

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Mary Whelan,

Plaintiff, Court File No. 27-CV-20-2623

vs.

Judge Joseph R. Klein

Case Type: Malpractice

Aleksandra Ljubisavljevic, and
Aleksandra Ljubisavljevic Law
Office, LLC.,

Defendants.

ZOOM VIDEOCONFERENCE DEPOSITION OF
RONALD J. KRESHA

Taken November 24, 2020

By Lynda L. Sandy

1 APPEARANCES:

2

3 RIMAS LAW FIRM, LLC * appeared via Zoom/VC *
14451 Highway 7
4 Suite 229
Minneapolis, MN 55345
5 Phone: 952.476.4000
Email: vytas@rimaslawfirm.com

6

By: Mr. Vytas M. Rimas
7 For the Plaintiff

8

9 LIND, JENSEN, SULLIVAN & PETERSON * appeared via Zoom/VC *
901 Marquette Avenue
10 Suite 1300
Minneapolis, MN 55402
11 Phone: 612.333.3637
Email: matt.sloneker@lindjensen.com

12

By: Mr. Matthew D. Sloneker
13 Mr. Paul C. Peterson
For the Defendants

14

15

ROSENMEIER LAW OFFICE * appeared via Zoom/VC
16 210 Second Street Northeast
Little Falls, MN 56345
17 Phone: 320.632.5458
Email: kerickson@littlefallslaw.com

18

By: Ms. Kris Erickson
19 For the Witness

20

21

22

23 Also Present: Mary Whelan (via Zoom)

24

25

1 I N D E X

2

3 Examination by Mr. Rimas, Page 06, 290

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5 Examination by Mr. Sloneker, Page 235

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10 131, 132, 133, 134, 135, 136, 137, 140, 141, 144, 146, 152,

11 153, 154, 155, 164, 165, 166, 168, 170, 173, 174, 176, 179,

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13 207, 219, 221, 223, 224, 228, 230, 292

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16 Exhibits introduced:

17 Exhibit 20 - Advantage South Dakota contract, Page 275

18 Exhibit 21 - Ames Economic Commission contract, Page 277

19 Exhibit 22 - Athens County Council contract, Page 279

20 Exhibit 23 - City of Cambridge contract, Page 280

21 Exhibit 25 - Greater Dubuque Corp contract, Page 281

22 Exhibit 26 - Wabash Valley Power contract, Page 283

23 Exhibit 28 - Three blog posts by Whelan, Page 287

24 Exhibit 44 - Amended Notice of Deposition, Page 10

25 Exhibit 45 - Plaintiff's subpoena to Axtell, Page 10

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- 2 Exhibit 46 - Amended Subpoena to Golden Shovel, Page 11
- 3 Exhibit 47 - Subpoena to Kresha, Page 12
- 4 Exhibit 48 - Emails between Rimas and Erickson, Page 12
- 5 Exhibit 49 - Email from Iba to Rimas, Page 13
- 6 Exhibit 50 - Document from Jensen to Rimas, Page 13
- 7 Exhibit 51 - Complaint, Page 15
- 8 Exhibit 52 - Answer and Counterclaim, Page 119
- 9 Exhibit 53 - Defendants' Statement of the Case, Page 168
- 10 Exhibit 54 - Responses to Interrogatories, Page 148
- 11 Exhibit 55 - Responses to 2nd set of Interr., Page 172
- 12 Exhibit 56 - Declaration of Ronald Kresha, Page 174
- 13 Exhibit 57 - 3/26/12 letter from Kane to Kresha, Page 154
- 14 Exhibit 58 - 3/30/12 letter from Jacobson to Kane, Page 155
- 15 Exhibit 59 - Leonard Street and Deinard documents, Page 212
- 16 Exhibit 60 - Stinson Leonard Street invoices, Page 123
- 17 Exhibit 61 - Golden Shovel Buy-Sell Agreements, Page 40
- 18 Exhibit 62 - Partnership tax returns, Page 47
- 19 Exhibit 63 - Payment history Mary Whelan, Page 125
- 20 Exhibit 64 - Emails between Kresha and Marshall, Page 127
- 21 Exhibit 65 - Quarter 2 planning GSA, Page 141
- 22 Exhibit 66 - Golden Shovel financial records, Page 55
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Exhibit 80 - Email Kresha and Fairah, Page 98
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Exhibit 83 - Email from Kresha to Whelan, Page 106
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1 THE ZOOM VIDEO CONFERENCE DEPOSITION OF RONALD J. KRESHA
2 was attended remotely by all parties and is taken on this
3 24th day of November, 2020, commencing at 9:25 a.m.

4
5 RONALD J. KRESHA,
6 having been first duly sworn,
7 was examined and testified as follows:

8
9 EXAMINATION

10 BY MR. RIMAS:

11 Q. Good morning, Mr. Kresha, my name is attorney
12 Vytas Rimaskas, I represent Mary Whelan in this legal
13 malpractice case against her former attorney, Aleksandra
14 Ljubisavljevic. And before I say anything further, by way
15 of instructions, have you ever had your deposition taken
16 before?

17 A. No.

18 Q. Let me just review the procedure. You are here
19 to give testimony under oath to the best of your
20 recollection in the deposition by which plaintiff, Mary
21 Whelan, has subpoenaed your testimony and documents today.
22 Your obligation is to give truthful answers under oath to
23 the best of your recollection.

24 During this Zoom videotape deposition I will be
25 asking you questions over the course of the proceeding and

1 you will be obligated to respond to each of my questions,
2 unless there is an objection or unless you have a question.
3 You can always ask me to repeat the question, rephrase it,
4 ask the court reporter to read it back so that you fully
5 understand the question.

6 There will be -- you will have opportunities to
7 take a break, lunch, et cetera, and just let us know that
8 you'd like to take a break. If it happens that I'm in the
9 middle of a question or a couple of questions, I will
10 definitely honor your request, I would just probably like
11 to finish the question or two and then take the break, if
12 that works for you.

13 Given that the court reporter is transcribing
14 your testimony verbatim and my answers, as a consequence,
15 please provide audible answers to the court reporter so
16 they can be accurately transcribed. Gestures or nonverbal
17 communications cannot be transcribed by the court reporter,
18 so please answer audibly, if you can.

19 Please allow that one person is speaking at one
20 time, where I can give you my question in entirety before
21 you answer and I will do the same with respect to your
22 answer, to allow you to answer, so that one of us are only
23 speaking at one time for the benefit of the court reporter.

24 At the conclusion of the deposition you'll have
25 the opportunity, if you wish to take it, to obtain a copy

1 of the deposition transcript, review it and sign it for
2 accuracy.

3 MR. RIMAS: And just for purposes of
4 further identification on the record, the parties that are
5 shown to be participating in this Zoom deposition of
6 Mr. Kresha today, November 24, 2020, include the court
7 reporter, Lynda Sandy; myself, Vytas Rimas, attorney for
8 plaintiff; Ms. Whelan; the witness, Ronald Kresha; his
9 attorney, Kris Erickson; the attorneys for defendants,
10 Aleksandra Ljubisavljevic, include Matt Sloneker and Paul
11 Peterson. I believe I've identified everyone in that
12 regard.

13 BY MR. RIMAS:

14 Q. Mr. Kresha, are you under any medication, medical
15 condition or any other circumstance that might in any way
16 impact on your testimony during this proceeding?

17 A. I am under no medical -- what was the question
18 again?

19 Q. Are you under any medical condition, medication
20 or other circumstance that might in any way impact the
21 testimony you're about to give during this deposition?

22 A. I am under no medication. And what other
23 conditions; could you be specific?

24 Q. If you have any underlying medical condition or,
25 you know, something in your environment that might impact

1 on your giving truthful and accurate testimony to the best
2 of your recollection.

3 A. To the best of my recollection, I'm -- I'm under
4 no medication, and without being specific I am -- I
5 wouldn't know how to answer that question.

6 Q. All right.

7 MR. RIMAS: And before I move on, I'd
8 just like to ascertain whether anyone else that's
9 participating in this deposition is recording the
10 deposition in any manner, other than the court reporter. I
11 will assume that is not the case, unless someone
12 affirmatively says they are.

13 Okay, and hearing no responses, I will assume
14 that only the court reporter is transcribing and recording
15 the deposition.

16 BY MR. RIMAS:

17 Q. Mr. Kresha, for the record state your full name
18 and resident address.

19 A. My name is Ronald Kresha, my address is 214
20 Lindbergh Drive Northwest, Little Falls, Minnesota 56345.

21 Q. Mr. Kresha, what did you do in preparation for
22 your deposition today?

23 A. I read your email.

24 Q. And that would be the email -- which email?

25 A. I read the email that you sent to me just stating

1 that I would be in this deposition.

2 Q. Okay. Are you represented by counsel today?

3 A. I have Kris Erickson, my counsel, with me.

4 Q. And are you represented by any other counsel in
5 connection with this deposition or subpoenaed documents?

6 A. No.

7 Q. Have you spoken with any attorneys, other than
8 your counsel, Ms. Erickson, regarding your deposition
9 today?

10 A. No.

11 Q. I'd like to direct your attention to the first
12 exhibit, if you could access it, Exhibit Number 44, and let
13 me know when you have that exhibit in front of you.

14 A. I have Exhibit 44 in front of me.

15 Q. Do you recognize Exhibit 44 to be the Amended
16 Notice of Taking Deposition of Ronald Kresha?

17 A. Yes.

18 Q. I then would like to direct your attention to the
19 next exhibit, Exhibit 45. Tell me when you have Exhibit 45
20 accessible to you.

21 A. I have Exhibit 45 accessible.

22 Q. Do you recognize Exhibit 45 to be plaintiff's
23 subpoena directed to David Axtell at Stinson, LLP?

24 A. Yes.

25 Q. And do you recall that Attorney David Axtell and

1 his law firm Stinson -- then known probably as Stinson,
2 Leonard, Street, had represented you and your company,
3 Golden Shovel Agency, LLC, in litigation that had been
4 brought against you by plaintiff Mary Whelan?

5 A. I'm sorry, please repeat the question.

6 Q. Well, let me re-ask it, then. You have
7 previously retained attorney David Axtell and his law firm,
8 Stinson, Leonard, Street, have you not?

9 A. Yes.

10 Q. And you would have retained them on your behalf,
11 as well as your company's behalf, Golden Shovel Agency,
12 LLC, in litigation brought by Mary Whelan against you and
13 Golden Shovel Agency; is that correct?

14 A. Yes.

15 Q. Next I'd like to direct your attention to Exhibit
16 46. Let me know when you have that in front of you.

17 A. I have 46 in front of me.

18 Q. Do you recognize that as -- strike that. Do you
19 recognize Exhibit 46 to be a document entitled, Amended
20 Subpoena in a Civil Case to Golden Shovel Agency, LLC,
21 requesting a deposition on November 20, 2020, and -- strike
22 that. Let me start over.

23 Do you recognize Exhibit 46 to be an amended
24 subpoena directed to Golden Shovel Agency asking for
25 production of documents listed in the subpoena on or before

1 November 20, 2020?

2 A. I recognize this to be an amended subpoena
3 document.

4 Q. And is it your understanding that your previous
5 counsel, David Axtell, and/or his law firm, Stinson, LLP,
6 provided access to the subpoenaed documents pursuant to
7 your consent?

8 A. Can you please restate that question?

9 Q. Yes. Did you consent to the law firm of Stinson,
10 LLP, to produce the subpoenaed documents that they have in
11 their possession pursuant to the subpoenas marked as
12 Exhibits 45 and 46?

13 A. Yes.

14 Q. Next I'd like to direct your attention to Exhibit
15 47. Looking at Exhibit 47, do you recognize that as
16 another subpoena seeking production of documents from
17 yourself on or before November 20, 2020?

18 A. Yes.

19 Q. And similar to your previous answer, you provided
20 consent or permission to the Stinson law firm to provide
21 access to these subpoenaed documents; is that correct?

22 A. Yes.

23 Q. Next I'd like to direct your attention to Exhibit
24 48. Exhibit 48 is a multi-page document containing
25 communications between myself and your attorney Kris

1 Erickson. Do you see that?

2 A. I see the document.

3 Q. And you've seen these emails previously; is that
4 correct, that are the subject of Exhibit 48?

5 A. I have seen these emails.

6 Q. Next I'd like to show you Exhibit 49. Do you see
7 that Exhibit 49 is an email from Stinson attorney Mark Iba
8 to myself, also copying your attorney, wherein Mr. Iba says
9 to, "Mr. Rimas, we have received client consent to disclose
10 the documents identified in your subpoena. The documents
11 should go out later today."

12 Do you recognize that these would be the
13 documents you gave consent to Stinson?

14 A. I see the email in front of me, yes.

15 Q. All right. The next exhibit is Exhibit 50, if
16 you could turn your attention to Exhibit 50. Exhibit 50 is
17 a single-page document from Dave Jensen of the Stinson law
18 firm, sent to myself and the other attorneys, including
19 your attorney, Ms. Erickson. Do you see that?

20 A. I see the email.

21 Q. And Mr. Jensen, on behalf of Stinson, stated,
22 "Sending this on behalf of Mark Iba in relation to the
23 subpoena in Whelan versus Ljubisavljevic. The link below
24 contains a single zip file with the set of produced
25 documents. There are 22,498 PDF files across GS000001

1 through GS0065105 Bates range." Do you see that?

2 A. I see that statement.

3 Q. And do you recognize that the documents
4 identified with the prefix to the Bates number, the GS,
5 would have been documents produced by Golden Shovel in
6 response to the subpoena?

7 A. I recognize the email. I can't say exactly how
8 they numbered them and so forth, but those are their
9 documents as accessed, yes.

10 Q. Isn't it your understanding that these Bates
11 numbered documents were processed in discovery in the
12 underlying lawsuit brought by Ms. Whelan against your
13 company and yourself?

14 A. I have no access to their process, so I have no
15 way of knowing.

16 Q. In the underlying action, were you involved
17 with -- or connected with facilitating providing documents
18 to your attorneys in connection with Ms. Whelan's lawsuit
19 against your company and yourself?

20 A. And clarify "underlying action."

21 Q. That would have been the lawsuit Ms. Whelan
22 brought against Golden Shovel Agency, LLC, and yourself in
23 federal court.

24 A. So can you state that specifically and then I can
25 answer it?

1 Q. Sure. Give me one second.

2 Let's turn to the next document, Exhibit 51. Do
3 you have that document in front of you?

4 A. I have document 51 in front of me.

5 Q. Do you see that the document 51 is entitled
6 Complaint and it includes pages one through nine? Does
7 your copy as well?

8 A. My copy is Complaint, Jury Trial Demand, and
9 there are nine pages.

10 Q. Very good. And the first page of Exhibit 51 of
11 the Complaint includes a court caption at the top of the
12 document, United States District Court, District of
13 Minnesota, below that it identifies the plaintiff as Mary
14 Whelan versus Golden Shovel Agency, LLC, Ronald Kresha and
15 John Does one through 20. Do you see that?

16 A. I see that.

17 Q. And this is the complaint for what we've referred
18 to as the underlying action or at least one of the
19 underlying actions between Ms. Whelan and your company and
20 yourself. Is it fair that I make reference to this legal
21 action as an underlying action for shorthand?

22 A. And when you say "underlying action," are you
23 saying all of them or this specific?

24 Q. Well, there were -- you probably recall that
25 there were two underlying actions, there's earlier action

1 by Mary Whelan versus Golden Shovel Agency and Ronald
2 Kresha also in federal court that was dismissed because it
3 was not served on your company. Were you familiar with
4 that action at the time?

5 A. I think you have two questions in here. What
6 specifically are you asking?

7 Q. Okay, let me back this up. How many lawsuits
8 have you been involved in in your life?

9 A. I don't -- I don't have an answer to -- I don't
10 know exactly what you're referring to, as far as a lawsuit
11 or what the scope of that is.

12 Q. Have you been sued before?

13 A. I have been sued before, I have been sued --
14 please clarify, before this lawsuit or before in general;
15 what is your specific question?

16 Q. I'm just asking very generally by way of
17 background information, have you been sued before?

18 A. So before today, before this lawsuit or in
19 general, what is your time frame?

20 Q. Before today --

21 A. Is the question -- go ahead.

22 Q. Before today have you been sued in any lawsuit?

23 A. Yes.

24 Q. Please identify the lawsuits.

25 A. The lawsuit would be the one that we're talking

1 about here, to the best of my recollection, and I don't
2 know how many other ones you're referring to. If you're
3 referring to two, I don't have the specific names in front
4 of me.

5 Q. Have you been sued in any lawsuit, other than a
6 lawsuit involving Ms. Whelan?

7 A. Not to the best of my recollection.

8 Q. Let's get some biographical background
9 information next. Whether and where did -- strike that.
10 On what date and where were you born?

11 A. I was born December 16, 1969, in Grand Island,
12 Nebraska.

13 Q. When and where did you graduate from high school?

14 A. I graduated from high school in 1988 in Columbus,
15 Nebraska.

16 Q. One more time on the name?

17 A. Columbus, Nebraska.

18 Q. And your subsequent education, when and where?

19 A. I attended college in Minnesota and then I
20 received another degree online in Nebraska.

21 Q. When you attended college in Minnesota, can you
22 identify the college and the dates of attendance?

23 A. I attended St. Thomas College in '88 and '89 and
24 then I attended St. Cloud State University in '92, '93.

25 Q. And that was what university?

1 A. St. Cloud State University.

2 Q. Okay. Did you receive any degrees from either of
3 the two institutions you've already identified?

4 A. I received a degree, a bachelor of arts degree in
5 English and aviation from St. Cloud State University.

6 Q. Any subsequent education?

7 A. I received my master's in finance from Bellevue
8 University. I don't recall the specific dates.

9 Q. Do you recall the approximate dates?

10 A. It was within the last ten years. I don't
11 recall. I would have to look.

12 Q. And was that online or physically attending?

13 A. Online.

14 Q. Any other education beyond what you've
15 identified?

16 A. Not that I can recall.

17 Q. Next I'd just like to briefly touch upon your
18 employment history. Beginning in 1988, did you have any
19 full-time employment while attending -- after graduation
20 from high school?

21 A. Specifically in 1988 or in general?

22 Q. Well, if we just start back in time, you know,
23 that was a convenient starting point, first full-time job.

24 A. So in 1988 I was working for -- part-time for
25 McDonald's.

- 1 Q. Where at?
- 2 A. In St. Paul, Minnesota.
- 3 Q. And title?
- 4 A. A supervisor.
- 5 Q. And when did that position end?
- 6 A. I believe that ended in 1991.
- 7 Q. And what was your next employment?
- 8 A. McDonald's in St. Cloud, Minnesota.
- 9 Q. And your position; for how long?
- 10 A. I believe it was two years. I was a supervisor.
- 11 Q. And your next position?
- 12 A. English teacher, Ivanhoe, Minnesota.
- 13 Q. Did you say Ivanhoe?
- 14 A. Correct.
- 15 Q. And your dates of being an English teacher in
- 16 Ivanhoe?
- 17 A. I believe I taught there through 1995.
- 18 Q. So that was probably -- the starting time would
- 19 have been about 1993?
- 20 A. No, I would -- I left college and then about
- 21 19 -- yes, about 1993 to 1994, the school year, and I
- 22 taught there for two years, that's correct.
- 23 Q. And what class grade?
- 24 A. Seventh, eighth grade.
- 25 Q. Seventh through eighth graders, all right. And

1 what did you do next?

2 A. Then I was a technology and curriculum
3 coordinator at Pierz, Minnesota.

4 Q. And what organization, at what organization?

5 A. Pierz High School, school district.

6 Q. And those would have been what approximate dates?

7 A. Approximately '95 through 2001.

8 Q. And your next employment thereafter?

9 A. Atomic Learning.

10 Q. Your position and dates of association with
11 Atomic Learning?

12 A. I was operations manager, and that was through
13 2008.

14 Q. And the starting year would have been 2001 or
15 2002?

16 A. It was actually in 1998, I was working for them
17 part-time while I was at the Pierz School District.

18 Q. And after Atomic Learning, what next?

19 A. Golden Shovel Agency in 2009.

20 Q. And are you currently employed there?

21 A. I am currently an owner.

22 Q. And when you say "an owner," would that be a
23 member of an LLC, then?

24 A. Correct, member of an LLC.

25 Q. And what is your ownership interest in the

1 company?

2 A. I have a 13 percent interest.

3 Q. And has that been your interest from 2010 through
4 the present?

5 A. That is correct.

6 Q. Pardon? Yes?

7 A. That is correct.

8 Q. Okay. And has your position been operations
9 manager -- strike that.

10 And what job title have you had with Golden
11 Shovel Agency from 2010 through the present?

12 A. I'm an active partner and involved in operations.

13 Q. Have you ever had any titles as president or CEO
14 or COO?

15 A. Yes, I have had the titles of CEO, COO.

16 Q. And over what time frame did you have the title
17 CEO?

18 A. I don't recall the exact dates.

19 Q. Was that before or after you had the title of
20 COO?

21 A. That was before.

22 Q. And you indicated you were an owner with a 13
23 percent interest in the company. What is the approximate
24 valuation of your current ownership in the company?

25 A. I don't have that number. We haven't reconciled

1 it yet.

2 Q. What's the last number you recall being the
3 valuation of your ownership interest in Golden Shovel?

4 A. I don't have a -- we haven't done a valuation
5 recently, so I don't -- I don't have a valuation number.

6 Q. So you don't have any recollection of any
7 valuation numbers from 2010 through the present of your
8 ownership interest in Golden Shovel Agency?

9 A. I haven't done a specific valuation of ownership
10 interest.

11 Q. You indicated you were owner of Atomic Learning.
12 What was your ownership interest in Atomic Learning?

13 A. 16 percent.

14 Q. And was that your ownership interest when you
15 started with Atomic Learning in 1998 through the conclusion
16 of your association with the company in 2008?

17 A. Yes.

18 Q. And what was the value of your 16 percent
19 ownership interest in Atomic Learning?

20 A. I don't recall that number.

21 Q. And when did your ownership interest in Atomic
22 Learning end?

23 A. I exited the company in 2008.

24 Q. So if I understand that, your ownership interest
25 ended when you exited the company Atomic Learning in 2008;

1 is that correct?

2 A. That's correct.

3 Q. And why did you live Atomic Learning?

4 A. Chose to move on.

5 Q. And how did Golden Shovel Agency come to your
6 earliest attention?

7 A. I decided to start a marketing firm.

8 Q. So were you the person that started Golden Shovel
9 Agency?

10 A. There was four, four of us that started it.

11 Q. And please identify the four of you.

12 A. Jeff Epple, Aaron Brossoit, Brian Westerberg.

13 Q. And what were the starting positions or titles
14 for each of the four members that started up Golden Shovel
15 Agency?

16 A. We were just owners and active members. It was
17 just a small company that we were starting.

18 Q. And currently what is the size of the company and
19 revenues of the company?

20 A. Please restate. Which company?

21 Q. The one you're still associated with, Atomic --
22 strike that. The company that you're still associated
23 with.

24 A. Specifically which company?

25 Q. I'm asking about Golden Shovel Agency.

1 A. Okay.

2 Q. To get a sense of the size of the company
3 currently, what were the approximate revenues of the
4 company for the most recent period recorded?

5 A. Which period would you like? Most recent
6 recorded would be the 2019 financials.

7 Q. So what were the company's revenues in 2019?

8 A. I have an approximate number; I don't have the
9 documents in front of me.

10 Q. And what's the approximate number?

11 A. The approximate number would be under
12 \$1.4 million.

13 Q. \$1.4 million?

14 A. Correct.

15 Q. And how many employees currently at the company?

16 A. I have no employees.

17 Q. How many non-employees working for the company?

18 A. Specifically state, what do you mean by
19 "non-employees"?

20 Q. Do you have any independent contractors working
21 for the company?

22 A. I do have independent contractors working for the
23 company.

24 Q. How many?

25 A. Approximately 15.

1 Q. And would that include any of the partners in
2 that number?

3 A. No.

4 Q. How many partners are there currently?

5 A. Five.

6 Q. So I take it that those five would include the
7 four that started the company, as well as an additional
8 partner; is that correct?

9 A. That is correct.

10 Q. Please identify the name of the fifth partner
11 with --

12 A. Greg Marshall.

13 Q. And when did he join the company?

14 A. A year after we started.

15 Q. So that would be, it looks like, 2009 -- or wait,
16 you started in 2009, so he would have started in
17 approximately 2010; would that be correct?

18 A. Yes, approximately 2009, 2010. I don't have the
19 exact date.

20 Q. When you were with Atomic Learning, were you
21 under any written agreement with the company?

22 A. Specifically what kind of written agreement?

23 Q. Employment agreement, noncompete,
24 non-solicitation, you know, or terms of --

25 A. I was an employee of Atomic Learning.

1 Q. So you would have received an annual W-2
2 statement reflecting that status?

3 A. I did receive an annual W-2.

4 Q. And what was your approximate salary when you
5 left Atomic Learning?

6 A. Approximately \$130,000.

7 Q. And did you receive any other compensation after
8 leaving Atomic Learning, beyond your salary of \$130,000?

9 A. Specifically what do you mean?

10 Q. Did you receive any money from your ownership
11 interest in the company?

12 A. I did receive ownership interest money.

13 Q. And approximately how much did you receive?

14 A. Approximately \$2.5 million.

15 Q. \$2.5 million, all right.

16 And at the time you left, how many other partners
17 were there at Atomic Learning?

18 A. There were a total of 11.

19 Q. And of those 11 partners at Atomic Learning, were
20 any of those the partners you identified for Golden Shovel?

21 A. Please state that again.

22 Q. You identified, including yourself, five partners
23 with your current company, Golden Shovel Agency; is that
24 correct?

25 A. That's correct, five partners with Golden Shovel.

1 Q. Which of those partners other than yourself, if
2 any, had been previously partners with Atomic Learning?

3 A. Brian Westerberg.

4 Q. And what was his position at Atomic Learning?

5 A. He was an owner.

6 Q. And did he ever carry any title with Atomic
7 Learning?

8 A. Customer service.

9 Q. Anything else?

10 A. Not that I recall.

11 Q. So would he have been a customer service manager,
12 director, vice president?

13 A. Can I ask a question?

14 Q. Please do.

15 A. Okay. And all this information that we're
16 disclosing, that stays within the deposition, right, that
17 cannot be made public? Nobody here can release that; is
18 that correct?

19 Q. If you're requesting that your deposition be
20 marked as confidential, subject to the governing protective
21 order, I have no objection to that circumstance.

22 MR. RIMAS: Mr. Sloneker, do you have
23 any comment or position in response to Mr. Kresha's
24 question?

25 MR. SLONEKER: I think his attorney

1 needs to advise him on that, which I will say I don't have
2 any objection to -- I mean, I guess the question is, is the
3 entire deposition transcript going to be labeled as
4 confidential or just some of these questions? I guess I'd
5 have to leave that up to them. Certainly we'll want to use
6 Mr. Kresha's testimony in the case, but to what extent you
7 guys want to label it confidential under a protective
8 order, I guess, is up to you, and I have no objection to
9 you doing that.

10 MR. RIMAS: And Ms. Erickson, what's
11 your position?

12 MS. ERICKSON: Yes, Mr. Rimas, I
13 guess it's the line of questioning where we're going down,
14 where we're talking about his personal finances, and that
15 just doesn't seem to be anything that should be shared
16 outside of this deposition.

17 MR. RIMAS: All right, so at least at
18 this juncture we can designate as confidential portions of
19 the transcript that relate to your financial circumstances,
20 and since you will have a further chance, I assume, to
21 review your deposition transcript, you can perhaps let us
22 know if anything beyond that needs to be so marked. Would
23 that work, Ms. Erickson?

24 MS. ERICKSON: You know, I still have
25 further concerns about that. We have here a party to an

1 action that specifically sued my client and now we're
2 sitting here and divulging a lot of private information
3 with her in attendance and it's just not something that I'm
4 comfortable with.

5 MR. RIMAS: No, I understand that, I
6 think both counsel for this case are just trying to seek
7 what the scope of the confidentiality --

8 (Technical difficulties.)

9 MS. ERICKSON: You locked up on me
10 there, Mr. Rimas.

11 MR. SLONEKER: Yes, he's frozen on my
12 screen, too.

13 MR. RIMAS: -- for your part on
14 behalf of Mr. Kresha --

15 (Technical difficulties.)

16 MR. SLONEKER: I think it's time for
17 a break, Mr. Kresha. If you need to get some coffee or use
18 the restroom, I suppose.

19 THE WITNESS: Okay, if that's
20 acceptable, I'll take a break and I'll come back.

21 MR. RIMAS: It looks like I have an
22 Internet hiccup on my end. Can I be heard again?

23 THE REPORTER: Yes, you can. The
24 witness is taking a break.

25 MR. RIMAS: Okay, so how about a

1 15-minute break and back at 10:30. Does that work for
2 everyone?

3 MS. ERICKSON: I have another
4 scheduled hearing at 10:30, so I'm not going to be able to
5 come back on. I'm going to advise my client from this
6 point after the break to not provide any information that
7 he feels is privileged. And if you want to save that and
8 come back to those questions or ask that information once
9 I'm back, I think that would be appropriate.

10 MR. RIMAS: Okay. And so that would
11 be the typical attorney-client privilege you're thinking
12 of?

13 MS. ERICKSON: Yes, I am.

14 MR. RIMAS: Okay, we will respect
15 that and try to ask questions around that circumstance,
16 should that come up.

17 MS. ERICKSON: Thank you.

18 MR. RIMAS: All right. So then we
19 will be -- it's 10:15, I don't know how long a break was
20 required. I would say let's resume at 10:30 or a few
21 minutes before.

22 (Whereupon, a break was taken.)

23 (Whereupon, Ms. Erickson did not
24 return to the deposition after the
25 break.)

1 BY MR. RIMAS:

2 Q. Mr. Kresha, before the break we were -- your
3 counsel mentioned the confidentiality and the like and we
4 indicated we would respect that, and my suggestion is we
5 can revisit that issue again, you know, toward the end of
6 the deposition, as far as the scope of the designation
7 which we will honor. And so --

8 A. Okay.

9 Q. -- with that said, let me go back to where we
10 were.

11 A. And if I could just ask a quick question. So it
12 is -- is the intention of the other counsels here that
13 everything would only be exclusively used for this -- for
14 your purposes and the complaint against each other and not
15 to be published by anybody publicly; is that correct?

16 Q. The parts of the deposition transcript that are
17 designated confidential would be sole protective, from my
18 view, meaning that they can only be used according -- only
19 for this litigation and could not be publicly made
20 available by the parties beyond the litigation.

21 MR. RIMAS: And Mr. Sloneker, is that
22 your -- any disagreement with that or comment in response
23 to Mr. Kresha's question?

24 MR. SLONEKER: Mr. Kresha, I'll tell
25 you this: The protective order that we have in the case, I

1 don't know if you've seen a copy of it, but I assume your
2 attorney has it, at least, that dictates what can and can't
3 be done with information and documents that are designated
4 as confidential; and so in the course of the case we may
5 have to file things with the court, parts of your
6 testimony, documents that are gone through with you and
7 things like that, and so that's the reason we need you,
8 probably when this is over, to go through the transcript
9 with your attorney, designate only as much as you really
10 think is necessary to be confidential, and then if we file
11 those things, we have to file them as confidential so that
12 they're not available to the public, but they would be
13 available to all the people in this case, the judge, the
14 parties, you know, the people that are laid out in the
15 protective order, so that's kind of how it works.

16 THE WITNESS: Understood. So just so
17 I'm clear, so everything -- we'll designate everything to
18 be what we deem confidential after that and then those will
19 be filed appropriately for the legal proceedings.

20 What I can expect reasonably is that nothing
21 would be shared outside, say on social media channels,
22 blogs, other -- is that correct, it would all be within the
23 confines of this case?

24 MR. RIMAS: That would be correct.

25 MR. SLONEKER: From my standpoint,

1 absolutely.

2 THE WITNESS: Okay. Thank you.

3 BY MR. RIMAS:

4 Q. All right. Mr. Kresha, we were going through
5 your employment here.

6 A. That's correct.

7 Q. And we ended up with Golden Shovel Agency, with
8 which you are still associated. Any other employment that
9 you have not already identified?

10 A. No, not to my -- no.

11 Q. And one of the questions I was asking before
12 break --

13 A. I apologize, I should go -- if I could clarify.

14 Q. Please do.

15 A. And I didn't think of it. I am a state
16 representative and so, therefore, I am an employee of --
17 technically an employee of the State of Minnesota.

18 Q. Let me get to that very shortly.

19 One of the questions I was starting to ask you
20 had to do with if you had any employment agreements with
21 Atomic Learning. You asked me, you know, what kind of
22 employment agreement, I gave you some examples.

23 Could you answer my question again, if you had
24 any written agreements with your --

25 A. At this time I can't recall. Yes, that was a

1 long time ago, so I can't recall any other ones that I'm
2 aware of.

3 Q. Do you recall if you had a noncompete agreement
4 with them when you left that you could not go into
5 competition with them?

6 A. I don't recall.

7 Q. Do you recall whether you had a non-solicitation
8 agreement when you left Atomic Learning, in that you could
9 not contact or hire any of the Atomic Learning employees in
10 your next endeavor?

11 A. I don't recall.

12 Q. Anything that would refresh your recollection?

13 A. I -- yeah, it was a long time ago, I don't recall
14 any of that in the agreements.

15 Q. If you had any of those agreements, et cetera,
16 would you still have them in your possession?

17 A. I don't have any of that in my possession.

18 Q. Now, other than the companies you identified, do
19 you have any ownership in any other companies? And I'm not
20 asking for, you know, ownership in mutual funds or
21 securities or things of that nature, but any other
22 companies that you might have --

23 (Technical difficulties.)

24 BY MR. RIMAS:

25 Q. Had an agreement with and/or an ownership, other

1 than the ownership interests you -- okay, let me just reask
2 the question.

3 Mr. Kresha, do you have an ownership interest or
4 had an ownership interest in any other company other
5 than --

6 (Technical difficulties.)

7 A. I'm sorry, you keep breaking up, so I don't know
8 what the specific question is.

9 BY MR. RIMAS:

10 Q. Give me one moment. Let me reask the question.

11 Do you have an ownership interest in any company
12 other than those identified?

13 A. Okay, I'm sorry, that went really fast. It
14 sounds like the Internet was jumbled. Please restate.

15 Q. Have you had a --

16 (Technical difficulties.)

17 A. Because I can't hear, I don't know the question
18 I'm supposed to be answering.

19 MR. SLONEKER: Mr. Rimas, you're
20 really breaking up pretty bad. I don't know if you want to
21 try to call in by phone, like we've done before, but we're
22 not making a lot of progress here.

23 MR. RIMAS: Okay, I will do that.

24 MR. SLONEKER: If you remember from
25 last time, I think the way you might do this is to

1 completely leave the Zoom video meeting, then call in and
2 log back into the Zoom meeting and use your phone audio,
3 rather than the computer audio.

4 MR. RIMAS: Okay.

5 MR. SLONEKER: That's what we did
6 last time and it seemed to work.

7 (Off the record.)

8 BY MR. RIMAS:

9 Q. Mr. Kresha, the last question I was trying to ask
10 you before the interruption of my Internet was, have you
11 had an ownership in any company other than those two
12 companies you've already identified?

13 A. Can you be more specific? I think you gave more
14 clarifying before.

15 Q. Previously you testified that you had an
16 ownership in Atomic Learning and Golden Shovel Agency; is
17 that correct?

18 A. That is correct.

19 Q. Have you had an ownership interest in any other
20 company, other than those two companies, in your lifetime?

21 A. And, again, specifically excluding stock and
22 mutual funds; is that correct?

23 Q. Right, excluding mutual funds, securities, those
24 sorts of investments. I guess it would be with respect to
25 privately-held companies.

1 A. Okay. Are you specifically referring to any?
2 I've had a couple small real estate pieces that I've done
3 with a friend.

4 Q. Well, yes, let me ask you this, then: Are you
5 familiar with a company called Fairlight?

6 A. I am familiar with the company called Fairlight.

7 Q. And what's your association, if any, with
8 Fairlight?

9 A. I don't have any ownership association with them.

10 Q. How do you know Fairlight; what do they do?

11 A. Fairlight does developmental and programming work
12 for Golden Shovel Agency.

13 Q. And how long have they done that kind of work?

14 A. They have been working with Golden Shovel since
15 our beginning.

16 Q. Okay.

17 MR. RIMAS: And just one moment here,
18 I did need to get back into the video; no one probably can
19 see me. Off the record for a moment.

20 (Off the record.)

21 BY MR. RIMAS:

22 Q. Mr. Kresha, lastly, going through your biography,
23 you indicated your association with the State of Minnesota.
24 Could you be more specific to identify such association?

25 A. In 2011 I was elected to the state

1 representatives and began my term in 2012.

2 Q. And do you continue to serve in that role?

3 A. I do continue to serve in that role.

4 Q. And what is your party affiliation for the tenure
5 of that association?

6 A. Can you be specific, which party that I...

7 Q. Are you Republican or Democratic?

8 A. I am a registered Republican for the State of
9 Minnesota.

10 Q. And in connection with that role, have you served
11 on any committees or other leadership positions at the
12 state legislature?

13 A. Can you be specific as to what position you're
14 looking for? I mean, I'm an elected official and that's my
15 title.

16 Q. Right. And elected officials oftentimes may be,
17 as an elected official, designated as certain function or
18 responsibility within that body. Have you ever been so
19 affiliated --

20 A. I'm not sure what you're specifically asking.

21 Q. Okay. Have you had a leadership position in a
22 legislature?

23 A. Can you name which ones, so I can tell you -- I'm
24 not sure that you designate as leadership versus what I do
25 in my normal day-to-day just serving.

1 Q. Were you ever associated as a majority leader,
2 minority leader, those sorts of designations within the
3 party at any time?

4 A. I was not a majority leader, I was not a minority
5 leader.

6 Q. Were you on any legislative committees?

7 A. Yes, we were assigned legislative committees.

8 Q. And so what legislative committees have you
9 served on during your tenure as a legislator?

10 A. I have served on Education, I have served on
11 Agriculture, I've served on Commerce, I have served on Ways
12 and Means.

13 Q. And just finishing up on your academic,
14 employment and other professional background, do you have
15 any other degrees, licenses, et cetera, professional
16 degrees, licenses, other than what you've already
17 mentioned?

18 A. Unless you can specifically ask me about one,
19 nothing to my recollection.

20 Q. Are you registered as a real estate broker?

21 A. I am not a real estate broker.

22 Q. Are you registered as a securities -- have you
23 invested in any securities?

24 A. I think you have two questions there. What
25 specifically would you like to ask me?

1 Q. Have you invested in securities?

2 A. What kind of -- I mean, just general mutual
3 funds, can you be specific so I know how to answer that?

4 Q. Beyond mutual funds, have you invested in any
5 securities where you've been listed as an accredited
6 investor?

7 A. Nothing to my recollection that I -- I don't know
8 specifically what you might be looking for, so I don't know
9 that I can answer that question.

