

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT,

IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. 50-2012-CA-023358-XXXX-MB

JAMES TODD WAGNER, SUPERCAR ENGINEERING,
INC., a Florida corporation,

Plaintiffs,

vs.

WARREN MOSLER, MOSLER AUTO CARE CENTER,
INC. ("MACC") a Florida corporation,
d/b/a Mosler Automotive,

Defendants.

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VOLUME I - DAY 1

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PROCEEDINGS BEFORE
HONORABLE LUIS DELGADO

DATE: MAY 9, 2023

TIME: 9:30 A.M. - 1:15 P.M.

1 APPEARING ON BEHALF OF PLAINTIFFS:

2

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13 ALSO PRESENT:

14 James Todd Wagner, Plaintiff

15 Warren Mosler, Defendant

16 David Griffin, TruVid, LLC

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I N D E X

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BE IT REMEMBERED, that the following proceedings were taken in the above-styled cause before Honorable Luis Delgado, Presiding Judge, at the Palm Beach County Courthouse, 205 North Dixie Highway, Courtroom 10-D, in the City of West Palm Beach, County of Palm Beach, State of Florida, on the 9th day of May, 2023, to wit:

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MR. WEBER: So, Your Honor, one of the issues we wanted to deal with is our motion for summary judgment.

THE COURT: I'm sorry?

MR. WEBER: One of the issues we wanted to deal with before we start trial is our motion for summary judgment. We had provided a copy to Your Honor, but I have another copy here if you need it.

THE COURT: Yeah, give me a hard copy.

MR. WEBER: And we had previously sought to schedule this, and Your Honor set it for the first day of trial. Here you go, Scott.

It's a short motion. It's against --

THE COURT: I looked it over, actually. Indispensable party and redundant counts --

MR. WEBER: Correct.

1 THE COURT: -- right? Okay. All right.

2 MR. WEBER: Do you want me to argue the
3 motion, or are you fully apprised, Your Honor?

4 THE COURT: No, I've read it. I looked it
5 over, but, you know, we have a court reporter here,
6 so we should have a little argument.

7 MR. WEBER: Okay.

8 So, Your Honor, our motion deals with the
9 fraudulent transfer claim and the unjust enrichment
10 claim with respect to a \$100,000 nonrefundable
11 deposit, which is also subject for a breach of
12 contract claim.

13 First, let's start with the fraudulent
14 transfer claim. The fraudulent transfer claim
15 seeks equitable relief against a third party that
16 is not a party to this case, RP High Performance.
17 The relief sought by the claim cannot be granted by
18 the Court because that party is not in this case,
19 so summary judgment should be granted on that
20 claim.

21 It is undisputed that RP High Performance is
22 not a party to this claim, and it's been an
23 affirmative defense in this case since at least
24 June 2019, I would say.

25 The next claim, Your Honor, is the claim

1 regarding unjust enrichment, which is pled in the
2 alternative to a breach of contract claim. Both
3 claims concern a \$100,000 deposit.

4 As Your Honor knows, you can plead claims in
5 the alternative, however, we are now at trial and
6 plaintiff has submitted a sworn interrogatory
7 response, which is attached to our motion, where he
8 testifies that there is a contract. So under the
9 case law he has chosen his path, we're at trial,
10 and so the unjust enrichment claim, which depends
11 on there not being an express agreement, should be
12 dismissed and judgment should be entered on it.

13 And if Your Honor wants to see the sworn
14 interrogatory response, you'll see that in --
15 attached to the motion as Exhibit A. It states
16 specifically in the interrogatory response, which
17 is attached as Exhibit A to the motion, Mr. Wagner
18 asserts -- in response to interrogatory number 1,
19 he identifies a oral agreement that was definitely
20 within the few months prior to my June 29, 2011
21 deposit. So he has identified an oral agreement
22 under oath in a sworn interrogatory.

23 THE COURT: Okay. So the Exhibit A I'm
24 looking at is this.

25 MR. WEBER: That looks like you're looking at

1 the complaint.

2 THE COURT: Oh, okay.

3 MR. WEBER: May I just see it, Your Honor? I
4 can point it out to you.

5 THE COURT: Look at this one because I just
6 wrote on this one.

7 MR. WEBER: So it's right there on the back
8 page of what you have in your hand there.

9 THE COURT: Oh, okay.

10 MR. WEBER: It's the last page. That's the
11 signature page of the interrogatory, Your Honor.

12 THE COURT: Okay. Response?

13 MR. WEBER: And there's been no opposition
14 filed to the motion for summary judgment, so all
15 statements of fact in the motion are deemed as
16 true.

17 MR. ZAPPOLO: Your Honor, I was just looking
18 for -- through some paperwork that I have and right
19 now I don't have it in front of me, but Mr. Mosler
20 filed an affidavit in this case where he said that
21 there was no such agreement. So there's certainly
22 an issue of fact with respect to whether there was
23 or whether there was not such an agreement.

24 Also, we frequently have oppositions -- and of
25 course I'm dealing with the second issue. We

1 frequently have cases that go to trial when one
2 side says there was an agreement and the other side
3 says there was not an agreement or one side says
4 there was an agreement, but if there wasn't an
5 agreement, he's been unjustly enriched and that's
6 the circumstance we have here. If we're not able
7 to prove the oral agreement, we'll be, you know,
8 asking the jury, as is frequently done in the
9 verdict forms, if you find that there was an oral
10 agreement, make these -- whatever findings about
11 damages, et cetera, and then skip to Count III or
12 whatever of the verdict form.

13 If you find that there was no such agreement,
14 then go to Count II or whatever the count is: Was
15 the defendant unjustly enriched? So that's common
16 practice frequently pled, et cetera. There's
17 definitely an issue of fact.

18 Trying to just hold the one interrogatory
19 in -- you know, in a vacuum is not -- not
20 appropriate under these circumstances, but if you
21 were, you have to compare that with Mr. Mosler's
22 affidavit that he filed in support of the motion
23 for summary judgment where he said there was no
24 such agreement.

25 So under those circumstances, we certainly

1 have an issue of fact and I will be asking
2 Mr. Mosler about his affidavit, et cetera, when he
3 takes the stand.

4 The other issue is perhaps more interesting
5 and deserves a little bit more argument. On its
6 face I will tell the Court, yes, it is true we did
7 not sue RP High Performance, but if you look at the
8 counts, and the count that is alleged in the Sixth
9 Amended Complaint, Count IV, fraudulent transfer,
10 what the count does is it tracks the language in
11 726.105 Florida Statute, and as a matter of fact it
12 even uses the language right out of and references
13 the subparts of the statute.

14 For example, at page 6, paragraph 30 of the
15 Second Amended Complaint, the -- excuse me, the
16 Sixth Amended Complaint, it alleges Warren Mosler
17 and MACC, Mosler Auto Care Center, made the
18 transfer, A, with actual intent to hinder, delay,
19 or defraud SEI. That's the language straight out
20 of 726.105(1)(a).

21 The next page at page 7, B, without receiving
22 the equivalent value in exchange for the transfer
23 obligation. That's the language out of
24 726.105(1)(b)(2). And then subparagraph 2,
25 intended to or believed to reasonably should have

1 believed that MACC would incur debts beyond its
2 ability to pay when they became due.

3 Just further down we talked about the
4 concealment of the sale. And further down
5 subparagraph 2D, the debtor had been sued or
6 threatened to sue. Those are all facts that are
7 going to come out in this trial. As a matter of
8 fact they're documents that have been exchanged.
9 They're exhibits. I don't even think that a lot of
10 that stuff should even be at issue here.

11 The real issue is whether or not you have to,
12 when suing someone for a fraudulent transfer,
13 whether you have to name the person that received
14 the goods, but here's the interesting thing, Your
15 Honor: While this is arguably inartfully pled to a
16 certain extent, what we do have is we have the
17 prayer for relief that says, at page 8, including
18 interest in money yet to be received or already
19 received by Warren Mosler or any other.

20 So, here's what happened: Mr. Mosler was not
21 only aware of the suit, he had already been sued
22 for various things, including the tort of
23 defamation.

24 Mr. Mosler then -- and, excuse me, and he had
25 also been sued -- the company, MACC, had been sued

1 for various corporate breaches of contract.

2 Mr. Mosler, as a sole shareholder of MACC, sold
3 MACC and all of its assets and then received the
4 money.

5 Now, if that money had stayed in the MACC bank
6 account, that would have been fine because then,
7 when we win on the counts against MACC, MACC would
8 have had assets for us to collect against. But
9 Mr. Mosler, as a sole shareholder of MACC, he took
10 it upon himself to transfer that money out and pay
11 some -- the evidence will show he put it into his
12 bank account and spent it on other things. So he's
13 received a benefit after my client has been --
14 suffered the fraud.

15 Now, we also pled for any other relief the
16 circumstance may require. And this is kind of an
17 equitable thing. Now the interesting thing is a
18 lot of times you sue under 726 after you have a
19 judgment, but the case law says you don't have to
20 wait until after you have a judgment, especially in
21 circumstances such as these where there's a statute
22 of limitation ticking away. We found out that
23 Mr. Mosler had transferred the assets, and so we
24 amended the complaint and sued him for that.

25 And what we have, Your Honor, is an

1 interesting -- there's a pretty similar case here,
2 it's Cook versus Pompano Shopper, a 4th DCA case.
3 It was back in 1991, but it kind of tracks pretty
4 substantially the circumstances here and I
5 highlighted something here.

6 Now, in page 2 of that -- and technically it's
7 page 39 of the opinion, but it's page 2 of the
8 Westlaw printout that I gave you, there was an
9 amended complaint alleging counts against the
10 Weinischkes -- and I apologize for mispronouncing
11 the name -- for violation of Florida's Uniform
12 Commercial Code, Bulk Transfer Act and Uniform
13 Fraudulent Transfer Act, which is the 726 statute,
14 out of the Weinischke sale of the Pompano Shopper's
15 assets.

16 So that's what we have. We have a similar
17 circumstance. That was actually a tort claim
18 against the corporate entity for defamation. In
19 our case, we didn't have a -- we don't have a tort
20 claim against the corporate entity for defamation,
21 but we have breach of contract claims against the
22 corporation. And so the appellees filed a motion
23 for partial summary judgment as Mr. Weber has here
24 on the counts alleging violation of Bulk Transfer
25 Act and the Uniform Transfer Act.

1 If we flip over to page 3, the trial court
2 erred in granting a partial summary judgment in
3 favor of appellees on the count for fraudulent
4 transfer. A tort claimant or contingent claimant,
5 which is what we are as defined under the statute,
6 we were a contingent claimant at all times, is as
7 fully protected under the Uniform Fraudulent
8 Transfer Act as a holder of an absolute claim.
9 They reversed the partial summary judgment on the
10 fraudulent conveyance count.

11 Now, the facts in this case are very clear
12 that -- and I don't think there's -- most of them
13 are going to be contested. The only issue here is
14 did we have to sue RP High Performance? And I
15 would concede that we're not entitled to any
16 remedies against RP High Performance because
17 they're not a party to the case.

18 Your Honor should also know that in this case
19 we anticipate the presentation of evidence,
20 specifically Exhibits 746 and 748, which -- in
21 which Mr. Mosler, when selling the assets, agreed
22 to indemnify RP High Performance for any claims by
23 Mr. Wagner. So why would we have to bring that
24 party in if Mr. Mosler's already said that he's
25 going to be responsible for any claims that might

1 be asserted against them?

2 Now it's true we can't get back and clawback
3 the assets from RP High Performance, but as the
4 case law holds, and there are various cases, we
5 certainly are allowed to have a lien and/or a
6 constructive trust over the proceeds from that
7 sale, that \$500,000 that RP High Performance paid
8 to Mr. Mosler in order to have Mr. Mosler sell off
9 its assets and prevent us from being able to
10 collect on our claims for breach of contract, et
11 cetera, against MACC.

12 MR. WEBER: Brief reply, Your Honor? All of
13 what Mr. Zappolo just presented was oral argument
14 to the Court. There's no evidence submitted to
15 Your Honor in response to our motion for summary
16 judgment as is required by the rule. He didn't
17 present any case law that identifies that having a
18 constructive trust is permissible under a
19 fraudulent transfer claim.

20 We don't contest that a fraudulent transfer
21 claim can be brought before a judgment, but this
22 claim is brought against the party. In the
23 ordinary course, he sues RP High Performance to
24 avoid the transfer and bring the assets back into
25 the transfer. That wasn't done here today, it

1 wasn't done ever, and so the claim needs to be
2 dismissed. It needs -- judgment should be entered.
3 None of the facts that Mr. Zappolo presented were
4 submitted in response to our motion. He had time
5 to do it; he failed to do so.

6 THE COURT: Thank you. Give me one moment.
7 So I'm looking at your summary judgment and the
8 relief you're seeking is -- for the most part,
9 while there are some facts that you cite, there are
10 one, two -- seven numbered paragraphs. You know,
11 it's a short statement of fact. Really, your
12 arguments are procedural, aren't they?

13 MR. WEBER: It's that -- it's an indispensable
14 party. This claim is brought against the wrong
15 parties.

16 THE COURT: And so, again, I think that's
17 procedural, isn't it? I mean, there's the rule.

18 MR. WEBER: Well, there's the rule. I mean,
19 they've -- that's -- on the merits they can't get
20 relief through a fraudulent transfer claim because
21 all the relief they're seeking is against RP High
22 Performance. The claim is null. You can't void
23 the transfer against the people who transferred the
24 assets. You void the transfer against the person
25 who received the asset and you claw it back into

1 the person who sent the asset away. That's how the
2 fraudulent transfer claim works. They don't have
3 the person who received the asset, and so your
4 court can't avoid the transfer. You'll be entering
5 a judgment against the party that's not in the
6 lawsuit.

7 MR. ZAPPOLO: Your Honor, if I may?

8 MR. WEBER: And so they have not cited any
9 case law that says that they can do anything else,
10 and he admits that the claim is not pled correctly.

11 THE COURT: Give me a moment. Because what
12 I'm trying to do is look at what I just heard --
13 process what I just heard through the lense of Rule
14 1.510.

15 MR. WEBER: Through that rule, Your Honor, I
16 mean, it's undisputed that RP High Performance
17 isn't in the case and we have -- that's an
18 undisputed fact.

19 MR. ZAPPOLO: Brief reply, Your Honor? The
20 asset that was transferred out of MACC, we did say
21 that -- on the one hand we did say that the
22 intellectual property was transferred to RP High
23 Performance. I conceded that we can't get that
24 back from Mr. Mosler, but what Mr. Mosler
25 transferred out of the company was the

1 \$500,000 that he received for that stuff. So we're
2 allowed to go after Mr. Mosler, the person who
3 basically eluded the company and left the company
4 unable to respond to a judgment that we're -- we
5 hope to get in this case.

6 MR. WEBER: Your Honor, that is not the claim
7 here at all. That's why in their -- in their
8 complaint they say "avoidance of the transfer of
9 MACC assets to RP High Performance."

10 THE COURT: That's on page 6?

11 MR. WEBER: Page 8 of his complaint.

12 MR. ZAPPOLO: But we also, just below that,
13 say "A writ of attachment or other provisional
14 remedy against the assets transferred or other
15 property of the transferee, including interest and
16 money yet to be received or already received by
17 Warren Mosler or any other."

18 MR. WEBER: That's not a fraudulent transfer,
19 Your Honor.

20 MR. ZAPPOLO: That absolutely is a fraudulent
21 of transfer.

22 MR. WEBER: That's a writ of attachment or a
23 provisional remedy. I mean, it's not -- it's
24 not -- that's not how a fraudulent transfer claim
25 works. He's supposed to sue RP High Performance to

1 get the writ of -- to attach the assets in RP High
2 Performance to prevent them from being further
3 transferred away.

4 MR. ZAPPOLO: In another case in this
5 courthouse I sued the owners of a shopping plaza
6 that sold their shopping plaza in the middle of the
7 suit, just like Mr. Mosler sold his company's
8 assets in the middle of this suit, was able to
9 obtain a judgment against the insiders for receipt
10 of the monies.

11 I also have with me, Your Honor, a copy of a
12 ruling from Judge Diana Lewis in a case of similar
13 circumstance where she held people similarly
14 responsible under the fraudulent transfer act.

15 MR. WEBER: And, Your Honor, there's no
16 response filed. What case? I was the lead counsel
17 in the Rothstein bankruptcy proceedings. I clawed
18 back over a million -- you know, I don't even know
19 how many millions of dollars. That's not what
20 we're here for today.

21 THE COURT: Give me a moment. I'm going in
22 circles in my head over one particular issue. Give
23 me one more moment.

24 All right. The motion for summary judgment is
25 granted as to the fraudulent transfer, denies the

1 Counts V and VI.

2 MR. ZAPPOLO: Okay, Your Honor.

3 MR. WEBER: I think the only remaining issue
4 then, Your Honor, is the --

5 MR. ZAPPOLO: There was an order that Your
6 Honor made and for some reason, probably my fault,
7 we didn't get the order submitted to you just on
8 bifurcation.

9 THE COURT: Oh.

10 MR. WEBER: It was agreed to during that
11 March 30th hearing, Your Honor. It was bifurcated
12 for purposes of punitive damages, one trial as to
13 liability, and one trial, if liability is
14 established, as to amounts.

15 MR. ZAPPOLO: I didn't agree to a separate
16 trial. It's the same jury --

17 MR. WEBER: Well, here.

18 MR. ZAPPOLO: -- that's going to hear the
19 second portion of it.

20 MR. WEBER: Yes.

21 MR. ZAPPOLO: Your Honor, there is one
22 outstanding issue. A good while back, I think in
23 January, we had the plaintiffs' motion for
24 sanctions against the defendant for withholding
25 evidence for years.

1 You heard argument. We were here a good
2 while. As of right now in this case there's Judge
3 Hafele's order that said that the defendants would
4 have a rebuttable presumption of -- and I don't
5 remember the exact phraseology. I'm sure Mr. Weber
6 is going to try to harp on this during the trial.
7 The allegation was that Mr. Wagner engaged in some
8 sort of witness tampering.

9 Right now, in perfect candor for the Court and
10 for the court reporter's benefit, I guess I'm
11 prepared and I'm going to have to defend and go
12 down all those rabbit holes about what happened
13 that transpired during this case. If Your Honor
14 was to rule one way or the other on that motion,
15 that might -- that would either limit the case or
16 something like that.

17 I think that Mr. Weber and I could probably
18 agree that it doesn't need to be inquired about
19 specifically during jury selection and things like
20 that, but if you could take a look at that, my
21 position would be if you could take a look at that
22 and let us know tomorrow so that we could modify
23 our presentations appropriately.

24 And I will remind the Court, Mr. -- there was
25 a hearing and Ms. Wagner, who interestingly enough,

1 I think Mr. Weber -- for the record, Mr. Weber and
2 I both have been trying to subpoena and
3 unsuccessfully, but in any case, the allegation was
4 that because Mr. Wagner sent emails to his ex-wife
5 after a hearing where she testified that there were
6 virtually no emails, everything was done via phone,
7 he wrote her a text that said "Really Jill?"
8 Something to the effect of "I won't forget this."
9 And Judge Hafele concluded that was an attempt to
10 intimidate a witness.

11 There's 18,500 pages of documents that were
12 produced in this case, inclusive of emails and all
13 kinds of other things, and we're going to have to
14 go into those things in order to defend my client
15 against those -- that, quote/unquote, rebuttable
16 presumption in order to rebut it. So I just want
17 the Court to know that that's where we're headed
18 unless -- as things stand right now.

19 MR. WEBER: Your Honor, if I may, there's no
20 allegation that James Todd Wagner engaged in
21 witness tampering. Judge Hafele found that James
22 Todd Wagner tampered with a material witness in
23 this case. He sent her threatening emails and used
24 one of the witnesses in this case to tell the
25 witness in this case that he would remove a lien on

1 her house in exchange for changing her testimony.
2 And in January 2020 Judge Hafele heard this issue
3 and granted our motion for sanctions and granted an
4 adverse inference against Mr. Wagner. And during
5 that hearing he asked Mr. Wagner whether he wanted
6 criminal counsel present based on Mr. Wagner's
7 testimony. That was a first for me, Your Honor.

8 MR. ZAPPOLO: And Mr. --

9 MR. WEBER: Hold on, Mr. Zappolo, I'm not
10 finished yet.

11 MR. ZAPPOLO: Okay.

12 MR. WEBER: That was a first for me. And
13 during this hearing in March, when Mr. Zappolo
14 presented his evidence supposedly in support of his
15 motion for sanctions for withholding documents for
16 years, which he's had since 2019, which he's had
17 three years to do discovery on, which Judge Hafele
18 already granted relief on, he already deposed
19 Mr. Mosler twice, already deposed Ms. Wagner
20 again -- during the hearing in March, Mr. Zappolo
21 said "Well, we didn't have the documents in
22 January, so we couldn't defend against the witness
23 tampering issue." That was false, Your Honor,
24 because he already had those documents for six
25 months. All of this whole issue is moot.

1 Judge Hafele heard all of the issues
2 surrounding the documents. Judge Hafele heard all
3 of the circumstances. Judge Hafele granted
4 appropriate relief and this issue is over.

5 MR. ZAPPOLO: I would like Your Honor to ask
6 Mr. Weber if the presumption that Judge Hafele
7 granted was, A, a rebuttable presumption. In which
8 case I'm entitled to rebut in front of this jury,
9 number one. I believe it is a rebuttable
10 presumption.

11 And number two, Judge Hafele's ruling, when we
12 came back, did grant me additional discovery and
13 said that I could come back for additional relief.
14 And that's what I did when we got the additional
15 discovery, and we've had the opportunity to go
16 through the 18,500 pages of documents that were
17 dumped on us prior to the first time this was --
18 well, one of the prior times this was slated to go
19 to trial.

20 THE COURT: Give me a moment.

21 MR. WEBER: And, Judge --

22 THE COURT: Give me a moment. Give me a
23 moment.

24 Can you gentlemen send me an order on that
25 today? Maybe as soon as we break, and I'll look at

1 it. I'm looking for it and I can't find what I
2 need to find.

3 MR. ZAPPOLO: Do you --

4 MR. WEBER: Both of our proposed -- competing
5 proposed orders on it? Okay.

6 MR. ZAPPOLO: I think -- did we both send
7 those?

8 MR. WEBER: Yes.

9 THE COURT: I'm sure you did.

10 MR. ZAPPOLO: I'm just wondering if I have a
11 whole bunch of work to do this afternoon or not.

12 MR. WEBER: How do you want me to send it to
13 Your Honor? Do you prefer it hand-delivered? By
14 portal?

15 THE COURT: If you give them to me, I can sign
16 one of them right now if you have it.

17 MR. WEBER: Okay. I don't have it right now.

18 MR. ZAPPOLO: I don't, but I'm sure at
19 lunchtime we can go ahead and --

20 THE COURT: Yeah.

21 MR. ZAPPOLO: -- do that.

22 THE COURT: Yeah. I think at one point I had
23 you guys in for quite a bit and I think something
24 in that may have addressed the competing order.

25 I'm looking for something in particular. I can't

1 find it and it's probably my fault, so...

2 MR. ZAPPOLO: You got a lot of cases, Your
3 Honor.

4 THE COURT: Honestly, way too many right now.

5 MR. ZAPPOLO: Off the record. If you don't
6 mind me asking, what's your case count at?

7 (Thereupon, a brief discussion was had off of
8 the record.)

9 THE COURT: Okay. All right. Anything else?

10 MR. ZAPPOLO: Steven?

11 MR. WEBER: I think that's it.

12 THE COURT: All right. Let's bring the jury
13 in.

14 So the way it's going to work is you guys will
15 do your jury selection. How much time do you guys
16 need?

17 MR. ZAPPOLO: I'm usually pretty fast. There
18 are not a lot of names and things like that, but
19 I'm going to be pretty quick, I imagine. Like 30,
20 40 minutes.

21 THE COURT: I'll give you 40 minutes per side.

22 MR. WEBER: Okay. I'll agree to that. 40
23 minutes per side.

24 THE COURT: 40 minutes per side, five-minute
25 warning, and then one minute?

1 MR. ZAPPOLO: To be honest with you, Your
2 Honor, I might come nowhere near 40 minutes
3 depending on what I hear and what happens.

4 THE COURT: The only thing I'll ask you, since
5 we have a court reporter present, if you see
6 something, just identify the juror, you know, so
7 that we have a record of it.

8 MR. ZAPPOLO: Yes. Would you like them
9 identified by name or by number?

10 THE COURT: Whatever.

11 MR. ZAPPOLO: Okay.

12 THE COURT: We have both so, you know,
13 whatever is easier for you.

14 MR. ZAPPOLO: Okay. All right. And you're
15 going to do the standard -- I'm assuming the
16 standard questionnaire?

17 THE COURT: I do the questionnaire and then I
18 turn it over to you. I don't do anything else.

19 MR. ZAPPOLO: Okay.

20 THE COURT: I'm going to let you guys address
21 three weeks.

22 MR. ZAPPOLO: Yes.

23 THE COURT: Okay.

24 MR. WEBER: Okay. And so if he takes 40
25 minutes, we'll be approximately 12 o'clock. Are we

1 going to break for lunch, or how are we going to do
2 that?

3 THE COURT: If he takes 40 minutes, it will
4 take us to 11 o'clock.

5 MR. WEBER: Okay. Oh, yeah. I have 10:37.
6 Yeah, okay, that's right.

7 MR. ZAPPOLO: But we're going to do all of the
8 questionnaires first.

9 THE COURT DEPUTY: Prospective jurors entering
10 the courtroom.

11 (Prospective jurors entering the courtroom at
12 10:37 a.m.)

13 THE COURT: Let me see the lawyers.

14 (Thereupon, a sidebar conference was held.)

15 THE COURT: We're going to seat the jurors up
16 front and I'd like to pick them before lunch.

17 THE COURT REPORTER: Judge, I can't hear you.

18 MR. WEBER: Yeah. I agree with this waiver of
19 lunch.

20 THE COURT: I'll go over that I'm the judge,
21 personal, personal, personal, cell phones.

22 MR. WEBER: Okay.

23 THE COURT: Sidebar, clerk.

24 THE COURT REPORTER: Judge, I can't hear you.

25 THE COURT: Courtroom.

1 MR. WEBER: And their phones.

2 MR. ZAPPOLO: Okay. I just want to -- I'm
3 going to -- Mr. Weber, I'm not going to go try and
4 prove my case. Mr. Weber and I find it
5 impossible --

6 THE COURT REPORTER: Judge --

7 MR. ZAPPOLO: I'm going to say the medical and
8 I get the feeling we're going to indoctrination
9 that we talked about. I just want to let you know
10 (Inaudible).

11 MR. WEBER: We can disagree.

12 MR. ZAPPOLO: There's a question of your
13 questioning with respect to the jurors. How are
14 you going to go into what your position of the
15 case --

16 THE COURT: Let's not pre-try the case.

17 MR. ZAPPOLO: That's the only issue.

18 THE COURT: Stay away from it.

19 MR. WEBER: It's ambiguous, so don't pre-try
20 the case.

21 THE COURT: Yes. Okay.

22 THE COURT REPORTER: I'm sorry, I couldn't
23 hear you at all, Judge.

24 (Thereupon, the sidebar conference was
25 concluded.)

1 THE COURT: Let's proceed. Thank you.

2 Good morning, everyone.

3 (Prospective jurors in unison: Good morning.)

4 So, ladies and gentlemen, welcome. All of us
5 here appreciate you coming to serve this week. I'm
6 the judge. My name is Lou Delgado and I'm going to
7 introduce everybody.

8 Again, I am the judge. You're going to hear
9 people occasionally refer to me as the Court. This
10 is the formal name for my role. My job is to
11 maintain order and decide how to apply the rules of
12 law to the trial. I will also explain various
13 rules to you that you will need to know in order to
14 do your job as the jury.

15 It's my job to remain neutral on the issues of
16 this lawsuit. I'm going to introduce you to the
17 parties. The party who files the lawsuit is called
18 the plaintiff. The party that is sued is called
19 the defendant. Attorneys, attorneys have a job of
20 representing their clients. That means they speak
21 for their clients here at trial. They take oaths
22 as attorneys to do their best and follow the rules
23 of their profession.

24 The attorney on this side of the courtroom
25 (Indicating) is Mr. Zappolo and the person -- he

1 represents the plaintiff and is the person who
2 filed the lawsuit here at the courthouse. His job
3 is to present his client's side of things to you.
4 And they'll be referred to us as the plaintiff.

5 Mr. Zappolo, will you please stand up and
6 introduce yourself and your client.

7 MR. ZAPPOLO: Thank you, Your Honor. Good
8 morning, everyone. My name is Scott Zappolo. I
9 have the pleasure of representing James Todd
10 Wagner, who's here to my left or your left, and he
11 also has a company called Supercar Engineering,
12 Inc. Thank you.

13 THE COURT: Thank you. On this side of the
14 courtroom (Indicating) is the person against whom
15 the suit was filed. They're the person being sued.
16 They're also going to be referred to as the
17 defendant.

18 Mr. Weber, will you please stand up and
19 introduce yourself.

20 MR. WEBER: Good morning. My name is Steven
21 Weber and I represent the defendants in this case,
22 Warren Mosler, who is the owner of the company
23 called Mosler Auto Care Center.

24 THE COURT: Thank you very much.

25 Over here to my left (indicating), the person

1 sitting in front of me is the Clerk of Court. She
2 is here assisting me with some of the mechanics of
3 the trial process, including the numbering and
4 collection of all of the exhibits that are
5 introduced in the course of the trial.

6 Seated in the jury box in front of the
7 stenographic machine is the court reporter, and her
8 job is to keep an accurate legal record of
9 everything you say and do during the trial, so it's
10 going to be very important that you speak clearly
11 so that she can type it clearly. There will be
12 times where we mumble or use phrases, syllables or
13 huh, uh-uh, and that's going to be difficult for
14 her to type. What she's going to need is a very
15 affirmative response, a yes or a no, but that is
16 for us to be able to keep an accurate record.

17 Over here in the uniform is the deputy.
18 Sometimes they're called the bailiff. His job is
19 to maintain order and security in the courtroom.
20 The bailiff is also my representative to the jury.
21 Anything you need or any problems that come up
22 during the course of the trial should be brought to
23 him, however, he cannot answer your questions, only
24 I can do that. And the deputy may change from
25 day-to-day.

1 Last but not least is the jury, which we will
2 begin to select in a few moments from among all of
3 you. A jury's job will be to decide what the facts
4 are and what the facts mean. Jurors should be as
5 neutral as possible at this point and have no fixed
6 opinions about the lawsuit. I like to repeat that
7 because I think it's very important. But at this
8 point jurors should be as neutral as possible. At
9 this point they should have no fixed opinions about
10 the lawsuit.

11 In order to have a fair and lawful trial,
12 there are rules that all jurors must follow. A
13 basic rule is that a juror must decide the case
14 only on the evidence presented in this courtroom.
15 You must not communicate with anyone, including
16 friends or family members, about the case, the
17 people, the places involved, or your jury service.
18 You must not disclose your thoughts about the case
19 or ask for advice on how to decide the case.

20 I want to stress that this rule means you must
21 not use electronic devices or computers to
22 communicate about this case, including tweeting,
23 texting, blogging, emailing, posting information on
24 a website or chat room or any other means at all.
25 Do not send or accept any message to or from anyone

1 about this case or about your jury service.

2 You must not do any research or look up any
3 words, names, maps, or anything else that may have
4 anything to do with this case. This includes
5 reading the newspaper, watching television, or
6 using computers, cell phones, the Internet, or any
7 other electronic device or any other means at all
8 to get information related to this case or the
9 people or places involved in this case. This
10 applies whether you are in the courthouse, at home,
11 or anywhere else.

12 Many of you have cell phones, tablets,
13 laptops, or other electronic devices. They must be
14 turned off while you are in the courtroom. Turned
15 off means that they are actually off and not in
16 silent or vibration mode. You may use these
17 devices during recesses, but even then you are not
18 to use your cell phone or electronic device to find
19 out any information about the case or communicate
20 with anyone about the case or the people involved
21 in the case. Do not take photographs, video
22 recordings, or audio recordings of the proceedings
23 or of your fellow jurors.

24 After each recess please double-check and make
25 sure that your cell phones and electronic devices

1 are turned off. At the end of the case, while you
2 are deliberating, you must not communicate with
3 anyone outside of the jury room. You cannot have
4 in the jury room any cell phones, computers, or
5 other electronic devices. If someone needs to
6 contact you in an emergency, the Court can receive
7 messages and deliver them to you without delay. A
8 contact phone number will be provided to you.

9 One of the reasons for these rules, these
10 rules are imposed because jurors must decide the
11 case without distractions and only on the evidence
12 presented in the courtroom. If you investigate,
13 research, or make inquiries on your own outside of
14 the courtroom, the trial judge has no way to make
15 sure that the information you obtained is proper
16 for the case.

17 The parties, likewise, have no opportunity to
18 dispute or challenge the accuracy of what you find.
19 That is contrary to our judicial system which
20 assures that every party has the right to ask
21 questions about and to challenge the evidence being
22 considered against it and to present argument with
23 respect to that evidence. Any independent
24 investigation by a juror unfairly and improperly
25 prevents the parties from having that opportunity

1 that our judicial system promises. Any juror who
2 violates these restrictions jeopardizes the
3 fairness of the proceedings and this trial could
4 result that would require the entire trial process
5 to start over again. A mistrial is a tremendous
6 expense and inconvenience to the parties, the
7 Court, and the taxpayers. If you violate these
8 rules, you may be held in contempt of court and
9 face sanctions, such as serving time in jail,
10 paying a fine, or both.

