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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - CENTRAL DIVISION
HONORABLE GEORGE H. WU, U.S. DISTRICT JUDGE

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. CR 07-689

CHARLES LYNCH,

Defendants.

REPORTER'S TRANSCRIPT OF
EVIDENTIARY HEARING
Monday, January 22, 2024
11:00 a.m.
LOS ANGELES, CALIFORNIA

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1 **LOS ANGELES, CALIFORNIA; MONDAY, JANUARY 22, 2024**

2 **11:00 A.M.**

3 **--oOo--**

4
5 THE COURT: All right. On the *United States versus*
6 *Lynch*. Let me have appearances.

7 MR. KOWAL: David Kowal for the United States.

8 MS. ABEL: Good morning, Your Honor. Rebecca Abel,
9 Deputy Federal Public Defender for Mr. Lynch who is present and
10 not in custody.

11 Also, in support of Mr. Lynch is his mother, who is
12 present, his former counsel who is present, and other
13 supporters.

14 THE COURT: Mr. Lynch is on the phone then?

15 MS. ABEL: Mr. Lynch is present.

16 THE COURT: You have changed a lot.

17 THE DEFENDANT: I have gotten older, yes.

18 THE COURT: I thought you were the expert.

19 Okay. All right. We're here, as I indicated, for an
20 evidentiary hearing. I have read the defense's materials.

21 Let me just ask, is there anything else that either side
22 is going to be offering?

23 MR. KOWAL: Yes, Your Honor. This is David Kowal.
24 As you know, we have not filed a brief, and the Court
25 denied --

1 THE COURT: You also haven't filed any evidentiary
2 materials.

3 MR. KOWAL: That's correct. If the Court permits me
4 I would like, at some point, to explain the context from the
5 Court's recent status conference, but we're prepared to go
6 forward, however the Court wants. We are prepared to take the
7 Court through the existing record on the evidentiary issue,
8 prepared to examine witnesses, whatever the Court wants, but
9 certainly also prepared to explain my egregious failures to
10 file the brief and the other things that I have messed up on,
11 so whatever the Court wants to do.

12 THE COURT: The egregious stuff, that goes to the
13 question to the motion to dismiss. I have viewed the motion to
14 dismiss as separate, substantively from the issue of the
15 evidentiary hearing.

16 The evidentiary hearing, it's been scheduled, it was
17 originally scheduled -- well, the matter was remanded back from
18 the Ninth Circuit on September 13th of 2018.

19 And there was a lot of preliminary stuff that insofar as
20 burden of proof, and what identifying the California laws that
21 were applicable at the time, things of that sort, but that was
22 more or less resolved.

23 Those initial procedural issues were resolved by
24 August 19th of 2019, and at that point in time, the original
25 evidentiary hearing was scheduled for April 27th of 2020.

1 Now, it's January 22nd, for 2024, this is the date that
2 has been scheduled for the evidentiary hearing, it has been
3 scheduled for least six months.

4 So, going forward -- we're going forward today, it's
5 inexcusable that it not going forward today.

6 I will entertain whatever either side has, although, I
7 understand the -- if you are going to be submitting stuff at
8 this point in time, I think -- I don't know, is the defense
9 going to object that they haven't seen a copy of it?

10 MS. ABEL: Yes, Your Honor. We had a discovery
11 cutoff in this matter.

12 Obviously, the record is closed. We had an expert
13 disclosure deadline. The government indicated they had no
14 expert.

15 THE COURT: I presume he can present things that are
16 already in the record.

17 In other words, things that he can present stuff from
18 the trial; he could present -- in other words, he doesn't have
19 an expert report, unlike the defense, but there is still
20 evidentiary materials that he can attempt to reference and
21 argue.

22 MS. ABEL: Your Honor, I think if the defense
23 attempted to do that, we would be precluded from doing so,
24 given that there was no indication or reference to those
25 documents in any prior filing, in any prior evidence offered,

1 either factually or in expert disclosure or otherwise.

2 As I said, there was a discovery cutoff. I'm not
3 entirely sure what could be within the scope of notice here
4 that certainly the defense presented evidence, both from the
5 record and beyond it in its motion papers, and the government's
6 opportunity to do so.

7 THE COURT: Let me see what the government is
8 attempting to proffer, and I will allow you to object any
9 portion you think is objectionable.

10 Let me ask the government, what do you want to present?

11 MR. KOWAL: With respect to discovery issue, I do
12 have a number of exhibits that are already in the record, for
13 example, Mr. Lynch gave a sworn deposition in this case and
14 made statements, we believe, essentially will win the case for
15 us on their own. I have those transcripts.

16 THE COURT: All right.

17 MR. KOWAL: I have other admissions that the parties
18 have made, so can I take those out.

19 But I just may need a second to get stuff together.

20 I wasn't -- may I just address the procedural posture
21 for a second?

22 THE COURT: In what sense?

23 MR. KOWAL: Just on the points about the evidentiary
24 hearing going forward.

25 THE COURT: All right.

1 MR. KOWAL: Again, I appreciate the Court's
2 indulgence. When I egregiously blew the deadline without --

3 THE COURT: Which one are you talking about at this
4 point?

5 MR. KOWAL: Without filing motion to extend the
6 calendar dates back in October.

7 My first instinct was I'm getting sanctioned and I
8 deserved to be sanctioned.

9 My second was that I needed to do what I did the first
10 time, which was to seek leave to --

11 THE COURT: I don't understand why you think I would
12 grant it.

13 MR. KOWAL: Well, I thought it would be difficult,
14 but I also saw two things.

15 One, the defendant filed a motion to dismiss as a
16 sanction, and, two, because this was the second time, my
17 assumption was --

18 THE COURT: Well see, the thing as I have indicated
19 there is a difference between -- the evidentiary hearing is on
20 the issue of whether or not the defendant strictly complied.

21 If the defendant strictly complied, then there is a
22 prohibition against the use of governmental funds to prosecute
23 the defendant during that point in time.

24 Whereas a motion to dismiss would be to dismiss the
25 prosecution in its entirety, which I consider to be, in other

1 words, it's much more severe sanction.

2 To my mind, you know, again, this evidentiary hearing
3 has been scheduled for a lengthy period of time. This case has
4 been gone, on as defense points out for 16 years.

5 Obviously, it took the Circuit ten years to resolve the
6 appeal, but that is not a criticism, it's just an observation.

7 MR. KOWAL: Can I address that?

8 THE COURT: What?

9 MR. KOWAL: Just the timing.

10 THE COURT: Sure.

11 MR. KOWAL: Again, I appreciate the Court's
12 patience. I think there is two reasons why it's us time to
13 file our brief.

14 Two reasons that are the same reason it took them two
15 years to file their opening brief.

16 THE COURT: Well no, the opening brief -- both sides
17 agree to some initial continuances.

18 MR. KOWAL: Two years, Your Honor.

19 THE COURT: But that is not the problem.

20 Obviously, if both sides ask for time, I granted the
21 time.

22 I'm not penalizing either side for that, I mean, that is
23 water under the bridge.

24 The problem, however, once I did schedule the
25 evidentiary hearing date, the government did not make any

1 application for continuances, and yet, it's what, three years
2 and nine months have gone by, or maybe less than that, about
3 two years.

4 MR. KOWAL: No, Your Honor, we have spent less time
5 doing our brief than they did preparing theirs.

6 THE COURT: Well, they bear the burden of proof as
7 was originally decided, they would have the burden of proof, so
8 you know.

9 MR. KOWAL: I guess what I'm explaining to the Court
10 is two things.

11 One, is that it's an immensely complicated factual and
12 procedural record and we were dealing with financial records.
13 As I said in my applications for more time in the past,
14 including now, we had an expert who had spent -- this is all
15 about analysis of profitability and financial records of the
16 defendant which are --

17 THE COURT: I thought most of the financial records
18 were produced even at the time of the original trial.

19 MR. KOWAL: Right, but they weren't analyzed for
20 what the defendant has done for a profit and loss analysis, and
21 then analyzed, and in addition to that, as I have explained,
22 just again, I see -- the Court is skeptical and it has a right
23 to be, but just to explain why I didn't make an application
24 separately to move the evidentiary hearing was that I --

25 THE COURT: But I don't envision that as the

1 problem. That happened, and you know, I noted it, but again,
2 the problem is that I granted the government two lengthy
3 continuances --

4 MR. KOWAL: Yes.

5 THE COURT: -- in this matter, and.

6 MR. KOWAL: Again, what I thought -- when the motion
7 to dismiss came, I thought I was going to lay out in detail
8 these are the tasks that were being done, these are why we
9 haven't completed them.

10 And I needed to meet with my agents and witnesses to see
11 exactly how much time would need that we could seek leave to do
12 so it would be a drop-dead date, not a time in the wind, but as
13 I was trying to explain -- I'm sorry.

14 THE COURT: Well, let's put it this way, the record
15 is the record.

16 MR. KOWAL: I agree, I want to make a further record
17 if I could.

18 THE COURT: All right.

19 MR. KOWAL: Is that we had a financial analyst, who
20 spent six months going through the detailed records.

21 It was unable to apply them to the records that the
22 defense had produced, and then it also would require me to go
23 meet with the new financial analyst after reviewing the
24 defense's materials, something which I have been doing for
25 months, but usually it takes a large chunk of time to do that

1 effectively.

2 And when the motion to dismiss came out, I was trying to
3 schedule the time for myself and the defense in our response
4 for failure --

5 THE COURT: The only problem of the argument,
6 because of the defense made a motion to dismiss in addition to
7 arguing that the government had failed to respond to the
8 evidentiary materials, that were set for the evidentiary
9 hearing, that somehow it should have given you more time to do
10 something else.

11 It doesn't quite work that way, because the defense
12 filed a reply to the -- which was simply noting the
13 government's failure to oppose.

14 MR. KOWAL: You are exactly right. That's why I
15 think as Ms. Yates said in opposing our most recent motion,
16 both parties saw the issues as the same in the motion to
17 dismiss and the motion for an evidentiary hearing in that the
18 government first had to explain its failure to file, which was
19 what I was intending to do, which I thought the motion to
20 dismiss was, like, an order to show cause, that I needed to
21 explain it, and to seek leave for relief all at once, and
22 that's all I have been trying to do when the first motion
23 hearing was set on the motion to dismiss, I was prepared to
24 start researching the motion and meet with the agents. I did
25 have three pending motions before that time, then the Court on

1 its own motion, moved everything to this day.

2 I fully assumed --

3 THE COURT: When you say, moved everything, this
4 date was the date was set for the evidentiary hearing, it has
5 been the date that was set for the evidentiary hearing for
6 months.

7 MR. KOWAL: Correct. I assume that we wouldn't be
8 going forward with the evidentiary hearing with a pending
9 motion to dismiss.

10 THE COURT: I don't understand why you would assume
11 that.

12 MR. KOWAL: Again, I thought the Court would want
13 us, even if -- even if the Court was having a sanction --

14 THE COURT: I didn't indicate a sanction, the
15 sanction would have been, I suppose, the motion to dismiss
16 would have been the sanction for the government's failure.

17 That is separate to my mind from the evidentiary hearing
18 which the Ninth Circuit ordered me to have.

19 Again, I had originally scheduled this in August
20 of 2019, and it was continued at the government's request, but
21 then this date of January 22nd was chosen by the government.

22 MR. KOWAL: Certainly was, Your Honor. Just like
23 the prior six or so continuances of the defense were chosen by
24 the defense. I set forth our basis for it.

25 THE COURT: But the defense, every time that they

1 wanted a continuance, asked for the continuance.

2 MR. KOWAL: That is correct. I did not ask it
3 timely.

4 THE COURT: Correct. Let me stop, I think whatever
5 record you wanted to make, you have made.

6 MR. KOWAL: I wanted to say one thing about the
7 timing and why, you know, I still think it would be useful for
8 us -- again, I'm prepared to put forth all of our evidence in
9 the record today.

10 I could do it from the lectern, or I could do it from
11 that. But I assume if we were having this motion to dismiss,
12 that that would be part of the same schedule.

13 And I just wanted to also address my failure to appear
14 at the hearing on the status conference.

15 I was under the incorrect assumption that because the
16 two issues had to do with the government's failure to file the
17 brief, that we were going forward on the 22nd, and that I would
18 have to file any responsive information on that hearing date.

19 I did not expect we were going ahead with the status
20 conference.

21 When the Court did contact me, I did come over here, and
22 I was too late, but then when I looked for the Court's order, I
23 expected to see a show cause order about the failure to appear
24 or what was going forward at the evidentiary hearing.

25 The Court then referred back to the motion to dismiss

1 hearing on the 22nd, which is the Court is acknowledging is
2 that the evidentiary hearing, but there was nothing about
3 scheduling what we would be doing at the evidentiary hearing.

4 THE COURT: You are confusing the two.

5 The Court, at this point, never combined the evidentiary
6 hearing with the motion to dismiss.

7 All it did, was because the defense had filed a motion
8 to dismiss, that I simply moved it to the January 22nd date
9 because we were already scheduled for January 22nd.

10 MR. KOWAL: That's why I didn't understand how we
11 would go forward with the evidentiary hearing when the Court
12 would hear argument and we would preclude the evidentiary
13 hearing.

14 THE COURT: Again, the fact that the defense filed a
15 motion to dismiss doesn't change the Court's prior order on an
16 evidentiary hearing which has been pending for months and
17 months and months on a case that has been pending for decades,
18 simply decades.

19 At some point in time this case has to be resolved.
20 That's the reason why I wanted evidentiary hearing to go
21 forward, because the evidentiary hearing resolves a large
22 portion of this case and doesn't get rid of the case, which the
23 motion of dismiss the case which potentially could.

24 I don't understand why I would decide a motion to
25 dismiss, when if I decide for the defense insofar as the

1 appropriations are concerned, I don't know why I would stick my
2 neck out, and say, oh yeah, I'm going to dismiss the case
3 anyway.

4 MR. KOWAL: It would preclude the necessity for the
5 hearing and having witnesses and things like that.

6 THE COURT: Those have already been scheduled. I'm
7 not precluding them.

8 MR. KOWAL: Are we going to cross-examination the
9 witnesses today?

10 THE COURT: Mr. Kowal, hopefully, you understand the
11 Court's position. What is your evidence?

12 MR. KOWAL: Your Honor, will I be able to examine
13 the witnesses?

14 MS. ABEL: Your Honor, Mr. Lynch is presented today.
15 We also will noticed several experts, but because there was no
16 evidence prepared in opposition to them, we did notice them to
17 appear today, and then it was back and forth all last week,
18 meaning was the hearing going forward, wasn't the hearing going
19 forward, in terms of the government twice potentially moving,
20 potentially moving not.

21 The experts are not present.

22 I don't know why we would cross-examine the experts,
23 when waiver has already been established here.

24 Local Rule 7-12 says the failure to oppose constitutes a
25 waiver of all arguments and opposition.

1 There have been no arguments in opposition. It would be
2 impossible to prepare an expert for any kind of
3 cross-examination, given the defense has no idea what nature of
4 that examination would be.

5 There have been no facts discovery at all.

6 The government several times mentions experts. We have
7 received no expert disclosure.

8 The motion that we're here for today was filed 18 months
9 ago.

10 And the government had 18 months to do really, anything.

11 In the last seven months, it's done nothing.

12 I just want to add one thing about this, which is the
13 motion to dismiss was filed on November 15th.

14 The Court then set a hearing for 8:00 a.m. today, which
15 would be an hour and a half ago at this point. It would be
16 resolved before we arrived for this.

17 But the government's opposition to that motion was due
18 three weeks ago.

19 And it wasn't until five days ago that the government
20 deigned to acknowledge that the motion was filed at all.

21 I think any opposition to that motion would have been
22 waived by the time the government got around to filing an *ex*
23 *parte*.

24 I think what is most important here, Your Honor, if I
25 could performed as the government had performed, I would long

1 ago been fired by this Court, by my clients and declared
2 ineffective and would have been preplaced.

3 I'm not sure why we're fighting against individuals,
4 when this is in fact the United States government.

5 If Mr. Kowal needed assistance, he had hundreds of
6 people to ask for help.

7 I don't understand why the scheduling of one individual
8 affects my client's freedom.

9 At this point, I think the defense's position is still
10 that any opposition has been waived.

11 Nothing has been filed.

12 If the government wanted to proffer its 400 different
13 excuses, it's opportunity to do so was in opposition or was in
14 its *ex parte*, was in its opposition to motion to dismiss.

15 As the Court noted, the motion to dismiss was purely an
16 effort to get Mr. Kowal's attention.

17 I didn't know what more I could do. I filed a reply
18 that said you didn't do what you were supposed to do the first
19 time.

20 He filed a simultaneous *ex parte*.

21 We come to the next deadline and here we are again.

22 I didn't know how else to get the federal government to
23 pay attention to Mr. Lynch, who has been on pretrial release
24 for 16 years.

25 That is the goal.

1 As the government notes, it was an attempt to set an
2 OSC, however, Mr. Kowal has been the subject of an OSC by a
3 parallel Court in this --

4 THE COURT: That is something I'm not going to get
5 into.

6 MS. ABEL: Only insofar as he responded to 24 hours
7 to that order to show cause.

8 That is not the nature -- the specifics are irrelevant,
9 he's capable of responding to something is evidence. Again, if
10 he needed help, there were hundreds of people to help him.

11 I am one person, I think the opportunity for Mr. Kowal
12 to present first time evidence here at this hearing, would
13 violate both the local rules, and this Court's numerous time
14 holding in many cases.

15 THE COURT: Well, let me put it this way, he cannot
16 produce any expert witness's testimony, because I agree with
17 you, that ship has sailed years ago.

18 MS. ABEL: I would agree I would think that applies
19 equally to evidence. The failure to identify evidence in the
20 record, prior to this time?

21 THE COURT: If the evidence is already in the record
22 he can reference it. Clearly, there is evidence in the record.

23 MS. ABEL: But as the Court knows, for example, in
24 civil cases in a Rule 56 motion, if the opposition does not
25 identify those citations specifically, they are waived.

1 We are somewhat in a civil proceeding here, I bear the
2 burden in this matter.

3 THE COURT: It's a little bit different, what you
4 are talking about, for example, in a summary judgment motion
5 type of situation, where there are things procedurally that are
6 required. There would be statement of undisputed facts and
7 then if the opposition fails to respond to the failure of
8 undisputed facts, then the Court can state those facts are
9 undisputed.

10 This is an evidentiary hearing. An evidentiary hearing,
11 by definition requires some production of evidence.

12 The defense has provided that evidence, you know, and
13 you know, so, for example, I would allow the government to
14 question Mr. Lynch on his evidence that it was proffered.

15 I don't see any problem with that.

16 But, you know, I also will allow him to reference the
17 portions of the record that are in front of the Court for his
18 arguments.

19 But, you know again, insofar as new materials are
20 concerned, new evidentiary materials, I would agree with the
21 defense, that train has left the station.

22 MS. ABEL: Your Honor, I guess the defense does want
23 to make its record. To the extent there is waiver there is
24 entire waiver as to all arguments and evidence.