10 Q. Great, I will leave that behind and proceed
11 onward.

12 I'd like to direct your attention to another
13 exhibit, Exhibit 61. If you could turn your attention to
14 Exhibit 61 and let me know when you have opened that
15 document.

16 A. I have Exhibit 61 opened.

17 Q. Do you recognize Exhibit 61 to be a multi-page
18 document that includes the Bates numbers GS?

19 A. Please clarify on Bates numbers GS, I'm not sure
20 what that means. Now I can't hear you.

21 (Technical difficulties.)

22 MR. RIMAS: I'm back on computer
23 audio, can you hear me?

24 THE WITNESS: I can hear you.

25

1 BY MR. RIMAS:

2 Q. Mr. Kresha, with respect to Exhibit 61, I will
3 just represent to you that in the underlying action your
4 counsel, as is common, stamped all the documents that were
5 produced on behalf of Golden Shovel Agency with a unique
6 Bates number. And if you can look in the bottom right-hand
7 corner of Exhibit 61, it has the designation or stamp
8 GS0057516. Do you see that?

9 A. I see GS0057516.

10 Q. So any of the documents that we're covering in
11 this deposition that have a prefix GS, which most of them
12 do, you can assume that they were documents that were
13 produced by Golden Shovel in the underlying action,
14 provided to their attorney David Axtell, Stinson, Leonard,
15 Street, in the 2014-2015 time frame and they designated
16 each unique page of their production with that number. Is
17 that fair?

18 A. Yeah, I'm not familiar with that processes, but I
19 see that there is a number at the bottom and on the next
20 page there is another number that moves up incrementally.

21 Q. Okay. And so in connection with these documents
22 that I'm going to be covering with you, I will sometimes
23 direct you to the GS number or the page number of the
24 document, just for ease of reference and for clarity of the
25 record.

1 So I'm turning your attention back to Exhibit 61,
2 the first page of that exhibit has a Bates number
3 GS0057516; is that correct?

4 A. I see that number on the first page.

5 Q. Okay. And if you take a moment to look at the
6 pages of Exhibit 61, it contains various Golden Shovel
7 Agency Buy-Sell Agreements that were produced by your
8 company in the underlying litigation. Do you see that?

9 A. I see that this document is the Buy-Sell
10 Agreement, yes.

11 Q. And if I direct you to another Buy-Sell Agreement
12 within Exhibit 61, I'm trying to determine which one might
13 be the most recent or governing Buy-Sell Agreement because
14 those -- all of these that were produced and marked as
15 Exhibit 61 do not have signatures, so I'm trying to see if
16 I can get your assistance in that identification.

17 I direct your attention to the last Buy-Sell
18 Agreement part of Exhibit 61 and that would be with the
19 Bates numbered page of -- ending in 57563. It's entitled,
20 The Golden Shovel, LLC, Member Control Agreement. Tell me
21 when you navigate to that page.

22 A. Okay, I'm on that page that ends with 563.

23 Q. Well, let me move forward, then, by a couple of
24 pages. Give me a moment.

25 Actually, flip a few more pages until you get to

1 the page ending with 57563, three pages later than what you
2 were looking at. Do you see that page?

3 A. I see the page that ends with 57573.

4 Q. You don't see the one ending in 57563?

5 A. I'm sorry, 563, let me go up. I thought you said
6 573.

7 Q. Okay. Do you see 57563?

8 A. I am on 57563.

9 Q. Okay, very good. So this document is entitled,
10 Golden Shovel, LLC, Member Control Agreement; is that
11 correct?

12 A. That's correct.

13 Q. And it lists the registered office and agent of
14 Golden Shovel to be Ronald Kresha, 43 East Broadway, Little
15 Falls, Minnesota 56345; is that correct?

16 A. This document does state that.

17 Q. And are you the registered agent and is that the
18 office address?

19 A. That is the registered office and I am the
20 registered agent.

21 Q. Very good. Turning your attention to the next
22 page, GS0057564, page two of the Member Control Agreement
23 it lists as management by the Board of Governors, all of
24 the governors are designated as members and it lists Aaron
25 Brossoit, Jeffrey Eppele, Ronald Kresha, Brian Westerberg,

1 and this is -- these are the current governors or members
2 of Golden Shovel Agency; is that correct?

3 A. Those four are listed on the document, as stated
4 on the document.

5 Q. Now, if you turn your attention to the same
6 document we're looking at, a few pages later that end in
7 57566. Tell me when you get to that page.

8 A. 57566?

9 Q. Yes. And at the top that would be page four of
10 the Member Control Agreement.

11 A. I have, yes, page four of that document.

12 Q. Now, paragraph five talks about compensation and
13 it indicates that members may be paid, however, for any
14 services rendered in any other capacity for the LLC,
15 whether officers, employees, independent contractors or
16 otherwise. Do you see that?

17 A. I see that.

18 Q. And what compensation do you currently receive
19 from Golden Shovel?

20 A. I have compensation as a member, what's reported
21 as guaranteed payments.

22 Q. What is that amount?

23 A. I don't recall that specific amount right in
24 front of me. I don't have that document.

25 Q. Do you have any general recollection of what that

1 amount might be?

2 A. Do you have a document you can point me to that I
3 could verify what you're looking at? I mean, the document
4 is based on the company, how we do, so...

5 Q. I understand. I may have some in a few moments;
6 let me just finish this one and get back to that point.

7 So you receive a guaranteed payment based on your
8 status as a member or governor; is that correct?

9 A. That's correct.

10 Q. Have you ever been an employee of Golden Shovel
11 Agency?

12 A. I have not been an employee of Golden Shovel.

13 Q. Have you ever been an independent contractor of
14 Golden Shovel Agency?

15 A. I have not been an independent contractor.

16 Q. What written agreements do you have -- or strike
17 that.

18 And presently you do have a governing Member
19 Control Agreement with your fellow governors or members or
20 partners; is that correct?

21 A. To the best of my recollection, there is an
22 agreement between us.

23 Q. And would that be similar to the agreement that
24 we've been talking about?

25 A. I can't say because I can't compare this.

1 Q. Okay. I'd like to direct your attention to page
2 seven of the Member Control Agreement. If you look at the
3 page number on top, if that's any easier, of the document
4 and that corresponds with the bottom page number GS0057569.
5 Can you tell me when you get there.

6 A. And that is 569?

7 Q. 569, yes.

8 A. Yes.

9 Q. And at the very top it indicates the list of the
10 owners, middle column list, their contribution and the
11 remaining column states percentage interest in the LLC. Do
12 you see that?

13 A. I see that.

14 Q. And for you it indicates Ronald Kresha \$50,000
15 capital. Do you see that?

16 A. I see that.

17 Q. And would that have been your monetary investment
18 in the company?

19 A. At the time this document was produced, that is
20 correct.

21 Q. Has that changed any?

22 A. I don't have specifics. If you have a document
23 you can point me to, I can clarify it; but at the time this
24 was produced, that document was correct.

25 Q. Okay. And lastly, the percentage interest in the

1 LLC stated for you was 22.2 percent of entire interest. Do
2 you see that?

3 A. I see that.

4 Q. And was that the percentage of your interest in
5 Golden Shovel?

6 A. The document in front of us is correct.

7 Q. Okay. I'd like to direct your attention to the
8 next exhibit, 62. Let me know when you have Exhibit 62.

9 A. I have Exhibit 62.

10 Q. And this exhibit contains various partnership tax
11 returns that were provided by your company during the
12 underlying litigation. Unfortunately, the Bates numbers
13 are upside down so that we could look at the documents in
14 their correct orientation.

15 I'd like to direct your attention to one of these
16 partnership returns that are part of Exhibit 62. So if you
17 could turn your attention -- the Bates numbers increase in
18 size, so let me just see if I can navigate you to 57470,
19 and that should show you the beginning of a partnership tax
20 return for 2011.

21 A. Okay, I'm looking for it. It'll take a minute.

22 Q. Okay.

23 A. Okay, what was the name again or what was the
24 Bates number?

25 Q. 57470.

1 A. Okay, I have a page with the Bates number 57470.

2 Q. And at the top of that document you're looking at
3 Form 1056, U.S. Return of Partnership Interest 2011; is to
4 correct?

5 A. I can confirm this is Form 1065, partnership
6 income for 2011.

7 Q. All right. And this was prepared on behalf of
8 Golden Shovel Agency; is that correct?

9 A. This was prepared for Golden Shovel, yes.

10 Q. And who prepared this? I take it it was an
11 outside accountant or tax preparer?

12 A. The preparer's name is on the form.

13 Q. Okay. And you would have been involved in the
14 information provided to the tax preparer; is that correct?

15 A. Yes.

16 Q. And just for the record, the preparer's name on
17 the form of this portion of Exhibit 62 was Lanny N. Searcy
18 of Searcy & Associates; is that correct?

19 A. On the form it does say Lanny N. Searcy.

20 Q. And is that still the tax preparer that Golden
21 Shovel Agency currently uses?

22 A. Do you have a form you'd like me to verify? I
23 can verify that this was the preparer we used at the time.

24 Q. And can you identify who the preparer is
25 currently that you use?

1 A. Do you have a form you want me to look at to
2 verify or is that just a general question?

3 Q. Just your recollection, who does Golden Shovel
4 use to prepare their taxes currently?

5 A. This firm has changed hands, so this firm is no
6 longer.

7 Q. And so which firm are you using?

8 A. A gentleman who took over for that firm.

9 Q. And if you could identify the name of the person?

10 A. The name of the accountant is Chris Kaiser.

11 Q. And where is he located?

12 A. He's in Brainerd.

13 Q. And what's the name of his firm?

14 A. Kaiser & Associates.

15 Q. And what is your current title with Golden Shovel
16 Agency?

17 A. I am the operating officer.

18 Q. And in that role, what are your duties and
19 responsibilities as operating officer for Golden Shovel?

20 A. I'm in charge of operations.

21 Q. Are you in charge of the financial operations of
22 Golden Shovel?

23 A. I do manage the finances.

24 Q. And in that capacity you would be providing the
25 financial information used to prepare the tax returns for

1 Golden Shovel; is that correct?

2 A. I provide information used to prepare tax
3 returns.

4 Q. All right. So continuing to direct your
5 attention to the first page of the 2011 partnership tax
6 return 1056 for Golden Shovel Agency, on line 1-B it was
7 recorded that the gross receipts for Golden Shovel for the
8 year 2011 were \$209,825; is that correct?

9 A. Line 1-B does state \$209,825, that is correct.

10 Q. And let me ask this: As far as you know, the
11 information disclosed in form 1065-11 for Golden Shovel
12 Agency, beginning with Bates number pages 57470 through the
13 end of the document, were true and correct at the time they
14 were prepared, the last page being --

15 A. To the best of my knowledge.

16 Q. Pardon?

17 A. All right, go ahead, finish your question,
18 please.

19 Q. Right. Through the rest of the document ending
20 with page 57513.

21 A. To the best of my knowledge, this document was
22 correct.

23 Q. Was what?

24 A. To the best of my knowledge, this document was
25 accurate at the time it was created.

1 Q. Okay, thank you. And I'm directing your
2 attention a few pages into the document, there is Schedule
3 K-1, various schedules for the partners. I'm trying to see
4 if I can find one for yourself.

5 Yes, so if you turn to Bates numbered page ending
6 in 57476, partner's share of income for you, tell me when
7 you are there.

8 A. What was the Bates number again?

9 Q. 57476.

10 A. 57476. Okay, I have 57476 in front of me.

11 Q. Okay. Now, do you see that that is a Schedule
12 K-1, partner's share of income, deductions, credits, et
13 cetera, for Golden Shovel Agency, information about the
14 partner Ronald Kresha?

15 A. I see that document.

16 Q. And it shows that your share of the profit and
17 loss of capital to be beginning with 22.3 percent and
18 ending at 16.67 percent. Do you see that?

19 A. I see that.

20 Q. And why did that change, why did your -- was that
21 the addition of another partner that caused that percentage
22 to decrease?

23 A. I believe, to the best of my recollection, that
24 was the addition of another partner.

25 Q. And so as far as you know, your interest of 16.67

1 percent in the partner's share of ownership of Golden
2 Shovel Agency continues to this day?

3 A. I still have partnership in it, I don't -- I
4 mean, this document in front of you is the best at the
5 time. I don't have the current numbers in front of me.

6 Q. Okay.

7 A. I can tell you that what you see here is correct
8 at that time.

9 Q. All right. And in this document that we're
10 looking at, is there anything that indicates or reports
11 what your compensation received was from Golden Shovel
12 Agency in 2011?

13 A. I mean, the document is as it states and there is
14 a guaranteed payment line there.

15 Q. And we're looking at the same page of 57476?

16 A. We're looking at the same page of 57476.

17 Q. And if you could just navigate me to that
18 guaranteed amount, that would be the left column, which
19 letter?

20 A. I believe it would be in the right column. If
21 you read those down, I can verify the numbers for you.

22 Q. Okay, please do.

23 A. Yes, if you read those down, I'll verify them for
24 you, so I know exactly what you're asking me.

25 Q. Yes. So you received a guaranteed payment of

1 \$3,125 for 2011, according to line four guaranteed
2 payments?

3 A. Line four states guaranteed payments, that is
4 correct, \$3,125, that is the correct line stated -- that is
5 the amount stated there.

6 Q. Okay. And what did you understand a guaranteed
7 payment to be, that being part of your organization? If
8 you were to explain that to someone else, what did the
9 guaranteed payment mean?

10 A. The guaranteed payment is moneys received that we
11 have to report as a member and it's deemed as a guaranteed
12 payment as taxes.

13 Q. So if you walked me through the calculation, if
14 you started with the recorded revenues of Golden Shovel in
15 the tax return, how would you arrive at the guaranteed
16 payment for you of \$3,125?

17 A. \$3,125 was my compensation as recorded on here
18 for 2011, according to this document.

19 Q. All right. One moment, please. Thank you.

20 Next I'd like to direct your attention to the
21 2012 tax returns that are also part of Exhibit 62. If you
22 go back to Bates numbered page 57368, and let me know when
23 you get there.

24 A. What was the Bates number again?

25 Q. 57368.

1 A. Okay, I'm on 57368.

2 Q. And as far as you can tell, was the information
3 reported for Golden Shovel Agency, LLC, disclosed in this
4 portion of Exhibit 62 for Form 1065, U.S. Return of
5 Partnership Income for 2012, beginning on page GS0057768,
6 accurate when reported?

7 A. To the best of my knowledge, this was accurate as
8 reported.

9 Q. Thank you. It indicates that Golden Shovel
10 Agency reported gross receipts or sales of \$536,692; is
11 that correct?

12 A. I can verify that \$536,692 is on line 1-A.

13 Q. And that would have been the revenue for GSA in
14 the year reported; is that correct?

15 A. I can verify that that was the number that was
16 reported.

17 Q. All right. I'd like to direct your attention
18 further along in that document, the Schedule K-1 for 2012,
19 the Bates numbered page ending in 374. Tell me when you
20 get there.

21 A. I'm on a page that has a GS number of 57374.

22 Q. Okay. Do you see that is the Schedule K-1 for
23 Golden Shovel Agency for 2012 that reports the partner's
24 share of income, deductions, credits, et cetera, for Ronald
25 Kresha?

1 A. That is the correct document that is the
2 partner's share of income, deductions, credits.

3 Q. And it shows and discloses that your interest was
4 16.67 percent; is that correct?

5 A. That is the correct percentage at that time.

6 Q. And it also shows that your guaranteed payment --
7 (Technical difficulties.)

8 BY MR. RIMAS:

9 Q. Mr. Kresha, your guaranteed payment reported for
10 2012 was \$19,000; is that correct?

11 A. On line four of this document it says \$19,000, I
12 can verify that.

13 Q. Okay, thank you. I'd like to next turn your
14 attention to Exhibit 66. Tell me when you have that
15 document open and accessible.

16 A. I have Exhibit 66 up.

17 Q. Okay. Now, Exhibit 66 consists of financial
18 records of Golden Shovel beginning with GS0003429; is that
19 what you recognize?

20 A. I do recognize this was a proforma income
21 statement of cash flows and the document number was
22 0003429.

23 Q. And do you --
24 (Technical difficulties.)

25 A. I'm sorry, I didn't hear that question.

1 BY MR. RIMAS:

2 Q. Were you involved in the preparation of the
3 proforma income statement cash flow, first page of Exhibit
4 66, ending in GS0003429?

5 A. I did contribute, to the best of my knowledge, to
6 preparing this statement.

7 Q. And for what year does the proforma income
8 statement cash flow reflect?

9 A. I do not know. I don't see it stated on there;
10 and that was a long time ago, so I don't know exactly which
11 year this was in reference to.

12 Q. Mr. Kresha, what would you need to look at to
13 verify the date of this document, the year indicated?

14 A. I don't know that I -- I don't know that I could
15 put a specific date. Again, this is a long time ago, but I
16 don't recall.

17 Q. And do you know the name of the software used to
18 generate this document?

19 A. This is a PDF.

20 Q. What software generated the document that became
21 part of this PDF?

22 A. I can't say specifically if it was -- it would
23 have been a spread sheet program. I don't recall exactly
24 which spread sheet program would have been used.

25 Q. And would you have used QuickBooks at the time?

1 A. This document would have been created by a spread
2 sheet, that's what I can tell you, that's what I recall.

3 Q. Okay. Now looking at the left column of this
4 document, just to get some explanation, it shows a net
5 revenue in the first column. Do you see that?

6 A. I see that.

7 Q. And this shows it for the months beginning with
8 January through December, with a total of \$824,600. Do you
9 see that?

10 A. I see that.

11 Q. And would that capture the revenue for the time
12 period indicated of GSA?

13 A. No, this was a projection and a proforma
14 document, it was not an actual document.

15 Q. Okay. And what allows you to characterize this
16 document as a projection? Is there any word or information
17 disclosed in the document that leads you to that
18 characterization?

19 A. To the best of my knowledge, the word "proforma"
20 was used internally when we projected and created
21 aspirational budgets.

22 Q. Okay. Next I'd like to direct your attention
23 toward the end of the document, it looks like it would be
24 the last two pages of this exhibit marked as 66, that would
25 be beginning with the page ending with 3725. Tell me when

1 you see that page.

2 A. I do see that page, 3725.

3 Q. So do you recognize this as a document you would
4 have generated for GSA?

5 A. That would have been an internal projections
6 document that generated at that time.

7 Q. And when you say "at that time," that time would
8 have been what time?

9 A. Because there's no specific date, I can't tell
10 you, other than it looks like it was sometime after 2009.
11 I don't know if -- I don't recall if this was just a
12 projections document or what this form was used for.

13 Q. So it may have been a projection or it may have
14 reflected actual revenues, is that how I should understand
15 your testimony?

16 A. All I can say is this was a projection. Actuals
17 would have been the tax documents.

18 Q. All right. So under revenues there's a column of
19 software development. Do you see that?

20 A. I see that.

21 Q. And that category reflected what?

22 A. That would have been -- to the best of my
23 knowledge, that software development would have been
24 development, costs associated with developing the Golden
25 Shovel software that we required. That would have been the

1 beginning of the expenses.

2 Q. And please explain to us -- I'm not familiar with
3 that service or product of GSA. What was Golden Shovel
4 software?

5 A. The software would have been related to our web
6 development and web providing software, the Economic
7 Gateway.

8 Q. So that was the software entirely responsible for
9 the revenues received by Golden Shovel Agency?

10 A. That was our hosting software that we used for
11 websites.

12 Q. And you indicated that was an expense. Who was
13 that expense paid to?

14 A. To the developers. I don't know -- we just had
15 used -- this wasn't an actual paid, this would have been a
16 projection, so this would have been trying to project out
17 the costs.

18 Q. And was the company Fairlight the company that
19 did the software development for --

20 A. I can't say specifically off this document
21 because it was just a line item, it wasn't to any actual
22 contractors.

23 Q. So then continuing down on the line item, there's
24 the name Ron. I take it that would be for Ron Kresha,
25 yourself, under the revenues heading?

1 A. That's correct.

2 Q. What did that signify?

3 A. That would have been for planning, that signifies
4 planning purposes of projected expenses.

5 Q. So when you reported \$68,125 in 2011, what kind
6 of expenses were you contemplating that you would have
7 expensed?

8 A. That would have been for compensation for direct
9 operations within the company.

10 Q. The next one's guaranteed payments, that would
11 have been the guaranteed payments to the partners,
12 including you, for revenues; is that correct?

13 A. Well, that looks like that would be a total of
14 the guaranteed payment for people that were actively
15 working within the company at the time.

16 Q. So, for example, if we look at the year 2011, the
17 guaranteed payment reported or disclosed is \$235,737; is
18 that correct?

19 A. That question isn't correct as stated. If you
20 want to restate it, I can verify.

21 Q. Well, why don't you tell me what the figure
22 represents and speed up the process.

23 A. What would you like to know? I mean, I can
24 verify what you're asking, but you asked that last one
25 incorrect. I'm not sure what you're asking me, so I don't

1 know how to answer.

2 Q. Do you see the figure \$235,737?

3 A. I see the figure \$235,737.

4 Q. And what portion of that were you entitled to as
5 a guaranteed payment?

6 A. The \$235,737 appears to represent a total of the
7 lines with Aaron, Jeff and Ron, our projected possible
8 compensation for that period, that's what that document
9 appears to be.

10 Q. So that you would -- to get your respective
11 guaranteed payments projected, you would take \$235,737 and
12 divide that by the three partners and then they would each
13 get a third of that reported number, if I understand your
14 testimony.

15 A. No, that document -- that number is what we
16 projected to be paid for internal -- for compensation for
17 internal fees, that's my understanding of guaranteed
18 payments.

19 Q. That's a total guaranteed payment to all
20 partners; is that correct?

21 A. No, it's the total -- I believe that is a total
22 of lines for Aaron, Jeff and Ron. I don't have -- I'm not
23 calculating it, but it looks to me like that is totaling
24 those three lines.

25 Q. The next line for revenues is labor. What would

1 that have reflected with the numbers reported for 2011 and
2 2012?

3 A. So please clarify. You said the next line of
4 revenue; the labor is not a revenue, that would have been
5 an expense.

6 Q. All right. It just happens to be you have a
7 heading of the document that says revenues and you have
8 various things listed there under. Not having authored the
9 document, I'm trying to understand the document from your
10 testimony. So what does labor represent and the number --

11 A. Labor represents possible employees at that time.

12 Q. And how many employees did Golden Shovel have in
13 2011?

14 A. I don't recall, I don't recall the specific
15 numbers. That was a long time ago.

16 Q. Did they have any employees in 2011?

17 A. I believe there was one or two that received a
18 W-2 wage, but I don't have that in front of me. If you
19 have a document you can point to, I can verify it; but
20 other than that, I have no recollection.

21 Q. Do you recall the name or names of the one or two
22 employees that you just mentioned?

23 A. Not off the top of my head. I would have to have
24 a document in front of me to verify.

25 Q. The next line is contracted work, which numbers

1 recorded from 2010 to 2013. What did that reflect?

2 A. That would have reflected possible contractors
3 that we would have looked at bringing on.

4 Q. That would be independent contractors?

5 A. That would be correct.

6 Q. The next one is sales, what does the row for
7 sales indicate?

8 A. That would be possible expenses to bring in sales
9 contractors.

10 Q. And there's a column for professional fees, what
11 would that have indicated?

12 A. Professional fees would be probably fees
13 associated to accounting or other banking fees. Any fees
14 associated with some type of service in that manner.

15 Q. That would have included legal fees as well?

16 A. That would have included legal fees, to the best
17 of my knowledge.

18 Q. Next I'd like to direct your attention -- how did
19 you first come to know Mary Whelan?

20 A. I had known her through my previous company
21 Atomic Learning.

22 Q. And were you involved as part of the hiring of an
23 employee for Atomic Learning with Mary Whelan?

24 A. I was -- I don't remember exactly how I was
25 involved. I was in charge of operations, so I'm sure I

1 would have filled paperwork out, but I don't recall
2 anything else.

3 Q. Do you remember interviewing with her?

4 A. I do not.

5 Q. And do you recall approximately what year she
6 would have been hired?

7 A. I do not.

8 Q. Do you recall what her position was?

9 A. I believe she was involved in graphics.

10 Q. And she was a W-2 employee of Atomic Learning?

11 A. I don't recall. I don't remember how that was
12 structured.

13 Q. Do you recall what her compensation was?

14 A. I do not.

15 Q. And over what time frame were you associated with
16 Mary Whelan while she was at Atomic Learning?

17 A. I don't recall the dates.

18 Q. Did she do any work for you?

19 A. In what capacity do you mean? I don't understand
20 the question.

21 Q. Did she do any compensated -- did any of her work
22 duties or responsibilities include any work that she did
23 under your supervision?

24 A. No.

25 Q. Do you know who she would have reported to at

1 Atomic Learning if it was not you?

2 A. I don't recall the structure.

3 Q. So in that time period, if you were in charge of
4 operations, were you the -- you were the top person on the
5 organizational chart; is that correct?

6 A. I was one of the executive team.

7 Q. Who else was on the executive team other than
8 you?

9 A. I don't recall everybody on the team. That was a
10 long time ago.

11 Q. Okay. Do you recall the reasons why Ms. Whelan
12 left Atomic Learning?

13 A. I did not, I wasn't -- none of that was disclosed
14 to me.

15 Q. Were you responsible for hiring her services for
16 Golden Shovel?

17 A. I was responsible for bringing -- inviting her to
18 be an independent contractor for Golden Shovel.

19 Q. And what year did that occur in?

20 A. I don't recall the specific year.

21 Q. And why did you invite her to be an independent
22 contractor for Golden Shovel?

23 A. We were looking for a graphics person and I was
24 aware that she was available.

25 Q. And how were you aware?

1 A. I don't remember how it came to me. I mean,
2 somehow the knowledge had come to me that she was no longer
3 working with Atomic Learning. I think I picked her name up
4 like I would have any other contractor that would have been
5 available.

6 Q. And what were the terms of the services she
7 rendered for Golden Shovel when you hired her?

8 A. I don't recall that specifically, I'd have to go
9 back and look. If you have a document, I can verify them,
10 but I don't have the specifics in front of me.

11 Q. And so what sorts of documents would there be for
12 you to answer that question?

13 A. I don't know, it was so long ago. If you have
14 one that you can refer to me, I can look at it to verify,
15 but I really don't have any -- I don't have any
16 recollection.

17 Q. Okay. Would your company still have a file or
18 any documents that involve Ms. Whelan?

19 A. We don't have any files. Everything that was in
20 the -- as part of that was part of the underlying
21 litigation and we don't keep those records anymore.

22 Q. And just for the record, those records would be
23 the ones we've been looking at and we'll be looking at over
24 the course of the deposition --

25 (Technical difficulties.)

1 A. Yes. Again, I can verify any document you put in
2 front of me and tell --

3 (Technical difficulties.)

4 BY MR. RIMAS:

5 Q. -- number beginning with GS on them.

6 A. I didn't understand what you said.

7 Q. Okay. And what is the document retention policy
8 of Golden Shovel?

9 A. We have to stop, I didn't hear your last
10 question, you broke up on me. Please restate your
11 question.

12 Q. Yes. What is the document retention period for
13 retaining documents at Golden Shovel, if there is one?

14 A. There is no document retention policy, that I'm
15 aware of.

16 Q. Okay. I'd like to direct your attention to
17 Exhibit 67. Let me know when you have that.

18 A. Okay, I have the exhibit, I have Exhibit 67 up.

19 Q. Okay, thank you. Exhibit 67 consists of various
20 communication reports of Golden Shovel, beginning with
21 Bates number GS0060092. Do you see that?

22 A. I see the document ending in 92.

23 Q. And you see at the top of that page communication
24 report 9-30-2012 through 10-6-2012; is that correct?

25 A. I see, yes, up at the top of the document.

1 Q. Okay. Now, is this a document that you prepared
2 or contributed to the preparation of?

3 A. No, not that I recall. I did not prepare
4 internal documents.

5 Q. Do you recognize this as a document of Golden
6 Shovel?

7 A. Yes, this looks to be an internal reporting
8 document that people used for communication.

9 Q. All right. And just to walk through the
10 document, on the first page it has the heading Sales, below
11 that Current Sales, below that color codes; it looks like
12 there's a color code for Gatekeeper/Gateway,
13 Gateway/Gatekeeper and additional services. Do you see
14 that?

15 A. I do see the color coding.

16 Q. And regrettably this is a black-and-white copy,
17 but you probably understand that the color copy of this
18 document would show the different color coding; is that
19 correct?

20 A. That could be correct.

21 Q. So after the color code, the first listed entry
22 is Gatekeeper. Do you see that?

23 A. I do see the word Gatekeeper.

24 Q. What was Gatekeeper in the time frame indicated;
25 how would you describe that to one of your customers or

1 prospective customers?

2 A. Gatekeeper was a term used for customer service.

3 Q. Customer what?

4 A. Customer service.

5 Q. Customer service.

6 A. The term Gatekeeper was what we used for serving
7 our clients.

8 Q. Okay. So in this instance one of the clients
9 listed is Lost Rivers ED, Inc. Do you see that?

10 A. Which part, under...

11 Q. We're still at the --

12 A. Please refer me to -- yes, I see a couple
13 sections.

14 Q. All right. So there's a column below color code
15 that lists various clients. Do you see that?

16 A. I do see that. I see a client section, yes, says
17 Lost River, contract amount, invoice and status, I see
18 that.

19 Q. Okay. So if we take Lost River ED, Inc., by way
20 of example, under the contract amount it shows \$12,250,
21 does it not?

22 A. The contract amount shows \$12,250.

23 Q. And this would have been for the Golden Shovel
24 product or service called Gatekeeper; is that right?

25 A. I can't say, I did -- I did not create this, so I

1 don't know exactly how they were referring to the sales. I
2 can say that all I see is the name and the amount, I can
3 verify those.

4 Q. Okay. And who would have prepared this document?

5 A. I don't recall. I don't know who internally
6 prepared it.

7 Q. It would have been a document that would have
8 circulated to your attention in a time frame indicated,
9 would it not?

10 A. I don't recall, but I probably would have read it
11 at that time if it was an internal report.

12 Q. So proceeding on with the contract amount Lost
13 Rivers, Golden Shovel entered into a contract with Lost
14 Rivers, the contract amount was \$12,250, as reported on
15 this first page; is that correct?

16 MR. SLONEKER: Object to form.

17 A. According to --

18 THE WITNESS: I'm sorry, what's that?

19 MR. SLONEKER: I may object from time
20 to time. You can ignore me, just wait until I do it and
21 then you can answer.

22 THE WITNESS: Okay.

23 A. So do you want to restate the question? I didn't
24 hear all that, so please back up and I can do this again.

25

1 BY MR. RIMAS:

2 Q. Okay. The contract amount for the contract
3 between Golden Shovel and Lost Rivers is supposed to have
4 been \$12,250; is that correct?

5 A. I can tell you that this says \$12,250. I don't
6 have the actual contract in front of me, so I don't know
7 what it's referring to. I don't know if it was actual or
8 if it was a proposal or if it was a conversation. I can
9 just tell you on this document it says \$12,250.

10 Q. The next column says that half of the amount was
11 invoices to Lost Rivers in the amount of \$6,125; is that
12 correct?

13 A. Yes, that is correct.

14 Q. And what does the word "invoice" mean to you?

15 A. They would have invoiced them for some services;
16 and I don't have the contract in front of me, so I don't
17 know what that would have been.

18 Q. Okay. And were you involved in the preparation
19 of invoices for the customers of Golden Shovel Agency in
20 the time frame indicated?

21 A. I approved them, I saw them; I didn't create all
22 of them.

23 Q. 567, a couple pages from the end of the document.

24 A. 567.

25 Q. Yes. It is a page that shows year-to-date sales

1 2014 and 2015. Do you see that page?

2 A. Yes, that's correct.

3 Q. All right. So for the year-to-date sales of GSA
4 in 2014 there's a charge by month that lists renewals, new
5 sales and totals for the entire year. Do you see that?

6 A. I see that.

7 Q. And for 2014 it reports that the total amount of
8 sales was \$573,250; is that correct?

9 A. The amount on there that is reported as \$573,250,
10 I have no way of verifying that that was projected, actual
11 or just a pipeline document. I didn't prepare this form,
12 as I recall.

13 Q. And you used the word "pipeline," what does
14 "pipeline" mean to you?

15 A. Sales pipeline is when the salespeople project
16 out what possible sales could come in.

17 Q. Now, below that amount there is a row with a
18 percentage symbol. Do you see that?

19 A. Yes, I see the percentage symbol, yes.

20 Q. So what do those reported symbols, percentage
21 symbols mean; under renewal is 50.7 percent, new sales is
22 49.3 percent and the total is 100 percent?

23 A. Correct, so those are just percentage
24 calculations, as I understand it, \$290,850 would have been
25 50.7 percent of the total \$573,000, as reported on this

1 document.

2 Q. Okay. Next I'd like to turn your attention to
3 Exhibit 68. Exhibit 68 consists of Golden Shovel invoices,
4 two pages bearing Bates numbers GS0013789 and GS0042714; is
5 that what you have?

6 A. I see Bates number 3789 and Bates number 37 -- or
7 I'm sorry, 42714.

8 Q. Okay. So looking at the first page of Exhibit
9 68, do you recognize that as a Golden Shovel invoice?

10 A. That appears to be a Golden Shovel invoice.

11 Q. And to whom is the invoice directed?

12 A. According to this document, to Great River
13 Energy.

14 Q. And the time frame would have been, as indicated,
15 December 22, 2012; is that correct?

16 A. That December 22, 2012, is on the document.

17 Q. And so your company invoiced Great River under
18 this invoice for \$84,000; is that correct?

19 A. I can verify this document was created. I don't
20 recall exactly if it was sent or if it was paid, I just
21 don't have that. But I can verify that this document is
22 accurate, this has been produced, yes.

23 Q. Okay. And it was created in the ordinary course
24 of GSA's business?

25 A. Yes, this is an invoice created with the date of

1 December 22, 2012.

2 Q. And that would have been something that you would
3 have been involved in the creation of or oversight of
4 creation of invoices in the time frame indicated?

5 A. I don't recall exactly what my role would have
6 been. I would have seen it, I'm sure, as the operations
7 person, I would have been familiar with it, but I don't
8 recall exactly how it was generated.

9 Q. Okay. And the last page of this Exhibit 68 shows
10 another invoice for the due date period of June 15, 2012,
11 in the amount of \$26,250; is that correct?

12 A. I do see a document with the date of June 15,
13 2012.

14 Q. And, again, it is your understanding this would
15 have been true and accurate amounts reported in the invoice
16 to Great River in the time frame indicated?

17 A. I can verify this document was created with the
18 date of June 15, 2012. I don't recall any other specifics.

19 Q. And it was a document generated in the ordinary
20 course of business of Golden Shovel?

21 A. It was a document created with the date of
22 June 15, 2012, that's all I can -- just looking at this, I
23 can't recall anything else.

24 Q. Okay. Next I'd like to direct your attention to
25 Exhibit 70. Let me know when you have that opened.

1 A. I have Exhibit 70 open.

2 Q. Do you recognize Exhibit 70 to be a multi-page
3 document that includes various contracts between Golden
4 Shovel Agency and its listed customers?

5 MR. SLONEKER: Object to form.

6 THE WITNESS: I'm sorry, what's that?

7 MR. SLONEKER: I was just entering an
8 objection. You can answer his question, if you know.

9 THE WITNESS: Okay.

10 A. I know these documents were produced, that's
11 really all I can say about them. I don't recall specifics
12 about them.

13 BY MR. RIMAS:

14 Q. Okay. Well, looking at the first one, by way of
15 example, the first page of Exhibit 70, GS001009, this
16 document is entitled, Golden Shovel Agency Agreement to
17 Provide Economic Gateway and Gatekeeper Service. Do you
18 see that?

19 A. I see that on the document.

20 Q. And that the contracting party to this document
21 was identified as Advantage South Dakota client. Do you
22 see that?

23 A. I see that on the document.

24 Q. And this particular document was signed by the
25 client several pages later, GS0001015. Do you see that?

1 A. I see that.

2 Q. And typically who would sign on behalf of Golden
3 Shovel Agency these types of contracts as --

4 A. At that time it may have been anybody with
5 executive signing authority.

6 Q. Okay. And please identify those persons.

7 A. Whoever was on the executive team back then. I
8 don't recall all the team members. I was part of it, I'm
9 sure. It would have been other partners if they had
10 signing authority.

11 Q. And so you would have been responsible at
12 different times for signing similar agreements that Golden
13 Shovel Agency had with its customers; is that correct?

14 A. I would have had executive authority to sign
15 documents, yes.

16 Q. And who prepared this, who drafted the terms of
17 this agreement?

18 A. I don't know. I don't recall.

19 Q. Was it someone internal to Golden Shovel Agency
20 or an outside attorney?

21 A. I don't recall. We've used both.

22 Q. Have you drafted any contracts on behalf of
23 Golden Shovel?

24 A. Yes.

25 Q. Now, going back to this particular document, the

1 section two or paragraph two, payment for services, on the
2 first page of Exhibit 70. Do you see that?

3 A. First page of Exhibit 70, I see payment for
4 services.

5 Q. Okay. So it indicates under that paragraph, for
6 creation of website with the services and modules set forth
7 above, client shall pay Golden Shovel the sum of \$15,000,
8 with one-half of said sum, \$7,500, payable upon execution
9 of this agreement and the second one half payable, \$7,500,
10 when the website is released to the client. Do you see
11 that?

12 A. I see that.

13 Q. And those would be the amounts that would be
14 included in Golden Shovel invoices to this client?

15 A. I believe so. What was stated there would have
16 been what was discussed during the sales process.

17 Q. Okay. And thereafter, according to the last
18 sentence, the client would continue to pay additional
19 amounts of \$6,000 annually for hosting, maintenance,
20 technical support and Gatekeeper service beginning May 1,
21 2013; is that correct?

22 A. Yes, that is part of the terms. If they chose to
23 renew, I believe that would have been their amount.

24 Q. Okay. And these amounts would have ended up in
25 the revenue reports for Golden Shovel that ended up in

1 their partnership tax returns?

2 A. The process would have been if they -- if the
3 contract was secured and a payment was secured, it would
4 have directly flowed to the tax documents, that's correct.

5 Q. All right. I'd like to direct your attention
6 to --

7 MR. RIMAS: Before I do that,
8 Mr. Kresha, do you customarily take a lunch at a certain
9 time or have a suggestion regarding the time table to do
10 so?

11 THE WITNESS: I mean, I can just keep
12 working through to get to the end, that's fine with me.

13 MR. RIMAS: All right. I'm just
14 trying to see how much additional material I can continue
15 covering. Off the record for a moment.

