IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

JAN WALLACE and PATRICK MCNEVIN, Plaintiffs,	
vs.	NO. CV2005-052145
DAVID LEEPER and JANE DOE LEEPER, Defendants.	

DEPOSITION OF DAVID BRIAN LEEPER

Phoenix, Arizona
July 27, 2006
9:06 a.m.

Prepared by:
KELLY SUE OGLESBY, RPR
Arizona CR No. 50178
CSR(CA)

Prepared for:
THE COURT
(ORIGINAL)

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R E C E S S E S

DEPOSITION of DAVID BRIAN LEEPER, commenced at 9:06 a.m. on July 27, 2006, at the Blume Law Firm, P.C., 11801 North Tatum Boulevard, Suite 124, Phoenix, Arizona, before KELLY SUE OGLESBY, Arizona CCR No. 50178.

* * *

APPEARANCES

FOR PLAINTIFFS:

BLUME LAW FIRM, P.C.
BY: GARY R. BLUME
11801 North Tatum Boulevard
Suite 124
Phoenix, Arizona 85028-1612

FOR DEFENDANTS:

JENNINGS, HAUG & CUNNINGHAM, L.L.P.
BY: CHAD L. SCHEXNAYDER
2800 North Central Avenue
Suite 1800
Phoenix, Arizona 85004-1049

ALSO PRESENT:

Ms. Jan Wallace
Mr. Patrick McNevin

DAVID BRIAN LEEPER,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION

Q. (BY MR. BLUME) Good morning, Mr. Leeper. My name is Gary Blume. I will be asking questions today.

A. Okay.
Q. Have you had your deposition taken before?
A. Yes.
Q. Under what circumstances?
A. Working as a Phoenix police officer.
Q. Any other times you have had your --
A. No.
Q. -- deposition taken?

Let me go over the ground rules just quickly so we are all kind of on the same page.

Kelly will be taking down everything that's said, so it's important that you say things instead of make noises, uh-huh, um-hm, things like that. It's also important that we don't talk at the same time because it's hard for her to take all that down if we do that. And also, if you don't understand a question or if there is one you don't hear, clarify it, ask me about it.

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Do you understand?
A. Yes.
Q. Good.

What's your full name?
A. David Brian Leeper.
Q. And your address?
A. 6260 West Melinda Lane in Glendale, 85308.
Q. How long have you been there?
A. Four years.
Q. Where were you prior to that?
A. 22032 North 74th Lane in Glendale, 85308.
Q. How long were you there?

A. Five years.
Q. And the one right before that?
A. I don't remember the address.
Q. What city?
A. Phoenix.
Q. Cross streets?
A. Beardsley -- no. Excuse me. I-17 and the 101. Excuse me. That would be Rose Garden and the 101.
Q. I-17?
A. And -- yes.
Q. How long were you there?
A. A year.
Q. Was that a house?

A. No, it was an apartment. I was going through a divorce.
Q. Was 74th Lane a house?
A. Yes.
Q. As was Melinda?
A. Yes.
Q. Does anyone else live with you at Melinda now?
A. My four daughters.
Q. Do you have any other children?
A. No.
Q. You are not married now?
A. No, I am not.
Q. And you have an ex-wife?
A. Yes.
Q. One?
A. Two.

Q. What are their names, the most recent one?
A. Doty or Dorothy Charles.
Q. The other one?
A. Phyllis Leeper.
Q. Does she have a maiden name?
A. Barkley.
Q. Do they both live around here?
A. Yes.
Q. As in Phoenix?

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A. Glendale.
Q. Glendale.
What's your current employment?
A. Net Growth Realty, realtor.
Q. Prior to that?
A. One Source.
Q. Prior to that?
A. Stanford Lyon.
Q. Is it a realty --
A. Yes.
Q. -- situation?
A. Yes.
Q. Those three, Net Growth, One Source, and Stanford Lyon, were you a real estate agent at all of those?
A. Yes.
Q. And you are licensed to sell real estate?
A. Yes.
Q. Prior to Stanford Lyon?
A. About the same, Exit, E-x-i-t, Realty.

Q. Prior to that?
A. It would be the H.W. Johnson Concrete.
Q. Prior to that?
A. Phoenix Police Department.
Q. All right. I was trying to get back to it.

When were you a police officer?
A. Between 1984 and nineteen -- excuse me -- 1984 to 2000. I think it's 2000.
Q. And Johnson Concrete, how long were you there?
A. It was three months.
Q. What were you doing?
A. Estimating on jobs.
Q. Why did you leave?
A. I became a realtor. I needed more money.
Q. That was with Exit?
A. Yeah, Exit, Stanford Lyon, they are two different -- they are kind of under the same umbrella.
Q. How long were you there?
A. Eight months.
Q. One Source?
A. A year and a half.
Q. And how long have you been at Net Growth?
A. To the present. I am still there. Since then, since the end of the -- I went from One Source to Net Growth and continued till present.
Q. So that's probably about -- you were at One Source from 2001 probably to 2003?
A. Yes.
Q. And then 2003 to the present at Net Growth?

A. Yes.

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Q. Why did you leave being a police officer? It looks like you went -- that was a break, a whole different direction.
A. I was going through the divorce. I was diagnosed with cancer. I had gotten in an auto accident. I ended up going through the department -- I got some discipline reference my ex-wife through the divorce and I never returned. I never went for the discipline, so they terminated me when I never showed up.
Q. So she had a restraining order out?
A. No.
At that time, yes.
Q. Cancer, is that over with? What happened? What's that about?
A. It's in a remissive state right now.
Q. But you can still function and --
A. Uh-huh, yes.
Q. -- your cognitive abilities are okay --
A. Yes.
Q. -- and you can testify?
A. Yes.
Q. Okay. Do you have any licenses?
A. The real estate.
Q. Is that the only one?
A. Yes.

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Q. Does it have other riders or addendums to it, such as you can sell insurance or annuities --

A. No.
Q. -- or is it -- you don't have anything like that?
A. No.
Q. All you do is real estate?
A. Yes.
Q. The type of real estate license, is it just a sales license?
A. Yes.
Q. Who is the broker that you work for?
A. Greg Loynd.
Q. How do you spell that?
A. G-r-e-g L-o-y-n-d.
Q. And is he the principal or involved with Net Growth Realty?
A. Yes.
Q. Is Net Growth Realty an Arizona corporation?
A. Yes.
Q. Let me -- the licenses -- so the only license is a real estate sales agent license that you have?
A. Yes.
Q. And of course a driver's license I would assume?
A. Driver's license.

Q. But other than that, there is nothing else?
A. Well, Net Growth Realty is -- I don't know if it's considered a license or not. We are licensed to do business as Net Growth Realty.
Q. Let's talk about Net Growth.
Arizona corporation?

A. Yes.

Q. Who are the shareholders?

A. Myself and Greg Loynd.

Q. What's the percentage?

A. I believe it's 51 and 30.

Q. Which way? Who is 51?

A. I am.

Q. And the other one is 30?

A. Yes.

Q. What about the other 20 percent?

A. They are not -- they are not held by anybody. They are open shares, I believe.

Q. Well, is the entity, Net Growth, is it a corporation or an LLC?

A. Corporation.

Q. It's an Inc.?

A. Yes.

Q. And is it treated as a subchapter S corporation for tax purposes?

A. I believe -- yes, I believe so.

Q. Are there K-1s that are distributed to you each year? It's a form denoting the profit of the company.

A. I would have to discuss with my accountant exactly which is the proper name of the form I receive.

Q. The Net Growth corporation is authorized to issue how many shares?

A. I don't know.

Q. You don't know?

Do you know how many are actually issued?

A. No.

Q. But the only shareholders as we sit here today are yourself and Greg?

A. That's correct.

Q. Have there been other shareholders at any point in time?

A. No.

Yes, there was. Excuse me. There was Arthur Shalinski.

Q. How do you spell that?

A. I don't know.

Q. Shalinski?

A. Yeah. He is Polish.

Q. And what did he do or when was he a shareholder?

A. In the very beginning of the company.

Q. Why did he leave?

A. He went his own direction with investment properties.

Q. Was he also a real estate agent?

A. Yes.

Q. Is Greg also a real estate agent?

A. Yes.

Q. And he also has a broker's license?

A. Yes.

Q. Are there any other businesses, corporations, LLCs, associations or any kind of entities in which you have an interest?

A. No.

Q. Are there any of that list -- what I am getting at, there is LLCs, Inc.s, C corps, sub S. Any kind of an entity in which you are an officer or a director?

A. No.

Q. Just to clarify also, when I ask if you were a shareholder, I don't know if you considered -- I don't know if you have brokerage accounts where you own shares of GE. That's not the kind of company I am thinking about. Well, I guess I am.

You have none of those kind of shares?

You said you don't own any shares in any corporation, so to me that would mean you have no mutual

fund or GE stock or anything like that?

A. I have, like, a 401(k). Is that what you mean?

Q. No, just -- I am excluding those.

What I am after there, really, was corporations in which you are more active, not necessarily a public company that you would own stock in, but I didn't want that to be a distinction or I didn't want that to be -- I wanted you to understand the difference, I guess. Because your answer, you said no, and most people have a share of stock in something.

A. No.

Q. Have you ever heard of a company called Top Soil?

A. Yes.

Q. What is it?

A. It's a company we were starting that --

Q. Who is "we"?

A. Patrick McNevin, Alan Androz and myself.

Q. Did it get formed?

A. Yes, we did. We filed the paperwork, and actually I forgot that that was ever even -- we filed with the Corporation Commission, but I don't know if we -- if it's still active or canceled or not. I don't know if -- I just know we had -- it never materialized. We never did anything.

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Q. What was it supposed to do?

A. It was a partnership to do land investments, property investments.

Q. When you say "partnership," did you mean limited liability company?

A. Yes.

Q. Or was it actually a partnership?

A. It was a limited, LLC.

Q. And the intent was you were to be a member of that LLC; is that right?

A. Yes.

Q. But as far as -- I guess what your testimony is, it was filed, but you don't have any other knowledge about it as you sit here?

A. Well, it was filed. I don't know if it's active or if we just let it go to the wayside. It never -- it never materialized to do any business.

Q. When was it filed?

A. I don't recall.

Q. In the last ten years?

A. In the last year.

Q. Oh, within the last year?

A. Yes.
Q. You said Mr. McNevin, Androz and yourself were involved.

Were there any other members or managers that have been associated with Top Soil that you know?
A. No.
Q. Was it actually called Top Soil Properties, LLC?
A. Yes.
Q. Do you know if it had any contractual relationships with any third parties?
A. No. Well, yes.
Q. You don't --
A. With Charlevoix Homes.
Q. And what was the account?
A. No contract. It was just that's how Top Soil kind of arrived --
Q. You mean that's --
A. -- came to be.
Q. -- that's where it came into being?
A. Well, somewhat. That's where I met Alan Androz and that's where I met Patrick McNevin.
Q. That was the first time?
A. Yes.
Q. I will get to that.
Are you a member of or have any interest in any kind of partnerships or limited partnerships?
A. Is that a new question --
Q. Yeah.

A. -- or the previous question?
Q. It's an extension of the same one. I have tried to add in partnerships and limited partnerships to the breadth of that, and I understand that Top Soil is one that you have already mentioned.
Are there any other others?
A. Not that I can recall at this time.
Q. Is there a chance that there could be, just you don't remember?
A. I don't recall there being one.
Q. What's your education?
A. I have a bachelor's degree in psychology at Arizona State University.
Q. Anything else?
A. No.
Q. High school degree and --
A. Yeah.
Q. -- a bachelor's?
A. That's the highest completion, was a college degree.
Q. Have you taken any extended courses or anything specific to real estate?
A. Just required with the licensing and continuing education and stuff which is required.
Q. You had mentioned that you met McNevin at --

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during this Top Soil time frame?
A. No, that's not correct. During doing work with Mike Roberts at Charlevoix Homes.
Q. When you say work with him, what do you mean?

A. Well, Patrick was an employee for Charlevoix Homes.

Q. And you were --

A. I brought property to Charlevoix Homes for development.

Q. Okay. And then that's the time when you met Mr. McNevin?

A. That's correct.

Q. About when was that?

A. Two years ago.

Q. Could you spell Charlevoix for Kelly?

A. C-h-a-r-l-v-o -- is it e-x?

Q. V-o-i-x.

A. Yeah, v-o-i-x. Something like that.

MR. BLUME: One of those Canadian-French things, huh?

Q. (BY MR. BLUME) The meeting that you had with Mr. McNevin, how did that evolve, your relationship with him?

A. What do you mean?

Q. Well, from the moment you first met him, how did

your relationship with him evolve?

