

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO
CENTRAL DIVISION
JENNIFER S. BETTS,
Plaintiff,

Case No. 37-2016-
00034128-CU-BC-CTL
vs.
EDWARD L. CLARK, JR.,
Defendant.

EDWARD L. CLARK, JR., dba
The Electrical Expert,
Cross-Complainant,
vs.
JENNIFER S. BETTS, an
individual, JENNIFER S. BETTS,
dba (SDCAN), MICHAEL SHAMES,
dba (SDCAN) and DOES
through 10, inclusive,
Cross-Defendants.

DEPOSITION OF EDWARD L. CLARK, JR.
San Diego, California
Wednesday, March 28, 2018

Reported by Marsha Lewsley, CSR
Certificate No. 7726

1 APPEARANCES

2
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19 ACTION NETWORK (SDCAN) AND MICHAEL SHAMES:
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ALSO PRESENT: Jennifer S. Betts

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
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10 EDWARD L. CLARK, JR., dba
11 The Electrical Expert,
12 Cross-Complainant,
13 vs.
14 JENNIFER S. BETTS, an
15 individual, JENNIFER S. BETTS,
16 dba (SDCAN), MICHAEL SHAMES,
17 dba (SDCAN) and DOES 1
18 through 10, inclusive,
19 Cross-Defendants.

20 The deposition of Edward L. Clark, Jr., taken
21 on Wednesday, March 28, 2018, commencing at the hour of
22 9:30 a.m., at 501 West Broadway, Suite 700, in the City
23 of San Diego, State of California, before me, Marsha
24 Lewsley, Certified Shorthand Reporter in and for the
25 State of California.

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4 March 28, 2018

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15 Colloquy Preceding Examination by Mr. Shames
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4

5 PAGE NO. LINE NO. PAGE NO. LINE NO.

6 9 6 88 24

7 12 2 89 7

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1 SAN DIEGO, CALIFORNIA; MARCH 28, 2018; 9:30 A.M.

2

3 EDWARD L. CLARK, JR.,

4 having first been duly sworn, testified as follows:

5

6 EXAMINATION

7 BY MR. MONSON:

8 Q. Good morning, Mr. Clark. I'll be taking your

9 deposition today.

10 Can you please state your full name and address

11 for the record.

12 **A. Edward L. Clark, Jr., 17061 Bolero,**

13 **B-o-l-e-r-o, Lane in Huntington Beach, 92649.**

14 Q. You've had your deposition taken before; is

15 that correct?

16 **A. Yes, I have.**

17 Q. On approximately how many occasions?

18 **A. Over 150.**

19 Q. So I don't need to explain to you what a

20 deposition is, do I?

21 **A. No, sir.**

22 Q. Is there any reason today you can't give your

23 best testimony?

24 **A. No, there is not.**

25 Q. No medications or any alcohol that would affect

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1 your memory?

2 **A. No, sir.**

3 MR. MONSON: I'll hand you what we'll mark as

4 Exhibit 1.

5 (Exhibit 1 marked for identification.)

6 THE WITNESS: Before we start --

7 MR. MONSON: Yes?

8 THE WITNESS: -- I would like to make a couple

9 statements for the record.

10 I am here in pro per, by myself, not

11 accompanied by an attorney. So in order to keep the

12 record straight, Mr. Monson will be asking a series of

13 questions. If I have any objections, I will answer for

14 Mr. Clark. I'll make the following objections. And

15 then when Mr. Clark -- so I'll be talking in the third

16 party so everybody understands who is talking and who is

17 not. And then when I make the statement, "You can

18 answer, if you know the answer," then that will be

19 Mr. Clark talking. So I just want to clarify how I'm

20 going to go forward today so there is no

21 misunderstanding.

22 MR. MONSON: That's perfectly fine with me.

23 BY MR. MONSON:

24 Q. I hand you Exhibit 1. Have you ever seen this

25 document before? It's titled: Notice of Deposition of

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1 Edward Clark and Demand for Deposition of Documents.
2 **A. Yes, I have.**
3 Q. And did you bring any documents today pursuant
4 to that notice?
5 **A. Yes, I did.**
6 Q. I'll go through on page 4 on Exhibit 1. It
7 asks for copies of bank statements regarding the
8 \$100,000 check. I'm paraphrasing it.
9 Do you have any documents in response to
10 request No. 1?
11 MR. CLARK: For Mr. Clark, I would like to
12 object on the following grounds. I have provided a
13 series of objections I'm just going to read into the
14 record.
15 Edward L. Clark, Jr. objects to the production
16 of documents Set One as follows: "Propounding party
17 previously served Responding party with all of the same
18 questions in a production of document request Set One.
19 Production request 1 through 60, 63 through 65, 74
20 through 79 have already been propounded and proper
21 objections made. Respondent replied with appropriate
22 objections on 12-18-2017. Propounding party (Plaintiff
23 and Cross-Defendant) accepted objections since to date
24 propounding party has failed to respond, meet and confer
25 or otherwise question objections preventing discovery on

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1 the same issues with the same questions. Propounding
2 party failed to Meet and Confer in good faith and or
3 respond in compliance with California Code of Civil
4 Procedure CCP 3.724."
5 "Attached hereto and incorporated by reference
6 is Defendant Objections to Production of Documents Set
7 One Propounded by Plaintiff, Proof of Service dated
8 12-17-2017, and Plaintiff Jennifer Betts' Declaration in
9 opposition to Defendant Motion of Summary Judgment."
10 "In addition to Objections previously made
11 responding to Production of Documents Set One and the
12 fact the discovery request and is propounded strictly to
13 harass Defendant and not calculated to lead to
14 admissible evidence. Plaintiff admits in Declaration
15 and opposition to Summary Judgment motion attached
16 herein; No. 19: 'There were no conditions on what he
17 could or would spend the money on,'" quote, end quote.
18 "Consequently, how the money was spent, who was
19 paid, is not at issue in this matter. Hence, 1" -- I've
20 listed them in the opposition all the numbers, but I
21 specified them earlier so I won't repeat them.
22 All the -- the requests previously mentioned
23 "is not at issue, irrelevant and has nothing to do with
24 underlying matter to inquire about Contract Formation or
25 'Alleged Breach of Contract' (i.e. At Will investment.)"

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1 So attached to these objections, hereto and
2 incorporated herein again is Declaration of Jennifer
3 Betts in opposition to Defendant's Motion for Summary
4 Judgment, or in the Alternative, Summary Adjudication,
5 Defendant Response to Request of Production of Documents
6 with Proof of Service.
7 So I have actually a copy for you. Here -- I'm
8 sorry. It came out of my hand.
9 So with the objections, I'm directing Mr. Clark
10 not answer any of those questions.
11 MR. MONSON: There was only one question.
12 MR. CLARK: Well, those objections addresses
13 each and every question like that. And you we can go
14 through them one at a time or you can read the
15 objections and see which ones Mr. Clark is not going to
16 be responding to.
17 MR. MONSON: Could I have my question read
18 back, please.
19 (Pending question read back as follows:
20 Q. "I'll go through on page 4 on Exhibit 1.
21 It asks for copies of bank statements regarding
22 the \$100,000 check. I'm paraphrasing it.
23 Do you have any documents in response to
24 request No. 1?")
25 ≡

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1 BY MR. MONSON:
2 Q. So my question was: Do you have any documents
3 in response to request No. 1. Your attorney made a very
4 artful objection.
5 Can you just answer my question? You either
6 have them with you or you don't.
7 MR. CLARK: For Mr. Clark, I have lodged the
8 appropriate objections to your question and I have
9 directed Mr. Clark not to answer any questions alluding
10 to the questions you have already asked in previous
11 discovery.
12 BY MR. MONSON:
13 Q. The question I asked was: Did you bring
14 any bank statements documents with you today? Yes or
15 no?
16 MR. CLARK: For Mr. Clark, I will lodge the
17 same objection. Mr. Clark has been directed not to
18 answer any questions alluding to those documents. The
19 objections are clear and they've indicated that by pure
20 objection that the documents on that issue are not here.
21 BY MR. MONSON:
22 Q. So you're testifying for Mr. Clark that he did
23 not bring any documents regarding No. 1 today?
24 MR. CLARK: For Mr. Clark, I'm going to lodge
25 the same objection. He is not going to answer any

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1 questions on the questions identified in your discovery
 2 in your request for deposition today that I pointed out
 3 in the objection.
 4 BY MR. MONSON:
 5 Q. Let me ask you this, Mr. Clark. Do you have
 6 at your residence or in your possession copies of any
 7 bank statements showing where you deposited the \$100,000
 8 check?
 9 MR. CLARK: For Mr. Clark, I will lodge the
 10 same objection, that any questions having to do with how
 11 the money was spent, Mr. Clark has already stipulated
 12 that he accepted a check from Ms. Betts for a \$100,000
 13 and cashed the check. That's all that he -- that is the
 14 only question that you can ask.
 15 So Mr. Clark is not going to answer any
 16 questions that you asked regarding financial status of
 17 Mr. Clark, checking accounts or anything like that.
 18 BY MR. MONSON:
 19 Q. I'm not asking about the status of Mr. Clark's
 20 checking account.
 21 I'm asking Mr. Clark: Do you have possession
 22 of any documents showing where you deposited the
 23 \$100,000 check? It's a yes or no question.
 24 MR. CLARK: I will lodge the same objection for
 25 Mr. Clark. He is not going to answer any questions

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1 regarding his personal or company or any checking
 2 account information as that's all protected.
 3 BY MR. MONSON:
 4 Q. I don't want any confidential information. And
 5 I'm willing to stipulate to cross out the account number
 6 and any other financial information that may be in
 7 there. I want to know if you have any records showing
 8 where the \$100,000 check was deposited.
 9 MR. CLARK: I'm going lodge the same objection
 10 as it's not relevant. There is no foundation for
 11 needing that information. It's already been stipulated
 12 that Mr. Clark has cashed the check and accepted the
 13 check personally from Ms. Betts.
 14 BY MR. MONSON:
 15 Q. What was the check for, Mr. Clark?
 16 MR. CLARK: I am going to object for Mr. Clark.
 17 I'm going to -- well, Mr. Clark, he can go ahead and
 18 answer that question.
 19 BY MR. MONSON:
 20 Q. Please answer the question, Mr. Clark. What
 21 was the \$100,000 check for?
 22 **A. Ms. Betts had had a vested interest in moving**
 23 **a movie forward that she was directly forward called**
 24 **"Circle the Wagons" to outline the fraud and deceit**
 25 **behind SDG&E hiding what was the cause of the 2007 Witch**

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1 **Creek Fire.**
 2 Q. And that \$100,000 was transferred to you for
 3 what reason?
 4 **A. To further along the production of a movie, a**
 5 **motion picture.**
 6 Q. Did --
 7 **A. As an at will investment on her part.**
 8 Q. Did the \$100,000, in fact, get used towards the
 9 movie?
 10 **A. Yes.**
 11 Q. And what records do you have to show the
 12 \$100,000 was used towards the movie?
 13 MR. CLARK: I'm going to object as is there --
 14 that information is not relevant to this particular
 15 subject matter. Ms. Betts has already disclosed in her
 16 declaration that there was not conditions on how the
 17 money was to be spent. So it is -- there is -- it's
 18 irrelevant to the subject matter in this case.
 19 MR. MONSON: Are you instructing Mr. Betts --
 20 or Mr. Clark not to answer that question?
 21 MR. CLARK: Yes.
 22 MR. MONSON: Can I have the question reread,
 23 please.
 24 (Pending question read back as follows:
 25 Q. "And what records do you have to show

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1 the \$100,000 was used towards the movie?")
 2 BY MR. MONSON:
 3 Q. So does Mr. Clark have any records of how the
 4 \$100,000 was spent towards the movie?
 5 MR. CLARK: Yes, he does. Not here with him
 6 today because they were not requested.
 7 BY MR. MONSON:
 8 Q. I didn't ask if they were here today.
 9 He has records of how the \$100,000 was spent,
 10 correct?
 11 **A. Of course.**
 12 Q. Can you summarize for me, Mr. Clark, how the
 13 \$100,000 was spent towards the movie?
 14 MR. CLARK: I'm going to object on the grounds
 15 that the question -- there is no foundation for the
 16 question. This case is on a breach of contract from --
 17 strike that. Let me start over.
 18 I'm going to object for Mr. Clark in that any
 19 information on how the money was spent is irrelevant to
 20 this subject matter and there is no foundation for the
 21 questions being asked because there were no conditions
 22 placed on how the money was spent by Ms. Betts. So I'm
 23 directing Mr. Clark not to answer.
 24 BY MR. MONSON:
 25 Q. Is it your position, Mr. Clark, that you

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1 essentially had Ms. Betts give you \$100,000 so that you
2 could use it to further the movie?
3 MR. CLARK: I'm going to object to -- there is
4 no foundation -- there is no foundation. You're stating
5 a fact that is not in evidence suggesting that Mr. Clark
6 made Ms. Betts do anything.
7 MR. MONSON: Could you read the question,
8 please.
9 (Pending question read back as follows:
10 Q. "Is it your position, Mr. Clark, that
11 you essentially had Ms. Betts give you
12 \$100,000 so that you could use it to further
13 the movie?")
14 MR. MONSON: Is Mr. Clark going to answer that
15 question?
16 MR. CLARK: No, he is not.
17 BY MR. MONSON:
18 Q. Why not?
19 MR. CLARK: The objection stands on its own in
20 that the -- there is no foundation for the -- you're
21 stating a fact that is not in evidence. There is no
22 foundation for the question. You're making a statement
23 that Mr. Clark somehow made Ms. Betts give him the
24 money, and there is no foundation for that.
25 \\\

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1 BY MR. MONSON:
2 Q. I'm just asking Mr. Clark if it's his position.
3 If it's not his position, he can say no. If it is his
4 position, he can say yes. But I would just like a yes
5 or no answer.
6 **A. No.**
7 Q. It's not Mr. Clark's position?
8 **A. No.**
9 Q. Am I correct that Mr. Clark is stating it is
10 not his position?
11 MR. CLARK: Again, I'm going to object to the
12 line of questioning from counsel that there is no
13 foundation. The only -- when Mr. Clark makes that
14 statement that he is making the statement that
15 Ms. Betts -- he did not make Ms. Betts do anything.
16 THE WITNESS: The answer to your direct
17 question, and it's clear on the record, you asked if
18 Mr. Clark made Ms. Betts sign a check. The answer to
19 that is no. The specific part of your question.
20 BY MR. MONSON:
21 Q. Did Mr. Clark accept the \$100,000 with the
22 understanding that he would use it toward the
23 development of the movie?
24 **A. Yes.**
25 Q. And how did he use the \$100,000 toward the

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1 development of the movie?
2 **A. The money was utilized to retain a new writer
3 to do a rewrite of the movie. The movie [sic] was
4 utilized to retain counsel and put counsel on retainer
5 for managing the project. The money was utilized to
6 retain a producer. The money was used to retain a
7 contracts type attorney. And the money was also used to
8 retain another attorney that was utilized in an effort
9 to get an opinion letter so that we could get insurance
10 on the movie in order to gain investors.**
11 Q. And of those things you just mentioned, that's
12 where the \$100,000 went?
13 **A. Yes.**
14 Q. Do you have any documents to support that that
15 specific \$100,000 that Ms. Betts put up went to those
16 specific expenses?
17 MR. CLARK: I'm going to object to the line of
18 questioning for Mr. Clark. For Mr. Clark, I'm going to
19 object on the ground that the -- strike that.
20 Yes, he does have documents.
21 BY MR. MONSON:
22 Q. Did you bring any of those documents with you
23 today?
24 **A. No, I did not.**
25 Q. Where are those documents located?

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1 **A. Bank records.**
2 Q. But where are they located?
3 **A. Online.**
4 Q. What bank?
5 MR. CLARK: I'm going to object on the grounds
6 that the banking institution utilized by Mr. Clark is
7 privileged. And not -- it's not relevant to this
8 subject matter.
9 BY MR. MONSON:
10 Q. Who is the new writer?
11 **A. I forget his second name. His first name was
12 Alonzo.**
13 Q. Alonzo?
14 **A. Alonzo. I don't recall his last name.**
15 Q. And what did Alonzo write?
16 **A. He took the original screenplay originally --
17 that I had originally written, and he completely tried
18 to reconstruct it so that we could get an opinion
19 letter. The first one failed miserably because it was
20 written incorrectly.**
21 Q. How much did you pay Alonzo?
22 MR. CLARK: I'm going to object on the grounds
23 that it is irrelevant to the subject matter and/or to
24 this case and direct my client not to answer the
25 question.

Page 20

1 BY MR. MONSON:
2 Q. Who was the counsel that you used?
3 **A. I had several actually. Carla Polkinhorn was**
4 **one. Ted Gerdes was another. And there was a third one**
5 **that I don't recall her name -- that I don't recall off**
6 **the top of my head.**
7 Q. Who was the producer?
8 **A. A gentleman by the name of Raul Ceyala. I am**
9 **not sure how to spell his last name.**
10 Q. Could you give me your best guess on the last
11 name?
12 **A. I think it's like C-e-y-a-l-a, something like**
13 **that. I might be way off, but it's something like that.**
14 **Your client would know the answer to that.**
15 Q. Who was the contracts attorney you used?
16 **A. That's the one I can't recall her name. She**
17 **worked in concert with Carla Polkinhorn.**
18 Q. And the opinion letter was by Ted?
19 **A. Mr. Gerdes, yes.**
20 Q. So I take it they all sent invoices to you
21 before you paid them out a specific portion of the
22 \$100,000?
23 **A. I don't know if all of them did because I was**
24 **working pretty closely. They might have just told me**
25 **what the retainers were, and I might have just issued a**

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1 **check. I don't recall with Raul and Carla. Ted Gerdes**
2 **would have. And I think the other attorney for**
3 **contracts, if I can recall her name, would have as well.**
4 Q. What was the name of the bank and the location
5 where the \$100,000 check was deposited?
6 **A. Chase Bank.**
7 Q. In Huntington Beach?
8 **A. Yes.**
9 Q. On McFadden or what street?
10 **A. I'm not sure which Chase Bank branch I**
11 **deposited it in. It just got deposited in my account.**
12 Q. But you deposited it at a Chase Bank branch in
13 Huntington Beach?
14 **A. Yes.**
15 Q. Did you electronically deposit it?
16 **A. I might have because I use their machines**
17 **frequently. There is a possibility that I did.**
18 Q. And was the \$100,000 check for purposes of
19 investing in the movie essentially?
20 **A. The \$100,000 check was Ms. Betts wanting the**
21 **vested interest in the creation of this movie. That's**
22 **what it was for.**
23 Q. And did she --
24 **A. And it was utilized for moving the movie**
25 **forward. And she spent a tremendous amount of time --**

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1 **it wasn't just her \$100,000. She invested a tremendous**
2 **amount of time working with the people that we were**
3 **working with to move this movie along.**
4 Q. Did you give her any kind of a written receipt
5 for her \$100,000 check?
6 **A. No, I did not. She did not ask for one nor did**
7 **she want one. She had a copy of the -- of the receipt**
8 **by which the check was cashed and that was all she got.**
9 Q. A copy of the receipt --
10 **A. The cancelled check shows that the check was**
11 **cashed. And I stipulated that that was put into my**
12 **personal account.**
13 Q. It was put into your personal account?
14 **A. Yes.**
15 Q. So it was never deposited into any account for
16 Circle the Wagons 2012, LLC; is that correct?
17 **A. It was -- at the time she gave me the check she**
18 **was aware that we were just forming the company. There**
19 **was not a checking account at the time. And so that**
20 **company was then utilized to open the checking account**
21 **and it was redeposited into a Circle the Wagons bank**
22 **account.**
23 Q. My question was: The \$100,000 check was not
24 deposited originally in the Circle the Wagons 2012, LLC
25 account, correct?

Page 23

1 **A. Ms. Betts made the check out to Edward L.**
2 **Clark, Jr. or Ed Clark, I don't recall exactly how she**
3 **made it out, but she made it out to me as an individual**
4 **and not to the company. I asked her to make it out to**
5 **the company. She did not.**
6 Q. My question was: The \$100,000 check was not
7 deposited in the Circle the Wagons 2012, LLC correct; is
8 that correct?
9 **A. The check was deposited first into my personal**
10 **account because it was made out to Ed Clark and then**
11 **redeposited by Ed Clark into a -- to open a new account**
12 **with Circle the Wagons.**
13 Q. Okay. So that I'm correct that the original
14 check was not deposited into a Circle the Wagons 2012,
15 LLC account; is that right?
16 **A. I will let you -- she can re-read back the**
17 **question. I answered your question. You can interpret**
18 **it as you wish.**
19 Q. Well --
20 **A. I'm not going to justify whether you interpret**
21 **things right or not. That's not what I'm here to do**
22 **today.**
23 Q. You deposited it into your personal account,
24 correct?
25 **A. I did.**

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1 Q. And then you drafted a check or did a money
2 transfer of \$100,000 from your personal account over to
3 Circle the Wagons 2012, LLC bank account?
4 **A. I utilized that money to open a new checking**
5 **account with Circle the Wagons 2012, LLC. I don't**
6 **recall the name of the checking account, but it was**
7 **Circle the Wagons something. I think it's 2012 LLC.**
8 Q. And where is that account opened for Circle the
9 Wagons 2012, LLC?
10 MR. CLARK: I am going to object on the grounds
11 that Circle the Wagons, LLC is not a party to this case
12 and I am not going to disclose any information regarding
13 Circle the Wagons, LLC in this case.
14 I'm going to direct my client not to answer any
15 questions regarding Circle the Wagons 2012, LLC as they
16 are not a party to this case.
17 BY MR. MONSON:
18 Q. Mr. Clark, do you know what account you
19 transferred the \$100,000 into on behalf of Circle the
20 Wagons 2012, LLC?
21 MR. CLARK: I'm going to, for Mr. Clark, object
22 to the question on the grounds that Circle the Wagons
23 2012, LLC is not a party to this case and he is not
24 directed not to answer any questions regard to Circle
25 the Wagons 2012, LLC.

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1 BY MR. MONSON:
2 Q. My question was: Do you know? I just want to
3 know if you know where you deposited it. I don't want
4 to know where you deposited it, just do you know where
5 you deposited it?
6 **A. Yes.**
7 Q. And you did say you deposited it for a
8 Circle the Wagons 2012, LLC bank account somewhere,
9 correct?
10 MR. CLARK: I'm going to, for Mr. Clark, object
11 on the grounds that any further questions regarding
12 Circle the Wagons 2012, LLC will not be answered on the
13 basis that Circle the Wagons 2012, LLC is not a party to
14 this case.
15 BY MR. MONSON:
16 Q. I understand. I just want to be clear that,
17 one, Mr. Clark, you know where you put the \$100,000
18 check. You took the \$100,000 check that Ms. Betts gave
19 you, you deposited it into your Chase Bank account.
20 Then you transferred that \$100,000 to an account in the
21 name of Circle the Wagons 2012, LLC.
22 And I want to know: Do you know what account
23 you transferred it to? I don't want to know the name of
24 the account.
25 MR. CLARK: I'm going to, for Mr. Clark, again

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1 make the following objection, that any questions
2 relating to Circle the Wagons, LLC whether accounts
3 [sic] went in or out, any issue whatsoever, Mr. Clark is
4 directed not to answer. So I would move on, Counselor.
5 BY MR. MONSON:
6 Q. Do you have any documentation showing that the
7 money was transferred from your personal account to the
8 Circle the Wagons, LLC account?
9 MR. CLARK: I'm going to object for Mr. Clark
10 on the ground that any document or any checking account
11 information of any kind is protected and he is not going
12 to answer any questions regarding checking accounts.
13 Mr. Clark has already stipulated that the check
14 received from Ms. Betts was cashed. There is no --
15 how -- where the money went from there is not at issue
16 in this case. Mr. Clark is not going to answer any
17 questions regarding checking accounts, what he knows
18 about checking accounts or any of those issues. They
19 are not at issue in this breach of contract case against
20 Mr. Clark.
21 BY MR. MONSON:
22 Q. How about, are they at issue in connection with
23 your cross-complaint?
24 **A. No.**
25 MR. CLARK: And I'm going to -- it's better

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1 late than never, but I'm going to object on the question
2 in that your question is asking for a legal conclusion
3 and this witness is not in a position to ask for a legal
4 conclusion. That's my objection.
5 BY MR. MONSON:
6 Q. So I take it you're not going to produce any
7 further documents pursuant to the request for produce
8 documents; is that correct?
9 MR. CLARK: For Mr. Clark, I will object on
10 that it misstates his testimony already on the record.
11 BY MR. MONSON:
12 Q. Let me ask you this. Have you brought any
13 documents at all today that you're going to produce
14 pursuant to the request to produce documents?
15 **A. Yes.**
16 Q. What documents have you brought?
17 **A. That's yours. I don't need that one. I'll**
18 **look at this one here.**
19 **I have brought documents pursuant to request**
20 **Nos. 61, 62, 66.**
21 Q. Just one second, please. What else?
22 **A. 67 and 68 through 73.**
23 Q. Okay. What documents do you have in regards to
24 request No. 61, Exhibit 1?
25 **A. Okay. For starters, I've got some specific**

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1 documents for 61. And pursuant to your notice of taking
2 deposition where you asked for all documents, I have
3 with me all electronic files pursuant to each of these
4 questions Bates stamped zero through 3,200 to produce
5 for part of the record today.
6 Q. Just for the record, you mean you have 3,200
7 pages of documents?
8 A. Yes.
9 Q. Are they in E-format or are they actual hard
10 copies?
11 A. They are actually hard copies of electronic
12 e-mails between both cross-defendants and myself. And
13 in support of that --
14 MR. CLARK: And I'm going to speak on behalf of
15 Mr. Clark for just a minute.
16 As a result of the previous discovery, both
17 cross-defendants responded back that on request for all
18 the e-mails that Mr. Clark had access to all the e-mails
19 as well. So in an effort to make sure that all of
20 records were put on the record, Mr. Clark printed all
21 e-mails that were received or sent to both
22 cross-defendants, and also has a -- had a third party
23 come in and authenticate the e-mails, that they were
24 performed during the normal course of business and they
25 came from the e-mail address of

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1 jennifer@jenniferbetts.com, jenniferbetts5@gmail.com,
2 michael@sandiego -- sandiegocan.org and Ed Clark The
3 Electrical Expert. And he has provide a declaration to
4 that effect as well that we'll make part of the record
5 as well.
6 BY MR. MONSON:
7 Q. Can I see the declaration, please?
8 A. Yes.
9 Q. Who is Nash Endraws?
10 A. He is a third party IT person that I had
11 come in. And he is an IT person that is utilized in my
12 USA National Title Company to maintain our network.
13 Q. So what documents have you produced then
14 consistent with these 3,200 pages?
15 A. Well, in addition to these 3,200 pages, I've
16 got -- I want to make sure I've got this right here.
17 So I'm going to go specifically to 61. I'm
18 going to read. Okay. I brought a specific document
19 that goes along with the question as well, that -- I'm
20 going to read the question into the record so that the
21 answer follows.
22 Q. What questions are you reading?
23 A. 61. You've asked about No. 61. Would you like
24 to read it into the record?
25 Q. No. The record is there. And it is a copy as

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1 an exhibit. So if you want to read it, you can read it.
2 A. Copies -- request No. 61: "Copies of any and
3 all documents which evidence that Edward L. Clark, Jr.,
4 or you 'was required to table (put on hold) his efforts
5 to create a screenplay titled 'Circle the Wagons'
6 documenting the Corporate cover up by SDG&E until after
7 the Cross Defendant Betts case against SDG&E concluded
8 to prevent any conflicts to her case' was a condition
9 precedent to retention by Cross Defendant Betts,' as
10 referred in the Second Amended Cross-Complaint."
11 On this matter I am producing an e-mail dated
12 August 15th, 2015 sent to Ed Clark, subject: "Please
13 confirm," and it came from jenniferbetts5@gmail.com.
14 And in the second paragraph it confirms -- it says:
15 "P.S. You are correct. I agreed not to settle. I
16 settled."
17 And the only reason I agreed to take this case
18 and put the movie on hold was if Ms. Betts agreed not to
19 settle they are case to that the information she was
20 trying to have become go public would become public. So
21 she directed me to put the movie on hold because it
22 would look -- be a conflict of interest if I was trying
23 to make money on a movie and as her expert witness. So
24 this is the only document that I could find that
25 basically, in her words, indicates: "You are correct.

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1 I agreed no to settle." Basically that particular
2 document, that indicates what her and my understanding
3 were.
4 MR. MONSON: So we'll mark this as Exhibit 2.
5 THE WITNESS: I actually have copies for you as
6 well.
7 MR. MONSON: Thank you.
8 (Exhibit 2 marked for identification.)
9 MR. MONSON: Exhibit 2 is a five-page document.
10 It starts out: "Ed Clark - The Electrical Expert," From
11 Jennifer Betts, August 15th, 2015, e-mail to Ed Clark.
12 THE WITNESS: Okay. I'll keep this one if you
13 take that one.
14 MR. MONSON: Well, this is going to be the
15 court reporter's.
16 THE WITNESS: I'm keeping my copy. You can
17 have your copy and you can do with it what you want.
18 MR. MONSON: Thank you.
19 BY MR. MONSON:
20 Q. So that's all the documents you have with
21 respect to No. 61?
22 A. No, it's not. As I indicated, I have documents
23 zero through 3,200, which are an indication of -- it's
24 all the e-mails that have transpired between the
25 parties.

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1 **And the reason why they're significant and on**
2 **point is that they outline the intent of the parties**
3 **throughout this case. And they outline the agreements**
4 **between the parties throughout the case by their sheer**
5 **actions of what has transpired from the date that**
6 **Ms. Betts contacted Mr. Clark to the date this**
7 **litigation was filed.**
8 Q. And you printed those 3,200 pages out?
9 **A. Yes.**
10 Q. And is it a copy that I can have that we can
11 attach to the deposition or use?
12 **A. Yes, I would like to have it all attached to**
13 **the deposition.**
14 Q. Could I see them, please?
15 **A. Sure. I'll just give you the box.**
16 Q. Are they all Bates numbered?
17 **A. Starting with 1 through 3,200.**
18 Q. I don't see 1 and 2.
19 **A. What's that?**
20 Q. I don't see page 1 or page 2.
21 **A. Oh, shucks. Oh, no.**
22 Q. Were they e-mails also?
23 **A. Yes, they were. It was the very -- the very**
24 **first e-mail that Ms. Betts sent me inquiring about my**
25 **work.**

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1 **And I don't now if I said it or not, but there**
2 **shouldn't be anything else missing. I inadvertently**
3 **didn't put them on there, but I can go back and tell you**
4 **the date of the e-mail just about, if you give me a**
5 **second.**
6 Q. Well, you can just e-mail it to me later.
7 **A. Okay.**
8 Q. For No. 62 do you have any documents, other
9 than those that have already been produced?
10 **A. Let's see here. So No. 62, request No. 62 are:**
11 **"Copies of any and all documents which evidence that**
12 **Jennifer Betts ever 'informed Defendant and Cross**
13 **Complainant her personal case settled against SDG&E in**
14 **excess of \$1.6 million."**
15 I also says that Ms. Betts told me on the phone
16 that her case settled for \$1.6 million, but in terms of
17 a document that she sent me, I have with me an e-mail
18 from Jenniferbetts5@gmail.com, titled at the top: "Ed
19 Clark - The Electrical Expert," addressed to: "Ed Clark
20 - The Electrical Expert."
21 And on page -- this is an e-mail string. On
22 page 4 you will see a paragraph that starts out with:
23 "I settled." And down below, it states on the last
24 line: "They paid 1.5," representing 1.5 million.
25 MR. MONSON: So I'll attach that as Exhibit 3,

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1 which is an e-mail four pages long. The first e-mail
2 being from Jennifer Betts to Mr. Clark dated
3 August 13th, 2015.
4 (Exhibit 3 marked for identification.)
5 BY MR. MONSON:
6 Q. And other than the documents that you produced
7 so far and the 3,200 pages, do you have any other
8 documents for No. 62?
9 **A. Just that document along with the 3,200**
10 **documents, pages of documents, correct.**
11 Q. How about item No. 66. Do you have any
12 documents for item No. 66?
13 **A. Along with the 3,200 documents I've already**
14 **produced to you, I will -- copies of all documents which**
15 **evidence that the \$100,000 check proceeds payable to Ed**
16 **Clark were required to be utilized for a screenplay,**
17 **yes. I have -- what did I do with it? Here we go.**
18 For starters, I'm going to give you a copy of
19 the check that she gave me as evidence that that's what
20 it was for. I am going to produce a copy of an e-mail
21 from Carla Polkinhorn, carlaplk@gmail.com, on Monday,
22 August 18th, 2014, to jennifer@jenniferbetts.com and
23 Ed Clark, subject: "Letter of Understanding and
24 Business Plan. Letter of understanding Jennifer Betts.
25 Letter of Understanding." It says it twice, or with

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1 **attachments.**
2 And this document is dated again August 18th,
3 where Ms. Polkinhorn sent a letter of understanding at
4 my request to Ms. Betts resulting from her wanting to
5 have an equity position in the film.
6 I have a document from Jennifer Betts and
7 jenniferbetts.com sent to Ted Gerdes dated Tuesday
8 October 20th, subject: "Circle the Wagons Movie, Letter
9 to Gerdes Fire Timeline," and it's a communication from
10 Jennifer Betts and her role in trying to further the
11 movie and supporting Ted Gerdes with all the documents
12 and a fire case timeline.
13 I'm kind of going off on a tangent here. Could
14 you read the question back to me, please. Make sure
15 that I stop when I need to.
16 Q. It is basically just: What documents do you
17 have regarding item No. 66?
18 **A. Okay. And so the -- I have a document dated**
19 **Thursday, October 22nd, 2015 to tedgerdes@mac.com, and**
20 **Ed Clark from Jennifer Betts with a tracking number and**
21 **updated timeline of a hard drive that she sent**
22 **supporting all the work that she did in her efforts to**
23 **try to further this movie as well.**
24 I actually have a copy of the timeline produced
25 by Ms. Betts to Mr. Gerdes showing that her -- her

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1 efforts to further the movie and what the money was
2 being spent on.
3 I am going to produce a Confidentiality
4 Agreement entered on June 31st, 2014 with Jennifer Betts
5 so that she can read the screenplay after it was
6 completed. And I would like to point out on that
7 document the -- it's only signed by Jennifer Betts and
8 not Ed Clark because that was taken right off the e-mail
9 string. The original I have and was sent by e-mail to
10 Ms. Betts. So that's the reason why my signature is not
11 on it, because it was taken right off the e-mail from
12 Ms. Betts.
13 And in addition to what I've given you, again
14 I've produced 3,200 pages of e-mails that all support
15 the requests for No. 66 through actually the rest -- the
16 remaining.
17 Q. How about No. 67? Do you have any documents
18 regarding 67? I guess I could ask 67 through 73 because
19 you said --
20 A. They're all the same. It's all the same
21 documents. They're redundant questions trying to get to
22 the same thing. And the same answer, the same documents
23 are required for all of them.
24 And, again, the reason I produced so many
25 documents for you is that your request says: Bring all

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1 documents, all e-mails. And so it's all supportive of
2 the actions by Ms. Betts in her efforts to further the
3 movie of "Circle the Wagons."
4 MR. MONSON: I'm going to mark as Exhibit 4 a
5 copy of the second amended complaint with all of the
6 exhibits that are attached to it. And for clarity I've
7 Bates numbered the second amended complaint at the
8 bottom right-hand corner SAC 0001 through SAC 0217.
9 (Exhibit 4 marked for identification.)
10 BY MR. MONSON:
11 Q. And I have it in a three-ring binder, which I
12 hand to you. But when it becomes an exhibit the court
13 will have it bound into its separate binder along with
14 the deposition exhibits.
15 MR. CLARK: I would like to clarify for Mr.
16 Clark that you referenced this as the "second amended
17 complaint." This is titled: "Second Amended
18 Cross-Complaint."
19 BY MR. MONSON:
20 Q. You're correct. I stand corrected.
21 Mr. Clark, have you seen the second amended
22 cross-complaint before which is attached as Exhibit 4?
23 A. Yes, I have.
24 Q. And you prepared this complaint?
25 A. In pro per. Yes, I did.