16 (Discussion off the record.)

17 (Whereupon, a break was taken.)

18 THE WITNESS: I'm just curious, you
19 had stated that you were going to talk to my attorney about
20 the compensation. It was my understanding that that was
21 agreed to before we did this, and so has that changed and
22 do you not -- is your intention not to honor that
23 compensation that was put in front of you?

24 MR. RIMAS: The compensation that was
25 put in front of me was very brief and terse, the details

1 were not covered. You'll be obtaining a deposition
2 transcript that indicates the approximate duration of your
3 deposition testimony, that should guide you in preparing
4 your invoice.

5 THE WITNESS: Okay, so just so I'm
6 clear, so is it your intention not to honor that email,
7 you're going to try to go a different direction?

8 MR. RIMAS: We're going to follow the
9 email.

10 THE WITNESS: Okay. And so, of
11 course, the email that was sent was -- that had my
12 reasonable compensation terms and that's what your -- I can
13 expect that you'll follow for invoicing.

14 MR. RIMAS: Let me ask you this --
15 and we're back on the record, I take it?

16 THE REPORTER: Yes.

17 MR. RIMAS: So let's begin with that.
18 Mr. Kresha, what is the compensation you're requesting for
19 the deposition?

20 THE WITNESS: I'm referring to the
21 email that was sent to my attorney, so I just wanted
22 clarification that you were going to follow that or you
23 weren't.

24 MR. RIMAS: What is the rate of your
25 compensation requested?

1 THE WITNESS: According to the email,
2 my reasonable compensation rate is \$285 an hour.

3 MR. RIMAS: And what's the basis
4 for --

5 THE WITNESS: That's what I charge
6 for my work.

7 MR. RIMAS: Okay. And what is the
8 basis for your hourly rate?

9 THE WITNESS: That's what I charge in
10 my normal compensation time, so... And, I mean, if it's
11 best if we need to pause and I need to get my attorney,
12 that's probably a better way to do it. I was just left
13 unclear with your answer, so --

14 MR. RIMAS: You what?

15 THE WITNESS: I was left unclear with
16 your answer before we left for lunch.

17 MR. RIMAS: Well, as I indicated, I
18 will be talking to your attorney and respecting your
19 request for compensation, but I need to do that with your
20 attorney.

21 THE WITNESS: Okay.

22 MR. RIMAS: So back on the --

23 THE WITNESS: I think I'm clear.

24 MR. RIMAS: All right.

25

1 BY MR. RIMAS:

2 Q. I'd like to direct your attention to another
3 exhibit. Now please turn your attention to Exhibit 72 and
4 let me know when you get there.

5 A. And that's Exhibit 72?

6 Q. Yes.

7 A. Okay.

8 Q. Do you recognize Exhibit 72 to be an email from
9 John Marshall to Heidi Thielen, in the time frame
10 indicated, June 24, 2011?

11 A. I do.

12 Q. In that time frame what was John Marshall's
13 duties with Golden Shovel?

14 A. John was a managing partner, as well as handled
15 sales conversations.

16 Q. And same question regarding Heidi Thielen, who is
17 she and what did she do for the company in the time frame
18 indicated?

19 A. At that time Heidi was also involved with sales.

20 Q. And was she an employee or an independent
21 contractor?

22 A. I don't recall at that time if she was an hourly
23 employee or if she was an independent contractor at the
24 time.

25 Q. Okay. And had you occasion to or would you have

1 seen this email in the time frame indicated, that's the
2 first --

3 A. It didn't look like I was -- it doesn't look like
4 I was involved in that, so I don't know the basis of that.

5 Q. Okay. And I'd like you to turn your attention a
6 few pages later in this Exhibit 72, Bates numbered page
7 GS0005895. Tell me if you see that.

8 A. Okay, 5895, yup, I see that.

9 Q. Do you recognize this as your email to John
10 Marshall and others at Golden Shovel regarding email
11 template for survey you wrote on August 24, 2011?

12 A. Yeah, I mean, this looks like an email. It must
13 have come from my account, though. That's all I can say.

14 Q. All right. Then I'd like to direct your
15 attention to the next document, and that is on page number
16 42952.

17 A. 42952?

18 Q. 42952.

19 A. Yes.

20 Q. It looks like this was an email from your partner
21 John Marshall to you, January 5, 2013, re 2013.

22 A. Yes, it must have been an email. I don't know
23 the context of it or I don't recall it.

24 Q. Do you see that there is an email --

25 A. Which document are we looking at again?

1 Q. We're still on the same page, 42952. There's an
2 email on that first page -- or I mean on that page, below
3 that there's an email from you to Jeff, Aaron and John,
4 Saturday, January 5, 2013, starting out --

5 A. Yes, I see that email exists.

6 Q. As far as you can tell, the information would
7 have been true and correct at the time frame indicated?

8 A. I can acknowledge it looks like that email was
9 sent. I have no recollection of any other context behind
10 it.

11 Q. Okay. So if you look down your email, "There are
12 a couple things we have got to get done, number one, put
13 the lawsuit out of your mind."

14 That would be Ms. Whelan's lawsuit against your
15 company; is that correct?

16 A. Again, I don't recall the email specifically, so
17 I -- to the best of my recollection, I -- I can just say
18 the email was written; I don't remember the context.

19 Q. And in that time frame the only lawsuit you were
20 aware of was Ms. Whelan's lawsuit against Golden Shovel and
21 yourself; is that correct?

22 A. I believe that's -- that's the only thing I can
23 recall.

24 Q. You go on to say, "She is a quack and has proven
25 so."

1 You were referring the "she" to be Ms. Whelan; is
2 that correct?

3 A. I don't recall. I don't recall the email. I
4 don't recall specifically who may have been referred to
5 there. I can't say.

6 Q. Could it have been someone other than Ms. Whelan?

7 A. It was a long time ago, I don't recall.

8 Q. And you go on to say in your email, "We are not
9 the first to be sued by crazy and won't be the last." Do
10 you see that?

11 A. Yup, I do see that.

12 Q. And that would have been your statement you
13 emailed on January 5, 2013?

14 A. That appears to be a statement that was in an
15 email that came out of my account, that's what I can
16 verify.

17 Q. And you close with paragraph one, "I will squash
18 her like a bug, so it's time to move on."

19 What did you mean, "squash her like a bug"?

20 A. I can't say. I don't recall. It was a long time
21 ago.

22 Q. Did you have negative or hostile feelings toward
23 Ms. Whelan in that time frame?

24 A. I don't know, that was a long time ago. I really
25 don't recall how I was feeling one way or the other.

1 Q. Give me one moment.

2 I'd like to direct your attention to a few pages
3 later in Exhibit 72, Bates numbered page GS0044960. Tell
4 me when you get there. Mr. Kresha --

5 A. I'm sorry, can you say that again? I didn't hear
6 what you said.

7 Q. Could you direct your attention to the same
8 exhibit, 72, a few pages later.

9 A. Yes.

10 Q. GS0044960.

11 A. Sorry, I'm still looking. What were the last
12 four numbers again?

13 Q. 4960, or just 960, to make it easier.

14 A. Is it after 950, 951? There it is, I have 960,
15 yup.

16 Q. Do you recognize that as your email at the top,
17 Ron Kresha to John Marshall, "Thanks and something to think
18 about," that you would have sent on May 26, 2011?

19 A. Yes, it looks like an email that is from my
20 account. I don't recall anything else about it.

21 Q. And this includes a LinkedIn message that was
22 forwarded to you regarding Mary Whelan; is that correct?

23 A. It could be. I don't recall the actual
24 conversation or the time that this happened.

25 Q. But this came out of your email account in the

1 time frame indicated; is that correct?

2 A. It looks like it did come out of my email in this
3 time frame, that's correct.

4 Q. And that LinkedIn would have included a
5 recommendation that John Marshall made regarding
6 Ms. Whelan; is that correct?

7 A. I mean, whatever he put in here, I don't know. I
8 don't remember the conversation, so... I'm not sure what
9 the context was at the time.

10 Q. Next I'd like to direct your attention to a few
11 pages later in Exhibit 72, the GS page number ending in
12 963. Tell me when you have that.

13 A. Yes, I have 963.

14 Q. That shows an email that you would have received
15 from Ms. Whelan on June 14, 2011, "About us" page. Do you
16 see that?

17 A. I see the email, yes.

18 Q. And you recall that Ms. Whelan was seeking
19 compensation for her work on Gatekeeper?

20 A. I don't recall the context of it. I don't know
21 if there was other emails or -- I can verify this is an
22 email, it looks like it was from that account to me, that's
23 all I can remember.

24 Q. Was Ms. Whelan the developer or originator of
25 Gatekeeper?

1 A. Gatekeeper is a service, there is -- I don't
2 understand the context of that question.

3 Q. Did Ms. Whelan develop Gatekeeper as a service
4 for your company?

5 A. Well, Gatekeeper is just customer service. I'm
6 not sure how you mean by developing. Customer service has
7 been around for a long time. I don't understand the
8 context of what your question -- what you're trying to get
9 to.

10 Q. Don't you charge your customers for providing
11 Gatekeeper to a customer?

12 A. Our customers at that time would hire us to do
13 Gatekeeper, which is to provide customer service. I'm not
14 sure that anybody has created that, it's just always been a
15 model. Is that correct? Am I missing something?

16 Q. So what did the customer get by you providing
17 Gatekeeper to them?

18 A. They provided -- they received advice or
19 suggestions on how to enter content onto their website.
20 They would call us up with technical questions, we might
21 fix their technical things. Basically, any customer
22 service-related question.

23 Q. And in a time frame of this email -- or strike
24 that. Ms. Whelan, you indicated, was an independent
25 contractor. Was she always an independent contractor for

1 the entire duration of her services to Golden Shovel?

2 A. To the best of my knowledge, I believe she was an
3 independent contractor.

4 Q. And did you offer an employment position to her?

5 A. I don't recall any offer.

6 Q. Do you recall offering her a partnership
7 position?

8 A. I don't recall offering any partnership
9 conversation.

10 Q. Do you recall offering her compensation in the
11 range of \$52,000 for working for Golden Shovel?

12 A. I don't recall any of those conversations. That
13 was quite a while ago.

14 Q. Do you recall the reason for the end of
15 Ms. Whelan's services to GSA?

16 A. I don't recall. I don't remember. I know that
17 she had asked to leave and that's all I remember.

18 Q. Did she leave the company on good terms or other
19 terms?

20 A. I can't say. I don't know how to interpret that.
21 I mean, people leave the company, come and go all the time.

22 Q. So how many people have left Golden Shovel since
23 its inception?

24 A. I don't know the exact number. Worked with
25 contractors, they've come and gone. I don't have a number.

1 Q. Mr. Kresha, could you direct your attention to
2 page --

3 (Technical difficulties.)

4 BY MR. RIMAS:

5 Q. Mr. Kresha, could you direct your attention to
6 the bottom of page 963, the page we were discussing. There
7 is an email from you dated June 14, 2011, again, that goes
8 on to the next page. Do you see that?

9 A. I do see that.

10 Q. Is that a true and correct copy of your email to
11 Ms. Whelan on June 14, 2011?

12 A. That appears to be an email that came out of my
13 account. I don't know any more about the context of it.

14 Q. And in the body of that email you say, "You were
15 offered a position with the company and declined the
16 offer."

17 Do you recognize that as you have made -- you had
18 made an employment offer to Ms. Whelan that was the subject
19 of this email?

20 A. I don't recognize what the conversation was. It
21 could have been aspirational comments about the future, I
22 don't remember.

23 Q. And you go on to say, "I have no company
24 resources to draw from to even consider residential revenue
25 to you."

1 If you had been able to pay Ms. Whelan what she
2 was owed in that time frame, would she still be with the
3 company?

4 MR. SLONEKER: Object to form.

5 A. I have no way to answer that.

6 BY MR. RIMAS:

7 Q. Mr. Kresha, continuing on that page, below the
8 signature line, below your signature line and some links
9 provided, you have kind of a -- creating a generic
10 statement, "Golden Shovel Agency brings over ten years of
11 experience combining web technology, design expertise,
12 social media placement and strategy to present entities in
13 their best light." Do you see that?

14 A. I see the statement.

15 Q. And would that ten years of experience have
16 included Ms. Whelan?

17 A. I don't know, I don't know how that was
18 constructed or where that number came from.

19 Q. Okay. Is it your recollection that Ms. Whelan
20 advanced the objectives of Golden Shovel during her tenure
21 with your company?

22 MR. SLONEKER: Object to form.

23 A. Can you be specific? I have no way of answering
24 that. I don't know what you're trying to get to.

25

1 BY MR. RIMAS:

2 Q. Well, I mean, I'll take you to a few pages
3 further into Exhibit 72, the page ending with 979. Tell me
4 when you get there.

5 A. I'm at 979.

6 Q. Yes. Do you have that?

7 A. I have 979.

8 Q. Do you recognize that as including an email that
9 you sent to the team on October 27, 2011?

10 A. That is an email that was sent to the team on
11 October 27, 2011.

12 Q. That came from you?

13 A. That did come from me.

14 Q. And it was true at the time where you state,
15 "I've spoke to all the people who received a correspondence
16 from Mary. All three thanked me for reaching out and
17 assure me that they are paying no attention to the email or
18 source." Do you recall what that related to?

19 A. Yes, that was related to some negative
20 correspondence that was sent out against us, and I believe
21 I had direct communications with -- I don't remember who it
22 was with, but correcting the statement that we're -- well,
23 negatively untrue said about us.

24 Q. And was this the subject of your company's
25 counterclaim against Ms. Whelan?

1 A. I do not believe so. I believe -- I don't
2 remember. We were responding to some negative emails that
3 were sent out and we were reassuring our customers.

4 Q. And were you aware that Golden Shovel had filed a
5 counterclaim or suit against Ms. Whelan in connection with
6 her lawsuit against the company and you?

7 A. I believe there was a countersuit. I don't
8 remember all the timing, but...

9 Q. And why did Golden Shovel file a countersuit
10 against Ms. Whelan?

11 A. I can't recall. I don't remember. At the time
12 we were -- I was working with a legal team and I -- I don't
13 remember all the specifics of how we got there.

14 Q. And the legal team -- or primary person on a
15 legal team would have been attorney David Axtell, with
16 Stinson Leonard Street at the time; is that correct?

17 A. That was my attorney.

18 Q. I'd like to direct your attention to the next
19 page of exhibit -- that we've been covering as part of
20 Exhibit 72, page ending in 5001. Tell me when you have
21 that.

22 A. I have 5001.

23 Q. And the top of that page has an email from John
24 Marshall to you, dated January 9, 2013. "Not sure if you
25 saved this little rant from Mary..." That is something

1 that you received prior to that email; is that correct?

2 A. I'm sorry, let me look at it. Can you please
3 state your question again?

4 Q. You received, in the time frame indicated, the
5 email from John Marshall to you, January 9, 2013, regarding
6 Ms. Mary Whelan, did you not?

7 A. I see that this is an email that was sent. I
8 don't -- again, I don't know any more context of it; it was
9 a long time ago.

10 Q. And the email that was forwarded to you in that
11 time frame was from Ms. Whelan, dated November 3, 2011. Do
12 you see that?

13 A. This email is dated November 11, 2011.

14 Q. It was dated November 3, 2011; is that correct?

15 A. I see that the date is November 3, 2011.

16 Q. Okay. And Ms. Whelan in that email had copied
17 you, among others, and she went on to state, "You know
18 Gatekeeper was MY idea, my strategies, my ideas, my
19 concepts, my everything." Is that correct?

20 A. I see it stated here that she wrote that.

21 Q. And she goes on further to say, "Why were you
22 manipulating me all those months and telling me you'd make
23 me the VP of marketing, give me a percentage of each
24 Gatekeeper sale and a \$52,000+ salary" --

25 A. I'm sorry, you're breaking up again.

1 (Technical difficulties.)

2 (Discussion off the record.)

3 BY MR. RIMAS:

4 Q. Mr. Kresha, Ms. Whelan, in this email that you
5 were copied on, indicated that you told her that she would
6 become the VP of marketing; is that correct?

7 A. I have no recollection of a conversation. The
8 email looks like it was sent. I can't tell you any more
9 context about it.

10 Q. Do you recall offering her the position of VP of
11 marketing?

12 A. That was a long time ago. I don't recall any
13 conversations about that.

14 Q. And she goes on to say you told her that she
15 would get a percentage of each Gatekeeper sale and a
16 \$52,000+ salary. That was stated in that email, correct?

17 A. I don't have -- I see the email as written. I
18 can tell you that email was sent, that's all I can recall.

19 Q. Okay. One moment, please.

20 Do you have Exhibit 79, Mr. Kresha?

21 A. Exhibit 79, okay.

22 Q. Do you recognize Exhibit 79 to be a Golden Shovel
23 news release and titled, "Golden Shovel Ramps Up With
24 Dynamic Sales and Marketing Team"?

25 A. I see that, that was dated April 12, 2011.

1 Q. So that was a news release on behalf of your
2 company; is that correct?

3 A. That's correct.

4 Q. And you would have contributed to the content
5 that's part of this news release marked as Exhibit 79?

6 A. I don't remember who put that news release
7 together.

8 Q. It does have, at the bottom of the first page of
9 the Exhibit 79 heading in GS0037179, a quote from you. Do
10 you recall the quote stated, "The goals for our clients are
11 more than just attracting and retraining jobs. It is also
12 about saving time and money for the organizations involved,
13 said Kresha." Was that your quote at the time?

14 A. It appears that, yes, my quote was put in there.
15 I don't know when I said it or in what context, but it
16 looks like it was used for this press release.

17 Q. And the paragraph above indicates that at the
18 time you were listed as the Golden Shovel president; is
19 that correct?

20 A. According to this press release, that was a time
21 when I was listed as the president.

22 Q. Now, there's also a paragraph regarding
23 Ms. Whelan above that, wherein it stated, "Mary Whelan has
24 over ten years agency experience in the areas of online
25 marketing, interactive development, Web solutions on social

1 media in the foodservice, domestic and global education,
2 electronic software, construction industries." Do you see
3 that?

4 A. I see that in there.

5 Q. And it ends with that paragraph that, "Whelan
6 carries that experience over to the firm's services,
7 solutions and clients." So that would have been the kind
8 of work she rendered for Golden Shovel Agency in the time
9 frame indicated, April 12, 2011?

10 A. I don't know the context of how that was written,
11 so I don't know exactly what was being said in that
12 paragraph. But it was written, but I didn't have a part of
13 writing that, so I don't know.

14 Q. Now, in the first paragraph of this, of Golden
15 Shovel Agency, at the end of the paragraph states -- or the
16 beginning states, "Golden Shovel Agency, a Web development
17 firm," I can skip a few lines, "has announced the expansion
18 of its team naming John Marshall Vice President of Sales
19 and Mary Whelan Director of Strategic Marketing." Is that
20 correct?

21 A. That is correct, that's what's written there.

22 Q. So in that time frame the press release to the
23 world announced and identified Mary Whelan to be the
24 director of strategic marketing for Golden Shovel; is that
25 correct?

1 A. It announced in that context fulfilling
2 contractual duties and services, that's what that -- what I
3 recall that saying.

4 Q. She was announced to be the director of strategic
5 marketing at Golden Shovel; is that correct?

6 A. My recollection it wasn't a position, it was a
7 title for doing contractual services. I don't recall that
8 position ever actually formulating with the company.

9 Q. And what's the basis for that recollection?

10 A. We were a new company and we used titles on the
11 bottoms of emails. It was part of the signature line,
12 that's all I recall.

13 Q. And you also had --

14 (Technical difficulties.)

15 A. You're breaking up, I didn't hear that question.

16 BY MR. RIMAS:

17 Q. In any case, Mr. Kresha, by virtue of this press
18 release, every reader of the press release would associate
19 and understand Mary Whelan to be the director of strategic
20 marketing for Golden Shovel; is that correct?

21 MR. SLONEKER: Object to form.

22 A. It's stated as it is. I don't know the intent or
23 how people would have interpreted it.

24 BY MR. RIMAS:

25 Q. And subsequently you used -- your company uses an

1 article in numerous promotions of its services to its
2 customers and prospective customers, did it not?

3 A. It could have gone out. I don't know where the
4 reach of it went or where it was distributed.

5 Q. I'd like to direct your attention to Exhibit 80.

6 A. Okay.

7 Q. Do you recognize Exhibit 80 to include emails
8 between you and Fairah at Fairlight Interactive?

9 A. I see this email, yes.

10 Q. And I should say Fara Epple at
11 fairlightinteractive.com, and what was the connection with
12 Fairlight Interactive and your company at that time?

13 A. At that time they were doing development work,
14 that I recall.

15 Q. And were some of your partners also the owners of
16 Fairlight Interactive?

17 A. Jeff and Aaron are involved with Fairlight
18 Interactive.

19 Q. And does that association continue to this day?

20 A. Yes, Jeff and Aaron are still associated with
21 that.

22 Q. So a significant portion of Golden Shovel's
23 revenue received is paid to Fairlight Interactive for their
24 software development; is that correct?

25 A. Well, we pay them for software development. I

1 wouldn't characterize it any other way.

2 Q. And have you received any compensation from
3 Fairlight Interactive at any time?

4 A. No, I'm not involved with Fairlight.

5 Q. Now, on the bottom page of this exhibit, the
6 bottom portion of this page, there's an email from you to
7 Fairlight Interactive dated November 5, 2010, starting with
8 "thank you." Do you see that?

9 A. What's the page number?

10 Q. Same page, the page that has the Exhibit 80
11 sticker on GS0038148.

12 A. Okay, I see that.

13 Q. And that information in your email to Fairah was
14 true and correct at the time indicated?

15 A. The email was created and sent. I don't remember
16 all the context of it so -- but whatever was sent there was
17 written.

18 Q. Written by you; is that correct?

19 A. It looks like it came from my email.

20 Q. Okay. Now, there's a paragraph toward the end of
21 your email where you write -- that starts with "To be
22 honest." Do you see that?

23 A. I see the paragraph "To be honest."

24 Q. You indicated, "To be honest, my number one goal
25 of bringing Mary on board was to clearing Aaron's plate of

1 things to keep him from being front and center with
2 customers."

3 So does this indicate that you had brought her on
4 board as an employee in the time frame of November 5, 2010?

5 MR. SLONEKER: Object to form.

6 A. That is not -- the context of this was, we were
7 looking at bringing additional services on to help with
8 things that we were doing, and that's how I recall that.

9 BY MR. RIMAS:

10 Q. Did Ms. Whelan provide those additional services?

11 A. I don't know exactly what we're referring to
12 here, so I can't say.

13 Q. I'd like to direct your attention to the next
14 Exhibit, 81. Tell me when you're there.

15 A. Which one?

16 Q. Exhibit 81.

17 A. 81?

18 Q. Yes.

19 A. I have 81.

20 Q. 81 is a single-page document bearing production
21 number GS0042050, it includes an email from Jeff Epple to
22 you regarding 2012 projections, dated November 28, 2011; is
23 that correct?

24 A. It looks like that email was sent and date -- or
25 dated 11/28.

1 Q. So in his email Jeff writes to you, "Here are
2 some base projections on the income and expenses."
3 Expenses were partner salaries, which are stated to be
4 \$400,000; is that correct?

5 A. It looks like Jeff put this together. I don't
6 remember if he was just putting a projection together or
7 putting thoughts together. We did lots of things or
8 budgeting so I -- and preparation, so I don't know the
9 context of what he was putting together.

10 Q. Was the partner salaries \$400,000, in your view,
11 the total partner salaries he was writing about or were
12 they individual partner salaries?

13 A. That would have been -- if he was doing it for
14 budget reasons, that would have been a sum of all the
15 partner salaries, a proposal, so... That's my best
16 recollection.

17 Q. Okay. And then below that there's outsourcing,
18 Heidi 40,000, Victor 20,000. Who was Heidi -- or what was
19 Heidi doing for 40,000 in that time frame of November 28,
20 2011?

21 A. I don't recall her duties. I didn't directly
22 oversee her all the time.

23 Q. And what --

24 A. And just a clarification, I believe this is a
25 projection, it was not actual, so it might have just been

1 projecting possibilities for upcoming years.

2 Q. So it might have been that Golden Shovel was
3 promising Heidi \$40,000 in the future; is that correct?

4 MR. SLONEKER: Object to form.

5 A. No.

6 BY MR. RIMAS:

7 Q. And why is that not correct?

8 A. This would have just been an aspirational email
9 for budgeting purposes.

10 Q. And who was Victor for \$20,000?

11 A. Victor was somebody who was working with the
12 company, an independent contractor.

13 Q. And what kinds of services did he provide?

14 A. At this time frame I don't have all of the --
15 what services he's been doing.

16 Q. Can you think of any?

17 A. He would have been doing internal communications,
18 scheduling meetings, perhaps. That's the best I can
19 recall.

20 Q. The next item is outsourcing, Fairlight \$220,000.
21 Do you see that?

22 A. I see that.

23 Q. Was that a "yes"?

24 A. Yes, I see that.

25 Q. Okay. In the context of this email, Fairlight

1 would be receiving \$220,000 a year from Golden Shovel
2 Agency; is that right?

3 A. The context of this email is, like I said,
4 aspirational requests, that's all I can remember of it.

5 Q. Aspirational request that Fairlight would receive
6 \$220,000 in annual a year?

7 A. Just looking at this email, the best I can give
8 you is Jeff was requesting that as a potential for budget
9 purposes.

10 Q. But all of these numbers are for the time period
11 of a year or on an annual basis, are they not?

12 A. I believe it would have been for -- request for
13 the upcoming year.

14 Q. And that would be because the subject says 2012
15 projections; is that correct?

16 A. I believe so.

17 Q. Then below that, under income, there's a category
18 for Gateway utilities \$500,000. Do you see that?

19 A. Yes, Gateway utilities \$500,000.

20 Q. And what were Gateway utilities, if you were to
21 explain that to someone unfamiliar with this document?

22 A. That have been using our Economic Gateway web
23 service and that was our sales goal, or that would have
24 been a sales goal we were trying to reach.

25 Q. And did Economic Gateway also include Gatekeeper;

1 was that part of the Economic Gateway package?

2 A. No, the Gatekeeper was our customer support
3 service.

4 Q. The next one is Gateway local \$250,000. What did
5 that refer to; what was Gateway local as used in that
6 entry?

7 A. So the Gateway utilities would have been sales
8 goals around utility companies, and the Gateway local would
9 have been sales goals around other non-utility companies;
10 we have goals in and out of that market

11 Q. Okay. And then for Gatekeeper, that was \$100,000
12 and what did that refer to?

13 A. That looks like at that point the author of the
14 email was projecting on possible sales goals for customer
15 service Gatekeeper.

16 Q. And the last one is renewals, it looks like
17 there's a question mark and I'm not sure what the GRE
18 stands for. Do you know --

19 A. Yes, the renewals would have been -- at this
20 point it looks like it was unknown what the renewal sales
21 would be, if we had any, and GRE would have been a client.

22 Q. Would that be Great River?

23 A. That would be Great River Energy, I believe.

24 Q. And was that one of your biggest clients at the
25 time?

1 A. That was a client of ours at the time.

2 Q. Would that have been your largest client at the
3 time?

4 A. I believe it would have been one of our largest
5 clients. I don't specifically remember if it was the
6 largest, but it was -- it was certainly at the time a
7 substantial client.

8 Q. What other substantial clients can you identify
9 in that time period, in addition to Great River?

10 A. I don't remember any other ones, but we -- I
11 don't remember specifically what our client list looked
12 like back then.

13 Q. Okay. I'd like to direct your attention to
14 another exhibit; just give me one moment in that regard.

15 Please direct your attention to Exhibit Number
16 54. Tell me when you have that.

17 A. Did you say 54?

18 Q. Yes.

19 A. Okay, I have -- I see a 50, a 51, a 52, I do not
20 see a 54.

21 MR. SLONEKER: I don't have a 54
22 either.

23 MR. RIMAS: Okay, give me one second.
24 I'm going to need to take a brief break. And what I
25 propose to do, for whatever reason, I would like to email

1 you a couple of attachments that I see are not on this
2 list, and so I'm going to take about ten minutes and send
3 that out. So if we can resume this in approximately ten
4 minutes, and check your email before that time. Thank you.

5 (Whereupon, a break was taken.)

6 BY MR. RIMAS:

7 Q. I'd like to direct Mr. Kresha's attention to
8 Exhibit 83. Tell me when you get there.

9 A. Okay, I have Exhibit 83 up.

10 Q. Do you recognize Exhibit 83 to be your email to
11 Ms. Whelan, dated November 1, 2010, the subject you wrote
12 was "new email"?

13 A. That's correct.

14 Q. And do you recognize that she was assigned a new
15 email address with the company, user name mwhelan and given
16 a temporary password 876552 by you for this email; is that
17 correct?

18 A. She was assigned an email. I don't remember if I
19 sent it or if the system sent it, but it looks like this
20 was assigning her an email account.

21 Q. Who would your assistant have been at the time?

22 A. It could have been generated by the system
23 itself, I don't remember.

24 Q. On and after November 1, 2010, her company email
25 was listed in the body of your email, it states, "Your new

1 email address is mwhelan @goldenshovelagency.com." Is that
2 correct?

3 A. Yup, it looks like she was assigned an email
4 address.

5 Q. And she would have used that company-provided
6 Golden Shovel Agency email address from November 1, 2010,
7 throughout the duration of her services and association
8 with Golden Shovel; is that correct?

9 A. Yes, the email -- I mean, all this states is that
10 she was assigned an email. The rest of that I don't have
11 recollection of, the time frame and so forth. But, yeah,
12 this email states she was assigned an email.

13 Q. Okay. And as far as you know, she used it
14 thereafter on company business?

15 A. Yup, she would have been assigned an email to
16 communicate with Golden Shovel.

17 Q. And she would also use that email with
18 communications with customers and potential customers of
19 Golden Shovel Agency?

20 A. That's possible, yup.

21 Q. And why did you need to assign her that company
22 email address?

23 A. We assign emails to people who are contracting
24 with us and helping us with things; it just makes
25 communication a little easier.

1 Q. I'd like to direct your attention next to Exhibit
2 84. Let me know when you have Exhibit 84 open in front of
3 you.

4 A. Okay, I have Exhibit 84 open.

5 Q. Do you recognize this as an email from you to
6 Ms. Whelan at her Golden Shovel Agency email address,
7 subject, "Congratulations John." Do you see that?

8 A. I see that.

9 Q. And who is John in the "Congratulations John" you
10 referenced in your email to Ms. Whelan on February 4, 2011?

11 A. That would have been John Marshall, I believe.

12 Q. And so in the body of the email the
13 congratulations was because down on the body of your email
14 you state, "Just received a call from John and it sounds
15 like the Great River project is a go."

16 So that was at the inception of obtaining Golden
17 Shovel's contract with Great River; is that true?

18 A. It looks like this email was in reference to the
19 Great River project, yes.

20 Q. And you go on to say, "This was a game changing
21 sale for us." What did you mean by "game changing sale"?

22 A. Probably just a very good sale and we were
23 probably happy about it. It happens.

24 Q. Okay. Now, on the next page of Exhibit 84, Bates
25 numbered page GS0045969, that follows your signature line,

1 there's a listing of Mary Whelan, marketing manager, with
2 her company email address. Below that is a Golden Shovel
3 Agency address for her in Little Falls, et cetera.

4 So at that time she was being -- represented to
5 be a marketing manager for Golden Shovel; is that correct?

6 A. I can't recall the specifics, all I can -- this
7 document is correct, she had an email and she had a
8 signature line with marketing manager and she was
9 performing services with the company as a contractor for
10 various marketing activities that we requested.

11 Q. She was holding herself out to the world as a
12 marketing manager with your authorization; is that correct?

13 MR. SLONEKER: Object to form.

14 A. I don't recall that.

15 BY MR. RIMAS:

16 Q. I'd like to direct your attention to the next
17 exhibit, 85. Tell me --

18 A. 85.

19 Q. 85 is a two-page document bearing Bates number
20 59, it included -- it's an email from you to Jeff Epple
21 dated March 28, 2012, the subject you wrote was, "The
22 copyright from Mary." Do you see that?

23 A. I see the email, yup.

24 Q. And it looks like in your email you were able to
25 include a snippet or a portion of her copyright

1 registration for online social media bearing registration
2 number TX0007476015; is that correct?

3 A. I see this was sent. I don't know what it was in
4 relationship to. I don't recall why this was sent.

5 Q. Your name as president follows the portion of her
6 copyright registration that you included in your email,
7 does it not?

8 A. My signature is on this. I don't recall this
9 email, I don't know what it was in relationship to.

10 Q. Did you understand at that time that Ms. Whelan
11 had copyrights to online social media marketing, including
12 Gatekeeper?

13 MR. SLONEKER: Object to form.

14 A. I'm sorry, please restate that.

15 BY MR. RIMAS:

16 Q. Did you understand that in connection with your
17 email dated March 28, 2012, marked as Exhibit 85, that
18 Ms. Whelan had a copyright on online social media
19 marketing, including Gatekeeper?

20 MR. SLONEKER: Same objection.

21 A. This was just an email sent and I don't know the
22 context of it or how it was created.

23 BY MR. RIMAS:

24 Q. But you would have been -- but this was your
25 email and information that you provided in your email to

1 Mr. Epple; is that correct?

2 A. It's an email that was sent from my email account
3 and it has this information. I don't know why it was
4 generated or I don't recall the context of it.

5 Q. Okay. And were you aware at any other time that
6 Ms. Whelan claimed a copyright registration and sued the
7 company, your company and you for copyright infringement?

8 A. I was aware that there was a copyright lawsuit,
9 yes.

10 Q. And did you and your company in fact infringe
11 that copyright?

12 A. I have no way of -- I don't know -- I don't know
13 the whole context of all that. I mean, I -- I don't
14 have -- I don't have an answer to that. I can't recall
15 exactly what you're trying to get to here.

16 I mean, can you point me to a specific copyright
17 and a document? Maybe I can answer if it exists or not;
18 but, sorry, I have no recollection or way to answer that.

19 Q. All right. Well, let's see if I can accommodate
20 your request. Give me a moment, please.

21 A. I mean, I can answer this way: To the best of my
22 knowledge, we have not infringed on any copyright.

23 Q. And did Golden Shovel have any copyright on its
24 Gatekeeper or other products and services in the time frame
25 of 11/2012?

1 A. We would have filed various -- I don't know that
2 we even actually filed it, but we certainly claimed
3 copyright for original document and original properties
4 that we created as the original source author, is the best
5 I can think of.

6 Q. And so give me some examples of those original
7 source documents that you claim copyright.

8 A. I mean, anything we would write, whether it would
9 be a letter or put something on the website or maybe create
10 a graphic, we're a media company that creates a lot of
11 things.

12 Q. I'd like to turn your attention to Exhibit 51.
13 Tell me when you get there.

14 A. Okay, I'm at 51.

15 Q. We started talking about this document a little
16 bit earlier, to refresh your recollection as to who sued
17 you for what; and this is the complaint filed by Ms. Whelan
18 against Golden Shovel and yourself on February 10, 2014,
19 consisting of nine pages. Do you see that?

20 A. I see that.

21 Q. And the legal claims that she sued your company
22 and you for start on page four of Exhibit 51. If you turn
23 your attention, do you see count one for copyright
24 infringement?

25 A. I see that.

1 Q. And if you go further, Ms. Whelan brought a legal
2 claim against Golden Shovel and yourself for count two,
3 primary estoppel on page nine. Do you see that?

4 A. I see that.

5 Q. And she also, on the bottom of that same page,
6 asserted another legal claim, count three for emotional
7 distress. Do you see that?

8 A. I see that on the document.

9 Q. And on the next page, page eight of the complaint
10 marked as Exhibit 51, she asserted another legal claim
11 against the company and you, count five for unjust
12 enrichment. Do you see that?

13 A. I see that.

14 Q. Did I mention count four for fraud as well?

15 A. I don't know, you're running the show here. I
16 don't know what you mentioned.

17 Q. Okay. On the previous page, the other claim she
18 asserted against the company is count four for fraud. Do
19 you see that?

20 A. I see the count four for fraud.

21 Q. Okay. And you indicated that you disagreed with
22 her having a copyright infringement claim against you and
23 the company; is that correct?

24 A. This claim was filed and we did not accept that
25 claim, we fought against it.

1 Q. And how about count two, primary estoppel?

2 MR. SLONEKER: Object to foundation.

3 A. How about it; what about it?

4 BY MR. RIMAS:

5 Q. Like --

6 A. It exists, I see it in the document, yes.

7 Q. Okay. So if we look in paragraph 36 that's under
8 count two for primarily estoppel, one of the assertions
9 Ms. Whelan made against you and the company was -- I should
10 say, paragraph 34, "Defendants made promises, through oral
11 and written representations, that they would provide
12 Plaintiff Whelan with a new title, increases in her
13 compensation, bonuses related to the sales of Gatekeeper
14 full-time employment, an ownership interest in the company
15 and reimbursements for business expenses in the near
16 future." Did you make those promises to Ms. Whelan?

17 MR. SLONEKER: Object to form.

18 A. We rejected all the claims in this document.

19 BY MR. RIMAS:

20 Q. And why did you reject the claims with these
21 particular promises for count two, primary estoppel?

22 A. We rejected them on the basis of them actually
23 existing.

24 Q. Now, for count three Ms. Whelan asserts that she
25 was harmed for emotional distress resulting from actions of

1 you and your company, that you intended to harass,
2 belittle, confuse, mislead, threaten her for the purpose of
3 coercing her for performing services for which she was
4 substantially under-compensated.

5 Was she under-compensated at the time, in your
6 view?

7 A. I reject the claim.

8 Q. Why do you reject the claim?

9 A. I just re -- I don't see anything that had any
10 merit to the claim, so we reject the claim. And I believe
11 that was handled in the settlement documents.

12 Q. Are you referring to a settlement conference or
13 something else?

14 A. I'm just saying I reject the claims and we
15 rejected this claim.

16 Q. So you don't recall harassing, belittling,
17 confusing, misleading or threatening Ms. Whelan during the
18 course of her services for Golden Shovel?

19 A. I do not recall ever doing that.

20 Q. Next page, count four for fraud. That includes
21 an assertion in paragraph 41 that defendants, including
22 you, represented to Ms. Whelan that you would reimburse her
23 for the fair market value of the services she provided,
24 offered her a full-time position and other compensation, an
25 increase in revenue and the passage of time.

1 At the time that these representations were made
2 by you and others at Golden Shovel, you knew them to be
3 false. Did you agree or disagree with those assertion?

4 A. I reject this claim as written. I don't agree
5 with it.

6 Q. Now, in that time frame with Ms. Whelan's
7 assertion that you had promised to pay her \$52,000, you
8 would not have been able and Golden Shovel would not have
9 been able to pay her that amount in that time frame; is
10 that correct?