25 However, if the government intends to offer previously

1 unidentified evidence in this setting for the first time, the
2 defense would seek an opportunity to respond to that evidence
3 without further opportunity by the government to file any
4 supplemental sur-reply, et cetera.

5 THE COURT: I don't know if I will allow him to
6 offer new evidence that has not been referenced already in the
7 record. You know, the record is the record.

8 MS. ABEL: I would add in a suppression context,
9 if in fact, I came in and tried to offer a whole new host of
10 evidence in that proceeding, I would be barred by both this
11 Court and the government.

12 In that case, the government would bear the burden, I
13 would be opposing. I could not come into this Court having
14 filed no opposition and seek the evidentiary hearing for the
15 first time to cross-examine an officer on any grounds.

16 MR. KOWAL: Defense is saying my opportunity to
17 discuss waiver was in the motion to dismiss, which is exactly
18 what my position was. I thought we were going to discuss my
19 failures and reasons.

20 But on the issue of cross-examination, I do have
21 cross-examination on the evidence that they have presented.

22 THE COURT: This is what I am going to do, I have
23 another matter which I'm going to take briefly.

24 I will allow Mr. Kowal -- Mr. Kowal is going to get
25 together, I guess, the materials that he wants to present.

1 There is evidence that I will take you through on that.
2 Amongst others, that not only did Mr. Lynch take what he
3 considered salary for himself, but that he paid down
4 preexisting personal debts throughout the course of the time
5 with his own -- with the revenues of the business.

6 And contrary to California law, he had no financial
7 accountability, although, you are supposed to, as a collective.

8 Again, that other indicia of him always operating the
9 business for personal financial need rather than for the
10 collective purpose.

11 There was no actual intent at the time ever to be a
12 collective, subjectively or objectively.

13 And then, again, just on the closed circuit, and again,
14 I can expand if the Court has any questions, you are required
15 under California law that only members of the collective may be
16 the subject of -- you may obtain marijuana from the members of
17 the collective. He numerous times got marijuana from outside
18 when it suited his business needs.

19 He also had employees who were not patients or in any
20 way qualified under California law.

21 He also, in violation of California law, when he
22 received marijuana from a source outside in his organization he
23 did not document it, and he knew that intentionally.

24 So those are the things we're focusing on.

25 THE COURT: All right. Let me ask the defense, what

1 is your response to those arguments?

2 MS. ABEL: Your Honor, I'm going to just keep
3 reiterating, this is all news to me.

4 I have not had an opportunity to consider any of the
5 pile that he handed me, nor any of the things he said.

6 Can I tell you that the brief does address --
7 specifically, the declaration of Alex Kreit who was an expert
8 on California medical marijuana law, circa, this period as well
9 as the declaration provided by our nonprofit status expert that
10 intent to be anything, is not required under the law. You can
11 intend to be one type of corporation, but actually be serving
12 as another.

13 The closed circuit question was expressly, by -- I may
14 be misstating URZ, as the commencement of that case name, which
15 specifically says that closed circuit is not required, that was
16 addressed directly in the opening brief.

17 And, Your Honor, there was many other things that I
18 didn't capture clearly, because I'm not sure where the
19 government is going.

20 And again, I want to reserve my right to reply after
21 having notice and object to the late introduction of evidence.

22 THE COURT: Okay.

23 MR. KOWAL: Your Honor, just to address what counsel
24 said, about not knowing where things are going. I'm going to
25 present to the Court, and I will mark it as Exhibit 1, that

1 many of these arguments were both briefed and much of the
2 evidence, though not all of the evidence we're going to present
3 to the Court today, came -- let me just write down this one --
4 I'm going to hand it up to the Court, if I may -- from the
5 government's briefing in the Ninth Circuit, pertinent excerpts
6 of which are included for the Court, including both the case
7 citations and the citations to the record.

8 And then I have all of the pertinent references in there
9 to record evidence.

10 I have those separately, but I was going to use those as
11 part of my presentation, just to go through them with the
12 Court.

13 MS. ABEL: For clarification for defense, can the
14 Court identify specifically what has been marked as Exhibit 1?

15 THE COURT: Exhibit 1 is the Ninth Circuit's brief
16 that was submitted by the government. It's the government's
17 fourth brief on cross appeal.

18 It's Docket No. 164 on the Circuit's case, 10-50219.

19 And also, I guess 10-5906993. I don't know what the
20 last one is, but I guess it's the appeal number is 10-5029 --
21 sorry, 219.

22 MS. ABEL: Thank you, Your Honor.

23 THE COURT: I did hand a copy of this to defense
24 counsel with my exhibits.

25 Just so the Court understands, let me just actually just

1 to make it a little easier for the Court, I will mark as
2 Exhibit 2, which is that same brief, but with all -- whenever
3 there is a citation in the brief, it references GER or SER in
4 the pertinent sections.

5 I have included those documents in the packet that I'm
6 going to mark as Exhibit 2.

7 Each of these documents has been handed to defense
8 counsel, in fact, in one big stack.

9 So, in other words, this is the same brief, setting
10 forth the government's various theories and case law with the
11 actual evidentiary record support, so I'm going to hand that to
12 the clerk now.

13 THE COURT: All right.

14 MS. ABEL: To the extent defense received this, it's
15 not entirely clear which portions of the documents this is.

16 MR. KOWAL: I'm glad to go through that when I
17 handed it counsel, they were all in one big stack together.
18 Then you can reference them through the references in the
19 brief, so defense counsel has each underlying document as
20 referenced by the SER or GER number.

21 In terms of roadmap, most of these arguments have been
22 made before. There is a few additional ones that we're going
23 to develop from our evidentiary hearing.

24 In addition, the defense, through their experts and
25 their proposed submissions to the Court, have provided

1 additional evidence that we, through the cross-examination and
2 through just pointing out to the Court, will support each of
3 these areas.

4 Does that make sense, Your Honor?

5 THE COURT: I understand.

6 MR. KOWAL: I think I will just -- I want to ask
7 just in terms of organizing my presentation, I was asking
8 defense counsel, she just made reference to her nonprofit
9 expert and her medical marijuana expert that had been
10 submitted.

11 Both of them rely heavily on the analysis of the
12 bookkeeper about as to whether this business earned a profit
13 and how it earned its profit and how it spent its money.

14 The very most important person that I want to examine is
15 the bookkeeper and I wanted to see in terms of organizing what
16 the availability of doing that was.

17 MS. ABEL: Yes, Your Honor, she was available by
18 phone at 9:30.

19 Again, this was the first I knew is at 11:00 that The
20 Court was interested in cross examining her.

21 I would have to check to assure her continued
22 availability now. Again, I had no notice.

23 THE COURT: Just check and see what her availability
24 is.

25 MS. ABEL: Certainly, Your Honor.

1 MR. KOWAL: I think I mentioned cross-examination
2 right at the beginning of the hearing.

3 MS. ABEL: The hearing was set for 9:30, Your Honor.
4 Your Honor, may I have a moment to step outside?

5 THE COURT: Sure.

6 MR. KOWAL: We would request to see what the
7 availability is, so I can show her documents.

8 I don't know how I can show her, her own documents, and
9 her exhibits, if she's not here, but we can cross that bridge
10 when she gets back.

11 THE COURT: Check on her availability.

12 (Brief recess.)

13 MS. ABEL: Thank you.

14 THE COURT: Let me ask the defense counsel, did you
15 contact your witness?

16 MS. ABEL: We indicated at the last of the close of
17 the hearing, she's on the east coast, and I'm waiting to
18 confirm she can be here by phone.

19 I had no opportunity to prepare her for any cross. I
20 would object to it, I don't know the nature of the cross.

21 MR. KOWAL: Cross will be on her declaration.

22 THE COURT: All right.

23 MR. KOWAL: When she submitted, well, let me start
24 with some similar things first.

25 THE COURT: All right.

1 MR. KOWAL: I'm going to present the Court with some
2 just to orient the Court some of the admissions that have been
3 made by counsel and some statements made by the Court, the
4 evidence in this case, and sort of the collective defense.

5 So, our next exhibit is Exhibit 3. I'm going to make a
6 note this going to be the transcript of this Court's sentencing
7 hearing on April 29, 2009.

8 It is a portion of the transcript where a prior defense
9 expert, Mr. Elford, starting on what is marked as ER 7479 or
10 page 78 of the transcript, is talking to the Court about the
11 same theory of immunity that the defendants is presenting here,
12 the collective or cooperative.

13 And I just wanted to do this by way of reminding the
14 Court, after seeing the trial, and again, obviously, so many
15 years away, there is two parts where, for example, on page 81,
16 which is ER 3482, the Court says starting at Line 18: Let me
17 stop you, well, you have just described that doesn't fit
18 Mr. Lynch's operation, because first of all, there wasn't a
19 group. It was operated by himself. And the other thing it was
20 selling to people who were not part of the collective
21 situation.

22 And there is one other part of the transcript.

23 That is the part I have included here, I don't think I
24 copied the remaining part.

25 But again, this is just point the Court to, its prior

1 after this exact same defense was presented after four
2 sentencing hearings, what the Court's view was.

3 And, you know, it's consistent with what we're saying
4 the Court is noting that sole ownership nature of this.

5 THE COURT: I made a comment in a sentencing hearing
6 I didn't make a specific finding of that point, though.

7 MR. KOWAL: I don't expect it would be a binding
8 finding. I would expect to remind the Court of when it was.

9 The next is --

10 THE COURT: That was on a point which is addressed
11 by the declaration of Mr. -- is it Kreit?

12 MS. ABEL: Yes, Your Honor.

13 THE COURT: He addressed that is point.

14 MR. KOWAL: Again, we will address it further, but
15 I'm saying after the Court saw all of the trial evidence, that
16 is what the Court --

17 THE COURT: I didn't make a actual finding.

18 MR. KOWAL: I'm only taking it as far as it goes. I
19 don't want to belabor the point.

20 THE COURT: Okay.

21 MR. KOWAL: The next exhibit is Exhibit 4, which is
22 going to be the Document 255 in the District Court record.

23 This is defendant's reply brief on sentencing.

24 I'm on page 15 of Document 255 in the Court's record and
25 GER, which is government's excerpt of record 45 at Lines 2 --

1 starting at Line 2.

2 And I will read it into the record, and I'm starting
3 with the government correctly notes: That Mr. Lynch did not
4 operate a collective or cooperative, but rather a storefront
5 dispensary.

6 They then say something, the opinion of Attorney General
7 that storefront dispensaries, which have been operating
8 for years, and not recognized by the law is of course, that is
9 just an opinion.

10 Line 6, the defense counsel, in a pleading tried to
11 persuade this Court, it says: Mr. Lynch does not dispute the
12 government's assertion that he made no attempt to operate as a
13 classic collective as now defined by the Attorney General.

14 MS. ABEL: Your Honor, if at any point you would
15 like me to reply, I am happy to.

16 THE COURT: If you want to respond, you can respond.

17 MS. ABEL: I think, in general, I prefer to do so in
18 a writing after I have had an opportunity to consider any of
19 this for the first time, but only that those responses to the
20 Attorney General's specific guidelines which were issued in
21 2008, and the position of the defense is thoroughly laid out in
22 its motion.

23 THE COURT: Okay.

24 MR. KOWAL: With respect to the admission, Your
25 Honor, I want to point the Court, I have a copy here but I can

1 do it by citation.

2 The Court of Appeals in this case noted that admission
3 in its discussion of this defense at 903 F.3d. 1061, and then
4 part of this discussion is at 1086.

5 They say that it is questionable whether a cooperative
6 as a -- excuse me -- although, potentially closer in a sense of
7 not having been expressly ruled out by the California Supreme
8 Court precedence, its questionable whether CCC was a
9 cooperative as the statute so defines the term.

10 They discuss some factors including, it was a sole
11 proprietorship, then it talks about some of the findings you
12 made.

13 And then it says, they quoted this exact thing: Lynch
14 had also conceded in his response to the sentencing memorandum
15 that quote, he does not dispute the government's assertion that
16 he made no attempt to cooperate a classic collective.

17 THE COURT: What requirements does it have to be
18 being a classic collective as opposed to collective?

19 MR. KOWAL: It just goes to the whether it was a
20 collective at all, that he didn't make any attempt to operate,
21 and the classic modifier doesn't add very much here.

22 But my point is the Ninth Circuit, in analyzing this
23 issue, thought it pertinent in sending it back for remand.

24 THE COURT: Okay. What else do you want to offer?

25 MR. KOWAL: The next thing I would like to offer is

1 a full transcript of Mr. Lynch's proffer testimony.

2 MS. ABEL: The defense absolutely objects to any
3 admission of what the government is referring to Mr. Lynch's
4 safety valve proffer. The Court is well aware cannot be used
5 against the defendant. I would cite the government
6 specifically to Mr. Kowal's statement at that time, which says
7 it is not to be used against you.

8 I understand the government is now doing exactly what
9 this stated in 2009, it would not do.

10 MR. KOWAL: No. It can't be used for sentencing,
11 but it can be used -- we have filed this in front of the Court
12 at least three times. And this was filed as Exhibit 293, it
13 was filed in the Ninth Circuit.

14 It was filed before this Court for sentencing, and it
15 was filed in front of this Court when we did preliminary
16 issues.

17 There has been no objection to admission of this, it's
18 in the record.

19 THE COURT: There is an objection now.

20 MR. KOWAL: If they want to brief it, we can, but it
21 is in the record, and it's sworn testimony.

22 MS. ABEL: Your Honor, I agree it is in the record,
23 it was in the record as to sentencing, which the defense has no
24 objection to its consideration at the time of sentencing, or
25 for its consideration at the time of sentencing that the Ninth

1 Circuit considered.

2 Obviously, it remanded for resentencing,

3 Here, we're deciding an entirely different issue, which
4 was whether Mr. Lynch strictly complied with marijuana laws.

5 If Mr. Kowal represented to the defendant that it would
6 not be used against him, I cannot construe this in any other
7 way than it be used against him now.

8 I would point also to 18 U.S.C. 3553(f), which says it
9 cannot be used in any way other than for the application of the
10 safety valve, and specifically, cannot be used to enhance his
11 sentence.

12 I don't see how this isn't an attempt to do just that.

13 MR. KOWAL: I will point out, that we didn't offer
14 it in the Ninth Circuit for sentencing.

15 We offered it on this exact issue multiple times and we
16 filed it in this case also at when they brought an indicative
17 motion.

18 THE COURT: Let me ask you, when you say you offered
19 it, in other words, the Ninth Circuit was engaged in
20 factfinding of some sort?

21 MR. KOWAL: These defendants brought an indicative
22 motion seeking an injunction in the Ninth Circuit in this case,
23 on the exact issue saying that the appropriation writer
24 prohibited them from -- for us from enforcing, and the
25 government, in this Court, submitted this transcript and

1 excerpts from it. And then that went up to the Ninth Circuit
2 and was considered in both in the briefs of both parties, and
3 its on the exact same issue here, which came with no objection.

4 Let me just find the other place in the record it was.
5 I believe it's in 469, in addition to -- but I will make a note
6 to provide all of the instances when this exact transcript has
7 been used without objection on this exact question that the
8 Court and the Ninth Circuit was doing.

9 THE COURT: Well, let me ask you, what page -- you
10 have given me lots of pages, what pages are you referring to?

11 MR. KOWAL: I have separate excerpts of the most
12 pertinent pages, which I'm going to be referring to both with
13 witnesses, and I can take the Court, that would be the next
14 exhibit, Exhibit 6.

15 This, as you could see, as I'm handing it to the clerk,
16 these are exhibits that were specifically submitted on this
17 issue to the Ninth Circuit.

18 MS. ABEL: Your Honor, I don't believe the defense
19 has a copy of it.

20 MR. KOWAL: It's in the first Ninth Circuit copy
21 that I gave you.

22 Let me see if I can find an extra one. It should have
23 SER 14.

24 MS. ABEL: It's been found, thank you.

25 THE COURT: Let me ask, even as to Exhibit 6, which

1 pages are you referring to in Exhibit 6?

2 MR. KOWAL: Well, all throughout the exhibits there
3 are pages I'm referring to. These are the pertinent exhibits
4 we have briefed to the Ninth Circuit, and I want to take
5 through, both the witnesses and the Court in this hearing, and
6 that's what I wanted to ask the Court, would you like me to go
7 through them and say, here is where he says this, and why it's
8 significant, or wait until I do it with Mr. Lynch or the
9 witnesses or both?

10 So, in other words, for example, in this -- I will give
11 you one example. In this brief, it says that he didn't -- he
12 bought marijuana for outside of his store, that is in this
13 exhibit, and I can point you to those lines, and then go
14 forward with what the Court wants.

15 THE COURT: Is buying marijuana outside the
16 collective barred?

17 MR. KOWAL: Yes.

18 THE COURT: Why?

19 MR. KOWAL: Because several opinions, including the
20 ones we said in the Ninth Circuit, has said so, and it's
21 also --

22 THE COURT: Let me ask the defense.

23 MR. KOWAL: Attorney General guidelines.

24 THE COURT: The guidelines are not binding.

25 MR. KOWAL: It has been adopted to multiple other

1 courts.

2 THE COURT: It is different because the guidelines
3 came out after the defendant's conduct in this case.

4 MR. KOWAL: Your Honor, but --

5 THE COURT: Yeah, it's not binding. It's
6 instructive, perhaps, but it's not binding.

7 MR. KOWAL: When the Court of Appeals references it
8 as its holding as the law, then it is binding, and I would also
9 say that --

10 THE COURT: I don't understand. The law did not
11 exist at that point in time, because the collective -- I'm
12 sorry, the guidelines weren't issued at that point.

13 MR. KOWAL: Your Honor, we have briefed this to the
14 Court in the preliminary briefings here.

15 THE COURT: I understand. I said it was
16 instructive, I don't understand how you could say it's binding,
17 determinative, since it wasn't in existence at the time.

18 MR. KOWAL: Because it's the interpretation of the
19 statute as what is happening at all times, both regulations and
20 case law --

21 THE COURT: There are cases that basically say the
22 purchase outside the collective does not bar a determination of
23 compliance.

24 What do you do with those cases?

25 MR. KOWAL: I can distinguish them for you. I can

1 discuss them for you.

2 I will indicate even in those cases the facts were very
3 different and the amounts of them were very different.

4 And so, we are relying on that, we have briefed it to
5 the Court before, and we will brief it again if you want.

6 THE COURT: Let me ask the defense, what is the
7 defense response?

8 MS. ABEL: Your Honor, in *Pizarski*, which is a Ninth
9 Circuit decision that postdates the briefing on the preliminary
10 issues, I would point the Court to page 745 of that opinion,
11 which specifically says: This concerns specifically the
12 possession of excessive amounts of cash and weapons, which the
13 Attorney General's guidelines prohibit.

14 And *Pizarski*, a Ninth Circuit opinion, which involved
15 conduct that postdated the issuance of the guidelines, which is
16 much more clear those guidelines would have been relevant.

17 The Ninth Circuit specifically said, we don't care.
18 These guidelines are nonbinding and do not trump evidentiary
19 findings.