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1 Q. Did you have anyone assist you in preparing the
2 complaint?
3 A. No, I did not.
4 Q. Did you seek any advice from any attorneys to
5 assist you in doing the complaint?
6 A. No, I did not, other than myself.
7 Q. You're not an attorney, correct?
8 A. No, I am not.
9 Q. On -- I'm just going to refer to the page
10 numbers here, meaning the Bates numbered page. So on
11 page 2, at paragraph 4, you allege that SDCAN -- San
12 Diego Consumers' Action Network -- "is an unincorporated
13 non-profit association qualified to do business" in
14 California. How do you know that?
15 MR. CLARK: I'm going to object for Mr. Clark
16 in that Mr. Clark as a witness was not informed.
17 Mr. Clark as an attorney was informed by
18 counsel representing Mr. Shames that they are a
19 non-profit association qualified to do business in the
20 State of California.
21 BY MR. MONSON:
22 Q. I don't understand your answer when you say:
23 "Mr. Clark as an attorney."
24 A. Well, I'm represent myself in pro per.
25 Q. But you're not an attorney.

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1 A. I am still many able to make the same
2 objections.
3 Q. You can make objections, yes.
4 A. There is still privilege between the two
5 parties, if I so state.
6 Q. What is privileged?
7 MR. CLARK: The fact that Mr. Clark is
8 representing himself, you're not able to ask Mr. Clark
9 to draw legal conclusions or talk about any legal
10 efforts that have been made resulting in this case. You
11 can ask Mr. Clark questions about his involvement as a
12 witness in this case only.
13 MR. MONSON: Are you telling me that Mr. Clark
14 the witness, to the extent he has conversations with
15 Mr. Clark pro per, who is acting pro per, not as an
16 attorney, is confidential, subject to the
17 attorney-client privilege?
18 MR. CLARK: Yes, I believe it is.
19 BY MR. MONSON:
20 Q. Have you ever been wrong in your life?
21 A. Oh, yes, many times.
22 Q. Count it one more time.
23 A. Well --
24 Q. There is no privilege that you have with any
25 attorney because you don't have an attorney.

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1 MR. CLARK: For Mr. Clark, we are not going to
 2 argue the point. If there is a difference of opinion on
 3 how something takes place in this court, you can take it
 4 up with the court. This is not the forum for you and I
 5 to get into a conversation of whether I am wrong.
 6 BY MR. MONSON:
 7 Q. I'm just giving you a chance.
 8 So how does Mr. Clark, the individual, know
 9 that SDCAN is an unincorporated non-profit association
 10 qualified to do business in California?
 11 **A. He was informed via documentation sent by his**
 12 **counsel --**
 13 Q. Sent by whose counsel?
 14 **A. Mr. Shames, SDCAN counsel.**
 15 Q. Mr. Shames -- SD's counsel, not your counsel.
 16 **A. Correct.**
 17 Q. Okay.
 18 **A. After the complaint -- the first amended -- the**
 19 **first cross-complaint was submitted and the second --**
 20 **and the first amended cross-complaint was submitted, and**
 21 **there was an issue of over whether or not SDCAN was**
 22 **properly served, Mr. Clark was informed by opposing**
 23 **counsel that SDCAN --**
 24 Q. Who are you testifying for when you say "Mr.
 25 Clark"? You are Mr. Clark.

1 **A. I'm telling you my answer. So you can listen**
 2 **to my answer and strike it if you don't like it.**
 3 Q. No. Listen to my question and answer it and
 4 answer it yes or no.
 5 MR. MONSON: Could you read the question back,
 6 please.
 7 (Pending question read back as follows:
 8 Q. "Is it true that Mr. Shames told you, Mr.
 9 Clark, that SDCAN is an unincorporated
 10 non-profit association qualified to do business
 11 in the State of California?")
 12 THE WITNESS: No, Mr. Shames himself did not.
 13 BY MR. MONSON:
 14 Q. Did anyone ever tell you that?
 15 **A. Yes.**
 16 Q. Who?
 17 **A. Well, you did, for one. As well as counsel for**
 18 **Mr. Shames and SDCAN.**
 19 Q. Who? Give me a name.
 20 **A. Mr. Monson and Ms. Abeln.**
 21 Q. Did Mr. Shames ever tell you that?
 22 **A. I don't recall Mr. Shames himself ever telling**
 23 **me he was a non-profit association.**
 24 Q. Thank you.
 25 Did Ms. Betts ever tell you that she was

1 **A. That's what I'm saying.**
 2 Q. Okay.
 3 **A. Okay? So as I indicated, if you want to -- I**
 4 **was informed -- Mr. Clark or I would say I was**
 5 **informed -- sorry, I'll try to keep that straight.**
 6 **I was informed by counsel for SDCAN and**
 7 **Mr. Shames that SDCAN was a non-profit association.**
 8 Q. So the way you learned that, Mr. Clark, is
 9 Mr. Shames told you?
 10 **A. No, that's not what I said. I said I was**
 11 **informed by Mr. Shames' counsel. Mr. Shames didn't**
 12 **tell. Counsel -- Mr. Shames' counsel represented it in**
 13 **a transmittal.**
 14 Q. Is it true that Mr. Shames told you, Mr. Clark,
 15 that SDCAN is an unincorporated non-profit association
 16 qualified to do business in the State of California?
 17 MR. CLARK: I am going to object as to
 18 reference of this. There is no foundation as to what
 19 you are asking or when it was done. Can you tell me --
 20 BY MR. MONSON:
 21 Q. Ever.
 22 **A. Originally Ms. Betts informed Mr. Clark, and**
 23 **Mr. Shames --**
 24 Q. I'm not asking you about Mr. Betts. I'm asking
 25 you --

1 working with Mr. Shames and together they were
 2 representing SDCAN to oppose a rate case against SDG&E?
 3 **A. She did inform me she was going to partner with**
 4 **Mr. Betts -- or Mr. Shames to oppose the rate case**
 5 **against SDG&E.**
 6 Q. You say the word "partner."
 7 **A. That's what she originally represented to me,**
 8 **that she was partnering with Mr. Shames.**
 9 Q. Didn't she tell you they were working together?
 10 **A. As I just indicated, she originally told me she**
 11 **was partnering with Mr. Shames.**
 12 Q. Well, in your complaint on Exhibit 4, page 2,
 13 paragraph 6, you say: "Cross-Defendants" -- Defendant
 14 Betts -- it's a typo -- "an individual, and
 15 Cross-Defendant Shames, an individual, worked together
 16 representing SDCAN. . . to oppose a rate case against
 17 SDG&E." Is that correct?
 18 MR. CLARK: I'm going to object in that the
 19 statement speaks for itself.
 20 BY MR. MONSON:
 21 Q. I didn't ask you if the statement speaks for
 22 itself. I asked you if the statement is correct. Yes
 23 or no?
 24 **A. Yes.**
 25 Q. Yes, it is correct?

1 **A. Yes.**
2 Q. Thank you.
3 Are you contending that Jennifer Betts is the
4 alter ego of SDCAN?
5 **A. No, I am not.**
6 Q. You're contending that Jennifer -- Michael
7 Shames is the alter ego of SDCAN?
8 **A. Yes.**
9 Q. I'll leave that for Mr. Shames to ask you
10 questions about.
11 Were you aware in 2015 that Ms. Betts and
12 Mr. Shames, through SDCAN, were involved in a rate
13 increase -- a rate case against SDG&E?
14 **A. Yes.**
15 Q. How did you become aware of that?
16 **A. By Ms. Betts informing me.**
17 Q. In 2007 who were you retained by to do
18 discovery to determine the cause of the 2007 Witch Creek
19 Fire?
20 **A. A firm called Culbreth & Schroeder.**
21 Q. Can you spell that?
22 **A. Capital C-u-l-b-r-e-t-h and Schroeder, capital**
23 **S-c-h-r-o-e-d-e-r, I believe.**
24 Q. As a result of that retention did you become a
25 whistle blower against SDG&E?

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1 **A. Yes, I did.**
2 Q. Did you have your deposition taken in
3 connection with that Witch Creek Fire through the law
4 firm of Culbreth & Schroeder?
5 **A. No, I did not.**
6 Q. When you became a whistle blower how did you
7 accomplish that?
8 **A. After I requested a meeting and had a meeting**
9 **with SDG&E to inform them of a design problem on their**
10 **system, that is a pure safety violation for the public,**
11 **on my way out of the meeting I refused to sign a**
12 **confidentiality agreement between SDG&E and Culbreth &**
13 **Schroeder, and I made it clear that I was not a part of**
14 **that.**
15 Bret Culbreth, the principal in Culbreth &
16 Schroeder, threatened to sue me if I went public because
17 it was obvious they were going to cover it up. And so I
18 took steps then to get them to fire me so that I could
19 go public without recourse of being sued.
20 Q. How did you first come into contact with
21 Ms. Betts?
22 **A. Ms. Betts made contact with me inquiring about**
23 **why I was the only one telling the truth about the fires**
24 **in 2007. She wrote me an e-mail. I forget the exact**
25 **date, but she made an inquiry to me.**

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1 Q. Do you know how Ms. Betts learned about you?
2 **A. I think she found me through my website. And I**
3 **created a website called the electricalexpert.com so I**
4 **could start putting online everything I was doing**
5 **associated with the Witch Creek Fire. And I think**
6 **that's how she found me.**
7 Q. When you say everything you were doing
8 associated with the Witch Creek Fire, what do you mean?
9 Your testimony or your findings?
10 **A. No, I actually disclosed -- I did disclose what**
11 **I found as far as the Witch Creek was concerned. And I**
12 **didn't disclose everything. I just disclosed some**
13 **pertinent meetings with public officials. And I also**
14 **created a -- later on I created a video, a You Tube**
15 **video so people could see how fires were starting as a**
16 **result of the design with SDG&E.**
17 Q. So you're saying Ms. Betts sent you an e-mail
18 asking you something about why you're the only one
19 telling the truth?
20 **A. Correct.**
21 Q. And how did you respond to that?
22 **A. I don't recall the e-mails. You have it in the**
23 **file. I can't tell you right now exactly what it says,**
24 **but I produced the documents that went back and forth**
25 **between Ms. Betts and myself.**

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1 Q. Do you recall having any phone conversations
2 with her about -- during your initial contact with her?
3 **A. We had many phone calls. Many phone calls from**
4 **that day -- probably from that day or the next day up**
5 **until she filed this complaint. She took a very active**
6 **role in what I was doing. And, of course, I did with**
7 **her as well. I was eventually retained as her expert.**
8 Q. Do you know when she first contacted you?
9 **A. As I indicated, she first contacted me sometime**
10 **in, I think, early 2008, I think is the first e-mail.**
11 **In fact, I probably can get closer here, if you just**
12 **give me a second.**
13 I don't have the date of that e-mail. Like I
14 said, it was shortly after the 2007 fires. I think it
15 was like around -- and I'm totally estimating around
16 February of 2008.
17 Q. And that's because she had seen your website?
18 You suppose that's because she had seen your website?
19 **A. I think she made reference or told me that on**
20 **the phone that she had already reviewed my website. I**
21 **don't recall exactly how she got my -- you would have to**
22 **ask her.**
23 Q. That's where she asked you: Why are you the
24 only one telling the truth?
25 **A. Yes.**

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1 Q. When was the first time you met Ms. Betts?
2 **A. I don't recall the exact date, but there was a**
3 **day I drove down and drove around and showed her some of**
4 **my findings and she showed me some stuff that she had**
5 **concerns about. I don't remember the exact date. It**
6 **would have been sometime I think in 2008. I have no**
7 **idea what the date was. That's the first time I met her**
8 **in person.**
9 Q. In your second amended complaint, Exhibit 4,
10 page 4, you indicate that -- paragraph 17: On
11 June 20th, 2012, at the request of cross-defendant
12 Betts, Clark met with Betts -- or sent Betts a proposed
13 Circle the Wagons business plan.
14 **A. I'm sorry. Which complaint are you looking at?**
15 Q. Page 4, paragraph 17.
16 **A. Okay.**
17 Q. So it says you sent her a proposed Circle the
18 Wagons business plan, a Circle the Wagons Top-Sheet, and
19 Circle the Wagons Private Placement Memorandum for her
20 review. Do you know how that came about?
21 **A. Yes. Through my discussions with Ms. Betts and**
22 **the experience that I had had to date I did inform her**
23 **that we had already -- we were in process of trying to**
24 **create a motion picture so that the public can see, you**
25 **know, the effects of SDG&E's design. I shared with her**

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1 **we were at the very preliminary stages and were**
2 **developing that prospect.**
3 **And that I had -- there was a lady,**
4 **Ms. Polkinhorn, who was an attorney retained to drive**
5 **that and figure out how to put that together in the**
6 **event we could get to the point where we could publicly**
7 **advertise. And so she asked me to see what we were**
8 **developing.**
9 Q. And so you sent her a copy of this private
10 placement and the business plan?
11 **A. No, I sent her a copy of a proposed because it**
12 **wasn't done yet. But just to let her -- she is an**
13 **attorney, and she had indicated she would like to see**
14 **what we were doing and see if she had any input to it.**
15 **So I sent her a copy of the proposed plan as it was**
16 **written as of that date.**
17 Q. And that's Exhibit C to the cross-complaint,
18 which is marked as page 0039?
19 **A. Correct.**
20 Q. Did you send her the business plan with the
21 idea that she may want to invest in the movie?
22 **A. I sent the business plan to her because she had**
23 **indicated she would like to see what the movie is about**
24 **because she felt strongly this needed to go public. It**
25 **was at her request.**

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1 Q. Was there any discussion at that time about
2 requesting that Ms. Betts invest money into the movie?
3 **A. She expressed an interest from the beginning**
4 **that she would like to invest in the movie at some point**
5 **in time.**
6 **So I'm going to say in answer to your question**
7 **I don't think that was ever an issue, that she**
8 **wanted to be a part of this movie. That was her**
9 **decision.**
10 Q. Well, when you say "to be a part of," you mean
11 to invest money in the movie?
12 **A. And be a part of it. Because a lot of the**
13 **story of the existing screenplay as it's written**
14 **revolves around some of the stuff that she has done at**
15 **her home. So she wanted to have an active role in it**
16 **and be a part of it.**
17 Q. What do you mean by be "a part of it"? You
18 mean to be in the movie actually?
19 **A. Any of the above. At the time when we were**
20 **first talking about all this she was just inquiring**
21 **about what we were doing. She had talked about trying**
22 **to help in any way she could. So that could have been,**
23 **A, from -- she spent a tremendous amount time on this.**
24 **So she was already helping out a lot and offering her**
25 **time with Mr. Gerdes and supporting documentation in an**

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1 **effort -- in an effort to get an opinion letter. So**
2 **there were a lot of discussions revolving around a lot**
3 **of things. It was never just talked about investing.**
4 **It was talking about everything about the story, how to**
5 **get this public.**
6 Q. Were you looking for people to invest in the
7 movie at that time?
8 **A. Obviously I retained outside counsel to --**
9 **because I didn't know how to did that so I had to hire**
10 **somebody who did. And to start putting together the**
11 **templet and the format by which it could be done.**
12 **So the fact that I was working on that and**
13 **trying to figure out the right way and the wrong way and**
14 **all of that stuff, Ms. Betts, again because she was an**
15 **attorney, asked to see it so he she could add her input**
16 **to it.**
17 Q. But were you looking for other people to invest
18 in the movie?
19 **A. At the time, the idea was once we got insurance**
20 **on the film to go out to try -- it's a \$20 million film.**
21 **I sure don't have that kind of money. So at some point**
22 **time there was going to be a public offering for**
23 **investors who invested in the movie.**
24 Q. Would you expect that if people invested in the
25 movie they would be entitled to see where their money

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1 went towards that investment?
2 **A. I think that if a -- somebody wanted to know**
3 **how their money was going to be spent or what they were**
4 **entitled to, they would put something in writing and**
5 **make sure it was clear that there was a meeting of the**
6 **minds, that everybody agreed how it was going to be**
7 **spent, when it was going to be spent, and what the**
8 **feedback was going to be.**
9 Q. At some point in time did Ms. Betts retain you
10 to serve as an expert witness in connection with -- I
11 believe her house had burned down in the fire, correct?
12 **A. That's correct.**
13 Q. And did she retain you?
14 **A. Yes, she did.**
15 Q. Did she send you a retainer of \$3,000?
16 **A. Yes, she did.**
17 Q. And did you have a written agreement with her
18 for that retain?
19 **A. Yes, I did.**
20 Q. And is that Exhibit D of the Second Amended
21 Complaint, which is Bates marked page 89?
22 **A. Yes, it is.**
23 Q. And is that the entire agreement for you being
24 retained as an expert witness in connection with Ms.
25 Betts' case?

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1 **A. Yes.**
2 Q. There are no other terms regarding your
3 retention as an expert witness in this case?
4 **A. No.**
5 Q. Were there conditions put on you serving as the
6 expert witness in this case?
7 **A. The document speaks for itself, sir. This is**
8 **the document in which Ms. Betts -- in which Ms. Betts**
9 **agreed to retain my services.**
10 Q. And you didn't put anything in this agreement
11 about the fact that you were going to put the screenplay
12 on hold as a condition precedent before you could serve
13 as her expert; is that correct?
14 **A. Not in writing, sir. That was a verbal**
15 **agreement which I had with her, which I alluded to**
16 **earlier in the exhibit that I produced to you.**
17 Q. A verbal agreement regarding you being retained
18 as an expert witness?
19 **A. No, a verbal agreement what I would not further**
20 **the movie until after her case was over. Because --**
21 Q. Wasn't there --
22 **A. Let me paraphrase that and give you the reason**
23 **why. Because the reason she asked me to put it on hold**
24 **is because she was concerned about a conflict of**
25 **interest and how that would look in front of a jury,**

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1 **if I was moving a movie forward and yet testifying on**
2 **her case.**
3 Q. And you drafted your fee schedule and expert
4 witness serves agreement, correct?
5 **A. Well, it is a standard agreement I have been**
6 **using for years.**
7 Q. And you prepared it?
8 **A. Yes.**
9 Q. And you didn't put anything in there about the
10 fact that there was a condition precedent that you put
11 the movie on hold, correct?
12 **A. No. I did that based on her request. Just**
13 **verbal request.**
14 Q. And as a result of putting the movie on hold
15 and serving as an expert witness in connection with
16 Ms. Betts' matter, did you suffer any damages?
17 **A. Regarding the movie, no.**
18 Q. So putting the screenplay on hold didn't cause
19 you any damages?
20 **A. No. And I don't think I claimed any damages on**
21 **that issue in the cross-complaint.**
22 Q. And during the time you were serving as the
23 expert witness, did you do any work at all towards
24 Circle the Wagons?
25 **A. I don't -- I don't recall exactly what I did.**

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1 **Because I had already -- I don't recall -- you asked the**
2 **question, I already had the writer work on the**
3 **screenplay. And as I recall, I don't recall exactly**
4 **when that started -- or when that ended and I received**
5 **that.**
6 **There was a point in time -- and I don't know**
7 **the date so I don't want to say no, because there might**
8 **have been some residual stuff left over that people were**
9 **already contracted to do. For example, the first**
10 **opinion letter, I don't know when I got feedback that**
11 **they wouldn't do it because it wasn't done properly. So**
12 **I don't know the dates or the timing of that. And it's**
13 **most likely in the documents I gave you.**
14 Q. On Bates page 5 of Exhibit 4, which is
15 paragraph 21 --
16 **A. Okay.**
17 Q. -- it says: On May 21st, 2014, Clark met with
18 Betts --
19 **A. I'm sorry. You said page 5, right? What**
20 **number are you at?**
21 Q. Paragraph 21.
22 **A. Okay.**
23 Q. It says: On May 21st, 2014 -- I'm
24 paraphrasing -- Clark met at Betts' residence.
25 Defendant Betts introduced Clark to Shames, who informed

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1 Clark he did business as a representative of SDCAN.
2 **A. Yes. That's the first time I met Mr. Shames.**
3 **Is it Shames or Shames?**
4 Q. Shames.
5 And it goes on to say: "Cross-Complainant" --
6 that's Clark -- "agreed to work for SDCAN in opposition
7 to the rate against SDG&E." Is that correct?
8 **A. To the degree in which once the retainer was**
9 **put in place, yes.**
10 Q. So on May 21st, 2014 you met Mr. Shames out at
11 Ms. Betts' residence, were introduced to him as a
12 representative of SDCAN, and you agreed to do work for
13 them to oppose the SDG&E rate increase, correct?
14 **A. The way you're asking the question is -- I am**
15 **not sure if it's correct or not. So just let me**
16 **paraphrase.**
17 **Mr. Shames asked me if I would support him in**
18 **the rate case against SDCAN and testify against the**
19 **utility, and asked me if I had any problems with doing**
20 **so. And I said no. So that's the extent of what that**
21 **paragraph means. So I agreed that I would be happy to**
22 **engage with them and, yes, I am available to testify**
23 **against SDG&E.**
24 Q. So you just had an oral agreement at that time?
25 **A. There was not an oral agreement. He asked me**

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1 **if I was available to testify and if I would testify**
2 **against the utility because there is just not a lot of**
3 **engineers out there that seem to want to testify against**
4 **a utility. And I told him absolutely I would be in a**
5 **position. And I didn't have any problems testifying**
6 **against SDG&E should he -- there is nothing there that**
7 **says he retained me or didn't retain me. I just told**
8 **him I was available.**
9 Q. Well, I'm just reading what it says. It says:
10 "Cross-Complainant" -- that's you -- "agreed to work for
11 SDCAN in opposition to the rate against SDG&E." Is that
12 a true statement that you wrote?
13 **A. Only in the sense I agreed to work with him for**
14 **SDG&E, that I would testify against -- that I was in a**
15 **position, if he chose to retain me -- I left a part out**
16 **of that statement. If he chose to retain me and needed**
17 **my support I was available to testify against SDG&E.**
18 **Nothing had even been filed at that point. The**
19 **decision hadn't been made to go forward. He just**
20 **indicated that his background is to challenge these kind**
21 **of rate increases with utilities, and when the time**
22 **comes would I be in a position to work with him. And I**
23 **said yes, I would. So that's the intent of that**
24 **document -- or that statement.**
25 Q. So you didn't actually come to an agreement to

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1 do work for SDCAN on May 21st, 2014, correct?
2 **A. No. There was nothing in writing. There was**
3 **no retainer agreement. There was no discussion of what**
4 **possibly could be done. It was strictly Mr. Shames**
5 **asking for if I was available to support him or if I**
6 **would support him.**
7 Q. In paragraph 22 of the Second Amended Complaint
8 it says that: In June of 2014 Cross-Defendant Betts
9 informed Clark that her personal case had settled
10 against SDG&E in excess of 1.6.
11 I was going to ask you how she informed you of
12 that, but I think you've already produced some e-mails
13 that you showed me before that have it in an e-mail.
14 **A. Correct. And she actually on the phone**
15 **indicated it was in excess of 1.6 million. That's how I**
16 **came up with that. It wasn't until you asked me for the**
17 **document did I go back and find it in writing and find**
18 **it was 1.5 million.**
19 Q. And then she asked you to send her the final
20 invoices for your work, correct?
21 **A. That's correct.**
22 Q. And you sent her the final invoices and she
23 paid you, correct?
24 **A. Correct. For work performed on her case only.**
25 **Nothing for SDCAN.**

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1 Q. And then you allege in paragraph 22 that she
2 asked you "to keep her posted on the progress for the
3 film Circle the Wagons"?
4 **A. Yes, she did.**
5 Q. Was that in any of the e-mails she sent to you?
6 **A. It's a good question. If so, it's in there.**
7 **But we had many, many phone calls. We spoke on a very**
8 **regular basis by this point.**
9 Q. In paragraph 23 of Exhibit 4, it says that:
10 On July 10th, 2014 Clark reached out to Betts to provide
11 update on movie progress and inquire about her interest
12 in the film. And then it attaches an e-mail, which is
13 Exhibit F.
14 Exhibit F is page SAC 095. And in this e-mail
15 on page 95 from July 9th, 2014, Ed Clark is sending the
16 e-mail to Jennifer, asking her: I would like to -- "I
17 would like to give my attorney for the movie your name
18 and e-mail to reach out and get an NDA executed so we
19 can send you a private placement memorandum for your
20 consideration in investing in the movie."
21 So essentially you were asking Jennifer if she
22 would like to invest in the movie?
23 **A. I was following up with her request previously**
24 **to me that once the screenplay got done she wanted to**
25 **read it and said she'd put up the money to see it**

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1 developed. So she asked me to get ahold of it once it
2 was completed so that she could take a look at it and
3 consider to see if she wanted to be an investor or just
4 actively help with getting the -- she spent, I mean,
5 crazy hours helping with Ted Gerdes with documentation
6 trying to get the opinion letter. But step number one
7 after she provided \$100,000 was to get the screenplay
8 rewritten. And, of course, she wanted to see that when
9 it was done. And so now some time has gone by, and so I
10 followed up with her request.

11 Q. Wasn't a part of the Circle the Wagons
12 screenplay already sent to her in the business plan?

13 A. The original one was. The problem with the
14 original screenplay, it was -- I hired a young writer
15 out of college to write it for me and it was written
16 more like a documentary. I never done this before I
17 didn't know the difference between a documentary and a
18 motion picture.

19 So when we tried to get original opinion
20 letter, the law firm wouldn't even consider it because
21 it just wasn't done right and it wasn't done by a union
22 writer in the WGA. So we had to go back and do a
23 rewrite of the screenplay.

24 So the original one she got was the original
25 documentary type that is written in a very linear

1 No. 99.

2 A. Okay.

3 Q. And that's the confidentiality agreement that
4 she signed. And I think your signature is on that one
5 too.

6 A. Yes, that was the executed copy.

7 Q. Then on paragraph 25 of Exhibit 4, Bates page
8 5, it says: On or about August 2nd Betts informed Clark
9 "via phone call that she did not want to officially
10 invest in the Movie for fear of repercussions from
11 confidential settlement with SDG&E, but would make a
12 cash donation with understanding the risky nature of
13 making a movie and did not have any expectations of it
14 being returned."

15 And so that's what she told you on a phone
16 call, correct?

17 A. She told me that in person when she handed me
18 the check and when she --

19 Q. I'm just asking you: Did she tell you that on
20 a phone call on August 2nd? That's what you're
21 alleging.

22 A. August 2nd. Well, that's what it says here. I
23 must have thought that when I wrote this, because she
24 had the main discussion when she gave me the check
25 because I know she had asked me to -- when we talked

1 fashion, like: On this day this happened, the next day
2 this happened. Where a motion picture is done
3 completely different and jumps all around and kind of
4 talks about the future, talks about the present kind of
5 jumps around. So there was two -- there was two that
6 she got.

7 And, to my knowledge, she probably -- you know,
8 I can go back and look, but she probably got a
9 confidential agreement, an NDA for both of them. I
10 would have to go back and look.

11 Q. You mean for the very first one the business
12 plan?

13 A. Yeah. I don't know if she did or not. That
14 one I don't know if she did or not for that one.

15 Q. That might be in the 3,200 pages?

16 A. Yes.

17 Q. So on Exhibit 4, paragraph 24, which is page
18 Bates 5 -- are you with me?

19 A. Yes.

20 Q. -- it says: On August 2nd, 2014 Betts e-mailed
21 Clark's counsel "a copy of the Confidentiality Agreement
22 she signed on July 31, 2014 as a condition of precedent
23 to reading the screen play (1st draft.)"

24 And then it attaches a copy of the
25 Confidentiality Agreement as Exhibit G, which is Bates

1 about the investment, whether it was going to be paid
2 back once we got investor or not the phone call, that we
3 had we talked about her confidentiality agreement with
4 SDG&E that she was concerned on how it would look.
5 There was a lot of things discussed. So, yes, I believe
6 this is what we talked with on that night as well. And
7 then she asked me that she wanted to have some kind of
8 a financial investment, convert that to an equity
9 position --

10 Q. We will get to --

11 A. Let me finish. Let me finish.

12 So that conversation that we had talked about a
13 lot of things and encompassed all of those things, which
14 prompted me to call the attorney and send her a letter
15 of understanding for her review.

16 Q. I think you jumped way ahead of yourself here.
17 I'm just asking you if on August 2nd there was a phone
18 call, and that's what was discussed during that phone
19 call. Not other conversations or subsequent
20 conversations.

21 A. There was a lot of conversations in that phone
22 call, including this.

23 Q. And then you attached to that Exhibit H, which
24 is Bates No. 104. And that's an e-mail of August 2nd --

25 A. Okay.

1 Q. -- at 6:48 a.m. So was that phone call on
2 August 2nd sometime before 6:48 a.m.?
3 **A. I might have misspoke on the date because I**
4 **think it was the night before.**
5 Q. Okay. And then the e-mail from Jennifer Betts,
6 which is Bates No. 104, is to Carla Polkinhorn,
7 P-o-l-k-i-n-h-o-r-n.
8 **A. Yes.**
9 Q. And that's your attorney?
10 **A. Yes.**
11 Q. And she says: "Attached is the executed
12 Confidentiality Agreement. Although I do not plan to
13 invest, Ed said this was required such that he can share
14 the Screenplay with me, et cetera."
15 **A. Correct.**
16 Q. And did you understand at that time that
17 Ms. Betts did not plan to invest in your movie?
18 **A. Based on this particular e-mail, Ms. Betts was**
19 **going back and forth whether she could, whether she**
20 **couldn't. And in this particular e-mail she indicated**
21 **that that's -- that's the first I had seen that, when**
22 **she wrote this to Ms. Polkinhorn.**
23 Q. And you got a copy of the e-mail, right?
24 **A. Yes, I'm on here.**
25 Q. Did that cause you any concern when you saw the

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1 words: "Although I do not plan to invest"?
2 **A. No. No one was forcing Ms. Betts to invest in**
3 **this movie.**
4 Q. On that e-mail, which is Bates 104, there is an
5 e-mail from Carla Polkinhorn dated July 10th, 2014 to
6 Jennifer and cc'd to you. And it says: "Hi, Jennifer,
7 Nice to meet you and hope all is well."
8 Had Jennifer personally met Carla?
9 **A. I think that was just that meeting, two ladies**
10 **meeting online. I don't think they ever met in person,**
11 **that I can recall. I don't know that they would know**
12 **what each other looked like.**
13 Q. And paragraph 26 of Exhibit 4, which is Bates
14 No. 5, it says: On August 18th, Clark's outside counsel
15 sent Betts a "Letter of Understanding confirming her
16 understanding of the risky nature of providing a,"
17 quote, "development fee," end quote, "and included an
18 option to give. . . Betts first right of refusal to
19 convert 'Development Fee' to an equity position," quote,
20 "if and only when," end of quote, "funding for a feature
21 film is received." And it attaches Exhibit I, which is
22 an e-mail, from Carla Polkinhorn of August 18th, 2014 to
23 Jennifer.
24 **A. What Bates stamp number are you looking at?**
25 Q. 107 is the Bates number.

