

EXHIBIT 14

EXHIBIT A

(DOCUMENT SOUGHT TO BE SEALED)

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

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UNILOC USA, INC.,
UNILOC LUXEMBOURG S.A.
and UNILOC 2017 LLC,
Plaintiff,

vs. Case No.
5:19-cv-01692-EJD (VKD)

APPLE INC.,
Defendant.

-----x
*** ADDITIONAL CAPTION ON PAGE 2 ***

REMOTE VIDEOTAPED DEPOSITION BY VIRTUAL ZOOM OF
JAMES PALMER
September 9, 2020

PAGES 74-237 ARE HIGHLY CONFIDENTIAL -
ATTORNEYS' EYES ONLY AND ARE BOUND SEPARATELY

Reported By: Lynne Ledanois, CSR 6811
Job No. 4226269

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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UNILOC 2017 LLC,
Plaintiff,

vs. Case No.
3:19-cv-1095-JD

APPLE INC.,
Defendant.

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Remote videotaped deposition of JAMES
PALMER, taken in San Francisco, California,
commencing at 10:13 a.m., on Wednesday,
September 9, 2020 before Lynne Ledanois,
Certified Shorthand Reporter No. 6811

1 break. However you want to do it.

2 MR. WINNARD: I can't promise that
3 we'll be done in an hour.

4 THE WITNESS: Okay.

5 MR. WINNARD: We can take a break,
6 come back on and then take a break so you
7 can move the car.

8 THE WITNESS: At 1:40 I'll have to
9 take a break to move the car.

10 VIDEOGRAPHER: Going off the record at
11 12:45 p.m.

12 (Recess taken.)

13 VIDEOGRAPHER: We're back on the
14 record at 12:55 p.m.

15 BY MR. WINNARD:

16 Q Welcome back, Mr. Palmer.

17 During the break did you discuss the
18 deposition with your counsel?

19 A I did not.

20 Q I'm staying on Exhibit 1, which is the
21 Uniloc Term C loan investment memorandum and I
22 would like to direct your attention to
23 Exhibit 2. It's at Page 13.

24 A Okay.

25 Q What is shown on Exhibit 2 of --

1 entitled "Uniloc Settlement Revenue Detail" of
2 Exhibit 1 to your deposition?

3 A I'm sorry, are you asking me what's
4 shown there?

5 Q Yes.

6 A Let's see.

7 MR. FOSTER: What page are we on of
8 Exhibit 2?

9 MR. WINNARD: This is Page 13 of the
10 document, it ends in --

11 THE WITNESS: Exhibit 1; right?

12 BY MR. WINNARD:

13 Q We're in Exhibit 1 for the deposition.
14 It's Page 13 of the memorandum and it's bearing
15 Bates 1089.

16 A Page 13 of Exhibit 1, yes. The
17 question is?

18 Q I'll repeat the question.

19 What is shown on Page 13 of the
20 investment memorandum entitled "Uniloc
21 Settlement Revenue Detail"?

22 A This -- it looks to me to be a list of
23 all of the settlements that Uniloc had probably
24 since we were -- from February to April --
25 February of 2015 to April of 2017.

1 Q Is the table of licenses and revenue
2 shown on Page 13 of Exhibit 1 a full and
3 accurate description of all of the monetization
4 revenue that Uniloc received between February
5 2015 and April 2017?

6 A I believe so.

7 Q Do you have any reason to believe that
8 the listing shown on Page 13 of Exhibit 1 is
9 inaccurate or incomplete in any way?

10 A No.

11 Q If we look on the right-hand side of
12 the table, it shows revenue from May 31st, 2016
13 to April 14th, 2017.

14 Do you see that?

15 A I'm sorry, say that again, please.

16 Q Sure. So if we look on the right-hand
17 side, we have the date of May 31st, 2016 running
18 to April 14th, 2017.

19 Do you see that?

20 A Yes.

21 Q And the total for that time frame of
22 Uniloc's monetization revenue was a little over
23 \$14 million; right?

24 A That looks correct.

25 Q To the best of your knowledge, that's

1 an accurate calculation of Uniloc's revenues
2 between May 31st, 2016 and April 14th, 2017?

3 A That's correct.

4 Q If we go to the left-hand side
5 briefly. We see at the bottom there are three
6 settlements dated after March 31 of 2017.

7 Do you see those?

8 A Three settlements dated after what?

9 Q After March 31st, 2016, there are
10 three licensed settlement values listed --

11 A Yes.

12 Q -- after that date; correct?

13 A Yes.

14 Q Those settlements are one to Perkin
15 Elmer, one to [REDACTED] and one to Endo;
16 correct?

17 A Yes.

18 Q And the total amount of those
19 settlements is a little over a million dollars;
20 right?

21 A Yes.

22 Q So if we include that revenue in the
23 list shown at the right, it would be fair to say
24 from April 1st, 2016 to April 14th, 2017, Uniloc
25 generated a little over \$15 million in revenue;

1 is that right?

2 A I would categorize it as they
3 generated \$15 million in settlements.

4 Q Is there any other revenue that Uniloc
5 generated between February 2015 and April 2017
6 other than this?

7 A I don't believe so, but I'm just not
8 sure.

9 Q So let me ask that again because I
10 think we got crosstalk there.

11 Aside from the settlement values
12 listed on Page 13 of the investment memorandum,
13 did Uniloc generate any other revenue between
14 February 2015 and April 2017 that's not
15 reflected on this page?

16 A I don't have the financials from that
17 time frame, so I cannot say yes or -- I cannot
18 say yes to that.

19 Q Can you think of any revenue that's
20 missing between February 2015 and April 2017
21 other than --

22 A Not off the top of my head.

23 Q Sitting here today, you're not able to
24 identify any other revenue that Uniloc generated
25 between February 2015 and April 2017; right?

1 A That's correct.

2 Q If we look at the numbers shown on
3 Page 13 of the Fortress investment memorandum,
4 would you agree that for the time period between
5 April 1st, 2016, the March 31st, 2017, Uniloc
6 generated less than \$20 million in monetization
7 revenue?

8 A That's correct, I would think, based
9 on this.

10 Q Do you have any reason to believe that
11 Uniloc generated more than \$20 million in
12 monetization revenue between April 1st, 2016 and
13 March 31st, 2017?

14 A No.

15 Q Sorry, let me go through that again.
16 I know you know where I'm going, but I just want
17 to make sure it's clear for the record.

18 Do you have any reason to believe that
19 Uniloc generated more than \$20 million in
20 monetization revenue between April 1st, 2016 and
21 March 31st, 2017?

22 A No.

23 Q It would be correct to say that Uniloc
24 generated less than 20 million in monetization
25 revenues for the period of time from April 1st,

1 2016 to March 31st, 2017; right?

2 A Based on this, yes.

3 Q Do you have any other knowledge other
4 than what's shown on Page 13 as to whether
5 Uniloc generated more or less than \$20 million
6 in this time frame?