20 If, in a case, where we're talking about weapons, the
21 Ninth Circuit was willing to overlook it, and did not find that
22 those guidelines substantively changed the requirements of the
23 law. I can't see how purchases outside of the collective would
24 particularly where URZ, the case discussed thoroughly in the
25 defense's motion, found that it expressly was permitted and

1 that case existed in 2005. In fact, it is a 2005 case, so it
2 is the only one of which potentially Mr. Lynch or his counsel,
3 at the time, could have been aware.

4 MR. KOWAL: In response, Your Honor that *Pizarski*
5 case was not talking about this closed circuit provision. It
6 was talking about what the Attorney General described as an
7 indicia of illegality, not actual legality.

8 So first of all, it's a different analysis than the one
9 she's discussing.

10 Secondly, after URZ and these cases, cases on which the
11 defense have relied in their briefing and their experts have
12 cited have found that they must be a closed circuit.

13 So those are the ones that we're relying on, and we're
14 using preliminarily, just I want to establish the fact and
15 establish the extent of the lack of closed circuit, or as
16 defense counsel just conceding the point as a factual matter,
17 and we're moving on to legal argument.

18 So I believe that we're going to be able to show that he
19 wasn't a closed circuit, I can bring you that evidence.

20 I also want to point out we're in a standard here that
21 is different than just merely California law. That under the
22 appropriation writer, he must strictly comply with all
23 regulations and laws of California under *McIntosh*, *Klimon* and
24 the other Ninth Circuit cases.

25 So the standard is strict compliance, not near

1 compliance or substantial compliance. The Ninth Circuit
2 specifically said reasonable compliance is not okay, it's
3 strict compliance.

4 So any violation, in our view, takes him out of this.

5 THE COURT: It makes it difficult when one is
6 defining something that doesn't come into the definition, which
7 you are attempting to get from the Attorney General's
8 guidelines, they were not published until after the conduct
9 occurred.

10 MR. KOWAL: Again, the defense is relying on their
11 briefing on the cases and the Attorney General guidelines.

12 THE COURT: That's because it's instructive, but
13 it's not binding.

14 MR. KOWAL: Your Honor, we have already briefed this
15 issue.

16 THE COURT: You are basically arguing against the
17 same thing. I have already indicated it is instructive. You
18 are saying no, it's binding.

19 In orders, if you failed -- if it binds any respect, it
20 is binding, and the case is over.

21 I have said it's instructive, so we have a difference in
22 terms of interpretation, so don't tell me what you are saying
23 is something different than the Court.

24 MR. KOWAL: I believe general guidelines are not
25 binding, I have never disagreed with that, but are persuasive.

1 What I'm saying is when a Court of Appeals in California
2 rules with reference to the same persuasive authority as a
3 holding in its case that you cannot get, as a matter of law,
4 immunity if you are not a closed circuit, that is more than
5 persuasive authority; that is California law.

6 And as we have set out in our brief to the Ninth
7 Circuit, there are multiple cases that have held that,
8 including ones that the defense experts are citing in their
9 briefs.

10 THE COURT: When you are saying, "closed circuit,"
11 you are talking about purchasing outside the collective, you
12 are not talking about selling outside of the collective?

13 MR. KOWAL: Both.

14 THE COURT: Who did they sell outside the
15 collective?

16 MR. KOWAL: The rule is for both.

17 THE COURT: I understand the rule. I asked you as a
18 fact, are you limiting it to sales outside the collective or
19 are you talking only about purchases outside the collective?

20 MR. KOWAL: I'm talking about purchases and also
21 people in the marijuana operation, not being members of the
22 collective, those two.

23 THE COURT: The latter point, I don't understand.

24 MR. KOWAL: He had employees who were not patients
25 or primary caregivers as required by law.

1 THE COURT: So, in other words, you are saying he
2 had employees who were working in the business aspect that were
3 not members of the collective?

4 MR. KOWAL: Correct, Your Honor.

5 THE COURT: So they were just straight employees?

6 MR. KOWAL: Correct, Your Honor.

7 THE COURT: Okay. What else do you want to say?

8 MR. KOWAL: May I point to the portions of the
9 record on these issues?

10 THE COURT: You can do whatever you want, that's why
11 we are here.

12 MR. KOWAL: Yes. The excerpts from the deposition
13 transcript, Exhibit 6, on this issue of outside of the
14 collective.

15 MS. ABEL: Your Honor, may I have leave to confer
16 with my colleague regarding Ms. Malone?

17 THE COURT: Sure.

18 MS. ABEL: Thank you.

19 MR. KOWAL: Are we still waiting?

20 THE COURT: Waiting on you.

21 MR. KOWAL: I was waiting on defense counsel.

22 Okay. The first is, again, tell me how much detail you
23 want, but it's on page 70, which is SER 144, where Mr. Lynch
24 describes traveling up to dispensaries that he -- in Northern
25 California to stock his supply.

1 Then on pages 71 through 74, he describes that he let an
2 employee, Abraham Baxter, travel up to Northern California
3 multiple times to obtain marijuana supply from nonmember
4 stores, particularly when he thought that they were valuable
5 strains.

6 With respect to that, tell me if you want me to stop if
7 you are not following.

8 The next part is that at pages 80 and 89, Mr. Lynch
9 admits that when he goes up north to a dispensary and comes
10 back, he would not log in -- he would not track where the
11 marijuana came from, because he would just log it in under the
12 person's name, so there would be no --

13 THE COURT: Are you talking about page 89?

14 MR. KOWAL: Page 80 and 81.

15 THE COURT: Page 80 and 81?

16 MR. KOWAL: Yes, Your Honor.

17 Then I would highlight when he discusses that he wasn't
18 -- when Mr. Kandilary went on these trips, he is asked: It
19 seems like you are actually circumventing your own system
20 because you are not documenting where the marijuana came from,
21 you are just putting them under a blanket that Johnny, who you
22 later had to fire, picked up all of this stuff.

23 Mr. Lynch answers at Line 21: Right.

24 Again, I agree with the Court that the Attorney
25 General's guidelines are just persuasive, but they also say

1 that collectives must document all of their sources of their
2 marijuana.

3 So here is a system which is not doing that.

4 THE COURT: What is the defense response?

5 MS. ABEL: Your Honor, again, we object to the
6 consideration of this exhibit, as it is the safety valve
7 proffer to the extent the government is arguing.

8 I believe he's arguing waiver as to that objection.

9 This is the evidentiary hearing. None of the prior
10 considerations of this evidence resulted in any legal findings.

11 In fact, this Court did not make any factual findings
12 and the Ninth Circuit specifically redirected this to this
13 Court at this time to make those factual findings.

14 And the defense is in fact objecting to the
15 consideration of the safety valve proffer, which is to be used
16 for purposes of sentencing.

17 In fact, the cover sheet of both Exhibits 5 and 6
18 expressly state the purpose of it, which is to determine the
19 applicability.

20 THE COURT: Let me ask the government a question,
21 the whole purpose of the safety valve proffer, the government's
22 position has always been that he was a leader.

23 I don't understand why the government engaged in the
24 charade as a safety valve proffer, since it was always the
25 government's position that he was a leader, therefore, he

1 couldn't qualify for safety valve.

2 MR. KOWAL: We told that to the defense. They
3 wanted to go ahead anyway, because they felt if they won with
4 you on leadership, then he would be eligible so they wanted to
5 make sure they checked that box. So that was their intent,
6 they specifically asked for a deposition.

7 THE COURT: All right; is that correct? Do you
8 know?

9 MS. ABEL: No. Your Honor, this predates my
10 specific involvement as to that moment in time.

11 In any event, it was some -- I don't know a decade and a
12 half ago.

13 As to the factual argument that I believe the government
14 is making, I think it goes to the closed loop argument as to
15 the other dispensaries, which the defense did address.

16 In fact, there is specific case law that says obtaining
17 it from other dispensaries is permissible.

18 And that I think that was the argument with regard to
19 the trips to Northern California.

20 As to the argument with regard to tracking, I believe
21 that the defense's exhibits demonstrate there was substantial
22 tracking of all -- of both incoming money, as incoming
23 marijuana, outgoing money, payments made by members, payments
24 made to providers, and all of that was documented in the
25 system.

1 I don't know -- I guess, I'm not entirely certain of
2 what the government's argument was there, but I don't think the
3 government disputes that there was substantial tracking of both
4 the source of the marijuana and payments for it.

5 MR. KOWAL: Your Honor, substantial compliance with
6 rules under *McIntosh* and *Kliman* is a loss for their defense.
7 There must be full and complete compliance, that was the
8 exactly the argument the defense is making to the Ninth
9 Circuit.

10 They said we substantially complied with California law.
11 The Ninth Circuit said if you only substantially comply, you
12 lose. You must fully and strictly comply.

13 So defense's argument if it's to be taken at face value,
14 shows that they are not meeting the standard legally for this
15 hearing.

16 MS. ABEL: Two responses, Your Honor.

17 One, I understand the argument is that the CCCC didn't
18 track the source of the marijuana. That requirement is only
19 implied by the guidelines. I would remind the Court --

20 THE COURT: By the what?

21 MS. ABEL: By the guidelines. Those guidelines say
22 substantial compliance is all that is required.

23 How the Court should interpret how one strictly complies
24 with future law that only requires substantial compliance is a
25 mystery.

1 At the time of 2006 and 2007, the law did not say
2 anything about the collective or cooperative requiring tracking
3 of the source of marijuana.

4 And I don't know how Mr. Lynch, the CCCC, or any other
5 dispensary could have foreseen the future changes that the
6 guidelines might bring or that what he was doing wasn't
7 substantially compliant with those changes.

8 He, in fact was.

9 I think the government is trying to say -- have it both
10 ways. He wants to argue the guidelines apply, but that the
11 requirement that those guidelines only required substantial
12 compliance, doesn't apply because the Ninth Circuit overrides
13 the substantial compliance, but not the portions of the
14 guidelines he likes.

15 I don't think you can have it both ways, and I also
16 think that most of the evidence that the government is pointing
17 to is from, again, the safety valve proffer, which, for the
18 reasons the Court identified and the defense, is not -- cannot
19 be used against Mr. Lynch at this time or at any other
20 proceedings other than sentencing.

21 THE COURT: All right. What else?

22 MR. KOWAL: Yes, Your Honor. The -- remember,
23 Mr. Lynch, at no time was seeking to operate as a collective or
24 seeking a protection, just as to the retrospective argument --

25 THE COURT: No, because the time it was originally

1 passed, there is a notion the collective wasn't necessary, the
2 operative format.

3 MR. KOWAL: It wasn't implied at his time, but he
4 wasn't seeking to operate as one or seeking the objection.

5 He saw it as a primary caregiver, so this whole
6 exercise --

7 THE COURT: That was the assumption of the way that
8 in which would be the most legal to operate it.

9 MR. KOWAL: It was a mistaken assumption. He can't
10 now retroactively try to fit his --

11 THE COURT: Well, being collective, again, what
12 constitutes being collective isn't necessarily written in
13 stone.

14 One can even, without the intent of operating as a
15 collective, operate as a collective.

16 MR. KOWAL: Yes. I'm giving you an example of how,
17 again, but every time I show when he doesn't operate as a
18 collective, they can't go by and say, well, we don't didn't
19 know.

20 He was either operating as a collective or was not.
21 When you go back and look at it, these are examples factually
22 that we are trying to explain to the Court show he was not
23 operating as a collective, and I would leave it at that.

24 THE COURT: Okay.

25 MR. KOWAL: The next one, with respect to closed

1 circuit, is at pages 89 and 90.

2 And there, he discusses one of his employees, not being
3 a patient, and I can't remember his name. He discusses it
4 further on page 89, and then on page 90, he says one of his
5 employees fits this description, Ryan Doriarty, and I think
6 anyone else -- maybe the other security guys, he didn't last
7 long, so the question is: Wasn't it a requirement that you had
8 employees be patients?

9 He said: Right. Actually one of my managers suggested
10 that all employees be required to be patients, but I said no.
11 That is not one of our requirements here.

12 So just to remind the Court, Ryan Doriarty was an
13 employee of the operation who was actually seen delivering
14 marijuana, for which there is evidence in the presentence
15 report and elsewhere about the many things he did, and I'm just
16 offering that as direct evidence that Mr. Lynch intentionally
17 did not have a closed circuit in that he had employees who he
18 did not require to be patients.

19 THE COURT: Well, in fact, even if there were
20 patients, and if they had made an unauthorized transfer, that
21 wouldn't made any difference.

22 There is no evidence that he knew any employees was
23 making unauthorized transfers.

24 MR. KOWAL: I am not asking about unauthorized
25 transfers, I'm talking about the operation of the business.

1 THE COURT: But whether or not every member of the
2 cooperative has to be a patient.

3 MR. KOWAL: Yes, that is our assertion. If the
4 Court finds, as a matter of law, that they don't, I believe
5 that would contradict the law, but I'm at least establishing
6 fact.

7 THE COURT: What aspect of the law would that
8 contradict?

9 MR. KOWAL: The law of the California Supreme Court.
10 In fact, I was looking, I will try to find the -- I believe,
11 the defense, themselves, have talked about that in some of
12 their things but I will -- can I see exhibit --

13 THE COURT: What else do you want to offer?

14 MR. KOWAL: Do you want me to address that legal
15 argument further, Your Honor?

16 THE COURT: Well, you say you don't have it.

17 MR. KOWAL: I do have it.

18 THE COURT: Where is it?

19 MR. KOWAL: I wanted to take a look at Exhibit 1.
20 I have lost track of where my brief is.

21 THE COURT: This exhibit?

22 MR. KOWAL: Yes, thank you.

23 One of the cases is *People versus London*, 22 Cal. App
24 4th at 555.

25 And I just want to point out before we go further that

1 one of the defense's nonprofit experts cites that exact case,
2 as relevant to the requirements for marijuana law.

3 And then there is *People versus Solas*, 217 Cal App. 4th
4 at 5960 and qualified patients of *Anaheim versus the City of*
5 *Anaheim*, at 167 Cal App 4th, 747, 46. All of those cases
6 specifically discuss the closed circuit aspect as being a
7 matter of law in trying to establish a collective or
8 cooperative defense under California law.

9 Mr. -- the defense themselves cite that case in the
10 declaration of Offer Lyon. And they are relying on that same
11 case in their favor on the declaration at Paragraph 13.

12 And it's our view, you can't take just part of the case.

13 All right. Next the page 207, 10 to 19, Your Honor it
14 might actually make more sense because these are responsive to
15 some of the things in Mr. Lynch's declaration, would it make
16 more sense for me to examine Mr. Lynch?

17 THE COURT: You can do whatever you want. This is
18 an evidentiary hearing.

19 MR. KOWAL: All right. We will ask Mr. Lynch to
20 take the stand, then.

21 MS. ABEL: Your Honor, I want to note for record
22 that Ms. Malone is available until 1:30 our time, and I have a
23 phone number where she can be reached.

24 THE COURT: In that case, let's put Ms. Malone on
25 the line.

1 MR. KOWAL: Can I get Ms. Malone's materials
2 together?

3 THE COURT: Okay.

4 MS. ABEL: Your Honor, may I step out of the court
5 to confirm my expert has the declaration and exhibits available
6 to her?

7 THE COURT: Sure.

8 (Brief recess.)

9 MS. ABEL: Your Honor, Ms. Malone is ready and
10 available with her declaration and exhibits.

11 THE COURT: Let me have the clerk connect her.

12 THE COURTROOM DEPUTY: I am sorry, what is her name?

13 MS. ABEL: Christine Malone.

14 MR. KOWAL: Your Honor, will there be a way to show
15 her documents?

16 THE COURT: I don't expect to see how you could,
17 since this is telephonic.

18 MR. KOWAL: I would like to be able to.

19 THE COURT: You would like all sort of things. The
20 government has put itself in this position.

21 I mean, you could have proffered this stuff beforehand.
22 We could have had a better system, but, you know, the
23 government didn't file anything, so the government is in this
24 position.

25 MS. ABEL: Your Honor, for the record, of course, if

1 the defense had these exhibits previously, I would have, of
2 course, sent them to Ms. Malone.

3 I don't have them in electronic format and I could not
4 have sent them to her.

5 THE COURT: All right.

6 THE COURTROOM DEPUTY: I have her on.

7 THE COURT: All right.

8 THE COURTROOM DEPUTY: Ms. Malone, can you hear me?

9 THE WITNESS: Yes, I can.

10 THE COURT: All right. This is the Judge.

11 Let me ask Ms. Malone, do you have any problem with
12 being sworn in and testifying at this evidentiary hearing?

13 THE WITNESS: No.

14 THE COURT: You do have your work-up in front of you
15 at this point?

16 THE WITNESS: I believe I have everything I need,
17 yes.

18 THE COURT: Okay. Let me have the clerk swear her
19 in.

20 THE COURTROOM DEPUTY: All right.

21 Do you solemnly swear that the testimony you shall give
22 in the cause now before this Court, shall be the truth, the
23 whole truth, and nothing but the truth, so help you God?

24 THE WITNESS: Yes.

25 THE COURTROOM DEPUTY: Would you please state and

1 spell your full name for the record?

2 THE WITNESS: Sure. Christine Malone.

3 C-h-r-i-s-t-i-n-e M-a-l-o-n-e.

4 CHRISTINE MALONE,

5 having been duly sworn,

6 testified as follows:

7 DIRECT EXAMINATION

8 BY MR. KOWAL:

9 Q Ms. Malone, this is the prosecutor speaking. Can you hear
10 me?

11 A Yes, sir.

12 Q If you have problems hearing me, let me know.

13 A I will.

14 Q Do you have your exhibits in front of you?

15 A I do.

16 Q In Paragraphs 5 and 6, you talk about some of the things
17 you reviewed to prepare your declaration?

18 A Yes.

19 Q Do you see that?

20 A Yes.

21 Q And Paragraph 6, you said you reviewed Mr. Lynch's tax
22 returns for 0'6, '07, and '08.

23 When you say you reviewed Mr. Lynch's tax returns, do
24 you mean his tax information in his QuickBooks accounts?

25 A I don't recall whether it was a physical tax return or

1 not.

2 I can tell you if you want to give me a moment to
3 review?

4 Q Sure. What are you reviewing?

5 A I have all of the documents that were provided to me to
6 review.

7 Q Okay.

8 A I need to go back and see if that was what I physically
9 had, but I'm assuming they were tax returns -- they were
10 probably tax returns.

11 Q Will you just confirm that for us, please?

12 A I sure will.

13 Q And I just want to let defense counsel know, we have never
14 had tax returns -- real tax returns produced to us in this
15 case, and we had a stipulation that all this new discovery
16 created or produced would be produced promptly, and that
17 discovery cutoff has passed. You drafted that stipulation.

18 That stipulation is in the record at Document 502, which
19 was made into an order by this Court, so I will just see
20 whether this is -- obviously, if the defense has tax returns
21 and they haven't turned it over to us, we just want to address
22 that.

