

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC 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

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

RECORD ON APPEAL – VOLUME II

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1 Q Mr. Spohn, I'm going to show you -- ask you to
2 identify this, if you would, please. Is that the
3 2009 return you prepared for Guardian?

4 A Yes.

5 Q Okay.

6 A Looks like it.

7 Q And who's the K-1 go to in the 2009 return?

8 A Mary Kay Johnson.

9 THE COURT: Is that a -- is that the document that
10 you just marked as an exhibit?

11 MR. TODD ELLIS: It -- it is not, Your Honor. I'm
12 ---

13 THE COURT: Okay.

14 MR. TODD ELLIS: --- sorry. I was getting ready
15 to offer it into evidence.

16 THE COURT: All right.

17 MR. TODD ELLIS: And that would be Exhibit --
18 Defendant's Exhibit No. 12.

19 MR. SAUTTER: Your Honor ---

20 THE COURT: Any ---

21 MR. SAUTTER: --- Defendant's Exhibit No. 12, the
22 2009 S-corp tax return of Guardian Eagle Security, no
23 objection ---

24 THE COURT: All right.

25 MR. SAUTTER: --- to introduction as evidence.

1 MR. TODD ELLIS: Thank you.

2 (Whereupon, Defendant's Exhibit 12 was marked and
3 entered into evidence.)

4 MR. TODD ELLIS: That's all I have, Your Honor.

5 THE COURT: All right. Any redirect?

6 MR. SAUTTER: Thank you. Thank you.

7 REDIRECT EXAMINATION

8 BY MR. SAUTTER:

9 Q Let's just go right to that 2009 Guardian Eagle
10 Security tax return, Mr. Spohn, Exhibit No. 12. You
11 see it right there in front of you?

12 A No. He took it ---

13 Q Oh, she's still marking it. I'm sorry. All
14 right. Was there a K-1 issued for that year?

15 A Yes.

16 Q And who was the shareholder's name listed on that
17 2009 K-1 for Guardian Eagle Security?

18 A Well, what's here is just Mary Kay. But ---

19 Q If you look at the ---

20 A There should've been two.

21 MR. TODD ELLIS: There is two.

22 Q That -- look ---

23 MR. TODD ELLIS: I'm sorry.

24 Q --- at the second page.

25 A Oh. I'm sorry. Yes.

1 Q Who does it show?

2 A Julio Reis.

3 Q And what was the ordinary business income that
4 flew -- that flowed to Mr. Reis in 2009 on the K-1?

5 A \$3,389.

6 Q In -- do you have any idea of how that money was
7 paid -- the tax liability on that was paid?

8 A How the tax liability -- yeah. Once his personal
9 return was done, they basically paid for whatever the
10 tax was on that \$3300.

11 Q Who -- who paid for that?

12 A Well, it came out of Guardian Eagle.

13 Q Okay. So the tax liability went to Mr. Reis
14 because he was a -- a shareholder and -- and Guardian
15 Eagle paid -- compensated Mr. Reis the -- the tax
16 liability for that year ---

17 A Correct.

18 Q --- correct?

19 A Yeah.

20 Q All right. Did Mary Kay get a -- a -- a K-1 for
21 2009 as well?

22 A Yes.

23 Q And what was her ordinary business income or loss?

24 A \$9.

25 Q All right. So -- all right. So that's 2009.

1 2010 is what it is, as far as K-1 and tax liability.

2 How -- how is the tax liability -- if you know, 2010
3 the K-1 was issued to Mary Kay Johnson?

4 A Correct.

5 Q Who paid for the tax liability of that? Where did
6 that money come from?

7 A I don't know if they prepared their personal
8 return for that year or not, so ---

9 Q Okay.

10 A --- I couldn't answer.

11 Q All right. But based -- based upon how the
12 business was run, to your knowledge, your working for
13 them for so -- for -- for those years, do you have
14 any idea as to, you know, how -- who -- who paid the
15 tax liability for 2010, if any, of Mary Kay Johnson?

16 A I'm sure they would've taken a draw out of the
17 business to cover the taxes, which is -- which is
18 common.

19 Q Okay. So the business was really paying any of
20 the tax liability of -- of the shareholder or any
21 shareholder, correct?

22 A Yeah. And -- and the -- that's usually how it
23 works.

24 Q Okay.

25 A Yeah.

1 Q So how about 2011? Was there a K-1 issued?

2 A I don't -- I have no idea.

3 Q How about 2012? Was any K -- K-1 issued?

4 A I couldn't answer that, because I don't -- I don't
5 know.

6 Q All right. And -- but you -- you were the in-
7 house CFO at that time, correct?

8 A From May of '12 to January of '13. Yes.

9 Q Okay. So you don't -- all right. So ---

10 A So when I was there, no. It -- it -- the -- the
11 accounting was trying to get -- we were trying to get
12 the accounting caught up to do the returns. But when
13 I was there, they were not completed.

14 Q Okay. So there was no tax liability to Mary Kay
15 Johnson on a K-1 for -- to ---

16 A No.

17 Q --- your knowledge, for -- for the 2010/2011,
18 correct?

19 A Well, there's a tax liability because no return
20 was completed.

21 Q All right. All right. And that would all be
22 dependent on who -- who was designated as a member in
23 the

24 -- in the tax documents, correct?

25 A Yes. From her tax standpoint, yes.

- 1 Q Yeah.
- 2 A Yeah.
- 3 Q That -- and that -- and that -- that's a big
4 difference -- is -- is there a difference between tax
5 standpoint of -- what -- what law, if you -- if you
6 -- I'm sure you know. Do you agree with me that the
7 federal tax law covers the federal tax issues?
- 8 A Yeah.
- 9 Q And South Carolina partnership law controls the
10 partnership issues, to your knowledge, right?
- 11 A A partnership. Yes.
- 12 Q All right. Could be two different things.
- 13 A It could be, yes.
- 14 Q And that depends on how the partnership is
15 operated, correct?
- 16 A Correct.
- 17 Q And it -- is there anything illegal about that?
- 18 A Not that I'm aware of, no.
- 19 Q So the fact -- so what does the -- all right.
20 (Whereupon, Mr. Sautter and Mr. Michael Ellis
21 conferred.)
- 22 Q And these are all issues that could have and
23 should have been addressed in an operational
24 agreement between Luis Endara and Bobby Johnson,
25 correct?

1 A Absolutely.

2 MR. SAUTTER: Nothing further from this witness,
3 Your Honor.

4 THE COURT: Any recross?

5 (Whereupon, Mr. Todd Ellis and Mr. Ward
6 conferred.)

7 RE CROSS-EXAMINATION

8 BY MR. TODD ELLIS:

9 Q Mr. Spohn, I -- I'm going to hold you to what you
10 agreed to do with me earlier on. Mr. Sautter just
11 asked you five questions in a row regarding
12 partnerships, did he not?

13 A Yes.

14 Q And the LLC that operated AVSX is not a
15 partnership, correct?

16 A No.

17 Q It has nothing to do with partnership law, does
18 it?

19 A From the tax -- from the tax standpoint, no.

20 Q Is there anything else?

21 A I mean, I'm not a lawyer. But I think there's the
22 -- the way you operate a business also influences how
23 -- ownership.

24 Q Isn't it the -- when you file your taxes and who
25 gets what burden and responsibilities and

1 liabilities? That's all your clients care about,
2 isn't it?

3 A All my clients. Yes. Yeah. Well, and I -- and
4 this is not a -- a -- a textbook way to run a
5 business. That's -- absolutely not.

6 Q Right. Okay. Isn't it true that at the end of
7 the year, when the tax liability flows down to a
8 member of an LLC ---

9 A Uh-huh.

10 Q --- if there's no money to pay those taxes or if a
11 corporation is somehow defunct or let's say that
12 someone raids it because they're competing against
13 them and steals all their affiliates and accounts and
14 that company can't pay the taxes for that member,
15 that member's stuck with that bill, aren't they?

16 A Yes.

17 MR. TODD ELLIS: That's all I have, Your Honor.

18 THE COURT: All right. Sir, you may step down.

19 Thank you.

20 THE WITNESS: Okay.

21 (Whereupon, the witness exited the witness stand.)

22 MR. SAUTTER: Your Honor, I would -- I would
23 request that Mr. Spohn be excused.

24 THE COURT: Any objection?

25 MR. TODD ELLIS: No objection.

DIRECT EXAMINATION BY MR. MICHAEL ELLIS - ERIC BOUVET 441

1 THE COURT: Without objection, sir, you're
2 excused. You're free to leave. You have ---

3 THE WITNESS: Okay.

4 THE COURT: --- no further responsibility here.
5 Have a ---

6 THE WITNESS: Thank you.

7 THE COURT: --- nice day.

8 THE WITNESS: Thank you.

9 MR. SAUTTER: Your Honor, one minute?

10 THE COURT: Yeah.

11 (Off the record briefly.)

12 MR. MICHAEL ELLIS: Your Honor, at this time
13 plaintiff would call Mr. Eric Bouvet to the stand.

14 THE COURT: All right.

15 DEPUTY CLERK OF COURT: Right up here, sir.

16 (Whereupon, the witness came forward.)

17 ERIC BOUVET, having been first duly sworn,
18 testified as follows:

19 THE COURT: Go ahead..

20 MR. MICHAEL ELLIS: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY MR. MICHAEL ELLIS:

23 Q Good morning, Mr. Bouvet. How are you doing this
24 morning?

25 A I'm okay.

1 Q Mr. Bouvet, do you know the parties, Luis Endara,
2 Bobby Johnson, and Mary Kay Johnson?

3 A I do.

4 Q And how do you know them?

5 A I know them from my time working at AVSX
6 Technologies.

7 Q So -- okay. So you -- you were an employee of
8 AVSX?

9 A I was.

10 Q Okay. Can you tell me the time frames you were
11 employed with AVSX?

12 A July of 2012 to February of 2014, and then a short
13 stint thereafter, ending in June of 2014.

14 Q So -- so you left in 2014 and then came back?

15 A Yes.

16 Q Okay. And can you tell us about your hiring
17 process back in 2012?

18 A Sure. I was working for another security company
19 that I chose to leave. One of the people that I'd
20 worked in the business with at that prior company
21 wanted to make an introduction for me to AVSX. I was
22 supplied with Bobby Johnson's phone number. I
23 reached out to him and had a telephone conversation
24 about ---

25 Q I'm -- I'm sorry. And what did you understand

1 Bobby Johnson to be in relation to AVSX at the time?

2 A The CEO and owner.

3 Q Okay. Thank you.

4 A Okay.

5 Q Please continue.

6 A I reached out. And we had a brief conversation
7 over the phone that led to a face-to-face meeting
8 that was casual conversation about the alarm business
9 and then, the opportunities for me to join AVSX. And
10 I -- I believe, after that meeting, roughly about two
11 weeks later, I drove down to the corporate office in
12 Columbia. And we ---

13 Q Oh ---

14 A --- agreed ---

15 Q I'm sorry. Were you -- was that meeting the Grove
16 Park Inn meeting or is that the telephone meeting you
17 were just -- when -- whenever you had the -- the
18 meeting ---

19 A The first face-to-face?

20 Q Yes.

21 A I met -- I met them at the Grove Park Inn in
22 Asheville ---

23 Q And who ---

24 A --- North Carolina.

25 Q --- who were them?

1 A Bobby Johnson, Luis Endara, Dan Spohn, and Dan --
2 I'm trying to remember Dan's last name. He was their
3 operations officer.

4 Q Okay.

5 A Not -- not Dan. Dave.

6 Q Okay.

7 A Dave -- Cason.

8 Q So you had a sit-down with them at Grove Park Inn?

9 A I did.

10 Q And at that time who did -- what -- what did you
11 believe Bobby Johnson and Luis Endara's relation to
12 the company was?

13 A Well, I mean, I was under the impression that
14 those were the owners. That's what I always
15 understood to be the case prior to me ever talking or
16 meeting with them within the industry. You know, I
17 understood them to be the owners.

18 Q Okay. And at that meeting, did you ask about
19 working for ownership interest in the company?

20 A I did.

21 Q How -- how did that go?

22 A I was told that at that time, that opportunity was
23 not available.

24 Q Okay. Did -- did they know that you were going to
25 be asking for that that day?

1 A I don't believe so. No.

2 Q Okay. But they seemed to have the authority to
3 make that decision?

4 MR. TODD ELLIS: Objection, Your Honor ---

5 THE COURT: Objection sustained.

6 Q Whenever you asked that, did they say they needed
7 to consult with anybody else prior to making a
8 decision?

9 MR. TODD ELLIS: Objection, Your Honor ---

10 THE COURT: Objection ---

11 MR. TODD ELLIS: --- leading.

12 THE COURT: --- overruled.

13 A No.

14 Q Okay. They made the decisions themselves?

15 A Correct. I was told that there was no opportunity
16 at that time.

17 Q Okay. Thank you. So you were hired in July of
18 2012?

19 A Yes.

20 Q And what was your position when you were hired?

21 A Originally, I was hired to be the regional manager
22 of North Carolina.

23 Q Okay. And were you gradually promoted?

24 A I was.

25 Q What was the highest rank in the company you ever

1 achieved?

2 A Vice-president of sales.

3 Q And in that position did you report directly to
4 the owners of the company?

5 A Yes, I did.

6 Q And who was that?

7 A Bobby and Luis.

8 Q Did you ever consult with Mary Kay Johnson?

9 A No.

10 Q Okay. And so you said you were fired in February
11 of 2014?

12 A It was my belief that I was fired. Yes.

13 Q Okay. And was this before Luis Endara was kicked
14 out?

15 A It was.

16 Q And then, when were you rehired?

17 A I believe it was April 1st was my first day back.

18 Q Of 2014?

19 A Of '14. Yes.

20 Q So that was after Luis had left the company?

21 A Correct.

22 Q So who rehired you?

23 A Bobby Johnson.

24 Q Okay. Did he offer an explanation to you of why
25 you -- you had to leave the company in February of

1 '14?

2 A That it was a big misunderstanding and that, you
3 know, we needed to put things back right and continue
4 to bring back what -- what I considered to be, you
5 know, one of the greatest working atmospheres I had
6 ever been a part of.

7 Q When you came back in April of 2014, did AVSX have
8 a drastically different atmosphere from before you
9 left?

10 A No. It didn't. But that was -- one of the
11 reasons for me to come back is to keep that
12 atmosphere that had existed. It had degraded -- or
13 been degrading for some time prior to me leaving in
14 February.

15 Q Okay. Was there a different representation as to
16 the ownership structure of the company?

17 A Well, I always understood that Luis and Bobby were
18 the owners. But I was also of the understanding that
19 on paper it was Mary Kay. I knew that. But it was
20 always presented as these two are the owners.

21 Q Okay. Did -- were you ever given any explanation
22 of why Luis was not with the company when you came
23 back?

24 A Just that things had come to light that were not
25 very becoming of how AVSX conducted business; that,

1 you know, he had been spending money that was not
2 approved; and that, you know, he was planning on
3 moving and hadn't consulted who I believed to be his
4 business partner about that move.

5 Q Okay. They said he spent money without consulting
6 it?

7 A Yes.

8 Q Based upon your understanding of the company, do
9 you think Luis should've had to consult?

10 A Well, I think it's always good, when you're in a
11 relationship, to discuss expenses. But to get
12 approval, no.

13 Q Okay. So you think it's good to always discuss
14 things with your business partner?

15 A Absolutely. I do it daily.

16 Q Now, did -- did Mary Kay have a more prevalent
17 role in the company when you came back?

18 A Not -- no. And -- and I was never in the
19 corporate office ---

20 Q Okay.

21 A --- to -- to know any different. But I didn't get
22 any directive from Mary Kay.

23 Q Did Bobby Johnson ever tell you that he was not an
24 owner when he came back -- when you came back?

25 A Well, I think that was always kind of the joke,

1 was on paper he wasn't the owner.

2 Q Okay.. But in -- but what was the truth of the
3 matter ---

4 A What I ---

5 Q --- as -- as ---

6 A --- knew ---

7 Q --- you understood ---

8 A --- what I ---

9 Q --- it?

10 A --- knew to be true was that Mary Kay Johnson
11 owned the company on paper, but that Bobby and Luis
12 owned the company and ran the company.

13 Q And in what percentages, according to your
14 understanding?

15 A That, I never knew.

16 Q I'm -- I'm sorry?

17 A That I never knew. I never asked.

18 Q Okay.

19 A I just knew them to be the owners.

20 Q Okay.

21 (Whereupon, Mr. Sautter and Mr. Michael Ellis
22 conferred.)

23 Q Mr. Bouvet, I'd like to show you a document. It's
24 been introduced into evidence as Plaintiff's No. 14.

25 Do you -- take -- take a second and look at that. Do

1 you recognize that document, Mr. Bouvet?

2 A Give me one moment.

3 Q Okay. I'm sorry.

4 A Yes.

5 Q What do you recognize that document as?

6 A To the best of my memory without reading through
7 this, this document was a complaint filed by my
8 former employer against AVSX Technologies,
9 challenging the legitimacy of our ability to conduct
10 business in North Carolina; and then, specifically, a
11 sales rep in particular that was not valid for
12 registration in North Carolina or had been denied.

13 Q Okay. Were any of the owners of AVSX investigated
14 in this process?

15 A I mean, everybody had to give testimony.

16 Q Okay. Would you mind turning to page 2.

17 A Okay.

18 Q Do you see under "Interviews"?

19 A Yes.

20 Q All those people were interviewed during this
21 investigation by the North Carolina licensing board?

22 A Correct.

23 Q Do you see Mr. Endara on there?

24 A I do.

25 Q And what is his title next to his name?

1 A Owner.

2 Q Of?

3 A AVSX.

4 Q Okay.

5 (Whereupon, Mr. Sautter and Mr. Michael Ellis

6 conferred.)

7 MR. MICHAEL ELLIS: Court's indulgence.

8 Q Mr. Bouvet, I'd like to show you another document

9 labeled Plaintiff's 3. Just have to look at that.

10 (Whereupon, Mr. Sautter and Mr. Todd Ellis

11 conferred.)

12 A Okay.

13 Q Do you recognize that document?

14 A I -- I'm sure I -- I was included on it. Yes. I

15 mean, I'd have to read it to ---

16 Q Okay. Okay. So -- so you don't recognize that

17 right now?

18 A Not right offhand.

19 Q Okay.

20 A But, I mean, it was to Team AVSX, which would've

21 included me, and I read all correspondence ---

22 Q Okay.

23 A --- I needed to.

24 Q So -- so you don't, at this moment, remember the

25 e-mail "Our History," like, what it says, off -- you

1 would have to read that ---

2 A I -- I would ---

3 Q --- to refresh ---

4 A --- have to ---

5 Q --- your ---

6 A --- read it. Yeah.

7 Q Okay.

8 (Whereupon, Mr. Sautter and Mr. Michael Ellis
9 conferred.)

10 Q Would you mind just scanning over that very
11 quickly.

12 A Sure.

13 THE COURT: Is that item in evidence?

14 MR. MICHAEL ELLIS: Yes, Your Honor.

15 THE COURT: What's the item?

16 MR. MICHAEL ELLIS: It's, like, Plaintiff's 3.

17 THE COURT: All right. Thank you.

18 A Would you like me to scan the whole document or
19 just the one that he is forwarding and sharing?

20 Q The -- the -- the bottom one is the main one.

21 A Okay.

22 (Whereupon, Mr. Sautter and Mr. Michael Ellis
23 conferred.)

24 Q Just based off scanning, what does that e-mail
25 appear to say?

1 A It's telling the history of how Bobby and Luis
2 came together ---

3 Q Okay.

4 A --- to start the company that is now AVSX.

5 Q And is that how you always understood the company
6 to be?

7 A Yes.

8 Q That's an accurate description of how the company
9 was?

10 A Yes.

11 Q Okay.

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

14 Q Mr. Bouvet, did you ever sign an employee
15 agreement with AVSX Technologies?

16 A I did.

17 Q Did you sign one both times you were rehired -- or
18 hired?

19 A No.

20 Q So -- so you signed one when you were first hired?

21 A Correct.

22 Q Okay. And then, you say you were fired in 2014?

23 A Yes.

24 Q Rehired and you didn't sign one then?

25 A Correct.

1 Q Thank you, Mr. Bouvet. That's -- please answer
2 any questions Mr. Todd Ellis might have.

3 THE COURT: Cross-examination.

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

5 CROSS-EXAMINATION

6 BY MR. TODD ELLIS:

7 Q Mr. Bouvet, I'm Todd Ellis. Good morning.

8 A Good morning.

9 Q Mr. Bouvet, what -- what -- what do you do now?

10 A I run a security company.

11 Q Right. You run a security company that's a direct
12 competitor of AVSX Technologies, LLC, correct?

13 A If by competing you mean we sell similar product,
14 yes. But we do not compete in the same markets, to
15 my knowledge.

16 Q To your knowledge?

17 A Correct.

18 Q Okay. But you compete mostly in North Carolina;
19 is that correct?

20 A Correct.

21 Q And AVSX sells services in North Carolina as well?

22 A They do.

23 Q So that's not the same territory?

24 A To my knowledge, sir, they do not compete in the
25 same exact markets as us.

1 Q Okay. But as ---

2 A For ---

3 Q --- the ---

4 A --- for example, we're not in Raleigh; they are.

5 Q Okay. Same markets. All right. So you ever run
6 across their sales reps?

7 A No, sir.

8 Q You don't?

9 A No.

10 Q You don't have any personal contact with them?

11 A Their current sales reps?

12 Q Correct.

13 A Well, I learned a -- a week or two ago, I made a
14 phone call to a sales rep that works for them. And
15 when she told me she was satisfied she was with them,
16 I thanked her for her time and hung up the phone.

17 Q Right. But you had certainly been -- you've
18 solicited their sales reps before ---

19 A I ---

20 Q --- to come work for you?

21 A --- believe that was the first one that I've
22 solicited.

23 Q Okay. But you have done it?

24 A (No audible response.)

25 Q You did do that with this young lady?

- 1 A Yes, I did.
- 2 Q Okay. Now, who owns Affinity?
- 3 A Myself and my business partner, Michael O'Byrne.
- 4 Q Michael -- excuse me?
- 5 A Michael O'Byrne.
- 6 Q What is the type of entity that you do your
7 business through?
- 8 A Meaning how are we set up ---
- 9 Q Yes, sir.
- 10 A --- legally? We're a corporation.
- 11 Q Okay. And do you know what kind of corporation?
- 12 A It's an S corp.
- 13 Q An S corp?
- 14 A (No audible response.)
- 15 Q And how -- how have you been sharing profits and
16 losses through that business?
- 17 A I mean, we split everything equally.
- 18 Q Right. Because you're -- you get a K-1 at the end
19 of the year; is that correct?
- 20 A I do.
- 21 Q Right. And what's the other partner's name? I'm
22 sorry.
- 23 A Michael O'Byrne.
- 24 Q O'Byrne? Does Michael get a K-1 as well?
- 25 A He does.

1 Q Right. Do you have any service managers or key
2 employees who are not owners in the company?

3 A Who are not owners?

4 Q Not owners.

5 A Of course.

6 Q You do?

7 A Yes.

8 Q Okay. And do those key employees manage much of
9 the day-to-day operations?

10 A Well, they each have individual roles that they
11 manage ---

12 Q Right.

13 A --- and work together as a team.

14 Q But because of that, they don't own the company in
15 any way, do they?

16 A They do not.

17 Q They do not.

18 A (No audible response.)

19 Q The persons who own the company are the persons
20 responsible for it through the S corporation,
21 correct?

22 A Correct.

23 Q If the IRS comes and says, "Hey, Affinity, you owe
24 X number of dollars," who's responsible for that?

25 A That would be Michael and myself.

1 Q Right. And if Affinity, God forbid, wrongfully
2 harmed someone's home you're going in and doing it
3 and burns it down while you're trying to set
4 something up, who's responsible for that?

5 A We are.

6 Q And potentially, that liability could go down to
7 you and your partner, potentially?

8 A Potentially.

9 Q Right. You hope that that structure sets it up
10 and protects you; isn't that right?

11 A Yes.

12 Q Okay. I -- I know you were here for a little bit
13 of Mr. Spohn's testimony; is that correct?

14 A Probably the last five minutes of it ---

15 Q Okay.

16 A --- yes.

17 Q Other than what you heard here today, do you
18 actually, despite your relationship twice now with
19 AVSX, did you actually ever see the corporate
20 documents and/or know who was the owner of AVSX
21 Technology?

22 A I only knew by what I was told. I never saw any
23 corporate documents.

24 Q Right. And, in fact, your second time being
25 employed, you inquired about ownership into the

1 company; is that right?

2 A It was the first time.

3 Q First time?

4 A (No audible response.)

5 Q The second time, though, you met in your second
6 interview, in fact, with Bobby Johnson and Mary Kay
7 Johnson; isn't that correct?

8 A Well, I wouldn't consider it an interview. We sat
9 down and had coffee to talk about me coming back.

10 Q Okay. In other words, you -- and what those terms
11 might be?

12 A That things would go back to the way they used to
13 be and get back to the business at hand.

14 Q All right. That -- Mr. -- Mr. Ellis -- Mike Ellis
15 asked you about your employment agreement.

16 A Uh-huh.

17 Q Is it your statement that you are not bound by the
18 terms of that for noncompeting and/or solicitation of
19 employees?

20 A That would be correct. Noncompeting piece -- even
21 though it was written into there, it was always
22 advised that AVSX did not have a noncompete and, you
23 know, if you chose to leave and did things the right
24 way, you were free to go do what you wanted to do,
25 which is what I did. And on the nonsolicit, that

1 certainly was in there. And it had a time period on
2 it. And the phone conversation that I was alluding
3 to moments ago, when I made that call, I was outside
4 of that time period.

5 Q Okay. So you did look it up to determine whether
6 you had solicited inside the two years of the
7 agreement?

8 A Well, of course. I wouldn't want to put myself in
9 harm's way or the company.

10 Q Great. Thank you.

11 A Uh-huh.

12 THE COURT: Any redirect?

13 MR. MICHAEL ELLIS: Yes, sir.

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

16 REDIRECT EXAMINATION

17 BY MR. MICHAEL ELLIS:

18 Q Mr. Bouvet, Mr. Todd Ellis asked you about your
19 new company. What -- what kind of company did you
20 say it -- what entity?

21 A It's an S corp.

22 Q Okay. And in order to get your company started,
23 who did you file the articles of incorporation with?

24 A They were filed with the State of North Carolina
25 through our attorney.

1 Q Okay. And you pay taxes to the IRS?

2 A Quarterly.

3 Q Okay. So the Secretary of State of North Carolina
4 has to deal with the company that you own, correct?

5 A Correct.

6 Q And the IRS collects taxes, correct?

7 A Yes.

8 (Whereupon, Mr. Sautter and Mr. Michael Ellis
9 conferred.)

10 MR. MICHAEL ELLIS: Nothing further, Your Honor.

11 MR. TODD ELLIS: Very briefly, Your Honor.

12 RECROSS-EXAMINATION

13 BY MR. TODD ELLIS:

14 Q Mr. Bouvet, do you have a shareholder agreement
15 with your partner?

16 A I do.

17 Q Does it outline the responsibilities and duties
18 and rights of the parties if the company was to, for
19 instance, add someone else in as a partner or as a
20 shareholder, the -- the company breaks up, who owns
21 what? Does it outline those issues?

22 A It -- it outlines the responsibilities. I -- I'd
23 have to actually look at the document -- it's been
24 some time -- to answer all those questions. But it
25 does outline the responsibilities ---

- 1 Q Right.
- 2 A --- and what the shares are.
- 3 Q And what your rights are; is ---
- 4 A Correct.
- 5 Q --- that correct?
- 6 A Yes.
- 7 Q If you didn't have that document, what other
- 8 evidence would there be that the two of you were
- 9 owners of that company?
- 10 A Well, on paper I guess there'd be none. I guess
- 11 it would just be understandings of who runs that
- 12 company.
- 13 Q Well, that -- that's not quite true. Because at
- 14 the end of the year -- again, I'm not badgering you
- 15 on this. This is ---
- 16 A Okay.
- 17 Q --- you're -- you're not an accountant. Isn't it
- 18 true, though -- I'm reminding you. Isn't it true,
- 19 though, at the end of the year, the company has a
- 20 duty to send a
- 21 K-1 to every owner of the company?
- 22 A It does.
- 23 Q So that would be evidence of who the owner is?
- 24 A Yes.
- 25 Q Right. And without that North Carolina -- the

1 State of North Carolina -- nobody else has to know
2 who the owners are, correct?

3 A I -- I -- I would assume that to be correct. Yes.

4 MR. TODD ELLIS: That's all I have. Thank you,
5 Your Honor.

6 THE COURT: All right. Sir, you may -- excuse me
7 -- you may step down.

8 (Whereupon, the witness exited the witness stand.)

9 MR. SAUTTER: Your Honor, we'd ask that Mr. Bouvet
10 be allowed to be excused.

11 THE COURT: Any objection?

12 MR. TODD ELLIS: No objection.

13 THE COURT: Without objection, sir, you're
14 excused. You're free to go. Have a nice day.

15 THE WITNESS: Thank you.

16 MR. SAUTTER: Your Honor, at this point in the
17 trial, the plaintiff would rest their case.

18 THE COURT: All right. All right. Ladies and
19 gentlemen, the plaintiff has rested its case. What I
20 am going to -- well, what we need to do at this
21 point, I'm going to ask you to step to the jury room.
22 There's some matters of law that we need to take up.

23 Do not discuss the case. Do not discuss the
24 case. I'll get you back out here as quickly as
25 possible. Thank you.

1 (Whereupon, the jury exited the courtroom at 10:38
2 a.m.)

3 (Off the record briefly.)

4 THE COURT: All right. I got to -- I'm going to
5 stand down for just a minute and then ---

6 MR. TODD ELLIS: Yes, sir.

7 THE COURT: --- I'll come back. All right.

8 (Off the record from 10:38 a.m. until 10:59 a.m.)

9 THE COURT: All right. I apologize for keeping
10 you all waiting as long as I did. You know, when
11 you're on the bench up here, it's hard to get the
12 matters done that you need to get done, especially
13 when you're in a trial. I mean, just like you all:
14 You're having to return phone calls at your office
15 and whatnot.

16 All right. Any motions at this time from defense
17 counsel?

18 MR. TODD ELLIS: Yes, Your Honor. I have a
19 directed-verdict motion on all claims of the
20 plaintiff on the simple premise is that all of Mr.
21 Endara's claims arise from his claim of ownership of
22 Guardian Eagle Security, LLC, and eventually through
23 AVSX Technologies, LLC. The simple and only
24 testimony in this case came from Dan Spohn, one of
25 the last witnesses.

1 When I asked him about shareholder's share in an S
2 corp under 26 CFR 1.1, Mr. Spohn stated that you
3 cannot be an owner of an LLC unless you receive a K-
4 1. There has been testimony, Your Honor, only
5 operational, regarding the reason why Mr. Luis Endara
6 should have entitlement to the company.

7 If we don't grant directed verdict in this case,
8 it's my assertion, Your Honor, that we would be
9 creating South Carolina law that said those LLCs
10 without an operating agreement can be attacked for
11 ownership from anyone who has no written document or
12 proof to any agency or tax authority who oversees
13 limited liability companies. I'll try to say that
14 more precisely now.

15 But I essentially think, if the matter goes to the
16 jury and the jury should find -- we would potentially
17 be creating law that says anybody can attack an LLC
18 for ownership if you have some kind of operational
19 substantial role in the company, if that LLC has no
20 operating agreement, because we would be saying you
21 need no proof what -- no written proof whatsoever
22 with any agency or government authority, other than
23 speculative operational issues. And I assert that
24 that's grounds for directed verdict on all the
25 claims, because the only testimony, in fact, from

1 their own witness was you cannot be an owner unless
2 you receive a K-1. There's been no dispute that Mr.
3 Endara received a K-1 in this case.

4 THE COURT: All right. Mr. Sautter?

5 MR. SAUTTER: Thank you, Your Honor. What -- what
6 we really have here, Your Honor, is the parties and
7 the evidence and the proof that's been submitted to
8 this Court is really looked at -- looked to be --
9 urged to be examined in two -- by two different
10 authorities, Mr. Ellis would say, because on paper
11 and the tax issues that arise, that Luis Endara would
12 be barred from even claiming and having the jury
13 determine what his role was with Guardian and with
14 AVSX.

15 This is not a tax court. The issues squarely
16 before this Court on our papers and in our proof are
17 that -- and it's been testified to by people who
18 worked at AVSX and Guardian Eagle. The CFO, Dan
19 Spohn; the -- the software guy/CIO, Jason Wolfe,
20 testified; Luis Endara that -- that the business was
21 operated as the partnership of Luis Endara and Bobby
22 Johnson and that they formed the entities of Guardian
23 Eagle and AVSX and complied with the statutory
24 requirements for ownership. But really, the partners
25 are the ones that formed those entities.

1 Mr. Spohn made it very clear that -- and it's up
2 to the Court to instruct the jury on the law, of
3 course -- but that, you know, an operational
4 agreement is not necessary and that it may be two
5 different things for tax liability and for ownership
6 liability and ownership responsibility. I think
7 there's been more than sufficient evidence put forth
8 on the plaintiff's claims to allow this jury to
9 consider all of the case before they make their
10 determination as actually to what Mr. Endara's status
11 is; and, if they so find, what his damages are from
12 his dissociation.

13 THE COURT: All right. Mr. ---

14 MR. TODD ELLIS: Briefly, Your Honor. Of course,
15 Your Honor knows that directed verdict is when the
16 evidence yields only one inference. A directed
17 verdict is -- in favor of the moving party is proper.
18 The rule does not authorize the submission of
19 speculative, theoretical, and hypothetical views to
20 the jury. And that's exactly what we have here, Your
21 Honor.

22 This is a simple case. I would assert to you that
23 whether I'm a trial lawyer, a circuit court judge, a
24 law clerk, or anybody else, we are trying to resolve
25 cases in the simplest, the most effective, and, of

1 course, just and right way. And in this case,
2 without any -- any corporate documents whatsoever
3 indicating he has ownership, Mr. Endara would be able
4 to go forward if we don't direct verdict in this
5 case.

6 And the evidence is exactly opposite -- excuse me
7 -- Mr. Sautter -- what he stated Mr. Spohn said. Mr.
8 Spohn was clear. Exactly what he said was you cannot
9 be an owner unless you get a K-1. Forget about
10 whether it's for tax consequences. They would love
11 to wipe away any document here that's part of it.

12 But that's -- that's not the argument at all.
13 There is no evidence of ownership whatsoever except
14 -- in -- in a corporate sense at all, except the K-1s
15 being issued by the company, which is for the
16 purposes of showing that. But the circular itself
17 shows you must -- must issue a K-1 to any member --
18 must issue a K-1 to any member of it.

19 THE COURT: Does the South Carolina Limited
20 Liability Act require that?

21 MR. TODD ELLIS: Well, to my knowledge, the -- it
22 doesn't -- it doesn't speak to the tax -- taxation
23 issues of it. It does require that the -- you know,
24 the ownership -- it doesn't require the K-1, that I
25 know of. But it -- it ---

1. THE COURT: Well ---

2. MR. TODD ELLIS: --- doesn't ---

3. THE COURT: --- let me ---

4. MR. TODD ELLIS: --- speak to that at all, Your
5. Honor. The -- the LLC documents and how they
6. structure it doesn't require an operational
7. agreement. So literally, you -- in this state this
8. case could be the case that says: If you are a
9. substantial manager in an LLC that doesn't have an
10. operational agreement, you can attack for ownership.
11. It's what this case would say.

12. THE COURT: Well, let me ask you the -- the
13. opposite of that: If you don't have an -- if you do
14. have an operating -- I mean, is that necessitated in
15. every LLC that you have an operating agreement?

16. MR. TODD ELLIS: It does not.

17. THE COURT: All right. Under what circumstances
18. or situations might one attack the very issues that
19. Mr. Endara is attacking here without an operating
20. agreement?

21. MR. TODD ELLIS: What ---

22. THE COURT: So they have a K-1. Is that your ---

23. MR. TODD ELLIS: Got to have a ---

24. THE COURT: --- just ---

25. MR. TODD ELLIS: --- K-1. That's what ---

1 THE COURT: Right. Which is ---

2 MR. TODD ELLIS: --- I think ---

3 THE COURT: --- not required by the act?

4 MR. TODD ELLIS: Your Honor, I don't think it
5 speaks to the act about the K-1.

6 THE COURT: Okay.

7 MR. TODD ELLIS: Yeah. I ---

8 THE COURT: Well, let me ask you this: Pursuant
9 to Section 33-44-103 and the comments section of that
10 statute, it certainly says -- and I'm quoting here:
11 Although many agreements will be in writing, the
12 agreement and any amendments may be oral or may be in
13 the form of a -- of a record. Course of dealing,
14 course of performance, and usage of trade are
15 relevant to determine the meaning of the agreement
16 unless the agreement provides that all amendments
17 must be in writing.

18 In other words, my reading of that comment is that
19 it can be an oral agreement. And if it's not in
20 writing, course of dealing, performance -- course of
21 performance, usage of trade, pursuant to that
22 comment, is the very thing that we have here, is it
23 not? I mean, it's a factual dispute pursuant to the
24 fact that there is no written agreement.

25 MR. TODD ELLIS: Your Honor, I totally agree with

1 you... But that portion of the statute presumes we've
2 gotten already to the question which is, I think,
3 before you, which is that is he a member?

4 THE COURT: Well, it ---

5 MR. TODD ELLIS: Can ---

6 THE COURT: --- it -- well, is that not a factual
7 dispute?

8 MR. TODD ELLIS: No.

9 THE COURT: He says he is. Your client says he's
10 not. Witnesses have come in here and testified that
11 -- that that's the way they operated. At -- at
12 least that was my -- our understanding or my
13 understanding as to how they operated.

14 MR. TODD ELLIS: Without question, Your Honor. I
15 don't question that at all.

16 THE COURT: Okay. And ---

17 MR. TODD ELLIS: You're ---

18 THE COURT: --- why does ---

19 MR. TODD ELLIS: --- going ---

20 THE COURT: --- that -- then, answer this question
21 for me: Why does that not create a factual issue for
22 this jury?

23 MR. TODD ELLIS: Because you have to have the
24 threshold of actually having the K-1 showing
25 ownership. I think 33-104, Your Honor, speaks to the

1 issue of what are those terms/responsibilities of the
2 owners of the LLC? But you have to have the
3 threshold that you are an owner to begin with. And
4 if there's no operational document, literally, Honor
5 -- Your Honor, there would be nothing to show
6 whatsoever responsibility, except for having that K-
7 1.

8 I think you have to -- I agree with your
9 assessment. But you have to read them in
10 conjunction. The K-1 has to be in place. And
11 frankly, from the stand, Your Honor, the -- the --
12 the accountant has said you can't be a member -- not
13 just a guy who was around a lot and had control and
14 got great benefits. I think you would've had to have
15 received a K-1 to show your ownership interest if
16 there's no written document.

17 Because literally, the test that you read out,
18 which I think is a test for -- for LLCs that have
19 known and written down and there's not a question --
20 every case I've researched in months on this case ---

21 THE COURT: There's -- there's not a lot of case
22 law out there on ---

23 MR. TODD ELLIS: You know ---

24 THE COURT: --- an LLC ---

25 MR. TODD ELLIS: --- what the case law is on, Your

1 Honor, is disputes among obvious LLC members over
2 those rights you've just described in there ---

3 THE COURT: Right.

4 MR. TODD ELLIS: --- and not the issue of is he a
5 member or not. And without -- the statute does not,
6 by the way, designate a member. Doesn't -- doesn't
7 define what a member is. So I think, again, that
8 proves further you fall to what the testimony of the
9 Court was here: You can't be a member unless you've
10 gotten a K-1.

11 THE COURT: Well, with all due respect, I am going
12 to respectfully deny your motion for directed
13 verdict. While you have correctly stated the law
14 with regards to when there is only one inference that
15 can be deduced from the evidence, the question
16 becomes one of law for the Court, I think that there
17 is more than one reasonable inference, based upon the
18 testimony that's been presented in this courtroom.

19 Furthermore -- furthermore, you indicated that
20 there -- it would be improper to submit speculative,
21 theoretical, or hypothetical views to the jury. I
22 think it boils down to a question of fact in this
23 case -- of credibility -- excuse me -- question of
24 credibility in this case. And the Court, under the
25 law, has no authority, no authority whatsoever, to

1 decide credibility issues or to resolve conflicts in
2 the testimony or evidence.

3 Furthermore, where the evidence -- where there is
4 a reasonable possibility of probability that a
5 verdict could be in favor of the plaintiff, the
6 Court, under the law, is required to deny such
7 motion. But I believe, again, that you have aptly or
8 argued such issues on behalf of your client zealously
9 and your position is certainly protected on the
10 record in case a verdict is rendered against them and
11 I am wrong. Okay?

12 MR. TODD ELLIS: Your Honor, I have another
13 follow-up directed-verdict motion.

14 THE COURT: All right.

15 MR. TODD ELLIS: Your Honor, I move for directed
16 verdict that Bobby Johnson and Mary Kay Johnson be
17 removed from the case as individual defendants. The
18 piercing the corporate veil, I don't even think it's
19 a cause of action. But the assertion at the
20 beginning of the case was removed.

21 There's been no evidence that Bobby Johnson/Mary
22 Kay Johnson did anything outside the agency of AVSX
23 Technologies whatsoever which would provide them to
24 have individual liability, other than through Mary
25 Kay's ownership of AVSX in some way, should a

1 judgment be rendered in this case, no specific
2 evidence that the -- that was done for some
3 individual personal gain. Even if you had -- even
4 with the allegations that they kicked me out and
5 they're of AVSX, that's by and through the benefit of
6 AVSX. And nothing said -- there's going to be
7 personal gain to either one of these folks
8 individually.

9 THE COURT: Mr. Sautter?

10 MR. SAUTTER: Your Honor, this -- this -- this --
11 we -- we have withdrawn our cause of action for
12 piercing the corporate veil. But we still have to
13 somewhat rely on the -- on the doctrine of that. And
14 -- and I get there by these are the individual acts
15 of these two, Bobby Johnson, Mary Kay Johnson, that
16 have damaged Luis. It's not a corporation that voted
17 on things. They're very lenient about corporate
18 formality.

19 These are the individual acts. It's partner
20 against partner. Our theory is -- is that Luis
21 Endara and Bobby Johnson are partners. The partners
22 formed the -- these -- these LLCs. And Bobby is the
23 one who ousted Luis from the partnership. They have
24 benefitted from it by their continuing to have all
25 the benefits: the holdbacks, the revenue shares.

1 He's been damaged by their individual actions.

2 And indeed, Mr. Ellis's -- his -- his theory of
3 liability is that all the liability flows to Mary
4 Kay. Well, they haven't even issued K-1s for those
5 years. We don't even know what's happened. They --
6 they were in charge of the -- the financial
7 documents. They haven't filed taxes.

8 So it is their individual acts that we would -- we
9 would argue to this Court that there's been ample
10 evidence of their individual acts that have damaged
11 Mr. Endara throughout the way they operate a business
12 and throughout the way they disassociated him, that
13 they should remain in the case as party defendants.

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

16 MR. TODD ELLIS: Your Honor ---

17 THE COURT: Hold on a minute.

18 MR. TODD ELLIS: I'm sorry..

19 MR. SAUTTER: The -- yeah. They -- they -- they
20 treated the -- the -- it -- there's no question about
21 it. When -- when Endara was still with -- with the
22 -- with the partnership -- and then it even continued
23 after he left -- they treated the bank accounts of
24 AVSX -- Mary Kay Johnson with the Mercedes, which the
25 personal expenses -- which were testified to by Mr.

1 Spohn, Bobby Johnson -- they -- they lived out of --
2 you know, personal expenses. They lived out of the
3 AVS [sic] money. And half of that money, it's our
4 position, should've been Luis -- Luis's. And we are
5 arguing that their individual liability -- their
6 individual acts -- their -- you -- you know, bring
7 the -- they should not be granted a directed verdict.

8 THE COURT: All right. Hold on just a minute.
9 All right, Mr. Todd Ellis. Happy to hear from you.

10 MR. TODD ELLIS: Thank you. Your Honor, there is
11 no individual acts in this case. What he's talking
12 about, he's trying to assert that any small, closely
13 held corporation, the individual owners of that would
14 be responsible for a termination that does -- was
15 done by corporate counsel, stating that he was not an
16 employee. None of that speaks to -- it -- it -- it
17 -- the -- the circumstances surrounding it might be
18 some kind of, you know, inflaming situation.

19 But all of these acts were done by and through the
20 corporate structure and -- and does not create
21 individual liability. It's -- directed verdict
22 should be granted against these individuals because
23 what they've done and every act that they've done and
24 been testified in this case has been done by and
25 through AVSX.

1 Whether Mr. Endara received personal funds or they
2 received personal funds, the acts were the same. And
3 I think that the individuals should be dismissed from
4 the case. This is a corporate active -- the
5 corporation fired him. And all damages would flow
6 from that action.

7 There's nothing wrong with that act. It may be
8 that, as you state, that the jury's going to decide
9 that issue or not. But there's not individual acts
10 here that were done.

11 THE COURT: All right. Mr. Sautter?

12 MR. SAUTTER: Yes, sir.

13 THE COURT: Is it your assertion that individuals
14 are not shielded by the limited-liability act?

15 MR. SAUTTER: They can be.

16 THE COURT: All right. Well, let me ask you this:
17 Is it not a -- a necessity to pierce the corporate
18 veil to hold individuals liable for acts on behalf of
19 the corporation? I mean, they're elements required
20 to pierce the corporate veil, which you all withdrew,
21 one of which of the elements is failure to observe
22 corporate formalities: nonpayments of dividends,
23 siphoning of funds of the corporation by the dominant
24 stockholder, nonfunctioning of other officers or
25 director, absence of corporate records, and the fact

1 that corporations was -- corporation was merely a
2 facade for the operations of the dominant
3 stockholder.

4 I mean, all of those are required to hold someone
5 personally ---

6 MR. SAUTTER: Yes, sir.

7 THE COURT: --- responsible.

8 MR. SAUTTER: Yes, sir.

9 THE COURT: And those are factors that the Court
10 has to look at. Tell me why I should hold them
11 personally in the case at this point when you
12 withdrew your motion -- or your position as to
13 piercing the corporate veil.

14 MR. SAUTTER: We withdrew the cause of action to
15 pervert -- to piercing the corporate ---

16 THE COURT: Well, I mean ---

17 MR. SAUTTER: --- veil ---

18 THE COURT: --- piercing the corporate veil would
19 be a necessity, would it not, to holding them
20 personally responsible?

21 MR. SAUTTER: I -- I -- I believe that -- I
22 believe they satisfy all the elements.

23 THE COURT: But you withdrew it.

24 MR. SAUTTER: Yes, sir.

25 THE COURT: That's the point. That's what I'm

1 getting at.

2 MR. SAUTTER: Well, it -- if ---

3 THE COURT: And -- and ---

4 MR. SAUTTER: --- if it ---

5 THE COURT: --- and I'm not going to disagree with

6 you about some of the testimony that was in here.

7 Maybe you would've gotten there. But you withdrew

8 that when we started this trial.

9 (Whereupon, Mr. Sautter and Mr. Michael Ellis
10 conferred.)

11 MR. SAUTTER: I think we had a motion to pierce
12 the corporate veil, Your Honor. And -- and I -- and
13 -- and -- and ---

14 THE COURT: You had a motion. But I -- you
15 withdrew that matter before we even started ---

16 MR. SAUTTER: We -- we ---

17 THE COURT: --- the trial of this ---

18 MR. SAUTTER: We ---

19 THE COURT: --- case.

20 MR. SAUTTER: We did -- I guess to be ---

21 (Whereupon, Mr. Sautter and Mr. Michael Ellis
22 conferred.)

23 MR. SAUTTER: I -- I don't want to dance around
24 with -- with this Court. But I believe that we
25 withdrew the motion to pierce the corporate veil. I

1 believe that we proceeded and the evidence and it
2 would even -- the -- you know, if -- if the evidence
3 that was received that would relate back to the
4 pleadings and things of that nature, there is
5 evidence that satisfy each and every one of those
6 elements -- or at least to make a -- a case enough to
7 submit to the jury.

8 And -- and then, when you -- when you couple it
9 with the testimony that's come out, I think there's
10 ample evidence of it. I'm not so certain a -- a
11 separate cause of action is required. But I -- I
12 believe we withdrew the motion from it and the
13 evidence that was presented satisfies those elements.
14 And I'd request that Mr. Ellis's -- Mike -- Todd
15 Ellis's motion be denied.

16 MR. TODD ELLIS: Briefly, Your Honor, may I ---

17 THE COURT: Yes.

18 MR. TODD ELLIS: --- be heard? Your -- Your
19 Honor, I -- I was in your chambers. And I don't
20 remember everything in this case. But I remember
21 them withdrawing that and they were proceeding on
22 ownership solely. So whether those elements played
23 there or not, first of all, I think piercing the
24 corporate veil and the elements you just read out,
25 Your Honor, is not necessarily appropriate in any way

1 in the issue of a ownership of an LLC. It is when
2 third parties are attacking an LLC.

3 Mr. Endara -- all those facts that they just spend
4 off, using personal funds, not corporate -- if he
5 claims he was an owner, he was a part of that. So
6 I'd argue two things: They withdrew that motion for
7 piercing the corporate veil and they can't go forward
8 on it. That's just like if I'd have withdrawn my
9 counterclaims, came back here at the end of the day,
10 and say, "Judge, I want you to allow me to argue for
11 a counterclaim in the -- in the closing." I can't do
12 that.

13 They withdrew the piercing a corporate veil. And
14 I think even to their point, they knew that disputes
15 -- purported disputes among members is not
16 appropriate for piercing a corporate veil. It's not
17 -- it's for third parties attempting to get to the
18 ownership for wrongful acts, not someone who's
19 actually purportedly a member themselves.

20 MR. SAUTTER: Your Honor, I don't -- I don't -- I
21 think ---

22 THE COURT: Well ---

23 MR. SAUTTER: ---- we ---

24 THE COURT: --- hold on a minute, now.

25 MR. SAUTTER: Yes, sir.

1 THE COURT: Mr. Ellis, you've asserted throughout
2 the trial of this case that he's a third party, in
3 essence, and not an owner.

4 MR. TODD ELLIS: Well, I know, Your Honor. But
5 this is their attempt to get to piercing the
6 corporate veil.

7 THE COURT: I mean ---

8 MR. TODD ELLIS: So ---

9 THE COURT: --- you -- you're arguing one position
10 throughout the entire trial of this case, and now
11 you're arguing something separate and apart on ---

12 MR. TODD ELLIS: I'm not ---

13 THE COURT: --- your motion ---

14 MR. TODD ELLIS: --- trying ---

15 THE COURT: --- for a directed verdict as to the
16 piercing the corporate veil.

17 MR. TODD ELLIS: I'm -- I'm not, Your Honor --
18 Your Honor. I'm not arguing different -- I'm -- I'm
19 asserting what their position is. Their position is
20 -- is that he was a member. Well, it -- it doesn't
21 matter. It's not appropriate for him to be --, to --
22 for piercing the corporate veil under these
23 circumstances. But I ---

24 THE COURT: Well, you've ---

25 MR. TODD ELLIS: --- I ---

1 THE COURT: --- asserted throughout that he's not
2 a member. And then ---

3 MR. TODD ELLIS: Right.

4 THE COURT: --- you -- that -- that -- that --
5 that -- and then you say he was simply a W-2
6 employee.

7 MR. TODD ELLIS: Yes, Your Honor.

8 THE COURT: Which would make him a third party, so
9 to speak, as to any ownership interest.

10 MR. TODD ELLIS: Right.

11 THE COURT: And you're ---

12 MR. TODD ELLIS: And if ---

13 THE COURT: --- saying it's got to be a third
14 party to pierce the corporate veil, not an owner.

15 MR. TODD ELLIS: Right, Your Honor. If I was
16 arguing to include pierce the corporate veil, then
17 I'd be arguing two different sides. They're arguing
18 one side ---

19 THE COURT: Well ---

20 MR. TODD ELLIS: --- which is he was a member and
21 we should pierce the corporate veil of the entity in
22 which he's -- supposedly was an owner.

23 THE COURT: I understand. I understand. Well,
24 I'm going to think about the issue on the personal
25 liability. It was -- again, and -- and it was

1 discussed in chambers. And I believe I put it on the
2 record that the issues in this case as boiled down
3 was whether or not: (1) he was a member/owner; or
4 (2) whether or not he was a W-2 employee.

5 (Off the record briefly.)

6 MR. SAUTTER: Your Honor, I would just argue one
7 more thing: The -- the South Carolina ---

8 THE COURT: And ---

9 MR. SAUTTER: --- Code of Laws LLC Section 33-44-
10 602, it -- it states -- it's number -- it -- it's at
11 (c) (As read): A member who wrongfully dissociates
12 from a limited liability couple -- company is liable
13 to the company and to the other members for damages
14 caused by the dissociation. It says a member. The
15 liability is in addition to any other obligation of
16 the member to the company or to the other members.

17 And I would state that a -- argue that under the
18 law, that he is entitled to pursue the members
19 individually. And there's been ample evidence as to
20 who the members are in this case: the partners,
21 Bobby Johnson and Luis Endara.

22 THE COURT: All right. Well, I'll look at that.
23 What I'll -- I'll take that under consideration.

24 All right. All right. We'll stand down for just
25 a minute. And then we're going -- Mr. Ellis, you

1 have your -- I know your -- Mr. and Ms. Johnson are
2 here. How about your other witness that we talked
3 about yesterday?

4 MR. TODD ELLIS: Your Honor, I can -- I spoke to
5 him. He did all he could. He cannot be here till
6 tomorrow morning.

7 THE COURT: Okay.

8 MR. TODD ELLIS: Yeah. And ---

9 THE COURT: Well ---

10 MR. TODD ELLIS: --- that is the last witness I
11 would have ---

12 THE COURT: So ---

13 MR. TODD ELLIS: Excuse me. Yeah. I -- I have
14 Mr. Johnson, I think.

15 THE COURT: Just those three possible ---

16 MR. TODD ELLIS: Yeah. I don't think Ms.
17 Johnson's going to testify again. But you're right.
18 It -- it -- it would be Mr. Johnson. I don't think
19 it would be that long. And then I would -- you know,
20 I don't have him till tomorrow morning. I'd need ---

21 THE COURT: Okay.

22 MR.. TODD ELLIS: --- to discuss it ---

23 THE COURT: Well, we'll -- we'll hammer out some
24 issues this afternoon -- early afternoon. What we
25 can do is put Mr. Johnson and take a lunch and come

1 back and have a charging conference. How about that?

2 MR. TODD ELLIS: Yes, Your Honor.

3 THE COURT: All right. Let's stand down for just
4 a minute and then we'll get the jury in here and
5 we'll go from there, okay?

6 MR. TODD ELLIS: Thank you.

7 (Off the record from 11:25 a.m. until 11:39 a.m.)

8 THE COURT: All right. Mr. Todd Ellis, did you

9 ---

10 MR. TODD ELLIS: Yes, sir.

11 THE COURT: --- hand up the statute that you
12 wanted ---

13 MR. TODD ELLIS: I ---

14 THE COURT: --- to?

15 MR. TODD ELLIS: No -- no, Your Honor.

16 THE COURT: Let me just ---

17 MR. TODD ELLIS: I ---

18 THE COURT: --- see what you ---

19 MR. SAUTTER: Your Honor, it's the same statute
20 that I was referring to in my arguments to ---

21 THE COURT: Okay.

22 MR. SAUTTER: --- the Court.

23 THE COURT: All right. Here, Mr. -- I got -- I
24 have a copy of it.

25 MR. TODD ELLIS: Okay.

1 THE COURT: I ---

2 MR. TODD ELLIS: I have ---

3 THE COURT: --- copy ---

4 MR. TODD ELLIS: --- a brief ---

5 THE COURT: --- of it back here when I went back
6 in chambers.

7 MR. TODD ELLIS: --- a brief argument on it, Your
8 Honor.

9 THE COURT: I've heard everything I need to hear,
10 Mr. Ellis. Thank you, though.

11 All right. Anything else before I bring the jury
12 back out? Plaintiff's counsel?

13 MR. SAUTTER: No, Your Honor.

14 THE COURT: Defense counsel?

15 MR. TODD ELLIS: Only, Your Honor, you're just --
16 you're still taking that under advisement, I assume?

17 THE COURT: Yes, sir.

18 MR. TODD ELLIS: Okay. Yes, Your Honor. No.
19 Then, nothing further.

20 THE COURT: Bring me the jury, please, sir.

21 (Off the record briefly.)

22 (Whereupon, the jury entered the courtroom at
23 11:41 a.m.)

24 THE COURT: The jury is seated, Your Honor.

25 THE COURT: Thank you very much. All right.

1 Ladies and gentlemen, when you exited the courtroom
2 but prior to you exiting the courtroom, the plaintiff
3 rested its case. At this point the defense has an
4 opportunity to present its case. Therefore, I am
5 going to recognize Mr. Todd Ellis. Call your first
6 witness, please, sir.

7 MR. TODD ELLIS: Thank you, Your Honor. I call
8 Bobby Johnson.

9 (Whereupon, the witness came forward.)

10 BOBBY JOHNSON, having been first duly sworn,
11 testified as follows:

12 (Off the record briefly.)

13 DIRECT EXAMINATION

14 BY MR. TODD ELLIS:

15 Q Mr. Johnson, there's -- a day or two ago, we heard
16 from you a little bit when the plaintiffs called you
17 in their case. I wanted to visit with you about a
18 couple topics. This jury's heard a lot about the
19 time line. I want to take you to the end of your
20 relationship with the employment of Luis Endara in
21 March of 2014.

22 If you would, talk to the jury a little bit about
23 why AVSX terminated Mr. Endara.

24 A His commitment and influence within the company
25 had diminished significantly over the preceding year.

1 Q Were there concerns about his work on a daily
2 basis that you had?

3 A Yes. And it became much worse there between
4 January and March of 2014.

5 Q Was there a particular time line or event that you
6 thought showed that deterioration start to begin?

7 A Yes. That would've been the weekend of March 7th.

8 Q Okay. That culminated it, though. But was there
9 an event prior to that where you started to see Mr.
10 Endara's work performance ---

11 A Yes. That would've began in December 2012 upon
12 his divorce from Mona Endara.

13 Q Okay. Was Mr. Endara's -- what -- what was his
14 time commit there afterwards and what was taking his
15 time?

16 A He became, as he referenced, friends with Ms.
17 Ellie Moise -- or Moise in, I believe, June. And
18 then they expedited their relationship thereafter.

19 Q Okay. And during that time were you aware of that
20 relationship?

21 A I was, as well as the circumstances.

22 Q Right. Did you realize that at -- at times he was
23 visiting with her and either going out of state to
24 Detroit or some other place?

25 MR. SAUTTER: Your Honor, objection. He's

1 leading.

2 THE COURT: Objection sustained.

3 Q Were you aware that he was traveling to see her?

4 A Yes, sir.

5 Q And -- and to your knowledge, did that affect his
6 responsibilities at the office?

7 A Significantly.

8 Q What were those that gave you concern regarding
9 other vendors and -- and employees in the way Mr.
10 Endara was either responding or not?

11 A His whole demeanor changed -- his attitude, his
12 commitment to family and so forth. It became more of
13 a jovial atmosphere at the company that was geared
14 around a relationship that had its concerns as well.

15 Q How about his attention to detail?

16 A It became significantly withdrawn.

17 Q Was Mr. Endara missing appointments?

18 A Correct.

19 Q Was Mr. Endara not responding to colleagues?

20 A As we've discussed, Mr. Endara played a
21 significant role in regards to the service and
22 support of AVSX Technologies and therefore in the
23 time periods in which he would have technical
24 requests or so forth, he was usually the party that
25 would be the first point person to respond. There

1 were instances that accumulated in the first part of
2 2014 that became very challenging to understand.

3 Q Now, Mr. Johnson, lots of documents have been
4 submitted in this case, some e-mails between you and
5 Mr. Endara. But did you have communications with him
6 regarding these concerns?

7 A Mr. Endara and I communicated on a significant
8 level throughout the day throughout our entire
9 relationship.

10 Q And how did you do that, other than by e-mail?

11 A That would've been by text message, e-mail, phone
12 communication. We could even -- at one point it was
13 very unfortunate that, you know, if you're in an
14 interview with someone, you could actually finish
15 each other's sentences at times.

16 Q Plaintiff has introduced an e-mail in which you
17 had discussed in January of on or about 2014, just a
18 couple months before this termination, you being
19 down, tired, otherwise struggling. Tell the jury, if
20 you would, the -- that and -- and -- and how that
21 coincided or otherwise, if it does at all, with your
22 concerns about Mr. Endara's work.

23 A I could go into the personal conversation that
24 regarded where my grandfather had passed, of course,
25 which would put you in a depressive state at times

1 when a significant party in your family had passed.

2 Unfortunately, that's not the only reason.

3 As a business we're -- we are responsible for the
4 families in which we support on a daily basis,
5 whether that's our immediate family or whether that's
6 the UPS truck man who drops off our packages on
7 behalf of our distributors. He's got three children.
8 And I could actually tell you how many times I've
9 actually requested to talk to him about his kids. So
10 it's important to me to understand we're all
11 interconnected in somehow, some way. We each have
12 some bearing on each other.

13 So the standpoint of all of that played a
14 significant role each January, as I was reviewing the
15 previous year's challenges or hiccups or sales
16 margins, markets, how they were performing. And, of
17 course, that would always play a role in trying to
18 influence additional benefits thereafter to help to
19 erectify [sic] that.

20 Q That wasn't the only communication you had with
21 Mr. Endara about either his work performance or your
22 goals for the company there afterwards in January up
23 to March of 2014?

24 A Correct.

25 Q All right. Several witnesses, Mr. Johnson, have

1 been showed this AVS corporate-responsibilities
2 structure.

3 A Yeah.

4 Q And I think you've said it on -- earlier on direct
5 examination when they called you in the plaintiff's
6 case, that you created that document; is that right?

7 A That would be correct.

8 Q Does that document have anything on there, speak
9 any way, to ownership of the company?

10 A It does not.

11 Q What does it set forth there?

12 A It set forths [sic] the roles and responsibilities
13 for each primary -- primary party that was in our
14 senior leadership team. And this would've been
15 created in 2012.

16 Q And at that time in 2012, who owned AVSX
17 Technologies?

18 A In 2012 that would've been my wife, Mary Kay Cason
19 Johnson.

20 Q Okay. I want to show you what's been marked as
21 Plaintiff's Exhibit 3 and ask you to take a look at
22 that as well. That -- I think that's been referred
23 to a couple times as the "Our History e-mail."

24 A Yes, sir.

25 Q Anywhere in that history, does it state the actual

1 ownership of the company to anyone either other than
2 Mary Kay Johnson, or does it state it at all, to your

3 ---

4 A It does ---

5 Q --- knowledge?

6 A --- not.

7 Q Do you use the term "business partner" in that e-
8 mail?

9 A It's a very long and significant e-mail. But I'm
10 very confident that there -- I use that term loosely
11 in all my relationships with employees. So
12 therefore, I want them to feel, as well as I do and
13 as well as Mary Kay does, and any employee that's
14 currently with AVSX, that they themselves are the
15 identity that -- that encounters our customers on a
16 daily basis.

17 Q Do you mean that in any way to be ownership of the
18 company?

19 MR. SAUTTER: Objection, Your Honor. That's
20 leading.

21 THE COURT: Objection sustained.

22 MR. TODD ELLIS: You changed seats on me. That's
23 why it threw me off. Sorry.

24 THE COURT: Mr. ---

25 MR. SAUTTER: Sorry, Todd.

1 THE COURT: Ask the question, please.

2 Q Mr. Johnson, what did you intend to convey when
3 you used the term "business partner"?

4 A The most important part is to ensure all of our
5 team members -- and it's reflective in the employee
6 agreements that we offer them -- that they understand
7 that they're a business partner of ours as much as
8 they are a member of our family and help impress upon
9 them that what they do daily to help us grow or to
10 help us service our customers is the most critical
11 component of our success.

12 Q Jason Wolfe testified here earlier. Matt Edwards
13 testified here earlier. Did you ever use that term
14 with them?

15 A Freely. And as well as they have themselves in
16 additional e-mails.

17 Q All right. How about outside vendors that you all
18 worked with?

19 A Absolutely. Yearly, AVSX would have an
20 opportunity to visit with our team members, our
21 vendors, and we would treat them with the respect and
22 courtesy that they deserve for assisting us
23 throughout each year.

24 Q Did you have any -- did you intend to convey any
25 legal significance ---

1 A I would not, nor could I. I graduated high school
2 six months late, so I have not had any formal
3 education that would qualify me as such.

4 Q Okay. This does state some background on how the
5 companies and you and Luis became working together
6 over a period of time.

7 A Yeah.

8 Q You don't really deny what you testified to
9 earlier. If you could, take them through briefly how
10 you left the industry and the fitness center and went
11 to work in -- at least in the same entity in which
12 Mr. Endara was in.

13 A I was, in fact -- built a relationship with Mr.
14 Endara. It was actually in 2004 -- or -- yes --
15 2004. And then in June of 2006, Mr. Endara presented
16 to me that he was an owner of the fledgling alarm
17 company referenced in this e-mail. And upon doing
18 so, I became impressed with the opportunity because
19 my wife was pregnant with our second child. And I
20 felt that working 12 hours a day at the gym facility
21 was restricting my ability to be a good father.

22 Q And then, in fact, you worked in several different
23 entities; is that correct?

24 A I did.

25 Q With -- with -- in fact, Mr. Endara was there as

1 well?

2 A The trajectory of our careers continued
3 thereafter.

4 Q All right. I'm going to show you what's been
5 marked as Plaintiff's Exhibit No. 14. This is the
6 multiple times referred to North Carolina
7 investigation report. Do you recall that?

8 A I do.

9 Q Yeah. Several times -- I don't know what pages
10 they are. You -- you've read this document ---

11 A I have.

12 Q --- before, correct? Right.

13 A Yes, sir.

14 Q There is a reference in here to Luis Endara from
15 the North Carolina board being the owner; is that
16 correct?

17 A As documented, yes, sir.

18 Q By -- it's -- it's documented by the North
19 Carolina investigative report, correct?

20 A Correct.

21 Q Did you in any way represent Mr. Endara as the
22 owner of the company?

23 A No. I would not, nor would I -- as you see on
24 page 7, I'm referenced as the CEO of AVSX.

25 Q Okay. And do you know of anybody at AVSX,

1 including Mary Kay or anyone else with any authority,
2 representing Mr. Endara as the owner?

3 A Not to my knowledge.

4 Q Okay. Mr. Johnson, tell the jury, if you would:
5 Since the termination of Luis Endara, how is the
6 business going at AVSX?

7 A It was one of the most struggling years since Mr.
8 Endara's exit, as he became a competitor, as well as
9 what you witnessed earlier with Mr. Beatty -- or Mr.
10 Bouvet. Both parties were associated with AVSX in a
11 senior leadership role and have become a competitor
12 ever since and have dastardly pursued AVSX employees,
13 AVSX customers, and accounts -- erroneously and
14 difficult to understand considering their employment
15 agreements.

16 Q Approximately how many accounts has MX Security
17 taken from AVSX?

18 A In my conversation with our senior business
19 partner, Vector Security, who's our primary ---

20 MR. SAUTTER: Objection ---

21 A --- funding ---

22 MR. SAUTTER: --- Your Honor.

23 A --- source ---

24 MR. SAUTTER: He's ---

25 THE COURT: Objection ---

1 MR. SAUTTER: --- he's going ---

2 THE COURT: --- sustained.

3 MR. SAUTTER: --- into hearsay now.

4 Q To your knowledge, Bobby? Anything to your
5 knowledge?

6 A It would be a significant amount in excess of 400
7 units.

8 Q Okay. And if you would, tell the jury what that
9 means to your -- to your business, 400 units or so.

10 A That means the families in which supported us look
11 at us as if we were involved in something that
12 actually caused them pain. Each and every one of you
13 would trust a home-security company to protect your
14 families, I would think. And unfortunately, when
15 somebody resolicits you under the premise of
16 unethical actions, it brings great discredit upon the
17 industry.

18 Q Now, Mr. Endara did not have an employment
19 agreement with you; is that correct?

20 A Not to my knowledge did he ever sign any document.

21 Q Right. And if he was an owner of AVSX, would he
22 be bound by a document with Vector?

23 A Of course he would.

24 Q And does that -- the document that I produced in
25 this case isn't -- as witnessed and provided to Mr.

1 Endara is Defendant's Exhibit No. 8?

2 A Correct.

3 Q If you would, take a look at that.

4 A (Complied.)

5 Q I know you're incredibly familiar with that, as
6 that ---

7 A Yes.

8 Q --- being your main vendor. Does that document
9 prohibit owners of AVSX Technologies and its
10 affiliates from soliciting accounts that you
11 ultimately sell and utilize with Vector?

12 A In a very significant manner, whether or not Mr.
13 Endara has a physical copied employment agreement
14 with AVSX, his participation, as his attorney has
15 referenced in my testimony previously, that he
16 participated in all things legal in regards to AVSX.
17 -- would put him in a position where he would have
18 full knowledge of both this restriction, as well as
19 each independent affiliate, sales representative,
20 support member, technician who was obligated to
21 follow said employment agreement. So it's very
22 challenging that we do not have that copy.

23 And in addition to that, he was the QA holder,
24 which is the quality-assurance license holder, for
25 AVSX Technologies for a period of three/four years,

1 to my knowledge. And he would be fully aware and
2 responsible for the actions of those employees. And
3 it's very challenging to understand that that was not
4 enforced by himself thereafter.

5 Q Approximately how many affiliates -- that being
6 the sales reps -- have gone from AVSX to MX Security?

7 A I would say that that would be a better question
8 for Mr. Endara. But a significant percentage of his
9 team members have been previously associated with
10 AVSX Technologies.

11 Q And those are the ones that were lost for your
12 company and go to MX Security?

13 A Yes. The effort to recruit these individuals and
14 solicit them on a regular basis began to peak in
15 December of 2014.

16 Q All right. And that's after the time of his
17 termination, of course?

18 A Be a period of six months.

19 Q And MX Security was set up by Ms. Moise; and then,
20 ultimately, Mr. Endara testified, at least, that he
21 owns the company, correct?

22 A Correct. It was set up on March 31st, 2014, the
23 exact date that Mr. Endara was no longer -- was
24 communicated that he would no longer be a part of
25 AVSX.

1 Q Can Vector terminate your agreement with them for
2 these type of solicitations and the flipping of the
3 accounts with your former affiliates?

4 A They can do so at any time, as well as we can in
5 our documentation of the employment agreement: that
6 the company has a right for any reason to no longer
7 do business or to no longer consider doing business
8 with both us as AVSX or any employee that is
9 dissociated with us.

10 Q Mr. Endara testified that you could count on
11 Vector giving you residuals and other payments for
12 10/15/20 years. Do you recall that testimony?

13 A This would be correct.

14 Q Yes. Can that be stopped by Vector?

15 A It was correct in the manner that I recall the
16 conversation. But it is also to -- very important to
17 understand. AVSX Technologies is one big family.
18 It's one big unit.

19 So every dollar that it makes or generates or that
20 the relationships that it does, it does so by
21 distributing those opportunities to the people that
22 work with us. They -- of course, Vector Security,
23 who is our funding partner, as well as DISH Network,
24 could immediately decide that the relationship was no
25 longer functional for them and completely and utterly

1 notify us within 30 days that we no longer would be
2 receiving said residuals or that our holdback
3 percentages that were presented to you would be
4 applicable to the accounts sold in the previous year,
5 which in our industry, it is industry standard that
6 10 percent is a fair number to anticipate of account
7 attrition, which would be a customer who may not pay
8 or -- pay it on time, maybe they have a challenge
9 with their account, or the customer unfortunately is
10 going through difficult financial journeys.

11 Q So in simple terms, Vector can cut that off on 30
12 days' notice?

13 A They could cut it off today.

14 Q And, in fact, would the fact that a former
15 employee and using affiliates is competing against
16 and turning accounts, could that be the basis for
17 terminating that agreement?

18 A Vector Security could actually sue us. AVSX
19 Technologies could be sued by our own business
20 partner. And I dealt with that for over a long
21 period of time, as we were influenced by unethical
22 parties that were associated with us. And at one
23 point during this journey, I woke up. And I realized
24 that the naiveness that I was offering to those
25 parties was being abused.

1 Q Is the answer, then, yes?

2 A Yes. With passion.

3 Q Okay. Mr. Endara with counsel worked up what he
4 asserted was what he would claim is the ownership
5 interest that he has in AVSX Technologies and that if
6 this jury was to award him and find that he's a owner
7 and entitled to some disassociated share, that this
8 is what he believes he should be entitled to. Did
9 you have a chance to review this while he was
10 testifying?

11 A Yes.

12 Q Okay. And based on the preliminary tax return,
13 this number up here is correct and \$620,000; is that
14 right?

15 A To my knowledge.

16 Q Those were the net earnings approximately in 2014?

17 A Correct.

18 Q All right. Is Mr. Endara responsible for any of
19 the taxation of that \$620,000?

20 A No. And it also does not reflect the impact that
21 was instituted in 2015 throughout the year, as well
22 as the preceding year of 2013, considering the
23 amounts that were owed and the impact that that
24 caused to the families as we continued to overcome
25 that which was negatively influencing us.

1 Q Okay. So forget about what you think about his
2 multiplier of 4 and how you divide it up. If you
3 would, he does have revenue-sharing and holdbacks
4 down here below. Does the money that he read off
5 from the AVS -- AVSX documents relating to revenue-
6 sharing and holdbacks, that amount there below the \$1
7 million in those two terms, were those included in
8 the gross amount in this figure which then ended up
9 -- ended up netting 620,000?

10 A As they have been for seven years. Yes.

11 Q So it's not a separate income stream that's not
12 accounted for in this preliminary tax return?

13 A Correct.

14 Q And those are the numbers that can be cut off at
15 any day; is that correct?

16 A Absolutely, would -- which would then show AVSX
17 Technologies at a loss.

18 Q In fact, you know of entities or you've seen
19 firsthand in which those have been cut off before; is
20 that correct?

21 A For instance, they've been cut off. But
22 unfortunately, in addition to that, the accounts that
23 were being serviced that were then unethically taken
24 after, would also adversely discount those numbers.
25 And that's the reason 2015 numbers are also very

1 critical, considering that AVSX suffered a 50 percent
2 loss by the actions of previous parties associated
3 with it in the year 2015, one of which was Mr.
4 Endara.

5 Q Mary Kay Johnson was the only owner of AVSX after
6 Mr. Reis disassociated on his own from the company;
7 is that correct?

8 A Yes.

9 Q All right. And you don't begrudge Mr. Endara from
10 going and competing against you but for what?

11 A (No audible response.)

12 Q What we just talked about with Vector, the
13 violation of that agreement.

14 MR. SAUTTER: Your Honor, he's clearly leading the
15 witness now. I ---

16 THE COURT: Objection ---

17 MR. TODD ELLIS: I -- I am ---

18 THE COURT: --- sustained.

19 MR. TODD ELLIS: I am clearly leading. I'm to the
20 get to the heart of it. Excuse me.

21 Q Let me ask it this way, Mr. Johnson: But for the
22 agreement with Vector which prohibited your
23 affiliates and employees from taking and flipping
24 accounts, you don't have a problem with Mr. Endara
25 running MX Security?

1 A That man no longer exists to me.

2 Q Now, Mr. Johnson, would -- but for taking
3 affiliates -- those are the people that work for you
4 -- in violation of that agreement and then going and
5 flipping accounts, do you have any problem with MX
6 Security going and competing against you?

7 A Vehemently. In regards to the manner in which
8 they're going about attacking the families in which I
9 support.

10 MR. TODD ELLIS: Just one moment, Your Honor ---

11 THE COURT: Yes, sir.

12 MR. TODD ELLIS: --- please.

13 (Whereupon, Mr. Todd Ellis and Mr. Ward
14 conferred.)

15 MR. TODD ELLIS: That's all I have.

16 Q Mr. Johnson, please answer counsel's questions.

17 A Thank you.

18 THE COURT: Cross-examination?

19 MR. SAUTTER: Thank you, Your Honor.

20 (Whereupon, Mr. Sautter and Mr. Todd Ellis
21 conferred.)

22 CROSS-EXAMINATION

23 BY MR. SAUTTER:

24 Q So Mr. Endara, as he's sitting here and you say no
25 longer exists for you, he's not bound by this Vector

1 Security agreement unless he is an owner -- owner of
2 AVSX/Guardian Eagle; isn't that true?

3 A Well, of course that would be true, sir.

4 Q So you're saying he is an owner so that he's bound
5 by this agreement; wasn't that your testimony?

6 A No, sir. I stipulated, as I discussed and can be
7 reviewed, Mr. Endara was a participant in the
8 creation of the employment agreement in which all
9 AVSX associates are held to.

10 Q Okay. So he didn't sign any employment agreement,
11 did he?

12 A That is correct, sir.

13 Q And that's because he was an owner, right?

14 A No, sir.

15 Q And if he's not -- and -- and if he's an owner and
16 you want him bound -- you talked about unethical
17 conduct of -- of taking your salespeople and things
18 of that nature. Has that ever been determined by
19 anybody else? Is that a subject of any other lawsuit
20 or claims that you could've brought in this case?

21 A Not at this time.

22 Q All right. So he has to be an owner to be bound
23 by this agreement with Vector, correct?

24 A No, sir.

25 THE COURT: And that's exhibit what?

1 MR. SAUTTER: Exhibit No. 8.

2 THE COURT: Thank you.

3 Q So what bounds him to this agreement with -- by
4 Vector?

5 A The hundreds of communications in which he was a
6 participant in making sure that the -- AVSX
7 Technologies, LLC, employees, sales representatives,
8 technicians, on a daily basis were held accountable
9 to an ethical standard in which he himself does not
10 enforce at MX Security.

11 Q He's either owner or he's not.

12 A He never was, sir.

13 Q Okay. You have referred to him as "partner,"
14 haven't you?

15 A I would refer to very many employees and team
16 members that are associated with AVSX as such.

17 Q All right.

18 (Whereupon, Mr. Sautter and Mr. Michael Ellis
19 conferred.)

20 Q Okay. Here we go. Did you participate in
21 responding to requests for admissions that I
22 submitted to your counsel?