11 All of your communications with courtroom
12 personnel or me will be a part of the record of
13 these proceedings. That means that those
14 communications shall either be made in open court
15 with the court reporter present, or if they're in
16 writing, the writing will be filed with the Clerk
17 of Court. This means if you are outside the
18 courtroom, any communication with me must be in
19 writing, unsigned, and handed directly to the
20 bailiff. Do not share the content of the writing
21 with anybody, including other jurors. I have
22 instructed the courtroom personnel that any
23 communications you have with them outside of my
24 presence must be reported to me, and I will tell
25 the parties and their attorneys about any

1 communication from you that I believe may be of
2 interest to the parties and their attorneys.

3 However, you may communicate directly with the
4 courtroom personnel about matters concerning your
5 comfort and safety, such as where to park, where to
6 take breaks, how to assemble for jury duty, attire,
7 what personal items can be brought into the
8 courthouse, et cetera. If you become aware of any
9 violation of these instructions or any other
10 instruction I give you, you must tell me by giving
11 a note to the deputy.

12 All right. Madam Clerk --

13 THE CLERK: Yes.

14 THE COURT: -- can you swear in the panel,
15 please?

16 THE CLERK: Yes, Your Honor.

17 If you can please raise your right hand. Do
18 you solemnly swear or affirm that you will answer
19 truthfully all of the questions asked of you as
20 prospective jurors?

21 (Prospective jurors in unison: Yes.)

22 THE COURT: Thank you. I saw everybody take
23 an oath. I didn't see anybody who didn't.

24 I'm sorry, sir? Oh, I thought you were trying
25 to get my attention.

1 All right. Now that you've been sworn, I'd
2 like to give you an idea about what we're going to
3 do.

4 MR. ZAPPOLO: Your Honor, I apologize.

5 PROSPECTIVE JUROR NO. 1-7: I'm sorry. May I
6 approach the bench? I know it's unusual.

7 THE COURT: All right. Let me see the
8 attorneys.

9 (Thereupon, a sidebar conference was held.)

10 THE COURT REPORTER: Wait. Judge --

11 THE COURT: Ma'am. Ma'am. Sorry.

12 PROSPECTIVE JUROR NO. 1-7: I don't know if
13 this is relevant or not. I was a present victim
14 and witness to an assault, robbery, and hate crime
15 and it's an open case and I've invoked Marsy's Law.
16 I just want you to be aware of that.

17 THE COURT: Okay. So you were a victim in a
18 crime? You're not here for a criminal case today.

19 PROSPECTIVE JUROR NO. 1-7: That's fine.

20 THE COURT: Since you invoked Marsy's Law, I
21 don't think anybody is going to ask you about that
22 right now. Are there any questions about her being
23 the victim of a robbery?

24 MR. ZAPPOLO: No, Your Honor.

25 THE COURT: Okay. So if we ask out there if

1 anybody has any open cases, I'll excuse you from
2 answering that question. Okay?

3 PROSPECTIVE JUROR NO. 1-7: Okay.

4 (Thereupon, the sidebar conference was
5 concluded.)

6 THE COURT: All right. Now that you've been
7 sworn --

8 MR. WEBER: Your Honor --

9 PROSPECTIVE JUROR NO. 1-3: Can I ask a
10 question?

11 THE COURT: I'm sorry. Let me get through --
12 no, no. You know I did that, but really let me get
13 through this and then we'll start addressing all of
14 you at once.

15 All right. Now that you've been sworn, I'd
16 like to give you an idea about what we're here to
17 do. This is a civil trial. A civil trial is
18 different from a criminal case where a defendant is
19 charged by the State prosecutor for committing a
20 crime. The subject of a civil trial is a
21 disagreement between people and companies where
22 their claims of one or more of these parties have
23 been brought to court to be resolved. It's called
24 the trial of a lawsuit.

25 What I'm going to ask the parties to do is if

1 they will list the witnesses they anticipate
2 calling at trial today. We'll start with the
3 plaintiff.

4 MR. ZAPPOLO: Good afternoon or good morning,
5 everyone. Clifford Atiyeh, Abby Cubey, Benjamin
6 Greene, Ian Grunes, Sylvia Klaker, Warren Mosler,
7 Alan Simon, Jill Wagner, James Todd Wagner,
8 Jonathan Frank, and Sally Apgar.

9 THE COURT: Defense.

10 MR. WEBER: Some of these names will be
11 repeated, but James Dennis Wagner, Sr., Brian
12 Christopher Lunsford, Sylvia Klaker, Clifford
13 Atiyeh, Benjamin Greene, Matthew Farah, Ian Grunes,
14 Rick Mancuso, Dr. Donald May, Dr. Wade Silverman,
15 Warren Mosler, James Todd Wagner, Alan Simon,
16 Jonathan Frank, Sally Apgar.

17 MR. ZAPPOLO: Your Honor, I have one more.
18 Dr. Linnda Durre may be called to testify.

19 THE COURT: Thank you. Now I want to explain
20 to you how the selection process works. There will
21 be questions and challenges. This is the part of
22 the case where the parties and the lawyers have the
23 opportunity to get to know you a little bit in
24 order to help them come up with their own
25 conclusion about your ability to be fair and

1 impartial so they can decide who they think should
2 be a juror in this case.

3 How we go about that is as follows: First,
4 I'll ask some general questions of you and then
5 each of the lawyers will have more specific
6 questions that they will ask of you. After they
7 have asked all of their questions, I will meet with
8 them and they will tell me their choices for
9 jurors. Each side can ask that I exclude a person
10 from serving on a jury if they give me a reason to
11 believe that he or she might be unable to be unfair
12 or impartial. That is what we call a challenge for
13 cause.

14 Lawyers also have a certain number of what are
15 called peremptory challenges by which they can
16 exclude a person from the jury without giving a
17 reason. By this process of elimination, the
18 remaining persons are selected as a jury. It may
19 take more than one conference among the parties and
20 their attorneys and me before the final selections
21 are made.

22 For purposes of the questions, the questions
23 that you will be asked during this process are not
24 intended to embarrass you or unnecessarily pry into
25 your personal affairs, but it is important that the

1 parties and their attorneys know enough about you
2 to make this important decision. If a question is
3 asked that you would prefer not to answer in front
4 of the whole courtroom, just let me know, and you
5 can come up here and give your answer in front of
6 just the attorneys and me. If you have a question
7 of either of the attorneys or me, do not hesitate
8 to let me know.

9 Responding to the questions, there are no
10 right or wrong answers to the questions that you
11 will be asked. The only thing that I ask is that
12 you answer the questions as frankly and as honestly
13 and as completely as you can. You have taken an
14 oath to answer all of the questions truthfully and
15 completely and you must do so. Remaining silent
16 when you have information you should disclose is a
17 violation of that oath. If a juror violates this
18 oath, it not only may result in having to try the
19 case all over again, but can also result in civil
20 and criminal penalties against the juror
21 personally.

22 So, again, it is very important that you be as
23 honest and complete with your answers as you
24 possibly can. If you don't understand the
25 question, please raise your hand and ask for an

1 explanation or clarification.

2 In sum, this is the process to assist the
3 parties and their attorneys to select a fair and
4 impartial jury. All of the questions they ask of
5 you are for this purpose. If for any reason you do
6 not think you can be fair and impartial, then you
7 must tell us.

8 So, when you walked in, there should have been
9 a laminated piece of paper in your chair. Some of
10 you are holding it. It's got a list of questions
11 on it. And we have a map with all of you listed on
12 it. And we're going to start -- once we get going
13 with the first row, we'll move on to the second
14 row, the third row, and the fourth row and we're
15 going to start at the right side of the room with
16 Ms. Moreira and work our way over to Ms. Jorgensen,
17 and then we'll go on to Mr. Greco and go on to
18 Mr. Belsky, and we'll do the same thing for the
19 third row and the fourth row.

20 What I would like for you to do, because we do
21 have a court reporter present, because sometimes
22 it's hard to hear and since you're not wearing a
23 microphone, if you can please stand up when it's
24 your turn, say your name, and go through the
25 questions that are listed in the order in which

1 they are listed. And so why don't we go ahead and
2 start with that whenever you're ready.

3 Oh, so we'll stand up, we'll say our name,
4 we'll answer the questions. And then at the very
5 end there's a question that says "Can I be a fair
6 juror in this case?" And that's going to be a very
7 yes-or-no question.

8 Some people will answer questions but in the
9 way that we normally talk with each other, you
10 know, over coffee like "sure" or "yeah." And when
11 we're friends, we might understand each other very
12 clearly, but because we have a court reporter who
13 doesn't know us and she needs to write everything
14 down, I need a very clear "yes" or "no" from
15 everybody.

16 So, again, it would just be very simple.
17 Number 1, I'm Judge Lou Delgado. Number 2, I live
18 in Palm Beach County. Number 3, I'm a Circuit
19 Court Judge. Number 4, I'm married or I'm single.
20 Number 5, my spouse's occupation would be this.
21 Number 6, I have children or I don't have children
22 or I have grandchildren. And I would go all the
23 way down and answer every single question. Okay?
24 Whenever you're ready.

25 PROSPECTIVE JUROR NO. 1-1: My name is Acelia

1 Moreira. I live in Palm Springs, Publix, divorced,
2 three children, four grandchildren, no service, no,
3 no, no, no.

4 MR. ZAPPOLO: Your Honor, I apologize. If I
5 may, I don't think Mr. Weber and I actually have a
6 copy of the questionnaire.

7 MR. WEBER: I have it written down.

8 PROSPECTIVE JUROR NO. 1-2: Number 1, Kathleen
9 Basile. Number 2, Boca Raton. Number 3, I'm a
10 personal trainer. Number 4, single. Number 6,
11 none. 7, none. 8, no. 9, no. 10, yes. 11, yes.

12 THE COURT: Who do you know in the courtroom?

13 PROSPECTIVE JUROR NO. 1-2: Can I come up,
14 please?

15 (Thereupon, a sidebar conference was held.)

16 PROSPECTIVE JUROR NO. 1-2: You, Your Honor.

17 THE COURT: From over there, I didn't
18 recognize you.

19 PROSPECTIVE JUROR NO. 1-2: I'm also wearing
20 glasses.

21 THE COURT: You're also wearing glasses, yes.
22 Okay. All right. So we met at a wedding recently.

23 MR. ZAPPOLO: Okay.

24 MR. WEBER: That doesn't matter to me.

25 THE COURT: We really don't know each other.

1 I don't have your phone number.

2 PROSPECTIVE JUROR NO. 1-2: No. Also the
3 company of the defendants, he looks familiar.

4 MR. WEBER: Do you know if it's in Boca?

5 PROSPECTIVE JUROR NO. 1-2: Okay. It's not in
6 Boca.

7 MR. WEBER: No, it's not in Boca?

8 PROSPECTIVE JUROR NO. 1-2: Okay. So, no, I
9 don't know him. That's all.

10 (Thereupon, the sidebar conference was
11 concluded.)

12 PROSPECTIVE JUROR NO. 1-3: Good morning. My
13 name is Virginia Belman, Boynton Beach, cleaning,
14 married, painter. I have five children and ten
15 grandchild. Yes, no, no. And the 11, no. Can I
16 explain to you why?

17 My first language is Spanish. I try to
18 understand a lot more in English, but it's going to
19 be hard for me.

20 THE COURT: Okay. Thank you very much. I
21 appreciate it.

22 PROSPECTIVE JUROR NO. 1-3: Okay.

23 THE COURT: Thank you very much.

24 PROSPECTIVE JUROR NO. 1-4: Okay. Thank you.

25 Good morning, everyone. I'm Selina Haczynski. I

1 live in Greenacres. I am retired, married, my
2 husband is retired, one child -- oh, I'm retired.
3 I worked at the Department of Veterans Affairs in
4 veterans benefits because it said former
5 occupation.

6 All right. Resuming. No, one child, one
7 adult child. No grandchildren. Prior jury
8 service, yes, in Largo, Florida. And in the
9 military, I was in the Navy. Am I a party? Number
10 9, no.

11 Number 10 is no. And yes. However, I do have
12 health concerns, neurological conditions treated at
13 the Department of Veterans Affairs at
14 West Palm Beach and the University of Miami, so I
15 do have health concerns I need to make you aware
16 of. My doctor wrote a note just in case, and if
17 any medical records need to be provided as well, I
18 can do that.

19 THE COURT: Give it to the bailiff.

20 PROSPECTIVE JUROR NO. 1-4: So that affects me
21 and it will affect my ability to be here.

22 THE COURT: All right. Thank you for your
23 response.

24 PROSPECTIVE JUROR NO. 1-4: Thank you. It's
25 on the third page.

1 THE COURT: Give me a minute.

2 PROSPECTIVE JUROR NO. 1-4: What's that?

3 THE COURT: Give me a minute. I need to read
4 all of it.

5 PROSPECTIVE JUROR NO. 1-4: Oh, I apologize.
6 I'm just excited here. Oh, boy. I'll be quiet
7 now.

8 THE COURT: All right. Thank you very much,
9 madam.

10 PROSPECTIVE JUROR NO. 1-4: Thank you.

11 PROSPECTIVE JUROR NO. 1-5: Good morning. My
12 name is Alina Maria Crousillat. I'm from North
13 Palm Beach. I am an editor. I am widowed,
14 businessman, that's number 5. Number 6, three
15 children, one adult child. No grandchildren.

16 No prior jury service. No. 9, no. 10, no.
17 And 11, yes.

18 PROSPECTIVE JUROR NO. 1-6: Jason Daly,
19 Jupiter, television network manager, married.
20 Number 5, dental assistant. Two children, no
21 grandchildren. Yes for number 8. No for 9. No
22 for 10. 11, yes.

23 PROSPECTIVE JUROR NO. 1-7: I'm Shira
24 Jorgensen, Boca Raton, I'm a retired nurse. I am
25 married. My spouse is also a retired cartographer.

1 We have five children between us and eight
2 grandchildren. I don't know. Are the children's
3 occupations relevant?

4 I have served on a jury before in the state of
5 Virginia, Fairfax County. I don't know anyone
6 here. And I do believe I'm a fair person.

7 PROSPECTIVE JUROR NO. 2-1: Good morning.
8 Joseph Greco, I live in Boynton Beach,
9 self-employed. Number 4, married. Number 5,
10 self-employed. Number 6, no children. Number 8,
11 none. Number 9, no. Number 10, no. Number 11,
12 yes.

13 PROSPECTIVE JUROR NO. 2-2: Terence Bonner,
14 West Palm Beach, defense attorney. And if I can
15 approach on number 4, it has a little explaining to
16 do there.

17 (Thereupon, a sidebar conference was held.)

18 PROSPECTIVE JUROR NO. 2-2: I am in the
19 process of a divorce. I have a hearing at the end
20 of this month in this courthouse. I have a
21 four-year-old and a six-year-old that I am a single
22 parent to and share custody or share
23 responsibility. I don't have any coverage. My
24 time period starts tomorrow. My availability is
25 the problem. So I tried to call and tell somebody

1 ahead of time, but they said you need to tell the
2 judge when you're up there, so this is me doing
3 that.

4 THE COURT: Do you have a problem with
5 tomorrow?

6 PROSPECTIVE JUROR NO. 2-2: No, no. I'm in
7 the process of getting a divorce. I have a hearing
8 at the end of this month and I have a four-year-old
9 and six-year-old that I am 50 percent responsible
10 for. It's my availability; I don't have coverage.
11 I'm newly into this process, so I have no one to
12 pick them up from school and take care of them when
13 I'm supposed to. So that's my issue.

14 THE COURT: Okay.

15 PROSPECTIVE JUROR NO. 2-2: Number 5, not
16 applicable. 6, two. 7, none. 8, no active. 9,
17 no, no, and yes.

18 PROSPECTIVE JUROR NO. 2-3: Good morning. My
19 name is Mike Hillier. I live in Greenacres. I'm a
20 professional auto glass technician. I'm single. I
21 have one adult son -- I'm sorry, I'm nervous.

22 THE COURT: That's okay.

23 PROSPECTIVE JUROR NO. 2-3: Number 8, no.
24 Number 9, no. Number 10, no. And number 11, I
25 didn't. Sorry, just very nervous.

1 THE COURT: That's okay, sir. Thank you.

2 PROSPECTIVE JUROR NO. 2-4: Good morning. My
3 name is Susan Hanlon. I live in Lake Worth. I am
4 a legal secretary at Searcy Denney law firm. I am
5 single and divorced. My divorce -- I'm divorced
6 from my spouse. He's a painting contractor.

7 I have two children, a 31-year-old son and a
8 14-year-old daughter. I have no grandchildren. My
9 adult son is a server at Lynora's. I have never
10 served on a jury. Number 9, I'm not a party. If
11 divorce counts, I was a party in a divorce.

12 10, I do not know anyone. And 11 is yes.

13 THE COURT: And who are you a legal assistant
14 to?

15 PROSPECTIVE JUROR NO. 2-4: Laurie Briggs,
16 Hardee Bass, and Lindsay Reinhart at Searcy Denney.
17 I've been there 30 years.

18 THE COURT: Thank you very much.

19 PROSPECTIVE JUROR NO. 2-5: My name is Mark
20 Joseph Kohlbeck. I live in Wellington. I'm a
21 professor of accounting. I'm married. My spouse
22 is a stay-at-home mom. Two adult children. One
23 just graduated Florida and the other one's at
24 Florida. Prior jury service, yes, both here and in
25 Dallas. Not a party to any lawsuits. I don't know

1 anybody here. And I can be a fair juror.

2 PROSPECTIVE JUROR NO. 2-6: Good morning.
3 Dustin Debord. I live in Boynton Beach, Florida.
4 My occupation is a sales manager. Marital status,
5 divorced. Former occupation spouse's, medical
6 technician. I have two children. Yes, prior jury
7 service. No pending or past lawsuits. I do not
8 know anyone in the courtroom. And yes, I can be a
9 fair juror.

10 PROSPECTIVE JUROR NO. 2-7: My name is Kyle
11 Belsky. I live in West Palm Beach. I'm a business
12 development associate for a wealth manager.
13 Single, no kids. Number 7 doesn't apply. 8, no.
14 9, yes. 10, no. And 11, yes.

15 THE COURT: Thank you.

16 PROSPECTIVE JUROR NO. 3-1: My name is
17 Alejandro Azurdia. I live in Royal Palm Beach.
18 I'm a facility technician. Single. Number 5, not
19 applicable. Number 6, not applicable. Number 7,
20 not applicable. Number 8, yes. Number 9, no.
21 Number 10, no. Number 11, yes.

22 PROSPECTIVE JUROR NO. 3-2: Frederic Smith,
23 Boca Raton. Former business owner, married, wife
24 is a retired social worker, two adult children, one
25 grandchild, did jury service in Boca -- in Broward

1 County. No lawsuits. I don't know anybody here.
2 And I think I'd be a fair juror.

3 PROSPECTIVE JUROR NO. 3-3: Rosana Del Valle.
4 I'm from Jupiter. Finance manager, married. My
5 husband is in sales. One adult child. Number 8,
6 yes. Number 9, no. Number 10, no. Number 11,
7 yes.

8 PROSPECTIVE JUROR NO. 3-4: My name is Tayra
9 Muller. I live in Boca Raton. I'm a high school
10 biology teacher and a business owner too. My
11 husband is a business owner. We have two children,
12 no grandchildren, no prior jury service, no pending
13 or past lawsuits, don't know anybody, and I will
14 not be fair.

15 THE COURT: What kind of business do you own?

16 PROSPECTIVE JUROR NO. 3-4: Hmm?

17 THE COURT: What kind of business do you own?

18 PROSPECTIVE JUROR NO. 3-4: Junk removal.

19 THE COURT: Junk removal?

20 PROSPECTIVE JUROR NO. 3-4: Yes.

21 THE COURT: And you said you cannot be fair?

22 I will allow the attorneys to explore that later.

23 PROSPECTIVE JUROR NO. 3-5: Good morning. My
24 name is Brandie Hassan. I live in Jupiter. I am a
25 surgical assistant. I am married. My husband is a

1 medical device rep. We have two children, no
2 grandchildren, no prior jury service, no lawsuits,
3 I do not know anyone in the courtroom. And yes, I
4 can be a fair juror.

5 THE COURT: Thank you.

6 PROSPECTIVE JUROR NO. 3-6: My name is Sonia
7 Buitrago. I live in West Palm Beach. I'm a nanny.
8 I'm married. My husband is a project manager. We
9 have three adult children, no grandchildren.
10 Number 8, no. Number 9, no. Number 10, no, I
11 don't know anybody. And 11, no, because my -- my
12 first language is not English and I think it's not
13 fair. I don't understand 100 percent.

14 THE COURT: Thank you very much.

15 PROSPECTIVE JUROR NO. 3-7: Good morning. My
16 name is Matthew Soifer. I live in North Palm
17 Beach. My occupation, I'm a teacher. Marital
18 status, married. Number 5, my spouse's occupation
19 is a speech language pathologist. Number 6, we
20 have no children. Number 7, not applicable.
21 Number 7 [sic], no prior jury service. Number 9,
22 yes. I was -- a few years ago I was a plaintiff in
23 a civil case. Number 10, I don't know anyone in
24 the courtroom. And number 11, despite the fact,
25 yes.

1 THE COURT: Okay. What kind of civil case?

2 PROSPECTIVE JUROR NO. 3-7: Small claims.

3 THE COURT: Thank you.

4 PROSPECTIVE JUROR NO. 4-1: Good morning. I'm
5 Cheryl Eloise Ackerman. I live in Boynton Beach.
6 I am retired right now, but I was a former New York
7 City IEP administrator. I am married. My spouse
8 is -- was vice president of marketing for a tax and
9 legal and health publisher in both Atlanta and New
10 York. I have two adult children, three great
11 grandchildren -- three great, specific
12 grandchildren as opposed to adorable. My son is a
13 social director, social media director for NYU. My
14 daughter is in public relations for Weight
15 Watchers. Right now she's on maternity leave.

16 I had prior jury service in both Atlanta and
17 New York. I was a party in pending lawsuits,
18 traffic lawsuit, and we just had a class action
19 suit against Toyota. Do you know anyone in the
20 courtroom? No, but there's always hope. And can
21 you be a fair juror? Eh, yes. And I guess yes,
22 but not fully confident in it.

23 PROSPECTIVE JUROR NO. 4-2: Good morning. My
24 name is Elizabeth Pennacchio. I live in Boca
25 Raton. I am a licensed fire protection engineer.

1 I am married. My husband is a civil engineer,
2 works for the Florida DOT. I have no children.
3 Number 7, no. Number 8, no prior jury experience.
4 I was not a party to a pending or past lawsuit, but
5 I was a part of a deposition as an expert witness,
6 fire protection engineer. Do I know anyone in this
7 courtroom? No. And can I be a fair juror? Yes.

8 PROSPECTIVE JUROR NO. 4-3: My name is George
9 Watson. I live in Riviera Beach, Florida.
10 Occupation is a painter. I'm single. Three
11 children, two adults. Prior jury service, yes, in
12 Palm Beach County. I'm not a party of any pending
13 past lawsuits. I don't know anyone in the
14 courtroom. And I can be a fair juror.

15 PROSPECTIVE JUROR NO. 4-4: Good morning. My
16 name is Steve Registere, and I currently live in
17 Delray Beach. I am currently working as a security
18 guard at the courthouse in Delray Beach also. I am
19 single. Number 6, no. Number 7, yes, I have two
20 and I'm making two more. And prior jury service,
21 no. I have one pending lawsuit and one in the
22 past. And I don't know anyone in here. And number
23 11, yes.

24 THE COURT: How long have you been a security
25 guard in Delray?

1 PROSPECTIVE JUROR NO. 4-4: For two years.

2 THE COURT: Two years?

3 PROSPECTIVE JUROR NO. 4-4: Yes.

4 THE COURT: You don't recognize me?

5 PROSPECTIVE JUROR NO. 4-4: Yes.

6 THE COURT: Okay. Thank you very much.

7 PROSPECTIVE JUROR NO. 4-5: Good morning. My
8 name is Liliana Mclean. I live in West Palm Beach.
9 I am a manager for a dental office. I am widowed.
10 My husband was in maintenance, worked in
11 maintenance. We have two adult children, one --
12 and no grandchildren. One is a parole officer here
13 in West Palm Beach, downtown, and the other one is
14 a full-time college student out of state.

15 I don't have any prior jury service. Number 9
16 is no. Number 10 is no. Number 11 is yes. I
17 would like to ask the Court to consider that I am
18 the only breadwinner in my home and my college girl
19 depends completely on me. And if this was a long
20 trial, it would definitely have a financial affect
21 on me because my employer would not be willing to
22 pay for days. Thank you.

23 PROSPECTIVE JUROR NO. 4-6: My name is Giulia
24 Nicoladeli Nuernberg. I live in Boca Raton. I'm a
25 full-time server, single. Number 6, none. Number

1 7, not applicable. 8, no prior jury service. 9,
2 no. 10, no. And 11, no.

3 THE COURT: Where are you a server?

4 PROSPECTIVE JUROR NO. 4-6: Where?

5 Maggiano's.

6 THE COURT: Thank you.

7 PROSPECTIVE JUROR NO. 4-7: My name is Marie
8 Fequiere. I live in the town of Haverhill. I'm a
9 registered nurse. I'm married. My husband's
10 occupation, he's a -- he owns another contractor
11 company. I have two children. My adult one is in
12 the Marine Corps. I have no grandchildren. No
13 prior jury service. No pending lawsuits. Number
14 10 is no, and 11 is yes.

15 THE COURT: Thank you. What does he do in the
16 Marines?

17 PROSPECTIVE JUROR NO. 4-7: I'm sorry?

18 THE COURT: What does he do in the Marines?

19 PROSPECTIVE JUROR NO. 4-7: Um, that's
20 personal.

21 THE COURT: All right. We're going to go a
22 little bit into the lunch hour today, so I think
23 right now is probably the best time to take a small
24 break. If you need to use the restroom, this is
25 the time to do it.

1 Deputy, why don't we recess for about -- I
2 want to say five to ten minutes. Again, you know,
3 I read you the instructions. I'll paraphrase them
4 now, but during your recesses don't use your cell
5 phones or Internet to look up the people or places
6 involved in this case, okay?

7 If you see the attorneys or the parties,
8 they've been instructed by the Court not to
9 communicate with you. So if you see them in the
10 hallway, they're going to walk away, look down.
11 They're not trying to be rude or disrespectful to
12 you, they're just following the Court's order.

13 Okay. Thank you very much. We'll take five
14 minutes.

15 THE COURT DEPUTY: Court will be in recess.

16 (Prospective jurors exit the courtroom at
17 11:23 a.m.)

18 THE COURT: They're going to take five
19 minutes. Ms. Haczynski showed me a document. It's
20 a doctor's document. I'll let you guys inquire
21 about it. But what it says is she's excused from
22 jury service for a period of at least one year or
23 greater. So I'm throwing that out there for you.

24 MR. WEBER: Okay.

25 THE COURT: You know, in case you want to

1 spend a lot of time on examining her or if you want
2 to spend a little time on examining her, I just
3 want to put it on your radar.

4 MR. WEBER: Yeah.

5 THE COURT: I'm going to take a five-minute
6 break to use the restroom. If you want to use the
7 restroom, the jury room is open. Okay.

8 MR. WEBER: Your Honor, I have a copy --
9 printed copy of the proposed order on our motion,
10 Your Honor.

11 THE COURT: All right. Set it here and then
12 I'll look at yours. And you're going to bring
13 yours to me?

14 MR. ZAPPOLO: Yes.

15 THE COURT: All right. We'll take about five
16 minutes.

17 (Thereupon, a short break was taken from
18 11:23 a.m. to 11:35 a.m.)

19 THE COURT: Thank you. Please be seated.
20 Plaintiff.

21 MR. ZAPPOLO: Thank you, Your Honor.

22 Good morning, everyone.

23 (Prospective jurors in unison: Good morning.)

24 As we mentioned earlier, but I'll mention
25 again, my name is Scott Zappolo. I have the

1 pleasure of representing James Todd Wagner who sits
2 before you. And as the judge mentioned a few
3 minutes ago, I now get to ask a few follow-up
4 questions to that questionnaire that you just
5 answered. And after I'm done, Mr. Weber is going
6 to ask some follow-up questions as well.

7 It's very important that everyone go ahead and
8 feel free to speak openly. And as we've seen
9 before, if you have something that you feel is
10 particularly private, or that you don't mind -- you
11 don't want to share with the group, please let us
12 know so that we can address it in front of the
13 judge. What we're trying to do here is find people
14 that are going to be fair for the -- to try this
15 case, both for the plaintiff and for the defense,
16 okay. The system doesn't work if we don't have a
17 fair jury, okay.

18 So with that, I'm going to mention a few
19 things, and I'd like to do this kind of quickly, so
20 I'm going to do things like, say, by a show of
21 hands.

22 Okay. Is there anybody here who can't raise
23 their hand or has any physical impediment to
24 raising their hand?

25 Okay. Seeing no one, no one raising their

1 hand, how about this: Everyone raise your hand if
2 you can raise your right hand.

3 (Prospective jurors complied.) All right. I
4 see everyone's raising their hand.

5 Is there anyone who didn't raise their hand or
6 anyone notice anyone didn't raise their hand? All
7 right. Perfect. We're going to move right along.

8 I'm going to read off a number of names that
9 are more than the people that we just expect to see
10 maybe here in the courtroom or call as witnesses
11 and I'd like you, if you hear a name that you
12 recognize, please raise your hand.

13 I mentioned Clifford Atiyeh. Does anyone, by
14 a show of hands, recognize that person, know that
15 person? I think we already said no to that.

16 There's another name, Dan Carvalho. Raise
17 your hand if you know or heard of Dan Carvalho.
18 Okay. I see no hands raised.

19 Shawn Chambers, I see no hands raised.

20 Abby Cubey we mentioned, and no hands are
21 raised now and I don't think anyone mentioned
22 before.

23 Ezra Dire, seeing no hands.

24 John Figcarra, F-I-G-C-A-R-R-A, I see no
25 hands.

1 Chet Philip, I see no hands.

2 Christoph Flugel, F-L-U-G-E-L, I see no hands.

3 Michael Furman, anyone know Michael Furman or
4 heard of him? Okay. I see no hands.

5 Barrie Godown, G-O-D-O-W-N, I see no hands.

6 Benjamin Greene we asked about before, I'll
7 ask again. I see no hands.

8 Ian Grunes, he's a local person. A lot of
9 people said they were from Boca. Anyone know Ian
10 Grunes? I see no hands.

11 John Heimarcy, H-E-I-M-A-R-C-Y, I see no
12 hands.

13 Jared Holland, H-O-L-L-A-N-D, I see no hands.

14 Roger Hoss, H-O-S-S, I see no hands.

15 And you're looking at me like why does this
16 guy keep saying I'm seeing no hands. I'm doing
17 that so the court reporter takes it down and it's
18 clear what's going on here because it's hard to
19 know what goes on in the courtroom unless the
20 attorneys or the judge document what's going on.
21 So it seems a little bit weird, but I think that
22 those of you who are chosen as jurors will get used
23 to it.

24 All right. Going on, Noah Joseph. All right.

25 I see no one raising their hands.

1 Nabiel Kahn, K-A-H-N. I see no one raising
2 their hands.

3 Randy Klaker, K-L-A-K-E-R, I see no one
4 raising a hand.

5 Sylvia Klaker, I see no one raising a hand.

6 Mike Kovacs, K-O-V-A-C-S, I see no one raising
7 a hand.

8 Ralph Kramer, K-R-A-M-E-R, I see no one
9 raising a hand.

10 Lew Lee, I see no one raising a hand.

11 Pete Magnusson, I see no one raising a hand.

12 Mark Margolis, I see no one raising a hand.

13 Dan Maslick, I see no one raising a hand.

14 David McClellan, I see no one raising a hand.

15 Jim Miniker, I see no one raising a hand.

16 Xan, X-A-N, Moody Stuart. I see no one
17 raising a hand.

18 Tommy Morrison or Tom Morrison, not to be
19 mistaken for Jim Morrison. All right. I still see
20 no one raising a hand.

21 Jacob Mosler, I see no one raising a hand.

22 Warren Mosler, the gentleman seated over
23 there. I see no one raising a hand.

24 Thomas Olofsson, I see no one raising a hand.

25 Davin Patin, I see no one raising a hand.

1 Kelly Reagan, I see no one raising a hand.

2 Evelyn Richards, I see no one raising a hand.

3 Ann Rodgerson, I see no one raising a hand.

4 Savvas Savopoulos, I see no one raising a
5 hand.

6 Martin Short, I see no one raising a hand.

7 Scott Sherman, I see no one raising a hand.

8 Alan Simon, I think we mentioned him before.
9 I see no one raising a hand.

10 Dick and Barrie Van Elk, I see no one raising
11 a hand.

12 Mike Vietro, I see no one raising a hand.

13 James Todd Wagner seated in front of me. I
14 see no one raising a hand.

15 What about James Wagner, Sr.? I see no one
16 raising a hand.

17 Jill Wagner, I see no one raising a hand.

18 Raja Zaini, Z-A-I-N-I, I see no one raising a
19 hand.

20 Joe Ziomeck, I see no one raising a hand.

21 Does anyone by a show of hands -- please raise
22 your hand if anyone's heard of AVM, LLP. Okay. I
23 see no one raising a hand.

24 Has anyone heard of Brecklin Technologies? I
25 see no one raising a hand.

1 Has anyone heard of Canapea, C-A-N-A-P-E-A,
2 Kahn? I see no one raising a hand.

3 Anyone heard of III, LLP? I see no one
4 raising a hand.

5 We asked before, I'll ask again, Mosler Auto
6 Care Center? I see no -- oh, there's a person
7 raising a hand in the back. Yes, sir. What do you
8 know about Mosler Auto Care Center?

9 PROSPECTIVE JUROR NO. 4-3: It's down the
10 street from my house.

11 MR. ZAPPOLO: Okay. Have you ever interacted
12 with them, done business with them?

13 PROSPECTIVE JUROR NO. 4-3: No.

14 MR. ZAPPOLO: Have you ever heard about them
15 that would affect your --

16 PROSPECTIVE JUROR NO. 4-3: I just see the
17 signs as I drive by.

18 MR. ZAPPOLO: Okay. So there's nothing you
19 know about Mosler Auto Care Center by virtue of the
20 fact of seeing the signs that would sway you one
21 way or the other in the case, is there?

