

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN N. XEREAS,	.	
	.	
Plaintiff,	.	CA No. 12-0456 (DAR)
	.	
v.	.	
	.	Washington, D.C.
MARJORIE A. HEISS, et al.,	.	Thursday, November 8, 2018
	.	9:43 a.m.
Defendants.	.	
.	Pages 581 through 747

DAY 4
TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE DEBORAH A. ROBINSON
UNITED STATES MAGISTRATE JUDGE

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P R O C E E D I N G S

THE COURT: Good morning. As of the time we recessed last night, the Court heard your motion, Mr. O'Neil, on behalf of your clients for judgment pursuant to, presumably, Rule 50.

In order to ensure clarity in the record, I would like for you to please state each count number as to which you seek judgment. I believe I know, based on my familiarity with the pleadings, but in order to ensure that the record is clear, I'd like for you to state the count number.

MR. O'NEIL: Your Honor, our motion went to all remaining counts that survived the summary judgment, and those would be Counts I, II, III, V, I believe VII, VIII -- my apologies, Your Honor. Count XVIII for unjust enrichment and Count XIX for cybersquatting. And I believe that completes the list, Your Honor.

THE COURT: Thank you, Mr. O'Neil.

Mr. Richa, is it you who will respond?

MR. RICHA: Yes, Your Honor.

THE COURT: Thank you.

MR. RICHA: Thank you. Good morning, Your Honor.

THE COURT: Good morning.

MR. RICHA: We believe it's clear that the arguments made by Mr. O'Neil do not meet the standard required for a directed verdict. Directed verdict's appropriate only if a reasonable jury could not find for the plaintiff, and we believe

1 we've presented evidence that would lead a reasonable jury
2 to conclude -- that would lead to a reasonable jury possibly
3 concluding in our favor.

4 Mr. O'Neil reasserted many of the same arguments that were
5 made in defendants' motion for summary judgment that Your Honor
6 had already addressed in her opinion with regard to the
7 defendants' motion for summary judgment, and plaintiffs have
8 presented evidence that meet the elements of the counts pled
9 that remain in the complaint, and we believe that a reasonable
10 jury could indeed find for Mr. Xereas.

11 With regard to the breach of contract and the duty of good
12 faith and fair dealing counts, I believe Mr. O'Neil sort of
13 lumped those together in his arguments. So I'll sort of do the
14 same and then transition from breach of contract to duty of good
15 faith and fair dealing.

16 Of course, the four elements for breach of contract are
17 that there's a valid contract between the parties, that the
18 obligation or duty arising out of -- there's an obligation or
19 duty arising out of the contract, that there's a breach of that
20 duty, and that there's damages caused by the breach.

21 The operating agreement has been admitted into evidence.
22 That's the valid contract from which the obligations or duties
23 arise, and we've presented evidence that there's a breach of
24 that duty that caused damages to the plaintiff.

25 The Removal of Managing Member provision of the operating

1 agreement states that removal is only appropriate in three
2 circumstances. One is death and disability, two is the failure
3 to devote the time reasonably necessary to fulfill duties for
4 the company, and the third is fraud and willful misconduct.
5 Mr. O'Neil addressed the latter two, so I will do the same.

6 Mr. O'Neil focused on the fact that Mr. Xereas allegedly
7 stopped coming to the club at some point, and there's been
8 evidence that plaintiff has put on that is clearly to the
9 contrary. There's at least one e-mail that has been admitted
10 into evidence that shows that Mr. Xereas was working during the
11 time period that defendants state that he was not.

12 Sedrick Muhammed also testified that Mr. Xereas was working
13 during the time period that defendants state that he was not,
14 and there were even manager meetings that were held in the club
15 with Mr. Xereas present during the time period that defendants
16 state that Mr. Xereas was not working.

17 Additionally, Mr. O'Neil argued that Mr. Xereas's removal
18 was appropriate because plaintiff asserted his right to the
19 trademark and filed a lawsuit against his partners. We would
20 proffer that this is truly a nonsensical argument. Assertion of
21 one's legal proprietary rights is not a breach of contract.

22 To take Mr. O'Neil's argument, if we accepted Mr. O'Neil's
23 argument, if plaintiff hypothetically discovered that the
24 defendants were committing fraud, he would not be able to bring
25 it to the IRS's attention or file a complaint against defendants

1 for stealing funds, for example, and clearly somebody asserting
2 their legal rights does not a breach of contract or breach of
3 fiduciary duty of good faith or fair dealing make.

4 The fact remains and the evidence shows that Mr. Xereas had
5 a registered mark with the first-use date of 2005, and he has a
6 right to assert that proprietary interest. And sort of this
7 applies -- the actions that happened on January 26th apply to
8 both breach of contract and breach of good faith and fair dealing.

9 On January 26, per defendants' own testimony and per
10 plaintiff's testimony and the evidence that's been admitted,
11 defendants took away Mr. Xereas's management authority on that
12 date. They actually physically changed the locks of the club.
13 They locked him out of his e-mail accounts. They stripped him
14 of his management powers, and they assigned those management
15 powers to Defendant Heiss and made her in charge of day-to-day
16 operations.

17 And then they had an attorney send Mr. Xereas a letter
18 telling him not to do the work that he was doing previously
19 because it was now Ms. Heiss's responsibility. Yet, they say he
20 stopped coming to work, despite them taking that action. So
21 given that fact, clearly a reasonable jury could find that
22 Mr. Xereas continued to work until defendants made it impossible
23 for him to do so and removed him improperly as a managing member.

24 The elements for a breach of duty and good faith and fair
25 dealing is we would have to prove that the defendants evaded the

1 spirit of the contract, willfully rendered imperfect
2 performance, or interfered with the performance by the other
3 party. Clearly, those actions that I just stated that happened
4 on January 26th, which were admitted into evidence by testimony
5 and by documents, made it impossible for plaintiff to perform as
6 he was required to perform. So, for those reasons, we believe
7 that defendants' motion should be denied.

8 Additionally, Your Honor, there are some other smaller
9 breach of contract claims that would still fall under breach of
10 contract. There has been testimony and evidence provided with
11 regard to the failure of defendants to give plaintiff notice of
12 meetings or let plaintiff know the purpose of the meeting prior
13 to the meeting. So those would also be breach of contract
14 claims that a reasonable jury could find in favor of the
15 plaintiff.

16 THE COURT: What is your contention, Mr. Richa,
17 regarding the distinction between Count V and Count XIII?

18 MR. RICHA: Five -- can you tell me what each one is,
19 Your Honor?

20 THE COURT: Five is Breach of Contract and of Covenant
21 of Good Faith and Fair Dealing. Thirteen is breach of the LLC's
22 operating agreements. Although the caption of the count does
23 not so state, breach of the operating agreement is alleged in
24 the body of Count XIII.

25 MR. RICHA: Okay. I think -- I mean, there is overlap

1 between the two, which is why I believe Mr. O'Neil addressed
2 them together and I'm essentially sort of addressing them
3 together, but I tried to transition from one to the other.

4 The breach of contract claims are clear in terms of the
5 provisions, the removal provision and the operating agreement,
6 so on and so forth. We believe that the sum total of the
7 actions that were taken by defendants were not taken in good
8 faith, that they were not acting in the best interest of the
9 company but acting in the best interest of themselves.

10 So, on that basis, I believe defendants have not met
11 the burden. I believe a reasonable jury could find for the
12 plaintiff with regard to either count.

13 THE COURT: Let me back up just one moment. It
14 appears that the count in which breach of the operating
15 agreement is alleged was misnumbered. It appears as Count XIII,
16 it is designated as Count XIII, but actually it should be Count
17 VIII since it follows Count VII. Do you agree?

18 MR. RICHA: Yeah. I know there was a misnumbering
19 mistake. Yes, Your Honor.

20 THE COURT: Now you may continue.

21 MR. RICHA: With regard to the motion as it relates to
22 trademark, the elements to prove --

23 THE COURT: Let me ask you to refer to a specific
24 count by number, please.

25 MR. RICHA: I believe those were the beginning counts,

1 the first three Lanham Act counts, I, II, III. And in order for
2 plaintiffs to prove those counts, the elements are that the
3 plaintiff owns a valid trademark which the United States Patent
4 and Trademark Office registration -- it has been admitted into
5 evidence, so clearly he owns a trademark -- that the trademark
6 is distinctive and acquired a secondary meaning, which has also
7 been proven by evidence; and third, that there's a substantial
8 likelihood of confusion between the party's mark and the
9 infringers' mark, which clearly there is here since they were
10 using the exact same name.

11 As a matter of fact, Your Honor, in your opinion on
12 defendants' motion for summary judgment, on the top of page 11
13 of your opinion, Your Honor denies the argument that Mr. O'Neil
14 tried to reassert yesterday with regard to commercial use of the
15 trademark. Mr. O'Neil argued that the use of the trademark on
16 the certificate of occupancy and on the liquor license would not
17 rise to the level of commercial use.

18 Your Honor addressed this in your opinion on the summary
19 judgment motion, and you stated, Your Honor:

20 "Defendant however, contends that the display of the Riot
21 Act name on government documentation does not rise to the level
22 of 'commercial use.' Cases cited by Defendants are inapposite.
23 Those cases do not address the use and display of an infringing
24 mark. Though the facts, as set forth by the parties, appear
25 undisputed at the outset, they are subject to divergent, yet

1 justifiable, inferences."

2 And we would argue the same holds true for whether a
3 reasonable jury could find for the plaintiff, and we would
4 argue, of course, that a reasonable jury could indeed find for
5 the plaintiff.

6 Mr. O'Neil argued that the trademark is not used in
7 commerce as it relates to the use of the name on the licenses.
8 However, the testimony shows that the name is on the liquor
9 license. The testimony shows that the name was on the
10 certificate of occupancy after Mr. Xereas issued a cease and
11 desist with regard to the trademark. Mr. O'Neil actually made a
12 comment yesterday that it would be the same as writing the name
13 on the bathroom floor, and clearly that's a ridiculous argument.

14 Their use of the trademark precludes Mr. Xereas from using
15 it. Mr. Xereas testified that he was not able to conduct
16 business because there were concerns with regard to liability
17 that other parties would have with regard to defendants
18 continuing to use the Riot Act name on their licenses.

19 And the fact is that Mr. Xereas cannot go get a license in
20 the same name since they are using the name on the license, and
21 the burden is on them since they put forth the motion and they
22 have not offered any evidence to suggest that Mr. Xereas could
23 actually go out and use that name on his own license given the
24 fact that they are using it inappropriately.

25 THE COURT: The defendants have not offered any

1 evidence at all, would you agree, since we're still in the
2 plaintiff's case?

3 MR. RICHA: Well, okay. No evidence has been admitted
4 that would suggest that, Your Honor. And beyond that, putting
5 sort of aside the argument with regard to the use of the
6 trademark on the licenses, that was one of the inappropriate and
7 unauthorized uses of the trademark.

8 However, after February 2012, when plaintiff issued a cease
9 and desist letter asserting his right to the trademark and
10 demanding that defendants stop using the trademark, the
11 defendants continued actively using the trademark in multiple
12 ways. Defendant Dawson testified that defendants used the
13 trademark after receiving the cease and desist letter.

14 He testified that they used the trademark in e-mails, he
15 testified that they used the trademark in mailings, he testified
16 that they used the trademark in commerce, he testified that they
17 used the trademark in television ads, and he testified that they
18 used the trademark in connection with goods and services.

19 THE COURT: By "goods and services," do you mean, for
20 example, the liquor license?

21 MR. RICHA: No. I mean they were still promoting
22 comedy after the cease and desist letter under the Riot Act name
23 from February 2012 until summer of 2012 when they rebranded to
24 Penn Social. So they were actively using the name in commerce
25 in terms of comedy services to the public.

1 So the infringement from February 2012 till the summer of
2 2012 during the rebrand, they continued using the name the same
3 way it had been being used when Mr. Xereas was still actively
4 involved with the company, and then after the rebrand, that's
5 when they only started using it on the licenses.

6 THE COURT: Are you speaking of Count I?

7 MR. RICHA: Yes. The Lanham Act, I, II, III, the
8 Lanham Act claims, the trademark claims. And Mr. O'Neil also
9 said, Your Honor, that --

10 THE COURT: To which count is the evidence regarding
11 continued use for a period which remain, I, II, or III?

12 MR. RICHA: All three, Your Honor.

13 And there was one final point that Mr. O'Neil made that I'd
14 like to address. He kept referring to the fact that the evidence
15 showed that there was an agreement to make an agreement with
16 regard to the licensing of the trademark, and that's an absolute
17 mischaracterization of the evidence that has been admitted.

18 The evidence on the record is that Mr. Xereas licensed the
19 trademark. He testified to that. There are e-mails that were
20 admitted that demonstrate that. He, again, had a registered
21 trademark with a right of first use of 2005, and even assuming
22 that there was no specific end term with regard to the licensing
23 of the trademark, even if that's true, then the plaintiff has
24 the legal right that's terminable at will at that point. And so
25 he licensed the trademark, and he has the right to revoke that

1 license at any point given the fact that there was no term, and
2 there is evidence from both the plaintiffs and defendants in
3 terms of testimony that there was no written agreement with
4 regard to that trademark.

5 THE COURT: To which count do you refer?

6 MR. RICHA: I'm still on the trademark. I'm still on
7 the three trademark counts.

8 THE COURT: And by that you mean I, II, and III?

9 MR. RICHA: Yes, Your Honor.

10 Then the cybersquatting claim, Mr. O'Neil never addressed
11 it specifically, but it's sort of an extension of the trademark
12 arguments. The elements are that the trademark is distinctive,
13 that the domain name is identical or confusingly similar to the
14 plaintiff's mark, and that defendants registered, trafficked in,
15 or used the domain names with the bad-faith intent to profit
16 from it.

17 Again, the e-mails that have been admitted into evidence
18 and the testimony show that defendants continued using the
19 e-mail accounts and the domain names after plaintiff's February
20 2012 cease and desist letter, that they were reading plaintiff's
21 e-mails, that they were forwarding plaintiff's e-mails, that
22 they were responding from plaintiff's e-mails. So, therefore,
23 clearly we believe that a reasonable jury could find for the
24 plaintiff with regard to the cybersquatting claim.

25 And the final one, Your Honor --

1 THE COURT: Before you go on -- I'm sorry,
2 Mr. Richa -- what do you contend are the elements of the
3 cybersquatting claim?

4 MR. RICHA: The first is that the trademark is
5 distinctive, the second is that the domain name in question is
6 identical or confusingly similar to the plaintiff's trademark,
7 and the third element is that defendants registered, trafficked
8 in or used the domain names with the bad-faith intent to profit
9 from it.

10 So the first one is that the trademark is distinctive,
11 which clearly it is, and Your Honor recognized that in your
12 opinion with regard to defendants' summary judgment motion.

13 That the domain name is identical or confusingly similar,
14 it's not confusingly similar. It doesn't apply here. They're
15 identical. They were using the same domain names that
16 Mr. Xereas testified that he had been using since 2005, prior
17 to meeting the defendants.

18 And the last one is that they registered, trafficked in,
19 or used the domain names with the bad-faith intent to profit.
20 And, again, they were using those domain names after February --
21 the testimony shows and the evidence shows that they were using
22 those domain names after February 2012, that they were using
23 them in commerce, that they were indeed profiting from them.
24 Therefore, all the cybersquatting elements are met, and a
25 reasonable jury could find for Mr. Xereas.

1 THE COURT: What evidence did plaintiff offer
2 concerning the last contention that you made; that is,
3 defendants profited from the use of the trademark?

4 MR. RICHA: Yes, Your Honor. That some of the e-mails
5 that were admitted into evidence showed that they were reading
6 the e-mails, forwarding the e-mails, and Mr. Dawson testified
7 that they were continuing to use the name in commerce, actively
8 in commerce, from February 2012 until the rebrand, which was
9 summer of 2012.

10 And if I may, Your Honor, the final one is unjust enrichment.
11 Mr. O'Neil again kind of brings in the trademark argument that
12 I've already addressed, so I'm not going to rehash it.

13 And, again, Your Honor, I'm trying, for the sake of time as
14 well -- I know we don't want to keep the jury waiting, so I'm
15 trying to address exactly the points Mr. O'Neil made. There are
16 additional points that I could address, so of course I'm willing
17 to address any questions that you may have, but I'm trying to go
18 big-picture and also address specifically what Mr. O'Neil
19 brought up yesterday.

20 The elements for unjust enrichment are that plaintiff
21 conferred a benefit on defendants, that defendants retained the
22 benefit, and that defendants' retention of the benefit is
23 unjust. Clearly, plaintiff conferred a benefit on defendants.
24 There's been testimony that he allowed defendants to use the
25 trademark and to use the domain names pursuant to a license,

1 defendants obviously retained that benefit per the testimony
2 that I've already alluded to, and that defendants' retention of
3 the benefit is unjust. And Your Honor actually dealt with
4 unjust enrichment as it relates to defendants' use of the
5 trademark, again, in the opinion rendered in response to
6 defendants' summary judgment motion.

7 And, actually, on page 25, Your Honor, of your opinion, you
8 state that "Plaintiff correctly points out that a genuine issue
9 of material fact exists over whether the plaintiff conferred a
10 benefit on the LLC through allegedly licensing the Riot Act
11 trademarks, and whether that benefit was unjust when Plaintiff
12 'never received a cent for *the use of his mark*.'"

13 He's testified he was never paid for the mark. Defendants
14 have testified that they used it, and they testified that they
15 continued to use it after plaintiff asserted his ownership in
16 that mark after February 2012.

17 So, for all those reasons, Your Honor, we believe that
18 defendants' motion should be denied.

19 THE COURT: Thank you very much, Mr. Richa.

20 MR. RICHA: Thank you.

21 THE COURT: Mr. O'Neil, I will hear your reply.

22 MR. O'NEIL: Just briefly, Your Honor.

23 With respect to the breach of contract claim, Mr. Richa
24 points to evidence that on several occasions in late January
25 there was testimony that the plaintiff responded to e-mails or

1 phone calls in that period, but after February 1st, there's no
2 evidence presented by the plaintiff that he continued doing his
3 job. And so for that reason, Your Honor, just the fact that
4 there was one instance after January 26th -- or 19th, whichever
5 date you're picking -- doesn't mean he presented any evidence
6 that he was continuing to do his job.

7 With respect to the cybersquatting claim, Your Honor, which
8 is Count XIX in plaintiff's complaint, there are two elements
9 outlined there. In paragraph 353: "Defendants caused to be
10 registered, registered, and/or used the RIOT ACT Domain Names
11 with a bad-faith intent to profit from Plaintiff's RIOT ACT
12 Trademarks." There's been no evidence submitted that there was
13 a bad-faith intent by the defendants to profit from the use of
14 the alleged trademark.

15 THE COURT: Would you repeat the count to which you
16 just referred, Mr. O'Neil?

17 MR. O'NEIL: This is Count XIX, Your Honor.
18 Cybersquatting under Section 43(d) of the Lanham Act.

19 THE COURT: Please continue.

20 MR. O'NEIL: In paragraph 356 of the same count, they
21 allege that "Plaintiff has been harmed and suffered financial
22 damages by Defendants' acts of cyber-squatting as alleged
23 herein." I don't believe there's been any evidence that the
24 plaintiff has suffered any damage from the continued use of the
25 domain names. There's no evidence that Mr. Xereas attempted to

1 register a domain name, attempted to use any domain name.

2 In fact, there's no evidence that he used the trademarks at
3 all after January of 2012.

4 Similarly, that same point, Your Honor, is of importance to
5 Counts I, II, and III. There can be no risk of confusion in the
6 marketplace if Mr. Xereas is not using or even attempting to use
7 the trademark in any way, shape, or form.

8 Another point that Mr. Richa made, and I'll keep this
9 brief, but he stated repeatedly in his arguments that Mr. Xereas
10 has never been paid for his work, whereas his expert took the
11 stand and told us and the jury that his shares in the company
12 are worth between \$380,000 and \$800,000.

13 Every member of an LLC, their primary means of profit is
14 a recovery of the profits of the company. He owned 26 percent
15 of the company. The whole idea was the investors would get paid
16 back first, and when the company was profitable, each of the
17 partners would get the rewards from that enterprise. So the
18 claim that he wasn't paid a salary, which was discretionary
19 under the operating agreement, is of no relevance.

20 Thank you, Your Honor.

21 THE COURT: To which count does that refer, the
22 argument regarding payment of a salary?

23 MR. O'NEIL: I believe he's asserting it as a breach
24 of contract, Your Honor. I believe the unjust enrichment claim
25 is limited to the lack of payment for the trademark, and as we

1 stated in our motion, Your Honor, there was no agreement to pay
2 any set amount reached between plaintiff and defendants for the
3 use of the trademark. So there can't be any unjust enrichment
4 if they had simply agreed to negotiate that term in the future.

5 THE COURT: Thank you, Mr. O'Neil.

6 MR. O'NEIL: Thank you, Your Honor.

7 THE COURT: Anything further, Mr. Richa?

8 MR. RICHA: Just a couple points, Your Honor.

9 With regard to the trademark claims, Count I, II, and III,
10 there's no law that suggests that Mr. Xereas would have to
11 use the trademark in order to plead a trademark infringement
12 complaint. So that's irrelevant.

13 With regard to the reference to the ownership shares that
14 Mr. Morrissey testified to, Mr. Xereas's ownership value does
15 not bifurcate the responsibilities that defendants had with
16 regard to payment for the trademark.

17 And to bring that to the unjust enrichment point, the
18 testimony that plaintiff makes was that there was a trademark
19 license and that he was to be paid for it in the future. The
20 fact that he was supposed to be paid for it in the future does
21 not mean that there was no agreement with regard to licensing
22 or that the defendants should benefit from having that license
23 without having to pay for it.

24 The government recognizes the plaintiff owns the trademark,
25 and it's unjust for defendants to be using that trademark

1 without paying a licensing fee pursuant to that agreement.

2 That's a question for the jury, and we believe a reasonable jury
3 could and would find in our favor with regard to those counts.

4 As far as the cybersquatting and the bad-faith intent to
5 profit, again, Defendant Dawson testified that they continued
6 using those domain names. They were issued a cease and desist
7 letter. They were put on notice that plaintiff owns that
8 trademark. They were put on notice that they were to stop using
9 that trademark. At the time plaintiff asserted that right, the
10 trademark was registered in the United States Patent and
11 Trademark Office.

12 Defendants ignored the cease and desist. Defendants
13 ignored the fact that it was registered with the United States
14 Patent and Trademark Office and continued using it as if it were
15 their own, and that's clearly what the unjust enrichment cause
16 of action is intended to prevent.

17 So nothing further, Your Honor.

18 THE COURT: Thank you, Mr. Richa.

19 Because I believe some time will be required in view of
20 the number of counts and the overlap, particularly with respect
21 to the breach of contract claims, I will indicate to the jury
22 generally that plaintiffs -- and I believe this is the
23 appropriate time to do this, because I did not tell them at the
24 outset what the parties' claims are. I will indicate that
25 plaintiff has rested, that the issues that will be decided with

1 respect to plaintiff's claims are breach of contract, breach
2 of the operating agreement, and trademark infringement.

3 The Court grants the motion with respect to the
4 cybersquatting claim. As I indicated, because there is
5 significant overlap among the other claims, I believe we should
6 go back when we're not delaying the jury and address what the
7 numbers are of the claims. But because the jury will receive
8 instructions on the law of breach of contract, breach of the
9 operating agreement, and trademark infringement, there is no
10 occasion for us to go into further detail at this time.

11 Put another way, that means that the parties should
12 contemplate that one or two of the breach of contract claims
13 will also -- that the Court will grant the motion for judgment
14 as a matter of law as to I or II, but that is a matter that will
15 be addressed prior to the time the jury is instructed.

