

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

KEVIN MUELLER,)	
)	
Plaintiff,)	
)	
vs.)	No. 30-2017-00948339-
)	CU-BC-CJC
ABRAHAM SAMUEL NAGER,)	
individually and as Trustee of)	
the Nager Family Trust, dated)	
December 19, 2006; and DOES)	
1-10, inclusive,)	
)	
Defendants.)	
_____)	

DEPOSITION OF KEVIN MUELLER

Thursday, January 17, 2019

Long Beach, California

REPORTED BY: Lyn Corrin Aaker, CSR No. 6228

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Deposition of KEVIN MUELLER, the Plaintiff, taken on behalf of the Defendant, at 111 West Ocean Boulevard, Suite 1200, Long Beach, California 90802, commencing at the hour of 11:05 a.m., Thursday, January 17, 2019, before Lyn Corrin Aaker, CSR No. 6228, pursuant to Notice of Taking Deposition.

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Also Present: ABRAHAM SAMUEL NAGER

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I N D E X

WITNESS	EXAMINATION	PAGE
KEVIN MUELLER	By Mr. Glickman	5

EXHIBITS FOR IDENTIFICATION

Defendants'

Exhibit 1	Color copy of photograph; 1 page	59
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QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER

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1 THURSDAY, JANUARY 17, 2019, LONG BEACH, CALIFORNIA

2 11:05 A.M.

3 * * *

4

5 KEVIN MUELLER,

6 the witness herein, having been first duly sworn, was

7 examined and testified as follows:

8

9 EXAMINATION +

10 BY MR. GLICKMAN:

11 Q. Would you please state your full name for us.

12 A. Kevin G. Mueller.

13 Q. Have you ever gone by any other name?

14 A. No.

15 Q. Where do you currently reside?

16 A. 32372 Via Antibes, Dana Point, California 92629.

17 Q. And when did you move in there?

18 A. I believe it was November of 2011, December 2011.

19 Q. What was your immediately prior address before

20 Via Antibes?

21 A. I lived in western Virginia, 1830 Fountain Drive.

22 Q. So the Via Antibes address is the first address

23 that you had in California after moving from Virginia?

24 A. Correct.

25 Q. Did you ever have any other address in California

1 at any time?

2 A. Prior to living in Virginia.

3 Q. At any time before Via Antibes, did you ever have
4 any other California address?

5 A. Yeah, sure.

6 Q. Maybe it will be easier this way. How many
7 different times have you lived in California?

8 A. I've lived in California off and on most of my
9 life.

10 Q. Where did you grow up?

11 A. Can you be a little more specific, say time
12 periods?

13 Q. Where did you go to high school?

14 A. Culver City High School.

15 Q. When did you graduate?

16 A. 1984.

17 Q. Did you go to any school after graduating from
18 high school?

19 A. I took a year off, and then I went back to school
20 and began to attend West Los Angeles Community College.

21 Q. And what years were you at West Los Angeles
22 Community College?

23 A. '85 maybe to '86.

24 Q. Did you get an AA degree there?

25 A. I did.

1 Q. And what did you do next with your educational
2 background?

3 A. I transferred to UCLA.

4 Q. And when did you transfer to UCLA?

5 A. '88, I believe.

6 Q. And how long were you at UCLA?

7 A. About two years, a little over two years, I
8 think.

9 Q. Did you get a degree from UCLA?

10 A. I did.

11 Q. In what?

12 A. Bachelor of Arts, Political Science.

13 Q. And then what did you do after graduating UCLA?

14 A. I began to pursue aviation full time.

15 Q. What do you mean "pursue aviation"?

16 A. To develop the rating skills and credentials that
17 are needed for employment in the field of aviation,
18 particularly for airlines.

19 Q. Are you talking about being a pilot?

20 A. Yeah.

21 Q. And so are you currently a pilot?

22 A. I am.

23 Q. When did you first become licensed to be a pilot?

24 A. I am not sure. I think I got my private pilot's
25 license in the late '80s.

1 Q. And have you held a private pilot's license
2 continuously since then?

3 A. Theoretically, yes. I mean a commercial pilot's
4 license supersedes a private pilot's license. An airline
5 transport pilot's license supersedes a commercial license.
6 So as you move up the rung, if you will, or you attain
7 higher ratings, they supersede -- you know, a private
8 pilot's license is a very basic rating.

9 Q. So you got the private pilot's license in the
10 late '80s. Right?

11 A. Yes.

12 Q. What was your next license relating to aviation?

13 A. Instrument, I believe.

14 Q. And when did you get that?

15 A. Late '80s as well.

16 Q. What was your next license relating to aviation?

17 A. Commercial multi-engine.

18 Q. When did you get that?

19 A. I'm going to go with maybe '90 on that one.

20 Q. And the next license?

21 A. Airline transport pilot.

22 Q. The commercial multi-engine allows you to fly
23 passengers. Is that right?

24 A. Correct.

25 Q. And what's the airline --

1 A. Transport pilot.

2 Q. -- transport pilot? What's that one?

3 A. So in order to fly aircraft that weigh in excess
4 of 12,500 pounds, you need to have a type rating in that
5 airplane. You can't amend a type rating to a commercial
6 license. You can only amend it to an airline transport
7 pilot's rating. So generally smaller commuter airlines,
8 you can fly there with a commercial rating. But for any
9 airline that's flying anything in excess of 12,500 pounds
10 requires an airline transport rating.

11 Q. Okay. And when did you first get the airline
12 transport rating?

13 A. Say like '92.

14 Q. And what's the next license after that?

15 A. That's it.

16 Q. And so the private pilot's license, who issues
17 that?

18 A. The FAA.

19 Q. And are all these issued by the FAA?

20 A. All.

21 Q. And what license do you currently have?

22 A. Airline transport pilot.

23 Q. What do you have to do to keep that license
24 current?

25 A. I don't know that the license ever really

1 expires. Currency is maintained by maintaining your
2 currency in the aircraft that you are flying.

3 Q. Do you have to have physicals on a certain
4 frequency?

5 A. Every six months.

6 Q. And so do you ever not pass the physical?

7 A. No.

8 Q. Where do you report the physical findings to?

9 A. The FAA.

10 Q. And when was your last physical?

11 A. October of last year.

12 Q. And do you have siblings?

13 A. I have a brother, yeah.

14 Q. What's your brother's name?

15 A. Kenneth Mueller.

16 Q. Say it again.

17 A. Kenneth Mueller.

18 Q. And you are Kevin, and he is Kenneth?

19 A. Correct.

20 Q. So you guys are both Ks.

21 A. Correct.

22 Q. What's his middle initial?

23 A. C.

24 Q. What's your middle initial?

25 A. G.

1 Q. And who is older, you or your brother?

2 A. My brother.

3 Q. How much older?

4 A. A year and a month.

5 Q. Do you guys look alike?

6 A. Some people say yes; some people not so much.

7 Q. Is your brother a pilot, also?

8 A. He is.

9 Q. Have you ever used your brother's pilot license
10 for anything?

11 A. No.

12 Q. Has he ever used yours for anything?

13 A. No.

14 Q. What's his occupation?

15 A. He is a pilot.

16 Q. Has that been your occupation for a certain
17 number of years?

18 A. Since 1993.

19 Q. Since 1993 you have worked continuously as a
20 pilot?

21 A. Yeah. '93, '94.

22 Q. Have you ever taken any time off for any reason
23 other than like a vacation? Have you ever taken any leave
24 of absence from working as a pilot?

25 A. I don't really recall.

1 Q. And where does your brother live?

2 A. Rancho Santa Margarita.

3 Q. And do you know his address off the top of your
4 head?

5 A. No.

6 Q. Phone number? You probably have it in your
7 phone. Right?

8 A. Yeah, probably.

9 Q. Can we get his phone number?

10 MR. HALFEN: What's the relevance of this,
11 Counsel? The answer is no. What's the relevance?

12 MR. GLICKMAN: If you say no, then --

13 MR. HALFEN: He is not required to bring anything
14 with him to the deposition today. The fact that he has
15 his phone with him is irrelevant. So if you can explain
16 to me what the relevance is, I will consider it, but I
17 don't think his brother's telephone number is relevant to
18 this deposition or this case, and I am not going to have
19 to have him give it; so why don't we move on. I will
20 instruct him not to answer.

21 MR. GLICKMAN: On relevance?

22 MR. HALFEN: That's right.

23 MR. GLICKMAN: I don't remember seeing that as a
24 proper objection at a deposition.

25 MR. WEERASURIYA: Pardon me. I will jump in with

1 a privacy objection as well, third party privacy.

2 MR. HALFEN: Actually, I am not instructing him
3 not to answer a question because I don't believe a
4 question was pending; so there is no instruction not to
5 answer a question, just for the record. If you want to
6 ask a question, then maybe I will instruct him depending
7 upon what this question is.

8 BY MR. GLICKMAN:

9 Q. What's your brother's phone number?

10 A. I don't know.

11 MR. WEERASURIYA: Objection on third party
12 privacy rights again.

13 MR. HALFEN: He answered the question he doesn't
14 know, so let's move on.

15 BY MR. GLICKMAN:

16 Q. Are you married?

17 A. No, I am not.

18 Q. Have you ever been married?

19 A. No.

20 Q. Do you have any children?

21 A. I do not.

22 Q. At any time since you have lived in the
23 Via Antibes property, has anybody lived with you?

24 A. Define live with me.

25 Q. Spent more than a week with you.

1 A. Yes.

2 Q. And how many different people?

3 A. One.

4 Q. And who was that?

5 A. A friend of mine who came and lived with me for
6 about three or four months. He was going through a
7 divorce --

8 Q. Who was that?

9 A. -- shortly after I moved in.

10 Q. Name?

11 A. Is that really relevant?

12 Q. Well, we are talking about events that occurred
13 at your house and your property and Mr. Nager's property,
14 and there was somebody who was at your property for a
15 period of time so.

16 A. Thomas Maein.

17 Q. Spell the last name.

18 A. I believe it's M-a-e-i-n.

19 Q. And do you know his phone number?

20 A. I do not know.

21 Q. When did he live with you?

22 A. Again, as I said, for a few months in the early
23 part of 2012.

24 Q. Did anything go on involving Mr. Nager and you
25 during that time that you believe he was a witness to?

1 A. No.

2 Q. Where does he live now?

3 A. I am not sure.

4 Q. In the Southern California area?

5 A. I don't think so, no.

6 Q. What type of work does he do?

7 A. He is a pilot.

8 Q. Who does he work for?

9 A. United Airlines.

10 Q. Anybody else that lived with you at your house on
11 Via Antibes for any period of time more than a week?

12 A. No.

13 Q. Do you have any pets?

14 A. I do not, no.

15 Q. Have you ever had any pets?

16 A. In my entire lifetime?

17 Q. At Via Antibes.

18 A. No.

19 Q. Unless I say otherwise now, I am just going to
20 talk about your time at Via Antibes. Okay?

21 A. Okay. Sounds good.

22 Q. So during the time that you have been at
23 Via Antibes, have you worked for anybody in particular?
24 You said your friend worked for United. Did you work for
25 an airline of some sort?

1 A. I work for United Airlines.

2 Q. So all your time that you have been at
3 Via Antibes, you have been employed as a pilot for
4 United Airlines?

5 A. Correct.

6 Q. And a passenger pilot?

7 A. Correct.

8 Q. Do you fly certain routes?

9 A. I do, yeah.

10 Q. Which route?

11 A. It's not a specific route, but a majority of the
12 time I fly long distance international routes.

13 Q. And what type of planes do you fly?

14 A. Currently I am flying a 787 or a 747, the
15 triple 7.

16 Q. And so when you bought the Via Antibes property,
17 you bought it. Right?

18 A. Yeah.

19 Q. And then do you remember what the sales price
20 was?

21 A. I want to say 845-.

22 Q. And do you have a mortgage outstanding on it?

23 A. I do.

24 Q. And how much is the mortgage?

25 A. I don't recall off the top of my head.

1 Q. I'm sorry?

2 A. I don't recall off the top of my head.

3 Q. Do you have a ballpark estimate?

4 A. About the same, like 780- maybe.

5 Q. So there was about a 10 percent down payment or
6 so?

7 A. I think it was 20 percent.

8 Q. Did you sell some other property to buy this
9 property?

10 A. The apartment I owned in DC I sold, but that
11 wasn't required for the purchase of this property, no.

12 Q. In other words, you had cash on hand for the down
13 payment?

14 A. Yeah.

15 Q. And have you ever been convicted of a felony?

16 A. Never.

17 Q. Do you own any guns?

18 A. I do.

19 Q. Are you carrying a gun now?

20 A. I am not.

21 Q. Do you have a license to carry a gun?

22 A. No longer, no.

23 Q. When did you have a license to carry a gun?

24 A. I was a deputized Federal Marshal from about 2003
25 until about 2009.

1 Q. And that had to do with your work as a pilot?

2 A. Yeah.

3 Q. Did you carry a gun as a pilot?

4 A. Yeah.

5 Q. Other than carrying a gun while you were working
6 as a pilot, did you carry a gun outside of your work as a
7 pilot?

8 A. No.

9 Q. Do you have guns in your home?

10 A. I do.

11 Q. How many guns do you have in your home?

12 A. Two.

13 Q. What kind of guns?

14 A. A pistol and a shotgun.

15 Q. Have you ever carried the gun when you have been
16 around Mr. Nager?

17 A. Never.

18 Q. And so has anybody ever told you that you were an
19 alcoholic?

20 A. No.

21 Q. And are you an alcoholic?

22 A. I am not.

23 Q. Have you ever been to any drug or alcohol type of
24 rehab facility?

25 A. I have not, no.

1 Q. How about like a personality anger management
2 type rehab facility, anything like that?

3 A. No.

4 Q. When exactly did you move into Via Antibes?

5 A. November or December of 2011.

6 Q. When did you first meet Mr. Nager in relation to
7 when you moved in?

8 A. Shortly thereafter.

9 Q. And how did you meet him the first time?

10 A. I was in my -- on my driveway, and he came up and
11 introduced himself and told me that he couldn't be happier
12 to see me because the last people who lived here were the
13 biggest fucking assholes he ever met.

14 Q. What else did you tell you about the people that
15 lived there?

16 A. All kinds of sordid allegations and rumors. His
17 son was involved with illegal activity of some sort,
18 things of that nature.

19 Q. This was all in the first conversation?

20 A. No. As the story progressed.

21 Q. Did you have a good relationship with Mr. Nager
22 when you first moved in?

23 A. I did.

24 Q. And when did -- strike that. You met Mr. Nager's
25 daughter?

1 A. Yeah.

2 Q. When did you first meet her in relation to when
3 you moved in?

4 A. I think he introduced me shortly after I moved
5 in.

6 Q. Did you ever speak with Mr. Nager's daughter
7 without Mr. Nager being around?

8 A. Never.

9 Q. Did you ever ask Mr. Nager for help or a referral
10 for any landscaping?

11 A. Yes.

12 Q. And tell me about that. What did you ask about?
13 What did he tell you about landscaping?

14 A. It wasn't really landscaping specifically. It
15 was more like I think I asked him if he knew of a good
16 gardener in the neighborhood. He recommended one --

17 Q. Do you remember -- I'm sorry. Go ahead.

18 A. No. Please.

19 Q. No. Finish.

20 A. Where were we?

21 Q. I'm sorry. It was my fault for interrupting you.
22 You asked Mr. Nager if he knew of any good gardener, and
23 he recommended somebody to you?

24 A. He did.

25 Q. What happened with that recommendation?

1 A. I hired him.

2 Q. And who was that?

3 A. Jose Barraza.

4 Q. Is Mr. Barraza still your gardener?

5 A. No.

6 Q. When did he stop being your gardener?

7 A. Probably about eight, nine months after the
8 assault allegation.

9 Q. "After the assault allegation." What do you
10 mean?

11 A. The assault allegation that came from your
12 client, Mrs. Barraza -- or Mrs. Nour, pardon me, and
13 Jose Barraza.

14 Q. Oh, the allegation that they made that you
15 assaulted them?

16 A. Correct.

17 MR. HALFEN: Objection; vague and ambiguous, also
18 assumes facts not in evidence, also compound as phrased.

19 BY MR. GLICKMAN:

20 Q. I'm just trying to find out what you're talking
21 about when you said "the assault allegation."

22 A. Did he not submit three affidavits of alleged
23 assault, one in my back yard?

24 Q. So that's what you're talking about?

25 A. Yes.

1 Q. Okay. Up until that time was there any issue
2 that you had with Mr. Barraza?

3 A. No. I have never had an issue with Mr. Barraza.

4 Q. You felt he was doing a good job as a gardener?

5 A. Sure.

6 Q. Did you ask Mr. Nager's advice about colors for
7 your house or any other matter of work on your house other
8 than the gardening recommendation?

9 A. I don't remember ever discussing colors.

10 Q. The only recommendation for work of any kind that
11 you got from Mr. Nager was for a gardener?

12 MR. HALFEN: Objection; overbroad, vague and
13 ambiguous.

14 BY MR. GLICKMAN:

15 Q. You can answer.

16 A. I mean there might have been discussions about,
17 you know, contractors that do this work or that work. I
18 can't really remember any specifics, to be honest with
19 you.