7 A Not off the top of my head.

8 Q If you could move back up in Exhibit 1
9 to Page 4, which ends in Bates 1080.

10 A Page 4?

11 Q Yes. The title of this says
12 "Intellectual Property Update."

13 Do you see that?

14 A Yes.

15 Q And to be clear, I don't want you to
16 tell me the context of what's blocked out here.
17 I don't want any subject matter.

18 But can you answer for me yes or no
19 whether the information contained on Page 4
20 would be due diligence or valuation work
21 performed by Fortress's IP team?

22 A I cannot.

23 Q You don't know one way or the other
24 whether that's what is contained on Page 4?

25 A I do not know what's contained in

1 Page 4.

2 Q Okay. We can set aside Exhibit 1. I
3 guess just electronics, so we can leave it.

4 MR. WINNARD: I'm going to find a
5 document that will be Exhibit 3. Just a
6 moment.

7 Okay. I'm marking and introducing as
8 Exhibit 3, a document entitled "Third
9 Amendment to Revenue Sharing and Note and
10 Warrant Purchase Agreement." And it ends --
11 it begins with production number
12 UNILOC_APPLE_2017-18265.

13 (Exhibit 3 was marked.)

14 BY MR. WINNARD:

15 Q Do you now see Exhibit 3 in your
16 folder?

17 A Yes.

18 Q And, Mr. Palmer, this is Exhibit 3,
19 which is the third amendment to the revenue
20 sharing and note and warrant purchase agreement;
21 right?

22 A Let's see. Yes.

23 Q And I'll note for you -- I think it's
24 starting on the Page 14 of the document. It's
25 production Number 18278. It starts with the

1 conformed copy of the revenue sharing and note
2 and warrant purchase agreement which was
3 attached to the amendment.

4 Do you see that?

5 A What page?

6 Q It would be Page 14 of the electronic
7 copy or maybe it's Page 13, ending in the
8 production number over in the bottom right of
9 18278.

10 A Yes.

11 Q You can take a moment to flip through
12 it. I'll represent to you that this is the
13 third amendment to the revenue sharing agreement
14 between Uniloc and Fortress and it attaches the
15 conformed version of that agreement after the
16 third amendment is executed.

17 (Discussion off the record.)

18 MR. FOSTER: What is the production
19 number on the page you want to call his
20 attention to.

21 MR. WINNARD: For now I was just
22 showing him it's essential this was produced
23 as one combined document. It's the
24 amendment to the revenue sharing agreement
25 and then the full version with the amendment

1 A I don't recall if we did or did not.
2 I would have to go through the documents.

3 Q Sitting here today, you cannot recall
4 if Fortress removed Section 6.2.2 from the
5 revenue sharing agreement; right?

6 A I believe I made my -- I've answered
7 that question previously.

8 Q Please answer. Sitting here today,
9 you cannot recall whether Fortress removed
10 Section 6.2.2 from the revenue sharing
11 agreement; right?

12 A Simply because I don't have the
13 documents in front of me from that perspective.
14 But from a management perspective of this, for
15 sure we did not -- we had no concern about the
16 actual monetization revenues in 6.2.2.

17 Q Did you or anyone else at Fortress
18 ever communicate to Uniloc in writing that
19 Fortress would never enforce Section 6.2.2 of
20 the revenue sharing agreement?

21 A I don't recall if we did.

22 Q Sitting here today, you can't identify
23 any writing where Fortress did so; right?

24 A I cannot other than I think, again --
25 this is because I don't have all of the

1 documents in front of me, I believe -- I have to
2 look at the last amendment and I don't know if
3 we would have gone through a last amendment if
4 we thought that they were in default, so I
5 mean -- or provided the additional capital if we
6 thought they were in default. In fact, I know
7 we wouldn't have.

8 MR. WINNARD: I'm going to mark as
9 Exhibit 4 when we get it open here. Not
10 marked yet. Just give me a minute.

11 Marking as Exhibit 4 document starting
12 with production number Apple 358 -- or
13 UNILOC_APPLE_358_0352.

14 (Exhibit 4 was marked.)

15 BY MR. WINNARD:

16 Q Mr. Palmer, do you see Exhibit 4?

17 A Yes, it just came up.

18 Q Okay.

19 A I'm laughing because it's a big one.

20 That's all.

21 Q It's 62 pages on this. I want to make
22 sure you have the same --

23 A Oh.

24 MR. FOSTER: From a data size
25 standpoint.

1 THE WITNESS: Got it.

2 MR. FOSTER: 36 megabytes.

3 BY MR. WINNARD:

4 Q Do you see that Exhibit 4 in the
5 middle is entitled "Revenue Sharing and Note and
6 Warrant Purchase Agreement"?

7 Do you see that?

8 A Yes.

9 Q And in the top right you see "RG draft
10 of 12/18/2014"; right?

11 A 12/18/2014, got it.

12 Q The draft says RG draft; right?

13 A Yes.

14 Q Do you have an understanding that RG
15 would have stood for Ropes & Gray, Fortress's
16 counsel?

17 A Yes.

18 Q Do you understand this to be a draft
19 prepared by Fortress's counsel of the revenue
20 sharing agreement?

21 A That's what it looks like.

22 Q Do you have any reason to believe that
23 it's not a draft prepared by Fortress's counsel?

24 A I do not.

25 Q I'll take you to page -- I believe

1 it's 14 of the document.

2 A What is the -- what do you call it?

3 Q The Bates or production number at the
4 bottom is 0369.

5 A Okay.

6 Q It's taking a minute to load.

7 A Yes.

8 Q We're looking at -- do you see
9 Section 6.2?

10 A Yes.

11 Q And you see in this draft Fortress's
12 counsel has revised Section 6.2; right?

13 A There's red and there's blue. I'm not
14 sure who did what. Red, blue and black,
15 obviously, so I'm not sure who's blue and who's
16 red.

17 Q Do you have an understanding of how an
18 agreement is modified or redlined?

19 A Yes.

20 Q Do you understand that generally text
21 that's been removed is shown in red and struck
22 through?

23 A No, I understand. I just didn't know
24 who removed and who added is what I was saying.

25 Q You understand this is a draft

1 prepared by Fortress's counsel; right?

2 A Yes. But somebody marked it up.

3 Q Right. You understand this is Ropes &
4 Gray's draft of December 18th, 2014; right?

5 A Yes.

6 Q If we look at Section 6.2 and we go to
7 Section 6.2.1.

8 Do you see that?

9 A Yes.

10 Q The original language stated that
11 Uniloc would need to seek to satisfy the
12 monetization milestones; right?

13 A That's what it looks like.

14 Q And that language is removed in the
15 draft of Fortress' counsel of December 18th,
16 2014 in Exhibit 4; right?

17 A Yes.

18 Q So the prior draft required Uniloc
19 only to seek to satisfy the milestones; right?

20 A Before -- I'm not sure I understand
21 the question. So somebody struck out that
22 language, I see that.

23 Q So prior to that language being
24 struck, the agreement only required Uniloc to
25 seek to satisfy the milestones; right?

