

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION - DETROIT**

In re:

Chapter 11

HERITAGE COLLEGIATE APPAREL, INC.
f/k/a M-Den, Inc., d/b/a The M Den,

Case No. 24-47922-tjt

Hon. Thomas J. Tucker

Debtor.

**THE HERITAGE COLLEGIATE APPAREL, INC. UNSECURED
CREDITORS' COMMITTEE'S OBJECTION TO CONFIRMATION OF
DEBTOR'S SECOND AMENDED COMBINED PLAN OF LIQUIDATION
AND DISCLOSURE STATEMENT**

The Heritage Collegiate Apparel, Inc. Unsecured Creditors' Committee ("Committee") objects to confirmation of Debtor's Second Amended Combined Plan of Liquidation and Disclosure Statement filed on January 16, 2025 (Docket # 232, "Plan").¹

Introduction

The Plan cannot be confirmed for numerous reasons, most notably for the proposed extensive post-confirmation role it provides for the Debtor (as a duplicate fiduciary – in addition to the Liquidation Trustee) and its failure to sufficiently disclose the continued involvement of Scott Hirth, his affiliations, and his numerous conflicts of interest. Debtor's responsibilities

¹ Capitalized terms not defined in this Objection have the meanings given them in the Plan.

under the Plan would include distribution of in excess of \$9m of remaining Sale Proceeds, as well as full authority with respect to all Claims and Interests other than those held by non-priority Unsecured Creditors.

Not only is Hirth wildly conflicted for the proposed role, but his pre- and post-petition management failures show he is unfit to administer the Plan and may be subject to claims by the Liquidation Trust. The Plan would allow Hirth to continue to run point on a secured loan and Merchant Cash Advance “mess” he likely intentionally created. This includes Hirth causing Debtor to receive over \$42,000,000 of inflows from at least 97 different MCA lenders (though Hirth initially represented there were only *two* such loans), and outflows of \$75,000,000. Worse yet, Hirth cannot be a disinterested fiduciary for his proposed role when he personally guaranteed most of Debtor’s secured debt and the majority, if not all, of the MCA debt.

Debtor’s accounting “system,” if it can be called one, is incomplete and confusing. Accounting controls appear virtually non-existent. The Committee’s examination of Debtor’s bank statements showed approximately 1,700 “Not Sufficient Funds” transactions totaling around \$33,000,000 by Debtor on Hirth’s watch.

Hirth ran the Debtor with, at times, breathtaking incompetence. He gave alleged creditors – whose names he did not always know – Debtor’s

corporate credit card to charge over \$100k of luxury goods which were not properly accounted for by the Debtor.

The record makes clear that the Debtor, through Hirth, is not qualified to control estate affairs in any way post-confirmation, especially with respect to the MCA debacle he created and initially hid. There would be no benefit to the estate to keep an insider in charge of a significant liquidation and claim process, particularly this insider who plunged the Debtor into financial chaos. There should be only one fiduciary going forward. Neither creditors nor public policy would be served by permitting continued Debtor involvement with respect to any matters. Debtor's creditors have long deserved better.

Background

Plan's Continuing Role for the Debtor

1. The Plan provides that "the Debtor shall continue to be responsible for objection to, allowance of, and distribution to all Claims and Interests other than those held by non-priority Unsecured Creditors." Plan, p. 2.

2. In addition, "[t]he Debtor will retain and distribute Sale Proceeds and will retain the right to pursue the MCA Creditor Adversary Proceedings and certain post-confirmation Professional Fees." Plan, p. 3.

3. The Plan would continue to keep only Debtor's eyes on its questionable MCA and secured lender situation and would leave decision-making authority for litigation, payment, objection, and resolution of these claims exclusively with the Debtor.

4. Who will perform this role for the Debtor? Creditors are left to guess, but the person who has been and will assumedly continue to be in charge of the Debtor is Scott Hirth.

Background of Scott Hirth

5. Scott Hirth was sued by the Securities and Exchange Commission in the Eastern District of Michigan in 2008 in connection with an alleged "accounting fraud scheme at ProQuest perpetrated by Defendant Hirth, the former Chief Financial Officer of ProQuest's [Co-Defendant] Information and Learning Division." A certified copy of the Complaint ("SEC Complaint") is attached as Exhibit 1, p. 1, ¶ 1.

6. The SEC Complaint against Hirth includes additional allegations that:

- a. "At the end of monthly and quarterly reporting periods, from at least 2001 through 2005, Hirth made fraudulent manual journal entries in order to favorably alter ProQuest's financial results," which entries "were designed to increase revenue and decrease expenses at ProQuest," and "had no basis and were unsupported" Complaint, p.1, ¶ 1.

- b. In Madoff-like fashion, the SEC alleged that “[a]s part of his scheme, Hirth created false documentation to purportedly support the balances in the manipulated accounts,” and described his “deceptive intent in carrying out his fraudulent accounting scheme . . . in a number of notes he authored,” which “notes contained references to being ‘caught’ with accounting issues, ‘cooking the books,’ the possibility of going to ‘jail,’ and references to accounting scandals at ‘Enron and Worldcom.’” Complaint, p. 2, ¶ 2.
- c. “Hirth’s motivation for the fraudulent scheme was his desire to be promoted to a senior management position at ProQuest and also monetary gain as his compensation was tied to [a ProQuest division’s] performance.” Complaint, p. 2, ¶ 3.
- d. The SEC alleged that “Defendant Hirth has engaged in and, unless restrained and enjoined by this Court, will continue to engage in acts and practices which constitute and will constitute violations of [various sections of the Securities Act of 1933 and the Securities Exchange Act of 1934].” Complaint, p. 3, ¶ 7.
- e. The SEC further alleged that:
 - i. “Hirth stated unequivocally in one [handwritten note] entry: ‘Doc trail needs to support **messed up systems**[,]² not cooking the books.’” Complaint, p. 10, ¶ 33 (alteration in original, emphasis added); and that

² “Just, **I had a mess**, so I didn’t have this tracked to the last hair on the gnat’s back, like you should” (Deposition, pp. 168-69); “[A]ll this noise of **this mess** here” (Deposition, p. 49); “**The mess** with the bounced checks, and bounced debits, and all that.” (Deposition, p. 218). “It was hurriedly and **messily negotiated**” (Deposition, p. 129); “**the mess** we had led to some bounced checks” (Deposition, p. 156); Hirth’s deposition testimony, referenced below and attached as Exhibit 6, regarding bookkeeping practices of **the Debtor**. (All emphasis added).

- ii. Hirth lied to ProQuest's auditors and provided them false financial information. Complaint, p. 11, ¶¶ 36-37.

7. Hirth agreed to entry of a final judgment against him, “[w]ithout admitting or denying the allegations of the complaint” (Consent of Defendant Scott Hirth, a certified copy of which is attached as Exhibit 2), which Final Judgment as to Defendant Scott Hirth (“SEC Judgment,” a certified copy of which is attached as Exhibit 3) includes the following:

- a. “Defendant [Hirth] is prohibited from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 781] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].” SEC Judgment, p. 6.
- b. “Defendant [Hirth] is liable for disgorgement of \$233,676.00, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$54,474.25 and a civil penalty in the amount of \$130,000.00” SEC Judgment, p. 6.

Hirth's Management of Debtor before and during its Bankruptcy

8. Similar to ProQuest's records, Debtor's records show “messed up systems.”

9. Michigan online corporate records show that Hirth is the President, Treasurer, Secretary, and Director of the Debtor (Exhibit 4).

10. Hirth told Capstone's Sheldon Stone at their first meeting that the Debtor had **two** MCA loans, “that one was fraudulent and the other was

taken out to help one of debtor's vendors who was a family friend."

Declaration of Sheldon Stone, Exhibit 5, ¶ 2.

11. Hirth testified to the following at the January 9, 2025 examination of the Debtor under Fed. R. Bank. P. 2004 ("Deposition," a copy of the transcript of the Deposition is attached as Exhibit 6):

- a. "[E]verybody ultimately reported to me." Deposition, p. 28.
- b. "I was the guy in charge." Deposition, p. 41
- c. "I was the guy that knew the accounting." Deposition, p.41
- d. Hirth is a 25.03% shareholder of the Debtor. Deposition, p. 17.
- e. Hirth also owns 33 and 1/3 percent of SSJ Return Holdings, Inc., which itself owns 24.91% of the Debtor. Deposition, p. 18.
- f. In 2020, in "an attempt to – to – to find some creative financing," SSJ borrowed money from "Phoenix" related to credit card processing;
 - i. "the money would have – would have gone from M-Den, Inc. [Debtor] to SSJ Return Holdings to that credit card processor" Deposition pp. 20-21;
 - ii. "I don't know that Phoenix gave any money to SSJ Holdings. I think they paid off some other high-interest debt, MCA-type debt, and they were, then, in turn, paid off through the credit card processing arrangement"; Deposition, p. 22;
 - iii. Q. All right. **So why was SSJ Return Holding paying the credit card processing fees that the debtor would owe?**

A. I think that's an excellent question that I'm not sure

I could even answer myself, except to say that that's how the lender wanted it to happen. They wanted a separate entity in the middle.

Q. All right. So – so did the debtor transfer money to SSJ Return Holding, then SSJ Return Holdings, then, in turn, sent to Phoenix?

A. That's exactly what I was saying. Yes, exactly that.

Q. All right. And do you know the amount of money we're talking about?

A. I think – over a couple of years there until that was paid off. It was probably \$2,000,000. Something like that. Deposition, pp. 22-23 (emphasis added).

- g. Debtor scheduled Hirth as a creditor owed a claim in the amount of \$1,617,470 for “loans” relating to tax distributions and refunds returned to the Debtor and loans of personal funds. Deposition, pp. 34-40; Plan, p. 56.
- h. Hirth had a personal Chase Sapphire credit card ending in 4038, and “the bills on that credit card are exclusively debtor bills.” Deposition, p. 48. “Somewhere between 30 and \$50,000” of charges on this card are not reflected in the Debtor's financial records. Deposition, pp. 49-50.
- i. Debtor is owed an account receivable of \$592,634 from M-Den Stadium Properties.³ Deposition, p. 71, Plan, p. 11.
- j. Without Bankruptcy Court approval, Hirth caused up to 40 employees to be subcontracted to Coleman House for the first four home University of Michigan football games and allowed

³ M-Den Stadium Properties, LLC is one of the “Related Entities” under the Plan of which Hirth is a 33% owner along with the other principals of the Debtor (Corrin 33%; Horning 33%). Deposition, p. 92; Plan p. 56.

the use of Debtor personal property, also without Bankruptcy Court approval. See Deposition, pp. 122-133; Plan p. 61.

- k. In 2019, when Debtor needed financing in addition to that being provided by Bank of Ann Arbor, Hirth did not approach Bank of Ann Arbor for an increase in Debtor's line of credit (Deposition, p. 144) nor did he approach any other banking institutions for financing (Deposition, p. 145).
- l. When asked, "Do you happen to know the total amount of money that the debtor borrowed between 2019 and 2024 from the MCA lenders," Hirth answered, "I do not," then, when probed, indicated "I think got into the 30s [million]". Deposition, p. 152; (it was actually \$42m of inflows and \$75m of outflows from 2018 into 2024, Stone Declaration, ¶ 3).
- m. Debtor wrote checks in March 2024 that were returned for insufficient funds. When asked if financial controls existed to prevent this, Hirth answered: "It's me. It's me letting it out, and me thinking the float is going to be this long to get to them and this is what sales should be for this day to get there, so at the margin, it was a little bit aspirational." Deposition, pp. 156-57. Debtor also issued a check to the University of Michigan on January 31, 2024 for \$3,850,939.79 that was rejected for insufficient funds. Deposition pp. 198-99.
 - i. "[T]he mess that we had led to some bounced checks." Deposition, pp. 156-57.
 - ii. "The mess with the bounced checks, and bounced debits, and all that." Deposition, p. 218.
- n. When Hirth was asked if he was surprised that the Committee calculated approximately 1,700 transactions totaling approximately \$33m of NSF transactions, Hirth indicated, "it doesn't surprise me that there's a big quantity. What the actual dollar amount was, I wouldn't have known that." Deposition, pp. 159-160.

- o. Hirth gave MCAs access to Debtor's bank account who deducted money from the Debtor's bank account that should not have been deducted. Deposition, p. 161.
- p. Debtor would receive and/or borrow funds from an MCA, the MCA would contact "only [Hirth]" directing him to pay an entity different than the MCA with whom the Debtor contracted, and Hirth would have the Debtor directly pay or allow the new entity to deduct funds from the Debtor's account without further documentation, and payment applications were tracked by Hirth "in an imperfect fashion." "I would throw together a quick spreadsheet with my best thoughts." See Deposition, pp. 165-177.
 - i. "Just, I had a mess, so I didn't have this tracked to the last hair on the gnat's back, like you should, like if it was a normal bank loan." Deposition, p. 169.
 - ii. Q. So – Okay. If I'm hearing that, the accounting on the debtor's books and records doesn't necessarily relieve the amount owed to the MCA lender, but it records ins and outs. A. That's correct. Deposition, p. 170.
 - iii. "[M]ost of that was done on the phone, not in paper or e-mail or contract." Deposition, pp. 170-71.
- q. On December 21, 2023, Hirth provided an MCA, whose name he does not recall, the Debtor's credit card to charge \$4,600 to "Loro Piana Meat Packing (Luxury Store)". The amount was \$4,600 because "that's all I can afford today." Deposition, pp. 183-85.
- r. On the same date, Hirth provided another MCA Debtor's credit card to allow them to charge \$33,831.73 to "Net-a-Porter (Luxury Retailer)". He believes the MCA was either "Timeless" or "Forever". Deposition, p. 185.
- s. On January 31, 2024, Debtor wrote a \$55,420.50 check to "Eleven Paris USA (Luxury Store)," which Hirth says was MCA related: "this happens to be a guy that owns both a, I believe,

that's a manufacturer, not a luxury store. And he also does the MCAs." Deposition, pp. 185-86.

- t. Hirth allowed further credit card charges on Debtor's card on January 31, 2024 in the amount of \$4,305 to Loro Piana Meat Packing (Luxury Store), January 31, 2024 in the amount of \$39,651.08 to Net-a-Porter (Luxury Retailer), January 31, 2024 in the amount of \$2,133.96 to "Net-a-Porter," and January 31, 2024 in the amount of \$9,512.41 to "Tom Ford (Luxury Store)". Deposition, pp. 186-87.
 - i. When asked to which party the Tom Ford (Luxury Store) payment of \$9,512.41 was made, Hirth responded, "I don't." When further asked, "Is there something that we can look at to figure that out?" he responded, "I don't think there's something we could look at. It would be me searching my calendar and phone and brain to figure out who that was, but I can't sit here and tell you who that was, other than these are – all these transactions are the exact same process. I just couldn't tell you who the counterparty was." Deposition, p. 187.
- u. Royalty calculations submitted to the University of Michigan did not tie to the Debtor's tax returns and compiled financial statement. Deposition, p. 204.
- v. Bank of Ann Arbor told Debtor in March 2024 that it no longer wanted Debtor's depository and transactional bank accounts because of "[t]he mess with the bounced checks, and bounced debits, and all that." Deposition, pp. 217-18.
- w. Debtor opened a bank account for a short period of time – in 2020, 2022, or 2023 – at PNC at the request of an MCA whose name he does not recall for funding to come into that account and payments out of it for a reason which he does not know other than "[b]ecause they wanted it to be that way." Deposition, pp. 221-22.

Hirth's Conflicts of Interest

12. Under the proposed Plan, Debtor/Hirth would be in charge of “objection to, allowance of, and distribution to all Claims and Interests other than those held by non-priority Unsecured Creditors” Plan, p. 2. His purview would include the following creditors:

- a. Bank of Ann Arbor (\$3.6m claim) – indebtedness guaranteed by Commercial Guaranty by and between Scott Hirth and Bank of Ann Arbor dated February 23, 2017 (Exhibit 7);
- b. Elemental (\$4.6. claim) (MCA Creditor) – Hirth signed a Performance Guaranty of Scott Hirth in connection with the Sale of Future Receipts Agreement by and between M-Den Inc. and Elemental Capital Inc., dated December 6, 2023; (Exhibit 8);
- c. SBA (\$514k claim) – Hirth signed an Unconditional Guaranty in favor of SBA dated July 2, 2021 in connection with the Note by and between SBA and M-Den, Inc. dated June 17, 2020 (Exhibit 9);
- d. Newtek (\$3.6m claim) – Hirth signed an Unconditional Guaranty of Scott Hirth in favor of Newtek Small Business Finance, LLC dated December 10, 2020 (Exhibit 10);
- e. TVT (\$3.3m claim) – Hirth signed a Personal Guaranty of Scott Hirth in favor of TVT 2.0 LLC dated March 23, 2023 in connection with the Business Loan and Security Agreement by and between M-Den, Inc. and TVT 2.0 LLC (Exhibit 11);
- f. Vault Capital (\$861k claim) (MCA Creditor) – Hirth executed a Guaranty in favor of Vault Capital in connection with the Merchant Agreement by and between Vault Capital and M-Den, Inc. dated November 9, 2023 (Exhibit 12);

- g. Churchill Capital (\$5.3m claim) – Hirth signed a Guaranty of Scott Hirth in favor of Churchill Capital Partners, LLC in connection with the Sale of Future Receivables Agreement by and between M-Den, Inc. and Churchill Capital Partners, LLC dated August 16, 2023 (Exhibit 13);
- h. Family Fund (\$380k claim) (MCA Creditor) – Hirth executed a Guaranty in favor of Family Funding Group LLC in connection with the Standard Merchant Cash Advance Agreement by and between Family Funding Group LLC and M-Den, Inc. dated December 5, 2023 (Exhibit 14); and
- i. Uptown Fund (\$332k claim) – Hirth executed a Guarantee in favor of Uptown Fund LLC in connection with the Standard Merchant Advance Agreement dated May 14, 2024 by and between Uptown Fund LLC and M-Den, Inc. (Exhibit 15).

13. Hirth would also control litigation with the MCA Creditors, all of which appear to hold his personal guaranty.

14. The Plan also calls for the Liquidation Trust to step into the shoes of the Bank of Ann Arbor Related Entity Loan Documents after payment of Bank of Ann Arbor's secured claim under the principles of equitable subrogation. See Plan, §§ 3.1-3.3.

15. The Related Entities are:

- a. M-Den Properties, LLC – Hirth is a one-third owner (Deposition, p. 94);
- b. M Den Stadium Properties, LLC – Hirth is a one-third owner (Deposition, p. 92) and this entity owes the Debtor \$592,634 (Deposition, p. 71); and
- c. M Den State Street Properties, LLC – Hirth is a one-third owners (Deposition, p. 95).

16. Included in the Bank of Ann Arbor Related Entity Loan

Documents, which the Liquidation Trust would hold for enforcement, are:

- a. Commercial Guarantee by and between Scott Hirth and Bank of Ann Arbor dated June 27, 2017, guaranteeing the indebtedness of M-Den State Street Properties, LLC;
- b. Commercial Guarantee by and between Scott David Hirth Trust Dated October 14, 2002 and Bank of Ann Arbor dated June 27, 2017, guaranteeing the indebtedness of M-Den State Street Properties, LLC;
- c. Commercial Guarantee by and between Scott Hirth and Bank of Ann Arbor dated August 23, 2018, guaranteeing the indebtedness of M-Den Properties, LLC;
- d. Commercial Guarantee by and between Scott David Hirth Trust Dated October 14, 2002 and Bank of Ann Arbor dated August 23, 2018, guaranteeing the indebtedness of M-Den Properties, LLC;
- e. Commercial Guarantee by and between Scott Hirth and Bank of Ann Arbor dated August 23, 2018, guaranteeing the indebtedness of M-Den Stadium Properties, LLC; and
- f. Commercial Guarantee by and between Scott David Hirth Trust Dated October 14, 2002 and Bank of Ann Arbor dated August 23, 2018, guaranteeing the indebtedness of M-Den Stadium Properties, LLC. See Plan, pp. 68-71.⁴

⁴ The Plan is confusing because it refers to “Affiliated Entities” and “Affiliated Entity Real Estate,” but defines neither term. See Plan pp. 56, 68.

Argument

I. **The Plan fails to provide adequate information under 11 U.S.C. § 1125.**

17. As proponent of the Plan, Debtor has the burden of proving, by a preponderance of the evidence, that all of the requirements for confirmation under 11 U.S.C. § 1129(a) have been satisfied. *In re St. James Nursing & Physical Rehab. Ctr., Inc.*, 559 B.R. 186, 189 (Bankr. E.D. Mich. 2016).

18. Section 1129(a)(1) provides that the court shall confirm a plan only if “[t]he plan complies with the applicable provisions of this title.”

19. One of those provisions is § 1125 of the Bankruptcy Code, which mandates that approval of a chapter 11 plan may not be solicited unless “at the time of or before such solicitation, there is transmitted to such holder [of a claim or interest] the plan or a summary of the plan, and a written disclosure statement approved, after notice and a hearing, by the court as containing adequate information.” 11 U.S.C. § 1125(b).

20. “Adequate Information” “means information of a kind, and in sufficient detail . . . that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan” 11 U.S.C. § 1125(a).

21. While a determination of what constitutes adequate information is generally a factual matter left to a Bankruptcy Court's discretion, see, e.g., *In re Scioto Valley Mortgage Co.*, 88 B.R. 168, 170 (Bankr. S.D. Ohio 1988), there are certain disclosures that are mandated by the Bankruptcy Code.

22. A debtor must, for example, disclose the identity and affiliations of the post-confirmation debtor representative under § 1129(a)(5). Absent this disclosure, creditors cannot assess whether the Plan meets the standards under § 1129(a)(5), such as whether the continuance of the debtor representative's role is consistent with the interests of creditors and with public policy.

23. Debtor's Plan makes no reference to the anticipated continuing role of Hirth, nor does it discuss his numerous conflicts of interest with respect to the role.

24. Debtor's Disclosure Statement does not provide adequate information, and the Plan should not be confirmed.

II. The Plan fails to disclose the identity and affiliations of Debtor's proposed post-confirmation representative under 11 U.S.C. § 1129(a)(5)(i).

25. Section 1129(a)(5)(i) requires that the plan disclose "the identity and affiliations of any individual proposed to serve, after confirmation of the

plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan, or a successor to the debtor under the plan”

26. The Plan does not indicate who will carry out the extensive duties reserved by the Debtor.

27. Scott Hirth has been, and by all indications will continue to be, post-confirmation, Debtor’s sole representative – but the Plan does not identify him, or anyone, as Debtor’s representative. Nor does it indicate if and how Debtor’s representative would be compensated.

28. Without identifying Hirth, the Plan cannot conceivably be deemed to identify his affiliations as required by § 1129(a)(5)(i).

29. The Plan should not be confirmed because of these deficiencies.

III. Scott Hirth is wildly conflicted and there are significant questions about his management competency. His continuing as Debtor’s representative post-confirmation is not consistent with the interests of creditors and with public policy under 11 U.S.C. § 1125(a)(5)(ii) and his selection violates 11 U.S.C. § 1123(a)(7).

30. Section 1129(a)(5)(ii) requires that the court find the appointment or continuance Debtor’s representative “consistent with the interests of creditors and equity security holders and with public policy.”

31. Section 1123(a)(7) provides that “a plan shall contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan”

32. Scott Hirth’s continued involvement in this case is untenable under both provisions.

33. Hirth’s numerous affiliations and connections with creditors and conflicts of interest have not been fully disclosed nor adequately discussed in the Plan. As a sampling, he and his trust are guarantors of tens of millions of dollars of Debtor’s secured and/or MCA obligations, Hirth is himself a scheduled creditor of Debtor in excess of \$1.6m, he is an owner of a Related Entity that owes over \$500k to Debtor, he is an owner of the Related Entities that will be obligated to the Liquidation Trust after payment of Bank of Ann Arbor, he and his trust have guaranteed those obligations and may be subject to suit, and Hirth is a potential target for recovery of voidable transfers and other potential causes of action.

34. Causes of action against Hirth may include mismanagement of the Debtor before and after the bankruptcy.

35. During the bankruptcy, Hirth has shown blatant disregard for the requirement of seeking bankruptcy court approval for transactions out

of the ordinary course of business. See 11 U.S.C. § 363(b)(1). Without Bankruptcy Court approval, Hirth caused up to 40 employees to be subcontracted to Coleman House for the first four home University of Michigan football games and allowed the use of Debtor personal property, also without Bankruptcy Court approval. See Deposition, pp. 122-133; Plan p. 61.

36. Before the bankruptcy, Hirth ran the Debtor with, at times, breathtaking incompetence. Hirth's lack of accounting controls and egregious prepetition misconduct is relevant under § 1129(a)(5). *In re SM 104 Ltd.*, 160 B.R. 202, 245 (Bankr. S.D. Fla. 1993) ("Where the proposed officer or director has previously engaged in serious misconduct in managing the debtor or is unfit to manage the debtor, employment is improper under § 1129(a)(5).") (citations omitted).

37. As described above, Hirth would give Debtor's credit card to purported MCA lenders, whose true names and identities he often did not know, and allow them to charge tens of thousands of dollars to the Debtor for luxury goods, all without the charges relieving any of the Debtor's obligations.

38. The “two” MCA loans represented to the Committee’s financial advisor were actually 97, accounting for approximately **\$42m of inflows** and **\$75m of outflows**. Stone Declaration, ¶ 3.

39. As noted above, Hirth, on multiple occasions, had the Debtor make payments to a different MCA lender from the one Debtor contracted with without written confirmation, contract amendment, or proper accounting. See Stone Declaration, ¶¶ 5-6.

40. While Hirth was at the helm, Debtor wrote approximately 1,700 checks to MCAs totaling approximately \$33m that were returned NSF “to buy time.” Stone Declaration, ¶ 7.

41. Debtor’s accounting records are “incomplete and confusing;” “payments were made to various MCAs, and the payments were not recorded in the debtor’s books.” Stone Declaration, ¶ 5.

42. The Plan proposes keeping Debtor/Hirth in control of over \$9m of Sale Proceeds and all claims other than non-priority Unsecured Creditors. The record makes clear that Hirth is not qualified to control the affairs of the Debtor in any way post-confirmation, especially with respect to the MCA and secured lender “mess” he created and initially hid. Neither creditors nor public policy would be served by permitting continued Debtor

involvement with respect to any creditor matters. Debtor's creditors have long deserved better.

IV. The Plan cannot be confirmed for numerous other reasons.

43. The Plan is objectionable for numerous additional reasons, including:

- a. It was not proposed in good faith under § 1129(a)(3).
 - i. See, e.g., *In re Edgewood Food Mart, Inc.*, No. 23-61204-LRC, 2024 Bankr. LEXIS 2712, at *25 (Bankr. N.D. Ga. Nov. 6, 2024). (“Where the debtor’s management has a ‘serious problem of conflict of interest’ that would prejudice creditors, courts have found that a plan was not proposed in good faith.”). The record is replete with evidence of Hirth’s serious conflicts for the role the Debtor proposes for itself in the Plan, many of which are undisclosed. See also *In re Zimont*, 649 B.R. 784, 791 (Bankr. D. Ariz. 2020) (“Based on Debtor’s failure to disclose this significant item in their Amended Disclosure Statement or Amended Plan, this Court cannot find that the Debtors’ Amended Plan was proposed in good faith. Debtors’ Plan does not satisfy the requirement of §1129(a)(3) and cannot be confirmed.”)
- b. The Plan would put Hirth in charge of paying Committee Professionals, who are investigating him and may be involved in lawsuits against him. Plan, pp. 2, 22-24. This would be an improper conflict of interest and further evidence of lack of good faith under § 1129(a)(3).
- c. The Plan states that Hirth and other insiders “owned” – past tense – “Affiliated Entities which leased the Affiliated Entity Real Estate to Debtor.” Plan, p. 56. Again, neither of these terms, “Affiliated Entities” and “Affiliated Entity Real Estate,” are defined, which is confusing and causes the Plan to lack adequate information under 11 U.S.C. § 1125. Even more

importantly, if Hirth and the insiders no longer own the Related Entity Real Estate, disclosures including when it was sold and who owns it now must be made given the equitable subrogation proposed by the Plan.

- d. The Plan impermissibly gerrymanders impaired accepting classes in violation of §§ 1122 and 1129(a)(10).
 - i. For example, Debtor proposes to pay the Allowed Secured Claim of Bank of Ann Arbor (Class I) in full under the Plan within 90 days of the Effective Date yet indicates that Bank of Ann Arbor's claim is impaired. The Plan does not appear to alter the contractual rights of Bank of Ann Arbor and the claim is being paid in full. The claim should be considered unimpaired.
 - ii. Further, Debtor separately classifies Classes II through IX. However, the aggregate amount of these alleged secured or ownership claims is approximately \$18 million and there is only \$9 million of sale proceeds. This means that creditors below the waterline of \$9 million are unsecured because there is not sufficient collateral to satisfy these claims. Classes V through IX should not be separately classified and should instead be classified as general unsecured claims.
- e. The Plan inappropriately seeks to approve, authorize, and paper-over unauthorized post-petition actions by the Debtor under ¶ 5.11 of the Plan.
 - i. As disclosed in the Plan (at the Committee's insistence), Debtor permitted Coleman House to lease at least 40 Debtor employees and use personal property after the petition date during four home football games absent approval under § 363(b). In exchange for staffing stadium operations and enabling Coleman House to sell thousands of dollars of merchandise at four home football games, Coleman House reimbursed Debtor the

employees' wages and paid Debtor a measly \$4,475. Potential claims related to the unauthorized transfer against all parties – including, but not limited to, Coleman House and Debtor's management – should be preserved and evaluated.

Reservation of Rights

44. The Committee reserves its rights, including to raise additional objections to confirmation of the Plan, to move to appoint a chapter 11 trustee, and to file a competing plan.

WHEREFORE, the Committee respectfully requests that confirmation of the Plan be denied, and that the Committee be granted additional relief as is just and equitable.

Respectfully submitted,

WOLFSON BOLTON KOCHIS PLLC

Dated: February 14, 2025

By: /s/ Scott A. Wolfson
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Exhibit Index

Exhibit 1	SEC Complaint
Exhibit 2	Consent of Defendant Scott Hirth
Exhibit 3	SEC Judgment
Exhibit 4	Michigan Online Corporate Records
Exhibit 5	Declaration of Sheldon Stone
Exhibit 6	Deposition Transcript of Scott Hirth
Exhibit 7	Guarantee of Scott Hirth re Debtor's Indebtedness to Bank of Ann Arbor
Exhibit 8	Guarantee of Scott Hirth re Elemental Capital Inc.
Exhibit 9	Guarantee of Scott Hirth re SBA
Exhibit 10	Guarantee of Scott Hirth re Newtek
Exhibit 11	Guarantee of Scott Hirth re TVT
Exhibit 12	Guarantee of Scott Hirth re Vault Capital
Exhibit 13	Guarantee of Scott Hirth re Churchill Capital Partners, LLC
Exhibit 14	Guarantee of Scott Hirth re Family Funding Group LLC
Exhibit 15	Guarantee of Scott Hirth re Uptown Fund

EXHIBIT 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

SCOTT HIRTH, and
PROQUEST COMPANY, now known as
VOYAGER LEARNING COMPANY

Defendants.

Case No: 08 CV 13139

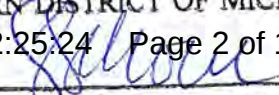
JURY TRIAL REQUESTED

COMPLAINT

Plaintiff, the United States Securities and Exchange Commission (the "Commission"), for its Complaint against Scott Hirth ("Hirth") and ProQuest Company, now known as Voyager Learning Company (collectively "ProQuest"), alleges as follows:

INTRODUCTION

1. This case concerns an accounting fraud scheme at ProQuest perpetrated by Defendant Hirth, the former Chief Financial Officer of ProQuest's Information and Learning Division ("PQIL"). At the end of monthly and quarterly reporting periods, from at least 2001 through 2005, Hirth made fraudulent manual journal entries in order to favorably alter ProQuest's financial results. These manual journal entries were adjustments to the balances in certain ProQuest accounts and were designed to increase revenue and decrease expenses at ProQuest. These entries, which had no basis and were unsupported, were made in four key areas of PQIL's accounting - prepaid royalty, deferred revenue, prepaid commissions and accrued royalty payable. Through these false accounting entries, Hirth materially inflated ProQuest's reported Earnings Before Interest and Taxes ("pre-tax earnings") for 2001 through 2004 and the

I hereby certify that the foregoing is a true copy of the original on file in this Office.
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
BY: 
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first three quarters of 2005. This false, pre-tax earnings information was disclosed to the investing public in ProQuest's financial reports and filings such as its Form 10-K and 10-Q filings with the Commission.

2. As part of his scheme, Hirth created false documentation to purportedly support the balances in the manipulated accounts. For example, Hirth's account reconciliation spreadsheets contained "hidden rows" so that false account entries were hidden when printed in hardcopy. Hirth also used "white font" in these spreadsheets, which placed false information in white-color text so that they were invisible. Hirth's deceptive intent in carrying out his fraudulent accounting scheme is further evident in a number of notes he authored. These notes contained references to being "caught" with accounting issues, "cooking the books," the possibility of going to "jail," and references to accounting scandals at "Enron and Worldcom."

3. Hirth's motivation for the fraudulent scheme was his desire to be promoted to a senior management position at ProQuest and also monetary gain as his compensation was tied to PQIL's financial performance.

4. After ProQuest disclosed the accounting scheme in its public filings, it lost over \$437 million in market capitalization. ProQuest's stock price dropped from \$29.41 to \$12.31 per share between February and April 2006. On August 31, 2007, ProQuest restated its results for 2001 through 2004 and the first three quarters of 2005. In this restatement, ProQuest reduced pre-tax earnings by \$129.9 million in areas where Hirth engaged in his scheme. Put another way, Hirth's scheme overstated pre-tax earnings by 31% between 2001 and the first three quarters of 2005. As of July 21, 2008, ProQuest was quoted at \$4.95 a share on the Pink Sheets OTC Electronic Markets and is only a fraction of the company that it used to be before Hirth's scheme.

5. Between 2001 and 2005, ProQuest failed to devise and maintain a system of internal accounting controls that could have prevented Hirth from falsifying hundreds of journal entries to ProQuest's general ledger. ProQuest had inadequate controls over the posting of manual journal entries and little or no internal controls to determine whether these journal entries were supportable and necessary. This failure, among others, allowed Hirth to carry out his scheme without detection for almost five years.

6. ProQuest also failed to properly apply basic accounting principles during this period. Specifically, in August 2007, ProQuest corrected for accounting errors it discovered during its restatement analysis, and reduced pre-tax earnings by \$113.2 million for 2001 through 2005. Some of ProQuest's significant errors occurred in its accounting for internally-developed software costs, product masters costs, and lease accounting, which overstated pre-tax earnings by a total of \$38.5 million. Moreover, as a result of Hirth's scheme and these accounting errors, ProQuest failed to keep books and records that accurately reflected its financial results.

7. Defendant Hirth has engaged in and, unless restrained and enjoined by this Court, will continue to engage in acts and practices which constitute and will constitute violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b) and 78m(b)(5)], and Rules 10b-5, 13b2-1, 13b2-2 thereunder [17 C.F.R. §§ 240.10b-5, 240.13b2-1, and 240.13b2-2], and for aiding and abetting violations of Sections 13(a) and 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78j(b), 78m(a), 78m(b)(2)(A) and (B)] and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13].

8. Defendant ProQuest has engaged in and, unless restrained and enjoined by the Court, will continue to engage in acts and practices which constitute and will constitute violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and (B)], and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, 240.13a-13].

JURISDICTION AND VENUE

9. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act [15 U.S.C. §77t(b)] and Section 21(d) of the Exchange Act [15 U.S.C. §78u(d)].

10. The Court has jurisdiction of this action pursuant to Sections 20(b) and 22(a) of the Securities Act [15 U.S.C. § 77t(b) and 77v(a)] and Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

11. Venue lies in this Court pursuant to Section 22(a) of the Securities Act [17 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa]. ProQuest was headquartered in Ann Arbor, Michigan between 2001 and 2005 and many of the acts, practices, transactions and courses of business alleged herein occurred within the jurisdiction of the United States District Court for the Eastern District of Michigan. Hirth was a former employee of ProQuest and he is also a resident of Carleton, Michigan, which is within this district.

12. Defendants, directly or indirectly, have made use of the means or instrumentalities of interstate commerce, or of the mails, or the facilities of a national securities exchange in connection with the transactions, acts, practices and courses of business alleged herein in this Complaint.

DEFENDANTS

13. Scott Hirth, age 41, is a resident of Carleton, Michigan. Hirth was the Vice-President of Finance and Chief Financial Officer of ProQuest's Information and Learning Division from 1999 through 2005. On May 25, 2006, ProQuest terminated his employment after determining that Hirth orchestrated an accounting fraud scheme at ProQuest.

14. ProQuest was a Delaware corporation with its headquarters located in Ann Arbor, Michigan between 2001 and 2005. ProQuest was formerly known as Bell & Howell Company from 1907 to 2001. Before March 28, 2007, ProQuest was a publicly traded corporation on the New York Stock Exchange and its securities were registered pursuant to Section 12(b) of the Exchange Act. On March 28, 2007, the NYSE suspended trading in ProQuest's shares because it failed to timely file its December 31, 2005 Form 10-K and certain of its 2006 fiscal Form 10-Q and 10-K. On June 30, 2007, ProQuest changed its name to Voyager Learning Company, which currently trades its securities on the Pink Sheets Electronic OTC Markets.

FACTS

A. Background

15. ProQuest was a company that specialized in aggregating, organizing and packaging data from various publishers to provide information-service products to its customers. From 2001 through 2004, ProQuest consisted of two primary business segments: ProQuest Business Solutions and PQIL. During that time-period, PQIL accounted for approximately 60% of ProQuest's revenue and ProQuest Business Solutions accounted for the remainder.

16. PQIL provided published materials to schools, academic institutions, and libraries worldwide. PQIL licensed content from publishers, converted this published information to microfilm, print and electronic form, and often collected this information into an electronically

accessible database. PQIL added value by providing proprietary abstracts, indices, database navigation tools, and other convenient user-interface elements. PQIL had several product lines, including electronic published products, traditional products (such as newspapers and microfilm) and classroom products (such as course materials and textbook supplements).

17. From 1999 through 2005, Scott Hirth was PQIL's Vice-President of Finance and Chief Financial Officer and responsible for PQIL's accounting and financial reporting. Hirth joined ProQuest in 1994 as a financial analyst and rapidly moved up the ranks by serving in different managerial positions in the finance department until he became the CFO of PQIL in 1999.

B. Hirth's Fraudulent Scheme at ProQuest

18. From at least 2001 through 2005, Hirth perpetrated a fraudulent scheme to falsely inflate PQIL's pre-tax earnings through unsupportable manual journal entries in PQIL asset and liability accounts. These false manual journal entries resulted in increases in revenue and decreases in expenses for PQIL, which materially increased ProQuest's reported pre-tax earnings.

Hirth's Manual Journal Entries

19. A manual journal entry at PQIL was a manual adjustment to an account balance that was posted to ProQuest's general ledger. Information from ProQuest's general ledger was used to prepare ProQuest's financial reports, such as its Form 10-K and 10-Q filings, that were filed with the Commission. Hirth directed the entry of unsupportable manual journal entries at the end of months and quarters in four key areas of PQIL's accounting – prepaid royalty, deferred revenue, prepaid commissions and accrued royalty payable.

20. In his scheme, Hirth ignored ProQuest's policy for the posting of manual journal entries. This policy required that supporting documentation be provided for each manual journal entry. In contravention of this policy, Hirth did not provide appropriate, or in many cases, *any* backup support for his manual journal entries. Rather, over the course of five years, Hirth merely filled out a manual journal entry request form identifying the account number and the adjustment amount. He submitted this form for posting without appropriate supporting information.

21. As the CFO of PQIL, Hirth knew that his subordinates would not question his authority to direct the entry of his manual journal entries. In fact, these subordinates did not prevent Hirth from directing the entry of manual journal entries without backup support. In essence, Hirth's power to make these unsupported entries was absolute and unchecked.

22. Hirth's manual journal entries were often large (in the millions) and consisted of round-dollar entries. Hirth made these unsupported entries when PQIL closed its books for the month or quarter. This allowed Hirth to make his unsupported adjustments when he had a better understanding of how PQIL had performed for the previous period.

23. Hirth knew that the unsupported manual journal entries he posted would significantly alter the balances in the PQIL general ledger. Hirth knew that the PQIL financial information he submitted for each month, quarter and annual period would be consolidated into ProQuest's overall financial statements and disclosed to the investing public in ProQuest's financial reports that were filed with the Commission. Hirth also knew that PQIL's financial results would be separately listed in ProQuest's filings with the Commission, such as its Form 10-K and Form 10-Q filings.

24. Hirth was provided drafts of ProQuest's Form 10-Qs and 10-Ks for review before they were filed. In particular, from 2003 through 2005, after reviewing the proposed filings, Hirth signed internal certifications wherein he certified that the information contained in these periodic reports was correct and accurately reflected PQIL's financial position. His certifications were false.

Hirth's Control over the PQIL Finance Department

25. Hirth maintained exclusive control over key PQIL accounts, which allowed him to carry out his scheme. Specifically, he had sole responsibility for reconciling the prepaid royalty, prepaid commission and deferred revenue accounts. In other words, Hirth independently determined the balances in these accounts for each period and submitted manual journal entries to adjust these accounts. He also had significant input into the final balance of the PQIL accrued royalty accounts.

26. Hirth maintained total control over the month-end and quarter-end closing process at PQIL, which involved an internal reporting of PQIL's revenue and expenses for the particular period. Hirth's control over the closing process also helped him to carry out his accounting scheme.

Hirth's Cover-up of the Accounting Scheme

27. Hirth took steps to cover up his fraudulent scheme. Hirth created and maintained Microsoft Excel spreadsheets for the prepaid royalty and prepaid commission accounts. These spreadsheets identified each line item that served as justification for the total balance in these accounts. Hirth ensured that the actual balance in these two accounts matched the total on his spreadsheet by means of a manual journal entry he submitted for posting to ProQuest's general ledger. These reconciliation spreadsheets were then maintained in hard copy at ProQuest and

served as supporting documentation for the balances in these accounts. In addition, these documents were reviewed in ProQuest's audit work pursuant to Section 404 of the Sarbanes-Oxley Act of 2002 ("SOX 404") and by ProQuest's outside auditor during its periodic audits.

28. Since at least 2004, Hirth concealed some of his false entries within the prepaid royalty spreadsheets. The line items in these spreadsheets generally consisted of the catalogue number that identified the publisher, the amount of deferred revenue on that product, and the royalty rate charged by the publisher. The prepaid royalty was determined by multiplying the deferred revenue by the royalty rate.

29. Hirth's 2005 spreadsheets for the prepaid royalty account contained rows that were hidden using a "Hide" function in a spreadsheet program. When printed, these hidden rows were invisible. The hidden rows contained fictitious values that had no basis or support. Within the hidden rows were large, round-dollar entries. Often, these entries were identified with catalogue numbers that did not exist at PQIL.

30. For example, Hirth's prepaid royalty spreadsheet for the fourth quarter of 2005 contained hidden rows totaling \$11.4 million, which constituted 45.3% of the total balance for this period. One of these hidden rows included an entry of \$1.19 million for catalogue number 78520. This catalogue number did not exist at PQIL. Moreover, three hidden rows included balances for catalogue numbers that should not have any prepaid balances attributable to those numbers because there was no revenue earned on those publishers' content. These line items totaled \$6.4 million.

31. Since at least 2005, Hirth also concealed some of his false entries in the prepaid commission spreadsheets. These spreadsheets identified the total amount of commissions paid to its sales force and the commissions to be recognized as an expense *pro rata*. The

commissions to be recognized as an expense were subtracted from the total commissions paid to give the total prepaid commission account balance as of that balance sheet date. For example, in Hirth's fourth quarter 2005 prepaid commission spreadsheet, one cell entry was located far away from the main body of the spreadsheet where prepaid commission entries were made. This cell entry contained an amount of \$4.1 million in "white font", *i.e.* font in the color white such that it is invisible when printed in hard copy. By a formula, this entry was added to the total prepaid commission balance in the main part of the spreadsheet and constituted 42.5% of that balance. There was no basis for this entry.

Hirth's Handwritten Notes Shows His Deceptive Intent

32. Hirth reflected his intent in conducting and concealing his accounting scheme in numerous handwritten notes he authored from 2003 through 2005. For example, Hirth stated:

- "how can we be audit proof and make fin. #s this year. ENRON and Worldcom"
- "Once past audit prob [problem or probably] no sweat on jail"
- "Can't make #s and co [company] going under anyway"
- "If dig real deep. Def [deferred] problem"
- "We need lots of revenue. Max the real rev [revenue] so I can fix"
- "What if caught – Blame the query and old systems and get fired. Key is all else clean."

33. Hirth's notes also reminded him to "destroy" and "get rid of" manual journal entries. Hard copies of a number of key manual journal entry forms are missing from ProQuest's records. Additionally, Hirth stated unequivocally in one entry: "Doc trail needs to support messed up systems[,] not cooking the books."

Hirth's Motive for the Scheme

34. Hirth's motivation for the fraudulent scheme was his desire to progress through the managerial ranks at ProQuest. Hirth desired to become the President of PQIL and, eventually, the Chief Executive Officer of ProQuest. Hirth was identified by senior management as a future leader of the company and even served as acting President of PQIL during the summer of 2005. Consistent with this desire, Hirth was fearful that his ambitions would not be realized if he reported PQIL's true financial position. He expressed in his notes: "We have a number I fear we can't make" and "I could miss Q2 [second quarter] and come clean in June. Probably get fired for that."

35. Hirth was also motivated by monetary gain to carry out his scheme. Hirth's total annual compensation between 2000 and 2005 steadily increased from approximately \$200,000 to \$300,000 including bonuses. Hirth's receipt of bonuses was directly tied to PQIL's financial performance.

Lying to Auditors

36. In furtherance of his scheme, Hirth provided false information to ProQuest's outside auditors from 2001 through 2005. Specifically, Hirth's manipulation of PQIL's accounting resulted in false financial information being provided to ProQuest's outside auditors in connection with its audit.

37. Hirth also provided account reconciliation documents, such as hard copies of his spreadsheets to ProQuest's outside auditors, which contained false information about the proper balance of the prepaid royalty, prepaid commission, and deferred revenue accounts.

C. The Impact of Hirth's Fraudulent Scheme

38. As a result of Hirth's scheme, PQIL overstated its revenue and understated its expenses between 2001 and 2005, which favorably impacted PQIL's pre-tax earnings. PQIL's financial reporting, which included the artificially inflated pre-tax earnings numbers, was consolidated into the company's overall financial reporting. PQIL's financial results and/or ProQuest's consolidated financial information were disclosed to the investing public in ProQuest's Forms 10-K, 10-Q, 8-K and S-3 filings for 2001 through 2005. In total, ProQuest overstated pre-tax earnings by approximately \$129.9 million in the areas where Hirth engaged in manipulation from 2001 through the first three quarters of 2005.

39. The table below demonstrates the effect of Hirth's fraud on pre-tax earnings that was disclosed in ProQuest's periodic filings with the Commission:

(In millions)	2001	2002	2003	2004	Q1 05	Q2 05	Q3 05	Total
Previously reported pre-tax earnings in Forms 10-K and 10-Q	66.4	85.3	89.2	96.2	18.8	27.4	35.3	418.6
Overstatement of pre-tax earnings attributable to Hirth's Fraud Areas	16.4	11.5	20.8	41.8	8.4	7.3	23.7	129.9
Overstatement attributable to Hirth's Fraud Areas as a % of pre-tax earnings	24.7%	13.5%	23.3%	43.5%	44.7%	26.6%	67.1%	31.0%

40. ProQuest's disclosure of Hirth's accounting scheme in its Form 8-K filings and press releases between February and April 2006 resulted in a reduction of \$437 million in market capitalization. ProQuest's stock price dropped from \$29.41 to \$12.31 per share during this period. As of July 21, 2008, ProQuest (now Voyager Learning Company) was quoted at \$4.95 a

share on the Pink Sheets OTC Electronic Bulletin and has significantly fewer assets than before Hirth's scheme.

D. Material Misstatements in ProQuest's Financial Statements Filed with the Commission

41. As explained above, from 2001 to 2005, Hirth's scheme resulted in an overstatement of \$129.9 million in pre-tax earnings. This overstatement was included in four Form 10-K filings, fifteen Form 10-Q filings, eleven Form 8-K filings, and nine Form S-3 filings that were filed with the Commission by ProQuest between 2001 and 2005. The specific filings containing the financial misstatements are detailed below.

42. Hirth materially misstated PQIL and ProQuest's pre-tax earnings in ProQuest's Form 10-K filings that were filed on March 29, 2002, March 27, 2003, March 18, 2004, and March 17, 2005.

43. Hirth materially misstated PQIL and ProQuest's pre-tax earnings in ProQuest's Form 10-Q filings that were filed on May 15, 2001, August 13, 2001, November 13, 2001, May 14, 2002, August 13, 2002, November 12, 2002, May 13, 2003, August 11, 2003, November 10, 2003, May 13, 2004, August 12, 2004, November 12, 2004, May 12, 2005, August 10, 2005 and November 10, 2005.

44. Hirth materially misstated PQIL and ProQuest's pre-tax earnings in ProQuest's Form 8-K filings that were filed on April 29, 2003, July 29, 2003, October 28, 2003, February 26, 2004, April 27, 2004, July 28, 2004, October 27, 2004, November 2, 2005, May 4, 2005, August 3, 2005, and November 2, 2005.

45. Hirth materially misstated PQIL and ProQuest's pre-tax earnings in ProQuest's Form S-3 filings that were filed on June 22, 2001, July 10, 2001, September 24, 2001, April 17, 2002, June 3, 2002, June 11, 2002, June 12, 2002, June 14, 2002 and June 17, 2002. These

filings either expressly contained or incorporated by reference PQIL's and/or ProQuest's misstated pre-tax earnings information.

46. Hirth's accounting scheme and his material misstatements of ProQuest's pre-tax earnings deceived the investing public about ProQuest's true financial situation for over five years.

**E. ProQuest's Internal Controls Deficiencies And Other Accounting Errors
Internal Controls**

47. Between 2001 and 2005, ProQuest had numerous, significant deficiencies in its internal controls that allowed Hirth to carry out his scheme.

48. PQIL's inadequate procedures allowed Hirth to act independently in requesting, approving, and ordering the entry of manual journal entries. ProQuest's policy of requiring backup documentation for manual journal entries was ineffective because there was no individual with authority to enforce this requirement against Hirth. The task was left to one of Hirth's subordinates, who was not in a position to mount a serious challenge to Hirth's practices.

49. Hirth maintained sole control of key accounts at ProQuest, which included reconciling the accounts at the end of monthly and quarterly periods. No one else at ProQuest had input into or reviewed Hirth's determinations of the final balance of these accounts. The only support for these balances was Hirth's spreadsheets that were maintained solely by Hirth.

50. ProQuest had weak accounting systems that were not integrated. Financial data did not automatically flow from through the various accounting systems to the general ledger but were often transferred to the general ledger through manual journal entries. This situation further allowed Hirth to manipulate the accounts without detection because the posting of manual journal entries was a routine event at ProQuest.

51. In its Form 10-K issued on August 31, 2007, which included its financial restatement, ProQuest admitted that it had material weaknesses in its internal controls. The internal control deficiencies identified included weakness in its accounting systems, controls used to select and modify accounting policies, controls in its financial statement and reporting process, controls in the account reconciliation process, and controls in the manual journal entry process.

Accounting Errors

52. During its analysis to restate its pre-tax earnings, ProQuest discovered numerous accounting errors. The errors were significant and widespread throughout its many businesses. The errors, in large part, stemmed from ProQuest's inability to properly apply basic accounting principles. These accounting errors resulted in material misstatements in ProQuest's Forms 10-Q, 10-K, 8-K and S-3 public filings. ProQuest corrected for accounting errors it discovered during the restatement analysis, which amounted to a \$113.2 million reduction in pre-tax earnings from 2001 through 2005.

53. Some of the most significant accounting errors occurred in the PQIL businesses in capitalized software and product masters costs and lease accounting, which had the effect of overstating pre-tax earnings by a total of \$38.5 million between 2001 and 2005. These errors are further discussed below.

54. PQIL generally capitalized direct and indirect overhead costs incurred in creating electronic and microfilm document copies, which are called "product masters." These product masters were essentially PQIL's value-added to information obtained from publishers and includes functions such as search capabilities for the end-user or customer. Capitalization of the cost of manufacturing product masters was permissible because ProQuest's value added to the

product masters constituted an asset under Generally Accepted Accounting Principles (“GAAP”). GAAP defines assets as “probable future economic benefits obtained or controlled by a particular entity as a result of past transactions or events.” (FASB Concept No. 6: Elements of Financial Statements). ProQuest’s product masters had the ability to generate future economic benefit from the sale of such content or access to such content which results in net cash inflows to the company. The costs associated with manufacturing product masters were amortized over the useful life of the product.

55. During the restatement process, ProQuest discovered that PQIL was incorrectly accounting for costs relating to product masters. PQIL was using a higher percentage of the costs of manufacturing product masters than is allowed under GAAP and was improperly including costs associated with employees who were not directly involved in producing the product masters. As a result, ProQuest improperly deferred recognition of those expenses.

56. PQIL also capitalized costs associated with software developed for internal use and applied guidance from the American Institute of Certified Public Accountants (“AICPA”) Statement of Position 98-1 (“SOP 98-1”), Accounting for the Costs of Computer Software Developed or Obtained for Internal Use. SOP 98-1 provided that costs associated with developing software for internal use should be capitalized and then expensed over the useful life of the software. In particular, SOP 98-1 required companies to properly capture internal and external costs involved with the various stages of software development.

57. As a result of the restatement analysis, ProQuest concluded that PQIL did not properly apply guidance from SOP 98-1 because it did not record labor time and costs for those individuals that specifically worked on internally-developed software and did not exclude individuals within these groups that were uninvolved in internally-developed software

production. In addition, ProQuest did not differentiate between the three stages of software development and capture costs associated only with the software application development stage.

58. Additionally, PQIL did not properly classify the leases it entered into for property and equipment between 2001 and for the first three quarters of 2005. Statement of Financial Accounting Standards No. 13 (“FAS 13”), Accounting for Leases, classifies leases as either capital leases or operating leases. Capital leases are recorded as an asset and amortized. Rent obligations on operating leases are expensed as incurred on a straight-line basis. Leases are classified as capital leases if they meet one of the four criteria outlined in FAS 13. One of those criteria classifies leases as capital leases when the present value of all future rent payments equals or exceeds 90% of the fair market value of the asset.

59. PQIL incorrectly determined the present value of the future rental payments on the majority of the leases it entered into between at least 2001 and 2005. The present value of those payments was regularly understated, which resulted in improperly classifying these leases as operating leases rather than capital leases under FAS 13.

60. The above errors, and others that were discovered during the restatement analysis, resulted in material misstatements in ProQuest’s reported pre-tax earnings that were included in its periodic filings with the Commission between 2001 and 2005.

CLAIMS FOR RELIEF

COUNT I

Defendant Hirth Violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder

61. Plaintiff repeats and realleges paragraphs 1 through 60 above.

62. As a result of the activities described above, Defendant Hirth, in connection with the purchase or sale of ProQuest securities, by the use of means or instruments of transportation

or communication in interstate commerce or of the mails, directly or indirectly: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon purchasers of securities.

63. Defendant Hirth intentionally, or with recklessness, engaged in the conduct described above. In engaging in such conduct, Defendant Hirth acted with scienter, that is, with an intent to deceive, manipulate, and defraud or with a reckless disregard for the truth.

64. By reason of the foregoing, Defendant Hirth violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

COUNT II

Defendant Hirth Violated Section 17(a) of the Securities Act

65. Plaintiff repeats and realleges paragraphs 1 through 60 above.

66. As a result of the activities described above, Defendant Hirth, in the offer or sale of ProQuest securities, by the use of means or instruments of transportation or communication in interstate commerce or of the mails, directly and indirectly: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of untrue statements of facts or omissions of material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, practices, and courses of business which operated and would operate as a fraud or deceit upon the purchasers of ProQuest securities.

67. Defendant Hirth intentionally, or with recklessness, engaged in the conduct described above. In engaging in such conduct, Defendant Hirth acted with scienter, that is, with an intent to deceive, manipulate, and defraud or with a reckless disregard for the truth.

68. By reason of the activities described above, Defendant Hirth violated Section 17(a) of the Securities Act [15 U.S.C. §77q(a)].

COUNT III

Defendant Hirth Violated Section 13(b)(5) of the Exchange Act and Rule 13b2-1 thereunder

69. Plaintiff repeats and realleges paragraphs 1 through 60 above.

70. Defendant Hirth knowingly circumvented and knowingly failed to implement a system of internal accounting controls and knowingly falsified books, records or accounts subject to Section 13(b)(2) of the Exchange Act.

71. Defendant Hirth directly or indirectly falsified or caused to be falsified books records or accounts subject to subject to Section 13(b)(2) of the Exchange Act.

72. By reason of the activities described above, Defendant Hirth violated Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rule 13b2-1 thereunder [17 C.F.R. § 240.13b2-1].

COUNT IV

Defendant Hirth Violated Rule 13b2-2 under the Exchange Act

73. Plaintiff repeats and realleges paragraphs 1 through 60 above.

74. Defendant Hirth directly or directly: (i) made or caused to be made materially false or misleading statements and (ii) omitted to state, or caused others to omit to state, material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, to an accountant in connection with an audit, review or

examination of financial statements or the preparation or filing of a document or report required to be filed with the Commission.

75. By reason of the activities described above, Defendant Hirth violated Rule 13b2-2 under the Exchange Act [17 C.F.R. § 240.13b2-2].

COUNT V

Defendant ProQuest Violated Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder and Defendant Hirth Aided and Abetted these Violations.

76. Plaintiff repeats and realleges paragraphs 1 through 60 above.

77. Section 13(a) of the Exchange Act and Rules 13a-1, 13a-11, and 13a-13 thereunder, require issuers of registered securities to file with the Commission factually accurate annual and quarterly reports (Form 10-K and Form 10-Q) and certain current information with the Commission (Form 8-K). Rule 12b-20 further provides that, in addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they were made, not misleading.

78. By reason of the activities described above, ProQuest violated Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 13a-11, 13a-13].

79. By reason of the activities described above, Defendant Hirth, pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)], knowingly provided substantial assistance to and thereby aided and abetted ProQuest in its violations of the Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder.

COUNT VI

Defendant ProQuest Violated Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Defendant Hirth Aided and Abetted those Violations

80. Plaintiff repeats and realleges paragraphs 1 through 60 above.

81. Section 13(b)(2)(A) requires issuers to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the issuer's assets. Section 13(b)(2)(B) requires issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that, among other things, transactions are recorded as necessary to permit the preparation of financial statements in conformity with U.S. Generally Accepted Accounting Principles and to maintain accountability for the issuer's assets.

82. By reason of the activities described above, Defendant ProQuest violated Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and (B)].

83. By reason of the activities described above, Defendant Hirth, pursuant to Section 20(e) of the Exchange Act [15 U.S.C. §78t(e)], knowingly provided substantial assistance to and thereby aided and abetted ProQuest in its violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and (B)].

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court:

I.

Enter a Final Judgment and Order of Permanent Injunction restraining and enjoining Defendant Hirth and his agents, servants, employees, attorneys in-fact, and all persons in active concert or participation with it who receive actual notice of the injunction by personal service or

otherwise, and each of them, from violating Section 17(a) of the Securities Act, Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934, and Rule 10b-5, 13b2-1, 13b2-2 thereunder, and for aiding and abetting violations of Sections 13(a) and 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder.

II.

Pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], prohibit Defendant Hirth from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

III.

Order Defendant Hirth to disgorge all ill-gotten gains that he has received as a result of the acts complained of herein, with prejudgment interest thereon.

IV.

Pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], order Defendant Hirth to pay civil penalties.

V.

Enter a Final Judgment and Order of Permanent Injunction restraining and enjoining Defendant ProQuest, and its agents, servants, employees, attorneys in-fact, and all persons in active concert or participation with it who receive actual notice of the injunction by personal service or otherwise, and each of them, from violating Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

VI.

Grant any equitable relief that may be appropriate or necessary for the benefit of investors pursuant to Section 21(d)(5) of the Exchange Act [15 U.S.C. §78u(d)(2)];

VII.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

VIII.

Grant Orders for such further relief as the court may deem just and appropriate.

Dated: July 22, 2008

Respectfully Submitted,

/s/ Sunil R. Harjani

James A. Davidson
Sunil R. Harjani
Attorneys for Plaintiff United States Securities and
Exchange Commission
175 W. Jackson Boulevard, Suite 900
Chicago, Illinois 60604
Telephone: (312) 353-7390

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a copy of the attached was filed electronically on July 22, 2008. Notice of this filing will be sent by operation of the Court's electronic filing system, or if not possible, via Federal Express to at least one attorney for each defendant:

William R. Baker III
Michele Rose
Latham and Watkins
555 Eleventh Street NW
Suite 1000
Washington D.C. 20004-1304
Counsel for Defendant ProQuest Company
n/k/a Voyager Learning Company

David DuMouchel
George Donnini
Butzel Long
150 West Jefferson, Suite 100
Detroit, Michigan 48226
Counsel for Defendant Scott Hirth

/s/ Sunil R. Harjani

Sunil R. Harjani
U.S. Securities and Exchange Commission
Chicago Regional Office
175 West Jackson Street, Suite 900
Chicago, IL 60064

Date: July 22, 2008

EXHIBIT 2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

SCOTT HIRTH, and
PROQUEST COMPANY, now known as
VOYAGER LEARNING COMPANY

Defendants.

Case No:

CONSENT OF DEFENDANT SCOTT HIRTH

1. Defendant Scott Hirth ("Defendant") waives service of a summons and the complaint in this action, enters a general appearance, and admits the Court's jurisdiction over Defendant and over the subject matter of this action.

2. Without admitting or denying the allegations of the complaint (except as to personal and subject matter jurisdiction, which Defendant admits), Defendant hereby consents to the entry of the final Judgment in the form attached hereto (the "Final Judgment") and incorporated by reference herein, which, among other things:

- (a) permanently restrains and enjoins Defendant from violations of Section 17(a) of the Securities Act of 1933 ("Securities Act"), Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 ("Exchange Act"), and Rule 10b-5, 13b2-1, 13b2-2 thereunder, and for aiding and abetting violations of Sections 13(a) and 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder.

- (b) orders Defendant to pay disgorgement in the amount of \$233,676.00, plus prejudgment interest thereon in the amount of \$54,474.25; and
- (c) orders Defendant to pay a civil penalty in the amount of \$130,000 under Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act.

3. Defendant agrees that he shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any civil penalty amounts that Defendant pays pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors. Defendant further agrees that he shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any penalty amounts that Defendant pays pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors.

4. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

5. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the Final Judgment.

6. Defendant enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

7. Defendant agrees that this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

8. Defendant will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

9. Defendant waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Final Judgment.

10. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted against Defendant in this civil proceeding. Defendant acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any

disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that he shall not be permitted to contest the factual allegations of the complaint in this action.

11. Defendant understands and agrees to comply with the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegation in the complaint or order for proceedings." 17 C.F.R. § 202.5. In compliance with this policy, Defendant agrees: (i) not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; and (ii) that upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint. If Defendant breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

12. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendant to defend against this action. For these purposes, Defendant agrees that Defendant is not the prevailing party in this action since the parties have reached a good faith settlement.

13. In connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, Defendant (i) agrees to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice; (ii) will accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iii) appoints Defendant's undersigned attorney as agent to receive service of such notices and subpoenas; (iv) with respect to such notices and subpoenas, waives the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony reimburses Defendant's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v) consents to personal jurisdiction over Defendant in any United States District Court for purposes of enforcing any such subpoena.

14. Defendant agrees that the Commission may present the Final Judgment to the Court for signature and entry without further notice.

15. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

Dated: 3-31-08

Scott Hirth

Scott Hirth

On 31st, 2008 March, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.

Janice Brents
Notary Public
Commission expires:

JANICE BRENTS
Notary Public, State of Michigan
County of Wayne
My Commission Expires Mar. 23, 2013
Acting in the County of Wayne

Approved as to form:

David F. DuMouchel
Name: DAVID F. DuMouchel.
Address: 150 W. Jefferson Ave, Detroit, MI.
Tel No.: (313) 225-7000.
Attorney for Defendant

EXHIBIT 3

8

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

Case No: 08 CV 13139

SCOTT HIRTH, and
PROQUEST COMPANY, now known as
VOYAGER LEARNING COMPANY

Defendants.

FILED
2008 JUL 30 P 1:18
U.S. DIST. COURT
EAST. DIST. MICHIGAN
DETROIT

FINAL JUDGMENT AS TO DEFENDANT SCOTT HIRTH

The Securities and Exchange Commission having filed a Complaint and Defendant Scott Hirth having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

I hereby certify that the foregoing is a true copy of the original on file in this Office.
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

BY:  Deputy

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 13(b)(5) of the Exchange Act [15 U.S.C. §78m(b)(5)] by knowingly circumventing or knowingly failing to implement a system of internal controls or knowingly falsifying any book, record, or account described in Section 13(b)(2) of the Exchange Act [15 U.S.C. §78m(b)(2)].

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Rule 13b2-1 promulgated under the Exchange Act, by falsifying or causing to be falsified, any book, record, or account subject to Section 13(b)(2)(A) of the Exchange Act.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Rule 13b2-2 promulgated under the Exchange Act, by, as an officer or director of an issuer, directly or indirectly (a) making or causing to be made a materially false or misleading statement to an

accountant in connection with or (b) omitting to state, or causing another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading, to an accountant in connection with (1) an audit, review or examination of the financial statements of an issuer required to be made under Section 13 of the Exchange Act [15 U.S.C. §78m]; or (2) the preparation or filing of any document or report required to be filed with the Commission under Section 13 of the Exchange Act [15 U.S.C. §78m] or otherwise.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from, directly or indirectly, aiding and abetting any violation of Section 13(a) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13] by, directly or indirectly, knowingly providing substantial assistance to an issuer in the filing or causing to be filed with the Commission any registration statement pursuant to Section 12 of the Exchange Act [15 U.S.C. § 781], or any annual, current, quarterly, or other report pursuant to Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)] and the rules and regulations promulgated thereunder that: (a) contains any untrue statement of material fact or omits to state any material fact necessary in order to make the statements, in light of the circumstances under which they were made, not misleading; (b) fails to contain information required to be contained therein; or (c) fails to comply in any

material respect with the requirements of Section 12 or Section 13(a) of the Exchange Act [15 U.S.C. §78l and 78m(a)] or Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13].

VII.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from aiding and abetting any violation of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. §78m(b)(2)(A)] by, directly or indirectly, knowingly providing substantial assistance to an issuer in its failing to make and keep books, records and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer.

VIII.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from aiding and abetting any violation of Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. §78m(2)(B)] by, directly or indirectly, knowingly providing substantial assistance to an issuer in its failing to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: (a) transactions are executed in accordance with management's general or specific authorization; (b) transactions are recorded as necessary to permit preparation of financial statements in conformity

with generally accepted accounting principles or any other criteria applicable to such statements, and to maintain accountability for assets; (c) access to assets is permitted only in accordance with management's general or specific authorization; and (d) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

IX.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)] and Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)]. Defendant is prohibited from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78I] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

X.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$233,676.00, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$54,474.25 and a civil penalty in the amount of \$130,000.00 pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act. Defendant shall satisfy this obligation pursuant to the terms of the payment schedule set forth in paragraph XII below after entry of this Final Judgment by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The payment shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center,

6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter identifying Scott Hirth as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961. The Commission shall remit the funds paid pursuant to this paragraph to the United States Treasury.

XI.

Defendant shall pay \$418,150.30 in three installments according to the following schedule: (1) \$313,612.73 within 10 business days of entry of this Final Judgment; (2) \$52,268.79 plus post-judgment interest of \$801.02 pursuant to 28 U.S.C. §1961 within 180 days of the entry of this Final Judgment; and (3) \$52,268.79 plus post-judgment interest of \$393.98 pursuant to 28 U.S.C. §1961 within 360 days of the entry of this Final Judgment.

If Defendant fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Final Judgment, including post-judgment interest, minus any payments made, shall become due and payable immediately without further application to the Court.

XII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

XIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

Dated: July 30, 2008

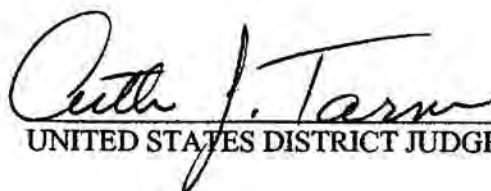

UNITED STATES DISTRICT JUDGE

EXHIBIT 4

LARA Corporations Online Filing System

Department of Licensing and Regulatory Affairs

ID Number: 800166818

[Request certificate](#)

[Return to Results](#)

[New search](#)

Summary for: HERITAGE COLLEGIATE APPAREL, INC.

The name of the DOMESTIC PROFIT CORPORATION: HERITAGE COLLEGIATE APPAREL, INC.

The name was changed from: M-DEN, INC. **on** 05-29-2024

The name was changed from: STEIN & GOETZ SPORTING GOODS, INC. **on** 07-24-1992

Entity type: DOMESTIC PROFIT CORPORATION

Identification Number: 800166818 **Old ID Number:** 161452

Date of Incorporation in Michigan: 11/10/1970

Purpose: Other

Term: Perpetual

Most Recent Annual Report: 2024

Most Recent Annual Report with Officers & Directors: 2022

The name and address of the Resident Agent:

Resident Agent Name: SCOTT HIRTH

Street Address: 5000 CARPENTER ROAD

Apt/Suite/Other:

City: YPSILANTI

State: MI

Zip Code: 48197

Registered Office Mailing address:

P.O. Box or Street Address: 5000 CARPENTER ROAD

Apt/Suite/Other:

City: YPSILANTI

State: MI

Zip Code: 48197

The Officers and Directors of the Corporation:

Title	Name	Address
PRESIDENT	SCOTT HIRTH	315 S. MAIN ST. ANN ARBOR, MI 48104 USA
TREASURER	SCOTT HIRTH	315 S. MAIN ST. ANN ARBOR, MI 48104 USA
SECRETARY	SCOTT HIRTH	315 S. MAIN ST. ANN ARBOR, MI 48104 USA
DIRECTOR	SCOTT HIRTH	315 S. MAIN ST. ANN ARBOR, MI 48104 USA

Act Formed Under: 327-1931 Michigan General Corporation Act

Acts Subject To: 284-1972 Business Corporation Act

Total Authorized Shares: 50,000

Written Consent

[View Assumed Names for this Business Entity](#)

View filings for this business entity:

ALL FILINGS
ANNUAL REPORT/ANNUAL STATEMENTS
ARTICLES OF INCORPORATION
RESTATED ARTICLES OF INCORPORATION
RESTATED ARTICLES OF INCORPORATION
RESTATED ARTICLES OF INCORPORATION



[View filings](#)

Comments or notes associated with this business entity:

[LARA FOIA Process](#) [Transparency](#) [State Web Sites](#)

[Michigan.gov Home](#) [ADA](#) [Michigan News](#) [Policies](#)

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EXHIBIT 5

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION - DETROIT**

In re:

Chapter 11

HERITAGE COLLEGIATE APPAREL, INC.
f/k/a M-Den, Inc., d/b/a The M Den,

Case No. 24-47922-tjt

Hon. Thomas J. Tucker

Debtor.

/

DECLARATION OF SHELDON STONE

I, Sheldon Stone, declare:

1. I am the Financial Advisor to the UCC for the Heritage Collegiate Apparel Inc. bankruptcy. I originally began working with the debtor in December of 2023 as our firm, Capstone Partners, LLC, was hired by the debtor's bank, Bank of Ann Arbor ("BoAA"). BoAA was concerned about the frequency and amount of funds being withdrawn from the debtor's operating account by Merchant Cash Advance ("MCA") lenders.

2. In my initial meeting with the debtor, Scott Hirth told me that debtor only had two MCA loans, that one was fraudulent and the other was taken out to help one of debtor's vendors who was a family friend. When asked who was looking into the fraudulent loan, he said his attorney was.

3. I submitted an information request which took weeks to fulfill

and was incomplete when I received it. Eventually, I gained read-only access to the debtors ERP system which housed debtor's financial and accounting records. An analysis of debtor's records showed that there were approximately 97 different MCA lenders accounting for approximately \$42 million of inflows, and approximately \$75 million in outflows to the various MCA lenders. The loans from the MCA lenders began as early as 2018 and continued into 2024.

4. When questioned about the volume of loans, the debtor blamed it on the COVID pandemic saying that inventory had to be ordered for the new school year and football season. Furthermore, Hirth said if the University of Michigan football team went on to win the Rose Bowl and National Championship, the debt to the MCA lenders would be extinguished due to sale of merchandise related to these two victories. He estimated the revenue for this merchandise would be \$35 million.

5. Upon being selected as Financial Advisor for the UCC, I found his accounting records to be incomplete and confusing. For example, payments were made to various MCAs, and the payments were not recorded in the debtor's books. Additionally, Hirth would receive calls/emails from certain MCA lenders telling the debtor not to make a payment to the MCA that lent the funds, rather to another MCA that the

debtor had no previous relationship with (or the “new” lender would withdraw the funds directly from the debtor’s operating account). When asked if the debtor received revised loan documents regarding this transaction, Hirth’s answer was “No”.

6. The accounting records did not always record these diverted payments.

7. Examination of the debtor’s bank statements showed that there were approximately 1,700 checks to MCA’s that were returned for *Not Sufficient Funds*. When questioned about issuing checks totaling approximately \$33 million dollars when it was known the funds did not exist, the debtor replied, “To buy time”.

8. In the accounting records, the debtor had recorded approximately \$150,000 for purchases made of luxury goods and other retail items. There was an additional entry of approximately \$29,000 dollars for interior design services. Hirth explained that he provided his personal credit card to MCA lenders to make the purchases in lieu of payment(s) on the loan(s). When asked about this unusual practice, Hirth stated that it was because his family was being threatened by MCA lenders. I do not know why he did not report this to the proper authorities but simply acquiesced to the demands of the MCA lender(s).

I declare, under penalty of perjury and pursuant to 28 U.S.C. § 1746,
that the foregoing is true and correct to the best of my knowledge,
information, and belief.

Dated: February 11, 2025

Sheldon L. Stone
Sheldon Stone,

Executed in Birmingham, Michigan

[*Signature Page to Declaration*]

EXHIBIT 6

<p style="text-align: center;">UNITED STATES BANKRUPTCY COURT IN THE EASTERN DISTRICT OF MICHIGAN</p> <p>UNSECURED CREDITORS COMMITTEE,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">Case No. 24-47922</p> <p style="text-align: center;">vs</p> <p>HERITAGE COLLEGIATE APPAREL, INC.,</p> <p style="text-align: center;">Defendant.</p> <hr style="border-top: 1px dashed black;"/> <p style="text-align: center;">EXAMINATION OF HERITAGE COLLEGIATE APPAREL, INC. (SCOTT HIRTH), taken on Thursday, January 9, 2025, at the offices of Schafer & Weiner, PLLC, located at 40950 Woodward Ave., Suite 100, Bloomfield Hills, Michigan 48304, at 9:01 a.m., pursuant to Notice.</p> <p style="text-align: center;">REPORTED BY: NICOLE ARGUDO, CSR-16107</p> <p style="text-align: right;">1</p>	<p style="text-align: center;">A P P E A R A N C E S</p> <p>Appearing for Unsecured Creditors Committee: ANTHONY J. KOCHIS - P72020 WOLFSON BOLTON KOCHIS PLLC 3150 Livernois Road, Suite 275 Troy, Michigan 48083 (248)247-7105 akochis@wolfsonbolton.com</p> <p>Appearing for Heritage Collegiate Apparel, Inc.: HOWARD M. BORIN - P51959 SCHAFFER AND WEINER PLLC 40950 Woodward Avenue Bloomfield Hills, Michigan 48304 (248)540-3340 hborin@schaferandweiner.com</p> <p>Appearing for Scott Hirth: RYAN DEL HEILMAN - P63952 HEILMAN LAW PLLC 40900 Woodward Avenue, Suite 100 Bloomfield Hills, Michigan 48304 (248)835-4745 ryan@heilmanlaw.com</p> <p>VIDEO TECHNICIAN: David B. Schafer</p> <p>ALSO PRESENT: David Rychalsky, Capstone Erik Morandi, Capstone Sheldon Stone, Capstone</p> <p style="text-align: right;">2</p>
<p style="text-align: center;">T A B L E O F C O N T E N T S</p> <p>Witness Page</p> <p>SCOTT HIRTH</p> <p>Examination by MR. KOCHIS.....5</p> <p style="text-align: center;">E X H I B I T S</p> <p>Exhibit 1 - Statement of Financial Affairs.....18</p> <p>Exhibit 2 - Debtor's Amended Schedules.....34</p> <p>Exhibit 3 - Officer Loans Excel Spreadsheet.....42</p> <p>Exhibit 4 - InterCompany Details.....111</p> <p>Exhibit 5 - LiftForward Credit Agreement.....142</p> <p>Exhibit 6 - Debtor's Bank Statement.....155</p> <p>Exhibit 7 - Analysis Spreadsheet.....158</p> <p>Exhibit 8 - Extracted Financial Ledger.....182</p> <p>Exhibit 9 - Notice of Termination193</p> <p>Exhibit 10 - Forbearance Agreement.....205</p> <p style="text-align: right;">3</p>	<p>Thursday, January 9, 2025</p> <p>9:01 a.m.</p> <p>VIDEOGRAPHER: We are on the record. This is the video deposition of Scott Hirth being taken at 40950 Woodward Avenue, Suite 100, Bloomfield Hills, Michigan. Today is Thursday, January the 9th, of the year 2025. The time is 9:02:21 a.m. My name is David B. Schafer, video technician and notary public for Lapeer County. The attorneys, please introduce yourselves for the record.</p> <p>MR. KOCHIS: I'll go first. Good morning. Anthony Kochis on behalf of the Official Committee of Unsecured Creditors.</p> <p>MR. BORIN: Howard Borin on behalf of the debtor.</p> <p>MR. HEILMAN: Ryan Heilman, representing Scott Hirth.</p> <p>VIDEO TECH: Is that it? Sir, would you raise your right hand for us?</p> <p>THE WITNESS: Yes. * * * * *</p> <p style="text-align: center;">S C O T T H I R T H</p> <p>having been duly sworn testified as follows: * * * * *</p> <p>VIDEOGRAPHER: You may proceed.</p> <p style="text-align: right;">4</p>

1 MR. KOCHIS: All right. Good morning. My
 2 name is Anthony Kochis. I represent the committee in
 3 this case. This is the deposition of the debtor,
 4 Heritage Collegiate Apparel, Inc, pursuant to the Third
 5 Amended Rule 2004 Subpoena.
 6 * * * * *

7 EXAMINATION

8 BY MR. KOCHIS:

9 Q. Could you please state and spell your name for the
 10 record?

11 A. My name is Scott Hirth. S-C-O-T-T. H-I-R-T-H.

12 Q. And Mr. Hirth, have you ever been deposed before?

13 A. I have.

14 Q. Okay. So that's good to know. A couple of ground
 15 rules: If you don't understand a question, just ask me
 16 to repeat or clarify it, and if you need to take a
 17 break, just let us know and we can, obviously,
 18 accommodate that.

19 So this is the deposition of the debtor,
 20 which I will refer to alternatively as the debtor or
 21 Heritage Collegiate Apparel, Inc. I just wanted to get
 22 that kind of definition out of the way. Does that make
 23 sense?

24 A. It does.

25 Q. All right. And so what I want you to understand is

5

1 A. David Hirth.

2 Q. All right. And then his partner, what was his name?

3 A. Doug Horning.

4 Q. All right. So Mr. David Hirth and Mr. Doug Horning
 5 bought that -- Did I pronounce it correctly --

6 A. You did.

7 Q. -- first of all? Okay.

8 A. You did.

9 Q. They bought that business in 1970?

10 A. No.

11 Q. No.

12 A. 1976.

13 Q. Oh, 1976.

14 A. Mr. Stein and Mr. Goetz owned it, owned that entity in
 15 1970.

16 Q. Got it. So then your father and Mr. Horning purchased
 17 it in 1976.

18 A. Correct.

19 Q. And what was the business, if you know, in 1976?

20 A. So Mr. Stein and Mr. Goetz ran a sporting goods store,
 21 so you would think of that as a traditional sporting
 22 goods store. Sticks, bats, pucks, balls, shoes, those
 23 kinds of things, that's what that business was, and my
 24 father and his partner bought that business from the two
 25 original owners in 1976.