23 MR. TODD ELLIS: You don't have a copy for me?

24 MR. SAUTTER: No. That's all I got. Y'all got
25 one.

1 MR. TODD ELLIS: Well, I mean, I don't -- are you
2 going to show it to him?

3 MR. SAUTTER: Sure.

4 Q Did you participate with counsel in -- in
5 responding to my and Mr. Ellis's request to admit?

6 A These were prepared by my attorney, Mr. Ellis, I
7 would consider.

8 Q Did you provide any information on that?

9 A Yes, sir, as ---

10 Q Okay.

11 A --- would be ---

12 Q Yes, sir. All right. Let's just go -- let's just
13 go through with it. I wish I had another copy, but
14 my file's in shambles at the moment. Just skip right
15 to the -- right to the chase.

16 Could you -- I'll read to you Question No. 4 (As
17 read): Admit that the only agents with actual
18 authority to bind -- to bind AVSX from commencement
19 of doing business until February 1st, 2014, in
20 extraordinary business decisions were Bobby Johnson
21 and Luis Endara. And you've -- you deny the request.
22 Identify all agents and state all facts that support
23 your denial, provide a copy of any evidence that
24 supports your request.

25 And what was your response?

1 A As it stipulates, the response was (As read):
2 Admit only that Mr. Endara had authority to bind AVSX
3 on many daily operational issues. But he was not an
4 active member of AVSX. It says "member." I
5 apologize. He was not a member of AVSX. Please see
6 all documents referenced in the defendants' response
7 to interrogatories and requests for production.

8 Q Okay. And then, No. 5, I asked you (As read):
9 Admit that Defendant Bobby Johnson has represented to
10 third parties and employees of AVSX, through e-mail
11 and other communications, that he and Luis Endara are
12 the sole equity owners of AVSX.

13 And what was your response?

14 A I'm sorry, sir. (As read): Admit only that Mr.
15 Johnson said at times to employees and other third
16 parties that he and Mr. Endara were partners in the
17 business. Mr. Johnson did so for the purpose of
18 recognizing his -- his significant effort, service to
19 the company, and for the team-building purposes.
20 Furthermore, Mr. Johnson made these same
21 representations regarding other AVSX employees and
22 corporate partners, who had no interest in and were
23 not members of AVSX.

24 Q All right.

25 MR. SAUTTER: I would -- I would move this in as

1 the next plaintiff's exhibit, Your Honor ---

2 THE COURT: Any objection?

3 MR. SAUTTER: --- requests to admit, the same as
4 Mr. Ellis's.

5 MR. TODD ELLIS: I have no objection, Your Honor.

6 THE COURT: Without objection, so admitted, which
7 will be number what, madam court reporter?

8 THE COURT REPORTER: Your Honor, this will be
9 Plaintiff's 21.

10 THE COURT: Very good. Plaintiff's 21 admitted
11 without objection.

12 (Whereupon, Plaintiff's Exhibit 21 was marked and
13 entered into evidence.)

14 Q So you admit on that paper that you referred to
15 him as partner, correct?

16 A Excuse me, sir?

17 Q You admit on that paper that you refer to him to
18 others -- you refer to him as a partner. You admit
19 that ---

20 A I'm sorry.

21 Q --- is that correct?

22 A Again, what I rated -- what I'd stated was (As
23 read): Admit only that Mr. Johnson said it part --
24 at times to employees and other third parties that he
25 and Mr. Endara were partners in the business. Mr.

1 Johnson did so for the purpose of recognizing his
2 significant service to the company and for team-
3 building purposes. Further, Mr. -- Mr. Johnson made
4 these same representations regarding other AVSX
5 employees, not to include Mr. Endara, and corporate
6 partners, not to include Mr. Endara. I'm just adding
7 that. I apologize.

8 Q Okay.

9 A Who had ---

10 Q Well, I ---

11 A --- no interest ---

12 Q --- I just want to talk about what's on paper.

13 A Okay. I'll read that, then, sir. I apologize.

14 Q That -- that's fine.

15 A (As read): Admit only that Mr. Johnson said at
16 times to employees and other third parties that he
17 and Mr. Endara were partners in the business. Mr.
18 Johnson did so for the purpose of recognizing his
19 significant service in the company and for team-
20 building purposes. Further, Mr. Johnson made these
21 statements representatives -- representations
22 regarding other AVSX employees and corporate
23 partners, who had no interest in and were not members
24 of AVSX.

25 Q Okay. That's on paper, correct?

1 A That's what it says, sir.

2 Q I'm asking you today: Do you admit to this jury,
3 to this Court, to the parties that Mr. Endara was
4 your partner and that you and him together formed AVS
5 Technologies [sic]?

6 A I do not.

7 Q And why not?

8 A Mr. Endara is not my partner.

9 Q He's your partner there on paper.

10 A As are each employee that's been referenced as on
11 paper, as stated, as well as additional
12 communications and information. And, you know, we
13 could parade all of our team members in here to let
14 them know that the culture of AVSX was more than just
15 two men. It was a culture designed to support
16 families and do it ethically and to be committed to
17 each of them on a daily basis, not for the benefit of
18 financial outcome.

19 Q Okay. You and Luis together created that culture,
20 correct?

21 A This is not correct.

22 Q What?

23 A Mr. Endara has provided numerous communications
24 identifying that he himself is not me.

25 Q You and Mr. -- Mr. Endara together created the

1 culture of AVSX that you're very proud of?

2 A No, sir.

3 Q Didn't?

4 A No, sir. He was a -- a primary participant, and
5 he did very well with us. And he adapted to our
6 culture. Unfortunately, his actions post have
7 identified exactly the concerns that brought that
8 moment.

9 Q So the concerns that you're talking about -- and
10 maybe I don't understand. You were concerned about
11 him leaving the culture of AVSX, correct?

12 A No, sir.

13 Q No?

14 A (No audible response.)

15 Q You weren't concerned about him leaving the
16 company?

17 A No, sir. I wouldn't be concerned about someone
18 such as myself having to leave.

19 Q Having to leave?

20 A Yes, sir.

21 Q Why did Luis leave the company?

22 A Mr. Endara's services were no longer required as
23 an employee of AVSX.

24 Q Who made that determination?

25 A My wife.

1 Q Did you have any participation in it?

2 A Absolutely.

3 Q So you and your wife decided that?

4 A As any CEO would. Unfortunately, the perception
5 of a wife to a husband is always going to be there in
6 regards to AVSX.

7 Q Okay. Well, that's something we're all going to
8 have to try to figure out. But he's your partner.
9 He's an owner. If he's bound by this Vector Security
10 agreement, shouldn't there have been discussions with
11 Mr. Endara about how he would break off from the
12 business and how the -- how his -- his business could
13 be wrapped up and -- and your business could
14 continue. Is that true?

15 A This ---

16 MR. TODD ELLIS: Objection ---

17 A --- would not ---

18 MR. TODD ELLIS: --- Your Honor.

19 A --- be correct.

20 MR. TODD ELLIS: Excuse me. You ready?

21 THE COURT: What's your grounds for your
22 objection?

23 MR. TODD ELLIS: Yeah. Objection as it's
24 convoluted. It was a long question. I didn't
25 understand it.

1 THE COURT: Objection overruled.

2 Q Please answer.

3 A I had stated this would be incorrect.

4 Q And why?

5 A This would be incorrect due to the fact that each
6 and every individual has a responsibility to their
7 morals and to their ethics, their values, and to hold
8 them accountable for that on a daily basis and see
9 some of the things that my family has gone through in
10 eight years. It's almost impossible to imagine
11 someone proving you were wrong.

12 Q That's what this is all about, isn't it? You
13 don't think you're wrong?

14 A I know I'm not, sir.

15 Q You know you're not?

16 A (No audible response.)

17 Q You heard -- you heard the other witnesses testify
18 that he was your partner, that he was an owner. Are
19 they all wrong?

20 A They also work for Mr. Endara as well, providing
21 services. Mr. Spohn is his current tax accountant, I
22 believe, for MX Security. Mr. Bouvet is a competitor
23 who is directly soliciting, as he stated, employees
24 of AVSX Technologies.

25 Mr. Wolfe is a very kind gentleman and very good.

1 And I hate to see that the influence is what occurred
2 at AVSX over the year and the loss of 50 percent
3 revenue influenced the decision to no longer support
4 his family as well, in addition to Mr. Edwards, both
5 of which left in the same time period.

6 Q So this North Carolina regulatory action, which is
7 Exhibit 14, did you or anyone else from AVSX ever
8 object to Mr. Endara being referred to as an owner of
9 AVSX to the New York -- North Carolina regulatory
10 authorities?

11 A No. But the lawsuit filed at the time from a
12 competing company identified Mary Kay Johnson as the
13 owner and Mr. Endara as a manager -- would be
14 directly responsible for that.

15 Q Where's the lawsuit? Where's the beef?

16 A It's a filed lawsuit, sir.

17 Q Where -- I'm asking you about Exhibit No. 14, the
18 regulatory action in North Carolina. When he was
19 represented by -- by ---

20 A Yes.

21 Q --- the company as the owner ---

22 A Yes.

23 Q --- my question was: Was there ever any objection
24 from anybody at AVSX that ---

25 A There was ---

1 Q --- he's not ---
2 A --- no necessity ---
3 Q --- really an owner ---
4 A --- for an objection, sir.
5 Q What?
6 A There would be no necessity for objection.
7 Q I'm not asking if there's necessity. Was there an
8 objection or not?
9 A No, sir.
10 Q So AVSX allowed Mr. Endara to participate in that
11 investigation as owner, correct?
12 A This document also stipulates on page 7 that I am
13 simply the CEO of AVSX Technologies ---
14 Q Right.
15 A --- that ---
16 Q It's got him down as owner and it's got you as
17 CEO, correct?
18 A So he's the owner, sir?
19 Q That's what you say.
20 A I didn't say this, sir.
21 Q That's what the company responded to the North
22 Carolina regulatory authorities; isn't that correct?
23 A No, sir. That's not a correct title. But ---
24 Q Well ---
25 A --- if the questioning as to why, if we were

1 owners, Mr. Endara is the sole owner of AVSX in this
2 -- in this document, then.

3 Q Doesn't say sole owner, does it? The jury ---

4 A It says ---

5 Q --- will have ---

6 A --- owner, sir, and identifies me as the CEO.

7 They're ---

8 Q Okay.

9 A --- two distinct differences.

10 Q Okay. But my question is: Did AVSX or anybody
11 else do anything else to clear up your version of who
12 owned AVSX and your version of who was responsible to
13 the different regulatory authorities?

14 A This was an investigator in which both myself and
15 Mr. Endara, as well as additional employees, met in
16 North Carolina. This was an actual case that was
17 filed by an investigator. As to whether or not this
18 identified the parties correctly, I wouldn't be able
19 to testify.

20 Q All right. But you didn't do anything to change
21 it?

22 A Nor would I.

23 Q You wouldn't?

24 A No. This actual case was actually found and we
25 were penalized. Again, AVSX Technologies was

1 influenced with a very significant amount of
2 unethical activity. In that penalization in the
3 North Carolina board that made this complaint, that
4 exceeded \$18,000. In that complaint we were more
5 concerned about overcoming this issue than what we
6 were about what the titles within this document
7 reflected.

8 Q Well -- okay. All right. Thank you.

9 I think you talked about there was a series of --
10 of e-mails when you were -- you -- you were fed up.
11 It's -- it's Plaintiff's Exhibit No. 4. Do you -- I
12 think you testified -- it -- it's a January of 2014
13 ---

14 A Yes, sir.

15 Q I'll hand it to you. That that was kind of the
16 beginning of the end.

17 A The beginning of the end, sir?

18 Q The beginning of the end with Mr. Endara's
19 relationship with AVSX. I think that's what was --
20 your testimony was.

21 A Mr. Endara initiated taking trips in an excessive
22 amount that far exceeded 18 -- 18 visits in a short
23 period of time.

24 Q Okay. That's fine. It -- did y'all have any
25 restrictions or written-down rules or anything on

1 paper saying you couldn't take trips or things of
2 that nature?

3 A He's not an owner, sir. So no. That's not ---

4 Q What do you mean?

5 A Mr. Endara, you -- as you stated, did not sign as
6 an owner, nor does he have an employment agreement.

7 So that restriction would be ---

8 Q I'm asking ---

9 A --- the answer ---

10 Q --- you ---

11 A --- is no.

12 Q --- if there were ---

13 THE COURT: Hold on a minute. Sir, please let him
14 finish his question before ---

15 THE WITNESS: Yes, sir.

16 THE COURT: --- you start talking. And let him
17 finish responding before you start talking, Mr.
18 Sautter. Please continue with ---

19 MR. SAUTTER: All right.

20 THE COURT: --- your question.

21 Q Were there written policies and procedures in
22 effect at AVSX ---

23 A Oh, absolutely.

24 Q --- that would prohibit or would call into
25 question the trips that were taken that you've

1 testified to the jury?

2 A Yes.

3 Q And -- and what -- and -- and in this e-mail of
4 January of 2014, did you point out any of the trips
5 or any of the things, any of the -- you -- so-called
6 unethical activity that he was engaged in, was that
7 pointed out in that e-mail?

8 A Allow me to read the e-mail, please, sir.

9 THE COURT: Which is exhibit what?

10 MR. SAUTTER: Exhibit No 4, Your Honor ---

11 THE COURT: Thank you.

12 MR. SAUTTER: --- and -- and madam court reporter
13 and the jury.

14 A (As read): I know, bud. I know. I just wonder
15 how much the two of us can handle by ourselves until
16 people realize we don't do it for anyone but them.
17 I'm tired of this consistent lack of respect you
18 receive, my families receive, and the impact it is
19 causing brings a significant amount of values with
20 it, to the point it becomes hard not to wonder what
21 if.

22 That's on the second page, sir.

23 Q Okay. So ---

24 A I'm not understanding the question. I apologize.

25 Q The question is: In -- in this e-mail,

1 Plaintiff's Exhibit No. 4, does it refer to trips of
2 Luis Endara as being a problem with his continuing in
3 whatever capacity he was operating under at that time
4 with AVSX? It doesn't say anything about trips.

5 A This exhibit does not reflect anything about
6 trips.

7 Q It -- do you have an e-mail that says anything
8 about trips while he was still working there?

9 A There are multitude of communications that Mr.
10 Endara himself would have to admit to in that regard.

11 Q Where are they? Where's the beef? Do you have
12 them here today?

13 A I'd be glad to present every document that is
14 required.

15 Q Have they been presented yet? We've been asking
16 about them.

17 A Yes, sir.

18 Q Where are they?

19 A Your client would have them as well.

20 Q I'm asking you.

21 A I'm ---

22 Q You've ---

23 A --- answering ---

24 Q --- made these ---

25 A --- for ---

1 Q --- allegations there are hundreds of
2 communications back and forth about problems that
3 you've had with him.

4 A Yes, sir.

5 Q I'm asking for one.

6 A The reason that those aren't in this --

7 Q Mr. -- Mr. -- Mr. -- Mr. Johnson, do you have ---

8 A All right.

9 Q --- one written document that we can show the jury
10 or show the Court or show me as to problems that you
11 had with Mr. Endara that you've talked about --
12 flights, expenses -- prior to his termination? Is
13 there one document that you have?

14 A Sir, Mr. Endara is not an owner. That's the
15 premise of this.

16 Q Is there one document, Mr. Johnson?

17 A There are numerous. But as for whether or not
18 they've been submitted or have been used as an
19 exhibit, I wouldn't be able to answer that question.

20 Q So as far as you know today, there hasn't been
21 anything submitted ---

22 A Not at this time.

23 Q --- about the problems that you had with him?

24 A Correct.

25 Q And this e-mail of January 14th that you were --

1 that you testified about -- series of e-mails, there
2 were problems with the company. That's fine. But --
3 and then, the e-mails and -- the e-mail train speaks
4 for itself. But to your knowledge, in this e-mail
5 does it express any of the problems about flights,
6 expenses, or any other kind of alleged unethical
7 conduct or anything of that nature?

8 (Whereupon, Mr. Sautter and Mr. Michael Ellis
9 conferred.)

10 A Sir, may I read from the document?

11 Q Please.

12 A (As read): Mr. Endara references at one point
13 throughout this document in its own e-mail and began
14 to travel more until we stabilize and either change
15 those affected by greed. I will do it.

16 The reference to that is that we have been
17 impacted by those with greed who were putting
18 themselves ahead of the company.

19 Q Where is that?

20 A It's on the third page, sir.

21 Q Where is it?

22 A The -- under the -- at the bottom, probably the --
23 75 percent down, three-quarters of the way down.

24 Q Okay. And who -- who -- who wrote that?

25 A That would be -- it appears as if that was written

1 by Mr. Endara.

2 Q And it says that (As read): There was a
3 significant investment made in North Carolina,
4 significant to allow a small group of guys to derail
5 us.

6 And doesn't he say: "If it takes me being in
7 North Carolina every week, every other week, etc.,
8 and begin to travel more until we stabilize and
9 either change those affected by greed, I will do it."
10 Isn't that what it says?

11 A Yes, sir.

12 Q And where does it say that -- where do you say
13 that, "Well, you're traveling too much already," or,
14 "There's always been a problem about you traveling"?
15 That's not in there anywhere, is it?

16 A I do not believe so, sir. I'm still ---

17 Q All right.

18 A --- reviewing the document.

19 Q Okay.

20 A Sir, on the -- on the fifth page ---

21 Q Yes, sir.

22 A --- the midway down where the signature of Mr.
23 Endara reflects, it does, though I don't want to
24 belittle what the language -- it does stipulate the
25 whole entire -- I can read the whole entire paragraph.

1 if you like.

2 Q That's fine.

3 A (As read): It does get tiring that people use us.
4 But that is ending. We are not letting people
5 borrow. We will put a stop to -- at -- at other
6 things that we know and see are just representative
7 of manager abuse. We will look at Virginia and
8 either Chris steps up or finds a replacement to cut
9 it. Our issue is that we care, but some take
10 advantage and abuse your kindness -- it's our -- I'm
11 sorry -- abuse our kindness. It stops now.

12 Q Okay. And I won't ask you to finish it. Who --
13 who wrote that?

14 A That was Mr. Endara.

15 Q And so he was just trying to look out for the
16 company, correct?

17 A It shows awareness of Mr. Endara and the
18 influences of those who attempted to abuse the
19 company and which supported ---

20 Q Right.

21 A --- it.

22 Q Right. So there's nothing in here about your
23 saying that Mr. Endara is abusing the company or
24 anything of that nature; isn't that true? And then
25 I'll move on off of this.

1 A That's accurate.

2 Q Okay. All right. That's Exhibit No. 4.

3 Now, so it's your position that -- so you rely on
4 the tax documents to show that Mr. Endara is not an
5 owner, right?

6 A No, sir.

7 Q You don't?

8 A No, sir.

9 Q What else is it based on?

10 A My wife is financially responsible for every
11 single purchased vehicle in the account. She has a
12 \$250,000 credit line that's used for fleet manager of
13 the Ford vehicles. That is commiserate to 2011.

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

16 Q How much did she pay for her interest in the
17 company?

18 A My wife's documentation, as we've stated, did not
19 reflect any financial investment.

20 Q Okay. But, I mean, you know, you're relying on
21 tax documents. And will you agree with me, we're
22 really dealing with two different systems here?
23 We're dealing with the South Carolina laws as
24 partnerships, and we're dealing with the income tax
25 laws, correct?

1 A No, sir.

2 Q We're not?

3 A We're dealing with distributors, vendors. We're
4 dealing with the account balances that AVSX
5 Technologies was both encountering during the time
6 period of Mr. Endara's employment and since then.

7 We're dealing with a woman who has to actually
8 handle that, no matter whether or not her husband was
9 here, Mr. Endara was here, or any employee of AVSX.
10 It's in her name.

11 Q So that issue is to be determined pursuant to the
12 South Carolina corporation and -- and the LLC laws,
13 right ---

14 MR. TODD ELLIS: Objection ---

15 Q --- and not ---

16 MR. TODD ELLIS: --- Your Honor.

17 Q --- tax law, if you ---

18 THE COURT: Hold on and let him finish his
19 question.

20 Q --- if you know, that issue of -- of your wife's
21 liability, who's responsible, how the company is run,
22 that is dependent upon South Carolina law as far as
23 partnerships, correct?

24 THE COURT: Hold on. Before you answer the
25 question, do you have an objection?

1 MR. TODD ELLIS: I object, Your Honor. That calls
2 for ---

3 THE COURT: And what's the grounds for your
4 objection?

5 MR. TODD ELLIS: Calls for a legal conclusion.

6 THE COURT: He can answer the question if he knows
7 the answer.

8 A Could you repeat the question, sir?

9 Q Okay. Well, all things that you just talked
10 about, you know, the -- the -- the -- the effect on
11 the distributors, the effect on the accounts, the
12 effect on actual operation of the company, do you
13 know whether that's determined by South Carolina
14 limited-liability and partnership law or the IRS tax
15 law?

16 A I do not.

17 Q Okay. You -- you agree with me, there's -- there
18 could be a difference or there has been shown to be a
19 difference between the tax law, if you know, and the
20 partnership law in South Carolina as it applies to
21 this case?

22 MR. TODD ELLIS: Objection, Your Honor.

23 Q If ---

24 THE COURT: Objection ---

25 Q --- you know.

1 THE COURT: --- overruled.

2 A No ---

3 THE COURT: Can the ---

4 A --- sir.

5 THE COURT: --- lawyers approach a minute -- hold
6 on a minute. The lawyers approach a minute.

7 (Whereupon, a bench conference was held off the
8 record in the presence of the jury but out of the
9 hearing of the jury.)

10 Q To your knowledge, which means do you know, that
11 under the facts of this case, there is a difference
12 between South Carolina partnership law and IRS tax
13 law? Is there a difference?

14 A I believe both those documents reflect Mary Kay
15 Cason Johnson.

16 Q Is there a difference between South Carolina
17 partnership, to your knowledge, and -- applying the
18 facts of this case, and the IRS laws?

19 MR. TODD ELLIS: Objection ---

20 A No, sir.

21 MR. TODD ELLIS: --- Your Honor.

22 THE COURT: Hold on.

23 MR. TODD ELLIS: For the grounds ---

24 THE COURT: Objection ---

25 MR. TODD ELLIS: --- stated ---

1 THE COURT: --- overruled. Answer the question if
2 you know, sir, please.

3 A No, sir.

4 Q There's no -- there's no -- there's no difference
5 between these two?

6 A No, sir.

7 MR. TODD ELLIS: Wait. I'll . . .

8 Q All right. Let me ask it another way, because I
9 think we just got a double negative, which equals a
10 positive.

11 Is there a difference, to your knowledge, between
12 South Carolina law, as applied to the facts of this
13 case, and the IRS law?

14 A To my knowledge, they're separate entities.

15 Q Okay. And do you recognize that we are in a court
16 of law of South Carolina?

17 A Yes, sir.

18 Q Okay. And ---

19 MR. SAUTTER: Your Honor, that's all I have for
20 this witness.

21 THE COURT: Any redirect?

22 MR. TODD ELLIS: Yes, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. TODD ELLIS:

25 Q Mr. Johnson, did you hire me to discuss the issues

1 on the law that might apply to this case?

2 A I hired you as my attorney, sir.

3 Q Yeah. For those issues, correct?

4 A Yes, sir.

5 Q Yeah.

6 A Yes, sir.

7 Q You don't have any idea how it's applied and what
8 the Court might charge with regard to what law
9 applies, do you?

10 A No, sir.

11 Q On Exhibit No. 4, they made -- I -- I cannot hear
12 this and -- or read the document any more than we've
13 done in two days. So -- but that e-mail, if you'll
14 pull it back up again.

15 A Yes, sir.

16 Q You -- when you wrote that e-mail -- what's the
17 date on that again?

18 A This date reflects January 17th, 2014.

19 Q All right. And January 17th, 2014, did you know
20 the total number of trips and the times that Mr.
21 Endara was away from work at that point when you
22 wrote that e-mail?

23 A No, sir.

24 Q On or about when did you learn?

25 A March 2014.

1 Q And -- and how did you learn -- or what did you
2 see that led you to that knowledge?

3 A Mr. Endara had scheduled in a training
4 appointment, as he referenced, but in that duration
5 had previously scheduled an appointment on January
6 30th to attend purchasing a \$1.6 million home in
7 Myrtle Beach, South Carolina.

8 Q And how did you learn that?

9 A Due to the ability to review the accounts between
10 March 18th and March 24th during Mr. Endara's exit.

11 Q Did you review for the first time -- or did you
12 review the Priceline account for the -- for the
13 company?

14 A Yes, sir. The ---

15 Q And ---

16 A --- evening of March -- of March 7th or 8th,
17 whichever date that is, that Friday.

18 Q What did that reveal to you?

19 A That revealed that Mr. Endara had misled me to
20 believe that he would attend the training session on
21 that Saturday. And by doing so, he then admitted
22 that I not -- I did not have knowledge that he was
23 intended to buy a home with Ellie Moise.

24 Q You didn't know anything about Myrtle Beach prior
25 to that time?

1 A Correct.

2 Q Did that raise suspicions about Mr. Endara's
3 intention?

4 A It was an extremely daunting impact.

5 Q And, in fact, what did the Priceline account show
6 with regard to how much he had been going to Detroit?

7 A A significant amount of trips. In addition it --
8 it showed additional concessions that were made to a
9 Luis C. Endara, III.

10 Q And -- and tell me a little bit about that, what
11 you found out.

12 A I believe ---

13 MR. SAUTTER: Your Honor, I think he's getting
14 into hearsay here. I don't even know if we have the
15 documents.

16 MR. TODD ELLIS: What do I need a document ---

17 THE COURT: All right.

18 MR. TODD ELLIS: --- for right ---

19 THE COURT: Hold on -- hold on, Mr. Todd Ellis.
20 I'm going to sustain the objection right now. Unless
21 he has personal knowledge.

22 Q Do you have personal knowledge of ever seeing a --
23 an official AVSX document that had Luis C. Endara,
24 III, on it?

25 A Absolutely.

1 Q All right. And did corporate funds -- were they
2 utilized in that transaction?

3 A Absolutely.

4 Q And tell the Court, if you would, and the jury
5 what that transaction was.

6 A In February of 2014, the plaintiff reached out to
7 a industry manufacturer with Honeywell Security in
8 effort to receive free tickets to the ISC West Expo,
9 which is an industry-specific expo, that our industry
10 attends once per year. Upon that, AVSX did not have
11 association at the time with a gentleman named Luis
12 C. Endara, III. In that documentation it was
13 verified from their company -- and it is in -- in his
14 e-mail -- will reflect that there was an exhibit pass
15 sent.

16 And in that exhibit pass, Mr. Luis C. Endara, III,
17 was identified as being an employee of AVSX sales.
18 It was later changed, upon the arrival at the expo
19 event, to AVSX Panama. We are not an international
20 company.

21 Q Again, did that raise your suspicions regarding
22 Mr. Endara?

23 A It brought me so much pain and discomfort to know
24 that that situation occurred, as well as the others,
25 that I could not put it into words.

1 Q Mr. Sautter asked you a lot about communications
2 that you did or did not have with Mr. Endara about
3 these concerns in the time leading up to the
4 termination. Did you speak to him on a daily basis?

5 A Not at that time.

6 Q At the -- after the termination you did not,
7 correct?

8 A Prior to it at a period of about ten days upon the
9 first event, I chose not to communicate, other than
10 by text message or e-mail.

11 Q And you didn't learn about the -- the Priceline --
12 the number of trips, these issues, until March of
13 2014, correct?

14 A Correct.

15 Q But did you discuss with him your other concerns
16 regarding his inattentiveness before that time?

17 A Yes. On numerous basis. And the promised by him
18 himself that they would be alleviated.

19 Q Okay.

20 MR. TODD ELLIS: That's all I have, Your Honor.

21 THE COURT: Any further recross?

22 MR. SAUTTER: Yes, Your Honor, briefly.

23 RE CROSS-EXAMINATION

24 BY MR. SAUTTER:

25 Q You're talking about a training session. Was that

1 a training like lifting weights and working out?

2 A No, sir. It was an industry-specific ISC West,
3 which he utilized our manufacturer relationship to
4 generate the expo for it.

5 Q I'm not talking about the expo pass. I'm talking
6 about you were crushed that -- that you were
7 scheduled in a training session and then you -- and
8 you -- and you determined that he went to Myrtle
9 Beach to look at a house. The training session was
10 working out, lifting weights, things of that nature,
11 right?

12 A That was specific to what Mr. Endara testified as
13 well.

14 Q I'm asking you.

15 A Yes, sir.

16 Q The training session is working out?

17 A Yes. It was a scheduled training session with the
18 corporate trainer of AVSX that Mr. Endara did not
19 identify that he was exiting or not being able to
20 attend or that he was out of town. He scheduled that
21 on that Friday prior and then on that following
22 morning, stated he was sick and that he could not
23 attend. In that process of doing so, it then became
24 aware that Mr. Endara had initiated this trip to
25 Myrtle Beach in an effort to purchase the home on

1 January the 30th, 2014. Even firing the ---

2 Q Can you fire an employee for -- for not -- for
3 missing a -- a -- is it a voluntarily training
4 session?

5 A It would be voluntarily, sir.

6 Q Okay.

7 A But it brought into ---

8 Q He was fired for that?

9 A No, sir. It brought into a -- to the absolute
10 knowledge of the company that Mr. Endara was not
11 participating in the manner he was supposed to and
12 that therefore was bringing great discredit upon
13 AVSX.

14 Q He was bringing great -- great discredit for not
15 going to work out and going to Myrtle Beach to look
16 at a house. Is that your testimony to the jury?

17 A AVSX Technologies, as comparative to Mr. Endara
18 and myself, Bobby Lee Johnson, had no knowledge that
19 Mr. Endara was planning on moving from Columbia,
20 South Carolina, at any time.

21 Q Looking at a -- looking at a house and not coming
22 to a training session, isn't that adding up 2 and 2
23 and getting 44?

24 A If that's what you would like, sir.

25 Q All right. So you didn't even know -- you had no

1 knowledge about all these trips and stuff that you
2 were saying led -- led to your -- led to his
3 termination. You didn't even know about all that at
4 the time that he was terminated, correct?

5 A Not the extensive amount.

6 Q Well, how could that form a basis -- how could
7 that form any basis of his termination ---

8 A In addition, the week prior to Mr. Endara exit,
9 after these events that were included in the training
10 session, he initiated the use of his American Express
11 credit card that was a company credit card and
12 purchased an iMac MacBook Pro from Best Buy. It was
13 the first purchase that this gentleman, who was a --
14 supposed to -- is presenting himself as an owner when
15 made in that American Express account. It was
16 activated for that sole purchase, and it's the only
17 purchase reflective in its history in using that
18 company credit card. We do not have access to that
19 MacBook Pro, nor do we have knowledge as to what it
20 was used for.

21 Q So he bought a computer, a laptop ---

22 A Yes, sir.

23 Q Was he authorized to use that AmEx card?

24 A Yes, sir. He would've had to have activated --
25 the fact that he activated it months after the card

1 was issued. There was no additional company expenses
2 reflective.

3 (Whereupon, Mr. Sautter and Mr. Michael Ellis
4 conferred.)

5 Q Buy -- what'd he buy, a MacBook?

6 A MacBook Pro.

7 Q How much -- how much did that cost?

8 A It was \$1485.31.

9 Q What year was that?

10 A That was in 2014, sir, March.

11 Q Okay. And that was the same year that AVSX made
12 \$9.9 million, correct?

13 MR. TODD ELLIS: Objection ---

14 A No, sir.

15 MR. TODD ELLIS: --- Your Honor.

16 Q That is ---

17 THE COURT: Objection ---

18 Q --- I'll rephrase.

19 THE COURT: --- overruled.

20 Q That was the same year that the preliminary tax
21 documents for 2014 show a \$9.9 million gross ordinary
22 income for AVSX, correct?

23 A It would be our gross revenue generated. Yes,
24 sir.

25 Q And -- and as part of the deductions -- and we'll

1 -- we'll look at the chart, if you want.

2 A Okay.

3 Q But as part of the deductions, do you know --
4 maybe you don't know; I don't -- was -- was -- was --
5 was part of this -- you've got -- you've got a number
6 of deductions up here.

7 THE COURT: And again, that's ---

8 A Okay.

9 THE COURT: --- exhibit what?

10 MR. SAUTTER: That's the -- it is ---

11 MR. MICHAEL ELLIS: --- 7.

12 MR. SAUTTER: --- Exhibit No. 7, Your Honor.

13 THE COURT: Thank you.

14 MR. SAUTTER: This is the demonstrative exhibit
15 that I'm referring Mr. Johnson to.

16 Q So even if you -- you -- he bought that laptop,
17 right? Would that be included within the -- in those
18 ---

19 A No, sir.

20 Q --- deductions?

21 A No, sir.

22 Q It would not?

23 A I would not anticipate, seeing as though we do not
24 have that item.

25 Q Do you know whether it was included in the

1 deductions or not?

2 A I do not, sir.

3 Q 1400-buck laptop?

4 A Yes, sir.

5 Q Missing a training session?

6 A Yes, sir. As well as an interview on March 10th,
7 in which he'd sent an e-mail confirming that he was
8 not able to attend due to weather conditions in
9 Detroit, Michigan.

10 Q Right. A trip to his fiancée's ---

11 A It was ---

12 Q --- working out ---

13 A --- his fiancée's, sir?

14 Q Working out -- I -- I believe she's been
15 identified as his fiancée.

16 A He identified her as a friend. That's all I
17 wanted to clarify.

18 Q Okay. That's fine. Working out, buying a laptop
19 for 1400 bucks, going to Detroit, getting a free
20 ticket from his brother -- are those the only grounds
21 that -- why he was terminated?

22 A Said free ticket reflected AVSX sales, not AVSX
23 anything else, sir. That's not a free ticket.

24 That's absolutely not an employee who was associated
25 with AVSX that was attending that industry-wide

1 event. Not at our behest.

2 Q How much did AVSX spend on -- to get that ticket

3 -- that free ticket?

4 A It was \$80, sir. It ---

5 Q Okay.

6 A --- was not free.

7 Q Eighty dollars ---

8 A Yes, sir.

9 Q --- \$1400 ---

10 A Yes, sir.

11 Q --- missing a workout section ---

12 A Yes.

13 Q --- going to Myrtle Beach ---

14 A Yes.

15 Q --- flying to Michigan ---

16 A Absolutely.

17 Q --- those were all grounds to terminate his

18 relationship, whatever it was -- those were your

19 grounds ---

20 A Sir, those were just the grounds in March of 2014.

21 Q All right. So the grounds that you've presented

22 today for terminating Mr. Endara from whatever role

23 that he had at AVSX; isn't that correct?

24 A His performance severely was impacted upon his

25 divorce and his commitment to his friend, who now is

1 referenced as his fiancée.

2 Q Okay. Well, where is -- is it ---

3 A Who is ---

4 Q --- is there ---

5 A --- our competitor as well, sir. She's ---

6 Q Okay.

7 A --- the president and owner of MX Security ---

8 Q Yeah. I'm ---

9 A --- which ---

10 Q --- glad you -- I'm glad you reminded me of that.

11 Defendant's Exhibit 7 was the -- you know, when --

12 when did MX Security come into being?

13 A March 31st, 2014.

14 Q You sure?

15 A Yes, sir. That's what's reflective on the state
16 registry that I saw.

17 Q Well, I'm handing you Defendant's Exhibit 7, which
18 Mr. Ellis put into evidence.

19 A It was also initiated by a gentleman named John B.
20 Lane, who is a CPA here in Columbia, South Carolina,
21 at the same time.

22 Q Let me just see No. 7. Here we go. Exhibit No.
23 7, introduced by your attorney and without objection
24 from me.

25 A Yes, sir.

1 Q What does it state the -- the -- the date that the
2 license was issued to MX Security?

3 A This states that the license was issued on May
4 7th, 2014. The South Carolina Registry of Businesses
5 reflects March 31st, 2014.

6 Q Well, do we have that document? Is that ---

7 A It's online, sir.

8 Q Okay. But the document that was admitted into
9 evidence by your attorney without my objection says
10 it -- the license was issued 5/7/14. Do you agree
11 with me on that?

12 A No ---

13 Q That ---

14 A --- sir.

15 Q Is that ---

16 A I agree ---

17 Q --- what that ---

18 A --- that that's ---

19 Q --- document ---

20 A --- what this states, as the South Carolina Alarm
21 Association.

22 Q Okay.

23 A But the business was created on March 31st, 2014.

24 Q All right.

25 A And it was created in the name of Ellie Moise.

1 And it was initiated by a CPA in Columbia, South
2 Carolina, named John B. Lane, who ---

3 Q Okay.

4 A --- reflected as the registered agent therein.

5 Q Mr. Lane coming today?

6 A I'm not, sir. I'm just saying that's what was on
7 the online.

8 Q This document, No. 7, to your attorney -- it says
9 it was -- license issued 5/7/14. And that's my last
10 question. Is that what it says or not?

11 A It ---

12 Q The ---

13 A --- says that the issue date was 5/7/2014.

14 Q Thank you. No further questions, Mr. Johnson.

15 THE COURT: Sir, you may step down. Thank you.

16 THE WITNESS: Thank you.

17 (Whereupon, the witness exited the witness stand.)

18 THE COURT: All right. Can the lawyers approach a
19 minute ---

20 MR. TODD ELLIS: Yes.

21 THE COURT: --- please.

22 (Whereupon, a bench conference was held off the
23 record in the presence of the jury but out of the
24 hearing of the jury.)

25 THE COURT: All right. Ladies and gentlemen, what

1 I am going to do at this point, I am going to cut you
2 loose, so to speak, for the rest of the day, all
3 right? There are some matters that I need to deal
4 with. When I let you all go, myself and the
5 attorneys -- I'm going to let everyone go to lunch,
6 and then we're going to come back and deal with some
7 matters I need to deal with this afternoon.

8 But rather than keep you here this afternoon, I am
9 going to let you go. And I'm going to ask that you
10 be back tomorrow morning at 9:30. Be back tomorrow
11 morning at 9:30.

12 My instructions remain the same: Do not discuss
13 the case. Do not do any independent investigation on
14 your own. You're to decide this case based solely
15 upon the testimony and evidence that's presented in
16 this courtroom and nowhere else.

17 For your planning purposes, I will tell you all
18 that it is very much the intention of the Court to
19 get this case to you tomorrow -- to get this case to
20 you tomorrow for you all to make a decision. It will
21 probably be the Court's intention to have the clerk's
22 office order lunch for you all tomorrow. And -- and
23 I'm just telling you that for planning purposes. So
24 you make arrangements if you need to. Some of you
25 may be doing some work separate and apart -- because

1 I certainly recognize you all have lives outside of
2 this courtroom but want to advise you of what the
3 plan is for tomorrow so you can plan accordingly,
4 okay?

5 Anything from plaintiff's counsel before I release
6 the jury at this point?

7 MR. SAUTTER: No, Your Honor.

8 THE COURT: Defense counsel?

9 MR. TODD ELLIS: Nothing, Your Honor. Thank you.

10 THE COURT: All right. Thank you all again for
11 being here when I have asked you all to be here.
12 Have a good rest of the day and -- and evening. And
13 I'm going to see you all tomorrow morning at 9:30.
14 Okay.

15 (Whereupon, the jury exited the courtroom at 12:43
16 p.m.)

17 (Off the record briefly.)

18 THE COURT: All right. What -- what we are going
19 to do at this point: I'm going to go ahead and --
20 and break for lunch. I'm going to ask that you all
21 be back here at two o'clock -- at two o'clock.
22 During the lunch break, I would advise the attorneys
23 -- I want you to look at a couple statutes, both of
24 you: Section 33-44-303, as well as 33-44-203.

25 And I would specifically instruct you to look at

1 the commentary or the comments pertaining to those
2 statutes. While the comments are not, quote/unquote,
3 the law, they are certainly advisory. And I'd
4 instruct you all to look at that, and we'll ---

5 MR. TODD ELLIS: Okay.

6 THE COURT: --- address that ---

7 MR. SAUTTER: Thank you, Your Honor.

8 THE COURT: --- after lunch.

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

10 THE COURT: All right. Two o'clock.

11 (Off the record from 12:45 p.m. until 2:06 p.m.)

12 THE COURT: Where is Mr. Sautter?

13 MR. MICHAEL ELLIS: He is not back yet. But we
14 can go ahead if you're ready, Your Honor.

15 THE COURT: All right. Well, let me -- Mr. Todd
16 Ellis, have you had an opportunity to review
17 plaintiff's request to charge?

18 MR. TODD ELLIS: I -- I have, Your Honor.

19 THE COURT: What is your position with regards to

20 ---

21 MR. TODD ELLIS: I think none of them are
22 applicable, Your Honor.

23 THE COURT: All right.

24 MR. TODD ELLIS: All of them -- I can be specific,
25 but I think in general, we -- we find no plaintiff's

1 charges that apply to the Uniform Liability -- the
2 LLC act, Limited Liability Company Act; that they're
3 all partnership statutes unrelated to the causes of
4 action in this case, including what they've pled, but
5 also what was -- came from the stand in this case and
6 that that is a LLC, designated for tax purposes as an
7 S corp. There's no partnership statute that would
8 apply. And we therefore think that the statute
9 specifically related to the partnership act are
10 inappropriate.

11 THE COURT: Mr. Michael Ellis?

12 MR. MICHAEL ELLIS: Your Honor, we have alleged
13 that Mr. Luis Endara and Mr. Bobby Johnson have been
14 partners this entire time. We think that the
15 partnership act is completely applicable to the
16 instructions to be given to the jury.

17 And -- and, Your Honor, if -- if it might be
18 possible to add a jury -- request a jury charge that
19 at dispute is a South Carolina business entity and,
20 as such, it is South Carolina law that controls, just
21 simple.

22 THE COURT: Well, let me ask you this: I mean,
23 there's no question that an LLC was formed here. I
24 mean, is it your position that because there's not an
25 operating agreement, that it defaults to a

1 partnership -- limited liability partnership?

2 MR. MICHAEL ELLIS: That is not our position, Your
3 Honor. And -- and our -- actually, our position is
4 there is an operating agreement, a verbal operating
5 agreement ---

6 THE COURT: Okay.

7 MR. MICHAEL ELLIS: --- just no ---

8 THE COURT: Well ---

9 MR. MICHAEL ELLIS: --- written ---

10 THE COURT: --- I mean ---

11 MR. MICHAEL ELLIS: --- one.

12 THE COURT: --- what ---

13 MR. MICHAEL ELLIS: And I'll ---

14 THE COURT: What you've given me here, though --
15 let me see here. You're citing 33-41-210, 33-41-50
16 -- 510, which are the Uniform Partnership Act.

17 MR. MICHAEL ELLIS: And -- and, Your Honor, our
18 position is that the partnership was formed before
19 any LLC and the LLC is an asset of the partnership
20 between Bobby Johnson and Luis Endara.

21 THE COURT: All right.

22 (Off the record briefly.)

23 THE COURT: That'll be request to charge by Mr.
24 Todd Ellis. There are -- they're not specifically
25 numbered. But it's ten pages, which the bottom of

1 the pages are numbered. So I'm going to assume we're
2 going -- for record purposes, we're going to go in
3 the order of pages that are numbered on the bottom.

4 MR. TODD ELLIS: Yes, Your Honor.

5 THE COURT: All right.

6 MR. MICHAEL ELLIS: Thank you.

7 THE COURT: What says the plaintiff with regards
8 Defendants' Request to Charge No. 1?

9 MR. MICHAEL ELLIS: (No audible response.)

10 THE COURT: I mean, have you not -- have y'all not
11 reviewed these, Mr. Michael Ellis? Have you
12 discussed those with Mr. Todd Ellis? Have y'all
13 discussed these?

14 MR. TODD ELLIS: I -- I told them I didn't think
15 of them are applicable. That's all I have discussed
16 about theirs. They didn't ask me anything about ---

17 MR. MICHAEL ELLIS: And -- and, Your Honor, I -- I
18 believe that we are on their -- or at least I think I
19 was under the mistaken impression that we had till
20 2:30 to come back and maybe Mike Sautter was that too
21 and -- and ---

22 THE COURT: What time did I say, madam court
23 reporter?

24 THE COURT REPORTER: Two, Your Honor.

25 THE COURT: Two o'clock. We broke at a quarter of

1 one. I said two o'clock.

2 MR. MICHAEL ELLIS: And -- and -- and we are ready
3 to proceed, since you did say two o'clock. But I --
4 Mr. Ellis shared with Mr. Sautter this morning the --
5 his requests to charge. And I have not had a chance
6 to review them yet.

7 THE COURT: Well, that kind of defeats the purpose
8 of us being back at two o'clock if y'all hadn't even
9 looked at them, does it not?

10 MR. MICHAEL ELLIS: Yes, Your Honor, it does.

11 THE COURT: All right.

12 (Off the record briefly.)

13 THE COURT: Can you step out and see where Mr.
14 Sautter is.

15 MR. MICHAEL ELLIS: Yes, Your Honor.

16 (Off the record from 2:12 p.m. until 2:15 p.m.)

17 THE COURT: Mr. Sautter?

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

19 THE COURT: I asked that you be back at two
20 o'clock.

21 MR. SAUTTER: I'm ---

22 THE COURT: Can you ---

23 MR. SAUTTER: --- I'm ---

24 THE COURT: --- tell me what -- what's going on?

25 MR. SAUTTER: I was researching the law that the

1 Court was in -- wanted me to. And I thought -- I --
2 I -- I misunderstood. I thought it was 2:15, Judge.
3 I apologize.

4 THE COURT: Well, your cocounsel said he thought
5 it was 2:30. Now you're saying it's 2:15. Did I --
6 was I -- Mr. Todd Ellis, what'd you understand?

7 MR. TODD ELLIS: Yeah. I think you said two
8 o'clock and tomorrow morning at 9:30 for the jury.
9 But I ---

10 THE COURT: That's what ---

11 MR. TODD ELLIS: Yeah. That's ---

12 THE COURT: --- I thought.

13 MR. TODD ELLIS: --- what's you said.

14 MR. SAUTTER: I apologize, Your Honor.

15 THE COURT: Mr. Sautter, have you had a chance to
16 review defendants' requests to charge?

17 MR. SAUTTER: Yes, sir, we have.

18 THE COURT: Have you had a chance to discuss them
19 with Mr. Todd Ellis?

20 MR. SAUTTER: Not yet, Your Honor. And some of
21 the requests to charge will be dependent on this
22 Court's determination of whether we are allowed to
23 proceed individually against the named defendants.
24 And those are the matters that I think the Court
25 wanted to clear up and we would like to clear up.

1 THE COURT: Well, all right. Well, let's talk
2 about that for a minute. We stood down at quarter of
3 two -- excuse me -- quarter of one. And I
4 specifically asked you all to look at 33-44-602.
5 Well, you all -- Mr. Sautter, you handed up or cited
6 that particular statute. And I specifically asked
7 you all to look at 33-44-203, as well as 33-44-303.

8 MR. SAUTTER: Yes, sir.

9 THE COURT: Now, Mr. Sautter, you argued 33-44-602
10 for the proposition that Mr. and Ms. Johnson remain
11 in this case individually and potentially liable
12 individually; is that correct?

13 MR. SAUTTER: Yes, sir.

14 THE COURT: All right. Mr. Todd Ellis, we broke
15 at -- when we broke, you -- you had indicated and you
16 handed up a copy of this statute, which I gave back
17 to you because I already had a copy, that you
18 possibly wanted to put something else on the record

19 ---

20 MR. TODD ELLIS: Please ---

21 THE COURT: --- concerning ---

22 MR. TODD ELLIS: Please, Your Honor.

23 THE COURT: Yes, sir.

24 MR. TODD ELLIS: Thank you. May it please the
25 Court?

1 THE COURT: Yes, sir.

2 MR. TODD ELLIS: Defendants in the case, Your
3 Honor -- a -- a couple things: In conjunction with
4 the argument I'm getting ready to make regarding 33-
5 44-602, we believe that also that the documents
6 provided and the statutes provided by the Court, 33-4
7 -- 44-303 and 302 are applicable to this issue. But
8 as to 602, the statute that was read into the record
9 and provided to the Court, applies to a member having
10 the power to disassociate themselves and not being
11 wrongfully disassociated and therefore who might be
12 liable with regard to members.

13 So this is a -- a member disassociating
14 themselves, which I don't believe are the allegations
15 of Mr. Endara and would be inapplicable as to whether
16 the other members are, in fact, liable for any of
17 those acts.

18 And then, I'd be happy to argue what -- what you
19 asked us to look at. But if you want to ask Mr.
20 Sautter about that, I'm happy to have that as well.

21 THE COURT: Mr. Sautter, anything else you want to
22 say with regards to that particular statute?

23 MR. SAUTTER: That particular statute does govern
24 members, I believe, that are wrongfully dissociated
25 as well as members who wrongfully dissociate

1 theirselves. It clearly provides for liability.

2 Addressing the -- the -- the statutes that the
3 Court wanted ---

4 THE COURT: Well, ---

5 MR. SAUTTER: --- us to ---

6 THE COURT: --- anything ---

7 MR. SAUTTER: --- look at ---

8 THE COURT: --- else you -- I -- I'm dealing with
9 602 ---

10 MR. SAUTTER: 602.

11 THE COURT: --- right now. I'm going to get to
12 those other statutes in just a minute.

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

15 MR. SAUTTER: Well, if -- if Mr. Endara could be
16 liable to -- as a member individually to a -- to this
17 limited liability company for his wrongful
18 dissociation, I would argue that the same should
19 apply to -- to the individual members who wrongfully
20 dissociated Mr. Endara in this case, the individual
21 acts of those members, Your Honor.

22 THE COURT: It was asked, when Mr. Bobby Johnson
23 was on the stand, by yourself, Mr. Sautter,
24 concerning causes of action by Mr. Johnson against
25 your client: Have there been any -- any

1 counterclaims? And then, from my understanding,
2 there are no counterclaims asserted. Is that
3 correct, Mr. Todd ---

4 MR. TODD ELLIS: That is correct, Your Honor.

5 THE COURT: All right. Well, my reading of 33-44-
6 602 addresses the liability of a member who -- who
7 wrongfully -- himself or herself disassociates from
8 the limited liability company. For instance, my
9 reading of this statute would be applicable in a
10 situation had -- had your client -- Mr. Endara, had
11 he wrongfully disassociated himself from this limited
12 liability company as a member, then he would
13 certainly be liable for the wrongful disassociation
14 for damages caused by such disassociation. So I
15 don't think that is particular -- particularly
16 applicable in this case.

17 Now, with regards to 33-44-203 -- and this kind of
18 goes back to Mr. Todd Ellis's motion for a directed
19 verdict and his argument to -- to the Court
20 concerning the fact that Mr. Endara was not on paper
21 a -- a member or an owner of this LLC. And I
22 specifically directed you all to the comments
23 section, which is the first sentence there, which
24 says: "The articles serve primarily a notice
25 function and generally do not reflect the substantive

1 agreement of the members regarding the business
2 affairs of the company."

3 I specifically directed Mr. Todd Ellis -- well,
4 each of you to that direction as further support of
5 this Court's -- I didn't tell you at the time, but
6 I'm telling you now. It's further support of this
7 Court's denial of defendants' motion for a directed
8 verdict.

9 Having said that, Mr. Todd Ellis, I'll give you an
10 opportunity, if you want to put anything else on the
11 record, pertaining ---

12 MR. TODD ELLIS: Very briefly -- very ---

13 THE COURT: Okay.

14 MR. TODD ELLIS: --- briefly, Your Honor.

15 THE COURT: All right. If it's nothing new, if
16 it's the same thing ---

17 MR. TODD ELLIS: Yes, sir.

18 THE COURT: --- I don't want to hear it. If it's
19 something new, I'll -- happy to hear from you.

20 MR. TODD ELLIS: Yes, sir. I -- I -- I would like
21 to argue about that. As it states on the first page
22 of the -- of -- of the requirements, it must be in
23 the articles, Your Honor, the only name that need be
24 on the articles is the organizer. We've never
25 asserted and don't assert that Mr. Endara or any

1 member of the LLC has to be on the articles of -- of
2 -- of organization. So I concur with the first
3 sentence, but I don't think it's applicable to my
4 directed verdict because the statute's never required
5 that the articles list the members of the
6 organization.

7 And therefore, I think -- it -- it -- the -- the
8 only other writing that would be there, if there is
9 no operating agreement, would be the tax filings,
10 indicating who those members are. And for the --
11 because there's no evidence there -- that he was in
12 this one, then -- then that's a reason for directed
13 verdict; he's not a member.

14 THE COURT: All right. So noted for the record.

15 But ---

16 MR. TODD ELLIS: Right.

17 THE COURT: --- I think -- in this Court's
18 opinion, for what it's worth, the Court disagrees
19 with you ---

20 MR. TODD ELLIS: Yes, Your Honor.

21 THE COURT: --- as previously stated on the
22 record.

23 Now, with regards to Section 33 -- 33-44-303, and
24 that more specifically relates to the personal
25 liability or the alleged personal liability of Mr.

1 and Ms. Johnson, Subsection (c) of that section
2 states that: All or specified members of a limited
3 liability company are liable in their capacity as
4 members for all or specified debts, obligations, or
5 liabilities of the company if -- if: a provision --
6 provision to that effect is contained in the articles
7 of -- of organization, which there's been nothing
8 with regards to that, testimony or otherwise, in this
9 case; and a member so liable has consented in writing
10 to the adoption of the provision or to be bound by
11 the provision.

12 My question to you, Mr. Sautter, pursuant to that
13 statute, what grounds do you believe that you have to
14 further hold them personally within this lawsuit?

15 MR. SAUTTER: Thank you, Your Honor. I would
16 first refer to 33-44-303(a), the last sentence, which
17 says: A member or manager is not personally liable
18 for a debt, obligation, or liability of the company
19 solely by reason of being or acting as a member or
20 manager.

21 Here, we have a number of individual acts in the
22 record of these two individuals. And I -- I would
23 say we're -- we're not trying to hold him -- him or
24 her liable solely by reason of their role with the
25 company.

1 And the Court directed us to the comments -- to
2 the section. And I note that the comment says: A
3 member or manager is responsible for acts or omission
4 to the extent those acts or omissions would be
5 actionable in contract or tort against the member or
6 manager if that person were acting in an individual
7 capacity.

8 And I think that's what the evidence is in this
9 case -- or at least there's substantial enough
10 evidence to submit what is a contested fact to the
11 jury for their determination.

12 THE COURT: All right.

13 MR. SAUTTER: I would also -- to support leaving
14 them in individually, the South Carolina Rules of
15 Civil Procedure 15(b), which allows amendments to
16 conform to the evidence: to the extent that issues
17 were not raised in the pleadings by my withdrawal of
18 the motion to bifurcate, which would act the Court to
19 -- not -- not -- not motion to bifurcate. To the
20 extent that the pleadings did not -- to the extent
21 that withdrawal of my motion to pierce the corporate
22 veil was not -- was -- was withdrawn in our -- in our
23 pretrial hearing, I believe that's also a matter for
24 the Court to determine. But those issues have been
25 tried in this courtroom. And -- and they make the --

1 the -- the -- the primary defense of Mr. Ellis and
2 his client that, you know -- that -- that they have
3 been tried and they have been put before the -- the
4 jury. And if I make the -- the motion to consider
5 them as an amendment to conform to the evidence, as
6 -- as what we've been doing for the last three days.

7 And finally, even the corporate-veil doctrine
8 itself, it talks about fundamental fairness and
9 things of that nature as the different prongs. But I
10 don't think it's required to pierce the corporate
11 veil -- veil. We are alleging in the seventh cause
12 of action, the wrongful dissolution of the
13 partnership and that in Paragraph 62: Plaintiff and
14 defendant Bobby agreed to carry on as co-owners a
15 business for profit. Section -- Paragraph 63:
16 Plaintiff and Bobby attempted but failed to create an
17 LLC known as AVS Technologies, LLC, resulting in a
18 general partnership with the two of them as the only
19 partners.

20 And then, I asked for damages against all
21 defendants. And if you flip to partnership law, I
22 mean, one partner can sue another for any wrongdoings
23 of -- of -- of that partner.

24 So to the extent the corporate veil is -- I don't
25 believe a corporate -- pierce the corporate veil is

1 required to -- for one partner to sue another. It's
2 certainly been their position that there is no LLC or
3 there is no partnership. But that's a matter for the
4 jury to determine. And I respectfully request that
5 the Court deny Mr. Ellis's motion.

6 And -- and there -- and there's an inherent
7 tension in all of this. The partnership law and --
8 and the LLC is -- it -- I think it's different when a
9 third party is trying to hold an officer liable for
10 acts of the partnership than when a partner is trying
11 to hold other partners or the other partner liable
12 for individual acts that he says were part of the
13 partnership business. And it's certainly been in
14 contest that Ms. -- with Mr. Endara whether they were
15 in part of the partnership business.

16 THE COURT: Mr. Todd Ellis?

17 MR. TODD ELLIS: Yes, Your Honor. On -- on -- on
18 the issue, first, regarding this: I -- I think Mr.
19 Sautter is reaching for straws regarding this
20 partnership issue. And, Your Honor, we need to clear
21 that up, I -- I think, before -- I don't -- I don't
22 know how to ask you to charge something.

23 First of all, in chambers, Your Honor, he told
24 you: We are only pursuing his interest as an LLC
25 member and for being wrongfully discharged. And so

1 there was no partnership issue related to that. They
2 want to argue partnership law, when their own
3 accountant states an LLC and was operating by and
4 through that.

5 So I would tell you that either by and through
6 their jury charges or as it applied to any
7 relationship between the parties, we are dealing with
8 members and those members are dealt with -- the
9 statute you pointed out to us, which is 33-44-303,
10 which says they will not be liable to each other
11 unless -- unless those acts amongst themselves would
12 otherwise be in contract or tort outside in their
13 individual capacity.

14 And there's been no evidence of that. Everything
15 was done -- everything arises from my letter on March
16 24th, 2014: Luis, you're fired, period. All this
17 other stuff is just collateral:

18 Their cause of action relates as to whether that
19 was a disassociation that was improper or whether --
20 and ours -- the defense, of course, at all, was
21 whether he was a member at all. There -- there's a
22 lot of testimony.

23 But from a charging standpoint and from my clients
24 being individually liable, Your Honor, 33-44-303
25 applies. And there is no specific provision --

1 there's been no evidence that our members elected to
2 be liable for acts. And this is done all through the
3 corporate -- so I -- I would say in chambers he --
4 that they waived that.

5 Their pleadings related to partnership, there's
6 been no evidence that this was a -- they call it a
7 partnership a lot. But their own accountant states
8 this is an LLC and how they acted. It's how they
9 file their tax returns, even if he was a member -- or
10 did anything, it was an -- through an LLC.

11 THE COURT: Let me ask this question. I apologize
12 because I wrote it down somewhere, and I can't seem
13 to find it in my notes. When was the LLC formed?

14 MR. TODD ELLIS: Your Honor, the original Guardian
15 Security was formed in 2008. And the official name
16 change was in 2011 to AVS Technologies [sic]. We
17 have ---

18 THE COURT: Hold on a minute.

19 MR. TODD ELLIS: Yes, sir.

20 THE COURT: Was changed to AVSX when?

21 MR. TODD ELLIS: 2011.

22 THE COURT: When in 2011?

23 MR. TODD ELLIS: Yeah -- yes, Your Honor. Let me
24 get that exhibit.

25 (Whereupon, Mr. Todd Ellis and Mr. Johnson

1 conferred.)

2 MR. TODD ELLIS: 1/31, Your Honor.

3 MR. MICHAEL ELLIS: Your -- Your Honor, would you
4 like the Secretary of State corporate ---

5 THE COURT: I mean, unless you dispute what he
6 just said, I don't need to see it.

7 MR. SAUTTER: He's referring to Exhibit No. 9,
8 Your Honor.

9 MR. MICHAEL ELLIS: And it was ---

10 MR. SAUTTER: It's Exhibit No. 9. It reflects the
11 -- the amendment to change the name from Guardian
12 Eagle Security, LLC, to AVSX was September 1st, 2011.

13 THE COURT: Okay. Thank you. Well, let me ask
14 you this question, Mr. Sautter: In all of your --
15 your -- your claims for damages on behalf of your
16 client, all of -- of your claims for damages arise
17 out of the wrong -- the alleged wrongful termination
18 of him or disassociation of him by Mr. and Ms.
19 Johnson was when the -- after the LLC some -- I don't
20 know -- three years after the LLC was formed; is that
21 correct?

22 MR. SAUTTER: (No audible response.)

23 THE COURT: 2008 to 2011?

24 MR. SAUTTER: Let me just look at my things again,
25 Your Honor.

1 THE COURT: I mean, I'm looking at them on page 3 of
2 14 right here.

3 MR. TODD ELLIS: It would actually be longer than
4 that, Your Honor. The wrongful dissociation was in
5 2014 -- alleged.

6 THE COURT: That's what I said ---

7 MR. TODD ELLIS: Oh.]

8 THE COURT: --- I thought.

9 MR. TODD ELLIS: I thought you said '11.

10 THE COURT: No.

11 MR. TODD ELLIS: Excuse me.

12 THE COURT: You're right. You -- you -- I did say
13 that. I apologize. You're exactly right.

14 MR. SAUTTER: Your Honor, I -- I would refer the
15 Court to Paragraph 65 on page 9: wrongful
16 dissolution of the partnership, which reincorporated
17 all ---

18 THE COURT: What page?

19 MR. SAUTTER: --- the allegations in front.

20 THE COURT: What page -- 60 -- page 9?

21 MR. SAUTTER: Page 9 of 14, Paragraph 61, Your
22 Honor, beginning at 61. For -- for the point ---

23 THE COURT: Well ---

24 MR. SAUTTER: --- being that ---

25 THE COURT: -- let me ask you this: What

1 testimony has been elicited during the last three
2 days that there was a failed attempt to create the
3 LLC of AVSX? I mean, it has been testified to over
4 and over and over it had started out as Guardian and
5 that it subsequently name change was to AVSX. You've
6 alleged here in your complaint that -- that that
7 didn't place, in essence.

8 MR. SAUTTER: That's right.

9 THE COURT: It failed to take place, so it's a
10 partnership.

11 MR. SAUTTER: Right.

12 THE COURT: What evidence is there that that
13 failed to take place?

14 MR. SAUTTER: By the way the business was operated
15 and by the way the business did their corporate
16 filings. The business of Luis Endara and Bobby
17 Johnson was -- was in existence before and the
18 partnership of it is the partnership that failed to
19 create AVSX was in -- was in effect since 2008. And,
20 you know, there -- there's -- there's no question
21 that the corporate formalities weren't followed in
22 this case.

23 THE COURT: Well ---

24 MR. SAUTTER: There's ---

25 THE COURT: --- I mean, it -- it seems to me like

1 -- I'm sorry. Go ahead.

2 MR. SAUTTER: Well, and -- and that's -- that's
3 our theory: that they were general partners; they
4 tried to -- they tried to create a -- a limited
5 liability company; it was created; it did pay taxes.

6 But they still have the general-partnership
7 relationship, no matter what -- nobody's ever really
8 been able to -- they're -- they're saying he's just
9 an employee of AVSX. And I'm suing -- we're suing
10 them on their individual acts. So general partners
11 can sue other general partners. And that's what
12 we've done in the -- in the sixth -- seventh cause of
13 action.

14 And we don't have to prove every allegation of
15 that. But it's our -- it -- it's our -- they never
16 acted like an LLC, Judge. It's been clear to that.

17 (Whereupon, Mr. Sautter and Mr. Michael Ellis
18 conferred.)

19 MR. SAUTTER: Every LLC member gave no capital
20 contribution and all the other evidence that we have.
21 We have a -- a -- the -- the sole member of the LLC
22 saying that she was appointed solely because she was
23 -- she was Mr. Johnson's spouse.

24 So, I mean, I think that's a contested fact. And
25 we'd request that the jury -- it be submitted to him

1 the individual -- to them the individual liability as
2 well.

3 (Whereupon, Mr. Sautter and Mr. Michael Ellis
4 conferred.)

5 MR. SAUTTER: The -- the -- one of the problems
6 that could happen if -- should a jury return a
7 verdict and should this Court not allow the jury to
8 consider the -- whatever individual liability there
9 is, that they would be -- then be free to change the
10 name of the company and say AVSX Technologies has
11 nothing to execute on any judgment that -- that Mr.
12 Endara obtains.

13 If they are in their individually, it makes it
14 less hard -- maybe that's a -- maybe that's an action
15 in supplemental proceedings. I'm not so sure. But
16 ---

17 THE COURT: Well, I think you're probably right on
18 that.

19 MR. SAUTTER: Yes, sir. I think that's where it
20 comes down to anyway, Judge.

21 THE COURT: Yeah. But I don't -- I'm having a
22 hard time wrapping my mind around your request that
23 this Court charge them law on a -- on -- on a -- in
24 essence, on a partnership, as well as an LLC. And --
25 and I just don't -- you know, back in chambers before

1 we ever started, you said -- you and Mr. Todd Ellis
2 were back there, along with Mr. Michael Ellis, said,
3 "Judge, we -- we -- we've -- we've narrowed these
4 issues down -- or we've tried to," okay, and -- and
5 -- and that being (1) either he was a member of the
6 LLC; or (2) he's a W-2 employee of the LLC. Was that
7 not our discussion back in chambers?

8 MR. SAUTTER: Yes, sir.

9 THE COURT: Okay. But now that seems to have
10 changed. It -- or am I just misreading that or
11 misunderstanding ---

12 MR. SAUTTER: Judge, it's ---

13 THE COURT: --- your argument? I mean, it seems
14 to me like you're trying to make it more complicated
15 than it actually is. I mean, I think it's pretty
16 clear. I think that is the issue at this point.

17 MR. SAUTTER: Yes, sir.

18 THE COURT: And regardless, assuming arguendo that
19 it was a partnership in 2008 -- well, before 2008,
20 okay?

21 MR. SAUTTER: (Nodded head up and down.)

22 THE COURT: When that LLC was formed in 2008
23 creating Guardian, what, if anything, of that
24 partnership carries on?

25 MR. SAUTTER: Well, general -- general partners

1 can own and manage ---

2 THE COURT: But I ---

3 MR. SAUTTER: --- LLCs.

4 THE COURT: --- I -- I -- I -- the Limited
5 Liability Corporate Act, LLC act, specifically, in
6 its definitions, talks about member managers, manager
7 managed. So it kind of differentiates that out.

8 And -- and the commentary that I -- or asked you
9 all to look earlier that -- and -- and -- and goes
10 back to the articles don't necessarily in -- and --
11 and I'm paraphrasing here ---

12 MR. SAUTTER: Yes, sir.

13 THE COURT: --- do not necessarily in and of
14 themselves define how the company is going to be
15 operated. And if you don't have an operating
16 agreement, then you look to all of these factors that
17 I read to y'all earlier -- I don't know what case it
18 was -- pull those factors up for me, please, Bryant
19 -- which goes down to the manner in which they
20 conducted themselves, etc., etc., which there's been
21 a substantial amount of testify from the witness
22 stand. And -- and that is: Well, they weren't
23 partners or -- or owners together on paper, but --
24 for instance, what was your understanding of
25 structure of this LLC. Well -- and -- and as more

1 than one person said, well, it was my understanding
2 they were co-owners of this company.

3 And Mr. Todd Ellis, advocating on behalf of his
4 client, has said more than once owners of
5 corporations get a K-1; they didn't get a K-1, so
6 they're not owners. Right, Mr. Todd Ellis?

7 MR. TODD ELLIS: You got that one down, Your Honor

8 ---

9 THE COURT: Okay.

10 MR. TODD ELLIS: --- for sure.

11 THE COURT: I -- I mean, if I've heard that once,
12 I've heard it -- I don't know -- madam court
13 reporter, can you tell me how many times? I'm just
14 kidding. Okay.

15 But, I mean, the -- that narrows the issues down
16 here, okay? And -- and -- and it is the Court's
17 opinion -- and if you can find some case law that you
18 want me to look at, I'll be happy to look at it. But
19 I do not believe that for argument's sake, once that
20 partnership was formed back whenever it was, okay,
21 that once the LLC is formed, they don't operate
22 independently of each other. They don't operate
23 independently of each other. It's either an LLC or
24 it's a partnership.

25 And everything from this witness stand during the

1 last three days has dealt with LLC -- the LLC. And
2 the fact that there's not an operating agreement here
3 and the fact that Mr. Spohn, I think it was, said,
4 "I've been asking them since 2008 to get an operating
5 agreement."

6 And when you don't have an operating agreement,
7 you can certainly operate under oral agreements, as
8 -- as -- as allowed by the statutes -- by -- by the
9 commentary. I mean, it says that, okay?

10 And when you operate under oral agreements, as it
11 is alleged here, then that becomes a jury issue as to
12 what those oral agreements were, because it's -- it's
13 not an agreement on that.

14 And so I -- and -- and -- and it's the Court's
15 opinion that that's how it -- you know, they can
16 believe it was a 50/50, but that's up for them to --
17 to the jury to believe at that point, since there's
18 not an operating agreement here. I just don't
19 believe that the two entities operate -- or -- or
20 that they coexist, you know, after the LLC is
21 created.

22 And -- and, I mean, I'll be happy to look at case
23 law to -- if you've got any case law that -- that
24 says otherwise on that issue.

25 MR. SAUTTER: Well, there's no way to explain the

1 -- the business operations of the partnership or the
2 LLC by business law. They just did whatever they
3 wanted. They ---

4 THE COURT: Well ---

5 MR. SAUTTER: --- did whatever they decided.

6 THE COURT: Again, which creates the necessity of
7 getting an operating agreement ---

8 MR. SAUTTER: Yes, sir.

9 THE COURT: --- which we don't have here.

10 MR. SAUTTER: Yes, sir. Yes, sir. But, you know,
11 I would -- I would just go back to the -- these --
12 these were not -- he is not asking to sue them
13 individual based upon solely their corporate
14 functions.

15 THE COURT: We're not talking about that right
16 now. I'm talking about the issue of the partnership
17 and the LLC. We'll come back to the personal-
18 liability issue, okay?

19 MR. SAUTTER: (Nodded head up and down.)

20 THE COURT: But -- but I want to hear from you, by
21 way of argument or by way of case law, that both of
22 these entities can coexist together.

23 MR. SAUTTER: I ---

24 THE COURT: Does that ---

25 MR. SAUTTER: --- I ---

1 THE COURT: --- make sense?

2 MR. SAUTTER: Yes, sir. Yes, sir. And -- and
3 these are difficult issues. But ---

4 THE COURT: Hold on a minute. Your cocounsel is
5 about to have a fit over there to tell you ---

6 MR. SAUTTER: Your Honor ---

7 THE COURT: --- something.

8 MR. SAUTTER: --- I'm about to ---

9 THE COURT: Please ---

10 MR. SAUTTER: --- send him back to Charleston.

11 THE COURT: Mr. ---

12 MR. SAUTTER: But I ---

13 THE COURT: --- Michael ---

14 MR. SAUTTER: --- know he ---

15 THE COURT: --- Sautter ---

16 MR. SAUTTER: --- means well.

17 THE COURT: --- please -- please tell your
18 cocounsel whatever you want to tell him so -- so then
19 he can . . .

20 (Whereupon, Mr. Sautter and Mr. Michael Ellis
21 conferred.)

22 MR. SAUTTER: There -- there -- and Mr. Ellis has
23 reminded me that their partnership agreement came
24 before the formulation of Guardian Eagle and -- and
25 -- and AVSX and -- and even Protection24 to operate

1 an LLC that way. But their partnership agreement
2 preceded it, and -- and their general-partnership
3 agreement -- agreement superceded it.

4 THE COURT: Well, I disagree with you.

5 MR. SAUTTER: Yes, sir.

6 THE COURT: But, you know, I may be wrong. And if
7 I am, then we got a good record because I've done
8 enough talking on that issue, I think.

9 MR. SAUTTER: Yes, sir.

10 THE COURT: All right.

11 MR. SAUTTER: Thank you, Your Honor.

12 THE COURT: And -- and listen, I want the record
13 clear on it. Because if I'm wrong and I've -- you
14 know, and it affects your client, then I want it
15 corrected. And that's what we got the Court of
16 Appeals for and the Supreme Court.

17 Okay. But I -- I -- I -- I don't think -- unless
18 you can give me some case law or something that says
19 that they can coexist together -- because I -- I
20 believe that -- that what it boils down to, once that
21 LLC was created -- once that LLC was created, it
22 encapsulated or whatever you want to say, it took
23 over any partnership agreement they had. Okay?

24 Now, after that, whatever oral agreements that
25 they -- I mean, he could come in here and say that,

1 in fact, that my -- you know, my position is that I
2 was 80 percent partner and he was 20 and they kicked
3 me out and I'm entitled to 80 percent of this. He
4 could've said whatever he wanted to say. That boils
5 down to a jury issue as to whether or not they
6 believe he was 50/50 or -- or whatever. I mean, I
7 think that's where it goes to at that point.

8 And by virtue of not having an operating agreement
9 otherwise, I mean, it just becomes a factual issue
10 for them to decide whether or not they believe your
11 client on the 50/50.

12 MR. SAUTTER: Judge ---

13 THE COURT: And that may have been -- I mean, that
14 may have been their agreement before the LLC was ever
15 created.

16 MR. SAUTTER: Judge, I -- I would just request
17 overnight to brief that issue on the -- whether the
18 general partnership and the LLC can coexist and to
19 have that authority for you tomorrow -- any
20 additional authority.

21 THE COURT: I'll give you that.

22 MR. SAUTTER: Thank you, Your Honor.

23 THE COURT: But forward it to -- don't -- don't
24 just send it to me, now. Send it to him so he can
25 look at it as well, and send it to my law clerk.

1 MR. SAUTTER: Yes, sir.

2 THE COURT: But I -- I just -- I don't -- you
3 know, in thinking about it right here, I just don't
4 see where you're going to get charge on partnership
5 law and LLC law. And so you need to look ---

6 MR. SAUTTER: Sure.

7 THE COURT: --- at ---

8 MR. SAUTTER: Okay. The -- the tension is between
9 -- I -- I -- I see, Your Honor.

10 THE COURT: I'm not saying there's tension. I'm
11 just saying that he -- that the LLC supercedes
12 anything that may have existed as it pertains to any
13 partnership agreement. And so ---

14 MR. SAUTTER: I ---

15 THE COURT: All right?

16 MR. SAUTTER: I -- I -- I hear -- I hear you about
17 the charge, Judge. And I should probably kick myself
18 in the foot. But have -- has the Court -- is the
19 Court inclined to grant Mr. Ellis's motion to -- to
20 not have the jury consider any individual liability,
21 or is the Court struggling just with the partnership
22 and the LLC jury charges? I -- that's what ---

23 THE COURT: Well, I mean, I'm not really
24 struggling with the LLC versus the ---

25 MR. SAUTTER: Yes, sir.

1 THE COURT: --- partnership.

2 MR. SAUTTER: Yes, sir. Well ---

3 THE COURT: So I think I've decided on that.

4 MR. SAUTTER: Yes, sir.

5 THE COURT: The -- the issue comes down -- and --
6 and -- on this personal liability, I mean, I -- I'm
7 -- I'm going to think about that. I'm going to look
8 at these statutes again.

9 And in fairness to you and going back and looking
10 at my notes before we started the trial, I wrote down
11 that plaintiff was withdrawing his motion -- motion
12 to pierce the corporate veil. I mean, that's what I
13 wrote down. You want to see -- one of y'all want to
14 see them -- you happy to see them?

15 MR. TODD ELLIS: I'm not sure I follow you, but
16 that's what I thought. But how does it impact this,
17 Your Honor?

18 THE COURT: I don't know that it necessarily --
19 what was -- what was withdrawn was plaintiff's motion
20 for bifurcation and plaintiff's motion to pierce the
21 corporate veil.

22 My question -- in -- in order to pierce the
23 corporate veil, I mean, it just -- it goes back to --
24 certainly, that would result in possible personal
25 liability if the piercing of the corporate veil is

1 allowed.

2 MR. TODD ELLIS: Your -- Your Honor, I would -- I
3 would -- I think I know where you're going. But
4 you're right. It was a motion withdrawn. But I
5 don't know that there is a specific defense related
6 to that ---

7 THE COURT: Well, I -- as -- as ---

8 MR. TODD ELLIS: --- or ---

9 THE COURT: --- that is ---

10 MR. TODD ELLIS: --- or allegation.

11 THE COURT: Well, is that a specific -- my -- my
12 question then becomes: Is that a ---

13 MR. TODD ELLIS: --- affirmative requirement?

14 THE COURT: Is it a specific cause of action, so
15 to speak, or is it a -- is it a jury issue as to
16 whether or not -- based upon the testimony, whether
17 or not is -- is it a Court decision to allow piercing
18 the corporate veil or is that a factual issue for the
19 jury? It -- it -- you know, is -- is it an issue
20 wherein, based upon, as -- as you know, the Court is
21 required to charge whatever the -- the -- the
22 applicable law to a particular case. And the Court
23 does that based upon the testimony from the witness
24 stand during the course of the trial.

25 And -- and is it -- the question is, I think -- is

1 -- and you got -- you got a statute in play that I
2 cited about personal liability, which says absent
3 such and such, they're not liable. Now you have this
4 issue pertaining to the piercing of the corporate
5 veil, which say -- or has me question -- I don't know
6 that ---

7 MR. TODD ELLIS: Your Honor, the partnership issue
8 applies as well.

9 THE COURT: Hold on a minute. Say that again.

10 MR. TODD ELLIS: Because -- I think you are
11 correct that this -- this is an LLC and the dealings
12 were done by and through an LLC. Then, it falls to
13 the statute in which you cited, which is what
14 everybody contemplated: that the acts ---

15 THE COURT: Well ---

16 MR. TODD ELLIS: --- by and through the LLC are
17 not the individual liability of the members.

18 THE COURT: Well, and here's -- here may be
19 another default, so to speak, because of the absence
20 of an operating agreement. And maybe the statute
21 controls and says because you don't have an operating
22 agreement, because it wasn't in writing, they're
23 precluded from personal liability.