22 PROSPECTIVE JUROR NO. 4-3: No, nothing
23 personal.

24 MR. ZAPPOLO: Okay. And you can still be fair
25 if you were chosen as a juror in this case,

1 correct?

2 PROSPECTIVE JUROR NO. 4-3: Yes.

3 MR. ZAPPOLO: Okay. Thank you.

4 Mosler Cars, Inc.? See no hands.

5 Mosler Supercars, Inc.?

6 PROSPECTIVE JUROR NO. 4-3: I know all of

7 them.

8 MR. ZAPPOLO: All of them?

9 PROSPECTIVE JUROR NO. 4-3: All of them is
10 right in that area.

11 MR. ZAPPOLO: Okay. Same questions for you,
12 sir. Mr. -- I apologize, I don't want to --

13 PROSPECTIVE JUROR NO. 4-3: Watson.

14 MR. ZAPPOLO: Is it Mr. Watson?

15 PROSPECTIVE JUROR NO. 4-3: Yes.

16 MR. ZAPPOLO: Okay. Mr. Watson, same question
17 for all of those companies: Is there anything that
18 you know about any of those companies that would
19 sway you one way or the other with respect to being
20 a fair juror in this case?

21 PROSPECTIVE JUROR NO. 4-3: No.

22 MR. ZAPPOLO: Okay.

23 PROSPECTIVE JUROR NO. 4-3: Just some of the
24 cars look good when you ride by.

25 MR. ZAPPOLO: Okay. All right. Next company,

1 Rollcentre Racing. Has anyone heard of Rollcentre
2 Racing? I see no hands.

3 What about Supercar Engineering, Inc.? I see
4 no hands.

5 And Valance, Inc.? I see no hands.

6 Now the reason that I was asking you all those
7 questions is that there are going to be a number of
8 documents that we anticipate, both on our side and
9 their side, that are admitted into evidence in this
10 case and so is there any reason that anyone feels
11 that they're going to be particularly swayed one
12 way or the other because there are documents used
13 in this case? Like, for example, oh, the other
14 side has a lot of documents. They must be right
15 just because they've got a lot of documents.

16 By a show of hands, does anyone think that
17 because someone has a lot of documents that they
18 should win a case?

19 Okay. Is there anyone here that believes
20 everything they read by a show of hands? I see no
21 one raising their hands, okay.

22 Here's the big question for everyone: As a
23 group, as individuals, I'm asking everyone in the
24 group, but I'm going to ask, is there anyone here
25 who feels like they don't have common sense?

1 Everyone -- okay. I see no one raising their hand.
2 I see some smiles.

3 Does everyone understand what I mean when I
4 say "common sense"? The ability to -- okay. When
5 I say "common sense" -- and I see Ms. Belman kind
6 of shaking her head a little bit like you don't
7 understand.

8 PROSPECTIVE JUROR NO. 1-3: Yeah.

9 MR. ZAPPOLO: Okay. When I say "common
10 sense," that means you don't have particular
11 technical knowledge about something. You're not
12 supersmart about one thing, but you can kind of
13 figure things out if you look at them and pay
14 attention. Does everybody here feel like they can
15 pay attention in this case?

16 Okay. By a show of hands, anybody have like
17 some type of a medical condition? And if anyone
18 wants to -- doesn't want to disclose the medical
19 condition, I'm sure the judge will hear you up
20 separate, but besides anyone who may have already
21 discussed something with us, is there anyone that
22 feels that they have a medical condition that would
23 prohibit them from being able to pay attention in
24 this case, like back pain?

25 One time I had somebody that said "Oh, you

1 know, I just had back surgery." Okay. Anything
2 like that that's going to prevent you from being
3 fair in this case? And I will tell everyone that
4 the seats in the jury box are much more comfortable
5 than the seats you're sitting on now, so if that's
6 any consolation to you.

7 All right. So I see no hands with respect to
8 that.

9 PROSPECTIVE JUROR NO. 1-4: Other than what I
10 already disclosed?

11 MR. ZAPPOLO: Okay. Ms. Haczynski, right.

12 PROSPECTIVE JUROR NO. 1-4: Yes.

13 MR. ZAPPOLO: And thank you for that
14 disclosure.

15 Now, is there anyone here who feels that
16 because Mr. Wagner is the plaintiff, he doesn't
17 deserve anything? Anyone have like a oh, the
18 legal -- a feeling inside their gut that says the
19 legal system has run amok? Everybody's filing
20 lawsuits and people don't deserve things. There's
21 too many people that file lawsuits.

22 We can be honest. People feel that too many
23 lawsuits are filed? Anyone by a show of hands?
24 Okay. I see a couple of people there.

25 All right. Mr. Belsky, you feel like too many

1 lawsuits are filed? Do you feel like this is one
2 of those lawsuits?

3 PROSPECTIVE JUROR NO. 2-7: I don't know yet.

4 THE COURT: Okay. Good answer. So you feel
5 like you can listen to the evidence in this case
6 and then make a decision, right?

7 PROSPECTIVE JUROR NO. 2-7: Correct.

8 THE COURT: Okay. And Mr. Kohlbeck is it?
9 Okay. I saw you raise your hand. And do you feel
10 like this is one of those lawsuits that shouldn't
11 have been brought, it's just a part of a bad,
12 screwed up system?

13 PROSPECTIVE JUROR NO. 2-5: I have no idea
14 what it's about yet.

15 MR. ZAPPOLO: Okay. You're willing to listen
16 to the evidence and see what the evidence is before
17 you make your decision, correct?

18 PROSPECTIVE JUROR NO. 2-5: Yes.

19 MR. ZAPPOLO: All right. Now I notice in the
20 back, was it Ms. Nuernberg? I'm mispronouncing it,
21 I apologize. But you raised your hand, Juror 4-6
22 Potential Juror 4-6. That's your number.

23 Do you feel like this is one of those cases
24 that just because Mr. Wagner brought a lawsuit
25 he's -- you know, it's one of those lawsuits that

1 shouldn't have been brought?

2 Like everyone talks about the McDonalds coffee
3 case. Has anybody heard about the McDonalds coffee
4 case? Okay. I see a few people raising their
5 hands.

6 Is there anyone who feels like this is like
7 one of those McDonalds coffee cases? Oh, it's just
8 blown out of proportion. Anybody feel that way?

9 I see no hands. Okay. What about -- it is
10 Nuernberg, correct?

11 PROSPECTIVE JUROR NO. 4-6: Correct.

12 MR. ZAPPOLO: All right. Now, Ms. Nuernberg,
13 I didn't get an answer from you. I think I moved
14 on and I apologize for that, but I am interested.

15 Do you feel like because Mr. Wagner is the
16 plaintiff in this lawsuit, that he's brought a
17 claim that doesn't have any merit or anything like
18 that?

19 PROSPECTIVE JUROR NO. 4-6: I don't know yet.

20 MR. ZAPPOLO: Okay. And you're willing to
21 listen to the evidence before you make your
22 decision, right?

23 PROSPECTIVE JUROR NO. 4-6: Yes.

24 MR. ZAPPOLO: All right. By a show of hands,
25 is there anybody here who's -- I know the judge

1 asked you if you could be fair to that question
2 number 11, but that's really the most important
3 question here. Has anybody here ever made a
4 decision, like a snap decision, where they judge
5 someone prematurely or they thought something
6 because of the way someone looked or something and
7 then later on they regretted it besides me? Okay.
8 I see a lot of hands being raised there.

9 Okay. Is there anyone who's -- could we
10 ask -- can I ask everyone who's served on a jury to
11 please raise your hand very briefly.

12 All right. Of the jurors who -- the people
13 who served on a jury before raising your hands,
14 okay, is there anybody that felt like after the
15 fact they had a little bit of remorse about the
16 verdict that they rendered or anything like that?
17 Keep your hand up if you feel like you had remorse
18 after the fact.

19 Okay. Mr. Kohlbeck?

20 PROSPECTIVE JUROR NO. 2-5: Yes.

21 MR. ZAPPOLO: Okay. Can you explain -- tell
22 us about the case that you were on. Was it a
23 criminal case or a civil case?

24 PROSPECTIVE JUROR NO. 2-5: It was a criminal
25 case of three strikes and you're out application.

1 MR. ZAPPOLO: Okay.

2 PROSPECTIVE JUROR NO. 2-5: Where the three
3 crimes -- it was in my neighborhood. And the three
4 cases, if I remember right, were he was -- the
5 first two were smoking weed and joyriding. The
6 third one was stealing some sunglasses out of an
7 open convertible.

8 MR. ZAPPOLO: Okay. I don't want to invade
9 what your decision was.

10 PROSPECTIVE JUROR NO. 2-5: I don't care. It
11 was a while back, but it really set the tone of how
12 I think.

13 MR. ZAPPOLO: Okay.

14 PROSPECTIVE JUROR NO. 2-5: So the minimum in
15 Texas there was 25 to life because all three were
16 felonies.

17 MR. ZAPPOLO: Wow. Okay.

18 PROSPECTIVE JUROR NO. 2-5: And the jury, the
19 rest of the jury wanted life, and we spent most of
20 the time talking that down --

21 MR. ZAPPOLO: Okay.

22 PROSPECTIVE JUROR NO. 2-5: -- to something
23 more reasonable. And from then on I said I just
24 think the law is wrong.

25 MR. ZAPPOLO: Okay.

1 PROSPECTIVE JUROR NO. 2-5: So I won't apply
2 it.

3 MR. ZAPPOLO: But in this case --

4 THE COURT: Can you repeat that?

5 PROSPECTIVE JUROR NO. 2-5: If that ever comes
6 to -- I know this is not a criminal cause, but I
7 will not apply that law.

8 THE COURT: All right.

9 PROSPECTIVE JUROR NO. 2-5: I'm just done.

10 THE COURT: We're going to talk about that.

11 I'm going to interject myself for a moment here.

12 The judge is going to instruct you on the law, and
13 you understand that that is the law of this case?

14 PROSPECTIVE JUROR NO. 2-5: I believe that the
15 jury and the citizens have a responsibility and
16 right to, if the law is wrong, to not -- to voice
17 their concerns.

18 THE COURT: All right. So if the judge
19 instructs you on the law of this case, would you
20 follow the law of this case?

21 PROSPECTIVE JUROR NO. 2-5: I will not.

22 THE COURT: Okay. Thank you.

23 MR. ZAPPOLO: And thank you for your honesty.

24 That's kind of the thing that we're really trying
25 to discover here, okay.

1 By a show of hands, is there anyone else that
2 feels as Mr. Kohlbeck does, that he's not sure that
3 he would follow the law and the instructions that
4 the judge gives them? Anyone by a show of hands
5 besides Mr. Kohlbeck?

6 No. All right. I see no hands. So everyone
7 here is making a commitment that besides
8 Mr. Kohlbeck apparently at this point --

9 PROSPECTIVE JUROR NO. 2-5: Sorry.

10 MR. ZAPPOLO: And that's fair enough. Thank
11 you.

12 -- that if the judge instructs you as to the
13 law, that you will follow the law in this case,
14 correct? Is there anyone that disagrees with what
15 I just said, that all of you will follow the law?

16 Yes, sir, Mr. Soifer.

17 PROSPECTIVE JUROR NO. 3-7: I will say that I
18 do not agree with all laws. So is that along the
19 lines of what you're asking, or you're asking me if
20 the law is the law, that I would respect the law?

21 MR. ZAPPOLO: Well, this is a civil case and
22 so the judge is going to give you some instructions
23 at the end of the trial about what law you are to
24 follow in making a decision about who should win or
25 who should lose in this case.

1 Is there any feeling that you have, as you sit
2 here right now, that says "I just don't think I can
3 follow the law that the judge is going to tell me"?

4 PROSPECTIVE JUROR NO. 3-7: I'm not sitting
5 here with any of those feelings.

6 MR. ZAPPOLO: Okay. Now do you recognize the
7 difference between a civil case and a criminal
8 case?

9 PROSPECTIVE JUROR NO. 3-7: I do.

10 MR. ZAPPOLO: Okay. And so that everyone is
11 aware, in a civil case, we're talking about --
12 we're not talking about sending someone to jail.
13 We're just talking about disputes, like contract
14 disputes. And in this case there's a contract
15 dispute and some other disputes, but it's two
16 people and we're not trying to -- this case is not
17 about sending someone to jail or anything like
18 that.

19 Does anyone -- does that affect anyone's
20 opinion about whether they think they can follow
21 the judge's instructions as to the law in this
22 case?

23 Okay. I see no hands.

24 And so let me ask this as a follow-up: Is
25 there anyone who feels that it's not fair to make

1 someone pay damages to another side?

2 Okay. I see no hands. So I did see
3 Ms. Ackerman in the back. You were kind of moving
4 your lips a little bit.

5 PROSPECTIVE JUROR NO. 4-1: Well, if it's
6 warranted, then it's justified; but if it's not
7 warranted and it's a frivolous lawsuit, then it's
8 not justified.

9 MR. ZAPPOLO: Okay. So you still have an open
10 mind about whether or not -- you know, whether or
11 not someone should be awarded damages in this case?

12 PROSPECTIVE JUROR NO. 4-1: I don't know the
13 evidence, so I can't make that judgment.

14 MR. ZAPPOLO: Okay. And you would follow the
15 judge's instructions as he would instruct you on
16 what the law is in this case, correct?

17 PROSPECTIVE JUROR NO. 4-1: The law is the
18 law.

19 MR. ZAPPOLO: Okay. Thank you. Now I had a
20 note down as you were hesitant when you answered
21 question number 11.

22 PROSPECTIVE JUROR NO. 4-1: I still am.

23 MR. ZAPPOLO: Okay. And can you tell us what
24 makes you hesitant to say that you can be fair and
25 impartial?

1 PROSPECTIVE JUROR NO. 4-1: Should I stand or
2 can I sit?

3 MR. ZAPPOLO: As long as the court reporter
4 can hear you.

5 PROSPECTIVE JUROR NO. 4-1: You can hear me.
6 I'm a former teacher, you can hear me.

7 Okay. What I feel is if I don't know the
8 evidence of the trial and I don't know what the
9 specifics are, I cannot make a full -- a fully
10 honest judgment until I know what is in front of
11 me.

12 MR. ZAPPOLO: Okay.

13 PROSPECTIVE JUROR NO. 4-1: If I'm saying that
14 I can be fair, now what if something's said that
15 refers back to something I had in my past that I
16 did not know about ahead of time? Well, that kind
17 of skews my judgment and doesn't make me a fair
18 juror.

19 MR. ZAPPOLO: Okay. Thank you.

20 THE COURT: So let me interrupt. So the judge
21 is going to instruct you that you're to remain
22 neutral on the case. You're not to make up your
23 mind about the case. You're not to discuss the
24 case with anybody else until you've heard, one, all
25 of the evidence in this case.

1 PROSPECTIVE JUROR NO. 4-1: Yes.

2 THE COURT: Two, the arguments of the
3 attorneys. And three, the law as instructed by the
4 Court.

5 PROSPECTIVE JUROR NO. 4-1: Yes, sir.

6 THE COURT: Now once you've heard all that,
7 the jury will go back and deliberate. Do you
8 understand?

9 PROSPECTIVE JUROR NO. 4-1: Yes.

10 THE COURT: You're only to consider the facts
11 and evidence presented in this case in this
12 courtroom, the law presented in this case in this
13 courtroom, and the arguments presented by the
14 attorneys in this case in this courtroom.

15 Now from what I heard earlier, I don't think
16 anybody knew any of the parties involved in this
17 case before today, and so whatever experiences
18 you've had in your past are separate and apart from
19 what's going on in this case. Do you understand
20 that?

21 PROSPECTIVE JUROR NO. 4-1: Understood.

22 THE COURT: And so even though these are
23 separate people, separate times, separate events,
24 are you telling me that the evidence that you hear
25 in this courtroom would be tainted by experiences

1 from another place, another time?

2 PROSPECTIVE JUROR NO. 4-1: Not necessarily.
3 I'm saying in my own mind, how I see something --
4 how do I explain? Someone will look at my jacket
5 and say that's yellow. And then someone will say,
6 no, that's a different color because they see --
7 they're colorblind or that's their realm of
8 reasoning.

9 THE COURT: Are you telling me that you'd
10 consider evidence from another time and another
11 place that's not in this case --

12 PROSPECTIVE JUROR NO. 4-1: No, I would not.

13 THE COURT: -- even though it's your past
14 experiences?

15 PROSPECTIVE JUROR NO. 4-1: I would try not
16 to. I'm being honest.

17 THE COURT: Okay. All right. Thank you.

18 MR. ZAPPOLO: And just to follow-up on what
19 the judge was asking, one of the counts in this
20 case is a breach of contract count. I'm not going
21 to tell you any facts about that, but I want you to
22 assume for a minute that you had a contract with
23 someone two years ago and they breached that
24 contract.

25 Based upon the fact that someone breached a

1 contract with you, would you automatically say "Oh,
2 the other side must have definitely breached the
3 contract because" --

4 PROSPECTIVE JUROR NO. 4-1: No.

5 MR. ZAPPOLO: Okay. And I see you're
6 indicating no.

7 PROSPECTIVE JUROR NO. 4-1: No, definitely
8 not.

9 MR. ZAPPOLO: And that's what we're trying to
10 examine here. Some people say "Oh, yeah, you know,
11 in my brain, people breach contracts all the time
12 and so if you're suing for a breach of contract,
13 you have to win," okay? And that's not what we're
14 looking for here.

15 We're looking for independent, honest people
16 that will look at everything objectively and not
17 bring their own prejudices to bear in this case,
18 okay? Fairness.

19 So under those circumstances, Ms. Ackerman,
20 could you be fair in this case?

21 PROSPECTIVE JUROR NO. 4-1: I would try. I
22 would try.

23 MR. ZAPPOLO: Okay. Even if you had an
24 experience in your past, you would try -- you would
25 put that aside and rule only on what the judge said

1 and the facts of what went on between the parties
2 in this case --

3 PROSPECTIVE JUROR NO. 4-1: Yes.

4 MR. ZAPPOLO: -- correct?

5 PROSPECTIVE JUROR NO. 4-1: Yes.

6 MR. ZAPPOLO: Okay. Thank you very much.

7 Ms. Nuernberg, I apologize again for calling
8 on you, but my notes said you answered no to
9 question number 11, you could not be fair in this
10 case. Why is that?

11 PROSPECTIVE JUROR NO. 4-6: I'm biased.

12 MR. ZAPPOLO: You're biased already? I
13 thought you didn't know anyone in the room.

14 PROSPECTIVE JUROR NO. 4-6: Not on anyone in
15 the room, the way I see -- I don't really know,
16 honestly.

17 MR. ZAPPOLO: You don't know?

18 PROSPECTIVE JUROR NO. 4-6: I'm biased, and
19 also English isn't my first language as well.

20 MR. ZAPPOLO: I will say that I think everyone
21 who's working with the English language in this
22 room is doing quite a good job, but let me ask:
23 When you say you're biased, do you feel like you're
24 biased for Mr. Wagner?

25 PROSPECTIVE JUROR NO. 4-6: No.

1 MR. ZAPPOLO: Are you biased against
2 Mr. Wagner?

3 PROSPECTIVE JUROR NO. 4-6: No.

4 MR. ZAPPOLO: Are you biased for Mr. Mosler?

5 PROSPECTIVE JUROR NO. 4-6: No.

6 MR. ZAPPOLO: Are you biased against
7 Mr. Mosler?

8 PROSPECTIVE JUROR NO. 4-6: No.

9 MR. ZAPPOLO: I'm trying to understand why
10 you're saying you're biased then.

11 THE COURT: Ms. Nuernberg, can you please
12 stand up? I can't see you.

13 MR. ZAPPOLO: I'm sorry, Ms. Nuernberg, the
14 judge has asked you to stand, please, so he can
15 hear you a little bit better.

16 THE COURT: Thank you.

17 PROSPECTIVE JUROR NO. 4-6: Maybe I
18 misunderstood the question.

19 MR. ZAPPOLO: Okay. The question is, and I'll
20 read it to you, can and will you be a fair juror in
21 this case?

22 PROSPECTIVE JUROR NO. 4-6: Yes, I guess.

23 MR. ZAPPOLO: Okay. But you did say no, so I
24 want to ask you -- this is our time to be honest
25 with each other and figure out -- that's what --

1 voir dire means to speak the truth, okay.

2 So what is it that made you initially say you
3 couldn't be and that you were biased?

4 PROSPECTIVE JUROR NO. 4-6: I don't know the
5 answer.

6 MR. ZAPPOLO: Okay.

7 THE COURT: Ms. Nuernberg, how old are you?

8 PROSPECTIVE JUROR NO. 4-6: Hmm?

9 THE COURT: How old are you?

10 PROSPECTIVE JUROR NO. 4-6: 22.

11 THE COURT: Okay. Well, so I want to thank
12 you for being here. I'll tell you that I think
13 jury service is one of the most important things we
14 can do as Americans. I really believe that.

15 There's times where I talk about it. I
16 usually reserve that until the very, very end. I'm
17 going to do that at the very, very end of this
18 trial to the people who are sitting in the jury,
19 but for who's here right now, I do want you to know
20 that I firmly believe that jury service is one of
21 the most important things we can do as Americans.

22 We're blessed to live in this wonderful
23 country. And while it may not be perfect, it is
24 the greatest place on Earth. And most of the
25 rights that we have are rights that we can exercise

1 ourselves. Your right to speak, your right to
2 worship, your right to complain about your
3 government. There are very few rights that require
4 the participation of others. The only one that I
5 can think of is the right to a trial by jury. And
6 so in order for you to have the right to a trial by
7 jury means that other people have to participate in
8 the jury process. And in order for the people here
9 today to have a right to a trial by jury means that
10 other people have to participate in the jury
11 process.

12 There's not much that our nation asks of us:
13 Taxes, occasional military service, but also jury
14 service. Jury service is one of the most important
15 things that we do as Americans. I want you to know
16 that, okay?

17 All right. Go ahead, sir.

18 MR. ZAPPOLO: Thank you, Your Honor. Ms. -- I
19 hope I'm pronouncing this right. Ms. Muller.

20 PROSPECTIVE JUROR NO. 3-4: Muller.

21 MR. ZAPPOLO: I apologize.

22 PROSPECTIVE JUROR NO. 3-4: Yes.

23 MR. ZAPPOLO: You explained you couldn't be
24 fair.

25 PROSPECTIVE JUROR NO. 3-4: Well, this case is

1 regarding, I'm guessing, a business owner, right?

2 MR. ZAPPOLO: Yes.

3 PROSPECTIVE JUROR NO. 3-4: So as a business
4 owner, I have a different opinion. So I don't know
5 yet the facts, but I don't know what will be, you
6 know, my personal opinion regarding this case.

7 MR. ZAPPOLO: Okay.

8 PROSPECTIVE JUROR NO. 3-4: So that's why.

9 MR. ZAPPOLO: What type of business do you
10 own?

11 PROSPECTIVE JUROR NO. 3-4: Junk removal.

12 MR. ZAPPOLO: Okay. I apologize. You
13 mentioned that before.

14 PROSPECTIVE JUROR NO. 3-4: Yes.

15 MR. ZAPPOLO: Okay. Well, do you think that,
16 as a business owner, it impacts whether or not
17 people have to honor agreements or anything like
18 that?

19 PROSPECTIVE JUROR NO. 3-4: Oh, definitely
20 they have to.

21 MR. ZAPPOLO: Okay. And do you think that
22 because they are business owners in this case you
23 couldn't be fair to one business owner or the other
24 or even both?

25 PROSPECTIVE JUROR NO. 3-4: Well, the thing is

1 that as a business owner you have your rights. You
2 have your contracts. You know, you have your
3 information, so you have to be aware of all that
4 information, you know, to give an answer. So
5 that's my opinion.

6 I will say that of course you have to go, you
7 know, be fair and they have to, you know, own the
8 contract.

9 MR. ZAPPOLO: Okay. And there are other
10 issues in this case besides breach of contract, but
11 that was just an easy one to touch on.

12 But as far as you being a fair juror, what is
13 it that makes you feel that you couldn't be fair?

14 PROSPECTIVE JUROR NO. 3-4: Depending on both
15 cases because I have to hear both.

16 MR. ZAPPOLO: Right.

17 PROSPECTIVE JUROR NO. 3-4: You know, I have
18 to be in their shoes, you know, so I feel like I
19 have experienced before, so I need to see what's
20 happening and see what will be my opinion about it.

21 MR. ZAPPOLO: Right. So after -- at the end
22 of this trial -- remember, the judge said he's not
23 going to -- you're not to make any decision until
24 you've heard all of the evidence in this case and
25 the arguments from the attorneys about what all the

1 evidence means.

2 PROSPECTIVE JUROR NO. 3-4: Uh-huh.

3 MR. ZAPPOLO: Do you feel that at the end of
4 all that, if you've heard Mr. Wagner's side of the
5 story and you've heard Mr. Mosler's side of the
6 story and the side of the story from their
7 respective businesses as well, and then you've
8 heard Mr. Weber talk about what he thinks all the
9 evidence means and you've heard me talk about what
10 I think all the evidence means, then you hear the
11 judge instruct you about what the law is --

12 PROSPECTIVE JUROR NO. 3-4: Uh-huh.

13 MR. ZAPPOLO: -- at that point do you think
14 you could be fair in this case?

15 PROSPECTIVE JUROR NO. 3-4: I think I could be
16 fair because I will definitely follow the law.

17 MR. ZAPPOLO: Okay. So we can kind of change
18 your answer to you would be fair, right?

19 PROSPECTIVE JUROR NO. 3-4: Yeah. Definitely.
20 Yeah.

21 MR. ZAPPOLO: Okay. Well, thank you for that
22 honesty.

23 PROSPECTIVE JUROR NO. 3-4: Okay.

24 MR. ZAPPOLO: Now, Ms. Buitrago -- and I
25 apologize if I'm mispronouncing your name -- you

1 said that you didn't think you could be fair
2 because of the language barrier?

3 PROSPECTIVE JUROR NO. 3-6: Yes. Last year I
4 came and the judge sent me home because he said the
5 English no good.

6 MR. ZAPPOLO: Okay.

7 PROSPECTIVE JUROR NO. 3-6: I would like, but
8 the vocabulary, I don't understand like hundred
9 percent, like --

10 MR. ZAPPOLO: Okay.

11 PROSPECTIVE JUROR NO. 3-6: -- you know.

12 MR. ZAPPOLO: Do you read English?

13 PROSPECTIVE JUROR NO. 3-6: No.

14 MR. ZAPPOLO: No? Okay. Well, thank you for
15 your honesty. I appreciate that.

16 Ms. Belman, you had said something similar to
17 Ms. Buitrago, that you didn't feel you could be
18 fair because of Spanish-English language barriers.

19 PROSPECTIVE JUROR NO. 1-3: Yes, but let me --
20 I send four of my girls to graduated for FAU and
21 they -- how you call it? Professional? And only
22 my son is construction worker. Me, I try my best,
23 but I still struggle. I don't want -- some of the
24 words I don't understand, so I'll be honest with
25 you.

1 MR. ZAPPOLO: Okay. Do you read English?

2 PROSPECTIVE JUROR NO. 1-3: No. I try a
3 little bit. I try to study small books.

4 MR. ZAPPOLO: All right. And thank you. I'm
5 sure there's lots of people that if we went to a
6 Spanish speaking country wouldn't do so well.
7 Thank you for your honesty. I appreciate that.

8 Now there was someone that said -- I think it
9 was Ms. Jorgensen. Ms. Jorgensen, you said "I
10 don't think it's relevant what my kids do."

11 PROSPECTIVE JUROR NO. 1-7: Oh, I said I
12 didn't know if it was relevant.

13 MR. ZAPPOLO: All right. I'm going to ask
14 you.

15 PROSPECTIVE JUROR NO. 1-7: I'm happy to tell
16 you.

17 MR. ZAPPOLO: Are any of your children
18 lawyers?

19 PROSPECTIVE JUROR NO. 1-7: No.

20 MR. ZAPPOLO: Okay. Do any of your children
21 work in the exotic car industry?

22 PROSPECTIVE JUROR NO. 1-7: No.

23 MR. ZAPPOLO: And when I say "exotic car
24 industry," we're talking about things like
25 Lamborghinis, Ferrarris, Bugattis.

1 PROSPECTIVE JUROR NO. 1-7: No, no one works
2 in that industry.

3 MR. ZAPPOLO: All right. By the way, show of
4 hands, does anyone have a family member who's
5 worked with exotic cars, Lamborghinis, Ferraris?

6 PROSPECTIVE JUROR NO. 2-3: I've worked
7 with -- I install glass, so that's what I do for a
8 living. I've been doing it for 31 years. And I
9 used to go to the businesses, so I've probably been
10 to certain businesses all around Palm Beach County,
11 so...

12 MR. ZAPPOLO: Okay. How long have you been
13 doing that?

14 PROSPECTIVE JUROR NO. 2-3: 31 years.

15 MR. ZAPPOLO: Okay. And none of the companies
16 that were mentioned in this case rang a bell to
17 you, correct?

18 PROSPECTIVE JUROR NO. 2-3: No, sir. Like I
19 said, it's been so long, I stay -- I'm actually the
20 shop manager, so I stay in the shop.

21 MR. ZAPPOLO: Okay.

22 PROSPECTIVE JUROR NO. 2-3: But over the years
23 I have been probably to most of the exotic cars and
24 what have you. I have done a lot of work for a lot
25 of high-end, you know.

1 MR. ZAPPOLO: Okay. I'm going to share with
2 you and everyone that a lot of facts in this case
3 date back to like 2011, 2012 even. Would that
4 change your answer? Do you recall ever going to
5 any companies that had exotic cars?

6 PROSPECTIVE JUROR NO. 2-3: Yes.

7 MR. ZAPPOLO: In the Riviera Beach area?

8 PROSPECTIVE JUROR NO. 2-3: Absolutely.

9 MR. ZAPPOLO: Around '10, '11, '12?

10 PROSPECTIVE JUROR NO. 2-3: Uh-huh.

11 MR. ZAPPOLO: You do? Okay.

12 PROSPECTIVE JUROR NO. 2-3: Yes.

13 MR. ZAPPOLO: And none of the names in this
14 case ring a bell?

15 PROSPECTIVE JUROR NO. 2-3: It doesn't ring a
16 bell unless they changed the names or something's
17 changed.

18 MR. ZAPPOLO: Okay.

19 PROSPECTIVE JUROR NO. 2-3: I don't know. I
20 can't remember. I don't remember.

21 MR. ZAPPOLO: All right. Does the company
22 name Consulier ring a bell at all?

23 PROSPECTIVE JUROR NO. 2-3: It sounds
24 familiar, but like I said, I've done a lot of
25 business all over Palm Beach County on all high-end

1 cars, but like I said, I don't -- you know, it's --
2 I've been in the shop for a long time, so I haven't
3 been mobile; so a lot of the places that I did work
4 for, I can't remember the particular names for
5 them.

6 MR. ZAPPOLO: Okay. If in the middle of this
7 trial something came up and you said "Oh, wait, I
8 think I've been there. I think I've been to that
9 shop or that company and installed glass" --

10 PROSPECTIVE JUROR NO. 2-3: Yes.

11 MR. ZAPPOLO: -- would that impact your
12 ability to be fair and impartial in this case?

13 PROSPECTIVE JUROR NO. 2-3: No.

14 MR. ZAPPOLO: Okay.

15 PROSPECTIVE JUROR NO. 2-3: I just -- no.

16 MR. ZAPPOLO: Go ahead, please finish.

17 PROSPECTIVE JUROR NO. 2-3: I'm just trying to
18 be honest with you.

19 MR. ZAPPOLO: And I appreciate that.

20 PROSPECTIVE JUROR NO. 2-3: Like I said, they
21 look familiar to me.

22 MR. ZAPPOLO: They look familiar?

23 PROSPECTIVE JUROR NO. 2-3: Very, very
24 familiar.

25 MR. ZAPPOLO: And let me ask you this: With

1 both of the gentlemen, Mr. Wagner and you indicated
2 Mr. Mosler looking familiar to you, do you still
3 feel that you can be fair and impartial as a juror
4 in this case?

5 PROSPECTIVE JUROR NO. 2-3: Yes. Yes. Yes.

6 MR. ZAPPOLO: And you would base your
7 decisions as a juror only on the facts and the
8 evidence and the arguments and everything that you
9 hear in the courtroom, not about something you knew
10 in the past, correct?

11 PROSPECTIVE JUROR NO. 2-3: I understand.
12 Yes. Correct.

13 MR. ZAPPOLO: All right. And we are almost --
14 I'm almost done here.

15 I'm going to touch on a couple of other
16 things, though. By a show of hands, who thinks --
17 well, let me ask -- let me back up.

18 Does it change anyone's opinion about whether
19 or not they can be fair and impartial, and would it
20 change the answers that you gave about being fair
21 and impartial as a juror in this case, if you knew
22 that this case was going to go for about 11 days?

23 Okay. I see a couple of hands. Let's keep
24 them up, please. And remember --

25 PROSPECTIVE JUROR NO. 1-4: It's not a

1 question, but I would need to know ahead of time.

2 THE COURT: Let's raise our hands so we can
3 keep a record and then we'll address them one at a
4 time.

5 MR. ZAPPOLO: Yes. Ms. Haczynski, you were
6 just speaking.

7 PROSPECTIVE JUROR NO. 1-4: I'll be fair,
8 okay, because --

9 MR. ZAPPOLO: No. I'm just telling you, you
10 can put your hand down while you're speaking.

11 PROSPECTIVE JUROR NO. 1-4: Okay. I thought
12 you were telling me to be quiet.

13 MR. ZAPPOLO: No.

14 PROSPECTIVE JUROR NO. 1-4: No. I would need
15 to know ahead of time so I can reschedule medical
16 appointments.

17 MR. ZAPPOLO: Okay.

18 PROSPECTIVE JUROR NO. 1-4: So it's not
19 fairness, but rather logistics order.

20 MR. ZAPPOLO: Okay. And that's what we're
21 talking about here. We're talking about there's a
22 difference between someone who says "I can be fair
23 and impartial, but you're really putting a hardship
24 on me," okay?