A. As I brought properties to Charlevoix Homes, Patrick McNevin was involved in the land acquisitions, I guess, with Charlevoix. That was part of his job functions.

Q. How many -- do you remember any of the properties that you brought to Charlevoix?

A. I can't recall them all, but --

Q. Anyone?
A. Well, Mike Roberts, being Charlevoix Homes, 92nd Avenue and Happy Valley. I also brought in the buyer of their property on Cottonwood Estates. I brought to him several properties. Citrus and Glendale. I brought them -- well, there is numerous, there is several. 75th Avenue and Thunderbird. I brought them probably the average of 20 to 25 different properties. I mean, just different land.
Q. When you say it's an average --
A. Well, I am just saying what I would do when I located land, I would contact Mr. Roberts and ask him if these are lands that interested him. Which ones he would end up doing and purchasing was a company decision.
Q. Then you would -- how were you paid?
A. Usually commission.
Q. And who was the payor of that commission?

A. Usually the seller or sometimes -- which is standard, or Charlevoix Homes.
Q. Was this real property that you listed?
A. Some of them were and some of them were just stuff I found on LoopNet and RMS, word of mouth.
Q. Was there any written arrangement between yourself and Charlevoix?
A. No.
Q. Were each of the deals that you mentioned, 92nd, Cottonwood, Citrus and 75th, unwritten deals where the property was ultimately purchased by Charlevoix?
A. No.

Q. Can you delineate between those four as to what happened?

A. Cottonwood Estates, I ended up bringing in the buyer, what's called Larry Wilton and co-built. They ended up purchasing Cottonwood Estates. 92nd Avenue and Happy Valley, they ended up purchasing, himself and Mr. Johnson.

Q. "They" being Charlevoix?

A. Char -- well, Mike Roberts.

Q. Roberts?

A. Yeah. He is the CEO of the company. They ended up buying 92nd Avenue and Happy Valley.

On Citrus and Glendale, Charlevoix was unable to

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come up with the earnest deposit or the ability to close on the property in the time frame, that they did not close that one.

At 75th Avenue and Thunderbird, I believe the property wasn't -- the zoning was not an issue or something that they wanted to pursue or the funding wasn't available through Charlevoix Homes.

Q. So you received commissions on two of those four, 92nd Avenue and Cottonwood?

A. Yes.

Q. And you didn't receive any money or proceeds from 75th or from Citrus?

A. No.

Q. When you were doing the transactions or involved with Charlevoix, were you doing it on behalf of Net Growth, your company?

A. Yes.
Q. Were there also some transactions that you did as an individual outside of Net Growth?
A. No.
Q. Everything that you were doing was run through or involved with Net Growth?
A. With Charlevoix, yes.
Q. Or with any third party when you are out doing your real estate transactions?

A. No.
MR. SCHEXNAYDER: Objection; form.
THE WITNESS: I'm sorry.
MR. SCHEXNAYDER: No. Go ahead, answer.
Q. (BY MR. BLUME) If you can answer. The question is a little muddled.
A. Yes. What is the question? I'm sorry.
Q. At any time when you were conducting business, did you do it outside of the corporation?
A. Yes.
Q. In what manner?
A. I do personal stuff.
Q. So some of the deals or the real estate transactions you would do might be done just in your name, and then some of them would be brought into Net Growth as a company?
A. What's your question? I'm sorry. I don't understand the question.
Q. I am asking you if that's true or false.
So sometimes you did things on your own and you

would receive the revenue for that and sometimes you would put them into Net Growth?

A. No.

Q. No?

A. I don't -- that's false the way you stated it.

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Q. Okay. How should I have stated -- describe how your -- where you derive income.

A. I derive income from personal deals which I personally am involved in.

Q. So David Leeper would find a property, as an example, and would enter into a contract in his own name under his Social Security number and all of those things and would receive the commission for it, or whatever the deal was, separate from the company?

A. No.

Q. No? Okay. Then clarify it for me.

A. Well, if I bought, like, my house, for instance, that's a real estate deal. I would live in the house and I would turn around and sell it after two years. That's a personal deal of mine.

Q. True.

Is that the only kind of deal that didn't run through the company?

A. No.

Q. What other deals did not run through the company?

A. The deal on Citrus and Glendale.

Q. Are there others?

A. No.

Q. That's all I am trying to find out, is, in

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general, the business that you have, Net Growth, if I look at all of its documents, that will entail all of the business transactions and the sources of your income that occurred, except for your personal residence and Citrus and Glendale?

A. The real estate aspect is done through Net Growth Realty. Now, if I have personal deals, like, for instance, 75th -- excuse me -- Buckeye and 107th, I shared the profits, for lack of a better term, the money made from that, and then -- but the real estate was run through the real estate company, the transaction.

Q. So some revenue on a deal, the equity --

A. As a principal.

Q. -- would go just to you; however, the sale of the real estate and the commissions is what goes through Net Growth?

A. That's correct.

Q. Does Greg also operate similarly?

A. Not that I -- no.

Q. And how does he run his real estate business?

A. He -- he acts as a realtor. He sometimes lists his properties, sometimes represents buyers. He also receives revenue from the company.

Q. How?

A. Usually it's on a -- but it's not a defined

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percentage of what the company makes as being a broker.

Q. So he would -- because he is the managing

broker, it's his license, he receives some --
A. Compensation.
Q. -- compensation for that?
A. Yes.
Q. The employees -- are there any other employees besides you two of that company?
A. No.
Q. Secretaries or any part-time help?
A. No.
Q. Any independent contractors that wouldn't be considered as employees?
A. Realtors?
Q. Anybody.
A. Yeah, realtors work for our office, yes.
Q. How many?
A. Oh, I think we have eight.
Q. What are the gross revenues of the company, at least in 2005?
A. I would not know without seeing the tax records or seeing the records. That's what the broker does.
Q. Did you file your taxes on time in 2005?
A. Yes.
Q. Both individual and company?

A. Yes.
Q. How much compensation did you get out of it over the course of 2005?
A. I don't recall the exact number.
Q. Well, is it a million dollars?
A. No.

Q. A hundred thousand?
A. More.
Q. Half a million?
A. No.
Q. So it's less than half a million, but more than one?
A. Yes.
Q. More than a hundred thousand?
When I said one, I didn't mean one. I meant 100,000. So it's between 100,000 and 500,000?
A. Yes.
Q. Is that a typical year?
A. No.
Q. It's a bad year, good year?
A. It's a good year.
Q. Is the market starting to get worse?
A. Define "worse."
Q. It's not going to make as much money.
A. The market?

Q. Yeah.
A. I don't know. I couldn't tell you what the market is -- the aspect of -- what perspective you are coming from.
Q. Are you projecting your business to do better or worse this year?
A. I -- I don't know yet. I am projecting to do better.
Q. Okay. Do you know a person named Bruce Johnson?
A. Yes.

Q. Tell me about him.
A. Childhood friend. I have known him since second grade. We owned boats together and rode horses together, did things together. Best man at my wedding. Long-time friend, business associate. I brought him deals, financial real estate deals, and he closes on the transactions and makes money.
Q. Do you still own boats together?
A. No. This was when we were kids. Younger years.
Q. Do you own horses together?
A. We owned our own horses. Do I own a horse today? No. He still has a horse.
Q. Are there any assets that you own conjunctively with Mr. Johnson?
A. No.

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Q. What's the last deal that you took to him?
A. The last deal I took to Johnson, probably Citrus and Glendale.
Q. You mentioned Cottonwood Estates as one of the deals that you ran through Charlevoix.
Do you believe you were fairly treated on that?
A. Yes.
Q. Were you the -- did you receive a commission --
A. Yes.
Q. -- on that?
Was that an equitable play also, where you acted as either the buyer or the seller?
A. No.
Q. Are there transactions on which you actually

purchase the real estate and then resell it?
A. No.
Q. None?
A. None.
Q. If you never act as the purchaser or the seller of the real estate, how do you participate in an equity play on real estate?
A. Well, I -- and I probably shouldn't have said no. I presumed, because you asked me if I put my name down -- it's not my name. The only -- usually transactions I have done like that are with other people

who were using their equity or their principal are the primary person on contract.
Q. Give me an example.
A. Like I used Jan Wallace on 107th and Buckeye.
Q. Let's analyze that.
When you say -- how did that work that it resulted in an equity play?
A. Well, I put up the owner's deposit. I located the property. I brought in the buyer. I prepared all the documents, and upon the closing of the transaction, the escrow, I shared the principals with Patrick McNevin and Jan Wallace and myself.
Q. Shared the principals?
A. The profits.
Q. This is 107th and Buckeye. In the example that you just gave me, can we put numbers on that so I have got a feel for the totals?
A. Well, I --

Q. The purpose -- I'm sorry.

A. I'm sorry. I will let you finish your question.

Q. The example of 107th and Buckeye, I just wanted to track the contract itself, how it worked and how much money it was that you are talking about.

A. I don't remember the exact amounts of what we purchased it for and what we -- excuse me, what I sold it

for. But the question (sic) to your question, I put $2,000 of earnest deposit down. While it was in escrow we brought in a secondary buyer by advertising through Net Growth Realty on RMS and we did a simultaneous close.

Q. What's a simultaneous close?

A. Where it's called -- referred to as a flip where we are buying it for one price and we brought in a buyer at a higher price. The seller receives their agreed selling price, and the second buyer, the excess funds, the additional funds goes to the seller of the property, who is the principal on the contract.

Q. Do the seller and the ultimate buyer know each other?

A. No.

Q. How do you keep them apart?

A. That does not need to be disclosed under real -- under law.

Q. So the real estate laws and the laws of Arizona say that that's okay, I don't have to tell him about it as long -- do I have to keep those as two separate transactions?

A. Yes.

Q. But it's okay with all -- I mean, they don't care, I suppose.
A. I don't know who regulates that law.

Q. In the case of the 107th and Buckeye, the seller, the original owner that had it, you don't remember who they were, what their name was?
A. That was Bruce Johnson.
Q. So Johnson owns -- this was -- and then who was the ultimate buyer?
A. I don't recall.
Q. So Johnson, he owned the property.
Well, this is the lifelong friend; right?
A. Yes.
Q. Did he ever find out that that happened?
A. Yes.
Q. What did he say?
A. Nothing to me.
Q. How much was the equity, the difference?
A. 50,000.
Q. Out of the -- did you also receive a commission for the sale?
A. Yes.
Q. How much was that?
A. I don't recall the exact commission.
Q. Charlevoix Land Acquisitions, do you know anything about it?
A. Anything, yes.
Q. What? Tell me what you know.

A. Mike Roberts is the CEO. I know the location. I know they build condos and maybe land acquisitions. They do flips.

Q. Is there also a Mr. Onsley and White that are involved with that?

A. No.

Q. Who are the members of Charlevoix Land Acquisition?

A. I have no idea.

Q. But Mr. Roberts is involved with it?

A. Yes.

Q. Do they act as a purchaser and a seller of property primarily?

A. "They"? Who is "they"?

Q. Charlevoix Land Acquisitions.

A. Today or did they used to?

Q. At any time.

A. Yes.

Q. Are they still in existence today?

A. Yes.

Q. Do they still do real estate transactions?

A. Yes, as far as I know.

Q. The transaction -- well, before I get to that, when was the first time you met Miss Wallace?

A. I don't recall.

Q. Was it about the time that you met Mr. McNevin?

A. Thereafter. They were boyfriend and girlfriend.

Q. Did they have any business dealings together or -- that you were aware of, or how were they presented

to you?
A. As boyfriend and girlfriend.
Q. That was it?
A. Yes.
Q. I mean, eventually they ended up doing transactions and deals with you.
A. One. Well, I guess two.
Q. And what were the two?
A. 107th and Buckeye and 75th Avenue and Thunderbird.
Q. Okay. On 107th, was there a requirement that a woman be --
A. There was one more. There was one in California, too. I'm sorry.
Q. What was that?
A. Jan Wallace was selling -- had a friend that owned some property in California, some --
THE WITNESS: Is something funny, Jan? Am I missing something?
MR. BLUME: I'm sorry?
THE WITNESS: I'm sorry. Is that Jan?

Oh, yeah.
Her laughing, I was wondering what was funny.
MR. SCHEXNAYDER: We are going to have a real short deposition if that gets to be a problem.
THE WITNESS: Yes, I would agree.
MR. BLUME: Why don't we take a break.
MR. SCHEXNAYDER: Actually, let's take a break. It's the coffee, not you.

(A recess was taken from 9:43 a.m. to 9:47 a.m.)

Q. (BY MR. BLUME) I wanted to talk a little bit about 107th and Buckeye.

Was there a requirement, as far as you know, that a woman was required to be part of the transaction?

