## In The Matter Of:

## DIETZ DEVELOPMENT, LLC AND CHRISTOPHER DIETZ v. JANE PEREZ

## Hearing December 5, 2012



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2	PEREZ EXHIBITS	PAGE	2 secondary to an action for defamation. We are requesting
3	No. 12Complaint	138	3 that a preliminary injunction be entered because
4	No. 13Lawsuit	138	4 Ms. Perez has posted items regarding my client over a
5	No. 20 E-mail from Ms. Perez to Mr. Dietz	138	5 period of time, and we have every reason to believe that
6	No. 21 Breakdown of Price List	138	6 she will continue to do so.
7	No. 26 Photograph	138	7 The standard for a preliminary injunction
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9	No. 28 DPOR Letter	138	9 there was is likelihood success on the merits and what
10	No. 30 Invoice	110	10 public interest is.
11	No. 32 Photograph	138	11 As was discussed in your chambers earlier,
12	No. 33 Photograph	138	12 today's hearing will really come down to the success on
13	No. 34 Photograph	105	13 the merits. And given the accusations that were made of
14	No. 35 Photograph	106	14 crimes of theft and trespassing, of work that was not
15	No. 35Photograph	138	15 completed, invoicing that was inaccurate, and others that
16	No. 37 Photograph	109	16 will come out as we present the testimony, these are very
17	No. 38 Photograph	109	17 damaging allegations to be made against my client. And
18	No. 39 Photograph	109	18 he is protected under Virginia Defamation Law against
19	No. 40 Photograph	109	19 those, so a preliminary injunction should be entered.
20	No. 41 Photograph	109	20 THE COURT: Thank you.
21	No. 42 Photograph	109	21 OPENING STATEMENT
22			MR. BACON: May it please the Court. James
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- 1 PROCEEDINGS
- 2 THE COURT: Mr. Nelson, are you ready?
- 3 MR. NELSON: Yes, Your Honor.
- 4 THE COURT: Okay. Let's go.
- 5 MR. NELSON: All right. As we begin, Your
- 6 Honor, we do have two stipulations. One stipulation is
- 7 that Ms. Perez' property itself is not posted that there
- 8 is no trespassing, but that there is posting at the
- 9 entrance to the neighborhood.
- And the second is that Plaintiff's Exhibits 1
- 11 through 4 are the writings of Ms. Perez.
- MR. BACON: So stipulated, Your Honor.
- 13 THE COURT: All right. Thank you.
- MR. NELSON: The plaintiff will call
- 15 Mr. Dietz to the stand.
- MR. BACON: Before we begin, I would like to
- 17 make a brief opening if I may, if counsel is not going to
- 18 make an opening.
- MR. NELSON: Your Honor, I will. I
- 20 apologize.
- 21 THE COURT: Okay.
- 22 OPENING STATEMENT

- 1 Bacon. Also with me at counsel table is Sefton K. Smyth
- 2 of my office, and Ms. Jane Perez.
- 3 The Court has been given our opposition that
- 4 sets forth the standards. We believe that none of the
- 5 standards required in order to obtain a preliminary
- 6 injunction have been met in this case, not just
- 7 likelihood of success.
- 8 But to give the Court some general
- 9 background, very briefly, Your Honor, in 2011, Ms. Jane
- 10 Perez bought a townhouse. And, as is often the case,
- 11 when you buy a used home or a home, an older home some
- 12 work needed to be done. So she talked to several
- 13 contractors about doing the work and happened to come
- 14 upon Mr. Dietz. They had gone to high school. Had
- 15 reconnected from Facebook. And he has a contracting
- 16 business and offered to do the work.
- 17 Although there was no formal, written
- 18 contract signed by the parties, the parties agreed to a
- 19 scope of work, a price for the work, and a time frame of
- 20 when the work would be done. This work was to start in
- **21** June of 2011.
- The work was not getting done. The work was

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- 1 not being done right. And Ms. Perez became dissatisfied
- 2 with the amount of time that it was taking to get all
- 3 this done. She believed the work was not being done
- 4 professionally, and that her house was being damaged by
- 5 some of the work that the workers were there doing the
- 6 work.
- 7 She had given a key to Mr. Dietz. He had
- 8 access to the home. When she went to work during the
- 9 day, his contractors and subs would come to the house and
- 10 do this work.
- 11 There came a point in time when she
- 12 terminated him. Shortly at that time or the next day,
- 13 the evidence will show that her jewelry went missing.
- 14 She reported that to the police. The police did an
- 15 investigation. She also reported the theft to her
- 16 insurance, and the evidence will show that insurance paid
- 17 their insurance policy under that theft.
- Now, because of the poor work done by
- 19 Mr. Dietz, Ms. Perez, the evidence will show was required
- 20 to pay other contractors to, not only come complete the
- 21 work, but to fix the problems that were there at the time
- 22 Mr. Dietz and his workers were supposed to do doing this

- 1 lawsuit.
- 2 Now, the evidence, as the Court is probably
- 3 aware, there are many states around the country who have
- 4 legislated this to stop this kind of thing, these
- 5 lawsuits. Virginia, however, unlike D.C. and Maryland,
- 6 is not one of those states whose had that legislation
- 7 enacted.
- 8 But, as a result of this case, we believe the
- 9 standard for the Court is that Dietz must prove that
- 10 these publications were false. That Ms. Perez either
- 11 knew or believed them to be true or lacked reasonable
- 12 grounds for such belief or acted negligently in failing
- 13 to ascertain the facts to which the publications are
- 14 based at the time they were made. The latest of which,
- 15 the evidence will show was August 29, 2012, and that's
- 16 important.
- As the Court knows, true statements do not
- 18 support a claim for defamation, nor do statements of
- 19 opinion, even slight inaccuracies, according to the case
- 20 law that we provided the Court of expressions are
- 21 immaterial given provided the defamatory charge alleged
- 22 as true in substance.

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raye

- 1 work.
- 2 As a result of this experience, like many
- 3 other people do in today's Internet world, Ms. Perez
- 4 posted her bad experience on two locations. One was
- 5 called Yelp, and the other is Angie's list. You will
- 6 hear about Angie's list and what is required to become a
- 7 member on Angie's list.
- 8 Unfortunately, with the trend on online
- 9 reviews, there have been a number of lawsuits filed by
- 10 those who want to stop these kinds of things. And I
- 11 indicate that those are S-L-A-P-P, SLAPP suits. And it
- 12 stands for Strategic Lawsuits Against Public
- 13 Participation. These are filed in retaliation for people
- 14 who speak out on public controversy. These lawsuits
- 15 target individuals.
- For Internet postings, they are called Cyber
- 17 SLAPPs. And the attempt to the lawsuit is to chill free
- 18 speech, intimidate critics who would speak on these
- 19 issues given the costs associated with having to defend
- 20 an expensive lawsuits. So the point of a SLAPP suit, and
- 21 we believe the evidence will show this is a SLAPP suit,
- 22 is to silence the critic through the expense of the

- 1 To refute these claims, and the claims are
- 2 specifically laid out, we intend to the prove the
- 3 following: Number 1, Mr. Dietz, neither he nor his
- 4 corporation were licensed with the Virginia Department of
- 5 Professional Occupational Regulation at the time she made
- 6 the posts, as she indicated.
- 7 Mr. Dietz did not even send the paperwork in
- 8 to obtain his license until August 29, 2012. And that
- 9 was only after the evidence will show DPOR did an
- 10 investigation and had found he had performed this work
- 11 without a license and required him to comply.
- .2 We will also prove that Ms. Perez did not
- 13 find out that DPOR had closed its file until September
- 14 10, 2012, after the last of her posts.
- 15 Mr. Dietz' company, the LLC, the evidence
- 16 will show is a District of Columbia Limited Company,
- 17 Limited Liability Company, was not certified, or did not
- 18 have a Certificate of Authority to do business in
- 19 Virginia at the time this work was done, and did not
- 20 obtain that until August 31, 2012, after the last of her
- 21 posts.
- His invoice to her, the evidence will show

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- 1 contained and included nearly \$3,000 worth of work that
- 2 was not performed, and we will identify on a list those
- 3 items.
- 4 We will also provide the court photographs
- 5 showing the actual damage done to the home by Mr. Dietz
- 6 and his company.
- We will provide evidence that Ms. Perez had
- 8 to pay other contractors. And she will testify she had
- 9 to pay more money than the contract price to get the same
- 10 work done, and to fix the problems.
- 11 The evidence will also show that Mr. Dietz
- 12 filed a lawsuit in his own name against her to collect on
- 13 this invoice in the General District Court of Fairfax
- 14 County last year. He didn't file his Bill of
- 15 Particulars, as a result, summary judgement was entered
- 16 in favor of Ms. Perez.
- 17 Again, the evidence will show the day after
- 18 Dietz was terminated, Ms. Perez found some of her jewelry
- 19 missing. He was the only person she had given a key to
- 20 have access to her home, he and his crews and folks that
- 21 were working there.
- 22 She filed a report, the evidence will show

- 1 District of Columbia for not paying his workers. We will
- 2 provide evidence that Dietz has been sued several times
- 3 in the District of Columbia in connection with the
- property he rents.
- In the end, we believe the evidence will show
- 6 that this case is ultimately no more than retaliation and
- an attack against Ms. Perez for posting negative reviews
- 8 online about her experience, something that we believe in
- the interest of public, opportunities the consumers ought
- to be able to do as long as their statements, in this
- 11 case her statements are truthful, and were truthful, as
- 12 were hers.
- We're asking the Court to deny the 13
- 14 preliminary injunction on the basis that not one of the
- 15 grounds necessary to establish that can be established at
- 16 this time.
- 17 THE COURT: Yes, sir.
- MR. NELSON: Plaintiff calls Christopher 18
- 19 Dietz to the stand.
- 20 As I begin, Your Honor, Exhibits 1 through 4
- 21 have been stipulated to be the writings of the defendant,
- 22 and I would ask those be admitted.

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- MR. BACON: No objection, Your Honor.
- THE COURT: Exhibits 1 through 4 are 2
- 3 admitted.
- 4 [Whereupon, Plaintiff's Deposition Exhibit
- 5 Numbers 1 through 4 were admitted into evidence.]
- CHRISTOPHER DIETZ
- called as a witness, having first been duly sworn,
- 8 was examined and testified as follows:
- DIRECT EXAMINATION
- BY MR. NELSON: 10
- 11 Q. Please state your name.
- 12 A. Christopher Dietz.
- 13 Q. What is your address?
- 14 A. 4318 Alton Place, Northwest, Washington, D.C.
- 15 20016.
- 16 Q. What business are you in?
- 17 A. I'm in construction and renovation.
- 18 Q. And what company is that with?
- 19 A. Dietz Development, LLC.
- 20 Q. What is your position there?
- 21 A. I'm the owner.
- 22 O. What does that business involve?

We will also provide evidence that Dietz and

1 with the police regarding the theft. She made a claim on 2 her insurance. And at the time, he advised in those

- 3 posts what was going on. And, at the time of these 4 posts, regarding the theft, she didn't know the status of
- 5 the police investigation or what they were doing.
- The evidence will also show that Mr. Dietz,
- 7 after all this was over in the fall of 2011 showed up
- 8 unannounced, uninvited at her house in January of this
- 9 year, January 31, 2012, knocking on the door, the
- 10 evidence will show Ms. Perez did not let him in the
- 11 house, called the police, and subsequently sent him a no
- 12 trespassing letter, then installed an alarm system, and
- 13 got a dog. As counsel indicated, we had stipulated that
- 14 her neighborhood at all times relevant here has a sign
- 15 saying no trespassing.
- 16 We will also provide evidence that a
- 17 complaint was filed with the Office of the Attorney
- 18 General in the District of Columbia in 2011 by a claimant
- 19 claiming that Dietz and his company tried to extort the
- 20 customer for money for work that was not done.
- 22 his company were sued by the Attorney General in the

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- 1 A. Renovation, mostly residential. Kitchens.
- 2 Bathrooms. Pool additions. Full houses. Full
- 3 renovations. Working with homeowners, as well as
- 4 investors.
- **5** Q. How long have you been in the business?
- 6 A. Approximately, seven years, going on eight
- 7 years.
- 8 Q. Prior to this year, what was the business'
- 9 reputation in the community?
- MR. BACON: Objection, Your Honor, unless he
- 11 can lay a foundation. That's self-serving, as well.
- THE COURT: Sustained.
- MR. NELSON: I will circle back.
- 14 BY MR. NELSON:
- 15 Q. Did you know Ms. Perez prior to the work in
- 16 this matter?
- 17 A. Yes, I did.
- 18 Q. And, how so?
- 19 A. She's a former high school classmate of mine.
- 20 Q. How did you come to obtain the work at her
- 21 house?
- 22 A. We had communicated since we were connected

- 1 THE COURT: Any objection?
- 2 MR. BACON: It's not the ultimate price
- 3 quote, so I'm not sure what the relevance is, but I have
- 4 no objection if he just wants to establish that there was
- 5 a quote at one point in time.
- THE COURT: All right. It will be admitted.
- 7 [Whereupon, Plaintiff's Exhibit Number 5 was
- **8** admitted into evidence.]
- 9 BY MR. NELSON:
- 10 Q. Did you receive written authorization to
- 11 begin work in this case?
- 12 A. I did.
- 13 Q. And how did you receive that authorization?
- 14 A. Verbally, as well as in written e-mail.
- 15 Q. In terms of the scope of the work, were there
- 16 items that were -- was there a final list that was ever
- 17 drawn up just as a list?
- **18** A. Can you clarify that to be more clearer?
- 19 Q. Prior to receiving the written authorization,
- 20 was there a single list that included all of the items to
- 21 be done?
- 22 A. Yes. She actually generated herself a

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- 1 via Facebook for a high school reunion. I had
- 2 complimented on she had purchased a house. I offered my
- 3 congratulations, and let her know that I was a
- 4 contractor. And if she ever need my opinion or input,
- 5 certainly to ask for any help.
- 6 Q. Had you worked in Virginia prior to this
- 7 contract?
- 8 A. No.
- 9 Q. Did you discuss the scope of what Ms. Perez
- wanted to have done on the house?
- 11 A. Yes. She created the scope of work, and then
- 12 I followed that, and I discussed that with her.
- 13 Q. Did you provide a price quote for her?
- 14 A. I did provide a price quote for her.
- 15 Q. If you would turn to Exhibit 5 in that
- 16 binder; do you recognize this document?
- 17 A. I do.
- 18 Q. And what is it?
- 19 A. It is a price quote that I generated and sent
- 20 to Ms. Perez.
- MR. NELSON: Your Honor, I move for the
- 22 admission of Exhibit 5.

- 1 spreadsheet that she sent to me of items that she wanted
- 2 fixed. That did grow, but she added things to it. But,
- 3 yes, there was an initial spreadsheet.
- 4 Q. If will you turn to Exhibit 6; do you
- 5 recognize that document?
- 6 A. I do.
- 7 Q. What is it?
- 8 A. It's an e-mail that I received from
- 9 Ms. Perez.
- 10 Q. What does it say out?
- 11 A. Pardon me?
- 12 Q. What does the e-mail say out?
- 13 A. What does it say?
- 14 Q. Yes. What is its significance?
- 15 A. Well, the first part of it is adding an
- 16 additional item to the scope of work or the list of work
- 17 to be done.
- And then below that, it talks about picking
- 19 out colors and having met my daughter. Initial chitchat
- 20 of the contract, what steps she was taking for the work
- 21 from going to get a credit card at Home Depot to colors
- of paints and the carpet.

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- 1 Q. Is this e-mail illustrative of the process of
- 2 going back and forth regarding what items were to be
- 3 done?
- 4 A. Yes, it is.
- 5 MR. NELSON: Your Honor, I would move for the
- 6 admission of Exhibit 6.
- 7 MR. BACON: No objection to the e-mail.
- 8 THE COURT: All right. It will be admitted.
- 9 [Whereupon, Plaintiff's Exhibit Number 6 was
- 10 admitted into evidence.]
- 11 BY MR. NELSON:
- 12 Q. At the conclusion of the work, did you
- 13 provide an invoice describing the work that had been
- 14 done?
- 15 A. I did.
- 16 O. Was that invoice accurate to what had been
- 17 done?
- 18 A. It was.
- 19 Q. If you will turn to Exhibit 7; do you
- 20 recognize that document?
- 21 A. I do recognize it.
- 22 Q. What is it?

1 checks. I can't find my checkbook. And I said, well,

- 2 I've got to pay. I have to pay out of pocket.
- 3 And, shortly thereafter, she started creating
- 4 a punch list, which is standard procedure in working
- 5 whether it be small or large scope of work, and I started
- 6 taking care of those items.
- 7 And some of them were within our scope of
- 8 work, some of them were outside it. But being a high
- 9 school former classmate of mine, and just the kind of
- 10 person and professional I am, I took care of those items.
- 11 And some of the stuff was nitpicking, but I took care of
- 12 it. And finally when I said, look, before I continue, I
- 13 need to get paid something. And then she said, well, you
- 14 know, I will get a check.
- And then a day or two after that, she said
- 16 there is jewelry missing from my house. I don't want you
- 17 to come back into my house until this gets situated. I
- 18 don't suspect you, but please don't come back into my
- 19 house to finish up the work until then.
- 20 Q. We're talking specifically about the punch
- 21 list. What are some of the items that were on that punch
- **22** list?