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1 **A. Okay.**
2 Q. And in there Carla is asking Jennifer: How you
3 are? I spoke with Ed and he asked me to revise the
4 Letter of Understanding to reflect the fact that you
5 would like first refusal to perhaps convert the 100,000
6 'Development Fee' into an equity interest in the film
7 and perhaps invest further (rather than being re-paid
8 this development fee upon the film's full funding which
9 will be based on the budget that will be established in
10 coming weeks during the development phase)."
11 And then at the bottom of that is there an
12 e-mail of August 4th that's telling Jennifer: Attached
13 is the Letter of Understanding. "The above link will
14 take you to Delaware, LLC status." What is that?
15 **A. Circle the Wagons, LLC was formed as a Delaware**
16 **corporation.**
17 Q. When was that formed?
18 **A. I just went through this with the tax people.**
19 **I think officially in 2000-- it was 2012 or 2014. And**
20 **the reason I say that is I just had to get -- the tax**
21 **people were confused on my filing so I just had a**
22 **meeting with them. They had two different accounts.**
23 **I formed Circle the Wagons, LLC, the idea of it**
24 **here as the Delaware corporation first, and I didn't**
25 **report it to the State of California. I didn't know I**

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1 **needed to because I wasn't doing business for two years.**
2 **So either I started it in 2012, and I notified the state**
3 **in 2014 -- which I think is the case. I think the**
4 **Delaware corporation, off the top of my head, was 2012,**
5 **and then California became aware in 2014.**
6 **So I had to go back and reconcile taxes because**
7 **they had all the deposits. They just put them in the**
8 **wrong account.**
9 Q. Isn't that the name of it, Circle the Wagons,
10 LLC 2012 [sic]?
11 **A. That makes sense. Yes, so I formed it in 2012.**
12 **Thanks. That makes sense.**
13 Q. And when you formed Delaware, LLC 2012, were
14 you the sole owner of it?
15 **A. Yes.**
16 Q. So you were the managing member?
17 **A. Yes.**
18 Q. Did you put any assets into it to start it up?
19 **A. At the time I don't think I did.**
20 Q. Did you sign any documents transferring the
21 authorship of "Circle the Wagons" or the copyright to
22 "Circle the Wagons" or whatever that would be into the
23 LLC?
24 MR. CLARK: For Mr. Clark, I'm going to object
25 to the line of questioning, as I indicated earlier, to

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1 any questions regarding Circle the Wagons, LLC, its
2 formation or any other financial interest in Circle the
3 Wagons, as Circle the Wagons 2012, LLC is not a party to
4 this action.
5 BY MR. MONSON:
6 Q. But yet you're asking Ms. Betts to invest in
7 Circle the Wagons, LLC 2012 [sic], correct?
8 **A. At the time, yes. But she did not invest --**
9 **she has no involvement with Circle the Wagons, LLC.**
10 Q. What would one be investing in in Circle the
11 Wagons, LLC 2012 [sic] if it was just an LLC and didn't
12 own the rights to "Circle the Wagons," the book?
13 **A. I'm sorry. Say that again.**
14 Q. What is one investing in with Circle the
15 Wagons, LLC 2012 [sic]? What assets did it have?
16 MR. CLARK: I'm going to, for Mr. Clark, object
17 on the grounds of any questioning -- any questions
18 pertaining to Circle the Wagons 2012, LLC as it is a
19 separate corporation and not a party to this litigation,
20 named as a defendant or at all in this litigation.
21 BY MR. MONSON:
22 Q. Has anyone else ever invested in Circle the
23 Wagons, LLC 2012 [sic]?
24 MR. CLARK: For Mr. Clark, I'm going to object
25 that the question is confidential to Circle the Wagons

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1 2012, LLC. And Circle the Wagons 2012, LLC is not a
2 party to this litigation, and the witness will be
3 instructed not to answer any further questions regarding
4 corporate structure, finances of any kind for Circle the
5 Wagons 2012, LLC.
6 BY MR. MONSON:
7 Q. Well, I don't want to know anything about its
8 corporate structure because it's not a corporation, but
9 I do want to know if anyone has invested. Not who. Not
10 how much. Just has anyone else invested in Circle the
11 Wagons 2012, LLC?
12 MR. CLARK: For Mr. Clark, I'm going to object
13 on the grounds it is irrelevant, that Circle the Wagons
14 2012, LLC, who invests is not part of this underlying
15 matter. And Mr. Clark will not answer any questions.
16 BY MR. MONSON:
17 Q. When you say it's not relevant, discovery is
18 for the purpose of finding out what may be relevant.
19 So it is a little broader. We are not talking about
20 whether it's relevant at trial, but whether it's
21 relevant at discovery.
22 I think I'm entitled to find out if anyone else
23 ever invested in Circle the Wagons 2012, LLC, other than
24 your contention, that Ms. Betts did.
25 MR. CLARK: For Mr. Clark, Circle the Wagons

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1 2012, LLC or its investors are not relevant to this
2 subject matter. Circle the Wagons 2012, LLC is not a
3 party to this case. And this witness is not in a
4 position to speak for Circle the Wagons 2012, LLC since
5 they are not a party to this case.
6 BY MR. MONSON:
7 Q. And one other question. Do you know whether
8 or not anyone else invested in Circle the Wagons
9 2012, LLC? I don't want to know who. I don't want to
10 know how much. Just do you know if anyone did? Yes or
11 no?
12 MR. CLARK: For Mr. Clark, I'm going to object
13 to the grounds that you're asking a question that if
14 somebody were to invest in Circle the Wagons 2012, LLC,
15 that is privileged information.
16 Circle the Wagons 2012, LLC is not a party to
17 this case, and, therefore, this witness will be
18 instructed not to answer any questions. The complaint
19 is against Mr. Clark as an individual, not against
20 Circle the Wagons 2012, LLC.
21 BY MR. MONSON:
22 Q. I am not asking if there was an investment or
23 if there wasn't an investment. I'm just asking if you
24 know if there was or wasn't an investment. If you say
25 no, then I have no further questions because you don't

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1 know. If you say yes, then I might have to bring a
2 motion to compel or something.
3 MR. CLARK: For Mr. Clark, I'm going to object
4 on the grounds that it's irrelevant, there is no
5 foundation. Circle the Wagons 2012, LLC is not a party
6 to this case. Information pertaining to investors,
7 whether there are any or there are not any are not
8 subject to this litigation.
9 BY MR. MONSON:
10 Q. But all I'm asking is if you know if there are
11 or there aren't. And I don't want to know what you
12 know, just do you know.
13 MR. CLARK: For Mr. Clark, Counselor, the
14 objections have been addressed. You've got the answer.
15 Move on to another question.
16 BY MR. MONSON:
17 Q. You haven't answered my question. See, to
18 bring a motion to compel, if the judge makes you answer
19 the question and you said, "Judge, I don't know if there
20 are any investors. Yes or no, I don't know either way,"
21 then there is no answer. And I just want to know if you
22 say to the judge, "Yes, Judge, I do know if there are
23 investors," then the judge may order you to tell me or
24 may order you not to tell me.
25 MR. CLARK: For Mr. Clark, I am going to state

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1 the objection that we are asking this witness a question
 2 pertaining to the corporation of LLC -- or the Circle
 3 the Wagons 2012, LLC.
 4 With that said, and standing objection, the
 5 witness will answer.
 6 THE WITNESS: No, there are no other investors
 7 other than me personally.
 8 BY MR. MONSON:
 9 Q. Thank you.
 10 How much have you invested in Circle the Wagons
 11 2012, LLC?
 12 **A. I honestly don't have any idea. A lot of time**
 13 **and money. I really don't have any idea. I've never**
 14 **thought about it. I've never sat down and penciled out**
 15 **to see my time -- how much time was spent versus how**
 16 **much money and in screenwriters, et cetera, and lawyers**
 17 **prior to getting to the point of representing Ms. Betts**
 18 **in litigation.**
 19 Q. Excluding time, do you have any estimate as to
 20 how many hard dollars you've invested in Circle the
 21 Wagons 2012, LLC?
 22 **A. I don't have any idea right now. I've not even**
 23 **given that any thought whatsoever.**
 24 Q. Would it be less than a million dollars?
 25 **A. Oh, yes. I didn't spend a million dollars on**

1 **And, you know -- and it indicates although she was**
 2 **planning on it, after she re-evaluated her return on all**
 3 **of her investments, that she just didn't feel at that**
 4 **time, and pursuant to this e-mail, that she was going to**
 5 **be able to. And I responded: Very well. We'll keep in**
 6 **touch.**
 7 Q. Then it goes on to say: "However on
 8 September 21, 2014, informed" -- I guess you mean
 9 Betts -- Betts informed Clark "she had changed her mind
 10 and scheduled a meeting on September 23, 2014 to provide
 11 a \$100,000 Development Fee check to" Clark. And then
 12 you attached a copy of the check.
 13 **A. Correct.**
 14 **(Exhibit 5 marked for identification.)**
 15 BY MR. MONSON:
 16 Q. I'll show you what we'll mark as Exhibit 5,
 17 which is a copy of a check of September 21st, 2014,
 18 payable to Ed Clark for \$100,000, signed by Jennifer
 19 Betts. And on the flip side of it, it shows an
 20 endorsement, which appears to be Ed Clark's signature.
 21 Is this a copy of the check that you received?
 22 **A. Yes, it is.**
 23 Q. And is that your signature on the reverse side?
 24 **A. Yes, it is.**
 25 Q. Was there any other documentation between you

1 **it.**
 2 Q. Would it be less than a half a million dollars?
 3 **A. I don't know, Counselor. Because time is money**
 4 **for me, and I spent a lot of time developing --**
 5 Q. I'm not asking you about time.
 6 **A. I don't know.**
 7 Q. I'm asking you about dollars.
 8 **A. As I sit here today, I'm going to tell you I**
 9 **don't know. I don't know how much physical money I**
 10 **spent and I am not going to sit here and guess or**
 11 **estimate for you. I am telling you I am the only or**
 12 **investor to this point that got the first screenplay**
 13 **written and the first attempt denied for an opinion**
 14 **letter. So whatever that cost me up to that point for**
 15 **the lawyers and writers, it cost me. I don't remember**
 16 **what the number is.**
 17 Q. So in paragraph 27 of the second amended
 18 complaint, which is on Bates page 6, you say that: On
 19 September 6th, Betts informed Clark "she was not going
 20 to be able to move forward with a 'Development Fee' for
 21 a variety of reasons."
 22 Can you elaborate on the variety of reasons she
 23 informed you about?
 24 **A. There is an e-mail in your file where she talks**
 25 **about all of her investments and where her money was at.**

1 and Ms. Betts at the time that they check was given to
 2 you?
 3 **A. The documentation that we had in front of us at**
 4 **the time was the letter of understanding sent to her**
 5 **from Ms. Polkinhorn. And I had that with me.**
 6 Q. And did Ms. Betts ever sign the letter of
 7 understanding?
 8 **A. No, she did not. She indicated that she didn't**
 9 **want to have anything in writing because for fear of**
 10 **repercussions from SDG&E and her existing**
 11 **Confidentiality Agreement.**
 12 Q. Where were you when you received this check?
 13 **A. I don't recall the name of it. She had me meet**
 14 **at a cafe somewhere down here that was -- had something**
 15 **to do with her family, her grandfather like owned the**
 16 **museum or started the museum. I don't recall. You**
 17 **would have to ask your client. But it was a little cafe**
 18 **she had us meet at. She picked the spot.**
 19 Q. How long was the meeting?
 20 **A. Well, it was -- interestingly that you ask**
 21 **that. The lunch was for about maybe an hour because we**
 22 **had lunch. And then she asked me to walk around with**
 23 **her so she could show me the town that involved all of**
 24 **her family heritage.**
 25 Q. Did you ever have a conversation with Ms. Betts

1 where she talked about making you a short-term loan?
 2 **A. All conversations involving the short-term loan**
 3 **were prefaced with getting repaid. We both thought this**
 4 **movie would get funded quickly, as soon as we got**
 5 **investment money. Never did we have any discussions**
 6 **where I would be held personally responsible. All**
 7 **discussions, including the letter -- e-mail to her just**
 8 **a couple days before this, talked about if there was a**
 9 **short-term loan it would be precedent on a -- getting**
 10 **funded. That's why the letter of understanding clearly**
 11 **understood this was -- basically was an at will**
 12 **investment. Because she wanted to be a part of it and**
 13 **that she fully understood the risk of a movie. There is**
 14 **nothing that says nor would I have ever agreed to be**
 15 **personally responsible. I wouldn't have taken the**
 16 **money.**
 17 **In fact, I offered to give the money back to**
 18 **her the day we walked around after she had given me the**
 19 **check, clarifying that this was not -- there were no**
 20 **conditions attached to this movie in any way, shape or**
 21 **form.**
 22 **There was an e-mail just a few days before that**
 23 **meeting from me to her addressing the fact that if it's**
 24 **a short-term loan it specifically states, which she --**
 25 **we both thought -- first of all, neither one of us had**

1 **You have to realize a couple weeks prior to**
 2 **this Ms. Betts invited me to go on a two-week vacation**
 3 **with her to Italy. The day -- night before we were**
 4 **supposed to meet, I called to confirm whether our**
 5 **meeting was still on. I informed her I was going to be**
 6 **in San Diego with my son because he was doing a**
 7 **triathlon. And she tried to get me to come spend the**
 8 **night with her in a hotel. And I said no.**
 9 **After she gave me the check we were walking**
 10 **around. I had to ask Ms. Betts to please quit trying to**
 11 **hold my hand in public because I have a girlfriend, I am**
 12 **not interested. And if this check was in any way**
 13 **contingent on anything other than what her and I agreed**
 14 **upon, to move this movie forward, I'm happy to give it**
 15 **back to you. And she absolutely was emphatic and said,**
 16 **"No, that's not the issue. This movie has to get done."**
 17 **She reiterated that when she got involved with**
 18 **Ted Gerdes, that this movie has to get done, what her**
 19 **role and intent of the movie was.**
 20 **Q. When she gave you the check did she tell you**
 21 **that: I don't expect to ever be paid?**
 22 **A. Yes, she did. She goes: I realize this is**
 23 **movie. I understand the risk. I don't care if it's in**
 24 **writing or not. I prefer it not to be because of my**
 25 **concern with SDG&E. And if I don't ever get it back, I**

1 **any idea how long the rate case would take. I was under**
 2 **the impression it was something that was going to happen**
 3 **during that same time frame. So when we talked about a**
 4 **short-term loan, we both realized and knew that the rate**
 5 **case had to be done because that's the ending of the**
 6 **movie. She had control of when that got done. I wasn't**
 7 **working on it at the time, she was.**
 8 **Q. Did Ms. Betts tell you there were no conditions**
 9 **on what you could use the funds for?**
 10 **A. Yes.**
 11 **Q. So you could use them to pay your rent or you**
 12 **could use them to invest in the movie?**
 13 **A. Well, the intent shown by all the documents was**
 14 **that Ms. Betts and I proceeded as a result of that to**
 15 **work on the movie for the next two years. So there was**
 16 **no doubt in her mind or my mind what we were doing and**
 17 **what the money was being spent on.**
 18 **Q. But --**
 19 **A. But there were no conditions on how the money**
 20 **was spent or when it was spent or how it was spent.**
 21 **Q. And that's what she told you when she gave you**
 22 **the check?**
 23 **A. That's correct. And she told me again. We**
 24 **had a discussion while we were walking around and she**
 25 **confirmed it.**

1 **don't ever get it back.**
 2 **Q. Isn't it true that when she gave you the check**
 3 **it was agreed that she would be repaid as soon as**
 4 **possible?**
 5 **A. No, sir, it was not. It was agreed that she**
 6 **would get repaid if and when -- if we got movie**
 7 **investment from an investor. That's the only way that**
 8 **she could get the money back. And at that point in time**
 9 **she asked for the ability to convert that \$100,000 into**
 10 **an equity position if we had gotten to the point where**
 11 **we would go out to public. She was aware we couldn't go**
 12 **out to public yet because we didn't have an opinion**
 13 **letter.**
 14 **Q. So the \$100,000 she would get paid back as soon**
 15 **as you could find someone to invest \$100,000 in the**
 16 **movie?**
 17 **A. Well, she was helping me try to find it. She**
 18 **was working on the film with me. But, yes, the premise**
 19 **being that we were both excited about getting this movie**
 20 **together. She had a vested interest in getting the**
 21 **movie together. It was going to be shot at her ranch.**
 22 **So she fully understood what we were trying to do. And**
 23 **that we both -- quite honestly we were working quite**
 24 **well together. We both thought this is something that**
 25 **we could get funding for quickly.**

1 We didn't understand at the time how important
2 that opinion letter was to get getting investors. We
3 didn't find that out until after Ms. Betts was not able
4 to give Ted Gerdes the documentation we needed to
5 support the film.
6 Q. So are you saying that at no time did you ever
7 agree to repay the loan as soon as possible?
8 A. At no time did I ever agree to repay the loan
9 as soon as possible. I did agree -- the only thing that
10 I ever agreed to is that in the event we get funding,
11 she will get her money back from the investors.
12 Q. What attempts did you make to get funding?
13 A. We actually -- throughout the process of her
14 and I working together on the film, the producer and
15 lawyer I was working with, we were in constant
16 communications in Dubai. And to the point where they
17 were going to fly out and meet with me. But they
18 wouldn't do it until they got an opinion letter on the
19 film. Because they can't invest in a movie that you
20 can't get insurance on.
21 Quite honestly there was a very high confidence
22 level had we got insurance, we would get immediate
23 funding.
24 Q. Are you still working on trying to get the
25 movie?

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1 A. Right now, yes, I am. I will. And it will
2 eventually go forward. But right now I was on hold
3 until the PUC rate case got done.
4 I haven't gotten 100 percent confirmation on
5 where that's all. I just recently found out that I
6 think they get denied so I think that case is over.
7 However, with what I'm working on against the PUC on the
8 Northern California fires, there is going to be some
9 more modifications because it's a California issue, it's
10 not just a San Diego issue.
11 So the movie is moving forward and I'm still
12 working on it. And I still have plans. And I've never
13 ever told Ms. Betts that when we get funding she won't
14 get her money. And if we go forward I still am going to
15 stand behind what I said I was going to do. But until
16 such time as we get funding for the movie we're both out
17 a lot of money.
18 Q. So it's still your position that if you receive
19 \$100,000 in funding, that first \$100,000 would go to
20 Ms. Betts?
21 A. I propose that she will get her money back if
22 the movie gets funded. I've never said anything other
23 than that. And I don't think she has ever alleged that
24 I said I wouldn't pay her. It has nothing to do with me
25 paying her; it has do with investors putting up the

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1 money.
2 Fully stand behind -- you know, fully plan on
3 standing behind what I suggested that I would do as a
4 result of her and I working on this film.
5 Q. Was there any discussion on the day that you
6 were handed the check about why the check was made
7 payable to you as opposed to "Circle the Wagons"?
8 A. Yes.
9 Q. What was that discussion?
10 A. She did not want -- she knew that the movie
11 would come out as "Circle the Wagons," and she didn't
12 want to have her name -- she wanted to conceal it from
13 SDG&E being able to find out that it was made out to
14 supporting the film. That's why she made it out to me
15 personally.
16 Q. What was your understanding as to why she
17 didn't want SDG&E to know that she was funding any of
18 the movie?
19 A. She told me she signed a Confidentiality
20 Agreement in her settlement with SDG&E on her personal
21 case for \$1.5 million. At the time she told me 1.6. I
22 thought it was more money than 1.5 until I found the
23 document that she told me it was over \$1.6 million.
24 Q. So when you received the check and went to
25 deposit it, did you take the time to send any kind of an

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1 e-mail confirming what it was for to Ms. Betts?
2 A. No.
3 Q. Did you take any notes or anything of your
4 recollections of what happened that day at or about the
5 time it happened?
6 A. I don't follow. You mean notes about her
7 giving me the check?
8 Q. Yes.
9 A. No.
10 Q. So you didn't sit down and write to yourself:
11 I met with Ms. Betts today and she gave me the check for
12 \$100,000 and she doesn't expect it to be repaid and it
13 was not a loan?
14 A. I didn't need to. She is a lawyer. I tried to
15 put the understanding in writing. She had reasons not
16 to because of her legal recourse from SDG&E.
17 Q. No, I mean for your own protection you didn't
18 write yourself a memo?
19 A. I don't need any protection because there
20 was -- the check is enough. She made an at will
21 investment at her own free risk. There is nothing in
22 writing. There is no contract. There is nothing.
23 Q. If you look at paragraph 29 of Exhibit 4,
24 which is Bates 6, it says: On September 28th, 2015,
25 Betts "again requested" Clark to "be her expert on the

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1 Rate Application, and quoted," in quotes, "(Of course,
 2 I will pay you/request your fees as part of
 3 intervention, et cetera, or we can work something out)"
 4 end of quote, and assured Clark he would be paid.
 5 When you say "again requested," what do you
 6 mean by that?
 7 **A. Ms. Betts had continually, throughout my -- I**
 8 **am going to call it friendship at the time because at**
 9 **the time it was a friendship -- was requesting my**
 10 **services to help on the rate case until she got involved**
 11 **with Mr. Shames. And at one point in time there was**
 12 **apparently a lot of distrust between the two.**
 13 **She wrote me an e-mail and it might have been**
 14 **just prior to this, but she was concerned about -- and**
 15 **I'll use her words: Mr. Shames being a Kool-Aid drinker**
 16 **and being part of the status quo that had been framing**
 17 **her and assured me that if she has to do the rate case**
 18 **on her own, by herself, she will, and she will pay me on**
 19 **the rate case separately from.**
 20 **So in essence on the phone I was telling her:**
 21 **Look, I can't keep working for free. I need a retainer**
 22 **agreement. And she was assuring me that she would pay**
 23 **me regardless if Mr. Shames or SDCAN did or not.**
 24 Q. Well in paragraph 29 you said: "Again
 25 requested" you to be her expert. When was the first

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1 time she had requested you to be her expert?
 2 **A. The first time -- there was -- there was three**
 3 **times, actually. And let me share it with you here real**
 4 **quick.**
 5 Q. Well, I was just referring back to paragraph 21
 6 where it said you --
 7 **A. To be her expert for the rate case. If she was**
 8 **going to -- to be her expert. She had already used me**
 9 **on her personal case.**
 10 Q. Paragraph 21. Remember paragraph 21? It said
 11 you met with her and Shames out at her place.
 12 **A. Correct.**
 13 Q. And you agreed to work for SDCAN to oppose the
 14 rate case against SDG&E. And that's on May 21st.
 15 **A. I'm going object that you just put words in my**
 16 **mouth. We talked about that issue already. And so when**
 17 **you make that statement, that statement you just made**
 18 **where I agreed to work for SDCAN, I already shared with**
 19 **you that that statement was letting Mr. Shames aware**
 20 **that I would be available to testify against the**
 21 **utility. We had no contract at that point in time when**
 22 **we met at his house. There was no scope of work. There**
 23 **was nothing talked about. Alls I said at that --**
 24 Q. I understand.
 25 **A. So when you make that statement you don't stick**

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1 **words in my mouth.**
 2 Q. I don't stick words in your mouth. I'm quoting
 3 the exact words that you wrote in the complaint on three
 4 different occasions: The first complaint, the first
 5 amended complaint, and the second amended complaint.
 6 But I'm just saying on May 21st, that's when
 7 you met Shames and talked about being the expert. And
 8 then on September 28th, 2015, that's again requesting
 9 you serve as the expert on the rate case.
 10 **A. Correct.**
 11 Q. And so there was one time back in --
 12 **A. 2014.**
 13 Q. -- 2014. And this is the second time.
 14 **A. Yes.**
 15 Q. So back in 2014, was it Shames asking you to
 16 work on the rate case or was it Clark [sic] or was it
 17 both of them?
 18 **A. Well, back in 2014, when I first met Mr. Shames**
 19 **at Ms. Betts' house, he was just asking my availability**
 20 **and if I'm willing to testify against a utility. That**
 21 **was the extent of my conversation with Mr. Shames at**
 22 **Ms. Betts' house.**
 23 **Following that, Ms. Betts retained my services**
 24 **for her personal case. And when that ended -- and at**
 25 **this point in time she wasn't sure yet whether she was**

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1 **going to work with Mr. Shames on the rate case. And she**
 2 **asked me if she did it on her own if I would be her**
 3 **expert. So she gave me a -- she gave me a scope of**
 4 **work. I think, off the top of my head, like reviewing**
 5 **of 12 or 14 depo- -- she gave me a scope of work and**
 6 **asked for a retainer agreement.**
 7 **So I sent her another retainer agreement**
 8 **specifically for the rate case.**
 9 MR. MONSON: Why don't we take a short break.
 10 (A brief recess was taken.)
 11 MR. MONSON: We can go back on the record.
 12 BY MR. MONSON:
 13 Q. Mr. Clark, I wanted to clarify one thing, maybe
 14 more than one. Just one for now.
 15 You indicated that you took the \$100,000 and
 16 put it into your personal account at Chase and then
 17 transferred it into the LLC account.
 18 My question is: Do you know how long it took
 19 before the money went from the Chase account into the
 20 Circle the Wagons, LLC 2012 [sic] account?
 21 **A. I think within just a couple days I opened up**
 22 **the account. I used that money to open up the account**
 23 **for Circle the Wagons, LLC.**
 24 Q. And the Circle the Wagons, LLC 2012 [sic],
 25 that's the name of the account?

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1 MR. CLARK: I'm going to -- for Mr. Clark going
2 to object and direct this witness he is not going to
3 answer any questions with regards to Circle the Wagons
4 2012, LLC. Circle the Wagons 2012, LLC is not a party
5 to this case.
6 BY MR. MONSON:
7 Q. The fact that it's not a party to this case
8 doesn't really matter.
9 My question is: Did you open up an account
10 where you put the \$100,000, after it went from your
11 account, your personal account in the name of Ed Clark
12 to an account that had the name on it that's identified
13 as Circle the Wagons, LLC 2012 [sic] or some other name?
14 MR. CLARK: For Mr. Clark, the question has
15 been asked and answered. Objections are on the record.
16 This witness is instructed not to answer.
17 BY MR. MONSON:
18 Q. Well, was the account in the name of "Circle
19 the Wagons"?
20 MR. CLARK: For Mr. Clark, the question was
21 asked and answered and objections were lodged.
22 This witness is instructed not to answer. The
23 Circle the Wagons 2012, LLC is not a party to this case.
24 BY MR. MONSON:
25 Q. It really doesn't matter whether they're a

1 physical corporation. Questions specifically about
2 Circle the Wagons 2012, LLC is not a function of this
3 case nor is it relevant or calculated to lead to any
4 admissible discovery regarding your allegations of
5 breach of contract towards Mr. Clark with this
6 fabricated payment. It has nothing to do with that. It
7 is not relevant. And this witness will not answer the
8 questions.
9 BY MR. MONSON:
10 Q. Well, you contend that Ms. Betts invested in
11 the LLC.
12 MR. CLARK: For this witness, states facts not
13 in evidence and misstates testimony.
14 BY MR. MONSON:
15 Q. Then Ms. Clark [sic] must have loaned you
16 personally --
17 MR. CLARK: Objection. Ms. Clark is not a
18 party to the case.
19 MR. MONSON: Let me finish my statement. I'll
20 stand corrected.
21 BY MR. MONSON:
22 Q. Ms. Betts must have loaned you personally
23 \$100,000 and she had nothing to do with the LLC. Thank
24 you very much.
25 MR. CLARK: For this witness I will lodge --

1 party or not a party. You're a party and you're the
2 controller and owner of the LLC, correct? There is
3 nobody else that owns any interest in the LLC; is that
4 correct?
5 MR. CLARK: For this witness, he is -- as
6 already been laid out, the question is objected to. It
7 has -- Circle the Wagons 2012, LLC is not a party to
8 this case. And there will be no questions asked
9 regarding -- or answered regarding Circle the Wagons
10 2012, LLC.
11 BY MR. MONSON:
12 Q. We've already asked lots of questions about it
13 and you've answered them.
14 A. Not true, sir. Go back and read me the record.
15 Q. Well, you attached the business plan. You've
16 attached all kinds of other documents and stuff.
17 A. In terms of what was originally done and the
18 actions between the parties, that's fine.
19 MR. CLARK: Your client has already indicated
20 that -- and you guys won the summary judgment motion on
21 the fact you didn't sign anything with -- you've already
22 taken the position you have nothing to do with Circle
23 the Wagons 2012, LLC. All the documents to date show
24 the actions of the party, the intent of the party, what
25 the two parties agreed upon, the business dealings, the

1 move to strike the last statement by counselor. States
2 facts that are not in evidence. Has laid no foundation,
3 has not presented this witness any foundation whatsoever
4 that an agreement or a contract of any kind exists,
5 other than the fact that Ms. Betts made an at will
6 investment in herself interest to further the movie of
7 "Circle the Wagons."
8 BY MR. MONSON:
9 Q. Circle the Wagons 2012, LLC.
10 A. No, the movie is titled "Circle the Wagons."
11 She didn't invest -- her at will contribution had
12 nothing to do with the corporation. It had to do with
13 strictly the furtherance of a motion picture called
14 "Circle the Wagons." It has nothing to do with Circle
15 the Wagons, LLC. Her self-interest was strictly the
16 fact that she wanted to be a part of making a movie.
17 Q. Is "Circle the Wagons" a feature film
18 copyrighted in your name?
19 A. Yes, it is.
20 Q. Is the copyright owned by you?
21 A. I think as part of the forming the LLC -- I
22 don't know that -- I think it is still owned by me
23 personally. I have to look at the documentation. I
24 don't know if it's owned by the LLC or if it's owned by
25 me. I don't remember the legalities. There was a lot

1 of discussion back then. I don't recall.
2 Q. Well, have you ever signed a document
3 transferring the copyright interest in "Circle the
4 Wagons" to the LLC?
5 **A. As I just indicated, I recall having**
6 **discussions when the lawyers were putting this together.**
7 **And I don't recall if I signed documents for that**
8 **specific issue or if I only signed the documents to form**
9 **the LLC. I don't remember.**
10 Q. If you look at Exhibit 4, Bates page 6,
11 paragraph 30 of the second amended cross-complaint.
12 **A. Bates stamp 30. Okay. Bates stamp 30?**
13 Q. No, Bates stamp 6, paragraph 30.
14 It says: On March 18th, 2016, Betts confirmed
15 to Clark "that she had form a partnership with. . .
16 Shames doing business as SDCAN to oppose the San Diego
17 Gas & Electric proposed rate increase with the" PUC.
18 **A. What Bates stamp for Exhibit K?**
19 Q. Bates stamp is 113.
20 And so Exhibit K --
21 **A. Got it.**
22 Q. -- is nothing more than the first two pages of
23 Exhibit A, which is the application of SDG&E to recover
24 costs.
25 **A. I think that this document, if you look at**

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1 **Bates stamp 113 -- No. 116, you know, I think this was**
2 **the first document that Ms. Betts' name was on it for**
3 **information only. And it talks about San Diego Consumer**
4 **Affairs [sic].**
5 **And quite honestly she was just excited that**
6 **she had partnered -- and she referred to the word**
7 **"partner" with Mr. Shames and sent me this. So I think**
8 **she was just excited that she was going to work with him**
9 **and not have to do this on her own.**
10 Q. But you were aware at the time that Ms. Betts
11 allegedly told you she was a partner with Mr. Shames for
12 SDCAN that SDCAN was a non-profit association, correct?
13 **A. I don't think so at that time, no. Like I**
14 **said, I didn't find out until later, after some**
15 **complaints were filed and you telling me in the hallway,**
16 **I think was one of the first indicators. I don't recall**
17 **when that issue first came up, but I just took her word**
18 **at -- for what it was. And she might have misspoke, but**
19 **she informed me what she had formed a partnership and**
20 **Mr. Shames had asked her to partner with him.**
21 **Now, whether she meant that from a legal**
22 **standpoint or not, you know, really it didn't matter. I**
23 **utilized that word "partnership" as what she told me in**
24 **my complaint.**
25 Q. But you're not suing any partnership, correct?

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1 **A. I have revised -- in the second amended**
2 **complaint the caption speaks for itself, who is involved**
3 **with this, which is SDCAN as a non-profit association,**
4 **Mr. Shames and Jennifer Betts as individuals.**
5 Q. Again, so you're not suing Betts and Shames as
6 partners?
7 MR. CLARK: For Mr. Clark, I'm going to object
8 that the cross-complaint speaks for itself. The second
9 amended cross-complaint speaks for itself as to who the
10 parties are.
11 BY MR. MONSON:
12 Q. Well, do you know if there, in fact, is a
13 written partnership agreement between Betts and Shames?
14 **A. I don't know what's transpired between the two**
15 **parties.**
16 Q. And do you know whether there is any type of
17 oral partnership between Betts and Shames.
18 **A. I can only recite what Ms. Betts shared with me**
19 **is that she formed a partnership with Mr. Shames. I**
20 **don't know whether that was oral or written. I don't**
21 **know any of the details about how that partnership was**
22 **formed. Alls I can share with you is she called me and**
23 **told me she was excited. She sent me this document so I**
24 **could see that her name was on the face place.**
25 Q. And the document doesn't indicate there is a

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1 partnership, does it?
2 MR. CLARK: I'm going to, for Mr. Clark,
3 object. The document speaks for is itself. It's not up
4 to Mr. Clark to interpret what the documents says.
5 BY MR. MONSON:
6 Q. Well, when you read the document, Mr. Clark,
7 does it imply to you or do you believe as a result of
8 reading this document that Shames and Betts are partners
9 in San Diego Consumers' Action network?
10 **A. When I read this document I presumed they were**
11 **partners because that's what Ms. Betts told me they**
12 **were. I didn't have to think of anything past that.**
13 Q. Moving on to Exhibit 4, paragraph 31, Bates 6,
14 it says: On July 14th "Betts, representing SDCAN,
15 requested a CV and retainer for Expert Witness services
16 from" Clark "for the current rate case with SDG&E and
17 the Public Utilities Commission." How did that come
18 about?
19 **A. Ms. Betts and I were on the phone on a regular**
20 **basis. The -- she was asking -- she was constantly**
21 **sending documents with reference to the rate case. And**
22 **I finally told her that, you know, she has got to stop**
23 **sending documents until a retainer is in place. I am no**
24 **longer going to continue offering my services. She had**
25 **been promising me a retainer for a long time and I**

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1 finally said enough is enough. She said: I'll get you
2 one.
3 Q. And so you sent her the retainer information?
4 **A. What -- what Bates stamp is L and I'll tell you**
5 **if it's the right one.**
6 Q. Did you send her retainer information, is my
7 question.
8 **A. Yes, I did.**
9 Q. And let's look at Bates 119 through 122 -- 123.
10 So 121 is your CV, correct?
11 **A. Yes.**
12 Q. And then 122 is the fee schedule you sent for
13 this case?
14 **A. Yes.**
15 Q. And you wrote: "For Jennifer Betts" on it, as
16 opposed to SDCAN?
17 **A. I don't know if I just failed to take that off**
18 **or at that point she was still contemplating whether she**
19 **was going to have to do it on her. Because there is an**
20 **e-mail in the file where throughout this process she**
21 **wasn't sure there was -- for the lack of better**
22 **terminology, she didn't trust Mr. Shames.**
23 **And so her dialogue with me was, "If Mr. Shames**
24 **turns out to be a Kool-Aid drinker and part of the**
25 **scam" -- and that was her words -- "I might have to do**

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1 this on my own." And so I -- so there is an e-mail in
2 the file where I indicate to her that I committed my
3 services to her. She needs to tell me if I'm to work
4 for Mr. Shames and SDCAN or not.
5 So I think during this time frame all this
6 dialogue was going on, so I think at the time it was up
7 in the air as to which one I would actually get a
8 retainer signed from. So I just sent this as the
9 boilerplate because I think she was leaning on, at the
10 time of doing it, on her own. And I'll -- there are
11 e-mails in the file in the same time frame that
12 you'll -- if you care to go back and read through it, it
13 kind of goes over all of this.
14 Q. So Ms. Betts signed your fee schedule, schedule
15 of fees?
16 **A. No, she did not.**
17 Q. 122.
18 **A. No, she did not. No, she did not. I sent it**
19 **to her. She said: Thanks, I'll put a check to the mail**
20 **tomorrow with a check and backup drive of the documents,**
21 **which were the documents that she told me I would need**
22 **to review, which is how I came up with the \$25,000**
23 **retainer. Forgive me, I don't recall, but it's like 12**
24 **or 14 depositions, as well as other stuff. That's how I**
25 **came up with -- I think if you divide \$25,000 by 450 it**

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1 was about a weeks' worth of work or so, whatever it
2 turned out to be. So the next day I got another e-mail
3 from her when she realized it was \$25,000. And that's
4 kind of when everything unraveled and fell apart.
5 Q. Why is that?
6 **A. She was unhappy with the \$25,000 retainer.**
7 Q. Well, did she call you and tell you that?
8 **A. I think she sent me an e-mail expressing her**
9 **concerns. I think she accused me of being a plant for**
10 **SDG&E, something to that effect. There are some pretty**
11 **harsh e-mails that she sent back after she said: I'll**
12 **send you a check. I think the next day she started**
13 **sending me e-mails. And then she cooled down. You**
14 **know, she -- she had -- to her credit she had a lot of**
15 **on her plate at that time with everything that was going**
16 **on. She cooled down and she said she would get with**
17 **Shames and talk about it -- or Shames. Excuse me.**
18 Q. So on Exhibit 4, paragraph 33, Bates No. 7, it
19 is alleged that on July 14th Betts changed her mind and
20 sent you an e-mail, Exhibit M, just four hours earlier
21 having had confirmed a financial commitment. And you
22 said: "Referencing for the first time a question
23 regarding repayment of \$100,000 commitment to the movie
24 as," quote -- not, quote -- "as attempted leverage to
25 persuade Defendant and cross-Complainant." That's you.