11 A. I don't have any recollection on -- I don't have
12 that in front of me. I have to go back and look.

13 I don't recall the conversations or I don't
14 recall the basis for those. That was quite a while ago.

15 Q. Could your company, in 2011 and 2012, afford to
16 pay Ms. Whelan a \$52,500 salary?

17 A. I don't know the answer to that. I don't
18 remember all the sales of how it all came together, so I
19 don't have an answer.

20 Q. And in that time period again, how much
21 compensation did you receive from Golden Shovel Agency?

22 A. I don't recall directly. I mean, we can go back
23 and look at one of the documents, whatever would have been
24 on the tax document for 2014 -- or 2013.

25 Q. Now, turning your attention on the next page,

1 count five, Ms. Whelan asserted a claim for unjust
2 enrichment against defendants, that she delivered her
3 services and developed and created Gatekeeper, that you
4 failed to deliver compensation in an amount equal to the
5 value of her services provided; is that correct?

6 A. I don't know the basis of that. I'm not a
7 lawyer, so I can't tell you -- I can't answer that.

8 Q. Ms. Whelan did provide services in developing
9 Gatekeeper, did she not?

10 A. She provided services; but, again, Gatekeeper was
11 just customer service, so there was no -- other than just
12 being a customer service representative, which was another
13 name for Gatekeeper, I don't have any other way of
14 answering.

15 I don't know how you create -- I guess I don't
16 understand your question, because creating customer
17 service, I'm not sure how you're getting -- are you asking
18 that did she create customer service?

19 Q. No, she created Gatekeeper and your company
20 charges a handsome fee for customers who purchase
21 Gatekeeper.

22 A. I can't -- I mean, I can't verify that statement,
23 there's just a lot in there that -- I'm not sure what
24 you're asking. Is there a question there?

25 Q. Your business of Golden Shovel cannot survive

1 without selling the Gatekeeper product and services to its
2 customers; is that correct?

3 MR. SLONEKER: Object to form.

4 A. If you're asking me if Gatekeeper is dependent on
5 the company or is our company dependent on Gatekeeper, the
6 answer is no.

7 BY MR. RIMAS:

8 Q. Well, what is it dependent on?

9 A. We can sell -- we sell lots of things.

10 Q. Okay, tell me the "lots of things" you sell that
11 you're dependent on.

12 A. We're a website development company, we develop
13 websites and we write content, we write stories and we
14 create websites for people. When they call us with
15 questions, we answer the questions, that's what we do.

16 Q. Was Gatekeeper in 2011 a going concern?

17 A. I don't understand the question. Please restate.

18 Q. Was Golden Shovel insolvent in the year 2010?

19 A. I believe we were showing a loss on the taxes,
20 that's correct.

21 Q. And in 2012 was Gatekeeper showing a loss for its
22 taxes and insolvent?

23 A. I have to look at the document again, I don't
24 remember exactly what it was; but my recollection was, in
25 those early years we were not showing a profit.

1 Q. And during the time that Ms. Whelan worked for
2 you at Golden Shovel, did you tell her that your company
3 was insolvent?

4 A. I don't recall those conversations.

5 Q. Do you recall her having numerous conversations
6 that the only reason she provided services for your
7 company, because she was not fully compensated, was with
8 the promises you had made for a salary, partnership
9 interest and proceeds from Gatekeeper?

10 MR. SLONEKER: Object to form.

11 A. I don't recall that, I don't recall that
12 conversation.

13 BY MR. RIMAS:

14 Q. I'd like to direct your attention to Exhibit
15 Number 52.

16 A. Okay, I have 52 up.

17 Q. Do you recognize this as -- this document that's
18 entitled, Answer and Counterclaim, marked as Exhibit 52 in
19 this exhibit, and previously marked as Exhibit 42 in
20 another deposition, to be Defendant's Answer and
21 Counterclaim consisting of 11 pages?

22 A. I recognize the document. I didn't understand
23 about the deposition, this is the only deposition I've been
24 in.

25 Q. Now, with respect -- as far as you can tell, is

1 this information disclosed in the document your attorneys
2 prepared on your behalf and the company's behalf marked as
3 Exhibit 52 accurate in the time frame indicated?

4 MR. SLONEKER: Object to foundation.

5 A. Where is Exhibit 52? Can you please refer me to
6 specifically what you're asking?

7 BY MR. RIMAS:

8 Q. Well, do you see anything -- let's be more
9 specific. Give me just a moment.

10 A. I mean, this document was created by my attorneys
11 and at the time was accurate; yes to that.

12 (Technical difficulties.)

13 BY MR. RIMAS:

14 Q. -- the counterclaim, tell me when you reach that
15 page.

16 A. I'm sorry, which page?

17 Q. And that will be page seven of Exhibit 52.

18 A. I'm on page seven of Exhibit 52.

19 Q. And in the middle of that page there's a heading
20 "Counterclaim." Do you see that?

21 A. I see the heading "Counterclaim."

22 Q. And so after this heading defendants were
23 asserting a legal claim against Ms. Whelan entitled
24 "Counterclaim," is that correct?

25 A. Our attorney did generate a counterclaim and that

1 document is in front of me.

2 Q. And more specifically, as you will see on the
3 next page, if you turn to page eight of the heading
4 Counterclaim for Breach of Contract. Do you see that?

5 A. I see that.

6 Q. And you were asserting that Ms. Whelan breached
7 the contract with GSA; is that correct?

8 MR. SLONEKER: Object to foundation.

9 A. Our attorneys produced this document, that's what
10 I can verify.

11 BY MR. RIMAS:

12 Q. And what agreements and contracts, if any, were
13 you aware of between your company and/or yourself and
14 Ms. Whelan over her time with Golden Shovel?

15 A. I don't recall all those -- whatever would have
16 been in the documents. I don't have copies of that.

17 Q. Did you provide any of the information to your
18 attorneys that ended up in this document marked as Exhibit
19 52?

20 A. Whatever documents are here would have been
21 provided by the company to our attorney.

22 Q. Now, in paragraph 12 it was asserted on your
23 behalf and the company's behalf on page nine of the
24 counterclaim that begins with "Whelan's breach of the
25 license agreement..." Do you see that?

1 A. I see that.

2 Q. Were you aware of any license agreement between
3 Ms. Whelan and your company?

4 A. All I can recall is -- I can verify what they
5 wrote here. I don't have a context for it, nor am I a
6 lawyer, so I can't interpret it.

7 Q. This paragraph goes on to state, paragraph 12,
8 "Whelan's breach of the license agreement has caused great
9 harm to Golden Shovel..." Do you see that?

10 A. I see that.

11 Q. And what great harm were you aware of by
12 Ms. Whelan toward your company, as referenced in paragraph
13 12 of Exhibit 52?

14 A. The only thing that I can recall was some
15 negative emails that had been sent out; and I don't recall
16 other things, other than maybe loss of time and attention
17 to this matter.

18 Q. Did you lose any time and attention to this
19 matter as a result of Ms. Whelan's work for your company?

20 MR. SLONEKER: Object to form.

21 A. I'm not sure I understand that question. Can you
22 be more specific, please?

23 BY MR. RIMAS:

24 Q. Well, you indicated a moment ago that your
25 company might have been harmed by loss of time resulting

1 from the actions of Ms. Whelan. Did you lose any time or
2 harmed in any way as a result of the actions of Ms. Whelan
3 that's the subject of the breach of contract?

4 A. Are you talking about in terms of the lawsuit in
5 general and how much time was dedicated to that?

6 Q. That's one component; can you answer that?

7 A. I can answer that because of the lawsuit I did
8 have to spend substantial time defending the litigation, as
9 well as pulling documents together, and that was time away
10 from other things for the company.

11 Q. Okay. And what kind of documents did you pull
12 together that you spent so much time on?

13 A. Whatever was requested through the discovery
14 process.

15 Q. And that would include the GS documents that
16 you've looked at during today's proceeding?

17 A. I believe those documents were part of that, yes.

18 Q. And you were the primary interface between the
19 company and the Stinson attorneys with respect to the
20 lawsuit, were you not?

21 A. I was.

22 Q. I'd like to direct your attention to the next
23 document. Please turn to Exhibit 59.

24 A. I do not have a 59.

25 Q. All right. Let's then turn your attention to 60.

1 Do you have Exhibit 60?

2 A. I do have a 60.

3 Q. And Exhibit 60 is a multi-page document of
4 invoices from Stinson Leonard Street, beginning with Bates
5 numbered page GS0065020 through 100. Do you have that in
6 front of you?

7 A. I have Exhibit 60 in front of me, yup, it ends
8 with a GS number of 65100.

9 Q. Okay. And so is it your understanding these were
10 invoices you received from your attorneys in connection
11 with the lawsuit between Ms. Whelan, Golden Shovel Agency
12 and yourself over the course of litigation; is that
13 correct?

14 A. These are the invoices, that is correct.

15 Q. And did you pay all of the invoices marked as
16 Exhibit 60 to --

17 A. I did.

18 Q. Pardon?

19 A. Those invoices were paid.

20 Q. As far as you can tell, all the information
21 disclosed in these invoices you believe to be true and
22 correct and, therefore, paid on them in the time frame
23 indicated; is that correct?

24 MR. SLONEKER: Form and foundation.

25 A. Those invoices were paid.

1 BY MR. RIMAS:

2 Q. Now, was it your company's position or your
3 position that Ms. Whelan was responsible to reimburse you
4 for payment of any of these invoices marked as Exhibit 60?

5 A. I don't recall. I mean, that conversation may
6 have happened. I don't recall a specific conversation
7 about that. I'm sure we were looking for ways to recoup
8 our expenses, but I don't recall any specific things and I
9 don't remember any conversations with our attorney about
10 anything specific.

11 Q. I'm going to direct your attention to Exhibit 63.
12 Please let me know when you have that.

13 A. Okay.

14 Q. Exhibit 63 is a single-page document bearing
15 Bates number GS0065101, entitled, "Payment History Mary
16 Whelan, Golden Shovel Agency," that references a list of
17 various checks drawn on the bank --

18 (Technical difficulties.)

19 BY MR. RIMAS:

20 Q. Bank of Pine Country Checking, in the amount of
21 \$15,796.09; is that correct?

22 A. That looks correct.

23 Q. Now, this payment history, was this a document
24 that you would have generated in the time frame indicated?

25 A. Yes.

1 Q. And Pine Country Checking was your company's
2 banking and lending institution in that time frame?

3 A. Yes.

4 Q. Is that still the case?

5 A. Yes.

6 Q. So then as far as you know, is this the entire
7 payment history on your company's part to Ms. Whelan?

8 A. As far as I know, these were the checks that were
9 processed.

10 Q. Okay. So just to have more context for the
11 information disclosed, the first item listed as check 522,
12 drawn on Pine Country Checking for \$1,000. Do you see
13 that?

14 A. I see that.

15 Q. So that would have been a check that was issued
16 to Ms. Whelan on the date indicated, June 20, 2011; is that
17 correct?

18 A. That's correct.

19 Q. And do you know -- did you sign any of these
20 checks?

21 A. Yes, I would have signed the checks.

22 Q. You would have signed each of these checks, then,
23 right?

24 A. Correct.

25 Q. How did you come up with the figure of \$1,000 as

1 a first check payment shown on Exhibit 63?

2 A. I don't recall what the exact requested service
3 would have been.

4 Q. Did you pay on an invoice from Ms. Whelan or by
5 some other means?

6 A. I don't recall. That was a long time ago.

7 Q. Over this time period did Ms. Whelan complain
8 that she was underpaid by you?

9 A. I don't recall. There could have been
10 conversations about that, I don't recall the exact nature.

11 Q. Okay. I'd like to direct your attention to
12 Exhibit Number 64. Please tell me when you are there.

13 A. Okay.

14 Q. Exhibit 64 is a multi-page document of -- it
15 looks like emails between you and Ms. Whelan from the June
16 2011 time frame, making reference -- strike that.

17 Exhibit 64 includes emails with you and John
18 Marshall regarding Ms. Whelan, among other things, bearing
19 Bates numbers GS0046597 through 600; is that correct?

20 A. Yes, I see this document.

21 Q. And as far as you can tell, the information
22 disclosed in Exhibit 64 was true and correct in the time
23 indicated?

24 MR. SLONEKER: Object to form.

25 A. I can verify the email exists. I don't remember

1 the whole context of the conversation.

2 BY MR. RIMAS:

3 Q. Okay. So in this exhibit you are giving your
4 recollections of arrangements and contractual terms you had
5 with Ms. Whelan to your partners, including John Marshall,
6 were you not?

7 MR. SLONEKER: Object to form.

8 A. This looks like an email where I was sharing my
9 recollections with the partners, that's all I can remember
10 from it.

11 BY MR. RIMAS:

12 Q. And in paragraph two of your recollections to
13 your partners, you state, "I asked her in January what she
14 needed to have in order of compensation to stay on with the
15 company." Do you see that?

16 A. I see that.

17 Q. And you go on to discuss things about the
18 company, and a couple lines below you state, "...I felt it
19 was imperative to offer Mary the same rate as Heidi would
20 receive. I offered Mary 450-500 a week or hourly of 15.50.
21 At this point, I told her that it did not matter to me
22 whether or not she was an employee or contracted employee."
23 Do you see that?

24 A. Yes, I see that was written.

25 Q. Okay. And so was she offered a position as an

1 employee in the January 2011 time frame?

2 A. I don't recall any specifics on that. This looks
3 like an email where we were just talking through
4 projections, aspirations, so I -- I don't recall any
5 specifics.

6 Q. Any offers or promises or representations that
7 were made to Ms. Whelan on behalf of your company Golden
8 Shovel would have been made by you, would they not?

9 A. I mean, there's lots of conversations. I don't
10 know if other conversations would happen that someone had
11 talked about possibilities of -- I would have been one
12 person to give conversations, but that's all I can recall
13 from that time period.

14 Q. When it came to compensation, you were the person
15 responsible for those conversations with Ms. Whelan, rather
16 than the other partners, were you not?

17 A. I would have been part of that. It would have
18 been broader conversations as we talked about money,
19 budgeting.

20 Q. Okay. Now, the next page of your email
21 recollections to your partners you state, "In March, she
22 informed me that she would like to get back to a level of
23 pay that she had seen previously." Do you see that?

24 A. I see that.

25 Q. You go on to state, "She said she would like to

1 be at 50-55 K by June 1st." Is that correct?

2 A. I see here it says it was agreed that she would
3 like to be at that level, yes, I see that written.

4 Q. At least that's what you wrote in the time frame
5 indicated, correct?

6 A. I wrote that in that email, yes.

7 Q. And then you go on to write, "We had extensive
8 conversations about this and what it would mean for a job
9 description. In April (I believe), I brought the issue to
10 the partners and lobbied for her to be at 52,500 starting
11 June 1. It was agreed by us to move her to 52.5K. In
12 early May. I let her know that we would be moving her to a
13 new salary base."

14 Was that correct in the time frame you wrote
15 this?

16 A. I can verify what was written, I don't remember
17 the subsequent conversations behind it.

18 Q. And did she ever receive compensation consistent
19 with this promise to move her to \$52,500 in early May of
20 2011?

21 MR. SLONEKER: Object to form.

22 A. She received the payment disbursements that were
23 put out in the other document, the check payments.

24 BY MR. RIMAS:

25 Q. And why didn't she receive any of the \$52,500

1 promised in the time frame of -- in the time frame of your
2 writing?

3 A. To my best recollection, she left the company and
4 decided to move on.

5 Q. Now, you go on to write in the next paragraph
6 that Ms. Whelan showed signs of discomfort with Heidi and
7 Julie, which I assume were other employees of Golden
8 Shovel. Was that what you wrote?

9 A. I did write that.

10 Q. Okay. And you go on to write, a little bit
11 further on that paragraph, "I believe she saw it as a
12 threat to push her out."

13 Did you seek to push Ms. Whelan out of the
14 company in the time frame that you wrote in this email?

15 A. I did not.

16 Q. Then you close that paragraph with stating, "That
17 week she chose not to come to the Little Falls office and I
18 suspected she was becoming uncomfortable and fearful." Do
19 you see that?

20 A. I see that.

21 Q. Why was Ms. Whelan becoming uncomfortable and
22 fearful that you suspected and wrote to your partners?

23 MR. SLONEKER: Object, form and
24 foundation.

25 A. I wrote that probably just in response to trying

1 to interpret the activities and events of that time period.

2 I don't recall the specifics.

3 BY MR. RIMAS:

4 Q. And if she hadn't become uncomfortable and
5 fearful in that time frame, she would have been able to
6 continue to be employed by your company?

7 MR. SLONEKER: Form and foundation.

8 A. I have no way of answering that.

9 BY MR. RIMAS:

10 Q. Now, in the next paragraph there's further
11 discussion that you were recollecting to your partners and
12 in the middle of that recollection you state, "Wednesday of
13 that week, I read the letter she sent to John via LinkedIn
14 which suggested to me that she had not been entirely
15 truthful with me regarding her feelings towards me and the
16 company and she had some pent up resentment." Do you see
17 that?

18 A. I see that.

19 Q. And what sort of resentment had she had toward
20 you and the company that caused you to write this to your
21 partners?

22 A. I don't recall. As I stated here, she had
23 resigned; it left a lot of uncertainty and unknowns I
24 didn't know. I think when I wrote this I was just trying
25 to interpret the events that were happening, so I can't

1 answer that, I don't know.

2 Q. Now, you use the word "resign" in this email
3 recollection to your partners, do you not?

4 A. I use the word "resign," I believe.

5 Q. Whereas in a paragraph before that you had
6 written that she saw it as a threat to push her out, that
7 she was pushed out. So why did you characterize her being
8 pushed out as having been resigned in this recollection?

9 MR. SLONEKER: Object to form.

10 A. It was just a word choice. I don't know anything
11 other than just a word choice I used.

12 BY MR. RIMAS:

13 Q. Now, the next paragraph you state, "In
14 retrospect, I asked repeatedly how we could accommodate her
15 needs." Do you see that?

16 A. I see that.

17 Q. And what needs did you repeatedly ask to
18 accommodate?

19 A. At that point I believe that she was asking to
20 terminate services with us and I was asking if there was
21 something that could have been done differently, and that's
22 all I recall. I was just trying to understand why the
23 termination request had been made.

24 Q. Well, if you had paid her the money that was due,
25 she would not have been forced to leave the company; is

1 that correct?

2 MR. SLONEKER: Object to form,
3 foundation.

4 A. I can't answer that.

5 BY MR. RIMAS:

6 Q. Now, you go on to state to your partners, "At one
7 point she asked for a 2 year contract engagement." Do you
8 see that?

9 A. Yup.

10 Q. And what was your response to that request?

11 A. The sentence I wrote was, "I told her that even
12 if I gave her one, it would only be worth the length of our
13 cash flow."

14 Q. And would you have given her the two-year
15 contract of engagement if your company had better cash flow
16 and was able to afford her services?

17 MR. SLONEKER: Foundation.

18 A. I have no way of answering that.

19 BY MR. RIMAS:

20 Q. Did you inform her that your company had no cash
21 flow sufficient to pay her for a two-year contract of
22 engagement?

23 A. I'm sure the conversation came up. At that point
24 we were a very new company; and with new companies and
25 start-ups, things are always uncertain and shaky and I

1 think I was just managing to the early start-up years of
2 the company.

3 Q. And then you go on to state, "I know that
4 security was a big thing for her and in the end, I don't
5 know that she ever really felt secure with GSA."

6 I take it GSA was Golden Shovel Agency. And why
7 did you write that?

8 A. Again, I was just trying to interpret the events
9 that were unfolding.

10 Q. Now, you go on and state in the next paragraph,
11 description about Heidi being a part-time employee, being
12 paid on an hourly basis and receiving a five percent
13 commission on any business that she closes. Was that
14 accurate at the time?

15 A. That was accurate at the time.

16 Q. So she got a five percent commission on business
17 she closed; is that correct?

18 A. Yes, received five percent commission on sales
19 she closed.

20 Q. What kind of commission was Ms. Whelan entitled
21 to while she was with Golden Shovel Agency?

22 MR. SLONEKER: Object to form.

23 A. She wasn't a salesperson.

24 BY MR. RIMAS:

25 Q. Was there any discussion of a commission, bonus,

1 royalty or some reimbursement for her Gatekeeper
2 development?

3 A. There might have been conversations if that sales
4 line had done better. I don't recall specifics. I mean,
5 we talked about lots of budgeting, aspirational goals of
6 the company. I'm sure there was lots of "if" statements
7 made.

8 Q. And those statements were made over the course of
9 her tenure with your company, that enabled her to continue
10 working for your company, was it not?

11 MR. SLONEKER: Form and foundation.

12 A. Be a little more specific; I'm not exactly sure
13 what you're asking.

14 BY MR. RIMAS:

15 Q. Your numerous conversations about security and
16 compensation with Ms. Whelan, while she was working for
17 your company, was your means of inducing her to keep
18 working for your company because of the work she made for
19 your company; is that correct?

20 MR. SLONEKER: Form.

21 A. She was contracted for services; and during the
22 time she was contracted for services, we were looking at
23 potential growth, if that were to occur, what that would
24 mean and those were aspirational comments in conversations
25 we had.

1 BY MR. RIMAS:

2 Q. And if there was professional growth, you had
3 indicated to her that she would get a piece of that growth;
4 is that correct?

5 MR. SLONEKER: Form.

6 A. I mean, there were lots of conversations about if
7 we did certain sales things, what we could afford or how we
8 could put that together. In order to talk about budgets
9 and so forth, we had to talk about an aspirational level
10 and what possibilities were.

11 BY MR. RIMAS:

12 Q. And were those aspirations realized by your
13 company?

14 A. No.

15 Q. Why not?

16 A. Being a small company takes a long time to build,
17 took us a long time to build our sales up, so...

18 Q. And at what point in time subsequent to 2011 were
19 any of your company's aspirations reached, if any?

20 MR. SLONEKER: Object to form.

21 A. I don't know, can you give me a better -- I
22 don't -- that was pretty broad, I'm not sure exactly what
23 you're asking.

24 BY MR. RIMAS:

25 Q. When did your company turn a profit?

1 A. We have -- I don't have all the specifics in
2 front of us. I believe we had one or two years of profit
3 growth. Later, I want to guess in -- I don't even recall.
4 I'd have to go look at all the documents, but we did have
5 profitable years afterward, but I don't remember when, I
6 don't remember how big.

7 Q. And currently is Golden Shovel solvent or
8 insolvent, in your view?

9 A. We're a growing company, we make decisions about
10 where we're going to invest cash as they come in and that's
11 where we are.

12 Q. So at this moment in time are you solvent or
13 insolvent, setting aside the aspirations?

14 A. At this point we're holding our own, we're able
15 to pay some of the bills as they come in and we're able to
16 try to find ways to increase sales.

17 Q. Now, continuing and maybe finishing your
18 recollections to your partners in Exhibit 64, on the next
19 page ending in 599, you have a paragraph five relating to
20 Fairlight Interactive. Do you see that?

21 A. I see paragraph five.

22 Q. And you wrote to your partners, "Fairlight
23 Interactive: Clarification on the business partnership and
24 arrangements."

25 What did you mean by that; what sort of business

1 partnership and arrangements were there between your
2 company and Fairlight Interactive in the time frame of your
3 email writing to your partners?

4 A. They were our development contracts, so they did
5 our programming and development work that we asked them to
6 do.

7 Q. And why did you believe clarification on your
8 business partnership and arrangements were necessary?

9 A. Every year we would go through exactly what
10 needed to be done or what didn't need to be done and we
11 clarified what services we'd request.

12 Q. And by virtue of that business partnership, did
13 not Fairlight Interactive benefit more by the partnership
14 than your company?

15 A. How do you mean by that? I mean, we contract for
16 those services and we pay for those services.

17 Q. They received most of your company's revenues for
18 the work they did, did they not?

19 A. They invoiced us and we paid those invoices.

20 Q. Now, you go on to say below that, "Tutorial and
21 training on Mary on Social Media integration." I take it
22 that would be reference to Mary Whelan?

23 A. I don't recall.

24 Q. And why did you write about tutorial and training
25 on Mary on social media integration?

1 A. I don't recall what that was in relationship to.

2 Q. I'd like to direct your attention next to Exhibit
3 67.

4 A. Okay.

5 Q. Exhibit 67 looks like it starts out on the first
6 page with the heading, Communications Report 9-30-2012
7 through 10-6-2012. Do you see that?

8 A. I see that.

9 Q. So would this communication report be something
10 that you contributed to?

11 A. This is a communication report that I would have
12 seen. Lots of people were adding to these communication
13 reports at the time, so I don't recall exactly how it was
14 all put in.

15 Q. As far as you can tell, all the information
16 disclosed was true and correct at the time frame indicated?

17 MR. SLONEKER: Object to form and
18 foundation.

19 A. The information that was put here was -- it was
20 on the document. I can't verify exactly what happened or
21 didn't happen.

22 BY MR. RIMAS:

23 Q. I think we've covered a similar document in
24 another exhibit, so -- you know, we talked about the
25 contract amount, the invoicing, et cetera. So what you

1 said earlier would apply to this document as well,
2 exhibit --

3 MR. SLONEKER: Object to form.

4 BY MR. RIMAS:

5 Q. Do you recall your discussion earlier about the
6 pipeline documents, the contract amounts and invoicing?

7 A. I do recall the conversation; and if you want to
8 ask me specifically about this, I'll answer those.

9 Q. All right.

10 MR. SLONEKER: Counsel, just for the
11 record, we did already talk about this exact exhibit
12 earlier today.

13 MR. RIMAS: Right. Okay. And in
14 polite response to Mr. Kresha, let me follow up on one more
15 thing here.

16 BY MR. RIMAS:

17 Q. Let me show you the next exhibit, 65. Tell me
18 when you have that.

19 A. I have 65.

20 Q. Do you recognize Exhibit 65 to be a document
21 entitled, "Quarter 2 Planning, Golden Shovel Agency
22 Planning session," bearing Bates numbered pages GS0046357
23 through 363?

24 A. I recognize this to be a quarter two planning
25 document.

1 Q. Did you have any contribution to this document?

2 A. I don't recall how it was exactly put together.

3 It looks like it was a team planning document.

4 Q. And can you tell who the team was?

5 A. I don't recall who was part of this.

6 Q. Can we tell what the time frame of this was?

7 A. All I can say is it was quarter two and it looks
8 like around the 2011 time frame.

9 Q. Okay. And toward the bottom of the first page
10 there's the heading that says "Solvency." Do you see that?

11 A. Yup.

12 Q. It says, "In order to continue to be an effective
13 sales and marketing company, the company partners must
14 manage and grow the cash and profitability of the company
15 to be self sustaining by the end of 2011." Is that
16 correct?

17 A. That's what that reads, that's correct.

18 Q. So it sounds like this planning session or
19 document was -- at least this portion was directed to your
20 partners, rather than your staff?

21 A. I don't remember who received this, so... It
22 looks like we were doing a higher level planning pitch.

23 Q. And by "higher level" you would mean for
24 partners' eyes only?

25 A. Certainly anybody that was making planning

1 statements about the company. Sometimes I involve people
2 underneath me; it's hard to say who was all involved. We
3 try to do a company-wide approach to all of our planning.

4 Q. That would have included Ms. Whelan; was she part
5 of this planning?

6 A. I don't know. I can't say.

7 Q. I'd like to direct your attention to Bates number
8 359 of Exhibit 65.

9 A. Okay.

10 Q. This was the organization chart in that time
11 frame; is that correct?

12 A. Well, it's an organization -- that's part of our
13 planning session. I think it was a possibility. I don't
14 recall if it actually was the actual one at the time.

15 Q. So you were listed as the president. In that
16 time frame were you the president?

17 A. I was the president of the company at that time.

18 Q. On the next level there's four boxes, the first
19 box identifies VP of sales John Marshall. Was he the VP of
20 sales at that time?

21 A. I don't recall exactly if that was his title or
22 if we were just planning. He was certainly involved in
23 sales, but I don't remember how much further it went there.

24 Q. And if the reference arrow is any indication, he
25 reported to you?

1 A. That's correct.

2 Q. And the next box to the right of that is director
3 of strategic marketing Mary Whelan. Do you see that?

4 A. I see that.

5 Q. And was she the director of strategic marketing
6 in the time frame indicated?

7 A. This document was, again, a planning-purposes
8 document, so I can't say how much it reflected of actual.

9 Q. By that you mean that she was on your wish list
10 to assume that position of director of strategic marketing
11 or that you wished her to assume that position?

12 MR. SLONEKER: Object to form.

13 A. I was putting possibilities together of how
14 things could be. I'm sure there was other possibilities,
15 but I don't recall them all.

16 BY MR. RIMAS:

17 Q. But this was probably the only organization chart
18 you produced in connection with the underlying litigation
19 of 65,000-plus pages; is that correct?

20 A. This is the document that would have been entered
21 in for that, yes. I'm sure there was lots of
22 conversations, but I don't have a recollection of all that.

23 Q. On the next box to the right is VP of business
24 development. Aaron Brossoit, was he the VP of business
25 development in the time frame indicated?

1 A. Again, I don't know exactly how this was
2 reflected, but this was a planning document, so... It was
3 a possibility. I don't remember exactly what was happening
4 behind it.

5 Q. And then the last person for VP of product was
6 Jeff Epple, was he your vice president of product in that
7 time frame?

8 A. Again, same thing, this document reflects
9 conversations and possibilities. I don't recall exactly
10 what was happening behind.

11 Q. And what does VP of product mean or aspire to or
12 suggest, in your view, in the time frame indicated?

13 A. In the time this was indicated it would have been
14 somebody who would have been working with our programmers
15 and our development teams.

16 Q. Now, all of these four individuals in your
17 organization that we identified, they were basically
18 management that, according to the reference arrows,
19 reported to you or would have reported to you had your
20 aspirations been fulfilled; is that correct?

21 A. I have no way of knowing that. I mean, it was
22 planning and putting things on paper and I have no way of
23 looking back to see what exactly could have come together.

24 Q. So as far as, you know, the two levels of the
25 organization we talked about, you on top and the four

1 others beneath you, on the same level, all of those
2 identified were owners of the company except for
3 Ms. Whelan; is that correct?

4 A. That is correct.

5 Q. And it was an aspiration with her being listed as
6 indicated to be an owner, if your aspirations were
7 fulfilled; is that correct?

8 MR. SLONEKER: Object to form.

9 A. That's not what this document is. This was just
10 an organizational document putting people in places where
11 they could perform duties and fulfill services.

12 BY MR. RIMAS:

13 Q. And just finishing the organization chart, the
14 bottom level, to understand these reference arrows, below
15 Ms. Whelan was an account executive, Laura Horvath was
16 that. And according to this chart was Ms. Horvath an
17 account executive in the time frame indicated or did you
18 wish her to become an account executive?

19 A. I don't recall. It was a long time ago and I
20 don't know what our planning purposes were at this time and
21 how we were trying to assemble different duties that would
22 be fulfilled.

23 Q. And if I was to interpret these reference arrows
24 correctly, Ms. Horvath would have been reporting to
25 Ms. Whelan, as well as reporting to John Marshall; is that

1 correct?

2 A. The arrows simply indicate communication models.
3 We were early on -- I wouldn't correctly say this was any
4 type of hierarchy, other than we were just trying to
5 organize how people work within each other.

6 Q. And the last -- let's see, the other person on
7 the bottom tier of your organization chart was territory
8 manager Heidi Thielen. Do you see that?

9 A. I do see that.

10 Q. And according to the reference arrow, she would
11 have been in communication with, worked with or reported to
12 John Marshall, Laura Horvath?

13 A. She would have certainly been communicating --
14 I'm sorry, say that again.

15 Q. She would have been in communication with and/or
16 reporting to or working for -- directly with John Marshall
17 or Ms. Horvath?

18 A. That would have been the communication path.

19 Q. And the only communication path, if that's what
20 these reference arrows signify, between Ms. Whelan as
21 director of strategic marketing and yourself as president,
22 were only between you and her; is that correct?

23 A. In putting this together, that would help to make
24 the communication more efficient and keep it within the
25 context of marketing.

1 Q. All right. Now directing your attention to three
2 pages later of Exhibit 65, we have Bates numbered page GS
3 ending in 361. Tell me when you get there.

4 A. I'm on 361.

5 Q. There is the heading toward the bottom, "Creative
6 Direction, Golden Shovel brand-support Mary with marketing
7 feedback." Do you see that?

8 A. I see that.

9 Q. And that would have been Mary Whelan that's
10 referenced there.

11 A. I believe so.

12 Q. And so what was meant by that statement; what
13 kind of support for what marketing feedback?

14 A. Probably report on how the marketing was being
15 received or what could be improved or what was working
16 well.

17 MR. RIMAS: Let's take a brief
18 intermission, I'll see if I can email those documents. If
19 we could be back -- it's a few minutes before 3:30, if we
20 could be back at 3:40. Thank you very much.

21 (Whereupon, a break was taken.)

22 BY MR. RIMAS:

23 Q. I'd like to direct your attention to Exhibit
24 Number 54, if you could open up attachment 54. If I look
25 to see what that looks like, I think that should be

1 recognizable from the name of the document. Tell me when
2 you have it opened.

3 A. I have it opened.

4 Q. Do you recognize Exhibit 54 to be a 14-page
5 document, with the first page including the court caption,
6 Federal Court, Mary Whelan, plaintiff versus Golden Shovel,
7 LLC, et al; "et al" which would include Mr. Kresha.
8 Further document identification being Defendants' Responses
9 to Plaintiff's Interrogatory, Set Number One.

10 A. I'm sorry, which number was that? Is that number
11 54?

12 Q. Yes.

13 A. I do recognize number four to be Defendants'
14 Response to Plaintiff's Interrogatory Requests, Set One.

15 Q. Okay. And it bears production numbers MW000432
16 through MW000445; is that correct?

17 A. My document does go to the end of 000445.

18 Q. Now, page MW000434 has an interrogatory number
19 one, tell me if you see that.

20 A. I see interrogatory number one.

21 Q. And you were asked, as well as your company, in
22 this interrogatory to provide a complete list of
23 defendants' clients from November 2011 to the present. Do
24 you see that?

25 A. I see that that request was made.

1 Q. And then if you go to the next page -- or strike
2 that.

3 On the same page, in the response interrogatory
4 number one, after the objections were made by defendants,
5 there's a concluding sentence that states, "Without waiving
6 aforementioned objections, attached hereto as Exhibit A is
7 list of Golden Shovel clients that purchased Gatekeeper
8 services from November 2011 to present." Do you see that?

9 A. What page is that?

10 Q. That's still --

11 A. Oh, yup, so starting with "Without waiving
12 aforementioned objections, attached hereto as Exhibit A," I
13 see that sentence.

14 Q. Now, if we continue toward the -- further into
15 the document, let's look for Exhibit A, which follows the
16 signature line of your Stinson attorney at the time, which
17 I believe was David Axtell, on November 13, 2014.
18 Following his signature on that date is Exhibit A, a
19 two-page portion of the document bearing Bates numbers 436
20 through 437. Do you see that?

21 A. I see that.

22 Q. And do you recognize that as a list of your
23 company's contracts and the identified contract clients
24 beginning with a contract date of January 31, 2011, through
25 October 15, 2014?

1 A. I see that as a list of clients that have -- that
2 were listed and, yes, there's a contracted services column.

3 Q. And as far as you know, the information disclosed
4 in this Exhibit A list of clients and contracts was true
5 and correct for the period indicated?

6 A. Yes.

7 Q. Now, just to explain some of the terminology --
8 and I guess before we do that, that would have been based
9 on information you would have provided to your attorneys,
10 this chart of information?

11 A. That's correct.

12 Q. And so the first contract date is for the client
13 Red Wing, January 31, 2011, is indicated to be the contract
14 date and the contracted services identified is for Gateway
15 website and GK service. Do you see that?

16 A. I see that.

17 Q. And so tell us in -- or describe for us what
18 contracted services would have been for the Gateway website
19 portion of this description.

20 A. So the Gateway website would have been the
21 hosting and maintenance of their website.

22 Q. And then the other portion of the contracted
23 service for Red Wing was GK service. What did that entail?

24 A. That would entail the customer service portion of
25 answering their question, helping them generate content and

1 publish to social media.

2 Q. Was there some general breakdown in the
3 contracted pricing for how much was allocated to Gateway
4 website and how much was to the GK service, GK Gatekeeper
5 service?

6 A. Yes, you could buy a website and not opt to get
7 the customer support of the Gatekeeper process.

8 Q. And on this chart is there an example of a
9 customer who only got the Gateway website, which I take it
10 would not be functional without the Gatekeeper service?

11 MR. SLONEKER: Object to form.

12 A. The Gatekeeper -- the website can be completely
13 by itself.

14 BY MR. RIMAS:

15 Q. Is there an example of that on the Exhibit A
16 chart of contracts, clients and services?

17 A. It does not look like any -- I don't see any
18 websites that were stand-alone on this chart.

19 Q. Okay. And a follow-up question would be: All of
20 the contracted services for the clients disclosed in
21 Exhibit A included the Gatekeeper service; is that correct?

22 A. According to this, it looks like that was a
23 service that was included. That could have either been
24 offered as part of a promotion or it could have been a
25 contracted amount.

1 Q. But in any case, the Gatekeeper service was
2 identified as a contracted service and included --

3 A. Yes.

4 Q. -- these contracts.

5 A. For these contracts we identified that they were
6 getting the customer service piece, yes.

7 Q. And were there not any contracts prior to
8 January 31, 2011?

9 A. I don't recall. I don't recall. I don't know
10 exactly what this list was or who put this one together.

11 Q. Okay. And if one extended the chart of contracts
12 shown in Exhibit A beyond the last date disclosed of
13 October 15, 2014, through the present, do you know how many
14 more contracts would be added to the list?

15 A. No, I don't have a number.

16 Q. Would that be over a hundred?

17 MR. SLONEKER: Foundation.

18 A. I don't know.

19 BY MR. RIMAS:

20 Q. And if you went through this list, which of these
21 continue to be existing clients of Golden Shovel as we
22 speak?

23 A. I don't have that in front of me. I'd have to
24 spend some time and look at it closely to see exactly who's
25 renewed. Not all of these are renewed.

1 Q. Can you recall any of these that have renewed, if
2 that's the majority of the clients listed?

3 A. I can't say if it's a majority or minority, I
4 can't tell you with any type of certainty what the exact
5 renewal amount would be.

6 Q. Back in the day of these contract deals shown in
7 Exhibit A, which ones were, in your view, the significant
8 clients as far as revenue generated?

9 MR. SLONEKER: Form.

10 A. You know, they were all about the same. Great
11 River certainly was a larger contract; other than that,
12 they were all about the same.

13 BY MR. RIMAS:

14 Q. Okay. I'd like to have you open the next
15 attachment to your email, or another attachment to your
16 email, Exhibit 57, and let me know when you've done so.