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- 1 A. It's an invoice for work that was completed
- 2 at Ms. Perez' house.
- 3 Q. Is there anything on this invoice that was
- 4 not, in fact, completed at her house?
- 5 A. No.
- 6 MR. NELSON: I would move for the admission
- 7 of Exhibit 7.
- 8 MR. BACON: No objection to the document
- 9 itself.
- 10 THE COURT: All right, sir. It will be
- 11 received.
- 12 [Whereupon, Plaintiff's Exhibit Number 7 was
- 13 admitted into evidence.]
- 14 BY MR. NELSON:
- 15 Q. How did the work in this matter come to a
- 16 close?
- 17 A. Well, per the e-mails, I kept getting
- 18 compliments and additional work added to it, that she
- 19 wanted additional stuff done. It came to a close when I
- 20 kept insisting on getting a payment, and she kept coming
- 21 up with excuses for it. Well, I just moved here. I
- 22 haven't opened up a checking account. I don't have any

- 1 A. I can't recall the entire list, but there
- 2 was a piece of hair that was stuck in the polyurethane.
- 3 We had put some new polyurethane on the floors. And
- 4 that's not uncommon. That can come from a vent. It
- 5 could come from a, you know, a window being open.
- 6 There was some paint on what we painted one
- 7 room. We painted the adjoining room. There was a shared
- 8 column. And so some of the paint that we had painted on
- 9 one side had come over a little bit onto the other side
- 10 of the corner. So we were adjusting things, like very
- 11 simple stuff.
- There was, you know, doors were not aligned
- 13 or leveled correctly. So we just -- very minute, small
- 14 stuff that was being what's called a punch list, taking
- 15 care of that that might have been overlooked or had not
- been addressed until that client brought that up.
- 17 Q. Was there an issue regarding paint on a
- 18 mantel?
- 19 A. Yes. She claimed that there was paint
- 20 spatter on an antique fireplace mantel in the basement.
- 21 The color die for the paint that was on the mantel was in
- no way close to the paint that we used in the room, nor

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- 1 was it the age of the paint that we used. And you can
- tell that by the thickness, the type of the consistency
- of the paint and how hard it was to take off. That paint
- was previously put there possibly.
- MR. BACON: Your Honor, I will object to 5
- speculation and ask the Court to disregard.
- THE COURT: Overruled. Go ahead and finish
- 8 your statement.
- BY MR. NELSON:
- 10 Q. You may answer the question.
- 11 A. So that is pretty much it. And she said that
- I had damaged her antique mantel by the paint splatter.
- We went ahead and removed, to the best of our ability,
- this paint splatter even though we had not done it
- because I wanted to simply just wrap it up and make her
- feel good as a customer, and myself ultimately to get
- 17 paid.
- **18** Q. Was there an issue with a door that was
- warped?
- 20 A. Yes, there was.
- 21 Q. What happened there?
- 22 A. The rear French door leading to the patio

- of a police complaint regarding jewelry of Ms. Perez?
- 2 A. Yes. It's kind of two-fold. One, I received
- 3 an e-mail from Ms. Perez stating that the police would be
- contacting me because she filed a police report. She had
- told the police she didn't suspect me of having anything
- to do with it. She said, her by the e-mail, she told
- them she doesn't suspect me.
- Two, I was contacted by Fairfax County Police 8
- Officer Wilden that he wanted to speak to me about that
- complaint. And a follow up to that, I met with him at
- least once in person, if not once twice, and multiple
- phone conversation regarding the situation.
- Q. If you turn Exhibit 8, would you tell me what
- that item is?
- A. That is the e-mail from Ms. Perez to myself
- asking me to drop off the keys. And stating the dollar
- amount of jewelry that went missing from her house. And 17
- telling me that if the 16 items are produced by the end
- of tomorrow, she will not press charges.
- 20 She states she wanted me to hear this from
- herself versus the officer would be contacting me for
- information purposes only. And that, quote, I let them

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- know you were not a suspect in any way, shape or form.
- 2 MR. NELSON: Your Honor, I would move for the
- admission of Exhibit 8. 3
- 4 MR. BACON: No objection.
- 5 THE COURT: It will be received.
- 6 [Whereupon, Plaintiff's Exhibit Number 8 was
- 7 admitted into evidence.]
- BY MR. NELSON: 8
- Q. When was the last time that you had any
- involvement with the investigation of the jewelry?
- A. I couldn't really put a date on that, but I
- had provided Officer Wilden with all the e-mails from the
- beginning to the end communication, along with photos of
- the work and the complaints that were done, along with my
- contact information, as well as my workers' contact
- information first and last name and phone number. He
- requested that information, and that was about it. 17
- I was interviewed once at the station over in
- McLean. And maybe met a follow-up time and phone calls.
- But the last time I spoke to him, he said that the case
- had been closed.
- **22** Q. Were you ever charged in that matter?

splatters onto the wood French door. 5

Aluminum clad is not vinyl clad. It is a

- wood exterior cover, as well as a wood interior. And
- that expands and contracts with the moisture. She claims

1 from the dining room, we were required to paint the

interior of it. There was an air conditioner that she

3 had upstairs that the condensation was dripping onto the

patio, brick patio that, in turn, bounces on this or

- that it was not opening and closing correctly due to us 9
- painting it shut. 10
- 11 I had took pictures prior to addressing that
- showing that there was previous paint there. And the 12
- majority of the side part of the door was exposed natural 13
- wood showing. And not having any kind of sealant, 14
- polyurethane or paint, had the ability to expand. And therefore, be stuck, or nothing would be able to open and
- close. 17
- And I did to the best of my ability to 18
- rectify that problem even though that's not my fault 19
- because her location of the air conditioning directly
- above the door.
- 22 Q. Did there come a time when you became aware

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- 1 A. I was not.
- 2 Q. Were any of your employees ever charged?
- 3 A. No.
- 4 Q. Did you steal Ms. Perez' jewelry?
- **5** A. I did not steal anything.
- 6 Q. How did you find out about the statements
- 7 that Ms. Perez made on Yelp and Angie's List?
- 8 A. I have a vendor, several vendors. One
- 9 particular vendor, M&M Appliance in northwest D.C., that
- 10 I purchase all of my appliances from, I have a good
- 11 relationship with the owners. And one of them called me
- 12 to let me know that he had referred my business to a
- 13 pretty solid, high-end client of his because she had
- 14 inquired about a recommendation for contractors. And --
- MR. BACON: Your Honor, I have to object to
- 16 that. It's all hearsay.
- 17 THE COURT: Sustained.
- 18 BY MR. NELSON:
- 19 Q. Did you find out about these statements
- 20 through M&M Appliance?
- 21 A. Yes. My contacts at M&M Appliance let me
- 22 know that he had been contacted by this client that he

- 1 BY MR. NELSON:
- 2 Q. To the best of your recollection, when did
- 3 you begin work on the contract?
- 4 A. Approximately, June summertime of 2011.
- 5 June, July time frame.
- 6 Q. And how long was the contract active?
- 7 A. Approximately, until the end of July and end
- 8 of August 2011.
- 9 Q. Did you go to Ms. Perez' house after the
- 10 contract at some point?
- 11 A. Yes, I did.
- 12 Q. And what was the purpose of that visit?
- 13 A. Well, in my opinion, she owed me money. She
- 14 had not had any communication with me. The police
- 15 investigation had been resolved, at least on my point of
- 16 view.
- 17 I come from the City of Falls Church. And in
- 18 my graduating class at George Mason High School, there
- 19 were 90 kids. It's a small community in the City of
- 20 Falls Church. And if you have an issue, you talk to
- 21 somebody, and so I went there to talk to her.
- 22 Q. Where on her property did you go?

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- 1 had referred myself to stating she had researched me
- 2 online and found out I had a great rating.
- 3 MR. BACON: You're Honor, same objection.
- 4 THE COURT: Sustained.
- 5 BY MR. NELSON:
- 6 Q. Looking at the allegations and the statements
- 7 themselves, did you perform the contract up through the
- 8 time that you were locked out?
- 9 A. I did.
- 10 Q. Was there any damage that you caused to
- 11 Ms. Perez' house?
- 12 A. No.
- MR. BACON: Again, I'm giving as much leeway
- 14 as possible. It's kind of leading very much so.
- MR. NELSON: Your Honor, they are specific
- 16 statements.
- 17 THE COURT: All right. It would be helpful
- 18 that we know when he started and when he finished, the
- 19 customer complaints.
- MR. NELSON: Certainly, Your Honor. And I
- 21 may just need to save the details for rebuttal because I
- 22 don't know what the specific allegations are.

- 1 A. To the door. To the door. I knocked on the
- 2 door on the stoop or the front steps of her house.
- 3 Q. Did she notify you in any way that you were
- 4 trespassing at that time?
- 5 A. No.
- 6 Q. What was the length and substance of the
- 7 conversation with her, if any?
- 8 A. I wanted to talk to her. I said, hey, I
- 9 would like to talk to you. She said she didn't want to
- 10 talk to me and closed door. And I would say it lasted
- 11 maybe two or three minutes maximum.
- 12 Q. Did you leave immediately?
- 13 A. I did.
- 14 Q. What is your Better Business Bureau reading?
- 15 A. I have A Plus rating. And I'm accredited,
- which is two different steps, being graded, as well as
- 17 accredited.
- **18** Q. When did the accreditation take place?
- 19 A. It took place maybe a month ago, two months
- 20 ago, but it was being held up by --
- MR. BACON: I will object unless he knows or
- 22 has some foundational evidence as to why he didn't have a

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- 1 rating prior to that time, him testifying what he
- 2 believes was the reason why he didn't have a rating prior
- 3 to that time.
- THE COURT: Overruled. Go ahead.
- THE WITNESS: And it took a while because I 5
- was told by the director in the Washington, D.C., office
- on K Street downtown that they had received a complaint
- from Ms. Perez about my business, so they had to do some
- additional investigating by the Better Business Bureau.
- They're not set up to investigate, but they don't give a
- credit or give a rating until they do the background
- check of a business. 12
- But I was told by the director they had not 13
- approved my application or accredited me due to the
- 15 complaints from Ms. Perez.
- BY MR. NELSON: 16
- O. Does the BBB accreditation or lack of it
- change in any way whether you are authorized to do
- 19
- 20 A. It certainly helps your reputation and
- assists with gaining more clients because you can market
- 22 yourself as a BBB accredited business.

- 1 A. Yes, I have.
- 2 Q. And what was that?
- 3 A. Clients of mine, as well as --
- MR. BACON: Your Honor, I will have to
- object. It kind of relates to the last question. But
- also any client that who would have said the things would
- have been saying hearsay statements, which are not
- permitted. I can't cross-examine any of that.
- 9 MR. NELSON: Your Honor, for purposes of
- proving damages, in the ultimate trial, that certainly
- may be the case, but for purposes of today, what we're
- 12 looking at is --
- THE COURT: I will overrule that objection. 13
- 14 MR. NELSON: Thank you, Your Honor.
- 15 THE WITNESS: Can you repeat the question?
- BY MR. NELSON: 16
- Q. What have you observed in the course of your
- business as these statements coming up?
- A. I certainly have not been contacted as much
- from people looking online for licensed contractors. I'm
- part of the National Association of Remodeling Industry,
- so I appear on there. So if someone is typing in via the

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- website for licensed contractors, they would come up and
- be able to see my information and, in turn, do research.
- 3 Certainly, business slowed down, as well as
- people inquiring as to why this was being said about me
- from clients, previous clients to potential clients, and
- people in general that I didn't know if they were looking
- for or didn't need a contractor or did need a contractor.
- So they were simply inquiring as to why this had been
- 9 said.
- 10 THE COURT: Now, the fact that your business
- may have been off could have happened by several other
- things. I think what we're looking for is somebody
- saying to you I read something bad about you.
- THE WITNESS: Well, yes, that was definitely 14
- said, definitely said. 15
- THE COURT: On how many occasions, 16
- approximately? 17
- THE WITNESS: I don't know. Four or five. 18
- THE COURT: Okay. Are these clients, or 19
- potential clients? 20
- 21 THE WITNESS: Two or three clients, and
- several others were potential clients. In my line of

And certainly I had not pursued it prior to 1

- 2 this situation because most of my clients are by direct
- 3 referral or investors, and so I'm not aggressively
- marketing myself in that aspect.
- But certainly once I realized the importance
- of being accredited or rated, I followed through with it.
- So it's very important in my line of work.
- 8 Q. But is it necessary?
- **9** A. It's certainly not necessary, and not
- necessary at all. I have been in business almost eight
- years up until recently just getting it. It's not
- necessary at all. 12
- 13 Q. What effect do statements contained in
- Exhibit 1 through 4 have on a business like yours?
- 15 MR. BACON: Your Honor, I have to object to
- his testimony of the effect. That's for the Court to
- determine. 17
- THE COURT: Sustained. 18
- BY MR. NELSON: 19
- 20 Q. In the course of your business, have you
- observed these statements in particular collating up in
- business context?

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- 1 work, I'm sure like a lot of other business, you don't
- 2 necessarily know if you have a client in front of you
- 3 until they actually state it. They could be just
- 4 inquiring, or just doing some background checks for
- 5 themselves.
- BY MR. NELSON:
- 7 Q. But do you know the full extent to which
- 8 these statements have had an effect on owners of your
- 9 business?
- 10 A. There is no way to know the current damages,
- 11 previous damages, or future damages because I have a
- 12 telecom background. As such, once it's posted, even if
- 13 it's physically removed, there are catches and other
- 14 people that can capture this information and spread it
- around the Internet, and you cannot stop it, so.
- 16 Q. What is your business motto in terms
- 17 developing business?
- 18 A. I market from the most basic neighborhood
- 19 listserves, to creating social events, existing and
- 20 potential future clients, to the most previous clients.
- 21 I do a lot of business from referrals. A lot of business
- 22 from people who find me online.

- 1 was charged with a crime, that's not true. That there
- 2 was a current investigation against me. Not true. That
- 3 additional sanctions were on imposed on me by DPOR. Not
- 4 true. So the majority of this write up is, I would say,
- 5 all of it is false.
- 6 And I went the step in contacting these
- 7 organizations or entities that she referenced and got
- 8 verification that, in fact, these things are false. So
- 9 it's very harmful. It was also personally --
- MR. BACON: I will object and ask the Court
- 11 to strike his statement that he got confirmation that
- 12 these are false from independent sources. That's hearsay
- 13 at a minimum.
- THE COURT: He has a letter from the Attorney
- 15 General saying that they never had a complaint.
- THE WITNESS: I have an e-mail as well from
- 17 DPOR stating there were never any charges or sanctions.
- MR. BACON: Well, I would like to see the
- 19 letter that there were never any charges or sanctions.
- 20 We will get into that.
- THE COURT: It's in there in one of those
- 22 exhibits.