A. No.

Q. Was the offering price, or could it have been, $120,000?

A. Yes.

Q. Was Jan Wallace involved in the drafting of the documents in any way?

A. Not that I recall.

Q. Did her name appear on any of the documents?

A. Yes.

Q. In what capacity?

A. As a buyer.

Q. That -- as the buyer. You just said she didn't

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have anything to do with the preparation.

So in other words -- and I want to ask this as kind of a yes or no -- you prepared all of the documents for her and then did she sign them or was she aware of them or did she review them?

MR. SCHEXNAYDER: Objection; form.

THE WITNESS: That's three questions.

Q. (BY MR. BLUME) Right. Let's start out with the first one.

Did she review the documents?

A. I don't recall.

Q. I just want to get a time frame on this, too.

As I understand it, this was about December of '04. Does that sound about right --

A. Yes.

Q. -- when this was filed?

You are not sure if she reviewed them. Do you know if she signed them?

A. No, she did not.

Q. Could you have signed her name to those?

A. Yes.

Q. Did you do it with her authority?

A. Yes.

Q. When did she give you that authority?

A. When I advised her and Patrick of the purchasing of the property.

Q. About when was that?

A. At the time of the contract. At the time of the Johnson contract, he stated he wanted 120,000 for the property.

Q. Now, prior to that time, what was the understanding of the relationship between the three of you, being yourself, Mr. McNevin and Miss Wallace?

A. Well, we did not have a relationship at that time. Jan Wallace, through Patrick -- what I mean by "through Patrick," Patrick advised me that he wanted to start doing land deals himself and get involved with his girlfriend Jan, who was involved with this big company, and wanted to know -- and it was an opportunity for us to make some big money. And what he asked to do, what we needed to do, if I could bring the properties and do what

I do for Charlevoix Homes, if I did it through himself and Jan, that we could be principals, wherein Charlevoix I was just receiving commissions.

Q. At the time was Mr. McNevin still working for Charlevoix?

A. Yes.

Q. Wasn't that a problem?

A. For who?

Q. For him.

A. I don't know. You have to ask him.

Q. I mean, he didn't say anything to you about it or -- that Charlevoix would be unhappy that he would do that? Because it sounds like what you just said is he would be doing the same stuff he was doing at Charlevoix.

A. I'm sorry. Was there a question?

Q. Is that true, that he would be doing similar functions with this new opportunity with you that he was doing with Charlevoix?

A. Well, Charlevoix, for purposes of -- was twofold. They were -- originally main purpose was to buy land for development, and -- which is Charlevoix's primary function, and the change of the real estate market brought in the ability to do flips, which was pretty common, and Patrick wanted to be involved in that aspect of it.

Q. You stated there was no relationship, but it sounds like you did something in common on 107th and Buckeye.

What were you, then, if there was no relationship between you? Why did you guys do that transaction?

A. Because Patrick, through his understanding that Jan controlled this large asset-based company and they would start another company where we would be supposedly principals at some point and receive a million dollars'

worth of stock as a principal of this subsidiary or however you pronounce it, company that Jan was going to form through this REIT of hers, so Patrick wanted -- or just to show Jan the ability that I could make money and know how to obtain land that could be profitable, I set up, as an example, using my money, locating the property and selling the property, that, you know, I can make money and be a valuable asset to this image or this projected goal of theirs.

Q. You have mentioned a real estate investment trust in that answer, I believe, somewhere, REIT, is that right?

A. I don't even know the name of the REIT. I don't recall it.

Q. But does that mean that part of the arrangement with Miss Wallace and Mr. McNevin was to have a real estate investment trust?

A. That agreement that I had was first with Patrick. It wasn't much discussed with Jan.

Q. I have never -- in this lawsuit I just haven't heard anything about a real estate investment trust, and when you mentioned that in that answer that you had, I don't know in what context you meant that.

Was that just a mistake or was that part of the opportunity they told you they had?

A. That was the opportunity they told me they had.

Q. Okay. So the discussion, it appears, is that there would be some relationship between the three of you that would result in you getting a lot of stock and a bunch of money?

A. Correct.

Q. And to accomplish that, you were supposed to provide real estate deals that they were going to put into a corporation that was to be a subsidiary of a bigger company?

A. Yes.

Q. The intent, then, on 107th and Buckeye was to be an example of how that would work?

A. Just -- no. The ability that I can make money, that I could -- what I am doing could be profitable.

Q. Okay. So in or around December of '04, 107th and Buckeye, through Mr. Johnson, is found, and then you --

A. No.

Q. No? I'm sorry.

A. I'm sorry. I don't mean to interrupt you. Go ahead.

Q. Well, no, that's okay. I appreciate it because I want to understand how the transaction evolved.

A. Okay. What's your question? I'm sorry.

Q. How did the transaction evolve from the point that you discovered it until the point that it resulted in commissions being paid and the property being sold?

A. It evolved that Mr. Johnson owned the property and told me he wanted to sell it for 120,000, and I told him I can sell it for $120,000. What I did then was put the contract -- told Patrick about the property and we did a contract for the purchase of $120,000.

Q. And the purchaser was to be Ms. Wallace?

A. Not originally, but this is about the same time -- the person I represented before was looking at two or three different properties, and that was one that she was interested in, and that's where I was -- originally used Jan Wallace, because I told Mr. Johnson there was a woman that was interested in the property.

Q. Who was first person that --

A. I don't remember her name.

Q. But it was a woman?

A. Yeah.

Q. So there was kind of a woman twist on this where you needed to have a woman?

A. No.

Q. You just said that you told Mr. Johnson that there was a woman involved.

A. Yes.

Q. Well, did you at any time tell either Mr. McNevin or Miss Wallace that a woman needed to be named in this transaction?

A. No. It was just -- what I told them, that there was a woman that I represented buying property, and if we wanted to do that deal, we could, and I would just use

Jan's name.

Q. Is this a separate deal or the 107th and Buckeye?

A. The 107th and Buckeye.

Q. So was there a requirement in the mind of Mr. Johnson that a woman was going to be the ultimate purchaser of this property?

A. No.

Q. Did you feel that you had to consistently have a woman as the purchaser of the property in order to keep Mr. Johnson happy?

A. No.

Q. Were you fearful that if you didn't use a woman in the transaction, Mr. Johnson might be upset that you were doing a flip or doing something else?

A. No.

Q. So the contract was put together for the sale of the property from Mr. Johnson to Miss Wallace for $120,000?

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A. Yes.

Q. At the same time did you find another buyer of the property for $200,000?

A. No.

Q. At the time that the contract was entered into for the purchase of the property for $120,000 by Ms. Wallace, did you sign her name to that purchase contract?

A. I believe so.

Q. Once the purchase was complete and the 120 --

well, what happened next? Did the purchase for $120,000 get completed?

A. On a flip, yes.

Q. Who was then the flip? How did the flip work?

A. The flip worked that the title company -- you know, I don't recall exactly how the distribution of the funds works.

Q. Well, do you recall the ultimate purchaser, how much they paid for it?

A. I believe there was $50,000 earned, so I believe it was around 170. I could be wrong.

Q. All right. At the time that the flip occurred, was there an understanding in place that you were to find properties, Jan, Miss Wallace, was to provide the money, and Mr. McNevin was to provide the administration?

A. No.

Q. What was the understanding between the three of you as to how that -- only 107th and Buckeye, how that transaction would work?

A. The understanding was that I located the property through Johnson, I put up the earnest deposit, I prepared the contracts, I advertised for the resale of the property, I brought in the new buyer, and when the transaction closed I split the proceeds with Jan Wallace and Patrick McNevin and myself. Net Growth Realty received a commission.

Q. Why? It doesn't sound like they are doing anything.

A. That's correct. That was to authenticate that I have the ability to make money.

Q. Which then resulted in the formation of this . company, the subsidiary you are talking about?

A. No.

Q. Was it ever formed?

A. No.

Q. Do you know what it was supposed to be called?

A. WIP. Western Investment Properties.

Q. And what was your understanding of the function of Western Investment Properties?

A. They had a --

Q. Is "they" Mr. McNevin and Jan Wallace?

A. Well, WIP was a part of this REIT or this bigger company who would basically bring in the financial abilities to close on these properties and do developments of real estate. And this was -- this WIP was the function that would locate the property or would find the real estate deals or control the real estate deals. Basically WIP was going to flip the properties to the bigger company.

Q. So the bigger company ends up being the buyer?

A. No, being what Jan controlled as the CEO.

Q. And then eventually WIP becomes a part of the bigger company with the issuance of stock?

A. Right. Correct.

Q. And then you end up being a stockholder in a bigger company?

A. Yes.

Q. But you still keep doing the real estate things and the subsidiary?

A. Yeah. WIP was separate from Net Growth Realty. It was separate from Top Soil property. It was separate from Dave Leeper. WIP was going to be basically under Jan's control and Jan's business.

Q. Weren't you to be a shareholder in WIP?

A. It was -- we discussed it.

Q. Was that the plan?

A. I suppose.

Q. But they never formed it and you didn't become a member in it or --

A. No.

Q. -- a shareholder?

A. Never became any part of it.

Q. The proceeds, you had mentioned $50,000 on 107th and Buckeye?

A. Yes.

Q. Was that the amount of gross proceeds that were received by all three of you?

A. Gross proceeds, that was after commissions. That was the proceeds after the sale.

Q. That was the amount that was supposed to be cut up three ways?

A. Correct.

Q. What actually happened to that money?

A. Well, I gave a check to Patrick McNevin, I gave a check to Jan Wallace, and I received my third. I think there was around $17,000 apiece -- whatever the math comes out to -- some odd change.

Q. Was that money then moved into another deal or was it used for something or what happened?
A. Well, not that particular money. They provided

me back with funds for the three of us to go into equal shares into an earnest -- I mean, to an earnest deposit on 75th Avenue and Thunderbird.
Q. How much did they give you back?
A. The same amount, 17,000 and odd change. It came to $50,000 earnest deposit.
Q. At that moment was there a relationship between you three, was there a partnership, was there a contract, or what was your --
A. No partnership, no contract agreements, nothing written. It was basically the free money you talked about that they received, it was taking that free money and making more money.
Q. And did you also put in your $16,000?
A. 17, yes.
Q. So there is a total of roughly $50,000 again --
A. Yes.
Q. -- that was going to go into 75th and Thunderbird --
A. Yes.
Q. -- was the idea?
A. Yes.
Q. Tell me about 75th and Thunderbird.
A. It's a piece of property that was brought to me for sale. The land, I don't remember how many acres it

was.

Q. From who?

A. That was through -- actually through a church who introduced me to Mark Hughes, who we ended up being -- he was -- represented the seller.

Q. Was that the first time you met Mark Hughes?

A. I don't recall.

Q. Had you done any other transactions with him to that point?

A. I don't recall.

Q. Could you have?

A. Yes.

Q. He is an attorney, isn't he?

A. Yes.

Q. Does he also participate and do equity plays and flips?

A. Yes.

Q. Does he have a real estate license?

A. No.

Q. Does he rely on a particular broker or agent to do most of his transactions?

A. I would not know.

Q. Have you worked with him since?

A. Yes.

Q. The transaction that you were involved with him

on was 75th and Thunderbird.

Can you name the other transactions that you have been involved with Mark Hughes?

A. Citrus and Glendale. Grand and Jomax.

Q. Is that one thing or two?
A. Two. They are separate.
Q. So there is a Grand project and there is a Jomax project?
A. Yes.
Q. Anything else?
A. I don't -- I don't believe so. I can't recall at this time.
Q. Did you receive commissions from all three of those deals?
A. Commissions, no.
Q. An equity play or some kind of compensation from those?
A. Just Citrus and Glendale.
Q. But you received nothing for Grand and nothing for Jomax?
A. No.
Q. Why not?
A. Well, because they never closed. 75th Avenue and Thunderbird and -- Jomax and Grand is one property. Jomax and Grand is one property. 100 -- 75th and

Thunderbird is a separate property.
Q. So Grand and Jomax aren't two things, they are one?
A. Yes. That's cross streets, Jomax and Grand.
Q. I thought you said earlier there were two different projects.
A. 75th and Thunderbird.
Q. Is one.

A. Grand in Glendale is two, and Jomax is three.
Q. And you received not a commission, but a money -- an equity participation in 75th and in Citrus, but not in Jomax and Grand?
A. Correct.
MR. SCHEXNAYDER: Objection; form.
Q. (BY MR. BLUME) How much did you receive for Citrus?
A. I believe it was 120,000.
Q. The checks that you received back from Mr. McNevin and Miss Wallace, the $17,000 plus your 17,000, what did you do with it?
A. Those were money that we -- I deposited them and I did one $50,000 check from my account as an earnest deposit for 75th Avenue and Thunderbird.
Q. When you say your account, do you mean --
A. Personal account.