23 A I do have a 1040 for 2006 for Charles Lynch.

24 Q Your declarations says also 2007 and 2008?

25 A I'm double checking. I have a 2007, and I have a 2008.

1 Yes, I have all three years.

2 Q And where did you get those from?

3 A They would have been provided by the Court for Mr. Lynch,
4 himself, I don't recall who provided them.

5 Q When you say "the Court," who do you mean?

6 A Not the Court, but the public defender. She's the one
7 that corresponded with me and gave me almost all of the
8 information I have.

9 MR. KOWAL: Your Honor, we have never seen those
10 documents, and --

11 THE COURT: Well, why should I particularly care at
12 this point because discovery is already closed. If there was a
13 problem with discovery, discovery items should have been
14 brought to the Court's attention.

15 MR. KOWAL: Your Honor, I didn't know until this
16 moment there were actual tax returns.

17 I thought she was talking about tax information in the
18 QuickBooks.

19 THE COURT: No. She references -- I also reviewed
20 Mr. Lynch's tax returns. She said she reviewed the tax
21 returns.

22 I presume that she reviewed the physical tax returns
23 that had been filed that he kept a copy of.

24 MR. KOWAL: Well, can I ask the defense to provide
25 us with a copy of that at their earlier convenience?

1 THE COURT: No. Discovery has already been cut off
2 in this matter.

3 MR. KOWAL: But they violated discovery. Let me
4 hand the Court the discovery agreement.

5 THE COURT: I don't particularly care, counsel.

6 Again, if you want make some sort of request to compel
7 something, this is a evidentiary hearing. It has been
8 scheduled for months.

9 Discovery has been cut off for months. If there was
10 something, and you had a copy of this declaration much earlier,
11 then --

12 MR. KOWAL: Correct.

13 THE COURT: So, again, I'm not engaging at this
14 point in time to reopen anything.

15 This is the evidentiary hearing only.

16 MR. KOWAL: Well, can I examine her about what those
17 documents she relied on show?

18 THE COURT: You are questioning her. I didn't say
19 you couldn't.

20 BY MR. KOWAL:

21 Q Okay. In 2006, Ms. Malone, did the tax return indicate
22 any profits or income?

23 A The tax returns shows taxable interest, business income
24 and capital gain loss.

25 Q What are the amounts?

1 A Interest \$40, business income \$5,271, and loss of \$3,000.

2 Q So what's the total taxable income in 2006?

3 A So the total taxable income -- it has zero dollars taxable
4 income and that is because of the itemized deductions from
5 using all income.

6 If you wanted an adjusted gross income or the total
7 income, and not the taxable, I can give that to you.

8 Q Does it list source of his income?

9 A There is a profit and loss for business.

10 Q Does it indicate what the business is?

11 A It's the same, Central Coast Compassionate Caregivers.

12 Q What is he reporting as for that entity, specifically?

13 A Gross profit is \$93,500 with expenses -- expenses of
14 \$87,984, and that gives you the 5,000 or so that was in.

15 Q Is there any itemization of expenses or deductions of any
16 kind there?

17 A No. I don't have that document.

18 Q Is there a Schedule C?

19 A It is a Schedule C. It just says the total expenses is a
20 line item.

21 Q Is there a Line 31 on the Schedule C regarding profits?

22 A So the net profit is 5,516.

23 Q So there -- he's reporting on his IRS tax returns a profit
24 of \$5,000 from the operation of the CCC?

25 A Correct.

1 Q For 2006?

2 A Correct.

3 Q What other schedules or items are there in the -- in
4 general, in the 2006 tax returns?

5 A There is another profit or loss from business for Zyber
6 Software.

7 Q Zyber Software. What does it say for that, what are the
8 essential figures for that?

9 A Gross receipts \$10,500 with total expenses of roughly
10 \$10,745.

11 Q And did you, in your review of Mr. Lynch's materials,
12 determine what Zyber Software was?

13 A I did not.

14 Q Did you know -- did you see any checks written from the
15 CCC to Zyber Software?

16 A Not to my knowledge. I don't remember that, no.

17 Q And if there were checks written to the separate entity,
18 Zyber Software, how would you have accounted for them as an
19 expense or as an income to Mr. Lynch?

20 MS. ABEL: Your Honor, objection, as the defense
21 counsel -- sorry, government counsel is providing options to
22 the witness.

23 MR. KOWAL: If there are other options, please let
24 me know.

25 THE WITNESS: If they were recorded in the books, I

1 would not have changed them, so I couldn't tell you if they
2 were reported as expenses or not.

3 BY MR. KOWAL:

4 Q I see. So you just accepted what you found in the books?

5 A For the most part, yes.

6 My job was just to make sure everything looked like it
7 was in its place and it looked reasonable.

8 Q I see. So, for example, Mr. Lynch itemized something in
9 his books as an expense, you didn't confirm whether it was an
10 actual expense or something else. You just took it in your
11 analysis as your experience?

12 A Correct. As long as it was a reasonable conclusion.

13 Q And how would you determine whether it's a reasonable
14 conclusion?

15 A A lot of times if a vendor pulls up and says it does
16 software, and it's recorded as a software expense, I would take
17 it that that is what it is.

18 Now, if you record something that is obviously a company
19 that doesn't even come close to what you're categorizing it is,
20 then I would have flagged it as a question.

21 Q I see. What about Zyber Software, if payments --

22 A That one I don't recall if I saw it or not. I would have
23 to go back and review the books again to see if that name
24 actually fell in.

25 Q Okay. If I told you that Mr. Lynch wrote large checks to

1 Zyber Software, would that refresh your memory --

2 A No.

3 Q -- on the CCC bank account?

4 A I do not recall. Like I said, this was done a while ago
5 and this was just brought to my attention. I had no time to
6 review.

7 Q All right. Let's talk about this Schedule C for 2007.
8 What entities are listed there?

9 MS. ABEL: Your Honor, I would object to recitation
10 of hearsay documents. The government had an opportunity to
11 request these documents, didn't do so, and I don't know this
12 expert is the right person to read into the record documents.

13 MR. KOWAL: She relied on them, Your Honor.

14 THE COURT: Rephrase the question.

15 BY MR. KOWAL:

16 Q Can you explain the same information about Schedule C for
17 2007, please?

18 A For Central Coast Compassionate Caregivers, it looks like
19 we had gross receipts of \$64,700 with total expenses of \$45,768
20 with profit of \$18,932.

21 Q So according to the tax return, Mr. Lynch earned a profit
22 in 2007 from the operation of the Central Coast Compassionate
23 Caregivers?

24 A According to this tax return, yes.

25 Q Is that tax return signed by Mr. Lynch?

1 A This tax return -- I didn't have a signed -- it just says
2 "self prepared."

3 Q I see, by who?

4 A It does not say. I would make the assumption that it's
5 done by him or somebody he authorized.

6 Q I see. And it's reporting -- does it describe it as
7 compensation or as profit?

8 A It shows on the tax return as a profit from the business.

9 Q Is that Line 31?

10 A Line 31 on the tax return -- this tax return has a Line 31
11 it says "alimony paid."

12 Q My mistake. Let me get my copy of it.

13 What other entity or sources of income are listed in the
14 2007 tax return?

15 A Again, there is a capital loss of \$3,000 and then I
16 believe --

17 MS. ABEL: Again, Your Honor, I would object to the
18 recitation of the document insofar as this is not the
19 opportunity to engage in a factfinding mission.

20 MR. KOWAL: I'm examining the witness.

21 THE COURT: Please go ahead.

22 THE WITNESS: The other item in here, again, is the
23 Zyber Software with a tentative loss of \$10,498.

24 BY MR. KOWAL:

25 Q And does it have any other information about Zyber

1 Software?

2 A It has gross receipts of 8,051 with expenses of \$18,549.

3 Q Are there any other sources of income on the 2007 tax
4 return?

5 A No. That is all I see here.

6 Q Okay. What about the 2008 tax return?

7 MS. ABEL: Again, I would object to the recitation
8 of the document from the record.

9 MR. KOWAL: You can answer the question.

10 THE WITNESS: Taxable interest \$26, business income
11 and loss of \$4,214. Again, a capital gain loss of \$3,000.

12 And then it carries the same information, Zyber Software
13 profit and loss, has gross receipts of \$16,838 with expenses of
14 \$12,624.

15 BY MR. KOWAL:

16 Q Okay.

17 A And there is no CCCC income or loss in this one.

18 Q When you were analyzing these materials for Mr. Lynch, did
19 you learn what employment Mr. Lynch had before he operated the
20 CCC?

21 A I do not believe so.

22 Q And can I just start by saying, if I say CC or CCC, I'm
23 referring to the CCCC.

24 Do you understand the Central Coast Compassionate
25 Caregivers is what you have been opining about in your

1 declaration; is that fair?

2 A I would assume.

3 Q Did you know from his tax returns that Mr. Lynch operated
4 a marijuana store in Atascadero until February of 2006?

5 A I did not.

6 Q Did you learn that from any source of your review of
7 materials?

8 MS. ABEL: Your Honor, objection as to relevance.

9 THE COURT: I will allow her to answer that
10 question.

11 THE WITNESS: I'm sorry?

12 BY MR. KOWAL:

13 Q Did you learn about this prior Atascadero operation that
14 operated until February of 2006 at any time of your review of
15 the materials?

16 A I think it was brought to my attention what this was
17 regarding, but I don't know that it had anything to do with the
18 books that I was reviewing.

19 Q The books you are reviewing, how far do they go back?

20 A Oh, good question. Bear with me, because I don't recall.

21 Q Okay.

22 A I don't remember how far back the QuickBooks went, because
23 I specifically went through a period of time from 2006 forward.

24 Q Just for the record, what was the period -- you looked at
25 the period looking at Paragraph 4, April 1, 2006, to

1 March 29th, 2007, right?

2 A Correct.

3 Q Okay. I believe that's all I looked at.

4 I don't believe I dug into any further than that.

5 Whether or not the QuickBooks has that data in it, I don't

6 know.

7 Q All right. But you have the QuickBooks data with you?

8 A I may, I should.

9 Q You don't have to look at it now, I just want to know
10 whether you have it?

11 A Yes, I should have it, yes.

12 Q I guess when we talked about start-up expenses, I will
13 just ask you about that and what your analysis was.

14 Paragraph 16, you said in addition to the above
15 expenses, the CCC also paid Mr. Lynch \$50,463.42 for start-up
16 expenses that he had charged to his personal credit cards.

17 Do you see that?

18 A I do.

19 Q And you then included that as an expense on Exhibit C-5 on
20 your profit and loss statement, correct?

21 A I believe so.

22 Q And you can just keep Exhibit C-5 handy, just because I
23 may have some questions about it.

24 A I have to find it, sorry.

25 Q Take your time.

1 A I don't have them labeled, I don't think, exactly the
2 same, is my problem.

3 Q The tax returns, did you get those in electronic form?

4 A I do not recall.

5 Q Do you have them in electronic form now?

6 A Yes. I have them in a PDF.

7 Q So you could e-mail them to defense counsel or whoever
8 requested them; is that right?

9 A If directed.

10 Q Okay.

11 A I apologize, could you tell me what Exhibit C-5 is?

12 Q Sure. That is your profit and loss statement.

13 A Is that for the 2000 one through March 2009?

14 Q April 1st, 2006, through March 29th, 2007.

15 A Thank you. Okay, I have got that in front of me.

16 Q All right. We're talking about the start-up expenses.

17 A Correct.

18 Q And I'm referring to Paragraph 16.

19 A Correct.

20 Q Okay. He charged personal credit cards and what you mean
21 is that he used the funds from the operation of the CCCC to pay
22 back personal credit cards?

23 A Correct.

24 Q And on your C-5, you -- rather than as income or potential
25 profit to the CCC, you indicated -- or to Mr. Lynch, you

1 indicated this was an expense that came out of total income,
2 correct?

3 A Correct.

4 Q Okay. And is that because they related to the start-up of
5 the business?

6 A Correct.

7 Q But if Mr. Lynch made these payments to pay down his
8 personal credit cards for expenses unrelated to the CCC, it
9 wouldn't count as expense, correct?

10 A There would be distributions.

11 Q In other words, profit to Mr. Lynch?

12 A Well, it would be -- it wouldn't reduce income by
13 expenses. It would be on the balance sheet as a distribution
14 to him personally if they did not relate to the company itself.

15 Q Just like the \$110,000 in distributions you also found,
16 correct?

17 A Correct.

18 Q We could just call that sort of, like, a salary he paid
19 himself?

20 A My understanding is because this is a single member LLC,
21 it's disregarded so income on the company itself would become
22 his income.

23 Q His income?

24 A Uh-huh.

25 Q It's income to Mr. Lynch?

1 A Correct.

2 Q Okay. And let me you this: How many credit cards were
3 there?

4 A That, I do not recall.

5 Q Did you -- with the credit card information, did you --
6 excuse me, one second.

7 Did you do any spreadsheets of this information in your
8 line item?

9 A That I don't recall either.

10 Q Do you have any today?

11 A Not -- I would have to look. I'm not sure what I have got
12 as far as that goes.

13 And I have got the bank statements.

14 Q Just to understand, when you -- what was your process and
15 what did you produce to do this line item of \$50,000 of
16 expenses from paying Mr. Lynch's personal credit cards?

17 A One moment. Let me double check this one. Hold on one
18 second, I apologize.

19 Q Take your time, please.

20 A I have got a lot of sheets in here. I'm looking for this.

21 I believe I started with -- I don't know that I have the
22 actual write-down of the expenses.

23 He had three line items in start-up expenses that were
24 payments to credit cards that were noted as start-up paybacks.

25 There was an additional line item of 15,000 which we

1 moved to distributions that was written to him personally.

2 So, we just -- I just left those three credit card
3 payments as paybacks for start-up.

4 Q Can you give me some information about those three credit
5 card payments?

6 A I doubt that I have that. All I know there were three
7 payments made on August, September, and December of 2006.

8 Q Can you just -- I don't -- I'm just -- what information is
9 there in the line item -- what dates, what amounts, what
10 information about these three payments?

11 A Okay, I have --

12 MS. ABEL: Your Honor, the defendants would object.
13 This evidence was produced by the government to the defense in
14 2021, and the government has access to all of the line items.

15 MR. KOWAL: I'm trying to determine that. I don't
16 really understand what she's saying. I'm trying to ask the
17 witness what the information is, so I understand it.

18 THE COURT: I will let the witness answer it, if she
19 understands it.

20 BY MR. KOWAL:

21 Q What are the three line items?

22 A In 8/2006 there is a payback in the memo, it's to MBNA
23 America for \$9,916.35.

24 Q 9,196.35?

25 A Correct.

1 Q What was the name of that card company?

2 A MBNA America.

3 Q Just so I understand from defense counsel, do we have that
4 information?

5 MS. ABEL: All of this information from the
6 QuickBooks was produced by the government.

7 MR. KOWAL: I understand. I wanted to know what she
8 was relying on for this declaration.

9 MS. ABEL: All of the information currently being
10 referred to is from the QuickBooks.

11 BY MR. KOWAL:

12 Q I understand what I want to see is what she was including
13 in the 50,000 second item.

14 A On 9/17/06, for Chase card, for 1,425,288.

15 Q Okay. And then the last is on 12/22 of 06, CitiBank card
16 with a memo of start-up payback, again, for \$26,294.19.

17 And what did you do to verify that these were personal
18 expenses -- excuse me, expenses of the CCC as opposed to credit
19 card debt of Mr. Lynch that he had apart from his work in the
20 CCC?

21 A That I'm not able to determine -- I don't believe I was
22 provided those credit card statements to back up the detail.

23 MS. ABEL: That is outside of the scope of this
24 expert. The expert opined that was Offer Lyon.

25 MR. KOWAL: I'm asking about the specific line item

1 what she did to determine it.

2 THE COURT: Rephrase the question.

3 BY MR. KOWAL:

4 Q Did you know that in this case that Mr. Lynch and the
5 defense produced in discovery credit card statements for, I
6 believe, 17 different credit card accounts for Mr. Lynch?

7 A No. That was not what I was asked to review, so I didn't
8 reviews those.

9 Q You didn't receive that from the defense?

10 A No.

11 Q So you were unable to look at those credit card companies
12 and determine whether the expenses occurred during the time the
13 CCC was in operation?

14 A Correct. As stated earlier, a lot of the expenses were
15 recorded in the QuickBooks, and, like I said, I went on a basic
16 verification that they looked reasonable.

17 Q In other words, did Mr. Lynch enter these as start-up
18 expenses and you took that at face value?

19 A Correct.

20 Q If there was a credit card statement that showed, for
21 example, in check for \$26,294.19, was paying off preexisting
22 debt of Mr. Lynch before he operated the CCC, how would you
23 characterize that?

24 A That would have gone as a distribution.

25 Q In other words, a distribution to Mr. Lynch, just like,

1 for example, salary?

2 A Correct.

3 Q And if that payment was for expenses that were incurred
4 while he was operating another marijuana store, would that
5 count as start-up expenses for this marijuana store?

6 A Not normally, unless --

7 Q Can you repeat the last part of your sentence?

8 A Unless they are related. If they are the same company or
9 one is working as a dba of the other, would be my
10 understanding.

11 Q And if they were personal debt that Mr. Lynch had, would
12 it precede this?

13 A I did not review that, he would go to the sheet.

14 Q Where would that be on C-5?

15 A It's not on C-5, because C-5 is a P&L.

16 Q Okay. You have a 50,463.42?

17 A Right.

18 Q Would it just come off?

19 A Yes. That would reduce by whatever was personal.

20 Q Would it change net income?

21 A Yes, it would.

22 Q And increase net income?

23 A Correct.

24 Q And then in your declaration at Paragraph 19, would it
25 change the cash flow at all?

1 No, because it would just be Mr. Lynch's compensation,
2 right?

3 A Correct. It would just move from bank accounts balance
4 sheet to the equity account.

5 Q Just to be clear, you have, even though, there were credit
6 card statements potentially available, you weren't able to
7 verify that these were real start-up expenses versus some other
8 item, correct?

9 A Correct.

10 Q And you weren't told that there might be evidence showing
11 that these credit card statements show that these were not
12 start-up expenses, but Mr. Lynch's personal, that is unrelated
13 to the CCC; is that correct?

14 A Not to my knowledge.

15 Q And the -- did you review, I think, on Paragraph 5, you
16 indicate you reviewed Bank of America records?

17 A Yes.

18 Q This is the account ending in 0239?

19 A One moment.

20 Q All right.

21 A Sorry, I was looking for the document to verify the
22 account.

23 Yes, correct, account ending in 0239.

24 Q What specifically did you review bank statements?

25 A Yes. I have the banks statements and they were reconciled

1 to the QuickBooks.