24 MR. TODD ELLIS: Your Honor, there's no question.
25 The statute specifically says that.

1 THE COURT: Well: ---

2 MR. TODD ELLIS: Absent provisions relating to
3 certain terms, there's default within the LLC
4 document.

5 THE COURT: I don't disagree ---

6 MR. TODD ELLIS: Yeah.

7 THE COURT: --- with you.

8 MR. TODD ELLIS: And, Your ---

9 THE COURT: That's what I'm ---

10 MR. TODD ELLIS: Yeah. I -- I would just make
11 three points that I think were contemplated: Number
12 1 is my clients didn't have notice of it. The motion
13 was withdrawn, which I could've solicited testimony
14 that would otherwise have said that was done by and
15 through the corporate actions.

16 The -- you -- you terminated -- first of all,
17 you've got an act here, which you're trying to narrow
18 this down to, like we all are. He was terminated.
19 Was he a member or was he an employee or someone not
20 entitled to a membership interest?

21 All his damages -- all he put up, Your Honor -- he
22 didn't say they defamed me and it cost \$200. He said
23 the LLC -- I -- my membership interest -- I'm owed
24 and entitled to this amount. The only damages in
25 this case that have been presented are by and through

1 his loss of that business, which was done by and
2 through an LLC.

3 Did Mary Kay Johnson direct that he be terminated?
4 Yes. But that's not an individual act outside the
5 scope of the LLC actions. There's nothing here in
6 the record to your point earlier that would point to
7 any individual act outside of the corporate
8 activities.

9 THE COURT: Well -- and -- and I read off, I
10 think, most, if not all, of those elements as you --
11 when you get down to piercing the corporate veil, one
12 of which was siphoning off money from the
13 corporation, so to speak, okay? And -- and there was
14 testimony -- and -- and there was testimony from this
15 witness stand of alleged spending of money, not only
16 by your client, but by Mr. Endara ---

17 MR. TODD ELLIS: Right.

18 THE COURT: --- as well. Okay? I mean, it ---

19 MR. TODD ELLIS: There's no question.

20 THE COURT: --- it is what it is.

21 MR. TODD ELLIS: There's no question. But, Your
22 Honor, that doesn't equate to piercing the corporate
23 veil when the party asserts he was a member -- when
24 the -- when the person asserts that he was a member
25 also was engaged in the activity. I would -- I would

1 agree with you in -- in that regard. And that
2 motion's not there.

3 So I -- I think the simple -- my opinion is -- is
4 that while I don't agree he's a member, and while I
5 want there to be directed verdict on that issue,
6 should the Court proceed, the issue is: Was he a
7 member? What are his damages entitled through -- for
8 being fired as a result of that?

9 Nothing stems from any other personal action in
10 which he's caused damages, Your Honor, nothing
11 whatsoever.

12 Before you read those -- I know you're getting
13 ready to read the things again. I would also argue
14 this, Your Honor: We'd also ask you to charge on
15 laches.

16 But certainly, someone arguing to pierce the
17 corporate veil, after seven years in an entity in
18 which this action's been going on that he supposedly
19 has benefitted from, can't come in and now argue,
20 hey, you're personally liable for that.

21 So if you -- Mr. Endara was a member, got -- had
22 control, got the benefits of being a member in some
23 way or another, then he can't come in now and argue
24 you're personally liable for that because we were
25 doing that for seven years through the LLC. That

1 would be another defense to that action.

2 THE COURT: Well, the -- the -- that raises
3 another issue. Does the piercing of the corporate
4 veil -- these factors -- do you consider those
5 factors posttermination of Endara -- Mr. Endara, or
6 do you consider those factors from '08, whenever the
7 LLC was created, all the way forward?

8 So anyway ---

9 MR. TODD ELLIS: Your -- Your ---

10 THE COURT: --- it's food for thought. You don't
11 have to argue about it. I'm just ---

12 MR. TODD ELLIS: No. I was just going to say:
13 Something I think is obvious regarding piercing the
14 corporate veil, it normally would not kick in until
15 the time that the cause of action arises. And that's
16 usually some third party. And that's not a member of
17 the own LLC, if he's -- asserts that's what he is.

18 THE COURT: Well -- well ---

19 MR. SAUTTER: Can -- can I make one final
20 argument, Your Honor? I would ---

21 THE COURT: Yes, sir.

22 MR. SAUTTER: I would point the Court out to 33-
23 44-407, which talks about liability for unlawful
24 distribution. It says: A member of a member managed
25 company or a member or management -- manager of a

1 manager managed company who votes for or assents to a
2 distribution in violation of 406 is -- is -- the
3 articles of organization or the operating agreement
4 is personally liable to the company for the amount of
5 the distribution.

6 And I -- and -- and I would -- that's what I would
7 argue: that there is personal liability here. She's
8 liable to the company, as well as to Mr. Endara..

9 THE COURT: All right. Well, I disagree with your
10 assessment on that code section that you just cited.

11 MR. SAUTTER: Okay.

12 THE COURT: That relates to unlawful
13 distributions, which is not a -- not the issue here.
14 Okay?

15 MR. SAUTTER: (Nodded head up and down.)

16 THE COURT: And I don't think there's been any
17 testimony that there's been unlawful distribution, so
18 to speak. The whole issue in this case, as the Court
19 has seen it, is -- as I've said before: I was a
20 member of this LLC; I was a 50/50 owner in this LLC;
21 and they wrongfully terminated me. And -- and, in
22 the words of your client on the witness stand, it's
23 his allegation that it was, in essence, a hostile
24 takeover of his interest in the -- in the company.
25 Okay?

1 So I don't want -- I don't think that any
2 partnership statutes are applicable in charging this
3 jury. I think the issues are very simplified. And
4 that relates simply to the -- what his status was --
5 what his status was and from that status what, if
6 any, damages he's entitled to.

7 But I'll look at this issue a little bit further
8 on the corporate veil. For your sake, rather than
9 wait till in the morning, I will tell you that I'm
10 leaning towards not allowing the piercing of the
11 corporate veil.

12 MR. SAUTTER: Yes, sir.

13 THE COURT: Okay?

14 MR. SAUTTER: Yes, sir.

15 THE COURT: Now, that could change. But I'm --
16 but I'm telling you that for your benefit right now.
17 All right?

18 MR. SAUTTER: Yes, sir.

19 THE COURT: All right. Anything further?

20 MR. TODD ELLIS: Judge, we should have
21 exchanged/be ready to prepare those -- the charges
22 again, considering what we've done here today, to
23 hopefully narrow some -- to you in the morning and
24 then prepare my client -- my witness, Mr. Zion. Is
25 that what you'd like to have us do -- 9:30 you want

1 us ---

2 THE COURT: I want y'all here at nine o'clock ---

3 MR. TODD ELLIS: Yes, sir.

4 THE COURT: --- sharp.

5 MR. TODD ELLIS: Yes, sir.

6 THE COURT: All right?

7 MR. TODD ELLIS: Yes, sir.

8 THE COURT: And we ---

9 MR. TODD ELLIS: Thank you. We'll ---

10 THE COURT: --- can ---

11 MR. TODD ELLIS: --- see you then.

12 THE COURT: --- finish up with this charge issue.

13 Make sure your witness is here at 9:30.

14 MR. TODD ELLIS: Yes, sir.

15 THE COURT: And let's try to get this case wrapped
16 up tomorrow.

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

18 MR. SAUTTER: Thank you, Your Honor.

19 THE COURT: All right.

20 (Whereupon, the proceeding was adjourned at 3:02
21 p.m.)

22

23

24

25

TRANSCRIPT OF RECORD

TRIAL DAY 4 - 01/28/16

(Whereupon, the proceeding was reconvened at 9:27 a.m.)

THE COURT: All right. Have you all had an opportunity to go through the -- the prospective charges? Is that correct, Mr. Sautter?

MR. SAUTTER: Yes -- yes, sir, Your Honor.

THE COURT: Mr. Todd Ellis?

MR. TODD ELLIS: Yes, Your Honor.

THE COURT: Well, let me hear what you all agree upon, what you disagree up. Let's get this thing done.

MR. TODD ELLIS: Yes, sir.

MR. SAUTTER: Okay, Your Honor. Well, I -- I -- the easiest way is that I do not object to Mr. Ellis's charges, with the exception -- of Defendant's Request to Charge No. 5.

THE COURT: Hold on a second. Let -- let me get mine back in order. I'm sorry.

MR. SAUTTER: Yes, sir.

MR. TODD ELLIS: Judge, I have a stapled copy. You want that?

THE COURT: I got it right here.

MR. TODD ELLIS: Yeah.

1 THE COURT: Thank you, though. I got them in
2 order now. All right. Number 5?

3 MR. SAUTTER: Yes, sir. Requesting that the Court
4 charge basically tax law, when that is only one
5 perhaps indicia, you know, an annual K-1 to each
6 person.

7 THE COURT: Hold on just a minute. Is there any
8 particular provision within No. 5 that is applicable?

9 MR. TODD ELLIS: Excuse me, Your Honor.

10 (Off the record briefly.)

11 THE COURT: I was looking at ---

12 MR. TODD ELLIS: --- drafts.

13 THE COURT: --- this ---

14 MR. TODD ELLIS: Yes. Yes, sir.

15 THE COURT: --- Number 5 from whatever was
16 submitted earlier.

17 (Off the record briefly.)

18 THE COURT: All right. I'm sorry.

19 MR. TODD ELLIS: That's all right.

20 THE COURT: All right. Plaintiff objects to No.
21 5. What else?

22 MR. SAUTTER: The -- that's it, Your Honor. And I
23 assume that the other statements appear to be correct
24 statements of the law. And I assume a lot of that
25 will already be in Mr. Caldwell's charges that he's

1 trying to get together for the Court. And I think
2 some of the other charges are also included in what
3 we have requested that the Court charge. But 5 is --
4 is the one we have a problem with, Your Honor.

5 THE COURT: All right. What about defendant?
6 What about defendant as to plaintiff's requests to
7 charge?

8 MR. TODD ELLIS: Oh, plaintiff's? Yes, Your
9 Honor. We only have -- we object to some and
10 portions of others. Can I go through each ---

11 THE COURT: Well ---

12 MR. TODD ELLIS: --- one?

13 THE COURT: --- are there new submissions on that
14 as well? Because all I have is what -- it's from the
15 partnership. I think I gave you all the hard copies
16 ---

17 MR. TODD ELLIS: I see.

18 THE COURT: --- that my clerk had printed ---

19 MR. TODD ELLIS: Mr. ---

20 THE COURT: --- out.

21 MR. MICHAEL ELLIS: Would you like two copies for
22 each of y'all?

23 THE COURT: That's fine. That'll be good. Thank
24 you. All right.

25 MR. TODD ELLIS: Your Honor, as to Plaintiff's

1 Request to Charge No. 1, only the last paragraph,
2 which is on page 2, which has a specific reference
3 that the law which applies is the South Carolina
4 Uniform Liability Company Act. I think it states the
5 law. It's no need to mention that the South Carolina
6 Uniform Liability Act is the only law that would
7 apply in this case.

8 So I have no objection except the last paragraph
9 on page 2 of 5. It -- and I -- I think it's
10 duplicative. But No. 2 on the second page, I have no
11 objection to. Number 3, Your Honor, I don't object
12 to that concept.

13 This is the key one, I believe, for Your Honor to
14 charge in the case. It is dealing with what you'd
15 pointed out early on and what we've been debating.
16 It's relating to the operating agreement, the lack
17 thereof, and what the jury should consider.

18 And I would ask the Court consider a charge which
19 is No. 4 for the defendant in lieu of their charge.
20 I think it's clear it doesn't -- it's not broken up.
21 And I -- I think that this wrongfully -- or -- maybe
22 not -- wrongfully is not the right word. It -- it --
23 it's too much of an emphasis on the comment of the
24 section, as opposed to the meaning of the law. And
25 it's -- and it's just broken up.

1 I would -- Mr. Sautter and I discussed this back
2 and forth. We -- we just -- we almost came to
3 agreement. We could not do so.

4 So I think that their No. 3, Plaintiff's 3, and
5 Defendant's 4 are the -- on or about the same --
6 certainly the same concept and ---

7 THE COURT: Right.

8 MR. TODD ELLIS: --- and defendant's is better.

9 THE COURT: All right.

10 MR. TODD ELLIS: The -- the -- No. 4, I object to
11 -- 4 and 5, I object to the same reason. And that is
12 UCC law regarding course of performance and course of
13 dealing. It's not -- it's not applicable under the
14 -- any of the things that have been charged, pled, or
15 otherwise in this case and, again, I think wrongfully
16 emphasizes that portion of if there's no writing in
17 place. So I think the UCC on 4 and 5 it -- should
18 not be charged to the jury.

19 MR. SAUTTER: Your Honor, I -- we would agree to
20 delete the reference to the statute in Items No. 4
21 and 5 of Plaintiff's Requests to Charge.

22 MR. TODD ELLIS: Your Honor, this -- either way, I
23 -- it -- it says -- it says "particular transaction."
24 It's law that applies between a -- dealers and
25 merchants. It -- it's not applicable to this case.

1 This jury knows what "course of dealing" means. And
2 -- and what you're going to charge ---

3 THE COURT: Hold on ---

4 MR. TODD ELLIS: --- to ---

5 THE COURT: --- just a minute. Let me read it
6 read it real quick.

7 MR. TODD ELLIS: Yes, sir.

8 (Off the record briefly.)

9 THE COURT: All right. I've looked that. I -- go
10 ahead, Mr. Todd ---

11 MR. TODD ELLIS: All right.

12 THE COURT: --- Ellis.

13 MR. TODD ELLIS: Thank you, Your Honor. Number 6
14 for plaintiff -- Your Honor, that's what we were back
15 on the other day. That is a wrongful cite. That is
16 when a member disassociates himself and is not
17 applicable to this case. And so I -- we've pointed
18 that out. 33-44-602(b)(1) is when a member
19 disassociates themselves and what damages arise.

20 And -- and, Your Honor, 6 and 7 -- if -- if you're
21 looking at the damages charge in this case or
22 whatever it should be, Your Honor, you -- you pointed
23 out or read early on and I believe the damages should
24 come and are stated in 33-44-702: Court action to
25 determine the fair market value of distributional

1 interest lays out what should be considered -- 33-44-
2 702 -- and not the 602 that they describe or 101(5)
3 and (6). Distributional interest would be related to
4 obviously what distribution's there to get. But when
5 they -- court determine action, under 702.

6 And then, No. 8, action against individual
7 members: Your Honor, I don't -- I don't disagree
8 with that charge. I just would argue that based on
9 the evidence they presented in this case, that there
10 is no evidence that the individual members should be
11 able to -- the individual members of the LLC should
12 go to the jury, with regard to the verdict. I think
13 that that is the true law.

14 I think, after we looked at it, Mr. Sautter and
15 Mr. Ellis looked at it, that manager -- members can
16 sue other members and certainly under these
17 circumstances. But there is not a -- a paragraph in
18 the pleading nor was there anyone from that witness
19 stand or otherwise to say that any action was done
20 outside the scope of the corporate activities. All
21 this action arises from him, quote, wrongfully being
22 terminated and not some personal tort or individual
23 capacity that my clients have. So I would assert
24 that it should not be -- it's a true meaning of the
25 -- it's a true portion of the law. But it should not

1 be charged in the case.

2 THE COURT: All right. Hold ---

3 MR. TODD ELLIS: And ---

4 THE COURT: --- on just a second. Hold on ---

5 MR. TODD ELLIS: Yeah.

6 THE COURT: -- just a second.

7 MR. TODD ELLIS: Yes, sir.

8 (Off the record briefly.)

9 THE COURT: Mr. Sautter, what do you say about
10 that with regards to No. 8?

11 MR. SAUTTER: I think we pled it, Your Honor, in
12 our seventh cause of action.

13 THE COURT: Well, let me ask this question,
14 though: When we get down to the verdict form, you
15 know, it's going to say, in essence, we, the jury,
16 find the -- either the plaintiff did or did not by a
17 preponderance of the evidence prove (1) that he was a
18 member; and (2) that such wrongful -- that he was
19 wrongfully disassociated from such entity; and that
20 the defendants, in essence, are liable in the amount
21 of such and such, assuming they get to that point.

22 MR. SAUTTER: Yes, Your Honor.

23 THE COURT: Does that makes sense?

24 MR. SAUTTER: Yes, sir.

25 MR. TODD ELLIS: Your Honor, it does. But that's

1 -- but, of course, what I would ask that you submit
2 to the jury is that that claim only be against AVSX.

3 THE COURT: Well, I think, under the -- I think,
4 under that statute, cited by -- Mr. Sautter knows --
5 they can sue the members -- each other. Okay?

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

7 THE COURT: But, I mean, if -- it -- it would be
8 -- I think it has the potential to mislead if it's
9 not submitted to them in their entirety at this
10 point, because they're -- they're -- plaintiffs are
11 -- is entitled to pursue against the company as well
12 as individual members.

13 MR. TODD ELLIS: I don't -- I totally agree with
14 Your Honor.

15 THE COURT: And -- and -- and to -- to sit there
16 and just say it's against AVSX, I mean, that's a
17 misrepresentation.

18 MR. TODD ELLIS: Your Honor ---

19 THE COURT: Who -- how ---

20 MR. TODD ELLIS: --- I ---

21 THE COURT: --- how it gets paid and who it's paid
22 -- by whom it's paid is irrelevant to them.

23 MR. TODD ELLIS: I know. It's relevant to my
24 clients, though, and I know you know that. I'm not

25 ---

1 THE COURT: Right.

2 MR. TODD ELLIS: --- joking about it. But the
3 point is -- is that your first instinct, when this
4 was brought up, was not about the law. And I agree
5 with you. He has the right to sue the individual
6 members.

7 Your first statement was: There's been no
8 evidence from that witness stand that there were
9 individual acts outside their capacity as a member
10 for ---

11 THE COURT: Right.

12 MR. TODD ELLIS: --- the -- for damages in this
13 case.

14 THE COURT: Right.

15 MR. TODD ELLIS: And that's why I ---

16 THE COURT: But the ---

17 MR. TODD ELLIS: --- would ask you ---

18 THE COURT: --- law does not say it has -- they
19 have to act outside that capacity to be liable to the
20 other members. The law does not say that.

21 MR. TODD ELLIS: I think it ---

22 THE COURT: It does not say that they have to be
23 acting outside the course and scope of their
24 employment to be liable to other members.

25 MR. TODD ELLIS: Well, even the statute you read

1 out yesterday actually does, I believe ---

2 THE COURT: Well, you ---

3 MR. TODD ELLIS: --- Your Honor ---

4 THE COURT: --- know, what I -- what I ---

5 MR. TODD ELLIS: --- if you ---

6 THE COURT: --- believe and in -- in retrospect
7 and going back and looking at that statute, I believe
8 that that is applicable to third parties suing the
9 LLC. The LLC shields personal liability from third
10 parties unless, in fact, members are acting outside
11 the course and scope of their employment.

12 MR. TODD ELLIS: I see your distinction, Your
13 Honor. I -- I respectfully disagree because I think
14 it still applies the same was, is that in order to go
15 forward, you have to have evidence that those
16 individuals acted in that manner.

17 I agree that that is the charge. They have the
18 right to do that. I just don't think we heard any
19 evidence from the stand that, in fact, there was
20 individual-capacity action here taken, you know.

21 THE COURT: Let me get back to something here real
22 quick.

23 (Off the record briefly.)

24 MR. TODD ELLIS: I know you're looking, too, Your
25 Honor. But if I could -- the -- the ---

1 THE COURT: Hold on ---

2 MR. TODD ELLIS: --- one you ---

3 THE COURT: --- just a ---

4 MR. TODD ELLIS: Yes, sir.

5 THE COURT: Hold on just a minute, please.

6 (Off the record briefly.)

7 THE COURT: Go ahead, Mr. Todd Ellis.

8 MR. TODD ELLIS: Yes, Your Honor. You were --
9 yesterday you pointed us to 33-44-303 ---

10 THE COURT: Right.

11 MR. TODD ELLIS: --- which -- and you may have
12 been reading that. And -- and, of course, (a) says
13 except as otherwise provided, there's no -- those are
14 liabilities of the company. That's -- it says that.

15 But in the comment, Your Honor, I think it's to
16 your point here -- here: A member or manager as an
17 agent of the company is not liable for debts,
18 obligations, and liabilities from -- of the company
19 simply because of the agency. A member or manager is
20 responsible for the acts or omissions to the extent
21 those acts or omissions would be actionable in
22 contract or tort against the member or manager if
23 that person were acting in an individual capacity.

24 So I think all those have to be read together.
25 And I still think that in order for a member to have

1 an action individually against another member, it has
2 to be a -- in contract or tort against the member or
3 manager if that person were acting in an individual
4 capacity.

5 And I think 303 -- and what Mr. Sautter and
6 plaintiff have -- have cited have to be read
7 together. And ---

8 THE COURT: Well, here -- here's the distinction:
9 Article 3 of Title 33, 33-44 Article 3, 301, the
10 heading is: Relations of Members and Managers to
11 Persons Dealing with Limited Liability Company. What
12 I said a minute ago, third parties -- under 410 --
13 410, under Article 4 says "Relations of Members to
14 Each Other and to Limited Liability Company." That's
15 the distinction. And that's why the Court believes
16 that he certainly can pursue this action against
17 individual members in their individual capacity.

18 MR. TODD ELLIS: Your Honor, I -- I -- and I want
19 to be clear, because I -- I hear you. And I -- I
20 hear that reasoning. What -- I'm not disagreeing
21 with you on any of that.

22 What I'm trying to assert is that your -- you've
23 originally said, which I concur with, there as no
24 evidence of individual acts at all. So it's not that
25 he couldn't pursue -- plead -- plead the case and

1 have proven that. They did not have any evidence
2 from the stand that they acted individually in any
3 way.

4 So the -- the -- it should go against AVSX. And
5 then, the liability falls where it may be.

6 THE COURT: Your objection is so noted for the
7 record, but I'm overruling you ---

8 MR. TODD ELLIS: Okay.

9 THE COURT: --- on that.

10 MR. TODD ELLIS: All right, Your Honor. The only
11 thing I'd ask, then, as -- as you're considering this
12 -- and I know you don't have to rule on this now --
13 is that I have -- we have a special form on the
14 verdict form which would allow the jury to find it
15 only against AVSX or against Bobby Johnson and Mary
16 Kay Johnson or individually. I think the jury form
17 would be -- they could find that only AVSX acted in
18 that manner and not the individuals.

19 And was there -- I don't know that there's
20 anything downside or against what your ruling is to
21 have those split out for the jury to find that
22 against -- the company only or against the
23 individuals.

24 THE COURT: Mr. Sautter?

25 MR. SAUTTER: Your Honor, I would -- I would

1 prefer a verdict form as the Court laid out for the
2 simplicity of it. And I would agree that our Request
3 to Charge No. 8 should conclude with: "You, the
4 jury, are charged with determining whether defendants
5 are responsible for any liability owed to
6 plaintiff . . . " and take out "all of the
7 defendants," which I -- was included in there by Mr.
8 Ellis -- Mr. Mike Ellis.

9 MR. TODD ELLIS: And -- and, Your Honor, since
10 you're going to charge that, I would say "a -- a
11 defendant" -- "a or any defendants."

12 THE COURT: All right. I'll make a decision on
13 it.

14 MR. TODD ELLIS: Yes, sir.

15 THE COURT: Number 9?

16 MR. TODD ELLIS: Number 9. Excuse me, Your Honor.

17 (Whereupon, Mr. Todd Ellis and Mr. Webb
18 conferred.)

19 MR. TODD ELLIS: I know, under the LLC statute,
20 Your Honor, you can have claims of law and in equity.
21 I just don't know that you can have both. But I --
22 you know, I -- I guess I don't have an objection with
23 unjust enrichment.

24 THE COURT: Okay. All right. I'll get this --
25 try to get a -- work on getting this hammered out

1 from here forward. Is your witness here?

2 MR. TODD ELLIS: He -- he is. I only -- can I
3 have five minutes, Your Honor, if you ---

4 THE COURT: Yeah. Let me ask this -- I'm just
5 asking this for planning purposes. How long do you
6 anticipate -- you all anticipate this witness
7 lasting?

8 MR. TODD ELLIS: Of course ---

9 THE COURT: Who ---

10 MR. TODD ELLIS: --- I don't know ---

11 THE COURT: --- who is he?

12 MR. TODD ELLIS: Mr. Zion is the accountant for

13 ---

14 THE COURT: Okay.

15 MR. TODD ELLIS: --- AVSX. All right.

16 THE COURT: I would think, Your Honor, in total,
17 guessing Mr. Sautter's style, no more than an hour,
18 probably 40 minutes.

19 THE COURT: Okay.

20 MR. SAUTTER: I agree, Your Honor. As ---

21 THE COURT: Well, what I would ---

22 MR. SAUTTER: I'll be ---

23 THE COURT: --- anticipate ---

24 MR. SAUTTER: --- limited ---

25 THE COURT: --- doing is -- is putting him up,

1 taking a break at that point ---

2 MR. TODD ELLIS: It may be less than that,
3 actually, Your Honor.

4 THE COURT: --- and -- and I'd like to get the
5 case to the jury by lunchtime.

6 MR. TODD ELLIS: Before?

7 THE COURT: Before lunchtime.

8 MR. TODD ELLIS: Yes, sir.

9 THE COURT: All right. Closing argument -- we'll
10 talk about this briefly right now. Closing
11 arguments, how long will you anticipate, Mr. Sautter?

12 MR. SAUTTER: Forty-five minutes, Your Honor.

13 MR. TODD ELLIS: For yours?

14 MR. SAUTTER: Yes, sir.

15 MR. TODD ELLIS: Holy ---

16 MR. SAUTTER: It might be shorter, Judge.

17 MR. TODD ELLIS: Holy mackerel.

18 THE COURT: How about you, Mr. Todd Ellis?

19 MR. TODD ELLIS: I'm thinking four, now. They'll
20 love me for that. Four minutes. No. I mean, I ---

21 THE COURT: Well, listen ---

22 MR. TODD ELLIS: Twelve minutes, Your Honor? I
23 don't know. Fifteen minutes, tops? Twelve minutes.

24 THE COURT: Have you done your closing argument
25 yet, Mr. Sautter?

1 MR. SAUTTER: Yes, sir.

2 THE COURT: You time it?

3 MR. SAUTTER: Yes, sir.

4 THE COURT: Okay.

5 MR. SAUTTER: At least thirty.

6 THE COURT: I'll give you a maximum of thirty ---

7 MR. SAUTTER: Yes, sir.

8 THE COURT: --- on the front end. You get
9 rebuttal.

10 MR. SAUTTER: Yes, sir.

11 THE COURT: Five or ten.

12 MR. SAUTTER: Yes, sir.

13 THE COURT: And I'm not going to -- don't -- don't
14 -- I'm not going to cut you off in ---

15 MR. TODD ELLIS: Make him ---

16 THE COURT: --- midstream.

17 MR. TODD ELLIS: --- talk real fast, Your Honor.

18 THE COURT: I -- I'm not -- I'm not going to cut
19 you off in midstream of your argument. What -- I --
20 I will just remind you all -- and -- and you know --
21 it's limited to the evidence and the reasonable
22 inferences therefrom. And -- and what I don't want
23 you to do is start repeating everything -- when you
24 start saying the same thing over and over, I'm going
25 to call you on that.

1 MR. SAUTTER: Yes, sir.

2 THE COURT: Okay? If you start saying the same
3 things over and over, I'm -- I'm going to call you on
4 that.

5 And -- and -- and I say that. And I say this: I
6 don't know that I've ever, in the six years I've been
7 on the bench, I don't think I've ever called a lawyer
8 down and said, "You need to sit down," or anything
9 like that.

10 So you don't need to worry about me up here while
11 you're doing your closing arguments. But if it gets
12 too long, I may -- I may have to. All right?

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

14 THE COURT: All right. We'll stand down for just
15 a minute.

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

17 THE COURT: And we'll go from there.

18 (Off the record from 9:50 a.m. until 10:00 a.m.)

19 THE COURT: All right. Plaintiff's counsel ready
20 to proceed?

21 MR. SAUTTER: Yes -- yes, sir, Your Honor.

22 THE COURT: Defense counsel?

23 MR. TODD ELLIS: Yes, Your Honor.

24 THE COURT: Bring me the jury, please, sir.

25 DEPUTY CLERK OF COURT: Yes, Your Honor.

1 THE COURT: Can -- can y'all approach as they're

2 ---

3 MR. TODD ELLIS: Of course.

4 THE COURT: --- coming real quick.

5 MR. SAUTTER: Yes, sir.

6 THE COURT: I need to ask you something.

7 (Off the record briefly.)

8 (Whereupon, the jury entered the courtroom at
9 10:01 a.m.)

10 THE BAILIFF: Jury is seated, Your Honor.

11 THE COURT: Thank you very much. Good morning,
12 ladies and gentlemen. Hope you all had a nice
13 evening yesterday. We're still trying to work some
14 things out here. I apologize for keeping you all
15 waiting back there.

16 At this time I'm going to recognize defense
17 counsel. Call your next witness, please.

18 MR. TODD ELLIS: Thank you, Your Honor. May it
19 please the Court?

20 THE COURT: Yes, sir.

21 MR. TODD ELLIS: Good morning. Good morning. Mr.
22 Mark Zion, please.

23 (Off the record briefly.)

24 (Whereupon, the witness came forward.)

25 MARK ZION, having been first duly sworn,

1 testified as follows:

2 DIRECT EXAMINATION

3 BY MR. TODD ELLIS:

4 Q Good morning, Mark.

5 A Good morning.

6 Q Mark, tell the jury what your profession is,
7 please.

8 A I'm a public tax accountant, tax preparer.

9 Q What -- what are your credentials?

10 A I've been working in the tax business for 35
11 years. I'm a enrolled agent, which is a licensure by
12 the U.S. Treasury Department to represent taxpayers
13 through tax court. I'm an accredited tax adviser,
14 accredited tax preparer, and a certified financial
15 planner.

16 Q Do you currently provide services for AVSX
17 Technologies, LLC?

18 A We've been engaged so. Yes, sir.

19 Q How long, Mr. Zion?

20 A We started, I believe, it was the fall of '14,
21 trying to do some work on catching up on some
22 accounting and tax work for them.

23 Q Okay. And that's been quite something, I'd
24 assume?

25 A Quite a task. Yeah. Been four years' of work to

1 try to cram in to a short period of time.

2 Q Have you prepared preliminary tax returns for this
3 entity for 2012, 2013, and 2014?

4 A I did.

5 Q In fact ---

6 MR. TODD ELLIS: I'm going to use the big exhibit,
7 if it's all right.

8 MR. SAUTTER: Sure.

9 Q This is the first time you would've seen this, at
10 least in this form. But this, I can purport to you,
11 is the preliminary report that you prepared, drawing
12 up the first page of it, for 2014; is that correct?

13 A That was it. Yes.

14 Q Yes. And if you would, tell the jury a little bit
15 about what you have to do and information you have to
16 look at in order to prepare a preliminary tax return
17 -- or, for that matter, a tax return.

18 A Oh, it was an accounting of the books and records
19 that were supplied by the client. We have to
20 assemble those into a financial statement to, you
21 know, determine what's income, expenses, and -- at
22 least in the presentation that they have given. We
23 don't audit or testify to what's actually the
24 application. There's a balancing of books. And
25 then, there's a preparation of the form, which

1 requires a presentation of a balance and a profit-
2 and-loss statement.

3 Q What kind of entity is AVSX Technologies, LLC?

4 A They're reporting is that they are a single-member
5 LLC being taxed for IRS purposes as an S corporation,
6 which ---

7 Q Okay. I mean, that -- that -- I've been trying
8 cases for 20 years. It's just a terrible statement
9 in general. But what does that mean ---

10 A Right. What does that mean?

11 Q --- an S corp for tax purposes?

12 A The S-corporate status for tax purposes is --
13 allows an entity to file a separate income tax return
14 for the entity itself, which gives it some, you know,
15 limited liability but the separate tax returns from
16 the individual. But the income on an S corporation
17 is not taxed at the corporate level. Regular
18 corporations' taxes assume they're -- General
19 Electric pays its tax at the corporate level.

20 Small business, or S corporations, the income,
21 whatever is determined in that S corp is then passed
22 down to the shareholders via a form that's integral
23 part of the return called a K-1. And the K-1 would
24 be -- I describe it sometimes like a W-2. It's an
25 allocation of the income of the corporation to the

1 shareholders.

2 And so the entity itself pays no income tax. The
3 corporate -- an S corp pays no income tax, per se.
4 It's liability of the shareholders that are -- that's
5 reflected on the Form K-1.

6 Q And you have to receive a K-1 to be responsible
7 for that tax debt; is that right?

8 A That's correct. That's correct.

9 Q All right. And -- and the -- the pass-through of
10 the income, for instance, on this 2014 preliminary
11 return, would -- would that be the net income
12 reflected down here of \$620,000 and some change?

13 A It's close, Todd. Yes. There -- there is some
14 other adjustments to that number that do get passed
15 through on the back side. But that is the -- that
16 income of the enterprise. Yes.

17 Q Could you explain to them what might reduce that
18 total amount to an individual ---

19 A There ---

20 Q --- owner?

21 A --- there's still an allocation of -- again, S-
22 corp returns get to be somewhat complicated. But
23 there is an allocation of depreciation that gets
24 allocated to the shareholders at a shareholder level.

25 So that \$620,000 has a depreciation adjustment to

1 it for the depreciation of the equipment. And then,
2 obviously, the shareholder is responsible for the
3 income tax.

4 Q And what is it -- your responsibility as a tax
5 preparer, the person who prepares the tax for the
6 corporation, to do with regard to the members?

7 A Well, I prepare a K-1. As part of the return,
8 we're obligated to issue a K-1 to the -- to the
9 shareholders of that S corporation that represents
10 accurately the -- the income. And obviously, we're
11 held to a -- a standard that says we have to prepare
12 a return completely and accurately as we ---

13 Q So if there is a member of the LLC, you have to
14 give them a K-1?

15 A By all means. By all means.

16 Q And the regs demand that you do that?

17 A It's by statute and by regs that you have to
18 report that income to the shareholders. The division
19 of the income is by the owner's shareholders is how
20 that's allocated. That's correct.

21 Q I don't think you've had a -- a chance to review
22 both of these. You've seen one -- at least one
23 before. I'm going to show you what's been marked as
24 Defendant's Exhibit 1 and this -- Defendant's Exhibit
25 No. 12. If you would, take a look at that.

1 Mr. Zion, they may not be the complete returns
2 shown before you, but what are they, sir?

3 A Well, these represent the 2009/2010 S-corporate
4 tax returns prepared for Guardian Eagle Securities,
5 LLC [sic] ---

6 Q And ---

7 A --- for 2009/2010.

8 Q Those were not prepared by you?

9 A They were not prepared by me. No, they were not.

10 Q And the tax preparer listed on there is who?

11 A Daniel Spoon.

12 Q Spohn?

13 A Spohn. I'm sorry.

14 Q Dan Spohn?

15 A (No audible response.)

16 Q Right. Who -- in 2009 -- let me ask you one a
17 time. In 2009 the tax returns reflect who as the
18 member of that LLC?

19 MR. SAUTTER: Your Honor, I would object. I mean,
20 the records and documents speak for themselves.
21 They're already been introduced in evidence. I think
22 there's been comment on them. Mr. -- Mr. ---

23 MR. TODD ELLIS: Is this a ---

24 MR. SAUTTER: --- Mr. Zion ---

25 MR. TODD ELLIS: --- testimony ---

1 THE COURT: Hold on ---

2 MR. TODD ELLIS: --- of the ---

3 THE COURT: --- a minute. Hold on -- hold on a
4 minute.

5 MR. SAUTTER: Mr. ---

6 THE COURT: What's the grounds for your objection?

7 MR. SAUTTER: I think he's getting ready to elicit
8 expert testimony and he is not an expert and has not
9 been ---

10 THE COURT: Overruled ---

11 MR. SAUTTER: --- identified ---

12 THE COURT: --- at this point. Go ahead, Mr. Todd
13 Ellis.

14 Q Mr. Zion ---

15 THE COURT: I will ask you to rephrase your
16 question, though. You're leading the witness.

17 Q I asked -- who is listed on the K-1?

18 A For the 2009 tax return, there's two K-1s
19 presented here: a Julio Reis and a Mary Johnson --
20 Kay Johnson.

21 Q And how about on the 2010 return?

22 A 2010 is the one I did review before doing the '11.
23 And it shows a Mary Kay Johnson as the 100 percent
24 shareholder.

25 Q Okay. I'm going to show you now what's been

1 marked as Defendant's Exhibit No. 11 and ask you to
2 take a look at that as well. What is that, sir?

3 A This is the South Carolina application for a
4 business license and withholding number for Guardian
5 Eagle Securities, LLC.

6 Q Is that ---

7 A It ---

8 Q What does that document do for the -- the taxing
9 industry -- the tax agency?

10 A This is the -- you establish the file number for
11 the State of South Carolina, as far as payroll
12 withholdings, income tax filing, those-type
13 activities. It's a business-application form.

14 Q You did not prepare that as well?

15 A I did not prepare that. Dan Spohn did that as
16 well ---

17 Q And ---

18 A --- according to ---

19 Q --- does -- does that list who the members or
20 owners of that entity are?

21 A It does. It says list of the -- the owners or
22 partners. It lists Mary Kay Johnson as the 100
23 percent owner.

24 Q Based on your preliminary returns done provided to
25 the plaintiff in this case for the years '11, '12,

1 '13, and '14, have you determined a preliminary tax
2 liability for the members of AVSX?

3 A I have done a thumb -- thumb -- thumb-sketch
4 calculation to at least give a range for the tax.
5 Obviously, the income flows to the shareholder and
6 it's taxed at the shareholder's individual tax-rate
7 levels. And that can be -- vary.

8 But given the income that's passing through, based
9 on Mary Kay's income and W-2 wages and what would be
10 passing through on the K-1, they would be in -- I
11 would expect a marginal tax bracket of 33 percent on
12 federal and 7 percent on South Carolina. So I'd
13 guesstimate or estimate at that point about a 40
14 percent tax rate is what you're estimating.

15 And so for the four years in question is what you
16 asked, 2011 through '14 ---

17 Q Uh-huh.

18 A --- it's a little over three-quarters of a million
19 dollars, \$733,000 in, you know, projected federal and
20 state tax liability.

21 Q Tax liability?

22 A Correct.

23 Q For the owners of AVSX Technology, LLC?

24 A That's correct.

25 Q Mr. Zion, is there anywhere that that tax

1 liability is reflected in your return?

2 A It is not reflected there. No.

3 Q Okay. That's this exhibit. It's ---

4 A No.

5 Q --- it's not -- it's not -- it's not reflected in
6 this front page of that exhibit?

7 A That's right.

8 Q When you're valuing a business, does the tax
9 liability have to account for that -- be accounted
10 for?

11 A It does. It's a contingent liability of the -- of
12 the ---

13 MR. SAUTTER: Your Honor ---

14 A --- future ---

15 MR. SAUTTER: --- I'm ---

16 THE COURT: Hold on a minute.

17 MR. SAUTTER: --- I'm going to object.

18 THE COURT: What's the grounds for your objection?

19 MR. SAUTTER: I think he's trying to get into the
20 valuation of the business. And I think that ---

21 THE COURT: Hold on a minute. Can y'all approach
22 a minute.

23 MR. TODD ELLIS: Yes, Your Honor.

24 (Whereupon, a bench conference was held off the
25 record in the presence of the jury but out of the

1 hearing of the jury.)

2 MR. SAUTTER: Your Honor, the -- madam court
3 reporter, the objection is withdrawn at this time.

4 THE COURT: Thank you. Go ahead, Mr. Ellis ---

5 MR. TODD ELLIS: Thank you ---

6 THE COURT: --- please.

7 MR. TODD ELLIS: --- Your Honor.

8 THE COURT: Ladies and gentlemen, I hope you don't
9 mind me standing up here. I'm not doing that -- I
10 sit and ride so much that -- that I want to stand
11 some. So if's distracting any of you, I apologize
12 for that. Mr. Ellis, you may continue.

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

14 Q Before your testimony today, Mr. Zion, did you
15 have a chance to review at least a photograph of --
16 of this exhibit?

17 A Yeah. I saw a picture of that. Yes, I did.

18 Q Okay.

19 A I had a chance to review.

20 Q And I think I represented to you that Mr. Endara,
21 with assistance of counsel, made some calculations
22 based on the return -- preliminary return that you
23 prepared; is that correct?

24 A That's correct.

25 Q And did you see this four-time multiplier in

1 considering the valuation of the company?

2 A I saw that multiplier and -- and raised an
3 eyebrow.

4 Q And a company like AVSX Technologies, what would
5 be -- what's the multiplier that should be used?

6 MR. SAUTTER: Your Honor, I would object.

7 THE COURT: Objection sustained. Can the lawyers
8 approach a minute, please.

9 (Whereupon, a bench conference was held off the
10 record in the presence of the jury but out of the
11 hearing of the jury.)

12 Q Mr. Zion, I'm going to back up a little bit. Let
13 me ask you a little bit about the -- your practice
14 during your career. Have you had an opportunity to
15 evaluate and value businesses for the purpose of
16 sales, mergers, or other transactions?

17 A Yes, I have. With helping clients in their
18 enterprises, as far as doing mergers and
19 acquisitional work, we've been on both sides of doing
20 valuations, as far as helping a client determine a
21 value of a target purchase or helping them on the
22 sale side, because there's huge tax implications on
23 -- on the transaction. And so we get involved many
24 times with that process.

25 Q So whether you're doing a valuation yourself or

1 taking about the tax consequences, how --

2 approximately how many files you think you've done in
3 that regard?

4 A As far as those type of transactions, probably in
5 excess of 50.

6 Q Fifty?

7 A (Nodded head up and down.)

8 Q Have you done businesses which are similar sales-
9 type -- I'm maybe categorizing this -- if you'd like
10 to describe it otherwise -- I would call it --
11 consider this a sales-type business like AVSX. Have
12 you evaluated other sales-type businesses like AVSX?

13 A We have. Yes. All kinds.

14 Q All right.

15 MR. TODD ELLIS: Your Honor, I'd offer Mr. Zion as
16 a expert witness in the case.

17 THE COURT: Expert in the field of?

18 MR. TODD ELLIS: Business valuation.

19 THE COURT: Mr. Sautter?

20 MR. SAUTTER: Your Honor, I have some standard
21 objections to -- to make as to his -- not as to Mr.
22 Zion's qualifications as a ---

23 THE COURT: You have any questions you want ask
24 him?

25 MR. SAUTTER: No, sir. No voir dire at this time.

1 THE COURT: State the grounds for your objection,
2 please.

3 MR. SAUTTER: Grounds for the objection is Mr.
4 Zion has been identified as an expert. The grounds
5 of -- for the objection is although certainly, by
6 reason of his practice and experience, generally, he
7 is qualified to give an opinion as to what the value
8 of this business is, but ---

9 THE COURT: All right. Come here for a minute,
10 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: All right. Over plaintiff's
15 objection, I'm going to qualify this individual as an
16 expert. Ladies and gentlemen, let me give you this
17 charge before we go any further. Normally, a person
18 cannot give opinion testimony. Normally, when a
19 person testifies, they must testify as to what they
20 either saw, heard, or sensed by smell or something of
21 that nature.

22 However, there is an exception when someone is
23 qualified because of education or experience. They
24 are permitted -- they are permitted to give their
25 opinion in certain areas if the Court qualifies them

1 that way. This witness is being qualified in the
2 area of business valuation to give opinion testimony
3 in that area.

4 That does not mean -- it does not mean that you
5 must accept the opinion. But it is evidence for you
6 to use any way that you see fit. Mr. Todd Ellis, you
7 may continue, sir.

8 MR. TODD ELLIS: Thank you, Your Honor. May it
9 please the Court.

10 Q If -- if you would, Mr. Zion, you see that Mr.
11 Endara multiplied what are the net proceeds for a
12 single year in evaluation of this business. Is that
13 an appropriate multiplier?

14 A It's generous in the realms of what we've
15 experienced in that type of business, meaning I think
16 it's excessive. A multiplier is a -- is a shorthand
17 way of qualifying what we call a capitalization rate.
18 What -- what would a buyer expect the continued
19 income stream to generate for them into the future?

20 And so we call that a capitalization rate. And
21 it's -- and a multiplier is a simplification of using
22 that an investor would want a rate of return on his
23 investment. And a multiplier of 4 is a 25 percent
24 cap rate, which is a relatively generous valuation.

25 So when you're valuing a business using a

1 multiplier, you're trying to determine, as best you
2 can -- you know, all -- all valuations are basically
3 under a willing buyer and willing seller. But the
4 buyer is typically looking at how confident am I of
5 that income stream continuing into the future. And
6 that's ---

7 Q Okay.

8 A --- what drives that multiplier.

9 Q And as a result of your seeing the prior taxes and
10 income of the company, knowing where the company is
11 now, what is your -- what -- what could you tell the
12 jury about the income stream and sales and the --
13 what they've done in net income over that period of
14 time?

15 A Well, notably, you saw in the 2014 returns that
16 the income was down significantly from the prior
17 year. So there's a 20 percent -- almost 20 percent
18 of -- a 19 percent drop in -- in revenue within the
19 operation, which is a trend that says can I count on
20 that income stream. And so there's another valuation
21 method that's commonly used, which is called discount
22 future earnings.

23 And what you do is you look at what do I expect
24 those earnings to be in the future and I can discount
25 it back to a present value. That methodology is

1 probably not appropriate, given the trend that we saw
2 in the sales of the -- of the enterprise on -- on --
3 on a decline.

4 Q You're -- you have knowledge of these accounts and
5 where the revenue comes with AVSX, right?

6 A Correct.

7 Q You have had extensive discussions with them
8 regarding financing their future income, what they
9 could expect?

10 A We have.

11 Q And ---

12 A Can ---

13 Q --- and -- and why is that a -- when I say it's a
14 sales business, that's a term that you use. But do
15 -- do they own the paper in which they sell?

16 A They do not. They're -- they're selling that
17 paper as a -- selling the paper immediately. So the
18 revenue sales are generated by selling the contracts
19 on a -- on a -- on a discounted price up front, which
20 is -- basically captures the value of those contracts
21 right there and then.

22 Q They have some nominal residual that can be cut --
23 cut off, though, or they can receive over a period of
24 time; is that right?

25 A Nominal. That's right.

1 Q But that's nothing compared to the sales-contract
2 price they get when they do it?

3 A Right.

4 Q Would that indicate to you that you have to go out
5 and sell the next account and the doesn't matter for
6 your next income, then?

7 A It's always on the next sale. That's correct ---

8 Q Right.

9 A --- right. No recurring income -- or very
10 minimal.

11 Q All right. Mr. Endara also -- well, he didn't
12 show any other discounts. He just multiplied this
13 times 4 and gave a figure of 1.24 million. Are there
14 other discounts that should be considered under these
15 circumstances?

16 A Yeah. There's a significant omission on the
17 valuation as far as if you were looking to divide
18 this business because the representation is that he
19 would be a 50 percent owner in the enterprise. I
20 mean, 50 percent owner in -- in buying and selling
21 businesses, I'm only buying a 50 percent interest.
22 And so there's a concept very well established and
23 what's called a lack-of-control discount. The fact
24 that I'm not acquiring a controlling interest in the
25 enterprise is a -- speaks to a significant discount

1 on an arm's length transaction of what I, as a buyer,
2 would be willing to pay for a business because I
3 don't control, at the end of the day. A controlling
4 interest is significant and that makes that interest
5 what we call also not marketable.

6 And so there are two very recognized discounts in
7 valuation: lack of marketability and lack of control
8 that, in most cases, when the valuations are done,
9 can produce discounts as much as 60 and 70 percent of
10 whatever the valuation was made on the business. So
11 if we have a -- a -- the valuation -- what I tell
12 clients is the valuation of the business as a whole
13 is not the value of 50 percent because of those
14 discounts.

15 Q What about the multiplier? What would be a
16 reasonable multiplier under these circumstances?

17 A It's a judgment. But typically, you'd see
18 something in the 1 1/2, something like that, which
19 would represent, you know, a -- a -- a much higher
20 capitalization rate because of the insecurity of the
21 income.

22 Q Is there any other discounts, other than the fact
23 that the -- the minority or only half ownership is
24 not very marketable?

25 A Lack of control. And then, again the business

1 trend is the other thing I'd noted. The business
2 trend was what it would -- you'd be factoring a
3 discount for the fact that the trend of the
4 enterprise was negative. We -- we've had sales
5 growth for years and -- and now you have a -- a turn
6 on -- on that.

7 And -- and quite frankly, you're looking at the
8 stabilization of the -- of the -- of the -- of the
9 revenue. That's -- that's a critical piece.

10 Q And how about the tax liability of what the
11 company owes in taxes?

12 A The tax liability would be a -- a factor in
13 determining what is the -- what number you use as a
14 multiplier. The -- the ---

15 Q I see ---

16 A --- 620 up top would be -- is a -- is a pretax
17 number. And you have to obviously consider the tax.

18 Q Right. There's been some testimony about -- I
19 know this may have predated -- dated your
20 representation of -- it -- it may be now, but I'm not
21 sure. If -- if either members or managers of a
22 company are authorized or are using company cards or
23 proceeds to have personal items, can that be
24 accounted for in a tax return or otherwise in your
25 office?

1 A It can be. It's considered a compensation. And
2 it can be treated as compensation or as a
3 distribution to the shareholder. If it's a member
4 shareholder, they can be considered as a
5 distribution. Or it would be considered as
6 compensation to the individual.

7 Q And AVSX gives you a breakdown of those; is that
8 correct?

9 A They did.

10 Q Okay.

11 A They did.

12 MR. TODD ELLIS: Just one moment, Your Honor.

13 THE COURT: Yes, sir.

14 (Whereupon, Mr. Todd Ellis and Mr. Webb
15 conferred.)

16 Q That's all I have. Thank you, Mr. Zion. Answer
17 -- answer any of counsel's questions, please.

18 THE COURT: Cross-examination.

19 MR. SAUTTER: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. SAUTTER:

22 Q Mr. Zion, when was your first official business
23 with AVSX?

24 A As an accountant or ---

25 Q Yes, sir, as an accountant.

1 A It -- I believe '14 -- the fall of '14.

2 Q All right. And so -- all right. And you didn't
3 audit -- all the information that you used to prepare
4 these preliminary returns was provided by AVSX,
5 correct?

6 A That's correct.

7 Q All right. And you didn't do any kind of forensic
8 audit or anything of that nature, right?

9 A Did not.

10 Q All right. And you talked about that -- that AVSX
11 is known as a single-member LLC and is taxed as an S
12 corporation?

13 A Yes, sir.

14 Q So it is then a single member for tax purposes,
15 correct?

16 A Well, for tax purposes to be -- what the IRS regs,
17 it's -- it's -- what -- the IRS calls it a
18 disregarded entity.

19 Q Right.

20 A So when a single-member LLC decides to be taxed as
21 an S corporation under the statute of the IRS, it's
22 -- it's deemed a disregarded entity.

23 Q All right. So all that is single member -- all of
24 those designations are important for what you do for
25 tax purposes, correct?

- 1 A Correct.
- 2 Q All right.
- 3 A Correct, Mr. Sautter.
- 4 Q Okay. Are you familiar with the South Carolina
- 5 Limited Liability Act?
- 6 A Some.
- 7 Q All right. Would you agree with me that the South
- 8 Carolina Limited Liability Act may have provisions
- 9 that differ from the on-paper tax reportings that you
- 10 make?
- 11 A I -- I can't speak to that. I don't -- I ---
- 12 Q Okay.
- 13 A The -- I -- I know how the IRS -- how the IRS
- 14 forces me to consider on tax, as far as I have to
- 15 examine whether it's a single member or ---
- 16 Q Yes, sir.
- 17 A --- multimember. But ---
- 18 Q Yeah.
- 19 A --- that's ---
- 20 Q And -- and that's all based upon what they tell
- 21 you?
- 22 A Well, and representation from the secretary of
- 23 state's office. Sure.
- 24 Q Sure.
- 25 A Yeah.

1 Q Sure. Sure. And you don't consider how the --
2 the -- the company or how AVSX, in this instance has
3 operated over the last ten -- four -- four or five
4 years, right?

5 A I don't understand.

6 Q You don't -- it -- as part of your -- your
7 testimony and as part of the designation as an S corp
8 and all that, do you consider how the company has
9 operated or do you base your reports and filings upon
10 what the -- AVSX tells you?

11 A Well, I -- I -- it's what they provide. They --
12 they provide certain obviously accounting and
13 documentation. So that's what the tax returns
14 generate from: bank statements ---

15 Q Okay.

16 A --- that type of stuff.

17 Q Okay.

18 A Right.

19 Q So you've made no determination as to whether
20 there are additional owners of AVSX, correct?

21 A What was represented is what's represented in --
22 in the -- that's correct. I have not.

23 Q And that was for tax purposes, right?

24 A Correct.

25 Q All right. And we talked about shareholders. And

1 you talked about a -- a K-1 is -- is -- is passed --
2 the -- the -- all the income passes through to the
3 shareholder in this case?

4 A Correct.

5 Q And so the shareholder would get the benefit of
6 any -- you said even after the -- the numbers, the
7 shareholder may get the benefit of additional
8 depreciations, correct?

9 A Correct.

10 Q All right. And you -- and -- and you considered
11 -- let's just move on. You talked about a
12 multiplier. You said in the -- Mr. Endara
13 multiplying it times 4 was generous; is that right?

14 A The -- I think that was my words. Yes.

15 Q Okay.

16 A Yeah.

17 Q And what -- what is a -- what is the -- a -- a
18 recognized multiplier for a high-risk, high-benefit
19 sales industry, such as -- is there -- is there an
20 industry standard?

21 A There are guidelines that -- I haven't researched
22 that particularly. But here are guidelines from the
23 -- from what you see in other trends from -- reported
24 in the rags and the journals. But overall, the
25 concept is what would a willing buyer/willing seller

1 for the risk ---

2 Q Okay.

3 A And so a multiplier of 4, I'd very rarely see in a
4 transaction. It's -- it's a -- it's not ---

5 Q What's the range?

6 A It ranges from ---

7 Q In -- in this kind of business.

8 A I -- I would expect it from -- anywhere from 1 to
9 3.

10 Q All right. All right. And so you -- you have
11 testified that -- that Mr. Endara's -- the value of
12 him purchasing a half-interest would be somewhat
13 discounted because he would not have control over the
14 company and he would be a -- not a minority -- well,
15 like a -- he wouldn't have control, right?

16 A No control. Correct.

17 Q And -- and -- and -- and my question to you is:
18 Mr. Endara is -- is trying to have AVSX purchase his
19 distributional interest. So when they purchase Mr.
20 Endara's distributional interest, is it not true that
21 then they would have total control over all the
22 assets?

23 A They would.

24 Q All right. So that discount about minority
25 shareholder or lack of control would not apply if --

1 if the company was purchasing Mr. Endara's interest?

2 A To your point, though, yes and no. Because again,
3 as a -- as a buyer, there is no other competitive
4 buyer. So if -- if -- if -- if he has the -- I have
5 a captive seller.

6 Q Okay. Okay. Business trends -- when did the
7 business really start -- did the business go down, as
8 you've looked at over the years 2011, 2012, 2013?

9 A It did not. It was on a sales growth for those
10 periods.

11 Q Well -- and when did the business begin to -- to
12 go down: in 2014?

13 A '14 is when we saw the revenue turned. Yeah.

14 Q Do you have any knowledge of -- of -- of a reason
15 as to why the business went down?

16 A It's been represented, obviously, Mr. Endara has
17 left the firm and obviously his impact has -- had
18 some implication on that, I would suspect.

19 Q Do you know who provided the -- the money and the
20 assets to even start up the -- the prior business of
21 Guardian Eagle and AVSX that the -- that -- that
22 those assets went to Guardian Eagle and AVSX? Do you
23 have any idea about that?

24 A Well, it was represented on the '11 return, when I
25 picked up that file, that there was money owed to Mr.

1 Endara for the acquisition of Protection24, which was
2 entity that he had prior.

3 Q Okay. Do you -- do your records show any
4 consideration or anything paid to Ms. Mary Kay
5 Johnson for her -- to allow her to be owner?

6 A Don't have those records. No.

7 Q And would you -- would you find it surprising that
8 no money was paid to her?

9 MR. TODD ELLIS: Paid ---

10 Q From -- for -- for the -- for the -- for her to be
11 designated as the sole owner of the business for tax
12 purposes?

13 A It's -- it's not unusual to have -- you talking
14 about her paying, I assume, is your ---

15 Q Yes, sir. Yes, sir.

16 A --- I didn't meant to -- but that's -- it -- it's
17 on how an entity starts up. It could be thin or not.

18 Q All right. And most entities are thin when they
19 start up?

20 A They are. Yeah.

21 Q And that would include -- it -- it -- if Mr.
22 Endara has -- has formed another entity?

23 A Correct, I would suspect.

24 Q The -- and, in fact, it's hard to value new
25 businesses and things of that nature because of that,

1 right?

2 A Correct.

3 Q And when was the last time, for what year, that
4 the taxes -- the business taxes for AVSX were filed,
5 for what tax year?

6 A My understanding is the last return filed was for
7 2010.

8 Q All right. And -- and you talked about if -- if
9 -- if -- if a member had benefits such as -- or
10 member or anybody in the company had benefits that
11 were not a business expense, that they could be --
12 could be included as income as a distribution; is
13 that correct?

14 A Correct. If they're a shareholder, it's not
15 unusual in small businesses where there's personal
16 activity and it gets handled as a distribution to the
17 shareholder.

18 Q Was there personal activity in -- in your review
19 of the records of AVSX to Mary Kay Johnson?

20 A Yes.

21 Q All right. And does -- is -- has that continued
22 since Mr. Endara was terminated on March 21st, 2014?

23 A Has continued, yes.

24 Q Are you aware of any business records where Mr.
25 Endara has shared in any distributions since his

1 termination in 2014?

2 A None that -- none of it was reported at '14 for
3 the short period.

4 Q Okay. So you have testified as to the potential
5 tax liability of -- of a -- of the shareholder for
6 the years '11, '12, '13, and '14 in -- in a sum of
7 \$733,000, correct?

8 A Potential. Yes, sir.

9 Q All right. And if Mr. Endara is found to be a --
10 a shareholder for that same time period, would he
11 have half of that 733, if he was a -- found to be a
12 50 percent partner?

13 A He would be responsible for -- yes.

14 Q All right.

15 A Yeah.

16 Q So he'd be responsible for -- for -- for whatever
17 tax liability he would have?

18 A That's correct.

19 Q Can you -- you can't really determine exactly what
20 number they -- they -- they'd pay, right?

21 A Cannot exactly, I mean, without the preparation of
22 the individual return because of the impact of ---

23 Q Okay.

24 A --- personal stuff.

25 Q That's right.

1 A Yeah.

2 Q Is a -- can a person -- and -- and -- and -- and
3 if Mr. Endara was -- was provided a K-1, as Mr. -- as
4 Ms. Mary Kay Johnson has been provided a K-1, do they
5 need that K-1 information before they can -- they can
6 -- you know, prepare their own taxes?

7 A They need it -- excuse me -- they need that
8 information to file a complete and accurate return.
9 Yes, sir.

10 Q Yes, sir. And -- and the -- and the company has
11 to have all their taxes together before they can even
12 issue K-1s, correct?

13 A That's correct.

14 Q All right. And at this time the company has not
15 been -- been prepared to issue -- to file their own
16 tax return for '11, '12, '13, and '14?

17 A That's correct.

18 Q All right.

19 (Whereupon, Mr. Sautter and Mr. Michael Ellis
20 conferred.)

21 Q Did -- did -- are -- are you the landlord of -- of
22 AVSX?

23 A Yeah. I own the building that they currently
24 rent, and they were renting -- yes -- continue to
25 rent.

1 Q Yes, sir. And -- and they -- and, in fact,
2 there's a lease that's been marked as an exhibit into
3 evidence, which is -- I'm sorry; let me get my ---

4 MR. MICHAEL ELLIS: Ten.

5 Q --- Exhibit No. 10.

6 THE COURT: Plaintiff?

7 MR. SAUTTER: Plaintiff's Exhibit No. 10, Your
8 Honor ---

9 THE COURT: Thank you.

10 MR. SAUTTER: --- and madam court reporter.

11 A Yes. I'm familiar with this.

12 Q Yes, sir. Is it -- are you the -- are you the
13 landlord?

14 A I am.

15 Q You might be part of a group, right?

16 A Well, it's under the name of Zion Holdings, which
17 is a single-member LLC.

18 Q Yes, sir. Yes, sir. And who -- and who is the --
19 what's the date of that lease?

20 A The lease is dated May of 2007.

21 Q And who is the tenant?

22 A The tenant is Luis -- Luis Endara and
23 Protection24, LLC.

24 Q All right. And if you look at the back page, who
25 are the witnesses to your signature?

1 A Bobby Johnson and Meredith Cox.

2 Q All right. And who -- who is the witness to --
3 were the same witness -- who were the witnesses to
4 Luis' signature?

5 A The same.

6 Q All right. And that was for Protection24, LLC?

7 A That's correct.

8 Q Do you understand that -- that that company assets
9 were transferred to Guardian Eagle and -- and which
10 eventually became AVSX?

11 A Yeah. I understand that they were sold, yes, to
12 ---

13 Q Okay.

14 A --- to -- yes.

15 Q All right. And this -- this lease is -- it's --
16 it's -- it's for the same building, but this lease is
17 no longer in -- in effect, correct?

18 A That's correct.

19 Q And there's a new lease?

20 A There's a new lease.

21 Q And who -- who signed the new lease, if you know?

22 A New lease, it was Mary Kay Johnson.

23 Q Did -- did Bobby Johnson sign it?

24 A He did not.

25 Q Okay. And when -- when Force Protection was there

1 and -- and -- and ---

2 MR. TODD ELLIS: Protection24 -- I'm sorry.

3 MR. SAUTTER: I'm sorry. I don't -- I -- I
4 apologize. Sorry about that.

5 MR. TODD ELLIS: I'm sorry, Mike.

6 MR. SAUTTER: I'm not trying to confuse the jury.
7 I'm having to ---

8 MR. TODD ELLIS: Yeah.

9 Q When Protection24 entered into this lease with
10 you, were there discussions about the purchase of the
11 building?

12 A (No audible response.)

13 Q If you recall.

14 A There were subsequent discussions. There --
15 there's -- there is a progression of leases that
16 happened. There was another lease after this one.
17 What -- what transpired is that they actually
18 violated this lease. They couldn't continue paying
19 the rent ---

20 Q Right.

21 A --- and downsized into some back-office space in
22 another building. So this one was called null and
23 void. And so we tore this lease up and then
24 subsequently went into a new agreement that had a
25 purchase option in -- in the agreement.

1 Q And -- for the purchase option and -- and who --
2 who was negotiating that purchase option with you?

3 A Bobby Johnson.

4 Q Did Luis Endara participate?

5 A He did not.

6 Q Luis -- Luis Endara did not approach you to buy
7 this building?

8 MR. TODD ELLIS: Objection, Your Honor: asked and
9 answered.

10 MR. SAUTTER: I'll -- I'll -- I'll ask him another
11 way, Your Honor.

12 Q Did Luis ---

13 THE COURT: Sustained. Go ahead.

14 MR. SAUTTER: All right.

15 Q To your knowledge, did -- did Luis Endara approach
16 you or discuss with you that -- that he would like to
17 buy this building with Bobby at any time?

18 A It was a conversation. Sure. They -- they wanted
19 to acquire the building.

20 Q All right.

21 (Whereupon, Mr. Sautter and Mr. Michael Ellis
22 conferred.)

23 MR. SAUTTER: Your Honor, that's all I have for
24 this witness.

25 THE COURT: Any redirect?

1 MR. TODD ELLIS: Briefly, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. TODD ELLIS:

4 Q I think we got -- mixed up those important terms
5 again too. And we were talking about monies that
6 might be from -- from the corporation but used by
7 either managers or owners for personal use during
8 that time. That's not just a distribution.

9 Distributions go to members; is that correct?

10 A Right.

11 Q And what would happen if a manager and employee
12 utilized corporate funds for his personal reasons --
13 taxation-wise?

14 A Taxation-wise, it would be considered additional
15 compensation. It would be included as either W-2
16 wages or as a 1099 for compensation.

17 Q So someone that's not listed as a member would not
18 receive a distribution?

19 A Correct.

20 Q Luis Endara has never received a distribution from
21 AVSX Technologies, to your knowledge?

22 A To my knowledge.

23 Q Okay. Do you recognize Luis Endara here today?

24 A I do.

25 Q Did Luis Endara, as the accountant for AVSX, ever

1 complain to you that he was not listed as an owner in
2 the company?

3 A. No.

4 Q Did he ---

5 A It -- it ---

6 Q --- in fact -- go ahead.

7 A It was, in fact, by design, as I understood, so --
8 that he did not want to be an owner.

9 MR. TODD ELLIS: That's all I have, Your Honor.

10 THE COURT: Anything further? Any -- any -- any
11 recross?

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

14 RE CROSS-EXAMINATION

15 BY MR. SAUTTER:

16 Q So you testified moments ago that it was by design
17 that he was not listed as a member; is that correct?

18 A It was their structure that Mary Kay was the
19 owner. Yes. It was always represented that Mary Kay
20 was the owner.

21 Q And that's what -- the structure that they
22 represented by ---

23 A That's what ---

24 Q --- design?

25 A --- they represented to me.

1 MR. SAUTTER: Thank you, Your Honor. No further
2 questions.

3 THE COURT: Sir, you may step down. Thank you.

4 THE WITNESS: Thank you.

5 (Whereupon, the witness exited the witness stand.)

6 MR. TODD ELLIS: Your Honor, may I allow Mr. Zion
7 to be released?

8 MR. SAUTTER: No objection, Your Honor.

9 THE COURT: All right. Without objection, sir,
10 you're free to go. You have no further
11 responsibility here. Have a nice day.

12 THE WITNESS: More taxes, but thank you, though.
13 Thank you.

14 THE COURT: All right. It's your busy time of the
15 year, isn't it?

16 THE WITNESS: Yeah. This time of the year, it's
17 busy.

18 THE COURT: Mr. Ellis?

19 MR. TODD ELLIS: Your Honor, I have -- the defense
20 rests their case. And I just have a matter with the
21 Court of law when you're ready.

22 THE COURT: All right. Ladies and gentlemen, I'm
23 going to have to ask you to step to the jury room.
24 Do not discuss the case. I'll get you back out here
25 as -- as quickly as possible. Do not discuss the

1 case.

2 (Whereupon, the jury exited the courtroom at 10:45
3 a.m.)

4 (Off the record briefly.)

5 THE COURT: All right, Mr. Todd Ellis.

6 MR. TODD ELLIS: Thank you, Your Honor. May it
7 please the Court: The defendant would renew its
8 motions for directed verdict, first that the only
9 evidence from the stand is that the -- from the
10 witness stand and in the action here today is that in
11 order to be a owner of a business, they must receive
12 a K-1.

13 And for that purpose only, then the plaintiff
14 can't proceed on a -- all of his causes of action
15 regarding supposed course of dealing or otherwise
16 that -- I would assert to you that the K-1 alone can
17 support that. All of the expert witnesses have
18 testified that an owner must have that K-1. And for
19 those -- for that purpose, Your Honor, no -- none of
20 the plaintiff's claims can go forward against any of
21 the defendants.

22 THE COURT: Mr. Sautter?

23 MR. SAUTTER: Thank you, Your Honor. I -- I think
24 that -- I, of course, disagree. I think the -- the
25 K-1 may -- may -- may or may not be relevant evidence

1 in this case. But it is certainly not dispositive as
2 to some -- as to whether someone has a claim enough
3 and that -- and under the evidence to present it to
4 the jury to have the jury determine the plaintiff's
5 status, such as Mr. Endara. And I'd respectfully
6 request that Mr. Ellis's motion be dismissed.

7 THE COURT: Or denied?

8 MR. SAUTTER: Or denied. I'm sorry, Your Honor.

9 THE COURT: Based upon what I have heard
10 throughout and even in this last witness's statement
11 here, I'm going to respectfully deny your motion.
12 While K-1 is certainly evidence of ownership, it is
13 not dispositive of such.

14 Furthermore, in this particular case, K-1, as
15 testified to, was prepared based upon the parties'
16 representation to the accountants. And there's -- I
17 think it's certainly argument to the jury, Mr. Ellis,
18 that you've -- Todd Ellis, that you've argued
19 throughout, but it is not grounds to -- to direct a
20 verdict. All right.

21 MR. TODD ELLIS: Your Honor, again, just for the
22 record, I would assert again -- ask for directed
23 verdict on the issue of the individual defendants,
24 again based on that -- I think, the -- the members of
25 an LLC can sue each other for wrongful acts. I think

1 there's been no evidence from the witness stand that
2 these individual acts were outside the scope of
3 anything that was within the authority of the LLC and
4 therefore the individual defendants should be
5 dismissed.

6 THE COURT: All right. Based upon the Court's
7 prior rulings and as previously stated on the record,
8 that is as well respectfully denied for the same
9 reasons.

10 I didn't -- I want -- I want to put this on the
11 record, because I'm debating on -- on what I'm going
12 to do.

13 (Off the record briefly.)

14 THE COURT: Well, let me do -- I'm going to do
15 this. I want to say something. And I'm sitting
16 here, debating on how to go about doing it.

17 During Mr. Zion's testimony on cross-examination
18 of Mr. Zion by Mr. Sautter, pursuant to a question
19 that was asked by Mr. Sautter, Mr. Ellis -- Todd
20 Ellis interjected in correcting Mr. Sautter on his
21 question as to the entity, which was not appropriate.
22 During the course of the trial, there's been an issue
23 of counsel talking to each other during the
24 questioning of witnesses, prior or similar-type
25 conduct of calling out witnesses's names, and then

1 this last instance. And I said beforehand that if
2 there was another instance, that I was going to deal
3 with it accordingly.

4 While it was -- I don't think it was intentional,
5 I think it was a matter of -- whatever it was, I
6 don't think it was intentional. But I'm -- it --
7 it's improper. It's improper. And so anyway, I'm
8 debating on how I'm going to deal with that. But ---

9 MR. TODD ELLIS: Your Honor, may I be heard on it?

10 THE COURT: Yes, you may.

11 MR. TODD ELLIS: Thank you, Your Honor. Apologies
12 to madam court reporter, the Court, Mr. Endara, my
13 clients. It was totally reactionary as ---

14 THE COURT: I understand ---

15 MR. TODD ELLIS: --- as to try ---

16 THE COURT: --- that.

17 MR. TODD ELLIS: --- to give him ---

18 THE COURT: I understand.

19 MR. TODD ELLIS: --- that we had not -- that --
20 that I would've hoped privately Michael would've
21 corrected me on, had I have maken [sic] the mistake.
22 It was knee-jerk, not intended to disrupt his cross-
23 examination in any way. I apologize to the Court.

24 But -- and Your Honor was well aware that you had
25 directed me on that before. This was -- this was not

1 something that I interjected in any way that said he
2 was not telling the truth or that it was to try stop
3 the flow of his cross-examination or in any way
4 injured, I hope -- Michael, I apologize too in that
5 regard. That -- that's all I have to say, Your
6 Honor.

7 MR. SAUTTER: Your Honor, may I just put something
8 on there briefly?

9 THE COURT: Yeah.

10 MR. SAUTTER: I -- I fumbled with the name of the
11 -- of the entity. And I -- and I -- that's not the
12 first time I've done it in this case. I -- I took no
13 offense to Mr. Ellis' remarks. But I respectfully
14 understand that the Court has to do what the Court
15 ---

16 THE COURT: Well ---

17 MR. SAUTTER: --- has to do.

18 THE COURT: --- let -- let me ask -- ask this: I
19 -- I'm going to ask Mr. Endara and his fiancée, as
20 well as Mr. and Ms. Johnson to leave the courtroom
21 for a minute, if you would.

22 (Off the record briefly.)

23 THE COURT: I -- I've asked -- and -- and what I
24 was -- let me say this. They've exited the
25 courtroom. And -- and this is what I've struggled

1 with up here for the last several minutes.

2 I do not ever like to correct lawyers in front of
3 their clients. I -- I just don't like to do it. If
4 -- if -- if I have an issue with lawyers, I like to
5 deal with it back in chambers, okay?

6 But I -- in -- in -- in all of the years -- and
7 both of you ought -- you gentlemen all -- and, Mr.
8 Todd Ellis, Mr. Sautter, you've practiced law a lot
9 longer than I have. You just have.

10 But in the years that I've practiced law and now
11 the six years I've been on the bench, I've never seen
12 some of this stuff that's been in this courtroom this
13 week. And -- and I haven't had to address these
14 issues with lawyers about talking back and forth,
15 blurting out, you know, a witness's name, for
16 instance, a knee-jerk -- and -- and I don't think it
17 was intentional, what happened this last time. But
18 I've never had that.

19 And -- and I didn't want to say all of -- probably
20 said more than I've wanted to in front of your
21 clients because I -- I told my law clerk I don't want
22 it to appear as though I'm criticizing the way and --
23 and manner in which you're defending your client in
24 front of your client. You have done a great -- both
25 of you have done great jobs on behalf of your

1 clients.

2 But that conduct it not appropriate in the
3 courtroom. It -- it's just not.

4 MR. TODD ELLIS: No offense taken whatsoever for
5 anything you said in front of my clients, Your Honor.
6 I promise ---

7 THE COURT: Well, I ---

8 MR. TODD ELLIS: --- you that.

9 THE COURT: --- just don't like to do that. And
10 -- and ---

11 MR. TODD ELLIS: I understand.

12 THE COURT: Because listen, it's stressful enough
13 trying a case. I've been there. I -- I know, okay?

14 Y'all are fighting over money. And -- and the
15 bulk of what I tried was criminal stuff where people
16 worried about going to prison for the rest of their
17 life.

18 You know, money is one thing. But time in the
19 penitentiary, that -- you talking about some stress
20 and making sure that you've got all your i's dotted
21 and your t's crossed. I mean, that's a different
22 ball game.

23 And -- and I can remember the -- the -- the last
24 -- the last murder case I tried before I got elected
25 to the bench. A young lawyer that worked for me, he

1 walked into the courthouse. And he asked me -- he
2 said, "Are you nervous?"

3 I said, "You dang right I'm nervous." I said,
4 "The day that you quit being nervous is the day you
5 need to quit trying cases." I said, "It's kind of
6 like playing football or baseball. You know, you
7 have butterflies in your stomach before the game
8 starts. But once that game starts, you're ready to
9 go."

10 And I said, "That's just like this arena, so to
11 speak, of trying cases. If you're not nervous when
12 you walk in here, something's wrong with you."

13 So again, I don't think it was intentional at all.
14 But it's just not appropriate in the courtroom. And
15 -- and I ---

16 MR. SAUTTER: Your Honor, may I ---

17 THE COURT: Yeah.

18 MR. SAUTTER: --- briefly?

19 THE COURT: Yes, sir.

20 MR. SAUTTER: Bar to bar, bar to bench, I do a lot
21 of family-court work. And -- and I've seen a lot of
22 things in trial. And this doesn't rise to -- in my
23 view, it -- and that's not what's important here.
24 But I respect Mr. Ellis. We all have a job to do.

25 I -- that's just -- the Court -- the Court --

1 whatever the Court decides is fine with me. I just
2 wanted to make it clear, it -- it did not prejudice
3 my examination ---

4 THE COURT: And -- and that's not ---

5 MR. SAUTTER: --- to -- to my ---

6 THE COURT: --- the issue.

7 MR. SAUTTER: --- knowledge.

8 THE COURT: That's not ---

9 MR. SAUTTER: Yes, sir.

10 THE COURT: --- the issue.

11 MR. SAUTTER: Yes, sir.

12 THE COURT: You know, it -- it's kind of like, I
13 mean ---

14 MR. SAUTTER: I ---

15 THE COURT: Again, that's not the issue. And it
16 ---

17 MR. SAUTTER: Yes, sir.

18 THE COURT: It -- it -- the issue is appropriate
19 courtroom decorum and activity within the courtroom.

20 MR. SAUTTER: Yes, sir.

21 THE COURT: And, you know, that's what -- that's
22 what the issue is.

23 MR. SAUTTER: Yes, sir.

24 THE COURT: So anyway, I'm going to step down for
25 a minute and -- and try to get the rest of this

1 plugged down in the -- the jury charge.

2 MR. TODD ELLIS: I mean, it -- Your Honor, I think
3 I should -- we should resolve it before you get off
4 the bench, if I could again apologize in that. One
5 thing about -- whether you -- it's egregious or not
6 or what the intent was, your directive on the first
7 day of trial was not to do that. And I -- I do
8 understand that. Got it; it happened; it was a knee-
9 jerk reflection that I would try to assist any of us
10 involved in that, that I should not have done.

11 But it was no intent to do that. That's all I
12 have to say. And I hope that you'd understand.
13 Thank you.

14 THE COURT: Well, listen, I understand that, okay?
15 All right. I want to step down and look at these
16 charges and get ---

17 MR. TODD ELLIS: Yes, your ---

18 THE COURT: --- this thing ---

19 MR. TODD ELLIS: --- Honor.

20 THE COURT: --- hammered out. Y'all can get your
21 clients ---

22 MR. TODD ELLIS: Thank you.

23 THE COURT: --- back in the courtroom, okay?

24 (Off the record from 11:00 a.m. until 11:35 a.m.)

25 THE COURT: All right. Let me -- tell me when

1 you're ready, Maryann.

2 THE COURT REPORTER: Yes, sir.

3 THE COURT: You ready?

4 THE COURT REPORTER: Ready.

5 THE COURT: Let me tell you what I've done with
6 this charge and what I'm going to do. I mean, it's
7 not my final draft yet. I've told my law clerk what
8 I wanted to do on it. And he's going to e-mail it to
9 me and I'll look at it then and -- and maybe make
10 some modifications.

11 What we'll end up doing is I'll let you do closing
12 arguments, and I'll be reviewing this charge while
13 you all are doing closing arguments. So if you -- if
14 one of you objects during closing arguments, I might
15 have to make you start over because I might be
16 reading this charge up here instead of specifically
17 listening to your closing argument.

18 On page 1 of plaintiff's request to charge,
19 defendant had no objection to page 1. On page 2
20 defendant objected to the paragraph at the top of the
21 page which was the last paragraph of the first part
22 of this charge. What I am -- I am going to leave
23 that paragraph in there and add, at the end of that,
24 Defendant's Request to Charge No. 1, which defines
25 limited liability ---

1 MR. TODD ELLIS: Yes, sir.

2 THE COURT: --- company. On No. 2 there was no
3 objection to No. 2. At the end of No. 2, I am going
4 to add Defendant's Request to Charge No. 3.