20 Q. When you moved in to your property at
21 Via Antibes, were there any hedges between your house
22 and Mr. Nager's house?

23 A. There were.

24 Q. What kind of hedges? Do you know what the plant
25 is?

1 A. I don't know the species.

2 Q. And the hedges were where? They were on the
3 border between your house and Mr. Nager's house?

4 A. The entire, the entire landscaping all around the
5 entire home was overgrown, you know, everywhere. So, you
6 know, on every probably border, perimeter to the house.

7 Q. But there is one common border that you have with
8 Mr. Nager's house. Right?

9 A. Yeah.

10 Q. And there was a hedge on that border when you
11 moved in?

12 A. To my recollection, yes.

13 Q. Did Mr. Nager plant a hedge after you moved in on
14 the border between your house and his house?

15 A. No.

16 Q. Did you plant any hedge after you moved in on the
17 border between your house and Mr. Nager's house?

18 A. No.

19 Q. And this hedge, does it flower?

20 A. I believe there are parts of it that do. It's
21 not one -- as I recall, it's not one specific species the
22 entire length, so there may be some that flower. I am not
23 really sure.

24 Q. Is there a wall also where the hedge is that
25 separates your house from Mr. Nager's house?

1 A. There is now, yeah.

2 Q. And when you moved in, was there a wall?

3 A. There was a wooden fence that was falling down
4 between our two properties when I moved there.

5 Q. And at some point in time did you ask Mr. Barraza
6 to cut down the hedges between your house and Mr. Nager's
7 house?

8 A. Can you be specific to what hedges you are
9 talking about?

10 Q. Well, the hedge that is on the common border
11 between your house and Mr. Nager's house.

12 MR. HALFEN: Well, objection; mischaracterizes
13 prior testimony.

14 BY MR. GLICKMAN:

15 Q. Go ahead. You can answer.

16 A. No. I have never asked Mr. Barraza to cut
17 anything that was on anyone else's property other than my
18 own.

19 Q. Okay. And so was the hedge on your property or
20 Mr. Nager's property?

21 A. Again, which hedge specifically are you referring
22 to?

23 Q. Well, there is a common border between your
24 property and Mr. Nager's property.

25 A. There is.

1 Q. That property line runs perpendicular to
2 Via Antibes?

3 A. It does. It runs from the street to the meadow.

4 Q. So that's the only common border that you have
5 with Mr. Nager. Right?

6 A. Correct.

7 Q. And so did you ever instruct -- strike that. Is
8 the hedge on your property or Mr. Nager's property?

9 MR. HALFEN: Again objection; mischaracterizes
10 prior testimony, and also vague and ambiguous based on
11 prior testimony.

12 BY MR. GLICKMAN:

13 Q. Go ahead.

14 A. So there is a hedge in the front of the property
15 and a hedge in the rear of the property. The hedge in the
16 rear of the property is on Mr. Nager's property. The
17 hedge in the front of the property is on my property.
18 That's why I'm having a little --

19 Q. Okay. So when you say the front and the rear of
20 the property, how are you distinguishing between those two
21 areas?

22 A. Front is the west facing, and rear would be east
23 facing.

24 Q. Okay. So on the front area, that's the area that
25 the hedge is on your property?

1 A. Correct.

2 Q. And did you have Mr. Barraza cut down the hedge
3 on that part of the property?

4 A. I had Mr. Barraza replace some landscaping there.

5 Q. And the hedge that's on the rear side of the
6 property, that's on Mr. Nager's side. Is that right?

7 A. I'm sorry. Was there a question?

8 Q. The hedge that's on the rear side of the
9 property, that's on Mr. Nager's side of the property line?

10 A. Right.

11 MR. HALFEN: I am going to object to the extent
12 that it calls for an expert opinion and, therefore, lacks
13 foundation.

14 MR. GLICKMAN: Go ahead.

15 MR. HALFEN: I think he answered it, though.

16 BY MR. GLICKMAN:

17 Q. You said "Right"?

18 A. Correct.

19 Q. So did you ever have Mr. Barraza do anything with
20 that part of the hedge that's on the rear part of the
21 property?

22 MR. WEERASURIYA: Objection; vague and ambiguous.

23 MR. HALFEN: Also same objection as to expert
24 opinion.

25 THE WITNESS: As I stated before, I have never

1 asked nor had Jose Barraza cut any landscaping anywhere
2 other than on my property.

3 BY MR. GLICKMAN:

4 Q. Okay. So if we are talking about the hedge that
5 runs along the common property line with you and
6 Mr. Nager, the only area of the hedge that you had
7 Mr. Barraza do any trimming or cutting of any kind would
8 be on what you are calling the front part of the common
9 property boundary?

10 MR. HALFEN: Objection; mischaracterizes prior
11 testimony.

12 THE WITNESS: I would contend that the hedge on
13 the front of the property is completely on my property.
14 There may be, you know, like a very small portion of it
15 that is on his property. That would be need to be
16 measured to be found out for certain.

17 BY MR. GLICKMAN:

18 Q. But without saying whose side of the property
19 it's on, just the hedge that runs along the common border
20 either on your side or his side, the only area that you
21 had Mr. Barraza do any trimming or cutting of any kind was
22 on what you are calling the front side of that property
23 border?

24 MR. HALFEN: I'm going to object. Again it
25 mischaracterizes the witness's prior testimony.

1 BY MR. GLICKMAN:

2 Q. Go ahead.

3 A. I am not sure I understand the question. Could
4 you maybe make it a little more clear for me.

5 Q. If we take the entire common border that you have
6 between Mr. Nager and your property, where did you have
7 Mr. Barraza do any cutting?

8 A. Solely on my side of the property.

9 Q. And when you say solely on your side of the
10 property, you are talking about what you have described as
11 the front part of the property. Is that correct?

12 A. Anywhere on my property, solely on my side of the
13 property.

14 Q. Okay. Did you ever talk with Mr. Nager about
15 getting any permission for Mr. Barraza to do any trimming
16 or cutting of the hedge that runs along your property
17 boundary?

18 MR. HALFEN: Objection; vague and ambiguous.

19 THE WITNESS: Which hedge are you referring to
20 now again?

21 BY MR. GLICKMAN:

22 Q. There's only one hedge that runs along your
23 common border. Right?

24 MR. HALFEN: Well, objection; again
25 mischaracterizes the witness's testimony, his previous

1 testimony.

2 THE WITNESS: As I have stated, there are two
3 hedges or maybe more. I don't know exactly what's in his
4 back yard. But there is a hedge in the front part of the
5 house, which is solely on my property, and then at the
6 rear of the property, both properties, Mr. Nager has a
7 hedge on his side of the wall that runs to the eastern
8 boundary.

9 BY MR. GLICKMAN:

10 Q. Okay. On either of those two hedges that you
11 just described, did you ever talk with Mr. Nager to get
12 his permission to do any trimming or cutting or anything
13 of those hedges?

14 A. The hedge in the front part is solely on my
15 property. I do not believe I need nor did I seek
16 Mr. Nager's permission to trim hedges that are on my own
17 property.

18 Q. Okay. So the portion on the front you never
19 talked with Mr. Nager about "Hey, I am thinking about
20 trimming this. Do you have any input on this or
21 anything?" You never had that discussion with him?

22 A. I think I told him I was planning on changing --
23 just in discussion changing the landscaping that was there
24 because it was a number of different species, many
25 overgrown, many, you know, pretty much out of -- you know,

1 that I was thinking about changing, but I was not looking
2 for his permission, no.

3 Q. But you were talking to him and telling him here
4 is what you are thinking of doing?

5 A. I believe that was discussed, yeah.

6 Q. When was this?

7 A. I can't really recall.

8 Q. Was Mr. Barraza a witness to your conversation?

9 A. I don't recall.

10 Q. Was anybody a witness to your conversation?

11 A. I don't think so.

12 Q. Can you ballpark what year this conversation took
13 place?

14 A. Well, it was prior to 2015.

15 Q. And was it a friendly conversation?

16 A. It was, as I recall.

17 Q. What did Mr. Nager say in response to your
18 discussion with him?

19 A. He had concerns about what I was going to replace
20 it with and that the existing hedges, bushes, whatever
21 would be taken down because he said to me, "I don't want
22 to have to see your shitty truck."

23 Q. What type of truck?

24 A. Pickup truck.

25 Q. What year?

1 A. I don't really recall. It was fairly new,
2 probably 2013.

3 Q. You parked the pickup truck in the driveway?

4 A. I did. It does not fit in the garage.

5 Q. Okay. Was there something about the truck
6 that --

7 A. Nothing whatsoever.

8 MR. HALFEN: Hang on. He hasn't finished his
9 question. You have to wait until he finishes, and then
10 you answer.

11 THE WITNESS: Pardon me.

12 BY MR. GLICKMAN:

13 Q. But you gave the description of Mr. Nager as,
14 quote, "your shitty truck," close quote?

15 A. Correct.

16 MR. HALFEN: Objection; vague and ambiguous.

17 BY MR. GLICKMAN:

18 Q. Is that the way you described what Mr. Nager said
19 about your truck?

20 A. That is what he said about my truck.

21 Q. Is there anything that you saw about your truck
22 that would lead you to say that was an accurate or
23 inaccurate assessment of your truck?

24 MR. WEERASURIYA: Objection; calls for
25 speculation, vague and ambiguous.

1 THE WITNESS: No.

2 BY MR. GLICKMAN:

3 Q. Your truck was in good condition?

4 A. It was brand-new.

5 Q. And it was too big to park in your garage. Is
6 that what you said?

7 A. Yes.

8 Q. What type of truck?

9 A. Toyota.

10 Q. What type?

11 A. Tacoma four crew cab. I believe it has four
12 seats, a long bed.

13 Q. How many cars did you have at that time?

14 A. Just the one.

15 Q. And was it that you had other stuff in your
16 garage that prevented you from parking the truck in the
17 garage?

18 A. No.

19 Q. Why couldn't you park the truck in the garage?

20 MR. WEERASURIYA: Objection; asked and answered,
21 I believe.

22 THE WITNESS: Too long.

23 BY MR. GLICKMAN:

24 Q. Okay. Was there anything else that was said when
25 you had that discussion with Mr. Nager about your plans to

1 do changes to the landscaping in the front area?

2 A. I recall assuring him that the new landscaping
3 would be more than adequate, satisfactory. It will be
4 brand-new, very nice. There will be no problem. He won't
5 have to see my truck.

6 Q. Anything else Mr. Nager said at that time?

7 A. Not that I recall.

8 Q. And so did you go ahead and change the
9 landscaping in the front area?

10 A. I did, yeah.

11 Q. When did you do that?

12 A. Shortly thereafter.

13 Q. Did you need to get any permission from the
14 homeowners association in any way to do the landscaping in
15 the front?

16 MR. HALFEN: Objection; calls for a legal
17 conclusion, lack of foundation.

18 THE WITNESS: No, I don't believe so.

19 BY MR. GLICKMAN:

20 Q. Did you inquire of anybody at the homeowners
21 association that you needed to get permission?

22 A. I do not remember doing that.

23 Q. So when did you change the hedges at the front?

24 A. As I said, I am not really sure.

25 Q. It was before or after you filed the lawsuit?

1 A. Oh, we are talking about somewhere between 2012
2 and 2015, so probably like 2013, '14. I don't know.

3 Q. What about the back area where your common
4 boundary line is? You are saying that the hedge is fully
5 on Mr. Nager's property at that point.

6 MR. HALFEN: Objection; mischaracterizes prior
7 testimony.

8 BY MR. GLICKMAN:

9 Q. Is that correct?

10 A. I'm sorry?

11 Q. Did you ever have any discussion with Mr. Nager
12 about the back hedge, about doing any trimming of any kind
13 on the back hedge, the one that is on the common boundary
14 between his property and your property?

15 A. The rear hedge.

16 Q. The rear edge. We will call it that.

17 A. Many conversations.

18 Q. When did you first have a conversation with
19 Mr. Nager about the rear hedge?

20 A. Probably beginning in the early part of 2014.

21 Q. And what was discussed at that point?

22 A. About getting him to trim the hedge to allow me
23 to have the ocean view that the property was meant to
24 have.

25 Q. When you moved in, did you have an ocean view?

1 A. As I said, the vast majority of the landscaping
2 in the back yard was significantly --

3 MR. HALFEN: Try to listen to the question that's
4 asked, and answer the question that's asked. Can we have
5 the question read back, please.

6 BY MR. GLICKMAN:

7 Q. I thought you were doing a good job.

8 (Question read as follows:

9 "Q. When you moved in, did you have an ocean
10 view?")

11 MR. HALFEN: That's a yes-or-no question.

12 BY MR. GLICKMAN:

13 Q. Or an explanation.

14 A. I would say it's a yes and a no question, to be
15 honest with you.

16 Q. So let me see -- I think I got the sense of what
17 you were saying. You said that there was an ocean view,
18 but the hedge was --

19 A. Obstructing it, yes.

20 Q. It was overgrown at that point?

21 A. The hedge was significantly obstructing the ocean
22 view to the south, yeah.

23 Q. If we take the wall that you subsequently put
24 in --

25 A. I'm sorry. Which wall?

1 Q. Along the rear hedge. You put a wall up there,
2 right, on your property?

3 A. The rear hedge meaning the south boundary
4 property line?

5 Q. The boundary between you and Mr. Nager where
6 there's that common boundary line where there is the hedge
7 that's on his property.

8 A. He and I put in --

9 Q. The wall?

10 A. -- the wall.

11 Q. But without arguing about that, I am just trying
12 to get an idea if you can estimate how much higher than
13 the wall was the vegetation when you moved in. I
14 understand there wasn't a wall there at the time. But if
15 we take the wall that's there now, was the vegetation
16 higher than the height of the wall now?

17 MR. HALFEN: Objection; vague and ambiguous.

18 THE WITNESS: Higher than the wall that is there
19 now --

20 BY MR. GLICKMAN:

21 Q. Right.

22 A. -- or the wall that was there? The wall that's
23 there now. Is that the question?

24 Q. Yes, because we can objectively see the height of
25 the wall now. If we go out to the property, we can

1 measure it and see how high it is. I am just trying to
2 get an idea if you can in your mind say that the
3 vegetation was a foot higher than the wall that's there
4 now or two feet higher or lower, or what?

5 A. A couple of feet, a number of feet.

6 Q. A couple of feet what?

7 MR. HALFEN: He said, "A couple of feet, a number
8 of feet" is what I heard him say.

9 BY MR. GLICKMAN:

10 Q. Right. But was it higher or lower than the wall?

11 A. Higher.

12 Q. Okay. So if we go out to the property now and we
13 look at the wall now and if we imagine a couple feet
14 higher, that would be the height of the vegetation when
15 you moved in?

16 MR. HALFEN: Objection; mischaracterizes prior
17 testimony.

18 MR. GLICKMAN: I thought I said it exactly right,
19 but go ahead.

20 MR. HALFEN: Well, you said "a couple." He said
21 "a couple, a number of feet," which is a different
22 statement, Counsel. So you don't have to revise his
23 testimony when you ask the next question. His testimony
24 is clear. He said, "a couple, a number of feet."

25 MR. GLICKMAN: What does that mean, "a couple, a

1 number of feet"?

2 MR. HALFEN: Well, you can ask him a follow-up
3 question if you don't understand it, but you are
4 mischaracterizing his testimony and repeating his answer
5 inaccurately, and you have been doing that a number of
6 times, Counsel.

7 BY MR. GLICKMAN:

8 Q. What does that mean, "a couple, a number of
9 feet"?

10 A. I don't know the exact measurement.

11 Q. Are you talking about two feet, three feet, five
12 feet? What are you talking about?

13 A. I'd rather not guess. I don't know.

14 Q. What's your best estimate? You were the one who
15 was there when you moved in, and you could see what it
16 looked like.

17 MR. HALFEN: Objection; argumentative.

18 MR. WEERASURIYA: Calls for speculation as well.

19 BY MR. GLICKMAN:

20 Q. What's your best estimate?

21 MR. HALFEN: Objection; asked and answered.

22 THE WITNESS: Two feet maybe.

23 BY MR. GLICKMAN:

24 Q. Okay. So at any time -- strike that. When did
25 you first have any discussion with Mr. Nager then about

1 doing any trimming of any kind on that rear hedge?

2 A. As I said before, it began in the early part of
3 2014.

4 Q. And did he talk to you, or did you talk to him
5 first?

6 A. I talked to him.

7 Q. And where were you when you talked to him the
8 first time?

9 A. I don't recall.

10 Q. Anybody else around?

11 A. I don't recall.

12 Q. What do you recall discussing with Mr. Nager in
13 that first conversation about the rear hedge?

14 A. That I would very much appreciate it if he
15 trimmed his hedge.

16 Q. And what did he say?

17 A. He gave a litany of excuses as to why he didn't
18 want to, couldn't do it.

19 Q. What do you mean "a litany of excuses"?

20 A. He said he had significant privacy concerns. He
21 said a doctor that lived in the neighborhood had been
22 coming down into the meadow and spying on his daughter
23 while she sunbathed in their back yard, you know, things
24 of that nature, you know.