16 Does anyone wish to be heard with respect to whether at
17 this time I should state -- I must state that plaintiff rests.
18 I will hear you regarding whether you believe I should state
19 that plaintiff's claims are for breach of contract, breach of
20 an operating agreement, and trademark infringement.

21 MR. RICHA: And breach of good faith and fair dealing
22 is also within that, Your Honor? And unjust enrichment?

23 THE COURT: I believe we can defer that until the time
24 to give the jury instructions. As I said, there is significant
25 overlap among those counts. The jury does not need to know the

1 numbering of the counts. We need to know, of course, so that
2 the record is clear. The jury does not need to know the
3 numbering. The jury does not have any occasion to know as to
4 which counts the Court granted summary judgment, which counts
5 were dismissed, and which counts are those as to which the Court
6 grants the motion for judgment as a matter of law.

7 Is there any objection to proceeding in that fashion?

8 MR. RICHA: No, Your Honor.

9 THE COURT: Mr. O'Neil?

10 MR. O'NEIL: No, Your Honor.

11 THE COURT: Very well. Thank you. Are you ready to
12 proceed, Mr. O'Neil?

13 MR. O'NEIL: Yes, Your Honor.

14 THE COURT: Very well.

15 (Jury in at 10:17 a.m.)

16 THE COURT: Members of the jury, good morning.
17 Thank you for bearing with us. You may be seated.

18 At this time, I will inform you that the plaintiff has
19 rested the presentation of plaintiff's case. Plaintiff's claims
20 as to which you will receive much more detailed instructions
21 after the entire case has been heard are for breach of contract,
22 breach of an operating agreement, and trademark infringement.

23 Now, Mr. O'Neil.

24 MR. O'NEIL: Defense calls Geoffrey Dawson.

25 (Witness resumes the stand.)

1 GEOFFREY DAWSON, WITNESS FOR THE DEFENSE, PREVIOUSLY SWORN

2 DIRECT EXAMINATION

3 BY MR. O'NEIL:

4 Q. Could you state your name for the record?

5 A. Geoffrey Dawson.

6 THE COURT: Members of the jury, the reason that the
7 clerk did not administer the oath to Mr. Dawson is that his
8 testimony remains under oath. You may recall that he was called
9 in the plaintiff's case, so his testimony remains under oath.
10 I didn't want you to be alarmed or think that we had forgotten
11 a step.

12 MR. O'NEIL: Thank you, Your Honor.

13 THE COURT: Now, please proceed.

14 BY MR. O'NEIL:

15 Q. Mr. Dawson, what line of work are you in?

16 A. I operate bars and restaurants.

17 Q. How did you get into the bar business?

18 A. Well, I went to college at UMass and had to pay for it, so
19 I started working as a carpenter. Really loved that. Came back
20 to D.C., started renovating houses, fell in love with the game
21 of pool, and decided that opening a little pool place would be a
22 good idea, against everybody's best advice. I then formed a
23 partnership and opened Bedrock Billiards in 1992, and from then
24 I was in the business.

25 Q. And where was that first bar?

1 A. In D.C., in Adams Morgan.

2 Q. And since opening that first establishment, approximately
3 how many establishments have you opened in D.C. and around the
4 country?

5 A. Almost 30.

6 Q. And what other cities around the country have you run bars
7 or --

8 A. Philadelphia; Nashville; Austin, Texas; Gaithersburg, if
9 you call that far away.

10 Q. It is during rush hour. Now, have all of those ventures
11 been successful?

12 A. No, they haven't. Many have. I've had some epic failures
13 as well. We opened a big venture in the Verizon Center when it
14 opened. It was called Velocity Grill. It was supposed to be
15 the city's premier sports bar, and it was really one of the
16 city's greatest failures, in my mind.

17 We tried everything we could to make it work, but despite
18 that, the business just didn't succeed. It was on the wrong
19 corner and it went down, and it was really one of the most
20 painful experiences I've had. All the investors lost their
21 money, and I had to face them all and tell them what had
22 happened. It was very hard.

23 Q. And have any of those investors come back to invest with
24 you in later ventures?

25 A. They haven't. No.

1 Q. Maybe you can tell the jury, just briefly, some of your
2 more well-known establishments in D.C.

3 A. After Bedrock, we opened Atomic Billiards, another small
4 one, and then we went on to open Buffalo Billiards in Dupont
5 Circle. All three are still open today. They've been very
6 successful. The investors are very happy.

7 We opened Carpool in Virginia that was in operation until
8 last year, and we sold the property, and those investors were
9 very happy as well; Rocket Bar, Iron Horse, Jackpot, Lost &
10 Found, Franklin Hall, Church Hall, all in D.C., and all going
11 pretty smoothly.

12 Q. And as a general matter, did most of them follow the same
13 financial structure in that the investors would put up the
14 initial capital, be repaid first, and you'd have to wait until
15 the venture became profitable and they had been repaid --

16 A. Yes. Our model has always been that we put the investors
17 first. So we take their money, we open the business, and then
18 they get paid back first before we take profits.

19 Q. How did the Riot Act venture compare to some of your other
20 establishments?

21 A. Compare in scope? It was pretty big. It was a huge
22 project. I thought it was going to be spectacular. It was not
23 in my wheelhouse, obviously. Comedy was John's specialty, but
24 we thought it was going to be amazing. In fact, when I look at
25 the business plan now, the numbers we put in there were

1 extraordinary and -- you know. But it just wasn't, unfortunately.

2 Q. I want to turn now to the specifics about Riot Act, if you
3 could turn to Exhibit 3 in your binder.

4 MR. O'NEIL: May I approach, Your Honor?

5 THE COURT: Yes.

6 MR. O'NEIL: This is Exhibit 3. Could you look at
7 this exhibit?

8 I'm handing the witness what has been marked as Plaintiff's
9 Exhibit 105, which has already been admitted into evidence.

10 THE COURT: Thank you, Mr. O'Neil.

11 BY MR. O'NEIL:

12 Q. If you could turn to page 8 of this, the November 1, 2010,
13 operating agreement.

14 A. Okay.

15 Q. Is that the operative agreement that still governs at Riot
16 Act/Penn Social?

17 A. I believe so.

18 Q. At the top of page 8, in Section 3.1 of the agreement, it
19 sets out that each of the managing members was to make a capital
20 donation. Do you see that?

21 A. Yes, I do.

22 Q. Is that also typical of your ventures?

23 A. Yes, it is.

24 Q. Have you ever done a venture where the managing members
25 didn't invest any money in the venture?

1 A. No.

2 Q. And in this instance, each managing member was expected to
3 contribute \$100,000. Is that correct?

4 A. That is correct.

5 Q. I'd ask you to turn to page 22.

6 A. Okay.

7 Q. Paragraph (e) at the top of the page, this provision
8 states that "Any vote, consent, approval, determination, or
9 other action required or permitted to be taken by the Managing
10 Members must be approved by a majority (in number, without
11 regard to Percentage Interests) of the Managing Members."

12 Do you see that?

13 A. Yes, I do.

14 Q. Why was this provision important to include in the
15 operating agreement?

16 A. Well, when we set out to raise money for Riot Act, we
17 believed we would all contribute in that effort. It became
18 apparent to us that John was not going to be able to raise
19 money, and as it turned out, he did not raise any money.

20 My investors needed to be protected. They needed to know
21 that, if they were investing in me and in Marjorie and in this
22 business, that we could protect their investment. So a 50-50
23 partnership would not allow that protection, so we had to have
24 the voting power to do things for the business and to use our
25 fiduciary responsibility as sort of our guiding light, because

1 the investors' money is the most important thing, I think, in
2 the whole equation.

3 Q. In your initial discussions with Mr. Xereas, did he say
4 he would raise capital from outside investors?

5 A. Yes. We believed he would.

6 Q. Did he tell you how much?

7 A. We thought he was going to raise up to \$500,000.

8 Q. But in the end, he didn't bring in any outside investors?

9 A. No outside investors at all.

10 Q. So they were all people you knew and dealt with including
11 your family members?

12 A. 100 percent. Yes.

13 Q. Yesterday you were asked if Ms. Heiss was brought into the
14 business only to make sure that you could control the business.
15 Do you recall that?

16 A. Yes, I do.

17 Q. And you answered no?

18 A. I did.

19 Q. Could you explain that answer for us?

20 A. Well, she wasn't brought in only to exert control over
21 the partnership. She was brought in to perform legal duties
22 and to help us keep the business organized and on track, which
23 is something she's very good at. In addition to that, as I just
24 stated, she was brought in to protect my and our investors.

25 Q. The bottom of that page, Section 6.3 of the operating

1 agreement, do you see that?

2 A. Yes, I do.

3 Q. It provides the terms for the removal of a managing member.
4 Correct?

5 A. Yes.

6 Q. And that's the provision of the agreement you relied on
7 when you removed Mr. Xereas as a managing member in March of
8 2012. Correct?

9 A. Yes, it is.

10 Q. Do your other businesses have similar types of provisions?

11 A. I would have to check, but in general, yeah, we have legal
12 documents that spell out how the partnership will run.

13 Q. Have you ever had to remove a managing member in any of
14 your establishments before?

15 A. Never have.

16 Q. On the next page, page 23, Section 6.5 of the agreement,
17 states the Duties of the Managing Members. Do you see that?

18 A. Yes, I do.

19 Q. And this provision states that "The Managing Members are
20 required to devote such time and effort to the business and
21 affairs of the Company as in the judgment of the Managing
22 Members is reasonably necessary to promote and maintain
23 adequately the interests of the Company." Do you see that?

24 A. Yes, I do.

25 Q. Is that the provision or one of the provisions that you

1 relied upon in removing Mr. Xereas as a managing member?

2 A. Yes, it was.

3 Q. Why did you conclude that he had failed to meet his duties?

4 A. He stopped contributing to the business. He stopped
5 working. He stopped showing up and promoting comedy. Did he
6 walk through the doors? Yes, he walked through the doors, but
7 he wasn't doing the things we needed him to do.

8 I know nothing about comedy. I mean, I do now, but at the
9 time, all I knew about comedy was what was on TV. John was an
10 expert. He was the glue that we needed to continue to protect
11 our investors and to make the business hopefully begin to work,
12 because it wasn't working, and we needed him to try to remedy
13 that.

14 Q. In January of 2012, when the managing members voted to
15 remove Mr. Xereas's management authority over the comedy
16 business at the club, were you ending his -- all of his duties
17 and responsibilities with the club?

18 MS. MCDONALD: Objection, Your Honor.

19 THE COURT: You may approach.

20 (Bench conference.)

21 MS. MCDONALD: I would request that Mr. O'Neil
22 rephrase his questions to be less leading.

23 THE COURT: What is the objection?

24 MS. MCDONALD: Leading, Your Honor.

25 MR. O'NEIL: I thought I established the first part

1 of the question in the question before that.

2 THE COURT: How do you suggest that the question be
3 rephrased, Ms. McDonald?

4 MS. MCDONALD: As a "how" or "what" question that
5 doesn't indicate the answer. "Why did you" --

6 THE COURT: Can you rephrase your question?

7 MR. O'NEIL: I can try, Your Honor.

8 THE COURT: Very well. Thank you.

9 (End of bench conference.)

10 BY MR. O'NEIL:

11 Q. When Mr. Xereas's management authority was restricted in
12 January of 2012, what was the purpose of doing that?

13 A. We needed to rein in what was happening at the business.
14 Things were crazy. The money wasn't there. We were
15 nip-and-tuck with the payroll. We couldn't really be certain
16 that anything was going to work. We didn't know how many people
17 were going to come through the doors at any given time for a
18 show. We didn't know if we were going to make money. You know,
19 the pressure was intense. We had to have control.

20 So we had two parties writing checks instead of just one.
21 People couldn't just write a check and make a commitment for the
22 company. We had to all be on board. So that was the gist of it.
23 We still needed John to continue to work on comedy. We needed
24 him to spread the good word about this club, because without him,
25 the club was really doomed, I thought. So we still needed him.

1 Q. And did you express that sentiment to Mr. Xereas?

2 A. Yes, we did. Passionately.

3 Q. On more than one occasion?

4 A. Yes.

5 Q. And what was his response?

6 A. Not very enthusiastic. He didn't really put forward much
7 effort. We couldn't get in touch with comedians. We couldn't
8 find contracts. We had comedians showing up for shows that we
9 didn't know about. No, not helpful.

10 Q. So Mr. Xereas hadn't left executed contracts for the shows
11 that he had lined up in January, February, March? Is that --

12 MS. MCDONALD: Objection, Your Honor.

13 MR. O'NEIL: I'm just clarifying the witness's
14 testimony.

15 THE COURT: The objection is overruled.

16 THE WITNESS: Could you repeat the question, please?

17 BY MR. O'NEIL:

18 Q. So you said you didn't have contracts, and comedians were
19 showing up that you didn't even know had been scheduled to
20 perform. Had Mr. Xereas left you with an organized set of
21 contracts for the commitments he had made on behalf of the
22 company?

23 A. No, he hadn't. It was incredibly disorganized. There
24 were very often not contracts with comedians, despite our
25 repeated requests that every show be booked with a contract,

1 that we have, you know, everything buttoned up tight. But he
2 kind of ran a loose ship, and at that point, when he stopped
3 helping us, we couldn't put all the pieces together.

4 Q. When you say he ran a loose ship, in a profitable business,
5 is that a problem?

6 A. Not at all. You know, when you're making money,
7 everybody's happy. In this business, we had projected that we
8 were going to be making money from day one based on all three of
9 our participation in writing the business plan, and we spent a
10 lot of time to do that. And we vetted each other, we vetted the
11 business model, we looked at my successful models, we looked at
12 comedy as -- and John's experience in comedy as a piece of that.
13 The three of us were convinced that this thing was going to work.

14 When you open the doors and there's cash coming in, as
15 I can attest through my own experience, everybody's happy.
16 Investors are happy. The partners are happy. The business is
17 happy. When there is a loud sucking sound of desperation in a
18 business and money's not coming in, that's when people get
19 nervous and things start going wrong and people start to circle
20 the wagons around their own interests.

21 Q. And you stated -- I believe you said that you had asked
22 Mr. Xereas on multiple occasions to provide you and Marjorie
23 with executed contracts. Is that correct?

24 A. Yes, we had.

25 MS. MCDONALD: Objection, Your Honor. May I approach?

1 THE COURT: Yes, of course.

2 (Bench conference.)

3 MS. MCDONALD: I don't believe that --

4 THE COURT: What is your objection, Ms. McDonald?

5 MS. MCDONALD: Relevance.

6 THE COURT: I'm sorry?

7 MS. MCDONALD: Relevance. I don't think this goes to
8 any of the claims, counterclaims.

9 THE COURT: Mr. O'Neil?

10 MR. O'NEIL: We have a counterclaim for breach of
11 contract.

12 MS. MCDONALD: I don't believe it states in their
13 counterclaims anywhere that Mr. Xereas failed to provide
14 contracts under any count.

15 MR. O'NEIL: Count I.

16 THE COURT: Is that not part of the breach of contract
17 claim?

18 MS. MCDONALD: He said it's part of the counterclaims.

19 MR. O'NEIL: Or the breach of good faith and fair
20 dealing.

21 THE COURT: I should say the breach of contract
22 counterclaim. Excuse me.

23 MS. MCDONALD: And I don't believe it mentions in any
24 of that that Mr. Xereas failed to provide contracts.

25 THE COURT: The objection is overruled.

1 (End of bench conference.)

2 MR. O'NEIL: I'm sorry. Could the court reporter
3 read the last question for me?

4 THE REPORTER: Question: "And you stated that you
5 had asked Mr. Xereas on multiple occasions to provide you and
6 Marjorie with executed contracts. Is that correct?"

7 Answer: "Yes, we had."

8 THE WITNESS: Yes, we did. Marjorie is a stickler for
9 the details. She worked with us at Bedrock Management for many
10 years. She kept things locked down and in order, and she was
11 increasingly frustrated with the lack of order at Riot Act.

12 BY MR. O'NEIL:

13 Q. And some of these headliners, how much money would they
14 get paid for an engagement?

15 A. You know, as much as \$10,000? I don't remember the
16 specifics because I was focused on a lot. But, yeah, big money.

17 Q. Okay. Looking at paragraph 6.4 of the operating agreement,
18 we've heard Mr. Xereas testify that he wasn't paid by the LLC.
19 In the last paragraph, the last sentence of paragraph 6.4, it
20 states, "Any consideration to be paid as salaries by the Company
21 to the Managing Members shall be determined by the Managing
22 Members in their reasonable discretion." Do you see that?

23 A. Yes, I do.

24 Q. Mr. Xereas asked for a salary from the company. Correct?

25 A. Correct.

1 Q. And did you provide one to him?

2 A. We tried to, yeah. I mean, we wanted to. In a perfect
3 world, he would have gotten his salary, which we had hoped would
4 be \$72,000 a year, to manage the club because, you know, he
5 didn't have a means of living outside of that, and he was going
6 to be devoting a lot of time to it. And, again, if we'd opened
7 the doors and the people had flooded in and they opened up their
8 wallets and the business had made a ton of money, that wouldn't
9 have been a problem. We would have paid him happily.

10 But, you know, when it goes bad and you don't have money to
11 pay your vendors, you don't have money, potentially, to pay your
12 landlord or to pay your comedians or to pay all the pieces of
13 keeping this business afloat, you're going to make some decisions
14 about who's going to get paid and who's not. And since we were
15 the partners who had received equity for our expertise and our
16 work, we were never guaranteed that we were going to get money.

17 Q. And you had paid \$100,000 into the business and received
18 26.7 percent. Correct?

19 A. That's correct. Each of us.

20 Q. And each of your investors who put in \$100,000, how much
21 did they get?

22 A. 100,000 would get them 1 percent, but it would get them a
23 preferred return of their investment.

24 Q. When you set up the LLC and executed these operating
25 agreements, did Mr. Xereas understand the majority rule?

1 MS. MCDONALD: Objection, Your Honor. Calls for
2 speculation. There's no foundation for this question.

3 MR. O'NEIL: I'll withdraw the question.

4 THE COURT: Sustained.

5 BY MR. O'NEIL:

6 Q. Did you ever have any conversations with Mr. Xereas about
7 the majority-rule provisions in the operating agreement?

8 A. Absolutely. We talked about needing to satisfy our
9 investors' need for protection. In fact, I'm sure I said, hey,
10 you bring in two million bucks, and you can write it differently.
11 But that didn't happen, so...

12 Q. Did Mr. Xereas ask for control of the business?

13 A. Ask for control -- well, I don't know that he specifically
14 asked for control of the business, but he wanted to have control
15 of the business, of operating it, which was the plan, that as a
16 general manager he would be controlling a lot of the aspects of
17 the business.

18 Q. He was designated as the operating partner. I think we've
19 heard testimony to that effect previously.

20 A. Yes. He's the operating partner, and in a perfect world,
21 that would have been what he did. He would have gotten paid, he
22 would have operated, run the business, run the comedy, run the
23 bar and restaurant side of it, hired and fired, made all those
24 decisions, and we all would have probably been celebrating today.

25 Q. And what was your and Marjorie's expected role in the

1 day-to-day operations of the business?

2 A. Marjorie, again, was our legal counsel, and she was
3 responsible for vetting contracts and looking into, for
4 instance, if we sign a contract with a vendor to have an ongoing
5 service, she would review those contracts.

6 Occasionally, there are employment issues and people file
7 grievances. She's reviewed those for us in the past. If
8 somebody gets hurt and there's a lawsuit, she would deal with
9 that and help hire counsel to represent us in that. So that was
10 a pretty extensive part of it.

11 You know, this is -- again, if the business had worked as
12 planned, that would have been the majority of what she would
13 have done, and we all would have reviewed business on a regular
14 basis and kept up with it and continued on.

15 Q. Were you expected to have a day-to-day role in the operation
16 of the club?

17 A. No, I wasn't.

18 Q. Did you have an office there?

19 A. No. No, I didn't.

20 Q. John did, though. Correct?

21 A. Yes. John did.

22 Q. I want to turn now to the use of the Riot Act name. Did
23 you have discussions with Mr. Xereas early on in the process
24 about the use of the Riot Act name?

25 A. Yes, we did.

1 Q. Could you tell the jury about those discussions?

2 A. Well, we were going to open a comedy club together, and
3 we had to have a name for it. John had a name that he had
4 worked hard to create and a following that I think was
5 significant, and he wanted to call the club "Riot Act."

6 That made a lot of sense to us, so we said, sure, let's
7 call it "Riot Act." And it seems pretty obvious that we should
8 have control and ownership of that name inasmuch as we're using
9 it to operate a business that we've taken \$2 million investment
10 in. So we definitely had conversations to that effect.

11 Q. You had conversations with Mr. Xereas about his contributing
12 the name to the business?

13 A. Yes, we did.

14 Q. And he agreed to that?

15 A. He absolutely agreed to it.

16 Q. Did you have that conversation on more than one occasion?

17 A. In writing a business plan and creating a business called
18 "Riot Act," we had to make sure that we had that name as our
19 name going forward. We could have named it anything. I mean,
20 I've named -- well, some of our businesses have the same name,
21 but I've named all of my businesses for the most part, because
22 that's what I do. I'm one of the creative guys.

23 But we could have named it, you know, "The Funny Box," and
24 it wouldn't have substantially changed anything except that we
25 would have -- we would have owned that name, you know, without

1 any dispute. And, you know, we assumed that we were in that
2 same standing using "Riot Act" on behalf of our investors who
3 put \$2 million into this business and had a reasonable
4 expectation of the same.

5 Q. And as you recall, did Mr. Xereas specifically tell you
6 that he was contributing any rights he had in the name "Riot
7 Act" to the business?

8 A. Yes, he did.

9 Q. On more than one occasion?

10 A. Yes. On more than one occasion.

11 Q. In those early conversations, did Mr. Xereas discuss being
12 paid for the use of the name "Riot Act"?

13 A. I do not recall at any point having that discussion about
14 his being paid for the use of his name, the name "Riot Act."

15 Q. Can I ask you to turn to Defendant's Exhibit 48 in the
16 notebook?

17 A. All right.

18 Q. Do you recognize this document?

19 (Witness reviewing document.)

20 A. Yes. It's an e-mail exchange between John and me dated
21 March 20, 2010.

22 Q. Was that about the approximate time when you first started
23 having discussions with Mr. Xereas about this project?

24 A. Shortly after we began, yeah.

25 MR. O'NEIL: Your Honor, defendants would like to move

1 Defendants' Trial Exhibit 48 into evidence.

2 THE COURT: Is that without objection, Ms. McDonald?

3 MS. MCDONALD: Your Honor, the document does contain
4 hearsay, but I have no objection to the exhibit being offered at
5 this time. I guess it depends on the purpose Mr. O'Neil intends
6 to use it for.

7 THE COURT: Is that an objection to the admission of
8 the exhibit?

9 MS. MCDONALD: Yes, Your Honor.

10 THE COURT: Let me ask you to approach, please.

11 (Bench conference.)

12 THE COURT: I'm sorry. What is the objection,
13 Ms. McDonald?

14 THE WITNESS: The document contains hearsay.
15 I suppose I'm fine with Mr. O'Neil admitting the document, but
16 I would question his intended use of it. If he intends to read
17 Mr. Dawson's out-of-court statements to Mr. Dawson to prove the
18 truth of the matter asserted, that would be hearsay.

19 MR. O'NEIL: I think I'm looking at Mr. Dawson's
20 statements from the fact that he made the statement that he said
21 the things he said to Mr. Xereas. I'm not trying to establish
22 the truth of the statement.

23 THE COURT: The objection is overruled.

24 (End of bench conference.)
25

1 BY MR. O'NEIL:

2 Q. Mr. Dawson, on the second page of Exhibit 48, which is a
3 carry-over from the first page, it appears you were writing an
4 e-mail to John. Do you see the paragraph that starts, "I've
5 learned over the years"?