5 MR. TODD ELLIS: What -- oh, I'm sorry. You're --
6 you -- you're not -- you weren't saying what you --
7 you're actually going to circle that back in? I ---

8 THE COURT: Yes.

9 MR. TODD ELLIS: Tell me, Your Honor, again so I
10 can make a note. On 1 you're going to add what at
11 the end -- charge ---

12 (Whereupon, Mr. Webb and Mr. Todd Ellis
13 conferred.)

14 THE COURT: Your Charge No. 1.

15 MR. TODD ELLIS: My Charge 1. Okay. Yes, Your
16 Honor.

17 THE COURT: On number -- Plaintiff's ---

18 MR. TODD ELLIS: Yes, sir.

19 THE COURT: --- Plaintiff's No. 2, at the end of
20 that, I'm going to add in Defendant's No. 3. Okay?

21 On Plaintiff's 3, what I'm doing there, when it
22 gets to -- I'm going to take the -- and -- and -- and
23 I'm going to take out the citing of the statutes
24 within here. But as you get down into No. 3, you
25 objected to that. When it gets down to about the

1 middle of that first paragraph, where it says "When
2 there is no written operating agreement . . . " you
3 see where I'm talking about?

4 MR. TODD ELLIS: Yes, Your Honor.

5 THE COURT: And then, it says ". . . course of
6 dealing and course of performance are relevant . . ."
7 You see where it says that?

8 MR. TODD ELLIS: Yes, Your Honor.

9 THE COURT: I'm going to bring back in there
10 within parentheses ". . . by course of dealing, how
11 the parties have dealt with each other in the past
12 and how their understanding of those past dealings
13 will continue as their agreement for conducting
14 business with one another . . ."

15 That's defining that. And "course of performance"
16 will be the way that they regularly -- regularly
17 conducted business, end parentheses there. So 4 and
18 5 in -- in their entirety will be stricken. But
19 that'll be as part of this No. 3. And again, I want
20 to see how it looks and how it reads once I get back
21 to it once it's forwarded to me. And -- and I'll
22 certainly give you all an opportunity to make any
23 other objections at ---

24 MR. TODD ELLIS: Okay.

25 THE COURT: --- that point, okay?

1 I'm just telling you what my ---

2 MR. TODD ELLIS: Yes, sir.

3 THE COURT: --- initial inclinations to do are.

4 In this last paragraph on -- on No. 3, last
5 sentence there, it says: "You, the jury, are charged
6 to evaluate the evidence that -- as it has been
7 presented to you and to determine the terms of such
8 operating agreement of AVSX." All right.

9 MR. TODD ELLIS: But, Your Honor -- well, I'll --
10 I'll visit with you when . . .

11 THE COURT: All right. Now, 4 and 5, as I told
12 you, are out because of what I did in No. 3.

13 Six, I'm going to leave in, in part. And -- and I
14 -- I want to look and see how that reads. It
15 certainly -- but within 6, between those two
16 paragraphs was going to add in Defendant's Request to
17 Charge No. 2, which deal with the disassociation.
18 Okay?

19 Number 7, the distributional interest, I'm going
20 to look at that. I need to look at that a little bit
21 more closely. All right.

22 Eight -- 8 may be left in there in part, but it'll
23 be moved. There's not any -- but I want to see it
24 once I finalize that. Unjust enrichment, No. 9, was
25 unobjected to.

1 Defendant's Request to Charge No. 4, I think, is
2 encapsulated within No. 3 that deal with the
3 operating agreement. Number -- excuse me --
4 Defendant's No. 6 was not objected to, which will be
5 added in there at the conclusion -- or near -- or
6 right before my conclusion on the charge that
7 defendants have asserted the defense of laches and
8 then define it, taking out the case cite -- cites
9 within that request to charge.

10 MR. TODD ELLIS: Your Honor, can I make two brief
11 points that may solve us from having to argue
12 anything ---

13 THE COURT: Yes.

14 MR. TODD ELLIS: --- later -- two -- two brief ---

15 THE COURT: Yes.

16 MR. TODD ELLIS: I understand you're going to read
17 on Plaintiff's Exhibit No. 3, taking out some of the
18 statute references and putting together course of
19 dealing, adding those in there. I'm -- I'm -- if you
20 do that, I -- what I think that does is that it gives
21 the impression that corporate documents or other
22 materials, which I tried to have in -- in Defendant's
23 4, are also relevant as well. It emphasizes course
24 of -- course of dealing and takes away other evidence
25 that may be a part of it. Can you add that into that

1 charge as well? In other words, course of dealing,
2 how they act between each others, and other corporate
3 materials and documents may be considered for -- to
4 consider the operating agreement.

5 MR. SAUTTER: No objection, Your Honor.

6 THE COURT: Okay. All right.

7 (Whereupon, Mr. Webb and Mr. Todd Ellis
8 conferred.)

9 THE COURT: We can add something along those lines
10 in there.

11 MR. TODD ELLIS: Thank you, Your Honor. And then,
12 the other one is I -- if you -- I think you said
13 you're going to look at this again. But under No. 6
14 for plaintiff, I just think that No. 6 is the wrong
15 statute ---

16 THE COURT: Hold on ---

17 MR. TODD ELLIS: --- and that ---

18 THE COURT: --- a minute, now. Plaintiff's 6.

19 MR. TODD ELLIS: Plaintiff's 6. Sorry.

20 THE COURT: Okay.

21 MR. TODD ELLIS: Sorry. Plaintiff's 6 is the
22 wrong charge for how the amount should be considered
23 and determined by the jury.

24 THE COURT: Wait a minute. Plaintiff's 6 is
25 disassociation. You're talking about distributional

1 interest on 7?

2 MR. TODD ELLIS: I am, Your Honor. Excuse me.

3 (Whereupon, Mr. Webb and Mr. Todd Ellis
4 conferred.)

5 MR. TODD ELLIS: Well, 602 is wrongfully -- it's 6
6 and 7, actually. It -- 602 is the wrong statute. I
7 think -- I think it's got to be Defendant's 2 is
8 really ---

9 THE COURT: Well ---

10 MR. TODD ELLIS: --- the ---

11 THE COURT: And I don't disagree with you. That's
12 why I said I want to look at that a little bit ---

13 MR. TODD ELLIS: Okay.

14 THE COURT: --- more closely on that.

15 MR. TODD ELLIS: Other than that, I think those
16 were the two, kind of -- and if we can merge that
17 language together, which doesn't emphasize course of
18 dealing, but as a balancing act, that's ---

19 (Whereupon, Mr. Webb and Mr. Todd Ellis
20 conferred.)

21 THE COURT: Well -- and -- and let me say this.
22 On -- what time you got the food going to be -- it's
23 going to be here?

24 DEPUTY CLERK OF COURT: Probably about 12:30, Your
25 Honor.

1 THE COURT: All right. We need to get this done,
2 then. We may let them eat, and then I'll come back
3 and charge them on the law.

4 On this K-1, limited liability companies are
5 required to issue an annual K-1, which is -- that is
6 Request to Charge No. 5. I will tell you right now
7 I'm leaning on not putting that in. And -- and this
8 is why: Because of what -- in -- in essence, what
9 you just said here are these other corporate
10 documents here.

11 A K-1 is -- none of that is dispositive. But I
12 think you certainly are entitled to argue that as
13 part of these other corporate documents ---

14 MR. TODD ELLIS: Your ---

15 THE COURT: --- that are evidence of it.

16 MR. TODD ELLIS: Your Honor, I -- I think, after
17 you told me, it -- it is -- set out alone is
18 emphasized too much. Would you consider putting in
19 corporate documents, including tax returns, K-1s --
20 you -- you're going to read three definitions
21 regarding course of dealing.

22 THE COURT: Yeah.

23 MR. TODD ELLIS: And you could -- if -- if you
24 would put that in there as well as that they could
25 consider, I definitely think that's fair.

1 THE COURT: Well, I mean, I think it is --
2 encapsulates -- when I say corporate documents, I
3 think what you ---

4 MR. SAUTTER: Your Honor, I've got no objection to
5 their corporate filings to include ---

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

7 MR. SAUTTER: --- corporate documents, corporate
8 filings.

9 THE COURT: I mean, it -- well, tax returns, K-1s
10 -- you got any objection to that?

11 MR. SAUTTER: I don't like to identify them.

12 MR. TODD ELLIS: Well, I don't like to identify
13 course ---

14 THE COURT: Well ---

15 MR. TODD ELLIS: --- of dealing and then ---

16 MR. SAUTTER: Well ---

17 MR. TODD ELLIS: --- defining it. But ---

18 THE COURT: Well, we'll -- y'all can argue about
19 that after y'all do closing arguments.

20 MR. TODD ELLIS: Yes, Your Honor.

21 THE COURT: We'll eat lunch in here while we're
22 hammering that out while they're eating. Anything
23 else before I bring the jury?

24 MR. SAUTTER: No, Your Honor.

25 THE COURT: Defense counsel?

1 MR. TODD ELLIS: Nothing, Your Honor.

2 THE COURT: Bring me the jury, please.

3 THE BAILIFF: Yes, Your Honor.

4 (Off the record briefly.)

5 (Whereupon, the jury entered the courtroom at

6 11:46 a.m.)

7 THE BAILIFF: The jury is present, Your Honor.

8 THE COURT: All right. Ladies and gentlemen,
9 thank you for your patience. What we are going to do
10 now is we are going to move into closing arguments.
11 After closing arguments, it's my understanding that
12 your lunch should be here by the time closing
13 arguments are completed. And I'm going to let you
14 eat lunch, and then I'm going to come -- we're going
15 to come back and I'm going to charge you on the law
16 in this case. Okay?

17 At this time I'm going to recognize plaintiff's
18 counsel for closing argument.

19 MR. SAUTTER: Thank you, Your Honor.

20 THE COURT: Mr. Sautter?

21 CLOSING ARGUMENT BY MR. SAUTTER ,

22 MR. SAUTTER: Well, here we are. First of all, I
23 want to thank the jury for your patience in all of
24 this. We are all on a -- on a journey.

25 I first came into this courtroom probably 35 years

1 ago. The first time was probably as a law clerk.
2 And then I became a lawyer. I had to go to law
3 school first. And I worked for a law firm.

4 And I went to law school. And I passed the bar,
5 as I -- all the attorneys in here did. And then I've
6 -- I've been in practice for a long time.

7 And at first, when I first started law school, I
8 really didn't understand what the road was. It takes
9 a combination to really understand what's going on,
10 to -- to -- to both -- to bring your own personal
11 experiences, to -- when I would hear the law
12 professors tell me what the law was and then I would
13 go to my law office, it seemed like two different
14 things. It really seemed like three different
15 things, from what I knew.

16 But that's the benefit that I've had. I've been
17 doing this for a long time, as has Mr. Ellis and
18 counsel for Mr. Johnson. But unfortunately, y'all --
19 y'all have gotten a cram course in this -- a four-day
20 cram course, when we -- when we have to get together
21 and determine what the road -- if there is a road,
22 what the path is, what the journey, and what the
23 results are.

24 You know, what we're trying to do in all of that
25 and what I've -- you know, I'm continuing to work on

1 and I've

2 -- it's -- it's a never-ending process for us. But
3 fortunately for you guys, y'all -- ladies and
4 gentlemen of the jury, you may never be in this
5 position again.

6 But the idea is to figure out the truth. And
7 that's what a jury verdict is: What is the truth? I
8 was hopeful -- and -- and -- and you'll have to put
9 it together, because you -- you are the ones who
10 determine the truth in this case.

11 I don't think the facts are really in -- in
12 dispute that much in this case. It's just how the
13 facts are applied. And how do we decide? The jury
14 has a lot of different experiences. We selected you
15 -- Mr. Ellis and I and -- and our teams selected you
16 because we thought that y'all could do it. And we
17 are happy with the jury.

18 It doesn't -- you know, you're going to find the
19 truth. You know, our roles -- we've all taken oaths,
20 Mr. Ellis and I and -- and all the lawyers have taken
21 a -- a -- different oaths of how we practice and how
22 we treat each other. The Court has taken a -- a --
23 an oath as well, both as a -- as a lawyer and as a
24 judge. And each of y'all have taken an oath in this
25 case to be fair and deliberate and to return a -- a

1 just and true verdict. And that -- and that's where
2 we are right now.

3 The judge's role, as you know, you've seen it over
4 the last four days. He's kind of the referee. He's
5 kept things moving. That's as far as the -- the
6 progress of the trial goes. And -- and that's the
7 way it is. He -- he is the -- in charge of this
8 courtroom. And he's in charge of all of us, the
9 lawyers and everyone in here, as to how we go about
10 our business.

11 Judge Brown also has a very important role coming
12 up. He will tell you or instruct you on the law of
13 South Carolina, the law to be applied in this
14 courtroom, the law upon which you must apply to the
15 facts as you find them. I submit, you -- you find
16 the facts first and then apply the law. But it might
17 -- it -- it might be the actual -- the other way
18 around. And that's the guidance that the Court's
19 going to give us in this matter.

20 And you're -- you're perfectly entitled to
21 consider everything that -- that came out of that
22 witness stand, all those exhibits. And a -- and a --
23 another -- you know, that's -- that's the physical
24 evidence. And -- and -- but you're also -- this case
25 largely rests on the testimony. There aren't --

1 aren't that many business records. And there'll be
2 testimony about that and there'll be argument about
3 that. There has been testimony about those.

4 But a lot of it is depending on what the witnesses
5 said when they were on that stand and what they said
6 in those e-mails. And, you know, this is a hard
7 case. This -- this is -- I said I did family court
8 work. This is a lot like a family court case, except
9 for we don't have the benefit of a jury. We usually
10 just argue this in front of a judge.

11 Families have been affected. It's a lot of been
12 -- there's been some high emotion in this case.
13 There's been some high drama. And that's unusual for
14 a business case. It doesn't usually go like this.
15 It's usually marked -- it's -- it's usually a
16 gentleman like the accountant who goes over figures
17 forever and -- and it's hard to -- you know, it's
18 hard for the lawyers to even follow it.

19 But we don't have that here. We -- we've got what
20 the parties said. And where I'm going with all that
21 is it kind of comes down -- well, it does come down
22 -- and you will be asked to consider the credibility
23 of the witnesses. All that -- all the witnesses --
24 well, at least the parties, they have a lot on the
25 line on this case.

1 And how did it come out -- how did it come off?

2 You know, what -- what -- what happened up there? I
3 mean, some of the -- I -- I -- I -- you know, the --
4 it just came out of their mouths. You know, a lot of
5 it, it just happened. And -- and that's the way it
6 happens in every case. But this case may be a little
7 bit different that way.

8 To determine the credibility, use your everyday
9 experience, like -- like all the other facts that you
10 judge. But that is -- that is a huge, huge item in
11 this case. All right.

12 So the facts are to be decided by the jury on the
13 evidence presented and consideration of the testimony
14 and the credibility of the witnesses and other
15 matters. I -- I'm -- I'm sure I'm leaving out some
16 things. But so then, we go to the exhibits.

17 You know, the first exhibit that I showed you was
18 the chart -- the chart, the corporate
19 responsibilities. This is it. There's no -- this is
20 how the business operated. And we've had Bobby
21 Johnson testify. We've had Luis Endara testify over
22 here. We've had Daniel Spohn, the CFO, testify right
23 here. And we've had Jason Wolfe, the CIO, also
24 testify.

25 So you have the benefit of all these people who

1 were in the operation of AVSX tell you how they
2 thought it operated, including Bobby Johnson. Mary
3 Kay's not on the chart. But she told you how she
4 believed it operated.

5 And then, the e-mails -- you know, I'm primitive
6 about e-mailing and things of that nature. But --
7 and, you know, they -- they might be more
8 sophisticated than I am. But, you know, when you sit
9 down and write something at eleven o'clock at night,
10 it's not because you're trying to worry about what's
11 going to happen or could happen two months down the
12 road. It's because you've got a concern; you want to
13 address it.

14 If you look at -- see that e-mail number -- I'm
15 sorry -- Exhibit No. 4, when -- when -- when Bobby
16 starts -- starts in that we've got a problem, you
17 know, and then -- you know, it's all over the place.
18 Bobby's concerned at eleven o'clock at night. He
19 talks about "me stepping away." Was that different
20 than his testimony on the witness stand?

21 He talks about being upset with Nikki, who is his
22 -- I think it's his daughter; I might be misspoken --
23 that spent money on a trip that they didn't have. He
24 talks about his air conditioner breaking and maybe
25 taking back a TV.

1 Luis responds: "We've got this, brother." It's
2 all going to be before you back there to look at.

3 Bobby says: "I just wonder how much the two of us
4 can handle of -- by ourselves." And he even asks if,
5 you know, that the -- Mary Kay was considering going
6 back to work.

7 Luis tells him: "We are 50/50, bro." Bobby
8 doesn't dispute it in the next exchange at 11:08 the
9 next morning.

10 Bobby says: "I want to see this thing succeed
11 long-term for all of our families." Bobby says:
12 "It's a good thing we built it because we can
13 resurface it." And then he says: "See you at 12."

14 So, you know, that's pretty -- pretty -- it's a
15 lot of discussion. And -- and -- and, you know, it
16 was made at the time that these concerns were -- were
17 rare. That was two -- a little over two months
18 before -- before the end, when -- when Luis was
19 terminated on 3/21/14.

20 You can look at them. There's -- the other --
21 other one that's important is the -- the our story.
22 You know, there's a lot of families that work and --
23 and benefit from AVSX. But the two primary families,
24 I submit -- and it's for you to decide -- were the
25 Endara family and the Johnson family. There are

1 others. But read -- you know, just look at it; read
2 it. It's -- I think it's pretty telling.

3 Let me see. I've got some specific -- you know,
4 he talks about the -- about the, you know -- our
5 history is nothing but the -- the name and the people
6 who defined us; our -- our company has grown, but the
7 name and -- but the name and the people who have
8 defined us have not, things of that nature: amazing
9 numbers, impressive stats; never about the quality of
10 the numbers, egos, or where we came from. It's where
11 we are headed with the right people.

12 That's what he -- that's what Bobby Johnson talked
13 about. And he sent it to the AVSX team, Mr. Luis
14 Endara, and John Madden.

15 One more e-mail here -- there was the e-mail
16 that's marked Exhibit No. 2, which is a -- Bobby --
17 Friday at 2 -- 2:01, some -- saying -- saying he
18 wants to make some big changes. He talks about:
19 "Yes. Luis and I are willing to give 10 percent of
20 our company to those who want to bring it like never
21 before."

22 Now, those are Bobby's own words. You heard him
23 say "bring it" in here. That's just what he lived
24 by. And that's the way this company was operated.
25 They were bringing it for both families.

1 All right. So Luis and Bobby got on this path
2 together. And I think it probably started even
3 before 2008, when they -- when they first
4 participated in the -- in -- in the formation -- or
5 in the company of Protection24.

6 And they -- and they were successful. They built
7 a -- a -- a -- a really good business. And -- and on
8 March 21 of 2014, it all changed.

9 You are fired, f-i-r-e-d. He didn't say that.
10 And Mr. Ellis wrote it in -- in a letter. But Luis
11 was terminated as a regular company employee. Swap
12 out the vehicles. Don't attempt to communicate with
13 Bobby Johnson or -- or -- or Mary Kay.

14 You know, he lost everything. And his family was
15 fired shortly thereafter. All the benefits and
16 privileges that came with being with AVSX and forming
17 AVSX were lost at that point.

18 You know, it's -- it's no coincidence that Mr.
19 Spohn said that after 2014, business started to go
20 down a little bit. That's because they lost their
21 main man. There he is right there. He's the one who
22 brought -- brought the money and the expertise to the
23 business. It was his money that funded for --
24 Protection24.

25 Bobby is -- is superior at a salesman and -- and

1 the vision and moving forward. They were great
2 together. They're brothers.

3 Luis provided for Bobby in his -- in his will. If
4 something happens to me, man, I want you to be in
5 charge of my estate. That's what he said. Bobby
6 said he never even knew about the will, yet his
7 mother witnessed it and his daughter. You'll have it
8 back there to look at.

9 So here we are. What happened? What -- what --
10 what happened to cause this beautiful relationship,
11 this beautiful business relationship between brothers
12 of different mothers, families -- what happened?

13 Well, according to Mr. Johnson, Luis didn't go to
14 a workout session. Luis instead went to Myrtle Beach
15 to look at a house. You know, there was a \$1400
16 laptop purchased. There was a free ticket to an
17 exposition -- it maybe wasn't free; maybe it was \$40
18 that -- that showed up in the name of Luis's brother.

19 And -- and that was enough for Bobby to just pull
20 the plug. Were -- were -- were -- were the
21 partnership formalities recognized at that time? No.
22 You are fired.

23 And, you know, that -- that brings up another good
24 point. I'm -- Mr. Ellis has been -- instructed all
25 the witnesses to be very careful and to specify which

1 hat you're talking about or what position you are.

2 And that's nice. I mean, I wish it was that simple.

3 If it was that simple and we had an organization
4 agreement, as Mr. Spohn said, none of us would be
5 here. None of us would be here. It would've been
6 resolved one way or another. And it -- and it
7 wouldn't take a jury who has four days' experience in
8 this area to try to figure out what really happened
9 between these two. You know, it's a tough task.

10 We -- we all disagree what -- what happened. Mr.
11 Ellis would have you -- Mr. Todd Ellis -- I've got
12 Mike Ellis over there with me. Mr. Todd Ellis and
13 Mr. Johnson would have you just -- just -- let's just
14 look at what's on paper. Let's look at, you know,
15 who's -- who's the -- who got the K-1 for the -- for
16 the years that they filed tax returns. Don't -- you
17 don't need to look at anything else. Let's just look
18 at the K-1.

19 But, you know, businesses don't operate that way,
20 especially not this kind of business. It's a
21 security business. It's a business. It's high
22 volume; it's high risk; it's high money. And you
23 have to work it and work it and work it to get to
24 where they were prior to Luis -- Luis being
25 disassociated.

1 So -- so here we are, you know. I'm just flipping
2 through here, everybody.

3 You know, how did they -- how did they operate the
4 business? Well, when -- when Protection24 was
5 formed, Julio Reis was the -- was the front man. He
6 was the owner on paper. That's the big difference,
7 owner on paper, and the way they operated the
8 business.

9 And Mr. Reis testified here. He -- you know, he
10 told -- you -- it's up to -- it'll be up to you to
11 judge his credibility.

12 But he said: "Well, I didn't really have much to
13 do with it. I wanted to help these guys out. I
14 didn't have anything to do with the operation of the
15 business. I didn't -- I didn't get anything for --
16 for -- you know, for agreeing to disassociate myself
17 and to transfer it to Mary Kay." There's nothing.

18 The only thing I think he got out of this was that
19 the company paid whatever taxes -- AVSX or Guardian
20 Eagle paid whatever taxes he would have for his
21 front-man role. So he didn't come out of pocket.

22 And he testified that to his knowledge, nothing
23 changed after he left; that Mary Kay just was
24 substituted for him. That's what Luis Endara
25 testified to. That's what Jason Wolfe testified to.

1 That's what Dan Spohn testified to. And -- and the
2 other, Mr. Bouvet, that's what -- that's what they
3 all testified to: that -- that -- that, you know --
4 the ones that knew Julio Reis -- that nothing --
5 nothing had changed between the way he was designated
6 the front man and the way made -- Mary Kay was later
7 designated the front man.

8 I mean, you -- Mary Kay Johnson testified. And
9 believe me, I mean, there -- you know, everybody's a
10 nice person and everything like that. I'm not going
11 to say anything bad about her.

12 But it's -- it's kind of interesting that she's
13 the owner of a multimillion-dollar company, was not
14 given any consideration for her role, knew very
15 little about the company. But that's -- that's for
16 you to determine out. And I think what it boiled
17 down to, when -- when Mr. Ellis asked her the
18 question, "Well, why were you designated the owner?"
19 and I think she said, "Well, Vector, our dealer --
20 the security dealer insisted it be somebody and --
21 and Vector was okay with me."

22 And I think the testimony was: "Was there any
23 other reason?"

24 "Well, yes. I'm the spouse. Mr. Johnson is my
25 spouse, and he's CEO."

1 So, you know, it's -- she -- she took over
2 Guardian. It's -- it -- it's all the same. Nothing
3 really changed.

4 There -- there -- there are time delays in here.
5 One of these exhibits shows that -- Exhibit No. 9
6 shows that Julio Reis was dissociated on 2/7/2011.
7 And if you look at the 2010 tax return, which is
8 another exhibit that we have here somewhere, it -- it
9 will show that -- here we go. The -- the 2010 K-1
10 show -- shows Mary Kay as the -- Exhibit No. 13 shows
11 Mary Kay as the sole shareholder.

12 So, you know, that's the way they did business.
13 That was all part of the course of their business.
14 They don't have the documents. They don't have the
15 records. So it's -- it's left to you to try to
16 figure this thing out. Because the lawyers -- we
17 haven't been able to. It's -- you've seen it.
18 There's a big difference between what's on paper and
19 how they actually ran it.

20 And then, we have this other tension. You know,
21 what is the law of this case? Is it South Carolina
22 partnership law, or is it federal income tax law?

23 And I submit that Mr. Zion maybe cleared that up a
24 little bit. I -- and I think the judge will instruct
25 you on the law. But they're basically two different

1 things for two different purposes.

2 Secretary of state is so you can do business in
3 this state. And in this state an operational
4 agreement is not required. And in this state the
5 operational agreement by default becomes how the
6 parties performed.

7 And in this state they have protections so that
8 somebody just can't fire his business partner of six
9 years at that point and just say, "Sorry. You don't
10 even exist to me anymore." Can't do that. They have
11 protections.

12 That's what the testimony was, you know. Now, for
13 tax purposes, it might be another thing. You know,
14 the -- the -- the -- Mr. Spohn testified that he
15 prepared the taxes based upon the representations.
16 Mr. Zion did the same thing. But the representations
17 were -- when Spohn was there, were coming from both
18 of them. And when Mr. Zion got on board in the fall
19 of 2014, the representations were only from the
20 Johnson table because the Endara family had been
21 terminated.

22 So those are -- those are the -- the big issues.
23 You -- I mean, there's no -- it's no secret about it.
24 We have -- we have submitted evidence that -- other
25 than Mr. Johnson's words and Mr. Endara's testimony

1 as to the -- you know, how were they doing business.

2 I mean, I've got a lease agreement. Mr. Zion was
3 the landlord. He's an -- he's a skilled accountant.
4 He was their landlord. And the first lease was --
5 you know, it's way back in 2007, I think, when Force
6 Protection -- Protection24 -- I'm sorry I fumbled
7 that name -- when Protection24 was in existence. It
8 was signed by Mr. Endara.

9 So that's some evidence for the jury to consider
10 that he was the owner of Protection24 and that, if
11 nothing changed when Protection24 folded into
12 Guardian Eagle and later became AVSX, that -- that's
13 something the jury could -- could use to -- to link
14 -- to link that.

15 You know, Protection24, when they folded -- folded
16 -- when they ceased doing business, all their assets
17 that Mr. Endara had provided went into the Guardian
18 Eagle war chest to continue doing business. And
19 that's just how it was.

20 We've got a -- a -- a South Carolina Electric and
21 Gas bill, Plaintiff's Exhibit No. 11. I'll let the
22 jury -- you know, you -- it's going to be up to you
23 to assign what weight you want. But the power bill
24 for the place was in his name. And he was already
25 fired. He was fired in March. And this is August,

1 and he's getting a notice and they're threatening to
2 cut off power at his house, you know. That's just
3 the way they did business -- or that's the way Bobby
4 did business after Luis was terminated.

5 I mean, they're all little things. I mean, I wish
6 we had an operational agreement we could refer to,
7 but we don't.

8 You know, one of the things that is -- how was the
9 company represented? Or what representations did the
10 company make and -- and including this North Carolina
11 regulatory action. Now, Bobby Johnson testified that
12 he -- you know, he never testified in court before;
13 he never given a -- you know, he -- that -- that was
14 Luis's -- that was Luis's job as -- as an owner.

15 Luis stood up there and he had to take the heat.
16 And he's designated as owner. It's right here on
17 page 2 of 27. And it's right there in Exhibit No.
18 14.

19 You know, it's -- there's no objection from Bobby.
20 There was no objection -- of course. There's only
21 objection now after he terminated Luis and he's
22 trying to -- whatever he's trying to do. It goes on
23 and on.

24 The tax returns, I would -- I would argue, are not
25 dispositive. I think the judge is going to tell you

1 that the -- all the corporation's filings and -- and
2 documents are -- are one thing you can -- can
3 consider. But I submit that -- that the best
4 evidence is what the parties themselves said during
5 times of stress prior to Mr. Endara being terminated.

6 Let's see here. You know, I -- I -- I kind of
7 made -- I tried to make a big deal about -- and
8 challenge Mr. Johnson. And -- and I apologize if I
9 was too rough on him. But I kept asking him -- maybe
10 I only asked him once -- where's the beef.

11 He said he had hundreds of communications with --
12 with Luis about problems that he had with his
13 performance. I -- I don't know if I -- if -- you
14 know, I -- I might be missing something. But I -- I
15 haven't seen any evidence of that, other than what
16 Mr. Johnson said. And like any other witness, you're
17 free to believe or not believe his testimony. And --
18 and please, consider the credibility of all the
19 witnesses.

20 You know, and -- and the -- and the main fact of
21 it is -- is that the Johnson family is -- is -- is --
22 is still in this business. We got the e-mail -- or
23 e-mail that's Plaintiff's Exhibit No. 17 between Dan
24 Spohn and Nacolle Caltrider that talks about
25 different chargebacks involved and stuff like that.

1 Dan Spohn had to -- had to chime in on it, both from
2 the witness stand and in this e-mail. It's -- it --
3 it is what it is. Y'all can read them yourself.

4 I will say that Dan Spohn did say in Exhibit No.
5 18 -- it's under that same string -- that: "I have
6 given you and Nacolle every document I have, both
7 paper and electronic. There is nothing in writing
8 regarding the loans Protection24 made to you in lieu
9 of payroll. It was reported on their books. But I
10 don't believe a final corporate return has been
11 filed. I know I didn't file it."

12 And that was Dan Spohn. That's Exhibit No. 18.

13 So -- and I -- you know, the defendants have their
14 own documents. And -- and we didn't object to any of
15 them. A lot of them were the tax documents and
16 things of that nature.

17 The one that I do want to talk about, though, is
18 this deposition testimony, where I think Mr. Ellis
19 has tried to assert or -- and probably will try to
20 assert -- that -- that Luis is estopped from claiming
21 any ownership interest in the company because of this
22 testimony.

23 It was all here. I'll read it. It's very brief.
24 It's Defendant's Exhibit 4.

25 "How are you currently employed?

1 Answer: In which way? Can you
2 rephrase the question?

3 Question: You're the owner of ---

4 Answer: I'm the vice-president of
5 AVSX. The actual legal owner on
6 paper is Mary Kay Johnson.

7 Question: So your title is vice-
8 president?

9 Well, per se, we don't -- Bobby and I
10 don't have titles, per se. We assume
11 whatever role is required. If I
12 needed to be whatever I need to be at
13 that moment to represent our staff,
14 that's what I will be. But
15 typically, I handle the operations of
16 the company.

17 All right. And what's Bobby
18 Johnson's title?

19 Same thing as me. Same thing as me.

20 We're -- he didn't say we're
21 brothers. But that -- you can -- you
22 can determine that, if you like. He
23 could be the CEO today or the
24 president, whichever. We really
25 don't have titles, per se, in

1 reality. We share equal -- equal
2 responsibilities.

3 And then, you know, they ask how the
4 responsibilities are divided.

5 Luis said: Typically, I handle the
6 questions of the company and he
7 handles the finances and the sales
8 and marketing. But if I'm not
9 present at one time, he can handle
10 the operations and vice versa. We
11 kind of share roles, to some extent.

12 Yeah. They were sharing roles. They were sharing
13 roles as the -- as the owners of the company.
14 Anyway, you'll have that back there. You can note
15 the parties on it: Medtronics [sic] v. AVSX and
16 James Wilson. I think -- I think Mr. Johnson said he
17 was sued personally -- not -- not -- well, he
18 might've been amended and added to it, but not in
19 this document.

20 Oh, Lordy. Okay. You know, I submit that there's
21 been ample evidence that how this company was
22 operated was a lot different than how it was on
23 paper. We'll go over a few more exhibits, and then
24 I'll get -- I'll get to the issues.

25 One of the things that we did -- and Mr. Ellis did

1 as well -- was we sent out requests for admit --
2 requests to admit. And Mr. Johnson admitted -- the
3 -- Question No. 5 -- this is -- now Plaintiff's
4 Exhibit No. 21. "Do you admit that Bobby Johnson was
5 -- had represented to third parties and employees of
6 AVSX, through e-mail and other communications, that
7 he and Luis Endara are the sole equity owners of
8 AVSX."

9 And I'm -- and the response: "Admit only that Mr.
10 Johnson said at times to employee and other parties
11 that he and Mr. Endara were partners in the
12 business." Then, he goes on to explain: "Mr.
13 Johnson did so for the purpose of recognizing the
14 significant service to the company and for team-
15 building purposes."

16 There's more there, but I'm not going to read it.
17 Mr. Ellis may -- may -- may choose to. I'm not.
18 It's just what it is -- what it is.

19 So where are we now? What -- what -- what -- what
20 point are we at? There really -- it's a lot of
21 stuff. But there's not much stuff. It's not the
22 stuff that we normally expect in -- in a
23 multimillion-dollar business.

24 So -- so, you know, what are the issues that
25 you're going to be asked to decide? It's pretty

1 simple. I might fumble it, but I'm going to try.
2 And that -- there'll be a verdict form by the judge
3 to -- to -- to look at this.

4 What was his standing -- the first question, I
5 believe, is going to be what was Luis Endara's
6 standing with this company? Was he a member? Was he
7 a 50/50 member?

8 You say "yes"; check one box. You say "no"; you
9 check that box.

10 If he's a member -- there may be another one I
11 forgot. If he -- if he is a member, what is he
12 entitled to for his distributional interest? In
13 other words, in this case, we are asking for half of
14 the present value as of the date that he was
15 dissociated of -- of the company.

16 And -- and that's it. There's really two
17 questions. I mean, there's a lot to it. It's --
18 it's been a hard -- hard case for us to try. And
19 like -- like a couple of witnesses said, if we had a
20 operational agreement, we wouldn't be here today.

21 All right. Let me go get these charts.

22 So if you get past the first level -- and that --
23 that's totally up to you -- then we go to the second
24 level, which is damages. And Mr. Zion told you about
25 AVSX and said he had prepared this -- these

1 preliminary draft of returns. It's -- it's as you've
2 seen it. I don't know that you'll have this big one
3 back there, but you will have the small one, which is
4 Plaintiff's Exhibit No. 7.

5 And the numbers are the same. We -- we've all --
6 we've all looked at it. Mr. Ellis has talked about
7 it -- Mr. Mike Ellis, as well as I.

8 But the thing that's really striking out of all
9 this -- what is now -- well, it's not surprising for
10 gross receipts or sales, \$9.957 million. That's what
11 they did. That's what Luis and Bobby built together.

12 That's what Luis contributed the seed money in --
13 in Protection24 to get to. It didn't take that long,
14 2008 to 2014. You're looking at six years.

15 So in six years -- and Mr. -- the accountant
16 testified -- Mr. Zion -- it takes awhile to get
17 things going. So they were on a upward climb and got
18 a lot of expenses, about 5,000,000 right there. The
19 -- and -- and the balance but they still have about a
20 41 percent return on that part.

21 And so, you know -- and then, you subtract all the
22 deductions and you get this number 620,754. Mark
23 Zion there -- and he's -- he talked about it. He
24 didn't -- I -- I don't know. I guess he did go over
25 Exhibit 7 a little bit. But he was here; you see

1 that.

2 So what -- what are we asking for? What -- what
3 is Mr. Endara asking for, for damages for the jury to
4 consider? What we are asking for is that he be
5 awarded the fair value of one-half interest in this
6 company.

7 Now, Mr. Zion testified: Well, it's a small
8 company and you can't buy 50 percent. But -- but,
9 you know, they -- we are asking AVSX to -- to -- for
10 you to award a judgment against AVSX that includes
11 the value of Mr. Endara's one-half interest.

12 And like everything else in this case -- and a lot
13 of things -- well, most things in life, it's not
14 black and white. It's gray. It's all over the
15 place.

16 But, you know, the -- the judge will -- you know,
17 the law is that the -- the judge will tell you what
18 the law is. But Luis is intimately familiar with
19 this business. He has a lot of experience. And a --
20 a person can testify and give an opinion as to value
21 of things they know about.

22 And if you'll notice, Mr. Endara is -- and I'll
23 get the -- the blue chart in a minute. This -- Mr.
24 Zion, the CPA, kind of talked about a lot of the same
25 things: capitalization. Zion talked about a

1 different rate. But, you know, he -- and Mr. -- Mr.
2 Zion is a security -- Mr. Endara is a security alarm
3 guy.

4 And -- and Mr. Zion, he didn't say we were full of
5 malarkey or anything of that nature. He just -- you
6 know, he kind of -- I submit that there is evidence
7 that Zion corroborated the damages that Mr. Endara
8 put up on this board.

9 Okay. I apologize for such a low -- low-tech
10 trial. But here we are. All right.

11 So he took the net profit of the 620. Mr. Endara,
12 based upon his experience in the industry,
13 capitalized it times 4. Mr. Zion testified today
14 that it can be anywhere from 1 1/2 times to 3 times.

15 But the -- the -- but the -- the correct answer is
16 how do you capitalize it -- or how do you capitalize
17 it, if at all, is for y'all to determine. You know,
18 these is -- these are just -- this is just guidance.
19 It's going to be the jury's decision to award any
20 damages.

21 You know, I -- I'm -- I'm going to advocate hard
22 for his position. But it's not up to me. It's up to
23 you.

24 And what I -- what I am telling you now is not
25 even evidence. It's just presenting his position

1 zealously within the bounds of -- of the law.

2 So he multiplied it times 4. He gets 1.24 million
3 bucks. That's a hard number right there. Well, this
4 is a hard number. This 620 is a hard number. It's
5 going to be up to the jury to -- well, that's going
6 to be up to the jury whether -- whether you even
7 consider that number.

8 But -- but I would submit that that 620 is a hard
9 number. And then, whatever multiplier you choose to
10 use or not -- not choose to use, that -- that is your
11 decision.

12 These are big numbers. It's a big case. They are
13 -- have to think about the losses, the losses to Luis
14 from one day being a part of this \$10 million-a-year
15 gross company to the next day not having anything,
16 cut off -- cut off from all the benefits and
17 privileges of AVSX.

18 This -- this revenue sharing and these -- and
19 these other items, they -- they are significant.
20 Exhibit No. 20 of plaintiff's, it's called "Revenue
21 Sharing and Holdbacks." This -- this -- this is
22 money that they -- that they -- AVSX gets from their
23 lead dealer -- supplier, Vector.

24 It's not guaranteed. It can go up and down.
25 It'll go away if the business is allowed to be

1 folded. And I think that Mr. Endara have testified
2 to that.

3 It's not certain. But what -- what -- what Luis
4 did, at my instruction, was figured out what the
5 revenue sharing for the same year, 2014, as -- as the
6 -- as the tax return and he multiplied it times the
7 same. It was a little -- it's -- it's broken up. It
8 goes April through December in this one column. And
9 then, you have to take out the other -- the other
10 months, January -- January through March, in this
11 other column.

12 But it was a total of 285 plus 175 -- it's that
13 number. And then, there's this holdback. Well, the
14 -- you know -- and you'll see it. I mean, I -- I
15 hope I -- I mean, it's up to the jury to determine
16 this -- this Vector contract. I -- it's Defendant's
17 Exhibit No. 8. It's -- I don't know. It's going to
18 be up for you to determine it.

19 But it does have different multipliers. And the
20 multipliers that they use are all based upon a lot of
21 -- you know, how they get their holdback and revenue
22 sharing and actually how much the -- each of the
23 contracts that -- that Luis or -- or the company
24 would sell.

25 It's all in there. It's not dated. But it's no

1 question that John Madden, who Mary Kay said, you
2 know, had to okay her appointment -- or suggested it
3 and then Mary Kay Johnson -- she signed it, on paper
4 -- yes -- on paper.

5 But who actually made that money? It was -- it
6 was those two gentlemen. Well, he didn't make it in
7 2014 because he was already terminated.

8 Revenue sharing and holdback is not guaranteed.
9 But as long as the company stays in business and the
10 contracts stay in business, that money goes on
11 forever. You know, but it's up to you to determine.

12 We use the 2014. But in fairness, that money
13 would be paid -- it's trying to represent what's paid
14 in the future over the life of those contracts.

15 And it gets another big number, 1.3 million bucks.
16 And he multiplies it again by 4. And he gets a huge
17 number, 5,211,836. And his 50 percent interest in --
18 in that is 2.6 million.

19 It's up to you to determine what the damages are,
20 if you find that he is a 50/50 member. You use your
21 -- you use your common sense. You know, you use the
22 guidance that you've had from the testimony today.
23 Mark Zion says the multiplier is reasonable with this
24 kind of company to 1.5 and 3. Luis testified, based
25 upon his experience and the risks involved, to get

1 the capitalization on the rate of return is 4. You
2 can use whatever number you want.

3 If you add those two numbers together, the 50
4 percent here and the 50 percent there, it's \$3.8
5 million. Am I demanding \$3.8 million today? No, I'm
6 not. It's going to be -- that's one of the things
7 that you're going to have to decide.

8 The damages, like the -- his status, are in your
9 hands. And that's where we are. It's just that's
10 what -- that's what our system's all about.

11 Mr. Ellis and I agree on a lot of things. And we
12 haven't agreed -- we agreed on a lot of things in
13 this case. But we don't agree on that, you know.

14 But when I had their expert on the stand, I was --
15 you know, you take your -- you take his testimony for
16 what it was. I was -- I was happy with it.

17 So this is what it's all about. Nobody is -- this
18 is a case about money. It's -- it's -- it's all
19 about that. It has a lot of emotions and family
20 things wound up in it.

21 It hasn't been the easiest case for me to try.
22 And I'm sure it's not going to be the easiest case
23 for you to come -- to come to some verdict. We would
24 like to -- for you to come to a verdict.

25 It has to be unanimous. You know, I -- I don't

1 know what goes on back in the jury room. I've never
2 been back there. I was on a jury pool one time. And
3 I -- I knew everybody wanted to get off the jury;
4 they didn't want to be -- they didn't even want to
5 get picked for a case.

6 But that's your determination. And I ask that you
7 consider, you know, basically, these are two
8 families. What's the cost of betraying a brother?
9 What's the cost of betraying another family?

10 You know, you -- you reap what you sow in this
11 world. And that's what I've been taught. And I
12 don't know how you get there. But those are the
13 issues before you: what is his status and what are
14 his damages.

15 And I appreciate your consideration very much.
16 And at this time, I will sit down.

17 THE COURT: Mr. Ellis?

18 MR. TODD ELLIS: May it please the Court: Mr.
19 Sautter, will you help me with the charts?

20 MR. SAUTTER: Sure. Yeah.

21 (Whereupon, Mr. Todd Ellis and Mr. Sautter
22 conferred.)

23 JUROR: (Raised hand.)

24 DEPUTY CLERK OF COURT: Your Honor, I think we ---

25 JUROR: Is it okay if I use the restroom before

1 you start, Mr. Ellis?

2 MR. TODD ELLIS: Of course.

3 JUROR: Okay.

4 THE COURT: All right. Ladies and gentlemen --
5 hold, hold, hold. All of you got to go.

6 JUROR: Oh.

7 THE COURT: Hold ---

8 JUROR: Oh, we all ---

9 THE COURT: All of you step to the jury room. Do
10 not discuss the case. I'll get you back out here as
11 quickly as possible.

12 JUROR: Sorry.

13 THE COURT: That's okay.

14 (Off the record briefly.)

15 (Whereupon, the jury exited the courtroom at 12:28
16 p.m.)

17 (Off the record from 12:28 p.m. until 12:37 p.m.)

18 THE COURT: Are they ready. Do you know whether
19 or not the jury is ready?

20 THE BAILIFF: Yeah. They're ready.

21 THE COURT: Let's go. Get them, please, sir.

22 We're going to get this to this jury at some point, I
23 promise you.

24 MR. TODD ELLIS: Fifteen minutes, hopefully, Your
25 Honor. Hey, Judge, did you decide, before they come

1 in -- do you think you're going to break, let them go
2 to lunch and then ---

3 THE COURT: Yes, I ---

4 MR. TODD ELLIS: --- and then ---

5 THE COURT: --- am.

6 MR. TODD ELLIS: --- you charge them after?

7 THE COURT: I am. I will say this: Y'all come up
8 here ---

9 MR. TODD ELLIS: Yes, Your Honor.

10 THE COURT: --- just a minute.

11 (Whereupon, a bench conference was held off the
12 record outside the presence of the jury.)

13 (Whereupon, the jury entered the courtroom at
14 12:37 p.m.)

15 THE BAILIFF: This jury is present, Your Honor.

16 THE COURT: All right. Was there -- was your food
17 back there yet ---

18 JUROR: Yeah. Too much coffee.

19 THE COURT: --- Mr. Foreman?

20 THE FOREPERSON: Not yet.

21 THE COURT: Okay. All right. Mr. -- Mr. Todd
22 Ellis, you're so recognized for closing ---

23 MR. TODD ELLIS: Thank you, Your ---

24 THE COURT: --- argument.

25 MR. TODD ELLIS: --- Honor. May it please the

1 Court.

2 CLOSING ARGUMENT BY MR. TODD ELLIS

3 MR. TODD ELLIS: You were compelled to be here.
4 But you have served well. And you have served well
5 with some dry testimony at times.

6 I asked you to do one thing and one thing only,
7 because you've been compelled to be here. And that
8 was to try to listen, to use your independent
9 judgment, to use your daily experiences, to use your
10 common sense to determine things by listening. And
11 you all have done that over a four-day trial.

12 My child at home can't get through four minutes of
13 television without looking at her phone or talking to
14 me. So I know the attention that it takes to do
15 that. It is not easy. And on behalf of the parties
16 and the Court, we want to thank you for that. Thank
17 you very much.

18 I suggested to you at the beginning of this trial
19 that this case was about what? Have your cake and
20 eat it too. This case was that you can't have it
21 both ways. And that's exactly what's happened.
22 That's what occurred from the witness stand, from the
23 documents in this case.

24 I am not going to spend a lot of time on this.
25 Because if y'all don't see it, I was wrong.

1 Everything was wrong that that's what this is all
2 about: someone, Luis Endara, wanting to have it both
3 ways. Distance myself as an owner of a corporation,
4 distance myself when there's potential for liability;
5 there's a startup there; costs, everything related to
6 that.

7 But boy, when it's time for me to try to get mine,
8 let's bring myself back in. I want that cake. And
9 even after I eat it, I want to possess it as well.
10 And that's what's occurred in this trial.

11 I think Mr. Sautter was almost correct -- or in --
12 I don't know that he's not correct. We disagree a
13 little bit on the law, what I think the judge will
14 say.

15 He's going to have to say this, I believe, and
16 what y'all are going to have to find. The judge is
17 going to charge you that in order for the plaintiff
18 to be awarded any damages in this case, you must
19 first find that he is a member, a member of AVSX
20 Technologies, LLC.

21 I've asked every witness in this case: Let's be
22 real careful about the words we choose. It's not a
23 partner. It's not a buddy. It's not a friend. It's
24 not a brother. It's not anything else, other than
25 you must find he was a member of the LLC, period, not

1 a manager with massive responsibilities for a couple
2 years that worked with Mr. Johnson.

3 We admit that happened. We admit that. He must
4 have been a member of the LLC. And for whatever
5 reason -- remember this? When he distanced himself,
6 he's not a member. He's not a member.

7 So if you don't find him to be a member of the
8 LLC, then you don't have to go any further. You
9 don't have to consider whether any -- the
10 disassociation and firing was wrongful. You don't
11 have to consider whether he has any damages
12 whatsoever.

13 And the judge is going to give you a jury form at
14 the end of it -- of this for you to make the
15 decisions as a juror -- jury and then write that
16 down. And essentially, if you find he's not a member
17 -- he's distanced himself; he's got to live with what
18 he did one way or the other -- you simply put on
19 there I find for the defendants and hand it back.
20 And this will be over.

21 The next thing, though, that I think Mr. Sautter
22 failed to tell you is even if you found he was a
23 member, which we do not think you can find in any way
24 whatsoever, he has to have been wrongfully
25 disassociated from the LLC -- wrongfully

1 disassociated from the LLC. And the testimony here
2 was this -- and this is where you've got to use that
3 daily knowledge that you guys have gotten, which was
4 a little tougher in this case.

5 You got to be -- he was inattentive to the
6 business. He was missing meetings. He was failing
7 to contact service contact people. He traveled
8 excessively, even more than these guys did in
9 expending at times, to Detroit to see his friend.

10 And he went to Myrtle Beach after missing a
11 meeting -- not just to go to Myrtle Beach. Bobby
12 didn't fire him or otherwise because he missed a
13 workout. That was a joke.

14 He went to Myrtle Beach to look at a house with
15 his friend without telling him. Now, is that
16 important? Is that a wrongful act, enough to be
17 fired, even if you thought he was a member, which we
18 don't.

19 What's important is this: You have to take those
20 five reasons with Mr. Johnson's knowledge of Luis
21 Endara's past. Think about this, guys. Four times
22 he has run out of businesses, created another one,
23 taken accounts and people. Four times opened up,
24 done service techs, hired these techs, people to go
25 out and sell. Run up the numbers. When the time to

1 flip and move those accounts, he opens up another one
2 -- not with his name on it, now, not being an owner.
3 Crank it up.

4 Do you think it's a reasonable inference for Bobby
5 Johnson to have thought at the time in March of 2014
6 that Luis Endara was cranking up to go leave and
7 compete against him? And guess what happened? He
8 did, didn't he? He did the same thing he's done
9 several times.

10 Now, he testified: "I had to do it. I had no
11 choice." That may be the case. Doesn't make it
12 right legally. And it doesn't make a part of his
13 history. This is what he does, folks. This is what
14 he does.

15 See, when you sell those contracts to the
16 homeowners, they come to my house and MX Security or
17 AVSX and these other companies. "Todd, will you let
18 me use your -- let me be your alarm service."

19 They bring in those equipment. You pay 800 bucks.
20 You got the pad. Totaling that, the companies pay
21 them an up-front cost. And then, they get a nominal,
22 nominal amount going forward on the monitoring.
23 Okay?

24 So what happens? You're only getting really paid
25 the big bucks if you sell that account again and flip

1 them for a new account. Well, how do you get a new
2 account from a client you've had on a list for a long
3 time? You go create another entity. Go get me a new
4 entity; that's a new client now. Todd Ellis, who I
5 had under Protection24, that's Todd Ellis now that
6 I've got under MX Security. Boom.

7 So is it reasonable to determine that Bobby
8 Johnson, at the time in March 2014, knew that Luis
9 Endara was getting ready to compete against him and
10 was not functioning, based on whatever his personal
11 issues were at that time.

12 So I don't think he's a member. I don't think
13 you're going to find that. And you just find for the
14 defendant.

15 But even if you do, it's got to be a wrongful
16 disassociation. And then there afterwards, it's got
17 to be about the damages. And I'll talk to you about
18 that a minute.

19 It can't be that you find he was a significant
20 person in the business. It can't be that you find he
21 was a key employee. It can't be that you find that
22 he had sweat equity in there over for years. It
23 can't be that you find that on paper, he was really a
24 person who owned that business. Can't be that.

25 You have to find he was a member. And as much as

1 they'd like to juggle that up in the air and see
2 which ball y'all see and make sure that that's moving
3 all the time, the law says he's got to be a member of
4 that LLC.

5 Now, was he a member? What do we look at? What
6 do y'all look at? What do you think about?

7 It's easy. What's the first thing we do? How
8 about what Luis Endara said personally himself
9 whether he owned that company. That'd be a good
10 place to start, wouldn't it?

11 Exhibit No. 4 at his deposition testimony, this is
12 a sworn document, just like he came in here in front
13 of y'all: raised his right hand and swore to you to
14 tell the truth, the whole, and nothing but the truth.

15 He says under oath:

16 "How are you currently employed?

17 In which way? Can you rephrase?

18 You're the owner of ---

19 I'm the vice-president of AVSX. The
20 actual legal owner on paper is Mary

21 Kay Johnson."

22 Shouldn't it be over right now? Right now?
23 Shouldn't I sit down right now? If I was doing my
24 duty to my client, I probably should just go sit
25 down.

1 I don't know how you can find that he was a member
2 of the LLC when he says in sworn testimony he's not
3 the legal owner. You can't, folks. Am I sympathetic
4 to anybody who loses their job? Of course. Am I a
5 small-business owner? Yes.

6 But he swore that he was not an owner. You can't
7 find that he was a member of this LLC, based on that
8 document alone. But that's not it, is it?

9 He had a financial declaration with his family in
10 family court, another sworn testimony from Luis
11 Endara, not some third party, not some former
12 employee that walked in here and said, "Oh, yeah.
13 Luis was the owner. He and Bobby shared the
14 responsibilities."

15 No. Luis Endara wrote to the Family Court
16 downstairs in this courthouse that he had no
17 interest, no business interest, no stock, no money,
18 no ownership in any third-party business. And his
19 excuse was: My wife and I just wanted to get that
20 over with.

21 I don't think there's a qualification on this form
22 that says: And by the way, you can lie to us if your
23 wife and you just want to get it over with.

24 You can't get past that. I'm not a legal expert
25 on perjury. But I know you're sworn to tell the

1 truth in those two circumstances.

2 How about his own voice in e-mails? Defendant's 5
3 -- this is to their lawyer, the lawyer. We don't
4 have an operating agreement for Mr. Endara but do
5 have articles of incorporations where shows Mary Kay
6 the sole owner. That's Luis Endara. He admitted on
7 the stand, his e-mail, he sent it out and said it.

8 Three direct pieces of testimony from the
9 plaintiff himself that he's not an owner, the actual
10 essence of this case -- for four days we've been
11 arguing about. Can't overcome it, folks.

12 The tax returns -- I can't go over it any more. I
13 bet y'all are going to be hearing K-1 and tax return
14 in your sleep for 20 days overnight. But I got to
15 remind you again what came from the witness stands.

16 The two credible accountants in this case, one of
17 which still does work for Mr. -- I mean, Mr. Endara,
18 said you can't be an owner of a company unless you
19 get a K-1. You can't be an owner of a company unless
20 you get a K-1.

21 So the tax returns in 2009 and 2010 show, what,
22 for guardian ad litem [sic] and AVSX? Mary Kay
23 Johnson in 2010 was the 100 percent owner, by their
24 own return, another document which is under law --
25 you could get charged with perjury should you file

1 it. The taxpayer, including Mr. Zion -- did you see
2 his face when I asked him that?

3 Don't you have to file that legally? You have to
4 state all owners and give them a K-1. You're
5 responsible for that as the tax preparer.

6 Mr. Zion's face went white. Because he was the
7 guy responsible for that. If it was a lie or if it
8 wasn't, it was really the truth who's the owner. But
9 the fact that he's -- he's on the witness stand for
10 somebody who's claiming he's not -- he never provided
11 Mr. Endara a K-1.

12 Mr. Endara testified he's never gotten a K-1 his
13 entire career. Now, what does that mean, folks? Is
14 that every piece of evidence of what Luis Endara has
15 done in his life? No.

16 He's savvy. He knows better. Don't get caught on
17 the tax returns. Don't do that. He's never gotten a
18 K-1 in his life, much less in this case.

19 The department of revenue filing as well: from
20 Dan Spohn, accountant for AVSX, 2010, it asks right
21 here who is the owner. Dan Spohn, a third party,
22 writes Mary Kay Johnson, 100 percent -- 100 percent.

23 Those are the statements that you all have got
24 that we can get this over with like that. Get it
25 over with like that. All this talk about Mr. Endara

1 having massive responsibilities, people thinking he
2 was an owner, having all this stuff, helping build
3 this over a period of time, really don't even doubt
4 that. He was a key employee that ran from ownership;
5 specifically tried not to be an owner so as to avoid
6 liability.

7 The other one that's going to be ringing in your
8 ears in sleep for the next two months: on paper.
9 For goodness sakes, I started counting them up. Mr.
10 Endara, in my cross-examination, said, "Well, she's
11 the owner -- Mary Kay is the owner on paper." He
12 said it 22 times -- 22 times.

13 You know why he did? He can't win unless he murks
14 that water up and lets you think that there's a
15 difference between on paper and legal owner. He must
16 -- only way to prevail, he must prove to you there's
17 a difference between on paper and in real life.

18 That's what he wanted. That's what he set up this
19 whole time. You know how many times his counsel said
20 it in -- in his closing statement -- Michael -- Mr.
21 Sautter? Just five times.

22 But you know what you've never heard out of Mr.
23 Sautter's mouth? There is a legal distinction
24 between on paper and activity. He knows that's not
25 right.

1 On paper is like me saying my wife is a medical
2 doctor. That's her degree on paper. But I see the
3 patients. I get the money. That's what that's like.

4 On paper means something like I've got 700
5 Facebook friends, but I know my butt's going to be
6 home tomorrow night by myself. That's on paper I got
7 700 Facebook friends.

8 You know what it is? It is a famous saying. It
9 is a distinction without a difference. Distinction
10 without a difference. It is a logical fallacy. It
11 is nothing but a phrase to throw you off.

12 Who testified in this case? I'm not going to go
13 through everybody. Y'all followed this left and
14 right.

15 Who testified for the plaintiff? Mr. Endara
16 himself. You all know he has an economic interest in
17 this case. He wouldn't be here otherwise.

18 Mr. Spohn, the former CFO for AVSX, who does his
19 tax returns now for MX and himself, Mr. Spohn says
20 you can't be an owner of an LLC business unless you
21 get the K-1 and you get the responsibilities. Said
22 it right here from the -- from the stand. Said it
23 right here. Admitted that he filed tax returns
24 solely listing Mary Kay Johnson as the owner.

25 Now, either Mr. Spohn has committed fraud because

1 he knows that Mr. Endara was an owner and he didn't
2 put him on there. Or he did what was right under his
3 duty under the law and filed who he knew the owners
4 of the company were.

5 Got two former employees who admitted, you know
6 what, they talked to each other all the time about I
7 -- we thought Luis was the owner. And there's no
8 question now. Nobody is going to testify, say, or
9 otherwise or argue that operationally, Luis Endara
10 was an essential person -- essential to that business
11 for a long period of time.

12 He was not an owner. So those guys admitted they
13 had no idea what the corporate structure was. Never
14 been in a meeting; never filed any document; never
15 done anything. So those two employees, nice people,
16 they didn't mean anything to the entire case. I
17 wasn't sure why they were here.

18 One person who directly competes against AVSX came
19 in and testified he was the owner. But he admitted
20 you can't be the owner of a company unless you're on
21 the tax returns you have responsibility for. He's
22 the one. You remember it.

23 Eric Bouvet said, "Yeah. I started Affinity. My
24 partner and I own it. And yeah. I'm on it because
25 I'm on the return. I got to be responsible for it."

1 He knew nothing about the corporate structure.

2 And how about Mr. Reis? I'm not sure Mr. Reis
3 wasn't the most important witness in this entire
4 thing. Mr. Julio Reis, for whatever you think he did
5 -- accountwise, gave them help -- he used his credit.
6 Remember he testified that early on for them to be a
7 part -- to start this business, supposedly.

8 Mr. Reis was the most honest one of them all. Do
9 you remember when he said -- when I asked him: "Mr.
10 Reis, what kind of business do you own?"

11 "I own a digital company in Lexington, South
12 Carolina. It does about \$5.8 million a year -- \$5.8
13 million a year."

14 "Who owns your company?"

15 "My wife does."

16 "Why does she own your company?"

17 "Well, we want to get minority contracts."

18 "And how does she show that on the tax returns?"

19 Now, what did he do at the end? I think he
20 probably made a mistake. He came back and said, "No,
21 no, no. I meant I own 49 percent and she owns 51
22 percent so we can get the minority contracts."

23 I don't think he was lying. I simply think he
24 forgot that it went from her 100 percent to him, 49
25 and 51.

1 So their own witness testified that the legal
2 significance of what percentage you own and shares
3 and the filing on those tax returns and how much you
4 get. It's not about operations. He works in it
5 every day. His wife is just like Mary Kay.

6 Mary Kay Johnson rarely, until 2014, worked in
7 that business on a daily basis. No one has testified
8 that's important at all. It means nothing to this
9 whole thing about who can own a company.

10 Joe Blow down the street can own AVSX and never
11 show up here again, never contribute a dollar, should
12 the parties or people involved be up to that. Don't
13 let them fool you with Mary Kay was not that involved
14 in the company. Who cares?

15 Or how about the dang Mercedes-Benz? Who cares
16 about that? It's got nothing to do with who owns the
17 company.

18 Mr. Reis, the guy is sophisticated who was brought
19 in who helped start this whole thing, came in and
20 said it is important. I owned it and Mary Kay owned
21 it.

22 Well, how about your company? My wife owned it.
23 And the two accountants -- the two accountants
24 that you've seen, the credibility of them are good.
25 They know how to value these companies. They know

1 how to look into this.

2 And -- and how about -- you -- you saw Mr. Zion
3 this morning. I asked him, standing right behind
4 Luis -- Luis Endara: "What did Luis Endara tell
5 you?" "I don't want to be the owner."

6 Is there more credible evidence in the entire case
7 other than words out of -- well, maybe that's not
8 that credible. But is there more credible words in
9 the entire case than Mark Zion on the stand saying,
10 "I don't want to be an owner"?

11 Now, could they have contemplated all this? Could
12 they have talked about him being an owner?
13 Absolutely. But if you don't do it, you don't do it.

14 You can act like it. You can quack like a duck.
15 You can walk like a duck. If it ain't a duck, it
16 ain't a duck.

17 Mr. Endara has worked at Guardian Eagle Security,
18 LLC, and AVSX Technologies. Never received notices
19 from the business that he was a member. Never
20 received a K-1 from the business noting that he was a
21 member, never showing him any profits and losses from
22 that tax return document.

23 And here's the other one as well. Y'all probably
24 know the dates better than I do by now. 2008 this
25 entity opened up; 2014 he's fired.

1 Has he shown you one document or one person
2 brought to this courtroom who said what? I
3 complained that they were not making me an owner.

4 Has anyone testified that Luis Endara stomped on
5 the ground and said, "You make me an owner now. How
6 come I'm not on these K-1s? Why am I not getting
7 this? How come I'm a vice-president of service
8 manager? Why do I represent" -- he never complained,
9 folks.

10 So if you don't believe his direct words, until he
11 filed this lawsuit, he never raised an issue. That
12 -- is that suspicious? Do you read -- need to read
13 between the lines there?

14 Because that's the way he wanted it. That's the
15 way he wanted it. He wanted the distance until it
16 came down to it in whatever operations he was.

17 Now, the thing I heard over and over again was
18 this: We had to make Mary Kay the owner of the
19 company because of our credit. And that may have
20 been true with security.

21 But you also heard the testimony of Mr. Zion, Mr.
22 Spohn, and Mr. Johnson, all of them admitting all
23 they had to do was what? Write it down. Write it
24 down. Mary Kay Johnson's 100 percent owner. But on
25 the exit of Luis Endara, I get X percentage of this

1 company. There's nothing that would've prohibited --
2 if he was -- and that was the intent of the parties,
3 from Bobby Johnson, Mary Kay Johnson, and Luis
4 Endara, sitting down and writing out on a piece of
5 paper: You know, she's on paper the owner, but Bobby
6 and I split this 50/50. Signed, Luis Endara.
7 Signed, Bobby Johnson.

8 Four days of trial that would've saved. Thousands
9 of documents that would've saved. Countless hours of
10 attorneys work and clients work, the stress of all
11 this process, your time involvement. Four sentences.

12 Now, am I supposed to blame Bobby or Luis for
13 that? It doesn't matter. Don't you think that was
14 their intent? He did not want to be an owner. He
15 wanted the distance from the entity.

16 I'm almost done. I'm going to let the -- Mr.
17 Sautter come back up here, I'll explain to you in a
18 minute.

19 I -- I almost can't bring myself to talk to you
20 about these damages. I almost can't. Not only are
21 they ridiculous, and I don't believe you're ever
22 going to get to that because you just mark off for
23 the defendant and you go home.

24 But I would be breaching my duty to my client if I
25 didn't at least talk about it for a minute. Okay?

1 Let's look at these damages. Sometimes in a
2 trial, folks, it's not important who you hear from.
3 It's important who you didn't hear from. Who did you
4 not hear from? An expert witness. You didn't hear
5 from an expert witness for the plaintiff, did you?

6 They could've hired an expert witness to come in
7 here and given you a calculation that looks something
8 differently than scratch on a plain board that says:
9 "These are the damages based on my evaluation of
10 AVSX. This is what he would be owed, should the
11 breach be shown."

12 Mr. Endara, who is a smart guy, apparently, I --
13 and -- came up here and did this. But there's
14 absolutely no basis in these numbers. Even if you
15 were to find that he was a member, he was wrongfully
16 terminated, and he's entitled to some damages in this
17 case, I don't know you can effect this.

18 Yes. The company in 2014 netted \$620,000. They
19 have \$730,000 in tax liability, the company does --
20 730. Mr. -- the one educated evaluator that you've
21 seen, the business evaluator, said this is
22 ridiculous, 4-time rate. It's a small, closely held
23 company. There's no market for small percentage of
24 ownership.

25 So you can't do this as a multiplier of 4. At

1 best, 1.5 was his testimony. He said there's a range
2 from 1.5 to 3. He says it's that, because you got to
3 discount it based on that value and the amortization.

4 That number can't be done. Can't be 1.2.5. You
5 already -- you all know about these. I'm not going
6 to talk to you about the residuals and the -- the
7 holdbacks. You know that can end any day.

8 The only testimony in this entire case is -- is
9 that with 30 days' notice, Vector can stop this
10 account -- this train right now. It's -- he wanted
11 to tell you it was 20 years' worth of income that can
12 come.

13 The man's changed business four times; had four
14 different contracts. He's still not getting paid on
15 that one from eight years ago. He's trying to pull
16 the wools -- wool over your eyes. Discount all that
17 out of there and out.

18 This company right now ain't worth a dang thing,
19 not only because of what Mr. Endara's been doing
20 since he left, but because it's a struggling
21 business. It rises and falls by sales. And that's
22 okay. Bobby and Mary Kay are willing, like always,
23 to go with that. And they'll try to do that.

24 That number is ridiculous. You should not find
25 any damages for him and certainly not anywhere in the

1 range of that. It is one year of income, going down,
2 that happened to be at the peak time of the entire
3 business whatsoever and doesn't even come close to
4 showing the tax liability or anything else that you'd
5 have to discount from that amount. Ridiculous if you
6 were to find that.

7 Folks, what a finding would do -- let's say that
8 you all found -- it is your decision -- you found
9 that he was a member, okay? A member of this LLC
10 based on course of dealing, based on something that
11 he says I was a guide for that many years; that
12 that's how they held themselves -- a couple of e-
13 mails over eight years of business where he says the
14 word 50/50 or calls him a partner or calls somebody
15 else a partner and that's evidence that's he's a
16 member? It's ridiculous.

17 But if you -- even if you found that -- if you
18 found that today, you know what we would be setting
19 up, this whole process? And this is the fear of
20 everybody in this room, at least me. We'd be setting
21 up that any key employee of any small, closely held
22 business could linger on for a couple of years in a
23 company in which they were working as a manager or
24 key employee, they could assert their importance. If
25 there was no operational agreement, they could step

1 in and claim ownership at any time.

2 We're setting up South Carolina law that says:
3 Oh, by the way, if you're an LLC and you don't have
4 an operating agreement, a key employee could come
5 along and he could go, "I own your business." And
6 we'd be in a battle like this. That can't be the
7 law. That can't be it.

8 The judge will tell you what his thoughts are on
9 that. But that's what we're setting up.

10 My associate over here, Andy Webb -- heck of a job
11 on this trial -- probably done more work than I have
12 as well. I got a small, closely held business. I
13 think I have an operating agreement. I'm not sure.
14 Because you know why? I'm the only guy.

15 But you know what? Andy comes up in three years
16 and goes, "Remember all those verdicts I helped you
17 get? Remember the defenses I had? Thanks, Todd.
18 I'll take my 50 percent."

19 That can't be right. It's not right. Andy's
20 never been on my K-1, unless he typed it up this
21 morning himself.

22 It can't be the law. To be a member, you have to
23 have the official corporate documents: the tax
24 returns, the K-1, and more than a couple of e-mails
25 and a claim that I was key there.

1 But most importantly -- most importantly, this is
2 a plan and a scheme that's been going on by Luis
3 Endara for years in the alarm business. Get in; get
4 165,000/175,000 a year in income. When I build it up
5 a little bit, I get a W-2 wage. Those W-2s are in
6 there, aren't they?

7 W-2 wages that I get, I'm not the owner; I'm not
8 the owner. Go out there and just flash and burn with
9 this style on how he sells these accounts. Couple
10 lawsuits start coming in; employees start leaving;
11 liability starts coming along. Getting sued -- boom.
12 I'm gone. My new entity -- I'm out of here.

13 Never been on a tax return. You never saw me.
14 I'll tell you in my deposition I don't own the
15 business.

16 That's what this case is all about. It's not
17 2014. It's about years and years of a plan and a
18 scheme for him to avoid it.

19 Now, I'm getting ready to sit down. Mr. Sautter,
20 should he so choose, has a right to come back up
21 here. Think about this. You can't speak out loud.
22 Think about this.

23 I'm going to challenge him -- mostly his client --
24 to do this: show us one document, one statement,
25 since 2008 where Luis Endara says -- Luis Endara says

1 I'm the owner of Guardian/I'm the owner of AVSX.

2 Think about that when Mr. Sautter's up here. What
3 you need to do is to go in the back, get this case
4 over with, of what you've known, probably from the
5 first day: He's not a member. Decide for the
6 defendant. Get this case over with. Thank you.

7 THE COURT: Mr. Sautter ---

8 MR. SAUTTER: Thank you ---

9 THE COURT: --- briefly.

10 MR. SAUTTER: --- Your Honor.

11 THE COURT: Briefly.

12 MR. SAUTTER: Yes, sir.

13 REBUTTAL ARGUMENT BY MR. SAUTTER

14 MR. SAUTTER: Well, I think we'd all like to have
15 this case concluded. But I think it's more than a
16 snap that's going to get us all there -- at least I
17 hope so.

18 Boy, I guess basically what I -- what I would like
19 to remind y'all is it's not what I feel about Mr.
20 Ellis's exhibits that really counts. It's not what I
21 feel about their, you know, corporate filings that
22 really counts. It's what you feel about all of that
23 stuff.

24 I -- I'm not going to tell y'all what to do.
25 Y'all are 12 people. I -- you know, I can't. And if

1 I did, it -- it wouldn't -- it wouldn't work. Y'all
2 got to make your own decision.

3 But there -- there are a couple things that I just
4 can't -- can't help but not counter with what Mr.
5 Ellis said. One, that Mr. Luis Endara ran from
6 ownership to avoid liability. Who -- who kicked out
7 who? Who kicked out who? Who -- who did have that
8 ownership hat on? For all those years from 2008 to
9 2014, both of them.

10 Bobby kicked him out. "You don't exist to me
11 anymore." Those are harsh words. That's what
12 happened. He didn't run from anything.

13 And this tax-liability stuff. You know, Mark Zion
14 said 733 -- 733,000 tax liability that that's not
15 even considered on this -- on this chart. And I know
16 I'm writing on it. I mean, you could just divide
17 that in half and subtract it from whatever number --
18 what -- whatever number you choose to put on damages,
19 if you get to damages at all. That's your decision.

20 I didn't hear Mark Zion say that this approach was
21 ridiculous. I think he said -- and -- "generous" is
22 -- I think is what -- what his word was.

23 Mr. Ellis didn't ask Mr. Zion what his value of
24 the company was, because I think even applying a 1
25 point -- I don't know why -- I don't know why -- I

1 don't know. That's something that you're going to
2 have to decide.

3 As far as not having evidence, they control all
4 the evidence. They have it. He was on -- all that
5 evidence was on lockdown so he couldn't get it even
6 before Mr. Ellis's letter.

7 Mr. Ellis's letter is the thing that -- that
8 distanced Luis Endara from the business. And it
9 wasn't that he ran from liability. That's -- that
10 just one thing.

11 And then, why was he fired? Well, you know, you
12 heard it. Working out, laptops. You know, does that
13 add up?

14 Mr. Endara hasn't run from anything. Whatever
15 y'all decide, if there's an award, the -- whatever
16 happens in the tax arena will happen. But that's not
17 for y'all to decide today. If -- but if you want to
18 consider taking off half of 733 or -- that's fine.
19 It -- that's -- that's your decision.

20 You know, I -- I'm a little bit -- get it over
21 with just like that. Well, if we -- if -- if it
22 would've been that simple, we wouldn't be here.

23 And the reason why it's not that simple is it's
24 not what's on paper in an operational agreement,
25 because there is none. It's how they operated the

1 business. And that was a big -- big distinction.
2 That's the whole case. That's their whole defense.

3 Operationally -- and Mr. Ellis stated that
4 operationally, Luis had -- had that hat on. But
5 doesn't operationally equal operation, how that
6 business was operated? I mean, those are lawyer
7 words. And -- and -- and y'all -- you know, please
8 consider all that.

9 How was the business operated? And there's ample
10 evidence that you can make your decision from all of
11 that. I mean, there is a -- a -- the e-mail that
12 Luis says he's 50/50 and Bobby doesn't quarrel with
13 it, things of that nature: our history, our company.

14 You know, it -- you know, I ask you this: What --
15 where -- where -- where is Bobby Johnson on paper?
16 He's not -- I -- I guess he did -- he did sign some
17 of those documents. But he's not -- he's not on
18 paper any more than -- than Luis is on paper.
19 Because those papers don't really count as much as
20 the operation of the business, which is what we've
21 been doing for the last four -- four days to try to
22 show you -- show you how they operated. And -- and
23 an operation agreement is not required.

24 Okay. Bobby Johnson -- I called him as my first
25 witness. And I called him for a reason. I wanted

1 y'all to have all the information. I'm not hiding
2 from anything.

3 It's there. What were their responses? We've
4 talking about credibility and things of that nature.
5 Where's the beef? Where are all these -- you know,
6 what -- where is it?

7 How can you conclude that somebody is getting
8 ready to slash and burn or flash and burn your
9 business based on not going to work out? based on
10 going to Myrtle Beach and not working out? based on
11 all the things that Mr. Ellis and Mr. Johnson would
12 -- would urge you to agree on. It's just -- it's
13 just not there.

14 If there's something there -- you know, we're --
15 we've been faulted for not producing e-mails -- I'm
16 the owner; I'm the owner. I'm stomping my foot up
17 and down. I'm the owner -- from Luis Endara. But
18 that wasn't necessary.

19 They were brothers. And I think -- you know,
20 there's -- there's evidence of that that you can
21 consider.

22 Who distanced who, you know? Who -- who
23 wrongfully disassociated who?

24 You know, Luis didn't have any choice. The doors
25 were locked. Don't even contact them -- Mr. Ellis's

1 exhibit.

2 Anyway, that's all for y'all to determine. There
3 is -- you know, we are asking for his one-half value
4 of -- of -- of the interest -- his interest in AVSX,
5 if you determine he has it, if you determine what the
6 value is. We're asking for that.

7 But if you determine that -- you know, you -- you
8 can't determine that. We are also asking that you
9 consider whether -- or if anyone has been unjustly
10 enriched in this case. It's a legal equitable
11 doctrine that -- that is in this case.

12 Unjust enrichment -- who has the cake? Who's
13 still eating it? That's what I'm talking about.
14 Who's driving the \$160,000 Mercedes? Who is using
15 the business for all their expenses and all of their
16 family expenses? Whose family is still working for
17 AVSX?

18 If you don't recognize that he has a member or
19 ownership interest, I would ask you to consider how
20 much the Johnsons have been enriched. This might be
21 the number, \$620,000. Maybe you multiply it; maybe
22 you don't. That's the only number we have.

23 You know, to get -- to keep talking about, Well,
24 there was no -- he doesn't have a -- he doesn't have
25 a single K-1 in his name. Well -- well, the -- the...

1 -- the full -- the full version of the facts is
2 nobody from this company has a K-1 since 2011. I
3 think that's the -- the -- I think they filed 2010
4 taxes and that was it.

5 So all of that really hasn't been determined on
6 paper for tax purposes. So I mean, that's just what
7 your -- you guys are going to have to consider,
8 ladies and gentlemen.

9 Let me have my -- Mr. Reis. Let me just go -- go
10 to him. I -- I know his wife. She's active in his
11 business. But what was the testimony about Mary
12 Kay's involvement in -- in this business?

13 You've heard it. I won't -- I won't have to go
14 through it again. She knew very little about it.
15 And I think Mr. Ellis argued that she wasn't involved
16 until after Luis was -- and -- and that's -- and
17 that's supposed not to be an issue. That's something
18 that you're not supposed to consider.

19 You know, that's the biggest thing. You have to
20 consider everything. You have to consider the
21 evidence that's been submitted. You have to consider
22 the credibility of the witness. You have to consider
23 the intangible things. The -- you know, use your own
24 common sense.

25 That -- that's -- that's pretty much it. I -- I

1 can't tell you what to do. I can't tell anybody what
2 to do. I can present Mr. Endara's case, which --
3 which I -- I have done, with the help of my
4 associate, Michael Ellis. And that's all I can do.

5 The -- it started out as a journey between two
6 brothers. But where that journey -- the fork in the
7 road, after he was fired, that's what y'all are to
8 determine today. What effect did that have?

9 If he was an owner -- you know, and what damages
10 did he suffer, if you so decide that? Or who was
11 unjustly enriched after that? That's the fork in the
12 road. That's where the journey's over.

13 He didn't run from that. He didn't have any
14 choice.

15 So that's where we are today. We're -- we -- I
16 really appreciate your service. And thank you very
17 much.

18 THE COURT: All right. Ladies and gentlemen, you
19 all have heard all the testimony and arguments of
20 counsel. The only thing that remains is for me to
21 charge you on the applicable law.