25 Lots of people say "I can be fair and

1 impartial for an hour, but if you ask me to stay in
2 court for three days, that's going to cause a
3 problem because I've already got plane tickets to
4 go to Buenos Aires tomorrow," okay.

5 So there are two separate issues and that's
6 what I'm investigating now, the hardship aspect,
7 okay?

8 So I'm going to go down in the first row, in
9 the first row only. Ms. Haczynski, you said you
10 would need time to be able --

11 PROSPECTIVE JUROR NO. 1-4: Exactly. Because
12 I have a MRI Friday and so when I learned about
13 this, it was out of the blue, but I don't want to
14 have this in the back of my mind while I'm
15 listening because I want to be here. When I'm
16 here, I'm here.

17 MR. ZAPPOLO: Right.

18 PROSPECTIVE JUROR NO. 1-4: And so I would
19 need time to know how to take care of that so I can
20 be here and focus.

21 MR. ZAPPOLO: Your Honor, if I may -- I'm not
22 aware, are you going on Mondays? Are we doing
23 trial on Mondays?

24 THE COURT: We do -- let me see the attorneys.

25 (Thereupon, a sidebar conference was held.)

1 THE COURT: All right. So, if anything, I'm
2 going to tell them I take Mondays off. I mean, we
3 work on Mondays. I do special set hearings. The
4 way I explain it -- and before I explain it to them
5 I'll make sure it's okay with you guys, but I tell
6 them we'll have jury trial Tuesday through Friday.
7 Mondays they can go back to their office and do
8 what they need to do. I do that for the benefit of
9 the people being able to check in with work and not
10 falling behind in work, but that we resume on
11 Tuesdays and it's prompt, you know.

12 MR. WEBER: Is it 9:30 to 4:30?

13 THE COURT: 9:30 to 5:00.

14 MR. ZAPPOLO: And --

15 THE COURT: I'll tell them the hours and --

16 MR. ZAPPOLO: Yes, sir.

17 THE COURT: I'll tell them those hours.

18 MR. WEBER: And how much more time are you
19 supposed to have? It's been almost an hour.

20 THE COURT: He has 40 minutes. He's been
21 going for 35, and we've had a couple of bench
22 conferences. I am probably going to give him like
23 five, six more minutes.

24 (Thereupon, the sidebar conference was
25 concluded.)

1 All right, ladies and gentlemen. So the way
2 this division works is we do jury trials Tuesday
3 through Friday, starting at 9:30 until about
4 5 o'clock. There might be the chance where it runs
5 late one or two days depending on witnesses or
6 depending on when a verdict is rendered.

7 Mondays the Court hears other hearings, allows
8 the attorneys to go back to their offices, address
9 phone calls, talk to their clients. And so the
10 people who are serving on juries can go back and
11 check in with work, return phone calls for their
12 businesses so they don't lose their clients, and so
13 Mondays are the days that you would not be in this
14 courthouse.

15 We would resume on Tuesdays at 9:30 in the
16 morning and go until about 5:00 or 5:30 every
17 single day until we complete. Okay?

18 MR. ZAPPOLO: Okay. So with what the judge
19 just explained to you, is there anyone that feels
20 that -- in the first row only, besides
21 Ms. Haczynski --

22 THE COURT: It's also my intention to release
23 you as soon as we select a jury today so that you
24 can make accommodations for the remainder of the
25 trial.

1 PROSPECTIVE JUROR NO. 1-4: Okay. Thank you.

2 MR. ZAPPOLO: Okay. So with all that being
3 said, in the first row and first row only, is there
4 anyone that feels that they have a particular
5 hardship with coming to court for the next two to
6 three weeks? I see Ms. Crousillat?

7 PROSPECTIVE JUROR NO. 1-5: Crousillat.

8 MR. ZAPPOLO: And what is that?

9 PROSPECTIVE JUROR NO. 1-5: Well, I'm a widow
10 and I have two minors. Even though I have one
11 older son, he's practically independent, and I'm
12 still working through my economics. You know, I'm
13 trying to figure it out because they go to school
14 because I have to take them, and yeah.

15 MR. ZAPPOLO: Okay.

16 PROSPECTIVE JUROR NO. 1-5: And so I have to
17 do it by myself.

18 MR. ZAPPOLO: I understand.

19 PROSPECTIVE JUROR NO. 1-5: Even though I can
20 organize myself a lot, but I'll be very stressed
21 out about it.

22 MR. ZAPPOLO: Thank you. Thank you. I
23 appreciate that.

24 Anyone else? Yes, Ms. Basile.

25 PROSPECTIVE JUROR NO. 1-2: The biggest

1 struggle would also be financially because I'm
2 single. If I'm -- as a personal trainer, if I'm
3 not there, I don't get paid, so that was just --
4 that would be my biggest trouble.

5 MR. ZAPPOLO: Thank you very much.

6 Second row, show of hands, anyone feels that
7 there's a hardship here? We're going to go from
8 that side over. Yes, sir, Mr. Greco.

9 PROSPECTIVE JUROR NO. 2-1: Yes. My family
10 depends on the income that I create and being
11 self-employed, I'm required to be in my business in
12 order for the business to function, so being away
13 for more than a day or two would really jeopardize
14 us, like, paying the bills and whatnot.

15 MR. ZAPPOLO: And what type of business is
16 that?

17 PROSPECTIVE JUROR NO. 2-1: It's an online
18 English school.

19 MR. ZAPPOLO: Okay. Thank you. Next,
20 Mr. Bonner?

21 PROSPECTIVE JUROR NO. 2-2: Yeah. For the
22 reasons that we spoke about before, four and
23 six-year-old.

24 MR. ZAPPOLO: Thank you. Gotcha. I
25 understand that, and counsel knows.

1 PROSPECTIVE JUROR NO. 2-2: Yes.

2 MR. ZAPPOLO: So you didn't want to air that
3 before, so I'll cut you off. Thank you. I
4 appreciate that.

5 Anyone else in that row? Mr. Kohlbeck?

6 PROSPECTIVE JUROR NO. 2-5: You said 11 days,
7 right?

8 MR. ZAPPOLO: Approximately. I'm sure counsel
9 and I are going to try to get it done sooner, but
10 that's what we're starting at.

11 PROSPECTIVE JUROR NO. 2-5: With only four
12 days during the week next Friday, I think we're
13 leaving, my son and I, for about a two and a half
14 week celebration of his graduation. It's been
15 planned for about a year.

16 MR. ZAPPOLO: Okay.

17 PROSPECTIVE JUROR NO. 2-5: Nonrefundable type
18 of situation, about 10-, \$12,000 probably.

19 MR. ZAPPOLO: Thank you. I appreciate you
20 telling us. Oh, I see Ms. Moreira.

21 PROSPECTIVE JUROR NO. 1-1: Moreira.

22 MR. ZAPPOLO: Moreira, did I do better? All
23 right. Thank you. I apologize for mispronouncing
24 that.

25 PROSPECTIVE JUROR NO. 1-1: Yes, I'm working

1 in Publix only four days and I'm taking time off
2 already, but I'm cleaning house, so these people
3 are waiting for me and I -- I'm cleaning house on
4 Wednesday and Thursday.

5 MR. ZAPPOLO: Okay.

6 PROSPECTIVE JUROR NO. 1-1: So the other day
7 I'm coming, but these days is very difficult --

8 MR. ZAPPOLO: Okay. And --

9 PROSPECTIVE JUROR NO. 1-1: -- if when I come.

10 MR. ZAPPOLO: Okay. Thank you. I noticed
11 that -- I noticed you have a very beautiful Spanish
12 accent; is that correct?

13 PROSPECTIVE JUROR NO. 1-1: Yes.

14 MR. ZAPPOLO: Okay. And how is your grasp of
15 English? I heard some other people say that they
16 have trouble reading documents. Can you read and
17 write English?

18 PROSPECTIVE JUROR NO. 1-1: I don't read too
19 much, but when I hear, I understand better, but the
20 problem is I never go to the school.

21 MR. ZAPPOLO: Okay.

22 PROSPECTIVE JUROR NO. 1-1: I living too long
23 in America, I think I need to speak it better, but
24 I learn in my job because I'm working 27 years in
25 Publix.

1 MR. ZAPPOLO: Okay. Congratulations. Good
2 for you.

3 PROSPECTIVE JUROR NO. 1-1: Thank you.

4 MR. ZAPPOLO: Good company.

5 Now let's go to the third row, show of hands.
6 Mr. Soifer?

7 PROSPECTIVE JUROR NO. 3-7: So I'm a third
8 grade teacher at the moment and there's three weeks
9 left in the school year, so it's kind of important
10 for my third graders to matriculate to the fourth
11 grade.

12 That's not the main issue. Selfishly enough,
13 the main issue is that I have a trip planned this
14 Thursday and Friday. And if I had to miss that
15 trip, my first trip in three years, I'd probably be
16 a little resentful if I had to miss that trip.

17 MR. ZAPPOLO: Okay. Thank you. By the way,
18 anyone who's got a teacher in the family or those
19 that are teachers, Happy Teachers' Day. I've heard
20 that on the radio this morning.

21 All right. So the next person in line there,
22 Ms. Hassan?

23 PROSPECTIVE JUROR NO. 3-5: Yes.

24 MR. ZAPPOLO: How do you have a hardship?

25 PROSPECTIVE JUROR NO. 3-5: Yes. So I

1 homeschool two -- both of my younger children, and
2 my husband works full time.

3 MR. ZAPPOLO: Okay. And how old are your
4 children?

5 PROSPECTIVE JUROR NO. 3-5: I have a second
6 grader and a sixth grader.

7 MR. ZAPPOLO: Okay. Thank you very much.
8 And Ms. Muller?

9 PROSPECTIVE JUROR NO. 3-4: Muller.

10 MR. ZAPPOLO: Yes.

11 PROSPECTIVE JUROR NO. 3-4: Yeah. I'm a high
12 school teacher so we're working on graduation, so
13 this week is very important.

14 MR. ZAPPOLO: All right. Thank you. And yes,
15 I see Mr. Hillier is raising his hand in the second
16 row.

17 PROSPECTIVE JUROR NO. 2-3: Yes. I'm the shop
18 manager where I work. So what it is, I work on a
19 lot of emergency vehicles and, to me, I think
20 that's important that I be there to -- you know,
21 because they don't have anybody -- you know, nobody
22 that is like me in the shop to do my job. So it
23 makes it very difficult for my boss to try and
24 coordinate with them.

25 MR. ZAPPOLO: Okay. And back to the third

1 row. Anyone else on the third row that has a --
2 yes, ma'am, Ms. Del Valle?

3 PROSPECTIVE JUROR NO. 3-3: Yeah. I'm a
4 finance manager and there's only two of us. I work
5 at a car dealership, so it would put a very
6 stressful situation on my job. And my partner is
7 supposed to go away I believe Friday, the other
8 finance manager, and we're the only ones that can
9 do our jobs there.

10 MR. ZAPPOLO: You said you were a finance
11 manager for a car dealership?

12 PROSPECTIVE JUROR NO. 3-3: Yes.

13 MR. ZAPPOLO: What dealership is that?

14 PROSPECTIVE JUROR NO. 3-3: Mercedes.

15 MR. ZAPPOLO: What Mercedes dealership is
16 that?

17 PROSPECTIVE JUROR NO. 3-3: North Palm Beach.

18 MR. ZAPPOLO: Okay. And has Mercedes in North
19 Palm Beach ever sold any exotic cars? Do you have
20 any understanding of the industry, the exotic car
21 industry?

22 PROSPECTIVE JUROR NO. 3-3: Yes.

23 MR. ZAPPOLO: And with your -- notwithstanding
24 your knowledge of the exotic car industry, like
25 Lamborghinis, Ferraris, Bugattis?

1 PROSPECTIVE JUROR NO. 3-3: Yeah. We only
2 have new Mercedes, but occasionally we get a
3 trade-in, and my owner owns the Ferrari dealership
4 on Okeechobee Boulevard.

5 MR. ZAPPOLO: Who owns the Ferrari dealership?

6 PROSPECTIVE JUROR NO. 3-3: The same group
7 that I work for.

8 MR. ZAPPOLO: Okay. Thank you. And but
9 notwithstanding that, you had said you could be
10 fair and impartial in this case if you're chosen?

11 PROSPECTIVE JUROR NO. 3-3: Yeah. As far as
12 that goes, yeah. It would just be hard. And I
13 also earn 100 percent commission, so if I miss 11
14 days of work, I wouldn't get paid.

15 MR. ZAPPOLO: Okay. And anyone else on the
16 third row?

17 And last on the fourth row? Last, but not
18 least. Yes, ma'am, Ms. Ackerman?

19 PROSPECTIVE JUROR NO. 4-1: Yes, I have
20 obligations up north of going back in about two and
21 a half to three weeks, and I also have a husband to
22 take care of, and I have doctors' appointments.

23 MR. ZAPPOLO: Okay.

24 PROSPECTIVE JUROR NO. 4-1: Being older,
25 that's what happens.

1 MR. ZAPPOLO: I understand. And I can
2 appreciate that. Not to be prying --

3 PROSPECTIVE JUROR NO. 4-1: Yes.

4 MR. ZAPPOLO: -- but is there anything acute
5 that, like, if I don't make this doctors'
6 appointment, I'm going to have a serious issue as
7 opposed to --

8 PROSPECTIVE JUROR NO. 4-1: It's chronic.
9 It's chronic age. The alternative stinks, so
10 that's --

11 MR. ZAPPOLO: Okay. And your husband, you
12 said you take care of him. Does he have any
13 disabilities or anything like that?

14 PROSPECTIVE JUROR NO. 4-1: He's a 70-year-old
15 man. We'll leave it at that.

16 MR. ZAPPOLO: All right. Ms. Pennacchio, did
17 you raise your hand?

18 PROSPECTIVE JUROR NO. 4-2: I didn't raise a
19 hand because I know we're all busy people and we
20 all claim to be, but, you know, I'll make it work
21 with work if I have to.

22 MR. ZAPPOLO: Okay. Who else on -- and thank
23 you. I appreciate that.

24 Who else on the fourth row raised their hand
25 and said they had a hardship? Okay. Mr. Watson,

1 first.

2 PROSPECTIVE JUROR NO. 4-3: I have plans to
3 pick up my daughter from college next week. It's
4 the end of the semester.

5 MR. ZAPPOLO: Okay. And where is she going to
6 college?

7 PROSPECTIVE JUROR NO. 4-3: University of San
8 Francisco.

9 MR. ZAPPOLO: Oh, good for you. All right.
10 And Mr. Registre?

11 PROSPECTIVE JUROR NO. 4-4: Yes.

12 MR. ZAPPOLO: Okay. What was your concern?

13 PROSPECTIVE JUROR NO. 4-4: All of my family
14 is, like, dependent on me, so I have limited
15 income.

16 MR. ZAPPOLO: If you were -- I heard you say
17 that you worked security at the South County
18 Courthouse, right?

19 PROSPECTIVE JUROR NO. 4-4: Yes.

20 MR. ZAPPOLO: If you got jury duty, don't you
21 get paid anyway?

22 PROSPECTIVE JUROR NO. 4-4: No.

23 MR. ZAPPOLO: No? Okay. All right. Thank
24 you. And Ms. Mclean?

25 PROSPECTIVE JUROR NO. 4-5: Yes.

1 MR. ZAPPOLO: What was your concern?

2 PROSPECTIVE JUROR NO. 4-5: So as I stated
3 before, you know, I'm a very recent widow, only a
4 year and a half, so I'm trying to put everything
5 still together. I mean, I know how important it is
6 to be a juror, but at this point, right now at this
7 time in my life, you know, I'm still trying to put
8 my last kid through college. This is her last
9 year. She's going to be a senior this coming year.
10 She is out of state. There's a lot of expenses.

11 You know, I work so, you know, just by myself.
12 I don't have anybody else in my home, and I have a
13 lot of bills and stuff that I have to provide for
14 us. She depends on me. She's a full-time student,
15 so being away 11 days, I think, would really create
16 a financial situation for me.

17 MR. ZAPPOLO: Okay.

18 PROSPECTIVE JUROR NO. 4-5: It's really
19 stressing me definitely.

20 MR. ZAPPOLO: Thank you. I appreciate
21 everyone's honesty.

22 PROSPECTIVE JUROR NO. 4-5: Thank you.

23 MR. ZAPPOLO: And I can tell you that I'm sure
24 Mr. Weber, myself, and the Court will do our best
25 to try and figure out -- be as fair as we can to

1 everyone.

2 Just one last question: There's likely to be
3 assertions in this case that either I might say or
4 another lawyer in the case might say very
5 emphatically. Like if I were to say something like
6 "The sky is green, the sky is green, the sky is
7 green," does anyone feel that they couldn't apply
8 their common sense and separate the fact that I
9 said something three times over and over and just
10 because of that you can still apply your common
11 sense to the facts in the case and make a fair
12 decision, taking the lawyers out of the case, and
13 in essence just ruling upon the evidence that's
14 presented?

15 Now don't get me wrong, the lawyers get to
16 argue what it all means, but does anyone feel that
17 they can't apply their common sense in the face of
18 an emphatic lawyer who's telling you the way it is?
19 It might be me, I don't know. Does anyone feel
20 like they can't do that? That they can still apply
21 their common sense to the facts and the evidence
22 that they see that comes in through witnesses and
23 documentation?

24 Okay. Anyone that doesn't feel they can do
25 that, please raise your hand.

1 THE CLERK: Five minutes, Counsel.

2 THE COURT: I think we're timed.

3 MR. ZAPPOLO: Yes. And that was my last
4 question, Your Honor, and I thank you all for your
5 attention. Mr. Weber probably has some questions
6 for you.

7 THE COURT: All right. Defense, it's your
8 panel.

9 MR. WEBER: Thank you, Your Honor. Good
10 morning. Just a few questions for you.

11 (Prospective jurors in unison: Good morning.)

12 MR. WEBER: Piggybacking off of what
13 Mr. Zappolo did with the hand raising, has anyone
14 ever been a lawyer? Raise your hand if you've been
15 a lawyer.

16 Okay. Has anyone been to law school? Raise
17 your hand if you've been to law school. Okay.

18 Raise your hand if you are unfamiliar with the
19 concept of sending and receiving emails. Has
20 anyone not sent and received emails? We see no
21 hands, okay.

22 Raise your hand if you are unfamiliar with the
23 concept of replies to emails being indented or
24 interlined with other emails within the same email
25 thread. Does anyone know what I'm talking about?

1 Is that an unfamiliar concept to anybody here?

2 PROSPECTIVE JUROR NO. 2-4: What do you mean
3 by "indented"? I'm sorry, I'm lost on that.

4 Indented like --

5 MR. WEBER: Yeah. Have you ever seen when
6 there's an email and someone replies to that email
7 and it might be the old email is indented down the
8 line? As you scroll down the chain, it gets
9 further and further indented to the right. Have
10 you ever seen that before?

11 PROSPECTIVE JUROR NO. 2-4: I don't think so.

12 MR. WEBER: Okay. I'm sorry, you were?

13 PROSPECTIVE JUROR NO. 2-4: Susan Hanlon.

14 MR. WEBER: And --

15 PROSPECTIVE JUROR NO. 4-1: Ackerman.

16 MR. WEBER: Yes, thank you.

17 Okay. That's all of the questions I have,
18 Your Honor.

19 THE COURT: All right. Thank you very much.
20 Deputy, if you can excuse the jury, I'm going to
21 have a conversation with the attorneys, please.

22 MR. ZAPPOLO: I'm not sure if the deputy heard
23 you, Your Honor.

24 THE COURT: Oh, we're going to start picking
25 the jury. Can you take them outside, please?

1 THE COURT DEPUTY: Sure.

2 THE COURT: Thank you.

3 (Prospective jurors exit the courtroom at
4 12:27 p.m.)

5 THE COURT: All right. We're going to pick a
6 jury. We're going to bring them in and swear them
7 in and then I'm going to release them. We're going
8 to do a few things, but whenever you want to work
9 on the white noise is fine, so it will just be a
10 few moments.

11 All right. Do you need a minute to go over
12 your stuff?

13 MR. ZAPPOLO: Yes, sir.

14 THE COURT: Okay. I'll give you guys about
15 five minutes. That was not awful -- I mean, that
16 was fast, so --

17 MR. ZAPPOLO: I did such a great job, Your
18 Honor.

19 MR. WEBER: Well --

20 THE COURT: We'll address causes --

21 MR. WEBER: I told you I was fast.

22 THE COURT: -- right away and then we'll go to
23 peremptories, okay?

24 MR. ZAPPOLO: Yes.

25 THE COURT: All right. I can tell you I took

1 notes on some of these hardships. I don't know if
2 they're all hardships, not even close, but okay.

3 MR. ZAPPOLO: Thank you.

4 THE COURT: All right. I'll be back in about
5 five minutes.

6 (Thereupon, a short break was taken from
7 12:29 p.m. to 12:41 p.m.)

8 THE COURT: All right. Please be seated.

9 All right. Challenges for cause, plaintiff.

10 MR. ZAPPOLO: Jurors -- do you want to do them
11 individually, or do you want me to list them all
12 off?

13 THE COURT: You can list them all off if you
14 want.

15 MR. ZAPPOLO: Okay. I think Juror 1-1,
16 language.

17 THE COURT: Any objection to 1-1?

18 MR. WEBER: No objection.

19 THE COURT: All right. 1-1 for cause.

20 MR. ZAPPOLO: Juror 1-3, language.

21 MR. WEBER: No objection.

22 THE COURT: All right. For cause.

23 MR. ZAPPOLO: Okay. Juror 2-2, Mr. Bonner,
24 the attorney with the childcare issues.

25 MR. WEBER: No objection.

1 THE COURT: Okay. 2-2 for cause.

2 MR. ZAPPOLO: 2-5, Mr. Kohlbeck said he
3 couldn't be fair, didn't think he'd follow the law,
4 et cetera, and he said he's got prepaid travel for
5 two and a half weeks.

6 MR. WEBER: No objection because of the
7 appearance issue.

8 THE COURT: I agree. All right.

9 MR. ZAPPOLO: Then Juror 3-6.

10 THE COURT: Juror 3-6.

11 MR. ZAPPOLO: Language.

12 MR. WEBER: No objection.

13 THE COURT: All right. Granted.

14 MR. ZAPPOLO: That was all of my for cause,
15 Your Honor.

16 THE COURT: All right. Give me one second,
17 let me take a look at this.

18 All right. Defense.

19 MR. WEBER: 3-4, Your Honor. She had a
20 similar issue where she couldn't be a fair juror.
21 This is the one who had -- was the teacher and also
22 had the small business. And she had the answer,
23 when you first questioned her, that seemed like she
24 couldn't be a fair and impartial juror.

25 MR. ZAPPOLO: I thought I rehabilitated her

1 pretty well. She -- after I said -- after she said
2 the reason she couldn't be fair is because she'd
3 have to hear all the evidence, and I said after you
4 hear all the evidence, you can follow what the
5 judge says, et cetera?

6 THE COURT: I mean, so you're both correct. I
7 don't have reasonable doubt. I do think she was
8 trying to avoid jury service at all costs. She
9 couldn't really articulate why she was biased. She
10 said she had to hear all the evidence.

11 You know, it happens. It's been my experience
12 in selecting these jurors that sometimes people
13 will say things they don't really mean to get out
14 of jury service, especially when it's three weeks
15 long, but I think she was successfully
16 rehabilitated. I don't have a reasonable doubt
17 about her ability to serve as a juror from what
18 I've heard.

19 All right. What's the next one?

20 MR. WEBER: 3-7. He had said that there was
21 some instances where he didn't agree with the law,
22 and it was unclear whether he would actually follow
23 the law if he disagreed with it.

24 THE COURT: Any objection?

25 MR. ZAPPOLO: I thought he did say that he

1 would. Remember, I differentiated with him on the
2 criminal versus a civil case, and I thought that he
3 was pretty well rehabilitated.

4 MR. WEBER: This is the -- this was the guy on
5 the end who said he had a small claims case.

6 THE COURT: I know who it is. Yeah, I don't
7 have reasonable doubt about him either.

8 Kohlbeck really concerned me.

9 MR. WEBER: Yeah.

10 THE COURT: I thought he would not follow the
11 law as instructed, but after hearing the complete
12 voir dire, I'm not -- I don't have any doubt that
13 Mr. Soifer wouldn't follow the law as instructed.

14 All right. What's the next one?

15 MR. WEBER: That's it, Your Honor.

16 THE COURT: Okay. Those are all of the cause
17 challenges.

18 Any hardships? Let's address hardships.

19 MR. ZAPPOLO: We said Bonner was for cause,
20 right? Because he was like a cause hardship.

21 THE COURT: Correct.

22 MR. ZAPPOLO: I listed him as a cause, so I
23 guess he's technically hardship, but -- Ms. --
24 Juror 1-5, Ms. Crousillat. She's a recent widow
25 with two minor children.

1 MR. WEBER: We object to that one. She
2 doesn't seem like --

3 THE COURT: All right. Objection sustained.

4 MR. ZAPPOLO: Okay.

5 THE COURT: I can tell you the ones that I
6 thought were financial hardships were people who
7 were sole business owners. So 1-2, 2-1. The other
8 financial hardship that I thought was Mr. 4-4.

9 People who are either sole business owners who
10 can't generate income unless they're present, or
11 people whose income is the sole basis for providing
12 for their families. So there was another lady too.
13 Let me look at this. 4-5.

14 So I think 4-4, 4-5, 1-2, and I think it
15 was --

16 MR. ZAPPOLO: 2-1 you said.

17 THE COURT: -- 2-1 were the ones that I
18 thought could be financial hardships. What are
19 your thoughts on those?

20 The other ones, for example, where it would be
21 a hardship on their boss, that's not a financial
22 hardship, but the ones where it would be a
23 financial hardship on them, those are the ones that
24 I would consider.

25 MR. WEBER: I agree, Your Honor. That's what

1 I have: 2-1, 4-4, and 4-5.

2 THE COURT: Repeat that.

3 MR. WEBER: I have 2-1.

4 THE COURT: I've got 1-2, 2-1, 4-4, 4-5. I've
5 got four of them.

6 MR. WEBER: Oh, 1-2.

7 THE COURT: So she's the personal trainer.

8 MR. WEBER: Right. Oh, right. Yes, yes.

9 THE COURT: If she's not actually moving the
10 weights for these people, they're not going to pay
11 her. 2-1 is the online English class.

12 MR. WEBER: Right.

13 THE COURT: If he's not there to teach them,
14 they're not going to pay him.

15 MR. WEBER: Yeah.

16 THE COURT: 4-4 is the security guard. If he
17 doesn't generate income, his family doesn't have
18 income. And 4-5, if she doesn't generate income,
19 then, you know, her daughter doesn't have income.
20 So --

21 MR. WEBER: I agree, Your Honor.

22 MR. ZAPPOLO: Okay.

23 THE COURT: Any position on those?

24 MR. ZAPPOLO: No. I think the Court's
25 appropriate.

1 THE COURT: Okay.

2 MR. ZAPPOLO: I'm not going to -- I'm not
3 going to argue it.

4 THE COURT: Well, you can.

5 MR. ZAPPOLO: No. I understand what the Court
6 is doing, and I'm not going to -- I'm not here to
7 cause hardship to people.

8 THE COURT: Yeah. I mean, there are other
9 people. The widow, you know, if she can find day
10 care. You know, if the finance manager at the
11 dealership, you know --

12 MR. ZAPPOLO: Right. There's coverage.

13 THE COURT: Yeah.

14 MR. ZAPPOLO: There should at least be some
15 coverage.

16 THE COURT: The -- what do you call it? The
17 glass installation, you know, they're not financial
18 hardships to them, they're financial hardships to
19 their employers, so --

20 MR. ZAPPOLO: The other one would be the
21 server at Maggiano's.

22 THE COURT: What about her?

23 MR. WEBER: We object to that one. I think
24 she was fine.

25 THE COURT: Well, let me hear you.

1 MR. ZAPPOLO: Just along the same reasoning as
2 the Court. She's a young lady who's a server at
3 Maggiano's, if we're going to follow that logic,
4 but I wasn't going to raise it.

5 THE COURT: Yeah. Well, she didn't say it was
6 a hardship for her.

7 MR. ZAPPOLO: Okay.

8 THE COURT: I actually thought she was
9 disingenuous about her bias.

10 MR. ZAPPOLO: Yeah, so did I.

11 THE COURT: A little bit I chastised her, a
12 little bit, in a very subtle way, but okay.

13 All right. Then let's go into preemptory
14 challenges. We'll start with -- I guess the first
15 one is 1-4. We'll start with plaintiff. If they
16 accept the panel as is, then we'll go to defense.
17 If you accept the panel as is, then that's our
18 panel.

19 If, you know, you want to strike anybody in
20 the first six, you'll tell me. And then after
21 you've exercised your first strike, then defendant
22 will use their strike. We'll snake it, you know.

23 MR. ZAPPOLO: Just so we're clear, Your Honor,
24 the panel as it now sits would be 1-4, 1-5, 1-6,
25 1-7, 2-3, and 2-4, correct?

1 THE COURT: Correct.

2 MR. ZAPPOLO: All right. And are we going to
3 do an alternate?

4 THE COURT: You have one alternate. You get
5 three peremptories and one peremptory alternate.

6 MR. ZAPPOLO: Okay. We'd like to exercise a
7 peremptory on Juror 2-4.

8 THE COURT: All right. Plaintiffs' first
9 peremptory on 2-4, that takes our panel up to 2-6.
10 Defense, do you accept?

11 MR. WEBER: Judge, can I just be clear on who
12 makes up the current panel now?

13 THE COURT: 1-4, 1-5, 1-6, 1-7, 2-3, 2-6.

14 MR. WEBER: We accept that panel.

15 THE COURT: Plaintiff, do you accept that
16 panel?

17 MR. ZAPPOLO: We'd like to exercise our second
18 peremptory on 2-6.

19 THE COURT: All right. So defense, that takes
20 us to 1-4, 1-5, 1-6, 1-7, 2-3, and 2-7. Do you
21 accept that panel?

22 MR. WEBER: We accept that panel.

23 THE COURT: Defense -- or plaintiff, do you
24 accept that panel?

25 MR. ZAPPOLO: We exercise the peremptory on

1 2-7, Your Honor.

2 THE COURT: All right. So that takes us to
3 1-4, 1-5, 1-6, 1-7, 2-3, and 3-1.

4 Defense, do you accept that panel?

5 MR. WEBER: We accept the panel.

6 THE COURT: Okay. I guess that's our panel.

7 As far as our alternate, that takes us to 3-2.

8 Defense, do you accept the alternate?

9 MR. WEBER: Yes, Your Honor.

10 THE COURT: Plaintiff?

11 MR. ZAPPOLO: Yes.

12 THE COURT: All right. So Mr. Smith will be
13 our alternate, and I guess that's our jury. Let me
14 take a look at this one more time.

15 Okay. So the alternate is important, I want
16 you to know that. You know, I kind of let you guys
17 know that she -- she didn't really voice an
18 objection to sitting on the jury, but she brought a
19 note saying she shouldn't sit on a jury for a year,
20 and that's 1-4.

21 So, you know, both of you having accepted her
22 being apprised of that, you know, it could be an
23 issue, putting that on your radar, so we're going
24 to impanel one alternate. That would be Frederic
25 Smith, okay.

1 Okay. I'm sorry, I got a note from the
2 deputy. It says "Juror 1-4 complains that her leg
3 is hurting right now."

4 MR. WEBER: Can I see the note, Your Honor,
5 the doctor's note?

6 THE COURT: Does she have it?

7 MR. WEBER: I thought she gave it to you.

8 THE COURT DEPUTY: She had the cane and --

9 THE COURT: Yeah, yeah. Can you go get her
10 doctor's note for us, please?

11 THE COURT DEPUTY: Yes.

12 THE COURT: Thank you very much.

13 All right. So this is a piece of paper. It
14 says the Department of Veterans Affairs. It's not
15 really signed. It says, "Regarding ROI plus
16 request of Selina Haczynski, we received your
17 request for information on April 28, 2023. The
18 individual identified" -- so this is essentially a
19 cover letter with privileged information.

20 Let's see. Page 3 because page 2 is just --
21 it says, "Progress Notes. To whom it may concern,
22 this letter serves as certification that
23 Ms. Haczynski, Salina Andrea has to be excused from
24 jury duty due to her medical condition for one year
25 and possibly permanently if her physical condition

1 will not improve.

2 Sincerely, Inna Genel, M.D., board-certified
3 by the American Board of Internal Medicine, West
4 Palm Beach VA, 7305 North Military Trail." And it
5 says here it's dated April 27, 2023.

6 MR. WEBER: Can I see it?

7 THE COURT: Yes.

8 MR. WEBER: Does it look legitimate?

9 THE COURT: Well, I mean, whether or not, it's
10 your panel. You guys are fighting fire.

11 MR. ZAPPOLO: I know. We haven't sworn anyone
12 in, so maybe.

13 MR. WEBER: Let me just put it up for one
14 second.

15 MR. ZAPPOLO: Do you want to consult?

16 MR. WEBER: Yes. Do you want to speak as
17 well?

18 Yeah, we're going to keep her.

19 MR. ZAPPOLO: We'd like to -- my client would
20 like to strike her.

21 THE COURT: I'll give you an additional
22 peremptory.

23 All right. So, I'm concerned about this. I'm
24 worried about it. I'm worried about it because
25 she's complaining about her leg right now and we

1 haven't even started. This is going to be 11 days.