7

1 you're testifying on behalf of the debtor here today, so
 2 what did you do prepare yourself for your testimony here
 3 today?

4 A. What I did to prepare myself was we produced documents
 5 for this subpoena, and I had one brief conversation with
 6 both the debtor's attorney and my personal attorney the
 7 other day.

8 Q. Okay. Other than conversations with Mr. Borin and
 9 Mr. Heilman, did you speak with anyone else regarding
 10 your deposition today?

11 A. I did not.

12 Q. Okay. What's your educational background, Mr. Hirth?

13 A. I have an undergraduate degree from Michigan State in
 14 economics, and a business MBA from Michigan, 1998 and
 15 1992, respectively.

16 Q. Do you hold any professional certification?

17 A. I do not.

18 Q. Okay. I want to go back in time and focus on Heritage,
 19 so my understanding is that the entity was first formed
 20 in 1970, and it was known as Stein & Goetz -- or
 21 Goats -- Sporting Goods, Inc; is that correct?

22 A. I believe that is correct. That was long before my
 23 time, but that was the business that my father and his
 24 partner bought in 1976.

25 Q. Okay. So your father, what was his name?

6

1 Q. Understood. And when did you become involved with
 2 Heritage?

3 A. Well, I was 11 in 1976 and -- or 10 -- and I went to
 4 work on the first day that my dad owned the place, so I
 5 was very young, but we were introduced to that business
 6 very young, and so as soon as I turned whatever the
 7 legal age to work was, 14, 15, 16, I went to work, you
 8 know, in the sporting goods store at whatever age that
 9 was.

10 Q. All right. Have you been continuously working there
 11 since that time?

12 A. No.

13 Q. Okay.

14 A. No. So that -- I worked -- I worked there through high
 15 school, then went off to college, as I had suggested.
 16 Came back for a couple of years between undergraduate
 17 and graduate school and worked there. By then, it was
 18 called the M-Den, and it was -- I believe the -- the
 19 fundamental legal entity was still that Stein & Goetz
 20 Sporting Goods, but by then, the business was called the
 21 M-Den.

22 Then I went to graduate school and then I
 23 came back and worked for just a brief minute after my
 24 MBA, and that was at the time that we were becoming --
 25 looking at becoming the official retail partner of

8

1 Michigan, and as soon -- almost as soon as that had
2 taken place, I went off and did other things in the
3 corporate world, so I worked for a company called Bell
4 and Howell out of Chicago and various names after that,
5 and then I rejoined what was, by then, M Den Inc. in
6 19 -- I'm Sorry. 2009.

7 Q. All right. Thank you for that.

8 A. Uh-huh.

9 Q. So my understanding is that the debtor changed its name
10 to M Den Inc. in 1992. Do you happen to know whether
11 that's correct?

12 A. I believe that's true.

13 Q. Okay.

14 A. I don't know the exact date, but I know it was doing
15 business as M Den, Inc. -- or I'm sorry -- as the M Den.
16 I think that year was 1984 or 5, something like that,
17 when they changed to M-Den Inc. That 1992 sounds about
18 right.

19 Q. All right. So what I'm gathering from that answer is
20 even before 1992, the debtor was using the name M Den in
21 its business?

22 A. Yes. The first M-Den store was the store in the
23 Briarwood Mall and that was in 1982.

24 Q. Okay. Do you know why the debtor changed its name to
25 M-Den Inc.?

9

1 A. I don't.

2 Q. All right. At a certain point in time, the debtor
3 became official retailer of the University of Michigan,
4 correct?

5 A. That's correct.

6 Q. Do you know when that was?

7 A. 1992.

8 Q. Okay. And then the -- my understanding is that the name
9 stayed M Den, Inc. of the debtor until May 29, 2024; is
10 that correct?

11 A. It certainly did until 2024. The exact date in 2024, I
12 would have to take your word for that, but it was -- I
13 think it was in May.

14 Q. Okay. And why did the name change in 2024?

15 A. I'm not sure I could explain all the legal answers to
16 that, but the University of Michigan said "You got to
17 change your name."

18 Q. Okay. And it was changed to what in 2024?

19 A. Heritage Collegiate Apparel.

20 Q. And how did the debtor come up with that name?

21 A. It was a fairly rushed process, and we came up with
22 something that kind of suggested what we had had been
23 doing, but without the university name in it.

24 Nothing -- and nothing more creative than that.

25 Q. Okay. There are quite a few assumed names for DBAs that

10

1 I found related to the debtor that I wanted to ask
2 about, and I have an exhibit, if that would be easier,
3 or I can just name them.

4 A. I think if you name them, I can probably respond.

5 Q. Okay. The first the one is All About Blue.

6 A. All About Blue was a business that was immediately next
7 door to our flagship store on State Street and we bought
8 that business and put -- Basically, we took over the
9 space, both bought the business and took over the space,
10 as part of the expansion of our flagship store on
11 State Street in Ann Arbor.

12 Q. Okay. Did the debtor do business under that name?

13 A. Never.

14 Q. Okay. It -- it -- Was the name something that the
15 debtor acquired when it acquired that business that
16 was --

17 A. Yes.

18 Q. -- next door?

19 A. I'm pretty sure it was an asset purchase agreement and
20 the name came along with the business, even though our
21 full intent was to just shut it down.

22 Q. All right.

23 MR. BORIN: Scott, let him just finish the
24 question completely. Just --

25 THE WITNESS: Oh, okay.

11

1 MR. BORIN: Just -- You know what he's asking
2 you, but --

3 THE WITNESS: Okay.

4 MR. BORIN: It makes her life much easier.

5 THE WITNESS: Sorry.

6 MR. BORIN: So she can keep the record clean.

7 THE WITNESS: Okay.

8 BY MR. KOCHIS:

9 Q. The next name is Spartan Country. Are you familiar with
10 that name?

11 A. I am. Spartan Country was one of many stores that
12 opened and closed by, what was then, Stein and Goetz
13 Sporting Goods as Mr. Hirth and Mr. Horning were growing
14 that business, so Spartan Country was the Michigan State
15 version of the M-Den.

16 Q. Oh.

17 A. It was -- it was -- That -- that was an actual physical
18 store in the mall in Okemos. I'm spacing the name of
19 it.

20 MR. BORIN: Meridian.

21 THE WITNESS: Meridian Mall in Okemos.

22 BY MR. KOCHIS:

23 Q. Okay. And did that store close?

24 A. It did.

25 Q. When was that, approximately?

12

1 A. I don't know. Before 1990.
 2 Q. Got it. The next name is Stadium Boulevard. Are you
 3 familiar with that name?
 4 A. I am, and that is the exact same story, so Stadium
 5 Boulevard was in Fairlane Mall and it was Mr. Hirth and
 6 Mr. Horning, Stein and Goetz Sporting Goods, their
 7 dipping of their toe in the water of the professional
 8 market, so the store in Fairlane had Lions, Tigers
 9 Pistons, Red Wings product, and Michigan, and Michigan
 10 State stuff. It was a very brief forwarding, so opened
 11 the store in the mall, ultimately closed the store a
 12 couple of years later.
 13 Q. This next one is the Den at the Stadium. Are you
 14 familiar with that name?
 15 A. I am.
 16 Q. What is that?
 17 A. The Den at the Stadium is -- Okay. So how do we -- how
 18 do we do this quickly? So for one year between 1992 and
 19 2004, so between 1992 when we first became Michigan's
 20 partner, and 2004, when we no longer were Michigan's
 21 partner, there was one year when we were also not
 22 Michigan's partner. They chose someone else to be the
 23 retail partner for the internet and for the stores in
 24 the stadium, and that was the year 2009 when they hired
 25 a different company to be their partner so that we could

13

1 continue doing business near the stadium without the M
 2 in our name.
 3 At their request, we formed another doing
 4 business as, so the Den at the Stadium is what was
 5 created, so the tent that is on the corner of Stadium
 6 and Main Street operated as the Den for one year.
 7 Q. And what was the reason that the University chose a
 8 different partner in 2009?
 9 A. For the first time ever since 1992 they went out for
 10 open bid, RFP process, and somebody offered them some
 11 exorbitant sum of money and they took that partner.
 12 Q. Do you know who it was?
 13 A. It was a company called East Sports Partners.
 14 Q. And then did that relationship between that entity and
 15 the University -- It only lasted one year?
 16 A. Correct. East Sports Partners went bankrupt within the
 17 first 12 months.
 18 Q. And then -- So from a timing perspective then in 2010,
 19 the University came back to the debtor as its official
 20 partner?
 21 A. That's correct.
 22 Q. Next one on the list is The Rivalry. Are you familiar
 23 with that name?
 24 A. I am.
 25 Q. All right. What is that name?

14

1 A. The Rivalry was the store in the mall in Livonia, which
 2 is called -- What is the mall in Livonia called? Laurel
 3 Park Place, and in that store we carried Michigan and
 4 Michigan State product and that's why they called it The
 5 Rivalry. It was purely a DBA, though. Not -- It was
 6 not a corporation.
 7 Q. Okay. Did the debtor do business under the name The
 8 Victors?
 9 A. Never The Victors. The Victors Collection by the M-Den
 10 is a name of the store that went into the space that was
 11 All About Blue, which ultimately got joined with our
 12 flagship store when we were allowed to put a hole in the
 13 wall. So before all this happened, if you went to the
 14 State Street store and you went to the main entrance to
 15 the M-Den under that big awning that had "The M-Den" on
 16 it, the Victors Collection by The M-Den was the next set
 17 of doors to the right if you were facing it, so we did
 18 do business as The Victors Collection by The M-Den.
 19 Nothing about The Victors. It was The Victors
 20 Collection by The M-Den.
 21 Q. Okay. Were there any other names that the debtor did
 22 business under?
 23 A. Stadium Boulevard. I don't believe so.
 24 Q. Okay. The State of Michigan Department of Licensing and
 25 Regulatory Affairs filing identifies the president,

15

1 treasurer, secretary, and director as you; is that
 2 accurate?
 3 A. I believe it is all those things that I am for that
 4 entity, yes.
 5 Q. And we're talking about the debtor.
 6 A. What was M-Den, Inc. and is now Heritage - Collegiate
 7 Apparel, Heritage Collegiate Apparel, Inc., yes.
 8 Q. Are there any other officers of the debtor?
 9 A. Did you say secretary, by the way?
 10 Q. It does say that, yes.
 11 A. Okay. I am not the secretary --
 12 Q. Okay.
 13 A. -- of that entity. My partner, Steve Horning, is the
 14 secretary of that entity and the vice president. I'm
 15 not sure if vice president is an official position with
 16 the State in a corporation like that, but he is the
 17 secretary, but I am the president and the treasurer.
 18 Q. All right. So president and treasurer of the debtor is
 19 yourself?
 20 A. Yep.
 21 Q. The secretary and vice president is Mr. Horning.
 22 A. That's correct.
 23 Q. Are there any other officers of the debtor?
 24 A. My sister and other partner, Julie Corrin, is also a
 25 vice president of that entity.

16

1 Q. All right. So Ms. Corrin is a vice president. Any
 2 other officers?
 3 A. No.
 4 Q. The filing with the Department of Licensing and
 5 Regulatory Affairs identifies you as a director of the
 6 debtor. Is that accurate?
 7 A. I don't know.
 8 Q. Okay.
 9 A. I don't know the answer to that.
 10 Q. To the best of your knowledge, are there directors of
 11 the debtor?
 12 A. I think there are directors, and that Steve, Julie, and
 13 I are directors of that entity.
 14 Q. Is there bylaws of the debtor?
 15 A. Not that I've ever laid my hands on. I've never seen
 16 them.
 17 Q. Okay. Let's talk about the shareholders of the debtor,
 18 so this is my understanding from what has been filed
 19 with the bankruptcy court, and I'll go one by one, that
 20 you are a 25.03 percent shareholder; is that correct?
 21 A. Yes.
 22 Q. That Ms. Corrin is a 25.03 percent shareholder; is that
 23 correct?
 24 A. Yes.
 25 Q. That Mr. Steve Horning is a 25.03 percent shareholder;

17

1 you see that?
 2 A. Yes.
 3 Q. Did the debtor make payments to SSJ Return Holdings,
 4 Inc.?
 5 A. No.
 6 Q. All right. So the debtor did make distributions to
 7 yourself, Ms. Corrin, and Mr. Steve Horning. Correct?
 8 A. That's correct.
 9 Q. Why did the debtor not make distributions to SSJ Return
 10 Holdings, Inc.?
 11 A. It was not -- it was never even really a functional
 12 entity, and this was all about -- Those distributions
 13 were for taxes.
 14 Q. Well --
 15 A. For the taxes of M-Den Inc.
 16 Q. Yeah, but in fairness, when you say it was not a
 17 functional entity, I mean, it was a 24.91 percent
 18 shareholder of the debtor. Correct?
 19 A. Correct.
 20 Q. Okay. So there were no distributions to SSJ Return
 21 Holdings in the one year prior to the bankruptcy. Have
 22 there ever been distributions to SSJ Return Holdings,
 23 Inc.?
 24 A. The only distributions that would have been to SSJ
 25 Holdings would have also been turned around and then

19

1 is that correct?
 2 A. Yes.
 3 Q. And then SSJ Return Holdings, Inc. is a 24.91 percent
 4 shareholder; is that correct?
 5 A. Yes.
 6 Q. Let's talk about SSJ Return Holdings, Inc. Who are the
 7 shareholders of that entity?
 8 A. Steve, Julie, and I, each 33 and a third percent.
 9 Q. Okay. So I'm going to hand you what I'm going to mark
 10 as Exhibit Number 1, and for the record, Mr. Hirth, this
 11 is the debtor's Statement of Financial Affairs. It is
 12 part of Docket Number 72, so question for on this
 13 Statement of Financial Affairs, the answer to question
 14 four says "See attached schedule 4," and then you go to
 15 attached schedule 4 and it identifies amounts paid to
 16 insiders in the year prior to the petition date. Do you
 17 see that?
 18 A. Sorry. Oh, there. Yes.
 19 (Exhibit 1 marked for identification)
 20 BY MR. KOCHIS:
 21 Q. So it's on -- If you're looking at the stamp on the
 22 bottom, it's on page 67 and 68.
 23 A. I see that.
 24 Q. Okay. So this does not reflect that there were any
 25 payments by the debtor to SSJ Return Holdings, Inc. Do

18

1 sent to whatever entity was owed money as a result of
 2 that. There was never any money that went to SSJ Return
 3 Holdings that went to Steve, Scott, or Julie.
 4 Q. Okay. But let -- let's -- let's talk about this,
 5 though, so in the one year prior to the bankruptcy
 6 filing, no monies went to SSJ Return Holdings, Inc.
 7 Correct?
 8 A. That's correct.
 9 Q. Is there a time that you are familiar with that the
 10 debtor did transfer money to SSJ Return Holdings?
 11 A. Yes.
 12 Q. When was that?
 13 A. That -- Let me see the date. The -- That was part of
 14 some financing that was done around the time of COVID,
 15 so that would have been in 2020, I believe, where this
 16 was part of some financing done related to credit card
 17 processing, and so the money would have -- would have
 18 gone from M-Den, Inc. to SSJ Return Holdings to that
 19 credit card processor, so there was a -- There was a
 20 period of time where that financing was active, where
 21 that's how the money went.
 22 Q. All right. So let's -- let's break that down.
 23 A. Yeah.
 24 Q. So the debtor was doing financing related to credit card
 25 processing?

20

1 A. The credit card processing, yes.
 2 Q. And so what exactly does that mean? The debtor was
 3 trying to reduce its credit card processing fees?
 4 A. It was some debt that was paid off as part of the credit
 5 card. It actually resulted in higher -- It was -- It
 6 increased credit card processing fees. It led to a
 7 higher, essentially, a higher credit card processing
 8 fee. That was how the debt was repaid. It was -- it
 9 was an attempt to -- to -- to find some creative
 10 financing and that's what took place there, and it was
 11 tied to the -- to the significant credit card volume
 12 that M-Den, Inc. did.
 13 Q. All right. So did the debtor enter into a loan
 14 relationship at that time with another entity?
 15 A. SSJ Return Holdings entered into a debtor relationship.
 16 Q. All right. SSJ Return Holdings entered into a
 17 relationship with who?
 18 A. With a company called Phoenix.
 19 Q. All right. And then what was the -- what was the nature
 20 of the relationship between SSJ Return Holdings and
 21 Phoenix?
 22 A. I believe that was a lender and a debtor relationship
 23 and -- and a credit card processor.
 24 Q. All right. So Phoenix gave money to SSJ Return
 25 Holdings?

21

1 Q. All right. And do you know the amount of money we're
 2 talking about?
 3 A. I think over -- over a couple of years there until that
 4 was paid off. It was probably \$2,000,000. Something
 5 like that.
 6 Q. All right. So going back to Exhibit 1 for a moment, so
 7 I -- I just want to walk through this, because some of
 8 this is just familiarization, frankly, for me.
 9 A. Yeah. Okay.
 10 Q. So there are some names on this exhibit and I want to
 11 understand who they are, so the first one is Hunter
 12 Hirth.
 13 A. That's my daughter.
 14 Q. Okay.
 15 A. And the manager of marketing for M-Den, Inc.
 16 Q. Is Hunter?
 17 A. Yeah.
 18 Q. Okay.
 19 A. So she had a role in the company and that's her role,
 20 and so she happens to be my daughter, and she was the
 21 marketing manager for the company.
 22 Q. Okay. Who is Brett Horning?
 23 A. That is Steve Horning's son and worked summers and
 24 holidays for the company in the warehouse, primarily.
 25 Q. All right. Who is Don Horning?

23

1 A. I don't know that Phoenix gave any money to SSJ
 2 Holdings. I think they paid off some other
 3 high-interest debt, MCA-type debt, and they were, then,
 4 in turn, paid off through the credit card processing
 5 arrangement.
 6 Q. Okay.
 7 A. So instead of being a two-percent fee on credit card
 8 processing, it was a four-percent fee --
 9 Q. All right. But --
 10 A. -- as an example.
 11 Q. -- but my understanding is is that the entity that would
 12 owe a credit card processing fee --
 13 A. Right.
 14 Q. -- that would be the debtor, correct?
 15 A. Correct.
 16 Q. All right. So why was SSJ Return Holdings paying the
 17 credit card processing fees that the debtor would owe?
 18 A. I think that's an excellent question that I'm not sure I
 19 could even answer myself, except to say that that's how
 20 that lender wanted it to happen. They wanted a separate
 21 entity in the middle.
 22 Q. All right. So -- so did the debtor transfer money to
 23 SSJ Return Holdings, then SSJ Return Holdings, then, in
 24 turn, sent to Phoenix?
 25 A. That's exactly what I was saying. Yes, exactly that.

22

1 A. Steve Horning's father, the brother of Doug Horning, who
 2 was -- Well, the founder of -- of -- The guy that bought
 3 the sporting goods store way back in 1976, and worked
 4 occasionally. He was a retiree. He worked occasionally
 5 in the warehouse shipping orders, things like that.
 6 Q. All right. Who is Drew Horning?
 7 A. Drew Horning is Steve Horning's nephew, Don Horning's
 8 grandson. He worked in the warehouse. Looks like very
 9 little in the past year, but he worked in the warehouse
 10 shipping orders, also.
 11 Q. All right. Who is Robin Horning?
 12 A. Robin Horning is Steve Horning's cousin. Doug Horning,
 13 again, the founder, my father's partner, his daughter,
 14 she ran the shipping line for the warehouse, and
 15 that's -- so that's the familial relationship and that's
 16 the role that she had in the company.
 17 Q. Understood. Are there any other individuals not listed
 18 on here that are insiders of the debtor that received
 19 payments within the one year of the bankruptcy filing?
 20 A. No.
 21 Q. So let's talk about the escort tax distribution versus
 22 the gross wages, so if I'm looking at the line items for
 23 yourself, Ms. Corrin, and Mr. Horning, the gross ranges
 24 are 190 -- call it 196 with some change. Do you see
 25 that?

24

1 A. I do. I see a little bit of difference between --
 2 Q. Between --
 3 A. Steve and I.
 4 Q. Yes.
 5 A. Actually, I think this schedule is actually wrong. I
 6 think Julie's number is in place of Steve's and Steve's
 7 number is in place of Julie's now that I look at it.
 8 Q. Well, that's -- That was what I was going to ask, so --
 9 A. I can explain that.
 10 Q. Well --
 11 A. Okay. You ask.
 12 Q. We'll walk through it.
 13 A. Okay.
 14 Q. So the gross wages to you in the one year prior to the
 15 petition date was \$196,000 and some change. Correct?
 16 A. Actually, the gross wages cash compensation to me,
 17 Julie, and Steve was all \$166,153. Julie and I, because
 18 we had health insurance through the company, and Steve
 19 did not, Steve has his health insurance as part of his
 20 wife's insurance plan, we had \$30,000 of imputed health
 21 insurance costs in that number. That's why the two of
 22 us are different than the one of us.
 23 That's not actual cash compensation. That
 24 is the premium for the health care for Julie and I, as
 25 employees of the company, that because of the S corp,

25

1 Q. So remind me. You took the business over in -- Are we
 2 talking -- When was that? What year?
 3 A. Steve, Julie, and I bought the business from Dave and
 4 Doug in 2013.
 5 Q. All right. So in 2013, you believe Mr. David Hirth and
 6 Mr. Doug Horning were paying themselves approximately
 7 166,000 in salary?
 8 A. I think in 2013 they were probably paying themselves
 9 about \$150,000 a year, something like that, and that
 10 translated to Steve, Julie, and I. And then, you know,
 11 raises between 2013 and 2024 led to 166.
 12 Q. Okay. How were the raises determined between 2013 and
 13 2024?
 14 A. They were infrequent and depended on just how big the
 15 business had gotten and what was going on. There was no
 16 formal process.
 17 Q. But who would make those decisions on behalf of the
 18 debtor?
 19 A. Steve, Julie, and I.
 20 Q. All right. Let's go to the line item for Julie. Now, I
 21 think what we have, perhaps, surmised is that the 166 in
 22 the gross wages column for Julie, perhaps, should be 196
 23 because it should include the 30,000 for taxes?
 24 A. The number for Steve should be on Julie's line.
 25 Q. Right.

27

1 and I'm not a tax guy, so I won't be able to answer this
 2 correctly, but apparently that's how you have to state
 3 that. That needed to go on our W-2s because we're
 4 owners.
 5 Q. Okay. So 30,000 -- and I'm just sticking with you for
 6 the minute.
 7 A. Yep.
 8 Q. So 30,000 of the 196 relates to health insurance?
 9 A. That's correct.
 10 Q. So then 196 minus 30, 166. That would have been the
 11 cash compensation?
 12 A. To Steve, Julie, and I.
 13 Q. No. I'm just sticking with you.
 14 A. Oh, I'm sorry. Yes. For me, yes.
 15 Q. Okay. So is that in the form of a salary?
 16 A. It is.
 17 Q. All right. Is there a written agreement between you and
 18 the debtor?
 19 A. No.
 20 Q. Okay. How was that salary amount determined?
 21 A. I don't know. I think that's approximately the salary
 22 that Mr. Hirth and Mr. Horning were paying themselves
 23 when they sold the business to us, the next generation,
 24 and so that's approximately what the owner's salary was
 25 at when we took the business over.

26

1 A. And the number for Julie, the 166, should be down on
 2 Steve's line.
 3 Q. Got it. Okay. So those two should be flip-flopped?
 4 A. Yep.
 5 Q. Okay. Let's discuss the -- the different roles with
 6 respect to the debtor, so what were you primarily
 7 responsible for with respect to the debtor's operations?
 8 A. I was, as the president of the company, I was
 9 responsible for all the admin functions. Marketing
 10 reported to me. I guess, everybody ultimately reported
 11 to me, but marketing, finance, business development, and
 12 the biggest chunk of my time was I was actually the
 13 buyer. I was the -- I was the -- the head of the buying
 14 team and the financial part of the buying process.
 15 Q. Okay.
 16 A. I'm dealing with external folks, like lawyers and
 17 accountants, all of that kind -- I was the primary
 18 person with University of Michigan. That -- that kind
 19 of stuff. I had had previous business experience, where
 20 my two partners had only ever worked in the M-Den, so
 21 that's why I was the president, and that's what, kind
 22 of, my job was.
 23 Q. All right. What was Ms. Corrin's job responsibilities
 24 with respect to the debtor?
 25 A. She was -- The way that I would describe it is she was

28

1 in charge of retail operations, so all of the stores,
2 the store managers, the store staffs reported up through
3 her, so making the stores run on a daily basis, that was
4 her job. Getting the football stadium stores ready each
5 year for any new football season was her job. Being
6 onsite for any big Michigan athletic event, meaning
7 football games and basketball games, that was her job.
8 She was -- she was the manager of managers for the
9 actual hard-core retail operation.
10 Q. All right. And what was the Mr. Steve Horning's job
11 responsibilities with respect to the debtor?
12 A. He, Steve, was in charge of distribution, both inbound
13 and outbound, so receiving a product, distribution of
14 product to the stores and to customers, and he was in
15 charge of technology, getting internet to the various
16 stores, getting internet to the stadium, the interface
17 with the outside. We didn't really have techies in
18 house until very late in the game, but interfacing with
19 the third party technologists that we would have done
20 the POS system or the website or other things like that,
21 so technology, distribution, warehousing, those kind of
22 things.
23 Q. Got it. All right. So sticking with Exhibit 1, there's
24 also a column that relates to S corp tax distribution.
25 Do you see that?

29

1 A. -- prior to January 10th.
2 Q. So that would have been based on the 2023 tax liability
3 of the debtor?
4 A. Projected tax liability, yes. That's correct.
5 Q. All right. Did there end up being tax liability of the
6 debtor for 2023?
7 A. That is not filed yet, and given what's transpired
8 between -- there will end up not being a tax liability
9 for that year. I think that's how that's going to look.
10 Q. What's the status of the 2023 tax returns?
11 A. I sure hope it's any day. The accountants, it's been an
12 interesting period of time, obviously, and it's just
13 taking the accountants a little longer than we had
14 expected to get that done.
15 Q. And remind me the name of the accountant for the debtor.
16 A. Rehmann, I think, they're called Rehmann now. It used
17 to be Rehmann Robson. Now it's Rehmann, R-E-H-M-A-N-N.
18 Q. Does the debtor own any intellectual property?
19 A. Does the debtor own any intellectual property? I don't
20 think so. I think we -- I suppose that there is
21 software for the website that we actually own, even
22 though it runs on servers that are not ours. I think
23 that would be intellectual property. Our POS system
24 is -- is leased, so that is not -- That -- It's NetSuite
25 by Oracle.

31

1 A. Yes.
2 Q. And it appears that in the one year prior to the
3 petition date there was an S corp tax distribution of
4 218,000 to yourself, Mr. Corrin, and Mr. Steve Horning;
5 is that correct?
6 A. Yes.
7 Q. Why was that S corp tax distribution made?
8 A. That was -- So as an S corporation, the taxes -- the tax
9 burden of the entity is passed through to the
10 principals, and that's how the taxes were paid, so that
11 distribution there was made in January of 2024 so that
12 it could be paid to the State and the Federal Government
13 based on an estimate of the profitability of M-Den, Inc.
14 for 2024. The tax return, obviously, wouldn't have been
15 done yet, but that was an estimate of the profitability
16 of the entity at the time.
17 Q. Okay.
18 A. So that -- so that -- I'm just saying, so that money
19 went, for example, in my case, 218,000 went to me. I
20 turned that right around and wrote a check to the State
21 for probably a quarter of that and to the Federal
22 Government for the remainder, so none of that money
23 actually ended with me. That went from me to the State
24 and to the Federal Government --
25 Q. Okay. And so that --

30

1 We pay a monthly fee, so we don't own
2 that. I'm not sure that I know the full definition of
3 intellectual property, but I don't believe that we have
4 any intellectual property other than, potentially, the
5 software that was written for our website.
6 Q. So -- Yeah. I just wanted to close the loop on that, so
7 trademarks, for example, does the debtor own any
8 trademarks?
9 A. I don't think so. I don't think we own any trademarks.
10 I don't think there's anything that we've ever done that
11 was ever trademarked.
12 Q. All right. What about patents? Any patents?
13 A. For sure no patents.
14 Q. All right. There are a couple of other names of
15 individuals that I wanted to get straight. All right.
16 And these came up in relation to the schedules. Let me
17 just run through some of these other names that came up.
18 A. Okay.
19 Q. So Barbara Hirth, who is that?
20 A. Barbara Hirth is my mother, and she is the wife of my
21 father, and was one of the owners of the -- So that's
22 both familial and business, so she was one of the owners
23 of the Stein and Goetz Sporting Goods, which turned into
24 M-Den, Inc., so she's my mother, and she was my father's
25 wife, and as such one of the former owners of the M-Den

32

1 that we bought from in 2014.
 2 Q. So Barbara had an ownership interest that was acquired
 3 in 2013?
 4 A. That's correct.
 5 Q. All right. Who is David Corning?
 6 A. David Corrin?
 7 Q. Corrin, yes. Sorry.
 8 A. Julie's husband.
 9 Q. All right. Did he have any role with the business?
 10 A. No.
 11 Q. Elizabeth Horning?
 12 A. Steve's wife.
 13 Q. Did she have any role with the business?
 14 A. No.
 15 Q. Renee Whitt, W-H-I-T-T?
 16 A. My wife.
 17 Q. Okay.
 18 A. And no role with the business.
 19 Q. All right. I'm going to hand you what I'm going to mark
 20 as Exhibit Number 2, and then for the record, Exhibit
 21 Number 2 is debtor's amended schedules. It's Docket
 22 Number 151. I had a couple questions about this and
 23 then we may return to it later, so the first one,
 24 Mr. Hirth, it's -- and I'm looking at the bottom. The
 25 page number, it's on page 34 of 47.

33

1 A. Okay.
 2 (Exhibit 2 marked for identification)
 3 BY MR. KOCHIS:
 4 Q. All right. And it is claim number 3.65, Julie Corrin,
 5 and it lists -- The schedules list a claim amount
 6 associated with her for \$972,727. Do you see that?
 7 A. I do.
 8 Q. And then basis for claim is "Loans." Do you know what
 9 loans Ms. Corrin made to the debtor?
 10 A. Yes.
 11 Q. Okay. What are those loans?
 12 A. So as part of that S corp tax situation, the taxes, as
 13 we discussed a few minutes ago, passed from the entity
 14 to each of us owners, Ms. Corrin being one of them, and
 15 that was money was, dollar for dollar, sent to the State
 16 or the Feds based on an estimated tax burden.
 17 If, when taxes were financially calculated
 18 based on final year-end results and all the other things
 19 that go into a final tax return, if any money was
 20 refunded to Ms. Corrin, Mr. Hirth, me, Mr. Horning, that
 21 money was repatriated to the company as a loan from
 22 Ms. Corrin to the entity, so that is the accumulation of
 23 money loaned back from Ms. Corrin from the distribution
 24 that would have been a part of -- as part of that tax
 25 process, and there might have been a little -- there

34

1 might have been a little money in there that she would
 2 personally have loaned us, loaned the company, during
 3 the COVID times or during the distressed period later
 4 than that, but that's the predominant amount of that
 5 money there, 972,727, would have been tax refunds that
 6 were loaned back, and tax refunds to Julie that were
 7 loaned back to the company.
 8 Q. All right. So the date debt was incurred, it says it's
 9 2013 to 2023. Do you see that?
 10 A. Yes.
 11 Q. So was that the time period that this practice was
 12 followed?
 13 A. Yes. I don't believe she would have had made a loan
 14 every year, but 2013, being the year that we bought the
 15 company, and 2023, being the last year that anything
 16 like that could have happened.
 17 Q. Okay. So let me understand this, so there would have
 18 possibly been a refund from the IRS or, I suppose, there
 19 could be a refund from the State of Michigan to
 20 Ms. Corrin; is that correct?
 21 A. Correct.
 22 Q. And then Ms. Corrin would -- Every single time she
 23 received one of those refunds, transferred it to the
 24 debtor or did it only happen on occasion?
 25 A. I wouldn't say that it happened every single time, but

35

1 every one of substance was sent back to the debtor this
 2 way.
 3 Q. What does "of substance" mean?
 4 A. If there was a State tax refund of \$1,000, she very well
 5 might have kept that, but if it was a significant one,
 6 like, that would have generated from -- Was it
 7 the -- Was it the ERTC? Is that Employee Retention Tax
 8 Credit that came up from COVID, as an example. I
 9 believe it's called the ERTC, which generated a
 10 significant tax refund to people that kept employees
 11 around during COVID. Well, since we are an S corp, that
 12 refund for M-Den Inc. would have gone, some to Scott,
 13 some to Steve, and some to Julie. That would have been
 14 a non -- that would have been a substantial material
 15 amount and that was sent back to the company this way.
 16 Q. All right. But -- but let's talk at a high level.
 17 A. Yeah.
 18 Q. So during the period 2013 to 2023, did the debtor make a
 19 tax distribution to Ms. Corrin so that Ms. Corrin could
 20 pay her estimated taxes?
 21 A. Yes.
 22 Q. So to the extent that there was, then, a refund
 23 associated with that, I'm just trying to understand,
 24 would the refund have been greater or less than the tax
 25 distribution amount that had been received by Ms. Corrin

36

1 from the debtor?
 2 A. I would -- I -- I -- I don't know the exact amounts, but
 3 I would think, based on my experience with my own
 4 situation, it would have been slightly less. The
 5 distribution would have been greater than what was sent
 6 back.
 7 Q. Got it. How was these numbers tracked and maintained on
 8 behalf of the debtor?
 9 A. When the tax return would come back to the three of us
 10 owners, we would write a check and sent that money back
 11 to the company, so in this case, Julie Corrin check,
 12 personal funds, which is where the tax refund would have
 13 landed, to M-Den, Inc., and then that was tracked as
 14 such on the books, on the company books, and --
 15 Q. How would it be identified in the company books?
 16 A. I believe there is a payable line or a loan line for
 17 each of us owners that was tracked, so that entry would
 18 have been debit, cash, credit, liability to Scott -- to
 19 Julie in this case, Scott or Steve.
 20 Q. Okay.
 21 A. Debit, cash to the company, credit, liability to Julie,
 22 Steve, and Scott.
 23 Q. All right. So we have the check being written by
 24 Ms. Corrin back to the debtor, and we have a -- an entry
 25 in the debtor's books and records. Are there any other

37

1 A. That's a small piece. But that is, but that is still --
 2 that -- that -- that is what -- the bulk of that number
 3 would be, those tax re -- returns and refunds, as I
 4 suggested. There would be other smaller pieces, as
 5 well.
 6 Q. Understood.
 7 A. Yeah.
 8 Q. And so I want to talk about the smaller pieces.
 9 A. Yep.
 10 Q. So what documents evidents the loans related to the
 11 smaller pieces?
 12 A. I don't think there are any documents. There is --
 13 there would be a check that went from Julie, in this
 14 case, to the company, and then there would be a
 15 recording of that amount on the -- on the company's
 16 financials.
 17 Q. And how would it be recorded on the company's
 18 financials?
 19 A. Same way as the tax returns, so it would be debit, cash,
 20 credit, payable to Julie Corrin.
 21 Q. Okay. Okay. Let's go to page 41 of 47 of this exhibit,
 22 please.
 23 A. Okay.
 24 Q. And it's creditor number 3.116. That appears to be
 25 yourself. Do you see that?

39

1 documents that substantiate this loan amount?
 2 A. We -- we certainly did not do a loan document for each
 3 time that that tax -- that that tax refund was sent back
 4 to the company. The only thing that I could think about
 5 where it might be documented is that the Bank of Ann
 6 Arbor knew of this practice and asked that these loans
 7 be subordinated to any loan that was involved with the
 8 Bank of Ann Arbor, so I believe there is language in
 9 Bank of Ann Arbor loan documents that talk about these
 10 loans and -- and this mechanism for how we got the money
 11 back to the company.
 12 Q. All right. Another, I think, portion of -- of this
 13 972,727 you mentioned might be a loan during the COVID
 14 period. What does that mean?
 15 A. I think that to make payroll, as -- as COVID was
 16 happening and the stores were shutting down, to make
 17 payroll, I think each of us had to loan the company, I
 18 don't know, \$10,000 or something like that, to make --
 19 to make payroll around all that crazy time there and
 20 that might not have been the only instance. There are
 21 probably other instances, but it would have been small
 22 things like that where Julie, Steve, and I would have
 23 had to put personal funds in the company because of the
 24 craziness of the business shutting down during COVID.
 25 Q. All right. So this, it seems like --

38

1 A. I do.
 2 Q. All right. And so the schedules reflect a claim amount
 3 of \$1,617,470 to you. Date that was incurred, 2013 to
 4 2023, and the basis for claims is loans. Do you know
 5 what this claim amount relates to?
 6 A. It relates to exactly the same thing that we just
 7 discussed with Ms. Corrin.
 8 Q. All right. So then it would then be comprised of two
 9 things, then. Just for the record, so the first part
 10 would be you would receive a tax refund, either from the
 11 IRS or the State of Michigan, and you would remit that
 12 back to the debtor if it was of substance. Right?
 13 A. That's correct.
 14 Q. All right. And then the second part, I think you
 15 described it as more one-off times where you might have
 16 to loan the company money from your personal funds.
 17 A. That's correct.
 18 Q. Okay. This would be tracked in the same way that we
 19 described with respect to Ms. Corrin?
 20 A. That's correct.
 21 Q. Okay. Do you know -- Just for example, why your number
 22 is different than Ms. Corrin's number?
 23 A. Because there -- I would have -- I would have been the
 24 first line of defense, shall we say, if there was
 25 trouble, so there is more of my personal funds not

40

1 generated by the company in the company that had to be
 2 put back into the company to make payroll.
 3 Q. All right. Why were you the first line of defense?
 4 A. Because I was the guy that had to pay the bills. I was
 5 the -- I was the guy in charge. I was the guy that knew
 6 accounting. I was the first line of defense.
 7 Q. All right. So what I'm gathering from that, then, is
 8 with respect to the second part, which is times when
 9 personal funds had to be put into the company, your
 10 proportion of personal funds being put in the company
 11 were larger, as compared to Ms. Corrin's, for example?
 12 A. That's correct.
 13 Q. All right. Okay. Let's flip the page, page 42 of 47.
 14 There is a creditor, 3.125.
 15 A. Yes.
 16 Q. Steven Donald Horning, that claim amount is \$1,006,432,
 17 the date, 2013 to 2023. Basis for the claim: Loans.
 18 Do you know what that claim amount relates to?
 19 A. That is exactly the same thing as we just discussed with
 20 Julie and with I -- with me.
 21 Q. All right.
 22 A. So the exact same thing.
 23 Q. All right. And it would have been recorded in the
 24 debtor's books and records the same way?
 25 A. Yes. Debit, cash, credit, payable to Steven,

41

1 Julie, and the million and six for me.
 2 Q. So is this data -- is this data that was taken from the
 3 debtor's books and records or was this a separately
 4 maintained spreadsheet?
 5 A. It was a separately maintained spreadsheet maintained by
 6 our bookkeeper, but it drew from the data that was in
 7 the general ledger.
 8 Q. Okay. Who was the bookkeeper?
 9 A. Our bookkeeper was Deanna Holbrook.
 10 Q. All right. And Deanna maintained this spreadsheet over
 11 what period, do you know?
 12 A. I don't know whether she maintained this spreadsheet or
 13 whether she generated this in response to the request to
 14 fill out the schedule, but I do believe that this was a
 15 document she kept all along, so that it was right at the
 16 finger tips, rather than any of us non-bookkeepers that
 17 would -- if we needed to know what the company owed back
 18 to us, we could look at this document, rather than have
 19 to dig it out of the general ledger, so I don't think
 20 this is printed here because it was in response to
 21 making these schedules, but I do think that it was
 22 maintained regularly, as well.
 23 Q. Okay. So let's maybe walk through a couple of these so
 24 maybe we can understand, so the first one, and I do
 25 apologize about the size, but that's how it came to me.

43

1 Steve Horning.
 2 Q. All right. All right. I'm going to hand you what we're
 3 going to mark as Exhibit Number 3, and then, just for
 4 the record, and for your own benefit, because I realize
 5 there's no Bates stamp or anything on this, there were
 6 number of documents that were produced in connection
 7 with this Rule 2024 Examination. This is one of them.
 8 The Excel file, Mr. Hirth, was called "Owner Loans
 9 Details" and it was in the folder called "Q8."
 10 A. Yes.
 11 (Exhibit 3 marked for identification)
 12 BY MR. KOCHIS:
 13 Q. Are you familiar with this document?
 14 A. Yes.
 15 Q. All right. What does this document show?
 16 A. I believe this document shows all the ins and outs of
 17 that liability account that we just talked about for
 18 each of us related to the various loans.
 19 Q. So --
 20 A. That's -- this is the detail of those balances.
 21 Q. Yeah. I know. I understand. And you're talking about
 22 the -- what we were just looking at in Exhibit 2?
 23 A. In Exhibit 2.
 24 Q. Right.
 25 A. So the million dollars for Steve, the \$970,000 for

42

1 A. Probably started with me.
 2 Q. So the first line item is February 1, 2017, under the
 3 document number it says "Loan-SDH."
 4 A. Yeah.
 5 Q. And then under Scott it has 150,000, and then in the
 6 memo it has "Deposit - Loan from SDH." Do you know what
 7 that relates to?
 8 A. Yeah. That would be \$150,000 of money from me,
 9 personally, to the company for something at that time.
 10 Q. Okay. You're not sure what it is?
 11 A. I have a feeling that at that time of the year, it would
 12 have been a slow time of the year. It was also 2017,
 13 and our bank -- the business was growing a lot and the
 14 bank had not expanded our line of credit, and making
 15 ends meet, I guess, is how I would describe that in that
 16 particular one. I don't think that was a tax return. I
 17 think that was a, out of necessity, "Hey, we need a
 18 little bit of funds in the company."
 19 Q. Got it. So the next one, just -- I'm sorry.
 20 February 21, 2017, under the name, it says "RTC." Under
 21 the Scott column it has 34,352.55. The memo, "Used SDH
 22 CC." Do you know what that relates to?
 23 A. So we used my company credit card -- I'm sorry -- my
 24 personal credit card to pay a bill, is what that looks
 25 like to me, and I don't remember what RTC is, but I

44

1 think RTC is -- was a vendor of some sort.
 2 Q. Okay. Now, this next line item, now this is maybe how I
 3 want to begin to understand it. The next line item is
 4 negative, so it has name, "American Express." It has a
 5 negative amount of \$4,582.72, and then the memo says
 6 "Scotts Amex bill," and then in parentheses it says
 7 "personal."
 8 A. Right.
 9 Q. Do you know what that relates to?
 10 A. I don't. I don't remember exactly, but that, somehow,
 11 that is a repayment of the -- some of the 150 and the
 12 34, and reducing, essentially, what the company owed me.
 13 Q. Well -- All right. Let me make sure I understand it, so
 14 when you say repayment, the debtor transferred to you
 15 the 4,582?
 16 A. Whether the debtor paid my American Express bill or the
 17 debtor repaid me 40 -- \$4,582.72 so that I could pay my
 18 American Express bill, one of the two things happened.
 19 Q. Okay. Is there corresponding documents that relate to
 20 this entry?
 21 A. I don't know. There would be -- Those are, clearly,
 22 checks that got written.
 23 Q. Well, why do you say that?
 24 A. Well, there's a check that got written from me to the
 25 company of \$150,000. There's a --

45

1 I don't know the answer to that. It's one of those two.
 2 Q. Okay. Got it. And then I think I do see on here -- We
 3 have to go a few down, but if you go down to July 11,
 4 2018, there's 150,000, and then it says, "SDH Deposit,"
 5 and then in paren, "tax refund," so that would be an
 6 example of the tax refund going back to the company that
 7 you described earlier?
 8 A. Yes. That would be exactly that.
 9 Q. Okay. Is this spreadsheet something that you looked at
 10 over the years?
 11 A. Infrequently.
 12 Q. Okay. What times would you look at this?
 13 A. Well, every time that, at least, on the occasions when
 14 we would be looking to get tax refunds, or tax returns
 15 are done or tax refunds, what are we going to do with
 16 them? A document like this would get pulled out and
 17 say, "Well, where do we stand with the company right
 18 now, Because of what we owe the company or the company
 19 owes us," and in every case, obviously, that's the
 20 company owing us.
 21 Q. And do you --
 22 A. So once a year, call it.
 23 Q. Got it. Do you believe the information in this exhibit
 24 to be accurate?
 25 A. I do. I -- and I would say that it's accurate and low,

47

1 Q. Well, can I stop you?
 2 A. Yeah.
 3 Q. And I apologize, but why do you know it's a check?
 4 A. I -- Okay. So I know it was check. I know how that
 5 \$150,000 got back --
 6 Q. Okay.
 7 A. -- to the company and that was a check written from
 8 Scott to the company.
 9 Q. All right. But are you testifying about that from your
 10 memory or are you looking at something on this exhibit
 11 that tells you it's a check?
 12 A. I'm test -- I'm doing both. I'm testifying that I know
 13 how the bulk of the money got back to the company when
 14 Steve, Scott, and Julie loaned it back, and that was by
 15 writing a check from their personal funds to the
 16 company, and I know, in fact, for this first line, since
 17 it was me, I wrote a check to the company for \$150,000.
 18 The second one, whether that -- the second
 19 one, I don't have the same level of recollection. The
 20 second one, 34,352, we used -- it says we used my credit
 21 card, so that means a personal credit card, not a
 22 company credit card, and so whether that check went from
 23 me or -- I'm sorry -- from the company to me to pay a
 24 credit card bill or the company went from -- or the
 25 check went from the company to the credit card company,

46

1 if anything.
 2 Q. Why do you say "low"?
 3 A. Because I still have a balance on a personal credit card
 4 that's related to the company and so does Mr. Horning
 5 and Julie might, as well, but I don't think this record
 6 reflected it.
 7 Q. What credit card is that?
 8 A. I'm going to reach into my pocket and pull out the
 9 credit card that I'm referring to, and it's a Chase
 10 credit -- That's the debit card -- a Chase Sapphire card
 11 ending in 4038.
 12 Q. So the Chase Sapphire credit card ending in 4038, that
 13 is a debtor credit card?
 14 A. Nope.
 15 Q. Oh.
 16 A. That is a Scott Hirth credit card.
 17 Q. Okay. So it's a personal credit card of yours?
 18 A. Right.
 19 Q. How does the debtor get involved in that credit card?
 20 I'm not following.
 21 A. Well, I'm suggesting that the bills on that credit card
 22 are exclusively debtor bills.
 23 Q. Okay. So there were charges made to that credit card
 24 that were made that were for the benefit of the debtor?
 25 A. Correct.

48

1 Q. And when would that have been?
 2 A. I think that anything during the timeframe that this
 3 document takes care of would have been reflected on this
 4 document, so it would be things since then or around the
 5 time when, call it May, when all the -- all this noise
 6 of this mess here, through to -- Well, hell, there's
 7 charges hitting there right now, even, frankly, for the
 8 company that we still have to have a -- we still have to
 9 have the website running, because we haven't yet
 10 transferred the name to the University, so our website
 11 forwards traffic to MDen.com, which is now controlled by
 12 the University's new partner. Somebody has to pay for
 13 the hosting of that website, so that's still going on
 14 right now. Small, not like this, but, there's still
 15 charges happening right now.
 16 Q. Okay.
 17 A. And not in the cash collateral budget. We got to keep
 18 the website running until we can get it transferred and
 19 that money's got to come from somewhere.
 20 Q. And so you gave the example of the Chase Sapphire card,
 21 that are amounts on there that are not reflected in this
 22 Exhibit 3.
 23 A. I think that's correct, yes.
 24 Q. Okay. What amounts with respect to that Chase Sapphire
 25 card do you believe are not reflected in this Exhibit 3?

49

1 assumption is the refunds would come back in the April
 2 timeframe; is that fair?
 3 A. I think later. We were almost always on an extension,
 4 so our taxes didn't get filed until June-ish --
 5 Q. Okay.
 6 A. -- or somewhere in there.
 7 Q. All right.
 8 A. And then sometime after that.
 9 Q. Sometime after that. All right. So the refund comes
 10 back from the IRS or the State of Michigan, and then
 11 that refund would be remitted back by you, or
 12 Ms. Corrin, or Mr. Horning to the debtor, so my question
 13 is: With respect to that applicable tax year that the
 14 refund was occurring, was there a net operating loss of
 15 the debtor?
 16 A. I don't think we would not have distributed money based
 17 on an estimate if we thought there was going to be a net
 18 operating loss. You see what I'm saying? We wouldn't
 19 have just distributed money thinking that there -- if
 20 there was an operating loss for a year, we would not
 21 have thought there was a tax liability unless it made no
 22 distribution. If it turned out that there was a net
 23 operating loss after we -- the estimate was X and the
 24 answer turned out to be Y, so that the tax refund
 25 suggested that there was, that could have occurred, but

51

1 A. Somewhere between 30 and \$50,000.
 2 Q. Okay. And that would have been associated with the 2024
 3 period through now?
 4 A. I think that's correct, yes.
 5 MR. KOCHIS: Okay. Does everyone want to
 6 do -- We've been going for a while. Do you want to do
 7 like a five/ten-minute break?
 8 MR. BORIN: Yeah.
 9 VIDEOGRAPHER: Going off the record at
 10 10:10:55.
 11 (Off the record at 10:10 a.m.)
 12 (Back on the record at 10:17 a.m.)
 13 VIDEOGRAPHER: We're back on the record at
 14 10:17:20 a.m.
 15 BY MR. KOCHIS:
 16 Q. All right. Mr. Hirth, so I just want to close the loop
 17 on the practice that we were discussing about sending
 18 the tax refunds back to the debtor. In any given year
 19 where that would happen, was there a net operating loss
 20 of the debtor for that tax year?
 21 A. Can you say that one more time?
 22 Q. Yeah.
 23 A. Let me make sure I'm understanding.
 24 Q. Sure. So my understanding is that these refunds would
 25 come back, and I mean, let's talk about it this way. My

50

1 it wouldn't most often have been like that. Where if
 2 there was a loss in a year, we wouldn't have distributed
 3 in the first place.
 4 Q. Okay. You -- you talked a little bit about the
 5 different roles that yourself, Ms. Corrin, and
 6 Mr. Horning had with respect to the debtor, but I want
 7 to talk a little bit about how business decisions were
 8 made, so how did that occur? Generally speaking of the
 9 debtor, was everyone -- For example, you described your
 10 roles that you had. Were you the ultimate
 11 decision-maker with respect to those roles or did you
 12 have to consult other people? How were the business
 13 decisions made?
 14 A. Most often, it was if it was in my area of
 15 responsibility, I made the decision. If we were going
 16 to open a new store or something of that magnitude, we
 17 would get together and discuss that.
 18 Q. Okay.
 19 A. But operationally, and if it was in my department, my
 20 area, I would make those decisions. Day to day in the
 21 stores, Julie would make those decisions. It wouldn't
 22 have to get escalated to all of us.
 23 Q. Got it. So that's kind of what I was driving at, so at
 24 a certain level, there become decisions where yourself,
 25 Ms. Corrin, and Mr. Horning would consult on. True?

52

1 A. Yes.
 2 Q. And you gave the example of if we're opening a new
 3 store.
 4 A. Yes.
 5 Q. All right. Are there other examples like that where the
 6 three of you would consult about a business decision?
 7 A. There are. Hiring and firing of significant employees.
 8 Some of the financing we would consult. Some of the
 9 financing we would -- That was not Steve and Julie's
 10 expertise. There would be less of a consultation and
 11 more of a "We need to do this. We are doing this," and
 12 informing, rather than consulting. Those kinds of
 13 things.
 14 Q. All right. And when there were those circumstances
 15 where the three of you were consulting about a decision,
 16 how would you finalize that decision? For example,
 17 would you take a vote?
 18 A. It was always unanimous. We were of -- I don't know any
 19 other way to describe that, except that there was a lot
 20 of faith put in me to be representing the things that I
 21 know about, and if I said "We're doing this," they would
 22 agree, and that was reciprocated. If Steve said
 23 something in technology needed to happen or be fixed,
 24 there would be some -- I have some background in those
 25 areas, so I may have pushed a little bit, but we always

53

1 ended in a unanimous place. There was -- and there was
 2 never a formal vote.
 3 Q. All right. So I think, previously, you had discussed
 4 that you were in charge of the finance; is that correct?
 5 A. Yes.
 6 Q. All right. But there was a bookkeeper?
 7 A. That's correct.
 8 Q. So let's talk about the finance side of things, so we
 9 have you. We have a bookkeeper. Were there other
 10 people at the debtor involved in the finance side of
 11 things?
 12 A. No.
 13 Q. All right.
 14 A. Accountants, external accountants.
 15 Q. External accountants.
 16 A. Rehmann-Robson.
 17 Q. All right. But let's just talk internally at the
 18 debtor.
 19 A. No.
 20 Q. Just you and the bookkeeper?
 21 A. That's correct.
 22 Q. Okay. And so how did that relationship work as between
 23 you and the bookkeeper? The bookkeeper would do the
 24 entries? Is that what the bookkeeper was responsible
 25 for?

54

1 A. Sure. Track the cash, pay the bills. I would sign the
 2 checks. She would enter accounting data, you know,
 3 sales and expenses recorded, send that data to the
 4 external accountants once a year or quarterly for tax
 5 purposes.
 6 Q. Okay. So -- so Diana (sic) is entering the everyday
 7 sales, other data, into -- Was there an ERP system?
 8 A. NetSuite by Oracle.
 9 Q. All right.
 10 A. And everything that's in this stage is NetSuite by
 11 Oracle.
 12 Q. All right. And then, did you review what Diana (sic)
 13 was doing?
 14 A. Financial statements on a monthly basis, so -- Yeah.
 15 She reported to me, so to the extent that there was
 16 oversight, yes. That was by me.
 17 Q. All right. But the financial statements, what were
 18 those, internally prepared by Diana (sic)?
 19 A. Correct.
 20 Q. And what would they consist of?
 21 A. The -- the -- So it was -- I believe that the phrase
 22 that our tax folks used, because this was all guided by
 23 taxes because we weren't audited and the bank account
 24 didn't need audited financials, so -- But -- but it was
 25 intended to be gap accounting, so it was accrual -- it

55

1 was accrual accounting. If there was a question on what
 2 to do with that, we would have most often asked the
 3 accountants for -- the external firm for guidance on
 4 that, but for the most part, this was make sales,
 5 collect sales, record those by location, and pay the
 6 bills.
 7 Q. Right. But it sounds like Diana (sic) would give to you
 8 monthly financial statements?
 9 A. That's correct.
 10 Q. All right.
 11 A. Internally prepared.
 12 Q. Okay. And so give me an example of what would be
 13 included in those monthly financial statements that you
 14 would look at.
 15 A. A PNL on a balance sheet.
 16 Q. Anything else?
 17 A. No.
 18 Q. Okay. Did you have occasion where you reviewed those
 19 monthly financial statements and then you made
 20 corrections to them?
 21 A. Yes.
 22 Q. And then how would that work? Would Diana (sic)
 23 implement those corrections?
 24 A. The -- It would be more often a question where I would
 25 say "What is this," and she would say the answer to

56

1 that, and either the answer to that would prove to be
 2 correct and it would stay there, or if she had made a
 3 mistake, then that would be changed, or if neither one
 4 of us knew the right answer and we had to ask the
 5 accountants, we would ask for external guidance.
 6 Q. And has Diana (sic) always been the bookkeeper?
 7 A. I think Deanna was hired approximately a year after we
 8 bought the company. The longtime bookkeeper for my
 9 father and his partner when they owned it, she had been
 10 there for many years, call it 1980 to 2014, something
 11 like that, and Deanna replaced her, so --
 12 Q. So it would have been around 2014?
 13 A. Somewhere in there, Deanna started, yep.
 14 Q. Let's bounce back to Exhibit 1 for a minute, the
 15 Statement of Financial Affairs. Do you have that in
 16 front of you?
 17 A. I do.
 18 Q. All right. So question one talks about the gross
 19 revenue from business in -- Let's look at 2022, for
 20 example. 2022 --
 21 A. Okay.
 22 Q. -- reflects the gross revenue from the business as
 23 44,846,000 and some change. Do you see that?
 24 A. I do.
 25 Q. All right. Do you believe that number to be accurate?

57

1 ballpark-ish, what are we talking about in revenue
 2 during this period?
 3 A. Low, 20, and high, 44 or 48.
 4 Q. Okay.
 5 A. Yep. And COVID is included in that timeframe, so --
 6 Q. Right. And we're going to talk about that.
 7 A. Yeah.
 8 Q. So what, was the company historically profitable?
 9 A. Yes.
 10 Q. All right. Was there a certain point in time where it
 11 was not profitable?
 12 A. Yes.
 13 Q. When was that?
 14 A. I think that -- Not -- When we owned the company, so
 15 from the period of 2013, forward, that's what I'm
 16 speaking to.
 17 Q. Yeah.
 18 A. Just --
 19 Q. I understand.
 20 A. Okay. I believe that not profitable was 2019 and then
 21 again in 2020. 2019, being pre-COVID. 2019 (sic),
 22 being, obviously, COVID and there may be another period
 23 in between there. I do think that it was profitable
 24 from 2013 to 2019.
 25 I could be wrong. There might have been

59

1 A. I do.
 2 Q. Okay. And do you know where -- where you obtained this
 3 number?
 4 A. I think that when we were asked to fill out this
 5 schedule, I went to -- for 2022 -- because it would have
 6 been completed, I went to the -- I want to make sure I
 7 say this correctly -- the compiled financials prepared
 8 by the accountants that would have gone to the bank.
 9 Q. All right. The compiled financials would have been done
 10 by Rehmann?
 11 A. That's correct.
 12 Q. All right. The 44 million number, is that -- is that a
 13 historically consistent figure or is that more of an
 14 anomaly. Do you know?
 15 A. Are you talking amount?
 16 Q. Yeah.
 17 A. Is that what you're asking?
 18 Q. Yep.
 19 A. That would -- 2022, if I recall, would have been the
 20 second year that Michigan won the Big Ten Championship
 21 and went to the College Football Playoffs, so that would
 22 have been a higher than average number.
 23 Q. Okay. So give me a rough idea, so you know, what -- For
 24 the period 2013 until the petition day, 44 million
 25 sounds like it may have been a little high, so what,

58

1 one year where it was not.
 2 Q. Okay. All right. What happened in 2019, such that the
 3 debtor was not profitable?
 4 A. The -- We put in a new, that new ERP system, and it was
 5 expensed and not capitalized, and so it would have shown
 6 a, I believe, it showed a loss. It was not a very
 7 successful football season and we had significant
 8 investments that year.
 9 Q. Okay. Yeah. So my -- My understanding is that the
 10 debtor put in a new ERP system in 2019 and the cost of
 11 that was around a million dollars; is that correct?
 12 A. That's correct, yes.
 13 Q. Okay. So did the debtor purchase that ERP system from
 14 someone?
 15 A. It was a combination. It was a -- it's a software
 16 license that has an annual payment, but then there is
 17 the up-front installation cost that, essentially, is
 18 purchased.
 19 Q. Okay. And who did the debtor acquire or license that
 20 from?
 21 A. NetSuite by Oracle.
 22 Q. Okay. And so does the debtor have any, for example,
 23 claims against NetSuite or Oracle related to that ERP
 24 system?
 25 A. I don't know -- I don't think I understand "claims."

60

1 Q. Is there an allegation that something was done
 2 improperly, such that the debtor should be compensated
 3 some amount by NetSuite or Oracle?
 4 A. No.
 5 Q. All right. So there was the ERP system. I think you
 6 said, what I heard a minute ago, you said it was not
 7 capitalized. Did I hear you correctly?
 8 A. You did.
 9 Q. What do you mean by that?
 10 A. There is a -- there is a notion that you could put that
 11 on the balance sheet and amortize that over the period
 12 of time, as opposed to as expense of all as incurred, so
 13 2019, the year 2019, has all of the installation cost in
 14 it, 'cause it was a cash cost, and therefore, it shows a
 15 net operating loss. If that would have been put on the
 16 balance sheet and amortized over a period of time, that
 17 may not have shown a net operating loss.
 18 Q. Okay.
 19 A. That was all guided by the accountants.
 20 Q. Okay. All right. So was there anything else in 2019
 21 that resulted in the company being not profitable?
 22 A. A horrible football season.
 23 Q. All right. Anything else?
 24 A. We were down -- Yeah, there was a big something else.
 25 We only had three stores operating for most of 2019.

61

1 monies it had in order to make those improvements, as
 2 opposed to seek to borrow that money; is that correct?
 3 A. That's correct.
 4 Q. And why was that decision made?
 5 A. The -- I -- Let's see. What's the answer to that
 6 question? I don't know that the bank would have had any
 7 appetite to finance the ERP system, so we didn't even
 8 ask. We were getting the sense at the time that the
 9 bank -- This was starting to feel like we were becoming
 10 a fairly large fish in their smallish pond, so I didn't
 11 get warm and fuzzy feelings from the bank that they
 12 wanted to finance another store.
 13 Q. Okay.
 14 A. We had just done several expansions in 2015 -- '13, '14,
 15 '15, '16. I don't know that the bank wouldn't have
 16 financed the store or stores, but it never really
 17 crossed our mind to have the bank finance that ERP
 18 system.
 19 Q. All right. But I -- I -- I understand where you're
 20 going with the ERP system --
 21 A. Yeah.
 22 Q. -- but I want to differentiate to the --
 23 A. Correct.
 24 Q. -- the self-funding related to the store.
 25 A. Yeah.

63

1 The store on Main Street was being reconstructed and the
 2 store in Detroit had not opened. Both of those opened
 3 back up again in November, so January through November
 4 of that year, we were down two locations.
 5 Q. I also, I believe, read in the disclosure statement that
 6 there was a decision to self -- self-fund certain
 7 improvements related to the Detroit store; is that
 8 correct?
 9 A. The self fund was the payment of that million dollars
 10 for the installation of the new ERP system. That was
 11 not financed, and the building of the Main Street store
 12 was self financed, not a bank loan, and then the Detroit
 13 store was -- the landlord paid for most of that, so we
 14 had some money that we had to spend on that, but the
 15 Detroit store was actually paid for, about 60 percent,
 16 by the landlord.
 17 Q. All right. So there was self-funding related to the
 18 Main Street store location?
 19 A. Correct.
 20 Q. All right. And that was -- Just so I understand, that
 21 was self-funding of what, exactly, related to that
 22 store?
 23 A. The leasehold improvements to make the building into an
 24 M-Den store.
 25 Q. Okay. And the decision by the debtor was to use the

62

1 Q. So I'm just telling you I am looking at the disclosure
 2 statement. It's Docket Number 213, 2-1-3, and on page
 3 47 of 98 it indicates, "At the same time the debtor
 4 funded roughly 600,000 to build out its Detroit and Main
 5 Street locations with both locations opening and
 6 reopening for business in November of 2019."
 7 A. And I agree with that. Most of that 600,000 was for
 8 Main Street. A small piece was for the Detroit store.
 9 Q. Okay. So with respect to that 600,000 the debtor came
 10 out of pocket to do, did you approach, for example, the
 11 bank to seek financing for that build out cost?
 12 A. In a very limited way.
 13 Q. Okay. What way was that?
 14 A. It was maybe a lunch conversation, and it was not,
 15 "Well, sure. We'll do this store like we've done all
 16 the other ones." It was, "We've loaned you a lot of
 17 money in the past. Let's think about that."
 18 Q. Okay. All right. So let me ask it this way: So the
 19 ERP system was roughly, what I'm looking at here, it
 20 seems to be a million dollars?
 21 A. Right around a million dollars, yes.
 22 Q. And then the build out of Detroit and Main Street was
 23 roughly 600,000?
 24 A. Cash, out of pocket.
 25 Q. Right.

64

1 A. Yeah.
 2 Q. So we're talking about 1.6 million in 2019?
 3 A. That's correct.
 4 Q. And the debtor had availability in its bank account of
 5 11.6 million that it used for those two items?
 6 A. Or operations, profitable operations.
 7 Q. Okay. So it did not borrow money to do the ERP or the
 8 buildout?
 9 A. That's correct.
 10 Q. All right. 2020, I think you indicated in 2020 the
 11 debtor was not profitable. I -- I have a suspicion as
 12 to what the answer might be, but why was the debtor not
 13 profitable in 2020?
 14 A. Right. So 2020, of course, was the COVID year and the
 15 stores were shut down on March 11, I'm pretty sure was
 16 the date, March 12th, and the students left campus and
 17 no football games with fans in the stands and
 18 significantly less revenue.
 19 Q. All right. Let's go -- Apologies. Let's go back to the
 20 ERP for a minute.
 21 A. Yes.
 22 Q. Why was the ERP not capitalized by the debtor?
 23 A. I don't know the answer to that other than that was what
 24 the guidance from Rehmann was, that don't make that into
 25 a, I believe the phrase is, a self-constructed asset.

65

1 A. Yep.
 2 Q. -- was there no operations of debtor or were there some
 3 operations of the debtor?
 4 A. We could continue internet sales.
 5 Q. Okay.
 6 A. Web sales.
 7 Q. Okay. And how did the internet or web sales work?
 8 A. So the internet, MDen.com was still out there and up and
 9 running and customers could place orders on there, and
 10 essentially, because, you know, there wasn't a lot of
 11 guidance and the world didn't know what was happening,
 12 the three of us owners, as I believe the phrase was,
 13 "critical employees" or there was some -- some phrase
 14 that allowed us, as critical employees, to travel to our
 15 office so that we could take those orders and fulfill
 16 them.
 17 Q. So -- But were those -- Was the debtor shipping the
 18 goods to the retail customer in the mail?
 19 A. Yes.
 20 Q. Okay.
 21 A. So just like a regular internet order.
 22 Q. Okay.
 23 A. So the stores were closed, so you couldn't go to the
 24 store to buy a sweatshirt, but if that person needed a
 25 sweatshirt or wanted a sweatshirt, they could go to

67

1 For tax reasons, you can account for it this way and
 2 expense it.
 3 Q. Okay.
 4 A. I didn't make that decision.
 5 Q. The lunch conversation with the bank you were talking
 6 about, that was a lunch conversation with the Bank of
 7 Ann Arbor?
 8 A. Correct.
 9 Q. Okay. Did you approach any other banks in connection
 10 with potential financing related to the ERP or the store
 11 buildout?
 12 A. No.
 13 Q. All right. So the COVID shutdown in March 2020, how
 14 long was the debtor shut down for?
 15 A. For -- I believe the governor said that stores could
 16 open again for actual in-person shopping, I want to say,
 17 like, July 12th. That date sticks out my head, so it
 18 may not be the 12th, but it was from March to July,
 19 and -- but just opening again was not the not
 20 necessarily the key to starting generate revenue again.
 21 You need students to come back on campus and things
 22 likes that, but technically, shutdown was March to July.
 23 Q. Yep. No. I understand. So here's what I want to
 24 understand: So during that approximate March to July
 25 time period --

66

1 MDen.com and order it and Steve, Julie, or I would
 2 fulfill it, and UPS never shut down during COVID 'cause
 3 they were a critical infrastructure, so they -- they
 4 would pick up and deliver that item.
 5 Q. Got it. All right. So July-ish, the store can reopen
 6 for in-person shopping, correct?
 7 A. Yes.
 8 Q. But the students are not back on campus at that time; is
 9 that true?
 10 A. That is true.
 11 Q. All right. When do students come back on campus?
 12 A. Not in a complete way until August of 2021.
 13 Q. All right. And is that the same time that in-person
 14 sporting events also began?
 15 A. That's correct. So with football of 2021, in-person
 16 sporting events could happen again.
 17 Q. Okay. Take a look at Exhibit 2 for me, if you wouldn't
 18 mind, and I am on -- I am on page 6 of 47. It is part 3
 19 that talks about accounts receivable.
 20 A. Yes.
 21 Q. All right. The debtor identifies \$161,488 in accounts
 22 receivable. What does that relate to?
 23 A. I'm sorry. You're talking about the first one, the
 24 161,488 --
 25 Q. Yes, sir.

68

1 A. -- 53? Okay. That is -- The vast majority of M-Den
 2 business is a customer walks in the store, buys a
 3 sweatshirt, pays cash or with a credit card, but we get
 4 the cash instantaneously. There is very small piece of
 5 business where we would extend credit to, essentially,
 6 the University of Michigan. That could be the athletic
 7 department. That could be a department wanting to buy
 8 gifts for a retiring professor, something like that,
 9 where they would get -- take the item and we would send
 10 them a bill, and this is the cumulative amount of those
 11 bills, so this is -- instead of debit, cash, credit
 12 revenue, it was debit, receivable, credit revenue.
 13 Q. All right. Is that amount still owing as of today?
 14 A. I think that it is owing to this amount. If we would
 15 have -- if some check would have been received, it may
 16 be done small, but I think there's at least 160,000
 17 still there as of today.
 18 Q. All right. Has the debtor made a demand of the
 19 University of Michigan to pay this amount?
 20 A. We have not.
 21 Q. All right. Why not?
 22 A. Because we owed them, and the reason that this hadn't
 23 been paid, something like \$8,000,000.
 24 Q. Okay. And it is -- My understanding is the University
 25 of Michigan has different entities, so I -- I want to be

69

1 which clearly is a part of -- and I know we do gifts for
 2 the School of Information for graduation. I think
 3 there's a piece of that in there, which is clearly a
 4 part of the big University. I know that various
 5 departments of the hospital do jackets that may -- It's
 6 certainly the University of the Michigan, but it might
 7 be the University of Michigan Hospital, and then there
 8 certainly would be athletics in there, as well.
 9 Q. Okay. Is there some report that shows a breakdown of the
 10 entity or department that comprises the 161,000?
 11 A. There is.
 12 Q. All right. Then, sticking with this exhibit, over 90
 13 days old is listed as an account receivable of \$592,634.
 14 Do you see that?
 15 A. I do.
 16 Q. What is that related to?
 17 A. I believe that is the receivable due to M-Den, Inc. from
 18 M-Den Stadium Properties.
 19 Q. All right. M-Den Stadium Properties owes the debtor
 20 that amount related to what?
 21 A. That is an amount that is owed based on the lease and
 22 all of the lease or -- and/or -- Let's see. Is there a
 23 lease involved there? All of the operating events,
 24 expenses, of M-Den Stadium Properties would not have
 25 been covered by the lease payments that were regularly

71

1 clear when we're talking about them, so we're talking
 2 about which entity in particular when we say "University
 3 of Michigan"?
 4 A. That 160 is made up of several entities of the
 5 University of Michigan.
 6 Q. Oh, which entities?
 7 A. So I -- I'm -- I can't say all of them.
 8 MR. BORIN: You at least got to be more
 9 specific here, because there's departments and entities.
 10 For example, there's a University of Michigan -- It's
 11 got an athletic department, but that's a part of the
 12 University. There's also an alumni association that, I
 13 believe, is an independent operating entity, so you got
 14 to be a little bit careful when you're talking about
 15 entities and departments, because I think the University
 16 is just one legal entity.
 17 THE WITNESS: Yeah. Yeah. Right. So the --
 18 You're exactly right. There would be departments, so
 19 this is either the Athletic Department or the Department
 20 of Surgery, so I suppose the hospital could actually be,
 21 technically, a different entity, as opposed to a part of
 22 the University.
 23 MR. BORIN: Oh, I don't know that.
 24 THE WITNESS: I -- I think that it is, but
 25 there's a difference between the School of Information,

70

1 made between M-Den, Inc. and M-Den State Street
 2 Properties, so that over the four, five, or six years
 3 since we owned it, that entity accumulated a amount that
 4 M-Den, Inc. had to pay over and above its rent of
 5 \$592,634.
 6 Q. All right. And we are going to talk about the locations
 7 a little bit later on today, but I believe you, and
 8 maybe I misheard, but I believe you first may have
 9 referred to M-Den Stadium Properties and then a minute
 10 ago, I believe, you said M-Den State Street. Do you
 11 know which entity we're --
 12 A. I misspoke. Definitely Stadium Properties.
 13 Q. Stadium Properties.
 14 A. Yes.
 15 Q. All right. So Stadium Properties --
 16 A. Right.
 17 Q. -- owe some money and it didn't have the ability to pay
 18 those monies and so the debtor paid the monies?
 19 A. That's correct.
 20 Q. What was the payments for?
 21 A. Well, the best example of that was when there was no
 22 football season in 2020 -- in 2020, and an atrocious
 23 football season in 2019. The original lease arrangement
 24 between M-Den Inc. and M-Den Stadium Properties was
 25 based on revenue, a percentage of revenue, and when no

72

1 revenue happened or when low revenue happened in those
 2 years, there was no rent payment to pay and there was
 3 still a mortgage to pay or, actually, on that property,
 4 two mortgages to pay, and so M-Den, Inc. paid those
 5 mortgages.
 6 Q. All right. Is there actual loan documents evidencing
 7 this?
 8 A. No. There's just the financial statements. It's in our
 9 company transactions, but there's detail behind all
 10 those.
 11 Q. All right. Question on the logistics of how this
 12 occurred: Did M-Den, the debtor, send the money to
 13 M-Den Stadium Properties or did M-Den, the debtor, pay
 14 those obligations to M-Den Stadium Properties, creditor,
 15 directly?
 16 A. I don't think there's a 100-percent answer, but the
 17 predominant answer the most of the time was we tried to
 18 go M-Den, Inc. to M-Den Properties -- M-Den Stadium
 19 Properties, and then to, then, pay the bill from there.
 20 Q. Okay. So in that circumstance where that would have
 21 occurred, would that have been a check, for example,
 22 from M-Den to M-Den Stadium Properties?
 23 A. It would have either been a check or just there was
 24 all -- they were all the same bank account or -- all the
 25 same bank. I'm sorry. So it could have just been an

73

1 Q. Okay. Why was the debtor unable to pay those debts as
 2 they became due?
 3 A. That is -- So the answer to that is manifold. The
 4 answer to that is that we went into COVID having spent
 5 any cash reserves we had that the -- to make it through
 6 COVID. We took out some financing that ended up being
 7 way too expensive and not a good solution to the
 8 problem. COVID had far more impact on the business than
 9 just not running for several years.
 10 For a period of time when -- between March
 11 and when football season started happening again, the
 12 supply chain was tremendously disrupted and this -- and
 13 we had ended up have -- taking on inventory during the
 14 supply chain -- I think I told the story in the
 15 disclosures about three specific instances where vendors
 16 just shipped product and we owed money for that -- for
 17 the -- for that product, and there was a huge shift in
 18 the business from COVID from stores to internet. Our
 19 internet business loses money. It lost money all along,
 20 but it was a small part of the business.
 21 When it became a bigger a part of the
 22 business, it lost more money, and then when the
 23 national -- the -- the football team started to win Big
 24 Ten championships and, ultimately, a national
 25 championship, the results of that, while great in sales,

75

1 internal transfer from an M-Den, Inc. bank account to an
 2 M-Den Stadium Properties bank account. They were all at
 3 Bank of Ann Arbor.
 4 Q. All right. But is there some type of report in the
 5 debtor's accounting system that details the \$592,634?
 6 A. Yes. Just like there is, I -- I think, maybe we -- I
 7 think we provided that as part of the subpoena.
 8 Q. You may have.
 9 A. I think we did.
 10 Q. Okay.
 11 A. So -- But similar to the ones, the amount above, yes.
 12 There's a report.
 13 Q. Why is that amount listed as doubtful -- Well, actually,
 14 maybe I'm misreading it, so this might be me, so the
 15 doubtful or uncollectible line says "0," so does the
 16 debtor view the 592,634 as collectable?
 17 A. I don't know the answer to that in the bankrupt state of
 18 the entity. That's the best answer I can give to that.
 19 I don't know.
 20 Q. All right. Sticking with those schedules, Exhibit 2,
 21 for the minute, at the time of debtor's bankruptcy
 22 filing, unsecured claims aggregate, and I'm looking at
 23 page 46 of 47, aggregate roughly \$31,000,000. Do you
 24 see that?
 25 A. Let me just get there. Yes.

74

1 were predominantly weighted towards internet sales, and
 2 we lose money on internet sales, and we lost more and
 3 more money on internet sales.
 4 I'm going to keep this short. The
 5 accumulation of all of those things made it so that the
 6 business was broken, and therefore, when the national
 7 championship ended up generating about \$12,000,000 in
 8 gross receipts, rather than what we were expecting,
 9 something north of 20, somewhere between 20 and 30, we
 10 did not have the cash to pay these obligations. Some of
 11 these obligations weren't as big as these at that time,
 12 but that is -- I'm going to stop there.
 13 Q. Okay.
 14 A. But it's those, those things contributed to the business
 15 being broken and not being able to pay these debts.
 16 Q. All right. So I appreciate that. There's a lot there
 17 to unpack.
 18 A. There is.
 19 Q. So the first thing, so the debtor has always lost money
 20 on internet sales?
 21 A. I'm going to put it this way: The internet, we pay
 22 50 percent cost of goods. We pay 20 percent, 15 percent
 23 most of the time, 20 percent on championship
 24 merchandise, to the University, so there's 70 percent
 25 cost of goods right off the top, a 70 percent variable

76

1 cost on every dollar that goes through the internet
 2 before you've shipped a product or paid any staff or any
 3 warehousing, so the internet only worked for us -- And
 4 if you looked at the cost of the internet being spread
 5 over the whole operation -- And it's just another way to
 6 get one of our good customers their product.
 7 When it became a shift to people buying in
 8 the internet instead of the stores, as a result of COVID
 9 or heavily buying on the internet, instead of the stores
 10 for these, finally, great, exciting times of football,
 11 more revenue through the internet piece of the business
 12 was not helpful.
 13 You're -- you're starting out of the gate
 14 over 80 percent variable costs on the internet business,
 15 so the internet will always -- didn't make much money.
 16 It might have made a little bit, but as it got bigger,
 17 it got worse, and it -- and it certainly didn't make any
 18 money since COVID.
 19 Q. Okay. So one of the other things you mentioned, spent
 20 the cash reserves during COVID, so what I'm taking away
 21 from that is the debtor had certain cash reserves and
 22 that those became depleted during COVID?
 23 A. I was really referring to what we did in 2019, which was
 24 paying for the ERP system and the stores.
 25 Q. Okay.

77

1 concerned about the shift from the stores to the
 2 internet and what that actually was going to look like,
 3 so there was no question there was a, "We made it," only
 4 to know that that actually wasn't the case. That's how
 5 I would say that.
 6 Q. Okay. One of the things you mentioned was the
 7 University of Michigan national championship in -- that
 8 would have been 2023, right?
 9 A. It was January 8, 2024.
 10 Q. '24.
 11 A. But it was the season 2023.
 12 Q. Okay. Got it.
 13 A. Yes.
 14 Q. And so my understanding from reading some of the
 15 statements in the disclosure statement that has been
 16 filed is that on the national championship merchandise,
 17 the revenue share portion that the debtor had to pay to
 18 other sources was higher. Am I understanding that
 19 correctly?
 20 A. That's correct.
 21 Q. Why is that?
 22 A. Our contract with the University says that for any, I
 23 believe, it references a period of time previous to the
 24 current CFP, College Football Playoff, but any I think
 25 it said BCS Bowl Championship Series, the big bowl

79

1 A. Had we known COVID was happening, that old ERP system
 2 could have went along a little bit further. Had we
 3 known -- It's interesting on the stores, 'cause all
 4 those stores were committed as started long before
 5 COVID. It was construction delays at the building site
 6 that made them span, basically, right up to COVID. We
 7 should have had those stores open in 2018/2017, so we
 8 were committed, but then they took forever to get done.
 9 Q. All right. Another thing you mentioned, took out
 10 expensive financing. What was that?
 11 A. Yes. That is -- It's a variety of things, but when the
 12 bank was not able to help during COVID, we started to
 13 take merchant cash advances.
 14 Q. All right. When did that begin?
 15 A. It began right around the start of COVID. I'll call it
 16 2020, I think.
 17 Q. All right. So emerging from COVID, it sounds like the
 18 company was struggling financially. Is that fair?
 19 A. I think that I would answer that this way: That
 20 emerging from COVID, we were breathing a sigh of relief
 21 that we made it through COVID. We had no idea -- we had
 22 no idea that Michigan was going to start winning
 23 football games in a big way. We had expectations that
 24 the stores that we had built would be like all of our
 25 other stores that had built and be successful. We were

78

1 games, Orange Bowl, Sugar Bowl, those kind of things,
 2 and anything that approximates a playoff, the University
 3 gets a big percentage of the sales.
 4 Q. Okay.
 5 A. That's a part of the University of Michigan agreement
 6 that made us their official retail partner. That's why
 7 that cost went up.
 8 Q. Okay. I'm skipping around a little bit in terms of how
 9 I wanted to go about this, but it might make sense to do
 10 it now, so can you look at Exhibit 2 for me? And I'm on
 11 45 of 47.
 12 A. 45 of 47, yes.
 13 Q. So creditor 3.141, University of Michigan Department of
 14 Athletics. Basis for claim: "Royalty Payments," and
 15 then it lists a claim amount of \$8,855,882. Do you see
 16 that?
 17 A. I do.
 18 Q. So I think -- I think what we were just talking about a
 19 minute ago were royalty payments that the debtor had to
 20 make to the University of Michigan. Some of that
 21 related to the national championship. Is -- is -- is
 22 that the same thing that you were talking about a minute
 23 ago that we're looking at --
 24 A. It is.
 25 Q. -- on this exhibit?