25 Q. So he wanted the hedge to prevent the doctor from

1 spying on his daughter. Is that the way you understood
2 what he was saying?

3 MR. HALFEN: Objection; that calls for
4 speculation.

5 THE WITNESS: I don't know why, what all the
6 reasons were that he wanted the hedge.

7 BY MR. GLICKMAN:

8 Q. But he told you something about a doctor spying
9 on his daughter?

10 A. Yeah. That was his reasoning for privacy, and he
11 mentioned that. He mentioned some doctor that lived in
12 the neighborhood, like I said, that he said would come
13 down into the meadow and peek into his back yard and spy
14 on his daughter.

15 Q. This hedge that was on the rear part of the
16 property between your property and Mr. Nager's property,
17 was that a hedge that would block the view from the
18 meadow?

19 A. No.

20 Q. Who is this doctor that he was talking about? Do
21 you know?

22 A. I don't know who he is.

23 Q. Anything else that Mr. Nager said to you in that
24 first conversation when you discussed trimming the hedge
25 that's on your common property?

1 A. Not that I can recall, no.

2 Q. Was there still a wooden fence at that point?

3 A. I don't remember.

4 Q. At some point in time you had some discussion
5 that led to the wooden fence coming down and a wall going
6 up on that rear part of the common property boundary.
7 Right?

8 A. Correct.

9 Q. And how did that come about?

10 A. As I said before, when I moved in, the fence that
11 was all along the southern boundary was completely rotten,
12 termite ridden, and falling down in sections, falling
13 down, downhill into his property, towards his property; so
14 it was obviously something that needed to be addressed
15 sooner or later.

16 Q. Okay. So you approached Mr. Nager about doing
17 something with that wood fence?

18 A. I don't remember how it was decided. I don't
19 recall if I approached him or he approached me.

20 Q. Do you recall Mr. Nager coming to you and saying,
21 "Look, let's talk about doing a new fence or a new wall
22 here"?

23 A. We had a discussion or two about the need to
24 resolve the problem, you know what I mean, by putting
25 in -- you know, either replacing or repairing a new fence

1 because it was an obvious problem that couldn't be denied.

2 Q. Was this a cordial conversation about dealing
3 with the fence?

4 A. Yeah.

5 Q. And what was the outcome of the fence discussion?

6 A. To put in a new fence.

7 Q. Okay. And what type of fence?

8 A. A block wall fence.

9 Q. Did you have some written agreement of some sort
10 relating to the new -- do you call it a fence or a wall?

11 A. A wall. I guess a wall would be more
12 appropriate.

13 Q. Like what Trump says: Is it a wall, or is it a
14 fence?

15 MR. HALFEN: Objection; vague and ambiguous.

16 MR. GLICKMAN: Objection; bad joke.

17 MR. HALFEN: Yeah. I think counsel was joking.
18 I was half joking, too, actually.

19 BY MR. GLICKMAN:

20 Q. Okay. But the discussion was eventually going
21 towards putting in a wall as opposed to a new wood fence?

22 A. Correct.

23 Q. And who brought up the idea of putting in a wall?

24 A. I don't recall. I recall the wall, the idea
25 behind the wall was so that the same thing wouldn't occur,

1 the termites, the rot that occurred to the wood.

2 Q. Before the old fence was taken down and the wall
3 was put up, did you ever have Mr. Barraza do any work on
4 that hedge where the back area is of your house dividing
5 your property and Mr. Nager's property?

6 MR. WEERASURIYA: Objection; asked and answered.

7 BY MR. GLICKMAN:

8 Q. Go ahead.

9 A. On my property.

10 Q. At all. Did you ever ask Mr. Barraza to do any
11 trimming, any work on that hedge before the wall was put
12 up on that common area between your property and
13 Mr. Nager's property?

14 MR. WEERASURIYA: Objection; same.

15 THE WITNESS: No.

16 BY MR. GLICKMAN:

17 Q. So with the wall did you and Mr. Nager have
18 anything in writing relating to the wall that was put up?

19 A. I don't think so, but I'd have to look.

20 Q. For purposes of this question I want you to
21 assume that Mr. Barraza is going to testify that you told
22 him, Mr. Barraza, that Mr. Nager had given approval for
23 cutting hedges on -- the part of the hedge that was in the
24 back part of your property on the common property
25 boundary. Do you recall ever giving Mr. Barraza that

1 statement?

2 MR. HALFEN: Objection; as phrased the question
3 is vague and ambiguous, but beyond that it assumes a fact
4 that's not in evidence here, calls for speculation on the
5 part of the witness.

6 THE WITNESS: I didn't even understand the
7 question.

8 BY MR. GLICKMAN:

9 Q. I will just ask it afresh. Did you ever tell
10 Mr. Barraza that you had spoken with Mr. Nager and that
11 Mr. Nager gave approval for Mr. Barraza to trim the hedge
12 that's separating your property and his property on the
13 back side of the property?

14 MR. HALFEN: Objection; vague.

15 THE WITNESS: Anywhere other than on my property?

16 BY MR. GLICKMAN:

17 Q. What you are saying is --

18 A. What I'm saying is Mr. Barraza was my landscaper.
19 He had free rein to cut, trim, whatever my landscaping on
20 my property. I never instructed Mr. Barraza to cut or
21 trim landscaping anywhere other than on my property, any
22 hedge, any whatever.

23 Q. Okay. Did you ever tell Mr. Barraza that
24 Mr. Nager had given approval for any landscaping you were
25 doing?

1 MR. WEERASURIYA: Objection; asked and answered.

2 THE WITNESS: Any landscaping that I was doing on
3 my property?

4 BY MR. GLICKMAN:

5 Q. Of any kind. Did you ever tell Mr. Barraza, "I
6 spoke with Mr. Nager, and Mr. Nager gave his approval for
7 doing this." --

8 MR. WEERASURIYA: Objection; the same. Sorry.

9 BY MR. GLICKMAN:

10 Q. -- "Here's what I'd like done"?

11 A. No.

12 Q. Did you make any improvements on your house
13 before you moved in?

14 MR. WEERASURIYA: Objection; vague and ambiguous.

15 THE WITNESS: Before I moved in?

16 BY MR. GLICKMAN:

17 Q. Yes.

18 A. No.

19 Q. And after you moved in, did you make any
20 improvements of any kind?

21 A. Significant improvements.

22 Q. Let's talk about the exterior improvements. What
23 exterior improvements did you make after you moved in?

24 A. Almost everything was painted. There was some
25 siding and brick work that didn't match on the front of

1 the house that was stuccoed, all stuccoed to match, the
2 windows, you know, that were leaking were repaired, things
3 of that nature.

4 Q. Okay. Did you do any building of any kind in the
5 rear of your house; that would be the area facing the back
6 yard of Mr. Nager's house?

7 A. How do you mean "building"?

8 Q. Well, I don't know. I think you put in some sort
9 of deck, a sun deck of some sort or something.

10 A. No, I did not.

11 Q. What did you put in? You put something in.

12 A. I put in an arbor awning.

13 Q. There were some posts put in, and then there was
14 some covering of the area with curtains around it?

15 A. It was an awning installed by an awning company
16 in my back yard.

17 Q. Okay. What other work did you do in your back
18 yard?

19 A. Relandscaped the entire back yard, put fresh
20 grass. There was some old growth trees that were falling
21 down. A lot of debris was taken out.

22 Q. Did you put in an area where you have chaise
23 lounges now?

24 A. I did not put in the area, no.

25 Q. That was there when you moved in?

1 A. It was.

2 Q. Did you do anything to that area other than paint
3 it?

4 A. I repaired -- I did not. The concrete that was
5 on the floor of that area and the stairs that led down
6 from it, I had that repaired.

7 Q. So did you change the footprint at all or just
8 make --

9 A. I did not change the footprint in any way.

10 Q. -- repairs, not any change to the footprint?

11 A. Correct.

12 Q. And so the only, quote, unquote, "new change"
13 that you made in the back yard was putting in the arbor?

14 MR. HALFEN: Objection; mischaracterizes his
15 prior testimony.

16 BY MR. GLICKMAN:

17 Q. Is that right?

18 A. When you say like construction --

19 Q. Right. Other than repairing existing structures,
20 the only change you made was adding the arbor?

21 A. The only significant change, yes.

22 Q. Okay. Did you have to get any permits of any
23 kind for any of the work that you did on the outside of
24 your house?

25 MR. HALFEN: I will object to the extent that it

1 calls for a legal conclusion. Go ahead.

2 THE WITNESS: Yes.

3 BY MR. GLICKMAN:

4 Q. Who did you get permits from?

5 MR. WEERASURIYA: Objection; compound.

6 THE WITNESS: The City of Dana Point.

7 BY MR. GLICKMAN:

8 Q. And these were permits for doing what?

9 A. Installing that arbor.

10 Q. Other than installing the arbor, did you get any
11 other permit for work on your house from the City of
12 Dana Point?

13 MR. HALFEN: Objection; overbroad as to time
14 frame, vague and ambiguous.

15 THE WITNESS: Not that I recall.

16 BY MR. GLICKMAN:

17 Q. Did you have to get any permission of any kind
18 from the homeowners association for any work you did in
19 your back yard?

20 MR. HALFEN: Again, I will object on the grounds
21 that as phrased the question calls for a legal conclusion.

22 THE WITNESS: Yes.

23 BY MR. GLICKMAN:

24 Q. What permission did you get from the homeowners
25 association?

1 A. I received written permission from the homeowners
2 association.

3 Q. For the arbor?

4 A. For the arbor.

5 Q. Anything else?

6 A. I think it was some landscaping things, you know,
7 landscaping issues. I can't really recall, to be honest
8 with you.

9 Q. Did you ever ask any of your neighbors to sign
10 off and give it permission for any work you were doing on
11 the outside of your house?

12 A. I asked all of my neighbors with the exception of
13 Mr. Nager.

14 Q. Is there a reason you did not ask Mr. Nager?

15 A. Yes.

16 MR. HALFEN: Objection; vague and ambiguous,
17 overbroad.

18 THE WITNESS: Yes.

19 BY MR. GLICKMAN:

20 Q. What was your reason?

21 A. It was downstream of the letter from you
22 requesting that I have no contact or, you know, whatever
23 with your client, Mr. Nager. So I got the -- it's not
24 really approval. It's just letting your neighbors see the
25 plans. And I took it to the HOA, and I informed the board

1 president that he had not seen it because of the letter
2 that you wrote and that he would make sure that he could
3 get a look at it or what have you. I don't really know
4 what happened after that point.

5 Q. Who was the board president?

6 A. At that time it was Randy Jones.

7 Q. So what other neighbors did you get permission
8 from?

9 MR. WEERASURIYA: Objection; mischaracterizes the
10 testimony.

11 THE WITNESS: The Tianos, who live just to the
12 north of me, and at the time the Lemonadis that lived to
13 the east of me.

14 BY MR. GLICKMAN:

15 Q. Across the street?

16 A. Across Mentone, not across Antibes but across.

17 Q. Your house is on the corner. Right?

18 A. Correct.

19 Q. You are familiar with a neighbor impact form that
20 the homeowners association has?

21 A. That is it, I believe.

22 Q. I'm sorry?

23 A. I believe that is it.

24 Q. Okay. And so how many times did you have a
25 neighbor impact form signed by different neighbors?

1 A. Any time it was required.

2 Q. How many times did you do it?

3 A. Are we talking about the arbor now again?

4 Q. Just in terms of work that you did on your house,
5 how many times, separate times did you use a neighbor
6 impact form?

7 A. I can't recall. Numerous times.

8 Q. And did you ever have Mr. Nager at any time sign
9 a neighbor impact form?

10 A. I can't recall.

11 Q. Did you ever --

12 A. I can recall after 2015, after the letter from
13 you, no.

14 Q. But before 2015 you were there for four years,
15 more or less. During those four years did you ever ask
16 Mr. Nager to sign a neighbor impact form?

17 A. I don't recall.

18 Q. Was there a cement mixer truck that came to the
19 back of your house at some point in time?

20 A. Can you be more specific?

21 Q. Did you ever have a cement mixer truck at your
22 property that poured concrete for anything in your back
23 yard?

24 A. When the concrete on that was repaired, there was
25 a cement mixer truck that pulled onto Antibes.

1 Q. What do you call that area where the concrete was
2 repaired?

3 A. I don't know exactly what you would call it, to
4 be honest with you. I believe its main function is a
5 retaining wall.

6 Q. Did you ever call it a viewing deck?

7 A. No.

8 Q. This is an area now that you have chaise lounges
9 on?

10 A. I do.

11 Q. Did you have to get a permit for the cement mixer
12 truck to come on?

13 A. No. Repairing cement does not require a permit.

14 Q. Do you have a view of Mr. Nager's house from your
15 property?

16 MR. WEERASURIYA: Objection; vague and ambiguous.

17 MR. GLICKMAN: I will agree with that one.

18 Q. From your back yard do you have a view of
19 Mr. Nager's property?

20 A. I can see portions of his property from my back
21 yard, yes.

22 Q. What portions of his property can you see?

23 A. Mainly his back yard area.

24 Q. Can you see any part of his house?

25 A. Yeah. The eastern end of the home, some of the

1 roof.

2 Q. Has anybody ever told you that you were invading
3 Mr. Nager's privacy from your back yard?

4 MR. HALFEN: You mean other than in this lawsuit?

5 MR. GLICKMAN: Right.

6 MR. HALFEN: Other than in this lawsuit. That's
7 obviously an allegation, Counsel, in this lawsuit. Am I
8 correct about that?

9 MR. GLICKMAN: I think so, yes.

10 MR. HALFEN: Okay. He is aware of the lawsuit.
11 Do you know of any other time when that issue came up
12 other than this lawsuit?

13 THE WITNESS: No. Mr. Nager is the only one
14 who's ever alleged that.

15 BY MR. GLICKMAN:

16 Q. Did he say anything to you directly about that?

17 A. I think he said it to anyone who would listen to
18 him, including me.

19 Q. When did Mr. Nager first say anything to you
20 about that you were invading his property? Strike that.
21 When did Mr. Nager ever say anything to you about that you
22 were invading his privacy?

23 A. I don't remember couching it in terms of invading
24 his privacy. Violating, you know, whatever, that kind of
25 thing.

1 Q. When did Mr. Nager say anything about violating
2 his privacy or whatever he was talking to you about?

3 A. With any discussion, as I recall it, numerous
4 times.

5 Q. When did this first come up, this concept of
6 violating his privacy?

7 A. Probably in the latter part of 2014.

8 Q. What was the context?

9 A. Just that context.

10 Q. What context? I mean you had to be talking to
11 him somehow.

12 A. Oh, again about trimming the bushes to allow me
13 the view that I am entitled to per the CC & Rs and the
14 view maintenance policy.

15 Q. What are you referring to when you say the view
16 maintenance policy?

17 A. Emerald Ridge's view maintenance policy.

18 Q. What is that?

19 A. It lays down how much view can be blocked, who is
20 given the responsibility, the sole responsibility to
21 determine that blockage, and that essentially any
22 decisions that they hand down are unassailable. That's
23 it.

24 Q. Okay. So Mr. Nager said something to you about
25 that he felt that you were invading his privacy?

1 A. Not that I was invading his privacy. One of the
2 many excuses was privacy. He kept harping on his privacy,
3 his privacy.

4 Q. Many excuses for what?

5 A. For not cutting the bushes, trimming the bushes.

6 Q. And the bushes that you are talking about, this
7 is that hedge that we are talking about where that new
8 wall was put up?

9 A. The hedge on the, yeah, rear portion of the
10 property.

11 Q. And so when Mr. Nager and you were having some
12 discussion about you felt he should trim the hedge and he
13 was giving you the reasons why not because of privacy, was
14 the wall already in place at that time, or was this before
15 the wall was built?

16 A. I don't recall, to be honest with you.

17 Q. So, again, if we use the height of the wall
18 that's there now, when you were having this discussion
19 about Mr. Nager trimming the hedge, how high was the hedge
20 above where the wall is now?

21 A. As I said before, a couple of feet.

22 Q. So about the same as when you moved in?

23 A. It was hard to determine when I moved in where,
24 you know. There was no delineated line (indicating).

25 Q. Well, did you feel that Mr. Nager was essentially

1 maintaining the hedge at the same height as it was when
2 you moved in?

3 MR. HALFEN: Objection; vague and ambiguous.

4 THE WITNESS: I don't really recall.

5 BY MR. GLICKMAN:

6 Q. You don't recall what?

7 A. What exact landscaping he was doing in his back
8 yard throughout the period --

9 Q. But you were having some discussion with
10 Mr. Nager where you felt that you wanted Mr. Nager to trim
11 the hedge, and it was about two feet or so above where the
12 wall height is now, and Mr. Nager was saying he didn't
13 want to do it because of privacy and other issues.

