

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

Peter S. Davis, as Receiver of  
DenSco Investment Corporation,  
an Arizona corporation,

Plaintiff,

VS.

Clark Hill PLC, a Michigan  
limited liability company;  
David G. Beauchamp and Jane Doe  
Beauchamp, Husband and wife,

Defendants.

NO. CV2017-013832

**DEPOSITION OF GREGG REICHMAN**

Phoenix, Arizona  
April 23, 2019  
10:38 a.m.

REPORTED BY:  
KELLY SUE OGLESBY, RPR  
Arizona CR No. 50178  
Registered Reporting Firm R1012

GREGG REICHMAN, 4/23/2019

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(None.)

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DEPOSITION OF GREGG REICHMAN, commenced at  
10:38 a.m. on April 23, 2019, at the law offices of  
Coppersmith Brockelman, PLC, 2800 North Central Avenue,  
Suite 1900, Phoenix, Arizona, before KELLY SUE OGLESBY, a  
Certified Reporter, CR No. 50178, in and for the County of  
Maricopa, State of Arizona, pursuant to the Rules of Civil  
Procedure.

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GREGG REICHMAN, 4/23/2019

Phoenix, Arizona  
April 23, 2019  
10:38 a.m.

\* \* \*

(Deposition Exhibit No. 922 was marked for  
identification.)

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

EXAMINATION

Q. (BY MR. DeWULF) Please state your name for the  
record.

A. Gregg Reichman.

Q. Mr. Reichman, you are here today as a deponent  
in a matter brought by the receiver for DenSco against my  
clients, Clark Hill and David Beauchamp.

Do you understand that?

A. Yes.

Q. Have you been deposed before?

A. Yes.

Q. Multiple occasions?

A. Yes.

Q. Notwithstanding that, I will just go through a

GREGG REICHMAN, 4/23/2019

1 couple things to make sure you and I are thinking the same  
2 thing and this goes efficiently.

3 My goal today is to find out what you know about  
4 underlying events that led to the litigation where Clark  
5 Hill and David Beauchamp were sued. I'm going to try to  
6 ask understandable questions and clear questions to you,  
7 but if you don't understand my question, will you let me  
8 know?

9 A. I will.

10 Q. And I'll try to rephrase it. If you answer the  
11 question, I'm going to assume you understood the question.  
12 Is that fair?

13 A. Yes.

14 Q. We need to extend the courtesy to one another to  
15 allow the other to complete speaking before the other  
16 speaks so the court reporter can take it down for the  
17 record.

18 Do you understand that?

19 A. Yes.

20 Q. You are under oath to tell the truth and you  
21 understand our things we say today, including your  
22 testimony, can be used in court proceedings later on?

23 A. I understand.

24 Q. Your answers, and I think you already understand  
25 this, your answers will need to be audible so we can hear



GREGG REICHMAN, 4/23/2019

1 them, and verbal so they can be understood, rather than  
2 uh-uh, uh-huh, those kinds of things.

3 Do you get that?

4 A. I do.

5 Q. All right. So let me ask you a little bit of  
6 background information, if I could, and then I want to go  
7 to 922, which is what I believe is the latest version of  
8 the website for your entity, but --

9 A. It isn't.

10 Q. It is not?

11 A. No.

12 Q. Okay.

13 A. This says 2014 up at the top.

14 Q. All right. Thank you for the clarification.

15 A. You are welcome.

16 Q. Maybe this will be -- well, we will use this as  
17 a starting point. I didn't see anything in the  
18 bio information I saw for you regarding education.

19 Do you have any post-high school education?

20 A. Some community college.

21 Q. And where was that?

22 A. Scottsdale Community College.

23 Q. Were you born here in Arizona?

24 A. No.

25 Q. Where were you born?

GREGG REICHMAN, 4/23/2019

1 A. New York.

2 Q. What year?

3 A. 1960.

4 Q. When did you move to Arizona?

5 A. 1970.

6 Q. What brought you here?

7 A. My father and mother, kicking and screaming.

8 Q. So let's look at 922. As you have clarified,  
9 this would have been a snapshot, I guess, as of 2014. It  
10 references Active Funding Group on the first page.

11 Were you doing business through Active Funding  
12 Group in -- well, does it still exist?

13 A. I'm sorry.

14 Q. Does Active --

15 A. Yes.

16 Q. -- Funding Group still do business?

17 A. Yes, it does.

18 Q. And how would you describe its business?

19 A. We are an asset-based investor -- or lender to  
20 investors.

21 Q. And are the -- are the assets securing the loans  
22 typically residential real estate or not?

23 A. Typically they are, yes.

24 Q. If you could, the second page of -- let me ask  
25 you to look at the third page of this document. It uses

GREGG REICHMAN, 4/23/2019

1 the word hard-money lender in quotation marks. It says:  
2 Active Funding Group is a specialty finance company based  
3 in Scottsdale, Arizona. A more commonly known reference  
4 for the company's business is "hard money lender."

5 Do you see that language?

6 A. Yes, I do.

7 Q. Would that be an accurate description of Active  
8 Funding Group?

9 A. Yes. People described the industry in different  
10 ways, and I have described it in different ways, but  
11 that's one of the ways you could describe it.

12 Q. What would be the elements of how you go about  
13 doing your business? What are the things you look for to  
14 accomplish as a lender in a hard-money lending  
15 transaction?

16 A. Obtain the most, highest amount of down payment  
17 that we can, and procure the highest collateral,  
18 lowest-risk collateral that we can, so that we have the  
19 lowest-risk loan that we can make.

20 Q. And the way to achieve the collateral for your  
21 loans, is it typically for leased residential real estate  
22 in the form of a deed of trust?

23 A. Yes.

24 Q. And so in terms of getting the highest  
25 collateral or the highest-level collateral, it would be --

GREGG REICHMAN, 4/23/2019

1 A. Quality was what I said.

2 Q. -- quality --

3 A. Yeah.

4 Q. -- would be to be in first position deed of  
5 trust on the property?

6 A. No, that wasn't what I was referring to. I was  
7 referring to the actual asset itself.

8 Q. So you are talking about there being sufficient  
9 value in the property against which the loan is being  
10 made?

11 A. That would be one element. There are many  
12 elements to our metric that we consider core quality or  
13 high quality. Value is one.

14 Q. Could you share those with us?

15 A. Condition, location, socioeconomic climate  
16 surrounding the asset, amount of repairs needed for the  
17 asset, the appetite that we might determine would be  
18 present at a trustee sale if the loan went into default  
19 and we had to foreclose on the asset to convert our  
20 secured interest to ownership and monetize the asset. All  
21 of those things.

22 Q. In making a loan at Active Funding -- well, let  
23 me back up.

24 Do you recall when you formed Active Funding  
25 Group?

GREGG REICHMAN, 4/23/2019

1 A. I am going to take a guess, but somewhere around  
2 2008 or '09. Maybe 2009.

3 Q. There was some reference in some documents I  
4 read that you took a break from lending for some period of  
5 time in around 2008, 2009.

6 Is that consistent with your memory? Is that  
7 accurate?

8 A. I took a break, would -- I didn't really take a  
9 break. I had one company that I had formed many years ago  
10 that wound down, and then Active Funding Group started  
11 about that time.

12 Q. What was the name of the company you wound down?

13 A. Active Finance Group.

14 Q. Was its business similar to Active Funding?

15 A. Yes.

16 Q. Why did you wind it down?

17 A. It failed.

18 Q. Why did it fail?

19 A. 94 percent of our borrowers stopped making their  
20 payments.

21 Q. And was that a result of the recession?

22 A. It was a result of catastrophic price deflation  
23 in real estate assets across the country, that spiraled  
24 down beginning in the first quarter of 2006 and continued  
25 for four years.

GREGG REICHMAN, 4/23/2019

1 Q. I have seen references in some of the documents  
2 to you at Active Funding having investors.

3 Do you have investors?

4 A. We have lenders to the company and co-investors  
5 to the company.

6 Q. Lenders meaning you have third parties who loan  
7 money to Active Funding?

8 A. Yes.

9 Q. Are those secured?

10 A. Yes.

11 Q. And did you also say co-investors?

12 A. Yes.

13 Q. And how -- could you explain that to us?

14 A. We invest with our, some of our lenders, and I  
15 would refer to that as a co-investment structure.

16 Q. When you say invest with lenders, are you  
17 talking about loans or are you talking about other forms  
18 of business?

19 A. Well, no. Only loans.

20 MR. CAMPBELL: I'm sorry. I didn't hear you.

21 THE WITNESS: Only loans.

22 Q. So there are times when Active Funding could be  
23 a co-lender with one of your investors on a piece of  
24 property?

25 A. Yes.

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1 Q. So when we use the word "investors" as it  
2 relates to Active Funding, we are really talking about  
3 folks who are advancing money in the form of a loan to  
4 Active Funding, right?

5 A. Yes. Investors was your word. I didn't use  
6 that word. I said I had lenders to the company, so I am  
7 clear about it.

8 Q. I understand. Thanks for your clarification. I  
9 have seen you use the term in some of the documents.  
10 That's why I am asking.

11 A. I got it.

12 Q. When Active Funding would make a loan, I guess  
13 from 2008 or '09 through 2015, did you have people who  
14 would do the research for determining the value of the  
15 real estate securing the loan?

16 A. We would do the under -- we refer to that as  
17 underwriting. You referred to it as research. There is  
18 some research involved, and then it's, I guess, if they  
19 are both accurate, we would do the underwriting ourselves,  
20 either myself or my business partner, on every single  
21 loan.

22 Q. Now, I have seen reference to a Jody Angel or  
23 Angle --

24 A. Angel.

25 Q. Angel?

GREGG REICHMAN, 4/23/2019

1 A. Yes.

2 Q. And is he your business partner?

3 A. Yes.

4 Q. And has he been your business partner since  
5 Active Funding was created in '08 or '09?

6 A. Yes.

7 Q. What role does he play in the company?

8 A. None for the last three and a half years.

9 Q. Is he a passive investor or is he --

10 A. No. He is just still a partner, but not  
11 working.

12 MR. ABRAHAM: We will talk about this off the  
13 record.

14 MR. DeWULF: We all have a bunch of stories.

15 MR. ABRAHAM: Nothing we can talk about in here.

16 MR. DeWULF: Yeah, you are right. Let's go  
17 directly to beers and stories.

18 Q. So the due diligence that you would typically  
19 do, could you describe the due diligence you would  
20 typically do in connection with making a loan?

21 A. Depending on what type of loan it was, what the  
22 circumstances surrounding the purchase was, we had a  
23 different set of due diligence depending on where the  
24 asset came from, how it was purchased.

25 I can give you generally what we do, if that's



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1 okay.

2 Q. That would be helpful.

3 A. We would get customer information. The customer  
4 is required to give us a certain amount of information in  
5 order for us to start. The customer is required to give  
6 us a certain amount of information upfront in order for us  
7 to start our process.

8 So we would be asking the customer for the  
9 purchase price, what they thought the asset was worth  
10 repaired, some kind of monetization strategy, would like  
11 to know a little bit about what they are planning on doing  
12 with it.

13 Once we had that information, we used fairly  
14 standard research tools. We would -- we physically  
15 inspect every asset, so we go there, take photographs,  
16 walk through the interior, if we are able to gain access  
17 to the interior. We would look at the neighborhood. We  
18 would look at surrounding properties, try to find any  
19 value impediments, you know. As an example, or backs a  
20 shopping center, backs a school that has lights for a  
21 baseball field. Has one giant master bedroom and it's a  
22 4,000 square foot house and there is no other bedrooms,  
23 those kinds of things.

24 We would try to identify as closely as possible  
25 comparable sales for like-type assets that occurred in the

GREGG REICHMAN, 4/23/2019

1 last six months so that we could determine what the  
2 collateral being pledged would be worth on a retail basis,  
3 assuming that our collateral ended up being as desirable  
4 as the comparables that we were looking at. And those are  
5 just, in general, our valuation tools.

6 Q. Let's look at, if we could, further back in this  
7 document. The fourth page there is a heading that says  
8 AFG Underwriting Guidelines.

9 A. I see it.

10 Q. Does that kind of fairly summarize at least what  
11 your process would have been? It looks like it's  
12 consistent with what you just described.

13 A. I'm not going to read. I'm going to take your  
14 word for it.

15 Q. That's fine.

16 Do you always require money down by your  
17 borrower?

18 A. We always have, yes. I have -- yes, we always  
19 have.

20 Q. And do you always require personal guarantees?

21 A. We did in the beginning. We don't, we haven't  
22 for many years.

23 Q. Did you have any unique practices that you  
24 followed when you lent money to a borrower who was buying  
25 property out of a trustee sale?

GREGG REICHMAN, 4/23/2019

1 A. We had additional practices.

2 Q. And what were those?

3 A. Verify that the sale took place would be one.  
4 we would -- I would want to determine the opening bid  
5 versus what the customer paid. I would want to run a  
6 chain of title to make sure that the customer didn't make  
7 a mistake and that the lien position that the customer  
8 represented that they purchased was actually the lien  
9 position that they purchased at the trustee sale. Check  
10 back taxes, see if there were taxes owed.

11 And any other title impediments that we thought  
12 might be a deterrent for the customer to be able to sell  
13 the property in the event, you know, because that's how we  
14 get paid, when they liquidate the properties one way or  
15 another, so we want to make that there sure is a clear  
16 path to doing that and that the customer hasn't missed  
17 anything.

18 Q. What you have just described is the due  
19 diligence the company would do on a purchase at a trustee  
20 sale.

21 When is that done? Is that done before the bids  
22 even are submitted on a trustee sale, or is it done after  
23 someone has successfully bid but before you fund the loan?

24 A. Only after the successful bidder. We would  
25 never do it in advance.

GREGG REICHMAN, 4/23/2019

1 Q. How does the successful bidder know that you  
2 will make the loan on the bid at the trustee sale?

3 A. They never know.

4 Q. They just take the chance that you will be  
5 willing to fund, because they know something about your  
6 business?

7 A. No, they don't know anything about our business.  
8 They just assume that we are in the business of deploying  
9 debt capital to professional investors, and if we don't,  
10 someone else will. So, you know, we are -- we want to  
11 make the loan, so we are in the business to make these  
12 loans, and I have been doing it for 25 years so we are  
13 fairly well-known.

14 Q. When you fund a borrower at a trustee sale, to  
15 whom do you provide the funds?

16 A. Well, the borrower is the customer, but we don't  
17 ever let the borrower take control of any funds. So just  
18 so I understand your question correctly, your question is  
19 where do we send the funds, the payment funds?

20 Q. Yes.

21 A. To the trustee.

22 Q. On any of the loans that you have done at AFG,  
23 do you ever fund the loan directly to the borrower as  
24 opposed to through a third party, like a trustee, an  
25 escrow agent, title company, anything like that?

GREGG REICHMAN, 4/23/2019

1 A. I was a little bit confused by your question,  
2 because it was multiple questions.

3 Q. Okay. I appreciate the clarification.

4 So is -- do you -- in the practices that you are  
5 aware of at AFG, do you ever fund any loans directly to a  
6 borrower?

7 A. Where the borrower has -- let me just make sure  
8 I understand. Are you asking me if the borrower ever has  
9 control of the debt financing that we provide, the money?

10 Q. Yes.

11 A. No, the borrower never has control.

12 Q. Why is that?

13 A. Because I don't know what the borrower is going  
14 to do with it, so I am never going to give a borrower  
15 control of the money.

16 Q. So you want to make sure that the monies are  
17 used properly and put you --

18 A. For their intended purpose.

19 Q. Got it.

20 MR. ABRAHAM: Let him finish.

21 THE WITNESS: Okay.

22 Q. No. And that's my fault.

23 So the goal is to make sure the monies are used  
24 for the proper purpose and that AFG is properly secured on  
25 the loan, right?

GREGG REICHMAN, 4/23/2019

1 A. Both of those goals, yes.

2 Q. Does AFG ever allow itself to be put in a second  
3 inferior position to another loan?

4 A. Yes.

5 Q. And what occasion?

6 A. It -- it's -- we take it case by case. That's  
7 something, for your background, we never even -- we never  
8 considered until just the last couple of years.

9 Q. And when you do so, do you normally enter into  
10 some sort of a Subordination Agreement with the superior  
11 lender?

12 A. No.

13 Q. Can you give us an example of when it might  
14 occur where you would voluntarily agree to a second  
15 position?

16 A. Sure. An example of that would be a deal we did  
17 last week. A customer brought us six single-family  
18 residences. They are worth about \$2.4 million combined.  
19 The customer has institutional debt in senior position of  
20 about \$800,000 and they wanted \$400,000 of additional debt  
21 financing, so our all-in LTV was 50 percent and I liked  
22 the collateral, and so we were comfortable with a junior  
23 position lien on that.

24 Q. I understand. You used the word LTV. Is that  
25 loan-to-value ratio?

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1 A. Yes.

2 Q. And does that describe the process where you  
3 are -- it's a ratio between how much the loan amount is  
4 versus the value in the property?

5 A. Yes.

6 Q. And as a percentage, you have just indicated on  
7 this multifamily situation worth 2.4 million that the loan  
8 to value was roughly 50 percent.

9 Is that what you said?

10 A. Correct.

11 Q. And would that be the loan to value as it  
12 relates to your loan or collectively between your loan and  
13 the institutional loan?

14 A. Collectively.

15 Q. Was there a rule of thumb you typically followed  
16 at Active Funding with respect to loan-to-value ratios?

17 A. Yes. We -- of course.

18 Q. What were they?

19 A. We generally won't advance more than 65 percent  
20 of the repaired retail value, and we generally won't  
21 advance more than 80 percent of the borrower's cost. We  
22 look at those two numbers and we generally won't  
23 advance -- or we generally will advance whichever one of  
24 those numbers is lower.

25 Q. The way you have described it, it sounds like it

GREGG REICHMAN, 4/23/2019

1 was fairly typical that you were lending money on  
2 properties that would be fixed up by the borrower.

3 A. Is that a question?

4 Q. Yes. Is that right? Is that a true statement?

5 A. It's a variety. Some of them need no repair,  
6 shockingly, and some of them are total disasters. So, I  
7 mean, lit on fire. I mean, really, we are -- we will  
8 consider all of it based on, you know, conservative  
9 underwriting, and if we can value it and we think it can  
10 be repaired, we will probably make an offer.

11 Q. It would be true in most instances, at least  
12 prior to the last couple years, that as a lender, AFG  
13 would require to be in a first-position lien?

14 A. Yes, that's correct.

15 Q. Did you know Denny Chittick?

16 A. Yes.

17 Q. Do you know when you first met him?

18 A. I can give you a ballpark timeframe. Sometime  
19 in 2007.

20 Q. Do you remember the circumstances?

21 A. Yes. I had an industry-leading company and at  
22 the time large operation and we were struggling. And our  
23 industry is typically an industry where there is a lot of  
24 acrimony between the competitors, although I'm not sure  
25 why, and I took it upon myself at that time to look past



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1 that and invite all of my competitors to my conference  
2 room so that we could talk about what was happening in the  
3 industry, because the industry was collapsing and we were  
4 all struggling, and see if there was any solutions that  
5 anyone had to try to improve what was happening for all of  
6 us, and I invited Denny to that meeting.

7 Q. As a general proposition, were there any  
8 solutions arrived at among the group?

9 A. No.

10 Q. Okay. Do you recall that Denny Chittick had a  
11 company called DenSco at that time?

12 A. I don't recall -- I mean, no, I don't recall  
13 what I -- if I knew it was DenSco, but I knew him. I  
14 suppose I'm guessing I probably -- I don't want to guess,  
15 but I heard of DenSco.

16 Q. How many lenders would there have been in this  
17 meeting that you called in 2007?

18 A. I think about ten showed up.

19 Q. Do you have any knowledge of how Denny  
20 Chittick's company got through that rough time of  
21 recession, post-recession time?

22 A. No.

23 Q. And did your company, Active Finance Group, you  
24 said it wound down, and was that a result of there  
25 simply -- you were not getting paid on the loans you were

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1 making?

2 A. Correct. The borrowers stopped paying.

3 Q. What did you do? I mean, did you have to file  
4 for bankruptcy, or how did you work your way through that?

5 A. I worked my way through that, you know, a day at  
6 a time. I mean, we tried to get some of the borrowers to  
7 continue to pay. When we reached the conclusion that they  
8 were not going to pay, we filed notices of trustee sale,  
9 conducted trustee sales, recovered assets, managed the  
10 assets as best we could, tried to monetize the assets if  
11 we could sell them, and inevitably recovered almost all  
12 the assets and sold almost all the assets. And that's how  
13 we wound it down. It took about three years.

14 Q. Was there sufficient value in the assets to  
15 cover the amount of the debt?

16 A. No. We had -- no, there was not.

17 Q. During the period of time, Mr. Reichman,  
18 between, say, 2008 to present, do you loan money through  
19 any other entities other than Active Funding Group?

20 A. No. I don't think so. I'm 99 percent sure it's  
21 a no.

22 Q. All right. I don't want to make you read this  
23 information, everything in the 922, but you would have put  
24 accurate information in your website as of 2014, right?

25 A. I would think I would, yes.

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1 Q. And I know it's a lot of content here, but any  
2 reason to believe that the information contained in  
3 Exhibit 922 was not accurate as of 2014?

4 MR. CAMPBELL: Objection; form.

5 MR. ABRAHAM: You can answer, if you know.

6 THE WITNESS: I would want to read it before I  
7 answered that.

8 Q. All right.

9 A. But circling back to what you said, how you  
10 premised it, I wouldn't think we would have inaccurate  
11 information here. If there is something inaccurate, I  
12 would correct it. I have made typographical errors. I  
13 have changed some of the language over the years.

14 Q. Okay. And at least 922 appears visually to be a  
15 depiction of the website as of the date indicated, right?

16 A. This looks like my logo. I don't know what the  
17 stuff on the bottom is. This Apple Store stuff doesn't  
18 look likely anything from me --

19 Q. Uh-huh.

20 A. -- but it looks pretty familiar.

21 Q. Okay. Did AFG have a policy as to how many  
22 loans it might make to any one borrower or what percentage  
23 of its total loans it might dedicate to any one borrower?

24 A. Yes.

25 Q. What was that policy?

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1           A.    I don't remember the specifics of it, but as  
2 customers became larger borrowing customers, we would  
3 ratchet back our advance and make the customer put more  
4 money in.

5           Q.    Put more money into each loan?

6           A.    Yes.   More down payment money.

7           Q.    You don't remember any rule of thumb that you  
8 would only do a certain percentage of total loans?

9           A.    We had guidelines, but, you know, we look at it  
10 on a going-forward, moving basis, based on a few different  
11 things.

12          Q.    Okay.   When you put together the meeting of the  
13 hard-money lenders in 2007 to address what was then  
14 difficult market conditions, you would have known,  
15 generally, who your competitors were in the hard-money  
16 lending business, right, at least in the Phoenix market?

17          A.    I knew some of them.   I don't think I knew all  
18 of them.

19          Q.    The kinds of things you have described as it  
20 relates to how AFG did its business, loan-to-value ratios,  
21 getting first-lien positions, not dedicating too much of  
22 its monies to one borrower, were those qualities you saw  
23 in other hard-money lenders at the time as well?

24          A.    I don't have any idea, and I never called them  
25 and asked them any of those questions.

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1 Q. Did you ever learn at any time what DenSco's  
2 approach was as it relates to hard-money lending with its  
3 customers?

4 A. No. I never asked Denny any of that  
5 information.

6 Q. Did you know that he had investors?

7 A. No. I didn't know anything about his business,  
8 other than he was a competitor. And I only knew that  
9 because some of my customers were borrowing from him also,  
10 so they would try to pistol whip me, you know: I can get  
11 this from Denny or I can get this from Scott Gould or I  
12 can get this from a competitor, so I heard his name.

13 Q. Okay. Do you remember any of those customers or  
14 borrowers that would have been doing that, what you have  
15 just described?

16 A. Scott Menaged was one of them. I think Alan  
17 Robinson and Nick Linehan (phonetic) were telling me that  
18 on occasion. I would hear it on occasion from guys we  
19 were lending to, and girls, women.

20 Q. So you, sitting here today, you do not know or  
21 never knew that DenSco actually had investors?

22 A. Sitting here today, I have read the information,  
23 some of the information that the receiver has placed on  
24 his website for public viewing. So sitting here today, if  
25 that information is credible, then I -- and if I can

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1 believe that information, I think they had invest -- that  
2 Denny had investors, yes, but I didn't know that ever.

3 Q. Before reading the information you saw on the  
4 receiver's website, you did not know that DenSco had  
5 investors?

6 A. Correct.

7 Q. And prior to what you may have learned on the  
8 website, you did not know what DenSco's lending procedures  
9 were?

10 A. No.

11 Q. Would you agree with me that to be an effective  
12 hard-money lender, you are at least going to have to pay  
13 attention to property values, getting first-position  
14 liens, and making sure loan-to-value ratios are  
15 appropriate?

16 A. I agree with you.

17 Q. So at least as it relates to the business of  
18 DenSco and other hard-money lenders, you would have  
19 assumed that would have been true with them, correct?

20 A. I don't care about them. Like, it's not  
21 anything that I would ever spend any time thinking about.

22 Q. So let's just treat this as a hypothetical.

23 If you were to think about a hard-money lender  
24 such as DenSco, you would assume in going about its  
25 business it would, like yourself, want to make sure they

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1 had a first-position lien, had proper loan-to-value  
2 ratios, make sure it wasn't dedicating too much of its  
3 loan to one borrower, and making sure that there was -- it  
4 met the property value due diligence requirements.

5 Fair?

6 A. No.

7 MR. CAMPBELL: Object to form and foundation.

8 THE WITNESS: That's not fair in my mind,  
9 because what I find the industry to be is full of very  
10 poorly disciplined, very disorganized, low threshold of  
11 standardization, sloppy operations. And some of them do  
12 the most amazing things you could ever imagine that we  
13 would never do, you know, because customers will call me  
14 and say I got this deal over here and I would just shake  
15 my head.

16 So one would hope they would operate like we  
17 would if they want to stay in business, but based on the  
18 feedback I get from customers, if that's true, they  
19 operate, many of them operate very differently from my  
20 company.

21 Q. Do you think that what you do -- I mean, you  
22 obviously employ what you consider to be good business  
23 practices, right?

24 A. Yes.

25 Q. Do you consider yourself to be more demanding

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1 and more exacting than other hard-money lenders?