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1 It doesn't say to do what.
2 **A. To work for free in the CPUC case. She didn't**
3 **want to pay the retainer.**
4 Q. So if we look at Exhibit M, which is Bates 125,
5 she is basically saying she didn't read your CV and
6 retainer when she replied to you. So she didn't see it
7 was \$25,000. She says she can't afford \$25,000. And
8 then she asks at the end: "Please update with me regard
9 to the movie status and your promise to repay my
10 \$100,000 check."
11 So when you read that, what did you do?
12 **A. We had a phone call specifically on that issue**
13 **and reminded her that the movie can't get done until she**
14 **finishes the rate case. And we can't get investors**
15 **until the screenplay gets done and we get insurance on**
16 **it. And she agreed.**
17 Q. After you got this e-mail --
18 **A. That was her update.**
19 Q. After you got this e-mail you had that phone
20 call?
21 **A. And if I recall, I think I sent her an e-mail**
22 **too. I don't exactly remember. But I know it was**
23 **shortly after this we had quite a lengthy phone call**
24 **regarding the \$25,000, whether or not Mr. Shames was**
25 **going to be a part of this with her.**

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1 And I explained to her that when she was
2 retained me the first time she was fully aware that I
3 discounted my time frame to her how many hours I worked.
4 Because she was losing everything she owned. And this
5 was a completely independent and separate case. She now
6 has another attorney. Has nothing to do with me or the
7 public or anything, that this is completely separate
8 case. That now she has somebody she is working with.
9 Between the two of them they can afford to pay for my
10 time as necessary to do the work. So we had a very
11 lengthy conversation regarding that issue.

12 Q. But the end of this July 14th, 2016 e-mail
13 says: "Update me with regard to the movie status,"
14 which you've testified you had lengthy conversations
15 doing that. And also: Update with regard to . . .
16 your promise to repay me my \$100,000 check."

17 What conversations did you have with her about
18 that?

19 A. That there was no promise to repay her anything
20 unless we found investors for funding the movie. The
21 only way she was going to get her money back and that we
22 were both stuck until we could get the -- an opinion
23 letter so that we could get insurance on the movie and
24 get investors and actually go out to a public offering.

25 Q. So you told her basically you didn't promise to

1 was engaged to get married. And then she -- I just had
2 recently gotten engaged to get married. And she just
3 totally went off the deep end. As I indicated earlier,
4 there was a constant barrage of issues over the past
5 year of her trying to get me to escort her to four-day
6 weekends on horseback riding, all kinds of thing,
7 knowing I was involved with somebody.

8 So when I finally told her I was engaged to get
9 married in combination -- I mean everything boiled up in
10 one night with her in one conversation. She was mad
11 about the retainer. She was mad that I was engaged --
12 that I gotten engaged to get married. And I told her to
13 please let that issue go. And her response was if I
14 don't work for free on this case with her and support
15 her and SDCAN on this case she would file this lawsuit
16 against me.

17 Q. And she told you this on July 14th, 2016?

18 A. It was either this phone call -- let me read
19 what this says.

20 Q. Well, this --

21 A. I haven't read this for a long time.

22 Q. This is where she brings up the e-mail that
23 says: "And your promise to repay my \$100,000 check."

24 A. And we either spoke that night or the next day.
25 We spoke at length on the phone. I am not sure what day

1 repay her \$100,000?

2 A. No, I did not. That's exactly what I told. I
3 never told her I was personally responsible.

4 In fact, like I said, if you want to refer to
5 it there is an e-mail just a few day prior to that
6 states just that, that the loan, a short-term loan as
7 you want to call it, is contingent on getting moneys
8 back from the investor, with the understanding her and I
9 both thought at the time she issued that check that the
10 PUC rate case wouldn't take nearly as long as it did.
11 That was something she was actively involved with. And
12 I had no control over how long that took.

13 Q. So how did you interpret this e-mail of
14 Exhibit M to be attempted leverage to persuade you to
15 work for free?

16 A. Ms. Betts was so upset. A couple things
17 happened in my phone call with her. Ms. Betts was so
18 upset about the \$25,000 retainer fee and working -- and
19 accusing me of being a plant for SDG&E all along, she
20 threatened me that if I didn't work for free without a
21 retainer and agree to get paid based on what happens
22 with the rate case that she would file this -- file a
23 lawsuit against me. That's how she used this case as
24 leverage.

25 In that same conversation I informed her that I

1 it was, but it was as a result of discussing that issue
2 when she threatened to file a lawsuit against me.

3 Q. And what did she say with regard to threatening
4 to file a lawsuit against you?

5 A. She told me that she is going to threaten to
6 sue me and try to hold me personally liable for this
7 \$100,000 if I didn't agree to work for her and Mr.
8 Shames and not charge them until after the rate case was
9 over.

10 What I didn't know at the time, and what I
11 didn't know at this time, is Mr. Shames had already
12 directed Ms. Betts at the time to start putting
13 documentation together utilizing my work product and she
14 had already been work on it.

15 Q. How do you know that?

16 A. There are e-mails that Ms. Betts informed me
17 that: Oh, by the way, Mr. Shames asked me to start
18 writing your declaration for you, instead of me writing
19 my own declaration. There are e-mails to that effect in
20 there.

21 So you look at the timing of when Mr. Shames is
22 giving her direction. Well, first of all, they know
23 they're going to use my work product and not pay for it.
24 They know they're going to -- he has got her already
25 working on putting it together. I have already provided

1 documentation to Mr. Shames to please provide me with
2 any work product, anything that you file with the CPUC
3 with my name on it and/or what your intentions are, that
4 there is no retainer agreement in place. Please don't
5 use my name unless there is a retainer agreement.
6 So all of these e-mails if you look at, the
7 calendar of events, it's all going on at that exact same
8 time. So when I had that discussion with Ms. Betts she
9 literally went into orbit.
10 Q. And she wanted you to work for free?
11 A. She wanted me -- what they wanted me to do --
12 Q. Did they ask you to work for free?
13 A. Yes. Because they didn't want me -- unless the
14 PUC agreed to pay me at the end. That was their caveat.
15 And Mr. -- following Ms. Betts' proposal to me, Mr.
16 Shames sent me one. And I wrote a very lengthy response
17 to him as for ethical concerns with violations that as
18 an independent expert --
19 Q. That's in your complaint. We will get to that.
20 We are not there yet.
21 A. So it's all within that same time frame, within
22 a week or two of each or where everything was taking
23 place.
24 Q. But you're saying that Ms. Betts said she
25 wanted you to work for free on the rate case?

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1 A. She said she did not have the money to pay me a
2 retainer. She wanted me to continue my work and partner
3 with them and get paid down the road --
4 Q. Well, that's not working for free.
5 A. Yes, it is. Because as I explained to her, as
6 an independent expert I cannot partner with any lawyer
7 contingent on my fees on the outcome of the case.
8 Q. I understand that.
9 A. Okay.
10 Q. So I understand.
11 A. So I explained that to Ms. Betts and told her:
12 I cannot work and not get paid. Because -- just
13 because -- if she is putting a caveat that it's
14 contingent then -- oh, I did tell her that if I were to
15 consider something like that, as long as you're
16 personally liable for the money so that my fee is not
17 contingent on the PUC, I can agree to figure something
18 else and figure out how we can do it to where everybody
19 is happy.
20 Q. So you get paid later?
21 A. If -- and either Ms. Betts or Mr. Shames would
22 agree to be personally responsible. So, therefore, they
23 wanted me to take the hit on whatever the PUC wouldn't
24 approve, if any at all. So they couldn't guarantee that
25 I was going to get paid. So, yes, they did want me to

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1 work for free in hopes of getting paid later.
2 Q. But Ms. Betts didn't say to you: I want you to
3 work for free completely, no chance of being paid at
4 all?
5 A. She told me that she could not afford to pay me
6 expert fees.
7 Q. Did she tell you: I want you to --
8 A. Yes.
9 Q. -- work for free with no chance of getting paid
10 at all?
11 A. She said she would not personally be
12 responsible for getting paid, so yes.
13 Q. I understand that. Did she tell you that she
14 wanted you to work for free with no chance of you ever
15 getting paid at all?
16 A. Yes.
17 Q. When did she tell you that?
18 A. In that same phone conversation. Like I said,
19 this lady was yelling at me and very upset at me because
20 she couldn't afford to pay the expert fees.
21 Q. And did she say to you: If you don't work for
22 free I'll file a lawsuit against you?
23 A. She said: If you do not agree to work with us
24 with SDCAN, I'm going file a lawsuit against you for the
25 \$100,000.

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1 Q. That she had loaned you?
2 A. No.
3 MR. CLARK: For Mr. Clark, I'm going to object
4 that it misstates facts not in evidence. That is not
5 what the record says.
6 BY MR. MONSON:
7 Q. What did Ms. Betts say? Did she say: I loaned
8 you \$100,000. I am going to sue you to get it back?
9 A. That is is not what she said. Oh, no. At that
10 point in time Ms. Betts said: I'm going to sue you for
11 the \$100,000. She did not use the word "loan." She
12 said: I'm going to sue you for \$100,000 and make you
13 pay for it.
14 Q. So, anyway, July 14th, 2016 is the first time
15 you ever saw her say to you that you had promised to pay
16 back the \$100,000?
17 A. There was one other time, and I don't recall
18 exactly when, when she wanted -- and I think it was
19 shortly after the rate case -- or we thought it was
20 going to take a long time.
21 I think she sent me an e-mail as a reference
22 and used the word "short-term loan." And I called her
23 immediately and said: Remember, this is what we talked
24 about. You're aware we can't finish this thing until we
25 get insurance. And we had a phone call after an e-mail

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1 she sent me and she was fine. She was just upset that
 2 the rate case was taking so long.
 3 Q. So she had proposed a short-term loan
 4 previously?
 5 A. No.
 6 MR. CLARK: For Mr. Clark, I'll object to the
 7 statement: Misstates facts not in evidence.
 8 BY MR. MONSON:
 9 Q. Well, Mr. Clark, you said something about a
 10 short-term loan. How did that come about?
 11 A. She made a reference to the money for the first
 12 time as a short-term loan without the condition attached
 13 to it, that it would be repaid upon receiving investor.
 14 Q. And this reference to a short-term loan was
 15 made after the check had been cashed?
 16 A. This was -- it was sometime before the check
 17 was cashed and the time frame we were just talking
 18 about. I just recall going through all these documents,
 19 seeing a -- one e-mail where she questioned the -- she
 20 just said, you know: What's the status?
 21 And I called her up and I shared with her that
 22 we can't go out and look for investors until we get
 23 insurance. That's what stopped us the first time.
 24 We're still there. And we can't get insurance until we
 25 finish the movie, which is the rate case that you're

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1 working on.
 2 Q. On Exhibit 4, paragraph 34, Bates No. 7 -- are
 3 you there?
 4 A. Which paragraph?
 5 Q. 34. It says: On August 18th, 2016, Clark had
 6 a conference call with Betts and Shames to review
 7 Clark's ethical concerns for Betts and Shames asking
 8 Clark "to basically partner with two attorneys and defer
 9 payments based on the outcome of a CPUC hearing until
 10 the CPUC approves invoices or not."
 11 So this was a conference call you had with
 12 Mr. Shames and Ms. Betts?
 13 A. Yes, subsequent to the issue and the follow-up
 14 discussion with Ms. Betts. Mr. Shames attempted to send
 15 me his version of an agreement or a retainer. And I
 16 responded back to him and outlined the ethical issues
 17 with his -- with his retainer and the attempt for me to
 18 change my testimony. And I told him I refused to do
 19 that.
 20 Q. What invoices would the CPU have to approve?
 21 A. That's a good question. You have to check with
 22 your clients because my invoices would go to -- as an
 23 expert would go to the client and would get paid within
 24 30 days. I don't know how the CPUC proceedings work.
 25 That's something you have to ask your client.

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1 Q. Well, aren't they invoices submitted by you?
 2 A. Yes, they are. And I don't know -- as a
 3 indicated, my invoices would be submitted -- in this
 4 case would have been submitted to SDCAN. And they would
 5 have paid them. And then they would have had to submit
 6 those to the PUC for reimbursement as part -- again, I
 7 don't know how the PUC proceedings work. So when I say
 8 what happens up there, I am totally -- don't have a
 9 clue. I'm not sure how they evaluate invoices or that
 10 kind of thing.
 11 Q. Well, you invoice for your expert work, right?
 12 A. Well, I have attorneys who usually pay me right
 13 away. On rare occasions it takes a bit more time, but
 14 usually right away. Quite frankly, as Ms. Betts did
 15 when I invoiced her for her case.
 16 Q. And then you refer to Exhibit P, which is Bates
 17 128. If you go to Bates 128, please.
 18 A. Oh, I'm sorry. Okay.
 19 Q. And that's an e-mail from Michael Shames to you
 20 of August 18th, 2016.
 21 A. No, that's not correct. This is an e-mail from
 22 me to Michael dated August 18th, 2016 following our
 23 phone call and him trying to convince me --
 24 Q. If you just bear with me. Look at the e-mail
 25 in the middle of the page, August 18th, 2016 at

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1 3:45 p.m.
 2 A. Got you.
 3 Q. To you from Mike.
 4 A. Got you. Okay.
 5 Q. Your e-mail is above that at 5:20 p.m.
 6 A. Got it.
 7 Q. "Jennifer and I are going put together a scope
 8 of work along with a detailed retainer agreement in
 9 which you will be compensated with monies upfront and
 10 during your work period."
 11 Was that discussed?
 12 A. Yes.
 13 Q. Would that be ethical?
 14 A. Yes.
 15 Q. They'll endeavor to minimize your risk, on your
 16 part. They'll still send you a letter addressing the
 17 ethical issues you raised. And he hopes to have
 18 something to by next week.
 19 So do you remember receiving that?
 20 A. Yes.
 21 Q. And later that day, at 5:20 you e-mailed him
 22 back: "Please send me any statutes, rules of the court,
 23 or codes that I can see what the PUC rules are for
 24 compensating expert bills on these types of issue [sic]
 25 and the anticipation there with the moneys carried by me

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1 until the end."
 2 And they weren't proposing you to carry fees,
 3 they were proposing to pay you up front, correct?
 4 **A. No, they were not. That's what this e-mail**
 5 **states. But in their dialogue, their proposal that they**
 6 **sent me was not the case. They wanted me to carry some**
 7 **money until the end. In my counter-proposal I told them**
 8 **I would consider doing that.**
 9 Q. I'm not asking about your counter-proposal.
 10 I'm just asking you about this document at this time.
 11 **A. Let me finish my statement and then you can go**
 12 **back and ask. But this statement was as a result of our**
 13 **phone call --**
 14 Q. This statement -- and you're pointing to 128
 15 the bottom e-mail?
 16 **A. Yes. And then following -- because of that and**
 17 **the response. And what they were in the phone call**
 18 **asking me to consider, I made this following e-mail**
 19 **statement that states: "Please send me any statutes,**
 20 **rules of the court, or codes that I can see what the PUC**
 21 **rules are for compensating expert bills on these types**
 22 **of issue [sic] in the anticipation there would be moneys**
 23 **carried by me until the end."**
 24 **So I was okay with originally now what Mr.**
 25 **Shames is trying not what Ms. Betts was offering. I was**

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1 trying what Mr. Shames was considering. However, I had
 2 ethical concerns with what he was asking me to do. And
 3 before I could agree to doing it I was asking him for
 4 assistance to show me that what he was asking was okay
 5 with the court.
 6 Q. Okay.
 7 **A. Or the PUC.**
 8 Q. Paragraph 35 of Exhibit 4 Bates No. 7, that
 9 says: On September 9, 2016 Clark received a retainer
 10 proposal from Shames --
 11 **A. Yes.**
 12 Q. -- attached as Exhibit O.
 13 That same day, September 9th, Clark received an
 14 e-mail notification from Betts notifying Clark not to
 15 sign the proposed -- the proposal from Shames for fear
 16 it was a "trap." And that's attached as Exhibit P.
 17 And she is apparently commenting to you that
 18 defendant Shames is attempting to change previous
 19 testimony to now support the CPU and Cal Fire,
 20 eliminating the finding that CPU and Cal Fire and SDG&E
 21 all worked together to conceal the design problem that
 22 caused the 2006 Witch Creek Fire as well as the 2003
 23 Cedar and Paradise Fires.
 24 Let's look at Exhibit O. So this is an e-mail
 25 that Mr. Shames is sending to you --

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1 **A. What Bates?**
 2 Q. Oh, excuse me. 131 Bates.
 3 **A. Okay.**
 4 Q. This is an e-mail that Mr. Shames sends to you
 5 on September 9th, 2016, a copy to Jennifer Betts. And
 6 he sends you the proposed memorandum of understanding
 7 between San Diego Consumers' Action Network and Ed
 8 Clark, correct?
 9 **A. Correct.**
 10 Q. Did you think that was forming a partnership
 11 with them?
 12 **A. I would have -- my intent was -- my thinking**
 13 **was he sent me an MOU to review.**
 14 Q. Yes.
 15 **A. And, yes, he was asking me to -- let me -- what**
 16 **was your question again? Say that again.**
 17 Q. Did you think you were forming a partnership
 18 with SDCAN if you signed this MOU?
 19 **A. At the time I don't think I really thought**
 20 **about it. Alls I did was receive it and look at it. So**
 21 **I don't know what I thought at the time, other than the**
 22 **fact that he sent me an MOU.**
 23 Q. What do you think now?
 24 **A. I think that they wanted me to work for free**
 25 **and carry the money, and they weren't going to be**

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1 personally responsible. And the fact that I wouldn't
 2 work for them, I got this lawsuit filed against me by
 3 Jennifer Betts.
 4 Q. But I thought you said that they were trying to
 5 make you a partner in the lawsuit in the rate hearing.
 6 **A. They were. And I explained to them that they**
 7 **can't do that. That is the reason I requested the**
 8 **ethical questions I did and the statute from the CPU,**
 9 **that Mr. Shames is telling me: Hey, the CPU proceeding**
 10 **is different than civil litigation. This is not in**
 11 **superior court. The rules are different. So because I**
 12 **did not know, I did the obvious thing and asked Mr.**
 13 **Shames: Okay, show me.**
 14 Q. In this memo of understanding aren't they
 15 proposing to pay you money?
 16 **A. Yes.**
 17 Q. And they're not saying we have to win the rate
 18 case to pay you money. They're saying --
 19 **A. Let's go to the memo of understanding.**
 20 Q. Well, they're saying they'll pay you money.
 21 **A. Let's go to the memo so we can go through each**
 22 **step. Okay? So what part are you referring to?**
 23 Q. The part where they say they're going to pay
 24 you money.
 25 **A. Okay. Let's go down here. Let me look.**

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1 Q. It says in the third paragraph: "SDCAN will
 2 pay Clark at a rate of \$350 per hour and will establish
 3 a cap of \$7,000." Did you understand that?
 4 **A. That was his proposal. He reduced my rate from
 5 had 450 to 350 arbitrarily.**
 6 Q. Did you understand --
 7 **A. That's what he was attempting at the time.
 8 Yes, at a much reduced rate.**
 9 Q. But they're offering you pay you money. It has
 10 nothing do with the outcome of the rate case, correct?
 11 **A. Well, keep reading, sir.**
 12 Q. At the time the rate cap of -- "At the time
 13 that the \$7,000. . . cap is reached, Clark will notify
 14 SDCAN, at which times SDCAN continue to at the rate of
 15 \$350 per hour for any additional authorized work done
 16 for SDCAN in this case."
 17 Then the fourth paragraph says: "After
 18 delivery of the draft and agreement. . . SDCAN will
 19 tender a retainer of \$2,500. Upon completion of
 20 testimony, SDCAN will tender additional payment of
 21 \$2,500. Final payment of any remaining monies will be
 22 provided upon the submission of the case to the CPUC.
 23 None of the services provided by Clark will be
 24 contingent upon the outcome of the case."
 25 **A. Well, what is not said there is that will be**

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1 **provided to the CPUC. And my response to them was if
 2 they don't approve it all, you'll be personally liable
 3 for it. And the answer was no.**
 4 Q. I know. We're in negotiation here. But
 5 they're not saying you have to work for free.
 6 **A. Yes, they are. They are asking me to carry
 7 money without providing any response to my questions
 8 that I -- that the PUC allows me as a retained expert to
 9 do that.**
 10 Q. Are they trying in any way to influence your
 11 testimony one way or the other?
 12 **A. Yes.**
 13 Q. How?
 14 **A. Well, let's go a little farther.**
 15 **Oh, yes, here we go. In paragraph 2: "Clark
 16 will provide written Direct Testimony in CPUC
 17 Proceeding. . . regarding SDG&E's (including Larry
 18 Davis. . . as well as other SDG&E and Sempra Executives)
 19 intentional concealment from Cal Fire and [sic] the
 20 CPUC."
 21 That directly contradicts that --
 22 everything that I and Ms. Betts had found, discovered
 23 and determined. Cal Fire and the PUC were directly
 24 involved in concealing this with SDG&E and now Mr.
 25 Shames is asking for me to change my testimony that**

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1 **SDG&E concealed the information from Cal Fire and the
 2 PUC.**
 3 Q. Well, did SDG&E conceal from Cal Fire the CPUC
 4 and CPS -- did they conceal -- what did SDG&E conceal
 5 from Cal Fire? Not a clear question. Let me restate
 6 it.
 7 **A. Restate it again because I am not sure where
 8 you're going with that.**
 9 Q. Well. This paragraph says: Clark will provide
 10 written direct testimony in the CPUC hearing regarding
 11 SDG&E's intentional concealment from Cal Fire, the CPUC
 12 and CPSD of origin and causation evidence related to the
 13 2007 Witch Creek Fire and prior fires.
 14 There is more, but what are we talking about
 15 there, intentional concealment? In other words,
 16 SDG&E -- they want you to testify that SDG&E was
 17 concealing from Cal Fire the causation of the 2007 Witch
 18 Creek?
 19 **A. Mr. Shames and Ms. Betts -- and Ms. Betts was
 20 actually aware, and I think interpreted this the same
 21 way I did when we received it. That's why she responded
 22 with: Don't sign it. It's a trap from Mr. Shames.**
 23 **Mr. Shames was fully aware that our position on
 24 this entire file was that SDG&E, Cal Fire, and the PUC
 25 were all working in cahoots. By this time PUC didn't**

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1 **publish the findings. PUC and Cal Fire were helping
 2 SDG&E conceal the cause of this fire. Okay?**
 3 **So that was my position. That continues to be
 4 my position. And so when I -- that's why Mr. Shames
 5 when he sent this to me asking me to go on record and
 6 argue on SDG&E's behalf was causing me to change my
 7 testimony or asking me to change my testimony.**
 8 Q. In other words, they wanted you to change that
 9 SDG&E intentionally concealed the cause from Cal Fire
 10 and the CPUC?
 11 **A. Correct.**
 12 Q. When, in fact, you believe that SDG&E, Cal
 13 Fire, and the CPUC circled the wagons and conspired
 14 together to put the whole thing under the rug?
 15 **A. Both myself, your client Ms. Betts, Mr. Shames
 16 was fully aware of our position.**
 17 Q. But now we're at the rate hearing. At the rate
 18 hearing SDG&E wants to -- what's their purpose at the
 19 rate hearing? To prove they weren't negligent, correct?
 20 It wasn't their fault?
 21 **A. Correct. And I have a follow-up letter to
 22 this, to Mr. Shames pointing out all the flaws with
 23 this. And I did, in my effort to try to work with them
 24 and come to a resolution, point out that I understand
 25 that this is against SDG&E. I won't say those things.**

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1 But I can still support your efforts as long as I don't
 2 have to go on record and say that I -- that -- I am not
 3 going to say that they concealed it from these people
 4 because they were all in on it together.
 5 But I did share with them, as far as the cause
 6 of the Witch Creek Fire, the reasons behind the design
 7 that caused the fires. I'm happy to support them.
 8 There is an e-mail in the file that talks specifically
 9 on point to your question, on what I said I would do or
 10 consider if we were able to somehow get past a lot of
 11 these issues that he has in here.
 12 Q. So the idea was you would testify to the PUC at
 13 the rate hearing that the cause of the fire was the
 14 negligence of SDG&E because of the way they put their
 15 power poles up?
 16 A. And the intentional negligence, quite honestly.
 17 I mean they knew about this in 2003. So there was a lot
 18 to be said.
 19 Q. But all the trials that had gone on before by
 20 the homeowners had just been as to damages, not as to
 21 the liability, correct?
 22 A. You know, I don't know. You are asking me
 23 to --
 24 Q. All the ones you've been involved in.
 25 A. The only one that I was involved with was Ms.

1 A. I think I was still open if things -- I hadn't
 2 said no yet. Alls I was doing was saying -- you know, I
 3 responded with all the issues of his memo. And on
 4 September 12th I responded.
 5 So I'm not exactly sure when the time frame was
 6 that -- I think I called Ms. Betts and said, "Is it okay
 7 to talk to Mike? You guys seem to have a falling out."
 8 She had sent me an e-mail, I think a blind cc of
 9 correspondence between of two of them. And it was her
 10 questioning the same things I was questioning.
 11 So I called her to say, "Hey, you know, my
 12 allegiance is to you. What do you want me to do? Are
 13 you doing this by yourself?"
 14 At this point in time it was still uncertain
 15 who she was going to have me work for.
 16 Q. So you hadn't come to any agreement as to what
 17 your fee would be?
 18 A. No.
 19 Q. Or what the scope of your testimony would be
 20 about?
 21 A. That's correct.
 22 Q. And had Ms. Betts threatened you again to file
 23 a lawsuit against you to collect the \$100,000 she said
 24 she loaned you?
 25 A. When we were talking about this I don't think

1 Betts. Other than the one I recently got retained by
 2 Culbreth & Schroeder. The only one I actually got
 3 involved with was Ms. Betts and then later her friend --
 4 Q. Ross.
 5 A. -- Ms. Ross.
 6 Q. In any event, you didn't sign this MOU?
 7 A. That's correct. I responded to it.
 8 Q. You had issues with it.
 9 And then Ms. Betts sent you an e-mail, which is
 10 marked as Exhibit P. It's Bates 136. And so she sends
 11 you that e-mail on the same day, just a few hours later.
 12 And it says: From Jennifer Betts to Ed Clark,
 13 September 9th, 2016: "Don't sign until we can talk.
 14 Methinks a trap. Been battling mightily."
 15 And after you received that did you call
 16 Ms. Betts?
 17 A. Yes. I don't recall if I called her or she
 18 called me. I don't know who called who.
 19 Q. Did you have a phone conversation with her?
 20 A. We were on the phone pretty much continuously.
 21 So I don't know exactly what the time frame would be or
 22 the day would be.
 23 Q. And did you come to any conclusion as to
 24 whether or not you would serve as an expert witness for
 25 SDCAN?

1 that issue came up.
 2 Q. And then if you look at paragraph 36 of
 3 Exhibit 4, Bates 7, it says: On September 12th -- it's
 4 now a few days later -- 2016, Clark replied to Shames
 5 "addressing his proposal and offering an alternative
 6 proposal for consideration."
 7 And then you attached that as Exhibit Q, which
 8 is Bates 139. And 139 is an e-mail from you of
 9 September 12th to Shames, copy to Betts regarding the
 10 proposed MOU.
 11 And the first thing you say in there is: "Your
 12 memo indicates we're working jointly. This is an
 13 attorney expert relationship. You are hiring me for my
 14 expert opinion and to testify if needed as an expert. I
 15 am not a party to the litigation or a partner working
 16 jointly."
 17 So now you're capitalizing on the word
 18 "jointly," which was in the MOU, and saying that you
 19 don't want to be a partner or be jointly with them,
 20 correct?
 21 A. It's pointed out the fact that the relationship
 22 between an expert and an attorney, it's clear that you
 23 can't be partners. Here I'm explaining this to an
 24 attorney who should already know that.
 25 Q. And then No. 4 is where you talk about what

1 your testimony would be --

2 **A. You skipped over No. 2. "My rates are not**

3 **negotiable" --**

4 Q. I am not interested in No. 2 or No. 3.

5 No. 4, it says: "Your memorandum, suggests

6 testimony to support SDG&E concealing information from

7 Cal Fire and the PUC. That is testimony. I cannot

8 provide, as the PUC and Cal Fire are part of the problem

9 as they both intentionally concealed information in

10 their reports made public to support the SDG&E hiding

11 the cause of the Witch Creek fire from the public,

12 including refusing to meet jointly with me with all

13 parties present. That point might be a deal killer fir

14 you to engage my services."

15 So the whole issue then of whether or not to

16 retain you is whether or not you would testify in a way

17 that they would find beneficial for their case, right?

18 **A. The only way they would retain me is if they**

19 **were going to use my work product and my name to try to**

20 **win the case.**

21 Q. But you're saying they wanted you to testify

22 contrary to what your findings were.

23 **A. He was trying to get me to change -- Mr. Shames**

24 **was trying to get me to change my testimony to support**

25 **what he thought would be a win against SDG&E by me going**

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1 **on record and opposing what I have been on record many**

2 **times saying.**

3 Q. If you look at Bates 140.

4 **A. I notice you're not reading No. 5, but it goes**

5 **to what I was talking about earlier.**

6 Q. No. I am not at No. 5 right now. And there is

7 question pending.

8 **A. Okay.**

9 Q. If you look at SAC Bates 140, this is a few

10 days before page 139. So on September 9th, Shames

11 writes you an e-mail. It says: "We finally got our act

12 together on our end. Thanks for your patience. I've

13 drafted a proposed MOU that estimates" so many hours.

14 And then he talks about how is he trying to

15 relieve your concerns about the ethics. And he talks

16 about why he reduced your hourly rate. And then he asks

17 if you have any questions. And sending you the MOU so

18 you could make provisions to you.

19 And you didn't make any provisions to it

20 because you objected to it, correct?

21 **A. Correct. Actually what I did -- and I didn't**

22 **make any changes to him. Since his was so far off base**

23 **I think I sent another one.**

24 Q. Do you have that?

25 **A. It's in your file.**

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1 Q. We'll come to it then.

2 **A. Actually you have it.**

3 Q. I see. We'll get to it.

4 And in Exhibit 4, paragraph 37, Bates No. 8,

5 paragraph 37 says: On September 21 Clark received

6 another proposal from Betts, and attached as Exhibit R,

7 attempting to get Clark "to sign a document with new

8 payment terms for the movie development fee and

9 utilize" Clark's "time and expertise as an expert to pay

10 back development fee in lieu of waiting for the movie to

11 be funded as originally agreed."

12 If you look at Exhibit R, this is an e-mail

13 from Betts to you on September 21 --

14 **A. What Bates stamp?**

15 Q. Excuse me. 145.

16 **A. Okay. You skipped over the response back to**

17 **Mr. Shames on the countering his proposal, correct?**

18 Q. You mean Exhibit T?

19 **A. Bates stamp 142.**

20 Q. Well, let's look at 142 real quick.

21 This is obviously prepared by you again. Your

22 Expert Witness Services agreement.

23 **A. Yes, modifying it following my reply back to**

24 **him regarding his.**

25 **So you asked me the question if I modified his.**

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1 **And I said no, I replied with a -- with another one.**

2 **And this is it.**

3 Q. Yes, it is part of Exhibit Q.

4 So that's your counter-proposal, so to speak?

5 **A. Yes. And this is where I was offering to only**

6 **work up to a certain amount of money and asking that if**

7 **the PUC didn't pay for it they would have to be**

8 **personally responsible so it doesn't come across as**

9 **though I was partnering with a couple of attorneys**

10 **helping the outcome of a case.**

11 Q. And here you're saying the scope of your work

12 would be "regarding SDG&E, Cal Fire, and the PUC

13 intentional concealment of the cause of the Witch Creek

14 fire."