22 Can you see if their lunch is here, please?

23 THE BAILIFF: Yes, Your Honor.

24 THE COURT: All right. I'm going to let you go to
25 the jury room and eat lunch. Do not discuss the

1 case. Do not discuss the case until you're
2 instructed to do so. I'll get you back out here as
3 quickly as possible.

4 Mr. Foreman, once everyone has eaten, if you'll
5 knock on the door and let them know when you all are
6 ready to return, we'll get you back in here as
7 quickly as possible, okay?

8 Everybody remain seated while the jury exits the
9 courtroom.

10 (Whereupon, the jury exited the courtroom at 1:17
11 p.m.)

12 (Off the record briefly.)

13 THE COURT: All right. Anything from plaintiff's
14 counsel before we stand down for a few -- a little
15 bit?

16 MR. SAUTTER: No, Your Honor.

17 THE COURT: Defense counsel?

18 MR. TODD ELLIS: Nothing, Your Honor.

19 THE COURT: All right. I am in the process of
20 going through this charge. What I am going to do is
21 once I finish hammering everything out, I will get --
22 do you all have access to e-mail as we're in here?

23 MR. MICHAEL ELLIS: Yes, sir.

24 MR. SAUTTER: Yes, sir.

25 MR. MICHAEL ELLIS: On our phones.

1 THE COURT: By laptop ---

2 MR. SAUTTER: On our ---

3 THE COURT: --- or pad?

4 MR. SAUTTER: --- on our smartphone.

5 MR. TODD ELLIS: Phone, for sure, Your Honor.

6 THE COURT: Okay. Let me see what I can do and
7 may get a hard copy. I don't mind you looking at it
8 on your phone. But it might just be easier for you
9 to look at it with a hard copy.

10 MR. TODD ELLIS: Certainly.

11 MR. SAUTTER: Thank you ---

12 THE COURT: Okay.

13 MR. TODD ELLIS: Probably ---

14 MR. SAUTTER: --- Your Honor.

15 MR. TODD ELLIS: --- would be. Thank you, Your
16 Honor.

17 THE COURT: All right. I'll -- we'll stand down.

18 MR. TODD ELLIS: Okay.

19 THE COURT: Let's reconvene about 20 till -- about
20 20 till.

21 MR. SAUTTER: Thank you, Your Honor.

22 THE COURT: Okay?

23 MR. TODD ELLIS: Yes, Your Honor. Thank you.

24 (Off the record from 1:19 p.m. until 1:47 p.m.)

25 THE COURT: Mr. Todd Ellis, you had objected to

1 this charge on the distributional interest on page 3
2 of 5.

3 MR.. TODD ELLIS: Yes, Your Honor.

4 THE COURT: And you referenced Section 702?

5 MR. TODD ELLIS: Yes, Your Honor.

6 THE COURT: 702 is quite lengthy. What -- what --
7 what plaintiff's counsel has cited here, 33-44-101(5)
8 and (6), is the definitional section for
9 distributional interest -- let me see --
10 distributional interest, as well as a distribution.
11 Defining distributional interest, as defined by the
12 code, means all the members' interest in
13 distributions by the limited liability company.

14 And it says: Distribution means a transfer of
15 money, property, or other benefit from a limited
16 liability company to a member in the member's
17 capacity as a member or to a transferee of the
18 member's distributional interest.

19 Let me ask you this: Would you -- would you agree
20 that (1) if plaintiff proves by a preponderance of
21 the evidence that, one, he's a member -- and my --
22 this is how the verdict form at the present reads.
23 First question: Do you, the jury, find by unanimous
24 consent that the plaintiff has proven by a
25 preponderance of the evidence that he was a member of.

1 this LLC? If yes, then they go to Question 2. If
2 they find no, that says: "Stop. Sign the verdict
3 form. Return the -- sign and date."

4 It -- if it's yes, you go to Question 2. Question
5 2 is: Do you find that the plaintiff has proven by a
6 preponderance of the evidence or by unanimous consent
7 -- find by unanimous consent that it is proven by a
8 preponderance of the evidence that he was wrongfully
9 disassociated from said LLC? If yes, they go to the
10 Question 3. If no, they sign, date, and come back.

11 Three, if they find yes to those two questions,
12 then it's a damages issue.

13 MR. TODD ELLIS: Yes, sir.

14 THE COURT: You agree with that?

15 MR. SAUTTER: Yes, sir.

16 MR. TODD ELLIS: All of that.

17 THE COURT: Okay.

18 (Whereupon, Mr. Sautter and Mr. Michael Ellis
19 conferred.)

20 MR. SAUTTER: But Judge, we -- we have made that
21 claim for unjust enrichment. And that needs to be on
22 there somewhere.

23 MR. TODD ELLIS: Yeah. I ---

24 THE COURT: And that's part of the charge.

25 MR. TODD ELLIS: I was, worried, Your Honor, the

1 way that -- that -- not intentionally and maybe I'm
2 wrong. But I -- the way I thought Mr. Sautter argued
3 that was not the law. And I -- I'm concerned about
4 how it's going to be ---

5 THE COURT: Well, I'm going to ---

6 MR. TODD ELLIS: He ---

7 THE COURT: --- tell -- I mean, if I -- if I'm
8 charging it, it's what I tell them the law is, not
9 what he ---

10 MR. TODD ELLIS: I know, Your Honor.

11 THE COURT: --- he tells them.

12 MR. TODD ELLIS: I -- I guess I wanted to make it
13 clear. He argued that they could -- even if they
14 found he was not a member, they could give him unjust
15 enrichment. I think they still have to find that
16 he's a member to give him some -- even if it's not
17 disassociational ---

18 THE COURT: Well, I don't know that they have to.
19 I mean, they could find that he's ---

20 MR. TODD ELLIS: Or I ---

21 MR. SAUTTER: Judge, I'm okay with that. I'm okay
22 with the ---

23 (Whereupon, Mr. Sautter and Mr. Michael Ellis
24 conferred.)

25 MR. SAUTTER: I -- I -- I don't agree with that.

1 Mr. ---

2 MR. TODD ELLIS: It's on the record, Your Honor.

3 MR. WEBB: Yeah. Too late now.

4 MR. SAUTTER: Mr. -- Mr. Mike Ellis has just
5 reminded ---

6 MR. TODD ELLIS: That's ---

7 MR. SAUTTER: --- me that -- that they are
8 exclusive; that -- that plaintiff cannot have a
9 double ---

10 MR. TODD ELLIS: No ---

11 MR. SAUTTER: --- recovery ---

12 MR. TODD ELLIS: --- no, no, no, no.

13 MR. SAUTTER: --- but that -- that if they find
14 he's not a member, they could ---

15 MR. TODD ELLIS: Right.

16 MR. SAUTTER: --- still find that he's unjustly
17 enriched or -- that -- that the defendant is unjustly
18 enriched.

19 MR. TODD ELLIS: I -- then, I totally disagree
20 with that charge.

21 THE COURT: Well, you didn't object to it earlier.

22 MR. TODD ELLIS: Your Honor, because it -- yeah.
23 Yeah. That's right. Now I'm getting on the one ---

24 THE COURT: Yeah.

25 MR. TODD ELLIS: Your Honor, I think they have to

1 find he's a member. They -- what the difference is,
2 is that they may not find he's entitled to some
3 distributional interest, disassociated interest. But
4 they could say he's unjustly enriched. That's why I
5 had consented to it before. It can be done -- he
6 still has to be a member.

7 That's saying -- that would be saying that -- that
8 the jury could find is if he's an employee, he's
9 entitled to unjust enrichment.

10 THE COURT: Say that again?

11 MR. TODD ELLIS: That would be saying even if you
12 find he's an employee, he's entitled to money for the
13 work he did. That's what that's saying.

14 THE COURT: Well, let me ask you this, Mr.

15 Sautter: I mean, if they find he's an employee, as
16 Mr. Todd Ellis has asserted here, why would he be
17 entitled to ---

18 (Whereupon, Mr. Sautter and Mr. Michael Ellis
19 conferred.)

20 MR. SAUTTER: The -- the unjust-enrichment claim
21 takes care of all the equitable claims which we've
22 pled in our complaint: estoppel and equitable --
23 resulting trust and constructive trust and that --
24 and that matter.

25 MR. TODD ELLIS: All of which, Your Honor,

1 requires a finding that he's a member of the LLC.
2 That's all my point -- I -- I assumed you'd be
3 reading it, inserting "should you find, here's his
4 associated interest." You can't -- I guess I was
5 assuming they can't make that interest calculation;
6 what's the unjust enrichment.

7 (Whereupon, Mr. Sautter and Mr. Michael Ellis
8 conferred.)

9 MR. TODD ELLIS: I -- I mean, there's -- there's

10 ---

11 THE COURT: Well, let ---

12 MR. TODD ELLIS: --- no way ---

13 THE COURT: --- me ask you this, Mr. Sautter. And
14 maybe it's just been so long that I've forgotten. I
15 mean, is -- is it your position that a jury can award
16 damages in equity, as well as in -- in -- in
17 conjunction with a -- it seems to me like you got to
18 choose.

19 MR. TODD ELLIS: Your -- Your ---

20 MR. SAUTTER: Well, if -- if -- if there's an
21 award of ---

22 THE COURT: I mean, you ---

23 MR. TODD ELLIS: Your Honor ---

24 MR. SAUTTER: That -- and that's probably --
25 that's probably Mr. Ellis's point right there, that

1 if they find he's not a member, then that might be
2 the only relief he would ever be entitled to.

3 THE COURT: Well, I mean ---

4 MR. TODD ELLIS: Your -- Your Honor, you're right.
5 I haven't argued that. It's ---

6 THE COURT: I mean, it ---

7 MR. TODD ELLIS: --- choice of remedy. It's at
8 the stage of ---

9 THE COURT: Well ---

10 MR. TODD ELLIS: --- the case where he's to got to
11 choose the remedy.

12 THE COURT: And -- and it goes to also -- and --
13 and I tend to -- without looking at something any
14 further at this point, tend to agree with Mr. Todd
15 Ellis on the fact that if he's not a member, then,
16 you know, we're an at-will state, right?

17 MR. SAUTTER: Yes, sir.

18 THE COURT: Okay? And which means you can -- you
19 can fire for any reason or no reason, which how would
20 -- if he's -- if he's not a member, how would he be
21 entitled to -- I mean, it -- it -- it would open the
22 door for so many other employees to come in here at
23 that point and say: "Well, I benefitted that company
24 and it's unjust enrichment for them; they shouldn't
25 have gotten rid of me."

1 MR. SAUTTER: That's right.

2 THE COURT: That make sense?

3 MR. SAUTTER: Yes, sir.

4 THE COURT: So I don't think you're entitled to
5 that unless they find he's a member.

6 MR. SAUTTER: Your Honor, can ---

7 THE COURT: I -- I -- I mean -- I mean, I'm -- I'm
8 asking you to try to help me out here a little bit on
9 that.

10 MR. SAUTTER: Oh, I -- I am. And -- and Mr. --
11 Mr. Ellis -- Mr. Michael Ellis would like to address
12 the Court, if that's -- if that's okay.

13 THE COURT: Yes, sir.

14 MR. MICHAEL ELLIS: And -- and, Your Honor, we
15 believe that they are mutually exclusive remedies.
16 If he -- if he wins on his legal claim, he gets
17 damages under that. And unjust enrichment is left to
18 the side.

19 But we claim that if he does not prevail on his
20 legal claim, he still has his equitable claims to
21 recover damages for.

22 THE COURT: You you're not answering ---

23 MR. MICHAEL ELLIS: Well ---

24 THE COURT: --- my ---

25 MR. MICHAEL ELLIS: --- well ---

1 THE COURT: --- question, though.

2 MR. MICHAEL ELLIS: Well -- and ---

3 THE COURT: Get -- get to my question ---

4 MR. MICHAEL ELLIS: I'm sorry ---

5 THE COURT: --- please.

6 MR. MICHAEL ELLIS: --- Your Honor. We -- we did

7 -- we did allege in our complaint resulting trust.

8 There was testimony throughout the trial of how Mr.

9 Endara did make capital contributions in money. He

10 also made sweat-equity contributions throughout it.

11 It resulted in Mary Kay, if we fail on the legal

12 claim, becoming the legal owner. So he bought and

13 placed in legal name with Mary Kay, but the whole

14 time, retained that benefit. So it -- it -- if -- if

15 -- the unjust enrichment takes care of our resulting-

16 trust claim. He -- he bought ---

17 THE COURT: I mean, I understand ---

18 MR. MICHAEL ELLIS: --- for another ---

19 THE COURT: --- what you're saying.

20 MR. MICHAEL ELLIS: Okay.

21 THE COURT: I understand what you're saying.

22 MR. TODD ELLIS: Your -- Your Honor ---

23 THE COURT: You're ---

24 MR. TODD ELLIS: --- your -- your instinct was

25 right. I may be dating back to law school. And I'm

1 thinking it's time to elect your remedy. You got to
2 go.

3 THE COURT: Well, I mean, it -- it -- it -- it's
4 just ----

5 MR. TODD ELLIS: Still got to find he's got to be
6 a member.

7 MR. MICHAEL ELLIS: And we're ---

8 THE COURT: Would it ---

9 MR. MICHAEL ELLIS: --- not asking for double
10 recovery. It's one -- either/or.

11 THE COURT: I mean, would that not have been a --
12 maybe a conversion action?

13 MR. SAUTTER: Yes, sir.

14 MR. MICHAEL ELLIS: It's -- we have constructive
15 trust alleged as well, that through the actions of
16 defendants, they -- they obtained legal title and
17 they must therefore hold it in trust for plaintiff.

18 THE COURT: Well, let me ask you this: I mean, I
19 heard no -- I mean, I heard testimony as to what he
20 did in helping start: computers and -- and maybe
21 some other stuff. Correct? You ---

22 MR. TODD ELLIS: You ---

23 THE COURT: --- agree with ---

24 MR. TODD ELLIS: --- you ---

25 THE COURT: --- that, Mr. Todd Ellis?

1 MR. TODD ELLIS: Absolutely.

2 THE COURT: I didn't -- do not recall hearing any
3 specific financial contributions -- what -- did -- or
4 did I -- am I missing that?

5 (Whereupon, Mr. Sautter and Mr. Michael Ellis
6 conferred.)

7 MR. MICHAEL ELLIS: Your Honor, it's -- the
8 startup money for Protection24, LLC, that -- that ---

9 THE COURT: Was there ---

10 MR. MICHAEL ELLIS: --- was the ---

11 THE COURT: --- any money?

12 MR. MICHAEL ELLIS: --- was the startup ---

13 THE COURT: Okay.

14 MR. MICHAEL ELLIS: --- for Guardian ---

15 THE COURT: My ---

16 MR. MICHAEL ELLIS: --- was financed by Mr.
17 Endara.

18 THE COURT: Was there any testimony as to how much
19 that was?

20 MR. MICHAEL ELLIS: There was not an amount that
21 testified ---

22 THE COURT: Okay. Well ---

23 MR. MICHAEL ELLIS: --- but he did testify that he
24 -- he was the -- he provided the startup money for
25 that company.

1 THE COURT: All right. Well, there's got to be
2 some testimony to that, I would think. Otherwise,
3 you're asking me to let them speculate as to that or
4 guess as to that, which the law prohibits the Court
5 from submitting speculative or theoretical amounts or
6 damages. You don't have to prove it to a
7 mathematical certainty, but there's got to be some
8 evidence or testimony to that value.

9 MR. MICHAEL ELLIS: And -- and ---

10 THE COURT: You agree ---

11 MR. MICHAEL ELLIS: --- Your Honor ---

12 THE COURT: --- with that or disagree with that?

13 MR. MICHAEL ELLIS: I -- I don't disagree that
14 speculative damages -- I don't disagree that
15 speculative damages can be presented to the jury. I
16 agree that speculative damage shouldn't go to the
17 jury.

18 But under the theory of constructive-resulting
19 trust, he created the corpus of the trust account.
20 He created the sweat equity that helped that ---

21 MR. TODD ELLIS: Your Honor ---

22 MR. MICHAEL ELLIS: --- grow to the amount of the
23 2014 returns that grew to the same amount as his
24 claim under his legal theory.

25 THE COURT: And -- and I don't -- but there's been

1 absolutely no testimony as to the value of that. I
2 mean, you -- you're asking -- how -- how is a jury to
3 come to a conclusion as to money damages on that,
4 when there's been absolutely no testimony on it?

5 MR. MICHAEL ELLIS: Based upon the 50 percent
6 ownership that he claimed while on the stand.

7 THE COURT: But that -- that ---

8 MR. TODD ELLIS: That's double ---

9 THE COURT: --- claim ---

10 MR. TODD ELLIS: --- recovery.

11 THE COURT: --- is as a member.

12 MR. TODD ELLIS: Yeah. Your Honor, I -- I mean, I
13 -- I don't -- I can't even believe we're getting this
14 far, because Protection24 was a total separate entity
15 that closed down before this entity was ever ---

16 THE COURT: Well, I mean ---

17 MR. TODD ELLIS: --- brought ---

18 MR. SAUTTER: Your Honor, we -- we withdraw our --
19 our ---

20 THE COURT: I -- I'm not so much worried about
21 that, because there's been testimony that
22 Protection24 to Guardian to AVX -- I mean, I think
23 all of that's so convoluted to some extent. And
24 there was testimony as to when it happened and that
25 kind of stuff. You know, but there was testimony

1 that Guardian took over Protection24's accounts,
2 etc., etc. ---

3 MR. TODD ELLIS: Uh-huh. Uh-huh.

4 THE COURT: --- and that rolled back into AVX,
5 same type of stuff.

6 MR. TODD ELLIS: Yes, Your Honor.

7 THE COURT: So, I mean, I'm not -- that's not an
8 issue to me.

9 MR. SAUTTER: Your Honor ---

10 THE COURT: Mr. ---

11 MR. SAUTTER: --- I -- I agree with the Court's
12 analysis that he would have to be a member to be
13 entitled to any relief under the case that we've
14 tried today.

15 THE COURT: I mean ---

16 MR. SAUTTER: And I'd like ---

17 THE COURT: --- you mean the last four days?

18 MR. SAUTTER: Yes, sir. Yes, sir.

19 THE COURT: All right. Now, this gets into my
20 damages issue, okay, which I was -- before we got off
21 on the unjust enrichment, Mr. Todd Ellis ---

22 MR. TODD ELLIS: Yes.

23 THE COURT: --- referenced Section 702. As I said
24 a minute ago, I've looked at 702. And 702 is quite
25 lengthy.

1 And what I think -- I think you have to look at
2 701 as well, okay? Because in essence, plaintiff is
3 asking for this company to purchase his
4 distributional interest. Is that right or wrong?

5 MR. SAUTTER: Yes, sir.

6 THE COURT: Mr. Todd?

7 MR. TODD ELLIS: Absolutely.

8 THE COURT: Okay.

9 MR. TODD ELLIS: Yes, Your Honor.

10 THE COURT: And it says in Subsection (a) of 33-
11 44-701 (As read): "A limited liability company shall
12 purchase a distributional interest of a: (1) a
13 member of an at-will company for its fair value
14 determined as of the date of the member's
15 disassociation if the member's disassociation does
16 not result in -- in a dissolution and winding up of
17 the company's business . . ."

18 I think that's where we start with damages, right
19 there. If you find he's a member, boom, you go to
20 the next. If you find he was wrongfully
21 disassociated, boom, you go to the next, which is the
22 damages here.

23 The law requires that a limited liability shall --
24 company shall purchase his distributional interest,
25 as I just said, with regards to that. And that goes

1 -- and I hadn't heard anything otherwise. But I
2 assume this is an at-will -- I'll -- well, I looked
3 at the documents. It's an at-will LLC.

4 MR. TODD ELLIS: Correct, Your Honor.

5 THE COURT: It's an at-will LLC. I looked at the
6 exhibits this morning.

7 So I think you stop there. Let's see.

8 MR. TODD ELLIS: 702(a)(1), Your Honor. I see
9 your -- where you're going. I think that's ---

10 THE COURT: Right.

11 MR. TODD ELLIS: --- 702(a)(1) is when you go
12 there then.

13 THE COURT: Yeah. That's when you go over to
14 702(a)(1).

15 MR. TODD ELLIS: Yeah.

16 THE COURT: All right. Which should read: "In
17 determining the fair value of a distributional
18 interest in a -- in a -- in a -- in an LLC" -- skip
19 "the Court shall" ---

20 MR. TODD ELLIS: Uh-huh.

21 THE COURT: --- "you, the jury, must determine the
22 fair value of the interest, considering, among --
23 among other relevant evidence, the going-concern
24 value of the company and any agreement among some or
25 all of the members, fixing the price or specifying a

1 formula for determining the value of "distributional
2 interest" ---

3 MR. TODD ELLIS: You know, there's just been no
4 evidence of any of the other stuff, but ---

5 THE COURT: Right.

6 MR. TODD ELLIS: --- I -- yeah. So either you
7 could stop there or ---

8 THE COURT: Right there.

9 MR. TODD ELLIS: Yeah. And -- and ---

10 THE COURT: And I think that's it ---

11 MR. TODD ELLIS: Yes, sir.

12 THE COURT: --- on damages.

13 MR. TODD ELLIS: I have no objection.

14 MR. MICHAEL ELLIS: No objection from plaintiff,
15 Your Honor.

16 THE COURT: Okay.

17 MR. TODD ELLIS: Yeah. Your Honor, the -- the 701
18 portion, I think, does not state wrongful
19 disassociation. If the Court would include exactly
20 the terms ---

21 THE COURT: Well, I don't know -- let's see. If
22 they find he's a -- a -- a member, okay, which --
23 which is in my first interrogatory on the verdict
24 form, and they find he was wrongfully disassociated,
25 then that's -- that's -- I mean, that's together

1 already.

2 MR. TODD ELLIS: Already. Included ---

3 THE COURT: So -- so I -- they don't even get to
4 this part on buying distributional interest unless
5 they've already found it was wrongful.

6 MR. TODD ELLIS: Yes, Your Honor. I just didn't
7 have 701 in front of me, so I'm a little less secure
8 about it.

9 THE COURT: You want to look at it?

10 MR. TODD ELLIS: Yes, sir.

11 THE COURT: I mean, this is mine. I went to my
12 office last night and got this, because I couldn't
13 find an updated code in this courthouse, Mr. Truitt
14 ---

15 DEPUTY CLERK OF COURT: Yes, sir.

16 THE COURT: --- okay?

17 DEPUTY CLERK OF COURT: I'll see ---

18 MR. SAUTTER: Judge, that's what ---

19 DEPUTY CLERK OF COURT: --- what I can do about
20 that, sir.

21 MR. SAUTTER: Judge, that's why ---

22 THE COURT: Well ---

23 MR. SAUTTER: --- I was late coming back from
24 lunch. I had to go to my buddy's law office in
25 Columbia ---

1 THE COURT: Well, I mean ---

2 MR. SAUTTER: --- to get one.

3 THE COURT: --- I -- you know, computers are
4 great. But I want the hard copy in my hand so I can
5 flip the pages and -- and go back and forth with that
6 stuff.

7 Individuals such as my law clerk, that they really
8 never looked at books but looked at computers the
9 whole time, it probably don't matter to them. But
10 those of us who ---

11 MR. SAUTTER: Scrollers.

12 THE COURT: --- have seen both sides like to have
13 it in your hand.

14 (Off the record briefly.)

15 MR. TODD ELLIS: Your Honor, I would still ask
16 that it's perfect with the exception that I -- I was
17 -- I -- I think that reads that they're allowed to do
18 that. And ---

19 THE COURT: Well, if ---

20 MR. TODD ELLIS: --- if -- if you ---

21 THE COURT: --- they find he's a member, they have
22 to do it under the law, whether it's wrongful or not.

23 MR. TODD ELLIS: All I'm asking -- and asking --
24 is that if you put it at the beginning of that very
25 exact charge in that sentence, if you have so found

1 it was a wrongful disassociation, the -- and then
2 start into that sentence. Even though it's a second
3 part ---

4 (Off the record briefly.)

5 MR. MICHAEL ELLIS: And -- and, Your Honor, we
6 would agree that regardless, wrongful or rightful,
7 he's still entitled to his 50 percent distributional
8 interest as a member, if he's found to be a member.

9 THE COURT: Do -- do what, now?

10 MR. MICHAEL ELLIS: We ---

11 THE COURT: Either ---

12 MR. MICHAEL ELLIS: --- we ---

13 THE COURT: --- wrongful or rightful, you say he's
14 entitled to something?

15 MR. MICHAEL ELLIS: To his 50 percent -- if -- if
16 he's found to be a 50 percent owner, he's entitled to
17 his 50 percent membership interest -- distributional
18 interest.

19 MR. TODD ELLIS: You know that's true, Your Honor.

20 THE COURT: Yeah. And -- and then, they have to
21 determine what -- what that is.

22 MR. TODD ELLIS: You -- you can strike that
23 language. I just ask that if you so choose -- I
24 don't think it has to be found -- I think if ---

25 THE COURT: Well, let -- let me -- that's ---

1 MR. TODD ELLIS: Right.

2 THE COURT: --- that's interesting. I mean, I
3 appreciate you bringing that up. If you find he's a
4 member, does that not negate whether it was wrongful
5 or not, based -- I mean, they got to -- if he's a
6 member, then they got to purchase it, whether it was
7 a wrongful disassociation or not.

8 MR. TODD ELLIS: Well, that's what gets back to my
9 -- my problem with which calculation that we're
10 using. Because I think only 702 can be allowed to be
11 used when a court action to determine the fair market
12 value and not distributional interest. And so
13 sliding into 701 may be -- I mean, they have sued for
14 fair market value of the distributional interest.

15 THE COURT: Uh-huh.

16 MR. TODD ELLIS: Because he was wrongfully -- no.
17 He -- he -- Your Honor, he has to be both. He -- he
18 has to be a member and wrongfully disassociated.
19 He's not necessarily ---

20 THE COURT: Well, if -- if he's not wrongfully
21 disassociated and they certainly could've sued him
22 for wrongful ---

23 MR. TODD ELLIS: Exactly.

24 MR. MICHAEL ELLIS: Damages.

25 THE COURT: --- disassociation.

1 MR. MICHAEL ELLIS: And -- and, Your Honor, it is
2 plaintiff's position that -- that wrongful
3 dissociation is something that still needs to be
4 found -- or decided upon. It does open up other
5 things, such as attorneys' fees. So -- so I -- I --
6 we believe that regardless if it's wrongful or
7 justified, I guess, would be the other word, he's
8 still entitled to his 50 percent interest. But we
9 would ---

10 MR. TODD ELLIS: No.

11 MR. MICHAEL ELLIS: --- still prefer ---

12 THE COURT: Well ---

13 MR. TODD ELLIS: No, it's not.

14 MR. MICHAEL ELLIS: --- to -- a finding, if it was
15 wrongful or not.

16 THE COURT: All right. I'm going to leave the
17 verdict form as I said earlier. I'm going to leave
18 that as is.

19 MR. SAUTTER: Would there ---

20 MR. MICHAEL ELLIS: Your Honor ---

21 MR. SAUTTER: Would that include unjust
22 enrichment, Your Honor, after they find -- find -- if
23 they find he's a member but ---

24 MR. TODD ELLIS: You're not putting that ---

25 THE COURT: Sir?

1 MR. TODD ELLIS: You're going to put a separate
2 cause of action for unjust enrichment on the verdict
3 form?

4 (Off the record briefly.)

5 THE COURT: Let -- let me ask you this, Mr.
6 Sautter.

7 MR. SAUTTER: Yes, sir.

8 THE COURT: You're asking about this unjust
9 enrichment. I mean, isn't that what we talked about
10 ten minutes ago? And I thought you said you were
11 withdrawing that.

12 MR. SAUTTER: Well, if ---

13 THE COURT: Did I misunderstand that?

14 MR. SAUTTER: No. I -- I -- I concede that --
15 that in order to avail himself of unjust enrichment,
16 he would have to be found to be a member and the jury
17 would have to award no damages for dissociation or
18 wrongful -- maybe it's all part of it, Judge.

19 THE COURT: Well, let me ask this question: Say a
20 jury finds him not wrongfully -- say they find him as
21 a member, all right?

22 MR. TODD ELLIS: But -- but not wrongfully
23 disassociated. I get ---

24 THE COURT: That's right.

25 MR. TODD ELLIS: --- where you're going.

1 THE COURT: Does that, then, fall to the Court to
2 determine what his distributional interest is?

3 MR. SAUTTER: (No audible response.)

4 THE COURT: Now, these statutes are somewhat
5 convoluted. And like I said yesterday, I mean, I --
6 it's not a lot of case law out ---

7 MR. TODD ELLIS: No, there's ---

8 THE COURT: --- there ---

9 MR. TODD ELLIS: --- nothing. There's nothing.

10 THE COURT: --- on these ---

11 MR. TODD ELLIS: No. But ---

12 THE COURT: --- LLCs.

13 THE COURT: --- nobody's faulting anybody for
14 that. Well, first -- first of all, I'd go back with
15 regard -- let's see if we can clean up unjust
16 enrichment, in my opinion.

17 You -- your -- your point is you've had no
18 evidence of that. I don't think they can be charged.
19 I don't think they could be on the -- the form. And
20 frankly, I -- I would say this to ---

21 THE COURT: Go ahead. I'm listening.

22 MR. TODD ELLIS: I would say this to Mr. Sautter,
23 too, Your Honor, in that I -- I think we're all in
24 trouble if we -- if we monkey up that verdict form.
25 Because it -- it's just going to go bad on us. And I

1 think we're looking at a -- you have to choose the
2 remedy at one point. The evidence might be there. I
3 think this is the time you have to elect that.

4 I've had multiple causes of action that I can go
5 -- you can go to the jury on, but you whittle them
6 down and choose ---

7 THE COURT: Well ---

8 MR. TODD ELLIS: --- at this ---

9 THE COURT: --- why ---

10 MR. TODD ELLIS: --- time.

11 THE COURT: --- why don't we do this. I -- I
12 think this is the appropriate thing to do. Make it a
13 four-interrogatory verdict form. It addresses: (1)
14 if he's a member; (2) if he was wrongfully
15 disassociated, which goes into what you've asked
16 about attorneys' fees, okay, and other costs; (3)
17 whether or not he was properly disassociated; and
18 then, (4) damages.

19 That allows them to answer each of those
20 interrogatory questions. If they find he was
21 wrongfully disassociated and they skip to -- to the
22 damages issue; if they don't find he's wrongfully
23 disassociated, then they can find that he was
24 disassociated. And the law requires that his
25 interest be purchased. And that lets them affix that

1 value for the purchase price.

2 I think that's the appropriate way to do it.

3 Y'all want to talk about it a second? Do so.

4 MR. TODD ELLIS: Well ---

5 THE COURT: But I don't think unjust enrichment
6 goes back there. I think it's -- at this point, it's
7 speculative because it -- while there was testimony
8 that, you know, he did -- your client did some up-
9 front stuff and some money went in, but there was
10 nothing in specifics on that. And it'd simply be
11 speculation and guess for this jury to affix some
12 figure to that, when there hadn't been any testimony
13 to it.

14 MR. TODD ELLIS: Your Honor, I -- I think we at
15 least feel good enough about that approach. Can you
16 type that -- can y'all type that up and ---

17 THE COURT: He's working on it right now.

18 MR. TODD ELLIS: Okay. If you can do that --

19 THE BAILIFF: It's ready, Your Honor.

20 THE COURT: Okay. Me too. I'm -- I'm just trying
21 to get us all ready.

22 THE BAILIFF: Okay.

23 THE COURT: All right.

24 (Off the record from 2:14 p.m. until 2:53 p.m.)

25 THE COURT: All right. There are some changes

1 that I made on this jury charge. Let's see. All
2 right. On page 9 -- I know your pages aren't
3 numbered. I went back and numbered mine. Page 8 has
4 at the top -- or near the top "limited liability
5 company."

6 MR. TODD ELLIS: Yes, sir.

7 THE COURT: All right. The next page -- next-to-
8 the-last -- or next-to-the-last -- well, the last
9 full paragraph on that page, where it says ". . . a
10 plaintiff has proven by a preponderance of the
11 evidence . . ." -- y'all with me?

12 MR. SAUTTER: Yes, sir.

13 MR. TODD ELLIS: Uh-huh.

14 THE COURT: Next sentence I've put: "Plaintiff
15 must then prove by a preponderance of the evidence
16 whether he was wrongfully disassociated from the
17 LLC." Okay?

18 MR. TODD ELLIS: Yes, sir.

19 THE COURT: Disassociated LLC -- the next page,
20 which is page 10, last paragraph before damages: "If
21 you, the jury, find that plaintiff was a member of
22 the AVSX Technologies LLC . . ." strike through the
23 next 2 1/4 line; skip down; it says: ". . . then you
24 must determine whether or not plaintiff's
25 disassociation was wrongful."

1 MR. TODD ELLIS: Oh. I see. Yes.

2 THE COURT: And -- and that's a -- you know, and
3 stop there, not wrongfully disassociated, dah, dah,
4 dah, dah, dah. But -- y'all with me on that?

5 MR. TODD ELLIS: Yes, sir.

6 MR. MICHAEL ELLIS: So -- so ---

7 THE COURT: All right. Now, when you get into
8 damages, there's a comma placed on second line under
9 damages. But when you skip over to page 11, about
10 midway, that second -- where it starts "Ladies and
11 gentlemen, the plaintiff must prove by a
12 preponderance or greater weight . . ." I've stricken
13 that.

14 Because I've already said it -- should've --
15 should've already said that they got to -- he's got
16 to -- yeah -- prove his damages by a preponderance of
17 the evidence. So it just starts there: "This does
18 not mean that plaintiff must prove damages to a
19 mathematical certainty or produce the exact
20 amount . . ." -- I mean, it just reads the rest of
21 that. Okay?

22 MR. TODD ELLIS: Yes, Your Honor.

23 THE COURT: And I -- that was all the changes I
24 had. Any ---

25 MR. TODD ELLIS: Your Honor, I -- I had one

1 request; spoke to Mr. Sautter about it. He didn't
2 have an objection. I ---

3 THE COURT: Okay.

4 MR. TODD ELLIS: --- if you -- it is on that same
5 page 9 you were working on before.

6 THE COURT: All right.

7 MR. TODD ELLIS: The very top of the page, just

8 ---

9 THE COURT: I put corporate filings in there.

10 MR. TODD ELLIS: Did you ---

11 THE COURT: And that's what you -- I mean ---

12 MR. TODD ELLIS: Yes.

13 THE COURT: --- I've -- I've written it in here.
14 And I failed to mention that. But I'd already -- is
15 that what you were talking about?

16 MR. TODD ELLIS: It -- it is, Your Honor.

17 THE COURT: Okay.

18 MR. TODD ELLIS: We -- we ---

19 MR. SAUTTER: One part of it.

20 MR. TODD ELLIS: We -- we thought it would be more
21 -- more clarifying and we don't -- if we -- if you
22 said there is no writing -- there is no written
23 agreement, you may consider, among other things --
24 and then go into corporate documents and corporate
25 filings, course of dealing.

1 THE COURT: Okay.

2 MR. TODD ELLIS: I think that lets the list be
3 read out.

4 MR. MICHAEL ELLIS: I think ---

5 MR. TODD ELLIS: And then ---

6 MR. MICHAEL ELLIS: --- I think the end of the
7 sentence needs to be changed, just sounded like a bad
8 sentence then -- the "are relevant to determine."

9 MR. TODD ELLIS: Why?

10 THE COURT: Well, just strike through it. "You
11 may consider, among other things, corporate
12 documents, course of dealing, each of which may be
13 relevant to determine the meaning of the agreement."
14 How ---

15 MR. TODD ELLIS: But ---

16 THE COURT: --- about that?

17 MR. TODD ELLIS: --- I thought you were going to
18 put corporate filings in there.

19 THE COURT: I did.

20 MR. TODD ELLIS: Oh.

21 THE COURT: I didn't say it, but it's ---

22 MR. TODD ELLIS: Okay.

23 THE COURT: --- in there.

24 MR. TODD ELLIS: Yes, sir. That's -- that's
25 great. Yes, Your Honor. Thank you. That was it.

1 THE COURT: All right. Everything else look okay?

2 MR. SAUTTER: Judge, I -- I would like to make an
3 objection on the record about the failure to include
4 unjust enrichment and the -- that on the verdict
5 form.

6 THE COURT: All right.

7 MR. SAUTTER: And I -- I mean, I'd just state it.
8 That -- I -- I ---

9 MR. TODD ELLIS: She's on.

10 MR. SAUTTER: She's on the record?

11 THE COURT: Are we on the record, Maryann?

12 THE COURT REPORTER: Yes, sir.

13 THE COURT: Yeah. She's on.

14 MR. SAUTTER: Your Honor -- Your Honor, objections
15 to the -- to your charges to predict -- to protect
16 the record: I -- I would just object to not
17 including in the jury charges the unjustment --
18 unjust-enrichment cause of action or, you know,
19 elements of the unjust enrichment.

20 As to the verdict form, if we're there already, I
21 would just request that unjust enrichment be included
22 somewhere in there when the -- when the -- when the
23 jury is considering -- considering damages, just for
24 the record, Judge.

25 THE COURT: Well, I mean, I'm just trying --

1 listen, I want it right. And I'm just trying to
2 think. I just don't see how it's applicable. And --
3 and if they -- and -- and the reason I say it is
4 this: One -- and I've already put
5 -- said this on the record -- if the jury finds he is
6 not a member, it's your position that he's -- that --
7 that unjust enrichment still ought to be considered.
8 Okay?

9 And as I've previously said, we're an at-will-
10 employee state. And that would open up, in the
11 Court's opinion, Pandora's box, so to speak, as for
12 every employee to be able to come in and say, "Well,
13 they were unjustly enriched because of all the work
14 that I did and performed for that company while I was
15 employed there."

16 Now, you know, there -- it may have been a
17 situation, like I said before, wherein a conversion
18 cause of action may have been a viable cause of
19 action, had there been testimony -- specific
20 testimony as to money put in, the amount -- I mean,
21 there was testimony that there was money and
22 equipment. But there was no testimony as to the
23 value of any of that.

24 And so I just -- I respectfully disagree with you.
25 And -- but your objection is so noted for the record.

1 MR. SAUTTER: Thank you, Your Honor.

2 THE COURT: Okay. Anything else? I'm afraid to
3 ask that question. But anything else?

4 MR. SAUTTER: Not from the plaintiff ---

5 MR. TODD ELLIS: Nothing ---

6 MR. SAUTTER: --- Your Honor.

7 MR. TODD ELLIS: --- from the defendant, Your
8 Honor.

9 THE COURT: Please, sir, bring me the jury.

10 THE BAILIFF: Bring them in. Okay.

11 (Off the record briefly.)

12 THE COURT: I'm going to tell them I don't give
13 them -- usually give cases beyond three o'clock, and
14 I'm going to do my best in four minutes to give them
15 this charge.

16 (Whereupon, the jury entered the courtroom at 3:01
17 p.m.)

18 THE BAILIFF: Jury is present, Your Honor.

19 THE COURT: Thank you very much. All right.

20 Ladies and gentlemen, I'm sure you all were sitting
21 back there wondering if we'd ever get to this point.
22 But I promise you, we are now at the point that I can
23 charge you on the law in this case.

24 CHARGE OF THE COURT

25 THE COURT: As I've said before, you've heard all

1 the evidence and arguments of the parties. I am now
2 going to explain to you the law which is applicable
3 to this case.

4 In this case, ladies and gentlemen, the plaintiff
5 claims that he was a member of AVSX Technologies,
6 LLC, and that he was wrongfully disassociated from
7 such LLC. Plaintiff further claims that he is
8 entitled to a distributional interest in AVSX
9 Technologies, LLC. Plaintiff must prove the claim by
10 a preponderance, or greater weight, of the evidence.
11 I will discuss the plaintiff's burden of proof in
12 further detail later in this instruction.

13 Now, as I give you these instructions, I want you
14 to understand, ladies and gentlemen, that when I use
15 the word plaintiff, I refer to Mr. Luis Endara.
16 Likewise, when I use the word defendants, I am
17 referring to AVSX Technologies, LLC, Bobby Johnson,
18 and Mary Kay Johnson.

19 Now, during this trial you and I have had separate
20 duties to perform. As the trial judge, it is my
21 responsibility to preside over this trial. And I
22 also have the duty to rule upon the admissibility of
23 evidence offered during the process of this trial.

24 In that regard you are to consider only -- only
25 the competent evidence before you, and you are to

1 disregard from your mind any testimony ordered
2 stricken from the record of this case during the
3 progress of the trial, if there was any. You are to
4 consider only the testimony which has been presented
5 from this witness stand, together with any exhibits
6 admitted into the record of this case and any
7 stipulations of counsel made into the record, if
8 there were any.

9 Furthermore, I have the additional duty to charge
10 you on the applicable law of this case. And in that
11 regard I am the sole judge of the law of this case.
12 It is your duty to accept and apply the law as I
13 state it to you. If you have any preconceived ideas
14 as to what the law is or what the law ought to be and
15 it does not agree with what I tell you the law is,
16 you are obligated under your oath to abandon these
17 preconceptions because you are sworn to accept the
18 law precisely as I now state it to you.

19 In this trial you, ladies and gentlemen, are the
20 sole and exclusive judge of the facts. Do not infer
21 that I have any opinion about the facts in this case
22 from anything that I have said during the course of
23 this trial in ruling upon the admissibility of
24 evidence or otherwise, or from anything that I say
25 during the course of this charge to you. In this

1 regard the law simply does not permit me to have any
2 opinion about the facts. As jurors it is your duty
3 alone to determine the effect, value, weight, and
4 truth of the evidence presented during the course of
5 this trial.

6 As previously mentioned, the plaintiff claims that
7 the defendants should compensate him for his damages.
8 In order to recover for damages, the plaintiff must
9 prove the claim by a preponderance, or greater
10 weight, of the evidence.

11 So what do we mean by the greater weight of the
12 evidence? Simply this: Imagine a traditional set of
13 scales. When the case begins, the scales are even.
14 After all the evidence has been presented, if the
15 scales should remain even or if they should tip ever
16 so slightly in favor of the defendant, then the
17 plaintiff would have failed to meet his burden of
18 proof and your verdict should be for the defendant.

19 If, on the other hand, those scales should tip
20 ever so slightly in favor of the plaintiff, then --
21 then he would have met his burden of proof and your
22 verdict should be for the plaintiff.

23 Of course, there is no way to weigh evidence,
24 except through the exercise of your common sense and
25 judgment. It is entirely a mental process, and the

1 evidence you should give the most weight to is that
2 which convinces you of its truth, regardless of the
3 source from which it comes. The number of witnesses
4 does not determine preponderance of the evidence.
5 Rather, it must be determined by the greater weight
6 of all of the evidence.

7 Now, ladies and gentlemen, there are two types of
8 evidence generally presented during a trial: direct
9 evidence and circumstantial evidence.

10 Direct evidence is the testimony of a person who
11 claims to have actual knowledge of a fact, such as an
12 eyewitness. It is evidence which immediately
13 establishes the main fact to be proved.

14 Circumstantial evidence is proof of a chain of
15 facts and circumstances indicating the existence of a
16 fact. It is evidence which immediately establishes
17 collateral facts from which the main fact may be
18 inferred. Circumstantial evidence is based on
19 inference and not on personal knowledge or
20 observation.

21 It is proof that does not actually establish the
22 fact in question, but that asserts or describes
23 something else from which you may either reasonably
24 infer the truth of the fact or at least reasonably
25 infer an increase in the probability that the fact is

1 true. For circumstantial evidence to be sufficient
2 to warrant the finding of a fact, the circumstances
3 must lead to that fact with reasonable certainty.
4 The facts and circumstances should be considered in
5 light of ordinary experience and common sense. The
6 existence of a fact cannot be based on speculation,
7 surmise, or conjecture.

8 The law makes absolutely no distinction between
9 the weight or value to be given to either direct or
10 circumstantial evidence, nor is a greater degree of
11 certainty required of circumstantial evidence than of
12 direct evidence.

13 Now, in determining what the facts in this case
14 are, you must judge the credibility, which simply
15 means the believability, of the witnesses and the
16 value of weight to be given to their testimony. You
17 alone must decide the force, effect, and truth of the
18 testimony.

19 In making this decision, there are many things you
20 may and should take into consideration, such as the
21 appearance and manner of the witnesses on the stand,
22 a characteristic often referred to as the demeanor of
23 the witness. Was the witness forthright or hesitant?
24 Was the witness's testimony consistent or did it
25 contain discrepancies? What was the ability of the

1 witness to know the facts about which he or she
2 testified? Did the witness have a cause or reason to
3 be biased and prejudiced in favor of the testimony he
4 or she gave? Was the testimony of the witness
5 corroborated, or made stronger, by other testimony
6 and evidence or was it made weaker or impeached by
7 such other testimony and evidence?

8 As jurors please understand you have the right to
9 believe a small portion of a witness's testimony and
10 discard the larger portion or vice versa. You may
11 believe all of a witness's testimony or none. You
12 may believe the testimony of a single witness against
13 that of many witnesses or the other way around.

14 In exercising your mental processes and attempting
15 to decide the truth, the law simply requires that you
16 exercise your good judgment, your common sense, your
17 sense of logic and reason, and your experiences in
18 life. You then apply these attributes to the
19 evidence and apply the law as I am going to state it
20 to you and thus arrive at a verdict.

21 Now, during the course of this trial, ladies and
22 gentlemen, you heard testimony of an individual that
23 was qualified as an expert witness. I gave you a
24 charge at that time, but I'll tell you again that our
25 rules of evidence ordinarily do not permit a witness

1 to testify to opinions or conclusions. An exception
2 to this rule exists for witnesses that we call expert
3 witnesses. A witness who, by education and
4 experience, has become expert in some art, science,
5 or profession may give an opinion as to the subject
6 the witness claims to be and expert in and may also
7 give the reasons for the opinion.

8 You should, ladies and gentlemen, consider any
9 expert opinion given by a -- by a witness and, like
10 any other evidence, give it the weight that you think
11 it deserves. If you decide that an expert witness's
12 opinion is not based on sufficient education and
13 experience, or if you decide that the reasons given
14 in support of the opinion are not sound or that the
15 opinion is outweighed by other evidence, you may
16 disregard the opinion entirely.

17 An expert witness's testimony is to be given no
18 greater weight than that of other witnesses simply
19 because the witness is an expert. And you do not
20 have to accept an expert's opinion, even though it is
21 uncontradicted.

22 Certain testimony was also presented into evidence
23 by a deposition. A deposition is testimony taken
24 under oath before a trial and preserved in writing or
25 by mechanical means such as video or audio tape

1 recording. Deposition testimony may be used by any
2 party for the purpose of contradicting, or
3 impeaching, the testimony of another party. Or in
4 certain situations, under our rules of procedure, it
5 may be used when a witness is unavailable to appear
6 in court. You, ladies and gentlemen, are to
7 determine the weight to be given to such deposition
8 testimony and decide the force, effect, and truth of
9 such testimony.

10 Now, ladies and gentlemen, the issue in this
11 litigation is to decide who are the members, and
12 therefore the owners, of AVSX Technologies, a South
13 Carolina limited liability company. Therefore, the
14 applicable law for you, the jury, to apply to these
15 facts as you believe them to be is the South Carolina
16 Uniform Limited Liability Company Act.

17 A limited liability company is a legal entity,
18 distinct from its members. However, a limited
19 liability company is owned by its members. When you
20 hear the word member, it is synonymous with owner.
21 In order for a party to have an action against a
22 limited liability company for wrongful disassociation
23 from an LLC, the person must first be found to be a
24 member of that LLC.

25 Plaintiff must prove by a preponderance of the

1 evidence that he was a member of AVSX Technologies,
2 LLC. If you determine that plaintiff is a member of
3 AVSX Technologies, LLC, you must then determine how
4 such LLC was to be operated.

5 The operating agreement is the essential contract
6 that governs the affairs of a limited liability
7 company. It is the operating agreement that
8 regulates the affairs of the company and the conduct
9 of its business and governs relations among the
10 members, managers, and the company. Although many
11 agreements will be in writing, the operating
12 agreement may be oral.

13 When there is no written agreement, you may
14 consider, among other things, corporate documents,
15 corporate filings, course of dealings, such as how
16 the parties have dealt with each other in the past
17 and how their understanding of those past dealings
18 will continue as their agreement for conducting
19 business with one another, and course of performance
20 -- in other words, the way that the parties regularly
21 conducted the business, each of which may be relevant
22 to determine the meaning of the agreement. In other
23 words, it is the operating agreement that controls
24 who is a member of a limited liability company.

25 It is undisputed in this case that there has never

1 been any written operating agreement for AVSX
2 Technologies, LLC. At dispute is what the operation
3 agreement of AVSX Technologies, LLC, is, who it
4 recognizes as its members, and what their ownership
5 interest is. You, the jury, are charged to evaluate
6 the evidence as it has been presented to you and
7 determine the terms of such operating agreement of
8 AVSX Technologies.

9 Now, if the plaintiff has proven by a
10 preponderance of the evidence that he was a member of
11 AVSX, LLC, plaintiff must then prove by a
12 preponderance of the evidence whether he was
13 wrongfully disassociated from AVSX Technologies, LLC.

14 Disassociation is the word used by the South
15 Carolina Limited Liability Company Act to describe
16 when a member is no longer a member. A
17 disassociation is wrongful if it is in breach of an
18 express provision of an oral or written agreement.

19 Furthermore, a member is disassociated from a
20 limited liability company upon the occurrence of the
21 member's expulsion by unanimous vote of the other
22 members if a member is engaged in wrongful conduct
23 that adversely and materially affected the company's
24 business, willfully or persistently committed a
25 material breach of the operating agreement, or

1 engaged in conduct relating to the company's business
2 which make -- makes it not reasonably practicable to
3 carry on the business with the member.

4 If you, the jury, find that the plaintiff was a
5 member of AVSX Technologies, LLC, then you must
6 determine whether or not plaintiff's disassociation
7 was wrongful.

8 Now, if you find that plaintiff has proven by a
9 preponderance of the evidence that he was a member,
10 whether or not you find his disassociation was
11 wrongful, you must determine his damages or
12 distributional interest. Distributional interest
13 means all of a member's interest in money, property,
14 or other benefit to be received from a limited
15 liability company.

16 A limited liability company shall purchase a
17 distributional interest of a member of an at-will
18 company for its fair value, determined as of the date
19 of the member's disassociation if the member's
20 disassociation does not result in a dissolution and
21 winding up of the company's business.

22 In an action brought to determine the fair value
23 of a distributional interest in a limited liability
24 company, you, the jury, are charged with determining
25 the fair value of the interest, considering, among

1 other relevant evidence, the going-concern value of
2 the company, any agreement among some or all of the
3 members fixing the price or specifying a formula for
4 determining value of distributional interests.

5 This does not mean, ladies and gentlemen, that the
6 plaintiff must prove his damages to a mathematical
7 certainty or produce evidence of the exact amount of
8 damages suffered. However, the amount of damages
9 cannot be left to guesswork or speculation. Instead,
10 the evidence presented by the plaintiff must be
11 enough to allow you to determine the amount of
12 damages with reasonable certainty and accuracy.

13 Now, ladies and gentlemen, the defendant -- let's
14 see -- has asserted the defense of laches. Laches is
15 an equitable doctrine defined as negligent -- excuse
16 me -- as neglect for an unreasonable and unexplained
17 length of time, under circumstances affording
18 opportunity for diligence, to do what in law should
19 have been done. In order to establish laches as a
20 defense, the defendant must show that the plaintiff
21 unreasonably delayed his assertion of his right,
22 resulting in prejudice to the defendants asserting
23 the defense of laches.

24 Now, ladies and gentlemen and Mr. Foreman, I am
25 now drawing near the end of my charge. And as you

1 retire to begin your deliberations, I wish to express
2 the hope that each of you will be mindful of the
3 importance of your responsibility. You are not
4 called upon very often to serve as jurors, and the
5 proper performance of the duty requires that each of
6 you to reach the height of freeing your minds of all
7 improper influences.

8 Now, ladies and gentlemen, please do not get the
9 idea that I am trying to intimate to you how I might
10 think you should decide this case. If I -- as I have
11 already told you, under the laws of the State of
12 South Carolina, you, the jury, are the sole judge of
13 all questions of fact: It would be highly improper
14 for me to influence you in the performance of that
15 duty.

16 Now, Mr. Foreman and ladies and gentlemen of the
17 jury, I will give you a copy of these instructions in
18 written form. During your deliberations you may
19 refer to the instructions to guide your decision-
20 making. I will tell you that you must consider the
21 instructions as a whole and not follow some and
22 ignore others. Mr. Foreman, at the time that your
23 verdict is rendered, I would ask that you please
24 return the instruction to the Court, along with the
25 items of evidence.

1 Now, I am going to send the verdict form back to
2 you all. I'm going to give it to the foreman to take
3 with you all back in the jury room. When you, the
4 jury -- when you, the jury, arrive at a verdict as to
5 the -- as to plaintiff's cause of action, you will
6 write the verdict on the verdict form, Mr. Foreman.

7 But let me emphasize: The verdict in this case
8 must be unanimous. It must be unanimous.

9 Now ---

10 (Off the record briefly.)

11 THE COURT: What I hold in my hand, ladies and
12 gentlemen, is the verdict form, which is two pages.
13 And I'm going to go through it briefly with you,
14 okay?

15 The first question on the verdict form is: "We,
16 the jury, find by unanimous consent that plaintiff
17 has proven by a preponderance of the evidence that
18 plaintiff, Luis Endara, was a member/owner of AVSX
19 Technologies, LLC." If your answer is "no," you
20 check the box, "no," and it's instructions on here
21 that tells you to stop, sign, and date the verdict
22 form and let -- knock on the door and let them know
23 you've reached a verdict.

24 If your answer is "yes," that he has proven by a
25 preponderance of the evidence that he was a member,

1 then you go to Question 2. Question 2 says: "We,
2 the jury, by -- find by unanimous consent that
3 plaintiff has proven by a preponderance of the
4 evidence that plaintiff, Luis Endara, was wrongfully
5 disassociated from AVSX Technologies, LLC."

6 Regardless of what your answer is here, yes or no,
7 you go to Question 3, which asks: "We, the jury,
8 unanimously find that plaintiff has proven by a
9 preponderance of the evidence that he is entitled to
10 an award of damages in the sum of . . ." and it
11 leaves a blank for you to write out what those
12 damages are.

13 Your decision as to each of these questions, as I
14 said a minute ago, must be your unanimous decision.
15 All 12 of you must agree. Okay?

16 Now, I am going to ask you, ladies and gentlemen,
17 to retire to the jury room but do not -- do not begin
18 your deliberations. The law requires that I consult
19 with the attorneys once again to make sure that I
20 have not left anything out of these instructions.

21 Before I ask you to retire to the jury room, does
22 everybody feel okay? Anybody not feeling well?

23 (No audible response from the jury members.)

24 THE COURT: I'll tell you why I ask that a little
25 bit later. Okay?

1 During your deliberations, Mr. Foreman, should you
2 have any questions, pen and paper or pencil and paper
3 will be back there. It will be your job to write out
4 whatever questions you all have. Knock on the door;
5 let the bailiff know you have a question give it to
6 him; he will, in turn -- or she will, in turn, get
7 it to me. And I will answer it, whether it
8 necessitates me bringing you all back in here and
9 answering that question, as the Court deems
10 appropriate, or I could write a response on there.
11 But I'll answer it however -- in a fashion that the
12 Court believes is appropriate. Okay?

13 Once you've reached a verdict and once you fill
14 out the verdict form, sign and dated it, let the
15 bailiff know that you've reached a verdict. We will
16 get you back in the courtroom as quickly as possible.

17 Make sure you bring all the items of evidence back
18 in, along with my jury instruction, and the verdict
19 form.

20 If, at this time, all of you would step to the
21 jury room -- yeah, I'm going to -- you're going to
22 have the instruction to deliberate in just a few
23 minutes, but don't do it yet. Please step to the
24 jury room, but do not begin your deliberations until
25 you're instructed to do so.

1 (Whereupon, the jury exited the courtroom at 3:23
2 p.m.)

3 THE COURT: As they're exiting, can the lawyers
4 come forward and make sure we got all the items of
5 evidence up here, please.

6 MR. TODD ELLIS: Yes, Your Honor.

7 (Off the record from 3:23 p.m. until 3:25 p.m.)

8 THE COURT: All right. Y'all -- have y'all looked
9 at all the items of evidence?

10 MR. TODD ELLIS: Yes, Your Honor.

11 MR. MICHAEL ELLIS: Yes, sir.

12 THE COURT: All right. Now, having said that --
13 we're on the record -- any exception or objection to
14 the charge by the jury that have not previously been
15 stated by plaintiff's counsel?

16 MR. SAUTTER: No, Your Honor.

17 THE COURT: Defense counsel?

18 MR. TODD ELLIS: None, Your Honor.

19 THE COURT: All right. What about the verdict
20 form? Any exception or objection, other than what
21 may have been previously stated by plaintiff's
22 counsel?

23 MR. SAUTTER: No, Your Honor.

24 THE COURT: Defense counsel?

25 MR. TODD ELLIS: None, Your Honor.

1 THE COURT: All right. If you will -- hang on --
2 take this. Where's my jury list? Get Mr. Crawley --
3 when you take that in, if you'll get Mr. Crawley out
4 ---

5 THE BAILIFF: Mr. Crawley?

6 THE COURT: --- and give all of them the items of
7 evidence, along with my charge and verdict form, and
8 tell them to begin their deliberations.

9 But make sure you get Mr. Crawley out of there.
10 All right. We'll stand down for right now.

11 MR. TODD ELLIS: Yes, Your Honor. Thank you.

12 (Off the record at 3:25 p.m.)

13 (Whereupon, the jury began deliberating at 3:25
14 p.m.)

15 (Off the record from 3:25 p.m. until 5:40 p.m.)

16 THE COURT: All right. I have been advised that
17 the jury has reached a verdict. And I will remind
18 everyone in the courtroom: Keep your emotions in
19 check, whatever the verdict may be.

20 Failure to do so could result in being held in
21 contempt of court, which could be a fine or a period
22 of incarceration. If you do not believe that you can
23 keep your emotions in check, now is your time to
24 leave the courtroom.

25 Anything from plaintiff's counsel before I bring

1 the jury in?

2 MR. SAUTTER: No, Your Honor.

3 THE COURT: Defense counsel?

4 MR. TODD ELLIS: Nothing, Your Honor. Thank you.

5 THE COURT: All right. Bring the jury, please.

6 THE BAILIFF: Yes, Your Honor.

7 (Whereupon, the jury entered the courtroom at 5:41
8 p.m.)

9 THE COURT: All right, Mr. Truitt.

10 DEPUTY CLERK OF COURT: Yes, Your Honor. Mr.
11 Foreman, if the jury has reached a verdict, would you
12 hand it to me, please.

13 THE FOREPERSON: (Complied.)

14 DEPUTY CLERK OF COURT: Thank you.

15 THE COURT: All right. Mr. Truitt, you may
16 publish the verdict.

17 VERDICT OF THE JURY

18 DEPUTY CLERK OF COURT: Yes, sir. (As read): "In
19 the State of South Carolina, in the County of
20 Richland, in the Court of Common Pleas; Case No.
21 2014-CP-40-4234; Luis Endara, plaintiff, versus AVSX
22 Technologies, LLC, Bobby Johnson, and Mary Kay
23 Johnson, defendants. The verdict is: Question No.
24 1: We, the jury -- we, the jury, find by unanimous
25 consent that the plaintiff has proven by a

1 preponderance of the evidence that plaintiff, Luis
2 Endara, was a member/owner of AVSX Technologies, LLC.
3 The answer is: No. Signed by Scott Tanner on this
4 28th day of January, 2016."

5 Mr. Foreman, is this your verdict and the verdict
6 of the entire jury?

7 THE FOREPERSON: Yes, it is.

8 DEPUTY CLERK OF COURT: Thank you, sir.

9 THE COURT: All right. Anything from plaintiff's
10 counsel at this time before I release the jury?

11 MR. SAUTTER: Yes, sir. We'd ask that the jury be
12 polled.

13 THE COURT: All right. Mr. Truitt?

14 POLLING OF THE JURY

15 DEPUTY CLERK OF COURT: Yes, Your Honor. Ladies
16 and gentlemen of the jury, at this time I have two
17 questions to ask you. The questions will be: Was
18 this your verdict and is it still your verdict? When
19 I call out your name, please answer "yes" or "no."

20 Number 52, Mark Cousins, was this your verdict?

21 JUROR: Yes.

22 DEPUTY CLERK OF COURT: Is this still your
23 verdict?

24 JUROR: Yes.

25 DEPUTY CLERK OF COURT: Number 184, Darlene

1 Montgomery, was this your verdict?

2 JUROR: Yes.

3 DEPUTY CLERK OF COURT: Is this still your
4 verdict?

5 JUROR: Yes.

6 DEPUTY CLERK OF COURT: Number 206, Duncan
7 Fleming, was this your verdict?

8 JUROR: Yes.

9 DEPUTY CLERK OF COURT: Is this still your
10 verdict?

11 JUROR: Yes.

12 DEPUTY CLERK OF COURT: Number 8, Melvin Baker,
13 was this your verdict?

14 JUROR: Yes.

15 DEPUTY CLERK OF COURT: Is this still your
16 verdict?

17 JUROR: Yes.

18 DEPUTY CLERK OF COURT: Number 187, Susie Myers,
19 was this your verdict?

20 JUROR: Yes.

21 DEPUTY CLERK OF COURT: Is this still your
22 verdict?

23 JUROR: Yes.

24 DEPUTY CLERK OF COURT: Number 234, Juliet Shiver,
25 was this your verdict?

1 JUROR: Yes.

2 DEPUTY CLERK OF COURT: Is this still your
3 verdict?

4 JUROR: Yes.

5 DEPUTY CLERK OF COURT: Number 150 -- 142, Rachel
6 Kessler, was this your verdict?

7 JUROR: Yes.

8 DEPUTY CLERK OF COURT: Is this still your
9 verdict?

10 JUROR: Yes.

11 DEPUTY CLERK OF COURT: Number 22, Myron
12 Brailsford, was this your verdict?

13 JUROR: Yes.

14 DEPUTY CLERK OF COURT: Is this still your
15 verdict?

16 JUROR: Yes.

17 DEPUTY CLERK OF COURT: Number 226, James
18 Rutledge, was this your verdict?

19 JUROR: Yes.

20 DEPUTY CLERK OF COURT: Is this still your
21 verdict?

22 JUROR: Yes.

23 DEPUTY CLERK OF COURT: Number 255, David
24 Swearingen, was this your verdict?

25 JUROR: Yes.

1 DEPUTY CLERK OF COURT: Is this still your
2 verdict?

3 JUROR: Yes.

4 DEPUTY CLERK OF COURT: Number 239, Nikie Smalls,
5 was this your verdict?

6 JUROR: Yes.

7 DEPUTY CLERK OF COURT: Is this still your
8 verdict?

9 JUROR: Yes.

10 DEPUTY CLERK OF COURT: Number 258, Scott Tanner,
11 was this your verdict?

12 JUROR: Yes.

13 DEPUTY CLERK OF COURT: Is this still your
14 verdict?

15 JUROR: Yes.

16 DEPUTY CLERK OF COURT: Thank you. The jury has
17 been polled, Your Honor.

18 THE COURT: All right. Anything further from
19 plaintiff's counsel at this time before I release the
20 jury?

21 MR. SAUTTER: No, Your Honor.

22 THE COURT: Defense counsel?

23 MR. TODD ELLIS: Nothing, Your Honor. Thank you.

24 THE COURT: All right. Ladies and gentlemen, I
25 want to thank you for your service this week. I know

1 jury service never comes at a convenient time. If
2 you get summoned for jury duty back up here over the
3 next three years and you wish to be excused, you have
4 that right. All right?

5 I would encourage you, if you're summoned to
6 serve, whether it be up here again, whether it be in
7 city court, magistrate's court, or federal court,
8 that you would willingly serve. This is really the
9 only remaining service that we have in this country.
10 It's not -- some people go a lifetime and are never
11 called to serve as jurors.

12 I hope you learned this week, this is not
13 television. This is not television at all. I can't
14 express to you the importance of your service, not
15 only to this county, but to this state and to this
16 country.

17 If you all were seated as litigants at this --
18 either one of these tables or if you were seated in a
19 criminal courtroom, you would want people such as
20 yourselves serving on juries.

21 As you went through that qualification process on
22 Monday, you got a small glimpse of your background --
23 very small. And it takes people from different walks
24 to serve on juries.

25 You wouldn't want me or any other judge walking

1 into court on Monday morning and looking at one of
2 the deputies and saying, "Go find me the first 12
3 people out there you find on the street, bring them
4 in here, and let's try this case." That is not a
5 system that you would want.

6 Our judicial system is not perfect. But I can
7 promise you, it's the best in the civilized world. I
8 hope that you all had a good experience up here this
9 week. I hope you had a good learning experience.

10 I've told you throughout this week not to discuss
11 the case. When you leave here today, you can discuss
12 it as much as you want to. However, nobody can make
13 you discuss it if you do not wish to discuss it.

14 What I'm getting at is: When you leave here
15 today, if somebody approaches you to talk about this
16 case and they tell you, you don't want -- and you
17 tell them you don't want to talk about it and they do
18 not leave you alone, let the clerk's office know
19 here. And I promise, it'll be handled. I promise
20 you, it'll be handled.

21 There is -- clerk, Mr. Truitt, will have a -- can
22 have a -- I think you -- you got work excuses for
23 them if they need it tonight?

24 DEPUTY CLERK OF COURT: Yes, Your Honor.

25 THE COURT: All right. If you need a work excuse

1 before you leave here today, Mr. Truitt can -- can
2 provide that for you.

3 You've heard the proverbial statement that the
4 check is in the mail. The check will be in the mail
5 for your service this week. It in no way, shape, or
6 form can pay you for what your service is worth to
7 this county, to this state, and to this country. So
8 don't go lay any large-ticket items aside, thinking
9 that's going to pay for it.

10 Truth of the matter is you might be able to by
11 yourself -- or -- or maybe your family a happy meal
12 at McDonald's. But if the -- if the courts or if the
13 government tried to pay you for what your service is
14 actually worth, it'd be -- the country would be in a
15 lot worse condition than it is right now,
16 financially.

17 Again, thank you for your service. I hope you all
18 have a good rest of the week. When I release you
19 here today, you don't have to come back tomorrow. So
20 have a nice evening, stay dry, and be safe on your
21 way home. All right? Thank you.

22 (Whereupon, the jury exited the courtroom at 5:48
23 p.m.)

24 THE COURT: All right. Mr. Sautter, I will give
25 you ten days ---

1 MR. SAUTTER: Thank you, Your Honor.

2 THE COURT: --- to make any posttrial motions ---

3 MR. SAUTTER: Yes, sir.

4 THE COURT: --- that you so desire. And, Mr.

5 Ellis -- Todd Ellis, I'll give you ten days

6 thereafter to respond to such. I don't know when

7 I'll be back up here.

8 It may something that I don't need to have a

9 hearing on. But I'll give you ten days to make any

10 posttrial motions.

11 MR. SAUTTER: Thank you, Your Honor.

12 THE COURT: All right.

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

14 THE COURT: All right. Anything else?

15 MR. SAUTTER: No, sir.

16 MR. TODD ELLIS: No, sir.

17 THE COURT: With regards to the matter that I

18 dealt with earlier, \$100 to the charity of your

19 choice.

20 MR. TODD ELLIS: Yes, sir. Write it tomorrow,

21 Your Honor. Thank you.

22 THE COURT: Thank you. Make sure you get with Mr.

23 Truitt so he can deliver it.

24 MR. TODD ELLIS: Yes, sir.

25 THE COURT: All right. Thank you.

1 MR. SAUTTER: Your Honor, may I approach?

2 THE COURT: Yes, sir.

3 (Whereupon, the proceeding was concluded at 5:23
4 p.m.)

5 --- END OF TRANSCRIPT OF RECORD ---
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CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS,
CERTIFIED VERBATIM REPORTER - MASTER, CERTIFICATE
OF MERIT, OFFICIAL COURT REPORTER FOR THE EIGHTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA,
DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE,
ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD IN THE
HEARING OF THE CAPTIONED CAUSE, RELATIVE TO
APPEAL, IN THE CIRCUIT COURT FOR RICHLAND COUNTY,
SOUTH CAROLINA, ON THE 25TH THROUGH 28TH DAYS OF
JANUARY, 2016.

I DO FURTHER CERTIFY THAT I AM NEITHER OF
KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

JANUARY 11, 2017

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 Requests to Charge

1. **Burden of Proof-Preponderance of the Evidence** As I explained to you earlier, this is a partnership dispute action. In order for the plaintiff to receive the compensation sought, he must prove his claim by the greater weight-or preponderance-of the evidence.

What is meant by the greater weight of the evidence can be illustrated by imagining a traditional set of scales. When the case begins, the scales are even. After all the evidence has been presented, if the scales should remain even, or if they should tip, even slightly, in favor of the Defendants, then the Plaintiff will have failed to meet his burden of proof, and your verdict would be for the Defendants.

If, on the other hand, the scales tip, even slightly in favor of the Plaintiff, then he will have met his burden of proof, and your verdict would be for the Plaintiff.

Of course there is no way to weigh the evidence, except through the exercise of good common sense and judgment. It is entirely a mental process-and the evidence to which you should give the most weight is that which convinces you of the truth, regardless of from whom or what source it comes.

I will now explain the law that applies to this particular case:

2. **General Partnership Defined** South Carolina's Uniform Partnership Act defines a partnership as "an association of two or more persons to carry on as co-owners a business for profit." SC Code Ann. §33-41-210. A partnership can be formed by individual people, business entities such as corporations or limited liability companies, or any combination thereof.

The existence of a partnership is a question of fact. Intent to become partners is not necessary to the creation of a partnership. All that is necessary is the intent to do those things that in law constitute persons as partners. The sharing of profits and losses is evidence to the formation of a partnership. The controlling factor in finding a partnership is the parties' intention to enter into a relationship that, as defined in the Partnership Act, creates a partnership.

Once a Partnership has been formed, "no person can become a member of the partnership without the consent of all the partners" SC Code § 33-41-510(7).

If you, the jury, find that any or all of the parties intended to carry on as co-owners a business for profit, then you must find that those you found to form that intent to be partners are indeed in a general partnership.

3. **Relationship Among Partners** South Carolina's Uniform Partnership Act establishes default rules that govern the relations among partners unless changed by a partnership agreement. A partnership agreement need not be in writing but can be determined by their course of performance, or in other words a partnership agreement can arise in accordance with the ordinary way that the partners run their business.

One mandatory rule that can never be modified by a partnership agreement is that every partner is accountable to each other partner and to the partnership as a fiduciary.

A **fiduciary relationship** is a relationship that is founded on the trust and confidence reposed by one person in the integrity and fidelity of another. It exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the person imposing the confidence. In other words, those said to have entered into a fiduciary relationship have assumed a duty to act within the best interests of the other.

If you the jury find that a partnership arose between any or all of the Parties then you must find that a fiduciary relationship existed between those you find to be partners. If you find that Plaintiff was a partner of one of the Defendants and that a Defendant breached the fiduciary duty owed to Plaintiff, then you must issue a verdict in favor of Plaintiff and award him the damages that you deem appropriate taking into consideration among other things 1.) his percentage in the valuation of the partnership, 2.) his damages from being alienated from his company, and 3.) the costs of having to engage in this legal case.

4. **Course of Performance** You heard me say that a partnership agreement can be established through the partner's course of performance when there is no written partnership agreement. "A "Course of Performance" is a sequence of conduct between the parties..." UCC § 1-303(a). In other words, the course of performance between parties is how they typically conduct themselves in relation to one another.

In this particular case, both sides agree that there was never any writing laying out the terms of a partnership agreement. It is Plaintiff's position that the terms of his and Defendant Bobby Johnson's partnership agreement were established through their course of performance, or sequence of conduct between them, of owning the business as 50/50

owners while having a limited liability company with a straw man that was presented to the world but had no actual authority or ownership interest in their company. It is the Defendants' position that the course of performance of the company established that Julio Reis started the company as the 100% owner and hired Plaintiff and Defendant Bobby Johnson as employees and then Defendant Mary Kay Johnson purchased the company from Julio Reis and became the 100% owner of the company and that Plaintiff and Defendant Bobby Johnson remained as employees with no ownership interest in the company.

As all parties agree that there is no writing controlling their relationship amongst each other and they disagree on what the course of performance was, you the jury are charged with establishing whether the course of performance for running the business presently known as AVSX Technologies, LLC was that Plaintiff and Defendant Bobby Johnson were partners and 50/50 owners, or whether Julio Reis started the business and sold his 100% ownership interest to Defendant Mary Kay Johnson.

5. **Partnership Property.** A partnership may own property in the name of the partnership. All real or personal property originally brought into the partnership by contribution or purchase or subsequently bought with partnership capital is partnership property. A limited liability company is an example of property that can be owned by a partnership.

If you the jury find that a Partnership arose between Plaintiff and Defendant Bobby Johnson and that their Partnership owned AVSX Technologies, LLC then you must find what Plaintiff's ownership interest or percentage was in that partnership property.

6. **Dissolution of a Partnership Defined** The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on of the business. When the dissolution of a partnership is in contravention to the agreement between the partners, it is said to be a wrongful dissolution.

If you the jury find that a partnership arose between Plaintiff and any of the partners you must find whether or not the dissolution of their partnership was in accordance with their partnership agreement. If you find that the dissolution of the partnership was not in accordance with the terms of the partnership agreement, then you must find that it was a wrongful dissolution.

7. **Unjust Enrichment** If you the jury find that the Plaintiff has failed to establish his burden of proof under a legal theory as a 50/50 owner of the business known as AVSX Technologies, LLC then you can still find he is entitled to an amount of damages under the equitable theory of unjust enrichment. If you find that Plaintiff has unjustly retained some benefit at the expense of Plaintiff, then you can provide Plaintiff the recovery of that amount.

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: _____
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CASE NO.: 2014-CP-40-4234

Luis Endara,

Plaintiff,

-vs-

VERDICT

AVSX Technologies, LLC, Bobby
Johnson, and Mary Kay Johnson,

Defendants.

1. We the Jury, find by unanimous consent that Plaintiff has proven, by a preponderance of the evidence, that Plaintiff, Luis Endara, was a member/owner of AVSX Technologies, LLC?

No ☒ Yes ☐

If you find that the Plaintiff was not a member of AVSX, stop here sign and date the verdict form and let the Bailiff know.

If you find the Plaintiff was a member/owner proceed to question #2.

2. We the Jury, find by unanimous consent that Plaintiff has proven, by a preponderance of the evidence, that Plaintiff, Luis Endara, was wrongfully dissociated from AVSX Technologies, LLC?

No ☐ Yes ☐

If your answer to question #2 is no, stop here sign and date the verdict form and let the Bailiff know.

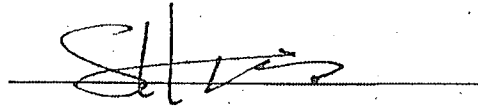
If your answer to question #3 is yes, proceed to question #3.

3. We, the Jury, unanimously find by a preponderance of the evidence, that the Plaintiff is entitled to an award of damages in the sum of \$_____.

(Please sign and date this form below.)

January 28, 2016

DATE

A handwritten signature in black ink, appearing to be "S. H. [unclear]", written over a horizontal line.

FOREPERSON

(Please let the Bailiff know when you have completed this form)

AVSX Corporate Responsibilities

PLAINTIFFS

EXHIBIT NO. 1
FOR IDENTIFICATION

01/25/16
DATE: RPTR: NJS



CEO

Bobby Johnson

- Sales Strategy
- Marketing and Technology
- Recruitment
- Business Growth



President

Luis Endara

- Operational Strategy
- Sales Support
- Recruitment
- Business Model Sustainment



EXECUTIVE MANAGEMENT



COO

David Cason

- Operations
- Technician Support
- Audit Staff



CFO

Dan Spohn

- Payroll Processing
- Financial Accountability



Office Manager

Sharon Fitzhugh

- Customer Relations
- Admin Staff Accountability



CIO

Jason Wolfe

- Software Mngmt
- Enhance Company Efficiency

From: "Bobby" <bjohnson@avsx.com>
Date: Friday, February 08, 2013 2:01 PM
To: "Jason Wolfe" <jwolfe@gjwnet.com>; "Luis Endara" <luis@avsx.com>; "David Cason" <dcason@avsx.com>
Subject: Alterations to Structure

I would like to have a meeting with everyone on leadership at 9 am sharp Monday (Dave, Bobby, Luis and Jason are the Sr Leaders) to start our new leadership meeting and I do not want to cancel these in the least even if we are out of town.

I have made some BIG changes today and some alterations to structure and I look forward to sharing them further with each of you. I couldn't wait a full weekend to address these things that have been eating at me and I in no way meant to exclude you guys.

It is time for us to BRING IT and I promised you I would. Some changes we will implement:

5 % net share for both Jason and Dave (shared equally) reflective on performance and implementation of control measures to increase culture and success therein. We may add Eric to this as well to replace Dan.

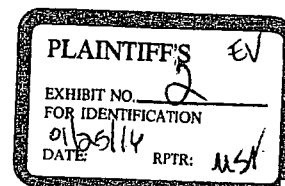
5 % employee net share for office staff only. This will not include sales and/or install. This will be shared dependent on each individual office staff member sharing the focus and benefit of doing the job position in which they are required to adhere to.

Yes, Luis and I are willing to give 10% of our company to those who want to BRING IT like never before.