2 A. Yes, and more conservative.

3 MR. CAMPBELL: One moment. Just give me a  
4 second. I just need to make some objections.

5 Objection; form and foundation.

6 MR. ABRAHAM: Go ahead, if you remember the  
7 question.

8 THE WITNESS: Yes, I think we operate at a  
9 higher level of precision, with more standardization, and  
10 I believe we are more conservative, just based on what my  
11 customers tell me about the deals they are able to get  
12 elsewhere.

13 Q. Okay. You, a moment ago, were talking about  
14 when you first met Denny Chittick and you were talking  
15 about this meeting in '07.

16 Do you recall, then, any times that you would  
17 have met or communicated with him after that date?

18 A. We had -- yes, we had I think two more meetings  
19 with the group of lenders, and so he was at those two  
20 meetings, and then I didn't communicate with him at all  
21 for many years.

22 Q. Do you remember when the next time was that you  
23 actually communicated with him?

24 A. Yes, late in 2012.

25 Q. So I want to ask you some questions about your



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1 history with Scott Menaged.

2 Do you remember when you first started doing  
3 business with Scott Menaged?

4 A. Roughly, 1998.

5 Q. Do you remember the circumstances?

6 A. I do. I used to conduct boutique, what I  
7 referred to as boutique foreclosure seminars where I would  
8 train people how to properly purchase foreclosure assets  
9 at trustee sales, and Scott was an attendee of one of  
10 those seminars.

11 Q. And he must have talked to you at the time for  
12 you to remember the date, right?

13 A. I generally remember the date, the timeframe.  
14 Yes, he spoke to me when he was at the seminar. All of  
15 the attendees spoke with me.

16 Q. And did he do any business with you after that?

17 A. Yes.

18 Q. When did he first do business with you or one of  
19 your entities?

20 A. I think the next day.

21 Q. And who would your lender -- would your lender  
22 have been the entity you identified earlier, which was  
23 Active Finance Group?

24 A. No. That was before we started Active Finance  
25 Group. My lending entity at that time, 22 years, 23 years

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1 ago, was -- I think was called Capital Realty Services.

2 Q. And was it a hard-money lender?

3 A. We did a number of different things. We were --  
4 we purchased properties at trustee sales and wholesaled  
5 them to investors, and we also loaned the investors money  
6 if they needed money.

7 Q. And was Scott Menaged a borrower of Capital  
8 Realty Services starting in roughly 1998?

9 A. Yes.

10 Q. Could you describe the kinds of borrowings he  
11 did? Were they typically involving the purchase of  
12 residential real estate?

13 A. Yes.

14 Q. And did he continue to do business with Capital  
15 Realty Services while it did business?

16 A. He did.

17 Q. When did Capital Realty Services wind down?

18 A. Probably 2001.

19 Q. And is that when you created Active Financing  
20 Group?

21 A. I think Active Finance Group, I think we  
22 actually name changed it, but I'm not sure. So I'm not  
23 sure that Capital actually wound down. I think we just  
24 name changed it to Active Finance Group, but I'm not  
25 completely certain of that.

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1 Q. That reminds me of a question I didn't ask.

2 So when you created Active Funding, was that an  
3 entirely new entity with a new corporate filing?

4 A. Yes.

5 Q. So I'll probably use AFG for Active Funding  
6 Group. Are you okay with that, and we will shorten it?

7 A. Yes.

8 Q. And what you recall is you think you started  
9 that business in 2008 or 2009?

10 A. Yes.

11 Q. And would you have lent money to Scott Menaged  
12 through Active Finance Group in 2001 going forward?

13 A. Yes.

14 Q. And then you would have lent money to him  
15 through Active Funding Group when that entity was formed  
16 in 2008, 2009, going forward?

17 A. No, that's not accurate. He didn't borrow from  
18 us when we first started. He was borrowing from other  
19 people, as I understand it.

20 Q. So you have been in the hard-money lending  
21 business since roughly 1998?

22 A. Yes.

23 Q. Do you recall the circumstances surrounding him  
24 coming to you again to be a borrower for one of your  
25 entities after not doing so for a while?

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1           A.    No.  I mean, borrowers come and go.  Sometimes  
2   they are doing a lot of business with us and then they  
3   just stop, and then two years later I get a call or they  
4   will send in an application.  It's just random.

5           Q.    You don't remember the circumstances surrounding  
6   Scott Menaged becoming a borrower from either Active  
7   Finance Group or Active Funding Group?

8           A.    Well, he needed money for purchases, would be  
9   the circumstances why he would contact us.

10                   (Deposition Exhibit No. 923 was marked for  
11   identification.)

12           Q.    This relates to a website that there may have  
13   been interaction between you and Scott Menaged on.

14                   Do you recall this?

15           A.    I have some -- not really, but a little bit.

16           Q.    What do you recall about it?

17           A.    We -- Scott was a property wholesaler, and we  
18   had -- we were doing business with a lot of property  
19   wholesalers.  And so in an effort to augment our business,  
20   we would attempt to get them to put links on their  
21   websites that would directly link them to our website so  
22   we could have more customers.  And I don't remember his  
23   website, but in reading this, it sounds to me like we  
24   probably had a link on his website.

25           Q.    Okay.

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1 (Deposition Exhibits No. 924 and 925 were marked  
2 for identification.)

3 Q. Mr. Reichman, I'm showing you Exhibits 924 and  
4 925. The 924 is a July 23rd, 2008, email from you to Eric  
5 Weinbrenner, do you see that, and others?

6 A. Yes.

7 Q. And was Weinbrenner a partner of Scott  
8 Menaged's?

9 A. I have no idea.

10 Q. Okay. You never knew?

11 A. I don't know if he was ever partners with Scott.

12 Q. Okay.

13 A. Formally. I mean, I heard that he became  
14 partners with Scott later on.

15 Q. In any event, was there a dispute with him,  
16 between you and Weinbrenner?

17 A. No.

18 Are you talking about 924?

19 Q. Yeah.

20 A. In reading this, what leaps to mind is Eric was  
21 a business partner of mine. I had a couple of business  
22 partners in Active Finance Group. We had an institutional  
23 credit facility, asset-based credit facility with Wells  
24 Fargo. We all personally guaranteed that line.

25 From reading this, and I have no recollection of

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1 this until you handed it to me, because it's a 12-year-old  
2 document, but what leaps to mind when I read this is, when  
3 Active Finance Group was failing, we had this enormous  
4 credit facility with Wells Fargo, which was in default,  
5 and so the partners were wondering how that was going to  
6 wind up, what were they going to do. And so this, to me,  
7 addresses Eric's personal guarantee on that credit  
8 facility, and my comments about it.

9 Q. I understand. Okay. So let's look at 925.

10 If you look at what is the last email of that  
11 line of emails on the last page or next to the last page,  
12 Mr. Reichman.

13 A. Next to last page?

14 Q. Yeah. There is an email from Scott Menaged to  
15 you, dated August 6, 2008. And I -- read that to  
16 yourself, and I'm going to ask you a question about it.

17 A. Okay.

18 Q. So what I'm reading this to say is that you had  
19 a problem with Menaged because his business partner was  
20 having a dispute with you, or am I misunderstanding this?

21 A. No, that's the way it looks, from reading this.

22 Q. Does that refresh your memory at all?

23 A. A little bit. I think Eric -- there was some  
24 issue with -- I think with a property that he bought from  
25 us or something, and he filed some kind of action. It

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1 didn't go very far. I mean, it was dismissed pretty  
2 quickly. I don't have a lot of recollection of that  
3 particular issue.

4 Q. In these series of emails, both you and Scott  
5 Menaged are describing your relationship as a friendship.

6 Would you agree that that was an accurate  
7 description, that you were friends in August of 2008?

8 A. I would describe it as a business friendship.

9 Q. Is that something different than a regular  
10 friendship?

11 A. To me it is.

12 Q. How?

13 A. One, a social friendship is different than a  
14 business friendship. You and I can be doing business  
15 together and I can consider you a business friend. I like  
16 you. I enjoy doing business with you. If my mother dies  
17 and I'm sad, I'm not going to call you to have you try to  
18 comfort me. That's a different kind of friendship.

19 I don't socially go out with you, I don't spend  
20 a lot of my personal time with you, but we do business  
21 together. So some of my -- we rarely meet any of our  
22 customers. Some of them I do and some of them I like, so  
23 I consider that a business friendship.

24 Q. And Menaged's relationship with you in 2008  
25 would have been a business friendship and not a social

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1 friendship?

2 A. It was always a business friendship. I never  
3 had a social, extenuating social friendship with Scott.

4 Q. And what are the earmarks of a business  
5 friendship? what are the qualities?

6 A. We do business together. I admire the way that  
7 we do business. You do what you say you are going to do.  
8 I don't have to chase you for money. You seem like a  
9 reasonable person.

10 when there are things that happen and you have  
11 choices to make where you can take something that I  
12 consider to be the high road, you take the high road.  
13 Just somebody that I have a good feeling that I can do  
14 business with this person for an extended period of time  
15 and it's going to go well.

16 Q. would that description of being a business  
17 friend of Scott Menaged, would that still be true as of  
18 today?

19 A. I have no relationship with him. He is in jail.

20 Q. All right. But was there a point in time when  
21 your business friendship with Scott Menaged changed or  
22 stopped?

23 A. It just -- it changed, yes.

24 Q. Did it change just because he went to jail?

25 A. No. He -- during this time we had been doing a



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1 lot of business with Scott, all the way up through Active  
2 Finance Group, which is what this communication was in  
3 2008, and then we didn't do any business with him for  
4 years, so I don't think I ever even talked to him. It  
5 just -- there was no reason to talk to him. So it changed  
6 from that standpoint. There was no business friendship  
7 because we weren't doing any business. It wasn't like I  
8 went to dinner with the guy.

9 Q. Well, you resumed doing business with him in  
10 2011, right?

11 A. Roughly, yeah. Yes.

12 Q. And did business with him through 2016, right?

13 A. I can't remember if it was through 2016 or 2015,  
14 but for a number of years, yes.

15 Q. And would you describe during that period of  
16 time that you would have been business friends?

17 A. It was different. He was absent. I almost  
18 never saw him and almost never talked to him.

19 So in the early days I would see him a lot and  
20 talk to him a lot more. So we really -- it was not  
21 much -- I would still say it was a business friendship,  
22 but not much interaction. He was extremely hard to reach.  
23 He was not very responsive. And, I mean, I think I saw  
24 him in all that period of time in person maybe three  
25 times.

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1 Q. Earlier you described a business friendship as  
2 one where you could rely on one another, you would trust  
3 one another, that kind of thing, correct?

4 A. Yes.

5 Q. Was there ever a time when you felt because of  
6 his conduct that you could not trust Scott Menaged?

7 A. Up until what point?

8 Q. Ever.

9 A. Oh, I felt I couldn't trust him after I read his  
10 2016 bankruptcy deposition where he admitted to this  
11 massive fraud that he committed against Denny. After  
12 that, if I was to believe what he wrote in his -- what's  
13 written in his deposition, I would have concluded that I  
14 can no longer trust him.

15 Q. But before you read the, I think it's called a  
16 2004 Exam, which is a procedure in Bankruptcy Court, but  
17 it was the deposition given by Scott Menaged in 2016,  
18 correct?

19 A. Yes. I don't know when it was given. I  
20 remember I think I read it sometime in late 2016.

21 Q. Do you remember how you got access to it?

22 A. Either off Pacer or off the receiver's website.  
23 I think off the receiver's website.

24 Q. Okay. And at that point you, having read what  
25 he did vis-a-vis DenSco, your opinion of him changed?

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1 A. Yes. Absolutely.

2 Q. But prior to having read that deposition of  
3 Scott Menaged, arising out of his bankruptcy, you still  
4 had a favorable opinion of him?

5 A. Yes, I did.

6 Q. I haven't seen you or any of your entities  
7 identified as creditors in Menaged's bankruptcy.

8 Does he owe you any money?

9 A. No.

10 Q. Do any of his entities owe you money?

11 A. I don't think so. No.

12 (Deposition Exhibit No. 926 was marked for  
13 identification.)

14 Q. I'm not going to go through this in detail with  
15 you, Mr. Reichman, but starting about halfway down on the  
16 first page is an email from you dated December 22nd, 2010,  
17 to Scott Menaged, your partner Jody Angel, and Dana  
18 Johnson.

19 Do you see that?

20 A. Yes.

21 Q. And it is a -- the subject is "Going forward  
22 agreement for funding to buyzauctionshomes.com.

23 Do you read that? Did I read that correctly?

24 A. Yes.

25 Q. And was buyzauctionshomes.com a Menaged entity?

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1 A. I believe it was.

2 Q. And so is this memorializing an agreement  
3 between your entity Active Funding Group LLC and Menaged's  
4 entity?

5 A. Yes, I think it is.

6 Q. And it involved a credit facility in the amount  
7 of a million dollars?

8 A. Yes.

9 Q. Do you remember what led to entering into this  
10 agreement?

11 A. Vaguely.

12 Q. What do you remember?

13 A. I think he called me and said I'm considering  
14 using multiple lenders. I'm buying a lot of trustee  
15 sales. What can you do for me?

16 Q. Do you know, in the scheme of things, whether  
17 this would have been when you reinitiated or revived your  
18 business relationship with him?

19 A. I don't remember when we made a loan to him. I  
20 mean, we put this out here. I put a lot of things out  
21 there and never do business with the person, so it's not  
22 necessarily a straight line.

23 Q. Did you do business with him arising out of this  
24 funding buyzauctionhomes.com?

25 A. I believe we did, yes.

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1 Q. And was that mainly in the context of his buying  
2 properties at trustee sales?

3 A. Yes.

4 Q. So this would have been an instance where you  
5 were telling him, I'm going to loan you money on trustee  
6 sales in advance of actually knowing what the properties  
7 were on the trustee sales?

8 A. No. I think you are mischaracterizing it.

9 what this agreement represents to me is we will  
10 make this amount of money available to you. It doesn't  
11 say we are going to abandon our structure or procedures.  
12 It's just if you -- if you are buying and you want to send  
13 the loans our way, we will advance a million dollars total  
14 under these terms, but it was never -- it's never a  
15 commitment in advance of having an address, driving the  
16 property, running comps, doing our inspection, running a  
17 chain. We don't abandon any of that.

18 This is just a general representation of here is  
19 what we will do if you want to send something our way,  
20 money-wise. We would never --

21 Q. Why did you even need to do it?

22 A. He asked me -- he asked me to do it.

23 Q. But you would have done loans on a case-by-case  
24 basis anyway, right?

25 A. Yes.

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1 Q. So what's the significance of entering an  
2 agreement like this?

3 A. It's a guideline, you know. I'm guessing that  
4 he got it from a bunch of different lenders. He just  
5 called and said what would you do for me if I start  
6 sending loans your way.

7 So sometimes the customer just wanted a  
8 guideline. I send things like this out all the time from  
9 people that just call and say what could you do for me.  
10 This is what I'm doing. These are my needs. You know,  
11 take your best shot.

12 So I will send them a summary, just a general  
13 overview of what I think we could do. It's not a  
14 commitment. It's not a guarantee. It's not any of that.  
15 You send me a property, give me an address, you give me  
16 the circumstances under which you are purchasing it, we  
17 will do our due diligence, we will make you an offer.  
18 That's how it works.

19 Q. So the million dollars, it could have been any  
20 number really?

21 A. Yes.

22 Q. And you do this frequently with different  
23 borrowers, this kind of facility?

24 A. If they have -- well, not -- not a lot of  
25 borrowers ask for this. I probably have a couple, maybe

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1 one a month, two a month. Generally, it's less detailed,  
2 but Scott wanted it to be more detailed, so I said, yeah,  
3 that's fine. Happy to do something more detailed.

4 And the other element to this, which I don't  
5 have with a lot of my customers, is he had customers also  
6 that needed financing. So he was primarily wholesaling  
7 these properties, so he would purchase something, but he  
8 wasn't the end buyer. So he would purchase at a trustee  
9 sale. Sell it to an investor. He needed financing to pay  
10 for it at the trustee sale, and frequently his customer  
11 would also need financing, so we had two customers.

12 So if you look at this, I was really giving him  
13 a summary of what we to do for him, and then summary of  
14 what we would do for his customer, if his customer elected  
15 to use us for financing, which there was no guarantee that  
16 they would, but we would hope that they would.

17 Q. Understand.

18 (Deposition Exhibit No. 927 was marked for  
19 identification.)

20 Q. I'm just showing you 927 to see if this  
21 refreshes your memory.

22 Was it -- you can read this, if you want.

23 A. Okay.

24 Q. It's --

25 A. Okay.

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1 Q. So did you find with Scott Menaged as a borrower  
2 that you had to remind him of making payments to you? Was  
3 there any sort of generalization you can share?

4 Because I have seen a number of documents, and  
5 I'm trying to be fairly judicious as to what I'm using,  
6 but it appears that you had to remind him of things and  
7 there were things he did, which were kind of sloppy and  
8 reckless, those are my terms, but did you have to stay on  
9 him about payments?

10 A. Yes. Well, my accounting department did and  
11 occasionally I did, yes.

12 Q. It was just a habitual issue for him?

13 MR. CAMPBELL: Objection; form, foundation.

14 THE WITNESS: I don't know how to respond to  
15 your characterization of habitual issue.

16 Scott was not a detail guy. My impression of  
17 his life is he was running a million miles an hour all the  
18 time, and he frequently overlooked lots of things,  
19 including payments when they were due. All kinds of  
20 things.

21 Q. So we have seen -- I have seen in the files tax  
22 issues.

23 Do you recall that he would have tax liens that  
24 would develop on some of his properties because he  
25 wouldn't pay taxes?



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1 A. Yes.

2 (Deposition Exhibit No. 928 was marked for  
3 identification.)

4 Q. To the point you made a moment ago, this appears  
5 to be -- Dana Johnson would have been in your accounting  
6 department at Active Funding?

7 A. At the time, yes.

8 Q. And this email is August 3rd, 2011. She is  
9 identifying payments are due from Menaged on loans you  
10 made to him?

11 A. Yes.

12 Q. So this would tell us, as of August 3rd, 2011,  
13 you had made a number of loans to Scott Menaged, correct?

14 A. Yes.

15 Q. You would typically allow, in the loans that you  
16 made or the loan documents you made with Menaged, that if  
17 you wanted to extend the loan for an extended period of  
18 time, you would pay additional money?

19 A. You are not really asking me a question. You  
20 are making a statement, but I will help you, if you would  
21 like me to.

22 Q. I would.

23 A. Okay. Scott was a wholesaler and he was -- he  
24 would buy three or four a day sometimes, and sometimes he  
25 would sell them before -- before he ever even told us he

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1 bought them, right? So it was complicated.

2 So when he came to us and wanted to do business  
3 with us, we tried to create a structure where he would  
4 have a certain amount of time to wholesale the properties  
5 so that we didn't have to have a larger event with him in  
6 terms of documenting everything.

7 So -- and he was buying so many, that sometimes  
8 he was strained for cash. So we agreed that he could put  
9 less cash down for a period of time, I think it was like  
10 ten days, and then if he didn't sell them to his wholesale  
11 customer, which would then become our borrower, he would  
12 increase his down payment. So that's what -- that's sort  
13 of -- that's a more precise response to what you said.

14 Q. That's really helpful, and that saves us some  
15 time.

16 So when you used the word "wholesaler," what you  
17 are saying is that he would buy a property out of trustee  
18 sale and frequently he would have a buyer already for that  
19 property?

20 A. Yes, an investor would purchase it from him.

21 Q. Okay.

22 A. This is common in our industry.

23 Q. Right.

24 A. There are lots of them.

25 Q. We used to call that double-escrowing, but is

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1 that the same?

2 A. There is no escrow, so that would be an  
3 inaccurate phrase for this transaction.

4 Q. So what is the -- what did the documents look  
5 like between him, as a successful bidder at a trustee  
6 sale, and his buyer?

7 A. I don't know.

8 Q. You don't know?

9 A. I wasn't party to those transactions. I was  
10 just a party to the finance transaction.

11 Q. So you never saw these documents?

12 A. No.

13 Q. All right. So when someone used the term  
14 "retailer" as it relates to a purchaser at a trustee sale,  
15 we are talking about someone who buys a property, fixes it  
16 up, and then sells it. Is that fair?

17 A. At the retail level.

18 Q. Right.

19 A. Yes. I don't call them retailers, by the way.  
20 That's your term, but the concept is as described.

21 Q. That's fine. I just used -- I have seen that  
22 term used.

23 A. Yeah. Yes.

24 Q. I was just curious.

25 This has been previously marked.

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1 MR. DeWULF: I don't think I have an extra copy.

2 MR. ABRAHAM: Just give it to him.

3 Q. I'm showing you what's previously been marked as  
4 Exhibit 648, Mr. Reichman.

5 A. Yes.

6 Q. And it's a series of emails, and you can thumb  
7 through it, if you wish. The original email on the last  
8 page of this document is from -- well, there is a  
9 communication from Aaron Morris that's the original email.

10 Do you remember that fellow named Aaron Morris?

11 A. Just -- maybe just a little.

12 Q. What do you know about him?

13 A. I think he was a borrower of ours for a period  
14 of time, but I'm not 100 percent sure. Just a vaguely  
15 familiar name.

16 Q. Okay. So the email that's forwarded on to you  
17 all from Denny Chittick, if you will see that, it starts  
18 at the bottom of the --

19 A. It says this guy is like an ugly girl with  
20 herpes?

21 Q. Yeah. It says, "Avoid this guy and anything to  
22 do with him like an ugly girl with herpes."

23 A. Yeah.

24 Q. That's a fairly descriptive phrase. Do you  
25 recall this -- well, let me just ask a general question.

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1 In it he is copying a number of individuals,  
2 some of whom I believe are hard-money lenders, including  
3 yourself.

4 Is that what your read of the listserv is on the  
5 emails?

6 A. I know a couple of these. I mean, I obviously  
7 knew Denny and I knew Scott Gould. I think Robert Koehler  
8 worked for Scott Gould, but I'm not sure. I've never met  
9 nor spoken with Robert Koehler.

10 Mark Steinbeck, I have met Mark Steinbeck. He  
11 works for Merchants Funding. I don't know -- I have some,  
12 I had some conversation with Brian Mortensen 20 years ago.  
13 I don't know him. Aaron Zeese, I have heard his name. I  
14 don't know him. I have never spoken to him. I don't know  
15 who Steve at Turner Electric Properties is. Daniel  
16 Diethelm, I have good familiarity with. He was a friend  
17 for some time. I haven't spoken to him in a while. And  
18 Lynn Hoebing is also a competitor and friend for some  
19 time. So some of these guys I know.

20 Q. And was it -- did you all communicate at -- this  
21 would indicate that there is a sharing of information for  
22 things that may be of common interest among hard-money  
23 lenders. And I use this as an example.

24 Do you know if there were occasions where you  
25 all, as hard-money lenders, would share information about

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1 things going on in the industry or that kind of thing?

2 A. I never did it, except the meetings that I told  
3 you about. I don't remember ever getting this. I would  
4 never do it.

5 Q. Do you remember -- there is a reference here to  
6 Tiffany & Bosco changing its approach on getting -- giving  
7 trustee sale receipts.

8 Do you remember any change going on in terms of  
9 their approach at trustee sales in September of 2011?

10 A. No.

11 Q. Let me read to you that last email on the top of  
12 the first page?

13 A. Okay.

14 Q. It's from Dan Diethelm. He says, "Borrowers  
15 borrow money for the same property from multiple lenders  
16 giving each a Deed of Trust while telling each they are  
17 the only lender. Like kiting 'checks' they are kiting  
18 Deed of Trust. The lenders can all argue about priority,  
19 but at the end of the day, it matters little as the money  
20 is long gone on hooker and blow."

21 Did I read that correctly?

22 A. Yeah, that's Dan. That's Dan. Vintage Dan.

23 Q. Do you remember the topic of multiple deeds of  
24 trust on one property from multiple lenders, do you  
25 remember that being a topic of discussion in September of

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1 2011 among hard-money lenders?

2 A. It wasn't with me.

3 Q. Okay.

4 A. I don't know about hard-money lenders, which was  
5 your question.

6 Q. Yeah.

7 A. I was never involved in a discussion like that.

8 Q. You basically just did your business in the way  
9 you thought was the proper way to do it, and didn't worry  
10 about other hard-money lenders?

11 A. Yeah. I didn't care about any of these guys.  
12 And I would never, ever communicate with them about  
13 anything. I have would have no reason to do it. They are  
14 competitors.

15 Q. Except for the occasions where you set up  
16 meetings for everybody to talk about dealing with the  
17 recession?

18 A. Three specific occasions, which I detailed for  
19 you, and that was it.

20 Q. And after that, you never had a meeting with  
21 other hard-money lenders about common issues?

22 A. Never. Never, that I can recall. I mean, I had  
23 lunch with Dan Diethelm and Lynn Hoebing. I wouldn't call  
24 that a meeting. Mostly that was about Dan giving me, you  
25 know, heartburn about some personal issue.

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1 (Deposition Exhibits No. 929 and 930 were marked  
2 for identification.)

3 Q. So let's look at 929 first, if we could,  
4 Mr. Reichman.

5 So it looks like this series of emails is simply  
6 Scott Menaged reaching out to you to borrow money. He  
7 indicates that -- he says Denny is out of money.

8 Do you see that, as an email?

9 A. I do see it, yes.

10 Q. And by Denny, he is referring to Denny Chittick;  
11 do you know?

12 A. I don't know what he was referring to. That  
13 would be my guess. I don't know anybody else named Denny.

14 Q. You knew in 2012 that Menaged was borrowing  
15 money both from you and from Denny Chittick?

16 A. He would tell me about borrowing money from a  
17 lot of people, including Denny. He would talk about it  
18 all the time.

19 Q. Did he borrow money from a number of hard-money  
20 lenders in 2012?

21 A. I don't know. I just know he told me that. I  
22 have no direct knowledge of his business and what he did  
23 or didn't do. I can only tell you what his words were.

24 Q. And what did he tell you?

25 A. He would tell me he borrowed from a lot of



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1 people. He would bitch-slap me, pardon my French, to try  
2 to use it as a tool to get me to advance more or give him  
3 a better rate or, you know, to be more aggressive about  
4 giving him more loans.

5           So he would always say, well, I can get the  
6 money here, I can get the money there, and he would name  
7 other people he was doing business with, all the time. It  
8 was a frequent topic.