15 **A. Which is what my testimony has always been.**

16 Q. Right. Which is a little different than what

17 the other proposal was. We've already gone over it.

18 **A. And it at the end of -- one, two, three,**

19 **four -- the end of paragraph 4: "SDCAN and its**

20 **principles, officers, and directors agrees to be**

21 **personally responsible to pay all money not authorized**

22 **or paid by the CPUC owed to Expert."**

23 Q. And then you have a place on there for Mr.

24 Shames and Ms. Betts to sign and personally guarantee?

25 **A. Correct.**

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1 Q. And if we go to Exhibit R, which is 145, so
2 this is where Ms. Betts is proposing that of the
3 \$100,000 she already advanced to you --
4 **A. I think her and Mr. Shames are proposing it.**
5 **They spoke together, and she just happened to be the**
6 **author.**
7 Q. Yes. And she is proposing that they'll pay you
8 \$18,000. And that will be credited as a payment towards
9 the \$100,000. Correct?
10 **A. That's what the document says.**
11 Q. And if you --
12 **A. Let me back up. Hold on. I kind of was**
13 **reading ahead.**
14 **I want to strike my last answer -- or correct**
15 **it, if I can.**
16 **This documents does not state that, according**
17 **to your question, that \$18,000. Are you looking at the**
18 **same document, the one that's marked 145?**
19 Q. Exhibit R. It's your Exhibit R.
20 **A. Well, I'm looking at Bates stamp that you're**
21 **looking at 145.**
22 Q. Exhibit R is two pages, 145 and 146.
23 **A. That 145 is the e-mail --**
24 Q. Yes.
25 **A. -- that she sent me that does not say that.**

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1 Q. 146 does.
2 **A. Now we're going to go on to 146. And that**
3 **documents states it.**
4 Q. Correct. Thank you.
5 I mean it states right at the top of 146:
6 "Terms:" The Edward Clark, Jr. "acknowledges and agrees
7 that he owed Jennifer S. Betts \$100,000, from a personal
8 loan made by Jennifer S. Betts" to Ed Clark, Jr. on
9 September 23rd, 2014.
10 MR. CLARK: I'm going to object for the witness
11 that he is -- he is making a statement, but he is
12 reading off of a document that Mr. Clark didn't agree
13 to.
14 BY MR. MONSON:
15 Q. I haven't asked a question yet. So you can
16 object when I'm done asking a question. You can object
17 when I'm done asking a question.
18 I read from page 146 the first sentence of it
19 that talks about you acknowledging \$100,000 loan from
20 Jennifer Betts.
21 **A. Ms. Betts' position, yes.**
22 Q. When you read this, did you do anything or
23 contact Ms. Betts to refute that there was a \$100,000
24 loan?
25 **A. Yes, I did.**

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1 Q. What did you do?
2 **A. We had another phone call -- I don't recall if**
3 **I sent back an e-mail on this thing. I either sent an**
4 **e-mail or a text. I don't recall. But I didn't find**
5 **any texts so I'm not sure.**
6 **Obviously I told her that she was completely**
7 **mischaracterizing what her e-mail says, first of all.**
8 **And that this was her first attempt to try to get me to**
9 **sign something changing her -- her at will investment in**
10 **the movie to something that I'm personally responsible**
11 **for.**
12 Q. When you --
13 **A. So I called her and told her that this is**
14 **totally out of character, totally wrong and 100 percent**
15 **a complete lie.**
16 Q. When you read Bates 146, after you read the
17 first sentence did you finish reading the rest of the
18 document?
19 **A. You know, I don't think so. I don't think I**
20 **did. Now that you remind me, I think I sent her back**
21 **and said: I read the first statement and stopped.**
22 Q. So you didn't read the rest of it?
23 **A. I don't know -- when I first read it, I read**
24 **the sentence. But when I first read it, I stopped and**
25 **e-mailed her back immediately and said: Based on your**

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1 **first statement.**
2 Q. There is an e-mail that says that?
3 **A. I believe so. There was an e-mail or a phone**
4 **call or a voicemail or something. But I stopped.**
5 **You asked the question so you obviously got it**
6 **from someplace. So I have to go back and look. It's**
7 **probably in the file over there.**
8 Q. My question is: When you read this, were you
9 shocked because it wasn't true?
10 **A. Yes. It was 100 percent a complete lie.**
11 Q. And did you sit down at a computer and write an
12 e-mail or on an iPhone and write an e-mail and say:
13 This is not true?
14 **A. Yes. I don't know if I actually wrote it or if**
15 **I called her and total her that.**
16 Q. I understand you can testify you called her and
17 told her that. No problem with that --
18 **A. I don't remember.**
19 Q. -- because that's what you're going to testify
20 to.
21 I want to know if you have any written
22 documents that you sent to her saying: I refute this.
23 There was no loan.
24 **A. I'm going to say that I presented to you**
25 **documents pages 1 through -- zero through 3,200 that you**

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1 didn't ask me that specific request for a document
2 today. And if it is -- if I have it, it's in those
3 documents.
4 I haven't reviewed it. I haven't looked at it.
5 I recall thinking that. I don't recall if it was just
6 verbal or if I did it in a writing. So as I sit here
7 today, I can't tell you which one it is, but can tell
8 you that as soon as I read that --
9 Q. If such an e-mail exists, it's in the 3,200
10 pages?
11 A. If I put it in writing, it's most likely done
12 by e-mail. Unless I did it by a text. And, again, I
13 didn't look at text messages. I don't know.
14 So as you sit here today, I quite honestly
15 don't remember how I communicated to it. But it was a
16 deal killer. And there was no way in the world that we
17 could go forward if that's what she planned on doing.
18 Because she is trying to change what our agreement was.
19 Q. This agreement, if she said: It's \$100,000
20 loan and I'll give you a credit for \$18,000, that would
21 be taxable to you, the \$18,000, right? You do pay taxes
22 for the income you get as an expert, correct?
23 A. Yes, I do.
24 Q. So if you got \$18,000, that would be taxable?
25 A. Yes, absolutely. I get 1099s, yes. I get a

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1 **1099 from everybody that I work for.**
2 Q. How did you declare the \$100,000 on your taxes
3 the year it was paid to you?
4 MR. CLARK: On behalf of Mr. Clark, I'm going
5 to object on the question as it's irrelevant to this
6 particular case. Mr. Clark's tax reportings are
7 protected by the U.S. Constitution.
8 Mr. Clark is directed he is not going to answer
9 any questions regarding his tax position on this case.
10 BY MR. MONSON:
11 Q. Well, isn't it true you didn't declare the
12 \$100,000 as income?
13 MR. CLARK: On behalf of Mr. Clark, his tax
14 returns and how he declares things are protected under
15 the U.S. Constitution.
16 And he is directed not to answer any questions
17 where his taxes are concerned.
18 BY MR. MONSON:
19 Q. On the tax returns for Circle the Wagons, LLC
20 2012 [sic] did it ever declare the \$100,000 as an
21 investment, as income or as a write-off of any type? Is
22 the \$100,000 reflected anywhere in the tax returns of
23 Circle the Wagons 2012, LLC?
24 MR. CLARK: On behalf of Mr. Clark I will
25 object on the grounds that Circle the Wagons, LLC is not

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1 a part of this case, tax returns for both Circle the
2 Wagons and Mr. Clark personally are protected by the
3 U.S. Constitution.
4 And this witness is directed not to answer any
5 questions regarding taxes.
6 And the evidence and the question is not
7 calculated to lead to any admissible discovery.
8 BY MR. MONSON:
9 Q. So I take you then you didn't sign Exhibit R?
10 A. No, I did not.
11 Q. And on the last paragraph of Exhibit R, Ms.
12 Betts is essentially saying that if the PUC doesn't
13 allow all your expenses that she'll make up the
14 difference, correct?
15 MR. CLARK: I'm going to object for the
16 witness. For Mr. Clark I will object just that the
17 document speaks for itself. It is Ms. Betts' document.
18 BY MR. MONSON:
19 Q. Well, did you read it?
20 A. No, I did not once I got past the first part.
21 Q. So you only read the first sentence?
22 A. When she tried to lie about and tried to, you
23 know, pull this stunt, I stopped and it was over.
24 MR. MONSON: It is now 1:00. Do you think we
25 should take like a half hour break, grab a sandwich

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1 somewhere.
2 MR. SHAMES: No more than a half hour.
3 MR. MONSON: No more than a half hour. Yes,
4 thank you. We'll be back at 1:30.
5 (Whereupon a lunch recess was taken
6 from 12:58 p.m. until 1:30 p.m.)
7 LUNCH RECESS
8 ∷∷∷
9 ∷∷∷
10 ∷∷∷
11 ∷∷∷
12 ∷∷∷
13 ∷∷∷
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1 AFTERNOON SESSION
2 SAN DIEGO, CALIFORNIA; MARCH 28, 2018; 1:32 P.M.
3
4 MR. MONSON: Back on the record.
5 EXAMINATION (RESUMED)
6 BY MR. MONSON:
7 Q. So on Exhibit 4, paragraph 38, Bates No. 8, you
8 indicate that from July 14th through September 28th of
9 2016 Betts and Shames were -- and you were unable to
10 reach an agreement to reach a reasonable dialogue --
11 wait a minute -- "unable to reach reasonable dialogue
12 and retention amount for" Clark to support their
13 "representing SDCAN with expert testimony." And then
14 you attached Exhibit S. Exhibit S is 148.
15 So in 148, your e-mail at 12:13 p.m. on the
16 28th, you're confirming that you haven't received a
17 retainer and that you won't be serving as an expert for
18 them, correct?
19 **A. Which Bates stamp number are you on?**
20 Q. I'm sorry. 148.
21 **A. On 148. The document speaks for itself, but I**
22 **put them on notice I'm leaving -- absent my receiving a**
23 **retainer, I'm leaving town.**
24 MR. CLARK: Document speaks for itself.
25 \\\

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1 BY MR. MONSON:
2 Q. That's on September 28th?
3 **A. Yes, at 12:13 p.m.**
4 Q. When did you first learn that -- when did you
5 first learn that Jennifer Betts had filed a lawsuit
6 against you for a \$100,000 loan?
7 **A. When I was served.**
8 Q. Do you remember when that was?
9 **A. I would have to look at the complaint from the**
10 **day I was served.**
11 Q. If you go to Bates No. 217, the very last page
12 of your complaint, which is -- it's 216. Part of
13 Exhibit B. Page 215.
14 MR. SHAMES: Yes.
15 BY MR. MONSON:
16 Q. And that's a letter you sent to Jennifer Betts
17 on January 4th, 2016.
18 **A. Yes, that's correct.**
19 Q. It says: "Please be advised I m in receipt of
20 the complaint filed by you and served upon my office
21 Thursday December 29, 2016."
22 So would that be the date you first learned
23 that you been served, December 29th, 2016?
24 **A. No, I think it was when I got back to my**
25 **office. I think it was served on my office. And I**

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1 **think -- I think it might have been the following**
2 **Monday. Whatever date January 4th was, that's the day**
3 **that I saw the complaint. I sat down and wrote this**
4 **letter.**
5 Q. No one called you and said you were served or
6 anything?
7 **A. No. My office -- I think my office did. But I**
8 **didn't know what it was until I read it. I own an**
9 **insurance company so it's not uncommon to get served.**
10 Q. But, anyway, December 29th, or shortly
11 thereafter, January 4th is when you first learned that a
12 lawsuit had been filed?
13 **A. Correct.**
14 Q. So on Exhibit S, which is page 148 --
15 **A. Bates Stamp 148?**
16 Q. Yes.
17 **A. Okay.**
18 Q. So that's an e-mail to you from Michael that
19 says: "Jennifer informs me that you have been unable to
20 reach an accommodation. It's unfortunate, but I do not
21 see how we will be able to retain your services based
22 upon the premise that there is a 'market value' for your
23 information."
24 Anyway, around September 28th is when it was
25 clear you no longer were going to be an expert witness

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1 for them, correct?
2 **A. That's correct.**
3 Q. And then if you look at paragraph 39 of
4 Exhibit 4, on page 8 of the complaint -- of the
5 cross-complaint.
6 **A. 39.**
7 Q. Yes.
8 **A. Okay.**
9 Q. 39 says that: Back on July 21st, Clark
10 informed "Shames via e-mail not to utilize" Clark's
11 "name in any way, or use his name in any Argument if"
12 Clark "is not a retained expert." I'm substituting
13 "defendant" cross-complainant" for the names.
14 And then you sent an e-mail to him, which is
15 Exhibit T, which is page 150. And in that e-mail, which
16 is July 21st, 2016, the middle of the first paragraph it
17 says: "I need to be retained as the expert if you are
18 going to use me in any way which includes using my name
19 on any pleading or documents."
20 **A. So you're on page 150.**
21 Q. 150.
22 **A. Is that where it starts?**
23 Q. Right. In the paragraph that says: "There
24 must be some confusion."
25 **A. Okay.**

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1 Q. It says: "I need to be retained as the expert
2 if you're going to use my name."
3 **A. Correct.**
4 Q. You were already designated as an expert at
5 that time, weren't you?
6 **A. Not to my knowledge.**
7 Q. No, but you've learned since then that they
8 already used your name and designated you as an expert?
9 **A. Jennifer Betts informed me that Mr. Shames had
10 already designated me as an expert without a retainer
11 agreement.**
12 Q. Right.
13 **A. And utilized my name in some fashion in support
14 of his case.**
15 Q. But without a retainer agreement -- but at
16 least having some understanding that you were going to
17 be doing work for him?
18 **A. We were actively engaged in preparing, trying
19 to come up with a retainer agreement.**
20 Q. But even though there was no retainer
21 agreement, you had discussions with them about serving
22 as an expert witness?
23 **A. Correct.**
24 Q. In fact, we already went over this, but back
25 early in your complaint, when you first met Mr. Shames

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1 at Ms. Betts' house -- and you have the paragraph. The
2 sentence in there that says you were going to do work
3 for them, but you say it wasn't an agreement yet.
4 **A. That's correct.**
5 Q. Do you have a website?
6 **A. Yes.**
7 Q. And you have your theory on the website of the
8 video of how the fire started with the poles and the
9 wires going through them --
10 **A. Yes.**
11 Q. -- in your demonstration.
12 Is any of that proprietary knowledge that you
13 own? I mean it's put out there to the public.
14 **A. No.**
15 Q. And your book is on your website too? Yes?
16 **A. Yes.**
17 Q. The book "Circle the Wagons"?
18 **A. Yes.**
19 Q. And it is not a fictional book, right?
20 **A. No. It's reality.**
21 Q. So it's your knowledge about what everybody was
22 doing with respect to the fire, SDG&E, and the various
23 agencies?
24 **A. Yes.**
25 Q. And you're aware that at the rate hearing case

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1 eventually Jennifer Betts tried to introduce into
2 evidence some of the information from your book and from
3 your website and from various depositions that you been
4 in?
5 **A. Yes, after you guys obviously lied about it for
6 a long time I found out later that they utilized
7 information from me.**
8 Q. What do you mean: You guys lied about it? I'm
9 sitting here. I didn't lie to you about anything. So
10 who is "you guys"?
11 **A. Well, I'm going to assume then you're
12 representing Ms. Betts. But if you go back and look at
13 all the discovery requests for Ms. Betts and Mr. Shames
14 regarding utilizing Ed Clark's name, all of you said:
15 No, his name did not get used in any way. So go back
16 and look at your discovery and all your requests,
17 especially the first set of requests for admissions from
18 Ms. Betts signed under penalty of perjury. Same thing
19 with Mr. Shames. You guys all represented that Mr.
20 Clark's name -- or my name was not utilized.**
21 Q. I'll take issue with you on it. But
22 nevertheless --
23 **A. That's why you can go back and look.**
24 Q. -- you have now learned that a lot of
25 information that Ms. Betts tried to submit was not

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1 admissible, right? They struck it?
2 **A. I understand there was testimony that got
3 stricken. I don't know what all got stricken.**
4 Q. Okay. But all the things that she was using
5 was public information, correct, on your website?
6 MR. CLARK: For Mr. Clark, I'm going to object
7 on the grounds that I don't know why it was stricken --
8 or Mr. Clark has no way of knowing. That's a matter of
9 the PUC he was not involved with. So I don't know --
10 and now I'll answer on my own.
11 THE WITNESS: I'll go ahead and answer I don't
12 know what was stricken and what was not stricken. Both
13 cross-defendants have tried to hide utilizing my name up
14 until recently.
15 BY MR. MONSON:
16 Q. Regardless of what was stricken or not
17 stricken --
18 **A. Yes.**
19 Q. -- the utilization of your name and your book
20 at the rate hearing, the utilization of your theories at
21 the rate hearing, the utilization of your website at the
22 rate hearing, did that damage you in any way monetarily?
23 **A. Yes.**
24 Q. How so?
25 **A. They utilized my work product and tried to**

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1 create testimony on my behalf. The conversations I had
2 originally had with Mr. Shames -- if you look at his
3 engagement letter with me he talked about me releasing
4 my work product so that it could be utilized at the PUC
5 hearing, regardless of the fact that it was public --
6 some of it was public information.
7 I don't know how much of it was utilized, how
8 much of it was public, how much of it wasn't. If it was
9 anything off the Ms. Betts' declaration that she
10 originally put together, that she -- I think was the
11 basis of her findings, that was not public information.
12 Q. Monetarily, what's the amount of your damages?
13 MR. CLARK: I'm going to object right now for
14 Mr. Clark on the basis that he hasn't really sat down
15 and figured it out. But there are -- all of the
16 documents at issue that she sent to Mr. Clark for review
17 prior to the filing of the PUC and feedback are all in
18 the file that you were presented in documents zero
19 through 3,200.
20 BY MR. MONSON:
21 Q. Do you have an expert that you intend to use at
22 trial to testify to your economic damages for the
23 wrongful use of your proprietary information?
24 A. That a good question. I don't know if we're
25 going to be allowed to designate any experts. If we

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1 are, then I will designate an expert. We've missed the
2 cutoff, the expert cutoff because we tried to get an
3 extension on the trial. But if the court allow me to
4 designate an expert, I most likely will.
5 Q. Currently the discovery cutoff is this week.
6 A. Correct.
7 Q. And the designation of experts is long past.
8 A. Correct.
9 Q. And you don't have an expert; is that what
10 you're telling me?
11 A. That's what I'm telling you.
12 Q. Have you ever consulted with an economist of
13 some type to try to figure out what your damages will be
14 for the wrongful use of your proprietary information?
15 A. No.
16 Q. Have you sat down ever yourself to try to
17 figure out what the monetary damages are to you?
18 A. No. But I will prior to trial.
19 Q. And how do you propose to do it?
20 A. Just to go back and review, look at the e-mails
21 sent to me from Ms. Betts and the amount of documents
22 that I reviewed on her behalf and didn't get paid for
23 after she promised to pay me.
24 Q. So your damages are the use of your time that
25 you haven't been paid for?

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1 A. And -- and the years of experience and work
2 product that I put together --
3 Q. That's public record.
4 A. Well, not necessarily. It depends on what was
5 produced and how much of that -- what was public record
6 versus how much of it was that she learned from Ed
7 Clark, myself.
8 Q. Tell me one piece of work product that is not
9 public record that you have that Ms. Betts used that you
10 want her to compensate you for.
11 MR. CLARK: I am going to object for Mr. Clark
12 on the grounds that he doesn't have a document in front
13 of him. He is not -- was not asked to produce that.
14 And I don't have it today.
15 BY MR. MONSON:
16 Q. I didn't ask you to produce it. I told you to
17 tell me, in your mind are you aware of any work product
18 that you have that has some monetary value because Ms.
19 Betts used it?
20 A. Yes.
21 Q. What?
22 A. All of it.
23 Q. Please identify specifically what "all of it"
24 is.
25 A. All of my work product and all the phone calls

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1 and all the e-mails and answering questions for Mr.
2 Clark and Ms. Betts in their preparation up until the
3 point they -- we had a falling out, I guess. Up until
4 Ms. Betts sent me her retainer.
5 Q. Your telephone calls with Ms. Betts are your
6 work product?
7 A. They are my work product. And that's time that
8 I should get compensated for.
9 Q. How much an hour should you be compensated for
10 all of your time?
11 A. 450 an hour.
12 Q. And how many hours?
13 A. I'm going to estimate right now that it's
14 probably going to be in the neighborhood of 100.
15 Probably 100 hours.
16 Q. And do you have any records to establish how
17 you get to your estimate of 100 hours?
18 A. I probably do. I do at home.
19 Q. And this is 100 hours you spent just working on
20 the rate case?
21 A. For SDCAN, correct. Ms. Betts sent me a lot of
22 documents.
23 Q. A case that you were never officially retained
24 for.
25 A. But promised to be paid by her in writing:

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1 **Stay working with us. If Shames doesn't pay you, I**
2 **will.**
3 Q. That was the proposal you didn't even read.
4 You rejected it.
5 **A. No.**
6 Q. You read the first line.
7 **A. No.**
8 MR. CLARK: I'm going to object for Mr. Clark
9 on the grounds that it misstates evidence.
10 THE WITNESS: There is a specific e-mail in
11 your file where Mr. Clark said Mr. Shames -- if I can't
12 come to an agreement with Mr. Shames -- I can't quote
13 exact dialogue, but to the effect: If Mr. Shames
14 doesn't pay you, I will. I need your help.
15 BY MR. MONSON:
16 Q. What date was that?
17 **A. I can't tell you off the top of my head. It's**
18 **in your file in the documents that I gave you today.**
19 Q. But you don't have a written fee agreement
20 between you and Ms. Betts or Mr. Shames, correct?
21 **A. Mrs. Betts had already paid me based on my fee**
22 **agreement with her. She understood my hourly rate going**
23 **forward. And it would be the same for SDCAN.**
24 Q. You mean a \$3,000 retainer agreement?
25 **A. And the \$14,000 final payment.**

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1 Q. And the change in the retainer to 25,000? That
2 agreement?
3 MR. CLARK: No, you're -- I'm going to object
4 on the grounds that counsel is misstating facts not in
5 evidence and argument.
6 BY MR. MONSON:
7 Q. You didn't ask for a retainer of 25,000?
8 **A. Yes, I did.**
9 Q. And it was rejected, right?
10 **A. The 25,000 retainer was, yes.**
11 Q. Yes.
12 **A. But not the 450 an hour. The 450 an hour was**
13 **never --**
14 Q. You're saying you are billing her for the
15 retainer you did for the original work you did on the
16 loss of her house?
17 **A. No, no, no, no, no, no. This is separate,**
18 **independent work just on -- just on the rate case. This**
19 **is after, time for after.**
20 Q. Do you have anything in writing to Ms. Betts or
21 Mr. Shames indicating that before you give them access
22 to any of your work product that they cannot use it as
23 they see fit?
24 **A. I don't have anything in writing. It is in Mr.**
25 **Shames's agreement with me trying to reduce -- get me to**

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1 **sign off the use of my work product. We talked about it**
2 **on the phone. And we talked about it on the phone and**
3 **he also sent me an e-mail confirming that he wouldn't**
4 **use my name.**
5 Q. Do you know when the lawsuit was filed against
6 you for the promissory note for \$100,000; the promise to
7 pay \$100,000?
8 MR. CLARK: The question was asked and
9 answered.
10 THE WITNESS: You've got the date. Alls I know
11 about it is when it was served to me.
12 BY MR. MONSON:
13 Q. Right. Do you know when it was filed?
14 **A. The document speaks for itself. It is stamped**
15 **on the document. As I sit here today, I don't recall.**
16 **But if you want to put the document in front of me, I**
17 **would be happy to answer it for you.**
18 Q. No, I just asked you if you know when it was
19 filed, that's all.
20 **A. As I indicated, the document speak for itself.**
21 **If you would like to put it in front of me, I can answer**
22 **that question.**
23 Q. So what you're telling me is you don't
24 currently recall when the lawsuit was filed, correct?
25 **A. As I sit here today, I can't tell you the date**

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1 **it was filed. I know -- we just talked about when I was**
2 **served and the date stamped. If you want to play games**
3 **put it in front of me, I'll tell you what day it was**
4 **filed.**
5 Q. If you look at Exhibit 4, paragraph 40, Bates
6 No. 8 --
7 **A. Okay.**
8 Q. -- does that refresh your memory any?
9 **A. Well, it puts here: On September 28th**
10 **defendant Betts filed the underlying complaint. I can**
11 **read the document. I would have to look at it to**
12 **confirm it. That's what I wrote in the cross-complaint.**
13 **I'm assuming it's correct.**
14 Q. Okay. And Ms. Betts indicated to you prior to
15 September 28th, 2016 that she was going to file a
16 lawsuit against you if you didn't sign the agreement?
17 **A. She had told me verbally on the phone, we**
18 **talked about it earlier, that she was going to file a**
19 **lawsuit against me if I didn't agree to work for them.**
20 Q. Would you agree that Ms. Betts did transfer
21 \$100,000 to you, right?
22 **A. I will agree that Ms. Betts made an at will**
23 **investment with her --**
24 Q. I'm not trying to characterize it as a loan or
25 as a gift or as anything else. \$100,000 went from her

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1 account to your account. Would you agree to that?
2 **A. I will agree that Ms. Betts made an at will**
3 **investment for the furtherance of the movie "Circle the**
4 **Wagons" and that check was issued to Ed Clark and cashed**
5 **by Ed Clark.**
6 Q. Would you agree that Ms. Betts is now
7 contending it's a \$100,000 loan to you? That's what
8 she's alleging, right?
9 **A. That's correct.**
10 Q. And she filed the lawsuit because she thinks
11 it's a loan. Do you understand that?
12 **A. Yes, I do.**
13 Q. And would you agree that people have the right
14 to file lawsuits against people if they have a dispute
15 over what the terms of something are?
16 **A. If it is a legitimate lawsuit and not made up,**
17 **yes.**
18 Q. What do you mean by "made up"?
19 **A. Well, when you file a breach of contract**
20 **against somebody and alleging that somebody has changed**
21 **their mind, in order for there to be a breach of**
22 **contract there, number one, needs to be a contract. In**
23 **this case there is no contract. There needs to be the**
24 **formation of a contract and a meeting of the minds that**
25 **both parties agree. There is none. You have not put**

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1 **anything in front of me.**
2 Q. You put \$100,000 check in your bank account.
3 You say it was an investment, at will or whatever, and
4 she says it was a loan. Isn't that a dispute?
5 **A. That specific issue is a dispute.**
6 Q. Okay.
7 **A. What is not in dispute is the fact that she**
8 **agreed that it would get paid upon finding investors for**
9 **the movie. That is not --**
10 Q. The terms of the transaction are in dispute?
11 **A. Well, there are surely no terms that I agreed**
12 **to her terms. And there is surely no terms apparently**
13 **that I can show you that she agreed with the other**
14 **terms. The fact that she chose --**
15 Q. Right.
16 **A. -- not to sign it, that's what's in dispute.**
17 Q. So we have two people who have a different view
18 of what the \$100,000 was for, correct?
19 **A. No. We have two people who have the same view**
20 **of understanding of what the \$100,000 was for. The fact**
21 **that she filed a lawsuit doesn't mean that she doesn't**
22 **understand it, she is just changing her mind.**
23 Q. She says she loaned you \$100,000. Do you
24 understand that?
25 MR. CLARK: I am going to object --

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1 BY MR. MONSON:
2 Q. Do you understand that?
3 MR. CLARK: -- as hearsay. Okay?
4 THE WITNESS: What I will tell you is that I
5 understand she provided \$100,000 for the furtherance of
6 a movie.
7 BY MR. MONSON:
8 Q. That's your understanding.
9 **A. Okay.**
10 Q. Her understanding is she provided it as a loan.
11 So you two have a dispute over what the \$100,000 was
12 about, correct?
13 **A. Well, that's why we're here today.**
14 Q. Exactly. And so she filed a lawsuit against
15 you because she has a belief that you owe her \$100,000.
16 You filed a defense against it saying that you don't owe
17 her \$100,000. Correct?
18 **A. Correct.**
19 Q. And you filed a cross-complaint against her,
20 correct?
21 **A. Correct.**
22 Q. And you're saying that her filing the lawsuit
23 was an abuse of process, correct?
24 **A. Correct.**
25 Q. Because she was trying to force you into doing

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1 what?
2 **A. She was trying to force me into working for**
3 **SDCAN and reducing my retainer and not charging them and**
4 **collecting the money that I utilized that was being**
5 **asked of me to support them.**
6 Q. And she was unable to force you to do that,
7 correct?
8 **A. That's correct. So she filed a lawsuit**
9 **instead.**
10 Q. Because she thought you owed her \$100,000.
11 **A. Because she filed the lawsuit because she**
12 **thought that would force me to back up and work for**
13 **SDCAN. That's why she filed the lawsuit. Not because I**
14 **owed it. That's just something she made up.**
15 Q. Did she file the lawsuit against you because
16 you refused to change your opinion to benefit Shames and
17 Betts?
18 MR. CLARK: I am going to object for Mr. Clark
19 on the grounds that you're asking Mr. Clark as to what
20 her thoughts were when she filed lawsuit, and he is not
21 in a position to do that and he is not going to
22 speculate.
23 BY MR. MONSON:
24 Q. You've already speculated. You put an
25 allegation in the complaint that that's why she did it.

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1 **A. The reason she did it, I already told you. The**
2 **reason she did it was trying to force me to work for**
3 **SDCAN.**
4 **They were already using my information. She**
5 **knew it was my work product. She already knew she was**
6 **in trouble. She thought -- and she talked with Mr.**
7 **Shames and they both thought collectively that filing**
8 **this lawsuit would force me to work for them, that I**
9 **wouldn't want to spend the money litigating something.**
10 Q. You said she filed the lawsuit because you
11 refused to change your original opinion regarding the
12 cause of the fire --
13 **A. No, I didn't say that.**
14 Q. -- and the cover up.
15 MR. CLARK: I'm going to object to that. That
16 misstates facts not in evidence. That's not why I said
17 she filed the lawsuit. I told you that -- I'm going to
18 object for Mr. Clark on the grounds he's stating facts
19 that are not the evidence.
20 BY MR. MONSON:
21 Q. She filed the lawsuit, you say, because you
22 refused to change your original opinion and testimony
23 regarding the causation of the 2007 Witch Creek Fire.
24 **A. To work for SDCAN on their terms. She filed**
25 **the lawsuit trying to force me to work for them. That's**

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1 **why she filed the lawsuit.**
2 Q. You didn't say that in your complaint.
3 **A. Yes, I did.**
4 Q. Let's read paragraph 40 of your complaint.
5 **A. Okay. Please do.**
6 Q. Look on Exhibit 4, Bates No. 8. Do you have
7 that in front of you?
8 **A. Yes.**
9 Q. It says: "On September 28, 2016
10 Cross-Defendant Betts filed the underlying complaint in
11 retaliation to Defendant and Cross-Complainant" --
12 that's you -- "refusing to change original opinions and
13 testimony regarding the causation of the 2007 Witch
14 Creek fire and refusing to agree to form a partnership,
15 in violation of Rules of Professional Conduct rule
16 1-310, with Cross-Defendants" -- that's Ms. Betts and
17 Mr. Shames -- all done "in order to delay compensation
18 until the outcome of the case is known and payments
19 approved by the CPUC."
20 So all I'm asking you about now is the first
21 reason, which is refusing to change the original
22 opinions and testimony regarding the cause of the 2007
23 fire.
24 **A. That's part of it, yes.**
25 Q. So you're saying that's why she filed the

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1 lawsuit?
2 **A. That's part of why she filed the lawsuit. The**
3 **document speaks for itself. I'll let you interpret it.**
4 Q. I am not talking about the document. I want to
5 know what you have to say.
6 You're saying that Ms. Betts, because you
7 wouldn't change your testimony, filed this lawsuit
8 against you for a breach of what she says was a promise
9 to repay \$100,000?
10 **A. She filed this lawsuit against me because I**
11 **would not change my testimony, which I thought she was**
12 **on my side on that. But that was part of the issue.**
13 **Because I would not agree to partner with them on this**
14 **PUC rate case and jeopardize my position as an expert**
15 **witness. And I think that's -- is that everything in**
16 **there?**
17 Q. Is there anything in the writings where they
18 ever make a proposal to you to be a partner with them on
19 a rate case?
20 **A. Yes.**
21 Q. I saw the memo of understanding. It doesn't
22 use the word "partnership" anywhere in there.
23 **A. Well, the word "partner" specifically is not**
24 **indicated.**
25 Q. Thank you.

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1 With regard to --
2 **A. However --**
3 Q. However what?
4 **A. The word "partner" is not specifically**
5 **utilized, but if you look at the writings of the parties**
6 **from Mr. Shames, the --**
7 Q. They speak for themselves.
8 **A. Let me finish.**
9 Q. I'm just looking for the word "partner."
10 **A. Let my finish my answer. Then you can strike**
11 **it if you want.**
12 **But the result of the representations by Mr.**
13 **Shames, the fact that they were both trying to get me to**
14 **carry the money until the end to see if I'd get paid, by**
15 **definition that is a partnership. And that's what I**
16 **explained to them I couldn't do.**
17 Q. In the legal proceeding that started this, in
18 this lawsuit that was filed by Jennifer Ms. Betts, has
19 anyone used any of the legal procedures allowed under
20 the lawsuit in an effort to harm you in any way?
21 **A. Yes.**
22 Q. What legal procedures have they used to harm
23 you?
24 **A. Ms. Betts and Mr. Shames filed the proceeding**
25 **in an effort to either, A, get me to work for free; or**

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1 **B, make me pay, which I have, to defend this case. And**
2 **the legal proceedings have been utilized to try to force**
3 **an outcome from me that I wasn't willing to do.**
4 Q. Other than filing the lawsuit, the actual
5 filing of the lawsuit, have any legal proceedings been
6 done against you to abuse you in any way?
7 **A. Yes.**
8 Q. What?
9 **A. We're still here today. This is costing me**
10 **time and money to come down here today.**
11 Q. So you think taking your deposition today an
12 abuse of the process?
13 **A. Yes, it is.**
14 Q. How so?
15 **A. Because it is a frivolous lawsuit to begin**
16 **with. The fact that took me three hours -- three and a**
17 **half hours to drive down here and it will take me three**
18 **and a half hours to drive home is an abuse of process.**
19 **You're tying up my time and energy on a frivolous**
20 **lawsuit that has no merit.**
21 Q. Any other use of the process that you think is
22 an abuse, other than the filing of the lawsuit?
23 **A. It's an abuse of the process to utilize the**
24 **filing of a lawsuit to try to coerce somebody --**
25 Q. We've already discussed that.