2 MR. ZAPPOLO: Right.

3 THE COURT: She says she has an MRI on Friday
4 she's going to have to reschedule. You know, I've
5 got concerns that this is going to be a comity of
6 errors, so -- all right. I'm granting an
7 additional peremptory to the plaintiff and that
8 will be number four.

9 Defense, you have four if you wish to exercise
10 them. That means that Mr. Frederic Smith will now
11 be a part of the panel. And our -- do you accept
12 that panel?

13 MR. WEBER: Sorry. Hold on one second, Your
14 Honor. Can I just calculate this?

15 THE COURT: Sure. So our panel now consists
16 of 1-5, 1-6, 1-7, 2-3, 3-1, 3-2.

17 MR. WEBER: Right now the panel ends on 3-3,
18 right, Your Honor?

19 THE COURT: 1-5, 1-6, 1-7, 2-3, 3-1, 3-2, 3-3
20 would be the alternate.

21 MR. WEBER: 3-3 is the alternate. We accept
22 it, Your Honor.

23 THE COURT: Okay. And plaintiff, you're out
24 of peremptories --

25 MR. ZAPPOLO: Yes.

1 THE COURT: -- with the exception of 3-3 as
2 the alternate. You get one for the alternate.

3 MR. ZAPPOLO: We accept 3-3.

4 THE COURT: Okay. All right. So then both
5 parties -- everybody accepts 1-5, 1-6, 1-7, 2-3,
6 3-1, 3-2 with our jurors, with 3-3 as our alternate
7 juror.

8 All right. Let's bring the jury in.

9 THE COURT DEPUTY: Prospective jurors
10 entering.

11 (Prospective jurors entering the courtroom at
12 1:01 p.m.)

13 THE COURT: Please have a seat wherever you
14 want, get comfortable.

15 Thank you very much, everybody. Please be
16 seated.

17 So we have picked a jury. As I call your
18 name, I'm going to ask that you please come and
19 take your place in the jury box in the order in
20 which I call you.

21 We'll start with Ms. Crousillat.

22 Mr. Daly.

23 Ms. Jorgensen.

24 Mr. Hillier.

25 Ms. Azurdia.

1 Mr. Smith.

2 Ms. Del Valle.

3 Madam Clerk, can you swear them in, please?

4 THE CLERK: Please raise your right hand. Do
5 each of you solemnly swear or affirm that you will
6 well and truly try the issues of the parties to
7 this cause and that you will render a true verdict
8 according to the law and the evidence?

9 (Jurors in unison: Yes.)

10 JUROR CROUSILLAT: I swear.

11 THE COURT: All right. Have a seat.

12 Everybody else, I appreciate your time and your
13 service. Jury service is one of the most important
14 things that we do. I will talk to the people who
15 are sitting at the end of this about how important
16 it is, but, like I said, there's not much that's
17 required of us, and in order to preserve our
18 rights, there's very few rights that require us the
19 participation of others. This is one of them.

20 I appreciate your time. Thank you for being
21 here. Please go downstairs and check in with the
22 jury selection office.

23 (Prospective jurors in unison: Thank you,
24 Your Honor.)

25 (Prospective jurors exit the courtroom at

1 1:05 p.m.)

2 THE COURT: All right. Thank you very much.
3 Please be seated.

4 So it is one of the most important things we
5 do as Americans, and I appreciate your time and
6 your service. I know that what we're about to
7 embark on is probably something that is a little
8 bit longer than you anticipated. I'm going to
9 release you today at this time. We'll reconvene
10 tomorrow. We'll be outside of this courtroom at
11 9:30 in the morning. I'm going to release you
12 right now because I want you to be able to make
13 plans, coordinate with people, but you are required
14 to be here tomorrow at 9:30 in the morning. Okay?

15 This is as warm as this courtroom gets and so
16 if you're prone to get cold, please bring a jacket,
17 a sweatshirt. You know, with 28 people in the
18 audience plus the attorneys, body heat in here
19 makes the room this temperature. Tomorrow, after
20 the room is cooled all night, it will be
21 significantly colder in here, okay. So if you're
22 cold now, you'll be a lot colder tomorrow. Please
23 bring a jacket. Please bring a blanket, okay.

24 The attorneys and I are going to go over a few
25 things for the next couple of hours, but you guys

1 I'm going to release. The only instruction that
2 I'm going to give you at this time is I'll
3 paraphrase what I said earlier. Please don't look
4 up the names of the people involved in this case.
5 Please don't look up the places involved in this
6 case. Do not discuss this case with anybody else.
7 There will be a time and a place for you to
8 deliberate and that's when you can discuss this
9 case.

10 You're not to discuss this case with your
11 family members or your friends or with each other
12 until I tell you that that's okay to do so. If you
13 do that, you might frame the issue for another
14 juror and that's not fair. The only time to
15 discuss this case is collectively and after you've
16 been instructed on the law, you've heard the
17 arguments of the attorneys, and heard all evidence.

18 So, again, you know, thank you for your
19 service. I can't tell you how grateful I am. And
20 I can speak for them, and I know that they're also
21 thankful for your time and your service. We know
22 it's valuable. We know it's a personal sacrifice.
23 That's not lost on us.

24 Let me see the attorneys for one moment.

25 (Thereupon, a sidebar conference was held.)

1 THE COURT: Is there anything I need to
2 instruct them on before I let them go?

3 MR. WEBER: We're going to buy them lunch.

4 THE COURT REPORTER: Wait. I cannot hear you.

5 THE COURT: They're going to buy lunch.
6 They're going to have lunch delivered, and I'll
7 tell them that now, okay. So as far as lunch
8 delivered, are you guys picking the food or --

9 MR. WEBER: Could it be the same with dietary
10 restrictions?

11 THE COURT: I'll ask them now about dietary
12 restrictions, okay.

13 MR. WEBER: Sandwiches?

14 MR. ZAPPOLO: We can get them Jimmy John's
15 menus.

16 MR. WEBER: Yeah.

17 THE COURT: Okay.

18 MR. ZAPPOLO: So --

19 THE COURT: I don't -- you know, I don't have
20 any preference one way or the other. I'll ask
21 about dietary restrictions, tell them that lunch is
22 going to be provided, and we'll address it further
23 in the morning.

24 MR. WEBER: Okay.

25 (Thereupon, the sidebar conference was

1 concluded.)

2 THE COURT: Okay. So this is my business
3 card. Anybody who has employer issues, reach out
4 to my office. My office will address that with
5 them. Obviously this is jury duty, so there's a
6 law on it.

7 Tomorrow morning -- so the attorneys, both
8 sides equally, have graciously agreed to provide
9 lunch for you for the next couple of weeks so you
10 don't need to bring your lunch.

11 Are there any dietary restrictions?
12 Allergies?

13 JUROR JORGENSEN: Seafood. Anything from
14 water I can't get close to.

15 THE COURT: Okay. All right. Thank you.

16 JUROR SMITH: I'm kind of lactose intolerant.

17 THE COURT: All right. All right. So with
18 those two things being said, we'll address it
19 further in the morning.

20 Again, don't discuss this case with anybody
21 else, don't discuss it with yourselves. You know,
22 and after I've given you this instruction,
23 inevitably people forget. I've seen crazy things.
24 I've seen jurors pass notes between themselves
25 during trial. You can imagine this is problematic.

1 Please don't discuss it with anybody, including
2 amongst yourselves.

3 If you see the attorneys in the hallways later
4 today on the way out or tomorrow morning on the way
5 in, they're not -- they're instructed not to talk
6 to you. Your juror badges are important; leave
7 those on. Everybody knows what they mean. People
8 will get out of your way because they know, okay?
9 It's very important that you wear that and it's
10 properly displayed. So if you're wearing a jacket,
11 you know, make sure it's on the top layer.

12 Okay. It is 1:10. I want to give you time to
13 coordinate the rest of the next several days of
14 your life, so Deputy, they're excused.

15 THE COURT DEPUTY: Yep.

16 JUROR DALY: Is there a time that you usually
17 end?

18 THE COURT: So the question is what time do we
19 usually end?

20 JUROR DALY: Yeah.

21 THE COURT: Roughly around 4 o'clock -- I'm
22 sorry, 5 o'clock.

23 JUROR DALY: Okay.

24 THE COURT: If we go over a little bit, it
25 won't be a lot. And if anything, we'll end before

1 5 o'clock.

2 JUROR DALY: Okay.

3 THE COURT: If we're in the middle of a
4 witness, maybe 5:15, maybe 5:20, but, you know, if
5 you need to be out of here by 5 o'clock -- does
6 anybody need to be out of here by 5 o'clock?

7 JUROR DALY: Yeah.

8 THE COURT: Okay. So we'll finish at
9 5 o'clock every day.

10 JUROR DALY: I coach baseball. I'm the only
11 coach on the team.

12 THE COURT: All right. We'll be done at
13 5 o'clock every day. The only day that I cannot
14 promise you that you'll be out of here by 5 o'clock
15 will be the day that you get the verdict form. If
16 you have to deliberate and that takes a little bit
17 longer, then that takes a little bit longer, but
18 every other day we'll be out of here by 5 o'clock,
19 okay? All right. Thank you, Deputy.

20 THE COURT DEPUTY: Okay. Follow me.

21 (Jurors exit the courtroom at 1:11 p.m.)

22 THE COURT: So we got to be done by 5 o'clock
23 every day.

24 MR. WEBER: Yeah.

25 THE COURT: So keep that in mind as you

1 examine your witnesses. You know, I guess I
2 promised him, so that's going to be a hard stop.

3 MR. WEBER: Okay.

4 THE COURT: Okay.

5 MR. WEBER: What was the allergy restriction
6 that she had?

7 THE COURT: Seafood.

8 MR. WEBER: Seafood? Okay. That should be
9 fine.

10 THE COURT: Which is great because that's the
11 expensive stuff.

12 All right. Well, anything else we need to
13 talk about today?

14 MR. ZAPPOLO: We're working on the -- we were
15 able to print out that order.

16 MR. WEBER: I gave it to you, Your Honor.

17 MR. ZAPPOLO: And counsel gave you his
18 version; this is our version.

19 THE COURT: Okay.

20 MR. ZAPPOLO: There is one issue that -- I
21 don't know how the Court wants to handle it. We
22 had filed a motion for reconsideration regarding
23 Cinnamin O'Shell.

24 THE COURT: About what?

25 MR. ZAPPOLO: Cinnamin O'Shell. That was

1 the --

2 THE COURT: Oh.

3 MR. ZAPPOLO: -- person -- there was --

4 THE COURT: Yeah, that's fine.

5 MR. ZAPPOLO: I'm not going to argue the
6 motion right now or anything, but we filed it --

7 THE COURT: No, I remember it. You know, that
8 was a hearing that I think we scheduled for like 30
9 minutes and then I gave you guys an incredible
10 amount of time.

11 MR. WEBER: Yeah.

12 THE COURT: I'm very familiar with that issue,
13 and that motion is denied.

14 MR. ZAPPOLO: Thank you, Your Honor. I just
15 wanted to be sure that we raised it so there's
16 not --

17 THE COURT: No. I remember that hearing very,
18 very well. I went back and forth several times. I
19 think I even looked at you and I said you're
20 fighting uphill, but I want to give you every
21 opportunity to argue this case because I know it's
22 so important to you and I want to get it right, and
23 I did carve out an additional, like, 90 minutes
24 more than I needed. I remember this case very
25 well.

1 MR. ZAPPOLO: Okay. I understand that.

2 Ms. O'Shell has supplied an affidavit pointing out
3 what she believes are mistakes and we filed it. So
4 I understand that the Court is keeping control of
5 its docket and its time, I just need to do what I
6 need to do to preserve the record.

7 THE COURT: No, no, no. Absolutely. Okay.
8 Anything else for today?

9 MR. WEBER: No, Your Honor.

10 THE COURT: All right. Tomorrow, 9:30. I can
11 tell you my UMC tomorrow.

12 MR. WEBER: Your Honor, actually, our tech guy
13 is going to put the monitor -- it's going to be
14 right there. Is that okay with Your Honor?

15 THE COURT: Yes. And then I think we're
16 waiting on ESS to help with the white noise.

17 THE COURT REPORTER: Yes. I got their phone
18 number for them to come back when we were done.

19 MR. ZAPPOLO: And one other issue. I believe
20 that the Court technology people said they needed
21 to be sure that you knew how to switch over the
22 monitor.

23 THE COURT: Yeah, I know how to do that.

24 MR. ZAPPOLO: You know how to do that? Okay.
25 Because I would plan on, at some point, on using

1 the hover table.

2 THE COURT: But I will tell you, you know, it
3 doesn't happen in, like, two seconds. It's not a
4 one button push.

5 MR. ZAPPOLO: Okay.

6 THE COURT: It's like -- it's like texting in
7 2001, you know.

8 MR. ZAPPOLO: Gotcha.

9 THE COURT: You push several buttons, you
10 know.

11 MR. ZAPPOLO: Gotcha.

12 THE COURT: All right. So tomorrow it looks
13 like I have -- it looks like I have 20 on my UMC,
14 but somebody doesn't read directions. All right.
15 About 9:30.

16 MR. WEBER: Okay.

17 THE COURT: About 9:30. All right. I'll look
18 these two over. I'll sign one and get it to the
19 clerk. Anything else I need to address?

20 MR. ZAPPOLO: And that will be served
21 electronically?

22 THE COURT: This?

23 MR. ZAPPOLO: Whatever the order is, yes.

24 THE COURT: Yes.

25 MR. ZAPPOLO: Thank you, Your Honor. We'll

1 look out for it tonight so we know.

2 MR. WEBER: Thank you, Your Honor.

3 MR. ZAPPOLO: All right. Have a good day.

4 THE COURT DEPUTY: Court will be in recess.

5 (Whereupon, the proceedings are adjourned at
6 1:15 p.m. and are continued on May 10, 2023 in
7 Volume II.)

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IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT,

IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. 50-2012-CA-023358-XXXX-MB

JAMES TODD WAGNER, SUPERCAR ENGINEERING,
INC., a Florida corporation,

Plaintiffs,

vs.

WARREN MOSLER, MOSLER AUTO CARE CENTER,
INC. ("MACC") a Florida corporation,
d/b/a Mosler Automotive,

Defendants.

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VOLUME II - DAY 2

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PROCEEDINGS BEFORE
HONORABLE LUIS DELGADO

DATE: MAY 10, 2023

TIME: 9:30 A.M. - 4:28 P.M.

1 APPEARING ON BEHALF OF PLAINTIFFS:

2 ZAPPOLO & FARWELL, P.A.
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8 APPEARING ON BEHALF OF DEFENDANTS:

9 WEBER LAW
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17 ALSO PRESENT:

18 James Todd Wagner, Plaintiff
19 Warren Mosler, Defendant
20 David Griffin, TruVid, LLC
21
22
23
24
25

1 I N D E X

2	WITNESS	PAGE
3	Opening Statement By Mr. Zappolo	189
4	Opening Statement By Mr. Weber	211
5	JAMES DENNIS WAGNER	
6	Direct Examination By Mr. Zappolo	227
7	Cross-Examination By Mr. Weber	233
8	SYLVIA KLAKER	
9	Direct Examination By Mr. Zappolo	235

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12 E X H I B I T S

13

13	EXHIBIT	DESCRIPTION	MARKED	RECV'D
14	Plaintiffs' 1	was marked Exhibit 3	229	232
15	Plaintiffs' 393	photograph	252	
16	Plaintiffs' 2	was marked Exhibit 397	255	256
17	Plaintiffs' 3	was marked Exhibit 392	257	258
18	Plaintiffs' 4	was marked Exhibit 1004	260	260
19	Plaintiffs' 5	was marked Exhibit 1247	269	270
20	Plaintiffs' 6	was marked Exhibit 340	284	284
21	Plaintiffs' 7	was marked Exhibit 59	288	289
22	Plaintiffs' 8	was marked Exhibit 1062	291	298
23	Plaintiffs' 9	was marked Exhibit 1220	298	300
24	Plaintiffs' 10	was marked Exhibit 358	303	306

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E X H I B I T S (cont.)

EXHIBIT	DESCRIPTION	MARKED	RECV'D
Plaintiffs' 11	was marked Exhibit 423	314	315
Plaintiffs' 12	was marked Exhibit 422	318	319
Plaintiffs' 13	was marked Exhibit 1248	324	324
Plaintiffs' 14	was marked Exhibit 1108	327	327
Plaintiffs' 15	was marked Exhibit 872	331	332
Plaintiffs' 16	was marked Exhibit 209	335	336
Plaintiffs' 17	was marked Exhibit 1344	339	340
Plaintiffs' 18	was marked Exhibit 412	350	351

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BE IT REMEMBERED, that the following proceedings were taken in the above-styled cause before Honorable Luis Delgado, Presiding Judge, at the Palm Beach County Courthouse, 205 North Dixie Highway, Courtroom 10-D, in the City of West Palm Beach, County of Palm Beach, State of Florida, on the 10th day of May, 2023, to wit:

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THE COURT: Okay. I looked over the orders and I'm a dummy. It turns out my assistant knew where they were and I didn't. But I made some changes at the very end, at the very end, the wherefore clause. And I remember this and I think -- I remember going over the emails. I remember reading the testimony. You know, and I understand what Judge Hafele's order was, so I'm going to vacate the adverse inference, but I'm not granting you yours, okay. And so that's where we're at with that.

20

21

MR. ZAPPOLO: And for clarity of the record, me, mine, would be the plaintiff, Your Honor?

22

23

THE COURT: Correct.

24

MR. ZAPPOLO: Thank you.

25

THE COURT DEPUTY: Jurors in the hallway.

THE COURT: They're going to take a couple of

1 minutes for coffee. I'm going to take a couple of
2 minutes for the bathroom. If you need coffee, take
3 it as well.

4 When they come back, I guess I'm going to
5 charge them generally with opening statements and
6 then you guys will go to your opening statements.

7 As far as jury instructions, what do we need
8 to address?

9 MR. WEBER: Jury instructions? I'm sorry,
10 Your Honor, for jury instructions, we have just
11 competing jury instructions, Your Honor, all the
12 way through and we need to address them all.

13 THE COURT: You what?

14 MR. WEBER: We need to address all of the jury
15 instructions. They're competing all the way
16 through.

17 THE COURT: Let's do that then.

18 MR. ZAPPOLO: We're doing that right now, Your
19 Honor?

20 MR. WEBER: I have a copy for Your Honor if
21 you want.

22 THE COURT: Please.

23 MR. ZAPPOLO: I don't even know that I have
24 mine. Actually, I can pull them up, though, on the
25 computer.

1 THE COURT: Thank you very much. All right.
2 Do you have your instructions?

3 MR. ZAPPOLO: I'm trying to pull them up, Your
4 Honor.

5 THE COURT: Okay. So the preliminary
6 instructions, I guess I went with the ones that
7 were provided by the Supreme Court. Any objections
8 to the way -- to how they were instructed
9 yesterday?

10 MR. ZAPPOLO: No, Your Honor.

11 THE COURT: Okay. I don't think it would be
12 timely at this point.

13 MR. WEBER: No, Your Honor.

14 THE COURT: Okay. So I'm going to breeze
15 through these because that's the first couple of
16 pages of your instructions.

17 Okay. So I guess where there's some deviation
18 is the jury instruction after they've taken the
19 oath. So, let's see.

20 I mean, for the most part they're just
21 formatted different, but these are exactly the same
22 with the exception of the first sentence: "Do you
23 solemnly swear or affirm that you will tell the
24 truth to Wagner, SEI, Mosler and MACC," but we've
25 already sworn them in, so I'll use Plaintiffs' 201

1 instruction. And then we go into the explanation
2 of the trial procedure, which is the -- after the
3 jury is selected and sworn. I'll use the 202.2
4 because that's -- that's generally what I'm
5 comfortable with.

6 The only thing that's missing is the
7 instruction on the facts of the case of the law. I
8 didn't see that from either one of you. Is it
9 buried in here somewhere?

10 MR. WEBER: I'm sorry, Your Honor, just I'm
11 pulling out my copy.

12 THE COURT: It starts with "Now you have heard
13 the law," but I haven't instructed them on the law
14 or even told them what the case is about. We
15 specifically skipped over that yesterday.

16 MR. ZAPPOLO: And I think that was earlier in
17 plaintiffs' jury instructions, so let me see.

18 MR. WEBER: Are you talking about number 5,
19 Your Honor? Our jury instruction number 5?

20 THE COURT: It's page 10 of your packet, page
21 15 of theirs. But page 5 of the plaintiffs' and
22 what page -- what page is yours?

23 MR. WEBER: Page 9 of mine.

24 THE COURT: Page 9 of yours. Let's see. Do
25 you see page 5 of the plaintiffs' packet? Do you

1 have a competing set?

2 MR. WEBER: I have 5.

3 MR. ZAPPOLO: Yes, sir. That's what I was
4 referring to, page 5 of our proposed instruction
5 201.1, for clarity of the record, prior to voir
6 dire. We described what the case is about.

7 I would concede that based upon yesterday's
8 ruling, the paragraph where it says "The third is
9 whether Warren Mosler, owner of Mosler Auto Care
10 Center, fraudulently sold the assets" needs to be
11 stricken.

12 THE COURT: What part?

13 MR. ZAPPOLO: Picking up with the "This is a
14 case about several issues" -- as you read down a
15 little bit, "The third is whether Warren Mosler,
16 owner of Mosler Auto Care Center, fraudulently sold
17 the assets of Mosler Auto Care Center to a third
18 party even though Supercar Engineering, Inc. may
19 have had a claim to the assets."

20 THE COURT: Do the parties agree that comes
21 out?

22 MR. ZAPPOLO: Based upon your ruling, we
23 respectfully disagree, I don't concede it, but yes.

24 MR. WEBER: Hold on, Your Honor. Oh, it's
25 number 11, page 17.

1 THE COURT: Page 17 of your packet?

2 MR. WEBER: Yes. That's where we list the
3 claims. But again, we would get rid of the
4 fraudulent transfer claim.

5 THE COURT: So the verdict form addresses what
6 you called the first issue, second issue, fourth
7 issue, fifth issue, sixth issue, seventh issue?

8 MR. ZAPPOLO: Yes, sir.

9 THE COURT: Eighth issue?

10 MR. ZAPPOLO: Yes.

11 MR. WEBER: Not our verdict form, Your Honor.

12 THE COURT: They're going to love your verdict
13 form.

14 MR. WEBER: Our verdict form is at the end.

15 THE COURT: I'm looking at it right now.

16 MR. ZAPPOLO: I believe ours is much simpler.

17 MR. WEBER: We object to plaintiffs' verdict
18 form.

19 THE COURT: Oh, I know that. I know that.
20 I'm looking at your verdict form, and I'm going to
21 look at theirs because I think that's going to help
22 me. I'm looking at your verdict form, Mr. Weber,
23 you know, and the recurring theme is "If your
24 answer is yes, then proceed to the following
25 question."

1 If the answer is no, what are they supposed to
2 do?

3 MR. WEBER: If it's no, then they go to a
4 different question is the direction there.

5 THE COURT: Where?

6 MR. WEBER: If you look under -- see,
7 there's -- under the "Yes" or "No," there's "If
8 your answer to this question is no, then" blah,
9 blah, blah. "If your answer to the question is
10 yes, then" blah, blah, blah. There's two
11 directions.

12 THE COURT: Okay. I see.

13 THE COURT DEPUTY: Your Honor, I'm going to
14 bring the jury into the jury room.

15 THE COURT: Well, I got to tell you, I like
16 them both. I think --

17 THE COURT DEPUTY: Jurors entering the room.

18 (Jurors entering the jury room at 10:10 a.m.)

19 THE COURT: I like them both, I do. I like
20 the simplicity of the one and I like how the other
21 one tells the appellate court what to look at
22 specifically, you know.

23 What's your position, Mr. Zappolo?

24 MR. ZAPPOLO: With respect to the issues?

25 THE COURT: Yeah. Why don't you like theirs?

1 MR. ZAPPOLO: I don't like theirs because --
2 first of all, I'm having trouble finding it. What
3 page are their jury instructions?

4 THE COURT: It was attached to the end.

5 MR. WEBER: It's the end.

6 THE COURT: This says number 1, but --

7 MR. WEBER: Just like yours.

8 MR. ZAPPOLO: No. The -- I thought we were
9 talking about what you were going to tell the jury
10 the case is about.

11 THE COURT: Oh, no, no, no. I decided in
12 order to make an informed decision on that, I
13 wanted to see the verdict form --

14 MR. ZAPPOLO: Oh, okay.

15 THE COURT: -- so there would be some harmony.

16 MR. ZAPPOLO: I'm sorry, I was mistaken.

17 THE COURT: So I'm looking at the verdict form
18 now and that will guide me through the rest of your
19 instructions.

20 MR. ZAPPOLO: All right.

21 THE COURT: So that's how they really answer
22 us, and so if we're going to be consistent in any
23 way, it's with the jury instructions.

24 I like the simplicity of yours, but with
25 Mr. Weber's instructions, you know, I think the

1 appellate court can really review things because
2 there's so much detail there. It's not that I want
3 to get reviewed by the appellate court, but, you
4 know, a part of my job is to be reviewed by the
5 appellate court and, you know, we want to get
6 things right.

7 So I like the detail of it. I do like the
8 simplicity of yours. Tell me why you don't like
9 theirs and then I'll ask Mr. Weber.

10 Mr. Weber, why don't you like Mr. Zappolo's?

11 MR. WEBER: Well, one thing, Your Honor, they
12 don't address our affirmative defenses. If you
13 look at Count I, where are our affirmative defenses
14 mentioned there? They're not mentioned there.

15 MR. ZAPPOLO: And if I --

16 MR. WEBER: And Count II, our affirmative
17 defenses are not mentioned in the verdict form.

18 If you look at Count III, there's a
19 prejudicial description of the alleged distribution
20 agreement calling it exclusive when it's not
21 exclusive. And again, we object because it doesn't
22 mention our affirmative defenses.

23 We object because Count IV is not in this. We
24 object to Count V. Again, no mention of our
25 affirmative defenses.

1 It's like they're grouping everything together
2 and it's not -- and we have several and I think
3 it's confusing to the jury, and I think we have to
4 lay it out if the appellate court has to review it.
5 I think that it's not -- I just don't think -- I'll
6 keep on going through it.

7 MR. ZAPPOLO: And herein lies the frustration
8 for the plaintiff. When the defendant filed their
9 affirmative defenses, if you read their affirmative
10 defenses, it reads like a run-on sentence of a book
11 long and that's problematic for us.

12 So what we said is -- I invited Mr. Weber --
13 as a matter of fact, probably when this case was
14 going to trial back in 2019, we asked Mr. Weber to
15 write out what he wanted to put in the jury
16 instructions for his affirmative defenses because
17 we couldn't figure out -- we couldn't make hide nor
18 hair of what actually we were going to put other
19 than write a book in a verdict form and I don't
20 think it's appropriate, as a lot of judges say, not
21 to, you know, give the jury a book.

22 I've had a lot of judges say the question on
23 affirmative defenses is: "Did the defendants prove
24 any of their affirmative defenses by a
25 preponderance of the evidence, yes or no?" And

1 that's -- you know, and that's it.

2 So I don't know that we -- that it's
3 appropriate to go through every single thing. I
4 understand what Your Honor is saying, but I also
5 understand the burden that we're putting on a jury.
6 I've had a case where I was chastised because we
7 had a 13-page verdict. I'm not sure how long
8 Mr. Weber's proposed order is --

9 THE COURT: It's long.

10 MR. ZAPPOLO: -- but I think it's in that area
11 and probably longer. And the case where the
12 13-page verdict was chastised was in a short -- a
13 case that was about this long or maybe a little bit
14 shorter.

15 THE COURT: I'm not going to chastise anybody
16 for a long verdict form. I think there are -- I
17 pick and choose what I chastise people about, but I
18 like the detail of it. But I'm slightly concerned,
19 Mr. Weber, that that jury will deliberate for two
20 weeks on what looks like a 30-page -- 50-page-plus
21 verdict form. You know, I am slightly concerned
22 about that, you know.

23 MR. WEBER: Well, may I, Your Honor?
24 There's -- it's not our fault that the two
25 plaintiffs brought ten claims against our client

1 that are inartfully pled in the complaint. I mean,
2 if you look at Count I, he doesn't even list the
3 different elements of the claim. I mean the claims
4 are not set forth.

5 THE COURT: I think the thing is we told them
6 three weeks to have this trial heard. It's a
7 50-page verdict form. My concern is that, you
8 know, we'll rest this case at two and a half weeks
9 and at the end of the third week, you know, we're
10 still maybe not going to have resolution on every
11 single field in the 50-plus page long verdict form.

12 I can tell you what I don't want to do to you
13 guys is mistry your case because the jury couldn't
14 reach a verdict after, you know, several days
15 because it was so long. You know, that's not
16 something I want to do.

17 I really like the detail of your verdict form,
18 I do. And I'm, you know, maybe even inclined to
19 think that if there's so much detail they have to
20 go through, they might be able to go through the
21 issues faster, but I don't know.

22 MR. WEBER: Your Honor.

23 THE COURT: I do agree with your position on
24 the affirmative defenses in the plaintiffs' verdict
25 form. Perhaps there's a way to do this somewhere

1 in the middle, you know.

2 MR. WEBER: Can I keep going, Your Honor? I
3 mean, if you look at -- there's four claims in this
4 case about defamation, Your Honor, right? There's
5 four claims at issue. You go to their defamation
6 count, they're lumping everything together without
7 even considering the individual statements that are
8 at issue in this case. I mean, you can't -- the
9 jurors are not going to know which are the exact --
10 the jurors deserve to see the statements that
11 they're actually ruling on.

12 As you know, plaintiffs are trying to confuse
13 the Court and they're going to try to confuse the
14 jurors.

15 THE COURT: Well, let's not do that. Let's
16 not say that.

17 MR. WEBER: There are multiple statements,
18 Your Honor, by third parties about plaintiffs, so
19 they need to know which statements they're actually
20 considering in the verdict form, so there are
21 multiple reasons I object. They're not -- all
22 counts in plaintiffs' verdict form don't list the
23 elements. All the counts in plaintiffs' verdict
24 form are misleading. All the counts in plaintiffs'
25 verdict form assume certain elements of the claims.

1 They lump defendants' affirmative defenses.

2 THE COURT: You guys know my concerns. My
3 concerns is the length of it could be a lot for the
4 jury. I do like the detail of it, I do. I really
5 do, Mr. Weber. I'm going to compliment you on this
6 verdict form. My concern is, again, how long
7 they're going to deliberate on this form. But I'm
8 also not looking to insult the collective
9 intelligence of that jury, you know.

10 MR. WEBER: Right.

11 THE COURT: Okay. I've heard from both of
12 you, and I guess I'm prepared to make a decision.

13 We will use Mr. Weber's verdict form. And so
14 with that as a guide, I'm inclined to use the
15 plaintiffs' description of the case. I'm going to
16 strike "The third is whether Warren Mosler, owner
17 of Mosler Auto," et cetera.

18 I'm also going to strike a portion of the
19 second where it says "exclusive distributorship
20 agreement" because "exclusive" is an adjective that
21 modifies "agreement" and they either reached an
22 agreement or they didn't. The type of agreement is
23 something the parties will argue to the jury, but
24 that way it doesn't look like it's coming from the
25 judge.

1 MR. WEBER: Can I make a comment, Your Honor?

2 THE COURT: Yes.

3 MR. WEBER: In the fourth issue -- it says
4 "The fourth issue is whether Mosler should be
5 required to return a \$100,000 deposit to James Todd
6 Wagner which James Todd Wagner made to purchase
7 Mosler Auto Care Center."

8 I would object to "which James Todd Wagner
9 made to purchase Mosler Auto Care Center, Inc."
10 because that seems like it's an established fact,
11 which it's not.

12 THE COURT: Mr. Zappolo?

13 MR. ZAPPOLO: You want to add "in hopes of
14 purchasing," something like that? "With the intent
15 of purchasing"?

16 MR. WEBER: No, Your Honor.

17 THE COURT: All right. I will strike that.
18 Again, everything else is the description of what
19 this was for, and I think the parties can present
20 that and that way it doesn't come from me.

21 MR. ZAPPOLO: So just for clarity, Your Honor,
22 you're leaving "whether Mr. Mosler should return
23 the \$100,000 deposit"?

24 THE COURT: "The fourth issue is whether
25 Warren Mosler should be required to return a

1 \$100,000 deposit to Mr. James Todd Wagner" --

2 MR. ZAPPOLO: Thank you.

3 THE COURT: -- period.

4 MR. ZAPPOLO: Thank you.

5 MR. WEBER: Just two more comments, Your
6 Honor, if I may?

7 THE COURT: Give me one second.

8 All right. What else?

9 MR. WEBER: The seventh is -- for the seventh
10 issue, the instruction states "The seventh issue is
11 whether Warren Mosler defamed Supercar Engineering,
12 Inc. and James Todd Wagner when he made comments to
13 journalists." It assumes Mr. Wagner made the
14 comments, which is disputed.

15 THE COURT: Mr. Zappolo, I think that's
16 consistent with what I've been doing.

17 MR. ZAPPOLO: Yes, sir.

18 THE COURT: Anything else?

19 MR. WEBER: I think that's it, Your Honor.

20 THE COURT: So why don't you guys both come
21 take a look at this.

22 MR. WEBER: Oh, and also the eighth issue is
23 whether Warren Mosler published falsehoods. I
24 mean, we're not conceding there's falsehoods.

25 MR. ZAPPOLO: That's an issue in the case, why

1 they published a false statement. It's right out
2 of the elements.

3 MR. WEBER: We don't want it to seem like it's
4 clear there were falsehoods because we don't say
5 that there were any falsehoods.

6 MR. ZAPPOLO: Hence, the issue is whether he
7 did.

8 THE COURT: Yeah, I'm okay with that one. I
9 mean, either he did or he didn't.

10 The other issue's whether he paid or didn't
11 pay or whether he got his money back or didn't get
12 his money back. The other words modify that first
13 clause, but that one I think is succinct and to the
14 point, and I think the parties can argue that.