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- I sent out my portfolio. It's online. And
- 2 they look at my companies information, as well as my
- 3 portfolio seeing the kind of work that I do. And then
- 4 inquiring the kind of job that they want done, if I do it
- 5 and my experience with that kind of project.
- 6 Q. To what extent are personal referrals that
- 7 source of business?
- 8 A. It's a big part of my business because they
- 9 know me, they know myself and they trust me a lot of
- 10 times. You're looking at a lot of different contractors,
- and you have to go on trust or faith. You don't know
- 12 what you will have. You're simply making a decision on
- what you hear, what you see, or what you read.
- And a large portion of my business is based
- 15 on physical, either seeing in person or seeing online or
- 16 reading, but whether it be recommendations, or whether it
- 17 be photo and gaining businesses from that.
- 18 Q. Of these statements that have been made
- 19 regarding you, are there any that, in particular, are
- 20 harmful to your reputation?
- 21 A. The majority of referrals, her postings are
- 22 harmful and quite insulting. And the fact she states I

- 1 MR. BACON: Okay.
- 2 THE COURT: Let's move on.
- 3 MR. NELSON: I'm sorry?
- 4 THE COURT: Let's move on
- 5 MR. NELSON: Thank you, Your Honor.
- 6 BY MR. NELSON:
- 7 Q. In fact, let's move to Exhibit 9, if you
- 8 could; do you recognize this document?
- 9 A. I do.
- 10 Q. And what is it?
- 11 A. It's a letter in response to my inquiry to
- 12 the Office of the Attorney General responding to my
- 13 concern of the posting online by Ms. Perez stating that I
- 14 had a previous court cases against me for unfinished
- 15 work.
- And it says here, that in thorough review of
- our records covering the last three years, show no
- 18 complaint on file regarding this company, referencing my
- 19 company.
- MR. NELSON: Your Honor, I would move for the
- 21 admission of Exhibit 9.
- MR. BACON: No objection

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- 1 THE COURT: It will be received.
- 2 [Whereupon, Plaintiff's Exhibit Number 9 was
- 3 admitted into evidence.]
- 4 BY MR. NELSON:
- 5 O. If Ms. Perez were to make additional
- 6 statements along the same lines as the previous ones,
- 7 would those new statements create additional injury for
- 8 your company?
- 9 A. Yes.
- MR. BACON: Your Honor, I will have to
- 11 object.
- THE COURT: Sustained. That's what this is
- 13 all about.
- MR. NELSON: Thank you, Your Honor.
- 15 BY MR. NELSON:
- 16 O. Have the statements made so far created a
- 17 form of injury?
- **18** A. Certainly, professionally and personally.
- 19 I'm at a loss of words as to what Ms. Perez' actions --
- 20 I'm flabbergasted. Anybody that knows my business
- 21 professional or personally knows that I'm more willing to
- 22 work out something. And for her to have accusations

- 1 Q. And am I correct that you have average
- 2 project costs between \$25,000 to \$50,000, and some are
- 3 between \$50,000 and \$100,000; is that right?
- 4 A. No.
- 5 O. That' not correct?
- 6 A. Well, different projects vary. The average
- 7 deck cost would be \$25,000. A kitchen might be \$50,000.
- 8 A home renovation might be \$100,000 to \$200,000. So it
- 9 really depends. The average is really not per type of
- 10 project.
- 11 Q. Am I correct that when you started your Dietz
- 12 Development, LLC, you obtained a license in the District
- 13 of Columbia; is that correct?
- 14 A. Correct.
- 15 Q. Even when you started doing work in the state
- 16 Maryland, you obtained a license to do that construction
- 17 work; is that correct?
- 18 A. Correct.
- 19 Q. And Ms. Perez' home is located in Virginia,
- 20 correct?
- 21 A. Correct.
- 22 Q. And when you went to do her work, you did not

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- 1 presented as fact online, that's damaging to me
- 2 personally and professionally when, in fact, she knows
- 3 very well that they are, in fact, false.
- 4 And if she had done research, she would have
- 5 been able to show that, in fact, she was wrong. She had
- 6 plenty of time to retract that. But, in fact, she
- 7 actually expanded her false accusations online throughout
- 8 the entire time multiple times.
- 9 MR. NELSON: Your witness.
- MR. BACON: Your Honor, if I may give you our
- 11 binders. I will give the witness the originals, and the
- **12** Court can have a copy.
- THE COURT: Sure. And counsel can have a
- **14** copy.
- 15 CROSS-EXAMINATION
- 16 BY MR. BACON:
- 17 Q. Mr. Dietz, I have a binder in front of you
- 18 identified as defendant exhibits. I will ask you to look
- 19 at some of those exhibits.
- First, let me start by asking you, am I
- 21 correct that you been in business since 2005?
- 22 A. Correct.

- 1 obtain a license from the state of Virginia, did you?
- 2 A. No
- 3 Q. Now, the work that you did for her was begun
- 4 roughly in June of 2011; is that right?
- 5 A. Correct.
- 6 Q. At the time you did the work, you didn't have
- 7 either a Class A, B or C license under Virginia, did you?
- 8 A. No.
- 9 Q. Now, the Department of Virginia Professional
- and Occupational Regulation of the state of Virginia
- 11 investigated you in connection with doing work with
- 12 without a license: isn't that correct?
- 13 A. Correct.
- 14 Q. And that --
- 15 A. Well, let's clarify that. It was
- 16 investigated based on Ms. Perez' complaint.
- 17 Q. That was with respect to the work that you
- 18 did here at her home in Virginia?
- 19 A. Correct.
- 20 Q. Okay. And the person who was involved in the
- 21 investigation for what I will refer to as DPOR was a lady
- by the name of Cheryl Queen; isn't that correct?

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- 1 A. Correct.
- 2 Q. And am I correct that you told Ms. Queen that
- 3 you did not have a have Virginia state contractor's
- 4 license?
- 5 A. Correct.
- 6 Q. Let me direct your attention Exhibit Number
- 7 1, Defendant's Exhibit Number 1. Do you see the last
- 8 line on the first page where it says Dietz stated this he
- 9 does not have a Virginia state contractor's license
- 10 because he does not market or offer contracting work in
- 11 Virginia?
- 12 A. I do see that.
- 13 Q. Okay. Am I correct that you did not, at
- 14 least up until this time September 10,2012, you did not
- 15 market either online or otherwise or offer contracting
- 16 work in Virginia?
- 17 A. Correct.
- 18 Q. It also states about the middle of the
- 19 Exhibit Number 1, it says Dietz stated that the lien had
- 20 since been dismissed. You filed a mechanic's lien; is
- 21 that right?
- 22 A. That's correct.

- 1 posting or compliment or what not, but it took place on
- 2 Facebook. She purchased a home, and I congratulated her.
- 3 Q. And between the two of you, you both never
- 4 signed an actual agreement for this work?
- 5 A. No, but I sent it to her, she didn't sign it.
- 6 Q. When did she tell you to stop working on her
- 7 home?
- 8 A. I don't know. End of July, end of August,
- 9 approximately.
- 10 Q. Let me ask you to turn to Defendant's Number
- 11 2. It's the next one over; do you see the e-mail chain?
- 12 A. Yes
- 13 Q. It's an e-mail from you dated June 22, 2011.
- 14 And you say I'm bringing another one of my electricians
- out to the house to review the wiring to see the issue;
- she had an issue with some wiring?
- 17 A. Well, it was preexisting.
- 18 Q. You just answer the question. Did she have
- an issue with some of the wiring?
- 20 A. That's what she says.
- 21 Q. Did you agree that she had an issue with some
- 22 of the wiring?

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- 1 Q. And you said you dismissed mechanic's lien;
- 2 how did you do that?
- 3 A. I didn't say I dismissed it.
- 4 Q. It says Dietz stated the lien has been
- 5 dismiss?
- 6 A. I didn't write that.
- **7** Q. Did you tell her the lien had been dismissed?
- 8 A. I certainly didn't say that.
- **9** Q. So this is not true what she wrote?
- 10 A. She says here Dietz stated the lien has since
- 11 been dismissed.
- **12** O. But that's not true?
- 13 A. I can't recall the exact conversation, but I
- 14 certainly would not have said it was dismissed.
- 15 Q. Okay. Now, in terms of the Facebook
- 16 communication between yourself and Ms. Perez, does she
- 17 approach you, or did you approach her?
- **18** A. I don't recall. I do recall complimenting
- 19 her and congratulating her on her new purchase.
- 20 Q. So you would have seen that online and
- 21 communicated via Facebook?
- 22 A. I don't recall. I don't recall any and every

- 1 A. Yeah.
- 2 Q. And do you see her e-mail on the same page
- 3 where she said I'm getting estimates for the work?
- 4 A. Sure.
- 5 Q. That was for the work that needed to be done;
- 6 isn't that correct?
- 7 A. No. She doesn't have a good grasp of what
- 8 construction is or what not. So when she purchased the
- 9 home, she assumed it was 100 percent perfect. It's an
- 10 older home, as such, anyone who owns a home knows that
- 11 sometimes one thing can go wrong that wasn't wrong a day
- **12** go.
- And this electrical issue was certainly not
- 14 my issue, but I had to bring somebody else to show it was
- 15 not my issue. And I was not contracted to do this issue.
- 16 But out of the goodness of my heart, and as a
- 17 professional, I was trying to assure that it wasn't my
- 18 fault, and to rectify any problem that she might have
- 19 assumed that was my fault.
- 20 Q. At the bottom of first page of Exhibit 2,
- 21 you're writing to her please send me the fixes list; is
- 22 that correct?

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- 1 A. Yes, I see that.
- 2 Q. And the last sentence says I will send you a
- 3 final invoices once I receive your fixes.
- 4 So you never previously invoiced her until
- 5 you received the fixes list; isn't that correct?
- 6 A. She had a contract.
- 7 Q. You can answer the question, sir. You never
- 8 previously invoiced her for anything until after you
- 9 received her fixes list; isn't this correct?
- 10 A. No, that's incorrect.
- 11 Q. Okay. Am I correct that you filed a lawsuit
- against her in your own name?
- 13 A. Yes.
- 14 Q. Okay. Let me direct your attention to
- 15 Exhibit 3, Defendant's Exhibit 3. Is this the lawsuit
- 16 that you filed in your own name?
- 17 A. It is.
- 18 Q. And you filed this for a return date of
- 19 August 17, 2011; isn't this right?
- 20 A. That's what it says.
- 21 Q. And you were suing her for \$9340, correct?
- 22 A. Correct.

- 1 going with that.
- 2 BY MR. BACON:
- 3 Q. Now, you were suing based on the invoice that
- 4 you previously referred to. And that is Defendant's
- 5 Exhibit Number 4; do you see that?
- 6 A. I'm sorry, I don't follow.
- 7 Q. Go to Defendant's Exhibit Number 4.
- 8 A. Okay. What was your question?
- 9 Q. You were suing on this invoice; isn't that
- 10 correct?
- 11 A. What invoice are you talking about, Exhibit 5
- **12** or 4?
- **13** Q. Exhibit 4.
- 14 A. I'm sorry, sir. Yes.
- 15 Q. Do you see that?
- 16 A. Yes.
- 17 Q. That's what you were suing Ms. Perez for;
- 18 isn't that right?
- 19 A. Correct.
- 20 Q. Let me ask you to turn to Exhibit Number 5;
- 21 do you see that?
- **22** A. I see it.

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- 1 Q. And you were suing her for \$3250 and attorney
- 2 fees, correct?
- 3 A. Correct.
- 4 Q. But you didn't have a lawyer, did you?
- **5** A. I had an attorney that I was for consulting.
- 6 And they told me that was the costs to fight the court
- 7 case.
- 8 Q. But they didn't fight the court case for you,
- 9 you fought the court case, didn't you?
- 10 A. That's correct.
- 11 Q. So even though you didn't have a lawyer, you
- were asking for \$3250?
- MR. NELSON: Your Honor, I would object on
- 14 relevance. Pleadings will always confirm facts.
- 15 THE COURT: Sustained.
- 16 BY MR. BACON:
- 17 Q. Just so I'm clear, you did not have an
- 18 attorney represent in connection with this suit; is that
- 19 correct?
- MR. NELSON: Objection, Your Honor.
- MR. BACON: I think I'm entitled to ask that.
- THE COURT: The whole point is where are we

- 1 Q. Is that the final order in the case granting
- 2 summary judgment in favor of Ms. Perez?
- 3 A. That what's it says.
- 4 Q. Now, let me direct your attention to Exhibit
- 5 Number 6; do you have that in front of you, sir?
- 6 A. I do.
- 7 Q. And it's dated August 17, 2012; is that
- 8 correct?
- 9 A. No.
- 10 Q. Excuse me -- August 13, 2012; is that
- 11 correct?
- 12 A. Correct.
- 13 Q. Now, even though it's faded, it does say
- 14 three lines above your signature on page 2; do you see
- 15 your signatures on page 2?
- 16 A. I do.
- 17 Q. And three lines above your signature, it says
- 18 Dietz Development states that he did not have a
- 19 contractors license; is that correct?
- 20 A. I see that.
- **21** Q. And you were advised that not having a
- 22 contractor's license in Virginia was a crime; isn't that

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- 1 correct?
- 2 MR. NELSON: Objection on ambiguity, Your
- 3 Honor.
- 4 BY MR. BACON:
- 5 Q. Well, it says above your signature failure to
- 6 comply with these provisions may result in a criminal
- 7 prosecution, do you see that, a Class I misdemeanor?
- 8 A. I see where it says may.
- **9** Q. Do you see on page 1 where it says failure to
- 10 comply with these provisions may result in a Class I
- 11 Misdemeanor?
- 12 A. I see that it says may result, yeah.
- 13 Q. So am I correct that they had advised you
- 14 that you needed to comply with obtaining a license and
- 15 then you agreed to do that?
- 16 A. No.
- 17 Q. Okay.
- 18 A. You're not correct.
- 19 Q. Did you obtain a contractor's license after
- 20 August 17, 2012, and you signed this?
- 21 A. Yes.
- 22 Q. Let me ask you to look at Exhibit Number 7.

- 1 investigator?
- 2 A. Yes.
- 3 Q. Advising her that you were actually going
- 4 ahead and obtaining your Virginia Class C License?
- 5 A. Correct.
- 6 Q. And you're FedExing that information?
- 7 A. Correct. That's what it says.
- 8 Q. So can we agree that as of August 29, the
- 9 date that you sent this, that your LLC was not registered
- to do business in Virginia?
- 11 A. Yes.
- **12** Q. Let's me ask you to look at Exhibit Number 9.
- 13 Can we agree that is certificate for the state of
- 14 Virginia indicating that you obtained your certificate to
- 15 transact business in Virginia on August 31 --
- 16 A. That's what it says.
- **17** Q. -- 2011?
- 18 A. That's what it says.
- 19 Q. You don't dispute that?
- 20 A. That's what it says.
- 21 Q. Now, did you receive an e-mail from Ms. Queen
- 22 on September 10 advising you that, as a result of what

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- 1 And that's dated August 24, 2012?
- 2 A. Yes.
- 3 Q. Did you receive this indicating that you had
- 4 no license, no certification or registration in the state
- 5 of Virginia?
- 6 A. I don't recall this, but I certainly might
- 7 have.
- 8 Q. Will you agree with me that as of this day,
- 9 August 24, 2012, you did not have a license, and you did
- 10 not have a Certificate of Authority to do business in
- 11 Virginia, and you were not registered in Virginia?
- 12 A. I can't state that because I do remember
- 13 during this process I did get my license and was
- 14 registered, but I don't know the exact dates.
- 15 Q. Okay. Maybe I can help you.
- 16 A. Good.
- 17 Q. Now, as a result of this Exhibit Number 7,
- 18 did DPOR have you actually obtain a license?
- 19 A. They encouraged me to, but said I was not
- 20 required to.
- 21 Q. Let me direct your attention to Exhibit
- 22 Number 8. Is this your name next to the DPOR

- 1 you had done, your case would now be closed?
- 2 A. I'm assuming you're referencing --
- 3 Q. Exhibit Number 10.
- 4 A. -- Exhibit Number 10?
- 5 Q. Yes, sir. Do you recall receiving this?
- 6 A. Yes.
- 7 Q. And this is dated as September 10th?
- 8 A. Correct.
- **9** Q. Let me ask you to turn to Exhibit Number 11;
- 10 is that your complaint in this case?
- 11 A. It looks to be, yes.
- MR. BACON: The Court's indulgence.
- 13 BY MR. BACON:
- 14 Q. I will ask you to turn to -- before we get
- 15 back to Number 11, let me ask you to turn to Exhibit
- 16 Number 21.
- You had mentioned that you and Ms. Perez had
- 18 come up with a list of items on a spreadsheet. Is this,
- in fact, the spreadsheet, the not to exceed price?
- 20 A. That is one of the spreadsheets, yes. I
- 21 can't state verbatim that it's the exact because it's not
- on an Excel layout, but, yeah, it looks to be.

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- 1 Q. Let me go back to Exhibit Number 11, if you
- 2 could turn there, please.
- Paragraph 15, which is on page 3, you have
- identified which you believe are false statements
- beginning at paragraph 15A; do you see that?
- 6 A. I see where it says I've listed the problems,
- 7 yeah.
- 8 Q. And you've got quotes to what she said. Do
- 9 you see where it says in Paragraph in 15A Dietz?
- 10 A. I didn't write the document, but I see the
- 11 quotation marks.
- 12 Q. Well, you authorized your lawyer to do it?
- 13 A. Well, you're referencing me, so --
- 14 Q. And you have --
- 15 THE COURT: Excuse me. Where is that,
- Mr. Bacon? 16
- 17 MR. BACON: We're at paragraph 15A, Your
- 18 Honor.
- THE WITNESS: You're referencing actually B. 19
- 20 MR. BACON: I'm referencing paragraph 15A on
- 21 page 3.
- 22 BY MR. BACON:

- 1 thousands more than originally estimated; are you
- claiming that's a false statement?
- 3 A. That is absolutely a false statement.
- Q. Do you know whether or not she had to get
- other contractors in to do this work?
- A. She sent me an e-mail stating that she would
- send me --
- 8 Q. That question was, sir --
- A. Let me answer it, sir.
- Q. Just answer the question. Do you know
- 11 whether or not she had to have other contractors do the
- 13 A. She said she had intended to get other
- contractors, but she said she would also send me their
- invoices or quotes to then deduct what she owed me and
- she would pay me the difference.
- 17 She never sent me any information from other
- contractors, so I assumed she left her house as is when I
- had finished my work.
- Q. So the second sentence of paragraph 15A is
- what you're saying is false?
- 22 A. That's correct.