9           Q. Did that matter to you?

10          A. No. I didn't care.

11          Q. Was there ever a time, let's say after Active  
12 Funding Group was created, where you were out hustling  
13 business, where you really needed to get business, or did  
14 it generally come to you because you were well-known and  
15 were good at what you did?

16          A. Both. I hustle every day, even today, for new  
17 business if I can. And I think we have a following of  
18 customers who just come to us because we are consistent  
19 and predictable and well-capitalized, and we do what we  
20 say we are going to do and we make it easy. So we try to  
21 get -- I try to get new customers every day, if I can.

22          Q. How do you hustle business?

23          A. I primarily send out an email blast. We have an  
24 email mailing list of prior customers, and people that  
25 come on our website that register to be on our email

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1 mailing list, and that's my core advertising vehicle.

2 I recently, in the last two months, hired a gal  
3 to go out and just meet with investors to make them aware  
4 of the company, tell them what we do. See if we can --  
5 you know, see if they will try us for one month. That's  
6 the goal.

7 Q. Now, you just used the word investors. That  
8 is --

9 A. Real estate investors, customers.

10 Q. Oh, potential borrowers?

11 A. Yes, potential borrowers.

12 Q. Okay. Let's go back to this term investor.  
13 when we talked earlier in your testimony --

14 A. Yeah.

15 Q. -- we talked about the fact that in some  
16 instances you would borrow money, you as a company would  
17 borrow money from lenders/investors, right?

18 A. Lenders, yes.

19 Q. And were those loans done at some percentage  
20 lower than the percentage at which you were loaning money  
21 to your borrowers?

22 A. Yes.

23 Q. What was your typical terms for your borrowing  
24 from an investor?

25 A. My target, my target rate to pay a lender or a

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1 co-investor is 7 percent.

2 Q. Is that an unsecured loan?

3 A. No.

4 Q. How do you secure those loans?

5 A. We do an assignment of collateral interest of  
6 first position deeds of trust to the lender.

7 Q. So you do the loan on a -- and then you assign  
8 that interest to the investor?

9 A. We do the loan with our money, and then we  
10 assign the beneficial interest to the investor, yeah, to  
11 our lender.

12 Q. And do you typically record that assignment?

13 A. Of course. Every single time.

14 Q. Any way of estimating what percentage of your --  
15 the loans you make to borrowers would be -- would involve  
16 investors?

17 A. Almost all of them. Lenders.

18 Q. How do you communicate with your investors as to  
19 what's going on at Active Funding on a periodic basis?

20 MR. ABRAHAM: John, you are using "investor."  
21 He is using "lender."

22 MR. DeWULF: Okay.

23 MR. ABRAHAM: Just so you can get on the same  
24 page.

25 MR. DeWULF: I understand.

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1 Q. So you have some form of promissory note that  
2 comes from your, I will call them investors, but they are  
3 people who are funding your loans that you are making.

4 A. No. We fund the loans.

5 Q. You fund the loans.

6 A. And then we recapitalize the company by getting  
7 lender dollars for the collateral.

8 Q. All right. And is it typically a  
9 dollar-for-dollar situation? For example, if you are  
10 loaning money to a borrower like Scott Menaged for  
11 100,000, would the loan that -- would the beneficial  
12 interest be 100,000 and you would get a loan for 100,000  
13 at 7 percent?

14 A. Not always. Sometimes we will. Depending on  
15 the asset and the risk associated therewith, sometimes we  
16 will have a conversation with someone -- I'm just giving  
17 you an example -- where let's say the loan amount is 700  
18 and a lender says, well, I will put in five, you guys put  
19 in two, and we will do that.

20 Q. That's the co-invest situation you were talking  
21 about earlier?

22 A. Yes.

23 Q. Okay. And how do you keep those people apprised  
24 of what's going on, those folks who have advanced money?

25 A. They get a monthly statement showing the

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1 collateral that's assigned to their account and how much  
2 money they have out, with a check.

3 Q. And are those loans that they make to you, are  
4 those short-term loans?

5 A. Yes.

6 Q. Typically a year, nine months?

7 A. Yes. One year.

8 Q. And your loans to your borrowers, that is the  
9 AFG loans that you are making to borrowers, are those --  
10 can you generalize as to what the duration of those loans  
11 typically are?

12 A. Six months primary term, and then the borrower  
13 has an option to renew the loan two times for 90 days at a  
14 clip.

15 Q. In other words, they pay some additional money  
16 to get the extension?

17 A. No. We are not allowed to charge fees. They  
18 don't charge. They don't pay money. The rate changes.  
19 The rate goes up if you don't pay us off in six months.

20 Q. So I saw some emails where he, Menaged, would  
21 pay 750 bucks for some sort of an extension.

22 what's that for?

23 A. If a loan matures and he doesn't pay us off.

24 Q. And is that -- what is that? Is that a fee or  
25 is that something else?

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1 A. We used to charge that. We don't charge it  
2 anymore.

3 Q. Let's look at 930.

4 MR. CAMPBELL: I'm not sure I have 930.

5 MR. DeWULF: I thought I had a copy for you.

6 MR. CAMPBELL: Maybe I just didn't get it.

7 MR. DeWULF: It looks like this.

8 MR. ABRAHAM: He can keep it.

9 MR. DeWULF: Sorry.

10 Q. All right. So I'm showing you 930. This is a  
11 communication in July of 2012.

12 Was Jeannine Bartlett a part of your accounting  
13 department at Active Funding?

14 A. I don't even remember her, to be honest with  
15 you.

16 Q. So you don't know who Jeannine Bartlett is?

17 A. Well, she has got an AFG email address so I'm  
18 guessing she worked for me, but I don't have an immediate  
19 recall of who she is. I think she -- we might have had --  
20 I think she was a receptionist who worked for us for about  
21 two weeks. That's what I remember, but I don't have -- I  
22 don't have much more recall than that.

23 Q. So let's just read the email that starts at the  
24 middle of the page, July 18, 2012, from Ms. Bartlett to  
25 you: Gregg, Do we charge Scott late fees? As of today he

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1 is past due \$38,931.90. He is past due on all of his  
2 loans and some are 30 days. Thank you. Jeannine  
3 Bartlett, Controller.

4 Does that refresh your memory that she was  
5 something other than a receptionist?

6 A. I would like to tell you it does, but no. No.  
7 I mean, and we don't have a huge amount of turnover, by  
8 the way, so it's interesting I don't remember her. But I  
9 swear, I mean, I don't.

10 Q. So there was a point in time where you did  
11 charge Scott Menaged late fees when he didn't pay the  
12 loans off on time?

13 A. I don't think we ever charged him a late fee.  
14 I'm not sure, but I don't think we did. I think she is  
15 asking if we did. She is not saying that we did.

16 Q. Okay. Let me ask generally. Did you charge  
17 some borrowers late fees in this timeframe, 2012?

18 A. Yes.

19 Q. But as a business, you stopped that process at  
20 some point, charging late fees?

21 A. No, we never stopped it as a business. I take  
22 it customer by customer, depending on the circumstances.

23 Q. Thank you.

24 So now you may charge late fees, depending on  
25 the circumstances, on a loan?

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1           A.    No.  I take issue with your characterization.  
2  You said now.  We have always charged late fees.  Not just  
3  now.  It just depends on the customer and the  
4  circumstance.

5           Q.    Okay.  Thanks.

6                    This is a good time to take a breather, if you  
7  want to get up and stretch, use the bathroom.  I try to  
8  break about every hour.  It's been a little over that.

9                    (A recess was taken from 11:52 a.m. to  
10 12:05 p.m.)

11          Q.    Let's go to 488, which is -- let's go to 487.

12          A.    487?

13          Q.    Yeah.  So these are the exhibits that I have  
14 just handed you, Mr. Reichman, are previously marked depo  
15 exhibits.  So let's first look at Exhibit 487 together.

16                   At the top of the first page of Exhibit 487,  
17 Denny Chittick is sending Scott Menaged an email dated  
18 September 21, 2012.

19                   He says:  Ok that's fine.  Greg Reichman called  
20 me saying that he and i have two loans on three  
21 properties:  Straight arrow, 46th way and 37209 North  
22 12th Street.  When you get back we need to straighten that  
23 out.  Thanks.  DC.

24                   Did I read that correctly?

25          A.    Yes.



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1 Q. And do you recall around September 21, 2012,  
2 learning that Menaged had borrowed money either through  
3 his entities or directly from both Active Funding and  
4 DenSco, so there were two loans on at least three  
5 properties?

6 A. I remember during that time discovering that  
7 there were multiple deeds of trust. I want to be sure  
8 that I understand your characterization and what you said  
9 so that I can give you a precise answer.

10 You said Menaged borrowed money against, from  
11 multiple lenders against multiple properties. I never  
12 knew that. I knew there were deeds of trust that were  
13 more than one deed of trust on particular properties that  
14 my company had loans on. That I discovered.

15 Q. All right. So let me follow up on the way you  
16 have described it.

17 You knew as of September 21, 2012, that Active  
18 Funding had a deed of trust on a loan to Scott Menaged --

19 A. His company.

20 Q. -- to his company, where DenSco also had a loan  
21 and a deed of trust on that property for a loan to  
22 Menaged?

23 A. I discovered that, yes.

24 Q. Okay. How did you discover it?

25 A. Reviewing the chain of title.

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1 Q. Was there something that prompted you to do that  
2 or do you just do that as a part of your business?

3 A. I do it on occasion.

4 Q. And did you discover in this timeframe that the  
5 DenSco loan was in first position versus the Active  
6 Funding loan or second position, or could you tell from  
7 the chain of title?

8 A. The only thing you can tell from the chain of  
9 title is recordation timeframe. My position is the DenSco  
10 loans were never in first position. I only made first  
11 position loans and my capital was deployed in first  
12 position.

13 Q. And your position was based on the recordation  
14 of the filing of the document or was it something else?

15 A. My legal position, and in most -- in most  
16 circumstances, the recordation timeframe.

17 Q. Okay. And specifically as of September 2012,  
18 did you believe that on these three properties where there  
19 were competing deeds of trust, that Active Funding had the  
20 superior position to DenSco?

21 A. Always.

22 Q. Okay. Was it a surprise to you that Scott  
23 Menaged had borrowed money from DenSco on -- where he  
24 secured those loans with the property that also secured  
25 your loans?

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1           A.    I couldn't draw that conclusion by reviewing the  
2 chain of title.  So it's not unusual to see multiple deeds  
3 of trust on stuff that we finance.  Typically that one of  
4 them has been released or there is some reason.  So when I  
5 first discovered it, I just saw that it was there.  I  
6 didn't know the circumstances surrounding it.  That came  
7 later.

8           Q.    So when you saw it was there, what did you do?

9           A.    The first thing I did was called Denny.

10          Q.    What did you tell him?

11          A.    I said -- I hadn't talked to him for many, many  
12 years, so some smalltalk.  "How you doing?"  I said, "I  
13 just wanted you to be aware that on a few of the loans  
14 that we have with Scott, it's showing DenSco DOTs on the  
15 chain and I don't see releases on file.  Would you mind  
16 checking and seeing if these loans are still on your books  
17 as unpaid?"  That was the conversation.

18          Q.    Do you remember anything he said?

19          A.    Yeah.  He said, "Hang on.  I'll check right  
20 now," and he did.

21          Q.    And what did he tell you?

22          A.    He said they are all still showing as not been  
23 paid off.

24          Q.    Do you remember anything else you or he said in  
25 that first call?

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1           A.     Yes. He said, "I'll talk to Scott about it.  
2 I'm not worried about it. I have this long history with  
3 Scott. He is a very good customer. I completely trust  
4 him. I don't think this will be an issue."

5           And I said, "I'm going to do the same. I'm  
6 going to call him and talk to him about it and try to  
7 determine what's going on here." And then I think we made  
8 a commitment to talk again after that.

9           Q.     So this document that we are looking at,  
10 Exhibit 487, indicates that there are three properties  
11 where there are two loans on each of the property, a loan  
12 by AFG and a loan by DenSco, correct?

13          A.     I didn't create this document.

14          Q.     But that's a fair reading of this document,  
15 right?

16          A.     That's -- it talks about three loans on the top,  
17 and then there is a listing of a lot of other loans.

18          Q.     And my question, my next question to you is, did  
19 you learn shortly after September 21, 2012, that there  
20 was -- there were more than three properties where there  
21 were competing loans between DenSco and AFG?

22          A.     I don't know what competing loans means, which  
23 is the term you used.

24          Q.     All right. Let me rephrase it.

25                 where there are deeds of trust securing loans by

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1 both AFG and DenSco?

2 A. I did learn that, yes.

3 Q. Did you ever learn how many properties in the  
4 fall of 2012 were in that situation?

5 A. I think it was roughly 12.

6 Q. So let me go back to the conversation.

7 You had a conversation with Denny Chittick you  
8 have shared with us where both of you have decided to go  
9 back to Scott Menaged to try to figure out how there could  
10 be two deeds of trust from both lenders, right?

11 A. Well, I knew how there could be. I wanted to  
12 find out why. You record one. I could record one on your  
13 house tonight.

14 Q. Fair answer.

15 So what did you do to find out why?

16 A. I called Scott and said, "I'd like to discuss  
17 this with you. What's going on?" Actually, I think I  
18 emailed him, and I said, "Hey, I discovered this. What's  
19 going on?" And he responded in one of these emails,  
20 "That's impossible." In other words, I was mis -- his  
21 response was I must be mistaken.

22 Q. Right.

23 So he was originally denying to you that that  
24 could be the case, that there would be two deeds of trust,  
25 one from DenSco, one from AFG on the same property.

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1           A.    He said it was impossible. Those were his  
2 words.

3           Q.    Okay.

4           A.    I think it's in one of these emails. I remember  
5 an email like that.

6           Q.    It is. It is. And we are going to find it  
7 here.

8                    So let's look at 488. It's a multipage  
9 document. So it looks like the first email, it's at the  
10 very end of that document, 488, is an email from you to  
11 Scott Menaged dated September 19.

12                   Do you see that?

13           A.    I'm sorry. The second page from the back?

14           Q.    Yeah. It's page 4 and 5 of that document.

15           A.    Okay. I'm on page 4.

16           Q.    So this is -- I'm now noticing that Exhibit 487  
17 actually is dated September 21, but your series of emails  
18 with Mr. Menaged start on September 19.

19                   Do you see that?

20           A.    Yep, I do.

21           Q.    Okay.

22           A.    Yes. I should say yes. Sorry.

23           Q.    And it looks like you are talking generally  
24 about monies being owed various properties.

25                   And then it looks like on the third page at the

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1 bottom, you say to Veronica on September 21, 2012, "If you  
2 get a moment can you please look up a few properties," and  
3 then you identify the three properties. And then you say:  
4 We are trying to figure out what occurred with those  
5 assets and from the books of it -- from the looks of it we  
6 they were traded back and forth in terms of the financing  
7 between Active Funding Group and DenSco, but releases were  
8 never filed. Let me know where you believe they are  
9 currently financed please.

10 And then Menaged says back, he says, "Be back  
11 Monday and will look into it buddy."

12 Did I read that correctly?

13 A. Which page are you on?

14 Q. "Look into buddy," on the third page, about  
15 halfway up.

16 A. I see it. Have a nice weekend.

17 Q. All right. And then you send an email that  
18 starts on the second page at the bottom, "It looks like  
19 these three deals of yours were double pledged to both AFG  
20 and DenSco," then you identify the properties.

21 A. I think you are going in reverse, because that  
22 was sent, and then he responded. Or maybe you are not.  
23 It's hard to read it this way.

24 Q. As I read it, I think that the original email is  
25 in the very back.

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1 A. From the back to the front? Okay.

2 Q. And then it goes forwards to the most current on  
3 the first page.

4 A. Yes. I see it.

5 Q. Okay. So if we look at the bottom of that,  
6 again, of page 3. Is that where we were?

7 MR. ABRAHAM: Page 2.

8 MR. DeWULF: Page 2.

9 Q. At the bottom of page 2, September 21, you say:  
10 OK. It's an important matter. It looks like these three  
11 deals of yours were double pledged to both AFG and DenSco,  
12 and you identify the properties. From reading the chain  
13 there are DOTs recorded from both companies. We are  
14 senior on all 3 deals and Denny's DOT is recorded behind  
15 ours. Do you remember these at all and what happened with  
16 them? Thank you.

17 And then, to refer to your earlier testimony,  
18 Menaged says, "Don't remember them but it's impossible,"  
19 correct?

20 A. Yes, it says that.

21 Q. And then you respond, higher up on that page 2,  
22 "Not impossible. I'm looking at the chains of title  
23 sitting in front of me. Both DenSco and AFG have loans on  
24 those properties. Veronica told me that DenSco has been  
25 paid off and she was waiting for releases. I just spoke



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1 to Denny. He indicated that he has not paid off. Please  
2 get this squared away as it is troubling."

3 And then Menaged says, "For a small fee I can do  
4 your accounting if you want."

5 A. Right.

6 Q. And then you write back, "Very funny. All the  
7 other loans are the same, all appear to be double pledged.  
8 You probably used our money to fund those silly furniture  
9 stores." So let me stop you there.

10 So you are referring to Menaged having a  
11 furniture business, right?

12 A. He had four of them.

13 Q. Yeah. And this is just a joke that he is  
14 misusing the money for his furniture business, right?

15 A. Yes, it was a joke.

16 Q. Okay. And then he responds, "Hahaha!!!! Ok if  
17 you say so...We will clear up Monday." And then you say,  
18 "Good, safe travels."

19 So at this point in time, you have checked with  
20 the chain of title, you figured out that there are double  
21 pledging between the loans of AFG and DenSco.

22 And what happens next in the communication, do  
23 you recall? Does he get back to you and tell you what he  
24 has discovered?

25 A. He did get back to me, yes.

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1 Q. Okay. What does he tell you?

2 A. He said that he does business with a lot of  
3 different lenders, and that his office sends out requests  
4 for financing to multiple lenders and that in this  
5 instance, they made a mistake. They sent requests for  
6 financing to both my company and to DenSco, and that they  
7 had made a mistake.

8 Q. All right. So you have -- when you discover  
9 that the problem is larger than just the three properties,  
10 it probably involves around 12, do you recall when you  
11 figured that out?

12 A. No.

13 Q. Okay. And so Menaged has just explained this as  
14 the fact that his company just sends loan requests, and it  
15 just happened that there were 12 properties pledged to  
16 both lenders?

17 A. Yes.

18 Q. Did you ever get a better explanation than that?

19 A. No, I never got a better explanation. I  
20 accepted that. I could see how that could happen.

21 Q. Okay. Did he indicate who was responsible for  
22 doing that in his organization?

23 A. I didn't ask him.

24 Q. Okay. But his explanation to you, at least as  
25 of September 2012, was not that he was defrauded or his

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1 company had been defrauded. They had just been careless  
2 or negligent regarding making care that there were only --  
3 there was only one loan pledged by the property?

4 A. For this grouping of assets, yes, that was his  
5 explanation.

6 Q. So what did you do about the fact that there  
7 were double pledges on these properties where AFG was the  
8 lender, as DenSco was as well? What did you do about  
9 that?

10 A. I think I had another phone call with Denny, was  
11 the first thing I did.

12 Q. Could you share with us what was said by you and  
13 what was said by him?

14 A. I said, "I talked to Scott. He is indicating to  
15 me this was done in error. When he gets back in town, we  
16 are going to have another discussion about it and see what  
17 I can do to resolve it."

18 And he said, "Yeah, I also spoke with him." And  
19 he reiterated the depth of their relationship and how much  
20 trust he had for Scott, and that he was not concerned  
21 about it. He said that multiple times. "Not concerned  
22 about it. Scott is a great customer. Been doing business  
23 with him for a decade. I'm comfortable with all this."

24 Q. Did you, Mr. Reichman, believe that on those  
25 dozen or so properties that AFG had the superior lien

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1 position to DenSco?

2 A. Always.

3 Q. On all 12 of those properties?

4 A. On every loan I ever made to Scott.

5 Q. Did you tell Denny Chittick that you believe  
6 that AFG was in a superior position on its lien to those  
7 of DenSco?

8 A. I don't think I used that exact language, but,  
9 yes, I had a discussion about lien position with Denny.

10 Q. Do you remember what he said in response?

11 A. He said, "I'm not concerned about it. Scott  
12 will work it out. You know, we have a lot of business  
13 together."

14 And there wasn't a discussion that extended  
15 beyond me expressing what I felt my company's position  
16 was. It wasn't -- it was not an acrimonious or combative  
17 discussion at all. Denny is pretty easy going.

18 Q. Did you do anything with respect to your  
19 business relationship with Menaged as a result of learning  
20 that there were 12 double-pledged properties?

21 A. At this juncture, yes.

22 Q. What did you do?

23 A. I tried to get more security, so in case there  
24 would be a problem into the future, I would have  
25 additional collateral.

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1 Q. Did you tell Menaged that, in this fall of 2012  
2 timeframe, that you prohibited him from getting  
3 double-pledged properties, or let me rephrase that, that  
4 you prohibited him from borrowing from other lenders where  
5 you were a lender on a property?

6 A. Well, the way you are characterizing it is that  
7 he intentionally was doing this, which I never believed  
8 until I read his bankruptcy deposition in 2016. And  
9 secondly, I would never give a customer an instruction  
10 like that. I don't run the customer. The customer is an  
11 adult.

12 Q. So what you would have told him is that you  
13 wanted to make sure that going forward, all the loans you  
14 make to him are properly securing your position in first  
15 position on the properties?

16 A. No, I wouldn't have told him that. The way you  
17 are characterizing it is that some loans I made to him  
18 weren't properly secured. They all were. I never made a  
19 loan to Scott that wasn't properly secured, or any other  
20 customers.

21 Q. So you always believed that this double-liening  
22 issue that occurred in 2012 was simply a mistake that  
23 Menaged or somebody in his company had made and nothing  
24 more?

25 A. Yes.

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1 Q. And the first time you thought differently about  
2 Menaged and his intentions was when you learned his --  
3 about his bankruptcy deposition?

4 A. Yes.

5 Q. In light of the testimony of Menaged in his  
6 bankruptcy deposition in 2016, do you now believe  
7 differently as to what occurred in 2012?

8 A. If he was telling the truth in his deposition,  
9 yes.

10 Q. What do you believe now?

11 A. I think he was intentionally getting money from  
12 multiple lenders.

13 Q. Let's look at 489.

14 Just for the record, this is an email from you  
15 dated September 24, 2012, to Scott Menaged, correct?

16 A. Yes.

17 Q. This email indicates that you spoke to Denny  
18 Chittick about three of the properties where there were  
19 double liens, correct?

20 A. Yes.

21 Q. But you later told him that you thought there  
22 were approximately 12 properties where there were double  
23 liens secured -- securing both AFG and DenSco loans?

24 A. I don't remember telling Denny that.

25 Q. Okay. When you say "I don't remember," do you

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1 think you did not tell him that there were properties  
2 beyond the three that had originally been identified or  
3 you just don't know?

4 A. Well, yeah, I have no recollection of telling  
5 him there were other properties at this timeframe.

6 Q. When you say "this timeframe," do you think in  
7 2012 you ever discussed with Denny Chittick the fact that  
8 there were more than three properties where there was  
9 double pledging between DenSco and AFG?

10 A. I don't remember if I did or not.

11 Q. Do you know if Scott Menaged discussed with  
12 Denny Chittick in the fall of 2012 the fact that there was  
13 more than three properties that were double pledged  
14 between DenSco and AFG?

15 A. I wouldn't have any knowledge of anything Scott  
16 said to anyone, unless I was in person, party to those  
17 conversations. So I have no idea what Scott told anyone  
18 ever.

19 Q. So what I'm trying to capture here, I understand  
20 how precise you are trying to be in your answer, but  
21 Mr. Menaged may have shared with you what he told Denny  
22 Chittick, and that's what I'm -- or he may have written to  
23 you telling you something.

24 So sitting here today, you don't believe Menaged  
25 ever told you anything about whether he told Chittick

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1 there was more than three properties that were double  
2 pledged?

3 A. He never told me that, that specific  
4 information. I did talk to Scott again and he did  
5 reference a conversation he had with Denny, but the  
6 reference was very vague. He said, "Look, I talked with  
7 Denny. Denny is fine with it." And that was it.

8 Q. When did that happen, do you remember?

9 A. I think the next -- I talked to Scott again  
10 after, when he came back from out of town, and we  
11 discussed this and we talked about additional collateral.  
12 And I said, "You know I'm talking to Denny," because he  
13 didn't know I'm talking to Denny. And I said, "I'm going  
14 to call Denny and tell him we have talked." And he said,  
15 "Yeah, that's fine." He said, "I've already talked to  
16 Denny. Denny is fine with it."

17 Q. When he said "Denny is fine with it," what did  
18 you understand that to mean?

19 A. I didn't ask for a deeper meaning.

20 Q. I'm not asking that. I'm asking what was your  
21 take from that? What did you understand that to mean?  
22 Did you not have any understanding?

23 A. I mean, my interpretation of when someone says  
24 "Denny is fine with it," would be Denny doesn't have a  
25 cause for concern. I have spoken with him. We had a



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1 discussion. He's fine.

2 Q. About the double liening issue?

3 A. Was the only thing I talked to Denny about.

4 Q. Right.

5 So you are agreeing with me that's probably what  
6 Menaged was referring to when Denny said he doesn't have a  
7 problem with it?

8 A. I'm assuming what happened on a call I wasn't a  
9 party to.

10 Q. All right. After -- after the conversation that  
11 you have just described between you and Scott Menaged, and  
12 do you think that would have also been in September of  
13 2012?

14 A. I think it was. I think so.

15 Q. Did you ever talk to Denny Chittick again about  
16 the subject of double liening on properties?

17 A. I don't -- yes.

18 Q. When do you recall that?

19 A. Roughly a year later.

20 Q. Okay. Let's put that aside for a minute.

21 After you learned of the potential issues  
22 associated with double pledging that Menaged had engaged  
23 in, you put in place certain mechanisms to protect AFG,  
24 right?

25 A. That -- that's a -- I didn't put in place

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1 mechanisms. I mean, I think I mentioned to you, I asked  
2 him if I could get some additional collateral. Because I  
3 had learned that he owned, like, 80 rental properties, and  
4 so my first thought was maybe I can secure some of our --  
5 I can get some additional security by getting him to  
6 pledge some of these rental properties. So that was what  
7 I did.

