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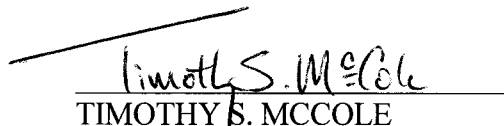
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Item	Description	Appendix Citation
1.	Transcript of Patrick O’Neal Howard, 5/5/2016	App. 0001
2.	Transcript of Patrick O’Neal Howard, 7/20/2016	App. 0089
3.	Transcript of Patrick O’Neal Howard, 7/21/2016	App. 0173
4.	Transcript of Charles Heinzelman, IV, 8/31/2016	App. 0249
5.	Patrick O’Neal Howard’s Background Questionnaire	App. 0346
6.	APG Revenue Contract, 11/2/2015	App. 0372
7.	Wherzt, Inc. Revenue Contract, 9/14/2015	App. 0409
8.	Ducourt Consulting, Inc. Revenue Contract, 1/6/2016	App. 0444
9.	FPA Operating Contract, 11/1/2015	App. 0489
10.	CFG I PPM, 1/15/2015	App. 0532
11.	CFG I Partnership Agreement,	App. 0577
12.	CFG II PPM, 3/2/2015	App. 0602
13.	CFG II Operating Agreement	App. 0646
14.	OE Capital Partners PPM, January 2016	App. 0667
15.	OE Capital Partnership Agreement, January 2016	App. 0709
16.	Packet Material	App. 0735
17.	OE Annual Report, FY2015	App. 0737

18.	Packet Email, 2/8/2016	App. 0756
19.	OE Certification Training Series 1: Overview,	App. 0764
20.	OE Certification Training Series 2: Sales Presentation	App. 0775
21.	OE Certification Training Series 3: Paperwork Process	App. 0789
22.	Radio Ad Email, 5/6/2015	App. 0797
23.	Radio Ad Email, 5/14/2015	App. 0798
24.	Radio Ad Email, 6/4/2015	App. 0802
25.	Radio Ad Email, 8/24/2015	App. 0804
26.	Investor Packet Email, 2/8/2016	App. 0806
27.	Email Re: Training, 1/19/2016	App. 0814
28.	Email Re: Midland, 9/8/2015	App. 0832
29.	Subscription Contract – Midland, January 2016	App. 0836
30.	Fund Profile, 1/1/2016	App. 0844
31.	Investor Packet	App. 0846
32.	C4 Investor List	App. 0863
33.	Seminar Invite, 8/8/2016	App. 0869
34.	Declaration of Lara Caruso	App. 0870
35.	Affidavit of Phillip Fuselier	App. 0891
35a.	Transcript of Fuselier's Ex. 3	App. 0910a
36.	Declaration of Carol Stumbaugh	App. 0974

DATED: February 14, 2017

Respectfully submitted,



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ATTORNEY FOR PLAINTIFF

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THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. FW-04043-A
OPTIMAL ECONOMICS)
CAPITAL PARTNERS, LLC)

WITNESS: Patrick O'Neal Howard

PAGES: 1 through 217

PLACE: Securities and Exchange Commission

801 Cherry Street, 19th Floor

Fort Worth, Texas

DATE: Thursday, May 5, 2016

The above entitled matter came on for hearing, pursuant to notice, at 9:12 a.m.

Diversified Reporting Services, Inc.

(202) 467 9200

App. 0001

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1 APPEARANCES:
 2
 3 On behalf of the Securities and Exchange Commission:
 4 BARBARA L. GUNN, ASSISTANT REGIONAL DIRECTOR
 5 CATHERINE FLOYD, ESQ.
 6 CAROL D. STUMBAUGH, STAFF ACCOUNTANT
 7 Securities and Exchange Commission
 8 Division of Enforcement
 9 801 Cherry Street, 19th Floor
 10 Fort Worth, Texas 76102
 11 (817) 900-2605
 12
 13 On behalf of the Witness:
 14 BARRETT R. HOWELL, ESQ.
 15 BRANDON MCCARTHY, ESQ.
 16 K&L Gates, LLP
 17 1717 Main Street, Suite 2800
 18 Dallas, Texas 75201
 19 (214) 939-5500
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1 PROCEEDINGS

2 (SEC Exhibit No. 1 was marked for
3 identification.)

4 MS. FLOYD: On the record May 5th, 2016,
5 at 9:12 a.m., at the SEC office in Fort Worth, Texas.
6 I will now place the witness under oath.
7 Whereupon,

8 PATRICK O'NEAL HOWARD
9 was called as a witness and, having been first duly
10 sworn, was examined and testified as follows:

11 EXAMINATION

12 BY MS. FLOYD:

13 Q Please state and spell your full name for the
14 record.

15 A Patrick O'Neal Howard P-a-t-r-i-c-k, O,
16 apostrophe, N-e-a-l, H-o-w-a-r-d.

17 Q Mr. Howard, my name is Catherine Floyd. With
18 me today are Barbara Gunn and Carol Stumbaugh. We are
19 officers of the United States Securities and Exchange
20 Commission for the purpose of this proceeding.

21 This is an investigation by the commission of
22 Optimal Economics Capital Partners, LLC, FW-4043, to
23 determine whether there have been violations of certain
24 provisions of the federal securities laws. However, the
25 facts developed in this matter might constitute

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1 violations of other federal or state civil or criminal
2 laws.

3 Prior to the opening of the record, I gave
4 you a copy of the formal order of investigation. The
5 formal order will be available for your examination
6 during the course of the proceeding.

7 Mr. Howard, have you had an opportunity to
8 review the formal order?

9 A Yes.

10 Q Prior to the opening of the record, you were
11 provided with a copy of the commission's Supplemental
12 Form 1662. A copy of that has been marked as
13 Exhibit 1.

14 Mr. Howard, have you had an opportunity to
15 review Exhibit 1?

16 A Yes.

17 Q Do you have any questions concerning this
18 exhibit?

19 A No.

20 Q It will be available for your review during
21 this proceeding, and, of course, you can talk to your
22 attorney, in this case, attorneys if you have any
23 questions about the exhibit.

24 Do you understand that the statutes that are
25 set forth in Exhibit 1 provide criminal penalties for

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1 knowingly providing false testimony or knowingly using
2 false documents in connection with this investigation?

3 A Yes.

4 Q Mr. Howard, are you represented by counsel?

5 A Yes.

6 MS. FLOYD: Would counsel please identify
7 themselves.

8 MR. HOWELL: Barrett Howell and Brandon
9 McCarthy with K&L Gates on behalf of the witness.

10 MS. FLOYD: Mr. Howell, are you representing
11 Mr. Howard as his counsel today?

12 MR. HOWELL: Yes, ma'am.

13 (SEC Exhibit No. 2 was marked for
14 identification.)

15 BY MS. FLOYD:

16 Q I am handing you what has been marked as
17 Exhibit 2. It is a testimony subpoena dated April
18 19th, 2016. Is Exhibit 2 a copy of the subpoena
19 pursuant to which you are appearing here today?

20 A Yes.

21 (SEC Exhibit Nos. 3 through 6 were
22 marked for identification.)

23 BY MS. FLOYD:

24 Q Now I am handing you several subpoenas. I'm
25 introducing four documents, subpoenas, dated January

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1 21st, 2016, marked as Exhibits 3 through 6. Exhibits 3
2 through 6 called for you to produce documents related
3 to this investigation. Have you tendered to the staff
4 all documents called for by the subpoenas?

5 A Yes.

6 MS. FLOYD: We received some documents from
7 you, Mr. Howell. Is that it or do you have any more
8 statements that we're waiting on?

9 MR. HOWELL: I think that the only thing
10 that's outstanding are the e-mail communications that
11 we discussed yesterday. I will confirm at the break,
12 but my understanding is that as of last night we had
13 produced any bank statements — any of the documents
14 that we discussed yesterday except for the e-mail.

15 MS. FLOYD: Those are all the statements of
16 all the bank accounts that he's in control of?

17 MR. HOWELL: Yes, ma'am.

18 MS. FLOYD: Thank you.

19 MR. HOWELL: Absolutely.

20 BY MS. FLOYD:

21 Q Mr. Howard, can you describe for me the
22 search that was conducted for responsive documents and
23 then also who conducted the search?

24 A The search was conducted by myself and my
25 employees. We searched our cloud-based backup drive

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1 where we hold all of our documents and QuickBooks for
2 the financial records and the bank accounts and online
3 bank accounts for all the bank statements, and then we
4 keep all of the financial repository, the financial
5 agreements on that same drive that I described earlier
6 in our document repository and then our subscription
7 agreements, and the Midland documents were from our
8 CRM.

9 Q CRM?

10 A Customer relation management software.

11 Q Great. Thank you. Have you withheld any
12 documents called for by the subpoenas?

13 A No.

14 Q Do you know of any documents that are
15 responsive to the requests that haven't been provided
16 or that have been lost, destroyed, or otherwise
17 disposed of besides the e-mail communications?

18 A No.

19 MR. HOWELL: Catherine, on that I think -- I
20 could be wrong, but I think that we were able to find a
21 document in request number nine, the three quotes.

22 MS. FLOYD: Yes.

23 MR. HOWELL: I think in our possession,
24 custody, or control we did find one -- a document that
25 had the waterfall twenty percent. But as far as I'm

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1 fast. So if you have any questions or you want me to
2 slow down, please feel free to ask me to do that. Also
3 if I ask you a question that involves a yes or no
4 answer, please say yes or no. No nodding of the head,
5 no huh-uh makes her life easier, especially the fact I
6 talk really fast. She's probably going to hate me by
7 the end of the day.

8 MS. GUNN: Slow down.

9 BY MS. FLOYD:

10 Q And if we ask a question that you don't
11 understand, please let me know. I will rephrase it or,
12 you know, ask it slower. Also the exhibits that are in
13 the room stay in the room. They don't disappear. Your
14 attorneys know that very well. And if you need a
15 break, just let me know. Otherwise, we'll probably
16 take a break every hour or so.

17 A Okay.

18 Q Can you think of any reason why you cannot
19 testify truthfully and accurately and to the best of
20 your abilities here today?

21 A No.

22 Q Are you on any medication or drugs that would
23 impair you from testifying truthfully and accurately
24 today?

25 A No.

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1 aware, I don't think on the other two we could find
2 anything that matched identically those quotes.

3 MS. FLOYD: Okay. I believe I got those
4 quotes from an older website, from November 2015.

5 MR. HOWELL: That's right. That's right. I
6 forgot we answered that. Sorry.

7 MS. FLOYD: Also the project profiles -- not
8 profiles -- the project plans, we were unable to open
9 them. I guess the name of the document was too long.
10 I was going to send you an e-mail, but I just wanted to
11 let you know.

12 MR. HOWELL: Those were the -- state the
13 document again.

14 MS. FLOYD: Project plans, I believe.

15 MR. HOWELL: Okay.

16 MS. STUMBAUGH: The ones that were sent last
17 night.

18 MS. FLOYD: The bank records, we got those.
19 I just need the spreadsheet.

20 BY MR. HOWELL: Okay.

21 BY MS. FLOYD:

22 Q Mr. Howard, have you testified before?

23 A Yes.

24 Q Just for this proceeding, you know we have a
25 court reporter. So I have a tendency to talk really

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1 Q At the end of the testimony, I'll give you a
2 chance to clarify anything you want to clarify, and
3 I'll give your attorneys a chance to ask clarification
4 questions as well.

5 Other than your attorneys, have you spoken
6 with anyone else about your testimony here today?

7 A Not about the content, no.

8 Q Who knows you're testifying here today?

9 A My employees.

10 Q Anyone else outside your company?

11 A No.

12 Q Did you do anything to prepare for your
13 testimony here today?

14 A Yes.

15 Q What did you do?

16 A I met with my attorneys.

17 Q Anything else?

18 A No.

19 MS. GUNN: For how long?

20 THE WITNESS: For about a grand total of
21 fifteen hours over two days.

22 MS. FLOYD: Mr. Howell --

23 MR. HOWELL: We're not efficient.

24 (Laughter.)

25 THE WITNESS: No, you're not. She told me to

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1 answer truthfully.
 2 MS. FLOYD: And I appreciate that.
 3 (SEC Exhibit No. 7 was marked for
 4 identification.)
 5 BY MS. FLOYD:
 6 Q I'm handing you what has been marked as
 7 Exhibit 7. I'll give you a chance to look through it.
 8 Have you had a chance to look through Exhibit 7?
 9 A Yes.
 10 Q Do you recognize Exhibit 7?
 11 A Yes.
 12 Q What is it?
 13 A It's a background questionnaire that I was
 14 asked to fill out.
 15 Q Are the answers that you provided in the
 16 questionnaire true and correct?
 17 A Yes.
 18 Q And as you sit here today, is there anything
 19 you need to add or change to the information within
 20 Exhibit 7?
 21 A No.
 22 Q Do you adopt for the purposes of your
 23 testimony all statements contained in Exhibit 7?
 24 A Yes.
 25 Q I would like to go through just a few

Page 15

1 responses you have in Exhibit 7 if that's okay with
 2 you. On Page 4 on Number 15, is it correct that you
 3 are the owner of Howard Capital Holdings, LLC?
 4 A That is correct.
 5 Q And you're also the owner of Optimal
 6 Economics Capital Partners, LLC?
 7 A That's correct.
 8 Q I think to make everyone's life easier, I'm
 9 going to say OE Capital if that's okay.
 10 A Great.
 11 Q On Number 16 it says here that you are a
 12 manager of OE Capital Ventures. Is that correct?
 13 A Correct.
 14 Q And you are a member of Insured Liquidity
 15 Partners Cfg I and Cfg II. Is that correct?
 16 A That's correct. I'm a managing member.
 17 Q Managing member. On Number 24 on Page 6, it
 18 says that you have testified in front of FINRA. Is
 19 that correct?
 20 A That is correct.
 21 Q On February 19th, 2016, is that correct?
 22 A That's correct.
 23 Q Why did you testify?
 24 A I was accused by a convicted felon of fraud,
 25 that I took \$3,500 from her instead of putting it in

Page 16

1 her insurance policy. My understanding is that that
 2 matter is now closed and over.
 3 Q The matter with FINRA is closed?
 4 A My understanding.
 5 MS. GUNN: How did you reach that
 6 understanding? Has FINRA sent you a termination
 7 letter?
 8 THE WITNESS: FINRA hasn't sent me anything.
 9 MS. GUNN: Okay. I'm not asking for
 10 communications with your lawyer. I'm just trying to
 11 understand whether you've been officially notified or
 12 whether that's your conclusion.
 13 THE WITNESS: That was my conclusion. I
 14 haven't heard anything else about that.
 15 MR. HOWELL: And just for the record, I think
 16 there might have been some confusion because on the ADD
 17 report it shows as being settled, but I think that's by
 18 the firm.
 19 MS. GUNN: Uh-huh.
 20 MR. HOWELL: And as far as we're aware, I
 21 don't think we have a closing letter from FINRA at this
 22 point.
 23 MR. McCARTHY: Other than her saying she was
 24 going to close it. That was all oral. There's nothing
 25 in writing.

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1 MS. FLOYD: So the attorney at FINRA said
 2 she's going to close the matter?
 3 MR. McCARTHY: Yeah. I gave her the rap
 4 sheet which is like nine felony convictions for fraud.
 5 MS. FLOYD: And that was attached to the
 6 background questionnaire as well.
 7 MR. McCARTHY: Yes, I think it was.
 8 MS. GUNN: Before we move on, just a
 9 clarification. On item sixteen you've identified some
 10 entities, some LLC's that you're a member of. Is that
 11 you personally? Are you personally the managing
 12 member?
 13 THE WITNESS: Yes, one of them.
 14 MS. GUNN: Which one?
 15 THE WITNESS: I said I am one of them, one of
 16 the managing members.
 17 MS. GUNN: Okay.
 18 THE WITNESS: Cfg I and Cfg II.
 19 MS. GUNN: You personally?
 20 THE WITNESS: Yes.
 21 MS. GUNN: Okay. And who are the other
 22 managing members?
 23 THE WITNESS: Urshel Metcalf.
 24 (The reporter requests clarification.)
 25 MS. GUNN: Anyone else?

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1 THE WITNESS: And then Insured Liquidity
 2 Partners, LLC.
 3 MS. GUNN: Okay. Thank you.
 4 BY MS. FLOYD:
 5 Q Mr. Howard, you said that the FINRA matter
 6 has been settled. Is that your belief?
 7 A Yes.
 8 Q It's been settled?
 9 A That's what I've been told.
 10 Q Okay. Number 26 on Page 7 -- and I'm
 11 assuming that refers to the same FINRA matter as well?
 12 A Yes.
 13 Q Okay. Were you named as a defendant or a
 14 respondent or was it just an investigation?
 15 A I believe it was just an investigation.
 16 MR. HOWELL: A complaint was filed.
 17 MS. FLOYD: A complaint was filed.
 18 MR. HOWELL: I don't think he was named as --
 19 he definitely was not named as a defendant. I don't
 20 think he was named as a respondent.
 21 MS. FLOYD: It was just a claim was filed,
 22 but an investigation proceeded because of the
 23 complaint.
 24 MR. HOWELL: That's exactly right.
 25 MS. FLOYD: Okay. Thank you.

Page 20

1 MS. GUNN: Of --
 2 THE WITNESS: 2015.
 3 MS. GUNN: Okay.
 4 THE WITNESS: Optimal Economics, dot, net, I
 5 believe that was put up somewhere around February of
 6 '15, but then we switched it to OE Capital Partners,
 7 dot, com in September.
 8 MS. GUNN: Okay.
 9 THE WITNESS: That no longer really exists as
 10 an independent site.
 11 MS. GUNN: Okay. And in terms of the content
 12 generation and design, does that comment relate to both
 13 of those websites?
 14 THE WITNESS: Correct. The content would be
 15 the same for each site.
 16 MS. GUNN: Okay. And in response to ten,
 17 you've identified various social networking accounts
 18 and e-mail addresses. Does the company, OE Capital, or
 19 Howard Capital have Facebook or Twitter or Instagram?
 20 THE WITNESS: Howard Capital does not.
 21 MS. GUNN: Uh-huh.
 22 THE WITNESS: OE Capital does. I listed --
 23 if you look where it says business Facebook page, I
 24 don't have a log-in for that. That's OE Capital
 25 Partners, and then business LinkedIn page is OE Capital

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1 MR. HOWELL: Absolutely.
 2 BY MS. FLOYD:
 3 Q On Page 7, Number 28.
 4 A Yes.
 5 Q It looks like you had a criminal proceeding
 6 in 2003. Is that correct?
 7 A That's correct.
 8 Q Could you explain what occurred?
 9 A I was living in an apartment complex. I
 10 moved out early. So I owed a reletting charge. I paid
 11 that charge with a check. That check didn't get
 12 deposited until maybe sixty days later, and I switched
 13 bank accounts. And upon understanding what happened, I
 14 immediately went down and paid the fine and paid the
 15 check.
 16 Q Is this your only criminal conviction?
 17 A Yes.
 18 MS. GUNN: I have a couple of follow-up
 19 questions.
 20 MS. FLOYD: Sure.
 21 MS. GUNN: On page -- in response to item
 22 nine, you identified some websites. Could you tell us
 23 for what period those have been active?
 24 THE WITNESS: OE Capital Partners dot com, I
 25 believe, has been out there since around September.

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1 Partners.
 2 MS. GUNN: What about Twitter or Instagram?
 3 Does the company have them?
 4 THE WITNESS: Not that I know of.
 5 MS. GUNN: Okay. Who has authority to post
 6 to the Facebook and LinkedIn pages for the company?
 7 THE WITNESS: Dovile Soblinskis.
 8 MS. FLOYD: You'll have to spell that.
 9 THE WITNESS: It's Lithuanian. D-o-v-o-l-e,
 10 S-o-b-l-i-n-s-k-a-s.
 11 MS. GUNN: Anyone besides that?
 12 BY MS. FLOYD:
 13 Q How about Kyle T-o-w-b?
 14 A I don't know that he does.
 15 MS. GUNN: What about you?
 16 THE WITNESS: I probably have access. I've
 17 never done it.
 18 MS. GUNN: Okay. In response to Question 21
 19 about accounts over which you have in -- which you have
 20 direct or indirect beneficial interest, you've
 21 identified various accounts. Does anyone else have
 22 authority over any of those accounts, specifically the
 23 last three you didn't specify whether anyone else did,
 24 Capital Ventures Cfg I and Cfg II?
 25 THE WITNESS: Capital Ventures, Cristina

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1 Cason.
 2 MS. GUNN: Okay. Do you?
 3 THE WITNESS: Yeah.
 4 MS. GUNN: You do and Cristina.
 5 THE WITNESS: I have overall and Cristina.
 6 MS. GUNN: Okay. Anyone else?
 7 THE WITNESS: Not over OE Capital Ventures.
 8 MS. GUNN: Okay.
 9 THE WITNESS: Insured Liquidity Partners,
 10 that would be myself. Urshel Metcalf still has
 11 authority of Cfg I and Cfg II, and I believe Cristina
 12 Cason has limited authority.
 13 MS. GUNN: Can you explain what the limited
 14 authority is?
 15 THE WITNESS: I don't believe that she can
 16 make -- do things like make transfers. She certainly
 17 has read access.
 18 MS. GUNN: Okay. All right. Thank you.
 19 BY MS. FLOYD:
 20 Q On Page 9, Number 31, it says here that you
 21 have an insurance license and a Series 6 and Series 63.
 22 Are all three active?
 23 A I don't believe the Series 6 and 63 are
 24 active anymore. I did not re-up this year or in 2015.
 25 The insurance license is active.

Page 23

1 Q Thank you. I would like to ask a few
 2 questions you about your employment history and work
 3 backwards. So Northwestern Mutual -- PFS, Primerica?
 4 A Primerica.
 5 Q Primerica?
 6 A Yes.
 7 Q Financial Services?
 8 A Yes.
 9 Q It says financial rep part time 2006. Were
 10 you only employed there in 2006?
 11 A Correct.
 12 Q Were you employed the entire year of 2006?
 13 A I don't think so. I can't remember exactly
 14 which months I was there.
 15 Q Okay. And financial rep. What were you
 16 selling?
 17 A Mostly insurance policies, some mutual funds.
 18 Primerica Financial Services was a multilevel marketing
 19 company, and so they wanted us to do recruiting.
 20 Q Okay. And where is PFS located?
 21 A The office that I, I guess, was tied to was,
 22 I believe, in Addison.
 23 Q Addison, Texas, correct?
 24 A Yes, correct.
 25 Q Next you were employed at Northwestern Mutual

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1 in Frisco, Texas. Is that correct?
 2 A Correct.
 3 Q You worked there from January 2007 through
 4 August 2008 eight as a financial representative.
 5 A Right.
 6 Q What were you selling?
 7 A Insurance policies, annuities, mutual funds,
 8 variable annuities.
 9 MS. GUNN: Were you actually employed by them
 10 or were you an independent contractor?
 11 THE WITNESS: I was employed by them.
 12 MS. GUNN: Okay. What about Primerica?
 13 THE WITNESS: I was an independent
 14 contractor.
 15 MS. GUNN: Thank you.
 16 BY MS. FLOYD:
 17 Q What was your compensation with Northwestern
 18 Mutual just roughly?
 19 A How much did I make or how did it work?
 20 Q How much did you make?
 21 A I made about -- my first year I made about
 22 100,000. My second -- until August the second year, I
 23 probably made about thirty.
 24 Q Could you explain how that worked?
 25 A So we got paid a commission for selling life

Page 25

1 insurance and annuity products. So I just sold as much
 2 as I possibly could.
 3 Q So you were never on a salary from
 4 Northwestern Mutual?
 5 A No.
 6 Q And then you worked at Turtle Creek Financial
 7 Group in Dallas, Texas. You were vice president from
 8 August 2008 to November 2009. Is that correct?
 9 A That is correct.
 10 Q What was your role at Turtle Creek?
 11 A It was to sell insurance policies and
 12 annuities.
 13 Q And how were you compensated?
 14 A Commission.
 15 Q And how much did you make while working at
 16 Turtle Creek?
 17 A About \$60,000, if I recall correctly.
 18 Q After Turtle Creek Financial Group, you
 19 worked at OneAmerica Securities. Is that correct?
 20 A That's correct.
 21 Q And that's in Dallas, Texas. You worked
 22 there roughly from November 2009 to December 2014. Is
 23 that correct?
 24 A That's correct.
 25 Q It looks like two different positions,

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1 financial representative and associate general agent?
 2 A That's correct.
 3 Q As a financial representative, what did you
 4 sell?
 5 A Life insurance, mutual funds, annuities.
 6 Q I'm sensing a theme here.
 7 (Laughter.)
 8 BY MS. FLOYD:
 9 Q And then as associate general agent, what
 10 were your duties?
 11 A Also to recruit, train, and develop new
 12 financial representatives.
 13 Q And how were you compensated as a financial
 14 representative?
 15 A 100 percent commission.
 16 Q Okay. And how were you compensated for the
 17 associate general agent position?
 18 A It was commission based on anything I sold,
 19 and then I got an override for anything that was sold
 20 by my team.
 21 Q And then you left OneAmerica and moved on to
 22 OE Capital Partners. Why did you leave OneAmerica?
 23 A I was -- I was an associate general agent,
 24 and so the next natural move there would be to have
 25 your own office. Joe Kane at the time was about to --

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1 going to retire in three years, and the only other AGA
 2 was his daughter. And so when it came down to it, the
 3 question was who's going to get the office. Well, it
 4 wasn't going to be me.
 5 So I -- the question was did I really want to
 6 stay there and work or did I want to move on to other
 7 things. So I decided that I really wanted to move on
 8 to something else.
 9 Q Okay. What was Joe Kane's position at
 10 OneAmerica?
 11 A Personal Economics Group, he was the
 12 president.
 13 MS. GUNN: What is Personal Economics Group?
 14 THE WITNESS: Personal Economics Group would
 15 be a general agency of the OneAmerica company.
 16 MS. GUNN: Okay.
 17 THE WITNESS: So it was basically a sales
 18 office.
 19 MS. GUNN: Okay. Like a d/b/a for that
 20 particular office?
 21 THE WITNESS: It was a d/b/a. The actual
 22 agency name was Joseph Kane Agency.
 23 MS. GUNN: Okay. Did you continue to sell
 24 insurance products while you were there?
 25 THE WITNESS: At Personal Economics Group?

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1 MS. GUNN: Uh-huh.
 2 THE WITNESS: Yes.
 3 BY MS. FLOYD:
 4 Q And so you left OneAmerica voluntarily?
 5 A Yes.
 6 Q Do you understand that according to your CRD
 7 that it says that OneAmerica terminated you?
 8 A I didn't understand that.
 9 (SEC Exhibit No. 8 was marked for
 10 identification.)
 11 BY MS. FLOYD:
 12 Q I'm handing you what has been labeled as
 13 Exhibit 8.
 14 MR. HOWELL: Thank you. Is this an extra
 15 copy?
 16 MS. FLOYD: Don't you dare. You know better.
 17 BY MS. FLOYD:
 18 Q Are you ready?
 19 A Yes.
 20 Q Do you recognize Exhibit 8?
 21 A It looks like my CRD report.
 22 Q Correct. It's a CRD report that basically
 23 covers your employment history among other things, but
 24 on Page 3, I believe, or Page 4 actually --
 25 A Here?

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1 Q Correct.
 2 A Yes.
 3 Q Thank you. Page 3. It says here under
 4 registrations with previous employers, it says from
 5 January 7th of 2010 to February 6th, 2015, OneAmerica
 6 Securities, the reason for termination, discharged,
 7 termination comment, failure to complete firm annual
 8 securities activities statement requirement. Do you
 9 understand what that means?
 10 A I understand what that means, yes.
 11 Q Can you explain -- first off were you
 12 terminated?
 13 A Not from my perspective. I gave my
 14 resignation to Joe Kane 12/31 of 2014.
 15 Q And did you give the resignation in writing?
 16 A I did give it in writing.
 17 Q When was your last day of work?
 18 A 12/31 of 2014.
 19 Q So you left the same day you gave your
 20 resignation?
 21 A Yes.
 22 Q And were you provided notice that OneAmerica
 23 had claimed that you were terminated?
 24 A I never -- I did not know that.
 25 Q Do you have an understanding of why they have

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1 failure to complete first annual securities activities
 2 statement requirement on your CRD?
 3 A I wouldn't know other than I know I didn't do
 4 it, but I had left.
 5 Q Did you, in fact, complete the firm annual
 6 securities activities statement?
 7 A No. I had left before February 6th of 2015.
 8 I left in '14. So if they were expecting me to do it
 9 for '15, it did not get done.
 10 Q Okay. And so you were aware that they had --
 11 I'm sorry. When were you first aware of when
 12 OneAmerica had put on your -- let me rephrase.
 13 When was the first time you learned
 14 OneAmerica had claimed that they had terminated you?
 15 A Today.
 16 Q Today?
 17 A Yes.
 18 Q So you learned this today?
 19 A Yes.
 20 MR. HOWELL: Catherine, do you mind if we
 21 take a two-minute break to clarify something?
 22 MS. FLOYD: Sure. Absolutely. Go off the
 23 record at 9:42 a.m.
 24 (Recess taken from 9:42 to 9:45.)
 25 MS. FLOYD: Back on the record at 9:45 a.m.

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1 BY MS. FLOYD:
 2 Q Did you want to clarify anything?
 3 A Yeah. Apparently my lawyers showed me
 4 something in prep for the FINRA testimony. I do not
 5 remember it, but apparently they did show me something
 6 that stated this.
 7 Q Thank you for clarifying that. After your
 8 attorneys showed you the information, did you try to
 9 contact OneAmerica to fix --
 10 A No.
 11 MR. HOWELL: Catherine, if you don't me
 12 addressing this --
 13 MS. FLOYD: Sure.
 14 MR. HOWELL: -- I think at that point since
 15 we were prepping for the FINRA testimony, we probably
 16 would have put him under strict orders not to reach out
 17 to anyone.
 18 MS. FLOYD: I understand. Thank you.
 19 MS. GUNN: On the exhibit page of Exhibit 8,
 20 Page 4, under the employment history, the second item
 21 down, it says from 2011, 2009 to present the name is
 22 American United Life?
 23 THE WITNESS: Yes.
 24 MS. GUNN: Do you have any -- can you tell us
 25 what your association was with American United Life?

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1 THE WITNESS: American United Life is a
 2 OneAmerica Securities company.
 3 MS. GUNN: Okay.
 4 THE WITNESS: So they were the insurance
 5 company for OneAmerica Securities. Of course
 6 OneAmerica Securities was the securities side.
 7 MS. GUNN: Okay.
 8 THE WITNESS: So that's one and the same
 9 company.
 10 MS. GUNN: Okay. And your association with
 11 them terminated when your association with OneAmerica
 12 terminated?
 13 THE WITNESS: Yes.
 14 MS. GUNN: Thank you.
 15 BY MS. FLOYD:
 16 Q After you left OneAmerica Securities, where
 17 did you go next?
 18 A I started Howard Capital Holdings, Optimal
 19 Economics.
 20 Q And when did --
 21 A OE Capital Partners.
 22 Q OE Capital, is that correct?
 23 A OE Capital.
 24 Q Thank you. There's a lot of OEs. When did
 25 you start OE Capital?

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1 A I believe the incorporation date for Howard
 2 Capital Holdings, which was the operator entity in the
 3 beginning, was in February, and I believe the
 4 incorporated date for Optimal Economics Capital
 5 Partners, LLC or OE Capital was in March.
 6 Q Of 2015?
 7 A Of 2015.
 8 Q Okay. And was it just you that started the
 9 company?
 10 A It was me and an assistant.
 11 Q Who is say your assistant?
 12 A Natalie Clair.
 13 Q And why did you start OE Capital?
 14 A In 2014 I was working with Urshel Metcalf at
 15 Personal Economics Group, and Urshel Metcalf had been
 16 introduced to a gentleman by the name of Allen Reno.
 17 Allen had this idea around -- a very complex idea
 18 around turnaround companies and how he could utilize
 19 different types of methodologies and capital to turn
 20 around and create a return.
 21 At Personal Economics Group, we had learned a
 22 lot about things like cash flow investing which was
 23 something I was very, very interested in, and I had
 24 done a lot of research and study on it.
 25 So I was very intrigued by his idea. I

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1 thought it was very complex. So I wanted to be a part,
2 but I did not want to be a part of their entity, and so
3 I started Howard Capital Holdings as essentially the --
4 I could go raise capital for Insured Liquidity
5 Partners, Cfg I, and their entity was supposed to do
6 all of the turnaround work and prep a company for the
7 capital.

8 Q Who's their company?

9 A Urshel Metcalf and Allen Reno.

10 Q What was their company's name?

11 A Insured Liquidity Partners.

12 Q So were you connected at all to Insured
13 Liquidity Partners? Were you --

14 A No.

15 Q Okay.

16 MS. GUNN: I'm sorry. You said their entity
17 would do the turnaround and something else, and I
18 didn't catch the second part.

19 THE WITNESS: Prep companies for investment.

20 MS. GUNN: Okay.

21 BY MS. FLOYD:

22 Q So primarily you wanted to raise the money.
23 Is that correct?

24 A Correct.

25 Q I'm sorry. I cut you off. Please continue.

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1 A Once we had -- we got going, we recognized
2 fairly quickly that didn't -- we didn't believe that
3 Allen Reno could do the things that he said he could
4 do, and there were some very, very, I think, unethical
5 activities going on.

6 Urshel decided that -- Urshel and I had been
7 coworkers for about a year. So we had a relationship.
8 And Urshel decided that he wanted to disconnect from
9 Allen, and so he did, and he -- and he and I kind of
10 started to have more insight into the companies.

11 Urshel was the chief kind of operator of
12 Insured Liquidity Partners, and at that point, Insured
13 Liquidity Partners, Cfg I, and Insured Liquidity
14 Partners, Cfg II, essentially were the funds.

15 Q Okay.

16 MS. GUNN: When did -- you said that you and
17 Urshel decided to disconnect from Allen Reno. When was
18 that?

19 THE WITNESS: This was around late March,
20 April time frame.

21 BY MS. FLOYD:

22 Q Of 2015?

23 A Of 2015.

24 MS. GUNN: And then -- I'm sorry. What
25 happened after that?

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1 THE WITNESS: After that we started to put
2 together kind of what I would call the engine to make
3 everything work. The way that things work is we have a
4 team of people that actually they go in and they
5 operate with the portfolio companies that we invest in,
6 and so they actually are hands-on from a marketing and
7 finance and infrastructure perspective, and they make
8 sure that the entrepreneurs are executing properly so
9 that we can get the projected revenues that we're
10 participating in. So we --

11 MS. GUNN: Can I stop you for just a minute?

12 THE WITNESS: Yes.

13 MS. GUNN: Was that -- we're still in the
14 March, April period, just after March, April of 2015?

15 THE WITNESS: Correct.

16 MS GUNN: Okay.

17 THE WITNESS: Correct. So this is what we
18 were doing at that point. We were starting to build
19 that engine and the human capital that was going to be
20 needed to really, you know, do the business model.

21 MS. GUNN: Okay.

22 BY MS. FLOYD:

23 Q And this staff -- was this staff the
24 employees of Howard Capital or were they employees of
25 Insured Liquidity Partners, LLC?

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1 A At this point both. Around the April time
2 frame, Howard Capital would have had two employees
3 including -- not including me and --

4 Q Who are the employees?

5 A It was Natalie Clair and Dovile Soblinskas.

6 THE WITNESS: Do you need me to spell it
7 again?

8 THE REPORTER: No.

9 BY MS. FLOYD:

10 Q And what was Natalie Clair's role at Howard
11 Capital?

12 A She was my assistant and kind of investor
13 relations.

14 Q And what was Dovile?

15 A Dovile.

16 Q Dovile. What was her role at Howard Capital?

17 A Business development and marketing.

18 Q Was Natalie and Dovile employees of Insured
19 Liquidity Partners as well?

20 A No. Those were separate employees.

21 Q Who was employed under Insured Liquidity
22 Partners?

23 A Urshel was the president, and his employees
24 were Cristina Cason.

25 Q And what was her role?

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1 A Her role was really as the accounting expert.
 2 Q Okay.
 3 A And Khensa, K-h-e-n-s-a, Bangert,
 4 B-a-n-g-e-r-t.
 5 Q And what was Miss Bangert's role?
 6 A She was, in essence, the project manager.
 7 Q Was that it at this time or were there more
 8 employees?
 9 A There were no more employees at that point.
 10 Q Okay. And you mentioned the two funds being
 11 Cfg I and Cfg II. Were these funds created after
 12 Allen -- you guys had disconnected from Allen Reno?
 13 A Cfg I was created by Urshel with Allen Reno.
 14 So Allen was there. Cfg II was after or I should say
 15 at least apart from Allen.
 16 Q Okay. And who is Optimal Economics Financial
 17 Liquidity, LLC?
 18 A During that same time frame as Urshel began
 19 to really want to push away from Allen, he went out and
 20 he created a bunch of entities so that Allen wouldn't
 21 create them. So he created Optimal Economics Financial
 22 Liquidity. He created, I believe, Optimal Economics,
 23 LLC. And if he created any more, I wouldn't know about
 24 it.
 25 Q And what is the business purpose of these two

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1 companies?
 2 A They have -- they have no business purpose.
 3 MR. HOWELL: As far as you're aware.
 4 THE WITNESS: As far as I'm aware, they've
 5 never -- I've never had any dealings with those two
 6 entities.
 7 MS. GUNN: Do they have any employees or
 8 business as far as you know?
 9 THE WITNESS: Not as far as I know.
 10 BY MS. FLOYD:
 11 Q Do they have bank accounts?
 12 A Not as far as I know.
 13 Q Okay. And then Optimal Economics Capital
 14 Partners, LLC.
 15 A Yes.
 16 Q That was created when?
 17 A That was created in March.
 18 Q March.
 19 A Yes.
 20 Q And why was that created?
 21 A I created that as the operating entity. I
 22 decided not to use it at that point because I wanted --
 23 I wanted to wait and clean some things up first. So I
 24 continued to use Howard Capital Holdings as the
 25 operating entity.

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1 Q So was OE Capital owned by Howard Capital?
 2 A Yes.
 3 Q You use Howard Capital as the operating --
 4 initially when you first created OE Capital?
 5 A That is correct, and if I can clarify just a
 6 little bit.
 7 Q Absolutely.
 8 A Howard Capital was intended to be the
 9 operating entity. Once I started to really distrust
 10 Allen Reno, I decided to get Optimal Economics Capital
 11 Partners, LLC because I wanted to really start to
 12 get -- gain a little bit more control over what was
 13 happening, and I didn't -- I didn't like the disconnect
 14 in the name. So that's the whole reason for that LLC
 15 coming about.
 16 Q Okay. Could you just briefly explain why you
 17 didn't trust Mr. Reno?
 18 A I will be happy to. Allen Reno had promised
 19 a couple of people in California that for a fee and --
 20 so if I can give an example, if they needed, say, \$5
 21 million, he -- if they gave him one percent up front,
 22 he would take them through some fancy thing, and then
 23 he would go get -- he had five million after he went
 24 through his whole thing.
 25 So he would -- what he would do is he'd take

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1 their money, and then there was no \$5 million. I had
 2 gotten a hold wind from Urshel that he had basically
 3 done that to someone in California and then said that
 4 we were going to invest \$5 million.
 5 I believe at that time, I probably raised
 6 about 400,000. So obviously I stopped trusting Mr.
 7 Reno pretty quickly, and I moved completely away from
 8 him, and it was up to Urshel whether or not he wanted
 9 to move, and Urshel decided to move away from him as
 10 well.
 11 MS. STUMBAUGH: The money that you helped
 12 raise through Insured Liquidity Partners, where did
 13 that money go?
 14 THE WITNESS: Insured Liquidity Partners, Cfg
 15 I.
 16 MS. STUMBAUGH: Just Insured Liquidity
 17 Partners.
 18 THE WITNESS: I did not help raise any money
 19 through Insured Liquidity Partners. It was only either
 20 in Cfg I or II.
 21 BY MS. FLOYD:
 22 Q Did Mr. Reno make these same claims to
 23 investors, to Cfg I investors?
 24 A No, no.
 25 Q Did he make promises or anything to any --

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1 A He never met a Cfg I investor.
 2 Q Thank you.
 3 MR. HOWELL: Catherine, do you mind if I ask
 4 a clarifying question?
 5 MS. FLOYD: Sure, absolutely.
 6 MR. HOWELL: So the statements that Mr. Reno
 7 was making, they were statements to potential investors
 8 or companies in which you were seeking possible
 9 investment?
 10 THE WITNESS: Companies that were seeking
 11 possible investment.
 12 BY MS. FLOYD:
 13 Q Portfolio companies.
 14 A Right.
 15 Q Thank you. So at the time you created OE
 16 Capital Partners, it was designed to be an operating
 17 entity, but you just hadn't utilized it yet, correct?
 18 A Correct.
 19 Q When did you start utilizing it as an
 20 operating entity?
 21 A January of this year, 2016.
 22 Q So Howard Capital Holdings was it the
 23 operating entity until this January, this past January.
 24 Is that correct?
 25 A That is correct.

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1 Q And what is OE Capital Ventures, LLC?
 2 A That is a fund that we started.
 3 Q And when did you start this fund?
 4 A This year, February of this year.
 5 Q What is Foundation for Optimal Living?
 6 A That is Urshel's current nonprofit.
 7 Q Do you have any involvement with Foundation
 8 for Optimal Living?
 9 A Only as a donator.
 10 Q What kind of nonprofit company is it?
 11 A It is supposed to teach financial literacy to
 12 business owners, but my belief is primarily veterans.
 13 Q And what is Ryse Essential Capital?
 14 A Ryse was -- it a company that Chad Alberson
 15 and Vince De La Torre started in order to contract with
 16 me and OE Capital Partners. They are now full-time
 17 employees of OE Capital Partners. So the LLC doesn't
 18 do anything that I know of.
 19 Q So it's a company that Mr. Alberson and Mr.
 20 De La Torre started, correct?
 21 A Correct.
 22 Q What was the business purpose for their
 23 entity?
 24 A They were going to be -- they were
 25 contractors for OE Capital Partners, and they did

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1 things like help build out some programs, so
 2 essentially corporate-based investment programs that I
 3 really wanted to get some analytics behind. So they
 4 did that work.
 5 Q Can you give me an example?
 6 A Sure. What we wanted to do is be able to
 7 offer to, you know, smaller or medium-sized businesses
 8 an alternative to deferred compensation strategies that
 9 they have out there now. So instead of putting this
 10 money in the market or insurance products, we wanted to
 11 be able to package something that would make sense to
 12 them that they can participate in private equity type
 13 structures.
 14 Q Mr. Alberson and De La Torre, they still do
 15 this just not under Ryse Essential Capital. They do
 16 this now under OE Capital Partners. Is that correct?
 17 A That's correct.
 18 Q And how are you compensated for your role in
 19 the various LLC's that you are connected with?
 20 A Howard Capital -- initially I didn't take
 21 any. I just bootstrapped it. Eventually it was a
 22 salary, and that's how I'm compensated now.
 23 Q Eventually -- do you know roughly when you
 24 started receiving a salary?
 25 A I started somewhere around July of 2015, I

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1 believe.
 2 MS. STUMBAUGH: Which entity is paying you a
 3 salary?
 4 THE WITNESS: Currently?
 5 MS. STUMBAUGH: Yes.
 6 THE WITNESS: OE Capital Partners.
 7 MS. STUMBAUGH: And previously?
 8 THE WITNESS: Howard Capital Holdings.
 9 BY MS. FLOYD:
 10 Q And how much are you receiving in salary
 11 currently?
 12 A Currently 180.
 13 Q And how are you paid? Are you paid through
 14 wire, check, ADP?
 15 A ADP.
 16 Q When did you start getting paid by OE
 17 Capital?
 18 A By OE Capital.
 19 Q Correct, yes.
 20 A This year when it was established.
 21 Q This year. Do you have an understanding of
 22 where your salary comes from? So what's the basis?
 23 Where are the funds coming from to pay your salary?
 24 A So what we -- we take approximately ten
 25 percent or so to pay some corporate expenses and

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1 corporate salaries.
 2 Q Ten percent of what?
 3 A Of capital raised.
 4 Q Is it ten percent per fund or as an
 5 aggregate?
 6 A As an aggregate as funds come in.
 7 MS. FLOYD: Let's take a break real quick.
 8 It's 10:07. Off the record.
 9 (Recess taken from 10:07 to 10:20.)
 10 MS. FLOYD: Back on the record at 10:20 a.m.
 11 BY MS. FLOYD:
 12 Q Going back to OE Capital Partners, who are
 13 its current employees?
 14 A Currently?
 15 Q Yes.
 16 A Besides myself there's Dovile Soblinskas,
 17 Cristina Cason, Tracy Alexander.
 18 Q What does she do?
 19 A She is the operator that is chiefly
 20 responsible for operating directly with the portfolio
 21 companies to help them execute. There's Chad Alberson,
 22 Vince De La Torre.
 23 Q Going back to Mr. Alberson and Mr. De La
 24 Torre, do they do anything else besides their previous
 25 contract work, help build programs?

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1 A That's still their primary, what they do.
 2 Q Okay. Just checking.
 3 A They also do some analytics work on, you
 4 know, making sure that our risk profiles for portfolio
 5 companies are in line, things of that nature.
 6 Q Okay. So you have yourself, Dovile,
 7 Cristina, Tracy, Chad, Vince. Anyone else?
 8 A There is Tico Martinez.
 9 Q I'm sorry?
 10 A Tico Martinez.
 11 Q How do you spell it?
 12 A Ti-c-o.
 13 Q Okay. And what does Tico do?
 14 A He helps build channels into broker-dealers,
 15 independent advisers, family offices for capital
 16 introductions.
 17 Q And how long has Tico been employed?
 18 A A month.
 19 Q One month. Who did his role prior to —
 20 A No one did his role prior to that other than
 21 me.
 22 Q Anyone else other than Tico?
 23 A Ron Scherer.
 24 Q How do you spell it?
 25 A S-c-h-e-r-e-r.

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1 Q And what is Ron's job?
 2 A He does primarily what Tico does.
 3 Q Okay.
 4 A And then Julie De La Torre who's my assistant
 5 and Kim Chapman who is my receptionist.
 6 Q What about Urshel?
 7 A Urshel's no longer a part of the
 8 organization.
 9 Q Why not?
 10 A See if I can —
 11 MR. McCARTHY: I think you missed one
 12 employee. There are eleven total.
 13 BY MS. FLOYD:
 14 Q Patrick, Dovile, Cristina, Tracy, Chad,
 15 Vince, Tico, Ron.
 16 A Julie.
 17 Q Julie.
 18 A Kim.
 19 Q Kim.
 20 MR. McCARTHY: Who's the receptionist?
 21 THE WITNESS: Kim Chapman. I have ten
 22 employees.
 23 MR. McCARTHY: There's ten including you I've
 24 got listed. So there's one missing.
 25 MR. HOWELL: He knows how many employees he

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1 has.
 2 BY MS. FLOYD:
 3 Q What about Kyle?
 4 A Kyle.
 5 MR. McCARTHY: Vindication.
 6 (Laughter.)
 7 A Kyle does web design and SEL.
 8 BY MS. FLOYD:
 9 Q SEL?
 10 A SEL, yeah. Dovile, Cristina, Tracy, Kyle,
 11 myself and sometimes Chad and Vince all have dual
 12 roles.
 13 Q Okay.
 14 A And so we all work not only for OE Capital in
 15 our roles, but we work with the portfolio companies in
 16 whatever capacity they need us to work with them to
 17 help them execute.
 18 Q Okay. And how are your employees
 19 compensated?
 20 A They're all on a base salary plus bonus.
 21 Q What's the bonus based on?
 22 A It's based on company performance.
 23 Q Company as in OE Capital company?
 24 A Correct.
 25 Q And where did you find your employees? Did

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1 you advertise?

2 A No. Most of them I knew.

3 Q From --

4 A Tracy, I've known her for ten years. She was
5 a client when I was a financial representative. I
6 worked with Tico at Personal Economics Group. I met
7 Chad and Vince while they were insurance agents. They
8 were really account managers for Assurant Health. And
9 Cristina was introduced to me via Urshel. And that's
10 also part of your next question which is why Urshel's
11 not there. So I'll just hold on to that.

12 Q Okay.

13 A And the Dovile was introduced to me through a
14 friend.

15 Q Okay. And why is Mr. Metcalf no longer
16 employed?

17 A So if I can retract back to that kind of
18 April time frame, we were starting to really put in
19 place that human capital. He had two employees at that
20 point, Khensa Bangert and Cristina Cason. I had two,
21 Dovile and Natalie.

22 Somewhere around June, Natalie came to me and
23 told me that she had been sexually assaulted by Mr.
24 Metcalf in his office. I confronted and asked Mr.
25 Metcalf if it was true. He indeed told me it was.

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1 And so I engaged my attorneys at the time,
2 which was Sidley Austin, on a remedy, and the initial
3 remedy which was not put in place until the end of
4 July --

5 Q Of 2015?

6 A -- of 2015 was that Urshel would have no more
7 employees, and so I then assumed his employees. And
8 during that same time -- so this is -- this stuff is
9 laid on top of each other. So during that same time,
10 we were looking at a potential portfolio company called
11 GanoLife.

12 Q How do you spell that?

13 A G-a-n-o life.

14 Q One word GanoLife?

15 A It was one word, yes. So if you'll recall,
16 Mr. Metcalf's team, what they were supposed to do is
17 make sure that everything was prepared and ready for
18 potential capital injection. This GanoLife company was
19 a company that was brought to our attention by Miss
20 Khensa Bangert. It was one of her friends.

21 We were really, really close to potentially
22 putting in our first investment into that company.
23 Cristina Cason, upon doing more due diligence, realized
24 that there was a million dollars in revenue missing,
25 and so when she realized that, she brought it to our

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1 attention.

2 We asked Miss Bangert about it because she
3 was at that point working with them almost on a daily
4 basis. First she said she didn't know about it.
5 Secondly, she said that there was other ways to book
6 revenue.

7 We then asked the portfolio company,
8 GanoLife, what happened, and essentially without
9 admitting it, they said yeah, we did some stuff. So at
10 that point, we decided not to engage in that
11 investment, and I no longer -- I no longer trusted Miss
12 Bangert.