2 Q You did reconcile them to the QuickBooks?

3 A Correct.

4 Q What time periods are the bank statements you looked at?

5 A I have -- it looks like starting -- this one starting
6 March 17th through, it looks like, August 10th of 2007.

7 Q Are there any page numbers -- you know, lawyers' page
8 numbers on the bottom of those documents?

9 A I don't -- they look like standard scans. There is no
10 information on the outside of them, just the scan.

11 Q It doesn't say, like, it doesn't have a Bates number of
12 any kind?

13 A They have the page numbers of the statements, just like 1
14 of 2, 2 of 2.

15 Q Okay. I just want to focus on that payment of \$26,294,
16 that was an expense.

17 Do you recall if that was on -- by check?

18 A I believe it says it is a check.

19 So the 26,294.19, I have check No. 302.

20 Q Okay. And that was a check signed by Mr. Lynch?

21 A I do not have copies of those checks.

22 Q Were you given any --

23 A I don't believe they are on the statements, I will double
24 check that for you, though.

25 Q Sure.

1 A So there are no check copies on these statements. I am
2 going to probably say that I went based on the date that that
3 was already tendered in the QuickBooks. This is actually a
4 physical check.

5 Q Would you agree that that was one of the biggest checks
6 written on the account, based on just looking through the
7 materials?

8 A Without going through a general ledger on that, I can't be
9 sure.

10 Q Do you have a general ledger?

11 A I should.

12 Q While she's looking, just defense counsel indicated that
13 Offer Lyon reviewed the credit card statements; is that
14 correct?

15 MS. ABEL: No.

16 MR. KOWAL: What do you mean Offer Lyon had reviewed
17 something. He was the expert who referred to that, not
18 Ms. Malone.

19 MS. ABEL: As to the specifics of what is or is not
20 an appropriate nonprofit expense.

21 MR. KOWAL: I see, okay. I understand, thank you.

22 THE WITNESS: I'm not seeing a larger check than
23 that in the data that I have at the moment.

24 BY MR. KOWAL:

25 Q So that was one of the biggest checks you saw by a fair

1 amount, right?

2 MS. ABEL: Objection. Vague.

3 THE COURT: I will sustain the objection.

4 BY MR. KOWAL:

5 Q Well, how much bigger is it than any other check,
6 approximately?

7 A Well, what I'm looking at -- one moment. I have got two
8 GLs I have got to run.

9 I would say it's probably about 10,000 higher than most.

10 Q That was used to pay down Mr. Lynch's Citi card?

11 A Yes.

12 Q You are taking him at his word that was for start-up
13 expenses?

14 A Correct. Without backup details to cover that, I do not
15 have anything.

16 Q You weren't given the Citi card bank statement, correct,
17 or yeah, credit card statement, correct?

18 A Let me double check. I don't remember seeing them.

19 Again, I will state this was a while back, I didn't have
20 time to review it.

21 Q I can give you the page numbers in the defense discovery.

22 A One moment. So you are telling me it's in the defense
23 discovery paperwork?

24 Q Yes.

25 MR. KOWAL: Madam Clerk, can I ask what the next

1 exhibit is?

2 THE COURTROOM DEPUTY: Seven.

3 MR. KOWAL: I'm going to just mark as Exhibit 7, a
4 copy of the Citi check with Bates number 800 at the bottom, and
5 I will hand it to the clerk while she's looking.

6 THE WITNESS: I'm sorry, I'm not finding what I
7 think I should be looking for.

8 BY MR. KOWAL:

9 Q Explain exactly what you are looking for, again?

10 A I'm looking to see if I have any details on those credit
11 cards.

12 Q That's fine. Tell me when you are ready to answer a
13 question, I don't want to stop you from looking.

14 A Okay. I'm not seeing it, but that doesn't mean that I
15 don't miss it.

16 Q But you don't remember looking at them as part of your
17 analysis, correct?

18 A Correct.

19 Q But you do say on page -- Paragraph 6 of your declaration,
20 select credit card statements.

21 Do you see that, after you discussed reviewing the tax
22 returns?

23 A Let me go back and look. I filed them funky. I
24 apologize, for the delay.

25 Q Take your time.

1 A Okay. I do see where it looks like I had credit card
2 statements.

3 Q Okay.

4 A I take that back, they are not statements.

5 Q Yeah, let me know.

6 A These look like QuickBooks work reports that are just
7 balance printouts.

8 Q But that is not what you said you reviewed credit card
9 statements in your declaration?

10 A I'm looking. If I said that, then I must have had
11 something, but I have, like, probably hundreds of miscellaneous
12 documents that I need to make sure I pull the right one for
13 you.

14 Q Oh. Can I just ask a general question while you look, and
15 that is, did you produce any charts or spreadsheets besides the
16 ones you included in your declaration?

17 A I have just basic work papers. That means probably maybe
18 something I reviewed and made a possible note on, but
19 ultimately, what I provided is the end result.

20 Q So there wouldn't be any, for example, breakdowns of
21 categories that weren't included, because you didn't think they
22 were relevant or you weren't asked to do it?

23 A No. You have got a full set of everything that was
24 available.

25 Q In other words, if you printed out some kind of statement,

1 it's in the report?

2 A It should be, yes. I apologize, if I had credit card
3 statements, I labeled them weird, and I'm not finding them at
4 the moment.

5 Q And so is it fair to say just generally, that much of your
6 calculation is just based on what was in the QuickBooks
7 themselves, rather than --

8 A Correct.

9 Q -- verifying it against other available financial
10 information?

11 A Okay. I do have -- it looks like I have a Bank of
12 America.

13 Q Are there any numbers on the bottom of those?

14 A Nothing outside of handwritten notes, but it looks like
15 they were written by someone, but they are not -- they do not
16 look like your court document number.

17 Q Okay. And in particular, I'm curious if you have a
18 CitiBank account statement?

19 A I do.

20 Q Are you looking?

21 A I have got that. It looks like I have a CitiBank ending
22 in 5937.

23 Q 5937?

24 A Yes.

25 Q Okay. And just what page -- what exactly do you have,

1 because I'm going to ask some questions about CitiBank,
2 specifically, since you reviewed them and --

3 A It looks like I have the March of 2006 through 12/07?

4 Q Yes. Okay. There is no court numbers on the right-hand
5 corner of those?

6 A No.

7 Q Is that something else you can provide if defense counsel
8 was asked?

9 A Yes.

10 Q And do you have the statement with closing date
11 12/06/2006?

12 A Yes.

13 Q And do you have it for 1/05/2007?

14 A Yes.

15 Q I'm going to just pass those out. Please give me a
16 second.

17 MS. ABEL: Your Honor, objection. I can't be
18 certain that whatever he is handing out correlates as to what
19 Ms. Malone is viewing.

20 THE COURT: Let me ask the witness, you said you are
21 available to 1:30 our time; is that correct?

22 THE WITNESS: I will stay available for you.

23 THE COURT: All right. I'm going to limit, however,
24 government counsel to 1:30, our time.

25 MR. KOWAL: Okay.

1 THE COURT: I presume you want to get through other
2 witnesses as well?

3 MR. KOWAL: Of course.

4 THE COURT: This is the only day I'm holding an
5 evidentiary hearing.

6 MR. KOWAL: Exhibit 8.

7 BY MR. KOWAL:

8 Q I'm starting on the page that -- which is my first page.
9 These are the ones I have, which has closing date 1/5/2007.

10 Do you see that?

11 A Yes.

12 Q Do you see a payment for \$26,294.19?

13 A Correct.

14 Q And does that correspond to the payment we discussed
15 before that Mr. Lynch designated as start-up expenses?

16 A That is the notes I have on the statement that I put per
17 QuickBooks, check 302 for 2/6 -- it was paid from CCC's bank
18 account.

19 Q That is the QuickBooks expense? Excuse me, that is the
20 one indicated as a start-up expense for Mr. Lynch; is that
21 correct?

22 A Correct.

23 Q And did you look at this statement to determine whether
24 there was expenses in the statements to verify Mr. Lynch's
25 representation that this payment was for start-up expenses as

1 opposed to preexisting personal expenses?

2 A I do not make notes of that.

3 Q Let's look through it.

4 At the time -- let me take you back going through each
5 statement.

6 So if we can see -- if we find start-up expenses you
7 would indicate -- you would agree would be fairly as start-up
8 expenses.

9 Do you understand what I'm going to do?

10 A Yes.

11 Q So we're going to go back into the statements from the
12 time of this payment until we find some start-up expenses.

13 Do you understand?

14 A Yes.

15 Q Okay. So we're at closing date, the first page of my
16 exhibit, closing date 1/05/2007, correct?

17 A Correct.

18 Q And then would the next one be a closing date, 12/06/2006?

19 A Correct.

20 Q And then our balance is still over \$26,000, correct?

21 A Correct.

22 Q And does your copy of that statement have any notation on
23 it, handwritten?

24 A It just has the check number and says "CCC, 26,294.12.

25 Q Do you recognize from your view of records as Mr. Lynch's

1 handwriting?

2 A I can't tell you whose handwriting it is, because I have
3 no way of quantifying who wrote what.

4 Q I meant from looking at all of the records, and all of
5 that, but if you can't you can't, that is fine.

6 You don't see any additional start-up expenses there,
7 correct?

8 A No.

9 Q And someone who is paying down the debt on that day,
10 correct, presumably Mr. Lynch?

11 A Correct.

12 Q And these financial charges, if these were for debts,
13 paying down debt that existed before the operation of the CCCC,
14 that wouldn't be a start-up expense, that would just be
15 servicing prior debt, correct?

16 A Correct.

17 Q You wouldn't count that as expenses to the CCCC, correct?

18 A Correct.

19 Q Then going back to the statement ending in 10/6/2006. Do
20 you see that?

21 A Yes.

22 Q And we have a purchase from Amazon of \$20.52?

23 A That is, yeah, that is on Number 6.

24 Q And that is November 1st payment?

25 A Uh-huh.

1 Q And because this is seven months after the time period you
2 started to examine, that wouldn't be fair to call start-up
3 expense, correct, that \$20?

4 A Probably not. There is a rotation.

5 Q Same thing with the finance charge, right?

6 A Correct.

7 Q Let's go back to the next 10/6/2006, do we see any
8 start-up expenses there?

9 A No.

10 Q What?

11 A No.

12 Q I'm sorry, I misheard you.

13 Let's go to ten -- 9/7/2006. Do you see any start-up
14 expenses there?

15 A No.

16 Q Okay. And then to the next page, 8/8/2006, do you see any
17 start-up expenses there?

18 A I'm unclear, there is one charge but I couldn't tell you
19 what it's for.

20 Q It says \$89.95?

21 A Correct.

22 Q That is about four months after the store had been
23 operating, based on your review of the records, correct?

24 A Correct.

25 Q Is it fair to say that is probably not a start-up expense?

1 A Yes.

2 Q Okay. Let's go back to the next one, 7/7, there is just
3 finance charge, no start-up expenses, correct?

4 A Correct.

5 Q Then the next one is 6/7. We see a total of purchases of
6 \$79; is that right?

7 A Yes.

8 Q \$79, is that possibly start-up expenses since we're two
9 months into the operation, or not?

10 A More than likely not.

11 Q What about the next one.

12 We have -- this is 5/5/2006, on my exhibit it's Bates
13 number 505, defendant's Bates number, and we see about, I think
14 it's about \$1,000 in -- let's see, oh no, is this \$87 in
15 purchases, as well, \$87?

16 A I'm sorry, we're on?

17 Q I'm sorry, 5/5 closing date?

18 A Correct. Yeah. There are three small charges.

19 Q Would those be start-up expenses?

20 A Probably not, although, it doesn't necessarily mean they
21 are not an expense of the company at some point.

22 Q It's possible, this \$87?

23 A I don't know if I would categorize them as start-up.

24 Q In your opinion, you wouldn't do them as start-up looking
25 right here?

1 A Right, I would use them as a standard expense.

2 Q Then the next document is 4/6/2006, how does it relate to
3 the time period you analyzed?

4 A We are about a month in.

5 Q And there is \$1,000 of -- \$1,068.35 of purchases, correct?

6 A Correct.

7 Q And those could plausibly be characterized as start-up
8 expenses. Do you agree?

9 A I agree.

10 Q Going back to our \$26,000 check, you found that \$1,068.35
11 looked like start-up expenses to you at this point?

12 A With what I had been provided.

13 Q Sure. Looking at these documents here?

14 A Correct.

15 Q And then let's go to the next, which is closing date,
16 3/7/2006. Do you see that one?

17 The next one, that is Bates number 509 in my documents.

18 A I see it.

19 Q Do we see purchases here?

20 A Yes.

21 Q Do the purchases start on February 8th, 2006?

22 A Correct.

23 Q And what is the total amount of purchases on this
24 statement; isn't it \$571.92?

25 A I see that yeah, 595.70.

1 Q And now if Mr. Lynch was operating a different marijuana
2 store, on February 17th, 2006, at a place other than Morro Bay,
3 anything before this time wouldn't be considered start-up
4 expenses, correct?

5 MS. ABEL: Objection. Vague and irrelevant.

6 THE COURT: Rephrase.

7 BY MR. KOWAL:

8 Q Okay. At this point, how far behind the time of
9 Mr. Lynch's operating the marijuana store in Morro Bay, are we?

10 A My start-up date that I started was April 1st.

11 Q Are you aware that Mr. Lynch didn't sign his lease for the
12 CCC until February 22nd, 2006?

13 A No.

14 Q And will you -- just for the purposes of my questions --
15 accept that Mr. Lynch, himself, has provided a lease which
16 started for his business on that day?

17 A If that's what you are telling me.

18 Q Okay. And are you aware Mr. Lynch continued to operate
19 another marijuana business in Atascadero until February 17th,
20 2006?

21 A No.

22 Q And if we go all the way back to February 8th, 2006, how
23 many possible start-up expenses do we have?

24 A We talked about roughly 2,000.

25 Q Roughly \$2,000.

1 What is the balance on this credit card at the starting
2 time of this period going as far back as February 8th, 2008?

3 A It was 27,322.88.

4 Q So it's over \$27,000?

5 A Right.

6 Q So the period going back to even before Mr. Lynch signed
7 the lease, would you say that you found basically \$2,000 in
8 start-up expenses on this credit card going back to the check
9 302?

10 A Going back to the 3/7 statement.

11 Q If Mr. Lynch didn't start the marijuana store that you had
12 analyzed until after the time reflected in this credit card
13 statement, what would you say about whether that \$27,000 check
14 was being used to pay start-up expenses versus whether it was
15 for Mr. Lynch's own distribution?

16 MS. ABEL: Objection, Your Honor. Vague.

17 THE COURT: I will sustain the objection.

18 BY MR. KOWAL:

19 Q Okay. Do you have an opinion, just from reviewing this,
20 as to whether the check 302 was for start-up expenses with
21 respect to the Morro Bay store you analyzed?

22 A I don't have an opinion on that because start-up expenses
23 can lead up to six months prior to business starting.

24 Q But if Mr. Lynch wasn't even operating this store and was
25 operating another store prior to the time of this statement,

1 how would that affect your analysis?

2 A I tend to be trusting. I would go on whatever I'm being
3 told unless they provide me with something. I would ask for
4 backup for it, but I don't have that backup at this point.

5 Q From this backup from the actual credit card statement, if
6 you were asked to do this, and you were told that
7 Mr. Lynch's -- the story you analyzed didn't start until at
8 least February 17, 2006, what would your analysis be?

9 A I would ask for additional documentation stating that this
10 is backup and showing me what it is for.

11 Q Without that backup, based on this credit card, what would
12 you say whether you could still state it was start-up expenses
13 based on what you have seen now?

14 A No. Not unless I could get provided backup.

15 Q Based on what you have seen, what we have gone through,
16 and what you have seen on the check, it's your opinion that you
17 don't believe it's start-up expenses based upon what you have
18 seen, correct?

19 A Correct. Potentially, it may not be.

20 Q What is your best judgment as an experienced bookkeeper,
21 based on what you have seen?

22 A I would probably not book it as start-up expenses.

23 Q You would book it as distribution to Mr. Lynch?

24 A Correct.

25 Q Of at least \$25,000; is that right?

1 A Correct.

2 Q And what would that say about the reliability of the
3 QuickBooks accounting that you reviewed in terms of how they
4 were characterized, if the biggest check you saw by several
5 thousand dollars was mischaracterized as start-up expenses
6 instead of a distribution to Mr. Lynch, would that show you
7 that in some ways Mr. Lynch was putting in the data more
8 favorably to his own position?

9 MS. ABEL: Objection, Your Honor.

10 THE COURT: I will sustain the objection.

11 BY MR. KOWAL:

12 Q Let me ask you, what does it say about your view about the
13 reliability of the characterizations in the QuickBooks?

14 A It would just make me go back and ask more questions at
15 this point. It would just make me look at the higher numbered
16 items.

17 Q And higher numbered items, like the three distribution
18 checks you previously specified that were listed under \$50,000
19 for start-up expenses, and by that, I mean 8/22/06 for \$919,
20 the Chase card, 14,252.88, and this \$26,000, that's what you
21 mean by high numbers?

22 A If it was my client, I would be going back and asking him
23 for more detail.

24 Q You wouldn't sign a tax return based on what you have seen
25 counting this \$26,000 check as a start-up expense, would you?

1 A Me? No, I don't do taxes.

2 Q But sort of your characterization for bookkeeping
3 purposes?

4 A Correct.

5 Q You would fairly characterize this as a distribution to
6 Mr. Lynch?

7 A Yes. If I couldn't get backup to substantiate that it is
8 start-up, then yes, I would tell my client I want them to
9 recharacterize it.

10 It is not unusual for things to be characterized
11 incorrectly at times.

12 Q Sure. And that -- is it fair to say, now you have looked
13 at this credit card, would it make you question whether the
14 other two start-up expenses totaling \$23,000 might have similar
15 problems?

16 A Possibly, yes.

17 Q And you are not comfortable characterizing them, as you
18 sit here today, seeing this as start-up expenses without more
19 information?

20 A Correct.

21 THE COURT: Is that it?

22 MR. KOWAL: No. I'm finding -- I apologize, can I
23 have a minute?

24 THE COURT: All right.

25 BY MR. KOWAL:

1 Q Now, with respect to -- do you recall -- you said in the
2 tax returns there was information about Zyber Software by
3 Mr. Lynch; is that correct?

4 A Correct.

5 Q And did you see payments from Zyber Software in your
6 review?

7 A I will tell you, just one moment.

8 I did see I had made a note about Zyber Software.

9 That it was -- there was an entity, I don't remember
10 what that was.

11 Q Do you have any information how many bank accounts from
12 CCC were made to Zyber Software?

13 A Not on the top of my head without pulling the file.

14 Q Is that something you can do quickly?

15 A Good question. It looks like I have payments to Zyber
16 Software in the time period. We're talking about roughly
17 \$29,400?

18 Q Okay. And those are payments from the CCC's bank account?

19 A Correct.

20 Q To Zyber Software?

21 A Correct.

22 Q And how did you itemize those in your profit and loss
23 statements, C-5?

24 A There is a consulting fee.

25 Q As an expense?

1 A Uh-huh.

2 Q So that wasn't a distribution to Mr. Lynch?

3 A Correct, it was an expense.

4 Q And are you aware that Zyber Software was a sole
5 proprietorship run by Mr. Lynch?

6 A That, I don't recall. I have some documentation on it, so
7 I would guess that, yes, I knew that.

8 Q And were you shown Mr. Lynch's sworn deposition testimony
9 in this case regarding various things, including Zyber
10 Software?