1 sharing agreement; right?

2 A That's correct.

3 Q To the best of your knowledge, who at
4 Fortress who would have been the one to
5 authorize this modification to Section 6.2?

6 A Maybe our attorneys. I don't recall.

7 Q To the best of your knowledge, who at
8 Fortress would have been telling the attorneys
9 whether or not they can make this change?

10 A I think probably Yoni would have been
11 involved in the documentation of this.

12 Q Aside from Yoni, is there anyone else
13 at Fortress who you believe may have information
14 about the changes that Fortress had made to
15 Section 6.2 of the revenue sharing agreement?

16 A I don't recall.

17 Q Have you searched your --

18 A Hold on one second. Jim is having
19 trouble getting that right section up.

20 (Discussion off the record.)

21 THE WITNESS: Sometimes it's hard
22 unless you do it straight over.

23 Sorry about that. Go ahead.

24 BY MR. WINNARD:

25 Q Have you searched your email for any

1 discussions regarding Uniloc monetization
2 minimum requirements from 2014 to the present?

3 A I don't recall recently, but I
4 probably did at some point.

5 Q Did you search in the last three
6 months for emails regarding Uniloc's minimum
7 revenue target?

8 A Probably not.

9 Q You can't think sitting here today
10 that you did so; is that right?

11 A I don't recall doing so. Go ahead.

12 Q In the December 18th, 2014 draft
13 prepared by Fortress's counsel, Section 6.2.2
14 was added to the agreement; right?

15 A Yes.

16 Q Why did Fortress add this requirement
17 to the revenue sharing agreement?

18 A I don't recall.

19 Q Do you have any knowledge as to why
20 this revenue requirement was added to the
21 revenue sharing agreement by Fortress?

22 A I do not.

23 Q Who at Fortress would know why this
24 revenue requirement was added to the revenue
25 sharing agreement?

1 A You know, I think it was myself and
2 Yoni working on this. I just don't recall any
3 discussions about this.

4 Q In the original draft or prior draft
5 of this agreement, Uniloc needed only to seek to
6 satisfy the monetization milestones in
7 Section 6.2.1; right?

8 MR. FOSTER: Object to the form.

9 THE WITNESS: That's what it looks
10 like.

11 BY MR. WINNARD:

12 Q Section 6.2.2 requires Uniloc to
13 actually hit certain minimums; right?

14 MR. FOSTER: Object to the form.

15 THE WITNESS: It has inserted 6.2.2.,
16 correct.

17 BY MR. WINNARD:

18 Q Your understanding of Section 6.2.2 is
19 that it would require Uniloc to generate
20 specific amounts of revenue in specific amounts
21 of time; right?

22 A Let me read it.

23 That's what it states here.

24 Q Do you have any understanding as to
25 why this specific revenue requirement was added

1 to the revenue sharing agreement?

2 A I don't. I can only surmise just to
3 bring us into the conversation and give us a
4 general guideline of what we were expecting.

5 Q Do you know why this revenue
6 requirement was placed in Article VI of the
7 revenue sharing agreement as opposed to any
8 other article or portion of the agreement?

9 A I couldn't comment on that.

10 Q Is it your understanding that a breach
11 of any of the covenants in Article VI would
12 constitute an event of default under the
13 revenue --

14 A No.

15 Q -- stream agreement?

16 A No.

17 Q What is the basis for that belief?

18 A You know, in my mind it's just a
19 guideline to bring us into the conversation.

20 Q Is there any portion of the revenue
21 sharing agreement on which you're relying for
22 your testimony that a breach of any of the
23 covenants in Article VI is not an event of
24 default?

25 A I've not read through it in detail

1 recently. That statement is correct.

2 Q You're relying on something other than
3 the agreement itself for your belief that a
4 breach of the covenants in Article VI would not
5 constitute an event of default; is that right?

6 A Are we talking at this particular time
7 in 2014?

8 Q At any time.

9 A As I stated before, we would have
10 ongoing discussions about the performance and at
11 no time did I consider this investment in a
12 default situation.

13 Q Right. My question is a little bit
14 different.

15 To be clear, you're not relying on the
16 language of the agreement itself for your belief
17 that a breach of the covenants in Article VI
18 would not be an event of default; right?

19 A Well, again, this comes down to an
20 issue of timing. I don't know -- I'm not
21 familiar with the documentation after this. And
22 I don't know when the amendments would have come
23 in and I just don't know from a timing
24 perspective, so...

25 Q Is there a provision in the agreement

1 that you can point to for your belief that a
2 breach of Article VI -- of any of the covenants
3 in Article VI is not an event of default?

4 A Not specifically. I would think that
5 the fact that we gave them additional capital
6 and we're happy with the investment is
7 sufficient.

8 Q That's not a provision in the
9 agreement, though; right?

10 A I haven't looked at the agreements in
11 awhile, so I don't know.

12 Q Right. So to be clear --

13 A If I recall, when we signed one of the
14 amendments or several of the amendments, it's --
15 this was never addressed, so it was never a
16 concern for us.

17 Q Did anyone at Fortress discuss
18 amending Section 6.2.2 at any time after
19 December 2014?

20 A I don't recall specifically discussing
21 Amendment 6.2.2.

22 Q Did anyone at Uniloc ask Fortress to
23 amend or remove Section 6.2.2 of the revenue
24 sharing agreement at any point after December
25 2014?

1 A I know that Craig and I had touched on
2 conversations about generation of revenue and
3 what we were expecting and so forth and the
4 status of the investment. I don't know if he
5 would have brought up 6.2.2. I don't recall if
6 he did or he didn't. But we did certainly
7 address kind of ongoing revenue.

8 Q So just to be clear, sitting here, you
9 don't have a recollection that he ever asked to
10 amend or remove Section 6.2.2 of the revenue
11 sharing agreement; right?

12 A I don't recall.

13 Q In the language of Section 6.2.2 of
14 the revenue sharing agreement draft of
15 Exhibit -- shown on Exhibit 4, Uniloc was given
16 from the closing date through December 31st,
17 2016 to receive at least \$20 million in
18 monetization revenues; right?

19 A That's what that states.

20 Q And the closing date was around the
21 end of December 2014?

22 A I believe that's correct.

23 Q How did Fortress determine the time
24 period over which Uniloc would need to generate
25 \$20 million starting from the closing date?

1 A I don't recall.

2 Q Did you have any involvement in
3 setting the time period over which Uniloc would
4 need to generate \$20 million starting from the
5 closing date?

6 A I don't recall those conversations.

7 Q Did Fortress have any documents to
8 justify its request that Uniloc must generate at
9 least \$20 million of monetization revenues from
10 the closing date through December 31st, 2016?

11 A Not that I am aware of.

12 Q Did Fortress generate any documents to
13 support its ask or amendment of this section to
14 require Uniloc to generate at least \$20 million
15 in monetization revenues during the four fiscal
16 quarter period ending on March 31st, 2017?