13 She worked for Urshel, and he decided that
14 she would be terminated because he no longer trusted
15 her either. So at that point after that happened and
16 the sexual assault remedy, Urshel basically didn't have
17 any employees, and he also didn't necessarily himself
18 possessed the skill set to really do what we wanted to
19 do.

20 So he and I made an agreement that I would
21 essentially buy him out by him starting a nonprofit,
22 and I would donate to that nonprofit for him.

23 Q And how much did you donate to the nonprofit?
24 I'm assuming the nonprofit is Foundation for Optimal
25 Living.

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1 A That is correct. It is \$12,500 per month
2 until next September.

3 MS. STUMBAUGH: Until September of --
4 THE WITNESS: 2016.

5 MS. STUMBAUGH: I wanted to make sure it
6 wasn't 2017.

7 BY MS. FLOYD:

8 Q Is Miss Clair still an employee?

9 A She is not.

10 Q Did she leave on her own terms?

11 A She did not.

12 Q And she got terminated?

13 A She did.

14 Q Could you please explain?

15 A Yes. Her responsibilities greatly increased
16 as we started to grow. She made a series of
17 substantial mistakes by correcting information on
18 investor forms without informing the investor, and when
19 it was brought to my attention for the third time after
20 talking to her about it twice, I gave her a severance
21 package.

22 Q Which forms did she correct?

23 A I can't recall exactly. I can recall
24 generally.

25 Q Okay.

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1 A There were several subscription agreements
2 and then several self-directed IRA forms.
3 Q What did she correct?
4 A The amount of the investment.
5 MS. STUMBAUGH: Are you saying she corrected
6 it or she changed it? Did she change it to the correct
7 amount or --
8 THE WITNESS: So she did change it to the
9 correct amount. However, what happened is without
10 notifying the client or the investor of that, the
11 custodian who at that point was Equity Trust said that
12 there was too much risk in terms of dealing with her.
13 Also -- I mean, that's just -- even if you
14 are changing it to the correct amount, that's just kind
15 of a no-no without informing and getting consent first,
16 and generally you want to have an investor change that
17 and initial it and send the forms.
18 BY MS. FLOYD:
19 Q Which fund were these investors for?
20 A That would have been Cfg II.
21 Q Cfg II. How many investor forms did she
22 correct?
23 A I don't know the number. I know at least
24 three.
25 MS. STUMBAUGH: Was it limited to just Equity

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1 Trust forms or were there other forms as well?
2 THE WITNESS: I was only aware of Equity
3 Trust forms.
4 BY MS. FLOYD:
5 Q When was she terminated?
6 A September 2015.
7 Q So you've cut ties with Mr. Metcalf. Is that
8 correct?
9 A That is correct.
10 Q When you hire employees, what kind of -- do
11 you do any background checks? Do you do any due
12 diligence on the employee?
13 A I do now.
14 Q Please explain.
15 A If I don't know them, then what we'll -- what
16 we will do going forward -- and I just had this
17 discussion with my staff -- is that we will actually
18 engage in a background check through an authorized
19 background check.
20 Q Third party?
21 A Third party, and that's it.
22 Q So are you aware of any of your employees
23 having criminal convictions?
24 A None of my current employees, I'm not aware
25 of that.

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1 Q So you're not aware that Mr. Vince De La
2 Torre was arrested in '96 and 2004 for marijuana
3 possession, arrested for a state felony and misdemeanor
4 in 2005, arrested for a second degree felony possession
5 in 2007 and arrested in 2008 for resisting arrest and
6 again for marijuana possession?
7 A I was not aware of that.
8 MR. HOWELL: Who was that, De La Torre?
9 THE WITNESS: Correct.
10 BY MS. FLOYD:
11 Q How about Mr. Kyle -- how do you say his last
12 name, T-o-w-b?
13 A Towb.
14 Q Towb?
15 A Towb.
16 Q Towb?
17 A I don't know.
18 MS. GUNN: You pronounce it Kyle.
19 (Laughter.)
20 BY MS. FLOYD:
21 Q He was arrested in 2005 for theft and the
22 arrested in 2007 for misdemeanor possession.
23 A I didn't know that either.
24 MR. HOWELL: Misdemeanor possession of what.
25 MR. McCARTHY: It has to be marijuana.

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1 MS. FLOYD: It seems like a common theme,
2 marijuana.
3 MR. McCARTHY: Possession of a controlled
4 substance in 2007 for Vince?
5 MS. FLOYD: Yes.
6 MR. McCARTHY: Second degree felony?
7 MS. FLOYD: Correct.
8 MR. HOWELL: All that's legal now.
9 MS. FLOYD: Not in Texas.
10 (Laughter.)
11 MS. GUNN: So just to clarify, are you saying
12 that you have not in the past done background checks,
13 but it is your plan to do so in the future?
14 THE WITNESS: That is correct.
15 BY MS. FLOYD:
16 Q As far as experience when it comes to your
17 employees, you said Cristina Cason -- correct? Am I
18 saying it right?
19 A Yes.
20 Q I have a tendency to butcher names. I
21 apologize. She does a lot of accounting work you said?
22 A Correct.
23 Q So what is your accounting background?
24 A She has an accounting degree, and she had --
25 she worked a prior NA for a rented accounting firm.

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1 Q Which firm was that?
 2 A It was in Florida. I don't know the name.
 3 Q Is she a CPA?
 4 A No, she's not.
 5 Q And what about Tracy Alexandria, Alexander?
 6 A Alexander.
 7 Q She's a portfolio manager essentially, right?
 8 A Correct.
 9 Q So what is her experience?
 10 A Well, I wouldn't call her a portfolio
 11 manager.
 12 Q Okay.
 13 A The way that I would differentiate that is
 14 what she actually does is work with the portfolio
 15 companies. She's more of -- you can call her a
 16 fractional COO working across all of those companies,
 17 and she has over twenty years' worth of experience of
 18 taking products to market.
 19 Q Okay.
 20 A And major corporations.
 21 Q And what about Dovile? What's her
 22 experience?
 23 A She has a degree. Her degree is in
 24 psychology, neuroscience, and economics. What she does
 25 is essentially help really understand why people buy.

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1 Q That's an interesting combination of degrees,
 2 psychology and economics. Okay. And what about Mr. De
 3 La Torre? What's his experience?
 4 A His experience is mostly from an account
 5 management sales perspective.
 6 Q Okay.
 7 A He and Mr. Alberson.
 8 Q You said -- you testified earlier that he
 9 does corporate-based programs and analytics. Does he
 10 have any sort of programming experience or --
 11 A It's not software.
 12 Q Okay.
 13 A It's like product development.
 14 Q Got it.
 15 MS. GUNN: I'm sorry. What kind of product
 16 is it that he's working on developing?
 17 THE WITNESS: So it's our investment product.
 18 So it goes within our portfolio, but it's specifically
 19 kind of tailored towards nonqualified deferred
 20 compensation programs for executives and companies,
 21 kind of like independent -- their own specific kind of
 22 retirement.
 23 MS. GUNN: So is he -- I'm trying to
 24 understand sort of what he brings to the table in terms
 25 of designing that kind of product and getting it

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1 structured properly. Does he have like TABS experience
 2 somehow or --
 3 THE WITNESS: No. I would work with him in
 4 terms of some of that complexity. He has some
 5 insurance experience. So a lot of the nonqualified
 6 deferred comp programs were built off of insurance
 7 platforms.
 8 MS. GUNN: Okay.
 9 THE WITNESS: So he has some of that
 10 experience and some understanding of benefit
 11 structures, a lot of understanding around benefit
 12 structures, and what this is, is essentially it's an
 13 executive benefit.
 14 MS. GUNN: Okay. Is there a common term in
 15 the industry for those types of benefits?
 16 THE WITNESS: Nonqualified deferred
 17 compensation.
 18 MS. GUNN: Okay. Has OE Capital started
 19 offering those products?
 20 THE WITNESS: Not yet, not as of yet.
 21 BY MS. FLOYD:
 22 Q Do you have a date in the future that you
 23 would like to start offering those products?
 24 A Not one predefined.
 25 Q If we can talk a little bit about OE

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1 Capital's funds, how many total funds are there again?
 2 A So there are three buckets.
 3 Q Okay.
 4 A One, two inventors.
 5 Q So Cfg I and Cfg II and then OE Capital
 6 Ventures, is that correct?
 7 A Correct.
 8 Q So I'm assuming that Cfg I is the original,
 9 the first one.
 10 A That's correct.
 11 Q Let's start with that one first.
 12 A Okay.
 13 Q I might get my dates wrong. So it was
 14 created by Mr. Metcalf, correct?
 15 A Correct.
 16 Q And that was February, March 2015 roughly?
 17 A It would have been -- I believe it's
 18 February.
 19 Q February of 2015, okay. Were you at all
 20 involved in creating that fund?
 21 A No.
 22 Q When did you get involved with the fund?
 23 A After it was created, after I started to
 24 raise some capital into it, and I realized that those
 25 terms that were created while we could meet those terms

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1 for investors, it was -- they were unsustainable for us
 2 as a company.
 3 Q Okay. So when did you start raising money
 4 for the fund, you yourself?
 5 A Probably February.
 6 Q 2015.
 7 A Yeah.
 8 Q And then you said it couldn't sustain the
 9 terms of, I'm assuming, the PPM. Is that correct?
 10 A Correct.
 11 MR. HOWELL: The PPM or the operating
 12 agreement?
 13 THE WITNESS: Well, the terms would be in
 14 the -- probably both, but certainly in the PPM.
 15 BY MS. FLOYD:
 16 Q And which terms did you think that they
 17 couldn't live up to?
 18 A The real thing that was going to kill -- kill
 19 the company was the ninety/ten split on any type of
 20 waterfall exit.
 21 Q Now, before we get further into that, this
 22 fund -- can you tell us a little bit about the fund?
 23 Can you tell us minimum investments, how many
 24 investors, what type of investors?
 25 A Minimum investment would be about 50,000.

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1 Q Okay.
 2 A I don't know how many investors are in that
 3 fund.
 4 Q Is it still open?
 5 A Yes. So if I can explain just a bit there --
 6 Q Sure, please. Please.
 7 A All of the funds, while we're not raising
 8 money into them, they're all open, and we treat
 9 everything as one fund.
 10 Q Okay. So you're treating the three
 11 individual funds as one big fund?
 12 A Correct.
 13 Q Do you disclose that anywhere?
 14 A I believe it is disclosed in our -- if it's
 15 not disclosed in the current OE Ventures PPM, it is
 16 being disclosed in the one that K&L Gates is working on
 17 right now.
 18 Q Okay. So if I'm an investor in Cfg I or Cfg
 19 II, would I be aware that my fund that I'm investing in
 20 is part of one big fund?
 21 A Yes.
 22 Q Where would I find that?
 23 A Well, you would -- you would have been
 24 introduced as one big fund, OE Capital Partners.
 25 Q So if I'm an investor --

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1 MS. GUNN: When would that information have
 2 been conveyed and how?
 3 THE WITNESS: It would have been conveyed
 4 through me as introducing you into the fund.
 5 MS. GUNN: Okay. You're saying orally?
 6 THE WITNESS: Correct.
 7 MS. GUNN: Okay. When you spoke to the
 8 investors.
 9 THE WITNESS: Correct.
 10 MS. GUNN: Okay. And do you speak to each of
 11 the investors?
 12 THE WITNESS: I do not.
 13 MS. GUNN: Okay. Those that do not speak to
 14 you personally, how are they informed?
 15 THE WITNESS: My belief is orally, but I
 16 can't confirm that.
 17 BY MS. FLOYD:
 18 Q What's the basis of your belief?
 19 A Just based on how we've taught Mr.
 20 Heinzelman, who's a Series 65 RIA, and he's done a
 21 significant amount of raising, how we've taught them to
 22 introduce the fund.
 23 Q So Mr. Heinzelman -- what's his first name?
 24 A Charles.
 25 Q And Charles, is he an employee of OE Capital?

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1 A No. He has his own company.
 2 Q What's his company's name?
 3 A He has two, C4 Benefits and Trajan Income.
 4 Q T-r-a-j --
 5 A A-n.
 6 Q Trajan.
 7 A Income.
 8 Q Okay. And Mr. Heinzelman is an RIA?
 9 A Correct.
 10 Q And what is your relationship with Mr.
 11 Heinzelman?
 12 A He raises capital for the fund.
 13 Q When did this relationship start?
 14 A June of 2015.
 15 Q And how do you know Mr. Heinzelman?
 16 A Mr. Metcalf held an event for advisers in
 17 Austin, Texas, and I believe it was either April or May
 18 of 2015. Mr. Heinzelman was there, and that's how we
 19 connected via Mr. Metcalf.
 20 Q Who raises -- which company of Mr. Heinzelman
 21 raises money for OE Capital?
 22 A They both do, but primarily it's been C4
 23 Benefits is my understanding. I pay an account of
 24 Charles Heinzelman. So what he does beyond that, I
 25 don't know.

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1 Q And how do you pay Mr. Heinzelman?
 2 A By wire.
 3 Q By wire. And how do you base your -- how
 4 does he get compensated? Is it based on a commission?
 5 Is it based on a salary?
 6 A No. It's based on a commission.
 7 Q And what is the commission?
 8 A Five percent.
 9 Q Five percent of each sale?
 10 A Of capital raised, amount of capital.
 11 Q Is it quarterly?
 12 A It's normally monthly.
 13 Q Monthly.
 14 A And for 2015, he also got a monthly -- \$6,000
 15 a month regardless if capital was raised.
 16 Q That's nice. So he gets \$6,000 regardless,
 17 right?
 18 A Yeah.
 19 Q Is there an agreement between the two of
 20 you?
 21 A It was a handshake.
 22 Q And how long is that agreement supposed to
 23 last?
 24 A It stopped last month.
 25 Q So from June 2015 to April of 2016, you had

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1 per month, just no more \$6,000. Is that correct?
 2 A Correct.
 3 Q Okay. How much to date have you given Mr.
 4 Heinzelman?
 5 A In commission?
 6 Q Yes.
 7 A I believe it's somewhere around \$200,000
 8 total.
 9 Q Were there months that he didn't raise much
 10 money, and you still paid him the \$6,000?
 11 A There might have been -- I think there was
 12 one.
 13 Q He consistently sells for you then?
 14 A Yeah, pretty consistent.
 15 Q Okay.
 16 A Pretty consistent.
 17 Q Besides your handshake, do you have any other
 18 agreement with him?
 19 A No.
 20 Q Does he market the funds for you? Is that
 21 what he does?
 22 A So he does market. I don't know if it's
 23 specifically our funds. I do know that part of it is
 24 terms that could be related to our fund.
 25 Q Okay. Does he ever show you or anyone at

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1 that agreement that you would pay him \$6,000 a month
 2 regardless of how much he raised?
 3 A Correct.
 4 MS. GUNN: Did you pay him commissions in
 5 addition to the 6,000 a month?
 6 THE WITNESS: Yes.
 7 MS. GUNN: Okay. And those were five
 8 percent?
 9 THE WITNESS: Yes.
 10 MS. GUNN: Okay.
 11 MR. HOWELL: Do you mind if I --
 12 MS. FLOYD: Please.
 13 MR. HOWELL: The agreement to pay Mr.
 14 Heinzelman was 6,000 a month, was that an agreement
 15 that was in place before you took over? Was that an
 16 agreement that you sort of adopted or was that
 17 something that was created at the time you took over in
 18 June or July 2015?
 19 THE WITNESS: That agreement was made between
 20 three entities, Mr. Heinzelman, Mr. Metcalf, and
 21 myself. So I wouldn't -- I don't think it would be
 22 accurate to say I simply took it over.
 23 MR. HOWELL: Okay.
 24 BY MS. FLOYD:
 25 Q So the agreement now is five percent capital

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1 your company documents he plans on giving to potential
 2 investors?
 3 A No.
 4 Q Do you ever approve anything he gives to
 5 potential investors?
 6 A No.
 7 Q Have you ever asked to look at documents he's
 8 given to potential investors?
 9 A No. I have only asked that any documents he
 10 gives outside of the PPM that we've created that he
 11 leaves our name specifically off of it and that he
 12 doesn't mention anything that can be tied directly to
 13 our fund.
 14 Q And why do you give him those instructions?
 15 A We're a 506B which means we don't do and
 16 can't do mass marketing.
 17 Q Okay.
 18 A I did not want to cross those lines, and I
 19 did not want to take a chance of him misrepresenting
 20 something from our funds.
 21 Q Okay. Let's just say Cfg I. Did you allow
 22 accredited and nonaccredited investors in this fund?
 23 A Yes.
 24 Q How about Cfg II?
 25 A Yes.

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1 Q So both were accredited and nonaccredited?
 2 A Correct.
 3 Q How about OE Capital Ventures?
 4 A There are nonaccredited in OE Ventures.
 5 Q Is that a 506C?
 6 A No. It's still a 506B.
 7 Q 506B, okay. I believe I saw in the PPM,
 8 which we'll get to in a minute, Cfg I is a 504?
 9 A Correct.
 10 MS. GUNN: Earlier Miss Floyd asked you if
 11 all of the funds were still open, and I think you
 12 testified all of the funds are still open. Are you
 13 still raising capital for all of the funds?
 14 THE WITNESS: No, ma'am.
 15 MS. GUNN: For which funds are you raising
 16 capital?
 17 THE WITNESS: OE Ventures.
 18 MS. GUNN: Okay. And when did you -- I
 19 assume you stopped raising for Cfg II. Is that
 20 correct?
 21 Yes.
 22 MS. GUNN: When did you stop raising for Cfg
 23 II?
 24 THE WITNESS: I believe the last ones were
 25 January or February of this year.

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1 MS. GUNN: Thank you. And just so we're
 2 understanding, when did you start raising capital?
 3 THE WITNESS: February of this year.
 4 MS. GUNN: And you're continuing to raise
 5 money for that?
 6 THE WITNESS: Correct.
 7 BY MS. FLOYD:
 8 Q And when did you stop raising money for Cfg
 9 I?
 10 A When?
 11 Q When.
 12 A I believe December of '15.
 13 Q You had mentioned Mr. Heinzelman. Did he
 14 raise money for all three funds or did he start with
 15 fund two, Cfg II?
 16 A Two.
 17 Q So who raised the money for Cfg I?
 18 A I did.
 19 Q You did. You did personally.
 20 A Yes.
 21 Q Anyone else on your team?
 22 A No.
 23 Q How much money did you raise for Cfg I?
 24 A I believe the number is somewhere around 850
 25 to 860,000 if I remember.

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1 Q And where did you find your investors?
 2 A They were mostly people that I've known, my
 3 friends or past clients.
 4 Q Any family?
 5 A No family.
 6 Q How many investors did you find?
 7 A I'm not quite -- I cannot -- I'm not quite
 8 sure. I can't remember how many investors
 9 specifically.
 10 Q And were these investors accredited or
 11 nonaccredited or both?
 12 A They were both.
 13 Q Both. And were you primarily communicating
 14 with these investors?
 15 A Yes.
 16 Q How about Cfg II? How much did you raise?
 17 Let me -- have you personally raised any money for Cfg
 18 II?
 19 A I have.
 20 Q You have. How much?
 21 A I have no idea.
 22 Q Okay. That's an honest answer. Thank you.
 23 And Mr. Heinzelman, do you know how much he's raised
 24 for Cfg II? And it's okay if you don't.
 25 A I don't know the answer to that question.

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1 Q Besides Mr. Heinzelman, have you used anybody
 2 else to raise money for Cfg II?
 3 A No.
 4 Q Do you know where Mr. Heinzelman finds his
 5 clients, his investors?
 6 A I don't know. I don't know all of his
 7 techniques.
 8 MS. GUNN: Do you have any understanding of
 9 how he goes about marketing the products that he sells?
 10 THE WITNESS: I know they do some referral
 11 marketing. I believe they have a radio ad that runs.
 12 MS. GUNN: Okay.
 13 THE WITNESS: And I don't know if he does
 14 anything else or not.
 15 MS. STUMBAUGH: How does Mr. Heinzelman get
 16 paid? Does he send you an invoice listing the amounts
 17 that he's raised? How do you know how much commission
 18 to pay him?
 19 THE WITNESS: So when -- when he sends in the
 20 paperwork, it has his name on it, and so we track it in
 21 our CRM.
 22 MS. GUNN: Earlier you testified that Mr.
 23 Heinzelman was a registered investment adviser. Is
 24 that him personally or one of his entities?
 25 THE WITNESS: I believe it's the -- I know he

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1 is a Series 65. I believe the entities are RIAs.

2 BY MS. FLOYD:

3 Q Is he still currently an RIA?

4 A Yes.

5 Q So after Mr. Heinzelman finds investors, do
6 these investors communicate with you or anyone on your
7 staff for OE Capital?

8 A By communicate --

9 Q Let's go back. So if I'm investor --

10 A Uh-huh.

11 Q -- and I want to invest in Cfg II, Heinzelman
12 finds me in some form or another. Once I sign -- does
13 he provide the PPMs to me?

14 A Yes.

15 Q Okay. And I would assume that OE Capital
16 provides PPMs to Mr. Heinzelman.

17 A Correct.

18 Q Okay. Do I receive anything other than the
19 PPM?

20 A Not from OE.

21 Q Not from OE?

22 A Correct.

23 Q What about from Mr. Heinzelman?

24 A I'm not sure.

25 Q You're unaware of what he provides to his

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1 A He will provide that to us.

2 Q And then what happens next?

3 A And upon that, you would receive -- on the
4 next quarter, you would receive a quarterly statement
5 from us.

6 Q Okay. Do I receive any e-mail updates or
7 phone calls? Do I have any communications with either
8 Mr. Heinzelman or OE Capital?

9 A Almost all your communications would go
10 through Mr. Heinzelman.

11 Q Okay. Who sends me my quarterly statements?

12 A We do.

13 Q Not Mr. Heinzelman?

14 A He wouldn't send you -- we mail out those
15 quarterly statements.

16 Q So I write the check, who am I writing it out
17 to?

18 A In that case, it has been Cfg II.

19 Q Okay. And would that go into a Cfg II?

20 A Correct.

21 Q And once it goes into the account, where does
22 it go from there?

23 A Once it goes into the account depending on
24 where the portfolio companies are and which one is
25 ready for its next milestone funding, it would go into

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1 investors?

2 A I am. I don't know if he provides anything
3 other the PPM.

4 Q What about a subscription agreement or an
5 operating agreement?

6 A I thought you were -- okay.

7 Q Yeah.

8 A At the time of investment, at the time of
9 prospecting.

10 Q As a potential investor, what would I
11 receive?

12 A From OE you would receive a PPM. You would
13 receive a subscription agreement.

14 Q Okay.

15 A And you would receive an LLC partnership
16 agreement.

17 Q And is this via Heinzelman?

18 A Correct.

19 Q Okay. So I would receive those three
20 documents, and then I become interested, and I
21 definitely do want to invest. I fill out the forms,
22 and then I provide them to Mr. Heinzelman or do I send
23 it directly to OE Capital?

24 A You provide that to Mr. Heinzelman.

25 Q Okay.

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1 a portfolio company.

2 Q Okay. Do you do any -- other than Mr.
3 Heinzelman, do you do any sort of dinners, investor
4 dinners, or have any events that you invite potential
5 investors to, to invest in any of the funds for OE
6 Capital?

7 A That's what we do.

8 Q Okay.

9 A Yes.

10 Q That's separate from Mr. Heinzelman?

11 A Correct.

12 Q Okay. So please explain those events, how
13 they came about.

14 A We generally will invite people
15 referral-based to an event. It might be at a hotel.
16 At that event, we'll have some light hors d'oeuvres. I
17 will present who we are, present the opportunity. And
18 then if anybody wants to follow up, they typically will
19 book an appointment with Dovile.

20 Q So going back to the referrals, where would
21 the referrals be coming from?

22 A Some come from current investors. Others
23 come from people that we just know, that know about us.

24 Q And if I'm a referral, would I be in contact
25 with Dovile? Who would I contact at OE Capital if I

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1 wanted to attend one of these meetings?
 2 A You would probably contact Dovile.
 3 Q And then she would say come to the W?
 4 A Correct.
 5 Q Or the Ritz. I'm just thinking of hotels in
 6 Dallas.
 7 A That's right.
 8 Q Say 5 o'clock on Thursday, we're having kind
 9 of a meet and greet and discussion regarding whichever
 10 fund. Is that correct?
 11 A That's correct.
 12 Q And at these meetings, do you provide any
 13 sort of materials?
 14 A Typically, no.
 15 Q So what is discussed specifically at these
 16 meetings?
 17 A Our investment methodology.
 18 Q Okay.
 19 A And how we pick our assets and how we
 20 collateralize those assets.
 21 Q Okay. And what is your methodology?
 22 A Our methodology is that we invest in the
 23 future revenues. So we are a revenue-based financing
 24 company for early stage companies, and so we're not
 25 seed. It's too early. We pick companies that have

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1 produced something. They've sold something, and now
 2 they need real growth capital. However, providing
 3 simply capital is an extraordinarily risky proposition.
 4 So along with that capital, we provide all
 5 human capital and human intellect to go in and operate
 6 with these entities to make sure that they're going to
 7 execute properly.
 8 Q Okay.
 9 A And once we get them to that point, we
 10 understand marketing and our markets and how we're
 11 going to go after them and our conversion rates, then
 12 we -- we invest in companies that have some level of
 13 assets so that we can collateralize against the
 14 dollars. Mostly for us that's inventoriable type of
 15 assets. It could be intellectual property if we deem
 16 there's a real value there outside of sales if we can
 17 sell that for a dollar amount. Once we now
 18 collateralize and we're off in sales, Tracy --
 19 Q What do you mean by collateralize?
 20 A We own. We own the inventory.
 21 Q The inventory of the company?
 22 A That is correct.
 23 Q Do you have an agreement that says we own
 24 inventory?
 25 A Yes, yes.

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1 Q Okay. And the inventory prior to funding?
 2 A Yes.
 3 Q Okay.
 4 MS. GUNN: Is that true for each of the
 5 companies in which you've invested?
 6 THE WITNESS: That's true for each of the
 7 companies. The only company that's different is
 8 RivaCare because they don't have an inventory. So we
 9 collateralized the brand and the IP.
 10 BY MS. FLOYD:
 11 Q Where do you find these portfolio companies?
 12 A Sometimes we found them at private equity
 13 events where they're essentially doing pitches. They're
 14 doing pitches. A couple of them have come via
 15 referrals, and those are the ways right now. Yeah.
 16 Q So you find a portfolio company. We'll get
 17 to specifics in a little bit. Let's just say ABC Corp.
 18 What happens next?
 19 A The first thing is we ask them to send their
 20 financials. We run them through a financial model to
 21 see based on what they think right now will they fit
 22 our financial model. We've developed an internal piece
 23 of software that helps us do that. It gives us either
 24 a red or a green.
 25 Q Who developed this?

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1 A I did.
 2 Q You personally developed this program?
 3 A Yes.
 4 Q Do you have a name for this program?
 5 A OREA, O-R-E-A.
 6 Q Does that stand for anything?
 7 A Optimal economics risk adjuster.
 8 Q Love the long names.
 9 (Laughter.)
 10 BY MS. FLOYD:
 11 Q So this program, you personally developed it?
 12 A I did.
 13 Q And so what exactly -- walk us through the
 14 program. Say I'm an employee and you're showing me
 15 this program for the first time. What does it do?
 16 A Very, very, very, very simple.
 17 Q Okay.
 18 A It takes an Excel spreadsheet, breaks it out
 19 in thirty-six months because the typical time frame for
 20 our relationship with a portfolio company is thirty-six
 21 months. It takes the revenues that they're projecting.
 22 It takes the ten percent capture that we
 23 would get. It takes into consideration a funding
 24 schedule, and what it does is it goes through line by
 25 line and says for every single month am I hitting my

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1 number if I stay at this particular revenue for the
2 rest of the term.

3 Q Okay. You said future sales. What was the
4 word you used, future --

5 MR. HOWELL: Funding.

6 BY MS. FLOYD:

7 Q Funding. You said they provide to you
8 basically what they potentially would assume their
9 sales would be. Is that correct?

10 A That is correct.

11 Q Do you have a basis of where they came up
12 with those numbers?

13 A Generally we don't at that point.

14 Q Okay.

15 A So that's just the first point of our due
16 diligence.

17 Q Okay. And then what happens next?

18 A After it goes through and it determines
19 whether it's a red or green --

20 MS. GUNN: I'm sorry. I'm not sure how we
21 got to red or green. So the software, which I think
22 you said is an Excel spreadsheet, tracks the revenue
23 over thirty-six months, the projected revenue, correct?

24 THE WITNESS: Correct.

25 MS. GUNN: And what is it that it does with

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1 Are you oil related? Are you real estate? And if you
2 are, we're going to discount you because we can't
3 control those prices.

4 That's a risk to us. So we're not -- so
5 instead of -- we're going to lower your projected
6 revenues what you think by at least ten percent.

7 MS. GUNN: Okay.

8 BY MS. FLOYD:

9 Q Does it vary depending on what it is? If
10 it's real estate, is twelve percent? Is there a
11 formula?

12 MS. GUNN: Commodity.

13 A Not for each commodity.

14 BY MS. FLOYD:

15 Q Okay.

16 A It just basically has -- we have a list of
17 commodities that are priced at a certain point. And
18 based on my background and Dovile's background in
19 economics, we say, okay, if it's got this much oil as a
20 part of the company, we are not going to be able to
21 control the price of that. Somebody else that has --
22 that's pulling strings will. So let's discount that
23 their revenues because we can't -- we can't control
24 that.

25 MS. GUNN: Let's step back. Are any of the

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1 respect to the ten percent capture?

2 THE WITNESS: Okay. The software is written
3 in Visual Basic access.

4 BY MS. FLOYD:

5 Q What does that mean?

6 A Access database.

7 Q Okay.

8 A What it does is you -- the portfolio company
9 or I should say the potential portfolio company at this
10 point provides us with an Excel spreadsheet of
11 thirty-six months' worth of basically income
12 statements.

13 What we do is we take the top-line revenues
14 and load it into OREA. It's just a button that you
15 basically click. What OREA does is it takes ten
16 percent. So the contracts that we have, we take ten
17 percent off the top-line revenues.

18 MS. GUNN: That's the way you get repaid?

19 THE WITNESS: That is correct.

20 MS. GUNN: Okay.

21 THE WITNESS: For three years.

22 MS. GUNN: Right.

23 THE WITNESS: And so what OREA does is it
24 takes -- it assumes ten percent, and then it does one
25 little special thing which it says are you a commodity.

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1 companies in which you currently invested fund money
2 companies that have -- are commodity-based?

3 THE WITNESS: No.

4 MS. GUNN: Okay. Let's take the noncommodity
5 situation.

6 THE WITNESS: Okay, noncommodity. So
7 revenues times ten percent equals how much we're
8 capturing.

9 MS. GUNN: Right.

10 THE WITNESS: And it does that for every
11 single month, and then what it does is it assumes that
12 for this month, this is the best you're going to get
13 for the next thirty some-odd months, right?

14 MS. GUNN: Right.

15 THE WITNESS: So what we're looking is at
16 what point do they turn green, and can they stay green.

17 MS. GUNN: At what point does who turn green?

18 THE WITNESS: The revenue projection. So
19 green means you're going to be able to generate enough
20 revenues to repay us plus the multiples that we're
21 looking for on our capital.

22 MS. GUNN: Okay. So what you're looking for
23 is that within the thirty-six months, they're going to
24 generate enough revenue just capturing the ten percent
25 to make sure that it repays the money that's

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1 essentially loaned?
 2 THE WITNESS: That is correct.
 3 MS. GUNN: Okay.
 4 BY MS. FLOYD:
 5 Q Now that you're at the green point --
 6 A Right.
 7 Q -- what happens next?
 8 A If we get green, then we basically have a
 9 little powwow between Cristina, Tracy, myself, and
 10 Dovile, and we decide whether or not we think this is
 11 just a good fit for us. If we believe that's true,
 12 then what we do is we enter into an eight to
 13 twelve-week due diligence process where we look at
 14 everything.
 15 So we look at their books. We look any
 16 contracts they have in place. We look at their human
 17 resources or leadership, the people that are in the
 18 company. We look -- we do a lot of market research. We
 19 try to understand what the market is.
 20 What are the market demographics? Will this
 21 particular product sell at the price point they believe
 22 it will? What are their competitors doing? How open is
 23 the market? What is their infrastructure? Are we going
 24 to have to buy separate infrastructure? How many people
 25 are we going to have to hire?

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1 So we go through a due diligence process to
 2 say is this -- is this company real, and do we
 3 believe -- or does the business support the fact that
 4 they're going to actually succeed.
 5 Q And these are companies that actually have
 6 sold the product prior to you coming in. Is that
 7 correct?
 8 A Correct.
 9 Q Okay. And you did due diligence on the
 10 company, and you said the individuals within the
 11 company as well?
 12 A Yes.
 13 Q What do you do with the individuals within
 14 the company?
 15 A Basically just interviews right now. Brandon
 16 made a very, very good suggestion earlier this year
 17 which we've started to engage. I think we've done it
 18 with one company where we run background checks now on
 19 the principals.
 20 MR. HOWELL: That wasn't Brandon. That was
 21 me.
 22 MS. FLOYD: Take your time.
 23 THE WITNESS: You weren't even in the room.
 24 (Laughter.)
 25 BY MS. FLOYD:

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1 Q Okay. So you do due diligence. You do
 2 extensive due diligence, I'm assuming.
 3 A Yes.
 4 Q What happens next?
 5 A Then we put together -- with the company we
 6 put together a new financial model based on everything
 7 that we've now found, and we see if that's going to be
 8 better or worse. And if it's better, then it's a
 9 really good opportunity, and now we start to engage in
 10 terms.
 11 Q So how is your model different than the
 12 original model?
 13 A The original financial model?
 14 Q Correct. What do you bring to the table?
 15 A Well, we bring to the table a lot of
 16 discipline, number one, on the numbers. So many times
 17 after we get done with it, the model is actually not
 18 better.
 19 It's worse because they overestimated their
 20 market conversion capabilities. They're not priced
 21 right. They don't understand a go-to-market strategy.
 22 Many times we -- there's no real product. There's no
 23 real market there. So they've sold some, but to grow
 24 into a big company, the market just doesn't --
 25 Q It's a short lifeline essentially?

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1 A Yeah.
 2 Q Okay.
 3 A So in many cases, we'll get to a point --
 4 and, you know, let's say eight to twelve weeks. We'll
 5 get to point in week four where we're saying not a good
 6 deal because we're already seeing what's going to
 7 happen here. So let's just get out. Let's not go any
 8 further with this.
 9 If it comes out better, what we're typically
 10 bringing is new lines of revenue through either
 11 relationships we have or different ideas, different
 12 markets that they didn't think was available that we
 13 validated are. So we can create different streams of
 14 revenue.
 15 One of the huge things that we bring to that
 16 is the human capital to do it. So they don't have to
 17 now go out and hire a whole team that they absolutely
 18 can't afford.
 19 My team comes in and helps create those
 20 additional channels for them, and then we build out
 21 that company as it's able to support it.
 22 Q So who within your team would go over
 23 typically to a company?
 24 A Tracy is essentially the COO of most of them,
 25 but we all -- when I say we, Dovile, Cristina, myself,

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1 Tracy, and sometimes Vince and Chad, we all operate
2 probably about fifty percent of our time helping those
3 portfolio companies execute on something, whatever that
4 is.

5 Q Okay. So you get to the green level, and
6 then you do the -- you said at least twelve weeks due
7 diligence, and you have your own model. If it's good
8 and looks good, what happens next?

9 A So we create a milestone funding schedule.
10 One of the things that's unique about us is we don't
11 just give a million dollar check up front and hope it's
12 okay. So what we'll do is create a milestone funding
13 schedule.

14 It might be \$200,000, and now they have to
15 hit the next milestone in order to get the next
16 tranche. And so we're now tracking to make sure that
17 they're -- we will be tracking to make sure that
18 they're on schedule. Once that schedule's agreed to,
19 we then start to negotiate the short form terms. Once
20 that's agreed to, we go to the long form.

21 Q Okay. So who creates the milestone form for
22 the funding?

23 A Tracy, Cristina. Primarily it's the two of
24 them.

25 Q Okay.

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1 A Sometimes Dovile helps with that.

2 Q Okay. And so once they've agreed on the
3 milestone funding, then you get to the contract with
4 the portfolio company.

5 A Yes.

6 Q What happens next?

7 A Once both legal teams or whoever's involved
8 has agreed and it's signed --

9 Q Changes things.

10 A Red lines it to death. It takes forever and
11 costs a lot of money. Once they've agreed to it and
12 it's signed, now we're ready to execute. So typically
13 we'll have some kind of kickoff, and Tracy will go with
14 a project plan, and we'll get to work.

15 Q Okay. So the project plan is created before
16 the contract is signed?

17 A Well, partially.

18 Q Okay.

19 A Partially.

20 Q So what is the project plan -- I know we
21 received it last night. We haven't had a chance to
22 open it up. Can you give me a brief overview of what I
23 would expect to see if I saw a project plan?

24 A Whew. Okay.

25 Q Is that a complicated question I just asked?

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1 A It's a lot of stuff.

2 Q Okay.

3 A So I can -- I can make it very, very
4 straightforward.

5 Q Okay. Please.

6 A When you open, you're going to see probably
7 about eight or nine tabs. It's going to start with the
8 sales pipeline. It's going to have a tab for every
9 single product that's offered.

10 It's going to understand what the inventory
11 looks like. It's going to understand how much the
12 inventory costs, how are we going to take that
13 particular product to be market.

14 It will have the entire marketing channels,
15 whether it's retail or e-commerce or some other
16 channel, BDB, for example, salespeople on the street,
17 what those conversion rates look like, and then we back
18 into the cost of that marketing, and then we supply
19 chain delivery, shipping. And I'm probably missing a
20 couple.

21 Q Sure.

22 A Essentially what is it going to take
23 operationally.

24 Q It's a comprehensive plan.

25 A It is extraordinarily comprehensive. What

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1 Chad has helped do with those plans is we've put
2 metrics and analytics behind it.

3 So while Tracy's working with those companies
4 and she's going in and saying here's where we are, it
5 starts to turn either green or yellow or red which
6 means we're either on schedule, off schedule, or dead.

7 Q Okay.

8 A And if we're -- if we're dead, they don't get
9 a next tranche.

10 Q Hypothetically if they're dead, what happens
11 next?

12 A If they're dead, then what we've done when
13 we -- in that initial tranche, we make sure it's going
14 into something that's collateralized.

15 Q Like the inventory?

16 A Like the inventory or we at least make sure
17 that we've got the signed paperwork that we've
18 collateralized in terms of -- with the IP. And so now
19 if they don't get a next tranche, well, then we just
20 go. We have the ability to go liquidate those assets
21 and recapture the funds.

22 Q You have the ability, but do you -- first off
23 have you been in a situation where you funded a
24 company, and it's gone dead after initial funding?

25 A Once.

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- 1 Q What was the company's name?
 2 A One Direct Marketing.
 3 Q And what did they do? What was their
 4 specialty?
 5 A They sold energy.
 6 Q Energy, okay.
 7 A Yes.
 8 Q So what were you trying to collateralize on?
 9 A They had a specific software platform that
 10 they had created that allowed them to do that, and
 11 that's what we collateralized with.
 12 Q So after it went dead, what did you guys do
 13 with the company?
 14 A Well, we let them go, and we held on to the
 15 collateral.
 16 Q So you still own the collateral?
 17 A Yes.
 18 Q Okay. Do you have any plans to sell it or
 19 what are you planning on doing with it?
 20 A We might. I think we can actually resurrect
 21 it and make it do something. In that particular case,
 22 the entrepreneurs really were a problem. So we held on
 23 to the collateral. It didn't -- we did not take that
 24 heavy of a loss on that.
 25 Q And when did it go dead?

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- 1 A November 2015.
 2 Q And that's the only one that's gone dead?
 3 A Yes.
 4 Q Okay.
 5 MS. GUNN: How much had you advanced to them?
 6 THE WITNESS: 100,000.
 7 MS. STUMBAUGH: What kind --
 8 THE WITNESS: 125,000, I believe.
 9 MS. STUMBAUGH: Sorry. What kind of
 10 collateral are y'all holding from them?
 11 THE WITNESS: Software.
 12 BY MS. FLOYD:
 13 Q Is there a patent on the software?
 14 A No, I don't think there is.
 15 Q And where is One Direct located?
 16 A Now nowhere?
 17 Q Where was it located?
 18 A They were in Dallas.
 19 Q Okay.
 20 MS. GUNN: Have you made any efforts to sell
 21 the software?
 22 THE WITNESS: No, no.
 23 BY MS. FLOYD:
 24 Q So moving forward on a portfolio company that
 25 goes green and stays green, what happens next after you

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- 1 have this -- you have this funding? Do you continue to
 2 fund them per milestone?
 3 A Correct.
 4 Q How long are these investments for?
 5 A Three years.
 6 Q Three years?
 7 A Three years.
 8 Q So what happens at the end of the three
 9 years, the thirty-six months? What happens to this
 10 portfolio company?
 11 A If we've reached the agreed-upon -- I will
 12 call it exit numbers, then we shake hands and go
 13 separate ways. If we have not, we have the option to
 14 stay in until we do or if they're doing exceptionally
 15 well, then the portfolio company has the option to pay
 16 out early.
 17 Q Okay. So I'm assuming you haven't gotten to
 18 this level yet.
 19 A No.
 20 Q Okay.
 21 MS. GUNN: One follow-up from some of your
 22 earlier testimony. Based on your testimony, I was
 23 understanding that none of the events that you've held
 24 at the various hotels, that the people who have
 25 attended that have not been people that Mr. Heinzelman

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- 1 has marketed to. Is that correct?
 2 THE WITNESS: That's correct.
 3 MS. GUNN: Okay. Thanks.
 4 BY MS. FLOYD:
 5 Q And going back to your testimony, we talked
 6 about the method of your madness of your investment
 7 strategy. What else do you talk about besides the
 8 method at these meetings?
 9 A That's it.
 10 Q That's it?
 11 A Uh-huh.
 12 Q Do people have questions? Do they come to
 13 you for questions or do they go to Dovile, Tracy?
 14 A They generally -- they have a few questions.
 15 They generally come to me or Dovile. That's typically
 16 where the questions go.
 17 Q And after a person attends one of these
 18 events, if they want to invest, they contact Dovile?
 19 A Yes.
 20 Q What percentage of these individuals that
 21 come to these events sign up and become investors?
 22 A Maybe -- if there's fifteen people in the
 23 room, maybe one or two.
 24 Q And how often do you have these events?
 25 A It has been sporadic. So I think we had four

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1 or five last year. That's about it. We've so far
 2 had -- I believe we've had two this year.
 3 Q Two this year. Are they in Dallas or are
 4 they in various other cities?
 5 A Dallas, Austin, Tampa.
 6 Q Tampa, okay.
 7 MS. GUNN: Why Tampa?
 8 THE WITNESS: Two reasons. I believe Mr.
 9 Heinzelman does have some people in Tampa, and so that
 10 specific event, the one in Tampa, was not for -- was
 11 not for prospective investors. It was for current
 12 investors. And so in that particular case, that was --
 13 the current investors that were connected to Mr.
 14 Heinzelman were there, but the bigger reason is we have
 15 two portfolio companies in Tampa.
 16 MS. GUNN: Okay.
 17 BY MS. FLOYD:
 18 Q Which portfolio companies do you have in
 19 Tampa?
 20 A APG and Future Products of America.
 21 Q Okay. Mr. Heinzelman, is he in Dallas?
 22 A He's in Austin.
 23 Q He's in Austin. What about C4 Benefits?
 24 A Right.
 25 Q Is that in Austin as well?

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1 A Yes.
 2 Q Now, we talked about Cfg II. Move on to OE
 3 Capital Ventures, and you had said only accredited
 4 investors were allowed in. Is that correct?
 5 A No. What I said is we only have accredited
 6 investors right now.
 7 Q Okay. But you can take on unaccredited?
 8 A We can.
 9 Q Okay.
 10 A Yeah.
 11 Q How many unaccredited do you have for Cfg II?
 12 A I'm not sure. A handful.
 13 Q A handful. Have you had any investor
 14 complaints?
 15 A No.
 16 Q How exactly is OE Capital compensated?
 17 A Can I ask a clarifying question?
 18 Q Please.
 19 A Do you simply mean how are we operating or
 20 how will we be profitable?
 21 Q Let's start with the first one. Let's start
 22 with, how are you operating? How do you pay your
 23 expenses, the lights, the rent, salaries, you name it?
 24 A Okay. So lights and rent, things like
 25 corporate expenses, we take ten percent of capital

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1 raised to help pay those corporate expenses. Salaries
 2 are a different beast for us because a big portion of
 3 that is really operating inside the portfolio
 4 companies, right? And so we take -- we take money from
 5 the fund to help us be inside those portfolio companies
 6 operating properly.
 7 MS. STUMBAUGH: Is that separate from the ten
 8 percent you mentioned earlier?
 9 THE WITNESS: Yes.
 10 MS. GUNN: Is there some allocation method
 11 that you use to determine -- let's say half your time
 12 is in the portfolio companies, and half your time is in
 13 other things.
 14 Is there some way you track or allocate your
 15 time so that you can determine which is proper to take
 16 from the funds and which is not and you need to pay for
 17 them somewhere else?
 18 THE WITNESS: What we actually do is we have
 19 an agreement with the portfolio companies of an amount
 20 that's negotiated. Let's call it five or ten percent,
 21 whatever we negotiate. That will allow us to pay for
 22 those people and so --
 23 MS. GUNN: I'm sorry. Are you saying that
 24 the portfolio companies are paying your people?
 25 THE WITNESS: So the way that it looks on the

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1 books, right, is that OE Capital -- that money gets
 2 basically pushed to OE Capital to pay, but the
 3 portfolio companies are agreeing that if we're going to
 4 be involved, then they're going to pay a return on
 5 those dollars.
 6 MS. GUNN: I'm sorry. I'm not following you.
 7 Okay. So the money comes into the fund.
 8 THE WITNESS: Money comes into the fund.
 9 MS. GUNN: It goes to OE Capital, correct?
 10 THE WITNESS: Yes. Money comes into the
 11 fund. Ten percent goes to overhead expenses and stuff
 12 like that, you know, Julie, Kim, people who are not in
 13 portfolio companies.
 14 MS. GUNN: Okay.
 15 THE WITNESS: I make an agreement with
 16 portfolio company one that SAYS, listen, we're bringing
 17 IN a LOT more than just human capital -- I mean
 18 financial capital here, and, you know, this level of
 19 talent is expensive.
 20 So what I'll do is let's agree there will be
 21 a seven and a-half percent financing fee or whatever it
 22 is, and now that money comes to OE Capital because
 23 there's OE Capital employees. But they're paying --
 24 essentially they're going to pay a return on those
 25 dollars because it's allocated to them as financing.

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1 MS. GUNN: I don't follow the last part of
2 that, the allocated to them as financing.
3 THE WITNESS: On the books.
4 MS. GUNN: Allocated to whom?
5 THE WITNESS: The portfolio company. Instead
6 of them having to go -- instead of them having to go --
7 MS. GUNN: They're taking the seven and
8 a-half percent out of the money that's being provided
9 to them as funding and paying it to OE Capital?
10 THE WITNESS: Right.
11 MS. GUNN: Okay. Is this something similar
12 to what in more private equity firms is called a
13 monitoring fee?
14 THE WITNESS: I would think it's similar.
15 MS. GUNN: Okay.
16 THE WITNESS: I would think that's similar.
17 MS. GUNN: And so the money by which a
18 portfolio company is able to pay that seven and a-half
19 percent, that money comes from the fund, correct?
20 THE WITNESS: Correct.
21 MS. GUNN: Okay. Thank you.
22 BY MS. FLOYD:
23 Q So in the agreement with the portfolio
24 company, you have agreed-upon revenues, correct, agreed
25 upon what --

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1 A Percentage.
2 Q -- percentage of revenues and then
3 hypothetically some type of percent for having your
4 team come in and help the company. That's a
5 separate -- that's something separate. Is that within
6 the same agreement as the revenue?
7 A Yes.
8 MS. STUMBAUGH: When is that seven and a-half
9 percent paid? Is that paid monthly? Is that paid as
10 they get funding?
11 THE WITNESS: As they -- as they get the
12 milestone funding.
13 MS. STUMBAUGH: Okay. So let's say company
14 receives \$100,000 in funding. They're going to turn
15 around and send \$7,500 back to you?
16 THE WITNESS: Correct.
17 MS. STUMBAUGH: Okay. I'm just trying to
18 understand the flow of money.
19 MS. FLOYD: Let me straighten that out a
20 little bit. They get 100,000. Then we take seven and
21 a-half percent as a part. So they've got 100,000. But
22 on the books, they've got a 107,500.
23 MS. GUNN: So the money that's paid to OE
24 Capital for -- to compensate for the work that your
25 staff does, you and your staff do for portfolio

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1 companies, never actually goes to the portfolio
2 company. Is that correct?
3 THE WITNESS: The seven and a-half percent,
4 that is correct.
5 MS. GUNN: The actual cash doesn't go to the
6 portfolio company?
7 THE WITNESS: That is correct.
8 MS. GUNN: But what the portfolio company --
9 MS. STUMBAUGH: Owes.
10 MS. GUNN: -- owes back is -- it is included
11 in that number?
12 THE WITNESS: That's correct.
13 MS. GUNN: Okay. I think I follow it now.
14 MS. FLOYD: Should we take a break? Let's go
15 off the record at 11:34.
16 (Whereupon, at 11:34 a.m., a luncheon recess
17 was taken.)
18 AFTERNOON SESSION
19 MS. FLOYD: Back on the record at 12:29 p.m.
20 BY MS. FLOYD:
21 Q We just took short recess for lunch. We
22 didn't have any conversations, substantive
23 conversations off the record during a break, have we?
24 A No.
25 Q Prior to going off the record for lunch, we

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1 had talked about hotel events. You had meetings with
2 potential investors. Were current investors also
3 present?
4 A We had different meetings for current
5 investors.
6 Q Okay. Where do those meetings occur?
7 A Typically in a hotel or something like that.
8 Q And how many meetings did you have with
9 current investors?
10 A Two.
11 Q Two meetings?
12 A Yes.
13 Q Two this year or two --
14 A They were both in 2015.
15 Q And where were they located?
16 A One was here in Dallas or in Dallas, and one
17 was in Tampa.
18 Q Tampa.
19 MS. GUNN: And is that the Tampa meeting you
20 previously referenced?
21 THE WITNESS: Yes.
22 MS. GUNN: Thank you.
23 BY MS. FLOYD:
24 Q How many investors went to the one in Dallas
25 ballpark?