11 A If I was, I did not dig through those.

12 Q Are you aware that Mr. Lynch testified that he had no
13 customers or clients at Zyber Software at the time he was
14 operating the CCC?

15 A No.

16 Q Are you aware that Mr. Lynch testified the entire time he
17 operated the CCC, Zyber Software had credit card debts?

18 A No.

19 Q Are you aware Mr. Lynch testified that he accumulated
20 these credit card debts from personal expenses like Mr. Lynch's
21 personal health insurance and credit card purchases?

22 A No.

23 Q Are you aware Mr. Lynch specifically testified that these
24 credit card fees for Zyber Software were accumulated before
25 Mr. Lynch opened the CCC?

1 A No.

2 Q And if Mr. Lynch accumulated these debts for Zyber
3 Software before he opened the CCC, are you aware he also wrote
4 -- admitted he wrote periodic checks from the CCC bank account
5 to pay off preexisting Zyber Software debt?

6 A No.

7 Q And you do see periodic payments to Zyber Software,
8 correct?

9 A Correct.

10 Q And what is the biggest one?

11 A 19,100.

12 Q And what is the date of that one?

13 A 3/12/07.

14 Q That is going from the CCC to Mr. Lynch?

15 A It's going to Zyber Software.

16 Q Excuse me, to Zyber Software?

17 A Correct. I have check No. 333.

18 Q I'm going to pass out as Exhibit 9. If I can find a
19 sticker, I want you to read the -- I just put Exhibit 9 in the
20 upper right-hand corner.

21 THE COURTROOM DEPUTY: Okay.

22 BY MR. KOWAL:

23 Q The largest one was \$19,100?

24 A Correct.

25 Q That was check 333?

1 A Correct.

2 Q Are you aware Mr. Lynch testified in his deposition that
3 he wrote these checks -- his biggest check to Zyber Software to
4 pay off his preexisting Zyber Software debt?

5 A No.

6 Q Is it fair to say if Mr. Lynch was writing checks to Zyber
7 Software to pay off preexisting debts he had accumulated before
8 he ran the CCC, that this should be counted as a distribution
9 to Mr. Lynch rather than an expense?

10 A Not necessarily.

11 Q Why not?

12 A Because he is writing a check to another company on this
13 company, it becomes an expense on the other company -- it
14 becomes income on the Zyber Software side that they need to be
15 picking that up as income and not a contribution from the
16 member.

17 So it's not unusual for somebody to have several
18 companies and they move money from one company to the next and
19 it be an expense on one company and income on the next.

20 Q That income flowed through to Mr. Lynch based on the tax
21 returns you reviewed, correct?

22 A Yes.

23 Q So this check to Zyber Software in removing a debt that
24 would help Mr. Lynch's income, correct?

25 A On this particular company?

1 Q Yes.

2 A This particular company the \$29,400, correct, yes. On
3 CCC, this would reduce the income but it would increase the
4 income.

5 Q Would it be fair to say if Mr. Lynch was the only operator
6 of that there would be financial benefit to Mr. Lynch?

7 MS. ABEL: Objection Your Honor.

8 THE COURT: I will allow her to answer the question if
9 she understands it.

10 THE WITNESS: So, not technically because basically
11 it's going as an expense from one company lowering its income
12 possibly but it's increasing the income of the second company
13 which is also being picked up on his tax returns, so unless
14 Zyber Software had expenses to offset it he would still be
15 picking that income up it's a flow through on the tax return on
16 the Schedule C.

17 BY MR. KOWAL:

18 Q It is helping -- it's going into basically Mr. Lynch much
19 pocket is it fair to say?

20 A Both companies belong to him, both companies actual bottom
21 line are his income yes.

22 Q But if he's actually paying off Zyber Software he has
23 personal credit card debt under the name Zyber Software this
24 isn't helping Zyber Software it's helping his personal credit
25 card debt.

1 MS. ABEL: Objection.

2 THE COURT: I will sustain. Kowal if Mr. Lynch
3 testified he had personal credit card debt that's what these
4 checks were being used for, that would help him directly, not
5 his account goes.

6 THE WITNESS: I'm not following this.

7 BY MR. KOWAL:

8 Q So Mr. Listen much testified he had personal credit card
9 debt on sigh we are software do you understand what I'm
10 representing to you?

11 A Yes.

12 Q If these checks were paying down his personal credit card
13 debt for personal expenses.

14 A Zyber Software they would be distributions to him
15 directly.

16 Q That's what I'm asking?

17 A So he would be picking up income from CCC and cyber and
18 then he would be -- those monies going out paying personal debt
19 would be considered distributions to him from cyber.

20 Q And if this was the case for all \$29,400 this would be an
21 additional \$29,400 distribution to him?

22 A Technically yes.

23 Q Okay?

24 THE COURT: All right. Let me ask the defense do
25 you have any questions for this witness.

1 MS. ABEL: Your Honor, I do. However, the defense
2 would like to respect Mr. Malone time to the extent that the
3 Court is going to permit the defense to offer a response to the
4 government at a later date in writing.

5 THE COURT: No. Ask your questions now. I will
6 give you five minutes or 10 minutes.

7 MS. ABEL: Thank you, Your Honor.

8 BY MS. ABEL:

9 Q Ms. Malone, this is Rebecca Abel for Mr. Lynch?

10 You -- can you define start-up expenses for the Court?

11 A Start-up expense would be anything that a person spends to
12 begin the work of their company and those expenses can go back
13 several months prior to the actual start date.

14 They are preparations, they are buying your software
15 buying your computer, they are picking up your expenses
16 anything relating setting up your LLCs. Those are all
17 considered start-up expenses.

18 Q Government walked you through some statements for CitiBank
19 card just a moment ago. I believe those statements ended or
20 the last statement reviewed was March of 2006; is that correct?

21 A Correct.

22 Q And the review of you did of the CCCC established a
23 beginning date essentially of April first, 2,006; is that
24 correct?

25 A Correct.

1 Q So to identify start-up expenses is it fair to say would
2 you need to go back prior to the formation of the CCCC to
3 identify if such expenses exist?

4 A Correct.

5 Q And those -- you mentioned some categories of expenses.
6 Is it fair to say that really anything that Mr. Lynch or any
7 organization needs to do in order to get set up, can constitute
8 a start-up expense?

9 A Correct.

10 Q And the government mentioned an unrelated dispensary it's
11 possible to operate a separate unrelated business and to incur
12 start-up expenses for CCC, for example?

13 A Absolutely.

14 Q Sorry give me just a moment.

15

16 Q In discussing the Zyber Software expense, I believe there
17 was a reference to a \$19,000 check that was categorized as a
18 consulting fee. Is it common for sole proprietorships to rely
19 on other consultants to provide services?

20 A Yes.

21 Q Including software services?

22 A Yes.

23 Q And it is both reasonable and expected that such services
24 may be provided by members of the corporation. For example,
25 members of the CCCC may also provide separate services to the

1 company in exchange for a fee?

2 A Yes.

3 Q And those would be reasonably categorized as quote/unquote
4 consulting fees?

5 A Yes.

6 Q Assuming all of the relevant expenses we just discussed
7 were miss categorized for one reason or another I will discuss
8 from your C-5 that would include both the \$50,000 start-up
9 expenses as well as the \$19,000 Zyber Software payment,
10 assuming those were miss categorized and those should have more
11 accurately been considered distributions to Mr. Lynch?

12 Does that make sense, making that assumption?

13 MR. KOWAL: Clarify are we talking about all of the
14 software 29,400 or we limiting to the one check.

15 MS. ABEL: Just the one identified by the government
16 at Exhibit 9 so \$19,000 check as well as the -- well as well as
17 the \$26,000 city card -- you know what let's take it all as
18 well as the \$50,000 start-up expenses if those were
19 recategorized as distributions to Mr. Lynch, would that
20 therefore increase his income from approximately 110,000 to
21 180,000, approximately?

22 THE WITNESS: Yes.

23 BY MS. ABEL:

24 Q So assuming all of that was error what we're talking about
25 here is the difference between \$180,000 income and \$110,000

1 income approximately?

2 A Correct.

3 Q And please feel free to tell me that this is not within
4 your scope, but you routinely review books of organizations
5 like the CCCC?

6 A I reveal all kinds of books, I have clients on all kinds
7 of levels. I won't say I have done anything to do with the
8 type of business he has but they are all very similar.

9 Q Setting aside the marijuana nature of the organization,
10 you do review organizations similar in size and scope and
11 structure to the CCCC?

12 A Yes.

13 Q Including going back some years, including going back a
14 decade or so?

15 A I can, yes.

16 Q You often look back at organizations at their historical
17 records.

18 MR. KOWAL: Objection leading.

19 THE COURT: Do you often look back at historical
20 records for such organizations?

21 THE WITNESS: Yes. A lot of times when I take on
22 any client we go back a year or two and just review the basic
23 data to see how they are classifying and what they are using
24 what their basic business does.

25 BY MS. ABEL:

1 Q To be clear you have been doing this for quite some time?

2 A I have been a bookkeeper, good Lord, since 2,003.

3 Q Fantastic, so in the relevant time period we're talking
4 about here in the late two thousands, did you routinely see
5 executives with incomes in the high \$100,000 range?

6 A Yes.

7 Q And the difference between 110 and 180,000, would that
8 strike you as substantial or notable in some way?

9 A Not necessarily.

10 Q And would that include all types of corporations, meaning
11 those that are engaged in a nonprofit status or for profit
12 status, et cetera?

13 A Correct.

14 MS. ABEL: Your Honor, may I have a brief moment?

15 THE COURT: All right.

16 MS. ABEL: Thank you. Nothing further at this time.
17 Your Honor, thank you.

18 THE COURT: The witness is excused. Thank you very
19 much.

20 Let's take an hour break and start at the 2:40, we're
21 going to go until 5:00.

22 MR. KOWAL: Procedurally, we will be done before
23 5:00.

24 THE COURT: No argument, that is it, this is an
25 evidentiary hearing, there are no arguments.

1 MR. KOWAL: I wanted to know that.

2 THE COURT: Thank you.

3 (Lunch recess.)

4 THE COURTROOM DEPUTY: Remain seated and come to
5 order, this Court is again in session.

6 THE COURT: All right. Let me ask the government,
7 your next item of evidence?

8 MR. KOWAL: I'm going to -- can I ask the clerk what
9 the next exhibit number is?

10 THE COURTROOM DEPUTY: Ten.

11 MR. KOWAL: Ten is a declaration of the defendant in
12 this case.

13 It's already in the Court's files, the Court record
14 246-2 and we -- for -- I would like for the Court what is
15 listed on page GER 409, I believe it's the next to the last
16 page, and it's Paragraph 31.

17 And the two sentences I just in terms of our argument
18 about operating as a collective as to subjective intent the
19 statement we consider under primary care under the, and the
20 last sentence we operated as a sole proprietor, which is what
21 my lawyer recommended.

22 The next exhibit, is the Court ready for the next one?

23 THE COURT: Of course.

24 MR. KOWAL: The next exhibit is going to be
25 Exhibit 11. Let me hand out copies to defense counsel.

1 This is already, I believe, in the -- this is the
2 declaration of Rachel Berdolf, Court record 236, and the GER
3 number starts with 248 and finishes at 329.

4 And I draw the Court's attention to the membership
5 agreements which have been referred to by some of the defense
6 exhibits as indicating a not for profit nature of the
7 operation.

8 It's government's contention that these actually show
9 that -- it says nothing about profitability or how money will
10 be spent, and essentially can't be used to infer any nonprofit
11 intent.

12 Tell me when the Court is ready.

13 THE COURT: I'm ready.

14 MR. KOWAL: I want to refer back to -- with respect
15 to the bookkeeper and her testimony, I want to refer back to
16 the excerpts of Mr. Lynch's safety valve deposition.

17 MS. ABEL: Your Honor, the defense maintains its
18 objection.

19 MR. KOWAL: Are the excerpts Exhibit 3, Your Honor.

20 THE COURT: The excerpts are 4, the excerpts are
21 Exhibit 3, yes.

22 MR. KOWAL: So the first I want to talk about the
23 Zyber Software testimony.

24 THE COURT: Wait a second, 3 is the sentencing
25 hearing.

1 MR. KOWAL: Okay.

2 THE COURT: I will take another look.

3 MS. ABEL: I believe it's 6, Your Honor, of the
4 deposition excerpts.

5 THE COURT: Actually, I don't have six, I have five
6 which is the full.

7 MR. KOWAL: Let me get another copy of 6 to the
8 Court.

9 THE COURT: Wait a second, I have 6. Thank you.

10 MR. KOWAL: All right. This is all for presentation
11 on the subject of operating for a profit motive, and for
12 profitability.

13 The Court remembers some of -- we talked about some of
14 the statements. Let me just start on page 107 of the
15 transcript, so it would be 107 of the transcript, the small
16 Number 28.

17 And did you find it, Your Honor?

18 THE COURT: I'm on it.

19 MR. KOWAL: Did you ever take any cash and put
20 either your expenses or your own bank account. You said you
21 might have done that sometimes.

22 And he does indicate Mr. Lynch did do that.

23 THE COURT: Well, he said yeah, if I did it is in
24 the records.

25 MR. KOWAL: Correct, that wasn't in the -- that

1 wasn't in the bookkeeper's declaration. But I'm indicating
2 that there is additional.

3 THE COURT: Well, no, it says if I did, it is in the
4 records.

5 It isn't, yeah, I did. It's I did, it's in the record.

6 MR. KOWAL: He confirms just like if I needed cash
7 or something.

8 Okay. I mean, the record what it is and the Court can.

9 Okay. Then I want to show this paragraph here, Your
10 Honor, on page 107 to 108, starting with: Did you try to
11 calculate, you know, what salary you were paying to yourself or
12 anything like that?

13 And I believe in Offer Lion's declaration he said he was
14 calculating his salary based on the needs of the operating CCCC
15 and I would submit this, this as testimony he was taking salary
16 based on his own personal needs. He said, I was basically
17 taking what I needed to pay the bills at time. I had credit
18 cards, I had to use for the business.

19 So I would write myself a check, just like everyone else
20 two weeks, you know, it was sort of like payroll, but I was
21 looking to the QuickBooks told me and as the owner of the
22 business I could take any money right out of the till basically
23 so, you know, since I was a sole proprietor I could take that
24 and accumulate it and do my taxes that way.

25 Again, we see him offering not in some collective way

1 with financial accountability as if required by California law
2 but he is using the business as just his own personal business.
3 That there is no joint activity here, there is no financial
4 accountability.

5 THE COURT: I don't need you to argue, I thought you
6 were offering evidence.

7 MR. KOWAL: Thank you. With respect to Zyber
8 Software that starts at page 109 to 114.

9 And he talks about his monthly expenses and he first
10 identifies Zyber Software at page 109.

11 He describes it as a sole proprietorship, and then what
12 kind of expenses it has.

13 And he said credit cards, I might have use the Zyber
14 Software credit cards to help start up the Central Coast CC and
15 then like my Internet access, I think my personal health
16 insurance.

17 He's asked at page 111, Line 13, whether he had any
18 clients or produced anything.

19 He said at this point, no, I wouldn't have since my
20 primary focus was on central coast CCC.

21 And when he was asked for more details about the
22 expenses, at page 112 Line 12. He said, like, my insurance,
23 credit card expenses, for what. Just he had accumulated
24 throughout time, I would have to look at my records.

25 And then he mentions on page 113, the expenses including

1 at Line 7 through 9, probably most of it was credit card
2 interest, paying credit cards.

3 And then consistent with what the evidence we saw on the
4 and the checks we saw in this case, admits that he wrote
5 himself at one point like a check over \$10,000 to Zyber
6 Software.

7 Then just to finish here at page 114, as to what the
8 source of these debts were, it said your credit card for Zyber
9 Software were expenses you incurred prior to opening the CCC
10 for the most part, and he affirmed probably, so, yes.

11 Your Honor, going back to page 107, let me find where it
12 is, sorry, 116, Mr. Lynch seems to indicate throughout his
13 declarations in this case, that, you know, the store closing
14 caused him financial hardship rather than his profitability,
15 but we're offering this evidence to show that he had a
16 significant mortgage and financial difficulties prior to the
17 opening of the store starting at Line 116 at 23.

18 His answer: Were you not earning any income or not
19 reporting income for some reason.

20 He said, I'm pretty sure I did my taxes for those years.

21 But the income I got for Zyber Software, I had living in
22 my house, refinanced my house.

23 And then on the next page, the agent asks on line 23:
24 What I'm trying to square with your statement you were doing
25 pretty well financially with the fact you have no income coming

1 in before you opened the CCCC.

2 He answers: Well yeah, I guess I have been doing well
3 in my investment in my house, that's how I managed to survive
4 for a number of years.

5 The agent clarified: In others words, house price was
6 going up, you were able to live by getting an equity credit and
7 live on that.

8 He said right.

9 Your Honor, I would like now to go to 224. Again, on
10 the issue of profits.

11 At pages 223 to 227, there is a discussion of how he
12 determined price for the amounts.

13 And he said, it was the price would be set by market
14 price rather than any percentage to try to accommodate costs.

15 Again, that is offered for showing that the operation is
16 to improve income even though there was no effort to calculate
17 overhead and only charge for that price.

18 Sorry, Your Honor, I have to find my reference, if I may
19 have a moment, please?

20 THE COURT: All right.

21 MR. KOWAL: Pointing to 223, now which is on SER 147
22 and page 57 of the numbered transcript.

23 THE COURT: Sorry, you said 147?

24 MR. KOWAL: 223, and SER 157.

25 In this paragraph Mr. -- there had been reference in the

1 defendant's declaration and the analysis of some of the defense
2 experts that defendant's discount program showed a nonprofit
3 intent.

4 We believe this paragraph shows the opposite, that he
5 says that I was realizing that I wasn't paying back my credit
6 cards, I was paying all of these high interest rates, and I
7 wanted to save the dispensary money so we could bring the price
8 down for the patients.

9 There was a time at the beginning of '06 I discounted
10 the discount program, for most of our patients until I got
11 those other bills paid off.

12 And we would just combine that with the CitiBank
13 evidence showing that these credit cards were actually his
14 personal expenses and this was -- the suspension was so he
15 could get a hold of more money for himself because he had high
16 interest rates as reflected in the CitiBank, preexisting debt
17 he had.

18 The next one is Trial Exhibit 90, which I believe
19 defense counsel has in the earlier question and I believe this
20 is also in one of the defense exhibits to one of their experts.

21 I'm marking this as Exhibit 12 I believe.

22 MS. ABEL: I'm sorry, Your Honor, for the record,
23 can the government clarify what that is.

24 MR. KOWAL: I will hand it to you.

25 MS. ABEL: Is it one of the ones I have already

1 given me.