8 Q. All right. Let's look at Exhibit 492.

9 MR. CAMPBELL: Do you have an extra copy of  
10 that?

11 MR. DeWULF: Are you sure? I thought I  
12 forwarded everything.

13 MR. CAMPBELL: I have 493 and 490 left.

14 MR. DeWULF: 492 is what we are looking at. You  
15 don't?

16 Actually, let's look at 490 first. Do you have  
17 that, Colin?

18 MR. CAMPBELL: Yes.

19 Q. This is just an email -- Exhibit 490,  
20 Mr. Reichman, is an email from you to Scott Menaged dated  
21 September 24, 2012. And you are telling him, "Scott - we  
22 need to talk to you and it needs to be immediately."

23 A. Yes.

24 Q. "Thank you."

25 All right. And then if you look at 492, you are

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1 providing him a summary of your account as of  
2 September 24, 2012?

3 A. Yes.

4 Q. If you want to thumb through them, I'm going to  
5 ask you a couple questions about your listing.

6 A. Okay.

7 I have done that.

8 Q. All right. Now, if we go to page 2, there is a  
9 title, chain of title and deed of trust issues.

10 Do you see that heading? It's towards the  
11 bottom of the page.

12 A. I do see it.

13 Q. And was this document something you prepared or  
14 someone prepared for you?

15 A. I prepared it.

16 Q. Okay. And what you are intending to do as of  
17 this date is to tell Scott Menaged this is the status of  
18 the loans that you have with AFG?

19 A. This document did two things. It talked about  
20 delinquent payments, it talked about delinquent down  
21 payments, and also apprising him of deeds of trust,  
22 multiple deeds of trust that appeared on the chain of  
23 title for certain assets.

24 Q. So what you learned as of September 24, 2012, is  
25 that Mr. Menaged had not only double pledged certain

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1 properties with loans from DenSco and AFG, but he also had  
2 double pledged with loans with family members and others  
3 not DenSco and AFG, right?

4 A. I don't know about family members.

5 Q. Okay. You don't remember him -- well --

6 A. And by the way, I want to make sure this is  
7 clear. You keep saying Mr. Menaged did this. Okay? I  
8 discovered that there were more than one deed of trust on  
9 properties that AFG had loans that we had a deed of trust  
10 on also.

11 when you say "he did this," to me that  
12 characterizing bad actor, that he did this specifically  
13 and intentionally, doing something wrong. I never knew  
14 that at this point in time. All I knew was what was the  
15 documents that were in the public records. That's what I  
16 knew, which he had explained.

17 Q. Right.

18 A. You keep going back to that and I keep making  
19 that clarification. I'm not trying to be difficult. I'm  
20 just -- it's important to me that you understand that,  
21 because that's what happened.

22 Q. I understand the distinction you are drawing.

23 A. Okay.

24 Q. You are drawing a distinction between what you  
25 knew at the time and what you may now know, right?

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1 A. Correct.

2 Q. And I'll try to be more precise with my  
3 questions. I appreciate it.

4 A. Okay. Thanks.

5 Q. What we now know, based on his testimony and  
6 what we have learned about his conduct, would suggest to  
7 you that maybe some of what he has done here is  
8 intentional, right?

9 A. It would suggest to me that all of it is  
10 intentional, if you believe what he said in his bankruptcy  
11 deposition.

12 Q. But what he is telling you in the timeframe that  
13 you are making decisions in September of 2012, is that it  
14 was an innocent mistake, right?

15 A. Absolutely.

16 Q. And your summary here where you are describing  
17 chain of title and deed of trust, those are properties  
18 where DenSco had a deed of trust on the same property that  
19 was securing a loan by AFG where it also had a deed of  
20 trust, correct?

21 A. Yes.

22 Q. You may have said this and I don't -- I  
23 apologize if I'm asking you the question a second time.

24 A. No problem.

25 Q. Did you ever tell Denny Chittick in 2012 that

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1 you believed that AFG was superior on all of its loans  
2 where DenSco was also a lender and secured on the  
3 property?

4 A. Yes. I told him that.

5 Q. Did he take issue with you at all on that?

6 A. No, he did not.

7 Q. Did he, Denny Chittick, ever share with you what  
8 Scott Menaged told him was the reason for there being  
9 double pledging on certain properties?

10 A. No.

11 Q. Let's look at 493. So let's go to the second  
12 page of 493. It's an email. It starts about a third of  
13 the way down the page.

14 Do you see that?

15 A. Page 2?

16 Q. Yes.

17 A. I see it.

18 Q. September 24, 2012, you write -- you say, "We  
19 are on for 10am tomorrow. We just wanted to get some  
20 minimum goals for the meeting." And then you proceed then  
21 to talk about what you are hoping to accomplish in the  
22 meeting, right?

23 A. Yes.

24 Q. And the points are that he needs to bring all of  
25 his payments current on all of the loans that he presently

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1 has with you, right?

2 A. Yes.

3 Q. And then you want additional collateral from  
4 him?

5 A. Yes, or substitute collateral.

6 Q. So let me ask, why do you need substitute  
7 collateral? Are you now believing that your loan is  
8 undersecured because there is a second loan on the same  
9 property?

10 A. No.

11 Q. What do you need additional collateral for?

12 A. Comfort.

13 Q. Okay. So there is -- why do you need comfort?

14 A. I will get as much as I can get. If a borrower  
15 wants to give me \$10,000,000 worth of collateral for a  
16 \$100,000 loan, I'm taking it every time. I will take it  
17 all.

18 Q. So there is nothing about this situation with  
19 DenSco that you have learned about that it's causing you  
20 to require more collateral; it's just that you have an  
21 opportunity to ask for more collateral?

22 A. I would ask for more collateral under any  
23 circumstance where I thought I could get it, but  
24 specifically the reason why Scott and I are talking about  
25 more collateral is because of this situation I discovered

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1 where there are multiple deeds of trust on some of the AFG  
2 assets. That was the reason for asking Scott for more  
3 collateral during this timeframe.

4 Q. So generally speaking, you are concerned about  
5 your loan-to-value ratio, now that you have learned that  
6 there is another lien sitting on the property?

7 A. No. I was golden. I didn't care about my  
8 loan-to-value ratio. If there was going to be a fight --  
9 the way I viewed it, Denny was being nice guy today. Many  
10 people are nice at a moment in time, and then a month  
11 later that changes and someone decides they want to have a  
12 fight.

13 So what I'm always trying to prepare for is the  
14 fight. So to me, going to the borrower and saying:  
15 Listen, this is going on. I understand it was a mistake,  
16 but it wasn't my mistake. This is your mistake. In order  
17 for me to be comfortable, in the spirit of cooperation,  
18 because this is your mistake, your operation, I'm going to  
19 ask you for this additional comfort, and I think it's  
20 fair. So I did.

21 Q. Did you ever tell Denny Chittick that you were  
22 seeking to get more collateral from Scott Menaged in the  
23 fall of 2012?

24 A. Never.

25 Q. Do you know if Scott Menaged ever told Denny



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1 Chittick that?

2 A. He never said anything to me about it.

3 Q. And let's look at the email that begins at the  
4 bottom of the first page from Scott Menaged to you dated  
5 September 24, 2012.

6 would you read it, and then I'm going to ask you  
7 a question about it.

8 A. Where it says "I appreciate"?

9 Q. Yes.

10 A. Okay.

11 Okay. I read it.

12 Q. So he says, "I appreciate the email and I want  
13 to make you as comfortable as possible. I did not benefit  
14 from this mess infact losing a million and a half dollars  
15 only only with you."

16 Let me just stop right there.

17 A. Uh-huh.

18 Q. Did he ever explain to you how he lost a million  
19 and a half dollars?

20 A. No.

21 Q. Do you think there is any basis for that?

22 A. I don't even know what he was talking about. We  
23 weren't partners. I don't know what losing a million and  
24 a half dollars with you even means.

25 Q. Well, in fact he would have gotten two loans,

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1 right? So he definitely would have gotten the money from  
2 those loans, right? He got the cash?

3 A. I have no idea what happened with the other  
4 loans. All I know is where my money went.

5 MR. CAMPBELL: Object to form, foundation.

6 THE WITNESS: Sorry.

7 MR. CAMPBELL: Just give me a second.

8 THE WITNESS: I apologize.

9 Q. He goes on and says, "I am discovering other  
10 issues with my stores."

11 Did you understand that to be referring to his  
12 furniture stores?

13 A. I don't remember --

14 MR. CAMPBELL: Objection; form, foundation.

15 THE WITNESS: I don't remember reading that, so  
16 I don't know what I understood at the time.

17 Q. Well, let me ask independently of this note, did  
18 Scott Menaged share with you in September of 2012 the fact  
19 he was having problems with his furniture stores?

20 A. No. He told us he was killing it. Very  
21 profitable. Super-successful. A little bit seasonal was  
22 the way he described it, but these were like 50,000 square  
23 foot mega furniture stores that were all over town and  
24 advertising everywhere, and, you know, he said they were  
25 doing great.

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1 Q. Let's go to the top of the next page, page 2.  
2 "We will start a discussion tomorrow and try to come up  
3 with something acceptable. I can't control what happened.  
4 I know you understand when certain things are out of your  
5 control."

6 Did you have any understanding what he was  
7 saying there?

8 A. I don't remember reading this seven years ago,  
9 but, I mean, I can give you an opinion.

10 Q. Well, let me just ask. Was there something in  
11 your history that you had shared with him where you had  
12 lost control of something? Do you know what he is  
13 referring to?

14 A. No. No, I don't. I mean, I read that as just  
15 some general statement. Who knows what Scott's thinking.

16 Q. Let me -- let me back up. Because I talked to  
17 you early in your deposition about both Denny Chittick and  
18 Scott Menaged, some general questions about your  
19 experience with them and knowledge of them.

20 Let me ask you, you testified a few minutes ago  
21 about the fact that you thought Scott Menaged was  
22 disorganized.

23 Do you recall that testimony?

24 A. Yes.

25 Q. What are other adjectives you would use to

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1 describe him, in your experience, what you knew about him?

2 A. Abrasive, very direct, dictatorial, impatient,  
3 very smart, honest, honorable, fair. That's what comes to  
4 mind.

5 Q. We have talked about the fact that you have now  
6 seen the testimony he gave in his bankruptcy, which would  
7 indicate to you that he was defrauding DenSco and doing  
8 other bad things.

9 A. Yeah. I was -- my description I just gave was  
10 during at this timeframe.

11 Q. I understand.

12 A. Not now. It's changed now.

13 Q. I understood your answer and I understood. That  
14 was the way I was asking the question.

15 As you -- now that you know that Menaged did  
16 what he did, can you share with us any ideas as to why he  
17 may have done that or anything about him that would have  
18 caused him to do that?

19 MR. CAMPBELL: Objection; form, foundation.

20 THE WITNESS: I mean, I'm going to just give  
21 you -- I will give you just my opinion about it.

22 That's what you are asking for, right?

23 Q. Yes.

24 A. I -- I'm astounded what he did. I want to throw  
25 up when I think about it. I'm astound -- I almost can't

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1 even believe it. Like, I almost can't even believe it,  
2 because this is not the guy that I did business with.  
3 would never do what he did, at least what he says he did.  
4 There is no way.

5 Like, I think about it now, I almost can't -- I  
6 know what happened, and I understand what happened with  
7 Denny and it was horrible, but something happened. I was  
8 not -- you know, when he was doing all this business with  
9 Denny prior to me, him asking us for money again, I didn't  
10 have a lot of knowledge of what he was doing.

11 I had a -- there is a mutual, there was a guy  
12 who used to borrow money from us, a wholesaler, who I was  
13 having a discussion with about this matter who dealt with  
14 Scott every day, was in the same office with Scott every.  
15 And I said: what happened? Like, how could this happen?  
16 How did this guy do this?

17 And he said -- and this is a guy that knew me,  
18 you know, in '98, '99. His name was John ray. He is a  
19 wholesaler. Nice guy. And he said: He changed. He  
20 changed after he -- after you shut down Active Finance  
21 Group. You guys didn't do business for a long time. He  
22 started driving expensive cars, he started wearing  
23 expensive jewelry, buying \$400 shirts and \$1,000 shoes.  
24 He changed.

25 And that was the first I had ever heard of that,

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1 because -- so I don't know what happened. I don't know  
2 why he -- a guy that would act, you know, so favorably for  
3 so long. Even in times of trouble, by the way, because I  
4 had some issues with him on some of his loans. He got  
5 divorced. He got divorced in, like, 2002 and we had,  
6 like, 30-something loans at the time with him, and he  
7 moved to New York. Just moved, like, in the middle of the  
8 night.

9 And I called him and said, "what do you plan on  
10 doing with the 30 loans you have?" And he said, "I'm  
11 going to sell them all." They were in partial stages of  
12 reconstruction. It was a mess.

13 And I said, you know, "who is going to  
14 orchestrate that? You want me to foreclose on them?" And  
15 he's like, "No, don't foreclose on them. I'll sell them,  
16 and at the end of the day if you don't get all your money  
17 I'll make it right." And I said, "I don't like the sound  
18 of that, but okay."

19 He sold -- he hired a realtor. sold all those  
20 properties. Lost money on most of them, and he owed us,  
21 like, 380,000 at the end. He flew into town and met with  
22 me from New York. He wrote me ten postdated checks for  
23 \$38,000 apiece and said, "You can deposit them one at a  
24 time and you will get all your money." And I took those  
25 checks and I deposited them one at a time and I got all my

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1 money, so he made it right.

2 So it's just unbelievable to me that a guy that  
3 behaves like that for, you know, ten years with me  
4 borrowing, does this.

5 Q. And the episode you just described about the  
6 multiple checks, was that in 2002?

7 A. Roughly.

8 Q. Did you ever learn that he had either gambling  
9 or substance abuse problems?

10 MR. CAMPBELL: Objection; form, foundation.

11 THE WITNESS: I knew that he liked to gamble. I  
12 didn't know he had a problem, and I never had any idea. I  
13 never -- I'm not a guy you are going to get substance  
14 abuse -- I'm not going to have a discussion with you.  
15 I've never smoked pot. I'm going to kick you out of my  
16 car. So that's not a discussion anyone is ever going to  
17 have with me, and everybody knows it.

18 Q. Yeah. And I wasn't suggesting that you were  
19 engaging in it.

20 A. No. I'm just saying. If you are doing that, we  
21 are not going to talk. So, no, I have no awareness of any  
22 of that, and I never saw any of it, you know, when I saw  
23 him. A few drinks now and then, never was drunk, never  
24 was out of control. You know, never saw any of that.

25 Q. So let's go to the top email on the first page

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1 of Exhibit 493. It's an email from you to Scott Menaged  
2 September 24, 2012.

3 I'll just read it. "We should proceed with the  
4 meeting and yes, we expected to have a positive tone as  
5 acrimony does not serve any purpose in this instance. We  
6 do have realistic expectations, we would ask the same from  
7 you as this is a significant problem with significant  
8 ramifications. At minimum we would like payments and down  
9 payment requirements brought current and we can't see any  
10 reason why that would be objectionable to you, is it?"

11 And then you go on, "If you have other assets  
12 which we believe you do they should it be offered to us as  
13 additional collateral. Is there any reason you should  
14 have an objection to that? Please bring a list. We will  
15 see you at 10."

16 So as a result of this communication, did  
17 Menaged offer you additional collateral?

18 A. No.

19 Q. He didn't bring a list?

20 A. No.

21 Q. But you did have discussions about trying to get  
22 additional collateral, right?

23 A. I brought the list.

24 Q. Of what you wanted from him?

25 A. Yeah. I did a bunch of research on his, all his



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1 entities and identified properties he had under his  
2 ownership, and I ran chains on all of them and I  
3 determined what I might be able to do to get additional  
4 collateral. I wasn't going to wait for him to bring a  
5 list. I wanted to get more comfort.

6 Q. And did you get additional collateral?

7 A. I did.

8 Q. In what form?

9 A. Deeds of trust on assets that he owned.

10 Q. And so you got additional deeds of trust on  
11 properties that had not formerly been the subject of a  
12 deed of trust from AFG?

13 A. That's correct.

14 Are you done with 493?

15 Q. We are.

16 A. Okay.

17 (Deposition Exhibit No. 931 was marked for  
18 identification.)

19 Q. So you should have in front you 495, 496, 497,  
20 and then 931.

21 A. I do.

22 Q. So let me ask you about 495. I know you would  
23 not have seen this. It is an email between Denny Chittick  
24 and Scott Menaged. It's dated September 26, 2012.

25 Denny says, "I talked to greg," and he says, "he

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1 just blamed his to past employees and quickly got off the  
2 phone. Trust me my books are golden, down to a gnats ass  
3 crack."

4 And so -- we have got some colorful emails  
5 today, don't we?

6 A. Yeah.

7 Q. So I'm reading this as Chittick saying to  
8 Menaged that you told him that the problems arose with  
9 your own employees.

10 Is that -- and I know you have not read this  
11 before, but does that have any basis in anything you  
12 experienced or saw? I mean, you didn't tell anyone that,  
13 right?

14 MR. CAMPBELL: Objection; form, foundation.

15 Q. All right. Let me rephrase it. It's a bad  
16 question. I was trying to short circuit it a little bit.

17 You never told Denny Chittick that this double  
18 liening, double pledging problem was a result of employees  
19 at your company, right?

20 A. Of course not.

21 Q. Okay. And so to the extent that Menaged is or  
22 Chittick is telling Menaged this, he would be lying?

23 MR. CAMPBELL: Object; form, foundation.

24 THE WITNESS: I have no idea what Denny was  
25 saying here.

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1 Q. Right.

2 A. All I can do is tell you, no, there was never  
3 any issue at my company that had anything to do with  
4 multiple deeds of trust on a property we financed, unless  
5 we made multiple loans on the property.

6 Q. Right.

7 A. Then there might be multiple deeds of trust on  
8 them.

9 Q. Would it be true in AFG that you approve all  
10 loans?

11 A. Yes.

12 Q. You individually?

13 A. Well, myself or, in this timeframe, either  
14 myself or my business partner, because he was still  
15 working there in 2012.

16 Q. And your business partner being Jody Angel?

17 A. Yes. Mostly me.

18 Q. And the topic of Denny Chittick, so he is  
19 referring to his books are golden, and he says he refers  
20 to -- or he is communicating to Menaged.

21 Did Denny Chittick, in your communications with  
22 him in the fall of 2012, ever say to you that he was in a  
23 superior position to AFG on any of those loans?

24 A. No.

25 Q. And he didn't contest your statement when you

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1 told him AFG was superior to DenSco on its loans on all  
2 those double-pledged properties?

3 A. I didn't --

4 MR. CAMPBELL: Objection to form.

5 THE WITNESS: I didn't use that exact language.  
6 I said, "I believe we are in first position on  
7 everything," and he didn't respond to it. There was no  
8 discussion about it. I just made the statement.

9 Q. Okay. Exhibit 496. Let's start at the last --  
10 the last few pages of this document of 496 is a series of  
11 descriptions of properties with deeds of trust and a  
12 lender identification.

13 Do you know whether this document was created by  
14 AFG or not?

15 A. I created it.

16 Q. Okay. And what was the intent? And we are  
17 talking about the last four pages of Exhibit 496.

18 A. Oh, this isn't my -- this is not me.

19 Q. Oh.

20 A. The last -- so I created -- I will tell you what  
21 I created. Starting with page 1, 2, 3, I don't remember  
22 this, this summary thing here. I may have created it, but  
23 I don't remember creating it. I do remember creating this  
24 memorandum.

25 Q. All right. So let's look at the memorandum.

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1 And there is both typewritten portions and then there is  
2 handwriting. If we look on, it's actually the second page  
3 of the document, but it's numbered 1, it has, "Here is  
4 what I have based upon what you gave us."

5 You typed that, right?

6 A. Yep, I did.

7 Q. And then the addresses with the dollar figures  
8 is a representation of properties against which AFG has a  
9 loan and the loan amount?

10 A. No, these are not all AFG loans. There is --  
11 these are just addresses. And then my handwritten notes,  
12 if I remember this, I think I remember it, would be what  
13 the chains revealed in terms of the debt that was on those  
14 assets. They are not all AFG loans, which is what you  
15 said.

16 Q. And so I'm clear about the way this is  
17 describing this, when, for example, that first line it  
18 says 140K, next to Heritage Oak way --

19 A. Right.

20 Q. -- is that 140K a representation of what you  
21 believe the AFG loan is on that property?

22 A. Probably. I don't know 100 percent for sure.

23 Q. And then there is handwriting that is after most  
24 of these listings.

25 Do you know whose handwriting that is?

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1 A. Mine.

2 Q. Okay. So you have gone through a chain of title  
3 and determined, for all those properties described, there  
4 is a loan by AFG that's in typing, and then the  
5 handwritten note may indicate a second loan to DenSco or  
6 someone else, right?

7 A. The answer is I think so.

8 Q. All right. And if we go back to your email at  
9 the top of that second page of this document, dated  
10 September 26th, 2012 --

11 A. You know what? May I correct my testimony?

12 Q. You may.

13 A. Sorry for interrupting you.

14 Q. Sure.

15 A. I actually think these are values. Not an AFG  
16 loan. I think these are my values, what it's worth.  
17 140K, I think that's -- I think that's what I thought the  
18 property was worth. I don't think that was the AFG loan  
19 amount.

20 Q. Okay. And if we look at that email at the top,  
21 the subject is valuations.

22 Do you see that?

23 A. Yes, it says next to my values, that's right. I  
24 should have read that, I guess.

25 Q. That's fine.

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1 In that first paragraph, it's your email to  
2 Scotty, right, dated September 26, 2012?

3 A. Yes.

4 Q. And it's to Menaged and you list properties, and  
5 you say there is a total of 61.

6 So that would be the total of all those  
7 properties you have listed?

8 A. I didn't count them, but if I counted right,  
9 yes.

10 Q. All right. And then the second paragraph of  
11 that email says: If you please write your values next to  
12 my values, and then the amount of debt you have on each,  
13 and how much you would propose to pledge at payoff for  
14 each we can move to getting documentation completed  
15 assuming we agree.

16 Did I read that correctly?

17 A. Yes.

18 Q. And so the handwritten notes would have been  
19 information that Menaged gave you on each of those  
20 properties and what he believed was owed?

21 A. No. These are my -- this is my notes. He  
22 never -- I don't think he ever gave me notes. It's not  
23 something he would ever do, in spite of the request.

24 Q. All right. So did he -- I guess my question is,  
25 when you sent him this email, did it contain both the

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1 typewritten and the handwritten information?

2 A. I can't remember. I think so.

3 Q. But it would be true, as we look at these listed  
4 properties, that there are a number that reference a  
5 DenSco loan, right?

6 A. Yes.

7 Q. And more than a dozen, right?

8 A. I didn't count them, but it looks like quite a  
9 few.

10 Q. So would you have been concluding as of  
11 September 26, 2012, that there were a number of properties  
12 that were double liened between DenSco and AFG?

13 MR. CAMPBELL: I'm going to object to form and  
14 foundation.

15 THE WITNESS: These are different properties.  
16 The 12 original properties -- these are properties, other  
17 properties he owned that at the time of this, we didn't  
18 have anything to do with.

19 Q. Oh, all right. Thank you for the clarification.

20 A. Or maybe we did one of them it looks like, or  
21 one of them here and there.

22 Q. So these --

23 A. There is a whole bunch of stuff that he owned  
24 that we had nothing to do with, or a few of them maybe we  
25 had loans on, but I was looking for equity. I wanted more



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1 comfort.

2 Q. I misunderstood. I apologize.

3 A. That's okay.

4 Q. So what you are saying is that you have  
5 identified these properties. When you are going to meet  
6 with him, you are wanting additional collateral, and you  
7 did your own chain of title search to see what else he  
8 owns that could be collateral, right?

9 A. Absolutely. And I told him I was going to do  
10 that. That was the whole preface for the meeting.

11 Q. Okay.

12 A. And I expressed it to him in writing.

13 Q. So this was information you presented him before  
14 you met with him to discuss what collateral he could  
15 provide you?

16 A. I can't remember if it was before or, like, you  
17 know, at the time of the meeting, but, yeah, I think I  
18 sent it over. I just don't remember. I mean, it looks  
19 like I sent it over.

20 Q. So what you are suggesting to him in these  
21 instances is that where there are already loans for DenSco  
22 secured by a certain property, you are asking him to  
23 provide you additional collateral through those  
24 properties?

25 A. No. In certain instances, that would be

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1 correct, but as a universal statement, you are incorrect.  
2 A lot of these properties are free and clear, had no debt  
3 on them. A lot of these properties had nothing do with  
4 Densco and nothing to do with AFG. These are just assets  
5 that he owned that I valued, that I determined what the  
6 debt -- if there was any debt on them and what the debt  
7 was and if I could see any equity, which wasn't what you  
8 asked.

9 Q. Thanks for the clarification.

10 So what I think you are saying to us is that you  
11 were looking to create an opportunity to provide more  
12 collateral from Scott Menaged, his entities, for the  
13 monies he owed you --

14 A. Absolutely.

15 Q. -- right?

16 A. As much as I could get.

17 Q. And the way you are doing it is you are  
18 identifying properties that he presently holds title to,  
19 either individually or through his entities, right?

20 A. Yes.

21 Q. And what's depicted on this page of Exhibit 496  
22 are, in some cases, an identification of a loan that  
23 already exists on a property and what you view as the  
24 value of that property, right?

25 A. Yes.

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1 Q. Okay. So you are looking at what debt there is,  
2 what the estimate of value is, and that tells you how much  
3 equity or additional value there might be there to provide  
4 you additional collateral?

5 A. Perceived equity.

6 Q. Okay. And so in some instances you might be  
7 suggesting to him that even though a DenSco loan exists on  
8 a property, if there is a gap between the amount of that  
9 loan and the value of the property, he could provide you  
10 another deed of trust as additional collateral, right?

11 A. I wouldn't care if it was a DenSco loan.

12 Q. Or anyone else?

13 A. I don't care who it is. Could be B of A. Could  
14 be the man on the moon. I'm looking for equity.

15 Q. And did the presentation of this information to  
16 Scott Menaged in September of 2012 result in him providing  
17 you additional equity?

18 A. Yes.

19 Q. What did he give you?

20 A. Deeds of trust.

21 Q. Okay. Did he give you multiple deeds of trust  
22 on properties that against which you had not lent money  
23 previously?

24 A. We had a blanket lien on a bunch of assets, and  
25 then we agreed on release provisions as he sold them.

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1 Q. And the blanket lien was for a million 4?