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1 **A. That's okay. I'll say it again.**
2 Q. Other than the lawsuit itself, is there any
3 other abuse of the process?
4 MR. CLARK: I'm going to object at this point
5 for Mr. Clark in that you're asking Mr. Clark to draw a
6 legal conclusion, and I'm not sure he is in a position
7 to do that at this point.
8 BY MR. MONSON:
9 Q. I don't want a legal conclusion.
10 What other legal things have you had to do
11 after the lawsuit was filed that you consider an abuse
12 of the process?
13 **A. Filing a lot of motions and having to fight**
14 **this lawsuit to try to remedy a frivolous lawsuit.**
15 Q. Filing your summary judgment motion was an
16 abuse of the process?
17 **A. Yes.**
18 Q. By you.
19 **A. No, no.**
20 Q. Why did the court dismiss your summary judgment
21 motion so quickly?
22 **A. Because I made mistakes. I'm not a lawyer.**
23 Q. What damages have you suffered as a result of
24 the alleged abuse of process?
25 **A. I'm going to say to the tune of probably**

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1 **\$100,000.**
2 Q. You've been harmed \$100,000?
3 **A. Yes.**
4 Q. And how do you calculate 100K?
5 **A. The time and energy of what I've done for**
6 **Ms. Betts in direct --**
7 Q. I'm talking about from the time the lawsuit was
8 filed --
9 **A. Oh, I misunderstood your question.**
10 Q. -- September 28th, 2016, how have you been
11 harmed?
12 **A. I misunderstood your question.**
13 Q. Okay.
14 **A. Because I thought you were talking about just**
15 **in overall work performed and utilization of my work**
16 **product.**
17 Q. I'll restate the question to make sure it's
18 clear.
19 The lawsuit was filed September 28, 2016 where
20 Mr. Clark alleges that you owe her \$100,000.
21 **A. Correct.**
22 Q. You filed a cross-complaint and you deny that
23 you owe her \$100,000.
24 How has the filing of that lawsuit harmed you
25 monetarily?

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1 **A. I'm going to say looking at all the filings and**
2 **stuff I've done on this case, it's probably going to**
3 **be -- oh, shoot -- in the neighborhood of 70,000 to**
4 **\$80,000 in time.**
5 Q. In your time?
6 **A. Yes.**
7 Q. Of doing what?
8 **A. Everything I've had to do on this case. I had**
9 **to learn it off the internet. So unlike yourself, who**
10 **is a professional lawyer and has people that does this**
11 **stuff for you, I have to look everything up and learn**
12 **how to file motions, how to respond to everything. But**
13 **for this lawsuit being filed against me, I wouldn't have**
14 **to do that.**
15 Q. And what is your time worth per hour?
16 **A. I'm going to be billing it at 450 an hour, as**
17 **if I were an attorney or an expert on this case. And**
18 **the court will have to decide if that's fair or not.**
19 Q. I've only been doing this for 42 years and I
20 wish I could get 450 an hour.
21 **A. I bet you wish you could. But I do, so I don't**
22 **know what to tell you.**
23 **Your client's already paid us so she already**
24 **knows.**
25 Q. Are you contending that the mere filing of this

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1 lawsuit on September 28th, 2016 by Ms. Betts is an abuse
 2 of process?
 3 **A. Yes. And the threats that went along with it**
 4 **prior to, yes.**
 5 Q. Do you have any other facts to support your
 6 contention that the filing of this lawsuit is an abuse
 7 of process?
 8 MR. CLARK: For Mr. Clark, I'll object. You
 9 are asking for a legal conclusion. And it's --
 10 BY MR. MONSON:
 11 Q. I'm asking for facts.
 12 **A. The facts are I've already -- now I'll speak**
 13 **for myself. I've already shared with you my opinion**
 14 **that the facts are that this lawsuit was filed in an**
 15 **effort to force Mr. Clark to work for SDCAN and not get**
 16 **his pay and defer money. That's why this case was**
 17 **filed. That's the fact. That's an abuse of process.**
 18 Q. Do you think that this lawsuit that was filed
 19 September 28th, 2016 was filed for an improper purpose?
 20 **A. Yes.**
 21 Q. And the improper purpose being what, to make
 22 you do something?
 23 **A. Two reasons: One to make me do something; and,**
 24 **B, to try to recover -- change the terms of an agreement**
 25 **when she made the at will investment in a movie, trying**

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1 **to hold Mr. Clark accountable personally.**
 2 Q. And --
 3 **A. So two things were done wrong. One was the**
 4 **reasons she filed the lawsuit to begin with was she**
 5 **created a lawsuit that she could file against me and**
 6 **made up the fact that there is some kind of an contract**
 7 **between the two parties.**
 8 Q. Okay. And you contend that the lawsuit was
 9 filed for an improper purpose, which was, one, to get
 10 you to do something. What was the other?
 11 **A. The -- fabricate trying to hold Ed Clark**
 12 **accountable for the funds that she invested in the**
 13 **movie.**
 14 **And the third thing that I didn't put in the**
 15 **complaint was the fact that she got really mad when I**
 16 **told her that I got engaged to get married. And so**
 17 **there was personal things going on with her on that**
 18 **issue, so . . .**
 19 Q. Well, none of which convinced you to do
 20 anything different, right? You still did what you were
 21 going to do, even though this lawsuit was filed,
 22 correct?
 23 MR. CLARK: I'm going to object on the grounds
 24 that I'm not sure what you did what you said you were
 25 going to do means.

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1 BY MR. MONSON:
 2 Q. You still got married?
 3 **A. Oh, yeah. Absolutely.**
 4 Q. On paragraph 41 of Exhibit 4, page Bates 8 --
 5 **A. Okay. Got you.**
 6 Q. -- it says: On January 12th, 2017 you learned
 7 that the cross-defendants utilized your expert testimony
 8 and entire work product in their rate case without
 9 paying for it, including the contents of the
 10 self-published book.
 11 Your self-published book is obtained free off
 12 the internet, right?
 13 **A. Yes.**
 14 Q. So anybody can use it for anything, right?
 15 **A. I don't know.**
 16 MR. CLARK: I'm going to object on that grounds
 17 because that calls for a legal conclusion. I don't
 18 know --
 19 THE WITNESS: No, I'll answer.
 20 I'm not sure personally right now as I sit here
 21 today if it's legal for somebody to use somebody else's
 22 work product without permission in any capacity.
 23 BY MR. MONSON:
 24 Q. Well, do people have to buy your book off the
 25 website?

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1 **A. No.**
 2 Q. So you say they use your book without paying
 3 for it because it's true you don't have to pay for it,
 4 right? It's free?
 5 **A. Well, I think --**
 6 Q. Was it free?
 7 **A. Yes, it is.**
 8 Q. Thank you.
 9 **A. The representations made by your clients, SDG&E**
 10 **had to file a motion to strike it because it was not --**
 11 **because it was presented as expert testimony. That's**
 12 **different than using my publication.**
 13 Q. Again, when you're talking about the expert
 14 testimony and entire work product, the work product is,
 15 again, these 3,200 e-mails and all the telephone calls
 16 you had with them. Is that it?
 17 **A. The work product will be based on what was**
 18 **presented to the CPUC utilizing Ed Clark's name and**
 19 **experience and opinions.**
 20 Q. And then to your understanding none of that
 21 testimony was allowed at the hearing, correct?
 22 **A. I don't know what was allowed or what was not.**
 23 **I know there were motions to strike Ed Clark's opinions.**
 24 **I don't know what was stricken and what was maintained**
 25 **on the record. I really struggle with trying to migrate**

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1 through the CPUC information.
 2 Q. In paragraph 42 of Exhibit 4, it says: "At all
 3 times thru [sic] out communications with" Clark, the
 4 cross defendants -- that's Shames and Betts --
 5 "conspired collectively to deceive" Clark "with their
 6 true intentions and create a reason for a lawsuit in
 7 order to utilize the process to force Cross-Defendant"
 8 -- that's you -- "to work and support their rate case
 9 opposing SDG&E and not pay for the services rendered."
 10 What facts do you have to show that Ms. Betts
 11 and Mr. Shames conspired to do this to you?
 12 A. Well, if you look at the sequence of events in
 13 the documents that you've been provided, and you go back
 14 to the request to Mr. Shames to, A, show me a statute
 15 that allows me to work in the capacity that he wanted me
 16 to, the requests by me to ask Mr. Shames to provide me
 17 any documentation or pleadings or anything he has in
 18 mind of using my name for, the fact that he refused to,
 19 the fact that Ms. Betts informed me that Mr. Shames
 20 asked her to start trying to create my declaration, the
 21 fact that at no time when he responded to me in the one
 22 e-mail where he said he was not going to use Ed Clark --
 23 I will not use your name as an expert. He didn't say:
 24 We're going to use your name anyways, or whatever public
 25 information we can use.

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1 None of the correspondence back from Mr. Shames
 2 and Ms. Betts informs Ed Clark: Hey, you know, we
 3 understand we don't have a retainer with you, but there
 4 is some stuff that we can use. That was all hidden from
 5 Mr. Clark. In fact to the point even through discovery
 6 it was -- and knowing that they submitted this
 7 information to the PUC, both parties in their -- under
 8 penalties of perjury denied that they used my name in
 9 any fashion with anything in the PUC.
 10 Q. You're referring now to discovery in this case?
 11 A. Yes. But you look at the sequence events from
 12 start to finish, you know, and the promise to pay for
 13 Ms. Betts regardless of Mr. Shames' SDCAN can pay for it
 14 or not, all the way through, at no point ever is there a
 15 document that states, you know: Mr. Clark, we can't
 16 come to an agreement on this. How about if we just use
 17 your book or your -- you know, some of your information
 18 that we have in our possession and we won't utilize you?
 19 That was never done. It was all hidden from me.
 20 Q. If you look at paragraph 64 of the second
 21 amended complaint, it's on page Bates 13.
 22 A. Okay.
 23 Q. This is "Negligent Misrepresentation."
 24 A. Yes.
 25 Q. So you're alleging that Ms. Betts made a

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1 misrepresentation of a material fact to you that she
 2 made a \$100,000 contribution to proceed with the
 3 development of the screenplay and it was not a personal
 4 loan.
 5 So you're saying that she lied to you --
 6 A. Yes.
 7 Q. -- and she -- let me finish my question.
 8 -- she lied to you, she told you this is not a
 9 personal loan, and now she is telling you it is a
 10 personal loan. And so that's a misrepresentation?
 11 A. The misrepresentation is that she was just as
 12 excited as I was to get this movie started and made an
 13 at will investment.
 14 Q. What was the misrepresentation of a material
 15 fact? That's what you allege in here. What is the
 16 material fact that she misrepresented?
 17 A. She misrepresented -- if she had intentions of
 18 me being personally responsible, she should have made
 19 that representation. That's the material fact. That's
 20 the reason we're in this lawsuit because there is no
 21 contract. She did not want a contract. She did not
 22 want anything in writing.
 23 If at any point in the future she wanted to be
 24 able to say, "Hey, what about the money? When can I get
 25 it back?" she is a lawyer. She understands contracts.

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1 She should have put it in writing. I would say that's
 2 pretty material. That's the reason we're here today.
 3 Q. So you believe that money was donated for the
 4 purpose of allowing the development of the screenplay?
 5 MR. CLARK: I'm going to object. It states
 6 facts not in evidence.
 7 Mr. Clark has already stated what he says the
 8 money was for. And he can answer if he would like to,
 9 but I'll say it again, that Ms. Betts made an investment
 10 in the movie because of her self-interest in the movie
 11 and told Mr. Clark --
 12 THE WITNESS: Told myself that she didn't want
 13 anything in writing because of her confidentiality
 14 agreement that she told me she had with her own case
 15 that she settled with SDG&E.
 16 She did not expect to get the money back. That
 17 if she -- if we get investors when this is all done and
 18 well, so be it. But at that point in time she would
 19 like to have the option to convert it to an equity
 20 position rather than get the money back. That was our
 21 discussion.
 22 BY MR. MONSON:
 23 Q. So she didn't donate the money?
 24 A. I don't know how to answer that because she
 25 gave the money for the investment of the movie with the

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1 full understanding that we might not get it back. So
 2 that's a donation. With the understanding that if we
 3 got investment money back, she would get paid back.
 4 Q. Is it a donation or an at will investment?
 5 A. It's both. Because when you make an at will
 6 investment, you're currently donating the money in hopes
 7 of getting it back at some point in time. That's the
 8 difference.
 9 Q. What is an at will investment?
 10 A. You fully understand the risk of the money at
 11 stake, that there is a good chance you won't get it
 12 back.
 13 Q. That's your definition of an at will
 14 investment?
 15 A. Yes.
 16 Q. So it is a sketchy investment?
 17 A. Well, she fully understood what a movie --
 18 there is plenty of documentation in your file between us
 19 where she's explained many times that is the risky
 20 nature of investing in a movie that if we don't get
 21 funds, we don't get the money back.
 22 Q. Did Ms. Betts make a representation to you
 23 that she was donating the money for the purposes of
 24 allowing development of the screenplay? Donating the
 25 money.

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1 A. She made the representation that she was giving
 2 this check to be utilized for the furtherance of the
 3 movie and she --
 4 Q. That's not my question.
 5 A. It doesn't matter. I'm telling you what she
 6 said.
 7 Q. I know. And you have to answer this question
 8 yes or no, please.
 9 MR. CLARK: I'm going object that Mr. Clark
 10 doesn't have to answer a question that is trying to
 11 misstate the facts in evidence and the truth.
 12 And so a yes or no -- if a yes or no answer
 13 does not satisfy what you're trying to do, then he is
 14 not going to answer it.
 15 BY MR. MONSON:
 16 Q. If I am misstating a fact, then the answer to
 17 the question would be no. So you can still answer the
 18 question.
 19 So the question is: Did Ms. Clark [sic]
 20 represent that she was donating the money for the
 21 purposes of allowing the development of the screenplay?
 22 MR. CLARK: For Mr. Clark, I'm going to object
 23 in that Ms. Clark is not a party to this case.
 24 BY MR. MONSON:
 25 Q. I misspoke. I'll restate the whole question.

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1 Did Ms. Betts represent to you that she was
 2 donating the money for purposes of allow the development
 3 of the screenplay?
 4 A. Yes. And she prefaced it with she is not
 5 expecting to get the money back.
 6 Q. So she said she was donating the money?
 7 A. Yes.
 8 Q. That's the term?
 9 A. Yes.
 10 Q. That's the term she used?
 11 A. She told me that: I don't want anything in
 12 writing because I am not expecting to get the money
 13 back. By definition, that's a donation.
 14 Q. No. Did she use the exact term, "I'm donating
 15 the money"?
 16 A. I think she did. I'm going to say yes. I
 17 think she used that.
 18 Q. You think she did. And you're going to say yes
 19 under penalty of perjury?
 20 A. Yes, under penalty of perjury.
 21 Q. You're 100 percent sure that she said that?
 22 A. Yes, yes. Under the penalty of perjury.
 23 Q. Well, you know at the end of the deposition you
 24 get to read this and you can make any changes you want.
 25 And I have the right to comment on any changes you make

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1 to your deposition.
 2 MR. CLARK: I am going to object for Mr. Clark
 3 on the grounds is that a question or a threat?
 4 BY MR. MONSON:
 5 Q. It is an admonition that I usually give at the
 6 start of the deposition. But since you've been through
 7 hundreds of depositions I didn't think you would need
 8 it. But I want to make sure it's in the record
 9 somewhere.
 10 What other material misrepresentations did
 11 Ms. Betts make to you regarding the \$100,000 amount?
 12 A. The material misrepresentation is that if she
 13 wanted to be paid back personally by Ed Clark, number
 14 one, we would have never done the de -- I would have
 15 not accepted the check. Number two, if she wanted it to
 16 be held -- get paid back prior to seeking investment
 17 funds, she should have made that representation via a
 18 contract or in writing or some kind of an instrument so
 19 both parties understood and agreed upon what the
 20 requirements would be. That did not happen. That is a
 21 material misrepresentation.
 22 Q. So the misrepresentation is the fact she didn't
 23 tell you that she expected to be paid?
 24 A. Yes.
 25 Q. And you relied on that misrepresentation?

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1 **A. She is an attorney, so yes, I did. I relied on**
2 **her telling the truth and what her intentions for this**
3 **money.**
4 Q. I didn't ask you if she was an attorney.
5 You relied on the representation, correct?
6 **A. I did because she is an attorney. And she**
7 **should know better if she is trying to play games.**
8 Q. Well, you're an expert witness.
9 **A. Yes, I am. And I try to put it in writing.**
10 **And she didn't want anything in writing because of the**
11 **pure fact that she was worried about her repercussions**
12 **from San Diego Gas & Electric, period.**
13 Q. And you contend that Ms. Betts intentionally
14 didn't tell you that this money was really a loan?
15 **A. Well, I'm -- it is either going to intention or**
16 **it could be negligence. It could be either way. So**
17 **both are in there because a jury is going to decide**
18 **whether or not it was intentional or whether it was**
19 **negligence.**
20 Q. Well, what evidence do you have that you can
21 present at trial to show that it was intentional?
22 **A. This lawsuit. And a jury is going to decide**
23 **whether or not her actions, based on all the facts of**
24 **information and e-mails, if her acts were intentional or**
25 **not intentional.**

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1 Q. I mean whether or not she intentionally didn't
2 tell you, when you got the \$100,000, that she expected
3 it to be returned. What facts do you have to that?
4 **A. The facts that there is no document to**
5 **substantiate a meeting of the minds that the parties**
6 **agree on terms of a contract. She intentionally did not**
7 **want anything in writing.**
8 Q. Did the cross-defendants, both Shames and
9 Betts, tell you that they were going to pay you for your
10 services and misrepresent that to you, intentionally
11 tell you they were going to pay you for your services
12 when they knew they weren't going to pay you for your
13 services?
14 **A. Ms. Betts did. She did so in writing.**
15 Q. And Mr. Shames didn't?
16 **A. Mr. Shames and I never came to terms on an**
17 **understanding of payment.**
18 Q. Let's look at paragraph 84 of Exhibit 4, Bates
19 No. 15.
20 **A. I'm sorry. Say that again.**
21 Q. 84, paragraph 84.
22 **A. Okay.**
23 Q. This says: "Defendant/Cross-Complainant" --
24 that's you --
25 **A. Yes.**

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1 Q. -- "is informed and believes and based thereon
2 alleges Cross-Defendants" -- that's SDCAN, Betts, and
3 Shames -- "misrepresented a material facts [sic]" --
4 **A. Okay.**
5 Q. -- "by promising to pay for services and not
6 disclosing their intent not to pay while still
7 utilizing" Clark's "work Product, inducing him to work
8 and review documents for the SDG&E rate case."
9 Who represented material facts to you?
10 **A. Ms. Betts did. And I think that Mr. Shames did**
11 **by when I asked him what -- when I started e-mailing him**
12 **not to use my name or work product and started inquiring**
13 **about what he has used. The fact that he didn't tell me**
14 **he was using my work product is misrepresenting material**
15 **facts. That's intentional misrepresentation.**
16 Q. And so you've been damaged as a result by that
17 to the tune of \$18,000?
18 **A. I'm sorry. Let me see. What are you referring**
19 **to?**
20 Q. Your complaint paragraph 84.
21 **A. 84.**
22 Q. You're saying there are these material
23 misrepresentations to you. You're defrauded.
24 **A. Where did you come up with \$18,000?**
25 Q. I didn't, you did. On page 20 of your

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1 cross-complaint, paragraph 15, you allege that your
2 fourth cause of action which is for intentional
3 misrepresentation, you suffered general damages of
4 \$18,000, according to proof at trial.
5 **A. That's correct. For general damages and**
6 **special damages for --**
7 Q. I'm not asking you about special.
8 \$18,000 --
9 **A. Yes.**
10 Q. -- how do you calculate \$18,000?
11 **A. That was based on the material that was strict-**
12 **-- not work product, but strictly on the material that**
13 **Jennifer Betts sent me to review and reply back to her**
14 **for SDCAN.**
15 Q. You mean your time?
16 **A. My time.**
17 Q. Not material?
18 **A. For my time at 450 an hour.**
19 Q. To review the material?
20 **A. To review the material and give Ms. Betts**
21 **feedback based on her promise to pay.**
22 Q. So you spent 40 hours?
23 **A. It was about 40 hours of just reviewing**
24 **documents that she sent me. Actually there was more**
25 **than that, but I only --**

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1 Q. Do you have any documentation to support that
2 you spent 40 hours doing that?
3 **A. Yes, I do.**
4 Q. Where is it?
5 **A. In my office.**
6 Q. Then you say special damages of 255,500.
7 **A. Yes.**
8 Q. Where did you get that number from?
9 **A. The amount -- the time and energy and effort I**
10 **spent on my work product and that they utilized for free**
11 **to try to win their case.**
12 Q. You spent \$255,500 of your time?
13 **A. I spent -- I started on this case in 2007 and**
14 **did my work without -- after I left Culbreth &**
15 **Schroeder, without getting paid for it, and spent**
16 **countless hours working on this to develop my work**
17 **product.**
18 Q. I don't understand the prayer here on item
19 No. 16 of the prayer on Bates No. 20. It says:
20 "Special Damages: \$255,500" --
21 **A. Oh, I'm sorry. I get it.**
22 Q. Let me finish reading, please.
23 -- "recovery of all monies requested to be paid
24 (authorized by CPUC) by others resulting from the
25 utilization of Cross-Complainant work product without

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1 authorization according to proof at trial."
2 How do you come up with \$255,500?
3 **A. Thank you for clarifying that. I misspoke. I**
4 **was confused.**
5 **That \$255,500 is the amount of that SDCAN**
6 **requested from CPUC in opposition to the SDG&E rate case**
7 **filling use my work product to try to win the money.**
8 Q. So SDCAN, its attorneys filed a request to be
9 compensated \$255,500?
10 MR. CLARK: I'm going to object as stating
11 facts no in evidence. Part of this case involves the
12 fact that, yes, the two people are attorneys, but they
13 are -- you know, Michael Shames is the alter ego of
14 SDCAN. Neither one of them had -- neither attorneys had
15 retainer agreements. Their name was on the paperwork.
16 So I, at this point in time, don't know exactly
17 what they were, you know, at the PUC. Alls I know is
18 that two attorneys working together, working by the name
19 of SDCAN, which is typically Michael Shames, filed this
20 PUC writ case opposition in an effort to oppose SDG&E
21 using my work product and tried to pocket \$255,000.
22 BY MR. MONSON:
23 Q. So in other words --
24 **A. So I'm using them for that money.**
25 Q. SDCAN was requesting to be paid for their

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1 services of \$255,500?
2 **A. Correct.**
3 Q. And of that, you think you should have it all?
4 **A. Of that, I'm suing them for the entire amount**
5 **of money because they -- without authorization, embarked**
6 **on this campaign to make a whole ton of money utilizing**
7 **my work product without my permission.**
8 Q. Do you know if they received \$255,500?
9 **A. Well, one thing we know for sure is that you**
10 **opposed me getting that information. I tried to find**
11 **out what they got --**
12 Q. My question is: Do you know if they actually
13 received \$255,500?
14 **A. I'm going to say yes because that's what in**
15 **their paperwork. I'm going to say because I don't know.**
16 Q. You know that?
17 **A. I have to presume that they did because when I**
18 **tried to find out the information you wouldn't give me**
19 **the information.**
20 Q. Let's get under penalty of perjury. Do you
21 know for a fact that they received \$255,500? Yes or no?
22 **A. I have to presume that they got it because you**
23 **guys wouldn't answer the question.**
24 Q. So you don't know?
25 **A. I'm going to presume that they got it.**

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1 Q. How are you going to prove at trial you
2 suffered \$255,500 in damages?
3 **A. I'm going to put it in front of the judge and**
4 **jury and let them know that you fought me on giving me**
5 **the bank accounts and stuff so I could see what the**
6 **evidence was. And so absent the evidence, the documents**
7 **I'll put in front of them are the documents presented to**
8 **the CPUC. So I'm going to put on the fact that this is**
9 **how much they got paid. You're going to have to prove**
10 **that they didn't, if that's the case.**
11 Q. And you have a document that says that?
12 **A. Yes.**
13 Q. And where is that document?
14 **A. It's in your files over there.**
15 Q. In the 3,200 pages?
16 **A. 3,200 pages, correct.**
17 Q. And wouldn't you agree that they did some of
18 the work?
19 **A. No. I'll agree they used my work product and**
20 **in a private placement indicated my work product for**
21 **their application.**
22 Q. So you should be paid the reasonable value of
23 your work product?
24 **A. No. This case I'm suing them for the entire**
25 **amount of money. Because they -- they, without**

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1 authorization, utilized my work product and my
2 information, submitted it, tried to hide it, tried to
3 deceive -- tried to completely hide the fact they used
4 lied about the entire time including the firm's.
5 Q. So you're going to put in your prayer that
6 you're entitled to \$255,500, even though you didn't do
7 that amount of work. And the attorneys had to do the
8 work to get something like that awarded to them. And so
9 you're using this cross-complaint to get some leverage
10 to get that money from them, which I think is an abuse
11 of process.
12 A. Well, it's not leverage, sir, it is the fact.
13 They utilize my work product without authorization to
14 try to get this money, which is against the rules. You
15 have to pay for your -- an expert's work product.
16 Q. When you serve as an expert, if a big verdict
17 comes in do you get a bigger amount?
18 A. No, sir. That's why I am not contingent and I
19 can't partner with an attorney. I have to get paid as
20 an expert up front by the hour.
21 Q. Getting \$255,000 as damages, special damages,
22 would essentially be a bonus to you, wouldn't it?
23 A. No, sir. It actually wouldn't even come close
24 to covering the cost it took me to put all my work
25 product together and time and energy.

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1 Q. You're saying your work product is worth
2 \$255,500?
3 A. It's worth far more than that if I added up all
4 the time I spent on this case since 2012.
5 Q. Have you ever talked to any other experts to
6 see what your expert opinion is worth?
7 A. I can tell you I've had a lot of attorneys tell
8 me what my expert opinion is worth because they pay me
9 \$450 an hour for it.
10 Q. If you go to Exhibit 4, paragraph 90, which is
11 Bates No. 16, this is another cause of action for
12 intentional misrepresentation.
13 You're saying that the "Cross-Defendants" --
14 that's Shames and SDCAN -- "worked jointly to make false
15 representations of material facts to induce and coerce"
16 you "to continue working with full knowledge they were
17 not going to pay you for services of work product."
18 Seems like the same thing you were asking for
19 before.
20 A. It's the same thing. Very similar.
21 Q. And you're asking for the same amount of
22 damages, 18,000 and 255,500?
23 A. To be proven at trial, correct.
24 Q. And, of course, had you known they were going
25 to do this, you wouldn't have given them the work

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1 product?
2 A. That's correct.
3 Q. And do you think that these acts were done
4 willfully and maliciously against you?
5 A. Yes.
6 Q. Why didn't you allege that?
7 A. I did.
8 Q. Where it your complaint do you allege willful
9 and material malicious conduct?
10 A. Well, that's -- intentional misrepresentation
11 is virtually the same thing. You still have to show
12 malice in order to get intent.
13 And the second thing is once the breach of --
14 once the breach of contract gets kicked out, then we'll
15 amend the complaint to include malicious prosecution
16 because that has to be done first.
17 MR. MONSON: I'm going to pass for right now.
18 I don't have any further questions. I want to go
19 through a few of these documents over here. I will turn
20 the questioning over Mr. Shames.
21 THE WITNESS: I have something I would like to
22 add in response to your part of the testimony.
23 What is the next exhibit in line, please?
24 MR. MONSON: 6.
25 THE WITNESS: 6. We have the objections that I

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1 read into the record earlier with attachments. I would
2 like to introduce that as Exhibit 6 to the deposition,
3 please, and confirm that the attachments are all there.
4 Let me see that, if you don't mind. Which
5 includes -- it says: Attached hereto includes a
6 Declaration of Jennifer Betts in Opposition to
7 Defendants' Motion for Summary Judgment or in the
8 alternative, Summary Adjudication, Defendant Response to
9 Request for Production of Documents and Proof of
10 Service. So that's No. 6.
11 (Exhibit 6 marked for identification.)
12 MR. SHAMES: No. 7, I brought documents
13 presented in a box --
14 MR. MONSON: We are not marking the box as an
15 exhibit.
16 THE WITNESS: -- Bates stamped 1 through 3,200
17 as Exhibit No. 7.
18 MR. MONSON: They're not going to be given to
19 the court reporter. I'm going to keep them.
20 MR. CLARK: Well, I am asking the court
21 reporter if the court reporter is going to release them
22 to you. That will be --
23 MR. MONSON: She doesn't have to release them
24 to me. I have possession of them. They're right next
25 to my chair.

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1 THE WITNESS: Well zero to 3,200 is part of the
2 record, as well as -- and we will make that Exhibit 6.
3 If he doesn't want to give that to you, the
4 court will have to address that issue.
5 And then Exhibit No. 7 --
6 THE REPORTER: Wait a minute. This is 6.
7 THE WITNESS: 7 will be marked for the e-mails
8 or the documents Bates stamped zero through 3,200.
9 (Exhibit 7 marked for identification.)
10 THE WITNESS: And then this one will be 8,
11 which will be the Declaration of Nash Endraws,
12 E-n-d-r-a-w-s, in Support of Authenticating Business
13 Records of Defendant and Cross-Complainant.
14 (Exhibit 8 marked for identification.)
15 MR. CLARK: And what you guys do with the
16 documents will be up to you. That's it.
17 Back on that issue. If you are not going to
18 maintain possession of the records, please send me an
19 e-mail or let that he know so I can take.
20 THE REPORTER: I don't know if I can do that.
21 MR. CLARK: Well, I am asking that to be part
22 of the exhibit.
23 MR. MONSON: I'll put on the record right now
24 that the 3,200 pages that you brought in this box over
25 here, which is two and a half feet high, I'm going to

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1 keep them and I'll hold them until time of trial. But I
2 am not going to have them marked as an exhibit for this
3 deposition.
4 THE WITNESS: Well, the issue is that all of my
5 trial exhibits that I'm going to be -- will be utilizing
6 though Bates stamp numbers and referencing my deposition
7 for a reference that, those are already part of the
8 record. Okay?
9 MR. MONSON: That's fine.
10 THE REPORTER: I will put a sticker on them.
11 I just want to do what I'm supposed to do.
12 THE WITNESS: I don't all I know is that if you
13 don't take them and bind them, you know, I don't know
14 what's going to happen, I don't know if they're going to
15 be changed or anything. I mean if counsel wants to make
16 a copy of them and turn them over to you. But I am of
17 the opinion they need to be part of the record, part of
18 the deposition so that I can refer to those documents
19 during testimony at trial.
20 MR. MONSON: For purposes of identifying
21 exhibits at trial, each exhibit has to be an individual
22 exhibit and listed as such. I don't think the court is
23 going to be appreciate you say: Look at Exhibit 7 of my
24 deposition as one exhibit.
25 THE WITNESS: I fully plan on identifying all

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1 the documents separately in a separate folder. But I
2 gave you the opportunity to work with me on
3 authenticating e-mails. You chose not to do that. So I
4 went to the trouble of printing them all out, giving
5 them to you in advance, authenticating them with a third
6 party.
7 So if in the event that there is an issue at
8 trial over any e-mails on authenticity, I've been given
9 all the documents. You have time to object to them.
10 And that's the reason those documents are here so that
11 that -- and with that Bates stamp number so that it can
12 be reference to the court that you've already seen them
13 and they can be authenticated in case there are any
14 objections to any of the e-mails.
15 MR. MONSON: If you wanted to produce all those
16 e-mails you should have produced them back when I asked
17 you to produce them for the first time. Instead you
18 chose to bring them to your deposition. I obviously
19 don't have time to look through 3,200 pages to ask you
20 any further questions about them. And I'm not attaching
21 them as an exhibit to the deposition. I'm taking
22 possession of them for myself. They will be available
23 trial. And I understand your concern. We don't have to
24 stipulate or agree to you about anything regarding
25 authenticity of your evidence.

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1 THE WITNESS: One thing that you choose is to
2 hold this deposition until the very last week.
3 Otherwise you would have gotten this stuff a lot sooner.
4 So, again, I'm just going on record in stating
5 those e-mails are requested to be a part my deposition.
6 Taken custody by the court reporter, bound so that there
7 is a clear record with the court reporter what was
8 presented today. If counsel chooses not to do that,
9 that's an issue he is going to have to take up with the
10 court.
11 MR. MONSON: I will.
12 Mr. Shames, do you want to ask some questions?
13 MR. SHAMES: I do.
14 THE WITNESS: Is it Shames?
15 MR. MONSON: Mr. Shames. Excuse me.
16 MR. SHAMES: I'm actually go to ask for a
17 three-minute break. So we can go off the record for the
18 three minutes.
19 (A brief recess was taken.)
20 MR. SHAMES: We can go back on the record at
21 your convenience.
22 MR. CLARK: I would like to make a comment
23 before Mr. Shames starts his direct in that Mr. Shames
24 sent in an association of counsel. I've objected with
25 the court. I don't know that you've filed it with the

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1 court. I made objections to his association of
 2 counsel -- and let me back up for a second.
 3 Let me state for Mr. Clark I'm lodging the
 4 following objections. That Mr. Shames filed an
 5 association of counsel which I objected to. And he is
 6 here today with counsel representing himself.
 7 So in light of my objections, and not sure if
 8 I'm right or wrong, what I'm going to ask the court
 9 reporter to do is mark this part of the deposition. And
 10 when Mr. Shames concludes, mark the ending of it because
 11 I'm going to be taking this up with the judge. I'll
 12 answer your questions.
 13 Obviously just so that we don't have to do this
 14 again, but I'm going to can be asking the judge to
 15 strike any testimony here today and/or be able to use it
 16 in opposition to this case if it's deemed I happen to be
 17 right that this is not correct.
 18 So I've lodged my objections. Please mark the
 19 record. I'll be filing -- taking it up with the court
 20 with the objections that I filed with the court to your
 21 association of counsel. That's it.
 22 MR. MONSON: Let me state for the record that
 23 I'm aware that Mr. Shames has filed his association of
 24 counsel. Having practiced laws for 42 years I am
 25 perfectly fine with Mr. Shames representing SDCAN.