15 MR. ZAPPOLO: One issue, Your Honor. You
16 skipped now -- since we've cut out the third issue,
17 the next paragraph says "The fourth issue."

18 THE COURT: Yeah, we're going to fix that.

19 MR. ZAPPOLO: I think you need to change each
20 of the numbers after that or say "The next issue,
21 the next issue, the next issue."

22 THE COURT: I'm going to fix it after I read
23 it, but I need you guys to print a copy for me so I
24 can give it to the jury when they go back and
25 deliberate.

1 MR. ZAPPOLO: Okay. Are you going to change
2 the number of the issue, or are you going to say
3 "The next issue, next issue"?

4 THE COURT: Whatever you want me to do I will
5 do.

6 MR. ZAPPOLO: You can use the numbers, Your
7 Honor.

8 THE COURT: Okay. All right.

9 MR. ZAPPOLO: Thank you.

10 THE COURT: All right. So I'm going to start
11 with 201, the description of the case we just went
12 over.

13 I'm going to skip the participants, the roles,
14 and the explanation of the trial procedure. We
15 already did that.

16 And I'll read note-taking by jurors.

17 MR. WEBER: That's my page 13 and his page 21.
18 I believe they are consistent, Your Honor.

19 THE COURT: Yeah. I'm familiar with the
20 format of plaintiffs'. That's the one I usually
21 use, so I'm going to read that.

22 I take that back. I can read your description
23 of the case and that will be easier just to go
24 through number seven, number eight -- who's
25 testifying in Spanish?

1 MR. ZAPPOLO: Nobody that I'm aware of.

2 MR. WEBER: I don't know if anybody is.

3 MR. ZAPPOLO: I think we both left that in
4 because it was kind of standard.

5 MR. WEBER: In case somebody is, Your Honor.

6 THE COURT: Anybody is?

7 MR. ZAPPOLO: No.

8 MR. WEBER: I don't think so, but just in
9 case.

10 THE COURT: I'm going to remove that. They're
11 going to be waiting for it and they're not going to
12 get it.

13 Yeah, these are exactly the same for the most
14 part, so I'll use Mr. Weber's 10. And I'm using
15 them just because they fit on one page so it's easy
16 to flip through, but they're exactly the same, just
17 formatted differently.

18 MR. ZAPPOLO: I think we just gave them
19 notes -- we included the notes, et cetera, for the
20 Court.

21 THE COURT: Which we would cut out when we
22 give it to the jury anyway, so...

23 Number 10, Mr. Weber, you left off the
24 admissions of the parties. Any reason for that?

25 MR. WEBER: Which one is that? Mr. Zappolo's?

1 THE COURT: It's page 16 of yours, page 26 of
2 plaintiff. Are you guys using the admissions
3 during the trial?

4 MR. WEBER: I'm sorry, 16 of Mr. Zappolo's I
5 have --

6 THE COURT: No. 16 of yours, 26 of the
7 plaintiff.

8 MR. WEBER: Oh.

9 MR. ZAPPOLO: It may become relevant. We
10 don't intend to use them off the bat, but it may
11 come up during the course of the trial.

12 THE COURT: These are not instructions I'm
13 reading to the jury necessarily, this is what we
14 have in front of us. These are as needed, you
15 know.

16 MR. ZAPPOLO: Right.

17 MR. WEBER: Well, I'm not aware of any request
18 for admissions, so we'll have to wait and see what
19 he does, but this is the form statement.

20 THE COURT: All right. I'll use Mr. Weber's
21 because it's on one page. If you end up using any
22 admissions then, you know, approach, remind me, and
23 I'll charge the jury with the admissions
24 instruction. You know, the admissions are a part
25 of the record.

1 I take it we're introducing photographs,
2 physical evidence?

3 MR. ZAPPOLO: Yes, sir. Photographs.

4 THE COURT: All right. I'll read when they're
5 first published to the jury; I think that's fine.
6 Visual aids, that's fine.

7 Any evidence being admitted for a limited
8 purpose?

9 MR. ZAPPOLO: I don't believe so, Your Honor.

10 THE COURT: I mean, I guess it's always
11 possible.

12 MR. WEBER: I mean, the only thing that I can
13 think of is that there is the punitive damages
14 issue, but that would be after, if applicable, so
15 that would not be during this part of the trial.

16 THE COURT: Failure to maintain evidence or
17 keep a record, I don't think that's relevant
18 anymore, right? Didn't I strike both your adverse
19 inferences?

20 MR. ZAPPOLO: Yes.

21 MR. WEBER: Yeah, we agree that one is not
22 necessary.

23 MR. ZAPPOLO: I'm not sure that later on that
24 won't become --

25 THE COURT: If you need it later, bring it to

1 my attention.

2 MR. WEBER: We also object to that one, Your
3 Honor, because it's basically, as you said, an
4 adverse inference, so we object to that
5 instruction. And the Court is not giving any
6 inference that they have, so that --

7 THE COURT: Jury instruction number 12, your
8 page 18 --

9 MR. WEBER: No. I'm sorry, 301.11, their page
10 39, failure to --

11 THE COURT: Oh, yeah. No, I took that out. I
12 took that out.

13 MR. WEBER: Okay.

14 THE COURT: I want to ask you about your page
15 18. I think that's addressed with the stipulations
16 or -- let's see. That's a closing. That's after
17 the close of evidence, never mind.

18 MR. WEBER: Yep.

19 THE COURT: So we'll hop to yours at the very
20 end. Mr. Zappolo's page 41.

21 MR. WEBER: Right.

22 THE COURT: Do you have a competing
23 instruction?

24 MR. WEBER: Yes.

25 THE COURT: What page is that?

1 MR. WEBER: Our counts begin on page 25.

2 THE COURT: 25?

3 MR. WEBER: Yep, jury instruction number 19.

4 And we think this is an equitable issue that would
5 be decided by the Court anyway, so we object to
6 this instruction because it's an unjust enrichment
7 claim, Your Honor.

8 And also looking at Mr. Zappolo's instruction,
9 it says -- 416.7, he has not even finished the text
10 in the instruction. It says "Denies this claim and
11 has raised the affirmative defense of" question
12 mark, question mark, question mark, question mark,
13 dot, dot, dot, dot.

14 THE COURT: Is this a jury question or a judge
15 question?

16 MR. ZAPPOLO: Well, typically, Your Honor, you
17 know, as you may know, the judge -- any issues that
18 are tried before the jury, the jury makes the
19 factual determination and then the judge applies
20 the equitable principles, so I wasn't sure how you
21 wanted to handle that.

22 And also, the question mark, question mark,
23 question mark is because if you read their
24 affirmative defenses, I'm not sure what affirmative
25 defenses apply to which count. The only time I

1 find that out is after Mr. Weber recently did his
2 proposed jury instructions.

3 MR. WEBER: That's just not true, Your Honor.
4 You can pull up your answer.

5 THE COURT: I need to pick up the speed, I'm
6 sorry. All right. I'll use Mr. Weber's
7 instruction.

8 All right. Let's see. Page 42, I think you
9 have 504.1 at the bottom.

10 MR. WEBER: Do you want my competing --

11 THE COURT: I do.

12 MR. WEBER: It looks like it's cut off, Your
13 Honor, on mine. On his 42, I don't see it.

14 MR. ZAPPOLO: I apologize, Your Honor, what
15 was your question?

16 THE COURT: I'm looking for the competing
17 instruction.

18 MR. WEBER: Oh, it would be number 22, which
19 is jury instruction number 22 on page 28. It would
20 be number -- jury instruction number 23.

21 THE COURT: All right. Hold on.

22 MR. ZAPPOLO: Your Honor, I'm sorry, I have to
23 say, I'm a bit at a disadvantage here. I had no
24 idea you were going to be going through jury
25 instructions. I would have had the paper with me.

1 I mean, I'm trying to scroll through roughly 200
2 pages of stuff on a computer as you're asking
3 questions, and I know you're working quick, and I
4 can certainly appreciate that.

5 THE COURT: Well, I think what I'm trying to
6 do is figure out what I'm going to charge the jury
7 with right now.

8 MR. ZAPPOLO: Okay. And, Your Honor, I will
9 defer to however you want to handle this subject to
10 me being able to argue to you to correct something
11 or get it straight before it goes back with the
12 jury.

13 THE COURT: I'm going to use their verdict
14 form, okay. I like the format of one instruction
15 per page. During lunch, once you guys figure out
16 how you're going to line up your competing
17 instructions, then we can go through them one at a
18 time, okay? Because I am going through page this
19 or page that, you know, but right now we should get
20 opening statements underway, shouldn't we?

21 MR. ZAPPOLO: Yes.

22 THE COURT: And I think I have enough to give
23 for the opening statements. All right. Let me see
24 both of you up here. Because we're going to spend
25 hours doing this, I think, and I do want to get

1 underway. So I'll start with this, right? I'll
2 remind them that I'll read 201 introduction very
3 briefly.

4 MR. ZAPPOLO: 202.1, correct.

5 THE COURT: I'm sorry, 202.1. And then we're
6 going to backtrack because you never gave me this.
7 It's not really the law of the case, but I think
8 that's okay for now with these modifications.

9 MR. ZAPPOLO: 201.1 as we discussed or --

10 THE COURT: 201.1 with whatever I struck out.
11 And then I'll read the note-taking
12 instruction, Defendants' 7 --

13 MR. ZAPPOLO: Yes, sir.

14 THE COURT: -- on taking notes. Do you want
15 me to read the trial procedure again?

16 MR. WEBER: I think we should read that, Your
17 Honor, yes.

18 THE COURT: Okay. Then I'll read 202.2, the
19 trial procedure, and then you'll give your opening
20 statements.

21 MR. ZAPPOLO: Thank you, Your Honor.

22 THE COURT: And then we'll tackle jury
23 instructions after you guys confer a little bit
24 more. I'll put your packet together. My only
25 guidance is use defendants' verdict form.

1 MR. ZAPPOLO: Yes, sir.

2 MR. WEBER: May I just use the bathroom real
3 quick, Your Honor? I apologize.

4 THE COURT: Why don't we do that now. Oh, how
5 long do you guys need for opening statements?

6 MR. ZAPPOLO: This is an interesting case. I
7 tried to narrow it as much as possible and I find
8 that I keep running long, longer than I want. What
9 is the Court's -- do you have a general rule or
10 anything that you suggest?

11 THE COURT: Yeah. You have to conclude in 11
12 days.

13 MR. ZAPPOLO: We will conclude in 11 days.

14 THE COURT: So how much time?

15 MR. ZAPPOLO: I would think that 40 minutes --

16 THE COURT: So let's say we take 10 minutes
17 right now. That will take us to 10:50, 40 minutes
18 would be 11:30. How much time do you need for
19 opening?

20 MR. WEBER: 20, 30 minutes I would say, Your
21 Honor.

22 THE COURT: So we can conclude before lunch?

23 MR. WEBER: I would think so, as long as
24 Mr. Zappolo is held to his time and we are, you
25 know...

1 THE COURT: All right. Take ten minutes.

2 (Thereupon, a short break was taken from
3 10:42 a.m. to 10:51 a.m.)

4 THE COURT: So the deputy gave them Jimmy
5 John's menus.

6 MR. ZAPPOLO: Perfect. Plus an appropriate
7 tip. I mean for the bill.

8 THE COURT DEPUTY: Yes. I know what you mean.

9 MR. ZAPPOLO: I found out one time after the
10 trial that the delivery guy wasn't getting a tip or
11 anything.

12 THE COURT: Oh, that's horrible.

13 MR. ZAPPOLO: Yeah.

14 THE COURT: That's horrible. People work
15 hard.

16 MR. WEBER: Your Honor, one more issue, if I
17 may? I think plaintiffs are going to be reading
18 deposition designations into the record and we have
19 objections. I'm not sure how Your Honor would want
20 to handle that.

21 THE COURT: Deposition designations during
22 opening statements?

23 MR. WEBER: No, during -- well, I don't know
24 if he's going to use them during opening
25 statements, but --

1 MR. ZAPPOLO: Not during opening.

2 THE COURT: All right. Let's tackle that not
3 now so we can get into this before lunch, okay?
4 But please remind me. Bring it back to my
5 attention.

6 All right. Let's bring the jury out.

7 (Jurors entering the courtroom at 10:56 a.m.)

8 Thank you. Please be seated. Please be
9 seated. So yesterday you took an oath to serve as
10 jurors in this trial. And, again, before we get
11 started, I'd like to tell you about some of the
12 issues or rules or law that apply to this case and
13 let you know what to expect as the trial proceeds.

14 It's my intention to give you most of the
15 rules of law, but it might be that I don't know
16 what they are for sure at this time or what will
17 apply in this case until all of the evidence is
18 presented. However, what I can anticipate I will
19 give you at the beginning of the trial so that you
20 can better understand what to be looking for while
21 the evidence is presented.

22 If I later decide that a different or
23 additional law applies to this case, I will tell
24 you. In any event, at the end of the evidence I
25 will give you the final instructions on which you

1 must base your verdict. At that time you will have
2 a complete written set of instructions so you don't
3 need to memorize what I'm about to tell you.

4 This is the trial of a lawsuit. This is a
5 civil trial and it's different from a criminal case
6 where a defendant is charged by the state
7 prosecutor with committing a crime. The subject of
8 the civil trial is a disagreement between people or
9 companies where the claims of one or more of these
10 parties have been brought to the Court to be
11 resolved, and it is called the trial of a lawsuit.

12 This case is about several issues. The first
13 is whether a company, Supercar Engineering,
14 Incorporated, was paid for work it performed on
15 behalf of another company, Mosler Auto Care Center.

16 The second is whether Mosler Auto Care Center,
17 Incorporated breached a distributorship agreement
18 that it entered into with Supercar Engineering.

19 The third is whether Warren Mosler should be
20 required to return a \$100,000 deposit to James Todd
21 Wagner.

22 The fourth is whether Warren Mosler
23 fraudulently induced James Todd Wagner to make a
24 \$100,000 deposit.

25 The fifth is whether Mosler Auto Care Center,

1 Incorporated breached a federal warranty by failing
2 to recall and repair a vehicle which Supercar
3 Engineering, Incorporated bought from Mosler Auto
4 Care Center, Incorporated.

5 The sixth issue is whether Warren Mosler
6 defamed Supercar Engineering, Incorporated and
7 James Todd Wagner.

8 The seventh issue is whether Warren Mosler
9 published falsehoods regarding Supercar
10 Engineering, Incorporated's RaptorGTR resulting in
11 damages.

12 If you would like to take notes during the
13 trial, you may do so. On the other hand of course
14 you are not required to take notes. If you do not
15 want to, that will be left up to you individually.
16 You will be provided with a notepad and a pen for
17 use if you wish to take notes. Any notes that you
18 take will be for your personal use; however, you
19 should not take them with you from the courtroom.

20 During recess the bailiff will take the
21 possession of your notes and will return them to
22 you when we reconvene. After you have completed
23 your deliberations, the bailiff will collect your
24 notes which will be immediately destroyed and no
25 one will ever read your notes.

1 If you take notes, do not get so involved in
2 note-taking that you become distracted from the
3 proceedings. Your notes should be used only as
4 aids to your memory.

5 Whether or not you take notes, you should rely
6 on your memory of the evidence and you should not
7 be unduly influenced by the notes of other jurors.
8 Notes are not entitled to any greater weight than
9 each juror's memory of the evidence.

10 I'm going to read this to you again. I think
11 we covered it yesterday, but I think it's
12 important, but it's the trial procedure.

13 Opening statements. In a few moments the
14 attorneys will each have the chance to make what
15 are called opening statements. In an opening
16 statement, the attorney's allowed to give you his
17 views about what the evidence will be at trial and
18 what you are likely to see or hear in the
19 testimony. Then we'll go into the evidentiary
20 phase.

21 After the attorneys' opening statements, the
22 plaintiff will bring their witnesses and evidence
23 to you. Afterwards, the defendant will be able to
24 do the same.

25 Evidence. Evidence is the information that

1 the law allows you to see or hear in deciding this
2 case. Evidence includes the testimony of the
3 witnesses, documents, or anything else that I
4 instruct you to consider.

5 Witnesses. A witness is a person who takes an
6 oath to tell the truth and then answers the
7 attorneys' questions for the jury. The answering
8 of attorneys' questions by the witness is called
9 giving testimony. Testimony means statements that
10 are made when someone has sworn to tell the truth.

11 The plaintiffs' lawyer will normally ask the
12 witness the questions first. This is called Direct
13 Examination. The defense lawyer may ask the same
14 witness additional questions about whatever the
15 witness has testified to. That is also called
16 Cross-Examination.

17 Certain documents or other evidence may also
18 be shown to you during Direct or Cross-Examination.
19 After the plaintiffs' witnesses have testified, the
20 defendant will have the opportunity to put
21 witnesses on the stand and go through the same
22 process. Then the plaintiffs' lawyer gets to do
23 Cross-Examination. This process is designed to be
24 fair to both sides.

25 It is important that you remember that the

1 testimony comes from the witnesses. The attorneys
2 do not give testimony. They themselves are not
3 witnesses.

4 Objections. Sometimes the attorneys will
5 disagree about the rules for trial procedure when a
6 question is asked of a witness. When that happens,
7 one of the lawyers may make what is called an
8 objection. The rules for trial can be complicated
9 and there are many reasons for attorneys to object.
10 You should simply wait for me to decide how to
11 proceed. If I say that an objection is sustained,
12 that means the witness may not answer the question.
13 If I say the objection is overruled, that means the
14 witness may answer the question.

15 When there is an objection and I make a
16 decision, you must not assume from the decision
17 that I have -- from the decision that I have made
18 that any particular opinion other than the rules
19 for conducting trial are being correctly followed.
20 If I say a question may not be asked or answered,
21 you must not try to guess what the answer would
22 have been. That is also against the rules.

23 Sometimes I need to speak to the attorneys
24 about legal elements of the case that are not
25 appropriate for the jury to hear. The attorneys

1 and I will try to have as few of these conferences
2 as possible while you're giving us your valuable
3 time in the courtroom. But if we do have to have
4 such a conference during the testimony, we will try
5 to hold the conference at the side of my desk so
6 that we do not take a break and ask you to leave
7 the courtroom.

8 Recesses. Breaks in the ongoing trial are
9 usually called recess. During recess you still
10 have your duties as a juror and must follow the
11 rules even while having coffee at lunch or at home.

12 Instructions before closing arguments. After
13 the evidence has been presented to you, I will
14 instruct you on the law that you must follow. It
15 is important that you remember these instructions
16 to assist you in evaluating the final attorney
17 presentations, which come next and later during
18 your -- which will come next and then later during
19 your deliberations to help you correctly sort
20 through the evidence to reach your decision.

21 Closing arguments. The attorneys will have
22 the opportunity to make their final presentations
23 to you, which are called closing arguments.

24 And then final instructions. After you've
25 heard the closing arguments, I will instruct you

1 further on the law as well as explain to you how
2 the procedures you must follow on how to decide
3 this case.

4 Deliberations. After you hear the final jury
5 instructions you will go to the jury room and
6 discuss and decide the questions I have put on your
7 verdict form. The discussions you have and the
8 decisions you make are usually called jury
9 deliberations. Your deliberations are absolutely
10 private and neither I nor anyone else will be with
11 you in the jury room.

12 The verdict. When you have finished answering
13 the questions, you will give the verdict form to
14 the bailiff and we will all return to the courtroom
15 where your verdict will be read. When that is
16 completed, you will be released from your
17 assignment as a juror.

18 Finally, before we begin the trial, just a
19 brief explanation of rules that you must follow
20 when the case proceeds. Keep an open mind. You
21 must pay close attention to the testimony and other
22 evidence as it comes into the trial; however, you
23 must avoid forming any final opinion or telling
24 anyone else your views on the case until you begin
25 your deliberations.

1 This rule requires you to keep an open mind
2 until you have heard all of the evidence and it's
3 designed to prevent you from influencing how your
4 fellow jurors think until they have heard all of
5 the evidence and had an opportunity to form their
6 own opinions. The time and place for coming to
7 your final opinion and speaking about them with
8 your fellow yours is during deliberations in the
9 jury room.

10 After all of the evidence has been presented,
11 closing arguments have been made, and I have
12 instructed you on the law, it is important that you
13 hear all of the facts and that you adhere to the
14 law and how to apply it before you start deciding
15 anything.

16 Consider only the evidence. It is the things
17 that you hear and see in this courtroom that matter
18 in this trial. The law tells us that a juror can
19 consider only the testimony and other evidence that
20 all the other jurors have also heard and seen in
21 the presence of the judge and the lawyers. Doing
22 anything else is wrong and against the law.

23 That means that you must not do any work or
24 investigation on your own about the case. You must
25 not obtain your own information about the case or

1 anyone involved in the case from any source
2 whatsoever. This includes reading the newspaper,
3 watching television, or using the computer, cell
4 phone, the Internet, or any electronic device or
5 any means at all to get information related to this
6 case or the people or places involved in this case.

7 This applies whether you are in the
8 courthouse, at home, or anywhere else. You must
9 not visit places mentioned in the trial or use the
10 Internet to look at maps or pictures to see
11 anyplace discussed during the trial.

12 Do not provide any information about this case
13 or anyone else, including to your friends and
14 family members. Do not let anyone, including your
15 closest family members, make comments to you or ask
16 questions about the trial. Jurors must not have
17 discussions of any sort with the friends or family
18 members about the case or the people involved and
19 places involved. So do not let even your closest
20 family members make comments to you or ask
21 questions about the trial.

22 In this stage of electronic communication I
23 want to stress again that just as you must not talk
24 about this case face-to-face, you must not talk
25 about this case by using electronic devices. You

1 must not use phones, tablets, computers, or other
2 electronic devices to communicate. Do not send or
3 accept any messages related to this case or your
4 jury service. Do not discuss this case or ask for
5 advice by any means at all, including posting
6 information on the Internet, website, chat room, or
7 blog.

8 No mid-trial discussions. When we are in
9 recess do not discuss anything about the trial or
10 the case with each other or with anyone else. If
11 an attorney approaches you, do not speak with them.
12 The law says they are to avoid contact with you.
13 If an attorney will not look or speak to you, do
14 not be offended or form a conclusion about that
15 behavior. The attorney is not supposed to interact
16 with the jurors outside of the courtroom and is
17 only following the rules. The attorney is not
18 being impolite. If an attorney or anyone else does
19 try to speak with you or says something about the
20 case in your presence, please inform the bailiff
21 immediately.

22 Only the jury decides. Only you get to
23 deliberate and answer the verdict questions at the
24 end of the trial. I will not intrude into your
25 deliberations at all. I'm required to be neutral.

1 You should not assume that I prefer one decision
2 over another. You should not try to guess what my
3 opinion is about any part of this case. It would
4 be wrong for you to conclude that anything I say or
5 do means that I am for one side or another in the
6 trial. Discussing and deciding the facts is your
7 job alone.

8 And then again, all cell phones or other types
9 of electronic devices must be turned off while you
10 are in the courthouse -- or in the courtroom.
11 Turned off means the phone or other electronic
12 devices are actually off and not in silent or
13 vibrating mode. You may use these devices during
14 recess, but you may not use your phone or other
15 electronic device to find any other information
16 about the case or communicate with anyone about the
17 case or the people involved in the case. Do not
18 take photographs or video recordings, audio
19 recordings of the proceedings or your fellow
20 jurors. After each recess please double-check to
21 make sure that your device is turned off.

22 At the end of the case, when you are
23 deliberating, you must not communicate with anyone
24 outside of the jury room. You cannot have in the
25 jury room any cell phone, computer, or other

1 electronic device. If there are breaks in the
2 deliberations, I may allow you to communicate with
3 your family or friends, but do not communicate
4 about the case or your deliberations.

5 If someone needs to contact you in an
6 emergency, the Court can receive messages and
7 deliver them to you without delay and the Court's
8 number has been provided to you.

9 Can I see the attorneys for a moment?

10 (Thereupon, a sidebar conference was held.)

11 THE COURT: I just realized we need to talk
12 about juror discussions when we give the
13 instructions. I don't think I saw that included.

14 MR. WEBER: It's included.

15 THE COURT: It is?

16 MR. WEBER: Yeah.

17 THE COURT: I'm going to pull it up here.
18 Maybe it will be easier.

19 MR. WEBER: It's there. I can get it for you
20 if you want. I thought it was one of the jury
21 instructions.

22 THE COURT: Did I read it?

23 MR. ZAPPOLO: Yes, I believe you did.

24 THE COURT: I did?

25 MR. ZAPPOLO: No. I think you did just know.

1 THE COURT: Oh, I'm sorry, I meant juror
2 questions discussion.

3 MR. ZAPPOLO: Oh.

4 MR. WEBER: Oh.

5 MR. ZAPPOLO: That I did not hear and I do
6 believe you need to read it. And then, Your Honor,
7 if I may one issue as long as we're up here so I
8 don't have to have a separate sidebar.

9 There's a lady in the gallery who has been
10 going outside and talking with one of the
11 witnesses. Since Mr. Weber and I had discussed
12 that the rule would be invoked, I need that
13 addressed somehow and I don't know how you want to
14 do it.

15 THE COURT: Which lady?

16 MR. ZAPPOLO: The -- well, the blonde lady
17 should be out as well just in an abundance of
18 caution because if she's with one of my witnesses.
19 The gray-haired lady.

20 THE COURT: Well, I don't know who they are.
21 If the rule is invoked, we know what that means:
22 No communication about any testimony, okay.

23 MR. ZAPPOLO: But if those people are sitting
24 in here listening to openings and going out and
25 reporting it to others, I want those people

1 admonished.

2 MR. WEBER: Who are you talking about?

3 MR. ZAPPOLO: The lady, the blonde lady in the
4 back. She's with Mr. Wagner's father and with
5 another potential witness who will be testifying on
6 behalf of the defense, Mr. Christopher Lunsford.
7 She's out there with both of them. The other lady,
8 the gray-haired lady off to the Court's right, she
9 is -- has been going out and talking with
10 Ms. Klaker about what's been going on in the
11 courtroom.

12 MR. WEBER: How do you know she was talking
13 with her outside?

14 MR. ZAPPOLO: Because I heard it.

15 MR. WEBER: When?

16 MR. ZAPPOLO: Just now, when we broke, she
17 went outside and she said -- she's telling her what
18 she saw.

19 THE COURT: The rule is invoked, let's make
20 sure they're not disclosing anything. Okay?

21 MR. ZAPPOLO: I would ask that -- maybe it's
22 my witness. I'm going to ask her to step out so
23 there's no violation.

24 THE COURT: Yeah. If they're going to
25 testify, I need her to --

1 MR. ZAPPOLO: She's not going to testify, but
2 she's reporting --

3 MR. WEBER: How do we know they were reporting
4 what's happening to a testifying witness?

5 MR. ZAPPOLO: As I said, I've seen the lady go
6 out and talk with Ms. Klaker.

7 THE COURT: Okay. Well, communicate to your
8 witnesses and make sure that there's no improper
9 communication, okay? I'm going to read the juror
10 questions. I think that's the only one I'm missing
11 and we'll go to opening statements.

12 MR. WEBER: All right. Thank you.

13 MR. ZAPPOLO: All right.

14 THE COURT: All right. Anything else you
15 think I'm missing?

16 MR. WEBER: No, Your Honor.

17 (Thereupon, the sidebar conference was
18 concluded.)

19 THE COURT: All right. One more instruction.
20 During the trial you may have a question about
21 these proceedings. If so, you can write it down
22 and hand it to the deputy who will hand it to me
23 and I'll review the questions with the attorneys.

24 You may also have a question that you think
25 should be asked of a witness. If so, there's a way

1 for you to request that I ask the witness a
2 question. After all of the attorneys have
3 completed their questioning of a witness, you
4 should raise your hand if you have a question. I
5 will then give you sufficient time to write down
6 the question on a piece of paper. Fold it and give
7 it to the deputy who will then give it to me. Do
8 not put your name on the paper. Do not show it to
9 any of the other jurors.

10 It's important to know that if you have a
11 question that you believe should be asked, we're
12 going to talk about it. I will review the question
13 with the attorneys. Under our law, only certain
14 evidence may be considered by a jury in determining
15 a verdict. You are bound for the same rules of
16 evidence that control the attorneys.

17 If I decide the question may not be asked
18 under our rules of evidence, I will tell you,
19 otherwise I will direct the question to the
20 witness. The attorneys can then ask follow-up
21 questions. If there are additional questions, then
22 we will follow the same procedure again.

23 By providing this procedure I do not mean to
24 suggest that you must or should submit written
25 questions of witnesses. In most cases the lawyers

1 have asked the necessary questions.

2 Now it's time for plaintiffs' opening
3 statement.

4 MR. ZAPPOLO: Thank you, Your Honor. Ladies
5 and gentlemen, good morning.

6 (Jurors in unison: Good morning.)

7 As we mentioned yesterday and I introduced
8 myself to you, my name is Scott Zappolo. I met you
9 yesterday and I still have the pleasure of
10 representing James Todd Wagner and Supercar
11 Engineering.

12 As the judge mentioned, this is the
13 opportunity that I get to speak with you. You've
14 probably seen myself and Mr. Wagner walking up and
15 down the hall or several of the other people at the
16 defense table or even Mr. Wagner. We can't talk to
17 you. I don't get to look you in the eye and talk
18 directly to you. And so this, this moment and
19 during the closing argument are the only two times
20 I really get to address you, look you in the eye
21 and tell you certain things.

22 Right now it is my opportunity to tell you
23 what we think we're going to prove to you during
24 this case, what you can expect, kind of give you
25 the roadmap for what's going to happen here and

1 what we expect is going to happen up on the witness
2 stand with the testimony and the documents that
3 come in.

4 And you can see there's a screen up there. I
5 think the defense is going to put exhibits up on
6 the screen, and we anticipate that they're going to
7 play a video. They may even play a video in their
8 opening statement. And that's okay, we intend to
9 play a video as well. So that's one thing that we
10 agree, everybody is going to see this video that's
11 going to come up.

12 Some of our exhibits are going to be flashed
13 up on the screen when appropriate. We've got some
14 things that are blowups and we'll put them up here
15 on an easel. Other things we're just going to give
16 to the witness and the witness is going to testify
17 about them. And then the clerk is going to keep
18 the exhibits until the end of the case.

19 Now, some exhibits are going to be admitted
20 into evidence right there on the spot. And
21 depending on -- that usually depends on what the
22 witness says, okay. And if a witness says "No,
23 I've never seen that document" or something like
24 that, the odds are pretty good that it's not going
25 to be admitted into evidence, at least not at that

1 time, but hopefully we anticipate by the end of
2 this case, by the time you go back to the jury room
3 to consider, you know, your verdict, that you're
4 going to have a nice stack of documents and things
5 to consider, to look into and apply your -- not
6 only what the judge says is the law, that he's
7 going to give you in writing as he just mentioned,
8 but also to take that law, apply your common sense,
9 review the documents, remember the testimony, maybe
10 use your notes to refresh your own recollections
11 about the testimony, et cetera, to make the
12 decision, and we welcome that.

13 So that's just a little bit of a footprint.
14 And I'm going to come back at the end of this trial
15 and I'm going to talk to you about -- you know,
16 this is the point where I tell you what we intend
17 to prove, and then at the end of the case I come
18 back and tell you what I think we did prove and
19 why. And so right now it's just kind of a general
20 overlay from us, but let's talk about the general
21 overlay.

22 "He is nothing. He has severe mental
23 problems. He goes around saying he has everything,
24 but he has nothing." We're going to prove to you
25 in this case that those are the words that came out

1 of Mr. Mosler's mouth to a journalist to a
2 publication for the largest automotive publications
3 in the world. It was published. And that's not
4 the only time that Mr. Mosler spoke to publications
5 about Mr. Wagner.

6 On another instance, Mr. -- I should say it's
7 not the only time Mr. Mosler spoke to the
8 publications about Mr. Wagner and/or Mr. Wagner's
9 company, Supercar Engineering's vehicle that
10 Supercar Engineering had purchased from
11 Mr. Mosler's company, Mosler Auto Care Center. A
12 lot of people are going to refer to that as MACC,
13 M-A-C-C, Mosler Auto Care Center.

14 So you're going to hear testimony from various
15 people about a certain car. The car is called the
16 2012 RaptorGTR. The other side is going to take
17 issue with that. They're going to say that's not
18 the name of the car at all. But we're going to
19 show you documentation and evidence. You're going
20 to hear people testify and you're going to see --
21 we anticipate you're going to see emails as the car
22 was being developed and built at the Mosler Auto
23 Care Center factory that that's what they called
24 it.

25 We know well Mr. Wagner intends to prove that

1 that was the name of the car because he was the
2 person that did the EPA certification,
3 Environmental Protection Agency. The evidence in
4 this case is going to show that whenever you build
5 a new car, whether you be Ford or Mosler Auto Care
6 Center, you have to go ahead and present emissions
7 information and other things to the Environmental
8 Protection Agency before you can sell that car
9 before it becomes legal to be driven on the
10 streets. And the person who was designated in 2011
11 to get the EPA certification for this new car that
12 was coming out was James Todd Wagner through
13 Supercar Engineering.

14 Now, I'm going to digress for a moment here.
15 I want to talk with you guys about something and
16 that's because we're here on a lawsuit and the
17 judge mentioned to you some counts and things that
18 you're going to have to decide.

19 The first one that the judge mentioned was
20 whether or not Supercar Engineering was actually
21 paid for that work. So the issue for you guys to
22 decide and what you should be listening for during
23 this trial is testimony or documentation related to
24 James Todd Wagner's company, Supercar Engineering,
25 performing work for EPA certifications. And we're

1 going to prove to you that not only did he do the
2 work, he actually got the EPA certification, and we
3 anticipate you're going to see the EPA
4 certification document.