80

1 A. Yes.
2 Q. All right. So the entirety of that 8.855-million-dollar
3 claim, is that all for royalty payments?
4 A. It's 100 percent for royalty payments.
5 Q. Oh, really?
6 A. Yes.
7 Q. Do you know what time period that's for?
8 A. It's for a variety of time periods, but it is
9 predominantly for 2003 and through the end of 2004.
10 Q. Wait. 2003?
11 MR. BORIN: You don't mean to say 2003.
12 THE WITNESS: I'm sorry. 2023. Sorry.
13 Sorry. 2-0-2-3 and 2-0-2-4, plus some money that they
14 had forgiven initially during the COVID timeframe that
15 they then decided was actually due them, given the
16 difficulties that we ran into.
17 MR. KOCHIS: All right. Well --
18 THE WITNESS: So some of it extends back to
19 2019 and '20. I'm sorry. 2020 and 2021.
20 MR. KOCHIS: All right. Well, let's -- let's
21 attempt to break that apart, if we can.
22 THE WITNESS: Yep.
23 BY MR. KOCHIS:
24 Q. So the COVID forgiveness part that you said kind of came
25 back, do you know how much that is?

81

1 A. Correct.
2 Q. Okay. So March and May, you're still talking about
3 2024?
4 A. I'm still talking about 2024. That's correct.
5 Q. Got it. Okay. Prior to the August 2024 bankruptcy
6 filing, was there's an insolvency analysis performed
7 with respect to the debtor?
8 A. No.
9 Q. All right. I did want to transition to the sale effort,
10 so I'm -- I'm glad you brought that up, so my
11 understanding is, pre-bankruptcy, there were efforts
12 made to sell the debtor to potential suitors; is that
13 fair?
14 A. Yes.
15 Q. And when did that process begin?
16 A. That process began with -- that process began with a
17 party that had made overtures to us before, several
18 years, basically, once a year for four years, I think,
19 four or five years, but when they approached us again
20 in, call it, February of 2024 -- and so even before the
21 magnitude of this problem was even clear to us or that
22 the University got angry or creditors were screaming to
23 the level that they were screaming at the end, that
24 party made an overture to us again, and so that, I
25 think, it was in February of 2024 that the sale process

83

1 A. About \$2,000,000.
2 Q. All right. And so the remainder, the approximately
3 \$6,000,000, that would be 2023 to 2024 royalty?
4 A. Yes.
5 Q. All right. When did the debtor first consider filing
6 for bankruptcy?
7 A. Honestly, the debtor didn't consider filing for
8 bankruptcy.
9 Q. Well, the debtor --
10 A. No. I -- I -- I -- I'm just -- I was just talking it
11 out. We were planning to sell the company, is what our
12 plan to get out of this and what Michigan's guidance to
13 us was, sell the company. In fact, we will help you
14 sell the company.
15 It was only after several rounds of
16 failed -- where we thought we were across the finish
17 line with selling the company, did it become apparent
18 that one, bankruptcy may have to happen. Two, one of
19 the parties looking to buy us at the time suggested that
20 they may prefer to buy us out of the bankruptcy process,
21 so I'm going to say March. Between March and May of
22 2023, is when the option even came up. We weren't even
23 thinking about it in the least until then.
24 Q. Okay. And for reference, so between March and May, the
25 bankruptcy filing date was August 16, 2024.

82

1 in earnest really began.
2 Q. All right. Who is the party that approached the debtor
3 in February 2024?
4 A. Commonly referred to as Fanatics, but it's Ames Watson,
5 which is the owner of Lids and Fanatic, which ultimately
6 rolls up to Fanatics now.
7 Q. Right. Got it. But were there other potential suitors
8 in addition to Fanatics?
9 A. Yes.
10 Q. All right. And who were they?
11 A. The -- Well -- Let's -- let's lay out the four people
12 that were in the room for the auction.
13 Q. Okay. But I apologize, though. I'm -- I'm -- I'm
14 talking about --
15 A. Yeah.
16 Q. -- pre-bankruptcy, though?
17 A. Right.
18 Q. Okay.
19 A. I just want to make sure I hit the parties that were in
20 the room here, so I guess the way to do this is: Legends
21 was in the room here that day for the auction. They
22 were a party in a time frame very similar to Ames
23 Watson. Ames Watson was first, in February. Let's say
24 that Legends was between March and May, somewhere in
25 there. In the critical one, in the March time frame,

84

1 and what should have happened, and didn't, is that we
 2 tried, with Michigan's help or suggested help, to sell
 3 to, what I would call, a Michigan-friendly rich person.
 4 That commonly became known as the
 5 Champion's Circle, which is a bunch of rich guys that,
 6 in today's world, help pay for college football players
 7 and basketball players. We had a very friendly
 8 relationship with them. We played a huge role in
 9 getting Michigan's NIL efforts off the ground, and at
 10 the time, when Ames Watson came not strong enough to get
 11 everybody paid, including the University and these
 12 creditors, the notion for us and the University was the
 13 people need to buy this because there is tremendous
 14 respect for the M-Den and what we've done and what we've
 15 built.
 16 What we need to do is have one of these
 17 rich parties that are interested in keeping the M-Den
 18 going, as it was, buy this place. That was -- And
 19 Michigan offered to help, to a degree, with that. To
 20 put a name to it, my suggestion was we should sell -- we
 21 should call Stephen Ross, one of the ten richest persons
 22 in America, a huge donor of the University of Michigan,
 23 someone who we have helped in the past, consulted to his
 24 retail operations for the Miami Dolphins, and that
 25 morphed into, "Don't talk to him, but let's work through

85

1 A. Yep.
 2 Q. Were there anyone else pre-bankruptcy that there were
 3 discussion with about selling?
 4 A. There is. I forgot one and that's Underground Printing.
 5 Q. Underground Printing. Okay. All right. I -- I thought
 6 I heard you say that Michigan offered to help in the
 7 sale process to some degree. How was Michigan helping?
 8 A. They didn't end up helping much, but they suggested that
 9 they -- they -- "What are we going to do with this
 10 \$8,000,000," became a big question and the ultimate
 11 answer to that was, "You should sell. You should sell.
 12 Sell and maybe we have people that we can put you in
 13 touch with that would want to buy." They knew about
 14 Fanatics/Ames Watson and they suggested that they may be
 15 able to help put us in touch with others.
 16 Q. Okay. The Stephen Ross reach out that --
 17 A. That was my idea.
 18 Q. That was your idea and -- But did -- I thought I got
 19 from your answer that someone maybe, perhaps, poured
 20 cold water on that idea?
 21 A. Yes.
 22 Q. And who was that?
 23 A. That was the University who said "Do not specifically
 24 reach out to Stephen Ross."
 25 Q. Was there a reason why?

87

1 the Champion's Circle and the rich guys involved there
 2 to see if they can buy the M-Den on terms that can get
 3 everybody paid and keep the M-Den going as it is,"
 4 basically, but just owned by some entity that these rich
 5 guys would create, and that did not get across the
 6 finish line.
 7 That got, essentially, shunted to Legends
 8 and Legends came on very strong at the beginning. They
 9 knew exactly what they needed to pay to take care of all
 10 of this, and in the end -- And, oh, by the way, Michigan
 11 wanted them of the options that were out there.
 12 Ultimately, they wanted them to be their new partner,
 13 and they couldn't get it done.
 14 Those are the three big entities. There
 15 were others. There were others that came about as part
 16 of the auction process, but those were the three big
 17 entities that had a chance, had a real effort, they had
 18 real numbers that we were kicking around, and just
 19 didn't get it done.
 20 Q. Okay. And I, post-bankruptcy, obviously, on behalf of
 21 the committee, I'm familiar with what happened
 22 post-bankruptcy leading up to the auction. I'm more
 23 interested with pre-bankruptcy where I wasn't around, so
 24 pre-bankruptcy, we have Fanatics, Legends, and I'll just
 25 call them Champion's Circle.

86

1 A. There may be a reason why. There, obviously, was a
 2 reason why. The reason why wasn't given to me. I don't
 3 know the answer to that.
 4 Q. All right. Was there a reach out, regardless of what
 5 U of M said to Mr. Ross?
 6 A. No.
 7 Q. All right. So we know that a pre-bankruptcy sale did
 8 not get done with Fanatics, Legends, or Champion's
 9 Circle, and I think we somewhat talked about why, but I
 10 want to be a little bit more concrete about it, so with
 11 respect to Fanatics, for example, why did the a
 12 pre-bankruptcy sale not occur?
 13 A. The answer to that is that they did not offer enough
 14 money to cover our creditors and the amount -- and the
 15 amount of money that was owed to the University of
 16 Michigan and when that was the final answer and they
 17 would go no further, we and the University, together,
 18 agreed we can do better than this. Either they need to
 19 raise their number or somebody else will do better and
 20 we'll get the University paid and we'll get all of these
 21 creditors paid.
 22 Q. Okay.
 23 A. And it just turned out not to be true.
 24 Q. All right. What about Legends? Why did a
 25 pre-bankruptcy deal with them not come to fruition?

88

1 A. I have no idea.
 2 Q. Okay.
 3 A. Because it should have.
 4 Q. What about Champion's Circle? Why did a pre-bankruptcy
 5 deal with them not come together?
 6 A. I'm just trying to be careful of what I know and what
 7 I'm surmising, and that I only answer what I know.
 8 Q. Yeah. I -- I want to you testify about what you know.
 9 A. Right. And so you had asked about Legends, right?
 10 Q. I did. Well, the last question was about the Champion's
 11 Circle.
 12 A. I think that I need to answer that is that that morphed
 13 into the Legends deal. The Champion's Circle guys,
 14 essentially, made the introduction to Legends, and when
 15 it looked like Michigan wanted it to go that way, it
 16 went to Legends. There are other things I surmise that
 17 I -- that I don't know for a fact, so I'm not going to
 18 say.
 19 Q. That's fine.
 20 A. But that, essentially, after trying, they pushed it.
 21 "Do this deal with Legends. That will make Michigan
 22 happy. That will get this done."
 23 Q. Okay. And then, Underground Printing -- I don't --
 24 Who -- who is that entity? I'm not familiar with them.
 25 A. They were -- they're a fairly long-term partner of ours.

89

1 locations, so I just want to make it clear about the
 2 ones that we're talking about, so the first one I want
 3 to talk about is 1336 Main Street in Ann Arbor, and my
 4 understanding is the shorthand for that that I've heard
 5 in this case, is that it's referred to as the corner
 6 lot?
 7 A. Yes. Yes.
 8 Q. Okay. And that is a location that the debtor leased
 9 from an entity called M-Den Stadium Properties LLC; is
 10 that right?
 11 A. That is correct.
 12 Q. Okay.
 13 A. There are two addresses there, though. I should clarify
 14 that. 210 West Stadium Boulevard and 1336 South Main
 15 Street make up the property that is the corner. They
 16 just happen to be two addresses. It's right on the
 17 corner there. One is on Main Street and one is on
 18 Stadium Boulevard.
 19 Q. All right. Well, I'm glad you brought that up, then.
 20 Okay. Okay. So let's start with this: So the debtor
 21 did lease 1336 Main Street from M-Den Stadium
 22 Properties, correct?
 23 A. Yes.
 24 Q. Now, you referenced 210. Is it Stadium Street?
 25 A. West Stadium Boulevard.

91

1 They were a printer lo -- of ours -- They -- they -- and
 2 have some retail locations in Ann Arbor, and when they
 3 found out that we were for sale, they suggested that
 4 they may be interested.
 5 Q. And why did that, a pre-bankruptcy deal not come to
 6 fruition?
 7 A. They -- they couldn't even come even close to the amount
 8 of money required.
 9 MR. KOCHIS: Okay. I'm about to shift to a
 10 new set of topics. Do we want to take a five --
 11 MR. BORIN: Yeah.
 12 MR. KOCHIS: -- ten-minute break?
 13 THE WITNESS: Sure.
 14 VIDEO TECH: Going off the record at 11:15:40.
 15 (Off the record at 11:15 a.m.)
 16 (Back on the record at 11:25 a.m.)
 17 VIDEOGRAPHER: We're back on the record at
 18 11:25:51 p.m. -- a.m.
 19 BY MR. KOCHIS:
 20 Q. All right. I would like to shift gears and -- and talk
 21 a little bit about the property locations, and if you
 22 wouldn't mind, I think we're going to go through each of
 23 them, or at least the ones I understand, and I'm going
 24 to try to be succinct, 'cause I know sometimes there's
 25 some shorthand when we talk about the property

90

1 Q. All right. West Stadium Boulevard. Did the debtor
 2 lease that property?
 3 A. The debtor leased both of those from --
 4 Q. From M-Den Stadium --
 5 A. M-Den Stadium.
 6 Q. -- Properties.
 7 A. M-Den Stadium Properties owns both of those properties.
 8 Q. Got it. All right. And they're adjacent?
 9 A. Together they make up the property called "the corner."
 10 Q. All right. So M-Den Stadium Properties, when did the
 11 debtor begin leasing those properties from M-Den Stadium
 12 Properties?
 13 A. 2018.
 14 Q. And M-Den Stadium Properties, is that an affiliate of
 15 the debtor?
 16 A. It is a separate LLC owned by the three principals of
 17 the debtor.
 18 Q. All right. So yourself, Ms. Corning -- Corrin, and
 19 Mr. Horning?
 20 A. Yes.
 21 Q. All right. Is that 33 percent each?
 22 A. Yes.
 23 Q. And there is a written lease agreement, correct?
 24 A. There is.
 25 Q. When did M-Den Stadium Properties acquire -- Let's start

92

1 with this one: 1336 Main Street?
 2 A. 2018.
 3 Q. All right. When did it acquire 210 West Stadium
 4 Boulevard?
 5 A. 2018.
 6 Q. All right. Did the money for that acquisition come from
 7 the debtor?
 8 A. Did the money from that acquisition come from the -- No.
 9 It was -- M-Den, Inc. did not pay any money to acquire
 10 that property. The -- That is a mortgage by the --
 11 There's a mortgage held by Bank of Ann Arbor on that
 12 property and there's a mortgage held by the previous
 13 owner, seller financing, basically, on that property,
 14 and no M-Den, Inc. money was used in the purchasing
 15 that -- purchasing that property.
 16 Q. Got it. The seller financing one, I think I know what
 17 you're talking about. Question for you there: The
 18 seller financing was not paid with the loan from Bank of
 19 Ann Arbor?
 20 A. No. They exist next to each other.
 21 Q. Okay. All right. Let's go onto the next one on my
 22 list, which is 5000 Carpenter in Ypsilanti, Michigan,
 23 that I have heard commonly referred to as "the
 24 warehouse."
 25 A. Yes.

93

1 A. We were not. No. That isn't correct. M-Den Properties
 2 was created before Steve, Julie, and I owned the
 3 company, so my dad and his partner were the founding
 4 members of M-Den Properties, LLC.
 5 Q. Oh, okay.
 6 A. And they bought that property at 5000 Carpenter Road in
 7 2012. They sold both that piece of property and M-Den,
 8 Inc. to us, the new generation, in 2013.
 9 Q. Got it. And this property was where incoming shipments
 10 were delivered to and it was used for storage and
 11 logistics?
 12 A. Correct.
 13 Q. Got it. All right. The next one I have is 307 to
 14 309 State Street in the Ann Arbor, which I've commonly
 15 referred or heard it referred to as "part of the
 16 flagship store."
 17 A. That's correct.
 18 Q. All right. That entity -- or I'm sorry. The entity
 19 that owns that is M-Den State Street Properties, LLC.
 20 Correct?
 21 A. That is correct.
 22 Q. And the three members of that are yourself, Ms. Corrin,
 23 and Mr. Horning?
 24 A. That's correct.
 25 Q. And --

95

1 Q. All right. And the entity that owns that property is
 2 M-Den Properties?
 3 A. LLC, yes.
 4 Q. M-Den Properties, LLC.
 5 A. Yes. That's correct.
 6 Q. And the debtor leases or leased that property from M-Den
 7 Properties, LLC?
 8 A. Yes.
 9 Q. When did that lease begin?
 10 A. So the -- Let me just think about this.
 11 The -- the -- We -- When we bought, we, Steve, Scott,
 12 and Julie, bought M-Den, Inc., we bought that property
 13 at the same time, so we bought M-Den Inc. and M-Den
 14 Properties from my father and his partner in,
 15 essentially, the same transition in 2013. I don't
 16 believe that the lease was in place then between M-Den
 17 Inc. and M-Den Properties. I believe the lease that
 18 went in place there for the warehouse didn't -- took
 19 place in 2014, so from 2014 to 2024, M-Den, Inc. leased
 20 that property from M-Den Properties, LLC.
 21 Q. Yep. Okay. And so M-Den Properties, LLC, the members
 22 of that are yourself, Ms. Corrin, and Mr. Horning?
 23 A. Correct.
 24 Q. And M-Den Properties, LLC acquired that piece of real
 25 property in 2013, as you testified. Correct?

94

1 MR. BORIN: Just let me make sure. Was that
 2 the whole address on State Street? Make sure you don't
 3 get confused that --
 4 THE WITNESS: No. He did it, 307 and 309 are
 5 the building that we own. The flagship store has more
 6 addresses.
 7 MR. KOCHIS: Yeah. We're going to get to
 8 that.
 9 MR. BORIN: Okay. I just want to make sure.
 10 BY MR. KOCHIS:
 11 Q. All right. So when did M-Den State Street Properties,
 12 LLC acquire that real estate?
 13 A. 2017.
 14 Q. All right. Did the money for M-Den State Street
 15 properties to acquire that real estate come from the
 16 debtor?
 17 A. It did not.
 18 Q. All right. When did the lease between M-Den and M-Den
 19 State Street Properties begin?
 20 A. It began when -- I think it began -- there was a lease
 21 in place when we bought the property, but it also got
 22 redone in 2019, and I believe that was a five-year
 23 lease, so that lease would have gone from 2019 to 2024.
 24 The most recent lease, I believe, was 2019. We've
 25 leased it since we owned it, but the most recent lease

96

1 was the 2019 lease.
 2 Q. All right. All right. The next piece of property I
 3 have on my list is 1328 South Main Street in Ann Arbor,
 4 and I've heard that one commonly referred to as
 5 "adjacent to the corner lot."
 6 A. Yes.
 7 Q. What is, I guess, just so I understand from a geographic
 8 perspective, what is that piece of property -- What's
 9 the relationship to the debtor?
 10 A. The debtor, that property has no relationship to the
 11 debtor other than we were a tenant. We rented that
 12 property. The debtor rented that property from the
 13 owner of that property, essentially, for eight football
 14 games a year. That's a -- I believe it's a bank,
 15 actually.
 16 Q. Yeah. So --
 17 A. It's a bank.
 18 Q. -- so my understanding of the owner of that property is
 19 it's Stadium View Properties, LLC?
 20 A. It is.
 21 Q. Okay. And the debtor leased that property from Stadium
 22 View Properties, LLC for Michigan home football games?
 23 A. That's correct.
 24 Q. And so the purpose of that lease was debtor would sell
 25 merchandise from that location?

97

1 Q. Oh, you did operate for one year?
 2 A. For one year. We ran Moe's as Moe's for one year.
 3 Q. Okay. And then what happened after that one year?
 4 A. Then we closed Moe's, tried to lease that property,
 5 sublease it, find a subtenant, and we just consolidated
 6 all of our efforts into the flagship store. It was
 7 essentially taking out a competitor.
 8 Q. Were you able to find a subtenant?
 9 A. We did. We had found a subtenant and through the
 10 bankruptcy process, that did not end up getting across
 11 the finish line.
 12 Q. Well -- Okay. Let's walk through that.
 13 A. There was no formal lease signed with that subtenant.
 14 Q. When did this subtenant -- okay. Did a subtenant ever
 15 use the space?
 16 A. No.
 17 Q. So there was a proposed subtenant.
 18 A. I think that's a good way to say it.
 19 Q. And then a sublease was never executed?
 20 A. That's correct.
 21 Q. All right. The next one I have is 55 West Columbia in
 22 Detroit, Michigan. My understanding is that's commonly
 23 referred to as the "Detroit store," and that was a
 24 leased debtor location.
 25 A. That's correct.

99

1 A. That's correct.
 2 Q. Got it. Next one I have on my list is 711 North
 3 University in Ann Arbor. This one, my understanding is
 4 the debtor had a lease with either a person or an entity
 5 called Edwin VanDewege, D-E-W-E-G-E; is that correct?
 6 A. That's correct.
 7 Q. Is that a person or an entity, by the way?
 8 A. That, what you just named was the person.
 9 Q. Okay.
 10 A. I think that may be almost the company name, too, that
 11 he owns it from, but there might be an LLC at the end of
 12 that is what I'm trying to say.
 13 Q. Okay.
 14 A. I'm not positive about that, but, yes, the debtor did
 15 lease that property from that entity.
 16 Q. And what was the purpose of that lease?
 17 A. We, in 2017, we bought another competitor called Moe's
 18 Sport Shop and Moe's Sport Shop was operating in that
 19 location, and when we bought that entity, we inherited
 20 that lease.
 21 Q. All right. I'm sorry. What year was that?
 22 A. 2017.
 23 Q. But the debtor did not actually operate from that
 24 location; is that correct?
 25 A. For one year.

98

1 Q. All right. When did that lease begin?
 2 A. I'm not sure when the lease began. The lease probably
 3 has something like a 2018 date on it, but that store
 4 began operations in November of 2019.
 5 Q. Got it. And then when did the debtor cease operating
 6 out of that location?
 7 A. Within the two weeks precedent to filing
 8 the -- Between -- precedent to the bankruptcy filing, so
 9 somewhere early August.
 10 Q. And why did debtor stop operating from that location in
 11 August 2024?
 12 A. That's a -- that's a really -- It had -- I'm sure it had
 13 to do with unpaid rent and demands the landlord was
 14 making.
 15 Q. Okay. Was there -- was debtor facing an eviction
 16 action?
 17 A. I don't know that it had gotten to an eviction action.
 18 We were learning these things really fast at the time,
 19 but our attorneys on the real estate side were in
 20 discussion with them, and to avoid an eviction action, I
 21 think, we basically said we would stop operating.
 22 Q. Okay.
 23 A. And that they could have the property back.
 24 Q. Go it. Next one I have is 315/317 Main Street in Ann
 25 Arbor. I've commonly heard that referred to as the

100

1 "Main Street store."
 2 A. Yes.
 3 Q. Okay. And I believe the owner of that store was SMS,
 4 LLC and the debtor leased that location from SMS.
 5 A. Let's be clear on that. Our property address there was
 6 315 South Main Street. We released 315 South Main
 7 Street from the landlord, which is 315/317 SMS, so he
 8 has three addresses there. We leased one of the
 9 addresses.
 10 Q. Okay. So we leased 315 only?
 11 A. That's correct.
 12 Q. All right. And when did that lease begin?
 13 A. Again, that store opened in November of 2019. I have a
 14 feeling that the lease was a 2018 date on the lease,
 15 somewhere in 2018, and I think we should clarify one
 16 thing. That was the original Stein and Goetz Sporting
 17 goods location.
 18 Q. Okay.
 19 A. That's why that 315 address was important.
 20 Q. Got it. The next one I have is 301/303 State Street in
 21 Ann Arbor and I've heard that one commonly referred to
 22 as "part of the flagship store."
 23 A. That's correct.
 24 Q. Okay. Debtor leased that from E & J Associates, LLC?
 25 A. That's correct.

101

1 Q. And when did that lease begin?
 2 A. That lease began in 20 -- I don't know whether it's got
 3 a lease date of 2008 or 2009, but the location opened in
 4 2009.
 5 Q. All right. And then, I actually don't have an address
 6 for this one, but I understand that there was a lease
 7 with Simon Properties at Briarwood Mall.
 8 A. That's correct, yes.
 9 Q. All right. And do you know when that began?
 10 A. That -- I'm not sure if this is the legal way to say
 11 that, but I believe the lease that actually was in place
 12 there was the original lease back from the 1982 store
 13 that just kept getting extended and modified, so that
 14 lease in that location, I think, goes all the way back
 15 to 1982 --
 16 Q. Okay.
 17 A. -- the original lease.
 18 Q. And then I believe this is one of the locations that
 19 debtor ceased operating in shortly before the
 20 bankruptcy; is that right?
 21 A. That's correct.
 22 Q. Okay. And why did debtor cease operating in that
 23 location?
 24 A. There was an eviction proceeding happening there.
 25 Q. Okay. I also have -- Was there a store location at

102

1 Twelve Oaks Mall?
 2 A. That's correct.
 3 Q. All right. When did that begin?
 4 A. I think that began in the year 2000, and similar to the
 5 other mall location, that lease would have just been
 6 extended or addended or whatever up until, I think, the
 7 most recent lease was three years previous, so the most
 8 recent addendum was probably 2021.
 9 Q. And when did debtor cease operating from the location?
 10 A. Same timeframe, within a couple of weeks of the
 11 bankruptcy proceeding.
 12 Q. Was there an eviction action there?
 13 A. Threatened, but not -- had not actually taken place yet.
 14 Q. All right. I have seen reference to a property
 15 identified as 1336 South Main Street in Ann Arbor that
 16 is referenced to as "Drip House Coffee." The debtor
 17 have anything to do with that property?
 18 A. So 1336, if you recall, is one of the properties that we
 19 call "the corner."
 20 Q. Oh.
 21 A. 1336 and 2 -- That's why I made the point about 210 West
 22 Stadium, so the property that we call "the corner" and
 23 that we operated the tent on game days in that parking
 24 lot spans both properties. 1336 South Main Street,
 25 which its day job, shall we say, is to operate as a

103

1 coffee shop, so -- So M-Den Stadium Properties has a
 2 tenant that is not a related-party entity and that's the
 3 people that run the coffee shop.
 4 Q. Okay. All right. So M-Den Stadium Properties leases it
 5 to the coffee shop?
 6 A. That's correct.
 7 Q. And they -- Got it. All right.
 8 A. So the coffee shop operates there all the time. We only
 9 operated out of there on football weekends.
 10 Q. Got it. Did the debtor have a lease for a store
 11 location inside Michigan Stadium?
 12 A. It's not a lease. That -- The agreement that governed
 13 our relationship with the University as their official
 14 retail partner designated us as the retailer, the
 15 exclusive retailer inside Michigan Stadium on football
 16 game days, and as such, various locations came along
 17 with that.
 18 Q. Oh, other locations other than just inside Michigan
 19 Stadium?
 20 A. No. I'm saying inside Michigan Stadium there are, I
 21 think, at the end there were 11 locations inside
 22 Michigan Stadium that we were operating. That would
 23 have varied throughout the years, as construction would
 24 have happened inside the stadium, et cetera, but there
 25 were 11 locations inside Michigan Stadium that we

104

1 operated on game days as part of our agreement as their
 2 official retail partner.
 3 Q. Okay. But did the debtor also operate out of, for
 4 example, Chrysler Arena?
 5 A. From that same agreement, two locations inside Chrysler
 6 Arena --
 7 Q. Okay.
 8 A. -- the debtor operated out of.
 9 Q. All right. So Chrysler. What about -- What is it,
 10 Yost? Is that the hockey --
 11 A. Through the same agreement, we have two locations --
 12 Well, now, as Sheldon knows, now, which is one location
 13 in Yost Ice Arena, and that would go -- the same thing
 14 for the baseball stadium, the softball stadium, soccer
 15 stadium, et cetera.
 16 Q. Oh, got it.
 17 A. No leases. It was all part of that agreement.
 18 Q. Understood.
 19 A. That was why I answered it that way.
 20 Q. All right. So we covered a lot of spaces that the
 21 debtor leased or operated out of. Am I missing any that
 22 you are aware of?
 23 A. The internet.
 24 Q. Well --
 25 A. MDen.com.

105

1 Q. We're talking about physical space.
 2 A. Physical?
 3 Q. Physical spaces, yes.
 4 A. Okay. Let me just think about that for a min. Other
 5 than the University locations that we had -- There were
 6 five, so Main Street, State Street, Briarwood, Twelve
 7 Oaks, and Detroit, plus the stadium. I count the
 8 stadium as one, all of those, so -- No. We haven't
 9 missed anything.
 10 Q. Okay. All right. Let's go back to Exhibit 2, if we
 11 could, and I'm on page 35 of 47.
 12 A. Okay. I'm there.
 13 Q. All right. So there's creditor 3.77, M-Den Properties,
 14 LLC, and we just talked about that entity a moment ago.
 15 A. Yes.
 16 Q. The debtor lists "various intercompany loans" for the
 17 period 2013 to 2024 in the amount of \$392,692. Do you
 18 know what that amount relates to?
 19 A. I do.
 20 Q. What is it?
 21 A. That is an amount that -- Oh, do you -- Were you going
 22 to --
 23 MR. BORIN: No. I didn't --
 24 THE WITNESS: Okay. I thought --
 25 MR. BORIN: No. No.

106

1 THE WITNESS: I didn't even have a chance to
 2 say something.
 3 MR. BORIN: Go ahead.
 4 THE WITNESS: So the way that worked would be
 5 M-Den Properties -- I'm sorry -- M-Den, Inc. would pay
 6 rent to M-Den Properties, LLC for a lease rate that was
 7 set at market rent at this time of the lease. That
 8 amount, in this case, was greater than the amount of the
 9 mortgage payments due to the bank on that property,
 10 okay? So -- and also greater than the amount of
 11 operating expenses, et cetera, so essentially, the lease
 12 was -- the lease rate was greater than the sum of the
 13 expenses.
 14 The cash that was greater than the sum of the
 15 expenses was loaned from the real estate entity back to
 16 the operating entity, and that was -- I don't know about
 17 stipulated is the right word, but the bank knew that.
 18 We didn't -- As part of talking to the bank about
 19 lease -- them financing this property, that was not a
 20 mechanism to get money from M-Den, Inc. to that real
 21 estate entity.
 22 That was, frankly, a way to lower the
 23 occupancy cost. Owning that property was less expensive
 24 than leasing it, and so any money over and above
 25 financing costs, we loaned back to the operating

107

1 company. That's what this is, so this is the sum of
 2 lease payments greater than operating costs loaned back
 3 to the operating entity.
 4 BY MR. KOCHIS:
 5 Q. All right. So was \$392,692 actually transferred by
 6 M-Den Properties, LLC to M-Den or is this just a book
 7 entry?
 8 A. No. It was actually a transfer.
 9 Q. Okay. And how would that transfer have been
 10 accomplished? Would there have been a check written?
 11 A. I think it would have been a -- Just -- It's two
 12 different bank accounts on a Bank of Ann Arbor screen
 13 and just transfer it from one to the other.
 14 Q. All right. And so --
 15 A. And then that money was used to pay bills at the
 16 operating company.
 17 Q. Okay. And so this occurred over a various time period
 18 over 2013 to 2024?
 19 A. That's correct.
 20 Q. All right. Let's flip the page. So I'm looking at the
 21 first one, 3.78, M-Den State Street Properties, LLC, and
 22 this one lists an amount of \$1,306,160. Do you see
 23 that?
 24 A. I do.
 25 Q. Do you know what that relates to?

108

1 A. Yes.
 2 Q. What is it?
 3 A. The exact same thing, so that is lease payments greater
 4 than the financing costs of that location, and so that
 5 money, when all the expenses were paid, and that's when
 6 we got one mortgage on it and the mortgage payment was
 7 made, anything greater than that was repatriated to the
 8 operating company.
 9 Q. But how was there a determination made about what amount
 10 was the excess that could be transferred back to M-Den?
 11 A. Anything that was greater than zero over -- This is a --
 12 2017 through 2024, so this is seven years' worth of
 13 anything greater than zero, so that entity operated at a
 14 profit on its books, and the cash version of that,
 15 forget about the PNL for a second, the mortgage on that
 16 property, I believe, was about half of what the lease
 17 payment was.
 18 Q. So the lease payment by M-Den would go into M-Den State
 19 Street Properties. It would -- M-Den State Street
 20 Properties would then use the money to satisfy the
 21 mortgage payment and what other expenses?
 22 A. Property tax.
 23 Q. Taxes.
 24 A. Insurance, maintenance.
 25 Q. Okay.

109

1 A. That's it.
 2 Q. Okay. And after all of those amounts were satisfied,
 3 there would be a remaining amount?
 4 A. Correct.
 5 Q. And that remaining amount, M-Den State Street Properties
 6 would transfer back to M-Den during this time period?
 7 A. That's correct.
 8 Q. Okay. Let's go to 3.14. It's on page 42 of 47.
 9 A. 42 of 47?
 10 Q. Correct. And that one is a claim for Stadium View
 11 Properties, LLC, and it lists the claim as \$34,898.81.
 12 Do you know what that claim is for?
 13 A. That would have been the rent for that piece of grass,
 14 shall we say, that's in that -- that address, slightly
 15 to the north of our property by the stadium, the thing
 16 that we lease for only eight days a year, and this would
 17 be the payment due for that property for the 2024
 18 football season, essentially.
 19 Q. Okay. So the rental payment was -- was an annual
 20 payment?
 21 A. There were payments scheduled through the year. I think
 22 we had made one or two of those, but the bulk of it was
 23 set to be paid in advance of the football season.
 24 Q. Okay. Okay. Thanks. So I'm going to hand you what
 25 we're going to mark as Exhibit Number 4.

110

1 A. Okay.
 2 (Exhibit 4 marked for identification)
 3 BY MR. KOCHIS:
 4 Q. And then for the record, again, I apologize for the font
 5 size, but this is one of the documents produced to me.
 6 I believe it's called "InterCompany Details," and it was
 7 in the folder produced to me as "Q9".
 8 A. Yes.
 9 Q. So, Mr. Hirth, are you familiar with this document?
 10 A. Yes.
 11 Q. And what is this document?
 12 A. This is -- this is the document that shows the various
 13 ins and outs of the intercompany accounts that make up
 14 the -- the balances that we just discussed about, what
 15 was owed from M-Den Properties -- I'm sorry -- M-Den,
 16 Inc. to M-Den Properties M, M-Den, Inc. to M-Den State
 17 Street Properties, and what was owed from M-Den Stadium
 18 Properties to M-Den, Inc., so these are the ins and the
 19 outs that make up those on the rent payments, those
 20 payments of those expenses, and then repatriation of
 21 that money to the operating company.
 22 Q. Okay. And then do you know where this data came from?
 23 A. Yes. So Deanna would have kept track of this, and this
 24 data would all be sitting in, 'cause I believe each of
 25 these has an account both on Owl -- when I say the

111

1 debtor's financial system and on the three real estate
 2 entities' financial systems.
 3 Q. Okay. So I'm going to try to ask this question.
 4 Hopefully it makes sense. Is this information that's
 5 been extracted from books and records of the debtor or
 6 is this just a separate spreadsheet that Deanna
 7 maintained?
 8 A. I believe that this was created out of the books and
 9 records and foots to the books and records so that you
 10 can see what came in and what came out of the each of
 11 those accounts so that you can see the balance, what
 12 makes up the balance.
 13 Q. Okay. And do you know, is this something that was
 14 recently created or was this something that has existed
 15 over time?
 16 A. I have never seen this before we responded to the
 17 subpoena.
 18 Q. Okay.
 19 A. So this was created for the subpoena.
 20 Q. Okay. Got it.
 21 A. I had seen the balances on the financial statements, but
 22 I -- this detail was created for you.
 23 Q. Understood.
 24 A. Okay. For the subpoena.
 25 Q. So heading into bankruptcy in August 2024, when was the

112

1 last inventory that the debtor had completed?
 2 A. Physical?
 3 Q. Yes.
 4 A. May.
 5 Q. Of 2024?
 6 A. Of 2024, yeah.
 7 Q. Oh, okay. Well, maybe -- Hold on. Okay. Here -- All
 8 right. Well -- well, let's talk about this, then,
 9 'cause maybe this is just my confusion.
 10 A. Okay.
 11 Q. So lets talk about Exhibit 1.
 12 A. Okay.
 13 Q. And let's look at page 63 of 69.
 14 A. 63.
 15 Q. Of 69.
 16 A. Okay.
 17 Q. There's a question about inventories, number 27. Have
 18 any inventories of the debtor's property been taken
 19 within the two years of the filing of this case and the
 20 answer was no, so is that answer correct?
 21 A. I think when I read that, I didn't read that to mean
 22 physical count of inventory.
 23 Q. Oh, what did you take that to me?
 24 A. I took it -- Has any been taken? Has any inventory been
 25 taken from --

113

1 Q. You mean, like, stolen, taken?
 2 A. Or just taken in any way, shape, or form. I didn't read
 3 this and I clearly see now that that is an incorrect
 4 reading on my part, but, yes. If this means physical
 5 inventory counts, then this is an incorrect answer.
 6 Q. All right. All right. So the last inventory, physical
 7 inventory count, you think was May 2024?
 8 A. Unquestionably.
 9 Q. All right.
 10 A. May 2024.
 11 Q. Well, why do you say "unquestionably"?
 12 A. Because it was recent enough ago that I can remember.
 13 Q. Okay.
 14 A. Without -- There's no doubt.
 15 Q. All right. How often did the debtor perform physical
 16 inventories?
 17 A. Except for the years of the national championship and
 18 the College Football Playoffs, it was performed every
 19 year in January.
 20 Q. All right. The fact that it was in May 2024, did that
 21 have to do with the national championship?
 22 A. The chaos of the -- Yes.
 23 Q. Okay. All right. And is there a -- Well, let me back
 24 up. Who did the inventory in May of 2024?
 25 A. Our staff, it was not an external third party.

114

1 Q. All right. Internal?
 2 A. It was internal.
 3 Q. All right. And was there a report prepared?
 4 A. I believe the reports that are prepared was a summary of
 5 adjustments that needed to be made. No, that's not
 6 true. At the end of that, there would have been a
 7 report before the physical count and there was a report
 8 prepared at the end of that, so the answer is yes.
 9 Q. Okay.
 10 A. Yes, there is.
 11 Q. And then -- Well, let me ask it this way: So is the
 12 purpose of the physical inventory to reconcile against
 13 what's in the debtor's ERP system?
 14 A. What's physically on hand reconciled against what the
 15 ERP system says is on hand, that's correct.
 16 Q. Yeah. Got it. So May 2024 -- What about working
 17 backwards in time, what would have been the next most
 18 recent inventory?
 19 A. There should have been one in 2023, January. There was
 20 not.
 21 Q. Why not?
 22 A. Because of the chaos.
 23 Q. All right.
 24 A. And in January 2022, there was one, so we did the
 25 last -- So we missed one year. We missed one year and

115

1 then did it in May, instead of January in 2024.
 2 Q. All right. So was there one in 2022?
 3 A. Yeah.
 4 Q. When?
 5 A. There was in January 2022.
 6 Q. All right. January 2022. There was no inventory in
 7 2023 at all?
 8 A. That's correct. There might have been a cycle count for
 9 a specific item, but there was no physical count of
 10 every item in all the stores and the warehouse.
 11 Q. All right. Why no inventory in 2023?
 12 A. Because we couldn't get to it, plain and simple.
 13 Q. I want to shift a little bit about vehicles. My
 14 understanding, at the time of the debtor's bankruptcy
 15 filing, it owned two vehicles. There is a 2019 Chevy
 16 Express G3500. Are you familiar with that vehicle?
 17 A. Yes.
 18 Q. Is that a van, by the way?
 19 A. The Chevy is a box truck, I think you -- it would be
 20 commonly referred to.
 21 Q. Okay. And do you have any idea what that vehicle was
 22 worth?
 23 A. Yes.
 24 Q. What do you think that was worth at the time of the
 25 bankruptcy filing?

116

1 A. Under \$10,000.
2 Q. All right. And then, the other vehicle I understand
3 that the debtor owned at the time of filing was a 2023
4 Ram ProMaster. Is that a pickup truck?
5 A. That's a -- You would commonly think of that as a
6 sprinter van.
7 Q. Oh, okay. Any idea how much that was worth at the time
8 of the filing?
9 A. Yeah. Ballpark, call it, 15 to \$20,000.
10 Q. Okay. Any other vehicles?
11 A. No.
12 Q. All right. There is a reference in the disclosure
13 statement, and you may have made reference to this in
14 some of your testimony, about approximately \$5,000,000
15 worth of inventory being received during a two-week
16 period in December 2022. Do you know I'm referring to?
17 A. I do.
18 Q. All right. What happened, such that there was that
19 quantity of inventory received in a two-week period in
20 December 2022?
21 A. Okay. So here is the -- This is back to the long-term
22 effects of COVID, so not only was the store closed
23 during COVID, but obviously, lots of business had
24 disruption, and so what switched from whatever lead time
25 was in place, if a vendor of ours could have

117

1 either in advance of football season 2022 or later into
2 spring or summer of 2023, and the fact that it showed up
3 at that time created a cash problem.
4 There was inventory in our hands to the
5 tune of about \$5,000,000 from Champion, BCS, Lululemon
6 that just shouldn't have been there, and it created
7 havoc with us trying to -- First of all, trying to
8 figure out what it was. We didn't even know what it was
9 until well into 2023 because we had to get it off site.
10 We had to take it out of our warehouse and get it
11 elsewhere because it wasn't supposed to be at that time.
12 We wanted it, needed it in advance of
13 football season, and would need it again in advance of
14 either spring or the following football season, and they
15 were good long-term partners, key -- key partners there,
16 good inventory, not stale inventory, but we just had to
17 figure it out because we were right in the -- it showed
18 up right in the middle of the second Big Ten
19 Championship chaos at the end of 2022 there, and that's
20 why that came up. That's \$5,000,000 of stuff that we
21 had to pay for, to find a way to pay for, that we
22 couldn't. That's why that was disclosed in the
23 schedules that way.
24 Q. All right. So you had to take it out of the warehouse.
25 Where did the debtor take it to?

119

1 historically produced a sweatshirt for us, if we said we
2 need four weeks -- if the lead time was four weeks, that
3 was greatly extended.
4 If it was somebody who we had to deal with
5 and it was a year lead time, and there are some vendors
6 where their normal lead time was a year, that was up to
7 a year and a half or two years, and sorting that out as
8 the world is waking up and Michigan starts winning
9 football games again, all happened at the same time, so
10 all of those vendors are saying, "Scott, if you're going
11 to get product in here, you have to order it much, much,
12 much further in advance than you're used to," used to
13 have to order in, so we did that.
14 We were thinking positive. Students are
15 coming back. We're Michigan's partner. We're certainly
16 not going to let Michigan get embarrassed by having no
17 product for people to buy, so we placed orders that were
18 booked way out, so a year or more, and then the vendors
19 got that wrong. They were wrong and so a lot of that
20 product that you just asked about was supposed to be
21 delivered in advance of football season 2022.
22 The supply chain was still screwed up way
23 out into 2022, and frankly, is still screwed up until
24 today, and that product is referenced there because it
25 was \$5,000,000 of product that should have been there,

118

1 A. We took -- The pieces that left our warehouse, we asked
2 our partners at Underground Printing to -- they had a
3 brand-new warehouse that there was nothing going on
4 there and we moved it over there.
5 Q. Okay.
6 A. And brought it back as the chaos subsided.
7 Q. Okay. So the cash crunch that, I think, you mentioned,
8 so that related to the fact that it all came in at once
9 and that the vendors were expecting payment.
10 A. Yes. And that led to the cash crunch all throughout
11 2023, end of 2022, all of 2023, and frankly, even into
12 the balances that are on the debtor's schedule now.
13 Q. But I mean, I think what I'm hearing from your answer
14 was the debtor had ordered this and it was not timely
15 delivered to the debtor.
16 A. Correct.
17 Q. Okay. So to the extent it was not timely delivered to
18 the debtor, were there discussions with these vendors
19 about, "Hey, I did not timely receive this, so I'm not
20 going to remit payment to you within 30 days of receipt
21 or whenever that payment was due"?
22 A. Yes.
23 Q. And what was the result of those discussions?
24 A. For the most part, they were moved and pushed around.
25 Not entirely. Some of them started screaming and

120

1 threatening before that, but some of it was moved or
2 delayed.
3 Q. Some of the payments were moved and delayed?
4 A. Some of the payments were moved and delayed.
5 Q. Okay. So another thing you touched on, 'cause this is
6 the one other part that I wanted to ask you about --
7 A. Yeah.
8 Q. -- I think you said something the effect of it was not
9 stale inventory, so what I'm taking away from that
10 statement is regardless of the fact that debtor received
11 it late, it's still inventory that the debtor could
12 sell; is that fair?
13 A. Yes.
14 Q. Okay.
15 A. But the part that's missing from that is we had to sell
16 something. We had to get product to replace that in
17 advance of football season so we had something to sell
18 during football season, so we essentially got the
19 inventory twice, just it's not the same inventory.
20 Q. Okay. That part, you may have lost me on, so I get the
21 5,000,000 in December 2022.
22 A. Yep.
23 Q. But I -- When you said we needed to get something to
24 sell in advance, I think you're talking about a
25 different inventory set.

121

1 A. I am.
2 Q. Okay. So that different inventory set --
3 A. Right.
4 Q. -- when was that received?
5 A. That would have been received when it -- that would have
6 been received in replacement of the stuff that didn't
7 come when it should have, so it would have come in
8 advance of football season 2022.
9 Q. So that would have been, like, August 2022?
10 A. June, July, August.
11 Q. Okay. Are there -- So the August inventory and the
12 December inventory, are these from the same vendors or
13 are they different vendors?
14 A. Some is the same. Some are different.
15 Q. Okay. All right. I want to switch, and then maybe
16 we'll head to a lunch break, 'cause this may be a
17 logical stopping point after this. Coleman House.
18 A. Coleman House.
19 Q. So there's been some discussion that Coleman House was
20 operating the merchandise location in the University of
21 Michigan Stadium this past football season, and for at
22 least some of those games, Coleman House was utilizing
23 the debtor's employees; is that correct?
24 A. That is. That is correct. I think that I put on there
25 that it's Legends that is Michigan's partner, so Legends

122

1 is the actual partner of Michigan and Legends
2 subcontracted Coleman House to run those locations, so
3 Coleman house is a third party that actually works for
4 Legends, who is Michigan's partner.
5 Q. Okay. So Legends subcontracted Coleman House.
6 A. And Coleman House asked -- Legends and Coleman House
7 asked for our experienced staff to help them get off the
8 ground, frankly, and remember, we were thinking Legends
9 was going to buy us at that time, as well, so that's how
10 that all came together.
11 Q. All right. So the -- I'll just call it the
12 subcontracting, so the subcontracting by Coleman
13 House --
14 A. Yes.
15 Q. -- that would only relate to University of Michigan home
16 football games for this past season, correct?
17 A. That's correct.
18 Q. All right. And is it only football games or did it also
19 relate to any other sports, like hockey or --
20 A. Yeah, but it was only the first four football games
21 before we were sold through the auction.
22 Q. Okay.
23 A. So it was game one, game two, game three, and game four,
24 and it was only football.
25 Q. All right. So four -- four home football games?

123

1 A. That's correct.
2 Q. How many employees of the debtor were subcontracted
3 through this process?
4 A. Somewhere between 0 and 40 and it was closer to 40, but
5 it varied based on each game.
6 Q. Got it. And how -- how did -- how did the
7 subcontracting work?
8 A. Essentially, the -- Legends put us in touch with Coleman
9 House and said, "We think we're all going to be together
10 soon anyway, but this is how we're going to run the
11 place in the short run. We got this Coleman House
12 company. They do the Super Bowl. They do all this
13 other stuff. Can you -- can your people work with them
14 to get the stadium ready for football season, like
15 you've been doing for the past 30 years, and staff to
16 run the first couple of games?"
17 And at the time, I'm dealing all of this,
18 trying to get us sold to Legends and I said to them
19 "Yes. We'd be glad to help," and just cover the cost of
20 our staff, and one of the staff there was my sister, one
21 of the owners and, 'cause that was her job at that time
22 of the year -- and so if they cover the cost, that was
23 paying salary that we didn't have to pay, so I was
24 perfectly fine with that, and it was very helpful to
25 them.

124

1 It led to a good launch of them as
 2 Michigan's partner. It was a good answer for the
 3 customers, and it helped us. It defrayed costs that,
 4 obviously, at a time when things weren't good at all, we
 5 didn't have -- staff that we didn't have to pay, so
 6 that's how it was. They said how many people they
 7 wanted on their staffing model and we provided that
 8 staff, including managers, managers that we would take
 9 out of our normal operation and put into stadium
 10 locations on game day, and so they didn't have to, as
 11 they were ramping up, they didn't have to find leaders
 12 of those locations, either, so that's how that went, and
 13 then we would send them a bill for those costs. They
 14 would pay that bill.
 15 That's how it worked until we were right
 16 in the middle of the auction process and the creditor's
 17 committee suggested there might be some issue with us
 18 doing that process and that we should suggest that there
 19 should be some markup on those employees, and so we went
 20 back and said this is all going to come to a screeching
 21 halt if we can't got some kind of markup over and above
 22 our cost for those employees and they agreed to that
 23 markup, and so what ultimately happened is they paid us
 24 cost plus. I think it was 15 percent for those
 25 employees for those first four football games.

125

1 Q. Okay.
 2 A. But, essentially, except for the order --
 3 Q. I got it. I understand.
 4 A. Yeah.
 5 Q. But the other 39-ish employees, were they salary or were
 6 they hourly?
 7 A. There were a couple that were being salaried, so they
 8 would be managers of M-Den stores that would come to the
 9 stadium game days to provide leadership to those stadium
 10 locations, so a couple of people would be on salary.
 11 The rest would be strictly hourly.
 12 Q. Right. So I'm guessing, maybe, you know -- I mean, what
 13 is the number? How many were salary versus hourly? Do
 14 you know?
 15 A. Under ten were salaried.
 16 Q. Okay. And so what would happen? Would Heritage
 17 calculate the -- say that for week one there was only
 18 35, hypothetically --
 19 A. Yep.
 20 Q. -- would Heritage say, "Okay, 35 employees. This is the
 21 amount, Coleman House," and then remit some type of
 22 invoice to them?
 23 A. Yes.
 24 Q. All right. And the -- the surcharge or, I think, did
 25 you call it a surcharge or the cost plus?

127

1 Q. Okay.
 2 A. By then, we were sold to Rally House and that stopped.
 3 Q. All right. So I think one of the employees you
 4 mentioned would have been Julie Corrin, right?
 5 A. That's correct.
 6 Q. And so she was paid salary, and so let's take her as an
 7 example, so to the extent she was there, whatever her
 8 salary was for that day --
 9 A. Right, which is an interesting calculation.
 10 Q. -- can be calculated, Coleman House would then remit
 11 that money to whom? They would remit it to M-Den?
 12 A. M-Den, Inc., yes.
 13 Q. Okay.
 14 A. Heritage.
 15 Q. Heritage.
 16 A. Well, by then it was Heritage.
 17 Q. So they remitted to Heritage?
 18 A. Yeah.
 19 Q. And then Heritage, and we'll stick with the Julie Corrin
 20 example, then Heritage would then pay Julie Corrin her
 21 wages?
 22 A. It probably went the other direction. Julie would have
 23 been paid before we -- 'Cause payroll didn't sync up
 24 with how they paid us, but Julie would have been paid in
 25 advance of them paying us back.

126

1 A. I -- He actually had a name for it, the guy, when I had
 2 to come back, 'cause I had to renegotiate this with him.
 3 Cost plus, maybe. Something like that.
 4 Q. Okay.
 5 A. He had a name for it and he said, "This is the most that
 6 I could come up with to pay over and above the cost of
 7 those staff."
 8 Q. All right.
 9 A. And so then he got a separate invoice for that.
 10 Q. But the separate, the cost plus, let's just call it a
 11 surcharge for a minute, 'cause maybe that will make it
 12 easier --
 13 A. Yeah.
 14 Q. -- than using all these words.
 15 A. Yeah.
 16 Q. The surcharge ended up being 15 percent, correct?
 17 A. Correct. A mark up of 15 percent.
 18 Q. I just want to make sure I understand. Whatever the
 19 total was for the four football games for all the
 20 employees, that adds up to a total, and then that was
 21 multiplied by 15 percent?
 22 A. Right.
 23 Q. And then Coleman House paid that 15 percent?
 24 A. That's correct. So let's just say it was \$10,000 for a
 25 game. The invoice would have ended up being 11,500.

128

1 Q. Okay. And how was the 15 percent negotiated?
 2 A. It was hurriedly and messily negotiated because the
 3 notion of it came from you, frankly, so we had to go
 4 back to him in the middle of football season with a game
 5 that weekend and say "Listen. We're looking at not
 6 having anybody in the stadium this weekend if you can't
 7 come up with something on this," and he said this is
 8 what we can come up with.
 9 Q. All right.
 10 A. And then he came back to us. I talked to Kim. Kim
 11 talked to you, and that's what happened-ish.
 12 Q. All right. So let's tease this out a little bit more,
 13 though.
 14 A. Sure.
 15 Q. So hourly employees --
 16 A. Yeah.
 17 Q. Are there things like withholdings or other things that
 18 Heritage pays to hourly employees?
 19 A. It was done on gross. Gross, so if you're asking was
 20 the employer part of the FICA, did they pay us back for
 21 the employer part of FICA is, essentially, what you're
 22 asking, I think, and I think the answer to that is no,
 23 unless it's included in that 15 percent markup. What
 24 they paid us would have been, if it's an hourly employee
 25 and their rate on a football Saturday was \$20 an hour,

129

1 and they worked 8 hours for them, they would have been
 2 invoiced 20 times 8 times 1.15.
 3 Q. Okay. What about the salary employees? Are there
 4 things other than the salary -- I think, for example,
 5 earlier we talked about health insurance --
 6 A. Yeah.
 7 Q. Did -- Were there things like that that debtor paid to
 8 salary employees?
 9 A. There were those things and that was not factored into
 10 the calculation.
 11 Q. Okay. What are examples of those things?
 12 A. The only other thing that I can think of, other than the
 13 employer part of FICA and insurance would be 401K match.
 14 Q. Oh, the debtor provided a 401K match to salaried
 15 employees?
 16 A. Anybody in our 401k program, whether they were hourly or
 17 salaried, had a match.
 18 Q. Okay. And that was not included in the --
 19 A. That's correct. I'm not sure we were doing the match
 20 anymore at that point, either, by the way, but that was
 21 not -- it would have been, if they make \$20 an hour,
 22 that's their stated hourly rate. That's what went into
 23 that spreadsheet.
 24 Q. Okay. So there -- Let's talk about the writing, so
 25 there would have been an invoice that M-Den provided to

130

1 Coleman House, correct?
 2 A. Correct.
 3 Q. Is there anything else in writing related to this, what
 4 we're calling this subcontract?
 5 A. I think there's an e-mail in writing where it says what
 6 he is suggesting that he can pay and me agreeing to
 7 that.
 8 Q. And that he is who?
 9 A. The owner of Coleman House.
 10 Q. Does that person have a name?
 11 A. John Knudsen (phonetic).
 12 Q. All right. So we have this e-mail. We have invoices.
 13 Any other documents in writing evidencing this?
 14 A. There's -- The only other thing would be we had to
 15 provide access to the stadium, so we would have to get
 16 pictures and phone numbers, and I don't know about
 17 Social Security numbers, but some kind of unique
 18 identifier for each person, so there's a lot of
 19 documentation going back and forth with Coleman House
 20 saying "Here's who's coming this week. Here's their
 21 picture so they can get approved and get their
 22 credential issued so they can get into the stadium."
 23 Other than e-mails agreeing to that, that's the only
 24 other documentation that would have gone back and forth.
 25 Q. Okay. The space inside the stadium where the employees

131

1 were working for these four games --
 2 A. Yes.
 3 Q. -- my understanding is there was debtor personal
 4 property in that space, such as display units, hanging
 5 racks, and other display hardware; is that true?
 6 A. That is true.
 7 Q. Is there other debtor personal property other than what
 8 I just described?
 9 A. Bags. Did you say bags?
 10 Q. I did not.
 11 A. Bags.
 12 Q. So debtor owned bags?
 13 A. Debtor owned bags.
 14 Q. Okay.
 15 A. As in M-Den bags. Bags that said "M-Den" on them.
 16 Q. Okay. So did Coleman House utilize the display units,
 17 the hanging racks, display hardware, and the bags?
 18 A. Yes.
 19 Q. All right. Did the debtor receive compensation for
 20 that?
 21 A. Other than the 15 percent markup on the employees, no.
 22 Hold on. That's not even quite true.
 23 Q. Okay.
 24 A. The debtor, but then those bags were sold. Frankly, the
 25 bags and the racks were sold as part of our deal with

132

1 Rally House.
 2 Q. Well, I want to --
 3 A. Yeah.
 4 Q. I am going there.
 5 A. Okay.
 6 Q. So you're anticipating it correctly, but in terms of did
 7 Coleman House pay the debtor for use of those items we
 8 just discussed?
 9 A. Other than the 15 percent markup on the employees, no.
 10 Q. Okay. Now, we are going where you correctly predicted,
 11 which is: So then sale to Rally House occurs. Let's
 12 just take an easy example. Do you know what happened to
 13 the, let's use, the hanging racks that were inside the
 14 stadium?
 15 A. They are still there and they have not gone to Rally
 16 House.
 17 Q. Why have they not --
 18 A. Nor has Rally House asked us -- asked us for them.
 19 Q. Okay. So same thing as to the display units and the
 20 other display hardware.
 21 A. That is true. The only asset on that list that has been
 22 addressed was the bags.
 23 Q. Okay.
 24 A. And I don't know the final dispensation, but I know that
 25 I put Rally House in touch with Legends and Rally House

133

1 and Legends came to some agreement about the bags, so
 2 Rally House transferred the bags to Legends for
 3 something. I don't know what that thing is, but those
 4 bags that they bought because it was part of our
 5 inventory and supplies, was an M-Den asset at the time
 6 of the transaction, so Rally House owned those, and I
 7 believe, traded them to Legends for something.
 8 Q. Got it. I think I have been in that location in the
 9 stadium, so I just want to maybe articulate what I'm
 10 seeing in my mind. In terms of the display units, the
 11 hanging racks, and the display hardware, when you walk
 12 into that space, that is how the merchandise is
 13 displayed. It's on the hanging racks and on the display
 14 units, correct?
 15 A. Yes, but remember, there are 11 locations in the
 16 stadium, so you may not have been in all of them, and
 17 most of it had been removed. That's the -- the key here
 18 is that the phrase has got to be most. There was some
 19 remaining, but most of our racks had been removed before
 20 this happened.
 21 Q. Well, but wait a minute. Let's talk about the four
 22 football games where Coleman house is operating in
 23 there.
 24 A. Yep.
 25 Q. I mean, my understanding is that the only racks, display

134

1 hardware, in that space during that four games was the
 2 debtor's racks and hardware. There was no other racks
 3 or other --
 4 A. That is incorrect.
 5 Q. Oh, really?
 6 A. Yeah.
 7 Q. Where did the other racks and hardware come from?
 8 A. Legends brought their own. See, we were told to vacate
 9 the space, and we were told what they wanted, 'cause
 10 remember, Legends was, in theory, going to buy us at the
 11 time, so we were told "Get these out of here. We want
 12 to use this," and we did get this out of here.
 13 They wanted to have us leave some and
 14 leave the bags, 'cause we don't know what we're going to
 15 do for these first couple of games, so as you walk into
 16 that store, what you were used to seeing -- would have
 17 not been exactly what you were used to seeing, 'cause
 18 some of that would have been taken out and that
 19 ultimately got replaced by stuff that Legends brought of
 20 their own, so I would say most of our racks and
 21 display -- hanging displays and things like that had
 22 been removed. Some remained for them to use, just like
 23 they used our employees.
 24 Q. So I mean, do you have an idea on percentage of, for
 25 example, the mix of debtor racks versus Legends racks?

135

1 A. 70 percent of ours had been -- 60 to 70 percent of ours
 2 had been removed 30 to 40 percent were still there.
 3 MR. KOCHIS: Okay. All right. That's
 4 helpful. All right. Do you want to do this as a
 5 stopping point, then?
 6 MR. BORIN: Yeah, works for me.
 7 VIDEO TECH: Going on off at 10:29:21 --
 8 12:29.
 9 (Off the record at 12:29 p.m.)
 10 (Back on the record 1:27 p.m.)
 11 VIDEO TECH: We will begin. We are back on
 12 the record at 1:27:03 p.m.
 13 MR. KOCHIS: All right. Mr. Hirth, we're back
 14 on the record.
 15 THE WITNESS: Yes.
 16 BY MR. KOCHIS:
 17 Q. I want to talk for a minute about debtor's business
 18 model, so from a high-level perspective, debtor is
 19 selling merchandise in its retail stores, correct?
 20 A. Yes.
 21 Q. And do you have a percentage, in terms of what the
 22 markup would be on when Debtor acquires something, the
 23 markup from when, then, Debtor would sell it in the
 24 store locations?
 25 A. Yes.

136

1 Q. What would be that markup percentage?
2 A. Almost exclusively, it's what we call keystone in the
3 industry. If we buy something for \$10, we sell it for
4 20, so double.
5 Q. So a 50 percent markup?
6 A. I think that's a 100 percent.
7 Q. Oh, 100 percent.
8 A. Yeah.
9 Q. Okay.
10 A. So -- But, yes, cost of goods is 50 percent of sales.
11 There are a few things where we can get a little more
12 than that, a few things where we get a little less, but
13 essentially, it's double, so buy it for five, sell it
14 for ten.
15 Q. Okay. Now, when we were talking about the internet
16 sales and the fact those did not make money, was that
17 that same markup percentage?
18 A. Yes. The point I was making there is the merchandise is
19 the same thing. We did not sell on the internet for a
20 higher price or a lower price than what we sell in the
21 store, so if you bought it on the stores or in -- online
22 or in the stores, it was the same retail price and the
23 cost of the product was the same, so it was that same
24 five dollars and still selling for ten.
25 My point on the internet was: There are a

137

1 Ann Arbor first begin?
2 A. Oh, it began long before we owned it, so my -- It wasn't
3 the Bank of Ann Arbor when they bought the company back
4 in 1976. I'm not sure what the bank was in Ann Arbor,
5 but I think it's, essentially, ever since there was a
6 Bank of Ann Arbor, that was the -- that was the lending
7 relationship with my dad and his partner.
8 Q. Okay. So in 2013 when yourself and Ms. Corrin, and Mr.
9 Horning took over, did you inherit the same relationship
10 or did you restructure the relationship with Bank of --
11 A. We inherited the same relationship, yep, same
12 relationship, manager, and loan officer, and the whole
13 story.
14 Q. All right. As of the petition day, I'm going by my
15 notes, so I think this is correct. As of petition date,
16 there was roughly around 2.5 million owed to Bank of Ann
17 Arbor by M-Den directly on a line of credit?
18 A. I believe it was a line of credit and maybe one
19 construction loan that hadn't been paid off yet.
20 Q. Okay.
21 A. But that number is correct in total.
22 Q. All right. Did the -- The revolving line of credit, do
23 you remember what the revolver availability was?
24 A. Zero.
25 Q. Oh, well --

139

1 bunch of additional variable costs that come into play.
2 Shipping costs, you have shipping on every order, as
3 opposed to in the store, where you don't. The cost to
4 Michigan was much higher on an internet sale than it was
5 in the store, so we paid Michigan 15 percent on every
6 sale online, whereas we paid them between one and two
7 percent on every sale in the store. That was the point
8 I was making.
9 Q. Got it. With the shipping costs, did the debtor do free
10 shipping or did the debtor charge for online shipping?
11 A. We charged for online shipping up to a certain point.
12 The market is moving in a direction of doing free
13 shipping, but -- So there was a cap on how much we could
14 charge, but we did charge for shipping, not as much as
15 it costs, by the way. You could not recoup the entire
16 cost of shipping.
17 Q. Okay.
18 A. Our cost, we could charge about six bucks for it. That
19 was what the market suggested, and the average cost of a
20 one-pound package shipped from our store to any place,
21 our warehouse to any place in the state of Michigan, was
22 over eight dollars by the end, so --
23 Q. Okay. Let's shift gears to Bank of Ann Arbor.
24 A. Yes.
25 Q. When did loan relationship between debtor and Bank of

138

1 A. Oh, the total, 2.15 -- 2-1-5-0-0-0-0.
2 Q. Okay. And did that number fluctuate over the years?
3 What I mean by that is, did the availability, was it
4 greater or less over the years?
5 A. Yes.
6 Q. Oh, really?
7 A. Oh, absolutely.
8 Q. So let's start with this. What was the maximum that the
9 revolver availability went up to?
10 A. That is the maximum, two -- That is the maximum.
11 Q. Oh, okay.
12 A. But there were times when it was paid -- Our maximum
13 line of credit was \$2.5 million. That would get paid
14 down, like it's supposed to be --
15 Q. Yeah.
16 A. -- with a line of credit. It would get paid down, and
17 there would be times when it got drawn to its max.
18 Q. Understood. All right. So when did it increase in
19 terms of the total availability to the 2.150 million?
20 A. The last time it increased was in 2016 -- '17, 2017.
21 Q. All right. And was that at the request of the debtor?
22 A. Yes.
23 Q. And why did the debtor request an increase at that time?
24 A. The business had basically doubled from 2014 to -- I'm
25 sorry -- from 2015 to 2016.

140

1 Q. Okay. And did there come a point in time pre-bankruptcy
2 that Bank of Ann Arbor stopped providing availability on
3 that revolving line of credit?
4 A. No. It was fully drawn, but had we paid it down, there
5 was no suggestion that we wouldn't have been able to
6 redraw it.
7 Q. When did it become fully drawn?
8 A. I think it was fully drawn for most of 2023.
9 Q. So that, would that have remained the same up until the
10 bankruptcy filing day?
11 A. Yes. We would have not paid it down at all in 2023 or
12 2024.
13 Q. Okay. The construction loan, I -- Actually, I've never
14 actually been able to figure this out. What did the
15 construction loan with Bank of Ann Arbor actually relate
16 to?
17 A. The second story of the last expansion at the flagship
18 store.
19 Q. But what year was that?
20 A. So that would have been -- It was done in 2018, so must
21 have been a six year -- Something like 2018.
22 Q. Okay. All right. So I want to shift gears now. We
23 talked a little bit earlier about loans that had been
24 taken out and these loans that have been taken out -- I
25 guess, let me start this way: Bank of Ann Arbor became

141

1 fully drawn in 2023, but the debtor started seeking
2 alternative financing from other sources prior to 2023,
3 right?
4 A. Correct.
5 Q. All right. And that began in 2020?
6 A. Correct.
7 Q. All right. Why did it begin in 2020?
8 A. Well, the first reason that it began in 2020 was COVID.
9 Q. But were there instances where the debtor sought this
10 alternative financing prior to COVID?
11 A. I -- I -- It would have been very early 2020, if not, so
12 yes. I believe that the answer to that is yes, but it's
13 very close to COVID.
14 Q. All right. Well, yeah. Here's why though, because I've
15 gone through and I've kind of attempted to sort this.
16 All right. And actually, I didn't make copies of this
17 because I didn't anticipate that I was going to mark
18 this, so I do have this one copy, but I'm going to hand
19 you what I'm going to mark as Exhibit 5, and you can
20 show it to your counsel, and what this is, Mr. Hirth, is
21 this is a LiftForward Credit Agreement from
22 February 2019, so take a look at that one and show it to
23 your counsel when you have a chance.
24 A. Yes.
25 (Exhibit 5 marked for identification)

142

1 BY MR. KOCHIS:
2 Q. All right. So are you familiar with that?
3 A. I see it, yes.
4 Q. All right. So is the date on that correct?
5 A. Honestly, I thought this was -- When we did this
6 financing, I thought this was later in 2019, so -- but
7 the document definitely does say February 27, 2019.
8 Q. All right. So what was going on in February 2019, such
9 that the debtor approached LiftForward credit for a
10 loan?
11 A. The only thing that I recall would have been going on is
12 that we had those two stores that -- We were down two
13 stores and we were in the middle of not a very
14 successful football stretch.
15 Q. Okay. But correct me if I'm wrong, I mean, there's
16 still there's availability under the revolver at this
17 time in 2019.
18 A. There were. If we did this, there would have been no
19 availability.
20 Q. You know that as a fact?
21 A. I know that as a fact.
22 Q. Okay. But why do you know that as a fact?
23 A. Because we -- I know that the step to take any of this
24 kind of stuff was only there because the bank wasn't
25 able to do anything else. I believe the line had gone

143

1 up to 2.15 million, but it would have been fully drawn
2 at that time.
3 Q. So again, we're talking about February 2019?
4 A. That's correct.
5 Q. Okay. So let's take a step back for a minute, so if
6 line is drawn at Bank of Ann Arbor fully --
7 A. Yep.
8 Q. -- in February 2019, did you approach Bank of Ann Arbor
9 and request additional availability under the line?
10 A. No.
11 Q. Why not?
12 A. Because it was clear they were -- At some point, they
13 had made it clear that they were not going any further
14 on the line at \$2.15 million.
15 Q. When did they make that clear?
16 A. I think that that would have been somewhere between,
17 call it, 20 - I can't tell you exactly when, but
18 somewhere between 2017 and 2019.
19 Q. So somewhere between 2017 and 2019, Bank of Ann Arbor
20 indicated, "Hey, 2.150 million is --"
21 A. As high as we're going.
22 Q. Okay.
23 A. Yeah.
24 Q. And how did they communicate that to the debtor?
25 A. That was the comment about the big fish in the little

144

1 pond.
 2 Q. I don't know what that is.
 3 A. So that the -- Not that we were a gigantic company, but
 4 to them, between all of the -- that line of credit and
 5 the construction loan on M-Den, Inc., and the real
 6 estate loans at that time to the real estate entities,
 7 that was as far as they were comfortable with going to
 8 what is, essentially, the same enterprise.
 9 Q. Okay. But that was done in a discussion with Bank of
 10 Ann Arbor?
 11 A. It could have been lunch.
 12 Q. Okay.
 13 A. It wasn't a formal meeting, like this, but it was, you
 14 know, a lunch check-in.
 15 Q. All right. So why -- why didn't the debtor approach
 16 another banking institution, then? If Bank of Ann Arbor
 17 was saying there'd be no availability here, why didn't
 18 the debtor go elsewhere?
 19 A. I don't know.
 20 Q. Did debtor have discussions of approaching other banking
 21 institutions at that time?
 22 A. No.
 23 Q. Okay.
 24 A. And honestly, I don't think -- This is a me problem. I
 25 didn't think that that was even possible because Bank of

145

1 Ann Arbor wasn't calling in loans or anything like that.
 2 They just weren't going any farther, so I'm not sure I
 3 even still could sort that out myself. If there was
 4 another bank in relationship, it would have had to
 5 replace all of Bank of Ann Arbor, and I wasn't inclined
 6 to do that.
 7 Q. Why not?
 8 A. I don't know. I didn't want to bail on them. I didn't
 9 think that this was going to be a long-term issue, and
 10 it didn't occur to me.
 11 Q. Okay. All right. So in 2019, we had talked previously
 12 about the ERP system.
 13 A. Yeah.
 14 Q. Which we thought was roughly about a million dollars.
 15 We had talked about buildout costs associated with the
 16 Detroit store, and maybe one of the other stores that
 17 was maybe about 1.6 million, and that the debtor had
 18 funded those from cash reserves.
 19 A. Correct.
 20 Q. But at the same time, I think, in February 2019 the
 21 debtor is going to LiftForward credit and obtaining a
 22 loan for 2.371 million?
 23 A. I don't remember the exact amount, but, yes. We
 24 definitely got a loan from LiftForward at that time,
 25 which was not a merchant cash advance. This was a

146

1 longer-term loan.
 2 Q. All right. But presumably, right, the debtor had the
 3 cash availability for the ERP and the buildout. Why did
 4 the debtor need the money from LiftForward credit?
 5 A. I think it was, given -- it was -- Given the time of the
 6 year, it was -- We were short. We were just short.
 7 That's -- that's the time of the year where the business
 8 is slow. Coming off of a tough football season, two
 9 stores down, we were short.
 10 Q. So what, was the loan amount calculated to meet some
 11 type of anticipated shortfall in the debtor's revenue?
 12 A. It was to get us to the busy season where the bank line
 13 was enough to -- Should we need any other financing, the
 14 bank line would have been enough to provide.
 15 Q. Yeah. But, again, though, at this time I thought that
 16 the bank line was not available.
 17 A. Right. And what I'm saying is in February of that year,
 18 you know, February, March, April -- Let's step back a
 19 little bit. The business loses money from January to
 20 August every year, every year since 1976 when they took
 21 over, so you know, like all retail does, slow in the
 22 early part of the year and busy at the holiday time, and
 23 for us it's when football season starts, so I don't
 24 remember exactly what was going on back then, but there
 25 clearly was some sort of shortfall, and that would have

147

1 only been due to operations, and that would be because
 2 in that unique time there, we were down two stores, and
 3 not a very successful football season.
 4 Q. Okay. So -- So here's what I'm taking away from this,
 5 and let me know if you think this is accurate, that the
 6 money is meant to bridge the debtor to the more
 7 successful part of the year, which would be the start of
 8 football season, June, July, August?
 9 A. Correct.
 10 Q. Is that understanding correct?
 11 A. And the time when stores would get open and, in theory,
 12 a better, not only football season, but a better
 13 football season, so a more normal football season.
 14 Q. All right. So that loan with LiftForward Credit was
 15 the -- in the documents that were produced to me, it was
 16 the earliest one that I could find.
 17 A. Uh-huh.
 18 Q. Did the debtor seek financing with alternative sources
 19 before this LiftForward Credit Agreement that we're
 20 looking at?
 21 A. I don't think so.
 22 Q. All right. So this would have been the first?
 23 A. The first non-bank financing.
 24 Q. All right. And how did the debtor come to -- come to
 25 find LiftForward credit?

148

1 A. I think they found me.
 2 Q. Okay. How did they find you?
 3 A. An e-mail solicitation or a phone solicitation, I'm not
 4 sure which.
 5 Q. All right. So then fast-forwarding on the timeline,
 6 then, in the start of 2020 we had COVID, correct?
 7 A. Correct.
 8 Q. All right. When I am -- And I'm now looking at Exhibit
 9 Number 2, Mr. Hirth.
 10 A. Okay.
 11 Q. And I'm looking at schedule D, as in dog.
 12 A. Yes, sir.
 13 Q. And there are a number --
 14 A. What page?
 15 Q. Well, I mean -- I'll -- Let me finish --
 16 A. Okay.
 17 Q. -- and I'll kind of explain.
 18 A. All right. Got it.
 19 Q. Schedule D, as in dog, lists secured creditors that the
 20 debtor identified, and if I counted correctly, there's
 21 about 16 different entities listed in schedule D with a
 22 zero loan balance.
 23 A. Yes.
 24 Q. So for example, I'm just -- I'm randomly looking at page
 25 15 of 47. There's Clearview Funding Solutions at zero.

149

1 cash advance that the debtor entered into from 2019
 2 through the bankruptcy date in August 2024?
 3 A. I do not know that number.
 4 Q. Okay. Is it more than 20?
 5 A. Yes.
 6 Q. Is it more than 50?
 7 A. I don't think so.
 8 Q. All right. Would it -- would it surprise you if I told
 9 you that based upon the information we've looked at, it
 10 may be as many as 90?
 11 A. I would say the answer to that is that Capstone did an
 12 analysis for the bank and that analysis exists, and if
 13 it was 90, I would say I can't imagine it was 90
 14 different entities. It could be 90 including, perhaps,
 15 refinance arrangements, but 90 seems like a very high
 16 number to me.
 17 Q. So there were certain circumstance where -- I just want
 18 to make sure I understand when you say "refinance
 19 relationships." There were certain circumstances where
 20 there was an existing MCA loan that had been written and
 21 then the debtor asked that lender to refinance it, such
 22 that the MCA lender extended additional monies?
 23 A. Or stretched it out or something like that.
 24 Q. Okay. All right. Do you happen to know the total
 25 amount of money that the debtor borrowed between 2019

151

1 A. Yep.
 2 Q. There's Crusader Group, LLC listed at zero.
 3 A. Yep.
 4 Q. So these 16 that are listed, these are lenders that the
 5 debtor went to in order to borrow money?
 6 A. At some point in time between 20 -- let's say 2019 and
 7 2024, we would have borrowed money from somebody, one of
 8 those people. We didn't owe them any more money, but I
 9 believe they got on the schedule because they still had
 10 a UCC filing in place.
 11 Q. Okay.
 12 A. That's the only reason they're on here with a zero owed.
 13 Q. Understood.
 14 A. They still had their UCC filing out there.
 15 Q. So I'm trying to understand not the only magnitude, but
 16 the types of lenders that the debtor was approaching.
 17 It seems like some of these lenders, but perhaps not
 18 all, were merchant cash advance lenders.
 19 A. I think the vast majority ended up being merchant cash
 20 advance lenders. I think with the exception of probably
 21 two, Newtek and TVT, and before, which was paid off long
 22 ago, but Newtek and TVT. Everybody else on this list
 23 would be what you and I consider a merchant cash advance
 24 lender.
 25 Q. All right. So do you know the total number of merchant

150

1 and 2024 from the MCA lenders?
 2 A. I do not.
 3 Q. All right. Do you have an idea of what that amount
 4 might be?
 5 A. The idea I have, and the most concrete I have, is the
 6 analysis that Capstone did for the bank, which was a
 7 number that I think got into the 30s, the last -- what I
 8 saw, that's what my remembrance is.
 9 Q. So approximately \$30 million in money borrowed?
 10 A. Yes.
 11 Q. Why did the debtor need to borrow \$30 million from MCA
 12 lenders?
 13 A. Because that was a terrible answer for how to finance
 14 what ended up needing to happen, but it was the answer
 15 that I was in, so it certainly wasn't that the business
 16 was short of all that, but because of the interest rate,
 17 or the shortness of the term, or the extent of COVID, or
 18 the inventory problem that came up, or the fact that
 19 there were no home football games, the combination of
 20 all that meant that that amount had to be used to
 21 supplement operations.
 22 Q. Yeah. So part of your answer is -- You, again,
 23 correctly anticipated where I'm going, 'cause I think
 24 part of your answer was it's not that the debtor was
 25 short of all of that or something to that effect.

152

1 A. Yeah.
2 Q. Because my reaction to the 30-million-dollar number, if
3 that is accurate --
4 A. Yeah.
5 Q. -- is debtor was doing sales of somewhere between 20 and
6 40 million. That's what we talked about earlier.
7 A. Yep.
8 Q. And so we have about 30 million in unsecured creditors,
9 ballpark-ish, at the time of the bankruptcy filing.
10 A. Yep.
11 Q. So if there's 30 million unpaid and the debtor is making
12 somewhere between 20 and 40 million in sales --
13 A. Yeah.
14 Q. -- where did the 30 million in borrowed funds go?
15 A. I believe the way that I would answer this is it was not
16 a PNL issue, not that there was never a PNL issue, like
17 during COVID. There were actually operating losses. It
18 was a balance sheet situation. It was -- There was too
19 much inventory that had to be carried, given what the
20 sales was -- sales were. That's why that inventory
21 situation, the 5 million that showed up out of nowhere,
22 is an issue.
23 We were not financing operating losses,
24 not that we never had to finance operating losses, but
25 it was a balance sheet issue, not a PNL issue.