6 A. Yes, I do.

7 Q. Could you read that?

8 A. Sure.

9 THE COURT: Members of the jury, let me make certain
10 that everyone can see the exhibit. Can everyone see? Very
11 well. Thank you very much.

12 THE WITNESS: "I've learned over the years that
13 addressing business issues up front is a very important
14 ingredient to a healthy partnership. With that in mind, how do
15 you imagine the percentage of ownership being divided between
16 us? How will we address the ownership of the Riot Act name?
17 How will we resolve the differences should we not see eye to
18 eye? I guess there are loads of things to consider beyond
19 these, but we should talk when I get back from Mexico on the
20 29th and make sure we are comfortable with where we're going and
21 how we get there."

22 BY MR. O'NEIL:

23 Q. And by this e-mail, you were bringing up for Mr. Xereas the
24 issue of ownership of the trademarks that the company would be
25 using. Correct?

1 A. Yes, I was.

2 Q. And it was subsequent to this e-mail to Mr. Xereas raising
3 this issue that he told you that he was contributing whatever
4 rights he had in the trademark --

5 MS. MCDONALD: Objection, Your Honor.

6 MR. O'NEIL: -- "Riot Act" to the business. Correct?

7 THE COURT: What is the objection?

8 MS. MCDONALD: Mr. O'Neil's testifying.

9 MR. O'NEIL: I think we've already had that testimony
10 clearly stated.

11 THE COURT: The objection is overruled.

12 MR. O'NEIL: I think I already moved to admit Exhibit
13 48 into evidence.

14 THE WITNESS: Shall I answer that?

15 THE COURT: The Court indicated that the exhibit would
16 be admitted over objection.

17 MR. O'NEIL: Okay. Thank you, Your Honor.

18 THE COURT: That is Defendants' Exhibit 48.

19 (Defendant Exhibit No. 48
20 received into evidence.)

21 BY MR. O'NEIL:

22 Q. If you could turn to Defendants' Exhibit 32, I believe this
23 exhibit has already been admitted. I think we looked at this
24 exhibit yesterday or the day before, and this is an e-mail from
25 John to you and Marjorie in May of 2011. Correct?

1 A. Yes, it is.

2 Q. And could you read the third bullet point on Mr. Xereas's
3 e-mail to you?

4 A. Beginning with "I think"?

5 Q. Yes.

6 A. "I think we need to really look into
7 licensing/trademarking/registering our name brand."

8 Q. You can stop there. When Mr. Xereas was saying "our name
9 brand," what do you think he was trying to convey?

10 MS. MCDONALD: Objection, Your Honor. Speculation.

11 MR. O'NEIL: I'll withdraw the question, Your Honor.

12 BY MR. O'NEIL:

13 Q. In making that statement, was Mr. Xereas stating that he
14 was the owner of the trademark and that the company would have
15 to pay him a licensing fee to use it?

16 MS. MCDONALD: Same objection, Your Honor.

17 THE COURT: Sustained.

18 BY MR. O'NEIL:

19 Q. What did you understand when he referred to "our trademark"?

20 A. "Ours" being the partnership "Riot Act" that was Marjorie,
21 me, and John. That's "our" in this instance.

22 Q. And between March of 2010 and this May of 2011, had
23 Mr. Xereas ever referred to them as his trademarks?

24 A. No.

25 Q. Had he ever informed you that he expected the company to

1 pay for the use of the trademark?

2 A. No, he hadn't.

3 Q. Did he ever discuss a specific fee that he expected the
4 company to pay?

5 A. No, he did not.

6 Q. I ask you to turn to Defendants' Trial Exhibit 53.
7 The background's a little dark, but can you read it?

8 A. The top part, yes.

9 Q. Do you recognize this document? At the top it appears
10 to be an e-mail from you to John and cc'ing Marjorie Heiss.
11 Do you see that?

12 A. Yes, it is.

13 Q. And below that, it says, "On July 20, 2010, at 2:19 p.m.
14 John Xereas wrote," and you understand that to be an e-mail
15 from Mr. Xereas to you?

16 A. Yes, I was.

17 MR. O'NEIL: Your Honor, I'd like to admit Defendants'
18 Trial Exhibit 53 into evidence.

19 THE COURT: Without objection, Ms. McDonald?

20 MS. MCDONALD: Without objection, Your Honor.

21 THE COURT: Thank you, Ms. McDonald. Defendants'
22 Exhibit 53 will be admitted without objection.

23 (Defendant Exhibit No. 53
24 received into evidence.)
25

1 BY MR. O'NEIL:

2 Q. Is that legible? It's difficult, I admit. The background
3 is very dark. I believe it says in Mr. Xereas's portion of the
4 e-mail --

5 THE COURT: Wait just one moment. I'm not certain
6 that everyone can see.

7 MR. O'NEIL: I don't think I can zoom in any better,
8 Your Honor. It's just a poor copy. It's a poor original that
9 we made poor copies of. If you'd prefer, Your Honor, I can
10 discuss the document without showing it to the jury.

11 THE COURT: That is what I will ask. If there is
12 a paper copy that you can offer as a substitute that can be
13 published should it be admitted, you may also do that.

14 MR. O'NEIL: I can do that, Your Honor. I believe
15 it's a little more legible on the paper version, but it's still
16 difficult.

17 BY MR. O'NEIL:

18 Q. Mr. Dawson, can you read what Mr. Xereas wrote in his
19 e-mail?

20 A. "Wanted you guys to know that I renewed our domain names,
21 at least 61 of them. Please find attached. Don't want any
22 donkeys sneaking in the back door on one of our ideas/revenue
23 streams once our name is out there. Let me know if there is any
24 I forgot. In addition, get an additional 20 percent" --

25 Q. You can stop there.

1 A. Okay.

2 Q. In this e-mail, was Mr. Xereas informing you that the
3 domain names that he was purchasing and providing to the LLC
4 were his property?

5 MS. MCDONALD: Objection, Your Honor. Speculation.

6 THE COURT: Sustained. Let me ask you to rephrase
7 your question, please.

8 BY MR. O'NEIL:

9 Q. What did you understand from Mr. Xereas's e-mail about the
10 ownership of these domain names?

11 A. Well, it consistently uses the word "our." He says "our
12 domain names." "I renewed our domain names." He said, "Don't
13 want any donkeys sneaking in on one of our ideas/revenue streams
14 once our name is out there." So we're just talking about our
15 collective property.

16 Q. Prior to this time, at any point had Mr. Xereas asserted
17 his individual ownership of domain names being used by the LLC?

18 A. Not outside of the LLC. That is, he wasn't suggesting
19 that, you know, he could just take the domain names at any time
20 and use them for his own purposes, no.

21 Q. In your discussions with Mr. Xereas, did you ever suggest
22 to him that he might want to keep the Riot Act name for himself?

23 A. I did not suggest that, no.

24 Q. Did he ever talk about doing business outside of the LLC?

25 A. He may have.

1 Q. Mr. Dawson, at any time, from today back to 2010, did you
2 agree to a license with Mr. Xereas for the use of the trademark?

3 A. No. We never agreed to a license to use -- a trademark
4 license with Mr. Xereas.

5 Q. Was there ever any discussion of the price that Mr. Xereas
6 was looking for from the LLC?

7 A. No. We never discussed the price.

8 Q. Did he ever discuss with you the terms under which he
9 expected the intellectual property to be returned to him by
10 the LLC?

11 A. We never discussed that.

12 Q. If Mr. Xereas had the right to take back the name at any
13 time, is that something you would have disclosed to your
14 investors?

15 A. We would have had to.

16 Q. Do you know if the Confidential Offering Memorandum in this
17 case that we've seen already, disclosed any such right to your
18 investors?

19 A. No. It's presented as a business that's going to be called
20 "Riot Act Comedy Theater," and that would state that they're
21 investing in that name and that domain.

22 Q. Would you have used the name "Riot Act" if Mr. Xereas had
23 requested that the company pay for it?

24 A. It would have made it difficult. If he had said we'd pay a
25 buck for it and own it, that would have been fine. If we sensed

1 that there was going to be a fight over the business's ability
2 to use that name at its own discretion for as long as it needed
3 it, then we never would have named it "Riot Act."

4 Q. It wasn't a key element of deciding to go into the comedy
5 business that you had this name available to you, was it?

6 A. No. The name is, you know, one piece of starting a
7 business, and we could have picked any number of names that
8 are clever and, you know, would have done just as well. The
9 business was going to succeed based on the product that we put
10 in front of customers.

11 Q. I want to talk a little bit now about the performance of
12 the business with some specifics. You stated earlier that you
13 participated in drafting the Confidential Offering Memorandum
14 and the revenue projections that were included therein. Correct?

15 A. Yes. We all did.

16 Q. And I believe you stated earlier that, in addition to your
17 investment, other family members invested in this business as
18 well. Correct?

19 A. Yes, they did.

20 Q. Did that include your children?

21 A. Yes. My children.

22 Q. And how long was it originally projected it would take to
23 pay back the investors?

24 A. Well, we expected them to be paid back -- I think it's in
25 13 months of operation in the baseline. There were multiple

1 cases we put forward: a baseline, a high case, and a low case.
2 In the baseline case, we thought we would have them paid back,
3 I believe, in 13 months.

4 Q. And have they been paid back yet?

5 A. They have been paid back 55 percent of their investment
6 eight years later. Seven years? Seven years later.

7 Q. Just as an aside, the operating agreement contains an
8 indemnification provision. Correct?

9 A. Yes, it does.

10 Q. What does that obligate the company to do?

11 A. Well, it indemnifies the partners in the event of legal
12 action, for one, and indemnifies us from individual -- I guess
13 not responsibility but individual -- liability?

14 Q. Liability?

15 A. Yeah.

16 Q. Okay. And pursuant to that provision in the contract,
17 have you been being indemnified against Mr. Xereas's claims
18 in this litigation?

19 A. Yes, I have.

20 Q. How much has that cost the company so far?

21 MS. MCDONALD: Objection, Your Honor. Relevance.

22 THE COURT: You may approach.

23 (Bench conference.)

24 MS. MCDONALD: I don't understand what counterclaim
25 this goes to, Your Honor.

1 THE COURT: Am I correct in my recollection that you
2 or one of your co-counsel, Ms. McDonald, asked either Mr. Dawson
3 or Ms. Heiss, possibly Mr. Dawson, whether his fees were being
4 paid by the LLC?

5 MS. MCDONALD: That's correct, Your Honor, but I
6 don't understand how the specifics as to the amount of fees,
7 what that goes to.

8 THE COURT: If the testimony was heard without
9 objection when you asked, what is the objection now to a
10 discussion of the circumstances under which that occurred?

11 MS. MCDONALD: I believe they discussed the
12 circumstances, and they established that Mr. Dawson is
13 indemnified by the company. However, the amount that the
14 company has spent on legal bills doesn't go to any claim or
15 defense.

16 THE COURT: Mr. O'Neil.

17 MR. O'NEIL: I believe the information is relevant
18 because we're saying this is an obligation that the company
19 has incurred as a result of Mr. Xereas's actions, and it's an
20 element of our damages for breach of contract.

21 THE COURT: Objection's overruled.

22 (End of bench conference.)

23 BY MR. O'NEIL:

24 Q. Mr. Dawson, can you answer the question? How much has
25 the company paid out under the indemnification provision?

1 A. We're just at about a million dollars right now.

2 Q. And that all hasn't gone to me. Right?

3 A. No. No. But getting there.

4 (Laughter)

5 Q. Could I ask you to turn to Exhibit 4, please?

6 THE COURT: Is this Defendants' Exhibit 4?

7 MR. O'NEIL: Defendants' Trial Exhibit 4.

8 THE COURT: Very well.

9 BY MR. O'NEIL:

10 Q. Do you recognize that document, Mr. Dawson?

11 A. I do. It's our financial projections for Riot Act
12 Comedy Theater.

13 Q. And this was included in the Confidential Offering
14 Memorandum sent to investors and potential investors?

15 A. Yes, it was.

16 MR. O'NEIL: We'd like to move the introduction
17 of Defendants' Trial Exhibit 4 into evidence, Your Honor.

18 THE COURT: Is that without objection, Ms. McDonald?

19 MS. MCDONALD: Without objection, Your Honor.

20 THE COURT: Thank you, Ms. McDonald. Defendants'
21 Exhibit 4 will be admitted without objection.

22 (Defendant Exhibit No. 4
23 received into evidence.)

24 BY MR. O'NEIL:

25 Q. On the fourth page of Exhibit 4, under "Projected Start-Up

1 Expenses," do you see that?

2 A. Yes, I do.

3 Q. And the total there is the total estimated opening
4 expenses were \$2,000,200?

5 A. That's what we projected, yes.

6 Q. And you and Mr. Xereas worked on that together?

7 A. Yes. We all worked on that together.

8 Q. And you created different feasibilities, different plans,
9 and costed out different options?

10 A. Absolutely. With every line there, we go through at what
11 point -- POS is point-of-sale system. Which one will we buy?
12 What's our experience with point-of-sale? How many terminals
13 will we need? Can we do with five? Do we need six? The more
14 you have, the more it costs.

15 So we tried to control as much as we could. Chairs and
16 tables, 50,000, and stools. Well, you can do better than that,
17 you can spend a lot more, so we try to find, you know, a
18 value-add to that if we can. In all of these numbers, we can
19 go higher or lower as we go into construction because, you know,
20 we make choices along the way.

21 Q. Looking at page 3, the third page of the exhibit, it's this
22 one here, page 1 of the Projected Start-Up Expenses, it also
23 includes Design Costs and Construction Costs. Correct?

24 A. Yes, it does.

25 Q. You heard testimony yesterday that the build-out of Riot

1 Act went over budget. Did you hear that?

2 A. Yes, I did.

3 Q. Do you agree?

4 A. It did go over budget, yeah.

5 Q. Can you explain why?

6 A. Well, as we went through the construction project -- and
7 John was there every day, and we talked about it pretty much
8 every day because I was there most days too -- we made collective
9 decisions, along with Marjorie, to choose one avenue or another.
10 It wasn't just me making all the decisions.

11 We all decided, for instance, AV equipment. We decided to
12 use one of John's recommendations for AV equipment. We later
13 fired them because they weren't doing the job, and we found a
14 guy who I'd worked with in the past who did it for less than
15 half of the 300,000.

16 So we together made choices about where we would spend
17 money in HVAC, plumbing, you know, what kind of toilets should
18 we get, what kind of tile should we use. It was a total team
19 effort in that department.

20 Q. And it was your intention to make this a top-of-the-line
21 comedy club. Correct?

22 A. Absolutely. And to make it a top-of-the-line comedy club
23 on a shoestring budget is kind of a trick, and I think we did
24 a phenomenal job. I know from a construction standpoint, at
25 1.2 million in construction totals, you know, if you add in

1 architect and some of the other design stuff, call it 1.3, you
2 know, that's well under \$200 per square foot for a 13,000-foot
3 space, which is doing well.

4 Q. And it wasn't your intention to have just a microphone and
5 a few speakers in the basement of a jazz club. You were aiming
6 top line. Correct?

7 A. Well, I would have done that. But I'm not a comedy guy.
8 No, we looked at what was out there. We wanted to be the
9 premier comedy club. We were completely in line with that.
10 We wanted the place to rock. We wanted people to walk in there
11 and feel moved and to feel excited and want to come back. And,
12 obviously, we were completely in lockstep in that and we did our
13 best to make that happen.

14 Q. You said you were completely in lockstep. Mr. Xereas was
15 involved in all of those decisions and approved all of those
16 decisions. Correct?

17 A. We jointly made those decisions, yes, and we jointly
18 approved them.

19 Q. Was there any part of the build-out expenses that you
20 required that Mr. Xereas objected to?

21 A. You know, at times we certainly discussed what was the
22 right thing to invest in or not. I deferred on a lot of it
23 because John's experience in comedy really led the way.
24 The guy's very good at what he does. He's -- you know, his
25 expertise of over 20 years in the business, his ability to

1 express what we needed was legit. So we did our best to make
2 it, you know, satisfy that, and we did our best to make it
3 satisfy what we knew would be a pleasant experience for people
4 walking in, have them feel as though they were coming into
5 something that was, you know, a \$10 million club that we built
6 for 2.

7 Q. The prior page in Exhibit 4 contains Annual Financial
8 Summaries. Do you see that?

9 A. Yes, I did.

10 Q. You had talked earlier about base case, low case, high
11 case. Correct?

12 A. Yes, I did.

13 Q. And these were your best attempt at projections of the
14 revenue and expenses of the company once it was established.
15 Correct?

16 A. Yes, they are.

17 Q. And in the low case that was presented to investors, you
18 estimated ticket sales at \$1.5 million per year. Correct?

19 A. That's correct.

20 Q. And I've already done the math. That's about \$127,000
21 a month, approximately.

22 A. Yes.

23 Q. And that was your low case. Correct?

24 A. Mm-hmm.

25 Q. Did the company ever reach that \$127,000 in ticket sales

1 per month?

2 A. You know, when we were using Groupon, maybe, because that
3 was -- if you all remember the deal where you'd buy at a
4 discount an item and then redeem it at some point in the future,
5 and it was -- you know, it was essentially a way of promoting
6 the business and spending -- giving people a half-price deal on
7 coming to the comedy club.

8 But when you get that money up front, you still have to
9 deliver later, and people would all show up at the end of the
10 deal, you know. They'd all come through the door at the same
11 time. So you do have to end up paying for that money.

12 Q. I think you touched on this a little bit previously,
13 Projected Cash Flow. This was also presented to your investors.
14 Correct?

15 A. Yes, it was.

16 Q. And in months 1 through 6 on this page of Exhibit 4, you're
17 showing the build-out costs on a monthly basis and no revenue.
18 Correct?

19 A. That's correct.

20 Q. The next page of the document is the projected cash flow,
21 page 2?

22 A. Yes, it is.

23 Q. So month 7 was projected to be the first month of
24 operations. Correct?

25 A. Correct.

1 Q. The build-out cost has gone down to zero?

2 A. Yes.

3 Q. And the projected revenue in that first month was \$368,000.

4 Do you see that?

5 A. Yes, I do.

6 Q. And the monthly cash flow at the bottom shows a profit of

7 \$150,121. Correct?

8 A. That is correct.

9 Q. So the projections that you shared with the investors and

10 which the investors relied upon in making their investment

11 showed that you expected the club to be profitable from the

12 first month?

13 A. Yes. Very profitable.

14 Q. And the profits going up every month until they reached,

15 in month 12, \$229,000 per month. Correct?

16 A. That's correct.

17 THE COURT: Members of the jury, I believe this is an

18 appropriate time for us to take our morning recess. I will

19 excuse you for 15 minutes. We will proceed from approximately

20 11:30 until approximately 12:30 and then break for lunch.

21 Please leave your notepads on your chairs.

22 (Jury out at 11:14 a.m.)

23 THE COURT: We will also take 15 minutes.

24 MR. O'NEIL: Thank you, Your Honor.

25 (Recess from 11:14 a.m. to 11:35 a.m.)

1 THE COURT: Just for planning purposes, how much more
2 time do you believe you need, Mr. O'Neil, for your direct?

3 MR. O'NEIL: I wouldn't want to underestimate. I'm
4 going to try to speed it up a little bit, but maybe 35 minutes?
5 30 to 45?

6 THE COURT: I think that means that you would complete
7 your direct, we would break for lunch, and then you would
8 cross-examine after lunch, Ms. McDonald.

9 MS. MCDONALD: Thank you, Your Honor.

10 THE COURT: Thank you.

11 (Jury in at 11:36 a.m.)

12 THE COURT: Thank you, members of the jury.
13 Please be seated.

14 BY MR. O'NEIL:

15 Q. Mr. Dawson, I'm going to switch gears a little bit and talk
16 about, instead of the projections, the actual results of the
17 company. Can you turn to Exhibit 5, please? Do you recognize
18 this document, Mr. Dawson?

19 A. Yes, I do. It's a Profit and Loss dated August 2011 for
20 Riot Act.

21 Q. And how was this document generated?

22 A. It's generated using our QuickBooks, which takes into
23 account income and expenses.

24 Q. The accounting software that the company was using; correct?

25 A. That's correct.

1 MR. O'NEIL: Your Honor, we'd like to move Defendants'
2 Trial Exhibit 5 into evidence.

3 THE COURT: Is that without objection, Ms. McDonald?

4 MS. MCDONALD: No objection, Your Honor.

5 THE COURT: Thank you, Ms. McDonald. Defendants'
6 Exhibit 5 will be admitted without objection.

7 (Defendant Exhibit No. 5
8 received into evidence.)

9 BY MR. O'NEIL:

10 Q. On the first page of Trial Exhibit 5, there's a line item,
11 "5401-Ticket Sales Income."

12 A. Yes.

13 Q. What's the number for August of 2011?

14 A. \$34,633.70.

15 Q. And we earlier saw in the projections the projected low
16 case that you had provided to investors was \$127,000 a month.
17 Correct?

18 A. That's correct.

19 Q. That's a significant shortfall, isn't it?

20 A. Yes, it is.

21 Q. Now, August was a partial month. Correct?

22 A. That's correct.

23 Q. You opened on August 11th?

24 A. Yes.

25 Q. So it was really only two-thirds of a month?

1 A. That's correct.

2 Q. On the second page, the overall net income for August 2011,
3 do you see that?

4 A. Yes, I do.

5 Q. You have total expense of \$127,000 and a net income of
6 negative \$33,651. Correct?

7 A. That's correct.

8 Q. So compared to the projections where you were going to make
9 money immediately, you were losing money immediately. Correct?

10 A. Yes. We would have made -- according to our hopes and best
11 guess, we would have made two-thirds of that 165 that we
12 projected in profit.

13 Q. Okay.

14 A. During that period.

15 Q. Turning to Defendants' Exhibit 6, similarly, do you
16 recognize this document?

17 A. Yes, I do. It's the September Profit and Loss Statement
18 for Riot Act, September 2011.

19 Q. And if you go further into the document, there are other
20 months reproduced there as well. Correct?

21 A. Yes, there are.

22 MR. O'NEIL: Your Honor, we'd like to move Defendants'
23 Trial Exhibit 6 into evidence.

24 THE COURT: Is that without objection, Ms. McDonald?

25 MS. MCDONALD: Without objection, Your Honor.

1 THE COURT: Thank you, Ms. McDonald. Defendants'
2 Exhibit 6 will be admitted without objection.

3 (Defendant Exhibit No. 6
4 received into evidence.)

5 BY MR. O'NEIL:

6 Q. Looking at Defendants' Exhibit 6 for September, this was
7 a full month of operation. Correct?

8 A. Yes, it was.

9 Q. And, again, line item 5401-Ticket Sale Income, what does
10 that say?

11 A. \$68,731.99.

12 Q. So almost half of what had been projected in the low case
13 to the investors.

14 A. That's correct.

15 Q. Similarly, on the next page of the exhibit, the total
16 expense for this full month of operations was \$239,000?

17 A. Yes, it was.

18 Q. Leading to an overall loss of \$75,000. Do you see that?

19 A. I do.

20 Q. So, at this point, in the first two months or month and
21 two-thirds of operations, the company was down almost -- more
22 than \$100,000. Is that correct?

23 A. That's correct.

24 Q. Turning to the next page, in October, again, on the first
25 page of the Profit and Loss, 5401-Ticket Sale Income, \$69,208.

1 Correct?

2 A. Yes, it was.

3 Q. About the same as it was in September?

4 A. Yes.

5 Q. And this time it's three pages. So the third page of the
6 October Profit and Loss shows a profit for the first time of
7 \$17,000. Do you see that?

8 A. Yes. That's correct.

9 Q. So, despite the fact that the ticket sales still were at
10 about 50 percent of what had been projected in the low case,
11 you were able to make a small profit in October. Correct?