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- 1 A Twentyish.
 2 Q Twentyish. What about Tampa?
 3 A I would say maybe twenty-five.
 4 Q Okay. And why did you have these meetings
 5 for investors?
 6 A Just so they can get to know us, make sure
 7 they knew who we are and kind of reiterate what our
 8 process is and help them understand what we do better.
 9 Q Were these investors that OE Capital found
 10 and/or Heinzelman found?
 11 A And/or Heinzelman, yes.
 12 Q Did any of these investors reinvest in -- not
 13 reinvest. Did they invest in a new fund or a different
 14 fund than they had originally invested in?
 15 A No.
 16 Q Okay. Besides the, I believe, what, there
 17 are seven total events, you said five for prospective,
 18 two for current investors, did you have any other
 19 events for prospective investors or investors?
 20 A No.
 21 Q Do you travel quite a bit for your job?
 22 A I do.
 23 Q Where do you go?
 24 A Mostly New York, Tampa, and LA.
 25 Q Why do you go to New York?

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- 1 A Private equity events.
 2 Q And how often?
 3 A Two or three times a year.
 4 Q Do you go by yourself or do you bring staff
 5 with you?
 6 A Typically Cristina Cason is with me and
 7 Dovile as well.
 8 Q How about Tampa?
 9 A Every couple of months.
 10 Q And what do you do in Tampa?
 11 A Work with portfolio companies.
 12 Q You previously testified you have two
 13 portfolio companies in Tampa?
 14 A Yes.
 15 Q Do you typically meet with a potential
 16 portfolio company?
 17 A We would.
 18 Q And did you meet with any of them in Tampa?
 19 A Those two before they became portfolio
 20 companies.
 21 Q How about Los Angeles?
 22 A Portfolio company.
 23 Q Which portfolio company is in Los Angeles?
 24 A RivaCare.
 25 Q And how many times have you been to LA?

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- 1 A Twice.
 2 Q And did you bring Miss Dovile and Cristina?
 3 A Yes.
 4 Q Do you ever have dinners with investors?
 5 A Yes.
 6 Q How often?
 7 A Not often.
 8 Q And is it with just one investor, two
 9 investors, a group of investors?
 10 A One or two would be my friends more than an
 11 investor dinner.
 12 Q So other than the hotel events -- are these
 13 events traditionally at hotels or are they at
 14 restaurants?
 15 A Mostly hotels or business -- like a business
 16 club.
 17 Q Business club, for example?
 18 A The Tower Club in Dallas.
 19 Q Gotcha.
 20 MS. FLOYD: Do you guys have any questions?
 21 BY MS. FLOYD:
 22 Q We spent quite a bit of time talking about
 23 how you find portfolio companies and what you look for,
 24 for portfolio companies. Now I want to kind of dive
 25 into the portfolio companies you actually did invest

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- 1 in. How many have you invested in currently?
 2 A Four.
 3 Q Four, okay. Can you name them, please?
 4 A APG, Athletics Performance Gear.
 5 Q Okay. Has it gone by any other names, T-u?
 6 A Yes. Tu is the brand of the product.
 7 Q Got it, okay. Of which product?
 8 A It is a specialty water bottle made for
 9 runners.
 10 Q And we'll dive more into that in a second.
 11 So you have Athletic Performance Gear, and what's the
 12 second one?
 13 A Future Products of America.
 14 Q Okay. And where is that one located?
 15 A Tampa.
 16 Q Tampa. And you mentioned previously that
 17 Athletes Performance Gear is also in Tampa, correct?
 18 A Correct.
 19 Q Okay. What is the third one?
 20 A WHRZT!
 21 Q Where is that located?
 22 A Dallas.
 23 Q And the last --
 24 MS. GUNN: Would you spell that for the
 25 record, please.

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1 THE WITNESS: W-H-R-Z-T.
 2 MS. GUNN: It's in all caps, right?
 3 BY MS. FLOYD:
 4 Q Are they all caps?
 5 A All caps.
 6 Q And it's WHRZT!
 7 A WHRZT!
 8 Q What about the last one?
 9 A The last one is RivaCare.
 10 Q And that's in Los Angeles, correct?
 11 A Correct.
 12 Q Let's start with Athletes Performance Gear,
 13 APG. When were you introduced to APG?
 14 A Either September or October of 2015.
 15 Q And how were you introduced to APG?
 16 A Met them at a private equity conference in
 17 New York.
 18 Q When did you meet them in New York?
 19 A September or October of 2015.
 20 Q Okay. And what did you guys discuss at the
 21 New York event?
 22 A Just told them we liked his water bottles and
 23 wanted to see if there was an opportunity for us to,
 24 you know, potentially fund him.
 25 Q Did he make a presentation on his water

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1 bottles at this event?
 2 A He did not.
 3 Q How did you know about the water bottles?
 4 A He had them with him.
 5 Q Was he carrying them around?
 6 A Yeah.
 7 Q And these water bottles, is it like what
 8 Carol has hanging around or what's special about these
 9 water bottles?
 10 A So the way that they fit in your hand as a
 11 runner, you run with them, and it's almost like you
 12 don't feel that they're there, and then they have a
 13 little trigger on them. So while you're running, you
 14 push the trigger, and the water just kind of squirts in
 15 your mouth.
 16 Q Okay.
 17 A And you run with two of them, and they have
 18 weights on them for, you know, a little bit of
 19 resistance while you're running.
 20 Q So you actually feel the water bottle then?
 21 A Correct.
 22 Q Because it's got weights in it, okay.
 23 A That's right.
 24 Q Okay.
 25 MR. HOWELL: You've got a customer. She's a

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1 runner.
 2 MS. FLOYD: I have hydration fast. I don't
 3 like to carry things in my hands.
 4 BY MS. FLOYD:
 5 Q Who runs the company?
 6 A Well, the CEO is a gentleman by the name of
 7 John Hobbs.
 8 Q Okay.
 9 A Who actually runs the company is Tracy.
 10 Q Okay. So did John Hobbs design the products,
 11 the water bottles?
 12 A Yeah.
 13 Q Is the water bottle the only product APG has?
 14 A They have another product called Elixir.
 15 Q What's that?
 16 A It's an electrolyte formula.
 17 Q And who manufactures that?
 18 A I can't remember the name of the company.
 19 Q Do you know who manufactures the water
 20 bottles?
 21 A Our contact is a company called First
 22 Innovations Group.
 23 Q First Innovations Group.
 24 A They're actually manufactured in China.
 25 Q Of course. Sorry. You said Tracy

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1 practically runs the company. Is that correct?
 2 A Correct.
 3 Q Okay. Why do you believe that?
 4 A Because she does everything from all of the
 5 operations. There are three employees. She really
 6 helps direct them, make sure that the tasks are getting
 7 done.
 8 Q And does Tracy do that from Dallas?
 9 A She lives in Austin, but, yes, she also
 10 travels sometimes.
 11 Q Okay. So what does Mr. Hobbs do for the
 12 company?
 13 A He's supposed to be the face of the company.
 14 Q Okay. Did you do any due diligence on Mr.
 15 Hobbs?
 16 A On him like a background?
 17 Q Anything. You interviewed him. Is that
 18 correct?
 19 A We did interview him. We took him through
 20 our standard process.
 21 Q What about a background check?
 22 A We did not do that.
 23 Q Okay. So for Mr. Hobbs, are you aware of his
 24 criminal convictions?
 25 A I am not.

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1 Q Okay. So you're not aware that he was
2 arrested in 1985 for heroin sale or purchase, 1986 for
3 possession of cocaine, 1989 for burglary, and 1990 for
4 trafficking stolen property?
5 A No.
6 Q Okay. So when you met Mr. Hobbs in New York,
7 what piqued your interest? Did you think the product
8 was something that would be marketable, it could make a
9 lot of money? What made you interested in the product?
10 A I've run two marathons, and when I saw it, I
11 thought it was a good idea.
12 Q Okay.
13 A And then he actually sold some product, and I
14 thought that there was a market for it.
15 Q Okay. So how many -- how many water bottles
16 did he sell before he had met you?
17 A A few thousand, maybe four or 5,000.
18 Q Does he have a website?
19 A He did.
20 Q And was he just selling it through his
21 website?
22 A And trade shows.
23 Q Trade shows, okay. Nothing like Amazon?
24 Nothing like that?
25 A No.

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1 Q Okay. How often did he go to trade shows?
2 A I don't know.
3 Q So when you had previously talked about when
4 you first met a portfolio company and you figured
5 out -- they gave you future projections, I'm assuming
6 Mr. Hobbs gave you future projections.
7 A He did.
8 Q And you put it in your OREA program?
9 A Yes.
10 Q And it passed the test, right?
11 A Yes.
12 Q So then you did due diligence on the company,
13 and then you did your own projections. Is that
14 correct?
15 A Correct.
16 Q I'm going to take one out.
17 (SEC Exhibit No. 9 was marked for
18 identification.)
19 BY MS. FLOYD:
20 Q I'm handing you what has been labeled as
21 Exhibit 9. Take a moment and look through it. Do you
22 recognize Exhibit 9?
23 A Yes.
24 Q What is it?
25 A This is the financial projections funding

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1 sheet for APG.
2 Q Okay. And who created Exhibit Number 9?
3 A Cristina Cason.
4 Q And it was used by using your OREA program?
5 A No. This was --
6 Q No.
7 A This was created by her after OREA.
8 Q Okay. And is there a special program that
9 she uses to create this?
10 A Excel, Microsoft Excel.
11 Q Would you walk us through what we're looking
12 at, of what you would look for to make the investment,
13 to have something be a good investment? What are you
14 looking for? What are the key areas?
15 A The first -- the first area you go to, you go
16 to the second page, and you'll see that there's --
17 Q I tried printing it in one sheet, but for
18 eyesight --
19 A Yeah, much easier.
20 MR. HOWELL: Thank you.
21 BY MS. FLOYD:
22 Q The second page.
23 A You will see that we would expect to fund
24 somewhere around a million dollars. You see the
25 funding plus the cost directly paid by OE.

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1 Q Yes, yes.
2 A And then if you came down to the revenue
3 captured piece --
4 Q Okay.
5 A -- you would see that there would be, you
6 know, a 10.5 million dollar capture.
7 Q Okay. So you're saying that they're going to
8 make about 10.5 million from these two products. Is
9 that correct?
10 A That's correct.
11 Q And then you would be funding roughly
12 around --
13 A A million bucks.
14 Q -- a million dollars. Okay.
15 MS. GUNN: I'm sorry. Are you saying that
16 the revenue that would be paid under this agreement to
17 the funds was the 10.5 million dollar number? Is that
18 correct?
19 THE WITNESS: Correct. Now, we would --
20 MS. GUNN: That's not how much the company
21 makes, correct?
22 THE WITNESS: That's not how much this
23 company makes, no. His net profit would be 8.4.
24 BY MS. FLOYD:
25 Q So together roughly around 19 million?

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- 1 A Correct.
- 2 Q And how did you come up with those numbers?
- 3 A Well, if you come back to the first page, you
- 4 will see the projected units -- I'm sorry -- the
- 5 projected sales channels, commercials, digital media,
- 6 catalog sales, marketing team, and the electrolyte.
- 7 Q Uh-huh.
- 8 A The number of units that they would expect to
- 9 sell, and then that goes all the way down to kind of
- 10 the projected units of sale and then the cost of goods
- 11 sold, and that starts to give you your revenue number.
- 12 Q Okay.
- 13 A The total projected sales should be the
- 14 revenue number.
- 15 Q Okay.
- 16 A So we would go -- we would just merely look
- 17 on the top line, off the negotiated captured percentage
- 18 for that company.
- 19 Q Okay.
- 20 A Then what we would do is come down to the
- 21 bottom line, second to the bottom where it says net
- 22 profit, and the second thing we're looking for is do
- 23 they start to run a positive net profit. If that's
- 24 true, then that means we don't have to fund them
- 25 forever in order to maintain -- maintain a return.

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- 1 Q Okay.
- 2 A So as long as they were starting to generate
- 3 a positive net profit, and then there were strong
- 4 enough sales to generate the revenue capture that we
- 5 would want, then this would end up being a good
- 6 investment.
- 7 Q Okay. It looks like around September of
- 8 2016, October of 2016, there seems to be quite a jump
- 9 in net profit. What do you anticipate happening during
- 10 those two months?
- 11 A Between September --
- 12 Q September and October of 2016, correct. Am I
- 13 reading this right? It says thirty-six -- roughly
- 14 36,000 in net profit to 69,000 in net profit down
- 15 below.
- 16 A Uh-huh.
- 17 Q Down below in the net profit blue line.
- 18 A That's right. Yeah. I see it. Let's see
- 19 what she has put in here.
- 20 Q She you mean Cristina?
- 21 A Cristina. The change in net profit comes out
- 22 the change in operating expenses.
- 23 Q Okay.
- 24 A You can see a 25,000 dollar switch if you go
- 25 back up to the product marketing team.

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- 1 Q I see that.
- 2 A So what she was saying is somewhere around
- 3 there we should bring on two team members, product
- 4 marketing team members. So she costs that in at
- 5 \$25,000.
- 6 Q Do you mean for the commercial? Am I reading
- 7 this right?
- 8 A Is that commercial?
- 9 Q Yeah. It looks like marketing team TV
- 10 commercial.
- 11 A That's it. Sorry.
- 12 Q There's a lot of lines.
- 13 A Yeah. So she puts 25,000 in for new
- 14 commercials. So there's where your costs come from.
- 15 Q And she's hoping more sales will come from
- 16 the commercial?
- 17 A More sales come from the commercial, and
- 18 then -- and then operating expense goes down.
- 19 Q Okay.
- 20 A So, for example, take August to September.
- 21 Q Okay.
- 22 A I mean August to October. If you look at
- 23 August, we've got a 52,000 dollar net profit, and then
- 24 October is 69,000. So that's not such a big jump.
- 25 Q Got it.

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- 1 A The dip in actually in the net profit off of
- 2 costs it gets paid.
- 3 Q Got it. Okay. So if I'm reading this
- 4 correctly, you have manufacturing costs. So it looks
- 5 you're manufacturing pretty hard core up front, but
- 6 then you're not having any more costs later on.
- 7 A The idea is that they would be able to pay
- 8 the manufacturing costs. So that's cost directly paid
- 9 by OE.
- 10 Q Got it.
- 11 A So they would be able to manufacture
- 12 themselves.
- 13 Q Okay. So how does Cristina predict the
- 14 number of units that are going to be sold?
- 15 A So what we do is we look at each sales
- 16 channel, and for each of those sales channels, there's
- 17 a lot of information on what a conversion rate would
- 18 be. Excuse me. And so let's take digital media --
- 19 digital media sales, for example.
- 20 Q Okay.
- 21 A Any big Optimedia or digital media company
- 22 will tell you based on a targeted media buy, targeted
- 23 meeting they're looking at certain people of certain
- 24 demographics, that they have information on buying
- 25 habits.

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1 So a targeted media buy would convert at one
 2 percent, and if it was called retargeting would convert
 3 it thirty percent. What Cristina does is take those
 4 numbers and apply them here and then cut them in half.
 5 So we assume one-half of the conversion rate that is
 6 typically assumed for any marketing channel.
 7 Q Okay. Have you guys created plans to sell
 8 this product?
 9 A Yes.
 10 Q Digitally?
 11 A We have.
 12 Q What are your plans?
 13 A We plan -- we're going -- we've actually
 14 executed a digital video to be played on, you know,
 15 YouTube channels and whatever and Facebook, Instagram,
 16 wherever it is. We have -- we're planning on executing
 17 a digital media buy. So that's going to -- what that
 18 is, they're going to go out and basically push all of
 19 this content that says, hey, don't you love me, buy me
 20 to somewhere around thirty million people.
 21 Q How do they do that?
 22 A They're a marketing agency. That's kind of
 23 what they do.
 24 Q And then you have commercials --
 25 MS. GUNN: Is that 3HM?

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1 THE WITNESS: 3HM is the branding company.
 2 The marketing agency in this case that we were using is
 3 Optimedia.
 4 BY MS. FLOYD:
 5 Q What does 3HM stand for?
 6 A 3-Headed Monster.
 7 Q That's a good marketing name. Up under
 8 projected sales, commercials, it doesn't seem like you
 9 guys are planning on getting any sales from
 10 commercials?
 11 A Not off of TV.
 12 Q You're spending 25,00 for a TV commercial.
 13 A That's -- as a TV commercial, you can
 14 substitute that for digital media buy. So that really
 15 is just we were planning on buying more marketing at
 16 that point.
 17 Q Okay. So this is created right when you guys
 18 enter into an agreement with the portfolio company. Is
 19 that correct?
 20 A That's correct.
 21 Q Do you guys update these realtime as well?
 22 A Yes.
 23 Q Okay. Are these the milestones?
 24 A No. They could be. So revenue begins to
 25 definitely be a milestone.

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1 Q Okay.
 2 A But the milestones are actually tracked in
 3 the project plans.
 4 Q Okay.
 5 MS. STUMBAUGH: You said that OE Capital
 6 Partners had a revenue share of ten percent. Is that
 7 correct?
 8 THE WITNESS: In most cases, yes.
 9 MS. STUMBAUGH: What about for APG?
 10 THE WITNESS: The original agreement with APG
 11 was ten percent. However, the CEO came back and said,
 12 hey, if the numbers support it, can I just up the
 13 percentage and pay you out early. So we would not -- I
 14 mean, in this case, our projected revenue capture, if I
 15 remember correctly, was about four X, so about \$4
 16 million. So at four million is actually when we would
 17 get out.
 18 MS. STUMBAUGH: This is showing a sixty
 19 percent revenue capture.
 20 THE WITNESS: Yes.
 21 MS. STUMBAUGH: I guess I don't understand.
 22 THE WITNESS: We changed it so that we would
 23 get our early.
 24 BY MS. FLOYD:
 25 Q And this -- the terms of that agreement are

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1 in the original agreement?
 2 A Correct.
 3 Q Do you only have one agreement with APG?
 4 A Correct. So inside the terms of every
 5 agreement, the portfolio company can opt to pay us off
 6 early. In this particular case, he wishes to do that.
 7 So we changed the model to say if we change the revenue
 8 capture how quickly can we get out.
 9 MS. STUMBAUGH: When does this show that you
 10 would be out?
 11 THE WITNESS: On this I would have to -- I
 12 would have to actually sum up these numbers. I don't
 13 know right here based on this.
 14 BY MS. FLOYD:
 15 Q Since we keep referencing the agreement, I'm
 16 going to go ahead and put the agreement as an exhibit.
 17 (SEC Exhibit No. 10 was marked for
 18 identification.)
 19 BY MS. FLOYD:
 20 Q I'm handing you what has been labeled as
 21 Exhibit 10. Take a moment to look through it. Do you
 22 recognize Exhibit 10?
 23 A Yes.
 24 Q What is it?
 25 A It's the financing agreement between OE

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1 Capital and Athletes Performance Gear.
 2 Q And who created Exhibit 10?
 3 A I believe the attorney was Darrell Cleveland.
 4 MS. GUN: I'm sorry. I didn't hear that.
 5 THE WITNESS: Darrell Cleveland.
 6 BY MS. FLOYD:
 7 Q And he's the attorney for OE Capital?
 8 A He's an independent attorney, yeah, but he
 9 worked on this for us.
 10 Q Okay. And have you drafted any part of this
 11 agreement?
 12 A No.
 13 Q Have you read the agreement?
 14 A Yes.
 15 Q And you signed the agreement?
 16 A Yes.
 17 Q So on Bates Number OEC_SEC_001695, that is
 18 your signature under investor?
 19 A Yes.
 20 Q So you had mentioned that you didn't buy out
 21 early or they can buy you out early. Where is that in
 22 this agreement?
 23 A 6.6.
 24 Q What page number are you on, twenty-four?
 25 A Yes.

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1 MS. STUMBAUGH: Twenty-four.
 2 BY MS. FLOYD:
 3 Q Early termination, 6.6?
 4 A Yes.
 5 Q And what is the minimum planned performance
 6 threshold?
 7 A The minimum planned performance threshold as
 8 it was defined at this time was the amount of revenues
 9 that will be needed to meet our minimum performance.
 10 Q And is it on Exhibit 9, this spreadsheet?
 11 Where would these minimum planned performance --
 12 A It would be the gross revenues.
 13 Q The gross revenues?
 14 A Yes.
 15 Q And what is the total funding amount?
 16 A That would be the total amount that we had
 17 funded the company at the time.
 18 Q So according to Exhibit 9, you had funded as
 19 of March 2016. Do you plan on funding any more money?
 20 A To APG?
 21 Q Yes, correct.
 22 A There is one more planned funding as of right
 23 now.
 24 Q Okay. I don't see it on Exhibit 9.
 25 MS. GUNN: Have all of the fundings that are

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1 in Exhibit 9 been made?
 2 THE WITNESS: Yes, they have.
 3 BY MS. FLOYD:
 4 Q So it looks like a total of \$626,950.00?
 5 That's just funding. That's separate from the cost you
 6 paid as well?
 7 A That's correct.
 8 Q Okay. So how did you pay for the
 9 manufacturing costs and the marketing costs and the
 10 printing cost?
 11 A We paid for those directly.
 12 Q Directly to the actual company?
 13 A Yes.
 14 Q The 3-Headed Monster, you paid them directly?
 15 A Correct.
 16 Q But the company only received from you
 17 \$626,950.00?
 18 A In terms of actual funding to pay their
 19 operating, yes.
 20 Q Now, that money -- did you also buy the
 21 inventory?
 22 A No. That's the cost directly paid by OE,
 23 manufacturing cost.
 24 Q Okay. So do you own the inventory --
 25 A Yes.

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1 Q -- of APG?
 2 A Yes.
 3 Q Is that a separate cost?
 4 A No. That's the cost we paid here. So
 5 manufacturing cost, that's the inventory.
 6 Q Okay. That's the payment for the actual
 7 inventory?
 8 A Right.
 9 Q Gotcha. Not actually manufacturing --
 10 A Right.
 11 Q -- the inventory. Now, hypothetically after
 12 three years or in this case if he's doing -- if APG is
 13 doing really well and they wanted to buy you out, what
 14 happens to that inventory? Do you still own it?
 15 A If we're doing this, we've sold out in almost
 16 probably two months. So then they go by their next --
 17 MS. GUNN: What is this? You said if we're
 18 doing this.
 19 THE WITNESS: The plan. So if we're selling
 20 bottles --
 21 MS. GUNN I'm sorry. I don't understand. If
 22 you're executing on the plan that's in Exhibit 9, then
 23 you would be out when?
 24 THE WITNESS: Her question was why isn't
 25 there more inventory purchases.

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1 BY MS. FLOYD:
 2 Q No. My question was actually, what happens
 3 to the inventory once the three years are up? It
 4 sounds like you are planning on selling the entire
 5 inventory.
 6 A Absolutely. I mean, you can't make -- so
 7 this inventory purchase could not support all of this
 8 revenue. So there would have to be subsequent
 9 purchases of inventory that they would be liquid enough
 10 to do themselves.
 11 Q But you wouldn't own that?
 12 A No.
 13 MS. GUNN: I'm sorry if you've been asked
 14 this question before, but if the plan was executed as
 15 reflected in the projections in Exhibit 9, when would
 16 OE Capital exit this investment?
 17 THE WITNESS: Well, since the entrepreneur,
 18 since he wants us out early?
 19 MS. GUNN: Uh-huh. Yes.
 20 THE WITNESS: Then according to this I
 21 believe -- I believe it's five times.
 22 MS. GUNN: And this is Exhibit 10.
 23 THE WITNESS: Exhibit 10. Five times the
 24 total funding amount. So at what point we capture \$5
 25 million.

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1 MS. GUNN: Okay. All right. And that would
 2 be when the total in the revenue capture line adds up
 3 to five million?
 4 THE WITNESS: Correct.
 5 MS. GUNN: Okay. Got it.
 6 BY MS. FLOYD:
 7 Q And you said he wants to buy you out. Is
 8 there a reason for that?
 9 A It has not been a rosy relationship.
 10 Q Is he upset that you guys are controlling the
 11 company?
 12 A He's upset that -- a little bit he's upset
 13 that we're controlling the company.
 14 Q Okay. What is he really upset about?
 15 A He wants me to pay him more money.
 16 Q Fund more?
 17 A No. See his salary?
 18 Q Okay.
 19 A He wants more.
 20 Q He being paid \$10,000 a month.
 21 A Yeah.
 22 Q And how much more does he want?
 23 A 15,000.
 24 Q That's quite a payment.
 25 MR. HOWELL: He wants a total of fifteen or

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1 he wants 15,000 more?
 2 THE WITNESS: More.
 3 MR. HOWELL: Sounds like our associates.
 4 MS. GUNN: I'm sorry. Excuse me. Are you
 5 saying he wants -- instead of 120,000 -- I assume
 6 that's 120 a year. He wants a 135?
 7 THE WITNESS: No.
 8 MS. GUNN: He wants 15,000 a month.
 9 THE WITNESS: Correct.
 10 MS. GUNN: Okay. That's the way I first
 11 understood it. I got a little confused. Thank you.
 12 BY MS. FLOYD:
 13 Q And on Exhibit 10 on Page 11, 2.3 payments to
 14 the investor, and the investor is OE Capital. Is that
 15 correct?
 16 A Correct.
 17 Q So please explain to us how APG is paying
 18 you, paying OE Capital.
 19 A As these revenues get generated in a typical
 20 arrangement, we would take ten percent of the gross
 21 revenues.
 22 Q Okay.
 23 A In this particular situation, once we start
 24 the revenues will be taking sixty percentish of
 25 whatever that is so that we can get ourselves out

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1 early.
 2 Q Okay. So according to Exhibit 9, APG's
 3 financial projections, it says in March 2016, your
 4 company had projected sales of 106,180. Has that
 5 occurred?
 6 A We are a month behind. So we're actually
 7 kicking it off. We were planning on kicking off the
 8 campaign at the end of April. We're a week or two
 9 behind.
 10 MS. GUNN: This shows projected sales
 11 starting in March of 2016.
 12 THE WITNESS: Correct.
 13 MS. GUNN: Okay. Have you had the projected
 14 sales that are reflected in the column for that month
 15 five, I think it is?
 16 THE WITNESS: No. We're a little bit more
 17 than a month behind.
 18 MS. GUNN: Okay. And the campaign has not
 19 kicked off yet. Is that correct?
 20 THE WITNESS: Correct.
 21 MS. GUNN: Doesn't that make you two months
 22 behind? Because you've got March and April both having
 23 sales here, and you haven't started the campaign yet.
 24 THE WITNESS: Now we are. It's May right
 25 now, right?

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1 MS. GUNN: Right. It's May 5th.
 2 MS. FLOYD: It's Cinco de Mayo. Back to
 3 Exhibit 10, Page 18, 5.3 --
 4 MS. GUNN: Before we go on --
 5 MS. FLOYD: Sure.
 6 MS. GUNN: -- why are you two months behind?
 7 THE WITNESS: Literally difficulties with the
 8 CEO.
 9 MS. GUNN: Okay. Besides the salary issue
 10 that you've described, what other difficulties, if any,
 11 have you had with the CEO of APG?
 12 THE WITNESS: He's got three employees that
 13 he pays that he has been very disrespectful to. His
 14 company's in Tampa, but he spends all of his time now
 15 in Chicago, and has deliberately done some things to
 16 kind of upset the schedule.
 17 MS. GUNN: Such as?
 18 THE WITNESS: Just getting -- interfering
 19 with the manufacturing process a little bit.
 20 BY MS. FLOYD:
 21 Q Has he interfered with the product itself?
 22 A No. No, he hasn't.
 23 MS. GUNN: Does he have any sort of copyright
 24 or trademark or any sort of intellectual property or
 25 patent or whatever on the --

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1 THE WITNESS: My understanding is he has at
 2 least a patent pending.
 3 MS. GUNN: On the water bottle?
 4 THE WITNESS: On the water bottle.
 5 MR. HOWELL: Be sure you let her finish
 6 asking the question before you answer.
 7 BY MS. FLOYD:
 8 Q So as far as the employees, he has a COO, a
 9 CFO, and a bookkeeper. Is that correct?
 10 A He has a COO. He does not -- we did not hire
 11 a CFO.
 12 Q So \$60,000 for a salary --
 13 A Instead of a CFO, we thought it was more
 14 important to hire the product marketing supervisor.
 15 Q Okay.
 16 A And then he has a salesperson.
 17 Q So he has a COO, a marketing person, and a
 18 salesperson.
 19 A Correct.
 20 Q Who is the COO?
 21 A His name is Jim Cooney.
 22 Q He gets paid \$100,000 a year?
 23 A That is correct.
 24 Q Does he actually work?
 25 A Yes, he does. He works very hard.

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1 MS. GUNN: So I understood your earlier
 2 testimony to indicate that Tracy Alexander was
 3 essentially the COO of all of the portfolio companies.
 4 THE WITNESS: That's correct.
 5 MS. GUNN: But they have a COO already?
 6 THE WITNESS: Correct.
 7 MS. GUNN: Okay. How are the duties parsed
 8 between the two of them? How does that work having two
 9 COOs?
 10 THE WITNESS: Tracy is -- essentially is the
 11 head operator. Jim takes direction from her. The CEO
 12 is essentially absent, and so right now Jim's role is
 13 more of -- kind of a director of operations. We felt
 14 it necessary to get someone in fairly quickly. Again,
 15 Tracy cannot be full time on four different companies.
 16 MS. GUNN: Right, right.
 17 THE WITNESS: So she gives overall direction.
 18 Jim executes more that direction.
 19 MS. GUNN: Okay. So in terms of when the
 20 costs of his salary fall, those would have started
 21 falling a little earlier, wouldn't they? So they
 22 started in January. When did he start?
 23 THE WITNESS: I don't recall exactly when he
 24 started. I believe it was somewhere around there.
 25 MS. GUNN: Okay. Am I reading this schedule

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1 right in terms of it's essentially budgeted for his
 2 salary to start in January?
 3 THE WITNESS: That's correct.
 4 MS. GUNN: All right. Do you know who owns
 5 the -- to the extent there's any intellectual property
 6 associated with the -- either the water bottles or the
 7 electrolyte product, do you know who owns the intellect
 8 property associated with that?
 9 THE WITNESS: My understanding is that John
 10 Hobbs will own the -- any patent or patent pendings on
 11 the water bottle.
 12 MS. GUNN: Uh-huh.
 13 THE WITNESS: And there's no intellectual
 14 property on the Elixir.
 15 BY MS. FLOYD:
 16 Q Electrolytes.
 17 A Electrolytes.
 18 MS. GUNN: So what would happen if the
 19 disagreements you've had so far with him, Mr. Hobbs,
 20 deteriorated further such that you wanted to part ways?
 21 THE WITNESS: What we would do is exercise
 22 our right to liquidate our inventory.
 23 MS. GUNN: Uh-huh.
 24 THE WITNESS: The retail value of that
 25 inventory is about \$2.4 million.

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1 MS. GUNN: Uh-huh.
 2 THE WITNESS: We would obviously discount
 3 that to some wholesaler to about 1.5 to 1.7. We would
 4 essentially fire sale our inventory.
 5 MS. GUNN: Okay.
 6 THE WITNESS: And we would -- so that will
 7 leave us a million invested, 1.5 back in one year.
 8 That's pretty good. And then we say nice doing
 9 business with you, wish it would have worked out better
 10 for you.
 11 MS. GUNN: And you told us some things that
 12 had been issues between OE Capital and Mr. Hobbs.
 13 Anything else that you haven't listed? I think you
 14 said his salary, his being absent, how he's been
 15 disrespectful with some of the people who work for him.
 16 Anything else?
 17 THE WITNESS: Those are it.
 18 MS. GUNN: Okay.
 19 BY MS. FLOYD:
 20 Q If you look at Exhibit 10, Page 18, under
 21 5.3, it says key person life insurance?
 22 A Yes.
 23 Q It says, and I quote, investor shall purchase
 24 and maintain a key person life insurance policy in the
 25 amount of the maximum funding amount, designate John

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1 Hobbs as the key person, and naming the investor as the
 2 beneficiary of the policy. Do you have a key person
 3 life insurance policy on Mr. Hobbs?
 4 A We do -- we do now, yes. That was executed
 5 late last year.
 6 Q Okay. And how do you pay for those life
 7 insurance policy?
 8 A Through -- OE pays that out of its operating.
 9 Q And where do you buy this life insurance
 10 policy from?
 11 A Different life insurance companies. We would
 12 typically figure out which one's the best rating and
 13 cost for each CEO or principal.
 14 Q You shop around and figure out which one?
 15 A Yes.
 16 MR. HOWELL: Which companies did you buy the
 17 life insurance policy on Hobbs from?
 18 THE WITNESS: I don't know. I can't
 19 remember.
 20 MS. GUNN: Who is your agent for that
 21 insurance?
 22 THE WITNESS: We use a broker. The name of
 23 it is Insurance Designers, I believe.
 24 BY MS. FLOYD:
 25 Q And how do you know Insurance Designers?

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1 A Vince met them.
 2 MS. GUNN: Are they located in Dallas or
 3 where are they?
 4 THE WITNESS: Yes, Dallas.
 5 MS. GUNN: You have a substantial history in
 6 the insurance business. Why are you using someone to
 7 place that?
 8 THE WITNESS: Just to be really honest, I'm
 9 just kind of done with the insurance business.
 10 MS. GUNN: You have lots of contacts in the
 11 business. I'm sure you know a lot of people in
 12 insurance. So I'm a little surprised that you're using
 13 someone to place that as opposed to, say, one of your
 14 contacts as the broker.
 15 THE WITNESS: I do have a lot of contacts. I
 16 just prefer not to use them.
 17 MS. GUNN: Okay. Thank you.
 18 BY MS. FLOYD:
 19 Q We'll move on to the next portfolio company
 20 which I believe is WHRZT! Is that correct?
 21 A WHRZT!
 22 Q WHRZT! Which is located in Dallas?
 23 A Yes.
 24 Q How were you introduced to WHRZT!?
 25 A I met him at a restaurant.

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1 Q Which restaurant?
 2 A Henry's in Plano.
 3 Q That's a good restaurant.
 4 A Yeah.
 5 Q So you met him at a restaurant. Was it --
 6 was it an event at the restaurant or was it just
 7 casually passing by and meeting him?
 8 A Casually passing by and meeting him.
 9 Q And he just started talking products?
 10 A He essentially was crying in his beer.
 11 Q That's sad. Was he crying about his
 12 products?
 13 A His inability to get funding in Dallas.
 14 Q Okay. And so I presume you sat down, had a
 15 beer with him, and talked about it?
 16 A Yes.
 17 Q And what did you tell him?
 18 A I just told him that, you know, I think I
 19 might be able to help. This particular time frame was
 20 actually -- when I met him it was before I even left
 21 Personal Economics Group.
 22 Q So it was sometime in 2014?
 23 A Correct, after I had run into -- before I had
 24 been introduced to Mr. Reno via Mr. Metcalf. So at
 25 that point, I told him I might be able to help, and I

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1 made an introduction.
 2 Q And who runs WHRZT?
 3 A Jim Nalley, N-a-l-l-e-y.
 4 Q Okay. And what exactly does WHRZT! do?
 5 A Excuse me. They have a geolocation tracking
 6 technology for -- specifically designed for trailers
 7 right now.
 8 Q A GPS for trailers?
 9 A Yes.
 10 Q I have cough drops if you need any.
 11 A That would help.
 12 MS. FLOYD: Let's go off the record at 1:20.
 13 (Recess taken from 1:20 to 1:31.)
 14 MS. FLOYD: Back on the record at 1:31.
 15 BY MS. FLOYD:
 16 Q During the break, did we have any substantive
 17 discussions regarding this matter?
 18 A No.
 19 Q All right. Going back to -- where is it?
 20 You met Mr. McNalley, I think his name is. Nalley?
 21 A Yes.
 22 Q At a restaurant, and you were introduced to
 23 him. He runs the company. You were introduced to him
 24 in 2014. Is that correct?
 25 A Correct.

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1 Q Okay. Now, what exactly the company does is
 2 they put like GPS on trailers, correct?
 3 A Correct.
 4 Q How many trailers -- does he own trailers or
 5 he just makes the GPS device?
 6 A He makes the GPS device.
 7 Q Okay. And how many has he sold to date?
 8 A I am not quite sure.
 9 Q Okay. Did he sell any GPS devices before OE
 10 Capital funded company?
 11 A No.
 12 Q No, okay.
 13 A No.
 14 Q So when did you start funding WHRZT!?
 15 A Our first payment was a bridge loan in, I
 16 believe, June of 2015.
 17 Q I'm going to go ahead and give you --
 18 MS. GUNN: While she's looking for that, you
 19 said you're not quite sure how many of the GPS devices
 20 he sold. Can you give us a range? Is it ten, 100,
 21 thousands, tens of thousands?
 22 THE WITNESS: I believe his latest PO was for
 23 5,000.
 24 MS. GUNN: His latest what?
 25 THE WITNESS: Purchase order.

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1 MS. GUNN: Okay.
 2 THE WITNESS: It was for 5,000.
 3 MS. GUNN: Okay. That's the number he's
 4 purchasing. How many has he sold?
 5 THE WITNESS: Excuse me. Let me clarify.
 6 That's the number -- the purchase order is the order
 7 from the client to him.
 8 MS. GUNN: Okay.
 9 THE WITNESS: So somebody's bought 5,000.
 10 MS. GUNN: Okay.
 11 THE WITNESS: That's the latest number, I
 12 believe.
 13 MS. GUNN: And so any idea of how many of
 14 those he's had?
 15 THE WITNESS: I believe this is his second
 16 one.
 17 MS. GUNN: Okay. And is that for a
 18 particular customer, client, both of them?
 19 THE WITNESS: Those two are for a specific
 20 client.
 21 MS. GUNN: Okay.
 22 THE WITNESS: If my recollection's correct,
 23 he has eleven or twelve contracts in place all that are
 24 purchasing random amounts.
 25 BY MS. FLOYD:

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1 Q Were these contracts in place before OE
 2 Capital started funding them?
 3 A No.
 4 Q How many contracts did he have in place
 5 before OE Capital?
 6 A None, zero.
 7 MS. STUMBAUGH: How much was the actual
 8 bridge loan?
 9 THE WITNESS: 100,000.
 10 (SEC Exhibit No. 11 was marked for
 11 identification.)
 12 BY MS. FLOYD:
 13 Q I'm going to hand you what's been marked as
 14 Exhibit 11. Take a moment and look through it. Do you
 15 recognize Exhibit 11?
 16 A Yes.
 17 Q What is it?
 18 A It's the financial projections for WHRZT!
 19 Q Did you create Exhibit Number 11?
 20 A No.
 21 Q Who did?
 22 A Cristina Cason with Jim Nalley.
 23 Q Jim Nalley, and that's the CEO of WHRZT!?
 24 A Correct.
 25 Q And Mr. Mc -- I keep calling him McNalley.

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1 Mr. Nailey provided OE Capital with the future
2 projections on his end prior to this being created. Is
3 that correct?

4 A That is correct.

5 Q Now, Exhibit 11, what we look at right now,
6 is this the current projections or was this the
7 projections that was created at the time of the
8 contract?

9 A These are projections that were created at
10 the time of the contract.

11 Q Have the projections been changed at all?

12 A I don't know.

13 Q Okay. So going to Page 2 -- first of all,
14 let me back up, you don't know. So if Cristina were to
15 change it, would she notify you?

16 A Not necessarily.

17 Q Would Tracy be notified?

18 A Yes.

19 Q Why wouldn't Cristina notify you?

20 A She would -- she would only notify me if
21 there was a major issue with it.

22 Q And what are typical reasons for updating
23 financial projections?

24 A Typical reasons would be if the costs came
25 out completely different.

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1 you update the projections if there's a raise in the
2 sales?

3 A We would -- we would not update the
4 projections.

5 Q Okay. So how would you keep track of a delay
6 in how much you guys are selling?

7 A We would have -- we have another system that
8 tracks actual.

9 Q Okay.

10 MS. STUMBAUGH: What system is that?

11 THE WITNESS: It's a spreadsheet.

12 MS. FLOYD: Barrett, I need a copy of the
13 actual realtime spreadsheet.

14 MR. HOWELL: Say that one more time. I'm
15 sorry.

16 MS. FLOYD: The realtime spreadsheet for each
17 portfolio company.

18 MR. HOWELL: We did not provide it?

19 MS. FLOYD: Not that I'm aware of.

20 MS. STUMBAUGH: It shows the actual sales.

21 MR. HOWELL: This was updated --

22 MS. FLOYD: Correct.

23 BY MS. FLOYD:

24 Q I presume this was made at the time of the
25 contract.

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1 Q Would you find that important to know?

2 A Yeah.

3 Q Any other reasons why it would change?

4 A The projections, no.

5 Q Okay. If you look at Page 2 of Exhibit 11,
6 if I'm reading this correctly, the revenue capture is
7 about roughly five million, and net profit is 7.6
8 million. Would OE Capital be walking away with five
9 million, and WHRZT! would be walking away with 7.6
10 million?

11 A That is correct.

12 Q So if I'm reading this correctly, as of
13 October 2015, WHRZT! sold 68,000 units of asset
14 tracking devices. Is that correct?

15 A October of --

16 Q Fifteen. I said sixteen. I meant fifteen.

17 MS. STUMBAUGH: Fifteen.

18 A That's not correct.

19 BY MS. FLOYD:

20 Q That's not correct?

21 A No.

22 Q How many did they sell in October 2015?

23 A They didn't start selling till January 2016.

24 Q Okay. So hypothetically this projection
25 would be updated for that reason or would you -- would

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1 A That's correct.

2 Q Okay. So the sales were delayed until
3 January 2016, correct?

4 A Correct.

5 Q Okay. How did that affect the total revenue
6 for thirty-six months or did it affect the total
7 revenue?

8 A It really hasn't affected it because he's
9 actually got more contracts now than we had projected.

10 Q Where is it on this -- on Exhibit 11 where
11 you project the contracts?

12 A We don't do that in here. We just projected
13 number of units sold.

14 Q Okay. How many units did he sell in January
15 2016?

16 A I'm not sure.

17 Q Is Tracy Alexander, I guess, the unofficial
18 COO of WHRZT! as well?

19 A She is a -- she operates much more like a
20 fractional COO.

21 Q Okay. And how many employees does WHRZT!
22 have?

23 A I would have to speculate.

24 Q Okay. And so what due diligence have you
25 done on this company?

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1 A The due diligence for WHRZT! was getting to
2 know the senior team, the -- understanding the product,
3 understanding the product market. We did have some
4 conversations with potential -- at the time potential
5 customers for WHRZT! that are now under contract to
6 make sure that it was a viable needed product.

7 We made sure we saw the product work. We
8 spoke to some other potential now contracted sales
9 forces for WHRZT!, and we made sure that these -- the
10 revenue projections could be met.

11 Q And did you look at competition if there's
12 other GPS for tractor-trailers or for other vehicles?
13 Have you checked that?

14 A We did.

15 Q Okay. So you began funding this company
16 before it sold any of its tracking devices. Is that
17 correct?

18 A That's correct.

19 Q Is that a normal procedure for OE Capital to
20 do?

21 A No.

22 Q This is the first time?

23 A Yes.

24 Q And only time so far?

25 A Yes.

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1 Q How much have you funded WHRZT!?

2 A About 1.5 million to date.

3 Q Okay.

4 MS. STUMBAUGH: What's the payout multiple on
5 WHRZT? What's your return before you guys get out? Is
6 it five times the funding or --

7 THE WITNESS: There's two -- there's two
8 different exits on WHRZT! We have the funding on the
9 revenue capture which is about three times a little
10 north of that, and then we have an agreement on a
11 merger and acquisition. The goal is to get bought, and
12 so the agreement on the merger and acquisition is an
13 additional seven X when that happens.

14 MS. GUNN: So ten X total?

15 THE WITNESS: Yes, ma'am.

16 (SEC Exhibit No. 12 was marked for
17 identification.)

18 BY MS. FLOYD:

19 Q I'm going to hand you what has been labeled
20 as Exhibit 12. Take a moment and look through it,
21 please. Do you recognize Exhibit 12?

22 A Yes. It's the revenue financing agreement
23 between OE Capital Partners and WHRZT!

24 Q And did you create Exhibit 12?

25 A I did not create it.

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1 Q Who created Exhibit 12?

2 A Sidley Austin.

3 Q Did you participate in drafting any portion
4 or section of Exhibit 12?

5 A Only in terms of content.

6 Q Okay. Now, on Bates Number OEC_SEC_001700 --

7 A Yes.

8 Q -- it says here under -- whereas the company
9 and investor have entered into a certain bridge loan
10 agreement dated July 13, 2015. You may have testified
11 to this, and I apologize if I ask this again. How much
12 was the bridge loan?

13 A \$100,000.

14 Q \$100,000. And then it mentions a promissory
15 note. How much was the promissory note?

16 A It was one and the same. The promissory note
17 was attached to the bridge loan.

18 Q So it's the same loan?

19 A Yes.

20 Q Gotcha. Okay. On Page 11, Bates Number
21 1709, Section C of 2.1 which would be funding amount
22 and procedure, it says maximum funding amount. The
23 maximum funding amount that may be provided by the
24 investor to the company shall be one million. You just
25 testified that you guys have funded WHRZT! for 1.5

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1 million.

2 A Yes.

3 Q So it's more than the contracted maximum
4 amount. Is that correct?

5 A That's correct.

6 Q Why -- sorry.

7 A The sentence says: Unless the investor
8 determines in its sole discretion to increase such
9 amount as a result of the company's financial
10 performance.

11 Q Okay. So was the company not performing very
12 well?

13 A They were -- they were performing to the
14 milestones that we had set forth at that point that
15 were important.

16 Q So why you felt the need to fund -- make
17 additional payments, funding?

18 A Because we -- they were performing.

19 Q I may be a little confused. They were
20 performing, so you felt like you needed to give them
21 more funding?

22 A Correct. They were performing to the
23 milestones that we had set forth that we felt were
24 important. That was not necessarily a type of revenue.

25 Q Did they need the additional funding?

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1 A They did.
 2 Q Okay.
 3 A Yes.
 4 MS. GUNN: Why did they need the additional
 5 funding?
 6 THE WITNESS: Mostly for operational
 7 expenses.
 8 MS. GUNN: Anything else involved?
 9 THE WITNESS: No.
 10 MS. GUNN: Okay. And what were the
 11 milestones they had met that led you to determine that
 12 it was appropriate to increase the amount of funding by
 13 fifty percent?
 14 THE WITNESS: There were two very important
 15 tests that they had to pass in order to -- in order to
 16 really launch the product. One of them was a
 17 manufacturing kind of test from, you know, durability
 18 and connectivity perspective, and the other one, which
 19 was the big one, was Verizon. So we felt as long as
 20 they could pass those tests --
 21 MS. GUNN: What was the second one?
 22 THE WITNESS: It was a test for Verizon.
 23 BY MS. FLOYD:
 24 Q The company, Verizon?
 25 A Yes.

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1 Q And what kind of test did Verizon -- did they
 2 have to do for Verizon?
 3 A Verizon -- any traffic that travels on
 4 Verizon's network, they have to -- Verizon has to
 5 certify that traffic, make sure that it can be secure
 6 enough, make sure that the devices communicate, that
 7 whole telecom certification process. So they had to go
 8 through that process and pass with a green light in
 9 order for the entire product to even work.
 10 Q So does WHRZT! have a contract with Verizon?
 11 A Yes.
 12 Q And what exactly are the terms of the
 13 contract?
 14 A There's two.
 15 Q There's two contracts.
 16 A (Moves head up and down.)
 17 Q Okay. The first contract, what are the
 18 terms?
 19 A I'm not quite sure what the terms of the
 20 first contract is. I can describe the contract.
 21 Q Okay.
 22 A The contract is merely to use the data
 23 services of the 2G bandwidth for data travel back and
 24 forth from the GPS.
 25 Q Okay.

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1 A The second contract is Verizon is acting as a
 2 sales force for WHRZT! product.
 3 Q So if I go into a Verizon store, I can go
 4 over and purchase this GPS in their store?
 5 A No. That is a business-to-business sales
 6 force. They have what's called a machine-to-machine
 7 quota, meaning they have to sell some services to
 8 something other than people. Verizon thought this was
 9 the perfect fit for their sales reps to go out and sell
 10 this to people who had trailers or needed machines
 11 tracked.
 12 MS. FLOYD: Can you find me now? Can you
 13 find me now?
 14 (Laughter.)
 15 BY MS. FLOYD:
 16 Q Okay. So where -- if you know, when were
 17 these contracts entered into?
 18 A I do not know.
 19 Q Had they entered into these contracts prior
 20 to OE Capital funding the company or after?
 21 A The contract -- excuse me. The contract for
 22 the data so where they would literally pay Verizon --
 23 Q Uh-huh.
 24 A -- that was before funding.
 25 Q Okay.

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1 A The sales contract was after.
 2 Q Got it. Okay. Thank you. You had
 3 previously testified that the company would pay roughly
 4 seven and a-half percent. I know it's not the exact
 5 percentage, but they would pay OE Capital a certain
 6 percentage for having their members or staff work with
 7 the portfolio company. Is that correct?
 8 A That's correct.
 9 Q And you testified before that you had
 10 disclosed this. Is that correct?
 11 A That's correct.
 12 Q Where is it in Exhibit 12 that discloses the
 13 portfolio company, WHRZT! in this case, pays OE Capital
 14 for his team staff?
 15 A It is not disclosed. It was not a part of
 16 the WHRZT! contract.
 17 Q So you have that but just not with WHRZT! Is
 18 that correct?
 19 A That's correct.
 20 Q Okay.
 21 MS. GUNN: The seven and a-half percent, was
 22 that part of the APG contract?
 23 THE WITNESS: I believe so.
 24 BY MS. FLOYD:
 25 Q Do you mind if we go back to that exhibit

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1 which is --
 2 MS. STUMBAUGH: Exhibit 10.
 3 MS. FLOYD: Thank you.
 4 A I cannot find it as part of this contract.
 5 MS. GUNN: We can come back to it.
 6 MS. FLOYD: Okay. Do you have any additional
 7 questions on WHRZTI?
 8 MS. STUMBAUGH: Jumping back to Exhibit 12 on
 9 Page 19, Section 5.3 talks about the key person life
 10 insurance.
 11 THE WITNESS: Yes.
 12 MS. STUMBAUGH: Has OE Capital purchased key
 13 man life insurance for Mr. Nalley?
 14 THE WITNESS: Yes.
 15 MS. STUMBAUGH: Do you recall who that was
 16 purchased through?
 17 THE WITNESS: I do not.
 18 BY MS. FLOYD:
 19 Q Was it the same agent you had purchased for
 20 Athletes?
 21 A It was.
 22 Q Okay. What was the third portfolio company?
 23 We've done Athletes. We've done WHRZTI. What was the
 24 third one?
 25 A RivaCare or Ducourt Consulting.