14 I am just trying to compare that point in time to
15 2011, when you moved in, the height of the hedge. Was it
16 about the same?

17 A. About the same, yes, or similar.

18 Q. And this conversation you were having with
19 Mr. Nager, then, when you first started talking about the
20 hedge and he brought up the privacy issues, when was that?
21 Did you say 2014?

22 A. Yeah.

23 Q. And when was the wall built?

24 A. I don't recall, to be honest with you. It was
25 before 2013, 2014, somewhere in that time period.

1 MR. HALFEN: Is now a good time for a break?

2 MR. GLICKMAN: Why not?

3 MR. HALFEN: All right.

4 (A 16-minute recess was taken.)

5 MR. GLICKMAN: Let's go back on the record.

6 Q. While we were off the record, did you think of
7 anything that you wanted to change of any of your answers
8 so far?

9 A. Not as of yet, no.

10 Q. You were at the property before you bought the
11 house. Weren't you?

12 A. I was.

13 Q. And you saw the back yard. You saw the foliage.
14 You saw whatever view there was at the time you bought the
15 property before you bought the property?

16 A. I saw the property, yeah.

17 Q. You walked all the way through. You walked in
18 the back yard?

19 A. There were a number of areas that were very hard
20 to access because of the amount of junk and crap and
21 everything in the back yard was one of those.

22 Q. Did you see whatever view there was in the back
23 yard before you bought the property?

24 MR. WEERASURIYA: Objection; vague and ambiguous.

25 THE WITNESS: You know, I saw the back yard. I

1 saw the potential that I thought was there, yeah.

2 BY MR. GLICKMAN:

3 Q. You were there during the daytime when you looked
4 at the property?

5 A. Daytime, yeah.

6 Q. Did you go by yourself or with somebody?

7 A. I was with a realtor.

8 Q. Who was that?

9 A. Diane. I don't recall her last name.

10 Q. What company?

11 A. I think it was BRE, which I believe is Better
12 Real Estate. I think that's it. Better Real Estate
13 something.

14 Q. Do you know if she is still with the same
15 company?

16 A. I don't believe she is, no. I think she is
17 retired.

18 Q. Did you have to sign some sort of
19 acknowledgements of having inspected the property and
20 waiving inspections and things like that when you bought
21 the property?

22 MR. HALFEN: Objection; vague and ambiguous.

23 THE WITNESS: Can you be more specific?

24 BY MR. GLICKMAN:

25 Q. Sure. When you bought the property, do you

1 recall signing any documents acknowledging that you had
2 visited the property and saw the conditions of the
3 property?

4 A. I signed all the documents in escrow that were
5 required of me to sign.

6 Q. Did you have any inspections done at the property
7 before you bought it? This is before escrow closed.

8 A. Yeah. There was an inspector.

9 Q. What kind of inspection?

10 A. I think they inspected electrical, plumbing, the
11 roof, things of that nature.

12 Q. How many times were you on the property before
13 escrow closed?

14 A. Twice, I believe.

15 Q. And both times during the day?

16 A. Yes.

17 Q. Let me show you a photo that we will mark this as
18 Exhibit 1 to your deposition.

19 (The aforementioned document was marked by the
20 court reporter as Defendants' Exhibit 1 for
21 identification; attached hereto.)

22 THE WITNESS: Do you have a copy for --

23 BY MR. GLICKMAN:

24 Q. I only have two copies. Sorry.

25 Exhibit 1, this is a photo taken from Mr. Nager's

1 property looking back towards your property across that
2 wall that was built?

3 A. Correct.

4 Q. And so the area that we see to the left of the
5 property where there is the curtains, is that the arbor
6 area we are talking about?

7 A. It is.

8 Q. And so that was something that was not there when
9 you bought the property that you built. Is that correct?

10 A. Correct.

11 Q. And the area where the three lounges are with the
12 two umbrellas, what do you call that area?

13 A. You can call it whatever you like. Again, I said
14 its main function was a retaining wall, I believe. It was
15 there before I bought the property.

16 Q. And if I call that area where the three chaise
17 lounges are and the two umbrellas the upper deck area,
18 would that be a sensible way of calling it?

19 A. You can call it whatever you'd like to call it.

20 Q. Why don't we just call it the upper deck area so
21 I don't have to keep on saying the area where the three
22 chaise lounges and the two umbrellas are. Okay with you?

23 A. Sure.

24 Q. From the upper deck area have you ever had your
25 ocean view obstructed?

1 A. The view of the ocean from the upper deck area,
2 was it ever obstructed by any of Nager's landscaping?

3 Q. Where was the obstruction?

4 A. There were a number of areas that were
5 obstructing even to a person being that high up on the
6 property, like the birds of paradise, things of that
7 nature. But never was there a claim to an ocean view from
8 this spot, and never -- and there was never any assessment
9 of an unreasonable view blockage done from anywhere other
10 than the ground level of the back yard.

11 Q. Okay. So where do you believe that Mr. Nager had
12 obstructed your view?

13 A. The view obstruction, you can only see a portion
14 of the area that encompassed the view obstruction from
15 this picture. But the hedge was quite a bit higher
16 (indicating) so that standing in the back yard, it was
17 significantly obstructing the ocean view in that
18 direction.

19 Q. Is there any obstruction of the ocean view that
20 you believe that we can see in this picture, Exhibit 1?

21 MR. WEERASURIYA: Objection; calls for
22 speculation, vague and ambiguous.

23 THE WITNESS: The only part that he is not
24 complying with here based upon the ARC is this one area,
25 the area over here (indicating) to the left, which is also

1 supposed to be at -- the area all the way back to the eave
2 of his roof or the --

3 BY MR. GLICKMAN:

4 Q. When we are looking at the property --

5 MR. HALFEN: I don't think he was quite finished,
6 Steve.

7 MR. GLICKMAN: Sorry.

8 THE WITNESS: That area does not meet the ARC's
9 instructions for resolving the view blockage. All of this
10 (indicating) does.

11 BY MR. GLICKMAN:

12 Q. So the area that you are saying did not meet the
13 requirements for getting rid of the view blockage is the
14 area that's just to the left of the photo where there is
15 the foliage that is above the height of the wall? Let me
16 see if I have a Sharpie.

17 (Brief interruption.)

18 MR. GLICKMAN: Let's go back on the record.

19 Q. So we have a Sharpie now. Can you put a circle
20 around where you believe there is a view blockage.

21 A. So it's hard to determine in this picture because
22 it's facing north. The limit was, you know, the end of
23 the house structure, and I believe that to be this
24 (indicating) is in noncompliance.

25 Q. Make a box.

1 A. (Witness complies.)

2 Q. There you go. And the area that you put the box
3 around, was that foliage there when you moved in?

4 A. I don't know.

5 Q. Do you know who planted that foliage there where
6 the box is?

7 A. I would assume Mr. Nager did.

8 Q. Were you ever aware of anybody from the
9 homeowners association other than Mr. Nager planting any
10 foliage?

11 A. That's correct. The homeowners association
12 planted some, I believe planted some foliage in his back
13 yard at one time. I don't know the specific details.

14 Q. The area that you put the box around, isn't that
15 the foliage that the homeowners association planted?

16 MR. WEERASURIYA: Objection; calls for
17 speculation.

18 THE WITNESS: As I said, I don't know.

19 BY MR. GLICKMAN:

20 Q. Why don't you know?

21 MR. WEERASURIYA: Objection; asked and answered.

22 THE WITNESS: I wasn't privy to the planting or
23 what was arranged or what was decided. That was between
24 the homeowners association and Mr. Nager.

25

1 BY MR. GLICKMAN:

2 Q. But how did you find out that the homeowners
3 association had planted some foliage on Mr. Nager's
4 property?

5 A. I think I learned about it later from someone
6 else on the board.

7 Q. Later meaning when?

8 A. Later.

9 Q. After your lawsuit was filed?

10 A. No. Before that.

11 Q. Before the lawsuit was filed, you were aware that
12 the foliage that was causing some of your blockage was
13 actually planted by the homeowners association?

14 MR. HALFEN: Objection; mischaracterizes his
15 prior testimony.

16 MR. WEERASURIYA: Also calls for speculation.

17 THE WITNESS: I don't even understand the
18 question, to be honest with you. You are saying did I
19 what, now?

20 BY MR. GLICKMAN:

21 Q. Before the lawsuit, before you filed your
22 lawsuit, you were aware that the homeowners association
23 had planted some foliage on Mr. Nager's property.
24 Correct?

25 A. Correct. I had been told that, yes.

1 Q. And were you told which foliage it was?

2 A. No.

3 Q. Were you told that some of the foliage that you
4 believe was blocking your ocean view was planted by the
5 homeowners association?

6 A. No.

7 Q. Did you ever make any request of the homeowners
8 association to trim or cut the foliage that the homeowners
9 association had planted on Mr. Nager's property?

10 A. As I just said, I don't know what they exactly
11 planted on his property. And I'd go a little further to
12 say that if this were trimmed to the fence line and if
13 this is the boundary of the roof and what the ARC
14 determined as the area that needed to be cleared, if this
15 part of the foliage was cut, there would not be an issue.
16 All this foliage (indicating) is the same, you know, if
17 this is the foliage that you are saying was put in by
18 the HOA.

19 Q. Okay. Is that what you believe the foliage was
20 that was put in by the HOA, the part that you just marked
21 with --

22 A. I don't know where -- I don't know. That's what
23 you said.

24 Q. Well, I thought you said -- I am not going to
25 argue with you. But before you filed your lawsuit --

1 A. I am just trying to answer you as best I can.

2 Q. Right. But before you filed the lawsuit, you
3 knew there was foliage that the HOA had planted on
4 Mr. Nager's property?

5 A. That's what I was told, yes.

6 MR. HALFEN: Objection; asked and answered.

7 BY MR. GLICKMAN:

8 Q. Did anybody tell you why that was planted on his
9 property?

10 A. Not really that I recall, no.

11 Q. Did somebody tell you the homeowners association
12 felt that there needed to be some privacy between your
13 property, and the homeowners association planted that
14 foliage there to provide Mr. Nager with some privacy?

15 A. No. As I recall --

16 MR. HALFEN: You have answered the question.

17 BY MR. GLICKMAN:

18 Q. As you recall what?

19 A. As I recall, it was part of, you know, he was
20 saying that -- I believe arguing that, you know, some of
21 his landscaping had been damaged or, you know, if it was
22 trimmed, it would be damaged, what have you, and that to
23 appease him, the association paid for or picked up the tab
24 to plant some landscaping back on that slope there.

25 Q. The landscaping damaged how?

1 A. From cutting, from trimming.

2 Q. Trimming by Mr. Barraza?

3 MR. WEERASURIYA: Objection; calls for
4 speculation.

5 THE WITNESS: I don't know who trimmed it.

6 BY MR. GLICKMAN:

7 Q. Who else would have been on the property to trim
8 the property other than Mr. Barraza?

9 MR. WEERASURIYA: Objection; calls for
10 speculation.

11 THE WITNESS: Mr. Barraza has an entire crew of
12 guys.

13 BY MR. GLICKMAN:

14 Q. Mr. Barraza's crew is who you are talking about,
15 then, who you believe trimmed this?

16 MR. HALFEN: Objection; vague and ambiguous and
17 calls for speculation.

18 THE WITNESS: That is who I would assume trimmed
19 it.

20 BY MR. GLICKMAN:

21 Q. So at some point in time you learned that
22 Mr. Nager was complaining that there was trimming that was
23 done of foliage. Is that true?

24 MR. HALFEN: Objection; vague and ambiguous.

25 THE WITNESS: That sounded like a half done

1 question. I'm sorry. One more time on that.

2 BY MR. GLICKMAN:

3 Q. You learned at some point in time that Mr. Nager
4 was contending that there was foliage on his property that
5 was trimmed without his permission?

6 A. No. That's not what I am contending at all.

7 Q. But the foliage that was planted by the
8 homeowners association, that was on Mr. Nager's property
9 or your property?

10 MR. HALFEN: Objection; vague and ambiguous and
11 also calls for speculation, lacks foundation, and is
12 inconsistent with prior testimony.

13 THE WITNESS: Nager's property.

14 BY MR. GLICKMAN:

15 Q. But you were aware that there was some dispute
16 that was going on that eventually led to the homeowners
17 association planting the foliage on Nager's property?

18 MR. HALFEN: Objection; lack of foundation, calls
19 for speculation.

20 THE WITNESS: Can you repeat that question?

21 BY MR. GLICKMAN:

22 Q. Sure. You were aware that there was some issue
23 of some sort that Mr. Nager was claiming that there was
24 inappropriate cutting of foliage on his property that was
25 eventually resolved by the homeowners association planting

1 foliage on his property?

2 MR. WEERASURIYA: Objection; calls for
3 speculation, vague and ambiguous as to "resolved."

4 THE WITNESS: No. That's totally wrong. What I
5 heard later after the fact was that there was, you know, a
6 complaint or beef made or whatever that some of the
7 landscaping was damaged in the trimming; and in order to
8 appease Mr. Nager, the homeowners association picked up
9 the tab to replant landscaping of his choice, you know, in
10 his back yard.

11 BY MR. GLICKMAN:

12 Q. Were you ever aware of this, put in quotes,
13 "beef," the term you used, around the time that Mr. Nager
14 was making this beef?

15 A. No. I only heard about it later.

16 Q. And who did you hear about it from?

17 A. I believe it was a board member.

18 Q. Which one?

19 A. I am not certain.

20 Q. Give me back the photo that you marked up over
21 there. We are going to have the one marked up, then, as
22 Exhibit 1. Let me show you another document that I will
23 mark as Exhibit 2.

24 (The aforementioned document was marked by the
25 court reporter as Defendants' Exhibit 2 for

1 identification; attached hereto.)

2 BY MR. GLICKMAN:

3 Q. This is another photo taken from Mr. Nager's
4 property. Do you recognize that photo?

5 MR. HALFEN: Objection; vague and ambiguous.

6 THE WITNESS: I don't recognize the photo. I did
7 not take the photo.

8 BY MR. GLICKMAN:

9 Q. But you recognize what is shown. Right?

10 A. Yes.

11 Q. It's taken from Mr. Nager's property looking back
12 towards your property?

13 A. Correct.

14 Q. Is that you on the upper deck area there?

15 A. I cannot tell in this picture, to be honest with
16 you. I would assume so.

17 Q. Okay. So from any area on your house can you
18 actually see the ocean?

19 A. Pardon me?

20 Q. From any area on your house, can you see the
21 ocean?

22 MR. WEERASURIYA: Vague and ambiguous as to time.

23 BY MR. GLICKMAN:

24 Q. Now. Let's talk about now. Can you see the
25 ocean?

1 A. Yes.

2 Q. Where do you have to be where you can see the
3 ocean?

4 A. In the back yard, in the dining area, a little
5 bit in the kitchen. It's quite a nice ocean view now.

6 Q. I'm sorry?

7 A. It's a nice ocean view now.

8 Q. And do you see Mr. Nager's house as you are
9 looking towards the ocean?

10 A. No.

11 Q. You can see the ocean without seeing Mr. Nager's
12 house at all?

13 A. If I am in my back yard, I can see portions of
14 his house. If I am in my home, I don't see any of his
15 house at all.

16 Q. What about Mr. Hill, the Hills' house? Can you
17 see their house when you look out towards the ocean?

18 A. No. I take that back. Actually, if I am in my
19 back yard, you know, in this very southeastern corner
20 (indicating), I can see a part of the Hills' back yard or
21 their fence and a little of their roof.

22 Q. Did you ever ask permission to build a rail along
23 the upper deck?

24 A. I did.

25 Q. And who did you ask to build the rail?

1 A. The homeowners association.

2 Q. And what was the result of that?

3 A. It was approved.

4 Q. And did you ever build the rail?

5 A. Not yet, no.

6 Q. Is there a reason why not?

7 A. I am currently spending my money on other things.

8 Q. Like what?

9 MR. WEERASURIYA: Objection; invades the client's
10 privacy.

11 BY MR. GLICKMAN:

12 Q. Are you talking about this lawsuit?

13 A. It could have an impact on it, yeah.

14 Q. Okay. Was this part of the permit process from
15 the City that you were supposed to build a rail there as
16 well?

17 MR. HALFEN: Objection; vague and ambiguous.

18 THE WITNESS: I went to the City to build the
19 rail. Do you know what I mean? I went to them for the
20 permit to build the rail.

21 BY MR. GLICKMAN:

22 Q. So you got a permit from the City to build the
23 rail?

24 A. Again, that's ongoing. There was another matter
25 that they wanted some information on, and, you know,

1 that's kind of where the project ran out of money a little
2 bit; so it's kind of on hold right there.