10 quick items I have addressed and need everyone to be aware of:

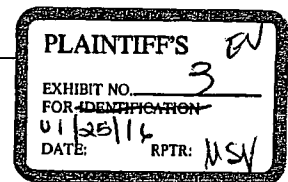
1. Melissa Rivers \$12.50 per hour and will work Monday thru Friday 11:30-8:30.
2. Nikki Caltrider will work Monday thru Friday 10-7.
3. Lotosha will be moved to Full Insurance and 40 hrs a wk and she will be the personal assistant for Sharon assisting her with overflow.
4. James (Tosha's son) will be hired at \$10 per hr part-time starting next week and will be the laborer for the office and inventory departments.
5. Laura Endara will be moved to \$12.50 per hr and she will be the Data Entry Coordinator.
6. Nikki and Courtney will be moved into Dan's office connected to Daves and will be in charge of payroll processing and planning- they are going to use existing desks and we will need to insure they have ample storage for all sensitive items (payroll, receipts, compliance licensing for Kat).
7. All things service will funnel thru Gloria to be processed initially, all things invoicing will funnel thru Michelle and then Nikki will receive the reports for payroll
8. Jason will be in charge of all things software and inventory control once JC arrives and during the interim moving forward and all purchases for inventory eventually will funnel thru him, I will assist entirely and he will also be in charge of Kat for recruitment and compliance.
9. Dave will be in charge of all things service and support to include technicians, with intimate assistance from Luis and whomever we decide will assist with the service department- why do I say this- I was very disappointed this morning with the situation involving Ryan Roose and I am at a position mentally where I would move in a different direction if it were up to me. I will leave this decision to Luis and Dave to override but I am concerned his dependability is very much a challenge we should not be required to deal with moving forward.
10. We will institute employee reviews on a monthly basis to begin March 1 for the month of February- these will be reflective of their job positions in which I will insure each of you will have in the coming weeks as I will write them very soon.

I hope everyone has an awesome weekend and they are not to troublesome to anyone- I am tired, exhausted and wore out but I am also freaking gassed up and excited to see everyone BRING IT- I am tired of hiding my needs to see everyone simply answer the question as to whether they can or not be a part of something very special and rewarding- it isn't just about money and revenue as it is about insuring the safety of our family and those who depend on each of us on a daily basis.



875

3/24/2014



From: "Bobby Johnson" <bjohnson@avsx.com>
Date: Sunday, December 29, 2013 7:51 PM
To: "Team AVSX" <teamavsx@avsx.com>
Cc: "John Madden" <jfmadden@vectorsecurity.com>; "Mary Hutchinson" <mlhutchinson@vectorsecurity.com>; "Steve Hammer" <sjhammer@vectorsecurity.com>; "Pam Petrow" <pjpetrow@vectorsecurity.com>
Subject: FW: Our History

Thought you guys may enjoy a not so intentional email share. Matt is finalizing the new BRING IT recruiting/HR enrollment website and has been hounding me for a historical version as to WHY AVSX! How did it start, what caused it and why is it where it is today so this evening I thought it would be nice for each of our current valued team members to have a sneaky peeky at the story you have all heard in maybe one fashion or another.

Of course I have given editorial credence to the story as you all know the truth is the only time Luis³ to my knowledge² has ever been known to LIE to my robust nugget was to get me to leap into this business after 2 years of continuous harassment. It is probably one of the only lies I am going to say I was ever thankful to³ fall² for as everyone who happens to take the time to read this email will realize it is a great story.

The moral of WHY AVSX is that none of us would be who we are without Karma- Karma is what defines our choices in life, good or bad, we can have good hearts, it is what we choose to do with those moments of challenge that makes our future decisions possible for others. Who knows what the next 10 years has to hold⁵ why in the world would anyone think I, or Luis, would not be in this for the long hall if you didn't know us from the start- we aren't giving up on any family who chooses to believe in our own. There are some within business who say you build a business to simply sell it or create an³ exit plan², I have an exit plan, my exit plan is to simply continue to push the envelope of our successes into realms of opportunity in which none of us ever felt possible. That is my exit plan. Otherwise, money will not define WHY AVSX and nor will anything other than knowing we are surrounded by those who truly know what it is we stand for- YOU⁵

So sit back relax, enjoy the fun and slightly adulterated story as to how AVSX became the #1 Destination for MY FAMILY and always will be⁵

From: Bobby Johnson <bjohnson@avsx.com>
Date: Sunday, December 29, 2013 at 5:08 PM
To: Matt Edwards <medwards@avsx.com>, Chris Bull <cbull@avsx.com>, Jason Wolfe <jwolfe@avsx.com>
Cc: Luis Endara <luis@avsx.com>
Subject: Our History

AVSX Technologies uniqueness is derived from the inception of the foundations of the business itself in 2008. First, to truly grasp the uniqueness of the overall impact AVSX has encountered it has truly begun and continued as a simple dream of 2 individuals wanting desperately to create a family-first culture revolving more around the benefits of the families served, both customer and staff, rather than simple profit and loss or anything close. In 2004, a friendship was struck between Mr. Luis Endara, previously a manager at the time with another fledgling alarm organization and Mr. Bobby Johnson, who at the time was a General Manager for a local fitness facility in Lexington, SC. Mr Endara at the time was attempting to consider another career path in lieu of the alarm industry and decided to join Mr. Johnson in the fitness industry for a very short time and little did they know at the time a life-long friendship would blossom from the opportunity to meet one another. Mr. Endara chose to quickly reapply himself to the alarm industry as an involved manager with the fledgling alarm company he was instrumental in assisting them as a manager and basic principal in becoming a force to be reckoned with within the Home Security Industry throughout South Carolina and Georgia.

In 2006, Mr Endara after 2 years of consistently attempting to recruit Mr. Johnson upon his exit from the fitness industry he finally made an offer Mr. Johnson, whom had ascended to VP of Sales within the local fitness company as a result of phenomenal growth during the preceding years, finally made the decision to exit the executive level position within the multi-million dollar business and join Mr. Endara as the acting General Manager of Sales as of June 2006. Within a very short period of time, Mr. Johnson, came to realize his vision and values were not commiserate with the company in which he was associated with and made the decision to either return to the fitness industry or to make his own attempt at opening an alarm company with the hopes of simply succeeding at a high enough level to provide for his family while maintaining his own personal fortitude without failure or negativity therein. At this time he also expressed in the event in negativity were to be brought upon Mr. Endara as a result of his efforts to assist Mr. Johnson in the pursuit to open his own entity he would be a partner from the start- the intent was never to see Mr. Endara suffer at the hands of a friendship.

Within days of the announcement of Protection24 LLC becoming the new entity Mr Endara returned to P24, at significant personal financial loss, and from this day forward has been the active business partner, cherished friend and brother-in-arms of Mr. Johnson. The commitment of both parties to right the wrongs of sacrifice and overcome the culture of egotism and aggressiveness which permeate throughout the alarm industry led to additional relationships through the years which many perhaps wilted while others blossomed immensely⁵ the most important of these was with a Vector Security Authorized Dealer known at the time as Guardian Eagle Security. The ownership of Guardian Eagle was not committed to enhancing their opportunities within the alarm industry and Mr. Johnson and Mr. Endara absorbed the company fully and consolidated the assets of both P24 with that of Guardian Eagle Security in the beginning of late 2007 as they realized the longterm benefits of their vision were best

served with the valuable Vector Security brand in which they now were associate. The semblance of ethics and values towards the customers for the first time was equal in many ways and almost impossible to explain- simply stating what was theirs was ours and vice versa from that moment forward.

In February 2008, the rebranded company of AVSX Technologies was introduced in an effort to give the motivational impact to our valued team to know we were committed to Excellence. Hence the naming of the new entity stood for Audio (recently changed to Automation), Video and Security Excellence and the new entity chose to continue the valued relationship as a Vector Security Authorized Dealer even more so by committing to providing service equal to installation. A new identity was born, but the name and people who have defined this identity have not- they have each continued to define WHY AVSX better than we could have ever imagined. Their culmination of success was immediate and within a very short period of time they have achieved record-shattering success month after month and enjoyed the continuation of their overall efforts without failure.

We could inundate each of us with the amazing numbers, impressive statistics and so forth but to be honest the benefit of knowing our commitment to quality has truly exceeded anything remotely believed to be possible from the beginning. We have never been about the quantity of numbers, egos, or the story of where we came from as much as the true impact of knowing where we are headed is with the right people and that is all that has ever mattered to those of who are proud to share with each of you as to WHY AVSX!

Matt- let me know if this is a good start.

From: "Bobby Johnson" <bjohnson@avsx.com>
Date: Friday, January 17, 2014 11:08 AM
To: "Luis Endara" <luis@avsx.com>
Subject: Re: it isn't venting anymore

No laughing bud. Honest. I appreciate you more than you know for knowing the real me. Knowing it isn't a front and knowing I just want to see this thing succeed longterm for all of the families that depend on us. I am not a person who quits at anything and you know that it is just I can't keep watching this thing crumble and know longterm isn't as longterm as we all might think is all.

Good thing is we built it, we can resurface it, I know we have it within us.

See you at 12 for a fun day of working out and thanks as always more than anything for being my true brother and also believing in me.

On 1/17/14, 10:03 AM, "Luis Endara" <luis@avsx.com> wrote:

>Bitch.... 2 things

>

>1... We are 50/50 so if you ass decides to only give 10% to the alarm
 >side...there is no stepping down or consign shit or your wife getting a
 >job...the sweat equity we put and all that we went thru was not for
 >limited fruits...it was so that our families would be financially taken
 >care and give us freedoms to be with our families at times, so I will NOT
 >play a role to out stress on your wife to get a job or any other shit
 >bro...

>

>2....I cosign the gym too...lol

>

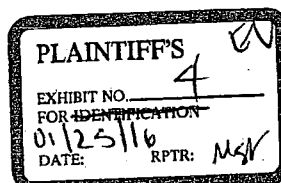
>As far as respect w me...that's my fault for being in the front side as
 >much and being nice guy....but that is changing today my brother....I
 >will NOT let you down nor will allow people ruin what we worked so hard
 >for bro...

>

>Yes bitch, this was my wake up call and we can laugh about it in a
 >year.... Lol

>

>Luis E.



878

3/24/2014

>803-556-1990

>Sent from my iPhone

>

>> On Jan 17, 2014, at 9:42 AM, "Bobby Johnson" <bjohnson@avsx.com> wrote:

>>

>> I know bud. I know. I just wonder how much the two of us can handle by
>> ourselves until people realize we don't do it for anyone but them.

>>

>> Tired of the consistent lack of respect you receive, my families receive
>> and the impact it is causing brings a significant amount of baggage with
>> it. To the point it becomes hard not to wonder "what if", even my wife
>>who

>> you would think would be against the \$\$ decision of perhaps stepping
>>down,

>> cosigned it, asking if she needed to go back to work this morning when I
>> explained it to her. She gets me, you get me, dave gets me... that is all
>>I

>> need but in the end this can't continue for all of us- we are honestly
>>at

>> the beck and call of so many that it is a ping pong match from 8 am
>>every

>> morning till about 1 am each night- everyone is just lucky I get the 2
>>hrs

>> to workout and hang with my true brothers. I cherish that hour more than
>> you guys know. It is my family time.

>>

>> I would never quit on you bro, I love you too much for that, I would
>>never

>> think of leaving you behind but I also don't want to negatively
>>influence

>> the business with my up and down journey. Honest, I just want to open a
>> fucking gym. Lol.

>>

>>

>>

>>> On 1/17/14, 9:32 AM, "Luis Endara" <luis@avsx.com> wrote:

>>>

>>> Hey....we got this brother...

>>>

>>> Trust me when I tell you that unless someone is faced with your reality
>>> can they ever feel what you feel...is like when someone losses a

>>> child...we don't know what it feels because we have never being there,
>>> but I can only imagine what my father felt when his first child died at
>>> the age of 6....just thinking about it brings tears to my eyes because
>>>as

>>> I father I can't even imagine...and I am just as guilty of not feeling
>>> how you feel because I am not in your place in life...yes, I love you
>>> like a brother bitch and would do anything for you, but I cannot deny
>>> that as humans although we feel for one another, we don't truly know
>>>what

>>> is like until it is us that go thru it...I truly hate to read your
>>>emails

>>> because I know how hard you work bro and I know that you mean good
for

>>> all of us and people just take advantage of us...I have trusted you and
>>> will continue to trust your decisions and know that I have your back
>>>100%

>>> and it is time for me to make decisions that I know at times I hate to
>>> make but that are hard to make and that you have made for the 2 of
>>>us...

>>>

>>> Bro...I will NOT allow anyone take us down...our families depend on
>>> us....at times we feel people like Eric are good or necessary for our
>>> long term success and then find that they just simply worked and used
>>>us

>>> as a stepping stone for their next move...we don't know that until we
>>> time goes by and we begin to see who they truly are...the investment
>>>and

>>> foundation we put in NC was significant to allow a small group of guys
>>> derail us...if it takes me being in NC every week, every other week,
>>> etc... And begin to travel more until we stabilize and either change
>>> those affected by greed I will do it...

>>>

>>> Gina is gone within the hour...not your decision to feel guilty because
>>> you think that you influenced it...but because the numbers reflect .
>>>it...I

>>> did a 12 month charge back review and she only decreased it by less
>>>than

>>> \$3,000 per month and that's that I used her numbers from 10/1 to
>>>now...so

>>> in the end she did this to herself not us...

>>>

>>> Love you bro...and I promise you that we will fix our problems and I

>>>will
>>> always be here for you bitch :)
>>>
>>> Luis E.
>>> 803-556-1990
>>> Sent from my iPhone
>>>
>>>> On Jan 17, 2014, at 8:46 AM, "Bobby Johnson"
<bjohnson@avsx.com>
>>>>wrote:
>>>>
>>>> The thing I don't know if I can overlook is the fact it is my own
>>>>family
>>>> who can't even absorb the magnitude of the moment. Who can't even
>>>> embrace
>>>> a future being built for them by someone who may not be able to
share
>>>>it
>>>> with them and yet they do not embrace this to ensure their success
and
>>>> that of my family. I don't know how much longer I can wait before I
>>>>must
>>>> do something else to ensure their future. It is my journey and I live
>>>>it
>>>> daily but it is starting to ride heavy on my conscious to see.
>>>>
>>>> As for Gina and Eric- I will leave their inevitable future up to you.
>>>>I
>>>> think I sway things too much from one side to the other at times and
>>>> just
>>>> don't want to live with the regrets of a ruined brotherhood over the
>>>> stresses these people cause daily. It just doesn't make sense. I will
>>>> text
>>>> you an example of this from Eric in just a second.
>>>>
>>>>> On 1/17/14, 7:52 AM, "Luis Endara" <luis@avsx.com> wrote:
>>>>>
>>>>> Don't let it get to you bro...we will fix things...those that are
>>>>>using
>>>>> us we will replace on our terms...we will start with Gina today bro,
>>>>> Eric
>>>>> will be next (within 90 days he will be gone)...

>>>>>

>>>>> As for the AC, it sucks that if is not one thing is the other but
>>>>> that's
>>>>> life right :)

>>>>>

>>>>> It does get tiring that people use us, but that is ending, we are not
>>>>> letting people barrow, we will put a stop at other things that we
>>>>> know

>>>>> and see are just rep/mgr abuse... We will look at va and either Chris
>>>>> steps up or find a replacement or cut it... Our issue is that we care
>>>>> but

>>>>> some take advantage Abuse our kindness.... It stops now... Fuck
them

>>>>>

>>>>> Luis E.

>>>>> 803-556-1990

>>>>> Sent from my iPhone

>>>>>

>>>>>> On Jan 16, 2014, at 11:11 PM, "Bobby Johnson"
<bjohnson@avsx.com>

>>>>>> wrote:

>>>>>>

>>>>>> I really do think it is time for me to step away. I think it is best
>>>>>> for all. It has been coming for a while. This isn't fun. We need to
>>>>>> work

>>>>>> out the transition. I won't leave it high and dry but to know
>>>>>> without

>>>>>> vector's money (which was more than we anticipated by far) last
week

>>>>>> we

>>>>>> wouldn't be paying bills and I would be bleeding out my ass again
is

>>>>>> no

>>>>>> fucking fun for me. This business doesn't pay my families bills. I
>>>>>> do.

>>>>>>

>>>>>> I am going to let everyone else go through what I went through to
>>>>>> not

>>>>>> know what the future holds. To have to work like a fucking slave so
>>>>>> they

>>>>>> can ensure someone else's family is fed and watch that be taken

>>>>>> advantage of by the wrong people. I am at my end bro- Nikki broke

>>>>>>the
>>>>>> camels back tonight after I checked the account realizing we just
>>>>>> spent
>>>>>> that kind of money on a fucking trip and I get home and my AC is
>>>>>>going
>>>>>> out at the house and will cost over 10k. I am taking back the
>>>>>>freaking
>>>>>> TV I bought that is still in the garage because unlike so many I
>>>>>>can't
>>>>>> take and know there is nothing there to ensure it is safe. I would
>>>>>> have
>>>>>> cancelled the trip too especially considering tomorrow John will
>>>>>>whoop
>>>>>> our ass on chargebacks too.
>>>>>>
>>>>>> Fuck it.
>>

TODD ELLIS

LAW OFFICE OF TODD ELLIS, P.A.

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

March 21, 2014

VIA EMAIL AND US MAIL

Luis Endara
402 Natique Circle
Columbia, South Carolina 29229

Re: Notice of Termination from AVSX Technologies, LLC
Todd Ellis Law File No. 14-0016

Dear Mr. Endara,

I represent AVSX Technologies, LLC. Please allow this letter serve as notice to you that effective today, March 21, 2014, your employment with AVSX is terminated. AVSX will pay your current salary through the end of March. AVSX will pay your health plan through the end of April 2014 and will speak with you about compliance with the Consolidated Omnibus Budget Reconciliation Act (COBRA) to ensure, if you chose, that you get the temporary continuation of coverage allowed under the law.

Immediately cease representing yourself as employed, in any way affiliated with AVSX or that you have authority to bind or speak for the company. You should no longer utilize or access office facilities and equipment, including but not limited to, the company email, server, bank accounts, credit cards, debit cards, office equipment or any other company proprietary information. AVSX is giving written notice to the company banks, cellular provider and vendors of the termination and confirming that you should no longer have access to company property or communications regarding company business.

Please make arrangements to turn in all company owned equipment, materials, automobiles, cell phones, computers, digital devices, client lists or any other company owned or created product or materials by Monday, March 24, 2014. AVSX will make arrangements for you to keep your current telephone number (803-566-1990) but you will not be on the company plan after March 28, 2014.

As for vehicles, you should immediately turn over to my office the 2012 Mercedes 550 a VIN of 4JGBF8GE1CA765509. You should contact me Monday, March 24, 2014 to deliver the Mercedes so that we avoid any further legal steps having to be taken to recover the car titled in Mary Kay Johnson's name. As for other vehicles you or your family utilize:

1. 2013 Jeep Wrangler driven by Laura Endara - AVSX discovered that you have been making the payments with company funds; Ms. Endara can keep the vehicle but AVSX will no longer make the payments;

TELE: 803.732.0123 | FAX: 803.732.0124 | TODD@TODDELLISLAW.COM

PLAINTIFF'S	
EXHIBIT NO.	5
FOR IDENTIFICATION	884
DATE: 3/25/16	RPTR: MSV

2. 2013 FJ Cruiser - a wrapped company vehicle driven by staff and the vehicles monthly payments withdrawn via AVSX account. AVSX is willing to unwrap the vehicle by on or about March 28, 2014 and ensure it is transferred to you or pay an agreed upon fair market value for the vehicle;
3. 2008 FJ Cruiser - vehicle you paid for that is wrapped and had previously been drive by staff. AVSX is willing to unwrap the vehicle by on or about March 28, 2014 and ensure it is transferred to you or pay an agreed upon fair market value for the vehicle.

Do not attempt to return to the AVSX offices to retrieve anything. The Human Resources department will make an inventory of your office and set aside any personal items that you may have left at the office. I will communicate with you again about where and when to deliver those items. Any effort by you to come on company property will be treated as a trespass.

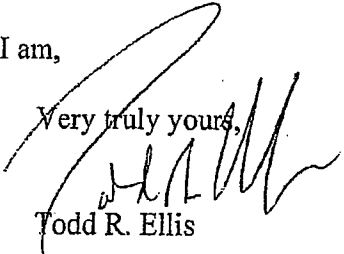
AVSX has assured me they intend on handling this matter professionally. I hope you will do the same. Do not disparage or defame the company, its owner or employees. I have been directed to tell you that the company intends on having very limited communications about your termination with employees. AVSX will let employees, clients and vendors know about the termination but have no interest in an exchange of harmful information.

I welcome your call or communication on any of these issues but you should not be attempting to communicate with AVSX, Bobby Johnson and Mary Kay Johnson. I know you have personal relationships with some people at AVSX but I again encourage you to limit communications with them during this transition and certainly not in a manner that would be disruptive or clearly intended to harm the company.

I look to hear from you about returning the referenced car and other company material as well as your thoughts on the other vehicles referenced about.

With kind regards, I am,

Very truly yours,


Todd R. Ellis

Form **1120S**Department of the Treasury
Internal Revenue Service

U.S. Income Tax Return for an S Corporation

Do not file this form unless the corporation has filed or is
attaching Form 2553 to elect to be an S corporation.Information about Form 1120S and its separate instructions is at www.irs.gov/form1120s.

OMB No. 1545-0123

2014

For calendar year 2014 or tax year beginning

, ending

A S election effective date 01/31/08	TYPE OR PRINT	Name AVSX TECHNOLOGIES, LLC (GUARDIAN EAGLE SECURITY LLC-2010)	D Employer identification number 26-1868248
B Business activity code number (see instructions) 238900		Number, street, and room or suite no. If a P.O. box, see instructions. 1140 BRIARGATE CIRCLE	E Date incorporated 01/31/2008
C Check if Sch. M-3 attached ☐		City or town, state or province, country, and ZIP or foreign postal code COLUMBIA SC 29210	F Total assets (see instructions) \$ 696,657

G Is the corporation electing to be an S corporation beginning with this tax year? ☐ Yes ☒ No If "Yes," attach Form 2553 if not already filed

H Check if: (1) ☐ Final return (2) ☐ Name change (3) ☐ Address change (4) ☐ Amended return (5) ☐ S election termination or revocation

I Enter the number of shareholders who were shareholders during any part of the tax year **2**

Caution. Include only trade or business income and expenses on lines 1a through 21. See the instructions for more information.

Income	1a Gross receipts or sales	1a	9,957,282	
	b Returns and allowances	1b	161,966	
	c Balance. Subtract line 1b from line 1a	1c	9,795,316	
	2 Cost of goods sold (attach Form 1125-A)	2	5,012,137	
	3 Gross profit. Subtract line 2 from line 1c	3	4,783,179	
	4 Net gain (loss) from Form 4797, line 17 (attach Form 4797)	4		
Deductions (see instructions for limitations)	5 Other income (loss) (see instructions—attach statement)	5	2,632	
	6 Total income (loss). Add lines 3 through 5	6	4,785,811	
	7 Compensation of officers (see instructions—attach Form 1125-E)	7	100,083	
	8 Salaries and wages (less employment credits)	8	1,769,610	
	9 Repairs and maintenance	9	23,972	
	10 Bad debts	10		
	11 Rents	11	155,695	
	12 Taxes and licenses	12	367,466	
	13 Interest	13	19,396	
	14 Depreciation not claimed on Form 1125-A or elsewhere on return (attach Form 4562)	14	32,938	
	15 Depletion (Do not deduct oil and gas depletion)	15		
	16 Advertising	16	201,506	
	17 Pension, profit-sharing, etc., plans	17		
	18 Employee benefit programs	18	6,149	
	19 Other deductions (attach statement)	19	1,488,242	
20 Total deductions. Add lines 7 through 19	20	4,165,057		
21 Ordinary business income (loss). Subtract line 20 from line 6	21	620,754		
Tax and Payments	22a Excess net passive income or LIFO recapture tax (see instructions)	22a		
	b Tax from Schedule D (Form 1120S)	22b		
	c Add lines 22a and 22b (see instructions for additional taxes)	22c		
	23a 2014 estimated tax payments and 2013 overpayment credited to 2014	23a		
	b Tax deposited with Form 7004	23b		
	c Credit for federal tax paid on fuels (attach Form 4136)	23c		
	d Add lines 23a through 23c	23d		
	24 Estimated tax penalty (see instructions). Check if Form 2220 is attached ☐	24		
	25 Amount owed. If line 23d is smaller than the total of lines 22c and 24, enter amount owed	25		
	26 Overpayment. If line 23d is larger than the total of lines 22c and 24, enter amount overpaid	26		
27 Enter amount from line 26 Credited to 2015 estimated tax ☐ Refunded ☐	27			

Sign
HereUnder penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements,
and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer)
is based on all information of which preparer has any knowledge.May the IRS discuss this return with the preparer
shown below (see instructions)? ☒ Yes ☐ No

Signature of officer

Date

Title

Paid
Preparer
Use Only

Print/Type preparer's name

MARK W. ZION

Preparer's signature

Date

01/15/16Check ☐ if
self-employed

PTIN

P00234607

Firm's name

ZION & COMPANY, INC.

Firm's EIN

Firm's address

**1226 BRIARGATE CIRCLE
COLUMBIA, SC****29221-6099**

Phone no.

803-561-9000

For Paperwork Reduction Act Notice, see separate instructions.

Form **1120S** (2014)

DAA

PLAINTIFF'S

EXHIBIT NO. **6**
FOR IDENTIFICATIONDATE: **01/25/16** RPTR: **MSV**

886

Form 1120S (2014) **AVSX TECHNOLOGIES, LLC**

26-1868248

Page 2

Schedule B Other Information (see instructions)

- 1 Check accounting method: a ☐ Cash b ☒ Accrual
c ☐ Other (specify) ▶

Yes No

- 2 See the instructions and enter the:

a Business activity ▶ **SALES**b Product or service ▶ **SECURITY SYSTEMS**

- 3 At any time during the tax year, was any shareholder of the corporation a disregarded entity, a trust, an estate, or a nominee or similar person? If "Yes," attach Schedule B-1, Information on Certain Shareholders of an S Corporation

- 4 At the end of the tax year, did the corporation:

- a Own directly 20% or more, or own, directly or indirectly, 50% or more of the total stock issued and outstanding of any foreign or domestic corporation? For rules of constructive ownership, see instructions. If "Yes," complete (i) through (v) below

(i) Name of Corporation	(ii) Employer Identification Number (if any)	(iii) Country of Incorporation	(iv) Percentage of Stock Owned	(v) If Percentage in (iv) is 100%, Enter the Date (if any) a Qualified Subchapter S Subsidiary Election Was Made

- b Own directly an interest of 20% or more, or own, directly or indirectly, an interest of 50% or more in the profit, loss, or capital in any foreign or domestic partnership (including an entity treated as a partnership) or in the beneficial interest of a trust? For rules of constructive ownership, see instructions. If "Yes," complete (i) through (v) below

(i) Name of Entity	(ii) Employer Identification Number (if any)	(iii) Type of Entity	(iv) Country of Organization	(v) Maximum Percentage Owned in Profit, Loss, or Capital

- 5a At the end of the tax year, did the corporation have any outstanding shares of restricted stock?

If "Yes," complete lines (i) and (ii) below.

(i) Total shares of restricted stock ▶

(ii) Total shares of non-restricted stock ▶

- b At the end of the tax year, did the corporation have any outstanding stock options, warrants, or similar instruments?

If "Yes," complete lines (i) and (ii) below.

(i) Total shares of stock outstanding at the end of the tax year ▶

(ii) Total shares of stock outstanding if all instruments were executed ▶

- 6 Has this corporation filed, or is it required to file, Form 8918, Material Advisor Disclosure Statement, to provide information on any reportable transaction? ▶
- ☒

- 7 Check this box if the corporation issued publicly offered debt instruments with original issue discount. If checked, the corporation may have to file Form 8281, Information Return for Publicly Offered Original Issue Discount Instruments. ▶
- ☐

- 8 If the corporation: (a) was a C corporation before it elected to be an S corporation or the corporation acquired an asset with a basis determined by reference to the basis of the asset (or the basis of any other property) in the hands of a C corporation and (b) has net unrealized built-in gain in excess of the net recognized built-in gain from prior years, enter the net unrealized built-in gain reduced by net recognized built-in gain from prior years (see instructions) ▶ \$

- 9 Enter the accumulated earnings and profits of the corporation at the end of the tax year. ▶ \$

- 10 Does the corporation satisfy both of the following conditions?

a The corporation's total receipts (see instructions) for the tax year were less than \$250,000

b The corporation's total assets at the end of the tax year were less than \$250,000

If "Yes," the corporation is not required to complete Schedules L and M-1.

- 11 During the tax year, did the corporation have any non-shareholder debt that was canceled, was forgiven, or had the terms modified so as to reduce the principal amount of the debt?

If "Yes," enter the amount of principal reduction ▶ \$

- 12 During the tax year, was a qualified subchapter S subsidiary election terminated or revoked? If "Yes," see instructions

- 13a Did the corporation make any payments in 2014 that would require it to file Form(s) 1099?

- b If "Yes," did the corporation file or will it file required Forms 1099?

Form 1120S (2014)

Schedule K Shareholders' Pro Rata Share Items

		Total amount	
Income (Loss)	1 Ordinary business income (loss) (page 1, line 21)	1	620,754
	2 Net rental real estate income (loss) (attach Form 8825)	2	
	3a Other gross rental income (loss)	3a	
	b Expenses from other rental activities (attach statement)	3b	
	c Other net rental income (loss). Subtract line 3b from line 3a	3c	
	4 Interest income	4	119
	5 Dividends: a Ordinary dividends	5a	
	b Qualified dividends	5b	
	6 Royalties	6	
	7 Net short-term capital gain (loss) (attach Schedule D (Form 1120S))	7	
Deductions	8a Net long-term capital gain (loss) (attach Schedule D (Form 1120S))	8a	
	b Collectibles (28%) gain (loss)	8b	
	c Unrecaptured section 1250 gain (attach statement)	8c	
	9 Net section 1231 gain (loss) (attach Form 4797)	9	
	10 Other income (loss) (see instructions) Type ▶	10	
	11 Section 179 deduction (attach Form 4562) SEE STMT 3	11	95,269
	12a Charitable contributions SEE STMT 4	12a	17,083
Credits	b Investment interest expense	12b	
	c Section 59(e)(2) expenditures (1) Type ▶ (2) Amount ▶	12c(2)	
	d Other deductions (see instructions) Type ▶	12d	
	13a Low-income housing credit (section 42(j)(5))	13a	
	b Low-income housing credit (other)	13b	
	c Qualified rehabilitation expenditures (rental real estate) (attach Form 3468, if applicable)	13c	
	d Other rental real estate credits (see instructions) Type ▶	13d	
Foreign Transactions	e Other rental credits (see instructions) Type ▶	13e	
	f Biofuel producer credit (attach Form 6478)	13f	
	g Other credits (see instructions) Type ▶	13g	
	14a Name of country or U.S. possession ▶	14b	
	b Gross income from all sources	14c	
	c Gross income sourced at shareholder level		
	Foreign gross income sourced at corporate level	14d	
	d Passive category	14e	
	e General category	14f	
	f Other (attach statement)		
	Deductions allocated and apportioned at shareholder level	14g	
	g Interest expense	14h	
	h Other		
	Deductions allocated and apportioned at corporate level to foreign source income	14i	
i Passive category	14j		
j General category	14k		
k Other (attach statement)			
Other information	14l		
l Total foreign taxes (check one): ▶ ☐ Paid ☐ Accrued	14m		
m Reduction in taxes available for credit (attach statement)			
n Other foreign tax information (attach statement)			
Alternative Minimum Tax (AMT) Items	15a Post-1986 depreciation adjustment	15a	3,235
	b Adjusted gain or loss	15b	
	c Depletion (other than oil and gas)	15c	
	d Oil, gas, and geothermal properties – gross income	15d	
	e Oil, gas, and geothermal properties – deductions	15e	
	f Other AMT items (attach statement)	15f	
Items Affecting Shareholder Basis	16a Tax-exempt interest income	16a	
	b Other tax-exempt income	16b	
	c Nondeductible expenses	16c	52,565
	d Distributions (attach statement if required) (see instructions)	16d	357,124
	e Repayment of loans from shareholders	16e	

Form 1120S (2014) **AVSX TECHNOLOGIES, LLC****26-1868248**Page **4****Schedule K** Shareholders' Pro Rata Share Items (continued)

Other Information		Total amount	
	17a Investment income	17a	119
	b Investment expenses	17b	
	c Dividend distributions paid from accumulated earnings and profits	17c	
	d Other items and amounts (attach statement)		
Reconciliation	18 Income/loss reconciliation. Combine the amounts on lines 1 through 10 in the far right column. From the result, subtract the sum of the amounts on lines 11 through 12d and 14l	18	508,521

Schedule L Balance Sheets per Books		Beginning of tax year		End of tax year	
Assets		(a)	(b)	(c)	(d)
1	Cash		220,669		373,789
2a	Trade notes and accounts receivable				
b	Less allowance for bad debts				
3	Inventories		140,000		150,000
4	U.S. government obligations				
5	Tax-exempt securities (see instructions)				
6	Other current assets (attach statement)				
7	Loans to shareholders				15,790
8	Mortgage and real estate loans				
9	Other investments (attach statement)				
10a	Buildings and other depreciable assets	810,640		928,538	
b	Less accumulated depreciation	708,609	102,031	836,816	91,722
11a	Depletable assets				
b	Less accumulated depletion				
12	Land (net of any amortization)				
13a	Intangible assets (amortizable only)	90,138		90,138	
b	Less accumulated amortization	18,773	71,365	24,782	65,356
14	Other assets (attach statement)				
15	Total assets		534,065		696,657
Liabilities and Shareholders' Equity					
16	Accounts payable				
17	Mortgages, notes, bonds payable in less than 1 year				
18	Other current liabilities (attach statement) STMT 5		47,960		153,953
19	Loans from shareholders				
20	Mortgages, notes, bonds payable in 1 year or more		183,676		141,443
21	Other liabilities (attach statement)				
22	Capital stock				
23	Additional paid-in capital				
24	Retained earnings		302,429		401,261
25	Adjustments to shareholders' equity (attach statement)				
26	Less cost of treasury stock				
27	Total liabilities and shareholders' equity		534,065		696,657

Form **1120S** (2014)

Form 1120S (2014) **AVSX TECHNOLOGIES, LLC****26-1868248**

Page 5

Schedule M-1 Reconciliation of Income (Loss) per Books With Income (Loss) per Return

Note. The corporation may be required to file Schedule M-3 (see instructions)

1	Net income (loss) per books	455,956	5	Income recorded on books this year not included on Schedule K, lines 1 through 10 (Itemize):	
2	Income included on Schedule K, lines 1, 2, 3c, 4, 5a, 6, 7, 8a, 9, and 10, not recorded on books this year (Itemize)		a	Tax-exempt interest \$	
3	Expenses recorded on books this year not included on Schedule K, lines 1 through 12 and 14i (Itemize):		6	Deductions included on Schedule K, lines 1 through 12 and 14i, not charged against book income this year (Itemize):	
a	Depreciation \$		a	Depreciation \$	
b	Travel and entertainment \$	52,190	7	Add lines 5 and 6	
	STMT 6	375			
4	Add lines 1 through 3	508,521	8	Income (loss) (Schedule K, line 18). Line 4 less line 7	508,521

Schedule M-2 Analysis of Accumulated Adjustments Account, Other Adjustments Account, and Shareholders' Undistributed Taxable Income Previously Taxed (see instructions)

	(a) Accumulated adjustments account	(b) Other adjustments account	(c) Shareholders' undistributed taxable income previously taxed
1	Balance at beginning of tax year	302,429	
2	Ordinary income from page 1, line 21	620,754	
3	Other additions STMT 7	119	
4	Loss from page 1, line 21		
5	Other reductions STMT 8	164,917	
6	Combine lines 1 through 5	758,385	
7	Distributions other than dividend distributions	357,124	
8	Balance at end of tax year. Subtract line 7 from line 6	401,261	

Form 1120S (2014)

Form **1125-A****Cost of Goods Sold**

(Rev. December 2012)

Department of the Treasury
Internal Revenue Service▶ Attach to Form 1120, 1120-C, 1120-F, 1120S, 1065, or 1065-B.
▶ Information about Form 1125-A and its instructions is at www.irs.gov/form1125a.

OMB No. 1545-2225

Name

AVSX TECHNOLOGIES, LLC

Employer identification number

26-1868248

1	Inventory at beginning of year	1	140,000
2	Purchases	2	2,418,915
3	Cost of labor	3	856,607
4	Additional section 263A costs (attach schedule)	4	
5	Other costs (attach schedule) STMT 9	5	1,746,615
6	Total. Add lines 1 through 5	6	5,162,137
7	Inventory at end of year	7	150,000
8	Cost of goods sold. Subtract line 7 from line 6. Enter here and on Form 1120, page 1, line 2 or the appropriate line of your tax return (see instructions)	8	5,012,137

9a Check all methods used for valuing closing inventory:

(i) ☒ Cost

(ii) ☐ Lower of cost or market

(iii) ☐ Other (Specify method used and attach explanation.) ▶

b Check if there was a writedown of subnormal goods ▶ ☐

c Check if the LIFO inventory method was adopted this tax year for any goods (if checked, attach Form 970) ▶ ☐

d If the LIFO inventory method was used for this tax year, enter the amount of closing inventory computed under LIFO **9d** ☐

e If property is produced or acquired for resale, do the rules of section 263A apply to the entity (see instructions)? ☐ Yes ☒ No

f Was there any change in determining quantities, cost, or valuations between opening and closing inventory? If "Yes," attach explanation ☐ Yes ☒ No

For Paperwork Reduction Act Notice, see instructions.

Form **1125-A** (Rev. 12-2012)

671114

Schedule K-1
(Form 1120S)Department of the Treasury
Internal Revenue Service

2014

For calendar year 2014, or tax

year beginning

ending

☐ Final K-1☐ Amended K-1

OMB No. 1545-0123

Shareholder's Share of Income, Deductions,
Credits, etc.

See back of form and separate instructions.

Part I Information About the Corporation

A Corporation's employer identification number

26-1868248

B Corporation's name, address, city, state, and ZIP code

AVSX TECHNOLOGIES, LLC
(GUARDIAN EAGLE SECURITY LLC-2010)
1140 BRIARGATE CIRCLE
COLUMBIA SC 29210

C IRS Center where corporation filed return

CINCINNATI, OH 45999

Part II Information About the Shareholder

D Shareholder's identifying number

130-00-0000

E Shareholder's name, address, city, state, and ZIP code

MARY K. JOHNSON
40 FORTY LOVE POINT
CHAPIN SC 29036F Shareholder's percentage of stock
ownership for tax year

50.000000 %



For IRS Use Only

Part III Shareholder's Share of Current Year Income,
Deductions, Credits, and Other Items

1	Ordinary business income (loss)	13	Credits
	310,377		
2	Net rental real estate income (loss)		
3	Other net rental income (loss)		
4	Interest income		
	60		
5a	Ordinary dividends		
5b	Qualified dividends	14	Foreign transactions
6	Royalties		
7	Net short-term capital gain (loss)		
8a	Net long-term capital gain (loss)		
8b	Collectibles (28%) gain (loss)		
8c	Unrecaptured section 1250 gain		
9	Net section 1231 gain (loss)		
10	Other income (loss)	15	Alternative minimum tax (AMT) items
		A	1,618
11	Section 179 deduction	16	Items affecting shareholder basis
*	47,635	C*	STMT
12	Other deductions		
A	8,542	D	337,171
		17	Other information
		A	60
		V*	STMT

* See attached statement for additional information.

671114

Schedule K-1
(Form 1120S)Department of the Treasury
Internal Revenue Service

2014

For calendar year 2014, or tax
year beginning _____
ending _____☐ Final K-1☐ Amended K-1

OMB No. 1545-0123

Shareholder's Share of Income, Deductions,
Credits, etc.

▶ See back of form and separate instructions.

Part I Information About the CorporationA Corporation's employer identification number
26-1868248B Corporation's name, address, city, state, and ZIP code
**AVSX TECHNOLOGIES, LLC
(GUARDIAN EAGLE SECURITY LLC-2010)
1140 BRIARGATE CIRCLE
COLUMBIA SC 29210**C IRS Center where corporation filed return
CINCINNATI, OH 45999**Part II** Information About the ShareholderD Shareholder's identifying number
801-111-8888E Shareholder's name, address, city, state, and ZIP code
**LUIS E. ENDARA
NAUTIQUE CIR
COLUMBIA SC 29210**F Shareholder's percentage of stock
ownership for tax year **50.000000 %**

For IRS Use Only

Part III Shareholder's Share of Current Year Income,
Deductions, Credits, and Other Items

1	Ordinary business income (loss)	13	Credits
	310,377		
2	Net rental real estate income (loss)		
3	Other net rental income (loss)		
4	Interest income		
	59		
5a	Ordinary dividends		
5b	Qualified dividends	14	Foreign transactions
6	Royalties		
7	Net short-term capital gain (loss)		
8a	Net long-term capital gain (loss)		
8b	Collectibles (28%) gain (loss)		
8c	Unrecaptured section 1250 gain		
9	Net section 1231 gain (loss)		
10	Other income (loss)	15	Alternative minimum tax (AMT) items
		A	1,617
11	Section 179 deduction	16	Items affecting shareholder basis
*	47,634	C*	STMT
12	Other deductions		
A	8,541	D	19,953
		17	Other information
		A	59

* See attached statement for additional information.

Form **4562**Department of the Treasury
Internal Revenue Service (99)**Depreciation and Amortization**

(Including Information on Listed Property)

▶ Attach to your tax return.

▶ Information about Form 4562 and its separate instructions is at www.irs.gov/form4562.

OMB No. 1545-0172

2014Attachment
Sequence No. **179**

Name(s) shown on return

AVSX TECHNOLOGIES, LLC

Identifying number

26-1868248

Business or activity to which this form relates

REGULAR DEPRECIATION**Part I Election To Expense Certain Property Under Section 179****Note:** If you have any listed property, complete Part V before you complete Part I.

1	Maximum amount (see instructions)	1	500,000
2	Total cost of section 179 property placed in service (see instructions)	2	117,898
3	Threshold cost of section 179 property before reduction in limitation (see instructions)	3	2,000,000
4	Reduction in limitation. Subtract line 3 from line 2. If zero or less, enter -0-	4	0
5	Dollar limitation for tax year. Subtract line 4 from line 1. If zero or less, enter -0-. If married filing separately, see instructions.	5	500,000
6	(a) Description of property	(b) Cost (business use only)	(c) Elected cost
SEE STATEMENT 10		51,896	51,896
7	Listed property. Enter the amount from line 29	7	43,373
8	Total elected cost of section 179 property. Add amounts in column (c), lines 6 and 7	8	95,269
9	Tentative deduction. Enter the smaller of line 5 or line 8	9	95,269
10	Carryover of disallowed deduction from line 13 of your 2013 Form 4562	10	
11	Business income limitation. Enter the smaller of business income (not less than zero) or line 5 (see instructions)	11	500,000
12	Section 179 expense deduction. Add lines 9 and 10, but do not enter more than line 11	12	95,269
13	Carryover of disallowed deduction to 2015. Add lines 9 and 10, less line 12	13	

Note: Do not use Part II or Part III below for listed property. Instead, use Part V.**Part II Special Depreciation Allowance and Other Depreciation (Do not include listed property.) (See instructions.)**

14	Special depreciation allowance for qualified property (other than listed property) placed in service during the tax year (see instructions)	14	
15	Property subject to section 168(f)(1) election	15	
16	Other depreciation (including ACRS)	16	

Part III MACRS Depreciation (Do not include listed property.) (See instructions.)**Section A**

17	MACRS deductions for assets placed in service in tax years beginning before 2014	17	6,139
18	If you are electing to group any assets placed in service during the tax year into one or more general asset accounts, check here		

Section B—Assets Placed in Service During 2014 Tax Year Using the General Depreciation System

(a) Classification of property	(b) Month and year placed in service	(c) Basis for depreciation (business/investment use only—see instructions)	(d) Recovery period	(e) Convention	(f) Method	(g) Depreciation deduction
19a 3-year property						
b 5-year property						
c 7-year property						
d 10-year property						
e 15-year property						
f 20-year property						
g 25-year property			25 yrs.		S/L	
h Residential rental property			27.5 yrs.	MM	S/L	
i Nonresidential real property			27.5 yrs.	MM	S/L	
			39 yrs.	MM	S/L	
				MM	S/L	

Section C—Assets Placed in Service During 2014 Tax Year Using the Alternative Depreciation System

20a Class life					S/L	
b 12-year			12 yrs.		S/L	
c 40-year			40 yrs.	MM	S/L	

Part IV Summary (See instructions.)

21	Listed property. Enter amount from line 28	21	26,799
22	Total. Add amounts from line 12, lines 14 through 17, lines 19 and 20 in column (g), and line 21. Enter here and on the appropriate lines of your return. Partnerships and S corporations—see instructions	22	32,938
23	For assets shown above and placed in service during the current year, enter the portion of the basis attributable to section 263A costs	23	

For Paperwork Reduction Act Notice, see separate instructions.

Form **4562** (2014)

Part V Listed Property (Include automobiles, certain other vehicles, certain aircraft, certain computers, and property used for entertainment, recreation, or amusement.)

Note: For any vehicle for which you are using the standard mileage rate or deducting lease expense, complete only 24a, 24b, columns (a) through (c) of Section A, all of Section B, and Section C if applicable.

Section A—Depreciation and Other Information (Caution: See the instructions for limits for passenger automobiles.)

24a Do you have evidence to support the business/investment use claimed? ☒ **Yes** ☐ **No** **24b** If "Yes," is the evidence written? ☒ **Yes** ☐ **No**

(a) Type of property (list vehicles first)	(b) Date placed in service	(c) Business/ investment use percentage	(d) Cost or other basis	(e) Basis for depreciation (business/investment use only)	(f) Recovery period	(g) Method/ Convention	(h) Depreciation deduction	(i) Elected section 179 cost

25 Special depreciation allowance for qualified listed property placed in service during the tax year and used more than 50% in a qualified business use (see instructions) **25**

26 Property used more than 50% in a qualified business use:

SEE STATEMENT 11		%	770,281	131,233			26,799	43,373
		%						

27 Property used 50% or less in a qualified business use:

		%				S/L-		
		%				S/L-		

28 Add amounts in column (h), lines 25 through 27. Enter here and on line 21, page 1 **28** **26,799**

29 Add amounts in column (i), line 26. Enter here and on line 7, page 1 **29** **43,373**

Section B—Information on Use of Vehicles

Complete this section for vehicles used by a sole proprietor, partner, or other "more than 5% owner," or related person. If you provided vehicles to your employees, first answer the questions in Section C to see if you meet an exception to completing this section for those vehicles.

	(a) Vehicle 1	(b) Vehicle 2	(c) Vehicle 3	(d) Vehicle 4	(e) Vehicle 5	(f) Vehicle 6
30 Total business/investment miles driven during the year (do not include commuting miles)						
31 Total commuting miles driven during the year						
32 Total other personal (noncommuting) miles driven						
33 Total miles driven during the year. Add lines 30 through 32						
34 Was the vehicle available for personal use during off-duty hours?	Yes	No	Yes	No	Yes	No
35 Was the vehicle used primarily by a more than 5% owner or related person?						
36 Is another vehicle available for personal use?						

Section C—Questions for Employers Who Provide Vehicles for Use by Their Employees

Answer these questions to determine if you meet an exception to completing Section B for vehicles used by employees who are not more than 5% owners or related persons (see instructions).

37 Do you maintain a written policy statement that prohibits all personal use of vehicles, including commuting, by your employees?	Yes	No
38 Do you maintain a written policy statement that prohibits personal use of vehicles, except commuting, by your employees? See the instructions for vehicles used by corporate officers, directors, or 1% or more owners	X	
39 Do you treat all use of vehicles by employees as personal use?		X
40 Do you provide more than five vehicles to your employees, obtain information from your employees about the use of the vehicles, and retain the information received?		X
41 Do you meet the requirements concerning qualified automobile demonstration use? (See instructions.)		X

Note: If your answer to 37, 38, 39, 40, or 41 is "Yes," do not complete Section B for the covered vehicles.

Part VI Amortization

(a) Description of costs	(b) Date amortization begins	(c) Amortizable amount	(d) Code section	(e) Amortization period or percentage	(f) Amortization for this year

42 Amortization of costs that begins during your 2014 tax year (see instructions):

43	Amortization of costs that began before your 2014 tax year	43	6,009		
44	Total. Add amounts in column (f). See the instructions for where to report	44	6,009		

Federal Statements**Statement 1 - Form 1120S, Page 1, Line 5 - Other Income (Loss)**

<u>Description</u>	<u>Amount</u>
OTHER INCOME	\$ 2,632
TOTAL	\$ 2,632

Statement 2 - Form 1120S, Page 1, Line 19 - Other Deductions

<u>Description</u>	<u>Amount</u>
BANK & CREDIT CARD CHARGES	\$ 13,331
INSURANCE	477,156
PROFESSIONAL FEES	101,626
LICENSING/BACKGROUND CKS	18,910
CAR/TRUCK EXPENSES	138,660
DUES & SUBS	30,928
INTERNET EXPENSES	74,191
CREDIT REPORTS	31,547
SUPPLIES	178,816
TELEPHONE	157,314
UTILITIES	17,809
TRAVEL	116,694
LAUNDRY & UNIFORMS	37,769
TRAINING	25,437
MISCELLANEOUS	7,800
GIFTS & REMEMBRANCES	2,054
AMORTIZATION	6,009
50% OF MEALS & ENTERTAINMENT	52,191
TOTAL	\$ 1,488,242

Statement 3 - Form 1120S, Page 3, Schedule K, Line 11 - Section 179 Deduction

<u>Description</u>	<u>Amount</u>
SECTION 179 - PERSONAL PROP	\$ 95,269
TOTAL	\$ 95,269

Statement 4 - Form 1120S, Page 3, Schedule K, Line 12a - Cash Contributions

<u>Description</u>	<u>Cash Contrib 50%</u>	<u>Cash Contrib 30%</u>	<u>Total</u>
MISCELLANEOUS CHARITIES	\$ 17,083	\$	\$ 17,083
TOTAL	\$ 17,083	\$ 0	\$ 17,083

Federal Statements

FYE: 12/31/2014

Statement 5 - Form 1120S, Page 4, Schedule L, Line 18 - Other Current Liabilities

Description	Beginning of Year	End of Year
ACCRUED PAYROLL	\$ 47,960	\$ 47,960
CREDIT CARD PAYABLE		105,993
TOTAL	\$ 47,960	\$ 153,953

Statement 6 - Form 1120S, Page 5, Schedule M-1, Line 3 - Expenses on Books Not on Return

Description	Amount
FINES AND PENALTIES	\$ 375
TOTAL	\$ 375

Statement 7 - Form 1120S, Page 5, Schedule M-2, Line 3(a) - Other Additions

Description	Amount
INTEREST INCOME	\$ 119
TOTAL	\$ 119

Statement 8 - Form 1120S, Page 5, Schedule M-2, Line 5(a) - Other Reductions

Description	Amount
FINES AND PENALTIES	\$ 375
MEALS & ENTERTAINMENT	52,190
CHARITABLE CONTRIBUTIONS	17,083
SECTION 179 EXPENSE	95,269
TOTAL	\$ 164,917

Statement 9 - Form 1125-A, Line 5 - Other Costs

<u>Description</u>	<u>Amount</u>
SUBCONTRACTORS	\$ 1,498,956
GAS	247,659
TOTAL	\$ 1,746,615

Regular Depreciation

Statement 10 - Form 4562, Part I, Line 6 - Section 179 Expense

<u>Description of Property</u>	<u>Cost</u>	<u>Expense</u>
OFFICE FURNITURE	\$ 5,224	\$ 5,224
OFFICE FURNITURE	521	521
OFFICE FURNITURE	1,826	1,826
OFFICE FURNITURE	1,500	1,500
NETSUITE SOFTWARE	15,813	15,813
CLICKSOFTWARE	12,813	12,813
NETSUITE SOFTWARE	11,944	11,944
OFFICE FURNITURE	2,255	2,255
TOTAL	<u>\$ 51,896</u>	<u>\$ 51,896</u>

Federal Statements

1/15/2016 10:36 AM

Regular Depreciation

Statement 11 - Form 4562, Part V, Line 26 - Property Used More Than 50% in Qualified Business

Property Type	Date in Service	Busn Use %	Cost or Basis	Basis For Depr	Per	Meth	Deduct	Sec 179
2012 FORD ESCAPE VIN: 3195	7/16/12	100.00	\$ 21,500	\$ 10,340	5.0	200DBHY	\$ 1,985	\$
2012 DODGE CARAVAN	1/17/12	100.00	21,861	10,501	5.0	200DBHY	2,017	
2012 JEEP PATRIOT	8/01/12	100.00	18,255	7,095	5.0	200DBHY	1,363	
2013 JEEP PATRIOT VIN: 9086	10/12/12	100.00	18,173	7,013	5.0	200DBHY	1,347	
2013 JEEP PATRIOT VIN: 9085	10/12/12	100.00	18,173	7,013	5.0	200DBHY	1,347	
2012 JEEP PATRIOT VIN: 4561	9/18/12	100.00	18,226	7,066	5.0	200DBHY	1,357	
2012 JEEP PATRIOT	9/18/12	100.00	18,226	7,066	5.0	200DBHY	1,357	
2012 JEEP PATRIOT	8/30/12	100.00	16,818	5,658	5.0	200DBHY	1,086	
2012 JEEP PATRIOT	8/30/12	100.00	16,818	5,658	5.0	200DBHY	1,086	
2013 FORD ESCAPE VIN: 50	1/30/13	100.00	20,278	9,118	5.0	200DBHY	2,918	
2013 FORD ESCAPE VIN: 20	1/30/13	100.00	20,278	9,118	5.0	200DBHY	2,918	
2013 FORD ESCAPE VIN: 31	1/30/13	100.00	20,278	9,118	5.0	200DBHY	2,918	
CHEVROLET TRAILBLAZER	6/03/13	100.00	3,000		5.0	200DBHY		
2013 FORD FUSION	2/15/13	100.00	25,000	13,840	5.0	200DBHY	5,100	
6 CARGO VANS @ 24600 EACH	3/31/11	100.00	123,000		5.0	200DBHY		
FORD CARGO VAN	8/31/11	100.00	32,332		5.0	200DBHY		

Federal Statements

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Regular Depreciation

Statement 11 - Form 4562, Part V, Line 26 - Property Used More Than 50% in Qualified Business (continued)

Property Type	Date in Service	Busn Use %	Cost or Basis	Basis For Depr	Per	Meth	Deduct	Sec 179
2012 FORD TRANSIT CONNECT VIN: 5713	5/23/12	100.00	\$ 21,700	\$	5.0	200DBHY	\$	\$
2012 FORD TRANSIT CONNECT VIN: 6255	5/23/12	100.00	20,700		5.0	200DBHY		
2012 FORD TRANSIT CONNECT VIN: 7599	10/25/12	100.00	20,500		5.0	200DBHY		
2012 FORD TRANSIT CONNECT VIN: 1593	10/25/12	100.00	20,500		5.0	200DBHY		
2012 FORD TRANSIT CONNECT VIN: 1594	10/25/12	100.00	20,500		5.0	200DBHY		
2012 FORD TRANSIT CONNECT VIN: 9042	11/12/12	100.00	21,500		5.0	200DBHY		
2012 FORD TRANSIT CONNECT VIN: 5195	11/12/12	100.00	18,500		5.0	200DBHY		
2012 FORD TRANSIT CONNECT VIN: 2380	11/12/12	100.00	21,500		5.0	200DBHY		
2012 FORD TRANSIT CONNECT VIN: 4657	11/29/12	100.00	20,500		5.0	200DBHY		
2012 FORD TRANSIT CONNECT VIN: 1893	11/29/12	100.00	20,500		5.0	200DBHY		
2012 FORD TRANSIT CONNECT VIN: 8938	11/29/12	100.00	21,500		5.0	200DBHY		
2012 FORD TRANSIT CONNECT	4/25/12	100.00	21,909		5.0	200DBHY		
2012 FORD TRANSIT CONNECT	5/04/12	100.00	21,700		5.0	200DBHY		
2011 FORD TRANSIT CONNECT VIN: 5735	1/01/12	100.00	20,554		5.0	200DBHY		
TOYOTA FJ CRUISER	5/05/14	100.00	33,789	22,629	5.0	200DBHY		11,160
FORD TRANSIT CONNECT VIN: 8987	8/28/14	100.00	16,484		5.0	200DBHY		16,484

AVSXTECH4 AVSX TECHNOLOGIES, LLC
26-1868248
FYE: 12/31/2014

Federal Statements

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Regular Depreciation

Statement 11 - Form 4562, Part V, Line 26 - Property Used More Than 50% in Qualified Business (continued)

Property Type	Date in Service	Busn Use %	Cost or Basis	Basis For Depr	Per	Meth	Deduct	Sec 179
FORD TRANSIT CONNECT VIN: 8083	9/10/14	100.00	\$ 15,729	\$	5.0	200DBHY	\$	\$ 15,729
TOTAL			\$ 770,281	\$ 131,233			\$ 26,799	\$ 43,373

Federal Statements**MARY K. JOHNSON****000-00-0000****Schedule K-1, Box 11 - Section 179 Deduction**

Description	Shareholder Amount
SECTION 179 - PERSONAL PROP	47,635
TOTAL	47,635

Schedule K-1, Box 16, Code C - Nondeductible Expenses

Description	Shareholder Amount
FINES AND PENALTIES	\$ 188
PAGE 1 MEALS/ENTERTAINMENT	26,095
TOTAL	\$ 26,283

Schedule K-1, Box 17, Code V - Other Information

Description	Shareholder Amount
GAIN ON EXCESS DISTRIBUTION	26,734

Federal Statements

LUIS E. ENDARA

~~001-00-5113~~Schedule K-1, Box 11 - Section 179 Deduction

Description	Shareholder Amount
SECTION 179 - PERSONAL PROP	47,634
TOTAL	47,634

Schedule K-1, Box 16, Code C - Nondeductible Expenses

Description	Shareholder Amount
FINES AND PENALTIES	\$ 187
PAGE 1 MEALS/ENTERTAINMENT	26,095
TOTAL	\$ 26,282

Federal Asset Report

Form 1120S, Page 1

Asset	Description	Date In Service	Cost	Bus %	Sec 179B	Bonus	Basis for Depr	PerConv	Meth	Prior	Current
Section 179 Expense:											
44	OFFICE FURNITURE	3/28/14	5,224	X	X		N/A	7	HY 200DB	0	5,224
45	OFFICE FURNITURE	4/19/14	521	X	X		N/A	7	HY 200DB	0	521
46	OFFICE FURNITURE	6/06/14	1,826	X	X		N/A	7	HY 200DB	0	1,826
47	OFFICE FURNITURE	6/08/14	1,500	X	X		N/A	7	HY 200DB	0	1,500
48	TOYOTA FJ CRUISER	5/05/14	33,789	X	X		N/A	5	HY 200DB	0	11,160
49	FORD TRANSIT CONNECT VIN: 8987	8/28/14	16,484	X			N/A	5	HY 200DB	0	16,484
50	FORD TRANSIT CONNECT VIN: 8083	9/10/14	15,729	X			N/A	5	HY 200DB	0	15,729
51	NETSUITE SOFTWARE	10/31/14	15,813	X	X		N/A	3	MOAmort	0	15,813
52	CLICKSOFTWARE	8/11/14	12,813	X	X		N/A	3	MOAmort	0	12,813
53	NETSUITE SOFTWARE	9/29/14	11,944	X	X		N/A	3	MOAmort	0	11,944
54	OFFICE FURNITURE	2/07/14	2,255	X	X		N/A	7	HY 200DB	0	2,255
			<u>117,898</u>				<u>N/A</u>			<u>0</u>	<u>95,269</u>
7-year GDS Property:											
44	OFFICE FURNITURE	3/28/14	N/A*	X	X		0	7	HY 200DB	0	0
45	OFFICE FURNITURE	4/19/14	N/A*	X	X		0	7	HY 200DB	0	0
46	OFFICE FURNITURE	6/06/14	N/A*	X	X		0	7	HY 200DB	0	0
47	OFFICE FURNITURE	6/08/14	N/A*	X	X		0	7	HY 200DB	0	0
54	OFFICE FURNITURE	2/07/14	N/A*	X	X		0	7	HY 200DB	0	0
			<u>0</u>				<u>0</u>			<u>0</u>	<u>0</u>
Prior MACRS:											
3	OFFICE FURNITURE	6/27/11	4,500	X	X		0	7	HY 200DB	4,500	0
5	FIVE YEAR ASSETS	11/15/10	40,376		X		7,456	5	HY 200DB	32,920	4,971
6	SEVEN YEAR ASSETS	11/15/10	1,050		X		314	7	HY 200DB	736	90
7	5 YEAR ASSETS	11/15/10	6,500		X		1,382	5	HY 200DB	5,118	921
21	OFFICE FURNITURE	1/13/12	2,486	X	X		0	7	HY 200DB	2,486	0
22	EQUIPMENT	9/30/12	1,781	X	X		0	5	HY 200DB	1,781	0
35	HVAC UNIT	5/09/12	6,100				6,100	39	MM S/L	254	157
41	A3 COMM PHONE SYSTEM	12/31/13	34,851	X	X		0	7	HY 200DB	34,851	0
42	OFFICE FURNITURE	2/04/13	7,650	X	X		0	7	HY 200DB	7,650	0
43	OFFICE FURNITURE	3/20/13	1,067	X	X		0	7	HY 200DB	1,067	0
			<u>106,361</u>				<u>15,252</u>			<u>91,363</u>	<u>6,139</u>
Other Depreciation:											
51	NETSUITE SOFTWARE	10/31/14	N/A*	X	X		0	3	MOAmort	0	0
52	CLICKSOFTWARE	8/11/14	N/A*	X	X		0	3	MOAmort	0	0
53	NETSUITE SOFTWARE	9/29/14	N/A*	X	X		0	3	MOAmort	0	0
	Total Other Depreciation		<u>0</u>				<u>0</u>			<u>0</u>	<u>0</u>
	Total ACRS and Other Depreciation		<u>0</u>				<u>0</u>			<u>0</u>	<u>0</u>
Listed Property:											
20	2012 FORD ESCAPE VIN: 3195	7/16/12	21,500	X	X		10,340	5	HY 200DB	14,469	1,985
23	2012 DODGE CARAVAN	1/17/12	21,861	X	X		10,501	5	HY 200DB	14,720	2,017
24	2012 JEEP PATRIOT	8/01/12	18,255	X	X		7,095	5	HY 200DB	13,430	1,363
25	2013 JEEP PATRIOT VIN: 9086	10/12/12	18,173	X	X		7,013	5	HY 200DB	13,404	1,347
26	2013 JEEP PATRIOT VIN: 9085	10/12/12	18,173	X	X		7,013	5	HY 200DB	13,404	1,347
27	2012 JEEP PATRIOT VIN: 4561	9/18/12	18,226	X	X		7,066	5	HY 200DB	13,421	1,357
28	2012 JEEP PATRIOT	9/18/12	18,226	X	X		7,066	5	HY 200DB	13,421	1,357
29	2012 JEEP PATRIOT	8/30/12	16,818	X	X		5,658	5	HY 200DB	12,971	1,086
30	2012 JEEP PATRIOT	8/30/12	16,818	X	X		5,658	5	HY 200DB	12,971	1,086
36	2013 FORD ESCAPE VIN: 50	1/30/13	20,278	X	X		9,118	5	HY 200DB	11,160	2,918
37	2013 FORD ESCAPE VIN: 20	1/30/13	20,278	X	X		9,118	5	HY 200DB	11,160	2,918
38	2013 FORD ESCAPE VIN: 31	1/30/13	20,278	X	X		9,118	5	HY 200DB	11,160	2,918
39	CHEVROLET TRAILBLAZER	6/03/13	3,000	X			0	5	HY 200DB	3,000	0
40	2013 FORD FUSION	2/15/13	25,000		X		13,840	5	HY 200DB	11,160	5,100
48	TOYOTA FJ CRUISER	5/05/14	N/A*	X	X		22,629	5	HY 200DB	0	0
1	6 CARGO VANS @ 24600 EACH	3/31/11	123,000	X	X		0	5	HY 200DB	123,000	0
2	FORD CARGO VAN	8/31/11	32,332	X	X		0	5	HY 200DB	32,332	0

*Because this asset has 179 expense, its cost has been included in the Section 179 Property cost total

Federal Asset Report

Asset	Description	Date In Service	Cost	Bus %	Sec 179	Bonus	Basis for Depr	PerConv Meth	Prior	Current	
9	2012 FORD TRANSIT CONNECT VIN: 5	5/23/12	21,700	X	X		0	5 HY 200DB	21,700	0	
10	2012 FORD TRANSIT CONNECT VIN: 6	5/23/12	20,700	X	X		0	5 HY 200DB	20,700	0	
11	2012 FORD TRANSIT CONNECT VIN: 7	10/25/12	20,500	X	X		0	5 HY 200DB	20,500	0	
12	2012 FORD TRANSIT CONNECT VIN: 1	10/25/12	20,500	X	X		0	5 HY 200DB	20,500	0	
13	2012 FORD TRANSIT CONNECT VIN: 1	10/25/12	20,500	X	X		0	5 HY 200DB	20,500	0	
14	2012 FORD TRANSIT CONNECT VIN: 9	11/12/12	21,500	X	X		0	5 HY 200DB	21,500	0	
15	2012 FORD TRANSIT CONNECT VIN: 5	11/12/12	18,500	X	X		0	5 HY 200DB	18,500	0	
16	2012 FORD TRANSIT CONNECT VIN: 2	11/12/12	21,500	X	X		0	5 HY 200DB	21,500	0	
17	2012 FORD TRANSIT CONNECT VIN: 4	11/29/12	20,500	X	X		0	5 HY 200DB	20,500	0	
18	2012 FORD TRANSIT CONNECT VIN: 1	11/29/12	20,500	X	X		0	5 HY 200DB	20,500	0	
19	2012 FORD TRANSIT CONNECT VIN: 8	11/29/12	21,500	X	X		0	5 HY 200DB	21,500	0	
31	2012 FORD TRANSIT CONNECT	4/25/12	21,909	X	X		0	5 HY 200DB	21,909	0	
32	2012 FORD TRANSIT CONNECT	5/04/12	21,700	X	X		0	5 HY 200DB	21,700	0	
33	2011 FORD TRANSIT CONNECT VIN: 5	1/01/12	20,554	X	X		0	5 HY 200DB	20,554	0	
49	FORD TRANSIT CONNECT VIN: 8987	8/28/14	N/A*	X			0	5 HY 200DB	0	0	
50	FORD TRANSIT CONNECT VIN: 8083	9/10/14	N/A*	X			0	5 HY 200DB	0	0	
			<u>704,279</u>				<u>131,233</u>			<u>617,246</u>	<u>26,799</u>
Amortization:											
8	GOODWILL	11/15/10	90,138				90,138	15 MOAmort	18,773	6,009	
			<u>90,138</u>				<u>90,138</u>			<u>18,773</u>	<u>6,009</u>
Grand Totals			1,018,676				236,623			727,382	134,216
Less: Dispositions and Transfers			0				0			0	0
Less: Start-up/Org Expense			0				0			0	0
Net Grand Totals			<u>1,018,676</u>				<u>236,623</u>			<u>727,382</u>	<u>134,216</u>

*Because this asset has 179 expense, its cost has been included in the Section 179 Property cost total

26-1868248

Bonus Depreciation Report

FYE: 12/31/2014

Asset	Property Description	Date In Service	Tax Cost	Bus Pct	Tax Sec 179 Exp	Current Bonus	Prior Bonus	Tax - Basis for Depr
Activity: Form 1120S, Page 1								
51	NETSUITE SOFTWARE	10/31/14	15,813		15,813	0	0	0
52	CLICKSOFTWARE	8/11/14	12,813		12,813	0	0	0
53	NETSUITE SOFTWARE	9/29/14	11,944		11,944	0	0	0
1	6 CARGO VANS @ 24600 EACH	3/31/11	123,000	100	123,000	0	0	0
2	FORD CARGO VAN	8/31/11	32,332	100	32,332	0	0	0
3	OFFICE FURNITURE	6/27/11	4,500		4,500	0	0	0
5	FIVE YEAR ASSETS	11/15/10	40,376		0	0	32,920	7,456
6	SEVEN YEAR ASSETS	11/15/10	1,050		0	0	736	314
7	5 YEAR ASSETS	11/15/10	6,500		0	0	5,118	1,382
9	2012 FORD TRANSIT CONNECT VIN: 571	5/23/12	21,700	100	21,700	0	0	0
10	2012 FORD TRANSIT CONNECT VIN: 625	5/23/12	20,700	100	20,700	0	0	0
11	2012 FORD TRANSIT CONNECT VIN: 755	10/25/12	20,500	100	20,500	0	0	0
12	2012 FORD TRANSIT CONNECT VIN: 155	10/25/12	20,500	100	20,500	0	0	0
13	2012 FORD TRANSIT CONNECT VIN: 155	10/25/12	20,500	100	20,500	0	0	0
14	2012 FORD TRANSIT CONNECT VIN: 904	11/12/12	21,500	100	21,500	0	0	0
15	2012 FORD TRANSIT CONNECT VIN: 515	11/12/12	18,500	100	18,500	0	0	0
16	2012 FORD TRANSIT CONNECT VIN: 238	11/12/12	21,500	100	21,500	0	0	0
17	2012 FORD TRANSIT CONNECT VIN: 465	11/29/12	20,500	100	20,500	0	0	0
18	2012 FORD TRANSIT CONNECT VIN: 185	11/29/12	20,500	100	20,500	0	0	0
19	2012 FORD TRANSIT CONNECT VIN: 893	11/29/12	21,500	100	21,500	0	0	0
20	2012 FORD ESCAPE VIN: 3195	7/16/12	21,500	100	11,160	0	0	10,340
21	OFFICE FURNITURE	1/13/12	2,486		2,486	0	0	0
22	EQUIPMENT	9/30/12	1,781		1,781	0	0	0
23	2012 DODGE CARAVAN	1/17/12	21,861	100	11,360	0	0	10,501
24	2012 JEEP PATRIOT	8/01/12	18,255	100	11,160	0	0	7,095
25	2013 JEEP PATRIOT VIN: 9086	10/12/12	18,173	100	11,160	0	0	7,013
26	2013 JEEP PATRIOT VIN: 9085	10/12/12	18,173	100	11,160	0	0	7,013
27	2012 JEEP PATRIOT VIN: 4561	9/18/12	18,226	100	11,160	0	0	7,066
28	2012 JEEP PATRIOT	9/18/12	18,226	100	11,160	0	0	7,066
29	2012 JEEP PATRIOT	8/30/12	16,818	100	11,160	0	0	5,658
30	2012 JEEP PATRIOT	8/30/12	16,818	100	11,160	0	0	5,658
31	2012 FORD TRANSIT CONNECT	4/25/12	21,909	100	21,909	0	0	0
32	2012 FORD TRANSIT CONNECT	5/04/12	21,700	100	21,700	0	0	0
33	2011 FORD TRANSIT CONNECT VIN: 572	1/01/12	20,554	100	20,554	0	0	0
36	2013 FORD ESCAPE VIN: 50	1/30/13	20,278	100	11,160	0	0	9,118
37	2013 FORD ESCAPE VIN: 20	1/30/13	20,278	100	11,160	0	0	9,118
38	2013 FORD ESCAPE VIN: 31	1/30/13	20,278	100	11,160	0	0	9,118
40	2013 FORD FUSION	2/15/13	25,000	100	0	0	11,160	13,840
41	A3 COMM PHONE SYSTEM	12/31/13	34,851		34,851	0	0	0
42	OFFICE FURNITURE	2/04/13	7,650		7,650	0	0	0
43	OFFICE FURNITURE	3/20/13	1,067		1,067	0	0	0
44	OFFICE FURNITURE	3/28/14	5,224		5,224	0	0	0
45	OFFICE FURNITURE	4/19/14	521		521	0	0	0
46	OFFICE FURNITURE	6/06/14	1,826		1,826	0	0	0
47	OFFICE FURNITURE	6/08/14	1,500		1,500	0	0	0
48	TOYOTA FJ CRUISER	5/05/14	33,789	100	11,160	0	0	22,629
54	OFFICE FURNITURE	2/07/14	2,255		2,255	0	0	0
Form 1120S, Page 1			887,225		63,056	0	49,934	140,385
Grand Total			887,225		63,056	0	49,934	140,385

Depreciation Adjustment Report

All Business Activities

Form	Unit	Asset	Description	Tax	AMT	AMT Adjustments/ Preferences
MACRS Adjustments:						
Page 1	1	1	6 CARGO VANS @ 24600 EACH	0	0	0
Page 1	1	2	FORD CARGO VAN	0	0	0
Page 1	1	3	OFFICE FURNITURE	0	0	0
Page 1	1	5	FIVE YEAR ASSETS	4,971	2,325	2,646
Page 1	1	6	SEVEN YEAR ASSETS	90	47	43
Page 1	1	7	5 YEAR ASSETS	921	375	546
Page 1	1	9	2012 FORD TRANSIT CONNECT VIN: 5713	0	0	0
Page 1	1	10	2012 FORD TRANSIT CONNECT VIN: 6255	0	0	0
Page 1	1	11	2012 FORD TRANSIT CONNECT VIN: 7599	0	0	0
Page 1	1	12	2012 FORD TRANSIT CONNECT VIN: 1593	0	0	0
Page 1	1	13	2012 FORD TRANSIT CONNECT VIN: 1594	0	0	0
Page 1	1	14	2012 FORD TRANSIT CONNECT VIN: 9042	0	0	0
Page 1	1	15	2012 FORD TRANSIT CONNECT VIN: 5195	0	0	0
Page 1	1	16	2012 FORD TRANSIT CONNECT VIN: 2380	0	0	0
Page 1	1	17	2012 FORD TRANSIT CONNECT VIN: 4657	0	0	0
Page 1	1	18	2012 FORD TRANSIT CONNECT VIN: 1893	0	0	0
Page 1	1	19	2012 FORD TRANSIT CONNECT VIN: 8938	0	0	0
Page 1	1	20	2012 FORD ESCAPE VIN: 3195	1,985	1,985	0
Page 1	1	21	OFFICE FURNITURE	0	0	0
Page 1	1	22	EQUIPMENT	0	0	0
Page 1	1	23	2012 DODGE CARAVAN	2,017	2,017	0
Page 1	1	24	2012 JEEP PATRIOT	1,363	1,363	0
Page 1	1	25	2013 JEEP PATRIOT VIN: 9086	1,347	1,347	0
Page 1	1	26	2013 JEEP PATRIOT VIN: 9085	1,347	1,347	0
Page 1	1	27	2012 JEEP PATRIOT VIN: 4561	1,357	1,357	0
Page 1	1	28	2012 JEEP PATRIOT	1,357	1,357	0
Page 1	1	29	2012 JEEP PATRIOT	1,086	1,086	0
Page 1	1	30	2012 JEEP PATRIOT	1,086	1,086	0
Page 1	1	31	2012 FORD TRANSIT CONNECT	0	0	0
Page 1	1	32	2012 FORD TRANSIT CONNECT	0	0	0
Page 1	1	33	2011 FORD TRANSIT CONNECT VIN: 5735	0	0	0
Page 1	1	35	HVAC UNIT	157	157	0
Page 1	1	36	2013 FORD ESCAPE VIN: 50	2,918	2,918	0
Page 1	1	37	2013 FORD ESCAPE VIN: 20	2,918	2,918	0
Page 1	1	38	2013 FORD ESCAPE VIN: 31	2,918	2,918	0
Page 1	1	39	CHEVROLET TRAILBLAZER	0	0	0
Page 1	1	40	2013 FORD FUSION	5,100	5,100	0
Page 1	1	41	A3 COMM PHONE SYSTEM	0	0	0
Page 1	1	42	OFFICE FURNITURE	0	0	0
Page 1	1	43	OFFICE FURNITURE	0	0	0
Page 1	1	44	OFFICE FURNITURE	5,224	5,224	0
Page 1	1	45	OFFICE FURNITURE	521	521	0
Page 1	1	46	OFFICE FURNITURE	1,826	1,826	0
Page 1	1	47	OFFICE FURNITURE	1,500	1,500	0
Page 1	1	48	TOYOTA FJ CRUISER	11,160	11,160	0
Page 1	1	49	FORD TRANSIT CONNECT VIN: 8987	16,484	16,484	0
Page 1	1	50	FORD TRANSIT CONNECT VIN: 8083	15,729	15,729	0
Page 1	1	54	OFFICE FURNITURE	2,255	2,255	0
				<u>87,637</u>	<u>84,402</u>	<u>3,235</u>

Form **1120S****Schedule K-1 Summary Worksheet****2014**

Name:

Employer Identification Number

AVSX TECHNOLOGIES, LLC**26-1868248**

Shareholder Name

SSN/EIN

Column A **MARY K. JOHNSON**~~999-99-9999~~Column B **LUIS E. ENDARA**~~999-99-9999~~

Column C

Column D

	Schedule K Items	Column A	Column B	Column C	Column D	SCH K TOTAL
1	Ordinary income	310,377	310,377			620,754
2	Net rental RE inc					
3c	Net other rental inc					
4	Interest income	60	59			119
5a	Ordinary dividends					
5b	Qualified dividends					
6	Royalties					
7	Net ST capital gain					
8a	Net LT capital gain					
8b	Collectibles 28% gain					
8c	Unrecap Sec 1250					
9	Net Sec 1231 gain					
10	Other income (loss)					
11	Sec 179 deduction	47,635	47,634			95,269
12a	Contributions	8,542	8,541			17,083
12b	Invest interest exp					
12c	Sec 59(e)(2) exp					
12d	Other deductions					
13a	Low-inc house 42j5					
13b	Low-inc house other					
13c	Qualif rehab exp					
13d	Rental RE credits					
13e	Other rental credits					
13f	Biofuel credit					
13g	Other credits					
14b	Gross inc all src					
14d-f	Total foreign inc					
14g-k	Total foreign dedts					
14l	Total foreign taxes					
14m	Reduct in taxes					
15a	Depr adjustment	1,618	1,617			3,235
15b	Adjusted gain (loss)					
15c	Depletion					
15d	Inc-oil/gas/geoth					
15e	Ded-oil/gas/geoth					
15f	Other AMT items					
16a	Tax-exempt interest					
16b	Other tax-exempt					
16c	Nonded expense	26,283	26,282			52,565
16d	Distributions	337,171	19,953			357,124
16e	Shr loan repmts					
17a	Investment income	60	59			119
17b	Investment expense					
18	Income (loss)	254,260	254,261			508,521

Form 1120S	Retained Earnings Reconciliation Worksheet		2014
For calendar year 2014 or tax year beginning _____, ending _____			
Name AVSX TECHNOLOGIES, LLC			Employer Identification Number 26-1868248

Schedule L - Retained Earnings

Retained Earnings - Unappropriated	0
Accumulated Adjustments Account	<u>401,261</u>
Other Adjustments Account	<u>0</u>
Undistributed Previously Taxed Income	<u>0</u>
 Schedule L, Line 24 - Retained Earnings	 <u><u>401,261</u></u>

Schedule M-2 - Retained Earnings

	Accumulated Adjustments Account	Other Adjustments Account	Undistributed Previously Taxed Income	Retained Earnings Unappropriated/ Timing Differences	Total Retained Earnings
Beg Yr Bal	302,429	0	0	0	302,429
Ordinary Inc (Loss)	620,754				620,754
Other Additions	119				119
Other Reductions	164,917				164,917
Distributions	357,124				357,124
 End Yr Bal	<u><u>401,261</u></u>	<u><u>0</u></u>	<u><u>0</u></u>	<u><u>0</u></u>	<u><u>401,261</u></u>

Shareholder's Basis Worksheet Page 1		2014
Form 1120S	Schedule K-1	For calendar year 2014 or tax year beginning , ending
Name AVSX TECHNOLOGIES, LLC MARY K. JOHNSON		Taxpayer Identification Number 26-1868248

Stock Basis

1. Beginning of year stock basis		0
2. Capital contributions		
Additions:		
3. Ordinary business income	310,377	
4. Net rental income		
5. Interest, dividends, royalties and net capital gains	60	
6. Net Section 1231 gain		
7. Tax-exempt interest and other income		
8. Other income		
9. Gain on disposal of Section 179 assets		310,437
10. Other increases		
11. Subtotal (Add line 1 through line 10)		310,437
Subtractions:		
12. Distributions	TOTAL DISTRIBUTIONS 337,171	310,437
13. Total losses and deductions applied against stock basis (See Shareholder's Basis Worksheet Page 2)		
14. Other decreases		
15. Amount used to restore loan basis		
16. End of year stock basis (Subtract the sum of lines 12 through 15 from line 11)		0

Loan Basis

17. Beginning of year loan basis		
18. Loans to corporation		
19. Loan basis restored - amount used in prior years to offset losses		
20. Other increases		
21. Loan repayments		
22. Total losses and deductions applied against loan basis (See Shareholder's Basis Worksheet Page 2)		
23. Other decreases		
24. End of year loan basis (Subtract the sum of lines 21 through 23 from the sum of lines 17 through 20)		0
25. End of year stock and loan basis (Add line 16 and line 24)		0
Principal amount of loan owed to shareholder at end of the year		0

Gain Recognized on Excess Distributions

26. Distributions		337,171
27. Stock basis before distributions and loss items		310,437
28. Gain recognized on excess distributions (Subtract line 27 from line 26)		26,734

Gain Recognized on Repayment of Shareholder Loan

29. Loan basis at beginning of tax year		
30. Loan basis restored - amount used in prior years to offset losses		
31. Loan basis before loan repayment (Add line 29 and line 30)		
32. Shareholder loan at beginning of tax year		
33. Loan repayments to shareholder during tax year		
34. Nontaxable return of loan basis ((Line 31 divided by line 32) multiplied by line 33)		
35. Gain recognized on repayment of shareholder loan (Subtract line 34 from line 33)		

Form **1120S**
Schedule K-1

Shareholder's Basis Worksheet Page 2

2014

For calendar year 2014 or tax year beginning

ending

Name

AVSX TECHNOLOGIES, LLC
MARY K. JOHNSONTaxpayer Identification Number
26-1868248

Loss Allocated to Stock and Loan Basis

	Suspended Losses	Current Year Loss	Total Loss	Percent	Allowed Stock Loss	Disallowed Loss	Percent	Allowed Loan Loss	Loss to Carryforward	Total Allowed Loss
Nondeductible noncap expenses		26,283	26,283	100.00		26,283	100.00		26,283	
Deductible Items:										
Ordinary business loss										
Net rental real estate loss										
Other net rental loss										
Short-term capital loss										
Long-term capital loss										
Net Section 1231 loss										
Other portfolio loss										
Other losses										
Section 179 expense	32,818	47,635	80,453	88.93		80,453	88.93		80,453	
Cash contributions (50%)	1,468	8,542	10,010	11.07		10,010	11.07		10,010	
Cash contributions (30%)										
Noncash contributions (50%) ..										
Qual conserv contrib (50%) ..										
Noncash contributions (30%) ..										
Cap gain prop 50% org (30%) ..										
Cap gain prop (20%)										
Qual conserv contrib (100%) ..										
Portfolio deductions (2% floor)										
Portfolio deductions (other) ...										
Investment interest expense ..										
Deductions-royalty income ...										
Section 59(e)(2) expend										
Preproductive period exp										
Commercial revitalization ded ..										
Reforestation expense ded										
Other deductions										
Foreign taxes										
Loss on disposal of 179 assets										
Total deductible items	34,286	56,177	90,463	100.00		90,463	100.00		90,463	
Total nonded and deductible items	34,286	82,460	116,746			116,746			116,746	

Go to shareholder: This worksheet was prepared based on corporation records. Please consult with your tax advisor for adjustments.