2 MR. KOWAL: I think so.

3 MS. ABEL: This is number.

4 MR. KOWAL: This is Number 12.

5 This was a trial exhibit. This is quarterly wages, I
6 didn't have time to go over this with Ms. Malone, but we're
7 just making the point, if you can compare his quarterly, the
8 quarterly wages of the employees with what Mr. Lynch was
9 pulling out of the business on average, that it was
10 approximately 3 to 4 times as much as his highest paid
11 employee.

12 Unless the Court has questions, I could sort of leave
13 the record at that.

14 So, again just to clarify, his highest paid employee is
15 making seven -- excuse me -- the defense expert had Mr. Lynch
16 paying himself a salary of about \$110,000 a year and
17 approximately \$27,000 a quarter.

18 In comparing it to the highest paid employee on this
19 17,000 it's about three and a half times as much that is the
20 purpose of that.

21 Oh also, the fact that Mr. Lynch didn't withhold taxes
22 because basically he's the owner operator which again tends to
23 show his correct tax. It tends to show this really isn't a
24 collective. This is as the Court said to Mr. Elford, this was
25 his operation.

1 Can I just confer with defense counsel, I just have a
2 few sets of documents just on the issue of when his Atascadero
3 business was operating, and I can ask him if Mr. Lynch or if we
4 can stipulate it and save the time.

5 THE COURT: Stipulate to it, that is fine.

6 MR. KOWAL: Let me just consult, let me get them
7 out.

8 (Defense and government witness conferring off the
9 record.)

10 THE COURT: Is something going to happen in the near
11 future.

12 MR. KOWAL: Yes, Your Honor. We're admitting the
13 next two exhibits.

14 THE COURT: All right.

15 MR. KOWAL: Is it 12 and 13?

16 THE COURTROOM DEPUTY: 13 and 14.

17 MR. KOWAL: 13 and 14.

18 MS. ABEL: For the record, can we identify which one
19 is 13 and which one is 14?

20 MR. KOWAL: I should have probably done it myself.
21 Is 13 the news of the week.

22 THE COURT: Yes.

23 MR. KOWAL: So these are I will make a
24 representation and we will see if we can get agreement. 13 are
25 some articles from Mr. Lynch's CCCC file about the Atascadero

1 store.

2 14 are some operating documents from the CCCC store in
3 Atascadero which go from I believe February 2nd the first page
4 to February 17th, as the furthest one, and we are offering --
5 so let me start with that, and then say we're offering this
6 with a stipulation that Mr. Lynch would testify that he was
7 operating that Atascadero store up until February 17th of 2006.

8 MS. ABEL: I guess as to the doubts the defense
9 objects because they are not authenticated. They are not Bates
10 stamped, I haven't myself seen them in the discovery that,
11 doesn't mean they are not there because I'm receiving them for
12 the first time right now have not had an opportunity to verify
13 their authenticity, accuracy or the government's representation
14 they are from Mr. Lynch's files, they both also fall outside
15 the relevant time period which is 4/1/2006, as to the
16 stipulation I think the defense is comfortable with stipulating
17 the Atascadero store was open and in operation on
18 February 17th, 2006, as the evidence here demonstrates it may
19 have opened and closed at various points and so I'm not
20 comfortable given the long time it's been with establishing any
21 other date it may have been open.

22 THE COURT: All right.

23 MR. KOWAL: I just want to see if I can reach a
24 stipulation on just the documents for Atascadero without
25 questioning Mr. Lynch that is all. I will take a second to

1 confer with counsel.

2 THE COURT: All right.

3 MS. ABEL: Your Honor, the parties can stipulate to
4 the representation that Exhibit 14 is of the kind and type that
5 the CCCC would produce at the close of each business day. That
6 includes both the Atascadero store and the Morro Bay store.

7 We're not establishing any stipulation as to Exhibit 13.

8 And are stipulating that the Atascadero store of the
9 CCCC was open on February 17th, 2006.

10 MR. KOWAL: Your Honor, I have one more transcript
11 excerpt I need to find can I have a moment, please?

12 THE COURT: All right.

13 MR. KOWAL: Your Honor, for the record I'm now
14 referring to the large transcript, the full transcript copy,
15 because I don't believe this is in the small transcript -- let
16 me double check. No, it's not, I'm going to be referring to
17 the large transcript at page 1, 134.

18 Starting at Line 24, Ms. Berkdohl, do you remember
19 Travis Perkins, he was one of our vendors?

20 There's discussion going to page 141 at Line 3. It's
21 talking about the fact that he made an exception. He had a
22 vendor who was a felon. And he made exception to his
23 requirements because he needed to supply the store.

24 Ending on page 141, why would you make an exception for
25 him? And said because the strain he provided was in demand.

1 I know the Court won't want me to read all of that. I
2 want it in the record as an example of the needs of the
3 operation trumping something internal procedures.

4 MS. ABEL: Your Honor, of course, the defense just
5 points out the best evidence is itself, and the line should be
6 read directly, and not by the government's interpretation.

7 MR. KOWAL: I was saying as you don't have to accept
8 the characterization.

9 Exhibit 15 is a letter from the public defender with GER
10 178. On the bottom -- just it's been offered before it's part
11 of the exhibits with the Ninth Circuit packet at Exhibit 1 or 2
12 and it was just at that point -- this has been offered to this
13 Court just as an admission there was a profit from the
14 enterprise, although, in that case it was signified as less
15 than \$100 \$100,000. I'm sorry.

16 I just want to look over Mr. Lynch's declaration for a
17 moment just to see I'm probably going to rest at this point. I
18 wanted to make sure there was no issues, I wanted to stipulate
19 as to Mr. Lynch's testimony.

20 I think that is it, Your Honor.

21 THE COURT: All right. Anything else?

22 MS. ABEL: Your Honor, if the government has rested
23 I would like to call Mr. Lynch in rebuttal, or alternatively, I
24 understand the Court suggests this is our last and final
25 opportunity to offer any evidence.

1 THE COURT: Yes.

2 MS. ABEL: I want to respond to some of the things
3 offered by the government.

4 THE COURT: All right.

5 MS. ABEL: May I take the lectern, Your Honor?

6 THE COURT: Sure.

7 THE COURTROOM DEPUTY: Would you please stand before
8 me. Would you please raise your right hand.

9 (Oath was administered.)

10 THE WITNESS: Yes, ma'am.

11 THE COURT: Thank you, please have a seat at the
12 witness stand. Please state and spell your full name for the
13 record?

14 THE WITNESS: Charles C. Lynch. CHARLES, space, C,
15 space LYNCH.

16 DIRECT EXAMINATION

17 BY MS. ABEL:

18 Q Very briefly I want to establish where you came from today
19 or where you came here for the purposes of today?

20 A I drove from Farmington, New Mexico.

21 Q Approximately how long of a drive is that?

22 A Well, if you drive state through it's about 14 hours. We
23 stopped at my brother's in Las Vegas.

24 Q But your primary purpose for that trip was to be in court
25 this morning?

1 A Yes.

2 Q And this afternoon?

3 A Yes. I wouldn't have traveled without it.

4 Q Understood. Thank you.

5 Let's start with Atascadero.

6 Atascadero, was Atascadero a dispensary you operated
7 prior to the dispensary at Morro Bay?

8 A Yes.

9 Q Was Atascadero, under what business name was Atascadero
10 operating?

11 A The same as the Morro Bay business, Central Coast
12 Compassionate Caregivers.

13 Q So the legal dispensary was the same?

14 A Yes.

15 Q And were the expenses for both of those similar?

16 A Yeah, pretty much the same.

17 Q Can you describe some of the initial start-up expenses you
18 had in opening of the first dispensary in the county?

19 A Well the lease, the rent of the building, security
20 deposits, then all of the hardware and software to do the
21 financial aspects of the business including the QuickBooks and
22 computers, I got computers for three or four different
23 computers and Atascadero, we built some security wall and also
24 had security cameras.

25 Then there was the membership ID card system, we also

1 developed that, like, the printer for that itself costs 5,000.

2 And then there is also the working with the storefronts
3 were part of it, you know, where people would interact like the
4 cabinets that we had, you know, the glass display cabinets and
5 stuff where the transactions occurred.

6 Those were like 4- or 5,000 alone for the cabinets and
7 then there is the expenses of paying employees and all of that.

8 Q In terms of Atascadero, is it fair to say it was
9 relatively short lived?

10 A Short lived?

11 Q The operation, it was only in operation for a short amount
12 of time?

13 A Yes.

14 Q And characterize that for the Court, months, years, weeks,
15 approximately, how long?

16 A Well, if you can't -- does that count the start-up time
17 too before the store actually closed?

18 Q No.

19 A Before it actually opened?

20 Q The time in which it was actually in operation?

21 A Three months or somewhere around in there. The Morro Bay
22 store was opened for a much of longer period of time. The
23 Morro Bay store was opened for almost a year.

24 Q But again, both starts were operated under the business
25 entity of the CCCC?

1 A Right, yes.

2 Q You only ever opened a single business entity for purposes
3 of operating any marijuana dispensary?

4 A One more time?

5 Q There was only one business entity that was used to
6 operate marijuana dispensary?

7 A Yes, ma'am.

8 Q That was?

9 A Central Coast Compassionate Caregivers.

10 Q For both business did you use QuickBooks?

11 A Yeah, I had to get QuickBooks to do the payroll. It
12 seemed like a better deal for me to do it myself to try to
13 outsource it to the company, which it would have cost a lot
14 more, so I had to do it by the QuickBooks software. And I had
15 a time machine so people could log-in and out their hours and
16 but yeah, I managed all of that myself.

17 Q And QuickBooks was the main repository of financial
18 information for the CCCC?

19 A Yes, all of the bank transactions downloaded into the
20 QuickBooks also I managed the bank accounts from the QuickBooks
21 software also.

22 Q You had had a point of sale system. Can you describe what
23 that is for the Court?

24 A It was kind of disjoint from the QuickBooks, they didn't
25 really talk to each other, and so it was disjoint system but

1 computer automated, and I had to register the -- logged all of
2 the transactions.

3 And then at the end of the day, I would -- also managed
4 discounts and stuff like that, that people were given and then
5 at the end of the day, we would run the close out whatever you
6 want to call it. We would count whatever money was there, have
7 the number of ones, and tens it's all written on the sheets.

8 So, we would consolidate or, you know, make sure all of
9 the money was there the at end of the day that matched the
10 transactions for the day.

11 Q And you mentioned before some of the expenses you paid out
12 in order to start-up the CCCC?

13 I want to walk you through those a little bit more.

14 In terms of -- let's actually talk specifically about
15 one of the exhibits offered by the government.

16 I'm going to bring it over since I only have a single
17 copy.

18 MR. KOWAL: Do you want this?

19 MS. ABEL: That's all right. I have got it.

20 I'm going to hand the witness, Exhibits 7 and 8.

21 MS. ABEL: They are the government exhibits.

22 THE COURT: They are the government exhibits.

23 MS. ABEL: Yes.

24 BY MS. ABEL:

25 Q So I handed you the government marked Exhibits 7 and 8, do

1 you recognize Exhibit 7?

2 A That is definitely my signature, yes.

3 Q It appears to be a check; is that correct?

4 A Yes, ma'am.

5 Q And it was -- we learned earlier today it was marked as a
6 start-up expense.

7 Do you have a specific memory as to what those -- what
8 that amount was used for, at least, a portion of it?

9 A Yeah, it's kind of I remember writing a \$25,000 check that
10 I used for the -- to purchase the first amounts of medical
11 marijuana that the store purchased, and so I used that 25,000
12 for starting up the business basically.

13 Q And when you say you wrote a check, you wrote a check
14 against the credit card?

15 A Yeah, I used credit card that is the credit card number
16 that I used to do it with the 5937.

17 Q So you pulled cash out to purchase the marijuana?

18 A Yes.

19 Q And why would cash have been necessary to make that
20 purchase as opposed to a credit card?

21 A Well, just the -- I couldn't buy that product with a
22 credit card basically.

23 Q At the time the vendors were not accepting other things
24 other than cash; is that correct?

25 A Yes.

1 Q So when you are writing in a check that you have in front
2 of you as Exhibit 7, can you explain the purpose of that check,
3 why you were paying down that debt?

4 A Yeah. I was -- it was a business expense that I was
5 paying back through the company basically.

6 Q And that check you would have written, would it have
7 occurred before the opening of the Morro Bay store?

8 A I can't remember exactly, but I believe so.

9 Actually, it definitely occurred the Morro Bay I'm
10 pretty sure for the Atascadero operation.

11 Q I'm also going to hand you what the government marked as
12 Exhibit 9.

13 Do you have Exhibit 9 in front of you?

14 A Yes, ma'am.

15 Q Can you for the record just explain what you see?

16 A Explain what I see.

17 Q Yeah, is it a check?

18 A Yes, it's a check.

19 Q Whose the check made out to?

20 A Zyber Software.

21 Q Are you familiar with Zyber Software?

22 A Yes, ma'am.

23 Q Can you describe for the Court what Zyber Software was?

24 A It was my own software entity that I even have going to
25 the stay and all of the computer related hardware and software

1 that I built for the dispensary was kind of logged under the
2 Zyber Software expenses, because I used I think I used Zyber
3 Software cards or something, credit or something to implement,
4 for example the QuickBooks and the card system and basically
5 and all of the computers and everything, the camera systems, so
6 yeah, I kind of ran that through the Zyber Software as an
7 expense on the Central Coast Compassionate Caregivers books.

8 Q Is it fair to say Zyber was performing work for the CCCC?

9 A Yes.

10 Q And I think you were just describing a lot of that work
11 but it involved the computer software and hardware for the
12 CCCC?

13 A Yes, ma'am.

14 Q And I also believe you are describing but it includes many
15 different operations.

16 Let's walk through them a little bit.

17 You mentioned a card system. Can you describe in a
18 little bit of detail what that card system was?

19 A Well, we had a dedicated computer that the secretary ran
20 which would take a photo and make digital copies of patients
21 records, like their ID, it showed their age and stuff, and then
22 also it make a copy of their medical recommendation and it
23 stored all of that on the computer, and so then it printed out
24 a little card that would automate their returning to the
25 dispensary, they do show the card and ID they would be able to

1 be serviced at the dispensary.

2 Q And just as a reminder this was in 2006, and there were no
3 other dispensaries operating in the county in which you
4 operated the CCCC?

5 A Yes. Central Coast Compassionate Caregivers but was the
6 only dispensary in San Luis Obispo county. There were many
7 others in LA County, and I don't know what Oakland county is
8 there up there, but there were many other dispensaries across
9 the state.

10 Q Did Zyber Software create the system, for example, the one
11 you were just describing?

12 A Create what?

13 Q Create the computer system you were just describing?

14 A Yeah, I pretty much built it all from scratch.

15 I saw how other dispensaries did it, but I didn't know
16 any of the hardware or any of the software that they used so I
17 kind of had to figure out that on my own.

18 Q And you provided those services to the CCCC in the form of
19 Zyber Software?

20 A Usually, I didn't really give myself an hourly wage or any
21 payment for it, it was always just to pay for the hardware or
22 software.

23 I didn't really get a personal income from Zyber
24 Software to pay myself, you know, a profit on that work.

25 Q To clarify, you logged those expenses as consulting fees

1 to Zyber Software?

2 A I believe so. Actually, some of it was consulting, I
3 think it was hardware expenses, but it was all under the Zyber
4 Software name.

5 Q And just so that we can illuminate this a little further,
6 what other hardware and software demands and did the CCC have
7 beyond the card system you were just describing?

8 A Beyond what, one more time?

9 Q We went through the card system. What other hardware and
10 software consulting services did Zyber provide to the CCCC?

11 A I set up the whole camera system for one that required a
12 dedicated computer and the cameras and everything setting up
13 the cameras I did all of that myself without any -- I didn't
14 charge an hourly rate or nothing.

15 I only did whatever it cost me to do it for the
16 hardware.

17 So there is the cameras the computers, the card system,
18 and then the QuickBooks software.

19 Also, I put together a check in check out system for the
20 employees to log their hours and so that way they would come in
21 punch their number and their time would start when they would
22 leave it, they would log their hours for them then I used that
23 to run payroll.

24 I think that was a dedicated computer system also. So I
25 set that up, so that is the card system, the cameras, the

1 employee hourly system.

2 Then there was the whole financial work also of running
3 the QuickBooks software, then there is the point of sale cash
4 register system also.

5 Q The point of sale had, like, a barcode reader, so
6 barcodes.

7 Can you explain the barcode system?

8 A Sure. We developed a barcode system that make it easier
9 to track transactions and make it quicker for patients to be
10 provided, their needs.

11 So, I would hire -- I had employees that would break
12 down the products into baggies, then we would print out -- it
13 was all in the software system, and we would print out barcodes
14 related to each vendor's services they had provided to us.

15 Then we would package those up with the barcodes, and
16 then when it was time for the transaction, we were able to just
17 scan it quickly and meet the needs of the people.

18 Q That barcode system that you just described was provided
19 by you through Zyber Software to the CCCC?

20 A Yes. I also set all that up pretty much on my own time.
21 I didn't charge an hourly rate or nothing, and only charged
22 whatever the cost of the hardware and software was.

23 Q So looking back at that exhibit in front of you, I believe
24 Exhibit 9, you see there a check to Zyber Software.

25 Can you recall the specifics of what that check was for?

1 A Not exactly. But 3907, that was right before we got
2 raided and shut down.

3 Q But as a general matter, checks like that that were made
4 out to Zyber Software, can you explain their purpose?

5 A Yeah, it's all in the books somewhere.

6 But yeah, this would have covered the -- lots of those
7 hardware and software expenses that I was talking about without
8 any fees -- hourly rates for my work.

9 Q Thank you for that explanation.

10 Let's just talk a little generally about credit cards.

11 There were some credit cards in your name and some in
12 the CCCC?

13 A I don't know if CCC actually had a credit card.

14 We had a bank account, and when I did open the bank
15 account, I told Bank of America the type of business and
16 everything, and they allowed it at that time.

17 But most of the credit cards were my personal cards, I
18 believe. I might have had a few Zyber Software cards, but I
19 can't remember exactly right off the bat.

20 Q The reason those cards were in your name, I think, you
21 were hinting at, because the CCCC could not open cards in its
22 true name?

23 A Yeah, I don't know, I'm not really sure.

24 Q Let me rephrase.

25 If a bank became -- if a credit card company became

1 aware of the nature of the enterprise, meaning, that it was a
2 marijuana dispensary, were you easily to access credit?

3 A Yeah. I remember couple -- let me thing a sec.

4 I remember, no matter what business transaction that I
5 did under the Central Coast Compassionate Caregivers, I was
6 informed whoever I was doing business with, the nature of the
7 business.

8 And like I said, I told Bank of America the nature my
9 business when I opened there.

10 Q Did other banks reject the CCCC?

11 A Yes. I believe so, yes. I can't remember about credit
12 cards.

13 I'm not sure, but I don't think CCC had any credit cards
14 -- I can't remember exactly, though.

15 Q Can you explain an example of when the CCCC was denied
16 credit whether in the form of a bank account or otherwise
17 because of the nature of the business?