3 Q. What was the other matter?

4 A. They wanted a little bit of structural
5 information with regard to this wall (indicating), this
6 retaining wall.

7 Q. That's the retaining wall between the upper deck
8 and the lower deck?

9 A. Yeah, between the upper part of the property and
10 the lower part of the property.

11 Q. And what you are calling the retaining wall, that
12 was there when you moved in?

13 A. Correct. So I didn't have that. I did not build
14 it, so I didn't have that information.

15 Q. Right. So the only thing that you did with that
16 wall was paint it and a couple repairs of any cracks?

17 A. And stuccoed it, yeah, painted and stuccoed, as I
18 did to the upper wall as well.

19 Q. Right. So you never pulled a permit to do any
20 work on the retaining wall?

21 A. I have not done any work on the retaining wall.

22 Q. Okay. But because -- how did it come about that
23 you came up with the idea of putting the safety rail on
24 the upper deck?

25 A. For safety.

1 Q. It was something you just came up with on your
2 own, or was this something that the homeowners association
3 or the City -- I am just throwing out ideas, but I am just
4 trying to find out how it came about.

5 A. I don't really recall. I mean I personally
6 wanted it from a safety standpoint.

7 Q. And did you get approval from the homeowners
8 association to put the safety wall in?

9 A. I did.

10 Q. Safety rail, not wall.

11 A. Sorry. I thought that's what you meant.

12 Q. Yeah. Have you discussed Mr. Nager or his
13 daughter with anybody else at the homeowners association?

14 MR. WEERASURIYA: Objection; compound.

15 BY MR. GLICKMAN:

16 Q. We can do them separately if you want. Have you
17 discussed Mr. Nager's daughter with anybody at the
18 homeowners association?

19 A. Never.

20 Q. Did you discuss anything about Mr. Nager with
21 other people at the homeowners association?

22 MR. HALFEN: Do you mean any members, or do you
23 mean board members or what, Counsel? Did he discuss it
24 with his neighbors, or who are you talking about?

25 MR. GLICKMAN: Anybody who is at the homeowners

1 association.

2 MR. HALFEN: All right. I will object; it's
3 vague and ambiguous.

4 THE WITNESS: Can we be more specific?

5 BY MR. GLICKMAN:

6 Q. Sure.

7 A. With board members? Yes.

8 Q. Have you discussed with anybody at the homeowners
9 association, either a board member or a neighbor, any of
10 the issues that you have with Mr. Nager?

11 A. Yes.

12 Q. And who have you discussed it with?

13 A. Various board members.

14 Q. Okay. Well, tell me which board members you have
15 had discussions with about Mr. Nager and the issues that
16 you have with Mr. Nager.

17 A. In board meetings I would say that that would
18 encompass all the board members.

19 Q. How about outside of board meetings?

20 A. Outside of board meetings?

21 Q. Right.

22 A. I have had discussions with the Hills, with the
23 Tianos. Can you get more specific about like what items
24 of discussion? I mean like what exactly are you talking
25 about?

1 Q. Let's talk about -- let's just kind of make a
2 list of what issues you have had with Mr. Nager since you
3 moved in. You have issues relating to the maintenance of
4 the foliage in between your two properties. Right?

5 A. Yeah.

6 Q. What other issues?

7 MR. WEERASURIYA: Objection; Rifkind, calls for a
8 narrative. You can respond if you understand.

9 MR. HALFEN: Also overbroad as phrased.

10 BY MR. GLICKMAN:

11 Q. I am trying to get a list of the areas where you
12 and Mr. Nager have had disagreements, so, obviously, one
13 is the view and the foliage. Right?

14 A. Yeah.

15 Q. What else?

16 A. Well, after the alleged assault dispute in my
17 back yard, Mr. Nager essentially went to war, you know,
18 against me in the community, disparaging my name, you
19 know, saying all kinds of terrible things about me, my
20 reputation, alleging that I am a peeping Tom. I am an
21 alcoholic. I abuse animals. I assault people. I point
22 finger guns, you know. The list goes on and on and grows
23 constantly.

24 Q. Okay. So what else in terms of broad topics are
25 there that you believe is some sort of area of dispute

1 between you and Mr. Nager? So far I have foliage and
2 views, I have the assault issue, and then I have the
3 broader issue of "disparaging my name and reputation."

4 MR. WEERASURIYA: Once again, I am going to lodge
5 a Rifkind objection. You may respond, though, if you
6 know.

7 THE WITNESS: Where are we at again now?

8 BY MR. GLICKMAN:

9 Q. I have foliage and views as No. 1, assault
10 dispute as No. 2, "disparaging my name and reputation" as
11 No. 3.

12 A. And the question is -- give me the question one
13 more time.

14 Q. Yeah, I am just trying to find out what areas of
15 disputes you and Mr. Nager have.

16 A. As I said, telling anyone in the neighborhood
17 that will listen I am an alcoholic. I am a peeping Tom.
18 I assault or abuse animals, attempt to abuse animals, you
19 know, I point finger guns at people, you know. It's
20 somewhat hard to remember exactly at this point in time
21 the litany.

22 Q. When did things first start between you and
23 Mr. Nager? When do you feel, looking back on it, you
24 could say here is where things turned south?

25 MR. WEERASURIYA: Objection; calls for

1 speculation, vague and ambiguous.

2 THE WITNESS: Right after, right after the
3 meeting in the back yard and --

4 BY MR. GLICKMAN:

5 Q. Which meeting in the back yard?

6 A. Where the alleged -- where he alleges they were
7 assaulted. They were met in the back yard to look at the
8 view obstruction and try to work it out between neighbors.

9 Q. So this was after the wall was already built.
10 Right?

11 A. The block wall between our two properties?

12 Q. Right.

13 A. Yes.

14 Q. And so let's go to that event. At some point in
15 time there was you, Mr. Barraza, Mr. Nager, and Ms. Nour
16 in your back yard. Right?

17 A. Correct.

18 Q. Anybody else?

19 A. No.

20 Q. When did this occur?

21 A. Early February of 2015.

22 Q. And what was the purpose of having the meeting in
23 your back yard?

24 A. To try and come to a neighbor-to-neighbor
25 resolution of a problem that the association was already

1 putting some pressure on him to resolve.

2 Q. And up until this point you felt you had a good
3 neighborly relationship with Mr. Nager?

4 A. Acceptable, yes.

5 Q. So tell me as best you can recall, then, what
6 happened from your point of view in your back yard at that
7 time with Mr. Nager, Mr. Barraza, Ms. Nour, and you.

8 MR. WEERASURIYA: Objection; calls for a
9 narrative.

10 THE WITNESS: We were to meet I believe it was a
11 Sunday at 3:00 p.m. We were to meet and discuss a
12 resolution to the view obstruction and the landscaping.
13 Mr. Nager kept rolling back the meeting. At 3:00 he
14 texted me and said, you know, he was running late. It
15 would be like 3:45. Closer to 3:45 he called me and said
16 it was probably going to be more like 4:30.

17 I made a number of suggestions saying, "Well,
18 let's get in touch with Jose. You want me to call Jose so
19 that he is not waiting around? We can catch him at home,
20 you know, whatever."

21 He kept telling me, "No, no, no, no. Don't worry
22 about Jose. I will take care of Jose. I will see you
23 later, whatever."

24 So about 4:30-ish he texted me and said he will
25 be there shortly. He gets home at 5:00, texts me, and

1 said he is home, and he is going to go walk his dogs real
2 quick, and then he is going to come over. So a little
3 after 5:00 I am down in the front of my property waiting
4 for the three of them. They come up, you know. Everybody
5 says hello.

6 MR. WEERASURIYA: Counsel.

7 BY MR. GLICKMAN:

8 Q. You are talking kind of soft.

9 MR. ABRAHAM NAGER: I can't hear him. I have a
10 hearing problem. I cannot hear him, so I am trying to
11 listen to him.

12 MR. GLICKMAN: You can sit back, and you can
13 speak up. How is that?

14 MR. ABRAHAM NAGER: Speak up.

15 THE WITNESS: Everybody says hello, whatever, in
16 the front yard. As we start heading to the back yard, he
17 tells me he feels like --

18 Q. He?

19 A. Nager. Sorry. He, meaning Mr. Nager, tells me
20 that he feels like I stabbed him in the back by going to
21 the HOA and that he didn't appreciate that.

22 All right. I kind of didn't respond and do
23 anything and blew that off and went to the back yard to
24 where we could view this part (indicating), the major part
25 of the view obstruction.

1 He says to me, "What exactly do you expect me to
2 do here?"

3 And I said to him, "Well, how about you pretend
4 that you live where I live and I live where you live? How
5 would you like me to cut my landscaping? Or how about you
6 cut the landscaping on the northern end of your property
7 exactly the way you cut the landscaping on the southern
8 end of your property to maximize your ocean view? Or how
9 about you comply with the ARC directive and cut it that
10 way?"

11 And he says to me, "Well, I don't want to have to
12 look into your shitty back yard."

13 I don't say anything to that other than "You know
14 all the work that I've done on the front yard. You know
15 all the work that I've done to the house, cleaning up this
16 house. You know this back yard. The back yard is going
17 to look really nice. You don't have to worry anything
18 about it."

19 And he says, "Well, then, maybe I will just wait
20 and see how your back yard turns out, and then I will
21 decide how much I am going to cut."

22 And I said to him, "That's not your prerogative.
23 You know, the view maintenance policy dictates that no
24 homeowner can obstruct more than 15 percent of another
25 owner's ocean view."

1 At this time it was probably about 5:15, 5:20,
2 maybe ten minutes before dark, getting pretty late. And I
3 said, "So listen, pick your 15 percent. Let's start
4 cutting."

5 And he says to me, "I don't like your attitude."

6 I said, "Okay. That's it. That's enough. We
7 are done here. I'd like the three of you to leave my
8 property. I'd like you to get off my property."

9 I followed them back -- they began to get off my
10 property. I followed them back along the southern
11 boundary of the property. All three of them exited the
12 gate, where I exited the gate last, locked the gate behind
13 me, followed the three of them down to the curb, went up
14 to Jose, apologized to him for the waste of his afternoon,
15 shook his hand, turned around, and went back into my
16 house.

17 Q. Okay. And so that's the extent of what happened?

18 A. Yeah.

19 Q. You never touched anybody inappropriately?

20 A. Never.

21 Q. Never slammed the gate on anybody?

22 A. Never.

23 Q. I mean you have heard these allegations, or you
24 have seen them. Right?

25 A. Yeah.

1 Q. So you are saying that those are not true?

2 MR. WEERASURIYA: Objection; vague and ambiguous,
3 overbroad, calls for speculation, misstates the testimony.
4 You can respond if you understand it.

5 THE WITNESS: One more time again.

6 BY MR. GLICKMAN:

7 Q. Right. I mean you have read Mr. Barraza's
8 statement. Right?

9 A. The alleged affidavit, yes.

10 Q. You think it's a fake affidavit?

11 MR. WEERASURIYA: Objection; calls for
12 speculation.

13 BY MR. GLICKMAN:

14 Q. Why did you call it alleged?

15 A. I personally don't believe Mr. Barraza wrote it.
16 I am aware of the allegations that you are talking about.

17 Q. Okay. And you dispute those?

18 MR. WEERASURIYA: Objection; compound, vague and
19 ambiguous.

20 THE WITNESS: Certainly. Absolutely.

21 BY MR. GLICKMAN:

22 Q. You read Ms. Nour's declaration?

23 A. I have.

24 Q. And you dispute what she's written?

25 A. I do.

1 Q. And what you are saying is basically that nothing
2 happened other than there was a disagreement that broke up
3 the meeting, and you left with nobody being touched,
4 nobody being injured, nobody being assaulted?

5 MR. WEERASURIYA: Objection; compound, misstates
6 the testimony, vague and ambiguous.

7 THE WITNESS: That's absolutely correct.

8 BY MR. GLICKMAN:

9 Q. Okay. So that's sort of like the time you point
10 to -- well, wait.

11 A. As relationships --

12 Q. I mean you point to that day when you were in the
13 back yard as when things really disintegrated between your
14 neighborly relationship?

15 MR. HALFEN: Objection; mischaracterizes prior
16 testimony.

17 THE WITNESS: I'm sorry. One more time.

18 BY MR. GLICKMAN:

19 Q. Yes. That's the event that you say led to the
20 disintegration of your relationship with Mr. Nager?

21 MR. HALFEN: Same objection.

22 THE WITNESS: Yes.

23 BY MR. GLICKMAN:

24 Q. And it was the events that occurred at that time
25 or when you subsequently found out that there were

1 allegations made that were different than you remember
2 what occurred at that event?

3 MR. WEERASURIYA: Objection; vague and ambiguous,
4 lacks foundation.

5 MR. HALFEN: I would add the objection I think it
6 also mischaracterizes his prior testimony.

7 THE WITNESS: So the event in the back yard led
8 me to decide personally that I know longer wanted anything
9 to do with Mr. Nager in any way, social, business, or
10 otherwise. As I began to learn about the things that he
11 was saying about me in the community to other people, from
12 that point on the relationship was forever tarnished.

13 BY MR. GLICKMAN:

14 Q. Who was the first person that told you that
15 Mr. Nager was saying something bad about you?

16 A. The guard, Mike Crylen.

17 Q. Can you spell his name for us? Do you have it?

18 A. I don't.

19 Q. I have it as C-r-y-l-e-n. Does that sound right?

20 A. Sounds about right, yeah.

21 Q. So what was it that Mr. Crylen told you?

22 A. That he was saying all kinds of --

23 Q. Mr. Nager?

24 A. He, sorry, Mr. Nager was saying all kinds of
25 nasty and disparaging things about me in the neighborhood,

1 which I --

2 Q. But what was it specifically Mr. Crylen told you?
3 Did he just tell you that Mr. Nager was saying nasty
4 things, or did he tell you what Mr. Nager was saying?

5 A. No. He was saying that I am an alcoholic, that I
6 assaulted people, that I am a peeping Tom, that I abuse
7 animals, you know, things of that nature.

8 Q. Abuse animals how?

9 A. Attempting to kick dogs.

10 Q. Have you ever attempted to kick dogs?

11 A. Never in my life.

12 Q. Have you ever kicked a dog?

13 A. I never kicked a dog in my life.

14 Q. What else did Mr. Crylen tell you?

15 A. That's not enough?

16 Q. I just want to make sure I got everything.

17 A. You know, this is almost four years ago. Right
18 now I don't really, you know --

19 Q. Who else told you that Mr. Nager said anything
20 bad about you?

21 A. You know, specifically I think Randy Jones.

22 Q. What did Randy Jones tell you?

23 A. That Mr. Nager has a hate on for me.

24 Q. Has a what?

25 A. A hate on for me.

1 Q. Okay. Did he tell you any specifics?

2 A. I can't really recall.

3 Q. Who else told you that Mr. Nager was saying
4 anything bad about you?

5 A. I recall Riza Lemonadi.

6 Q. And that's a woman?

7 A. No. It's a man.

8 Q. Man, Riza.

9 A. R-i-z-i, I believe. No. R-i-z-a.

10 Q. What did Mr. Lemonadi say? I can say it very
11 sloppily. She will fix it.

12 A. Basically the same things; that he was saying
13 some very unkind, very disrespectful things about me.

14 Q. Any specifics?

15 A. Again, you know, it was about four years ago so.

16 Q. But as you sit here today, are there any
17 specifics you can tell us other than what you've already
18 told us about what Mr. Lemonadi told you?

19 A. Not that I recall at this time.

20 Q. Anybody else that told you that Mr. Nager was
21 saying something bad about you?

22 A. I believe Lee Hill, Leland Hill, told me that as
23 well.

24 Q. What did Mr. Hill tell you Mr. Nager was saying
25 bad about you?

1 A. Just along the same lines. It wasn't -- you
2 know, just that "He is trying to trash your name. He is
3 ruining your name. He is saying very disrespectful
4 things."

5 Q. Anybody else ever tell you that Mr. Nager was
6 saying anything bad about you?

7 A. You know, a number of people. I can't really
8 recall, to be honest with you.

9 Q. As you sit here today, is there anybody else that
10 you can recall who told you that Mr. Nager was saying
11 anything bad about you?

12 A. I think Sandy Rough told me some things, also.

13 Q. Who is that?

14 A. Rough, R-o-u-g-h, I believe.

15 Q. Okay. Is that a man or woman?

16 A. A woman.

17 Q. What did Ms. Rough tell you?

18 A. Just again the same thing in broad terms. She is
19 not the kind of person to bring up --

20 Q. Anybody else tell you that Mr. Nager was saying
21 anything bad about you?

22 A. Not that I can recall at this time.

23 Q. So we talked about abusing animals, and you say
24 you've never abused any animal. Right?

25 A. Correct.

1 Q. You are not an alcoholic?

2 A. Correct.

3 Q. And are you a peeping Tom?

4 A. No.

5 Q. Have you ever looked into Mr. Nager's windows
6 when the curtains were open?

7 A. Never.

8 Q. And how about have you ever pointed a finger in a
9 gun-like position at Mr. Nager?

10 A. I have never.

11 Q. So was your truck ever broken into while it was
12 parked in your driveway?

13 A. It was.

14 Q. When was that?

15 A. I don't recall exactly.

16 Q. Has anybody asked you to park your truck in your
17 garage?

18 A. No. My truck won't fit in my garage, as I
19 mentioned to you.

20 Q. Were you on the homeowners association board at
21 some time?

22 A. I was.

23 Q. When was that?

24 A. For a few months in 2017.

25 Q. And you resigned from the board?

1 A. I did.

2 Q. Why did you resign?

3 A. I was unhappy with the way that business was
4 being conducted and was not willing to be a part of it.

5 Q. What type of business?

6 A. Homeowners association business.

7 Q. What was it that you were unhappy about?

8 A. There were a number of issues. If we start with
9 the board president and the make-up of the board, I asked
10 the board president, Randy Jones, a number of times to
11 consider bringing in other talent in the community that
12 could assist with the board, talent with regard to
13 landscaping, with regard to security, with regard to
14 communication, things of that nature, having committees,
15 as most boards do, that are recommended by the Accell
16 Management Company. No committees were in place.