17 A. I have 57 open.

18 Q. This exhibit consists of a three-page letter from
19 attorney Robert Douglas Kane, Jr., addressed to Ron Kresha,
20 chief executive officer, dated Monday, March 26, 2012,
21 bearing Bates numbers MW00868 through 870; is that correct?

22 A. The document does have those numbers on it.

23 Q. So you received and would have reviewed the
24 information in this Exhibit 57 in the time frame of the
25 document?

1 A. I don't recall when I would have seen it. It
2 looks like it was sent to us and I would have looked at it,
3 but I don't have any specifics of when I would have seen
4 it.

5 Q. Did you disagree with any of the content in
6 attorney Kane's letter to you that's the subject of Exhibit
7 57?

8 MR. SLONEKER: Object to form.

9 A. Yes, I rejected the claims.

10 BY MR. RIMAS:

11 Q. And how did you -- by what means did you reject
12 the claim?

13 A. I believe I had an attorney draft a letter
14 rejecting it.

15 Q. All right. And let's open up the next exhibit,
16 58. Tell me when you've done so.

17 A. I have 58 open.

18 Q. Exhibit 58 is a two-page document bearing Bates
19 numbers AL0000182 through 183, further identified as a
20 letter from attorney Paul S. Jacobson to Mr. Robert Kane,
21 Jr., sent by first class mail and email on March 30, 2012.
22 Did I identify that document correctly?

23 A. I see that document.

24 Q. And so this would have -- Mr. Jacobson would have
25 been the attorney you retained to respond to attorney

1 Kane's letter that we just finished discussing as part of
2 Exhibit 58?

3 A. Yes.

4 Q. And was Mr. Jacobson an attorney that you had
5 previously used for yourself or your company or was this
6 your first engagement of Mr. Jacobson?

7 A. No, I had previously used him.

8 Q. And did you provide any of the information,
9 factual information to attorney Jacobson that allowed him
10 to write this letter in response to attorney Kane's letter?

11 A. I'm sorry, restate the question.

12 Q. Did you provide any of the factual information or
13 asserted factual information in attorney Jacobson's letter
14 marked as Exhibit 58 to Mr. Jacobson?

15 A. I did communicate with him to help him put the
16 substance of the letter together.

17 Q. And so which of the factual assertions in his
18 letter marked as Exhibit 58 came from you?

19 A. I don't know exactly. We had a conversation and
20 he drafted the letter on our behalf as our legal
21 representation.

22 Q. And what was the result or consequence or
23 response of his letter by Ms. Whelan's attorney at the
24 time, if any?

25 A. I don't remember what the response was. I don't

1 know if there was a response sent back. I don't remember
2 exactly. I don't know what the time line was.

3 Q. Okay. So in part looking at the second page of
4 attorney Jacobson's response on your behalf and the
5 company's behalf, he starts the paragraph, "Your letter
6 also includes a number of other allegations concerning
7 Mr. Kresha, GSA and his former employer, Atomic Learning,
8 Inc". Do you see that?

9 A. I see that.

10 Q. And he goes on and writes, "Some of these
11 statements are demonstrably false, but they do not appear
12 to be Ms. Whelan's basis for the current allegations of
13 intellectual property infringement, appear to be simply
14 continuation of her ongoing but unfounded complaints of
15 mistreatment by Atomic Learning or GSA." Do you see that?

16 A. I see that.

17 Q. And he goes on to indicate that these were false
18 statements. So what complaints of mistreatment did
19 Ms. Whelan have from GSA in her time frame and why were
20 they false, in your view?

21 A. Because they were untrue.

22 Q. Identify for me her complaints of mistreatment;
23 how did GS mistreat her in that time frame that you state
24 were untrue?

25 A. I'd have to go back and the see exact allegations

1 because there was a time when we were responding to a
2 number of posts and social media posts that were, in our
3 opinion, untrue about Atomic Learning or Golden Shovel and
4 that was indicated in this paragraph.

5 Q. Right. But in this paragraph it talks about
6 complaints of mistreatment -- it talks about her
7 mistreatment by GSA. What mistreatment by GSA was she
8 complaining of that you said were false?

9 A. I would have to go back and see specifics. I
10 don't remember.

11 Q. Okay. Let's go back to Exhibit 57. I don't know
12 if you still have it open or you could open it for me, and
13 tell me when you have done so.

14 A. I have 57 open.

15 Q. All right. The last paragraph of Ms. Whelan's
16 attorney at the time Robert Kane's March 26, 2012, letter
17 written to you begins with the last paragraph on that page,
18 "As you are aware, Ms. Whelan was an independent contractor
19 for GSA from approximately August 2010 to May 2011." Do
20 you see that?

21 A. I see that.

22 Q. And was that statement correct, in your view, as
23 to the approximate duration of her services for GSA?

24 A. Again, that was a long time ago and we rejected
25 the claim by our response, so that's the best answer I can

1 give you.

2 Q. And she was identified as an independent
3 contractor for GSA and I believe you previously have
4 testified that you were in agreement that she was an
5 independent contractor for GSA; is that correct?

6 A. Yes, we had contracted her for services and had
7 used -- and, therefore, as you can see, we had a reporting
8 form of the 1099.

9 Q. All right. Did you ever receive a 1099 from
10 Golden Shovel?

11 A. I did not.

12 Q. Did any of your partners ever receive a 1099?

13 A. They didn't, to my best recollection.

14 Q. Now, going on into that paragraph, attorney Kane
15 writes that no contracts were ever created by Ms. Whelan
16 were a work made for hire within the meaning of 17 USC --
17 or strike that, I skipped too quickly. Let me restate
18 take.

19 Mr. Kane writes, "No contracts were ever executed
20 between the parties." Do you see that?

21 A. I see that.

22 Q. Do you agree that there were no contracts
23 executed between Golden Shovel and Ms. Whelan?

24 A. I have to go back and look, I don't know exactly.
25 Whatever is in this document in our response is what's out

1 there. I don't have any further -- I don't recall.

2 Q. Now, turning your attention to the second page of
3 attorney Kane's letter to you, several paragraphs into that
4 page of the letter he writes, "After two months of her
5 being unemployed, you contacted Ms. Whelan concerning a
6 start-up company (i.e. GSA)."

7 Was that consistent with what happened in that
8 time frame?

9 A. Yes, I believe after her being unemployed, I did
10 contact her.

11 Q. And in a paragraph preceding that it indicates,
12 "In June of 2010, Ms. Whelan's employment was terminated
13 with Atomic Learning, Inc. It is Ms. Whelan's contention
14 she was mistreated by several coworkers, including
15 individuals with supervisory roles, to force her
16 resignation." Do you see that?

17 A. I see that.

18 Q. And were you aware of that at the time you were
19 with Atomic Learning?

20 A. I was not.

21 Q. And is it your recollection that her employment
22 was terminated with Atomic Learning in June of 2010?

23 A. I have no reason to dispute it. I was not
24 involved, so I don't recall any of the details.

25 Q. And is there any reason you waited another two

1 months after she left the employment of Atomic Learning to
2 contact her for your start-up company GSA or Golden Shovel
3 Agency?

4 A. No, no reason, other than just services were
5 becoming available and I heard that she was looking for
6 some projects.

7 Q. Did that have anything to do with your
8 no-solicitation clause with Atomic Learning, that you
9 needed to let some time pass before you could contact
10 Ms. Whelan for your start-up company?

11 A. No.

12 Q. In that paragraph that starts with "After two
13 months of being unemployed," the second sentence Mr. Kane
14 writes to you, "Apparently, you were and continue to be a
15 corporate officer and shareholder of Atomic Learning." Was
16 that true?

17 A. That was not true; I had divested myself.

18 Q. You had divested yourself of any interest or
19 connection with Atomic Learning, including your investment,
20 by the time you contacted Ms. Whelan?

21 A. I was not involved with Atomic Learning.

22 Q. So you would disagree with Mr. Kane's statement a
23 few sentences that follow where he writes to you, "You also
24 mentioned you did still own shares of the company, but
25 these were to be redeemed by the corporation in the near

1 future."

2 Does that change your recollection as to when you
3 gave up and cashed in your shares of Atomic Learning for
4 \$2.5 million?

5 A. Yeah, there was probably payment left to come as
6 part of the exit; but I was not involved with Atomic
7 Learning, that was just part of the exit buyout.

8 Q. And did you receive the bulk of your buyout when
9 you left Atomic Learning or thereafter?

10 A. I believe that is privileged information.

11 Q. Well --

12 A. We can bring my attorney back in to discuss this,
13 but...

14 Q. Your attorney indicated privilege for
15 attorney-client communications, this has to do with your
16 financial information, which we indicated that you and your
17 attorney can designate as confidential and continue to be
18 protected under the protective order.

19 A. Okay.

20 Q. So with that being said, did you receive most of
21 your \$2.5 million buyout at the time you left Atomic
22 Learning?

23 A. It was a structured buyout. I don't remember
24 exactly how much over the period and I don't remember the
25 period of which the buyout occurred, but it was over years.

1 Q. Over a year or more than a year?

2 A. More than a year.

3 Q. Now, attorney Kane continues to write in the next
4 paragraph, "Initially, Ms. Whelan began designing E-mail
5 templates, designing print materials, developing new
6 verbiage for the GSA website and restructuring the web
7 page." Was that true?

8 A. I believe those were some of the duties we asked
9 her to do.

10 Q. And he goes on to write, "Thereafter, she began
11 creating and implementing a marketing plan for Economic
12 Gateway and developing a social media campaign." Was that
13 true at the time?

14 A. I did not -- I can't speak to that on how that's
15 phrased there. I'd have to go back and look exactly how we
16 asked for certain duties to be performed, so I can't speak
17 to how that -- the context of that.

18 Q. And he closes that paragraph by writing to you,
19 "At the onset, you stated GSA had only a budget of \$250 per
20 week for these activities. GSA compensated Ms. Whelan
21 sporadically, but eventually at the approximate rate of
22 \$250 per week." Was that accurate?

23 A. We had reviewed already the checks that were
24 disbursed, so I -- I don't have the math on how he got that
25 number.

1 Q. Okay. And then in the next paragraph attorney
2 Kane writes to you, "In October of 2010, GSA named
3 Ms. Whelan GSA's Marketing Manager, and then later as
4 Director of Strategic Marketing." Was that true at the
5 time?

6 A. Again, you know, we went through some of the
7 documents where we had those conversations; but in
8 substance, the claims that were put here we rejected.

9 Q. He goes on to write to you that she was also
10 promised a position of vice president of marketing. Was
11 that true?

12 A. Again, rejecting those claims. I don't recall
13 those conversations.

14 Q. You don't recall that as one of your aspirational
15 promises made to Ms. Whelan while she was --

16 A. No, that was a long time ago, I don't recall
17 those conversations.

18 Q. He goes on to write, "This was due to the success
19 of Ms. Whelan's efforts and your desire to keep her
20 involved in the company's general marketing operations."

21 Any disagreement with the facts stated in that
22 portion of attorney Kane's letter to you?

23 MR. SLONEKER: Object to form.

24 A. Again, I reject the claims as they were written.

25

1 BY MR. RIMAS:

2 Q. And lastly in that paragraph, attorney Kane
3 writes to you, "In addition to the title, came the offers
4 of an immediate increase in her compensation, full-time
5 employment, an ownership interest in the company and
6 reimbursements for business expenses in the near future.
7 None of these were realized."

8 Any disagreement with those assertions of fact by
9 attorney Kane?

10 MR. SLONEKER: Same objection.

11 A. Again, reject, I rejected those claims. I don't
12 recall the conversation.

13 BY MR. RIMAS:

14 Q. And do you agree or disagree with that final
15 statement, "None of these were realized"?

16 A. I have no way -- I have no basis for what the
17 assertion is there, so, again, I wholeheartedly rejected
18 the letter and the claims that were made.

19 Q. What was your reaction when you received this
20 letter from Kane on or after March 26, 2012?

21 A. It was a business dealing and I needed to respond
22 in a legally appropriate way.

23 Q. Were you upset, disappointed, surprised?

24 A. I responded in a legally business-appropriate
25 way.

1 Q. Now, attorney Kane in the next paragraph writes
2 to you about this time Ms. Whelan's activities
3 substantially increased from not only focusing on internal
4 marketing activities for GSA, but developing her new social
5 media platform. Any disagreement with any of those factual
6 assertions by Mr. Kane?

7 (Technical difficulties.)

8 MR. SLONEKER: Mr. Kresha, your
9 volume's gone, we can't hear you.

10 THE WITNESS: I'm sorry, it was
11 muted.

12 A. We rejected those claims and our response was in
13 the letter, as indicated by our lawyer.

14 BY MR. RIMAS:

15 Q. I don't think your lawyer, you know, was familiar
16 with your company business as you were at the time or you
17 didn't, you know, provide him with that information, but I
18 don't believe he really addressed these factual assertions
19 that you would only be able to respond to; is that correct?

20 MR. SLONEKER: Object to form.

21 A. The letter was responded to through legal means,
22 so that was our response.

23 BY MR. RIMAS:

24 Q. In the next page and top paragraph attorney Kane
25 wrote to you, "As mentioned in the previous paragraph,

1 Ms. Whelan's additional efforts were in developing a social
2 media networking platform, now known as Gatekeeper Social
3 Management."

4 And I believe it was your earlier testimony that
5 she did work on that endeavor known as Gatekeeper Social
6 Management, did she not?

7 A. Again, I would refer you to the response by our
8 attorney Mr. Jacobson, that was our response to this.

9 Q. Even though Mr. Jacobson did not specifically
10 address this, is that still your position?

11 A. I have nothing more to add to his response.

12 Q. Then the paragraph is ended by attorney Kane
13 writing, "Currently, this product appears to have a
14 subscription based pricing structure where the customer
15 will pay an initial set up fee and then pay a monthly
16 maintenance fee." I take it that was the case?

17 A. Again, you know, we provided the response with
18 Mr. Jacobson's letter and through the other documents you
19 got a chance to see how some of our services were set up.
20 It could vary on an individual basis.

21 Q. Did your contracts we looked at previously in
22 Exhibit A, did they include a subscription based pricing
23 structure?

24 A. Some of those did, some of those didn't.

25 Q. And some of those that did, what was meant by

1 "subscription based pricing structure"?

2 MR. SLONEKER: Foundation.

3 A. In order to -- subscription based, you subscribe
4 to a service and you can pay a yearly fee to keep it going.

5 BY MR. RIMAS:

6 Q. All right. And then those contracts in Exhibit
7 A, some of the customers were called on pursuant to the
8 terms of GSA's contract to pay an initial set-up fee and
9 then a monthly maintenance fee thereafter; is that correct?

10 A. Yes, I mean, would you like to go back
11 specifically to the document? We're being pretty broad
12 here, so I want to give you the right answer.

13 Q. Yes, if you can give me more specific information
14 in response to my question, please do so.

15 A. I mean, if you ask me specifically, I can give
16 you the answer. I'm not sure what you're looking for,
17 so... Let me know what you'd like and I'll try to answer
18 it.

19 Q. I've already asked you that question and I will
20 proceed with another question, since you have not answered
21 it. So let me go back to another exhibit.

22 I'd like to direct your attention to Exhibit 53.
23 If you could open up that attachment from the email that
24 was provided to you, and tell me when you have done so.

25 A. I have 53 open.

1 Q. And Exhibit 53 is a 25-page document --

2 A. Exhibit 53 I have a three-page document.

3 Q. All right, that's why we do this. My mistake.

4 Let me reorientate myself to Exhibit 53, so that we're on
5 the same three pages.

6 Exhibit 53 consists of three pages bearing Bates
7 numbers AL00069 through 71, and it's a court captioned
8 document entitled, "Defendants' Statement of the Case." Is
9 that identification correct?

10 A. That is correct.

11 Q. All right. Now, this was a statement of the case
12 filed on your behalf and Golden Shovel's behalf in the
13 federal litigation with Ms. Whelan that was signed by your
14 attorney David Axtell on July 7, 2014, as indicated on the
15 signature line on page three of the document; is that
16 correct?

17 A. This is the document produced by David Axtell, is
18 that your question? I'm sorry, it's getting long so I'm
19 trying to pay attention. What was your question again?
20 Please restate.

21 Q. A statement of the case was submitted on your
22 behalf and your company's behalf by your lawyer David
23 Axtell, with Stinson Leonard Street, on July 7, 2014; is
24 that correct?

25 A. That's correct.

1 Q. And the first page of the defendants' statement
2 of the case on Exhibit 53 --

3 A. I'm sorry, say that again.

4 Q. Yes, let me redo that. I direct your attention
5 to the second page of Exhibit 53 --

6 A. Okay.

7 Q. -- there's a heading that says "Factual
8 Background." Do you see that?

9 A. Okay. Yes.

10 Q. And your attorney asserts on your behalf and your
11 company's behalf that on -- "that plaintiff," which would
12 be Ms. Whelan, "and Mr. Kresha became acquainted when both
13 worked for a company named Atomic Learning." Was that
14 correct?

15 MR. SLONEKER: Object to form.

16 A. What's listed here was correctly submitted.

17 BY MR. RIMAS:

18 Q. Okay. And he further states, "Mr. Kresha left
19 Atomic Learning and began to work on a start-up company,
20 which is now Golden Shovel." Is that correct?

21 A. What's written here, I agree to, I agree to the
22 statements here.

23 Q. And I take it you would have also provided this
24 factual information to your attorneys, including attorney
25 David Axtell, that allowed him to draft this document on

1 your behalf; is that correct?

2 A. I would have provided him information to draft
3 this document.

4 Q. Okay. And he goes on to write on your behalf
5 that "Mr. Kresha learned that Ms. Whelan had been
6 terminated from Atomic Learning, and offered her contract
7 work with Golden Shovel." Was that correct?

8 A. I mean, as written, I agree with this. I
9 provided information and agreed with this statement as
10 presented.

11 Q. Okay. And then your attorney goes on in the next
12 paragraph to write, "In approximately October 2010,
13 Ms. Whelan began work as a contractor with Golden Shovel."
14 Is that correct?

15 A. I agree with the statement as written.

16 Q. He further states, "She was engaged to create
17 marketing documents and assist with social media strategy,
18 for which she agreed to payment of \$250 per week." Was
19 that correct?

20 A. I agree with the statements as they're written.

21 Q. He goes on to write, "Ms. Whelan continued to
22 operate her media strategies company, Interactive Mary,
23 during this time period." Do you agree with that?

24 A. I agree with the statements as written.

25 Q. And in the next paragraph he writes, "The

1 relationship between Ms. Whelan and Golden Shovel began to
2 deteriorate in the spring of 2011." Is that correct?

3 A. I agree with the statements as they're written,
4 the entire document, I agree with the document.

5 Q. So what information did you provide, what factual
6 information did you provide to your attorney David Axtell
7 about how your relationship with Ms. Whelan began to
8 deteriorate in the spring of 2011, while she was still
9 associated with your company?

10 A. I don't remember the specific conversation; but
11 this is a representation of that conversation, so it would
12 be the best information that I would have.

13 Q. All right. I'd next like you to turn your
14 attention and look at Exhibit 55, which is another
15 attachment to the email provided to you. Tell me when you
16 have that open.

17 A. I have 55 open.

18 Q. This is the 25-page document submitted by your
19 attorneys entitled, "Defendants' Responses to Plaintiff's
20 Second Set of Interrogatories" that were submitted in the
21 federal action Ms. Whelan brought against Golden Shovel
22 Agency, that they were signed on March 22, 2015,
23 specifically by David Axtell; is that correct?

24 A. This is a document that was presented -- I see
25 the last page is 25 and I haven't counted them, so it looks

1 like this is a document that was produced.

2 Q. Okay. And the last page of this Exhibit 55 you
3 verified the accuracy of the facts recited and that was
4 shown by your signature subscribed and sworn before the
5 notary on March 12, 2015; is that correct?

6 A. That's my signature, yup, I can verify that I
7 signed that document, so...

8 Q. And as far as you can tell, the information
9 disclosed in this document remains true and correct?

10 MR. SLONEKER: Object to form.

11 A. I'm not sure of the question. I can verify I
12 signed it, so... But what it says there, I signed in
13 agreement.

14 BY MR. RIMAS:

15 Q. Okay. Now, in response to interrogatory number
16 six, could you turn to page 17.

17 A. 17 of which document; is that number 55?

18 Q. Same document, yes.

19 A. Okay, I'm on 17.

20 Q. So 17 has interrogatory number six, asking about
21 your counterclaim and damages. And in the response to
22 number six, skipping past the form objections, the
23 statement is made that, "... and Defendants state that they
24 have been damaged by virtue of the time and expense of
25 responding to Plaintiff's demands over time, including the

1 cost of the present litigation."

2 Are you in agreement with that and that --
3 further in agreement that the costs for present litigation
4 were primarily the attorney invoices to your company from
5 David Axtell and his firm Stinson Leonard Street?

6 MR. SLONEKER: Object to form.

7 A. Again, I signed and then I -- I signed the
8 verification that I agree with the document as it's
9 written.

10 BY MR. RIMAS:

11 Q. Okay. I'd like to direct your attention to
12 Exhibit 56, if you could open and look at that exhibit
13 which is attached to the email provided.

14 A. Okay, I have 56 open.

15 Q. Do you recognize this three-page document to be a
16 document submitted on your behalf to the federal court in
17 the Whelan v Golden Shovel Agency lawsuit entitled,
18 "Declaration of Ronald Kresha in Opposition of Plaintiff's
19 Motion for Relief and Motion to Strike"?

20 A. I recognize that I signed a document dated on
21 March 11. I can't speak any further to -- I don't know the
22 specifics of what happened after that.

23 Q. And just for completion of your identification,
24 that was March 11, 2015, that you signed the document under
25 penalty of perjury; is that correct?

1 A. Correct, I signed that, it looks like, on
2 March 11, 2015.

3 Q. Now, on the first page of the exhibit, paragraph
4 four, you declare that "Ms. Whelan expressed interest in
5 becoming a full-time employee of GSA several months later."

6 "Several months later" would be, from the
7 preceding paragraph, October 2010; is that correct?

8 A. I signed the document, so I agree with what's
9 written there.

10 Q. And in paragraph five of the document you
11 declared, in response to her interest in becoming a
12 full-time employee of GSA, that GSA could not afford to
13 bring her on full-time; is that correct?

14 A. Again, the document as written I agree with.

15 Q. Now, in paragraph seven you state on the next
16 page, "GSA sent its first invoice for services in May
17 2011." What was that in regards to?

18 A. I don't know, I'd have to go back and look
19 specifically at the invoice. I don't have it in front of
20 me.

21 Q. I mean, that was an invoice coming from GSA to
22 which recipient?

23 A. I don't have the document, I don't know.

24 Q. And paragraph eight you declare, "GSA was
25 planning to bring Ms. Whelan on as a marketing director in

1 July 2011." Is that correct?

2 A. Again, I agree with the document as it's written.

3 Q. And with the previous documents we covered
4 earlier today, she was listed or referenced as a marketing
5 director while she was employed with GSA, was she not?

6 MR. SLONEKER: Object to form.

7 A. I can't answer, the way that question is stated,
8 I'm not quite sure.

9 BY MR. RIMAS:

10 Q. In paragraph ten you declare, "GSA paid
11 Ms. Whelan all compensation owed under our agreement.
12 Ms. Whelan was actually paid more than was agreed." Do you
13 see that?

14 A. I see that.

15 Q. Are you in agreement with that?

16 A. Again, I agree with the document as it's
17 presented.

18 MR. RIMAS: I don't know if I
19 missed -- I missed hearing Mr. Kresha's response. I don't
20 know if I had a connection interruption. Can people still
21 hear or see me?

22 MR. SLONEKER: Can now.

23 MR. RIMAS: Okay, give me a second.

24 BY MR. RIMAS:

25 Q. Mr. Kresha, you heard my last question, did you

1 not?

2 A. I did not.

3 Q. Okay, let me reask it.

4 You had stated in paragraph ten, "GSA paid
5 Ms. Whelan all compensation owed under our agreement.
6 Ms. Whelan was actually paid more than what was agreed."
7 Was that correct?

8 A. If you're asking me if I agree with the document,
9 I agree with the document as it's presented.

10 Q. And how was it that she was actually paid and
11 what was agreed?

12 A. I don't have recollection of what that was. I
13 mean, we can go with payment with the checks and I don't
14 have other recollection.

15 Q. Okay. Now, in paragraph 11 you declared that on
16 June 18, 2014, you attended a settlement conference in this
17 matter. Do you see that?

18 A. Yes, I see that.

19 Q. And where was the settlement conference?

20 A. I don't remember exactly where it was.

21 Q. Do you recall whether that was a settlement
22 conference you attended in Duluth, Minnesota, before
23 Magistrate Judge Brisbois?

24 A. That sounds correct.

25 Q. And you were present, Ms. Whelan was present,

1 attorneys were present; is that correct?

2 A. I believe so. I mean, I remember being there for
3 that. I don't recall all the details.

4 Q. Did you settle a lawsuit during that settlement
5 conference?

6 A. Whatever I signed should indicate what we did.
7 Again, I'm not a lawyer, so I -- I know the lawsuit was
8 dismissed at one point. I don't remember exactly how it
9 all happened.

10 Q. Do you remember any of the offers that were
11 exchanged between the parties during the settlement
12 conference, how much you and GSA offered to pay Ms. Whelan
13 and how much she counter offered and requiring payment for
14 settlement of her legal claims?

15 A. I don't recall any of that. I think it's all --
16 it's in some document perhaps. I don't recall.

17 Q. And in paragraph 13 you declare, "In open court,
18 I observed Ms. Whelan and her counsel dismiss Counts II-V
19 of her Complaint with prejudice." Is that correct?

20 A. Again, I agree with the document as it's written.

21 Q. So you observed her and her counsel dismissing.

22 What did you see when you observed Ms. Whelan and
23 her counsel dismiss Counts II-V with prejudice?

24 A. I was present and I was following my legal
25 counsel's advice, that's all I really remember, so...

1 Q. And do you remember --

2 A. I don't have all the details.

3 Q. And do you remember that Ms. Whelan's attorney of
4 record at the settlement conference was an attorney with
5 the name of Aleksandra Ljubisavljevic?

6 A. I don't recall.

7 Q. When you reference in your declaration Ms. Whelan
8 and her counsel, was her counsel male or female that you
9 referenced in paragraph 13?

10 A. I'm sorry, I really can't say. It was a long
11 time ago, I don't remember the specific events.

12 Q. And do you know why, in your view, in open court
13 Ms. Whelan and her counsel would have dismissed four out of
14 the five legal claims she had against your company and you?

15 MR. SLONEKER: Form and foundation.

16 A. Again, I was just following the advice of my
17 attorney.

18 BY MR. RIMAS:

19 Q. All right. I'd like to direct your attention to
20 Exhibit 64 -- or strike that. Let's go on to -- let's
21 direct your attention to Exhibit 73, and let me know when
22 you're at Exhibit 73.

23 A. Okay, I have 73.

24 Q. Exhibit 73 consists of multiple pages of GS
25 document production, which you assisted in the underlying

1 lawsuit.

2 Do you recognize Exhibit 73 to consist entirely
3 of pages from Golden Shovel's document production beginning
4 with GS007043?

5 A. Yes, I recognize those documents.

6 Q. Okay. As far as you know, the information
7 disclosed in Exhibit 73 were from documents or emails that
8 were kept by your company in the ordinary course of
9 business in the time frame of the documents indicated?

10 MR. SLONEKER: Object to form and
11 foundation.

12 A. Those were -- yes, those were documents that --
13 it looks like they were emails passed back and forth. I
14 don't have all the details. I don't recall them all.

15 BY MR. RIMAS:

16 Q. So on the first page of Exhibit 73 there you see
17 an email from your partner Jeff Epple to Heidi Thielen
18 regarding compensation. Would you have received this email
19 in the time frame indicated?

20 A. I was not on the email, so I don't recall that
21 conversation.

22 Q. Okay. I'd like to direct your attention to Bates
23 numbered page 11861. The pagination increases as you go
24 through the document; that's probably 10, 11, 12 pages into
25 the document. Tell me when you get there.

1 A. Okay, I have 861.

2 Q. And do you recognize that as including emails
3 between you and Jeff Epple in the end of November 28-29,
4 2011, time frame?

5 A. That looks to be an email chain, yes.

6 MR. SLONEKER: I'm sorry, what page
7 of the PDF are we on here?

8 MR. RIMAS: 11861.

9 MR. SLONEKER: Not the Bates number,
10 the number of the page of the PDF itself.

11 MR. RIMAS: Okay, give me a second.

12 MS. WHELAN: Page 13.

13 MR. SLONEKER: Thank you.

14 MR. RIMAS: Thank you. Mr. Sloneker,
15 tell me when you have it.

16 MR. SLONEKER: I've got it. Go
17 ahead.

18 BY MR. RIMAS:

19 Q. Mr. Kresha, on that page -- and just for the
20 record, that was the PDF page of the document in response
21 to attorney Sloneker's question that we are on in Exhibit
22 73.

23 In your email with your partner Jeff Epple
24 there's some projections for 2012 in the middle of the
25 email that states, "Partner salaries \$400,000." Is that

1 correct?

2 A. I see the email. I don't remember the context of
3 the conversation, so I'm not sure.

4 Q. This looks like similar numbers that we talked
5 about earlier in another GSA document we had in front of
6 you.

7 A. That could be.

8 Q. I'd next like to direct your attention to page
9 number 44791.

10 MR. RIMAS: And do we have a PDF page
11 number for ease of reference for those so inclined,
12 Ms. Whelan?

13 MS. WHELAN: 38.

14 BY MR. RIMAS:

15 Q. Do you have that page in front of you,
16 Mr. Kresha? Yes?

17 A. I'm looking for it. PDF page 38 and what's the
18 Bates number?

19 Q. GS0044791.

20 A. I have that document in front of me.

21 Q. Okay. Now, at the bottom of that page there's an
22 email from you dated January 26, 2011, and if we turn to
23 the next page, GS0044792, you wrote to Mary Whelan,
24 "Subject: Re: Musings." Do you see that?

25 A. I see the document, yes.

1 Q. Now, you write to Mary in your email, first
2 paragraph, you quoted your wife, "When you started the
3 company it was so positive and did good for so many people.
4 When did the darkness come?"

5 What did you refer to as the darkness at that
6 time?

7 A. I don't recall those conversations. It was a
8 long time ago, so I don't know the context of these emails.

9 Q. And a couple paragraphs later you state, "With
10 that said, it taught me one thing. I am capable of staring
11 into darkness and winning; and so are you. These issues
12 are not insurmountable. They are hard; the feelings hurt;
13 and the depression is real; but so is getting to the other
14 side. Believe me, I'm living proof. And darnit Mary you
15 are too good a person and too talented to let THAT win."

16 Did you have any -- in writing that to
17 Ms. Whelan, did you have any issues of depression in your
18 past?

19 A. I don't recall -- I don't recall the
20 conversations. I don't recall this document, so the
21 context escapes me.

22 Q. Did Mary Whelan have any issues with depression
23 that you chose to write that passage?

24 A. I don't recall.

25 Q. In the next paragraph you write to Ms. Whelan,

1 "Other items: I have not shared anything of our
2 arrangement with anyone. It is personal and the details
3 are not to be shared. All I have ever said about you is
4 that you are the Marketing Manager for GSA and that I am
5 fortunate to have you working with us."

6 Was that correct in the time of your writing to
7 Ms. Whelan?

8 MR. SLONEKER: Object to form.

9 A. Again, I have no context, so I don't recall
10 putting this document together.

11 BY MR. RIMAS:

12 Q. You close that paragraph by telling Ms. Whelan,
13 "You are my 'ace in the hole'... "for this company."

14 Is your recollection consistent, that this is
15 what and how you would have described Ms. Whelan in your
16 email to her re musings?

17 MR. SLONEKER: Object to form.

18 A. I don't recall.

19 BY MR. RIMAS:

20 Q. It is true that you are the author of this email
21 to Ms. Whelan, is it not?

22 A. It looks like this came from my email and I must
23 have written it.

24 Q. You go on to say in the next paragraph, "That
25 being said, I am embarrassed by what I can afford to pay

1 you at this point. I know it is low and I know it is not
2 ideal."

3 Was that correct at the time, that you couldn't
4 afford to pay Ms. Whelan for her services in keeping with
5 the promises you made to her?

6 MR. SLONEKER: Object to form.

7 A. Again, I don't recall the context, so that's
8 what's in the email.

9 BY MR. RIMAS:

10 Q. And in the closing toward the -- further in that
11 paragraph you write to Ms. Whelan, "Our fist order," which
12 I think you meant our first order, "will allow us to grow
13 quickly and to reset people's compensation. I am looking
14 forward to do that!"

15 With subsequent orders did you reset Ms. Whelan's
16 compensation, as you had indicated you would do?

17 MR. SLONEKER: Object to form.

18 A. Again, I don't recall.

19 BY MR. RIMAS:

20 Q. You continue to write several paragraphs later,
21 "If you are interested and willing to keep moving
22 forward...I am confident we can alleviate the anxieties. I
23 know GSA is going to move forward and I so very much want
24 you to be a part of that success."

25 Does that accurately reflect your sentiments

1 toward Ms. Whelan in the time frame you wrote your musings
2 to her?

3 MR. SLONEKER: Object to form.

4 A. I don't recall.

5 BY MR. RIMAS:

6 Q. In the closing paragraph you state, "My honest
7 opinion is this Mary: While I don't know specifically what
8 you went through, I know it was painful. When you say
9 'something changed inside' you, I know that feeling. I
10 gave my heart and my soul to that company and then some
11 evil presence took my soul and trampled on it."

12 Was that company you referenced to Ms. Whelan
13 Atomic Learning?

14 A. I don't recall. I really can't say.

15 Q. I mean, that was the only other company you had
16 in common with Ms. Whelan was Atomic Learning and Golden
17 Shovel; is that correct?

18 A. Again, I have no context for when that was
19 written, that was so long ago.

20 Q. Would you have shared these musings with your
21 wife at the time that you wrote this to Ms. Whelan?

22 A. I don't have an answer for that. I don't recall.

23 Q. And you stated, "More than anything, I want to
24 see you succeed and get your soul back."

25 Did Ms. Whelan follow your musings to succeed and

1 did she get her soul back, in your view?

2 MR. SLONEKER: Object to form and
3 foundation.

4 A. I don't know.

5 BY MR. RIMAS:

6 Q. Now, on the next page that follows you have an
7 email to Mary dated January 25, 2011, on Bates numbered
8 page GS0044793. Do you see that?

9 A. I do.

10 THE WITNESS: And I'm just wondering
11 if I can ask a question about process.

12 MR. RIMAS: Of what?

13 THE WITNESS: About process.

14 MR. RIMAS: Yes.

15 THE WITNESS: So I know in one of
16 your emails you had indicated that I could expect from 9:00
17 to 5:00; I see we're three minutes up to 5:00. Is there
18 still an expectation of that? What are we looking at for
19 planning purposes?

20 MR. RIMAS: Well, I believe that my
21 last email indicated that we were anticipating a full day's
22 deposition and we have -- that was our expectation
23 communicated to your counsel and your person. And if we
24 turn to the court reporter, which answers in part your
25 earlier question about your request for compensation, she

1 can probably give us a general sense of how much deposition
2 time has already occurred.

3 MR. SLONEKER: Mr. Kresha, I will say
4 for my part that I'm sorry that this is taking this long, I
5 don't think it should have taken this long and it's not
6 been my doing that it's taken this long; but I have the
7 right to ask you questions, too, and I have a number of
8 questions for you, so I have no idea how much longer
9 Mr. Rimas intends to go, but I've got a number of questions
10 after he's finished, whenever that may be.

11 THE WITNESS: Okay. If I could -- I
12 mean, if I could just get a time frame. I do have other
13 commitments. I was going off of the 9:00 to 5:00 that was
14 put in the email, so I just need to be able to let those
15 other commitments go, out of respect and courtesy to them,
16 so how would you like me to proceed? Should I just tell
17 them --

18 MR. RIMAS: Should we take a short
19 break so you can do what would make you comfortable in that
20 respect?

21 THE WITNESS: I just need to know
22 what to tell them. And I understand, Mr. Sloneker, you
23 would have questions for me as well, so is it appropriate
24 to ask, am I looking at three hours, two hours, five hours?
25 I just need to be able to let other people know that are

1 relying on my schedule.

2 MR. RIMAS: And Mr. Kresha, in
3 response to that, Mr. Sloneker's questions to you will --
4 we're not going to compensate you for those, that is
5 something you can work out with attorney Sloneker; if he
6 wants your deposition, he can pay for it.

7 MR. SLONEKER: Well, that's
8 interesting, I've never heard anything before this morning
9 about compensation for this deposition, I wasn't included
10 on any of the emails about this, but Mr. Rimas is the one
11 who subpoenaed you for a deposition. I have a right to ask
12 you questions, too, and so we can deal with that later,
13 but, you know --

14 THE WITNESS: Okay.

15 MR. SLONEKER: -- we've got to
16 address how long this is going to take here. Mr. Rimas, do
17 you have any estimate of how much time you have left?

18 MR. RIMAS: Could I just ask the
19 court reporter, I don't know if we need to take a brief
20 break, which may be in order, if she could just give us a
21 general time of how much deposition examination time has
22 lapsed.

23 MR. SLONEKER: The question in my
24 mind is how much longer are we going to be here tonight,
25 not how much time have we already used.

1 If it's your intention, Mr. Rimas, to use the
2 full allotment of time you have under the rules and then
3 call an end to the deposition, I obviously object to that.
4 But my question was, how much time do you believe you have
5 left?

6 MR. RIMAS: I'm hoping to wrap this
7 up as quickly as I can, perhaps another hour.

8 MR. SLONEKER: And Mr. Kresha, my
9 best estimate is two hours for you from me.

10 (Technical difficulties.)

11 MR. SLONEKER: You're muted, we can't
12 hear you.

13 THE WITNESS: Okay, so if I can just
14 take a couple minutes break, let me just reschedule the
15 commitment I have and then I'll plan for three hours here.
16 Is that what we're saying?

17 MR. RIMAS: Yes, let's break for --
18 it's a few minutes after 5:00; we can get back at 5:15, if
19 that's sufficient, and we can follow up from there.

20 THE WITNESS: Okay, I'll be back at
21 5:15.

22 MR. RIMAS: Thank you.

23 (Whereupon, a break was taken.)

24 BY MR. RIMAS:

25 Q. Mr. Kresha, were you able to clear your schedule

1 or accommodate it a little bit?

2 A. Let's just move on. How's that?

3 Q. Very good. Before the break we were -- we just
4 got done discussing your musings email to Ms. Whelan that
5 you emailed to her on January 26, 2011, that's part of
6 Exhibit 73, and we were turning our attention to a
7 continuation of that perhaps on the next page, GS0044793.
8 Do you have the page ending in 793 in front of you?