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1 Q Which is it? Is it RivaCare?
 2 MS. STUMBAUGH: Who's next?
 3 BY MS. FLOYD:
 4 Q Who is Ducourt Consulting or what is it?
 5 A Ducourt Consulting is the legal name.
 6 RivaCare is their d/b/a.
 7 Q Gotcha. And how were you introduced to
 8 RivaCare?
 9 A Vince was contacted or connected to William
 10 Harcourt through LinkedIn.
 11 (The reporter requests clarification.)
 12 BY MS. FLOYD:
 13 Q And who is William Harcourt like
 14 H-a-r-c-o-u-r-t?
 15 A Yes.
 16 Q And who is William Harcourt?
 17 A He was or is, I guess, a principal of Ducourt
 18 Consulting.
 19 Q Okay. So Vince -- or is it Vincent? Vince?
 20 A Vince.
 21 Q Vince knew him through LinkedIn. Is that
 22 correct?
 23 A They connected through LinkedIn.
 24 Q Okay. And when were you introduced to
 25 RivaCare?

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1 A I believe November of 2015.
 2 Q And is there anyone else who works at
 3 RivaCare?
 4 A There are three other principals.
 5 Q Okay. Who are they?
 6 A Dennis Duling, D-u-l-i-n-g, I believe.
 7 Q Okay. And who else?
 8 A Justin Duling.
 9 Q So Justin and Dennis are two different
 10 people?
 11 A Yes.
 12 Q Are they brothers?
 13 A Uncle and nephew.
 14 Q I was close.
 15 A Yeah.
 16 Q Who's the third one?
 17 A Yves, and I do not remember his last name.
 18 Q Is it like E-v-es?
 19 A Y-v-e-s.
 20 Q And he's a principal as well?
 21 A He is, yes.
 22 Q That's four. So there's four total?
 23 A Yes.
 24 Q So which one were you introduced to?
 25 A Initially William Harcourt.

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1 Q Okay. And you said November of 2015?
 2 A I believe that's correct, yes.
 3 Q And where were you introduced to him?
 4 A Via telephone, online.
 5 Q Okay. And what exactly does RivaCare do?
 6 A They are a telemedicine health distributor.
 7 Q Please explain.
 8 A I'll give you the RivaCare sales pitch.
 9 Q Okay.
 10 A Approximately ninety percent of all doctor's
 11 appointments, you kind of already know what's wrong
 12 with you.
 13 Q Ninety percent?
 14 A That's --
 15 MS. FLOYD: Ninety percent wrong with myself.
 16 MR. McCARTHY: Self-diagnose.
 17 (Laughter.)
 18 A And so the idea is instead of having to go
 19 see a doctor and pay a copay or whatever it is that you
 20 would have to pay or deductible, you have telemedicine
 21 option which is call a doctor either on the phone or
 22 video. To call a doctor is generally done on a
 23 per-visit basis. So every time you call a doctor, you
 24 have to pay thirty bucks or whatever it is.
 25 BY MS. FLOYD:

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1 Q Do you have to have an established
2 relationship with this doctor before you get into the
3 phone calls?

4 A No.

5 Q Is it like a call center? There's just
6 doctors sitting around in a call center?

7 A Well, sort of.

8 Q Okay.

9 A So it's a call center, and once they vet you
10 and make sure that you are calling about something that
11 doctor can help you with and not have to go to the
12 emergency room, they connect you to a bank of
13 physicians that have been vetted by whatever companies
14 doing the doctoring for lack of a better term.

15 Q Okay.

16 MR. HOWELL: Just to add some clarify, I
17 think we're talking about -- and this is specifically
18 designed for benefits plans, health insurance plans,
19 not just someone off the street picking up the phone
20 and calling an 800 number and getting a doctor.

21 MS. FLOYD: We have Obamacare now.

22 MR. HOWELL: Maybe I stand corrected.

23 MR. MCCARTHY: Till January 1.

24 MS. FLOYD: Correct.

25 A Let me correct this.

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1 You call the 800 number. You get in contact with this
2 doctor. You tell him your symptoms or if you're doing
3 BTC or whatever you call it. You show them what's
4 wrong with you.

5 MS. STUMBAUGH: FaceTime.

6 BY MS. FLOYD:

7 Q FaceTime. They prescribe medication?

8 A They can. Generally what those services
9 provide additionally is electronic medical records.

10 Q Okay.

11 A And so you would have your medical records.
12 You could send them via your Smartphone or whatever at
13 that point. The doctors look at your medical records
14 and then say based on your records and what you just
15 told me, you have a sinus infection. Here's the scrip.
16 Go to your local Walgreens.

17 Q Interesting. So this is what this company
18 does. So in the preplanning stage with this company,
19 what due diligence did you do?

20 A The first -- the first due diligence was on
21 the telemedicine industry and the viability of that
22 industry which we knew, but we, I guess, firmed up that
23 it is a massive industry, and it's growing like crazy.
24 It's expected to be kind of a standard in the next
25 three to five years.

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1 BY MS. FLOYD:

2 Q Sure.

3 MR. HOWELL: I'll stop talking.

4 A Typically what happens or what has happened
5 in the industry is the only way to get to these
6 programs is through a life insurance product.

7 BY MS. FLOYD:

8 Q Okay.

9 A They can be offered outside of life
10 insurance. I'm sorry. Not life insurance. Health
11 insurance.

12 Q Health insurance, okay.

13 A It can be offered outside of that, but no
14 one -- no one's done it yet. RivaCare is the first
15 company that's bringing a business-to-consumer aspect
16 to where you can purchase this outside of an insurance
17 product.

18 Q So how many companies do this through an
19 insurance company? Is it a small amount?

20 A It's a handful.

21 Q Okay.

22 A Four or five.

23 Q So there's not many companies that do this.

24 A No.

25 Q Okay. So you feel sick. I've got the flu.

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1 Q Okay.

2 A Secondly, we did the due diligence, not
3 backgrounds but due diligence on the leadership teams
4 of Ducourt. We wanted to make sure that they had the
5 ability to really execute the strategy. It really is
6 largely a distribution, marketing company. We needed
7 to make sure they had that expertise in-house.

8 Q Okay. So did you do any background checks on
9 the principals of RivaCare?

10 A No.

11 Q So are you aware of their bankruptcies and
12 criminal convictions?

13 A No.

14 Q Harcourt, William Harcourt filed for
15 bankruptcy in 2007, has state and IRS liens, a DUI in
16 2010, and a harassment charge in 2009. Duling -- I'll
17 have to figure out which one it is -- has a minor
18 possession charge in 1995 and criminal mischief
19 misdemeanor in 1996.

20 Harcourt filed for bankruptcy. Now, whether
21 that's business or personal, I don't know. So you were
22 unaware of those?

23 A I was unaware.

24 Q Okay. So as far as the product itself, the
25 communication with the doctors, were they operating

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1 prior to OE Capital's funding?
 2 A They were -- they were in testing. They had
 3 tested the market and sold some, I guess, memberships.
 4 Q So what are they selling?
 5 A They're essentially selling a subscription
 6 service to this call a doctor.
 7 Q Okay. And this is to individuals, correct,
 8 not -- outside of the health insurance companies?
 9 A That's correct.
 10 Q Okay.
 11 A They're selling directly to individuals.
 12 (SEC Exhibit No. 13 was marked for
 13 identification.)
 14 BY MS. FLOYD:
 15 Q I'm going to hand you what has been labeled
 16 as Exhibit 13. Take a moment and look through it.
 17 MS. FLOYD: I made copies before Barrett
 18 warned me he's bringing someone. I would have made you
 19 a copy.
 20 MR. MCCARTHY: He often forgets me.
 21 MR. HOWELL: This is thirteen.
 22 MS. FLOYD: Correct.
 23 BY MS. FLOYD:
 24 Q Do you recognize Exhibit 13?
 25 A Yes.

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1 Q What is it?
 2 A It is the financial agreement or the
 3 financial projections and funding, use of funds
 4 agreement.
 5 Q Did you draft Exhibit 13?
 6 A No.
 7 Q Who created Exhibit 13?
 8 A Cristina Cason.
 9 Q If I'm reading this correctly, what RivaCare
 10 receives in profit would be around 17.6 million in
 11 thirty-six months, and OE Capital would receive 9.5
 12 million. Is that correct?
 13 A That's correct.
 14 Q Okay. Now, this one's different than the
 15 other two we've looked at because this has no dates on
 16 the top.
 17 A It has months.
 18 Q Months, correct. So month one, what month --
 19 was it 2015, 2016? Which month and year would that be?
 20 A That was January, I believe.
 21 Q Of '16?
 22 A '16.
 23 Q Okay. So as of April 2016, it sells here --
 24 it says here projected sales of 3,940. Is that
 25 correct?

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1 A April.
 2 Q April.
 3 A That is not.
 4 Q Okay.
 5 A We had less than \$3,940 worth of sales.
 6 Q Was it significantly less or just a few?
 7 A Let me make sure that's right because I'm
 8 looking at sales, and I'm thinking of the rev cap
 9 number. Yeah. I think if I remember right, we got a
 10 refuse cap from them in April of somewhere around \$250.
 11 Q So not a whole lot?
 12 A Not a whole lot, but that would have been --
 13 that would have been \$2,500 in sales. So it was
 14 decently close.
 15 Q Okay. What is BTC campaign, buyer to
 16 customer?
 17 A Business to consumer.
 18 MS. STUMBAUGH: Close.
 19 MS. FLOYD: I should stop guessing.
 20 (SEC Exhibit No. 14 was marked for
 21 identification.)
 22 BY MS. FLOYD:
 23 Q I'm going to hand you what has been labeled
 24 as Exhibit 14. Take a moment and look through this.
 25 MR. HOWELL: Catherine, of the exhibits we're

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1 going to go through today, what number would you pick?
 2 MS. FLOYD: Twenty, twenty-one.
 3 MS. STUMBAUGH: Seventy-five.
 4 MS. FLOYD: I've got small ones coming up.
 5 MR. HOWELL: Really?
 6 MS. FLOYD: Uh-huh.
 7 MR. HOWELL: You won't have time for our SEC
 8 appreciation day.
 9 (Laughter.)
 10 BY MS. FLOYD:
 11 Q Do you recognize Exhibit 14?
 12 A Yes.
 13 Q What is it?
 14 A It is the revenue financing agreement between
 15 Ducourt Consulting and OE Capital Partners.
 16 Q And did you create Exhibit 14?
 17 A I did not.
 18 Q And did you participate in drafting any part
 19 of Exhibit 14?
 20 A Only from a content perspective.
 21 Q Did you read Exhibit 14?
 22 A Yes.
 23 Q Okay. On Bates Number OEC_SEC_001775, is
 24 that your signature under investor?
 25 A That is.

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1 Q As previously mentioned in the Athletes
2 agreement, within this agreement, do you see a
3 percentage that RivaCare is paying you for your staff
4 to essentially monitor or participate in this company?
5 A I do not see a percentage. I see the section
6 it's supposed to be in.
7 Q Where is that? What section is that?
8 A Let's see. Article --
9 Q Do the Bates number at the bottom.
10 A 001747.
11 Q Okay. And which paragraph?
12 A This paragraph I should be a lot more
13 detailed than that.
14 Q So it's missing?
15 A Yes.
16 Q Okay.
17 A I should have had K&L Gates do my contracts.
18 Q They'll be happy to hear that. Okay. Now,
19 as far as the product itself, I know it's not a
20 tangible product, but do you have any sort of ownership
21 of the inventory?
22 A Not of the inventory. I do have ownership of
23 the trademarks.
24 Q Okay.
25 A And there hadn't, to my knowledge, been any

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1 A I'm sorry. 001719.
2 Q Security interest?
3 A Correct.
4 Q Okay. So, again, it would be a lien?
5 A In this case, yeah. WHRZT! was our very,
6 very first contract.
7 Q Portfolio company?
8 A Yes.
9 Q Gotcha.
10 A And so we got better after that.
11 Q Understandable. On Bates number - for
12 Exhibit 14, going back to RivaCare, on Bates Number
13 OEC_SEC_001755 under key person life insurance, did you
14 purchase key person life insurance?
15 A We are in the process of finalizing that
16 purchase now.
17 Q And are you purchasing it on all four
18 principals?
19 A We are purchasing it on Justin Duling and
20 Yves.
21 Q Justin Duling and Yves. And are you using
22 the same agent as you used for the two others?
23 A Yes.
24 Q What's the total amount that you've funded
25 RivaCare?

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1 equipment type purchases but trademarks and then the
2 marketing process.
3 Q So if they were to acquire some equipment,
4 would you have ownership of that as well?
5 A I would.
6 Q Where in the contract does it say that?
7 (Witness and counsel confer.)
8 A Page 001758.
9 BY MS. FLOYD:
10 Q Security interest?
11 A Yes.
12 Q Section 5.2?
13 A Yes.
14 Q Okay. So you would have a lien on the
15 collateral. Is that correct?
16 A Correct.
17 Q Okay. That's different than actually full-on
18 owning it. Is that correct?
19 A On the collateral in this case, yes, because
20 there's no physical inventory.
21 Q Before we continue on, jumping back to
22 WHRZT!, do you also have an ownership agreement with
23 the company? I failed to ask this question.
24 A It's in the same -- it's in 5.2 as well.
25 Q Which Bates number?

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1 A 325,000.
2 Q 325,000?
3 A Yes.
4 Q And I presume from Exhibit 13 that you're
5 planning on making additional funding?
6 A We are.
7 Q Okay. Have you received any revenues? You
8 received the \$250. Anything else besides that?
9 A We may have received some -- we may have
10 received some this week. I'm not sure.
11 Q Okay. I believe the last portfolio company
12 is Future Products of America. Is that correct?
13 A That's correct.
14 Q And how were you introduced to Future Product
15 of America?
16 A Through John Hobbs at APG.
17 Q And Future Products of America is in Tampa,
18 Florida. Is that correct?
19 A That's correct.
20 Q And when were you introduced to Future
21 Products of America?
22 A It would have been last October, November
23 time frame, I believe.
24 Q And who were you introduced to at Future
25 Products of America?

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1 A Rick. I cannot say his last name.
 2 Valderrama.
 3 Q Can you spell that?
 4 A V-a-l-d-e-r-r-a-m-a, I believe.
 5 Q And where were you introduced to him?
 6 A Over the phone.
 7 Q And what exactly does Future Products of
 8 America do?
 9 A Future Products of America sources products
 10 from in innovative inventors and takes those products
 11 to market, the end channels of digital, retail, or
 12 affinity, and sells them.
 13 Q Shark Tank but not as intense.
 14 MR. HOWELL: Did you say they sell shark
 15 tanks?
 16 MS. FLOYD: No. Shark Tank, the TV show. I
 17 actually never watched it.
 18 MS. STUMBAUGH: It's in Florida.
 19 THE WITNESS: I don't like that show.
 20 MS. FLOYD: I've never seen it. I just know
 21 the premise behind it.
 22 A A little bit.
 23 BY MS. FLOYD:
 24 Q Okay. So the company is basically like a hub
 25 for inventors, correct?

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1 A Correct.
 2 Q Do they have a website?
 3 A Yes.
 4 Q What kind of products are on their website?
 5 Do they sell products on their website?
 6 A We are starting to sell those products
 7 through the website. I think the first one goes live
 8 in two weeks.
 9 Q So what kind of products would I find?
 10 A Mostly consumer good type products.
 11 Q Can you give me examples?
 12 A There's one called the Ultimate Cup.
 13 Q What is that?
 14 A It's a Beer Pong cup. It's got two sides two
 15 it. So you play Beer Pong, and you take the shot on
 16 the other side.
 17 Q Solo cups need to get with it then, right?
 18 A Yeah. They're about to go under.
 19 MR. HOWELL: You've got some in here.
 20 MS. FLOYD: Did you bring beer?
 21 MR. HOWELL: You always get mad when I do.
 22 (Laughter.)
 23 BY MS. FLOYD:
 24 Q So that's one product. What else?
 25 A There's something called a Hose Hooker.

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1 Q The Hose Hooker?
 2 A Hooker.
 3 (The reporter requests clarification.)
 4 BY MS. FLOYD:
 5 Q Okay.
 6 A Skip that one.
 7 Q Sort of interesting. What does that do?
 8 A It's almost ridiculous. You put this kind of
 9 stake in the ground, and it has this adjustable thing
 10 that you put a hose in.
 11 Q Like a garden hose?
 12 A Like a garden hose. And then you tend to
 13 your garden or what – I guess the biggest thing now is
 14 that boat marina operators really like them because
 15 they can fit into this thing, and they can wash their
 16 boats without having to hold the hose.
 17 Q Okay. Anything else? This is way more
 18 interesting than talking about agreements.
 19 A Wait a minute. Can I get them under NBA?
 20 Q We can't do anything about that.
 21 A They haven't hit the market yet.
 22 MR. HOWELL: You can invest.
 23 MS. STUMBAUGH: We can't even do that.
 24 MR. HOWELL: That would be frowned upon.
 25 A There's a product called the – we don't even

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1 have a name for it yet. It's a paint brush that comes
 2 apart. It has two little magnets. It comes apart. So
 3 you have one just call it three-inch paint brush. Pull
 4 it apart, and now you've got a two-inch and a one-inch
 5 all in one paint brush.
 6 Q Okay. These are the products – had these
 7 products been sold previously before OE Capital started
 8 funding the company?
 9 A Most of them have, yes.
 10 Q Through its inventor?
 11 A That's correct.
 12 Q Okay. Through avenues of word-of-mouth,
 13 their own website, whatnot, right?
 14 A QVC, yes.
 15 Q Okay. So obviously they needed funding.
 16 A Correct.
 17 Q So what kind of compensation did you have
 18 with Rick? We'll just call him Rick.
 19 A Rick.
 20 Q Okay.
 21 A There were three principals of First
 22 Innovations Group, Rick, Carmine, and Lloyd.
 23 Q And who exactly is First Innovations Group?
 24 A They are our manufacturing contact. So
 25 they're a manufacturing, product engineering company.

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1 MS. STUMBAUGH: They're the ones
 2 manufacturing the water bottles --
 3 THE WITNESS: That's correct.
 4 MS. STUMBAUGH: -- for APG.
 5 THE WITNESS: That's correct.
 6 MS. STUMBAUGH: They also manufacture the
 7 Hose Hooker and the Ultimate Cup?
 8 THE WITNESS: They manufacture all FPOA
 9 products.
 10 BY MS. FLOYD:
 11 Q Gotcha. Thank you. So you had a
 12 conversation with the three principals. Again -- I'm
 13 sorry. The names are Rick?
 14 A Rick, Carmine, and Lloyd.
 15 Q And what did you guys discuss?
 16 A We discussed that the revenue-based funding
 17 model was a really good model for the inventors that
 18 they were running into, and so what they really wanted
 19 to do is since inventors are notoriously bad
 20 businesspeople take the inventor out of the equation by
 21 offering them a revenue-based consistent income based
 22 on the sales of their product, and then we would fund
 23 the inventory and marketing and that type of stuff of
 24 those products, and then we would share in the -- in
 25 this case the actual profits with First Innovations

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1 on the company at that point?
 2 A Again, we didn't do a lot of due diligence --
 3 we didn't do any background. We did due diligence on
 4 the principals. We did do -- essentially what this is,
 5 this is a joint venture, which is different than our
 6 typical arrangement because we saw an avenue to
 7 participate in ongoing revenues and profits for a
 8 stream of products that would consistently be
 9 introduced.
 10 Q Okay.
 11 A And so instead of us financing one single
 12 product at a time, we created a joint venture with
 13 First Innovations Group where they would handle the
 14 product and handle the manufacturing supply chain side,
 15 and we would handle the finance, the marketing, and
 16 distribution side.
 17 Q Okay. But there's still a three-year time
 18 limit. Is that correct?
 19 A With this particular, no.
 20 Q Okay.
 21 A That is not correct.
 22 Q So you just keep going?
 23 A We just keep going.
 24 Q Okay. Good to know. As far as due
 25 diligence, what due diligence have you done on the

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1 Group.
 2 (SEC Exhibit No. 15 was marked for
 3 identification.)
 4 BY MS. FLOYD:
 5 Q I'm going to hand you what has been marked as
 6 Exhibit 15. Take a moment and look through it, please.
 7 What is Exhibit 15?
 8 A This is -- this is actually the budget for
 9 Future Products of America.
 10 Q Okay. And did you create Exhibit 15?
 11 A No.
 12 Q Who did?
 13 A Cristina Cason.
 14 Q Okay.
 15 A Along with probably Carmine.
 16 Q Okay. And you said this is different than
 17 projections. This is the budget, correct, or is it the
 18 same thing, just a different title?
 19 A I believe this is essentially the same thing.
 20 I believe this was the projections. I do not believe
 21 this is the ongoing budget.
 22 Q Okay. So was this created at the time of the
 23 contract?
 24 A It was.
 25 Q Okay. And what due diligence have you done

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1 actual products themselves?
 2 A So we do individual due diligence on the
 3 products. The first one is have they sold any yet. If
 4 not, then it's probably a no go. The second we do is
 5 our standard what's the market demand.
 6 We then -- in this particular case, we seek
 7 to understand what is the right particular channel by
 8 which to sell. Everything we sold online, but not
 9 everything will be sold, for example, in retail stores,
 10 and then there are certain products that are
 11 specifically designed for direct response to TV.
 12 Q Like infomercials.
 13 A Like infomercials.
 14 Q Okay.
 15 A And so we decide which channel is the best
 16 channel to sell this on, and then what we do is we use
 17 those same kind of conversion rates, understandings per
 18 channel to figure where we're going to sell and what
 19 we're going to sell.
 20 Q Okay. So you're saying Future Products of
 21 America is more -- is a joint venture.
 22 A Right.
 23 Q So you won't have a specific profit at the
 24 end of three years. So how -- did OE Capital buy units
 25 or buy any sort of joint venture -- you have a joint

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1 venture agreement with Future Products of America.
 2 A That is correct.
 3 MS. FLOYD: I need a copy of that, Barrett.
 4 MR. HOWELL: The joint venture agreement?
 5 BY MS. FLOYD:
 6 Q That's what this --
 7 A Yes.
 8 Q All right. Never mind.
 9 MR. HOWELL: I'll send you a copy if you
 10 want.
 11 MS. FLOYD: I'll go ahead and put that in the
 12 record.
 13 (SEC Exhibit No. 16 was marked for
 14 identification.)
 15 BY MS. FLOYD:
 16 Q I am going to hand you what has been labeled
 17 as Exhibit 16. So this is a joint venture agreement.
 18 A Correct.
 19 Q Take a moment and look through it. Do you
 20 recognize Exhibit 16?
 21 A Yes.
 22 Q And what is it?
 23 A It is the operating agreement for the joint
 24 venture between First Innovations Group and Optimal
 25 Economics Capital Partners and Future Products of

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1 a specific product or is it all the products under
 2 Future products of America?
 3 A It is two specific products.
 4 Q Which products are those?
 5 A One of them is something called the Clink.
 6 Q I promise I'm not going to repeat it. You
 7 don't have to worry.
 8 MS. FLOYD: He's hesitant to tell us.
 9 (Laughter.)
 10 A It's extraordinarily simple. It's a magnet
 11 that sits on your -- that has this double-sided super
 12 strong tape that sits on the back of your cell phone
 13 and then another magnet that sits on anything, and it
 14 is literally so strong you could toss your phone up
 15 against the wall, and the magnet will catch it.
 16 BY MS. FLOYD:
 17 Q Have you tested these products?
 18 MR. HOWELL: I'm going to test it with his
 19 phone.
 20 MR. MCCARTHY: Test it with your BlackBerry.
 21 BY MS. FLOYD:
 22 Q Okay. So what is the other product?
 23 A The other product is something call a
 24 Micromat.
 25 Q Micromat?

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1 America.
 2 Q Did you draft Exhibit 16?
 3 A I did not.
 4 Q Who did?
 5 A I believe an attorney for First Innovations
 6 Group.
 7 Q Okay. And did you read Exhibit 16?
 8 A I did.
 9 Q On Page 35, Bates label LEC_SEC_001818, is
 10 that your signature on that page?
 11 A Yes.
 12 Q Okay. So as far as Exhibit 15 under total
 13 sales of units, you have Walmart listed.
 14 A Yes.
 15 Q Is there an agreement in place with Walmart
 16 to sell some of these products?
 17 A We are currently finalizing that agreement.
 18 Q Okay. It hasn't officially been finalized.
 19 A It has not.
 20 Q And the current terms of the draft of the
 21 agreement call for 60,000 units as of November '16. Is
 22 that correct?
 23 A That's what we believe Walmart -- that's the
 24 number that Walmart is giving us right now, yes.
 25 Q What exactly are they contracting for? Is it

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1 A Yes.
 2 Q Okay.
 3 A It is -- it's a mat that you can put in the
 4 microwave. You don't put it in the microwave. Let's
 5 say you're microwaving some soup, and it's really,
 6 really hot, the bowl. You take this thing. It's
 7 silicon. You take your soup out and put it on the
 8 table, and it turns into a placemat.
 9 Q Interesting. Okay.
 10 A Sold out on QVC twice.
 11 Q All right. Interesting. So currently you
 12 have a draft of an agreement with Walmart, correct?
 13 A Correct.
 14 Q Okay.
 15 MS. GUNN: Who are you dealing with at
 16 Walmart? Who's the contact?
 17 THE WITNESS: I only know his first name,
 18 Griffin.
 19 BY MS. FLOYD:
 20 Q Have you had any dealings with Griffin?
 21 A No.
 22 Q Who has had dealings with Griffin?
 23 A Tracy Alexander via a sales rep named Max.
 24 Q It seems very undercover to me.
 25 MS. GUNN: Just so I understand, the sales

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1 rep named Max is someone with Future Products?

2 THE WITNESS: No.

3 MS. GUNN: Okay. Who's the sales rep?

4 THE WITNESS: In order to get any big
5 retailer, there are these sales reps that you have to
6 go through or else buyers won't talk to you. Max is
7 one of those.

8 BY MS. FLOYD:

9 Q He's not employed by Walmart. He's just kind
10 of like a sales agent.

11 A That is correct.

12 Q I did not know that. Okay. Interesting.

13 MR. HOWELL: That's where you get buyers
14 reps, sales reps.

15 MS. FLOYD: I didn't know you had to go
16 through a person to get to a person. They're not like
17 celebrities, know what I mean? I just didn't know.
18 Interesting.

19 MR. HOWELL: They think they are.

20 THE WITNESS: They kind of are.

21 (Laughter.)

22 MS. FLOYD: My definition of celebrity might
23 be a little different.

24 MS. GUNN: People see their baby on the front
25 of the Inquirer.

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1 A Yes, ma'am. It has a breakout of the
2 percentage of distribution based on that sales channel.

3 Q So OE Capital gets forty percent of the
4 profit?

5 A If it's sold in a retail distribution.

6 Q Retail distribution, okay. In commerce then
7 you get fifty percent. E-commerce distribution you get
8 sixty percent. Okay. So how do you fund this joint
9 venture?

10 A We fund the operating, and we fund the
11 marketing, and we fund the -- we fund the venture. We
12 fund the manufacturing of any of the inventory.

13 Q So do you do milestones still?

14 A We do.

15 Q Okay. But it looks like -- on Exhibit 15, it
16 looks like you guys do a monthly funding. Is that
17 correct?

18 A For the operator, that's correct.

19 Q So you fund them monthly?

20 A That's correct.

21 Q And you do this forever as long as it's
22 PROFITABLE?

23 A No. At some point once the revenues really
24 kick in, they'll be self-funded, and that's net
25 profit -- that's due to happen fairly shortly.

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1 BY MS. FLOYD:

2 Q So how is OE Capital compensated?

3 A By selling the products.

4 Q Okay. So what percentage do you get -- is it
5 revenue? You get a percentage of the revenue, correct?

6 A We get -- we get a little -- we get a thin
7 slice of the revenue, and we share in the profits,
8 back-end profits.

9 Q Okay. So how much have you received to date?

10 A I'm not quite sure. I know we just got
11 another payment from them this week. So I'm not quite
12 sure how much we received.

13 MS. GUNN: When you say a thin slice of the
14 revenue, is that as a number or as a percentage?

15 THE WITNESS: I believe it's -- I believe it
16 is something like maybe two to five percent. I can't
17 remember. This agreement is different because we
18 wanted to participate long term. And so on page -- in
19 Exhibit C, it has a breakout of how the --

20 BY MS. FLOYD:

21 Q Exhibit 16?

22 A Exhibit C.

23 Q On Exhibit 16.

24 A On Exhibit --

25 Q Exhibit C within the document. Gotcha.

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1 Q Is Tracy Alexander a part of this company as
2 well?

3 A She essentially acts as the CEO of this
4 company right now.

5 Q Okay. So what do the other principals do?

6 A Rick is responsible for -- he's what I call
7 the face of the company to the inventors. He's
8 responsible for going out and sourcing new products and
9 then bringing those new products in to see if they're
10 products that we would want to put on the platform.

11 Q So back to due diligence. You didn't do any
12 background check.

13 A No.

14 Q So you're unfamiliar with his bankruptcy
15 background and his criminal convictions, correct?

16 A I am unfamiliar.

17 Q Okay. So Rick has filed for Chapter VII in
18 2011 and had a DUI charge in 2009. If you were aware
19 of any of these criminal convictions or bankruptcies,
20 would that have affected your participation with the
21 portfolio agreement?

22 A Potentially.

23 Q Okay. How so? You say potentially. So what
24 would --

25 A With that question, I probably would not have

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1 entered into an agreement with John Hobbs.
 2 Q Okay.
 3 MS. STUMBAUGH: How is your investment in
 4 Future Products of America -- how is it protected? In
 5 the other cases, you have key man life insurance. You
 6 took a security interest in the assets. I don't see
 7 that here in Exhibit 16. Is there another method?
 8 THE WITNESS: Well, we actually own part of
 9 this company, and so our share underlies our money,
 10 plus we pay directly for any of the assets, any of the
 11 inventory. So all of the inventory that's purchased is
 12 actually in the name of OE Capital Partners. However,
 13 we do have key life insurance on Rick.
 14 BY MS. FLOYD:
 15 Q Through the same agent you used for the past
 16 three?
 17 A Yes.
 18 Q And OE Capital paid for that life insurance.
 19 Is that correct?
 20 A Yes.
 21 MS. FLOYD: Any questions on that? We can
 22 take a break.
 23 MS. GUNN: Why don't we take a break.
 24 MS. FLOYD: Let's go off the record at 2:44.
 25 (Recess taken from 2:44 to 3:04.)

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1 MS. FLOYD: Let's go back on the record at
 2 3:04 p.m.
 3 BY MS. FLOYD:
 4 Q Off the record, we didn't have any
 5 substantive conversations regarding specifics of the
 6 matter. Is that correct?
 7 A That's correct.
 8 Q But we did discuss bringing you back for
 9 testimony for a second day because we have additional
 10 material to go through. Is that correct?
 11 A Correct.
 12 MS. FLOYD: Okay. We were -- prior to going
 13 off the record, we were talking about Future Products
 14 of America's joint venture agreement, correct?
 15 MS. GUNN: Yes.
 16 MS. STUMBAUGH: Yes.
 17 BY MS. FLOYD:
 18 Q And you have previously testified that Tracy
 19 Alexander is basically acting COO of this company,
 20 correct?
 21 A Correct.
 22 Q What is her compensation?
 23 A She gets compensated by OE Capital Partners.
 24 Q Okay. So do you have an agreement with
 25 Future Products of America to -- like the other

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1 agreements where you get seven and a-half percent, and
 2 you're paying for her to monitor the company? Do you
 3 have a similar agreement with Future Products of
 4 America?
 5 A We don't.
 6 Q Okay. And as far as the other agreements
 7 where you do have that agreement, although it doesn't
 8 state the seven and a-half percent, do you have another
 9 agreement that does state that with the company,
 10 portfolio company?
 11 A I don't believe I do.
 12 Q Was it an oral agreement?
 13 A Yes.
 14 Q Okay. And if there's any way you could let
 15 your counsel know exactly what percentage per portfolio
 16 company, that would be fantastic as well.
 17 A I can do that.
 18 Q Thank you.
 19 MS. FLOYD: Do you have any questions?
 20 MS. STUMBAUGH: No.
 21 MS. GUNN: I did have one additional question
 22 on Exhibit 16. I noticed in Exhibit C that there's a
 23 provision for attributable profits and losses. So the
 24 allocation you testified to about the profits, that
 25 also applies to losses. Is that correct?

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1 THE WITNESS: That's correct.
 2 MS. GUNN: Okay.
 3 (SEC Exhibit No. 17 was marked for
 4 identification.)
 5 BY MS. FLOYD:
 6 Q I'm handing you what has been marked as
 7 Exhibit 17. Take a moment and look through it. Do you
 8 recognize Exhibit 17?
 9 A Yes.
 10 Q What is it?
 11 A It is the private offering memorandum for
 12 Insured Liquidity Partners, Cfg I.
 13 Q Did you draft Exhibit 17?
 14 A I did not.
 15 Q Did you participate in drafting certain
 16 sections of Exhibit 17?
 17 A I did not.
 18 Q Do you know who did draft Exhibit 17?
 19 A To my recollection, it was Allen Reno.
 20 Q Allen Reno?
 21 A Yes.
 22 MS. GUNN: Did you review the document before
 23 it was disseminated?
 24 THE WITNESS: Not in detail.
 25 BY MS. FLOYD:

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1 Q Is this the only version of the PPM for Cfg
2 I?
3 A To my knowledge, it is.
4 Q Okay. What does Cfg stand for?
5 A Coordinated Financial Group.
6 Q And who is Coordinated Financial Group?
7 A They were a group that Urshel Metcalf met,
8 and there was potentially some kind of arrangement for
9 them to participate somehow.

10 Q Okay.
11 (Ms. Floyd and Ms. Stumbaugh confer.)
12 BY MS. FLOYD:
13 Q So you believe it's the only version of this?
14 A I do, yes.

15 MS. GUNN: And just before we move on from
16 this, I believe you earlier testified that the proceeds
17 were approximately 850 to 860,000. Is that correct?

18 THE WITNESS: I believe so.

19 MS. GUNN: And can you tell us which of the
20 companies that money was invested in?

21 THE WITNESS: The way that it works is the
22 money really is invested in OE Capital Partners. OE
23 Capital Partners then decides based on milestone
24 funding and needs and timing which companies those
25 funds should go to.

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1 BY MS. FLOYD:
2 Q So indirectly it's going to the portfolio
3 companies?

4 A Via OE Capital Partners.

5 MS. GUNN: And so which portfolio companies
6 did OE Capital invest in using the proceeds from this
7 offer in Exhibit 17?

8 THE WITNESS: I can't tell you exactly what
9 companies got money from what exactly.

10 BY MS. FLOYD:

11 Q Why is that?

12 A Because in terms of how we look at it, we
13 look at one massive fund, and so what we would do
14 is just see where the available funds were, and we
15 would invest those based on what company needed what
16 when.

17 We also would use -- utilize this for kind of
18 building the engine, the human capital that we would
19 need to participate in those portfolio companies
20 because that's actually the engine that's going to
21 drive the returns.

22 So I can't -- I can't say that this money
23 went to this company because I would not have known
24 what that company was or how much they needed.

25 Q Do you disclose in the PPM that it's

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1 essentially part of one big fund?

2 A I didn't -- I did not draft this PPM.

3 Q Okay. But you think it's disclosed in the
4 other PPMs?

5 A I believe it is disclosed in OE Ventures. I
6 know it is disclosed in the new -- in the PPM that K&L
7 Gates are -- they're working on for us now.

8 Q Okay.

9 A For OE Ventures.

10 Q But it has not been distributed to investors
11 yet, correct?

12 A That PPM, no.

13 MS. GUNN: So I believe you earlier testified
14 that some of the money in particular you raised, I
15 believe you said 400,000, and this was before your
16 split with Mr. Reno and a little bit later Mr. --

17 MS. FLOYD: Metcalf.

18 MS. GUNN: Thank you. I was wanting to call
19 him Marshall. Do you have any understanding of what
20 happened to the money that was spent before you took
21 over, if you will? Were you involved in determining
22 how to spend that money?

23 THE WITNESS: Only a portion of it.

24 MS. GUNN: Okay. Which portion.

25 THE WITNESS: There was approximately 239,000

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1 that was at Howard Capital for the kind of acquisition
2 of human capital, building of the infrastructure,
3 getting the engine ready.

4 Mr. Metcalf had full management
5 responsibility and authority. I don't know where all
6 of the money that passed through Insured Liquidity
7 Partners went. I do know that some of it did go to
8 building out human capital and that side as well and
9 infrastructure.

10 MS. GUNN: When you say build out human
11 capital and infrastructure, what do you mean by that?

12 THE WITNESS: Finding the people that were
13 going to work with the portfolio companies to help
14 drive the revenue, starting to look at putting in place
15 the different types of systems that we might need,
16 looking at different types of software, whether it's
17 Microsoft Office, things of that nature that we would
18 need to actually do the work.

19 MS. GUNN: And so the money that went to
20 Insured Liquidity, did you have any authority or
21 control over that?

22 THE WITNESS: Urshel Metcalf had full
23 authority and control over that.

24 MS. GUNN: Okay. Do you have any
25 understanding of how much money that was?

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1 THE WITNESS: I believe it was somewhere
2 around \$500,000.
3 MS. GUNN: Okay. So virtually the entire
4 proceeds from the first offering went to build out
5 human capital and infrastructure?
6 THE WITNESS: Again, I don't know what all
7 Urshel Metcalf spent.
8 MS. GUNN: Okay. Thank you.
9 (SEC Exhibit No. 18 was marked for
10 identification.)
11 BY MS. FLOYD:
12 Q I'm going to hand you what has been marked as
13 Exhibit 18. Take a moment and read through this. Do
14 you recognize Exhibit 18?
15 A It is a partnership agreement for, it looks
16 like, Cfg I.
17 Q Insured Liquidity Partners, Cfg I?
18 A Correct.
19 Q And did you draft Exhibit 18?
20 A No.
21 Q Do you know who drafted Exhibit 18?
22 A I believe Allen Reno.
23 Q Did you participate in drafting Exhibit 18?
24 A No.
25 Q Have you read Exhibit 18?

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1 A I have, yes, for the most part.
2 Q And this isn't -- this appears to be the
3 draft -- not a draft -- an unsigned version. Counsel
4 has listed this as for nonaccredited investors. Is
5 that correct? There's another one I'll be showing to
6 you. I want to make sure I distinguish the two.
7 MR. HOWELL: I said that?
8 MS. FLOYD: It's in the production index. It
9 has it in the name.
10 MS. GUNN: I've got it if you want to look at
11 it.
12 MS. STUMBAUGH: Bates Number 1.
13 BY MS. FLOYD:
14 Q Nonaccredited. I just want to verify that's
15 correct.
16 A To my knowledge, it would be the same
17 partnership agreement whether it's accredited or not.
18 Q Okay.
19 MR. HOWELL: Do I need to call, Catherine,
20 and figure out what the background is on why that's in
21 there? I know this is our document.
22 MS. FLOYD: I can give you this other one,
23 and I can show you the difference between the two. So
24 maybe that will trigger something and refresh his
25 memory.

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1 (SEC Exhibit No. 19 was marked for
2 identification.)
3 BY MS. FLOYD:
4 Q I'm going to give you what has been marked as
5 Exhibit 19. Take a moment and look through it. Do you
6 recognize Exhibit 19?
7 A It looks like a partnership agreement for
8 Insured Liquidity Partners, Cfg I.
9 Q Did you draft Exhibit 19?
10 A No.
11 Q Do you know who did?
12 A I believe Allen Reno.
13 Q Did you participate in drafting Exhibit 19?
14 A No.
15 Q From my standpoint, I think the one main
16 difference is the last page, Exhibit A. On Exhibit 18,
17 it's a twenty/eighty. And on Exhibit 19, it's a 0/90.
18 Do you know why there's a difference?
19 A I do not believe Exhibit 18 is an accurate
20 document.
21 Q Exhibit 18, okay.
22 A The partnership -- the terms for Cfg I was
23 ninety/ten.
24 Q Okay.
25 A This document (indicating).

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1 Q So you believe the document used by investors
2 was Exhibit 19?
3 A Yes.
4 (SEC Exhibit No. 20 was marked for
5 identification.)
6 BY MS FLOYD:
7 Q I'm going to hand you what has been marked as
8 Exhibit 20. Please take a moment and look through it.
9 Do you recognize Exhibit 20?
10 A Yes.
11 Q What is it?
12 A It is the private placement memorandum for
13 ILP, Insured Liquidity Partners, Cfg II.
14 Q Okay. Did you draft Exhibit 20?
15 A I did not.
16 Q Do you know who drafted Exhibit 20?
17 A I believe Allen Reno.
18 Q Did you help participate in drafting Exhibit
19 20?
20 A I made updates subsequent to his leaving to
21 this document.
22 Q How many versions of Exhibit 20 are there?
23 A Only -- I believe only the one.
24 Q I'm sorry. I'm confused. So Mr. -- you said
25 Allen Reno had originally drafted the first one?

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1 A Yes.
 2 Q And then you made updates. So would there be
 3 two versions?
 4 A Well, there should be two, I guess. I'm not
 5 sure if it was a version, like a version two versus
 6 updating it.
 7 Q So you may have made updates to the original
 8 draft?
 9 A Yes.
 10 Q Okay.
 11 MS. GUNN: I'm sorry. I'm completely
 12 confused. So how many were used with investors, one
 13 PPM or two PPMs?
 14 THE WITNESS: I believe one PPM.
 15 MS. GUNN: One version of it?
 16 THE WITNESS: Right.
 17 MS. GUNN: Okay. And that was the version
 18 that you had made updates to, correct?
 19 THE WITNESS: Correct.
 20 MS. GUNN: Okay. Can you tell us where --
 21 what you updated or what you changed?
 22 THE WITNESS: I can. In Section 2, summary
 23 of the offering.
 24 MS. GUNN: Can you give us the Bates?
 25 THE WITNESS: Sorry. OEC_SEC_000091. I

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1 believe it's actually 92, section C, operations.
 2 MS. GUNN: So did you add that section?
 3 THE WITNESS: I did.
 4 MS. GUNN: Okay.
 5 THE WITNESS: OEC_SEC_000109, the management
 6 section. I believe that's it.
 7 (SEC Exhibit No. 21 was marked for
 8 identification.)
 9 BY MS. FLOYD:
 10 Q I'm going to hand you what has been marked as
 11 Exhibit 21. Take a moment and look through it. Do you
 12 recognize Exhibit 21?
 13 A It's the operating agreement for Insured
 14 Liquidity Partners II.
 15 Q Did you draft Exhibit 21?
 16 A I did not.
 17 Q Who did?
 18 A I believe Allen Reno.
 19 Q Did you participate in any sort of section,
 20 drafting a section or updating?
 21 A I did not.
 22 (SEC Exhibit No. 22 was marked for
 23 identification.)
 24 BY MS. FLOYD:
 25 Q I'm going to hand you what has been marked as

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1 Exhibit 22. Take a moment and look through it.
 2 MS. GUNN: Before we get to that one, in
 3 Exhibit 21, Page 139, that's the last page, Exhibit A,
 4 it shows that Mr. Metcalf has a one percent ownership.
 5 Do you see that?
 6 THE WITNESS: Yes.
 7 MS. GUNN: Does he still have that ownership
 8 position or are you buying it out as you described to
 9 us earlier today?
 10 THE WITNESS: I am buying it out.
 11 MS. GUNN: Okay.
 12 BY MS. FLOYD:
 13 Q Do you recognize Exhibit 22?
 14 A I do.
 15 Q What is it?
 16 A It is the private placement memorandum for OE
 17 Capital Ventures.
 18 Q Okay. And did you draft Exhibit 22?
 19 A Yes, I did, with help from Dovile Soblinskas.
 20 Q Okay. How many versions of Exhibit 22 are
 21 there?
 22 A Only this version.
 23 (SEC Exhibit No. 23 was marked for
 24 identification.)
 25 BY MS. FLOYD:

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1 Q I'll hand you what has been marked as Exhibit
 2 23. Take a moment and look through it.
 3 MS. FLOYD: You did not provide it to us.
 4 BY MS. FLOYD:
 5 Q Do you recognize Exhibit 23?
 6 A Yes. It is the partnership agreement for OE
 7 Capital Ventures.
 8 Q And did you draft Exhibit 23?
 9 A I did not.
 10 Q You did not draft Exhibit 23?
 11 A No.
 12 Q Do you know who drafted Exhibit 23?
 13 A Dovile Soblinskas.
 14 Q Do you know how many versions of Exhibit 23
 15 there are?
 16 A I believe just one.
 17 MS. GUNN: Did you review Exhibit 23
 18 before -- well, I guess the first question would be,
 19 has this been executed by the partnership -- excuse
 20 me -- by OE Capital Partners?
 21 THE WITNESS: Yes.
 22 MS. GUNN: Okay. And did you review it
 23 before it was used?
 24 THE WITNESS: Yes.
 25 MS. GUNN: Okay. And were you the person who

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1 was the final decision-maker in terms of authorizing
2 its use?

3 THE WITNESS: Yes.

4 MS. GUNN: Okay. I think there's --
5 actually, your signature's on there. I should say your
6 signature block is reflected. Okay. All right. I'm
7 sorry. I'm not going to try her last name. Is Dovile,
8 is she a lawyer?

9 THE WITNESS: She is not.

10 MS. GUNN: Okay. Do you know what
11 experience, if any, she has in drafting partnership or
12 other type agreements?

13 THE WITNESS: I wouldn't know if she has
14 extensive experience.

15 MS. GUNN: Okay. Do you know if she has
16 limited experience?

17 THE WITNESS: I would say she has limited
18 experience.

19 MS. GUNN: Okay. Is this the first time
20 she's done this or has she done it before?

21 THE WITNESS: I don't know if she's done it
22 before. I would assume this might be the first time.

23 MS. GUNN: Okay. Go ahead.

24 (SEC Exhibit No. 24 was marked for
25 identification.)

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1 Q Okay.

2 A Other than that, I believe probably the most
3 efficient way is Dovile probably would have e-mailed is
4 what I would assume.

5 MS. GUNN: So these were provided to Mr.
6 Heinzelman. Is that correct?

7 THE WITNESS: That is correct.

8 MS. GUNN: And how is it that you know he did
9 not give it to prospective investors.

10 THE WITNESS: I don't know that he did not.

11 MS. GUNN: Okay. So he may have?

12 THE WITNESS: He may have, yes.

13 MS. GUNN: Okay. But OE Capital did not
14 directly give it to prospective investors?

15 THE WITNESS: That's correct.

16 MS. GUNN: Okay.

17 (SEC Exhibit No. 25 was marked for
18 identification.)

19 BY MS. FLOYD:

20 Q I want to hand you what has been marked as
21 Exhibit 25. Do you recognize Exhibit 25?

22 A Yes.

23 Q What is it?

24 A It's the annual report that we send out to
25 our investors.

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1 BY MS. FLOYD:

2 Q I'm going to hand you what has been marked as
3 Exhibit 24. Take a moment and look through it. Do you
4 recognize Exhibit 24?

5 A This is a portfolio overview sheet.

6 Q And who drafted Exhibit 24?

7 A Dovile Soblinskas.

8 Q Did you read over Exhibit 24?

9 A Yes.

10 Q Did you approve Exhibit 24?

11 A Yes.

12 Q And was Exhibit 24 provided to potential
13 investors?

14 A It was -- no. It was provided only to
15 current investors who asked for a lineup of the
16 portfolio companies.

17 Q Do you know when you started providing this
18 to the investors?

19 A I cannot remember when we started providing.

20 Q And if current investors were asking for it,
21 would you e-mail it? Would you mail it? Would you
22 hand them a hard copy? How would they receive it?

23 A The majority of the investors would have come
24 through Charles Heinzelman, and he would have been
25 responsible for getting this to them.

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1 Q And did you draft Exhibit 25?

2 A Part of it.

3 Q Who drafted the other part?

4 A Dovile Soblinskas, Cristina Cason, Tracy
5 Alexander, and a little part by Chad Alberson.

6 MS. STUMBAUGH: Was this mailed out to
7 investors?

8 THE WITNESS: Along with the statements.

9 MS. GUNN: Is this document provided only to
10 current investors as of the year-end or has it been
11 provided to prospective investors?

12 THE WITNESS: No prospective investors.

13 MS. GUNN: I'm sorry. Only prospective?

14 THE WITNESS: Only current.

15 MS. GUNN: Okay. And you said you drafted
16 some of it. Can you tell us which parts you drafted?

17 THE WITNESS: I drafted, of course, the
18 letter to investors on 001262. I drafted the
19 executive -- the executive summary. I believe Dovile
20 and I both drafted the executive summary. Chad
21 Alberson did the graph.