12 A. Yes, thankfully.

13 Q. And then by November, ticket sales in November jumped to
14 \$158,000. Do you see that?

15 A. Yes, I do.

16 Q. Do you know the explanation for that increase?

17 A. We had a Groupon special which I mentioned earlier, and
18 I believe that raised somewhere in the neighborhood of 60,000
19 in income. So there were a lot of ticket sales associated with
20 that, and that's preselling tickets to future events at a
21 discounted rate.

22 Q. Does that have any implication on projected ticket sales in
23 the following months?

24 A. Definitely, because you can't -- you can only sell so many
25 tickets to a limited space, and people come in and they expect

1 their -- you know, we can't overbook, because we don't have any
2 place to put people. It also affected some of our arrangements
3 with comedians because we had Groupon people come in and redeem
4 their tickets, and that created a sell-out; and so the sell-out
5 triggered a higher pay to the comedian, despite the fact that we
6 hadn't actually realized the profit that month.

7 Q. And after doing this first Groupon deal, did the managing
8 members discuss whether it would be worth doing that again?

9 A. We did. Groupon was kind of the new kid on the block as a
10 way to reach customers, and in talking with other businesses,
11 business owners who had experimented with it, we were all
12 realizing that it was kind of, you know, robbing Peter to pay
13 Paul. You know, we're getting cash to sustain us, which we
14 needed, but, you know, we had to pay for it at some point.

15 So we had to, you know, give away that product later
16 instead of selling it as we went. So we decided that we should
17 not do any more Groupon offers, because it was just not a very
18 smart way to run the business, we felt.

19 Q. Despite that decision of the managing members of the
20 company, were other Groupon deals pursued?

21 MS. MCDONALD: Your Honor, may I approach?

22 THE COURT: Yes.

23 (Bench conference.)

24 MS. MCDONALD: I think we're pretty far afield of
25 the claims and counterclaims at this point, Your Honor. We're

1 talking about Groupon deals. I don't see where this has
2 anything to do with any of the counts.

3 MR. O'NEIL: This relates, Your Honor, to our counter-
4 claim alleging breach of contract where Mr. Xereas was taking
5 actions without the approval of the other managing members.

6 MS. MCDONALD: I don't believe that's in their count,
7 Your Honor.

8 THE COURT: The objection is overruled.

9 (End of bench conference.)

10 BY MR. O'NEIL:

11 Q. Mr. Dawson, to your knowledge, were other Groupon deals
12 pursued?

13 A. Yes, they were.

14 Q. Despite the managing members' decision not to do that?

15 A. That's correct.

16 Q. And they caused the same sort of financial hardship for
17 the company?

18 A. They did, yeah.

19 Q. Looking at the page 2 of the November Profit and Loss,
20 that shows a net income of \$67,488?

21 THE COURT: Counsel, may I ask you to return, please?

22 (Bench conference.)

23 THE COURT: I'm sorry. I anticipated that the next
24 question would be whether or not Mr. Xereas undertook further
25 Groupon sales.

1 MR. O'NEIL: Okay. I wasn't specific about that.
2 I can ask that question, Your Honor.

3 THE COURT: As answered, the question is that there
4 were other Groupon sales, but unless --

5 MR. O'NEIL: I'll link it to Mr. Xereas. Correct.

6 THE COURT: Yes.

7 MR. O'NEIL: Okay.

8 THE COURT: If the answer is not by Mr. Xereas, then
9 I believe I would have to retroactively sustain the objection
10 and strike the testimony.

11 MR. O'NEIL: Okay.

12 THE COURT: Thank you.

13 (End of bench conference.)

14 BY MR. O'NEIL:

15 Q. Mr. Dawson, I got ahead of myself a little bit on that.
16 With respect to the Groupon deal that was pursued after the
17 managing members decided not to do that, was that Mr. John
18 Xereas who entered into that agreement?

19 A. His brother Ted was the sort of chief architect of that
20 deal. I don't remember who specifically signed it or what the
21 collaboration that led to it was, but we had asked him not to
22 pursue any more.

23 Q. Did Ted --

24 MS. MCDONALD: Your Honor, may I approach?

25 MR. O'NEIL: Can I continue to pursue this line of

1 questioning, Your Honor, just --

2 THE COURT: Let me suggest that counsel approach now.

3 (Bench conference.)

4 MS. MCDONALD: Your Honor, the witness has testified
5 that the action was undertaken by Ted Xereas who's not a party
6 to this lawsuit.

7 MR. O'NEIL: The next question would be whether
8 Ted ever did any activities without John's approval.

9 MS. MCDONALD: He further said he didn't know who was
10 responsible for the -- ultimately responsible for the Groupon.
11 I would ask that the testimony be stricken.

12 THE COURT: Is this something you are going to tie up,
13 Mr. O'Neil?

14 MR. O'NEIL: I'm trying to with the next question,
15 Your Honor.

16 THE COURT: I'll overrule the objection. As I said,
17 if the loose ends are not tied up, I believe I must strike the
18 testimony.

19 MR. O'NEIL: That's fine, Your Honor.

20 (End of bench conference.)

21 BY MR. O'NEIL:

22 Q. Mr. Dawson, in your experience, did Ted Xereas undertake
23 actions at Riot Act without John's approval?

24 A. I don't know for sure, but -- well, I don't know for sure.

25 MR. O'NEIL: We'll move on.

1 MS. MCDONALD: Your Honor, may I approach?

2 THE COURT: Yes.

3 MR. O'NEIL: I'll withdraw the questions, Your Honor.

4 MS. MCDONALD: I ask that they be stricken as well.

5 THE COURT: The Court will strike the testimony
6 regarding the further Groupon sales.

7 MS. MCDONALD: Thank you, Your Honor.

8 BY MR. O'NEIL:

9 Q. Mr. Dawson, turning to the December Profit and Loss, on the
10 first page, December 2011, again line 5401-Ticket Sale Income,
11 it reverts now to \$66,140. Do you see that?

12 A. Yes. Similar to the months prior to November.

13 Q. Similar to September and October?

14 A. Yes.

15 Q. So the bump that was experienced in November went away
16 in December?

17 A. It's an artificial bump, yep.

18 Q. And the overall Profit and Loss for December here shows
19 a loss of \$2.2 million. Do you see that?

20 A. Yes, I do.

21 Q. And is the reason for the loss the very large
22 depreciation expense in line 7900 of almost \$2.1 million?

23 A. That's correct.

24 Q. And that's because the company's allowed to depreciate the
25 cost of the build-out?

1 A. Yes, it is.

2 Q. At the end of the year?

3 A. Yes. So that counts it as a loss.

4 Q. But even taking into account that large loss, in December
5 the company was still in the red, wasn't it?

6 A. Yes, we were.

7 Q. At a certain point in time, did you and Marjorie begin
8 to have concerns about Mr. Xereas's ability to do his job?

9 A. We did. I mean, we were losing money for the most part.
10 We were -- you know, we were paying a reduced rent during this
11 time. So this was -- there were a lot of things going on that
12 were keeping us afloat, but the rent was ultimately going to go
13 up to its full amount. We didn't see the business growing.

14 We had anticipated -- based on our belief that this
15 incredible comedy club was going to be a magnet, we had
16 anticipated profits, real profits, every month. So we started
17 to worry that there wasn't a solution coming from our operating
18 partner to fix this. A lot of assurances that we're going to be
19 good, we're going to be good, we'll figure it out, you know, we
20 got it covered. But we didn't. Yeah, we were very concerned.

21 Q. And was part of that concern manifested in the decision to
22 hire a general manager to work alongside John even before the
23 club opened?

24 A. We had -- yeah. We had decided to hire a general manager,
25 originally Rich Mackey, an experienced bar guy who I had worked

1 with for many years. In fact, we had opened Mackey's Pub
2 together, using his name, and we felt we needed somebody who
3 had that knowledge of the basic operation of food and beverage.

4 And despite John's assurances, you know, I've got this
5 covered; I know how to run this kind of business; I've done it;
6 I did it at the Improv, he needed help. He admitted he needed
7 help. We said, Fine, let's solve it. Let's hire a manager to
8 do that. Let's let you concentrate on your wheelhouse, you
9 know, do the comedy, and it'll all work out. Despite the fact
10 that we hadn't really anticipated having that extra salary, you
11 know, we figured we would absorb it because, again, we assumed
12 we were going to be making a lot of money.

13 Q. And after a certain point, I think we heard some testimony
14 yesterday, Mr. Mackey had to leave the job. Correct?

15 A. Yes. His father was ill, and he realized he couldn't --
16 his father lived in Ireland, so he couldn't realistically commit
17 to being there the amount of time it would take, be necessary to
18 operate a business of this magnitude.

19 Q. Did he recommend a replacement?

20 A. He did. He had a fellow he had met. I don't know that
21 he had worked with him, but he'd met him and was really
22 impressed with his work ethic. He liked that he was trained in
23 hotel and restaurant food and beverage. So he had a much more,
24 you know, black-and-white interpretation of how it should work.
25 He was young, I think in his, you know, mid-20s at the time, but

1 his experience was solid and his attitude was great.

2 Q. Did you consult with Mr. Xereas about the hiring of Matt
3 Morinello?

4 A. I assume we did. I can't specifically remember that
5 conversation, but we had -- Rich said he couldn't do it.
6 So we clearly needed a replacement, and we found Matt.

7 Q. Yesterday, Mr. Xereas testified that he didn't fire
8 Matt Morinello. Did you hear that?

9 A. I did hear that.

10 Q. Do you agree with that statement?

11 A. Well, I don't know that he said the words "You're fired."
12 He told him to go home without consulting us. And when I asked
13 him, you know, why, and I said, well, you know, you can't just
14 send him home, why isn't he here, he said essentially in an
15 e-mail, which I'm going to paraphrase, he said, you know, it's
16 either he stays or I stay; or if he stays, I go, is what John
17 said. Now, I couldn't trade my comedy partner for a manager, so
18 it was a pretty untenable situation. So to me that equals, you
19 know, twisting my arm and firing Matt, I mean, in a round-about
20 way.

21 Q. Can you turn to Defendants' Trial Exhibit 21.

22 A. Yeah.

23 Q. Do you recognize that document?

24 A. I do, and it's an e-mail -- let's see -- from me to John
25 dated 9/21/2011.

1 Q. And at the bottom is an e-mail from John to you.
2 Do you see that?

3 A. Yes.

4 MR. O'NEIL: Your Honor, we'd like to move the
5 admission of Defendants' Trial Exhibit 21.

6 THE COURT: Is that without objection?

7 MS. MCDONALD: May I approach, Your Honor?

8 THE COURT: Yes, of course.

9 (Bench conference.)

10 MS. MCDONALD: Your Honor, I don't see the relevance
11 of this document as it relates to any of the claims or
12 counterclaims.

13 THE COURT: May I see the exhibit, please? Thank you.

14 MR. O'NEIL: It's an e-mail exchange where Mr. Xereas
15 gives his reasons for firing Matt Morinello, which became an
16 issue of some contention both to the company and between the
17 partners.

18 MS. MCDONALD: It may have been an issue of
19 contention, Your Honor, but it's not related to any of the
20 counterclaims, and it's certainly not listed under any of the
21 counterclaims.

22 MR. O'NEIL: Breach of the duty of good faith and
23 fair dealing.

24 MS. MCDONALD: It's not listed there, Your Honor.

25 MR. O'NEIL: The document isn't listed there.

1 MS. MCDONALD: Neither is the conflict.

2 THE COURT: The objection is overruled.

3 (End of bench conference.)

4 BY MR. O'NEIL:

5 Q. Looking first, Mr. Dawson, at John's e-mail to you dated
6 September 21, 2011, he states, "He came in, I told him to leave
7 until I had talked to Geoff Dawson." Do you see that?

8 A. I do.

9 Q. Do you understand him to be referring to Matt Morinello?

10 A. Yes.

11 Q. And the day he told him to go home?

12 A. Yes.

13 Q. And that e-mail continues over on the next page.

14 A. Yes.

15 Q. And there's a statement there about Mr. Xereas that you
16 referred to in your earlier testimony: "If you want to bring
17 him back, you can do that, but without me." Do you see that?

18 A. Yes, I do.

19 Q. What was your response to Mr. Xereas's e-mail?

20 A. I don't know what my specific response was, but --

21 Q. In the e-mail on the first page of this exhibit.

22 A. Oh, there. Well, now I do know what my response was.
23 There you go.

24 MS. MCDONALD: Objection, Your Honor. This is
25 hearsay.

1 THE COURT: I'm sorry. What is your objection?

2 MS. MCDONALD: Defendants are obviously offering
3 hearsay.

4 MR. O'NEIL: It's a business record of the company,
5 Your Honor.

6 MS. MCDONALD: It's not a business record, Your Honor.
7 It's an e-mail.

8 THE COURT: The objection is overruled.

9 BY MR. O'NEIL:

10 Q. Could you read the first two paragraphs of your e-mail,
11 Mr. Dawson?

12 A. "John, I had such confidence in you and respect for you.
13 Thanks for the showing the consideration of picking up the phone
14 and discussing this with me before unilaterally acting. Since
15 that is how we work now" -- and that was sarcastic. "Since that
16 is how we work now, along with the key to the kingdom comes full
17 responsibility and accountability."

18 Q. What is it you tell him in the next paragraph?

19 A. I tell him to please arrange to deposit \$100,000 this
20 week to make his contribution as a managing member.

21 Q. Because he hadn't made that contribution at that point?

22 A. Because he hadn't made it at that point, and we were in
23 deep trouble.

24 Q. And you also asked him to replace the money you had been
25 lending the company with money that he would arrange. Correct?

1 A. I did.

2 Q. Did he do that?

3 A. No.

4 Q. Had you pledged your house as collateral for the loans you
5 were taking out to keep the business open?

6 A. The money I put in came from a line of credit that was
7 attached to my house, yes.

8 Q. Further down the page, there's a paragraph that says, "As
9 you are no doubt aware, we are barely covering costs day to day,
10 if even that. So the next payroll and rent checks will be touch
11 and go." Was that an accurate statement about the financial
12 condition of the company at the time?

13 A. That is a very accurate statement of the situation.

14 Q. And then you stated, "I was preparing a line of credit for
15 Riot Act but can no longer do this. You'll need to use your
16 resources." Do you see that?

17 A. Yes. I did write that.

18 Q. Did Mr. Xereas use his resources --

19 A. No.

20 Q. -- to arrange a line of credit for the company?

21 A. No, he did not.

22 Q. And then later, the next paragraph, or skipping over one,
23 it says, "You will have to put your skin in the game and bring
24 in some of the investors you told me you had." Do you see that?

25 A. Yes.

1 Q. And that's consistent with what you testified earlier,
2 that Mr. Xereas had told you he could bring in investors and
3 in fact he never did?

4 A. That's correct.

5 Q. And the precarious financial condition of the company,
6 that continued throughout the fall and early winter of 2011.
7 Correct?

8 A. Yes, it did.

9 Q. And at some point in late December, early January, did you
10 and Marjorie decide the business needed to change directions?

11 A. We had been discussing what we could possibly do to save
12 this business. You know, we were looking for any solutions that
13 we could come up with. And, really, we're a one-trick pony with
14 comedy being our thing, and we had to make that work. I mean,
15 we couldn't change direction in the middle of, you know, opening
16 a business that was much anticipated, and we, you know, didn't
17 really have a Plan B.

18 Q. And in the middle of January, you and Marjorie decided
19 that you would terminate the employment of Mike Farfel and
20 Ted Xereas. Correct?

21 A. We did. At that point, you know, we had tried to make
22 it work. We had tried to work with John's group of family
23 and friends who, you know, he had assured us were all seasoned
24 veterans of the game. We couldn't -- we had to change
25 something. We had to figure out a way to bring this business,

1 you know, into economic sense, because it wasn't making any.
2 And people are nice, and, you know, everybody was all good
3 people, there's no question about it. But like a general
4 manager of a baseball team, sometimes you have to fire, you
5 know, Dusty Baker even with two seasons of excellent work,
6 because you gotta change something. So we chose to do that.

7 Q. And Ted and Mike Farfel were the first employees let go in
8 cost-cutting measures, were they?

9 A. No. We had reduced our staff in numerous ways. I mean,
10 you know, bringing it down to -- I mean, that's what you do.
11 You try to operate at a real bare level, and so you anticipate
12 what nights would it be slow: Can we get by with one person
13 washing dishes? If we needed security, can we have less
14 security? Can we have people clean every other day?

15 I mean, you really gotta like take action and make
16 something happen to save it, to be able to -- if you miss
17 payroll, it's over. You know, if everybody's checks bounce,
18 it's over. And we were literally payroll-to-payroll concerned
19 with that. If you don't pay your rent, it's not over; but when
20 you fall behind in rent, it tends to snowball, and I haven't met
21 a landlord yet who says, Ah, don't worry about it. They want
22 their money too.

23 Q. How did John react to the termination of his brother and
24 Mike Farfel?

25 A. He was visibly angry. He stormed out. He screamed and

1 yelled. He left the premises. And if there was a tipping point
2 in that business, it was that day when we chose to, as I think
3 he felt, you know, violate his family of people.

4 He's talked about his family and how that was an important
5 part of it, but we needed our family -- and in this case I would
6 say my family is our investors because, ultimately, those are
7 the people who were holding me to the fire and asking what's
8 going on with this business, and I'm trying to explain, Oh, you
9 know, we're moving some things around, trying to fix it.

10 I mean, you can't talk to an investor who's not seeing the
11 \$165,000 in profit in month one, increase in month two, increase
12 in month three, show them the P&L and say, Yeah, god, we're just
13 barely making it after four or five months. So we had to do
14 something.

15 Q. And did those conversations with investors start as soon
16 as the club opened?

17 A. Sure. Yeah, investors came in. They wanted to see it.
18 Part of investing in this thing was there was a lot of
19 excitement. It was fun. It was, you know, come to a comedy
20 club, be an investor, have some special treatment.

21 You know, we took care of them. We gave them tickets.
22 We did nice things for them. Ultimately, that's a big part
23 of it, but not as big as getting their money back, not as big
24 as having that equity return and then having a profit turned
25 on their investment. So they were certainly concerned.

1 You know, any investor calls and asks to see a P&L, sure,
2 we'll talk about it. They wanted to know, Hey, how much money
3 did we make this month? And when you tell them we just lost a
4 little bit, you know, it's a tough conversation.

5 Q. And when you terminated the employment of Ted Xereas and
6 Mike Farfel, you also turned off their access to their Riot Act
7 Comedy e-mail accounts. Correct?

8 A. Yes. Company e-mails. And we couldn't have -- they were
9 angry, too, and they went out with a real, you know, bluster and
10 noise, and so we couldn't have them log back into their e-mail
11 and delete everything and, you know, create problems for the
12 business. So we turned off their e-mails.

13 Q. Is it your understanding that's pretty standard practice?

14 A. I believe so.

15 Q. At that point, did you turn off John's e-mail?

16 A. No.

17 Q. Did you do anything to prevent John from coming back in
18 after he stormed out?

19 A. We did not. We anticipated John would cool off and come
20 back and start getting down to the business of increasing our --
21 you know, getting our comics in and figuring out how we were
22 going to make this business work.

23 Q. And was there a short time later that there was some impact
24 to the company's social media accounts?

25 A. Very soon after. The next day, the day after that, the

1 accounts went down. I mean, like just boom. Off. So -- what
2 a coincidence, you know, that they went off the day after we let
3 Ted Xereas go and Farfel go and John stormed out in anger.

4 MS. MCDONALD: Objection, Your Honor. The witness
5 is speculating.

6 THE COURT: The objection is overruled.

7 BY MR. O'NEIL:

8 Q. Were you there, Mr. Dawson?

9 A. Yes, I was there.

10 Q. You saw it with your own eyes?

11 A. I did.

12 Q. Mr. Dawson, I think there was testimony yesterday about
13 some events in October of 2011 where you and Ms. Heiss had
14 proposed changing the operating agreement. Do you recall that?

15 A. Yes, I do.

16 Q. Do you recall the circumstances that led to that being
17 discussed?

18 A. I do. You know, some of them. John had not put his money
19 in, his hundred thousand, and was telling us that he probably
20 either couldn't get it or was going to have trouble getting it.
21 So we discussed how we could solve that, and one of the solutions
22 was to replace it with somebody else's money and to give him a
23 haircut in his equity.

24 Q. That was what the proposed revised operating agreement did?

25 A. That's correct.

1 Q. And in the end you decided -- the managing members didn't
2 adopt that revised operating agreement. Correct?

3 A. We did not. That was a proposal. It was simply a proposed
4 solution to a problem that John had. He wanted -- he couldn't
5 come up with his money, and he was trying to find a solution for
6 it. So we said, well, here's one way we could do it. He said
7 that's not going to work for me, and so we didn't do it.

8 Q. I'd ask you to turn to Defendants' Trial Exhibit No. 9 in
9 your notebook. Do you recognize that document?

10 A. It's an e-mail from me to John, cc'd to Marjorie, dated the
11 2nd of October 2011.

12 Q. And at the top there, there's a Riot Act Solution.doc
13 underlined?

14 A. Yes, there is.

15 Q. Do you know what that indicates?

16 A. That there's a Riot Act Solution.doc attached.

17 Q. There was an attachment to this e-mail?

18 A. Yes.

19 Q. And if you turn to the next two pages, is that the
20 attachment that's referred to in the e-mail?

21 A. Yes, it is.

22 MR. O'NEIL: Your Honor, we'd like to move Defendants'
23 Trial Exhibit 9 into evidence.

24 THE COURT: Is that without objection, Ms. McDonald?

25 MS. MCDONALD: I object, Your Honor.

1 THE COURT: Let me ask you to approach, please.

2 (Bench conference.)

3 THE COURT: On what ground?

4 MS. MCDONALD: Your Honor, this document offers
5 hearsay within hearsay. The attachment has Mr. Dawson conveying
6 conversations that Marjorie had with other parties. So hearsay
7 within hearsay within hearsay. And then statements that other
8 employers said, allegations of employees that were told to
9 Marjorie that were told to Geoff.

10 MR. O'NEIL: Your Honor, in their pretrial objections
11 to Exhibit No. 9, the only objection noted was relevance and
12 prejudice.

13 MS. MCDONALD: Not in our amended objections.

14 THE COURT: What was the objection that was raised to
15 that exhibit?

16 MS. MCDONALD: I can get my list, Your Honor.

17 MR. O'NEIL: In any event, Your Honor, we're not
18 necessarily introducing the document for the truth of the matter
19 asserted by the persons in there.

20 MS. MCDONALD: I believe that's quite to the contrary,
21 Your Honor. He's offering it for the facts in the --

22 MR. O'NEIL: This is a document drafted by Mr. Dawson,
23 provided to Mr. Xereas.

24 THE COURT: Did you object, Ms. McDonald --

25 MS. MCDONALD: Yes, I did, Your Honor.

1 THE COURT: -- on grounds other than relevance?

2 MS. MCDONALD: Other than relevance? Yes, Your Honor.

3 I objected on several grounds. I can obtain my list.

4 THE COURT: Where did you list them?

5 MS. MCDONALD: In our amended trial objections, Your
6 Honor, or exhibit objections.

7 THE COURT: Do you have your copy of it?

8 MS. MCDONALD: I don't believe I have my exact copy,
9 but I do have a spreadsheet that contains the same information.

10 It has objections on the grounds of prejudice, relevance.
11 There are many objections to this particular document,
12 Your Honor. Your Honor, I can also ask my paralegal if she has
13 the document available.

14 THE COURT: Bear with me, please, while I locate the
15 objections.

16 MS. MCDONALD: It would have been our amended
17 objections, Your Honor. I'm not sure of the ECF number or the
18 title of the document, but Mr. O'Neil had them well in advance
19 of trial.