2 A. I think so.

3 Q. All right. How did you arrive at that number?

4 A. I think it was just a number that made me feel  
5 better, that if it all became a big fight, you know, we  
6 would be okay in terms of recovering our principal amount  
7 and maybe some of our interest.

8 Q. Was it tied in any way to where you thought you  
9 were undersecured or anything like that?

10 A. I was never undersecured.

11 Q. Okay. So there was a dialogue between you and  
12 Menaged where you arrived at this number, but you just  
13 felt comfortable with the number?

14 A. I don't think we ever had a dialogue about the  
15 number. I said this is what I would like to get, and he  
16 didn't challenge it. Scott was not a guy that had long,  
17 challenging -- like, it was not difficult to deal with  
18 him.

19 Q. All right.

20 A. Generally, if it was fair and you made a fair  
21 request, he said okay and that was the end of it.

22 Q. Let's look at 497. If we look at the second  
23 page, Mr. Reichman, there is an email from Menaged to you  
24 saying, "Still working on this....what split do you feel  
25 is fair?"

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1 Do you know what he was referring to?

2 A. Show me -- tell me again where that is, please.

3 Q. Yeah. It's the last page. It's the second page  
4 of 497.

5 A. Oh.

6 Q. Menaged sends you a September 28, 2012, email.

7 A. 8:24, 8:36. Okay.

8 This would have been we were discussing what the  
9 release provisions would be as those properties, those  
10 assets monetized, how much AFG would get from the surplus  
11 equity.

12 Q. So is that on the properties where there are  
13 liens by DenSco and AFG? Is that what you are talking  
14 about?

15 A. It would have been on the properties on this  
16 list. I don't care if it's DenSco or anybody else.

17 Q. Okay. So when you said "this list," you are  
18 talking about the list on 496?

19 A. My handwritten notes.

20 Q. All right. So you are talking about those  
21 properties having new deeds of trust for AFG placed on  
22 those properties for additional collateral, right?

23 A. With his permission, yes.

24 Q. All right. And then on the sale of those  
25 properties, he is asking what do you think is a fair split

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1 of the monies from those properties between you and  
2 anybody else?

3 A. The net equity between us and him.

4 Q. Okay. And then you respond in your email that  
5 starts on the bottom of the first page, and what you are  
6 suggesting is the way of going forward to resolve things?

7 A. Yes, I see it.

8 Q. In that first paragraph, you say: I think it  
9 will vary asset to asset based upon how much equity you  
10 have in them. At a minimum I would suggest we get  
11 one-half of the distributable cash and we will be  
12 estimating what that number is but that is fine, the  
13 agreement can cover that.

14 And then you go on. It says: On the free and  
15 clear properties we would expect at least 80% because that  
16 would put them "in line" with what we would normally lend  
17 we can lay the paper off to our investors to recapture our  
18 capital. The situation is creating significant financial  
19 harm damages to us because we now have over \$1,000,000  
20 which we have said -- paid to you and our security  
21 interest in those assets is likely defective so we can't  
22 lay them off to our investors and replenish our cash.  
23 With the free and clear assets we could lay them off  
24 because our security interest would not be defective.

25 So I finished reading that for now. Let me just

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1 ask you a question.

2 A. Sure.

3 Q. Your -- when you say "our security interest in  
4 those assets is likely defective," what assets are you  
5 referring to?

6 A. The 12 properties that had multiple deeds of  
7 trust between, with Active and DenSco.

8 Q. Okay. And that is a reference to the fact that  
9 there is two loans on the same property so there is less  
10 equity or free -- free value in those properties?

11 A. Ask me again, please.

12 Q. Yeah. I guess the security interest being  
13 defective is a result of there being two loans on the  
14 property as opposed to one?

15 A. Yeah. Just for your -- just for clarification,  
16 I never thought my security interest was defective. I was  
17 just positioning.

18 Q. Oh, so this is just a negotiation for you?

19 A. Yeah. I wanted him to sign -- I wanted him to  
20 give me more collateral. So I'm going to take a position  
21 that because of your carelessness and because of what your  
22 office did, we are at risk more than we should be. I want  
23 more collateral. I never thought my position was  
24 defective ever. I said that to him, because I was  
25 negotiating.

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1 Q. Did he ever push back?

2 A. No.

3 Q. So you would be getting new loans on properties  
4 and you would be, on those properties, taking 50 percent  
5 of the value?

6 A. I wasn't getting new loans. That's a  
7 mischaracterization. I was placing deeds of trust to  
8 shore up equity in certain assets, and it wasn't always  
9 50 percent.

10 we had different splits for different assets.  
11 where there was a tremendous amount of equity, I would get  
12 more. If there was only a small amount of perceived  
13 equity, I would -- we would get less.

14 Q. All right. And in those instances where your  
15 deed of trust is the only deed of trust, then you would  
16 get 80 percent of the equity?

17 A. Whatever. I don't remember. Something like  
18 that, yes.

19 Q. That's what's reflected --

20 A. Yeah, I think so. We made an agreement that --  
21 we called them A properties, B properties -- we broke them  
22 up into three categories.

23 Q. Yes, I have seen that. I'll show that you in a  
24 moment.

25 All right. How are we doing on time? Do you



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1 guys want to break?

2 A. I don't need a break.

3 Q. It's a little after 1:00. You all doing okay?

4 (An off-the-record discussion.)

5 Q. Let me show you Exhibit 931, which is that last  
6 exhibit in that stack.

7 MR. CAMPBELL: What's the number again?

8 MR. DeWULF: 931.

9 MR. ABRAHAM: Go ahead, John.

10 Q. So this is a series of emails, Exhibit 931,  
11 between you and your partner, Jody Angel, and Scott  
12 Menaged, and it's having to do with finalizing this  
13 agreement where you are getting more collateral in light  
14 of -- well, that you are negotiating for, right, with him?

15 A. Yes.

16 Q. And if we could just look at what is the -- it's  
17 hard to -- the fourth page, it just references this  
18 million 4.

19 And what you did is for all those properties you  
20 identified where you were trying to get additional  
21 security and you would either get it paid in 80 percent or  
22 50 percent split, depending on what the present status of  
23 the property was, you were putting a blanket deed of trust  
24 for a million 4 on all those properties?

25 A. Yes.

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1 Q. And then as a function of those properties  
2 selling and the sales proceeds would then be applied to  
3 paying off whatever debt there was, and depending on what  
4 your deal with Menaged was, some of that 1.4 would get  
5 reduced, right?

6 A. Yes.

7 Q. Now, let me ask you, the negotiation that you  
8 did with Menaged where we have just been talking about on  
9 these exhibits, it's where you are seeking and getting  
10 additional collateral in light of these double-lien  
11 problems in the fall of 2012, did you do this all yourself  
12 or did you have the help of counsel?

13 A. I -- both. Both. This, I did myself. I talked  
14 to Andy about the multiple deeds of trust on the  
15 properties and what our position would be, how he felt  
16 about that, but this document, I prepared it myself and I  
17 didn't talk to any counsel about it at all.

18 Q. So the deal terms that you struck were yours,  
19 that is, you struck the deal with Menaged and you  
20 communicated it in writing and finalized it, right?

21 A. Correct.

22 (Deposition Exhibit No. 932 was marked for  
23 identification.)

24 Q. Just identify it for the record.

25 Is this the Promissory Note that you entered

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1 into with Menaged and his entity, Easy Investments, LLC?

2 A. Yeah, it appears to be a Promissory Note with  
3 his signature on it.

4 Q. And this is the million 4 that was the  
5 obligation that he agreed to that was secured by a variety  
6 of his properties, right?

7 A. It looks like it, yes.

8 Q. The answer may be obvious, but I don't know it.

9 Menaged did not pay you more money than he  
10 already owed you; he just provided you more collateral to  
11 make sure you got paid on your existing loans, right?

12 A. Yes.

13 Q. And you later asked for monies being placed in a  
14 lockbox account, right?

15 A. Yes, I did. That was a result of a suggestion  
16 from an attorney.

17 Q. What was -- why did you feel like above and  
18 beyond the million 4 in a secured loan, did you also need  
19 to get collateral in the form of lockbox funds?

20 A. I was worried about bankruptcy, if he declared  
21 bankruptcy, what would happen. I didn't want a protracted  
22 expensive legal battle, so we consulted bankruptcy  
23 counsel, Jack Hebert, who has passed away unfortunately.  
24 He was a lifetime friend of mine.

25 Q. Yeah, I don't want to know what the lawyer told

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1 you.

2 A. He said if he goes into bankruptcy --

3 MR. ABRAHAM: Don't talk about what Jack told  
4 you.

5 THE WITNESS: Yes, we got a lockbox account.

6 Q. All right. Was there something suggested by  
7 Menaged about bankruptcy? Why did you have concerns about  
8 bankruptcy?

9 A. He never suggested it. I was just trying to  
10 cover all my bases.

11 Q. Do you -- I'm going to digress for a minute from  
12 my line of questioning just to ask you, did you ever hear  
13 a story from Menaged where he blamed putting a cousin in  
14 charge of his business and that that resulted in him  
15 losing some monies?

16 A. I read that in his bankruptcy deposition. I  
17 never heard it from him.

18 Q. After you learned of these issues in September  
19 of 2012 where there was a double pledging of properties  
20 that were securing your AFG loans, did you continue to  
21 loan money to Menaged after that?

22 A. Yes.

23 Q. Did you have any concerns with him and his  
24 reliability, given the fact that he had told you he had  
25 made this mistake in the fall of 2012?

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1 A. Sure. I had some concerns, yes.

2 Q. How did you address that?

3 A. I mean, I have concerns about every borrower, so  
4 we -- I treat them all essentially the same. And we have  
5 issues with some borrowers, and obviously this is a pretty  
6 significant issue, but it wasn't a big enough issue for me  
7 to make meaningful changes in anything.

8 I think we probably -- I don't remember doing  
9 anything specific. My general -- my general approach is  
10 if a borrower is performing and doing what they say they  
11 are going to do, we will continue to lend to them.

12 And in this instance, I had a borrower who  
13 indicated he made a mistake. I believed him. I  
14 immediately spoke to the other lender that was involved.  
15 He indicated to me he had no concerns, long borrowing  
16 history, credible borrower, continuing to believe he was a  
17 credible borrower.

18 And when I asked for additional collateral, he  
19 came to the table and he gave it to me. I like -- I liked  
20 that. So that makes me think I have got a guy who is  
21 going to do the right thing and I should continue to be  
22 able to do business with him with some comfort. And a  
23 long history of him doing what he said he was going to do,  
24 when he said he was going to do it.

25 Q. Showing you Exhibit 498. I want you to look at

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1 it and I'm going to ask you some questions about it.

2 A. I have read it.

3 Q. All right. So start in the second page of this  
4 document. It looks like Menaged is sending an email to  
5 you dated October 17, 2012.

6 Is that -- is that right?

7 A. It looks that way, but it's -- I think this is  
8 just a blast email that he does and we were on the list.  
9 So when you say to me, I was on the list.

10 Q. It shows you as one of the recipients through an  
11 email, right?

12 A. Yes.

13 Q. Okay. And you come back to him and you say,  
14 "Are we getting the financing on this?" Right?

15 A. Yes.

16 Q. And that your email is October 18, 2012.

17 Just curious? Just want more business?

18 A. Want more business.

19 Q. All right.

20 A. I send emails like this to a lot of wholesalers.  
21 I get emails all day from guys that are sending me stuff.

22 Q. Okay. And then he writes you back and saying  
23 "Yes," right?

24 A. Yes.

25 Q. And then you right, "Good. When?"

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1 A. Actually, I said, "Good. Thank you."

2 Oh, "Good, when?" way down at the bottom. Yeah.  
3 Got it. Sorry.

4 Q. That's all right.

5 And then he writes you, "Your paying for this  
6 today. We sent it in yesterday to your office."

7 And then you say at the top, "Good. Thank you.  
8 I am assuming Denny (or anyone else) has no knowledge of  
9 it so we won't have to deal with him recording DOT in  
10 front of us, correct?"

11 A. Yes.

12 Q. So this is -- you are indicating you had  
13 problems with Denny and DenSco before on double liening  
14 and you are wanting to make sure that didn't happen again,  
15 right?

16 A. I'm indicating -- it was halfway in jest, but  
17 also I'm tickling him, like, you know, "Have you corrected  
18 your problems? I don't want to have any more problems.  
19 Happy to continue to do business, but I'm watching you."

20 Q. So you have said consistently that you have  
21 never had any concern with Active Funding being in first  
22 position deed of trust on all of its loans?

23 A. Yes, I have said that.

24 Q. And is that true on every loan you ever did with  
25 Scott Menaged and every entity of his, that you were

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1 always in first position deed of trust --

2 A. Yes.

3 Q. -- relative to other lenders?

4 A. I never deployed any capital into any of Scott's  
5 ventures, acquisitions of properties, where we were in a  
6 junior position. Never made a loan in junior position.

7 Q. Okay. When you are talking to him about doing a  
8 loan with him -- and earlier we know you were asking for  
9 additional collateral because of the fact that there were  
10 double pledges, right?

11 A. Yes.

12 Q. Did you tell him when you lent money to him, "I  
13 don't want you borrowing money from anyone else, even if  
14 it's an inferior position, because it affects our  
15 collateral"?

16 A. No. I told -- I tell him and all my other  
17 borrowers the same thing, which is exactly the opposite of  
18 that. I say, "I don't care how many loans you have on it,  
19 as long as I get what I bargained for."

20 If I am deploying in first position, I want to  
21 be in position. You can get five other loans if you want.  
22 Just don't -- I don't want them to be senior to me.

23 Q. Yeah, but if you are trying to achieve a certain  
24 loan-to-value ratio, won't that affect your loan-to-value  
25 ratio?



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1 A. No. It doesn't affect it one bit.

2 Q. You don't view that second loan as being a  
3 problem for you?

4 A. It's a benefit most of the time, actually.

5 Q. How is a loan secured against the same property  
6 your loan is secured against a benefit to you?

7 A. If it's a junior to me?

8 Q. If it's junior to you.

9 A. It's a benefit to me, because now someone else  
10 has an interest, right, it can be a benefit. It just  
11 depends on the circumstances. Sometimes it's not,  
12 sometimes it is, but sometimes it's a benefit.

13 Q. But you at least would have potential expenses  
14 associated with having to deal with the borrowers  
15 complying with that loan, right --

16 A. No.

17 Q. -- the one that's inferior you to?

18 A. I have no expenses in connection with that loan  
19 at all.

20 Q. So you are just assuming there is a trustee sale  
21 on a default on that inferior loan, you will just deal  
22 with it when it comes up, but it doesn't affect you?

23 A. I don't have to deal with an inferior loan. It  
24 has nothing to do with me.

25 Q. Because they just pay you off?

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1           A.    No.  No.  It has -- no, they don't pay me off.  
2   They could if they want to.

3           Q.    So your loan just continues to secure the  
4   property in a superior position?

5           A.    No.  Yeah.  Excuse me.  We are talking about in  
6   the event of a default and what happens at monetization.  
7   I thought that's what you were talking about.

8           Q.    Yeah.

9           A.    Did I misstate?

10          Q.    No.

11          A.    Okay.  So at monetization, the way this actually  
12   works, I file a notice of trustee sale.  I don't care  
13   about the junior.  I'm -- that's not my business, not my  
14   debt.  It's not my responsibility.

15                The junior will get a copy of the notice if he  
16   is properly recorded on the chain of title, because the  
17   trustee has a legal obligation to notify everybody in the  
18   chain.  And then the junior can contact me and say I want  
19   to reinstate, which I would probably let him do, or I want  
20   to pay you off, which I probably let him do, or they do  
21   nothing, which is probably the case.

22                And then my trustee sale is conducted.  And  
23   assuming there is enough third-party proceeds and it sells  
24   third party at the trustee sale, I get paid off.  I don't  
25   have anything to do with the junior.

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1 Q. All right. If the junior has a default and  
2 notices a trustee sale, do you care about that?

3 A. No.

4 Q. Because you are going to be paid either way?

5 A. They are taking -- they are recovering  
6 ownership. If it doesn't sell third party, they are  
7 recovering ownership subject to my deed of trust.

8 Q. Okay. And you don't incur any administrative  
9 expenses or anything that bothers you; that isn't a big  
10 deal for you?

11 A. Under which scenario?

12 Q. Under the scenario where the inferior loan goes  
13 to trustee sale?

14 A. It doesn't cost me a penny.

15 Q. Okay. So you are saying it doesn't bother you  
16 that there is an inferior loan, yet you were able to  
17 negotiate all this additional collateral from Menaged when  
18 there were inferior loans with DenSco?

19 A. I was positioning. I didn't like it.

20 Q. Why didn't you like it? I thought it didn't  
21 matter to you.

22 MR. CAMPBELL: Objection; form, foundation.

23 THE WITNESS: It didn't bother me at my core. I  
24 just didn't like what I saw. I mean, I see it from time  
25 to time, but, you know, I didn't like it so I'm going to

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1 get as much security as I can. Like I said, if I make a  
2 loan for 100,000 and someone wants to give me 10 million,  
3 I'm taking the 10 million.

4 Q. I'm showing you Exhibit 499. This may or may  
5 not prompt your memory. Look at the second page, if you  
6 could, Mr. Reichman.

7 A. Yes.

8 Q. You indicate to -- this is October 30th, 2012.  
9 You indicate to Menaged, "I have an idea I would like to  
10 discuss with you." And then he responds -- and you say,  
11 "please call me."

12 And he responds, "I will tomorrow. I am tied up  
13 all day at something at Brandon's school....I have an idea  
14 I want to talk to you about too. Maybe we can meet for  
15 dinner this weekend?"

16 Do you recall, sitting here today, what those  
17 ideas were, either expressed by him or by you?

18 A. No, I don't.

19 Q. And did you have dinner with him?

20 A. I don't think so.

21 Q. Do you ever -- did you have meals with Scott  
22 Menaged?

23 A. With him one-on-one, no, I don't think I ever  
24 did. He was -- I had -- early, in the early days of  
25 Active Finance Group, I had a couple young in age, young

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1 partners. They were more his age, and they were very  
2 friendly with him so he would hang out with them. Go to  
3 bars. Go to clubs.

4 And so there were dinners that I attended where  
5 there were 15 people there, he was, I was there, my  
6 partners were there, their wives were there, but  
7 one-on-one, maybe one time, so almost never. I think I  
8 had breakfast with him one time in Fountain Hills, early  
9 on when I first met him, at a place called DJ Bagels.

10 Q. Okay. So these emails are dated November of  
11 2012, and they discuss a payoff of Denny's loans, Denny  
12 Chittick's loans, as I read it.

13 Do you recall a point in time where loans from  
14 Denny Chittick to Scott Menaged were paid off?

15 A. We bought some loans from Denny, and I don't  
16 know if these were the loans or not.

17 Q. Do you remember what you paid for it?

18 A. No, I don't.

19 Q. Do you remember why you did that?

20 A. Scott called and said, "Denny is trying to  
21 create some liquidity to make new loans. I've got some  
22 loans that have been on the books with him for a long  
23 time, longer than he wants them to be. Would you be  
24 interested in buying them?" And I said, "Sure. Send them  
25 over. I'll look at them."

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1 Q. And do you think did you that in November of  
2 2012?

3 A. I don't remember when I did it.

4 (Deposition Exhibit No. 933 was marked for  
5 identification.)

6 Q. So if you look at this real quickly, this may  
7 refresh your memory about buying out loans.

8 A. It does.

9 Q. And so you think in November of 2012 you would  
10 have bought out a bunch of DenSco's loans to Scott  
11 Menaged?

12 A. This wasn't a bunch, which was the language you  
13 used. It was a few. It was not a tremendous amount of  
14 business for us. It looks like we identified -- I think  
15 he sent over more than these, and I ran them and picked  
16 the ones I liked.

17 Q. So you are sending him two wires, right?

18 A. Looks like it.

19 Q. For a total, it looks like --

20 A. 765 and change.

21 Q. Was there -- let me ask just a background  
22 question.

23 You indicated earlier that they had been on the  
24 books, these loans had been on DenSco's books for a while.

25 A. I indicated that's what Scott told me.

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1 Q. That's what Scott told you.

2 And Denny wanted to get paid on those loans?

3 A. That's what Scott told me, yes.

4 Q. Let's go off the record for a minute.

5 (A recess was taken from 1:34 p.m. to 1:57 p.m.)

6 (Deposition Exhibit No. 934 was marked for  
7 identification.)

8 Q. I'm not going to go through this with you --

9 A. Yeah.

10 Q. -- because of time, but let me just confirm, as  
11 we look halfway down on that first page --

12 A. Yeah.

13 Q. -- Mr. Reichman, this is an email you sent to  
14 Scott Menaged on February 12, 2013?

15 A. Yes, it looks like it.

16 Q. And it was to cover a number of business issues  
17 between you and him?

18 A. Yes.

19 (Deposition Exhibit No. 935 was marked for  
20 identification.)

21 Q. I will just show you real quickly 935.

22 The email to you from Scott Menaged dated  
23 February 7 is telling you that he is refinancing one of  
24 Denny's notes, and it gives it looks like an address, and  
25 then he says: Please send me subordination of the

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1 1.4 million note.

2 So -- and you say, "Just curious - why aren't  
3 you refinancing with us?"

4 So you had this blanket 1.4 million deed of  
5 trust on a variety of properties?

6 A. Yeah.

7 Q. And he is indicating to you he is refinancing  
8 and he wants you to subordinate that security to a new  
9 loan from DenSco?

10 A. Yeah. He is wrong, by the way. I would never  
11 subordinate. What he wants is a partial release. He is  
12 using the wrong language in this email.

13 Q. Okay. So when he refinances, he pays off the  
14 old loan and he is -- it would be a release of whatever  
15 that lien was that was --

16 A. A partial release of the million 4 that created  
17 a debt instrument against 10030 East Friess. Scott just  
18 uses the wrong language.

19 Q. I see. Okay.

20 And that's what you would do over this period of  
21 time, you would continue to be secured on a variety of his  
22 properties with this million point -- million 4 deed of  
23 trust, right, and then you would release that as deals  
24 would get sold?

25 A. Yes.



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1 (Deposition Exhibit No. 936 was marked for  
2 identification.)

3 Q. So, Mr. Reichman, I'm showing you Exhibit 936.  
4 It's an email to you from Scott Menaged dated June 5,  
5 2013, and it references a lawsuit --

6 A. It sure does.

7 Q. -- filed by an entity called FREO Arizona, LLC.  
8 Do you see that?

9 A. I do.

10 Q. Do you remember this lawsuit?

11 A. Just vaguely.

12 Q. Do you remember it had to do with a trustee sale  
13 that should have been canceled and went forward, and that  
14 Menaged ended up buying the property and got a loan from  
15 you guys?

16 A. I don't remember any of that. What I  
17 remember -- what I remember about it is the name of this  
18 F-R-E-O Arizona. I remember that. I remember the name of  
19 that entity. I don't remember the details surrounding it.

20 Q. You don't remember what the lawsuit was about?

21 A. No. Well, I have some recollection of something  
22 to do with a trustee sale, and that's all I remember.

23 Q. Do you remember it causing you any concern at  
24 the time, that there were any issues?

25 A. I mean, I'm always concerned when there is a

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1 piece of litigation with my company's name on it, but I  
2 don't think it was -- I mean, these things happen, you  
3 know. Customers, we get stuff like this on occasion.

4 Q. All right. So he, Menaged, at the top of that  
5 first page of 936 says, "I agree to pay reasonable  
6 attorneys fees for this lawsuit."

7 Do you remember that, that he was agreeing to  
8 pay the attorneys fees?

9 A. A little bit. I have a vague recollection of  
10 it.

11 Q. Do you remember why he agreed to pay attorneys  
12 fees?

13 A. Probably because I asked him to.

14 Q. But do you remember why you asked him?

15 A. Because I don't want -- I don't think -- I had  
16 nothing to do with this. I was just a lender. So if  
17 there was an action and I am named, I probably called  
18 Mr. Abraham here and said do we need to defend this, and  
19 he probably said we need to file a response. And then I  
20 said -- called Scott and said, "I don't to pay for this.  
21 It has nothing to do with me. You pay for it."

22 Q. Got it.

23 But you don't -- sitting here today, you don't  
24 remember anything other than there was a trustee sale or  
25 something?

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1 A. Correct.

2 Q. Okay. You -- earlier in your testimony when I  
3 was asking you about communications you had with Denny  
4 Chittick and we were talking in the timeframe of fall of  
5 2012, do you recall that line of questions? We were  
6 talking about these double liens. Do you remember that  
7 line of testimony?

8 A. Yes, I do.

9 Q. And then I asked when you next spoke to Denny  
10 Chittick, and you said it was approximately a year later.  
11 Do you recall that testimony?

12 A. I do.

13 Q. So let me come back to focus on that.

14 After the fall of 2012 when, you know, we have  
15 addressed this issue of there being double liens on some  
16 of these properties where DenSco and AFG were lenders to  
17 Menaged or his entities, you had a conversation in 2013  
18 with Denny Chittick?

19 A. Yes.

20 Q. Do you remember what the circumstances were?

21 A. I do.

22 Q. What do you remember?

23 A. The circumstances were I had lunch with a  
24 competitor, who is also kind of a friend, named Dan  
25 Diethelm, who is a lender. And he asked me to go to

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1 lunch, and we went to lunch over at Fashion Square, which  
2 is where his offices were, and he had this giant exhibit  
3 book that he had prepared. And he is like, "I just want  
4 to show you something that's going on that you may or may  
5 not be aware of."

6 And so he was also a lender to Scott, and he had  
7 done a whole bunch of research and determined that there  
8 were six or seven lenders, all hard private-money lenders  
9 to Scott, for assets that he purchased, including my  
10 company, a lender, and that all of these assets had  
11 multiple deeds of trust on them with DenSco and these  
12 other lenders. So he made me aware of that.

13 Q. What is Mr. Diethelm's entity called? What is  
14 his company?

15 A. I only know one and it's called Geared Equity.

16 Q. Geared Equity?

17 A. Uh-huh. I don't know if he uses it anymore.  
18 That's what he used to use.

19 Q. So was he telling you at that time that some of  
20 the loans you had made to Menaged or his entities were  
21 secured by property that were also securing other loans  
22 made by other lenders to Mr. Menaged or his entities?