Shareholder's Basis Worksheet Page 1		2014
Form 1120S		
Schedule K-1	For calendar year 2014 or tax year beginning , ending	
Name AVSX TECHNOLOGIES, LLC LUIS E. ENDARA	Taxpayer Identification Number 26-1868248	~~999-99-9999~~

Stock Basis

1. Beginning of year stock basis		336,715
2. Capital contributions		
Additions:		
3. Ordinary business income	310,377	
4. Net rental income		
5. Interest, dividends, royalties and net capital gains	59	
6. Net Section 1231 gain		
7. Tax-exempt interest and other income		
8. Other income		
9. Gain on disposal of Section 179 assets		
10. Other increases		310,436
11. Subtotal (Add line 1 through line 10)		647,151
Subtractions:		
12. Distributions		19,953
13. Total losses and deductions applied against stock basis (See Shareholder's Basis Worksheet Page 2)		82,457
14. Other decreases		
15. Amount used to restore loan basis		
16. End of year stock basis (Subtract the sum of lines 12 through 15 from line 11)		544,741

Loan Basis

17. Beginning of year loan basis		
18. Loans to corporation		
19. Loan basis restored - amount used in prior years to offset losses		
20. Other increases		
21. Loan repayments		
22. Total losses and deductions applied against loan basis (See Shareholder's Basis Worksheet Page 2)		
23. Other decreases		
24. End of year loan basis (Subtract the sum of lines 21 through 23 from the sum of lines 17 through 20)		0
25. End of year stock and loan basis (Add line 16 and line 24)		544,741

Principal amount of loan owed to shareholder at end of the year

0

Gain Recognized on Excess Distributions

26. Distributions		19,953
27. Stock basis before distributions and loss items		647,151
28. Gain recognized on excess distributions (Subtract line 27 from line 26)	*	0

Gain Recognized on Repayment of Shareholder Loan

29. Loan basis at beginning of tax year		
30. Loan basis restored - amount used in prior years to offset losses		
31. Loan basis before loan repayment (Add line 29 and line 30)		
32. Shareholder loan at beginning of tax year		
33. Loan repayments to shareholder during tax year		
34. Nontaxable return of loan basis ((Line 31 divided by line 32) multiplied by line 33)		
35. Gain recognized on repayment of shareholder loan (Subtract line 34 from line 33)		

*** NO GAIN RECOGNIZED IN CURRENT YEAR.**

Note to shareholder: This worksheet was prepared based on corporation records. Please consult with your tax advisor for adjustments.

Form **1120S**
Schedule K-1

Shareholder's Basis Worksheet Page 2

2014

For calendar year 2014 or tax year beginning

, ending

Name

AVSX TECHNOLOGIES, LLC
LUIS E. ENDARA

Taxpayer Identification Number

26-1868248

~~26-1868248~~

Loss Allocated to Stock and Loan Basis

	Suspended Losses	Current Year Loss	Total Loss	Percent	Allowed Stock Loss	Disallowed Loss	Percent	Allowed Loan Loss	Loss to Carryforward	Total Allowed Loss
Nondeductible noncap expenses		26,282	26,282	100.00	26,282					26,282
Deductible items:										
Ordinary business loss										
Net rental real estate loss										
Other net rental loss										
Short-term capital loss										
Long-term capital loss										
Net Section 1231 loss										
Other portfolio loss										
Other losses										
Section 179 expense		47,634	47,634	84.80	47,634					47,634
Cash contributions (50%)		8,541	8,541	15.20	8,541					8,541
Cash contributions (30%)										
Noncash contributions (50%)										
Qual conserv contrib (50%)										
Noncash contributions (30%)										
Cap gain prop 50% org (30%)										
Cap gain prop (20%)										
Qual conserv contrib (100%)										
Portfolio deductions (2% floor)										
Portfolio deductions (other)										
Investment interest expense										
Deductions-royalty income										
Section 59(e)(2) expend										
Preproductive period exp										
Commercial revitalization ded										
Reforestation expense ded										
Other deductions										
Foreign taxes										
Loss on disposal of 179 assets										
Total deductible items		56,175	56,175	100.00	56,175					56,175
Total nonded and deductible items		82,457	82,457		82,457					82,457

6 te to shareholder: This worksheet was prepared based on corporation records. Please consult with your tax advisor for adjustments.

Federal Statements

FYE: 12/31/2014

Form 1120S, Page 1, Line 12 - Taxes and Licenses

Description	Amount
BUSINESS TAXES & LICENSES	\$ 5,884
EMPLOYER SHARE FICA	240,910
UNEMPLOYMENT	80,977
SALES TAX	38,771
PROPERTY TAXES	924
TOTAL	\$ 367,466

Form 1120S, Page 1, Line 18 - Employee Benefit Programs

Description	Amount
EMPLOYEE BENEFIT PROGRAM	\$ 6,149
TOTAL	\$ 6,149

Form 1120S, Page 3, Schedule K, Line 4 - Interest Income

Description	Amount
OTHER INTEREST	\$ 119
TOTAL	\$ 119

Form 1120S, Page 3, Schedule K, Line 16c - Nondeductible Expenses

Description	Amount
FINES AND PENALTIES	\$ 375
PAGE 1 MEALS/ENTERTAINMENT	52,190
TOTAL	\$ 52,565

Form 1120S, Page 4, Schedule K, Line 17a - Investment Income

Description	Amount
INTEREST INCOME	\$ 119
TOTAL	\$ 119

Form 1125-A, Line 3 - Cost of Labor

<u>Description</u>	<u>Amount</u>
COST OF LABOR	\$ 856,607
TOTAL	\$ 856,607

ENDARA, LUIS E.
Prepared by: Zion & Company, Inc.

Summary

Filing status
Exemptions claimed

Income
Adjustments
Adjusted Gross Income

Itemized deductions?
Standard / Itemized deductions
Personal exemptions
Taxable income
Regular tax
Alternative minimum tax
Allowed credits
Tax net of credits
Self-employment tax
Other taxes
Total Federal Tax

Total federal payments
Refundable credits
Underpayment penalty
Federal Balance Due/ -Refund

Total state tax
Total state payments
State due/ -refund

Total combined tax
Total payments/ref credits
Total tax due/ -refund

2014	
Alt 1	Alt 2
Single	Single
1	1
63,503	306,352
1,410	-
\$ 62,093	\$ 306,352
No	Yes
6,200	9,949
3,950	2,291
51,943	294,112
8,838	80,915
-	-
-	-
8,838	80,915
2,819	-
-	2
\$ 11,657	\$ 80,917
10,377	10,377
-	-
-	-
\$ 1,280	\$ 70,540
-	-
-	-
-	-
11,657	80,917
10,377	10,377
1,280	70,540

Federal Tax Analysis

Annual inflation rate

Marginal tax rate

Tax method used

REGULAR TAX - ORDINARY INCOME

Ordinary income, 10% rate

Ordinary income, 15% rate

Ordinary income, 25% rate

Ordinary income, 28% rate

Ordinary income, 33% rate

Ordinary income, 35% rate

Ordinary income, 39.6% rate

Total Regular Tax on Ord Inc**CAPITAL GAINS TAX**

Capital gains taxed at 0%

Capital gains taxed at 5%

Capital gains taxed at 8%

Capital gains taxed at 10%

Capital gains taxed at 15%

Capital gains taxed at 20%

Capital gains taxed at 25%

Capital gains taxed at 28%

Total Capital Gains Tax**ALTERNATIVE MINIMUM TAX**

Alt min taxable inc - ordinary

Alt Min Tax on Ord AMTI**SOCIAL SECURITY, MEDICARE TAX**

Self-employment tax

FICA tax withheld on wages

Total Social sec, Medicare tax

Other income taxes

Less: Credits

Total Income Tax + FICA Tax

Income taxed at ordinary rates

Income taxed at cap gain rates

Taxable lump-sum distributions

Total income subject to tax

Tax as a percentage of income

2014	
Alt 1	Alt 2
N/A	N/A
25	33
Regular	Regular
9,075	9,075
27,825	27,825
15,043	52,450
-	97,000
-	107,762
-	-
-	-
-	-
\$ 8,838	\$ 80,915
-	-
-	-
-	-
-	-
-	-
-	-
-	-
-	-
-	-
\$ -	\$ -
-	-
\$ -	\$ -
2,819	-
3,331	3,331
6,150	3,331
-	2
-	-
\$ 14,988	\$ 84,248
51,943	294,112
-	-
-	-
51,943	294,112
29	29

Adjusted Gross Income

Wages
 Interest
 Dividends
 Taxable state refund
 Alimony
 Business income/loss
 Capital gain/loss
 Other gain/loss on sale
 IRA distributions
 Pensions and annuities
 Rents, royalties, K1 inc/loss
 Farm income/loss
 Unemployment compensation
 Social Security benefits
 Other income/loss
 Total income

 Adjustments to income

 Adjusted Gross Income

2014	
Alt 1	Alt 2
43,550	43,550
-	59
-	
-	
-	
-	
-	
-	
-	262,743
-	
-	
19,953	
63,503	306,352
1,410	
\$ 62,093	\$ 306,352

TECH4 01/15/2018 10:35 AM

1120S

Department of the Treasury
Revenue Service

U.S. Income Tax Return for an S Corporation

Do not file this form unless the corporation has filed or is
attaching Form 2553 to elect to be an S corporation.Information about Form 1120S and its separate instructions is at www.irs.gov/form1120s.

OMB No. 1545-0123

2014

Calendar year 2014 or tax year beginning

, ending

Election effective date

1/31/08

Business activity code
number (see instructions)

38900

Check if Sch. M-3
checked ☐

TYPE

OR

PRINT

Name

AVSX TECHNOLOGIES, LLC
(GUARDIAN EAGLE SECURITY LLC-2010)

Number, street, and room or suite no. If a P.O. box, see instructions.

1140 BRIARGATE CIRCLE

City or town, state or province, country, and ZIP or foreign postal code

COLUMBIA

SC 29210

D Employer identification number

26-1868248

E Date incorporated

01/31/2008

F Total assets (see instructions)

S 696,657

The corporation electing to be an S corporation beginning with this tax year?

☐ Yes☒ No

If "Yes," attach Form 2553 if not already filed

Check if: (1) ☐ Final return (2) ☐ Name change (3) ☐ Address change (4) ☐ Amended return (5) ☐ S election termination or revocation

Enter the number of shareholders who were shareholders during any part of the tax year

2

n. Include only trade or business income and expenses on lines 1a through 21. See the instructions for more information.

Gross receipts or sales	1a	9,957,282	
Returns and allowances	1b	161,966	
Balance. Subtract line 1b from line 1a	1c	9,795,316	
Cost of goods sold (attach Form 1125-A)	2	5,012,137	
Gross profit. Subtract line 2 from line 1c	3	4,783,179	
Net gain (loss) from Form 4797, line 17 (attach Form 4797)	4		
Other income (loss) (see instructions—attach statement)	5	2,632	
Total income (loss). Add lines 3 through 5	6	4,785,811	
Compensation of officers (see instructions—attach Form 1125-E)	7	100,000	

SEE STMT 1

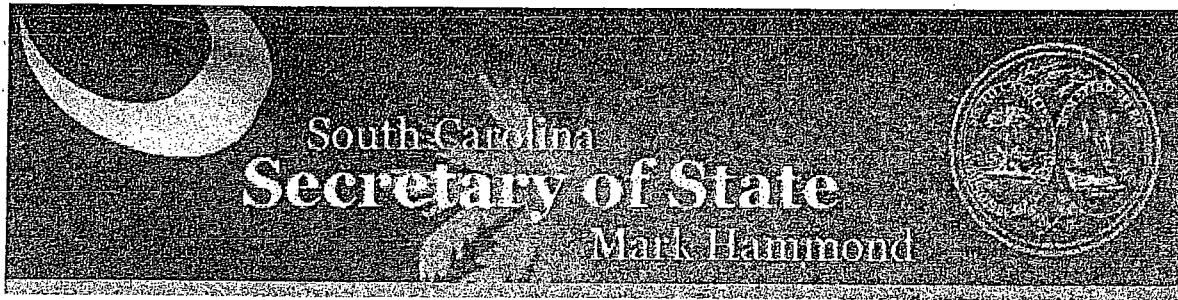
PLAINTIFF'S

EXHIBIT NO. 7

FOR IDENTIFICATION

DATE: 01/25/16

RPTR: MCH

**PROTECTION24 LLC**

*Note: This online database was last updated on 1/3/2016 3:05:10 AM.
See our Disclaimer.*

DOMESTIC / FOREIGN:	Domestic
STATUS:	Dissolved
STATE OF INCORPORATION / ORGANIZATION:	SOUTH CAROLINA Profit

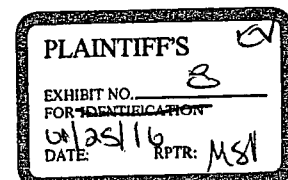
REGISTERED AGENT INFORMATION

REGISTERED AGENT NAME:	JAMES W. ELLERBEE
ADDRESS:	104 SALUDA RIDGE COURT
CITY:	WEST COLUMBIA
STATE:	SC
ZIP:	29072
SECOND ADDRESS:	
FILE DATE:	04/06/2007
EFFECTIVE DATE:	04/06/2007
DISSOLVED DATE:	02/07/2011

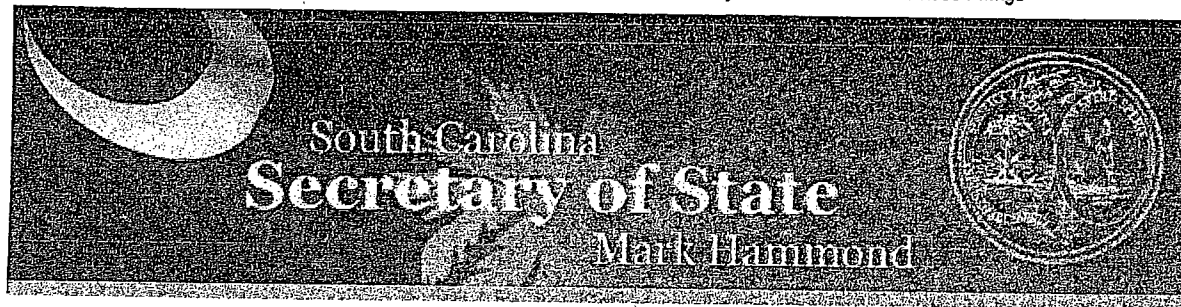
Corporation History Records

CODE	FILE DATE	COMMENT	Document
Dissolution	02/07/2011	TERMINATION	
Domestic LLC	04/06/2007	AT WILL	

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9.2.2



AVSX TECHNOLOGIES LLC

Note: This online database was last updated on 1/3/2016 3:05:10 AM.
See our Disclaimer.

DOMESTIC / FOREIGN:

Domestic

STATUS:

Good Standing

STATE OF INCORPORATION / ORGANIZATION:

SOUTH CAROLINA
Profit

REGISTERED AGENT INFORMATION

REGISTERED AGENT NAME:

BOBBY JOHNSON

ADDRESS:

1140 BRIARGATE CIR

CITY:

COLUMBIA

STATE:

SC

ZIP:

29169

SECOND ADDRESS:

FILE DATE:

01/31/2008

EFFECTIVE DATE:

01/31/2008

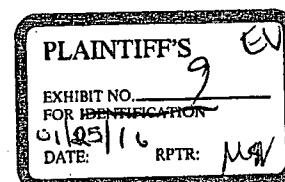
DISSOLVED DATE:

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Corporation History Records

CODE	FILE DATE	COMMENT	Document
Amendment	09/01/2011	CHG NAME FROM GUARDIAN EAGLE SECURITY, LLC	
Agent	02/07/2011	CHANGED AGT/ADD FROM-JULIO REIS/DESIGNATED OFFICE	
Amendment	02/07/2011	DISSOCIATED MEMBER-JULIO REIS	
Domestic LLC	01/31/2008	AT WILL	

Disclaimer: The South Carolina Secretary of State's Business Filings database is provided as a convenience to our customers to research information on business entities filed with our office. Updates are uploaded every 48 hours. Users are advised that the Secretary of State, the State of South Carolina or any agency, officer or employee of the State of South Carolina does not guarantee the accuracy, reliability or timeliness of such information, as it is the responsibility of the business entity to inform the Secretary of State of any updated information. While every effort is made to insure the reliability of this information, portions may be incorrect or not current. Any person or entity who relies on information obtained from this database does so at his own risk.



STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND) **LEASE**

This Agreement made this first (1st) day of May, 2007, by and between Zion Holdings, LLC, hereinafter called "Landlord," and Luis E. Endara and Protection24, LLC, hereinafter collectively referred to as "Tenant." Tenant shall be jointly and severally liable for all payments due Landlord under the provisions of this Lease.

WITNESSETH:

That Landlord, for and in consideration of the rents, covenants and agreements herein contained to be paid and agreed to be performed by Tenant, does hereby grant and lease to Tenant the following described premises:

1. Premises. All of that certain office space of approximately 3,601 square feet, more or less, contained in a building located at 1140 Briargate Circle, City of Columbia, County of Richland, State of South Carolina, owned by Landlord, hereinafter referred to as the "Leased Premises."

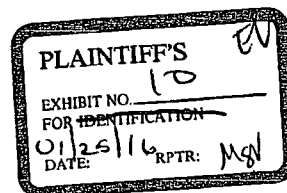
2. Term. The term of this Lease shall be for a period of fifty-one (51) months, commencing on the 1st day of May, 2007, and expiring on the 31st day of July, 2012.

3. Rental. Tenant shall pay to Landlord according to the following payment schedule, each in advance on or before the tenth (10th) day of each month without demand:

May, 2007 – July 31, 2007	\$ 0.00 per month
August 1, 2007 – January 31, 2008	\$1,500.00 per month
February 1, 2008 – July 31, 2008	\$2,500.00 per month
August 1, 2008 – July 31, 2012	\$3,600.00 per month

If rental payment is not received by the twentieth (20th) day of the month, there will be a late fee equal to ten percent (10%) of the monthly rental. There will also be a ten percent (10%) fee in the event of a returned check.

4. Notices. Until otherwise notified in writing by Landlord, Tenant shall make payment of rental and give notices to Landlord either in person or at the following mailing address:



Mark W. Zion
Zion Holdings, LLC
Post Office Box 211099
Columbia, South Carolina 29221-6099

5. Security Deposit. Tenant has on deposit with Landlord the sum of one month's rental, Three Thousand Six Hundred and no/100 Dollars (\$3,600.00), as specified above to serve as security for the faithful performance and observance by Tenant of the terms of this Lease. In the event Tenant defaults with respect to any of the terms of this Lease including, but not limited to, the payment of rent, Landlord may use the whole or any part of the deposit to the extent required, but Tenant shall remain liable for any additional amounts due. If Tenant shall comply fully with all of the terms of this Lease, the security deposit shall be returned to Tenant upon the expiration of the Lease Term. In the event of the sale or lease of the property of which the Leased Premises are a part, Landlord shall have the right to transfer the unused security deposit to the new purchaser or lessee who shall be responsible to the Tenant for the security deposit and Landlord shall be released from all liability for its return.

6. Use. The premises shall be used for commercial & residential sales & service security alarm systems as required by Tenant's business, but shall not be used for any illegal purpose, nor in any way that would increase the rate of insurance or invalidate the insurance coverages on the premises, nor in any manner interfere with or infringe upon the rights of Landlord or other tenants.

7. Improvements. Tenant agrees to accept the premises "as is".

8. Common Facilities. Tenant, its employees, agents and invitees, shall have the right to use in common with other tenants the elevator(s), if available, stairways, corridors, restrooms, vending areas, sidewalks and parking areas, as well as all other general common facilities.

9. Quiet Possession. Landlord warrants that it is seized with good and sufficient title to the entire premises, and further covenants that if Tenant shall discharge the obligations herein set forth to be performed by Tenant, then Tenant shall have and enjoy the quiet and undisturbed possession of the Leased Premises without hindrance or interference from Landlord or any other person lawfully claiming by, through or under Landlord.

10. Services Furnishes. Landlord will be responsible for the structure, roof and mechanical systems to the building. Landlord warrants that all mechanical systems are in working order.

11. Increases in Property Taxes and Property Insurance. Tenant agrees to pay as additional rent any pro rata increase as hereafter defined in property taxes or property insurance for the Leased Premises above the calendar year 2007.

12. Damage to Premises. If the Leased Premises are damaged or destroyed by fire or other casualty, Landlord shall repair or restore the Leased Premises within sixty (60) days after the date of damage and if not restored within that time, Tenant shall have the option of terminating this Lease; provided, however, that if the said damage shall occur within six (6) months of the expiration date of this Lease, Landlord shall have the right within fifteen (15) days to elect to terminate this Lease; and provided, further, that should the building in which the Leased Premises are located be damaged by fire or other casualty to such an extent that Landlord determines to discontinue the leasing of office space in the building, then Landlord shall have the right within fifteen (15) days to elect to terminate this Lease. If the damage or destruction to the Leased Premises was caused without fault of Tenant, the rental required by this lease shall abate proportionately to the extent that the premises are untenable by Tenant. In the event of the termination of this Lease, the term hereby granted shall cease, rent shall be apportioned and paid to the date of such damage, and Tenant shall not be liable for any further rent after such termination. All furniture, trade fixtures, files and other property of Tenant located at the Leased Premises shall be at the sole risk of Tenant, and Landlord shall not in any way be liable for damage to such property of Tenant. Except as may otherwise be provided in this Lease, Landlord and Tenant mutually agree that in the event of loss or damage to the entire premises, the Leased Premises and/or any contents, each party shall look first to any insurance in its favor before making any claim against the other party and, to the extent possible without additional cost, each party shall obtain, for each policy of such insurance, provisions permitting waiver of claim against the other party for loss or damage within the scope of the insurance, and each party to such extent permitted, for itself and its insurers, waive all such insured claims against the other party.

13. Maintenance and Repairs. Tenant shall keep the Leased Premises in good care during the term of this Lease and shall surrender same with keys thereto at the end of the term in good and clean condition, reasonable wear and tear and damage by fire or other casualty excepted. Tenant shall immediately notify Landlord or its agents of any defective condition or damage to the Leased Premises. Tenant shall be responsible for repairs to the demised premises during the term of this Lease, except for damage caused by Landlord, its employees or agents.

14. Right of Entry. Landlord shall have the right to enter the Leased Premises at reasonable hours to examine the same, or to install plumbing, electrical, telephone or mechanical lines, or to make such repairs, additions or alterations as it shall deem necessary, or to exhibit the same to prospective purchasers, or to exhibit the premises beginning ninety (90) days prior to the expiration of the Lease Term to prospective tenants.

15. Assignments. Tenant agrees that it will not assign or sublet in whole or in part any portion of the premises without the prior written consent of Landlord, which consent will not be unreasonably withheld; provided that such consent shall be unnecessary in the event of assignment to a subsidiary of Tenant. Any assignee or sub-

lessee must agree to abide by all of the terms of this Lease, and Tenant shall not be relieved from any of its obligations assumed under this Lease.

16. Subordination. Tenant agrees that its rights under this Lease shall at all times be subordinated to the lien of any and all mortgages, ground or underlying leases, or to the lien resulting from any other method of financing or refinancing, now or hereafter in force against the land and/or building of which the Leased Premises are a part, provided that the mortgagee or other lien holder shall agree that so long as the Tenant is not in default under the terms hereof, Tenant's rights under said Lease shall not be disturbed and that if on account of foreclosure or sale pursuant to the terms of any such security instruction, the lien holder or any other purchaser acquires title to said Leased Premises, the new owner will attorn to the Tenant and complete the Landlord's obligations under this Lease, provided Tenant is not then and does not thereafter default under the terms hereof. Tenant agrees to execute any documents which may be required to effectuate the subordination.

17. Condemnation. If, at any time during the term of this Lease, the entire property or any such substantial part as may render it unsuitable for its current use is taken for any public or quasi-public use under statute or by right of eminent domain, then in such event, when title vests in the condemning authority, the term of this Lease shall immediately cease and the Lease shall terminate. Tenant shall have no claim against the award made to Landlord for such taking or against Landlord for the value of any unexpired term of this Lease.

18. Hold Harmless. Tenant agrees to indemnify and save Landlord harmless against any and all claims, demands, damages, costs and expenses, including reasonable attorney's fees for the defense thereof, arising from the conduct or the management of the business operated by Tenant in the Leased Premises, or from any breach or default on the part of Tenant of any covenant or provision of this Lease, or from any act of Tenant, its employees or agents, and Tenant agrees to defend any such action or proceeding by counsel reasonably satisfactory to Landlord. Landlord shall not be responsible for the carelessness or negligence of other tenants. Landlord agrees to hold Tenant harmless for injury to any person by virtue of any structural or other defect in the building occupied by Tenant.

19. Default. If the Tenant shall fail to pay the base rent or any additional rent as provided within this Lease or shall fail to perform any of the covenants and agreements required under this Lease, or if Tenant shall vacate or abandon the Leased Premises prior to the expiration of the term or suffer the Lease to be taken under any writ of execution, or if a petition in bankruptcy, insolvency, or for reorganization is filed by or against Tenant, or if Tenant shall make an assignment for the benefit of creditors, then in any of such events, Landlord may deem Tenant to be in default under this Lease and if such default is not remedied to Landlord's satisfaction within fifteen (15) days after written notice of such default is delivered to Tenant, Landlord may as its option terminate this Lease and all rents then due and which would become due during the remainder of the term, together with such special damages that Landlord may suffer,

shall immediately become due and payable. Landlord shall also have the right of re-entry and repossession of the Leased Premises and may expel Tenant and remove all property therefrom with the right to sell same and apply the proceeds against any amounts due under this Lease. Landlord may at its option without terminating this Lease have full right of entry and may make such reasonable alterations and repairs as may be needed in order to relet the Leased Premises or any part thereof upon such rental, terms and conditions as it deems advisable, and Tenant shall remain liable to Landlord for any deficiency between the rent reserved hereunder for the remainder of the term and the rental, if any, obtained by Landlord in reletting. The failure of Landlord to relet the premises shall not in any way release or reduce Tenant's liability.

20. Attorney's Fees. If Tenant defaults in the performance of any of the covenants of this Lease and by reason thereof Landlord employs the services of any attorney to enforce performance by Tenant, to evict Tenant, to collect monies due by Tenant, or to perform any service based upon said default, then the Tenant shall pay a reasonable attorney's fee and all reasonable expenses and costs incurred by Landlord pertaining thereto.

21. Non-Waiver. The failure of Landlord or Tenant to insist upon strict performance of any of the terms, conditions and covenants herein shall not be deemed to be a waiver of any rights or remedies that Landlord and Tenant may have, and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained except as may expressly be waived in writing.

22. Holding Over. In the event Tenant shall continue to remain in and occupy the premises with the consent of Landlord after the expiration of the term of this Lease, such holding over shall not be deemed in any way to be a renewal or extension of the term of this Lease, but shall constitute a tenancy from month to month only, subject to all of the covenants and conditions of this Lease other than those relating to the term hereof, for which tenancy Tenant agrees to pay Landlord as rental the amount of monthly rental in effect at the end of the term.

23. Non-Easement. It is understood and agreed that this Lease does not grant any rights to light and air over property adjoining the land on which the Leased Premises are situated.

24. General.

A. Time of the Essence. It is understood and agreed between the parties hereto that time is of the essence in all of the terms and provisions of this Lease.

B. Governing Laws. This Agreement shall be governed by and construed according to the laws of the State of South Carolina.

C. Captions and Titles. The captions and titles appearing within this Lease are for reference only and shall not be considered a part of this Lease or in any way to modify, amend or affect the provisions thereof.

D. Grammatical Changes. The proper grammatical changes shall be understood and shall apply where necessary to designate the plural rather than the singular and the masculine or feminine gender.

E. Recordation. This Lease shall not be recorded, but a short form referring to this Lease, describing the premises and setting forth the term thereof, may be recorded by either party.

F. Entire Agreement. This Lease and the exhibits attached hereto and forming a part hereof set forth all of the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Leased Premises. No subsequent alteration or amendment shall be binding upon Landlord or Tenant unless reduced to writing and signed by each party.

G. No Partnership. Landlord does not, in any way or for any purpose, become a partner of Tenant in the conduct of its business, or otherwise, or a joint venturer or a member of a joint enterprise with Tenant.

H. Binding Agreement. The conditions, covenants and agreements contained in this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs, executors, administrators and assigns. No rights, however, shall inure to the benefit of any assignee of Tenant unless the assignment to such assignee has been made in accordance with the provision set forth by this Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

WITNESSES:

Bobby L. Johnson
Bobby L. Johnson
Mundeth Bly

Mundeth Bly
Bobby L. Johnson

LANDLORD:

Mark W. Zion
Mark W. Zion for Zion Holdings, LLC

TENANT:

Luis E. Enbara
Luis E. Enbara for Protection24, LLC



August 18, 2014

Louis Ernesto Endara
402 Nautique Cir
Columbia SC 29229-7334

Re: Service Address: 1140 Briargate Cir
Account Number: 6-2100-7425-1405

Louis Ernesto Endara:

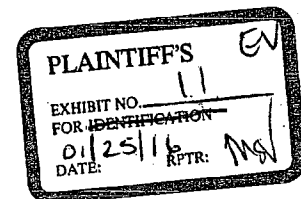
Our records show that an unpaid balance of \$484.71 remains on the above-referenced account.

Since payment has not been received, the balance has been transferred to 402 Nautique Cir, account number 6-2100-5697-7232, listed in the name of Louis Ernesto Endara.

If you have any questions or need additional assistance, please call us at 1-800-251-7234. Our Customer Service Representatives are available to help you.

Sincerely,

SCE&G Customer Service





SERVICE FOR
LOUIS ERNESTO ENDARA
1140 BRIARGATE CIR
COLUMBIA SC 29210-6504

ACCOUNT NUMBER
6-2100-7425-1405

Page 1 of 2

TOTAL AMOUNT DUE
\$484.71

www.sceg.com

CUSTOMER SERVICE - 24 HOURS A DAY
1-800-251-7234, toll-free

NOTICE DATE

July 25, 2014

Payment Options

Online: Visit scg.com to pay directly from your bank account or credit card.

By Mail: Pay by check or money order using the enclosed envelope. Please do not pay by cash.

By Phone: Call 1-800-450-9160, toll-free, 24 hours a day to pay using your credit card, debit card or directly from your bank account. There is a fee of \$3.50 per transaction that BillMatrix receives for providing this service. Additional limitations may apply.

Business Office: Visit an SCE&G business office located near you to pay in person. This is a free service.

NORTH COLUMBIA OFFICE, 3000 HARDEN ST., COLUMBIA SC 29203

Authorized Payment Agencies: Visit an authorized payment location near you to pay in person. This is a free service.

ACE CASH EXPRESS #0074, 5110 FAIRFIELD RD., COLUMBIA SC 29203

THE MAIL ROOM, 1606 CHARLESTON HWY., WEST COLUMBIA SC 29169

Unauthorized Payment Agencies: Additional payment centers may exist that are not SCE&G authorized payment agencies. While these unauthorized agencies may accept your SCE&G payment, they will charge you a fee for doing so, and your payment will be delayed in reaching SCE&G.

PLEASE RETURN THIS PORTION WITH YOUR PAYMENT.



90303

206555710

LOUIS ERNESTO ENDARA
1140 BRIARGATE CIR
COLUMBIA SC 29210-6504

FINAL BILL NOTICE

We are contacting you about your past due balance of \$484.71, which has been forwarded to the Receivables Management Department for collection.

We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report. This debt, once listed on your credit report, will remain on your credit report for at least six (6) years. This could negatively impact your ability to obtain credit. Your report will be updated to reflect that the debt has been paid if payment is received; however, it will remain on your credit report once it is listed with a credit bureau.

If you have paid this amount since the notice date, please accept our thanks. You may wish to contact us 1-800-251-7234 to confirm receipt of that payment.

Please use one or more of the following payment options:

- CASH • CHECK • MONEY ORDER • CASHIER'S CHECK
- ONLINE at scg.com (by credit card or directly from your bank account)
- BY PHONE using BillMatrix

Please call a representative in Receivables Management to make payment arrangements if you are unable to pay the balance in full. We can be reached at 1-800-251-7234.

If this notice does not agree with your records, or if you require assistance with payment options, please contact SCE&G immediately at 1-800-251-7234. Para mayor explicación acerca de este importante aviso, por favor llame a SCE&G y pida hablar con un representante en español.

Please let us know if we can help you with any of your future energy needs.

Final Bill Notice

PAST DUE AMOUNT
\$484.71 due 8/15/14

ACCOUNT NUMBER
6-2100-7425-1405

TOTAL AMOUNT DUE
\$484.71

☐ Do we have your new mailing address?
Please provide on back of sub.

PO Box 100255
Columbia, SC 29202-3255

Please enter amount enclosed.

\$

Write account number on check and make payable to SCE&G



6210074251405010000004847107140000048471



SERVICE FOR:
LOUIS ERNESTO ENDARA
1140 BRIARGATE CIR
COLUMBIA SC 29210-8504

ACCOUNT NUMBER
6-2100-7425-1405

Page 1 of 2

TOTAL AMOUNT DUE
\$484.71

www.sceg.com

CUSTOMER SERVICE 24 HOURS A DAY
1-800-251-7234, toll-free

NOTICE DATE
July 11, 2014

Payment Options

Online: Visit scg.com to pay directly from your bank account or credit card.

By Mail: Pay by check or money order using the enclosed envelope. Please do not pay by cash.

By Phone: Call 1-800-460-8160, toll-free, 24 hours a day to pay using your credit card, debit card or directly from your bank account. There is a fee of \$3.50 per transaction that BillMatrix receives for providing this service. Additional limitations may apply.

Unauthorized Payment Agencies: Additional payment centers may exist that are not SCE&G authorized payment agencies. While these unauthorized agencies may accept your SCE&G payment, they will charge you a fee for doing so, and your payment will be delayed in reaching SCE&G.

FINAL BILL NOTICE

Our records show the most recent payment of \$800.00 was received on 05/28/14.

Your final bill is past due. A late payment charge of \$7.18 has been added to your final bill amount, bringing the total amount due to \$484.71. Please pay this amount immediately to avoid further credit action, which may include turning the account over to an outside collection agency. We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.

If you have paid this amount since the notice date, please accept our thanks. You may wish to contact us 1-800-251-7234 to confirm receipt of that payment.

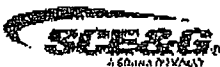
Please use one or more of the following payment options:

- CASH • CHECK • MONEY ORDER • CASHIER'S CHECK
- ONLINE at scg.com (by credit card or directly from your bank account)
- BY PHONE using BillMatrix

If this notice does not agree with your records, or if you require assistance with payment options, please contact SCE&G immediately at 1-800-251-7234. Para mayor explicación acerca de este importante aviso, por favor llame a SCE&G y pida hablar con un representante en español.

Please let us know if we can help you with any of your future energy needs.

PLEASE RETURN THIS PORTION WITH YOUR PAYMENT.



Final Bill Notice

PAST DUE AMOUNT
\$484.71 due 7/25/14

ACCOUNT NUMBER
6-2100-7425-1405

TOTAL AMOUNT DUE
\$484.71

90302

192681714

LOUIS ERNESTO ENDARA
1140 BRIARGATE CIR
COLUMBIA SC 29210-8504

☐ Do we have your new mailing address?
Please provide on back of tab.

PO Box 100255
Columbia, SC 29202-3255

Please enter amount enclosed.

\$

We'll account number on check and make payable to SCE&G.



6210074251405010000004847107140000048471



SERVICE FOR
LOUIS ERNESTO ENDARA
1140 BRIDGATE CIR
COLUMBIA SC 29210-8504

ACCOUNT NUMBER
6-2100-7425-1405

Page 1 of 2

TOTAL AMOUNT DUE
\$477.55

www.sceg.com

CUSTOMER SERVICE - 24 HOURS A DAY
1-800-251-7234, toll-free

NOTICE DATE
June 28, 2014

Payment Options

Online: Visit scg.com to pay directly from your bank account or credit card.

By Mail: Pay by check or money order using the enclosed envelope. Please do not pay by cash.

By Phone: Call 1-800-450-8160, toll-free, 24 hours a day to pay using your credit card, debit card or directly from your bank account. There is a fee of \$3.50 per transaction that BillMatrix receives for providing this service. Additional limitations may apply.

Unauthorized Payment Agencies: Additional payment centers may exist that are not SCE&G authorized payment agencies. While these unauthorized agencies may accept your SCE&G payment, they will charge you a fee for doing so, and your payment will be delayed in reaching SCE&G.

FINAL BILL NOTICE

Thank you for being our customer. This is a reminder that your final bill is due immediately.

Our records show the most recent payment of \$600.00 was received on 05/28/14.

To avoid a late payment charge being added to your account, the total amount of \$477.55 must be received by 5:00 PM on 07/11/14.

Please pay this amount immediately to avoid further credit action, which may include turning the account over to an outside collection agency. We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.

If you have paid this amount since the notice date, please accept our thanks. You may wish to contact us 1-800-251-7234 to confirm receipt of that payment.

Please use one or more of the following payment options:

- CASH • CHECK • MONEY ORDER • CASHIER'S CHECK
- ONLINE at scg.com (by credit card or directly from your bank account)
- BY PHONE using BillMatrix

If this notice does not agree with your records, or if you require assistance with payment options, please contact SCE&G immediately at 1-800-251-7234. Para mayor explicación acerca de este importante aviso, por favor llame a SCE&G y pida hablar con un representante en español.

Please let us know if we can help you with any of your future energy needs.

PLEASE RETURN THIS PORTION WITH YOUR PAYMENT.



Final Bill Notice

PAST DUE AMOUNT
\$477.55 due 7/11/14

ACCOUNT NUMBER
6-2100-7425-1405

TOTAL AMOUNT DUE
\$477.65

90501

177574859

LOUIS ERNESTO ENDARA
1140 BRIDGATE CIR
COLUMBIA SC 29210-8504

☐ Do we have your new mailing address?
Please provide on back of sub.

PO Box 100255
Columbia, SC 29202-3255

Please enter account enclosed.

\$

Write account number on check and make payable to SCE&G.



6210074251405010000004775506140000047755

Form **1120S**Department of the Treasury
Internal Revenue Service

U.S. Income Tax Return for an S Corporation

▶ Do not file this form unless the corporation has filed or is attaching Form 2553 to elect to be an S corporation.
▶ See separate instructions.

OMB No. 1545-0130

2008

For calendar year 2008 or tax year beginning ending

A S election effective date 1/31/08	Use IRS label. Otherwise, print or type.	Name GUARDIAN EAGLE SECURITY LLC	D Employer identification number 26-1868248
B Business activity code number (see instructions) 238900		Number, street, and room or suite no. If a P.O. box, see instructions. 104 SALUDA RIDGE CT	E Date incorporated 1/31/2008
C Check if Sch. M-3 attached ☐		City or town, state, and ZIP code WEST COLUMBIA SC 29169	F Total assets (see instructions) \$ 3,971

G Is the corporation electing to be an S corporation beginning with this tax year? ☒ Yes ☐ No If "Yes," attach Form 2553 if not already filedH Check if: (1) ☐ Final return (2) ☐ Name change (3) ☐ Address change
(4) ☐ Amended return (5) ☐ S election termination or revocationI Enter the number of shareholders who were shareholders during any part of the tax year **1**

Caution. Include only trade or business income and expenses on lines 1a through 21. See the instructions for more information.

Income	1a Gross receipts or sales	270,433	b Less returns and allowances		c Bal	1c	270,433
	2 Cost of goods sold (Schedule A, line 8)					2	266,462
	3 Gross profit. Subtract line 2 from line 1c					3	3,971
	4 Net gain (loss) from Form 4797, Part II, line 17 (attach Form 4797)					4	
	5 Other income (loss) (see instructions—attach statement)					5	
	6 Total income (loss). Add lines 3 through 5					6	3,971
Deductions (see instructions for limitations)	7 Compensation of officers					7	
	8 Salaries and wages (less employment credits)					8	
	9 Repairs and maintenance					9	
	10 Bad debts					10	
	11 Rents					11	
	12 Taxes and licenses					12	
	13 Interest					13	
	14 Depreciation not claimed on Schedule A or elsewhere on return (attach Form 4562)					14	
	15 Depletion (Do not deduct oil and gas depletion.)					15	
	16 Advertising					16	
	17 Pension, profit-sharing, etc., plans					17	
18 Employee benefit programs					18		
19 Other deductions (attach statement)					19		
20 Total deductions. Add lines 7 through 19					20		
21 Ordinary business income (loss). Subtract line 20 from line 6					21	3,971	
Tax and Payments	22a Excess net passive income or LIFO recapture tax (see instructions)	22a					
	b Tax from Schedule D (Form 1120S)	22b					
	c Add lines 22a and 22b (see instructions for additional taxes)					22c	
	23a 2008 estimated tax payments and 2007 overpayment credited to 2008	23a					
	b Tax deposited with Form 7004	23b					
	c Credit for federal tax paid on fuels (attach Form 4136)	23c					
	d Add lines 23a through 23c					23d	
	24 Estimated tax penalty (see instructions). Check if Form 2220 is attached					24	
	25 Amount owed. If line 23d is smaller than the total of lines 22c and 24, enter amount owed					25	
	26 Overpayment. If line 23d is larger than the total of lines 22c and 24, enter amount overpaid					26	
27 Enter amount from line 26 Credited to 2009 estimated tax ▶ Refunded ▶					27		

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

May the IRS discuss this return with the preparer

shown below (see instructions)? ☒ Yes ☐ No

PRESIDENT

Signature of officer **JULIO REIS**

Date

Title

Preparer's signature

JOHN B. MERRITT

Date

3/11/09Check if self-employed ☐Preparer's SSN or PTIN
P91410513

Paid Preparer's Use Only

Firm's name (or yours if self-employed),

J.B. MERRITT & ASSOCIATES, LLC

EIN

address, and ZIP code

**220 SWARTZ RD
LEXINGTON, SC****29072**

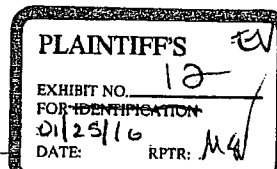
Phone no.

803-359-1041

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Form 1120S (2008)

DAA



935

Schedule A Cost of Goods Sold (see instructions)

1	Inventory at beginning of year	1	
2	Purchases	2	255,011
3	Cost of labor	3	
4	Additional section 263A costs (attach statement)	4	
5	Other costs (attach statement) STMT 2	5	11,451
6	Total. Add lines 1 through 5	6	266,462
7	Inventory at end of year	7	
8	Cost of goods sold. Subtract line 7 from line 6. Enter here and on page 1, line 2	8	266,462

9a Check all methods used for valuing closing inventory: (i) ☐ Cost as described in Regulations section 1.471-3
(ii) ☐ Lower of cost or market as described in Regulations section 1.471-4
(iii) ☐ Other (Specify method used and attach explanation.) ▶

b Check if there was a writedown of subnormal goods as described in Regulations section 1.471-2(c) ▶ ☐

c Check if the LIFO inventory method was adopted this tax year for any goods (if checked, attach Form 970) ▶ ☐

d If the LIFO inventory method was used for this tax year, enter percentage (or amounts) of closing inventory computed under LIFO **9d** ☐

e If property is produced or acquired for resale, do the rules of section 263A apply to the corporation? ☐ Yes ☒ No

f Was there any change in determining quantities, cost, or valuations between opening and closing inventory? ☐ Yes ☒ No

If "Yes," attach explanation.

Schedule E Other Information (see instructions)

	Yes	No
1 Check accounting method: a ☐ Cash b ☒ Accrual c ☐ Other (specify) ▶		
2 See the instructions and enter the: a Business activity ▶ CONSTRUCTION b Product or service ▶ SECURITY SYSTEMS		
3 At the end of the tax year, did the corporation own, directly or indirectly, 50% or more of the voting stock of a domestic corporation? (For rules of attribution, see section 267(c).) If "Yes," attach a statement showing: (a) name and employer identification number (EIN), (b) percentage owned, and (c) if 100% owned, was a QSub election made?		X
4 Has this corporation filed, or is it required to file, a return under section 6111 to provide information on any reportable transaction?		X
5 Check this box if the corporation issued publicly offered debt instruments with original issue discount ☐ If checked, the corporation may have to file Form 8281, Information Return for Publicly Offered Original Issue Discount Instruments.		
6 If the corporation: (a) was a C corporation before it elected to be an S corporation or the corporation acquired an asset with a basis determined by reference to its basis (or the basis of any other property) in the hands of a C corporation and (b) has net unrealized built-in gain (defined in section 1374(d)(1)) in excess of the net recognized built-in gain from prior years, enter the net unrealized built-in gain reduced by net recognized built-in gain from prior years \$		
7 Enter the accumulated earnings and profits of the corporation at the end of the tax year. \$		
8 Are the corporation's total receipts (see instructions) for the tax year and its total assets at the end of the tax year less than \$250,000? If "Yes," the corporation is not required to complete Schedules L and M-1.		X

Schedule K Shareholders' Pro Rata Share Items

	Total amount
1 Ordinary business income (loss) (page 1, line 21)	1 3,971
2 Net rental real estate income (loss) (attach Form 8825)	2
3a Other gross rental income (loss)	3a
b Expenses from other rental activities (attach statement)	3b
c Other net rental income (loss). Subtract line 3b from line 3a	3c
4 Interest income	4
5 Dividends: a Ordinary dividends	5a
b Qualified dividends	5b
6 Royalties	6
7 Net short-term capital gain (loss) (attach Schedule D (Form 1120S))	7
8a Net long-term capital gain (loss) (attach Schedule D (Form 1120S))	8a
b Collectibles (28%) gain (loss)	8b
c Unrecaptured section 1250 gain (attach statement)	8c
9 Net section 1231 gain (loss) (attach Form 4797)	9
10 Other income (loss) (see instructions) Type ▶	10

Form 1120S (2008)

Form 1120S (2008)

GUARDIAN EAGLE SECURITY LLC**26-1868248**

Page 3

		Shareholders' Pro Rata Share Items (continued)	Total amount
Deductions	11	Section 179 deduction (attach Form 4562)	11
	12a	Contributions	12a
	b	Investment interest expense	12b
	c	Section 59(e)(2) expenditures (1) Type (2) Amount	12c(2)
	d	Other deductions (see instructions) Type	12d
Credits	13a	Low-income housing credit (section 42(j)(5))	13a
	b	Low-income housing credit (other)	13b
	c	Qualified rehabilitation expenditures (rental real estate) (attach Form 3468)	13c
	d	Other rental real estate credits (see instructions) Type	13d
	e	Other rental credits (see instructions) Type	13e
	f	Alcohol and cellulosic biofuel fuels credit (attach Form 6478)	13f
	g	Other credits (see instructions) Type	13g
Foreign Transactions	14a	Name of country or U.S. possession	
	b	Gross income from all sources	14b
	c	Gross income sourced at shareholder level Foreign gross income sourced at corporate level	14c
	d	Passive category	14d
	e	General category	14e
	f	Other (attach statement) Deductions allocated and apportioned at shareholder level	14f
	g	Interest expense	14g
	h	Other Deductions allocated and apportioned at corporate level to foreign source income	14h
	i	Passive category	14i
	j	General category	14j
	k	Other (attach statement) Other information	14k
	l	Total foreign taxes (check one): ☐ Paid ☐ Accrued	14l
	m	Reduction in taxes available for credit (attach statement)	14m
	n	Other foreign tax information (attach statement)	
Alternative Minimum Tax (AMT) Items	15a	Post-1986 depreciation adjustment	15a
	b	Adjusted gain or loss	15b
	c	Depletion (other than oil and gas)	15c
	d	Oil, gas, and geothermal properties-gross income	15d
	e	Oil, gas, and geothermal properties-deductions	15e
	f	Other AMT items (attach statement)	15f
Items Affecting Shareholder Basis	16a	Tax-exempt interest income	16a
	b	Other tax-exempt income	16b
	c	Nondeductible expenses	16c
	d	Property distributions	16d
	e	Repayment of loans from shareholders	16e
Other Information	17a	Investment income	17a
	b	Investment expenses	17b
	c	Dividend distributions paid from accumulated earnings and profits	17c
	d	Other items and amounts (attach statement)	
Reconciliation	18	Income/loss reconciliation. Combine the amounts on lines 1 through 10 in the far right column. From the result, subtract the sum of the amounts on lines 11 through 12d and 14l	18

3,971

Form 1120S (2008)

Form 1120S (2008)

GUARDIAN EAGLE SECURITY LLC**26-1868248**

Page 4

Schedule L Balance Sheets per Books		Beginning of tax year		End of tax year	
Assets		(a)	(b)	(c)	(d)
1	Cash				3,971
2a	Trade notes and accounts receivable				
b	Less allowance for bad debts	()			
3	Inventories				
4	U.S. government obligations				
5	Tax-exempt securities (see instructions)				
6	Other current assets (attach statement)				
7	Loans to shareholders				
8	Mortgage and real estate loans				
9	Other investments (attach statement)				
10a	Buildings and other depreciable assets				
b	Less accumulated depreciation	()			
11a	Depletable assets				
b	Less accumulated depletion	()			
12	Land (net of any amortization)				
13a	Intangible assets (amortizable only)				
b	Less accumulated amortization	()			
14	Other assets (attach statement)				
15	Total assets		0		3,971
Liabilities and Shareholders' Equity					
16	Accounts payable				
17	Mortgages, notes, bonds payable in less than 1 year				
18	Other current liabilities (attach statement)				
19	Loans from shareholders				
20	Mortgages, notes, bonds payable in 1 year or more				
21	Other liabilities (attach statement)				
22	Capital stock				
23	Additional paid-in capital				
24	Retained earnings				3,971
25	Adjustments to shareholders' equity (attach statement)				
26	Less cost of treasury stock	()			
27	Total liabilities and shareholders' equity		0		3,971

Schedule M-1 Reconciliation of Income (Loss) per Books With Income (Loss) per Return

Note: Schedule M-3 required instead of Schedule M-1 if total assets are \$10 million or more—see instructions

1	Net income (loss) per books	3,971	5	Income recorded on books this year not included on Schedule K, lines 1 through 10 (itemize):	
2	Income included on Schedule K, lines 1, 2, 3c, 4, 5a, 6, 7, 8a, 9, and 10, not recorded on books this year (itemize):		a	Tax-exempt interest \$	
3	Expenses recorded on books this year not included on Schedule K, lines 1 through 12 and 14i (itemize):		6	Deductions included on Schedule K, lines 1 through 12 and 14i, not charged against book income this year (itemize):	
a	Depreciation \$		a	Depreciation \$	
b	Travel and entertainment \$		7	Add lines 5 and 6	
4	Add lines 1 through 3	3,971	8	Income (loss) (Schedule K, line 18). Line 4 less line 7	3,971

Schedule M-2 Analysis of Accumulated Adjustments Account, Other Adjustments Account, and Shareholders' Undistributed Taxable Income Previously Taxed (see instructions)

	(a) Accumulated adjustments account	(b) Other adjustments account	(c) Shareholders' undistributed taxable income previously taxed
1	Balance at beginning of tax year		
2	Ordinary income from page 1, line 21	3,971	
3	Other additions		
4	Loss from page 1, line 21	()	
5	Other reductions	()	
6	Combine lines 1 through 5	3,971	
7	Distributions other than dividend distributions		
8	Balance at end of tax year. Subtract line 7 from line 6	3,971	

671108

OMB No. 1545-0130

Schedule K-1
(Form 1120S)Department of the Treasury
Internal Revenue Service

2008

For calendar year 2008, or tax
year beginning _____
ending _____Shareholder's Share of Income, Deductions,
Credits, etc.

See back of form and separate instructions.

Part I Information About the Corporation

A Corporation's employer identification number
26-1868248B Corporation's name, address, city, state, and ZIP code
GUARDIAN EAGLE SECURITY LLC104 SALUDA RIDGE CT
WEST COLUMBIA SC 29169C IRS Center where corporation filed return
CINCINNATI, OH 45999

Part II Information About the Shareholder

D Shareholder's identifying number
046-62-5883E Shareholder's name, address, city, state, and ZIP code
JULIO REIS
105 WEST LAKE FARMS DR
BLYTHEWOOD SC 29016F Shareholder's percentage of stock
ownership for tax year 100.000000 %

For IRS Use Only

Final K-1

Amended K-1

Part III Shareholder's Share of Current Year Income,
Deductions, Credits, and Other Items

1	Ordinary business income (loss)	13	Credits
	3,971		
2	Net rental real estate income (loss)		
3	Other net rental income (loss)		
4	Interest income		
5a	Ordinary dividends		
5b	Qualified dividends	14	Foreign transactions
6	Royalties		
7	Net short-term capital gain (loss)		
8a	Net long-term capital gain (loss)		
8b	Collectibles (28%) gain (loss)		
8c	Unrecaptured section 1250 gain		
9	Net section 1231 gain (loss)		
10	Other income (loss)	15	Alternative minimum tax (AMT) items
11	Section 179 deduction	16	Items affecting shareholder basis
12	Other deductions		
		17	Other information

* See attached statement for additional information.

For Paperwork Reduction Act Notice, see Instructions for Form 1120S.

Schedule K-1 (Form 1120S) 2008

DAA

Federal Statements**Statement 1 - Form 1120S, Page 1, Line 19 - Other Deductions**

Description	Amount
TOTAL	\$ 0

Federal Statements

FYE: 12/31/2008

Statement 2 - Form 1120S, Page 2, Schedule A, Line 5 - Other Costs

<u>Description</u>	<u>Amount</u>
SALES EXPENSE	\$ 11,451
TOTAL	<u>\$ 11,451</u>

Form 1120S	Retained Earnings Reconciliation Worksheet	2008
For calendar year 2008 or tax year beginning _____, ending _____		
Name GUARDIAN EAGLE SECURITY LLC		Employer Identification Number 26-1868248

Schedule L - Retained Earnings

Retained Earnings -- Unappropriated	0
Accumulated Adjustments Account	3,971
Other Adjustments Account	0
Undistributed Previously Taxed Income	0
 Schedule L, Line 24 - Retained Earnings	3,971

Schedule M-2 - Retained Earnings

	Accumulated Adjustments Account	Other Adjustments Account	Undistributed Previously Taxed Income	Retained Earnings Unappropriated/ Timing Differences	Total Retained Earnings
Beg Yr Bal	0	0	0	0	0
Ordinary Inc (Loss)	3,971				3,971
Other Additions					
Other Reductions					
Distributions					
 End Yr Bal	3,971	0	0	0	3,971

Form **1120S****Schedule K-1 Summary Worksheet****2008**

Name

Employer Identification Number

GUARDIAN EAGLE SECURITY LLC**26-1868248**

Shareholder Name

SSN/EIN

046-62-5883Column A **JULIO REIS**

Column B

Column C

Column D

Schedule K Items	Column A	Column B	Column C	Column D	SCH K TOTAL
1 Ordinary Income	3,971				3,971
2 Net rental RE inc					
3c Net other rental inc					
4 Interest income					
5a Ordinary dividends					
5b Qualified dividends					
6 Royalties					
7 Net ST capital gain					
8a Net LT capital gain					
8b Collectibles 28% gain					
8c Unrecap Sec 1250					
9 Net Sec 1231 gain					
10 Other income (loss)					
11 Sec 179 deduction					
12a Contributions					
12b Invest interest exp					
12c Sec 59(e)(2) exp					
12d Other deductions					
13a,c Low-inc house 4215					
13b,d Low-inc house other					
13e Qualif rehab exp					
13f Rental RE credits					
13g Other rental credits					
13h Fuel alcohol credit					
13i Other credits					
14b Gross inc all src					
14d-f Total foreign inc					
14g-k Total foreign deds					
14l Total foreign taxes					
14m Reduct in taxes					
15a Depr adjustment					
15b Adjusted gain (loss)					
15c Depletion					
15d Inc-oil/gas/geoth					
15e Ded-oil/gas/geoth					
15f Other AMT items					
16a Tax-exempt interest					
16b Other tax-exempt					
16c Nonded expense					
16d Total property dist					
16e Shr loan repts					
17a Investment income					
17b Investment expense					
18 Income (loss)	3,971				3,971

Federal Statements**Form 1120S, Page 1, Line 1a - Gross Receipts**

<u>Description</u>	<u>Amount</u>
REVENUE	\$ 270,433
TOTAL	\$ 270,433

1022

STATE OF SOUTH CAROLINA
CORPORATION
INCOME TAX RETURNReturn is due on or before the 15th day of the 3rd month
following the close of the taxable year.IC-78
(Rev. 7/7/08)
3383

SC FILE #

INCOME TAX PERIOD ENDING 12/31/08LICENSE FEE PERIOD ENDING 12/31/09FED EI # 26-1868248NAME GUARDIAN EAGLE SECURITY LLCMAILING ADDRESS
104 SALUDA RIDGE CTCITY WEST COLUMBIASTATE SCZIP CODE 29169This is page 1 of your return.
You must include this page for
your return to be complete.Reprint all pages if any adjustments are made
to capture the information in Barcode.

Mail this return to:

SCDOR, Corporation Barcode, Columbia SC 29214-0029



1120/1120S barcode



1120-TC barcode

Staple check or money order here.

33831017

1022

STATE OF SOUTH CAROLINA

'S' CORPORATION INCOME TAX RETURN**SC 1120S**(Rev. 7/8/08)
3095Return is due on or before the 15th day of the 3rd month following the close of the taxable year.
Mail return to: SC DEPARTMENT OF REVENUE, Corporation Return, Columbia, SC 29214-0100

SC FILE # _____

Attach complete copy of Federal Return

County or Counties in SC Where Property is Located: _____

INCOME TAX PERIOD ENDING 12/31/08LICENSE FEE PERIOD ENDING 12/31/09FED EI # 26-1868248NAME GUARDIAN EAGLE SECURITY LLCMAILING ADDR. 104 SALUDA RIDGE CTCity 104 SALUDA RIDGE CT Audit Location WEST COLUMBIA State SCAudit Contact Telephone Number 803-744-0400CITY WEST COLUMBIA STATE SCZIP CODE 29169Change of ☐ Address ☐ Accounting PeriodCheck if ☐ Amended Return ☐ QSSS

Total Gross Receipts.

270,433

Total cost of depreciable personal property in SC.

0

If Filing a Final Return, See Instructions for Further Information.

☐ Merged ☐ Reorganized ☐ Dissolved ☐ WithdrawnDoes the Corporation have any Shareholders who are nonresidents of South Carolina? ☐ Yes ☒ NoPART I
COMPUTATION OF INCOME TAX LIABILITY

1. Total of line 1 through 10, Schedule K of Federal Form 1120S	1. <u>3,971</u>
2. Net Adjustment from line 15, Schedule A and B	2. _____
3. Total Net Income as Reconciled (line 1 plus or minus line 2)	3. <u>3,971</u>
4. If Multi-state Corporation, enter amount from line 6, Schedule G; otherwise, enter amount from line 3.	4. <u>3,971</u>
5. LESS: Income on line 4 taxed to shareholders of S Corporation	5. <u>3,971</u>
6. South Carolina Net Income subject to tax (line 4 less line 5)	6. <u>0</u>
7. TAX: Multiply amount on line 6 by .05 (5.0%)	7. <u>0</u>
8. Payments: (a) Tax Withheld (see instructions) <u> </u> (b) Paid by Declaration <u> </u>	
(c) Paid with Tentative Return <u> </u> (d) Credit from Line 23b <u> </u>	
Refundable Credits: (e) Ammonia Additive <u> </u> (f) Milk Credit <u> </u>	
9. Total Payments and Refundable Credits (add lines 8a through 8f)	9. <u>0</u>
10. Balance of Tax Due (line 7 less line 9)	10. <u>0</u>
11. Interest Due <u> </u> Penalty Due <u> </u> (See penalty & interest instr.) Enter Total.	11. _____
12. TOTAL INCOME TAX, Interest and Penalty Due (add lines 10 and 11)	12. <u>0</u>
13. OVERPAYMENT (line 9 less line 7)	
(a) Estimated Tax <u> </u> (b) License Fee <u> </u> (c) REFUNDED <u> </u>	
14. Total Capital And Paid In Surplus (Multi-State Corporations See Schedule E)	14. <u>0</u>
15. FEE DUE - Line 14 x .001, plus \$15.00 (Fee cannot be less than \$25.00)	15. <u>25</u>
16. LESS: Credits taken this year against license fee from SC1120TC, Part II, Column C (attach SC1120-TC)	16. <u> </u>
17. Balance (line 15 less line 16)	17. <u>25</u>
18. Payments: (18a) Paid with Tentative Return <u> </u> (18b) Credit from line 13b <u> </u>	
19. Total Payments (add line 18a and 18b)	19. _____
20. Balance of Fee Due (line 17 less line 19)	20. <u>25</u>
21. Interest Due <u> </u> Penalty Due <u> </u> (See penalty & interest instr.) Enter Total.	21. _____
22. TOTAL LICENSE FEE, Interest and Penalty Due (add lines 20 and 21)	22. <u>25</u>
23. OVERPAYMENT (line 19 less line 17)	
(a) Estimated Tax <u> </u> (b) Income Tax <u> </u> (c) REFUNDED <u> </u>	
24. GRAND TOTAL: INCOME TAX and LICENSE FEE DUE (add lines 12 and 22)	24. <u>25</u>

PART II
COMPUTATION OF LICENSE FEEMake check payable to: SC Department of Revenue. Include Business Name, FEI Number and SC File Number.
Go to www.sctax.org and look for the DOR ePay logo for other payment options.

For Office Use Only

SC1120S

GUARDIAN EAGLE SECURITY LLC

26-1868248

Page 2

SCHEDULE A AND B

ADDITIONS TO FEDERAL TAXABLE INCOME

1. Taxes on or Measured By Income	1. _____
2. Excess net passive income subject to federal tax	2. _____
3. Taxable portion of certain built-in gains subject to federal tax	3. _____
4. _____	4. _____
5. _____	5. _____
6. Other Additions (attach schedule)	6. _____
7. Total Additions (add lines 1 through 6)	7. _____

DEDUCTIONS FROM FEDERAL TAXABLE INCOME

8. _____	8. _____
9. _____	9. _____
10. _____	10. _____
11. _____	11. _____
12. _____	12. _____
13. Other Deductions (attach schedule)	13. _____
14. Total Deductions (add lines 8 through 13)	14. _____
15. Net Adjustment (line 7 less line 14) Also enter on line 2, Part 1, SC1120S	15. _____

SCHEDULE C

RESERVED

Please
Sign
Here

I, the undersigned, a principal officer of the corporation for which this return is made declare that this return, including accompanying Annual Report, statements and schedules, has been examined by me and is to the best of my knowledge and belief, a true and complete return.

Signature of officer JULIO REIS

Date

PRESIDENT

803-744-0400

Title

Telephone Number

I authorize the Director of the Department of Revenue or delegate to discuss this return, attachments and related tax matters with the preparer.

Yes ☒ No ☐

Preparer's Printed Name

JOHN B. MERRITT

Paid

Preparer's

signature JOHN B. MERRITT

Date

3/11/09

Check if

self-employed ☐

Preparer's Telephone Number

803-359-1041

Preparer's

Firm's name (or

J.B. MERRITT & ASSOCIATES, LLC

EI #

P91410513

Use Only

yours if self-employed)

220 SWARTZ RD

and address

LEXINGTON, SC

ZIP Code

29072

SC1120S

Page 3

SCHEDULE D ANNUAL REPORT TO BE COMPLETED BY ALL CORPORATIONS

1. Name GUARDIAN EAGLE SECURITY LLC
2. Incorporated under the laws of the State of SOUTH CAROLINA
3. Location of the Registered Office of the Corporation in the State of South Carolina is 104 SALUDA RIDGE CT
In the City of WEST COLUM Registered Agent at such address is _____
4. Location of principal office (street address) 104 SALUDA RIDGE CT
Nature of principal business in SC CONSTRUCTION
5. The total number of authorized shares of capital stock, itemized by class and series, if any, within each class is as follows:
- | | | |
|-------------------|--------|---------|
| NUMBER OF SHARES: | CLASS: | SERIES: |
| <u>100 COMMON</u> | | |
6. The total number of issued and outstanding shares of capital stock itemized by class and series, if any, within each class is as follows:
- | | | |
|-------------------|--------|---------|
| NUMBER OF SHARES: | CLASS: | SERIES: |
| <u>100 COMMON</u> | | |
7. The names and business addresses of the directors (or individuals functioning as directors) and principal officers in the Corporation are:
(If additional space is necessary, attach separate schedule).
- | NAME | TITLE | BUSINESS ADDRESS |
|----------------------------|----------------------|------------------|
| <u>JULIO</u> | <u>REIS</u> | <u>PRESIDENT</u> |
| <u>104 SALUDA RIDGE CT</u> | <u>WEST COLUMBIA</u> | <u>SC 29169</u> |
8. Date Incorporated 1/31/2008 Date commenced business in the State of South Carolina was 1/31/2008
9. Date of this report 3/16/2009 Fed EI # 26-1868248
10. If Foreign Corporation, the date qualified to do business in the State of South Carolina is _____
11. Was the name of the Corporation changed during the year? NO Give old name _____
12. The Corporation's books are in the care of _____
Located at (street address) 104 SALUDA RIDGE CT
13. The total amount of stated capital per balance sheet is:
- | | |
|---|----------|
| A. Total paid in Capital Stock (cannot be a negative amount) | \$ _____ |
| B. Total paid in Capital Surplus (cannot be a negative amount) | \$ _____ |
| C. Total amount of stated Capital (cannot be a negative amount) | \$ _____ |

Form SC1120S

GUARDIAN EAGLE SECURITY LLC

26-1868248

Page 6

SCHEDULE SC-K WORKSHEET

* Enter amounts from corresponding lines on your federal Schedule K in Column B.

	(A) Description	(B) * Amounts From Federal Schedule K	(C) Plus or Minus South Carolina Adjustments	(D) Federal Schedule K Amounts After SC Adjustments	(E) Col. (D) Amounts Not Apportioned or Allocated to SC	(F) Col. (D) Amounts Apportioned or Allocated to SC
1	Ordinary Business Income (loss)	3,971		3,971		3,971
2	Net Real Estate Rents (loss)					
3	Other Net Rents (loss)					
4	Interest Income					
5a	Ordinary dividends					
5b	Qualified dividends					
6	Royalties					
7	Net Short Term Cap. Gain (loss)					
8	Net Long Term Cap. Gain (loss)					
9	Net § 1231 Gain (loss)					
10	Other Income (loss)					
11	§ 179 Deduction					
12a	Contributions					
12b	Investment Interest Expense					
12c	§ 59 (e)(2) Expenditures					
12d	Other Deductions					

Non-Refundable Tax Credits: Enter Total Credits from SC1120-TC
 SC1120-TC must be attached to return.

If Qualified Subchapter S Subsidiary Election (QSSS), please list South Carolina subsidiaries only.
 Attach schedule, if more space is needed.

Department of the Treasury
Internal Revenue Service

For calendar year 2010, or tax
year beginning _____, 2010
ending _____, 20

▶ See back of form and separate instructions.

A Corporation's employer identification number
26-1868248

B Corporation's name, address, city, state, and ZIP code

Guardian Eagle Security LLC
1140 Briargate Circle
Columbia

SC 29210

C IRS Center where corporation filed return
Cincinnati, OH 45999-0013

D Shareholder's identifying number Shareholder: 1
589-48-8663

E Shareholder's name, address, city, state, and ZIP code

Mary K Johnson
141 Forty Love Pt
Chapin, SC 29036

F Shareholder's percentage of stock ownership for tax year	100.000000%



For IRS Use Only

PLAINTIFF'S EW
EXHIBIT NO. 13
FOR IDENTIFICATION
a125116
DATE: RPTR: MSH

Final K-1

☐ Amended K-1

671110
OMB No. 1545-0130

Part III Shareholder's Share of Current Year Income Deductions, Credits, and Other Items

Part III Deductions, Credits, and Other Items			
1	Ordinary business income (loss)	13	Credits
	134,195		
2	Net rental real estate income (loss)		
3	Other net rental income (loss)		
4	Interest income		
5a	Ordinary dividends		
5b	Qualified dividends	14	Foreign transactions
6	Royalties		
7	Net short-term capital gain (loss)		
8a	Net long-term capital gain (loss)		
8b	Collectibles (28%) gain (loss)		
8c	Unrecaptured section 1250 gain		
9	Net section 1231 gain (loss)		
10	Other income (loss)	15	Alternative minimum tax (AMT) items
		A	1,512
1	Section 179 deduction	16	Items affecting shareholder basis
		C	5,657
2	Other deductions	D	49,084
		17	Other information

* See attached statement for additional information.

July 15, 2013

FINAL INVESTIGATIVE REPORT

FILE NUMBER: 2012-ASL-021

TO: Director Terry Wright

FROM: Investigator Melvin Turner

RE: COMPLAINT AGAINST:

Mr. Daniel M. Hagerty
AVSX Technologies
1140 Briargate Circle
Columbia, SC 29210

COMPLAINT FROM:

Eric F. Beatty
Power Home Technologies
4905 Green Rd., #107-A
Raleigh, NC 27616

OVERVIEW

AVSX Technologies is a North Carolina licensed burglar alarm company with a primary branch office located in Columbia, SC. The company's qualifying agent is Daniel C. Hagerty, License# 1803-CSA, which expires on 01/31/15. Mr. Hagerty is an out-of-state licensee and is a resident of Columbia, SC.

AVSX conducts the following burglar alarm services: home and business security systems in the states of Georgia, South Carolina and North Carolina.

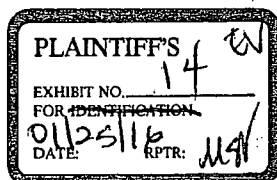
According to the PPS Database, as of this date, the company currently has (1) Active licensee and (42) Active Registrants and (14) Applied For Registrants.

Introduction

On April 13, 2012, Eric F. Beatty submitted a formal complaint form to the Alarm Systems Licensing Board against AVSX Technologies and their Qualifying Agent and Operations Manager, Daniel M. Hagerty. Mr. Beatty makes the following allegations:

*AVSX was operating as a burglar alarm company before being properly licensed under the ASLB. This would be a possible violation of 74D-2(1)(2).

Page 1 of 27



*AVSX's Qualifying Agent, Daniel Hagerty was not faithfully carrying out the duties and functions of a qualifying agent as required under 74D-2(c)(1).

*AVSX contracted/hired unregistered workers to conduct burglar alarm services for their company within the state of North Carolina. This would be a violation of 74D-8(a)(1)(2).

*AVSX was operating branch offices in the state of North Carolina without prior approval from the ASLB, which would be a violation of 74D-7(d).

The following procedures were followed in order to conduct a special review of these allegations:

Interviews:

Daniel C. Hagerty, Subject and Qualifying Agent for AVSX Technologies
Eric Beatty, Complainant
Daniel Hagerty, QA AVSX
Louis Endara, Owner, AVSX
Nacolle Caltrider, Install/Sales Coordinator for AVSX
Eric Bouvet, Regional Manager for AVSX
Derrick Simmons, Team Leader for AVSX
Paul White, Former AVSX sub-contractor
Shannon Martin, Former AVSX Employee

Documents reviewed:

PPS/ASL Database System and file documentation
AVSX client contracts
Business and personal email correspondence
Facebook information
Pictures of current and former AVSX employees
AVSX quarterly ESC Reports, 1099s and W-2s of current and former subcontractors/employees

**INVESTIGATION DETAILS –
(Chronological Order)**

Upon receiving and reviewing this complaint prior to assignment, Field Services Supervisor, Phil Stephenson directed Investigators Kim Odom (Greensboro), Sarah Conner (Charlotte) and myself (Raleigh) to conduct a compliance check at each location of the Branch Office violations. I was assigned the coordination of this event which he directed to be done on the same date and time at each location.

1. *(Alleged Branch Office Violation)

In reference to the alleged AVSX office location on 400 Pinner Weald Way, Suite 200 in Cary, NC, the following information was discovered:

05/08/12: This Investigator conducted an unannounced visit to the Cary location on 05/08/12 at 10:00am. Upon entering the Pinner Weald business complex, there was AVSX company signage on the front of the building and inside on the office directory. Pictures were taken of the signage for evidence purposes. The actual door only had the suite number, 200 on it and no company signage right by the door. No vehicles with company signage were located in the immediate vicinity of the parking lot at that time. In addition, a call was made by this Investigator to a toll-free number, in which a company representative did answer as AVSX Technologies. The lady representative was asked if they installed alarms in the Raleigh area and she stated "yes." This indicated that AVSX had been installing burglar alarm systems since on or before 05/08/12 in North Carolina.

The location in Cary was considered to be a possible Branch Office violation due to it not being registered with the ASL Board. Attorney Fountain stated that all signage had been removed as of that date and that they were no longer conducting any business whatsoever in that building. This statement was also verified by this Investigator during a follow-up visit to the location. They stated that the only thing the office was used for was to hold equipment for their installers and salespersons. They stated that there was no phone line for any customer service or outside calls at the location, only a number for inside staff.

2. *(Alleged Branch Office Violation) In reference to the alleged AVSX office location on 10130 Perimeter Parkway, Suite 200 in Charlotte, NC, the following information was discovered:

On 05/08/12, Investigator Sarah Conner went to the Charlotte location to ascertain as to whether AVSX was conducting business from that location, and if so, what business were they conducting. Upon her arrival, she noticed that on the directory in the lobby there was no information concerning AVSX as to where it was located. There was no signage on the building in the lobby or on the office door concerning AVSX.