Q. -- your personal bank account?
A. Yes.
Q. When was it deposited and when was the other check issued?
A. I believe the same day.
Q. Do you know about when?
A. No, I don't recall.
Q. What's the bank?
A. Arizona Federal Credit Union.
Q. The check that went out, you said it was written to the title company?
A. Yes.

Q. Which one?
A. I don't recall.
Q. Do you know somebody named Peter Richman?
A. Not off the top of my head.
Q. Have you ever heard the name?
A. Could have.
Q. At the same time the 75th and Thunderbird transaction was happening, wasn't there also a transaction with Citrus and Glendale?
A. I don't recall the time frame.
Q. Were there to be -- or strike.
Were you to take any of these projects to Charlevoix Land or did you?

A. I believe all of them were.
Q. And then how did -- let's take 75th and Thunderbird. What happened on that project?
A. I have several subjects that buy land, or potential investors. I bring all of my deals to several people, and whoever performed or was interested -- that's what realtors do -- would do the deal through me.
Q. Then on -- so you would present it to Mr. Roberts?
A. Yes.
Q. As an example, I assume he is your main contact there?
A. Yes.
Q. Was Western Investment Properties ever to be involved in Citrus and Glendale?
A. No.

Q. Were they to be involved in the 75th and Thunderbird property?

A. No.

Q. Were there ever properties that were identified by either yourself or Mr. McNevin and Miss Wallace that were to be part of WIP?

A. No.

Q. Do you recall a meeting on March 6th of 2005 where yourself, Miss Wallace and Mr. McNevin met together

to discuss Western Investment Properties?

A. I don't recall that date, no.

Q. Do you recall that there was a meeting at some time to discuss that early in 2005?

A. Yes.

Q. Do you remember the substance of what the discussion was about?

A. On that particular date, no.

Q. Were there any minutes or notes that were taken during that meeting as far as you know?

A. No.

Q. Could Citrus and Glendale and 75th and Thunderbird, along with Jomax and Grand and an unidentified 80-acre parcel next to Cardinal Stadium and a Moon Valley property at 17th and Thunderbird and 13.7 acres near Cardinal Stadium have been discussed as potential opportunities for Western Investment Properties?

A. Could they have been discussed? Yes.

Q. Was there ever an intent that any of those properties would be placed into Western Investment

Properties and developed?

MR. SCHEXNAYDER: Objection; form.

Q. (BY MR. BLUME) Was there any discussion as far as you remember?

A. WIP was never formed.

Q. Right.

A. There was never an entity.

Q. I understand. But was there ever a discussion that those projects would be put into an entity called Western Investment Partners?

A. I don't recall.

Q. At the time of the 75th and Thunderbird project, the relationship with McNevin and Wallace, what was it?

A. That I would bring in a buyer through the real estate and that we would split the principals and Net Growth would get the commission.

Q. Is that in fact what happened on 75th and Thunderbird?

A. No.

Q. What did happen?

A. Jan canceled the contract and kept the $50,000 for herself and actually -- and reopened a new contract directly with my buyer.

Q. Who was your buyer?

A. I don't remember their entity. It was a buyer gone through real -- represented by a realtor. I don't remember her name at this time.

Q. Let's talk about Citrus and Glendale. Do you recall that deal --

A. Yes.

Q. -- in general?

Was the idea on the Citrus and Glendale that it would be involving Charlevoix Land Acquisitions?

A. I don't understand the question.

Q. How did Citrus and Glendale come into being as a project? Did you discover it?

A. Yes.

Q. Tell me about it.

A. It was just one of probably 50 deals at the time that was available or maybe 100 deals that are available through -- to me, and I presented it to several people.

Q. Was it a 40-acre parcel?

A. 39 and a quarter, yes.

Q. And was the sale price for it about 2.9 million or that's the area or the amount of value that was roughly attributed to that?

A. I don't recall.

Q. Was there a -- this -- the transaction time of the deal, when the deal was first presented, who was going to do it?

A. Mark Hughes.

Q. So Mark Hughes was involved. Was he the representative of the seller?

A. Yes.

Q. Could the seller have been somebody named

Christy?

A. Yes.

Q. Is that a human or is that a corporation or --

A. It's two dentists -- or one dentist, I guess. Excuse me.

Q. Was this another situation where there was going to be a double escrow on this and then ultimately it was going to be sold to another person?

A. Yes.

Q. Was the ultimate purchaser on this Mr. Johnson?

A. Yes.

Q. Had you ever mentioned or did you state to anybody, particularly Mr. McNevin or Miss Wallace, that there were some problems on this transaction with the owners of the land, the Christys, and that the deal was perhaps not going to go through?

A. A possibility. I don't recall the conversation.

Q. How did the deal evolve?

A. The deal was involved in a legal dispute for a couple of years.

Q. Between whom?

A. Christys and a partner or someone involved with the Christys. Mark Hughes was the attorney involved in the deal, and that would -- that could be the problem, if we could ever get through the litigation.

Q. So the legal issues involved a family trust or did it involve the Christys or Hughes or do you know?

A. It did not involve Hughes. It involved the Christys and their dealings with the property.

Q. Did you ever see any documentation, any verification that there was any kind of a dispute?

A. No.

Q. Was the sale price originally to be $3.2 million?

A. I don't recall. To who?

Q. To CLA.

A. I don't recall.

Q. Was there to be, then, a 3.8 flip on it that was going to happen -- or the numbers that I have been told were that there was a $600,000 profit that was built into it on the equity on a similar transaction to what you did, and another buyer was found for $4.9 million by CLA.

Does that ring a bell?

A. Possibly. I don't remember the numbers or who the buyer was.

Q. Well, at some time this deal was presented to CLA?

A. Yes.

Q. Why didn't they do it?

A. They didn't put up the earnest deposit.

Q. What were they required to put up for an earnest deposit?

A. That would be negotiable under contract.

Q. Do you remember what it was in this case?

A. No.

Q. Could it have been $100,000?

A. Yes.

Q. Did you put together the paperwork on the original contract similar to the one that you did with the first transaction with Wallace and McNevin?

A. First contract to what? I don't understand the question.
Q. This deal, did you do the paperwork in a similar fashion to what you had done before where you signed Miss Wallace's name?
A. No.
Q. You didn't?
A. No.
Q. So you didn't do the paperwork?
A. I don't -- I never presented the deal, I don't believe, with $100,000 earnest deposit with Jan Wallace's name on it.
Q. Right. But did you present a deal to CLA?
A. I don't -- I may have. I don't recall.
Q. And do you recall why CLA couldn't pay the

$100,000?
A. I presume -- no. I presume they just didn't have the funds to close the deal.
Q. Was there a time frame under which they had to come up with $100,000?
A. For CLA, I don't recall what the time frame -- if there was a time frame. I mean, like any deal, it was going to be whoever puts up the earnest deposit will get the deal.
Q. Did you then inform CLA and Mr. McNevin and Wallace that the deal was off, that it wasn't going to happen?
MR. SCHEXNAYDER: Objection; form.
THE WITNESS: I don't understand the question.

Q. (BY MR. BLUME) They appear to have been presented with an opportunity, that there was a Citrus and Grand --

A. Who is "they"?

Q. CLA was presented with an opportunity, and you just testified that it didn't happen, that you didn't write any paperwork up, but they didn't pay $100,000 of earnest money so the deal was off with them.

Is that accurate?

A. I don't recall if -- they might have put the 100,000 in. I don't recall if -- I just know that they

were not going to close on the deal. They either withdrew from the contract or -- I don't recall the circumstances of Charlevoix's involvement on that particular transaction.

Q. Was there ever a lis pendens filed against this property?

A. I don't know.

Q. Did you ever file one?

A. No.

Q. Did this property ultimately get sold?

A. Yes.

Q. And did you receive the $120,000 commission from Mr. Hughes on it?

A. No.

Q. Who did you receive a commission from?

A. I did not receive a commission.

Q. Who did you receive an equity play from?

A. Mark Hughes.

Q. How much?
A. 120,000.
Q. What were the terms of your deal with Mr. Hughes?
A. The terms of the deal with Mr. Hughes is that Net Growth Realty was to get a commission and what Mr. Hughes was going to make was not disclosed to me.

Q. So Net Growth was going to get a commission?
A. Originally, yes.
Q. Did it?
A. No.
Q. What were the terms under which the 120,000 was given to you?
A. On the table, under the circumstances, Mr. Johnson saw that Net Growth Realty was to receive $200,000 from the transaction and refused to let that happen and so he withdrew the $200,000 from the purchase price.
Q. So he saw the flip?
A. No. He saw the $200,000 to Net Growth Realty.
Q. Why did that make him unhappy?
A. I don't know.
Q. Well, now I am a little confused.
There was an arrangement to sell this to Mr. Johnson for how much?
A. 4 million.
Q. And he was unhappy because Net Growth was going to get $200,000?
A. Yes.

Q. But you are not sure why he was unhappy?
A. No.
Q. So you reduced the sale price to 300 --

3.8 million?
A. Yes.
Q. Just because he said I'm unhappy?
A. Yes.
Q. The $120,000 that you received, where did it come from and how did you calculate it?
A. It came from Mark Hughes.
Q. How was it calculated?
A. Mark Hughes stated that he had a partner, Tom Keck, I believe is his name, that was a realtor that was involved in the transaction. And at the table I told Mark Hughes that under the circumstance of Johnson's position, that I would -- would require half of what he was going to make to be split with me for bringing Johnson in.
Q. And so you ended up, you and Hughes, getting 240,000 and he gave half of that to you?
A. No.
Q. What happened?
A. He paid Tom Keck some money. I do not know what Mr. Hughes made. It came up that he agreed to pay me the 120 or 123,000, whatever the amount was.
Q. "He" being Hughes?
A. Hughes.
And I told him that I would need the check there, I mean, that day. I did not want to end up being

in a legal battle with Hughes.
Q. It sounds like you said that it already was a legal battle and that there was an unhappy Johnson who you gave $200,000 to.
A. I never said that.
Q. I'm sorry. Correct me. What did you say?
A. I never said it was a legal battle.
Q. You said there were legal problems; is that right?
A. Legal -- no, I don't recall that, either.
Q. Christys and the lis pendens as a problem, and a problem with the owners of the land.
Do you recall saying that?
A. A lis pendens by Christy?
Q. By anybody.
A. I don't recall saying that, no.
Q. Do you recall that there were any legal problems associated with Citrus and Glendale or the Christys or lis pendens?
A. The legal problems existed -- as I repeated, I believe I stated that Mark Hughes was the attorney, an attorney, maybe involved, maybe not, referenced in the Christys property. This was a property that was like two years of litigation on a previous problem they had legally, and that's the only legal problems I knew. That

was prior -- that was coming to an end and that's why it was able to be sold, because they had reached an agreement.
Q. Did you believe that the Citrus and Glendale

real estate project should have been involved with WIP?

A. No.

Q. Did you believe that Mr. McNevin or Miss Wallace had any interest at all in that transaction?

A. Yeah.

Q. Why didn't they receive any of the monies?

A. Same reason Charlevoix wouldn't or anybody else. If they are unable to come up with the earnest deposit or close the transaction, they are not entitled to the money. There is no agreements, no written contracts, no agreements or any relationship with Patrick McNevin or Janice or myself, or Jan Wallace.

Q. You said there was a relationship they had with the Citrus and Glendale project. What was it?

A. The relationship is in conversation with Charlevoix Homes, which Patrick is a part of and was aware that that was a property for sale, like 50 other properties for sale and available.

Q. So they didn't have any interest in it?

A. They may have if they could close and buy the property, absolutely. The same as Charlevoix Homes or

anybody.

Q. At this point did you have a relationship with them as a member or partner, as a participant in WIP, or was there any --

A. No.

Q. So you were now just three individuals -- well, you had always been -- it sounds like that there was never a partnership, corporation or any other kind of

relationship between the three of you that was
established.
A. No -- that's correct. Nothing was ever
established.
Q. Ever?
A. Ever.
Q. Do you recall going to Miss Wallace's house
prior to the Citrus and Glendale deal ultimately being
removed from CLA and saying that there was a problem with
it and that they had to do something under a deadline?
MR. SCHEXNAYDER: Objection; form.
THE WITNESS: I don't recall anything like that.
Q. (BY MR. BLUME) Do you recall ever going to her
house late in the evening and discussing the Citrus and
Glendale project?
A. No.
Q. Is it possible that the amount that was paid

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that you had testified was $200,000 was really $300,000?
A. I'm sorry. What are you referring to?
Q. You said that there was $200,000 that
Mr. Johnson took off of the purchase price.
A. There is only 200,000.
Q. It was? You don't recall it being 3?
A. No.
Q. The timing on this as to when the Citrus project
was occurring, was it about March of 2005?
A. Could have been, yes.
Q. Do you recall at any time that Ms. Wallace and
Mr. McNevin were asking you where the $50,000 was and what

it was being applied to that was put together when you three pulled the $17,000 each?