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- 1 Q. 15 A starts, Ms. Perez posted statements
- 2 online on Angie's list.com on January 31, 2012. And then
- 3 you attach Exhibit A; do you see that?
- 4 A. I see it.
- 5 Q. And Exhibit B and Exhibit C. And then you
- 6 say such statements include the following, and I want go
- through these statements.
- A. Where are you referencing?
- MR. BACON: May I approach the witness, Your
- Honor, to show him? 10
- THE COURT: Go ahead. 11
- MR. BACON: We will start here. 12
- THE WITNESS: Okay. All right. 13
- BY MR. BACON: 14
- 15 Q. So beginning at 15A, you identified the false
- statements. So let me ask you about 15A where it says
- Dietz Development was to perform painting, refinish, 17
- flooring, electric, plumbing and handiwork; are you
- claiming that's a false statement?
- 20 A. No.
- 21 Q. And she said I was instead left with damage
- 22 to my home and work that had to be reaccomplished for

- 1 Q. Paragraph B says my home was damaged, and the
- work had to be reaccomplished; are you claiming that's a
- false statement?
- A. Absolutely, because she provided me with no
- proof that she had to reaccomplish it.
- Q. Let me see if I can clarify that. Are you
- saying that it's false that she doesn't provide you with
- evidence, or are you saying it's false because it never
- happened?
- A. It never happened. I didn't damage her home.
- 11 Q. All right. Are you also saying that the work
- had to be reaccomplished, that's false as well?
- A. I don't know. She never provided proof one
- way or the other. And so when I left the home, I had
- finished the job with 100 percent professionals and
- thoroughness.
- 17 Q. The next item you say is false is 15C; do you
- see where it says I won on summary judgment?
- 19 A. That's correct. I see that.
- 20 Q. Are you saying that's false?
- 21 A. I'm not saying that's false.
- 22 Q. Okay. What in paragraph 15C are you saying

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- 1 that's false?
- **2** A. I didn't say that it's false.
- MR. NELSON: Your Honor, I believe the
- question is calling for a legal conclusion, and ask that
- it be -- I object. 5
- THE COURT: It's asking for a legal
- conclusion. The part in parens was put there by your
- client? 8
- MR. BACON: Yes, it was all. When I asked
- was there anything in paragraph C, I believe he said, no.
- He's not saying it's false.
- THE COURT: Well, he's probably wrong. Go 12
- ahead. 13
- BY MR. BACON: 14
- 15 Q. Let me direct your attention to paragraph
- 15D. Do you see that where the statement says he invoiced
- me for work not even performed, and also sued me for work
- not performed; are you claiming that is false?
- 19 A. Yes. I never invoiced for something I didn't
- 20 do.
- 21 Q. The last paragraph, paragraph E. This is
- 22 after -- I'm quoting -- this is after my first ever

- 1 Q. I understood, but can you please answer my
- 2 question. Am I correct --
- 3 A. Yes, I didn't have it August.
- **4** Q. -- you had no accreditation?
- 5 A. No. And 99 percent of the contractors out
- there don't have accreditation.
- Q. Now, paragraph A says that the company itself
- is not legitimate and lacking BBB accreditation.
- Now, am correct as of August 13, 2012, as you
- said, you did not have accreditation?
- 11 A. Correct, but that doesn't make me
- illegitimate.
- 13 Q. Well, the company, it says, is not
- legitimate. Am I correct you did not obtain your
- certificate to do business in Virginia until after August
- 13, 2012; isn't that correct?
- A. That's correct. But it says here the company
- itself is not legitimate if you don't have accreditation.
- And I'm saying as a professional contractor, and a
- majority of the contractors out there are not accredited
- by the BBB. It's through your own choosing you pay a
- service fee for accreditation.

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- 1 Q. Let me ask you with respect to paragraph 16
- 2 B. What are you claiming is not true about paragraph 16
- 3 B?
- 4 A. I never claimed to have a Virginia license.
- 5 Q. Okay. So you're saying that you never
- claimed to have a Virginia license?
- A. Nope.
- 8 Q. And you advised Ms. Perez of that?
- A. It never came up.
- 10 Q. It never came up. Okay. Let me direct your
- attention to paragraph 16C. What are you claiming in
- paragraph 16C that is not true or false?
- 13 A. The majority of it, if not all of it, it
- states here legitimate companies don't avoid the BBB. I
- was a legitimate company prior to coming back into
- contact with Ms. Perez, and I wasn't accredited, nor
- rated by the BBB. 17
- I have several or other professional and
- personal contacts that run their own businesses and they 19
- are not accredited and they are multi -- excuse me. Let
- me finish, please -- millionaires, and they are not
- accredited. 22

2 was the only one with a key; what about that is false?

3 A. Well, I don't know that was her first, last

1 police report when I found my jewelry missing, and Dietz

- 4 or second or fifth police report. And how do I know that
- 5 I was the only one without a key -- or with a key.
- 6 Excuse me.
- 7 Q. Okay. So that is what's false about that.
- 8 Let me direct your attention to paragraph 16, which again
- refers to your statements. 9
- 10 Paragraph 15 refers to the Yelp posts. Do
- 11 you see that beginning on page 4 of Exhibit 11. And it
- 12 indicates what she posted on August 13; do you see that?
- 13 A. I see paragraph 16, yes.
- 14 Q. Now, when did your company receive the BBB
- accreditation?
- 16 A. An accreditation is not the first step. You
- actually get a rating, and then you get accreditation.
- But, I don't know, last month.
- 19 Q. But prior to that in August of 2012, is it
- 20 fair to say that you were not accredited?
- 21 A. No, but you don't have to operate with
- 22 accreditation. That's your own choosing.

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- 1 Q. Let me ask you this question. Do you know
- 2 what she meant by legitimate?
- 3 A. It seems to me --
- 4 Q. No. I'm asking you do you know what she
- meant by legitimate?
- MR. NELSON: Objection, Your Honor. It's an
- objective standard.
- THE COURT: Where are we going with this, 8
- whether he knows what it means by legitimate?
- THE WITNESS: It's more the perception of a 10
- public reading. 11
- 12 THE COURT: It's a slur, isn't it?
- MR. BACON: I don't think so, Your Honor. If 13
- you're illegitimate because you don't have authority to
- do business in a particular state, you don't have a
- license. And you have to have a license because to not
- have a license is a crime in Virginia. I don't see how
- that makes you legitimate.
- THE COURT: Clearly, legitimate companies do 19
- not avoid the BBB, that's an opinion, right? 20
- MR. BACON: I agree. It's an opinion, which
- 22 is irrelevant.

- saying that's not true?
- 2 A. That's absolutely false.
- **3** Q. Why is that false?
- A. Because I confirmed with the police
- department --
- 6 Q. You confirmed --
- A. I'm answering your question.
- 8 Q. Okay. As of August 13, 2012, you confirmed
- with the police department what?
- A. Multiple times I spoke with Officer Wilden or
- with other people with the Fairfax County Police asking
- if there is a current investigation. If they needed any
- additional information from me, any documents, if they
- needed to talk to any of my workers, if they needed to
- talk to any of my subcontractors regarding this case
- because I didn't want anything holding over my head with
- relevancy to this because this is false.
- **18** Q. So what did you confirm as of August 13,
- 20 A. There was no ongoing investigation.
- 21 Q. Who did you confirm that with?
- 22 A. The police department.

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- 1 O. Who?
- 2 A. I called the McLean office on Old Chain
- 3 Bridge Road.
- **4** Q. Do you have a name of the officer?
- 5 A. No. Officer Wilden was no longer at that
- 6 office at that time I believe.
- 7 Q. Is there anything else in Paragraph E that
- you're claiming is false?
- A. Yes. I did return the key, actually
- certified mail. And the no trespassing signs at the
- complex, I didn't see any. I'm not sure they're not
- there or there. It's not up for debate. But when I came
- to visit her house, I had to been told to stay away.
- 14 Q. Okay. And just so I'm clear, you did have a
- police offer call you about the theft; is that right?
- 16 A. Correct.
- 17 Q. So you knew there was an investigation going
- on and who was involved with it?
- 19 A. That was last year, yeah, 2011.
- 20 Q. Yes. As of the date of this.
- 21 A. Date of what?
- 22 Q. As of the date -- so as of this date, you

THE WITNESS: But it's insinuating that I'm

- illegitimate by not getting accreditation, sir.
- BY MR. BACON:
- 4 Q. I just want to understand what about the part
- 5 where it says this contractor's case was dismissed in my
- 6 favor; are you saying that's not true?
- 7 A. No.
- 8 Q. So that is true, your case was dismissed?
- **9** A. The case was dismissed.
- 10 Q. In whose favor?
- 11 A. It says my favor right there.
- 12 Q. So that's her favor, Ms. Perez' favor; isn't
- 13 that correct?
- 14 A. I assume that's what it says, yeah.
- 15 Q. Paragraph D, am I correct that you're saying
- that is false because you're claiming that you did not
- invoice her for work not performed?
- 18 A. That's correct. I did not work invoice for
- work that was not performed. I only invoiced for work
- that was performed.
- 21 Q. In paragraph 16E, the matter with the police
- 22 continues to be pursued as August 13, 2012; are you

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- 1 knew there was an investigation?
- 2 A. What date are you referring to?
- 3 Q. Today. You knew there was an investigation
- 4 going on as a result this?
- 5 A. Correct. But not at the time of the posting
- 6 or the modification or update to her posting.
- 7 Q. When are you claiming that the matter was
- 8 closed?
- 9 A. I don't know the specific date because the
- 10 police department doesn't give you that information, but
- 11 months and months and months ago, I called and went into
- the office, and they said there is no current
- 13 investigation.
- 14 Q. Do you know when Ms. Perez filed the police
- 15 report?
- 16 A. I would assume sometime June, July, August of
- 17 last year.
- 18 Q. Now, are you saying that there may be no
- 19 trespass signs in her neighborhood?
- 20 A. I don't know.
- 21 Q. You just don't know?
- 22 A. I never saw any.

- **1** A. 16 E or 17 E?
- **2** Q. 17E. The only difference.
- 3 A. Well, you have to be more clear. I didn't
- 4 know if you're back at 16 or 17.
- 5 The first item is the wrong line of work.
- 6 Who is to determine I'm the wrong line of work. 99.9
- 7 percent of my customers are happy customers. That the
- 8 project was redone by legitimate contracts at additional
- 9 costs due. I don't know that legitimate contractors --
- 10 and again, who determines legitimate contractors, and
- 11 additional costs were incurred.
- I have an e-mail stating from Ms. Perez that
- 13 she would let me know what additional contractors go in
- 14 at what additional costs were incurred and then forward
- 15 that information and she never did.
- And the client was left filing a theft
- 17 report.
- 18 Q. You're saying she filed a theft report?
- 19 A. Are you going to let me finish or what? I
- 20 mean, please. I was going to last point there. The
- 21 client is left filing a theft report.
- She did file a theft report, but I don't know

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- 1 Q. And you do agree that you did go to her front
- 2 door and knocked; is that correct?
- 3 A. That's correct.
- 4 Q. Now, just so I'm clear, with respect to the
- 5 paragraph 17 of the complaint, the paragraphs A through
- **6** F, are those the same in paragraph 16 that you referred
- 7 to?
- 8 A. They are not the exact same.
- 9 Q. Well, 17 A, the company itself is not
- 10 legitimate and lacking BBB accreditation; that's the same
- **11** isn't it?
- 12 A. I can help you if you want.
- 13 Q. Tell me what differences are.
- 14 A. Look to be A the same, B the same, C the
- 15 same.
- MR. NELSON: Your Honor, we're happy to
- 17 stipulate only paragraph E is different, that paragraph F
- 18 corresponds with paragraph E of 16.
- MR. BACON: Thank you. That moves it along.
- 20 BY MR. BACON:
- 21 Q. Let me ask you about paragraph E. What are
- 22 you claiming in paragraph E as defamatory or false?

- 1 if it's because of me, or for some other reason.
- 2 Q. Okay. Now, let me ask you about paragraph 18
- 3 A on the same page 6. What do you claim is defamatory or
- 4 false about paragraph 18 A?
- 5 A. DPOR never imposed any sanctions on me. And
- 6 certainly didn't pose further since there is no sanction
- 7 from the get-go.
- 8 Q. Well, you didn't send in your paperwork --
- **9** A. I wasn't required to.
- 10 Q. Can I finish the question?
- 11 A. Sure. I apologize.
- 12 Q. Thank you. You did not send in the paperwork
- 13 for your license until 18 August 29; isn't that correct,
- 14 sir?
- 15 A. Correct.
- 16 Q. So the DPOR file was open when the post was
- 17 made; isn't that correct?
- **18** A. That's correct -- well, I would assume so.
- 19 Q. Let me ask you to go paragraph 18 B. What
- 20 are you claiming about defamatory about paragraph 18 B?
- 21 A. That seems to be an opinion. It's a very,
- 22 very specific statement. So it says falsehoods in this

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- 1 category will always get an F grade.
- 2 Q. You will agree with me that that's an
- 3 opinion; is that correct?
- 4 A. It's an opinion in that I fall into that
- 5 category, and therefore I get an F grade.
- 6 Q. And will you agree with me that when there is
- a complaint, there is a decline or a grade, downgrade
- 8 when someone files a complaint?
- 9 A. Not necessarily -- well, you're referencing
- 10 the F grade?
- 11 Q. I'm just asking you will you agree with me
- that the Better Business Bureau will downgrade someone
- when the complaint is filed --
- 14 A. This is referencing Angie's list, not the
- BBB.
- 16 Q. May I finish? Will you agree with me that
- there is a downgrade when there is a complaint or a
- violation of the law filed in connection with the Better
- Business Bureau, will you not?
- 20 A. That's correct, but I never had a downgrade
- 21 from the Better Business Bureau.
- 22 Q. Well, you have not had any grade until just

- 1 Q. I know that the name is deleted, but do you
- 2 recall this complaint that indicates that it happened
- 3 between May and December 2012?
- A. I do recall.
- Q. And do you recall page 2 of the statement
- Chris Dietz was paid for renovation of my property. He
- was paid for repair installation of the following items?
- A. I do see this, yes.
- Q. Chris never fixed these items as requested.
- And has invoiced me for extra work I did agree to
- verbally or in writing. He's trying to extort money from
- me, and has not completed the work he was paid to do; do
- you see that?
- 14 A. I see that.
- 15 Q. And you're familiar with this. And this was
- filed January 28, 2011?
- A. And it was dismissed for not having any basis
- for it. She also owed me money. So there wasn't --
- Q. Just so I'm clear, you, in fact, received a
- copy of this complaint; isn't that correct?
- 21 A. I did.
- 22 Q. And the actual print that was not clear from

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- 2 A. Your Honor, can I clarify? You're
- 3 referencing sentence B. And the F grade that we're
- 4 referencing in our complaint is regarding Angie's list,
- 5 not the Better Business Bureau?

1 recently; isn't that correct?

- 6 Q. Let me direct your attention to paragraph 18
- 7 C; do you see that?
- 8 A. I do.
- 9 Q. What do you claim in paragraph 18C was
- 10 defamatory or false?
- 11 A. I was never sued by another client.
- 12 Q. And is there any mention in paragraph 18 C
- 13 which Office of the Attorney General is identified there?
- 14 A. No, it does not state any state or city or
- county.
- 16 Q. Isn't it true that a complaint was filed
- against you in January 2011 with the D.C. Attorney
- General's Office for a job that you did in 2010?
- 19 A. Yes, there was a complaint filed.
- 20 Q. Let me ask you to look at Exhibit 12; do you
- 21 have this number in front of you?
- 22 A. I see it here, yes.

- page 2 is fully set forth on page 3, isn't that correct,
- by the person complaining?
- 3 A. I'm assuming so. But I can't really assume
- or agree or disagree because I don't remember this.
- 5 Q. So at the time the post was made by
- Ms. Perez, there had been a complaint made against you
- with the Attorney General's Office about your
- construction work, and you were investigated by that
- Attorney General's Office?
- A. Sure. Anybody can file a complaint. And if
- a government agency is given a complaint, due diligence,
- they have to investigate. But you also can find out if
- you did a through research that it was dismissed.
- 14 Q. Are you saying that the Attorney General's
- Office did not investigate and sue you?
- **16** A. The Attorney General did not sue me here.
- O. Now, the rest of the documents in Exhibit
- Number 12 identify your contract and your other
- paperwork; isn't this correct?
- A. That's what it looks like.
- 21 Q. Well, let me direct your attention to the
- 22 Exhibit 13 with respect to your statement here that you

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- 1 were not sued by the Attorney General's Office. Do you
- 2 recall this lawsuit by the Attorney General's Office the
- 3 says in the first paragraph this District of Columbia by
- 4 the Office of the Attorney General filed suit against you
- 5 and Dietz Development, LLC, your company?
- 6 A. I do see that.
- 7 Q. So, in fact, contrary to what you just said,
- 8 you were, in fact, sued by the Office of the Attorney
- 9 General's Office in D.C.; isn't that correct?
- MR. NELSON: Objection to characterization,
- 11 Your Honor, that's not what he said.
- THE COURT: Overruled. Go ahead.
- 13 THE WITNESS: No. Unless you were thorough
- 14 or clearer, you're referencing two different cases here.
- 15 BY MR. BACON:
- 16 O. Okay. Well, this is the lawsuit that is Case
- 17 Number 1949-11, filed March 15, 2011; do you see that?
- **18** A. I see that.
- 19 Q. And it starts the District of Columbia by the
- 20 Office of Attorney General for the District of Columbia
- and through its attorneys bring suit against Christopher
- 22 Dietz, Individually, and Dietz Development, LLC; do you

- 1 you didn't return a security deposit?
- 2 A. Yes.
- 3 Q. Let me direct your attention to Exhibit
- 4 Number 15. Can you identify this lawsuit against your
- 5 tenants that sued you as a result that they alleged
- 6 multiple housing code violations and a breach of your
- 7 lease?
- 8 MR. NELSON: Objection, Your Honor, to
- 9 relevance. I don't believe that any of the allegations
- 10 in the complaint get to a statement that he's never been
- 11 sued.
- MR. BACON: Well, I think it goes to, Your
- 13 Honor, among other things, his claim that he has never or
- 14 not only been not sued by the Attorney General's Office,
- 15 but never been sued. If we can stipulate to these items,
- 16 I don't have a problem.
- MR. NELSON: I will stipulate that he has
- 18 been sued.
- THE COURT: All right. Let's move on.
- 20 BY MR. BACON:
- 21 Q. Now, just so I'm clear, let me ask you to
- 22 look at Exhibit C to your complaint, which Exhibit 11.