23 A. He was telling me there were multiple lenders,  
24 all of whom fell under the scenario you just described.  
25 Six or seven, some of which I knew, some of which I

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1 didn't, including him.

2 Q. You think this was in the fall of 2012 or '13?

3 A. Late 2013.

4 Q. Do you remember when, approximately?

5 MR. CAMPBELL: I'm sorry. You talked over each  
6 other. Did you say late 2013?

7 THE WITNESS: Yes.

8 Q. What does that mean? Does that mean November,  
9 December?

10 A. Something like that.

11 Q. Was this news to you?

12 A. Well, I thought he was talking about what I had  
13 already knew back from 2012, so I didn't -- I didn't  
14 really react much to it. I never looked at his exhibit  
15 book. I didn't ask him a lot of questions about it.

16 And he says -- and he is like, "Are you  
17 concerned about this?" And I said, "Of course, I'm  
18 concerned about it." And he said, "well, that's it?" And  
19 I went, "yes. I will go back to my office and try to  
20 determine what's going on. Thank you for telling me."  
21 And that was it.

22 Q. Do you know if he was talking to other  
23 hard-money lenders who were also suffering from this  
24 position of being -- have loaned money to Menaged where  
25 there were other loans competing with theirs?

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1 A. At that moment in time, I didn't have that  
2 discussion with him, no.

3 Q. Okay. He just told you what he had discovered  
4 about what was happening with some of your loans?

5 A. And many other lenders.

6 Q. Okay.

7 A. But your question was do I know if he discussed  
8 it with other lenders, and the answer is I don't know. We  
9 didn't talk about that at that time.

10 Q. So does -- does that lead you then to check and  
11 do chain -- check chain of title and that kind of thing on  
12 some of your loans?

13 A. It certainly did.

14 Q. What did you do?

15 A. I pulled chains on every one we had with Scott  
16 or one of his entities at the time.

17 Q. What did you discover?

18 A. That there were DenSco DOTs on the majority of  
19 them, in addition to AFG DOTs.

20 Q. When you say "DOTs," you are talking about deeds  
21 of trust?

22 A. Deeds of trust, yes. Sorry.

23 Q. That's all right.

24 were you able to conclude on those chains of  
25 title whether the deeds of trust that secured the AFG

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1 loans were in a superior or inferior position to those  
2 deeds of trust that were securing the DenSco loans?

3 A. Yes. There is actually two operative documents.  
4 we haven't talked about that yet, but now is an  
5 appropriate time to introduce it.

6 Q. All right.

7 A. We file a notice of deed of trust initially so  
8 that there is a public record of the fact that we have  
9 advanced funds for a trustee sale purchase. We do that  
10 right away. And then we follow it subsequently with a  
11 full deed of trust, which is like a 12-page document. The  
12 notice of deed of trust, a two-page document.

13 So I created a spreadsheet that showed our  
14 notice, when it was recorded, our DOT, when it was  
15 recorded, and anybody else's DOTs and when they recorded.

16 Q. So the notice of deed of trust, is that filed at  
17 the successful bid?

18 A. No. I don't know about it at the successful  
19 bid. The customer calls me after that. I file it as soon  
20 as I'm told that we are going with you for the financing.  
21 we file it then.

22 Q. Okay. So in a typical scenario, if a borrower  
23 were successful at a trustee sale, they contact you. You  
24 have agreed to fund a loan. You file the notice of  
25 trustee sale against the property?

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1 A. No. That's incorrect. You said notice of  
2 trustee sale. That's not what we file. That's what the  
3 trustee files.

4 Q. Oh, I apologize.

5 A. We file the notice of deed of trust.

6 Q. Thanks. Sloppy question.

7 So when you determine you are going to loan  
8 money to that successful bidder at the trustee sale, then  
9 you file a notice of deed of trust?

10 A. Yes, correct.

11 Q. And that's recorded against the property until  
12 you file an actual deed of trust, right?

13 A. Yes.

14 Q. Do you release the notice of deed of trust or is  
15 it just --

16 A. We never have, but interestingly, recently title  
17 companies are asking us to do that, after all these years.  
18 I don't know why, but we will. We just don't do it as a  
19 matter of routine. We record a release of our full deed  
20 of trust when we are paid off.

21 Q. Well, the notice of deed of trust is filed to  
22 tell the world you are going to file a deed of trust and  
23 you don't want someone to be recording something in the  
24 meantime, right?

25 A. Not exactly. It's filed to tell the world that



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1 we have money on this property that's secured by the  
2 property. It doesn't necessarily reference and we won't  
3 be recording, which is what you said, another document,  
4 but we do record another document.

5 Q. Right. But without the actual trustee's deed of  
6 trust document recorded?

7 A. No. We wait for the trustee's deed to hit.  
8 Because if you don't do that, you have an out-of-sequence  
9 recording --

10 Q. Right.

11 A. -- and then you have to file releases for  
12 everything --

13 Q. Right.

14 A. -- and re-record everything. So we try to avoid  
15 that mess.

16 Q. The trustee's deed, meaning the deed going to  
17 the successful bidder from the trustee?

18 A. Yes.

19 Q. All right. I may have not allowed you to  
20 complete your answer.

21 A. Yes.

22 Q. We said a bunch of stuff.

23 A. No. You did good.

24 Q. Good. That's the first time on that.

25 MR. ABRAHAM: You did good, John. Go home.

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1 MR. DeWULF: Let's call it, guys. That's a  
2 first.

3 MR. ABRAHAM: I told you not to do this.

4 MR. DeWULF: I never do this, but mark that in  
5 the record. I had a lawyer used to do all that. Mark  
6 that.

7 Q. All right. So you determined that there are --  
8 you pulled the chains of title. You determined there are  
9 multiple deeds of trust on these properties.

10 what do you do next?

11 A. Call my, you know, cardiologist. Tell him I  
12 need help. I mean, I was, you know, not happy. I was  
13 upset. I talked to my business partner about it.

14 Q. Jody Angel?

15 A. Yes, uh-huh. And then I called Denny.

16 Q. And tell us what you said and what he said in  
17 that call.

18 And, again, this is sometime in late 2013?

19 A. Yes. I said, "Hi, how you doing?" "Good." I  
20 hadn't talked to him at all since, you know, the last time  
21 we talked in 2012. And I said, "I just want to let you  
22 know that I had lunch with Dan Diethelm." I don't  
23 remember if he knew Dan or not. "And it was brought to my  
24 attention that there are multiple lenders that have deeds  
25 of trust from DenSco filed also on assets that they have

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1 loans on."

2 So I said: I did a spreadsheet with all of my  
3 loans with Scott and -- not all of them, not every single  
4 one, but most of them have DenSCO DOTs on them.

5 And he said, "Okay. Have you talked to Scott  
6 about it?" And I said, "No, not yet. I'm going to talk  
7 to Scott when I hang up with you."

8 And he said, "Okay. Well, talk to Scott and let  
9 me know what Scott says." I said, "Okay." So that's what  
10 I did.

11 Q. And that was the sum total of what you and Denny  
12 talked about?

13 A. It was not a long discussion.

14 Q. Did he indicate he was upset or surprised or  
15 anything?

16 A. I never had a long discussion with him. He  
17 never sounded upset. He never really reacted to anything.  
18 He just listened. He never offered much commentary about  
19 anything.

20 Q. Did either of you talk about which loan was in a  
21 superior position through its deed of trust?

22 A. Not in that call.

23 Q. All right. So did you call Scott Menaged then?

24 A. Yes.

25 Q. And it must have been soon after the call you

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1 had just described?

2 A. It was, yes.

3 Q. And can you tell us what you and he spoke about?

4 A. Sure. Again, I said the same thing. I said,  
5 "It's brought to my attention by a competing lender that  
6 you do business with that there is multiple deeds of trust  
7 on other properties we have loans on. I did a bunch of  
8 research. I have determined this. What is going on?  
9 what's happening?"

10 Q. What did he say?

11 A. He said, "I have no idea what you are talking  
12 about. You must have made a mistake." I said, "I haven't  
13 made a mistake. I did this research personally. I have  
14 all the chains sitting in front of me. You are welcome to  
15 come look at them if you like. There is something going  
16 on here and I don't like it."

17 And he said, "It's a mistake. This is not  
18 true." And I had said, "Okay. Listen, you do your own  
19 research, okay, and you figure this out, and then you let  
20 me know what's going on."

21 I said, "But this needs to happen quickly. I'm  
22 not comfortable with any of this at this point. So you  
23 figure out what's going on and you tell me. You know, you  
24 say it's a mistake. Okay. I'm just telling you that  
25 these documents are recorded in the public record. I can

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1 see them. You can see them. Anyone who runs a chain is  
2 going to see them. Figure out what's going on and call me  
3 back."

4 And he said, "I'm going to figure it out and  
5 call you back real fast." I said, "Okay, great," and that  
6 was the end of that call.

7 Q. All right. And then did you have another  
8 conversation with him later?

9 A. I did.

10 Q. How much time went by, roughly?

11 A. I think a day.

12 Q. And had you talked to Mr. Chittick again in the  
13 meantime?

14 A. No.

15 Q. Okay. Did he call you or did you call him, that  
16 is Scott Menaged call you or did you call Scott Menaged?

17 A. I don't remember.

18 Q. All right. Tell us what was said in that  
19 conversation?

20 A. He said, "I'm starting to gain an understanding  
21 of what's going on with this. I don't have a full  
22 understanding of it yet. I'm finding that this -- that  
23 there is a significant problem with not just your loans,  
24 other loans and other things in my office, and I think I  
25 have had employee crime. I'm not sure yet."

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1 And I said, "Okay. When are you going to be  
2 sure?"

3 And he said, "Well, I had an employee," I think  
4 he said it was a Jamaican woman who was running a part of  
5 his business, and he had fired her a couple of weeks ago,  
6 and that what he was able to determine, since we talked  
7 the day before, was that he thinks there may be a theft  
8 issue and that she was responsible for the theft and that  
9 she had stolen money out of his accounts, money out of his  
10 father's accounts, and he thought that she was responsible  
11 for these multiple deeds of trust, but he wasn't  
12 completely sure yet, but he was going to work -- continue  
13 to work on it and then update me.

14 Q. Anything -- did you say anything in response?

15 A. I said, "Yeah, work on it." I created urgency.  
16 I was agitated and I wanted him to know that I was  
17 agitated, not happy.

18 Q. All right.

19 A. I mean, I wasn't yelling and screaming. I don't  
20 do that. I don't think it's productive in a business  
21 discussion, but my instructions were: You need to find  
22 out what's going on and I need to know what's going on,  
23 and you need to -- this is on you. Figure it out.

24 Q. Okay. And so in the sequence, how much time  
25 passed before you talked to him again?

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1 A. I think a couple of days. I don't remember  
2 exactly.

3 Q. And did you talk by phone?

4 A. Yes.

5 Q. Do you remember who called whom?

6 A. No.

7 Q. What do you recall being said in that call?

8 A. I had already talked to Denny, so I let him know  
9 that I had talked to Denny.

10 Q. All right. So let me stop you there.

11 So between that second call you had with Scott  
12 Menaged and the one you are about to describe that was two  
13 days later, you have talked to Denny Chittick again?

14 A. Yes.

15 Q. Okay. Could you describe that for us, then.

16 A. I said, "Look, I told you I'd call you back  
17 after I spoke with Scott. I have spoken with Scott. He  
18 indicates to me he is researching this. He has identified  
19 that it's happening. He chalks it up at this point to  
20 employee crime, to a particular employee that he has, and  
21 he is going to get back to me in the short term and tell  
22 me what he has discovered. He told me that there was  
23 money stolen out of accounts for his father, accounts for  
24 himself, and I'm waiting for him to call me back.

25 Q. All right. Did you share with him this detail

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1 that the employee was supposedly this Jamaican woman that  
2 had been fired a little while ago?

3 A. No. I just said employee crime.

4 Q. And do you know whether, when you had this  
5 discussion with Denny Chittick you have just described,  
6 whether Denny had gotten, Denny Chittick had gotten any  
7 further detail from Scott Menaged since you had last  
8 spoken to him?

9 A. He told me he was meeting with him either that  
10 day or the next day.

11 Q. So then you had another conversation with Scott  
12 Menaged after the one you have just described with Denny  
13 Chittick?

14 A. Yes.

15 Q. And what can you recall about that discussion?

16 A. He said he hired a private investigator to  
17 locate this woman and that she had moved back to Jamaica,  
18 and that he was still attempting to determine the full  
19 extent of it, and that he had met with Denny and that he  
20 had come to a framework with Denny of how to work out of  
21 it.

22 Q. Did he explain what the framework was?

23 A. Generally.

24 Q. What did he tell you?

25 A. He said Denny had agreed to become a partner



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1 with him in his wholesale business, so he would  
2 participate in profits from the wholesale business to  
3 reduce his exposure on the lending side.

4 He said Denny was going to provide him with  
5 100 percent financing for everything he purchased at  
6 trustee sale so that he wouldn't have a cash crunch. And  
7 he said that Denny was going to provide him with an  
8 unsecured credit line, so in case he got tight on cash, he  
9 would have a cushion, but he didn't think he would get  
10 tight on cash because he had sufficient liquidity to work  
11 through this, to work through it until everything was paid  
12 off.

13 Q. I didn't follow what you just said.

14 who had sufficient liquidity?

15 A. Scott had indicated that Denny had given him --  
16 made a pledge of an unsecured credit line if he needed it,  
17 but he didn't think he would need it because he had  
18 sufficient liquidity, to bridge gaps if he needed it.

19 Q. Did he tell you how long, what the size of the  
20 unsecured credit line was?

21 A. No.

22 Q. Anything else you can recall from that  
23 conversation?

24 A. Yeah. I told him I wanted to see him. I said,  
25 "You got to come in here. I want to talk to you. I'm not

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1 comfortable. This is a significant issue. I don't want  
2 to do this over the phone." It was very hard to get him  
3 to come in for a meeting. He never wanted to come in for  
4 a meeting.

5 Q. When you say "never," you mean in the entire  
6 time you knew him or in this specific timeframe?

7 A. It was always -- since he was a movie star, it  
8 became very difficult. You couldn't get him in for a  
9 meeting. He thought he was a movie star.

10 From the time that he re-engaged with us in  
11 2011, 2012, I don't think I was in my office three times.  
12 I asked him to come in a few times to discuss things, just  
13 in general what he was doing. He would never come in.  
14 Almost impossible to get him in.

15 Q. When was he a TV star? Do you remember the  
16 period of time?

17 A. No. No. I would be guessing, but he was on  
18 some Property Wars show.

19 Q. So anything else you can recall? You have just  
20 described this conversation. You have asked for a meeting  
21 with Scott Menaged.

22 Did you meet with him then?

23 A. I did.

24 Q. Okay. Where was the meeting?

25 A. In my office.

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1 Q. How soon after this phone call you just  
2 discussed did you meet?

3 A. I think it was like a week.

4 Q. Was it still in 2013?

5 A. I can't remember.

6 Q. What happened at the meeting?

7 A. I told him I was very uncomfortable with what  
8 was going on. I understand it was employee crime and I  
9 was sympathetic to that, because I had -- I was also a  
10 victim of employee crime many years earlier, so I knew how  
11 it felt I said, but I wanted to know what his solutions  
12 were. You know, what was plan B? What was plan C? How  
13 was this all going to get worked out?

14 And he said, "Well, I have a number of different  
15 solutions. Number one, I have 7 to 8 million in cash on  
16 the sidelines all the time that I use for my furniture  
17 stores. I don't want to dedicate that to the lending  
18 business, because I need it." He said, "I have about  
19 \$30 million worth of free and clear furniture in my  
20 stores. If I need to, I'll leverage that inventory. My  
21 father is extraordinarily wealthy. If I need to, I have  
22 already talked to him about helping me with money, he is  
23 willing to help me with money. And Denny and I are in  
24 full cooperation. He is completely comfortable with all  
25 of this. And as long as everybody stays calm, this works

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1 out fine."

2 Q. Do you remember anything you said to him?

3 A. I said, "I'm willing to, you know, roll with  
4 it," I think was what I said, or, "I'm willing to roll  
5 with it, provided we get progressively paid off, and  
6 provided your loan account is paid on a timely basis."

7 And I think I also -- I think at that point, I  
8 think Diethelm was also talking to me again and had  
9 indicated to me that they were going to -- he had  
10 organized these other lenders and wanted me to be a  
11 participant with him and these other lenders.

12 He had hired an attorney, I think Bryan Cave,  
13 and that they were going to go to Denny and make a demand  
14 that Denny subordinate any DenSco loan to all of the other  
15 lenders' loans, including AFG, and would I want to be a  
16 part of that, and I think I told Scott that was happening.

17 Q. In other words, you told Scott Menaged that this  
18 Diethelm, Mr. Diethelm was actually organizing these other  
19 lenders and was going to hire counsel?

20 A. Yes. Had already hired counsel he told me,  
21 Diethelm told me.

22 Q. Did Mr. Diethelm tell you that he believed that  
23 all of these other loans from these collection of lenders,  
24 including Geared, his entity, were in a superior position  
25 to the DenSco loans?

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1           A.    I don't remember having that discussion with  
2 him.

3           Q.    Okay. Do you remember him sharing with you why  
4 he thought he could insist upon a subordination of the  
5 DenSco loans?

6           A.    No need for a fight. If Denny is willing to  
7 subordinate, no fight.

8           Q.    Had Denny indicated to Mr. Diethelm that he  
9 would be willing to subordinate the DenSco loans?

10          A.    He never -- Denny never told me about that. I  
11 did talk to him about Diethelm, but he never said I'm  
12 willing to subordinate, I'm not willing to subordinate,  
13 ever to me.

14          Q.    So you indicated to him that I'm willing to roll  
15 with it so long as your account is maintained?

16          A.    And progressively we are getting paid off.  
17 Those were the two conditions.

18          Q.    And does that mean paid interest, and when the  
19 loans become due, that they are paid?

20          A.    Yeah. I want to reduce my exposure to him. So  
21 when proper, I want -- you know, these things, you got to  
22 make an attempt to do something. Well, they were all  
23 rented. It's really difficult to sell occupied rentals.

24                So part of the plan, and Denny told me this  
25 also, when I talked to Denny about him and Scott's

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1 discussion, was to get the properties vacant, because then  
2 you can sell them easily, more easily, repair them and  
3 sell them at the retail level, because they get the best  
4 result that way. You get the most money.

5 Q. Did Scott Menaged propose to you that you reach  
6 a similar agreement with him that he reached with Denny  
7 Chittick?

8 A. To become partners?

9 Q. Yeah.

10 A. No, never. I was just a lender. I just want to  
11 be a lender. I don't want to be partners with any of my  
12 customers.

13 Q. What happened next after you indicated to him  
14 you would be willing to roll with it as long as you  
15 progressively got paid and he reduced the amounts owed to  
16 you?

17 A. Nothing. I mean, the meeting was over. Nothing  
18 happened.

19 Q. Did you have any further discussions with Denny  
20 Chittick after that point?

21 A. I did.

22 Q. What do you remember about that?

23 A. I told him that Diethelm had told me he was  
24 going to be coming to Denny's office unannounced with a  
25 letter from Bryan Cave demanding subordination, and that

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1 Diethelm had asked me to be a part of that group that was  
2 going to come and ask for that, for that subordination for  
3 my loans.

4 I told him I had talked with Scott. I told him  
5 Scott told me that he had now been partners with Denny,  
6 entered into a partnership with Denny, and that the plan  
7 was to sell the property -- get the properties vacant,  
8 repair them, sell them to get the highest amount of money,  
9 generate the highest amount of money, and that that was  
10 what was going to happen over a period of time.

11 I told him that Scott said he was capable of  
12 coming to the table with money. He had enough liquidity  
13 and was willing to use his money to come to the table to  
14 make sure that if there was money needed, everybody gets  
15 paid, and all he needed was time to do that.

16 And I asked him if it was true that he was  
17 partnering with Scott and providing his unsecured credit  
18 line and that he had this discussion about a long-term  
19 solution, longer-term solution. And he said, "I met with  
20 Scott. We have a longer-term solution. That's true."

21 Q. Did you tell Denny Chittick what you required of  
22 at least Scott Menaged going forward?

23 A. Yeah. I said my two conditions are that my loan  
24 account is kept current, he is not in default, and that I  
25 progressively get paid off, so he -- I reduce my exposure

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1 to him. He has got to do something. They are all rented.  
2 He wasn't in a particular hurry to sell them, but that  
3 wasn't going to work for me. I wanted to get paid off.  
4 so there had to be a plan, so that was his plan.

5 Q. Were there any discussions with him about  
6 whether your loans were in a more secure, superior deed of  
7 trust position?

8 A. With Denny?

9 Q. Yes.

10 A. Yes. I think during that call.

11 Q. Tell us what that -- what was said by you and  
12 him.

13 A. Well, he asked me if I was going to join up the  
14 group, you know, I think he called it the vigilante group  
15 that was coming after him. And I said, "I don't know.  
16 I'm thinking about it. I have been asked to join them."  
17 I said, "You know, my opinion about it is to some degree  
18 going to be detailed by you and I, how we interact and  
19 what Scott does."

20 You know, I have a huge history with Scott of  
21 him doing what he says he is going to do. I've been in  
22 difficult situations with him before, where he was  
23 deficient with loan accounts with me and he always made it  
24 up. I never had a problem with Scott. Everything I have  
25 asked him to do when there had been problems, he has



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1 agreed to, and he has performed on all of that.

2 And so I said, "I'm not in a hurry get in a big  
3 fight with anyone." And he said, "well, here is what I  
4 think. And if I could ask you to consider this, I would  
5 appreciate it."

6 And I said, "Okay. What is it?" And he said,  
7 "I believe Scott has enough money to pay these other  
8 lenders off, but not you. Are you willing to wait over a  
9 long term for us to execute this plan? Long term, get the  
10 tenants out, renovate the units, sell them, because that  
11 will generate the most money for everyone."

12 And I said, "As long as my loan account is  
13 current and as long as I'm progressively getting paid off,  
14 yes, I'm willing to wait."

15 He said, "Are you going to join forces with this  
16 vigilante group?" And I said, "I don't have a requirement  
17 to do that." I said, "However, if you subordinate to all  
18 of them willingly, I expect you to subordinate to me,  
19 too."

20 I only had a couple loans that were junior to  
21 Denny. Like, only a couple. Like, I didn't have any  
22 notices of deed of trust that were junior to Denny. Mine  
23 were senior on every occasion. And out of, I don't know,  
24 125 DOTs that Scott had on my loan account, like 10 of  
25 them were junior to Denny, so I was -- and even on the 10

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1 that weren't, I was purchase money, according to what Andy  
2 has told me.

3 MR. ABRAHAM: Stop.

4 MR. CAMPBELL: No, no. You can go ahead.

5 THE WITNESS: Sorry.

6 So I wasn't concerned about that, but that was  
7 the discussion.

8 He's like: Look, I don't want -- I don't have a  
9 reason to have a big fight with anyone. I think these  
10 other lenders are going to get paid off. And as long as  
11 you are willing to wait and we execute this plan,  
12 everything will be fine.

13 And I said, "Okay. I'm willing to wait,  
14 provided my customer doesn't go into default and I get  
15 paid down."

16 Q. When you said the customer not going in default,  
17 are you saying that he, Menaged or his entities, as a  
18 borrower, has to keep current on both interest payments  
19 and on paying off the loan when it comes due?

20 A. That doesn't make a lot of sense. I mean, of  
21 course he is going to pay the loans off.

22 When you say "comes due," like on the exact  
23 maturity date?

24 Q. Well, the term of the loan, say, is a year.

25 A. Yeah, I didn't -- I never enforced maturity

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1 dates. If a borrower is current in their payment, they  
2 can go past the maturity date. I'm okay with that.

3 Q. So when you say payment, you are talking about  
4 interest payments on a monthly basis?

5 A. Yeah, he has to keep current on his interest.  
6 He has to keep current on his interest, and I wanted my  
7 loan account to be reduced, meaning get these properties  
8 vacant, repair them and sell them. I want my exposure  
9 reduced. Those were the two requirements, progressively.

10 Q. A moment ago you were describing your history  
11 with Scott and you said you had a huge history with him.  
12 He always was able to -- if he committed to something, he  
13 would honor the commitment, or something to that effect.

14 Did you tell Denny Chittick that when you were  
15 in conversation with him?

16 A. I never told Denny that. He told me that.  
17 Denny told me about his history with Scott. I don't think  
18 I offered anything about --

19 Q. I'm sorry. I misunderstood your testimony.

20 A. That's okay.

21 Q. So let me go back. When --

22 A. Denny did tell me about his history with Scott.

23 Q. Okay. So in your conversation with Denny  
24 Chittick where he is asking you whether you are going to  
25 join the vigilante group, you have just described what was

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1 said, you did not describe to Denny the fact that you had  
2 had a good history with Scott Menaged, right?

3 A. I don't remember doing that. I may have. It's  
4 something I would say, but I don't remember specifically  
5 telling him that.

6 Q. But you do think that Denny Chittick was telling  
7 you that he had had a good history with Scott Menaged?

8 A. No, I don't -- not, I don't think he said that.  
9 He did say that.

10 Q. Okay.

11 A. A lot of respect for Scott. Long history.  
12 Always done what he said he was going do. Not worried  
13 about any of it.

14 Q. So did you understand, by virtue of entering  
15 this understanding with Denny Chittick, that he was not  
16 going to fight AFG in terms of whether AFG had a superior  
17 or inferior deed of trust on these properties that were  
18 securing the loans?

19 A. Not exactly, but I can tell you what the  
20 discussion was about that.

21 Q. Yes.

22 A. You know, I liked the way the conversation was  
23 going. He is easy to talk to. Clearly was not going in  
24 an acrimonious way. I was happy about that. And I said,  
25 "Just so you know, I have talked with" --

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1 THE WITNESS: Am I allowed to say this, I talked  
2 with my lawyer?

3 Q. Yeah, but don't tell us --

4 A. Well, okay. Then I can't --

5 MR. ABRAHAM: You can tell him what you told  
6 Denny.

7 THE WITNESS: which is what you told me.

8 MR. ABRAHAM: well, if you told Denny something,  
9 you can go ahead and tell him.

10 THE WITNESS: what I said was, "with regard to  
11 deed position and superiority of deed position, I believe  
12 all of my deeds are in superior position, regardless of  
13 whether your deeds have recordation superiority, because  
14 my money was purchase money. My money went to a trustee.  
15 Your money it sounds like went somewhere else. And so I  
16 don't think we have a challenge in terms of deed priority  
17 and recordation. I think my deeds -- my DOTs are senior  
18 to everything that you have. Any common assets where  
19 there are two deeds of trust, one from DenSco and one from  
20 AFG, my deeds are superior."