153

1 A. Right. So the \$30 million isn't \$30 million that all
2 went to this. It was the same \$30 million, because
3 these were so short term. It was the same number --
4 Whatever the amount of money it was that we needed to
5 cover those shortfalls that we just talked about, that
6 same thing had to get borrowed again, and again, and
7 again, to -- because of these, you know, a lot of these
8 merchant cash advances were less than a year in term.
9 Q. Okay. I understand what you mean by that. All right.
10 So operating losses, inventory, refinancing, did the
11 borrowed MCA money, did it go towards anything other
12 than those three?
13 A. Nothing.
14 (Exhibit 6 marked for identification)
15 BY MR. KOCHIS:
16 Q. All right. I'm going to -- I'm going to hand you what
17 we're going to mark as Exhibit Number 6, and then take a
18 look at that. So Exhibit 6, Mr. Hirth, this is just a
19 copy of the debtor's bank statement from Bank of Ann
20 Arbor for March 29, 2024. I can represent to you this
21 is one of the documents produced to my office in
22 connection with today's deposition.
23 A. Yes.
24 Q. So when I took a look at this, what I noticed is that,
25 for example, I'm on the -- I'm on page 2.

155

1 predominantly, and that these were -- these were short
2 term, you know, witness -- numerous attempts in these
3 various documents where we tried to get this to be a
4 separate, stretched out longer, something closer to the
5 bank. For example, like Newtek did. For example, while
6 not perfect, something similar to what TVT did, but we
7 just never got all the way across the finish line, so it
8 was -- it was financing some operating losses, some
9 balance sheet issues, which means primarily inventory,
10 and some, it was just refinancing itself because these
11 were too short term.
12 Q. All right. So here's what I'm hearing.
13 A. Yes.
14 Q. And so that -- I want to say it back to you so that
15 we're maybe on the same page, so in terms of the
16 question of why did the debtor borrow the money, what
17 did the money get used for, I think, you identified some
18 operating losses is what the money got used for.
19 A. Like, during COVID, the businesses, certainly, did not
20 make money during COVID.
21 Q. Right. You identified inventory payments that needed to
22 be made. Some of the money got used for that.
23 A. Correct.
24 Q. And then the last one you identified was refinancing,
25 correct?

154

1 A. Yes.
2 Q. And it details the commercial checking account. There
3 was a number of returned checks for insufficient funds.
4 Do you see that on page 2?
5 A. I do.
6 Q. I'm seeing on page 2, for example, I'm seeing, like, 12
7 on page 2.
8 A. I do see that.
9 Q. So my question to you is: Why did the debtor have a
10 returned check for insufficient funds in this May time
11 period we're looking at? I'm sorry. March. I
12 misspoke.
13 A. Because we were in a bad place. We -- we had expected
14 the -- the -- the national championship to last longer.
15 By March, things had settled down to a basic March. I
16 think at this time there's still some merchant cash
17 advance debits hitting here, and planning cash at that
18 time in the mess that we had led to some bounced checks.
19 Q. All right. But, I guess, why were the check -- why were
20 the checks sent if there were not sufficient funds in
21 the bank account?
22 A. I think the answer to that is that when we mailed the
23 check, we thought there was enough money there, a debit
24 would come in from a merchant cash advance, and there
25 ended up not being money. We were extended. It was

156

1 very difficult times, and I didn't get it right
 2 sometimes. I certainly didn't intend to bounce a check.
 3 We mailed the check, thought there would be enough money
 4 to clear it, and it didn't happen.
 5 Q. All right. So I think we had talked previously about
 6 the financial controls, in terms of the bookkeeper
 7 preparing the monthly financial statements and you
 8 reviewing those, but let's -- let's shift that a little
 9 bit. Let's talk about -- You cut the checks, correct?
 10 A. She cuts the checks.
 11 Q. Oh, she cuts them?
 12 A. I sign them.
 13 Q. Oh, the bookkeeper cuts them. You sign them.
 14 A. I sign them.
 15 Q. All right. What about -- Was there any type of
 16 financial control about looking at available funds at
 17 the time that the checks were being cut and signed?
 18 A. It's me. It's me letting it out, and me thinking the
 19 float is going to be this long to get to them and this
 20 is what sales should be for this day to get there, so at
 21 the margin, it was a little bit aspirational.
 22 Q. But what -- what did you look at when you're making the
 23 decision to sign the check that's going to be mailed
 24 out?
 25 A. Yep.

157

1 automatic debits that didn't clear.
 2 Q. I think that's correct.
 3 A. That's how -- I'm just looking at the other titles here
 4 and I'm just asking that. I don't believe all of those
 5 are checks is what I'm asking.
 6 Q. I think they're financial statements, whether they be
 7 ACHs, wires, or checks.
 8 A. Correct. Okay. I got it.
 9 Q. And so I want to go back to the quantity and magnitude,
 10 so when we were looking across 2020 through 2024, if you
 11 total this first part of the chart where it's 300,000,
 12 5.86, and you total it all the way across, it's
 13 approximately 33 million and there's approximately 1700
 14 transactions that resulted in an NSF. Does that number
 15 surprise you?
 16 A. In its quantity, it does surprise me, yes.
 17 Q. Okay. Did you think that that number would be
 18 different?
 19 A. I've never looked at it this way, because in many of
 20 these MC -- Not having -- not having looked at it this
 21 way, I would say the vast majority of that was not
 22 bounced checks, which is the question you were asking
 23 earlier. The vast majority of this would have been MCA
 24 transactions where they're debiting the account and that
 25 the fact that those were bouncing would lead to some of

159

1 Q. What are you looking at? Are you looking at the bank
 2 account statement or what are you looking at?
 3 A. I'm looking at the bank account, how badly this check
 4 needed to get to somebody, what I expect money will come
 5 in between the time that we wrote that check and the
 6 time I think it's going to get presented, and sometimes
 7 I didn't get that right. I don't -- I don't what else
 8 to say. I -- We bounced some checks.
 9 Q. Yeah. But do -- do you have any idea of the magnitude
 10 of the number of checks that were bounced in the -- in
 11 the four years leading up to the bankruptcy filing?
 12 A. I don't.
 13 (Exhibit 7 marked for identification)
 14 MR. KOCHIS: Okay. So I'm going to hand you
 15 what we're going to mark as Exhibit 7. Here, I will
 16 just put it here, I guess. It's -- Oh, you know what?
 17 It's supposed to be stapled, but I apologize. It's not.
 18 BY MR. KOCHIS:
 19 Q. So this is an analysis that we put together, Mr. Hirth,
 20 and what we did is we looked at the -- the bank
 21 statement for the period 2022 through 2024, and the top
 22 part are the dollar amounts of non-sufficient funds
 23 transferred that we were able to find from the bank
 24 account statements.
 25 A. Not all checks, correct? Some of those could have been

158

1 the reasons that these things got refinanced, so it
 2 doesn't surprise me that there's a big quantity. What
 3 the actual dollar amount was, I wouldn't have known
 4 that.
 5 Q. All right. So what I'm hearing, though, is that there's
 6 a difference between, I think, a check that you were
 7 saying is written that bounced versus an MCA
 8 deduction --
 9 A. Yeah.
 10 Q. -- where there was insufficient funds.
 11 A. Insufficient funds or they were debiting beyond what I
 12 thought they should have been debiting, what the
 13 agreement was, variety of reasons, but, yes. There is a
 14 big distinction between checks bouncing and the MCA
 15 automatic debits bouncing.
 16 Q. All right. But there's a little nuance there, so I
 17 think part of your answer was they were -- they were
 18 debiting more than the amount that you thought they
 19 should? Or maybe I misheard you.
 20 A. No. I said that, so that's an issue for sure. There's
 21 the notion of the MCA payment, per many of those
 22 contracts, should go down when sales go down and it
 23 takes some time for that to be worked through. They're
 24 financing it based on a certain amount of receivables,
 25 and so some of this was simply related to -- How do I

160

1 say it -- further negotiations with those MCA players,
 2 which are not the nicest of folks, as we certainly know,
 3 and there's a big difference between a bounced check and
 4 these MCA things. This quantity only gets there because
 5 it's trying to work with some of these MCA players and
 6 getting them paid, but getting them paid in a time and
 7 an amount that actually makes sense, versus how much
 8 money is coming in at that time, at that stretch of
 9 time.
 10 Q. All right.
 11 A. A ton of money got to these MCA players, a ton of money,
 12 just not always on the schedule that they either thought
 13 they had or should have had or needed to be refinanced
 14 in a term that actually made more sense.
 15 Q. All right. So were there circumstances during the 2020
 16 to 2024 period where an MCA was deducting money from the
 17 debtor's bank account that, in your view, the MCA should
 18 not have been deducting?
 19 A. Absolutely.
 20 Q. All right. I guess, start with -- Give me one example.
 21 A. The -- the -- Well, you could pick any name on here.
 22 Probably not TVT, but any name on here, Churchill,
 23 Elemental, Vault, Family Funding, any of those, Gold
 24 Crest, if it bounced, the high preponderance is that my
 25 take was that the payment should have been reduced or

161

1 is they were just seeking a dollar amount that was
 2 inconsistent with the agreement? Or maybe I'm not
 3 understanding it correctly.
 4 A. For sure there was times where they would debit beyond
 5 the end of contract, so there were some of these that
 6 would have gone just like a merchant cash advance
 7 should, \$100,000 borrowed, \$150,000 to be repaid back, a
 8 payment of \$1,000 every business day for whatever that
 9 math says. Some of these work just like that, but even
 10 in that case where it worked perfectly, they would debit
 11 beyond the end of contract, so instead of debiting back
 12 150,000, they would debit back 151,000, 152,000,
 13 160,000. The debits wouldn't get shut off when the
 14 contract ended.
 15 Q. All right. Well, in that hypothetical world that
 16 happened, I mean, that strikes me as a situation where
 17 the debtor is paying more to the MCA lender than what's
 18 called for in the contract.
 19 A. That is what I'm saying.
 20 Q. Okay. So did the debtor get that money back from the
 21 MCA lender?
 22 A. Sometimes, and sometimes not.
 23 Q. All right. But as of the petition date, I mean, were
 24 there -- were there amounts that the debtor was owed
 25 from these MCAs related to that overpayment situation

163

1 the payment -- or we were in the process of refinancing
 2 with them to stretch it out.
 3 Something was going on so that that
 4 bounced and it could have been as simple as we -- our
 5 sales -- This was a -- this was a, call it, a six-month
 6 contract. There's a big difference between a March --
 7 February or March level of sales and a -- even June or
 8 July. By June or July it's into the busier season
 9 again, where those payments should have been lower in
 10 January, February, March, higher in April, May, July,
 11 and I think there were, 'cause I just remember getting
 12 screamed at on the phone by all of these people, except
 13 for TVT, as I look at there list here. Almost every one
 14 of them, there was a time where I thought I paid them
 15 more than the contractual rate or more at that
 16 particular time and it should have been higher later in
 17 the year and lower earlier in the year, as an example.
 18 Q. But the higher earlier in the year and lower later in
 19 the year, my assumption there is that that would relate
 20 to a repayment arrangement where the dollar amount is
 21 tied to the debtor's sales. Correct?
 22 A. Correct. Which, I believe, these are all called a
 23 purchase of future receivables.
 24 Q. Okay. But that's one thing, but I think the other
 25 thing, though, that you were -- you were saying, though,

162

1 you were describing?
 2 A. I don't think so. I think at the petition date we owed
 3 TVT, and we owed Newtek, and it ended up we ended up
 4 owing Vault, and I don't think we owed anybody else
 5 anything, and I don't think they -- I can't sit here
 6 today and name one that I think owed us money back. I
 7 can't swear that none did, but I don't think that any
 8 owed us anything back.
 9 Q. All right. In reconciling some of the proofs of claim
 10 that had been filed in this case, I have heard reference
 11 to payments where the MCA company was directing the
 12 debtor to make payment to a different entity. Did that
 13 happen?
 14 A. Absolutely.
 15 Q. All right. So, I guess, let's start with the first
 16 question. Which MCA companies does that relate to, do
 17 you know?
 18 A. I think one that I can say for sure, and this happened
 19 more than others, but the one that I know I can -- is
 20 the notion of Elemental. Elemental started as
 21 Elemental, Redstone, Gold Crest. Let me see. There's
 22 one that's tied into that -- There's Redstone, Tiger,
 23 all of those are the same entity, and through the
 24 various refinancing, through the various bouncing of
 25 payments, we would get the direction to start paying

164

1 entity X, instead of entity Y. No new contract, pay
 2 entity X, instead of entity Y.
 3 Q. So let's stick with Elemental for the purposes of this
 4 discussion.
 5 A. Yeah.
 6 Q. So debtor would receive that direction, pay entity X
 7 instead of entity Y. Who would that --
 8 A. For sure.
 9 Q. -- who would that direction come from?
 10 A. That would come from the lender, and in that case, two
 11 members of the Isaacov family, one being Gabe, and one
 12 being Simon.
 13 Q. All right. So either Gabe or Simon would reach out to
 14 who at the debtor?
 15 A. Only me.
 16 Q. To you.
 17 A. Right. And lots of the screaming and yelling and
 18 threatening.
 19 Q. And they would say -- they would say, instead of paying
 20 Elemental, the debtor should send the payment to this
 21 other entity?
 22 A. "We're going to start doing debits from this entity,"
 23 because their bank was giving them static because there
 24 had been bounces, so "Scott, we need to do this to
 25 another company, to another one of our companies," and

165

1 so the debit that you're going to see is no longer
 2 Elemental. It's going to be Redstone. Same amount,
 3 same contract, but it's going to debit from that
 4 company, instead of -- in addition to a bunch of
 5 screaming and yelling and threats.
 6 Q. All right. But let's -- All right. So there would have
 7 been a missed payment or a bounced payment by the debtor
 8 to Elemental is the first thing I'm hearing; is that
 9 right?
 10 A. That is one of the ways that this would have taken
 11 place, but yes.
 12 Q. Okay.
 13 A. So let's start there, yes.
 14 Q. All right. So then someone from Elemental would call
 15 you and say, "Well, the debtor missed its payment to
 16 Elemental, so instead of the debit by Elemental, it's
 17 now going to be a debit by a different company?"
 18 A. Yes.
 19 Q. What was your understanding as to why a different
 20 company would debit the debtor?
 21 A. Because the bank of the first company was screaming at
 22 them too loud and that they had -- It was causing them
 23 an issue with their bank.
 24 Q. So your understanding is the fact that the debtor was
 25 bouncing a transaction to Elemental was causing a

166

1 problem with Elemental's financial institution?
 2 A. That is one of the reasons that this would have taken
 3 place. That's -- that's correct.
 4 Q. Okay. All right. What were the other reasons that --
 5 Let's stick with Elemental -- the other reasons why a
 6 payment would go to an entity other than Elemental?
 7 A. The -- Well, another one would be the -- You got to
 8 understand there was tons of screaming and yelling in
 9 the middle of all this, right, and threats, so who these
 10 people are, they're screaming, screaming, screaming
 11 daily. Okay. Trying to solve this, not trying to screw
 12 anybody ever. There's lots of screaming involved, and
 13 so then there's me saying, "Guys, there is only so much
 14 money coming in on a daily basis. We have to do
 15 something about this," so one of the ways to do
 16 something about it would be that group.
 17 As I understand it, there are investors
 18 behind these. There may be a group of investors that
 19 would have more tolerance to do that particular deal in
 20 a different way, maybe stretched out more, so that the
 21 deal that started out on Elemental ended up on, as an
 22 example, Tiger Capital because that investor group was
 23 more amenable to, let's just say, taking it over a
 24 longer period of time. That could have actually ended
 25 up in a new contract, and sometimes it wouldn't have.

167

1 Q. Yeah. But I mean, fundamentally, when the -- Sticking
 2 with Elemental, when the money is owed to Elemental and
 3 a payment is going to Tiger, for example --
 4 A. Right.
 5 Q. -- did the payment to Tiger reduce the amount that the
 6 debtor owed to Elemental?
 7 A. Yes.
 8 Q. All right. How do you know that?
 9 A. Well, I don't know that since some of these people have
 10 come out of the woodwork and are suggesting that money
 11 is still to owed them, but there were numerous cases
 12 where a deal that started on one platform ended up on
 13 another platform and was paid off and all parties
 14 recognized that it was paid off.
 15 Q. Yeah. But there's two sides to this coin, presumably,
 16 right? So one side is the debtor side where the debtor
 17 can see -- Okay. Instead of this money going to
 18 Elemental, it's now going to Tiger. I see that X number
 19 of dollars have left my bank account and gone Tiger, so
 20 then did the debtor, then, in its books and records,
 21 record a reduction of the amount owned to, in this
 22 example, Elemental, if it went to Tiger?
 23 A. So -- Yes, in an imperfect fashion.
 24 Q. All right. Describe what was the "imperfect fashion."
 25 A. Just, I had a mess, so I didn't have this tracked to the

168

1 last hair on the gnat's back, like you should, like if
2 it was a normal bank loan.
3 Q. All right. Who was doing the tracking of this?
4 A. Me.
5 Q. Why was it not the bookkeeper?
6 A. Because it was -- it was even beyond that, and I'm not
7 saying she wasn't tracking -- she wasn't tracking at any
8 level, but the detail level of that was purely a
9 discussion between me and the principals at each of
10 these entities. That was a me thing.
11 Q. How did you track this on behalf of the debtor?
12 A. I tracked it as -- in the middle of screaming and
13 yelling, so I'm getting called, I would run, "This is
14 where I think we stand and this is how much I think is
15 left to go." I would just -- I would throw together a
16 quick spreadsheet with my best thoughts.
17 Q. Yeah. But I understand that you put together a
18 spreadsheet, but my assumption is there has to be an
19 entry into debtor's books and records. Correct?
20 A. Oh, the entry into the debtor's books and records is
21 purely the cash in and the cash out. This, essentially,
22 went through one account on the financial statements.
23 Q. So going back to the example, so the -- Instead of a
24 payment to Elemental, the payment went to Tiger. There
25 would be some type of corresponding entry in debtor's

169

1 and yelling. This all starts with the screaming and
2 yelling that they would not put in an e-mail or any
3 other kind of document. It's the screaming and yelling
4 and threatening that gets us to that place, so
5 that -- most of that was done on the phone, not in paper
6 or e-mail or contract.
7 Q. All right. So we discussed Elemental as an example of
8 an MCA lender where payments went to different entities
9 other than the, I guess I'll call it, first MCA lender.
10 A. Yes.
11 Q. Were there other examples of that practice?
12 A. The best other example is Churchill, Spin Capital, and
13 there might be another one in there. I'm not
14 remembering the name right now, but Churchill,
15 fundamentally, changed its name to Spin Capital.
16 It's -- it was the same entity. It just changed its
17 name, so in that particular case, it was a little less
18 complex. It was simply, I guess, not very different
19 from M-Den, Inc. changing its name to Heritage
20 Collegiate Apparel.
21 Q. All right. So I -- The one thing I want to determine is
22 the way you described it, and we'll go back to the
23 Elemental example --
24 A. Uh-huh.
25 Q. -- for a minute, is that the -- the other entity, so the

171

1 books and records that says that the payment to Tiger
2 reduces the amount that's owed to Elemental?
3 A. Not by the -- not by the individual account. Not by
4 the -- not by this. We had an account that was called
5 "MCAs," and it went in -- on the financials it went in
6 and out on the same account, whether it was Elemental or
7 whatever, or Redstone, or whatever example we're using.
8 Q. So -- Okay. If I'm hearing that, the accounting on the
9 debtor's books and records doesn't necessarily relieve
10 the amount owed to the MCA lender, but it records the
11 ins and outs.
12 A. That's correct.
13 Q. All right. But there's a second side of this coin,
14 though, so the second side of this coin would actually
15 be Elemental, and so were there times where the debtor
16 said, "Hey, Elemental, I've made these payments to Tiger
17 or to Redstone; show me a loan balance that reflects
18 application of these payments"?
19 A. Yes.
20 Q. Okay. And the debtor received these?
21 A. I don't know that I received very many of those. I know
22 that we came to an agreement on the phone numerous times
23 that we were done and you're paid.
24 Q. So those discussions were done orally?
25 A. Many of them, because I keep coming back, the screaming

170

1 Tiger in the example of Elemental --
2 A. Right.
3 Q. -- the Tiger would begin deducting?
4 A. Right.
5 Q. And so was it that entity that starting deducting or did
6 the debtor have to actually take some affirmative action
7 for Tiger to begin deducting?
8 A. The debt -- I would say there were some times when the
9 debtor would have to take some action and some times
10 when it was not. "Hey, we're going to start debiting as
11 Tiger, instead of Elemental," and just told, in the
12 midst of a bunch of threats and screaming and yelling,
13 that's going to happen, and then sometimes it was, "Sign
14 this, so we can debit as Elemental instead of -- or
15 debit as Tiger, instead of Elemental."
16 Q. All right. So the times that there were paperwork
17 executed, what exactly was the debtor being asked to
18 sign?
19 A. I think it was -- If and when that happened, it would be
20 one-page document that says, "Allow us to debit as," I
21 guess, in this case, Redstone, instead of Elemental.
22 Q. But in that document, was there some type of, for
23 example, link between Elemental and Redstone, such that
24 it was clear that this document that the debtor was
25 signing related to the original loan that Elemental

172

1 originated?
 2 A. I don't know. I know that what was clear was the person
 3 doing the screaming and yelling at me was the same
 4 person representing both Elemental and Redstone.
 5 Q. All right. So do you believe that the -- I know we
 6 talked about the fact the debtor's books and records
 7 record the ins and outs, but it doesn't necessarily
 8 relieve the loan amount. Are you confident that
 9 recording the payments that went out, that the debtor's
 10 books and records captured all of those payments?
 11 A. All of them.
 12 Q. Okay. And why are you confident that it captures all of
 13 them?
 14 A. Because that's how the -- that's how the money went. I
 15 know every one of those bank accounts was reconciled and
 16 had to hit the financial statement someplace, and that
 17 money went in and out from only that bank account. The
 18 one thing about Deanna is that the bank accounts are
 19 reconciled to the last penny, so everything that flowed
 20 through the bank account hit the financial statements.
 21 Q. So did all of the MCA payments by the debtor, did it all
 22 come out of the Bank of Ann Arbor bank account?
 23 A. That, or the Chase bank account, or -- and we had -- we
 24 had other bank accounts before Chase, but of the bank
 25 account, 'cause there was more than one bank account,

173

1 but of those bank accounts, every one of them got
 2 reconciled, and at the end there was only Bank of Ann
 3 Arbor and Chase, and at the real end there was only
 4 Chase, not even Bank of Ann Arbor anymore, but whatever
 5 bank account there was, every transaction that went
 6 through it was reconciled to the last hair on the gnat's
 7 back, and recorded in the financial statements one way
 8 or another.
 9 Q. Okay.
 10 A. Every one of them.
 11 Q. Okay. All right. So when we were looking at the MCA
 12 lenders with a zero balance on schedule D --
 13 A. Yes.
 14 Q. -- in Exhibit Number --
 15 A. What is it?
 16 Q. -- 2. It's 2. It seems to me that what would have to
 17 have been done in order for these schedules to have been
 18 completed is that someone would have had to look at the
 19 debtor's books and records that shows all of the
 20 payments out to MCAs that was aggregated, and then
 21 someone would have to have determined which one of those
 22 payments apply to which lender in order to conclude that
 23 the balance was zero. Is that accurate?
 24 A. I would say that it didn't quite go like that, 'cause
 25 some of these, for example, I knew were just simply paid

174

1 off. The only way that -- Let's just go to page 16,
 2 Grover Capital. I know who that party is. I know they
 3 were 100 percent -- that's one that went, essentially,
 4 just how it was supposed to go, I think. Certain amount
 5 of money comes in, certain amount of money is supposed
 6 to be paid out, zero.
 7 Grover and our relationship was complete,
 8 except for one thing. They didn't release their UCC.
 9 So that one would have been -- the only reason that got
 10 on this list is the attorneys are going through the list
 11 of UCCs, and my take, I knew for a fact that Grover was
 12 owed no money, and so that's how that got on there.
 13 Grover hadn't been paid in that case months before
 14 filing, and so I just knew that it was zero. There was
 15 no reconciliation I had had to go to.
 16 I knew the guy. That guy was not
 17 screaming and yelling. There was no -- I haven't been
 18 in contact with him in a long time, and we knew it was
 19 zero.
 20 Q. But with respect to Grover --
 21 A. Yeah.
 22 Q. -- did Grover ever send a letter, for example, saying,
 23 "M-Den, Heritage, thank you. Your loan has been paid in
 24 full"?
 25 A. The number of zero-balance letters or letters like that

175

1 that I got from any of these people, even ones that went
 2 very smoothly, was a very low number, so I don't know
 3 that I had got it from Grover. I may have gotten it
 4 from Grover, but it's a very low number of these guys
 5 that sent "Thank you. You're paid off in full," here's
 6 a letter. It's greater than zero, but it's not the vast
 7 majority.
 8 Q. All right. So sorry to harp on this, but I just want to
 9 make sure, though, so when payments were going to an
 10 entity other than the originally identified MCA
 11 lender --
 12 A. Yes.
 13 Q. -- you've described the circumstance in which the MCA
 14 lender is deducting, and maybe they're doing it by
 15 themselves or maybe they asked you to sign a document
 16 authorizing the deduction. Yes?
 17 A. Yes.
 18 Q. Okay. Were there circumstances where the debtor sent a
 19 payment, and by that I mean, sent a check, sent a wire
 20 or sent an ACH to an entity other than the MCA lender
 21 that had originated that loan that was intended as a
 22 payment on that loan?
 23 A. Yes.
 24 Q. All right. Why did the debtor do that?
 25 A. Because in the middle of the yelling, screaming, and

176

1 threats, instead of a debit, it could have been, "Scott,
2 I need you to send a wire to this entity. We were going
3 to debit from here, but to get me off your phone today
4 and stop screaming at you, I need a wire for \$10,000 to
5 this entity today. Then we will start debiting from
6 this new entity next Monday," something like that.
7 That's how that discussion would have gone.
8 Q. Okay. So -- And do you have a recollection of a lender
9 where that occurred?
10 A. I can always go back to Elemental.
11 Q. Okay.
12 A. You can guarantee that it occurred from them.
13 Q. All right. So that, was it a check, or a wire, or an
14 ACH?
15 A. I don't -- So that particular answer I just gave would
16 have been -- there would be no check in that. It would
17 either be -- it wouldn't be leading to a debit, so let's
18 just say in the case of Elemental debits, there's some
19 issue with debits. I don't have the money. They're
20 trying to debit too high for how busy the time of year
21 is, whatever, and so screaming and yelling, and then I
22 respond. "Scott, I need you to be at -- go to a new
23 entity, because our bank is pissed off because of the
24 bounces with this old entity. I need you to send a wire
25 today, not tomorrow, today, to this new entity, and then

177

1 we will start debits from that new entity on Monday,"
2 for example. That discussion happened a lot of times.
3 Q. All right. So you, the debtor, would send a wire in
4 that circumstance you just described?
5 A. Oh, I would send a \$10,000 -- If I had it, I would send
6 a wire for 10,000 or whatever, and they would start
7 debiting their 1, 2, 3, 5,000 a day at date X in the
8 future.
9 Q. And that wire out that the debtor would send, would that
10 be recorded in the debtor's books and records as a
11 payment to an MCA?
12 A. Yes. It would be no different than a debit.
13 Q. All right. How does the debtor know that the
14 counterparty, the party the debtor was sending the
15 payment to, received the money?
16 A. I'm not -- In that case, I'd send a wire.
17 Q. Okay.
18 A. To -- I have banking instructions, so I sent a wire and
19 it was received. The screaming and yelling would have
20 continued, had they not received it.
21 Q. All right. But did the debtor take steps to verify that
22 the payment was received?
23 A. I knew that it left my bank account, and as you may or
24 may not know with these folks, for sure, they were
25 screaming at me, and if it wasn't there, they would have

178

1 let me know, so I would have said, "The wire went,"
2 either text or phone, "The wire went." It's out of my
3 bank account. Do you see it in yours," and that would
4 have either come back a yes, or at minimum, the
5 screaming would have stopped.
6 Q. Some of the MCA loans appear to be, and I think you
7 mentioned this, in an attempt to refinance or pay off
8 other MCA loans -- So for example, I believe Newtek --
9 A. Right.
10 Q. -- may be an example of that; is that correct?
11 A. Yes.
12 Q. Do you recall Newtek was taken out to refinance other
13 loans?
14 A. We got almost no money out of the Newtek deal. It was
15 almost exclusively refinancing.
16 Q. All right. And why did the debtor elect to do that
17 refinancing with Newtek?
18 A. Because, actually, Newtek, I don't think it was the case
19 at the time, but Newtek was, basically, almost a bank,
20 and the terms on that, that's an SBA loan with Newtek,
21 so the rate is the -- Newtek is not in any way, shape,
22 or form an MCA, at least, to me.
23 MR. KOCHIS: Okay. Do you want take a short
24 break or do you want keep going?
25 THE WITNESS: I'm ready to keep going.

179

1 MR. BORIN: It's your deposition, so --
2 MR. KOCHIS: Ryan?
3 MR. HEILMAN: I'm fine to keep going.
4 MR. KOCHIS: Okay. All right.
5 THE WITNESS: I'm -- I'm good.
6 MR. KOCHIS: All right.
7 BY MR. KOCHIS:
8 Q. I do have a little bit of what I'm calling the name game
9 matching, and I think you talked about this a little
10 bit, but I've tried to do my research on this, so TVT
11 was an entity that the debtor borrowed money from.
12 Correct?
13 A. TVT, yes. Yes.
14 Q. TVT. And did that entity also go by the name ACH
15 Capital?
16 A. Yes. The -- I believe -- I don't think that one
17 changed, necessarily, that all of the debits -- It's
18 either the wires or the debits always -- Their wiring
19 instructions said ACH Capital.
20 Q. Okay. Did TVT go by the name Lendspark?
21 A. One of the deals was by Lendspark.
22 Q. Related to TVT?
23 A. Correct, a subsidiary of TVT.
24 Q. All right. Vault Capital, did that go by Empire?
25 A. Empire Recovery is the law firm that Vault Capital

180

1 engaged to collect from us.
 2 Q. Okay.
 3 A. They are two different entities.
 4 Q. Oh, okay.
 5 A. But it's the same deal. The Empire Recovery is a law
 6 firm.
 7 Q. So if debtor's books and records show payments to Empire
 8 Recovery --
 9 A. It is for the Vault deal.
 10 Q. For Vault Capital.
 11 A. That's correct.
 12 Q. All right. Family Funding, did that entity go by the
 13 name Pinewood Capital?
 14 A. Yes.
 15 Q. All right. Elemental, get ready --
 16 A. Yes.
 17 Q. Elemental, I found the following names that may have
 18 used or gone by: BMF Capital?
 19 A. Yes.
 20 Q. Tiger Capital?
 21 A. Yes.
 22 Q. MM Funding?
 23 A. Yes.
 24 Q. Coldwater?
 25 A. Yes.

181

1 Q. Radla, R-A-D-L-A, Capital?
 2 A. Yes.
 3 Q. Speedy Funding?
 4 A. Yes.
 5 Q. AFA Capital?
 6 A. Yes.
 7 Q. Redstone Advance?
 8 A. Yes.
 9 Q. AmeriFi Capital?
 10 A. Yes.
 11 Q. Okay.
 12 A. Those are all the same, those two bothers, that I had
 13 suggested.
 14 MR. KOCHIS: All right. We took a look at
 15 the -- I'm just trying to make sure I state this right.
 16 I think this came from the debtor's books and records,
 17 and perhaps, the accounts payable, and we had a couple
 18 questions about some transactions.
 19 (Exhibit 8 marked for identification)
 20 BY MR. KOCHIS:
 21 Q. So I'm going to hand you this, and what we did here,
 22 Mr. Hirth, is we extracted this, instead of printing,
 23 like, the entire financial ledger, which would have been
 24 thousands of pages, we extracted this to a smaller
 25 version, and again, I apologize for the size.

182

1 A. Yep.
 2 Q. But it shows some of these transactions that we didn't
 3 know quite what they were for, like, so for example,
 4 there was a transaction December 21, 2023. It looks
 5 like it was, perhaps, maybe charged on a Chase Visa
 6 credit card.
 7 A. Yep.
 8 Q. And then it says it relates to "Loro Piana Meat Packing
 9 (Luxury Store)." Do you see that?
 10 A. Yes.
 11 Q. Do you happen to know what that was for?
 12 A. Yes. I don't remember which one of the MCAs it was, but
 13 that was in the middle of somebody screaming at me
 14 saying, "Give me a credit card. I'm going to charge --
 15 Give me a credit card number that I can charge something
 16 to. Give me a credit card that has some money on it and
 17 I'm going to charge this." I said I've got \$4600 on
 18 this card, and they charged it to "Loro Piana Meat
 19 Packing." That is clearly a payment for an MCA.
 20 Q. All right. So let's break it down. So the Chase Visa
 21 credit card that was utilized --
 22 A. Yes.
 23 Q. -- that was, what, debtor's credit card?
 24 A. I'm reaching into my pocket to look and make sure that
 25 it wasn't my personal credit card, but I believe that

183

1 that was the company Chase -- Yes, the debtor's Chase
 2 credit card.
 3 Q. All right. So the debtor's Chase credit card was used
 4 by an MCA to make some type of purchase at Loro Piana
 5 Meat Packing.
 6 A. For all I know, they own Loro Piana Meat Packing and
 7 they paid themselves.
 8 Q. Oh, okay. Well, do we know what MCA that relates to?
 9 A. I do not. It definitely relates to an MCA.
 10 Q. Well -- Okay. How do you know it definitely relates to
 11 an MCA?
 12 A. Because I know how that transaction came about. I just
 13 can't remember which MCA the name is.
 14 Q. Is there some other document that we can look at that
 15 would help us determine what MCA it relates to?
 16 A. I don't know. What I think I would have to do is take
 17 and study this and trace back in my mind and calendar
 18 who it was that was doing screaming and yelling at this
 19 time and which one I gave a credit card to.
 20 Q. Okay.
 21 A. I don't think there's a document.
 22 Q. Okay. But as we sit here right now, you do not recall?
 23 A. I do not. I know exactly what happened. I just don't
 24 know what the name of the MCA player was.
 25 Q. All right.

184

1 A. Somebody screaming, "Give me a credit card," \$4,600,
2 that's all I can afford today.
3 Q. Okay.
4 A. That's what the discussion was.
5 Q. All right.
6 A. I just can't sit here and tell you who it was.
7 Q. Understood. All right. The next one, it's also on
8 12/21/2023, \$33,831.73 to "Net-a-Porter (Luxury
9 Retailer)." Do you know what that one relates to?
10 A. That's the exact same thing with a different vendor,
11 with a different MCA player.
12 Q. Do you know which one?
13 A. I think that one was -- If you will just give me one
14 minute, I will think of this. That one was one of two.
15 I can tell you it's either Timeless or Forever.
16 Timeless -- I think it's called -- Capital or Forever
17 Capital.
18 Q. All right. The third one on the list is also
19 "Net-a-Porter." Does that relate to the same thing you
20 just described?
21 A. Same thing.
22 Q. All right. The next one down, \$55,420.50, January 31,
23 2024, "Eleven Paris USA (Luxury Store)." Do you see
24 that?
25 A. Yep.

185

1 Q. What does that relate to?
2 A. That was a check. That was a check paying off an MCA.
3 Q. But the check was sent to Eleven Paris USA?
4 A. That's correct. I believe the contract on that was a
5 company called Vee Funding, something like that. V-E,
6 V-E-E, maybe.
7 Q. But is your understanding -- Is Eleven Paris USA somehow
8 related to that MCA lender or is it a luxury store?
9 A. This happens to be a guy that owns both a, I believe,
10 that's a manufacturer, not a luxury store.
11 Q. Oh.
12 A. And he also does the MCAs.
13 Q. Okay. January 31, 2024, \$4,305, again, this is to Loro
14 Piana Meat Packing. Do you know what that relates to?
15 A. Same as above.
16 Q. All right. Then, the next one, January 31, 2024,
17 \$39,651.08 to "Net-a-Porter --"
18 A. Same as the above.
19 Q. Well, that one, I think maybe you said was Timeless or
20 Forever.
21 A. That's what I meant by above.
22 Q. Got it. All right.
23 A. There was a -- there was a YNAP above, or whatever the
24 heck that says, Y-N-A-P, Net-a-Porter.
25 Q. All right. January 31, 2024, \$9,512.41 to "Tom Ford

186

1 (Luxury Store)." Do you know what that was for?
2 A. So the exact same thing. I think it was a different
3 party.
4 Q. Okay. Do you know which party?
5 A. I don't.
6 Q. Is there something that we can look at to figure that
7 out?
8 A. I don't think there's something we could look at. It
9 would be me searching my calendar and phone and brain to
10 figure out who that was, but I can't sit here and tell
11 you who that was, other than these are -- all these
12 transactions are the exact same process. I just
13 couldn't tell you who the counterparty was.
14 Q. All right. And then the last one, January 31, 2024,
15 \$2,133.96 to "Net-a-Porter." Do we think that was
16 Timeless or Forever?
17 A. We do. Timeless and Forever are related, by the way.
18 Q. Okay.
19 MR. BORIN: Timeless and Forever are related.
20 THE WITNESS: It's a song, yeah.
21 BY MR. KOCHIS:
22 Q. We found, I think I have it in the stack, but maybe I'll
23 just ask it. We found some transactions in June 2023
24 and October 2023 to Gabriel A. Levy, who we believe is
25 an attorney in New York.

187

1 A. Yes.
2 Q. And the amount we found combining the June 30th and the
3 October 27, 2023 was \$170,500.
4 A. Yes.
5 Q. Why did the debtor send that money -- Well, first of
6 all, was it to Gabriel A. Levy or was it to his law
7 firm?
8 A. Okay. This all relates to the TVT financing, and so
9 TVT -- We found the TVT financing, which this is
10 important, so the TVT financing, while it looks a lot
11 like an MCA, is a far better situation than many of
12 these because it was much longer and the rate was much
13 lower, so the TVT financing actually was over two years,
14 okay, and so the party that found that was essentially a
15 broker that found that for us, and as we were closing
16 that transition, again, we didn't get any money.
17 We got very little of any money out of the
18 TVT transaction. They just paid off other positions
19 that were less attractive and stretched it out, and so
20 as we're closing that deal, I said, "Are there any other
21 fee -- I can't sign this deal unless I understand that
22 this is all the fees that are included." Like any other
23 closing, the fees have got to come out of the proceeds.
24 I'm not going into my pocket to pay any other fees.
25 Okay. And so the answer came back, "Yes.

188

1 All the fees are included in this closing," which from
 2 TVT's perspective, turned out to be the case. There was
 3 a broker involved that decided -- that was owed a fee,
 4 and it turns out they were legitimately owed a fee. I
 5 had signed an agreement with that broker or funding
 6 group, whatever you want to call it, and I knew it at
 7 that time.
 8 There's no dispute here, except I thought
 9 that fee for that funder was paid out of the closing,
 10 and it turned out it wasn't. There was TVT's fee paid
 11 at closing, but this brokerage fee was not. I was able
 12 to produce an e-mail to them that said, "I asked the
 13 question. They said all the fees were taken out." I
 14 said, "I'm done. I got no more to pay."
 15 Well, the group, and I believe it's Fundy
 16 or Fundry, F-U-N-D-R-I or F-U-N-D-R-Y, they said, "Hell
 17 no. We're not paid yet and we're going to sue you," and
 18 so that's the lawyer for that entity and he decided he
 19 wanted to be paid to the law firm and not to Fundy or
 20 Fundry, and we paid it over time. That's the
 21 transactions you're talking about, so that's a law firm,
 22 the Gabriel A. Levy Law Firm.
 23 Q. All right. Who was the broker that was owed money?
 24 A. That's Fundy, Fundry, Fundi, something like that.
 25 Q. Oh, that's the broker?

189

1 lawsuits that the debtor was involved in that are not
 2 listed here?
 3 A. No.
 4 Q. Okay. I went through, and I have found a couple, so the
 5 first one I found was a Vault 26 Capital, LLC versus
 6 M-Den, et all, found in New York County. Are you
 7 familiar with that lawsuit?
 8 A. Vault.
 9 Q. Vault 26 Capital, LLC.
 10 A. Isn't that Vault Capital that is -- is suggesting that
 11 they have a claim in the bankruptcy?
 12 Q. I don't know, but --
 13 A. I do believe that it is.
 14 Q. Okay. But I'm just telling you, and I'm just handing
 15 that to you, so you can take a look at it. I did find
 16 that lawsuit when I was searching. It's not listed in
 17 the Statement of Financial Affairs. Are you aware of
 18 that lawsuit?
 19 A. No.
 20 Q. Okay. I also found one, an Alpha Equity Fund, LLC
 21 versus M-Den, Inc. in Connecticut.
 22 A. Yes. I am aware of that one.
 23 Q. Oh, you are aware of that one?
 24 A. But that one was dropped.
 25 MR. BORIN: This looks like it was filed

191

1 A. Yeah. It's related to the TVT financing.
 2 Q. And the amount that was paid, the 170,500, that was
 3 the --
 4 A. That was the fee.
 5 Q. -- the brokerage fee?
 6 A. Yes. And we paid that over several payments.
 7 Q. Let's go back to Exhibit 1 for a minute.
 8 A. Okay.
 9 Q. And -- Oh, okay. I'm on page 57 of 69. It's part 3,
 10 question 7, and this lists the ongoing legal actions,
 11 administrative proceedings, et cetera, against the
 12 debtor.
 13 A. Yes.
 14 Q. What did -- Well, first of all, if you flip to the last
 15 page, it looks like you signed the Statement of
 16 Financial Affairs; is that correct?
 17 A. Yes.
 18 Q. Okay. What did you do to verify this list of ongoing
 19 legal actions, administrative proceedings, court
 20 actions, et cetera?
 21 A. I looked at what I -- documents/service or whatever that
 22 I had been received and compared it with, I mean, I
 23 think our attorneys. Not these attorneys, but our
 24 regular, corporate attorneys.
 25 Q. Okay. I mean, are you aware of whether there are

190

1 post-petition, so obviously --
 2 THE WITNESS: Yeah.
 3 MR. BORIN: If we were aware of it, we would
 4 have violated the stay. We just would have notified
 5 them.
 6 THE WITNESS: Yeah. What was the name on that
 7 one, again?
 8 MR. KOCHIS: Alpha Equity Fund, LLC versus
 9 M-Den, Inc.
 10 THE WITNESS: And as I recall, that, that we
 11 knew about and it went away. They ended up freezing our
 12 bank account. That's the only reason that I know about
 13 that. Was there a date on there?
 14 MR. KOCHIS: Well, it looks like it was filed
 15 March 2024.
 16 THE WITNESS: I think it went in and was --
 17 was dropped immediately thereafter. Somehow, the only
 18 reason I have any remembrance about that one is that it
 19 was frozen. They froze our bank account for a hot
 20 minute and it got unfroze, so as far as I know, that one
 21 is -- that one went away. I did know about that, but no
 22 one's ever been engaged on that.
 23 BY MR. KOCHIS:
 24 Q. Okay. Any other lawsuits involving the debtor?
 25 A. Not that I know of.

192

1 MR. KOCHIS: Okay. All right. Let's shift
 2 gears to University of Michigan, so this is going to be
 3 Number 9.
 4 (Exhibit 9 marked for identification)
 5 MR. KOCHIS: So I'm going to hand you --
 6 Sorry. I covered up that word, but I'm going to hand
 7 you what we marked as Exhibit Number 9.
 8 BY MR. KOCHIS:
 9 Q. And then, for the record, this is a letter from Warde
 10 Manuel, that on February 7, 2024, that I -- And it was
 11 produced to me early on in this case. Have you seen
 12 this document before, Mr. Hirth?
 13 A. Yes.
 14 Q. All right. Is the date of the letter correct in terms
 15 of did the debtor receive this letter on or about
 16 February 7, 2024?
 17 A. I remember because it was one of the worst days of my
 18 life and it was February 8th when we received it. I
 19 believe it was overnighted on the 7th and we received it
 20 on February 8th.
 21 Q. Got it.
 22 A. Burned into my brain forever.
 23 Q. All right. So there's a number of things in this letter
 24 that I wanted to touch upon. In the second paragraph,
 25 it talks being a University of Michigan audit being

193

1 debtor dispute that allegation?
 2 A. I don't necessarily dispute that. I would dispute the
 3 word "promptly." They knew that they began that audit
 4 request in the middle of football season, instead of in
 5 the middle of a slow time of the year, and so they were
 6 made aware of what promptly would mean to us, given that
 7 it was in the middle of football season.
 8 Q. Yeah. But -- Okay. Well, at what point in 2023 did --
 9 did the audit officially begin?
 10 A. I think football season, so like, late August, early
 11 September.
 12 Q. All right. But they sent this letter in February of
 13 2024.
 14 A. Yes.
 15 Q. So football season, college football season, is done by
 16 then, agreed?
 17 A. The national championship game was January 8, 2023.
 18 Q. Okay.
 19 A. And we did nothing but ship orders from January until --
 20 Well, we were still going gangbusters on February 7th.
 21 Q. Okay.
 22 A. So in the middle of all that, this document showed up.
 23 Q. So had -- had the debtor produced any information to the
 24 University of Michigan or --
 25 A. Much, and that was requested in the subpoena, and it was

195

1 incomplete, so I want to stop there, so do you know what
 2 audit is being referred to when they talk about the
 3 University of Michigan's audit?
 4 A. Yes.
 5 Q. Okay. What audit is that?
 6 A. So in 2023, they -- they had not audited our books
 7 related to the agreement in many, many, many years, so
 8 they had suggested, in the middle of the crazy football
 9 season, that they wanted to audit our books versus the
 10 agreement, the official retailer agreement, so that
 11 began in sometime in late '23.
 12 Q. All right. What was the reason that U of M stated they
 13 wanted to audit the debtor's books in 2023?
 14 A. Well, they hadn't been paid some royalties at that
 15 point, but they also hadn't audited our books, which
 16 they had the right to under the agreement, in many
 17 years.
 18 Q. And when you say "many," how many are we talking about?
 19 A. Not since Steve, Scott, and Julie owned the company, so
 20 the last one I know of was happened when my dad was
 21 still the owner, so that was -- and that was many, many
 22 years ago, before 2013.
 23 Q. All right. So continuing on, so then the letter
 24 indicates that the debtor had failed to provide
 25 financial and accounting records promptly. Does the

194

1 one of those subdirectories, and everything in there had
 2 been produced to them before this date.
 3 Q. Okay. Got it. The University alleges that the debtor
 4 has been insolvent from at least December 31, 2020,
 5 through the present. Do you see that? Does the debtor
 6 dispute that?
 7 A. Yes.
 8 Q. Okay. What's the basis to dispute that?
 9 A. Well, I'm not sure that I know what the technical,
 10 either legal, or financial answer to insolvent is, but
 11 if it's simply that our liabilities exceeded our assets,
 12 there were things, like, I believe, the accounting
 13 for -- the accounting for -- What's the -- What was
 14 the -- What was the -- What was the loan that was
 15 forgiving as part of COVID? The --
 16 MR. BORIN: PPP.
 17 THE WITNESS: PPP, right. I believe that
 18 could have led to an entry. Something like that could
 19 have led to an entry that would have said, as I recall,
 20 they were something along those lines that may have made
 21 it look like the liabilities were greater than the
 22 assets, but I don't believe that we were insolvent. I
 23 do believe we got to the point where we were insolvent.
 24 I do not believe that we were insolvent at the time that
 25 they suggested here.

196

1 BY MR. KOCHIS:
2 Q. All right. But the University's indicating, as of the
3 calendar year ending 12/31/2020, liabilities exceeded
4 assets, so let's stop there.
5 A. Right.
6 Q. As of 12/31/2020, did the debtor's liabilities exceed
7 assets?
8 A. I think they might have because of -- And -- and that,
9 the year of 2020 was the year of COVID. We had a
10 substantial operating loss, so just one year of
11 operating loss could have lead to liabilities being
12 greater than assets, and think that was almost the exact
13 amount of the operating loss in 2020.
14 Q. The 1.929 --
15 A. Yeah.
16 Q. -- is that correct, what you're referring to?
17 A. Yes.
18 Q. Okay.
19 A. That's why I dispute that. COVID, that was the year of
20 COVID. That's taking an extreme position there to say
21 that we're insolvent because of one year where we had an
22 operating loss in the biggest pandemic that we've seen
23 in years, so yes. I do dispute that.
24 Q. All right. But -- I hear you, but the University goes
25 on to say in the balance sheet provided by the debtor

197

1 for the month end, November 30, 2023, the debtor had a
2 bank balance of 389,758, while its current liabilities
3 were, it looks like, that's a negative \$14,701,020, so
4 is that statement by the University correct?
5 A. Total liabilities, not current. I believe they're
6 saying total. Right? You're reading the same thing I
7 am?
8 Q. I think so.
9 A. That says total liabilities, so total liabilities would
10 include long-term liabilities, and I don't think that
11 long-term liabilities would factor into whether we were
12 insolvent or not, at least in my opinion.
13 Q. Yeah. But I want to get away from the insolvency.
14 A. Okay.
15 Q. I don't -- I'm not trying to --
16 A. We definitely gave them a financial statement. I don't
17 think that they're misstating what we gave them.
18 Q. That's what I'm trying to ask you.
19 A. But I don't believe.
20 Q. Okay.
21 A. I don't have that in front of me, but don't believe that
22 they misstated.
23 Q. All right. All right. Let's flip the page.
24 A. Okay.
25 Q. "On January 31, 2024, M-Den dropped a check for

198

1 \$3,850,939.79 at the reception desk," and then it goes
2 on to say that the check was rejected for insufficient
3 funds. Did that occur?
4 A. Yes.
5 Q. Why was that check dishonored?
6 A. Because we didn't have enough money in the bank account.
7 Q. All right. Why did debtor write the check?
8 A. Because it was due that day, and I thought I had it, and
9 I didn't.
10 Q. What did you do to confirm whether or not the debtor had
11 sufficient monies in the account before writing the
12 check?
13 A. I didn't. I confirmed that I thought by the day the
14 check would get cleared. I thought I would have the
15 money in the account.
16 Q. Based upon what?
17 A. Based on what I thought the sales would be, and/or that
18 I could get an MCA provider to get me money to cover it
19 on that day.
20 Q. Yeah. But --
21 A. And it didn't happen.
22 Q. Understood. But I mean, from the time -- Okay. Let me
23 just make sure I understand this. From the time that
24 this check was -- What date was the check cut? Do you
25 know?

199

1 A. That day.
2 Q. January 31st?
3 A. Yes. At the earliest, a day before.
4 Q. All right. So January 30th or January 31st.
5 A. Yep.
6 Q. And you were anticipating that the check would be cashed
7 when?
8 A. Within a day of that.
9 Q. All right.
10 A. January 31st, February 1st, February 2nd, something like
11 that.
12 Q. So the debtors believed that it would either have sales
13 funds or that it would get an MCA loan in those couple
14 of days --
15 A. Yes.
16 Q. -- to cover that check?
17 A. That's correct.
18 Q. All right. The second full paragraph on the second
19 page --
20 A. Second page, second full paragraph.
21 Q. Yes.
22 A. Starts with "The University".
23 Q. Yes. So towards the bottom of that paragraph it
24 indicates the debtor's November 30, 2023, balance sheet
25 recognizes an undisputed balance of approximately 6.2

200

1 million currently owed by M-Den to the University of
 2 Michigan, pursuant to the agreement. Is that statement
 3 correct?
 4 A. I think that statement is correct, yes.
 5 Q. All right. And that 6.2 million would have been royalty
 6 payments that were owed?
 7 A. That's correct. That includes the 3.8 million above.
 8 Q. Got it. At what point in time did the debtor fall
 9 behind on paying royalty payments to the University of
 10 Michigan?
 11 A. Only during COVID was the only time royalty payments
 12 were not as timely as they should have been, until the
 13 end here, until this event.
 14 Q. Well, but -- Okay. So in -- During COVID, the debtor
 15 began to fall behind. Fair?
 16 A. And would also argue that the University agreed to
 17 either forgive, because they didn't do football games
 18 and basketball games and that, or allow us to delay
 19 paying royalties, so -- so -- Yes. It all -- It started
 20 in the COVID times.
 21 Q. Right. So -- But then, let's -- let's fast-forward,
 22 right?
 23 A. Yep.
 24 Q. So -- so -- so up until the filing date and then in
 25 2021 --

201

1 A. Yeah.
 2 Q. -- 2022, 2023, and part of 2024?
 3 A. Correct.
 4 Q. So was the debtor behind on paying royalty payments for
 5 those years to the University?
 6 A. I don't think so. I think the only royalty that hadn't
 7 been paid at that point, other than COVID-related
 8 royalties, was the 2023 payment where the check bounced
 9 from above.
 10 Q. Yeah. But -- Okay. But here's where I can't reconcile
 11 on that. When we looked at the schedule amount in the
 12 schedules, it was something like 8,000,000.
 13 A. Correct. Because at this point, it wasn't 8,000,000
 14 yet. This was in February of that year, so this is only
 15 paying royalties earned as of the end of 2023. Then,
 16 you have 2024, Q1 of 2024, which is the national
 17 championship, where they're getting 20 percent of
 18 10,000,000, so there's the other two.
 19 Q. All right. So Q1 of 2024 was not paid?
 20 A. Correct. At this point, it wouldn't have been paid. It
 21 wouldn't have even been due until April of '24.
 22 Q. All right.
 23 A. Yeah. And that's how you get to the 8,000,000.
 24 Q. All right. So I'm moving down to the paragraph that
 25 starts, "Your correspondence with Ms. Krievs,"

202

1 K-R-I-E-V-S.
 2 A. Yeah.
 3 Q. As far as the middle of that paragraph, it states that
 4 the debtor's financial records confirm that the debtor
 5 "made cash distributions to its owners of over \$1.0
 6 million in 2022 and \$790,600 year to date through
 7 November 2023." Is that statement correct?
 8 A. She's obviously drawing a conclusion here that was not
 9 correct. We've actually been over here. That is any
 10 distributions we made to the owners was related to
 11 paying taxes, not what she's suggesting there, which is
 12 she's suggesting we paid ourselves, rather than pay
 13 them. Those distributions were for tax payments.
 14 Q. Yeah. But -- Okay. Was the entirety of the 1 million
 15 that's referenced for 2022, was that -- is that all for
 16 tax payments?
 17 A. One hundred percent, we have never distributed one penny
 18 to Steve, Scott, and Julie for Steve, Scott, and Julie
 19 to enjoy. Anything that was recorded as a distribution
 20 was distributed -- was distributed as for paying taxes,
 21 'cause we're an S corp. She didn't know that or didn't
 22 understand that, and so that's why that statement is
 23 there.
 24 Q. Okay. And then -- So, I guess, this would be page 3.
 25 Yes. So they rapid-fire a bunch of questions in the

203

1 letter, and I have a couple questions on these.
 2 A. Uh-huh.
 3 Q. So the first one that the University is asking about is,
 4 they ask in number 1, "Why don't the sales in the
 5 royalty calculations submitted to the University tie to
 6 the tax returns and compiled financial statements?" Do
 7 you see that?
 8 A. I do.
 9 Q. All right. So let's start with this: Is it true that
 10 the royalty calculations submitted to the University did
 11 not tie to the tax returns and compiled financial
 12 statements?
 13 A. I believe it is.
 14 Q. It is true?
 15 A. True.
 16 Q. Okay. Why did they not tie?
 17 A. Because the compiled financial statements, for some
 18 reason, add sales tax into the, call it, revenue line.
 19 I'm not sure I ever know why that they did it that way,
 20 but that also corresponds to how the tax returns were
 21 done. Obviously, we're not -- we don't pay them royalty
 22 on tax returns -- on sales tax. We pay them royalty on
 23 the amounts of the sales of University of Michigan
 24 product that we make, and so that's why that's the case,
 25 so I understand the point she was making there, but

204

1 that's -- that's not a thing.
 2 Q. So you think if we adjusted for sales tax it would tie?
 3 A. Yes, I do.
 4 Q. Okay. What -- what was the royalty reporting that the
 5 debtor submitted to the University? Was that a
 6 debtor-prepared document that it would submit?
 7 A. Yes.
 8 Q. And who would prepare that?
 9 A. Me.
 10 Q. Was it a certain form that the University had the debtor
 11 complete?
 12 A. So this goes back to -- My father and his partner were
 13 school teachers and football coaches. There was not a
 14 business degree amongst them, and my dad would do this
 15 handwritten on a piece of 8.5 by 11 paper, and that was
 16 the royalty report. I, essentially, took that and
 17 turned it into an Excel spreadsheet, and that's the
 18 report, so it's the same report that had been given to
 19 them in 1992, just turned into an Excel spreadsheet.
 20 MR. KOCHIS: All right. Let's go to -- I will
 21 give you Number 10.
 22 (Exhibit 10 marked for identification)
 23 BY MR. KOCHIS:
 24 Q. All right. I've handed you Exhibit Number 10, and this
 25 is a forbearance agreement between the Regents of the

205

1 Q. Got it.
 2 A. Yep.
 3 Q. All right. So I want to understand what had happened
 4 leading up to this, so we had the Notice of Termination
 5 that we looked at in Exhibit 9.
 6 A. Yep.
 7 Q. And that was February 2024.
 8 A. Yep.
 9 Q. And then we had the Forbearance Agreement we're looking
 10 at in Exhibit 10, which is May of 2024.
 11 A. Yeah.
 12 Q. So what's happening between when the debtor got the
 13 termination letter to when this forbearance agreement
 14 was signed with respect to the debtor and the
 15 University?
 16 A. Shortly after this document, Exhibit 9, was received, we
 17 went into a full-court press of trying to solve this,
 18 which included trying to get money to pay them, and
 19 ultimately led to the discussion to sell the company, so
 20 between Jan -- between February and May, this quickly
 21 turned into, "We will not -- we will not terminate this
 22 as long as you're working toward a sale to somebody that
 23 we're happy with," which was the list of those parties
 24 that we talked about earlier today. A offer was on the
 25 table from Ames Watson/Lids/Fanatics. The University

207

1 University of Michigan and the debtor. Have you seen
 2 this document before?
 3 A. Yes.
 4 Q. All right. So question for you -- This is the version
 5 that's been provided to me. If you look at page 3,
 6 there's a signature for the debtor. Does that appear to
 7 be your signature?
 8 A. It does.
 9 Q. There's not a signature by the Regents of the University
 10 of Michigan. Do you know whether this document was ever
 11 signed by the University?
 12 A. I do not know.
 13 Q. Okay. So this document, it states that the effective
 14 date is May 13, 2024. Is that the date that this
 15 document was signed?
 16 A. It looks to me like it was signed on 5/16 of '24 based
 17 on the signature.
 18 Q. Okay. All right. And, just, the reason why I'm asking
 19 for that is because in the recitals, the third bullet
 20 point, it talks about Legends having an expressed
 21 interest in acquiring the debtor's stock or assets, and
 22 I know that we had talked about that earlier, so I was
 23 trying to confirm whether the time frame is, roughly,
 24 accurate?
 25 A. Yes. It was in that May time frame.

206

1 was made aware of that.
 2 We had to join Zoom calls with those three
 3 parties and Ames Watson would go no higher on their
 4 offer, which would have meant a lot of haircuts for a
 5 lot of people, and we and the University jointly agreed
 6 that we were not going to take that offer, that we could
 7 do better, which led to the discussions with Champion's
 8 Circle, and ultimately, led to the discussions with
 9 Legends. The bulk of it -- So the answer to that
 10 question is the bulk of the time between Exhibit 9 and
 11 Exhibit 10 was trying to sell the company to somebody
 12 that would get everybody paid.
 13 Q. So when you say we "jointly" decided, so the debtor and
 14 the University, in consultation with one another,
 15 determined they were not going to accept the sale offer?
 16 A. Yes. Remember, the University, as part of our contract
 17 with them, has a right to approve who we would sell to.
 18 That right is included in that 2009 or 2010 agreement,
 19 and the University would have had to take a haircut, as
 20 well, based on that, and then what the Lids/Ames Watson
 21 offer was, and they suggested, no, we, together, can do
 22 better.
 23 Q. All right. And that's what I want to explore, so was it
 24 truly a joint decision where the debtor and the
 25 University both came to the same conclusion or did one

208

1 party have a difference of opinion with respect to that
 2 conclusion?
 3 A. I 100 percent agreed --
 4 Q. Okay.
 5 A. -- with that decision.
 6 Q. Okay. What was the reason why you agreed?
 7 A. Because I thought that Ames Watson ended up being not
 8 really Fanatics and Lids. They ended up being a hedge
 9 fund, and they're the owners of it, but they acted like
 10 a hedge fund at the end of the day. Rather than taking
 11 the long view that would have been, if you just get this
 12 number to this point, and -- which the business was
 13 worth before we got distressed, you could be Michigan's
 14 partner for the next however many years, and we don't
 15 have to go to all of these vendors that are owed money,
 16 and we don't have to go to Michigan and give them a
 17 haircut and convince them to take a haircut.
 18 Get to this number. Doesn't mean Scott,
 19 Steve, and Julie aren't going to get anything of this,
 20 but get the vendors paid and get Michigan paid, and
 21 let's get this done, and they wouldn't, and that led to:
 22 Let's go to the Champion's Circle. Let's go to Legends.
 23 Q. Okay.
 24 A. And that's what took place between Exhibit 9 and Exhibit
 25 10.

209

1 we have to stop doing, and they suggested that if we
 2 work towards getting this fixed, we will -- we will hold
 3 off on enforcing this termination. One of the things in
 4 there, I think, addressed the name. Somewhere in this
 5 letter on -- "Effective March 11, 2024, the University
 6 terminates the Agreements. Starting March 11th, M-Den
 7 must not operate under the name M-Den, the Victors
 8 Collection, or any variance thereof".
 9 That's on -- that's at the bottom of page
 10 2 on this, which they then said, "We'll hold off on
 11 that, as long as we work towards getting this solved."
 12 Other than that document, I don't remember this coming
 13 up again until we were presented with this document on
 14 the 13th of May.
 15 Q. Okay. And did this document come from the University --
 16 A. Yes.
 17 Q. -- originally?
 18 A. Yes.
 19 Q. All right. All right. So a little bit of a nuance
 20 question, but paragraph one talks about, 1.a., talks
 21 about irrevocably assigning. Did debtor sign any
 22 assignment agreement other than this document we're
 23 looking at, Exhibit 10, assigning to the University, the
 24 name "M-Den"?
 25 A. At this time, no. I believe there was another document

211

1 Q. All right. Exhibit 10, so --
 2 A. Yes.
 3 Q. I'm looking at paragraph one at the bottom of the first
 4 page. "On the Effective Date, M-Den irrevocably assigns
 5 to UM, and agrees that UM shall have all right, title,
 6 and interest in and to and is the sole and exclusive
 7 owner of the name "M-Den"." Now, I'll stop there.
 8 There's more and we can all read it, so this part of the
 9 agreement, this term, I'll call it, when did discussions
 10 about the inclusion of this term first begin?
 11 A. I'm sorry. "Term" as in words or "term" as in time
 12 frame?
 13 Q. No. What I mean is this being a part of the agreement.
 14 A. This being a part of --
 15 Q. Of the Forbearance Agreement.
 16 A. -- of the concept of the name --
 17 Q. Yes.
 18 A. -- going back them --
 19 Q. Yes.
 20 A. -- as part of the Forbearance Agreement? I don't
 21 remember it being a part of the discussion before we got
 22 this presented to us.
 23 Q. Oh, okay. So did the University of Michigan draft this
 24 document that we're looking at?
 25 A. Right. I believe in Exhibit 9 there's reference to what

210

1 that was signed, and it was -- it -- it looked like an
 2 official State document, like a doing-business-as form,
 3 that they wanted us to sign sometime after this
 4 agreement.
 5 Q. Oh, really?
 6 A. Yes.
 7 Q. So it was a filing with the State of Michigan?
 8 A. It was -- it was, all of a sudden, not our bankruptcy
 9 counsel, but our regular, business counsel said,
 10 essentially, to keep Michigan happy and working under
 11 this forbearance agreement, you need to sign this
 12 document, and it wasn't a document like either of these.
 13 It was a -- it looked more like a State document, like a
 14 doing -- the form you fill out with the State to --
 15 MR. BORIN: I think I can help you out with
 16 this, Anthony. I don't know if you want him to testify,
 17 but I can tell you what's talking about. Right after --
 18 This is when, you know, pursuant to this, they changed
 19 the name from M-Den, Inc. to Heritage Collegiate, and
 20 then they immediately file a DBA for the M-Den.
 21 MR. KOCHIS: Okay.
 22 MR. BORIN: Shortly before the bankruptcy
 23 filing, they terminated the right to use the M-Den name.
 24 MR. KOCHIS: With the State of Michigan?
 25 MR. BORIN: So the two, they're on LARA.

212

1 They're on the system. You can find them both there,
2 but that's what he's talking about.
3 THE WITNESS: That that's what I meant.
4 MR. KOCHIS: Okay. All right. So we have the
5 documents filed with the State of Michigan. We have
6 this agreement.
7 THE WITNESS: Yes.
8 BY MR. KOCHIS:
9 Q. Other than the documents from the State of Michigan and
10 this agreement, no other documents that you're aware of
11 that assigns to the University the M-Den name?
12 A. That's correct.
13 Q. Okay. So there's a -- On page 2 -- customer list. On
14 the effective date, the debtor "will transfer its
15 current and complete customer list to UM and consents to
16 UM using said information for its own purposes
17 thereafter." Do you see that?
18 A. Yes.
19 Q. Prior to this agreement, had the debtor shared with the
20 University its customer list?
21 A. Yes.
22 Q. Oh, really?
23 A. We've always viewed the customer list as one in the
24 same. That, the 2010 agreement with the University,
25 addresses the customer list we have merged and

213

1 addressed here.
2 Q. Okay. All right. So this Forbearance Agreement, we're
3 not sure whether or not this was signed by the
4 University. Did -- Was this Forbearance Agreement ever
5 terminated, to your knowledge?
6 A. I don't know.
7 Q. Are you aware of any agreements that the debtor signed
8 with the University after the date of this agreement?
9 A. I know of an agreement that I signed with the University
10 post-petition that was litigated and -- Not litigated,
11 but went before the bankruptcy judge not long ago.
12 Q. Oh, yeah. I know. Yeah.
13 A. But that document is the only thing that I have signed.
14 Q. Okay. I know what you're talking about.
15 A. Yes.
16 Q. Okay. So we're actually getting towards the end, which
17 is good. I want to go back to the schedules for a
18 minute.
19 A. Is that Exhibit 1?
20 Q. That's Exhibit 2.
21 A. Okay.
22 Q. We're going to bounce around a little bit --
23 A. Okay.
24 Q. -- but I think this might be useful, so on page 5 of
25 47 --

215

1 de-duplicated their customer list and our customer list,
2 so it was, essentially, one customer list, so we had
3 shared customer lists before.
4 Q. Okay.
5 A. So -- And we -- I think it was always clear to me that
6 our agreement with the University suggested that they
7 had access to the customer list anytime they wanted it,
8 our customer list.
9 Q. All right.
10 A. Anytime they wanted it.
11 Q. All right. On paragraph seven --
12 A. Okay.
13 Q. So there's denial of any right or claim. At the time
14 that this was executed, are you aware of whether M-Den,
15 the debtor, had any claims that were being asserted
16 against the University?
17 A. No.
18 Q. And then, this the paragraph also talks about claims
19 that the University may have. What were, at this time,
20 what were you aware of as the claims being asserted
21 against the University -- I'm sorry -- against the M-Den
22 by the University?
23 A. I believe that the only thing I knew at this time was I
24 had this letter in my hands with a lot of things that
25 they had threatened about, and that's what was being

214

1 A. Yes.
2 Q. -- question number 3 in part 1, "Checking, savings,
3 money market, or financial brokerage accounts." Do you
4 see that?
5 A. Yes.
6 Q. It says "Cash Checking."
7 A. Yes.
8 Q. Do you know what bank account that entry is referring
9 to?
10 A. I'm highly confident that it would relate to the Chase,
11 which, I believe, at the time that was all we had left
12 was Chase bank accounts that -- the two Chase bank
13 accounts.
14 Q. All right. So at the time of this bankruptcy filing
15 there were two Chase bank accounts?
16 A. That's correct.
17 Q. All right. Well, I assume one's a checking.
18 A. They're both checking accounts.
19 Q. Oh, they're both checking.
20 A. But one of them was predominantly used for the stores to
21 deposit cash into. We call it a cash account, but it
22 was really just a checking account.
23 Q. What was the other one used for?
24 A. That was the main operating account, so there was a main
25 operating account, and then the second one, basically,

216

1 had just cash deposits in it.
 2 Q. Okay.
 3 A. 'Cause the stores -- So the stores didn't have it. The
 4 managers couldn't deposit money. You know, it was just
 5 a cash -- a way for the managers to get cash, as a
 6 result of whatever cash sales happened, into the bank.
 7 Q. Okay. So I now want to look at the Statement of
 8 Financial Affairs. That's Exhibit 1, and I'm looking at
 9 page 60 of 69.
 10 A. Okay.
 11 Q. And part 10, question 18, asks about closed financial
 12 accounts within one year before filing the case, and the
 13 debtor identifies a Bank of Ann Arbor account ending in
 14 06 and a Bank of Ann Arbor account ending in 14. Do you
 15 see that?
 16 A. Yes.
 17 Q. Okay. Why were those Bank of Ann Arbor accounts closed?
 18 A. The Bank of Ann Arbor told us they no longer wanted to
 19 be our depository and transactional bank accounts.
 20 "Find another bank." They didn't call the loans, but
 21 they suggested get another transactional account.
 22 Q. And when did the bank tell the debtor that?
 23 A. I believe, sometime in March.
 24 Q. Of 2024?
 25 A. Yes.

217

1 Q. All right. Was that in writing or was that over the
 2 phone?
 3 A. I think it might have been in person, actually.
 4 Q. Okay.
 5 A. And I think it was probably followed up in writing. I
 6 don't know that for sure, but I think it was in person
 7 in my conference room.
 8 Q. All right. So they did not call the loan at that time,
 9 but they -- Did they affirmatively say "We are closing
 10 the accounts"? Or did they say to the debtor, "You must
 11 find different accounts"?
 12 A. Both of those. It's "Find different accounts by May
 13 first or we are closing these accounts."
 14 Q. All right. Did they give a reason as to why they took
 15 that position?
 16 A. Yes. The mess with the bounced checks, and bounced
 17 debits, and all that.
 18 Q. All right. And you think there might be a letter, but
 19 you're not sure.
 20 A. There might be.
 21 Q. Okay.
 22 A. There is certainly an e-mail from the banker at the time
 23 saying, "Scott, what is your progress? I'm getting the
 24 accounts closed by," date X.
 25 Q. Okay. So at that point, is that when the debtor went to

218

1 Chase?
 2 A. We had been at Chase previous to that, just because of
 3 that notion of the stores having to have a place to
 4 deposit cash. You know, there's no Bank of Ann Arbor up
 5 in Detroit. There's no Bank of Ann Arbor up in -- where
 6 Twelve Oaks is, so we had accounts at Chase, but now,
 7 those became the main operating accounts at Chase, so
 8 essentially, everything that used to take place in these
 9 two accounts, took place in the Chase accounts.
 10 Q. All right. So we have Bank of Ann Arbor accounts that
 11 get closed. When did they get closed?
 12 A. I think they get closed, actually, on May first, which
 13 is when they told us they had to be closed. We stopped
 14 using them, probably, a week, you know, 'cause,
 15 obviously, credit card receipts have to flow into the
 16 bank. I wanted to make sure that there's not a closed
 17 account that those are going to bump up against, so we
 18 gave ourselves about a week leeway, so everything was
 19 flowing correctly into Chase, and then we were clear.
 20 Q. Okay. So the Bank of Ann Arbor accounts were closed.
 21 The debtor is utilizing the accounts at Chase Bank.
 22 A. Correct.
 23 Q. Did the debtor have other bank account?
 24 A. No. Not at that time.
 25 Q. Well, I have come across references to other bank

219

1 accounts, so --
 2 A. Yeah. There were other bank accounts.
 3 Q. Okay.
 4 A. But not at this time.
 5 Q. All right. Well, let's maybe talk about it.
 6 A. Yeah.
 7 Q. So how long had the Chase bank accounts been opened for?
 8 It sounds like they had been open for a while.
 9 A. A long time. I, personally, bank at Chase, for example.
 10 Q. Okay.
 11 A. So we had a business bank account at Chase for a long
 12 time. I don't remember how long, but for a long time.
 13 Q. Okay. Bank of America --
 14 A. Yeah.
 15 Q. -- was there a Bank of America debtor account?
 16 A. There was.
 17 Q. And when did that exist?
 18 A. That existed -- I think that bank account was closed.
 19 That account and Chase formed the same function, because
 20 one of the stores had a Bank of America near it and one
 21 of them had a Chase near it, but that one closed at
 22 least a year, I believe, it was '22, sometime in 2022.
 23 Q. What's -- It sounds like that was close to one of the
 24 store locations.
 25 A. Correct.

220

1 Q. Do you know what store location it was close to?
 2 A. Correct. I think that it was the Detroit store that had
 3 an easier access to Bank of America, than to a Chase.
 4 Q. Okay. Was there a Comerica debtor bank account?
 5 A. Yes.
 6 Q. When did that close?
 7 A. That closed at about that same time.
 8 Q. 2022?
 9 A. Yes.
 10 Q. What that was account used for?
 11 A. So that, that account we had inherited from before we
 12 bought the company, and that was -- that was finally
 13 closed. That was -- that was just cleanup. That's a
 14 terrible bank, and they were charging fees, and we just
 15 ended up closing that account. It was -- it was not
 16 used for much of anything at the end.
 17 Q. So that account existed way back in 2013?
 18 A. It did.
 19 Q. Did the debtor have a PNC account?
 20 A. We did for a short period of time.
 21 Q. When was that?
 22 A. I believe that was in 2020. Was that in 2022 or 2023?
 23 In and out, we were in and out of that bank within --
 24 within the same year.
 25 Q. What was that account used for?

221

1 A. That account was used for, I think, the only thing that
 2 was -- I think one MCA vendor would have funded that
 3 account and the payments came out of that account.
 4 That's it.
 5 Q. But why did the debtor open up a bank account,
 6 specifically, for that one MCA vendor loan?
 7 A. Because they wanted it to be that way.
 8 Q. Is there a reason why?
 9 A. I don't know the reason.
 10 Q. Were there any other bank accounts of the debtor within
 11 the last five years that we have not discussed?
 12 A. No.
 13 Q. So I want to go back to the MCA loan money inflows.
 14 A. Yep.
 15 Q. So it sounds like some came into the PNC account.
 16 A. Yes.
 17 Q. Do you know what MCA that was, by the way?
 18 A. I don't.
 19 Q. Okay. What bank accounts did the other MCA inflows come
 20 into?
 21 A. Either the -- What do I call it? The Bank of Ann Arbor
 22 accounts, which is where the majority went. Some would
 23 have gone into the Chase accounts.
 24 Q. All right. What about payments out to MCAs? What
 25 accounts did those come out of?

222

1 A. Almost exclusively, the main bank account at Bank of Ann
 2 Arbor, which then turned to Chase. I'm not saying that
 3 no payment ever went out of another bank account, but
 4 the vast majority, like 90-some percent came out of
 5 whatever the main operating account was, which until May
 6 at Bank of Ann Arbor -- And after that, it was Chase,
 7 and no matter which bank account they came in and out
 8 of, they all were reflected through the same place on
 9 the general ledger.
 10 Q. I didn't follow that last part.
 11 A. It didn't matter which bank account they would have gone
 12 in and out of, the process was the same for recording
 13 them and the financial statements.
 14 Q. Yeah, but -- But when those are being recorded in the
 15 debtor's books and records, doesn't there have to be
 16 some type of corresponding notation so that the books
 17 and records reflect or tie to the -- the bank account?
 18 A. Yeah. So the bank account is -- is on the books and
 19 records and to the extent of recording the liability or
 20 expense, that's all the same account, no matter which
 21 account the cash flowed through. That factor line or
 22 the MCA line --
 23 Q. Yes.
 24 A. -- it all flowed through there, no matter which bank
 25 account the payment happened.

223

1 Q. Well, no. No. I -- Yes.
 2 A. Okay. That's all. That's the only point I was making.
 3 Q. I think I -- But I think we're talking about something
 4 different. I think what you're talking about is the
 5 fact that it's coded MCA in debtor's books and records
 6 and that's how the debtor knows that that transaction is
 7 associated with an MCA.
 8 A. Correct.
 9 Q. Right. I'm talking about something different, though,
 10 which is: We know it's associated with an MCA, but if
 11 we have to tie that back to a bank statement, is there
 12 an entry in debtor's books and records that tells us
 13 what bank that transfer came out of?
 14 A. I don't know the answer to that. I know that -- I know
 15 that at one time or another when those bank accounts
 16 existed, they all were listed on the debtor's financial
 17 statements.
 18 Q. Yeah.
 19 A. And that bank account was reconciled, just like any
 20 other bank, just like the main bank account was.
 21 Q. Okay. All right. All right. You rejoined debtor in
 22 2009. Where were -- You were at Bell and Howell prior
 23 to that?
 24 A. Yeah. And then that underwent a name change, ProQuest
 25 Information and Learning, ProQuest, but essentially,

224

1 that was the same company, just a couple of name
2 changes.
3 Q. All right. The ProQuest employment, that ended in May
4 2006; am I correct?
5 A. Yes.
6 Q. Okay. Where were you employed, if you were, between May
7 2006 and then when you rejoined M-Den in 2009?
8 A. I hung out at shingle and I was a consultant.
9 Q. Okay.
10 A. The company was called Strategic Innovations and I had a
11 variety of clients around Monroe County and southeast
12 Michigan.
13 Q. So what were you -- what were you consulting, with
14 respect to --
15 A. Operational things, some financial things. My tagline
16 was: "Making lives better for small and medium-size
17 businesses through an increased emphasis on leadership,
18 strategy, and discipline."
19 MR. BORIN: It's a long tagline.
20 THE WITNESS: You're lucky I remembered it,
21 but small, small companies.
22 MR. BORIN: If you take the first letter of
23 each, does that make something?
24 THE WITNESS: Probably, but I probably
25 wouldn't think it was any good -- And this was all with

225

1 the notion that I was coming back to rejoin the company.
2 BY MR. KOCHIS:
3 Q. You're coming back to rejoin M-Den?
4 A. M-Den, right.
5 Q. All right.
6 A. When Dad -- When Dave and Doug retired.
7 Q. But -- Okay. But from 20 -- 2013 is when it's acquired
8 from the prior owners, right?
9 A. Correct.
10 Q. So between the time you joined in 2009 until 2013, what
11 was your role?
12 A. It was, essentially, the same role, just I didn't own
13 the company then, so if you want to think of it, I was
14 the president, but my dad and Doug still owned the
15 company. I had grown up in the company, so there was --
16 so training was not the same, but if you can imagine, I
17 was coming in from the outside, you could think of that
18 as, you know, three or four-year incubation period
19 before the owners ride off into -- the original
20 owners -- ride off into the sunset.
21 Q. Got it. All right. 2008, there's an SEC violation
22 charge against you.
23 A. Yes.
24 Q. What does that relate to?
25 A. That relates to the period of time when I was the vice

226

1 president of finance and chief financial officer of a
2 division of that ProQuest entity.
3 Q. Okay. Did the allegation relate to reporting related to
4 royalty issues?
5 A. It did.
6 Q. All right. And then, 2008, that case is then resolved,
7 settlement agreement executed, you admit no-fault.
8 Correct?
9 A. That's correct.
10 Q. All right. That -- That occurs and concludes prior to,
11 then, going to M-Den in '09. Am I right?
12 A. That occurs starting in 2006 -- 5 or 6, I believe, and
13 ends in 2008, which is the dates you just suggested, so
14 that was resolved. I -- I was -- I had my shingle hung
15 out, and I was a consultant between 2006 and 2009 when I
16 came back to the M-Den.
17 Q. All right. All right. So -- so I know in, certainly,
18 in 2013, at the point in time, you're overseeing
19 finance, but what about 2009 through 2013 at -- at the
20 debtor? Are you overseeing finance during that period,
21 too?
22 A. To a degree. Not the same as when we owed -- my dad and
23 Doug, it was really my dad, was -- and that was the old
24 bookkeeper. Their bookkeeper that had been here
25 forever, was still the bookkeeper, and she was really a

227

1 bookkeeper. They had to outsource the actual financial
2 statement preparation to a, call it, a higher-level
3 bookkeeper, who would then hand it over to, at the time,
4 it was Deloitte, not Rehmann Robson, for the
5 accountants, so it was really a fundamentally different
6 thing back then.
7 Q. Okay.
8 A. And then both of those parties retired, the internal
9 bookkeeper retired and that intermediary between that
10 bookkeeper and the accountants retired in that time
11 frame, which led to Deanna being hired in 2014.
12 Q. All right. I think we talked about this earlier, but --
13 so let's focus on 2013 through 2024 --
14 A. Okay.
15 Q. -- the books and records of the debtor.
16 A. Yep.
17 Q. I think one of the things I thought we talked about
18 earlier was keeping those books and records in
19 conformity with generally accepted accounting
20 principles. I thought that was mentioned earlier. I
21 could be wrong. Is that how the debtor kept the books
22 records for that time period in consistence with
23 generally accepted accounting principals?
24 A. I think -- So let me step back and say I'm not an expert
25 on generally accepted accounting principles. That's

228

1 been proven, even back to that SEC action, but I think
 2 the answer to that is yes. I don't think that the
 3 accounting for the MCA transactions was perfect, and
 4 that's one of the reasons the tax returns aren't done
 5 yet.
 6 Q. But those are almost done?
 7 A. Almost done --
 8 Q. Yeah.
 9 A. -- as they sort out that. Other than that, I think they
 10 were kept in accordance with gap.
 11 Q. Other than the MCA transactions?
 12 A. Correct.
 13 Q. All right. So 2013 to the filing date in 2024, did the
 14 debtor's books and records accurately reflect the
 15 transactions and dispositions of debtor's assets?
 16 A. Yes.
 17 Q. Okay. Did that include the MCA transactions?
 18 A. When the tax returns are completed with the
 19 accountant's, external accountant's, blessings of how to
 20 account for the MCA transactions, the answer to that
 21 would be yes.
 22 Q. Well --
 23 A. Otherwise, the answer is yes.
 24 Q. Well, but in that answer, that suggests that after the
 25 tax returns are concluded, there might be changes to the

229

1 card of the debtor to purchase goods for the benefit of
 2 the MCA, and we had found a couple of examples on
 3 Exhibit 8. Are there other examples beyond what's
 4 listed on Exhibit 8 that you're aware of where that
 5 practice occurred?
 6 A. I know that the -- I know of one other credit card
 7 situation, and that would have been that Empire Recovery
 8 collecting for Vault, but that was an actual law firm or
 9 collection agency where an actual payment was put
 10 through on a credit card.
 11 Q. Okay.
 12 A. That's the only thing that I can think of.
 13 Q. Okay. And there was also some discussion about when you
 14 would have discussions with the MCAs, there would be
 15 threats by the MCAs that occurred during these
 16 conversations. Do you recall that?
 17 A. Yes.
 18 Q. All right. Who were the individuals making the threats?
 19 A. Whoever the principal was of a variety of these MCAs.
 20 The Isaacov family for sure, which is the
 21 Elemental/BMF/MM Capital/whatever. Some of the
 22 principals of Churchill, at times, would get loud.
 23 Heck, even TVT, who I said isn't really an MCA, but TVT
 24 got very loud and made some very strong statements from
 25 time to time.