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- 1 see that?
- 2 A. I do see that.
- 3 Q. Do you agree with that, or do you disagree
- 4 with that?
- 5 A. That is what is written. But, Your Honor, to
- 6 clarify, we're referencing another document regarding
- 7 something completely different. So when he's insinuating
- 8 something else, he needs to be more clear.
- 9 THE COURT: All right.
- 10 BY MR. BACON:
- 11 Q. And this case that the Attorney General's
- 12 Office brought against you was for not paying your
- workers; isn't that correct?
- 14 A. That is what the case says, yes.
- 15 Q. Now, you have also had rental property in the
- 16 District of Columbia; is that correct?
- 17 A. Yes.
- **18** Q. Let me direct your attention to Exhibit
- 19 Number 14. Can you identify this Exhibit Number 14 as a
- 20 lawsuit?
- 21 A. Yes.
- 22 Q. That your tenants filed against you because

- 1 Other than what you said here today so far,
- 2 is there anything else in Exhibit C that you claim to be
- 3 defamatory?
- **4** A. Where are you saying in paragraph C?
- 5 MR. BACON: May I show him, Your Honor?
- 6 THE COURT: Sure.
- 7 BY MR. BACON:
- 8 Q. So you have attached Exhibits, A, B, C that
- 9 you assert are defamatory, and as a result you have been
- 10 damaged. What I wanted to do is ask you about Exhibit C;
- 11 do you have that in front of you?
- 12 A. I do. I see it.
- 13 Q. My question is is there anything else that
- 14 that we have not already heard here today in Exhibit C,
- 15 the DPOR document that you're claiming to be defamatory?
- MR. NELSON: And, Your Honor, we would be
- 17 willing to stipulate that anything that has not already
- 18 addressed, we will not ask to be included in any
- 19 preliminary injunction.
- MR. BACON: Then I will move on to my next
- 21 question.
- BY MR. BACON:

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- 1 Q. Have you been damaged by Exhibit C, the DPOR
- 2 document?
- 3 A. Well, not specifically the DPOR document,
- 4 it's more the posting, the referencing of the
- 5 investigation. And the charges of the misdemeanor, Class
- 6 I Misdemeanor online by Ms. Perez.
- People can't readily have access to this
- 8 actual written complaint, they see Ms. Perez' online, and
- 9 they assume rightfully or wrongfully that she's stating a
- 10 fact.
- 11 Q. So Exhibit C, are you saying you have not
- been damage by Exhibit C itself?
- 13 A. Well, Exhibit C is actually a complaint and
- 14 not actually easily, publically available.
- 15 Q. My question is you have attached it as one of
- 16 your exhibits --
- 17 A. This is a reference --
- 18 O. Can I finish?
- 19 A. Sure.
- 20 Q. Have you attached it as one of your Exhibits
- 21 A, B and C indicating this statement has defamed me. And
- 22 I asking you with respect to this particular exhibit,

- 1 stipulate that for purposes of preliminary injunction, we
- 2 wouldn't include anything that wasn't specifically laid
- 3 out in the complaint.
- 4 MR. BACON: Then let me move to my next
- 5 question then.
- 6 BY MR. BACON:
- 7 Q. How have you been damaged by Exhibit D?
- 8 A. I know that for a fact that I lost one
- 9 client. I lost clients.
- 10 Q. Okay. What in Exhibit D caused you to lose
- 11 clients?
- 12 A. Stating that I committed a Class I
- 13 Misdemeanor. That I had further sanctions imposed
- 14 against me.
- 15 Q. Is that it?
- 16 A. I'm reading it. Businesses that fall within
- 17 that category also get an F grade. A bogus, nonpayment
- **18** case. That wasn't bogus.
- 19 I didn't keep any complaint from showing up
- 20 on the Better Business Bureau's website, that's the
- 21 Better Business Bureau's decision. I have no control
- 22 over there actions. The Consumer Protection Agency and

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- 1 Exhibit C, how has this exhibit defamed you?
- 2 A. The reference of this exhibit online has
- 3 damaged me and defamed me by assuming or referencing that
- 4 I am a criminal. That I have been charged with
- 5 misdemeanors. That I didn't finish my work. That I did
- 6 poor work, and the list goes on.
- 7 Q. And you're saying --
- 8 A. One other thing, too. This a politician
- 9 turned con artist, referencing I was vice president of my
- 10 senior class, I mean that's just an insult. I mean
- 11 that's 20 years ago.
- **12** Q. So that's how you have been damaged?
- 13 A. Sure. Being called a criminal. A crook. A
- 14 politician turned con artist. I believe con artist is an
- 15 abbreviation for convicted, right?
- **16** Q. Let me ask you about Exhibit D to your
- 17 complaint.
- **18** A. The next page?
- 19 Q. Yes. Is there anything else in Exhibit D
- 20 made in your stipulation that you claim to defamatory
- 21 other than what you have already said here today?
- MR. NELSON: And we would be happy to

- 1 the Office of the Attorney General are nothing relevant
- 2 to being sued by another client for unfinished work. I
- 3 was never sued by a former client for unfinished work.
- 4 Q. It says the Consumer Protection Agency and
- 5 the Office of the Attorney General are good sources.
- 6 A. Who stated --
- **7** Q. Who stated the Dietz had been sued by another
- 8 client for unfinished work. We just went through that,
- 9 didn't we?
- 10 A. Never sued, sir.
- 11 Q. The Office of the Attorney General sued you,
- 12 will you not admit that?
- MR. NELSON: Objection.
- 14 THE WITNESS: For what, wage, or unfinished
- 15 work?
- 16 BY MR. BACON:
- 17 O. Yes. For wage.
- **18** A. Well, it says here I was sued by another
- 19 client for unfinished work, not wages.
- 20 Q. You were investigated by them --
- **21** A. That doesn't say that here.
- 22 Q. I understand that. But you were also

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- 1 investigated by them for not doing work and extorting
- 2 money from a client; isn't that correct?
- 3 MR. NELSON: Objection. Relevance.
- 4 MR. BACON: I think it's very relevant, Your
- 5 Honor.
- 6 THE COURT: Is that the one that came out in
- 7 his favor?
- 8 THE WITNESS: Yes.
- 9 MR. BACON: It actually didn't come out in
- 10 his favor.
- 11 THE WITNESS: It was dismissed, sir. And I
- would be more than willing to bring in the assistant
- 13 attorney general who I know and have on my personal
- 14 contacts.
- THE COURT: Was that case dismissed, counsel?
- MR. BACON: It was eventually resolved, yes.
- 17 THE WITNESS: There was no legitimacy to the
- 18 case, sir.
- MR. BACON: The Court's indulgence. I will
- 20 just ask and see if I don't have any more questions.
- 21 THE COURT: Okay.
- MR. BACON: I don't have any more questions,

- 1 worms. You can install a light, but the wiring can be
- 2 faulty. And if I'm not required or contracted or hired
- 3 to run new wiring or ensure it works, simply installing a
- 4 light and making sure it works should occur. But if
- 5 there is defective wiring that is preexisting and I
- 6 wasn't hired or I asked to fix the wiring, then I can't
- 7 be held responsible for that, you know.
- 8 You're told to build a 10-foot wide table,
- 9 and the client has 36-inch open front door, it's not your
- 10 fault they asked for a 10-foot wide door and the table
- 11 doesn't fit into their door. I was asked to install a
- 12 light when there is faulty wiring. I can't be held
- 13 liable for that.
- MR. NELSON: Nothing further, Your Honor.
- 15 THE COURT: You may stand down.
- MR. BACON: The only other thing I would do,
- 17 Your Honor, is offer into evidence those specific
- 18 exhibits that we went through. I can get with the clerk
- 19 and go through that.
- THE COURT: All right. He will. You will
- 21 use those.
- MR. NELSON: The only thing I would ask on

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- 1 Your Honor.
- 2 REDIRECT EXAMINATION
- 3 BY MR. NELSON:
- 4 Q. With respect to the case brought by the D.C.
- 5 Attorney General, was that dismissed prior to reaching a
- 6 final judgment?
- 7 A. Yes -- actually, there was no case. It was
- 8 simply an investigation based on a complaint.
- 9 Q. And was the wages case dismissed?
- 10 A. It was settled.
- 11 Q. Okay. Looking at Defendant's Exhibit 2,
- 12 there is a discussion of wiring. Was the wiring issue
- 13 there something that was caused by your work?
- 14 A. No.
- 15 Q. And would you explain?
- 16 A. In old houses. A lot of electrical issues
- 17 appear, as well as plumbing. And one of things that I
- 18 was required or hired to do was switch out some light
- 19 fixtures.
- I don't recall if that light fixture was or
- 21 not. But assuming that it was, installing a light is one
- 22 thing, making sure it works is a whole different can of

- 1 that, Your Honor, is I just want a list of which
- 2 documents exactly we're talking about because I object to
- 3 14 though 16, in particular, I would object to.
- 4 THE COURT: He will do that. Are going to
- 5 call your client?
- 6 MR. BACON: Is he done?
- 7 MR. NELSON: That is our side, Your Honor.
- 8 MR. BACON: Yes, I would call Ms. Perez.
- 9 THE COURT: Before you do that, let's take 10
- 10 minutes.
- MR. BACON: Thank you, Your Honor.
- 12 [Off the record.]
- THE COURT: Please come up, Ms. Perez.
- 14 JANE PEREZ
- 15 called as a witness, having first been duly sworn,
- 16 was examined and testified as follows:
- 17 DIRECT EXAMINATION
- 18 BY MR. BACON:
- 19 Q. Please state your name and address for the
- 20 judge?
- 21 A. Jane Perez. 9307 Marycrest Street, Fairfax,
- 22 Virginia 22301.

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2 A. Yes, sir.

3 Q. What rank did you have?

4 A. Captain.

5 Q. Are you in the military now?

1 Q. Were you formerly in the military?

6 A. No, sir.

7 Q. The address that you just gave the judge, is

8 that a home or townhouse?

9 A. Townhome.

10 Q. What neighborhood is that in?

11 A. Stonehurst complex.

12 Q. Where is that located?

13 A. It's located in Fairfax, Virginia.

14 Q. Did you go to high school with Mr. Dietz?

15 A. Yes, I did.

16 Q. What high school was that?

17 A. George Mason Junior Senior High School.

**18** Q. When did you graduate?

19 A. 1994.

20 Q. Was he in your class?

21 A. Yes.

22 Q. So you both graduated at the same time?

1 page what that is?

**2** A. Can you help me?

3 MR. BACON: Your Honor, may I approach?

4 THE COURT: Sure. Do you have a problem with

5 those exhibits?

6 MR. BACON: I think we have it, Your Honor.

7 I apologize.

8 BY MR. BACON:

**9** Q. Do you see the bottom half of the third page

10 of Exhibit 20?

11 A. Yes.

12 Q. Can you identify that?

13 A. This is where we're talking to the work to be

14 done. And I had sent him a list of the work.

15 Q. So this is your e-mail identifying the price?

**16** A. Correct. As well as listing of the items.

17 Q. And the price breakdown identified on the

18 Exhibit 21, if you flip over to Defendant's Exhibit 21?

19 A. Yes. Exhibit 20 states \$9035. Exhibit 21

20 states \$9045.

21 Q. Okay. Was this the work that was going to be

22 done at your home as identified on Exhibit 21?

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1 A. Yes.

2 Q. Since graduating, have you had contact with

3 Mr. Dietz?

4 A. Other than the situation, no. He had

5 contacted me via Facebook in 2009 with a friend invite.

6 I posted that there was a -- that I bought a townhome.

7 And he e-mailed via Facebook, as I recall, and stated if

8 I need any help with the townhome, that he had a business

9 and to let him know.

10 Q. Is that how it came about that you contacted

11 and were able to speak with him about doing work at your

12 home?

13 A. Correct.

14 Q. Let me ask you to turn to -- do we have the

15 books? I'm sorry.

Would you please turn to Exhibit Number 19,

17 Defendant's Exhibit 19; do you recognize this?

18 A. Yes.

19 Q. Turning to the third page, do you see an

20 e-mail -- I'm sorry -- Exhibit Number 20. Turning to the

21 third page of Exhibit Number 20.

22 Can you identify the bottom portion of that

1 A. That's correct.

2 Q. Are these the items that you hired Mr. Dietz

3 to do?

4 A. That's correct.

5 Q. Were these the items he agreed to do?

6 A. That's correct.

7 Q. Now, do you see an e-mail on the fourth page

8 of the Exhibit Number 20 that he sent you dated July,

**9** June 1, 2011, at 8 p.m.?

10 A. Yes.

11 Q. Where he is agreeing to your proposal?

12 A. Yes.

13 Q. Now, did Mr. Dietz begin the work at your

14 townhouse?

15 A. Yes.

**16** Q. Approximately, when was that?

17 A. 6 June 2011.

**18** Q. Did you give Mr. Dietz a key?

19 A. Yes. I had the keys changed the day after I

20 moved in the 2nd of May, and provided him with a key.

21 Q. You say that you moved in. Is this a home

22 that you had purchased?

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- 1 A. Yes. There was a month-long rent back. And
- 2 I moved -- I purchased it on the 1st of April, moved in
- 3 the 1st of May, and changed out the keys the 2nd of May
- 4 to make sure the home was secure.
- 5 Q. So at the time that you moved in the home
- 6 when you changed out the keys, were you the only one with
- 7 the keys?
- 8 A. Yes.
- 9 Q. And you were the only one who has access to
- 10 the house?
- 11 A. That is correct
- 12 Q. Now, other than you and other than Mr. Dietz
- 13 that you gave a key to, was there anybody else that had
- 14 access or a key to this home?
- 15 A. No.
- 16 Q. Now, were there any other contractors that
- 17 you had separate from who Mr. Dietz was using at your
- 18 home at anytime during the period he was performing work
- 19 there's
- 20 A. No. If there was anybody coming through for
- 21 estimates there towards the tail end after I terminated
- 22 him, I would work walk in right side-by-side, if you want

- 1 photographs of the his work?
- **2** A. Yes, there are multiple photographs.
- 3 Q. Let me ask you, if you can, we will start at
- 4 Exhibit 32, Defendant's Exhibit 32; can you identify
- 5 that?
- 6 A. This is actually the seal that Dietz
- 7 Development had installed. I was concerned given the
- 8 other work what that seal looked like. And so I had a
- 9 contractor come in. And he dismantled the toilet and
- 10 brought that out. He said the seals were compressed and
- 11 would not have done the job. It's good that I had called
- 12 him in, and he replaced the seal.
- MR. NELSON: Objection, Your Honor, to the
- 14 hearsay, and move to strike.
- 15 JUDGE JOHNSON: Overruled.
- 16 BY MR. BACON:
- 17 Q. So you took these pictures?
- 18 A. Yes.
- 19 Q. And is this the picture of the actual seal
- 20 that Mr. Dietz installed on your toilet?
- 21 A. Yes. The contractor was so surprised, he
- 22 actually left it there for me to go ahead and see --

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- 1 to go ahead and do estimate, one person working with the
- 2 other to say here are the items that I need fixed, the
- 3 way Mr. Dietz did in the beginning.
- 4 Q. Now, did there come a time when you
- 5 terminated Mr. Dietz from the job?
- 6 A. Yes.
- 7 Q. Approximately, when was that?
- 8 A. 21 of June 2011.
- **9** Q. Why did you terminate Mr. Dietz?
- 10 A. Numerous reasons. There are numerous damages
- 11 to the home caused by Mr. Dietz. There were -- I was
- 12 told that the time frame on the contract was three to
- 13 four days. It had been three weeks. It just kept
- 14 getting pushed out. He said he would be done on the
- 15 20th. He kept pushing it out. It wasn't done then.
- And it just seemed like he wasn't capable of
- 17 professional grade work. The work throughout the house
- 18 by the time that he was done, my house worth looked to be
- 19 worth less than when we started.
- 20 Q. Other than him telling you that he would have
- 21 this work done in a few days and had not been completed
- 22 after three weeks, did you do anything, like take

- 1 THE COURT: To that extent --
- 2 MR. BACON: That's okay. We can see it, and
- 3 we can look at it.
- 4 BY MR. BACON:
- 5 Q. Let me ask you to turn Exhibit 33. Are these
- 6 a series of photos that you also took?
- **7** A. That's correct.
- 8 Q. And what are these photo depicting?
- **9** A. You will see a fullstreaml ight. And that
- 10 was identical to the light that was in there to begin
- 11 with. And he was hired to put a flush, mounted light in
- 12 there along with a light switch. And he had charged me
- 13 \$100 for that \$10 light. And you will notice there is 14 not a light switch on the side. It's that same full
- 15 string light that is there.
- 16 Q. Okay.
- 17 A. The second picture, he was hired to go ahead
- 18 and install an AC thermostat. I purchased the thermostat
- 19 myself. The installation looked to be about twice what
- 20 other contractors would have charged me in doing. The AC
- 21 didn't work for three days after his installation until
- 22 he fixed it.