5 We anticipate that when Mr. -- you're going to
6 see, and we'll prove, that when Mr. Wagner obtained
7 the EPA certification document, he forwarded it to
8 Mr. Mosler and he got a response: "Good job."

9 Now I ask you, again, to implore your common
10 sense and look at all of the different things that
11 are going on at the time that that happened. We're
12 going to present evidence about people trying to
13 buy the Mosler Auto Care Center company, either
14 through a stock purchase, which you just buy the
15 stock and then you own the company because you own
16 the stock, or through an asset purchase. An asset
17 purchase being if a company owns a bunch of things,
18 like cars and machinery and things like that, you
19 just buy all the cars and machinery and then you
20 leave the company as an empty shell with its
21 liabilities, okay.

22 So we're going to talk about that, and I
23 anticipate that this is going to be a learning
24 process for some of us. Myself potentially
25 included because some of the people that are going

1 to testify I haven't had the opportunity to talk
2 with yet. We're going to hear some evidence in
3 this case all together at the same time.

4 But the first issue, work for the EPA and
5 whether or not Supercar Engineering was paid for
6 that work. You're going to hear testimony from
7 James Todd Wagner about why he worked for Mosler
8 Auto Care Center without getting paid. Pay
9 attention to that. Apply common sense to that
10 testimony. That's what we're going to ask you to
11 do at the end of the trial.

12 Now the next thing is there's going to be
13 testimony in this case and documentation about a
14 distributorship agreement. Not one, but two, but
15 the judge will instruct you you're only here for
16 one of those distributorship agreements and it's
17 important that you discern between the two.

18 This case is about Supercar Engineering's
19 contract to be a distributor of Mosler Auto Care
20 products in China and Thailand. And we expect that
21 we're going to show that to you and we're going to
22 show you that there were certain requirements, like
23 the car had to be presented to people overseas,
24 okay.

25 And I'm paraphrasing a little bit, of course,

1 but I want you to pay particular attention to that
2 because there are some decisions that you're going
3 to have to make with respect to that
4 distributorship agreement because part of this
5 lawsuit is whether or not Mosler Auto Care Center
6 breached that distributorship agreement.

7 Now, Mr. Wagner will testify about the timing,
8 et cetera. We intend to show you Mr. Mosler's
9 signature on that distributorship agreement. And
10 yet we anticipate there's going to be testimony in
11 this case about people at Mosler saying that that
12 distributorship agreement was not in effect and
13 why.

14 The next issue that we're going to be
15 presenting to you and the evidence that you're
16 going to be looking at is about Mr. Wagner, through
17 his companies, trying to buy Mosler Auto Care
18 Center. And the evidence is going to show at first
19 he might have been looking to do -- just buy the
20 stock and then it became an asset purchase
21 agreement and the price changed, and the evidence
22 is going to show why the price changed, okay.

23 And the price -- the evidence -- pay
24 particular attention because at one point there's a
25 building involved in the transaction, at another

1 point Mr. Wagner finds out that Mr. Mosler is
2 selling off cars and he says "Wait a minute, this
3 company is not worth this much without these cars
4 in the inventory." So there's a negotiation and
5 the price changes over time.

6 And it's very interesting that there's going
7 to be evidence that an agreement was actually
8 signed, but I don't anticipate anyone is going to
9 see the written agreement, so what does Mr. Wagner
10 have to show you? He has emails.

11 And you heard Mr. Weber ask during voir dire
12 "Does anybody understand how you read an email and
13 how there might be indention -- indentations and
14 things like that?" And we're going to go through
15 and I'm going to have witnesses on the stand and
16 we're going to track through emails who said what,
17 when, and how did that -- you know, how did things
18 come to pass so that we hope to convey to you and
19 so that you'll have an understanding about this
20 \$100,000 deposit.

21 Now the evidence is going to show that
22 Mr. Wagner didn't have \$100,000 in his pocket and
23 he, like many others, the evidence will show, was
24 out there trying to solicit investors in order to
25 effectuate this purchase, but Mr. Wagner always had

1 a backup. Fortunately for Mr. Wagner, his father
2 was well enough off that his father could finance
3 this deal for him. And so while he didn't want to
4 rely upon his father, he had his father as a
5 backup. We anticipate his father is going to take
6 the stand. And what happened here is Mr. Wagner's
7 father actually made a \$100,000 deposit, wire
8 transfer to Mr. Mosler, and Mr. Mosler took that
9 \$100,000 deposit.

10 Now, there's a dispute and I don't think
11 you're ever going to hear the other side say in
12 this case deposit without the words "nonrefundable"
13 in front of it. I won't do the same, I'm just
14 going to -- because that's your decision to make.
15 It was a deposit. Our position is crystal clear,
16 and you will hear it from Mr. Wagner and you'll see
17 in the documentation that we intend to show you,
18 that that deposit was intended to be refundable if
19 someone else bought the company.

20 So I'm going to ask you to pay particular
21 attention to that because the evidence is going to
22 show that not only did Mr. Mosler agree to that,
23 that was actually Mr. Mosler's recommendation at
24 one point. And yet, when the company was
25 eventually sold to another person or another

1 company, Mr. Wagner asked for the deposit back and
2 still hasn't seen it.

3 Now there is a count in this case, and we're
4 going to be talking with you about it, and it's
5 going to be developed through the testimony and
6 documentation that comes in about fraudulent
7 inducement and that's going to be your decision to
8 make about whether Mr. Mosler, at the time that he
9 took in this \$100,000 deposit from Mr. Wagner, Sr.,
10 whether he intended to honor that agreement or not.
11 There's going to be some interesting email
12 exchanges and other things that come forth on that,
13 so pay particular attention, please.

14 There's also claims in this case about -- by
15 the way, part of that distributorship agreement,
16 part of the payment and the purchase for that
17 distributorship agreement for -- to distribute
18 Mosler products in China and Thailand, that
19 involved the purchase of that 2012 RaptorGTR.

20 And payments that were made towards that car
21 were also payments for the right to distribute
22 Mosler products in China and Thailand. The
23 problem, as you're going to see, is that Mosler
24 didn't produce the cars. In fact, Mosler, as we
25 discussed, was talking with media people saying

1 that wasn't a Mosler product.

2 Now we're going to ask you to apply your
3 common sense at the end of this and see how could
4 someone sell a car worldwide in China, Thailand,
5 and other locations that he was also a distributor
6 for, how could someone sell that car when the
7 purported manufacturer, the alleged manufacturer of
8 the car says it's not their vehicle? What does
9 that do? What does that do to your ability to
10 distribute?

11 So those facts are going to come in and relate
12 to the claim for breach of the distribution
13 contract, not producing a car and submarining all
14 attempts to sell the car. And the interesting
15 thing -- and here's how some of these things weave
16 together like real life -- it's not like on T.V.
17 where we have these little compartmentalized
18 issues.

19 In real life, the sale of that car that
20 Mr. Wagner, through his company, Supercar
21 Engineering, was able to pull off, the sale of that
22 car -- once he bought it from Mosler, it was for
23 sale. He was trying to show it to the world to get
24 more people to want to buy that car pursuant to his
25 distribution rights. And at the same time, if he

1 could sell that car, he would have had the money to
2 complete the purchase of Mosler Auto Care Center
3 because the evidence in this case is that these are
4 supercars, ladies and gentlemen. They're expensive
5 pieces of machinery. And for the price that
6 Mr. Mosler was willing to accept to sell Mosler
7 Auto Care Center if Mr. Wagner had been able to
8 sell his car, the RaptorGTR, he would have had the
9 money himself and he wouldn't have needed either
10 his other investors or his father to put this -- to
11 pull off this purchase.

12 And that was his dream. This, ladies and
13 gentlemen, is a car guy. He's an engineer. He's
14 engineered suspensions that are used in vehicles
15 all over the place.

16 The evidence in this case is going to show
17 he's the car guy that came up with the concept of
18 putting turbochargers back more to the rear in the
19 exhaust system than usual and that gave this car a
20 distinctive sound. It was able to keep the
21 turbochargers cooler and there were a whole lot of
22 advantages to doing that and that made -- that was
23 one of the things that made the 2012 RaptorGTR the
24 highest horsepower-to-weight ratio car on the
25 planet during that time period.

1 Now, in fairness, was that a collaboration
2 between the two gentlemen? To a certain extent
3 yes. The evidence is going to show that Mr. Mosler
4 had been building cars for years. His concept is,
5 and his thought was, build it lighter. Build it
6 lighter, okay. Build it lighter so that if you
7 have a superlight -- a really light car, the same
8 engine, the same horsepower can make it go that
9 much faster and perform that much better. That was
10 Mr. Mosler's concept and Mr. Wagner took that and
11 made it -- took it just a step further.

12 One of the issues in this case that you're
13 going to hear testimony about is the design of the
14 vehicles that Mr. Mosler had been creating over the
15 years and Mr. Wagner's desire, through Supercar
16 Engineering, who was the chief engineer for Mosler
17 Auto Care Center, to make a little change in the
18 design, make it a little more exotic, make it a
19 little more pizazzy, make it not look like a
20 Corvette. So there's going to be testimony about
21 the changes that Mr. Wagner wanted to do.

22 There's also going to be testimony about the
23 pushback from Mr. Mosler about that and what
24 Mr. Mosler wanted to do with all this stuff.

25 So I'm going to ask you to please pay

1 particular attention to all of these things. This
2 is very complex. This is not very simple. It's
3 not like a T.V. show. And I'm sure the other side
4 wants you to pay particular attention as well. But
5 all these things kind of meld together. They come
6 together and they all merge here in this courtroom.
7 You're going to hear evidence about all those
8 things.

9 You're going to hear evidence about when
10 Mr. Wagner took the RaptorGTR out on the road to
11 show to potential investors about problems. You're
12 going to see issues -- you're going to hear
13 testimony about whether or not Mosler honored that
14 in fairness. Mr. Wagner at one point said "Oh,
15 you've got to cover warranties."

16 There was some cracked auto glass on it, very
17 specialized auto glass that Mr. Mosler -- excuse
18 me, Mr. Wagner is going to testify about and the
19 problems that he had in getting replacement glass
20 for it, et cetera.

21 Now at one point Mr. Wagner is going to talk
22 about how he thought that was covered under a
23 warranty that all these other cars had, that all
24 the other cars that Mosler Automotive had sold to.
25 Its first sale being -- a very interesting point

1 that we anticipate the evidence is going to show,
2 the first sale, the chassis number 3 -- the first
3 two chassis were used in -- for in-house testing
4 and everything, but the first chassis that was
5 actually sold in this company, chassis number 3,
6 was sold to George Lucas from the Star Wars family,
7 and we anticipate there's going to be some cool
8 pictures and things like that that you're going to
9 get to see. But these cars were all warrantied,
10 his was not.

11 You're going to hear other testimony about a
12 potential car fire problem because of a fuel line
13 problem on all the cars. We anticipate you're
14 going to see recall notices or "get it fixed"
15 notices and everything. All the other cars were
16 offered to be fixed, but not his.

17 There's going to be other testimony about
18 problems with that -- with the car that they -- the
19 other side would not fix.

20 Now, there's two types of warranties: The
21 warranty that we talked about where Mr. Wagner was
22 saying he wanted things fixed, but there's also a
23 legal requirement, a federal warranty that dealers
24 honor, that manufacturers of these vehicles honor,
25 and we intend to show you that even the federal

1 warranty wasn't honored.

2 Notwithstanding whether they've agreed that --
3 and, by the way, Mr. -- the Bill of Sale on this
4 car that's at issue, it says 2012 RaptorGTR, but it
5 does -- in fairness to you, we anticipate the
6 evidence is going to show, it says it's sold as is
7 with no warranties. Mr. Wagner didn't realize
8 that. His testimony is going to be, but okay,
9 we're not here suing about the cracked glass or
10 anything like that. But we anticipate that that
11 evidence is going to come out to show you because
12 we're here to try and show you the whole picture,
13 the good and the bad.

14 So we have federal warranty claims. I think
15 it's pretty straightforward. Then we have counts
16 where James Todd Wagner is suing Mr. Mosler for the
17 comments that he made; Mr. Mosler's comments about
18 Mr. Wagner and about the car, suggesting that that
19 car was not street legal, not legally to be driven
20 on public roads.

21 We intend to show you that Mr. Mosler made
22 these comments and that these comments simply were
23 not true. And we're going to talk with you about
24 the damages that Mr. Wagner's company, SEI,
25 suffered because we're going to put on an expert

1 talking about how much these cars go for, how the
2 highest horsepower-to-weight ratio car in the world
3 at the time, how much that could have been sold
4 for. The first one of its kind, how much that car
5 could have been sold for and then how much it was
6 actually sold for, several hundred thousand dollars
7 less.

8 We're going to pose to you, say to you that
9 the evidence proves that the car sold for several
10 hundred thousand less because the manufacturer of
11 the vehicle said that's not ours, words to that
12 effect. You're going to hear the quotes.

13 Now there was a lot going on at this time. As
14 I mentioned earlier, the car was Mr. Wagner's
15 opportunity to buy the company and continue with
16 his dream of manufacturing these cars. He had a
17 business plan how he was going to manufacture them
18 overseas. He had people lined up, but the
19 interesting thing about this is at the same time
20 that Mr. Wagner was trying to buy the company, he
21 also said, "You know what? If I don't get to buy
22 the company, that's okay because I've got a
23 distributorship agreement. I've got rights to
24 distribute these cars."

25 So the evidence is going to show not only was

1 Mr. Wagner trying to purchase the company, he was
2 also assisting the company to find other buyers.
3 And what I want you to pay particular attention to,
4 ladies and gentlemen, is the price differentials.
5 Price differentials for the purchase price, price
6 differentials for how much Mr. Mosler wanted as a
7 down payment, differentials about whether or not a
8 down payment was refundable or nonrefundable,
9 because all those things start to tell a story and
10 get you to the truth of what was going on here.

11 The truth of what was going on here, we
12 believe the evidence will show, is that Mr. Mosler,
13 for whatever reason --

14 THE CLERK: Five-minute warning, Counsel.

15 MR. ZAPPOLO: Thank you.

16 -- for whatever reason, had come to have the
17 level of contempt, disrespect, not care for
18 Mr. Wagner. And so when he made those comments to
19 the journalist, he didn't care. He didn't care
20 about the truth or the falsity of them.

21 He didn't care about what it would do to
22 someone who's trying to start a business. He
23 didn't care what it would do to someone who had
24 been working for severe discount rates and things
25 like that.

1 As a matter of fact, the evidence is going to
2 show that when Mr. Wagner first saw these comments
3 in the newspapers, he was so upset, he thought that
4 Mr. Mosler had been misquoted and he was mad at the
5 journalists. Mr. Wagner thought he had a friend in
6 Mr. Mosler. And not until years into this case did
7 Mr. Wagner find out that Mr. Mosler, despite the
8 fact that Mr. Wagner had him sign an agreement
9 saying "Hey, if I bring you buyers, you won't
10 circumvent me and go do a deal directly with those
11 buyers," he thought Mr. Mosler was honoring that
12 deal too.

13 We're not suing about that, but it's a part of
14 the evidence in this case. Mr. Wagner had
15 Mr. Mosler sign an exclusive brokering agreement
16 that said that Mr. Mosler wouldn't go around him.
17 If Mr. Wagner brought a buyer to him, that he
18 wouldn't circumvent him. But there's going to be
19 evidence of that too.

20 There's going to be evidence that -- oh,
21 there's a very interesting character that's going
22 to be introduced. I don't know whether he'll
23 appear in this courtroom, a gentleman by the name
24 of Lew Lee. And Mr. Mosler is going to try and pin
25 this all, we anticipate, on Mr. Lew Lee. The

1 evidence is going to show that Lew Lee, for want of
2 a better phrase, and I believe Mr. Mosler is even
3 going to concede this, was a con man. And yet he
4 got into the Wagner-SEI camp and somehow now
5 Mr. Mosler says that when James Todd Wagner's
6 father wired that \$100,000, that it was for Lew
7 Lee. Pay particular attention to what Lew Lee said
8 in emails.

9 And so with all of that, and there's more to
10 tell, there's a bunch of interesting looking
11 documents, because at one point Mr. Wagner informed
12 people that this company was building cars
13 illegally. Because Mr. Wagner had been doing the
14 EPA certification, he took over doing the EPA
15 certifications from the old people that were doing
16 it, and he realized uh-oh, we got a problem. Every
17 car that was sold, that we could think of, was
18 manufactured and sold illegally and yet the one car
19 that was built properly within the federal
20 regulations was the 2012 RaptorGTR, and that's the
21 one that Matt says is not certifiable for use on
22 public streets.

23 Now, in fairness, there are two different
24 types of certifications in this country that are
25 important for this case. One is the EPA

1 certification. The evidence is going to show, when
2 you get a EPA certification, you can buy that car,
3 you can sell it, you can drive it on any road in
4 the country, but there's a very restricted
5 country -- excuse me, state called California. And
6 California has its own special emissions
7 requirements, and so there's an issue about that.

8 The 2012 RaptorGTR was not certified for
9 California emissions, but the evidence is going to
10 show that lots and lots and lots of supercars don't
11 pass the California emissions requirement. They're
12 still legal to sell. They title them in other
13 states. And it's common practice because the tax
14 that you have to pay to register these supercars is
15 higher in California anyway, so people are happy to
16 title these cars in other states and then they just
17 drive them to their homes in California.

18 So, with all of this -- and there's going to
19 be some other things that come up, but I think this
20 is my time to just tell you what to expect. This
21 is the big picture, okay, about the issues in this
22 case. And at the end of this case we're going to
23 ask you to come back, consider all of the evidence
24 that's been presented to you, consider the law that
25 the judge gives you, apply your common sense to the

1 facts and the law --

2 THE CLERK: Time.

3 MR. ZAPPOLO: -- and come back with a verdict
4 in favor of Mr. Wagner and SEI. And I thank you
5 for your time.

6 THE COURT: Defense.

7 MR. WEBER: Good morning. My name is Steven
8 Weber, and I represent Warren Mosler and Defendant
9 Mosler Auto Car Center -- Mosler Auto Care Center.
10 It's sometimes called MACC, M-A-C-C, you'll see
11 that.

12 The defendants are James Todd Wagner, who
13 sometimes is referred to as "Todd" or "Mr. Wagner,"
14 and Mr. Wagner owns the company called Supercar
15 Engineering, Inc. You'll see it referred to
16 sometimes as "SEI."

17 Now, Mr. Mosler is a renowned economist, the
18 evidence will show, and Mr. Mosler founded MACC.
19 He founded MACC to build a car that was better
20 performing than the competition. And his plan was
21 to demonstrate the performance of these cars by
22 racing them. Mr. Mosler was successful in racing
23 the cars, but the public was unfortunately not
24 buying it, so MACC became unprofitable.

25 Now in 2010 Mr. Mosler decided to sell MACC.

1 Mr. Wagner and his business partner, Lew Lee, the
2 evidence will show, tried to purchase MACC. They
3 were unsuccessful. And the core of this case and
4 the evidence will show that Mr. Wagner was obsessed
5 with purchasing MACC, but he couldn't do so. And
6 when others tried to purchase it -- because you'll
7 see that there were several people who tried to
8 purchase MACC. When others tried to purchase MACC,
9 Mr. Wagner became jealous.

10 Now the first claim and the second claim in
11 this case is about unpaid work, EPA approval work.
12 The evidence will show that there is a Consultant
13 Agreement, a written agreement by which SEI,
14 Mr. Wagner's company, was performing work for MACC.

15 The evidence will show that there are emails
16 from Mr. Wagner, on behalf of SEI, where he is
17 asking to use his work for the EPA approvals to pay
18 off the car at issue in this case.

19 So let me put that another way. Instead of
20 receiving money for his work, the evidence will
21 show that he asked to use his work on the EPA
22 approvals to pay for the car that's at issue in
23 this case.

24 The evidence will show that SEI was fully
25 paid, that SEI received the car, and it eventually

1 sold the car.

2 The next claim is for breach of contract.
3 This is a claim by SEI against MACC for breach of
4 the distribution agreement. The claim has two
5 parts. The first part of the claim is that MACC
6 allegedly breached the agreement by not producing
7 vehicles for SEI.

8 The evidence will show that SEI paid for one
9 vehicle and it received that vehicle, the car at
10 issue in this case.

11 The evidence will show that MACC wasn't
12 required to provide any vehicles until SEI paid for
13 the vehicles and purchased them.

14 The evidence will show that it is undisputed
15 that SEI only paid for and purchased one vehicle,
16 the car at issue in this case.

17 The second part of this claim is that SEI says
18 that MACC breached the distribution agreement by
19 selling SEI's rights under the agreement to the
20 person who eventually bought MACC in 2013.

21 So, in other words, SEI is claiming that it
22 had rights under the agreement and those rights
23 were sold to somebody else when MACC was eventually
24 purchased by a third party who's not in this case.

25 The evidence will show that SEI failed to live

1 up to its obligations in this case and thereby
2 forfeited any rights under the agreement.

3 The next claim in this case is a breach of
4 warranty claim by SEI against MACC. The evidence
5 will show very clearly that there is a Bill of Sale
6 for the car at issue in this case that says there's
7 no warranty whatsoever, end of story.

8 Now the next few claims are about this
9 \$100,000 deposit, and they are called breach of
10 contract, unjust enrichment, and fraudulent
11 inducement, and they all center around this core
12 set of facts. They are alleged by Mr. Wagner
13 against Mr. Mosler. And the evidence again will
14 show there's a written document that clearly
15 documents the \$100,000 as a nonrefundable deposit.
16 That means that once it was provided, it is not
17 going back.

18 Now, it's expected that Mr. Wagner will
19 testify there was an "oral" agreement. Meaning
20 it's not in writing, there's an oral agreement.
21 But the evidence will show, after the date of this
22 alleged "oral" agreement that Mr. Wagner swore
23 to, you will see the email documentation showing
24 negotiations continuing and continuing and
25 continuing. That's why I have a projector here.

1 That's why I asked the question in voir dire
2 whether you're familiar with emails because we are
3 going to zoom in on the emails. We are going to go
4 right through them.

5 Now, the evidence is going to show that Lew
6 Lee and James Todd Wagner were business partners.
7 The evidence is going to show that Lew Lee and
8 James Todd Wagner were communicating with
9 Mr. Mosler. The evidence is going to show that Lew
10 Lee's company called Santa Fe Digital Media,
11 there's -- it's going to show there's emails where
12 Mr. Wagner was identified as a board member of
13 Santa Fe Digital Media, which is sometimes referred
14 to as "SFDM." I know there's a lot of acronyms,
15 but we're going to make sure that you're aware of
16 which one we're talking about.

17 The evidence is going to show that when the
18 \$100,000 deposit was wired, that there is
19 contemporaneous, meaning at the same time, emails
20 where Mr. Wagner is giving the tracking number to
21 Lew Lee, telling Lew Lee that Mr. Wagner's father
22 is on the way to the bank. And the email
23 documentation will show that Lew Lee and Mr. Wagner
24 had until September 1st to close their purchase,
25 but they failed to do so.

1 Now, when they failed to close the purchase,
2 the evidence is going to show that Mr. Wagner was
3 heart broken and a new buyer emerged, somebody that
4 Mr. Wagner knew had the funds to close the purchase
5 and finally purchase MACC. His name is Savvas
6 Savopoulos.

7 Now Savvas is not going to appear today
8 because he was unfortunately murdered, but the
9 evidence will show that he had the finances to
10 purchase MACC. He was about to close. The
11 evidence will show that as part of his closing he
12 sent Mr. Wagner a Release and Termination Agreement
13 to end Mr. Wagner's involvement once and for all.

14 Mr. Wagner, the evidence will show, knew his
15 time at MACC was coming to an end and he
16 nonetheless was trying to purchase MACC, trying to
17 figure out a way to purchase the company still even
18 after what happened with Lew Lee. And one of the
19 ways he tried to raise money to be able to purchase
20 MACC was a music video involving the car.

21 And I have to show you the video now so you
22 understand the context of everything that's going
23 on. You have, simultaneously, Savvas is about to
24 close his purchase on MACC. You have James Todd
25 Wagner who's going to show he's trying to raise

1 money to purchase MACC, and so let's show the
2 video.

3 (Music video begins.)

4 Feel my fire.

5 Fire. It's me, Abby Cubey. You know you
6 wanna feel my fire, so come on, let me take you
7 higher.

8 I wanna be your one desire, go feel my fire.

9 I look at you and my blood is boiling hot, I
10 got a fever burning so give me what you got.

11 Don't stop moving, you only get one shot. So
12 pump it up, don't be a tease, you better bring the
13 devil down to his knees.

14 Feel my fire. Take me higher. Blow your mind
15 any time cause I heat up the night. Your massive
16 fuel injection's gonna make it all right. Touch
17 it, take it, feel it, feel my fire.

18 Baby drive me up the wall and feel the way I
19 feel. Take me for a ride cause your clutch is made
20 of steel.

21 Do it if you dare, just keep your hands up on
22 the wheel. I want it all, I want it bad, put the
23 pedal to the metal. You don't wanna make me mad.

24 Feel my fire. Take me higher. Blow your mind
25 any time cause I heat up the night. Your massive

1 fuel injection's gonna make it all right. Touch
2 it, take it, feel it, feel my fire.

3 Oh, mister sexy boy, I like your sex appeal.
4 Ah, turn me on every time you take the wheel.

5 Boy, keep it moving cause it's you I gotta
6 feel. I want it hard. I want it fast. I wanna
7 make the passion last.

8 I wanna make some noise and really raise my
9 voice. Let me feel the turbo blow.

10 Blow your mind any time cause I heat up the
11 night. Your massive fuel injection's gonna make it
12 all right. Touch it, take it, feel it, feel my
13 fire.

14 (Music video ends.)

15 MR. WEBER: Okay. So now regardless of your
16 own personal feelings about the video, the evidence
17 is going to show that the reaction from the car
18 world was swift and vicious. And you're going --
19 the evidence is going to show that Mr. Mosler
20 received emails from people who were angry about
21 how the brand was portrayed, who complained, and
22 who saw that the video was portraying the brand in
23 a way that could be viewed negatively.

24 In the wake of the video, and in response to
25 Mr. Savopoulos, who was about to purchase MACC, was

1 sending Mr. Wagner a Release and Termination
2 Agreement to end his involvement with MACC,
3 Mr. Wagner responded to Mr. Savopoulos and sent
4 Mr. Mosler and Mr. Savopoulos basically a demand
5 letter threatening claims in return for, among
6 other things, a \$100,000 payment, which the email
7 exchange will show he later identified as the
8 \$100,000 his father sent in, even though that's not
9 mentioned in the claim.

10 Well, when Mr. Mosler and Mr. Savopoulos
11 didn't agree to pay Mr. Wagner anything, the
12 evidence will show a lawyer appeared and threatened
13 a claim against MACC.

14 Now Savvas Savopoulos, who was about to buy
15 the company, the evidence will show, was faced with
16 someone who's threatening to sue the company and so
17 Mr. Savopoulos, not willing to purchase the company
18 that had a claim attached to it for an unknown
19 amount, walked away.

20 So now MACC is about the only person who was
21 the best shot at buying it. Well, guess who
22 reappears trying to purchase the company?
23 Mr. Wagner. Mr. Wagner continued to try to
24 purchase MACC; he was unable to do so.

25 Now in the wake of the video there were

1 articles about the video, about Mr. Wagner, about
2 SEI, about Ms. Cubey. And you will see, the
3 evidence will show, that there was a wave of
4 comments about Mr. Wagner.

5 The evidence will show this case is about four
6 articles. Only one of the articles contains a
7 comment where it is undisputed that it came from
8 Mr. Mosler. And you will see that that comment
9 accurately reflects, the evidence will show, that
10 Mr. Mosler was not involved in the video.

11 The other comments -- it's disputed whether
12 Mr. Mosler, who's quoted regularly, actually said
13 them. Mr. Wagner wasn't there to hear the
14 statements. He has no context of the statements.
15 But you will see those statements are within
16 articles that show that they could not be
17 considered defamatory. When you see the article,
18 then you will understand. And the evidence will
19 show these statements cannot be considered
20 defamatory.

21 And moreover, in the context of all the other
22 things that are going on, all the other comments,
23 the evidence will show that Mr. Wagner cannot
24 cherry-pick three or four sentences from all of the
25 comments out there and say that it was these

1 specific comments that actually caused the damage
2 because the email documentation will show that
3 Mr. Wagner himself agreed that journalists twist
4 words, journalists misquote, that other things in
5 the articles were what was causing Mr. Wagner not
6 to be able to find a job. Specifically, one of the
7 articles says that Mr. Wagner allegedly threatened
8 a lawsuit against MACC, and the evidence will show
9 that Mr. Wagner was specifically concerned about
10 those comments, not Mr. Mosler's comments.

11 Now Mr. Wagner is expected to testify that if
12 it wasn't for Mr. Mosler, he could have sold that
13 car for \$700,000 and he would have sold many and
14 made millions of dollars.

15 Well, the evidence will show that MACC never
16 sold a car for \$700,000, and our expert witnesses
17 will show that he would not have been able to sell
18 these cars for what he thought they were worth and
19 in the quantity that he thought he could sell them.
20 And that's it. Thank you.

21 THE COURT: Can I see the attorneys for a
22 minute?

23 (Thereupon, a sidebar conference was held.)

24 THE COURT: All right. An hour for lunch?

25 MR. WEBER: Yeah.

1 THE COURT: So I think what I'm going to do is
2 maybe have them pick up the sandwiches and go
3 downstairs so they can walk around and stretch
4 their legs. I'm going to instruct them not to
5 discuss the case with anybody else. And you guys
6 can stay in the courtroom, but I'm just going to
7 paraphrase to them what I'm going to say and we'll
8 reconvene let's say at 1:15?

9 MR. ZAPPOLO: Yes.

10 MR. WEBER: Yeah.

11 THE COURT: Okay.

12 MR. WEBER: That's great.

13 (Thereupon, the sidebar conference was
14 concluded.)

15 THE COURT: All right. Ladies and gentlemen,
16 it is lunchtime so the deputy is going to take you
17 into the jury room. Both parties have provided
18 lunch for you. So what I'm going to do is ask you
19 to pick up your lunch and then take the hour to go
20 downstairs. There's a dining room downstairs in
21 the cafeteria. Go stretch your legs. If you want
22 to walk out and get some sunshine, that's okay too.

23 Let's reconvene here at 1:10, please. At
24 1:10. We will have some work to do in the
25 meantime, but why don't you guys take your lunch

1 break now. If you need coffee, please use this
2 hour to get your coffee.

3 You know, if you're not cold, great. You
4 know, if you are cold and you want to go to your
5 car and get another jacket, please do so. Again,
6 this room gets very chilly throughout the day as
7 you can imagine. You know, it's an old building
8 with an antiquated air conditioning system.

9 It's actually really interesting, and I don't
10 know if you guys know this or not, but these air
11 conditionings are pneumatic air conditionings, so,
12 you know, they're powered by air. In order to
13 change the temperature, you actually have to
14 calibrate it before you can change the temperature.
15 It requires a special tool. I can't do it from the
16 bench. Like there's a box here, but it's useless.
17 And so the temperature is what the temperature is
18 and it always will be unless I get the County to
19 come in and do a work order, and so this is the
20 temperature for the courtroom. If you're warm,
21 great. If you're cold, get something. Okay?

22 Deputy, why don't we take them in, have them
23 pick up their lunch, and then let's take them
24 downstairs so they can walk around. We'll
25 reconvene at 1:10.

1 Oh, again, the attorneys are going to be out
2 there, make sure you don't speak to them. If
3 there's people outside, make sure you don't speak
4 to them. If you hear anything about this case,
5 bring it to my attention immediately. They're not
6 being rude to you if they're ignoring you, they're
7 following my instructions. And anybody who is
8 discussing the case or talking about the case in
9 your presence is not following my instructions and
10 I need to know ASAP, okay.

11 All right. Do not discuss this case amongst
12 yourselves or with other people. I'll see you at
13 1:10.

14 (Jurors exit the courtroom at 12:06 p.m.)

15 THE COURT: All right. Is it going to help if
16 you discuss jury instructions amongst yourselves?

17 MR. WEBER: I think we have to.

18 THE COURT: At the very least you put together
19 your competing instructions, that way I can go
20 through it quickly instead of flipping through
21 paperwork.

22 MR. WEBER: Okay.

23 THE COURT: You know, if you want, I'll give
24 you back your stack.

25 MR. WEBER: Yeah.

1 MR. ZAPPOLO: Your Honor, I don't think that I
2 have my stack. I wasn't aware that we were going
3 to be doing jury instructions today, so that was
4 kind of one of our things.

5 THE COURT: Well, he's got both.

6 MR. WEBER: They're all here, Scott.

7 THE COURT: Yeah, they're all here.

8 MR. ZAPPOLO: They're all here?

9 THE COURT: The way they're organized I think
10 is plaintiffs' stack followed by defendants' stack
11 and then the verdict forms are at the bottom. I've
12 already given you guidance on that.

13 All right. So we'll take a recess?

14 MR. ZAPPOLO: Yes, sir.

15 THE COURT: All right. Why don't we come back
16 at 1 o'clock. You know, I'd like to be here a
17 little bit before in case there's anything we need
18 to address --

19 MR. WEBER: Perfect.

20 THE COURT: -- and give you guys an hour. I
21 gave them an extra ten minutes just because we're
22 never really going to start at 1 o'clock if we're
23 here at 1 o'clock and I don't want to punish them
24 for it, so -- but we'll be back at 1 o'clock.

25 MR. WEBER: Okay.

1 THE COURT: All right. We're in recess.

2 (Thereupon, the lunch break was taken from
3 12:07 p.m. to 1:10 p.m.)

4 THE COURT DEPUTY: All rise. Court is now in
5 session.

6 THE COURT: Please be seated. Please be
7 seated.

8 MR. ZAPPOLO: Can we have five minutes, Your
9 Honor?

10 THE COURT: Do you need me out here, or do you
11 need me to go back inside?

12 MR. ZAPPOLO: No, we don't need you out here.

13 (Thereupon, a short break was taken from
14 1:10 p.m. to 1:13 p.m.)