A. I'm sorry. What's the question? I'm sorry.

Q. You testified that the three of you put together $17,000 and you wrote a check.

A. Yes.

Q. You flipped that over, you turned that 17 each into a $50,000 check that went for the purchase of 75th and Thunderbird.

A. Yes.

Q. What happened -- and that should have been in about April or March of 2005; is that right?

A. Yes, it could have been around that time.

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Q. What then happened from that moment on? Who did you give the money to?

A. The title company.

Q. And then what did they do?

A. Opened escrow.

Q. On that property?

A. Yes.

Q. Then what happens?

A. Then what happens is we -- we went into escrow. I advertised the property, obtained a different buyer to do a flip on the property.

Q. Who was the different buyer?

A. I don't remember their name.

Q. Who was the original buyer?

A. You mean Jan Wallace, was Jan Wallace's name on the contract? Yes.

Q. Was she to be the buyer?
A. On paper, the name, we used her name again.
Q. Okay. Did you provide documents to Mr. McNevin and to Miss Wallace about this transaction?
A. Yes.
Q. Why?
A. Because they didn't put in their $17,000 and this was a property that we were going to make money off of.

Q. But there was no relationship that you had with them at this point?
A. The relationship came from 107th Avenue and Buckeye where I made them money and we took the money we made and put it into the next project. That's the relationship.
Q. So there was an understanding?
A. On that particular property, that, yes, we were going to split the proceeds, that -- from my efforts on that piece of property, yes.
Q. Are you speaking of 75th now?
A. Yes.
Q. But there was not that same understanding with Citrus?
A. No.
Q. There would have been that understanding had Charlevoix made their $100,000 payment, though; is that right?
A. But not with Jan and Patrick. It would have been through Charlevoix Homes and Net Growth Realty.

Q. So there would have been no involvement of the three of you; that was strictly a Charlevoix land deal?
A. Charlevoix's deals were done through -- would have been through Top Soil, which would have been Patrick McNevin, Alan Androz and myself. We excluded Jan.

Q. On the Citrus deal?
A. No. On Top Soil Property deals.
Q. So Top Soil was doing Citrus?
A. No.
Q. Charlevoix Homes?
A. If Charlevoix Homes would have done it, it would have gone through Top Soil.
Q. But I thought that's who this was presented to.
A. It was presented to many people.
Q. Right.
But Charlevoix was the one that failed to perform by putting in the $100,000?
A. Many people did. I don't recall if Charlevoix failed or not. It was presented to them, but that was common practice for me.
Q. Well, was there an original sales contract that was to provide that the property would be sold for $3.8 million to Charlevoix?
A. Could have been.
Q. Did then Charlevoix find somebody? Do you recall a person in that transaction named Connie?
A. I don't recall what role Connie played in that transaction.
Q. Did Charlevoix then find somebody else to buy

the property for $4.9 million?

A. They may have.
Q. Did they ever tell you about that?
A. They may have.
Q. When they told you that, did you become upset and encourage Mr. McNevin to crater the deal and go around Charlevoix?
A. No.
Q. You never said anything like that?
A. I don't recall ever what involvement Connie had in it, so how can I go to the next step and result from something I don't recall.
Q. Well, if you -- you said that you might recall that there was a person ready to buy it for $4.9 million from Charlevoix.
A. I don't -- I said I don't recall that, if they did or they didn't.
Q. The point there was -- was that if there was a flip in place, you guys would make $600,000 doing the normal routine that you did?
A. Who is "you guys"? I don't understand the question.
Q. "You" being yourself, and perhaps Mr. McNevin and Miss Wallace, or whoever was ultimately proposing to do the Citrus deal. But when you found out that there was a bigger buyer at 4.9, you were perhaps thinking I should

do that and sell it -- instead of for 3.8, I could sell it for 4.9. All I have to do is get Charlevoix out of the deal, run this somewhere else, and then I can make the extra million dollar profit.

MR. SCHEXNAYDER: Object.

Q. (BY MR. BLUME) Was that ever a discussion that you had with Mr. McNevin?

A. I don't recall that at all, no.

Q. You don't recall having it or you don't recall that --

A. I don't recall having it.

Q. Back to the 75th -- I just want to call it the 75th project --

A. That's fine.

Q. -- where the $50,000 went.

And ultimately in late May or early June -- is that when this transaction ultimately happened? Do you recall the timing on it?

A. The transaction at 75th?

Q. Yes.

A. I don't recall when that happened.

When we opened the escrow you mean?

Q. Yes. Well, no. When it closed.

A. It never closed, as far as my knowledge is.

Q. Right now as we sit here, it's still open?

A. I wouldn't know.

Q. Have you called anybody to determine the status of it?

A. No.

Q. Was Mr. Johnson involved in this?

A. No.

Q. Do you recall a meeting at any time with an attorney from California named Clare, Miss Wallace, Mr. McNevin, Aunspach -- I think that's how you say that -- Auchspach, a principal of CLA, and a person named Shay?
A. "Principal of CLA," what does that mean?
Q. Somebody that has authority with CLA.
A. Who would that be?
Q. His name is Auchspach. Auchenbach. Do you remember a man named Auchenbach at all?
A. I don't remember that name at all.
Q. Never heard of that?
How about Mr. Androz?
A. Yes.
Q. Could he have been involved in a meeting where -- do you recall an early -- a late May, early June meeting to discuss 75th?
A. I don't recall that, having a meeting for that particular purpose. I remember meeting the person from

California.
Q. What were the circumstances?
A. They came into my office.
Q. And what was the meeting about?
A. I don't recall.
Q. Do you recall the purpose of why they came to your office?
A. No. We -- discussing land deals. That's --
Q. Do you recall any of the specific discussion?
A. No.

Q. Could it have been about 75th?
A. Yes, it could have been.
Q. Could it have been about Citrus?
A. Yes.
Q. Could have been about any of these deals, I guess?
A. Yes.
Q. Could have been about anything?
A. Yes.
Q. Do you recall at any time Ms. Wallace being upset about her signature being placed on documents that she didn't recall putting on?
A. Yes.
Q. When?
A. When I was in your office, came here and she

stated that was -- in her mind, it was forgery.
Q. That's the first time she ever said anything --
A. Yes.
Q. -- negative about it?
A. Yeah.
Q. Did she ever ask you at any time or point out that she was confused by some initials that were put on documents that weren't hers?
A. I don't recall.
Q. At that meeting where the California lawyer was there, could she have said anything that caused you to wonder whether she believed the signature was hers or appropriate?
A. I don't -- no, I don't recall that.

Q. But at least your recollection now, she had never said anything to you that would indicate that that's a forgery, I don't like that, I don't want you to do it? She didn't say anything like that --
A. No.
Q. -- up until the meeting in my office?
A. Yes.
Q. Do you know who Vern Crowe is?
A. I recall the name. I don't -- Vern I believe is one of the buyers on 75th Avenue and Thunderbird.
Q. Have you ever met him?

A. No. Well, you know what? I don't recall. He may have come into my office to pick up something, some plans or something.
Q. Was the sale price for 75th to be 1.8 million?
A. I believe so.
Q. Was the seller on that to be the foundation or some foundation --
A. Yes.
Q. -- that Mr. Hughes represented?
A. Yes.
Q. And was Miss Wallace to be the purchaser of that property?
A. Yes.
Q. Who would then resell it perhaps to Vern Crowe for 2.1 million?
A. I would find the buyer for it, yes.
Q. Did you find Mr. Crowe?
A. Yes.

Q. You said you never met him.

A. I found him through real estate.

Q. Okay. What does that mean?

A. Well, when I advertised the property, the realtor -- he is represented by a realtor, and that realtor represented Crowe or Vern or whatever his name was.

Q. Regarding Top Soil, were there any other transactions that you can specifically recall that you had anything to do or that you had knowledge of that Top Soil did?

A. We never put a contract with Top Soil on it -- Properties -- that I can recall. It was just a company we started up.

Q. Okay.

MR. SCHEXNAYDER: Gary, can we take another short break?

MR. BLUME: Sure. That's fine.

(A recess was taken from 10:38 a.m. to 10:45 a.m.)

Q. (BY MR. BLUME) You state -- and I am reading from your disclosure statement -- that Miss Wallace was the president of Secured Diversified Investments, Inc.

A. Yes.

Q. What else do you know about Secured Diversified Investments?

A. They had no assets to speak of.

Q. How do you know?

A. I found out through public document, Internet.

Q. So it's a public company?

A. Yes.

Q. You state that there was a promise to form the

LLC with you to begin developing real estate, and to your knowledge that never happened, did it?

A. I don't understand. What LLC are you talking about -- are you referring to? I'm sorry.

Q. I am reading what you say the facts of the case are.

A. LLC is too broad. What are you talking about? What are you referring to?

Q. It says here that "Jan Wallace and Patrick McNevin promised to form a limited liability company with David Leeper to begin developing real estate in Arizona."

A. Yes, that's WIP.

Q. And was that ever formed, as far as you know?

A. No.

Q. If it was formed, does that change your belief as to whether or not there was an arrangement between you three?

A. No.

Q. It wouldn't matter if it was formed then?

A. Because we never had any agreements. We never discussed any particulars.

Q. Well, it looks like here you agreed to form a company and develop real estate.

A. That was Jan's job.

Q. In fact, you did do one transaction where you split up some money.

A. Not with WIP.

Q. No, but you did with them.

A. Yeah, with Patrick and Jan.

Q. Okay. I am reading now that Wallace, Leeper and McNevin intended to become involved in the purchase and resale of another property located at Citrus and Glendale to CLA.

So it sounds like you had an understanding that the three of you were going to purchase and resell property that was known as Citrus; is that right?

A. Yes.

Q. You then state that you told the plaintiffs the intended buyer.

Who was that? Who was the plaintiffs' intended buyer?

A. I don't recall.

Q. "And the transaction was unable to come up with the $100,000 to open escrow and close within the short time constraints of the real estate deal."

What does that mean?

A. In order to perform on a property, you have to be able to open escrow, and if you open escrow you have to have the ability to close the property or you run the chance of losing your earnest deposit.

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Q. So was escrow opened on this property?

A. I don't recall.

Q. And you don't know who the plaintiffs' intended buyer was?

A. No.

Q. But your statement is that that was not made and that that particular deal fell apart?

A. Yes.

Q. And so you then took the transaction with Citrus and Glendale to somewhere else with Mark Hughes and then you did the deal over there?

A. Well, you are -- you are not correct in the fact that I don't bring it just to one person and they have a time period to perform and then I take it to the next person, they have a time period to perform. I take it to several people all at the same time when I learn about it, and who can perform and who can put up the earnest deposit and show a desire to buy the property is the one that gets the property. It's a free marketplace.

Q. Sure.

Can you have five escrows open at the same time?

A. You only have one escrow -- can I have five escrows? Yeah, absolutely. Can you have five escrows open at one time, absolutely, on different properties. You can have 50 properties if you can buy them all. You

can have a thousand.

Q. So on one property at Citrus and Glendale, I could have four different escrows open with four different buyers for that same property?

A. No, you cannot.

Q. All right. So once you opened the escrow with CLA, you can't open a new one until that one either happens or it is terminated?

A. Unless you are going to flip it and you open a different -- an escrow with whoever the new buyer is going to be. That's called a flip.

Q. And is that what happened here?

A. No.

Q. No, you are right. They closed the first escrow, so you took the property back and went to Hughes and did another deal?

A. I'm sorry. Who is "they"? I am not following your conversation. Who is "they"? I'm sorry.

Q. Reading from your transaction here --

A. Okay. I don't have it in front of me, but go ahead.

Q. I will read it to you.

A. Okay.

Q. "Defendant Leeper was told that the plaintiffs' intended buyer in the transaction was unable to come up

with the $100,000 to open escrow and close within the short time constraints of this real estate deal."

What does that mean?

A. The plaintiffs being your clients?

Q. Them, yes.

A. What that means is if the property was brought to them, they were unable to either put up the earnest deposit or were unable to close the deal, because the deal had to be closed under a time restraint, a time period, for anybody who was going to purchase the property, not just the plaintiffs.

Q. And it didn't happen with them?

A. That's correct.

Q. "Leeper, through his own independent contacts, ultimately located a buyer after the performance failure of the buyer intended and proposed by plaintiffs."