17 A Can you ask that question again,
18 please?

19 Q Sure. Did Fortress generate any
20 documents to justify its request that Uniloc
21 generate at least \$20 million of monetization
22 revenues over the four fiscal quarter period
23 ending March 31st, 2017?

24 A Did we generate any documents that
25 showed that -- that showed our desire to amend,

1 is that what you're asking? One more time. I'm
2 sorry.

3 Q Let's ask it this way: How did
4 Fortress decide what the monetization minimum
5 would be in Section 6.2.2?

6 A I don't know.

7 Q Who was involved --

8 A I don't recall those conversations.

9 Q Who was involved in the decision to
10 set the monetization minimum revenue at
11 \$20 million in Section 6.2?

12 A I don't recall specifics. I'm sure
13 Yoni would have been involved in that.

14 Q In Section 6.2.2 there's two different
15 time periods; right? The first is from the
16 closing date through December 31, 2016; right?

17 A Yes.

18 Q And that's a period of about two
19 years?

20 A Yes.

21 Q And then the second period is a fourth
22 fiscal quarter period ending March 31st, 2017
23 and judged from the last date of each fiscal
24 quarter thereafter; right?

25 A Yes.

1 Q And that's a period of one year;
2 right?

3 A That's what it looks like.

4 Q And in each time period Uniloc was
5 required to generate \$20 million in revenue;
6 right?

7 A I'm not sure that's what was intended,
8 but I was not involved. But again, you could
9 read it like that.

10 Q Why did Fortress shorten the time
11 period Uniloc had to generate \$20 million after
12 two years had elapsed?

13 A I don't know.

14 Q Was it Fortress's expectation that
15 Uniloc would become more successful over time in
16 amending this provision?

17 A I'm sorry, say that again. What do
18 you mean amending the provision?

19 Q Sure. I'll cut that out.

20 As of September 2014, was it
21 Fortress's expectation that Uniloc would
22 generate more revenue over time?

23 A I think that you go into any
24 investment hoping that it's going to be
25 successful over time.

1 Q Was it Fortress's expectation that
2 Uniloc would generate more revenue two years
3 down the line as opposed to in the first year?

4 A Maybe. I don't recall the
5 conversations around the status of what Uniloc
6 was doing at that particular juncture.

7 Q Do you have any understanding as to
8 the significance of this provision to Fortress
9 as of December 2014?

10 A Can you ask the question -- what is
11 the significance of this in December '14?

12 Q What is your understanding of the
13 significance of Section 6.2.2 in December 2014?

14 A Just to give us general guidelines of
15 what we would expect or what to expect.

16 Q You understand that -- let's go back
17 to Exhibit 3 for a moment if we can.

18 A Okay. I have it.

19 Q Let's go to Section 6.2 in this
20 agreement. If I can remember the page number.
21 It's taking a minute to load.

22 A I have it here.

23 Q It looks like it's Page 16.

24 A What agreement is this or I'll have to
25 scroll to the top again? This is the --

1 have touched on this. We may not. But we
2 absolutely touched on revenue generation and
3 expectations.

4 Q Right. I'm focusing on the revenue
5 requirement minimum.

6 Is it your testimony sitting here
7 today that you can't recall the specific
8 instance where you discussed the
9 20 million-dollar revenue minimum requirement
10 with Craig Etchegoyen or anyone else at Uniloc?

11 A That's correct.

12 Q Can we move to Section 7.2 of the
13 agreement? It's on Page 24 of the agreement and
14 it's production Number 1830.

15 A Okay.

16 Q And there's "Remedies Following an
17 Event of Default."

18 Do you see that?

19 A Yes.

20 Q "If any one or more events of default
21 shall occur, then in each and every such case,"
22 colon.

23 Do you see that?

24 A Yes.

25 Q Then it proceeds to list the number of

1 remedies that Fortress would have in the event
2 of a default; right?

3 A That's what it looks like.

4 Q Is it your understanding that Fortress
5 would need to take action to affirmatively
6 invoke these remedies in the event of a default?

7 A Ask the question one more time,
8 please.

9 Q Let's start with Section 7.2.1. That
10 section reads, "The majority purchasers (or the
11 collateral agent, acting at the direction of the
12 majority purchasers) may proceed to protect and
13 enforce" and so on.

14 Do you see that?

15 A Yes.

16 Q Do you see the language that the
17 majority purchasers may proceed; right?

18 A Yes.

19 Q They are not required to do so by the
20 agreement?

21 A Okay.

22 Q Do you see that?

23 A Yes.

24 Q Would you agree that at least this
25 remedy is at Fortress's option; right?

1 A Based on -- I'm not a legal expert,
2 I'm not a lawyer, and so I can't legally --
3 legally -- I don't think I should comment on
4 that.

5 Q Do you have an understanding
6 separately from the agreement in terms of when
7 there is an event of default, whether Fortress
8 has options at its disposal in terms of the
9 remedies it would have?

10 A I mean, that would be -- normally I
11 think we would have to put them in default in
12 order to have those rights. That's the way I
13 think it works on most of the stuff.

14 Q Do you understand that Fortress would
15 need to make an election in order to invoke
16 remedies following an event of default?

17 MR. FOSTER: So let me just stop you
18 there. You've been asking him about 7.2.1.
19 Are you limiting your question to that or
20 are you broadening it to other sections?

21 MR. WINNARD: I'm broadening it.

22 MR. FOSTER: Okay. Thank you.

23 THE WITNESS: So please ask the
24 question again.

25 BY MR. WINNARD:

1 Q I'll state it this way: Under the
2 revenue sharing agreement, do you have an
3 understanding as to whether Fortress's remedies
4 automatically come into play or whether it must
5 evoke them affirmatively in the event of a
6 default?

7 A You know, legally how this is written,
8 I do not -- I'm not sure exactly, although based
9 on everything else that we do, I would suspect
10 that we would have to put them in default.

11 Q Is there language in the agreement of
12 which you're aware that would require Fortress
13 to put Uniloc into default in order to invoke
14 its remedies?

15 A Based on my review of it today, I
16 can't see it, but I would have to review the
17 entire document again.

18 Q If you would turn to Section 7.3.
19 This is "Annulment of Defaults."

20 Do you see that?

21 A Yes.

22 Q Is Section 7.3 standard language in
23 Fortress's revenue sharing agreements?

24 A I wouldn't know.

25 Q As the managing director of IP at

1 Fortress, do you have an understanding of this
2 provision?

3 A So that's a different question.
4 Please -- specifically you're asking me about
5 this section in this instance or what?

6 Q Do you have an understanding of this
7 language as the managing director of IP
8 transactions at Fortress?

9 A On this specific language in this
10 specific section? Again, I'm not a lawyer, you
11 know, legalese here, I'm not sure, so...

12 Q You don't profess to be an expert in
13 the meaning of Section 7.3; right?

14 A That's what I'm saying.

15 Q Do you know why Fortress includes
16 Section 7.3 in the agreements with patent
17 assertion entities?

18 A I didn't say that they put this in all
19 agreements with patent assertion entities. In
20 this particular case, I don't know why it's
21 here.