231

1 accounting related to the MCA transactions.
 2 A. Yes. Part of which was at the suggestion of Capstone
 3 and their work with the bank.
 4 Q. All right. What is your understanding of how the
 5 accounting related to the MCA transactions might be
 6 changed?
 7 A. There's not enough expense. There's too much on the
 8 balance sheet and not enough expense. The purchase of a
 9 future receivable versus a loan and how that gets
 10 recorded and how the -- the -- the -- borrowed 100 and
 11 you pay back 150, how is the 50 accounted for
 12 appropriately when it's a future receivable. That's --
 13 that's what's at question.
 14 MR. KOCHIS: All right. Well, why don't we do
 15 this? Why don't we take a break? Let me regroup and
 16 run through this and see if I missed anything.
 17 VIDEO TECH: Going off at 3:46:20.
 18 (Off the record at 3:46 p.m.)
 19 (Back on the record at 3:58 p.m.)
 20 VIDEO TECH: We're back on the record at
 21 3:58:41.
 22 BY MR. KOCHIS:
 23 Q. All right. Mr. Hirth, in the Exhibit Number 8 we had
 24 discussed -- I'm trying to paraphrase, but -- some
 25 situations where, perhaps, an MCA was using a credit

230

1 Let's see. Folks from Westwood were very
 2 strong and vociferous. The collection firm, that Empire
 3 Recovery from Vault, they called relatives of mine after
 4 the stay and threatened some terrible things. After the
 5 stay, those are the ones that I would identify as --
 6 Q. All right. And all of these threats that we're talking
 7 about were in connection with attempting to compel the
 8 debtor to pay money?
 9 A. Yes.
 10 Q. And can you give us some example of the actual threats
 11 that were levied?
 12 A. I'm going to crush your business. I'm going to come
 13 after. I'm going to find you, not just find you and
 14 your assets, I'm going to find you, and you will pay us.
 15 Q. And can you tell us who would be the person saying that?
 16 A. That would -- that would have been from the Isaacov
 17 family. The only one that got that far -- That's not
 18 true. That's not true. That was the Isaacov family,
 19 but then the actual worst one was -- Let me just
 20 find -- We mentioned Kesef. Kesef was on that list, and
 21 they were paid off a long time ago, but that guy is the
 22 one that threatened physical violence.
 23 Q. Against you?
 24 A. Against me, and then that Empire Recovery collecting on
 25 behalf of Vault talked to my brother, sister-in-law,

232

1 tried to get to my daughter. Who else? I can't
 2 remember, but threatened that they would be financially
 3 liable for what, essentially, is the debtor's debts.
 4 That kind of stuff, so only one threatened physical
 5 violence. The others threatened absolute destruction of
 6 me, the company, anything like that, and at least one of
 7 those was post-petition.
 8 Q. Empire?
 9 A. Empire.
 10 Q. Okay. Many of the MCA loans also included personal
 11 guarantees. Are you familiar with that?
 12 A. Yes.
 13 Q. And the guarantees were of -- It would often, not all of
 14 them, but often times they would include you. They
 15 would include Ms. Corrin and Mr. Horning. Are you
 16 familiar with some of those?
 17 A. Yes.
 18 Q. All right. Did you have discussions with Ms. Corrin or
 19 Mr. Horning with respect to those personal guarantees
 20 before the documents would be signed?
 21 A. Yes.
 22 Q. And what was the nature of those discussions?
 23 A. It was always, simply, we are -- we are -- we are the
 24 company. We are -- This is no, fundamentally, no
 25 different than us guaranteeing the bank loans, and none

233

1 of us liked it, but --
 2 Q. Many of the loan documents that I've seen are electronic
 3 signatures, as opposed to wet signatures, so
 4 logistically, when there was a guarantee and it was an
 5 electronic signature, can you describe for me how each
 6 of yourself, Ms. Corrin, and Mr. Horning would
 7 electronically sign the document?
 8 A. I think it was always DocuSign.
 9 Q. But would there be a separate DocuSign sent you
 10 yourself, Ms. Corrin, and Mr. Horning?
 11 A. It would happen that way, and -- Did it ever happen any
 12 other way? I think -- I think there may have been a
 13 time or two where they would all, like, there would be
 14 three e-mails that all came to me in my e-mail address,
 15 and that we would have to scurry around and grab
 16 everybody to DocuSign that way, but for the most part,
 17 it was e-mails that went to all three of us.
 18 Q. All right. So -- And the times where it went directly
 19 to you, and I -- I -- I think what you're describing
 20 when you said "scurry around," you would have, for
 21 example, Ms. Corrin come in to complete her DocuSign?
 22 A. Correct.
 23 Q. And you would have Mr. Horning come in to complete his
 24 DocuSign?
 25 A. That's what I meant by scurry around.

234

1 Q. Okay. Right.
 2 A. That was just a screwup on the other party's side.
 3 MR. KOCHIS: Okay. All right. I don't have
 4 anything further. Thank you.
 5 THE WITNESS: Thank you.
 6 MR. HEILMAN: No questions.
 7 MR. KOCHIS: All set.
 8 MR. BORIN: Yep. All set.
 9 VIDEOGRAPHER: This concludes the video
 10 deposition. Going off at 4:06:43 p.m.
 11 (Examination concluded at 4:06 p.m.)
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235

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1 STATE OF MICHIGAN)

2)ss.

3 COUNTY OF MACOMB)

4

5 I certify that this transcript, consisting of
6 236 pages, is a complete, true, and correct record of
7 the testimony of SCOTT HIRTH held in this case on
8 January 9, 2025.

9

10 I also certify that prior to taking this
11 deposition, SCOTT HIRTH was duly sworn to tell the
12 truth.

13

14 This transcript was completed on January
15 23, 2024.

16

17

18

19

20

21

22 _____

23 Nicole Argudo, CSR-16107

24 Notary Public, Macomb County, Michigan

25 My commission expires: 10-26-2029

A	173:17,20	196:12,13	ACHs 159:7	110:14
a.m 1:16 4:2	173:22,23	228:19,23	acquire	234:14
4:7 50:11	173:25,25	228:25	60:19	addressed
50:12,14	174:5	229:3	92:25 93:3	133:22
90:15,16	178:23	230:1,5	93:9 96:12	211:4
90:18	179:3	accounts	96:15	215:1
ability	192:12,19	68:19,21	acquired	addresses
72:17	199:6,11	108:12	11:15,15	91:13,16
able 26:1	199:15	111:13	33:2 94:24	96:6 101:8
76:15	216:8,21	112:11	226:7	101:9
78:12	216:22,24	173:15,18	acquires	213:25
87:15 99:8	216:25	173:24	136:22	adds 128:20
141:5,14	217:13,14	174:1	acquiring	adjacent
143:25	217:21	182:17	206:21	92:8 97:5
158:23	219:17,23	216:3,12	acquisition	adjusted
189:11	220:11,15	216:13,15	93:6,8	205:2
absolute	220:18,19	216:18	acted 209:9	adjustments
233:5	221:4,10	217:12,17	action	115:5
absolutely	221:11,15	217:19	100:16,17	admin 28:9
140:7	221:17,19	218:10,11	100:20	administ...
161:19	221:25	218:12,13	103:12	190:11,19
164:14	222:1,3,3	218:24	172:6,9	admit 227:7
accept	222:5,15	219:6,7,9	229:1	advance
208:15	223:1,3,5	219:9,10	actions	110:23
accepted	223:7,11	219:20,21	190:10,19	118:12,21
228:19,23	223:17,18	220:1,2,7	190:20	119:1,12
228:25	223:20,21	222:10,19	active 20:20	119:13
access	223:25	222:22,23	actual 12:17	121:17,24
131:15	224:19,20	222:25	25:23 29:9	122:8
214:7	229:20	224:15	66:16 73:6	126:25
221:3	accountant	accrual	123:1	146:25
accommodate	31:15	55:25 56:1	160:3	150:18,20
5:18	accounta...	accumulated	228:1	150:23
accompli...	229:19,19	72:3	231:8,9	151:1
108:10	accountants	accumula...	232:10,19	156:17,24
account	28:17	34:22 76:5	add 204:18	163:6
42:17	31:11,13	accurate	addended	182:7
55:23 65:4	54:14,14	16:2 17:6	103:6	advances
66:1 71:13	54:15 55:4	47:24,25	addendum	78:13
73:24 74:1	56:3 57:5	57:25	103:8	155:8
74:2	58:8 61:19	148:5	addition	AFA 182:5
111:25	228:5,10	153:3	84:8 166:4	Affairs 3:7
156:2,21	accounted	174:23	additional	15:25 17:5
158:2,3,24	230:11	206:24	138:1	18:11,13
159:24	accounting	accurately	144:9	57:15
161:17	41:6 55:2	229:14	151:22	190:16
168:19	55:25 56:1	ACH 176:20	address 96:2	191:17
169:22	74:5 170:8	177:14	101:5,19	217:8
170:3,4,6	194:25	180:14,19	102:5	affiliate

92:14	205:25	AmeriFi	173:8	annual 60:16
affirmative	207:9, 13	182:9	175:4, 5	110:19
172:6	208:18	Ames 84:4, 22	188:2	anomaly
affirmat...	210:9, 13	84:23	190:2	58:14
218:9	210:15, 20	85:10	197:13	answer 9:19
afford 185:2	211:22	207:25	202:11	17:9 18:13
age 8:7, 8	212:4, 11	208:3	amounts	22:19 26:1
agency 231:9	213:6, 10	209:7	18:15 37:2	47:1 51:24
aggregate	213:19, 24	Amex 45:6	49:21, 24	56:25 57:1
74:22, 23	214:6	amortize	110:2	57:4 63:5
aggregated	215:2, 4, 8	61:11	158:22	65:12, 23
174:20	215:9	amortized	163:24	73:16, 17
ago 34:13	227:7	61:16	204:23	74:17, 18
61:6 72:10	agreements	amount 23:1	analysis	75:3, 4
80:19, 23	211:6	26:20 34:5	3:13 83:6	78:19
106:14	215:7	35:4 36:15	151:12, 12	87:11, 19
114:12	agrees 210:5	36:25 38:1	152:6	88:3, 13, 16
150:22	ahead 107:3	39:15 40:2	158:19	89:7, 12
194:22	akochis@...	40:5 41:16	and/or 71:22	113:20, 20
215:11	2:5	41:18 45:5	199:17	114:5
232:21	allegation	58:15 61:3	angry 83:22	115:8
agree 53:22	61:1 195:1	69:10, 13	Ann 11:11	120:13
64:7	227:3	69:14, 19	38:5, 8, 9	125:2
agreed 88:18	alleges	71:20, 21	66:7 74:3	129:22
125:22	196:3	72:3 74:11	90:2 91:3	142:12
195:16	allow 172:20	74:13	93:11, 19	151:11
201:16	201:18	80:15	95:14 97:3	152:13, 14
208:5	allowed	88:14, 15	98:3	152:22, 24
209:3, 6	15:12	90:7	100:24	153:15
agreeing	67:14	106:17, 18	101:21	156:22
131:6, 23	Alpha 191:20	106:21	103:15	160:17
agreement	192:8	107:8, 8, 10	108:12	177:15
3:11, 16	alternative	108:22	138:23	188:25
11:19	142:2, 10	109:9	139:1, 3, 4	196:10
26:17 80:5	148:18	110:3, 5	139:6, 16	208:9
92:23	alternat...	127:21	141:2, 15	224:14
104:12	5:20	146:23	141:25	229:2, 20
105:1, 5, 11	alumni 70:12	147:10	144:6, 8, 19	229:23, 24
105:17	amenable	151:25	145:10, 16	answered
134:1	167:23	152:3, 20	146:1, 5	105:19
142:21	amended 3:8	155:4	155:19	answers
148:19	5:5 33:21	160:3, 18	173:22	10:15
160:13	America	160:24	174:2, 4	Anthony 2:3
163:2	85:22	161:7	217:13, 14	4:12 5:2
170:22	220:13, 15	162:20	217:17, 18	212:16
189:5	220:20	163:1	219:4, 5, 10	anticipate
194:7, 10	221:3	166:2	219:20	142:17
194:10, 16	American	168:5, 21	222:21	anticipated
201:2	45:4, 16, 18	170:2, 10	223:1, 6	147:11

anticipa...	approach	144:6, 8, 19	asset 11:19	232:7
133:6	64:10 66:9	145:10, 16	65:25	attempts
200:6	144:8	146:1, 5	133:21	154:2
anybody	145:15	155:20	134:5	attorney 6:6
129:6	approached	173:22	assets	6:6 187:25
130:16	83:19 84:2	174:3, 4	196:11, 22	attorneys
164:4	143:9	217:13, 14	197:4, 7, 12	4:9 100:19
167:12	approaching	217:17, 18	206:21	175:10
anymore	145:20	219:4, 5, 10	229:15	190:23, 23
130:20	150:16	219:20	232:14	190:24
174:4	appropri...	222:21	assigning	attractive
anytime	230:12	223:2, 6	211:21, 23	188:19
214:7, 10	approve	area 52:14	assignment	auction
anyway	208:17	52:20	211:22	84:12, 21
124:10	approved	areas 53:25	assigns	86:16, 22
apart 81:21	131:21	Arena 105:4	210:4	123:21
Apologies	approximate	105:6, 13	213:11	125:16
65:19	66:24	Argudo 1:19	associated	audit 193:25
apologize	approxim...	236:23	34:6 36:23	194:2, 3, 5
43:25 46:3	12:25	argue 201:16	50:2	194:9, 13
84:13	26:21, 24	arrangement	146:15	195:3, 9
111:4	27:6 57:7	22:5 72:23	224:7, 10	audited
158:17	82:2	162:20	Associates	55:23, 24
182:25	117:14	arrangem...	101:24	194:6, 15
Apparel 1:8	152:9	151:15	association	August 68:12
1:13 2:7	159:13, 13	articulate	70:12	82:25 83:5
5:4, 21	200:25	134:9	assume	100:9, 11
10:19 16:7	approxim...	asked 38:6	216:17	112:25
16:7	80:2	56:2 58:4	assumed	122:9, 10
171:20	April 51:1	89:9	10:25	122:11
apparent	147:18	118:20	assumption	147:20
82:17	162:10	120:1	51:1	148:8
apparently	202:21	123:6, 7	162:19	151:2
26:2	Arbor 11:11	133:18, 18	169:18	195:10
appear 179:6	38:6, 8, 9	151:21	athletic	authorizing
206:6	66:7 74:3	172:17	29:6 69:6	176:16
Appearing	90:2 91:3	176:15	70:11, 19	automatic
2:2, 7, 12	93:11, 19	189:12	athletics	159:1
appears 30:2	95:14 97:3	asking 12:1	71:8 80:14	160:15
39:24	98:3	58:17	atrocious	availabi...
appetite	100:25	129:19, 22	72:22	65:4
63:7	101:21	159:4, 5, 22	attached	139:23
applicable	103:15	204:3	18:14, 15	140:3, 9, 19
51:13	108:12	206:18	attempt 21:9	141:2
application	138:23	asks 217:11	81:21	143:16, 19
170:18	139:1, 3, 4	aspirati...	179:7	144:9
apply 174:22	139:6, 17	157:21	attempted	145:17
appreciate	141:2, 15	asserted	142:15	147:3
76:16	141:25	214:15, 20	attempting	available

147:16	106:10	115:17	107:9,17	219:25
157:16	107:15,25	bad 156:13	107:18	220:2,7,9
Ave 1:15	108:2	badly 158:3	108:12,12	220:11,13
Avenue 2:9	109:10	bags 132:9,9	138:23,25	220:15,18
2:14 4:5	110:6	132:11,12	139:3,4,6	220:20
average	114:23	132:13,15	139:10,16	221:3,4,14
58:22	117:21	132:15,17	141:2,15	221:23
138:19	118:15	132:24,25	141:25	222:5,10
avoid 100:20	120:6	133:22	143:24	222:19,21
aware 105:22	125:20	134:1,2,4	144:6,8,19	223:1,1,3
190:25	126:25	135:14	145:9,16	223:6,7,11
191:17,22	128:2	bail 146:8	145:25	223:17,18
191:23	129:4,10	balance 48:3	146:4,5	223:24
192:3	129:20	56:15	147:12,14	224:11,13
195:6	131:19,24	61:11,16	147:16	224:15,19
208:1	136:10,11	112:11,12	151:12	224:20,20
213:10	136:13	149:22	152:6	230:3
214:14,20	139:3	153:18,25	154:5	233:25
215:7	144:5	154:9	155:19,19	banker
231:4	147:18,24	170:17	156:21	218:22
awning 15:15	154:14	174:12,23	158:1,3,20	banking
	159:9	197:25	158:23	145:16,20
<hr/> B <hr/>	163:7,11	198:2	161:17	178:18
B 2:17 3:1,6	163:12,20	200:24,25	165:23	bankrupt
4:7	164:6,8	230:8	166:21,23	14:16
back 6:18	169:1,23	balances	168:19	74:17
8:16,23	170:25	42:20	169:2	bankruptcy
14:19 23:6	171:22	111:14	173:15,17	1:1 17:19
24:3 34:23	174:7	112:21	173:18,20	19:21 20:5
35:6,7	177:10	120:12	173:22,22	24:19
36:1,15	179:4	Ballpark	173:23,24	74:21 82:6
37:6,9,10	184:17	117:9	173:24,25	82:8,18,20
37:24 38:3	188:25	ballpark...	174:1,2,4	82:25 83:5
38:11	190:7	59:1 153:9	174:5	99:10
40:12 41:2	205:12	balls 7:22	177:23	100:8
43:17 46:5	210:18	bank 3:12	178:23	102:20
46:13,14	215:17	38:5,8,9	179:3,19	103:11
47:6 50:12	221:17	44:13,14	192:12,19	112:25
50:13,18	222:13	55:23 58:8	198:2	116:14,25
50:25 51:1	224:11	62:12 63:6	199:6	141:10
51:10,11	226:1,3	63:9,11,15	216:8,12	151:2
57:14 62:3	227:16	63:17	216:12,15	153:9
65:19	228:6,24	64:11 65:4	217:6,13	158:11
66:21 68:8	229:1	66:5,6	217:14,17	191:11
68:11	230:11,19	73:24,25	217:18,19	212:8,22
81:18,25	230:20	74:1,2,3	217:20,22	215:11
90:16,17	background	78:12	219:4,5,10	216:14
100:23	6:12 53:24	93:11,18	219:16,20	banks 66:9
102:12,14	backwards	97:14,17	219:21,23	Barbara

32:19, 20	103:4	153:15	bid 14:10	Bloomfield
33:2	139:2	159:4	big 15:15	1:15 2:9
baseball	142:5, 8	162:22	27:14 29:6	2:14 4:5
105:14	194:11	173:5	58:20	Blue 11:5, 6
based 30:13	195:3	179:8	61:24 71:4	15:11
31:2 34:16	201:15	180:16	75:23	BMF 181:18
34:18 37:3	beginning	183:25	76:11	BOLTON 2:3
51:16	86:8	186:4, 9	78:23	book 108:6
71:21	behalf 4:12	187:24	79:25 80:3	booked
72:25	4:14 6:1	189:15	86:14, 16	118:18
124:5	27:17 37:8	191:13	87:10	bookkeeper
151:9	86:20	193:19	119:18	43:6, 8, 9
160:24	169:11	196:12, 17	144:25	54:6, 9, 20
199:16, 17	232:25	196:22, 23	160:2, 14	54:23, 23
206:16	believe 6:22	196:24	161:3	54:24 57:6
208:20	8:18 9:12	198:5, 19	162:6	57:8 157:6
basic 156:15	15:23 16:3	198:21	bigger 75:21	157:13
basically	20:15	204:13	77:16	169:5
11:8 78:6	21:22 27:5	210:25	biggest	227:24, 24
83:18 86:4	32:3 35:13	211:25	28:12	227:25
93:13	36:9 37:16	214:23	197:22	228:1, 3, 9
100:21	38:8 42:16	216:11	bill 44:24	228:10
140:24	43:14	217:23	45:6, 16, 18	books 37:14
179:19	47:23	220:22	46:24	37:14, 15
216:25	49:25	221:22	69:10	37:25
basis 29:3	55:21	227:12	73:19	41:24 43:3
34:8 40:4	57:25	believed	125:13, 14	109:14
41:17	59:20 60:6	200:12	bills 41:4	112:5, 8, 9
55:14	62:5 65:25	Bell 9:3	48:21, 22	168:20
80:14	66:15	224:22	55:1 56:6	169:19, 20
167:14	67:12	benefit 42:4	69:11	170:1, 9
196:8	70:13	48:24	108:15	173:6, 10
basketball	71:17 72:7	231:1	bit 25:1	174:19
29:7 85:7	72:8, 10	best 17:10	44:18 52:4	178:10
201:18	79:23	72:21	52:7 53:25	181:7
Bates 42:5	94:16, 17	74:18	70:14 72:7	182:16
bats 7:22	96:22, 24	169:16	77:16 78:2	194:6, 9, 13
BCS 79:25	97:14	171:12	80:8 88:10	194:15
119:5	101:3	better 88:18	90:21	223:15, 16
becoming	102:11, 18	88:19	116:13	223:18
8:24, 25	109:16	148:12, 12	129:12	224:5, 12
63:9	111:6, 24	188:11	141:23	228:15, 18
began 68:14	112:8	208:7, 22	147:19	228:21
78:15	115:4	225:16	157:9, 21	229:14
83:16, 16	134:7	beyond	180:8, 10	Borin 2:8
84:1 96:20	139:18	160:11	211:19	4:14, 14
96:20	142:12	163:4, 11	215:22	6:8 11:23
100:2, 4	143:25	169:6	blessings	12:1, 4, 6
102:2, 9	150:9	231:3	229:19	12:20 50:8

81:11	Boulevard	Briarwood	burden 30:9	69:7 82:19
90:11 96:1	13:2,5	9:23 102:7	34:16	82:20
96:9	15:23	106:6	Burned	85:13,18
106:23,25	91:14,18	bridge 148:6	193:22	86:2 87:13
107:3	91:25 92:1	brief 6:5	busier 162:8	118:17
136:6	93:4	8:23 13:10	business	123:9
180:1	bounce 57:14	broken 76:6	6:14,23	135:10
187:19	157:2	76:15	7:9,19,23	137:3,13
191:25	215:22	broker	7:24 8:5	buyer 28:13
192:3	bounced	188:15	8:20 9:15	buying 28:13
196:16	156:18	189:3,5,23	9:21 11:6	28:14 77:7
212:15,22	158:8,10	189:25	11:8,9,12	77:9
212:25	159:22	brokerage	11:15,20	buys 69:2
225:19,22	160:7	189:11	12:14 14:1	bylaws 17:14
235:8	161:3,24	190:5	14:4 15:7	
borrow 63:2	162:4	216:3	15:18,22	C
65:7 150:5	166:7	brother 24:1	26:23,25	C 2:1 3:1
152:11	202:8	232:25	27:1,3,15	4:22
154:16	218:16,16	brought	28:11,19	calculate
borrowed	bounces	83:10	32:22 33:9	127:17
150:7	165:24	91:19	33:13,18	calculated
151:25	177:24	120:6	38:24	34:17
152:9	bouncing	135:8,19	44:13 52:7	126:10
153:14	159:25	bucks 138:18	52:12 53:6	147:10
155:6,11	160:14,15	budget 49:17	57:19,22	calculation
163:7	164:24	build 64:4	64:6 69:2	126:9
180:11	166:25	64:11,22	69:5 75:8	130:10
230:10	bowl 79:25	building	75:18,19	calculat...
bothers	79:25 80:1	62:11,23	75:20,22	204:5,10
182:12	80:1	78:5 96:5	76:6,14	calendar
bottom 18:22	124:12	buildout	77:11,14	184:17
33:24	box 116:19	65:8 66:11	117:23	187:9
200:23	brain 187:9	146:15	136:17	197:3
210:3	193:22	147:3	140:24	call 24:24
211:9	brand-new	built 78:24	147:7,19	47:22 49:5
bought 6:24	120:3	78:25	152:15	57:10
7:5,9,24	break 5:17	85:15	163:8	78:15
11:7,9	20:22 50:7	bulk 39:2	205:14	83:20 85:3
24:2 27:3	81:21	46:13	209:12	85:21
33:1 35:14	90:12	110:22	212:9	86:25
57:8 94:11	122:16	208:9,10	220:11	103:19,22
94:12,12	179:24	bullet	232:12	117:9
94:13 95:6	183:20	206:19	businesses	123:11
96:21	230:15	bump 219:17	154:19	127:25
98:17,19	breakdown	bunch 85:5	225:17	128:10
134:4	71:9	138:1	busy 147:12	137:2
137:21	breathing	166:4	147:22	144:17
139:3	78:20	172:12	177:20	162:5
221:12	Brett 23:22	203:25	buy 67:24	166:14

171:9	capitalized	47:19 79:4	217:1,5,5	161:2
189:6	60:5 61:7	91:5 107:8	217:6	218:22
204:18	65:22	113:19	219:4	227:17
210:9	Capstone	163:10	223:21	certific...
216:21	2:19,20,21	164:10	cached 200:6	6:16
217:20	151:11	165:10	cause 61:14	certify
218:8	152:6	171:17	68:2 78:3	236:5,10
222:21	230:2	172:21	90:24	cetera
228:2	captured	175:13	111:24	104:24
called 8:18	173:10	177:18	113:9	105:15
8:20 9:3	captures	178:16	121:5	107:11
14:13 15:2	173:12	179:18	122:16	190:11,20
15:2,4	card 20:16	189:2	124:21	CFP 79:24
21:18	20:19,24	193:11	126:23	chain 75:12
31:16 36:9	21:1,3,5,6	204:24	128:2,11	75:14
42:8,9	21:7,11,23	217:12	135:9,14	118:22
91:9 92:9	22:4,7,12	227:6	135:17	Champion
98:5,17	22:17	236:7	152:23	119:5
111:6	44:23,24	cases 168:11	162:11	Champion's
162:22	46:21,21	cash 25:16	173:25	85:5 86:1
163:18	46:22,24	25:23	174:24	86:25 88:8
169:13	46:25 48:3	26:11	203:21	89:4,10,13
170:4	48:7,9,10	37:18,21	217:3	208:7
185:16	48:10,12	39:19	219:14	209:22
186:5	48:13,16	41:25	causing	champion...
225:10	48:17,19	49:17 55:1	166:22,25	58:20
232:3	48:21,23	61:14	CC 44:22	75:25 76:7
calling	49:20,25	64:24 69:3	cease 100:5	76:23 79:7
131:4	69:3 183:6	69:4,11	102:22	79:16,25
146:1	183:14,15	75:5 76:10	103:9	80:21
180:8	183:16,18	77:20,21	ceased	114:17,21
calls 208:2	183:21,23	78:13	102:19	119:19
campus 65:16	183:25	107:14	certain 10:2	156:14
66:21 68:8	184:2,3,19	109:14	52:24	195:17
68:11	185:1	119:3	59:10 62:6	202:17
cap 138:13	219:15	120:7,10	77:21	champion...
Capital	231:1,6,10	146:18,25	138:11	75:24
167:22	care 25:24	147:3	151:17,19	chance 86:17
171:12,15	49:3 86:9	150:18,19	160:24	107:1
175:2	careful	150:23	175:4,5	142:23
180:15,19	70:14 89:6	151:1	205:10	change 10:14
180:24,25	Carpenter	155:8	certainly	10:17
181:10,13	93:22 95:6	156:16,17	10:11 38:2	24:24
181:18,20	carried 15:3	156:24	71:6,8	25:15
182:1,5,9	153:19	163:6	77:17	57:23
185:16,17	case 1:6 5:3	169:21,21	118:15	224:24
191:5,9,10	30:19	203:5	152:15	changed 9:9
Capital/...	37:11,19	216:6,21	154:19	9:17,24
231:21	39:14	216:21	157:2	10:18 57:3

171:15,16	37:23	chunk 28:12	159:1	170:13,14
180:17	39:13	Churchill	172:24	cold 87:20
212:18	45:24 46:3	161:22	173:2	Coldwater
230:6	46:4,7,11	171:12,14	214:5	181:24
changes	46:15,17	231:22	219:19	Coleman
225:2	46:22,25	Circle 85:5	cleared	122:17,18
229:25	69:15	86:1,25	199:14	122:19,22
changing	73:21,23	88:9 89:4	clearly	123:2,3,5
171:19	108:10	89:11,13	45:21 71:1	123:6,6,12
chaos 114:22	156:10,19	208:8	71:3 114:3	124:8,11
115:22	156:23	209:22	147:25	126:10
119:19	157:2,3,23	circumst...	183:19	127:21
120:6	158:3,5	73:20	Clearview	128:23
charge 29:1	160:6	151:17	149:25	131:1,9,19
29:12,15	161:3	176:13	clients	132:16
41:5 54:4	176:19	178:4	225:11	133:7
138:10,14	177:13,16	circumst...	close 12:23	134:22
138:14,18	186:2,2,3	53:14	32:6 50:16	collateral
183:14,15	198:25	151:19	90:7	49:17
183:17	199:2,5,7	161:15	142:13	collect 56:5
226:22	199:12,14	176:18	220:23	181:1
charged	199:24,24	claim 34:4,5	221:1,6	collectable
138:11	200:6,16	34:8 40:2	closed 12:12	74:16
183:5,18	202:8	40:5 41:16	13:11	collecting
charges	check-in	41:17,18	67:23 99:4	231:8
48:23 49:7	145:14	80:14,15	117:22	232:24
49:15	checking	81:3	217:11,17	collection
charging	156:2	110:10,11	218:24	15:9,16,18
221:14	216:2,6,17	110:12	219:11,11	15:20
chart 159:11	216:18,19	164:9	219:12,13	211:8
Chase 48:9	216:22	191:11	219:16,20	231:9
48:10,12	checks 45:22	214:13	220:18,21	232:2
49:20,24	55:2 156:3	claims 40:4	221:7,13	college 8:15
173:23,24	156:18,20	60:23,25	closer 124:4	58:21
174:3,4	157:9,10	74:22	154:4	79:24 85:6
183:5,20	157:17	214:15,18	closing	114:18
184:1,1,3	158:8,10	214:20	188:15,20	195:15
216:10,12	158:25	clarify 5:16	188:23	Collegiate
216:12,15	159:5,7,22	91:13	189:1,9,11	1:8,12 2:7
219:1,2,6	160:14	101:15	218:9,13	5:4,21
219:7,9,19	218:16	clean 12:6	221:15	10:19 16:6
219:21	Chevy 116:15	cleanup	coaches	16:7
220:7,9,11	116:19	221:13	205:13	171:20
220:19,21	Chicago 9:4	clear 70:1	coded 224:5	212:19
221:3	chief 227:1	83:21 91:1	coffee	Columbia
222:23	chose 13:22	101:5	103:16	99:21
223:2,6	14:7	144:12,13	104:1,3,5	column 27:22
check 30:20	Chrysler	144:15	104:8	29:24
37:10,11	105:4,5,9	157:4	coin 168:15	44:21

combination	226:1, 3, 17	44:18, 23	competitor	216:10
60:15	comment	45:12, 25	98:17 99:7	confirm
152:19	144:25	46:7, 8, 13	compiled	199:10
combining	commercial	46:16, 17	58:7, 9	203:4
188:2	156:2	46:22, 23	204:6, 11	206:23
come 10:20	commission	46:24, 25	204:17	confirmed
37:9 49:19	236:25	46:25 47:6	complete	199:13
50:25 51:1	committed	47:17, 18	68:12	conformity
66:21	78:4, 8	47:18, 20	175:7	228:19
68:11	committee	48:4 49:8	205:11	confused
88:25 89:5	1:4 2:2	57:8 59:8	213:15	96:3
90:5, 7	4:12 5:2	59:14	234:21, 23	confusion
93:6, 8	86:21	61:21 73:9	236:6	113:9
96:15	125:17	78:18	completed	Connecticut
122:7, 7	commonly	82:11, 13	58:6 113:1	191:21
125:20	84:4 85:4	82:14, 17	174:18	connection
127:8	93:23	95:3 98:10	229:18	42:6 66:9
128:2, 6	95:14 97:4	108:1, 16	236:14	155:22
129:7, 8	99:22	109:8	completely	232:7
135:7	100:25	111:21	11:24	consents
138:1	101:21	124:12	complex	213:15
141:1	116:20	139:3	171:18	consider
148:24, 24	117:5	145:3	comprised	82:5, 7
156:24	communicate	164:11	40:8	150:23
158:4	144:24	165:25	comprises	consist
165:9, 10	companies	166:4, 17	71:10	55:20
168:10	164:16	166:20, 21	concept	consistence
173:22	165:25	184:1	210:16	228:22
179:4	225:21	186:5	concerned	consistent
188:23	company 9:3	194:19	79:1	58:13
211:15	13:25	207:19	conclude	consisting
219:25	14:13	208:11	174:22	236:5
222:19, 25	21:18	221:12	concluded	consolid...
232:12	23:19, 21	225:1, 10	229:25	99:5
234:21, 23	23:24	226:1, 13	235:11	construc...
Comerica	24:16	226:15, 15	concludes	78:5
221:4	25:18, 25	233:6, 24	227:10	104:23
comes 51:9	28:8 34:21	company's	235:9	139:19
175:5	35:2, 7, 15	39:15, 17	conclusion	141:13, 15
comfortable	36:15	compared	203:8	145:5
145:7	37:11, 14	41:11	208:25	consult
coming	37:15, 21	190:22	209:2	52:12, 25
118:15	38:4, 11, 17	compel 232:7	concrete	53:6, 8
131:20	38:23	compensated	88:10	consultant
147:8	39:14	61:2	152:5	225:8
161:8	40:16 41:1	compensa...	conference	227:15
167:14	41:1, 2, 9	25:16, 23	218:7	consulta...
170:25	41:10	26:11	confident	53:10
211:12	43:17 44:9	132:19	173:8, 12	208:14

consulted 85:23	corner 14:5 91:5,15,17	91:22	190:16	36:25
consulting 53:12,15 225:13	92:9 97:5 103:19,22	92:23 94:5 94:23,25	193:14 197:16	37:11,24 39:20 40:7
contact 175:18	Corning 33:5 92:18	95:1,12,17 95:20,21	198:4 200:17	40:19 51:12 52:5
continue 14:1 67:4	corp 25:25 29:24 30:3	95:24 97:23 98:1	201:3,4,7 202:3,13	52:25 92:18
continued 178:20	30:7 34:12 36:11	98:5,6,24 99:20,25	202:20 203:7,9	94:22 95:22
continuing 194:23	203:21 corporate	101:11,23 101:25	213:12 216:16	126:4,19 126:20
continuo... 8:10	corporation 9:3 190:24	102:8,21 103:2	219:22 220:25	139:8 233:15,18
contract 79:22	15:6 16:16 30:8	104:6 108:19	221:2 224:8	234:6,10 234:21
162:6	correct 6:21 6:22 7:18	110:4,7,10 113:20	225:4 226:9	Corrin's 28:23
163:5,11	9:11 10:4 10:5,10	115:15 116:8	227:8,9 229:12	40:22 41:11
163:14,18	14:16,21 16:22	120:16 122:23,24	234:22 236:6	cost 60:10 60:17
165:1	17:20,23 18:1,4	123:16,17 124:1	corrections 56:20,23	61:13,14 64:11
166:3	19:7,8,18 19:19 20:7	126:5 128:16,17	correctly 7:5 26:2	76:22,25 77:1,4
167:25	20:8 22:14 22:15	128:24 130:19	58:7 61:7 79:19	80:7 107:23
171:6	25:15 26:9 30:5 31:4	131:1,2 134:14	133:6,10 149:20	124:19,22 125:22,24
186:4	33:4 35:20 35:21	136:19 139:15,21	152:23 163:3	127:25 128:3,6,10
208:16	40:13,17 40:20	142:4,6 143:4,15	219:19 correspo...	137:10,23 138:3,16
contracts 160:22	41:12 48:25	144:4 146:19	202:25 correspo...	138:18,19 costs 25:21
contractual 162:15	49:23 50:4 54:4,7,21	148:9,10 149:6,7	45:19 169:25	77:14 107:25
contributed 76:14	55:19 56:9 57:2 58:11	154:23,25 157:9	223:16 corresponds	108:2 109:4
control 157:16	60:11,12 62:8,19	158:25 159:2,8	204:20 Corrin 16:24	125:3,13 138:1,2,9
controlled 49:11	63:2,3,23 65:3,9	162:21,22 167:3	17:1,22 19:7 24:23	138:15 146:15
controls 157:6	66:8 68:6 68:15	169:19 170:12	30:4 33:6 33:7 34:4	counsel 142:20,23
conversa... 6:5 64:14 66:5,6	72:19 79:20 83:1	179:10 180:12,23	34:9,14,20 34:22,23	212:9,9 count 106:7
conversa... 6:8 231:16	83:4 91:11	181:11 186:4	35:20,22 36:19,19	113:22 114:7
convince 209:17				
copies 142:16				
copy 142:18 155:19				

115:7	65:14	44:24	68:3 84:25	data 43:2,2
116:8,9	66:13 68:2	46:20,21	crossed	43:6 55:2
counted	75:4,6,8	46:22,24	63:17	55:3,7
149:20	75:18 77:8	46:25 48:3	crunch 120:7	111:22,24
counterp...	77:18,20	48:7,9,10	120:10	date 9:14
178:14	77:22 78:1	48:12,13	Crusader	10:11
187:13	78:5,6,12	48:16,17	150:2	18:16
Country 12:9	78:15,17	48:19,21	crush 232:12	20:13
12:11,14	78:20,21	48:23 69:3	CSR-16107	25:15 30:3
counts 114:5	81:14,24	69:5,11,12	1:19	35:8 40:3
County 4:8	117:22,23	139:17,18	236:23	41:17
191:6	142:8,10	139:22	cumulative	65:16
225:11	142:13	140:13,16	69:10	66:17
236:3,24	149:6	141:3	current	82:25
couple 5:14	152:17	142:21	79:24	100:3
8:16 13:12	153:17	143:9	198:2,5	101:14
23:3 32:14	154:19,20	145:4	213:15	102:3
33:22	196:15	146:21	currently	139:15
43:23	197:9,19	147:4	201:1	143:4
103:10	197:20	148:14,19	customer	151:2
124:16	201:11,14	148:25	67:18 69:2	163:23
127:7,10	201:20	183:6,14	213:13,15	164:2
135:15	COVID-re...	183:15,16	213:20,23	178:7
182:17	202:7	183:21,23	213:25	192:13
191:4	craziness	183:25	214:1,1,2	193:14
200:13	38:24	184:2,3,19	214:3,7,8	196:2
204:1	crazy 38:19	185:1	customers	199:24
225:1	194:8	219:15	29:14 67:9	201:24
231:2	create 86:5	230:25	77:6 125:3	203:6
course 65:14	created 14:5	231:6,10	cut 157:9,17	206:14,14
court 1:1	95:2 112:8	creditor	199:24	210:4
17:19	112:14,19	39:24	cuts 157:10	213:14
190:19	112:22	41:14	157:11,13	215:8
cousin 24:12	119:3,6	73:14	cycle 116:8	218:24
cover 88:14	creative	80:13		229:13
124:19,22	10:24 21:9	106:13	D	dates 227:13
155:5	credential	creditor's	D 149:11,19	daughter
199:18	131:22	125:16	149:21	23:13,20
200:16	credit 3:11	creditors	174:12	24:13
covered	20:16,19	1:3 2:2	D-E-W-E-G-E	233:1
71:25	20:24 21:1	4:13 83:22	98:5	Dave 27:3
105:20	21:3,4,6,7	85:12	dad 8:4 95:3	226:6
193:6	21:11,23	88:14,21	139:7	David 2:17
COVID 20:14	22:4,7,12	149:19	194:20	2:19 4:7
35:3 36:8	22:17 36:8	153:8	205:14	7:1,4 27:5
36:11	37:18,21	Crest 161:24	226:6,14	33:5,6
38:13,15	39:20	164:21	227:22,23	day 6:7 8:4
38:24 59:5	41:25	critical	daily 29:3	31:11
59:22	44:14,23	67:13,14	167:11,14	52:20,20

58:24	37:21	20:10,24	97:9,10,11	156:9
84:21	39:19	21:2,13,15	97:12,21	163:17,20
103:25	41:25	21:22	97:24 98:4	163:24
125:10	48:10	22:14,17	98:14,23	164:12
126:8	69:11,12	22:22	99:24	165:6,14
139:14	156:23	24:18	100:5,10	165:20
141:10	163:4,10	26:18	100:15	166:7,15
157:20	163:12	27:18 28:6	101:4,24	166:20,24
163:8	166:1,3,16	28:24	102:19,22	168:6,16
178:7	166:17,20	29:11 31:3	103:9,16	168:16,20
199:8,13	172:14,15	31:6,15,18	104:10	169:11
199:19	172:20	31:19 32:7	105:3,8,21	170:15,20
200:1,3,8	177:1,3,17	34:9 35:24	106:16	172:6,9,17
209:10	177:20	36:1,18	112:5	172:24
days 71:13	178:12	37:1,8,24	113:1	173:21
103:23	debiting	40:12	114:15	176:18,24
104:16	159:24	45:14,16	117:3	178:3,9,13
105:1	160:11,12	45:17	119:25	178:14,21
110:16	160:18	48:13,19	120:14,15	179:16
120:20	163:11	48:22,24	120:18	180:11
127:9	172:10	50:18,20	121:10,11	188:5
193:17	177:5	51:12,15	124:2	190:12
200:14	178:7	52:6,9	130:7,14	191:1
DBA 15:5	debts	54:10,18	132:3,7,12	192:24
212:20	156:17	60:3,10,13	132:13,19	193:15
DBAs 10:25	159:1	60:19,22	132:24	194:24
de-dupli...	160:15	61:2 62:25	133:7	195:1,23
214:1	163:13	64:3,9	135:25	196:3,5
deal 88:25	165:22	65:4,11,12	136:18,22	197:25
89:5,13,21	177:18,19	65:22	136:23	198:1
90:5 118:4	178:1	66:14 67:2	138:9,10	199:7,10
132:25	180:17,18	67:3,17	138:25	201:8,14
167:19,21	218:17	68:21	140:21,23	202:4
168:12	debt 21:4,8	69:18	142:1,9	203:4
179:14	22:3,3	71:19	143:9	205:5,10
181:5,9	35:8 172:8	72:18	144:24	206:1,6
188:20,21	debtor 4:15	73:12,13	145:15,18	207:12,14
dealing	5:3,19,20	74:16 75:1	145:20	208:13,24
28:16	6:1 9:9,20	76:19	146:17,21	211:21
124:17	9:24 10:2	77:21	147:2,4	213:14,19
deals 180:21	10:9,20	79:17	148:6,18	214:15
Deanna 43:9	11:1,12,15	80:19 82:5	148:24	215:7
43:10 57:7	14:19 15:7	82:7,9	149:20	217:13,22
57:11,13	15:21 16:5	83:7,12	150:5,16	218:10,25
111:23	16:8,18,23	84:2 91:8	151:1,21	219:21,23
112:6	17:6,11,14	91:20 92:1	151:25	220:15
173:18	17:17	92:3,11,15	152:11,24	221:4,19
228:11	18:25 19:3	92:17 93:7	153:5,11	222:5,10
debit 37:18	19:6,9,18	94:6 96:16	154:16	224:6,21

227:20	233:3	205:14	235:10	99:22,23
228:15,21	December	227:22	236:11	106:7
231:1	117:16,20	DEL 2:13	depository	146:16
232:8	121:21	delay 201:18	217:19	219:5
debtor's 3:8	122:12	delayed	deposits	221:2
3:12 6:6	183:4	121:2,3,4	217:1	development
18:11 28:7	196:4	delays 78:5	describe	28:11
33:21	decided	deliver 68:4	28:25	Diana 55:6
37:25	81:15	delivered	44:15	55:12,18
41:24 43:3	189:3,18	95:10	53:19	56:7,22
74:5,21	208:13	118:21	168:24	57:6
112:1	decision	120:15,17	234:5	difference
113:18	52:15 53:6	Deloitte	described	25:1 70:25
115:13	53:15,16	228:4	40:15,19	160:6
116:14	62:6,25	demand 69:18	47:7 52:9	161:3
120:12	63:4 66:4	demands	132:8	162:6
122:23	157:23	100:13	171:22	209:1
135:2	208:24	Den 9:5,10	176:13	different
136:17	209:5	9:15,15,20	178:4	13:25 14:8
147:11	decision...	10:9 13:13	185:20	25:22 28:5
155:19	52:11	13:17 14:4	describing	40:22 52:5
161:17	decisions	14:6	164:1	69:25
162:21	27:17 52:7	denial	234:19	70:21
169:19,20	52:13,20	214:13	designated	108:12
169:25	52:21,24	department	104:14	121:25
170:9	deducting	15:24 17:4	desk 199:1	122:2,13
173:6,9	161:16,18	52:19 69:7	destruction	122:14
174:19	172:3,5,7	69:7 70:11	233:5	149:21
178:10	176:14	70:19,19	detail 42:20	151:14
181:7	deduction	71:10	73:9	159:18
182:16	160:8	80:13	112:22	164:12
183:23	176:16	departments	169:8	166:17,19
184:1,3	Defendant	70:9,15,18	details 3:10	167:20
194:13	1:9	71:5	42:9 74:5	171:8,18
197:6	defense	depended	111:6	178:12
200:24	40:24 41:3	27:14	156:2	181:3
203:4	41:6	depleted	determin...	185:10,11
206:21	definitely	77:22	109:9	187:2
223:15	72:12	deposed 5:12	determine	218:11,12
224:5,12	143:7	deposit 44:6	171:21	224:4,9
224:16	146:24	47:4	184:15	228:5
229:14,15	184:9,10	216:21	determined	233:25
233:3	198:16	217:4	26:20	differen...
debtor-p...	definition	219:4	27:12	63:22
205:6	5:22 32:2	deposition	174:21	difficult
debtors	defrayed	4:4 5:3,19	208:15	157:1
200:12	125:3	6:10	Detroit 62:2	difficul...
debts 75:1	degree 6:13	155:22	62:7,12,15	81:16
76:15	85:19 87:7	180:1	64:4,8,22	dig 43:19

dipping 13:7	207:19	29:12,13	38:5	64:20,21
directing 164:11	210:21 231:13	29:21,24 30:3,7,11	documents 6:4 38:1,9	137:24 138:22
direction 126:22 138:12 164:25 165:6,9	discussions 120:18,23 145:20 170:24 208:7,8	34:23 36:19,25 37:5 51:22 203:19	39:10,12 42:6 45:19 73:6 111:5 131:13 148:15	146:14 168:19 Dolphins 85:24
directly 73:15 139:17 234:18	210:9 231:14 233:18,22	distribu... 19:6,9,12 19:20,22 19:24	154:3 155:21 213:5,9,10 233:20 234:2	Don 23:25 24:7 Donald 41:16 donor 85:22 door 11:7,18 doors 15:17
director 16:1 17:5	dishonored 199:5	203:5,10 203:13	document... 190:21	double 137:4 137:13
directors 17:10,12 17:13	dispensa... 133:24	DISTRICT 1:2	DocuSign 234:8,9,16 234:21,24	doubled 140:24
discipline 225:18	display 132:4,5,16 132:17 133:19,20	Docket 18:12 33:21 64:2	dog 149:11 149:19	doubt 114:14 doubtful 74:13,15
disclosed 119:22	134:10,11 134:13,25 135:21	document 38:2 42:13 42:15,16 43:15,18 44:3 47:16 49:3,4 111:9,11 111:12 143:7 171:3 172:20,22 172:24 176:15 184:14,21 193:12 195:22 205:6 206:2,10 206:13,15 207:16 210:24 211:12,13 211:15,22 211:25 212:2,12 212:12,13 215:13 234:7	doing 9:14 10:23 14:1 14:3 20:24 46:12 53:11,21 55:13 124:15 125:18 130:19 138:12 153:5 165:22 169:3 173:3 176:14 184:18 211:1 212:14	double 137:4 137:13 doubtful 74:13,15 Doug 7:3,4 24:1,12 27:4,6 226:6,14 227:23 draft 210:23 drawing 203:8 drawn 140:17 141:4,7,8 142:1 144:1,6 drew 24:6,7 43:6 Drip 103:16 driving 52:23 dropped 191:24 192:17 198:25 due 71:17 75:2 81:15 107:9 110:17 120:21 148:1 199:8 202:21
disclosure 62:5 64:1 79:15 117:12	displayed 134:13	203:5,10 203:13	document... 190:21	double 137:4 137:13
disclosures 75:15	displays 135:21	division 227:2	document... 190:21	doubtful 74:13,15
discuss 28:5 52:17	disposit... 229:15	Docket 18:12 33:21 64:2	doing 9:14 10:23 14:1 14:3 20:24 46:12 53:11,21 55:13 124:15 125:18 130:19 138:12 153:5 165:22 169:3 173:3 176:14 184:18 211:1 212:14	doubtful 74:13,15
discussed 34:13 40:7 41:19 54:3 111:14 133:8 171:7 222:11 230:24	dispute 189:8 195:1,2,2 196:6,8 197:19,23	document 38:2 42:13 42:15,16 43:15,18 44:3 47:16 49:3,4 111:9,11 111:12 143:7 171:3 172:20,22 172:24 176:15 184:14,21 193:12 195:22 205:6 206:2,10 206:13,15 207:16 210:24 211:12,13 211:15,22 211:25 212:2,12 212:12,13 215:13 234:7	doing 9:14 10:23 14:1 14:3 20:24 46:12 53:11,21 55:13 124:15 125:18 130:19 138:12 153:5 165:22 169:3 173:3 176:14 184:18 211:1 212:14	doubtful 74:13,15
discussing 50:17	disrupted 75:12	203:5,10 203:13	doing 9:14 10:23 14:1 14:3 20:24 46:12 53:11,21 55:13 124:15 125:18 130:19 138:12 153:5 165:22 169:3 173:3 176:14 184:18 211:1 212:14	doubtful 74:13,15
discussion 87:3 100:20 122:19 145:9 165:4 169:9 177:7 178:2 185:4	disruption 117:24	203:5,10 203:13	doing 9:14 10:23 14:1 14:3 20:24 46:12 53:11,21 55:13 124:15 125:18 130:19 138:12 153:5 165:22 169:3 173:3 176:14 184:18 211:1 212:14	doubtful 74:13,15
	distinction 160:14	203:5,10 203:13	doing 9:14 10:23 14:1 14:3 20:24 46:12 53:11,21 55:13 124:15 125:18 130:19 138:12 153:5 165:22 169:3 173:3 176:14 184:18 211:1 212:14	doubtful 74:13,15
	distressed 35:3 209:13	203:5,10 203:13	doing 9:14 10:23 14:1 14:3 20:24 46:12 53:11,21 55:13 124:15 125:18 130:19 138:12 153:5 165:22 169:3 173:3 176:14 184:18 211:1 212:14	doubtful 74:13,15
	distributed 51:16,19 52:2 203:17,20 203:20	203:5,10 203:13	doing 9:14 10:23 14:1 14:3 20:24 46:12 53:11,21 55:13 124:15 125:18 130:19 138:12 153:5 165:22 169:3 173:3 176:14 184:18 211:1 212:14	doubtful 74:13,15
	distribu... 24:21	203:5,10 203:13	doing 9:14 10:23 14:1 14:3 20:24 46:12 53:11,21 55:13 124:15 125:18 130:19 138:12 153:5 165:22 169:3 173:3 176:14 184:18 211:1 212:14	doubtful 74:13,15
		document... 131:19,24	doing 9:14 10:23 14:1 14:3 20:24 46:12 53:11,21 55:13 124:15 125:18 130:19 138:12 153:5 165:22 169:3 173:3 176:14 184:18 211:1 212:14	doubtful 74:13,15
		documented	doing 9:14 10:23 14:1 14:3 20:24 46:12 53:11,21 55:13 124:15 125:18 130:19 138:12 153:5 165:22 169:3 173:3 176:14 184:18 211:1 212:14	doubtful 74:13,15

duly 4:23 236:11	6:12	166:25	126:3	entirely 120:25
	Edwin 98:5	167:5, 6, 21	127:5, 20	entirety 81:2
	effect 121:8	168:2, 2, 6	128:20	203:14
<hr/> E <hr/>	152:25	168:18, 22	129:15, 18	entities 69:25 70:4
E 2:1, 1 3:1	effective 206:13	169:24	130:3, 8, 15	70:6, 9, 15
3:1, 6 5:7	210:4	170:2, 6, 15	131:25	86:14, 17
101:24	211:5	170:16	132:21	145:6
e-mail 131:5	213:14	171:7, 23	133:9	149:21
131:12	effects 117:22	172:1, 11	135:23	151:14
149:3	effort 83:9	172:14, 15	employer 129:20, 21	169:10
171:2, 6	86:17	172:21, 23	130:13	171:8
189:12	efforts 83:11 85:9	172:25	employment 225:3	181:3
218:22	99:6	173:4	ended 30:23	entities' 112:2
234:14	eight 97:13	177:10, 18	54:1 75:6	entity 6:19
e-mails 131:23	110:16	181:15, 17	75:13 76:7	7:14 8:19
234:14, 17	either 40:10	Elemental's 167:1	128:16, 25	14:14 16:4
earlier 47:7	138:22	Elementa... 231:21	150:19	16:13, 14
130:5	Eleven 185:23	Elizabeth 33:11	152:14	16:25
141:23	57:1 70:19	embarrassed 118:16	156:25	17:13 18:7
153:6	73:23	emerging 78:17, 20	163:14	19:12, 17
159:23	88:18 98:4	emphasis 225:17	164:3, 3	20:1 21:14
162:17, 18	119:1, 14	Empire 180:24, 25	167:21, 24	22:11, 21
206:22	125:12	181:5, 7	168:12	30:9, 16
207:24	130:20	231:7	192:11	34:13, 22
228:12, 18	161:12	232:2, 24	209:7, 8	70:2, 13, 16
228:20	165:13	233:8, 9	221:15	70:21
earliest 148:16	177:17	employed 225:6	225:3	71:10 72:3
200:3	179:2, 4	employee 36:7	ends 44:15	72:11
early 100:9	180:18	129:24	227:13	74:18 86:4
142:11	185:15	employees 25:25	enforcing 211:3	89:24 91:9
147:22	196:10	36:10 53:7	engaged 181:1	94:1 95:18
193:11	200:12	67:13, 14	192:22	95:18 98:4
195:10	201:17	122:23	enjoy 203:19	98:7, 15, 19
earned 202:15	212:12	124:2	enter 21:13	104:2
earnest 84:1	222:21	125:19, 22	55:2	106:14
easier 11:2	elect 179:16	125:25	entered 21:15, 16	107:15, 16
12:4	electronic 234:2, 5		151:1	107:21
128:12	electron... 234:7		entering 55:6	108:3
221:3	Elemental 161:23		enterprise 145:8	109:13
East 14:13	164:20, 20		entire 138:15	164:12, 23
14:16	164:21		182:23	165:1, 1, 2
EASTERN 1:2	165:3, 20			165:2, 6, 7
easy 133:12	166:2, 8, 14			165:21, 22
economics 6:14	166:16, 16			167:6
educational				171:16, 25

172:5	94:15	everyday	88:11	210:6
176:10,20	97:13 99:7	55:6	105:4	exclusively
177:2,5,6	107:11	eviction	126:7,20	48:22
177:23,24	110:18	100:15,17	130:4	137:2
177:25	121:18	100:20	133:12	179:15
178:1	124:8	102:24	135:25	223:1
180:11,14	127:2	103:12	149:24	executed
181:12	129:21	evidencing	154:5,5	99:19
189:18	137:13	73:6	155:25	172:17
227:2	139:5	131:13	156:6	214:14
entrance	145:8	evidents	161:20	227:7
15:14	169:21	39:10	162:17	exhibit 3:7
entries	175:3	exact 9:14	167:22	3:8,9,10
54:24	188:14	10:11 13:4	168:3,22	3:11,12,13
entry 37:17	205:16	37:2 41:22	169:23	3:14,15,16
37:24	212:10	109:3	170:7	11:2 18:10
45:20	214:2	146:23	171:7,12	18:19 23:6
108:7	219:8	185:10	171:23	23:10
169:19,20	224:25	187:2,12	172:1,23	29:23
169:25	226:12	197:12	174:25	33:20,20
196:18,19	233:3	exactly 21:2	175:22	34:2 39:21
216:8	estate 96:12	22:25,25	178:2	42:3,11,22
224:12	96:15	40:6 41:19	179:8,10	42:23
Equity	100:19	45:10 47:8	183:3	46:10
191:20	107:15,21	62:21	220:9	47:23
192:8	112:1	70:18 86:9	232:10	49:22,25
Erik 2:20	145:6,6	135:17	234:21	57:14
ERP 55:7	estimate	144:17	examples	68:17
60:4,10,13	30:13,15	147:24	53:5	71:12
60:23 61:5	51:17,23	172:17	130:11	74:20
62:10 63:7	estimated	184:23	171:11	80:10,25
63:17,20	34:16	Examination	231:2,3	106:10
64:19 65:7	36:20	1:12 3:4	exceed 197:6	110:25
65:20,22	et 104:24	42:7	exceeded	111:2
66:10	105:15	235:11	196:11	113:11
77:24 78:1	107:11	example	197:3	142:19,25
115:13,15	190:11,20	22:10	Excel 3:9	149:8
146:12	191:6	30:19 32:7	42:8	155:14,17
147:3	event 29:6	36:8 40:21	205:17,19	155:18
ERTC 36:7,9	201:13	41:11 47:6	excellent	158:13,15
escalated	events 68:14	49:20 52:9	22:18	174:14
52:22	68:16	53:2,16	exception	182:19
escort 24:21	71:23	56:12	150:20	190:7
essentially	everybody	57:20	excess	193:4,7
21:7 45:12	28:10	60:22	109:10	205:22,24
60:17	85:11 86:3	64:10	exciting	207:5,10
67:10 69:5	150:22	70:10	77:10	207:16
86:7 89:14	208:12	72:21	exclusive	208:10,11
89:20	234:16	73:21	104:15	209:24,24

210:1, 25	experience	F	familiar	205:12
211:23	28:19 37:3	F 3:1	12:9 13:3	father's
215:19, 20	experienced	F-U-N-D-R-I	13:14	24:13
217:8	123:7	189:16	14:22 20:9	32:24
230:23	expert	F-U-N-D-R-Y	42:13	February
231:3, 4	228:24	189:16	86:21	44:2, 20
exist 93:20	expertise	facing 15:17	89:24	83:20, 25
220:17	53:10	100:15	111:9	84:3, 23
existed	expires	fact 46:16	116:16	142:22
112:14	236:25	82:13	143:2	143:7, 8
220:18	explain	89:17	191:7	144:3, 8
221:17	10:15 25:9	114:20	233:11, 16	146:20
224:16	149:17	119:2	familiar...	147:17, 18
existing	explore	120:8	23:8	162:7, 10
151:20	208:23	121:10	family	193:10, 16
exists	Express 45:4	137:16	161:23	193:18, 20
151:12	45:16, 18	143:20, 21	165:11	195:12, 20
exorbitant	116:16	143:22	181:12	200:10, 10
14:11	expressed	152:18	231:20	202:14
expanded	206:20	159:25	232:17, 18	207:7, 20
44:14	extend 69:5	166:24	Fanatic 84:5	Federal
expansion	extended	173:6	Fanatics	30:12, 21
11:10	102:13	175:11	84:4, 6, 8	30:24
141:17	103:6	224:5	86:24 88:8	Feds 34:16
expansions	118:3	factor	88:11	fee 21:8
63:14	151:22	198:11	209:8	22:7, 8, 12
expect 158:4	156:25	223:21	Fanatics...	32:1
expectat...	extends	factored	87:14	188:21
78:23	81:18	130:9	fans 65:17	189:3, 4, 9
expected	extension	failed 82:16	far 75:8	189:10, 11
31:14	51:3	194:24	145:7	190:4, 5
156:13	extent 36:22	fair 51:2	188:11	feel 63:9
expecting	55:15	78:18	192:20	feeling
76:8 120:9	120:17	83:13	203:3	44:11
expense	126:7	121:12	232:17	101:14
61:12 66:2	152:17	201:15	farther	feelings
223:20	223:19	Fairlane	146:2	63:11
230:7, 8	external	13:5, 8	fashion	fees 21:3, 6
expensed	28:16	fairly 10:21	168:23, 24	22:17
60:5	54:14, 15	63:10	fast 100:18	188:22, 23
expenses	55:4 56:3	89:25	fast-for...	188:24
55:3 71:24	57:5	fairness	201:21	189:1, 13
107:11, 13	114:25	19:16	fast-for...	221:14
107:15	229:19	faith 53:20	149:5	FICA 129:20
109:5, 21	extracted	fall 201:8	father 6:23	129:21
111:20	3:14 112:5	201:15	6:25 7:16	130:13
expensive	182:22, 24	familial	7:24 24:1	figure 58:13
75:7 78:10	extreme	24:15	32:21 57:9	119:8, 17
107:23	197:20	32:22	94:14	141:14

187:6,10	227:20	93:13,16	14:9,17	99:6
file 42:8	financed	93:18	23:11	101:22
212:20	62:11,12	107:19,25	33:23 40:9	141:17
filed 17:18	63:16	109:4	40:24 41:3	flip 41:13
31:7 51:4	financial	142:2,10	41:6 43:24	108:20
79:16	3:7,14	143:6	44:2 46:16	190:14
164:10	18:11,13	147:13	52:3 68:23	198:23
191:25	28:14	148:18,23	72:8 76:19	flip-flo...
192:14	55:14,17	153:23	82:5 84:23	28:3
213:5	56:8,13,19	154:8	91:2	float 157:19
filing 15:25	57:15 73:8	160:24	108:21	flow 219:15
17:4 20:6	112:1,2,21	188:8,9,10	119:7	flowed
24:19	157:6,7,16	188:13	123:20	173:19
74:22 82:5	159:6	190:1	124:16	223:21,24
82:7,25	167:1	find 21:9	125:25	flowing
83:6 100:7	169:22	99:5,8	135:15	219:19
100:8	173:16,20	119:21	139:1	fluctuate
113:19	174:7	125:11	142:8	140:2
116:15,25	182:23	148:16,25	148:22,23	focus 6:18
117:3,8	190:16	149:2	159:11	228:13
141:10	191:17	158:23	164:15	folder 42:9
150:10,14	194:25	191:15	166:8,21	111:7
153:9	196:10	213:1	171:9	folks 28:16
158:11	198:16	217:20	188:5	55:22
175:14	203:4	218:11,12	190:14	161:2
201:24	204:6,11	232:13,13	191:5	178:24
212:7,23	204:17	232:14,20	204:3	232:1
216:14	216:3	fine 89:19	210:3,10	follow
217:12	217:8,11	124:24	218:13	223:10
229:13	223:13	180:3	219:12	followed
fill 43:14	224:16	finger 43:16	225:22	35:12
58:4	225:15	finish 11:23	fish 63:10	218:5
212:14	227:1	82:16 86:6	144:25	following
final 34:18	228:1	99:11	five 72:2	48:20
34:19	financially	149:15	83:19	119:14
88:16	34:17	154:7	90:10	181:17
133:24	78:18	firing 53:7	106:6	follows 4:23
finalize	233:2	firm 56:3	137:13,24	font 111:4
53:16	financials	180:25	222:11	football
finally	39:16,18	181:6	five-year	29:4,5,7
77:10	55:24 58:7	188:7	96:22	58:21 60:7
221:12	58:9 170:5	189:19,21	five/ten...	61:22
finance	financing	189:22	50:7	65:17
28:11 54:4	20:14,16	231:8	fixed 53:23	68:15
54:8,10	20:20,24	232:2	211:2	72:22,23
63:7,12,17	21:10 53:8	first 4:11	flagship	75:11,23
152:13	53:9 64:11	6:19 7:7	11:7,10	77:10
153:24	66:10 75:6	8:4 9:22	15:12	78:23
227:1,19	78:10	11:5 13:19	95:16 96:5	79:24 85:6

97:13, 22	forgiveness	134:21	19:11, 17	161:1
104:9, 15	81:24	135:1	functions	235:4
110:18, 23	forgiving	158:11	28:9	future
114:18	196:15	four-per...	fund 62:9	162:23
118:9, 21	forgot 87:4	22:8	191:20	178:8
119:1, 13	form 26:15	four-year	192:8	230:9, 12
119:14	114:2	226:18	209:9, 10	fuzzy 63:11
121:17, 18	179:22	frame 84:22	fundamental	
122:8, 21	205:10	84:25	8:19	G
123:16, 18	212:2, 14	206:23, 25	fundamen...	G3500 116:16
123:20, 24	formal 27:16	210:12	168:1	Gabe 165:11
123:25	54:2 99:13	228:11	171:15	165:13
124:14	145:13	frankly 23:8	228:5	Gabriel
125:25	formed 6:19	49:7	233:24	187:24
128:19	14:3	107:22	funded 64:4	188:6
129:4, 25	220:19	118:23	146:18	189:22
134:22	former 32:25	120:11	222:2	game 29:18
143:14	forth 131:19	123:8	funder 189:9	103:23
147:8, 23	131:24	129:3	Fundi 189:24	104:16
148:3, 8, 12	forward	132:24	funding	105:1
148:13, 13	59:15	free 138:9	149:25	123:23, 23
152:19	forwarding	138:12	161:23	123:23, 23
194:8	13:10	freezing	181:12, 22	124:5
195:4, 7, 10	forwards	192:11	182:3	125:10
195:15, 15	49:11	friendly	186:5	127:9
201:17	found 11:1	85:7	189:5	128:25
205:13	90:3 99:9	front 57:16	Fundry	129:4
foots 112:9	149:1	198:21	189:16, 20	180:8
forbearance	181:17	froze 192:19	189:24	195:17
3:16	187:22, 23	frozen	funds 37:12	games 29:7, 7
205:25	188:2, 9, 14	192:19	38:23	65:17
207:9, 13	188:15	fruition	40:16, 25	78:23 80:1
210:15, 20	191:4, 5, 6	88:25 90:6	41:9, 10	97:14, 22
212:11	191:20	fulfill	44:18	118:9
215:2, 4	231:2	67:15 68:2	46:15	122:22
Ford 186:25	founder 24:2	full 11:21	153:14	123:16, 18
forever 78:8	24:13	32:2	156:3, 10	123:20, 25
185:15, 16	founding	175:24	156:20	124:16
186:20	95:3	176:5	157:16	125:25
187:16, 17	four 18:14	200:18, 20	158:22	128:19
187:19	72:2 83:18	full-court	160:10, 11	132:1
193:22	83:19	207:17	199:3	134:22
227:25	84:11	fully 141:4	200:13	135:1, 15
forget	118:2, 2	141:7, 8	Fundy 189:15	152:19
109:15	123:20, 23	142:1	189:19, 24	201:17, 18
forgive	123:25, 25	144:1, 6	further 78:2	gangbusters
201:17	125:25	function	88:17	195:20
forgiven	128:19	220:19	118:12	gap 55:25
81:14	132:1	functional	144:13	229:10

gate 77:13	209:16	180:14, 20	135:10, 14	75:7 77:6
gathering	218:14	180:24	136:7	99:18
9:19 41:7	232:10	181:12	139:14	119:15, 16
gears 90:20	given 31:7	190:7	142:17, 18	125:1, 2, 4
138:23	50:18	205:20	142:19	180:5
141:22	81:15 88:2	208:3	143:8, 11	215:17
193:2	147:5, 5	209:15, 16	144:13, 21	225:25
general 43:7	153:19	209:22, 22	145:7	goods 6:21
43:19	195:6	215:17	146:2, 9, 21	7:20, 22
223:9	205:18	222:13	147:24	8:8, 20
generally	giving	Goats 6:21	152:23	12:13 13:6
52:8	165:23	goes 77:1	155:16, 16	24:3 32:23
228:19, 23	glad 83:10	102:14	155:17	67:18
228:25	91:19	197:24	157:19, 23	76:22, 25
generate	124:19	199:1	158:6, 14	101:17
66:20	gnat's 169:1	205:12	158:15	137:10
generated	174:6	Goetz 6:20	162:3	231:1
36:6, 9	go 4:11 6:18	7:14, 20	165:22	gotten 27:15
41:1 43:13	17:19	8:19 12:12	166:1, 2, 3	100:17
generating	18:14 26:3	13:6 32:23	166:17	176:3
76:7	27:20	101:16	168:3, 17	governed
generation	34:19	going 18:9, 9	168:18	104:12
26:23 95:8	39:21 47:3	23:6 25:8	169:23	Government
geographic	47:3 65:19	27:15 31:9	172:10, 13	30:12, 22
97:7	65:19	33:19, 19	175:10	30:24
getting 29:4	67:23, 25	42:2, 3	176:9	governor
29:15, 16	73:18 80:9	47:6, 15	177:2	66:15
63:8 85:9	88:17	48:8 49:13	179:24, 25	grab 234:15
99:10	89:15	50:6, 9	180:3	graduate
102:13	90:22	51:17	182:21	8:17, 22
161:6, 6	93:21	52:15 59:6	183:14, 17	graduation
162:11	100:24	63:20 72:6	188:24	71:2
169:13	105:13	76:4, 12, 21	189:17	grandson
202:17	106:10	78:22 79:2	193:2, 5, 6	24:8
211:2, 11	107:3	82:21	195:20	grass 110:13
215:16	109:18	85:18 86:3	208:6, 15	great 75:25
218:23	110:8	87:9 89:17	209:19	77:10
gifts 69:8	129:3	90:14, 22	210:18	greater
71:1	145:18	90:23 96:7	215:22	36:24 37:5
gigantic	153:14	106:21	219:17	107:8, 10
145:3	155:11	110:24, 25	227:11	107:12, 14
give 56:7, 12	159:9	112:3	230:17	108:2
58:23	160:22, 22	118:10, 16	232:12, 12	109:3, 7, 11
74:18	167:6	120:3, 20	232:13, 14	109:13
161:20	169:15	123:9	235:10	140:4
183:14, 15	171:22	124:9, 10	Gold 161:23	176:6
183:16	174:24	125:20	164:21	196:21
185:1, 13	175:1, 4, 15	131:19	good 4:11	197:12
205:21	177:10, 22	133:4, 10	5:1, 14	greatly

118:3	guided 55:22	205:15	49:15	hedge 209:8
gross 24:22	61:19	hanging	67:11	209:10
24:23	guy 24:2	132:4,17	75:11 78:1	Heilman 2:13
25:14,16	26:1 41:4	133:13	102:24	2:13 4:16
27:22	41:5,5	134:11,13	207:12	4:16 6:9
57:18,22	128:1	135:21	happens	180:3
76:8	175:16,16	happen 9:10	23:20	235:6
129:19,19	186:9	22:20	186:9	held 93:11
ground 5:14	232:21	35:24	happy 89:22	93:12
85:9 123:8	guys 85:5	50:19	207:23	236:7
group 150:2	86:1,5	53:23	212:10	hell 49:6
167:16,18	89:13	68:16	hard-core	189:16
167:22	167:13	82:18	29:9	help 78:12
189:6,15	176:4	91:16	hardware	82:13 85:2
Grover 175:2		127:16	132:5,17	85:2,6,19
175:7,11	H	151:24	133:20	87:6,15
175:13,20	H 3:6 4:22	152:14	134:11	123:7
175:22	4:22	157:4	135:1,2,7	124:19
176:3,4	H-I-R-T-H	164:13	harp 176:8	184:15
growing	5:11	172:13	havoc 119:7	212:15
12:13	hair 169:1	183:11	hborin@s...	helped 85:23
44:13	174:6	199:21	2:10	125:3
grown 226:15	haircut	234:11,11	head 28:13	helpful
guarantee	208:19	happened	66:17	77:12
177:12	209:17,17	15:13	122:16	124:24
234:4	haircuts	35:16,25	heading	136:4
guarante...	208:4	45:18 60:2	112:25	helping 87:7
233:25	half 109:16	73:1,1	health 25:18	87:8
guarantees	118:7	85:1 86:21	25:19,20	Heritage 1:8
233:11,13	halt 125:21	99:3	25:24 26:8	1:12 2:7
233:19	hand 4:19	104:24	130:5	5:4,21
guess 28:10	18:9 33:19	117:18	hear 61:7	6:18 8:2
44:15	42:2	118:9	197:24	10:19 16:6
84:20 97:7	110:24	125:23	heard 61:6	16:7
141:25	115:14,15	133:12	87:6 91:4	126:14,15
156:19	142:18	134:20	93:23	126:16,17
158:16	155:16	163:16	95:15 97:4	126:19,20
161:20	158:14	164:18	100:25	127:16,20
164:15	182:21	172:19	101:21	129:18
171:9,18	193:5,6	178:2	164:10	171:19
172:21	228:3	184:23	hearing	175:23
203:24	handed	194:20	120:13	212:19
guessing	205:24	207:3	154:12	Hey 44:17
127:12	handing	217:6	160:5	120:19
guidance	191:14	223:25	166:8	144:20
56:3 57:5	hands 17:15	happened...	170:8	170:16
65:24	119:4	129:11	heavily 77:9	172:10
67:11	214:24	happening	heck 186:24	high 8:14
82:12	handwritten	38:16	231:23	36:16

144:21	230:23	24:11,12	133:25,25	176:10
151:15	236:7,11	24:12,23	134:2,6,22	identifier
161:24	historic...	26:22 27:6	Howard 2:8	131:18
177:20	58:13 59:8	30:4 33:11	4:14	identifies
high-int...	118:1	34:20	Howell 9:4	15:25 17:5
22:3	hit 84:19	41:16 42:1	224:22	18:15
high-level	173:16,20	48:4 51:12	huge 75:17	68:21
136:18	hitting 49:7	52:6,25	85:8,22	217:13
higher 21:5	156:17	92:19	hundred	identify
21:7,7	hockey	94:22	203:17	232:5
58:22	105:10	95:23	hung 225:8	imagine
79:18	123:19	139:9	227:14	151:13
137:20	Holbrook	233:15,19	Hunter 23:11	226:16
138:4	43:9	234:6,10	23:16	immediately
162:10,16	hold 6:16	234:23	hurriedly	11:6
162:18	113:7	Horning's	129:2	192:17
208:3	132:22	23:23 24:1	husband 33:8	212:20
higher-l...	211:2,10	24:7,7,12	hypothet...	impact 75:8
228:2	Holdings	29:10	163:15	imperfect
highly	18:3,6,25	horrible	hypothet...	168:23,24
216:10	19:3,10,21	61:22	127:18	implement
Hills 1:15	19:22,25	hospital		56:23
2:9,14 4:5	20:3,6,10	70:20 71:5	I	important
hired 13:24	20:18	71:7	Ice 105:13	101:19
57:7	21:15,16	hosting	idea 58:23	188:10
228:11	21:20,25	49:13	78:21,22	improperly
Hiring 53:7	22:2,16,23	hot 192:19	87:17,18	61:2
Hirth 1:13	22:23	hour 129:25	87:20 89:1	improvement...
2:12 3:3	hole 15:12	130:21	116:21	62:7,23
4:4,17	holiday	hourly 127:6	117:7	63:1
5:11,12	147:22	127:11,13	135:24	imputed
6:12 7:1,4	holidays	129:15,18	152:3,5	25:20
12:13 13:5	23:24	129:24	158:9	in-person
18:10	home 97:22	130:16,22	identifi...	66:16 68:6
23:12	123:15,25	hours 130:1	18:19 34:2	68:13,15
26:22 27:5	152:19	house 29:18	42:11	inbound
32:19,20	honestly	103:16	111:2	29:12
33:24	82:7 143:5	122:17,18	142:25	inclined
34:20 42:8	145:24	122:19,22	155:14	146:5
48:16	hope 31:11	123:2,3,5	158:13	include
50:16	Hopefully	123:6,6,13	182:19	27:23
111:9	112:4	124:9,11	193:4	198:10
136:13	Horning 7:3	126:2,10	205:22	229:17
142:20	7:4,16	127:21	identified	233:14,15
149:9	12:13 13:6	128:23	37:15	included
155:18	16:13,21	131:1,9,19	103:15	56:13 59:5
158:19	17:25 19:7	132:16	149:20	129:23
182:22	23:22,25	133:1,7,11	154:17,21	130:18
193:12	24:1,6,7	133:16,18	154:24	188:22