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- Even the way that it's installed, it wasn't 1
- lined up. The fixture that you see above it, the fixture
- above it, I had been charged for that. It's the same
- exact picture that was in the home inspection report.
- And he stated that he had replaced or installed that, as
- I recall. And clearly when you compare the two, that's
- not the case. That was there.
- The person, the contractor who went ahead and 8
- fixed the issue, the wiring, there was a wiring issue,
- said there was no way an electrician could have done that
- work I had been charged for by Dietz. 11
- BY NELSON: Objection. Hearsay, Your Honor. 12
- THE COURT: Sustained. 13
- 14 MR. BACON: Withdraw that.
- 15 BY MR. BACON:
- Q. Let me ask you about the next series of
- photographs, Exhibit 34. What do these to photographs
- depict?
- 19 A. When he had been hired to go ahead and
- install the light switch similar to this picture that you
- see before with the fan and light switch and the master
- bedroom, you will see the fan and light in there. And it

- JUDGE JOHNSON: Sustained. Ma'am, when 1
- quoting from what other sources told you, that's
- unacceptable evidence.
- THE WITNESS: Okay. 4
- BY MR. BACON: 5
- 6 Q. So let's have you go to the next exhibit
- where we see these exhibits, and they are pretty
- self-explanatory. 8
- 9 Exhibit Number 34, if you could highlight,
- for time purposes, what this these photos totally depict?
- A. Okay. He was supposed to install and paint
- the door, and the door didn't function. The workmanship,
- clearly there is one screw holding it in place. The door
- itself didn't match the door frame that wasn't painted,
- but I was still charged for a door that literally would
- not shut.
- Q. All right. Let's go to following exhibit on
- the next page. Are all these photographs depicting the
- same thing on Exhibit 34?
- 20 A. Right.
- 21 Q. Okay. Are there other photographs in Exhibit
- 22 34 that you can point out to the Court that reflect

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- 1 actually had a remote with it. I wanted it to be
- 2 hard-wired into the room. He had charged for that, but
- 3 had never installed it.
- 4 Q. So this is part of Exhibit 33, I apologize,
- 5 right?
- 6 A. Exhibit 33. Correct.
- 7 Q. So this is an item of work that was charged
- that he did not do?
- **9** A. That's correct.
- 10 Q. And you're taking this picture?
- 11 A. That's correct. There is also a picture of
- the outlets that he was hired to change out. He ended up
- changing out an outlet that was perfectly functional.
- And the outlet here is one that he was hired to go ahead 14
- and change outlets because it had something stuck in it,
- 16 therefore it wasn't functional. It was part of the home
- inspection report. Regardless, I had been charged for 17
- the outlet, and was, as I recall, a \$125 charge.
- And other contractors were charging about \$10 bucks to replace an outlet. And the reason why --20
- 21 MR. NELSON: Your Honor, objection to
- 22 relevance of other contractors' prices.

- either work that he was supposed to do that he did not,
- or damage that he caused to your home?
- 3 A. He was supposed to replace the track with the
- two sliding doors that you see there. And the picture
- very clearly shows that that's the old track that was in
- there. So therefore, the doors would not function, which
- was the original reason that he was hired for that task
- so the door would function, so I was left with the same
- thing. 9
- Q. That's the third page on Exhibit 34; is that 10
- correct?
- 12 A. That's correct.
- 13 Q. What about the fourth page of Exhibit Number
- 14 34; what does that depict?
- **15** A. We go to the pantry over by the kitchen.
- Once again, he was supposed to install doors to go ahead
- and function. And the price was a higher price. But 17
- once again, he said he included everything in case 18
- something were to go wrong. 19
- The doors would not function. They literally 20
- would not move side to side. The track was not replaced.
- The track had to be replaced, which you can tell from the

19

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- 1 pictures. Actually, the door that he installed was
- 2 warped, which wouldn't allow the door to slide
- 3 independently.
- 4 Q. Okay. What about the next page, the
- 5 following page 5 of Exhibit 34; what does that show?
- 6 A. He had been hired to fix the damage that was
- within the pantry and paint the inside of the pantry,
- 8 which he didn't do.
- **9** Q. That shows that it wasn't done?
- 10 A. Correct.
- 11 Q. Were you charged for that?
- 12 A. Yes.
- 13 Q. The next page, the sixth page, what does that
- 14 show photographs of?
- 15 A. Are we still on this page here?
- 16 O. Yes, ma'am.
- 17 A. All right. You will see polyurethane on the
- front of the doors that he had just put in which didn't
- 19
- 20 And, furthermore, he said that they were
- painted, and charged for it to be painted, as I recall.
- 22 You will see the Home Depot sticker on the side of it, so

- 1 Q. Did your contract require items to be
- 2 removed?
- 3 A. It didn't detail that out, but that just
- another part as I see it of professional grade work to
- make sure you clean up after.
- Q. I see. Anything else on page 5 of Exhibit
- 34?
- 8 A. No, sir.
- **9** Q. How about page 6 of Exhibit 34?
- 10 A. He had charged for screens to be secured and
- replaced. Clearly, these are the same screens that were
- there with the house, nonetheless I had been charged for
- 13
- 14 You will also see the window AC that he
- 15 installed. And there is a picture of the damage that
- actually allowing wire ran from the outside to enter the
- house. And it was so much, that I actually had to clean
- it up with towels and blanket. 18
- So I had to pay another contractor to come 19
- out and, you know, go ahead. I just took it out at that 20
- point because there was damage on the floor and was
- damage on the window seal

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- 1 clearly, it wasn't painted. Home Depot said that's the
- 2 finish, factory finish from Home Depot.
- MR. NELSON: Objection to hearsay again, Your 3
- Honor.
- MR. BACON: She can testify what it says that
- 6 it had a Home Depot finish on it.
- THE COURT: Overruled. Go on. 7
- THE WITNESS: There was polyurethane all over 8
- the house from the floors that he attempted to refinish.
- It was over all of the baseboards, on the doors, and on
- some of the walls.
- BY MR. BACON: 12
- 13 Q. On the walls?
- 14 A. Yes.
- 15 Q. Anything else in the fifth page you need to
- 16 identify?
- 17 A. This is what he left at my home. There were
- garbage bags left in the backward. You can see the old
- door that was left. The utility room, the same thing.
- 20 There is a picture of the old door that was left there.
- A garbage bag that was left there. Paint cans of
- 22 remnants of paints in there.

- 1 Q. Turning to the next page, page 7; what do
- these photos show?
- 3 A. There was damage to the windows, that when
- you first look at something like that, it's a part of the
- window itself, that metal rod that you see. I don't know
- how they managed to do that. The AC was installed in
- 7 there.
- 8 The levy or the window was also broken. And
- really as costly as that is, you might as well just wait
- until you replace the window itself. So the window will
- slam down, otherwise you need the levy to have it to
- function to go up and down. 12
- You will also see a door that was installed 13
- there by Dietz. And the following pictures show
- basically the door. There were no straight lines to it.
- It was difficult to get the door to open and closed. The
- hardware that was installed on the doors was not flushed.
- There were large chunks around where the hardware had
- been installed. 19
- The pane on the door knobs just, you know, 20
- 21 everything you can think of wasn't professional grade

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- 1 Q. Okay.
- 2 MR. BACON: Your Honor, I would offer Exhibit
- 3 34 into evidence.
- 4 THE COURT: It will be received.
- 5 [WHEREUPON, Defendant's Exhibit Number 34 was
- 6 admitted into evidence.]
- 7 THE WITNESS: There is that last photo that
- 8 shows pictures of the window seal outside. He charged to
- 9 recalk and paint those windows, and clearly that work was
- 10 not done.
- 11 BY MR. BACON:
- 12 Q. That last page of the exhibit shows calking
- 13 work was not done?
- 14 A. The calking work was not done, correct.
- 15 Q. You have a whole series of exhibits. I want
- don't want to waste a lot of Your Honor's time.
- Exhibit 35, can you give us summary of what
- 18 all the photos are in Exhibit 35, the kinds of issues or
- 19 problems?
- 20 A. Right. Basically, it goes through the
- 21 floors. There was probably a dozen errors. Human hair
- 22 under the polyurethane. There was dirt underneath the

- 1 Q. Exhibit 36, can you highlight the photographs
- 2 in Exhibit 36?
- 3 A. Just to finish up with Exhibit 35, there are
- 4 also photographs of the carpet that was never installed
- 5 that I was charged for.
- 6 Q. Okay.
- **7** A. As far as 36 goes, there are the
- 8 quote/unquote thousands of dollars of material that were
- 9 left at my house. It's actually the wrong paint that was
- 10 used. He was supposed to paint the corner of the utility
- 11 room with anti-mold paint, and instead he used clearly
- 12 masonry stucco, brick, paint.
- There's also paint left over the back patio.
- 14 My mantel was damaged. You see the chunks taken out of
- 15 the mantel in the back.
- 16 Q. Did you hear him testify about the mantel,
- 17 the antique mantel?
- 18 A. Yes.
- 19 Q. Can you tell us about the problem with that
- 20 mantel?
- 21 A. The mantel, it's worth -- the quotes that I
- 22 got for replacement were approximately \$3,000.

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- 1 polyurethane, which caused it to bubble up. There were
- 2 patch jobs apparently that, you know, where they tried to
- 3 fix things, but you can't do that. You have to redo the
- 4 entire floor. There were areas where there was no
- 5 polyurethane. I got this work done to bring a house from
- 6 an 8 to a 10. I was looking for professional grade work,
- 7 and it simply wasn't there.
- 8 Furthermore, there were gouges on the main
- 9 floor. The floor looked so nice that one of the
- 10 contractors didn't want to touch it before it happened.
- 11 And when he came through next time, the other contractor
- 12 --
- 13 Q. You can't say what they said.
- **14** A. Okay.
- 15 Q. So Exhibit 35 reflects all the problems that
- 16 you had with the floors; is that fair?
- 17 A. Right.
- MR. BACON: I would offer that into evidence.
- 19 THE COURT: It will be received.
- 20 [WHEREUPON, Defendant's Exhibit Number 35 was
- 21 admitted into evidence.]
- 22 BY MR. BACON:

- 1 MR. NELSON: Objection, Your Honor. She's
- 2 going on quotes for replacement.
- 3 THE COURT: Sustained. Gentlemen, remember
- 4 we're here for a preliminary injunction. We're not here
- 5 to prove the case one way or the other as to whether or
- 6 not.
- 7 BY MR. BACON:
- 8 Q. With respect to the Exhibits 37 to 42, could
- 9 highlight briefly the problems with either damage to your
- 10 home or work that you were charged for that was not done?
- 11 A. Well, with 36 you will see the paint that was
- 12 all over the fireplace that was left. And that was water
- 13 damage where they tried to clean off their paint from
- 14 both the time top of that mantel. As far as --
- **15 Q.** And Exhibit 37?
- 16 A. Exhibits 36, 37, this is where the work was
- 17 redone by other contractors. You will see the back light
- 18 works. You will see that there was a light switch
- 19 installed that was similar to the one that you saw
- 20 downstairs with actual light and band switch versus what
- 21 originally came with the house. So that work was
- 22 actually done versus just being charged.

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- 1 There was a flush mount wall lights installed
- 2 in the master closet versus the full string, which was
- 3 originally requested, but not done.
- 4 There is, once again, you will see that the
- 5 light downstairs now works. And the contractor that I
- 6 hired to go ahead and do that take care of that. They
- 7 lined it up professionally so that, you know, the work
- 8 was done right.
- 9 You will see the light switch that was
- 10 actually installed in the master bedroom closet, that the
- 11 master bedroom closet was repainted.
- 12 Q. Let me stop you.
- MR. BACON: Your Honor, do you have a sense
- 14 what you need to for that?
- 15 THE COURT: Yes.
- MR. BACON: I can move on?
- 17 THE COURT: You can.
- MR. BACON: Okay. I would offer Exhibits 37
- 19 to 42 into evidence.
- THE COURT: It will be received.
- 21 [Whereupon, Defendant Exhibit Numbers 37 to
- 42 were admitted into evidence.]

- 1 Q. So that's just under \$3000; is that correct?
- **2** A. That's correct.
- 3 Q. Now, did there come a time when you indicated
- 4 you were not happy with his work or dissatisfied?
- 5 A. Repeatedly, he tried to get me. His basic
- 6 response was hold off on until the end. I will give you
- 7 punch list. I will let you know what is going on.
- 8 Q. And did there come a time when he sent you an
- 9 invoice for his work?
- 10 A. Yes.
- 11 Q. Do you know when that was approximately?
- **12** A. The 23rd of June 2011.
- 13 Q. Okay. Let me ask you to look quickly at
- 14 Exhibit Number 4. Is that Exhibit Number 4, is that the
- 15 invoice?
- 16 A. Yes.
- **17** Q. Did you pay that invoice?
- 18 A. Yes.
- **19** Q. Why did you pay that invoice?
- 20 A. A lot reasons. First off, it had become a
- 21 legal issue. There was about \$3000 worth of work that
- 22 wasn't done. I had asked him after he was terminated to

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- 1 BY MR. BACON:
- 2 Q. Let me direct you to Exhibit 30. What is
- 3 Exhibit 30?
- 4 A. Exhibit 30 is the work that he was hired to
- 5 -- well, this is the invoice that he provided that was
- 6 analyzed by myself. The final invoice, the sole invoice
- 7 that he provided me. And it shows the work that was not
- 8 done. And from tallying it up, per the prices that he
- 9 had charged, it comes to --
- 10 Q. Go ahead.
- 11 A. \$2995.
- MR. BACON: I would offer that into evidence.
- 13 the comparison to what he charged and what was not done.
- MR. NELSON: Your Honor, it's a summary only.
- MR. BACON: I don't want to go through item
- 16 by item, Your Honor. I would ask that it be stipulated
- 17 to.
- MR. NELSON: It's unaccepted as a summary.
- THE COURT: All right, sir.
- 20 [Whereupon, Plaintiff's Exhibit Number 30 was
- 21 admitted into evidence.]
- BY MR. BACON:

- 1 go ahead and provide me with a list of the materials that
- 2 he used and that I would come up with estimates from
- 3 contractors to provide that to him, as far as fixes. His
- 4 response to that was any contractor would tell me that
- 5 the work had to be completely redone, and he was right.
- 6 Q. Did you have to pay other contractors to
- 7 complete the work?
- 8 A. Yes.
- 9 Q. How much did you pay in total?
- 10 A. To date, I paid approximately \$14,000.
- 11 Q. Is this for same work that he was supposed to
- 12 do for you?
- 13 A. The work that he either didn't complete, was
- 14 supposed to do, or damages.
- 15 Q. Are the various invoices for your contractors
- set forth in the Exhibit 22?
- MR. NELSON: Objection to relevance, Your
- 18 Honor.
- MR. BACON: I will withdraw the question.
- 20 BY MR. BACON:
- 21 Q. Now, did he file a lawsuit against you?
- 22 A. Yes.

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- 1 Q. What was the result of that lawsuit?
- **2** A. He lost. The case was dismissed in my favor.
- 3 Q. Did you understand that there was a summary
- 4 judgment entered?
- 5 A. Yes. And a case that was dismissed in
- 6 summary judgment has no merit, as I understood.
- 7 Q. Did he file a mechanic's lien on your
- 8 property?
- 9 A. Yes.
- 10 Q. What is your understanding of the status of
- 11 that lien, whether it's still there or disappeared or was
- 12 it dismissed?
- 13 A. My understanding at the time of the post was
- 14 that it had been removed. It was and still the 20th of
- 15 July, on my birthday, the invoice was 23rd of June. So
- 16 less than a month I had been served with the paperwork.
- 17 Q. Do you know whether that lien was actually
- **18** removed or released?
- **19** A. It has been removed. It's actually expired.
- MR. NELSON: Objection. Foundation.
- MR. BACON: I will move on.
- BY MR. BACON:

- 1 Q. So I'm clear, when he and his contractors
- 2 were there working in your house, were you there, or were
- 3 you at work?
- 4 A. I was at work.
- **5** Q. So you would go to work in the morning?
- 6 A. And they would perform the work quote/unquote
- 7 while I was gone.
- 8 Q. Let me show you Exhibit 23. If you can look
- 9 to the Exhibit Number 23; did you send this e-mail?
- 10 A. I did.
- 11 Q. Now, did you make an insurance claim?
- 12 A. I did.
- 13 Q. Let me show you Exhibit 24; does that reflect
- 14 the claim?
- 15 A. Yes.
- MR. NELSON: Objection, Your Honor,
- 17 relevance.
- 18 THE COURT: Sustained.
- 19 BY MR. BACON:
- 20 Q. Could any of the jewelry have been lost while
- 21 you were moving?
- 22 A. No.