22 Q Let me ask that question.

23 Do you know why Section 7.3 was
24 included in the revenue sharing agreement
25 between Uniloc and Fortress?

1 A I do not.

2 Q Did Fortress ever waive any event of
3 default in writing under this revenue sharing
4 agreement?

5 A I don't believe Fortress ever
6 considered this company to be in event of
7 default. So therefore, we would not have waived
8 it, I don't think. But we never thought they
9 were in default.

10 Q Are you aware of any instance where
11 Fortress waived an event default in a revenue
12 sharing agreement between Fortress and --

13 A I don't recall.

14 Q To the best of your understanding,
15 there was never an instance where Fortress
16 waived in writing any event of default under the
17 revenue sharing agreement between Fortress and
18 Uniloc; right?

19 A To the best of my knowledge.

20 Q To the best of your knowledge, that's
21 correct?

22 A Yes, although I would say the fact
23 that we gave them more money and were very happy
24 with them, I mean, I can't imagine we considered
25 them in default.

1 Q Did Fortress ever enter any amendment
2 to the revenue sharing agreement that waived any
3 event of default?

4 A I don't have them in front of me, so I
5 don't recall.

6 Q Are you aware of any amendment to the
7 revenue sharing agreement that operated as a
8 waiver of any event of default?

9 MR. FOSTER: Objection to the form.

10 THE WITNESS: You keep asking me if we
11 waived the event of default. I don't
12 believe we considered them in default to
13 then waive them and waive the default.

14 BY MR. WINNARD:

15 Q So is the answer to my question that
16 there was no waiver because you believed there
17 never to be an event of default?

18 A I'm not aware of any waiver, specific
19 waiver.

20 Q Are you aware of any general waiver?

21 A I believe the fact that we continued
22 to give them money and were happy with the
23 investment, you know. I mean, I don't think
24 there was any waiver because we never thought
25 they were in default. I don't know how many

1 times I can say it.

2 Q So for the same reason, was there
3 never a cure of any event of default because you
4 never believed Uniloc to trigger an event of
5 default?

6 MR. FOSTER: Objection to form.

7 THE WITNESS: Again, I would defer to
8 my previous answers.

9 BY MR. WINNARD:

10 Q This question is slightly different.
11 I'm asking about cure. You've testified that
12 you don't believe there had been an event of
13 default.

14 My question is: Given your belief
15 that you don't believe there was an event of
16 default, is it also the case you believe there
17 was never a cure of any event of default?

18 MR. FOSTER: Same objection.

19 THE WITNESS: I'll state again I don't
20 believe that there was an event of default.

21 BY MR. WINNARD:

22 Q Can you answer my question?

23 A Can you say it again? I'm sorry.
24 Please go ahead.

25 Q Given your belief that there was never

1 an event of default, is it your testimony that
2 there was never a cure of any event of default
3 under the revenue sharing agreement?

4 A I mean, I guess that would be the
5 case, yes.

6 Q Is that a yes, that it's your
7 testimony that given your belief that there was
8 no event of default, you also believe there was
9 no cure of any event of default under the
10 revenue sharing agreement; correct?

11 A I mean, it just seems like a strange
12 question that I'm not sure, you know, like the
13 answer you're fishing for on that.

14 I don't believe that there was an
15 event of default and, therefore, you know, you
16 could derive from that what you will.

17 Q Right. I'm asking you to help me
18 confirm my understanding.

19 So given your understanding there was
20 never an event of default, is it also your
21 understanding in your testimony today that there
22 was no cure of any event of default under the
23 revenue sharing agreement?

24 MR. FOSTER: Same objection.

25 THE WITNESS: If there was no default,

1 there can be no cure.

2 BY MR. WINNARD:

3 Q What is your understanding of the word
4 "cure" as it's used in Section 7.3 of the
5 revenue sharing agreement?

6 A Let's see. Down at the "Y"?

7 Q Correct.

8 A The company shall have cured -- I
9 guess the majority -- I'm talking to myself out
10 loud, I apologize.

11 I'm not a lawyer. I don't want to
12 comment on what this legalese actually means.

13 Q Do you have any understanding of the
14 word "cure" as it's used in the revenue sharing
15 agreement?

16 A I believe that would mean satisfy.

17 Q So in order to cure a revenue
18 shortfall of \$20 million, you would need to
19 generate \$20 million; right?

20 MR. FOSTER: Objection.

21 THE WITNESS: I don't think so.

22 BY MR. WINNARD:

23 Q What do you mean by the word "satisfy"
24 as a definition for the word "cure"?

25 A We could have amended the strategy,

1 changed the strategy, decided to, you know, take
2 a different direction. Many things could have
3 affected this.

4 Q Just so I understand how you're
5 understanding of the word "cure," if Uniloc
6 breached the agreement but Fortress didn't care
7 about the breach and was still satisfied, would
8 you consider that a cure under the revenue
9 sharing agreement?

10 A I'm not going to comment on that. I'm
11 not a lawyer.

12 Q Is your answer that you don't have any
13 information or belief as to whether that would
14 constitute a cure?

15 MR. FOSTER: Objection.

16 THE WITNESS: Yes.

17 BY MR. WINNARD:

18 Q So in the circumstance where Uniloc
19 breached the agreement but Fortress was
20 satisfied nevertheless with Uniloc's
21 performance, you can't testify one way or the
22 other if that is a cure of the revenue sharing
23 agreement?

24 MR. FOSTER: Objection.

25 THE WITNESS: I'm sorry, say that

1 Q That says, "The agreement, in turn,
2 specified, under "Annulment of Defaults"
3 Paragraph 7.3, that an event of default would
4 end after Fortress (on behalf of the majority
5 purchasers), either was reasonably satisfied
6 Uniloc had affected a cure, or had waived the
7 event of default."

8 Do you see that?

9 A Yes.

10 Q What is your understanding of the
11 difference between a cure and waiver as you've
12 used them in Paragraph 4 of your declaration?

13 A You know, in this instance, a waive of
14 the event of default is there was no default and
15 a cure would be if there was a default, it was
16 cured.

17 Q Let's set aside the specifics of
18 Section 6.2 and the minimums and whether that's
19 a default. What my question is just to make
20 sure I understand when you're using "cure" and
21 "waiver" in your declaration whether there is --
22 what your understanding of those two terms is?

23 A So I guess -- affected a cure or
24 waived in the event of default -- if I thought
25 that there was a default, it was cured and if --

1 or I had waived it as in there was no default.

2 Q Sorry, let me just ask this. What is
3 the definition of the word "cure" as you used it
4 in your declaration?

5 A The definition would be that --
6 satisfied.

7 Q What do you mean by "satisfied"?

8 A As in there is no default. Oh, it's
9 right here.

10 I'm fixing the microphone. I
11 apologize. Is that better?

12 Awesome. Thanks.

13 I'm sorry, go ahead.

14 Q So in the language of the agreement
15 there's discussions of curing an event of
16 default. Is that right?

17 A Yes. What I'm saying here is that I
18 don't believe there was a default, but if
19 somebody forces me to say there is a default, it
20 was cured in my mind.