189:1	industry	196:4,10	33:2	75:13
207:18	137:3	196:22,23	152:16	113:1,22
208:18	inflows	196:24	206:21	113:24
233:10	222:13,19	197:21	210:6	114:5,6,7
includes	information	198:12	interested	114:24
201:7	47:23	installa...	85:17	115:12,18
including	70:25 71:2	60:17	86:23 90:4	116:6,11
85:11	112:4	61:13	interesting	117:15,19
125:8	151:9	62:10	31:12 78:3	119:4,16
151:14	195:23	instance	126:9	119:16
inclusion	213:16	38:20	interface	121:9,11
210:10	224:25	instances	29:16	121:19,19
incoming	informing	38:21	interfacing	121:25
95:9	53:12	75:15	29:18	122:2,11
incomplete	infrastr...	142:9	intermed...	122:12
194:1	68:3	instanta...	228:9	134:5
inconsis...	infrequent	69:4	internal	152:18
163:2	27:14	institution	74:1 115:1	153:19,20
incorrect	Infreque...	145:16	115:2	154:9,21
114:3,5	47:11	167:1	228:8	155:10
135:4	inherit	institut...	internally	investments
increase	139:9	145:21	54:17	60:8
140:18,23	inherited	instruct...	55:18	investor
increased	98:19	178:18	56:11	167:22
21:6	139:11	180:19	internet	investors
140:20	221:11	insuffic...	13:23	167:17,18
225:17	initially	156:3,10	29:15,16	invoice
incubation	81:14	160:10,11	67:4,7,8	127:22
226:18	Innovations	199:2	67:21	128:9,25
incurred	225:10	insurance	75:18,19	130:25
35:8 40:3	ins 42:16	25:18,19	76:1,2,3	invoiced
61:12	111:13,18	25:20,21	76:20,21	130:2
independent	170:11	26:8	77:1,3,4,8	invoices
70:13	173:7	109:24	77:9,11,14	131:12
indicated	inside	130:5,13	77:15 79:2	involved 8:1
65:10	104:11,15	intellec...	105:23	38:7 48:19
144:20	104:18,20	31:18,19	137:15,19	54:10
indicates	104:21,24	31:23 32:3	137:25	71:23 86:1
64:3	104:25	32:4	138:4	167:12
194:24	105:5	intend 157:2	introduce	189:3
200:24	131:25	intended	4:9	191:1
indicating	133:13	55:25	introduced	involving
197:2	insiders	176:21	8:5	192:24
individual	18:16	intent 11:21	introduc...	irrevocably
170:3	24:18	intercom...	89:14	210:4
individuals	insolvency	3:10	inventories	211:21
24:17	83:6	106:16	113:17,18	IRS 35:18
32:15	198:13	111:6,13	114:16	40:11
231:18	insolvent	interest	inventory	51:10

Isaacov	103:25	June-ish	knew 38:6	102:2, 9
165:11	124:21	51:4	41:5 57:4	106:18
231:20	John 131:11		86:9 87:13	107:16
232:16, 18	join 208:2	<hr/> K <hr/>	107:17	108:25
issue 125:17	joined 15:11	K-R-I-E-V-S	174:25	110:12
146:9	226:10	203:1	175:11, 14	111:22
153:16, 16	joint 208:24	keep 12:6	175:16, 18	112:13
153:22, 25	jointly	49:17 76:4	178:23	117:16
153:25	208:5, 13	86:3	189:6	119:8
160:20	judge 215:11	170:25	192:11	127:12, 14
166:23	Julie 16:24	179:24, 25	195:3	131:16
177:19	17:12 18:8	180:3	214:23	133:12, 24
issued	20:3 25:17	212:10	know 5:14, 17	133:24
131:22	25:17, 24	keeping	7:19 8:8	134:3
issues 154:9	26:12 27:3	85:17	9:10, 14, 14	135:14
227:4	27:10, 19	228:18	9:24 10:6	143:20, 21
item 27:20	27:20, 22	kept 36:5, 10	12:1 13:1	143:22, 23
44:2 45:2	28:1 34:4	43:15	14:12 17:7	145:2, 14
45:3 68:4	35:6 36:13	102:13	17:9 22:1	145:19
69:9 116:9	37:11, 19	111:23	23:1 26:21	146:8
116:10	37:21	228:21	27:10 32:2	147:18, 21
items 24:22	38:22	229:10	34:8 37:2	148:5
65:5 133:7	39:13, 20	Kesef 232:20	38:18 40:4	150:25
	41:20 43:1	232:20	40:21	151:3, 24
<hr/> J <hr/>	46:14 48:5	key 66:20	41:18	154:2
J 2:3 101:24	52:21 68:1	119:15, 15	42:21	155:7
jackets 71:5	94:12 95:2	134:17	43:11, 12	158:16
Jan 207:20	126:4, 19	keystone	43:17 44:6	161:2
January 1:13	126:20, 22	137:2	44:22 45:9	164:17, 19
4:1, 6	126:24	kicking	45:21 46:3	168:8, 9
30:11 31:1	194:19	86:18	46:4, 4, 12	170:21, 21
62:3 79:9	203:18, 18	Kim 129:10	46:16 47:1	173:2, 2, 5
114:19	209:19	129:10	53:18, 21	173:15
115:19, 24	Julie's 25:6	kind 5:22	55:2 58:2	175:2, 2
116:1, 5, 6	25:7 27:24	10:22	58:14, 23	176:2
147:19	33:8 53:9	28:17, 18	60:25 63:6	178:13, 24
162:10	July 47:3	28:21	63:15	179:1
185:22	66:17, 18	29:21	65:23	183:3, 11
186:13, 16	66:22, 24	52:23 80:1	67:10, 11	184:6, 8, 10
186:25	122:10	81:24	70:23 71:1	184:12, 16
187:14	148:8	125:21	71:4 72:11	184:23, 24
195:17, 19	162:8, 8, 10	131:17	74:17, 19	185:9, 12
198:25	July-ish	142:15	79:4 81:7	186:14
200:2, 4, 4	68:5	143:24	81:25 88:3	187:1, 4
200:10	June 122:10	149:17	88:7 89:6	191:12
236:8, 14	148:8	171:3	89:7, 8, 17	192:12, 20
job 28:22, 23	162:7, 8	233:4	90:24	192:21, 25
29:4, 5, 7	187:23	kinds 7:23	93:16	194:1, 20
29:10	188:2	53:12	100:17	196:9

199:25	180:2, 4, 6	191:1	108:2	190:10, 19
203:21	180:7	192:24	109:3, 16	196:10
204:19	182:14, 20	lawyer	109:18	Legends
206:10, 12	187:21	189:18	110:16	84:20, 24
206:22	192:8, 14	lawyers	leased 31:24	86:7, 8, 24
212:16, 18	192:23	28:16	91:8 92:3	88:8, 24
215:6, 9, 12	193:1, 5, 8	lay 84:11	94:6, 19	89:9, 13, 14
215:14	197:1	lead 117:24	96:25	89:16, 21
216:8	205:20, 23	118:2, 5, 6	97:21	122:25, 25
217:4	212:21, 24	159:25	99:24	123:1, 4, 5
218:6	213:4, 8	197:11	101:4, 8, 10	123:6, 8
219:4, 14	226:2	leaders	101:24	124:8, 18
221:1	230:14, 22	125:11	105:21	133:25
222:9, 17	235:3, 7	leadership	leasehold	134:1, 2, 7
224:10, 14	Krievs	127:9	62:23	135:8, 10
224:14, 14	202:25	225:17	leases 94:6	135:19, 25
226:18		leading	104:4	206:20
227:17		86:22	105:17	208:9
231:6, 6		158:11	leasing	209:22
knowledge	L	177:17	92:11	leger 43:19
17:10	L 3:1	207:4	107:24	legitima...
215:5	laid 17:15	learning	leave 135:13	189:4
known 6:20	landed 37:13	100:18	135:14	lender 21:22
78:1, 3	landlord	224:25	led 21:6	22:20
85:4 160:3	62:13, 16	lease 71:21	27:11	150:24
knows 105:12	100:13	71:22, 23	120:10	151:21, 22
224:6	101:7	71:25	125:1	163:17, 21
Knudsen	language	72:23	156:18	165:10
131:11	38:8	91:21 92:2	196:18, 19	170:10
Kochis 2:3, 3	Lapeer 4:8	92:23 94:9	207:19	171:8, 9
3:4 4:11	LARA 212:25	94:16, 17	208:7, 8	174:22
4:12 5:1, 2	large 63:10	96:18, 20	209:21	176:11, 14
5:8 12:8	larger 41:11	96:23, 23	228:11	176:20
12:22	lasted 14:15	96:24, 25	ledger 3:14	177:8
18:20 34:3	late 29:18	97:1, 24	43:7	186:8
42:12 50:5	121:11	98:4, 15, 16	182:23	lenders
50:15	194:11	98:20 99:4	223:9	150:4, 16
81:17, 20	195:10	99:13	leeway	150:17, 18
81:23 90:9	launch 125:1	100:1, 2, 2	219:18	150:20
90:12, 19	Laurel 15:2	101:12, 14	left 65:16	152:1, 12
96:7, 10	law 2:13	101:14	120:1	174:12
108:4	180:25	102:1, 2, 3	168:19	lending
111:3	181:5	102:6, 11	169:15	139:6
136:3, 13	188:6	102:12, 14	178:23	Lendspark
136:16	189:19, 21	102:17	216:11	180:20, 21
143:1	189:22	103:5, 7	legal 8:7, 19	let's 17:17
155:15	231:8	104:10, 12	10:15	18:6 20:4
158:14, 18	lawsuit	107:6, 7, 11	70:16	20:4, 22, 22
179:23	191:7, 16	107:12, 19	102:10	24:21
	191:18			
	lawsuits			

27:20 28:5	205:20	Licensing	97:3 98:2	157:8,21
36:16	209:21,22	15:24 17:4	133:21	160:16
39:21	209:22	Lids 84:5	150:22	171:17
41:13	220:5	209:8	162:13	180:8,9
43:23	228:13	Lids/Ames	175:10,10	188:17
50:25 54:8	232:1	208:20	185:18	211:19
54:17	letter	life 12:4	190:18	215:22
57:14,19	175:22	193:18	207:23	Livernois
63:5 64:17	176:6	LiftForward	213:13,15	2:4
65:19,19	193:9,14	3:11	213:20,23	lives 225:16
71:22	193:15,23	142:21	213:25	Livonia 15:1
81:20,20	194:23	143:9	214:1,1,2	15:2
84:11,11	195:12	146:21,24	214:7,8	LLC 91:9
84:23	204:1	147:4	232:20	92:16 94:3
85:25	207:13	148:14,19	listed 24:17	94:4,7,20
91:20	211:5	148:25	71:13	94:21,24
92:25	214:24	liked 234:1	74:13	95:4,19
93:21	218:18	likes 66:22	149:21	96:12
99:12	225:22	limited	150:2,4	97:19,22
101:5	letters	64:12	191:2,16	98:11
106:10	175:25,25	line 24:14	224:16	101:4,24
108:20	letting	24:22	231:4	106:14
110:8	157:18	27:20,24	Listen 129:5	107:6
113:8,13	level 36:16	28:2 37:16	lists 34:5	108:6,21
126:6	46:19	37:16	80:15	110:11
128:10,24	52:24	40:24 41:3	106:16	150:2
129:12	83:23	41:6 44:2	108:22	191:5,9,20
130:24	162:7	44:14 45:2	110:11	192:8
133:11,13	169:8,8	45:3 46:16	149:19	lo 90:1
134:21	levied	74:15	190:10	loan 21:13
138:23	232:11	82:17 86:6	214:3	34:21
140:8	Levy 187:24	99:11	litigated	35:13
144:5	188:6	139:17,18	215:10,10	37:16 38:1
147:18	189:22	139:22	little 24:9	38:2,7,9
150:6	liabilities	140:13,16	25:1 31:13	38:13,17
157:8,8,9	196:11,21	141:3	34:25 35:1	40:16 44:6
164:15	197:3,6,11	143:25	44:18 52:4	62:12 73:6
165:3	198:2,5,9	144:6,9,14	52:7 53:25	93:18
166:6,13	198:9,10	145:4	58:25	138:25
167:5,23	198:11	147:12,14	70:14 72:7	139:12,19
175:1	liability	147:16	77:16 78:2	141:13,15
177:17	31:2,4,5,8	154:7	80:8 88:10	143:10
183:20	37:18,21	204:18	90:21	145:5
190:7	42:17	223:21,22	116:13	146:22,24
193:1	51:21	lines 196:20	129:12	147:1,10
197:4	223:19	link 172:23	137:11,12	148:14
198:23	liable 233:3	Lions 13:8	141:23	149:22
201:21,21	license	list 14:22	144:25	151:20
204:9	60:16,19	34:5 93:22	147:19	169:2

170:17	221:1	167:24	129:5	53:19
172:25	locations	188:12	148:20	64:16
173:8	62:4 64:5	217:18	149:8,11	67:10
175:23	64:5 72:6	longer-term	149:24	76:16 91:6
176:21,22	90:2,21	147:1	156:11	97:5
179:20	91:1	longtime	157:16	103:24
196:14	102:18	57:8	158:1,1,2	105:20
200:13	104:16,18	look 25:7	158:3	118:19
218:8	104:21,25	31:9 43:18	159:3,10	131:18
222:6,13	105:5,11	47:12	174:11	155:7
230:9	106:5	56:14	207:9	178:2
234:2	123:2	57:19	210:3,24	188:10
Loan-SDH	125:10,12	68:17 79:2	211:23	208:4,5
44:3	127:10	80:10	217:8	214:24
loaned 34:23	134:15	113:13	looks 24:8	lots 117:23
35:2,2,6,7	136:24	142:22	44:24	165:17
46:14	220:24	155:18,24	183:4	167:12
64:16	logical	157:22	188:10	loud 166:22
107:15,25	122:17	162:13	190:15	231:22,24
108:2	logistic...	174:18	191:25	low 47:25
loans 3:9	234:4	182:14	192:14	48:2 59:3
34:8,9,11	logistics	183:24	198:3	73:1 176:2
38:6,10	73:11	184:14	206:16	176:4
39:10 40:4	95:11	187:6,8	loop 32:6	lower 107:22
41:17 42:8	long 6:22	191:15	50:16	137:20
42:18	66:14 78:4	196:21	Loro 183:8	162:9,17
106:16	139:2	206:5	183:18	162:18
141:23,24	150:21	217:7	184:4,6	188:13
145:6	157:19	looked 47:9	186:13	lucky 225:20
146:1	175:18	77:4 89:15	lose 76:2	Lululemon
179:6,8,13	207:22	151:9	loses 75:19	119:5
217:20	209:11	158:20	147:19	lunch 64:14
233:10,25	211:11	159:19,20	loss 50:19	66:5,6
located 1:14	215:11	190:21	51:14,18	122:16
location	220:7,9,11	202:11	51:20,23	145:11,14
56:5 62:18	220:12,12	207:5	52:2 60:6	luxury 183:9
91:8 97:25	225:19	212:1,13	61:15,17	185:8,23
98:19,24	232:21	looking 8:25	197:10,11	186:8,10
99:24	long-term	18:21	197:13,22	187:1
100:6,10	89:25	24:22	losses	
101:4,17	117:21	33:24	153:17,23	M
102:3,14	119:15	42:22	153:24	M 2:8 5:7
102:23,25	146:9	46:10	154:8,18	9:5,10,15
103:5,9	198:10,11	47:14 64:1	155:10	9:15,20
104:11	longer 13:20	64:19	lost 75:19	10:9 14:1
105:12	31:13	74:22	75:22 76:2	88:5
109:4	154:4	80:23	76:19	111:16
122:20	156:14	82:19	121:20	194:12
134:8	166:1	108:20	lot 44:13	M-Den 8:18

8:21 9:17	109:18,19	103:15,24	manufact...	132:21
9:22,25	110:5,6	106:6	186:10	133:9
12:15 15:9	111:15,15	216:24,24	manyfold	136:22,23
15:15,15	111:16,16	219:7	75:3	137:1,5,17
15:16,18	111:16,17	223:1,5	March 65:15	match 130:13
15:20 16:6	111:18	224:20	65:16	130:14,17
19:15	126:11,12	maintained	66:13,18	130:19
20:18	127:8	37:7 43:4	66:22,24	matching
21:12	130:25	43:5,5,10	75:10	180:9
23:15	132:15,15	43:12,22	82:21,21	material
28:20	134:5	112:7	82:24 83:2	36:14
30:13	139:17	maintenance	84:24,25	math 163:9
32:24,25	145:5	109:24	147:18	matter 223:7
36:12	171:19	majority	155:20	223:11,20
37:13	175:23	69:1	156:11,15	223:24
62:24 69:1	191:6,21	150:19	156:15	max 140:17
71:17,18	192:9	159:21,23	162:6,7,10	maximum
71:19,24	198:25	176:7	192:15	140:8,10
72:1,1,4,9	201:1	222:22	211:5,6	140:10,12
72:10,24	210:4,7	223:4	217:23	MBA 6:14
72:24 73:4	211:6,7,24	making 29:3	margin	8:24
73:12,13	212:19,20	43:21	157:21	MC 159:20
73:13,14	212:23	44:14	mark 18:9	MCA 151:20
73:18,18	213:11	100:14	33:19 42:3	151:22
73:18,22	214:14,21	137:18	110:25	152:1,11
73:22 74:1	225:7	138:8	128:17	155:11
74:2 85:14	226:3,4	153:11	142:17,19	159:23
85:17 86:2	227:11,16	157:22	155:17	160:7,14
86:3 91:9	Macomb 236:3	204:25	158:15	160:21
91:21 92:4	236:24	224:2	marked 18:19	161:1,4,5
92:5,7,10	magnitude	225:16	34:2 42:11	161:11,16
92:11,14	52:16	231:18	111:2	161:17
92:25 93:9	83:21	mall 9:23	142:25	163:17,21
93:14 94:2	150:15	12:18,21	155:14	164:11,16
94:4,6,12	158:9	13:5,11	158:13	170:10
94:13,13	159:9	15:1,2	182:19	171:8,9
94:16,17	mail 67:18	102:7	193:4,7	173:21
94:19,20	mailed	103:1,5	205:22	174:11
94:21,24	156:22	manager	market 13:8	176:10,13
95:1,4,7	157:3,23	23:15,21	107:7	176:20
95:19	main 14:6	29:8	138:12,19	178:11
96:11,14	15:14 62:1	139:12	216:3	179:6,8,22
96:18,18	62:11,18	managers	marketing	183:19
104:1,4	64:4,8,22	29:2,8	23:15,21	184:4,8,9
106:13	91:3,14,17	125:8,8	28:9,11	184:11,13
107:5,5,6	91:21 93:1	127:8	markup	184:15,24
107:20	97:3	217:4,5	125:19,21	185:11
108:6,6,21	100:24	Manuel	125:23	186:2,8
109:10,18	101:1,6,6	193:10	129:23	188:11

199:18	means 46:21	150:23,25	195:24	146:22
200:13	114:4	155:8	201:2,10	152:9,11
222:2,6,13	154:9	156:16,24	204:23	153:6,8,11
222:17,19	meant 148:6	163:6	206:1,10	153:12,14
223:22	152:20	merged	209:16,20	153:21
224:5,7,10	186:21	213:25	210:23	155:1,1,2
229:3,11	208:4	Meridian	212:7,10	159:13
229:17,20	213:3	12:20,21	212:24	201:1,5,7
230:1,5,25	234:25	mess 49:6	213:5,9	203:6,14
231:2,23	Meat 183:8	156:18	225:12	min 106:4
233:10	183:18	168:25	236:1,24	mind 63:17
MCA-type	184:5,6	218:16	Michigan's	68:18
22:3	186:14	messily	13:19,20	90:22
MCAs 163:25	mechanism	129:2	13:22	134:10
170:5	38:10	Miami 85:24	82:12 85:2	184:17
174:20	107:20	Michigan 1:2	85:9	mine 232:3
183:12	medium-size	1:15 2:4,9	118:15	minimum
186:12	225:16	2:14 4:5	122:25	179:4
222:24	meet 44:15	6:13,14	123:4	minus 26:10
231:14,15	147:10	9:1 10:3	125:2	minute 8:23
231:19	meeting	10:16	194:3	26:6 57:14
MDen.com	145:13	12:14 13:9	209:13	61:6 65:20
49:11 67:8	members	13:9 15:3	Michigan...	72:9 74:21
68:1	94:21 95:4	15:4,24	85:3	80:19,22
105:25	95:22	28:18 29:6	middle 22:21	128:11
mean 19:17	165:11	35:19	119:18	134:21
21:2 36:3	memo 44:6,21	40:11	125:16	136:17
38:14	45:5	51:10	129:4	144:5
50:25 61:9	memory 46:10	58:20 69:6	143:13	171:25
81:11	mentioned	69:19,25	167:9	185:14
113:21	38:13	70:3,5,10	169:12	190:7
114:1	77:19 78:9	71:6,7	176:25	192:20
120:13	79:6 120:7	78:22 79:7	183:13	215:18
127:12	126:4	80:5,13,20	194:8	minutes
134:25	179:7	85:19,22	195:4,5,7	34:13
135:24	228:20	86:10 87:6	195:22	misheard
140:3	232:20	87:7 88:16	203:3	72:8
143:15	merchandise	89:15,21	midst 172:12	160:19
149:15	76:24	93:22	million	misreading
155:9	79:16	97:22	42:25 43:1	74:14
163:16,23	97:25	99:22	58:12,24	missed 106:9
168:1	122:20	104:11,15	60:11 62:9	115:25,25
176:19	134:12	104:18,20	64:20,21	166:7,15
190:22,25	136:19	104:22,25	65:2,5	230:16
195:6	137:18	118:8,16	139:16	missing
199:22	merchant	122:21	140:13,19	105:21
209:18	78:13	123:1,15	144:1,14	121:15
210:13	146:25	138:4,5,21	144:20	misspoke
meaning 29:6	150:18,19	193:2,25	146:14,17	72:12

156:12	111:21	month 198:1	49:10	44:17
misstated	126:11	monthly 32:1	85:20	53:11
198:22	137:16	55:14 56:8	98:10	55:24
misstating	147:4, 19	56:13, 19	128:1, 5	66:21
198:17	148:6	157:7	131:10	85:13, 16
mistake 57:3	150:5, 7, 8	months 14:17	161:21, 22	88:18
mix 135:25	151:25	175:13	164:6	89:12
MM 181:22	152:9	Morandi 2:20	171:14, 15	118:2
model 125:7	154:16, 17	morning 4:11	171:17, 19	119:13
136:18	154:18, 20	5:1	180:8, 14	147:4, 13
modified	154:22	morphed	180:20	152:11
102:13	155:4, 11	85:25	181:13	165:24
Moe's 98:17	156:23, 25	89:12	184:13, 24	177:2, 4, 22
98:18 99:2	157:3	mortgage	192:6	177:24
99:2, 4	158:4	73:3 93:10	210:7, 16	212:11
moment 23:6	161:8, 11	93:11, 12	211:4, 7, 24	needed 26:3
106:14	161:11, 16	107:9	212:19, 23	43:17
Monday 177:6	163:20	109:6, 6, 15	213:11	53:23
178:1	164:6	109:21	224:24	67:24 86:9
money 14:11	167:14	mortgages	225:1	115:5
20:1, 2, 10	168:2, 10	73:4, 5	named 98:8	119:12
20:17, 21	168:17	mother 32:20	names 9:4	121:23
21:24 22:1	173:14, 17	32:24	10:25	154:21
22:22 23:1	175:5, 5, 12	moved 120:4	15:21	155:4
30:18, 22	177:19	120:24	23:10	158:4
34:15, 19	178:15	121:1, 3, 4	32:14, 17	161:13
34:21, 23	179:14	moving	181:17	needing
35:1, 5	180:11	138:12	national	152:14
37:10	183:16	202:24	75:23, 24	negative
38:10	188:5, 16	multiplied	76:6 79:7	45:4, 5
40:16 44:8	188:17	128:21	79:16	198:3
46:13	189:23		80:21	negotiated
51:16, 19	199:6, 15	N	114:17, 21	129:1, 2
62:14 63:2	199:18	N 2:1 3:1, 1	156:14	negotiat...
64:17 65:7	207:18	5:7, 7	195:17	161:1
72:17	209:15	name 4:7 5:2	202:16	neither 57:3
73:12	216:3	5:9, 11	nature 21:19	nephew 24:7
75:16, 19	217:4	6:25 7:2	233:22	net 50:19
75:19, 22	222:13	9:9, 20, 24	near 14:1	51:14, 17
76:2, 3, 19	232:8	10:8, 14, 17	220:20, 21	51:22
77:15, 18	money's	10:20, 23	necessarily	61:15, 17
81:13	49:19	11:3, 4, 12	66:20	Net-a-Po...
88:14, 15	monies 20:6	11:14, 20	170:9	185:8, 19
90:8 93:6	63:1 72:18	12:9, 10, 18	173:7	186:17, 24
93:8, 9, 14	72:18	13:2, 3, 14	180:17	187:15
96:14	151:22	14:2, 23, 25	195:2	NetSuite
107:20, 24	199:11	15:7, 10	necessity	31:24 55:8
108:15	Monroe	31:15	44:17	55:10
109:5, 20	225:11	44:20 45:4	need 5:16	60:21, 23

61:3	normal 118:6	110:25	47:19	16:8,23
never 11:13	125:9	113:17	59:22	17:2
15:9 17:15	148:13	127:13	86:20 88:1	offices 1:14
19:11 20:2	169:2	139:21	117:23	official
54:2 63:16	north 76:9	140:2	125:4	4:12 8:25
68:2 99:19	98:2	149:9,13	192:1	10:3 14:19
112:16	110:15	150:25	203:8	16:15 80:6
141:13	notary 4:8	151:3,16	204:21	104:13
153:16,24	236:24	152:7	219:15	105:2
154:7	notation	153:2	occasion	194:10
159:19	223:16	155:3,17	35:24	212:2
203:17	notes 139:15	156:3	56:18	officially
new 29:5	Notice 1:16	158:10	occasion...	195:9
49:12	3:15 207:4	159:14,17	24:4,4	oh 7:13
52:16 53:2	noticed	168:18	occasions	11:25
60:4,4,10	155:24	174:14	47:13	12:16
62:10	notified	175:25	occupancy	18:18
86:12	192:4	176:2,4	107:23	26:14
90:10 95:8	notion 61:10	183:15	occur 52:8	48:15 70:6
165:1	85:12	193:3,7,23	88:12	70:23 81:5
167:25	129:3	204:4	146:10	86:10 95:5
177:6,22	160:21	205:21,24	199:3	99:1
177:25	164:20	209:12,18	occurred	103:20
178:1	219:3	216:2	51:25	104:18
187:25	226:1	230:23	73:12,21	105:16
191:6	November	numbers 37:7	108:17	106:21
Newtek	62:3,3	86:18	177:9,12	113:7,23
150:21,22	64:6 100:4	131:16,17	231:5,15	117:7
154:5	101:13	numerous	occurring	130:14
164:3	198:1	154:2	51:14	135:5
179:8,12	200:24	168:11	occurs	137:7
179:14,17	203:7	170:22	133:11	139:2,25
179:18,19	NSF 159:14		227:10,12	140:1,6,7
179:20,21	nuance	O	October	140:11
nicest 161:2	160:16	O 3:1,1 4:22	187:24	157:11,13
Nicole 1:19	211:19	5:7	188:3	158:16
236:23	number 18:10	Oaks 103:1	offer 88:13	169:20
NIL 85:9	18:12 25:6	106:7	207:24	178:5
no-fault	25:7,21	219:6	208:4,6,15	181:4
227:7	27:24 28:1	obligations	208:21	184:8
noise 49:5	33:20,21	73:14	offered	186:11
non 36:14	33:22,25	76:10,11	14:10	189:25
non-bank	34:4 39:2	obtained	85:19 87:6	190:9
148:23	39:24	58:2	office 67:15	191:23
non-book...	40:21,22	obtaining	155:21	210:23
43:16	42:3,6	146:21	officer 3:9	212:5
non-suff...	44:3 57:25	obviously	139:12	213:22
158:22	58:3,12,22	5:17 30:14	227:1	215:12
Nope 48:14	64:2 88:19	31:12	officers	216:19

okay 5:14	60:22	113:12,16	170:8,20	218:25
6:8,12,18	61:18,20	114:13,23	173:12	219:20
6:25 7:7	62:25	115:9	174:9,11	220:3,10
8:13 9:13	63:13 64:9	116:21	176:18	220:13
9:24 10:8	64:13,18	117:7,10	177:8,11	221:4
10:14,18	65:7 66:3	117:21	178:17	222:19
10:25 11:5	66:9 67:5	120:5,7,17	179:23	224:2,21
11:12,14	67:7,20,22	121:5,14	180:4,20	225:6,9
11:25 12:3	68:17 69:1	121:20	181:2,4	226:7
12:7,23	69:24 71:9	122:2,11	182:11	227:3
13:17 15:7	73:20	122:15	184:8,10	228:7,14
15:21,24	74:10 75:1	123:5,22	184:20,22	229:17
16:11,12	76:13	126:1,13	185:3	231:11,13
17:8,17	77:19,25	127:1,16	186:13	233:10
18:9,24	79:6,12	127:20	187:4,18	235:1,3
19:20 20:4	80:4,8	128:4	188:8,14	Okemos 12:18
22:6 23:9	82:24 83:2	129:1	188:25	12:21
23:14,18	83:5 84:13	130:3,11	190:8,9,18	old 71:13
23:22	84:18	130:18,24	190:25	78:1
25:11,13	86:20 87:5	131:25	191:4,14	177:24
26:5,15,20	87:16	132:14,16	191:20	227:23
27:12 28:3	88:22 89:2	132:23	192:24	once 47:22
28:5,15	89:23 90:9	133:5,10	193:1	55:4 83:18
30:17,25	91:8,12,20	133:19,23	194:5	120:8
32:18	91:20	136:3	195:8,18	one's 192:22
33:17 34:1	93:21	137:9,15	195:21	216:17
34:11	94:21 95:5	138:17,23	196:3,8	one-off
35:17	96:9 97:21	139:8,20	197:18	40:15
37:20	98:9,13	140:2,11	198:14,20	one-page
39:21,21	99:3,12,14	141:1,13	198:24	172:20
39:23	100:15,22	141:22	199:22	one-pound
40:18,21	101:3,10	143:15,22	201:14	138:20
41:13 43:8	101:18,24	144:5,22	202:10	ones 64:16
43:23	102:16,22	145:9,12	203:14,24	74:11
44:10 45:2	102:25	145:23	204:16	90:23 91:2
45:19 46:4	104:4	146:11	205:4	176:1
46:6 47:2	105:3,7	148:4	206:13,18	232:5
47:9,12	106:4,10	149:2,10	209:4,6,23	ongoing
48:17,23	106:12,24	149:16	210:23	190:10,18
49:16,24	107:10	150:11	211:15	online
50:2,5	108:9,17	151:4,24	212:21	137:21
51:5 52:4	109:25	155:9	213:4,13	138:6,10
52:18	110:2,8,19	158:14	214:4,12	138:11
54:22 55:6	110:24,24	159:8,17	215:2,14	onsite 29:6
56:12,18	111:1,22	162:24	215:16,21	open 14:10
57:21 58:2	112:3,13	163:20	215:23	52:16
58:23 59:4	112:18,20	166:12	217:2,7,10	66:16 78:7
59:20 60:2	112:24	167:4,11	217:17	148:11
60:9,13,19	113:7,7,10	168:17	218:4,21	220:8

222:5	216:24,25	195:19	150:12	226:8,19
opened 12:12	219:7	original	163:24	226:20
13:10 62:2	223:5	7:25 72:23	164:2,3,4	ownership
62:2	operation	101:16	164:6,8	33:2
101:13	29:9 77:5	102:12,17	168:2,6,11	Owning
102:3	125:9	172:25	170:2,10	107:23
220:7	Operational	226:19	175:12	owns 92:7
opening 53:2	225:15	originally	189:3,4,23	94:1 95:19
64:5 66:19	operatio...	176:10	201:1,6	98:11
operate	52:19	211:17	209:15	186:9
98:23 99:1	operations	originated	227:22	
103:25	28:7 29:1	173:1	owes 47:19	<hr/> P <hr/>
105:3	65:6,6	176:21	71:19	P 2:1,1
211:7	67:2,3	outbound	owing 47:20	p.m 90:18
operated	85:24	29:13	69:13,14	136:9,10
14:6	100:4	outs 42:16	164:4	136:12
103:23	148:1	111:13,19	Owl 111:25	230:18,19
104:9	152:21	170:11	owned 7:14	235:10,11
105:1,8,21	opinion	173:7	7:14 8:4	P51959 2:8
109:13	198:12	outside	57:9 59:14	P63952 2:13
operates	209:1	29:17	72:3 86:4	P72020 2:3
104:8	opposed	226:17	92:16 95:2	package
operating	61:12 63:2	outsource	96:25	138:20
50:19	70:21	228:1	116:15	Packing
51:14,18	138:3	overnighted	117:3	183:8,19
51:20,23	234:3	193:19	132:12,13	184:5,6
61:15,17	option 82:22	overpayment	134:6	186:14
61:25	options	163:25	139:2	page 3:2
70:13	86:11	overseeing	168:21	18:22
71:23	Oracle 31:25	227:18,20	194:19	33:25,25
98:18	55:8,11	oversight	226:14	39:21
100:5,10	60:21,23	55:16	owner 42:8	41:13,13
100:21	61:3	overture	84:5 93:13	64:2 68:18
102:19,22	orally	83:24	97:13,18	74:23
103:9	170:24	overtures	101:3	106:11
104:22	Orange 80:1	83:17	131:9	108:20
107:11,16	order 63:1	owe 22:12,17	194:21	110:8
107:25	67:21 68:1	47:18	210:7	113:13
108:2,3,16	118:11,13	72:17	owner's	149:14,24
109:8	127:2	150:8	26:24	154:15
111:21	138:2	owed 20:1	owners 7:25	155:25
122:20	150:5	43:17	26:4 32:21	156:4,6,7
134:22	174:17,22	45:12	32:22,25	175:1
153:17,23	ordered	69:22	34:14	190:9,15
153:24	120:14	71:21	37:10,17	198:23
154:8,18	orders 24:5	75:16	67:12	200:19,20
155:10	24:10 67:9	88:15	124:21	203:24
197:10,11	67:15	111:15,17	203:5,10	206:5
197:13,22	118:17	139:16	209:9	210:4

211:9	203:12	120:24	89:25	108:15
213:13	208:12	121:6,15	94:14 95:3	119:21,21
215:24	209:20,20	121:20	104:14	124:23
217:9	232:21	129:20,21	105:2	125:5,14
pages 182:24	pandemic	130:13	118:15	126:20
236:6	197:22	132:25	122:25	128:6
paid 18:15	paper 171:5	134:4	123:1,4	129:20
21:4 22:2	205:15	147:22	125:2	131:6
22:4 23:4	paperwork	148:7	139:7	133:7
30:10,12	172:16	152:22,24	205:12	165:1,6
45:16	paragraph	158:22	209:14	179:7
62:13,15	193:24	159:11	partners	188:24
69:23	200:18,20	160:17	14:13,16	189:14
72:18 73:4	200:23	190:9	28:20	203:12
77:2 85:11	202:24	196:15	119:15,15	204:21,22
86:3 88:20	203:3	202:2	120:2	207:18
88:21	210:3	208:16	party 29:19	230:11
93:18	211:20	210:8,13	83:17,24	232:8,14
109:5	214:11,18	210:14,20	84:2,22	payable
110:23	paraphrase	210:21	114:25	37:16
125:23	230:24	216:2	123:3	39:20
126:6,23	paren 47:5	217:11	175:2	41:25
126:24,24	parentheses	223:10	178:14	182:17
128:23	45:6	230:2	187:3,4	paying 22:16
129:24	Paris 185:23	234:16	188:14	26:22 27:6
130:7	186:3,7	particular	209:1	27:8 77:24
138:5,6	Park 15:3	44:16 70:2	party's	124:23
139:19	parking	162:16	235:2	126:25
140:12,13	103:23	167:19	passed 30:9	163:17
140:16	part 11:10	171:17	34:13	164:25
141:4,11	18:12	177:15	patents	165:19
150:21	20:13,16	parties	32:12,12	186:2
161:6,6	21:4 25:19	82:19	32:13	201:9,19
162:14	28:14	84:19	pay 32:1	202:4,15
168:13,14	34:12,24	85:17	36:20 41:4	203:11,20
170:23	34:24 40:9	168:13	44:24	payment
174:25	40:14 41:8	207:23	45:17	60:16 62:9
175:6,13	56:4 68:18	208:3	46:23	73:2 109:6
175:23	70:11,21	228:8	49:12 55:1	109:17,18
176:5	71:1,4	partner 6:24	56:5 69:19	109:21
184:7	74:7 75:20	7:2,24	72:4,17	110:17,19
188:18	75:21 80:5	8:25 13:20	73:2,3,4	110:20
189:9,10	81:24	13:21,22	73:13,19	120:9,20
189:17,19	86:15	13:23,25	75:1 76:10	120:21
189:20	95:15	14:8,11,20	76:15,21	160:21
190:2,6	101:22	16:13,24	76:22	161:25
194:14	105:1,17	24:13	79:17 85:6	162:1
202:7,19	107:18	49:12 57:9	86:9 93:9	163:8
202:20	114:4	80:6 86:12	107:5	164:12

165:20	people 36:10	229:3	132:3,7	Piana 183:8
166:7,7,15	52:12	perfectly	183:25	183:18
167:6	54:10 77:7	124:24	233:10,19	184:4,6
168:3,5	84:11	163:10	personally	186:14
169:24,24	85:13	perform	35:2 44:9	pick 68:4
170:1	87:12	114:15	220:9	161:21
176:19,22	104:3	performed	persons	pickup 117:4
178:11,15	118:17	83:6	85:21	picture
178:22	124:13	114:18	perspective	131:21
183:19	125:6	period 20:20	14:18 97:8	pictures
202:8	127:10	31:12 35:3	136:18	131:16
223:3,25	150:8	35:11	189:2	piece 39:1
231:9	162:12	36:18	petition	64:8 69:4
payments	167:10	38:14	18:16	71:3 77:11
18:25 19:3	168:9	43:11 50:3	25:15 30:3	94:24 95:7
24:19	176:1	58:24 59:2	58:24	97:2,8
71:25	208:5	59:15,22	139:14,15	110:13
72:20	percent	61:11,16	163:23	205:15
80:14,19	17:20,22	66:25	164:2	pieces 39:4
81:3,4	17:25 18:3	75:10	Phoenix	39:8,11
107:9	18:8 19:17	79:23 81:7	21:18,21	120:1
108:2	62:15	106:17	21:24 22:1	Pinewood
109:3	76:22,22	108:17	22:24	181:13
110:21	76:22,23	110:6	phone 131:16	pissed
111:19,20	76:24,25	117:16,19	149:3	177:23
121:3,4	77:14 81:4	156:11	162:12	Pistons 13:9
154:21	92:21	158:21	170:22	place 8:4
162:9	125:24	161:16	171:5	9:2 15:3
164:11,25	128:16,17	167:24	177:3	21:10 25:6
170:16,18	128:21,23	221:20	179:2	25:7 52:3
171:8	129:1,23	226:18,25	187:9	54:1 67:9
173:9,10	132:21	227:20	218:2	85:18
173:21	133:9	228:22	phonetic	94:16,18
174:20,22	136:1,1,2	periods 81:8	131:11	94:19
176:9	137:5,6,7	person 28:18	phrase 55:21	96:21
181:7	137:10	67:24 85:3	65:25	102:11
190:6	138:5,7	98:4,7,8	67:12,13	103:13
201:6,9,11	175:3	131:10,18	134:18	117:25
202:4	202:17	173:2,4	physical	124:11
203:13,16	203:17	218:3,6	12:17	138:20,21
222:3,24	209:3	232:15	106:1,2,3	150:10
payroll	223:4	personal 6:6	113:2,22	156:13
38:15,17	percentage	37:12	114:4,6,15	166:11
38:19 41:2	72:25 80:3	38:23	115:7,12	167:3
126:23	135:24	40:16,25	116:9	171:4
pays 69:3	136:21	41:9,10	232:22	209:24
129:18	137:1,17	44:24 45:7	233:4	219:3,8,9
penny 173:19	perfect	46:15,21	physically	223:8
203:17	154:6	48:3,17	115:14	placed

118:17	137:18,25	PPP 196:16	211:13	120:2
plain 116:12	138:7,11	196:17	president	182:22
Plaintiff	141:1	practice	15:25	prior 18:16
1:5	144:12	35:11 38:6	16:14,15	19:21 20:5
plan 25:20	150:6	50:17	16:17,18	25:14 30:2
82:12	194:15	171:11	16:21,25	31:1 83:5
planning	195:8	231:5	17:1 28:8	142:2,10
82:11	196:23	pre-bank...	28:21	213:19
156:17	201:8	83:11	226:14	224:22
platform	202:7,13	84:16	227:1	226:8
168:12,13	202:20	86:23,24	press 207:17	227:10
play 138:1	204:25	87:2 88:7	presumably	236:10
played 85:8	206:20	88:12,25	147:2	probably
player	209:12	89:4 90:5	168:15	11:4 23:4
184:24	218:25	141:1	pretty 11:19	27:8 30:21
185:11	224:2	pre-COVID	65:15	38:21 44:1
players 85:6	227:18	59:21	previous	100:2
85:7 161:1	pond 63:10	precedent	28:19	103:8
161:5,11	145:1	100:7,8	79:23	126:22
playoff	portion	predicted	93:12	150:20
79:24 80:2	38:12	133:10	103:7	161:22
Playoffs	79:17	predominant	219:2	218:5
58:21	POS 29:20	35:4 73:17	previously	219:14
114:18	31:23	predomin...	54:3	225:24,24
please 4:9	position	76:1 81:9	146:11	problem 75:8
5:9 39:22	16:15	154:1	157:5	83:21
PLLC 1:14	197:20	216:20	price 137:20	119:3
2:3,8,13	218:15	prefer 82:20	137:20,22	145:24
plus 81:13	positions	premium	primarily	152:18
106:7	188:18	25:24	23:24 28:6	167:1
125:24	positive	preparation	154:9	proceed 4:25
127:25	98:14	228:2	primary	proceeding
128:3,10	118:14	prepare 6:2	28:17	102:24
PNC 221:19	possible	6:4 205:8	principal	103:11
222:15	145:25	prepared	231:19	proceedings
PNL 56:15	possibly	55:18	principals	190:11,19
109:15	35:18	56:11 58:7	30:10	proceeds
153:16,16	post-ban...	115:3,4,8	92:16	188:23
153:25	86:20,22	preparing	169:9	process
pocket 48:8	post-pet...	157:7	228:23	10:21
64:10,24	192:1	preponde...	231:22	14:10
183:24	215:10	161:24	principles	27:16
188:24	233:7	preportion	228:20,25	28:14
point 10:2	potential	41:10	printed	34:25
59:10	66:10	present 2:19	43:20	82:20
103:21	83:12 84:7	196:5	printer 90:1	83:15,16
122:17	potentially	presented	printing	83:16,25
130:20	32:4	158:6	87:4,5	86:16 87:7
136:5	poured 87:19	210:22	89:23	99:10

124:3	130:16	92:9 93:10	11:19	quantity
125:16,18	progress	93:12,13	60:13	117:19
162:1	218:23	93:15 94:1	162:23	159:9,16
187:12	Projected	94:6,12,20	184:4	160:2
223:12	31:4	94:25 95:6	230:8	161:4
processing	ProMaster	95:7,9	231:1	quarter
20:17,25	117:4	96:21 97:2	purchased	30:21
21:1,3,6,7	promptly	97:8,10,12	7:16 60:18	quarterly
22:4,8,12	194:25	97:12,13	purchasing	55:4
22:17	195:3,6	97:18,21	93:14,15	question
processor	pronounce	98:15 99:4	purely 15:5	5:15 11:24
20:19	7:5	100:23	169:8,21	18:12,13
21:23	proofs 164:9	101:5	purpose	22:18
produce	properties	103:14,17	97:24	51:12 56:1
189:12	71:18,19	103:22	98:16	56:24
produced 6:4	71:24 72:2	107:9,19	115:12	57:18 63:6
42:6 111:5	72:9,12,13	107:23	purposes	73:11 79:3
111:7	72:15,24	109:16,22	55:5 165:3	87:10
118:1	73:13,14	110:15,17	213:16	89:10
148:15	73:18,19	113:18	pursuant	93:17
155:21	73:22 74:2	132:4,7	1:16 5:4	112:3
193:11	91:9,22	proposed	201:2	113:17
195:23	92:6,7,7	99:17	212:18	154:16
196:2	92:10,11	ProQuest	pushed 53:25	156:9
product 13:9	92:12,14	224:24,25	89:20	159:22
15:4 29:13	92:25 94:2	225:3	120:24	164:16
29:14	94:4,7,14	227:2	put 11:8	189:13
75:16,17	94:17,20	prove 57:1	15:12	190:10
77:2,6	94:21,24	proven 229:1	38:23 41:2	206:4
118:11,17	95:1,4,19	provide	41:9,10	208:10
118:20,24	96:11,15	127:9	53:20 60:4	211:20
118:25	96:19	131:15	60:10	216:2
121:16	97:19,22	147:14	61:10,15	217:11
137:23	102:7	194:24	76:21	230:13
204:24	103:18,24	provided	85:20	questions
professi...	104:1,4	74:7 125:7	87:12,15	33:22
6:16 13:7	106:13	130:14,25	122:24	182:18
professor	107:5,6	197:25	124:8	203:25
69:8	108:6,21	206:5	125:9	204:1
profit	109:19,20	provider	133:25	235:6
109:14	110:5,11	199:18	158:16,19	quick 169:16
profitab...	111:15,16	providing	169:17	quickly
30:13,15	111:17,18	141:2	171:2	13:18
profitable	property	public 4:8	231:9	207:20
59:8,11,20	31:18,19	236:24	<hr/>	quite 10:25
59:23 60:3	31:23 32:3	pucks 7:22	Q	132:22
61:21 65:6	32:4 73:3	pull 48:8	Q1 202:16,19	174:24
65:11,13	90:21,25	pulled 47:16	Q8 42:9	183:3
program	91:15 92:2	purchase	Q9 111:7	

R	reaction	206:18	receiving	41:23 55:3
R2:1 4:22	153:2	209:6	29:13	174:7
R-A-D-L-A	read 62:5	218:14	reception	178:10
182:1	113:21,21	222:8,9	199:1	203:19
R-E-H-M-...	114:2	reasons 66:1	reciproc...	223:14
31:17	210:8	160:1,13	53:22	230:10
racks 132:5	reading	167:2,4,5	recitals	recording
132:17,25	79:14	229:4	206:19	39:15
133:13	114:4	recall 58:19	recognized	173:9
134:11,13	198:6	103:18	168:14	223:12,19
134:19,25	ready 29:4	143:11	recognizes	records
135:2,2,7	124:14	179:12	200:25	37:25
135:20,25	179:25	184:22	recollec...	41:24 43:3
135:25	181:15	192:10	46:19	112:5,9,9
Radla 182:1	real 86:17	196:19	177:8	168:20
raise 4:19	86:18	231:16	reconcile	169:19,20
88:19	94:24	receipt	115:12	170:1,9,10
raises 27:11	96:12,15	120:20	202:10	173:6,10
27:12	100:19	receipts	reconciled	174:19
Rally 126:2	107:15,20	76:8	115:14	178:10
133:1,11	112:1	219:15	173:15,19	181:7
133:15,18	145:5,6	receivable	174:2,6	182:16
133:25,25	174:3	68:19,22	224:19	194:25
134:2,6	realize 42:4	69:12	reconcil...	203:4
Ram 117:4	really 19:11	71:13,17	175:15	223:15,17
ramping	29:17	230:9,12	reconciling	223:19
125:11	63:16	receivables	164:9	224:5,12
ran 7:20	77:23 81:5	160:24	reconstr...	228:15,18
24:14	84:1	162:23	62:1	228:22
81:16 99:2	100:12,18	receive	record 4:3	229:14
randomly	135:5	40:10	4:10 5:10	recoup
149:24	140:6	120:19	12:6 18:10	138:15
ranges 24:23	209:8	132:19	33:20 40:9	Recovery
rapid-fire	212:5	165:6	42:4 48:5	180:25
203:25	213:22	193:15	50:9,11,12	181:5,8
rate 107:6	216:22	received	50:13 56:5	231:7
107:12	227:23,25	24:18	90:14,15	232:3,24
129:25	228:5	35:23	90:16,17	Red 13:9
130:22	231:23	36:25	111:4	redone 96:22
152:16	reason 14:7	69:15	136:9,10	redraw 141:6
162:15	69:22	117:15,19	136:12,14	Redstone
179:21	87:25 88:1	121:10	168:21	164:21,22
188:12	88:2,2	122:4,5,6	173:7	166:2
reach 48:8	142:8	170:20,21	193:9	170:7,17
87:16,24	150:12	178:15,19	230:18,19	172:21,23
88:4	175:9	178:20,22	230:20	173:4
165:13	192:12,18	190:22	236:6	182:7
reaching	194:12	193:18,19	recorded	reduce 21:3
183:24	204:18	207:16	39:17	168:5

reduced	179:15,17	31:16,16	104:2	110:3,5
161:25	reflect	31:17,17	relates 26:8	134:19
reduces	18:24 40:2	58:10	29:24 40:5	remember
170:2	223:17	65:24	40:6 41:18	44:25
reducing	229:14	228:4	44:7,22	45:10
45:12	reflected	Rehmann-...	45:9	114:12
reduction	48:6 49:3	54:16	106:18	123:8
168:21	49:21,25	rejected	108:25	134:15
refer 5:20	223:8	199:2	183:8	135:10
reference	reflects	rejoin 226:1	184:8,9,10	139:23
82:24	57:22	226:3	184:15	146:23
103:14	170:17	rejoined 9:5	185:9	147:24
117:12,13	refund 35:18	224:21	186:14	162:11
164:10	35:19 36:4	225:7	188:8	183:12
210:25	36:10,12	relate 45:19	226:25	184:13
referenced	36:22,24	68:22	relation	193:17
91:24	37:12 38:3	123:15,19	32:16	208:16
103:16	40:10 47:5	141:15	relation...	210:21
118:24	47:6 51:9	162:19	14:14	211:12
203:15	51:11,14	164:16	21:14,15	220:12
references	51:24	185:19	21:17,20	233:2
79:23	refunded	186:1	21:22	remembered
219:25	34:20	216:10	24:15	225:20
referred	refunds 35:5	226:24	54:22 85:8	remembering
72:9 84:4	35:6,23	227:3	97:9,10	171:14
91:5 93:23	39:3 47:14	related 11:1	104:13	remembrance
95:15,15	47:15	20:16,24	138:25	152:8
97:4 99:23	50:18,24	39:10	139:7,9,10	192:18
100:25	51:1	42:18 48:4	139:11,12	remind 27:1
101:21	regarding	60:23 62:7	146:4	31:15
116:20	6:9	62:17,21	175:7	remit 40:11
194:2	regardless	63:24	relation...	120:20
referring	88:4	66:10	151:19	126:10,11
48:9 77:23	121:10	71:16,20	relatives	127:21
117:16	Regents	80:21	232:3	remitted
197:16	205:25	120:8	release	51:11
216:8	206:9	131:3	175:8	126:17
refinance	regroup	160:25	released	removed
151:15,18	230:15	163:25	101:6	134:17,19
151:21	regular	172:25	relief 78:20	135:22
179:7,12	67:21	180:22	relieve	136:2
refinanced	190:24	186:8	170:9	Renee 33:15
160:1	212:9	187:17,19	173:8	renegotiate
161:13	regularly	190:1	remainder	128:2
refinancing	43:22	194:7	30:22 82:2	rent 72:4
154:10,24	71:25	203:10	remained	73:2
155:10	Regulatory	227:3	135:22	100:13
162:1	15:25 17:5	230:1,5	141:9	107:6,7
164:24	Rehmann	related-...	remaining	110:13

111:19	140:21,23	77:8	39:19	22:22 23:1
rental	144:9	120:23	47:14	23:6,25
110:19	195:4	217:6	204:6,11	24:6,11
rented 97:11	requested	resulted	204:20,22	26:17 27:5
97:12	195:25	21:5 61:21	229:4,18	27:20,25
reopen 68:5	required	159:14	229:25	28:23
reopening	90:8	results	revenue	29:10,23
64:6	research	34:18	57:19,22	30:20 31:5
repaid 21:8	180:10	75:25	59:1 65:18	32:12,14
45:17	reserves	retail 8:25	66:20	32:15 33:5
163:7	75:5 77:20	13:23 29:1	69:12,12	33:9,19
repatriated	77:21	29:9 67:18	72:25,25	34:4 35:8
34:21	146:18	80:6 85:24	73:1,1	36:16
109:7	resolved	90:2	77:11	37:23
repatria...	227:6,14	104:14	79:17	38:12,25
111:20	respect 28:6	105:2	147:11	40:2,8,12
repayment	28:7,24	136:19	204:18	40:14 41:3
45:11,14	29:11	137:22	review 55:12	41:7,13,21
162:20	40:19 41:8	147:21	reviewed	41:23 42:2
repeat 5:16	49:24	retailer	56:18	42:2,15,24
replace	51:13 52:6	10:3	reviewing	43:10,15
121:16	52:11 64:9	104:14,15	157:8	45:8,13
146:5	83:7 85:14	185:9	revolver	46:9 47:17
replaced	88:11	194:10	139:23	48:18 49:7
57:11	175:20	Retention	140:9	49:14,15
135:19	207:14	36:7	143:16	50:16 51:7
replacement	209:1	retired	revolving	51:9 53:5
122:6	225:14	226:6	139:22	53:14 54:3
report 71:9	233:19	228:8,9,10	141:3	54:6,13,17
74:4,12	respecti...	retiree 24:4	RFP 14:10	55:9,12,17
115:3,7,7	6:15	retiring	rich 85:3,5	56:7,10
205:16,18	respond 11:4	69:8	85:17 86:1	57:4,18,25
205:18	177:22	return 18:3	86:4	58:9,12
reported	responded	18:6,25	richest	59:6,10
1:19 28:10	112:16	19:3,9,20	85:21	60:2 61:5
28:10 29:2	response	19:22 20:2	ride 226:19	61:20,23
55:15	43:13,20	20:6,10,18	226:20	62:17,20
reporting	responsi...	21:15,16	right 4:19	63:19
205:4	28:23	21:20,24	5:1,25 7:2	64:18,21
227:3	29:11	22:16,23	7:4 8:10	64:25
reports	responsi...	22:23	9:7,18,19	65:10,14
115:4	52:15	30:14	10:2 11:22	65:19
represent	responsible	33:23	14:25	66:13 68:5
5:2 155:20	28:7,9	34:19 37:9	15:17	68:11,13
represen...	54:24	44:16	16:18 17:1	68:21
4:16 53:20	rest 127:11	returned	19:6 20:22	69:13,18
173:4	restructure	156:3,10	21:13,16	69:21
request 14:3	139:10	returns	21:19,24	70:17,18
43:13	result 20:1	31:10 39:3	22:9,13,16	71:12,19

72:6,15,16	125:15	178:21	224:21	194:14
73:6,11	126:3,4,9	179:9,16	225:3	201:19
74:4,20	127:12,24	180:4,6,24	226:4,5,8	202:8,15
76:16,25	128:8,22	181:12,15	226:21	royalty
78:6,9,14	129:9,12	182:14,15	227:6,10	80:14,19
78:15,17	131:12	183:20	227:11,17	81:3,4
79:8 81:2	132:19	184:3,22	227:17	82:3 201:5
81:17,20	136:3,4,13	184:25	228:12	201:9,11
82:2,5	139:14,22	185:5,7,18	229:13	202:4,6
83:9 84:2	140:18,21	185:22	230:4,14	204:5,10
84:7,10,17	141:22	186:16,22	230:23	204:21,22
87:5 88:4	142:3,5,7	186:25	231:18	205:4,16
88:7,24	142:14,16	187:14	232:6	227:4
89:9,9	143:2,4,8	189:23	233:18	RTC 44:20,25
90:20	145:15	193:1,14	234:18	45:1
91:10,16	146:11	193:23	235:1,3	Rule 5:5
91:19 92:1	147:2,2,17	194:12,16	Rivalry	42:7
92:8,10,18	148:14,22	194:23	14:22 15:1	rules 5:15
92:21 93:3	148:24	195:12	15:5	run 29:3
93:6,21	149:5,8,18	196:17	Road 2:4	32:17
94:1 95:13	150:25	197:2,5,24	95:6	104:3
95:18	151:8,24	198:6,23	Robin 24:11	123:2
96:11,14	152:3	198:23	24:12	124:10,11
96:18 97:2	154:12,21	199:7	Robson 31:17	124:16
97:2 98:21	155:1,9,16	200:4,9,18	228:4	169:13
99:21	156:19	201:5,21	role 23:19	230:16
100:1	157:1,5,15	201:22	23:19	running 49:9
101:12	158:7	202:19,22	24:16 33:9	49:18 67:9
102:5,9,20	160:5,16	202:24	33:13,18	75:9
103:3,14	161:10,15	204:9	85:8	runs 31:22
104:4,7	161:20	205:20,24	226:11,12	rushed 10:21
105:9,20	163:15,23	206:4,18	roles 28:5	Ryan 2:13
106:10,13	164:9,15	207:3	52:5,10,11	4:16 180:2
107:17	165:13,17	208:17,18	rolls 84:6	ryan@hei...
108:5,14	166:6,6,9	208:23	room 84:12	2:15
108:20	166:14	210:1,5,25	84:20,21	Rychalsky
113:8	167:4,9	211:19,19	218:7	2:19
114:6,6,9	168:4,8,16	212:17,23	Ross 85:21	
114:15,20	168:24	213:4	87:16,24	S
114:23	169:3	214:9,11	88:5	S 2:1 3:1,6
115:1,3,23	170:13	214:13	rough 58:23	4:22 25:25
116:2,6,11	171:7,14	215:2	roughly 64:4	29:24 30:3
117:2,12	171:21	216:14,17	64:19,23	30:7,8
117:18	172:2,4,16	218:1,8,14	74:23	34:12
119:17,18	173:5	218:18	139:16	36:11
119:24	174:11	219:10	146:14	203:21
122:3,15	176:8,24	220:5	206:23	S-C-O-T-T
123:11,18	177:13	222:24	rounds 82:15	5:11
123:25	178:3,13	224:9,21	royalties	salaried

127:7,15	51:18	3:8 32:16	177:4,21	46:18,20
130:14,17	104:20	33:21 34:5	178:19,25	58:20
salary 26:15	118:10	40:2 43:21	179:5	109:15
26:20,21	131:20	74:20	183:13	119:18
26:24 27:7	145:17	119:23	184:18	141:17
124:23	147:17	174:17	185:1	170:13,14
126:6,8	160:7	202:12	screeching	193:24
127:5,10	162:25	215:17	125:20	200:18,18
127:13	163:19	school 8:15	screen	200:20,20
130:3,4,8	167:13	8:17,22	108:12	216:25
sale 83:9,25	169:7	70:25 71:2	screw 167:11	secretary
87:7 88:7	175:22	205:13	screwed	16:1,9,11
88:12 90:3	183:14	Scott 1:13	118:22,23	16:14,17
133:11	198:6	2:12 3:3	screwup	16:21
138:4,6,7	218:23	4:4,16	235:2	secured
207:22	223:2	5:11 11:23	scurry	149:19
208:15	232:15	20:3 36:12	234:15,20	Security
sales 55:3,7	says 18:14	37:18,19	234:25	131:17
56:4,5	35:8 44:3	37:22 44:5	SDH 44:6,21	see 18:14,17
67:4,6,7	44:20 45:5	44:21 46:8	47:4	18:23 19:1
75:25 76:1	45:6 46:20	46:14	searching	20:13
76:2,3,20	47:4 74:15	48:16	187:9	24:24 25:1
80:3	79:22	94:11	191:16	29:25 34:6
137:10,16	115:15	118:10	season 29:5	35:9 39:25
153:5,12	131:5	165:24	60:7 61:22	47:2 51:18
153:20,20	163:9	177:1,22	72:22,23	57:23 63:5
157:20	170:1	194:19	75:11	71:14,22
160:22	172:20	203:18,18	79:11	74:24
162:5,7,21	183:8	209:18	110:18,23	80:15 86:2
199:17	186:24	218:23	118:21	108:22
200:12	198:9	236:7,11	119:1,13	112:10,11
204:4,18	216:6	Scotts 45:6	119:14	114:3
204:22,23	SBA 179:20	screamed	121:17,18	135:8
205:2	Schafer 1:14	162:12	122:8,21	143:3
217:6	2:8,17 4:7	screaming	123:16	156:4,8
Sapphire	schedule	83:22,23	124:14	164:21
48:10,12	18:14,15	120:25	129:4	166:1
49:20,24	25:5 43:14	165:17	147:8,12	168:17,18
satisfied	58:5	166:5,21	147:23	179:3
110:2	120:12	167:8,10	148:3,8,12	183:9
satisfy	149:11,19	167:10,10	148:13,13	185:23
109:20	149:21	167:12	162:8	196:5
Saturday	150:9	169:12	194:9	204:7
129:25	161:12	170:25	195:4,7,10	213:17
savings	174:12	171:1,3	195:15,15	216:4
216:2	202:11	172:12	SEC 226:21	217:15
saw 152:8	scheduled	173:3	229:1	230:16
saying 22:25	110:21	175:17	second 40:14	232:1
30:18	schedules	176:25	41:8 46:18	seeing

134:10	175:22	227:7	shop 98:18	38:16,24
135:16,17	177:2,24	seven 109:12	98:18	sic 55:6,12
156:6,6	178:3,5,5	214:11	104:1,3,5	55:18 56:7
seek 63:2	178:9,16	shape 114:2	104:8	56:22 57:6
64:11	188:5	179:21	shopping	59:21
148:18	sending	share 79:17	66:16 68:6	side 54:8,10
seeking	50:17	shared	short 76:4	100:19
142:1	178:14	213:19	124:11	168:16,16
163:1	sense 5:23	214:3	147:6,6,9	170:13,14
seen 17:15	63:8 80:9	shareholder	152:16,25	235:2
103:14	112:4	17:20,22	154:1,11	sides 168:15
112:16,21	161:7,14	17:25 18:4	155:3	sigh 78:20
193:11	sent 20:1	19:18	179:23	sign 55:1
197:22	22:24	sharehol...	221:20	157:12,13
206:1	34:15 36:1	17:17 18:7	shortfall	157:14,23
234:2	36:15 37:5	sheet 56:15	147:11,25	172:13,18
self 62:6,9	37:10 38:3	61:11,16	shortfalls	176:15
62:12	156:20	153:18,25	155:5	188:21
self-con...	176:5,18	154:9	shorthand	211:21
65:25	176:19,19	197:25	90:25 91:4	212:3,11
self-fund	176:20	200:24	shortly	234:7
62:6	178:18	230:8	102:19	signature
self-fun...	186:3	Sheldon 2:21	207:16	206:6,7,9
62:17,21	195:12	105:12	212:22	206:17
63:24	234:9	shift 75:17	shortness	234:5
sell 82:11	separate	77:7 79:1	152:17	signatures
82:13,14	22:20	90:9,20	show 42:15	234:3,3
83:12 85:2	92:16	116:13	142:20,22	signed 99:13
85:20	112:6	138:23	170:17	157:17
87:11,11	128:9,10	141:22	181:7	189:5
87:12	154:4	157:8	showed 60:6	190:15
97:24	234:9	193:1	119:2,17	206:11,15
121:12,15	separately	shingle	153:21	206:16
121:17,24	43:3,5	225:8	195:22	207:14
136:23	September	227:14	shown 60:5	212:1
137:3,13	195:11	ship 195:19	61:17	215:3,7,9
137:19,20	Series 79:25	shipments	shows 42:16	215:13
207:19	servers	95:9	61:14 71:9	233:20
208:11,17	31:22	shipped	111:12	significant
seller 93:13	set 15:16	75:16 77:2	174:19	21:11 36:5
93:16,18	90:10	138:20	183:2	36:10 53:7
selling	107:7	shipping	shunted 86:7	60:7
82:17 87:3	110:23	24:5,10,14	shut 11:21	signific...
136:19	121:25	67:17	65:15	65:18
137:24	122:2	138:2,2,9	66:14 68:2	signing
send 55:3	235:7,8	138:10,10	163:13	172:25
69:9 73:12	settled	138:11,13	shutdown	similar
125:13	156:15	138:14,16	66:13,22	74:11
165:20	settlement	shoes 7:22	shutting	84:22

154:6	37:4	49:12	sources	13:6 24:3
Simon 102:7	110:14	88:19	79:18	32:23
165:12,13	slow 44:12	118:4	142:2	68:14,16
simple	147:8,21	150:7	148:18	101:16
116:12	195:5	158:4	South 91:14	sports 14:13
162:4	small 38:21	183:13	97:3 101:6	14:16
simply	39:1 49:14	185:1	101:6	123:19
160:25	64:8 69:4	207:22	103:15,24	spread 77:4
171:18	69:16	208:11	southeast	spreadsheet
174:25	75:20	someplace	225:11	3:9,13
196:11	225:16,21	173:16	space 11:9,9	43:4,5,10
233:23	225:21	somewhat	15:10	43:12 47:9
single 35:22	smaller 39:4	88:9	99:15	112:6
35:25	39:8,11	son 23:23	106:1	130:23
sir 4:19	182:24	song 187:20	131:25	169:16,18
68:25	smallish	soon 8:6 9:1	132:4	205:17,19
149:12	63:10	9:1 124:10	134:12	spring 119:2
sister 16:24	smoothly	sorry 9:6,15	135:1,9	119:14
124:20	176:2	12:5 18:18	spaces	sprinter
sister-i...	SMS 101:3,4	26:14 33:7	105:20	117:6
232:25	101:7	44:19,23	106:3	ss 236:2
sit 164:5	soccer	46:23	spacing	SSJ 18:3,6
184:22	105:14	68:23	12:18	18:25 19:3
185:6	Social	73:25	span 78:6	19:9,20,22
187:10	131:17	81:12,12	spans 103:24	19:24 20:2
site 78:5	softball	81:13,19	Spartan 12:9	20:6,10,18
119:9	105:14	95:18	12:11,14	21:15,16
sitting	software	98:21	speak 6:9	21:20,24
111:24	31:21 32:5	107:5	speaking	22:1,16,23
situation	60:15	111:15	52:8 59:16	22:23
34:12 37:4	sold 26:23	140:25	specific	stack 187:22
153:18,21	95:7	156:11	70:9 75:15	stadium 13:2
163:16,25	123:21	176:8	116:9	13:4,13,17
188:11	124:18	193:6	specific...	13:24 14:1
231:7	126:2	210:11	87:23	14:4,5
situations	132:24,25	214:21	222:6	15:23 29:4
230:25	sole 210:6	sort 45:1	Speedy 182:3	29:16
six 43:1	solicita...	142:15	spell 5:9	71:18,19
72:2	149:3,3	146:3	spend 62:14	71:24 72:9
138:18	solution	147:25	spent 75:4	72:12,13
141:21	75:7	229:9	77:19	72:15,24
six-month	Solutions	sorting	Spin 171:12	73:13,14
162:5	149:25	118:7	171:15	73:18,22
size 43:25	solve 167:11	sought 142:9	Sport 98:18	74:2 91:9
111:5	207:17	sounds 9:17	98:18	91:14,18
182:25	solved	56:7 58:25	sporting	91:21,24
skipping	211:11	78:17	6:21 7:20	91:25 92:1
80:8	somebody	220:8,23	7:21 8:8	92:4,5,7
slightly	14:10	222:15	8:20 12:13	92:10,11

92:14, 25	149:6	106:6	203:3	165:3
93:3 97:19	161:20	108:21	206:13	167:5
97:21	164:15, 25	109:18, 19	static	sticking
103:22	165:22	110:5	165:23	26:5, 13
104:1, 4, 11	166:13	111:16	status 31:10	29:23
104:15, 19	172:10	138:21	stay 57:2	71:12
104:20, 22	177:5	182:15	192:4	74:20
104:24, 25	178:1, 6	212:2, 7, 13	232:4, 5	168:1
105:14, 14	204:9	212:14, 24	stayed 10:9	sticks 7:22
105:15	started 44:1	213:5, 9	Stein 6:20	66:17
106:7, 8	57:13	236:1	7:14, 20	stipulated
110:10, 15	75:11, 23	stated	8:19 12:12	107:17
111:17	78:4, 12	130:22	13:6 32:23	stock 206:21
122:21	120:25	194:12	101:16	stolen 114:1
124:14	142:1	statement	step 143:23	Stone 2:21
125:9	164:20	3:7, 12	144:5	stop 46:1
127:9, 9	167:21	18:11, 13	147:18	76:12
129:6	168:12	57:15 62:5	228:24	100:10, 21
131:15, 22	201:19	64:2 79:15	Stephen	177:4
131:25	starting	117:13	85:21	194:1
133:14	63:9 66:20	121:10	87:16, 24	197:4
134:9, 16	77:13	155:19	steps 178:21	210:7
staff 77:2	172:5	158:2, 21	Steve 16:13	211:1
114:25	211:6	173:16	17:12, 25	stopped
123:7	227:12	190:15	18:8 19:7	126:2
124:15, 20	starts 118:8	191:17	20:3 23:23	141:2
124:20	147:23	198:4, 16	24:1, 7, 12	179:5
125:5, 8	171:1	201:2, 4	25:3, 17, 18	219:13
128:7	200:22	203:7, 22	25:19	stopping
staffing	202:25	217:7	26:12 27:3	122:17
125:7	state 5:9	224:11	27:10, 19	136:5
staffs 29:2	6:13 11:7	228:2	27:24	storage
stage 55:10	11:11	statements	29:10, 12	95:10
stale 119:16	12:14	55:14, 17	30:4 36:13	store 7:20
121:9	13:10 15:4	56:8, 13, 19	37:19, 22	7:22 8:8
stamp 18:21	15:14, 24	73:8 79:15	38:22 42:1	9:22, 22
42:5	16:16 26:2	112:21	42:25	11:7, 10
stand 47:17	30:12, 20	157:7	46:14 53:9	12:18, 23
169:14	30:23	158:24	53:22 68:1	13:8, 11, 11
stands 65:17	34:15	159:6	94:11 95:2	15:1, 3, 10
stapled	35:19 36:4	169:22	194:19	15:12, 14
158:17	40:11	173:20	203:18, 18	24:3 29:2
start 78:15	51:10 72:1	174:7	209:19	29:2 52:16
78:22	72:10	204:6, 12	Steve's 25:6	53:3 62:1
91:20	74:17	204:17	25:6 28:2	62:2, 7, 11
92:25	95:14, 19	223:13	33:12	62:13, 15
140:8	96:2, 11, 14	224:17	Steven 41:16	62:18, 22
141:25	96:19	231:24	41:25	62:24
148:7	101:20	states 1:1	stick 126:19	63:12, 16

63:24 64:8	148:2, 11	strong 85:10	40:12	230:2
64:15	216:20	86:8	substantial	suggests
66:10	217:3, 3	231:24	36:14	229:24
67:24 68:5	219:3	232:2	197:10	Suite 1:15
69:2 95:16	220:20	struggling	substant...	2:4, 14 4:5
96:5 99:6	story 13:4	78:18	38:1	suitors
99:23	75:14	students	subtenant	83:12 84:7
100:3	139:13	65:16	99:5, 8, 9	sum 14:11
101:1, 3, 13	141:17	66:21 68:8	99:13, 14	107:12, 14
101:22	straight	68:11	99:14, 17	108:1
102:12, 25	32:15	118:14	successful	summary
104:10	Strategic	study 184:17	60:7 78:25	115:4
117:22	225:10	stuff 13:10	143:14	summer 119:2
135:16	strategy	28:19	148:3, 7	summers
136:24	225:18	119:20	succinct	23:23
137:21	Street 11:7	122:6	90:24	sunset
138:3, 5, 7	11:11 14:6	124:13	sudden 212:8	226:20
138:20	15:14 62:1	135:19	sue 189:17	Super 124:12
141:18	62:11, 18	143:24	sufficient	supplement
146:16	64:5, 8, 22	233:4	156:20	152:21
183:9	72:1, 10	subcontract	199:11	supplies
185:23	91:3, 15, 17	131:4	Sugar 80:1	134:5
186:8, 10	91:21, 24	subcontr...	suggest	supply 75:12
187:1	93:1 95:14	123:2, 5	125:18	75:14
220:24	95:19 96:2	124:2	suggested	118:22
221:1, 2	96:11, 14	subcontr...	8:15 10:22	suppose
stores 12:11	96:19 97:3	123:12, 12	39:4 51:25	31:20
13:23 29:1	100:24	124:7	82:19 85:2	35:18
29:3, 4, 14	101:1, 6, 7	subdirec...	87:8, 14	70:20
29:16	101:20	196:1	90:3	supposed
38:16	103:15, 24	sublease	125:17	118:20
52:21	106:6, 6	99:5, 19	138:19	119:11
61:25	108:21	submit 205:6	182:13	140:14
63:16	109:19, 19	submitted	194:8	158:17
65:15	110:5	204:5, 10	196:25	175:4, 5
66:15	111:17	205:5	208:21	surcharge
67:23	stretch	subordin...	211:1	127:24, 25
75:18 77:8	143:14	38:7	214:6	128:11, 16
77:9, 24	161:8	subpoena 5:5	217:21	sure 10:15
78:3, 4, 7	162:2	6:5 74:7	227:13	11:19
78:24, 25	stretched	112:17, 19	suggesting	16:15
79:1	151:23	112:24	48:21	22:18
116:10	154:4	195:25	131:6	31:11 32:2
127:8	167:20	subsided	168:10	32:13
136:19	188:19	120:6	191:10	44:10
137:21, 22	strictly	subsidiary	203:11, 12	45:13
143:12, 13	127:11	180:23	suggestion	50:23, 24
146:16	strikes	substance	85:20	55:1 58:6
147:9	163:16	36:1, 3	141:5	64:15

65:15	switched	184:16	173:6	40:10
84:19	117:24	191:15	180:9	44:16 47:5
90:13 96:1	sworn 4:23	208:6,19	206:22	47:6,14,14
96:2,9	236:11	209:17	207:24	47:15
100:2,12	sync 126:23	219:8	228:12,17	50:18,20
102:10	system 29:20	225:22	232:25	51:13,21
128:18	31:23 55:7	230:15	talking 16:5	51:24 55:4
129:14	60:4,10,13	taken 1:13	23:2 27:2	55:22 66:1
130:19	60:24 61:5	4:4 9:2	42:21	109:22
139:4	62:10 63:7	43:2	58:15 59:1	203:13,16
146:2	63:18,20	103:13	65:2 66:5	204:6,11
149:4	64:19 74:5	113:18,24	68:23 70:1	204:18,20
151:18	77:24 78:1	113:25	70:1,14	204:22,22
160:20	112:1	114:1,2	80:18,22	205:2
163:4	115:13,15	135:18	82:10 83:2	229:4,18
164:18	146:12	141:24,24	83:4 84:14	229:25
165:8	213:1	166:10	91:2 93:17	taxes 19:13
176:9	systems	167:2	106:1	19:15
178:24	112:2	179:12	107:18	27:23 30:8
182:15		189:13	121:24	30:10
183:24	T	takes 49:3	137:15	34:12,17
196:9	T 3:1,1,1,6	160:23	144:3	36:20 51:4
199:23	4:22,22,22	talk 17:17	189:21	55:23
204:19	5:7	18:6 20:4	194:18	109:23
215:3	table 207:25	24:21	212:17	203:11,20
218:6,19	tagline	36:16 38:9	213:2	teachers
219:16	225:15,19	39:8 50:25	215:14	205:13
231:20	take 5:16	52:7 54:8	224:3,4,9	team 28:14
Surgery	10:12	54:17 59:6	232:6	75:23
70:20	53:17	72:6 85:25	talks 57:18	tease 129:12
surmise	67:15	90:20,25	68:19	TECH 4:18
89:16	68:17 69:9	91:3 113:8	193:25	90:14
surmised	78:13 86:9	113:11	206:20	136:7,11
27:21	90:10	130:24	211:20,20	230:17,20
surmising	113:23	134:21	214:18	techies
89:7	119:10,24	136:17	tax 24:21	29:17
surprise	119:25	157:9	26:1 29:24	technical
151:8	125:8	194:2	30:3,7,8	196:9
159:15,16	126:6	220:5	30:14 31:2	technically
160:2	133:12	talked 42:17	31:4,5,8	66:22
suspicion	142:22	52:4 88:9	31:10	70:21
65:11	143:23	106:14	34:12,16	technician
swear 164:7	144:5	129:10,11	34:19,24	2:17 4:8
sweatshirt	155:17	130:5	35:5,6	technolo...
67:24,25	161:25	141:23	36:4,7,10	29:19
67:25 69:3	172:6,9	146:11,15	36:19,24	technology
118:1	175:11	153:6	37:9,12	29:15,21
switch	178:21	155:5	38:3,3	53:23
122:15	179:23	157:5	39:3,19	tell 144:17

185:6,15	152:13	185:10,19	31:20,22	122:24
187:10,13	221:14	185:21	32:9,9,10	124:9
212:17	232:4	187:2	37:3 38:4	125:24
217:22	test 46:12	198:6	38:12,15	126:3
232:15	testified	205:1	38:17	127:24
236:11	4:23 94:25	214:23	39:12	129:22,22
telling 64:1	testify 89:8	215:13	40:14	130:4,12
191:14	212:16	222:1	43:19,21	131:5
tells 46:11	testifying	228:6	44:16,17	134:8
224:12	6:1 46:9	231:12	45:1 47:2	137:6
ten 58:20	46:12	things 7:23	48:5 49:2	139:5,15
75:24	testimony	9:2 16:3	49:23 50:4	141:8
85:21	6:2 117:14	24:5 29:20	51:3,16	144:16
119:18	236:7	29:22	54:3 57:7	145:24,25
127:15	text 179:2	34:18	58:4 59:14	146:9,20
137:14,24	thank 9:7	38:22 40:9	59:23	147:5
ten-minute	175:23	45:18 49:4	60:25 61:5	148:5,21
90:12	176:5	53:13,20	64:17	149:1
tenant 97:11	235:4,5	54:8,11	65:10	150:19,20
104:2	Thanks	66:21 76:5	69:14,16	151:7
tent 14:5	110:24	76:14	70:15,24	152:7,23
103:23	theory	77:19	71:2 73:16	154:17
term 152:17	135:10	78:11 79:6	74:6,7,9	156:16,22
154:2,11	148:11	80:1 89:16	75:14	157:5
155:3,8	thereof	100:18	78:16,19	158:6
161:14	211:8	125:4	79:24	159:2,6,17
210:9,10	thing 38:4	129:17,17	80:18,18	160:6,17
210:11,11	40:6 41:19	130:4,7,9	83:18,25	162:11,24
terminate	41:22	130:11	88:9 89:12	164:2,2,4
207:21	76:19 78:9	135:21	90:22	164:5,6,7
terminated	80:22	137:11,12	93:16	164:18
212:23	101:16	156:15	94:10	169:14,14
215:5	105:13	160:1	96:20	172:19
terminates	109:3	161:4	98:10	175:4
211:6	110:15	193:23	99:18	179:6,18
termination	121:5	196:12	100:21	180:9,16
3:15 207:4	130:12	211:3	101:15	182:16
207:13	131:14	214:24	102:14	184:16,21
211:3	133:19	225:15,15	103:4,6	185:13,14
terms 80:8	134:3	228:17	104:21	185:16
86:2 133:6	137:19	232:4	106:4	186:19
134:10	143:11	think 7:21	108:11	187:2,8,15
136:21	155:6	9:16 10:13	110:21	187:22
140:19	162:24,25	11:4 17:12	113:21	190:23
154:15	166:8	22:2,18	114:7	192:16
157:6	169:10	23:3 25:5	116:19,24	195:10
179:20	171:21	25:6 26:21	117:5	197:8,12
193:14	173:18	27:8,21	120:7,13	198:8,10
terrible	175:8	31:9,16,20	121:8,24	198:17