Investigator Conner stated that she arrived at this location at 10:00am and was told by the front desk personnel that AVSX was located in this building; however, they did not arrive until 11:00am. The front desk lady advised to Investigator Conner that Steve Biggers is the Manager for AVSX. She also advised that this location was an office co-op space for several businesses and she was responsible for answering the phones for all of the businesses. The front desk lady did place a call to Mr. Biggers and left a voice message that Investigator Conner was there to speak with him.

At approximately 10:45 a Mr. Phil Lescola (Sales Manager) arrived at the office. Investigator Conner spoke with Mr. Lescola in the conference room, which is shared by all the tenants. He advised that the company began conducting business in the Charlotte area in mid-January out of his manager's apartment (Steven Biggers). Francisco Saldano, who is no longer employed with ASVX, opened this office in mid-February of 2012 and Steve Biggers is the current manager. He advised Mr. Biggers was out sick. Mr. Lescola advised that no business is conducted out of this location with customers and it is only a meeting place for employees. He advised that there are 5 employees in the Charlotte area and they meet at this location. From there, they all share a van to a location and go door to door to sale alarm systems. If a system is sold, they have the customer sign a work order and schedule a time and date for the installer. The installer reviews the alarm contract with the customer and has them sign it.

Mr. Lascola provided me his business card which did indicate the address at 10131 Perimeter Parkway, Suite 200, Charlotte, NC, but the phone number was for the office in Georgia. There was a van located outside that was wrapped completely in advertisement for AVSX. It also listed the phone number to the Georgia office. It also indicated that it was registered in SC. Photographs were taken of the exterior building, the office, the polo shirt that the employees were wearing and the van they were traveling in. Photos will be provided as soon as they are downloaded.

End of Investigator Sarah Conner's investigative report information.

3. *(Alleged Branch Office Violation)In reference to the alleged AVSX office location at 333 S. Swing St. Greensboro, NC, the following information was discovered:

On 5/8/12, Investigator Kim Odom made an unannounced visit to AVSX Technologies in Greensboro, NC at approximately 9:45 am. The address given in the complaint was 3985 S. Swing Road; however, there was no such address. Investigator Odom advised she only found the location because of a "wrapped" vehicle with AVSX's markings and logo on it that was parked in front of 389 Swing Road. There was no building signage at the location and AVSX was not located on the directory by the road.

Investigator Odom met with Chris Curry, who is a Regional Director for AVSX. Curry stated that he was in charge of the Triad area. He said that the office had been in existence for approximately three months and that there were approximately 7 people who work out of the Greensboro office. He stated that the public and/or customers do not come to that location and, in fact, he only comes there about once a week for an hour or so. The staff meets there and he conducts training there.

The interior of the office was very sparse and no licenses were displayed. He stated that they did not have a land line at that location.

Curry had never heard of Daniel Hagerty, the QA, but gave Investigator Odom the names of two of the owners, Bobby Johnson and Louis Endora. Curry also gave her the names of the employees in the Greensboro office and said that some of the registrations had been sent to Raleigh and had overnighted some new ones to the Headquarters in Columbia, SC. He said they have one installer and the rest are salespeople. AVSX, according to Curry, only does CCTV and burglar alarm. Curry stated that he is not currently registered, as his was denied for lack of Continuing Education Credits (CEUs). He stated that he plans to go to the next Board meeting and obtain his CEUs.

Investigator Odom asked Curry if the Greensboro location was in the phone book or on their website and he was unaware of whether they were listed or not. He did provide her with a business card, which listed the Swing Road address, as well as a phone number of 336-430-0882, which is Curry's cell phone number. Investigator Odom mentioned to Curry that they had no signage in front of the building and he said, "No, not yet". She also asked him if he had any registration records in that office and he stated that everything is sent to their HQ in South Carolina.

Investigator Odom then explained to Curry the requirement to have a resident QA to have an office in North Carolina. They then discussed the need to have branch office licenses for additional offices. She stated he was unaware of any of this and thanked her several times for bringing it to his attention.

Investigator Odom issued a verbal cease and desist for operating out of that office. She advised Curry for no one to hand out business cards with local addresses until the situation is resolved. Mr. Curry then asked if he could continue working and she (Odom) advised him that she could not tell him he can work, as he is not currently registered.

There is no mention of North Carolina offices on AVSX's website; however, on yellowpages.com, there is a listing for AVSX with the Greensboro address and a phone number of 336-870-6707.

A Follow-up phone call from Louis Endora to Investigator Odom indicates the following: On May 8, 2012, at approximately 12:22 pm, Louis Endora, one of AVSX's owners, contacted Investigator Odom at 803-556-1990. He stated that he had spoken with Chris Curry and will do everything they need to do to get the company in compliance. He stated that the offices are only gathering areas for the sales staff and that no customers come there. Endora stated that Daniel Hagerty (company QA) works and lives in South Carolina.

Mr. Endora stated that he was unaware of the signage at the Raleigh office and would have it removed immediately. He would also advise everyone to cease giving out cards with the NC addresses on them. Endora stated that he has not yet had a chance to speak with Hagerty, but planned to speak with him on that date. Endora was very cooperative and said he would do whatever the board tells him to do to get the company in compliance.

An AVSX company roster ran on the same date showed 4 active registrations and 14 in applied-for status.

End of Investigator Kim Odom's investigative report information.

STATEMENTS, INTERVIEWS, AND INVESTIGATION DETAILS --

Complaint From

Eric Beatty, QA, Power home Technologies, 4905 Green Road, Raleigh, NC

Mr. Beatty alleges that AVSX Technologies was not registering their employees in North Carolina. Everyone that they hired was paid on a 1099. This was done so the Alarm Board would not be able to pull Quarterly Reports for employee/subcontractor verification. He advised that the Alarm Board would have to ask them to see their accounting system to ascertain what sales reps they paid commissions to. Mr. Beatty also believed they were operating in NC without a state license before they were approved. To verify his allegations he suggest the Board review all the customer contracts that AVSX has completed in NC in order to verify whether or not their staff was registered (Email Attorney Reed for this information to bring to the Board Meeting). He advised that AVSX has their salesmen fill out an initial form with the customer. Later, a technician will fill out the contract for the customer. Mr. Beatty believes that all this information is true because Power Home Technologies hired two of their sales reps, Shannon Martin and Tom Barcells. He advised that they were never required to fill out their NC paperwork. These allegations appeared to possibly be violations of 74D-8(a)(1) and (18).

Mr. Beatty advised that Shannon Martin, a former sub-contractor for AVSX was hired to be their Raleigh Sales Manager and was charged with opening up an office for them at 400 Pinner Weald Way, Cary, NC. He advised that Shannon hired sales reps out of his office and advertised the company name on an office building. He advised Mr. Martin opened up this office in August of 2011. On September 26, 2011, Mr. Beatty advised that he emailed Nan Williams, the ASL Board Secretary and asked if they (AVSX) had a branch license and she replied "no." Mr. Beatty also believed that they (AVSX) were just paying the QA and Operations Manager, Daniel Hagerty, a "fee" to hold their license in NC. He advised that Shannon Martin never met or talked to the guy that was supposedly their QA. Mr. Beatty believed that his (Hagerty) only involvement in the business was just to hold the license and is not even a W-2 employee. These allegations would be a violation of 74D-7(d)

Mr. Beatty also advised that AVSX has several sales reps that work out of their Myrtle Beach, SC location. He also believed that they (AVSX) are selling alarm systems in NC using unregistered people. Additionally, they are using a registered technician to do their paperwork in order to break the rules. Mr. Beatty also believed they have unregistered technicians driving up from Columbia, SC to install their systems in Charlotte, NC. These allegations would be a violation of 74D-8(a)(1).

Mr. Beatty requested an investigation into AVSX for alleged violations of 74D and to see if they are following the rules. He advised that they (AVSX) have registration violations and are blatantly ignoring the ALSB branch office approval process. We know for sure they are not registering their sales reps and have branch locations at the following addresses:

*400 Pinner Weald Way, Cary, NC

*3895 S. Swing Rd., Greensboro, NC

*10130 Perimeter Parkway, Ste. 200, Charlotte, NC

Mr. Beatty submitted an email from Bobby Johnson, CEO of AVSX, which contained updated information for AVSX staff members/contractors. He advised that they recently opened up an office in Raleigh, NC along with other offices either opening up or having been opened in other neighboring states.

Mr. Beatty submitted a picture of an AVSX Technologies sign posted on a building allegedly located in Cary, NC, under suite number 202. Another picture indicated an AVSX Technologies sign on an office building under suite number 400, which was allegedly located in Greensboro as mentioned earlier. No pictures were sent for the alleged AVSX office location in Charlotte, NC.

Mr. Beatty submitted an AVSX client contract that did not indicate any PPS/ASL Board contact information as required by 12 NCAC 11.0123(a)(2).

Lastly, Mr. Beatty advised that Travis Chavis, is a member of the AVSX Management Team in Greensboro, NC. He advised that Travis was not registered with the ASLB and was denied for cause but still continues to work. This would be a possible violation of 74D-8(a)(2).

Mr. Beatty submitted a letter from one of Power Home Technologies' sales representatives to his supervisor. The letter indicated that Travis Chavis and other AVSX staff/contractors were allegedly stealing Power Home Technologies customers by waiving fees, adding extra accessories/equipment and undercutting their sales if a contract is signed by Power Home clients with AVSX. According to 74D and the Administrative Code, this Investigator could not determine a possible statute violation pertaining to this matter.

Per Eric Beatty, he submitted to this Investigator, a letter advising of additional complaint information against AVSX on behalf of Justin Medlin, a former AVSX employee. Mr. Medlin's letter stated the following:

Mr. Medlin advised that he was hired by AVSX on 07/18/12 out of their Greensboro, NC office. He stated he was recruited by Eric Bouvet, Manager of the AVSX Greensboro, NC location. He advised he was told by Eric that if he came to work for AVSX he would pay him(Justin) \$1,000 per install, which was more than what he (Justin) was making with Power Home Technologies. Mr. Medlin also stated that Eric Bouvet (Regional Manager), Derrick Simons (Team Leader),

and Travis Chavis (Team Leader) and some other reps were having weekly sales meetings at the office.

Mr. Medlin advised that after the Alarm Board told AVSX they couldn't operate out of the office location, they still allowed him to pick up equipment at their local office again. The most recent visit to the office was Saturday, November 3, 2012 to pick up various items.

Mr. Medlin stated that they (AVSX) also had sales meetings after the Alarm Board told them they could not operate any longer. The most recent meeting was around Monday, November 5, 2012. He stated he knew this because he saw text messages about the meeting at the office. Mr. Medlin stated that both Derrick Simmons and Travis Chavis were going to be running the local office. He related that he has installed several jobs for Travis with the most recent jobs being listed below with the install dates as follows:

*On 11/07/12, Mr. Medlin advised he previously installed a security alarm system for Marty Wall at 2912 Fillbert St. in Raleigh, NC, 27610. He said this job cancelled but it was sold by Travis Chavis.

*On 11/02/12, Mr. Medlin advised he previously installed a security alarm system for Toi Graham at 706 Norman Shoaf Rd. in Winston Salem, NC. He related that he installed the security system for this client and was sold by Travis Chavis.

*On 10/25/12, Mr. Medlin previously installed a security alarm system for Ann Haps at 4458 Red Fern Place in Winston Salem. He advised this system was sold by Travis Chavis.

*On 10/17/12, Mr. Medlin previously installed a security alarm system for Percy Clark at 112 Peace Lane in Clayton, NC. He advised this system was also sold by Travis Chavis.

Mr. Medlin advised that when he worked for AVSX, he was very close with Eric Bouvet. He (Justin) told him directly that he was trying to recruit and set up meetings with the following Power Home Technologies representatives: Doyce Jackson, Andy Cofield, Raphael Allen, Paul White and Chris Stone.

Mr. Medlin stated that Eric also told him to contact Alan White, Jason Rivera, and Aaron Manning directly in order to try and recruit them from Power Home Technologies, Inc. Mr. Beatty stated that they refused to contact them. He (Medlin) stated that LeAnn Cole told him that she was logging onto Power Home Technologies Info Max Verification System to find out what jobs Power Home was selling so she could dispatch Derrick and Travis to those jobs to steal the customers. Mr. Medlin stated she told him that she still had the password from when she was employed with Power Home Technologies.

Mr. Medlin advised that Mr. Bouvet told him on several occasions that he looked forward to waking up every morning, helping gather more employees at the office, taking care of his family, and putting Power Home Technologies out of business.

This was the end of Mr. Medlin's letter that was submitted as additional information, in reference to this complaint case against AVSX Technologies.

Complaint Against:

Daniel C. Hagerty, QA AVSX Technologies, 1140 Briargate Circle, Columbia, SC

On 06/07/12 at 4:16pm, this Investigator made contact via telephone with Daniel Hagerty, the Qualifying Agent for AVSX Technologies. He was asked if he received the complaint form from the ASL Board; and he advised that he did not receive it as of that date. He also stated that he didn't know what happened to it and maybe someone got a hold of it and didn't let him know. He was advised that we would resend the paperwork as soon as possible. He was also told that a response letter referencing the alleged violations should be forwarded to me as soon as possible.

Investigative Details:

On or about the following day, this Investigator talked with Nan Williams, the ASL Board Secretary about Mr. Hagerty's previous statement that he did not receive the ASL Board's complaint paperwork. I asked Nan whether or not a certified mail receipt for the Hearing paperwork was sent out on 05/09/12 and was the return receipt delivered to the Alarm Systems Licensing Board? Nan stated that our office hadn't received it as of that date. Nan was then asked to resend the complaint paperwork so that he (Hagerty) could review the paperwork and submit a letter of response to the alleged violations. Nan immediately sent out the paperwork by the following business day.

On 06/12/12 at 9:05am, this Investigator received an unexpected phone call from a Louis Endara, the co-owner of AVSX. This Investigator was not available at that time but he left a voice mail message wanting to talk about this complaint case. He also left an email address as another means of contacting him.

On 06/12/12 at 1:15pm, this Investigator attempted to return Mr. Endara's phone call but no contact was made and a message was left to please return the call.

On 6/13/12 at 4:29pm, this Investigator submitted an email request to Mr. Endara for 2009, 2010, and 2011 ESC Reports as soon as possible in order for the investigation process to continue. He was also advised that upon review of the documentation that he would receive further instructions and information.

Louis Endara, Co-Owner, AVSX Technologies, 1140 Briargate Circle, Columbia SC

On 6/20/12 at 4:30pm, Mr. Endara sent this Investigator an email attachment of a PPS database company roster for 2011. He stated that for the years 2009 and 2010, that AVSX did not have any active agents. He related that AVSX was not doing any burglar alarm business in any regard in the state of NC until the 1st quarter of 2011 as Verified by Vector Security, which was provided in a separate email.

Mr. Endara advised that Mr. Hagerty absolved his Ameritech Security relationship and became a full member of AVSX Technologies, which at the time was Guardian Eagle Security, LLC. He stated they were doing business as AVSX Technologies since the 2nd quarter of 2010 in South Carolina and Georgia. He stated that Mr. Hagerty is not paid a specific "stipend" payment as alleged in the complaint and is compensated rather for his efforts accordingly in lieu of his licensing benefits.

On 06/13/12 at 4:28pm, this Investigator sent a follow-up email to Louis Endara. Mr. Endara was asked to submit ESC reports for the years 2009, 2010 and 2011. He was advised that the reports were needed as soon as possible in order for the complaint investigation process to continue on schedule. Lastly, he was advised that when review of his information was completed he would be notified of the findings and of any further instructions or information that may be needed.

On 06/14/12 at 10:25am, Mr. Endara submitted an email response advising that they were gathering the information and also drafting a synopsis of events regarding the complaint. He advised that he would send the information from them the first part of the following week. He also stated to be rest assured that AVSX will continue to focus on compliance with the ASL Board.

On 06/20/12 at 10:55am, Mr. Endara sent this Investigator a follow-up email stating that he wanted to inform me that he was completing our request and should be sending it that afternoon.

On 06/20/12 at 4:55pm, Mr. Endara submitted another follow-up email to this Investigator advising that he submitted the attached information as requested and to please feel free to contact him for any further questions.

On 06/21/12 at 4:40pm, Mr. Endara was advised again by email that the documents that he sent were reviewed and are still incorrect.

On 06/22/12 at 5:05pm, Mr. Endara submitted a response email stating to please accept his apologies and stated he just scanned and attached the files to include additional supporting documents that may assist further. He then stated that he would be attending an ESX Security Conference the following week in Nashville, TN, but would be checking his emails and to please feel free to contact him for any further questions.

On 07/02/12 at 12:02pm, after review of the files submitted via email from Mr. Endara, he was sent a response email from this Investigator. He was asked to clarify whether or not AVSX had any ESC reports of alarm business employees/contractors from whenever they started conducting business in NC?

On 7/3/12 at 3:38pm, Mr. Endara submitted a follow-up email to this Investigator stating that he attached the ESC Reports that were provided to them by the NC Alarm Board. However, these reports were Pending, Active, and Denied Rosters from the PPS Database System that we already have access to. Mr. Endara was immediately emailed on that date and advised that the information that he sent were not ESC Reports/1099s and was advised to speak with the Employment Security Commission for further assistance on the requested documentation. He was also instructed to submit a list via email of all employees that he had on payroll from whatever start date in which they began paying their NC employees/contractors for the last three years or for whatever year they began payroll on the alarm side of their business. The year the company began servicing customers in NC was still a little unclear during this phase of the investigation.

On 07/06/12, this Investigator called Mr. Endara back and no contact was made, but a message was left with the secretary to have Mr. Endara return the call. She stated that he would be out of town until 7/17/12, but would let him know when he returned.

On 07/24/12 at 8:25am, this Investigator sent Mr. Endara another follow-up email noting that he did not respond from the previous email sent on 07/06/12. He was advised he would contact him by phone later that day.

On 07/24/12 at 1:29pm, this Investigator received an email response stating that they did not begin doing business in NC until 2011 and like most other alarm companies they began their entry implementing the "pay per job" program as 1099 exclusive representative. He stated that they began hiring salary representatives in NC the 2nd quarter of 2012 and currently have four on the payroll. If there was anything further needed to let him know.

On 07/24/12 at 2:06pm, Mr. Endara submitted a second email asking this Investigator the following question: "Do you just need 1099 information for NC? We are having our CFO pull the information for you and should have it later today if not first thing in the morning. Thanks again Melvin have a great evening!"

Daniel C. Hagerty, QA AVSX Technologies, 1140 Briargate Circle, Columbia, SC

On 07/31/12 at 4:10pm, this Investigator made contact again with Mr. Hagerty via phone in reference to this complaint. Mr. Hagerty was asked whether he received the complaint form information via certified mail and he stated, "Yes." Mr. Hagerty was asked to submit to this Investigator a letter stating his response to the alleged violations. He advised that he would do so and would call back no later than 8/2/12 to discuss the allegations resulting from this complaint.

He also stated that investigator Kim Odom had already received paperwork from him in reference to the allegations. However, the paperwork he was talking about was for something irrelevant to this complaint.

Nacole Caltrider, Install/Sales Coordinator AVSX Technologies, 1140 Briargate Circle Columbia, SC.

On 08/01/12 at 12:02pm, this Investigator made contact via telephone with Nacole Caltrider, the Install/Sales Coordinator for AVSX. She was asked whether Mr. Hagerty was available and she advised that he (Hagerty) was not available. Due to her job title, she was then asked if she had any information as to the involvement of former AVSX sub-contractor, Shannon Martin, in this complaint case. She advised that numerous times she requested registration paperwork from Mr. Martin in 2011; and more specifically on 09/12/11, which followed a most memorable incident 9/11. She stated that Mr. Martin failed to produce the documentation she requested from him.

In AVSX's defense, Ms. Caltrider's statement was verified via email that on 08/24/11 at 11:44am, she sent a reminder to Shannon Martin. She requested to Shannon that she still hadn't receive his affiliate (registrant) and licensing paperwork and that she needed everyone's fingerprint cards. Another email communication was also conducted between Luis Endara and Shannon Martin requesting and reminding him (Shannon) that they needed the ASLB paperwork still. She also verified per a Promissory Note signed by Shannon Martin that he was being hired by AVSX on 06/17/11.

Ms. Caltrider abruptly directed me to speak with her supervisor, Luis Endara, the Regional Manager for AVSX for any further information about Shannon Martin.

Louis Endara, Owner, AVSX Technologies, 1140 Briargate Circle, Columbia SC

The phone call with Ms. Caltrider was then transferred to Louis Endara for further information. He answered and was asked by this Investigator about Shannon Martin, who they (AVSX) says was the reason for any of their sub-contractors not being properly registered. Mr. Endara stated that Shannon worked for three months and was asked about paperwork. He stated it was to their surprise that he didn't submit any paperwork for their subcontractors in order to properly register them. Mr. Endara was asked by this Investigator to submit a statement in reference to Mr. Martin's involvement in this complaint case, as well as any additional statements or documentation he wanted to submit.

On 08/07/12 at 5:03pm, Mr. Endara submitted an email as requested about this complaint and Mr. Martin's involvement. Mr. Endara stated in his email that AVSX's previous relationship with Mr. Martin began in about June 2011, as indicated in email communications initiated by Martin to AVSX. He stated that Martin was previously employed with Power Home Technologies as the Sales Manager for their Charlotte, NC office at the time of his initial efforts to join the AVSX team. He stated Martin took employment with AVSX in the latter part of June 2011. He

continued his employment through 09/08/12, at which time he provided a letter of resignation stating he could not continue with a commission only employment opportunity and had returned to "Corporate America." At that time, he didn't mention that he was returning to Power Home Technologies. Mr. Martin left under questionable terms as they (AVSX) learned of dubious purchases he made while employed with AVSX. Mr. Endara allegedly has text messages showing that Mr. Martin threatened to turn AVSX into the Alarm Systems Licensing Board.

He stated in his email that Mr. Martin then reinitiated communications with AVSX on or about May of 2012, wherein he stated his employment with Power Home Technologies had come to an abrupt end. He stated Mr. Martin was addressed by AVSX about his involvement with accusations that were sent to the Board, which he stated he didn't know of. However, he stated he knew about the accusations in an email. He stated Mr. Martin has been part of continued hostilities between the two companies over the past year and a half and both AVSX and Power Home Technologies reached a mutual agreement in a previous lawsuit filed by Power Home against AVSX in November 2011 and settled on or about March 15, 2012. On that date, both parties had agreed to alleviate the "war" which had brewed between the two companies. It was directly after this time that AVSX was made aware of the current complaint with the Alarm Board. No further information to report from this email.

Investigative Details Continued:

On 8/8/12 at 5:52pm, this Investigator emailed Shannon Martin in reference to the complaint and allegations that he is responsible for not having paperwork turned in on time/or not at all regarding AVSX employees/contractors.

On 8/8/12 at 2:28pm, this Investigator received an email response from Mr. Martin, which stated that he would love to help in any way he could and left a contact number. No call was able to be made on that date by this Investigator due to a change in schedule.

On 09/17/12, this Investigator submitted a Request to Continue Case # 2010-ASL-021 due to needing more time to complete this complaint investigation. More calls and contacts were needed to be conducted with witnesses or subjects in this case. In addition, there had been several requests for ESC Reports or 1099 forms from Luis Endara, Co-Owner of AVSX that had not been received. This Investigator needed more time to receive those documents needed to complete a full investigation for this case. This request was subsequently granted by FSS Phillip Stephenson

On 09/24/12 at 8:48am, this Investigator emailed Mr. Hagerty asking him to confirm that he received the Continuance for the ASL Board Meeting that was continued to January 2013 ASL Board Meeting.

On 09/24/12 at 8:55am, Mr. Hagerty responded via email that it was good news that the board meeting was reset for January 2013 and that should give everyone enough time to properly prepare for the meeting.

On 10/19/12, this Investigator contacted Attorney Reed Fountain about this complaint case. He was asked to provide the previously requested documents needed to complete this investigation and he stated he would work on getting those documents.

On 10/19/12, this Investigator contacted Attorney Reed Fountain via telephone about this complaint case. He was asked to provide the previously requested documents needed to complete this investigation and he stated he would work on getting those documents.

On or about 12/10/12, this Investigator received a call and voice mail message from Paul White, another former AVSX subcontractor. He left a message stating that he had knowledge of this complaint case and wanted to provide further information related to this pending complaint against AVSX.

**Paul White, Former AVSX Employee, 17B Daisy Circle, Spring Lake, NC 28390
910-492-6866**

On 12/11/12 at 8:22am, this Investigator made contact via telephone with former AVSX employee Paul White. He advised that he was terminated from AVSX. He stated that he was making 1099-forms for all employees, but would change everyone over to full employees hired on. He stated he was terminated due to not wanting to hang out with the good old' boys within the company. He stated that he was the manager over the Fayetteville office from around November of 2010 until he was terminated on 10/30/12. He stated that they thought he was too much of a family man, which was his reason for him being terminated.

Mr. White also stated that the office in Greensboro was located on S. Swing Rd. He stated he worked there for two years and was a manager for the company. Mr. White stated that Eric Bouvet is the Regional Manager for AVSX in North Carolina. He stated that everyone reports to a staff meeting in Greensboro every Monday at 11:00am. He stated that Daniel Hagerty works for Power Home Technologies, but AVSX is trying to hire him. He was asked where AVSX stores their client information and he stated that they gather their client information in Greensboro, but is then sent to headquarters in South Carolina.

Investigative Details Continued:

On 01/02/13, this Investigator was as another complaint case against AVSX, #2013-ASL-003 sent in from Eric Beatty. Details of this case are not included in this case, but may mention relevant information.

On 01/04/13, this Investigator submitted another Request for Continuance in order to address the following information. There were two pending complaints submitted against AVSX that were scheduled to appear before the Board in March of 2013. As of that date, this Investigator needed more time in order to provide a complete and thorough investigation of these complaint cases due to needing further witnesses' and subjects' statements and documentation. In addition, more time was again needed to receive the requested 2010 to 2012 ESC Reports/1099s for audit purposes. This request again was subsequently granted by FSS Phillip Stephenson.

On 01/09/13 at 2:56pm, this Investigator received a call from AVSX attorney, Reed Fountain. In reference to case# 2012-ASL-021, Mr. Fountain advised that he had submitted to this Investigator the 2010 and 2011 1099s via email, as requested; however, he was requested to also submit 2012 1099s as well, which weren't sent initially.

On 01/16/13, this Investigator received a follow-up call from Mr. Bouvet in reference to Travis Chavis' pending criminal charge(s). He indicated that he had Travis contact the District Attorney's office in Mecklenburg County about his criminal charge and he simply stated that it was still pending and had no further information at this time.

On 01/22/13 at 1:30pm, this Investigator held a follow-up meeting to discuss the current alleged violations against AVSX. Attendants at the meeting were, AVSX Attorney Reed Fountain; Louis Endara, Co-Owner of AVSX; Eric Bouvet, AVSX Regional Manager; and H. Brent Helms, AVSX Attorney from Winston-Salem.

Mr. Fountain started off by wanting to review the alleged violations and was advised that there were some alleged Branch Office violations that were found by our investigators at the following AVSX locations on May 8, 2012.

Compliance Check

On 01/14/13 at 11:00am, this Investigator was assisted by Investigator Kim Odom, in which we made an unannounced visit to the alleged AVSX office location on 333 S. Swing St. in Greensboro, NC. As we sat in the car to observe any activity and/or AVSX signage for any possible violations, we saw two people simply walk in at separate times to this office location. The building had no AVSX signage on the exterior of this location, which was possibly an alleged violation. There was a van parked right outside the office building that had AVSX signage wrapped around it and contained a toll-free number, 1-888-WHY-AVSX.

We approached the door and an AVSX salesperson answered the door. We asked to speak with Regional Manager Eric Bouvet or whoever was in charge of that office location. The AVSX staff indicated that Mr. Bouvet was not in the office and that he had just left not too long ago. The person in charge to speak with was Derrick Simmons, an AVSX Team Leader who was over this office. We asked could we speak with Derrick.

Derrick Simmons, Team Leader for AVSX, 1140 Briargate Circle, Columbia, SC

Mr. Simmons met with us and took us to an office where we could speak with him about the alleged complaint violations against AVSX. As we walked around the office we didn't see any phones sitting out and we didn't see a license hanging in an inconspicuous place near the entrance of the office.

We asked Derrick how many staff worked at this office and he stated he had 14 staff members and that they were all 1099 contractors and not employees.

We then had Derrick round up all of the staff currently at the office so we could document whether they were properly registered or not and carrying their registration cards. The following AVSX staff's registration was noted:

*Derrick Simmons (Team Leader); Registration(Reg.) Card# 007130P4; expiration date of 04/30/14

*Christopher J. Dicey (Consultant/Salesperson); Reg. Card# 006682P3; exp. date of 01/31/13

*Brian Quattrene (Consultant/Salesperson); Not on list; printed out on 01/04/13; stated has worked for AVSX for about 3 months

*Travis Chavis (Team Leader); Inactive registration; was at office during our visit; but left during our talk with Eric.

*Norman E. James (Sales Representative); stated has worked with AVSX for about 3 months; used to work with Power Home Technologies; Reg. card #005591P2 expired on 08/31/12; stated he was still waiting on registration card; stated began working at AVSX in September of 2012

*Archie Dawyer (Sales Representative); stated he was registered but indicated was Inactive in PPS database system.

Eric Bouvet, Regional Manager, AVSX Technologies, 1140 Briargate Circle, Columbia, SC

We then asked to speak with Eric Bouvet. He was not at the office at that time, but had left not too long ago after a staff meeting. Eric later reported back to the office to speak with us about their alleged complaint violations. On his person he had a Registration Card# 00713084, which had an expiration date of 08/31/13.

We asked Eric several questions about the office and his staff members. He advised this was a sales office. He stated that Derrick holds their staff meetings there before going out into the field. He advised that he recently applied for a license, but Nan turned him down. He stated that unregistered staff member, Travis Chavis, is still working at that office and they are trying to get

his registration card taken care of. Lastly, Eric was asked who conducts their installs and he stated that his staff conducts them. He also stated their equipment is shipped to their installers.

Eric was asked whether customers report to this office and he stated that they don't have customers report there and do not advertise there. Eric stated he is a W-2 or employee of AVSX. He stated that everyone else is 1099 contractors. He was asked who holds the applicant's paperwork and he stated, Kathy House. He said she (Kathy) ships all paperwork to the main office in Columbia, SC. He said that she (Kathy) also signs the registration applications. He stated she keeps up with renewals. Eric then stated that he used to work for Power Home Technologies where he was a top employee, even though he thought the company was garbage. Lastly, he stated he wants to apply for a license, but is in limbo about completing the process.

Eric was then asked about Travis' drug charge(s) in Charlotte, NC. He stated that he (Travis) has no Court date set and that his drug charge in Charlotte was pending (find status on charge).

Eric was then asked about what possibly happened between Power Home and AVSX? He stated that Bobby (AVSX) and Ben (Power Home) had a close, personal relationship. Both had proposed combining two companies, but Bobby decided not to and left Power Home. He stated that this is nothing but a vendetta by Ben against AVSX. No further questions were asked and we exited the building.

Investigative Details Continued:

On 02/22/13 at 5:05pm, this Investigator received a follow-up email from Attorney Fountain stated that they would forward the final 2012 tax documents once they were finalized. He also advised that their Corrective Action Plan was forthcoming. He advised to please keep them posted as to our audit findings. He also requested a copy of this Investigator's report when completed and a copy of the complaints against AVSX for their review. He also stated that he hoped to register several individuals for the next training course that was available; and to let them know when that would be. Lastly, he stated that their QA would like to have a meeting with this Investigator once we have our initial findings; and to let him know of any possible dates.

Paul White, Former Employee, AVSX Technologies, Columbia SC

On 02/01/13 at 10:30am, this Investigator met with former AVSX contractor, Paul White. Mr. White wanted to meet with this Investigator for a follow-up from the conversation we had on 12/11/12 via telephone. He advised that he began contract work for AVSX on 10/10/12 and was hired on by Travis Chavis. Mr. White advised that AVSX is out to get Power House Technologies and that they are also going after their employees by trying to hire/contract them out. He stated that while he contracted for AVSX, Eric Bouvet would send record checks of prospective contractors to Lisa Thomas. He would do this in order to get their record checks that came back as negative, which would get cleared up by them simply paying some fee.

Furthermore, Mr. White stated that AVSX staff would stay in \$600.00 rooms during conferences such as the 2012 Expo in Columbia, SC. He stated during this conference they gave away televisions, laptops, I-pads and golf clubs.

Mr. White stated that they still won't send him a termination letter to this day and does not know why he was actually terminated. Mr. White submitted several pieces of documentation that showed possible violations of AVSX.

Items submitted for complaint investigation by Paul White:

*Client contracts that do not have the PPS/ASL Board address and contact number as required. This is an alleged violation of 12NCAC11.0123(a)(2).

*An AVSX employee hire form for Mr. White that was signed by an unregistered and unlicensed employee, Travis Chavis, who was acting as a Manager for AVSX. This is an alleged violation of 74D-8(1)(a). In addition, Mr. Chavis at that time also had a pending criminal charge of Felony Possession of Cocaine out of Mecklenburg County.

Investigative Details Continued:

On 03/01/13 at 11:05am, this Investigator received an email from Attorney Reed Fountain requesting a follow-up meeting in regards to the following items: customer contracts that he wanted to know if it would be ok to email; when they can set up for the next training session; follow-up meeting with QA; and requested a Continuance, in order to discuss corrective action plan and resolution options especially with regards to making sure all pending complaints are heard at the same time.

Daniel C. Hagerty, QA AVSX Technologies, 1140 Briargate Circle, Columbia, SC

On 03/21/13 at 11:00am, this Investigator conducted a follow-up meeting with Attorney Reed Fountain and Qualifying Agent, Daniel Hagerty at the PPS Office. They first asked about renewing their business license and also had an insurance question about renewal that was redirected to Nan Williams, the Board Secretary. Attorney Fountain then stated that Mr. Hagerty did not initially receive the complaint paperwork, but did later receive that information. He stated that Mr. Hagerty was simply not trying to avoid handling this complaint with this Investigator.

They then mentioned that they were thinking about Eric Bouvet to become the new licensee for AVSX. They stated that this would be a more practical qualifying agent for them due to him residing in North Carolina. However, they stated that Daniel will be the QA until Bouvet becomes the new QA. They stated that they are currently implementing a new computer system

for handling their ASL paperwork required to be on file and their new installs and employment records.

Mr. Fountain stated that the drama is still going on between AVSX and Power Home.

I stated to them that they still hadn't submitted their 2012 tax documents. They stated that they still didn't have them at that time, but would submit an email when completed. They stated that Cathryn House is currently working on the tax form information. They stated that they would try to update this Investigator on a completion date as soon as possible.

Mr. Fountain then stated that the reasons for their alleged unregistered violations were totally based on Shannon Martin's incompetence in failing to submit the requested registration paperwork as aforementioned. As far as the improper attempted opening of the office in Cary, NC, Mr. Fountain stated that this particular office was opened without proper authorization from upper management. He stated that as of the date of this meeting, he was aware of all of the alleged violations that AVSX was being accused of.

Mr. Hagerty was asked what was his job title and duties, being that he is the company Qualifying Agent. He stated that he is the Operations Manager and resides in Columbia, SC. He stated his duties are to assist in sales and works on the technical side. He stated he also installs systems periodically and handles marketing as well. He stated he is an engineer by trade. He stated that he supervises 8 employees that handles support, parts and inventory, which are located in an adjacent building to his office location. He stated that he is in the office and the field periodically. He stated that he wants Greensboro to be the central office. He stated that their service department is coming together and almost completely together. He stated that their technicians roll in at about 8:00am and all of their vans are labeled correctly.

This Investigator again asked them for a timeline when their 2012 documents that were requested for the audit would be completed. Attorney Fountain stated that they should be completed within a couple of weeks. Mr. Hagerty then stated that Kathryn House at the main office in SC was in the process of converting all of the documents into a computerized system. Lastly, Attorney Fountain stated that they would check on the completion date for the paperwork and would get back with this Investigator for any updated information.

Nan Williams later spoke with them and they asked her whether they were submitting the correct paperwork for their liability insurance and whether they actually needed to submit their Workman's Comp paperwork, which was not necessarily needed. She did state to them that each Branch Office they were going to open in the future needed to be included on their insurance paperwork. Attorney Fountain stated that they planned to do just that.

End of meeting and no further discussion at that time.

Investigative Details Continued:

On 04/26/13 at 2:59pm, this Investigator sent a follow-up email to Attorney Fountain reminding him that this Investigator was still waiting to receive the final ESC Reports/10-99s as previously requested.

On 05/02/13 at 9:46am, due to the fact that PPS/ASL still hadn't received all requested documents in order to complete a full audit investigation, this Investigator sent Attorney Fountain another follow-up email. He was reminded that according to our last meeting on 02/21/13 I was advised that they would send the requested 2012 ESC Reports/10-99s and any Contract Information within a reasonable time period. However, as of that date, it had been a month and a half later and they still hadn't sent the requested documents. They were also sent in the email 74D-5 Powers of the Board and Suspension of licenses for failing to reasonably cooperate with the Board or its agents during an investigation of any complaint, etc...Chapter.

On 05/02/13 at 9:59am, Attorney Fountain responded in an email and stated that he apologized and would have the tax info and get it ASAP.

On 05/08/13, this Investigator discussed with Deputy Director Anthony Bonapart the fact that QA Daniel Hagerty and AVSX Attorney Reed Fountain still had not sent the needed information as previously requested on numerous occasions for the remaining AVSX10-99s and/or ESC Reports for the year 2012. This request stemmed from the most recent complaint submitted by Eric Beatty on 01/02/13. A second Subpoena was sent to Mr. Hagerty for the requested documents and to have them readily available for this Investigator at Mr. Fountain's office in Raleigh, NC on 05/17/13 at 11:00am.

Shannon Martin, Former AVSX Technologies and Power Home Technologies Employee.
1215 Shackelton Rd. Apex, NC 27502 919-492-6866
(Was listed on complaint as witness by Eric Beatty.)

On 05/09/13 at 2:11pm, Mr. Martin was finally contacted and asked about AVSX's allegations that he failed to submit registration paperwork as requested. He advised that he was not aware that AVSX was licensed. He stated he was hired at AVSX in June 2011, but soon went to Power Home at the end of August. He stated that things just didn't work out and then went to work for Power Home Technologies. He stated that he worked with AVSX for about a week and a half and then left. He stated that he basically didn't know anything about paperwork and does not understand what they are talking about him not submitting paperwork. He said that none of that was his responsibility and totally denied all involvement. He acted as if he had no clue and strongly denied the allegations that he was asked about in reference to unregistered staff and failure to turn in paperwork.

Mr. Martin was asked about his involvement in the set-up of the Cary, NC office location. He stated that he didn't think that anyone ever worked there. He stated that he didn't think any alarm work was done out of that office either. He said that there were many issues with employees that he cared not to get into. Lastly, he stated that he never did any security work and now works with Securitas, in which he only destroys documents. This was the end of Mr. Martin's telephone interview.

Investigative Details Continued:

On or about 05/19/13, this Investigator sent the W-2s and 10-99s via standard mail to Investigator Helen Parker. The documents were initially submitted to this Investigator by AVSX and Attorney Reed Fountain for the purposes of completing a full audit of their company records for alleged unregistered activity.

On 05/23/13, Investigator Parker advised this Investigator via email that she received the audit investigation information previously mailed.

On 06/06/13 at 12:07pm, this Investigator sent a follow-up email to Attorney Fountain about audit paperwork. He was asked to send a list of employees with their to and from employment dates while working as contractors with AVSX. This information was missing from the last documents that were submitted for audit purposes. A little later that day at 2:45pm, this Investigator received another email from Attorney Fountain stating that they just submitted Graham and Clark contracts with bank info redacted. He advised the contract sent isn't the current contract in use. He stated that there were no contracts for Haps and Wall because they were not current customers. He stated the only paperwork were some computer preserved notes on those sales calls. He advised to let him know if we needed anything else. He again requested a copy of my report and the numbers from the audit. He was advised no report would be available until the Board Meeting date.

Again, on 06/18/12 at 11:33am, this Investigator sent another email requesting a list of 2010 to 2012 employees/contractors' to and from employment dates. This information was needed to complete the audit investigation.

Furthermore, here is the following email requesting further information needed in order to complete our full audit of AVSX records:

"Hello again Mr. Fountain,

From 2010 to 2012, I need a list of your employees with their to and from employment dates for the time period that you actually had employees/contractors working for AVSX in North Carolina. Basically, he was requested send information from the same time period as the previous information requested.

I need this information immediately so that we can complete our audit of AVSX. I will give you all until 6/24/13 to do so."

On 06/24/13 at 5:40pm, this Investigator received response email from Attorney Fountain and he advised that he just sent me an attachment for an amended list showing termination dates of AVSX employees for 2012. He stated that he should be able to get 2011 shortly.

As of the date of this report, this Investigator still needs further documentation in order to complete a full audit for AVSX. The last email sent to Attorney Fountain advised him that a list of 2011 employee list of hire/termination dates were still needed. The last email I received from Mr. Fountain was on 07/01/13 stating that "We will double check- what names you are showing as missing" on the employee 2011 list. The numerous requests to submit initial or follow-up documentation for audit purposes is an alleged violation of 74D-10(17) and/or (18). Due to not receiving all of the documentation needed, this Investigator has not successfully completed a full audit for possible unregistered violations.

SUMMARY OF INVESTIGATION

On April 13, 2012, the Private Protective Services and Alarm Systems Licensing Board received a formal complaint form from complainant Eric F. Beatty. All of the following information located in this section of the report was taken directly from Mr. Beatty's complaint form, which indicated his statements in reference to the alleged violations against AVSX Technologies

In reference to the alleged allegations, this Investigator has determined the following:

*1. Alleged Registration Violation: 74D-8(a)(1)(2) - Without a full audit being completed, Travis Chavis has definitely been working unregistered for AVSX. He has been denied his alarm registration since 10/29/12. He began employment per the PPS Database on 08/28/12. This Investigator found that Mr. Chavis was acting as a Manager for AVSX when he completed Hire Date paperwork for former AVSX contractor Paul White. In addition, Mr. Chavis was at the AVSX office location in Greensboro during an unannounced visit by this Investigator and Kim Odom conducted on 01/14/13. However, Mr. Chavis left the office before we could question him about him working unregistered for AVSX. Mr. Chavis was also found to be located in numerous pictures with AVSX employees and flashing around cash money at their office location.

*2. Alleged Branch Office Violation: 74D-7(d) - On 05/08/12, this Investigator conducted an unannounced visit to the AVSX office location on 400 Pinner Weald Way, Suite 200 in Cary, NC. Upon entering the Pinner Weald business complex, there was AVSX company signage on the front of the building and inside on the office directory. Pictures were taken of the signage for evidence purposes. The actual door only had the suite number, 200 on it and no company signage right by the door. No vehicles with company signage were located in the immediate

vicinity of the parking lot at that time.

In addition, a call was made by this Investigator to a toll-free number, in which a company representative did answer as AVSX Technologies. The lady representative was asked if they installed alarms in the Raleigh area and she stated "yes." This indicated that AVSX had been installing burglar alarm systems since on or before 05/08/12 in North Carolina. The location in Cary was considered to be a possible Branch Office violation due to it not being registered with the ASL Board. During a meeting with AVSX, Attorney Fountain stated that all signage had been removed as of that date and that they were no longer conducting any business whatsoever in that building; which was also verified by this Investigator during a follow-up visit to the location. They stated that the only thing the office was used for was to hold equipment for their installers and salespersons. They stated that there was no phone line for any customer service or outside calls at the location, only a number for inside staff.

***3. Alleged Branch Office Violation: 74D-7(d)** - In reference to the alleged AVSX office location on 10130 Perimeter Parkway, Suite 200 in Charlotte, NC, the following information was discovered:

On 05/08/12, Investigator Sarah Conner went to the Charlotte AVSX location at 10130 Perimeter Parkway in Charlotte, NC. AVSX was conducting business from that location, and if so, what business were they conducting. Upon her arrival, there was no signage on the building in the lobby or on the office door concerning AVSX. She spoke with Manager Steve Biggers, who advised that this location was an office co-op space for several businesses and she was responsible for answering the phones for all of the businesses.

Investigator Conner then stated that she later spoke with Phil Lescola (Sales Manager) in the conference room of the office. He advised that the company began conducting business in the Charlotte area in mid-January 2012, out of his manager's apartment (Steven Biggers). Francisco Saldano, who is no longer employed with AVSX, opened this office in mid-February of 2012 and Steve Biggers is the current manager. He advised Mr. Biggers was out sick. Mr. Lescola advised that no business was being conducted out of this location with customers and it is only a meeting place for employees. He advised that there are 5 employees in the Charlotte area and they meet at this location. From there, they all share a van to a location and go door to door to sale alarm systems. If a system is sold, they have the customer sign a work order and schedule a time and date for the installer. The installer reviews the alarm contract with the customer and has them sign it.

Mr. Lascola provided Investigator Conner his business card, which did indicate the address at 10131 Perimeter Parkway, Suite 200, Charlotte, NC, but the phone number was for the office in Georgia. There was a van located outside that was wrapped completely in advertisement for AVSX. It also listed the phone number to the Georgia office. It also indicated that it was registered in SC. Photographs were taken of the exterior building, the office, the polo shirt that

the employees were wearing and the van they were traveling in. Photos were taken for evidence purposes.

*4. Alleged Branch Office Violation: 74D-7(d) - In 05/08/12, Investigator Kim Odom conducted an unannounced visit to the alleged AVSX office location in Greensboro, NC. The original address given in the complaint was 3985 S. Swing Road; however, there was no such address. Investigator Odom advised she only found the location because of a "wrapped" vehicle with AVSX's markings and logo on it that was parked in front of 389 Swing Road. There was no building signage at the location and AVSX was not located on the directory by the road.

Investigator Odom met with Chris Curry, who is a Regional Director for AVSX. Curry stated that he was in charge of the Triad area. He said that the office had been in existence for approximately three months and that there were approximately 7 people who work out of the Greensboro office. He stated that the public and/or customers do not come to that location and, in fact, he only comes there about once a week for an hour or so. The staff meets there and he conducts training there. Investigator Odom advised that no licenses were displayed in this office. In addition, she advised that the y didn't have a land line.

Curry had never heard of Daniel Hagerty, the QA, but gave Investigator Odom the names of two of the owners, Bobby Johnson and Louis Endora. Curry also gave her the names of the employees in the Greensboro office and said that some of the registrations had been sent to Raleigh and had overnighted some new ones to the Headquarters in Columbia, SC. He said they have one installer and the rest are salespeople. AVSX, according to Curry, only does CCTV and burglar alarm. Curry stated that he is not currently registered, as his was denied for lack of Continuing Education Credits (CEUs). He stated that he plans to go to the next Board meeting and obtain his CEUs.

Investigator Odom asked Curry if the Greensboro location was in the phone book or on their website and he was unaware of whether they were listed or not. He did provide her with a business card, which listed the Swing Road address, as well as a phone number of 336-430-0882, which is Curry's cell phone number. Investigator Odom mentioned to Curry that they had no signage in front of the building and he said, "No, not yet". She also asked him if he had any registration records in that office and he stated that everything is sent to their HQ in South Carolina.

Investigator Odom then explained to Curry the requirement to have a resident QA to have an office in North Carolina. They then discussed the need to have branch office licenses for additional offices. She stated he was unaware of any of this and thanked her several times for bringing it to his attention.

Investigator Odom issued a verbal cease and desist for operating out of that office. She advised Curry for no one to hand out business cards with local addresses until the situation is resolved.

Mr. Curry then asked if he could continue working and she (Odom) advised him that she could not tell him he can work, as he is not currently registered.

There is no mention of North Carolina offices on AVSX's website; however, on yellowpages.com, there is a listing for AVSX with the Greensboro address and a phone number of 336-870-6707.

A Follow-up phone call from Louis Endora to Investigator Odom indicates the following: On May 8, 2012, at approximately 12:22 pm, Louis Endora, one of AVSX's owners, contacted Investigator Odom at 803-556-1990. He stated that he had spoken with Chris Curry and will do everything they need to do to get the company in compliance. He stated that the offices are only gathering areas for the sales staff and that no customers come there. Endora stated that Daniel Hagerty (company QA) works and lives in South Carolina.

Mr. Endora stated that he was unaware of the signage at the Raleigh office and would have it removed immediately. He would also advise everyone to cease giving out cards with the NC addresses on them. Endora stated that he has not yet had a chance to speak with Hagerty, but planned to speak with him on that date. Endora was very cooperative and said he would do whatever the board tells him to do to get the company in compliance.

An AVSX company roster ran on the same date showed 4 active registrations and 14 in applied-for status.

In reference to the previous alleged AVSX Branch Office information, there are (3) possible Branch Office violations in Cary, Greensboro and Charlotte office locations that were found by this Investigator and Investigators Kim Odom and Sarah Conner.

***5. Alleged Violation: 74D-10(a)(17)(18)** - This Investigator has requested documentation for audit purposes from 06/20/12 to 07/01/13. This Investigator still hasn't been given the opportunity to successfully complete a full audit for this investigation. As indicated throughout this report, this Investigator requested numerous times the document needed; however, as of this date, a full audit has not been completed. This Investigator will present this information to the Board for further review.

***6. Alleged Violation: 12 NCAC11 .0123(a)(2)** - The complainant, Eric Beatty, submitted an AVSX client contract that did not indicate any ASL Board address and contact information.

LICENSING HISTORY

Burglar Alarm Business License:

*01/21/11 to Present, under AVSX Technologies, expires on 01/31/15

*02/10/06 to 11/01/10, under Ameritech Security & Audio Systems, LLC (BPN 005644P8),
Inactive.

DISCIPLINARY HISTORY

N/A

VIOLATIONS

§ 74D-7. Form of license; term; assignability; renewal; posting; branch offices; fees.

(d) Any branch office of an alarm systems business shall obtain a branch office certificate. A separate certificate stating the location and licensed qualifying agent shall be posted at all times in a conspicuous place in each branch office. Every business covered under the provisions of this Chapter shall file in writing with the Board the addresses of each of its branch offices. All licensees of a branch office shall notify the Board in writing before the establishment, closing, or changing of the location of any branch office. A licensed qualifying agent may be responsible for more than one branch office of an alarm systems business with the prior approval of the Board. Temporary approval may be granted by the Director, upon application of the qualifying agent, for a period of time not to exceed 10 working days after the adjournment of the next regularly scheduled meeting of the Board unless the Board determines that the application should be denied.

§ 74D-8. Registration of persons employed.

(a) (1) All licensees of an alarm systems business shall register with the Board within 30 days after the employment begins, all of the licensee's employees that are within the State, unless in the discretion of the Director, the time period is extended for good cause. To register an employee, a licensee shall submit to the Board as to the employee: set(s) of classifiable fingerprints on standard F.B.I. applicant cards; recent color photograph(s) of acceptable quality for identification; and statements of any criminal records as deemed appropriate by the Board.

(2) Except during the period allowed for registration in subdivision (a)(1) of this section, no alarm systems business may employ any employee unless the employee's registration has been approved by the Board as set forth in this section.

§ 74D-10. Suspension or revocation of licenses and registrations; appeal.

(a) The Board may, after notice and an opportunity for hearing, suspend or revoke a license or registration issued under this Chapter if it is determined that the licensee or registrant has:

(17) Failed or refused to reasonably cooperate with the Board or its agents during an investigation of any complaint, allegation, suspicion of wrongdoing, or violation of this Chapter.

(18) Failed to properly make any disclosure or provide documents or information required by this Chapter or by the Board.

**12 NCAC 11 .0123 CONSUMER CONTRACT AND DISCLOSURE REQUIREMENTS
FOR ALARM SERVICES**

(a) Every person, firm, association or corporation licensed to engage in the alarm systems business in North Carolina who sells, installs, services, responds to or monitors electrical, electronic or mechanical alarm systems shall execute with the consumer a written contract in all transactions that must consist of the following:

(2) The company's name, address, telephone number, and North Carolina Alarm Systems License Number and the North Carolina Alarm Systems Licensing Board's address and telephone number.

The violations alleged herein and any possible resolution is an informal staff opinion. Any alleged allegation or suggested resolution by the staff has not yet been reviewed by the North Carolina Alarm Systems Licensing Board or one of its Committees. You should understand that once presented to the Board or a Committee, the staff's position may be adopted, amended, or reversed.

mt 07/15/13

**LAST WILL AND TESTAMENT
OF
LUIS ENDARA**

I, LUIS ENDARA, of COLUMBIA, South Carolina, revoke my former Wills and Codicils and declare this to be my Last Will and Testament.

**ARTICLE I
IDENTIFICATION OF FAMILY**

I am not currently married to anyone.

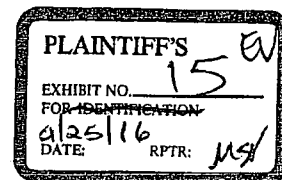
The names of my children are LAURA A.C. ENDARA. All references in this Will to "my children" are references to the above-named children and any children born to me or adopted by me after the signing of this Will.

**ARTICLE II
PAYMENT OF DEBTS AND EXPENSES**

I direct that my just debts, funeral expenses and expenses of last illness be first paid from my estate.

**ARTICLE III
DISPOSITION OF PROPERTY**

Residuary Estate. I direct that my residuary estate be distributed to my children in equal shares. If a child of mine does not survive me, such deceased child's share shall be distributed in equal shares to the children of such deceased child who survive me, by right of representation. If a child of mine does not survive me and has no children who survive me, such deceased child's share shall be distributed in equal shares to my other children, if any, or to their respective children by right of representation. If no child of mine survives me, and if none of my deceased children are survived by children, my residuary estate shall be distributed to GLORIA REYNA, COLUMBIA, South Carolina. If such beneficiary does not survive me, my residuary estate shall be distributed to my heirs-at-law, their identities and respective shares to be determined under the laws of the State of South Carolina, then in effect, as if I had died intestate at the time fixed for distribution under this provision.



(Handwritten initials)

**ARTICLE IV
NOMINATION OF EXECUTOR**

I nominate BOBBY JOHNSON - MY BUSINESS PARTNER, of COLUMBIA, South Carolina, as the Executor, without bond or security.

**ARTICLE V
NOMINATION OF GUARDIAN**

Should it become necessary to appoint a guardian of the person of a minor child, I nominate LAURA A.C. ENDARA, of COLUMBIA, South Carolina, to serve as the Guardian of my surviving children who are minors at the time of my death. If such person is unable to serve as Guardian, I nominate GLORIA REYNA - MY MOTHER, of COLUMBIA, South Carolina, to serve as the Guardian.

**ARTICLE VI
EXECUTOR POWERS**

A. Power to Dispose of Property. My Executor, with respect to my estate, and my Trustee with respect to my trust, in addition to other powers and authority granted by law or necessary or appropriate for proper administration, shall have the following rights, powers, and authority without order of court and without notice to anyone:

B. Power to Administer Estate. My Executor shall have the right to administer my estate using "informal", "unsupervised", or "independent" probate or equivalent legislation designed to operate without unnecessary intervention by the probate court.

**ARTICLE VII
MISCELLANEOUS PROVISIONS**

A. Paragraph Titles and Gender. The titles given to the paragraphs of this Will are inserted for reference purposes only and are not to be considered as forming a part of this Will in interpreting its provisions. All words used in this Will in any gender shall extend to and include all genders, and any singular words shall include the plural expression, and vice versa, specifically including "child" and "children", when the context or facts so require, and any pronouns shall be taken to refer to the person or persons intended regardless of gender or number.



B. Thirty Day Survival Requirement. For the purposes of determining the appropriate distributions under this Will, no person shall be deemed to have survived me unless such person is also surviving on the thirtieth day after the date of my death.

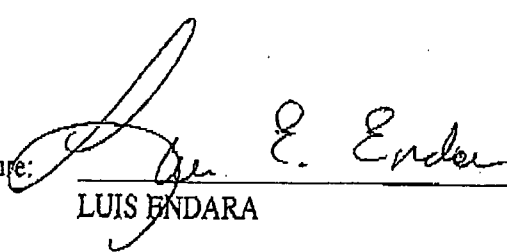
C. Liability of Fiduciary. No fiduciary who is a natural person shall, in the absence of fraudulent conduct or bad faith, be liable individually to any beneficiary of my estate, and my estate shall indemnify such natural person from any and all claims or expenses in connection with or arising out of that fiduciary's good faith actions or nonactions of the fiduciary, except for such actions or nonactions which constitute fraudulent conduct or bad faith. No successor trustee shall be obliged to inquire into or be in any way accountable for the previous administration of the trust property.

D. Intentional Exclusion. The failure of this Will to provide for any distribution to the following person(s) or organization(s) is intentional: RAMONA CASAREZ (ENDARA) FROM ANY LIFE INSURANCE OR ANY OTHER BENEFITS

E. Beneficiary Disputes. If any bequest requires that the bequest be distributed between or among two or more beneficiaries, the specific items of property comprising the respective shares shall be determined by such beneficiaries if they can agree, and if not, by my Executor.

IN WITNESS WHEREOF, I have subscribed my name below, this 11 day of Feb, 2014.

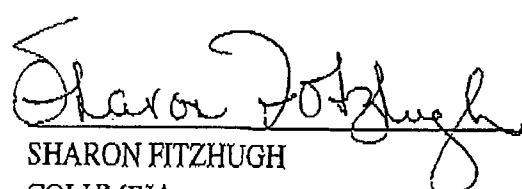
Testator Signature:


LUIS ENDARA

We, the undersigned, hereby certify that the above instrument, which consists of 6 pages, including the page(s) which contain the witness signatures, was signed in our sight and presence by LUIS ENDARA (the "Testator"), who declared this instrument to be his/her Last Will and Testament and we, at the Testator's request and in the Testator's sight and presence, and in the sight and presence of each other, do hereby subscribe our names as witnesses on the date shown above.

Witness Signature:

Name:


SHARON FITZHUGH

City:

COLUMBIA

State:

South Carolina

Witness Signature:

Name:

GLORIA REYNA-RIVERA

City:

COLUMBIA

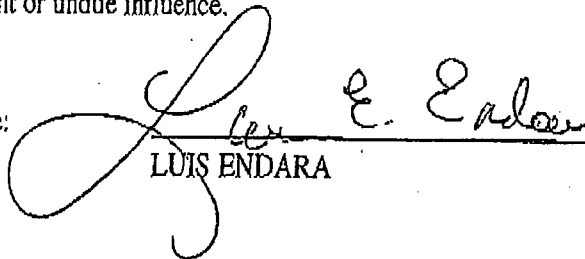
State:

South Carolina

AFFIDAVIT

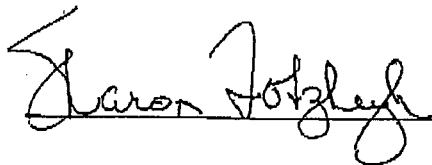
I, LUIS ENDARA, the Testator, sign my name to this instrument this 11 day of Feb, 2014, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Will and that I sign it willingly, in the presence of the undersigned witnesses, that I execute it as my free and voluntary act for the purposes expressed in the Will, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Testator Signature:


LUIS ENDARA

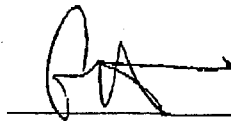
We, SHARON FITZHUGH and GLORIA REYNA-RIVERA the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the Testator signs and executes this instrument as the Testator's will and that the Testator signs it willingly in our presence, and that the Testator executes it as the Testator's free and voluntary act for the purposes expressed in the will, and that each of us, in the presence and hearing of the Testator, at the Testator's request, and in the presence of each other, hereby signs this will, on the date of the instrument, as witness to the Testator's signing, and that to the best of our knowledge the Testator is eighteen years of age or older, of sound mind and memory, and under no constraint or undue influence, and the witnesses are of adult age and otherwise competent to be witnesses.

Witness Signature:



Name: SHARON FITZHUGH
City: COLUMBIA
State: South Carolina

Witness Signature:



Name: GLORIA REYNA-RIVERA
City: COLUMBIA
State: South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND



982

Subscribed, sworn to and acknowledged before me by LUIS ENDARA, the Testator; and
subscribed and sworn to before me by SHARON FITZHUGH and GLORIA REYNA-RIVERA
witnesses, this 11 day of February, 2014.

Notary public, or other officer

Donald S. [Signature]

authorized to take and certify
acknowledgments and administer oaths

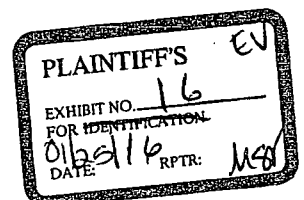
My Commission Expires
May 4, 2020

[Signature]

983

SCHEDULE D ANNUAL REPORT TO BE COMPLETED BY ALL CORPORATIONS

1. Name GUARDIAN EAGLE SECURITY LLC
 2. Incorporated under the laws of the State of SOUTH CAROLINA
 3. Location of the Registered Office of the Corporation in the State of South Carolina is _____
In the City of _____ Registered Agent at such address is _____
 4. Location of principal office (street address) _____
Nature of principal business in SC SALES
 5. The total number of authorized shares of capital stock, itemized by class and series, if any, within each class is as follows:
NUMBER OF SHARES: _____ CLASS: _____ SERIES: _____
 6. The total number of issued and outstanding shares of capital stock itemized by class and series, if any, within each class is as follows:
NUMBER OF SHARES: _____ CLASS: _____ SERIES: _____
 7. The names and business addresses of the directors (or individuals functioning as directors) and principal officers in the Corporation are:
(If additional space is necessary, attach separate schedule)
- | NAME | TITLE | BUSINESS ADDRESS |
|-----------------|----------------|---|
| MARY K. JOHNSON | PRESIDENT | 141 FORTY LOVE PT, CHAPIN, SC 29036 |
| BOBBY JOHNSON | CEO | 141 FORTY LOVE PT, CHAPIN, SC 29036 |
| LUIS ENDARA | VICE PRESIDENT | 402 NAUTIQUE CIRCLE, COLUMBIA, SC 29210 |
8. Date Incorporated 1/31/2008 Date commenced business in the State of South Carolina was 1/31/2008
 9. Date of this report 11/8/2012 FEIN _____
 10. If Foreign Corporation, the date qualified to do business in the State of South Carolina is _____
 11. Was the name of the Corporation changed during the year? No Give old name _____
 12. The Corporation's books are in the care of _____
Located at (street address) _____
 13. The total amount of stated capital per balance sheet is:
 - A. Total paid in Capital Stock (cannot be a negative amount) \$ 0
 - B. Total paid in Capital Surplus (cannot be a negative amount) \$ 0
 - C. Total amount of stated Capital (cannot be a negative amount) \$ 0





State of South Carolina
Department of Revenue

300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 125, Columbia, South Carolina 29214

C-450 (Rev. 8/29/12) 6371

October 29, 2015

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

Re: Freedom of Information Act Request

Dear Mr. Ellis:

Please find enclosed a copy of the Annual Report listing the names and addresses of the directors and principal officers of Guardian Eagle Security LLC. If you have questions please feel free to call me.

Sincerely,

A handwritten signature in cursive script that reads "Jean Funches".

Jean Funches
South Carolina Department of Revenue
Government Services/Freedom of Information Office
(803) 898-5444
funchej@sctax.org

RECEIVED
11/2/15 985

FW: Agreement?

Nacolle Caltrider

Tue 10/15/2013 4:13 PM

Sent Items

To: 'Luis Endara (luis@avsx.com)' <luis@avsx.com>;

Nacolle Caltrider

Office: 803.454.6355 ext 202

Fax: 888.908.3345

ncaltrider@avsx.com

From: Dan Spohn [mailto:dan@patriotconsultingllc.com]

Sent: Tuesday, October 15, 2013 4:11 PM

To: Nacolle Caltrider

Subject: Re: Agreement?

Who is this person referring to as far as being a manager of AVSX? Mary K?

Guardian Eagle was set up by some attorney that Luis used way back in the day. It was set up as in LLC and NOT incorporated however it is TAXED as an S corp. I have no idea who it was or where the original Articles of Organization are. However, I do know there was never an operating agreement set up because I tried for years to get them to set one up to no avail. The operating agreement dictates how the company is to be run, how to handle dissolution, etc.

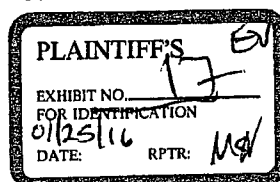
There were no other amendments that I am aware of after the name change but I don't know what anyone has done since I left.

On Tue, Oct 15, 2013 at 3:10 PM, Nacolle Caltrider <ncaltrider@avsx.com> wrote:

This is what is being requested from me. I have been advised that without the Operating Agreement we would not have been able to do the incorporation.

I got the update you emailed me yesterday, but I need to confirm, however, that she also is a Manager of AVSX, as that term is defined under the laws of South Carolina.

To that end, please send me the original Articles of Organization for Guardian Eagle Security, LLC, as well as the Operating Agreement for Guardian Eagle Security, LLC.



It does not look like there have been any further amendments since the name was changed to AVSX Technologies, LLC in 2011, but if this is incorrect, please let me know.

Nacolle Caltrider

Office: 803.454.6355 ext 202

Fax: 888.908.3345

ncaltrider@avsx.com

Subject: Re: 2010 Question

Date: Wednesday, February 18, 2015 at 9:23:09 PM Eastern Standard Time

From: Dan Spohn

To: Bobby Johnson

CC: Nacolle Caltrider

I will help anyway I can. I know it's a mess. It's ALWAYS been a mess.....LOL.

Dan Spohn - President

Patriot Consulting LLC

Ph: 803-629-6268

www.PatriotConsultingOnline.com

On Wed, Feb 18, 2015 at 7:50 PM, Bobby Johnson <bjohnson@avsx.com> wrote:

Thank you. I am simply "navigating" as best I can and starting to come to the realization that this isn't going to simply dissipate is all as I would hope of anything. We have recently witnessed Mr. Diaz attempt, as many others on his team now, to recruit successfully while suing and now to see and witness some of the other silly items is just becoming overly difficult not to address is all. I have all the documents you gave and can give to them as well as many more if needed but hopefully now that I have a better understanding we can help them better realize is all.

I may have them reach out to you in the future as we discussed if that is ok as some of this I just don't want anyone to think there was malice on our behalf is all. I will be thankful when this is finally over.

- Bobby

From: Dan Spohn <dan@patriotconsultingllc.com>

Sent: Wednesday, February 18, 2015 5:59 PM

To: Bobby Johnson

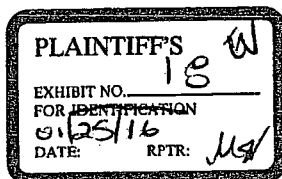
Cc: Nacolle Caltrider

Subject: Re: 2010 Question

Bobby,

I have given you and Nacolle every document I have both paper and electronic. There is nothing in writing regarding the loans Protection 24 made to you in lieu of payroll. It was recorded on Protection 24's books but I don't believe a final corporate return has been filed. I know I didn't file it.

As far as a forensic accountant, that is your call. I think it's going to be a big expense that isn't going to yield a very good return on the amount of money you will spend. As you know, Luis was audited by the IRS and it included the early years of Protection 24. There was no corporate return for the first few years as JB Merritt screwed up filing for S corp status in the beginning and Protection 24's income & expense are showing on a schedule C on Luis's personal return. That is done and over



with. However, any recent sales tax filings under Protection 24 certainly begs for an explanation. As per what was recorded on the books, Guardian/AVSX took over Protection 24 so I would say AVSX would have to at least give someone permission to use the Protection 24 name. This is why you have goodwill on your balance sheet. AVSX owns the rights.

Here is my advice. Finish up the bookkeeping and file the S corp tax returns for AVSX for the years that have not been filed. Then file your personal returns. Whether anyone wants to argue whether Luis was a partner of AVSX or not is not relevant to the loan to Luis from the purchase of Protection 24. It's two separate issues. I know if properly accounted for, AVSX has repaid Luis everything with all the money he took out of the business. Once the returns are done, I would find out who is using Protection 24 as that is really intangible property of AVSX. I think you have a case there.

Let me know if you need anything else.

Dan Spohn - President
Patriot Consulting LLC
Ph: 803-629-6268
www.PatriotConsultingOnline.com

On Wed, Feb 18, 2015 at 4:56 PM, Bobby Johnson <bjohnson@avsx.com> wrote:

Dan,

Please send any and all documents you have pertaining to your below comments. This makes no sense as these "loans" would need to be documented I am sure in turn in the tax returns of Protection24 llc from the preceding years prior to the sale of such to Mary Kay and Guardian, correct?

I know Mr. Endara (Diaz) had significant personal tax related issues during this time, mostly due to what I believe (though not asserting) was his choices personally and professionally prior to 2007 and considering you had assisted in all things financial in this regard, as well as what appears to be as we discussed recently that which is apparent to be forthcoming legally no matter what is attempted to alleviate otherwise, it is very challenging to understand is all and though I have many of these documents of both Protection24, Guardian and AVSX in possession we simply would appreciate some clarification is all please.

As we will all become aware soon, it appears Mr. Endara was not the owner of Protection24 (James Ellerbee) at the time of these supposed loans, mid to late 2007, though this as well would be inaccurate, it is he who did not take a salary stating it was due to a previous lawsuit in which he stated he had won a monthly settlement from a previous employer providing a monthly benefit, New Life Fitness I believe. He also states in a recent lawsuit pursuing AVSX for supposed ownership that this was "startup" capital I believe that he stated originally he and his wife

had invested, though of course she was the owner of Palmetto Alarm. As to why he would then be given this stipend at such levels as related below in 2010, years later, is difficult to understand is all considering the significant income he then retained as well as the expense account he serendipitously utilized without regard at all times, no matter what.

Would it be best to have a forensic audit conducted going back to the original starting point of both companies in an effort to isolate and evaluate these expenses overall? It just appears as if that is the direction that would be most beneficial for all parties. I know there was some concerns when JB Merritt was responsible so it just seems that to give a full peace of mind this might be best for us all considering all that has been realized is all. I would be highly accepting of this to say the least as I my friend do not have a degree in finance, Lol.

Please let us know your thoughts. Sorry for the long email as I am simply trying to provide Breanna with what she needs to make this happen seeing as though the 2010 taxes and much of 2011 was already believed to have been done, time and time again, dating back to 2013 almost.

There are also as we discussed more recent filings of Protection24 filing sales tax even after the official closing of such in 2/11, this is just becoming an obscene amount of layered information it seems, there is also a change of address filing of Protection24 from 1226 Briargate Circle to Saluda Ridge Ct after the closing which is just not adding up either is all as I have the closing document in which Luis signed as well as Mary Kay and yet these other documents followed thereafter.

Headache inducing Twilight Zone era silliness. Lol.

- Bobby

From: Nacolle Caltrider
Sent: Wednesday, February 18, 2015 4:06 PM
To: Bobby Johnson
Cc: Breanna Herndon
Subject: FW: 2010 Question

Please see the string below.

Thanks!

Nacolle Caltrider
AVSX Technologies
P: 803-978-5919
F: 803-772-7124

From: "dan@patriotconsultingllc.com" <dan@patriotconsultingllc.com>

Date: Wednesday, February 18, 2015 at 3:57 PM

To: Nacolle Caltrider <ncaltrider@avsx.com>

Subject: Re: 2010 Question

Nacolle,

Line 13a is goodwill from the purchase of Protection 24. When Guardian (AVSX) purchased Protection24, it took over it's inventory and the loan on Protection 24 books to Bobby which is what line 20 is. The difference of the purchase of assets and liabilities is goodwill.

Line 20 is what was remaining at the end of the year that was due to Luis. This is from the loans made to Bobby when he was with Protection 24 in lieu of taking a salary in the beginning years. When Luis would take money out beyond his pay check in AVSX, i.e. paying for his daughters college, etc, these amounts should be offset against this account which in essence is showing Bobby paying back the loans to Luis, i.e. the owner of Protection 24.

Dan Spohn - President

Patriot Consulting LLC

Ph: 803-629-6268

www.PatriotConsultingOnline.com

On Wed, Feb 18, 2015 at 3:11 PM, Nacolle Caltrider <ncaltrider@avsx.com> wrote:

Hey Dan.

Hope this finds you well!

I had 2 quick questions for you from the 2010 corporate tax return:

- On Schedule L Item 13a lists \$90,138 under "Intangible assests (amortizable only)" - do you have documentation or notes on that was for?
- On Schedule L Item 20 lists \$117,591 under "Mortgages, notes, bonds payable in less than 1 year" - do you have documentation or notes on what this was?

Thanks so much!

Nacolle Caltrider

AVSX Technologies

P: 803-978-5919

F: 803-772-7124

Consults - Encounter Notes (continued)**Consults signed by Lobel, Melanie Anne, MD at 06/30/15 0309**

Author: Lobel, Melanie Anne, MD

Filed: 06/30/15 0309

Editor: Lobel, Melanie Anne, MD (Physician)

Related Notes:

Service: Psychiatry

Note Time: 06/29/15 1541

Author Type: Physician

Status: Addendum

Original Note by Lobel, Melanie Anne, MD (Physician) filed at 06/30/15 0303

REFERRING PHYSICIAN: Dr. Albert.

REASON FOR EVALUATION: Altered mental status.

ROOM #: 440.

HISTORY OF THE PRESENT ILLNESS: This is a 39-year-old, Caucasian male who was admitted June

29, 2015 after being found wandering near a mall confused. The wife has stated to Nursing that his bizarre symptoms began a year ago after his partner left the business. The wife

States he began drinking alcohol more regularly as well. There has been a lot of stress on the patient

Due to his diagnosis of pituitary tumor as well in 2011. On psychiatric evaluation, the patient is able to answer some questions but is having some thought process delay evident on evaluation. His affect is flat.

He does not appear psychotic, stating, though, that "my body goes through a journey through time." He does admit to feeling "disoriented."

He does admit to

losing track of time. The patient when asked about any alcohol use admits he has been using alcohol,

but he denies daily use, and he denies having a problem where he cannot control it. The patient

states his wife "has an agenda." He also refrains from talking about his business because he states

there is legal action pending regarding a partner. The patient otherwise was very difficult to

evaluate as his delay in thought process is severe. He does not appear to have any gross abnormal

Movements. He does remember the

question at times and other times he does not. The patient does state that he has had seizures. It is

not apparent whether he has ever been on antiepileptics. Overall, though, in regard to behavior, he

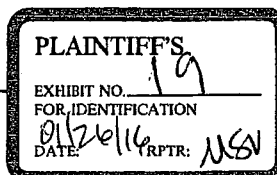
is calm, pleasant, just sitting on the edge of the bed. He states he has had a good appetite that "I

just ate." He does not at all appear to be going through any type of alcohol withdrawal.

FAST PSYCHIATRIC HISTORY: The patient states he saw a psychiatrist as well as a psychologist

when he was younger, and he had some "issues." He denies ever having any psychiatric hospitalizations

or treatment.



Nursing Note - Encounter Notes (continued)

stay in room. He kept saying, No! No!. Security called and they came up and was able to calm patient down and took telemetry out of room for nurse and patient's street clothes. Will continue to monitor.

Electronically Signed by Mason, Caroline Frye, RN on 06/30/15 0225

Nursing Note by Schelble, Kelsey R, RN at 06/29/15 1118

Author: Schelble, Kelsey R, RN

Service: (none)

Author Type: Registered Nurse

Filed: 06/29/15 1122

Note Time: 06/29/15 1118

Status: Signed

Editor: Schelble, Kelsey R, RN (Registered Nurse)

Pt returned to floor from tests. Pt immediately begins getting dressed and attempts to pull out IV. NT Celeste stops pt from pulling out IV and comes to tell this RN that pt states he is leaving and that "a friend is on the way to get me". This RN goes to room to find pt sitting in chair fully dressed. Pt states "I don't know where I am, I don't know why this keeps happening." Re-oriented pt to room and location. Pt responses are very delayed. Pt asked RN "Do you know Pam?" RN asks pt if Pam works here and pt pauses for approx 10 secs and states "No. No I'm just confused." Re-oriented pt again and will continue to monitor and begin CIWA.

Electronically Signed by Schelble, Kelsey R, RN on 06/29/15 1122

Nursing Note by Schelble, Kelsey R, RN at 06/29/15 1015

Author: Schelble, Kelsey R, RN

Service: (none)

Author Type: Registered Nurse

Filed: 06/29/15 1118

Note Time: 06/29/15 1015

Status: Signed

Editor: Schelble, Kelsey R, RN (Registered Nurse)

Spoke with pt wife and pt mother on their arrival to floor. Pt currently off floor for tests. Pt wife and mother attempt to explain to this RN some of the "bizarre" episodes and behavior pt has been having for approx the last year. Pt wife states that this past Fri evening pt left house around 7pm and she does not know where he went, but she was woken up around 4am to pt jumping out of a window of their house into back yard and then jumping into their pool. Wife states that she went out and asked him what he was doing and pt stated "I don't know. Just make it stop! Make it stop!" while holding his head. Wife states that pt could not tell her what she was supposed to make stop. She states that pt suddenly looked at her during this episode and in a "completely different voice" started cursing at her and using words towards her that she has "never heard him say before", and then suddenly reverting back to yelling and holding his head saying to "make it stop" again. Wife states pt now claims that he remembers nothing from that night.

Wife and pt mother are requesting psych consult, pt wife even stating that she attempted to get pt admitted straight to 3 Rivers yesterday but pt refused. Paged MD and spoke with Connie, NP, regarding family's request but Connie states that she wants to wait for wife to call back regarding pt's med list and also start pt on CIWA protocol at this time. Pt and pt wife state that it has been 4-6 days since pt's last drink but that pt has been drinking "heavily and regularly" for approx the past year since "business partner left". Will await wife return phone call and continue to monitor pt.

Electronically Signed by Schelble, Kelsey R, RN on 06/29/15 1118

Nursing Note by Wilber, Gina, RN at 06/29/15 0757

Author: Wilber, Gina, RN

Service: (none)

Author Type: Registered Nurse

Filed: 06/29/15 0815

Note Time: 06/29/15 0757

Status: Signed

Editor: Wilber, Gina, RN (Registered Nurse)

Pt. Adm. At 0510. No family present at time of adm. ED stated they did not notify pt's wife of adm. Pt. Able to ambul from stretcher to bed. Follows commands, keeps eyes closed mostly during interview assessment. Has delayed verbal responses but approp. Answers and clear speech. States last ETOH drink "6 days ago". Informed pt. Of POC and safety information. Bed alarm activated for safety. Called wife to notify of adm. Pt's wife stated that he has been having paranoid behavior lately. Thinking everyone is out to get him. She stated he's been drinking heavily during the past year after business partner left the company. Wife attempted to