21 Q How did Uniloc -- why don't we get to
22 that in the specifics. Maybe that will make it
23 more clear later.

24 A As in I could cure it by saying you
25 don't have to generate this revenue.

1 Q It is your understanding that Fortress
2 said, you don't have to generate this revenue.
3 Even though -- if Uniloc did nothing else, that
4 would be a cure, as you understand it and as you
5 used that word in your declaration; is that
6 right?

7 MR. FOSTER: Objection.

8 THE WITNESS: I believe that's what
9 I'm saying.

10 BY MR. WINNARD:

11 Q So as used in your declaration, "cure"
12 would come in the circumstance where Fortress
13 said to Uniloc, you don't have to do anything
14 with the revenue, I'm already satisfied; is that
15 right?

16 A I think it would be waiving -- yes, I
17 think that would be it.

18 Q Do you have an understanding of the
19 meaning of an event of default other than how it
20 is described in the revenue sharing agreement?

21 A Please be more specific.

22 Q Is your understanding of an event of
23 default different or the same as it's described
24 or defined in the revenue sharing agreement
25 between Uniloc and Fortress?

1 A I believe I understand what an event
2 of default is.

3 Q Is that understanding the same or
4 different from how it's defined in the revenue
5 sharing agreement between Uniloc and Fortress?

6 MR. FOSTER: Objection.

7 THE WITNESS: Say that again, please.

8 BY MR. WINNARD:

9 Q Is your understanding of an event of
10 default different from what -- how it's defined
11 in the revenue sharing agreement?

12 MR. FOSTER: Same objection.

13 THE WITNESS: I believe I understand
14 what an event of default is.

15 BY MR. WINNARD:

16 Q Right. I'm just asking to make sure I
17 understand your understanding.

18 Is your understanding the same or
19 different from how an event of default is
20 defined in the revenue sharing agreement?

21 MR. FOSTER: Same objection.

22 THE WITNESS: Is my understanding of
23 an event of default the same as it is in the
24 revenue sharing agreement?

25 Well, I think you're reading it saying

1 they are in default and I'm reading it
2 saying I don't believe they are in default.
3 So...

4 BY MR. WINNARD:

5 Q Do you agree with the express terms of
6 the revenue sharing agreement defining what an
7 event of default is under the terms of that
8 agreement?

9 A I believe that's the purpose of that
10 section to define events of default.

11 Q Do you have any basis to disagree that
12 that is the definition of event of default for
13 purposes of the revenue sharing agreement?

14 A No.

15 Q Do you agree that the parties didn't
16 modify the definition of event of default at any
17 time after December 2014; right?

18 A In writing?

19 Q In any way.

20 A Well, if an event of default was -- I
21 think we probably did redefine it.

22 Q What was the new definition of event
23 of default?

24 A I don't think we considered the
25 revenue monetization milestones events of

1 default?

2 MR. FOSTER: Cure to Fortress's
3 reasonable satisfaction.

4 MR. WINNARD: We don't need speaking
5 objections, Jim.

6 THE WITNESS: Ask me the question
7 again, please.

8 BY MR. WINNARD:

9 Q How did Uniloc cure the event of
10 default that you're referencing in Paragraph 12
11 of your declaration?

12 A Okay. So I think what I'm trying to
13 say here is I never believed them to be in
14 default. And if for some reason somebody says
15 they are in default, the simple fact that we
16 executed that May 15 agreement, you know, states
17 that these guys are not in default.

18 Q Do you consider the execution of that
19 amendment to the agreement as the cure of any
20 event of default?

21 A I would put it this way. Okay. I
22 don't believe they were in default and if, in
23 fact, somebody says they are in default, the
24 fact that we move forward, you know, establishes
25 the fact that we don't believe that there is a

1 default at that juncture.

2 Q What specific actions did Uniloc take
3 to cure any event of default that may have
4 existed as of March 31st, 2017?

5 A I think they would have had to thought
6 they were in default to take action to cure a
7 default. Since neither they nor us considered
8 them in default, I'm not sure they would have --
9 I don't know what actions you reference.

10 As I stated before, this is what I'll
11 say again. As I said ten different times, Craig
12 and I would have ongoing conversations about
13 strategy direction, et cetera, and you
14 constantly want to have discussions and make
15 sure you're on track and you make changes here
16 and decisions here.

17 So we never considered them in default
18 because we made a decision on not to go by the
19 monetization milestone.

20 Q Who made the decision?

21 A Myself. There were maybe others
22 involved in the discussion, certainly
23 discussions with Craig. We made the decision
24 that that's not the appropriate direction and
25 we're happy with it and we'll provide additional

1 investment.

2 Q Are there any documents that you're
3 referring to where you commit to writing a
4 decision not to enforce the revenue minimum?

5 A I believe that the simple fact that we
6 executed amendments and didn't put them in
7 default is, you know, evidence enough.

8 Q Did Uniloc propose to take any actions
9 after March 31st, 2017 to cure any potential
10 events of default caused by its revenue
11 shortfall?

12 A As I just stated, neither Uniloc nor
13 Fortress considered them in default. So I don't
14 think they would have had to specifically
15 address taking action against that or on that.

16 Q So Uniloc didn't propose any actions
17 to cure; right?

18 MR. FOSTER: Objection.

19 BY MR. WINNARD:

20 Q Because there was nothing to cure?

21 A Correct.

22 Q Because it's your understanding there
23 was nothing to cure, Uniloc proposed no actions
24 to cure?

25 A Correct.

1 MR. FOSTER: You have another
2 26 minutes left. The last 20 minutes shows
3 exactly why I'm telling you to proceed at
4 your peril if you just keep repeating the
5 same questions over and over again.

6 BY MR. WINNARD:

7 Q On what date did Uniloc cure any event
8 of default that may have been triggered by --

9 A I'm not going to answer that.

10 Q You can't identify a date for me?

11 A I think you're asking the same
12 question that you've been asking for 30 minutes.

13 Q I haven't asked you a date yet. I
14 want --

15 A Yeah, but you know, this is like, no
16 offense, lawyer trickery right now. I'm sorry,
17 but I'll sit -- like what you just did was the
18 exact reason why this is -- really, come on.

19 Q I just want to --

20 A Cut to the chase. You asked me if
21 they are in default. I said no.

22 Q Right. What I want to understand is
23 your declaration claims that it had been cured.
24 What I want to understand --

25 A No, what I said is -- okay, let's be

1 clear -- I never believed them to be in default.
2 But if for some crazy reason somebody thinks
3 they were in default, by simple fact of us
4 actually executing an additional amendment and
5 giving them additional capital means in my mind
6 that it's satisfied. That's what I say there.
7 There is a date right there in the declaration.