20 THE COURT: Okay. When did you file them?

21 MS. MCDONALD: Again, Your Honor, I'm not certain of
22 the ECF number or the document name, but it was our amended
23 trial objections -- or exhibit objections. They may not have
24 been filed. They may just have been provided to Mr. O'Neil,
25 and then we provided them to the Court. I really don't recall.

1 I can ask my paralegal, Your Honor.

2 THE COURT: I do not see any such filings.

3 MR. O'NEIL: I thought we filed amended pretrial
4 statements and amended jury verdict form after the first
5 pretrial hearing.

6 THE COURT: I do not see any filed objections.
7 I have before me plaintiff's second amended pretrial statement.

8 MS. MCDONALD: They were received by Mr. O'Neil, and
9 Mr. O'Neil did not raise any objection to our amended
10 objections, Your Honor.

11 MR. O'NEIL: I can't make any representation one way
12 or the other, Your Honor. I don't recall. But even if we
13 assume that the hearsay objection was made, this is a business
14 record of the company.

15 MS. MCDONALD: It's hearsay within hearsay within
16 hearsay.

17 THE COURT: There are no such objections. I've
18 scrolled through the entire --

19 MS. MCDONALD: Your Honor, that may not be the correct
20 document. I'd be happy to consult with my paralegal and try to
21 find the correct document.

22 THE COURT: Yes.

23 MS. MCDONALD: Thank you.

24 (End of bench conference.)

25 (Counsel conferring.)

1 THE COURT: Counsel, are you ready to return?

2 MS. MCDONALD: Your Honor, my paralegal has gone to
3 locate the document. She should be back in a moment.

4 THE COURT: Counsel, let me ask you to return, please.
5 (Bench conference.)

6 THE COURT: If we assume for a moment that such an
7 objection was made, I find it to be unfounded, and therefore
8 the objection is overruled.

9 MR. O'NEIL: Thank you, Your Honor.

10 (End of bench conference.)

11 BY MR. O'NEIL:

12 Q. Mr. Dawson, looking at Exhibit 9, your e-mail --

13 THE COURT: I should note that Defendants' Exhibit 9
14 is admitted over objection.

15 (Defendant Exhibit No. 9
16 received into evidence.)

17 THE COURT: Please continue.

18 BY MR. O'NEIL:

19 Q. In your e-mail to John, you state, "Attached is the recap
20 of what we discussed yesterday and today. I asked Marjorie to
21 help me clarify some of the legal aspects. As I told you today,
22 I sincerely hope we can resolve this, move forward, and work
23 together to make this business a great success. You can reach
24 me all day tomorrow if you have any questions."

25 Was this e-mail about the conversations you had with John

1 about potentially changing the operating agreement?

2 A. Yes, it was.

3 Q. And in the attachment, you said -- this is a document that
4 you drafted. Correct?

5 A. Yes.

6 Q. With Marjorie?

7 A. Yes.

8 Q. And you had discussed these same topics with John the day
9 before or on that same day?

10 A. Yes.

11 Q. The document's titled "Problems That You've Caused for the
12 Business," and it first refers to multiple lawsuits, and those
13 were the -- what were those lawsuits?

14 MS. MCDONALD: Objection, Your Honor. May I approach?

15 THE COURT: Yes.

16 (Bench conference.)

17 MS. MCDONALD: Your Honor, he's offering it for the
18 truth of the matter asserted, and also, this isn't relevant to
19 any of the claims or counterclaims. It's a relevance objection,
20 Your Honor.

21 MR. O'NEIL: I believe it relates to the breach of
22 the duty of good faith and fair dealing.

23 THE COURT: The objection's overruled.

24 MS. MCDONALD: Again, Your Honor, I'd like to point
25 out that there is none of this in their counterclaims --

1 THE COURT: Well, just a moment. Mr. O'Neil has
2 stepped away.

3 MS. MCDONALD: Yesterday Your Honor required us to
4 point to these allegations under each count, and that is not
5 happening here, Your Honor. These claims are not under each
6 count. Or any count.

7 MR. O'NEIL: I don't think retaliatory objections are
8 appropriate.

9 MS. MCDONALD: It's not retaliatory, Your Honor.
10 It's irrelevant.

11 THE COURT: The objection is overruled. Let's
12 continue so that we can get some further testimony in before
13 it's time to break for lunch.

14 (End of bench conference.)

15 BY MR. O'NEIL:

16 Q. Looking again at Exhibit 9, the attached document talks
17 about multiple lawsuits. Could you tell us about what the
18 document is referring to there?

19 A. It's referring to the termination of Matt Morinello and
20 his assistant, Nate -- I can't think of his last name offhand,
21 but the assistant GM.

22 Q. Nate Adams?

23 A. Nate Adams. Thank you.

24 Q. And it also discusses the failure of Mr. Xereas to
25 make his financial contribution to the company. Correct?

1 A. Yes, it does.

2 Q. And that was a concern both you and Marjorie had?

3 A. Yeah. Big time. I mean, it's a hundred thousand dollars
4 we didn't have in the account to keep us afloat.

5 Q. And, again, the Proposed Solution outlined on page 2, that
6 never went forward. Correct?

7 A. No. No, it didn't.

8 Q. The three parties were able to resolve the problems?

9 A. Yes, we were.

10 Q. And in part by Mr. Xereas making his required capital
11 contribution --

12 A. Yes.

13 Q. -- eventually, by December of 2011. Correct?

14 A. Correct.

15 Q. Did you have to settle claims with Mr. Morinello and
16 Mr. Adams?

17 A. We did. We were able to pay them severance based on their
18 time there and salary, and they -- in large part, I think thanks
19 to Marjorie negotiating with them, they were satisfied.

20 Q. And we've heard discussion about a meeting that took place
21 among the managing members on January 19. Do you recall that?

22 A. Yes, I do.

23 Q. Could you turn to Trial Exhibit 26 in your notebook,
24 please? Before we discuss the exhibit, Mr. Dawson, there's been
25 some testimony by Mr. Xereas that the operating agreement called

1 for a 15-day notice before meetings of the managing members.

2 Is that correct?

3 A. Yes. I heard that.

4 Q. Was that typically how things were done?

5 A. Not to my knowledge. I mean, I don't know how --
6 typically, if we were going to plan a managers meeting, I
7 suppose we would do that. But, you know, when the house is on
8 fire, you're trying to figure out how to put it out.

9 Q. But you would go down to the club on a regular basis and
10 have meetings with Mr. Xereas. Correct?

11 A. Oh, meetings, sure. All the time.

12 Q. And with Marjorie?

13 A. Yes.

14 Q. And sometimes they were planned in advance, and sometimes
15 everyone was together and you'd discuss topics of relevance to
16 you?

17 A. Absolutely.

18 Q. Do you recognize Defendants' Trial Exhibit 26?

19 A. I do.

20 Q. Could you tell us what it is?

21 A. It's the minutes of our meeting on January 29, 2012.

22 MR. O'NEIL: Your Honor, I'd move for the admission
23 of Defendants' Trial Exhibit 26 into evidence.

24 MS. MCDONALD: One moment, please, Your Honor.

25 (Plaintiff counsel conferring.)

1 MS. MCDONALD: I'm sorry. The January 19th, 2012?

2 MR. O'NEIL: Yes.

3 MS. MCDONALD: Yes. No objection, Your Honor.

4 THE COURT: Thank you, Ms. McDonald. Defendants'
5 Exhibit 26 will be admitted without objection.

6 (Defendant Exhibit No. 26
7 received into evidence.)

8 BY MR. O'NEIL:

9 Q. How was this transcript made, Mr. Dawson?

10 A. We recorded it using a phone.

11 Q. Somebody's phone was put in the middle of the table, and
12 it recorded everyone's conversation?

13 A. That's correct.

14 Q. And then that was eventually provided to someone to make
15 a transcript?

16 A. Yes, it was.

17 Q. And at the bottom of the first page, it states -- it's
18 quoting you saying that "Geoff Dawson, Marjorie Heiss, and John
19 Xereas are present on January 19, 2012." Do you see that?

20 A. Yes, I do.

21 Q. At the top of the next page, you state that you're recording
22 the meeting of the managing members to discuss several urgent
23 issues which must be resolved and voted upon. Do you see that?

24 A. Yes, I do.

25 Q. And in this meeting, I think there was testimony yesterday

1 that certain restrictions on the power to write checks that the
2 managing members had were voted upon and agreed to. Correct?

3 A. That's correct.

4 Q. And do you recall how that vote went?

5 A. In favor.

6 Q. Two votes in favor? Did Mr. Xereas vote against it?

7 A. I -- I don't recall. I know that we adopted it.

8 Q. In the middle of the page, after you make your proposal,
9 Ms. Heiss says she's okay with it, you say, "I'm fine with it,"
10 and you vote in favor. Ms. Heiss asks Mr. Xereas, "Does anyone
11 have discussion you want to make?" And Mr. Xereas, what is his
12 response?

13 A. "No. I have work to do."

14 Q. And at the bottom of the page, Mr. Xereas, when asked
15 again whether he wanted to vote, what is his response? The
16 last line.

17 A. The last line: "Does it really matter what I say because --
18 inaudible -- you're going to do whatever you want to do to
19 implement."

20 Q. Did Mr. Xereas ever vote on the proposal?

21 A. I don't believe so.

22 Q. In this meeting, were you discussing the damage to the
23 company's social media accounts?

24 A. I believe so. There was a lot of chaos.

25 Q. On page 3 of the transcript, Mr. Xereas states, "And as far

1 as the other thing, I had nothing to do with it. I'm looking
2 into it. But I don't even know how to do that stuff, nor did I
3 do it." Do you see that?

4 A. Yes.

5 Q. Did you accuse Mr. Xereas at that point of being involved
6 in the damage to the company's social media?

7 A. We had, yes.

8 Q. Did you know who had done it?

9 A. We assumed, due to the odd timing of it happening the day
10 after the removal of his brother and Farfel, that he had to have
11 something to do with it.

12 Q. And at the bottom of the page, you say, "Do you have any
13 idea what happened to our Facebook, Twitter?" And on the next
14 page, Mr. Xereas says, "I do not, but I'm looking into it."
15 Do you see that?

16 A. Yes.

17 Q. And then at that point in the meeting, you tell Mr. Xereas
18 that you'd hired a forensic investigator who's also looking into
19 it, "and we're going to sue for damages whoever is responsible
20 for it and will take it. So if you happen to find out who it
21 was, let's get it set straight. Okay? Thank you." Is that --

22 A. That's correct, yes.

23 Q. At any point during this meeting, did Mr. Xereas
24 acknowledge that Dawn Henderson had taken steps to damage
25 the company's social media accounts?

1 A. Not at this point, no.

2 THE COURT: Counsel, is this a suitable time to
3 break for lunch?

4 MR. O'NEIL: Yes, Your Honor.

5 THE COURT: Very well. Thank you very much.
6 Mr. Dawson, you may step down and return to your seat.

7 THE WITNESS: Thank you, Your Honor.

8 (The witness steps down.)

9 THE COURT: Members of the jury, I will excuse you
10 at this point. I will ask that you endeavor to return, please,
11 by 1:40 so that we can begin promptly at 1:45. Thank you.

12 (Jury out at 12:30 p.m.)

13 THE COURT: I'd like to tie up one loose end before
14 we recess. We did locate the objections, and having done so,
15 regards the argument made by plaintiff's counsel as a
16 mischaracterization of what actually is included in the amended
17 objections. In any event, to the extent that the primary
18 objection is relevance, the Court overrules the objection.
19 I simply wanted the record to be clear that I now have in front
20 of me ECF No. 195. Now, with that, can we break for lunch?

21 MR. O'NEIL: Yes, Your Honor.

22 THE COURT: Ms. McDonald?

23 MS. MCDONALD: May I have a moment, Your Honor?
24 Just a moment. (Pause.) Your Honor, could you please clarify
25 what exhibit you're referring to when you say that I misstated

1 the objection?

2 THE COURT: Nine.

3 MS. MCDONALD: Thank you, Your Honor, and I apologize
4 for misrepresenting previously. I was mistaken.

5 THE COURT: Very well. Thank you. Is there anything
6 else before we recess? Thank you very much. I will ask that
7 you also endeavor to return by 1:40 so that we can resume at
8 1:45. Thank you.

9 (Recess from 12:33 p.m. 1:57 p.m.)

10 THE COURT: Good afternoon. I apologize for the brief
11 delay in resuming. Are you ready to continue, Mr. O'Neil?

12 MR. O'NEIL: Yes, Your Honor.

13 THE COURT: Very well. Mr. Dawson, let me ask you to
14 come back to the stand, please. Have a seat, and Ms. Lesley
15 will escort the jury in.

16 (The witness resumes the stand.)

17 (Jury in at 1:59 p.m.)

18 THE COURT: Now, members of the jury, thank you for
19 bearing with us during the brief delay in resuming. Thank you.
20 Please be seated. Mr. O'Neil will continue his direct
21 examination of Mr. Dawson.

22 BY MR. O'NEIL:

23 Q. Mr. Dawson, could you turn to Defendants' Trial Exhibit 67.
24 Do you see that document?

25 A. Yes, I do.

1 Q. Do you recognize it?

2 A. The top is an e-mail from Marjorie to John. No. It's to
3 Marjorie from me, cc'ing John, I'm sorry, on January 26, 2012.

4 MR. O'NEIL: Your Honor, we'd like to move Defendants'
5 Trial Exhibit 67 into evidence.

6 THE COURT: Is that without objection, Ms. McDonald?

7 MS. MCDONALD: No objection, Your Honor.

8 THE COURT: Defendants' Exhibit 67 will be admitted
9 without objection.

10 (Defendant Exhibit No. 67
11 received into evidence.)

12 BY MR. O'NEIL:

13 Q. Mr. Dawson, these were communications from you and
14 Marjorie to John Xereas around January 25, 2012. Correct?

15 A. 26th, yes. 25th and 26th.

16 Q. 25th and 26th.

17 A. Yes.

18 Q. What were the purposes of these e-mails?

19 A. To try to get things back on track at Riot Act.

20 Q. Were they specifically addressing a meeting of the
21 managing members?

22 A. Yes, they are.

23 Q. And in the e-mail below, from Marjorie to John, cc'ing you,
24 Marjorie's e-mail starts, "I just received your phone text that
25 you have offsite meetings over the next two days and that Monday

1 will be your next available day to meet. Unfortunately,
2 we cannot wait to meet until then." Do you see that?

3 A. Yes.

4 Q. And then you reiterate it in the responsive e-mail: "It's
5 really important for us to meet tomorrow so we can go over the
6 very serious issues that we have that have come to light at Riot
7 Act." Do you see that?

8 A. Yes, I do.

9 Q. Do you recall these exchanges with --

10 A. I do.

11 Q. -- Mr. Xereas?

12 A. I do.

13 Q. In Ms. Heiss's e-mail, at the end of the second -- can you
14 see that?

15 A. Yes.

16 Q. In Ms. Heiss's e-mail of January 25th, the second
17 paragraph, she stated, "At our last managing member meeting last
18 Thursday, Geoff and I told you that we needed to meet again ASAP
19 to discuss important business issues. Geoff and I have been at
20 Riot Act every day this week and hoped to find you there so that
21 we could talk, but as far as we know, you have not been there
22 since Saturday evening." Do you recall Ms. Heiss making that
23 statement to Mr. Xereas?

24 A. I do.

25 Q. Is that consistent with your recollection of Mr. Xereas's

1 activities between the January 19th meeting and the January 26th
2 meeting?

3 A. Yes, it is.

4 Q. And you went ahead and conducted a meeting of the managing
5 members on January 26th. Correct?

6 A. Yes, we did.

7 Q. Would you turn to Defendants' Trial Exhibit 27. Could you
8 tell the jury what this document is?

9 A. Yes. It's a Riot Act, LLC Members Meeting, dated January
10 26, 2012.

11 Q. And again, was this transcript made from a recording of the
12 meeting held on the 26th?

13 A. Yes, it was.

14 Q. Was this provided to Mr. Xereas?

15 A. I believe it was.

16 MR. O'NEIL: Your Honor, defendants move for entry of
17 Defendants' Trial Exhibit 27 into evidence.

18 THE COURT: Is that without objection, Ms. McDonald?

19 MS. MCDONALD: One moment.

20 No objection, Your Honor.

21 THE COURT: Thank you, Ms. McDonald. Defendants'
22 Exhibit 27 will be admitted without objection.

23 (Defendant Exhibit No. 27
24 received into evidence.)
25

1 BY MR. O'NEIL:

2 Q. The transcript of this meeting reveals that the majority
3 of the managing members of the LLC voted to remove Mr. Xereas's
4 management authority for booking acts at the club. Is that
5 correct?

6 A. That's correct.

7 Q. And by doing that, were you intending to fire Mr. Xereas
8 from all of his responsibilities?

9 A. Not from all of his responsibilities, no.

10 Q. You weren't expecting him to walk away from the business
11 and never come back. Correct?

12 A. Not at all.

13 Q. Because there were still shows that were planned, and he
14 was typically the one on site who handled the comedians and
15 handled the shows and assisted in the running of the theater.
16 Correct?

17 A. He was our comedy expert. He was our guy. He booked the
18 shows. He knew the comedians. He was the person we needed to
19 complete those things.

20 Q. And at no time during this meeting did you and Ms. Heiss
21 decide that Mr. Xereas, all of his responsibilities were to be
22 removed. Is that correct?

23 A. That is correct.

24 Q. We heard some testimony earlier that you received a cease
25 and desist letter on February 14, 2012, from Mr. Xereas 's

1 attorney. Do you recall that?

2 A. Yes, I do.

3 Q. I'd ask you to turn to Defendants' Trial Exhibit 36.

4 Do you recognize this document?

5 A. Yes, I do.

6 Q. Could you tell the jury what it is?

7 A. This is an e-mail from our attorney, Mike Conlon, to John's
8 attorney, Irwin Liptz.

9 Q. Is it an e-mail or...

10 A. It's a letter.

11 Q. It's a letter from your attorney, and it's in response to
12 the cease and desist letter?

13 A. Yes, it is.

14 Q. And you hired Mr. Conlon, or the LLC hired Mr. Conlon,
15 to represent your interests?

16 A. Yes, we did.

17 MR. O'NEIL: Your Honor, we move for the entry of
18 Defendants' Trial Exhibit 36 into evidence.

19 THE COURT: Is that without objection, Ms. McDonald?

20 MS. MCDONALD: Just a moment, Your Honor.

21 May I approach?

22 THE COURT: Yes.

23 (Bench conference.)

24 MS. MCDONALD: Your Honor, I believe this exhibit
25 constitutes hearsay and opinion testimony not from an expert

1 witness.

2 THE COURT: What is the objection, Ms. McDonald?

3 MS. MCDONALD: Hearsay and opinion testimony.

4 THE COURT: Mr. O'Neil?

5 MR. O'NEIL: I think it represents a response from
6 the LLC to the cease and desist letter and, as such, is just
7 memorializing the company's position at the time.

8 THE COURT: The objection is overruled.

9 (End of bench conference.)

10 THE COURT: Defendants' Exhibit 36 will be admitted
11 over objection.

12 (Defendant Exhibit No. 36

13 received into evidence.)

14 BY MR. O'NEIL:

15 Q. Mr. Dawson, is it fair to say that you and Ms. Heiss and
16 the LLC, the defendants in this matter, were surprised when you
17 received the cease and desist letter?

18 A. Very surprised, yes.

19 Q. Was it upsetting to you?

20 A. Confusing, upsetting, sure. You know, stop using the name
21 of the business that we all started? Yeah, that was kind of a
22 shocker.

23 Q. It threatened the viability of the company, didn't it?

24 A. It threatened the very existence of the company, yes, in
25 my opinion.

1 Q. In the first paragraph, Mr. Conlon writes that "My clients
2 are very concerned by the recent actions of your client, John
3 Xereas, with respect to the LLC. As a managing member,
4 Mr. Xereas has a legal obligation to act in the best interests
5 of Riot Act and the business it owns, Riot Act Comedy Theater.
6 But his actions now appear to be aimed at advancing his own
7 interests to the detriment of the LLC and its other owners."
8 Was that statement consistent with your position at the time?

9 A. Very much so.

10 Q. The second paragraph, if you could read that to the jury?

11 A. "The latest and most blatant attempt to force his will upon
12 the LLC, your cease and desist letter of February 14th, shows a
13 callous disregard for his responsibilities to the LLC. However,
14 it is not the first time he's placed his interest above that of
15 Riot Act."

16 Q. And Mr. Conlon goes on to state that Mr. Xereas has failed
17 to cooperate with the other managing members to document or
18 confirm the comedy acts that were to perform at the theater or
19 assist in any way to make sure that the appearances of those
20 acts went smoothly. Is that consistent with your recollection
21 of that time?

22 A. Yes, it is.

23 Q. Had Mr. Xereas come into the theater at all between
24 February 1 and February 14?

25 A. Not to my knowledge.

1 Q. The next paragraph down states that "When the social media
2 of Riot Act, including its website, Facebook page, and YouTube
3 page, mysteriously and simultaneously went down, he was asked to
4 assist in getting these sites up and working again because he
5 was the one responsible for administering them. He refused to
6 help in any way." Is that consistent with your understanding?

7 A. Yes, it is.

8 Q. And finally, at the bottom, "Your letter of the 14th" --
9 and by that, he's referring to the cease and desist letter?

10 A. Yes.

11 Q. -- "transforms his failure to act properly as a manager
12 from acts of passive negligence to a level of open and active
13 efforts to damage the LLC and its business." Do you see that?

14 A. Yes.

15 Q. And in your view, was Mr. Xereas taking open and active
16 efforts to damage the LLC and its business?

17 A. In my opinion, yes, he was.

18 Q. Did some of those actions include complaints by Mr. Xereas
19 filed with the District of Columbia government about the zoning
20 at Penn Social?

21 A. Yes, they did.

22 MS. MCDONALD: Your Honor, may I approach?

23 THE COURT: Yes.

24 (Bench conference.)

25 THE COURT: Yes.

1 MS. MCDONALD: Your Honor has excluded testimony
2 regarding the zoning issues related to the company. I think it
3 would be improper now to permit this testimony when the reason
4 Mr. Xereas was pursuing contacts with the licensing agencies was
5 in part because of the zoning issues.

6 MR. O'NEIL: Your Honor, I filed the motion *in limine*
7 to prevent the plaintiff from presenting evidence that the
8 comedy theater was in violation of its zoning. That doesn't
9 mean I can't put on evidence that he was making complaints to
10 the D.C. government about that issue and damaging the business.

11 MS. MCDONALD: Your Honor, the other issue this
12 relates to is that Mr. Xereas was concerned about how the
13 defendants were behaving at the club under his trademark, and
14 that testimony was also precluded yesterday.

15 THE COURT: The objection is overruled.

16 (End of bench conference.)

17 BY MR. O'NEIL:

18 Q. Mr. Dawson, do you remember the question?

19 A. If we could repeat it, it would be --

20 Q. Were one of the things that John Xereas was doing was
21 filing notices or complaints with the D.C. government about
22 Riot Act/Penn Social's certificate of occupancy and its zoning?

23 A. Yes, he was.

24 Q. And did those actions similarly put the viability of the
25 business at risk?

1 A. Well, as a business owner in D.C., I can tell you that I
2 don't go out of my way to notify D.C. and ask them questions
3 about my own existence, my licenses, my -- you know, you don't
4 really want to shine a light on yourself with the D.C.
5 government if you don't have to.

6 Q. What's the consequence if your certificate of occupancy is
7 pulled by the government?

8 A. Well, you're done.

9 MS. MCDONALD: Objection, Your Honor. Calls for
10 speculation.

11 THE COURT: The objection is overruled.

12 BY MR. O'NEIL:

13 Q. Mr. Dawson, I'd ask you to turn to Exhibit 33.

14 MR. O'NEIL: Can we approach, Your Honor?

15 THE COURT: Yes.

16 (Bench conference.)