22 MS. GUNN: In terms of the content of the
23 graph, who provided that?

24 THE WITNESS: That was provided by me and
25 Cristina Cason.

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1 MS. GUNN: Okay. Keep going. Thank you.
 2 THE WITNESS: I did, I believe, the top part
 3 of 001265.
 4 BY MS. FLOYD:
 5 Q You drafted the top part?
 6 A Yes, and I drafted my look ahead bio.
 7 Q Your bio.
 8 A Yes.
 9 Q Did you draft your bio or everybody's bio?
 10 A Just mine.
 11 MS. FLOYD: Let's take a break at 3:37.
 12 (Recess taken from 3:37 to 3:49.)
 13 MS. FLOYD: Back on the record at 3:49.
 14 BY MS. FLOYD:
 15 Q While on the break, Mr. Howard, did we have
 16 any substantive conversations regarding this matter?
 17 A No.
 18 Q We just have a few follow-up questions
 19 primarily regarding the bank accounts for Howard
 20 Capital Holdings and OE Capital Partners. Do you have
 21 debit cards for either account?
 22 A Yes.
 23 Q Okay. Can we get debit card information
 24 statements?
 25 MS. GUNN: Who actually has those debit

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1 A Correct.
 2 Q But you'll double-check.
 3 MS. STUMBAUGH: Is that also true for wire
 4 transfers?
 5 THE WITNESS: It is.
 6 MS. STUMBAUGH: Who signs the checks for
 7 these bank accounts we've talked about?
 8 THE WITNESS: I sign all the checks.
 9 MS. STUMBAUGH: Any other signatories for the
 10 accounts? Is anyone else able to sign the checks?
 11 THE WITNESS: Let me clarify that. I sign
 12 the checks for Howard Capital, OE Capital Partners. If
 13 there are any checks for CF -- Insured Liquidity
 14 Partners, Cfg I was Urshel Metcalf. Insured Liquidity
 15 Partners, Cfg II was Urshel Metcalf.
 16 BY MS. FLOYD:
 17 Q Does he still have the capability to sign
 18 checks?
 19 A He has the capability. He does not have
 20 access to the checks.
 21 Q Okay. How about the account itself? Does he
 22 have access to the accounts?
 23 A He does.
 24 Q So he has the ability to basically clean you
 25 out if he wanted to? I'm not saying he would. I'm

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1 cards? How many are there.
 2 BY MS. FLOYD:
 3 Q Who has the authority to use it?
 4 A Only me.
 5 Q Only you, okay.
 6 MS. STUMBAUGH: We don't need the statements.
 7 MS. FLOYD: It's been a long day.
 8 MS. STUMBAUGH: Don't send me that again.
 9 BY MS. FLOYD:
 10 Q So you have debit cards only for Howard
 11 Capital Holdings and OE Capital Partners. Is that
 12 correct?
 13 A That's correct.
 14 Q Okay. So you don't have one for OE Capital
 15 Ventures or any of the other funds?
 16 A No.
 17 Q How about credit cards, company credit cards?
 18 A No company credit cards right now.
 19 Q And who has the ability to make electronic
 20 transfers amongst the bank accounts?
 21 A I do certainly, and Cristina Cason does for
 22 OE Ventures and I believe OE Capital Partners, but I
 23 will have to confirm that.
 24 Q Cristina -- you believe Cristina has
 25 capability for OE Capital Partners, correct?

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1 saying he has the capability.
 2 A He has that capability.
 3 Q Okay.
 4 MS. GUNN: Why is he still on those accounts?
 5 THE WITNESS: He was the -- he was the person
 6 that established the LLC's themselves and the bylaws.
 7 So when he set up those bank accounts at Green Bank --
 8 and we've been in discussions with Green Bank on how to
 9 get him off, and it is -- it's a pretty elaborate
 10 process that we're going through now.
 11 We have to get his agreement and change the
 12 bylaws, which he's willing to do. We just -- he wants
 13 to make sure that we will pay him the rest -- for the
 14 rest through September. So we're just working under
 15 that arrangement.
 16 MS. STUMBAUGH: Can you transfer the money
 17 out of those accounts yourself?
 18 THE WITNESS: I could. However, at this
 19 particular stage, I think in both of those accounts, it
 20 is a very minimal amount.
 21 BY MS. FLOYD:
 22 Q In Cfg I and Cfg II, it's minimum?
 23 A Correct.
 24 MS. STUMBAUGH: Who was making the transfers
 25 in the Cfg I and Cfg II accounts after Mr. Metcalf

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1 left?

2 THE WITNESS: There were no more -- I think

3 there was one transfer out of Cfg I. I did that. And

4 the Cfg II account was me primarily after Mr. Metcalf

5 left.

6 MS. GUNN: I don't have anything else.

7 MS. FLOYD: That is it. We are --

8 MS. GUNN: We're adjourning the testimony,

9 but you understand you remain under subpoena. We'll

10 reconvene at a later date agreed upon with your

11 attorneys.

12 MS. FLOYD: Correct.

13 THE WITNESS: Yes.

14 MS. FLOYD: Do you have anything you want to

15 clarify from your testimony today?

16 MR. HOWELL: Can we ask a question off the

17 record?

18 MS. FLOYD: Yeah, sure. Do you have any

19 other clarification questions?

20 THE WITNESS: No.

21 MS. GUNN: Do you want to make a statement

22 today? You will also have the opportunity next time as

23 well.

24 MS. FLOYD: Correct.

25 MR. HOWELL: I'll wait till next time and

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1 have our PowerPoint together.

2 MR. McCARTHY: We just want to make sure --

3 MS. FLOYD: Wait, wait. We're off the record

4 at 3:55.

5 (Whereupon, at 3:55 p.m., the examination was

6 adjourned.)

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PROOFREADER'S CERTIFICATE

1

2

3 In the Matter of: OPTIMAL ECONOMICS

4 CAPITAL PARTNERS, LLC

5 Witness: Patrick O. Howard

6 File Number: FW-04043-A

7 Date: Thursday, May 5, 2016

8 Location: Fort Worth, Texas

9

10 This is to certify that I, Donna S. Raya,

11 (the undersigned), do hereby swear and affirm that the

12 attached proceedings before the U.S. Securities and

13 Exchange Commission were held according to the record

14 and that this is the original, complete, true and

15 accurate transcript that has been compared to the

16 reporting or recording accomplished at the hearing.

17

18 _____

19 (Proofreader's Name) (Date)

20

21

22

23

24

25

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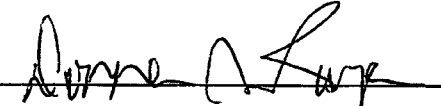
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PROOFREADER'S CERTIFICATE

In the Matter of: OPTIMAL ECONOMICS
CAPITAL PARTNERS, LLC
Witness: Patrick O. Howard
File Number: FW-04043-A
Date: Thursday, May 5, 2016
Location: Fort Worth, Texas

This is to certify that I, Donna S. Raya,
(the undersigned), do hereby swear and affirm that the
attached proceedings before the U.S. Securities and
Exchange Commission were held according to the record
and that this is the original, complete, true and
accurate transcript that has been compared to the
reporting or recording accomplished at the hearing.


(Proofreader's Name)

5/11/16
(Date)

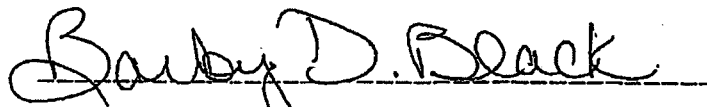
U.S. SECURITIES AND EXCHANGE COMMISSION

REPORTER'S CERTIFICATE

I, Barby D. Black, reporter, hereby certify that the foregoing transcript consisting of 215 pages is a complete, true, and accurate transcript of the statements indicated, held on May 5, 2016, in the Matter of: Optimal Economics Capital Partners.

I further certify that this proceeding was recorded by me and that the foregoing transcript has been prepared under my direction.

Date: May 11, 2016



Official Reporter

Diversified Reporting Services, Inc.

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THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. FW-04043-A

OPTIMAL ECONOMICS)

CAPITAL PARTNERS)

WITNESS: Patrick O'Neal Howard

PAGES: 218 through 411

PLACE: Securities and Exchange Commission

Trinity Room

801 Cherry Street

Fort Worth, Texas

DATE: Wednesday, July 20, 2016

The above-entitled matter came on for hearing, pursuant to notice, at 9:09 a.m.

Diversified Reporting Services, Inc.

(202) 467-9200

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1 APPEARANCES:

2
3 On behalf of the Securities and Exchange Commission:

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5 BARBARA GUNN, ESQ.

6 TIMOTHY McCOLE, ESQ.

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12
13 On behalf of the Witness:

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16 BRANDON MCCARTHY, ESQ.

17 K&L Gates, LLP

18 1717 Main Street, Suite 2800

19 Dallas, Texas 75201

20 214-939-5575

21

22

23

24

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1 PROCEEDINGS

2 MS. FLOYD: We are on the record at 9:09 a.m., on
3 July 20, 2016. I am Catherine Floyd, and I'm joined by my
4 colleagues, Barbara Gunn, Carol Stumbaugh, and Timothy
5 McCole.6 We are officers of the United States Securities &
7 Exchange Commission for the purpose of this proceeding. We
8 are today resuming the examination of Patrick Howard which
9 was adjourned on May 5, 2016.

10 Whereupon,

11 PATRICK O. HOWARD

12 having been previously duly sworn, was recalled as a witness
13 herein and was examined and testified further as follows:14 MS. FLOYD: Mr. Howard, are you represented by
15 counsel today?

16 THE WITNESS: Yes.

17 MS. FLOYD: Would counsel please identify
18 themselves.19 MR. HOWELL: Barrett Howell and Becca Loegering of
20 K&L Gates.21 MS. FLOYD: Testimony today is pursuant to a
22 Commission subpoena which has been previously marked as
23 Exhibit 2. Mr. Howard -- let me grab that exhibit.24 Mr. Howard, do you understand that you remain under
25 oath?

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1 CONTENTS

2 WITNESS:

3 Patrick O'Neal Howard

4 EXAMINATION

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1 THE WITNESS: Yes.

2 EXAMINATION

3 BY MS. FLOYD:

4 Q Is there anything that would prevent you from
5 giving full, complete, and truthful answers to my questions
6 today?

7 A No.

8 Q And the same instructions we covered in the first
9 testimony will apply to this as well, so please don't talk
10 over us. Allow us to finish the questions, and we'll try to
11 do the same. If you guys need to take a break, you know,
12 just ask. And verbal answers --

13 A Yes.

14 Q That's the most important. Thank you.

15 Let the record reflect that a copy of the formal
16 order of investigation in this matter will be available for
17 examination during the course of this proceeding.18 So we took your testimony back in May of -- May 5
19 of 2016. We primarily focused on OE Capital's portfolio
20 company, so I kind of want to dive in a little bit with that
21 to start off with today, if that's okay with you.

22 A Okay.

23 Q Since we last talked, has there been any new
24 additions to any portfolio companies for OE Capital?

25 A Yes.

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1 Q Okay. Could you please describe.
 2 A Unequal Technologies.
 3 Q Okay. And what is Unequal Technologies?
 4 A They are company that produces a patented coated
 5 Kevlar technology that's been tested and proven to reduce the
 6 impact that causes concussions by up to 95 percent.
 7 Q Okay. Great. And when were you introduced to
 8 Unequal Technologies?
 9 A I believe that would have been March of 2016.
 10 Q And do you have an agreement with Unequal
 11 Technologies?
 12 A Yes. So we have a signed term sheet, and we are
 13 now working through the long form agreement.
 14 Q And when was the signed term sheet?
 15 A I think it was signed maybe three weeks ago.
 16 Q Who runs the company?
 17 A Rob Vito.
 18 Q And where is the company located?
 19 A In Philadelphia -- or outside of Philadelphia.
 20 Q Do know where exactly?
 21 A Glen-something. Glendale. I don't know if that's
 22 right.
 23 Q And how much are you initially planning to fund
 24 Unequal Technologies?
 25 A With Unequal we funded two sides, so there's

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1 actually the signed term sheet, then there's the stock
 2 agreements, so there's two sides. We put a million dollars
 3 in the stock agreement, and then on the revenue-based
 4 financing side, the plan right now is anywhere between 2 to
 5 5 million.
 6 Q And how do you fund anything to date?
 7 A We fund it 1 million for the equity side, and I
 8 think we've done maybe 300,000 on the revenue-based finance
 9 side, based on that signed term sheet.
 10 Q Okay. And when did you fund the equity side, the
 11 1 million?
 12 A May, I believe. It was May.
 13 Q And when did you fund the 300,000?
 14 A Between May and June -- or, excuse me -- between
 15 June and July.
 16 Q Do you -- or are you planning owning any inventory
 17 in Unequal Technologies?
 18 A We will own the inventory. Yes.
 19 Q The entire inventory?
 20 A The amount that we would finance?
 21 Q And how much would that be?
 22 A It depends on the total finance amount. So if we
 23 finance \$2 million, we'll collateralize that against \$2
 24 million worth of inventory.
 25 Q And how much is their inventory worth today?

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1 A Oh, the retail of their current inventory? I don't
 2 know that exact number.
 3 BY MS. GUNN:
 4 Q Who's your contact at the company?
 5 A Rob Vito.
 6 Q Okay. And what are the terms of your -- what you
 7 call the 1 million equity?
 8 A So by terms, you mean the price of the equity?
 9 Q The stock agreement.
 10 A The stock agreement?
 11 Q Right. I mean, how much stock -- I gather you
 12 bought a million dollars' worth of stock.
 13 A Right. At \$1.50 per share.
 14 Q At \$1.50 per share.
 15 A Unequal themselves, based on the value of their IP,
 16 guaranteed a 2X against the stock.
 17 Q What do you mean by that?
 18 A So they are guaranteeing that you're going to at
 19 least receive two times your money back, two times the value
 20 of the stock, at your price. So we bought at a buck fifty,
 21 we're going -- they're guaranteeing a \$3 share price.
 22 Q By a particular date?
 23 A There is not a particular date.
 24 Q And have the shares actually been issued?
 25 A Yes.

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1 Q In whose name are the shares held?
 2 A Optimal Economics Capital Partners.
 3 Q And where are they?
 4 A What?
 5 Q Are they in certificate form? Are they in a
 6 brokerage --
 7 A Yes. Certificate form.
 8 Q So are they in a safe somewhere?
 9 A They're in our -- they're locked away in a file
 10 cabinet in our office.
 11 Q Are there restricted shares?
 12 A They are restricted shares.
 13 BY MS. FLOYD:
 14 Q Have you received any sort of returns from Unequal
 15 Technologies to date?
 16 A No, not to date.
 17 Q What is your estimated -- I know we looked at those
 18 project plans last time. What is your estimate of when
 19 you're starting to receive profits from Unequal Technologies?
 20 A Next month.
 21 Q So August?
 22 A August.
 23 BY MS. GUNN:
 24 Q Just to be clear, is it profits or revenues?
 25 A Revenues.

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1 Q Okay. And what is your -- I think you said you had
2 300,000 already financed based on a term sheet. Correct?

3 A Correct.

4 Q What percentage of the revenues are you going to
5 get?

6 A Ten percent top-line revenues.

7 Q I'm sorry. Ten percent what?

8 A Ten percent of top-line revenues.

9 Q For the entire company?

10 A They have a military division, so not the military
11 division.

12 BY MS. FLOYD:

13 Q So only the nonmilitary division. Would that be
14 sports gear?

15 A Correct.

16 Q Athletic gear for high schools and college and --

17 A That is correct. Yes.

18 Q Other than Unequal Technologies, is there any other
19 additional portfolio companies OE's invested in?

20 A No.

21 Q We talked a little bit about WHRZT! last time. Is
22 OE receiving returns from WHRZT!?

23 A Yes.

24 Q Do you recall which bank account it's going into?
25 I can probably give you a list of --

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1 A I believe it's going to Green Bank bank account.

2 Q I am marking -- this document is Exhibit 26. It is
3 something we put together. It's a list of your -- OE
4 Capital's bank account numbers and which bank it's located
5 at.

6 (SEC Exhibit No. 26 was marked for
7 identification.)

8 BY MS. FLOYD:

9 Q So out of the five different banking accounts,
10 which bank would the WHRZT! profits go into?

11 A It's going into the OE Capital Ventures, I believe,
12 but there's a subaccount on that called Revenue Capture --

13 Q Revenue Capture. Okay.

14 A -- that it's going into.

15 Q Okay. And looking at Exhibit 26 further, any other
16 bank records that we are missing on this list, besides the
17 subaccounts?

18 A No.

19 Q No?

20 BY MS. GUNN:

21 Q How does that subaccount work? Does it have the
22 same number, different number?

23 A I'm not 100 percent sure. When I log in, I see OE
24 Ventures' bank account, then I'll see a subaccount under
25 that. My guess is it has the same number and -- but I'm not

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1 sure how that works.

2 Q How frequently has -- have you received payments
3 from -- revenue payments from WHRZT!?

4 A Not as frequently as we hoped to date. They had
5 some early small revenues trickle in since January, so they
6 caught those up. And I think we've received one revenue
7 capture perhaps in May or June, and they are due to give us
8 another one now, and now they're starting to ramp up that
9 production, so we expect a rapid catch-up from WHRZT!

10 BY MS. FLOYD:

11 Q Since you started funding WHRZT!, how much have you
12 guys received in revenue?

13 A I'm not sure.

14 Q Ballpark, roughly?

15 A Oh, ballpark, I would say 2500 bucks. Not a lot.

16 Q Moving on to Future Products of America, is OE an
17 equity owner of Future Products of America?

18 A Yes. So OE -- Future Products of America is a
19 joint venture between OE and First Ventures Group.

20 BY MS. GUNN:

21 Q First Innovations Group?

22 A First Innovations Group. Thank you.

23 Q Okay. I was afraid there was someone new.

24 BY MS. FLOYD:

25 Q Okay. And ballpark, how much have you -- has OE

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1 Capital received in revenue from Future Products of America?

2 A I mean, not a lot at all yet. It's starting to
3 trickle in. Maybe couple thousand bucks.

4 BY MS. GUNN:

5 Q Did that go to the same account that you previously
6 identified?

7 A Yes.

8 BY MS. FLOYD:

9 Q Do all of the portfolio companies' revenues go into
10 that subaccount?

11 A Correct.

12 Q What about Athletes Performance Gear? Have you
13 received any sort of revenue from -- I'm going to call it
14 APG.

15 A No, we have not. We've not as of yet received
16 anything.

17 Q Are you still in business with APG?

18 A No.

19 Q Could you please explain why?

20 A Yes. It was a clear path to market with APG. All
21 of the research showed where his target market would buy the
22 product, and it was digitally -- digital marketplace, things
23 of that nature.

24 Mr. Hobbs became very, very, very noncooperative,
25 because he wanted to go to TV, and we wouldn't finance TV.

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1 We would finance the digital buy; we would finance all the
 2 marketing, but we wouldn't finance TV because the business
 3 was telling us that nobody would buy it from there.
 4 And so he became so -- I think the word would be
 5 uncooperative. He broke some of the covenants of the
 6 contract, so contractually we own the inventory, so we own
 7 the two brand and the inventory.
 8 So we discontinued with him. He has the ability to
 9 go raise money and take his patents and do it again if he
 10 want, but he can't use our brand or the inventory front that
 11 we purchased.
 12 And so we're now going to take that inventory to
 13 market; we're working with liquidators now. We expect to
 14 have that fully liquidated within the next three months.
 15 Q And you mentioned he violated some of the terms of
 16 the contract. Could you please explain those terms?
 17 A He locked us out of the bank accounts. He
 18 became -- he would no longer cooperate with the operating
 19 partner and project manager that we had associated with him,
 20 and he became very -- I can't find the right word right now,
 21 but disrespectful to his employees, and they walked out.
 22 Q And your project manager, you're referring to Tracy
 23 Alexander?
 24 A Yes, ma'am.
 25 Q Okay. And is Tracy Alexander also the project

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1 manager for Unequal Technologies?
 2 A She is.
 3 BY MS. STUMBAUGH:
 4 Q Where is the inventory for APG being held?
 5 A It's being held in a distribution center in Florida
 6 called the Fulfillment Lab, so we've gotten -- I believe the
 7 number by the end of July should be 17,000 units in, and then
 8 the rest should ship it in in August.
 9 BY MS. FLOYD:
 10 Q Are you planning to market that, or are you
 11 planning to sell the inventory as a whole?
 12 A We're looking at both options right now. We do
 13 have a liquidator that's looking at taking a large chunk, but
 14 we've had quite a good response in our initial go-to-market
 15 kind of test, so we are going to reserve some of the bottles-
 16 Tu-go to take to the market from a digital perspective.
 17 Q And your marketing company, is that 3Headed
 18 Monster?
 19 A They're the ones that -- they're our ad company.
 20 Q Okay.
 21 A So they did all the marketing assets, the videos
 22 and things of that nature. We have a team -- people that
 23 work with Tracy on her team that do actually the physical
 24 marketing, so pushing those videos out to target markets.
 25 Q Is this team employed by the portfolio company or

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1 by OE Capital?
 2 A This is -- these are OE Capital employees.
 3 Q Who's on that team?
 4 A Jim Cooney, Nicole Crisp, and Gary Leviitt, L-E-V-I-
 5 T-T.
 6 Q And I apologize if we've asked these questions
 7 already; it's been over two months, so our memory's a little
 8 fuzzy.
 9 MS. FLOYD: Let the record show that Brandon
 10 McCarthy came in and is on the record.
 11 BY MS. FLOYD:
 12 Q And as far as -- I believe it's the last portfolio
 13 company, RivaCare -- is that correct?
 14 A Yes.
 15 Q How many revenues have you -- has OE received from
 16 RivaCare?
 17 A A few dollars.
 18 Q Dollars?
 19 A Let's call it \$500 or something like that.
 20 Q Okay. So is it safe to assume that OE Capital has
 21 received around \$5000 of revenue --
 22 A I believe that's about --
 23 Q -- from portfolio companies?
 24 A I believe that's about correct.
 25 Q Okay. And that's since inception. Correct?

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1 A Correct.
 2 Q Overdrive: Was that potential portfolio company or
 3 a portfolio company that you would contract with when OE
 4 Capital first began?
 5 A Yes. So that was a early portfolio company.
 6 Urshel Metcalf was the -- kind of the initial person that
 7 sent the money.
 8 Q And how much money did Urshel Metcalf send?
 9 A I think the initial amount was 75,000, and I think
 10 that was followed up by 50,000, if I remember right.
 11 Q And did OE Capital receive any revenue from
 12 Overdrive?
 13 A No. So Urshel prematurely sent that -- those
 14 dollars in. And we really didn't have a signed agreement in
 15 place at all.
 16 We tried to work with Overdrive, which is also One
 17 Direct, which is also Cheap Watt. All three of those are the
 18 same entity. We tried to work with them to figure out if
 19 there was a way that we were going to be able to get those
 20 dollars out, and it turned out that it just wasn't going to
 21 work, so we discontinued that relationship.
 22 BY MS. STUMBAUGH:
 23 Q So Overdrive and One Direct Marketing are the same
 24 company?
 25 A Yes.

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1 BY MS. FLOYD:

2 Q Besides Overdrive and One Direct, were there any
3 other portfolio companies that did not work out that you had
4 a contract with?

5 A None that we had a contract with.

6 BY MS. FLOYD:

7 Q How about ones that you funded?

8 A I believe in prepping we figured out that Urshel
9 did send -- I think the number's \$15,000 to a company called
10 GanoLife.

11 Q Okay. And is that G-A-N-O or --

12 A G-A-N-O-Life.

13 Q And OE Capital funded GanoLife \$15,000, but you
14 guys did not have -- you guys, as in OE Capital did not have
15 a contractual agreement with GanoLife.

16 A We did not.

17 Q When did that relationship end with GanoLife?

18 A I believe either June or July of 2015. Cristina
19 Cason finally got the records and the books that she was
20 asking for, and we figured out that they had hid a million
21 dollars in revenue off the books, so we --

22 Q Hid or stole?

23 A I'll say hid.

24 Q Okay.

25 A So we decided that no way in the world could we get

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1 engaged with a company that did something like that.

2 Q Okay. Besides GanoLife and Overdrive/One Direct
3 Marketing, are there any other portfolio companies we're
4 missing?

5 A No.

6 Q And when companies come to you -- portfolio
7 companies come to you for funding, does OE Capital charge a
8 due-diligence fee?

9 A We do not, no.

10 Q OE Capital does not charge a due-diligence fee?

11 A No. OE Capital does not charge a due-diligence
12 fee.

13 Q Does any -- Howard Capital charge a due-diligence
14 fee?

15 A Howard Capital doesn't charge a due-diligence fee.

16 Q Does any entity connected with yourself charge a
17 due-diligence fee?

18 A Urshel Metcalf's entity -- that's not connected to
19 me, but Urshel Metcalf's entity did charge due-diligence
20 fees.

21 Q Which entity would that be?

22 A Insured Liquidity Partners, LLC.

23 Q Okay. So would it be safe to assume that once you
24 removed yourself from Urshel, that OE Capital, Howard
25 Capital, you guys do not charge a due-diligence fee. Is that

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1 correct?

2 A That is correct.

3 Q Do you have an idea of how much Urshel received
4 from due-diligence fees?

5 A I know he received -- I believe the number was
6 \$8,125 from a company called Wharton Brooks. I chose to
7 refund those dollars to Wharton Brooks, because I did not
8 believe that we did what we said we would do.

9 I know he also -- and I might get this number
10 wrong. I believe it was a \$30,000 due-diligence fee from ST
11 Group.

12 Q How did --

13 A It might have been 20,000. I think it was 20,000.

14 Q Are you aware of how Urshel Metcalf calculated
15 these fees?

16 A It was 1 percent of the ask. So if I can go into a
17 little detail --

18 Q Please.

19 A -- kind of how that worked, my responsibility at
20 that time was only from the capital and then saying, Hey, are
21 they ready for funding? And I was the one that would approve
22 a potential investment.

23 Urshel's entity -- and the way that we were
24 supposed to work was his entity was supposed to go out and do
25 the consulting work to get them ready. So it really wasn't

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1 even classified as due diligence as much as it was he was
2 supposed to doing all the work to get them ready for the
3 funding.

4 He fee for that was 2 percent of the ask, so he
5 would go find somebody that needed a million dollars, and he
6 would say -- well, 1 percent of the million or \$10,000 would
7 be -- and so that's kind of how he calculated that at the
8 time.

9 Q Thank you.

10 BY MR. McCOLE:

11 Q What was Urshel's definition of getting the company
12 ready?

13 A So this is going to require a little detail, so
14 bear with me. Urshel had met a guy named Alan Reno in spring
15 of 2014 sometime. Alan Reno had a lot of experience in
16 turnaround companies and management consulting, and he took
17 kind of a standard management consultant balance scorecard
18 that I used in my management consulting days, and he really
19 made it very, very complex, and he called it something called
20 the matrix.

21 So Urshel and Alan connected on that, and what
22 Urshel and Alan were supposed to do is utilize this matrix
23 format that Alan had come up with to go into these companies
24 and do this due diligence kind of work.

25 The idea was we're going to deconstruct the entire

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1 company, and then once we put all the things in the right
2 place, then we'll know a good amount of funding, and that's
3 what we'll go after.

4 And so that's the methodology that Urshel was
5 using. He learned it from Alan, and then he and Alan were
6 trying to employ that methodology in the companies.

7 Q And what, if any, role, then, did Urshel and Alan
8 play in the management of those companies that were the
9 subject of their efforts?

10 A In the actual management of them, the idea was that
11 they would be almost like a executive in residence. The idea
12 is that they were working very closely with the executives
13 and help them strategically plan out those -- all of that --
14 those companies.

15 Q And how, if at all, did the companies' capital
16 structure need to change in order to be in line with Alan and
17 Urshel's vision for the company?

18 A Theoretically that was one of the products of the
19 methodology. So they may have to -- would have to raise more
20 capital or change the cap structure in a certain way. I
21 mean, the methodology wasn't very clear on that, and so it
22 just didn't seem to work very well.

23 Q Was part of this vision or part of the structure
24 that they attempted to put in place for these companies that
25 the companies would go public?

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1 A I don't think so. That wasn't -- I never heard
2 that.

3 Q An IPO or anything like -- was that part of it,
4 anything like that?

5 A Not that I'm ever aware of.

6 BY MS. FLOYD:

7 Q I want to move on. I know we talked about the
8 funds a little bit the last time you came in on the 5th, but
9 I want to continue.

10 I understand CFG I was mostly Urshel Metcalf's
11 funds. He basically ran that fund. Is that correct?

12 A That's correct.

13 Q I want to move on to CFG II funds. I'm going to
14 hand you what has been previously marked as Exhibit 20. Take
15 a moment and look at Exhibit 20.

16 A (Perusing document.)

17 Q And you recognize Exhibit 20. Correct?

18 A I do. Yes.

19 Q And Exhibit 20 -- who receives Exhibit 20?

20 A Any investor into the CFG II.

21 Q Do potential investors receive Exhibit 20?

22 A Prior to a commitment, no.

23 Q So before they invest, they are unable to see a PPM
24 for the funds?

25 A They are before they invest, but they -- the way

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1 the processes worked is they sign a suitability form, which
2 basically says, Okay, I'm serious. And then they get a PPM.

3 Q Got it. So they get the PPM before they give you
4 money -- give OE Capital money. Okay.

5 BY MS. GUNN:

6 Q How much before -- how does the timing work in
7 terms of -- they sign a subscription agreement? Or are you
8 saying --

9 A No.

10 Q -- suitability --

11 A A suitability form.

12 Q Okay. Can you explain for us what's on that
13 suitability form?

14 A It is a form used -- it has basic information about
15 the investor, but it also has information about their
16 financial status from an accreditation perspective, and so it
17 allows us to see if they're accredited or unaccredited, or if
18 they're suitable, if they have enough liquidity.

19 Q Okay. So do they sign that form and then submit
20 it?

21 A Correct. So --

22 Q Okay. What information have they been provided
23 before they fill out that suitability form to make them
24 interested enough to fill that out? I guess what I'm trying
25 to understand is at that point what information do they have

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1 before they -- or before they fill out the suitability form?

2 A That's a good question, and I guess that depends on
3 who has been talking to them.

4 Q Okay.

5 A But typically they would have -- we have kind of a
6 piece that really overly -- from an overall perspective
7 explains kind of who we are and what our methodology is.
8 Typically what we would have is a conversation, so a sit-down
9 conversation, and really help them understand exactly who we
10 are, what are methodology is, how we pick our companies.

11 And then if they felt that this is something that
12 they want to pursue, then the next time is we got to make
13 sure that they're suitable, and so we send the suitability
14 form, and then we get them to fill out the suitability form
15 and send the PPM.

16 Q Okay. So then you get the suitability form back.
17 Who reviews that to determine if it's suitable?

18 A That's Dovile Soblinskas.

19 Q Okay. Assume that she determines that a potential
20 investor is suitable, then what happens next? Is that when
21 they get the PPM?

22 A No. They would have already gotten a PPM.

23 Q Okay. When do they get that?

24 A When she receives the suitability form, then the
25 PPM is released.

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1 Q Okay. Right. So when she receives it –
 2 A Correct.
 3 Q – she sends it out before determining that they're
 4 suitable?
 5 A As she – yeah.
 6 Q As part of that she'll just send it out.
 7 A Correct.
 8 Q Okay.
 9 MS. FLOYD: I'm going to enter into the record
 10 Exhibit 27.
 11 (SEC Exhibit No. 27 was marked for
 12 identification.)
 13 BY MS. FLOYD:
 14 Q Do you recognize Exhibit 27?
 15 A Yes, I do.
 16 Q And what is it?
 17 A It is the investor suitability questionnaire.
 18 Q And was Exhibit 27 what you were referring to when
 19 you were talking – answering Ms. Gunn's questions?
 20 A Yes.
 21 BY MS. GUNN:
 22 Q And have you used that form with all of the
 23 investors related to the Ventures fund?
 24 A I believe so.
 25 Q Okay. What about CFG II fund?

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1 A I believe that is true as well.
 2 Q What about CFG I?
 3 A I don't believe that's true, no.
 4 Q Okay. So you think you started using it when you
 5 started the CFG II fund?
 6 A Yes.
 7 BY MS. FLOYD:
 8 Q And besides what the – who fills out Exhibit 27?
 9 Is it the investor – potential investor, or is it Dovile?
 10 A It is the potential investor or, if we're using a
 11 RIA, it would be the RIA or the potential investor. Dovile
 12 doesn't actually fill it out; she receives it.
 13 Q Gotcha. Okay. And does Dovile do any additional
 14 research to determine suitability of the investors?
 15 A Outside of the form?
 16 Q Correct.
 17 A Not to my knowledge.
 18 Q Back to Exhibit 20 –
 19 BY MS. GUNN:
 20 Q You mentioned the RIA. Has there been a period
 21 when you've not used an RIA, you know, to assist the
 22 potential investor?
 23 A The first few investors were friends of mine, so we
 24 didn't – I wasn't using the RIA then. But for the most
 25 part, we've used an RIA to help.

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1 Q Who is that?
 2 A That's Charles Heinzelman.
 3 Q Okay. What is the name of the investment advisor?
 4 I assume RIA you mean a registered investment advisor. Is
 5 that correct?
 6 A Correct.
 7 Q Okay. What's the name of the registered investor
 8 advisor?
 9 A I believe it's – he either goes by C4 Benefits
 10 Group or Trajan.
 11 BY MS. FLOYD:
 12 Q Trajan Income?
 13 A Yes.
 14 Q Okay. When did Trajan Income become an RIA or
 15 investment advisor?
 16 A I believe that Trajan Income became one in 2016.
 17 My understanding is that he had a different one in 2015 and
 18 it expired, and he did Trajan Income in 2016.
 19 Q And which one was the one in 2015?
 20 A I thought it was C4 Benefits Group, but I'm not
 21 sure about that.
 22 Q On page – it's Bates-numbered OEC SEC 000087. And
 23 at the bottom half it says, Pre or post-subscription
 24 questions about the partnership, Patrick O. Howard, RIA."
 25 A Yeah.

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1 Q Are you an RIA?
 2 A I am not.
 3 Q And why is there an RIA after your name?
 4 A Initially when we started, I was working with RIA
 5 in a Box to bring up an RIA. Then after talking to counsel,
 6 we figured out that, oh, I don't need – I don't necessarily
 7 need to be an RIA, because I'm a manager of the fund, and I
 8 can go out and raise funds without being an RIA.
 9 So I decided to stop that process, and I did not
 10 update the document.
 11 Q Okay. First off, what exactly is an RIA in a Box?
 12 A RIA in a Box is a company that helps bring up RIAs
 13 very quickly.
 14 Q Okay. And you were referring to counsel. Which
 15 counsel?
 16 A That was Darryl Cleveland.
 17 Q And where is Darryl Cleveland located?
 18 A In Dallas.
 19 Q And does he work for a law firm or is he a solo
 20 practitioner?
 21 A He's a solo practitioner.
 22 Q Thank you. And it was your understanding because
 23 you're a manager of a fund you don't have to be an RIA. Is
 24 that correct?
 25 A Correct.

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1 Q Okay. And when did you learn this from Mr.
2 Cleveland?
3 A Would have been last spring sometime, maybe last
4 April time frame.
5 Q 2015?
6 A 2015.
7 Q Okay. Thank you.
8 BY MS. GUNN:
9 Q So when did you start raising money for CFG II?
10 A I believe that started May.
11 Q Of 2015?
12 A Of 2015.
13 Q So why do you have the RIA designation on the PPM
14 for CFG II?
15 A That's a mistake. It should not be there.
16 BY MS. FLOYD:
17 Q And I know we probably went through this last time,
18 but who drafted Exhibit 20?
19 A Dovile and myself.
20 Q And you approved Exhibit 20 after it was completed.
21 A I did.
22 BY MR. McCOLE:
23 Q Did you seek legal advice from any attorney
24 regarding the content of Exhibit 20?
25 A I did not.

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1 BY MS. FLOYD:
2 Q If you go to -- I believe it's number OEC SEC
3 000100, under section 5, risk factors.
4 A (Perusing document.)
5 Q Do you see which paragraph I'm referring to?
6 A I do.
7 Q And the paragraph -- and I quote: "The purchase of
8 units is a speculative investment. However, the company is
9 backing the minimum preferred yield in principal with
10 insurance-based assets."
11 What is a preferred yield?
12 A That's the first return of the investment.
13 Q So OEC is backing the minimum preferred yield. Is
14 that correct?
15 A Correct.
16 Q And what is that yield?
17 A Twelve percent.
18 Q And how did you calculate 12 percent?
19 A It was based off of the financial modeling, doing
20 the financial modeling and saying, Well, what is the best
21 preferred yield that we are comfortable with without -- while
22 thinking that we know how to collateralize that yield
23 properly and kind of making sure that we can deliver on what
24 we say. So it was all based off of financial modeling.
25 Q And how is the company backing this yield?

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1 A Well, we'll actually backing it in two different
2 ways. The first way is through the collateralized assets of
3 the company, and so we collateralize the assets that we're
4 acting investing in.
5 And then the second way is through insurance-based
6 assets.
7 Q And what exactly is the insurance-based assets?
8 A Life insurance.
9 Q The life insurance of the key individuals of each
10 portfolio company?
11 A Correct.
12 Q And do you have --
13 BY MS. GUNN:
14 Q How does that back the assets?
15 A (No response.)
16 Q That's essentially key-man insurance. Right?
17 A That's essentially key-man insurance.
18 Q So how does that back the assets?
19 A So what we would do is any life insurance you
20 can -- if it's an asset -- so if it's a permanent policy, so
21 we would convert the policy to a permanent policy, and then I
22 can go sell that policy on the secondary market for a
23 discount.
24 For example, let's say it's a \$2 million policy and
25 death benefit. I can convert that policy to a life -- to a

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1 permanent policy, and then I can go sell it for some discount
2 of that 2 million.
3 Q It's a very substantial discount, though, isn't it?
4 A It depends, but, yes, typically. I mean, you're
5 not talking about -- you're certainly not talking about
6 getting \$2 million for a \$2 million death benefit. No way.
7 It's probably 40 percent or something like that.
8 BY MS. STUMBAUGH:
9 Q Is there a cost associated with converting it to a
10 term policy as well?
11 A There is.
12 BY MS. GUNN:
13 Q I'm still trying to understand your reference to
14 insurance-based assets, because -- are you basically saying
15 the insurance -- or the value that you're obtaining from that
16 is the liquidation value, essentially, of the policy?
17 A Correct.
18 BY MR. McCOLE:
19 Q Is there an expectation that the collateral that
20 the company owned would be sufficient to provide the minimum
21 preferred yield if the minimum preferred yield was not
22 otherwise realized through the investment?
23 A That's correct.
24 Q Okay. And is it your position that the insurance-
25 based assets -- in other words, the key-man life insurance --

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1 that the value there would be sufficient to provide the full
2 minimum preferred yield in the event the company's
3 investments didn't provide that minimum preferred yield?

4 A That's correct.

5 Q And what's your basis for that belief? Well, let's
6 go with insurance first. What's your basis for the belief
7 that the key-man insurance would provide a sufficient asset
8 base to fully provide the minimum preferred yield in the
9 event the investments did not do so?

10 A So the basis for that belief is the process. So we
11 don't -- we would never give all the money of an ask upfront.
12 Right? We milestone-fund, and then what we look for is what
13 is the relative plan -- right? Or do we know what the plan
14 is to get us to our performance measures? And are we way off
15 that plan? Is that plan going to work, or are we on that
16 plan?

17 And so the minute that we realize that we're --
18 this isn't going to work, then what we would do is stop
19 funding. So we wouldn't be a million dollars in; we might be
20 350,000.

21 So if I got a million-dollar life insurance policy
22 that I now can go convert and get 30 to 40 percent, well, I
23 have my basis back, and then I can liquidate assets to get
24 any yield that I might need to get. So that's how the
25 process works.

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1 BY MS. GUNN:

2 Q Have you ever sold an insurance -- a key-man
3 insurance policy?

4 A Have I on the secondary market?

5 Q Yes.

6 A No, I haven't.

7 Q Okay. Have you ever acted as a broker for someone
8 selling such an insurance policy on the secondary market?

9 A I personally have not.

10 Q Okay. And the numbers that you're giving for the
11 amount that you would realize from the sale of the policy on
12 the secondary market, where are you getting those numbers?

13 A Well, that's my -- so I do have it -- while I've
14 not done it, I do have experience in that market. I was a
15 management consultant for a long time, working with banks,
16 and then I have a history of wealth management, working very
17 closely with life insurance companies, so I understand the
18 secondary market and resale market of life insurance very
19 well.

20 And so I have a history and a understanding what
21 that market looks like.

22 Q And where did you obtain that understanding?

23 A Over the last 12 years; that's what I did.

24 Q What in your previous experience gave you the
25 understanding of the amount that you would be able to realize

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1 in the secondary market?

2 A Well, I was working with life insurance companies
3 and understanding what the resale value of life insurance is
4 and how they bundle it up and how they --

5 Q Who bundles it up?

6 A The life insurance companies. How they bundle it
7 up, how they sell it on the secondary market.

8 Q Are you saying the insurance companies do the
9 bundling and selling on the secondary market?

10 A Sometimes.

11 Q And is there someone in particular that you worked
12 with that you learned this information from?

13 A I mean, various people from life insurance
14 companies; some portfolio managers of life insurance
15 companies. That's where I've learned it.

16 Q Is there anyone in particular you're thinking of?
17 If you needed to sell a policy, what would you do?

18 A If I needed to sell a policy, I would -- so I would
19 call up anywhere from a few, kind of a half a dozen wire
20 houses, people that work with bonds -- they're looking to sell
21 bonds in the banks, things of that nature -- and say, Hey, I
22 got life insurance policies that I would sell. Banks buy life
23 insurance policies as a part of their portfolio.

24 And so I would say, I have some life insurance
25 policies. What's your price?

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1 BY MR. McCOLE:

2 Q Give us the list of who you'd call.

3 A List of individuals or list of --

4 Q Yes.

5 A -- companies?

6 Q Either one. Start with -- let's start with
7 individuals.

8 A Well, I would probably start with calling -- and I
9 mean, I don't have individual names, but I'll with calling
10 OneAmerica, which is where -- I worked there for a bit. I
11 would probably call people at MassMutual that I know.

12 I would probably call some wire house guys, some
13 broker guys. My friend Tico Martinez, who also works for me,
14 knows some people that -- who would know how to go out and
15 sell life insurance on the secondary market.

16 Q Okay. So you would call OneAmerica, MassMutual.
17 You'd talk to your friend Tico. And you would talk to some
18 brokers.

19 A Yes.

20 Q Now, is it your understanding that these brokers
21 realize this 30 to 40 percent number on the sale of these or
22 is it the person who, like in your situation, who would
23 actually be selling one policy to be included in a bundle of
24 policies.

25 A So I would get -- so I would receive that value

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1 back. Is that your question?

2 Q Yes. It would be your expectation that you would

3 receive 30 to 40 percent of the face value of the 200 –

4 excuse me. So for a \$2 million policy, you would receive 30

5 to 40 percent of that 2 million face value for the policy.

6 Correct?

7 A That's correct. Now, there's a timing issue in

8 there – right? – because it's a secondary market. So

9 there's a price. So you have – I would – the life

10 insurance policy is our stop loss. Right? It's not what I

11 would do immediately, because there's a timing issue

12 involved.

13 You can't go sell a life insurance policy and get

14 money tomorrow. Right? You can't do that. And so there

15 would be a timing issue. Therefore what we would do is we

16 would make sure that our investors, from a collateralization

17 perspective of the liquidation value that we have in the

18 assets, can make our investors whole.

19 And then what we do to make sure that we land

20 softly is go then and resell those life insurance policies on

21 the secondary market.

22 Q Okay. And other than the – other than OneAmerica,

23 MassMutual, Tico and brokers that you mentioned, is there

24 anybody else that you would call to try to sell a key-man

25 policy?

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1 A No one that I can recall off the top of my head. I

2 mean, I would probably call a lot of people, and we'd figure

3 out what's the best way to sell it, but those – there's a

4 short list of people, that I just mentioned, that I would

5 say. Hey, let's go figure out how – where we need to sell

6 these.

7 BY MS. GUNN:

8 Q Have you obtained the key-man life insurance on the

9 key people in any of the companies that your funds have

10 funded?

11 A I believe we have, yes.

12 Q Okay. Which ones?

13 A I believe we've obtained them – and Tracy would

14 have that – on – I think Unequal's the only one that we

15 have not done yet.

16 Q Through whom did you obtain that insurance?

17 A I think we worked through a broker.

18 Q Who or what entities?

19 A I'm not sure. I wasn't the one that actually did

20 that.

21 BY MS. FLOYD:

22 Q Who at OE Capital purchased these life insurance

23 policies?

24 A Well, Tracy Alexander would have worked with the

25 broker and the portfolio company to get those life insurance

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1 policies in place.

2 BY MS. GUNN:

3 Q And when were they obtained?

4 A I believe most of them were obtained this year.

5 Q In 2016?

6 A I believe so. Yes.

7 Q When in 2016?

8 A I'm not sure.

9 Q And who pays for the policy?

10 A Well, what we've figured out is how OE pays for

11 them. We had an issue figuring out that from the very

12 beginning, but now what we do is we pay for them, and we have

13 a collateralized – I'm sorry, not collateralized. We have

14 an amendment that gives us rights to the policy.

15 Q An amendment to the policy?

16 A Yeah. I think it's called an assignment.

17 Q Okay. So just so I'm clear on this, it's your

18 understanding that at this point OE Capital is the owner of

19 the policy?

20 A We are – that was our issue.

21 Q Okay.

22 A So the issue was the insurance company had a

23 problem with OE owning the policy, because it blurred

24 insurable interest. So what they wanted to see is that the

25 portfolio company, since it was a key person and policy of

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1 the portfolio company, owned the policy, and then there was

2 an assignment to OE in the case that something happens.

3 Q Okay. So the portfolio company obtained the policy

4 and then assigned it to OE Capital.

5 A That's correct.

6 Q Okay. Who's actually paying the premiums on those

7 policies?

8 A That would be OE.

9 Q And do you know what the issuing insurance

10 companies are?

11 A I think from – I don't know; I would be

12 speculating. But I believe it's MassMutual.

13 Q And are the payments through a brokerage or the

14 checks or wires actually to MassMutual?

15 A It would be directly to the insurance company,

16 yeah.

17 BY MR. MCCOLE:

18 Q And where are the policies currently located?

19 A I don't know. I don't know if they're with us or

20 with the portfolio companies. I'm not sure.

21 Q So you don't know whether OE has a copy?

22 A I don't know. I'm sure we do, but I don't know

23 that.

24 BY MS. FLOYD:

25 Q And who at OE Capital would know this?

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1 A Probably be Tracy.
 2 BY MR. McCOLE:
 3 Q And describe the situations in which you've had to
 4 sell collateral in order to back the minimum preferred yield.
 5 A It's the APG situation.
 6 Q The football helmets?
 7 A No, the water bottles.
 8 Q Water bottles.
 9 A Yeah.
 10 Q Okay. And what value was realized from that sale?
 11 A Well, we're still working through the sale, but
 12 right now the wholesale value that we're looking at -- so
 13 we're a million dollars in; the wholesale value that we're
 14 looking at with the wholesalers and the liquidators is about
 15 1.5 million.
 16 If we decide to take a piece of that retail, then
 17 we're looking at probably \$2 million.
 18 Q So you believe that that -- the liquidation will be
 19 sufficient to cover your million dollars.
 20 A Absolutely. Yes.
 21 Q Are there any other instances in which you've had
 22 to sell a collateral in order to meet the minimum preferred
 23 yield?
 24 A No.
 25 BY MS. GUNN:

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1 bottles, then?
 2 A Yes.
 3 Q Okay.
 4 MR. HOWELL: Tim, if you guys don't mind, just to
 5 be clear -- because I thought the way it was structured, the
 6 water bottles were purchased directly OE?
 7 THE WITNESS: Correct.
 8 MR. HOWELL: Which I think might not necessarily
 9 make it a security interest that has to be foreclosed on,
 10 because it's already a direct ownership.
 11 THE WITNESS: Okay.
 12 BY MR. McCOLE:
 13 Q Do you agree with what Mr. Howell just said?
 14 A Yeah. We purchased the water bottles in our name,
 15 so they are OE-owned property.
 16 Q I see. Okay. And you're now in the process of
 17 attempting to liquidate those bottles. Correct?
 18 A Correct.
 19 Q Have any of the bottles been actually sold?
 20 A We have sold a few bottles online.
 21 Q Okay. And how much money have you realized as a
 22 result of those sales?
 23 A \$100, maybe 200; not much.
 24 Q How long has that online marketing effort been
 25 going on?

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1 Q Who are the liquidators you're talking about?
 2 A I don't know the names of the actual companies. In
 3 Tracy's team Gary Levitt -- it's all his contacts.
 4 Q I'm sorry. Who?
 5 A Gary Levitt. I'm sorry.
 6 BY MR. McCOLE:
 7 Q And forgive me. The others in the room on this
 8 side may know the answers to these questions. You might have
 9 said this before, but forgive me, but for my benefit, what
 10 portfolio company is associated with the water bottles you
 11 just talked about?
 12 A It was Athletics Performance Gear, was the portfolio
 13 company.
 14 Q Okay. And your total -- OE's total investment in
 15 Athletics Performance Gear is a million?
 16 A I believe it's 1,060,000.
 17 Q Okay. And OE has collateral in water bottles --
 18 A Correct.
 19 Q -- owned by Athletics Performance Gear. Correct?
 20 A The water bottles are owned by OE.
 21 Q Okay. So you have a -- OE has a security interest
 22 in -- they serve as collateral for the investment of OE.
 23 Correct?
 24 A That is correct.
 25 Q Okay. And you -- has OE taken possession of these

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1 A It has not even started yet. We have not launched.
 2 Q Okay. How is it, then, that you were able to sell
 3 some of those bottles online if it hasn't started?
 4 A Some people heard about us.
 5 Q How do you -- what's your understanding as to how
 6 they heard about you?
 7 A I have no idea. I'm happy about it, but I have no
 8 earthly idea how they heard about us.
 9 Q Okay. And how -- what's your plan with regard to
 10 marketing the bottles online?
 11 A So Nicole Crisp has put together a marketing
 12 strategy online that goes out to runners groups, the target
 13 market, which is women, ages, I believe, 28 to 40, something
 14 like that. And she has a history in digital marketing and
 15 driving revenues from digital marketing, so she's going to
 16 use Facebook.
 17 We also put -- of that million-dollar investment,
 18 about 3- to \$400,000 of it was in actually marketing, so we
 19 created a professional video. We created very professional
 20 ads, and so what we'll do is we'll spin -- we'll have a
 21 marketing spin, so we'll buy media, we'll roll those assets
 22 out, and we'll convert -- we believe, based on a very small
 23 media buy, that we can sell about 20,000 of those without
 24 having to liquidate them, and 20,000 at our retail price
 25 would give us a million dollars.