So you took it somewhere else. Isn't that what that means?

A. Yes. Not took it -- yeah.

Q. The other place was to do the deal with Mr. Hughes?

A. No. Mr. Hughes was the seller.

Q. Well, an arrangement that involved Mr. Hughes?

A. It's always involved Mr. Hughes. Hughes was never out of the picture.

Q. All right. But it did not -- but it went to another transaction in which you ultimately received $120,000?

A. Yes.

Q. And your testimony and position is that CLA, McNevin, Wallace, WIP, no one is entitled to anything?

A. Unless they purchase the property.

Q. And they didn't?

A. That's correct.

Q. So the money that you earned from that is exclusively yours and they have no claim to it?

A. Correct.

Q. Okay. Now, going on, "The $50,000 as earnest money for the purchase of property at 75th and Thunderbird, the parties agree" -- I am assuming when you say "parties," you mean the three of you -- "to split the equity gain on the sale," and you were to receive -- "Leeper was to receive a commission from the sale."

Is that the understanding on 75th?

A. Net Growth Realty would receive the commission off the sale.

Q. That's not what it says.

A. Well, but that's -- Leeper, what that refers to is -- I am a real estate agent and there is a commission paid. All commissions are paid through Net Growth Realty.

Now --

Q. So this actually should read that Net Growth was to receive a commission on the sale of 75th and Thunderbird?

A. Yes.

Q. You state that Wallace prepared a document purporting to cancel the transaction and received from the escrow agent $50,000 earnest money.

What document canceling the transaction are you speaking of?

A. She submitted it to -- she canceled the escrow and I guess put it in somebody else's name or her name to hide the proceeds going to me.

Q. Was there an issue here as to whether her signature was her actual signature or one that you did again?

A. I don't recall. I believe she signed that one. I don't recall.

Q. Okay. You say, "Wallace converted that portion of the deposit that belongs to Leeper and has refused to return the same."

The $50,000, do you know where it is?

A. Jan has it.

Q. She has it. So the deal happened? This thing ultimately sold?

A. I have no idea, but I just know that when she canceled it, she withdrew that $50,000. She wasn't entitled to my portion.

Q. Okay. You state that Jomax Crossing is another of the properties contemplated to be sold with the proceeds divided among the parties.

Is that another understanding between the three of you?

A. Yes.

Q. So now there are -- it appears that there were three understandings. The first one that actually happened, that was the test case, the 75th and Thunderbird that we were just talking about, and now Jomax.

A. They are all --

MR. SCHEXNAYDER: Objection to form.

THE WITNESS: Okay.

Q. (BY MR. BLUME) They are all to be part of WIP --

A. No.

Q. -- things?

No?

They were just between the three of you?

A. Yes.

Q. Now, it says that you obtained a buyer named

McFadden.

A. Yes.
Q. Who is McFadden?
A. A buyer.
Q. What's his full name?
A. Brett McFadden.
Q. How do you know him?
A. He is an insurance agent with Farmers Insurance.
Q. Have you done deals with him before?
A. Yes.
Q. How many?
A. I don't recall how many.
Q. More than five?
A. No.
Q. More than one?
A. Yes.
Q. Two?
A. I don't recall.
Q. You are saying that the plaintiff -- I would assume McNevin and Wallace -- prepared documents intending to mislead Leeper into believing this transaction had been terminated when in fact they fraudulently concealed from you that the transaction would go forward.
Can you expand on that?
A. Yeah. They -- while I was on vacation or out of town, they presented a document misleading McFadden that

they would give him an extra, I believe, $50,000 if they signed his rights away to them to get him out of the deal, so they basically deceived him and presented a document taking him out as the principal.

Q. This is on Jomax Crossing?

A. Yes.

Q. And I guess -- could we go through that a little slower? You are out of town?

A. I believe I was out of town.

Q. And how did they, McNevin and Wallace, find out about McFadden?

A. They were aware of it. I mean, it wasn't no secret.

Q. So what you are saying is they then went to him and they offered him an additional 50,000?

A. I believe it was $50,000.

Q. Above what? For the purchase price?

A. No. 50,000 of what -- I don't remember what our agreement is. We were going to give him so many -- X dollars for using his credit, his ability to provide the CLA for this property, and on the flip he was going to receive a cash amount. I don't remember the amount, but basically they came back, said, hey, we will give you an additional money, I believe it was $50,000, if you sign this over to us, you know. Give us the contract. Take it

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out of, you know, David's control is what they were trying to do, to, you know, use deception again through me on this transaction.

Q. "Use deception again." When is the first time they used it?

A. On 75th Avenue and Thunderbird.

Q. On Thunderbird. Okay.
So you had mentioned a CLA. I assume that's a --
A. That's Charlevoix Homes. Oh, no, no, no. CLA is their ability to --
Q. What does CLA stand for?
A. I don't remember. Certified loan application or something like that. It's for -- basically saying that you have the assets to close on the deal.
Q. It's like a credit authorization perhaps?
A. Exactly, right, on the amount of the purchase.
Q. Did McFadden provide that for you?
A. Yes.
Q. And how much money?
A. What do you mean?
Q. Was it limited? What was the limit that was established?
A. The price of the purchase of the land.
Q. And who was it issued by?

A. Spectrum.
Q. Do you recall whether Miss Wallace issued a similar instrument?
A. No, she did not. I don't recall that.
Q. Never?
A. No.
Q. You have never seen an instrument that she would have issued involving authorizing or stating that she had the funds necessary to do a transaction?
A. To what amount?

Q. Any amount.

A. Are we talking about this particular property --

Q. No.

A. -- or are we talking about just in general?

Q. Any. At any time are you aware that Miss Wallace had signed or executed or done any kind of a credit authorization that said that she could do a transaction?

A. I believe so. I believe those are very much so.

Q. Do you remember seeing one?

A. I don't recall. I would have to see one. They are pretty common. I mean, anybody can get one.

Q. Did you ever use one of those documents to secure a transaction without her knowledge or permission?

A. Not that I recall. She was aware of all the

transactions her name was ever put on or she was involved in.

Q. When you say she was involved with those and she authorized, I mean, did she write that to you and say you have authorization to?

A. She never wrote anything to me.

Q. But she would call you and say that you have authorization to?

A. No, I would talk to her. If she gave me a CLA, it was on a particular property, then I would have presented it. I believe that's where you are going with this. Is that correct?

Q. Sure.

A. Okay.

Q. But you don't specifically recall that happening?
A. No, I don't recall.
Q. But she could have done that?
A. Yeah, she could have very much so.
Q. Do you specifically recall whether or not you used that for any other purpose than that one intended transaction?
A. Which transaction are you referring to?
Q. Any one that she would have given it to you for, did you ever falsify that document or sign her name to it?

A. Did I?
Q. Yes.
A. Not that I recall.
Q. Never?
A. Not that I recall, no.
Q. When you say not that you can recall, does that mean you could have done it but you just don't remember?
A. I would not have -- I don't prepare CLAs. I don't have the ability to do so. Those are done through mortgage companies or banks.
Q. True.
A. So I would never perform one.
If she provided me one with her name on it, I don't know. She could have.
Q. Well, did she ever tell you to sign one on her behalf?
A. I don't recall.
Q. So she could have?

A. She could have.

Q. Okay. And I'm back now on the mechanics of how you came to understand that you could sign her name on things.

A. Yes.

Q. How was that again? She just generally told you --

A. Either -- either it would be that, you know, we need to put something under contract. She has an understanding of the transaction. She has no financial interest involved in the transaction. All she is going to do is benefit from the transaction, and she was always aware that her name was on the document on the purchase of the property.

Q. Well, was this a blanket granting of authority to you or was it specific? Like each time you had a contract, you said, "Hey, look, I'm going to put your name on this"?

A. I would advise her and talk to her.

Q. So every time her name or initials were put on something, you called her and she knew that?

A. I never said that, no.

Q. How did it work?

A. I don't recall exactly how the conversation worked, but she was always aware that we were purchasing a property or --

Q. That's what I am getting at.

A. Yeah.

Q. You say she was aware. How do you know she was aware?

A. Because I talked to her.

Q. Did you talk to her on one occasion or many

occasions?

A. Several times.

Q. And each time was it about the document and the signature, to say, "Jan, I am going to sign your name on this so we can do the deal," and she said, "That's okay. Do it"? Is that how it worked?

A. It could have.

Q. But you don't remember?

A. Right.

Q. But you do believe that you had that authority?

A. Yeah. She was aware that I was signing her name.

Q. But you just can't specifically tell me how?

A. Because we agreed to do the project and they were putting the contract under -- in her name. She was always aware that the contract was in her name and she was the purchaser, and she has always had accessibility to the contract. She had the contract and she was always aware that I signed her name.

Q. So any time it was signed, you sent her a copy?

A. Yes.

Q. Immediately?

A. No. Just whenever, through Patrick or through Jan.

Q. Okay. Back to your disclosure statement, you state that Wallace and McNevin made representations to you about their ability to locate, finance and participate in acquisition of property.

What were those representations?

A. That Jan controlled some multi-million dollar or billion dollar property or company and she could use those funds to secure the property.

Q. You state that she misrepresented her history of affiliations with other companies and failed to disclosure her history of failed business ventures, suits and claims against her for securities fraud and fraud in connection with other business dealings, which concealments induced you to continue discussions regarding future business relationships with plaintiffs and counterdefendants.

Can you tell me what that means?

A. On the public records it revealed that there is a lot of history with Jan and several lawsuits involving fraud, security frauds, and I have learned that she basically bankrupts most companies she is involved with as fraudulent schemes, just a way of doing business. She has a history of this.

Q. So she fraudulently schemes and causes the companies with which she works to become bankrupt?

A. That's what public records seem to indicate.

Q. That's what they say?

A. Indicate that. This is a pattern.

Q. And what does that have to do with the real estate deal?

A. Well, if I am going to do business with her and

I am giving her free money and free deals, I am getting involved with a pretty shady person. It's not someone who I want to do business with.

Q. Okay. But you say that it was a fraud. I mean, what was -- did she tell you I've never --

A. She never told me anything.

Q. That's where I am having trouble understanding what the fraud was, then. Usually somebody lies to you and that's the fraud. What's the lie?

MR. SCHEXNAYDER: You mean other than the words "failed to disclose"?

MR. BLUME: Yeah, fails to disclose.

Is that an objection?

MR. SCHEXNAYDER: No. Do you --

MR. BLUME: I'm sorry. I'll ask the questions. Is there an objection you want to put on the record?

MR. SCHEXNAYDER: Do you want to ask him whether he did the investigation?

MR. BLUME: No. I just want to ask him questions. Is there an objection you want to put on the record?

MR. SCHEXNAYDER: Okay. Don't answer any more questions about this paragraph.

Q. (BY MR. BLUME) Well, then, I will ask you about the fraud that was in your mind.

You had learned that she was involved with public companies through -- I assume you were reading public documents.

A. Yes.

Q. And you learned inside there that company --
that there were lawsuits against the company; is that
right?
A. I don't -- companies she was in control with and
involved with, yes.
Q. Right.
And were there suits against her as a person?
A. I don't recall.
Q. Do you recall the outcome of any of those?
A. No.
Q. Did she ever go to jail?
A. No, not that I know of. She could have.
Q. Was she ever fined?
A. I don't know.
Q. I guess what your statement is, is that because
of -- because of her not telling you that, you have been
frauded?

A. I never said that.
Q. What's in your mind about what -- about the
business dealings and why that's problematic?
A. What's problem -- I don't understand the
question.
Q. You said that she committed all these frauds.
A. The public records claimed that companies she
was involved with had been involved with fraud.
Q. Right.
A. That's what I had said.
Q. True.
And why is that a problem?

A. Because there is a pattern, a history of legal problems.

Q. And so that means that the deals that she was doing with you, that she is committing a fraud on those deals, too?

A. No.

Q. Oh, okay.

You state that she misrepresented her professional experience.

How did she do that?

A. In the fact that she had ability to perform on these properties, to close them, to bring money in. And she failed to bring money into any project, any deal.

Q. Well, you stated it was her professional experience. I assume that means like her jobs that she had.

How did she misrepresent that?

A. I'm sorry. Read to me -- I don't understand the question.

Q. It says that Wallace induced you to become involved in real estate development and purchase opportunities with Wallace by misrepresenting her professional experience.

A. Okay.

Q. What was the misrepresentation about her experience?

A. That she had ability to bring in money to close real estate transactions. She had the contacts and the business that she worked for, the companies that could provide income to close on these properties.