1 as yourself, which is essentially the alter ego, and no
 2 one is objecting to that. So if Mr. Shames wants to
 3 defend the alter ego allegation, he is certainly
 4 entitled to do that. But he is here representing SDCAN
 5 today.
 6 MR. CLARK: I will share that I'm not concerned
 7 whether you understand it not. I am stating my
 8 position. And I'm going to take it up with the court
 9 and let the court decide.
 10 If Mr. Shames proceeds with questions from
 11 SDCAN, you are not counsel for SDCAN, I'm going to ask
 12 the judge to preclude you from utilizing any of the
 13 testimony here today against -- in opposition to the
 14 second amended cross-complaint.
 15 MR. MONSON: I'm not sitting here on vacation.
 16 I'm sitting here listening to the questions. I am going
 17 to use every question he asks you. I am going to use
 18 every answer you give.
 19 MR. CLARK: That's fine.
 20 MR. MONSON: And I'm certain the court will
 21 agree.
 22 MR. CLARK: We will let the court decide that.
 23 It's not up to us to argue that today.
 24 Go ahead, Mr. Shames.
 25 \\\

1 That's who he says he has associated counsel with. So
 2 he would be completely entitled to be here today and ask
 3 questions on behalf of SDCAN.
 4 And to the extent any question he asks you, I
 5 would also ask the same question if he were not here.
 6 And I would expect to use all this testimony, whether
 7 it's marked from when you just started now until the end
 8 of Mr. Shames' questioning of you or not, because I am
 9 going to use that testimony myself in this trial, if
 10 necessary.
 11 THE WITNESS: With that said -- and I
 12 appreciate your candor. I'm sure you know a whole lot
 13 more about this than I do. But as you know, there is an
 14 allegation for alter ego where Mr. Shames and SDCAN is
 15 one in the same. And if found to be true then his
 16 questioning will be out of line.
 17 You, on the other hand, are not representing
 18 SDCAN. So I will make the same argument in that in
 19 light of the alter ego allegation, and Mr. Shames being
 20 one in the same, any questions he asks I'm going to ask
 21 the court to strike it from the record and not be
 22 utilized in opposition to this lawsuit.
 23 MR. MONSON: I don't understand how the alter
 24 ego allegation has any effect on this whatsoever.
 25 You're sitting here acting as your attorney and acting

1 EXAMINATION
 2 BY MR. SHAMES:
 3 Q. Thank you.
 4 We'll skip past the salutations and greetings.
 5 You know who I am. I know who you are.
 6 Mr. Clark, are you a vexatious litigant?
 7 MR. CLARK: I am going to -- for Mr. Clark I
 8 am going to object to the question as it's irrelevant
 9 and there is no foundation.
 10 It has nothing to do with the underlying case.
 11 And I direct him not to answer because, number one, I
 12 don't know what "vexatious litigant" means.
 13 BY MR. SHAMES:
 14 Q. That's my next question. Are you familiar with
 15 the term "vexatious litigant"?
 16 A. No, I am not.
 17 Q. Since 2011 how many civil cases have you been
 18 involved in in which you've been the plaintiff?
 19 A. You mean me personally?
 20 MR. CLARK: For Mr. Clark, I'm going to object.
 21 It's a question that is not calculated to lead to any
 22 admissible discovery. Any lawsuit that Mr. Clark has
 23 been involved with prior to this case is not relevant
 24 and not admissible in court. So I'm going to direct him
 25 not to answer.

1 MR. MONSON: Mr. Clark, prior lawsuits are just
2 a standard question that everybody asks in a lawsuit
3 about, whether or not people have been in them before or
4 not, because they may be calculated to lead to
5 discoverable evidence. So I'm just letting you know
6 you're wrong in not answering this question.
7 THE WITNESS: You guys have access to all the
8 information you provided to me. You guys have provided
9 me stuff that I've been involved with, so you have equal
10 access to what I've been involved with and what I
11 haven't. It's all public record. So anything you want
12 know about me you can look it up and find it. Just as
13 easy as I can go back and count cases. I've never
14 counted cases.
15 MR. MONSON: Or we can ask you a question and
16 you can answer it, like you're supposed to.
17 MR. CLARK: Well, I don't know the answer so
18 I'm just going to share with you. It's not going to be
19 admissible in court. It's not calculated to lead to
20 admissible discovery.
21 Any actions that Mr. Clark has had in other
22 cases prior to this event has nothing to do with this
23 case.
24 BY MR. SHAMES:
25 Q. So, Mr. Clark, what I'm hearing you say is you

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1 refuse to answer any question pertaining to other cases
2 in which you have been a plaintiff?
3 MR. CLARK: For Mr. Clark, I'm objecting to the
4 line of questioning because it is -- there is no
5 relevance to the underlying action. And it is not
6 calculated to lead to any admissible discovery for the
7 second amended cross-complaint or the breach of contract
8 case alleged in this particular case.
9 BY MR. SHAMES:
10 Q. Well, you just --
11 MR. CLARK: So I'm directing Mr. Clark not to
12 answer.
13 BY MR. SHAMES:
14 Q. Okay. I want to make sure you are not going to
15 answer that question.
16 **A. Correct.**
17 Q. Are you familiar with a case called Miller
18 versus Clark?
19 **A. Yes, I am.**
20 Q. Were you involved in that case?
21 **A. Yes, I was.**
22 Q. Personally?
23 **A. Yes.**
24 Q. Were you plaintiff?
25 MR. CLARK: I am going to object on the grounds

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1 that prior lawsuits, other than this one, are not
2 calculated to lead to any admissible discovery. It has
3 nothing do with the fraudulent activities of the
4 cross-defendants in the underlying action for the breach
5 of contract case alleged by plaintiff.
6 This witness is not going to answer any
7 questions pertaining to the details of any other
8 lawsuit.
9 BY MR. SHAMES:
10 Q. Are you familiar with a case called Clark
11 versus Stabile and Moshtael? Stabile, S-t-a-b-i-l-e,
12 and Moshtael, M-o-s-h-t-a-e-l. Are you the plaintiff in
13 that case?
14 **A. I don't know. I don't remember. When was that
15 case filed?**
16 Q. If I were to ask you about that case would you
17 continue to refuse to answer?
18 **A. Yes.**
19 Q. Okay. USA National versus Robert Kayton, are
20 you involved in that case?
21 MR. CLARK: For Mr. Clark, USA National Title
22 is a separate corporation not involved in this lawsuit,
23 not named in the lawsuit, and is not in a position as
24 the CEO to talk about anything to has to do with
25 lawsuits of an insurance company that he is involved

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1 with.
2 BY MR. SHAMES:
3 Q. Isn't it true that you represented yourself in
4 pro per in that case?
5 **A. No, it's not.**
6 Q. So you have an attorney handling that case?
7 **A. Yes.**
8 Q. Currently?
9 **A. Yes. As a separate corporation you have to an
10 attorney. You can't represent yourself in pro per.**
11 Q. Clark v. General Motors, is that a case in
12 which you were the plaintiff?
13 **A. Yes. I lemon lawed my Corvette.**
14 Q. And --
15 MR. MONSON: I didn't hear the answer.
16 THE WITNESS: I lemon lawed the Corvette.
17 MR. MONSON: Lemon lawed.
18 THE WITNESS: Unfortunately in California you
19 have to go through the process of a legal remedy when
20 the dealer can't fix your car. So you have to do it
21 through an attorney. They don't voluntarily give you
22 the money back.
23 BY MR. SHAMES:
24 Q. And if I asked you about details of that case
25 you'll also refuse to answer?

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1 **A. Yes. Well, I think I just gave you the details**
2 **without thinking about it.**
3 Q. Are you willing to give me more details about
4 it or should I move on?
5 MR. CLARK: You know, I am going to object only
6 on the grounds it has nothing do with this case. If
7 you'd like to hear about it, I would be happy to tell
8 you about it.
9 MR. MONSON: What year was the Corvette?
10 THE WITNESS: It was a ZO 6 with a ZO 7 race
11 package on it. And the transmission, they have a design
12 problem. It doesn't work.
13 MR. MONSON: 2016?
14 THE WITNESS: I think it was 2015.
15 BY MR. SHAMES:
16 Q. Just so I understand, the previous cases I
17 asked you about you were refusing to answer, but you'll
18 talk about the car case?
19 MR. CLARK: Going forward I am because I spoke
20 out without thinking about it. So I'm going to take the
21 position that any other case outside -- you know,
22 outside of this particular case is irrelevant in court
23 and not admissible. And it doesn't -- it's not
24 calculated to lead to any admissible discovery that has
25 to do with the fraud that you, sir, have committed in

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1 this case.
2 BY MR. SHAMES:
3 Q. And just so it's clear, on that basis you
4 refuse to answer?
5 **A. Correct.**
6 Q. Very good.
7 Do you understand that your failure to answer
8 my questions will necessitate that either I or my
9 associate counsel will have to file a motion to compel?
10 **A. I fully understand that if you don't like the**
11 **answers you're getting today you have all the rights in**
12 **world to file a motion to compel, go in front of the**
13 **judge and try to explain to her why all these other**
14 **lawsuits are somehow relevant to this case.**
15 Q. And you understand that you will be subject
16 potentially to monetary sanctions that are immediately
17 collectible if I were to prevail on that motion? You
18 understand that?
19 **A. Absolutely.**
20 **By the way, it's 30 days. I just got**
21 **sanctioned on one of them. Pay within 30 days.**
22 Q. Well. I am not --
23 **A. To your real attorney -- I'm sorry. To your**
24 **attorney.**
25 Q. Motions to compel depositions are different

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1 animals, just so you are aware of that. They are not
2 treated the same as motions to compel answers to
3 interrogatories. But I am not going to try to convince
4 you one way or the other.
5 Are you aware of the concept called "issue
6 sanctions," a legal term?
7 **A. No, I'm not.**
8 Q. Are you aware that if the court finds you've
9 acted in bad faith and refused to answer questions that
10 either issues in your case or the entirety of your case
11 can be dismissed? You understand that?
12 **A. Yes.**
13 Q. Very good.
14 MR. CLARK: Well, let me back up. Let me speak
15 out of turn.
16 I'm going to object for my client because he
17 doesn't know the legal ramifications of that term nor
18 did he ever hear it before, prior to this. So --
19 MR. MONSON: But his attorney knows? His pro
20 per attorney?
21 THE WITNESS: Well, I'm just lodging the
22 objection that you're asking me a question about
23 something that I don't know about.
24 BY MR. SHAMES:
25 Q. Are you aware of the fact that in risking a

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1 motion to compel to testify at a deposition that
2 portions of your case or the entirety of your case could
3 be struck by the judge?
4 **A. No, I'm not aware of that. At the same time,**
5 **the scope of the deposition has to be on point to the**
6 **term. You don't have a green light to ask any question**
7 **under the sun that has nothing to do with the case. It**
8 **has to do with the scope of this deposition.**
9 **In this case, sir, this is a second amended**
10 **cross-complaint against you about fraud and intentional**
11 **misrepresentation. And if your line of questioning**
12 **has nothing to do with any of those issues and it's not**
13 **relevant and it's not calculated to lead to any**
14 **evidence admissible in court, you're not allowed to just**
15 **cart blanche pry into Mr. Clark's personal life.**
16 Q. I have an obligation to inform you of the
17 repercussions of your actions. You can take it -- I
18 just wanted to make sure you understand it. You say you
19 do. We will move on, unless you don't.
20 **A. I don't understand it. Like I shared with you,**
21 **I have never heard the term before. I don't know the**
22 **legal consequences of that.**
23 **Alls I'm trying to share with you is I am**
24 **making a valid objection that you're going down a path**
25 **that has nothing do with this case. You can't tell me**

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1 what the valid reason is. You have not required -- in
2 fact, all of these issues I think were requested of me
3 in your discovery in which you did not meet and confer
4 in good faith to file a motion to compel when you had an
5 opportunity to pursue this issue. So trying to ask
6 those same questions today, failing to meet and confer
7 in good faith, does not give you a green light to go
8 down that same path and ask the same questions you've
9 asked me before.
10 MR. SHAMES: I'll move to strike the entirety
11 of your response. I am going to ask the question one
12 more time.
13 BY MR. SHAMES:
14 Q. Do you understand the concept or the risk that
15 your case could be dismissed by your failure to answer
16 questions at a deposition, refusing to answer? Do you
17 understand that potential outcome?
18 MR. CLARK: I'm going to, for Mr. Clark, object
19 that counsel is asking for a legal conclusion from the
20 witness, who has already informed him he doesn't know
21 the term -- or the legal consequences of what he is he
22 asking.
23 He has already informed counsel that the
24 questions he is asking, his attorneys that are
25 representing him asked those same questions in which

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1 they did not properly meet and confer and respond to my
2 objections months and months ago and take it up with the
3 court and a motion to compel. So to try to pressure and
4 threaten him today on the same issues, my client is not
5 going to answer the question.
6 BY MR. SHAMES:
7 Q. So you're refusing to answer my question?
8 **A. I'm going to take advice of counsel.**
9 Q. Are you refusing to answer that question I just
10 asked you?
11 MR. CLARK: For Mr. Clark, I'm going to lodge
12 the same objections that I just stated and state the
13 fact that my client is being directed not to answer that
14 question by me because of the fact that those questions
15 have already been asked and objected to and his counsel
16 failed to meet and confer. And I'll take it up with the
17 court in an appropriate time frame.
18 BY MR. SHAMES:
19 Q. I'm going to take that as you're refusing to
20 answer. Am I incorrect in that?
21 MR. CLARK: For Mr. Clark, I'm going to object
22 that he is not in the position to determine what is in
23 counsel's head and how he interprets anything that Mr.
24 Clark says. He is free to interpret it however he wants
25 to.

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1 MR. MONSON: I'm going to object to your
2 objecting. Speaking objections are not allowed. You've
3 been doing speaking objections all day long. You either
4 answer the question or you don't answer the question.
5 You either tell your client you object or you don't, but
6 you don't have speaking objections.
7 So from here forward, could you cut the
8 speaking objections, please. If you don't know what a
9 speaking objections is, go home and look it up on your
10 computer.
11 THE WITNESS: I will, sir. Thank you.
12 MR. SHAMES: Go ahead, Mr. Shames.
13 BY MR. SHAMES:
14 Q. So you're refusing to answer the question I
15 posed to you about whether you understand the possible
16 outcomes of your refusing to answer questions at a
17 deposition; is that correct?
18 MR. CLARK: I'm going to object for Mr. Clark.
19 For Mr. Clark, I'm going to lodge the following
20 objection. He is asking my client, Mr. Clark, to make a
21 legal conclusion and ask a question on a legal matter
22 that he is unaware of. And he is not going to answer
23 that question.
24 MR. MONSON: All you need to say is,
25 "Objection, I instruct my client not to answer." We

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1 don't need speaking objections.
2 THE WITNESS: Well, you may not need it. I do.
3 MR. MONSON: If you continue to do speaking
4 objections, we will seek sanctions for that also.
5 THE WITNESS: Please feel free to do whatever
6 you'd like, sir.
7 Go ahead.
8 BY MR. SHAMES:
9 Q. You have Exhibit 4 before you. Turn on
10 Exhibit O.
11 **A. Exhibit 4 in this?**
12 Q. Yes. Go to page Bates marked 133.
13 **A. Okay.**
14 Q. In responses to questions you were asked by
15 Mr. Monson, you've characterized this memorandum of
16 understanding as requiring you to either work for free
17 or work on a contingency arrangement based on the
18 outcome of the case. Is that correct?
19 **A. Yes.**
20 Q. Show me where in this document it asks you to
21 work for free.
22 **A. First of all, this contract, or what you**
23 **represented to me, is far less than the proposal you**
24 **received from me first. So by the sheer fact that when**
25 **reviewing this I actually responded to this in writing.**

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1 **But I think there is something in here. Just give me a**
 2 **second to reread this before I speak any farther here.**
 3 **First of all, you reduced my rate to \$350 an**
 4 **hour from the known \$450 an hour. So that's \$100 an**
 5 **hour of free time that you're asking, number one.**
 6 **"Final payment of any remaining monies will be**
 7 **provided upon submission of the case to the CPUC."**
 8 Q. Well, let's focus on that sentence, please. So
 9 you're looking at the third -- fourth paragraph,
 10 correct?
 11 **A. Well, I looked first at the third paragraph**
 12 **where you reduced my rate to \$350 an hour, taking \$100**
 13 **an hour. So that's working for free for that portion of**
 14 **agreement or what you're proposing.**
 15 **Now, question No. 4 is what? Paragraph No. 4?**
 16 Q. Paragraph No. 4, it looks as if you were
 17 referring to -- the second to last sentence: Final
 18 payment will be provided upon the submission of the case
 19 to the PUC. Do you see that?
 20 **A. Yes.**
 21 Q. And you interpret that as meaning that you
 22 would not get paid until the PUC finally rules; is that
 23 correct?
 24 **A. Based on what you told me personally and what**
 25 **Ms. Betts told me, yes.**

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1 Q. Okay. So you're interpreting this sentence
 2 based upon how we described it to you?
 3 **A. Yes.**
 4 Q. Is that what that sentence says?
 5 **A. Yes.**
 6 Q. The next sentence says: None of the services
 7 provided by you will be contingent upon the case
 8 outcome.
 9 Now, do you read that the same way, as that
 10 means you will be paid off only after the CPUC rules?
 11 **A. Yes.**
 12 Q. So you read that sentence as also saying that
 13 your payment will be contingent upon the outcome?
 14 **A. Because of your telling me on the phone, sir,**
 15 **that you would not be personally liable if the PUC**
 16 **didn't approve the balance of what was owed.**
 17 Q. So you read that last sentence as saying you
 18 would be -- the payment would be contingent?
 19 **A. Based on the fact that you would not personally**
 20 **guarantee, as the attorney asking me to do work for you,**
 21 **the balance of what is owed on the case. So that's how**
 22 **I read that. You would not put in here that you**
 23 **personally guarantee it. That's what I asked, and you**
 24 **refused to do that.**
 25 Q. Where does it say anywhere in this contract

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1 that you would be providing services above the cap for
 2 which you would be paid at a later time? Where does it
 3 say that?
 4 MR. CLARK: I'm going to object on this
 5 contract. It is not entered by both parties.
 6 With that said, he can answer the question.
 7 THE WITNESS: Now, what was your question?
 8 MR. SHAMES: Reporter, would you mind repeating
 9 the question.
 10 (Pending question read back as follows:
 11 Q. "Where does it say anywhere in this
 12 contract that you would be providing services
 13 above the cap for which you would be paid at a
 14 later time? Where does it say that?")
 15 THE WITNESS: I'm sorry, I was thinking about
 16 something else. Could you read it again, please.
 17 (Pending question read back as follows:
 18 Q. "Where does it say anywhere in this
 19 contract that you would be providing services
 20 above the cap for which you would be paid at a
 21 later time? Where does it say that?")
 22 THE WITNESS: I'm sorry. The question is not
 23 intelligible. I don't understand what you're asking me.
 24 BY MR. SHAMES:
 25 Q. You are of the belief that this contract

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1 contemplated that there would be services that you would
 2 render for which you would not be paid until some other
 3 time. Is that correct?
 4 **A. Yes.**
 5 Q. And where exactly does it say that?
 6 **A. You just --**
 7 Q. Where is the language? Point to the language
 8 where it says that.
 9 **A. "Final payment of any remaining monies will be**
 10 **provided upon submission of the case to the CPUC,"**
 11 **supported by the fact that you specifically told me that**
 12 **if PUC does not approve it, I don't get paid.**
 13 Q. And where does it say that in this document?
 14 **A. I'm just telling you that was based on my phone**
 15 **call with you.**
 16 Q. Actually, doesn't the next sentence say just
 17 the opposite? Doesn't the next sentence say just the
 18 opposite of what you just characterized?
 19 **A. No, it does not, because I asked you to include**
 20 **in this document that you would personally guarantee any**
 21 **difference, and you refused to. The fact that you would**
 22 **not personally guarantee, it leaves me no recourse in**
 23 **the event that they don't pay the entire balance at the**
 24 **minimum rate that you're having at \$350 an hour.**
 25 Q. In response to questions by Mr. Monson, you

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1 indicated that the lawsuit filed by Ms. Betts was
 2 designed to coerce you into providing testimony for
 3 SDCAN. Is that a correct characterization of your
 4 testimony?
 5 **A. Yes.**
 6 Q. Do you know the date that the SDCAN testimony
 7 was filed at the PUC?
 8 **A. It was sometime shortly either just before or**
 9 **just after the case was actually filed. I have**
 10 **the testimony. I looked up the date, and I don't recall**
 11 **exactly, but the timing, I think, is right around the**
 12 **date the case was actually filed, shortly after where**
 13 **you utilized my work product without my permission.**
 14 Q. Subject to check, will you accept that the
 15 testimony was filed by SDCAN on October 16th or 2016?
 16 **A. That sounds about right.**
 17 Q. Okay. There you go.
 18 And isn't it true that you didn't learn about
 19 the filing of the complaint until January 2017?
 20 **A. I'm sorry. Say that again.**
 21 Q. Isn't it true that you did not know about the
 22 filing of Ms. Betts' complaint against you until
 23 January 2017?
 24 MR. CLARK: I think that was asked and
 25 answered.

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1 THE WITNESS: And I'll have to refer back to
 2 the record. But whatever I answered the question, I had
 3 the dates in front of me. So I'll say that's about
 4 right.
 5 Do you have that, Mr. Monson? It was Exhibit
 6 B. What was Bates stamp number?
 7 MR. MONSON: 215, the letter dated January 4th,
 8 2016, when you returned to your office and read it and
 9 filed that letter that date --
 10 THE WITNESS: That's correct.
 11 MR. MONSON: -- as the day you learned of the
 12 lawsuit.
 13 THE WITNESS: That's correct.
 14 BY MR. SHAMES:
 15 Q. So please explain to me how a lawsuit that's
 16 filed three months or so after the testimony was due
 17 would have effectively coerced you into filing testimony
 18 that had already been filed?
 19 **A. Because you needed me as an expert and you had**
 20 **already used my work product without telling me. You**
 21 **had already filed it with the PUC, which caused San**
 22 **Diego Gas & Electric to file a motion to strike because**
 23 **you utilized expert testimony when you weren't supposed**
 24 **to. You didn't -- you weren't able to designate me as**
 25 **an expert because we did not have a retainer. So,**

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1 **therefore, that's why three months later.**
 2 **So it had -- the lawsuit coerced me. Had I**
 3 **would have been okay with it you could have designated**
 4 **me as an expert and you could have been on your merry**
 5 **way. But because of the hidden agenda of you and Ms.**
 6 **Betts, that didn't happen.**
 7 MR. SHAMES: I move to strike that answer as
 8 it's unresponsive.
 9 BY MR. SHAMES:
 10 Q. The question --
 11 MR. MONSON: I'll join.
 12 MR. SHAMES: I'm sorry?
 13 MR. MONSON: I'll join.
 14 BY MR. SHAMES:
 15 Q. The question I'll ask you again is: How could
 16 you have been coerced into providing expert testimony
 17 for SDCAN when that testimony was filed three months
 18 before you learned about the lawsuit that Ms. Betts
 19 filed?
 20 **A. I think you were sitting here earlier when**
 21 **Mr. Monson asked me those questions where we identified**
 22 **the dates where Ms. Betts made the threat that she was**
 23 **going to file the lawsuit. So it wasn't when -- it**
 24 **didn't all start from the fact that I learned the**
 25 **lawsuit was filed. She had already been making that**

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1 **threat. And you can look at her -- her -- which was**
 2 **supported by her -- what do you -- retainer that she**
 3 **proposed to me after yours didn't work out. So she had**
 4 **already been letting me know that that was -- that's**
 5 **what she was thinking about doing.**
 6 **So she started trying to coerce me and threaten**
 7 **me prior to the lawsuit being filed. I knew -- quite**
 8 **honestly I was surprised she actually did it because it**
 9 **shocked me that she would do something like that. But**
 10 **nevertheless, she tried and she informed me of it in**
 11 **advance. And I testified to that with Mr. Monson.**
 12 Q. So the coercion that you're alleging in this
 13 complaint has not to do with the actual filing of the
 14 complaint, but the coercion of her threatening to file a
 15 complaint back in July of 2016; is that correct?
 16 **A. And then actually going through with it. It's**
 17 **both.**
 18 Q. Well, answer me this then. What would be the
 19 coercive effect of the lawsuit being filed, since the
 20 testimony -- the SDCAN testimony had already been
 21 submitted to the PUC? What would be the coercive effect
 22 of that actual complaint being filed since it happened
 23 after the testimony was due?
 24 **A. Because I don't know the rules of procedure at**
 25 **the PUC level as to the timing of designating experts,**

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1 et cetera, like a civil case. You can file whatever you
 2 want with the CPUC. I don't know when you have to
 3 designate -- make the expert designation to support your
 4 filings. You already used my expert services and
 5 utilized my opinion and utilized my work product.
 6 So I don't know, again, what the effect -- the
 7 rules are in the PUC. But in my mind is that -- you
 8 know, Ms. Betts filed a lawsuit in an "ah" moment when
 9 she realized that you guys had gone forward with all the
 10 information I was trying to get from you guys on how you
 11 used my name and refused to provide that. And never
 12 even asked permission to utilize any of -- my name for
 13 any reason. In fact, I specifically ordered you not to.
 14 So that's the coercive effect.
 15 I think after the lawsuit was filed, the
 16 lawsuit physically being filed, I think you guys thought
 17 I would say: Oh, my God. Let's talk about this and how
 18 can we work this thing out. Because it surely had
 19 nothing to do with hers and my previous arrangements to
 20 forward a movie.
 21 Q. It is understanding then that after the case,
 22 Ms. Betts' case was filed against you, there was a
 23 possibility that SDCAN might submit some expert
 24 testimony by you in that rate case. Is that your
 25 understanding?

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1 **A. I think you already had. That's why I think**
 2 **you're just -- you just pointed out that your testimony**
 3 **was submitted prior to the lawsuit. Is that correct?**
 4 **Do I have that backwards?**
 5 Q. That's correct.
 6 **A. Is that correct?**
 7 Q. That --
 8 **A. You're utilizing my name in your testimony. Is**
 9 **that correct?**
 10 Q. My question is only to the coercive effect.
 11 You are alleging coercion.
 12 **A. Correct.**
 13 Q. I'm trying to understanding what that coercion
 14 is. So tell me what the coercion effect is of a lawsuit
 15 filed against you three months after testimony in a case
 16 is due.
 17 **A. The coercion effect is you look at the proposal**
 18 **sent to me from Ms. Betts when all of a sudden now she**
 19 **is trying to get me to put something in writing that**
 20 **somehow I owe her personally this money after she spoke**
 21 **about it with you. That's the coercive effect as used**
 22 **in litigation in writing, the threat of it or that idea**
 23 **after she had already told me she was going -- she was**
 24 **going to sue me if I didn't do this. And then three**
 25 **months later actually filing the lawsuit, knowing**

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1 **already that your -- you've already filed everything**
 2 **with my name on it and refused to tell me, despite me**
 3 **asking.**
 4 MR. SHAMES: I'm going move to strike that as
 5 also unresponsive.
 6 BY MR. SHAMES:
 7 Q. I'm going to ask you the question about what is
 8 the coercive effect of Ms. Betts' lawsuit filed in
 9 January of 2017. What is the coercive effect of that,
 10 not anything else?
 11 MR. CLARK: Well, for Mr. Clark I'm going to
 12 object because he did the best he can to explain his
 13 understanding. You're trying to get Mr. Clark to give
 14 you a legal conclusion that I am not sure he understands
 15 what you're getting at. So with that said, at least an
 16 objection is lodged.
 17 THE WITNESS: I'm not quite exactly sure at
 18 this point what you're trying to get out of me. Alls I
 19 can tell you is as I sit here today, based on the fact
 20 that you and Ms. Betts worked together, discussed your
 21 proposal to me, decided to use this movie -- this
 22 \$100,000 as a way to get me to work as a proposal for
 23 SDCAN is coercion. And the fact you filed a lawsuit to
 24 try to emphasize it is coercion. That's the best I can
 25 do for you today.

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1 BY MR. SHAMES:
 2 Q. Mr. Monson asked you about the work product
 3 that was fraudulently used by SDCAN and you say
 4 effectively, as you understand it, anything that was in
 5 Ms. Betts' testimony was your work product. Is that
 6 correct?
 7 **A. That's correct. That's why you tried to get**
 8 **me -- you and I discussed my work product and in your**
 9 **document you made comment about releasing it so that you**
 10 **can use it.**
 11 MR. SHAMES: I'm going to mark as the next
 12 exhibit in order, which may be Exhibit 8? Is that
 13 right?
 14 MR. MONSON: Yes.
 15 THE REPORTER: This was 8.
 16 (Exhibit 9 marked for identification.)
 17 BY MR. SHAMES:
 18 Q. This is the except from the direct testimony of
 19 Ms. Betts. And the stapling maybe a little screwed up.
 20 All right, maybe not. My copy is.
 21 And I want you to point out specifically in
 22 this document what is the work product that was
 23 fraudulently used.
 24 MR. CLARK: I'm going to object for Mr. Clark
 25 on the grounds that counsel is has provided an excerpt

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1 of one -- page 1, page 6, page 8, and page 11, and that
2 the title: "Direct Testimony of Jennifer Betts on
3 behalf of SDCAN regarding SDG&E Complicity and
4 Concealment in 2007 Wildfires."
5 The direct testimony from Ms. Betts was a very,
6 very large document. And there is no way that this four
7 pages of excerpts can categorize all the work product
8 and the numbers of times that Mr. Clark's name was used
9 in their opposition. So I'm going to object on the
10 grounds that this document doesn't represent Ms. Betts'
11 direct testimony on behalf of SDCAN.
12 MR. MONSON: Can I have it for a second,
13 please. I had two page 7s in mine.
14 MR. SHAMES: Okay. I've got page 6.
15 MR. MONSON: This doesn't have a page 7, but it
16 does now.
17 MR. SHAMES: Thanks for that.
18 MR. MONSON: And it has pages 6, 7, 8, and then
19 11.
20 MR. SHAMES: 11, right. That's correct.
21 THE WITNESS: Did I say the right pages on the
22 record or do I have to say it again?
23 MR. MONSON: You don't have to say anything.
24 BY MR. SHAMES:
25 Q. All right. Now you completed your objection.

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1 Are you refusing to answer any questions?
2 MR. CLARK: I am just making an objection that
3 you're putting four pages of a document that I recall
4 correctly was hundred of pages long. It was a big
5 document that was printed out. So this is in no way a
6 replica of what all is in there and the work product
7 utilized by you guys using Mr. Clark's work product.
8 But with that said, what would you like to know
9 about these four pages?
10 BY MR. SHAMES:
11 Q. I've already asked you. Identify specifically
12 what the work product is in these four pages.
13 **A. My work product is definitely my website,**
14 **number one. You guys didn't put that together.**
15 Q. All right. Well, let's talk about that. So
16 it's your allegation that a reference by us to your
17 website constitutes fraudulent, unauthorized use of your
18 work product, meaning that website, correct?
19 **A. Yes, because you lied to me about using my work**
20 **product and my name. My name is my work product. My**
21 **name is proprietary. You have to -- you represented to**
22 **me -- well, I'll just let it go at that.**
23 Q. Okay. What else?
24 **A. The work that Ms. Betts obtained from me as her**
25 **expert was not public information.**

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1 Q. And where are you referring to? Page and line.
2 **A. Let's go back here. It says: "I began to**
3 **prepare for trial on my own." So we're starting on page**
4 **6, line -- I'm going to say lines 14, 15. So: "After**
5 **becoming Pro Se, I retained Mr. Clark as my Consultant.**
6 **After experiencing a second unsuccessful mediation**
7 **session at JAMS on February 20th, 2014 in which SDG&E**
8 **continued to decline any liability, I began to prepare**
9 **for trial on my own on February 7, 2014, Counsel for**
10 **SDG&E had served a letter via CaseHomePage entitled**
11 **"Notice of Upcoming Reconstruction Work on TL637" --**
12 **meaning transmission line 637 -- "which indicated the**
13 **Wood to Steel conversion of TL 637 was imminent."**
14 Q. So what you're saying --
15 **A. I'm not done yet.**
16 Q. Well, hold on a second. Let's go one paragraph
17 at a time.
18 Where is the work product that you're alleging
19 in that paragraph that you just read on the record?
20 **A. "I retained Mr. Clark as my Consultant." And**
21 **during that time that I was her consultant anything that**
22 **I told her at that time was my work product.**
23 Q. And where in that paragraph does it reference
24 anything that you -- that she told you -- that you told
25 her? Sorry.