17 Pretty much everything, a decision of any kind,
18 you know, went through a very small group of people. And
19 then even those decisions weren't communicated to the
20 members of the HOA before they were implemented, some of
21 which spent significant amounts of HOA monies.

22 At the time during the election -- or let me say
23 this. Shortly after the election information came to
24 light that Mr. Nager was misinforming residents about the
25 election procedure, how many votes could be attributed to

1 how many members type of thing. I spoke with Sabrina
2 Davoodian, who is the liaison -- or was the liaison
3 between Accell and Emerald Ridge at the time, and asked
4 her if she heard anything about this.

5 She said that she did, had gotten quite a few
6 calls that seemed very odd to her. And basically what it
7 came down to was the allegation from other homeowners, not
8 from me, that Mr. Nager was going around and telling
9 people that they could place all of the available votes
10 that they had to cast for him and that they did not need
11 to vote for incumbents because incumbents were going to be
12 reelected anyway. That statement is untrue.

13 I brought that concern to the board president and
14 asked for a resolution of nothing more than asking him the
15 question in a board meeting whether or not that occurred,
16 yes-or-no answer. He was unwilling to answer the
17 question. The board president was unwilling to, you know,
18 examine the issue. That bothered me.

19 And then probably the third and last thing was
20 that for the majority of the time that I was on the board,
21 Mr. Nager was in violation of the CC & R's, which I
22 brought up to the board in a board meeting in Nager's
23 presence, saying that I found it I believe a very
24 inappropriate situation that a sitting board member could
25 be in violation of the CC & R's and at the same time pass

1 judgment on another member of this community.

2 Q. And what was Mr. Nager in violation for?

3 A. View obstruction. I believe he was fined in
4 February 2017, but I'd have to check.

5 Q. Did you ever drive behind Mr. Nager in an
6 aggressive manner of some sort?

7 A. No.

8 Q. How about did you ever drive behind Mr. Jones in
9 an aggressive manner of any sort?

10 A. No.

11 Q. You understand that there's allegations that you
12 were tailgating and driving very close to Mr. Nager?

13 A. To Mr. Nager, yes, I do understand that there are
14 allegations.

15 Q. And you are saying it never happened?

16 A. It never happened.

17 Q. When you moved into your property, were there
18 cameras on the property?

19 A. No.

20 Q. When did you install cameras on the property?

21 A. I don't remember the exact date, but it was very
22 shortly after Mr. Nager modified Mr. Hill's -- or the wall
23 between he and Mr. Hill's property when Mr. Hill was on
24 vacation.

25 Q. So did that have something to do with your desire

1 to put the cameras in?

2 A. Yeah. You know, like I wish I had had them in
3 from the day I moved in. I wish I had had them from the
4 discussions that occurred in the back yard with this
5 assault allegation. I only wish they were in there then.

6 So, you know, I had been thinking about security
7 cameras, and I am gone a fair amount of the time. But
8 when that incident occurred that he is now modifying a
9 fence, a common wall fence with another neighbor while
10 that neighbor was on vacation, that was the impetus that
11 got me to install the cameras.

12 Q. How did you find out about this event, this
13 modification of the fence?

14 A. Mr. Hill called me.

15 Q. And what did Mr. Hill say?

16 A. He said that he had just gotten a call from
17 another neighbor and that Mr. Nager was installing
18 plexiglass panels into the common wall fence and if there
19 was any way could I go down there and take a look and tell
20 him what I saw.

21 Q. And what did you do?

22 A. I went down the street. I went into the back of
23 Mr. Hill's property on the north side. I went along the
24 wall into his back yard, and, sure enough, there were two
25 guys that were there standing on Mr. Hill's slope,

1 installing plexiglass panels into the fence.

2 Q. And what did you do?

3 A. I said to the guys, "Listen, I know you guys are
4 just doing your jobs, but I want you to know that I have
5 spoken to the owner of this home. He in no way approves
6 what's happening. He's called the police department, and
7 my understanding is they are on the way. And he asked me
8 that if I found anyone on the property to tell them that
9 they were not to be on his property. They did not have
10 permission to be on his property."

11 And then I left, and I went back to my house, and
12 I called Mr. Hill, and I told him essentially --

13 Q. Did the guys leave the property when you said
14 that to them?

15 A. Did the guys get off of Mr. Hill's property?

16 Q. Right.

17 A. You know, one of them did. One of them did. The
18 other one stayed on the downslope side because in fairness
19 to him, I think it's pretty hard to install a glass panel
20 (indicating) downhill than compared to uphill.

21 Q. So were you there -- did the police come?

22 A. I believe they did, yeah.

23 Q. Are you the one that called the police, or
24 Mr. Hill called the police?

25 A. Mr. Hill called the police.

1 Q. Where was he?

2 A. He was on vacation.

3 Q. Did you talk to the police when they came?

4 A. I did not, no.

5 Q. Did you see Mr. Nager in the vicinity when you
6 were on the Hills' property?

7 A. I think I saw him for a second in his kitchen
8 window. I don't know. I didn't speak to him.

9 Q. You consider yourself a friend of the Hills?

10 A. Yeah.

11 Q. Do you go over there and have dinner with them at
12 their house from time to time?

13 A. Occasionally, yeah.

14 Q. And they take your trash in; you take their trash
15 in if they are on vacation, that sort of thing?

16 A. Yeah, occasionally, yeah.

17 MR. ABRAHAM NAGER: Can I use the restroom a
18 second?

19 MR. GLICKMAN: Sure. Should we take a break?

20 MR. HALFEN: It's a good time for a break anyway.

21 MR. GLICKMAN: Let's take a break, then.

22 MR. HALFEN: Why don't we take a five-minute
23 break.

24 (A 13-minute recess was taken.)

25 MR. GLICKMAN: Let's go back on.

1 Q. Was there anything that you thought about that
2 you wanted to change or add?

3 A. I didn't think about it.

4 Q. So I think we kind of got off on this thing that
5 was going on with the Hills, and you went down there on
6 the property, and you told us about what you did. That
7 was what triggered you to put the security cameras up?

8 A. Correct.

9 Q. And what was the connection? Why did you want to
10 put security cameras up?

11 A. Well, you know, taking into account the
12 experience that I had had with him in my back yard and the
13 false accusations that came after that, added to the fact
14 that, to my knowledge, from what I am being told by
15 Mr. Hill, he is now modifying a common wall fence that he
16 didn't even pay for in the first place while that neighbor
17 is on vacation and not present. You know, I thought why
18 would I not want security cameras?

19 Q. So the only reason why you put security cameras
20 up were to monitor Mr. Nager's activities on your
21 property?

22 MR. WEERASURIYA: Objection; misstates the
23 testimony.

24 THE WITNESS: No. My security cameras view the
25 perimeters of my home, so anything that happens on my

1 property with the exception of a few small areas will be
2 videotaped.

3 BY MR. GLICKMAN:

4 Q. Okay. So where did you put cameras up?

5 A. The commercial camera company that I contracted
6 with installed the cameras, and basically they are -- like
7 I said, they are at various points along the eaves of the
8 home, you know, filming the perimeter of the house, the
9 front yard, the back yard.

10 Q. How many cameras?

11 A. Six.

12 Q. And when did you install these cameras?

13 A. As I say, I can't really remember. I have that
14 information at home.

15 Q. What year was it?

16 A. I want to say 2015.

17 Q. Was it before or after you filed your lawsuit?

18 A. Before.

19 Q. From any of your cameras can you see any of
20 Mr. Nager's property?

21 A. Yes.

22 Q. And how many cameras can you see Mr. Nager's
23 property from?

24 A. One.

25 Q. And which one is that?

1 A. The one that is on the -- do you have a picture
2 of my house?

3 Q. Is it this one here (indicating)?

4 A. That's upside down.

5 MR. HALFEN: Are you going to mark that as an
6 exhibit, Counsel?

7 MR. GLICKMAN: If it's the one, we will figure it
8 out.

9 Q. Is that the one that you are talking about?

10 MR. HALFEN: Do you see the camera?

11 THE WITNESS: I do. Yes, that is the one.

12 MR. GLICKMAN: Okay. So we will get a picture
13 of this printed out, and we will mark that picture as
14 Exhibit 3.

15 MR. HALFEN: Okay.

16 (The aforementioned document was marked by the
17 court reporter as Defendants' Exhibit 3 for
18 identification; attached hereto.)

19 BY MR. GLICKMAN:

20 Q. So from the photo that we see in what we've
21 marked Exhibit 3, what can you see on Mr. Nager's
22 property?

23 A. Not really much of anything. You can see the
24 wall as it runs the length of the property, you know, some
25 bushes on his side. I think that's about it.

1 Q. Has the camera aim been changed at all since it
2 was installed?

3 A. No.

4 Q. So have you ever had a camera where you could
5 look inside any of the windows of Mr. Nager's property?

6 A. Never.

7 Q. Who is Barbara Belkin?

8 A. Barbara Belkin was -- she still is. I believe
9 she is a realtor now. Barbara Belkin worked for Accell
10 Property Management for a period of time -- I am not sure
11 of the exact period of time -- and was the liaison between
12 Accell and Emerald Ridge.

13 Q. And Accell is A-c-c-e-l-l. Right?

14 A. I believe that to be correct, yeah.

15 Q. Did you ever raise your voice at Barbara Belkin?

16 A. Never.

17 Q. Did you have any sort of a temper tantrum with
18 Barbara Belkin?

19 A. Never.

20 Q. Sabrina Davoodian we already talked about. She
21 was with Accell. Did you ever raise your voice at her?

22 A. Never.

23 Q. Did you ever have a, quote, "temper tantrum" with
24 her?

25 A. Never.

1 Q. Did you ever raise your voice at Randy Jones?

2 A. During board meetings we had some heated
3 discussions. I would not categorize it as did I yell at
4 Randy Jones, no.

5 Q. Outside of board meetings, did you ever speak
6 aggressively to Mr. Jones at all?

7 A. No.

8 Q. Did you ever have, quote, "temper tantrum" with
9 Mr. Jones?

10 A. No.

11 Q. And so the reason why you sued Mr. Nager was
12 because you felt he was not complying with the view
13 requirements?

14 MR. WEERASURIYA: Objection; Rifkind, calls for a
15 legal contention.

16 MR. HALFEN: Also may invade the attorney-client
17 privilege.

18 BY MR. GLICKMAN:

19 Q. Go ahead.

20 A. One more time with the question.

21 Q. You sued Mr. Nager because you felt that the
22 architectural review committee had told him to take
23 certain actions, and he had not taken certain actions in
24 relation to the foliage and your view rights?

25 MR. WEERASURIYA: Objection; misstates the

1 testimony, Rifkind, vague and ambiguous, calls for a legal
2 contention.

3 MR. HALFEN: Yeah. I am also going to instruct
4 the witness to not answer the question to the extent that
5 answering it would require divulging attorney-client
6 communications because it seems to me that what you are
7 asking him is in part infringing on any communications he
8 had with his attorney.

9 BY MR. GLICKMAN:

10 Q. Don't tell me anything that you and your attorney
11 talked about. I am just trying to get an idea of what
12 your reason was for suing Mr. Nager. I think it was
13 because you felt that he wasn't complying with the
14 architectural review committee in terms of trimming his
15 foliage in light of your view rights. Is that your
16 understanding?

17 MR. WEERASURIYA: Objection; misstates the
18 testimony, again overbroad, vague and ambiguous, Rifkind,
19 calls for a legal conclusion, and may invade the
20 attorney-client privilege.

21 MR. HALFEN: I'd also interpose an objection that
22 obviously the complaint in this case that was filed is a
23 matter of public record. It speaks for itself. But you
24 are asking, I think, for his understanding, so I am
25 obviously not going to instruct him not to answer the

1 question.

2 So go ahead and answer it to the extent that you
3 can and you understand the question.

4 THE WITNESS: Okay. I'm sorry. One more time
5 with the question after all that.

6 BY MR. GLICKMAN:

7 Q. I'll just ask for it to be read back so we don't
8 have to have a whole string of objection again so you can
9 just listen to the question.

10 A. Okay. Good idea.

11 (Question read as follows:

12 "Q. Don't tell me anything that you and your
13 attorney talked about. I am just trying to get an idea of
14 what your reason was for suing Mr. Nager. I think it was
15 because you felt that he wasn't complying with the
16 architectural review committee in terms of trimming his
17 foliage in light of your view rights. Is that your
18 understanding?")

19 THE WITNESS: Throughout the latter part of 2017
20 Mr. Nager was on the board, and the board had stopped
21 pretty much doing anything. They weren't enforcing the
22 CC & R's. They weren't fining him, you know, even though
23 the obstructions had not been removed. And this was after
24 about three years of just playing this game of a little
25 bit of trim here, a little bit of trim there, but never

1 any actual full compliance with what was handed down by
2 the board by the ARC. And it was the last option I wanted
3 to take but didn't really know what else to do other than
4 suing the association as well.

5 BY MR. GLICKMAN:

6 Q. Did you talk to somebody at the association and
7 say, "Look, you know, you guys aren't enforcing this.
8 What's going on here"?

9 A. I did.

10 Q. Who did you talk to?

11 A. Mainly it was e-mails with Sabrina.

12 Q. What was Sabrina's response?

13 A. That "We are well aware of the violation, and we
14 are going to, you know -- you know, we are going to follow
15 through. We are going to follow this to make sure it's
16 resolved."

17 Q. Did you talk to any board member?

18 A. When I resigned from the board and I wrote a
19 letter to the members of the community explaining why I
20 resigned, from that point on I was pretty much persona non
21 grata with the board. I would say that that letter didn't
22 exactly endear me.

23 Q. I think I asked you, and I didn't write it down.
24 But when were you on the board?

25 A. 2017.

1 Q. When?

2 A. First few months of 2017.

3 Q. Okay. So while you were on the board, did you
4 have discussions with anybody saying, "Look, you know,
5 Nager is not complying, and can't we do something to get
6 him to comply? If not, I am going to sue"?

7 A. Sue the board?

8 Q. Or Nager or sue somebody. You are going to have
9 to take matters into your own hands because they are not
10 taking any action.

11 MR. HALFEN: Objection; vague and ambiguous.

12 THE WITNESS: I don't recall discussions in the
13 early part of February. In the early part of 2017 I was
14 trying as hard as I could to get the board to enforce the
15 CC & R's.

16 BY MR. GLICKMAN:

17 Q. In general or against Nager?

18 A. Against Nager and the view obstruction.

19 Q. So who were you talking to to get the board to
20 enforce --

21 A. The remainder of the board.

22 Q. So who?

23 A. Randy Jones, Sandy Rough, Bob Grivetz, and
24 Mr. Nager was on the board, but, obviously --

25 Q. Because basically your complaint is the board

1 wasn't taking action, and you are taking action into your
2 own hands. Right?

3 MR. WEERASURIYA: Objection; misstates the
4 testimony. You may respond.

5 MR. HALFEN: Also argumentative.

6 BY MR. GLICKMAN:

7 Q. Isn't that right? You are seeking to enforce the
8 CC & R's because you felt the board wasn't enforcing the
9 CC & R's?

10 MR. WEERASURIYA: Objection; misstates the
11 testimony, vague and ambiguous, overbroad, and Rifkind,
12 and I am going to instruct my client not to respond to
13 that.

14 BY MR. GLICKMAN:

15 Q. You have a verified complaint. You read it. You
16 signed it. Right?

17 A. Yeah.

18 Q. You recall that you said that the board wasn't
19 taking action and that you were taking action because the
20 board wasn't taking action. Right?

21 A. Let me just ask him, if you don't mind, why he'd
22 like me to not respond because I don't really think --

23 MR. WEERASURIYA: Pardon the interruption, Kevin.
24 You know what? If you are comfortable responding to that,
25 go ahead. Just clarify your answer so you are not, you

1 know -- go ahead.

2 THE WITNESS: So one more time the question is
3 what?

4 MR. GLICKMAN: Let her read it so that way we
5 don't have to worry about any more misleading objections.
6 Just kidding.

7 (Question read as follows:

8 "Q. You recall that you said that the board
9 wasn't taking action and that you were taking action
10 because the board wasn't taking action. Right?")