9 A. I do have that page in front of me.

10 Q. Now, this page includes an email you wrote to
11 Mary Whelan on January 25, 2011, and you wrote many things;
12 let me just see if we can touch upon a few of them.

13 So in the first paragraph you open by telling
14 Mary, "You and I talked briefly about my faith, and there
15 is a lot you don't know about me and my past experiences."

16 You kind of close that paragraph with stating, "I
17 know you were hurt and that hurt badly-that is not easy for
18 me to accept. Especially since it was rooted from
19 something I created."

20 So what hurt did that, you know, impacted
21 Ms. Whelan so hard that you wrote about was rooted from
22 something you created?

23 A. I don't have any recollection of that.

24 Q. Did that have anything to do with her need for
25 financial survival and not giving her the promised

1 compensation offered?

2 MR. SLONEKER: Object to form.

3 A. I don't have any recollection.

4 BY MR. RIMAS:

5 Q. Now, in the next paragraph you tell Mary Whelan,
6 "I have been fighting for 24 months to resolve the 'demons'
7 in my life. The 'demons' of self-doubt, depression,
8 victimization and loss of purpose."

9 And so it sounds as if, during this time and for
10 the two years previous, you were in a depression and
11 seeking to deal with that medical condition; is that
12 correct?

13 A. I did not -- I don't recollect the context. It
14 might have been just a bad day.

15 Q. Have you ever been medically treated for
16 depression in your lifetime?

17 A. I have not.

18 Q. So you go on to state in your email to Ms. Whelan
19 in the fall, and I think that this would be the fall of
20 2010, you were struggling with GSA, "I couldn't get things
21 to connect, we seemed scattered and I felt like I was going
22 to lose this company due to lack of sales and that worried
23 me."

24 And you end your writing to Ms. Whelan, "So I
25 contacted you and hoped you'd consider working with me."

1 Do you see that?

2 A. I see that.

3 Q. So it would be true that Ms. Whelan, as a result
4 of you hiring her in 2010, did turn the company around, did
5 she not?

6 MR. SLONEKER: Object to form.

7 A. I don't recall that.

8 BY MR. RIMAS:

9 Q. So you go on in the next paragraph to write to
10 Ms. Whelan, "You have inspired this company, and more to
11 the point, you have inspired me. Mary I have watched with
12 amazement as you do your work. You accomplish things I
13 only dream of getting done. And more importantly you
14 taught me to trust again."

15 So you apparently had strong and positive
16 impressions of Ms. Whelan in that time frame, but it would
17 seem that your answer is going to be what?

18 MR. SLONEKER: Object to form.

19 A. I don't recall the context of which that was
20 written.

21 BY MR. RIMAS:

22 Q. This and the other email and musings were written
23 in January of 2011. Wasn't that at a time where Ms. Whelan
24 indicated that she was going to leave the company because
25 she was not being compensated as promised and you needed to

1 keep her in the company and these were your attempts to
2 keep her working longer at GSA; is that not the case?

3 MR. SLONEKER: Object to form.

4 A. I don't recall the context.

5 BY MR. RIMAS:

6 Q. And as a result of your continued promises,
7 representations, aspirations, et cetera, Ms. Whelan did
8 continue working for your company for another four months
9 without getting the promised compensation, title, ownership
10 interest, et cetera; is that correct?

11 MR. SLONEKER: Object to form.

12 A. I don't recall.

13 BY MR. RIMAS:

14 Q. So then you go on to write to Ms. Whelan, "Let's
15 take a look at what you have done:" So you listed 12
16 achievements, it would appear, on what she accomplished for
17 the company as of January 2011. Number one you state,
18 "Website is on the roll." Do you see that?

19 A. I see that it's written.

20 Q. And this is entirely about Ms. Whelan, is it not?

21 A. I don't recall. I see it as written, but I don't
22 recall the context.

23 Q. Number two you state, "We 'rock' in the social
24 media world." Is that correct?

25 A. That was written, I see it written there, yes.

1 Q. And continuing downward, number five, "Our blog
2 is coming along nicely and I feel a sense of obligation to
3 you to get it done." Do you see that?

4 A. I see that there.

5 Q. So you and Ms. Whelan would have worked together
6 on blogs for the company; is that right?

7 A. We would have worked on activities together.

8 Q. Now, back in the day or in the time frame of
9 2011, how would you -- what was the blog, if you were to
10 describe that to someone less tech savvy than yourself and
11 Ms. Whelan?

12 A. It was a written digital document put on a
13 website.

14 Q. And the purpose of that was for marketing reasons
15 to attract interest and customers to Golden Shovel Agency?

16 A. That would be the intent, I would imagine.

17 Q. Number six you state, "Facebook is hopping and I
18 look forward to your updates and posts."

19 So back in the day of 2011 Ms. Whelan was
20 harnessing Facebook for your company, was she not?

21 A. She was putting Facebook posts on.

22 Q. And number seven you write about Ms. Whelan and
23 to Ms. Whelan, "Our traffic continues to grow." Is that
24 correct?

25 A. I did write "Our traffic continues to gross,"

1 yes, number seven.

2 Q. And that would have resulted in customers for
3 your company's Gatekeeper and associated services and
4 products, would it not?

5 A. That statement just indicates that our traffic
6 grew, which is more visitors to the website. I don't know
7 what they would have become or done.

8 Q. Number nine you tell Mary, "The digital work you
9 do you is phenomenal" -- or strike that, I skipped number
10 eight.

11 You tell Mary in number eight, "The PR stuff is
12 absolutely AMAZING."

13 So to translate the acronym PR, you're writing
14 about her press relations stuff was absolutely amazing; is
15 that correct?

16 A. That would have been related to public relations,
17 so documents, press releases that were submitted.

18 Q. Number nine you tell her that "The digital work
19 you do is phenomenal." Is that correct?

20 A. That is stated there.

21 Q. And what sort of digital work did she do for your
22 company in the time frame that you wrote these highly
23 praise-worthy comments about her?

24 A. To the best --

25 MR. SLONEKER: Object to form.

1 A. -- of my recollection, it would have been --

2 THE WITNESS: I didn't hear that.

3 MR. SLONEKER: I objected to form.

4 Go ahead.

5 A. To the best of my recollection, it would have
6 just been graphic and photo manipulation.

7 BY MR. RIMAS:

8 Q. And in number ten you tell her that "Economic
9 Gateway understanding and brochure creation."

10 So you appreciated her work in connection with
11 the Economic Gateway by number ten; is that correct?

12 A. That suggests to me that she created a brochure
13 that was acceptable, yes.

14 Q. And number 11 you identify that she was a
15 "Positive Team player," correct?

16 A. Up to that -- yes, I wrote that. So I'm not sure
17 of the full context or how that came to be, but it looks
18 like that was in the email.

19 Q. And last number 12 was "Conference exposure."
20 What sort of conference exposure did Ms. Whelan provide in
21 her services for the company?

22 A. I don't remember exactly what she was doing at
23 that time. We were exploring the option of reaching out to
24 trade shows and using the industry, so it might have been
25 in relation to that.

1 Q. So then after that list of her achievements,
2 which I assume is a short list, you state, "Mary, when I
3 was at my lowest point, you came along and showed me that
4 things could be different."

5 And when you say at your "lowest point," I assume
6 that had to do with your company Golden Shovel Agency, did
7 it not?

8 A. I don't recall the context of when that was
9 written.

10 Q. Okay. Now, if you could turn your attention to
11 the next page, GS0044794, also part of Exhibit 73, there's
12 another email on January 25, 2011, that you wrote to Mary.
13 Do you see that?

14 A. Yes, I see that email exists.

15 Q. So in the second paragraph you write to her,
16 "First of all, we are so close to getting over the hump and
17 I wanted so very much for you to be a part of that. Our
18 exposure and success is closely tied to your efforts and I
19 won't forget that easily." Do you still remember that?

20 A. I don't recall when that was written and the
21 context. That was a long time ago.

22 Q. In the next paragraph you say, "Secondly, is it a
23 money issue? If there is some compensation that I need to
24 rectify, let me know. My plan was to get us over the hump
25 and reset everyone's situation. Did I make a mistake here

1 and miss a need?"

2 So when did you overcome the hump that you
3 referenced in this email?

4 A. I don't recall what that hump was, so I don't
5 know if we ever did get over that. Perhaps it was just
6 trying to project out. I don't recall.

7 Q. And I think you previously indicated that you did
8 offer to reset Ms. Whelan's compensation as a permanent
9 employee with your partners; is that correct?

10 A. I don't recall whether -- I don't recall that
11 conversation.

12 Q. You don't recall that aspiration to do that and
13 not having the money to fulfill that aspiration?

14 A. I mean, I recall us talking about projections and
15 aspirations; but the way you phrase it, I'm not exactly
16 sure if that's how it happened, so I just don't recall.

17 I know we talked about planning and we talked
18 about aspirations of what the company could possibly look
19 like, that's what I recall.

20 Q. And toward the concluding paragraph you say,
21 "Lastly, I want to make sure you and I have a conversation
22 before I tell the team. It will be a shock to John, Jeff,
23 Brian and Aaron, and Laura so I want to make sure I fully
24 understand the best I can before I let them know."

25 What is it that would come as a shock to them as

1 referenced in your email to Mary?

2 A. I'm not sure what the context was, if that was
3 after she had announced she was seeking other plans, so I'm
4 sure I would have had to inform the team of that, that's
5 the best of my recollection.

6 Q. What was that about another plan?

7 A. Just that if she had -- there was a point when
8 she had chosen to do other things and so I would have to
9 inform the team that there was going to be a change of
10 plans, that she was looking at other opportunities.

11 Q. And then you further state, "Please let me know
12 what happened. I would hate for us to quit working
13 together over a misunderstanding or something I
14 unintentionally said or did."

15 So it looks like you were able to convince her to
16 continue working for Golden Shovel; is that correct?

17 A. I don't know what -- I can't say. I don't know
18 what she had thought or what her mind was made of.

19 Q. Well, you suggested that she might have other
20 plans. What would those other plans have been that would
21 cause her to leave the company at that time?

22 MR. SLONEKER: Object to foundation.

23 A. I don't know, she -- I don't know if she had
24 decided to move on and -- I don't know what those were.

25

1 BY MR. RIMAS:

2 Q. And you know from the documents we looked at,
3 et cetera, that she continued working for your company
4 after the end of 2011 -- until May of 2011; is that
5 correct?

6 A. It looks like she did perform some services
7 between that time period.

8 Q. I'd like to turn your attention to a few pages
9 later, also in Exhibit 73, though, page ending with the
10 number 359. Tell me when you get there.

11 A. Can you give me a PDF document or a PDF page?

12 MR. RIMAS: Yes, can you call out a
13 PDF page, please.

14 MS. WHELAN: 44.

15 BY MR. RIMAS:

16 Q. Do you see that PDF page 44, also GS0045359?

17 A. I see that.

18 Q. Do you recognize that as your email written to
19 your partners on June 20, 2014, subject lawsuit update?

20 A. I recognize that email.

21 Q. And in that email you start out, "Gentlemen,
22 yesterday, as you know, we had our early settlement meeting
23 for the lawsuit."

24 And that would be the settlement conference you
25 had in front of Magistrate Judge Brisbois in Duluth,

1 Minnesota, in the summer of 2015; is that correct?

2 A. I don't recall. I don't recall the exact nature
3 and specifics.

4 Q. So you go on to write to your partners, "First of
5 all, it was very clear from the start that we were much
6 more prepared. It was also clear that because the other
7 side was not as prepared our efforts yesterday would be
8 hindered."

9 So how were you more prepared? What did you mean
10 by that?

11 MR. SLONEKER: Object to foundation.

12 A. I don't recall the context.

13 BY MR. RIMAS:

14 Q. Those are your words written on June 20, 2014,
15 are they not?

16 A. That is an email that was produced and it looks
17 like it came from my account, that's all I recall.

18 Q. Okay. So in the second paragraph you state,
19 "Secondly, we had 7 counts named in the complaint. 6 were
20 employment complaints. Basically she claimed we should
21 have paid her more." Do you see that?

22 A. I see that.

23 Q. And so is that information -- how did you obtain
24 that information; is that something you heard during the
25 settlement conference or you were provided with otherwise?

1 A. I don't recall the basis for any of those
2 statements.

3 Q. You go on to write, "The good news is that both
4 parties agreed this claim could not happen because the time
5 had run out for the lawsuit. So 6 complaints were
6 dismissed."

7 So those six complaints, or perhaps otherwise
8 stated to be legal claims, you understood were dismissed,
9 as you had previously observed in the declaration we talked
10 about earlier in your deposition; is that correct?

11 A. Perhaps in the context; again, I don't recall the
12 entire context of what was put together here.

13 Q. And then you go on to say, "This was one of our
14 big wins for the day. There is now only one claim left to
15 defend and that is the IP complaint." Is that correct?

16 A. That was written.

17 Q. Okay. Next you write to your partners, "Third, I
18 did make a couple offers to settle the claim. However,
19 they are claiming \$800,000 in damages. Yes, \$800,000. I
20 offered \$6,000 the day before the claim and I offered
21 \$20,000 on the court date."

22 How did you come up with \$20,000 to offer
23 Ms. Whelan during the settlement conference on the court
24 date? Is there any basis for that number?

25 A. I have no recollection of how I got to that

1 number.

2 Q. So then you go on to state, and maybe this
3 answers my question, you write, "What I was trying to do
4 was find a number that would be less than legal costs if
5 they would take them. It was all denied. And the reason
6 became clear by the end of the day."

7 So what reason became clear at the end of the
8 day?

9 A. I don't know. I was probably just trying to
10 explain in my mind what had happened, and I'm not exactly
11 sure what I meant by that.

12 Q. But you wrote this when you were fresh from the
13 settlement conference on June 20, 2014, did you not?

14 A. I believe so, I wrote it on whatever that date
15 was, June 20, so, yes, that was a long time ago. I don't
16 recall how I got to be writing that. I don't even recall
17 putting the email together, so...

18 Q. You go on to write that, "Mary does not believe
19 in any of the documents presented to her. She believes we
20 are hiding our money."

21 And you continue to write, "I presented
22 financials showing our \$900,000 three year loss, and they
23 wouldn't accept them."

24 So what sort of financials did you give them that
25 would show a three-year loss of \$900,000?

1 A. Any of the -- they would have been tax documents,
2 I believe, those were the statements we were using, to my
3 best recollection.

4 Q. So was there anything you were holding back or
5 hiding from Ms. Whelan that they continued to believe that
6 to be the case?

7 A. I have no answer to that, we weren't hiding any
8 money, everything -- everything we had was clearly stated
9 in our financials and the tax documents.

10 Q. Then you go on to write further, "This is a
11 personal vendetta against me. She wants to basically ruin
12 me anyway she can." Is that correct?

13 A. I did write that.

14 Q. And how did she want to ruin you?

15 A. I don't have a recollection of why I made that
16 statement.

17 Q. It was only months --

18 A. I probably was reacting to the lawsuit, I guess.
19 I don't know.

20 Q. Okay. It was only months ago that you -- we just
21 covered in January of -- strike that.

22 Then you go on to write, "The good news for you
23 is that I am the real focus. I can bear the battle."

24 And why did you think you were the focus, rather
25 than the other partners?

1 A. I suspect it was because of the specific names on
2 the lawsuit. I don't know.

3 Q. Then you go on to write, "So we are being very
4 aggressive now in compiling data and getting it ready to go
5 to the judge."

6 "I really don't believe she can win, but it is
7 clear to me that our system allows people to use 2nd rate
8 lawyers to tie up the courts and company's."

9 Were you referring to Ms. Whelan using
10 second-rate attorneys to tie up the courts, specifically
11 her attorney of record at the time, Aleksandra
12 Ljubisavljevic?

13 MR. SLONEKER: Object to form.

14 A. I don't recall where that came from.

15 BY MR. RIMAS:

16 Q. But, again, that was language that came from you;
17 is that correct?

18 A. The choice of words and colloquialism, that I'm
19 not sure how it was applied. I don't recall the email
20 being written.

21 Q. But this email was written as a lawsuit update
22 fresh after your settlement conference, and the only
23 attorney of record you encountered at the settlement
24 conference, on behalf of Ms. Whelan, was her attorney
25 Aleksandra Ljubisavljevic; is that correct?

1 MR. SLONEKER: Object to form and
2 foundation.

3 A. Again, I can't say what other context for making
4 a general statement about attorneys was at the time.

5 BY MR. RIMAS:

6 Q. Now, in that settlement conference that you spent
7 all day in Duluth, in which no settlement was reached, but
8 you state that almost all of Ms. Whelan's claims were
9 dismissed, was Ms. Whelan in distress during that process
10 when you observed her dismissing her claims?

11 MR. SLONEKER: Object to foundation.

12 A. I don't recall ever looking at anybody. I was
13 pretty focused on my legal team.

14 BY MR. RIMAS:

15 Q. And in response to the foundational objection, I
16 think you answered that and you're concluding a sentence of
17 your email describing a lawsuit update, you state to your
18 partners, in parentheses, "by the way, it was clear that
19 her mental instability is dragging this thing out. She
20 believes in a conspiracy and is very, very paranoid." Is
21 that correct?

22 MR. SLONEKER: Form and foundation.

23 A. Those are the words that are not the email and I
24 don't recall why I said that or context.

25

1 BY MR. RIMAS:

2 Q. So do you have any knowledge at that time, that
3 we don't know about, about someone's mental state, any
4 medical background or history that would cause you to use
5 that kind of language to your partners?

6 A. I had no knowledge of everybody's...

7 THE WITNESS: I apologize, there will
8 probably be some dogs barking, some of my kids are back
9 from college, so just to let you know there will be a
10 little background noise.

11 MR. RIMAS: That's fine, that's part
12 of the real world.

13 BY MR. RIMAS:

14 Q. I'd like to direct your attention to Exhibit 74.
15 Tell me when you are there.

16 A. Okay, I have 74.

17 Q. This is a document you produced in the underlying
18 deposition, bearing Bates numbers GS0043635 through 39,
19 entitled, Change in Terms Agreement, borrower Media
20 Enterprises, LLC; lender, Mid Minnesota Federal Credit
21 Union. Why did you produce this document in the underlying
22 litigation?

23 A. I'm not sure why this was requested.

24 Q. Was your company or yourself -- this Change in
25 Terms Agreement, it looks like a loan was obtained,

1 principle of \$152,884. Was this something in connection
2 with your company or yourself or your partners that this
3 was provided?

4 A. That was a loan for the building that I own with
5 another one of my partners that Golden Shovel -- we rented
6 from that building.

7 Q. Is that the building you still have?

8 A. I still own that building.

9 Q. So what kind of rent has your company been paying
10 you to rent the building over these years?

11 A. It has been anywhere from zero to \$500 a year.
12 It's been in-kind contributions, they keep up the
13 utilities, the utilities are about \$150 a month.

14 Q. So is that money you receive --
15 (Technical difficulties.)

16 BY MR. RIMAS:

17 Q. So over the years you've received money in your
18 pocket as a result of the rental arrangement your other
19 company has with Golden Shovel Agency; is that correct?

20 A. This document just is a loan document. I don't
21 have any financials related to that rent in this document.

22 Q. So what's the name of the company that you're
23 also a member of that owns the building in which your
24 company GSA resides in and pays rent on?

25 A. Media Enterprises.

1 Q. Any other owners in the company beside yourself?

2 A. I believe everyone's listed on the document.

3 Q. So it looks like your partners at -- some of your
4 partners at Golden Shovel, including Brian Westerberg,
5 yourself and there's another person by the name of Ronald
6 Hinnenkamp, is he a partner with you in other companies,
7 other than this company Media Enterprises, LLC?

8 A. We are -- the three of us are co-owners on this
9 building.

10 Q. But are you an owner with Mr. Hinnenkamp in any
11 other companies or matters?

12 A. Nope, we are just on this building.

13 Q. Okay. Next I would like to direct your attention
14 to Exhibit 75, do you have that exhibit in front of you?

15 A. I have that exhibit in front of me.

16 Q. Exhibit 75 is a multi-page document that bears a
17 plurality of Bates numbers, the first page is from AL000355
18 and it is entitled, "Golden Shovel Agency Government and
19 Economic Development Competitor Analysis." Do you see
20 that?

21 A. I see that document.

22 Q. And do you recognize that this document includes
23 Mary Whelan's logo and private -- or personal email address
24 as part of the document?

25 A. I would not have approved that. The Golden

1 Shovel document would have been Golden Shovel intellectual
2 property, and that would have been added without my
3 permission.

4 Q. And how would you know that?

5 A. Because I would not have approved that. Golden
6 Shovel has the rights and intellectual property that we
7 created.

8 Q. Are you the person that would have reviewed your
9 website and other documents for intellectual property to
10 ensure that it was properly identified and designated?

11 A. I would have been one of the ones reviewing the
12 documents, yes, but I -- you have to be more specific with
13 the question.

14 I mean, I certainly looked at the materials that
15 we created, and we believe that everything that was created
16 by us and the contractors we brought in were brought in to
17 do work for Golden Shovel, which is why we hired them and
18 that was our right as property, intellectual property.

19 Q. However, you did not have any written agreements
20 with your contractors that you referenced; isn't that true?

21 A. I don't recall that completely. I'd have to look
22 through all the documents.

23 Q. And did you also consult with any intellectual
24 property counsel regarding that matter?

25 A. Just the attorneys we had, but we believed that

1 the documents we were creating were of the property and
2 nature of Golden Shovel.

3 Q. I'd like to just backtrack a little bit and have
4 you look -- keep this exhibit handy and open up a new
5 exhibit, Number 59, that's another attachment to the email
6 you were provided, and tell me when you get there.

7 A. Yes, I have 59 up.

8 Q. Now, this exhibit includes earlier invoices
9 from -- looks to be from Leonard, Street and Deinard, but
10 the local attorneys there -- I should say by "local," from
11 their St. Cloud office, invoicing Golden Shovel Agency for
12 work in connection with Ms. Whelan's lawsuit against you
13 and your company; is that correct?

14 A. This is an invoice from those attorneys.

15 Q. And just for further identification, Exhibit 59
16 consists of documents you produced and your attorneys
17 labeled as GS0065049 through 52; is that correct?

18 A. These are invoices that were produced by these
19 attorneys, that's correct.

20 Q. Now, going back to the first time entry on the
21 first page of Exhibit 59, the Leonard, Street and Deinard
22 law firm invoice shows the date of 1/7/13, time keeper AJC
23 and that was your St. Cloud attorney Aaron J. Crandall, was
24 it not?

25 A. Yes, this looks like it was in connection with

1 conversations with Aaron Crandall.

2 Q. All right. And he described his time entry 1.5
3 hours of reviewed complaint, office conference regarding
4 same, email correspondence to Paul Jacobson regarding
5 representation, analyze claims, telephone conference with
6 Paul Jacobson.

7 Why did you switch from attorney Jacobson, your
8 initial attorney, to Leonard Street in connection with the
9 Whelan litigation?

10 A. At the time I recall it was a band width issue
11 and we were looking at somebody that specialized more in
12 the claims that were being brought up against us.

13 Q. Okay. And so it looks like you personally, as
14 well as your company and your attorneys, were aware of
15 Ms. Whelan's filed complaint in January of 2013, even
16 though your company was never served with the complaint,
17 which resulted in the original federal action being
18 dismissed; is that correct?

19 A. I'm not really sure how to answer that. Can you
20 be more specific?

21 We were responding to claims that were being
22 brought up against us.

23 Q. And did the first filed action by Ms. Whelan's
24 initial attorney Robert Kane, did that complaint come to
25 your attention -- or strike that.

1 How did attorney Kane's initial complaint come to
2 your attention?

3 A. I believe I received a letter.

4 Q. You received a letter. Did you receive a copy of
5 the complaint with the letter?

6 A. I don't recall. I think it was the response from
7 our attorney Paul Jacobson called that out, so whatever I
8 would have received would have been through a letter.

9 Q. In the complaint you would have received, you
10 would have provided to your attorney from Leonard Street in
11 St. Cloud, Aaron Crandall; is that correct?

12 A. I don't recall exactly if I would have -- if I
13 gave that to my attorney at the time, Paul Jacobson, and
14 then he forwarded it, but somehow we all shared the
15 information.

16 Q. As far as you can tell, the rest of the invoicing
17 for that time frame, you paid those invoices?

18 A. We paid our invoices, yes.

19 Q. Okay. One moment, please.

20 Okay, I'd like to redirect your attention to --

21 (Technical difficulties.)

22 BY MR. RIMAS:

23 Q. Turn your attention to Exhibit 72, if you could.

24 A. I'm sorry, so I'm looking at Exhibit 72, is that
25 what you said?

1 Q. Yes.

2 A. This looks like one we discussed earlier; is that
3 right?

4 Q. Yes, we did cover parts of it; but it does have
5 many other parts, which I wanted to touch upon next. So if
6 you could turn your attention to page number GS0045389.

7 MR. RIMAS: And maybe we can get a
8 call-out of the PDF page on that.

9 MS. WHELAN: Could you repeat the
10 Bates number?

11 MR. RIMAS: GS0045389.

12 MS. WHELAN: 45389?

13 MR. RIMAS: Yes.

14 MS. WHELAN: I don't see -- wait one
15 second. It is page 38.

16 BY MR. RIMAS:

17 Q. Mr. Kresha, tell me when you get there.

18 A. I am on page 38.

19 Q. Okay. And for the record, that is also
20 GS0045389, which includes email communications between you
21 and your associate Victor Perez on February 16, 2015,
22 regarding online information; is that correct?

23 A. I see the email in front of me. I don't recall
24 the exact context of it.

25 Q. So it would appear that the context suggested by

1 this email is a possible pain in the back for your public
2 activities. "I hope it goes away soon," that was a
3 reference to the lawsuit against you; is that correct?

4 A. It looks like Victor was responding to that, yes.

5 Q. And below that or further into the -- toward the
6 bottom and middle of this page you write to Victor, "The
7 best way to respond is with this statement: Ms. Whelan is
8 a former contracted worker who has become disgruntled and
9 filed a personal lawsuit against our CEO, Mr. Kresha. All
10 of the counts were dismissed except for a pending copyright
11 claim that is still in the discovery phase. Mr. Kresha is
12 a high-profile figure in the State of Minnesota and these
13 types of lawsuits can be politically motivated. However, a
14 lawsuit must be defended and Mr. Kresha is doing his best
15 to defend his name and the good work of Golden Shovel.
16 Also, because the lawsuit has named Mr. Kresha personally,
17 we cannot comment on the specifics of the lawsuit."

18 Was that a correct statement of your position in
19 the time frame of February 16, 2015?

20 A. That was our statement at the time.

21 Q. Okay. And how was Ms. Whelan's action against
22 you politically motivated?

23 A. I was running for office and at that time we were
24 just defending our statements with this response.

25 Q. I'd like to direct your attention a few pages

1 further into Exhibit 72, bearing Bates numbered page
2 GS0045556.

3 MR. RIMAS: Can you call out the PDF
4 equivalent of that page.

5 MS. WHELAN: 53.

6 BY MR. RIMAS:

7 Q. Mr. Kresha, tell me when you get to that page.

8 A. Okay, I'm on page 53.

9 (Technical difficulties.)

10 BY MR. RIMAS:

11 Q. -- just for the record.

12 A. I'm sorry, I didn't hear any of that.

13 Q. Okay. Can you hear me again?

14 A. Yes.

15 Q. I did have a little Internet hiccup there. If
16 you can hear me now, let me restate my question.

17 Mr. Kresha, we're looking at, for the record,
18 GS004556. Do you recognize this as an email from you to
19 your partners you sent on November 7, 2010, regarding
20 Monday, November 8, 2010?

21 A. I see that email.

22 Q. So you were talking about in that email having
23 two meetings; there's one at 10:00 that you described as
24 branding meeting to introduce Economic Gateway, presented
25 by Fairlight and Mary Whelan --

1 (Technical difficulties.)

2 BY MR. RIMAS:

3 Q. Mr. Kresha, on this page in your email you
4 identify a branding meeting to introduce Economic Gateway
5 presented by Fairlight and Mary Whelan, the marketing
6 manager for GSA, will be introduced as well. Do you see
7 that?

8 A. I see the email.

9 Q. So you were touting or presenting Mary Whelan as
10 the marketing manager for GSA in the time frame of
11 November 8, 2010, to the partners and recipients of that
12 email; is that correct?

13 A. That email looks like she was being introduced
14 into a meeting and those would have been some of the duties
15 described with that meeting, I would assume.

16 Q. All right.

17 MR. RIMAS: And can I still be heard?
18 It seems like my connection here is diminishing.

19 THE REPORTER: Yes, I hear you.

20 MR. RIMAS: Very good.

21 BY MR. RIMAS:

22 Q. I'd like to direct your attention further to
23 Exhibit 72, Bates numbered page GS0060469.

24 MR. RIMAS: Could you call out the
25 PDF equivalent of that page.

1 MS. WHELAN: 60.

2 BY MR. RIMAS:

3 Q. Let me know when you reach PDF page 60,
4 Mr. Kresha.

5 A. I see 60.

6 Q. Do you recognize that to be an overview of
7 Economic Gateway?

8 A. I do recognize that. And if you'll note the
9 Golden Shovel copyright at the bottom, that's how we would
10 have put our copyright on things. And when the lawsuit was
11 dismissed, it was shown that those had been falsified,
12 so... This is how we put our copyright on, so, yes, I can
13 recognize this document.

14 Q. And that previous document that had Ms. Whelan's
15 logo on it was an earlier time frame prior to you calling
16 her up or titling her as marketing director for Golden
17 Shovel or offering her a partnership position; was that
18 correct?

19 MR. SLONEKER: Object to form.

20 A. All I know is what was in the lawsuit dismissal
21 that was centered around how the copyright was falsified.

22 BY MR. RIMAS:

23 Q. Now, by this particular document the -- it is
24 true that Economic Gateway, as it's overviewed, needs
25 Gatekeeper to exist?

1 A. No, Economic Gateway can exist by itself. Again,
2 Economic Gatekeeper is simply a marketing name for customer
3 service. We could call it customer service or we could
4 call it Golden Shovel customer service, we could call it
5 Golden Touch, that was just a name to put on invoices as to
6 attribute to our customer service.

7 So if your question is, can Economic Gateway
8 exist without Economic -- or without Gatekeeper,
9 absolutely. We still have websites by themselves all the
10 time and back then we did that as well. Economic Gateway
11 was the website project -- product that was our precursor
12 and what based the company starting. Gatekeeper was just
13 to be customer service.

14 Q. Then I'd like to turn your attention to the next
15 page, GS0063451, it's Golden Shovel Agency 2010 end of year
16 partner meeting, Aaron's Thoughts and Reflections. Do you
17 see that?

18 A. I see that document.

19 Q. And your partner Aaron writes -- Aaron Brossoit
20 writes that -- in the last paragraph on the bottom page of
21 that reflection, "I have been impressed with Mary's
22 management of the social networks, website and newsletters
23 and think the great impact she has already made will become
24 even stronger as we get further into a routine."

25 Was that correct at the time indicated?

1 MR. SLONEKER: Object to foundation.

2 A. It looks like at that time, yes, Aaron had
3 written that. I don't know the context of it.

4 BY MR. RIMAS:

5 Q. You then go on to state, "Setting up meetings,
6 press releases, booth invites, phone calls, thank yous
7 combined made a large impact on the market setting us up
8 for success. I would very much like to see Mary make a
9 google cal that breaks out a 1st quarter marketing plan and
10 what she intends to do each week in relation to the
11 conference schedule, routine items, needed items, etc."

12 Could you explain to me about those three
13 reflections by Aaron and what was meant by Google cal; is
14 that a Google calendar?

15 MR. SLONEKER: Form and foundation.

16 A. I suspect it was a -- I don't know what the
17 context of it was, I didn't write it.

18 BY MR. RIMAS:

19 Q. So what does the word Google cal mean to you in
20 that time frame?

21 A. Possibly Google calendar maybe. I don't know, I
22 didn't write it.

23 Q. And did Ms. Whelan set up a Google calendar that
24 broke out the first quarter marketing plan and the items
25 aspired to by Aaron Brossoit in his reflections?

1 A. I don't know. I don't recall.

2 Q. Would he have a better recollection than you?

3 A. I don't know.

4 Q. I'd like to direct your attention to Exhibit 89.

5 Do you recognize Exhibit 89 to be an Economic Gateway
6 Status Meeting dated November 10, 2020, bearing Bates
7 numbers GS00063460 through 464?

8 A. I'm not getting any audio.

9 Q. Do you see that, Mr. Kresha? Can you hear me?

10 A. I can hear you now.

11 Q. All right. Mr. Kresha, I suppose I need to
12 repeat my question. Do you have Exhibit 89 in front of
13 you?

14 A. I have Exhibit 89 in front of me.

15 Q. And that exhibit is entitled, "Economic Gateway
16 Status Meeting," November 10, 2010; is that correct?

17 A. Economic Gateway Status Meeting, November 10,
18 2010, is on the document.

19 Q. Followed by "GSA Update"; is that correct?

20 A. I see GSA update.

21 Q. Now, several paragraphs -- I guess before we get
22 to that, was this Economic Gateway Status Meeting something
23 put together by you or for you?

24 A. I don't know who put this together, I don't -- I
25 don't know who this was presented to.

1 (Technical difficulties.)

2 BY MR. RIMAS:

3 Q. -- in the time frame indicated, would it not?

4 A. I'm sorry, I didn't catch that. Please restate.

5 Q. This document would have been reviewed by you or
6 come to your attention in the time frame indicated, would
7 it not?

8 A. I can't say. I don't know if this was an
9 internal meeting with notes. I don't know if I attended
10 that meeting.

11 Q. So going back to the first page of Exhibit 89,
12 under marketing it states, "Hired full time marketing
13 person-Mary Whelan." Do you see that?

14 A. I see that on here, yes.

15 Q. Does that refresh your recollection that your
16 company and you hired Ms. Whelan as a full-time marketing
17 person on or about November 10, 2010?

18 MR. SLONEKER: Object to form.

19 A. Yeah, I didn't create this document, that I
20 recall, so I don't know the context of using that statement
21 there.

22 BY MR. RIMAS:

23 Q. But you have no reason to disagree with that
24 statement, do you?

25 MR. SLONEKER: Same objection.

1 A. My recollection, she was an independent
2 contractor. I think that's consistent with all the other
3 documents and testimony.

4 BY MR. RIMAS:

5 Q. And yet she was hired as a full-time marketing
6 person; is that correct?

7 MR. SLONEKER: Form.

8 A. No, she was an independent contractor with a
9 1099.

10 MR. RIMAS: Give me one moment,
11 please.

12 (Off the record.)

13 BY MR. RIMAS:

14 Q. I'd like to turn your attention to Exhibit 89, if
15 you could tell me when you get back there.

16 A. I am at 89.

17 Q. We had previously covered, a few minutes earlier,
18 about the author or authors of this document stating that
19 Mary Whelan had been hired as a full-time marketing person,
20 and above that there was a reference under sales, "Received
21 signed contract from NWKRECI 20k check still en route."
22 What would that have related to?

23 A. That was never received. That would have been an
24 order that the sales was talking about, but that order
25 never occurred.

1 Q. And what did the acronym signify?

2 A. I believe that was Northwest Kansas.

3 Q. Northwest what?

4 A. Kansas.

5 Q. Okay.

6 A. That was a commitment that we thought we had, but
7 that promise was broken. I'm sure you can appreciate how
8 that happens sometimes.

9 Q. Yes.

10 MR. RIMAS: I'm a few minutes away
11 from ending my examination; and before I do so, I'd just
12 like to take a ten-minute break to ask a few more questions
13 and then turn it over to Mr. Sloneker, if I may. Let's
14 break for ten or 15 minutes. Thank you.

15 (Discussion off the record.)

16 THE WITNESS: So just for
17 clarification, so what you're saying, I know you had said
18 to expect an hour, so what can I expect going forward here?
19 You said a couple minutes; is that three minutes, five
20 minutes? Can you just tell me what the expectation is? I
21 would like to hug my college daughter, if I have a couple
22 minutes.

23 MR. RIMAS: I need to get my --
24 locate two things, so if I can locate those items and get
25 them in front of you, it would be a few minutes, that is

1 the best I can say at this juncture.

2 THE WITNESS: So are you sending me
3 new things?

4 MR. RIMAS: I believe not, but I need
5 to check.

6 THE WITNESS: Okay, so can you give
7 me a reasonable -- 15 minutes, 20 minutes? I want to make
8 sure that I at least get something to drink and refresh for
9 Mr. Sloneker's -- I think he owes me some questions, so I
10 want to be sharp for him, too.

11 MR. RIMAS: Okay, well, tell me when
12 you want to resume and we'll resume by a few minutes.

13 THE WITNESS: I think this is your
14 deposition, so I'm asking you, what would you -- what are
15 the expectations so I can plan? I think that's a fair
16 question. I just want to know so I can be ready for both.

17 MR. RIMAS: So you can get yourself
18 refreshed, et cetera, let's resume at 7:00, that's 20
19 minutes from now. Will that work?

20 THE WITNESS: Okay. I can do it in
21 ten.

22 MR. RIMAS: All right, let's do it in
23 ten. See you back at 6:50.

24 THE WITNESS: Okay, I'll be back in
25 ten minutes.

1 MR. RIMAS: Thank you.

2 (Whereupon, a break was taken.)

3 BY MR. RIMAS:

4 Q. Mr. Kresha, just following up on a couple more
5 questions and exhibits. Let me direct your attention to
6 Exhibit 75 and specifically --

7 A. And this is Exhibit 75 with the incorrect
8 copyright on the bottom, correct, with the falsified
9 document?

10 Q. No, that's --

11 A. Is that the one we're looking for?

12 Q. -- not responsive to my question, Mr. Kresha.

13 A. Oh, okay, just trying to be clear.

14 MR. RIMAS: Well, I will move to
15 strike that response as unresponsive.

16 BY MR. RIMAS:

17 Q. Are you on Bates numbered page GS0026122?

18 A. I'm sorry, which document number? I'm on Exhibit
19 75.

20 Q. Correct, and it's GS0026122.

21 MR. RIMAS: Perhaps we could get a
22 call-out for the PDF page.

23 MR. SLONEKER: It's 11.

24 MR. RIMAS: Pardon?

25 MR. SLONEKER: Page 11.

1 BY MR. RIMAS:

2 Q. Okay. Are you there yet, Mr. Kresha?

3 A. I am on page 11.

4 Q. Okay. Do you recognize that page GS0026122 as
5 including an email from you to Ms. Whelan, dated May 17,
6 2011, that says "congratulations"?

7 A. Yes, I see that document exists.

8 Q. And you were congratulating Ms. Whelan because,
9 "2 Gatekeeper orders came in through today! Looks like
10 your dreams are coming into play. Nice work!" Is that
11 correct?