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1 **A. So "I retained Mr. Clark as my Consultant."**
2 Q. So you consider that sentence to be a violation
3 of your work product?
4 **A. Yes. Well --**
5 Q. Yes or no?
6 **A. Not in this document, by further, by using any**
7 **information she obtained from me working for her as her**
8 **consultant, yes.**
9 Q. I'm going to strike your answer to that
10 question because I asked: Where in that paragraph is a
11 violation of the use of your work product? Where in
12 that paragraph is a use of your work product?
13 **A. I will say the same thing where I just**
14 **mentioned on page 6, lines 14, 15 -- it's not lined up**
15 **properly -- where: "I retain Mr. Clark as my**
16 **Consultant." From that date forward, my information**
17 **with her is my work product.**
18 Q. So you're saying that sentence is your work
19 product that she improperly used? That sentence?
20 MR. CLARK: I'm going to object for Mr. Clark.
21 I'm going to object to counsel paraphrasing a single
22 line when a previous objection indicates that Ms. Betts'
23 direct testimony comprises one -- a whole bunch of
24 pages, far more than what's given here. And he is
25 trying to break down a particular line item to make his

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1 point.
2 THE WITNESS: So with that said, my answer is
3 as I indicated. Once Ms. Betts contacted Mr. Clark as a
4 consultant, that is his work product with her going
5 forward.
6 MR. SHAMES: I move to strike that answer as
7 unresponsive. I'm going to ask the question one more
8 time.
9 BY MR. SHAMES:
10 Q. Where -- is that sentence that you just
11 referenced: "After becoming Pro Se, I retained Mr.
12 Clark as my Consultant," is that sentence a violation of
13 your work product -- a use of your work product? Sorry.
14 **A. Let me see if I can make it a little bit more**
15 **clear for counsel to understand.**
16 **From that day forward that sentence: Ms. Betts**
17 **retained Mr. Clark as her consultant. From that day**
18 **forward all information was his work product, period.**
19 Q. So anything she knows about the case from that
20 day forward is your work product?
21 **A. That she learned from me, yes.**
22 Q. Okay. Is there anything in that paragraph that
23 references something she learned from you? Is there
24 anything in that paragraph?
25 **A. According to these specific words, no, she did**

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1 not.
2 Q. Let's go to the next paragraph -- next page. I
3 ask you to review that and ask -- and point out to me
4 references to something that you told her.
5 **A. Starting with line 1: "Realizing that all of**
6 **the transmission line evidence in TL637 would be**
7 **destroyed by this construction," she learned that from**
8 **me.**
9 **"I prepared a Plaintiff's Ex Parte Notice and**
10 **Ex Parte Application for Preliminary Injunction to**
11 **Preserve Evidence, with exhibits and Mr. Clark prepared**
12 **a supporting Declaration."**
13 **All information associated with how -- what**
14 **needed to be preserved, she is not an electrical**
15 **engineer, she didn't know. All information she obtained**
16 **from me for the preservation of evidence came from me.**
17 **That is my work product.**
18 Q. Well, let's -- hold on. Stop. Let me ask you
19 about that.
20 That declaration, supporting declaration to
21 which you're referring to, isn't it true she paid you
22 for that?
23 **A. Yes.**
24 Q. So you were paid for that?
25 **A. Yes.**

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1 Q. So perhaps you can help me, show me a document
2 or reference a document that says that whatever
3 information that she paid for that you provided to her
4 cannot be used for any other purpose other than the
5 civil case. Where does it say that in an agreement or a
6 document that you sent to Ms. Betts?
7 **A. What is interesting is that it -- no document**
8 **does say that she can use my work product on another**
9 **case. She paid me to use that, my information, my work**
10 **product on her case.**
11 Q. Where does it say that?
12 **A. There is no document that suggests she has**
13 **permission to use it on any other case. It's what's not**
14 **in writing is what's key.**
15 MR. SHAMES: Okay. I am going to strike your
16 answer as unresponsive.
17 BY MR. SHAMES:
18 Q. What I'm asking you is: Is there a document
19 that says that any information that you gave her that
20 she had paid for -- okay -- is not able to be used for
21 any other purpose than the civil case? Is there a
22 document that says that?
23 **A. It's the document that doesn't exist that**
24 **doesn't allow her to do it. That's the evidence, sir.**
25 **As well as her verbal testimony with me agreeing that**

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1 **SDCAN would pay for my work product and she would pay**
2 **for it.**
3 **So there is plenty of documents contained in**
4 **these -- in what I gave you today that looks at the**
5 **understanding of the parties over a period of time. And**
6 **the request to continue working. The request that SDCAN**
7 **will -- or a commitment that if SDCAN doesn't pay, she**
8 **will.**
9 **So she was fully aware that in order to use my**
10 **work product, SDCAN, there would have had to have been a**
11 **retainer either by her or by you or SDCAN. One in the**
12 **same.**
13 **So it's the actions of the parties that**
14 **demonstrates what the understandings of the parties**
15 **were.**
16 Q. Is it your understanding that if a client pays
17 you for your expert advice and you provide that expert
18 advice to a client in writing, that the client may not
19 use your expert advice for any other purpose other than
20 for the specific purpose that you gave them?
21 **A. I have had plenty of cases in my career where**
22 **there has been multiple defendants, and each specific**
23 **defendant and people involved with the case, even though**
24 **sometimes they were involved with the same lawyers, they**
25 **would give me a separate retainer for the separate**

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1 amount of work. I have never had somebody in my entire
2 career -- and I've done a lot of cases -- utilize my
3 work product on one case and turn around and basically
4 sell it for their own purpose to make money on something
5 else. It has never happened.

6 Q. Let me give you a hypothetical. So Ms. Betts
7 takes this declaration that you prepared and what she
8 paid for, and she goes to the newspapers and she says --
9 makes a statement to the newspaper and uses that
10 declaration to support her position publicly. Would
11 that be, in your mind, an inappropriate use of your work
12 product?

13 MR. CLARK: For Mr. Clark, I'm going to object
14 as the question is a hypothetical question. It has
15 nothing to do with stating any facts in this case. And
16 I'm going to direct the client, Mr. Clark, not to answer
17 hypothetical questions.

18 If counsel has a question for this case he
19 would like to put -- this is not an expert testimony.
20 This is a percipient witness. If he has facts he would
21 like to put in front of the witness and ask specific
22 questions, please feel free to do so. But he is not
23 going to answer hypothetical questions in order to allow
24 him to create a story.

25 \\\

1 admissible discovery.

2 BY MR. SHAMES:

3 Q. All right. Going back to a previous
4 question -- strike that.

5 I want to refer you to line 8 of the document
6 that's been identified as Exhibit 9.

7 A. I'm sorry?

8 Q. Page 7, line 8. She references photo TL637.
9 Is photograph TL637 your work product?

10 A. Yes.

11 Q. You took the picture?

12 A. No. I directed Ms. Betts on what picture to
13 take and the -- and the purpose of needing the picture
14 and what the evidence showed. She did not know.

15 Q. So she took this picture at your direction?

16 A. Yes, because she wanted to -- she is the
17 attorney that I'm working for. She wanted to maintain
18 custody and control of the pictures and not have me do
19 it.

20 Q. And your position is that because you directed
21 her to take the picture, even though she took it that's
22 your work product?

23 A. Yes, because she would not have known to take
24 those pictures had I not been there to direct her.

25 Q. Can you quantify, as you sit here today, how

1 BY MR. SHAMES:

2 Q. All right. So let me understand this. You
3 will not -- you are refusing to answer that question.
4 Is that correct?

5 MR. CLARK: For Mr. Clark, he is not going to
6 ands a hypothetical question that only you know what
7 you're looking for.

8 If you have facts that you want to put in front
9 of Mr. Clark that suggest something about this case that
10 you want him to ask, feel free. But you're asking Mr.
11 Clark a hypothetical question, and he is not in a
12 position to answer a hypothetical question.

13 BY MR. SHAMES:

14 Q. So your position -- and I may be speaking to
15 Mr. Clark's attorney at this point -- that Mr. Clark
16 will not answer that hypothetical nor any hypothetical
17 that I pose to him in this line of questioning; is that
18 correct?

19 MR. CLARK: I think that's a fair statement.
20 Because I don't think as a percipient witness he is
21 required to answer hypothetical questions.

22 If you have a document or something you want to
23 put in front of Mr. Clark that's the purpose of this
24 deposition, to find out the facts of this case. And
25 hypothetical questions are not calculated to lead to

1 much time it took you, effort, in terms of hours it took
2 you to give Ms. Betts the guidance about which -- about
3 taking that picture specifically TL637? How much work
4 did you have to put into letting her know which picture
5 to take?

6 A. Well, TL637 that's not just one. That's a
7 bunch of poles. And there are several evidences.

8 On this particular -- let me think about it. I
9 have to figure out what day this.

10 Q. Remember, I'm referring to photograph, not
11 photographs, photograph TL637.

12 A. Well, I had to accompany her. So I had to
13 drive down from Huntington Beach and go with her to
14 this. I'm not sure -- what day was this? On March. . .

15 So this is the day that SDG&E agreed to set up
16 a time for myself and Mr. Clark to view and photograph
17 TL637. So that is multiple photographs.

18 The TL637 -- and obviously you don't know what
19 that is so I'll share it with you. TL637 is a
20 transmission line that has a lot of poles on it.

21 So this particular date Ms. Betts and I met
22 with Larry Davis of SDG&E and drove up and down this
23 power line photographing the evidence of what was still
24 there, by the way, this many years later. So there were
25 many photographs taken that day. We spent the better --

1 I mean we met, if I recall, pretty early in the morning
2 and we spent the better part of a day taking these
3 photographs. So there was a lot of photographs taken.
4 It's not one.
5 Q. Isn't it true that photograph TL637 is
6 contained in your book, "Circle the Wagons"?
7 A. Not all the photographs that we took this day.
8 We took a lot of photographs that are not contained in
9 my book. My book was published prior to this. We took
10 a lot of other photographs. And I showed her additional
11 evidence out that there we found while we were out
12 there.
13 So like I indicated earlier, all the
14 information that she learned from me that was not
15 contained in my book is private information. And she
16 used it.
17 MR. SHAMES: I am going to move to strike that
18 answer as unresponsive. I'm going to ask the question
19 again.
20 BY MR. SHAMES:
21 Q. Isn't it true that TL637, the photograph that
22 we've been talking about, is contained in your book
23 "Circle the Wagons"? True or false?
24 MR. CLARK: For Mr. Clark, I'm going to strike
25 as stating facts that are not in evidence.

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1 THE WITNESS: So I am going to say false
2 because you're making a false statement.
3 BY MR. SHAMES:
4 Q. There is no statement. It is a question.
5 Is TL637 contained in the book?
6 A. You referred to in your question as TL637
7 photograph like it's singular that we've been talking
8 about. And I just clarified it for you because you
9 don't understand that. That's a whole lot of poles
10 involved so there a lot of photographs. Those
11 photographs that we took that day are not contained my
12 book.
13 Q. So none of these photographs contained in
14 photograph TL637 can be found in your book?
15 A. The pictures that we took that day are not
16 contained in my book.
17 Q. Are any of those pictures contained on your
18 website?
19 A. No.
20 Q. Ms. Betts -- I'm sorry.
21 At line 12 on that same page Ms. Betts makes a
22 statement that it is her understanding that you
23 "believed the lack of insulators with this down guy
24 design was causing phase to ground faults and arcing."
25 Do you see that testimony?

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1 A. What line are you looking at?
2 Q. Lines 12 and 13.
3 A. On page 7?
4 Q. Page 11.
5 A. Oh, now you switched on me. Okay.
6 Q. It starts with: "It is my understanding that
7 Mr. Clark believed the lack of insulators with this down
8 guy design was causing phase to ground faults." Do you
9 see that?
10 A. Yes.
11 Q. Isn't it true that your assertion to that
12 effect is contained in your book "Circle the Wagons"?
13 A. I know the evidence of arcing is contained and
14 I identified several design issues that could have
15 solved this problem and kept it from happening.
16 I don't -- when you say this document under
17 line 12: "It is my understanding that Mr. Clark
18 believed the lack of insulators with this down guy
19 design was causing phase to ground faults and arcing,
20 her putting in the "lack of insulators" is, I think,
21 either a misstatement or I am not sure she understood
22 what she was saying there.
23 I am thinking if she -- I'm not sure what she
24 is saying there. Because I shared with Ms. Betts, and I
25 think what she was trying to say is that there were

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1 several design modifications that could have presented
2 this. And we both agreed, once I have explained it to
3 her, that was the case.
4 And one of those, which she says "lack of
5 insulators," it's -- it is what they call a down guy
6 insulator, which is not normally used on a 69 KB line.
7 However it could be -- that wasn't my focus as the
8 reason. Although it could be an alternative, if that's
9 makes sense. So I just think she misspoke there a
10 little bit.
11 Q. You still haven't answered my question.
12 Isn't this issue regarding the down guy design
13 and how it caused phase to ground faults, isn't that
14 contained in your book and explained in your book?
15 A. No, it's not.
16 Q. And not explained on your website either?
17 A. No.
18 Q. In fact, you don't reference "down guy design"
19 at all in your website, do you?
20 A. Yes, I do.
21 Q. Oh, you do?
22 A. Yes, but since you don't really know what
23 you're asking, and you're asking about if it caused
24 phase to ground faults, that obviously is just something
25 from somebody that doesn't know what they're asking.

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1 **Because that's what this entire case that Ms. Betts that**
2 **I worked on is about.**
3 Q. I am not asking. I'm referring to this
4 testimony.
5 **A. That's not my testimony.**
6 Q. Yes. Okay.
7 **A. So you're asking me to interpret --**
8 Q. No. What you're saying -- and I want to make
9 sure it's clear -- is that whatever is contained here is
10 not accurate; that's not your testimony?
11 MR. CLARK: I'm going to object as it misstates
12 facts not in evidence. For Mr. Clark, in that -- this
13 one sentence, Mr. Clark is pointing out that there was
14 an error made. I understand what she was trying to do,
15 but there is a mistake.
16 This document is hundreds of pages long and
17 you're trying to wrap everything up in one question and
18 everything in this book and everything in this document.
19 And that's not the case. So you're trying -- so I'm
20 going to object on your question for Mr. Clark in that
21 you're trying to tie him down to a single line item
22 here, which is not relevant because it misstates what
23 this case is about. There is a mistake on this
24 document.
25 \\\

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1 BY MR. SHAMES:
2 Q. So you --
3 **A. That one line item.**
4 Q. That one line item is a mistake? You're saying
5 that?
6 **A. I see what she is trying to say. She didn't**
7 **make it make sense properly. As you didn't ask the**
8 **question properly.**
9 Q. Is that your work product, that sentence?
10 **A. I didn't approve this writing. That's**
11 **something you have to ask Ms. Betts.**
12 **The concept behind what she was trying to write**
13 **is my work product. She just didn't understand how to**
14 **write it properly, just as you are struggling**
15 **understanding now to ask the right question.**
16 Q. Okay. I'm going to have to take a moment
17 here to ask you not to make accusations about the -- my
18 questions and the quality of the questions or whether I
19 misunderstand or don't understand. That's being
20 aggressive. That's inappropriate for depositions.
21 You're to answer the question and not to judge my
22 questions or anyone else's questions.
23 Is that clear to you? Do you understand that?
24 **A. I acknowledge what you just said. And in**
25 **response --**

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1 Q. All right.
2 **A. -- at the same time you're asking questions**
3 **that are abrasive, and you're trying to manipulate a**
4 **document and ask very specific questions that are trying**
5 **to misconstrue what this document means and what the**
6 **intent was and what the work product was. So as long**
7 **you keep trying to do that and ask the same question**
8 **over and over and over again, I'm going to give you the**
9 **same answer.**
10 MR. MONSON: Mr. Clark, he is not being abusive
11 at all. He is asking you very simple questions that
12 require very simple answers. And you continue to
13 interject speaking objections, which are totally
14 improper.
15 So could you please just object to a question,
16 state your simple objection, relevancy or whatever it
17 is. You don't need to go into long sentences. And then
18 ask your client to respond to the question.
19 THE WITNESS: I will do the best I can.
20 MR. MONSON: Thank you.
21 THE WITNESS: This is -- I am not familiar with
22 this, so all I can say is I'll do the best I can.
23 BY MR. SHAMES:
24 Q. All right. Going back to the sentence
25 beginning on line 12, isn't it true that the statement

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1 there by Ms. Betts in her testimony is not your work
2 product because it mischaracterizes what you would --
3 you had been telling her?
4 **A. No.**
5 Q. So then I'm to understand that it does not
6 mischaracterize what you've been telling her?
7 **A. It is your -- your understanding is correct in**
8 **that it does not mischaracterize. Although I will tell**
9 **you she didn't say what she was trying to say here**
10 **because of the lack of technical ability.**
11 Q. So is that statement accurate or not?
12 **A. I'm going to say -- I will say based on what**
13 **she was trying to say, yes, her intent was right. But**
14 **from a technical sense, she made a mistake.**
15 Q. But just to be clear, it is also your testimony
16 that both on your website and your book you do not have
17 this -- you do not have any discussion that relates to
18 this -- this sentence?
19 **A. As I sit here today, I don't recall exactly**
20 **what's in my book. So if you would like to put**
21 **something in front of me to refresh my memory. I talked**
22 **about a lot of things over the years, and I talked about**
23 **down guy design. I did not talk about them causing**
24 **ground fault. That's what this case is about. I talked**
25 **about different ways for SDG&E to remedy this.**

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1 **As far as specifically how I characterize it in**
2 **a book that I wrote back in 2008, I think -- or whatever**
3 **it was. I haven't read it in probably so many years. I**
4 **can't tell you exactly what is in there, so I am not**
5 **going to try to pretend to sit here and remember every**
6 **detail that is in the book.**

7 MR. MONSON: Mr. Clark, I viewed your video
8 several times. In fact, just yesterday where you have
9 the little pole and a couple wires and you start a fire.
10 Isn't that what it's talking about?

11 THE WITNESS: Well, she is talking about -- no,
12 that's two different things actually. It's talking
13 about down guy design. And, like I indicated, even in
14 the video I talk about some options to remedy that so it
15 won't happen.

16 But what she is talking about is the lack of
17 insulators. Again, that was one of the options that I
18 probably suggested. And I'm going to say here today I
19 probably suggested that what they call Johnny Balls --
20 excuse the terminology -- Johnny Balls is the term of
21 the insulator in laymen's terms that is an option.
22 However, in 69 KB design it's not typically used. There
23 are other options that are used. And I don't recall
24 exactly if I outlined that. I shared it with Ms. Betts
25 that that's an option because I showed her, dragging

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1 around, what they were. I don't recall exactly if I
2 talked about that particular issue as you're asking in
3 my book or on my website, as I sit here today. I might
4 have. I don't recall.

5 BY MR. SHAMES:
6 Q. Okay. Thank you.

7 Where on your website do you assert a copyright
8 to the information on your site?

9 **A. I don't know. Somebody created that for me.**

10 Q. Do you know if a copyright exists?

11 **A. I don't know.**

12 Q. Are you aware of whether there is any language
13 on your website anywhere that says use of the language
14 or the information on the website is restricted in any
15 fashion?

16 **A. I don't know. As I sit here today, I have no**
17 **idea.**

18 Q. Same questions with your book. Do you have any
19 knowledge of a copyright in your book?

20 **A. No.**

21 Q. Any restrictive use language in your book?

22 **A. Not that I'm aware of. I don't think so.**

23 Q. As you sit here today, are you aware of whether
24 any of your work product was ever considered by the
25 Public Utilities Commission?

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1 **A. I don't know. I wasn't involved with the --**
2 **are you talking about in the work that you did?**

3 Q. In the wildfire case in which SDCAN
4 participated.

5 **A. Well, I know they considered it because all of**
6 **the information I provided the CPUC ultimately Ms. Betts**
7 **sent to me and showed me that even though they didn't**
8 **state it in their public papers that they received all**
9 **the documents, and which we know they understood it**
10 **because SDG&E fixed all the problems by putting in steel**
11 **poles.**

12 **They actually used a design that we didn't**
13 **suggest. They put in steel poles. So Ms. Betts later**
14 **sent me an e-mail saying: You were right all along,**
15 **sent me a my clip from the CPUC of the information they**
16 **used that came from me.**

17 Q. Okay.

18 **A. So now how that translates into your hearing**
19 **and who talked to who at the CPUC I don't know.**

20 MR. SHAMES: So I'm going to move to strike
21 that as unresponsive.

22 BY MR. SHAMES:
23 Q. And, once again, I'm going to ask you the
24 question. Are you aware of whether the Public Utilities
25 Commission ever considered or contemplated your work

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1 product in their deliberation on this matter?

2 **A. Well, I can't speculate on what they did.**
3 **So I'm just going to say am I aware? No, because you**
4 **didn't retain me and I don't know what took place. I**
5 **was not a part of the hearing.**

6 Q. If the Commission never considered or used your
7 work product, you still consider -- in your mind, for
8 purposes of your complaint, you still consider that your
9 work product was used improperly; is that correct?

10 **A. Absolutely. Used it and lied about it and**
11 **didn't tell me you were using it. Absolutely. If you**
12 **wouldn't have lied about it, we wouldn't be here today.**

13 Q. So it doesn't matter whether the Public
14 Utilities Commission ever looked at any of your work
15 product for purpose of this lawsuit? You still feel
16 that your claim is valid?

17 **A. My claim is valid because I specifically**
18 **addressed e-mails to you concerning your work using my**
19 **name. You intentionally deceived me and didn't tell me**
20 **you were using my name and chose to proceed without a**
21 **retention and to continue to lie about ever using my**
22 **name at all. I've got documents from you that said, "I**
23 **never used your name."**

24 Q. All right.

25 **A. So the fraud and deceit in not whether or not**

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1 **the PUC used it or not, it's your acts on how you used**
2 **it and chose to try to conceal it from me. That's fraud**
3 **and deceit.**
4 Q. Okay. In response to questions posed to you by
5 Mr. Monson regarding damages, you talked about \$225,000
6 [sic] in special damages as being a number that you drew
7 from representations made by SDCAN to the Public
8 Utilities Commission of what we were going to charge the
9 Commission. Is that your understanding?
10 **A. Yes.**
11 Q. Is that an accurate understanding of your
12 statements?
13 **A. Yes. I decided to sue you for the money that**
14 **you were trying to make using my work product.**
15 Q. Okay. Do you have any evidence that Ms. Betts
16 or SDCAN received any money whatsoever from the PUC in
17 this case?
18 **A. No. Your attorneys refused to provide that**
19 **information upon request. In fact, I got a motion to**
20 **compel to kick out where I was trying to get that**
21 **information so I could see how much money you got or if**
22 **you got any money at all.**
23 **But you guys refused to give me that**
24 **information so I have no evidence, other than the**
25 **paperwork that I've got that you presented to the PUC on**

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1 **the amount of money you were going to collect.**
2 Q. As you sit here today, can you reference the
3 specific question that you posed to SDCAN's attorneys
4 that you hoped would elicit a response to that --
5 **A. Yes.**
6 Q. -- question?
7 What is the exact question you asked for to
8 find out whether SDCAN or Ms. Betts had gotten monies
9 paid to them by the PUC for this case?
10 **A. The entire reason I was trying --**
11 Q. What is the specific question that you asked?
12 **A. Look in the production of documents of SDCAN's**
13 **bank account records --**
14 Q. Okay.
15 **A. -- and that would have told me. I would have**
16 **been able to see a check coming from the PUC, had you**
17 **been paid, how much you got paid, who got paid, whether**
18 **or not you got paid the entire amount or if you pocketed**
19 **the amount of money you set aside for expert fees.**
20 Q. So you're referencing Special Interrogatory 38;
21 is that correct?
22 **A. I don't know. I don't have Special**
23 **Interrogatory No. 38 in front of me.**
24 Q. Okay. But you asked SDCAN's attorneys to
25 provide checking accounts by bank name, address, and

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1 account number; is that correct?
2 **A. Yes.**
3 Q. And you hoped that that question would give you
4 the information you wanted about whether SDCAN or Ms.
5 Betts got paid; is that correct?
6 **A. I would have subpoenaed the checking account**
7 **records to see if SDCAN got paid, how much it got paid**
8 **from the Public Utilities Commission as a result of this**
9 **opposition filing by you and Ms. Betts utilizing my work**
10 **product.**
11 Q. Okay. Did you present your question to either
12 Ms. Betts or to SDCAN asking, whether either of those
13 parties had ever received any compensation from the PUC
14 for this case?
15 **A. That was the -- I just referred to where I was**
16 **getting that information.**
17 MR. SHAMES: Okay. I am going to strike your
18 answer as unresponsive and ask it again.
19 BY MR. SHAMES:
20 Q. Did you ever submit a request to SDCAN's
21 attorneys or Ms. Betts' counsel asking whether they had
22 received, specifically received income from that
23 specific case from the PUC?
24 **A. As I sit here today, I don't recall. There's**
25 **been a lot of discovery back and forth where I tried to**

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1 **get a lot of information. And I don't recall -- I can't**
2 **answer that question without spending time to go through**
3 **all of the discovery.**
4 **There were several sets of discovery sent out**
5 **to both SDCAN Michael Shames and Jennifer Betts. And as**
6 **I sit here today I can't tell you if there was a**
7 **specific question or not. I would actually have to go**
8 **back, now that you've brought it, up and reread it.**
9 Q. Subject to checking, isn't it true that you
10 never asked a question asking whether that specific case
11 had resulted in income for Ms. Betts or for SDCAN?
12 Isn't that true?
13 MR. CLARK: I'm going to object. It states
14 facts not in evidence.
15 THE WITNESS: I already informed you just now,
16 and I restate what I said so it's clear, is that there
17 was a lot of discovery in this case. As I sit here
18 today, I don't recall --
19 BY MR. SHAMES:
20 Q. Okay.
21 **A. -- the answer to your question.**
22 Q. "I don't recall" is a sufficient answer.
23 MR. SHAMES: I'm going to ask that we take a
24 three-minute break.
25 MR. MONSON: Okay. Off the record.

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1 (A brief recess was taken.)
2 MR. SHAMES: Back on the record.
3 I've completed my questioning, and I'm going to
4 pass the questioning back to Mr. Monson.
5
6 FURTHER EXAMINATION
7 BY MR. MONSON:
8 Q. I just have one question follow-up.
9 The declaration that's referred to in
10 Exhibit 9 on page --
11 **A. Are you talking about in your book of exhibits**
12 **here?**
13 Q. No, Exhibit 9.
14 **A. Oh, here. Okay.**
15 Q. On page 7 of Exhibit 9. It's marked page 7,
16 line 5.
17 **A. Sorry. I didn't realize I had the exhibit in**
18 **my hand. Let me fix this so I don't mess it up for the**
19 **court reporter.**
20 **Okay. Go ahead, please.**
21 Q. Do you see where it talks about a declaration
22 at footnote 10 next to it?
23 **A. What page? I'm sorry. You're on page 9?**
24 Q. Page 7.
25 **A. Page 7. Okay.**

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1 Q. Line 5: "Prepared a supporting Declaration."
2 See that?
3 **A. Yes.**
4 Q. Was that declaration filed with the court in
5 Mr. Clark's case and in Ms. Betts' case?
6 **A. Ms. Betts never filed her declaration with the**
7 **court.**
8 Q. Was this declaration ever filed with the court?
9 **A. Not that I'm aware of from Ms. Betts' case, no.**
10 Q. Was it filed in Mrs. Ross's case?
11 **A. A declaration was filed ins Mrs. Ross's case**
12 **because there was a deposition done. To my knowledge,**
13 **this was Ms. Betts' declaration.**
14 Q. In Mrs. Ross's case did her declaration attach
15 the Betts' declaration?
16 **A. I have no idea.**
17 Q. Once a declaration gets filed with the court,
18 do you think it's still your work product and no one
19 else can use it after it becomes public record?
20 **A. I am personally not sure of that right at the**
21 **moment, but any information above and beyond that**
22 **declaration surely is work product.**
23 Q. I didn't ask about information above and
24 beyond.
25 I'm saying the declaration itself, once it's

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1 filed with the court does that become public
2 information?
3 **A. I think that it's public information because**
4 **anybody can look at it. The question becomes whether or**
5 **not it's usable in a case where you're deceiving**
6 **somebody about using their information and not paying**
7 **for it. So I'm not quite sure how to answer. I really**
8 **don't know. I'll be honest with you. I don't know at**
9 **this point. I will have to do some more research when I**
10 **get back.**
11 MR. MONSON: I don't have any further questions
12 for you today.
13 Do you have any questions of yourself?
14 THE WITNESS: No. I'll save them for trial.
15 MR. MONSON: I propose that we enter into a
16 stipulation to have the original transcript sent to Mr.
17 Clark's pro per attorney representing himself, in other
18 words, Mr. Clark's address. And he can hold it until
19 time of trial. And he can sign it. And if he makes any
20 changes to it he'll let us know. And if the original is
21 not available at trial, a copy can be used as if it's
22 the original. And we'll relieve the court reporter of
23 her duties under the Code.
24 THE WITNESS: I would like to make one
25 statement before you relieve her though to go on the

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1 record.
2 You asked if I had any questions. The answer
3 was no. But I have something I want to put on the
4 record.
5 MR. MONSON: Go ahead.
6 MR. CLARK: And please don't be offended by
7 this, but I want -- with reference to the exhibits
8 presented to this deposition today by Mr. Clark Bates
9 stamped 1 through 3,200, there was a lot of dialogue and
10 to whether or not they would be placed in your
11 possession. Counsel has had plenty of time to have
12 copies made. I don't know if you've done that or not.
13 And if -- I just want to put on the record my
14 concern of counsel maintaining copies of the records and
15 not being placed in the custody of the court reporter.
16 Simply because this is a fraud case involving two
17 attorneys who are -- in Mr. Clark's opinion, are lying
18 and being deceitful. And, hence, their counsel -- their
19 counsel has no choice but to engage in the same activity
20 to defend them. So, therefore, I am concerned and don't
21 feel I can trust this law firm to maintain custody of
22 3,200 documents for fear of what I might be done with
23 them. So I just want to lodge that objection.
24 I'm going to be filing a motion with the court
25 if they're not maintained by the court reporter just to

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1 make sure that there are no objections allowed on the
2 authenticity of the e-mails. We've been using them all
3 day and referring to them. I don't think that's going
4 to be an issue, but I just -- I have to put my concern
5 on notice because that's a lot of documents that I don't
6 know what's going to happen to them if they stay in your
7 custody, that's all.
8 MR. MONSON: Well, I'll propose a stipulation
9 that I will arrange to have the documents sent to the
10 court reporter's office, which is right in this
11 building, after my office makes copies of them. And I
12 haven't had a chance to review through them yet.
13 MR. CLARK: That's --
14 MR. MONSON: But you know what the 3,200
15 documents are because you have them on your computer
16 still.
17 MR. CLARK: I actually have a full set. But at
18 the time of trial, I will be referring to those
19 specifics documents with Bates stamps on them. And I
20 won't have time to go through and see if what the court
21 reporter -- well, actually I guess -- no, because I
22 won't have the documents. If they're a part of the
23 record with the deposition that I'll have in my
24 possession I'll know the documents have not been
25 tampered with. I won't know that if you bring them

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1 to -- I won't know that if -- at trial because you're
2 going to have the documents that have been presented
3 here today.
4 MR. MONSON: Well, if you're willing to pay for
5 the extra expense of the court reporter copying them and
6 binding them up so they are exhibit whatever number it
7 is of your deposition I'll be glad to turn them over to
8 the court reporter so they can be bound up.
9 THE WITNESS: I responded to your request for
10 deposition. I complied with your request for
11 deposition. I brought all documents per your request.
12 I am requesting that the court reporter maintain
13 custody. That's all. If you don't want to, again I'm
14 just pointing out that there is an integrity issue with
15 this entire case with all the attorneys I'm working with
16 here or am against here. So I have a concern regarding
17 the court reporter not maintaining custody and control
18 of the documents that were presented today into
19 evidence. That's all.
20 MR. MONSON: Any other thing other than that?
21 Is the stipulation is okay?
22 THE WITNESS: The stipulation is okay.
23 MR. MONSON: I will make copies of the 3,200
24 pages, and I'll provide them to the court reporter.
25 THE WITNESS: I again lodge the same objection.

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1 MR. MONSON: And I'm not worried about your
2 objection. I will make copies of them and provide them
3 to the court reporter. There is no way that I can
4 remove any of them or change any of them because you
5 have a copy of the same ones and I couldn't do that
6 anyway.
7 MR. CLARK: My objection has been noted.
8 MR. MONSON: And I don't like your innuendo
9 about what my intent would be. And I wouldn't do that
10 anyway.
11 MR. CLARK: Like I apologized in advance, sir,
12 when you're an attorney and you're trying to defend
13 attorneys who are lying, you have no choice but to
14 create the same thing.
15 MR. MONSON: The attorney I'm defending is
16 one attorney, Ms. Betts, and she is not lying.
17 THE WITNESS: We'll see.
18 Is there anything else?
19 MR. MONSON: So stipulated?
20 THE WITNESS: So stipulated.
21 MR. MONSON: We can go off the record..
22
23 (Whereupon the deposition was
24 concluded at 4:18 p.m.)
25 ---o0o---

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1
2 DECLARATION UNDER PENALTY OF PERJURY
3
4 I, EDWARD L. CLARK, JR., the witness herein, declare
5 under penalty of perjury that I have read the foregoing
6 in its entirety; and that the testimony contained
7 therein, as corrected by me, is a true and accurate
8 transcription of my testimony elicited at said time and
9 place.
10
11 Executed on this _____ day of _____,
12 2018, at _____,
13 (city) (state)
14
15
16 _____
17 EDWARD L. CLARK, JR.
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REPORTER'S CERTIFICATION

I, Marsha Lewsley, Certified Shorthand Reporter, in and for the State of California, Certificate No. 7726, do hereby certify:

That the witness named in the foregoing deposition was, before the commencement of the deposition, duly sworn to testify to the truth, the whole truth, and nothing but the truth in the foregoing cause; that the testimony and proceedings were reported stenographically by me and later transcribed into typewriting under my direction; that the foregoing is a true record of the testimony and proceedings taken at that time.

I do further certify that I am a disinterested person and am in no way interested in the outcome of this action or connected with or related to any of the parties in this action or to their respective counsel.

In witness whereof, I have subscribed my name this 9th day of April, 2018.

Marsha Lewsley, CSR No. 7726