Q. And how do you know that she didn't?

A. Because she never put up the money to close them. She never provided an earnest deposit from the company.

Q. Okay.

A. The deals kept falling -- going away because of her inability to perform.

Q. You then say that she fraudulently concealed her

history of association with failed, insolvent enterprises.

How did she fraudulently conceal it?

A. She indicated that she was, you know, CEO of great companies and she has great ability and controlled millions of dollars, and I don't believe that to be true.

Q. Was she in fact a CEO?

A. Yes.

Q. Okay.

A. I believe so. I never -- she said so and I believed her, I guess.

Q. You also state that she misrepresented her ability to secure financing.

How did she do that?

A. Never put money in escrow. Never came up with any money. Never wrote a check. Never wrote a company check.

Q. Okay. But at some time did she promise that she would?

A. Yes, constantly.

Q. How much was she going to write?

A. Whatever the earnest deposit, whatever the deals were. There was many, many deals brought to the table.
Q. So she just didn't do the deals?
A. None of them.
(Deposition Exhibit No. 1 was marked for

identification.)
Q. (BY MR. BLUME) Showing you what's been marked as Exhibit 1, do you recognize that document?
A. Yes, it's the purchase contract for 107th Avenue and Buckeye.
Q. I call your attention to the last page. These are stamped, by the way, Leeper and they have numbers on them.
Do you note that?
A. Yes.
Q. I am on Leeper 45.
A. Yes.
Q. On line 455 of this, is that in fact one of the signatures that Jan Wallace authorized you to sign?
A. She had knowledge of me signing, yes. I don't remember if she actually authorized me at the time of the signature.
Q. Well, was it -- but you did sign it?
A. Yes.
Q. And it was on or about January 11th of 2005?
A. Yes.
Q. Okay.
A. Or January, yes.
Q. I am just looking at the dates.

A. Yes. I saw January 12th on the page.

Q. And then on the previous pages, Leeper 36 through Leeper 44, the initials that are on there, JW, you did those, too?
A. I presume so, yes.
Q. Now, this is the contract that shows the $120,000 purchase price that you testified to before?
A. Yes.
Q. And this was in fact the very first deal that you did with -- that involved Miss Wallace and Mr. McNevin?
A. Yes.
Q. And I note that on the first page, Leeper 36, it says "received from Jan Wallace or nominee."
A. Yes.
Q. Did you write the "or nominee"?
A. No.
Q. Who did?
A. I don't know.
(Deposition Exhibit No. 2 was marked for identification.)
Q. (BY MR. BLUME) Showing you what's been marked as Exhibit 2, do you recognize this document?
A. It's a CLA standard real estate form.
Q. Is this the document that says that the loan that you were speaking of when you were talking about a

CLA and loan approval, is this the form that you were mentioning?

A. It could be one, yes. There are several forms.
Q. Do you recognize this particular one?
A. This is the standard real estate form that realtors use.
Q. Right. But this one appears to be signed by Brett McFadden?
A. Yes.
Q. Did you sign his name to this?
A. No.
Q. So Brett McFadden signed this on or about -- well, back to the document. Do you recognize it at all?
A. Yes.
Q. Have you seen it before?
A. Yeah. I believe this is the property -- this is the one that Brett McFadden provided for me.
Q. Do you remember which property it was?
A. This would have been Jomax and Grand.
Q. Okay. But the signature at the bottom you are testifying you didn't do?
A. I don't believe so. It doesn't --
Q. Did you have a similar arrangement with Mr. McFadden where you could sign his signature to things?
A. Yes. He was -- sometimes he was aware of that

on a transaction I signed.
Q. Sometimes you could sign his name to documents to do transactions?
A. Yes.
Q. But it was with his permission?
A. He was aware of it.

Q. Okay. Just to make clear, however, on Exhibit 2, that's not one that you did; that's one that he actually signed?

A. You mean on this?

Q. Yes.

A. Yeah, this was provided through the mortgage company.

Q. Right. But Brett McFadden actually signed that? You didn't sign for him on this one?

A. That's correct. I could not because it would have to be from -- this is generated through his finance person.

Q. Okay.

(Deposition Exhibit No. 3 was marked for identification.)

Q. (BY MR. BLUME) showing you what's been marked as Exhibit 3, this is Leeper 124 to Leeper 133, do you recognize this document?

A. This is a document performed -- I mean, not made

by me, of course. It's a document for the seller of the World Gospel Mission. Probably constructed by Mark Hughes.

Q. Certainly his name is there as the seller's attorney. And it shows that Jan Wallace is the buyer?

A. Yes.

Q. And what was this -- which property was this, do you remember?

A. This is --

Q. I call your attention to page 125 where it

describes it. It says that it's in Peoria, 9.8 acres.
Does that ring a bell?
A. That's 75th Avenue and Thunderbird?
Q. I don't know. I'm asking I guess.
A. My eyes -- I need my glasses. Oh, on the back. Yeah, that helps. Yeah, 75th Avenue and Thunderbird.
Q. On page 127 --
A. Yes.
Q. -- are those your initials? Is that a DL?
A. That is a DL. Those are not my initials, I don't believe. It could be.
Q. Do you have any idea whose initials they are?
A. No.
Q. If you look at the first page on 124 --
A. Yes.

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Q. -- in the upper right-hand corner --
A. Yes.
Q. -- those writings --
A. Yes.
Q. -- do you recognize those?
A. No.
Q. It says "Dave, your changes."
A. That's not my writing.
Q. Could you have instructed somebody to make changes on this and they did?
A. Yes.
Q. Do you recall that there was an issue with the zoning as indicated on page 127?
A. Yes.

Q. What was the issue?
A. The issue basically that the zoning was not as -- being sold as being residential. It was still zoned some other zoning.
Q. Now, let's go to page 128.
Again, those initials aren't yours, are they?
A. No.
Q. But do you recall instructing anybody to make that change or deletion?
A. I could have.
Q. But do you remember?

A. No.
Q. Why do you say you could have?
A. Well, because Patrick could have reviewed these. My broker could have reviewed these. Jan could have. It's common for me to -- on a contract that's not on a real estate form, something new, that I would have someone else review it.
Q. And then again on page 129.
A. Okay.
Q. Those are not your initials, and do you recall instructing somebody to delete that?
A. I could have. I don't recall instructing somebody to do that. It could have been Mark Hughes.
Q. That's on assignment of buyer's rights, so if you are going to flip it, I assume that's important.
Do you recall that discussion at any time on this?
A. What's your question? I'm sorry.

Q. On paragraph 14 on page 129 where it's stricken, it appears that that discusses the assignment of the buyer's rights, and I would assume that the assignment of those rights is important if you are desiring to flip it.

Does that help you recall why that might have been stricken?

A. Didn't like the wording, such as assignee is an

entity controlled by. I mean --

Q. Okay. Next page, 130, is this something that you instructed or authorized or put in here at the bottom of the page?

A. Yes.

Q. That appears to provide for $25,000 to be paid to Net Growth?

A. Yes.

Q. Is that the commission --

A. Yes.

Q. -- under this sale?

Now, on the last -- I'm sorry. On page 132, it shows Jan Wallace's signature.

Is this a signature that you signed?

A. Yes.

Q. And was that done with her permission and authority?

A. Yes.

Q. Do you recall how you obtained it?

A. Advising her of the property, explaining to her what we were doing, and providing the document and signing the document.

Q. Do you remember if you told her that you were signing her name on or about the time you signed it or was this just a general decision that you made on your own?

A. I don't remember the circumstances why I signed this particular one.

Q. Okay.

(Deposition Exhibit No. 4 was marked for identification.)

Q. (BY MR. BLUME) Showing you what's been marked as Exhibit 4, this appears to be a letter to you.

Do you recall receiving this?

A. Let me read it.

Q. I would also note that this exhibit does have another -- it has an attachment to it, so I would like to have you look at all the pages, not just the first one.

A. Okay.

Yeah, I remember this. Yeah, I remember this.

Q. What's this property?

A. 75th and Thunderbird.

Q. And that's the same one that we just saw that we were talking about on Exhibit 3, isn't it?

A. Yes.

Wait a second. It's not the same one. I don't see all the marked outs, the scratched out.

Q. Go to page 135.

A. Okay.

Q. And in the upper right it looks like they are different markings --

A. Yes.
Q. -- than the markings that are there, and I think it says, "Dave, This is what I sent to the client to sign."
A. Okay. That would have been through Mark Hughes.
Q. Do you believe that that handwriting is Mark Hughes'?
A. Yes.
Q. And it appears this was sent to you as the contract that's to be signed, or what was the purpose of this letter and document that was sent to you?
A. That the sellers had signed it.
Q. Okay. And I notice on page 140 of this --
A. Uh-huh.
Q. -- at the bottom it looks like the changes that we saw on the earlier document have in fact been made.
A. Yes.
Q. And I go to page 142 and 143. I want to look at those kind of together. Well, I want to look at three pages together and see if you can help me out. I am looking at 142, 143, and 144.
A. Okay.
Q. Can you tell me why there appear to be one page that has both signatures on it, one page that has one and another that has one.

A. Why does it appear that way?
Q. Yeah.
A. I think -- I would presume, and I could be guessing, that title would want a fully executed copy

where you would have the buyer and seller on the same page. So one would be World Gospel Mission signing, one would be Jan signing, and then one would be where both are on the same document. That would be my guess.

Q. Well, do you remember signing Jan's name twice to this?

A. No, I don't remember particularly, but it's still my signature.

Q. Right. I guess what I am wondering is, did -- was this just a modified copy that was put together on page 142 or did the Gospel Mission sign it twice? Because I have got a page where they signed by themselves and then one together.

A. I couldn't tell you.

Q. Okay. But, again, that document is similar and it's a signature that you signed with her name on it?

A. Correct.

(Deposition Exhibit No. 5 was marked for identification.)

Q. (BY MR. BLUME) Do you remember at any time with either Exhibit 3 or 4 that that was copied to Mr. McNevin

or Miss Wallace?

A. Yes.

Q. They got copies of both of those as they happened then?

A. Yes.

Q. Showing you what's been marked as Exhibit 5, these are Leeper documents 149 through 165. Now, there are a lot of pages there, and let's start out with the first one. We will kind of -- and I want to not hurry you and give you enough time to look at these, because there are different documents here, so I think we can do it kind of disjointed. The first one is the Arizona Federal check.

Do you recognize that?

A. Yes. This would be the cashier check to Security Title opening escrow at 75th and Thunderbird.

Q. Now, this is the one that was the money from all three of you?

A. Yes.

Q. And I note that it's March 7th of 2005.

A. Yes.

Q. Is that about the time this was given to Security Title?

A. I would have to look back at the document to refresh my memory. I don't recall.

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Q. Well, it seems that at least as of that time --

A. We were opening escrow, yes.

Q. -- in early March that there still was an understanding of some relationship between you and McNevin and Wallace?

A. Yes.

Q. The next page, this appears to just look like a receipt for that check. Is that accurate?

A. From the title company?

Q. Yes.

Have you seen this document before?

A. Yes.

Q. Now, on page 151 of this, do you -- what's this? I mean, it looks like it's unsigned.

Can you tell me, do you recognize this document?

A. It looks like something, information Jan wanted reference the property.

Q. Well, no.

Do you -- did you write it?

A. I don't recall.

Q. Do you know where it came from?

A. No.

Q. I mean, I can read it, but all I am trying to do is authenticate it to see what it is.

So you don't recall whether you wrote this or

some third party wrote it?

A. I don't recall.

Q. So all that we do know is whatever this thing says, we just don't know why it was generated or who it went to?

A. Well, it says to Jan Wallace and it says --

Q. Well, no. I mean, I can read it.

A. Okay.

Q. But if you can give me any more information about it that you know is what I am seeking.

A. Okay. No.

Q. Okay. The next page, can you tell me what this is?

A. It looks like an aerial view of the land that -- on 75th Avenue and Thunderbird.

Q. So this is the picture of the 75th Avenue and

Thunderbird. Did you say it was 39-point some acres?
A. No.
Q. Oh, this is 9.8?
A. Yes, that's correct.
Q. And then 153 is -- what is that?
A. That's an exhibit showing the layout of the land of 75th Avenue and Thunderbird, the 9.2 acres. The 9.8 is written --
Q. Is this -- did you make this document?

A. No.
Q. Do you know who did?
A. No.
Q. 154, it shows the buyer is VLC. Is that Vern Crowe? Is that the --
A. Yeah, I believe so.
Q. And the signatures at the bottom, what are -- did you do those or are those his? Whose are they? Do you recognize them?
A. I don't recognize that, no, but -- I don't recognize that signature, unless it's Jan Wallace's, unless I am signing Jan Wallace. Yeah, my signature signing Jan Wallace's.
Q. And it shows that it was June 17th, '05. Is that about right?
A. Uh-huh.
Q. Well, there are two signatures there. Is one of them supposed to be Crowe's and one of them Wallace's?
A. Where is the second signature? I'm sorry.
Q. Well, I guess I don't know.