21 And he said, "well, I have also spoken to my  
22 attorney and I don't agree with you, but I don't think it  
23 matters. We are never going to get into a fight about  
24 this. This -- as long as you give us time, this works out  
25 fine."

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1 And I said, "Okay," and that was it.

2 Q. What did you understand would happen when the  
3 properties sold that secured both your loan, AFG's loan  
4 and DenSco's loan, how would those monies be made out?

5 A. I don't understand the question.

6 Q. All right. Did you understand that between the  
7 loans where you are competing, where there are two deeds  
8 of trust on the same piece of property, that in some cases  
9 the aggregate value of those loans was greater than the  
10 value of the property being loaned against?

11 A. Yes. Where there were -- in some cases where  
12 there were multiple deeds of trusts on AFG properties, the  
13 property, in my opinion, when it monetized, would generate  
14 less money than it required to satisfy both of those deeds  
15 of trust.

16 Q. And did you discuss with Denny Chittick what  
17 would happen in that instance?

18 A. No.

19 Q. Did you have any understanding, as of this  
20 conversation with him going forward, what would be done in  
21 those instances where there is multiple liens and there is  
22 less money to cover the liens than as required?

23 A. No.

24 Q. What actually happened? I mean, in other words,  
25 even if you didn't discuss this with Denny Chittick and

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1 Scott Menaged, what happened going forward when a property  
2 sold that was securing both DenSco and AFG loans?

3 A. I don't care. I only care if we get paid.

4 Q. But I'm not saying you should care one way or  
5 the other. I'm just asking what in fact happened.

6 Did you just get paid fully on your loan?

7 A. Yeah. Let me explain to you the process. It's  
8 exceptionally simple.

9 We get a payoff request typically from the title  
10 company. It usually contains a property address and a  
11 loan account number. My accounting department prepares a  
12 one-page payoff statement, is this how much we are owed,  
13 and we send that to title. That's it. The money either  
14 comes in or it doesn't. It typically comes in by wire.  
15 That's it.

16 Q. And did that happen? In other words, going  
17 forward after this late 2013 series of conversations you  
18 had with Denny Chittick, on those closings where loans  
19 were paid off, were your loan payoffs met, in other words,  
20 when you submitted to the title company on those  
21 properties, was your first-position loan paid?

22 A. 100 percent.

23 Q. All right. Did you ever have to compromise or  
24 take less than the full amount owed on the loan that was  
25 secured on these properties that also secured DenSco

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1 loans?

2 A. Never did compromise and never was asked to  
3 compromise.

4 Q. Did you gain an understanding that in some of  
5 those instances, DenSco was not being fully paid on its  
6 loan secured against those same properties where AFG was  
7 loaning, secured on those properties?

8 A. I never would know that. I have no -- I don't  
9 track competitors. I don't know what's happening with  
10 DenSco or anybody else. I only -- all I know is we send  
11 the payoff statement and we either get the money or we  
12 don't. That's it.

13 Q. Well, let me ask a different question. Maybe  
14 I'm not being very clear.

15 You had to have known that there were more loans  
16 securing the properties in some instances than there was  
17 value in the property to cover those loans, right?

18 A. Asked and answered, Counselor. Yes, I knew  
19 that.

20 Q. All right. So you always got paid the full  
21 amount of your loan?

22 A. I always got paid the full amount of my payoff  
23 statement that was sent to whatever title company was  
24 asking for a payoff statement.

25 Q. And you had to also know, because you were



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1 paying attention to chains of title and those kinds of  
2 things, that in some instances the DenSco loan was not  
3 being fully paid off, right?

4 A. You are making a statement. You are not asking  
5 me a question. The question is --

6 Q. Is that right? The question is, "Right"?

7 A. No, no. You said you would have also had to  
8 have know the DenSco loan didn't get paid off. That's not  
9 a question.

10 The answer is we -- I never know if anybody else  
11 is getting paid off. We don't ask. I don't care. We  
12 don't communicate in that way. I never talk to a title  
13 company about who is getting paid. I don't care if ten  
14 people are going paid off, or if there is six people  
15 behind me taking a short pay, I don't care. I don't ask.  
16 The only thing we know is we either get paid or we don't.  
17 That's it.

18 Like, you -- I think you have a vision of being,  
19 there is some intricate amount of communication on these  
20 payoffs and there is not. There is no communication. We  
21 get a request for a payoff, we prepare a one-page payoff  
22 statement, we scan it and email it to the title company,  
23 and they pay us off or they don't, and that's it. That's  
24 the whole thing.

25 Q. Did you ever have any communication with Scott

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1 Menaged on any of these properties selling and loans being  
2 paid off?

3 A. No. The only communication I ever had with him  
4 about it was when he told me that he would be able to  
5 bring money in to bridge any gaps that might be necessary  
6 so that everything got paid on all the assets. That was a  
7 conversation that kind of related to what you said, which  
8 is why I'm bringing it up.

9 MR. DeWULF: would you read that back, please,  
10 Kelly.

11 (The requested portion of the record was read.)

12 Q. And do you remember when he told that you?

13 A. In our -- the last meeting that we had when I  
14 was saying what are the solutions.

15 Q. Okay.

16 A. And he told me about his multiple solutions.

17 Q. And so let me go back to the comments you made  
18 at the time. You said that he had 7 or \$8 million on the  
19 sideline, I think is what you said. Right?

20 A. Yes.

21 Q. Did you ever check to see whether that was true?

22 A. No.

23 Q. Do you know whether it was true?

24 A. I don't.

25 Q. Sitting here today, you don't know if it was

1 true?

2 A. No idea.

3 Q. You also said he had 30 million that he could  
4 free up from the value of furniture he had, right?

5 A. Inventory.

6 Q. You never figured out whether that was true or  
7 not?

8 A. No.

9 Q. All right. And then he also had a wealthy  
10 father.

11 Did you ever figure out whether that was true or  
12 not?

13 A. No.

14 Q. Even today, do you know?

15 A. No. I did find a building that his father owned  
16 free and clear for, like, \$6 million, so -- and I found  
17 that before we met, so I thought, well, if he owns a  
18 \$6 million building, probably a pretty wealthy guy.

19 Q. When you "before we met," before you met where  
20 he was proposing this solution --

21 A. Yes.

22 Q. -- in light of the problem?

23 A. It was a building around 67th Avenue and Bell,  
24 and U-Haul was the tenant.

25 Q. Okay. Did Menaged ever share with you that he

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1 had any sources of funding in Israel?

2 A. I can't -- I don't remember specifics about  
3 that. The answer is maybe. I have like this vague  
4 recollection of something like that, but I don't -- I  
5 can't give you a lot of -- I don't have a specific  
6 testimony on it.

7 Q. Did he ever share with you that he had some  
8 hedge fund owner that would be willing to fund purchases  
9 of property or that kind of thing?

10 A. No, but he did talk about a hedge fund coming in  
11 and taking out -- providing permanent financing to pay  
12 everything that he had with me. And he said he had  
13 made -- that that deal was going to happen.

14 And that made sense to me, because there were  
15 multiple hedge funds operating here in the Phoenix  
16 marketplace at the time, and they were providing permanent  
17 financing for a lot of my customers that had larger  
18 portfolios. He did say that.

19 Q. When did he tell you that he --

20 A. I can't remember. I think it was on a phone  
21 call.

22 Q. Do you remember what year?

23 A. I don't.

24 Q. It never happened, right?

25 A. It never happened.

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1 Q. Did you ever document any of these  
2 understandings that you had that you were discussing with  
3 Mr. Chittick and Mr. Menaged going forward?

4 A. No.

5 Q. All you cared about was the fact that when  
6 property sold, that your loan was paid off?

7 A. And that he kept the loan account current in  
8 terms of interest. I cared about those two things. And,  
9 I mean, we also care about collateral quality. Like if he  
10 was -- if the collateral was deteriorating and he wasn't  
11 selling it, you know, I would care about that, but I would  
12 never talk about that with him. He wasn't a guy that -- I  
13 mean, he -- they were mostly occupied, so he was  
14 maintaining them.

15 Q. Were you ever suspicious of the story he was  
16 telling you about a Jamaican, in effect, misusing company  
17 funds or defrauding him?

18 A. I -- yes, we were suspicious about it.

19 Q. Did you ever try to run it down or see if it was  
20 true?

21 A. No. I didn't see any value to doing that. I  
22 was trying to keep him not to get agitated. I wanted to  
23 continue to work with him, and he was performing.

24 To this -- my entire business history with him  
25 was he performed. He paid his payments. He paid off

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1 properties. When there were difficulties, he came to the  
2 table. So I never -- I didn't feel like I needed to go  
3 into, you know, Sherlock Holmes research mode about some  
4 Jamaican woman in Jamaica. I don't have the time to do  
5 it.

6 For me, the acid test is are you continuing to  
7 make your payments and am I going to continue to get paid  
8 down, because that was my request, and both of those  
9 things were happening. So I was happy.

10 Q. Did you ever confirm -- you indicated that in  
11 this one conversation you had with Menaged that he had a  
12 variety of sources of funds where he was going to try to  
13 make up the difference between the loan values and the  
14 property values.

15 Do you recall that testimony?

16 A. Yes. Well, not loan values and property. Yeah,  
17 I guess that's right. Whatever was generated at sale,  
18 which is a little different than property values.

19 Q. I understand.

20 A. Property values are perceived. You don't know  
21 what it's worth until it actually sells.

22 Q. So this explanation Menaged gave you of making  
23 up the gap between what the property sold for and what the  
24 loans, the aggregate amount due on the loans was, he  
25 indicated he had funds available to him to do that, right?

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1           A.    He said that he had -- that the furniture  
2 business was super-successful, making lots of money, and  
3 he also had this 7, \$8 million liquidity that he had  
4 almost all the time that he wasn't willing to dedicate to  
5 the real estate business, but that if he had to, he would.  
6 And, yes, he said, "I will bring in money to bridge this  
7 gap if I need to." That was what he said.

8           Q.    Now, as to the role DenSco was to play in all  
9 this, you understood that, I think you said that --

10                Let me make sure I get back to my notes here.

11               MR. CAMPBELL: John, when you have a place to  
12 break, can I have five minutes?

13               MR. DEWULF: Yeah. Let me just finish this  
14 line, and then we will take a break.

15           Q.    -- Denny would become a partner on the  
16 wholesale.

17               Do you recall that?

18           A.    Yes.

19           Q.    What did you understand that to mean?

20           A.    My understanding was Scott was buying -- he used  
21 to buy four, five, six, ten a day sometimes at a trustee  
22 sale and he would wholesale them, and he would hopefully  
23 sell them for more than he paid for them, so he is  
24 generating profit in that business. So my understanding  
25 was Denny would be participating in the profits from that

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1 business with him.

2 Q. So Denny would, through DenSco, contribute funds  
3 and become a wholesaler with him?

4 A. I never said contribute funds. I don't know if  
5 Denny contributed funds or not. Scott told me Denny was  
6 going to provide 100 percent financing, and that's a dead  
7 instrument, and Denny said -- confirmed that when I talked  
8 to him.

9 Q. Did you talk at all to Denny Chittick about this  
10 commitment of paying 100 percent on the dollar? I mean,  
11 in other words, 100 percent?

12 A. That he was financing Scott you mean?

13 Q. Yeah.

14 A. No.

15 Q. You just --

16 A. Not my business. Do whatever you want to do.

17 Q. But the way Scott described his arrangement with  
18 Denny Chittick, was the same as what Denny Chittick was  
19 describing to you, right, in terms of the solution?

20 A. Exactly the same, which made me happy, because  
21 it, you know, confirmed that Scott was telling me  
22 truthfully what was being discussed.

23 MR. DeWULF: All right. Let's break for five  
24 minutes.

25 (A recess was taken from 2:46 p.m. to 2:52 p.m.)



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1 Q. So I'm digressing for a little bit to cover a  
2 couple things with you, Mr. Reichman.

3 A. Okay.

4 Q. We had noticed the deposition of Tony Crabill of  
5 AFG for this afternoon. I -- in reviewing some of his  
6 bio materials, I saw that, I think, he joined AFG in 2014.

7 Is that consistent with your memory?

8 A. Sounds right.

9 Q. And the purpose for noticing his deposition was  
10 to find out what he knew about some of the interactions  
11 between AFG, Scott Menaged and his entities, and some of  
12 the DenSco related matters.

13 I'm asking a very general question, but did you  
14 involve him in those matters?

15 A. Never.

16 Q. Okay. So the function that he would have  
17 performed from 2014 on, what did he do for AFG?

18 A. Just straight A/R, A/P. He doesn't do -- he has  
19 no involvement with the runnings of the business. Just  
20 here is a new loan. Here is a loan that needs a payoff.  
21 Here is how much the payments are.

22 Q. And he has no discretionary authority and he  
23 doesn't interact with borrowers or that kind of thing?

24 A. He interacts with borrowers to the extent that  
25 they call him and say, "How much is my payment? I forgot

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1 my coupon book. How much do I owe you guys?" That's it.

2 Q. He doesn't have business authority as it  
3 relates to those?

4 A. Zero. None. Sorry. No business authority.

5 Q. All right.

6 A. No decision-making capacity whatsoever.

7 MR. DeWULF: I think you can tell him he can go.

8 (An off-the-record discussion.)

9 MR. DeWULF: Is that marked as an exhibit?

10 MR. CAMPBELL: 486.

11 MR. DeWULF: 486.

12 Q. I'm showing you what's been marked as  
13 Exhibit 486, Mr. Reichman.

14 Have you seen this document before?

15 A. No, I don't think I ever have.

16 Q. All right. So let me ask a general question.  
17 What did you do to prepare for today's  
18 deposition?

19 A. I met with Andy, talked to him about it.

20 Q. Did you review any documents?

21 A. No. I don't think so. I think the first  
22 documents I got were he sent me some exhibits, like, five  
23 pages last night that, I guess, you sent him. It wasn't  
24 all these documents.

25 Q. Let's look at this letter together.

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1           So this is a letter dated March 30th, 2017, to  
2 Ryan Anderson, who is counsel for the receiver in our  
3 litigation.

4           A.     Okay.

5           Q.     And it's from a guy named Cody Jess, who is a  
6 lawyer with the law firm Schian Walker, and he is -- he  
7 was counsel to Scott Menaged in connection with his  
8 bankruptcy matters.

9           So he is writing a letter to Ryan as it relates  
10 to the interactions between Active Funding Group, LLC,  
11 you, Mr. Reichman, Jody Angel, and Scott Menaged. It's in  
12 connection with discussions about trying to resolve a  
13 dispute, I think, that Menaged had with DenSco.

14           But let me ask you to -- if you look at this  
15 first paragraph on September 12th, 2012, can you read that  
16 paragraph to yourself?

17           A.     Where --

18           Q.     I'm sorry. First page, under the heading Active  
19 Funding Group, LLC, the second paragraph, could you read  
20 that to yourself? I'm going to ask a question about it.

21           A.     It's not accurate.

22           Q.     How is it not accurate?

23           A.     The 1.4, it refers to the \$1.4 million pledge as  
24 loans that we made that were in second position, and  
25 that's not what that was. So that's my response to it.

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1 Q. So the 1.4 million was not intended to address  
2 the fact that your company was in second position, but  
3 rather as you have discussed earlier in your deposition,  
4 it was meant to develop additional collateral for you on  
5 your loans with Mr. Menaged?

6 A. Yes.

7 Q. Okay. Any other things wrong with that  
8 paragraph?

9 A. Not that I can see.

10 Q. The next paragraph indicates that in the meeting  
11 that you had with Mr. Menaged, that he was depicting how  
12 he was hoping to address the problem with use of  
13 whiteboard.

14 Do you recall a meeting --

15 A. Use of a whiteboard?

16 Q. Use of a whiteboard.

17 A. Okay.

18 Q. Look at that paragraph. It's on the second --  
19 it's on page 2 --

20 A. Okay.

21 Q. -- in that first paragraph.

22 A. Okay. I have read it.

23 Q. Do you remember any such meeting, any discussion  
24 like that?

25 A. Yeah. Most of this is made up. We never talked

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1 about -- he never disclosed that he was getting two loans  
2 to pay DenSco back.

3 what he said in part of the meeting was we  
4 talked about the market in general, when we were talking  
5 about solutions. And one of the things he said was if the  
6 market continues to appreciate, all of this becomes a  
7 non-issue because the properties will be worth, you know,  
8 twice what they are. And he asked me what I thought  
9 market conditions would be in terms of depreciation in the  
10 next couple of years.

11 So we talked about that, but this whole, oh, he  
12 told us that he was using the second deed of trust to pay  
13 DenSco back, he never said that. There was never a  
14 discussion about that.

15 He did that about, as a part of the solutions,  
16 his -- just a general conversation about market  
17 conditions, because if the properties appreciate fast  
18 enough and high enough, then lots of comfort there.

19 Q. So did anyone, and that is Mr. Menaged,  
20 Mr. Chittick or anyone else, ever tell you that part of  
21 the way that your loans would be paid off where there were  
22 competing loans with DenSco secured by deeds of trust, was  
23 through loans from DenSco?

24 A. No, never. My understanding of how my loans  
25 would be paid off is they would sell the property, which

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1 is how my loans got paid off, by the way.

2 I did an extensive research project showing  
3 where the money came to pay AFG off. It came from Bank of  
4 America, U.S. Bank, Quicken Loans. That's where the money  
5 came from inevitably that paid us off. Right? I did that  
6 after we got paid off, on everything, just to kind of see  
7 what happened.

8 So, no, no one ever told -- the only thing I  
9 ever knew about money coming to the table to bridge any  
10 gaps, was when Scott said: I have 7 or 8 million. I can  
11 use it if I need to. I've \$30 million worth of free and  
12 clear furniture, and my dad is a rich, guy. This will get  
13 solved. That was it.

14 Q. So the only explanation ever given to you as to  
15 how the gap would be covered between the sales price and  
16 the aggregate value of the competing loans was Menaged's  
17 own funds or resources he had?

18 A. Absolutely, or -- or his dad.

19 Q. Let's look at that next paragraph. "Active's  
20 principals," do you see that? Why don't you read that to  
21 yourself, and then I would like your reaction to it.

22 A. Yeah, I mean, generally correct. I'm not sure  
23 if we said you need to wait a day or two. I think the  
24 language I would have used is what I -- is what I have  
25 testified to earlier, which is I don't care if a customer

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1 gets ten deeds of trust, as long as we get what we  
2 bargained for. If we are deploying first position  
3 capital, I want to be in first position.

4 Q. Did you ever have a conversation with Scott  
5 Menaged where you talked to him specifically about his  
6 borrowing from DenSco and making sure that the DenSco  
7 loans, the deed of trust securing DenSco loans was done on  
8 a later date?

9 A. I think he told me that Denny was willing to  
10 lend him money in second position as a part of all of  
11 this. Did I care about it, and I said I don't care. I  
12 said as long as I get what I bargained for, I don't care.  
13 You can get ten loans. And I tell lots of my customers  
14 that. Lots of my customers get juniors and sometimes  
15 third loans, and that's okay.

16 Q. So just let me clarify what you have just said.  
17 So in connection with the problem that everyone  
18 has identified in the fall of 2013, that there are DenSco  
19 loans and AFG loans secured by the same property, you are  
20 saying that you did discuss with Scott Menaged he might  
21 have to get another loan from DenSco?

22 A. No, I never said that. I said I don't care if  
23 he did. I said I don't care. I never instruct a customer  
24 to do anything.

25 Q. Yeah.

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1           A.    I only care what they do with me. So if you are  
2 going to go get ten loans, that's okay. I don't tell you  
3 how to treat those other lenders or make them wait or tell  
4 them -- I never do that. I'm not empowered to tell the  
5 customer how to deal with anybody else.

6                   But if you are going to get a loan from me and I  
7 am first position deployed capital, I want to be first  
8 position deployed capital. Go get your other loans. Tell  
9 your other lenders whatever you want. I don't care. I  
10 want to get what I bargained for. I rely on the customer  
11 for that. I don't instruct the customer about anything.  
12 I don't have the power do that.

13           Q.    Okay. Going back to the statement here, let  
14 me -- in this Exhibit 486, did you tell Scott Menaged that  
15 if he were to get a loan from DenSco to take out your  
16 position, that he needed to make sure that loan was in  
17 second position?

18           A.    What do you mean by -- take out my position  
19 means pay me off, so I'm confused by what you are saying.

20           Q.    All right. Let me rephrase it.

21                   Did you, in the timeframe where you were making  
22 loans to DenSco -- I'm sorry. Let me rephrase it.

23                   When you were making loans to Scott Menaged,  
24 were you aware that he was actually borrowing money from  
25 DenSco in the same timeframe?



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1           A.    I became -- I became aware on two occasions that  
2   there were multiple deeds of trust on properties that I  
3   had a loan on.  Yes, I became aware of that.

4           Q.    And that's in the fall 2012 and in the fall  
5   2013?

6           A.    Yes.

7           Q.    All right.  Did you ever have a conversation  
8   with Scott Menaged where you told him if you are going to  
9   borrow money from us, you need to make sure that any other  
10   lenders that lend money to you are in second position to  
11   us?

12          A.    Not that exact conversation.

13          Q.    But words to that effect?

14          A.    Yeah.  He told me that Denny was willing to lend  
15   him money in second position, and other people lend money  
16   in second position, and I said I don't care.  As long as I  
17   get -- as long as -- I'm not a second-position lender at  
18   that point.  I have never made a loan to Scott in second  
19   position ever.  As long as I'm secured in first position,  
20   that's fine.

21          Q.    When did Scott Menaged tell you that Denny  
22   Chittick was willing to lend money to him in second  
23   position?

24          A.    I think it was the last meeting we had after the  
25   2013 discovery, where he was talking about solutions and

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1 he said -- he was talking about the unsecured credit line,  
2 partners in the wholesale business, et cetera.

3 Q. Okay.

4 A. I think he also told me, by the way, Denny knows  
5 he is in second position. Something like -- I think I  
6 remember him saying something like that.

7 Q. Okay. So in these conversations in 2013, where  
8 you discover that the deeds of trust securing DenSco loans  
9 are secured on some of the same properties that are  
10 securing AFG loans, you think Scott Menaged shared with  
11 you that Denny was willing to loan money through DenSco in  
12 second position?

13 A. As part of this solution. Not prior to that.  
14 We never had a talk, discussion about it prior to that,  
15 anything like that.

16 Q. But you understood that there was at least some  
17 discussion between DenSco and Scott Menaged about Menaged  
18 borrowing from DenSco in connection with solving these  
19 problems that arose in the fall of 2013?

20 A. Yes. He said Denny was willing to lend him  
21 100 percent of what he paid in trustee sale, so he could  
22 continue with the business, create a profit of a wholesale  
23 enterprise, which Denny was participating in.

24 Q. And you were all right with that, but you wanted  
25 to make sure that Menaged knew that AFG was in first

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1 position and DenSco was in a second position or less,  
2 right?

3 A. No. I didn't care who was in second position.  
4 I don't care. I only care about AFG. You keep extending  
5 that to what I cared about DenSco. I don't -- no  
6 disrespect to the DenSco people. I don't care about  
7 anybody else. I care about my company, my money, my  
8 co-investors.

9 Q. I understand.

10 A. I never instruct a borrower what to do. I don't  
11 have the ability to do that. And even if I did, my  
12 borrowers would ignore me. They don't care what I think.  
13 It's a very antiseptic relationship. It's not like --  
14 there is not much to it.

15 I don't know if they can make the first payment.  
16 Keep that in mind. I'm an asset-based lender. I don't  
17 meet 95 percent of the customers. I never talk to  
18 95 percent of the customers. They don't seek advice from  
19 me. I don't provide it. I don't consult in their  
20 business. I don't provide them valuations. I don't give  
21 them opinions about anything. I don't want to. I just  
22 look at the collateral.

23 Q. Okay. So focusing on fall of 2013, you  
24 understood that one of the possible solutions for bridging  
25 the gap would be Menaged borrowing money from DenSco?

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1 MR. CAMPBELL: Let me just object to the form of  
2 the question.

3 THE WITNESS: Scott indicated to me, as I have  
4 already testified three times, that Denny told him he  
5 would give him an unsecured line of credit, had approved  
6 an unsecured line of credit that he could use, if he  
7 needed to, to work out of his situation. That was it.  
8 The rest of what you are saying, Scott never said to me.

9 Q. And did you, in those conversations you had in  
10 the fall of 2013, make it clear to Scott that whatever he  
11 did on these other loans, you wanted to make sure that AFG  
12 was always in first position?

13 MR. CAMPBELL: Wait a moment. John, when he  
14 testified earlier, he didn't say the fall of 2013. He  
15 said late 2013. That's why I'm objecting to form.

16 THE WITNESS: Yeah, you are right. Thank you  
17 for that.

18 Q. Okay. Which means November, December?

19 A. Yeah. I think it was like November.

20 Q. Fall, winter. Okay. Late 2013. Let me  
21 rephrase my question.

22 Late 2013, when you have had these conversations  
23 with Denny Chittick and Scott Menaged regarding this  
24 double-lien issue --

25 A. Yes.

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1 Q. Are you with me so far?

2 A. Yes.

3 Q. -- you understood from Scott Menaged that in  
4 order to fix the problem, he might borrow additional money  
5 from DenSco?

6 A. He didn't tell me that. He told me that he had  
7 this credit line available to him. He told me that money,  
8 if he needed it to bridge gaps, would come from his 7 to  
9 \$8 million cash stash, his furniture stores which were  
10 profitable, and his father as a last resort. He mentioned  
11 to me that he had this credit line that Denny had  
12 approved, unsecured. He was very proud of it. "I have an  
13 unsecured line of credit with Denny." I think he said  
14 "substantial unsecured line." I said great.

15 Q. And did he discuss the fact that if he loaned  
16 money against that line of credit, that it would be  
17 secured by a deed of trust?

18 A. We never talked about it. There was no detail  
19 about it. He just was very proud of it. Wanted me to  
20 know it.

21 Q. So you don't know how that line of credit was  
22 going to be used by Scott Menaged?

23 A. I have no idea. Never asked. Don't care. Only  
24 care if I get paid back.

25 Q. You made it clear in any event that, with Scott

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1 Menaged, that you wanted AFG always to be in the first  
2 position for the loans you made to him. Fair?