8 Q Right. So you're not pointing to any
9 cure that may have occurred between May 31st and
10 May 15th; right?

11 A I'm -- what I'm saying again is I do
12 not believe there was a default, so, therefore,
13 there was not a cure. But if for some crazy
14 reason somebody thinks there was a default, in
15 my mind there never was. And the simple fact
16 that we executed this and gave them additional
17 capital, you know, to me it's satisfied.

18 Q You understand that any default would
19 need to be cured to Fortress's reasonable
20 satisfaction. That's the terms of the
21 agreement; right?

22 A I believe that's what it says.

23 MR. FOSTER: All right. Doug, I've
24 been very patient, haven't said anything
25 else. At this point I'm going to put the

1 hammer down. I'm going to point out to the
2 witness the judge has already ruled in the
3 '358 case, the '360 case exactly as this
4 witness has testified.

5 MR. WINNARD: I'm exploring the
6 veracity of the declaration to make sure I
7 understand what the witness means by "cured"
8 because we think that that's actually a
9 material dispute that's part of the
10 discovery and the dispute as to what
11 standing was at that time these actions were
12 filed.

13 I understand your position, but we're
14 entitled to discovery on this.

15 BY MR. WINNARD:

16 Q I'm not trying to talk in circles.
17 Let me make sure I understand what you're
18 saying.

19 It's your testimony there was never an
20 event of default; right?

21 A Correct.

22 Q And that's true for all periods of
23 time from December 2014 until Uniloc 2017
24 acquired assets in, I think, May 2018?

25 A That has been my belief.

1 Q Given that it's your belief that there
2 was no event of default, it is your
3 understanding that Uniloc didn't take any
4 specific action to cure any event of default at
5 any time; right?

6 MR. FOSTER: Objection.

7 THE WITNESS: We would have to put
8 them in default. They would have had to
9 realize or believe they were in default to
10 take action.

11 Now, we did things and we amended the
12 strategy and had discussions about that and
13 so forth, you know. So there's things
14 around that, but we never did it
15 specifically because there was an event of
16 default or to cure an event of default.

17 BY MR. WINNARD:

18 Q So I understand, the execution of the
19 third amendment in May 2017, is it your view
20 that that amendment itself was a cure or is it
21 evidence that at some point leading up to that
22 amendment, there would have been a cure?

23 A The way I -- what I'm saying is I
24 never would have done that if these guys were in
25 default. So, therefore, I guess I would say

1 Q Okay. We have two numbers here saying
2 that Uniloc's value in patents currently exceeds
3 30 million and Fortress expected that value to
4 add an additional 60 million with the loan of
5 10 million in May of 2017; right?

6 A That's what it says.

7 Q So with the extension of financing in
8 May 2017, Fortress was looking at having about
9 \$26 million invested in Uniloc for what it
10 considered over \$90 million in evaluation;
11 right?

12 A That's what it sounds like this is
13 stating.

14 Q Do you have any reason to disagree
15 with those valuations?

16 A No, I just wasn't involved in the
17 valuation, so I hesitate to opine on this. But
18 that's what this says.

19 Q So if it were an event of default
20 after May 2017, Fortress would be able to take
21 possession of collateral that it had valued at
22 at least 30 million, if not up to 90 million;
23 right?

24 MR. FOSTER: Objection --

25 THE WITNESS: Again, the same answer I

1 gave about ten minutes ago. If there was an
2 event of default, I believe we would be able
3 to exercise our rights as defined in the
4 document.

5 BY MR. WINNARD:

6 Q Right. I just want to be specific to
7 Uniloc. The valuation at the time that Fortress
8 lent additional money in May 2017 was over
9 \$90 million; is that right?

10 MR. FOSTER: Objection.

11 THE WITNESS: At the time of this
12 amendment, what was -- you're saying the
13 value we estimated or somebody put a value
14 on this of \$90 million, which was
15 \$30 million from the beginning and an
16 additional 60 million if we acquired those
17 patents. Is that what you're saying?

18 BY MR. WINNARD:

19 Q That's right.

20 A That's what it looks like.

21 Q So even if we look at the -- strike
22 that. Withdrawn.

23 If Fortress lent Uniloc another
24 \$10 million, it would still have a valuation
25 exceeding 30 million even if Uniloc did not

1 purchase the patents that Fortress expected;
2 right?

3 MR. FOSTER: Objection.

4 THE WITNESS: So if they didn't buy
5 any more patents, we estimated the value
6 remaining to be \$30 million.

7 BY MR. WINNARD:

8 Q And that value exceeding \$30 million
9 was still larger than the total amount of money
10 that Fortress had lent to Uniloc across all
11 three levels; right?

12 A I -- we're relying on the 26 and there
13 was 30, and I don't -- again, I'm not trying to
14 be smart, but I forgot what we got paid back,
15 but it seems like it would be larger than what
16 we lent them, correct.

17 Q So assuming there had been an event of
18 default after May 2017, Fortress would have had
19 the right to take possession of collateral that
20 it valued as greater than all of the sums that
21 it had lent to Uniloc; right?

22 MR. FOSTER: Objection.

23 THE WITNESS: So in the hypothetical
24 situation where there was a default, we
25 would be able to exercise our rights. And

1 if, in fact, in the documents it says we can
2 take possession of the collateral, then what
3 you said would be correct.

4 BY MR. WINNARD:

5 Q And in giving Uniloc that additional
6 \$10 million, did Fortress place any restrictions
7 on what Uniloc could use those funds for?

8 A Again, I think we went through this
9 early on in the beginning and I said I don't
10 recall.

11 Q If we can turn to Exhibit 7.

12 A Let me refresh.

13 (Exhibit 7 was marked.)

14 THE WITNESS: Got it.

15 BY MR. WINNARD:

16 Q You recognize Exhibit 7 as a
17 supplemental declaration of James Palmer; right?

18 A Yes.

19 Q You understood you were making the
20 statements in this declaration under penalty of
21 perjury?

22 A Yes.

23 Q Did you write this declaration?

24 A Yes.

25 Q Did anyone help you write it?

1 A Probably reviewed it internally. But
2 for the most part, I wrote it.

3 Q Can you think of anyone who you may
4 have asked to help you write it?

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

6 Q Did you speak with anyone in preparing
7 your declaration?

8 A I don't remember.

9 Q Did you rely on any documents in
10 making the statements in this declaration?

11 A I don't think so.

12 Q If you can go to Paragraph 2 of your
13 declaration and start with the second
14 paragraph -- or second sentence.

15 A I'm sorry, the second paragraph?

16 Q Second paragraph, second sentence. I
17 can read it when you're ready.

18 A Second paragraph, second sentence, I
19 stated there that if -- is that the one, that
20 second sentence you --

21 Q Can you go ahead and read that since
22 you found it?

23 A "I stated there that if, contrary to
24 Fortress's view, an event of default had
25 occurred, Uniloc had cured that" --

1 REPORTER: Excuse me.

2 THE WITNESS: -- "ostensible event of
3 default to Fortress's satisfaction."

4 REPORTER: Excuse me. Can you read
5 that again?

6 THE WITNESS: "I stated there that if,
7 contrary to Fortress's view, an event of
8 default had occurred, Uniloc had cured that
9 ostensible event of default."