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- 1 Q. Did there come a time in June 2011 that you
- 2 called the police?
- з A. Yes.
- 4 Q. Do you know when that was approximately and
- 5 what the circumstances were?
- 6 A. That was June 22nd, the day after Dietz was
- 7 fired.
- 8 Q. What did you tell the police?
- 9 A. I told them that some of my jewelry was
- 10 missing. They asked me for a list of the jewelry. And
- 11 to let them know about the contractors that were working
- 12 there and the situation. And they said to go ahead and
- 13 to e-mail him, you know, with what my stipulations were.
- They asked me if I was going to press charges
- 15 or not. And it just, it all looked just really suspect.
- 16 I didn't want to point any fingers in the e-mail that I
- 17 wrote, but he did have the sole key to my house for him
- 18 and his crew to my door. The jewelry was missing the day
- 19 he was terminated. And I just wanted the jewelry to be
- 20 returned and for the situation not to escalate.
- 21 Q. So you advised Mr. Dietz about the theft?
- 22 A. Yes, I did.

- 1 Q. Why?
- 2 A. Well, first off, the move, the majority of
- 3 my, the actual move, cross-country move was done in
- 4 December, which was approximately six months after this.
- 5 And, also, the policy for the movers is you have to carry
- 6 jewelry on your person. They won't allow the jewelry to
- 7 be packed.
- 8 Q. Do you know whether Mr. Dietz was ever
- 9 charged with a theft?
- 10 A. The loop wasn't closed between me and the
- 11 officer. I called the detectives, and they said you
- 12 needed ---
- MR. NELSON: Objection. Hearsay, Your Honor.
- 14 THE COURT: Sustained.
- 15 BY MR. BACON:
- 16 Q. Do you know or did you ever learn whether the
- 17 case was ultimately closed?
- 18 A. No. The only thing -- not at the time of the
- 19 posting, no.
- 20 Q. Okay. Did you see Mr. Dietz after his case
- 21 was over and you won on summary judgment?
- 22 A. Yes.

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- 1 Q. When was that?
- **2** A. The 31st of January of this year.
- **3** Q. What were the circumstances of that contact?
- 4 A. I heard a knock on the door. I opened up the
- 5 door and saw him there. He said I want to speak to you.
- 6 I said I don't want to speak to you. I closed the door.
- 7 He stood outside muttering. I called the police. It
- 8 just, it really scared the heck out of me.
- 9 I had indicated to the officer after the
- 10 theft I wanted no contact with Dietz. I told my attorney
- 11 that I wanted no contact with Dietz. There is a no
- 12 trespassing sign out there. And for him to go ahead and
- 13 to show up at my door, like I said, it completely
- 14 disregarded what the officer, what I had told the
- 15 officer, what I had told my attorney, what the HOA sign
- 16 had said, and from hearing.
- 17 The reasoning for that, for him showing up,
- 18 he apparently had no regard for what the Court had also
- 19 ordered for the case being dismissed. So he had no real
- 20 reason to be at the door.
- 21 Q. Let me ask you to look at Exhibit 26 ask you
- 22 to identify the photograph on Exhibit 26?

- 1 THE COURT: We will use the documents.
- 2 BY MR. BACON:
- 3 Q. Did you receive Exhibit Number 28?
- 4 A. Yes.
- 5 Q. Did you take an any further action regarding
- 6 Mr. Dietz' lack of a license?
- 7 A. I did
- 8 Q. What did you do?
- **9** A. I actually swore out a warrant on the 4th of
- 10 October. I went into the Magistrate's office with the
- 11 charges that Dietz had at hand, so there is currently a
- 12 warrant out for him for unlicensed work.
- 13 Q. Prior to hiring Mr. Dietz, had you made any
- 14 posts on Yelp or Angie's list before that?
- 15 A. No.
- **16** Q. So you had no previous posts on any of those?
- 17 A. Not then.
- **18** Q. Had you ever posted anywhere before?
- 19 A. No.
- 20 Q. Did you also have a occasion to talk to the
- 21 Better Business Bureau?
- 22 A. Yes.

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- 1 A. That's where I live.
- **2** Q. And are those signs of the no trespassing?
- 3 A. Yes. It's a private street. No trespassing.
- 4 Correct.
- 5 Q. Did you also send Mr. Dietz a letter advising
- 6 him not to come back?
- 7 A. I did.
- 8 Q. Is that Exhibit Number 26 -- excuse me --
- **9** Number 27?
- 10 A. Yes.
- 11 Q. Did you also contact Virginia Department of
- 12 Profession Occupational Regulation?
- 13 A. Yes.
- 14 Q. Approximately, when was that?
- **15** A. Approximately, on the 10th of May.
- 16 Q. Did you speak with representatives?
- 17 A. I did.
- **18** Q. Do you know what their finding was?
- 19 A. Their finding was that he committed a Class I
- 20 Misdemeanor.
- MR. NELSON: Objection, Your Honor, both to
- 22 hearsay, and we have the documents in evidence.

- 1 Q. Let me ask you to look at Exhibit 31. Do you
- 2 recognize this e-mail that you received?
- з A. Yes.
- 4 O. What is it?
- 5 A. This is an e-mail from the Director of
- 6 Operations for the Better Business Bureau. And she is
- 7 stating --
- 8 MR. NELSON: Your Honor, it is hearsay what
- 9 she's stating. Objection on those grounds.
- 10 THE COURT: Sustained.
- 11 BY MR. BACON:
- 12 Q. Let me ask you to turn to Exhibit A of the
- **13** Exhibit Number 11; do you have that in front of you?
- MR. BACON: May I help her, Your Honor?
- 15 THE COURT: Yes.
- 16 THE WITNESS: I have it.
- 17 BY MR. BACON:
- 18 Q. Great. This is the post, one of the posts
- 19 that you made?
- 20 A. That's correct.
- 21 Q. Why did you make the statement in the first
- 22 paragraph of this post?

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- 1 A. Because it's the truth. I didn't want anyone
- 2 else to go through what I went through. So I let
- 3 consumers know what the point of writing the review was
- and the circumstances that I had encountered.
- 5 Q. Why did you make the statements in the second
- 6 paragraph of this post?
- 7 A. To the same effect that what I had said was
- 8 true. I tried to keep -- I tried to actually quote the
- sources, you know, cut and paste to be accurate that what
- 10 I stating. And just to lay the evidence out for whomever
- was reading it to make sure that they knew what the
- 12 sources were and who to go to and I had done my homework.
- 13 Q. Why did you say your home was damaged and the
- work had to reaccomplished?
- 15 A. Because that's what occurred.
- 16 O. Why did you say you were invoiced for work
- that was not performed?
- 18 A. Because that's what occurred.
- 19 Q. Why did you say you won on summary judgement,
- meaning the case had no merit?
- 21 A. Because that's what occurred.
- 22 MR. NELSON: Your Honor, objection to

BY MR. BACON: 1

- Q. Why did you state, quoting, clearly
- legitimate companies do not avoid the BBB and legitimate
- cases are not dismissed by a court of law?
- A. That's my understanding. If a company is
- performing work, to be legitimate, they are licensed to
- do the work, and they are accredited to go ahead and do
- the work, you know. That's what they are, they're
- telling you that they're licensed.
- Q. Why did you state the company itself is not
- legitimate and lacking a BBB accreditation and a Virginia
- state licensure despite his claim countered to that
- effect to bid on your job?
- A. He had told me he had a license to go ahead
- and do the work. That he had a Virginia license, and he
- was wasn't BBB accredited at the time.
- Q. Why did you state that the matter with the
- police continues to be pursued. A home security system
- was installed and a dog purchased for protection after
- filing for my first ever police report due to this
- contractor?
- 22 A. I had balanced the scenario after seeing

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Dietz' quotes or posts after mine. And I felt they

- attacked me personally, and they were false. And, you
- know, one of things he had stated is that the police
- didn't believe me.
- 5 And so I went to see if there were further
- grounds for that. And I had been told if that person was
- the sole person with a key, that you go ahead and pursue
- it, not that you just needed a videotape of the incident
- itself. So I went ahead to go ahead and pursue that with
- 10 the police, and also with the new trespassing signs that
- 11 were out there.
- Once again, if there a no trespassing sign 12
- out there, you know, that is something that you go ahead
- and look into, so I pursued it.
- Q. Did you purchase a home security system and a
- dog? 16
- A. I did. I did what I could. And the
- situation just didn't seem right. I didn't feel safe in
- my home after him showing up. Like I said, he looked to
- have not have any regard for what the Court's decision
- was, what the police was, what I had told the police or
- what I had told my attorney.

15 16 17

1 relevance.

- THE COURT: I have a problem with that. I
- 3 don't think that means in the law that the case has no
- merit. Not only do I think so, I know so. Move on.
- MR. BACON: Okay. 5
- BY MR. BACON:
- 7 Q. Let me ask you this. Why did you state after
- my first ever police report when I found my jewelry

question of why does not have anything to do whether or

- missing and Dietz was the only one with the key? 9
- MR. NELSON: Objection, Your Honor. The 10
- not it's true. 12
- MR. BACON: I think she's entitled to answer 13
- that question. 14
- JUDGE JOHNSON: I think she is, too.
- MR. NELSON: Thank you, Your Honor.
- THE WITNESS: Once again, what I heard was
- true or true as I knew it at the time. I don't claim to
- be a lawyer or police officer, but these were the facts that I had or the evidence that I saw before me and just
- kind of laid it out for people to go ahead and take it as
- they would.

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- So I did what I could to feel safe. And I
- 2 bought a dog. That's first thing that an officer will
- 3 tell you to do after a theft. I had home security system
- 4 installed.
- 5 Q. Was the theft your first ever police report,
- 6 that theft reported?
- 7 A. Other than automobile accidents, that all I
- 8 know of.
- **9** Q. Did Mr. Dietz have a key to your property,
- 10 and did he return it?
- 11 A. Yes, he had key. And no, he never returned
- 12 it.
- 13 Q. And we have seen the no trespassing sign; is
- 14 that correct?
- 15 A. That's correct.
- 16 Q. Let me ask you to turn to Exhibit B of
- 17 Exhibit 16 -- excuse me -- I think that's Exhibit 11.
- **18** Exhibit 11, which is the complaint.
- 19 If you could turn to Exhibit B. Is this
- 20 Exhibit B essentially the same as your initial post?
- 21 A. That and --
- 22 Q. And Exhibit A?

- 1 was that had occurred. I mean, those were just scenarios
- 2 that were laid out at the time.
- 3 Q. Let me ask you to turn to Exhibit C in the
- 4 same complaint; can you identify that?
- 5 A. Yes.
- 6 Q. What is it?
- **7** A. That's my complaint to Dietz.
- 8 Q. Did they provide you with a licensed
- 9 transcript of what occurred?
- 10 A. They provided me with a licensed transcript,
- which stated he had no license in the state of Virginia
- 12 as of the date of that.
- MR. BACON: I would move to admit that?
- MR. NELSON: Your Honor, we already
- 15 introduced that into evidence.
- MR. BACON: Thank you.
- 17 BY MR. BACON:
- **18** Q. Let me ask you to turn to Exhibit D, which is
- 19 the following exhibit; do you have that in front of you?
- 20 A. Yes.
- 21 Q. Why did you state given Dietz online posts
- 22 below about the investigation, DPOR has imposed further

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- 1 A. Angie's list, right. Angie's list and the
- 2 Yelp posts are basically the same.
- 3 Q. Are the reasons that you made the post an
- 4 Angie's list the same that you had them for Yelp?
- 5 A. Yes.
- 6 Q. Now, in the top post on August 13, why did
- 7 you say clearly legitimate companies do not avoid the
- 8 BBB, and legitimate cases are not dismissed by a court of
- 9 law as this contractor's case was dismissed in my favor?
- 10 A. I had turned in a complaint with the Better
- 11 Business Bureau in February, and they wrote me in May and
- said that had not gotten a response.
- 13 Q. Why did you state that -- I'm quoting --
- apparently, money, theft with the sole contractor's
- 15 access to your home and e-mail to the contractor,
- 16 possession of the resident's key, as well as not
- 17 returning that key and motive are not enough to file
- 18 charges, nor is trespassing, no trespassing sign in the
- 19 townhouse complex after the contractor losing his case
- 20 and showing up at your front door?
- 21 A. The situation just didn't see right. If I
- 22 were a consumer, I would want to know what the situation

- 1 sanctions against Dietz; what did you mean by that?
- 2 A. Sanctions in that context that means an
- 3 obligation that the government has imposed on you and
- 4 they had sent him a two-page warning letter, which
- 5 basically looked to be an admission of guilt of
- 6 unlicensed work which he had signed.
- 7 Further, when he had posted that the DPOR
- 8 investigation did or found nothing, that DPOR became
- 9 aware of that and wrote back and said, not only because
- 10 of that, we are obligating him now to go ahead and become
- 11 licensed within the state of Virginia, and that they were
- 12 monitoring him in order to do.
- So that license you've got to pay the state
- 14 of Virginia approximately \$160. And from what I can
- 15 tell, to go ahead and get that license.
- 16 Q. Why did you post businesses that fall within
- 17 this category always get an F grade?
- **18** A. That is a part of the quote that talks to the
- 19 Better Business Bureau. And their online, once again,
- 20 that's a quote taken directly from their web page, I
- 21 tried to stick closely to e-mails that were provided to
- 22 me or documents that were provided to me or online web

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- 1 posts from the company themselves.
- 2 And it stated that, for instance, was the
- 3 unlicensed work, that that would fall into their F
- 4 category. When you read that statement in full, that
- 5 makes sense.
- 6 Q. When you posted about the Consumer Protection
- 7 Agency and Office of the Attorney General, who were you
- 8 referring to?
- 9 A. The D.C. Office of the Attorney General and
- 10 Consumer and Protection Agency.
- 11 Q. Why did you make those statements?
- 12 A. I made those statements was just to show
- 13 consumers that if I had done my homework, I had talked to
- 14 him, and I went ahead and listened to what he said, he
- 15 told me that there was a case of unfinished work that had
- been against him, and so I quoted just that.
- 17 Q. Now, did you attempt to remove any of the
- 18 statements about Dietz from either the Yelp.com or the
- **19** Angie's list posting?
- 20 A. The Yelp posting was taken off after I read
- 21 Dietz' attorney statement about items being searchable.
- 22 I searched for myself under Google. And the first item

- 1 ahead and actually see that, you have to type his name
- 2 specifically. It's not under available under a general
- 3 search. And that they had asked him to produce a
- 4 Maryland residential license, and he had done so.
- 5 And, you know, the licensing office for
- 6 Maryland says that he has at that time no residential
- 7 license. And DPOR papers shows a similar scenario
- **8** because they have a commercial license there.
- 9 BY MR. BACON:
- 10 Q. How did he get identified initially on
- 11 Angie's list?
- 12 A. I had posted, and that had added him to
- 13 Angie's list.
- 14 Q. Did he ask you to do that?
- 15 A. No.
- 16 Q. Prior to this lawsuit, did he ever ask you to
- 17 remove any of these posts?
- 18 A. No.
- 19 Q. Did he ever send you a letter asking you to
- 20 remove any of these posts?
- 21 A. No.
- 22 Q. So is this lawsuit the first notice that he

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- 1 that came up was Dietz' response to my posts.
- 2 And his responses, a lot items were false.
- 3 That he had stated and felt that he attacked me
- 4 personally. He had specifically called me out by name,
- 5 so I went and took them off there.
- The Angie's list posts are still there
- 7 probably for whatever reason just as Dietz' posts, I
- 8 actually have to write in an e-mail to have those posts
- 9 changed, so.
- 10 Q. With respect the to those posts that are
- 11 still out there, how are they accessed?
- 12 A. With Angie's list, you to have a subscription
- 13 to read Angie's list. Further, in Dietz' case, he failed
- 14 an audit. And a search under his company, it's a 10-2
- 15 audit failed unresponsive in regards to --
- MR. NELSON: Your Honor, I'm not sure where
- 17 this is going with the relevance. It seems pretty far
- 18 afield.
- THE COURT: Overruled. Go ahead. Finish it
- 20 up.
- MR. BACON: It's almost done.
- THE WITNESS: That in order for you to go