201:4	199:14,17	164:22	118:2,5,6	226:10,25
202:6,6	209:7	Tiger 164:22	118:9	227:18
205:2	228:17,20	167:22	119:3,11	228:3,10
211:4	thoughts	168:3,5,18	123:9	228:22
212:15	169:16	168:19,22	124:17,21	231:25,25
214:5	thousands	169:24	125:4	232:21
215:24	182:24	170:1,16	134:5	234:13
218:3,5,6	threatened	172:1,3,7	135:11	timeframe
218:18	103:13	172:11,15	140:20,23	49:2 51:2
219:12	214:25	181:20	141:1	59:5 81:14
220:18	232:4,22	Tigers 13:8	143:17	103:10
221:2	233:2,4,5	time 4:7	144:2	Timeless
222:1,2	threatening	6:18,23	145:6,21	185:15,16
224:3,3,4	121:1	8:11,24	146:20,24	186:19
225:25	165:18	10:2 14:9	147:5,7,15	187:16,17
226:13,17	171:4	20:9,14,20	147:22	187:19
228:12,17	threats	21:14	148:2,11	timeline
228:24	166:5	28:12	150:6	149:5
229:1,2,9	167:9	30:16	153:9	timely
231:12	172:12	31:12	156:10,16	120:14,17
234:8,12	177:1	35:11,22	156:18	120:19
234:12,19	231:15,18	35:25 38:3	157:17	201:12
thinking	232:6,10	38:19 44:9	158:5,6	times 35:3
51:19	three 37:9	44:11,12	160:23	40:15 41:8
82:23	53:6,15	47:13 49:5	161:6,8,9	47:12
118:14	61:25	50:21	162:14,16	77:10
123:8	67:12	59:10	167:24	130:2,2
157:18	75:15	61:12,16	175:18	140:12,17
third 5:4	86:14,16	63:8 64:3	177:20	157:1
18:8 29:19	92:16	66:25 68:8	179:19	163:4
114:25	95:22	68:13	184:19	170:15,22
123:3	101:8	73:17	189:7,20	172:8,9,16
185:18	103:7	74:21	195:5	178:2
206:19	112:1	75:10	196:24	201:20
thought	123:23	76:11,23	199:22,23	231:22
51:17,21	155:12	79:23 81:7	201:8,11	233:14
82:16 87:5	208:2	81:8 82:19	206:23,25	234:18
87:18	226:18	84:22,25	208:10	timing 14:18
106:24	234:14,17	85:10	210:11	tips 43:16
143:5,6	throw 169:15	94:13	211:25	title 210:5
146:14	Thursday	100:18	214:13,19	titles 159:3
147:15	1:13 4:1,6	104:8	214:23	today 4:6
156:23	tie 204:5,11	107:7	216:11,14	6:1,3,10
157:3	204:16	108:17	218:8,22	69:13,17
160:12,18	205:2	110:6	219:24	72:7
161:12	223:17	112:15	220:4,9,12	118:24
162:14	224:11	115:17	220:12	164:6
189:8	tied 21:11	116:14,24	221:7,20	177:3,5,25
199:8,13	162:21	117:3,7,24	224:15	177:25

185:2	169:3,7,7	158:23	177:20	108:11
207:24	traded 134:7	transition	182:15	110:22
today's 85:6	trademarked	83:9 94:15	198:15,18	113:19
155:22	32:11	188:16	206:23	116:15
toe 13:7	trademarks	translated	207:17,18	118:7
told 75:14	32:7,8,9	27:10	208:11	123:23
135:8,9,11	traditional	transpired	230:24	138:6
151:8	7:21	31:7	tune 119:5	140:10
172:11	traffic	travel 67:14	turn 22:4,24	143:12,12
217:18	49:11	treasurer	turned 8:6	147:8
219:13	training	16:1,17,18	19:25	148:2
tolerance	226:16	tremendous	30:20	150:21
167:19	transaction	85:13	32:23	165:10
Tom 186:25	134:6	tremendo...	51:22,24	168:15
tomorrow	166:25	75:12	88:23	181:3
177:25	174:5	tried 73:17	189:2,10	182:12
ton 161:11	183:4	85:2 99:4	205:17,19	185:14
161:11	184:12	154:3	207:21	188:13
tons 167:8	188:18	180:10	223:2	202:18
top 76:25	224:6	233:1	turns 189:4	212:25
158:21	transact...	trouble	TVT 150:21	216:12,15
topics 90:10	217:19,21	40:25	150:22	219:9
total 128:19	transact...	Troy 2:4	154:6	234:13
128:20	73:9	truck 116:19	161:22	two-percent
139:21	159:14,24	117:4	162:13	22:7
140:1,19	182:18	true 9:12	164:3	two-week
150:25	183:2	52:25 68:9	180:10,13	117:15,19
151:24	187:12,23	68:10	180:14,20	type 74:4
159:11,12	189:21	88:23	180:22,23	127:21
198:5,6,9	229:3,11	115:6	188:8,9,9	147:11
198:9	229:15,17	132:5,6,22	188:10,13	157:15
touch 87:13	229:20	133:21	188:18	169:25
87:15	230:1,5	204:9,14	190:1	172:22
124:8	transcript	204:15	231:23,23	184:4
133:25	236:5,14	232:18,18	TVT's 189:2	223:16
193:24	transfer	236:6	189:10	types 150:16
touched	20:10	truly 208:24	Twelve 103:1	
121:5	22:22 74:1	truth 236:12	106:6	U
tough 147:8	108:8,9,13	try 90:24	219:6	U 88:5
trace 184:17	110:6	112:3	twice 121:19	194:12
track 55:1	213:14	trying 21:3	two 7:24	UCC 150:10
111:23	224:13	36:23 89:6	25:21 28:3	150:14
169:11	transferred	89:20	28:20 40:8	175:8
tracked 37:7	35:23	98:12	45:18 47:1	UCCs 175:11
37:13,17	45:14	119:7,7	62:4 65:5	Uh-huh 9:8
40:18	49:10,18	124:18	73:4 82:18	148:17
168:25	108:5	150:15	91:13,16	171:24
169:12	109:10	161:5	100:7	204:2
tracking	134:2	167:11,11	105:5,11	ultimate

52:10	199:23	49:10 69:6	unpaid	160:13
87:10	203:22	69:19,24	100:13	225:11
ultimately	204:25	70:2,5,10	153:11	231:19
13:11	207:3	70:12,15	unquesti...	various 9:4
15:11	understa...	70:22 71:4	114:8,11	29:15
28:10	6:19 9:9	71:6,7	unsecured	42:18 71:4
75:24 84:5	10:8 17:18	76:24 79:7	1:3 2:2	104:16
86:12	22:11	79:22 80:2	4:13 74:22	106:16
125:23	50:23,24	80:5,13,20	153:8	108:17
135:19	60:9 69:24	83:22	up-front	111:12
207:19	79:14,18	85:11,12	60:17	154:3
208:8	83:11 91:4	85:22	UPS 68:2	164:24,24
UM 210:5,5	97:18 98:3	87:23	USA 185:23	vast 69:1
213:15,16	99:22	88:15,17	186:3,7	150:19
unable 75:1	116:14	88:20 98:3	use 62:25	159:21,23
unanimous	132:3	104:13	99:15	176:6
53:18 54:1	134:25	106:5	109:20	223:4
uncollec...	148:10	122:20	133:7,13	Vault 161:23
74:15	163:3	123:15	135:12,22	164:4
undergra...	166:19,24	193:2,25	212:23	180:24,25
6:13 8:16	186:7	194:3	useful	181:9,10
Underground	230:4	195:24	215:24	191:5,8,9
87:4,5	Understood	196:3	utilize	191:10
89:23	8:1 24:17	197:24	132:16	231:8
120:2	39:6	198:4	utilized	232:3,25
understand	105:18	200:22	183:21	Vee 186:5
5:15,25	112:23	201:1,9,16	utilizing	vehicle
23:11	140:18	202:5	122:22	116:16,21
35:17	150:13	204:3,5,10	219:21	117:2
36:23	185:7	204:23		vehicles
42:21	199:22	205:5,10	V	116:13,15
43:24 45:3	underwent	206:1,9,11	V-E 186:5	117:10
45:13	224:24	207:15,25	V-E-E 186:6	vendor 45:1
59:19	undisputed	208:5,14	vacate 135:8	117:25
60:25	200:25	208:16,19	van 116:18	185:10
62:20	unfroze	208:25	117:6	222:2,6
63:19	192:20	210:23	VanDewege	vendors
66:23,24	unique	211:5,15	98:5	75:15
90:23 97:7	131:17	211:23	variable	118:5,10
102:6	148:2	213:11,20	76:25	118:18
117:2	UNITED 1:1	213:24	77:14	120:9,18
127:3	units 132:4	214:6,16	138:1	122:12,13
128:18	132:16	214:19,21	variance	209:15,20
150:15	133:19	214:22	211:8	verify
151:18	134:10,14	215:4,8,9	varied	178:21
155:9	university	Universi...	104:23	190:18
167:8,17	10:3,16,23	49:12	124:5	version
169:17	14:7,15,19	197:2	variety	12:15
188:21	28:18	unpack 76:17	78:11 81:8	109:14

206:4	vote 53:17	171:21	88:2	130:20
versus 24:21	54:2	176:8	119:11	138:15
127:13	vs 1:6	179:23,24	139:2	141:25
135:25		189:6	143:24	153:15
160:7	W	194:1	145:13	154:7
161:7	W-2s 26:3	198:13	146:1,5	159:12,19
191:5,21	W-H-I-T-T	207:3	152:15	159:21
192:8	33:15	208:23	169:7,7	167:20
194:9	wages 24:22	212:16	178:25	171:22
230:9	25:14,16	215:17	183:25	174:7
vice 16:14	27:22	217:7	189:10	175:1
16:15,21	126:21	222:13	202:13	179:21
16:25 17:1	wait 81:10	226:13	212:12	187:17
226:25	134:21	wanted 5:21	water 13:7	204:19
Victors 15:8	waking 118:8	11:1 22:20	87:20	217:5
15:9,9,16	walk 23:7	22:20 32:6	Watson 84:4	221:17
15:18,19	25:12	32:15	84:23,23	222:7,17
15:19	43:23	63:12	85:10	234:11,12
211:7	99:12	67:25 80:9	87:14	234:16
video 2:17	134:11	86:11,12	208:3,20	ways 166:10
4:4,8,18	135:15	89:15	209:7	167:15
90:14	walks 69:2	119:12	Watson/L...	we'll 25:12
136:7,11	wall 15:13	121:6	207:25	64:15
230:17,20	want 5:25	125:7	way 5:22	88:20,20
235:9	6:18 23:7	135:9,13	16:9 24:3	122:16
VIDEOGRA...	23:10 39:8	189:19	28:25 36:2	126:19
4:3,25	45:3 50:5	193:24	36:15	171:22
50:9,13	50:6,16	194:9,13	39:19	211:10
90:17	52:6 58:6	212:3	40:18	we're 16:5
235:9	63:22	214:7,10	41:24	23:1 26:3
view 74:16	66:16,23	217:18	50:25	42:2 50:13
97:19,22	69:25 83:9	219:16	53:19	53:2,21
110:10	84:19	222:7	64:12,13	59:6 65:2
161:17	87:13	wanting 69:7	64:18 66:1	70:1,1
209:11	88:10 89:8	Warde 193:9	68:12 75:7	72:11
viewed	90:10 91:1	warehouse	76:21 77:5	80:23
213:23	91:2 96:9	23:24 24:5	78:19,23	90:17,22
violated	116:13	24:8,9,14	84:20	91:2 96:7
192:4	122:15	93:24	86:10	106:1
violation	128:18	94:18	89:15 98:7	110:25
226:21	133:2	116:10	99:18	118:15,15
violence	134:9	119:10,24	102:10,14	124:9,10
232:22	135:11	120:1,3	105:19	129:5
233:5	136:4,17	138:21	107:4,22	131:4
Visa 183:5	141:22	warehousing	114:2	135:14
183:20	146:8	29:21 77:3	115:11	136:13
vociferous	151:17	warm 63:11	116:18	144:3,21
232:2	154:14	wasn't 67:10	118:18,22	148:19
volume 21:11	159:9	79:4 86:23	119:21,23	154:15

155:17	8:15,22	103:21	Woodward	30:14
156:11	9:2 14:9	Westwood	1:15 2:9	35:25
158:15	14:16	232:1	2:14 4:5	51:18 52:1
165:22	15:10,13	wet 234:3	woodwork	52:2,21
170:7	15:14 20:2	Whitt 33:15	168:10	63:15
172:10	20:3,6,21	wife 32:20	word 10:12	68:17
188:20	30:19,19	32:25	107:17	90:22
189:17,17	30:23	33:12,16	193:6	141:5
197:21	39:13	wife's 25:20	195:3	160:3
203:21	46:22,24	win 75:23	words 128:14	163:13
204:21	46:25 58:5	Wings 13:9	210:11	167:25
207:9,23	58:6,21	winning	work 8:4,7,7	177:17
210:24	75:4 78:2	78:22	54:22	202:20,21
211:22	80:7 89:16	118:8	56:22 67:7	209:21
215:2,16	94:18	wire 176:19	85:25	225:25
215:22	125:12,19	177:2,4,13	124:7,13	write 37:10
224:3	126:22	177:24	161:5	199:7
230:20	130:22	178:3,6,9	163:9	writing
232:6	140:9	178:16,18	211:2,11	46:15
we've 32:10	150:5	179:1,2	230:3	130:24
50:6 64:15	155:2	wires 159:7	worked 8:14	131:3,5,13
64:16	168:22	180:18	8:14,17,23	199:11
85:14,14	169:22,24	wiring	9:3 23:23	218:1,5
96:24	170:5,5	180:18	24:3,4,8,9	written
151:9	171:8	withhold...	28:20 77:3	26:17 32:5
197:22	173:9,14	129:17	107:4	37:23
203:9	173:17	witness 3:2	125:15	45:22,24
213:23	174:5	4:20 11:25	130:1	46:7 92:23
web 67:6,7	175:3	12:3,5,7	160:23	108:10
website	176:1	12:21	163:10	151:20
29:20	179:1,2	70:17,24	working 8:10	160:7
31:21 32:5	191:4	81:12,18	115:16	wrong 25:5
49:9,10,13	192:11,16	81:22	132:1	59:25
49:18	192:21	90:13 96:4	207:22	118:19,19
week 127:17	207:17	106:24	212:10	143:15
131:20	215:11	107:1,4	works 123:3	228:21
219:14,18	218:25	136:15	136:6	wrote 30:20
weekend	222:22	154:2	world 9:3	46:17
129:5,6	223:3	179:25	67:11 85:6	158:5
weekends	234:17,18	180:5	118:8	
104:9	weren't	187:20	163:15	X
weeks 100:7	55:23	192:2,6,10	worse 77:17	X 3:6 5:7
103:10	76:11	192:16	worst 193:17	51:23
118:2,2	82:22	196:17	232:19	165:1,2,6
weighted	125:4	213:3,7	worth 109:12	168:18
76:1	146:2	225:20,24	116:22,24	178:7
Weiner 1:14	West 91:14	235:5	117:7,15	218:24
2:8	91:25 92:1	WOLFSON 2:3	209:13	
went 8:3,7	93:3 99:21	won 58:20	wouldn't	Y

<p>Y 51:24 165:1, 2, 7 Y-N-A-P 186:24 yeah 19:16 20:23 23:9 23:17 32:6 36:17 39:7 42:21 44:4 44:8 46:2 50:8, 22 55:14 58:16 59:7 59:17 60:9 61:24 63:21, 25 65:1 70:17 70:17 84:15 89:8 90:11 96:7 97:16 113:6 115:16 116:3 117:9 121:7 123:20 126:18 127:4 128:13, 15 129:16 130:6 133:3 135:6 136:6 137:8 140:15 142:14 144:23 146:13 147:15 152:22 153:1, 4, 13 158:9 160:9 165:5 168:1, 15 169:17 175:21</p>	<p>187:20 190:1 192:2, 6 195:8 197:15 198:13 199:20 202:1, 10 202:23 203:2, 14 207:11 215:12, 12 220:2, 6, 14 223:14, 18 224:18, 24 229:8 year 4:6 9:16 13:18 13:21, 24 14:6, 15 18:16 19:21 20:5 24:9, 19 25:14 27:2 27:9 29:5 30:2 31:9 35:14, 14 35:15 44:11, 12 47:22 50:18, 20 51:13, 20 52:2 55:4 57:7 58:20 60:1, 8 61:13 62:4 65:14 83:18 97:14 98:21, 25 99:1, 2, 2, 3 103:4 110:16, 21 114:19 115:25, 25 118:5, 6, 7 118:18 124:22 141:19, 21</p>	<p>147:6, 7, 17 147:20, 20 147:22 148:7 155:8 162:17, 17 162:18, 19 177:20 195:5 197:3, 9, 9 197:10, 19 197:21 202:14 203:6 217:12 220:22 221:24 year-end 34:18 years 8:16 13:12 23:3 47:10 57:10 72:2 73:2 75:9 83:18, 18 83:19 103:7 104:23 113:19 114:17 118:7 124:15 140:2, 4 158:11 188:13 194:7, 17 194:22 197:23 202:5 209:14 222:11 years' 109:12 yelling 165:17 166:5 167:8 169:13 171:1, 2, 3</p>	<p>172:12 173:3 175:17 176:25 177:21 178:19 184:18 yep 16:20 26:7 28:4 39:9 57:13 58:18 59:5 66:23 67:1 81:22 87:1 94:21 121:22 127:19 134:24 139:11 144:7 150:1, 3 153:7, 10 157:25 183:1, 7 185:25 200:5 201:23 207:2, 6, 8 222:14 228:16 235:8 YNAP 186:23 York 187:25 191:6 Yost 105:10 105:13 young 8:5, 6 Ypsilanti 93:22 <hr/>Z<hr/>zero 109:11 109:13 139:24 149:22, 25 150:2, 12 174:12, 23 175:6, 14 175:19 176:6</p>	<p>zero-bal... 175:25 Zoom 208:2 <hr/>0<hr/>0 74:15 124:4 06 217:14 09 227:11 <hr/>1<hr/>1 3:7 18:10 18:19 23:6 29:23 44:2 57:14 113:11 178:7 190:7 203:14 204:4 215:19 216:2 217:8 1,000 36:4 163:8 1,006,432 41:16 1,306,160 108:22 1,617,470 40:3 1.0 203:5 1.15 130:2 1.6 65:2 146:17 1.929 197:14 1.a 211:20 1:27 136:10 1:27:03 136:12 10 3:16 8:3 137:3 205:21, 22 205:24 207:10 208:11 209:25 210:1 211:23 217:11</p>
---	--	---	---	---

10-26-2029 236:25	76:7	149:21	13:19 14:9	151:4
10,000 38:18	12/21/2023 185:8	150:4	205:19	153:5,12
117:1	12/31/2020 197:3,6	175:1	1998 6:14	202:17
128:24	12:29 136:8	160 70:4	1st 200:10	226:7
177:4	136:9	160,000 69:16	<hr/> 2 <hr/>	20,000 117:9
178:5,6	12th 65:16	163:13	2 3:8 33:20	2000 103:4
10,000,000 202:18	66:17,18	161,000 71:10	33:21 34:2	2003 81:9,10
10:10 50:11	13 63:14	161,488 68:21,24	42:22,23	81:11
10:10:55 50:10	206:14	166 26:10	68:17	2004 5:5
10:17 50:12	1328 97:3	27:11,21	74:20	13:19,20
10:17:20 50:14	1336 91:3,14	28:1	80:10	81:9
10:29:21 136:7	91:21 93:1	166,000 27:7	103:21	2006 225:4,7
100 1:15	103:15,18	166,153 25:17	106:10	227:12,15
2:14 4:5	103:21,24	17 140:20	149:9	2008 102:3
81:4 137:6	13th 211:14	170,500 188:3	155:25	226:21
137:7	14 8:7 63:14	190:2	156:4,6,7	227:6,13
175:3	217:14	1700 159:13	174:16,16	2009 9:6
209:3	14,701,020 198:3	18 3:7	178:7	13:24 14:8
230:10	142 3:11	217:11	211:10	102:3,4
100-percent 73:16	15 8:7 63:15	182 3:14	213:13	208:18
100,000 163:7	76:22	19 9:6	215:20	224:22
10th 31:1	117:9	190 24:24	2-0-2-3 81:13	226:10
11 8:3 47:3	125:24	193 3:15	2-0-2-4 81:13	227:15,19
65:15	128:16,17	196 24:24	2-1-3 64:2	2010 14:18
104:21,25	128:21,23	26:8,10	2-1-5-0-... 140:1	208:18
134:15	129:1,23	27:22	2,000,000 23:4 82:1	213:24
205:15	132:21	196,000 25:15	2,133.96 187:15	2012 95:7
211:5	133:9	1970 6:20	2.15 140:1	2013 27:4,5
11,500 128:25	138:5	7:9,15	144:1,14	27:8,11,12
11.6 65:5	149:25	1976 6:24	2.150 140:19	33:3 35:9
11:15 90:15	150 45:11	7:12,13,17	144:20	35:14
11:15:40 90:14	230:11	7:19,25	2.371 146:22	36:18 40:3
11:25 90:16	150,000 27:9	8:3 24:3	2.5 139:16	41:17
11:25:51 90:18	44:5,8	139:4	140:13	58:24
111 3:10	45:25 46:5	147:20	20 59:3 76:9	59:15,24
11th 211:6	46:17 47:4	1980 57:10	76:9,22,23	94:15,25
12 14:17	163:7,12	1982 9:23	81:19	95:8
156:6	151 33:22	102:12,15	102:2	106:17
12,000,000	151,000 163:12	1984 9:16	129:25	108:18
	152,000 163:12	1990 13:1	130:2,21	139:8
	155 3:12	1992 6:15	137:4	194:22
	158 3:13	9:10,17,20	144:17	194:22
	16 8:7 63:15	10:7 13:18	150:6	221:17
	82:25			226:7,10
				227:18,19
				228:13
				229:13
				2014 33:1
				57:10,12

94:19, 19	72:22, 22	188:3	206:14	49:22, 25
140:24	78:16	194:6, 13	207:7, 10	68:18
228:11	81:19	195:8, 17	211:5	178:7
2015 63:14	142:5, 7, 8	198:1	217:24	190:9
140:25	142:11	200:24	228:13	203:24
2016 140:20	149:6	202:2, 8, 15	229:13	206:5
140:25	159:10	203:7	236:15	216:2
2017 44:2, 12	161:15	221:22	2025 1:14	3,850,93...
44:20	196:4	2024 10:9, 11	4:1, 6	199:1
96:13	197:9, 13	10:11, 14	236:8	3.116 39:24
98:17, 22	221:22	10:18	205 3:16	3.125 41:14
109:12	2021 68:12	27:11, 13	21 44:20	3.14 110:8
140:20	68:15	30:11, 14	183:4	3.141 80:13
144:18, 19	81:19	42:7 50:2	210 91:14, 24	3.65 34:4
2018 47:4	103:8	79:9 82:3	93:3	3.77 106:13
92:13 93:2	201:25	82:25 83:3	103:21	3.78 108:21
93:5 100:3	2022 57:19	83:4, 5, 20	213 64:2	3.8 201:7
101:14, 15	57:20 58:5	83:25 84:3	218,000 30:4	3:46 230:18
141:20, 21	58:19	94:19	30:19	3:46:20
2018/2017	115:24	96:23	22 220:22	230:17
78:7	116:2, 5, 6	100:11	23 194:11	3:58 230:19
2019 59:20	117:16, 20	106:17	236:15	3:58:41
59:21, 21	118:21, 23	108:18	236 236:6	230:21
59:24 60:2	119:1, 19	109:12	24 79:10	30 26:10
60:10	120:11	110:17	202:21	50:1 76:9
61:13, 13	121:21	112:25	206:16	120:20
61:20, 25	122:8, 9	113:5, 6	24-47922 1:6	124:15
64:6 65:2	158:21	114:7, 10	24.91 18:3	136:2
72:23	202:2	114:20, 24	19:17	152:9, 11
77:23	203:6, 15	115:16	248) 247-...	153:8, 11
81:19	220:22	116:1	2:5	153:14
96:22, 23	221:8, 22	141:12	248) 540-...	155:1, 1, 2
96:24 97:1	2023 31:2, 6	150:7	2:10	198:1
100:4	31:10 35:9	151:2	248) 835-...	200:24
101:13	35:15	152:1	2:15	30-milli...
116:15	36:18 40:4	155:20	25.03 17:20	153:2
142:22	41:17 79:8	158:21	17:22, 25	30,000 25:20
143:6, 7, 8	79:11	159:10	26 191:5, 9	26:5, 8
143:17	81:12 82:3	161:16	27 113:17	27:23
144:3, 8, 18	82:22	185:23	143:7	300,000
144:19	115:19	186:13, 16	188:3	159:11
146:11, 20	116:7, 11	186:25	275 2:4	301/303
150:6	117:3	187:14	29 10:9	101:20
151:1, 25	119:2, 9	192:15	155:20	307 95:13
2020 20:15	120:11, 11	193:10, 16	2nd 200:10	96:4
59:21	141:8, 11	195:13		309 95:14
65:10, 10	142:1, 2	198:25	3	96:4
65:13, 14	183:4	202:2, 16	3 3:9 42:3	30s 152:7
66:13	187:23, 24	202:16, 19	42:11	30th 188:2

EXHIBIT 7



000100184022006302016

COMMERCIAL GUARANTY

Borrower: M-DEN, INC. (TIN: [REDACTED])
315 S. Main St.
Ann Arbor, MI 48104

Lender: Bank of Ann Arbor
Stadium
2204 West Stadium Boulevard
Ann Arbor, MI 48103
(734) 822-1900

Guarantor: SCOTT HIRTH
11657 Calkins Rd.
Carleton, MI 48117

CONTINUING GUARANTEE OF PAYMENT AND PERFORMANCE. For good and valuable consideration, Guarantor absolutely and unconditionally guarantees full and punctual payment and satisfaction of the Indebtedness of Borrower to Lender, and the performance and discharge of all Borrower's obligations under the Note and the Related Documents. This is a guaranty of payment and performance and not of collection, so Lender can enforce this Guaranty against Guarantor even when Lender has not exhausted Lender's remedies against anyone else obligated to pay the Indebtedness or against any collateral securing the Indebtedness, this Guaranty or any other guaranty of the Indebtedness. Guarantor will make any payments to Lender or its order, on demand, in legal tender of the United States of America, in same-day funds, without set-off or deduction or counterclaim, and will otherwise perform Borrower's obligations under the Note and Related Documents. Under this Guaranty, Guarantor's liability is unlimited and Guarantor's obligations are continuing.

INDEBTEDNESS. The word "Indebtedness" as used in this Guaranty means all of the principal amount outstanding from time to time and at any one or more times, accrued unpaid interest thereon and all collection costs and legal expenses related thereto permitted by law, reasonable attorneys' fees, arising from any and all debts, liabilities and obligations of every nature or form, now existing or hereafter arising or acquired, that Borrower individually or collectively or interchangeably with others, owes or will owe Lender. "Indebtedness" includes, without limitation, loans, advances, debts, overdraft indebtedness, credit card indebtedness, lease obligations, liabilities and obligations under any interest rate protection agreements or foreign currency exchange agreements or commodity price protection agreements, other obligations, and liabilities of Borrower, and any present or future judgments against Borrower, future advances, loans or transactions that renew, extend, modify, refinance, consolidate or substitute these debts, liabilities and obligations whether; voluntarily or involuntarily incurred; due or to become due by their terms or acceleration; absolute or contingent; liquidated or unliquidated; determined or undetermined; direct or indirect; primary or secondary in nature or arising from a guaranty or surety; secured or unsecured; joint or several or joint and several; evidenced by a negotiable or non-negotiable instrument or writing; originated by Lender or another or others; barred or unenforceable against Borrower for any reason whatsoever; for any transactions that may be voidable for any reason (such as infancy, insanity, ultra vires or otherwise); and originated then reduced or extinguished and then afterwards increased or reinstated.

If Lender presently holds one or more guaranties, or hereafter receives additional guaranties from Guarantor, Lender's rights under all guaranties shall be cumulative. This Guaranty shall not (unless specifically provided below to the contrary) affect or invalidate any such other guaranties. Guarantor's liability will be Guarantor's aggregate liability under the terms of this Guaranty and any such other unexpired guaranties.

CONTINUING GUARANTY. THIS IS A "CONTINUING GUARANTY" UNDER WHICH GUARANTOR AGREES TO GUARANTEE THE FULL AND PUNCTUAL PAYMENT, PERFORMANCE AND SATISFACTION OF THE INDEBTEDNESS OF BORROWER TO LENDER, NOW EXISTING OR HEREAFTER ARISING OR ACQUIRED, ON AN OPEN AND CONTINUING BASIS. ACCORDINGLY, ANY PAYMENTS MADE ON THE INDEBTEDNESS WILL NOT DISCHARGE OR DIMINISH GUARANTOR'S OBLIGATIONS AND LIABILITY UNDER THIS GUARANTY FOR ANY REMAINING AND SUCCEEDING INDEBTEDNESS EVEN WHEN ALL OR PART OF THE OUTSTANDING INDEBTEDNESS MAY BE A ZERO BALANCE FROM TIME TO TIME.

DURATION OF GUARANTY. This Guaranty will take effect when received by Lender without the necessity of any acceptance by Lender, or any notice to Guarantor or to Borrower, and will continue in full force until all the Indebtedness incurred or contracted before receipt by Lender of any notice of revocation shall have been fully and finally paid and satisfied and all of Guarantor's other obligations under this Guaranty shall have been performed in full. If Guarantor elects to revoke this Guaranty, Guarantor may only do so in writing. Guarantor's written notice of revocation must be mailed to Lender, by certified mail, at Lender's address listed above or such other place as Lender may designate in writing. Written revocation of this Guaranty will apply only to new Indebtedness created after actual receipt by Lender of Guarantor's written revocation. For this purpose and without limitation, the term "new Indebtedness" does not include the Indebtedness which at the time of notice of revocation is contingent, unliquidated, undetermined or not due and which later becomes absolute, liquidated, determined or due. For this purpose and without limitation, "new Indebtedness" does not include all or part of the Indebtedness that is: incurred by Borrower prior to revocation; incurred under a commitment that became binding before revocation; any renewals, extensions, substitutions, and modifications of the Indebtedness. This Guaranty shall bind Guarantor's estate as to the Indebtedness created both before and after Guarantor's death or incapacity, regardless of Lender's actual notice of Guarantor's death. Subject to the foregoing, Guarantor's executor or administrator or other legal representative may terminate this Guaranty in the same manner in which Guarantor might have terminated it and with the same effect. Release of any other guaranty or termination of any other guaranty of the Indebtedness shall not affect the liability of Guarantor under this Guaranty. A revocation Lender receives from any one or more Guarantors shall not affect the liability of any remaining Guarantors under this Guaranty. It is anticipated that fluctuations may occur in the aggregate amount of the Indebtedness covered by this Guaranty, and Guarantor specifically acknowledges and agrees that reductions in the amount of the Indebtedness, even to zero dollars (\$0.00), shall not constitute a termination of this Guaranty. This Guaranty is binding upon Guarantor and Guarantor's heirs, successors and assigns so long as any of the Indebtedness remains unpaid and even though the Indebtedness may from time to time be zero dollars (\$0.00).

GUARANTOR'S AUTHORIZATION TO LENDER. Guarantor authorizes Lender, either before or after any revocation hereof, without notice or demand and without lessening Guarantor's liability under this Guaranty, from time to time: (A) prior to revocation as set forth above, to make one or more additional secured or unsecured loans to Borrower, to lease equipment or other goods to Borrower, or otherwise to extend additional credit to Borrower; (B) to alter, compromise, renew, extend, accelerate, or otherwise change one or more times the time for payment or other terms of the Indebtedness or any part of the Indebtedness, including increases and decreases of the rate of interest on the Indebtedness; extensions may be repeated and may be for longer than the original loan term; (C) to take and hold security for the payment of this Guaranty or the Indebtedness, and exchange, enforce, waive, subordinate, fail or decide not to perfect, and release any such security, with or without the substitution of new collateral; (D) to release, substitute, agree not to sue, or deal with any one or more of Borrower's sureties, endorsers, or other guarantors on any terms or in any manner Lender may choose; (E) to determine how, when and what application of payments and credits shall be made on the Indebtedness; (F) to apply such security and direct the order or manner of sale thereof, including without limitation, any nonjudicial sale permitted by the terms of the controlling security agreement or deed of trust, as Lender in its discretion may determine; (G) to sell, transfer, assign or grant participations in all or any part of the Indebtedness; and (H) to assign or transfer this Guaranty in whole or in part.

GUARANTOR'S REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants to Lender that: (A) no representations or agreements of any kind have been made to Guarantor which would limit or qualify in any way the terms of this Guaranty; (B) this Guaranty is executed at Borrower's request and not at the request of Lender; (C) Guarantor has full power, right and authority to enter into this Guaranty; (D) the provisions of this Guaranty do not conflict with or result in a default under any agreement or other instrument binding upon Guarantor and do not result in a violation of any law, regulation, court decree or order applicable to Guarantor; (E) Guarantor has not and will not, without the prior written consent of Lender, sell, lease, assign, encumber, hypothecate, transfer, or otherwise dispose of all or substantially all of Guarantor's assets, or any interest therein; (F) upon Lender's request, Guarantor will provide to Lender financial and credit information in form acceptable to Lender, and all such financial information which currently has been, and all future financial information which will be provided to Lender is and will be true and correct in all material respects and fairly present Guarantor's financial condition as of the dates the financial information is provided; (G) no material adverse change has occurred in Guarantor's financial condition since the date of the most recent financial statements provided to Lender and no event has occurred which may materially adversely affect Guarantor's financial condition; (H) no litigation, claim, investigation, administrative proceeding or similar action (including those for unpaid taxes) against Guarantor is pending or threatened; (I) Lender has made no representation to Guarantor as to the creditworthiness of Borrower; and (J) Guarantor has established adequate means of obtaining from Borrower on a continuing basis information regarding Borrower's financial condition. Guarantor agrees to keep adequately informed from such means of any facts, events, or circumstances which might in any way affect Guarantor's risks under this Guaranty, and Guarantor further agrees that, absent a request for information, Lender shall have no obligation to disclose to Guarantor any information or documents acquired by Lender in the course of its relationship with Borrower.

GUARANTOR'S FINANCIAL STATEMENTS. Guarantor agrees to furnish Lender with the following:
Annual Statements. As soon as available, but in no event later than ninety (90) days after the end of each fiscal year, Guarantor's balance sheet and income statement for the year ended, prepared by Guarantor.



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**COMMERCIAL GUARANTY
(Continued)**

Loan No: 100184

Page 2

Tax Returns. As soon as available, but in no event later than ninety (90) days after the applicable filing date for the tax reporting period ended, Guarantor's Federal and other governmental tax returns, prepared by a tax professional satisfactory to Lender.

All financial reports required to be provided under this Guaranty shall be prepared in accordance with GAAP, applied on a consistent basis, and certified by Guarantor as being true and correct.

GUARANTOR'S WAIVERS. Except as prohibited by applicable law, Guarantor waives any right to require Lender (A) to continue lending money or to extend other credit to Borrower; (B) to make any presentment, protest, demand, or notice of any kind, including notice of any nonpayment of the Indebtedness or of any nonpayment related to any collateral, or notice of any action or nonaction on the part of Borrower, Lender, any surety, endorser, or other guarantor in connection with the Indebtedness or in connection with the creation of new or additional loans or obligations; (C) to resort for payment or to proceed directly or at once against any person, including Borrower or any other guarantor; (D) to proceed directly against or exhaust any collateral held by Lender from Borrower, any other guarantor, or any other person; (E) to give notice of the terms, time, and place of any public or private sale of personal property security held by Lender from Borrower or to comply with any other applicable provisions of the Uniform Commercial Code; (F) to pursue any other remedy within Lender's power; or (G) to commit any act or omission of any kind, or at any time, with respect to any matter whatsoever.

Guarantor also waives any and all rights or defenses based on suretyship or impairment of collateral including, but not limited to, any rights or defenses arising by reason of (A) any "one action" or "anti-deficiency" law or any other law which may prevent Lender from bringing any action, including a claim for deficiency, against Guarantor, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale; (B) any election of remedies by Lender which destroys or otherwise adversely affects Guarantor's subrogation rights or Guarantor's rights to proceed against Borrower for reimbursement, including without limitation, any loss of rights Guarantor may suffer by reason of any law limiting, qualifying, or discharging the Indebtedness; (C) any disability or other defense of Borrower, of any other guarantor, or of any other person, or by reason of the cessation of Borrower's liability from any cause whatsoever, other than payment in full in legal tender, of the Indebtedness; (D) any right to claim discharge of the Indebtedness on the basis of unjustified impairment of any collateral for the Indebtedness; (E) any statute of limitations, if at any time any action or suit brought by Lender against Guarantor is commenced, there is outstanding Indebtedness which is not barred by any applicable statute of limitations; or (F) any defenses given to guarantors at law or in equity other than actual payment and performance of the Indebtedness. If payment is made by Borrower, whether voluntarily or otherwise, or by any third party, on the Indebtedness and thereafter Lender is forced to remit the amount of that payment to Borrower's trustee in bankruptcy or to any similar person under any federal or state bankruptcy law or law for the relief of debtors, the Indebtedness shall be considered unpaid for the purpose of the enforcement of this Guaranty.

Guarantor further waives and agrees not to assert or claim at any time any deductions to the amount guaranteed under this Guaranty for any claim of setoff, counterclaim, counter demand, recoupment or similar right, whether such claim, demand or right may be asserted by the Borrower, the Guarantor, or both.

GUARANTOR'S UNDERSTANDING WITH RESPECT TO WAIVERS. Guarantor warrants and agrees that each of the waivers set forth above is made with Guarantor's full knowledge of its significance and consequences and that, under the circumstances, the waivers are reasonable and not contrary to public policy or law. If any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the extent permitted by law or public policy.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Guarantor's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Guarantor holds jointly with someone else and all accounts Guarantor may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Guarantor authorizes Lender, to the extent permitted by applicable law, to hold these funds if there is a default, and Lender may apply the funds in these accounts to pay what Guarantor owes under the terms of this Guaranty.

SUBORDINATION OF BORROWER'S DEBTS TO GUARANTOR. Guarantor agrees that the Indebtedness, whether now existing or hereafter created, shall be superior to any claim that Guarantor may now have or hereafter acquire against Borrower, whether or not Borrower becomes insolvent. Guarantor hereby expressly subordinates any claim Guarantor may have against Borrower, upon any account whatsoever, to any claim that Lender may now or hereafter have against Borrower. In the event of insolvency and consequent liquidation of the assets of Borrower, through bankruptcy, by an assignment for the benefit of creditors, by voluntary liquidation, or otherwise, the assets of Borrower applicable to the payment of the claims of both Lender and Guarantor shall be paid to Lender and shall be first applied by Lender to the Indebtedness. Guarantor does hereby assign to Lender all claims which it may have or acquire against Borrower or against any assignee or trustee in bankruptcy of Borrower; provided however, that such assignment shall be effective only for the purpose of assuring to Lender full payment in legal tender of the Indebtedness. If Lender so requests, any notes or credit agreements now or hereafter evidencing any debts or obligations of Borrower to Guarantor shall be marked with a legend that the same are subject to this Guaranty and shall be delivered to Lender. Guarantor agrees, and Lender is hereby authorized, in the name of Guarantor, from time to time to file financing statements and continuation statements and to execute documents and to take such other actions as Lender deems necessary or appropriate to perfect, preserve and enforce its rights under this Guaranty.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Guaranty:

Amendments. This Guaranty, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Guaranty. No alteration of or amendment to this Guaranty shall be effective, unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Attorneys' Fees; Expenses. Guarantor agrees to pay upon demand all of Lender's costs and expenses, including Lender's reasonable attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Guaranty. Lender may hire or pay someone else to help enforce this Guaranty, and Guarantor shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's reasonable attorneys' fees and legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Guarantor also shall pay all court costs and such additional fees as may be directed by the court.

Caption Headings. Caption headings in this Guaranty are for convenience purposes only and are not to be used to interpret or define the provisions of this Guaranty.

Governing Law. This Guaranty will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Michigan without regard to its conflicts of law provisions.

Choice of Venue. If there is a lawsuit, Guarantor agrees upon Lender's request to submit to the jurisdiction of the courts of Washtenaw County, State of Michigan.

Integration. Guarantor further agrees that Guarantor has read and fully understands the terms of this Guaranty; Guarantor has had the opportunity to be advised by Guarantor's attorney with respect to this Guaranty; the Guaranty fully reflects Guarantor's intentions and parol evidence is not required to interpret the terms of this Guaranty. Guarantor hereby indemnifies and holds Lender harmless from all losses, claims, damages, and costs (including Lender's attorneys' fees) suffered or incurred by Lender as a result of any breach by Guarantor of the warranties, representations and agreements of this paragraph.

Interpretation. In all cases where there is more than one Borrower or Guarantor, then all words used in this Guaranty in the singular shall be deemed to have been used in the plural where the context and construction so require; and where there is more than one Borrower named in this Guaranty or when this Guaranty is executed by more than one Guarantor, the words "Borrower" and "Guarantor" respectively shall mean all and any one or more of them. The words "Guarantor," "Borrower," and "Lender" include the heirs, successors, assigns, and transferees of each of them. If a court finds that any provision of this Guaranty is not valid or should not be enforced, that fact by itself will not mean that the rest of this Guaranty will not be valid or enforced. Therefore, a court will enforce the rest of the provisions of this Guaranty even if a provision of this Guaranty may be found to be invalid or unenforceable. If any one or more of Borrower or Guarantor are corporations, partnerships, limited liability companies, or similar entities, it is not necessary for Lender to inquire into the powers of Borrower or Guarantor or of the officers, directors, partners, managers, or other agents acting or purporting to act on their behalf, and any indebtedness made or created in reliance upon the professed exercise of such powers shall be guaranteed under this Guaranty.

Notices. Any notice required to be given under this Guaranty shall be given in writing, and, except for revocation notices of Guarantor, shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with



000100184022006302016

COMMERCIAL GUARANTY (Continued)

Loan No: 100184

Page 3

a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Guaranty. All revocation notices by Guarantor shall be in writing and shall be effective upon delivery to Lender as provided in the section of this Guaranty entitled "DURATION OF GUARANTY."

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Guaranty unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Guaranty shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Guaranty.

Successors and Assigns. Subject to any limitations stated in this Guaranty on transfer of Guarantor's interest, this Guaranty shall be binding upon and inure to the benefit of the parties, their successors and assigns.

Waive Jury. Lender and Guarantor hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by either Lender or Guarantor against the other.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Guaranty. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Guaranty shall have the meanings attributed to such terms in the Uniform Commercial Code:

Borrower. The word "Borrower" means M-DEN, INC. and includes all co-signers and co-makers signing the Note and all their successors and assigns.

GAAP. The word "GAAP" means generally accepted accounting principles.

Guarantor. The word "Guarantor" means everyone signing this Guaranty, including without limitation SCOTT HIRTH, and in each case, any signer's successors and assigns.

Guaranty. The word "Guaranty" means this guaranty from Guarantor to Lender.

Indebtedness. The word "Indebtedness" means Borrower's indebtedness to Lender as more particularly described in this Guaranty.

Lender. The word "Lender" means Bank of Ann Arbor, its successors and assigns.

Note. The word "Note" means Change In Terms Agreement.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

EACH UNDERSIGNED GUARANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS GUARANTY AND AGREES TO ITS TERMS. IN ADDITION, EACH GUARANTOR UNDERSTANDS THAT THIS GUARANTY IS EFFECTIVE UPON GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY TO LENDER AND THAT THE GUARANTY WILL CONTINUE UNTIL TERMINATED IN THE MANNER SET FORTH IN THE SECTION TITLED "DURATION OF GUARANTY". NO FORMAL ACCEPTANCE BY LENDER IS NECESSARY TO MAKE THIS GUARANTY EFFECTIVE. THIS GUARANTY IS DATED 02-23-2017.

GUARANTOR:

x [Signature] SCOTT HIRTH

INDIVIDUAL ACKNOWLEDGMENT

STATE OF MICHIGAN)
COUNTY OF WASHTENAW) SS

On this day before me, the undersigned Notary Public, personally appeared SCOTT HIRTH, to me known to be the individual described in and who executed the Commercial Guaranty, and acknowledged that he or she signed the Guaranty as his or her free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 23rd day of FEBRUARY, 2017.

By [Signature] My commission expires

Notary Public, State of MICHIGAN, County of WASHTENAW

Acting in the County of WASHTENAW

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EXHIBIT 8

PERFORMANCE GUARANTY – ADDITIONAL GUARANTORS

This PERFORMANCE GUARANTY (this “**Guaranty**”) is being executed and delivered by each undersigned (“**Guarantor**”) in favor of Elemental Capital Inc, and its subsidiaries, affiliates, agents, and assigns (collectively, “**Buyer**”), in connection with that certain Sale of Future Receipts Agreement (the “**Agreement**”), dated effective as of 12/06/2023, by and between Buyer and M-DEN INC (“**Seller**”), a business entity that desires to sell certain of its Future Receipts to Buyer pursuant to the Agreement. Capitalized terms used herein have the meanings provided in the Agreement. Each Guarantor is a shareholder, member, partner or other principal owner of Seller or is an affiliate of Seller that is owned and controlled by a shareholder, member, partner or other principal owner of Seller. Each Guarantor executes and delivers this Guaranty to induce Buyer to enter into the Agreement and purchase Seller’s Future Receipts. Accordingly, each Guarantor acknowledges and agrees that Guarantor will receive substantial benefits from providing this Guaranty.

Personal Guaranty of Performance. Each Guarantor agrees to irrevocably, absolutely and unconditionally guarantee to Buyer prompt and complete performance of the following obligations of Seller (the “Guaranteed Obligations”):

- a. Seller’s obligation to not (i) change the Account, (ii) add an additional Account, (iii) revoke Buyer’s authorization to debit the Account, (iv) close the Account without the express written consent of Buyer or (v) take any other action with the intent to interfere with Buyer’s right to collect the purchased Future Receipts;
- b. Seller’s obligation to not conduct Seller’s businesses under any name other than as disclosed to Buyer;
- c. Seller’s obligation to not change any of its places of business without prior written consent by Buyer;
- d. Seller’s obligation to not voluntarily sell, dispose, transfer or otherwise convey its business or substantially all business assets without (i) the express prior written consent of Buyer, and (ii) the written agreement of any purchaser or transferee assuming all of Seller’s obligations under this Agreement pursuant to documentation satisfactory to Buyer;
- e. Seller’s obligation to not enter into any merchant cash advance or any loan agreement that relates to or encumbers its Future Receipts with any party other than Buyer for the duration of this Agreement without Buyer’s prior written consent; and
- f. Seller’s obligation to provide truthful, accurate, and complete information as required by this Agreement.

2. Guarantor Waivers. Buyer does not have to notify any Guarantor of any of the following events and Guarantor will not be released from its obligations under the Agreement and this Personal Guaranty of Performance if it is not notified of: (i) Seller’s failure to timely perform any obligation under the Agreement, (ii) any adverse change in Seller’s financial condition or business, (iii) Buyer’s acceptance of the Agreement, and (iv) any renewal, extension or other modification of the Agreement or Seller’s other obligations to Buyer. In addition, Buyer may take any of the following actions without releasing any Guarantor from any of its obligations under the Agreement and this Performance Guaranty: (i) renew, extend or otherwise modify the Agreement or Seller’s other obligations to Buyer, and (ii) release Seller from its obligations to Buyer. Guarantor shall not seek reimbursement from Seller or any other guarantor for any amounts paid by it under the Agreement or this Performance Guaranty. Each Guarantor permanently waives and shall not seek to exercise any of the following rights that it may have against Seller, or any other guarantor, for any amounts paid by it, or acts performed by it, under the Agreement or this Performance Guaranty: (i) subrogation, (ii) reimbursement, (iii) performance, (iv) indemnification, or (v) contribution.

3. Guarantor Acknowledgement. Each Guarantor acknowledges that they understand the seriousness of the provisions of the Agreement, including the Jury Waiver, Class Action Waiver and Arbitration sections which apply to each

Guarantor, and has had a full opportunity to consult with counsel their choice, and have consulted with counsel or have decided not to avail themselves of that opportunity.

For Individual Guarantors:

[Name]: SCOTT DAVID HIRTH OWNER (Signature) DocuSigned by:
Scott David Hirth
6B623B2ED81F48B...

[Name]: STEVEN DONALD HORNING OWNER (Signature) DocuSigned by:
Steven Donald Horning
7B3505ED2D7A4AC...

For Business Entity Guarantors:

Guarantor #1's Legal Name: BELL & HOWELL COMPANY

D/B/A: BELL & HOWELL COMPANY

Fed ID #: _____ Type of Entity: _____

Business Address: _____ City: _____ State: _____ Zip: _____

Contact Address: 11657 CALKINS RD City: CARLETON State: MI Zip: 44117

Agreed to by: Name and Title: SCOTT DAVID HIRTH OWNER Signature: DocuSigned by:
Scott David Hirth
6B623B2ED81F48B...

Agreed to by: Name and Title: STEVEN DONALD HORNING OWNER Signature: DocuSigned by:
Steven Donald Horning
7B3505ED2D7A4AC...

Guarantor #2's Legal Name: BELL HOWELL

D/B/A: BELL HOWELL

Fed ID #: _____ Type of Entity: _____

Business Address: _____ City: _____ State: _____ Zip: _____

Contact Address: 11657 CALKINS RD City: CARLETON State: MI Zip: 44117

Agreed to by: Name and Title: SCOTT DAVID HIRTH OWNER Signature: DocuSigned by:
Scott David Hirth
6B623B2ED81F48B...

Agreed to by: Name and Title: STEVEN DONALD HORNING OWNER Signature: DocuSigned by:
Steven Donald Horning
7B3505ED2D7A4AC...

Guarantor #3's Legal Name: BIGCHALK, INC

D/B/A: BIGCHALK

Fed ID #: _____ Type of Entity: INC

Business Address: _____ City: _____ State: _____ Zip: _____

Contact Address: 11657 CALKINS RD City: CARLETON State: MI Zip: 44117

Agreed to by: Name and Title: SCOTT DAVID HIRTH OWNER Signature: DocuSigned by:
Scott David Hirth
6B623B2ED81F48B...

Agreed to by: Name and Title: STEVEN DONALD HORNING OWNER Signature: DocuSigned by:
Steven Donald Horning
7B3505ED2D7A4AC...

EXHIBIT 9

SBA Loan #7157077908

Application #3304264444



U.S. Small Business Administration
UNCONDITIONAL GUARANTEE
(DISASTER LOANS)

SBA Loan #	7157077908
Application #	3304264444
Guarantor(s)	Julie Corrin, Steve Horning, Scott Hirth
Borrower	M-DEN, INC.
Date	07.02.2021
Note Amount	\$500,000.00

1. **GUARANTEE.**

Guarantor(s) unconditionally guarantee(s) payment to SBA of all amounts owing under the Note and any modifications of the Note. This Guarantee remains in effect until the Note and any modifications of the Note is paid in full. Guarantor(s) must pay all amounts due under the Note and any modifications of the Note when SBA makes written demand upon Guarantor(s). SBA is not required to seek payment from any other source before demanding payment from Guarantor(s).

2. **NOTE.**

The "Note" is the promissory note dated 06.17.2020 and any modifications thereto in the total principal amount of **five hundred thousand and 00/100 Dollars (\$500,000.00)**, from Borrower to SBA. It includes any assumption, renewal, substitution, modifications or replacement of the Note.

3. **DEFINITIONS.**

"Collateral" means property, if any, taken as security for payment of the Note and any modifications of the Note or any guarantee of the Note.

"Loan" means the loan evidenced by the Note and any modifications of the Note.

"Loan Documents" means the documents related to the Loan signed by Borrower, Guarantor(s) or any other guarantor, or anyone who pledges Collateral.

"SBA" means the Small Business Administration, an Agency of the United States of America.

SBA Loan #7157077908

Application #3304264444

4. SBA'S GENERAL POWERS.

SBA may take any of the following actions at any time, without notice, without Guarantor(s)' consent, and without making demand upon Guarantor(s):

- A. Modify the terms of the Note or any other Loan Document except to increase the amounts due under the Note and any modifications of the Note;
- B. Refrain from taking any action on the Note and any modifications of the Note, the Collateral, or any guarantee;
- C. Release any Borrower or any guarantor of the Note and any modifications of the Note;
- D. Compromise or settle with the Borrower or any guarantor of the Note and any modifications of the Note;
- E. Substitute or release any of the Collateral, whether or not SBA receives anything in return;
- F. Foreclose upon or otherwise obtain, and dispose of, any Collateral at public or private sale, with or without advertisement;
- G. Bid or buy at any sale of Collateral by SBA or any other lienholder, at any price SBA chooses; and
- H. Exercise any rights it has, including those in the Note and any modifications of the Note and other Loan Documents.

These actions will not release or reduce the obligations of Guarantor(s) or create any rights or claims against SBA.

5. FEDERAL LAW.

When SBA is the holder, the Note and any modifications of the Note and this Guarantee will be construed and enforced under federal law, including SBA regulations. SBA may use state or local procedures for filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using such procedures, SBA does not waive any federal immunity from state or local control, penalty, tax, or liability. As to this Guarantee, Guarantor(s) may not claim or assert any local or state law against SBA to deny any obligation, defeat any claim of SBA, or preempt federal law.

6. RIGHTS, NOTICES, AND DEFENSES THAT GUARANTOR(S) WAIVE(S).

To the extent permitted by law,

- I. Guarantor(s) waive(s) all rights to:
 - 1) Require presentment, protest, or demand upon Borrower;
 - 2) Redeem any Collateral before or after SBA disposes of it;
 - 3) Have any disposition of Collateral advertised; and
 - 4) Require a valuation of Collateral before or after SBA disposes of it.
- J. Guarantor(s) waive(s) any notice of:
 - 1) Any default under the Note and/or any modifications of the Note;
 - 2) Presentment, dishonor, protest, or demand;
 - 3) Execution of the Note and/or any modifications of the Note;
 - 4) Any action or inaction on the Note and/or any modifications of the Note or Collateral, such as disbursements, payment, nonpayment, acceleration, intent to accelerate, assignment, collection activity, and incurring enforcement expenses;
 - 5) Any change in the financial condition or business operations of Borrower or any guarantor(s);
 - 6) Any changes in the terms of the Note and/or any modifications of the Note or other Loan Documents, except increases in the amounts due under the Note and/or any modifications of the Note; and
 - 7) The time or place of any sale or other disposition of Collateral.
- K. Guarantor(s) waive(s) defenses based upon any claim that
 - 1) SBA failed to obtain any guarantee;
 - 2) SBA failed to obtain, perfect, or maintain a security interest in any property offered or taken as Collateral;
 - 3) SBA or others improperly valued or inspected the Collateral;
 - 4) The Collateral changed in value, or was neglected, lost, destroyed, or underinsured;

SBA Loan #7157077908

Application #3304264444

- 5) SBA impaired the Collateral;
- 6) SBA did not dispose of any of the Collateral;
- 7) SBA did not conduct a commercially reasonable sale;
- 8) SBA did not obtain the fair market value of the Collateral;
- 9) SBA did not make or perfect a claim upon the death or disability of Borrower or any guarantor of the Note;
- 10) The financial condition of Borrower or any guarantor was overstated or has adversely changed;
- 11) SBA made errors or omissions in Loan Documents or administration of the Loan;
- 12) SBA did not seek payment from the Borrower, any other guarantor(s), or any Collateral before demanding payment from Guarantor(s);
- 13) SBA impaired Guarantor(s)' suretyship rights;
- 14) SBA modified the Note terms, other than to increase amounts due under the Note and/or any modifications of the Note. If SBA modifies the Note to increase the amounts due under the Note without Guarantor(s)' consent, Guarantor(s) will not be liable for the increased amounts and related interest and expenses, but remains liable for all other amounts;
- 15) Borrower has avoided liability on the Note and/or any modifications of the Note; or
- 16) SBA has taken an action allowed under the Note and/or any modifications of the Note, this Guarantee, or other Loan Documents.

7. DUTIES AS TO COLLATERAL.

Guarantor(s) will preserve the Collateral, if any, pledged by Guarantor(s) to secure this Guarantee. SBA has no duty to preserve or dispose of any Collateral.

8. SUCCESSORS AND ASSIGNS.

Under this Guarantee, Guarantor(s) include(s) successors, and SBA includes successors and assigns.

9. GENERAL PROVISIONS.

- L. ENFORCEMENT EXPENSES. Guarantor(s) promise(s) to pay all expenses SBA incurs to enforce this Guarantee, including, but not limited to, attorney's fees and costs.
- M. SUBROGRATION RIGHT. Guarantor(s) has/have no subrogation rights as to the Note or the Collateral until the Note or any modifications of the Note is/are paid in full.
- N. JOINT AND SEVERAL LIABILITY. All individuals and entities signing as Guarantor(s) is/are jointly and severally liable.
- O. DOCUMENT SIGNING. Guarantor(s) must sign all documents necessary at any time to comply with the Loan Documents and to enable SBA to acquire, perfect, or maintain SBA's liens on Collateral.
- P. FINANCIAL STATEMENTS. Guarantor(s) must give SBA financial statements as SBA requires.
- Q. SBA'S RIGHTS CUMULATIVE, NOT WAIVED. SBA may exercise any of its rights separately or together, as many times as it chooses. SBA may delay or forgo enforcing any of its rights without losing or impairing any of them.
- R. ORAL STATEMENTS NOT BINDING. Guarantor(s) may not use an oral statement to contradict or alter the written terms of the Note and/or any modifications of the Note or this Guarantee, or to raise a defense to this Guarantee.
- S. SEVERABILITY. If any part of this Guarantee is found to be unenforceable, all other parts will remain in effect.

SBA Loan #7157077908

Application #3304264444

T. CONSIDERATION. The consideration for this Guarantee is the Loan or any accommodation by SBA as to the Loan.

10. GUARANTOR(S) ACKNOWLEDGMENT OF TERMS.

Guarantor(s) acknowledge(s) that Guarantor(s) has/have read and understands the significance of all terms of the Loan Authorization Agreement, Note and/or any modifications of the Note, this Guarantee, including all waivers, and certifies, to the best of its, his or her knowledge and belief, that the certifications and representations in the attached Certification Regarding Lobbying are true, correct and complete and are offered to induce SBA to make this Loan.

11. GUARANTOR(S) NAME(S) AND SIGNATURE(S).

By signing below, each individual or entity becomes obligated as Guarantor under this Guarantee.

GUARANTOR:

DocuSigned by:
Julie Corrin
9A69E0CF08FA404...

Julie Corrin, individually

GUARANTOR:

DocuSigned by:
Scott Hirth
547B87CC19C743B...

Scott Hirth, individually

GUARANTOR:

DocuSigned by:
Steve Horning
1B6C6E4A40E7466...

Steve Horning, individually

EXHIBIT 10



U.S. Small Business Administration
UNCONDITIONAL GUARANTEE

SBA Loan #	92554282-08
SBA Loan Name	M-Den, Inc.
Guarantor	Scott David Hirth
Borrower	M-Den, Inc.
Lender	Newtek Small Business Finance, LLC
Date	12-10-2020
Note Amount	\$4,600,000.00

1. GUARANTEE:

Guarantor unconditionally guarantees payment to Lender of all amounts owing under the Note. This Guarantee remains in effect until the Note is paid in full. Guarantor must pay all amounts due under the Note when Lender makes written demand upon Guarantor. Lender is not required to seek payment from any other source before demanding payment from Guarantor.

2. NOTE:

The "Note" is the promissory note dated 12-10-2020 in the principal amount of **Four Million Six Hundred Thousand and 00/100 Dollars (\$4,600,000.00)**, from Borrower to Lender. It includes any assumption, renewal, substitution, or replacement of the Note, and multiple notes under a line of credit.

3. DEFINITIONS:

"Collateral" means any property taken as security for payment of the Note or any guarantee of the Note.

"Loan" means the loan evidenced by the Note.

"Loan Documents" means the documents related to the Loan signed by Borrower, Guarantor or any other guarantor, or anyone who pledges Collateral.

"SBA" means the Small Business Administration, an Agency of the United States of America.

4. LENDER'S GENERAL POWERS:

Lender may take any of the following actions at any time, without notice, without Guarantor's consent, and without making demand upon Guarantor.

- A. Modify the terms of the Note or any other Loan Document except to increase the amounts due under the Note;
- B. Refrain from taking any action on the Note, the Collateral, or any guarantee;
- C. Release any Borrower or any guarantor of the Note;
- D. Compromise or settle with the Borrower or any guarantor of the Note;
- E. Substitute or release any of the Collateral, whether or not Lender receives anything in return;
- F. Foreclose upon or otherwise obtain, and dispose of, any Collateral at public or private sale, with or without advertisement;
- G. Bid or buy at any sale of Collateral by Lender or any other lienholder, at any price Lender chooses; and
- H. Exercise any rights it has, including those in the Note and other Loan Documents.

These actions will not release or reduce the obligations of Guarantor or create any rights or claims against Lender.

5. FEDERAL LAW:

When SBA is the holder, the Note and this Guarantee will be construed and enforced under federal law, including SBA regulations. Lender or SBA may use state or local procedures for filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using such procedures, SBA does not waive any federal immunity from state or local control, penalty, tax, or liability. As to this Guarantee, Guarantor may not claim or assert any local or state law against SBA to deny any obligation, defeat any claim of SBA, or preempt federal law.

6. RIGHTS, NOTICES, AND DEFENSES THAT GUARANTOR WAIVES:

To the extent permitted by law,

A. Guarantor waives all rights to:

- 1) Require presentment, protest, or demand upon Borrower;
- 2) Redeem any Collateral before or after Lender disposes of it;
- 3) Have any disposition of Collateral advertised; and
- 4) Require a valuation of Collateral before or after Lender disposes of it.

B. Guarantor waives any notice of:

- 1) Any default under the Note;
- 2) Presentment, dishonor, protest, or demand;
- 3) Execution of the Note;
- 4) Any action or inaction on the Note or Collateral, such as disbursements, payment, nonpayment, acceleration, intent to accelerate, assignment, collection activity, and incurring enforcement expenses;
- 5) Any change in the financial condition or business operations of Borrower or any guarantor;
- 6) Any changes in the terms of the Note or other Loan Documents, except increases in the amounts due under the Note; and
- 7) The time or place of any sale or other disposition of Collateral.

C. Guarantor waives defenses based upon any claim that:

- 1) Lender failed to obtain any guarantee;
- 2) Lender failed to obtain, perfect, or maintain a security interest in any property offered or taken as Collateral;
- 3) Lender or others improperly valued or inspected the Collateral;
- 4) The Collateral changed in value, or was neglected, lost, destroyed, or underinsured;
- 5) Lender impaired the Collateral;
- 6) Lender did not dispose of any of the Collateral;
- 7) Lender did not conduct a commercially reasonable sale;
- 8) Lender did not obtain the fair market value of the Collateral;
- 9) Lender did not make or perfect a claim upon the death or disability of Borrower or any guarantor of the Note;
- 10) The financial condition of Borrower or any guarantor was overstated or has adversely changed;
- 11) Lender made errors or omissions in Loan Documents or administration of the Loan;
- 12) Lender did not seek payment from the Borrower, any other guarantors, or any Collateral before demanding payment from Guarantor;
- 13) Lender impaired Guarantor's suretyship rights;
- 14) Lender modified the Note terms, other than to increase amounts due under the Note. If Lender modifies the Note to increase the amounts due under the Note without Guarantor's consent, Guarantor will not be liable for the increased amounts and related interest and expenses, but remains liable for all other amounts;
- 15) Borrower has avoided liability on the Note; or
- 16) Lender has taken an action allowed under the Note, this Guarantee, or other Loan Documents.

7. DUTIES AS TO COLLATERAL:

Guarantor will preserve the Collateral pledged by Guarantor to secure this Guarantee. Lender has no duty to preserve or dispose of any Collateral.

8. SUCCESSORS AND ASSIGNS:

Under this Guarantee, Guarantor includes heirs and successors, and Lender includes its successors and assigns.

9. GENERAL PROVISIONS:

- A. ENFORCEMENT EXPENSES. Guarantor promises to pay all expenses Lender incurs to enforce this Guarantee, including, but not limited to, attorney's fees and costs.
- B. SBA NOT A CO-GUARANTOR. Guarantor's liability will continue even if SBA pays Lender. SBA is not a co-guarantor with Guarantor. Guarantor has no right of contribution from SBA.
- C. SUBROGATION RIGHTS. Guarantor has no subrogation rights as to the Note or the Collateral until the Note is paid in full.
- D. JOINT AND SEVERAL LIABILITY. All individuals and entities signing as Guarantor are jointly and severally liable.
- E. DOCUMENT SIGNING. Guarantor must sign all documents necessary at any time to comply with the Loan Documents and to enable Lender to acquire, perfect, or maintain Lender's liens on Collateral.
- F. FINANCIAL STATEMENTS. Guarantor must give Lender financial statements as Lender requires.
- G. LENDER'S RIGHTS CUMULATIVE, NOT WAIVED. Lender may exercise any of its rights separately or together, as many times as it chooses. Lender may delay or forgo enforcing any of its rights without losing or impairing any of them.
- H. ORAL STATEMENTS NOT BINDING. Guarantor may not use an oral statement to contradict or alter the written terms of the Note or this Guarantee, or to raise a defense to this Guarantee.
- I. SEVERABILITY. If any part of this Guarantee is found to be unenforceable, all other parts will remain in effect.
- J. CONSIDERATION. The consideration for this Guarantee is the Loan or any accommodation by Lender as to the Loan.

10. STATE-SPECIFIC PROVISIONS:

NONE

11. GUARANTOR ACKNOWLEDGMENT OF TERMS.

Guarantor acknowledges that Guarantor has read and understands the significance of all terms of the Note and this Guarantee, including all waivers.

12. GUARANTOR NAME(S) AND SIGNATURE(S):

By signing below, each individual or entity becomes obligated as Guarantor under this Guarantee.

GUARANTOR:

X 

Scott David Hirth, Individually

EXHIBIT 11



BUSINESS LOAN AND SECURITY AGREEMENT

1. INTRODUCTION. This Business Loan and Security Agreement (together with the accompanying Business Loan and Security Agreement Supplement and the accompanying Authorization Agreement for Direct Deposit (ACH Credit) and Direct Payments (ACH Debits), this "Agreement") governs your business loan ("Loan") made by TVT 2.0 LLC. Please read it and keep it for your reference. In this Agreement, the words "you", "your" and "Borrower" mean the Borrower identified on the signature page of this Business Loan and Security Agreement. Each Guarantor identified on the signature page of this Business Loan and Security Agreement shall be referred to individually as "Guarantor" and collectively as "Guarantors" in this Agreement. The words "Lender", "we", "us", and "our" mean TVT 2.0 LLC or its successor(s) and assign(s).

2. EFFECTIVE DATE. This Agreement begins on the date we accept this Agreement in Utah. Borrower understands and agrees that Lender may postpone, without penalty, the disbursement of amounts to Borrower until all required security interests have been perfected and Lender has received all required personal guarantees or other documentation.

3. AUTHORIZATION. Borrower agrees that the Loan made by Lender to Borrower shall be conclusively deemed to have been authorized by Borrower and to have been made pursuant to a duly authorized request on its behalf.

4. LOAN FOR SPECIFIC PURPOSES ONLY. The proceeds of the requested Loan may solely be used for the specific purposes as set forth in the Use of Proceeds Certification contained in Section 50 below, and not for any other purposes. In addition, the Loan will not be used for personal, family or household purposes, and Borrower and Guarantors are forever estopped from taking the position that such Loan (including Advances) are or were used for such personal, family or household purposes. Borrower understands that Borrower's agreement not to use the Loan proceeds for personal, family or household purposes means that certain important duties imposed upon entities making loans for personal, family or household purposes, and certain important rights conferred upon such persons, pursuant to federal or state law will not apply to the Loan or the Agreement. Borrower also understands that Lender will be unable to confirm whether the use of the Loan conforms to this section. Borrower agrees that a breach by Borrower of the provisions of this section will not affect Lender's right to (i) enforce Borrower's promise to pay for all amounts owed under this Agreement, regardless of the purpose for which the Loan is in fact obtained or (ii) use any remedy legally available to Lender, even if that

remedy would not have been available had the Loan been made for personal, family or household purposes.

5. DISBURSEMENT OF LOAN PROCEEDS AND MAINTENANCE OF BORROWER'S BANK ACCOUNT. If Borrower applied and was approved for a Loan, Borrower's Loan will be disbursed upon approval as provided in the accompanying Authorization Agreement for Direct Deposit (ACH Credit) and Direct Payments (ACH Debits). Borrower agrees to maintain Direct Payments (ACH Debits) in its operating account which is the account that was reviewed in conjunction with underwriting and approval of this Loan (including keeping such account open until the Total Repayment Amount had been completely repaid). Borrower agrees that the Loan made by Lender to Borrower may not be returned except at Lender's sole discretion.

6. PROMISE TO PAY. Borrower agrees to pay Lender the Total Repayment Amount shown in the accompanying Business Loan and Security Agreement Supplement in accordance with the Payment Schedule shown in the accompanying Business Loan and Security Agreement Supplement. Borrower agrees to enroll in Lender's Automatic Payment Plan and authorizes Lender to collect required payments as provided in the accompanying Authorization Agreement for Direct Deposit (ACH Credit) and Direct Payments (ACH Debits). If required by Lender, Borrower further agrees and authorizes Lender or its servicer to collect required payments from a transfer account established pursuant to certain Transfer Account Loan Documentation that will be provided by Lender in connection with this Business Loan and Security Agreement if applicable.

7. ALTERNATIVE PAYMENT METHODS. If Borrower knows that for any reason Lender will be unable to process a payment under Lender's Automatic Payment Plan, then Borrower must either restore sufficient funds such that the missed payment can be collected as provided in the accompanying Authorization Agreement for Direct Deposit (ACH Credit) and Direct Payments (ACH Debits), or promptly mail or deliver a check to Lender in the amount of the missed payment or, if offered, make the missed payment by any pay-by-phone or on-line service that Lender may make available from time to time. If Borrower elects to send payments on Borrower's Account by postal mail, then Borrower agrees to send such payments to TVT 2.0 LLC to 8791 South Redwood Road, Suite 200, West Jordan, UT 84088, Attn: Customer Service. All alternative payments must be made in good funds by check, money order, wire transfer, automatic transfer from an account at an institution offering such service, or other instrument in U.S. Dollars. Borrower understands and agrees that payments made at any other address than as specified by Lender may result in a delay in processing and/or crediting.



BUSINESS LOAN AND SECURITY AGREEMENT

If Borrower makes an alternative payment on Borrower's Loan by mail or by any pay-by-phone or on-line service that Lender makes available while Borrower is enrolled in the Automatic Payment Plan, Lender may treat such payment as an additional payment and continue to process Borrower's scheduled Automatic Payment Plan payments or may reduce any scheduled Automatic Payment Plan payment by the amount of any such additional payment received.

8. APPLICATION OF PAYMENTS. Subject to applicable law, Lender reserves the right to allocate and apply payments received on Borrower's Loan between principal, interest and fees in any manner Lender chooses in Lender's sole discretion it being understood and agreed that any fees and interest will generally be paid during the earlier portion of the term.

9. POSTDATED CHECKS, RESTRICTED ENDORSEMENT CHECKS AND OTHER DISPUTED OR QUALIFIED PAYMENTS. Lender can accept late, postdated or partial payments without losing any of Lender's rights under this Agreement (a postdated check is a check dated later than the day it was actually presented for payment). Lender is under no obligation to hold a postdated check and Lender reserves the right to process every item presented as if dated the same date received by Lender or Lender's check processor unless Borrower gives Lender adequate notice and a reasonable opportunity to act on it. Except where such notice and opportunity is given, Borrower may not hold Lender liable for depositing any postdated check. **Borrower agrees not to send Lender partial payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Agreement. All notices and written communications concerning postdated checks, restricted endorsement checks (including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount) or any other disputed, nonconforming or qualified payments, must be mailed or delivered to TVT 2.0 LLC, 8791 South Redwood Road, Suite 200, West Jordan, UT 84088, Attn: Customer Service.**

10. PREPAYMENT. Borrower may prepay Borrower's Loan in whole on any Business day by paying Lender the sum total of the Total Repayment Amount, any Returned Payment Fees, and any Late Fees, in each case as described in the accompanying Business Loan and Security Agreement Supplement less (i) the amount of any Loan payments made prior to such prepayment and (ii) the product of (x) the percentage identified as the applicable Prepayment Interest Reduction Percentage in the

accompanying Business Loan and Security Agreement Supplement; and (y) the aggregate amount of unpaid interest remaining on the Borrower's Loan as of such date as determined by Lender's records in accordance with Section 8. Borrower may prepay Borrower's Loan in part on any Business day and such payment shall be applied against the Total Repayment Amount, any Returned Payment Fees, and any Late Fees, in each case as described in the accompanying Business Loan and Security Agreement Supplement.

11. SECURITY INTEREST. Borrower hereby grants to Lender, the secured party hereunder, a continuing security interest in and to any and all "Collateral" as described below to secure payment and performance of all debts, liabilities and obligations of Borrower to Lender hereunder and also any and all other debts, liabilities and obligations of Borrower to Lender of every kind and description, direct or indirect, absolute or contingent, primary or secondary, due or to become due, now existing or hereafter arising, related to the Loan described in this Agreement, whether or not contemplated by the parties at the time of the granting of this security interest, regardless of how they arise or by what agreement or instrument they may be evidenced or whether evidenced by any agreement or instrument, and includes obligations to perform acts and refrain from taking action as well as obligations to pay money including, without limitation, all interest, other fees and expenses (all hereinafter called "Obligations"). The Collateral includes the following property that Borrower (or Guarantor, if applicable, pursuant to Section 12) now owns or shall acquire or create immediately upon the acquisition or creation thereof: (i) any and all amounts owing to Borrower now or in the future from any merchant processor(s) processing charges made by customers of Borrower via credit card or debit card transactions; and (ii) all other tangible and intangible personal property, including, but not limited to (a) cash and cash equivalents, (b) inventory, accounts, security entitlements, commodity contracts and commodity accounts, (e) instruments, including promissory notes (f) chattel paper, including tangible chattel paper and electronic chattel paper, (g) documents, (h) letter of credit rights, (i) accounts, including health-care insurance receivables, (j) deposit accounts, (k) commercial tort claims, (l) general intangibles, including payment intangibles and software and (m) as-extracted collateral as such terms may from time to time be defined in the Uniform Commercial Code. The security interest Borrower (or Guarantor, if applicable, pursuant to Section 12) grants includes all accessions, attachments, accessories, parts, supplies and replacements for the Collateral, all products, proceeds and collections thereof and all records and data relating thereto. Lender disclaims any security interest in household goods



BUSINESS LOAN AND SECURITY AGREEMENT

in which Lender is forbidden by law from taking a security interest.

12. PROTECTING THE SECURITY INTEREST. Borrower agrees that Lender and/or Lender's Representative may file any financing statement, lien entry form or other document Lender and/or Lender's Representative requires in order to perfect, amend or continue Lender's security interest in the Collateral and Borrower agrees to cooperate with Lender and Lender's Representative as may be necessary to accomplish said filing and to do whatever Lender and Lender's Representative deems necessary to protect Lender's security interest in the Collateral. Borrower and Guarantor each agree that, if any Guarantor is a corporate entity, then Lender or Lender's Representative may file any financing statement, lien entry form or other document against such Guarantor or its property that Lender and/or Lender's Representative requires in order to perfect, amend or continue Lender's security interest in the Collateral. Any such Guarantor agrees to cooperate with Lender and Lender's Representative as may be necessary to accomplish said filing and to do whatever Lender or Lender's Representative deems necessary to protect Lender's security interest in the Collateral. In this Agreement, "Lender's Representative" means any entity or individual that is designated by Lender to serve in such capacity.

13. LOCATION OF COLLATERAL; TRANSACTIONS INVOLVING COLLATERAL. Unless Lender has agreed otherwise in writing, Borrower agrees and warrants that (i) all Collateral (or records of the Collateral in the case of accounts, chattel paper and general intangibles) shall be located at Borrower's address as shown in the application, (ii) except for inventory sold or accounts collected in the ordinary course of Borrower's business, Borrower shall not sell, offer to sell, or otherwise transfer or dispose of the Collateral, (iii) no one else has any interest in or claim against the Collateral that Borrower has not already told Lender about, (iv) Borrower shall not pledge, mortgage, encumber or otherwise permit the Collateral to be subject to any lien, security interest, encumbrance or charge, other than the security interest provided for in this Agreement and (v) Borrower shall not sell, offer to sell, or otherwise transfer or dispose of the Collateral for less than the fair market value thereof. Borrower shall defend Lender's rights in the Collateral against the claims and demands of all other persons. All proceeds from any unauthorized disposition of the Collateral shall be held in trust for Lender, shall not be co-mingled with any other funds and shall immediately be delivered to Lender. This requirement, however, does not constitute consent by Lender to any such disposition.

14. TAXES, ASSESSMENTS AND LIENS. Borrower will complete and file all necessary federal, state and local tax returns and will pay when due all taxes, assessments, levies

and liens upon the Collateral and provide evidence of such payments to Lender upon request.

15. INSURANCE. Borrower shall procure and maintain such insurance as Lender may require with respect to the Collateral, in form, amounts and coverage reasonably acceptable to Lender and issued by a company reasonably acceptable to Lender naming Lender as loss payee. If Borrower at any time fails to obtain or maintain any insurance as required under this Agreement, Lender may obtain such insurance as Lender deems appropriate at Borrower's sole cost and expense. Borrower shall promptly notify Lender of any loss of or damage to the Collateral.

16. REPAIRS AND MAINTENANCE. Borrower agrees to keep and maintain, and to cause others to keep and maintain, the Collateral in good order, repair and condition at all times while this Agreement remains in effect. Borrower further agrees to pay when due all claims for work done on, or services rendered or material furnished in connection with the Collateral so that no lien or encumbrance may ever attach to or be filed against the Collateral.

17. INSPECTION OF COLLATERAL AND PLACE OF BUSINESS; USE OF PHOTOGRAPHS AND TESTIMONIALS. Lender and Lender's designated representatives and agents shall have the right during Borrower's normal business hours and at any other reasonable time to examine the Collateral wherever located and the interior and exterior of any Borrower place of business. During an examination of any Borrower place of business, Lender may examine, among other things, whether Borrower (i) has a place of business that is separate from any personal residence, (ii) is open for business, (iii) has sufficient inventory to conduct Borrower's business and (iv) has one or more credit card terminals if Borrower processes credit card transactions. When performing an examination, Lender may photograph the interior and exterior of any Borrower place of business, including any signage, and may photograph any individual who has signed the Agreement ("Signatory") unless the Signatory previously has notified Lender that he or she does not authorize Lender to photograph the Signatory. Lender may obtain testimonials from any Signatory, including testimonials on why Borrower needed the Loan and how the Loan has helped Borrower. Any photograph and testimonial will become and remain the sole property of Lender. Borrower and each Signatory grant Lender the irrevocable and permanent right to display and share any photograph and testimonial in all forms and media, including composite and modified representations, for all purposes, including but not limited to any trade or commercial purpose, with any Lender employees and agents and with the general public. Lender may, but is not required to, use the name of any Borrower and Signatory as a credit in connection with any



BUSINESS LOAN AND SECURITY AGREEMENT

photograph and testimonial. Borrower and each Signatory waive the right to inspect or approve versions of any photograph or testimonial or the written copy or other media that may be used in connection with same. Borrower and each Signatory release Lender from any claims that may arise regarding the use of any photograph or testimonial, including any claims of defamation, invasion of privacy or infringement of moral rights, rights of publicity or copyright.

18. LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Collateral or if Borrower fails to comply with any provision of this Agreement or any related documents, including but not limited to Borrower's failure to discharge or pay when due any amounts Borrower is required to discharge or pay under this Agreement or any related documents, Lender on Borrower's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Collateral and paying all costs for insuring, maintaining and preserving the Collateral. To the extent permitted by applicable law, all such expenses will become a part of the Obligations and, at Lender's option, will: (i) be payable on demand; (ii) be added to the balance of the Loan and be apportioned among and be payable with any installment payments to become due during the remaining term of the Loan; or (iii) be treated as a balloon payment that will be due and payable at the Loan's maturity. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon an Event of Default.