18 A Yeah, I think Mid State Bank denied us an account there.

19 That's all I can remember at this exact moment.

20 Q And, of course, for the record, it's been over 16 years
21 since you operated the CCCC?

22 A I have lost track of it, but yeah, definitely pretty close
23 to 16, going on 17 years now, 25 percent of my life.

24 Q In your declaration you mentioned that one of the start-up
25 expenses was a payment to someone named Dan Ister.

1 Can you elaborate on that a little bit further?

2 A Dan Ister was original partners, we were, like, 50/50
3 pretty much when the business -- it was his idea to start up
4 the business.

5 He didn't really have the technical knowledge, nor the
6 access funds to start-up funds that I did.

7 So we still worked together and started up the business,
8 but unfortunately, when the business license came through with
9 its conditions that said one of the conditions was that the
10 owners can't be felons, and Dan Ister had a minor felony on his
11 record for possession of hash or something of that nature, and
12 which I didn't know about before until that came through, and
13 so I informed him that he wouldn't be able to be part of the
14 business.

15 But I did feel like he earned -- you know, he did a lot
16 of work, and I felt like he -- and he did too, he felt like he
17 deserved something, so I compensated him to the best I could
18 under the circumstances.

19 Q Approximately, how much was that compensation?

20 A Nearly \$50,000, I believe.

21 Q And that was to buy Dan Ister out of the business?

22 A Yes. Somewhere there is a record of that, too, somewhere.

23 Q The government mentioned briefly in referring to earlier
24 discovery that there was -- that you refinanced your home.

25 Do you recall that?

1 A Yes.

2 Q Would that have been in, approximately, 2005?

3 A Yeah, probably approximately, yes, 2005.

4 I opened the dispensary in 2006, I believe.

5 Q Did you live off those funds while you were starting up
6 the dispensary?

7 Did you use some of those funds so that you could
8 survive while you were starting up the CCCC?

9 A The loan from the -- on the house, you mean?

10 Q Yes.

11 A Back in the day, I was a day trader also. And I would
12 have income, a little unpredictable, that would come in big
13 chunks from trading penny stocks.

14 I might have been down for a while there, and mortgaged
15 the house to keep things going.

16 Q Did you also use some of those funds for the CCCC?

17 A Yes, ma'am. That is kind of -- that was the funds I used
18 basically to start up the business end of the Central Coast
19 Compassionate Caregivers.

20 Q When you say those funds, approximately, how much are you
21 referring to?

22 A Well, I had 90,000 in the bank after the house had been
23 mortgaged, and everything settled.

24 So I had 90,000 sitting there. By the time we opened up
25 our first day, I had \$10,000 left. So all of that money, it

1 went to getting the business going, you know, because that was
2 my primary focus back then.

3 Q Were you ever directly repaid for those funds?

4 A Not directly.

5 Q Let me rephrase. Were you ever paid in full back for that
6 amount that was taken out of your home?

7 A Well, I don't know. I did get a salary at Central Coast
8 CC, but that -- most of it was a house mortgage.

9 And but yeah, I don't think I ever recouped that money
10 myself personally.

11 Q Ultimately, what happened to the home?

12 A I lost the home in bankruptcy.

13 Q And approximately, what year was that?

14 A I can't remember, 2007, '08, '09, somewhere in there.

15 Q And you mentioned just now you did have a bankruptcy
16 following the operation of CCCC?

17 A Yeah, I was disenfranchised from working pretty much
18 anywhere, no one would hire me, considering I had a federal
19 case over my head.

20 So, one more time on the question?

21 Q I think that's fine. I just want to talk very briefly
22 about your tax returns.

23 In 2007, you filed tax returns or -- I'm sorry, in 2007
24 who filed tax returns for you?

25 A I have always done my taxes myself, but on the other hand,

1 I did hire an attorney.

2 My attorney found another attorney to do my taxes for
3 me. And I wrote him a check, but before that check even cashed
4 through, I was rated and shut down, and so that attorney never
5 did my taxes.

6 And then I didn't have all of my books and everything
7 because they had been taken in the raid also.

8 So I used backups and notes and stuff to kind of
9 estimate my taxes for those years.

10 I did the best I could under the circumstances, since I
11 didn't have my detailed bookkeeping that I had maintained at
12 the business, because it had all been confiscated.

13 Q To clarify, the computers on which you kept your records
14 and the hardware, the backups or the QuickBooks, et cetera, had
15 been confiscated by the government, just to clarify?

16 A Right.

17 Q When you say "the raid," you are referring to the search
18 warrant that was conducted on both your home and the CCCC in
19 March of 2007?

20 A Yes, ma'am.

21 Q You mentioned before an attorney.

22 Did you in fact retain an attorney to assist you with
23 operating the CCCC?

24 A Yes. Like Corey was -- I paid him to be our attorney.

25 Q When you say "our," paid -- you paid Luke Corey to be

1 whose attorney?

2 A The collective -- whatever you want to call it, the
3 business.

4 Q The CCCC?

5 A The people of our collective, the Compassionate Caregivers
6 Group.

7 Q Did he provide advice regarding the operation of the CCCC?

8 A Whenever I wasn't sure about something, I would give him a
9 call and ask him what to do.

10 Just, for example, like the taxes, what should I do with
11 my taxes? And he says, well, let's get the tax expert in there
12 for you.

13 So like I said, I wrote him a \$5,000 check that never
14 went through because I got raided.

15 I have also done my taxes myself, you know. I always
16 kept the books pretty tight.

17 Q The CCCC had employees, people who worked at the
18 dispensary?

19 A Yes, ma'am.

20 Q And other than you, who was the next most responsible
21 person in the organization?

22 A Well, when we first started out, it was Dan and I, and
23 then we got kind of swamped and then another member, Gina, came
24 on as a secretary, and then so she started managing the patient
25 in process.

1 Then as the company, kind of, became more popular, I
2 hired security guards and had a chief of security guy, and then
3 I hired bud tenders, that's what they call them these days,
4 people that manage the counter.

5 I also had a manager who I had on a salary, who I
6 entrusted to -- even though I was there most of the time, I
7 entrusted the manager to make decisions on pricing and
8 management, or I mean, on the people who were working there.
9 The manager was on a salary.

10 Q And what was that salary?

11 A Last I remember, Mark Barolono, when I hired him, I put
12 him on a \$50,000 a year salary. One of my previous managers
13 wasn't following the rules.

14 Q Briefly, Mr. Lynch, you have been on pretrial services
15 supervision for 16 years; is that correct?

16 A Yes, ma'am.

17 MR. KOWAL: Relevance, Your Honor.

18 THE COURT: Sorry.

19 MS. ABEL: Your Honor --

20 THE COURT: You asked him whether or not he had been
21 on pretrial services for the past 16 years?

22 I mean, we all know the file in this case, so I don't
23 understand your question.

24 MS. ABEL: Thank you, Your Honor.

25 BY MS. ABEL:

1 Q Mr. Lynch, did you intend to operate the CCCC in
2 conformity with the law, to the best of your understanding?

3 A Yes, ma'am.

4 Q Did you obtain advice from others in order to ensure that
5 your understanding was the best available?

6 MR. KOWAL: Objection, Your Honor. Relevance, at
7 this point, it's all in his declaration, which is extremely
8 long.

9 THE COURT: I will allow him to answer that question
10 yes or no.

11 THE WITNESS: One more time?

12 BY MS. ABEL:

13 Q Did you obtain advice from others in order to determine
14 whether the CCCC was operating in conformity with the law?

15 A Yes, ma'am. I had the attorney, Luke Corey, who was the
16 local medical marijuana expert at the time.

17 THE COURT: Is he waiving his attorney-client
18 privilege?

19 MS. ABEL: No, I just needed to establish he did
20 obtain such advice.

21 MR. KOWAL: That would make the attorney-client
22 privilege.

23 THE COURT: It doesn't talk about what the substance
24 of what the advice was about this subject matter. I would say
25 it is close, but I won't say it's waiving privilege.

1 BY MS. ABEL:

2 Q Mr. Lynch, is it your intent to -- was it your intent to
3 violate California law in operating the CCCC?

4 A No, ma'am.

5 MS. ABEL: Nothing further.

6 THE COURT: Any questions from the government?

7 MR. KOWAL: Pardon me?

8 THE COURT: Any questions from the government?

9 MR. KOWAL: Yes.

10 FURTHER CROSS-EXAMINATION

11 BY MR. KOWAL:

12 Q Who was your partner with Atascadero operation?

13 A Dan Ister.

14 Q You were the full owner of the Atascadero operation just
15 like you were for the Morro Bay operation?

16 A Actually, it was kind of a 50/50 deal, I believe.

17 Q Wasn't it actually 60/40?

18 A I can't remember exactly. It was somewhere in there,
19 though.

20 Q Let's assume it's 50/50, 50/50 what?

21 A Just ownership of the business.

22 Q And that would be 50/50 when you say business, you talking
23 about 50 percent of the profits of the business?

24 A Well, just 50 percent of the business.

25 Q Including profits?

1 A If there was any, I would assume so, I guess so, yeah.

2 Q That's why you call it a business, right?

3 A Yes.

4 Q And did you and Mr. Ister organize that as a nonprofit
5 organization in any way?

6 A No, I didn't think -- I didn't think that was a
7 requirement under the California state laws.

8 Q So you didn't do that?

9 A It was not -- as you know a sole proprietorship.

10 Q When you had two people, it wasn't a sole proprietor, it
11 was a business partnership of some kind with respect to
12 Atascadero?

13 A Yeah, I would explain it -- I was on the books, but he was
14 50 percent or whatever, 40 percent or whatever it was.

15 Q So you why joint owners, and it wasn't organized as a
16 nonprofit?

17 A Correct.

18 Q And you mentioned a \$25,000 check with respect to
19 CitiBank; is that correct?

20 Am I identifying the \$25,000 check as being on your
21 CitiBank credit card?

22 A I believe so.

23 Q That's what you were talking about before?

24 A Right, right.

25 Q Do you have any records of when this check was taken out

1 of the CitiBank credit card account?

2 A Yeah, it would be all on the credit card statement
3 somewhere.

4 Q Okay. And did you follow through when I was going through
5 the bookkeeper the credit card statements of that account
6 ending in 5937?

7 A Right. This check probably occurred before the --

8 Q Before the statements?

9 A Right.

10 Q And the statements ended, as we discussed, on
11 February 8th, 2006.

12 I can show it to you again, but does that seem about
13 right?

14 A Yeah, I will assume.

15 Q And February 8th, 2017, you were still working at the
16 Atascadero store; is that correct?

17 A 2017?

18 Q I apologize, 2006.

19 A Possibly, I don't remember the dates, it's be so long.

20 Q It was in operation. Did you review those articles we
21 introduced as Exhibits 13 or 14 before?

22 A I didn't read all the way through them, I kind of browsed
23 -- I didn't have time to read them all.

24 Q Do you remember the stipulation that Atascadero was
25 operating until February 17th, 2006?

1 MS. ABEL: Your Honor, objection. That was not the
2 stipulation.

3 MR. KOWAL: It was operating on February 17th, 2006?

4 THE WITNESS: Yeah, I saw that one paper there. It
5 looked like an official document, possibly from the Atascadero
6 operation.

7 BY MR. KOWAL:

8 Q Did you ever operate both stores at the same time?

9 A No.

10 Q There was a gap in between the two, correct?

11 A Yes.

12 Q And different ownership between the two?

13 A Well no, not really.

14 When I started up the Morro Bay, Dan and I were still
15 partners, but then Morro Bay threw in the clause that felons
16 couldn't be a part of the business, so that's where our
17 relationship ended.

18 Q That's before you started actually operating and selling
19 marijuana, correct?

20 A Yeah. Dan wasn't allowed to participate at all in the
21 Morro Bay operation.

22 Q So, before you started operating the store, you changed
23 the ownership form?

24 A No, there was really no ownership form. I was always the
25 name as the sole proprietor. He was whatever you want to call

1 it, a silent partner maybe, is that the correct word?

2 Q Was there an agreement about sharing the 50/50?

3 A Definitely a verbal agreement, and there might have been a
4 written document, I can't remember exactly.

5 It seems like I would have wrote it down somewhere,
6 being me.

7 Q That wouldn't have applied after you bought him out?

8 A Pardon me?

9 Q The verbal agreement or written agreement would no longer
10 apply after you bought Mr. Ister out?

11 A Correct.

12 Q That would have been before you started the operations of
13 Morro Bay, correct?

14 A Right. Well, the funds weren't there to compensate him
15 for his work in the beginning, so I made payments to him at,
16 you know, as the operation grew.

17 Q Well, but he couldn't be an owner anymore because he had a
18 felony, before you started operations, correct?

19 A Correct.

20 Q He was no longer a part owner by the time?

21 A He wasn't a part owner in the business anymore, but I
22 still owed him compensation.

23 Q And you worked at the CCC, when it was going on, on most
24 days, correct?

25 A Yeah, I was there 99 percent of the time.

1 There was a short episode where I had an episode of
2 headaches for a month or two, and I actually worked from home
3 and due the camera system, I was keeping an eye on things. I
4 was sick there for a month or two.

5 Q When we talked about start-up expenses for Atascadero, you
6 mentioned security walls; is that one example of them?

7 A Right, we did build a security wall.

8 Q That wouldn't be something that would transfer over to
9 Morro Bay, would it, two months later?

10 A No. The security wall had to be removed when we left
11 Atascadero, which was another expense.

12 Q And as you sit here today, you don't know when that
13 \$25,000 check was written, correct?

14 A No, not exactly. There is a record of it, though,
15 somewhere.

16 Q It was before -- it's before, as we said before, the time
17 of the statements we reviewed, correct?

18 A Right. Right. I was -- that check happened before the
19 actual store opened, but it was still a business expense.

20 Q All right. With respect to Zyber Software, you were
21 paying yourself for the work you were doing at the CCC through
22 Zyber Software; is that what you described?

23 A No, no, I wasn't paying -- I wasn't paying myself a salary
24 or an hourly rate.

25 I was paying back the hardware and software purchases

1 that were done through the Zyber Software credit cards and
2 names.

3 Q And those expenses were incurred before you opened the
4 CCC, correct?

5 A Not all -- some were during, some were before, but they
6 were all related to the business.

7 Q But, you know, you gave that deposition that we were
8 talking about, your safety valve deposition.

9 Do you understand what we're talking about when we
10 talked about it here today?

11 A The safety valve deposition? Yes, it's be so long I can't
12 hardly remember it.

13 Q But your credit card fees for Zyber Software were expenses
14 you occurred prior to opening the CCC for the most part,
15 correct?

16 A I don't know. No, not necessarily. I can't remember
17 exactly, but I know the card system, for example, that kind of
18 got developed as the business operated, so I didn't have the
19 card system built in, so that would have been Zyber Software
20 expense.

21 Q Would it be fair to say you remember your Zyber Software
22 expenses better in 2009, than you would now, you mentioned you
23 couldn't remember some things?

24 A Possibly, yeah.

25 Q Okay. And, Your Honor, I wanted to read in the record

1 page 114 of the government's full trial exhibit and the
2 excerpts.

3 "QUESTION: Your credit card fees for Zyber software
4 were expenses you incurred prior to the opening CCC for the
5 most part?

6 "ANSWER: Probably so, yes.

7 BY MR. KOWAL:

8 Q I want to ask you about these payments you are making to
9 Zyber Software.

10 Did you check with anyone any other employee of the CCCC
11 before you did that?

12 A Before -- no, I managed the books, basically.

13 Q You had full control of the bank account?

14 A Yes.

15 Q And there were no rules about what you could do or not, it
16 was just your judgment, essentially, correct?

17 A Well, I usually consulted my attorney at the time and also
18 the manager, they would have -- actually, everybody would have
19 input on it, but I did make the final decisions, yes.

20 Q Did you share input about how much money you were going to
21 pay yourself?

22 A Well, with my attorney, I did.

23 Q Then did other employees -- did you share the financial
24 records of the -- you didn't share the financial records of the
25 company with other employees; is that correct?

1 A That's not true. The manager had access to the daily
2 sales and --

3 Q The manager won't have access to payments for start-up
4 fees, for example?

5 A No. That was probably all in my computer, my personal
6 computer.

7 So he probably didn't have access to that.

8 Q And you were the only one with access to information about
9 what you were paying yourself in salary, correct?

10 A One more time?

11 Q You were the only one with access to information about
12 what they were paying yourself in salary? That was also in
13 your computer, correct?

14 A Well, it was in the computer system. Actually, there was
15 a payroll system, it's all logged in the QuickBooks.

16 Q Would you share that information with members who came in
17 and bought marijuana from your store?

18 A Well, obviously, no.

19 MR. KOWAL: Nothing further.

20 THE COURT: Anything else from the defendants?

21 MS. ABEL: No, Your Honor.

22 THE COURT: The witness may be excused.

23 Thank you very much. Anything else from the government?

24 MR. KOWAL: None from the government.

25 THE COURT: Anything else from the defense?

1 MS. ABEL: I want to clarify the Court's position on
2 any responsive evidence that the defense may have.

3 In the normal course, the government would have offered
4 its evidence and the defense wanted to reply.

5 I didn't want to reopen discovery here, but to the
6 extent the government is relying on arguments not previously
7 raised before and arguing that there is insufficient evidence
8 because it's the defense's burden, the defendant would like the
9 opportunity to offer that evidence.

10 THE COURT: I don't understand. You want to offer
11 evidence as to what, at this point?

12 MS. ABEL: Your Honor, for example, the government
13 is arguing that the \$25,000 check that Mr. Lynch just testified
14 about, either doesn't exist or he doesn't have a record of it.

15 To the extent such records exist, the defense, in normal
16 course, would have had an opportunity to produce it, and would
17 have done so in reply.

18 It just -- the defense is obviously in a tricky place
19 here.

20 Certainly, we do not want to reopen this hearing. But,
21 of course, would normally have had an opportunity to review the
22 government's argument, review any evidence it offered, and
23 proffer its own evidence in reply. Because the defense does
24 bear the burden, doesn't want to close the record insofar as
25 there are clear responses to some of the things that the

1 government has offered for the first time here today.

2 THE COURT: Let me just ask, you are worried about
3 the \$25,000 check will somehow preclude the Court from finding
4 that he complied strictly with the requirements?

5 MS. ABEL: No. I'm only using it as an example.

6 THE COURT: I don't understand your point.

7 MS. ABEL: The defense's position is not that that
8 \$25,000 check would substantially change the legal analysis.

9 But I imagine that the government's argument is that
10 there is -- that the defense has not met its burden. Insofar
11 as there are loose ends here --

12 THE COURT: The government already stated the basis
13 for its objection at the start of the matter, that is the
14 government's objections.

15 MS. ABEL: Okay, Your Honor. I just wanted to
16 clarify that the defense is seeking an opportunity to offer
17 evidence that it normally would have offered in reply.

18 THE COURT: I understand the defense's position.

19 The matter will stand submitted.

20 Thank you.

21 (The proceedings concluded at 4:11 p.m.)

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