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1 Q And then on top of that, if any -- if the balance
2 of that inventory is liquidated through the liquidator, you'd
3 have -- you'd realize even more revenue. Correct?
4 A That's correct.
5 Q Is that the plan?
6 A We expect to liquidate those at about \$2 million in
7 value.
8 Q When did you first realize that it was going to be
9 necessary for you to market these bottles, as opposed to
10 Athletes Performance Gear?
11 A It was around, I believe, May time frame.
12 Q Of 2016?
13 A Of 2016.
14 Q And so you're in the process now of ramping up to
15 market them digitally. Correct?
16 A That's correct.
17 Q And you're also in the process of attempting to
18 liquidate the balance.
19 A That's correct.
20 BY MS. STUMBAUGH:
21 Q How many water bottles are we talking about?
22 A 50,000.
23 Q So you've got 17,000 on hand. Where's the rest of
24 them?
25 A They're on order; they're coming.

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1 BY MR. MCCOLE:
2 Q Well, in whose possession are they now?
3 A The 17,000? Well, it'll be 17,000 by the end of
4 July, so they ship these things in waves. Right? So -- to
5 cut down on shipping costs, and they manufacture them in
6 waves, so I think we got the first 7200 last week. The next
7 10,000 should hit by the end of this month, and then the
8 balance should hit in August.
9 And they are in our possession at our distribution
10 center in Florida.
11 Q Okay. And then -- but the ones that have yet to be
12 delivered to OE, those are --
13 A They're in China. They're still being
14 manufactured.
15 Q They're in China being -- to be manufactured and
16 delivered.
17 A Correct.
18 Q Okay.
19 BY MS. FLOYD:
20 Q Besides the water bottles, out of the other
21 portfolio companies, what else does OE own as far as
22 inventory?
23 A So OE has security -- no, OE has security interests
24 in wares at -- inventory and wares at IPE.
25 Q Okay.

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1 A We own all the FPOA inventory. Right now that's
2 only about \$50,000 in cost, but we're scaling up to go to
3 market with FPOA in August, September time frame.
4 Q And 50,000 of the various products that they
5 produce?
6 A Yes. There's 10,000 units of five different
7 products.
8 Q Okay. And as far as wares at RivaCare, do you have
9 a lien on the underlying product?
10 A Like a true legal lien?
11 Q Yes.
12 A Not yet, no.
13 Q Okay. So how do you have a securities interest?
14 A Just contractually.
15 Q So is it my understanding that the company backs
16 the minimum preferred yield by owning some of the underlying
17 assets and having insurance-based assets as well? Is that
18 correct?
19 A That's correct.
20 Q Okay.
21 BY MR. MCCOLE:
22 Q You know, I do have one other question about the
23 insurance piece, the key-man insurance. Is it the case that
24 before OE will invest in a given portfolio company, it first
25 acquires the key-man policy on -- acquires the key-man

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1 insurance policy?
2 A That's the theory. The way it's worked is we do it
3 during the first investment time frame. I mean, so we don't
4 really wait necessarily; we haven't waited until we put the
5 first money in. We've kind of started those processes
6 simultaneously.
7 Q But for each portfolio company there is a key-man
8 insurance policy. Correct?
9 A Correct.
10 Q And who does that policy cover?
11 A Typically the CEO.
12 Q Okay. Of the portfolio company. Correct?
13 A Yes, sir.
14 Q Anybody else?
15 A Not to this point.
16 Q So at the time potential investors receive a copy
17 of the PPM, which is Exhibit 20, that -- the key-man
18 insurance policy was already in place. Is that correct?
19 A Of the companies that we had invested in. Yes.
20 BY MS. GUNN:
21 Q In 2015?
22 A No, not in -- that's right; not in 2015.
23 Q Okay. So CFG was offered until when?
24 A January 2016.
25 Q Okay. So through most of the offering of CFG, you

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1 actually didn't have the insurance policies in place. Is
 2 that correct?
 3 A That's correct.
 4 Q Let's take WHRZT! Who is the CEO of WHRZT!?
 5 A Jim Nalley.
 6 Q How old is Mr. Nalley, approximately?
 7 A Fifty.
 8 Q Okay. And he would be the person you either have
 9 or are obtaining insurance on.
 10 A Correct.
 11 Q Do you have a key-man policy related to APG?
 12 A On John Hobbs.
 13 Q Okay. And how old is he?
 14 A I think he's 52.
 15 Q Okay. And then what about Future Products of
 16 America? Who would be the person you would have key-man
 17 insurance on in that case?
 18 A Rick Valderrama.
 19 Q Want to spell that?
 20 A I don't, but I'll try.
 21 Q Thank you.
 22 A I believe it's V-A-L-D-E-R-A-M-A [sic].
 23 Q Okay. And approximately how old is Mr. Valderrama?
 24 A I think he's may 43, 44.
 25 Q And then what about Unequal Technologies? Do you

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1 have a key-man policy -- I think you said you don't have one.
 2 A Not yet.
 3 Q Not yet. Okay. What about -- I don't have the
 4 list. Did you get one in connection with One Direct
 5 Marketing/Overdrive?
 6 A We did not. No.
 7 Q Okay. What about Ducourt Consulting or RivaCare?
 8 A Yes.
 9 Q Who do you have the policy on for that?
 10 A One of the principals, the main one that's doing
 11 most of the work. His name is Yves, Y-V-E-S, P-A-L-U-D,
 12 Palud.
 13 Q And how -- that's a Mr.?
 14 A That is.
 15 Q Okay. How old is he?
 16 A Thirty-eight.
 17 Q I'm not missing any of the portfolio companies?
 18 A Is that five? I think you got them.
 19 Q Okay. And do you have any understanding of what
 20 the health condition is of any of these key men?
 21 A They're all pretty healthy.
 22 Q Okay.
 23 A I don't know about Mr. V, but the rest of them have
 24 gone through their health tests, and my understanding is they
 25 all have been pretty healthy.

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1 BY MS. FLOYD:
 2 Q If you turn to OEC SEC 000107 under section 6, Use
 3 of Proceeds.
 4 A (Complying.)
 5 Q Could you please explain to us how CFG II had
 6 planned to use the proceeds received from the investors?
 7 A So the way that the proceeds are used is if you
 8 look -- and this is an example, and it's actually very
 9 conservative. It was saying, okay, 7-1/2 percent cost of
 10 capital, so any kind of commissions that we would have to pay
 11 or something. That actually is 5 percent.
 12 Beyond that, the money goes into -- a proportion of
 13 the money goes into corporate expenses, and the rest of it
 14 will go into portfolio company funding.
 15 Q And I believe back in May you testified that all
 16 three funds -- you classified it as more of one big fund
 17 under OE Capital. Is that correct?
 18 A That's correct.
 19 Q And is that disclosed in this PPM?
 20 A It is not.
 21 Q Okay. So the money you receive for this -- if an
 22 investor is to invest money, the money would go to OE
 23 Capital. They wouldn't invest money in a particular fund or
 24 would they actually invest into a particular fund?
 25 A The money would go into CFG II.

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1 Q Okay.
 2 A However, they don't invest into a particular
 3 company.
 4 Q Portfolio, you mean, or --
 5 A Right. Into a portfolio company. They're
 6 investing into a mutual fund of portfolio companies that is
 7 managed by OE.
 8 Q Okay.
 9 BY MS. GUNN:
 10 Q Okay. You said mutual fund. Did you mean like a
 11 portfolio of portfolio companies?
 12 A Correct. I'll clarify myself. I was using mutual
 13 fund as an example, but it is a number of different companies
 14 all producing revenue back as one big unit.
 15 BY MS. FLOYD:
 16 Q Okay. So on --
 17 BY MS. GUNN:
 18 Q Just to make sure that I understand this, in terms
 19 of the ownership of the assets that you've described as one
 20 of the aspects of the way you invest, that ownership is in
 21 the name of OE Capital?
 22 A Correct.
 23 Q Okay. And the insurance policies that you pointed
 24 to as a second way of securing, if you will, the investments,
 25 that's also in the name of OE Capital.

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1 A As a part of that assignment that's attached. Yes.
 2 Q Okay. Or owned by OE Capital –
 3 A Correct.
 4 Q – as a result of the assignment.
 5 A Correct.
 6 BY MS. FLOYD:
 7 Q So on page OEC SEC 000108, on the top, under C,
 8 Corporate Application of Proceeds, it says, Portfolio Company
 9 Fundings. The maximum proceeds is 7.8 million. Would that
 10 be the funding of the portfolio companies as a whole out of
 11 all the different funds or this fund in particular?
 12 A So that would be an example of a whole across all
 13 funds.
 14 Q All funds. Okay. So this fund is sharing that
 15 amount with the other funds.
 16 A Correct.
 17 Q Okay.
 18 BY MS. GUNN:
 19 Q But is there any way that an investor would know
 20 that from this, given that you don't tell them that it's all
 21 three funds together?
 22 A No.
 23 Q There's – under C, the second line says "insured
 24 liquidity premiums." To what does that refer?
 25 A That's the life insurance premiums.

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1 BY MR. MCCOLE:
 2 Q So what funds does this PPM cover, Exhibit 20?
 3 A What funds?
 4 Q Yes.
 5 A (No response.)
 6 Q Okay. As I understand your testimony, the
 7 investors aren't told through the PPM that there are other
 8 funds in addition to CFG II that are covered by the PPM. Is
 9 that your testimony? As I understand it, there's three
 10 funds.
 11 A There are three funds.
 12 Q Okay. What are those three funds?
 13 A CFG I, CFG II, and OE Ventures.
 14 Q Okay. And this PPM, which is Exhibit 20, is
 15 designed to provide information about all three of those
 16 entities. Correct?
 17 A That is correct.
 18 Q Okay.
 19 A Now, let me clarify that. At the time this was
 20 written, Ventures didn't exist, so it was meant to cover I
 21 and II.
 22 Q Is CFG I mentioned in the PPM, Exhibit 20?
 23 A No.
 24 Q But it existed at the time. Correct?
 25 A It did.

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1 Q And CFG II existed at the time. Correct?
 2 A Correct.
 3 BY MS. FLOYD:
 4 Q Is CFG I and CFG II mentioned in the OE Ventures
 5 PPM?
 6 A I don't believe they are, no.
 7 MS. FLOYD: Let's go off the record at 10:23.
 8 (A brief recess was taken.)
 9 MS. FLOYD: Back on the record at 10:41.
 10 BY MS. FLOYD:
 11 Q Mr. Howard, we didn't have any substantive
 12 conversations during the break, did we?
 13 A No.
 14 Q All right. I want to kind of start over a little
 15 bit on the different funds, if we can. I want to get a
 16 better understanding of how each one works and how they're
 17 all tied together, if that's okay with you.
 18 A Okay.
 19 Q So let's start with CFG I.
 20 A Okay.
 21 Q So when did – is it OE Capital that sold CFG I, or
 22 is it Howard Capital?
 23 A That?
 24 Q Sold CFG I, the fund.
 25 A That would – well, Howard Capital does business as

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1 OE Capital, so we did raise money for that fund.
 2 Q Okay. When did OE Capital start raising money for
 3 CFG I?
 4 A January, February 2015.
 5 Q Okay. And who raised the money for CFG I?
 6 A That was mostly me.
 7 Q And how much did you raise for CFG I?
 8 A I know the – at the lead the amount of money is
 9 900,000. That was totally in there, I probably raised, let's
 10 say, 90 percent of that.
 11 Q Okay. And where did that money go? What was it
 12 used for?
 13 A So it was used to build the infrastructure of the
 14 team that was going to be needed to produce the types of
 15 returns and the revenue-based financing in our model.
 16 Q Okay. So did any of that money go to the portfolio
 17 companies?
 18 A I believe – as a direct investment to them?
 19 Q Correct.
 20 A I believe \$50,000 went to WHRZT!
 21 Q Okay. And did CFG I investors – who were the
 22 investors for CFG I?
 23 A By name or –
 24 Q Were they companies? Did you –
 25 A Mostly individuals.

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1 Q Individuals? And how did you know these
 2 Individuals?
 3 A Most were either friends of mine or -- that I'd
 4 known for years or former clients that I've known for years.
 5 Q Okay. So did your investors to CFG I, did they
 6 have any underlying assets that protected their yield, their
 7 minimum yield?
 8 A Not at that point, but the way we view CFG I, II,
 9 and Ventures is an entire -- there's a big bucket.
 10 Q Okay.
 11 A And so we were ramping up to make sure that we
 12 could put the engine in place that was going to produce the
 13 returns and make sure that we could invest in the right
 14 entities that were going to provide the footing for those
 15 investors.
 16 Q Okay. So, again, before CFG II, so in the world of
 17 CFG I, were -- did you invest in any of the portfolio
 18 companies?
 19 A WHRZT!.
 20 Q WHRZT!. And you said 50,000. Is that correct?
 21 A That's correct.
 22 Q Did you have key life insurance on the owner of
 23 WHRZT!, and I can't remember his name. I apologize.
 24 A Jim Nalley.
 25 Q Nalley, yes. Did you have key-man insurance on Mr.

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1 Nalley?
 2 A No.
 3 Q Okay. Did you own any of the inventory of
 4 WHRZT! --
 5 A No.
 6 Q -- at the time?
 7 A No.
 8 Q Okay. Did you own any other assets at the time CFG
 9 I was sold?
 10 A No.
 11 Q Okay. So were CFG I investors receiving a premium
 12 quarterly?
 13 A Yes.
 14 Q And how were they receiving that money?
 15 A We reserve 12 percent of capital for time issues.
 16 Q So 12 percent of the capital raised for CFG I was
 17 used to pay the premiums -- the yields, the quarterly yields.
 18 Sorry.
 19 A Correct. Most of those were reinvested
 20 distributions, so most of them weren't cash.
 21 Q Okay. And approximately what was the percentage of
 22 investors who were cash versus reinvesting?
 23 A I mean, I would say 99 percent were reinvesting.
 24 BY MS. GUNN:
 25 Q Just a point of clarification: Do you compound the

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1 return over the course of the three years?
 2 A Annually.
 3 Q Okay. So I would get 12 percent on one year, the
 4 first year. And does the 12 percent the next year -- let's
 5 say I invested 100,000. So the first year I would have
 6 112,000 if I reinvested. Correct?
 7 A Correct.
 8 Q In the second year, is the 12 percent earned on
 9 100,000 or on 112,000?
 10 A 112,000.
 11 Q Okay.
 12 BY MS. FLOYD:
 13 Q Now, let's move forward to CFG II. When did you
 14 start selling for CFG II?
 15 A I believe May time frame.
 16 Q Of 2015?
 17 A 2015. I --
 18 Q Okay. So -- I'm sorry. Go ahead.
 19 A I was just going to try to provide a little history
 20 on the -- kind of the progression of those funds.
 21 Q Please.
 22 A So from the outset, the initial framework was to be
 23 an evergreen fund, one fund that was evergreen that had no
 24 closing dates. Right? The issue was when Alan and Urshel
 25 set up CFG I, they set it up as a 504. Well, that's a

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1 million-dollar cap.
 2 Well, we were always going to raise more than a
 3 million dollars, and the initial business strategy that they
 4 went out with was involving a group called CFG, Coordinated
 5 Financial Group. Well, that business plan -- I didn't feel
 6 that it was a viable one long term, but it really didn't
 7 matter, because CFG actually backed away.
 8 So you had investors coming in to a fund that was
 9 improperly structured from the very beginning, because we
 10 were always going to raise -- you just couldn't do what we
 11 were trying to do on a million dollars. So we had to
 12 actually open a different fund. So that was the purpose for
 13 the CFG II.
 14 Q What do you mean you had to open up different
 15 funds?
 16 A We were going to hit a million-dollar cap on CFG I.
 17 We were always going to raise more than a million dollars.
 18 It was never the intent to stop at a million.
 19 BY MS. GUNN:
 20 Q Because of the 504 limitation?
 21 A Because of the 504 limitations.
 22 BY MS. FLOYD:
 23 Q Why did CFG back away?
 24 A Because they did a background check on Alan Reno.
 25 Their exact words were, seems like he's a ghost, and it

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1 freaked them out, and they decided they didn't want to go
2 forward at all.

3 Q Do you have any idea what they mean by ghost?

4 A Yes, I do. Alan Reno just doesn't seem to -- I
5 mean, he certainly has a background; however, you can't find
6 anything on him anywhere.

7 Q So he has a resume but nothing to back it up?

8 A Yeah. I mean, not simply nothing to back it up.
9 You really can't find anything on him. He's hiding; he's
10 running from somebody, is my opinion.

11 And so that really scared them that, you know, they
12 could not find anything on him and decided to back away.

13 BY MR. MCCOLE:

14 Q What did you do to find what his history was?

15 A What did I do specifically?

16 Q Yes.

17 A Anything I could. At that point I didn't have
18 access to background check information. Based on what he
19 told me, I did as much researching as I could, and so I found
20 that some of the things he was saying was true, but once we
21 got possession of things to do a background check, I mean, he
22 just -- he didn't own anything, his name wasn't on anything.
23 He just -- he was a ghost.

24 Q So you used a third-party paid service to do a
25 background check on him?

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1 A That's correct.

2 Q And what was that service?

3 A I think it was LexisNexis.

4 BY MS. GUNN:

5 Q When did you do that?

6 A Urshel Metcalf did it. I believe that time frame
7 was March, April. That's when we started having --

8 Q 2015?

9 A 2015. That's when we started having all the
10 problems with him.

11 BY MS. FLOYD:

12 Q And how long did you know Reno before you did this
13 background check?

14 A I mean, I just met him in November, December of
15 2015. Urshel had known him since I think maybe March or
16 April of 2015.

17 Q Okay. All right. So CFG backed away. You guys --
18 OE Capital started CFG II. Is that correct?

19 A Correct.

20 Q And you started selling CFG II around 2015, of
21 May -- May of 2015?

22 A May-ish, yeah.

23 Q And how much did you raise for CFG II?

24 A I believe the number's 4.2 or 4.7 million.

25 Q And you raised this money for CFG II. Who raised

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1 the money?

2 A We did some of that internally, but a lot of that
3 was done by Charles Heinzelman and C4.

4 Q Okay. And we'll get to selling the funds a little
5 bit later, but I want to cover the actual fund itself.

6 So what kind of investors did you receive for CFG
7 II? Were they individuals, entities?

8 A Mostly individuals.

9 Q Were these friends as well?

10 A Most of them were not.

11 Q Okay. So you started selling -- starting buying
12 into -- funding portfolio companies. Correct?

13 A Correct.

14 Q What month in 2015 did you start funding?

15 A I believe our first was in June.

16 Q June.

17 A Yes.

18 Q Okay. So in May 2015 you funded \$50,000 to WHRZT!
19 for CFG I. And then for CFG II you started funding
20 additional portfolio companies. Correct?

21 A Yes, but not in May or June. June was -- out of
22 CFG II, if I remember right, June was WHRZT! as well.

23 Q Okay. Now, if you go to Exhibit 20, on Bates
24 number 100 -- OEC SEC 000100, back to section 5 of the Risk
25 Factors --

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1 A (Complying.)

2 Q All right. So the investors for CFG II -- what
3 insurance-based assets did they have that backed up their
4 minimum preferred yield?

5 A I don't think they had any at -- at that point I
6 don't think they had any. We just had the interest on the
7 inventory.

8 Q Interest on the inventory. Okay. So which
9 inventory at the time did OE Capital own?

10 A For that particular time frame, in June?

11 Q Correct.

12 A So that was WHRZT!, so WHRZT! was starting to order
13 inventory.

14 Q Okay. And so when did the securities interest for
15 Future Products of America and/or RivaCare, when did that
16 appear?

17 A Future -- it would have been Future Products of
18 America, and that would have been November, December time
19 frame, because that's when we signed that paperwork. And
20 then RivaCare would have been January.

21 Q Of 2016. Correct?

22 A That's when we signed that, I believe.

23 Q Okay. What about Athletes Performance Gear, APG?

24 A APG? That would have been -- I believe we signed
25 that in November. We own the assets of the company at that

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1 point. We owned the marketing assets, and then when we
 2 ordered the inventory, I believe which was in January,
 3 that's -- our big funding didn't come to APG until I believe
 4 like January or February time frame.

5 Q Okay. So the underlying assets, the inventory in
 6 APG, and the securities interest in WHRZT! and RivaCare and I
 7 believe ownership into Future Products of America -- those
 8 assets also covered the minimum preferred yield for CFG I for
 9 friends and family.

10 A That's correct.

11 Q Okay. And as far as the insurance-based assets,
 12 those did not exist until spring of 2016. Correct?

13 A That's correct.

14 Q So where is that disclosed in the PPM, in Exhibit
 15 20?

16 A That the insurance-based assets didn't exist until
 17 2016?

18 Q Yes. First off, the insurance-based assets. It's
 19 here under Risk Factors. Is that correct?

20 A Yes.

21 Q And I quote again, "The purchase of units is
 22 speculative investment. However, the company is backing the
 23 minimum preferred yield in principal with insurance-based
 24 assets."

25 So at the time this PPM was distributed to

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1 potential investors or investors, there were no insurance-
 2 based assets. Correct?

3 A Well, it depends on at what point. So we don't --
 4 again, we're evergreen, so we don't raise money up front,
 5 like we don't raise the fund and then distribute the money.
 6 We're -- we have money flowing in every month from potential
 7 investors. Right? And so it depends on at what point. So
 8 at some point, absolutely we had at least the collateralized
 9 assets in place for the investments that we had made at that
 10 point.

11 Q Okay. So the minimum -- you said 12 percent yield,
 12 where is it in Exhibit 20 that tells the CFG II investors
 13 that the underlying assets and the insurance-based assets is
 14 also covering other investors not in this fund?

15 A It doesn't say that in here.

16 Q Okay.

17 BY MR. McCOLE:

18 Q So it does not explain that the insurance and the
 19 other assets, for example, in the Athletes case, that the
 20 water bottles are also there to cover the earlier CFG I
 21 investors. Is that correct?

22 A That's correct.

23 Q You indicated earlier that the CFG I fund was a 504
 24 offering. Correct?

25 A Yes.

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1 Q And you're referring to Regulation D Rule 504
 2 offering --

3 A Yes.

4 Q -- of the securities laws. And it was your
 5 understanding -- as I understand your testimony, you
 6 concluded around that time that a million dollars was not
 7 sufficient to actually carry out the goals of the CFG I fund.
 8 Is that correct?

9 A That's correct.

10 Q And you raised 90 percent of the 900,000 that was
 11 raised in the CFG I fund. Is that correct?

12 A About 90 percent, I would say. Correct.

13 Q What, if any, disclosure did you make to the
 14 investors that your opinion was that a million dollars was
 15 insufficient to cover the goals of CFG I?

16 A Well, I can't say that I specifically said to them
 17 a million dollars is not enough. What I was always looking
 18 at is we're raising an evergreen fund. So I new we were
 19 going to have to open a new fund, but we see this as one
 20 fund, one big conglomerate of money.

21 So I was never looking at it from a perspective of,
 22 okay, we just have a million-dollar chunk. I was always
 23 thinking, it's an evergreen fund; we're going to raise a lot
 24 more money, and we're going -- and the assets are going to
 25 cover the entire base account.

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1 Q What, if any, disclosures did you make to the CFG I
 2 investors that it was necessary to make this enterprise a
 3 success to open other funds?

4 A Well, what they knew is that it was necessary to
 5 gain more investors, so we certainly told them that, and that
 6 the fund was going to be ever-growing, and so --

7 BY MS. FLOYD:

8 Q How -- I'm sorry. Go ahead.

9 A And so that's -- we certainly told them that as we
 10 sat down with them, that, You're getting in, but the fund's
 11 going to ever -- be ever-growing, and you're going to be part
 12 of that ever-growing fund as we see it.

13 Q So you verbally told them this.

14 A This is correct. Yes.

15 BY MR. McCOLE:

16 Q But did you tell them that there was going to be a
 17 second fund?

18 A Again, I don't think I specifically said second
 19 fund, because that's not how we were looking at it.

20 Q Did you explain to them the limitations on the Rule
 21 504 offer?

22 A I did not.

23 Q And who were the investors in the CFG I fund,
 24 identified by name?

25 A I mean, I probably can't remember all the names,

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1 but the first investors were Ray and Dee Jordan. Second
 2 investor was Tracy Alexander, who's now working for me. I'm
 3 going to now get them out of order, probably. Russell
 4 Kellner, Vince De La Torre.
 5 BY MS. FLOYD:
 6 Q And Vince De La Torre works for you as well?
 7 A He did.
 8 Q He did. He no longer works for OE Capital?
 9 A He does not.
 10 Q Joy Bibb, Walter Toler; I can't remember if Shawn
 11 Armstrong's in I or II. And that's about it. There's
 12 probably more. I can't think of the rest of them right now.
 13 BY MR. McCOLE:
 14 Q Approximately how many more do you think there
 15 might be?
 16 A Maybe three or four.
 17 Q What's your relationship to the Jordans?
 18 A I've known them for 15 years; very good friends of
 19 mine.
 20 Q So they're just personal friends of yours?
 21 A Yes.
 22 Q And what about Tracy Alexander?
 23 A I've known for over 10 years, and she was a former
 24 client, and is a real good friend of mine.
 25 Q Personal friends?

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1 A Yes.
 2 Q And what about Mr. Kellner?
 3 A Known him for over 10 years. He's a really good
 4 friend of mine.
 5 Q Okay. And what about Mr. De La Torre?
 6 A I met Vince two to three years ago. He is a really
 7 good friend of mine. He was my employee as well.
 8 Q Would you characterize him as a close personal
 9 friend?
 10 A I would, yes.
 11 Q And you mentioned somebody with the name Bibb?
 12 A Joy Bibb.
 13 Q How do you spell it?
 14 A J-O-Y B-I-B-B.
 15 Q So this is Ms. Bibb?
 16 A Yes.
 17 Q Okay. And how long -- what's your relationship
 18 with Ms. Bibb?
 19 A She was a former client of mine, and I would
 20 characterize her as a friend as well. I've known her for
 21 probably five years.
 22 Q And what about Mr. Toler?
 23 A Known him for -- okay. I've known him for probably
 24 six or seven years; really good friend of mine.
 25 Q And how much did the Jordans invest?

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1 A 100,000.
 2 BY MS. GUNN:
 3 Q Was that in cash?
 4 A Yes.
 5 BY MR. McCOLE:
 6 Q And how much did Tracy Alexander invest?
 7 A At that point, 100,000. She totally is in total
 8 for over 200,000; maybe 250- or something like that.
 9 Q Is that between CFG I and other funds?
 10 A I think it's I and II.
 11 Q How much did Kellner invest?
 12 A 50,000.
 13 Q What about De La Torre?
 14 A Oh, I think he -- total it was 50,000.
 15 Q Bibb?
 16 A All together I believe it was 100,000.
 17 Q Mr. Toler?
 18 A 25,000 for him and 25,000 for his wife.
 19 There's Greg and Mary Eleanor Alexander.
 20 Q How much did they invest?
 21 A There it was 100,000.
 22 BY MS. STUMBAUGH:
 23 Q And how do you know them?
 24 A Really good friends of mine. I've known them for
 25 about -- almost 10 years, I guess; no, probably like seven

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1 years.
 2 Q What about Collie Moye?
 3 A Collie Moye, yeah. He invested 50,000 as well.
 4 I've known him for three or four years. We were colleagues,
 5 and I would classify him as a friend.
 6 Q What about Diana Sands?
 7 A That's one of the ones I did not sell.
 8 Q Evan Sanchez?
 9 A Yeah. I guess you can say I sold to Evan.
 10 Q Is he a friend of yours or someone you used to work
 11 with?
 12 A I met him when I started OE, and we became kind of
 13 I would say acquaintances and strategic partners, and he
 14 wanted to invest.
 15 Q And Nancy Schmidt?
 16 A That is Collie Moye's wife.
 17 Q And Seth Shulman?
 18 A Did not sell him.
 19 BY MR. McCOLE:
 20 Q But how much did he invest -- Shulman?
 21 A 50,000.
 22 Q And who sold it to him?
 23 A That would have been Charles Heinzelman.
 24 Q Okay. And how much did Saenz invest?
 25 A I don't recall.

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1 Q Who sold Saenz?

2 A That would have been Charles Heinzelman as well.

3 Q Okay. By my math we've got about \$650,000
4 accounted for from those investors of the approximately
5 900,000 you indicated you raised. Does that sound about
6 right to you?

7 A My guess is we probably put the rest of Alexander's
8 money in there, but I'm not sure. From our prep the numbers
9 were, I believe, 900,000, so --

10 Q So the persons who raised this money were you and
11 Mr. Heinzelman?

12 A Correct.

13 Q Anybody else?

14 A Not that I -- no.

15 Q How did Heinzelman go about raising the money he
16 raised?

17 A I don't know.

18 Q And how did you go about raising the money you
19 raised?

20 A I called them up. I will call up my friend, meet
21 with them, talk to them about the opportunity and what we're
22 doing, the vision of building kind of a private equity model
23 and taking it into a venture capital space, participating in
24 revenues, what that means.

25 I will walk them through how we could -- get a

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1 level of comfort of how we get to a 12-percent return and
2 what that means, and then talk to them about the
3 collateralized strategies. And if they wanted to go forward,
4 then they wanted to go forward.

5 Q And did you provide them a private placement
6 memorandum associated with that?

7 A There -- with the 504 -- let's see. In most cases,
8 yes. I don't believe I provided one to the Alexanders.

9 Q But other than the Alexanders, you believe you
10 provided a private placement memorandum to all the rest.

11 A I believe I did. Yes.

12 BY MS. FLOYD:

13 Q Anything else besides the PPM?

14 A We didn't have hardly anything back then, so I
15 don't think so.

16 BY MR. MCCOLE:

17 Q I believe earlier you testified -- and if I have
18 this wrong, just let me know. I don't want to
19 mischaracterize what you said, but I'll give you my
20 understanding.

21 It was my understanding that you indicated that
22 your plan was with the CFG I fund, it was to reserve a
23 certain amount of that initial capital invested so that you
24 could make payments to the investors who made those
25 investments. Is that correct?

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1 A Yes. So what we do is we reserve the right to hold
2 12 percent in order to make any kind of cash payments that
3 would be needed, so that we could cover timing issues. So I
4 knew there was going to be timing issues on when companies
5 would get the revenue, so we wanted to make sure that we
6 could cover any cash distributions until we got to that
7 point.

8 Q Okay. What do you mean, cash distributions?

9 A Anybody that we had to actually pay who was taking
10 their distribution and not reinvesting it.

11 Q Okay. Did you explain to the investors that cash
12 that they might receive in the form of a distribution -- that
13 the source of that cash was from a 12-percent reserve that
14 the company kept?

15 A I explained to them about the reserve, yes. So I
16 explained to them that we keep a reserve so that we can
17 always make sure that we hit our distribution.

18 Q And did you explain to them that essentially it was
19 a reserve of the initial proceeds of \$900,000 raised?

20 A Yeah. So the reserve that we have actually is
21 formed of kind of three different things, but I did say that,
22 to answer your question.

23 Q So they understood, then, as far as you knew, that
24 it was at least possible for them to receive a return of
25 their capital in the form of a cash distribution.

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1 A Correct.

2 BY MS. STUMBAUGH:

3 Q Where were these cash reserves held? In which bank
4 account?

5 A It would have been in Green Bank -- those reserves
6 would have been held in -- I'm sorry -- in the -- at that
7 point those reserves would have been held in the CFG I
8 account.

9 BY MS. FLOYD:

10 Q What did you do with the money that was designated
11 to those who reinvested? Did you put the 12 percent annual
12 into an escrow account for those who reinvested?

13 A No.

14 Q Did you set aside money of the \$900,000 for those
15 who reinvested their assets -- their 3 percent or 12 percent
16 annual?

17 A Did I aside that money for them? No.

18 Q Their return basically.

19 A Right. No.

20 Q So before CFG II came about, there would have been
21 no way of paying those investors their 12 percent annual,
22 because you had nothing to back that. Correct?

23 A Well, so we had reserved their capital to make sure
24 that we can cover 12 percent annual as we continue to scale
25 up and get companies to produce.

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1 Q Okay. So before CFG II, it was -- the capital that
 2 you raised, you set aside 12 percent for each investor.
 3 Correct?
 4 A Correct. Twelve percent overall. That's correct.
 5
 6 BY MS. STUMBAUGH:
 7 Q Where's that money now?
 8 A If it --
 9 Q Still in the bank account?
 10 A If it hasn't been distributed, then it's been
 11 reinvested.
 12 BY MS. GUNN:
 13 Q So are you saying you set aside the first year's
 14 payment?
 15 A Correct.
 16 Q Did you set aside anything for the second and third
 17 year payment for the CFG I investors?
 18 A We didn't, no.
 19 Q If you had not raised the money in CFG II, would
 20 there have been any way that you could have repaid the
 21 investors in CFG I?
 22 A Not, but that was never -- so -- but CFG I was
 23 never an ending point. So the structure of CFG I was a
 24 mistake, and so there was no with a million dollars we were
 25 going to be able to invest in a company that was looking for

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1 a million dollars -- I'm sorry -- whereas it's first ask was
 2 a million and a half.
 3 So there was no way with a million-dollar cap we
 4 were going to be able to invest in a company that needed
 5 1.5 million, so it was never the plan to have a million-
 6 dollar fund. It was always the plan to have an evergreen
 7 fund, and the structure of that fund was structured
 8 improperly. That's the reason that we had to have a second
 9 fund.
 10 And so from my perspective, there is no three
 11 funds; there's one fund. When you look at how we track
 12 everything from our balance sheet, we track it as one big
 13 pile of money, and we have to deliver on one big pile of
 14 money.
 15 That's how the entire accounting system's set up,
 16 so all of it tracks back -- and that is how we explain it to
 17 the investors when we explain it in our presentations, when
 18 we sit down with them. It is we have one fund. It's
 19 tracked, it's managed, it's measured, it's one fund that we
 20 now have to have a return that goes back to that fund.
 21 BY MS. FLYNN:
 22 Q And you had this conversation with the CFG II and
 23 the OE Ventures investors as well?
 24 A That's correct.
 25 Q And who tells --

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1 BY MS. GUNN:
 2 Q When did you tell them that -- I mean, I think we
 3 talked about the PPM, that that was not disclosed in the PPM.
 4 A Correct.
 5 Q Are you now testifying that each investor in CFG II
 6 and OE Ventures has been told that it's one big fund?
 7 A Correct. That's how we've always explained it.
 8 Q Okay. Have you spoken to every single investor
 9 before they invested in CFG II or --
 10 A Not me personally, no.
 11 Q Okay. And what were they told about -- were they
 12 told that very little of the money from CFG I had been
 13 invested in portfolio companies and that CFG II and OE
 14 Ventures' portfolio companies would have to cover the returns
 15 on the first loan?
 16 A Again, that's -- so to directly answer your
 17 question, no, but that's not how we look at it. And so we
 18 look at it as one big glob of money, so CFG I investors went
 19 into building a team, which that team participates directly
 20 in the portfolio companies.
 21 CFG II and part of that money went into portfolio
 22 companies. CFG II money goes into maintaining and building a
 23 team, which that team is operating in each portfolio company,
 24 and some of that money goes in the portfolio companies, and
 25 the same with OE Ventures.

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1 The only reason that we have three funds is, A, CFG
 2 I was structured properly. CFG II --
 3 Q Do you mean improperly?
 4 A I'm sorry. Improperly, yes. Thank you for
 5 correcting me.
 6 CFG II, when we -- when Urshel -- split ways, we
 7 had to ultimately just maintain the integrity of the fund,
 8 and he had access to all accounts, so we decided -- and
 9 probably should have, as a prep, talked to our attorneys
 10 about it, but we decided the cleanest way was to put all that
 11 money in the portfolio companies, start up OE Ventures, and
 12 makes sure that he's not a part of anything.
 13 And so that's the reason for the evolution of
 14 funds. We don't see them and we don't manage them as
 15 separate funds. We manage them as one big fund.
 16 BY MR. MCCOLE:
 17 Q Do the investors of these funds understand the
 18 existence of each of the funds?
 19 A I don't know that they understand the existence of
 20 each of the funds. They understand the existence of other
 21 investors.
 22 Q Do they understand the interplay and relationship
 23 between the three funds?
 24 A Again, I wouldn't think they understand the
 25 interplay between the three funds. What they understand is

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1 every investor gets a preferred return.

2 Q What, if any, disclosure did you make to the CFG II

3 investors about the relationship between CFG II and CFG I?

4 A In terms of written disclosures, we don't have any

5 written disclosures, and what we have always said is that we

6 have an evergreen fund, we have one fund. And we constantly

7 raise money into that fund, and we're constantly going into

8 companies. And eventually, at the three-year mark, we'll

9 have people rolling out, and so we constantly have people

10 coming in, we constantly have our investing capital. That

11 capital is spread across all investors as that return comes

12 back, and then we will have certain people roll out at some

13 point at the end of their three-year hold period.

14 BY MS. FLOYD:

15 Q It has been three years and no one's rolled out.

16 Correct?

17 A That's correct.

18 Q And --

19 A We've -- I'm sorry.

20 Q Out of the 4.2 million that you raised in CFG II,

21 how much of that have you personally raised?

22 A I don't know, but it wouldn't have been that much.

23 Q Okay. And so who primarily raised all that money?

24 A That was primarily Charles Heinzelman at C4

25 Benefits Group.

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1 Q Okay. And so do you know if they had a

2 conversation with their investors, saying, This is an

3 evergreen fund and basically it's one big fund, and the

4 revenue goes to each -- or returns go to each investor

5 regardless?

6 A This is how we taught and trained them to talk

7 about it, so I would imagine they did.

8 Q What do you mean, trained them?

9 A So when we talked to them about how to go talk

10 about the fund and what they can and can't say and what they

11 should look out for, we talked to them about here's how we're

12 structured; here's -- I will say they certainly know that

13 there are three funds, so -- by that I mean, Charles

14 Heinzelman.

15 He certainly knows that there are three funds, but

16 we talked to him about, okay, we manage this as one big fund,

17 and made sure he understands that each individual is treated

18 kind of discretely in terms of their return and how they get

19 that.

20 Q And you say OE Capital trains these individuals who

21 sell the fund. Correct?

22 A We trained Charles Heinzelman and his group.

23 Q What do you mean, his group?

24 A There's -- his business partner, Jack -- I don't

25 know why I want to call him Phil Jackson.

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1 BY MS. STUMBAUGH:

2 Q Jackson Clements?

3 A Jackson Clements. He looks nothing like Phil

4 Jackson. We sat down, they did a due diligence effort with

5 us and made sure that they were comfortable, and then we sat

6 down with them and said, Here's how we talk about what we're

7 doing. Here's how we structured it. It's an evergreen fund,

8 so we've sat down with them, and we've trained them on how to

9 go out and talk about the fund.

10 MS. FLOYD: Okay. Can we go ahead and get off the

11 record at 11:21, just for five minutes.

12 (A brief recess was taken.)

13 MS. FLOYD: Back on the record at 11:46.

14 Off the record we discussed a document that Mr.

15 Howell is going to be providing to the staff. It's an

16 attorney letter that was an attachment to an email that was

17 given to us from OE Capital. Correct?

18 MR. HOWELL: Correct.

19 MS. FLOYD: Okay.

20 BY MS. FLOYD:

21 Q Before we went off the record, you had mentioned

22 that OE Capital had been training Mr. Heinzelman and C4

23 Benefits. Is that correct?

24 A Yes.

25 Q Okay. What kind of training did OE Capital

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1 provide?

2 A In-person training for sure, and then there were

3 some webinars that were provided by C4, and I believe Dovile

4 had a part in some of those webinars.

5 Q Okay. So let's start with the in-person training.

6 What -- how many in-person trainings were there?

7 A Oh, there was -- in terms of actual kind of

8 training there was one, and it was two days, with both

9 Charles and Jacks.

10 Q Jackson Clements?

11 A Jackson Clements.

12 Q Okay. It was just those two that were present at

13 the training?

14 A That's correct.

15 Q Okay. And who led the training on OE Capital's

16 side?

17 A I would say I did most of it.

18 Q Okay. And what -- were there materials that were

19 provided to Mr. Heinzelman and Mr. Clements?

20 A Not for that, no.

21 Q Not for that. Okay. Were there any slides during

22 this presentation?

23 A No.

24 Q Okay. So what did you tell Mr. Heinzelman and Mr.

25 Clements about OE Capital and how to -- what was the purpose

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1 of the training?

2 A Well, it was really -- there was two purposes of

3 that meeting that went over, if I remember right, two days.

4 First purpose was they came and did due diligence on us and

5 asked us questions.

6 And then the second half of that was us really

7 telling them about the inner workings of the portfolio really

8 work and kind of how we view the fund, and then probably, as

9 importantly, like things that you can and cannot --

10 especially cannot say; things that you can't say.

11 Q And what did you advise them that they could not

12 say to investors?

13 A Guaranteed; can't say the word "guaranteed" at all,

14 can't imply that it's a guarantee; that's a very specific

15 kind of definition. You can say the words "preferred," you

16 can say that what we really do is we seek, you know,

17 collateralized investments and companies, and we participate

18 in the top-line revenues, and then we bring our team in to

19 help make sure that that company executes properly so that we

20 have a much better change of achieving over the results that

21 we think we're going to achieve.

22 So that was the gist of it, and that -- just hammer

23 in on that, and how the portfolio works.

24 Q Okay. And when was this meeting?

25 A April of May of 2015.

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1 Q And where did this meeting take place?

2 A In Dallas.

3 Q And besides yourself, who else was present other

4 than Mr. Heinzelman and Mr. Clements?

5 A Would have been Dovile Soblinskas, Cristina Cason;

6 I want to say Natalie Clair; Urshel Metcalf.

7 Q So there was --

8 A I think that's it.

9 Q -- six or seven of you guys. Okay. So then you

10 said there were webinars. Is that correct?

11 A There were webinars.

12 Q Okay. And when did these webinars take place?

13 A Earlier this year; I believe January of this year

14 or February of this year.

15 Q Of 2016?

16 A 2016.

17 Q Okay. And who put on the webinars?

18 A These webinars were put on by C4.

19 Q Okay. And were you present for these webinars?

20 A I was not.

21 Q Who at OE Capital were present?

22 A Dovile Soblinskas.

23 Q And what was the purpose of the webinar?

24 A To help C4 and -- at this point they were trying to

25 expand, so any other kind of advisors understand who we are

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1 and how to talk about us.

2 Q And were there any materials that were provided to

3 the individuals who attended the webinar?

4 A I don't know. I don't think so. There might have

5 been some provided by C4. I don't think we provided any,

6 other than the webinar itself.

7 Q And if C4 were to provide materials to these

8 individuals, what would they be?

9 A I don't know.

10 Q Did you provide any materials to C4 so they could

11 provide it to --

12 A No.

13 Q -- individuals?

14 A No. Not that I know of.

15 Q Did you -- did OE Capital create a packet for Mr.

16 Heinzelman or Mr. Clements to use as sales materials?

17 A Yes.

18 Q Okay. And when were those materials provided?

19 A That packet was created in 2015, around May, June

20 time frame.

21 Q (Perusing documents.)

22 BY MR. McCOLE:

23 Q While she's looking for that, can you describe the

24 material that was in the packet?

25 A I know there were several pieces; the only one I

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1 can recall is the -- what we -- I think we called our pro

2 forma sheet; just kind of looked like a fact sheet from the

3 fund. And I think there might have been a bio sheet, but I

4 can't recall all what was in that packet at this point,

5 though.

6 Q Have you provided a copy of the packet to the staff

7 of the Commission?

8 A (No response.)

9 BY MS. FLOYD:

10 Q All right. I'm going to be handing you what has

11 been marked as Exhibit 28.

12 (SEC Exhibit No. 28 was marked for

13 identification.)

14 BY MS. FLOYD:

15 Q I'm handing you what appears to be an email from

16 Mr. Heinzelman to yourself, dated February 8, 2016. The

17 Bates number is OE SEC 031183, and on the email there appears

18 to be several attachments.

19 Do you recognize Exhibit 28?

20 A I do recognize the attachments, yes.

21 Q Do you recall receiving this email from Mr.

22 Heinzelman?

23 A I mean, not off the top of my head, but I'm sure I

24 received it.

25 Q Okay. Is it customary for you to read your emails?

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1 A Yeah.

2 Q And in the subject line it says, "Forward right
3 side of packet." What packet is referenced here?

4 A I would imagine that marketing packet that we put
5 together for them in 2015.

6 Q Okay. And what was the marketing packet used for?

7 A It was just materials that they could use as they
8 went out to talk about the fund.

9 Q The funds? Okay. And let's just go through the
10 packet. So let's go to the first one.

11 The first one is -- It says OE Capital Partners.
12 It says here middle of the page, says, OE Capital Partners
13 was started in Dallas, Texas, as a disruptive private equity
14 firm.

15 What do you mean by disruptive private equity firm?

16 A Our model is fairly unique in the space, and so we
17 like to think of ourselves as kind of disrupting the venture
18 capital/private equity space.

19 Q And below it says, Key Offerings and Benefits. It
20 says, 12 percent contracted return. How are you
21 contracted -- what contractual relationship do you have with
22 the investor that obligates you for 12 percent?

23 A What we do have is a partnership agreement that in
24 the partnership agreement it says a 12 percent preferred
25 return. We've since stopped using that word, but --

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1 Q Which word? -- "contracted"?

2 A Contracted.

3 Q And you receive no management fee. Is that
4 correct?

5 A That's correct.

6 BY MR. McCOLE:

7 Q Why did you stop using the word "contracted"?

8 A Just from the advice of counsel. It seemed that
9 that word was a little stronger than they were comfortable
10 for us to use, so we decided not to --

11 Q Who was the counsel?

12 A It was K&L Gates at that point.

13 Q Okay. When did you -- when was that advice
14 received?

15 A Would have you been probably March-ish of this
16 year.

17 BY MS. FLOYD:

18 Q Were you meeting with K&L Gates in New York?

19 A They have a New York office in which some experts
20 that we really needed to talk to.

21 Q I was just curious. I didn't know if Barrett moved
22 or --

23 BY MS. GUNN:

24 Q Can you identify the attorney that you spoke to?

25 A One's name was Ed Dartley; he's been my primary

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1 contact there.

2 BY MS. FLOYD:

3 Q And which department does he work for at K&L Gates?

4 A (No response.)

5 MS. FLOYD: Barrett, do you know?

6 MR. HOWELL: I know he's not -- he's in corporate
7 transactions, I think, investment advisor fund formation
8 compliance. I'll look it up and tell you exactly.

9 BY MS. FLOYD:

10 Q Okay. So this document we're looking at right now,
11 would this be something that would be shown to investors or
12 potential investors?

13 A It could be shown to potential investors, I would
14 say.

15 Q Moving on to the second document, it appears to be
16 two pages. It has a cover page that says, Revenue-based
17 financing, OE Capital Partners, and the second one appears to
18 be the substance of the attachments.

19 A Okay.

20 Q And this -- I'm sorry; it's a three-page
21 attachment. There's a third page as well.

22 So here you explain revenue-based financing.
23 Correct?

24 A Correct.

25 Q Okay. And then on the third page, under How the

Page 310

1 OECP Return Yield to Their Investors, it says here -- and I
2 quote -- "OECP contracts a minimum 12 percent annual return
3 to their investors."

4 So you're saying investors would receive minimum 12
5 percent. Is that correct?

6 A Correct.

7 Q And that you have a contractual obligation to
8 provide them that minimum 12 percent. Correct?

9 A Yeah, through our partnership agreement.

10 Q Okay. On the right-hand side there's like a black
11 box with a pie chart. It says, Portfolio Management
12 Strategy, and it has real estate as one of the pie pieces on
13 top.

14 A Yeah.

15 Q Are you saying that OE Capital owns real estate?

16 A No. We're saying as an overall strategy we look --
17 we will potentially own real estate.

18 Q But you don't currently own real estate?

19 A No, we do not.

20 Q Okay. And then midway through the black box it
21 says, OE Capital Partners, under average growth, has a 20
22 percent.

23 So in 2015 did OE Capital receive 20 percent
24 growth? Am I reading that right?

25 A Where are you reading that?

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1 Q It's right under, Typical Forms of Investment. It
2 has account type, has like money markets, 401(k), IRA, fixed
3 annuity. And then at the end it has OE Capital Partners.

4 A (Perusing document.) Yeah. Okay.

5 Q And it says, Average growth, 20 percent.

6 A No. OE does not have an average growth of 20
7 percent.

8 Q Okay. Did you review these documents before they
9 went to Mr. Heinzelman?

10 A I did. I did not read -- I don't know that I
11 reviewed this particular one. But, yeah, I would have --
12 typically I would review these documents.

13 BY MR. McCOLE:

14 Q What was its average growth?

15 A In our first year we just did 12 percent, so we're
16 not -- we are not -- we haven't really hit our stride on the
17 revenues yet. We expect to do that the second half of this
18 year.

19 Q What are you basing that 12 percent on that you
20 just mentioned?

21 A The financial modeling that we've done. So we did
22 a ton of financial modeling to see what would make sense from
23 a preferred return perspective in this particular model, and
24 so that's what that's based on.

25 Q Wait. I'm not talking about modeling. I'm talking

Page 312

1 about where it says "average growth" here on the chart.

2 A Uh-huh.

3 Q And below, at the bottom, highlighted in yellow, it
4 says "20 percent." You see that?

5 A Oh, you're talking about the 20 percent.

6 Q Yes. As I understand your testimony, that 20
7 percent is incorrect.

8 A That's correct: incorrect.

9 Q In other words, OE Capital has never had average
10 growth of 20 percent.

11 A No.

12 Q Is that correct?

13 A That is correct.

14 Q It has never had 20 percent average growth. Right?

15 A That's correct.

16 Q All right. What has OE Capital's average growth
17 been?

18 A Twelve.

19 Q What are you basing 12 percent on?

20 A The distributions, the preferred return.

21 Q And from what sources has it received that 12
22 percent -- average growth of 12 percent?

23 A So when we say growth, when we talk about 12
24 percent, what we're talking about is yield. We're talking
25 about a yield return of 12 percent. We're not talking about

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1 a capital appreciation growth. We're talking about a
2 yield -- distribution.