11 THE WITNESS: Like I said, I wasn't really -- I
12 don't really know an answer to that question.

13 BY MR. GLICKMAN:

14 Q. Okay. Why did you sue Elana Nager?

15 MR. HALFEN: Objection; Rifkind. You can respond
16 if you understand.

17 MR. HALFEN: I will again interpose sort of the
18 same objection I had before. To the extent it invades the
19 attorney-client privilege, I will object.

20 THE WITNESS: That was actually, you know, a
21 mistake as far as I am concerned. That was done by
22 Howard Neufeld when he filed the lawsuit because evidently
23 I believe her name is on the title. But I never intended
24 that she be brought into a lawsuit, and I conveyed that to
25 Howard shortly after I found that out.

1 MR. HALFEN: Hold on a second. You have now gone
2 into attorney-client communications.

3 THE WITNESS: Sorry.

4 MR. HALFEN: So I will move to strike the latter
5 part of that testimony.

6 BY MR. GLICKMAN:

7 Q. Did you ever have Mr. Neufeld represent you for
8 anything else before the Nager matter?

9 A. No.

10 Q. How did you find Mr. Neufeld?

11 A. He is a local attorney.

12 Q. Did the Hills refer you there?

13 A. No.

14 Q. Did you ever meet with Mr. Neufeld with the
15 Hills?

16 A. Would that not be an attorney-client privilege?

17 Q. I don't think so. They are not involved in this
18 case.

19 A. Yes, I met with Howard with the Hills.

20 Q. How many times?

21 A. Once, twice maybe.

22 Q. Was your first meeting with Neufeld you met with
23 the Hills as well?

24 A. No.

25 Q. You think you met Neufeld on your own first, and

1 then you had a meeting with Neufeld and the Hills sometime
2 after that?

3 A. Correct.

4 Q. And so when you had the meeting with Neufeld and
5 the Hills, who was at that meeting?

6 A. Neufeld and the Hills and myself.

7 Q. Both Mr. and Mrs. Hill?

8 A. I believe that is correct. I don't recall that.

9 Q. +And what was discussed at that meeting?

10 MR. HALFEN: Objection; attorney-client
11 privilege. I am going to instruct him not to answer.

12 MR. GLICKMAN: Isn't it violated when there is a
13 third party who is not involved in the lawsuit?

14 MR. HALFEN: I don't believe so, Counsel, not in
15 this situation. I have made my objection. I have made my
16 instruction.

17 MR. GLICKMAN: Okay.

18 MR. HALFEN: Let's move on.

19 BY MR. GLICKMAN:

20 Q. Are you going to follow his instruction?

21 A. Of course.

22 Q. And how many other times did you meet with
23 Neufeld when somebody else was present?

24 MR. HALFEN: Objection; vague and ambiguous.

25 THE WITNESS: Somebody else meaning?

1 BY MR. GLICKMAN:

2 Q. You had told us about one time where you met with
3 Neufeld and the Hills. There was another time when you
4 met with Neufeld and the Hills?

5 A. I said one or two times.

6 Q. Any other times where you met with Neufeld with
7 anybody else who was present aside from the Hills?

8 A. Not that I recall.

9 Q. And tell me what occurred at that second meeting
10 that you had with Neufeld, you, and the Hills.

11 MR. HALFEN: I am going to object. It's vague
12 and ambiguous. If what you mean by what happened, if you
13 mean to include discussions of topics or what was said
14 during those meetings, I am going to instruct him not to
15 answer the question on attorney-client grounds as with the
16 other question. But I am not clear on exactly what you
17 are asking, Counsel, so maybe you want to just rephrase
18 your question.

19 BY MR. GLICKMAN:

20 Q. +What was said at that second meeting with you
21 and the Hills and Neufeld?

22 MR. HALFEN: Objection; attorney-client
23 privilege. Instruct you not to answer.

24 BY MR. GLICKMAN:

25 Q. Are you going to follow that instruction?

1 A. I am.

2 Q. Were you and the Hills ever joint clients of
3 Neufeld, to your understanding?

4 MR. HALFEN: Objection; vague and ambiguous, also
5 calls for the witness to make a legal conclusion.

6 THE WITNESS: I don't know what that means.

7 BY MR. GLICKMAN:

8 Q. +Did you and the Hills ever say, "Why don't we
9 combine together and let's sue Nager"?

10 MR. HALFEN: Again, I will object to the
11 question. To the extent that you are asking him for
12 anything that was divulged in a conference with the
13 attorney, that that's an attorney-client privileged
14 communication. I will instruct him not to answer it.

15 BY MR. GLICKMAN:

16 Q. Did you and the Hills ever talk on your own about
17 suing Nager together?

18 A. No.

19 Q. +Did the Hills tell you they were going to sue
20 Nager?

21 MR. HALFEN: Well, again, I am going to object.
22 To the extent that any communication was within the
23 purview of an attorney-client meeting, I will object that
24 it's attorney-client privileged material, and I will
25 instruct him not to answer.

1 BY MR. GLICKMAN:

2 Q. Did you ever have any discussion with the Hills
3 outside of Neufeld's presence about the Hills suing Nager?

4 A. I am going to need you to repeat that.

5 Q. Did the Hills ever tell you, "Hey, we are going
6 to sue Nager, and here is what we are going to sue Nager
7 for," those sorts of things? Did you ever have that
8 discussion with the Hills outside of Neufeld's presence?

9 A. The Hills told me that they were contemplating
10 suing Nager.

11 Q. For what?

12 A. For modifying the fence without their approval
13 and that they had a number of other issues with him. I
14 think they were pretty much at their wits end with how to
15 handle it.

16 Q. Did you ever -- strike that.

17 (Brief interruption.)

18 MR. GLICKMAN: So let's go back on the record.

19 Q. Currently is there a view blockage of any kind?

20 A. There is a small amount that for some reason he
21 doesn't want to or won't trim.

22 Q. Is it less than the 15 percent figure you talked
23 about before?

24 MR. WEERASURIYA: Objection; calls for
25 speculation.

1 THE WITNESS: It doesn't comply with what the ARC
2 instructed him to do. It's a small amount.

3 BY MR. GLICKMAN:

4 Q. Where is the small amount? Don't mark it. Just
5 tell us in words first.

6 A. It's hard to determine from this picture. It's
7 easier --

8 MR. HALFEN: He's asking you to tell him in words
9 where it is. Can you do that? Is it possible?

10 THE WITNESS: Along here (indicating).

11 MR. HALFEN: Let the record reflect the witness
12 is pointing at Exhibit No. 1.

13 BY MR. GLICKMAN:

14 Q. I tell you what. We will mark another copy of
15 that as Exhibit No. 4, and why don't you use the Sharpie
16 and mark on there where you feel there is still an
17 obstruction.

18 A. (Witness complies.)

19 (The aforementioned document was marked by the
20 court reporter as Defendants' Exhibit 4 for
21 identification; attached hereto.)

22 BY MR. GLICKMAN:

23 Q. And so you marked a line along the top of the
24 wall?

25 A. On the northern -- yeah.

1 Q. So what you are saying is that there is foliage
2 that's growing up above the wall to a certain extent?

3 A. Yes.

4 Q. And how high above the wall?

5 MR. WEERASURIYA: Objection; calls for
6 speculation.

7 THE WITNESS: Maybe a foot. I don't really know.

8 BY MR. GLICKMAN:

9 Q. And so you feel that's blocking your view?

10 A. No. At the moment it does not block my view,
11 but, you know, the instructions from the ARC was that it
12 shouldn't be any higher than the wall height, and it's
13 always, you know, where does it stop? In the past it
14 hasn't.

15 Q. But are you satisfied now that the foliage issue
16 is being taken care of in an appropriate manner?

17 MR. WEERASURIYA: Objection; vague and ambiguous,
18 overbroad. You can respond if you understand.

19 THE WITNESS: For the most part, yes, I am.
20 However, when you say "taken care of," I don't exactly
21 know to what extent it has been taken care of in that
22 Nager refused to comply all through 2018 until the new
23 board enacted emergency provisions to increase the fine
24 levels.

25 So I believe he was fined -- it went from -- the

1 CC & R's were written in the '70s. It was like 50, 100,
2 250. That didn't get anybody's attention, so they
3 increased the fine levels not just for him but for anybody
4 in the community that didn't comply with the CC & R's to
5 100, 500 and 1,000. I believe he was fined 100, I believe
6 he was fined 500, and I believe that was the point at
7 which he cut.

8 I was at a board meeting a few months ago where
9 he was speaking to the board, and he challenged the
10 legality of that. So is it resolved? Is it done? I
11 don't know.

12 Q. Are you friends with Jack Tiano?

13 A. You know, we are neighbors. I wouldn't say
14 friends. We don't really socialize outside of Emerald
15 Ridge.

16 Q. Has he ever either talked or written to you about
17 any privacy issues that Mr. Nager has?

18 A. Not that I am aware of, no.

19 Q. Did he ever talk to you or write anything to you
20 about that you were invading Mr. Nager's privacy?

21 A. No.

22 Q. Have you ever received anything from the
23 homeowners association, either written or oral, notice
24 about your cameras invading Mr. Nager's privacy?

25 A. No.

1 Q. Did you ever curse at Mr. Nager as he was walking
2 his dogs?

3 MR. WEERASURIYA: Objection; asked and answered,
4 I believe.

5 THE WITNESS: No.

6 BY MR. GLICKMAN:

7 Q. Did you ever curse at Ms. Nour?

8 A. No.

9 Q. Did you ever spit at Mr. Nager or his dogs?

10 A. Never.

11 Q. Did you ever put dog feces in Mr. Nager's
12 mailbox?

13 A. No.

14 Q. Did you ever complain to Mr. Nager that some dog
15 was pooping in your front yard?

16 A. Yes.

17 Q. When did you complain to him about that?

18 A. Years and years ago, meaning 2012, '13. I don't
19 recall.

20 Q. What did Mr. Nager respond about you complaining
21 about dogs pooping in your front yard?

22 A. He told me what dog he thought it was.

23 Q. Are you aware of a witness who has seen you
24 placing dog feces in Mr. Nager's mailbox?

25 A. That's not possible.

1 Q. Why is it not possible?

2 A. I never placed dog feces in Mr. Nager's mailbox.

3 Q. Did you ever put any movie disks in Mr. Nager's
4 mailbox?

5 A. I don't recall.

6 Q. Did Mr. Nager ever ask you about counterfeit
7 movie disks that were put in his mailbox?

8 A. I don't recall.

9 Q. Did you ever tell Mr. Nager that you picked up
10 counterfeit bootleg movie disks from Hong Kong or China,
11 where you pick them up cheap?

12 A. Yes.

13 Q. You did tell him that?

14 A. I brought some back for him from I think it was
15 Shanghai, actually.

16 Q. What did you bring him?

17 A. Just a collection of movies.

18 Q. Why did you bring them to him?

19 A. He asked me to.

20 Q. When was that?

21 A. 2012, 2013 maybe, somewhere in there.

22 Q. How did you find out that Mr. Nager was claiming
23 that he was attacked by the Hills' dog?

24 A. I'm sorry?

25 Q. At some point in time you found out that

1 Mr. Nager was claiming to have been attacked by the Hills'
2 dog?

3 A. Mr. Hill told me.

4 Q. What did Mr. Hill tell you?

5 A. That -- I don't know the exact term. Like a
6 house or a dog minder or watcher or whatever that was
7 walking their dog while they were on vacation had walked
8 past -- was coming back to the Hills' home, walked past
9 Mr. Nager's property. His dogs ran out, and there was a
10 scuffle between the dogs. And then my understanding is
11 that all the people tried to pull all the dogs back, and I
12 believe he was bit at that point.

13 Q. Where were you at the time of the dog attack?

14 MR. HALFEN: Objection; calls for speculation.

15 THE WITNESS: I don't know. I was not home.

16 BY MR. GLICKMAN:

17 Q. Did you do anything to help the Hills in some way
18 to prove any issue in their case relating to the dog
19 attack?

20 MR. HALFEN: Objection; vague and ambiguous.

21 THE WITNESS: The Hills asked me if any of the
22 security cameras that I have on my home picked up any of
23 the incident that occurred. I went and cataloged and went
24 back through. He gave me the time, the date, and, sure
25 enough, there was some of the interaction that was caught.

1 I copied that and gave that to Mr. Hill.

2 BY MR. GLICKMAN:

3 Q. What did you find on your security cameras
4 relating to the dog incident?

5 MR. HALFEN: Objection; vague and ambiguous.

6 THE WITNESS: Can you be more specific?

7 BY MR. GLICKMAN:

8 Q. You said you looked at the video, and some of it
9 was caught. I'm trying to figure out what the, quote,
10 "some of it" was.

11 A. Oh, okay. So the house -- the dog --

12 Q. Walker?

13 A. -- walker that was staying at their house walks
14 down the sidewalk and then I think it kind of goes out of
15 frame. I don't remember exactly what all the footage
16 shows. Mr. Hill is in possession of it. Then you can
17 pick up a fair amount of scuffle that's occurring out in
18 the street, you know, kind of dog/people melee, people
19 trying to pull each other away, dogs away.

20 Then the gal that is walking the dog comes back
21 and sits on the curb in front of my house for a number of
22 minutes, and she is fairly shaken up, and that's about it.

23 Q. Do you still have a copy of that video?

24 A. I'd have to look.

25 Q. But how long was the video that you gave to the

1 Hills?

2 A. I don't recall.

3 Q. 30 seconds, a minute, two minutes? What's your
4 recollection?

5 A. You know, to be honest with you, I'd like to
6 change that. I think it was still shots, a series of
7 still shots, not a video. But they were still shots that
8 were sequenced, you know, literally like a second or half
9 second after one another.

10 So what was the entire duration? I really don't
11 know. It would be a number of minutes because, as I say,
12 it captures the gal coming down around the hill, walking
13 past my house, the scuffling, and then the gal coming back
14 and sitting on my driveway for a little while. So maybe
15 five minutes, seven minutes.

16 Q. So when you say "the scuffling," what are you
17 referring to?

18 A. Dogs going -- you know, a dog fight and human
19 beings trying to stop the dog fight.

20 Q. You could actually see that from your stills?

21 A. You can make out quite a bit of that from what
22 occurred in the street.

23 Q. And did you see Mr. Nager in any of those stills?

24 A. I believe so, yeah.

25 Q. And did you see Ms. Nour in any of the stills?

1 A. I believe so, yes.

2 Q. And you saw the Hills' dog, Amber, in the stills?
3 Yes?

4 A. You see dogs. I am certain it was the Hills'
5 dog, Amber. It's hard to make out, you know, a specific
6 dog because dogs are at a much lower level than the
7 humans.

8 Q. Right. But Amber --

9 A. I am certain she was there.

10 Q. She is much bigger than Mr. Nager's dogs?

11 A. Yes.

12 Q. How many other dogs did you see aside from Amber?

13 A. I think you see one of his dogs.

14 Q. Did you see in the video any biting activity
15 going on?

16 A. Not that I recall, no.

17 Q. And so now that we've cleared this up that these
18 are stills, do you still have these?

19 A. As I said, I'd have to check.

20 Q. And so you testified at the hearing that took
21 place at CASA, C-A-S-A. Right?

22 A. I did not testify. I was present.

23 Q. You didn't testify?

24 A. No.

25 Q. Did you meet with anybody before the hearing?

1 A. No.

2 Q. Did you meet with Mr. Neufeld before the hearing?

3 MR. WEERASURIYA: Objection; asked and answered.

4 THE WITNESS: No.

5 BY MR. GLICKMAN:

6 Q. Did you meet with the Hills before the hearing?

7 A. No.

8 MR. WEERASURIYA: Objection; same.

9 BY MR. GLICKMAN:

10 Q. So you just showed up at the hearing on your own
11 without talking with anybody about what was going to be
12 talked about at the hearing?

13 MR. HALFEN: Objection; argumentative,
14 mischaracterizes his testimony.

15 THE WITNESS: I knew when the hearing was going
16 to be, and I knew what the substance of the hearing was or
17 what the substance of the hearing was about. I did not go
18 to the hearing with the Hills. I did not meet with the
19 Hills prior to it. I attended the hearing.

20 BY MR. GLICKMAN:

21 Q. Did you consider the Hills' dog to be vicious at
22 all?

23 A. No.

24 Q. Had you ever seen any aggressive tendencies with
25 the Hills' dog?

1 A. I personally have not, no.

2 Q. Were you aware at all that the Hills had reported
3 to their veterinarian that the dog was becoming more
4 aggressive before the incident?

5 A. No. That would be news to me.

6 Q. You are aware that the Hills lost their appeal to
7 reverse the mandate with CASA at that hearing. Right?

8 A. I am not, no.

9 Q. You never found out what happened as a result of
10 that hearing that you attended?

11 A. I remember hearing something about I think the
12 dog had to wear a muzzle for a certain period of time or
13 what have you. But I've got to be honest with you. That
14 issue does not concern me directly. It's not something
15 that, you know, I consider to be high on my list of things
16 that I need to keep myself aware of.