17 MR. O'NEIL: I don't want to be in the habit of
18 anticipating Ms. McDonald's objections, but this document was
19 the subject of one of their motions *in limine* and our use of it
20 was restricted to impeachment. Yesterday we heard testimony,
21 repeated statements, that we're still using the Riot Act name on
22 our liquor license, the implication being that we're doing so
23 intentionally, and we think this document is properly used as
24 impeachment of that testimony.

25 THE COURT: May I see the exhibit, please?

1 MR. O'NEIL: The only portion of the document that
2 I'm going to refer to is the last paragraph.

3 THE COURT: Thank you.

4 MS. MCDONALD: Your Honor --

5 THE COURT: Well, bear with me, please, while I read
6 the last paragraph. (Court reviewing document.)

7 What is your concern, Ms. McDonald?

8 MS. MCDONALD: Well, Your Honor excluded this in the
9 motion *in limine*. Mr. O'Neil is not permitted to impeach his
10 own witness's testimony.

11 MR. O'NEIL: I'm impeaching the testimony that was
12 presented yesterday.

13 THE COURT: Are you suggesting this is impeachment
14 of Mr. Dawson as opposed to impeachment of another witness?

15 MS. MCDONALD: There's not another witness on
16 the stand, Your Honor. It absolutely would be offered as
17 impeachment of Mr. Dawson. It doesn't make any sense.

18 THE COURT: Mr. O'Neil?

19 MR. O'NEIL: Well, Your Honor, their motion *in limine*
20 was based on the fact that they said they conducted a search of
21 ABRA records and didn't find any evidence that we had submitted
22 anything to get the name changed; and perhaps I didn't bring it
23 to the Court's attention, but this letter suggests exactly the
24 opposite.

25 MS. MCDONALD: Your Honor, he absolutely did not bring

1 it to the Court's attention, nor did he bring it to the
2 plaintiff's attention, and the Court issued --

3 THE COURT: Do you acknowledge, Ms. McDonald, that
4 there was testimony which you elicited concerning the use of
5 the name on the licensing documents?

6 MS. MCDONALD: Yes, Your Honor. We elicited testimony
7 with respect to the continuing use of the trademark.

8 THE COURT: So why is this paragraph not relevant for
9 the limited purpose described?

10 MS. MCDONALD: Well, Your Honor explicitly excluded
11 this issue in your opinion on the motions *in limine*.

12 THE COURT: Did I not indicate that what was excluded
13 was the issue of action by any D.C. entity?

14 MS. MCDONALD: I'm sorry. Can you repeat the
15 question, Your Honor?

16 THE COURT: Do you acknowledge that it is the case
17 that what I excluded was the issue of testimony which would have
18 been speculative concerning why the D.C. government did or did
19 not take any action?

20 MS. MCDONALD: Your Honor excluded --

21 THE COURT: This is a different --

22 MS. MCDONALD: -- hearsay.

23 MR. O'NEIL: This is an official government letter to
24 your client, responding to his questions.

25 MS. MCDONALD: It's hearsay.

1 THE COURT: The objection is overruled.

2 MR. O'NEIL: Thank you, Your Honor.

3 (End of bench conference.)

4 BY MR. O'NEIL:

5 Q. Mr. Dawson, could you tell the jury what this --

6 THE COURT: Defendants' Exhibit 33 is admitted over
7 objection.

8 MR. O'NEIL: Thank you, Your Honor. I'll withdraw
9 that question.

10 (Defendant Exhibit No. 33
11 received into evidence.)

12 BY MR. O'NEIL:

13 Q. Exhibit 33 appears to be a letter from the government
14 of the District of Columbia Alcoholic Beverage Regulation
15 Administration dated September 23, 2013. Correct?

16 A. Yes, it is.

17 Q. And at that time you were operating as Penn Social?

18 A. Yes, we were.

19 Q. I point your attention to the last page of the letter.
20 On point 14, the question posed by Mr. Xereas to ABRA -- and
21 ABRA has jurisdiction over your liquor license. Correct?

22 A. Yes, they do.

23 Q. And the pulling of your liquor license would put you out
24 of business. Correct?

25 A. Effectively, yes.

1 MS. MCDONALD: Speculation.

2 THE COURT: Overruled.

3 BY MR. O'NEIL:

4 Q. Mr. Xereas asks the question of ABRA: "Has ABRA been
5 contacted or petitioned by any elected or appointed official on
6 behalf of Penn Social, defendants Dawson and/or Heiss? If so,
7 who and when? May we see the correspondence? Has ABRA been
8 contacted or petitioned by Boston Properties on behalf of Penn
9 Social, defendants Dawson and/or Heiss?" Do you see that?

10 A. Yes, I do.

11 Q. Who is Boston Properties?

12 A. Boston Properties was our landlord until they sold to
13 Cushman & Wakefield a couple years ago.

14 Q. And the ABRA response below that, could you read that for
15 the jury?

16 A. Response: "Nothing has been submitted by an elected or
17 appointed official on behalf of Geoffrey Dawson and/or Marjorie
18 Heiss. It may be helpful to know, however, that ANC 2C has
19 submitted a settlement agreement that would resolve the protest
20 of the renewal of the liquor license.

21 "Also, a transfer application has been submitted changing
22 the ownership interest of Penn Social, LLC, that also removes
23 John Xereas as a listed officer. This application is unable to
24 proceed during the pendency of the current lawsuit against Riot
25 Act DC, LLC, Civil Action No. 1:12-CV-456-RWR."

1 Q. And do you know if that case is the very case we're trying
2 today?

3 A. I believe it is.

4 Q. And so do you understand from this document that the D.C.
5 government was unable to proceed with any changes during the
6 pendency of this litigation?

7 A. Yes. They told me that they just --

8 MS. MCDONALD: Objection, Your Honor. Hearsay.

9 THE COURT: Is the objection to form?

10 MS. MCDONALD: Hearsay, Your Honor.

11 THE COURT: The objection is overruled.

12 THE WITNESS: I was informed by Fred Moosally, the
13 head of ABRA, in a conversation, that they weren't going to
14 touch this until we resolved our issue. And at the time, we
15 figured, you know, what does it take to resolve a lawsuit?
16 So I think that was their position too.

17 BY MR. O'NEIL:

18 Q. And that was nearly five years ago.

19 A. Yeah, it was.

20 Q. And that issue is still then pending, pending the
21 resolution of this lawsuit?

22 A. It's sitting open until we resolve our issue, then they'll
23 reissue the license in the name of Penn Social, I imagine.

24 Q. And you were present in the courtroom yesterday when you
25 heard Mr. Morrissey's testimony. Correct?

1 A. Yes, I was.

2 Q. And his, for lack of a better term, conclusion that there
3 was \$5 million in unsupported invoices at Penn Social that
4 should correspond to an extra \$5 million in your bank account
5 that could be distributed to owners and others entitled to those
6 monies, do you remember that?

7 A. I do. That would solve a lot of problems.

8 Q. Do you check your bank balance?

9 A. We do regularly.

10 Q. And do you reconcile it to the QuickBooks accounts?

11 A. Every month we review, we reconcile it with QuickBooks.
12 Our accountants do. At Tin Shop we review those accounts.
13 We make sure that the monthly costs are consistent with the
14 previous month's. We look at year-to-year costs. We follow
15 the trends that go up and down, make sure we're sort of on
16 track, and that if we have projections, we're trying to grow
17 a certain part of the business, we look at that.

18 Q. And the QuickBooks accounts are the official books of the
19 business. Correct?

20 A. They are.

21 Q. And is it -- who in the company at Penn Social is
22 responsible for inputting the information into QuickBooks?

23 A. Well, at Penn Social the information historically was put
24 into QuickBooks by Cindy Vaughn and reconciled and then
25 presented to us, and she did our taxes, as well, using that.

1 Q. Okay. And you've changed the system since then?

2 A. Since then we've gone to a different system, but the same
3 procedure goes on. It's just fewer steps and greater accuracy
4 to put all the information into a new system.

5 Q. And Mr. Morrissey testified that you had some \$170,000 in
6 unsupported expenses. Do you recall that?

7 A. Yes.

8 Q. Do you regularly submit expense requests to Penn Social
9 to pay when you incur an expense on the company's behalf?

10 A. Whenever we do, yes. During the build-out, for instance,
11 we had to hire people to do construction, we had to buy
12 equipment, we had to buy tables and chairs, we had to buy patio
13 furniture, we had to buy all sorts of things; and so I used my
14 own personal credit card to do that, and I get a reimbursement.
15 Or Peter Bayne, my business partner, has done that as well.

16 Q. And Mr. Morrissey also testified about a \$50,000 payment by
17 Penn Social to Tin Shop?

18 A. Yes. That was one of the management fees. It was a lump
19 sum. Basically, that year I think we took a hundred thousand
20 in management fees. And to put that in perspective, for other
21 businesses we have a 5 percent annual management fee on
22 revenues. So the business makes a hundred thousand dollars, it
23 would be a \$5,000 management fee. That \$100,000 management fee
24 at Penn Social is quite a bit less than 5 percent. It's in fact
25 about half of that, 2-1/2 percent.

1 Q. And what's covered by that management fee?

2 A. Well, our office costs are really what's covered by that.
3 We don't take salaries. We get paid when the businesses
4 distribute. So we pay -- for instance, when we transferred from
5 QuickBooks to Restaurant365, it was an incredibly complicated
6 procedure. Somebody has to put all that data in, and we did
7 that in our office. We set up, we test, make sure it all lines
8 up, and then we use that data to verify that our numbers are
9 good. So that's one instance.

10 We also do maintenance. We check on contracts with, for
11 instance, a cleaning vendor, and make sure they're doing their
12 job well. We source plumbers, electricians. We talk to the
13 managers on a regular basis. We have a social media guy who
14 works on our Twitter and Facebook and social media across our
15 businesses. We outsource other social media to other people.
16 So the costs that run through Tin Shop are applied back to the
17 businesses.

18 Q. Mr. Morrissey also referred to a loan that he said you
19 negotiated with Penn Social and that you were on both ends of
20 the transaction, and you negotiated the loan --

21 A. Well, yeah. Pretty simple negotiation, really. I had a
22 line of credit with National Capital Bank of Washington, a bank
23 I'd done business with for 20 years. It was a loan that cost 5
24 percent interest. So I simply lent money to Penn Social, and
25 they paid the 5 percent interest that I was paying National

1 Capital Bank, same interest. If that interest changed at any
2 point, they would have paid the difference, but I think it was
3 pretty consistently right around 5 percent. So, yes, I made
4 that loan happen. I negotiated it on both sides. It was simply
5 a way to provide money to allow Penn Social to -- and Riot Act
6 to, you know --

7 Q. But it's the case you weren't paying your bank 5 percent
8 and charging Penn Social 10 percent?

9 A. No. I wasn't making any money on that at all. It was just
10 a pass-through.

11 Q. And that loan, again, was secured by your personal residence.
12 Correct?

13 A. Yes. Yes, it was.

14 Q. We talked earlier this morning about the costs the company
15 had incurred under the indemnification provision of the
16 operating agreement. Did the company incur additional expenses
17 during the period January to July 2012?

18 A. At the point when we had to scramble to try to figure
19 out the comedy business, we hired one of our investors, John
20 Sullivan, who's in the entertainment business. He's an actor
21 and familiar with bookings and agencies and agents, primarily in
22 California, but nationally as well, New York. He had brought in
23 \$600,000 in investment into the business and was extraordinarily
24 interested in having it succeed since he'd brought in his friends.

25 So we hired him to come and help us try to navigate the

1 comedy world. So that was one part of it. And just generally
2 trying to keep the business going, I'd say it cost us, you know,
3 \$50,000, roughly, would be my guess.

4 Q. And then, in rebranding from Riot Act to Penn Social after
5 you made the decision that comedy was no longer a viable business,
6 you incurred costs in that process too, didn't you?

7 A. Yes. We had to change some physical things about the
8 business. You know, what we had going for us was we had a bunch
9 of screens we put in that could show things, sports, primarily.
10 So that was repurposed. We put in some games, shuffleboard
11 tables. We leased a lot of that. We put in seating upstairs,
12 created an area where people could hang out.

13 Let's see. We switched around the layout of the downstairs
14 service areas into a bar, so there was some build-out involved.
15 I think, you know, it was a couple hundred thousand bucks,
16 roughly, by the time we got it all, you know, rebranding, new
17 logo, new signs, all that.

18 Q. I'm going to ask you, Mr. Dawson, in July of 2012, when you
19 undertook the rebranding to Penn Social, did you do anything or
20 provide anything to Mr. Xereas about the trademarks?

21 A. I mean, we provided information to the investors about the
22 change in the brand, about Penn Social being the new name and
23 about the plan going forward. I mean -- and I was in close
24 contact with the -- many of the investors. I certainly spoke
25 with all of the investors during the course of this time,

1 telling them that I really thought we could save their
2 investment and that, you know, we were working hard to do that.
3 And we presented a -- you know, a modified business plan, but
4 really just a game plan for them to see.

5 Q. Did you provide anything to Mr. Xereas regarding his alleged
6 trademark material and his domains and his e-mail accounts?

7 A. In July?

8 Q. Through your attorneys?

9 A. We very well may have. You know -- I -- you know.

10 Q. Does the phrase "quitclaim deed" --

11 A. Oh, yes, we did. We did a quitclaim -- when we were --
12 sorry. When Penn Social was -- you know, we never stopped
13 running the business. So we were Riot Act, and then one day
14 we were Penn Social. The whole time we were doing all the
15 construction at night, during the day, opening at night and
16 being -- it was quite a show. But one day we woke up, and we
17 were Penn Social. So at that point we provided a quitclaim to
18 Mr. Xereas, saying, here's your Riot Act name, you know, live
19 well and prosper.

20 MR. O'NEIL: Thank you.

21 I have nothing further, Your Honor.

22 THE COURT: Counsel, let me ask you to approach,
23 please, regarding our schedule.

24 (Bench conference.)

25 THE COURT: Are you ready to begin, or would you like

1 a five-minute recess?

2 MS. MCDONALD: A five-minute recess would be great.

3 THE COURT: Very well. The deputy clerk was informed
4 that one juror has asked if the jury can be excused today by
5 4:15. I have to answer the question yes. I realize that may
6 mean that you will not complete your cross-examination today.
7 The reality is that's only 15 minutes earlier than we would
8 recess anyway. So I suggest we begin after the brief recess and
9 make as much progress as we can.

10 MS. MCDONALD: I expect we'll be able to complete
11 today, Your Honor.

12 THE COURT: Very well. All right. Thank you.

13 (End of bench conference.)

14 THE COURT: Members of the jury, at this time we will
15 take a brief recess. I will suggest 10 minutes to give you a
16 chance to stretch and refresh yourselves. I am aware that one
17 of you asked whether we could recess today by 4:15, and the
18 answer to that question is yes. I share that with you so there
19 will not be alarm concerning when we will stop for the day. So
20 when we resume, Ms. McDonald, on behalf of the plaintiff, will
21 undertake her cross-examination of Mr. Dawson. Thank you.

22 (Jury out at 2:34 p.m.)

23 THE COURT: Thank you. We will all take 10 minutes.

24 (Recess from 2:35 p.m. to 2:49 p.m.)

25 THE COURT: We're back on the record.

1 Counsel, I believe you were informed by the deputy clerk
2 that one juror asked what is a quitclaim deed. I'm going to
3 suggest that you ask that question, Mr. O'Neil, and after it is
4 answered, then you may begin your cross, Ms. McDonald.

5 MR. O'NEIL: Your Honor, we actually have a copy of
6 the quitclaim deed that I'll offer into evidence. Mr. Dawson's
7 not an attorney, so -- if that's acceptable.

8 THE COURT: That's fine.

9 (Jury in at 2:50 p.m.)

10 THE COURT: Members of the jury, thank you. Please be
11 seated. I understand that one of you asked a question about the
12 term "quitclaim deed." Mr. O'Neil is going to follow up, and
13 after he does, then Ms. McDonald will begin her
14 cross-examination.

15 MR. O'NEIL: Thank you, Your Honor.

16 BY MR. O'NEIL:

17 Q. Mr. Dawson, could you turn to Defendants' Trial Exhibit 47?

18 A. Okay.

19 Q. Was this a document you asked your attorneys to prepare?

20 A. Yes, it is.

21 Q. And on page 2 of this document, is that your signature with
22 the date of 7/1/2012?

23 A. Yes, it is.

24 MR. O'NEIL: Your Honor, at this time we'd like to
25 move into evidence Defendants' Trial Exhibit 47.

1 THE COURT: Is that without objection, Ms. McDonald?

2 MS. MCDONALD: Without objection, Your Honor.

3 THE COURT: Thank you, Ms. McDonald. Defendants'

4 Exhibit 47 will be admitted without objection.

5 (Defendant Exhibit No. 47

6 received into evidence.)

7 BY MR. O'NEIL:

8 Q. Mr. Dawson, I know you're not a lawyer, but what is your
9 understanding of the purpose and effect of this document that
10 you signed?

11 A. To my understanding, a quitclaim is when we give away any
12 rights whatsoever to a name, in this case the name "Riot Act
13 Comedy," or "Riot Act" at all, anything to do with it.

14 Q. Okay. So whatever rights you have, you're providing them
15 to, in this case, the assignee, John Xereas.

16 A. Yes.

17 MR. O'NEIL: I have nothing further, Your Honor.

18 THE COURT: Thank you, Mr. O'Neil. Ms. McDonald.

19 MS. MCDONALD: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MS. MCDONALD:

22 Q. Good afternoon, Mr. Dawson.

23 A. Good afternoon.

24 Q. You testified on direct examination that Marjorie is
25 a stickler for the details. Is that correct?

1 A. Yes.

2 Q. And she prepared many contracts for you in your businesses
3 over the years. Correct?

4 A. Yes, she has.

5 Q. She drafted the operating agreement?

6 A. Yes, she did.

7 Q. And the operating agreement does not contain a provision
8 licensing the Riot Act trademark.

9 A. No, it doesn't.

10 Q. The operating agreement does not contain a provision
11 transferring ownership of the Riot Act trademark.

12 A. No, it doesn't.

13 Q. She also drafted the Amended Operating Agreement.

14 A. Yes, she did.

15 Q. The Amended Operating Agreement does not contain a
16 provision licensing the Riot Act trademark?

17 A. No, it does not.

18 Q. And the Amended Operating Agreement does not contain a
19 provision transferring ownership of the Riot Act trademark.

20 A. That's correct.

21 Q. She drafted the offering memorandum.

22 A. Yes, she did.

23 Q. The offering memorandum did not contain a provision
24 licensing the Riot Act trademark.

25 A. It does not.

1 Q. And the offering memorandum does not contain a provision
2 transferring ownership of the Riot Act trademark.

3 A. That's right.

4 Q. You also testified, "We had to make sure that we had
5 control of the Riot Act name," but there's not a single document
6 that provides for the licensing of the Riot Act trademark.

7 Correct?

8 A. Correct.

9 Q. There's not a single document that provides for the
10 transfer of the Riot Act trademark.

11 A. Correct.

12 Q. I'd like to refer now to Defendants' Trial Exhibit No. 33.
13 Do you still have that, Mr. Dawson?

14 A. Is that all in --

15 Q. Yes.

16 A. Okay.

17 Q. I'd like to refer your attention to the last page of the
18 document, please.

19 A. Okay.

20 Q. The underlined portion of the document reads, "A transfer
21 application has been submitted changing the ownership interest
22 of Penn Social, LLC, but also removes John Xereas as a listed
23 officer." Did I read that correctly?

24 A. Yes, you did.

25 Q. And to be clear, that refers to a transfer application with

1 respect to the ownership of Penn Social?

2 A. Yes, it does.

3 Q. That document does not refer to a liquor license, does it?

4 A. Which document?

5 Q. The document before you does not refer to a transfer
6 application for the liquor license?

7 A. I'm not following you. I'm sorry.

8 Q. Does it read, "A transfer application has been submitted
9 for a liquor license"?

10 A. It -- in this case it refers to a liquor license because
11 the ownership -- in D.C., when you have ownership change in the
12 names owning the liquor license, you notify the alcohol bureau.
13 So I believe that that change refers to us notifying them that
14 there had been a change in the ownership.

15 Q. This refers to a change in ownership interest and not a
16 change in the liquor license. Correct?

17 A. Well, but they require that we notify them when there's a
18 change in the ownership interest so that they can accurately
19 reflect that on the liquor license itself.

20 Q. So the ownership interest would have to be changed to
21 effectuate a change in the licensing of the liquor license?

22 A. The ownership would have to be -- I'm sorry. Say that once
23 again?

24 Q. I'll move on.

25 A. Okay.

1 Q. This does not read that a transfer application has been
2 submitted to change the certificate of occupancy, does it?

3 A. No. It doesn't say that.

4 Q. It also does not read that a transfer application has
5 been submitted to change the certificate of trade, does it?

6 A. No. It doesn't say that either.

7 Q. I'd like to refer you now to Defendants' Trial Exhibit
8 No. 47. Do you have that in front of you, Mr. Dawson?

9 A. The quitclaim trademark and domain name assignment?

10 Yes, I do.

11 Q. This document was prepared by your attorney?

12 A. Yes, it was.

13 Q. It was prepared in July of 2012?

14 A. Yes. The 1st of July of 2012.

15 Q. Was that after litigation was already underway?

16 A. Litigation started earlier that year, yes.

17 Q. Mr. Dawson never -- or excuse me -- Mr. Xereas never signed
18 the quitclaim. Correct?

19 (Witness reviewing document.)

20 A. Not in my presence. Not according to this, no.

21 Q. Not to your knowledge?

22 A. Not to my knowledge.

23 Q. The quitclaim was intended to make clear that the LLC was
24 quitting whatever rights it had to the Riot Act name, if any.

25 Correct?

1 A. That's correct. I believe. I'm not a lawyer, but that's --

2 Q. In your understanding?

3 A. -- my understanding of it, yeah.

4 Q. Yet Penn Social has continued to use the Riot Act name
5 after July 2012 on its certificate of trade. Correct?

6 A. Because ABRA wouldn't let us take it off. Correct.

7 Q. I don't believe that's consistent with your testimony, sir.
8 Penn Social has continued --

9 THE COURT: The Court will strike the extraneous
10 comment and ask that you ask your next question.

11 BY MS. MCDONALD:

12 Q. Penn Social has continued to use the Riot Act name on its
13 liquor license post July 2012. Correct?

14 A. Yes. Its name -- Riot Act is on the liquor license after
15 July '12.

16 Q. And the Riot Act name is on the certificate of occupancy
17 for Penn Social after July 2012. Correct?

18 A. Yes. That's correct.

19 Q. You testified on direct about a January 19, 2010, I
20 believe, meeting? Perhaps you can correct me. Perhaps it
21 was later than that.

22 A. 2012.

23 Q. 2012. Thank you, Mr. Dawson.

24 A. Yep.

25 Q. Mr. Xereas brought a court reporter to that meeting, did he

1 not?

2 A. I believe he did, yes.

3 Q. That court reporter was denied admission?

4 A. I -- the court reporter did not stay and record the
5 proceedings.

6 Q. Instead, the recordings were made on your phone?

7 A. That's correct.

8 Q. And the recordings were prepared by your attorney?

9 A. I don't know who did the transcription, but my attorney
10 probably had something to do with it.

11 Q. But it was not an official court reporter?

12 A. I don't know. I don't know what the -- I honestly don't
13 know what the process was from -- you know, for transcribing
14 that.