12 MR. SLONEKER: Object to form.

13 A. It looks like that's what I said, yup.

14 BY MR. RIMAS:

15 Q. Do you recall when the two Gatekeeper orders came
16 in that caused you to make that exclamation?

17 A. I don't.

18 Q. I would next like you to turn back one more time
19 to Exhibit 72 and --

20 A. Okay, I'm on 72.

21 Q. And turn your attention -- as soon as I get there
22 first. Please direct your attention to GS0055230 in
23 Exhibit 72.

24 MR. RIMAS: And if you could call out
25 the PDF equivalent of that.

1 MS. WHELAN: 59.

2 BY MR. RIMAS:

3 Q. Tell me when you get there.

4 A. Okay, I'm on 59.

5 Q. Do you recognize that as an email from you to
6 Peter Schneider, sent on March 8, 2011, re Mary W., which I
7 assume is Mary Whelan?

8 A. Yup, I see that, that's the email.

9 Q. And who was Peter Schneider in that time frame?

10 A. That was a gentleman that was working with -- he
11 had a company called ICT Maven Group.

12 Q. And did he have any relationship with you or
13 anyone in your household?

14 A. Yes, he's my -- he was my brother-in-law and I
15 worked with him at Atomic Learning.

16 Q. And I guess backtracking on one thing: Are you
17 married?

18 A. I am married.

19 Q. And the name of your wife?

20 A. Wendy.

21 Q. Any kids?

22 A. I have five.

23 Q. And what are their ages?

24 A. 25, 23 -- no, 25 -- yes, 25, 23, 20, 17 and 13, I
25 believe.

1 Q. Very good. Now, in this email to your
2 brother-in-law regarding Ms. Whelan -- strike that.

3 It looks like your brother-in-law Pete wrote you
4 an email on the same day, March 8, 2011, "Hi Ron, my
5 marketing guy backed out. Do you think Mary Whelan has the
6 skills to help out with the development of a brand for
7 Common Opent Time and the design of marketing pages?"

8 Did you allow Ms. Whelan to pursue that job
9 opportunity with your brother-in-law that's the subject of
10 this email?

11 MR. SLONEKER: Object to form.

12 A. I don't recall what all happened in that email
13 chain.

14 BY MR. RIMAS:

15 Q. All right. And then I would like to direct your
16 attention --

17 (Technical difficulties.)

18 MR. RIMAS: Can you hear me now?

19 THE REPORTER: Yes.

20 MR. RIMAS: Thank you.

21 BY MR. RIMAS:

22 Q. I'd like to direct your attention to Exhibit 75,
23 and I'd like to direct you to the portion of that exhibit
24 that -- this particular page that I'm trying to get to does
25 not appear to have a Bates number, so let me see if I can

1 get you there on PDF page number.

2 I believe that's PDF page four, if you could turn
3 your attention to that page.

4 A. Okay, I have PDF page four.

5 Q. And that particular page, for identification,
6 includes an email from Diana Trettel "RE: Got let go
7 today!" to Mary Whelan.

8 Did you know a person by the name of Diana
9 Trettel?

10 A. I did know Diana Trettel.

11 Q. You did or did not?

12 A. I did, yes.

13 Q. And she was someone that was let go by Atomic
14 Learning; is that correct?

15 A. I don't know. I don't have any knowledge of
16 that.

17 Q. Do you know if Atomic Learning was involved in
18 any lawsuits, including a wrongful dismissal lawsuit, while
19 you were in an ownership position with the company?

20 A. I don't recall any lawsuits. There's none that I
21 was aware of.

22 Q. And one other piece; give me one second.

23 Currently on your Golden Shovel website,
24 unfortunately I don't have a quick copy --

25 (Technical difficulties.)

1 BY MR. RIMAS:

2 Q. You're familiar with the Golden Shovel website,
3 are you not?

4 A. I'm sorry, some of that cut out, I didn't hear
5 the whole question.

6 Q. Are you familiar with the website of your
7 company?

8 A. I'm familiar with the website; I don't
9 specifically have it in front of me.

10 Q. Okay. And it does still include, I believe, the
11 statement that some content in Golden Shovel's Gatekeeper
12 materials was originally created and authored by Mary
13 Whelan. More information about Ms. Whelan can be found at
14 hddp/www.interactivemary.com; is that correct?

15 A. That's -- I believe that's correct. If you can
16 point me to it. But I believe that was part of the
17 licensing agreement from the settlement, if my
18 recollection's correct.

19 MR. RIMAS: Okay. One moment,
20 please.

21 I did send one more attachment to everyone. I
22 wanted to have that to follow up Mr. Kresha's response on
23 his website, if he could.

24 BY MR. RIMAS:

25 Q. Mr. Kresha, can you check your email and see if

1 you received an attachment with the name Exhibit 90 on it.

2 A. Is it customary -- are we just creating documents
3 on the fly for this? I don't know how this process works.

4 Q. You wanted to see something on the website. I
5 was not able to quickly locate something, so Exhibit 90 is
6 a snapshot of your website addressing your comment.

7 A. Okay.

8 Q. So did you receive a copy?

9 A. I did receive a copy and I -- yeah, I have a copy
10 in front of me, I see this exhibit, it looks like Exhibit
11 90.

12 Q. Okay. And can you just state for the record,
13 looking at what's to be marked as Exhibit 90, as it relates
14 to Ms. Whelan, reflected on Golden Shovel's current website
15 a black and white snapshot of what you're looking at?

16 A. Okay, and I don't know how this works, so to the
17 other attorney, do I have to wait for him to acknowledge he
18 received it? I don't know how this works.

19 MR. SLONEKER: I received it. Go
20 ahead.

21 A. Okay, so, yes, I acknowledge the document has
22 been sent to me and it looks like it was taken off of our
23 website with the address indicated at the bottom.

24 BY MR. RIMAS:

25 Q. Okay. And read the statement displayed regarding

1 Ms. Whelan that appears on your website --

2 (Technical difficulties.)

3 A. "Some content in Golden Shovel's Gatekeeper" --

4 BY MR. RIMAS:

5 Q. -- Exhibit 90.

6 A. So reading from this, "Some content in Golden
7 Shovel's Gatekeeper materials were originally created and
8 authored by Mary Whelan. More information by Ms. Whelan
9 can be found at the website."

10 Q. Okay.

11 MR. RIMAS: And just instruction for
12 the court reporter, if I may. When you get this document
13 or after the deposition, if you could indicate this as
14 identified Exhibit Number 90 or mark it as such. Will that
15 work?

16 THE REPORTER: Yes.

17 (Discussion off the record.)

18 MR. RIMAS: Thank you very much and
19 let me just check this.

20 Mr. Kresha, thank you for your testimony in
21 response to the questions I've presented to you for this
22 portion. The remaining examination --

23 (Technical difficulties.)

24 MR. RIMAS: Can you hear me now?

25 MR. SLONEKER: Yes. Go ahead.

1 MR. RIMAS: Mr. Kresha, this is my
2 comments to you that you've been looking forward to
3 hearing: I thank you for your testimony and responses
4 given to my questions during the course of this deposition.
5 I will turn over the remaining portion of this deposition
6 to defendant's counsel, Matthew Sloneker, and I will
7 reserve any short time, hopefully, for any follow-up in
8 connection with what he says. Thank you. And
9 Mr. Sloneker -- did you hear that?

10 MR. SLONEKER: Not really.

11 MR. RIMAS: I turn over the
12 examination to you, Mr. Sloneker. I've completed my
13 examination of Mr. Kresha and Golden Shovel Agency.

14 MR. SLONEKER: Mr. Kresha, good
15 evening.

16 THE WITNESS: Good evening.

17 MR. SLONEKER: Are you okay to
18 continue?

19 THE WITNESS: Yes. Thank you for
20 asking.

21 EXAMINATION

22 BY MR. SLONEKER:

23 Q. All right. It is now 7:15 p.m., we've been at
24 this for quite time. I will try to be as brief as I
25 possibly can, okay?

1 A. Yeah, that's fine. I don't mind, just be
2 thorough. Let's do it right.

3 Q. All right. So I'm going to cover a lot of ground
4 you covered already this morning. I'm going to try to
5 summarize some of the testimony as a preface to some of my
6 questions, so just hang with me. If you don't understand
7 one of my questions, please let me know, okay?

8 A. Thank you.

9 Q. Now, you worked at Atomic Learning at the same
10 time as Ms. Whelan, correct?

11 A. That's correct.

12 Q. Do you understand that she was terminated from
13 her job at Atomic Learning?

14 A. I understand that happened. I wasn't part of it,
15 I don't have any knowledge of it, but I understand that
16 occurred.

17 Q. You were not involved in her firing.

18 A. I was not.

19 Q. But do you know why she was fired?

20 A. I do not. None of that was disclosed to me.

21 Q. All right. And then when you contacted her to do
22 some work for Golden Shovel, it sounds like your initial
23 arrangement was that she would be paid \$250 a week as an
24 independent contractor; is that true?

25 A. I believe that's the case, yes.

1 Q. And as far as you know, she was at all times an
2 independent contractor for Golden Shovel.

3 A. That's correct.

4 Q. She was never an actual employee of Golden
5 Shovel.

6 A. No. And we had issued a 1099 in conjunction with
7 that.

8 Q. You never issued her a W-2.

9 A. I did not.

10 Q. I saw in one of the documents that we looked at
11 earlier a reference to, you may have offered to increase
12 her contractor pay to something in the neighborhood of \$500
13 a week at some point. Do you recall seeing that?

14 A. I recall that and I know there was conversations
15 about what could possibly happen.

16 Q. And is it true that she turned down that increase
17 to \$500 a week or thereabouts because she wanted to
18 continue collecting her unemployment?

19 A. That is correct.

20 Q. Now, as far as you're aware, was there ever any
21 written contract of any kind between Ms. Whelan and Golden
22 Shovel?

23 A. No, there was not, not that I can recall.

24 Q. Aside from the settlement agreement, I suppose,
25 when the underlying lawsuit ended, right?

1 A. That's correct.

2 Q. There was never any written independent
3 contractor agreement between you or your company and
4 Ms. Whelan, correct?

5 A. Not that I can recall.

6 Q. And there was certainly never any written
7 employment agreement or contract between you or your
8 company and Ms. Whelan, correct?

9 A. Not that I can recall.

10 Q. Earlier today you also looked at a document that
11 suggested you had intended, or at least talking about
12 bringing on Ms. Whelan, whether it be as an employee or
13 contractor, at a salary, a yearly salary starting sometime
14 in the summer of 2011; is that right?

15 A. Yes, as we were planning on ahead and if there
16 was growth, we were looking at how we might be able to
17 expand positions.

18 Q. This was a start-up company in 2010 and 2011,
19 right?

20 A. That's correct.

21 Q. It was not yet profitable, it doesn't look like,
22 according to the tax records.

23 A. That is correct.

24 Q. In fact, it looks like you claimed a loss for at
25 least the first several years of the company's existence;

1 is that right?

2 A. That is correct.

3 Q. But because you guys were fresh in a new endeavor
4 and excited about it and hoping that the future would hold
5 good things, you were always planning for what would happen
6 when you make the sales and got the clients that you wanted
7 to get, right? Did you lose audio?

8 MR. RIMAS: I can hear you,
9 Mr. Sloneker. I don't hear anything from Mr. Kresha.

10 A. My head set went out, so the last thing I heard
11 was, because you were in a fresh endeavor, and then my
12 Bluetooth battery died.

13 BY MR. SLONEKER:

14 Q. Sure, no problem. Here's what I was trying to
15 ask you: We talked about sort of the lack of concrete
16 financial success early on; but because you guys were
17 trying to make a go of this start-up, I assume there was a
18 lot of planning for the future in the event that you got
19 the clients or accounts that you wanted to get; is that
20 fair?

21 A. That's fair. We were a start-up and, of course,
22 the aspirations were that we would be able to secure
23 contracts, we were trying to do sales activity and we were
24 planning that that may occur, so, yes, that was part of the
25 planning process.

1 Q. And that financial success that eventually came,
2 to some extent at least, didn't come until after Ms. Whelan
3 severed her relationship with the company, did it?

4 A. We remained unprofitable for quite a few years
5 after that.

6 Q. Do you remember that she essentially ended the
7 relationship in May of 2011?

8 A. I do recall that.

9 Q. At that point in time you weren't financially
10 profitable to the extent that you could bring on new
11 salaried employees; is that fair?

12 A. That's fair. We were struggling financially and
13 in fact we were bringing a lot of things internally to
14 compensate for that.

15 Q. And so to the extent that you had any
16 conversations with Ms. Whelan while she was affiliated with
17 Golden Shovel about the prospect of future employment, of
18 future salary or future positions or things like that, is
19 it fair to say that those conversations were always -- and
20 those discussions were always dependent on the happening of
21 some other event in the future?

22 A. That's correct. As we were -- as with all our
23 planning, whether it was on the revenue or the expense
24 side, we were always contingent upon future successes
25 actually being realized.

1 Q. And it's not until you can get those clients or
2 get those accounts or make those sales that you can
3 actually realize those dreams that you were having in the
4 early days; is that fair?

5 A. That's correct. And in many cases the cash flow
6 was never secured because they might say they were going to
7 do something, but the contract might not in fact come to
8 fruition, so many of our sales were conversations that
9 didn't necessarily turn into invoices.

10 Q. So you never promised Ms. Whelan a salary of a
11 particular amount while she was still affiliated with the
12 company; is that true?

13 A. Not to my recollection. I did not promise a
14 direct -- we talked about aspirations, as I did with other
15 people, that if financial success comes.

16 When you're a start-up, one of the things that
17 you do is project out to the future and try to hope that
18 that is realized, so...

19 Q. And I think you've testified here today, but a
20 lot of the documents we've looked at so far, things like
21 proformas or emails among the partners for projecting
22 budgets for the next year and things like that, those were
23 not the money you made, that was the money you were hoping
24 to make next year, right?

25 A. If I could characterize it this way: Whenever

1 you're a start-up, an entrepreneur, you're always dreaming
2 and you're producing those dreams, you're trying to see
3 what they could look like, and the proforma and the
4 projections were us trying to dream out in advance what
5 this company could become.

6 Q. But those kinds of projected or hoped-for
7 financial successes didn't come in 2011, did they?

8 A. That's correct.

9 Q. To the extent you did have discussions with
10 Ms. Whelan about the prospect of future employment or
11 salary, did those discussions involve a premise by you that
12 you would give her that position, that salary for a
13 particular number of years?

14 A. Not to my recollection, I -- because we didn't
15 know what the future would be, I don't recall me ever
16 putting that kind of a concrete promise out there.

17 Q. And were any of these discussions about the
18 potential for future employment, future salary, were they
19 ever put in writing anywhere, to your knowledge?

20 A. No.

21 Q. We've looked at a few documents here today
22 talking about Ms. Whelan as, you know, the director of
23 strategic marketing or the vice president of marketing or
24 the marketing director or titles like that. Do you
25 remember those titles being thrown around?

1 A. I do.

2 Q. Is there a particular document that would tell me
3 that there's any particular salary or benefits associated
4 with those titles?

5 A. Not that I can recall. When you're a start-up
6 and you're just getting out there, you try to attribute
7 titles so that you have some recognition with the clients
8 and -- it's a way for a start-up to start to bring
9 credibility before they get their brand awareness. So a
10 lot of times we could create titles and so forth on the fly
11 that would lend credence to how we were going to have
12 conversations with other people.

13 Q. And there's nothing about a particular title that
14 guarantees the person carrying that title to any particular
15 compensation; is that true?

16 A. That's correct. A lot of times a title would be
17 attributed because you're talking to somebody in the
18 marketplace that also has a title and you try to match
19 those titles so they both feel like they're on even footing
20 for conversations.

21 Q. And furthermore, is there any reason in your mind
22 that an independent contractor working for your company
23 could have a title in the company?

24 A. The only reason we would attribute titles to
25 independent contractors is to show that they're part of the

1 communications and it's one less barrier when they're
2 communicating with us.

3 Q. So giving a title to an independent contractor
4 wouldn't make them an employee of your company, in your
5 view, would it?

6 A. No. In fact, we do that now, all of our -- all
7 the people with us are independent contractors and they
8 have a title that fits their role, so that people
9 understand they're communicating within the confines of our
10 company.

11 Q. And even though they're not employees of the
12 company.

13 A. That's correct.

14 Q. Did you ever promise Ms. Whelan that she would be
15 a partner in Golden Shovel?

16 A. I did not, and I wouldn't have that authority on
17 my own.

18 Q. Your partners would need to agree to that, I
19 assume.

20 A. That's correct. That would have had to have been
21 a partnership agreement.

22 Q. And based on your last answer, I assume you never
23 told her that she actually was a partner at any point in
24 time, did you?

25 A. No, that would have been reflected in the member

1 control or Buy-Sell Agreement.

2 Q. To become a partner wouldn't she have had to buy
3 in, pay some money to the company to get into the
4 partnership?

5 A. That's correct. After we were established, you
6 would have had to buy shares.

7 Q. And she never bought any shares.

8 A. Correct.

9 Q. She never made any capital contribution to Golden
10 Shovel Agency.

11 A. That's correct.

12 Q. Did you ever guarantee to Ms. Whelan any
13 particular bonuses as part of being a partner in Golden
14 Shovel?

15 A. I did not.

16 Q. Did you ever promise her a specific percentage of
17 Gatekeeper sales?

18 A. The conversation could have been around -- when
19 we talk with other people, because you're a start-up and
20 you're looking for how you can come up with future revenue
21 and how you can do compensation to trade off for the early
22 start-up days, there was conversations about, if we could
23 hit certain sales goals, we could pass those down to people
24 that were part of the early success of the company, but
25 those would have been aspirational conversations that I

1 would have had with all those people that were helping us
2 out.

3 Q. Was there ever any specific percentage, a
4 specific number discussed with Ms. Whelan about percentage
5 of sales?

6 A. There may have been a number thrown out. I don't
7 recall if there was a specific one or if I wrote one down.
8 I'm sure that conversation happened, because I had it with
9 other people saying that, if we reach certain sales goals,
10 percentage goals, could be shared.

11 Q. And whatever those goals were, I assume you
12 didn't meet those goals in 2011.

13 A. We did not.

14 Q. And was there ever any formal agreement with
15 Ms. Whelan to pay her any percentage of Gatekeeper sales?

16 A. No, not that I recall.

17 Q. Did you ever promise her a specific percentage of
18 Golden Shovel's overall revenues or profits or anything
19 like that?

20 A. I did not.

21 Q. So these are the kinds of benefits she's claiming
22 in this lawsuit that she was promised by you, and she also
23 told me in her deposition recently that she thought she'd
24 get those kinds of benefits and compensation for ten years
25 or so. You never discussed that with her, that she would

1 be entitled to these kinds of things for ten years, did
2 you?

3 A. No.

4 Q. While Ms. Whelan was working as an independent
5 contractor for Golden Shovel, did you ever tell her
6 anything that you knew was not true?

7 A. Not to the best of my knowledge. I mean, I was
8 dealing with the information that was in front of me, so
9 whatever I was saying was what was happening at that time.

10 Q. You believed it if you were saying it to her.

11 A. Correct. Yes.

12 Q. Did you ever encourage other people at the
13 company to bully, intimidate or harass her?

14 A. No.

15 Q. Did you ever encourage anybody else at the
16 company to belittle her or make fun of her weight?

17 A. No.

18 Q. Did you ever observe any other employees or
19 independent contractors with Golden Shovel harassing
20 Ms. Whelan in any way?

21 A. No.

22 Q. She claims in this case that she was subjected to
23 extreme and outrageous conduct that was intended to and in
24 fact did cause her severe emotional distress while she was
25 working with Golden Shovel. Did you ever observe anything

1 like that?

2 A. I did not.

3 Q. While Ms. Whelan was contracting with Golden
4 Shovel, did you ever tell her she couldn't work for any
5 other company?

6 A. I did not.

7 Q. Did you do anything to prevent her from working
8 with any other company?

9 A. I did not.

10 Q. After she ended her relationship with Golden
11 Shovel in May of 2011, you sent her a check -- I think we
12 saw that in the list of payments that the company made to
13 her. You sent her a check for \$1,000 like in June,
14 sometime after she quit. Do you recall that?

15 A. Yes, I recall that check.

16 Q. Was the purpose of that to cover any remaining
17 fees that she was owed as an independent contractor?

18 A. I believe that was what it was, yes.

19 Q. And she accepted that money, right?

20 A. That's correct.

21 Q. In some of the documents we looked at earlier
22 today from the underlying litigation, Mr. Rimas was asking
23 you questions about various documents that were filed or
24 served in connection with that case; and I understand your
25 testimony that, you know, the lawyers draft a lot of that.

1 But are you aware that in that lawsuit you and Golden
2 Shovel claimed that, after she terminated her relationship,
3 Ms. Whelan started taking erratic action against Golden
4 Shovel?

5 A. That's correct.

6 Q. And you allege that she cancelled some company
7 social media accounts instead of transferring them?

8 A. That's correct.

9 Q. Can you tell me what you meant by that. What did
10 she do?

11 A. So one for example, we still don't have access to
12 our original Facebook account for Golden Shovel and we
13 didn't get the password, that wasn't transferred, so we had
14 to use a different vanity name. If we had other -- like we
15 were using mail shim and at the time one evening, as I was
16 trying to change the password, somebody was trying to
17 change it on the other side and I didn't have access and I
18 couldn't get to it, so we lost access to all of those
19 emails that had been created for the company.

20 So we had a number of incidents where we had to
21 go back and recreate Twitter accounts and so forth that we
22 lost access to.

23 Q. Did you have any evidence that it was Ms. Whelan
24 doing those things?

25 A. I did not -- I don't have any direct evidence or

1 screen shots, other than she was the only one that we had
2 shared the passwords.

3 Q. She was the only one that had the passwords for
4 those accounts?

5 A. Other than our internal, myself and the other
6 executives who were still with the company.

7 Q. Okay. You guys also mentioned the underlying
8 lawsuit and we saw in fact a document earlier today that
9 talks about it, but there was a reference to you -- well,
10 you claim in the underlying case that Ms. Whelan had
11 emailed some of your existing and/or potential customers
12 and bad-mouthed Golden Shovel?

13 A. That's correct. There were some emails that were
14 sent out to some of our prospects and in fact we found out
15 later one email that had gone out to a large South Dakota
16 prospect and they chose not to go with us because of some
17 of the emails that were sent.

18 Q. Did you ever get copies of those emails?

19 A. We did at one time. If they weren't submitted in
20 the documents, I don't have copies.

21 Q. And in fact there was an email we looked at
22 earlier today where you were mentioning to some of the
23 partners that you had contacted three clients to talk to
24 them about what they had received; is that right?

25 A. That's correct. We did have to do some customer

1 relations and -- because some emails had been sent out to
2 our customer prospects, our list, and I was calling through
3 and that email talked about three of them that I had talked
4 to and reassured them that it was not coming from us.

5 Q. And were those three existing clients or
6 prospective clients?

7 A. I believe, from that document, those were
8 existing clients. There were also some prospects that we
9 had to reach out to.

10 Q. Now, Gatekeeper you describe as essentially a
11 customer service component of what you sell to your
12 clients; is that fair?

13 A. That is correct.

14 Q. And Gatekeeper, to the extent it's a thing versus
15 a service, it was created or developed or conceived of or
16 put together around the time Ms. Whelan worked with Golden
17 Shovel; is that right?

18 A. Correct. So Gatekeeper was a process and we had
19 branded it, the process was at the time Facebook, Twitter
20 and so forth were coming online and becoming very popular,
21 and this was a process by which we would create content and
22 update social media accounts for our clients. And we
23 called it Gatekeeper, Gatekeeper Fit, the moniker of
24 Gateway, and then Gatekeeper, so that's how we branded
25 those internally and our branding had come up with that.

1 She was part of developing that process, which
2 was how to post and so forth, which was very common
3 knowledge, by the way, how to do mass postings and so
4 forth, we were just refining it into a step-by-step
5 procedure.

6 Q. And so her involvement with that process occurred
7 while she was an independent contractor with Golden Shovel,
8 correct?

9 A. Correct. One of the things that I had -- we were
10 requesting was that as an independent contractor, to help
11 us create the process by which we could update social media
12 accounts.

13 Q. And she was paid to do that, true?

14 A. She was compensated, correct.

15 Q. She told me that she never discussed with you who
16 would own the rights to Gatekeeper, to the extent that
17 anyone can own the rights to that. But is that true, did
18 you guys ever discuss who would own the rights to
19 Gatekeeper?

20 A. We didn't specifically discuss that and it was my
21 understanding there's an implied ownership and we were
22 going off of that. I don't know all the specifics of it,
23 but it was our belief that because we were asking for it to
24 be created, that intellectual property would be created
25 under Golden Shovel, that was how I saw it.

1 Q. While she was still working with Golden Shovel,
2 did she ever tell you that you or Golden Shovel couldn't
3 use Gatekeeper without her permission?

4 A. No.

5 Q. As far as you're aware, did she ever apply for
6 any sort of intellectual property protection for Gatekeeper
7 while she was still affiliated with Golden Shovel Agency?

8 A. No.

9 Q. Now, what you just said a minute ago about your
10 understanding of a license to use it, I take it it's your
11 position that you never infringed on any copyright that she
12 may be entitled to; is that right?

13 A. That's correct. What we believed is we were
14 requesting to have things created and we were paying for
15 those, which we did pay for, so we believe that those
16 rights belonged to us.

17 Q. At any point in time did you completely stop
18 using any of the materials that she had created while she
19 was a contractor with your company?

20 A. Yes, we no longer use any of those materials.

21 Q. And then when did you stop using those materials;
22 when she sued you?

23 A. Yes, that and very shortly after we --
24 essentially after she stopped, we started creating our own
25 processes and moving on because we just thought that was

1 the most prudent thing to do.

2 Q. So are you saying beginning in 2011, when she
3 severed her relationship, you started developing your own
4 processes or new processes?

5 A. To the best of my recollection, I mean, because
6 we were having the problems with losing our accounts and we
7 could tell there was going to be a contentious departure,
8 we started -- we stopped using the material she had created
9 for us, we started creating our own materials and we went
10 forward from there.

11 Q. And so by 2012 were you no longer using any of
12 her materials?

13 A. Yes, to the best of my knowledge, we were not
14 using any materials that were created by her. There may
15 have been things still on the website for things that
16 people had downloaded, but we had stopped by 2012 from
17 using anything that she had created; we had created our own
18 documents.

19 Q. So in other words, Golden Shovel Agency hasn't
20 made any money off whatever documents or content Mary
21 Whelan created for the last eight years or more; is that
22 fair?

23 A. That's fair. Right. And we didn't sell any of
24 those documents. Again, Gatekeeper for us is time. When
25 people buy the Gatekeeper service, they're essentially

1 buying the time of my customer service representative and
2 it is broken out as we give them four hours a month of
3 customer service time.

4 Q. So when you sell -- let's say you sell Economic
5 Gatekeeper to a client and it includes the Gatekeeper
6 service component; are you with me?

7 A. Correct.

8 Q. There's an initial -- it looks like, from the
9 contracts I've seen, it looks like there's an initial cost
10 for creating the website and things like that, right?

11 A. That's correct.

12 Q. And then there is ongoing like continually an
13 annual fee for the service components, right?

14 A. Yes. And specifically which service? Because we
15 have a couple different ones.

16 Q. At least the Gatekeeper service would be an
17 ongoing annual fee going forward.

18 A. Yes. So when you buy our website, when we create
19 a website for you, we have hosting and maintenance fees, so
20 we make sure that technically the website is always
21 running, we make sure that if there's any updates for
22 virus -- or programming software, we make sure that's all
23 installed, so the website is always maintained and running.

24 The Gatekeeper portion or the customer service
25 portion, that's a separate service, and what we do there is

1 we keep the sites up-to-date; if you send me a picture, I
2 upload it for you; if you ask me to write an article, I'll
3 have someone wrote an article. We're basically updating
4 the content and the digital media so that their website
5 content is always fresh and clean.

6 They can do that on their own, just like any
7 other website, they can upload their own, but we provide
8 that service through what we call the Gatekeeper customer
9 service.

10 Q. I guess my point, to make money off the
11 Gatekeeper customer service component, you haven't just
12 made all your money when you sell the website, it's an
13 ongoing obligation that has costs and expenses going
14 forward, right?

15 A. That's correct.

16 Q. It's not a one-off sale where you're done, you
17 get the money and, woo hoo, we got the client, we got the
18 customer's money, it's, we have to provide a service now
19 going forward, right?

20 A. Correct. All of our -- when we sell something,
21 it's a 12-month commitment and then they have the option to
22 renew, and so we service that website, if they purchase the
23 Gatekeeper customer service, we provide the content, we
24 update, we meet with them monthly and we work through
25 strategy, that's 12 months, and then they have the choice

1 to renew.

2 Q. And I assume that some clients renew after 12
3 months and some don't.

4 A. That's correct.

5 Q. Ms. Whelan alleges in this case that Golden
6 Shovel's sales off Gatekeeper were somewhere between 1.6
7 and \$2.6 million. Do you have any idea where she got that
8 number from?

9 A. I don't, and that was never the case.

10 Q. Has Golden Shovel made that much money off
11 Gatekeeper?

12 A. No.

13 Q. So her number is not --

14 A. We haven't had -- yeah, we haven't had that
15 amount of total sales for the entire company within the
16 first five years after 2012.

17 Q. And by then you weren't using Gatekeeper as it
18 existed when Ms. Whelan was there anymore.

19 A. Correct. And we were also -- we expanded into
20 digital video, virtual reality, so we have a number of
21 marketing strategies, so we have a number of other things,
22 but that number in top-line sales was never directly
23 attributed to Gatekeeper.

24 Q. One of the things your attorneys in the
25 underlying litigation said, I think it was in preparation

1 for the settlement conference that you talked about a
2 little bit up in Duluth, but your attorneys said in that
3 case that the total revenues from Gatekeeper itself, from
4 2011 through 2013, was only about \$60,000; does that sound
5 accurate to you?

6 A. That's accurate, that sounds accurate.

7 Q. And you had paid Ms. Whelan just under \$15,000
8 while she was an independent contractor for the company,
9 right?

10 A. That's correct.

11 Q. And that works out to be almost 25 percent of
12 what your company earned off Gatekeeper, right?

13 A. If the math is correct, yes.

14 Q. But you never promised her 25 percent on all
15 Gatekeeper sales forever and ever, did you?

16 A. I did not.

17 Q. All right. At this point I would like to ask
18 some questions about some of the documents that Mr. Rimas
19 covered with you earlier. Let's look at Exhibit 61 of his,
20 if you would.

21 A. I have 61 up.

22 Q. These are the Golden Shovel Agency Buy-Sell
23 Agreement and the Member Control Agreement and things like
24 that that you were asked about many, many hours ago. Do
25 you recall that?

1 A. I do.

2 Q. None of these documents are signed, are they?

3 A. These are copies of those. I did have signature
4 pages that were separate.

5 Q. Are the ones that are signed identical to this
6 one, do you know?

7 A. Yes.

8 Q. Oh, they are, okay.

9 A. Yes. The only difference was because people were
10 in remote locations, we received separate signatures and
11 so... But to the best of my knowledge, these are the
12 current operating agreements and buy and sell.

13 Q. Okay. Let's look at Exhibit 67.

14 A. Okay, I have 67 up.

15 Q. You were asked about this one a couple of times
16 today -- by the way, is the version you're looking at in
17 color or is it black and white?

18 A. My version's in color.

19 Q. All right, so is mine. And you were asked
20 specifically as an example about Lost Rivers ED, Inc. Do
21 you see that on the top line under "clients"?

22 A. I see that.

23 Q. First of all, it lists a contract amount of
24 \$12,250, correct?

25 A. That's correct.

1 Q. And then it indicates next to that that that
2 client was invoiced apparently \$6,125, correct?

3 A. That's correct.

4 Q. The next line over to the right says you were
5 still waiting on a signed contract and payment, right?

6 A. That's correct.

7 Q. So looking at this document, we can't even tell
8 if that contract was ever signed or if any amount was ever
9 actually paid on that contract, can we?

10 A. That's correct. And so the sales process was
11 when we believe we had a verbal agreement to start the
12 process. For them to actually go into a contractual, they
13 would have to submit payment and the contract, so our
14 process was to send an invoice and a contract. Sometimes
15 those came back signed and sometimes they came back with a
16 check, sometimes they came back with a non-sale.

17 Q. You sent out a lot of contracts that never got
18 signed; is that fair?

19 A. That's correct. In our early days, correct, the
20 process was sending contracts and invoices; and if they
21 signed the contract and paid the invoice, then we would
22 service it.

23 Q. And, again, back to this first page of Exhibit
24 67, again, Lost Rivers, it indicates that there's a
25 contract for \$12,250, but it also says you don't have a

1 signed contract yet and you don't have payment yet, right?

2 A. That's correct. In the notes there you can see
3 it says they are waiting on Matt's feedback. What that
4 meant was we were still waiting on whether or not the sale
5 was going to close.

6 Q. And that's the same for all those listed here on
7 the first page of Exhibit 67, isn't it, they all --

8 A. That's correct.

9 Q. -- say they're waiting on a signed agreement,
10 they're all waiting on payment, right?

11 A. Yes. Sometimes salespeople can be a bit overly
12 eager on what they thought was going to close and so some
13 of these didn't come to fruition.

14 Q. So we can't just add up the contract amount or
15 add up the invoiced amount and say, that's how much money
16 Golden Shovel made off these clients, because you might
17 not, right?

18 A. That's correct. In fact, I don't believe Lost
19 River actually became a client.

20 Q. And in addition, let's just look at those three
21 clients in the top box, Lost Rivers, Redwood Area and City
22 of Redfield, right?

23 A. Yup.

24 Q. The color on here indicates to me that they
25 bought both Gateway and Gatekeeper, right?

1 A. Yes, if the color coding matches, that's correct.

2 Q. And so the portion of the contract amount that's
3 for Gatekeeper is much less than the portion that's for
4 Gateway as a whole, correct?

5 A. That's correct. In the first year, the largest
6 portion of it would have been the website setup and all the
7 costs attributed to that.

8 Q. And you only really make money off Gatekeeper if
9 they continue to renew for years and years.

10 A. That's correct.

11 Q. So even if --

12 A. And in fact -- yes, go ahead. Sorry.

13 Q. Even if we took one of these contracts and
14 assumed you got paid the whole amount because they signed
15 the agreement, only a fraction of that would be for the
16 Gatekeeper service itself.

17 A. That's correct.

18 Q. And a document like this, Exhibit 67, tells us
19 nothing about how much money you actually made off
20 Gatekeeper with any of those clients, does it?

21 A. No. What this is is just a sales pipeline
22 report, as they're reporting potential conversations that
23 could turn into contracts.

24 Q. Let's look at another example, Exhibit 68.

25 A. Okay.

1 Q. This was an invoice to Great River Energy,
2 correct?

3 A. That's correct.

4 Q. And I think I remember seeing that contract, it
5 was different than all the other ones I had seen. It
6 looked like for Great River you were managing or hosting a
7 whole bunch of websites for regional entities of some sort;
8 is that right? Do you recall that?

9 A. I do. So Great River Energy has a number of
10 electrical co-ops and we were setting up the electrical
11 co-op websites.

12 Q. And so this invoice, it looks like, is for the
13 cost of Gatekeeper, which is the continuing customer
14 service, for the calendar year 2013, correct?

15 A. Yeah, so what this is is, if you look at it,
16 Dakota Electric, each website we were at the time
17 attributing Gatekeeper just as part of a service, it was --
18 we were just adding it on because if we could keep their
19 websites current and we can keep our customer service
20 engaged with them, the likelihood that they would renew
21 their website with us would go up.

22 If we lost contact with them or didn't talk to
23 them on a monthly basis, then the likelihood that they
24 would renew with us could go down, so it was about building
25 relationships to increase the renewal.

1 Q. But this first page, at least, is an invoice to
2 them and what you're billing them \$84,000 for is for the
3 Gatekeeper maintenance fee for the calendar year 2013,
4 right?

5 A. What's being billed here, if you look at each
6 line, is the Gatekeeper, plus site maintenance for each of
7 the sites, so that would include Gatekeeper services, which
8 is the customer service portion, as well as doing the
9 updates of their website, making sure that technically it
10 was correct, protecting against fishing, all of those
11 sort -- you know, denial of services. So when you see site
12 maintenance/Gatekeeper, that was us working with customer
13 service and making sure that technically their site was
14 always up and running with us. We have a 99-percent up
15 time that we try to hold to.

16 Q. So what you're saying is, it sounds like, is that
17 the \$3,000 payment for each of those websites is for more
18 than just the Gatekeeper service itself.

19 A. That's correct, it includes the site maintenance.

20 Q. And it's for the year 2013, right? Each line
21 says January 1st to December 31, 2013, right?

22 A. That's correct. That's correct.

23 Q. In 2013 Ms. Whelan wasn't affiliated with Golden
24 Shovel anymore, was she?

25 A. That's correct.

1 Q. So she wasn't providing any of these services
2 that you were billing Great River Energy for during 2013,
3 was she?

4 A. No. I had other people.

5 Q. Same with the second page of this Exhibit 68,
6 once again, this is for 2012, Gatekeeper --

7 A. Yes.

8 Q. -- and site maintenance. Ms. Whelan wasn't
9 providing any of these services in 2012, was she?

10 A. That's correct. And, again, they weren't using
11 documents, it was our time, they were talking to our
12 people.

13 Q. And your people did not include her at that point
14 in time, right?

15 A. Correct. That's correct.

16 Q. If we look at Exhibit 70, this is 171 pages of
17 contracts, some of which are signed by two parties, some of
18 which are signed by only one party and some of which aren't
19 signed by anybody, right?

20 A. Correct. Yes.

21 Q. So if we see a contract in here that isn't signed
22 by anybody, does that tell us that this was one you sent
23 out hoping to get a bite and it didn't come back?

24 A. Most likely if it didn't come back with two
25 signatures, that was not -- we didn't enter a contract with

1 that person.

2 Some of these could have been just created and
3 they were the unsigned copies, but I don't believe so. I'd
4 have to look at them all.

5 Q. Just looking at the --

6 A. But I --

7 Q. Sorry. Just looking at this collection of
8 documents doesn't tell us which of these accounts you
9 actually landed and which ones you didn't necessarily; is
10 that fair?

11 A. That's correct, we were -- right, we would
12 generate a contract with any sales conversation, so once we
13 got to a certain point in the prospecting, a contract was
14 always generated so that they could review the terms. That
15 was one of the final stages of whether or not they chose to
16 go with us.

17 Q. And if we just look at this first page of the
18 first contract here of Exhibit 70, it looks like it's with
19 Advantage South Dakota. Do you see that?

20 A. That's correct.

21 Q. And it's dated at the top 4/10/12?

22 A. That's correct.

23 Q. And then I think Mr. Rimas asked you some
24 questions about that payments for services section that's
25 at the bottom of that first page. Do you see that?