17 MR. ABRAHAM NAGER: Excuse me. Will this help?
18 Can I give this to you?

19 MR. GLICKMAN: That's okay. They don't need it.

20 MR. ABRAHAM NAGER: They don't need it?

21 MR. GLICKMAN: No.

22 MR. ABRAHAM NAGER: I was trying to help him.

23 BY MR. GLICKMAN:

24 Q. Did you ever complain to anybody that because of
25 Mr. Nager's actions, you were going to list your house for

1 sale?

2 MR. HALFEN: Of course you mean other than
3 counsel. Is that correct?

4 MR. GLICKMAN: Of course.

5 MR. HALFEN: Okay. Other than counsel.

6 THE WITNESS: I joked about it, yeah, a couple
7 times.

8 BY MR. GLICKMAN:

9 Q. Where did you joke about it?

10 A. You know, just in passing saying like, you know,
11 if I had known what kind of neighbor he was before I moved
12 in, I wouldn't have bought the house.

13 Q. And that's really just because of the hedge
14 issue, or is there something else?

15 A. No. The hedge issue, you know, is quite minor, I
16 think, compared to everything in total. It's the false
17 allegations, the accusations of being a peeping Tom, being
18 an animal abuser, being an assaulter, you know, completely
19 unsubstantiated allegations that just go on and on.

20 I'd like to clarify something as far as the
21 hearing, the dog hearing. I did not testify, to my
22 knowledge. I was asked in the period of the hearing. I
23 don't know if it was the judge or the gentleman that was
24 running the hearing asked if anybody could speak about the
25 demeanor of the dog, Amber, and I did. I spoke that, you

1 know, I have known the dog since shortly after they got
2 the dog. I have only known it to be very playful and very
3 even-tempered. And that I believe I said also that I
4 could corroborate that, you know, Mr. Nager has a long
5 history of having his dogs in the community off leash.

6 Q. Let's talk about that. So you have seen
7 Mr. Nager with his dogs off leash?

8 A. Sure.

9 Q. And where have you seen Mr. Nager with his dogs
10 off leash?

11 A. You know, pretty much all over. The meadow is an
12 area that everybody has their dogs off leash. But back
13 and forth from the meadow to people's homes, dogs are
14 almost always put back on leash. But Mr. Nager had a
15 tendency that he would never really do that.

16 Q. Did Mr. Nager's dogs ever act aggressively in any
17 way towards you?

18 A. Towards me, no.

19 Q. Did you ever see them act aggressively towards
20 anybody?

21 A. I have seen one of his dogs go after other dogs
22 before, you know. I don't know -- the little blond dog
23 seemed to be more aggressive. I have seen that dog
24 barking and yapping towards other dogs.

25 Q. You felt that was like something more than just

1 one dog saying hi to another dog?

2 A. It could very well have been.

3 Q. Who knows what dogs do? I mean I have cats. But
4 you felt that the little dog was being aggressive somehow
5 towards another dog?

6 MR. HALFEN: Objection; asked and answered.

7 THE WITNESS: I would say most people, you know,
8 when they have their dogs off the leash, that that dog is
9 either very obedient and controlled or is on a leash. So
10 if you are walking your dog, you don't expect someone
11 else's dog to come up yapping and barking towards your dog
12 which is on a leash.

13 BY MR. GLICKMAN:

14 Q. So that's what you saw --

15 A. Maybe that was friendly, I don't know, like you
16 said.

17 Q. Did it seem like it was -- it's hard to
18 anthropomorphize, where you are like trying to give human
19 emotions or attributes to a dog. But just based on what
20 you saw, did you see the dog off leash exhibit what you
21 interpreted to be aggressive actions towards another dog?

22 MR. HALFEN: Objection; vague and ambiguous.

23 THE WITNESS: Only what I have already stated. I
24 have never seen the dog bite another dog. I have never
25 seen, you know.

1 BY MR. GLICKMAN:

2 Q. Aggressive action towards another dog other than
3 what you've testified?

4 A. What I've described, yeah.

5 Q. How about Nadine Johnson? Do you know her?

6 A. I know of her.

7 Q. Have the Hills ever talked with you about issues
8 that they have with Ms. Johnson about view issues?

9 A. Yes.

10 Q. What have they told you about that?

11 A. That she is obstructing their view and has
12 obstructed their view.

13 Q. In a similar way that Mr. Nager is, in your mind,
14 obstructing your view?

15 MR. HALFEN: Objection; vague and ambiguous,
16 calls for speculation, lacks foundation on the part of the
17 witness.

18 THE WITNESS: Yeah, I don't really want to
19 really --

20 BY MR. GLICKMAN:

21 Q. It was obstructing their view because of
22 landscaping issues. Is that what they told you?

23 MR. HALFEN: Objection; vague and ambiguous.

24 THE WITNESS: Yeah.

25

1 BY MR. GLICKMAN:

2 Q. Did they show you how Ms. Johnson was obstructing
3 their views?

4 A. Yes.

5 Q. And what did you see?

6 A. Significant overgrowth of trees and bushes along
7 their southern boundary of their property.

8 Q. Have you ever seen on the Hills' property any
9 indication that the Hills were blocking Mr. Nager's view?

10 A. Not really. Not anywhere to the extent that, you
11 know, what I am used to.

12 Q. When you and Mr. Nager had discussed building the
13 new wall or the new fence on your property, was there some
14 discussion about where that fence or the wall would be
15 built in terms of on whose property?

16 A. Yes.

17 Q. What was the discussion that you had?

18 A. He wanted the fence built as far onto my property
19 as possible up to and including that the cinderblocks
20 would marry up to and touch the concrete slab parts of the
21 walkway on my property.

22 Q. Did you agree to that?

23 A. I did.

24 Q. And so is that the way the fence was built?

25 A. No.

1 Q. Why not?

2 A. The contractor came to me first, I believe, and
3 said that for structural integrity he could not do that.
4 He can't -- what he told me was that you can't place the
5 block on one extremity of the foundation or the other. It
6 has to be in the center of the foundation or as close to
7 the center of the concrete foundation as possible. So I
8 asked him, "How far can you cheat it towards my side?"

9 Q. And what did he say?

10 A. And he said, you know, "I will do the best I
11 can." I think it was -- I think the distance between the
12 block, the concrete block of the walkway and the wall on
13 my side of the property is about three inches, so more so
14 on my -- go ahead.

15 Q. The contractor is Mr. Mendoza?

16 A. I believe that's correct, yes. It was
17 Mr. Nager's --

18 Q. But you --

19 A. -- contractor.

20 Q. But you thought Mr. Mendoza did a good job on the
21 wall. Didn't you?

22 A. I thought he did a fair job. He had some
23 problems initially, you know, some things that had to be
24 addressed.

25 Q. But, I mean, you suggested that you and Mr. Nager

1 tip an extra \$200 each for Mr. Mendoza's work on the wall?

2 A. I don't remember that specifically, but I

3 regularly tip people that work for me.

4 Q. And Mr. Mendoza did other work on your property?

5 A. Yeah.

6 Q. He did the concrete work?

7 A. He tried.

8 Q. What do you mean "He tried"?

9 A. The job was terrible, completely botched. I
10 didn't have runoff. You know, the concrete was cracking
11 immediately. It was an atrocious job and had to be
12 redone.

13 Q. The difference where the wall was actually
14 placed, did you discuss that with Mr. Nager?

15 A. I did.

16 Q. And Mr. Nager agreed to that?

17 A. He was fully aware of it. I had Mr. -- what was
18 his name again, the contractor?

19 Q. Mendoza.

20 A. -- Mr. Mendoza get Mr. Nager when that issue came
21 up.

22 Q. And so you're saying Mr. Nager --

23 A. -- was fully apprised of it.

24 Q. And fully agreed to it?

25 A. Yes, because the wall was continued. I would

1 also add that, you know, in the building of the wall
2 everything had to be per his preference. The capstone in
3 the wall had to be exactly like the capstone of his home,
4 matching. The stucco had to be exactly matching the
5 stucco of his home. The color of the stucco had to be
6 exactly the color of the stucco of his home so he wouldn't
7 have to paint it.

8 All construction, all building, all materials,
9 all trash, all cutting of blocks all had to be done on my
10 property, none on his property.

11 Q. You agreed to all that, though?

12 A. I did.

13 Q. I forgot to ask you when we started. Did you
14 take any medications today?

15 A. No.

16 Q. Do you take any medications on a regular basis?

17 A. No.

18 Q. Who is Vivian Stein?

19 A. My girlfriend.

20 Q. Have you discussed with Ms. Stein your issues
21 that you have in general with Mr. Nager?

22 A. I don't like to bring other people into negative
23 situations so.

24 Q. She is a dentist?

25 A. She is.

1 Q. Have you told her that you are suing Mr. Nager,
2 and Mr. Nager is suing you?

3 A. Of course she's aware of the --

4 Q. Does she know Mr. Nager?

5 A. Not to my knowledge, no.

6 Q. Has anybody ever made an accusation against you,
7 that you are aware of, of identity fraud?

8 A. Pardon me?

9 Q. Has anybody made any accusation against you that
10 you were inappropriately using somebody else's identity?

11 A. Never.

12 MR. GLICKMAN: Okay. Why don't we take a short
13 break. Maybe we can finish up.

14 (A six-minute recess was taken.)

15 BY MR. GLICKMAN:

16 Q. Anything else that you are thinking of that --
17 strike that. Anything else that you thought of that you
18 want to change or add to your testimony so far?

19 A. Not at this moment, no.

20 Q. Okay. I want to go back. You said that the
21 architectural review committee issued some sort of order
22 to Mr. Nager to trim to the top of the wall?

23 A. Yeah. That was part their order or their
24 instructions.

25 Q. It was in writing or oral?

1 A. I know for certain it was in writing.

2 Q. Do you have a copy of it?

3 A. Not on me, no.

4 Q. But you have seen a copy of it?

5 A. Yes.

6 Q. And what does it say?

7 A. It lays out what the architectural committee
8 believes needs to be trimmed and cut in order to comply
9 with the CC & R's to eliminate the unreasonable view
10 blockage.

11 Q. Do you have a copy of that with you?

12 A. No.

13 Q. Is there anything else in writing that you
14 believe was issued by the homeowners association or any
15 unit of the homeowners association setting forth Mr. Nager
16 needed to comply with X?

17 MR. WEERASURIYA: Objection; Rifkind. You can
18 respond if you recall.

19 MR. HALFEN: Also I will object that it's vague
20 and ambiguous as phrased.

21 THE WITNESS: There is numbers of, you know,
22 instructions to him to trim his landscaping, to remove the
23 view blockage. I mean dozens of letters from the HOA to
24 him.

25

1 BY MR. GLICKMAN:

2 Q. Okay. And you have seen these?

3 A. Yes.

4 Q. Do you have copies of these?

5 A. Yeah, I believe so.

6 Q. And essentially what they said is that he has to
7 trim all the foliage to no higher than the height of the
8 wall?

9 MR. WEERASURIYA: Objection; misstates the
10 testimony, compound, vague and ambiguous.

11 MR. HALFEN: I will also object that the
12 documents speak for themselves.

13 THE WITNESS: I would say the same.

14 BY MR. GLICKMAN:

15 Q. Say the same what?

16 A. The documents speak for themselves. There is a
17 large number of documents. I can't speak to all of them.

18 Q. Okay. But the essence is --

19 A. Correct the view blockage.

20 Q. And the view blockage means cut so everything is
21 no higher than the height of the wall?

22 MR. HALFEN: Objection; vague and ambiguous. I
23 mean here is the trouble with it, Counsel. I don't know
24 if you want a speaking objection on the record, but the
25 point is he said there is a large number of documents.

1 And if what you are doing is you are trying to sort of
2 pigeonhole all this large number of documents into one
3 sort of general proposition without having the documents
4 in front of him, I think it's really calling for
5 speculation on the part of the witness, among other
6 problems.

7 But I am not instructing him. I think if he can
8 sort of understand it, you know, he can take a shot at
9 giving an answer, I guess.

10 THE WITNESS: I'm sorry. One more time with the
11 question.

12 BY MR. GLICKMAN:

13 Q. I am just trying to get an idea. What was
14 Mr. Nager supposed to do that he didn't do?

15 MR. WEERASURIYA: Objection; vague and ambiguous,
16 calls for a narrative, Rifkind, calls for speculation,
17 compound.

18 THE WITNESS: Trim his landscaping to comply with
19 the instructions of the ARC.

20 BY MR. GLICKMAN:

21 Q. And the instructions were no higher than the
22 height of the wall?

23 A. That was part of it. That was part of the
24 instructions.

25 Q. What was the other part?

1 A. There are numerous parts. I don't really feel
2 comfortable trying to lay them all out.

3 Q. Now, earlier you said something about a 15
4 percent view blockage was permitted under the CC & R's.
5 Do you recall that?

6 A. It was part of the view maintenance policy.

7 Q. So what did you mean by the 15 percent?

8 A. There was a clause, I believe, in the view
9 maintenance policy which said that, you know, no neighbor
10 could obstruct or block more than 15 percent of another
11 neighbor's view, ocean view. And I believe that since
12 then that verbiage has changed to unreasonable
13 obstruction, but in both cases all to be determined by the
14 ARC.

15 Q. Did you ever see some sort of calculation that
16 said that Mr. Nager was obstructing more than 15 percent
17 of your view?

18 MR. WEERASURIYA: Objection; calls for an expert
19 opinion.

20 THE WITNESS: So when the issue was initially
21 raised, the board took a look at it. The ARC came and
22 took a look at it, and then they went a step further and
23 hired a guy by the name of Jeff Smith, who I believe owns
24 Smith Architects and is somehow considered a view expert.
25 I am not really sure how you achieve that credential.

1 But he came out, took a number of pictures, and
2 then submitted a report to the HOA, which I was sent a
3 copy of, that clearly stated in excess of 15 percent of
4 the view is obstructed.

5 BY MR. GLICKMAN:

6 Q. And when was that?

7 A. The first time was in November of 2014.

8 Q. And then there was a second one?

9 A. There was.

10 Q. When was that?

11 A. I think it was November of 2015. I'm sorry.

12 December, I think it was, of 2015.

13 Q. And was there another one?

14 A. Not that I am aware of, no.

15 Q. And both reports indicated that there was more
16 than a 15 percent blockage?

17 MR. HALFEN: Objection; the reports speak for
18 themselves.

19 THE WITNESS: Yes.

20 BY MR. GLICKMAN:

21 Q. And you have copies of both reports?

22 A. I do.

23 Q. Okay. Those are all the questions I have for
24 you, then.

25 MR. HALFEN: I don't have any questions.

1 MR. WEERASURIYA: Neither do I.

2 MR. GLICKMAN: Okay. Why don't we stipulate,
3 then, that the original of the deposition transcript can
4 be sent to somebody. Who is the volunteer?

5 MR. HALFEN: That will be fine. If you want to
6 send it to Slaughter, Reagan & Cole, that's fine.

7 MR. GLICKMAN: Okay. And that counsel for
8 Mr. Mueller will make arrangements for Mr. Mueller to
9 read, review, and sign the transcript under penalty of
10 perjury; that we will ask that this all be done within 30
11 days of counsel's receipt of the original from the court
12 reporter or prior to commencement of trial, whichever
13 occurs first, since we are getting kind of in that range.

14 And if for some reason the document is not signed
15 or corrected within that time period, that an unsigned
16 copy can be used as if it had been signed and corrected.
17 And we will be notified of any changes or corrections
18 within that time period. And we will relieve the court
19 reporter of her statutory obligations upon delivery of the
20 original, and we will have counsel maintain custody of the
21 original and produce it whenever needed for any legitimate
22 purpose in this case.

23 MR. HALFEN: Sounds fine. So stipulated.

24 MR. WEERASURIYA: Okay. So stipulated.

25 MR. GLICKMAN: Okay.

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THE REPORTER: Would you like a copy, Counsel?

MR. HALFEN: I'll take a copy, electronic copy,
and everything, please.

(Proceedings concluded at 2:43 p.m.)

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DECLARATION

I hereby declare I am the deponent in the within matter; that I have read the foregoing deposition and know the contents thereof, and I declare that the same is true of my knowledge except as to the matters which are therein stated upon my information or belief, and as to those matters, I believe it to be true.

I declare under the penalties of perjury of the State of California that the foregoing is true and correct.

Executed this _____ day of _____,
20____, at _____, California.

KEVIN MUELLER

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REPORTER'S CERTIFICATE

I, Lyn Corrin Aaker, a Certified Shorthand Reporter, holding a valid and current license issued by the State of California, CSR No. 6228, do hereby certify:

That said proceedings were taken down by me in shorthand at the time and place therein set forth and thereafter transcribed under my direction and supervision.

I further certify that I am neither counsel for nor related to any party to said action, nor in any way interested in the outcome thereof.

The dismantling, unsealing, or unbinding of the original transcript will render the Reporter's Certificate null and void.

IN WITNESS WHEREOF, I have hereunto subscribed my name on this date January 22, 2019.



Certified Shorthand Reporter