15 Q. But there was no court reporter present?

16 A. There was no court reporter present.

17 Q. I'd like to refer now to Plaintiff's Exhibit 305.27.

18 MS. MCDONALD: May the record reflect I'm handing
19 Mr. O'Neil a copy?

20 THE COURT: Yes.

21 MS. MCDONALD: May I approach, Your Honor?

22 THE COURT: Yes, you may.

23 THE WITNESS: Thank you.

24 BY MS. MCDONALD:

25 Q. You recognize this document, don't you, Mr. Dawson?

1 A. Let's see. This is the loan and security agreement between
2 Penn Social and National Capital Bank for a loan made to Penn
3 Social.

4 Q. Is this the loan that you testified about during direct
5 examination?

6 A. No, it's not. It's the -- no, it's not.

7 Q. Is this a different loan that you secured for Penn Social?

8 A. The loan I testified about was my own personal line of
9 credit that I used to lend money to Penn Social. This is a
10 refinance of that loan when we were done with the construction
11 and the business had stabilized, and we were able to go to the
12 bank and say, hey, we're making money, can we turn this into a
13 term loan? The bank did that, and we're still paying it today.

14 Q. I'd like to refer you to Section 4(f). That section states
15 that any information you provide in financial statements or
16 other documents that are provided to National Capital Bank are
17 true and accurate. Is that correct?

18 A. I'm sorry. I'm still looking for 4(f). There we go.
19 That's correct.

20 MR. O'NEIL: Objection, Your Honor.

21 THE COURT: Let me ask you to approach, please.

22 (Bench conference.)

23 MR. O'NEIL: I don't see any relevance of the
24 document.

25 MS. MCDONALD: Your Honor, defendants put this

1 document into issue. This is the refinance of the loan that
2 Mr. Dawson gave to the company.

3 MR. O'NEIL: How did we put it at issue?

4 THE COURT: Could you explain, Ms. McDonald?

5 MS. MCDONALD: Your Honor, they asked Mr. Dawson about
6 the loan that he gave to the company. I'm continuing to follow
7 up on that issue.

8 MR. O'NEIL: He just testified it was a different loan.

9 MS. MCDONALD: He testified that it was a refinance of
10 that loan.

11 THE COURT: To what issue would that be relevant?

12 MS. MCDONALD: It's follow-up with respect to their
13 questioning on the loan, Your Honor.

14 THE COURT: But my question is to what is it relevant.

15 MS. MCDONALD: It's -- well, I intend to ask
16 Mr. Dawson about his veracity in the loan application.

17 THE COURT: While we're here at the bench, can I ask
18 you to explain, please?

19 MS. MCDONALD: He lied on the loan application,
20 Your Honor.

21 THE COURT: To what do you refer?

22 MS. MCDONALD: He stated that there was no ongoing
23 litigation when there was. He lied on the loan application.

24 THE COURT: Is the exhibit the application?

25 MS. MCDONALD: It's a loan security agreement,

1 Your Honor. It's an agreement. It's not an application.

2 THE COURT: May I see it, please?

3 MR. O'NEIL: There seems to be some creative numbering
4 going on with the 305.27. I'm not sure what that refers to.

5 MS. MCDONALD: You received our list.

6 MR. O'NEIL: No. I listed 305 followed by 306.

7 THE COURT: Where in here is there any statement of
8 Mr. Dawson's?

9 MS. MCDONALD: May I turn to my notes, Your Honor?

10 THE COURT: Yes.

11 (Counsel retrieves document.)

12 MS. MCDONALD: 4(h), Your Honor. There was ongoing
13 litigation, Your Honor.

14 THE COURT: My question is where is there a statement
15 in this document of Mr. Dawson?

16 MS. MCDONALD: Mr. Dawson attested in this document
17 that he was not in litigation --

18 THE COURT: How do I know that?

19 MS. MCDONALD: His signature is there, Your Honor.
20 I will elicit that testimony.

21 MR. O'NEIL: It seems to me, Your Honor, they're using
22 extrinsic evidence to attack the character for truthfulness of
23 the witness.

24 MS. MCDONALD: It's not character evidence, Your Honor.

25 THE COURT: The Court will overrule the objection

1 since Mr. Dawson's signature is on the document. However, I
2 expect, Ms. McDonald, that you'll refrain from the use of the
3 inflammatory term "he lied" until there's a basis for doing so.

4 MS. MCDONALD: Yes, Your Honor.

5 THE COURT: All right. Thank you.

6 (End of bench conference.)

7 THE COURT: The objection is overruled.

8 MS. MCDONALD: Thank you, Your Honor.

9 BY MS. MCDONALD:

10 Q. Mr. Dawson, we were just discussing the loan and security
11 agreement that you took out with National Capital Bank of
12 Washington.

13 THE COURT: Do you intend to move this into evidence?

14 MS. MCDONALD: Excuse me. Yes, Your Honor.

15 THE COURT: Plaintiff's Exhibit 305.27 will be
16 admitted without objection.

17 MS. MCDONALD: Thank you, Your Honor.

18 THE COURT: Excuse me. Admitted over objection.

19 (Plaintiff Exhibit No. 305.27
20 received into evidence.)

21 BY MS. MCDONALD:

22 Q. Mr. Dawson, we were just discussing your loan and security
23 agreement with National Capital Bank of Washington. Correct?

24 A. Yes, we were.

25 Q. I'd like to refer you to page 12.

1 (Technical difficulty with projector.)

2 THE COURT: I would suggest that if you have other
3 questions that you can ask which do not occasion display of the
4 exhibit that you do so now. The deputy clerk is calling so that
5 we can receive technical assistance.

6 MS. MCDONALD: Certainly, Your Honor.

7 THE COURT: Thank you.

8 BY MS. MCDONALD:

9 Q. That is your signature on page 12 of the document, correct,
10 Mr. Dawson?

11 A. Yes, it is.

12 Q. And the date of the agreement is March 10, 2015. Correct?

13 A. Yes, it is.

14 Q. I'd like to refer your attention now to section 4(h) of the
15 loan. Section 4(h) reads, "There are no actions, suits, or
16 proceedings pending or, to the knowledge of borrower, threatened
17 against borrower at law or in equity or before or by any
18 governmental authority." Did I read that correctly?

19 A. Yes, you did.

20 Q. That statement's not correct, is it, Mr. Dawson?

21 A. No, it's not.

22 Q. I'd like to move on now. You discussed on direct the
23 QuickBooks system. Correct?

24 A. Yes, we did.

25 Q. And that was an accounting system used for accounting and

1 taxes for the majority of the business period. Correct?

2 A. That's correct.

3 Q. It was used from the opening of the Riot Act business until
4 just recently?

5 A. Yes. I think so.

6 Q. And it's your bookkeeper that enters the company's data
7 into the QuickBooks. Correct?

8 A. We hire a bookkeeper who does it, yes.

9 Q. And you review the QuickBooks to ensure their accuracy?

10 A. Yes, I do.

11 Q. You also testified that you received reimbursements from
12 Riot Act/Penn Social for various expenses. Correct?

13 A. Yes, I have.

14 Q. And the company policy regarding reimbursements is that
15 you must submit a receipt?

16 A. Yes, we do.

17 Q. However, the company has reimbursed people for expenses
18 for which there is no receipt. Correct?

19 A. I don't know that that's correct or not. May have.

20 Q. You gave a deposition -- actually, two depositions in this
21 case, correct, Mr. Dawson?

22 A. I certainly was deposed, yes.

23 Q. One of those was as the corporate representative. Correct?

24 A. Yes.

25 Q. I'd like to refer now to your 30(b)(6) deposition transcript.

1 MS. MCDONALD: May the record reflect that I'm handing
2 a copy to Mr. O'Neil. May I approach, Your Honor?

3 THE COURT: Yes, you may.

4 THE WITNESS: Thank you.

5 BY MS. MCDONALD:

6 Q. Mr. Dawson, I've handed you a copy of your -- what's known
7 as a 30(b)(6) transcript where you testified as the corporate
8 representative. Is that correct?

9 A. Yes, it is.

10 Q. And you testified under oath. Correct?

11 A. Yes, I did.

12 Q. I'd like to refer your attention to page 52.

13 Starting at line 2, please read to yourself lines 2 to 5.

14 A. Hold tight. Hold tight. There's four pages to a page.
15 Bear with me. You said 52?

16 Q. Fifty-two. Please read to yourself page 52, lines 2 to 4.

17 (Witness reviewing document.)

18 A. Okay.

19 Q. Does that refresh your recollection, Mr. Dawson, that
20 people have in fact been reimbursed for expenses for which
21 there is no receipt?

22 A. It explains that we haven't been able to find all the
23 receipts, but it doesn't say that we reimbursed people without
24 a receipt, if I read it correctly.

25 Q. Mr. Dawson, does it read:

1 "Has the company reimbursed persons affiliated with it for
2 expenses for which there is no receipt?"

3 Response: "Yes."

4 Did I read that correctly?

5 A. Which I followed up with, "There are. We have had problems
6 finding all the receipts," is the answer, I think. So I
7 corrected myself. I mean, if I can't go there, I take it back,
8 but --

9 Q. That's fine, Mr. Dawson.

10 A. Okay.

11 Q. So it's your testimony that you can't find all the receipts
12 and invoices?

13 A. We've had a number of incidents at the businesses and in
14 my office, including a fire, and we have certainly had receipts
15 come up missing, yes. That's my testimony.

16 Q. Receipts have come up missing?

17 A. Due to fire, due to flood --

18 Q. There was a fire at Penn Social/Riot Act?

19 A. There was a fire at Bedrock Management.

20 Q. You testified yesterday that Penn Social -- receipts were
21 maintained at Penn Social.

22 A. That the receipts --

23 Q. Is that correct, Mr. Dawson? Did you testify to that
24 yesterday?

25 A. I believe I did testify --

1 Q. Thank you.

2 A. -- that some receipts are kept at Penn Social. Yes.

3 THE COURT: Could we pause just one moment, please?

4 (Technician adjusting equipment.)

5 THE COURT: Mr. Cramer, thank you very much.

6 MR. CRAMER: Sorry it took so long. It was a simple
7 button that I didn't see right away.

8 THE COURT: Thank you.

9 Counsel, I had quietly asked you to approach to ask whether
10 you were prepared to proceed without the electronic equipment,
11 but it is now fixed, so I think we can go on.

12 MS. MCDONALD: Thank you, Your Honor.

13 THE COURT: Members of the jury, thank you for waiting
14 patiently. Now please continue, Ms. McDonald.

15 MS. MCDONALD: Thank you, Your Honor.

16 BY MS. MCDONALD:

17 Q. Mr. Dawson, before our brief technical issue, we were
18 discussing how Riot Act/Penn Social's records are maintained,
19 and you'd mentioned that there were some issues with the
20 maintenance of those records?

21 A. Yes.

22 Q. Employees have expressed concerns about the maintenance
23 of Penn Social records. Correct?

24 A. Employees have?

25 Q. Yes.

1 A. In which instance?

2 Q. Peter Genis, your accountant?

3 A. You'll have to refresh my memory, please.

4 MS. MCDONALD: Your Honor, I'd like to refer now to
5 Plaintiff's Exhibit 11. May the record reflect I'm giving a
6 copy to Mr. O'Neil?

7 THE COURT: Yes, of course.

8 MS. MCDONALD: May I approach, Your Honor?

9 THE COURT: Yes, you may.

10 (Document tendered to witness.)

11 THE WITNESS: Thank you.

12 BY MS. MCDONALD:

13 Q. Mr. Dawson, you recognize this document. Correct?

14 A. I do.

15 Q. It's an e-mail from Peter Genis to you?

16 A. Yes, it is, dated 9/27/2012.

17 Q. And Peter Genis was your accountant for a time?

18 A. Peter Genis did bookkeeping for us, yes, at Penn Social.

19 MS. MCDONALD: Your Honor, I move to admit Plaintiff's
20 Exhibit No. 11.

21 THE COURT: Is that without objection, Mr. O'Neil?

22 MS. MCDONALD: No objection.

23 THE COURT: Plaintiff's Exhibit 11 will be admitted
24 without objection.
25

(Plaintiff Exhibit No. 11
received into evidence.)

BY MS. MCDONALD:

Q. Mr. Dawson, I'm going to read some of this e-mail to you.

"If you can really help it, please tell GM at Penn Social to categorize the expenses properly, assign check numbers to checks, and ask questions if unsure. If 15 other GMs can manage to enter everything the way it should be, what stops Peter Bayne and Vinnie? No other business you own that I'm aware of has GM assistant and the records in such a terrible state.

"Sorry, Geoff. But again, these guys sent me the file with no check numbers and all the repairs and maintenance categorized to Employee Benefits category, and they told me that they had rechecked everything before they sent it to me?"

Did I read that correctly, Mr. Dawson?

A. Yes, you did.

Q. I'd like to move on now to Riot Act's social media sites.

A. Okay.

Q. There was a time when Riot Act lost access to its social media sites. Correct?

A. Yes.

Q. And when you testified earlier that you were there, you didn't mean that you were present when someone deactivated the sites, did you?

A. I don't know where I was when the sites were deactivated,

1 but I was somewhere, you know, in orbit around the Riot Act
2 probably.

3 Q. But you didn't see who did it?

4 A. No. I didn't see who did it.

5 Q. And Mr. Xereas told you that Dawn Henderson was responsible.
6 Correct?

7 A. Later he did.

8 Q. And you filed a suit against Dawn Henderson for these
9 actions?

10 A. I don't believe we did.

11 Q. You don't recall filing a lawsuit against Dawn Henderson?

12 A. I don't know if -- I can't remember if we did or didn't.
13 We were certainly trying to track her down to get some
14 information from her. We couldn't find her.

15 Q. You testified earlier that the LLC is indemnifying you.
16 Correct?

17 A. Yes, I did.

18 Q. You also testified that the LLC is indemnifying Ms. Heiss?

19 A. It is.

20 Q. And the LLC has spent nearly \$1 million in the defense of
21 this case?

22 A. It had to, yes.

23 Q. As the majority owner of the LLC, it was your determination
24 that the LLC should indemnify you. Correct?

25 A. As the majority owner, it was my determination that the LLC

1 should indemnify me. I believe it's in our corporate documents
2 that the LLC indemnifies me.

3 Q. But no other person told you you should be indemnified?
4 That was your decision?

5 A. Well, I'm sure I spoke to my lawyers about the documents.
6 I'm sure, you know, things were discussed with them. And I'm
7 not sure that I was the majority member at that point when all
8 of this started and that indemnification began.

9 Q. So it would have been your and Ms. Heiss's decision to
10 indemnify the two of you?

11 A. If that's when we did it. I imagine there was a discussion
12 about the legal bills and how they should be paid. Sure.

13 Q. You also made the decision to cover the legal bills for
14 Squiid and Shaun Robinson. Correct?

15 A. Yes, we did.

16 Q. And you also made the decision to cover the legal bills of
17 your son. Correct?

18 A. My son. Which legal bills were for my son?

19 Q. I can refresh your recollection.

20 A. Please do.

21 MS. MCDONALD: Your Honor, I'm going to refer now to
22 Plaintiff's Exhibit 299. May the record reflect I'm giving a
23 copy to Mr. O'Neil.

24 THE COURT: Thank you.

25 MS. MCDONALD: May I approach, Your Honor?

1 THE COURT: Yes, you may.

2 THE WITNESS: Thank you.

3 BY MS. MCDONALD:

4 Q. I understand, Mr. Dawson, this is a large document.

5 I'd like to refer your attention to the first tab first.

6 A. The first -- I'm sorry?

7 Q. The first green tab.

8 A. Okay.

9 Q. Do you recognize this as Penn Social's Amended Objections
10 and Responses to Plaintiff's Fourth Set of Requests for
11 Admission?

12 A. Hold tight. Let me catch up to you here, make sure I got
13 the right green tab.

14 Penn Social's Amended Objections and Responses to
15 Plaintiff's Fourth Set of Requests for Admission. Correct.

16 Q. I'd like to refer your attention to page 11.

17 A. Okay.

18 Q. Request No. 28. Please read it to yourself.

19 A. "Admit the funds" --

20 Q. Please read it to yourself, Mr. Dawson.

21 A. Okay.

22 (Witness reviewing document.)

23 Q. Does that refresh your recollection?

24 A. It doesn't.

25 Q. It doesn't refresh your recollection that Penn Social paid

1 for your son's legal expenses?

2 A. I'm trying to put my son's legal expenses into perspective.
3 I don't remember paying his legal expenses or him being sued at
4 any point. So you'd have -- we'd have to dive a little deeper,
5 I'm afraid, because I just don't remember that.

6 Q. Do you agree that the company admitted that it paid for
7 your son's legal expenses?

8 A. I agree that I checked that box, but I just don't recall
9 anything to do with legal expenses being paid for my son.

10 Q. I'd like to refresh your recollection also now with respect
11 to the lawsuit against Dawn Henderson, if I may.

12 MS. MCDONALD: Your Honor, I'm going to refer to the
13 counterclaims of defendants Marjorie A. Heiss, Geoffrey O.S.
14 Dawson, and Riot Act DC, LLC, if I may.

15 THE COURT: You may.

16 MS. MCDONALD: May I approach, Your Honor?

17 THE COURT: Yes.

18 THE WITNESS: Thank you.

19 BY MS. MCDONALD:

20 Q. I'd like to refer your attention, Mr. Dawson, to the first
21 page of that document. Do you see the caption in the upper
22 left-hand corner?

23 A. Case 112?

24 Q. Yes, sir. Do you see that Dawn Henderson was a party to
25 this litigation?

1 A. I do.

2 Q. So you and Penn Social sued Ms. Henderson?

3 A. John N. Xereas, Plaintiff, Counter Claimant, versus
4 Marjorie Heiss, Geoffrey O.S. Dawson and Penn Social as
5 Defendants, Counterclaim Plaintiffs -- you'll have to walk me
6 through it, but it appears that -- yes. I'll go with that.

7 Q. Thank you, Mr. Dawson.

8 MS. MCDONALD: Those are all my questions, Your Honor.

9 THE COURT: Thank you very much, Ms. McDonald.

10 Mr. O'Neil, do you wish redirect?

11 MR. O'NEIL: Just a few questions, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. O'NEIL:

14 Q. Mr. Dawson, Ms. McDonald asked you about whether the
15 Amended Operating Agreement included a provision for the
16 transfer of the trademark. Correct?

17 A. I believe she did, yeah.

18 Q. And you answered that that document didn't contain any
19 language about the transfer of the trademark. Correct?

20 A. I think that's what I said, yeah.

21 Q. The document didn't contain any information about the
22 material you were contributing to the LLC. Is that right?

23 A. It did not.

24 Q. And it didn't contain any information about the material
25 Ms. Heiss was contributing to the LLC. Correct?

1 A. I don't believe so.

2 Q. And you had several conversations directly with Mr. Xereas,
3 as you testified earlier, in which he told you it was his intent
4 to give the trademark for the term "Riot Act," whatever rights
5 he had in it, to the LLC as his contribution. Correct?

6 A. Yes, he did.

7 MS. MCDONALD: Objection, Your Honor. I ask Mr. O'Neil
8 to rephrase his questions. He's presently testifying.

9 THE COURT: Let me ask you to rephrase your question,
10 please.

11 BY MR. O'NEIL:

12 Q. Did Mr. Xereas say anything to you about the transfer of
13 his trademark rights to the LLC?

14 A. He brought those with him and gave them to the LLC, yes.

15 Q. And you confirmed that with him in conversations?

16 A. Yes, we did.

17 Q. Do you wish today there was an agreement that spelled out
18 the transfer of any rights in the trademark?

19 A. Boy, do I.

20 MR. O'NEIL: I have nothing further, Your Honor.

21 THE COURT: Thank you very much, Mr. O'Neil.

22 Mr. Dawson, thank you. You may step down.

23 THE WITNESS: Thank you, Your Honor.

24 (The witness steps down.)

25 THE COURT: Mr. O'Neil, are you ready to call your

1 next witness?

2 MR. O'NEIL: I believe we are, Your Honor. I believe
3 Shaun Robinson is out in the hallway, if I may go get him?

4 THE COURT: Yes, of course.

5 (Witness enters the courtroom.)

6 THE COURT: Good afternoon, sir. Let me ask you to
7 please step to the witness stand and then face the deputy clerk
8 of court to be sworn.

9 SHAUN ROBINSON, WITNESS FOR THE DEFENSE, SWORN

10 DIRECT EXAMINATION

11 BY MR. O'NEIL:

12 Q. Good afternoon. Could you state your name for the Court?

13 A. Sure. My name is Shaun Robinson.

14 Q. Mr. Robinson, at one point did you work for a company that
15 was retained by Riot Act DC?

16 A. That was retained -- oh, I worked for Squiid, Inc., for
17 several years, between 2010 and 2016.

18 Q. And were you the owner of Squiid, Inc.?

19 A. Yes.

20 Q. And what was Squiid, Inc.?

21 A. Squiid, Inc., was a web development firm, but we also did
22 sort of all sorts of creative, like marketing, advertising, web
23 hosting, domain, e-mail services.

24 Q. Okay. And at one point you had an employee by the name of
25 Evan Rosenthal. Is that correct?

1 A. Yes.

2 Q. And did he know the plaintiff, John Xereas?

3 A. Yes. Evan was in charge of kind of finding sales leads,
4 and so that's how I became acquainted with John and the business
5 and Riot Act.

6 Q. And what was it that Riot Act asked you to do?

7 A. So Riot Act asked us to -- well, we made a proposal to them
8 to build a website and to sort of do logo design and kind of
9 related services, you know, knowing that they were starting up
10 from scratch. So we made a proposal for all sorts of services,
11 and then the first thing we kicked off with them in -- we signed
12 the contract in January of 2011, and then in February we kicked
13 off building a website. That was completed and released in
14 March and April of that year.

15 Q. And did you work with Mr. Xereas in performing your tasks?

16 A. Yes.

17 Q. What did he work on with you?

18 A. Pretty much everything that whole year. First it was the
19 website, and then we did graphic design, advertisement, print
20 design. I helped with like e-mail stuff and all sorts of
21 things. It was basically the whole year of 2011 we were kind of
22 working together and, you know, doing everything we could. We
23 ended up building a box office, a box-office system, that became
24 Riot Act's, you know, ticket-sales system.

25 Q. As part of the website development, there is a box office

1 element there?

2 A. Yes.

3 Q. And that was built from scratch by you?

4 A. Yes.

5 Q. When you were doing this work, who was paying you,
6 Mr. Xereas or Riot Act DC, LLC?

7 A. Riot Act DC, LLC.

8 Q. And you sent them the invoices?

9 A. Yes.

10 Q. And they paid them?

11 A. Yes. We -- yes. We signed a contract with Riot Act, LLC,
12 and over the course of that year there were, you know, monthly
13 invoices. And basically, I would -- even though John was
14 directing the work, like one time I went to get a check from
15 him, which was I think -- he wrote me from Riot Act, LLC, but
16 then the remaining times he told me to basically talk with
17 Marjorie and Geoff to get -- you know, to get paid, basically,
18 that they were handling the business aspects and he was sort of
19 handling the day-to-day operations.

20 Q. And was there a point where you handled the transfer of
21 a number of domains that Mr. Xereas had reserved or paid for?

22 A. Yes.

23 Q. How was that transfer effectuated?

24 A. So we built a website on a staging server. So what that
25 means is it was something like riotact.squid.com, and we got

1 the website up and running and showed them. And then basically
2 he said we want to take it live, and he said, you know, here's
3 my password to my domain account, can you make it live. And
4 there was some work with -- there was some work with like an IT
5 person named Alec.

6 And basically, John had put us together and sort of said,
7 Alec, Shaun's setting up Riot Act's website, can you sort of
8 help him and give him the information to transfer -- to transfer
9 the web hosting and to transfer the e-mail to the system that we
10 were setting up for the business, basically.