- 1 had any issue with your posts?
- 2 A. Yes.
- 3 MR. BACON: I don't have anything further,
- 4 Your Honor.
- 5 CROSS-EXAMINATION
- 6 BY MR. NELSON:
- 7 Q. Ms. Perez, am I correct in understanding that
- 8 the original Facebook contact that you had with Mr. Dietz
- 9 was related to high school, not business?
- 10 A. No.
- 11 Q. When you first became Facebook friends?
- 12 A. He send me a friend invite. I accepted it.
- 13 That was the extent of it.
- 14 Q. But it wasn't directly to his business in any
- 15 way?
- 16 A. The friend invite doesn't include information
- 17 other than it's basically inviting. There is nothing
- 18 else on the e-mail stating subject or anything like.
- 19 Q. It was sometime prior to your moving to
- 20 Virginia though, correct?
- 21 A. No. That's while I was living in Virginia.
- 22 Q. Looking at Exhibit 21 in the binder in front

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- 1 of you. You stated that was the list of items to be
- 2 done. Is this the list as it existed on or about May 28,
- **3** 20111
- 4 A. I'm not sure of the date of that. I know
- 5 that -- I have to look back at the e-mail track and
- 6 honestly see the date.
- 7 Q. On the third page of the Exhibit 20, the
- 8 e-mail track, it mentions the same number and gives that
- 9 date
- 10 A. Okay. If that's the date of e-mail then,
- 11 yes.
- 12 Q. And isn't it true the spreadsheet did change
- 13 some over time as items were, different items were
- 14 desired?
- 15 A. There were two items that I recall that were
- 16 added to the list.
- 17 Q. Looking at Exhibit 20, if you would turn to
- 18 the sixth page, this is under June 5 at 6:33 p.m., would
- 19 just read that e-mail?
- 20 A. June 5th, what time?
- 21 Q. 6:33 p.m.
- 22 A. 6:33 p.m. It basically talks to the light

- 1 A. Well, the thermostat that was existing was
- 2 lined up.
- **3** Q. Is it listed in any of documents?
- 4 A. The definition of professional grade work is
- 5 not in there, no.
- 6 Q. Now, you told Mr. Dietz not to come back at
- 7 that particular point prior to completion of all the
- 8 work, correct?
- 9 A. He was terminated.
- 10 Q. So if he can't come back, he wouldn't have
- 11 had an opportunity to clean up trash, for instance,
- 12 correct?
- 13 A. That's not correct. He was told to go ahead
- 14 and wrap things up on the 21st. He was there on the 21st
- and 22nd, and the items remained.
- 16 O. If you will turn to Exhibit 30. I want make
- 17 sure I understand how this works.
- Are you saying that only the items that have
- 19 the two asterisks are the ones that were not completed,
- 20 or is the entire list items that were included in the
- 21 billing, but were not attempted?
- 22 A. The items with the -- you can ask actually

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- 1 bulb outside by the patio being burnt out.
- 2 Q. And you state that there is something wrong
- 3 with the wiring you guess?
- 4 A. Right. It actually turned out that what they
- 5 were doing with the control panel had affected the back
- 6 light, that it was miswired, and that caused light to go
- 7 out.
- 8 Q. So this is house wiring, not the light
- 9 though, correct?
- 10 A. It's the wiring work that they had done that
- 11 caused the light to go out in the back porch. The
- 12 lighting in the kitchen, the picture that I had showed
- 13 beforehand with the pan and the light that he had charged
- 14 they had done or attempted, the work behind it to get the
- 15 indoor light to go ahead and work, and actually messed up
- 16 the wiring for the outdoor light so that it didn't work.
- 17 Q. You pointed in the Exhibit 33 to a thermostat
- 18 that was not lined up with the item above it?
- 19 A. Right.
- 20 Q. Is there anywhere in either the price
- 21 estimate or Exhibit 21 that alignment was part of the
- 22 contract?

- 1 tell on the second page. There is category that says or
- 2 a title heading that says work was attempted. And the
- 3 dollar amounts from his invoice itself are listed right
- 4 down there so you can tell which ones. It's kind the way
- 5 it got printed out.
- 6 Q. So it's only the second page then. Now, you
- 7 mentioned all of the different people that you told that
- 8 you didn't want to have any further contact with
- 9 Mr. Dietz. But prior to him showing up at your house,
- you had not actually told that to Mr. Dietz, had you?A. I sent him the exhibits that in here in
- 12 regards to staying away from the home after the theft.
- 13 Q. You're referring to the February 1st letter?
- 14 A. No. I'm referring to the e-mail that was on
- 15 the 22nd that was sent to him.
- THE COURT: Mr. Nelson, I think we're going
- 17 to recess at this point. We'll return at 2 o'clock.
- MR. NELSON: Certainly, Your Honor. Thank
- 19 you. I have two questions left, Your Honor.
- THE COURT: All right. Make it two.
- BY MR. NELSON:
- 22 Q. Of the 16 items that you reported as missing

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- 1 to the police station, isn't true that you found several
- 2 of them within a few days in your house?
- 3 A. The police officer had asked me to look
- 4 through all my belongings to make sure that everything
- 5 was on the list. So a couple of items were, I was asked
- 6 to review a couple of items to be accurate, and to remove
- and a couple of items that I found.
- 8 MR. NELSON: Actually, I will stop there.
- **9** THE COURT: We'll resume at 2 o'clock.
- 10 [Off the record.]
- 11 THE COURT: You may proceed.
- 12 REDIRECT EXAMINATION
- 13 BY MR. BACON:
- 14 Q. Ms. Perez, you heard testimony about
- 15 Mr. Dietz saying he wasn't required to have a license in
- 16 Virginia and about the sanctions. Let me show you
- 17 Exhibit 43. Did you receive this e-mail from DPOR?
- MR. NELSON: Objection, Your Honor.
- THE COURT: I don't think it's relevant, not
- 20 to today's issues.
- MR. BACON: The only thing I would do, Your
- 22 Honor, is make sure I have offered into evidence the

- 1 MR. NELSON: Your Honor, the standard for a
- 2 case on a preliminary injunction is look at the
- 3 irreparable harm to the plaintiff. If the injunction is
- 4 not granted, the irreparable harm to the defendant. If
- 5 it is, the likelihood of success on the merits and where
- 6 the public interest lies.
- 7 Mr. Dietz has testified to the business
- 8 losses that result and would continue to result should
- 9 additional statements be made by Ms. Perez. All we're
- asking is, pending the resolution of this case, that she
- 11 not make additional statements that are false.
- And, in particular, regarding the commission
- 13 of crimes by my client, and regarding the quality of work
- 14 that was done by him, as statements of fact. Again,
- 15 recognizing that opinion matters are outside of that.
  - For the defendant, the injury would be a
- 17 strong restriction on speech, but there is no monetary
- 18 injury pending the resolution of this case.
- The vast bulk of the testimony here has been
- 20 on the likelihood of success on the merits. The
- 21 defendant has spent some time trying to explain how the
- particular words that she used she might have meant in

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16

- 1 following exhibits from my part of the case. Exhibits 1
- 2 through 13, and 19 through 42. I believe the Court
- 3 already admitted 32 to 42.
- 4 THE COURT: Yes.
- 5 [Whereupon, Defendant Exhibit Numbers 1
- 6 through 13 were admitted into evidence and Defendant
- 7 Exhibits 32 through 42 were admitted into evidence.]
- 8 MR. BACON: So I would ask that 19 to 31 be
- 9 admitted, as well as 1 through 13. And then I would have
- 10 no further evidence at this time.
- MR. NELSON: Your Honor, as I'm looking at
- 12 this, at least 24 and 25 were kept out on relevance. And
- a portion of 28 that was referred to was also kept out
- 14 and the same thing for 29. And, I apologize, I need to
- 15 look at 31. Exhibit 31 is also hearsay, so I would
- 16 object to that as well.
- 17 THE COURT: Okay.
- 18 [Whereupon, Defendant Exhibit Numbers 20, 21,
- 19 26, 27, 28 and 30 were admitted into evidence.]
- THE COURT: Mr. Nelson, I will give you five
- 21 minutes to summarize your case. You may step down.
- 22 Closing Argument

- 1 some different way, but Your Honor is faced with the
- 2 objective words that were put forward.
- 3 She stated that DPOR had issued further
- 4 sanctions against my client when no sanctions in the
- 5 first place or further were actually issued. The license
- 6 fee is not a sanction. There was no finding by DPOR.
- 7 There was instead simply a dismissal of the case.
- 8 Your Honor is aware of the statements
- 9 regarding the general district court case. I won't go
- 10 further into that.
- 11 The defendant stated that my client had not
- 12 fulfilled the contract. Again, at the case itself, we
- 13 will be able to show that the those items were, in fact,
- 14 invoiced were the ones that he had completed. And any
- 15 items that were not completed were because she had kicked
- 16 him off the property. And the same thing to damage, he
- was not given the opportunity to fix all of the items.
- 18 Untruthfulness in billing, again there are not those
- 19 particular items.
- 20 And, perhaps, most importantly, she's accused
- 21 my client of a crime of theft where there is nothing to
- indicate that that has occurred. It is a false statement

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- 1 and it never went anywhere, whereas she stated it was
- 2 continuing to be pursued. The same thing for the crime
- 3 of trespass. There was nothing on her property that
- would indicate he was not permitted to be there.
- The criminal items, leaving damages aside, 5
- are defamatory, per se, so there should be no concern on
- the Court's part with respect to that. The damages are
- presumed. 8

15

- 9 She made statements that are not true. In
- the public interest in Virginia, in the opening 10
- statement, my esteemed colleague referred to SLAPP suits.
- And he made it very clear that they do not apply here in
- Virginia. Virginia follows the Common law rules as 13
- modified by First Amendment. And Virginia's rule is that
- the reputation of a person and of a business are
- something that must be protected against falsehood. 16
- 17 In Virginia, the rules are the same whether
- you take out an ad in the newspaper, make a speech on the
- street corner, or make a statement online. 19
- 20 For those reasons, we ask that you uphold the
- preliminary injunction.
- 22 THE COURT: I understand. Thank you.

- What I am concerned about is the criminal
- 2 allegation, and also her victory in the general district
- 3
- MR. BACON: Okay. With respect to the 4
- criminal allegation, if you look at the actual words, she
- specifically says the truth. Number 1, the only person
- who had a key to my house other than myself was
- Mr. Dietz. That's uncontroverted.
- 9 Number 2, the day after he was terminated, my
- jewelry is gone. Missing. A theft investigation
- occurred by the police, and a charge was filed by her
- stating that my jewelry had been stolen. That is a set
- of facts that are absolutely truthful, are absolutely
- correct.
- 15 And in her testimony in the communication
- that to the extent someone who was there, who could bring
- that jewelry back within a few days, there would be no
- further investigation or activity involving the police. 18
- 19 That is not untrue. It's not erroneous.
- 20 It's not false. It is absolutely true. And she
- subsequently had to pursue her insurance, who also
- investigated, determined the same thing, and then paid

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- MR. BACON: Five minutes, Your Honor? 1
- THE COURT: Yes, sir. 2
- 3 **CLOSING ARGUMENT**
- MR. BACON: May it please the Court. Thank
- you for the opportunity to present our evidence. First
- of all, going to the points, the four points: Likelihood
- of irreparable harm. The first piece of evidence that was identified was the Yelp post is no longer there.
- We're talking about the Angie's list post, that requires
- a subscription. There was uncontroverted evidence to
- that. That post, the Yelp post contained opinions of the
- defendant, Ms. Perez, on her experience. 12
- I went through specifically item by item the 13
- various, so-called false statements that the work was
- done completely, that's what the witness said the
- 16 plaintiff said.
- 17 THE COURT: I'll ease you're mind on that. I
- don't think that I can say that those statements made by
- either party are uncontroverted so that I could make a 19
- decision and say that the plaintiff would absolutely be
- able to prevail or there would be great likelihood for
- him to prevail on any of the items dealing with the work.

- the claim based upon that.
- 2 So I don't see how that could possibly be a
- basis for a defamation claim, nor do I see when you're
- comparing the likelihood of irreparable harm to the
- plaintiff versus the likelihood of harm to the defendant,
- how that could in any way affect him.
- 7 Specifically, he was asked numerous times
- what is it in the post that you have been damaged by, and
- he said everything. There has been no causal link to
- 10 anything in particular, including this criminal. His
- lawyer makes issue about this so-called crime saying she
- said he committed a crime. And nowhere on any posts do
- we have those words where that statement that he
- committed a crime. 14
- THE COURT: What's the reasonable inference 15
- 16 one could make?
- MR. BACON: Well, a reasonable inference 17
- could be that anybody associated with that home, who had
- access to that home could have, in fact, stolen that
- jewelry. Those are all reasonable inferences. So
- 21 anybody who had access could have done that.
- 22 But she is not saying what counsel is saying,

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- 1 that he was specifically pointed out and identified as
- the person who did that.
- 3 THE COURT: All right. Let's move to the
- 4 next one.
- MR. BACON: Success on the merits. The 5
- publication must be false and the defendant must know it.
- Or believing it to be true, lacked reasonable grounds for
- the belief. 8
- 9 I don't see how you could say or anybody
- 10 could say it's not reasonable for her to believe that the
- only other person who allows subcontractors and others to
- come in --12
- THE COURT: No. No. I'm talking about the 13
- lawsuit where she puts in parenthesis that she had won on
- 15 the merits.
- MR. BACON: That's her meaning under the law 16
- when you obtain a judgment by summary judgment, you 17
- obtain a judgment, quote, on the merits that can be used
- for res judicata purposes, for collateral estoppel 19
- 20 purposes, or for any other purposes. It's a final
- decision. And it is with prejudice the losing party on a
- summary judgment motion can't somehow redo the case or

- that. I don't think he's raised any other issues.
- MR. BACON: I don't think he's raised any 2
- other issues, but going to the other matters that still
- apply there is public policy.
- 5 Now, there is obviously a benefit to
- consumers being able to understand and review the
- experiences a consumer has with a company. If this was
- not a matter of public interest, we only need to look
- back and see all of the reporters here at the post. I
- respectfully submit this is clearly a matter of public
- 11 interest.
- 12 And on that basis, Your Honor, would ask the
- Court to deny entirely any preliminary injunction in this 13
- 14 case.
- 15 THE COURT: Thank you. I will give you one
- minute, sir. 16
- 17 MR. NELSON: I believe Your Honor has really
- hit the salient point. With respect to the general 18
- district Court, that it's the objective words. That it
- was a decision on the merits. Certainly, it may be
- preclusive of other actions, but it clearly also was not
- a decision on the merits.

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- bring it back up or assert it.
- And the fact that her reasonable opinion was 2
- that I won, that's a --
- 4 THE COURT: Okay. Thank you.
- MR. BACON: With respect to her statements of 5
- opinion, I would put that in that category.
- THE COURT: I've already said that as to his
- work or lack thereof, I'm not going to issue a
- preliminary injunction.
- 10 MR. BACON: But as to the summary judgment,
- her opinion as a lay person of what a summary judgment
- meant, when she puts, meaning I won this, I don't think 12
- it's actionable because the law makes it very clear that 13
- statements of opinion are not actionable and cannot be 14
- 15 actionable.
- 16 With respect the to DPOR, Exhibit 7, which is
- in evidence, is a specific finding by DPOR, quote, no 17
- license, certificate or registration was found based on
- upon the information provided. And then it cites the 19
- provisions of the Code where there is a violation, and
- 21 that's Virginia Code Section 1111.
- 22 THE COURT: I think she's entitled to say

- With respect to the accusation of theft in 1
- particular, which really is the most damaging to my
- client's representation, there is no other inference that
- that can be raised from the words that are on that page.
- And so we would request the injunction be granted. 5
- 6 THE COURT: I will grant your motion for a
- preliminary injunction on the discussion of the loss of
- the jewelry. The only real inference you can make from
- that is that the probable suspect is the Plaintiff in the
- case. The damage to him is far greater than the damage
- to her for furthering that particular story.
- 12 As for the second one, I think she has to
- delete in all fairness that she didn't prevail on a full
- hearing of all of the evidence in what we would call on
- the merits. Therefore, I will adjoin her from making the
- claim that it was on the merits. She certainly can say
- that he filed suit in the district court that ended in 17
- her favor. That will be it. If you want to draw it up,
- please, Mr. Nelson. 19
- 20 MR. NELSON: I will do that, Your Honor.
- 21 THE COURT: Thank you.
- [Whereupon, the hearing concluded at 2:15 p.m.]

JA:	NE PEREZ	December
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1	CERTIFICATE OF COURT REPORTER	
2	I, Stayce Lawson, a court reporter of the	
3	Commonwealth of Virginia, do hereby certify that the	
4	within-named witness personally appeared before me at the	
5	time and place sworn herein set out, and having been duly	
6	sworn, according to law, was examined by counsel.	
7	I further certify that the examination was	
8	recorded stenographically by me and this transcript is a	
9	true record of the proceedings.	
10	I further certify that I am not of counsel to any	
11	of the parties, nor in any way interested in the outcome	
12	of this action.	
13	As witness my hand and notarial seal this 17th day	
14	of December 2012.	
15		
16		
17		
18		
19	Stayce Lawson, Court Reporter	
20	Notary Public #369918	
21	My Commission Expires: May 31, 2013	
22		

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