19. BORROWER'S REPRESENTATIONS AND WARRANTIES. Borrower represents and warrants that: (i) Borrower will comply with all laws, statutes, regulations and ordinances pertaining to the conduct of Borrower's business and promises to hold Lender harmless from any damages, liabilities, costs, expenses (including attorneys' fees) or other harm arising out of any violation thereof; (ii) Borrower's principal executive office and the office where Borrower keeps its records concerning its accounts, contract rights and other property, is that shown in the application; (iii) Borrower is duly organized, licensed, validly existing and in good standing under the laws of its state of formation and shall hereafter remain in good standing in that state, and is duly qualified, licensed and in good standing in every other state in which it is doing business, and shall hereafter remain duly qualified, licensed and in good standing in every other state in which it is doing business, and shall hereafter remain duly qualified, licensed and in good standing in every other state in which the failure to qualify or become licensed could have a material adverse effect on the financial condition, business or operations of Borrower; (iv) the true and correct legal name of the Borrower is set forth in the application; (v) the

aggregate ownership percentage of the Signatories is greater than or equal to fifty percent (50%) of the Borrower's business; (vi) the execution, delivery and performance of this Agreement, and any other document executed in connection herewith, are within Borrower's powers, have been duly authorized, are not in contravention of law or the terms of Borrower's charter, by-laws or other constating documents, or of any indenture, agreement or undertaking to which Borrower is a party; (vii) all constating documents and all amendments thereto of Borrower have been duly filed and are in proper order and any capital stock issued by Borrower and outstanding was and is properly issued and all books and records of Borrower are accurate and up to date and will be so maintained; (viii) Borrower (a) is subject to no charter, corporate or other legal restriction, or any judgment, award, decree, order, governmental rule or regulation or contractual restriction that could have a material adverse effect on its financial condition, business or prospects, and (b) is in compliance with its charter, by-laws and other constating documents, all contractual requirements by which it may be bound and all applicable laws, rules and regulations other than laws, rules or regulations the validity or applicability of which it is contesting in good faith or provisions of any of the foregoing the failure to comply with which cannot reasonably be expected to materially adversely affect its financial condition, business or prospects or the value of the Collateral; (ix) there is no action, suit, proceeding or investigation pending or, to Borrower's knowledge, threatened against or affecting it or any of its assets before or by any court or other governmental authority which, if determined adversely to it, would have a material adverse effect on its financial condition, business or prospects or the value of the Collateral; (x) all information provided by Borrower and/or Guarantor as part of the application process for the Loan was true and complete; (xi) Borrower does not intend to file for reorganization or liquidation under the bankruptcy or reorganization laws of any jurisdiction within 6 months of the date hereof; and (xii) Borrower is not presently insolvent within the meaning of the Uniform Commercial Code as well as the United States Bankruptcy Code.

20. INTEREST AND FEES. Borrower agrees to pay in full the interest set forth in the accompanying Business Loan and Security Agreement Supplement. In addition to any other fees described in the Agreement, Borrower agrees to pay the following fees:

A. Origination Fee: A one-time Origination Fee in the amount set forth in the accompanying Business Loan and Security Agreement Supplement. Borrower agrees that this fee will be immediately deducted from the proceeds of Borrower's Loan.

B. Returned Payment Fee: A Returned Payment Fee in the amount set forth in the accompanying Business Loan



BUSINESS LOAN AND SECURITY AGREEMENT

and Security Agreement Supplement if any electronic payment processed on Borrower's Loan is returned unpaid or dishonored for any reason.

C. Late Fee: A Late Fee in the amount set forth in the accompanying Business Loan and Security Agreement Supplement if a scheduled payment is not received by Lender as provided in the payment schedule set forth in the accompanying Business Loan and Security Agreement Supplement.

D. Exit Fee: Upon the earlier to occur of (a) the date when full prepayment of the Loan occurs, (b) the Maturity Date or (c) the date on which the Loan has been accelerated following an Event of Default, Borrower shall pay to the Lender a fee of 3% of the original Loan Amount.

Payments made by Borrower hereunder will be applied and allocated between Loan principal, interest and fees in the manner set forth in Section 8.

21. INTEREST AND FEES EXCEEDING PERMITTED LIMIT.

If the Loan is subject to a law that sets maximum charges, and that law is finally interpreted so that the interest or other fees collected or to be collected in connection with this Agreement exceed the permitted limits, then (i) any such charge will be reduced by the amount necessary to reduce the charge to the permitted limit and (ii) if required by applicable law, any sums already collected from Borrower that exceed the permitted limits will be refunded or credited to Borrower.

22. **ONLINE CUSTOMER PORTAL.** When Borrower signs in with Borrower's valid username and password at <https://1workforce.com>, Borrower can obtain information about the Borrower's Loan, such as the outstanding balance, daily transactions and fees. No additional paper statement will be mailed to Borrower. Borrower agrees not to share Borrower's username and password to <https://1workforce.com> with any third party.

23. **FINANCIAL INFORMATION AND REEVALUATION OF CREDIT.** Borrower and each Guarantor (if any) authorize Lender to obtain business and personal credit bureau reports in Borrower's and any Guarantor's name, respectively, at any time and from time to time for purposes of deciding whether to approve the requested Loan or for any update, renewal, extension of credit or other lawful purpose. Upon Borrower's or any Guarantor's request, Lender will advise Borrower or Guarantor if Lender obtained a credit report and Lender will give Borrower or Guarantor the credit bureau's name and address. Borrower and each Guarantor (if any) agree to submit current financial information, a new credit application, or both, in Borrower's name and in the name of each Guarantor, respectively, at any time promptly upon Lender's request. Borrower authorizes Lender to act as Borrower's agent for purposes of accessing and retrieving transaction history information regarding Borrower from Borrower's

designated merchant processor(s). Lender may report Lender's credit experiences with Borrower and any Guarantor of Borrower's Loan to third parties as permitted by law, including with respect to any Guarantor to consumer credit reporting agencies. Borrower also agrees that Lender may release information to comply with governmental reporting or legal process that Lender believes may be required, whether or not such is in fact required, or when necessary or helpful in completing a transaction, or when investigating a loss or potential loss. Borrower and each Guarantor is hereby notified that a negative credit report reflecting on Borrower's and/or any Guarantor's credit record may be submitted to a credit reporting agency (including with respect to any Guarantor to consumer credit reporting agencies) if Borrower or such Guarantor fails to fulfill the terms of their respective credit obligations hereunder. Guarantor acknowledges that any credit reporting on the Loan shall be at the sole discretion of Lender (subject to applicable law) and that Lender has the right to report the Loan to Guarantor's personal credit file should Guarantor not pay any Obligation pursuant to the guaranty set forth in this Agreement.

24. **ATTORNEYS' FEES AND COLLECTION COSTS.** To the extent not prohibited by applicable law, Borrower shall pay to Lender on demand any and all expenses, including, but not limited to, collection costs, all attorneys' fees and expenses, and all other expenses of like or unlike nature which may be expended by Lender to obtain or enforce payment of Obligations either as against Borrower or any guarantor or surety of Borrower or in the prosecution or defense of any action or concerning any matter arising out of or connected with the subject matter of this Agreement, the Obligations or the Collateral or any of Lender's rights or interests therein or thereto, including, without limiting the generality of the foregoing, any counsel fees or expenses incurred in any bankruptcy or insolvency proceedings and all costs and expenses (including search fees) incurred or paid by Lender in connection with the administration, supervision, protection or realization on any security held by Lender for the debt secured hereby, whether such security was granted by Borrower or by any other person primarily or secondarily liable (with or without recourse) with respect to such debt, and all costs and expenses incurred by Lender in connection with the defense, settlement or satisfaction of any action, claim or demand asserted against Lender in connection therewith, which amounts shall be considered advances to protect Lender's security, and shall be secured hereby. To the extent permitted by applicable law, all such expenses will become a part of the Obligations and, at Lender's option, will: (i) be payable on demand; (ii) be added to the balance of the Loan and be apportioned among and be payable with any installment payments to become due during the remaining term of the Loan; or (iii) be treated as a balloon payment that will be due and payable at the Loan's maturity. Such right shall be in



BUSINESS LOAN AND SECURITY AGREEMENT

addition to all other rights and remedies to which Lender may be entitled upon an Event of Default.

25. BORROWER'S REPORTS. Promptly upon Lender's written request, Borrower and each Guarantor agrees to provide Lender with such information about the financial condition and operations of Borrower or any Guarantor, as Lender may, from time to time, reasonably request. Borrower also agrees promptly upon becoming aware of any Event of Default, or the occurrence or existence of an event which, with the passage of time or the giving of notice or both, would constitute an Event of Default hereunder, to promptly provide notice thereof to Lender in writing.

26. TELEPHONE COMMUNICATIONS. Borrower and Guarantors hereby expressly consents to receiving calls and messages, including auto-dialed and pre-recorded message calls and SMS messages (including text messages) from Lender, its affiliates, marketing partners, agents and others calling at Lender's request or on its behalf, at any telephone numbers that Borrower and/or Guarantors have provided or may provide in the future or otherwise in Lender's possession (including any cellular or mobile telephone numbers). Borrower and Guarantor agree that such communications may be initiated using an automated telephone dialing system.

27. INDEMNIFICATION. Except for Lender's gross negligence or willful misconduct, Borrower will indemnify and save Lender harmless from all losses, costs, damage, liabilities or expenses (including, without limitation, court costs and reasonable attorneys' fees) that Lender may sustain or incur by reason of defending or protecting Lender's security interest or the priority thereof or enforcing the Obligations, or in the prosecution or defense of any action or proceeding concerning any matter arising out of or in connection with this Agreement and/or any other documents now or hereafter executed in connection with this Agreement and/or the Obligations and/or the Collateral. This indemnity shall survive the repayment of the Obligations and the termination of this Agreement.

28. MERGERS, CONSOLIDATIONS OR SALES. Borrower represents and agrees that Borrower will not (i) merge or consolidate with or into any other business entity or (ii) enter into any joint venture or partnership with any person, firm or corporation.

29. CHANGE IN LEGAL STATUS. Without Lender's consent, Borrower represents and agrees that Borrower will not (i) change its name, its place of business or, if more than one, chief executive office, its mailing address, or organizational identification number if it has one, or (ii) change its type of organization, jurisdiction of organization or other legal structure. If Borrower does not have an organizational identification number and later obtains one, Borrower shall promptly notify Lender of such taxpayer identification number.

30. DEFAULT. The occurrence of any one or more of the following events (herein, "Events of Default") shall constitute, without notice or demand, a default under this Agreement and all other agreements between Lender and Borrower and instruments and papers given Lender by Borrower, whether such agreements, instruments, or papers now exist or hereafter arise: (i) Lender is unable to collect any Automatic Payment Plan payment on two consecutive dates due and/or, Borrower fails to pay any Obligations on two consecutive dates due; (ii) Borrower fails to comply with, promptly, punctually and faithfully perform or observe any term, condition or promise within this Agreement; (iii) the determination by Lender that any representation or warranty heretofore, now or hereafter made by Borrower to Lender, in any documents, instrument, agreement, application or paper was not true or accurate when given; (iv) the occurrence of any event such that any indebtedness of Borrower from any lender other than Lender could be accelerated, notwithstanding that such acceleration has not taken place; (v) the occurrence of any event that would cause a lien creditor, as that term is defined in Section 9-102 of the Uniform Commercial Code, (other than Lender) to take priority over the Loan made by Lender; (vi) a filing against or relating to Borrower (unless consented to in writing by Lender) of (a) a federal tax lien in favor of the United States of America or any political subdivision of the United States of America, or (b) a state tax lien in favor of any state of the United States of America or any political subdivision of any such state; (vii) the occurrence of any event of default under any other agreement between Lender and Borrower or instrument or paper given Lender by Borrower, whether such agreement, instrument, or paper now exists or hereafter arises (notwithstanding that Lender may not have exercised its rights upon default under any such other agreement, instrument or paper); (viii) any act by, against, or relating to Borrower, or its property or assets, which act constitutes the application for, consent to, or sufferance of the appointment of a receiver, trustee or other person, pursuant to court action or otherwise, over all, or any part of Borrower's property; (ix) the granting of any trust mortgage or execution of an assignment for the benefit of the creditors of Borrower, or the occurrence of any other voluntary or involuntary liquidation or extension of debt agreement for Borrower; (x) the failure by Borrower to generally pay the debts of Borrower as they mature; (xi) adjudication of bankruptcy or insolvency relative to Borrower; (xii) the entry of an order for relief or similar order with respect to Borrower in any proceeding pursuant to Title 11 of the United States Code entitled "Bankruptcy" (the "Bankruptcy Code") or any other federal bankruptcy law; (xiii) the filing of any complaint, application or petition by or against Borrower initiating any matter in which Borrower is or may be granted any relief from the debts of Borrower pursuant to the Bankruptcy Code or



BUSINESS LOAN AND SECURITY AGREEMENT

any other insolvency statute or procedure; (xiv) the calling or sufferance of a meeting of creditors of Borrower; (xv) the meeting by Borrower with a formal or informal creditor's committee; (xvi) the offering by or entering into by Borrower of any composition, extension or any other arrangement seeking relief or extension for the debts of Borrower, or the initiation of any other judicial or non-judicial proceeding or agreement by, against or including Borrower that seeks or intends to accomplish a reorganization or arrangement with creditors; (xvii) the entry of any judgment against Borrower, which judgment is not satisfied or appealed from (with execution or similar process stayed) within 15 days of its entry; (xviii) the occurrence of any event or circumstance with respect to Borrower such that Lender shall believe in good faith that the prospect of payment of all or any part of the Obligations or the performance by Borrower under this Agreement or any other agreement between Lender and Borrower is impaired or there shall occur any material adverse change in the business or financial condition of Borrower (such event specifically includes, but is not limited to, taking additional financing from a credit card advance, cash advance company or an additional working capital loan without the prior written consent of Lender); (xix) the entry of any court order that enjoins, restrains or in any way prevents Borrower from conducting all or any part of its business affairs in the ordinary course of business; (xx) the occurrence of any uninsured loss, theft, damage or destruction to any material asset(s) of Borrower; (xxi) any act by or against, or relating to Borrower or its assets pursuant to which any creditor of Borrower seeks to reclaim or repossess or reclaims or repossesses all or a portion of Borrower's assets; (xxii) the termination of existence, dissolution or liquidation of Borrower or the ceasing to carry on actively any substantial part of Borrower's current business; (xxiii) this Agreement shall, at any time after its execution and delivery and for any reason, cease to be in full force and effect or shall be declared null and void, or the validity or enforceability hereof shall be contested by Borrower or any guarantor of Borrower denies it has any further liability or obligation hereunder; (xxiv) any guarantor or person signing a support agreement in favor of Lender shall repudiate, purport to revoke or fail to perform his or her obligations under his guaranty or support agreement in favor of Lender or any corporate guarantor shall cease to exist; (xxv) any material change occurs in Borrower's ownership or organizational structure (acknowledging that any change in ownership will be deemed material when ownership is closely held); (xxvi) if Borrower is a sole proprietorship, the owner dies; if Borrower is a trust, a trustor dies; if Borrower is a partnership, any general or managing partner dies; if Borrower is a corporation, any principal officer or 10% or greater shareholder dies; if Borrower is a limited liability company, any managing

member dies; if Borrower is any other form of business entity, any person(s) directly or indirectly controlling 10% or more of the ownership interests of such entity dies.

31. RIGHTS AND REMEDIES UPON DEFAULT. Subject to applicable law, if an Event of Default occurs under this Agreement, at any time thereafter, Lender may exercise any one or more of the following rights and remedies:

A. Refrain from Disbursing Loan Proceeds: Lender may refrain from disbursing Borrower's Loan proceeds to Borrower's Designated Checking Account.

B. Debit Amounts Due From Borrower's Accounts: Lender may debit from Borrower's Designated Checking Account all Automatic Payment Plan payments that Lender was unable to collect and/or the amount of any other Obligations that Borrower failed to pay.

C. Accelerate Indebtedness: Lender may declare the entire Obligations immediately due and payable, without notice to Borrower, as set forth in Section 51.

D. Assemble Collateral: Lender may require Borrower and/or Guarantor to deliver to Lender all or any portion of the Collateral and any and all certificates of title and other documents relating to the Collateral. Lender may require Borrower and/or Guarantor to assemble the Collateral and make it available to Lender at a place to be designated by Lender. Lender also shall have full power to enter, provided Lender does so without a breach of the peace or a trespass, upon the property of Borrower and/or Guarantor to take possession of and remove the Collateral. If the Collateral contains other goods not covered by this Agreement at the time of repossession, Borrower and/or Guarantor agrees Lender may take such other goods, provided that Lender makes reasonable efforts to return them to Borrower and/or Guarantor after repossession.

E. Sell the Collateral: Lender shall have full power to sell, lease, transfer, or otherwise deal with the Collateral or proceeds thereof in Lender's own name or that of Borrower and/or Guarantor. Lender may sell the Collateral at public auction or private sale. Unless the Collateral threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender will give Borrower, Guarantor and other persons as required by law, reasonable notice of the time and place of any public sale, or the time after which any private sale or any other disposition of the Collateral is to be made. However, no notice need be provided to any person who, after an Event of Default occurs, enters into and authenticates an agreement waiving that person's right to notification of sale. The requirements of reasonable notice shall be met if such notice is given at least 10 days before the time of the sale or disposition. All expenses relating to the disposition of the Collateral, including without limitation the



BUSINESS LOAN AND SECURITY AGREEMENT

expenses of retaking, holding, insuring, preparing for sale and selling the Collateral, shall become a part of the Obligations secured by this Agreement. To the extent permitted by applicable law, all such expenses will become a part of the Obligations and, at Lender's option, will: (i) be payable on demand; (ii) be added to the balance of the Loan and be apportioned among and be payable with any installment payments to become due during either (a) the term of any applicable insurance policy or (b) the remaining term of the Loan; or (iii) be treated as a balloon payment that will be due and payable at the Loan's maturity.

F. Appoint Receiver: Lender shall have the right to have a receiver appointed to take possession of all or any part of the Collateral, with the power to protect and preserve the Collateral, to operate the Collateral preceding foreclosure or sale, and to collect the rents from the Collateral and apply the proceeds, over and above the cost of the receivership, against the Obligations. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Collateral exceeds the Obligations by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

G. Collect Revenues, Apply Accounts: Lender, either itself or through a receiver, may collect the payments, rents, income, and revenues from the Collateral. Lender may at any time in Lender's discretion transfer any Collateral into Lender's own name or that of Lender's nominee and receive the payments, rents, income and revenues therefrom and hold the same as security for the Obligations or apply it to payment of the Obligations in such order of preference as Lender may determine. Insofar as the Collateral consists of accounts, general intangibles, insurance policies, instruments, chattel paper, choses in action, or similar property, Lender may demand, collect, receipt for, settle, compromise, adjust, sue for, foreclose or realize on the Collateral as Lender may determine, whether or not any amount included within the Obligations is then due. For these purposes, Lender may, on behalf of and in the name of Borrower and/or Guarantor, receive, open and dispose of mail addressed to Borrower; change any address to which mail and payments are to be sent; and endorse notes, checks, drafts, money orders, documents of title, instruments and items pertaining to payment, shipment or storage of any Collateral. To facilitate collections, Lender may notify account debtors and obligors on any Collateral to make payments directly to Lender.

H. Obtain Deficiency: If Lender chooses to sell any or all of the Collateral, Lender may obtain a judgment against Borrower and/or Guarantor for any deficiency remaining

on the Obligations due to Lender after application of all amounts received from the exercise of the rights provided in this Agreement. Borrower and/or Guarantor shall be liable for a deficiency even if the transaction described in this subsection is a sale of accounts or chattel paper.

I. Other Rights and Remedies: Lender shall have all the rights and remedies of a secured creditor under the provisions of the Uniform Commercial Code, as may be amended from time to time. In addition, Lender shall have and may exercise any or all other rights and remedies it may have available at law, in equity or otherwise.

J. Election of Remedies: Except as may be prohibited by applicable law, all of Lender's rights and remedies, whether evidenced by this Agreement, any related documents, or by any other writing, shall be cumulative and may be exercised singularly or concurrently. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Borrower under the Agreement, after Borrower's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

32. CONSENT TO JURISDICTION AND VENUE. Subject to Section 33 below, Borrower, Guarantors and Lender each consent to the jurisdiction of the federal and state courts agree that any action or proceeding to enforce or arising out of this Agreement may only be brought in any court of the State of Utah or in the United States District Court for the District of Utah, and Borrower and Guarantors waive personal service of process. Borrower, Guarantors and Lender each waive any objections, including *forum non conveniens*, to the bringing of any such proceeding in such jurisdictions.

33. ARBITRATION. To the extent that a claim or dispute arises out of, or in relation to this Agreement, including without limitation, the terms, construction, interpretation, performance, termination, breach, or enforceability of this Agreement, the parties (Borrower, Guarantors and Lender) hereby agree that the claim or dispute shall be, at the election of any party within thirty (30) days after the claim or dispute arises, resolved by mandatory binding arbitration in Utah. The parties agree that the arbitration shall be administered by JAMS and the arbitration shall be conducted in accordance with the Expedited Procedures of the JAMS Comprehensive Arbitration Rules and Procedures except as otherwise agreed in this Agreement. The arbitrator shall be chosen in accordance with the procedures of JAMS, and shall base the award on applicable Utah law. The parties agree that the arbitration shall be conducted by a single arbitrator. Judgment on the award may be entered in any court having jurisdiction, subject to Section 32 above. The



BUSINESS LOAN AND SECURITY AGREEMENT

parties further agree that the costs of the arbitration shall be divided equally between them. Each party may pursue arbitration solely in an individual capacity, and not as a representative or class member in any purported class or representative proceeding. The arbitrator may not consolidate more than one person's or entity's claims, and may not otherwise preside over any form of a representative or class proceeding. This arbitration section is governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16.

34. NO WAIVER BY LENDER. No delay or omission on the part of Lender in exercising any rights under this Agreement, any related guaranty or applicable law shall operate as a waiver of such right or any other right. Waiver on any one occasion shall not be construed as a bar to or waiver of any right or remedy on any future occasion. All Lender's rights and remedies, whether evidenced hereby or by any other agreement, instrument or paper, shall be cumulative and may be exercised singularly or concurrently.

35. ASSIGNMENT. This Agreement shall bind and inure to the benefit of the respective successors and assigns of each of the parties hereto; provided, however, that Borrower may not assign this Agreement or any rights or duties hereunder without Lender's prior written consent and any prohibited assignment shall be absolutely null and void. No consent to an assignment by Lender shall release Borrower from its Obligations. Lender may assign this Agreement and its rights and duties hereunder and no consent or approval by Borrower is required in connection with any such assignment. Lender reserves the right to sell, assign, transfer, negotiate or grant participations in all or any part of, or any interest in Lender's rights and benefits hereunder. In connection with any assignment or participation, Lender may disclose all documents and information that Lender now or hereafter may have relating to Borrower or Borrower's business. To the extent that Lender assigns its rights and obligations hereunder to another party, Lender thereafter shall be released from such assigned obligations to Borrower and such assignment shall affect a novation between Borrower and such other party. TVT 2.0 LLC (in its capacity as Servicer) or a successor servicer (if any) shall, acting solely for this purpose as a non-fiduciary agent of Borrower, maintain at one of its offices in the United States a copy of each assignment agreement delivered to it with respect to this Loan and a register for the recordation of the name of each assignee of this Loan, and principal and interest amount of this Loan owing to, such assignee pursuant to the terms hereof. The entries in such register shall be conclusive, and Borrower, Lender and each such assignee may treat each person whose name is recorded therein pursuant to the terms hereof as a "Lender" hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The register maintained for this Loan shall be available for inspection by Borrower and any such assignee of this Loan,

at any reasonable time upon reasonable prior notice to TVT 2.0 LLC (in its capacity as Servicer) or the applicable successor servicer (if any). This Section 35 shall be construed so that this Loan is at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Internal Revenue Code and any related Treasury regulations (or any other relevant or successor provisions of the Internal Revenue Code or of such Treasury regulations).

36. INTERPRETATION. Paragraph and section headings used in this Agreement are for convenience only, and shall not affect the construction of this Agreement. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved against Lender or Borrower, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by all parties, having had the opportunity to consult counsel, and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties hereto.

37. SEVERABILITY. If one or more provisions of this Agreement (or the application thereof) is determined invalid, illegal or unenforceable in any respect in any jurisdiction, the same shall not invalidate or render illegal or unenforceable such provision (or its application) in any other jurisdiction or any other provision of this Agreement (or its application).

38. NOTICES. Except as otherwise provided in this Agreement, notice under this Agreement must be in writing. Notice to Lender will be deemed received by Lender at address sent forth in Section 47 by U.S. mail, postage prepaid, first class mail; in person; by registered mail; by certified mail; by nationally recognized overnight courier; or when sent by electronic mail. Notice to Borrower and/or any personal guarantor will deemed given when sent to Borrower's last known address or electronic mail address in Lender's records for this Loan.

39. RECORDKEEPING AND AUDIT REQUIREMENTS. Lender shall have no obligation to maintain any electronic records or any documents, schedules, invoices or any other paper delivered to Lender by Borrower in connection with this Agreement or any other agreement other than as required by law. Borrower will at all times keep accurate and complete records of Borrower's accounts and Collateral. At Lender's request, Borrower shall deliver to Lender: (i) schedules of accounts and general intangibles; and (ii) such other information regarding the Collateral as Lender shall request. Lender, or any of its agents, shall have the right to call any telephone numbers that Borrower has provided or may provide in the future or otherwise in the Lender's possession (including any cellular or mobile telephone numbers), at intervals to be determined by Lender, and without hindrance or delay, to inspect, audit, check, and make extracts from any



BUSINESS LOAN AND SECURITY AGREEMENT

copies of the books, records, journals, orders, receipts, correspondence that relate to Borrower's accounts and Collateral or other transactions between the parties thereto and the general financial condition of Borrower and Lender may remove any of such records temporarily for the purpose of having copies made thereof. If Borrower was referred to Lender for this Loan by a third party (the "Referring Party"), then Borrower consents to Lender sharing certain reasonable information about Borrower with the Referring Party for purposes of the Referring Party verifying and/or auditing loans made through such Referring Party's referrals.

40. GOVERNING LAW. Subject to Section 33 above, our relationship including this Agreement and any claim, dispute or controversy (whether in contract, tort, or otherwise) at any time arising from or relating to this Agreement is governed by, and this Agreement will be construed in accordance with, applicable federal law and (to the extent not preempted by federal law) Utah law without regard to internal principles of conflict of laws. The legality, enforceability and interpretation of this Agreement and the amounts contracted for, charged and reserved under this Agreement will be governed by such laws. Borrower understands and agrees that (i) Lender is located in Utah, (ii) Lender makes all credit decisions from Lender's office in Utah, (iii) the Loan is made in Utah (that is, no binding contract will be formed until Lender receives and accepts Borrower's signed Agreement in Utah) and (iv) Borrower's payments are not accepted until received by Lender in Utah. Parties agree that whenever Torah law requires, a Heter Iska should govern. Heter Iska documents are available upon request, at Business Halacha Institute 1937 Ocean Ave. Brooklyn NY 11230.

41. WAIVER OF NOTICES AND OTHER TERMS. Except for any notices provided for in this Agreement, Borrower and any person who has obligations pursuant to this Agreement (e.g., a Guarantor), to the extent not prohibited by applicable law hereby, waives demand, notice of nonpayment, notice of intention to accelerate, notice of acceleration, presentment, protest, notice of dishonor and notice of protest. To the extent permitted by applicable law, Borrower and any person who has obligations pursuant to this Agreement also agrees: Lender is not required to file suit, show diligence in collection against Borrower or any person who has obligations pursuant to this Agreement, or proceed against any Collateral; Lender may, but will not be obligated to, substitute, exchange or release any Collateral; Lender may release any Collateral, or fail to realize upon or perfect Lender's security interest in any Collateral; Lender may, but will not be obligated to, sue one or more persons without joining or suing others; and Lender may modify, renew, or extend this Agreement (repeatedly and for any length of time) without notice to or approval by any person who has obligations pursuant to this Agreement (other than the party with whom the modification, renewal or extension is made).

42. MONITORING, RECORDING AND ELECTRONIC COMMUNICATIONS. In order to ensure a high quality of service for Lender's customers, Lender may monitor and/or record telephone calls between Borrower and Lender's employees or agents. Borrower acknowledges that Lender may do so and agrees in advance to any such monitoring or recording of telephone calls. Borrower also agrees that Lender may communicate with Borrower electronically by e-mail.

43. JURY TRIAL WAIVER AND CLASS ACTION WAIVER. To the extent not prohibited by applicable law, Borrower, Guarantors and Lender waive their right to a trial by jury of any claim or cause of action based upon, arising out of or related to the Agreement and all other documentation evidencing the Obligations, in any legal action or proceeding. Subject to Section 33 above, any such claim or cause of action shall be tried by court sitting without a jury.

THE PARTIES HERETO (LENDER, BORROWER AND GUARANTORS) WAIVE ANY RIGHT TO ASSERT ANY CLAIMS AGAINST ANY OTHER PARTY AS A REPRESENTATIVE OR MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION, EXCEPT WHERE SUCH WAIVER IS PROHIBITED BY LAW OR AGAINST PUBLIC POLICY. TO THE EXTENT ANY PARTY IS PERMITTED BY LAW OR COURT OF LAW TO PROCEED WITH A CLASS OR REPRESENTATIVE ACTION AGAINST ANY OTHER, THE PARTIES HEREBY AGREE THAT: (1) THE PREVAILING PARTY SHALL NOT BE ENTITLED TO RECOVER ATTORNEYS' FEES OR COSTS ASSOCIATED WITH PURSUING THE CLASS OR REPRESENTATIVE ACTION (NOT WITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT); AND (2) THE PARTY WHO INITIATES OR PARTICIPATES AS A MEMBER OF THE CLASS WILL NOT SUBMIT A CLAIM OR OTHERWISE PARTICIPATE IN ANY RECOVERY SECURED THROUGH THE CLASS OR REPRESENTATIVE ACTION.

44. CONFIDENTIALITY. Borrower shall not make, publish or otherwise disseminate in any manner a copy of this Agreement or any public statement or description of the terms of this Agreement, except to its employees, advisors and similar persons who have a legitimate need to know its contents.

45. ENTIRE AGREEMENT. The accompanying Business Loan and Security Agreement Supplement and the Authorization Agreement for Direct Deposit (ACH Credit) and Direct Payments (ACH Debits) and any other documents required by Lender now or in the future in connection with this Agreement and Borrower's Loan are hereby incorporated into and made a part of this Agreement. This Agreement is the entire agreement of the parties with respect to the subject



BUSINESS LOAN AND SECURITY AGREEMENT

matter hereof and supersedes any prior written or verbal communications or instruments relating thereto.

46. COUNTERPARTS; ELECTRONIC SIGNATURES. This Agreement may be executed in one or more counterparts, each of which counterparts shall be deemed to be an original, and all such counterparts shall constitute one and the same instrument. For purposes of the execution of this Agreement, signatures delivered by electronic or fax transmission shall be treated in all respects as original signatures.

47. CUSTOMER SERVICE CONTACT INFORMATION. If you have questions or comments about your Loan, you may contact us by (i) e-mail at INFO@ACHCAPITAL.COM, (ii) telephone at 212 671-1781 or (iii) mail 8791 South Redwood Road, Suite 200, West Jordan, UT 84088, Attn: Customer Service.

48. GRANT OF LICENSE TO USE 1WORKFORCE PLATFORM. Subject to Borrower's compliance with this Agreement and the Terms of Use for the 1Workforce Platform, Lender grants Borrower a nonexclusive, revocable, non-transferable, non-sublicenseable, limited right and royalty-free license to use the 1Workforce Platform, effective solely during the term of the Loan and so long as an Event of Default has not occurred. The license granted to Borrower is personal, and no rights hereunder may be transferred by Borrower without the express written approval of Lender. Lender may terminate the license granted hereunder without notice at any time after an Event of Default has occurred.

49. PERSONAL GUARANTY. Each Guarantor, jointly and severally (if more than one), absolutely and unconditionally guarantee the prompt payment to Lender, including its successors and assignees, of any and all Obligations incurred by the Borrower pursuant to the Agreement (this "Personal Guaranty"). Each Guarantor further agrees to repay the Obligations on demand, without requiring Lender first to enforce payment against Borrower. This is a guarantee of payment and not of collection. This is an absolute, unconditional, primary, and continuing obligation and will remain in full force and effect until the first to occur of the following: (a) all of the Obligations have been indefeasibly paid in full, and Lender has terminated this Personal Guaranty, or (b) 30 days after the date on which written notice of revocation is actually received and accepted by Lender. No revocation will affect: (i) the then existing liabilities of the revoking Guarantor under this Personal Guaranty; (ii) Obligations created, contracted, assumed, acquired or incurred prior to the effective date of such revocation; (iii) Obligations created, contracted, assumed, acquired or incurred after the effective date of such revocation pursuant to any agreement entered into or commitment obtained prior to the effective date of such revocation; or (iv) any Obligations then or thereafter arising under the agreements or instruments then in effect and then evidencing the Obligations. Each Guarantor represents and

warrants that (i) it is a legal resident of the United States of America and (ii) neither Borrower, nor itself individually as Guarantor, intends to file for reorganization or liquidation under the bankruptcy or reorganization laws of any jurisdiction within 6 months of the date hereof. Each Guarantor waives all notices to which the Guarantor might otherwise be entitled by law, and also waives all defenses, legal or equitable, otherwise available to the Guarantor. This Personal Guaranty shall be construed in accordance with the laws of the Commonwealth of Utah, and shall inure to the benefit of Lender, its successors and assigns. To the extent not prohibited by applicable law, each of the undersigned Guarantors waives its right to a trial by jury of any claim or cause of action based upon, arising out of or related to this guaranty, the Agreement and all other documentation evidencing the Obligations, in any legal action or proceeding. Subject to Section 33 above, any such claim or cause of action shall be tried by court sitting without a jury.

50. CERTIFICATION AND SIGNATURES. By executing this Agreement or authorizing the person signing or affirming below to execute on its behalf, Borrower certifies that Borrower has received a copy of this Agreement and that Borrower has read, understood and agreed to be bound by its terms. Each person signing or affirming below certifies that each person is signing on behalf of the Borrower and/or in the capacity indicated below the signer's name (and if Borrower is a sole proprietorship, in the capacity of the owner of such sole proprietorship) and that such signer is authorized to execute this Agreement on behalf of or the in stated relation to Borrower.

Use of Proceeds Certification

As referred to in Section 4, by signing or affirming below, the Borrower certifies, acknowledges and understands that the proceeds from the requested Loan will be used solely for purchasing or acquiring specific products or services, for the following purposes only:

- specified merchandise
- insurance (but not self insurance programs)
- services or equipment
- inventory or other specified goods
- loans to finance specified sales transactions
- public works projects or educational services (e.g., training)

51. CONFESSIONS OF JUDGMENT. Borrower and Guarantor(s) shall, upon execution of this Agreement, deliver to Lender an executed Stipulation and Confession of Judgment in favor of Lender in the amount of the Total Repayment Amount of the Loan. Upon the occurrence of an Event of Default, Lender shall have the right to enter that Stipulation and Confession of Judgment with the Clerk of the Court and execute upon the Entered Judgment, amended by any payments made on the Loan.



AUTHORIZATION AGREEMENT FOR DIRECT DEPOSIT (ACH CREDIT) AND DIRECT PAYMENTS (ACH DEBITS)

This Authorization Agreement for Direct Deposit (ACH Credit) and Direct Payments (ACH Debits) is part of (and incorporated by reference into) the Business Loan and Security Agreement. Borrower should keep this important legal document for Borrower's records.

DISBURSMENT OF LOAN PROCEEDS. By executing this Authorization Agreement for Direct Deposit (ACH Credit) and Direct Payments (ACH Debits), Borrower authorizes Lender to disburse the Loan proceeds less the amount of any applicable fees upon Loan approval by initiating an ACH credit, wire transfer or similar means to the checking account indicated herein (or a substitute checking account Borrower later identifies and is acceptable to Lender) (hereinafter referred to as the "Designated Checking Account") in the disbursement amount set forth in the accompanying Business Loan and Security Agreement Supplement. This authorization is to remain in full force and effect until Lender has received written notification from Borrower of its termination in such time and in such manner as to afford Lender and Borrower's depository bank a reasonable opportunity to act on it.

AUTOMATIC PAYMENT PLAN. Enrollment in Lender's Automatic Payment Plan is required for Loan approval. By executing this Authorization Agreement for Direct Deposit (ACH Credit) and Direct Payments (ACH Debits), Borrower agrees to, and hereby, enrolls in the Automatic Payment Plan and authorizes Lender to collect payments required under the terms of Borrower's Business Loan and Security Agreement by initiating ACH debit entries to the Designated Checking Account in the amounts and on the dates provided in the payment schedule set forth in the accompanying Business Loan and Security Agreement Supplement. Borrower authorizes Lender to increase the amount of any scheduled ACH debit entry or assess multiple ACH debits for the amount of any previously scheduled payment(s) that was not paid as provided in the payment schedule and any unpaid Fees. This authorization is to remain in full force and effect until Lender has received written notification from Borrower of its termination in such time and in such manner as to afford Lender and Borrower's depository bank a reasonable opportunity to act on it. Lender may suspend or terminate Borrower's enrollment in the Automatic Payment Plan immediately if Borrower fails to keep Borrower's designated checking account in good standing or if there are insufficient funds in Borrower's checking account to process any payment (or if Lender is otherwise unable to collect any amounts by ACH debit owed to Lender under the Loan or under any other loan or extension of credit by Lender to Borrower). **If Borrower revokes the authorization or Lender suspends or terminates Borrower's enrollment in the Automatic Payment Plan, Borrower still will be responsible for making timely payments pursuant to the alternative payment methods described in the Business Loan and Security Agreement.**

Provisional Payment. Credit given by us to you with respect to an automated clearing house ("ACH") credit entry is provisional until we receive final settlement for such entry through a Federal Reserve Bank. If we do not receive such final settlement, you are hereby notified and agree that we are entitled to a refund of the amount credited to you in connection with such entry, and the party making to you via such entry (i.e. the originator of the entry) shall not be deemed to have paid you in the amount of such entry.

Notice of Receipt of Entry. Under the operating rules of the National Automated Clearing House Association, which are applicable to ACH transactions involving your account, we are not required to give next day notice to you of receipt of an ACH item and we will not do so. However, we will continue to notify you of the receipt of payments in the periodic statement we provide to you.

BUSINESS PURPOSE ACCOUNT. By executing this Authorization Agreement for Direct Deposit (ACH Credit) and Direct Payments (ACH Debits), Borrower attests that the Designated Checking Account was established for business purposes and not primarily for personal, family or household purposes.

ACCOUNT CHANGES. Borrower agrees to promptly notify Lender in writing if there are any changes to the account and routing numbers of the Designated Checking Account.

MISCELLANEOUS. Lender is not responsible for any fees charged by Borrower's bank as the result of credits or debits initiated under this agreement. The origination of ACH transactions to Borrower's account must comply with the provisions of U.S. law. Borrower agrees to be bound by NACHA rules of the Electronic Payments Association. Borrower agrees to provide to Lender at all times, "Live Contemporaneous Access" to all of its bank accounts in order for Lender to evaluate Borrower's compliance with the Agreement, and for collections in the Event of Default ("Borrower's Accounts"). "Live Contemporaneous Access" shall be defined as: Borrower, at all times and including but not limited to, providing Lender with accurate login information necessary to access all of Borrower's Accounts, such as usernames and passwords, answers to challenge questions, and security tokens. Borrower shall provide notice to Lender in the event Borrower makes any changes to the Designated Checking Account, including in the event Borrower closes the Designated Checking Account.



Signature Page

I hereby, as a duly authorized agent of Borrower, and in my individual and personal capacity as Guarantor, affirm that I have read and understand the terms and conditions of, consent to, and agree to be bound by, the Business Loan and Security Agreement (inclusive of the Guaranty therein), the accompanying Business Loan and Security Agreement Supplement, and the accompanying Authorization Agreement for Direct Deposit (ACH Credits) and Direct Payments (ACH Debits).

Guarantor #1: *Scott David Hirth* SIGN HERE
(Signature)

Borrower: By: *Scott David Hirth* SIGN HERE
(Signature)

Name: SCOTT DAVID HIRTH

Name: SCOTT DAVID HIRTH

Date: 3-23-23

Date: 3-23-23

Guarantor #2: *Steven D. Horning* SIGN HERE
(Signature)

By: *Steven D. Horning* SIGN HERE
(Signature)

Name: STEVEN DONALD HORNING

Name: STEVEN DONALD HORNING

Date: 3-23-23

Date: 3-23-23

Guarantor #3: *Julie Carol Corrin* SIGN HERE
(Signature)

By: *Julie Carol Corrin* SIGN HERE
(Signature)

Name: JULIE CAROL CORRIN

Name: JULIE CAROL CORRIN

Date: 3/23/23

Date: 3/23/23

For Lender's Use Only: This Agreement has been received and accepted by Lender in Utah after being signed by Borrower and any Guarantor(s).

By: _____
(Signature)

(Name)

Date: _____

EXHIBIT 12

GUARANTY

Personal Guaranty of Performance. The undersigned Guarantor(s) hereby guarantees to VC Merchant's good faith, truthfulness, and performance of all of the representations, warranties, covenants made by Merchant in the Merchant Agreement as each may be renewed, amended, extended or otherwise modified (the "Guaranteed Obligations"). Guarantor's obligations are due at the time of any breach by Merchant of any representation, warranty, or covenant made by Merchant in the Agreement.

Guarantor Waivers. In the event of a breach of the above, VC may seek recovery from Guarantors for all of VC's losses and damages by enforcement of VC's rights under this Agreement without first seeking to obtain payment from Merchant, any other guarantor, or any Collateral or Additional Collateral VC may hold pursuant to this Agreement or any other guaranty.

VC does not have to notify Guarantor of any of the following events and Guarantor will not be released from its obligations under this Agreement if it is not notified of: (i) Merchant's failure to pay timely any amount required under the Merchant Agreement; (ii) any adverse change in Merchant's financial condition or business; (iii) any sale or other disposition of any collateral securing the Guaranteed Obligations or any other guaranty of the Guaranteed Obligations; (iv) VC's acceptance of this Agreement; and (v) any renewal, extension or other modification of the Merchant Agreement or Merchant's other obligations to VC. In addition, VC may take any of the following actions without releasing Guarantor from any of its obligations under this Agreement: (i) renew, extend or otherwise modify the Merchant Agreement or Merchant's other obligations to VC; (ii) release Merchant from its obligations to VC; (iii) sell, release, impair, waive or otherwise fail to realize upon any collateral securing the Guaranteed Obligations or any other guaranty of the Guaranteed Obligations; and (iv) foreclose on any collateral securing the Guaranteed Obligations or any other guaranty of the Guaranteed Obligations in a manner that impairs or precludes the right of Guarantor to obtain reimbursement for payment under this Agreement. Until the Purchased Amount and Merchant's other obligations to VC under the Merchant Agreement and this Agreement are paid in full, Guarantor shall not seek reimbursement from Merchant or any other guarantor for any amounts paid by it under this Agreement. Guarantor permanently waives and shall not seek to exercise any of the following rights that it may have against Merchant, any other guarantor, or any collateral provided by Merchant or any other guarantor, for any amounts paid by it, or acts performed by it, under this Agreement: (i) subrogation; (ii) reimbursement; (iii) performance; (iv) indemnification; or (v) contribution. In the event that VC must return any amount paid by Merchant or any other guarantor of the Guaranteed Obligations because that person has become subject to a proceeding under the United States Bankruptcy Code or any similar law, Guarantor's obligations under this Agreement shall include that amount.

Guarantor Acknowledgement. Guarantor acknowledges that: (i) He/She is bound by the Class Action Waiver provision in the Merchant Agreement Terms and Conditions; (ii) He/She understands the seriousness of the provisions of this Agreement; (ii) He/She has had a full opportunity to consult with counsel of his/her choice; and (iii) He/She has consulted with counsel of its choice or has decided not to avail himself/herself of that opportunity.

Joint and Several Liability. The obligations hereunder of the persons or entities constituting Guarantor under this Agreement are joint and several.

THE TERMS, DEFINITIONS, CONDITIONS AND INFORMATION SET FORTH IN THE "MERCHANT AGREEMENT", INCLUDING THE "TERMS AND CONDITIONS", ARE HEREBY INCORPORATED IN AND MADE A PART OF THIS SECURITY AGREEMENT AND GUARANTY. CAPITALIZED TERMS NOT DEFINED IN THIS SECURITY AGREEMENT AND GUARANTY, SHALL HAVE THE MEANING SET FORTH IN THE MERCHANT AGREEMENT, INCLUDING THE TERMS AND CONDITIONS.

FOR THE MERCHANT (#1)By: SCOTT DAVID HIRTH
(Print Name and Title)
DocuSigned by:
SCOTT HIRTH
20F6E84F0A34FFD
(Signature)
SSN# _____ Driver's License Number _____

FOR THE MERCHANT (#2)By: JULIE CAROL CORRIN
(Print Name and Title)
DocuSigned by:
JULIE CORRIN
761610660DCE48B...
(Signature)
SSN# _____ Driver's License Number _____

FOR THE MERCHANT (#3)By: _____
(Print Name and Title) (Signature)
SSN# _____ Driver's License Number _____

BY OWNER (#1)By: SCOTT DAVID HIRTH
(Print Name and Title)
DocuSigned by:
SCOTT HIRTH
20F6E84F0A34FFD
(Signature)
SSN# _____ Driver's License Number _____

BY OWNER (#2)By: JULIE CAROL CORRIN
(Print Name and Title)
DocuSigned by:
JULIE CORRIN
761610660DCE48B...
(Signature)
SSN# _____ Driver's License Number _____

BY OWNER (#3)By: _____
(Print Name and Title) (Signature)

EXHIBIT 13

IV.14 **Facsimile & Digital Acceptance.** Facsimile signatures and digital signatures hereon shall be deemed acceptable for all purposes.

SECURITY AGREEMENT AND GUARANTY

Business (Merchant) Legal Name: M-Den Inc Federal Tax ID (EIN): 6 D/B/A: M-DEN
Business Address: 315 South Main Street City: Ann Arbor State: MI Zip: 48104
Additional Guarantor(s):
M DEN PROPERTIES LLC M DEN STATE STREET PROPERTIES LLC M DEN STADIUM PROPERTIES LLC

SECURITY AGREEMENT

Security Interest

This Agreement will constitute a security agreement under the Uniform Commercial Code. Merchant and Guarantor(s) grant(s) to CCP a security interest in and lien upon all of their present and future: (a) accounts (the "Accounts Collateral"), accounts receivables, chattel paper, documents, equipment, general intangibles, instruments, and inventory, as those terms are each defined in Article 9 of the Uniform Commercial Code (the "UCC"), now or hereafter owned or acquired by Merchant and/or Guarantor(s); (b) all proceeds, as that term is defined in Article 9 of the UCC; (c) funds at any time in the Merchant's and/or Guarantor(s) Account, regardless of the source of such funds; (d) present and future Electronic Check Transactions; and (e) any amount which may be due to CCP under this Agreement, including but not limited to all rights to receive any payments or credits under this Agreement (collectively, the "Secured Assets"). The security interest in Account Collateral shall be effective immediately. The Security interest in Secured Assets other than Accounts Collateral shall be effective automatically upon the occurrence of an Event of Default. Merchant agrees to provide other security to CCP upon request to secure Merchant's obligations under this Agreement. Merchant agrees that, if at any time there are insufficient funds in Merchant's Account to cover CCP's entitlements under this Agreement, CCP is granted a further security interest in all of Merchant's assets of any kind whatsoever, and such assets shall then become Secured Assets. These security interests and liens will secure all of CCP's entitlements under this Agreement and any other agreements now existing or later entered into between Merchant, CCP or an affiliate of CCP. CCP is authorized to file any and all notices or filings it deems necessary or appropriate to enforce its entitlements hereunder. This security interest may be exercised by CCP without notice or demand of any kind by making an immediate withdrawal or freezing the Secured Assets. CCP shall have the right to notify account debtors at any time. Pursuant to Article 9 of the UCC, as amended from time to time, CCP has control over and may direct the disposition of the Secured Assets, without further consent of Merchant. Merchant hereby represents and warrants that no other person or entity has a security interest in the Secured Assets. With respect to such security interests and liens, CCP will have all rights afforded under the UCC, any other applicable law and in equity. Merchant will obtain from CCP written consent prior to granting a security interest of any kind in the Secured Assets to a third party. Merchant and Guarantor(s) agree(s) that this is a contract of recoupment and CCP is not required to file a motion for relief from a bankruptcy action automatic stay to realize on any of the Secured Assets. Nevertheless, Merchant and Guarantor(s) agree(s) not to contest or object to any motion for relief from the automatic stay filed by CCP. Merchant and Guarantor(s) agree(s) to execute and deliver to CCP such instruments and documents CCP may reasonably request to perfect and confirm the lien, security interest and right of set-off set forth in this Agreement. CCP is authorized to execute all such instruments and documents in Merchant's and Guarantor(s) name. Merchant and Guarantor(s) each acknowledge and agree that any security interest granted to CCP under any other agreement between Merchant or Guarantor(s) and CCP (the "Cross-Collateral") will secure the obligations hereunder and under the Merchant Agreement. Merchant and Guarantor(s) each agrees to execute any documents or take any action in connection with this Agreement as CCP deems necessary to perfect or maintain CCP's first priority security interest in the Collateral and the Additional Collateral, including the execution of any account control agreements. Merchant and Guarantor(s) each hereby authorizes CCP to file any financing statements deemed necessary by CCP to perfect or maintain CCP's security interest. Merchant and Guarantor(s) shall be liable for, and CCP may charge and collect, all costs and expenses, including but not limited to attorney fees, which may be incurred by CCP in protecting, preserving and enforcing CCP's security interest and rights.

In the event Merchant, any of its officers or directors or any Owner/Guarantor, during the term of this agreement or while Merchant remains liable to CCP for any obligations under this agreement, directly or indirectly, including acting by, through or in conjunction with any other person, causes to be formed a new entity or otherwise becomes associated with any new or existing entity, whether corporate, partnership, limited liability company or otherwise, which operates a business similar to or competitive with that of Merchant, such entity shall be deemed to have expressly assumed the obligations due CCP under this Agreement. With respect to any such entity, CCP shall be deemed to have been granted an irrevocable power of attorney with authority to file, naming such newly formed or existing entity as debtor, an initial UCC financing Statement and to have it filed with any and all appropriate UCC filing offices. CCP shall be held harmless by Merchant and each Owner/Guarantor and be relieved of any liability as a result of any such authentication and filing of any such Financing Statement or the resulting perfection of its ownership rights or security interests in such entity's assets. CCP shall have the right to notify such entity's payors or account debtor (as defined by the UCC) of CCP's rights, including without limitation, CCP's right to collect all accounts, and to notify any payment card processor or creditor of such entity that CCP has such rights in such entity's assets. Merchant also agrees that, at the CCP's discretion, CCP may choose to amend any existing financing statement to include any such newly formed entity as debtor.

Negative Pledge

Merchant and Guarantor(s) each agrees not to create, incur, assume, or permit to exist, directly or indirectly, any lien on or with respect to any of the Collateral or the Additional Collateral, as applicable.

Remedies

Upon any Event of Default, CCP may pursue any remedy available at law (including those available under the provisions of the UCC), or in equity to collect, enforce, or satisfy any obligations then owing to CCP, whether by acceleration or otherwise.

GUARANTY OF PERFORMANCE

THE TERMS, DEFINITIONS, CONDITIONS AND INFORMATION SET FORTH IN THE "MERCHANT AGREEMENT", INCLUDING THE "TERMS AND CONDITIONS", ARE HEREBY INCORPORATED IN AND MADE A PART OF THIS SECURITY AGREEMENT AND GUARANTY. CAPITALIZED TERMS NOT DEFINED IN THIS SECURITY AGREEMENT AND GUARANTY, SHALL HAVE THE MEANING SET FORTH IN THE MERCHANT AGREEMENT, INCLUDING THE TERMS AND CONDITIONS.

As an additional inducement for CCP to enter into this Agreement, the undersigned Guarantor(s) hereby provides CCP with this Guaranty. Guarantor(s) will not be personally liable for any amount due under this Agreement unless Merchant commits an Event of Default pursuant to Paragraph 3.1 of this Agreement. Each Guarantor shall be jointly and severally liable for all amounts owed to CCP in the Event of Default. Guarantor(s) guarantee Merchant's good faith, truthfulness and performance of all of the

representations, warranties, and covenants made by Merchant in this Agreement as each may be renewed, amended, extended or otherwise modified (the "Guaranteed Obligations"). Guarantor's obligations are due at the time of any breach by Merchant of any representation, warranty, or covenant made by Merchant in the Agreement.

Guarantor Waivers. In the event of a breach of the above, CCP may seek recovery from Guarantors for all of CCP's losses and damages by enforcement of CCP's rights under this Agreement without first seeking to obtain payment from Merchant, any other guarantor, or any Collateral or Additional Collateral CCP may hold pursuant to this Agreement or any other guaranty. CCP does not have to notify Guarantor of any of the following events and Guarantor will not be released from its obligations under this Agreement if it is not notified of: (i) Merchant's failure to pay timely any amount required under the Merchant Agreement; (ii) any adverse change in Merchant's financial condition or business; (iii) any sale or other disposition of any collateral securing the Guaranteed Obligations or any other guaranty of the Guaranteed Obligations; (iv) CCP's acceptance of this Agreement; and (v) any renewal, extension or other modification of the Merchant Agreement or Merchant's other obligations to CCP. In addition, CCP may take any of the following actions without releasing Guarantor from any of its obligations under this Agreement: (i) renew, extend or otherwise modify the Merchant Agreement or Merchant's other obligations to CCP; (ii) release Merchant from its obligations to CCP; (iii) sell, release, impair, waive or otherwise fail to realize upon any collateral securing the Guaranteed Obligations or any other guaranty of the Guaranteed Obligations; and (iv) foreclose on any collateral securing the Guaranteed Obligations or any other guaranty of the Guaranteed Obligations in a manner that impairs or precludes the right of Guarantor to obtain reimbursement for payment under this Agreement. Until the Purchased Amount and Merchant's other obligations to CCP under the Merchant Agreement and this Agreement are paid in full, Guarantor shall not seek reimbursement from Merchant or any other guarantor for any amounts paid by it under this Agreement. Guarantor permanently waives and shall not seek to exercise any of the following rights that it may have against Merchant, any other guarantor, or any collateral provided by Merchant or any other guarantor, for any amounts paid by it, or acts performed by it, under this Agreement: (i) subrogation; (ii) reimbursement; (iii) performance; (iv) indemnification; or (v) contribution.

Guarantor Acknowledgement. Guarantor acknowledges that: (i) He/She is bound by the Class Action Waiver provision in the Merchant Agreement Terms and Conditions; (ii) He/She understands the seriousness of the provisions of this Agreement; (ii) He/She has had a full opportunity to consult with counsel of his/her choice; (iv) He/She has consulted with counsel of its choice or has decided not to avail himself/herself of that opportunity; and (v) He/She specifically and irrevocably consents to the terms of Section 4.06 of the Merchant and Security Agreement, namely the section entitled 4.06 Service of Process by Mail and/or Email

FOR THE MERCHANT (#1)

By: Scott David Hirth Owner
(Print Name and Title)
EIN# _____

DocuSigned by:
Scott Hirth
6862382ED01F48B... (Signature)

Driver's License _____

FOR THE MERCHANT (#2)

By: Julie Carole Corrin Owner
(Print Name and Title)
EIN# _____

DocuSigned by:
Julie Corrin
783505ED2D7AAAC... (Signature)

Driver's License _____

FOR THE GUARANTOR(S) (#1)

By: Scott David Hirth Owner
(Print Name and Title)
SSN# _____
E-Mail: shirth@mden.com
Address: _____

DocuSigned by:
Scott Hirth
6862382ED01F48B... (Signature)

Driver's License _____

FOR THE GUARANTOR(S) (#2)

By: Julie Carole Corrin Owner
(Print Name and Title)
SSN# _____
E-Mail: JULIECORR1111@MAIL.COM
Address: _____

DocuSigned by:
Julie Corrin
783505ED2D7AAAC... (Signature)

Driver's License _____

Merchant 1 Initial(s): SH Merchant 2 Initial(s): JC Guarantor 1 Initial(s): SH Guarantor 2 Initial(s): JC

EXHIBIT 14

STANDARD MERCHANT CASH ADVANCE AGREEMENT

GUARANTEE

G1. Personal Guarantee of Performance. This is a personal guaranty of performance, dated Dec. 05, 2023, of the Standard Merchant Cash Advance Agreement, dated Dec. 05, 2023 (“Agreement”), inclusive of all addenda, if any, executed simultaneously therewith, by and between FAMILY FUNDING GROUP LLC (“FFG”) and M-DEN, INC. (“Merchant”). Each undersigned Guarantor hereby guarantees each Merchant’s performance of all of the representations, warranties, and covenants made by each Merchant to FFG in the Agreement, inclusive of all addenda, if any, executed simultaneously herewith, as the Agreement may be renewed, amended, extended, or otherwise modified (the “Guaranteed Obligations”). Each Guarantor’s obligations are due at the time of any breach by any Merchant of any representation, warranty, or covenant made by any Merchant in the Agreement.

G2. Communications. FFG may use automated telephone dialing, text messaging systems, and e-mail to provide messages to Guarantor(s) about Merchant(s)’s account. Telephone messages may be played by a machine automatically when the telephone is answered, whether answered by an Owner, a Guarantor, or someone else. These messages may also be recorded by the recipient’s answering machine or voice mail. Each Guarantor gives FFG permission to call or send a text message to any telephone number given to FFG in connection with this Agreement and to play pre-recorded messages and/or send text messages with information about this Agreement and/or any Merchant’s account over the phone. Each Guarantor also gives FFG permission to communicate such information to them by e-mail. Each Guarantor agrees that FFG will not be liable to any of them for any such calls or electronic communications, even if information is communicated to an unintended recipient. Each Guarantor acknowledges that when they receive such calls or electronic communications, they may incur a charge from the company that provides them with telecommunications, wireless, and/or Internet services, and that FFG has no liability for any such charges.

G3. Guarantor Waivers. If FFG considers any Event of Default to have taken place under the Agreement, then FFG may enforce its rights under this Guarantee without first seeking to obtain payment from any Merchant, any other guarantor, or any Collateral, Additional Collateral, or Cross-Collateral FFG may hold pursuant to this Guarantee or any other agreement or guarantee. FFG does not have to notify any Guarantor of any of the following events and Guarantor(s) will not be released from its obligations under this Guarantee even if it is not notified of: (i) any Merchant’s failure to pay timely any amount owed under the Agreement; (ii) any adverse change in any Merchant’s financial condition or business; (iii) any sale or other disposition of any collateral securing the Guaranteed Obligations or any other guarantee of the Guaranteed Obligations; (iv) FFG’s acceptance of the Agreement with any Merchant; and (v) any renewal, extension, or other modification of the Agreement or any Merchant’s other obligations to FFG. In addition, FFG may take any of the following actions without releasing any Guarantor from any obligations under this Guarantee: (i) renew, extend, or otherwise modify the Agreement or any Merchant’s other obligations to FFG; (ii) if there is more than one Merchant, release a Merchant from its obligations to FFG such that at least one Merchant remains obligated to FFG; (iii) sell, release, impair, waive, or otherwise fail to realize upon any collateral securing the Guaranteed Obligations or any other guarantee of the Guaranteed Obligations; and (iv) foreclose on any collateral securing the Guaranteed Obligations or any other guarantee of the Guaranteed Obligations in a manner that impairs or precludes the right of Guarantor to obtain reimbursement for payment under the Agreement. Until the Receivables Purchased Amount and each Merchant’s other obligations to FFG under the Agreement and this Guarantee are paid in full, each Guarantor shall not seek reimbursement from any Merchant or any other guarantor for any amounts paid by it under the Agreement. Each Guarantor permanently waives and shall not seek to exercise any of the following rights that it may have against any Merchant, any other guarantor, or any collateral provided by any Merchant or any other guarantor, for any amounts paid by it or acts performed by it under this Guarantee: (i) subrogation; (ii) reimbursement; (iii) performance; (iv) indemnification; or (v) contribution.

G4. Joint and Several Liability. The obligations hereunder of the persons or entities constituting each Guarantor under this Guarantee are joint and several.

G5. Injunctive Relief. In case any Event of Default occurs and is not waived, FFG will be entitled to the issuance of an injunction, restraining order, or other equitable relief in FFG’s favor, subject to court or arbitrator approval, restraining each Guarantor’s accounts and/or receivables up to the amount due to FFG as a result of the Event of Default, and each Guarantor will be deemed to have consented to the granting of an application for the same to any court or arbitral tribunal

I have read and agree to the terms and conditions set forth above:

DocuSigned by:
SCOTT DAVID HIRTH

Name and Title: SCOTT DAVID HIRTH

Date: 12/5/2023

STANDARD MERCHANT CASH ADVANCE AGREEMENT

of competent jurisdiction without any prior notice to any Merchant or Guarantor and without FFG being required to furnish a bond or other undertaking in connection with the application.

G6. Choice of Law. Each Guarantor acknowledges and agrees that the Agreement and this Guarantee were made in the State of New York, that the Purchase Price is being paid by FFG in the State of New York, that the Receivables Purchased Amount is being delivered to FFG in the State of New York, and that the State of New York has a reasonable relationship to the transactions encompassed by the Agreement and this Guarantee. This Guarantee and the relationship between FFG, each Merchant, and each Guarantor will be governed by and construed in accordance with the laws of the State of New York, without regard to any applicable principles of conflict of laws.

G7. Forum and Venue Selection. Any litigation relating to this Agreement or this Guarantee or involving FFG on one side and any Merchant or any Guarantor on the other must be commenced and maintained in any court located in the Counties of Nassau, New York, or Sullivan in the State of New York (the "Acceptable Forums"). The parties agree that the Acceptable Forums are convenient, submit to the jurisdiction of the Acceptable Forums, and waive any and all objections to the jurisdiction or venue of the Acceptable Forums. If any litigation is initiated in any other venue or forum, the parties waive any right to oppose any motion or application made by any party to transfer such litigation to an Acceptable Forum. The parties agree that this Guarantee encompasses the transaction of business within the City of New York and that the Civil Court of the City of New York ("Civil Court") will have jurisdiction over any litigation relating to this Guarantee that is within the jurisdictional limit of the Civil Court. In addition to the Acceptable Forums, any action or proceeding to enforce a judgment or arbitration award against any Merchant or Guarantor or to restrain or collect any amount due to FFG may be commenced and maintained in any other court of competent jurisdiction.

G8. Jury Waiver. Each Guarantor agrees to waive trial by jury in any dispute with FFG.

G9. Counterclaim Waiver. In any litigation or arbitration commenced by FFG, each Merchant and each Guarantor will not be permitted to interpose any counterclaim.

G10. Statutes of Limitations. Each Merchant and each Guarantor agree that any claim that is not asserted against FFG within one year of its accrual will be time barred.

G11. Costs. Each Merchant and each Guarantor must pay all of FFG's reasonable costs associated with a breach by any Merchant of the covenants in this Agreement or this Guarantee and the enforcement thereof, including but not limited to collection agency fees, expert witness fees, and costs of suit.

G12. Prejudgment and Postjudgment Interest. If FFG becomes entitled to the entry of a judgment against any Merchant or any Guarantor, then FFG will be entitled to the recovery of prejudgment interest at a rate of 24% per annum (or 16% per annum if any Merchant is a sole proprietorship), or the maximum rate permitted by applicable law if less, and upon entry of any such judgment, it will accrue interest at a postjudgment rate of 24% per annum (or 16% per annum if any Merchant is a sole proprietorship), or the maximum rate permitted by applicable law if less, which rate will govern over the statutory rate of interest up until actual satisfaction of the judgment.

G13. Legal Fees. If FFG prevails in any litigation or arbitration with any Merchant or any Guarantor, then that Merchant and/or Guarantor must pay FFG's reasonable attorney fees, which may include a contingency fee of up to 40% of the amount claimed.

G14. Class Action Waiver. FFG, each Merchant, and each Guarantor agree that they may bring claims against each other relating to this Agreement only in their individual capacities, and not as a plaintiff or class action member in any purported class or representative proceedings.

G15. Arbitration. Any action or dispute relating to this Agreement or this Guarantee or involving FFG on one side and any Merchant or any Guarantor on the other, including, but not limited to issues of arbitrability, will, at the option of any party to such action or dispute, be determined by arbitration before a single arbitrator. The arbitration will be administered

I have read and agree to the terms and conditions set forth above:

DocuSigned by:
SCOTT DAVID HIRTH

Name and Title: SCOTT DAVID HIRTH

Date: 12/5/2023

STANDARD MERCHANT CASH ADVANCE AGREEMENT

either by Arbitration Services, Inc. under its Commercial Arbitration Rules as are in effect at that time, which rules are available at www.arbitrationservicesinc.com, or by Mediation & Commercial Arbitration, Inc. under its Commercial Arbitration Rules as are in effect at that time, which rules are available at www.mcarbitration.org. Once an arbitration is initiated with one of these arbitral forums, it must be maintained exclusively before that arbitral forum and the other arbitral forum specified herein may not be used. Any arbitration relating to this Agreement or this Guarantee must be conducted in the Counties of Nassau, New York, Queens, or Kings in the State of New York. Notwithstanding any provision of any applicable arbitration rules, any witness in an arbitration who does not reside in or have a place for the regular transaction of business located in New York City or the Counties of Nassau, Suffolk, or Westchester in the State of New York will be permitted to appear and testify remotely by telephone or video conferencing. In case any Event of Default occurs and is not waived, each Guarantor consents to FFG making an application to the arbitrator, without notice to any Merchant or any Guarantor, for the issuance of an injunction, restraining order, or other equitable relief in FFG's favor, subject to court or arbitrator approval, restraining each Guarantor's accounts and/or receivables up to the amount due to FFG as a result of the Event of Default.

Each Guarantor acknowledges and agrees that the Agreement and this Guarantee are the product of communications conducted by telephone and the Internet, which are instrumentalities of interstate commerce, that the transactions contemplated under the Agreement and this Guarantee will be made by wire transfer and ACH, which are also instrumentalities of interstate commerce, and that the Agreement and this Guarantee therefore evidence a transaction affecting interstate commerce. Accordingly, notwithstanding any provision in the Agreement or this Guarantee to the contrary, all matters of arbitration relating to the Agreement or this Guarantee will be governed by and construed in accordance with the provisions of the Federal Arbitration Act, codified as Title 9 of the United States Code, however any application for injunctive relief in aid of arbitration or to confirm an arbitration award may be made under Article 75 of the New York Civil Practice Law and Rules. The arbitration agreement contained in this Section may also be enforced by any employee, agent, attorney, member, manager, officer, subsidiary, affiliate entity, successor, or assign of FFG.

G16. Service of Process. Each Merchant and each Guarantor consent to service of process and legal notices made by First Class or Priority Mail delivered by the United States Postal Service and addressed to the Contact Address set forth on the first page of the Agreement or any other address(es) provided in writing to FFG by any Merchant or any Guarantor, and unless applicable law or rules provide otherwise, any such service will be deemed complete upon dispatch. Each Merchant and each Guarantor agrees that it will be precluded from asserting that it did not receive service of process or any other notice mailed to the Contact Address set forth on the first page of the Agreement if it does not furnish a certified mail return receipt signed by FFG demonstrating that FFG was provided with notice of a change in the Contact Address.

G17. Severability. If any provision of this Guarantee is deemed invalid or unenforceable as written, it will be construed, to the greatest extent possible, in a manner which will render it valid and enforceable, and any limitation on the scope or duration of any such provision necessary to make it valid and enforceable will be deemed to be part thereof. If any provision of this Guarantee is deemed void, all other provisions will remain in effect.

G18. Survival. The provisions of Sections G2, G3, G4, G5, G6, G7, G8, G9, G10, G11, G12, G13, G14, G15, G16, G17, G18, G19, G20, G21, and G22 shall survive any termination of this Guarantee.

G19. Headings. Headings of the various articles and/or sections of this Guarantee are for convenience only and do not necessarily define, limit, describe, or construe the contents of such articles or sections.

G20. Attorney Review. Each Guarantor acknowledges that it has had an opportunity to review this Guarantee, the Agreement, and all addenda with counsel of its choosing before signing the documents or has chosen not to avail itself of the opportunity to do so.

G21. Entire Agreement. This Guarantee, inclusive of all addenda, if any, executed simultaneously herewith may not be amended, modified, or canceled except in writing signed by all parties. Should there arise any conflict between this Guarantee and any other document preceding it, this Guarantee will govern. This Guarantee does not affect any previous agreement between the parties unless such an agreement is specifically referenced in the Agreement or herein. This Guarantee will not be affected by any subsequent agreement between the parties unless this Guarantee is specifically referenced therein.

I have read and agree to the terms and conditions set forth above:

DocuSigned by:
SCOTT DAVID HIRTH

Name and Title: SCOTT DAVID HIRTH

Date: 12/5/2023

STANDARD MERCHANT CASH ADVANCE AGREEMENT

G22. Counterparts; Fax and Electronic Signatures. This Guarantee may be executed electronically and in counterparts. Facsimile and electronic copies of this Guarantee will have the full force and effect of an original.

THE TERMS, DEFINITIONS, CONDITIONS AND INFORMATION SET FORTH IN THE "STANDARD MERCHANT CASH ADVANCE AGREEMENT", INCLUDING THE "TERMS AND CONDITIONS", ARE HEREBY INCORPORATED IN AND MADE A PART OF THIS GUARANTEE. CAPITALIZED TERMS NOT DEFINED IN THIS GUARANTEE SHALL HAVE THE MEANING SET FORTH IN THE STANDARD MERCHANT CASH ADVANCE AGREEMENT, INCLUDING THE TERMS AND CONDITIONS.

EACH UNDERSIGNED HEREBY ACCEPTS THE TERMS OF THIS GUARANTEE

GUARANTOR (#1)

By: SCOTT DAVID HIRTH
(Print Name)

DocuSigned by:
SCOTT DAVID HIRTH
6B623B2ED81F4BB... (Signature)

Driver License Number h

GUARANTOR (#2)

By:
(Print Name)

(Signature)

SS#

Driver License Number

EXHIBIT 15

UPTOWN FUND!

STANDARD MERCHANT CASH ADVANCE AGREEMENT

and each Merchant and each Guarantor agree that those courts are convenient, submit to the jurisdiction of those courts, waive any and all objections to the jurisdiction or venue of those courts, and may oppose any motion or application made by any party to transfer any such litigation to an Acceptable Forum. Notwithstanding any provision in the Agreement or this Guarantee to the contrary, each Guarantor waives the right to remove to federal court any litigation commenced against it by UPTOWN in a state court.

G7. Jury Waiver. Each Guarantor agrees to waive trial by jury in any dispute with UPTOWN.

G8. Counterclaim Waiver. In any litigation or arbitration commenced by UPTOWN, each Merchant and each Guarantor will not be permitted to interpose any counterclaim.

G9. Statutes of Limitations. Each Merchant and each Guarantor agree that any claim, whether sounding in contract, tort, law, equity, or otherwise, that is not asserted against UPTOWN within one year of its accrual will be time barred. Notwithstanding any provision in the Agreement or this Guarantee to the contrary, each Merchant and each Guarantor agree that any application made by any of them to stay an arbitration initiated against any of them by UPTOWN will be time barred if made more than 20 days after receipt of the demand for arbitration.

G10. Costs and Legal Fees. If an Event of Default occurs or UPTOWN prevails in any litigation or arbitration with any Merchant or any Guarantor, then each Merchant and/or Guarantor must pay UPTOWN's reasonable attorney fees, which may include a contingency fee of up to 40% of the amount claimed, as well as administrative or filing fees and arbitrator compensation in any arbitration, expert witness fees, and costs of suit.

G11. Prejudgment and Postjudgment Interest. If UPTOWN becomes entitled to the entry of a judgment against any Merchant or any Guarantor, then UPTOWN will be entitled to the recovery of prejudgment interest at a rate of 24% per annum (or 16% per annum if any Merchant is a sole proprietorship), or the maximum rate permitted by applicable law if less, and upon entry of any such judgment, it will accrue interest at a postjudgment rate of 24% per annum (or 16% per annum if any Merchant is a sole proprietorship), or the maximum rate permitted by applicable law if less, which rate will govern over the statutory rate of interest up until actual satisfaction of the judgment.

G12. Class Action Waiver. UPTOWN, each Merchant, and each Guarantor agree that they may bring claims against each other relating to this Agreement only in their individual capacities, and not as a plaintiff or class action member in any purported class or representative proceedings.

G13. Arbitration. Any action or dispute, whether sounding in contract, tort, law, equity, or otherwise, relating to the Agreement, this Guarantee, or involving UPTOWN on one side and any Merchant or any Guarantor on the other, including, but not limited to issues of arbitrability, and including, without limitation, any action or dispute that predates this Guarantee, will, at the option of any party to such action or dispute, be determined by arbitration in the State of New York. A judgment of the court shall be entered upon the award made pursuant to the arbitration. The arbitration will be administered either by the American Arbitration Association under its Commercial Arbitration Rules as are in effect at that time, which rules are available at www.adr.org, by Arbitration Services, Inc. under its Commercial Arbitration Rules as are in effect at that time, which rules are available at www.arbitrationservicesinc.com, by JAMS under its Streamlined Arbitration Rules & Procedures as are in effect at that time, which rules are available at www.jamsadr.com, by Mediation And Civil Arbitration, Inc. under its Commercial Arbitration Rules as are in effect at that time, which rules are available at www.mcarbitration.org, or by Resolute Systems, LLC under its Financial Dispute Arbitration Rules as are in effect at that time, which rules are available at www.resolutesystems.com. Once an arbitration is initiated with one of these arbitration forums, it must be maintained exclusively before that arbitration forum and no other arbitration forum specified herein may be used. As a prerequisite to making a motion to compel arbitration in any litigation, the party making the motion must first file a demand for arbitration with the chosen arbitration tribunal and pay all required filing and/or administrative fees. If the American Arbitration Association is selected, then notwithstanding any provision to the contrary in its Commercial Arbitration Rules, the Expedited Procedures will always apply and its Procedures for Large, Complex Commercial Disputes will never apply. Notwithstanding any provision to the contrary in the arbitration rules of the arbitration forum selected, the arbitration will be heard by one arbitrator and not by a panel of arbitrators, any arbitration relating to the Agreement or this Guarantee must be held in the Counties of Nassau, New York, Queens, or Kings in the State of New York, any party, representative, or witness in an arbitration hearing will be permitted to attend, participate, and testify remotely by telephone or video conferencing, and the arbitrator appointed will not be required to be a national of a country other than that of the parties to the arbitration.

Each Guarantor acknowledges and agrees that the Agreement and this Guarantee are the products of communications conducted by telephone and the Internet, which are instrumentalities of interstate commerce, that the transactions contemplated under the Agreement will be made by wire transfer and ACH, which are also instrumentalities of interstate commerce, and that the Agreement and this Guarantee therefore evidence a transaction affecting interstate commerce. Accordingly, notwithstanding any provision to the contrary in the Agreement, this Guarantee, or the arbitration rules of the arbitration forum all matters of arbitration relating to the Agreement or this Guarantee will be governed by and construed in accordance with the provisions of the Federal Arbitration Act, codified as Title 9 of the United States Code, however any application for injunctive relief in aid of arbitration or to confirm an arbitration award may be made under Article 75 of the New York Civil Practice Law and Rules or the laws of the jurisdiction in which the application is made, and the application will be governed by and construed in accordance with the laws under which the application is made, without regard to any applicable principles of conflict of laws. Any employee, agent, attorney, member, manager, officer, subsidiary, affiliate entity, successor, or assign of UPTOWN may elect to have any action or dispute

UPTOWN FUND!

STANDARD MERCHANT CASH ADVANCE AGREEMENT

with any Merchant or any Guarantor determined by arbitration as if that employee, agent, attorney, member, manager, officer, subsidiary, affiliate entity, successor, or assign of UPTOWN was a party to the arbitration agreement contained herein. Any party to a lawsuit in which UPTOWN and any Merchant or any Guarantor are parties may elect to have the matter determined by arbitration as if that party was a party to the arbitration agreement contained herein.

G14. Service of Process. Each Merchant and each Guarantor consent to service of process and legal notices made by First Class or Priority Mail delivered by the United States Postal Service and addressed to the Contact Address set forth on the first page of the Agreement or any other address(es) provided in writing to UPTOWN by any Merchant or any Guarantor, and unless applicable law or rules provide otherwise, any such service will be deemed complete upon dispatch. Each Merchant and each Guarantor also consent to service of process and legal notices made by e-mail to the E-mail Address set forth on the first page of this Agreement or any other e-mail address(es) provided in writing to UPTOWN by any Merchant or any Guarantor, and unless applicable law or rules provide otherwise, any such service will be deemed complete upon dispatch. Each Merchant and each Guarantor agrees that it will be precluded from asserting that it did not receive service of process or any other notice mailed to the Contact Address set forth on the first page of the Agreement or e-mailed to the E-mail Address set forth on the first page of the Agreement if it does not furnish a certified mail return receipt signed by UPTOWN demonstrating that UPTOWN was provided with notice of a change in the Contact Address or the E-mail Address

G15. Severability. If any provision or any portion of any provision of this Guarantee is deemed invalid or unenforceable as written, it will be construed, to the greatest extent possible, in a manner which will render it valid and enforceable, and any limitation on the scope or duration of any such provision or portion thereof necessary to make it valid and enforceable will be deemed to be part thereof. If any provision or portion of any provision of this Guarantee is deemed void, all other provisions and portions thereof will remain in effect.

G16. Survival. The provisions of Sections G2, G3, G4, G5, G6, G7, G8, G9, G10, G11, G12, G13, G14, G15, G16, G17, G18, G19, and G20 shall survive any termination of this Guarantee.

G17. Headings. Headings of the various articles and/or sections of this Guarantee are for convenience only and do not necessarily define, limit, describe, or construe the contents of such articles or sections.

G18. Attorney Review; No Construction Against UPTOWN. Each Guarantor acknowledges that it has had an opportunity to review this Guarantee, the Agreement, and all addenda with counsel of its choosing before signing the documents or has chosen not to avail itself of the opportunity to do so. The Agreement and this Guarantee will be construed without regard to the party or parties responsible for the preparation of same and will be deemed as prepared jointly by UPTOWN and each Merchant. Any ambiguity or uncertainty in the Agreement or this Guarantee will not be interpreted or construed against any party.

G19. Entire Agreement. This Guarantee, inclusive of all addenda, if any, executed simultaneously herewith may not be amended, modified, or canceled except in writing signed by all parties. Should there arise any conflict between this Guarantee and any other document preceding it, this Guarantee will govern.

G20. Counterparts; Fax and Electronic Signatures. This Guarantee may be executed electronically and in counterparts. Facsimile and electronic copies of this Guarantee will have the full force and effect of an original.

THE TERMS, DEFINITIONS, CONDITIONS AND INFORMATION SET FORTH IN THE "STANDARD MERCHANT CASH ADVANCE AGREEMENT", INCLUDING THE "TERMS AND CONDITIONS", ARE HEREBY INCORPORATED IN AND MADE A PART OF THIS GUARANTEE. CAPITALIZED TERMS NOT DEFINED IN THIS GUARANTEE SHALL HAVE THE MEANING SET FORTH IN THE STANDARD MERCHANT CASH ADVANCE AGREEMENT, INCLUDING THE TERMS AND CONDITIONS.

SIGNATURE(S) TO FOLLOW ON NEXT PAGE

UPTOWN FUND!

STANDARD MERCHANT CASH ADVANCE AGREEMENT

EACH UNDERSIGNED HEREBY ACCEPTS THE TERMS OF THIS AGREEMENT

GUARANTOR (#1)

Name of Guarantor #1: SCOTT DAVID HIRTH

Type of Entity (if Guarantor #1 is not a person): _____

Guarantor #1's Fed ID # (if Guarantor #1 is not a person) or SS# (if Guarantor #1 is a person): _____

Driver License Number (if Guarantor #1 is a person): _____

Contact Address: 11657 CALKINS RD City: CARLETON State: MI Zip: 48117

E-mail Address: shirth@mden.com Phone Number: 734-625-7713

By: SCOTT DAVID HIRTH OWNER *Scott Hirth*
(Print Name of Person Signing) (Print Title if Guarantor #1 is Not a Person) (Signature)

GUARANTOR (#2)

Name of Guarantor #2: JULIE CAROL CORRIN

Type of Entity (if Guarantor #2 is not a person): _____

Guarantor #2's Fed ID # (if Guarantor #2 is not a person) or SS# (if Guarantor #2 is a person): _____

Driver License Number (if Guarantor #2 is a person): _____

Contact Address: 2126 AGINCOURT City: ANN ARBOR State: MI Zip: 48103

E-mail Address: juliecorr1111@mail.com Phone Number: 734-625-7713

By: JULIE CAROL CORRIN OWNER *Julie Corrin*
(Print Name of Person Signing) (Print Title if Guarantor #1 is Not a Person) (Signature)