A. This is one signature, would be Jan Wallace's.

Q. The thing I am looking at is on line 143.

A. Is one signature.

Q. All right. I see it.

A. Two words.

Q. It's two words. All right, okay.

For some reason I thought it was -- were two initials, but I guess you are right.

Well, anyhow, you wrote that and it was intended to be Wallace; is that right?

A. Yeah. She is the seller.

Q. All right. Now, this next page, 155 --

A. I am still back on 154. Let me see what it was.

Q. Do you recognize it? I mean, it's titled Addendum 2 Net Growth Realty, Inc.

A. Yeah, I don't recall why this document was developed. Anyway, it's an addendum to a contract. I'm not quite sure it's the same contract as -- because this is not the format that Mark Hughes would use, so I don't recall what was the circumstances on this.

Oh, you know what? This was a document between our -- the buyer, VLC, Vern Crowe and Jan Wallace, so this would be an addendum to that. Okay, I understand it now. I recognize it now.

Q. "That" being Exhibit 3 and 4?

A. I'm sorry. My leg is falling asleep.

No.

Q. When you said that, what did you mean it's an addendum to?

A. It would be the purchase contract between Vern

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Crowe and Jan Wallace.

Q. Okay.

A. And those are not 3 and 4.

Q. Right. Because 3 and 4 are the --

A. Were the ones from Jan to Mark Hughes.

Q. To Mark, and then the flip was Mark to Crowe?

A. No. The flip was from Jan Wallace to Crowe.

Q. That's right.

Now, page 155, do you recognize this?

Now, this is hard to read.

A. Yes, it is.

No, I can't -- I can't read it.

Q. It's titled an Escrow/Investment Authorization.

What does that -- does that mean anything to you?

A. No.

Q. And there is a signature at the bottom.

Can you make that out?

A. No.

Q. It appears to say Jan Wallace.

Can you --

A. No.

Q. Can't see that?

A. No.

Q. Can I see your copy? Yours is bad.

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Well, I can see the Jan.

A. Okay.

Q. But you don't recognize this and can't make it out. And the question here would be is that -- did you sign her name to this?
A. I don't recall, no.
I don't recall. I can't read that.
Q. There is a Social Security number on there, 765-51-7593.
Do you recognize that?
A. No.
Is that me? Sorry about that.
MR. BLUME: Go off the record.
(A recess was taken from 11:32 a.m. to 11:33 a.m.)
Q. (BY MR. BLUME) Well, these documents are getting a little more obscure.
Do you recognize page 156?
A. It's a document from Security Title.
Q. Well, have you seen it?
A. Yes.
Q. And what was it supposed to be or what is it?
A. It's a receipt that they received the earnest deposit, 50,000, to open escrow at 75th Avenue and Thunderbird.

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Q. Now, on page 157 and 158, I don't know, do you recognize these at all?
A. I can't -- I mean, I can't read it. 157, I cannot.
Q. Let's go to 160. This appears to be -- that's okay.

This appears to be one of those CLAs.
Do you recognize it?
A. Conditional loan approval -- thank you. It's on a standard real estate form again. Yeah, this is a conditional loan approval apparently.
Q. What does this mean?
A. That Jan -- that this -- whoever, that Chase Manhattan Mortgage and someone signing it is giving her a conditional loan approval on that property address with the loan amount of -- I can't read it. Some kind of loan amount approval, with 20 percent down, as that's the condition.
Q. It looks like it's a million 400 something. Could that be possible?
A. They would loan her that if she would do the 20 percent down is what that states.
Q. And then as I understand it, this kind of a conditional loan approval can allow transactions to go forward or is it part of the normal course of business?

A. Normal course of business, yes.
Q. At any time ever have you altered, changed or signed one of these on her behalf and presented it on any deal she didn't know about?
A. Not that I recall, no.
Q. But it's possible?
A. I don't know. I don't recall. I don't recall.
Q. On page 163, it looks like at least part of the letter on June 22nd that was written to an Auchenbach. That was the name I was struggling with earlier.

Do you recognize that name, Auchenbach?
A. Yeah. I believe he works for Charlevoix Homes, also.
Q. Well, it looks like it's written to something called Leadermark Properties.
Do you know what that is?
A. No.
Q. Have you ever seen this letter?
A. I don't recall it, no.
Q. The next page, 164, there is a note that says "Jan's original signature."
Did you write that? Do you know where that came from?
A. "Jan's original signature" looks like my writing, but I don't remember what that's a reference to.

Q. Okay. All right. That's it on 5.
(Deposition Exhibit No. 6 was marked for identification.)
MR. BLUME: If you could, keep all those in a little pile there for me because she collects them later.
MR. SCHEXNAYDER: Yeah. You get strip-searched if you don't produce all the exhibits at the end of the depo. Got to be careful about that.
Q. (BY MR. BLUME) Do you recognize this?
MR. SCHEXNAYDER: Objection; form.
Q. (BY MR. BLUME) "This" being the thing that's marked as Exhibit 6. And I know there are quite a few pages there.
If you could look at it, it's labeled as Leeper

216 through 231, although I note that 216 and 231 look like they are the same.

A. 216 is a -- well, I take that back.

Q. Let me save you some time. I think these appear to be documents we have already looked at.

A. Okay.

Q. Because I am looking at 218, and it appears to be the VLC purchase contract and the $50,000 earnest money for 73rd and Thunderbird.

A. Well, the question I have, I don't know who Basilio Marcos is --

Q. Oh.

A. -- on document 216. I don't know what this is.

Q. It just appears to -- okay. That's fine.

And the addendum that's on page 217 now appears to be signed by two parties instead of one. This was the addendum we looked at before, where on line 43 that was the signature of Jan's you put down and it looks like Vern signed the bottom then or a buyer signed the bottom.

A. Yes.

Q. Do you recognize who that --

A. No.

Q. -- whose signature that is?

A. No.

Q. And then beginning on 218 and ending at 227, now it appears to have both the buyer and the seller's signature on it.

And, again, the seller's signature is Jan's that you put on there, right, on 227?

A. On page 227? Number 227?

Q. Right.

A. On document 222?

Q. 227.

MR. SCHEXNAYDER: 227.

THE WITNESS: Okay. On what line you said? I'm sorry.

Q. (BY MR. BLUME) 468.

A. Yes.

Q. And then I assume that on 228, line 36, the counteroffer, again, that's your signature also? Well, it's hers made by you?

A. Could be.

Q. And then on page 229, line 43, this is addendum 1, and, again, I am assuming that that -- on line 43, you signed her name in June on that?

A. Yeah, but I did not date it. That's not my writing on the date and I don't know about the signature.

Q. So that might not have been you that signed it?

A. No, that would be the buyer.

Q. Well, that's the buyer. You are right.

That's it on 6.

This might be a little better copy. In fact, I think it is a better copy. This is 7.

(Deposition Exhibit No. 7 was marked for identification.)

Q. (BY MR. BLUME) Showing you what's been marked as Exhibit 7, this is a Security Title Agency Escrow/Investment Authorization.

A. Oh, okay.
Q. Do you recognize this?
A. Yes.

Q. So you have seen this before?
A. Well, I presume so. I know what it is now. Okay.
Q. Tell me what it is.
A. Well, basically what it states is the money we have in escrow, that they can do it in an interest-bearing account.
Q. Okay.
A. That's what we are authorizing, that we can collect interest off the money in escrow. Very standard form.
Q. Who is "we"?
A. Well, whoever this form is referring to. It doesn't say. Or it says Jan Wallace. The 50,000, I presume this is -- without seeing everything it's connected to, this is from the 50,000 of the earnest deposit that Patrick, myself and Jan put in that we can collect interest on -- we can collect interest as long as the money is in escrow.
Q. Is this the $50,000 on the Thunderbird transaction?
A. That I made then, yes.
Q. And Security Title does this, I assume, to acknowledge that they received it and you are okay with it.

Is that why they do these things?

A. Yeah.

MR. SCHEXNAYDER: Objection; form.

THE WITNESS: Yes, they do this for the term request, between 30 and 180 days, you would receive whatever the going interest would be -- receive on that 50,000.

Q. (BY MR. BLUME) And then under note, colon, parties, FBO, what does FBO mean?

A. I'm sorry. Where are you referring to?

Q. In the middle of the document.

A. Here. Why don't you point it out to me. I don't see it.

Q. Note, parties, FBO.

Does FBO mean something?

A. I don't know what it means. I presume that it does.

Q. And then it has Jan Wallace and then there is a handwritten address with a Social Security number.

Do you recognize that handwriting?

A. Yes, that's my handwriting.

Q. Okay. Where did you get the Social Security number?

A. I don't know if I got it from Jan or where I got it from. I don't know.

Q. But as far as you know, that's her Social Security number?

A. I believe so.

Q. At the bottom where it says sign, is that where -- did you sign her name there?

A. Yes.

Q. It's not dated.

Do you know when, or about, this was signed?

A. No idea.

Q. But, again, she knew you signed this and was okay with it?

A. Well, this is her Social Security number. She gave it to me. If it's not her Social Security number, I don't know where I got it.

(Deposition Exhibit No. 8 was marked for identification.)

Q. (BY MR. BLUME) This is 8.

Do you recognize this page, this document?

A. No. It's a page 2 of some document, but --

Q. Well, what I am concerned about is the signature at the bottom where it says seller. It appears to be Brett McFadden.

A. Okay.

Q. And in the lower right-hand side it says Jomax Crossing LOI.

A. Okay.

Q. Could you have signed his name to this?

A. Yes.

Q. Well, did you?

A. It looks like it.

Q. Okay. What was this transaction about?

A. I don't know. I don't recognize it. I just --

Q. Can you make out who the buyer was?

A. No.

Q. But at least it's your recollection that you signed his name to that?

A. It says Brett McFadden, like you informed me, that I could have. I don't know what this document is referring to.

Q. Okay. There was a request for production of documents that was sent to your lawyer.

Do you recall that? Do you know what that is?

A. Well, I know what that is. Do I recall that you sent him that?

Q. Yes.

A. No, I don't recall you doing that.

Q. I did.

A. Okay.

Q. And what that means is that I asked him to send me some documents.

A. Okay.

Q. And then he sent me some documents on or about June 29th.

Do you remember assisting in the preparation of those documents or the collection of them?

A. I don't know what documents you are referring to.

Q. The ones that your lawyer gave me in response to the request I had for you.

A. I don't know what the lawyer gave you, what we are talking about.

Q. Okay. Well, there are some documents that are labeled M. Hughes.

Do you recognize these?

A. I have not personally seen those.

Q. Okay.

A. I mean, I don't know all -- there is 200 documents there.

Q. Probably closer to three.

A. Okay. Do I recognize what you have in your hand? Without seeing them, no.

MR. SCHEXNAYDER: For what it's worth, anything that's marked M. Hughes is intended to indicate documents that Hughes produced in response to subpoenas.

MR. BLUME: That you had?

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MR. SCHEXNAYDER: That's right.

MR. BLUME: That's what I thought. Now, there are some other documents. Well, maybe -- what are these? Are these -- they don't have anything on them.

MR. SCHEXNAYDER: That's Hughes' follow-up production that we got a day before you guys came. We thought rather than hold them up, we would just let your people copy them.

MR. BLUME: Okay. I'm finished. I assume you want to read and review.

MR. SCHEXNAYDER: We would like to read, review and sign. And you can send the copy to me.

MR. BLUME: Off the record.

(Deposition concluded at 11:49 a.m.)

____

DAVID BRIAN LEEPER

C E R T I F I C A T E

BE IT KNOWN that the foregoing deposition was taken by me; that the witness before testifying was duly sworn by me to testify to the whole truth and nothing but the truth; that the questions propounded by counsel and the answers of the witness thereto were taken down by me in shorthand and thereafter transcribed into typewriting under my direction, and that the foregoing pages of typewritten matter contain a full, true and accurate transcript of all proceedings and testimony had and adduced upon the taking of said deposition, all to the best of my skill and ability; and that pursuant to Rule 30(e), Arizona Rules of Civil Procedure:

[X] Review and signature was requested.

[ ] Review and signature was not requested.

I FURTHER CERTIFY that I am not related to nor employed by any of the parties hereto and have no interest in the outcome.

DATED at Phoenix, Arizona, this 4th day of

August, 2006.

KELLY SUE OGLESBY, RPR,
CSR(CA), Arizona CCR No. 50178