1 A. Yes.

2 Q. And, again, we kind of talked about this, but one
3 of the consistencies I see through these contracts, the
4 amounts sometimes change, but basically there's a lump sum
5 at the beginning for the website creation and then there's
6 an ongoing charge, right, we talked about that?

7 A. That's correct. The way that works is when we
8 set up -- because we're working with people to launch their
9 website and it takes between six and seven months, so if we
10 launch a website within six months, then they would only
11 have six months of customer service with us. If a client
12 goes out 11 months and they only have one month because
13 their site is only live for one month, so it's the second
14 year where the customer service really kicks in and so
15 that's where you'll see that here with the renewal.

16 Q. And once again, just again for example, this very
17 first page of Exhibit 70, the payment for this service is
18 \$15,000 for the website with the services and modules set
19 forth above, and then the ongoing charge of \$6,000 a year
20 and that would include both -- that would include hosting,
21 maintenance, technical support and Gatekeeper service,
22 right?

23 A. Yes, that's correct.

24 Q. So once again, Gatekeeper service itself is just
25 a fraction of that ongoing annual charge, right?

1 A. That's correct.

2 Q. And looking at this contract, assuming this one
3 was actually entered into and came to fruition, this
4 doesn't tell us anything about how long they continued
5 paying for the Gatekeeper service, does it?

6 A. That's correct. It's on a yearly basis, so there
7 was no commitment past the contract terms. And in some
8 cases if they chose to exit, there was a termination clause
9 where they could send us a note within 30 days and then we
10 would prorate that.

11 Q. I saw that, too. So this client, Advantage South
12 Dakota, assuming this contract was ever actually
13 consummated, could have paid for one year, they could still
14 be paying eight or nine years later, we don't know by
15 looking at this contract, do we?

16 A. That's correct.

17 Q. And we don't know by looking at this contract the
18 total amount of money that Advantage South Dakota has ever
19 paid to Golden Shovel Agency, do we?

20 A. No.

21 Q. You were shown an email earlier in which
22 Ms. Whelan suggested to you and others that Gatekeeper was
23 her idea, her strategy, her concept and her everything. Do
24 you agree with that?

25 A. No.

1 Q. Take a look at Exhibit 81 briefly. This is
2 something we sort of brushed on or touched on earlier, but
3 this is Jeff Epple's email to you with some 2012
4 projections. Do you see that?

5 A. I see that.

6 Q. Again, as we discussed, these were projections,
7 right?

8 A. These were projections.

9 Q. To know what you actually made, we've got to look
10 at the tax returns, don't we?

11 A. Absolutely, yeah, the tax returns would be the
12 actuals.

13 Q. Exhibit 83 is your email to Ms. Whelan giving her
14 a goldenshovelagency.com email address. Do you recall
15 that?

16 A. I do.

17 Q. Giving an independent contractor an email address
18 does not convert them to an employee in your view, does it?

19 A. No, we give emails out to all of our independent
20 contractors because it's just -- it makes communication
21 easier.

22 Q. Same reason you give them titles, too, right?

23 A. Some we give titles. We also give them business
24 cards.

25 Q. Do they say Golden Shovel Agency on them?

- 1 A. Some of them do.
- 2 Q. Take a look at Exhibit 64.
- 3 A. Okay, I have 64.
- 4 Q. This is your email to your partners in which you,
5 toward the middle of that first page, recount sort of what
6 happened with Ms. Whelan. Do you recall this?
- 7 A. Yes, I recall that.
- 8 Q. On the top of the second page, the first full
9 paragraph starts with "In March." Do you see that?
- 10 A. I see that paragraph.
- 11 Q. And then there's a sentence in the middle that
12 starts "In April." Do you see that one?
- 13 A. "In April" I see that.
- 14 Q. And it describes that you, in about April, went
15 to your partners and lobbied for Ms. Whelan to get a salary
16 starting at \$52,500 starting on June 1st. Do you see that?
- 17 A. I see that.
- 18 Q. And then you told her about that in early May.
- 19 A. I see that.
- 20 Q. And then she quit in late May, didn't she?
- 21 A. That's correct.
- 22 Q. There was never any written offer or written
23 contract about that employment discussion, was there?
- 24 A. No. We were having conversations about what
25 future roles could be and future compensation based on if

1 we hit sales goals, I believe, as I recall there. I let my
2 partners know that I would be lobbying for an increase if
3 we were to reach certain goals and then, yes, I was
4 informed, I believe in May, that she wanted to separate.

5 Q. And you weren't reaching those goals that you
6 wanted to reach either, were you?

7 A. No.

8 Q. Take a look at Exhibit 54, please.

9 A. And 54, is that an -- it must be an email; is
10 that correct? Because I don't have it in my list.

11 Q. Yes, this would have been one that Mr. Rimas sent
12 us later in the day, 53 to 59.

13 A. I have 54 up.

14 Q. So 54 is a few pages of legalese and then
15 starting on page five of the PDF is this list of clients.

16 A. Yes.

17 Q. And I think you testified that this was a list of
18 clients that had purchased either Gatekeeper alone or
19 Gateway plus Gatekeeper between 2011 and the date of this
20 document.

21 A. Yes, that's correct. If I recall correctly, we
22 were asked to produce through the discovery process a list
23 of our clients and this is what that is.

24 Q. But, again, this document doesn't tell us how
25 much you charged each of these clients, right?

1 A. That's correct.

2 Q. It doesn't tell us how much they actually paid
3 you.

4 A. That's correct.

5 Q. Doesn't tell us for how many years they
6 maintained the Gatekeeper service.

7 A. Correct.

8 Q. And it doesn't tell us what percentage of the
9 overall billings to that particular client were for Gateway
10 service itself -- or Gatekeeper service itself. I'm sorry.

11 A. That's correct. And some of those, if it was
12 their first year, if you recall, a majority of their
13 service is the website setup, so -- and depending if they
14 recur, renew with us or not, that would affect their
15 services.

16 Q. And if you look at the contract dates in this
17 list, only two of them, the first two, were entered into
18 before Ms. Whelan left Golden Shovel, right?

19 A. That's correct.

20 Q. And so to the extent any actual Gatekeeper
21 service was provided on any of these accounts, she was gone
22 by the time you guys were providing that service.

23 A. That's correct.

24 Q. And she certainly wasn't providing Gatekeeper
25 service to Golden Shovel clients after she quit, was she?

1 A. No.

2 Q. Let's look at Exhibit 75.

3 A. Okay, I have 75 up.

4 Q. So you were asked about this one three or four
5 times. I'm just looking at page one, what is this?

6 A. That would have been a marketing document that
7 would have been created, and I'm sure I would have asked
8 for this to be created for us to send out. It's what we
9 call a sales sheet, it gives information and analysis about
10 what we're going to do.

11 Q. And why is Mary Whelan's information on the
12 bottom of this page?

13 A. I don't know, that wasn't the font we used and
14 that was not something I would have authorized.

15 Q. Who put that on there?

16 A. Golden Shovel did not.

17 Q. Do you know when that was put on there?

18 A. The best way I can answer that, in the settlement
19 documents this was brought up in the dismissal on the final
20 count and it was all laid out. But according to that
21 document, to the best of my recollection, this was put on
22 later on the direction of one of the attorneys that was
23 working with Ms. Whelan, but I don't have the specifics in
24 front of me, so I'd have to go back and look that up. That
25 was the basis for the dismissal of the last count.

1 Q. What do you mean, "that was the basis for the
2 dismissal of the last count"?

3 A. That was one of the issues that was brought up
4 was that we -- when we identified that that was put on
5 there incorrectly -- and, again, I -- I'll just say it this
6 way: The conversation was, this was put on there
7 incorrectly and the documents were falsified, that's how it
8 was explained to me, but I don't have the -- I don't have
9 the dismissal in front of me.

10 Q. Was this first page of Exhibit 75 filed with the
11 court in the underlying case as evidence of something?

12 A. I believe so.

13 Q. And you mentioned earlier that this copyright was
14 falsified, is that what you were referring to?

15 A. I mean, in terms of me saying that we did not put
16 that on there, so that would have not been -- Golden Shovel
17 did not put that on there, that was put on after the fact,
18 so in my terms, that would have been a false document.

19 Q. Do you know if this document ever went out to any
20 clients or prospective clients with this Mary Whelan logo
21 on the bottom?

22 A. Not to my recollection that I -- I certainly
23 wouldn't have approved that going out. And, again, the
24 font was different than what we were using, so that
25 happened later.

1 Q. After she was done working with you?

2 A. That's correct.

3 Q. All right. I want to ask you about some
4 contracts. Do you have my email with Exhibits 20 through
5 28?

6 A. I believe so. Let me find that. And if you can
7 give me just a minute.

8 Q. Sure.

9 A. I remember seeing it, I've got to find the exact
10 email. Do you remember the time you sent it? That will
11 help me.

12 Q. Yes, I can figure that out because I think I sent
13 it to you and your attorney.

14 A. Yes, and it might be buried with Kris's name, but
15 it was after 9:00 and then I have a calendar one.

16 Q. I sent it at 9:06 a.m. this morning.

17 A. 9:06, okay, yes, I have it. I received it at
18 9:08. I have one, two, three, four, five, six, seven,
19 eight, nine documents.

20 Q. All right. So the first eight of these are
21 individual contracts that are also contained within Exhibit
22 70 that we just talked about a minute ago.

23 A. Okay.

24 Q. I just wanted to ask you -- start with Number 20.

25 A. Okay, I have 20 up.

1 Q. That is the Advantage South Dakota contract we
2 were looking at before, right?

3 A. Yes.

4 Q. And it is not signed by Golden Shovel at the
5 bottom, correct?

6 A. That's correct.

7 Q. Do we know for sure if this deal was consummated
8 or not?

9 A. I believe, because they signed it, they would
10 have become a client of ours. This looks like we got it
11 back from the client, they had signed it. This was
12 probably obtained before we actually signed it and sent it
13 back and put it in our system. So just looking at this
14 with their signature, that tells me they had accepted the
15 contract and we were most likely going to enter into a
16 relationship.

17 Q. Do you know whether this contract is still in
18 effect?

19 A. I do not believe they are still a client of ours.

20 Q. Do you know how long it lasted?

21 A. Off the top of my head, I don't. But I can try
22 to recall it, if you give me a minute.

23 Let's see, Advantage South Dakota, yeah, they're
24 a former client and so they did not renew with us; and to
25 the best of my knowledge, they stopped renewing with us in

1 2015.

2 Q. Are you looking at your internal company
3 documents to figure that out?

4 A. I'm looking through because I believe -- I don't
5 remember them coming through 2016 or 2017, so that was my
6 best recollection.

7 Q. All right. Take a look at Exhibit 21, if you
8 would.

9 A. Okay.

10 Q. And I wanted to ask you this one because this
11 is -- the date at the top is 2/9/12, this is with Ames
12 Economic Development Commission. Again, this one is signed
13 only by Ames and not Golden Shovel.

14 But what I wanted to ask you about this one is,
15 it's a little bit different in that if you look at the
16 payment for services portion on the first page.

17 A. Yes.

18 Q. This appears to be for Gatekeeper only; is that
19 right?

20 A. That is correct, if I'm looking at this one.
21 Yeah, so this one, they did not have a website and what
22 they had requested, as I look through this, was just --
23 you'll see that we have customer support, initial content
24 creation, so that would have been creating success stories
25 that we could publish for them, maintenance and social

1 media, so that was all part of our strategy and process for
2 helping them with just the Gatekeeper process.

3 Q. And those initial start-up things you talked
4 about, is that what the \$1,000 for the one-time setup cost
5 is for?

6 A. That's correct.

7 Q. And then with this contract, the ongoing payment
8 is 4,800 bucks a year, right?

9 A. That's correct.

10 Q. And is that just for Gatekeeper or is that for
11 something more than just Gatekeeper?

12 A. That would be for Gatekeeper, that would be
13 the -- I believe the four hours a month, I think it says in
14 here, we will attribute four hours, up to four hours a
15 month, and then the strategy, updating their social media
16 accounts. Sometimes we will look for what other people
17 were posting about those, try to find news articles, so
18 that was what that was for, our time with that client per
19 month.

20 Q. Is this contract still in effect, to your
21 knowledge?

22 A. I don't believe they are and I don't remember
23 when they discontinued, but I don't believe -- I know it's
24 been a couple of years.

25 Q. All right.

1 A. In fact, I -- I'm sorry, go ahead.

2 Q. No, you can finish your thought.

3 A. I was going to say, to the best of my knowledge,
4 it -- and oftentimes when we have a Gatekeeper, they
5 oftentimes don't renew because the website is really their
6 anchor. I don't believe Ames actually renewed because they
7 didn't see value in just us doing social media because we
8 weren't doing the website.

9 Q. Take a look at the next one, Exhibit 22.

10 A. Okay.

11 Q. And here we have an example of one if you
12 scroll -- this is with Athens County Economic Development
13 Council, right?

14 A. That's correct.

15 Q. And this is an example of one. If you scroll all
16 the way to the bottom, there's no signatures, right?

17 A. That's correct.

18 Q. So this would be one that was a bid or a prospect
19 that never actually happened.

20 A. This one was -- this went out in the prospecting.
21 I do actually believe Athens became a customer, but they
22 are no longer a customer. They were very short-term, I
23 think, to the best of my recollection. I mean, without
24 actually looking at them, but I don't -- they're not a
25 customer now for sure.

1 Q. All right. Let's look at Exhibit 23.

2 MR. SLONEKER: For the court
3 reporter, these are labeled Exhibits 20 through 28,
4 obviously, because I didn't know what he was going to
5 number his with, so I just put these on here. So let's
6 just call them Kresha Exhibits 20 through 28 with the
7 transcript. They won't fit with the numbers we looked at
8 earlier. At least we'll know what we were referring to in
9 the transcript. Does that make sense?

10 THE REPORTER: Yes.

11 BY MR. SLONEKER:

12 Q. Exhibit 23 is another completely unsigned
13 contract with the City of Cambridge, correct?

14 A. That's correct.

15 Q. I guess, first of all, do you know if this
16 contract was ever executed?

17 A. This was executed for a couple of years. They're
18 in longer a client.

19 Q. What I wanted to ask you about with this one,
20 under services on the first page.

21 A. Yes.

22 Q. I don't see Gatekeeper 2.0 listed here, like I
23 saw it on a bunch of the other ones. Does that mean this
24 client didn't purchase Gatekeeper?

25 A. That's correct. They were a city website, so...

1 Many of our clients are economic development organizations.
2 This was a city municipality, so they only chose the
3 website.

4 Q. And so you might have made a sale to the City of
5 Cambridge, but they weren't paying you for Gatekeeper.

6 A. That's correct, we didn't do the Gatekeeper
7 service for them.

8 Q. Let's look at Exhibit 25, this is a contract with
9 The Greater Dubuque Development Corporation?

10 A. That's correct.

11 Q. Once again, I don't see Gatekeeper listed under
12 services. Did this contract not include Gatekeeper?

13 A. It did not include Gatekeeper.

14 Q. Sorry, just give me a second here.

15 Let me have you go back to Exhibit 23, if you
16 would, the Cambridge one.

17 A. Exhibit 23?

18 Q. Yes. So we talked about how Gatekeeper isn't
19 listed in services and mentioned that this was a client
20 that didn't want Gatekeeper, right?

21 A. Right.

22 Q. If we look down toward the bottom of the first
23 page where the payment for services section starts.

24 A. Yes.

25 Q. See where it describes the ongoing annual payment

1 and it still says for hosting, maintenance, technical
2 support and Gatekeeper service?

3 A. Yes.

4 Q. Is that in there just because that's in your
5 standard contract and it didn't get deleted?

6 A. Yes, that looks like that was the -- it's not
7 deleted.

8 Q. If Gatekeeper was part of this, it would be
9 listed under services under heading number one?

10 A. That's correct.

11 And sometimes, like I said, because Gatekeeper
12 was just our customer service, it was sometimes very
13 loosely just tossed in there as part of what we did.

14 Q. All right. Look at Exhibit 26.

15 A. Okay.

16 Q. Let me back up. You just said that Gatekeeper
17 was sometimes just kind of thrown in because it's your
18 customer service. Can you attribute any particular dollar
19 figure to the value of that Gatekeeper service in a
20 contract like that, where it might just be thrown in?

21 A. I can't because it all depends on how many hours
22 they're going to pay for, so we standardly -- like in that
23 one we would -- I think on that contract it said an hour a
24 month. So sometimes if they go over an hour, we would bill
25 them for that; but that was our standard, we'd do one hour

1 or four hours a month based on what they thought they
2 needed.

3 Q. All right. Take a look at Exhibit 26. This is a
4 contract with the Wabash Valley Power Association.

5 A. That's correct.

6 Q. What did you do for the \$149,300 that's listed
7 here?

8 A. So with Wabash we set up their website, and I'm
9 looking to see. So we set up 26 members websites, so
10 looking through this, for \$58,000, so we did a total of 26
11 websites. Very similar to the Great River where we set up
12 all the members ones and then we offered Gatekeeper upkeep
13 and content services as part of that, and there was a
14 dollar amount that was attributed to that.

15 Q. Okay. I mean, are you able to tell me --

16 A. So the --

17 Q. Go ahead.

18 A. I'm sorry, go ahead and ask your question.

19 Q. I mean, there's dollar amounts in here, but are
20 you able to split it up and say, this much was for
21 Gatekeeper, this much was for creating the websites,
22 anything like that?

23 A. As I look at this here, so this was a larger
24 contract and when we would have a larger contract, like
25 this one was \$149,000, and we were doing that many sites,

1 we knew we were going to be doing content updates and
2 basically servicing the client through customer service,
3 and so that's why I'm sure Gatekeeper was added to that; we
4 called it the Gateway and Gatekeeper service. Again, that
5 was our way of letting them know they were going to get
6 customer service.

7 And if you can imagine, with that many websites,
8 we were pretty actively involved with keeping their sites
9 up and running.

10 Q. And since this contract was entered into -- well,
11 this one is in the end of 2012, Ms. Whelan wasn't providing
12 any of those services, was she?

13 A. That's correct. This was the end of 2011 and,
14 right, we really started in earnest in the 2012 year.

15 Q. If we looked at Exhibit 27, then, this one's a
16 little bit different. There is another contract with that
17 same client, it looks like. And tell me if I'm wrong, but
18 for this contract you guys created a tax abatement
19 estimator, a workers' compensation calculator and a
20 cost-of-living calculator for their website.

21 A. That's correct. Sometimes we do additional
22 programming work, look interactive math, so we create these
23 accounts, so, yes, that requires very specialized
24 programming.

25 Q. And none of that was for Gatekeeper, was it?

1 A. That's correct. We have programmers that do
2 that.

3 Q. So to the extent that any ongoing services were
4 provided pursuant to any of these contracts we've looked at
5 or any other ones that Golden Shovel had, Ms. Whelan
6 obviously played no role in actually providing the
7 Gatekeeper service to the clients after she left the
8 company, right?

9 A. That's correct.

10 Q. And as we've also talked about, even some of
11 these contracts that might have signatures on them, didn't
12 end up resulting in any payment to your company. Fair?

13 A. That's correct.

14 Q. At the settlement conference -- okay, I'm going
15 to change subjects on you now, are you with me?

16 A. I'll try, yes.

17 Q. In June of 2014 you went to a settlement
18 conference with your attorney or attorneys up in Duluth.
19 Do you remember that generally?

20 A. I remember that generally.

21 Q. You offered money to Ms. Whelan to settle the
22 case. True?

23 A. Yeah, that was mediation and so I believe at one
24 point we had offered some -- yes, we had offered money.

25 Q. And she turned it down.

1 A. Correct.

2 Q. And then a year or so later you ended up settling
3 the case without having to pay her anything.

4 A. That's correct.

5 Q. And not only that, but she officially gave you or
6 your company a license to keep using Gatekeeper, to the
7 extent you were using it anyway at that point, right?

8 A. That's correct. Part of the settlement was an
9 unlimited usage license, as long as we would put that
10 she -- we put some attribution that she had helped work on
11 some of the documents, which we -- is still on our website
12 to this day.

13 Q. You did that as part of the settlement, not
14 necessarily because you agree with the fact that she
15 created those documents; is that right?

16 A. We did that as part of the settlement.

17 Q. And we also looked at an email earlier today
18 where you were reporting back to your partners after
19 attending that settlement conference. Do you remember that
20 email?

21 A. I remember that email.

22 Q. You said something in there about how she wanted
23 \$900,000 or something like that, right?

24 A. That's correct.

25 Q. Do you have any idea why she went from demanding

1 \$900,000 from you in 2014 to settling the case for nothing
2 in 2015?

3 A. The only thing that I can -- the conversations we
4 had, I believe it was attributed to the fact that the
5 document arised that there was falsification of the
6 copyright.

7 Q. Are you aware of anything else Ms. Whelan did
8 that hurt her own case in that litigation?

9 A. I don't. I don't. I don't have a good way to
10 answer that. We had a legal team that was very active and
11 I followed their direction and their advice.

12 Q. And do you have any knowledge of anything that
13 her attorney did in that underlying case that hurt their
14 case? By that I mean Mr. Rimas, her current attorney.

15 A. Now, I know there was discussions about some
16 things that were happening, but I don't recall exactly what
17 those may have been specifically. I probably couldn't say.

18 I know there was discussions about some things
19 that may have not been handled correctly; I don't know to
20 what extent that was. I just know that once there was some
21 conversations about how some things were being handled,
22 whatever that was. I remember the documents coming about
23 the copyright being changed on the bottom of some documents
24 and then suddenly moved very quickly to dismissal.

25 Q. All right. Lastly, let's look at Exhibit 28; do

1 you have that?

2 A. I do have 28.

3 Q. Have you ever seen this before?

4 A. I have seen that.

5 Q. How did you come across this?

6 A. There was a number of postings that were being
7 made from this account and I believe this had been shared
8 to me by somebody else and -- so that's how I saw that.
9 Plus, when I started running for office, as you can
10 imagine, you're under a media scrutiny and many people
11 started to pick up on these things and they would come back
12 to me, so I was very often having to explain and defend my
13 reputation based on comments that were being put out there.

14 Q. So people in the community were seeing this and
15 bringing this to your attention?

16 A. That's correct.

17 Q. These appear to be three blog posts by
18 Ms. Whelan, right?

19 A. That's correct.

20 Q. And the first one refers to somebody named
21 Simmons, a younger politician. Who's that?

22 A. That was a candidate that ran against me I think
23 two terms ago, his name was Dustin Simmons.

24 Q. You beat him, though?

25 A. Yes, I did win.

1 Q. Congratulations. She also says in this post that
2 your hometown of Columbus, Nebraska, didn't want anything
3 to do with you or your company. Do you know what she means
4 by that?

5 A. We had tried to get a contract with them, never
6 got an opening with them. I don't think they ever took our
7 services on, so I suspect this was a bit out of
8 extrapolation from that. I still have a very good
9 reputation with them, my hometown. In fact, my father is
10 on the city council. Our last name is well-known there.

11 Q. The next post starts off by saying that you have
12 a history of taking credit for the works of others. Do you
13 know what she's talking about there?

14 A. That I do not.

15 Q. In the middle of that paragraph she says that you
16 told her that you were going to lose Golden Shovel Agency
17 due to the lack of sales, but that she saved the company.
18 Did you ever tell her that?

19 A. I don't recall that. I mean, those were the
20 early days, we were struggling with sales and so forth.
21 Certainly when we brought her in to help us with some
22 marketing, that could have been helpful at times, but I
23 don't recall ever saying that she saved the company.

24 Q. In the last post she says that -- essentially
25 says that she had to file for bankruptcy because of the

1 nine months spent working with Golden Shovel Agency. Do
2 you know anything about that?

3 A. I do not.

4 Q. She said you sucked her into your startup under
5 false pretenses, stole a product she had created, and then
6 refused to even pay her the money you owed her. Did you do
7 that?

8 A. I did not do that.

9 MR. SLONEKER: Mr. Kresha, I believe
10 those are all the questions that I have for you. You've
11 been very patient. Thank you. You can get back to your
12 family and enjoy the rest of your evening.

13 MR. RIMAS: I have a few questions.
14 Am I still audible?

15 THE REPORTER: Yes.

16 MR. RIMAS: Okay, very good.

17

18 RE-EXAMINATION

19 BY MR. RIMAS:

20 Q. Mr. Kresha, I believe you were asked in
21 cross-examination by attorney Sloneker about making
22 promises to Ms. Whelan about her salary. Do you recall
23 that, you denied making these kind of promises?

24 A. I recall the questioning.

25 Q. I'd like to direct your attention to Exhibit 76,

1 with your company's production number GS0047240.

2 MR. RIMAS: And if I can get a
3 call-out for the PDF on that.

4 MS. WHELAN: This is in Exhibit 76
5 and you said it ends in 240?

6 MR. SLONEKER: Page ten.

7 BY MR. RIMAS:

8 Q. Well, let me direct you, Mr. Kresha, if you go to
9 the last page of Exhibit 76 and then go forward by one
10 page, you would be looking at the portions of Exhibit 76 I
11 wanted to reference. Do you see that as being GS0047240?

12 A. What are the last three numbers?

13 Q. 240.

14 A. 240?

15 Q. Yes.

16 A. I see a document, yup.

17 Q. Now, at the top of that document or email, it is
18 an email from yourself to your partner Jeff Epple, dated
19 January 27, 2012. Do you see that?

20 A. The top of the document says January 27, 2012; is
21 that correct?

22 Q. Yes.

23 A. Yup.

24 Q. And the subject is, thought process on Victor?

25 A. Yup, that's correct.

1 Q. And you write to Jeff Epple, "Received your
2 clarification. First of all, you keep bringing up Mary
3 and, yes, I know I advocated for her salary."

4 That is true that you advocated for Ms. Whelan's
5 salary, did you not?

6 A. When we were doing the planning phases, if we
7 could reach our company goals, I was advocating that we
8 increase people's salaries and Mary was one of those.

9 Q. Okay. And then you went on to say, "Let me be
10 perfectly clear, that was the single biggest regret that I
11 have. No one was more relieved than I was when she parted
12 ways with us." Do you see that?

13 A. I see that.

14 Q. And then you go on to conclude, "If have to foot
15 the bill personally. It was a dumb mistake and one that I
16 regret." Do you see that?

17 So you had, in your email, acknowledged that you
18 had -- that you were asked for her pay, you would have
19 related that to Ms. Whelan, did you not?

20 MR. SLONEKER: Object to form.

21 A. I did write in here and I acknowledge it was a
22 dumb mistake and one that I regret, yes.

23 BY MR. RIMAS:

24 Q. And why was that your single biggest --
25 (Technical difficulties.)

1 A. I'm sorry, I didn't hear question.

2 BY MR. RIMAS:

3 Q. Can you hear me know?

4 A. Yes, I can hear you.

5 Q. Ms. Kresha, why was that your single biggest
6 regret, as you wrote to your partner Jeff Epple that you --

7 A. As I recall, I was trying to find a way to move
8 the company forward and she declined to move forward with
9 us and then through subsequent actions, it chose to be a
10 mistake and one that I regretted, so... Her actions showed
11 that she wanted to do more harm to the company than
12 actually help the company.

13 Q. You went on to say, "I put this company in grave
14 jeopardy when I asked for her pay and I knew I would have
15 to foot the bill."

16 Did you not acknowledge to your partner that you
17 had promised to pay her, that you knew you would have to
18 pay the bill?

19 A. No. What I acknowledged to my partner, to the
20 best of my recollection, is that we were struggling with
21 sales and that part of me advocating would have been that I
22 would have had to put in more capital investment to cover
23 that salary.

24 Q. Privately, rather than through --
25 (Technical difficulties.)

1 A. I'm sorry, you broke up.

2 BY MR. RIMAS:

3 Q. Mr. Kresha, can you hear me?

4 A. I can hear you.

5 Q. Tell me why, when you asked for her pay, that you
6 would have to foot the bill personally, were you -- had you
7 indicated to your partners and/or to Ms. Whelan that you
8 would increase her compensation and pay her privately,
9 rather than through company funds?

10 A. No. I was trying to find a way to grow the
11 company, and knowing that we were struggling and on the
12 borderline of being insolvent, I was trying to find ways
13 that I could bring people in to hopefully increase sales.

14 Q. Okay.

15 A. That wasn't the case; and as I stated here, it
16 was a dumb mistake and one that I regret.

17 Q. All right. Next I'd like to redirect your
18 attention to the partnership agreements that you were asked
19 about by attorney Sloneker, so if you could turn to Exhibit
20 61 and page number --

21 A. Yup, I have 61.

22 Q. And specifically page number GS0057 --
23 (Technical difficulties.)

24 A. I'm sorry, I'm having a really hard time, you
25 keep cutting out. Can you find a way to slow down, so I

1 can get through this?

2 BY MR. RIMAS:

3 Q. Bates Number --

4 (Technical difficulties.)

5 BY MR. RIMAS:

6 Q. Bates number GS --

7 (Technical difficulties.)

8 MR. SLONEKER: Mr. Rimas, is there
9 something you could do about your connection?

10 BY MR. RIMAS:

11 Q. -- 57569.

12 MR. SLONEKER: I know it's getting
13 late, but, Mr. Rimas, if you'd like to contract with our
14 services, we're very good with technical support and
15 perhaps we could make your connection better.

16 MS. WHELAN: Wow.

17 (Technical difficulties.)

18 MR. RIMAS: All right, thank you for
19 your patience.

20 BY MR. RIMAS:

21 Q. Mr. Kresha, I have been directing you to Exhibit
22 61, specifically to page number GS0057569.

23 MR. RIMAS: If you could call out the
24 PDF for that.

25 A. I'm sorry, you keep breaking up, can you --

1 MS. WHELAN: It's page 50.

2 A. -- back up --

3 MS. WHELAN: Page 50, Kresha.

4 THE WITNESS: I'm sorry, is this the
5 normal protocol? I believe I'm supposed to --

6 MS. WHELAN: Yes.

7 THE WITNESS: -- be going through
8 counsel; is that correct?

9 MR. SLONEKER: It's not. Mr. Rimas,
10 I think you should advise your client not to speak during
11 the deposition. I can try to help you out with PDF numbers
12 and pages, if possible, but she's not a participant in this
13 deposition.

14 MR. RIMAS: I asked her for a
15 call-out of a number previously for the convenience of the
16 participants, and you had no objection, so I was doing the
17 same.

18 MR. SLONEKER: The comments are now
19 going beyond that. So if she limits it to page numbers,
20 that's fine.

21 MR. RIMAS: That's all she's done
22 throughout the deposition.

23 MS. WHELAN: Page 50.

24 MR. SLONEKER: That's not true.

25 MS. WHELAN: Page 50.

1 BY MR. RIMAS:

2 Q. Mr. Kresha, are you at page 50, PDF page of
3 Exhibit 61?

4 A. I'm working my way through there.

5 Q. Very good.

6 A. Okay, I'm on page 50.

7 Q. Now, that page indicates the contribution of the
8 partners under the Golden Shovel Agency Member Control
9 Agreement toward their own partnership interest; is that
10 correct?

11 A. At the time this was written, those were the
12 contributions of those owners.

13 Q. And the two biggest owners of GSA at the time,
14 Aaron Brossoit and Jeffrey Epple had 33.3 percent interest
15 in Golden Shovel; is that correct?

16 MR. SLONEKER: Mr. Kresha, your
17 volume cut out. Did you lose audio again?

18 A. No, I think I'm okay. Please restate your
19 question. I'm sorry, I have some background noise.

20 BY MR. RIMAS:

21 Q. Mr. Kresha, the two biggest investors or owners
22 of your company were Aaron Brossoit and Jeffrey Epple, each
23 had a 33.3 percent interest in your company; is that
24 correct?

25 A. I'm sorry, can you please restate. You cut out

1 again.

2 Q. Mr. Kresha, Aaron Brossoit and Jeffrey Epple were
3 your two owners with the largest percentage of interest in
4 the company; is that correct?

5 A. Was your question that Mr. Brossoit and Mr. Epple
6 were the largest interest owners of the company at that
7 time; was that your question?

8 Q. Yes.

9 A. Okay. At the time this was documented, yes, they
10 were the largest interest owners.

11 Q. And they each had a 33.3 percent interest, as
12 reflected in this page from the Member Control Agreement?

13 A. In this document, yes, as stated, they had 33.3
14 percent of the interest in the company.

15 Q. And it was also true that they did not contribute
16 any money toward their percentage interest in the company;
17 is that correct?

18 A. They had contributed ideas and they had -- we had
19 rolled over an existing company and their ideas from Cloud
20 Card Graphics and Brain Magnet and we took those ideas and
21 we took these customer lists and they were brought into the
22 company as their participation. That was what was
23 indicated with goodwill.

24 Q. Okay. I appreciate that, and your answer to my
25 question was -- what was the answer to my question, that it

1 was true they contributed no money toward obtaining their
2 ownership interest in Golden Shovel Agency; is that
3 correct?

4 A. When we started up, correct, they had come to me
5 and we had -- it was their idea to start the company and
6 when we put a valuation on that, this was the valuation for
7 that. So those are the four original owners and because
8 Aaron and Jeff had come up with the idea for the company, I
9 and the other owner, Mr. Westerberg, had contributed
10 capital to participate.

11 Q. And how did you come up with the valuation of
12 \$75,000 goodwill for each of the members, Aaron Brossoit
13 and Jeffrey Eppe?

14 A. As with many start-up companies, you just kind of
15 scratch out a number and you try to come up with where
16 you're going to land, and we all agreed that this was at
17 the point their idea, plus our capital would equate to the
18 valuation.

19 Q. Okay, thank you. I'd like to then go back to
20 questions attorney Sloneker asked you about the June 24th
21 settlement conference in Duluth, where you offered money to
22 Ms. Whelan to settle the case and she refused that offer.
23 Do you recall your testimony and his questions on that
24 subject?

25 A. I recall that we offered money and she refused,

1 yes.

2 Q. And do you recall --

3 (Technical difficulties.)

4 A. I'm sorry, you broke up again.

5 BY MR. RIMAS:

6 Q. Do you recall --

7 (Technical difficulties.)

8 MR. SLONEKER: How long do you think
9 we're going to do this?

10 MR. RIMAS: All right, can you hear
11 me now?

12 THE REPORTER: Yes.

13 MR. RIMAS: I just have my remaining
14 questions regarding the settlement conference.

15 BY MR. RIMAS:

16 Q. Mr. Kresha, you indicated that you --

17 THE WITNESS: Is it appropriate to
18 ask how many questions you have so I can just prepare? Do
19 you have five, do you have ten; where are we at?

20 I'm sorry, I'm having a really hard time to hear
21 you. I'm trying to participate and do the right thing
22 here, but it keeps breaking up, so I don't know what to
23 say.

24 MR. RIMAS: I don't have that many
25 questions. It's the internet that slowed it down.

1 THE WITNESS: Okay. If you can be
2 very concise, I'll try to do the same and maybe we can
3 limit the technical difficulties.

4 MR. SLONEKER: He's gone now.

5 MR. RIMAS: Okay, I tried that again.
6 My regrets. Can I be heard now?

7 THE REPORTER: Yes.

8 BY MR. RIMAS:

9 Q. Okay. Mr. Kresha, in connection with the
10 settlement conference, you made an offer and it was
11 rejected by Ms. Whelan in response to attorney Sloneker's
12 question; is that correct?

13 MR. SLONEKER: Mr. Kresha, we can't
14 hear you now, you must be muted again.

15 A. Yes, I'm sorry, please repeat that. I'm having a
16 hard time pulling all this together. So what specifically
17 are you asking me now?

18 BY MR. RIMAS:

19 Q. I'm asking you about the settlement conference in
20 June

21 A. Okay, so you're asking me about the settlement
22 conference.

23 Q. In June 2014, correct.

24 A. In June 2014 in Duluth, I remember that
25 conversation.

1 Q. Okay. And you offered to pay Ms. Whelan money
2 and that was rejected; is that correct?

3 A. I offered and that was rejected, yes.

4 Q. And you also indicated that Ms. Whelan dismissed
5 all of her legal claims except for the copyright
6 infringement; is that correct?

7 A. I believe the dismissal was everything but the
8 copyright infringement.

9 Q. And do you also recall that the reason expressed
10 for that was that the statute of limitations had run on all
11 of the claims that were dismissed by her and her counsel at
12 the time of record, Aleksandra Ljubisavljevic?

13 A. What was explained to me was that it was time
14 barred. I'm not familiar with the legal term, because I'm
15 not a lawyer, but that's what was explained to me.

16 Q. Okay. So was it explained to you that those
17 claims were dismissed because they were -- all of them were
18 time barred; is that correct?

19 A. That's what I was told.

20 Q. And who were you told that by?

21 A. My attorneys.

22 Q. And my last question was, you indicated that
23 Golden Shovel provided business cards to various
24 representatives of Golden Shovel. Did that include
25 Ms. Whelan?

1 A. I don't recall if she got any or not. I don't
2 recall.

3 Q. Do you have any record if she did or did not?

4 A. I have no record of that.

5 MR. RIMAS: Thank you, Mr. Kresha. I
6 have no further questions.

7 THE WITNESS: Okay.

8 MR. SLONEKER: Mr. Kresha, none of us
9 represent you, you had an attorney with you earlier today,
10 maybe she's already given you advice on this, but you've
11 got the right to obtain a copy of the transcript and review
12 it to ensure its accuracy and then sign it, if you choose,
13 or you can waive that right. We're not going to tell you
14 what to do because we don't represent you, but you can do
15 what you will or what your attorney wants you to do.

16 THE WITNESS: Okay. And she told me
17 that I would do that, yes, to get a copy of that and we'll
18 review it.

19 MR. RIMAS: Thank you very much.

20 (At 9:00 p.m. this matter concluded.)

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1 ERRATA SHEET

2 Page/Ln Correction Reason

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1 I, RONALD J. KRESHA, have read this deposition
2 transcript pages 1 - 303 and acknowledge herein its
3 accuracy except as noted on the errata sheet.

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Signature

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Notary Public

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1 STATE OF MINNESOTA

2 COUNTY OF ST. LOUIS

3 I hereby certify that I reported the Zoom
4 deposition of RONALD J. KRESHA, on the 24th day of
5 November, 2020;

6 That I was then and there a Notary Public in and
7 for the County of St. Louis and the State of Minnesota, and
8 as such I was duly authorized to administer an oath;

9 That the witness before testifying was by me
10 first duly sworn to testify to the whole truth and nothing
11 but the truth relative to said cause;

12 That the foregoing testimony was recorded in
13 shorthand by me and transcribed into typewriting under my
14 direction, and is true and correct to the best of my
15 ability;

16 That I am not related to any of the parties
17 hereto nor interested in the outcome of the action.

18 WITNESS MY HAND AND SEAL this 7th day of
19 December, 2020.

20

21

22 _____
LYNDA L. SANDY

Notary Public

23 St. Louis County, Minnesota

24

25 My commission expires: 01/31/2025

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