10 BY MR. WINNARD:

11 Q And your statement here is describing
12 the statement you made in the prior declaration
13 that was marked as Exhibit 6; right?

14 A Correct.

15 Q And your statement in this declaration
16 is describing that statement as an "if"
17 statement; right?

18 A I'm not sure I understand. I stated
19 that if -- I think I stated here what I said to
20 you while we were going through that, that,
21 again, I didn't believe that we were in event of
22 default, but if for some reason somebody defined
23 it as -- I -- in no way did I feel they were and
24 it was satisfied.

25 Q Right. I just want to make sure that

1 A I believe that statement to be
2 correct.

3 Q And is your testimony about any
4 potential event of default on June 30th, 2017
5 the same as your testimony about any potential
6 event of default on March 31, 2017?

7 A Again, please ask that again.

8 Q I don't want to get in trouble for
9 asking it for the 12th time.

10 A Again, it is the end of the day. I'm
11 not trying to be difficult. I'm trying to make
12 sure I hear the question, that's all.

13 Q Just to shortcut it, your testimony
14 today is that there was no event of default
15 based on a revenue shortfall on March 31st,
16 2017; right?

17 A Yes.

18 Q Is your testimony also that there was
19 no event of default based on any revenue
20 shortfall that may have occurred on June 30th,
21 2017?

22 A Yes.

23 Q What actions occurred after June 30th,
24 2017 would you point to as evidence of any
25 potential cure of that --

1 A I don't have anything off the top of
2 my head at this point to point to.

3 Q Just to draw a distinction --

4 A Other than, you know, I don't believe
5 we ever said, hey, you're in default. We never
6 considered them to be in default.

7 Q And because you never considered
8 Uniloc to be in default based on revenue
9 generated as of June 30th, 2017, Uniloc never
10 took any specific actions to cure any issues of
11 default after that date; right?

12 MR. FOSTER: Objection.

13 THE WITNESS: So again, I think this
14 is getting back to the question now for the
15 13th time. Again, I'll state it.

16 I never believed them to be in -- I
17 never considered them to be in event of
18 default. Uniloc never considered themselves
19 in event of default, so I don't think they
20 would have taken a specific action to cure a
21 default that they did not believe they were
22 in.

23 BY MR. WINNARD:

24 Q I want to make sure that's also the
25 case for the June 30th, 2017 revenue shortfall.

1 Is that your testimony?

2 A I'll put it even further. At no time
3 from beginning to whenever did we ever consider
4 that this company was in default from a loan
5 perspective or with a loan outstanding.

6 Q And when you talk about a company
7 being in default, are you talking about any
8 conditions other than what is stated in the
9 revenue sharing agreement?

10 A When I -- when I'm talking about
11 Uniloc not being in default talking about any
12 other conditions, I'm talking about at no time
13 did we believe that they were in default while
14 we had a loan outstanding.

15 Q I just want to ask whether when we
16 talk about default or events of default, is
17 there a difference in your mind between those
18 two terms?

19 A Default is a default.

20 Q Is it the same as an event of default?

21 A You know, again, I'm not a lawyer and
22 I can't -- to me I'm not trying to be cute or
23 anything, but, I mean, I never considered this
24 company to be in default.

25 Q I'm not asking that. In your

1 declaration you used the terms both "default"
2 and "event of default." And I just wanted
3 clarification.

4 Do you have a distinction in your mind
5 between those two terms?

6 A In my mind for a company to be in
7 default, we would have to put them in default.

8 Q Was your understanding based on any
9 terms in the revenue sharing agreement?

10 A It was based on my 20 plus years of
11 experience.

12 Q You were aware that Uniloc acquired
13 patents from Hewlett-Packard; right?

14 A I believe they did acquire some
15 patents from Hewlett-Packard.

16 Q Prior to the acquisition of those
17 patents, did Uniloc provide any information to
18 Fortress about those patents?

19 A I don't recall.

20 Q Uniloc 2017 acquired Uniloc
21 Luxembourg's patent portfolio; right?

22 A I believe that's correct.

23 Q Did Uniloc 2017 perform any valuations
24 of the patents that it acquired from Uniloc
25 Luxembourg?

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

2 Q Who would be the best person to ask at
3 Fortress?

4 A To be honest, I don't know.

5 Q You're aware that Uniloc acquired a
6 portfolio of patents that were originally
7 assigned to Philips?

8 A Who owned those? Who were they
9 acquired from?

10 Q It would have been from Pendragon, I
11 believe.

12 A I believe they did acquire some assets
13 from Pendragon.

14 Q Did Uniloc provide any information to
15 Fortress about the patents that it intended to
16 acquire from Pendragon?

17 A I don't recall.

18 MR. WINNARD: It's now 4:00. I have
19 questions regarding agreements involving
20 Uniloc 2017 and CF Uniloc, but I'm not going
21 to be getting to those today.

22 VIDEOGRAPHER: This concludes today's
23 testimony given by James Palmer. The total
24 number of media used was one and will be
25 retained by Veritext. The total

1 on-the-record time of questioning is
2 four hours and 48 minutes.

3 We are off the record at 3:59 p.m.

4 (Discussion off the record.)

5 MR. WINNARD: I just want to make
6 clear that we're keeping this deposition
7 open and that we ask that it be treated as
8 such, that the deposition is not concluded
9 of Mr. Palmer and that there not be any
10 discussions with Mr. Palmer regarding the
11 scope of this deposition or his testimony
12 and we will resume at a time that counsel
13 can agree to or the court will resolve.

14 MR. FOSTER: I completely disagree for
15 the reasons I stated 45 minutes ago.

16 (The Confidential portion of the
17 deposition of JAMES PALMER was concluded.)

18
19 (Proceedings concluded at 4:02 p.m.)
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25

1 I, LYNNE M. LEDANOIS, a Certified
2 Shorthand Reporter of the State of
3 California, do hereby certify:

4 That the foregoing proceedings were
5 taken before me at the time and place herein set
6 forth; that a record of the proceedings was made
7 by me using machine shorthand which was
8 thereafter transcribed under my direction; that
9 the foregoing transcript is a true record of the
10 testimony given.

11 Further, that if the foregoing
12 pertains to the original transcript of a
13 deposition in a Federal Case, before completion
14 of the proceedings, review of the transcript []
15 was [X] was not requested.

16 I further certify I am neither
17 financially interested in the action nor a
18 relative or employee of any attorney or party
19 to this action.

20 IN WITNESS WHEREOF, I have this date
21 subscribed

22 Dated: *Lynne Marie Ledanois*

23
24 *Lynne Marie Ledanois*

LYNNE MARIE LEDANOIS

25 CSR No. 6811