11 Q. For the company.

12 A. Yes.

13 Q. Okay. And the company was paying for that?

14 A. Yes.

15 Q. And did you also work on the transfer of e-mail accounts --

16 A. Yes.

17 Q. -- from personal e-mail accounts to company e-mail accounts?

18 A. Yes.

19 Q. Do you remember whose e-mail accounts you worked on?

20 A. Yes. So we set up -- you know, one of the services we were
21 providing was we set up Google Apps for the business. Google
22 Apps is like an e-mail hosting system, and this was what I was
23 just mentioning. In April of 2011, John had put me in touch
24 with -- well, we started in February, but it was actually done
25 in April of 2011.

1 He had put me in touch with someone named Alec Berry from a
2 company called Reston -- I think Reston Tech? And basically it
3 was like -- like, Alec, Shaun is setting up the new e-mail
4 system. It was -- the e-mail thread was called "Migration to
5 the Cloud," and he said, Shaun, please work with Alec to get the
6 e-mails over. And the e-mails -- I think there were four or
7 five accounts. It was basically John, Ted, someone named Farf?
8 It was farf@riotactcomedy.com, and I think it was Maria. I
9 think it was those four, and there may have been one or two
10 other ones.

11 MR. O'NEIL: May I approach, Your Honor?

12 THE COURT: Yes.

13 BY MR. O'NEIL:

14 Q. If you could turn to Exhibit 54.

15 A. Okay.

16 Q. Do you recognize this document?

17 A. Yes.

18 Q. It purports to be an e-mail from John Xereas to, among
19 other people, you at Squiid, Inc., correct, on December 2, 2010?

20 A. Yes.

21 MR. O'NEIL: Your Honor, at this point we'd like to
22 offer Defendants' Trial Exhibit 54 into evidence.

23 THE COURT: Ms. McDonald?

24 MS. MCDONALD: No objection, Your Honor.

25 THE COURT: Thank you, Ms. McDonald. Defendants'

1 Exhibit 54 will be admitted without objection.

2 (Defendant Exhibit No. 54
3 received into evidence.)

4 BY MR. O'NEIL:

5 Q. Okay. In this e-mail, Mr. Xereas is supplying to you
6 information about the Network Solutions sites that he's
7 purchased or has in his possession. Correct?

8 A. Yes.

9 Q. And the purpose of this was to transfer those domains to
10 the LLC. Correct?

11 MS. MCDONALD: Objection, Your Honor. I believe
12 it calls for speculation as to Mr. Xereas's intent with this
13 document.

14 THE COURT: Let me ask you to rephrase your question
15 so that it is not expressed in a leading form.

16 BY MR. O'NEIL:

17 Q. Do you know the purpose of this e-mail?

18 A. This e-mail was written at the time we were starting
19 talking. This was before -- we hadn't done any work at this
20 time. He was introducing me to Alec, sort of letting me know
21 we're going to be working together, and, you know, he told me --
22 he told me that Alec and I might have something in common to
23 talk about. He was sort of talking about setting up a store,
24 et cetera.

25 So this e-mail, this was in December, and in February we

1 actually -- we signed the contract at the end of January, and
2 then between February and April I worked with Alec to transfer
3 the e-mail and set up the web hosting on that -- you know, point
4 the domain name to the staging site I was talking about.

5 Q. And Mr. Xereas knew about this transfer at the time it was
6 taking place. Correct?

7 MS. MCDONALD: Objection. Lack of foundation.

8 THE COURT: May I ask you to rephrase your question,
9 please.

10 BY MR. O'NEIL:

11 Q. You worked with John Xereas in perfecting this transfer.
12 Correct?

13 A. Yes.

14 Q. And you communicated with him about it?

15 A. Yes. I mean, we -- between him, Alec and I on e-mail,
16 and, you know, at different times the other partners, yes.
17 This was the first in several e-mails that were related to
18 either pointing the domain name to the new site or transferring
19 the e-mail from the old server to the new server.

20 Q. And the new server was paid for by the company.

21 A. The new server was paid for by the company, yes.

22 Q. The Google services you were obtaining on the server were --

23 A. Yes.

24 Q. Whatever you had to pay to use the server was paid by the
25 company, not by Mr. Xereas personally.

1 A. Yes. That's correct.

2 Q. Did Mr. Xereas ever say anything to you about his desire to
3 continue ownership of the e-mail accounts?

4 A. No. No, he -- you know, I mean, by transferring the
5 e-mails from the old system to the new business, you know,
6 implicitly, he wants to keep those e-mails. But, you know, it
7 wasn't -- there was nothing -- he did not say I would like to
8 keep these e-mails separate in any way from what you're doing
9 for the business. So.

10 Q. What I'm referring to, I mean the e-mail accounts, not the
11 actual substantive e-mails that are in the accounts. Correct?

12 A. Yes.

13 Q. Okay. And eventually there came a time when you got sued
14 by Mr. Xereas. Is that correct?

15 A. Yes.

16 Q. And Riot Act, later Penn Social, hired counsel to defend
17 you?

18 A. Yes.

19 Q. Do you know what was the result of that lawsuit?

20 A. I'm not sure what the result of the lawsuit was, but I --
21 Squiid was, I guess -- I'm not sure if this is the right word,
22 but relinquished or let go from being a defendant in that
23 lawsuit.

24 Q. Did Mr. Xereas ever say anything to you about his ownership
25 of the term "Riot Act"?

1 A. Not that I can -- I mean, in the sense that he was an owner
2 of this company with the other two, and I knew that he had --
3 you know, that he had been, you know, using that name from
4 beforehand. But I don't remember any conversation at all about,
5 you know, about keeping this somehow separate from the -- from
6 the relationship that Squiid had with this company, basically.

7 Q. This is going to be difficult with the current state of the
8 notebook, but are you able to turn to document Trial Exhibit 35?

9 A. Yes.

10 Q. Okay. And that appears to be a e-mail from Irwin Liptz
11 to you at -- to Shaun@riotactcomedy and Shaun@squiid.com.
12 Do you see that?

13 A. Yes.

14 Q. Do you remember getting this e-mail?

15 A. Yes.

16 Q. Did you understand that this e-mail was asking you to shut
17 down the riotactcomedy.com website?

18 A. I did, but I -- you know, this e-mail was from someone at
19 yahoo.com. I had never received any, like, communication from
20 John or from any of the partners about this.

21 So I remember reading it, but I honestly -- you know, I had
22 no -- I didn't know if this was like real, or if this was just
23 someone on the Internet. Basically, I had no way to, like,
24 authenticate this, and I hadn't heard anything from John before
25 or after this. So. But, yeah. I mean, from reading it, I

1 understood that it was asking -- that it was saying that it was
2 granted and solely for the purposes of building a website. So.
3 Yeah.

4 MR. O'NEIL: Your Honor, we'd like to move Exhibit 35
5 into evidence, please.

6 THE COURT: Ms. McDonald?

7 MS. MCDONALD: No objection.

8 THE COURT: Thank you, Ms. McDonald. Defendants'
9 Exhibit 35 will be admitted without objection.

10 (Defendant Exhibit No. 35
11 received into evidence.)

12 BY MR. O'NEIL:

13 Q. You can now look at the document on the screen, Mr. Robinson.
14 Could you read for us, Mr. Robinson, the last paragraph?

15 A. It says, "We hereby demand Squiid deny access to said
16 website to any other persons other than Mr. Xereas or his
17 designees. In the absence of this, immediate legal action will
18 be taken."

19 Q. Okay. What would have been the effect of denying access to
20 the website of any person other than Mr. Xereas?

21 A. The way I read that was that the website we had built, the
22 box office that was up and running and receiving payments, that,
23 you know, it would be shut down, basically.

24 Q. And higher up in the letter, the first paragraph, Mr. Liptz
25 states that his office represents Mr. John Xereas. You see

1 that? "Mr. Xereas is the sole owner of the domain
2 riotactcomedy.com." Was that your understanding, that he
3 was the sole owner of that domain?

4 A. That was not my understanding.

5 Q. Your understanding was that the LLC owned it.

6 A. Yes.

7 Q. And the LLC paid for it.

8 A. Yes. Or, I'm sorry. I don't know -- I didn't know who
9 paid for it, but I understood everything, you know, Riot Act to
10 be the company that we had -- that I had a relationship with,
11 that my company had a relationship with.

12 Q. And how much had Riot Act paid you for the development of
13 the website, approximately?

14 A. I mean, it was incremental. You know, the very first pass
15 getting a website up, it was something around \$3,000, and then
16 I would say, you know, three to four thousand dollars a month
17 throughout that year to do all sorts of services like I was
18 mentioning before.

19 So maybe -- maybe 30 to 40,000 throughout the year. But
20 not all of that had been paid and -- not all of that had been
21 paid, you know, by the end of the year. So there was sort of
22 like some accounts receivable.

23 Q. And did the development work on the box-office feature, was
24 that a separate cost?

25 A. That was part of that, let's say -- it was in the range of

1 40,000 for the whole year.

2 Q. The next statement in the letter is that "Riot Act Comedy
3 was purchased by Mr. Xereas and paid for by him personally in
4 2005, and he owns this domain through 2015." Do you see that?

5 A. Yes.

6 Q. Do you have any reason to take issue with that statement?

7 A. I mean, no. I know that it was registered -- I know that
8 the registration date was right. I don't know, you know, the
9 legal -- I didn't know the legal status of it other than it was
10 sort of that I was given access in the context of, you know, my
11 relationship or my company's relationship with this company.

12 Q. Right. And you had participated in the transfer of the
13 website from Mr. Xereas to the company's accounts. Correct?

14 A. Yes.

15 Q. Later, in the middle of 2012, did you participate in
16 the transfer from Riot Act Comedy to Mr. Xereas of his e-mail
17 accounts and domain names?

18 A. Yes.

19 Q. Was that done at the instruction of Riot Act's attorneys?

20 A. Yes.

21 Q. And you worked with the attorneys to do that?

22 A. Yes.

23 MR. O'NEIL: I have nothing further, Your Honor.

24 THE COURT: Thank you, Mr. O'Neil.

25 Mr. Richa, you may cross-examine.

1 MR. RICHA: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. RICHA:

4 Q. Good afternoon, Mr. Robinson. Did you have administrative
5 access to the Riot Act domain names and e-mail accounts?

6 A. Yes.

7 Q. Isn't it true that companies can grant administrative
8 access to third parties, and that does not transfer ownership
9 of those domain names and e-mail accounts?

10 A. Yes.

11 Q. And isn't it true that one party can give another party
12 control of domain names and e-mail accounts without actually
13 transferring the ownership of those domain names and e-mail
14 accounts to that third party?

15 A. Yes.

16 Q. In order to change administrative access -- strike that.
17 In order to change administrative access to domain names, you
18 must have the user name and the password to the domain name
19 registrar. Is that correct?

20 A. Yes.

21 Q. And isn't it true that if someone wanted to grant you
22 administrative access, they would still have to give you
23 the user name and password to the domain name registrar?

24 A. Yes.

25 Q. With the user name and the password to the domain name

1 registrar, a person who has that can then transfer ownership of
2 those domain names and e-mail accounts. Correct?

3 A. When you have access, you can modify -- if you have full
4 access, you can modify any of the settings in the account. So
5 you could change like where the domain's pointed, and also you
6 could change the registered contact. I can't speak to the legal
7 ownership of that, but yes, you can change like the settings in
8 there of who is listed as the technical and administrative
9 contact.

10 Q. Okay. And Squiid is a company owned by you. Correct?

11 A. Yes.

12 Q. And did Squiid and Riot Act have a written agreement?

13 A. Yes.

14 Q. And you were issued a third-party subpoena in this case,
15 were you not?

16 A. Yes.

17 Q. And as part of that subpoena, you were requested to provide
18 copies of all agreements that you had with Riot Act. Isn't that
19 correct?

20 A. I'm not sure. I did -- I have provided a lot of -- I
21 provided basically all of the e-mails and records that I have.
22 I don't remember being specifically asked for that.

23 MR. RICHA: Your Honor, I'm handing Mr. Robinson a
24 copy of the subpoena that was issued in this case to refresh his
25 recollection.

1 THE COURT: Very well.

2 MR. RICHA: May I approach?

3 THE COURT: Yes.

4 BY MR. RICHA:

5 Q. Do you recognize that document, Mr. Robinson?

6 A. Yes.

7 Q. Can you read me -- go to page 8, please, and you can read
8 No. 4? You can read it out loud if you'd like.

9 A. "All documents regarding your engagement by, employment by,
10 or any work performed by you for Penn Social."

11 Q. Okay. So does that refresh your recollection?

12 A. Yes.

13 Q. So you were indeed requested to provide all written
14 agreements that you had with Riot Act. Isn't that correct?

15 A. Yes.

16 Q. And you did not provide any written agreements.
17 Isn't that correct?

18 A. I did provide everything I had.

19 Q. My question is did you provide any written agreements
20 that Squiid had with Riot Act.

21 A. Yes. With Riot Act, yes, but this says Penn Social.

22 Q. Well, Penn Social used to be named Riot Act. Correct?

23 A. I -- yes. I know that -- I don't know the legal status of
24 the change, but I know that, yeah, it's not -- the same space is
25 Penn Social. I don't know the legal status, and I didn't have

1 any legal documents with Penn Social.

2 Q. Okay. Well, look at No. 3 right above it.

3 A. Three is all documents regarding Penn Social. Two is all
4 documents regarding the Riot Act trademark and domain names.

5 Q. I'll move on to something else. Isn't it true that you
6 performed services -- you and/or Squiid performed services for
7 many of Defendant Dawson's businesses, other businesses?

8 A. Yes.

9 Q. How many other businesses did you perform work for?

10 A. Maybe one or two.

11 Q. One or two?

12 A. Yeah.

13 Q. Are you familiar with Ted Xereas and Mike Farfel?

14 A. Yes.

15 Q. Are you aware that they were terminated on January 17, 2012?

16 A. No.

17 Q. Were you aware that they were terminated?

18 A. I did hear -- I did hear about -- like I was traveling
19 in India at the time, so I did hear about it. But, you know,
20 I didn't really -- I wasn't focused on it at that time.

21 MR. RICHA: Your Honor, I'm handing Mr. Robinson
22 what's been premarked Plaintiff's Exhibit 67. May I approach,
23 Your Honor?

24 THE COURT: Yes, you may.

25 THE WITNESS: So this is an e-mail from Geoff on

1 January 17, and he was asking for the credentials to the Google
2 Apps cloud e-mail system we had set up, and that was the one
3 that we had transferred those e-mails to the previous year.

4 MR. RICHA: Your Honor, I move to admit Plaintiff's
5 Exhibit 67.

6 THE COURT: Is that without objection, Mr. O'Neil?

7 MR. O'NEIL: No objection.

8 THE COURT: Plaintiff's Exhibit 67 will be admitted
9 without objection.

10 (Plaintiff Exhibit No. 67
11 received into evidence.)

12 BY MR. RICHA:

13 Q. So in this e-mail, Mr. Dawson is requesting the access to
14 the domain names and e-mail accounts from you on August 17 --
15 excuse me -- January 17, 2012. Is that correct?

16 A. No, that's not correct. He's asking for "Could you e-mail
17 Riot Act e-mail admin." So he's asking for the admin access to
18 Google Apps, but this has nothing to do with the domain names.

19 Q. Okay. But it has to do with the e-mail accounts?

20 A. Yes. At this time, it had about 20 or 30 employee e-mail
21 accounts from, you know, employees of Riot Act, LLC, that we
22 had set up over the course of that year.

23 Q. Okay. And as you testified previously, the admin access
24 would allow the person who has admin access to control the
25 e-mail accounts. Is that correct?

1 A. Previously we were talking about admin of the domain
2 accounts. Here we're talking about -- so that was something
3 like Network Solutions or GoDaddy. Here it's talking about the
4 e-mail admin, which is Google Apps.

5 Q. Mr. O'Neil handed you an exhibit, Defendants' Trial Exhibit
6 54. Do you still have that in front of you?

7 A. Yes, sir.

8 Q. Is there any place in this e-mail where Mr. Xereas transfers
9 his ownership of either the domain names or the e-mail accounts
10 or indicates that he wishes to transfer his ownership of the
11 domain names and/or e-mail accounts?

12 A. No, not in this e-mail.

13 Q. Is there another e-mail where Mr. Xereas expressed that he
14 wanted to transfer his ownership in the domain names or e-mail
15 accounts to Riot Act?

16 A. I wouldn't -- I can't speak to the legal ownership, but
17 there are e-mails where he says, here's the password, here's the
18 person, please go ahead and transfer the e-mails and point the
19 domain at the new website.

20 Q. But that does not transfer ownership; isn't that correct?

21 A. I'm sort of on the technical side. I can't speak about the
22 legal ownership, but I can speak that, technically, yes, there
23 were e-mails that said please point this domain at the staging
24 site, and please transfer the e-mails on Reston Tech to the new
25 Google Apps e-mail service.

1 Q. I'm not asking you to make a legal conclusion. I'm asking
2 you if there's any documents, e-mails or any other documents,
3 where Mr. Xereas says he wanted to transfer ownership of the
4 domain names and the e-mail accounts to the defendants.

5 A. No.

6 MR. RICHA: Okay. Nothing further.

7 THE COURT: Thank you very much, Mr. Richa.

8 Mr. O'Neil, do you have brief redirect?

9 MR. O'NEIL: No, Your Honor.

10 THE COURT: Thank you, Mr. O'Neil.

11 Mr. Robinson, thank you. You may step down, and you are
12 excused.

13 THE WITNESS: Okay. Thank you.

14 (The witness steps down.)

15 THE COURT: Counsel, may I ask you to approach,
16 please, regarding our schedule?

17 (Bench conference.)

18 THE COURT: Is there something you can accomplish,
19 Mr. O'Neil, in essentially five minutes? If not, there is no
20 penalty for that. We will --

21 MR. O'NEIL: We can start Ms. Heiss.

22 THE COURT: Would you like to do that?

23 MR. O'NEIL: That's fine with me.

24 THE COURT: I assume your questions will largely
25 occasion no objection. In other words, state her name, for

1 example.

2 MR. O'NEIL: I hope that one passes.

3 THE COURT: All right. Let's see if we can start.

4 MR. O'NEIL: Okay.

5 THE COURT: Thank you.

6 MR. O'NEIL: Can I just ask -- I just ask the Court's
7 indulgence for a minute or two to move some documents around.

8 THE COURT: Yes.

9 (End of bench conference.)

10 THE COURT: Members of the jury, in order to ensure
11 that we do not run over the time at which I promised to excuse
12 you, I think we will recess now. I wish all of you a pleasant
13 evening. Please leave your notepads with Ms. Lesley.

14 Our schedule tomorrow will be the same. I will invite you
15 to come as early as 9:00, expect that you'll arrive by 9:20 so
16 that we can begin right at 9:30. Thank you so much. Everyone
17 have a good evening. Thank you.

18 (Jury out at 4:07 p.m.)

19 THE COURT: I'm sorry. I reconsidered after I sent
20 you back to your tables. I actually do fear that there is not
21 very much we can accomplish in five minutes, and I really would
22 like to be mindful of the time of the jury.

23 Is there anything we can discuss since the jury's gone?
24 The jury is gone, and all of you are still here.

25 MR. O'NEIL: The defendants plan tomorrow to play

1 deposition excerpts from the deposition of Dawn Henderson, both
2 the plaintiff's and the defendants' designated parts of her
3 deposition testimony, and it's about 40 minutes long. So it's
4 not too long.

5 THE COURT: Have you spoken with Mr. Cramer regarding
6 the equipment that you need to do that?

7 MR. O'NEIL: My understanding was there was a DVD
8 player here that could handle it. I believe there's a DVD
9 player here that can play it, but we'll confirm that.

10 THE COURT: Very well. I will suggest that you
11 confirm that.

12 MR. O'NEIL: The only other issue, Your Honor, you had
13 a pending objection to a portion of the witness testimony that
14 we had designated.

15 MS. MCDONALD: Your Honor --

16 THE COURT: Ms. McDonald.

17 MS. MCDONALD: Thank you. Plaintiffs have
18 counter-designated and prepared their own presentation of
19 Ms. Henderson's deposition. However, Mr. O'Neil's designations
20 contain a question with respect to Ms. Henderson's -- a criminal
21 charge in her history, and that is impermissible character
22 evidence, Your Honor, that we would ask be disallowed.

23 THE COURT: Is that the only portion of the transcript
24 as to which you have an objection, Ms. McDonald?

25 MS. MCDONALD: I believe so, Your Honor.

1 THE COURT: Mr. O'Neil?

2 MR. O'NEIL: Your Honor, in this instance we didn't
3 use any extrinsic evidence to prove any elements of the
4 testimony at issue. We simply asked her if she'd ever been
5 charged criminally, and she responded yes and explained what
6 it was. In our view, the charge that she acknowledged that
7 she pled no contest to was a crime of false statement. So we
8 believe the testimony is admissible.

9 THE COURT: Ms. McDonald?

10 MS. MCDONALD: Your Honor, if I may, I believe
11 Mr. O'Neil has misrepresented what transpired with the charge
12 against Ms. Henderson. She testified that it was dismissed and
13 nothing was -- she was never convicted of anything.

14 THE COURT: Is that correct, Mr. O'Neil? In other
15 words, that there was no conviction?

16 MR. O'NEIL: I believe the testimony at issue was --

17 THE COURT: I can hear you, Mr. O'Neil, but let me ask
18 you to come back to the podium microphone, please. Are you able
19 to follow along, Ms. McDonald?

20 MS. MCDONALD: No, Your Honor. I don't have a copy,
21 unfortunately.

22 (Defense counsel conferring with plaintiff counsel.)

23 MR. O'NEIL: Ms. Henderson's testimony is not a model
24 of clarity, Your Honor, but she states:

25 "Have you ever been charged with a criminal offense?

1 "Yes.

2 "When was that?

3 "I don't know the exact charge. I don't remember.

4 "Do you know approximately?

5 "One was like -- I don't know.

6 "What are the events involved and the instances where you
7 were charged with a criminal offense?

8 "I picked up a prescription for somebody that wasn't a
9 valid prescription.

10 "And you were charged with that?

11 "Yes.

12 "Were you found guilty?

13 "I pled no contest.

14 "What was the result of that plea?

15 "I think it was squashed. I think they did away with it.

16 "You didn't serve any time in jail?

17 "No."

18 That's the extent of it.

19 THE COURT: I am prepared to grant the plaintiff's
20 motion to exclude that portion of the deposition transcript.
21 There is no record that there was any conviction. I believe,
22 certainly, had there been such a response by Ms. Henderson, the
23 Court's ruling could well be quite different.

24 So I will ask you overnight to make whatever edits are
25 necessary to ensure that that portion of the transcript is not

1 aired for the jury, or aired in the presence of the jury.

2 MR. O'NEIL: Thank you, Your Honor.

3 THE COURT: Is there anything else concerning the
4 deposition of Ms. Henderson?

5 MS. MCDONALD: Nothing here, Your Honor.

6 THE COURT: Mr. O'Neil, will Ms. Henderson, through
7 the deposition, be your first witness tomorrow, or will your
8 first witness be Ms. Heiss?

9 MR. O'NEIL: I was planning that my first witness be
10 Ms. Heiss, then we'd play Ms. Henderson, and then we'd finish
11 with Mr. Bayne.

12 THE COURT: Very well.

13 MR. O'NEIL: Thank you, Your Honor.

14 THE COURT: Thank you. Is there anything else we
15 can resolve before we recess?

16 MS. MCDONALD: Nothing here, Your Honor.

17 THE COURT: Very well. Thank you very much.
18 Everyone have a good evening. We will resume in the morning.

19 (Proceedings adjourned at 4:14 p.m.)
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CERTIFICATE

I, BRYAN A. WAYNE, Official Court Reporter, certify
that the foregoing pages are a correct transcript from the
record of proceedings in the above-entitled matter.

Bryan A. Wayne
BRYAN A. WAYNE