3 Q So that includes -- would that include a return on
4 capital -- I mean, a return of capital? Excuse me.

5 A It would include a return of capital.

6 Q So giving someone his money back would count as
7 average growth in your --

8 A It would count as the 12 percent distribution for
9 that year.

10 Q Okay.

11 A So, yeah, the term average growth there, so we
12 shouldn't be on that chart. That --

13 BY MS. FLOYD:

14 Q Who drafted this document?

15 A I believe it was Chad Armstrong -- that's not his
16 last name. Chad Alberson.

17 Q Okay. And he works for OE Capital. Correct?

18 A Yes.

19 BY MS. GUNN:

20 Q And is he the person who was laying out the
21 document or drafting the content of it?

22 A I believe he is the one that actually both laid out
23 and he went out and wrote -- I believe he was the one that
24 wrote most of those revenue-based financing content. He
25 probably would have worked with Dovile on some of the charts.

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1 BY MS. FLOYD:

2 Q And if you further down in the black box, it has
3 another chart. It says, Minimum Performance, Year 1, Year 2,
4 Year 3. Do you see where I'm looking?

5 A Yes.

6 Q Okay. And year 1, year 2, year 3 -- I'm assuming
7 year 1 would be the day the investor invests its money.
8 Right?

9 A Correct.

10 Q Okay. And so you're saying minimum 12 percent, and
11 you're saying average growth, 18 percent the first year, 19
12 percent the second year; third year it would be 20 percent.
13 What basis do you have for those percentages?

14 A (No response.)

15 Q How did you come up with that percentage?

16 A So those are based on the financial modeling that
17 we've done with our portfolio companies.

18 Q When did that financing model occur? So when did
19 you actually sit down and look at a model and figure out the
20 percentage?

21 A Okay. So we've done that -- the 12 percent -- the
22 overall model is based on a whole bunch of economic and
23 financial analysis that we did to come up with the model.
24 Since then when we went into every single portfolio company
25 that we go into, we build out an entire financial model to

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1 make sure that we're going to hit our numbers and to see
2 what's the likelihood of us hitting our numbers.
3 This would have come out of an average of those
4 overall models kind of put together.
5 Q So does it change as more portfolio companies are
6 added to OE's --
7 A It would.
8 A -- business?
9 A It would change, yes. Honestly, this is premature.
10 This chart probably shouldn't be in there.
11 BY MS. GUNN:
12 Q At this point, from February of 2016, when the
13 email's dated -- I think it's February 8 -- what -- had OE
14 Capital had an average performance over three years?
15 A Not yet. And that's why I said this probably
16 shouldn't be in there. And --
17 Q So what are these numbers based on?
18 A It's based on financial models; it's based on the
19 expectation.
20 Q It's not based on actual performance.
21 A It's not historical, no.
22 Q It's not based on actual performance.
23 A No.
24 Q It's based on a computer model?
25 A It's based on a computer model. Correct.

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1 BY MS. FLOYD:
2 Q And what database came up with this computer model?
3 A Well, it was done through our -- through an Excel
4 spreadsheet.
5 MR. MCCARTHY: Real quick. You'd asked on Ed
6 Dartley for the information. It's Investment Management,
7 Hedge Funds, and Alternative Investments.
8 MS. FLOYD: Thank you.
9 MR. MCCARTHY: He also has listed Fintech,
10 Marketplace Lending, Renewable Energy.
11 MS. FLOYD: Thank you.
12 BY MS. GUNN:
13 Q And so under the chart we were just looking at,
14 there's also a bar chart, a bar graph. See that same page?
15 A Where it says --
16 Q Bottom right-hand corner it says, Performance Data?
17 A I do see that.
18 Q And it shows year 1, year 2, year 3. You see that?
19 A Yes.
20 Q And then am I correct that that's also based on the
21 financial modeling and not on actual performance?
22 A It looks like these are just based on the same data
23 set, because the numbers match, so, yeah, I would say it's
24 based on the same data set, which is the financial modeling.
25 Q So in other words, it's a graphic representation of

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1 what's in these numbers.
2 A Yes.
3 BY MS. FLOYD:
4 Q And at the bottom of the black box it has an
5 asterisk that says, All investments placed with OE Capital
6 Partners are registered and regulated by the State under
7 Regulation D 506(c). Is that accurate?
8 A It is -- the funds are 506(b).
9 Q So they're not 506(c).
10 A No. At the time of -- probably when this thing got
11 created, we thought it was going to be a 506(c). I mean,
12 this piece is old. I'm looking at the date, not being very
13 happy with it. This is a old piece.
14 At the time we were probably thinking it was going
15 to be a 506(c). We changed it, and -- before we started
16 raising capital into -- and made sure it's a 506(b).
17 BY MS. GUNN:
18 Q I'm sorry. Earlier you told us CFG I was 504.
19 Correct?
20 A That's correct.
21 Q Which was CFG II?
22 A CFG II was -- that was the one that we -- it is a
23 506(b). Initially we were thinking 506(c); we decided to go
24 506(b).
25 BY MS. FLOYD:

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1 Q What about OE Ventures?
2 A It's a 506(b).
3 BY MR. MCCOLE:
4 Q Did CFG I file a registration statement with any
5 state?
6 A No.
7 Q Did CFG II?
8 A I don't think so.
9 Q What about --
10 MS. FLOYD: OE Ventures.
11 BY MR. MCCOLE:
12 Q Yeah, OE Capital Partners.
13 A OE Ventures?
14 Q Yeah, OE Ventures.
15 A OE Ventures, yes.
16 Q It did?
17 A It has a Form D with Texas, and I believe K&L Gates
18 has been working to make sure --
19 Q Wait. I'm not talking about a Form D. I'm talking
20 about a registration statement with the State of Texas. Is
21 it registered as a securities offering in the state of Texas?
22 A Is it registered as a security -- so my attorneys
23 told me that we needed to file a Form D, and then they would
24 check to make sure that -- if there was any other blue-sky
25 filings in any state, that they would do it.

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1 So my assumption is, if it needs to be done, they
2 have done it, but I -- they've not reported back to me yet on
3 whether or not that's done.

4 Q So you don't know whether a registration statement
5 has been filed in any state. Is that correct?

6 A If you mean -- so my understanding -- and maybe I'm
7 missing your question. My understanding is that with a
8 506(b), which is an unregistered security, that what we need
9 to file is a Form D and then any kind of blue-sky filings for
10 any state with unregistered securities.

11 Q Okay. Let's parse through the language of that
12 very small type at the bottom of that black column. It says,
13 "All investments placed with OE Capital Partners are
14 registered and regulated."

15 Okay. When it says "are registered," what does
16 that mean?

17 A I didn't write that statement. I didn't write it,
18 so I don't know --

19 Q What do you understand it to mean?

20 A What it -- what they should be saying there is that
21 we are a -- we have -- we are a 506(b), which is an
22 unregistered security by this state -- by the SEC. That's
23 what it should be saying.

24 Q Okay. But it's indicating here -- would you
25 agree? -- that OE Capital Partners -- all investments placed

Page 321

1 yeah.

2 Q Right. Do you have any understanding of what is
3 meant by -- as McCole has pointed out, what this says is that
4 it's registered. I think what I'm hearing you say -- and
5 correct me if I'm wrong -- is that you're just referring to a
6 Form D. Is that correct?

7 A (No response.)

8 Q You think that's what this is referring to?

9 A I think that's what this is referring to, the fact
10 that we are a unregistered security with a 506(b).

11 Q It in fact says that it's registered.

12 A Yeah, I mean, I think -- and, again, I'm
13 speculating, but I think, based on my understanding of my
14 employees, is that this was an attempt to say, Listen, we're
15 just not out here running cowboy. Right? There are some
16 rules we have to follow, and they exist under this rule
17 called 506(b).

18 Q You testified earlier that you had originally
19 thought that your CFG II offering would be a 506(c), but that
20 you changed it to a 506(b). When did you make that change?

21 A It would have been, I believe, April, May of last
22 year.

23 BY MS. FLOYD:

24 Q And why did you think it was going to be a 506(c)?

25 A The initial idea was -- so a 506(c) allows you to

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1 with OE Capital Partners are registered by the State.

2 A If there is a state registration needed, then we
3 will have filed one from K&L Gates, but --

4 Q Is it your understanding that a registration
5 statement has been filed with any state?

6 A When you say registration statement, I'm not clear
7 about what you mean.

8 Q I'm talking about registering an offering of
9 securities with a state.

10 A But -- okay. So a 506(b), in my understanding, is
11 an unregistered security. So I wouldn't know of any
12 registration that we would have to file for unregistered
13 security.

14 My attorneys have told me that there might be blue-
15 sky filings. I know that we -- they filed for I believe
16 Florida, Ohio, Texas, Illinois, California.

17 BY MS. FLOYD:

18 Q And why in those particular states?

19 A That's where we have investors. If we needed to
20 file them.

21 BY MS. GUNN:

22 Q I understand that you did not write this, but you
23 did send this -- your firm did send this to Mr. Heinzelman,
24 didn't they?

25 A I would imagine so, yes. I mean, he had them, so,

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1 advertise, so we thought we might go and do some advertising.
2 By meeting Mr. Heinzelman and thinking that he had a book of
3 business already, then we thought that there might not be a
4 need to advertise.

5 And the difference between a 506(b) and a 506(c) is
6 the (b) allows for some flexibility, at least in terms of a
7 few unaccredited investors, so we thought having that
8 flexibility would be optimal.

9 Q All right. Moving on to the next document,
10 attachment, what would you call this attachment? Would this
11 be a pro forma sheet or profile sheet?

12 A I believe I would call it a profile -- like a fund
13 profile.

14 Q Fund profile, okay.

15 A Yeah, it's not a pro forma.

16 Q Okay. And so the date of it appears to be
17 6/1/2015. Is that correct?

18 A That's -- yeah, this one, yes.

19 Q Okay. And again you have the 12 percent contracted
20 yield and paid quarterly. It says down here -- under Key
21 Features it says 80/20 split on waterfall profits. Has OE
22 Capital always kept the 80/20 split?

23 A No. CFG I believe was 90/10.

24 Q And why did you change it?

25 A It just -- while we could do 90/10, it just didn't

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1 make sense to keep it. 80/20 is standard in the industry, so
2 we decided to go with 80/20.

3 Q Down several lines below Key Features it says,
4 Potential CapX Returns. What are capX returns?

5 A Multiple returns on our investment, so we -- for an
6 example, we model everything to a 3X return; that would be a
7 capX return.

8 BY MS. GUNN:

9 Q Why would you include that feature, given that --
10 well, let me step back. Weren't the potential returns for
11 the investors limited by a cap of 20 or 24 percent?

12 A It was a 20 percent cap, which netted down to a
13 18.4 percent return at 80 percent split.

14 Q And so what is the significance of the potential
15 capX returns? Is that the difference between the 12 and the
16 18?

17 A No. I mean, there's -- for example, if we hit our
18 numbers in WHRZT!, there's a 13X return.

19 Q Then why does an investor care, because they're not
20 going to get that, are they?

21 A Yeah, I'd share that. Sure. Potential capX
22 returns, I wouldn't keep all that money. We'd share it back
23 out.

24 Q I thought it was limited to 20 percent.

25 A Well, I mean, it -- from a contractual perspective,

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1 2015?

2 A That was. That was based on -- mostly based on the
3 WHRZT! modeling.

4 Q So at the time you had, I think -- I believe you
5 testified \$50,000 into WHRZT!. Is that correct?

6 A We did, but we -- I mean, the overall ask of WHRZT!
7 was 1.5 million, so we didn't model 50,000; we modeled 1.5
8 million.

9 Q That you would receive from WHRZT! over the next
10 three years.

11 A That we would inject into WHRZT!

12 Q Okay.

13 A And then based on the overall performance of the
14 performer, that is the data that we were doing that.

15 Q So you're saying -- you're testifying that WHRZT!
16 alone could produce 18, 19, 20 percent average performance
17 for the fund.

18 A It could. That's correct.

19 Q And then the paragraph below the chart -- and I
20 quote -- "Performance data represents future performance,
21 which has a 12 percent ensured minimum yield, regardless of
22 market conditions or individual company performance."

23 So are you saying that the investor will receive 12
24 percent regardless if there is a 2008 market crash or if the
25 actual company doesn't perform?

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1 but I don't think any investor is ever going to be mad at me
2 if I give them more money.

3 Q Okay.

4 BY MS. FLOYD:

5 Q On the left side of the document, under Fund
6 Description -- and I quote -- "The fund is part of a
7 portfolio of investments of hand-picked privately held
8 companies with high growth potential, where the risk is
9 hedged by ensuring the yield on a daily revenue of each
10 company within the portfolio."

11 When you say "by ensuring the yield," are you
12 referring to the key point insurance -- key man insurance?

13 A I don't believe that's what that sentence is
14 saying.

15 Q Okay. What is it saying, then?

16 A What it says is by ensuring the yield on a daily
17 revenue of each company within the portfolio -- so what we do
18 is we look on a daily basis to see if there's any revenue
19 coming, and we capture that.

20 And so the overall risk gets hedged down by new
21 revenues that are coming in. I believe that's what that's
22 trying to say.

23 Q Okay. And under Performance Data, again, it has
24 the average performance 18, 19, and 20 percent over the next
25 three years. So was this projected at the time of June 1,

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1 A Yes. Well, I mean, that is correct. So we're not
2 in the market. Right? Markets are -- we're not trading
3 securities in the market, so market crashes -- we can
4 insulate ourselves by picking the right companies.

5 This -- and the 12 percent was based upon the
6 overall insurance-based strategies that we talked about
7 earlier.

8 Q So just on the key-man insurance alone, you're
9 saying their 12 percent is protected.

10 A Correct.

11 Q And then down below it says Risk Strategy, and it
12 basically says -- and I quote -- "While, the purchase of any
13 investment is a speculative endeavor, Optimal Economics
14 Capital Partners, LLC, has a proprietary portfolio model that
15 disconnects our investors from the underlying risk of the
16 assets, using insurance-modeling techniques."

17 What are you referring to?

18 A Again, that is the -- that is kind of the key-
19 person insurance strategy in a secondary market.

20 Q So the key-man insurance is basically -- protects
21 against any risk the investor has. Is that correct?

22 A It protects -- yeah, it protects the investors'
23 risk. It doesn't protect our risk. Right? So in essence
24 what we were doing is transferring the risk from the investor
25 to us.

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1 BY MS. GUNN:

2 Q I'm sorry. Earlier you testified that the way you
3 looked at the inventory purchase would be protection for the
4 investor and the key-man insurance was for you. Did I
5 misunderstand that?

6 A You didn't. You didn't, but --

7 Q Isn't that just the opposite of what you just said?

8 A Well, we still -- no. The insurance protects our
9 risk, but still the risk is transferred from the investor to
10 us. Right? So that's what I was attempting to just say,
11 that what we're doing with this model is transferring the
12 risk from the investor to us, and then what we're trying to
13 do is make sure that we cover our risk using the modeling
14 techniques.

15 Q How does that transfer the risk from the investor
16 to you?

17 A Well, so if the investor's risk is going to -- is
18 really going to be made whole through the overall strategy of
19 milestone-funding, daily revenue captures, and collateralized
20 assets, then the real risk is, okay, are we going to be able
21 now to make enough money on the other side of that to keep
22 our lights on.

23 And so now the risk goes from the investor to us,
24 and now we utilize the stop-loss, which is the insurance, to
25 try to back up our risk.

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1 Q And how is it that you know that the investors'
2 risk is covered by the items that you enumerated?

3 A So what we do, again, when we go into a company, we
4 do an assessment of their finances, an assessment of any
5 inventory, how that inventory will be purchased, what would
6 be the potential liquidation value of that inventory.

7 And then what we do is we milestone-fund against
8 all of those metrics, and as we start to see that we're on
9 plan, then that allows us to either, you know, fund more or,
10 if we're off plan, then we have to fix the problem.

11 But -- so we've built an overall analysis software
12 product that allows us to take a look at that company from a
13 numbers perspective to see if the assets and the liquidation
14 value of those assets will support the amount of money that
15 we funded into it at a given point.

16 BY MR. McCOLE:

17 Q With respect to the APG company --

18 A Yes.

19 Q -- that's the company that you've got the water
20 bottles from. Correct?

21 A Correct.

22 Q Was APG initially in the business of marketing
23 those bottles?

24 A They were.

25 Q What, if any, other business did APG have?

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1 A They didn't.

2 Q So they were just in the business to market those
3 bottles. Correct?

4 A That's correct.

5 Q Okay. How much of APG's inventory did you acquire?

6 A 100 percent of it.

7 Q What, if any, efforts did APG take to sell those
8 bottles before you acquired all of its inventory?

9 A They didn't have any bottles to sell. They had --
10 that was his problem. He had sold -- I think it was 2000,
11 5000 bottles, but he was cash constrained; he couldn't sell
12 any more.

13 Q Why couldn't he sell any more?

14 A He didn't have the money to manufacture any more.

15 Q He sold 2000 or so bottles. Correct?

16 A I think, yes, either -- between 2- to 5000, I
17 believe.

18 Q How much money did he make on that?

19 A I have no idea.

20 Q Approximately.

21 A I have no idea.

22 Q You invested -- how much money did you invest in
23 the company?

24 A A million dollars.

25 Q And you have no idea how much money the company

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1 made by selling the product that it was designed -- set out
2 to sell?

3 A No, because I don't care.

4 BY MS. FLOYD:

5 Q Why don't you care?

6 A Well, he would have had to sell it to the right
7 market at the right price point and have enough money to go
8 market it properly, and he didn't. Right? And so when you
9 go into a venture space, what you're really looking at is not
10 necessarily what's the company's performance, because most of
11 the time they're in growth stage; right? For us they're in
12 growth stage, not in seed or angel, but they're in growth.

13 But the problem is it's a chicken and egg issued.
14 They need the money to really realize the growth, but they
15 don't have the money, so they don't realize the growth. So
16 what you're really doing is you're analyzing the market;
17 you're analyzing the conversion rates of the market, and
18 you're analyzing what is the top price point of that market.

19 And then once you validate those, then you know how
20 much money you can put into inventory and marketing and how
21 much money you can make.

22 BY MR. McCOLE:

23 Q So APG could only sell 2000 or so bottles.
24 Correct?

25 A That's how much he did sell. Yeah.

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1 Q What leads you to believe that your company is
2 going to be able to sell and make a profit out of the bottles
3 your company has?

4 A Because we did the market research, we did the
5 market testing, we've validated it. We know what the price
6 point is; we did that research and testing as well, and so we
7 know how to go market to that market.

8 We know the conversion rate. We cut the conversion
9 rate in half and the numbers still worked. And so, again,
10 just because he didn't have the right go-to-market strategy
11 doesn't mean he didn't have a good marketable product.

12 So we knew, going in, after we'd done our legwork
13 and worked with our marketing firm that we had something that
14 would sell.

15 Q So it's your belief that you have a strategy that
16 he did not have. Correct?

17 A It is 100 percent my knowledge that we have a
18 strategy that he didn't have.

19 Q To date have you been -- has your company realized
20 any profit by selling any assets acquired by one of your
21 portfolio companies?

22 A No. We're not at that stage yet. So the only
23 company we would be at that stage with is APG, and --

24 Q And you believe you're going to be able to make a
25 go of it where he could not.

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1 A Absolutely.

2 Q Okay.

3 BY MS. FLOYD:

4 Q After you sell all the inventory that you guys
5 currently have for APG, are you planning to get more
6 inventory in?

7 A No.

8 Q Manufacture -- why not?

9 A Because we -- that would be infringement on his
10 patents. He still owns his patents. Right? We own the
11 inventory, and we own the brand. He owns his patents.

12 So what the agreement is is if we got in trouble,
13 we can go liquidate our current inventory. If I make another
14 run of inventory without his approval, I infringe on his
15 patents.

16 Q So you're basically done after you sell out what
17 you guys have currently.

18 A With those water bottles. That's correct.

19 Q Is there anything else you're selling under that
20 brand?

21 A We're looking at extending that brand into some
22 other products, but we've not made any decisions yet.

23 Q When you say brand, what do you mean by brand?

24 A The "Tu" brand.

25 Q So Athletes Performance Gear is the name of the

Page 333

1 company, and then the brand is Tu?

2 A It's the name of his company; our brand is Tu.

3 Q Thank you.

4 BY MS. GUNN:

5 Q Two?

6 A T-U.

7 Q T-U. Okay. It's the Egyptian god of dream
8 protection; protects dreams.

9 BY MR. McCOLE:

10 Q So on Exhibit Number 28, Bates number 3188 -- I
11 believe it's the document -- the page we were looking at just
12 a moment ago, it says 80/20 split on waterfall profits. Do
13 you see that on the left-hand side?

14 A Yes.

15 Q What do you mean by waterfall profits?

16 A Anything above 13 percent.

17 BY MS. GUNN:

18 Q Above that it says, Annual minimum returns backed
19 by insurance. What are you referring to there?

20 A Again, that's the -- that would be the insurance
21 strategy that we talked about.

22 Q Key-man insurance?

23 A Correct.

24 Q Okay. But when you use the term "insuring the
25 yield over on the right, you said that wasn't referring to

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1 the insurance." Right?

2 A No. That's -- I did say that that's referring to
3 the insurance as well. Oh, you mean the whole sentence?

4 Q In the fund description.

5 A Yeah, because the rest of the sentence says,
6 "insuring the yield on the daily revenue of each company."

7 Q Right.

8 A I'm not quite sure what -- I mean, I didn't write
9 this document, but I don't think they were talking about the
10 insurance there.

11 Q Who did write it?

12 A I believe Dovile wrote this.

13 Q Did you review it?

14 A I did.

15 Q Did you --

16 A And we do not -- we no longer use this. This is
17 from 6/1/2015. This whole thing's changed.

18 Q Right. But at this point you had reviewed and
19 approved it. Correct?

20 A Yes.

21 BY MS. FLOYD:

22 Q Are there other versions of this?

23 A There is certainly an updated version of that.

24 BY MS. GUNN:

25 Q How many versions are there of this -- I think you

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1 called it the fund profile sheet?

2 A I don't know how many versions of it. I know that

3 we have a latest version that is --

4 Q Okay.

5 A -- not this.

6 Q What is your latest version, as of what date?

7 A Somewhere 2016. Sorry. I don't know the exact.

8 Q Further down, under Risk Strategy, we were looking

9 at the first sentence on that. And you make a reference to a

10 proprietary portfolio model. What are you referring to

11 there?

12 A That's our OERA model.

13 Q That's O-E-R-A?

14 A Yes.

15 Q And when you use the word "proprietary," what do

16 you mean by that?

17 A That is IP that we own.

18 Q Okay. Do you have a copyright, a trademark?

19 A Well, we went to look at getting it patented. The

20 attorney that we worked with at the time said it was very

21 difficult to patent software like that. We've been since

22 talking to K&L Gates, and we're working through whether or

23 not it makes sense to try to go down the patent route or get

24 it copywritten or trademarked or -- I think we did start

25 trademarking it. Now we're trying to figure out what makes

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1 sense from a protection perspective.

2 Q Further down in that paragraph there's a sentence

3 that says, "Since we can determine the price of the risk,

4 much like insurance companies, then we can insure for that

5 risk."

6 What are you saying there?

7 A So what we're -- I think what that sentence is

8 saying is what OERA does is, as information comes in on a

9 near-real-time basis, we can look at what our risk is at any

10 given point relative to the overall portfolio or relative to

11 the amount of money invested.

12 So since we know what that is and we can project

13 that out, then it makes it a lot easier for us to figure out

14 how do we go out and make sure we insure that risk.

15 Q And what do you mean by insure that risk??

16 A There's two ways that we would probably -- that we

17 do look at insuring that risk. The first one is at any given

18 point am I falling below the collateralized value? Am I

19 investing above the collateralized value of the assets?

20 Right?

21 So if I'm about to go into a new tranche of

22 investing, however -- what my risk curve is telling me is

23 that if you do that, we're going to fall below a certain risk

24 level -- or go -- to use better language -- above a certain

25 risk level, then we're not going to do that. We're going to

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1 make sure that our collateralized value is above the amount

2 of money that we're investing. Right?

3 Q Okay.

4 A Or we're going to make sure that the revenues

5 coming in plus the collateralized value is more than the next

6 tranche. So either way, we can -- we're making sure that we

7 have a value under that that insures that risk. Right?

8 Q So when you say insure that risk, you don't mean

9 insurance.

10 A Well, the second part of it -- so there was -- I

11 said there's two parts. The second part of it is if I know

12 what that is at any given point, then that also gives me a

13 little insight into, okay, if I have to go sell an insurance

14 asset, what price do I need to look for to start selling?

15 How much discount can I take to make sure that we recoup?

16 Q And the insurance you're referring to is the key-

17 man insurance --

18 A That would be the key-man insurance.

19 Q -- you had testified about.

20 A That's correct?

21 MR. HOWELL: Let her finish asking the question

22 before you answer.

23 THE WITNESS: Okay. Sorry.

24 BY MS. GUNN:

25 Q And to sort of further -- go a little further, the

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1 next sentence says, "Therefore, because of the proprietary

2 model, OECP has the capability to insure the principal plus

3 minimum yield return to its investors."

4 There you're again talking about -- when you use

5 the word "insure," you mean sort of the two-prong thing you

6 discussed before, the collateral and the key-man insurance?

7 A That's correct.

8 BY MR. MCCOLE:

9 Q Earlier you said one of the things you were not

10 allowed to say was "guarantee." Remember that?

11 A Yes.

12 Q When you use this language here, "the capability to

13 insure the principal" -- you see that, the bottom of 31188?

14 A Yes.

15 Q What's the distinction between a guarantee and

16 insuring the principal there?

17 A So at the point -- at the time this was written,

18 with the counsel that we had at that point, we felt that the

19 word "guarantee" had a certain financial definition to it.

20 It's a bond. Right? It's something that has a bond-like or

21 debt-like guarantee.

22 Insurance in every aspect would be different. So I

23 will give an example of how we were thinking. You know, to

24 insure my car doesn't guarantee I'm going to get the full

25 value on my car, for an example.

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1 So insurance, in its nature, is different; it's
 2 meant to indemnify. It's not meant to guarantee a certain
 3 price. We have since moved away from -- this is why I'm
 4 saying this is old. We've since moved away from all that
 5 language.
 6 We internally believed it was confusing, and our
 7 attorneys now have said, Hey, you might want to stay away
 8 from anything that kind of insinuates that, so we stopped
 9 using any of that language.
 10 Q Yeah, because here at the bottom of 31188, you're
 11 "the capability to insure the principal plus minimum yield
 12 return to its investors." Do you see that?
 13 A I see that.
 14 Q To me that sounds like there's insurance that you'd
 15 be able to look to to make sure that the principal was
 16 repaid, assuming that it -- you know, that the performance
 17 was not sufficient to preserve the principal, but also to
 18 ensure a minimum yield; in other words, a profit over and
 19 above that principal.
 20 That's what it sounds like to me. How would you
 21 characterize what this is attempting to say?
 22 A Again, I would -- what I -- what we were thinking
 23 at the time is that we wanted to be very compliant with what
 24 we thought and what was being told to us at the time was the
 25 letter of the law.

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1 And so we thought "insure" -- the word "insure" was
 2 a strong enough word without having to use the word
 3 "guarantee" to help people have a comfort -- understanding of
 4 how the collateralized positions that we were taking works,
 5 along with the way that we fund our companies.
 6 So we were attempting to provide language that
 7 helped people understand, okay, it's not a guarantee, but
 8 there are collateralized positions that reduce risk.
 9 Q It's not a guarantee, but nevertheless it's
 10 insurance to cover the principal plus a minimum yield. Is
 11 that what you were attempting to convey?
 12 A To a certain degree.
 13 BY MS. FLOYD:
 14 Q All right. Moving on to the next page, under Team
 15 Members, it has Patrick Howard, CEO, Optimal Economics, RIA.
 16 So, again, that should have not been there?
 17 A That should not have been there.
 18 Q Okay. And I'm guessing this second part, did
 19 Dovile draft this document? I think it was actually a two-
 20 parter of the first part, the one we just looked at.
 21 A Yes. This -- Dovile would have drafted this
 22 document.
 23 BY MS. GUNN:
 24 Q Would you review it and approve it?
 25 A I would have.

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1 BY MS. FLOYD:
 2 Q And again, on the right side it says, OECF
 3 Benefits, 20 percent average growth. Again, would you
 4 consider that inaccurate?
 5 A That is inaccurate.
 6 Q And down below on the left-hand side -- and I
 7 quote -- "The purchase of units is a speculative investment,
 8 however the company is backing the minimum preferred yield
 9 and principal with insurance-based assets."
 10 I'm assuming that's, again, discussing the key-man
 11 insurance.
 12 A Correct.
 13 Q And to continue on, I quote: "While this should
 14 not be considered a guarantee, the company separates the risk
 15 of the underlying from the return of the investor. Therefore
 16 there is an assurance of the return of principal and minimal
 17 yield distribution."
 18 So, again, it's the same thing we just discussed
 19 before on the other page.
 20 A Correct.
 21 BY MR. McCOLE:
 22 Q In order for that assurance to have any meaning,
 23 that means that the key-man insurance and -- the value to be
 24 realized from the key-man insurance and the value to be
 25 realized from the collateral is going to equal or exceed the

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1 amount the investors put in. Correct?
 2 A Correct.
 3 Q What assurance did you have that that was in fact
 4 the case in terms of that valuation?
 5 A Again, when we go into portfolio companies, we do a
 6 valuation of not only what is their inventory valued at cost
 7 but, you know, what problem is it solving? Is there a market
 8 for it? Right? Is there a market for it? Even at wholesale
 9 cost is there a market? Is there anywhere I can go and dump
 10 these off and somebody's going to take them, because there is
 11 a market. Right?
 12 The market may not be as big as we thought, but
 13 there's still a market. And we analyze that, and we put a
 14 value to that. And so it's doing our due diligence and
 15 financial modeling along with kind of that risk due diligence
 16 modeling that we do that we have that level of confidence.
 17 Q So all of that valuation or valuing and analysis is
 18 internal. Correct?
 19 A It is. Correct.
 20 Q Okay. What, if any, third-party valuation firm did
 21 you bring in to value the insurance and the collateral?
 22 A At this point we haven't. We are engaging our
 23 public auditing firm, DiLucci, at the end of this year to do
 24 a full audit, in which they will do valuations of those
 25 assets.

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1 Q Okay. So you have no third-party valuation of the
2 bottles from APG. Correct?
3 A Outside of the liquidators? We have liquidator
4 valuations.
5 Q Okay. What's the liquidator valuation?
6 A So when we went to the liquidators and said, Hey,
7 what do you think you can move these bottles for? What cost
8 would you buy them from us for? That's what the liquidator
9 valuation is.
10 Q And what number did they tell you they would buy it
11 from you for?
12 A Somewhere around 30 bucks a bottle.
13 BY MS. FLOYD:
14 Q Did they provide this in a document form, like a
15 sheet, telling you \$30 a bottle?
16 A I don't know. I didn't go out there, but they did
17 provide that verbally to Tracy's team.
18 Q Who is the liquidator that provided that figure?
19 A I don't know the name of the liquidator.
20 Q If you had to find out, what would you do?
21 A I would call Gary Levitt.
22 Q Who?
23 A Gary Levitt.
24 Q And who's Gary Levitt?
25 A He's an internal OE employee.

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1 Q And he's the one that had communication with the
2 liquidators?
3 A Right.
4 Q How many liquidators provided that number?
5 A I don't know.
6 BY MS. FLOYD:
7 Q Does Tracy Alexander and Gary Levitt -- do they
8 meet with you weekly, monthly, to kind of give you a heads up
9 of what's going on with the portfolio companies?
10 A Weekly.
11 Q Weekly. Okay. Would this be something that would
12 come up in the meeting?
13 A Yes. So we speak specifically about this every
14 Monday, and then, of course, throughout -- if there's
15 anything new or anything that happens throughout the week, we
16 speak, but we have -- we're putting in place now -- remember
17 we have to hit -- we have to get more bottles hitting the
18 shores, because the liquidators are expecting certain
19 numbers.
20 But we have a definite plan on how we liquidate the
21 bottles. Our initial plan was to sell all through
22 liquidators. We did a quick test from our digital strategy
23 and realized that there was a strong market response that
24 came back.
25 So now what we're going to do is sell -- we're

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1 going to reserve a few of them for digital market launch,
2 which instead of \$30 a bottle, our retain price is \$50 a
3 bottle.
4 Q For one water bottle or a set?
5 A It's a set.
6 BY MR. McCOLE:
7 Q And the liquidators are willing to pay \$30 a set?
8 A Correct.
9 Q So the liquidator is willing to pay three-fifths of
10 the retail price for these?
11 A Well, we're not setting their retail price for
12 them.
13 Q Okay. Of your retail price, though. Correct?
14 A Correct.
15 BY MS. FLOYD:
16 Q And how much does it cost you to manufacture a
17 water bottle, just one water bottle?
18 A Manufacture? I am probably going to get this
19 number wrong, but I believe it's somewhere in the
20 neighborhood of \$7.
21 Q And you paid the manufacturer directly. Is that
22 correct?
23 A That's correct.
24 BY MR. McCOLE:
25 Q Have you -- has your company had experience of

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1 selling a manufactured product like a water bottle in the
2 past?
3 A So selling it how?
4 Q In any way?
5 A Yes.
6 Q Okay. What is that experience?
7 A Well, my experience as a management consultant,
8 working with a bunch of companies; Tracy Alexander has over
9 20 years of experience --
10 Q Okay, wait. No, no, no, no. I'm sorry. I mean
11 this particular company, OE Capital Partners.
12 A (No response.)
13 Q The company that's the subject of this Exhibit 28,
14 on page 311189. What is its experience in selling products
15 like water bottles?
16 A So OE as a organization, OE as an entity doesn't
17 have any experience, but any entity is made up of the people
18 in it, so if there was no people in it, of course it wouldn't
19 have any experience. It's the people in it that have the
20 experience.
21 And we have Gary, who's sold manufactured sports
22 products all over the place; Tracy, who has been a product
23 manager of some of the biggest companies in Texas. You have
24 me, that I've worked for retailers, I've worked for companies
25 that span the spectrum.

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1 So I would say we have rich experience in selling
2 products, digitally and through wholesale channels like
3 retail.

4 Q Is there a way -- I mean, can you estimate or give
5 us some sort of an estimate on how much of this kind of
6 selling the individuals in the company have done collectively
7 in the past?

8 A I mean, I left out Jim, who's got 25 years' worth
9 of experience. Gary's got 25 years. Tracy has 25 years.
10 Don't tell her I said that; she'll be mad at me.

11 I have specifically in this over 10 years, but I
12 have 20 years' worth of experience, so collectively quite a
13 bit.

14 BY MS. FLOYD:

15 Q What do you mean, experience? You mean physically
16 taking a manufactured product and selling it to the market?

17 A Correct.

18 Q So what products did you sell to the market?

19 A Me personally?

20 Q Correct.

21 A So I worked for a retailer called Service
22 Merchandise for a few years ago, where we took any number of
23 different products to the market. We were one of the initial
24 ones that did digital marketplaces, so I had -- I brought
25 that experience to the table of being one of the first ones

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1 Q Selling insurance?

2 A And financial products, so -- and investment.

3 Q What type of financial products?

4 A Mutual funds.

5 Q Insurance products?

6 A Insurance products. My last position was as a
7 managing director at a boutique firm in Dallas. I did at
8 that point start to investigate different venture capital,
9 private equity structures. I got very interested in the
10 space.

11 But because I wasn't a broker/dealer, I couldn't
12 actually do any sales from that perspective, and so --

13 Q What were you selling at that --

14 A Excuse me?

15 Q What were you selling at -- is that OneAmerica?

16 A That was OneAmerica.

17 Q Okay. What were you selling at OneAmerica?

18 A Insurance, mutual funds mostly.

19 Q Okay.

20 A Annuities.

21 Q Okay. Anything else?

22 A Not that I was selling there, no.

23 Q You've referenced today in your testimony -- the
24 documents referenced the OERA model, I think it is. Is that
25 correct?

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1 that really put up digital catalogs and understood how to
2 move products that way.

3 My management consultant background involves me
4 working with several different retailers, whether they were
5 online or brick-and-mortar, on how to move more product,
6 efficiencies and work flow, how to go sell product.

7 And so I have a lot of experience and understanding
8 how to move product from a retail, digital, other
9 perspective. My first company I built, although it wasn't a
10 big company, was a T-shirt company in college.

11 I have direct mail experience. I have a ton of
12 experience in this space.

13 BY MS. GUNN:

14 Q Do you have any experience in private equity, in
15 running a private equity firm?

16 A Not in running one. I do have some experience --
17 so I switched from my management consulting background -- or
18 my management consulting career, made a wholesale switch in,
19 I believe, 2005, 2006 into the wealth management space, and
20 which I learned a lot about insurance products, financial
21 advising --

22 Q What position did you have in the wealth management
23 space?

24 A Sales -- for most of my career, sales, just
25 selling, and then --

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1 A Yes.

2 Q Your proprietary model?

3 A That's correct.

4 Q Had that model -- what I'm trying to understand is
5 whether you had previously used that model in your work.

6 A You mean prior to OE Capital Partners?

7 Q Correct.

8 A No, ma'am.

9 Q Okay. So if the model had not been -- you haven't
10 had any actual performance verification of the model, then.
11 Is that correct?

12 A Not -- that is correct, not real life. We did run
13 regression testing on the model, so we went back 20 years and
14 ran regression testing on different companies in similar-
15 stage growth and see -- to see when the model would work and
16 when the model would break.

17 And so we have a -- we do have tests that validate
18 that the model works.

19 BY MR. McCOLE:

20 Q Did you disclose to investors that the valuations
21 of the collateral and the key-man insurance were not done by
22 third-party valuation firms in arm's-length transactions?

23 A We did not. We did disclose that -- we disclosed
24 that the valuations are internal valuations, in the annual
25 report that we sent out at the end of 2015.

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1 BY MS. FLOYD:
 2 Q Going to the last page of Exhibit 28, there appear
 3 to be three charts. The first says 2018 blended return
 4 rates. Blended, what do you mean by that?
 5 A I'm not quite sure where this -- who put this
 6 together and if it's ever been used.
 7 Q Well, it appears to be part of the packet that was
 8 provided to Mr. Heinzelman and C4.
 9 A Okay. Then we -- seems to be someone put it
 10 together for him. I'm trying to familiarize myself with
 11 this. I'm not quite sure that I've seen this yet.
 12 Q Okay. What about the last chart down below. It
 13 says, OE Capital Partners profit and loss for 2015 through
 14 2017. And then it has on the left-hand side, sales, total
 15 income, expenses, and net profit.
 16 Do you have any idea where the numbers came from?
 17 A Would have been modeling. I mean, I -- it's pretty
 18 common in the venture capital space, when you have estimates,
 19 you put a E beside the year, so those are all estimates.
 20 And so I would imagine it came from the financial
 21 modeling that we were doing with portfolio companies at that
 22 time.
 23 Q Okay. And so the middle chart says, Nominal
 24 returns of \$50,000. Hypothetically, if I'm an investor and
 25 I'm looking at this chart, if I invest \$50,000, it would look

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1 Q I'm guessing the net profit was not 1 million.
 2 Thank you.
 3 Now, Exhibit 28 -- I think we had previously
 4 discussed it's part of a packet. And is this packet provided
 5 to investors?
 6 A I don't know. We don't use that packet internally,
 7 so --
 8 Q Okay. So the packet was -- what was the purpose of
 9 the packet?
 10 A It was to provide Mr. Heinzelman with material --
 11 some kind of marketing materials that he requested.
 12 Q And did he tell you that he was going to use it
 13 with investors?
 14 A He didn't tell me that, no.
 15 Q All of the materials in this I guess email and
 16 attachments -- do you know if there are any other materials
 17 that may have been provided?
 18 A I don't.
 19 Q So as far as the packet, was the packet provided to
 20 Mr. Heinzelman and C4 Benefits during the training?
 21 A I don't think so during training; I think maybe
 22 after it, but I'm not sure the exact time the packet was
 23 prepared.
 24 Q Okay. I'm going to hand you three packets at once.
 25 We're going to use them continuously.

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1 like in average performance I could almost double my
 2 investment. Is that correct?
 3 A If -- that's correct.
 4 MS. FLOYD: Let's go ahead and break for lunch.
 5 It's one o'clock.
 6 (Whereupon, at 1:00 p.m., a luncheon recess was
 7 taken.)
 8 AFTERNOON SESSION
 9 MS. FLOYD: Back on the record. It's 1:55 p.m.
 10 BY MS. FLOYD:
 11 Q During the break did we have any substantive
 12 conversations regarding this matter?
 13 A No.
 14 Q Okay. I want to go back to Exhibit 28 just for one
 15 second. Turn to the last page of the exhibit. That last
 16 chart that says, OE Capital Partners profit and loss 2015-
 17 2017.
 18 I guess it would be the second column, under 2015E.
 19 In 2015 did you guys have 1.3 million in sales?
 20 A No.
 21 Q Total income: Did you guys receive 1.5 million in
 22 income?
 23 A No.
 24 Q Did you guys have \$500,000 in expenses?
 25 A No.

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1 I'm handing you what has been labeled as Exhibits
 2 29, 30, and 31.
 3 (SEC Exhibit Nos. 29 through 31 were
 4 marked for identification.)
 5 BY MS. FLOYD:
 6 Q Please take a moment and look through it.
 7 A Perusing documents.)
 8 Q Do you recognize Exhibits 29, 30, and 31?
 9 A I've not seen these yet.
 10 Q You've not. Okay. Do you know who possibly had
 11 drafted Exhibits 29 through 31?
 12 A It says, Brought to you by C4 Benefits Group, so
 13 I'm thinking they must have drafted them.
 14 Q Okay. Did -- do you know how they were provided
 15 the information that is contained within 29, 30 and 31
 16 exhibits?
 17 A Probably through information from our presentation.
 18 This particular is certainly from our presentation, and then
 19 probably through talking with Dovile, I would imagine.
 20 Q Is it possible that Dovile used these slides during
 21 her presentation to the brokers or to the individuals?
 22 A To the individuals?
 23 Q Yes. The webinar.
 24 A Some of them.
 25 Q Some of them.

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- 1 A Some of them, yes.
- 2 Q And how do you know that?
- 3 A Because some of them are familiar to me.
- 4 Q Okay. And anywhere in these three exhibits do they
- 5 talk about OE Capital being one fund and having -- or one big
- 6 fund and having three small funds under it?
- 7 A Well, it talks about our investment process and how
- 8 we are -- we're essentially just one fund.
- 9 Q Is it -- where does it say that in there?
- 10 A In terms of the actual -- well, it talks -- from --
- 11 it says it from the methodology perspective. It doesn't
- 12 utilize those exact words, but it doesn't say -- you know, it
- 13 talks about our investment. Your money goes into a fund, and
- 14 then we -- what we do with that money is we take it through
- 15 this process.
- 16 We pick the companies and then we invest in the
- 17 companies; we utilize the captures, and we return those
- 18 captures back to the individuals, so our process is always --
- 19 always been the same; we've always used the same process.
- 20 Q Okay. So during the training webinar, were the
- 21 individuals informed about CFG I?
- 22 A So this was not a training -- this is not a
- 23 training webinar for investors.
- 24 Q Okay. What is it, then?
- 25 A This would have been a training webinar for C4

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- 1 Benefits Group advisors.
- 2 Q For individuals, for individuals who work for C4
- 3 Benefits. Is that correct?
- 4 A My understanding, yes. I know it wouldn't have
- 5 been -- they had a training, and it was for new advisors that
- 6 they were trying to either recruit or bring on or train.
- 7 Q Okay. Now, if you go to Exhibit 30, I believe it's
- 8 called OE Capital Partners' Certificate Training, Series 2,
- 9 and Sales Presentation.
- 10 What does certification training mean? Are you
- 11 guys actually certifying these advisors?
- 12 A Again, this is a C4 Benefits Group training, not an
- 13 OE training.
- 14 Q Okay. So you're unfamiliar with anyone at OE
- 15 certifying whether they can sell the funds on behalf of OE
- 16 Capital.
- 17 A That's correct. We weren't certifying them.
- 18 Q At all.
- 19 A No, not at all.
- 20 Q Okay. If you look at -- I apologize; they're not
- 21 numbered. So as far as the training process went -- let me
- 22 see if I understand this correctly -- yourself and Dovile or
- 23 various individuals at OE Capital trained Mr. Heinzelman and
- 24 Jackson Clements. Correct?
- 25 A That's correct.

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- 1 Q And then C4 Benefits, which is basically Jackson
- 2 Clements and Heinzelman, then trained advisors. Is that
- 3 correct?
- 4 A That's my understanding.
- 5 Q So what are they training these advisors to do?
- 6 A What I speculate is to be able to talk about the OE
- 7 product, if asked about it.
- 8 Q If asked. So how would a person know about the OE
- 9 product?
- 10 A What I do know is that they did have some
- 11 advertising that C4 did.
- 12 Q What kind of advertising did they do?
- 13 A They were doing radio advertising.
- 14 Q And how were you aware of the radio advertising?
- 15 A They told me about it. They told me that they were
- 16 doing radio advertising.
- 17 Q Did they tell you that after the radio ads were
- 18 already on the ad -- on the radio?
- 19 A No. I knew about it before.
- 20 Q Okay. So what did you know about the radio ads?
- 21 A That they were going to go on the radio -- I
- 22 believe it was the Bone in Tampa, is the radio station -- and
- 23 essentially they had been using this radio -- this person for
- 24 a few years, is my understanding, prior, and so they -- what
- 25 they wanted to do is see how they could utilize that to

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- 1 inspire some traffic for people to ask about -- more about
- 2 other products, including OE.
- 3 Q Okay. So when did these ads appear on the radio?
- 4 A Can't exactly remember. It was in summertime of
- 5 2015, I think.
- 6 Q And how long did you know prior to the radio ad
- 7 being broadcasted?
- 8 A So they -- we went through a series of
- 9 conversations, and the first level of conversations were, you
- 10 know, can we use the radio to promote OE? At the time we
- 11 were entertaining -- so it must have been around June, I
- 12 think, but at the time were entertaining the 506(c), and so
- 13 we gave them kind of a list of here's everything -- the
- 14 disclosures you have to -- it's a 506(c); it's only for
- 15 accredited investors. But if we do a 506(c), yes, you can
- 16 actually advertise.
- 17 They wanted to use it for more than just accredited
- 18 investors, so they didn't want this to only be for this
- 19 product; they wanted it to be for an expanded product, so if
- 20 somebody called in, they could offer them a different -- any
- 21 kind of a product that might fit the suitability for that
- 22 client, even if they didn't fit our product or some other
- 23 product. Right?
- 24 And so what we did is said, Listen, that's on you.
- 25 Right? Whatever you say from that perspective, you cannot

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1 use our name, you can't market our product or anything like
2 that. What we'll tell you is you can't -- we'll tell you
3 what you can't say, and you can't tie anything directly back
4 to us, because that would be breaking the solicitation -- the
5 advertising rules, if we are a 506(b).

6 And so they went forward and created some radio
7 ads, and we had no creative input into those ads. That's all
8 on that.

9 Q So did OE Capital provide any sort of lists of what
10 they can and cannot say, in the end?

11 A What we did is we provided an initial list when we
12 were thinking about if it was going to be a 506(c) and what
13 they could and couldn't say, and the fact that it had to be
14 disclosed to accredited investors only.

15 Beyond that, once they took it upon themselves, we
16 simply didn't have any creative input. I mean, we -- they
17 took some of our suggestions from a perspective of saying,
18 Hey, I wouldn't say things like "guaranteed" on anything
19 unless you think you can -- some of your other products
20 guarantee certain things.

21 However, you know, we don't have any input into how
22 you are going to advertise your products, outside of if
23 you're going to say our name or mention our product, then we
24 have to be a 506(c), and then we have to -- it only can go
25 towards accredited investors.

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1 Q Did you at any point approve the script that was
2 used in the radio?

3 A We didn't approve it, no.

4 BY MS. GUNN:

5 Q Were you given the opportunity to review it and
6 object to what it said before it was used?

7 A Prior to its use?

8 Q Yes.

9 A No.

10 Q Not in any instance?

11 A We did not review and get a chance to object prior
12 to its use. Charles did send some stuff to us, but our point
13 was not to -- I made it clear, Guys, this isn't our
14 advertising; this is his. So we're not going to get put into
15 an approval process for something that's not directly tied to
16 us.

17 Q Who did you make that clear to?

18 A My team.

19 Q What about Mr. Heinzelman?

20 A Well, I mean, I had several conversations with
21 Charles so that he understood that whatever he was saying
22 needed to apply to more than just our product.

23 BY MS. FLOYD:

24 Q Okay. I'm going to hand you what has been labeled
25 as Exhibit 32.

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1 (SEC Exhibit No. 32 was marked for
2 identification.)

3 BY MS. FLOYD:

4 Q Take a moment and look through that.

5 A (Perusing document.)

6 Q Exhibit 32 appears to an email from yourself to Mr.
7 Heinzelman, cc: Jackson Clements; it's dated May 6, 2015,
8 around 10:34 a.m. The Bates number is OE SEC 018207.

9 On the first part of the email, which was actually
10 sent at 9:39 a.m., and it reads -- subject line is Radio Ad,
11 and it reads -- I quote -- "Morning, Patrick. In Jackson's
12 call with Dovile she gave us a basic outline of what to say
13 and not to say to go along with the Word document sent Monday
14 eve.

15 "Jackson will be scripting out an outline we would
16 like to have you review so we can ensure 100 compliance on
17 our initial undertaking here. Are you amenable to that?

18 "Regards and best wishes, Charles Heinzelman."

19 And then on the top of the -- I'm sorry. Let's
20 stick with this email section. So Dovile did give a basic
21 outline -- is that your understanding -- of what to say and
22 what not to say?

23 A In this email, yes.

24 Q Okay. And so you became aware that Jackson was
25 scripting an outline for the radio ad. Is that correct?

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1 A Yes.