3 A. We were never -- from the very beginning, from  
4 two thousand -- from 1998, it was always clear. It was  
5 never any other offer, and he never made any other  
6 requests. He never asked me to do a junior.

7 Q. Okay. So let's look at page 2 of this letter,  
8 which is Exhibit 486. The second paragraph, the last  
9 sentence in that paragraph, okay, it begins, "It was."

10 Do you see that sentence?

11 A. Hang on, please.

12 Q. "It was during this meeting."

13 A. The last paragraph on page 2?

14 Q. No. Page 2, the second paragraph, the last  
15 sentence.

16 A. Second paragraph, last sentence. It was during  
17 this meeting that Active principals advised Menaged he  
18 needed to wait a day or two --

19 Q. Okay. Let me start the question. I'm going to  
20 read it to you.

21 A. Yeah.

22 Q. "It was during this meeting that Active's  
23 principals advised Mr. Menaged that he needed to wait a  
24 day or two after funded a loan for a particular property  
25 to obtain a loan for the same property from DenSco, as

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1 Active wanted there to be no confusion as to whose loan  
2 was in first position."

3 Is that a true statement or not?

4 A. I never told him to wait a number of days. I  
5 wouldn't have instructed him what to do. I didn't care  
6 what he did. I only cared that we were getting what we  
7 bargained for.

8 Q. And what you bargained for was that you would be  
9 in first position?

10 A. Every time.

11 Q. So the next sentence, that is the sentence that  
12 begins the third paragraph on that page, it says,  
13 "Active's principals were also concerned about the  
14 \$1.4 million in debt that was second in priority to  
15 DenSco's debt."

16 A. That's all wrong. That wasn't what it was.

17 Q. He goes on and talks about the blanket deed of  
18 trust.

19 There was a blanket deed of trust on various  
20 properties, we've discussed that already, for the  
21 1.4 million, right?

22 A. Correct.

23 Q. In June of 2013, it talks about Reichman  
24 requesting that Menaged borrow through another entity.

25 Do you recall that happening?

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1 A. Vaguely.

2 Q. Do you remember why you required or requested  
3 that he start borrowing through a different entity?

4 A. I think it was probably, you know, we were  
5 getting paid down. I wanted that to continue. And to the  
6 extent that there were any problems, you know, use a fresh  
7 entity.

8 We do that all the time. It's common with my  
9 borrowers, probably out of some concern about I wanted to  
10 make sure we got paid. We were getting paid, and we were  
11 getting paid off and he was current on payments. I think  
12 it might have been something my partner came up with. I  
13 don't remember.

14 Q. Do you think that was in approximately June of  
15 2013?

16 A. I have no clue. I don't know. I remember some  
17 reference to it, but I can't remember exactly saying it or  
18 the exact meaning. I have like a vague recollection of  
19 it.

20 Q. Do you remember that the new entity through  
21 which Menaged borrowed was Arizona Home Foreclosures, LLC?

22 A. I know the name of that entity. I don't think  
23 we requested it. I think he just started using it. I  
24 don't think it was at our request.

25 (Deposition Exhibit No. 937 was marked for



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1 identification.)

2 Q. Does Exhibit 937 refresh your memory at all on  
3 the change in name that Menaged was using to borrow money?

4 A. Yeah. I mean, I don't have much of a memory, of  
5 it. I remember seeing this entity show up.

6 Q. But you didn't request it; it was something he  
7 decided to do?

8 A. I don't remember. I don't think I did. I mean,  
9 I think he had two or three different entities that he  
10 used subsequent to that. But that's common. Our  
11 borrowers change entities all the time.

12 (Deposition Exhibit No. 938 was marked for  
13 identification.)

14 Q. Just identify for me real quickly. This is a  
15 July 31, 2013, email from you to Scott Menaged?

16 A. I'm sorry. Ask me it again.

17 Q. I'm just confirming that Exhibit 938 is an email  
18 from you dated July 31, 2013, to Scott Menaged, and Jody  
19 Angel?

20 A. Yes. I have some recollection of it.

21 Q. And do you recall this was kind of a summary you  
22 were doing of loans outstanding to him and you were  
23 concerned about payoffs?

24 A. Yep, I do. I do remember it, yes.

25 Q. The next paragraph in this letter we were

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1 looking at a moment ago that Cody Jess wrote, Exhibit 486,  
2 talks about setting up the lockbox account.

3 And there was a lockbox account set up with  
4 Alliance Bank where rental payments could be deposited by  
5 Mr. Menaged as further security for AFG's loans?

6 A. Yes, there was, but I didn't perceive it as he  
7 would deposit the payments. That was never what I thought  
8 was going to happen.

9 Q. Oh, I misunderstood the letters I wrote -- or  
10 read.

11 What was the lockbox for?

12 A. In case he went into bankruptcy, so that we  
13 could get the court to approve us getting the rents, us  
14 grabbing the rents, as under our assignment of rents  
15 provision in our deed of trust, so that we could just  
16 slide right into the lockbox account. I never had a  
17 vision of him depositing into that lockbox account.

18 Q. Did you ever consider litigation against  
19 Menaged?

20 A. No. I mean, he was a current-pay borrower who  
21 was paying off properties as agreed. I never considered  
22 litigation against him. We generally don't consider  
23 litigation against someone unless we have a beef.

24 Q. The problems that arose in the fall of 2012 and  
25 the problems that arose in late 2013, you didn't consider

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1 litigating with him on those issues?

2 A. No. I don't think we threatened litigation or  
3 talked about it.

4 Q. Do you know if the lockbox was ever used?

5 A. It was never used by us.

6 Q. Perhaps you have learned through reading  
7 Menaged's deposition testimony or otherwise that Denny  
8 Chittick in some instances was lending money directly to  
9 Scott Menaged.

10 Did you ever learn that? In other words, his  
11 loans were funded directly to Menaged as opposed to  
12 trustees or third parties?

13 A. I don't remember -- I don't remember  
14 specifically learning that, no. I have some awareness  
15 that he was sending the money directly to Scott, but I  
16 can't tell you how I got the awareness. I just don't  
17 remember. Maybe Scott told me. Maybe it was in that  
18 bankruptcy deposition. I'm not sure.

19 Q. Yeah. That was my -- to the extent that before  
20 Denny Chittick's suicide and before Menaged went into  
21 bankruptcy, do you think you ever learned from anyone that  
22 DenSco was actually sometimes funding loans, paying the  
23 money directly to Scott Menaged?

24 A. I don't remember.

25 Q. Let me ask a little bit of a different question.

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1 Did you ever become aware, before Denny  
2 Chittick's suicide, that DenSco knew some of its loans to  
3 Menaged were not secured by deeds of trust?

4 A. I didn't know what Denny knew or didn't know. I  
5 never asked him any of those questions.

6 Q. And no one told you that?

7 A. No. It was never discussed with anybody.

8 (Deposition Exhibit No. 939 was marked for  
9 identification.)

10 Q. I'm showing you Exhibit 939, Mr. Reichman.

11 Does your signature appear on the second page of  
12 that document?

13 A. Yes.

14 Q. The document is called a Tolling Agreement. If  
15 you look at the first line of the first page, it says it's  
16 entered into as of April 10, 2019.

17 Do you see that?

18 A. I do.

19 Q. Okay. And did you sign on behalf of Active  
20 Funding Group, LLC, this document?

21 A. Yes.

22 Q. Without disclosing to us advice of counsel or  
23 confidential communications you had with counsel, did you  
24 have any understanding as to why you did this?

25 A. Yes, is what I was told by Andy.

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1 Q. Okay. So if it requires you to disclose what  
2 Andy told you or you told him to get advice from him --

3 A. You want me to tell you that?

4 Q. No.

5 A. Okay.

6 Q. What I want to know is, did you have any  
7 independent understanding of why you entered into the  
8 Tolling Agreement, other than information you would have  
9 gotten from counsel or communications with him?

10 A. He explained --

11 MR. ABRAHAM: Yes or no. Just yes or no to his  
12 question.

13 THE WITNESS: Did I have an understanding of  
14 what it was?

15 Q. Yeah.

16 A. After I talked to him, yeah.

17 Q. Okay. And independent of talking to him, you  
18 didn't?

19 A. No.

20 (Deposition Exhibit No. 940 was marked for  
21 identification.)

22 Q. Showing you Exhibit 940.

23 Do you recall this document?

24 A. Not really.

25 Q. Do you remember what the Easy Comping Project

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1 was?

2 A. Oh, A little bit. I have a vague recollection.  
3 I will tell you what I remember.

4 I think this was a result of when Scott -- Scott  
5 was trying to determine what these assets were worth and  
6 what it would look like in a liquidation analysis. He  
7 asked me to value them, so I did. I'm not 100 percent  
8 sure about that, but I'm relatively sure.

9 (Deposition Exhibit No. 941 was marked for  
10 identification.)

11 THE WITNESS: Oh, yeah. I remember this.

12 Q. All right. So I'm showing you Exhibit 941. It  
13 looks like an email from you to Dan Diethelm, dated  
14 December 23rd, 2013. Subject, demand letter DenSco.

15 In it you are saying, "Dan - the demand looks  
16 great. would you please verbally represent to Denny,  
17 curing the 'face to face' that Active Funding Group, LLC  
18 is, in support of the demand and seeking the same  
19 subordinations for that AFG has with Easy Investments, LLC  
20 as well as Arizona Home Foreclosures, LLC. Once you know  
21 exactly when the meeting will take place please let us  
22 know. Thank you for agreeing to make this important  
23 delivery."

24 Did I read that correctly?

25 A. You did.

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1 Q. And is this referring to your earlier testimony  
2 that Mr. Diethelm came to you to talk to you about the  
3 fact that there were a number of lenders to Scott Menaged  
4 where the liens were competing?

5 A. Yeah. Kind of two different things. So he  
6 didn't come -- this was -- I never discussed this in  
7 person. This was when he told me that him and the other  
8 lenders were hiring an attorney to meet with Denny to  
9 demand the subordination, and did I want to be a part of  
10 that. So that's not really what you said.

11 So we had an initial meeting where he had the  
12 big exhibit book, which I didn't look through. And I  
13 thought he was talking about something I already knew,  
14 which I didn't know, which I later discovered. And then  
15 subsequent to that he said all these lenders are banding  
16 together. We are going to ask for subordination. And  
17 then after he told me that, he sent me a copy of the  
18 letter that he was going to hand Denny over the desk. I  
19 read the letter, and then I produced this email.

20 Q. Let me just show you a document and ask you if  
21 you have seen it before.

22 Have you seen the demand letter that Bryan Cave  
23 wrote?

24 A. I saw a demand letter that they wrote, but I  
25 don't have a -- you know, I can't tell you this was it.

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1 If this was the only one that Bryan Cave ever did, then I  
2 probably saw it.

3 Q. Did you see the demand letter before it went  
4 out?

5 A. I believe so. I think so.

6 Q. And did Dan Diethelm share it with you?

7 A. Yeah. Yes.

8 Q. And when you are talking about, in Exhibit 941,  
9 "the demand looks great," is that -- are you referring to  
10 a demand letter that Bryan Cave wrote?

11 A. Yes, it would have been.

12 Q. Let's go ahead and mark this. I think this was  
13 marked previously.

14 (Deposition Exhibit No. 942 was marked for  
15 identification.)

16 Q. I'll just ask for the record. So Exhibit 941  
17 refers to a demand letter that Diethelm had shared with  
18 you, and you believed that 942, if it is the demand letter  
19 from Bryan Cave to Denny Chittick, it would be the demand  
20 that you reviewed before it went out?

21 A. I think so, yes.

22 Q. All right. Showing you what's been marked as  
23 Exhibit 535.

24 So I want you to assume for a minute,  
25 Mr. Reichman, that this is a summary that has been done by



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1 the receiver, where certain properties had competing deeds  
2 of trust between DenSco loans and other third-party loans.  
3 okay?

4 A. Okay.

5 Q. And if you see --

6 A. I can't read any of it, just for your benefit.

7 Q. Too hard for you to read it?

8 A. Impossible.

9 Q. Okay. well, the headings are right here.

10 A. I can read some of the headings, yeah.

11 Q. DenSco and third-party loans. But I want to --  
12 the summary of the information, just I want to ask you if  
13 it's consistent with your memory, that it appears that at  
14 least in terms of competing loans, that they would have  
15 started between at least Active Funding and DenSco in May  
16 of 2012, and then it goes on and identifies a bunch of  
17 competing loans that continue on until, I believe it was  
18 November of 2013. And that's on what is page 4 of 5,  
19 according to the document.

20 A. Okay.

21 Q. But during the time from May of 2012 to November  
22 of 2013, were you aware at the time that Scott Menaged was  
23 borrowing money or his entities were borrowing money from  
24 DenSco at the same time he was borrowing money from you,  
25 both of which were secured by the same properties?

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1 MR. CAMPBELL: Objection; form, foundation.

2 THE WITNESS: That's a very complicated  
3 question, so I need you to ask me pieces of it. And I  
4 think I understood it, but if you wouldn't mind.

5 Q. All right. When do you think you first became  
6 aware that Scott Menaged was borrowing money from DenSco  
7 secured by deeds of trust where AFG was also a lender?

8 MR. CAMPBELL: Objection; form, foundation.

9 THE WITNESS: I initially became aware of it in  
10 late 2012 when Scott --

11 MR. ABRAHAM: That's all.

12 Q. All right.

13 A. Okay.

14 Q. And did you --

15 A. And I don't know if Scott was borrowing it. His  
16 explanation was different than that.

17 MR. CAMPBELL: Objection. Move to strike.  
18 Nonresponsive.

19 Q. So was there -- I know you have been careful to  
20 say today that you don't require anything of your  
21 borrowers so long as you are in first position and you get  
22 paid.

23 So is it your testimony that you did not talk to  
24 Mr. Menaged after that fall 2012 timeframe about borrowing  
25 money from DenSco or anyone else in addition to borrowing

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1 from you?

2 MR. CAMPBELL: Objection to form.

3 THE WITNESS: No. I never said that.

4 Q. Did you talk to him about borrowing from other  
5 lenders and securing with deeds of trust on properties  
6 where you are also a lender?

7 Let me rephrase it. This is a complicated topic  
8 and I'm sorry for the imprecision of my questions.

9 A. It's okay.

10 Q. I'm trying to capture a lot of thoughts in one  
11 question. Let me break it down.

12 If Exhibit 535 is accurate, it appears as though  
13 from 2012 into 2013, Scott Menaged, either through Easy  
14 Investments or one of his other entities, borrowed a ton  
15 of money from DenSco while he was also borrowing money  
16 from you, and securing both loans by the same property.

17 Do you understand that today, that that in fact  
18 happened --

19 MR. CAMPBELL: Objection.

20 Q. -- or do you know?

21 MR. CAMPBELL: Objection; form, foundation.

22 THE WITNESS: The only time I ever became aware  
23 that he was borrowing from multiple lenders was in his  
24 bankruptcy deposition in 2016.

25 Q. Okay. And then you learned, I guess in the

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1 conversation with Dr. Diethelm --

2 A. Diethelm.

3 Q. -- Diethelm, in late 2013, right?

4 A. I learned from Dan that there were multiple  
5 deeds of trust with lots of different lenders that Scott  
6 was involved with and that DenSco was involved with.

7 Q. And you did not know, before that conversation  
8 with Diethelm that caused you to then change the title,  
9 et cetera, that Scott Menaged individually or through his  
10 entities had been subjecting these properties to multiple  
11 liens that secured your loans?

12 A. I knew of two. I became aware in two different  
13 instances that there were multiple deeds of properties,  
14 or, excuse me, multiple deeds of trust on properties that  
15 AFG had a loan on. Once in late 2012. Once in late 2013.

16 Q. Let me -- why don't we take about a five-minute  
17 break.

18 A. Yeah.

19 Q. I want to kind of wrap this up, and I'm just  
20 checking documents to see if there is anything else. I  
21 also want to make sure I make as an exhibit and ask you  
22 about.

23 A. Okay.

24 (A recess was taken from 3:31 p.m. to 3:42 p.m.)

25 (Deposition Exhibit No. 943 was marked for

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1 identification.)

2 Q. So before I ask you about 943, Mr. Reichman, you  
3 earlier testified about the conversations that occurred in  
4 late 2013 about how to fix this double-lien issue and your  
5 conversations with Mr. Chittick and Mr. Menaged.

6 Do you recall that testimony?

7 A. Yes, I recall that testimony.

8 Q. Did the understanding that you all collectively  
9 reached in late 2013, did the understanding change later  
10 or did -- or were you aware of it ever changing?

11 I know you indicated in your testimony that AFG  
12 was getting paid on its loans and that's what you were  
13 primarily concerned about, but was there ever, after the  
14 end of 2013, further discussion about solving this  
15 double-lien issue differently than what had been discussed  
16 in 2013?

17 MR. CAMPBELL: Objection; form.

18 THE WITNESS: I remember no subsequent  
19 conversation.

20 Q. Let me show you Exhibit 943. And I want to  
21 focus you on the first page of this document. And this,  
22 you are not copied on these emails, so you would not have  
23 seen this document, I believe, but I'm going to use it as  
24 a point of reference.

25 So if you could look at the first page, there is

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1 an email that starts about a third of the way down, Scott  
2 Menaged to Denny Chittick, dated February 26, 2014.

3 Do you see that?

4 A. I see it.

5 Q. And he says: He probably will say it is  
6 necessary for his purposes as well. I am just thinking  
7 ahead before I meet with him. I'm also not comfortable  
8 with either of you taking a hit. I am comfortable doing a  
9 promissory note, not dischargeable in bankruptcy, so  
10 everyone is secure.

11 Did you ever discuss with either Denny Chittick  
12 or Scott Menaged, AFG taking a hit on the monies that was  
13 owed to them?

14 A. Never.

15 Q. So when we look at the email that starts a  
16 little over halfway down from Denny Chittick writes -- he  
17 says: I think I understand the 330 am rant haha. You  
18 take a million dollar hit. Gregg takes a million dollar  
19 hit. He gives me a personal loan for a million. You give  
20 me a loan for a million, secured with the family asset.  
21 Gregg doesn't have to know how I'm secured. This is  
22 necessary for my purposes.

23 Does any of that information sound familiar to  
24 you at all? Were there any discussions between you, Denny  
25 Chittick, and Scott Menaged about you taking a hit on the

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1 amounts owed to you in the amount of a million dollars?

2 A. No. I was never going to take a hit.

3 Q. Okay. You really didn't care, as long as AFG  
4 got paid on the loans owed to it by Menaged or his  
5 entities, you didn't care what DenSco did, right?

6 A. I didn't know what they did. I had no  
7 familiarity with their business model. Never asked.  
8 would never have asked. Don't care what any of my  
9 competitors do. It's not my business.

10 Q. And my question a moment ago had to do with you  
11 taking a hit.

12 But other than the discussion we had where you  
13 were willing to not file suit, not do anything drastic, so  
14 long as you got paid in a timely manner and your monies  
15 were accounted for, you didn't agree to any other  
16 compromises, did you, as it related to the monies owed to  
17 you by Mr. Menaged?

18 A. No. I wasn't asked to agree to any compromises  
19 and I didn't agree to any.

20 (Deposition Exhibits No. 944 through 946 were  
21 marked for identification.)

22 Q. Can you briefly describe 944 for us?

23 A. It appears to me to be a list of loans with the  
24 note receivable amount and the payment amount, and due  
25 dates and when the loan was made and the loan number and

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1 the borrower name.

2 Q. Do you know whether on these loans there were  
3 also deeds of trust securing DenSco loans on those same  
4 properties?

5 A. I can't identify them from this.

6 Q. Let's look at Exhibit 945.

7 A. Got it.

8 Q. And Laura --

9 A. Boucher.

10 Q. -- Boucher --

11 A. She pronounced it BU-SHAY. We pronounced it  
12 BU-CHER.

13 Q. Laura was an Active Funding employee?

14 A. Yes.

15 Q. She was involved in finances or financial stuff?

16 A. Well, that's a very vague comment. Laura was an  
17 A/R, A/P person.

18 Q. Okay. Do you know what 945 is a listing of?

19 A. It appears to be a listing of the loan number,  
20 collateral name, note date, note receivable, day due, and  
21 monthly interest due.

22 Q. So if we look at this 945, is the total amount  
23 of all those notes 3,622,810.23?

24 A. That's not my work product.

25 Q. You don't know?



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1           A.     Well, I'm guessing that that's what that is up  
2     there. I'm not capable of adding it up in my head, but I  
3     would think it's a reasonable conclusion, based on my  
4     looking at this document.

5           Q.     And do you think that these were loans owed to  
6     AFG by Menaged or his entities?

7           A.     Based on who is included in the chain, which is  
8     him and his office girl, yes.

9           Q.     And was he paying you roughly 50,000 in interest  
10    on a monthly basis, do you recall?

11          A.     It varied. You know, if the loan is paid off,  
12    the number goes down. More loans are made, the number  
13    goes up.

14          Q.     Let's look at 946, ask you what this is a  
15    listing of.

16          A.     It's like Scott's entities. I don't -- I'm  
17    guessing that when the, like, 5107 and 5157, maybe that's  
18    a loan -- oh, it looks like maybe it was a loan number and  
19    then street address.

20          Q.     And do you know if those loans had deeds of  
21    trust that were competing with deeds of trust from DenSco?

22          A.     I have no clue, from looking at this document.  
23    It doesn't give me enough information.

24          Q.     All right.

25                 (Deposition Exhibit No. 947 was marked for

GREGG REICHMAN, 4/23/2019

1 identification.)

2 Q. Can you identify Exhibit 947 for us?

3 A. It looks like an email from us. It looks like  
4 an email from me to Scott with a summary of payoffs  
5 received during a certain timeframe.

6 Am I done with this, sir?

7 Q. Yes, you are.

8 (Deposition Exhibit No. 948 was marked for  
9 identification.)

10 Q. This is the only version of this document I have  
11 seen. It's a Settlement Agreement and Release. It  
12 references that FREO litigation --

13 A. Yes.

14 Q. -- we talked about early in your testimony.

15 A. I see that.

16 Q. It has someplace for your signature.

17 Do you recall whether Active Funding Group  
18 signed a settlement agreement related to the resolution of  
19 the FREO dispute?

20 A. I don't remember. I remember it didn't last  
21 long and that it was, you know, it wasn't anything that  
22 survived for very long and it didn't bother me, so...

23 Q. Do you remember that there was a settlement  
24 agreement entered into in connection with the FREO  
25 dispute?

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1 A. No, I don't remember the settlement agreement.

2 Q. I'm just about finished here.

3 A. It's okay. Take your time.

4 (Deposition Exhibit No. 203 was marked for  
5 identification.)

6 Q. I'm showing you what's been marked as  
7 Exhibit 949, Mr. Reichman, and it's a series of emails  
8 between you and Scott Menaged. Again, I think the  
9 earliest in time of these emails is the last three pages  
10 of it, and it looks as though you are sending him an email  
11 about a dispute regarding a DenSco loan.

12 Do you see this?

13 A. Yes.

14 Q. Do you recall this instance, independent of this  
15 document?

16 A. I have a little bit of recollection of it.

17 Q. What do you remember?

18 A. This was one of the assets that we encumbered  
19 with the \$1.4 million blanket. I think he sold it and we  
20 were supposed to get a certain percentage of the net  
21 distributable, but that ability to do that was impaired  
22 because DenSco had recorded a third deed of trust on it.

23 So this was a discussion about what -- you know,  
24 I wanted it. I didn't care about the DenSco deal. My  
25 position was, "Look, we had this agreement. You can go

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1 get ten more deeds of trust if you want and you pay those  
2 off, but we are supposed to get a certain percentage of  
3 those additional encumbered assets, so make it happen."

4 And his response was, "Give me some rope, you  
5 know, give me some slack on this, because I'm making  
6 progress. I'm doing what I said I was going do. I'm  
7 paying you off. Your payments are current." And he was  
8 asking me to make an exception about it, is what it looks  
9 like to me.

10 Q. Did you?

11 A. I don't remember. Probably.

12 Q. And he is also asking what the balance is due  
13 still on --

14 A. Something like that.

15 Q. -- the million 4?

16 A. Yeah. Yes, I mean. Excuse me.

17 MR. ABRAHAM: wait for his question.

18 THE WITNESS: Okay. Sorry.

19 Q. That's okay. It's been a long day for her.

20 A. Sorry.

21 Q. So these emails would reflect the fact that this  
22 million 4 is being reduced over time as a function of  
23 being paid off on these properties that you got as  
24 additional collateral, right?

25 A. Yes.

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1 Q. Okay. And then ultimately did he pay off the  
2 million 4?

3 A. I think so. I don't remember specifically, but  
4 I think so.

5 MR. DeWULF: No further questions. I appreciate  
6 you coming in today.

7 THE WITNESS: You are welcome, thank you.

8 MR. CAMPBELL: I have about four hours.

9 I'm joking. No questions.

10 THE WITNESS: Thank you.

11 MR. CAMPBELL: Are you going to read and sign?

12 MR. ABRAHAM: Read and sign.

13 (3:58 p.m.)

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GREGG REICHMAN

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1 BE IT KNOWN that the foregoing proceeding was  
2 taken before me; that the witness before testifying was  
3 duly sworn by me to testify to the whole truth; that the  
4 questions propounded to the witness and the answers of the  
5 witness thereto were taken down by me in shorthand and  
thereafter reduced to typewriting under my direction; that  
the foregoing is a true and correct transcript of all  
proceedings had upon the taking of said deposition, all  
done to the best of my skill and ability.

6 I CERTIFY that I am in no way related to any of  
7 the parties hereto nor am I in any way interested in the  
outcome hereof.

8  
9 [X] Review and signature was requested.  
[ ] Review and signature was waived.  
[ ] Review and signature was not requested.

10  
11 I CERTIFY that I have complied with the ethical  
12 obligations in ACJA Sections 7-206(F)(3) and  
7-206-(J)(1)(g)(1) and (2).

13  
14 Kelly Sue Oglesby  
15 Kelly Sue Oglesby  
Arizona Certified Reporter No. 50178

5/7/2019

Date

16  
17 I CERTIFY that JD Reporting, Inc. has complied  
18 with the ethical obligations in ACJA Sections  
7-206(J)(1)(g)(1) and (6).

19  
20 JD REPORTING, INC.  
21 Arizona Registered Reporting Firm R1012

5/7/2019

Date