2 Q And is he asking you to review the script to make
3 sure that they were in compliance?

4 A He is. This was in early May. This was when we
5 were still thinking about the 506(c).

6 BY MS. GUNN:

7 Q Do you recognize this as an email exchange between
8 yourself and Mr. Clements?

9 A Yes.

10 BY MS. FLOYD:

11 Q So on the top part of Exhibit 32 is an email from
12 yourself to Mr. Heinzelman, cc: Mr. Clements, saying, "Yes,
13 send it to me. I would to look it over."

14 So you did have a chance to look over the script.
15 Is that correct?

16 A This was when we were still thinking about the
17 506(c), so, yes, in that case I would have wanted to look it
18 over, because it would have specifically mentioned our name
19 and product.

20 Q Did you look over the script?

21 A We didn't go forward with the 506(c).

22 Q Okay. My question is, did you look over the
23 script?

24 A Well, I don't know, because we did not -- we would
25 not have gone with that script, whatever it was, because we

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1 didn't do the 506(c).
 2 Q Okay. I'm giving you what has been marked as
 3 Exhibit 33.
 4 (SEC Exhibit No. 33 was marked for
 5 identification.)
 6 BY MS. FLOYD:
 7 Q Please take a moment and look this over.
 8 A (Perusing document.)
 9 Q Do you recognize Exhibit 33?
 10 A It's an email chain.
 11 Q Okay. So it appears to be an email chain, Bates-
 12 numbered OE SEC 018777, and I believe the email chain starts
 13 around May 6 through May 14. And if you look at page 3 and
 14 4 -- page 3, actually, the email chain on page 3 appears to
 15 be what we just looked at on Exhibit 32.
 16 A Correct.
 17 Q It's May 6, between Mr. Heinzelman and yourself and
 18 Mr. Clements, and it's the exact email I just read; you know,
 19 "Morning, Patrick."
 20 Then if you look at page 2, you'll see the bottom,
 21 May 6, Patrick Howard wrote, "Yes, send it to me. I would to
 22 look it over."
 23 So Mr. Clements, it looks like he had responded,
 24 said that he will have something done today or today. And it
 25 appears on May 6 he indeed sent you a draft of several

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1 scripts; looks like there's more than one.
 2 Do you see the scripts?
 3 A Yes.
 4 Q You said that you wouldn't use his scripts because
 5 you were -- at the time you were going to use 506(c), but now
 6 you're doing 506(b). So what in these scripts would you not
 7 use if you were -- if they were -- say they were sending this
 8 off to have it broadcasted. Would there be a problem with
 9 it?
 10 A Well, if you look at Dovile's response here, that
 11 was the problem. Again, we were looking at a 506(c), and if
 12 we were going to be in the approval process, we needed to
 13 make sure that the disclosure language was in there, and
 14 there was disclosure language regarding accredited investors.
 15 So, again, if we were going to be in the approval
 16 process, we would have had to make sure that the scripts were
 17 approved.
 18 Again, we got put out of the approval process
 19 because we decided not to be a 506(c), to be 506(b), and they
 20 decided to leave -- to take on the marketing and the
 21 languages themselves.
 22 Q Okay.
 23 A They had full creative over there.
 24 Q So do you recall roughly when you decided to go
 25 into 506(b) from 506(c)?

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1 A It would have been prior to the radio ads going up,
 2 for sure.
 3 Q Okay. I'm going to hand you what has been labeled
 4 as Exhibit 34.
 5 (SEC Exhibit No. 34 was marked for
 6 identification.)
 7 BY MS. FLOYD:
 8 Q Take a moment and look through it.
 9 A (Perusing document.)
 10 Q Do you recognize Exhibit 34?
 11 A It looks like an email chain -- or email between
 12 Charles and me.
 13 Q And it's Bates-numbered OE SEC 019142 through
 14 019143. So we'll take the email down on the -- I guess most
 15 of page 1, and it's May 4, 2015, at 10:28 a.m. It's from Mr.
 16 Heinzelman to yourself and --
 17 MS. GUNN: I think it's June 4.
 18 BY MS. FLOYD:
 19 Q I'm sorry. June. Sorry. Its subject line is Live
 20 Reads on Radio Show. So it appears Mr. Heinzelman is sending
 21 you basically a script of what the radio ad was playing. Is
 22 that correct?
 23 A It appears it was after he'd already -- yeah, after
 24 he'd already submitted, and the read -- ad had gone live, and
 25 he was giving me that.

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1 Q Okay. And so the top of the email was from
 2 yourself to Mr. Heinzelman, June 4, 11:12 a.m., and you said,
 3 "That is awesome." So you seemed to like the ad. Is that
 4 correct?
 5 A I did. I thought it was funny.
 6 Q Why is it funny?
 7 A Just the way this guy talks it's kind of funny to
 8 me.
 9 Q Okay. I think he's referred to as a shock DJ or --
 10 A That's how Jacks refers to him.
 11 Q Okay. And so why would Mr. Heinzelman send you
 12 this script?
 13 A I guess just to let me know what they did.
 14 Q Did for what?
 15 A What they put on the radio.
 16 Q For what? Why were they putting this on the radio?
 17 A They were -- they already had that ad, so they
 18 were -- it was the spot they were using to advertise with.
 19 Q What are they advertising?
 20 A They already had the spot. I'm sorry.
 21 Q What were they advertising in the script or in the
 22 ad?
 23 A I mean, all of the components of what they were
 24 advertising matches to our product; however, Charles says it
 25 doesn't necessarily have to -- he has other products that

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1 could or -- could potentially fit.

2 Q So Mr. Heinzelman has other products that offer

3 minimum 12 percent a year as well?

4 A I mean, that's what he said to me. I don't know

5 what product offerings they have.

6 Q Who paid for this radio ad?

7 A So C4 pays for the radio ad. What we do is we

8 split overall marketing -- we did; we don't anymore -- split

9 overall marketing costs with them.

10 Q Marketing costs, as in the radio ad?

11 A Could be part of that cost, yeah.

12 Q So if this radio ad cost \$5000, would you pay 2500

13 for it?

14 A That's correct. But I'd like to clarify.

15 Q Sure.

16 A So the agreement with Mr. Heinzelman was not

17 specifically about radio ads; it was about marketing in

18 general. So if he decided, for example, Hey, I want to

19 market in a certain way, I want to send out direct mail

20 marketers, would you be willing to half that up with me, and

21 so that was the agreement: Whatever marketing -- because we

22 weren't doing anything.

23 So as long as we stayed off -- our name stayed off,

24 or we had the proper disclosures involved, then that was the

25 agreement.

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1 Q So hypothetically if they had a billboard saying,

2 Earn your minimum 12 percent here; call C4 Benefits, you

3 would split that billboard cost half.

4 A Correct. Or, honestly, what it was -- because

5 we were trying to create an exclusive strategic

6 relationship, and so if it was earn your 3 percent -- find

7 your new 3 percent annuity; call there.

8 And once the phone rang, then if he found an

9 opportunity, he would present our product as a solution as

10 well. So it was really just helping him generate traffic,

11 and his agreement was that any opportunity that he would

12 find, he would present our product as a solution.

13 Q So you're saying if an investor hears his script or

14 hears his radio ad and says, Hey, I want to earn a minimum 12

15 percent a year -- and I quote from the script: "Yes, you

16 heard me correctly, the worst-case scenario...the minimum is

17 12 percent."

18 If an investor calls up saying, I want to get a

19 minimum 12 percent, C4 Benefits, would they putting down

20 marketing materials of OE Capital in front of them?

21 A They would be, in addition to any other product

22 that they thought might fit.

23 BY MS. GUNN:

24 Q Might fit what?

25 A That client's needs.

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1 BY MR. McCOLE:

2 Q So OE Capital paid to have this radio ad, at least

3 a portion of the cost to have the radio ad run. Correct?

4 A What we paid -- the ultimate answer to that is yes,

5 but what we paid is half of C4's marketing cost.

6 Q And was it -- one of the purposes of this ad was to

7 attract investors to OE Capital. Correct?

8 A It was -- the purpose of the ad was to generate

9 traffic for C4 Benefits Group. A lot of the traffic that

10 came weren't suitable for our product, so they put them in

11 different products.

12 So the purpose of the traffic was -- the ad was to

13 generate traffic for C4 Benefits Group. We were the

14 beneficiary of some of that traffic.

15 Q So, on other words, the advertisement was designed

16 to attract prospective investors to C4 --

17 A Correct.

18 Q -- so that C4 could present an investment in OE

19 Capital, among other investments. Is that correct?

20 A That's correct.

21 Q And if you look at Exhibit Number 33, Dovile says

22 to Mr. Heinzelman, in an email of May 14, 2015, at 2:13

23 p.m. -- in response to having read the radio script, she

24 says, "Charles, everything is great with the scripts."

25 Do you see that?

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1 A Yes.

2 Q And she ccs you on that email. Correct?

3 A Yes.

4 Q And she points out the only disclosure language you

5 have to add at the end is, This offering is for accredited

6 investors only. Right?

7 A Correct.

8 Q And then she also says, "So remember that we can

9 take those investors; however, we cannot advertise to them."

10 Correct?

11 A Correct.

12 Q And I don't see -- at least not in this email chain

13 I don't see any email from you, after having been cc'd,

14 making any additions or changes to anything that Dovile said.

15 Is that correct?

16 A That's correct here.

17 Q And would you agree with the statements that Dovile

18 made regarding the script?

19 A Would I agree now?

20 Q Or at the time?

21 A At the time I probably would have tweaked a few

22 words, but overall I thought it was pretty effective.

23 Q Okay. And she was a representative of OE Capital.

24 Correct?

25 A Yes.

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1 Q And she reported to you. Were you her supervisor?
 2 A Still am. Yes.
 3 Q Now, the script that appears in Exhibit Number 33
 4 and the script that appears in Exhibit Number 34, what, if
 5 any, differences are there that you're aware of between those
 6 two scripts?
 7 A (Perusing document.)
 8 MR. HOWELL: So are you asking him if he made any
 9 changes to the script?
 10 MR. MCCOLE: I'm trying to get at are they the same
 11 script?
 12 THE WITNESS: You mean there -- I think there's
 13 one -- I mean, it seems like there -- for the most part -- I
 14 mean, I see some word changes and differences in them, but
 15 for the most part.
 16 BY MS. GUNN:
 17 Q Earlier you testified about the components being
 18 described in the scripts as fitting the OE Capital
 19 investment. Have any of those elements been changed --
 20 changed? For example, the 12 percent, the references to the
 21 12 percent?
 22 A In these scripts?
 23 Q Versus the ones in Exhibit 34.
 24 A In 33 versus 34?
 25 Q Yeah.

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1 A I don't think so.
 2 BY MR. MCCOLE:
 3 Q So would you agree that both scripts seem to
 4 describe aspects of the OE Capital investment?
 5 A Yes.
 6 Q And when you say, in Exhibit Number 34, "That is
 7 awesome," what did you -- what were you referring to?
 8 A More of the tone of the script; more of kind of the
 9 way it was being delivered.
 10 Q So you were speaking about that script in an
 11 approving manner. Correct?
 12 A Yes.
 13 BY MS. FLOYD:
 14 Q After these ads were broadcasted, did OE Capital
 15 receive a lot more investors?
 16 A So C4 -- my understanding, C4 Benefits Group did
 17 receive phone calls from those ads, and as a result, some of
 18 those ended up being investors in OE, so, yes.
 19 Q I'm going to hand you what has been marked as
 20 Exhibit 35.
 21 (SEC Exhibit No. 35 was marked for
 22 identification.)
 23 BY MS. FLOYD:
 24 Q Please take a moment and look through it.
 25 A (Perusing document.)

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1 Q Do you recognize Exhibit 35?
 2 A It's an email between Charles, Dovile.
 3 Q And -- Dovile?
 4 A Dovile.
 5 Q It's August 24, 2015, now. You are not a recipient
 6 of this email. But on the first part of the email, when Mr.
 7 Heinzelman says -- and I quote -- "Working on prospecting
 8 this week. I know Jacks has a huge week lined up with market
 9 crashing and radio ads blowing up with it."
 10 Do you know what he was referring to?
 11 A I don't know; I can speculate.
 12 Q What would be your speculation?
 13 A August last year the market was crashing. The
 14 radio ads they were running were running, so I would imagine
 15 that they were getting a lot of calls.
 16 Q So that would basically mean investors were looking
 17 for the 12 minimum, especially since the market's crashing.
 18 Is that correct?
 19 A The way that I would say it is investors were
 20 looking for an alternative because the market was crashing.
 21 MS. FLOYD: Let's go ahead and just take a quick
 22 break. It's 2:37. Off the record.
 23 (A brief recess was taken.)
 24 MS. FLOYD: We're on the record at 2:49 p.m.
 25 BY MS. FLOYD:

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1 Q During the break, Mr. Howard, did we have any
 2 substantive conversations regarding this matter?
 3 A No.
 4 Q Thank you. All right. Talking about C4 Benefits
 5 and Mr. Heinzelman, who else sold the OE funds?
 6 A Do you mean other than C4?
 7 Q Yes. Correct. I guess you classify Mr. Heinzelman
 8 under the C4 umbrella. Is that correct?
 9 A I would classify him as C4.
 10 Q As C4. Okay.
 11 A No one else sold anything. It was -- outside of
 12 that it was all internal.
 13 Q Okay. So who in OE would actually sell the funds?
 14 A So I'll answer that in date time frames. So in
 15 2015 it was primarily either myself or Dovile. In 2016 we've
 16 now brought on two internal employees, and their -- a big
 17 part of their job is to help us raise capital through the
 18 selling of the investment units.
 19 Q And which employees are those?
 20 A Ron Scherer.
 21 Q How do you spell that?
 22 A S-C-H-E-R-E-R.
 23 Q Okay. And when was Mr. -- is it Mr. Scherer? --
 24 A Yes.
 25 Q -- hired?

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1 A I believe March 2016.
 2 Q March. Okay. Who is the second employee?
 3 A Tico Martinez.
 4 Q When was he hired?
 5 A Okay. Got them reversed. Tico was hired in March;
 6 Ron was hired in April
 7 Q Thank you. So yourself, Dovile, and the two new
 8 employees are primarily the ones that are raising capital for
 9 OE, internally. Is that correct?
 10 A That's correct.
 11 Q Okay. So externally it's -- raising capital would
 12 be C4 Benefits. Correct?
 13 A I mean, as of May of 2016, we no longer use C4.
 14 Q Who do you use now?
 15 A We don't have any external capital raisers right
 16 now.
 17 Q Okay. So as of right now, the only ones raising
 18 capital are within OE Capital.
 19 A That's correct.
 20 Q Why do you no longer use C4 Benefits?
 21 A When we engaged counsel K&L Gates, they had
 22 concerns about the finder's exemption that we were attempting
 23 to use with C4, so our understanding was that Mr. Heinzelman
 24 was 65, but I'm not sure that other people that he was using
 25 as his extension were.

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1 So in other words, we were paying him. There may
 2 have been times that he would use someone else to go find a
 3 potential investor, and he would potentially pay those
 4 people.
 5 Q Okay. Going back to this money, you said using a
 6 finder's exemption. What do you mean by that?
 7 A So there -- former counsel had shown us, I believe,
 8 some kind of -- well, it was called a finder's exemption, so
 9 there were several rules tied to what it meant to be a
 10 finder.
 11 So a finder could be someone that could go out and
 12 essentially refer in an investor, and then there were several
 13 rules around kind of what that finder could and couldn't do
 14 from a referral perspective.
 15 Couldn't enter into -- couldn't sign documents, for
 16 example. Couldn't actually ask for a check, I think was one
 17 of them. And so the attempt initially was to have -- Mr.
 18 Heinzelman would -- was using the finder's exemption to pay
 19 essentially referral kind of fees to people that was attached
 20 to C4 that may not have had the right licenses.
 21 We became increasingly concerned about that
 22 exemption and whether or not it was going to be upheld or it
 23 was going away, so we decided that we wanted to gain some
 24 real clarity around kind of how we were positioning
 25 ourselves, so we made a business decision to only deal with

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1 people who had all of their licenses in place.
 2 And so we asked C4, Mr. Heinzelman, to make sure
 3 that anyone that he was dealing with was properly licensed.
 4 And until that happens, we suspended all business with him.
 5 Q And when did you ask Mr. Heinzelman to do this?
 6 A I think we probably asked that around I guess
 7 March, April time frame of 2016. I asked counsel how long we
 8 should give them before they either complied -- and they said
 9 60 days.
 10 I remember the 60th day was the end of May, so if I
 11 back up two months, then that's when we --
 12 Q And you said counsel. Do you mean K&L Gates?
 13 A I mean K&L Gates. Yes.
 14 Q So your relationship with C4 Benefits, when did
 15 that begin?
 16 A May.
 17 Q 2015?
 18 A 2015.
 19 Q Okay. So it is your understanding that you would
 20 pay Mr. Heinzelman commissions for bringing in investors --
 21 you would pay him directly, but his group as C4 Benefits
 22 would contract out or hire other people to -- other finders
 23 brought in business. Is that correct?
 24 A Yeah. I know he had other people he was working
 25 with at that point, doing different types of products,

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1 insurance-based stuff, things of that nature. And so he
 2 wanted to utilize that network. Our request is that he make
 3 that network fully licensed so that we wouldn't have to worry
 4 about whether or not compensation was correct down the chain.
 5 Q Okay. So still -- let's look to 2015. So was OE
 6 Capital aware of the individuals who brought in the business
 7 under C4 Benefits?
 8 A We were aware of some of them, yes, for sure.
 9 Q So explain the process. So if Joe Smith under C4
 10 Benefits brought in an investor, explain the process of
 11 paperwork to money. Where does -- who does the paperwork --
 12 does he have the investor fill out the paperwork?
 13 A Yes.
 14 Q And I'm saying Mr. Smith.
 15 A I think so. I think he had the investors fill out
 16 the paperwork. It's a possibility that he could have had
 17 them call Dovile and have Dovile fill out the paperwork with
 18 the investor.
 19 Q Okay. So the investor writes a check. Who are
 20 they writing the check to?
 21 A If they were writing a check directly, they were
 22 writing the check to the fund, OE Capital Ventures or CFG II.
 23 Q Okay. And so these investors that are found under
 24 C4 Benefits, how -- what kind of payment, commission, do you
 25 pay them for investment per capita? What is your agreement

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1 with these brokers?

2 A So I don't have an agreement with the individual
3 brokers. Charles does.

4 Q Okay.

5 A So we would pay Charles 5 percent of the invested
6 amount, and along with that, we would send a report of who
7 closed.

8 So with the paperwork we would know, okay, who's
9 this person? Who's the name of the person that Charles is
10 using? And how much the investment was.

11 And Charles had individual agreements with each of
12 them in terms of how much of that 5 percent he would pay
13 them.

14 Q Okay. So you just let Mr. Heinzelman know who
15 brought in what, and then he would figure out on his end what
16 to pay the broker.

17 A That's correct.

18 BY MS. GUNN:

19 Q Did you have any understanding of what any of those
20 particular splits were?

21 A I do not. Somebody said -- and I don't know who,
22 so it was literally kind of hearsay. Somebody said 3
23 percent; somebody else said 2 percent. So I would assume it
24 was probably different per person.

25 Q But am I correct in understanding that your

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1 else -- what other involvement they may have had in the
2 process?

3 A I really don't understand.

4 Q I think you had said that OE Capital sent Mr.

5 Heinzelman a report of the amount that was invested and who
6 had closed it.

7 A Correct.

8 Q How did you know who had closed it?

9 A With the investor, so -- I'll tell you from our
10 side what I know.

11 Q Right.

12 A So Dovile would work with Jackson Clements pretty
13 closely, so Jackson was basically the go-to on that side for
14 processing of whatever. I said what I know -- I believe any
15 part of their business, but I know this is who Dovile worked
16 with on our side.

17 And so with the paperwork, Dovile would -- Jackson
18 would tell her who -- the name of the person that may have
19 referred the deal -- referred the investor in, and Dovile
20 would record that so that we can report it back.

21 Q Okay. Thank you.

22 BY MS. FLOYD:

23 Q So an investor that C4 Benefits had found, if they
24 had questions regarding their investment, who would they
25 call? Would they call C4 Benefits or would they call Dovile

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1 understanding was that the people Mr. Heinzelman was paying
2 were getting some portion of the 5 percent, some percentage
3 portion of the 5 percent?

4 A That's my understanding, yes.

5 Q Okay. And earlier you testified that -- something
6 along the lines that your former counsel had shown you a
7 finder's exemption. Who were you referring to?

8 A Darryl Cleveland.

9 Q When was that?

10 A I mean, it would have been springtime 2015.

11 Q And do you have any understanding of who was
12 providing the information about the prospective investment to
13 prospective investors?

14 A I'm sorry?

15 Q Do you have any understanding -- we used the
16 hypothetical Mr. Smith. Was it your understanding that Mr.
17 Smith would provide a prospective investor with information
18 about the investment in OE Capital?

19 A Yes. That's my understanding.

20 Q Okay. And earlier today you talked about a
21 suitability form. Did they -- did the individuals such as
22 the hypothetical Mr. Smith obtain the information about
23 suitability from the investor?

24 A I don't know that process.

25 Q Okay. Do you have any understanding of what

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1 or OE Capital?

2 A Yes. They will call both. Many times they would
3 call Jackson; however, Dovile would be involved, especially
4 if there was anything, for example, from the custodian that
5 was needed. She would certainly be involved. And once they
6 got her name, a lot of people would call her directly.

7 Q But the point of contact, would that generally be
8 Jackson or somebody at --

9 A If it came through --

10 Q -- C4 Benefits?

11 A -- a referral from C4, it would either be Jackson
12 or whatever the broker was.

13 Q I'm going to hand you what has been marked as
14 Exhibit 36.

15 (SEC Exhibit No. 36 was marked for
16 identification.)

17 BY MS. FLOYD:

18 Q Take a minute and look through this.

19 A (Perusing document.)

20 Q Do you recognize Exhibit 36?

21 A Looks like it's some sort of agent commission
22 distribution, so it looks like something that would be sent
23 in with maybe the paperwork for the investment.

24 Q Okay. So could you explain in a little bit more
25 detail? So I'm trying to figure out, so if Mr. Smith, who

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1 works under C4 Benefits, brings investors, they submit the
 2 subscription agreements and whatever paperwork they need to
 3 fill out; they submit that with this document so they get
 4 their commissions for that investment?
 5 A That's my belief on this one.
 6 Q And they would submit this to OE Capital Partners.
 7 Correct?
 8 A Right. So if you look, this agent number -- well,
 9 in this case it was Jackson, and then in the notes, assign
 10 all commissions to C4, so everything went to C4, and on their
 11 side they split it out, but the way they would know to split
 12 out is that this person's name would be tied to the investor
 13 they brought.
 14 Q Got it. And so you would actually pay Mr.
 15 Heinzelman personally, not C4 Benefits? You would wire money
 16 to Mr. Heinzelman?
 17 A Yeah. In our system the account name is Charles
 18 Heinzelman that the money got wired to.
 19 Q Okay. Thank you. So how many months did you --
 20 did OE Capital use this process?
 21 A (No response.)
 22 Q When did it change?
 23 A It changed -- you mean using C4?
 24 Q Well, just using the C4, having the broker send in
 25 these commission distributions along with the other

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1 documents?
 2 A It would have changed this past March.
 3 Q March. Okay. So for several months you used that
 4 process. Is that correct?
 5 A That's correct.
 6 Q And if Mr. Smith wanted to get hired by C4 Benefits
 7 to sell OE Capital to investors, he would have to go through
 8 training. Correct?
 9 A I believe so.
 10 Q Okay.
 11 A But that would have been C4 training.
 12 Q Do you have any idea what C4 may have told this
 13 broker on why they can sell this without being registered?
 14 A I don't. The only thing I can suggest is that we
 15 believe -- and I believe this would have been C4's believing
 16 as well, is that there was a difference between a referring
 17 in and an actual selling, so, you know, putting your name on
 18 an application as you sold product.
 19 And the finder's exemption was for people to refer
 20 in product to someone else who would actually sell it or
 21 close it and be able to get paid on that. So that was our
 22 belief during that time, so I would imagine that was their
 23 belief as well.
 24 Q Okay. And I'm assuming other than Mr. Heinzelman,
 25 everyone else was unregistered. Is that correct?

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1 A I can't think of anybody that was registered.
 2 Q Was Mr. Clements registered?
 3 A No, he was not.
 4 Q But Mr. Heinzelman had a 65. Correct?
 5 A He still does, yes.
 6 Q And so you said you were informed that under the
 7 finder's exemption -- and you were informed by Mr. Cleveland.
 8 Is that correct?
 9 A Of the finder's fee.
 10 Q Of the finder's fee exemption. Correct?
 11 A Correct.
 12 MS. FLOYD: Let's take a break. It's 3:08.
 13 (A brief recess was taken.)
 14 MS. FLOYD: Back on the record at 3:22.
 15 BY MS. FLOYD:
 16 Q Mr. Howard, did we have any substantive
 17 conversations off the record?
 18 A No.
 19 Q I'm going to hand you two documents, if you'll take
 20 a moment and look through them.
 21 A (Perusing documents.)
 22 Q Ready?
 23 A Yes.
 24 Q Okay. Do you recognize Exhibit 37?
 25 A Yes.

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1 (SEC Exhibit No. 37 was marked for
 2 identification.)
 3 BY MS. FLOYD:
 4 Q Exhibit 37 appears to be an email, Bates-numbered
 5 OE SEC 030984. It appears to be between -- it's from Mr.
 6 Heinzelman to yourself, cc: Mr. Clements, dated February 4,
 7 2016, at 5:19 p.m.; subject line: Re: Attorney letter.
 8 Could you please describe to me what this email was
 9 with regard to?
 10 A I had sent Mr. Heinzelman a letter that I asked Mr.
 11 Cleveland to draft that just kind of stated in terms of -- to
 12 do some research and say that exactly what he thought the
 13 Dodd-Frank exemptions that we -- I guess that matched us, the
 14 Dodd-Frank exemptions, and I asked him to put together
 15 something about the marketer -- finder's exemption as well.
 16 Q Okay. So Exhibit 38, which is the other document I
 17 have provided to you, is that a copy of the letter you had
 18 forwarded to Mr. Heinzelman?
 19 A This is.
 20 (SEC Exhibit No. 38 was marked for
 21 identification.)
 22 BY MS. FLOYD:
 23 Q And so Exhibit 38 appears to be a memorandum from
 24 Mr. Cleveland to yourself. Correct?
 25 A Yes.

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1 Q And it says, "With regards to SEC registration
2 exemptions under Dodd-Frank and marketer restrictions."
3 Correct?
4 A Yes.
5 Q Okay. So it's my understanding that you had
6 contacted Mr. Cleveland to have him draft this memo for Mr.
7 Heinzelman and C4 Benefits?
8 A No.
9 Q Okay.
10 A Let me clarify.
11 Q Sure.
12 A Charles had all these people that he said were
13 ready to go and he wanted to kind of pull into his network of
14 agents/advisors, and so he asked me if I could put something
15 down so that they could feel comfortable about what they
16 needed to do in terms of marketing it.
17 So what I did is said, Listen, I'll have my
18 attorney draft something up for you, so you can -- so that
19 you can look at it, but whatever agreement that you make is
20 between you and your guys. You know, I'm just having him do
21 this as a favor so that you can see it.
22 Q Okay. And so, again, Exhibit 38, what was the
23 purpose of this specific memorandum?
24 A Just to give Mr. Heinzelman clarity on how we fit
25 into the exemptions and then what the finder's exemption

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1 looked like.
2 Q Okay. It appears to myself on Exhibit 38 --
3 appears to be a memorandum just describing the Dodd-Frank
4 exemptions in general, but it's my understanding that it's
5 geared specifically towards OE Capital.
6 A Oh, I'm sorry. No. You are correct.
7 Q Okay. All right. So can you just describe the
8 exemptions just in general. Did you interpret these
9 exemptions -- which ones OE Capital fell under?
10 A Directly to Mr. Heinzelman?
11 Q Just in general.
12 A In general. Oh, yeah. I knew which ones that we
13 fell under.
14 Q Okay. So Mr. Cleveland didn't tell you which ones
15 you fell under; you decided which ones you fell under.
16 A Well, he and I discussed it, but prior -- way prior
17 to this letter, he and I discussed which ones I fell under.
18 Q Okay. And so what did you represent to Mr.
19 Heinzelman then on which exemptions you fell under?
20 A Well, we certainly fall under -- well, first of
21 all, this is about advisors, not about funds, this particular
22 one. So we're a fund, so there's actually a different --
23 Q Exemption for the fund?
24 A For the fund.
25 BY MR. McCOLE:

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1 Q And when you say this one, you're referring to
2 Exhibit Number 38?
3 A Yes, sir. But it is -- but they are fairly close,
4 so we are -- we do represent that we work with and fund
5 venture capital funds. We are less than 150 million, and
6 there's -- the rest of these don't really fit a fund, but
7 there's two others that we fall in as well in terms of the
8 exemption for a fund.
9 BY MS. FLOYD:
10 Q Now, it's my understanding that as a fund you guys
11 fall under the venture capital fund or capital -- venture
12 capital exemption. Is that correct?
13 A Venture capital exemption. That's correct.
14 Q Okay.
15 A There's others that we meet, but that's one of the
16 ones that we meet. Yes.
17 Q Okay. Does OE Capital own any sort of equity in
18 the portfolio companies?
19 A Does OE -- yes, it does.
20 Q What do they own?
21 A Only one, just Unequal.
22 Q Okay. So prior to that you had no equity interest
23 whatsoever.
24 A That's correct.
25 Q Are you aware that venture capital exemptions

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1 require 80 percent equity ownership?
2 A Venture capital exemptions require 80 percent
3 equity ownership.
4 Q Of the portfolio companies.
5 A That's not my understanding of the exemption.
6 Q So as of right now you still think that you fall
7 under the venture capital exemption as a fund. Correct?
8 A Correct.
9 Q Okay. Now, let's move that aside. So we're
10 talking about the advisor himself. Correct?
11 A Correct.
12 Q So whether they fall under the advisor exemption.
13 Correct?
14 A That's what this -- is in this memo, but that would
15 not apply to us. We're not advisors.
16 Q Okay. But this is what you're representing to Mr.
17 Heinzelman. Correct?
18 Am I saying his name wrong?
19 A You're saying it right.
20 Q I'm emphasizing an N, and I haven't heard the N
21 from you, so I don't know -- is it Heinzelman or Heinzelman?
22 A I don't know.
23 Q Because I've been saying Heinzelman, and you've
24 been saying Heizelman.
25 A I've said Heizelman since the day I've met him. He

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1 may call himself Heinzelman.
 2 Q Okay. I keep hearing it, and I had to correct
 3 myself.
 4 So is this what you're representing to Mr.
 5 Heinzelman as what exemptions they fall under?
 6 A I wasn't trying to represent anything to him. I
 7 was just trying to pass on information.
 8 Q Okay. And if you look at Exhibit 37, the email, it
 9 appears that Heinzelman had an issue with this letter. Is
 10 that correct?
 11 A Seems like he did, yes.
 12 Q And it appears from Exhibit 37 that Mr. Heinzelman
 13 didn't believe he fell under the advisor's exemption. And
 14 unfortunately the copy doesn't show parts of it highlighted,
 15 but I believe -- yes, it does. Okay. Good.
 16 He highlighted certain sections that he believes
 17 the brokers are doing that would make those brokers fall to
 18 fall under this exemption. Is that correct?
 19 A That's what it seems that he does. Yes.
 20 Q Okay. So what happened after this email? Did
 21 Heinzelman and the brokers continue to sell?
 22 A When was this? February? So here's what happened
 23 after the email. He and I had several conversations around
 24 how we're structured and around whether or not he fit within
 25 the exemption from a marketer's restriction exemption.

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1 Ultimately where we landed was I told him he had
 2 to -- that I was paying him because he was licensed, but he
 3 had to make a determination on whether or not he felt he
 4 could pay others or whether he did not feel comfortable doing
 5 that.
 6 Ultimately that's where everything landed, is
 7 actually he decided to make sure that -- he wanted everybody
 8 I think licensed as well. So that is where all that ended
 9 up.
 10 Q Okay. So how -- after February 4 of 2016, how much
 11 longer did Mr. Heinzelman and C4 Benefits solicit on behalf
 12 of OE Capital?
 13 A Till March.
 14 Q So 30 days?
 15 A Yes. So once we, OE, decided, hey, we really
 16 wanted to make sure that we were protecting ourselves by
 17 making sure that even people that Charles was working with
 18 was licensed, we gave him 30 days to either get compliant or
 19 we -- I mean, 60 days; I'm sorry. We gave him 60 days to
 20 either get compliant or we would suspend doing business.
 21 That 60 days was ended up in the end of May, so I'm
 22 just backing it up, the May, so it would have been end of
 23 March.
 24 Q Okay.
 25 BY MR. McCOLE:

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1 Q During that 60-day period were his agents still
 2 distributing sales materials and soliciting investors?
 3 A I don't know.
 4 Q As far as the relationship with OE Capital, OE
 5 Capital had not prohibited him or his agents from doing that.
 6 Correct?
 7 A That is correct.
 8 Q During that 60-day period.
 9 A Yes, sir. That's correct.
 10 Q Was there an expectation that -- on OE Capital's
 11 part that Heinzelman's group was continuing to distribute
 12 sales materials and solicit investors during that 60-day
 13 period?
 14 A I don't know if there was an expectation. I
 15 figured they would.
 16 Q And would you be -- would OE Capital have an
 17 expectation to pay commissions on any sales that would have
 18 taken place during that 60-day period?
 19 A Yes. So -- but again, that was at -- from -- after
 20 talking with K&L Gates, I asked them what was a good -- what
 21 would be a good time frame for me to give them to kind of
 22 clear out and get compliant. They gave me 60 days, but they
 23 did not tell me to tell them to cease activity at that point.
 24 Q Did they -- did you pay them any commissions during
 25 that 60-day period?

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1 A I think we did. I'm sure we did.
 2 Q So he indicates in his email, which is Exhibit
 3 37 -- he points out various concerns with -- that he has with
 4 the information derived from the Darryl Cleveland memo, and
 5 he indicates -- and I'm referring to Mr. Heinzelman -- that
 6 his agents are distributing sales materials and soliciting
 7 investors. Correct? Right there on page 2 of Exhibit 37.
 8 A (Perusing document.) Yes, that's what he says.
 9 Q And is that consistent with your understanding of
 10 what his agents were doing?
 11 A I mean, I honestly did not -- I don't know what his
 12 agents were doing. I don't know their sales process on that
 13 side.
 14 Q And he also points out that -- you know, he says,
 15 It appears as though paying a percent of the investment is
 16 outcome based. Do you see that?
 17 A Yes.
 18 Q What do you understand him to mean there?
 19 A That it was based on the success of the
 20 transaction.
 21 Q That he was receiving a sales commission for
 22 selling the investments?
 23 A Right. That he was -- that the percentage that he
 24 was receiving was based on whether or not the transaction was
 25 successful; meaning the money transferred or not.

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1 Q Now, Mr. Heinzelman, as I understand your
2 testimony, was registered, or he was licensed. Is that
3 correct?

4 A That's correct.

5 Q Now, what is your understanding as to what he was
6 licensed to do?

7 A I knew he was a Series 65.

8 Q Okay. And was he a registered broker?

9 A I don't think he's a broker.

10 Q Was he associated with a registered broker?

11 A I don't know the answer.

12 Q What do you understand Series 65 to mean?

13 A It's a registered investment advisor, it's an IAR,
14 independent advisor.

15 Q Okay. Did you understand that he was not
16 registered as a broker?

17 A I didn't know whether or not he was registered as a
18 broker. I knew he was registered as an investment advisor.

19 Q Back to Exhibit Number 38, when did you receive
20 Exhibit Number 38?

21 A It would have been sometime, let's see, around the
22 date of this email, so sometime early February 2016.

23 Q Okay. And what was it that prompted Mr. Cleveland
24 to prepare this email for you?

25 A I asked him to.

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1 Q What, if any, information did you give Mr.
2 Cleveland regarding the nature of the relationship between OE
3 Capital and C4 Benefits?

4 A I'm not sure if I gave him any information on that.
5 I mean, all I was trying to do is pass information to
6 Charles. So he was expanding -- this was about expansion for
7 him. He was trying to expand his network of people, and he
8 wanted -- they were asking him for clarity, so he wanted some
9 clarity.

10 He didn't have -- from my understanding, he told me
11 he didn't have counsel; he didn't have anybody to go to. So
12 I just asked my guy to prepare something for him, but it
13 wasn't in any way trying to guide him from any perspective.
14 It was just a passive information.

15 Q So did you explain to Mr. Cleveland the
16 activities -- in detail the activities C4 Benefits was
17 providing -- or the services that C4 Benefits was providing
18 on behalf of OE Capital?

19 A I don't know them in detail. I don't know the
20 activities that they were doing in detail.

21 Q So, for example, did you explain they were running
22 radio ads; they are attracting investors. We are paying them
23 a commission in order for them to do that? Did you explain
24 any of that to Mr. Cleveland?

25 A So they weren't running radio ads on the behalf of

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1 OE; they were running radio ads on the behalf of C4.

2 BY MS. FLOYD:

3 Q Did you approve C4 Benefits to use the marketing
4 materials to be up on C4 Benefits' website?

5 A I didn't know that there were marketing materials
6 on C4 Benefits' website.

7 BY MR. McCOLE:

8 Q Getting back to information explained to Mr.
9 Cleveland, did you explain to Mr. Cleveland that C4 Benefits
10 was running radio ads paid for by OE Capital, at least in
11 part, to attract investors to OE Capital?

12 A No. And that's not the reason for this memo.

13 Q Okay. Did you explain that OE Capital was paying
14 C4 Benefits transaction-based fees or commissions for selling
15 the OE Capital investments?

16 A Well, he knew I was paying Charles Heinzelman.

17 BY MS. FLOYD:

18 Q I'm going to hand you what has been marked as
19 Exhibit 39.

20 (SEC Exhibit No. 39 was marked for
21 identification.)

22 BY MS. FLOYD:

23 Q Do you recognize Exhibit 39?

24 A Yes.

25 Q Exhibit 39 appears to be an email chain between

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1 yourself and Mr. Heinzelman, and Mr. Clements was cc'd. The
2 subject line is re: Ohio 506 rule finder's fee. And this is
3 going back to our previous conversation about the 60 days you
4 had mentioned you had until Mr. Heinzelman had to become
5 compliant. Is that correct?

6 A Uh-huh.

7 Q Okay. So on page 3, an email March 31, 2016, from
8 yourself, you write -- and I quote -- "The attorney said 60
9 days is okay...my thought is to drive up the pipeline...and
10 then empty it within the next 60 days."

11 You wrote that email. Correct?

12 A I did.

13 Q So were you planning on getting as many investors
14 in within those 60 days? Is that correct?

15 A Well, I mean, that was my thoughts to him. I
16 couldn't control what he did, but my thoughts to him was --

17 Q Encouragement?

18 A If we got -- well, if the attorneys are giving us
19 60 days, then best utilize the 60 days.

20 Q Okay. And so on page 2 -- actually, going back to
21 the 60 days, do you recall if you -- if C4 Benefits raised a
22 good amount of money during those 60 days?

23 A This was from the end of -- they did not.

24 Q They did not?

25 A No.

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1 Q End of March to the end of May they did not
2 raise --

3 A They did not raise -- they did not -- there was
4 hardly any new money. What happened over those next 60 days
5 is the pipeline just emptied out.

6 Q Okay. On page 2, on the email -- part of the email
7 chain, on Monday, March 21, 2016, at 3:08 p.m., it's from
8 Charles Heinzelman to yourself, cc Mr. Clements.

9 So the second paragraph -- I'll just read the
10 email; it might be easier. I quote: "We do not have anyone
11 currently as we we reliant on the exemption and could sell
12 based upon what we were told previously. Getting one at this
13 juncture might be too late.

14 "From the reading I did, the fund and the agents
15 were tied together when it came to compensation period. Hope
16 the attorneys are understanding that and the 60 days for us
17 become compliant protects us, you, and then.

18 "Can you ask them from our perspective so we can
19 feel comfortable filling the pipeline the next 60 days. I
20 know we have quite a few apps pending now that we have the
21 audit and should be throwing up a few million the next two
22 weeks."

23 First, what audit was he referring to?

24 A There was not an audit. That's a misstatement. We
25 did a compilation at the end of 2015. That's what he's

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1 two big questions that we were trying to answer.

2 Perhaps the biggest one was are we even an
3 unregistered security? -- because of our structure as an LLC
4 and because we have potential to turn on voting rights and
5 have active not passive investors.

6 And so the question that the attorneys were tossing
7 around was, well, what are you exactly. Are you an
8 unregistered security, or are you not even a security at all?
9 And so we were going down that path.

10 Now, that conversation was going on for the last
11 few weeks, and Mr. Heinzelman was involved only from me
12 telling him what -- well, I'm not quite sure where this is
13 going to end up.

14 Right now -- and there are other emails where I'm
15 saying, We are an unregistered security, 506(b). That's what
16 we are. But our structure may mean that we can be not a
17 security at all.

18 And so what I was attempting to say here is that we
19 did believe that we were in compliance because of the
20 solicitor exemption, and because we existed in a structure
21 that didn't necessarily -- means that we could have not
22 necessarily been -- we could have been a non-security fund,
23 however you're supposed to say that.

24 However, by this time we had clarified that
25 position. We had determined that from a business

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1 referring to.

2 Q So I'm getting the gist that Mr. Heinzelman is not
3 comfortable filling the pipeline until they know that they're
4 protected. Is that correct? Is that the gist that you get
5 from the email?

6 A Yes.

7 Q Okay. And then on the first page, on March 21,
8 2016, you write -- and I quote -- "I did ask them. The
9 answer I got, which was disclosed with, We do not represent
10 C4, we represent OE. They have to say that. And to be
11 clear, we believe that we are well in compliance because of
12 two factors: one, the solicitor exemption; since you were
13 sourcing potential investors being qualified as though by OE;
14 and two, exist in a structure that satisfies a non-security
15 fund.

16 "We have decided that going forward is in our best
17 interest to clarify our position and become an unregistered
18 security and not utilize a solicitor exemption because it's
19 too vague and may be going away."

20 You wrote that email. Correct?

21 A Yes.

22 Q So were you representing to Mr. Heinzelman that
23 they were in compliance because of the solicitor exemption?

24 A Okay. No. There's a lot of other conversations
25 that's happening as this email's going around. There were

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1 perspective -- not a legal one, but from a business
2 perspective it made more sense for us to be -- to stay an
3 unregistered security and then really push away anything that
4 has to do with a finder's exemption, simply because we
5 believe that it was vague and not very reliable, and a lot of
6 people were using it a lot of different ways, and we just
7 wanted to make sure that we were in compliance.

8 MS. FLOYD: Let's go ahead and take a five-minute
9 break. It's 3:51 p.m.

10 (A brief recess was taken.)

11 MS. FLOYD: On the record at 4:12.

12 BY FLOYD:

13 Q Mr. Howard, did we have any substantive
14 conversations about this matter off the record?

15 A No.

16 Q Thank you. You had previously testified that you
17 recently hired two new employees at OE Capital who do
18 soliciting investors for raising money for the funds. Is
19 that correct?

20 A That's correct.

21 Q And I believe their names are Ron Scherer and Tico
22 Martinez. Is that correct?

23 A That's correct.

24 Q So for Ron Scherer, what exactly is his title at OE
25 Capital?

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- 1 A I'm not sure he has an official one.
- 2 Q What's his unofficial title?
- 3 A Kind of private wealth.
- 4 Q Okay. So what would be his job duties?
- 5 A So Ron Scherer has been a -- in the wealth
- 6 management space for 30 years. He has a massive book of
- 7 business. And when he -- what he does -- his job duties are
- 8 to take care of current investors of OE, just generally take
- 9 care of them, account management kind of stuff.
- 10 And then his role is also to introduce the
- 11 opportunity to potential new investors.
- 12 Q Okay. Does he have any other duties besides those
- 13 two?
- 14 A That's about it; I mean, general kind of account
- 15 management duties like hosting events, things of that nature,
- 16 but those are his primary duties.
- 17 Q And so what percentage of his time is spent
- 18 soliciting investors?
- 19 A Eight percent.
- 20 Q Do you have a contract with him, an employment
- 21 contract?
- 22 A I don't know. I mean, he's under our standard kind
- 23 of no-solicitation NDA contract. I don't think we think we
- 24 have a specific compensation contract in place.
- 25 Q Okay. How is he compensated?

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- 1 A Base salary.
- 2 Q Does he receive a bonus for a certain amount of
- 3 income that he -- or revenue that -- or funds that he raises
- 4 on behalf of the funds?
- 5 A He -- no, any bonuses he receives are
- 6 discretionary.
- 7 Q Okay. And who has that decision?
- 8 A I do.
- 9 Q You only?
- 10 A Yes.
- 11 Q And how is he paid? Is it through wire? Is it
- 12 through ADP?
- 13 A ADP payroll.
- 14 Q Okay. Tico Martinez, what is his job title?
- 15 A He does strategic alliances.
- 16 Q What is that?
- 17 A So he goes out and he's basically what we would
- 18 call a wholesaler. So he -- his main job is to get our
- 19 investment product on the platform of independent
- 20 broker/dealers and independent RIAs.
- 21 Q Okay. So is that his only job duty?
- 22 A He does individual raises as well, but that's
- 23 primarily his job duty.
- 24 Q Okay. So what percentage of his time does he spend
- 25 soliciting investors?

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- 1 A On him, probably more like 30 percent.
- 2 Q And how is he compensated?
- 3 A Base salary.
- 4 Q Any bonuses?
- 5 A Discretionary.
- 6 Q And I assume you're the one that's deciding that
- 7 bonus?
- 8 A Yes.
- 9 Q Thank you.
- 10 BY MS. GUNN:
- 11 Q Has he been successful in getting new investment
- 12 product on any BD or IA platforms?
- 13 A He's certainly been successful in getting interest.
- 14 That's kind of a long process, so we've not been approved yet
- 15 on any BD platforms; seems like we'll probably get approved
- 16 by a couple of RIAs within the next couple of months.
- 17 BY MR. McCOLE:
- 18 Q Is one of the factors used to determine the amount
- 19 of Mr. Scherer's bonus how much money he raises?
- 20 A That would be one of the factors.
- 21 BY MS. FLOYD:
- 22 Q What are the other factors?
- 23 A Overall company performance, and then personal
- 24 development goals.
- 25 BY MS. GUNN:

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- 1 Q What does that mean?
- 2 A So for each employee, what we have is, you know,
- 3 kind of a career development path, and then we tie that back
- 4 to personal development goals. So, you know, who do you want
- 5 to be when you grow up, and how can I help you get there?
- 6 And so we'll compensate based on some of those
- 7 goals.
- 8 Q What are his personal development goals?
- 9 A I can't remember that conversation. Got 13
- 10 employees. I think ultimately what he wants to do is really
- 11 have a more well-rounded, A, understanding of private equity
- 12 and alternative investments and then a big goal of his is to
- 13 figure out how do we develop corporate -- how can he get
- 14 involved in developing corporate strategies for our
- 15 investment platform, so how do we get it into corporations,
- 16 companies, banks.
- 17 Q Like as part of a 401(k) or something?
- 18 A Not necessarily, but potentially.
- 19 Q How else would you get it in companies?
- 20 A Well, a lot of companies, many companies have
- 21 venture arms, like Google has Google Ventures.
- 22 Q Okay. Now I understand what you're talking about.
- 23 So the corporations as investors.
- 24 A Correct.
- 25 BY MS. FLOYD:

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1 Q You previously testified that all three funds have
2 a mixture of accredited and unaccredited investors. Is that
3 correct?
4 A Yes.
5 Q Okay. And in the subscription -- or in the
6 suitability questionnaire, the investor fills that out. Is
7 that correct?
8 A That's my understanding.
9 Q Okay. So if a person were to claim they're
10 accredited, does OE Capital do any additional research to
11 determine if that person is indeed accredited?
12 A Not that I know of.
13 Q Does OE Capital hire a third-party vendor to
14 determine if the person is accredited or not?
15 A No.
16 BY MR. McCOLE:
17 Q Back to Scherer for just a moment, what percentage
18 of his overall compensation is salary?
19 A 99 percent. I mean, most of his compensation is
20 salary.
21 Q And how much is that, annually?
22 A Well, let's see. Annually? Right now it is I
23 believe 84,000.
24 Q And is that based on 2015?
25 A No, that's based on -- that's starting 2016.

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1 Q Oh, that's right. He came on board in 2016.
2 A Correct.
3 Q And so what bonuses -- how much money has he
4 received in bonuses this year?
5 A I'm not 100 percent sure.
6 Q Has he received any?
7 A He has -- he received one bonus.
8 Q And how much was that one?
9 A I cannot quite remember. I believe it was either
10 7500 or \$10,000. Actually, I think it was \$9,000 actually.
11 Q And what was that bonus based on?
12 A General performance. I mean, he did really good;
13 he's done really good since he came on, and so just wanted to
14 bonus him at the end of the quarter.
15 Q Okay. So he came on in 2016. Correct?
16 A Correct.
17 Q When?
18 A I get him and Tico mixed up. Tico came in March;
19 he came in April.
20 Q April. All right. And so since coming on in
21 April, he's received one bonus of 9000?
22 A Yes.
23 Q And he receives a salary of 84,000?
24 A I believe that's correct.
25 Q And what, if any, bonuses has Martinez received?

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1 A I don't think he's received any bonus.
2 Q Okay. And what's his salary?
3 A I believe it's 60,000 a year.
4 MS. FLOYD: Why don't we go ahead and stop for the
5 day and then pick up tomorrow. Off the record at 4:21 p.m.
6 (Whereupon, at 4:21 p.m., the examination was
7 concluded.)

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PROOFREADER'S CERTIFICATE

1
2
3 In The Matter of: OPTIMAL ECONOMICS CAPITAL PARTNERS
4 Witness: Patrick O'Neal Howard
5 File Number: FW-04043-A
6 Date: Wednesday, July 20, 2016
7 Location: Fort Worth, TX

8
9 This is to certify that I, Maria E. Paulsen,
10 (the undersigned), do hereby swear and affirm that the
11 attached proceedings before the U.S. Securities and Exchange
12 Commission were held according to the record and that this is
13 the original, complete, true and accurate transcript that has
14 been compared to the reporting or recording accomplished at
15 the hearing.

16
17
18 (Proofreader's Name) (Date)
19
20
21
22
23
24
25

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