15 THE COURT: Please be seated. Please be
16 seated. Are we ready?

17 MR. ZAPPOLO: We are, Your Honor.

18 THE COURT: Okay. Random question, how many
19 hours of sleep did you get?

20 (Thereupon, a brief discussion was had off of
21 the record.)

22 THE COURT DEPUTY: Jurors entering the room.

23 (Jurors entering the room at 1:15 p.m.)

24 THE COURT: Thank you. Please be seated.

25 Plaintiff, it's your case.

1 MR. ZAPPOLO: Thank you, Your Honor. The
2 plaintiff calls James Wagner, Sr.

3 THE COURT: Just a reminder, the rule has been
4 invoked.

5 MR. ZAPPOLO: Yes, sir.

6 THE COURT DEPUTY: Please stand here. Raise
7 your right hand and face the clerk.

8 THE CLERK: Do you solemnly swear or affirm
9 that the evidence you're about to give is the
10 truth, the whole truth, and nothing but the truth?

11 **THE WITNESS: I do.**

12 THE COURT DEPUTY: Watch your step going up
13 and watch your step coming back down, okay.

14 **THE WITNESS: Okay.**

15 THE COURT: Everything okay? Okay. It's your
16 witness.

17 MR. ZAPPOLO: I'm sorry, Your Honor, he's
18 already been sworn?

19 THE COURT: Yes.

20 MR. ZAPPOLO: Okay. Thank you.

21 DIRECT EXAMINATION

22 BY MR. ZAPPOLO:

23 Q Good afternoon.

24 **A Hi.**

25 Q Would you introduce yourself to the jury,

1 please.

2 **A James Dennis Wagner. I'm the father of the**
3 **plaintiff.**

4 Q Well, that was my second question. Thank you.

5 THE COURT: Mr. Wagner, let me stop you for a
6 second. Is that microphone working?

7 **THE WITNESS: I don't know.**

8 THE COURT DEPUTY: Just tap it. Yes, it is.

9 THE COURT: Maybe lean it a little closer to
10 him. Thank you very much.

11 BY MR. ZAPPOLO:

12 Q And Mr. Wagner, what do you do for a living?

13 **A I'm retired.**

14 Q Okay. What did you used to do for a living?

15 **A I worked 30 years for a privately owned media**
16 **company, newspapers, television, auto traders,**
17 **apartments for rent, houses for sale, and our claim to**
18 **fame was we started The Weather Channel and sold it to**
19 **NBC in September of '08.**

20 Q Thank you very much.

21 I want you to think back some time ago. Did
22 there ever come a time when your son asked you to do
23 anything with respect to wiring any amount of money?

24 **A With respect to the Mosler car thing? Yes.**

25 **He telephoned me and said he wanted to buy the company**

1 and he could turn it around and he needed -- that date
2 was the deadline for getting a \$100,000 initial deposit
3 or something like that.

4 Q Okay.

5 A And he also asked me if he had trouble getting
6 the financing, would I back him up.

7 Q Okay. Now let me show you what's been marked
8 as Exhibit Number 3 for identification.

9 Do you recognize that document, sir?

10 A Well, the print is very small, but it looks
11 like a copy of part of my bank statement.

12 Q Right?

13 A Yes.

14 (Thereupon, Plaintiffs' Exhibit 3 was marked
15 for identification.)

16 BY MR. ZAPPOLO:

17 Q Okay. And within that bank statement, about
18 halfway down there's a date on the left, 6/29. Can you
19 read the dollar figure that's on that?

20 A \$100,000.

21 Q Okay. And did you, in fact, wire \$100,000 on
22 or about June 29th?

23 A Yes.

24 Q Okay. And did you wire that for anyone -- let
25 me back up.

1 Who, if anyone, did you wire that money on
2 behalf of?

3 **A I wired it for my son.**

4 Q Okay. And if your son was using the company
5 to effectuate the transfer, would that have made any
6 difference?

7 MR. WEBER: Objection, hypothetical.

8 THE COURT: Sustained.

9 **THE WITNESS: I'm not sure I understand.**

10 BY MR. ZAPPOLO:

11 Q Okay.

12 **A He had to get the money.**

13 Q Hold on for a minute. When the judge sustains
14 the objection, that means we're not going to answer the
15 question. Okay?

16 **A Oh.**

17 Q So we're not going to answer that question.

18 **A Okay.**

19 Q Fair enough.

20 When you made this wire -- by the way, was
21 that -- do you remember what year that was?

22 **A Was it 2011?**

23 Q Okay. Thank you very much.

24 And I'll direct your attention -- well, I
25 won't. Let's try this: Have you ever heard of a

1 gentleman by the name of Lew Lee?

2 **A Recently I have, but when I gave my**
3 **depositions four years ago, I did not know of the man.**

4 Q Okay. What about back in June of 2011 did you
5 ever hear of a Lew Lee?

6 **A Not that I remember, no.**

7 Q Okay. Thank you.

8 MR. ZAPPOLO: Your Honor --

9 BY MR. ZAPPOLO:

10 Q You said that your son had talked with you
11 about assisting him with the purchase. Do you recall
12 any other figures besides \$100,000 being discussed?

13 **A Well, the purchase price was going to be a**
14 **million, so we needed another 900,000, then we needed**
15 **some working capital.**

16 Q Okay.

17 **A So, you know, I pretty much conveyed that, you**
18 **know, I could provide up to 2 million.**

19 Q Okay. And are you telling this jury that you
20 were liquid enough at that time to --

21 **A Absolutely.**

22 Q Okay. Any doubt in your mind about that?

23 **A None whatsoever.**

24 Q Okay. Any doubt about whether or not you
25 would have provided the financing you just discussed?

1 **A If he asked me, I would have provided it.**

2 Q Okay. By the way, with respect to that, that
3 document in front of you, is there any reason to doubt
4 that that's not a true and accurate copy of your bank
5 statement that was provided?

6 **A It's correct.**

7 Q Okay. Thank you.

8 MR. ZAPPOLO: Your Honor, at this time I'd
9 like to move Plaintiffs' Exhibit Number 3 into
10 evidence.

11 MR. WEBER: No objection, Your Honor.

12 THE COURT: All right. So Plaintiffs' 3
13 admitted as --

14 MR. ZAPPOLO: Should we just use the exhibits
15 as they're marked for continuity?

16 THE COURT: I think it would be easier for the
17 clerk. Well, it might not be easier for the clerk,
18 it might be more challenging for the clerk.

19 I think we'll call it 1. Plaintiffs' 1,
20 formerly 3 for identification.

21 MR. ZAPPOLO: Okay. Thank you, Your Honor.

22 (Thereupon, Plaintiffs' Exhibit 1 was received
23 into evidence.)

24 MR. ZAPPOLO: Thank you, Mr. Wagner.

25 Thank you, Mr. Wagner, that's all the

1 questions I have of you.

2 THE COURT: Cross-Examination?

3 MR. WEBER: Yes.

4 CROSS-EXAMINATION

5 BY MR. WEBER:

6 Q Good afternoon, Mr. Wagner.

7 A Hello.

8 Q I have a few questions for you.

9 Did your son, James Todd Wagner, ever ask you
10 to wire \$2 million to purchase MACC's assets?

11 A No.

12 Q Did your son, James Todd Wagner, ever ask you
13 to wire more than the \$100,000 you just identified to
14 purchase MACC's assets?

15 A No.

16 MR. WEBER: No further questions.

17 THE COURT: Redirect?

18 MR. ZAPPOLO: None, Your Honor. May this
19 witness be excused?

20 THE COURT: Sir, please have a wonderful day.
21 I'm sorry, I'm sorry, sir, the clerk did remind me,
22 I don't see any questions from the jury, so this
23 witness is excused.

24 Have a wonderful day. Sir, have a wonderful
25 day. I just wanted to put that on the record.

1 MR. ZAPPOLO: Thank you, Your Honor.

2 THE COURT: Can I see the attorneys for a
3 second?

4 (Thereupon, a sidebar conference was held.)

5 THE COURT: Mr. Wagner is staying in the
6 courtroom. He's entitled to stay in the courtroom,
7 it's a public courtroom. Let's make sure he
8 doesn't discuss his testimony with anybody else.
9 Okay?

10 MR. ZAPPOLO: Yes.

11 THE COURT: Yeah. If you'll please let him
12 know because he's not being recalled, correct?

13 MR. WEBER: Correct.

14 MR. ZAPPOLO: Correct.

15 THE COURT: All right. So let's make sure he
16 doesn't discuss his testimony with anybody else.

17 MR. ZAPPOLO: Will do, Your Honor.

18 THE COURT: You can just go back there and
19 tell him. Thank you very much.

20 (Thereupon, the sidebar conference was
21 concluded.)

22 THE COURT DEPUTY: Just stand here and face
23 the clerk.

24 THE CLERK: He needs to call her on the
25 record.

1 THE COURT DEPUTY: Call her on the record,
2 please.

3 MR. ZAPPOLO: The plaintiff calls Sylvia
4 Klaker, Your Honor.

5 THE CLERK: Please raise your right hand. Do
6 you solemnly swear or affirm that the evidence
7 you're about to give is the truth, the whole truth,
8 and nothing but the truth?

9 **THE WITNESS: Yes.**

10 THE COURT DEPUTY: Watch your step going up
11 and watch your step coming back down. Okay?

12 **THE WITNESS: Okay.**

13 THE COURT: Whenever you're ready, sir.

14 MR. ZAPPOLO: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MR. ZAPPOLO:

17 Q Ms. Klaker, would you introduce yourself to
18 the jury, please.

19 **A Hi. I'm Sylvia Klaker.**

20 Q And, Ms. Klaker, what do you do for a living?

21 **A I work for Enterprise Assets, LLC.**

22 Q And what does Enterprise Assets, LLC do?

23 **A We are -- I act as a liaison between people
24 that have loans with us and the servicing company.**

25 Q Okay. And what type of loans does Enterprise

1 Assets, LLC offer?

2 **A We don't offer any loans, but we are just**
3 **carrying them -- caring for them. They're residential**
4 **and commercial.**

5 Q Okay. Is there anyone in the courtroom who's
6 a owner, at least in part, of Enterprise Assets, LLC?

7 **A Yes.**

8 Q Who is that?

9 **A Warren Mosler.**

10 Q Okay. Do you know what percentage -- never
11 mind. It doesn't matter.

12 Okay. You're familiar with Mr. Mosler,
13 correct?

14 **A Oh, yes.**

15 Q Okay. And how long have you known Mr. Mosler?

16 **A Goodness. I went to work for him in**
17 **October -- on October 8th of 2003, but we had been**
18 **friends for a few years prior to that.**

19 Q Okay. And you continue to be friends with
20 Mr. Mosler, correct?

21 **A Oh, yes, sir, uh-huh.**

22 Q Okay. Now besides working at Enterprise
23 Assets, LLC, have you ever worked at any other company
24 that Mr. Mosler owned a part or all of?

25 **A Yes.**

1 Q What company or companies?

2 A **Mosler Auto Care Center.**

3 Q Okay. And when did you work for -- when did
4 you start working at Mosler Auto Care Center?

5 A **That was October 8th of 2003.**

6 Q Okay. Does anyone else in your family work
7 for anyone else associated with anyone in this
8 courtroom?

9 A **No.**

10 Q What's your husband's name?

11 A **Randy.**

12 Q Okay. Randy Klaker, correct?

13 A **Yes, sir.**

14 Q Okay. And has Mr. Klaker ever worked for
15 anyone in this room?

16 A **He's done work for Mr. Mosler.**

17 Q Okay. And where do you live, ma'am?

18 A **I live at 355 -- 3557 Turtle Island Court in
19 West Palm Beach.**

20 Q Have you ever lived in any residence that is
21 owned or somehow affiliated with anyone in this
22 courtroom?

23 A **Yes.**

24 Q Okay. Please explain that to the jury.

25 A **I lived on Singer Island for about five, maybe**

1 **six years on and off.**

2 Q Is that a waterfront home?

3 **A It was, beautiful.**

4 Q And you lived in a waterfront home on Singer
5 Island for five or six years, and who owned that home?

6 MR. WEBER: Objection, relevance.

7 THE COURT: What is the relevance?

8 MR. ZAPPOLO: Bias, Your Honor. It goes to
9 bias.

10 THE COURT: Go ahead.

11 **THE WITNESS: Warren Mosler.**

12 BY MR. ZAPPOLO:

13 Q Okay. And how much do you pay in rent there?

14 **A I don't know. That was something between him
15 and my husband.**

16 Q Okay. Now based upon -- let me back up.

17 You started work at Mosler Auto Care Center on
18 October 8th of 2003 you said. How long did you work
19 there?

20 **A I worked there until the business sold.**

21 Q Do you remember when the business sold?

22 **A I believe it was in 2013.**

23 Q Okay. Do you remember who the business was
24 sold to?

25 **A It sold -- the assets were sold to RP High**

1 **Performance.**

2 Q Who were the principles or the people who
3 owned or ran RP High Performance?

4 **A I really don't know who the owners were.**

5 Q Are you familiar at all with a company called
6 Rossion?

7 **A Yes, sir.**

8 Q Okay. What role, if any, did Rossion have in
9 that transaction?

10 **A I don't know what kind of role they had.**

11 Q Okay. Who was your contact person at RP High
12 Performance?

13 **A I believe it was Ian Grunes. That would be
14 G-R-U-N-E-S.**

15 Q Okay. And did there ever come a time when you
16 worked for RP High Performance?

17 **A Yes.**

18 Q And how long did you work for RP High
19 Performance?

20 **A Two or three months.**

21 Q Okay. Now I want to take you back to your
22 time at Mosler Auto Care Center, okay?

23 **A Uh-huh.**

24 Q Now when you worked at Mosler Auto Care Center
25 when you first started, what did you do for that

1 company?

2 **A I answered phones, handled mail. I assisted**
3 **with hiring and terminations. I researched insurance**
4 **companies, the best ones for our group. Basic office**
5 **matters.**

6 Q Okay.

7 **A The general things that we do.**

8 Q Did you do any accounting work?

9 **A I paid bills and I ran payroll.**

10 Q Did your job duties change between 2003 and
11 2013?

12 **A No.**

13 Q You would agree with me that that was roughly
14 ten years that you worked for the company?

15 **A Yes.**

16 Q Okay. Now, what did you do for RP High
17 Performance?

18 **A Pretty much nothing. I just answered phones**
19 **and took messages.**

20 Q Okay.

21 **A But Mr. Grunes never -- never collected his**
22 **messages.**

23 Q Okay. And you ended up leaving the employment
24 of RP High Performance?

25 **A Yes.**

1 Q Okay. Now, when you were with MACC -- and I'm
2 going to use MACC, M-A-C-C as Mosler Auto Care Center,
3 okay?

4 A Sure.

5 Q And that means the company, all right?

6 A I understand.

7 Q Thank you. And so when you were with MACC,
8 what did MACC do? What was the company's business?

9 A They were building a car.

10 Q Okay. Do you remember what car they were
11 building?

12 A The MT900.

13 Q Okay. And how many MT900s were built, to the
14 best of your knowledge?

15 A I don't really know.

16 Q Okay. Fair enough.

17 And have you ever heard of an MT900S?

18 A I heard of that, yes.

19 Q Okay. And did MACC produce a car called the
20 MT900S?

21 A I don't know.

22 Q Okay. Have you ever heard of a Photon?

23 A Yes.

24 Q A car called a Photon?

25 A Yes.

1 Q What do you know about a Photon vehicle?

2 A Not much other than it was bad ass and it was
3 built by guys before I got there.

4 Q Okay. Do you remember what color the Photon
5 was?

6 A I don't. Yellow maybe. I don't know. I
7 can't remember.

8 Q All right. Do you remember any other vehicles
9 being made by Mosler Auto Care Center?

10 A They built the Consulier in the 1990s. That
11 was before I was there, though.

12 Q Okay. Any other vehicles you remember being
13 manufactured at MACC?

14 A Not that I recall.

15 Q Do you remember any other vehicles being
16 discussed at MACC?

17 A Oh, goodness.

18 Q About -- and when I say "discussed," I should
19 narrow that, I apologize to you. Discussed about
20 building or the potential to build.

21 A No.

22 MR. WEBER: Objection, ambiguous.

23 THE COURT: Overruled.

24 BY MR. ZAPPOLO:

25 Q You can answer.

1 **A** **I wasn't involved in the discussions for**
2 **building vehicles.**

3 **Q** **Okay.**

4 **A** **That was out of my duties and**
5 **responsibilities. I don't -- that's not what I did.**

6 **Q** **Okay. You didn't have anything to do with the**
7 **engineering of any cars, did you?**

8 **A** **Oh, no.**

9 **Q** **Okay. And you didn't have anything to do with**
10 **the sales of any cars, did you?**

11 **A** **Other than prepare due diligence packages, no,**
12 **sir.**

13 **Q** **And when you say "due diligence packages,"**
14 **what do you mean?**

15 **A** **When we had a prospective buyer, they would**
16 **want to know how the company was doing and they would**
17 **ask for certain information, and I would make copies and**
18 **present it to them.**

19 **Q** **Okay. So you were talking about the sale of**
20 **the company?**

21 **A** **Yes.**

22 **Q** **Okay. Were you in charge of negotiating any**
23 **sales of the company?**

24 **A** **No.**

25 **Q** **Okay. You weren't in charge of negotiating**

1 potential sales of the company, correct?

2 **A No, that's not my -- that's not a part of my**
3 **duties or responsibilities.**

4 Q Do you recall any individuals that -- or
5 companies, that were interested in buying the company
6 that you did a due diligence package for?

7 **A Yes.**

8 Q Who were those people or companies?

9 **A I know -- I know Todd wanted to buy the**
10 **company.**

11 Q And just for the record, "Todd" is James Todd
12 Wagner, the plaintiff, correct?

13 **A Yes. And we always called him "Todd."**

14 Q Okay.

15 **A And I prepared a packet for Savvas and a**
16 **package for Jeff Reiss and I can't remember his**
17 **partner's name. And there may have been more, but it's**
18 **been so many years, I -- I forget, sorry.**

19 Q Okay. Did you have anything to do with
20 preparing a due diligence package for RP High
21 Performance or that group?

22 **A I could have. I probably did.**

23 Q Okay.

24 **A I must have because they bought the company.**

25 Q Okay.

1 **A The company assets.**

2 Q Now you mentioned a person by the name of
3 Savvas.

4 **A Yes, sir.**

5 Q Do you remember his last name?

6 **A I can't pronounce it.**

7 Q Okay.

8 **A But it's S-A-V -- Savopoulos perhaps.**

9 Q Okay. All right. If I were to say Savvas
10 Savopoulos, would you say I was saying it wrong?

11 **A I wouldn't say you were saying it wrong, sir.**

12 Q Okay. Thank you.

13 **A Uh-huh.**

14 Q All right. Now did you do any -- any
15 accounting work with respect to any of these potential
16 purchases, like take in money or give out any money?

17 **A No.**

18 Q Okay. So do you have any understanding as to
19 whether Mr. James Todd Wagner gave any money in any form
20 as a down payment for the purchase of the company?

21 **A Yes. It's my understanding that he did.**

22 Q Okay. And how much was your understanding
23 that he gave?

24 **A His -- he and his partner gave \$100,000.**

25 Q Now you just said the words "he and his

1 partner."

2 **A Yes.**

3 Q Who do you understand to be his partner?

4 **A Lew Lee.**

5 Q And how do you -- when did you speak with Lew
6 Lee?

7 **A I didn't.**

8 Q Okay. So who told you that Lew Lee was
9 Mr. Wagner's partner?

10 **A His wife, Jill.**

11 Q Okay. Now was -- that's Jill Wagner, correct?

12 **A Yes, sir.**

13 Q Was Ms. Wagner married to Mr. Mosler at the
14 time?

15 MR. WEBER: Objection.

16 **THE WITNESS: Mr. Mosler?**

17 MR. ZAPPOLO: I'm sorry, I apologize.

18 MR. WEBER: Move to strike that portion of the
19 transcript.

20 THE COURT: Granted.

21 MR. ZAPPOLO: Slip of the tongue.

22 BY MR. ZAPPOLO:

23 Q Was Jill Wagner married to Todd Wagner at that
24 time?

25 **A I don't quite remember.**

1 Q Okay. You do understand that they became
2 divorced at some point?

3 A Oh, yes, I'm aware of that. I'm just confused
4 with the dates.

5 Q Okay.

6 A Yeah.

7 Q Based upon your interaction with Ms. Wagner,
8 can you tell this jury your impression of whether or not
9 she was upset about that divorce and the circumstances
10 related to it?

11 A About the divorce?

12 Q Yes.

13 A She was very upset about the divorce.

14 Q Okay.

15 A She found out he had been having an affair
16 with their nanny.

17 Q Okay.

18 A And she was upset.

19 Q Okay. So when was the last time you talked
20 with Jill Wagner?

21 A Approximately three, three and a half weeks
22 ago.

23 Q Do you still stay friendly with Ms. Wagner?

24 A I thought so, but I haven't heard from her in
25 over a week.

1 Q Okay. Mr. Reiss you mentioned. Let me back
2 up. I apologize, we're discussing Mr. Wagner and his
3 deposit. Now I'd like to ask you about Savvas
4 Savopoulos.

5 Do you remember him giving you any deposit for
6 the purchase of MACC or MACC's assets?

7 A I don't remember receiving a deposit from
8 Mr. Savopoulos.

9 Q Okay. What about Jeff Reiss?

10 A No, I don't recall they ever made a deposit.

11 Q Do you remember a deposit from RP High
12 Performance?

13 A I don't even remember that deposit.

14 Q Okay.

15 A If there was one.

16 Q Have you ever heard of a car called a
17 RaptorGTR?

18 A Yes.

19 Q Okay. And what is that car?

20 A I think that's -- if I recall correctly, that
21 was Todd's car that he made some modifications to or was
22 trying to make modifications to.

23 Q I'm sorry, you just said he was making
24 modifications to or what did you say?

25 A He had planned to make some modifications to

1 **it.**

2 Q Okay. Well, let's break that into the two
3 parts you just distinguished.

4 **A Okay.**

5 Q What were the planned modifications to that
6 car?

7 **A Add twin-turbos, and I don't know what all
8 else. I don't know a whole lot about what they can add
9 on or not.**

10 Q Okay. When were the twin-turbos going to be
11 added?

12 **A I don't know.**

13 Q Do you know who added the twin-turbos?

14 **A I don't know.**

15 Q Do you know when the twin-turbos were added?

16 **A Can I back up a little bit?**

17 Q Sure.

18 **A I think the guys in the shop added the
19 twin-turbos, but I'm not 100 percent sure.**

20 Q Okay. So although you're not 100 percent
21 sure, you think that those were put on by the guys in
22 the MACC shop, right?

23 **A I think Todd had them do that work for him,
24 yes.**

25 Q Okay. Now, in fact, Mr. Wagner paid for those

1 twin-turbos to be put on that car as the car was built
2 by MACC, didn't he?

3 **A I'm guessing, yes.**

4 Q Okay. Well, did you prepare or have anything
5 to do with the billing for that vehicle?

6 **A Yes.**

7 Q Okay. While I sort through some documents,
8 I'm going to keep asking you questions just so that we
9 don't waste any time, okay.

10 If you saw a picture of that vehicle, MT --
11 excuse me, the RaptorGTR, would you recognize it?

12 **A Perhaps.**

13 Q Let me ask you another follow-up question.
14 Did you have anything to do with the preparation of the
15 Certificates of Origin for a vehicle?

16 **A I did at times, yes.**

17 Q Okay. And could you explain to the jury how
18 those Certificates of Origin for a vehicle were prepared
19 at Mosler Auto Center?

20 **A We would get information from the front office
21 that we needed to prepare a Certificate of Origin and
22 they would supply the VIN number and the information
23 that needed to go on the certificate and we would type
24 it up.**

25 Q I'm sorry, you said someone would supply the

1 information?

2 **A I said the front office.**

3 Q Okay. Who at the front office?

4 **A Administration would be Jill Wagner.**

5 Q Okay. How were those Certificates of Origin
6 created as between a computer program or a typewriter?

7 **A Typewriter.**

8 Q Okay. Now was there a form and then they were
9 typed up?

10 **A Yes. They came in a -- they came in numerical
11 order and then you would take the next one and put the
12 appropriate information on it, type it up.**

13 Q Was it ever explained to you why you typed up
14 the Certificates of Origin after getting information
15 from the people in the administrative office as opposed
16 to just having them type it up themselves there?

17 **A Why would they type it up when we were the --
18 like the secretarial pool and the receptionist area?
19 We're supposed to do that work.**

20 Q Okay. Thank you.

21 **A Yes.**

22 Q I'm going to show you what's been marked for
23 identification purposes as exhibit -- Plaintiffs'
24 Exhibit 393 without showing that to anyone else.

25 Can you identify that car?

1 **A It's an MT900.**

2 (Thereupon, Plaintiffs' Exhibit 393 was marked
3 for identification.)

4 BY MR. ZAPPOLO:

5 Q Okay. What makes you say it's an MT900?

6 **A It looks like one of our cars.**

7 Q Can you look at the back of that vehicle, how
8 many taillights do MT900s have?

9 **A This one does look different.**

10 Q Okay. Now, does that refresh your
11 recollection as to whose car that might have been?

12 **A No.**

13 Q Okay.

14 **A Please understand, I may have worked at the
15 company, but I'm no car expert.**

16 Q Okay. Do you recall ever any discussions
17 about the number of taillights that were going to be put
18 on the RaptorGTR as opposed to the MT900s?

19 **A No, I don't recall that.**

20 Q You don't recognize that Exhibit 393 at all --
21 correct? -- other than what you've said before?

22 **A No, sir.**

23 Q Okay. So just so we're clear, you're
24 identifying Exhibit 394 as an MT900, correct?

25 MR. WEBER: Objection. It's a 393.

1 MR. ZAPPOLO: I apologize, Your Honor and to
2 counsel.

3 BY MR. ZAPPOLO:

4 Q Exhibit 393, you're identifying that as an
5 MT900, correct?

6 **A I did not. I said it looks like one of our**
7 **cars.**

8 Q Okay. But you can't identify it either as an
9 MT900 or as a Raptor car, correct?

10 **A Correct.**

11 Q Okay. Do you know where the turbochargers
12 were on the MT900s?

13 **A It's those things down there at the bottom,**
14 **perhaps.**

15 Q Okay. Well --

16 **A These silver things down here.**

17 Q Okay. Do you recognize the silver things in
18 that picture as twin-turbos?

19 **A I don't know. Are those the twin-turbos? I**
20 **don't know. That's how much I know about cars.**

21 MR. ZAPPOLO: Okay. I'll take that back from
22 you. I'll leave that with the clerk. It's marked
23 for identification purposes only.

24 THE COURT: So this is just a trial exhibit,
25 it's not in evidence?

1 MR. ZAPPOLO: That's a trial exhibit. It's
2 marked for ID only. She cannot identify it, so
3 I've not moved it in.

4 THE COURT: Okay. Continue, please.

5 BY MR. ZAPPOLO:

6 Q Well, let me actually back up. The car that's
7 in that picture, did you ever see that car around the
8 MACC shop?

9 A It looks like a lot of cars around the MACC
10 shop.

11 Q Okay. I don't want to -- since we're looking
12 at that photograph, is there -- was there anything about
13 that photograph in the background that you recognize?

14 A Yes.

15 Q Okay. What do you recognize in the background
16 of that photograph?

17 A They appear to be containers.

18 Q Okay. Like when you say "containers," what
19 type of containers?

20 A Big containers.

21 Q Okay. If I were to use the words "tropical
22 shipping containers," would that ring a bell?

23 A They look similar to those, yes.

24 Q Okay. And where else have you seen those type
25 of tropical shipping containers?

1 **A Behind the building at MACC.**

2 Q Okay. Thank you.

3 **A You're welcome.**

4 Q When you worked at MACC, did you have an email
5 address?

6 **A Yes.**

7 Q Do you remember what that was?

8 **A I believe it was sklaker@moslerauto.com.**

9 Q Thank you. I'm showing you what's been marked
10 as Exhibit Number 397 or identification purposes. Do
11 you recognize that document?

12 **A Yes.**

13 (Thereupon, Plaintiffs' Exhibit 397 was marked
14 for identification.)

15 BY MR. ZAPPOLO:

16 Q Okay. That is an email that was addressed
17 from -- was it addressed to who?

18 **A Addressed to Warren.**

19 Q And --

20 **A And myself.**

21 Q Okay. Now take a minute and look over that
22 document. I want you to look at the -- specifically,
23 the bottom line on the first page of that email.

24 Does that refresh your recollection at all
25 about any deposits that may have been made by --

1 **A Can I keep looking at it one minute?**

2 Q Absolutely.

3 **A Thank you. Okay.**

4 Q Now I just want you to look at the bottom line
5 in that email chain. Does that refresh your
6 recollection at all as to whether or not Mr. Savopoulos
7 gave a deposit for the purchase of MACC assets?

8 **A I'm sorry, it doesn't -- I don't recall this.**
9 **I really don't recall it, but it says right here "the**
10 **deposit," so he must have submitted a deposit for**
11 **50,000.**

12 Q Okay. Is there any reason to believe that
13 Exhibit Number 397 is not a true and correct copy of the
14 emails that came from the MACC servers?

15 **A No.**

16 MR. ZAPPOLO: Okay. Thank you. At this time
17 I'd like to move Defense Exhibit 397 into evidence.

18 MR. WEBER: No objection.

19 THE COURT: All right. 397 admitted as
20 Plaintiffs' 2?

21 THE CLERK: Yes.

22 MR. ZAPPOLO: Thank you, Your Honor.

23 (Thereupon, Plaintiffs' Exhibit 2 was received
24 into evidence.)

25 BY MR. ZAPPOLO:

1 Q Since we were talking about pictures, I'm
2 going to ask you: Did you have any opportunity to go
3 into the shop while you were at MACC?

4 A Yes.

5 Q And did you have the opportunity to see any
6 vehicles as they were being built in the shop at MACC?

7 A Yes.

8 Q I'm showing you what's been marked as
9 Plaintiffs' Exhibit Number 392. Have you ever seen that
10 vehicle inside the shop at MACC?

11 A I saw several vehicles inside. I wouldn't
12 know one from the other.

13 (Thereupon, Plaintiffs' Exhibit 392 was marked
14 for identification.)

15 BY MR. ZAPPOLO:

16 Q Okay. Do you recognize the background in that
17 picture as being anything or anyplace that you've been
18 before?

19 A That could certainly be our shop area.

20 Q Okay. Is there any reason to believe that
21 that's not a true and accurate representation of the
22 MACC shop area with the vehicle in it?

23 A No.

24 Q Okay.

25 MR. ZAPPOLO: Your Honor, at this point I'd

1 like to move Exhibit 392 into evidence.

2 MR. WEBER: No objection, Your Honor.

3 THE COURT: 392 admitted without objection.

4 (Thereupon, Plaintiffs' Exhibit 3 was received
5 into evidence.)

6 BY MR. ZAPPOLO:

7 Q Now, Ms. Klaker, I'd like you to take a look
8 at Exhibit 392 that's admitted into evidence and compare
9 it to 393. Based upon your powers of observation, do
10 the rear ends of those two cars appear to be the same?

11 A **They're similar, but if you're asking me if
12 it's the same car, I really don't know.**

13 Q Okay. Just so that we're clear, though,
14 Exhibit Number 392 has something very distinctive in the
15 upper right-hand corner with respect to the makeup of
16 the floor. Can you identify that for us?

17 A **Which?**

18 Q The upper right-hand corner?

19 A **The one that's scribbled out or whatever?**

20 Q Do you know what that floor is comprised of?

21 A **Oh, that's the floor of the front office.**

22 Q Okay.

23 A **I mean, not the front office, the showroom.**

24 Q Okay. And what did that showroom floor look
25 like?

1 **A Like checkers.**

2 Q Okay. Checker board floor?

3 **A Yes, sir.**

4 Q Okay. Thank you.

5 **A Uh-huh.**

6 Q And, I apologize, I'm trying to stay on one
7 topic, but I might jump around a little bit.

8 Did you ever hear of a company called Mosler
9 Supercars, Inc.?

10 **A Yes.**

11 Q And what was your understanding as to what
12 Mosler Supercars, Inc. was?

13 **A It was my understanding that was Todd's
14 company.**

15 Q Okay. And did you have any understanding as
16 to what James Todd Wagner intended to do with that
17 company?

18 **A No.**

19 Q Okay. That's because you weren't negotiating
20 the purchase deal, right?

21 **A Correct.**

22 Q Okay. Ms. Klaker, I'm showing you what's been
23 marked as Plaintiffs' Exhibit Number 1004 for
24 identification purposes. Is there any reason to believe
25 that -- well, let me back up.

1 Do you recognize that as your email?

2 **A Can you give me a quick minute?**

3 Q Absolutely. I'm not trying to rush you, I
4 apologize.

5 **A I'm a slow reader.**

6 Q I sympathize, I'm just trying to move as
7 quickly as I can. You tell when to slow down.

8 **A Yes, I recognize this.**

9 (Thereupon, Plaintiffs' Exhibit 1004 was
10 marked for identification.)

11 BY MR. ZAPPOLO:

12 Q Okay. And is there any reason to believe that
13 that's not a true and correct copy of an email that you
14 received on or about November 18, 2011?

15 **A No.**

16 MR. ZAPPOLO: Okay. At this point I'd like to
17 move Plaintiffs' Exhibit Number 1004 into evidence.

18 MR. WEBER: No objection, Your Honor.

19 THE COURT: Admitted as Plaintiffs' 4.

20 MR. ZAPPOLO: Thank you.

21 (Thereupon, Plaintiffs' Exhibit 4 was received
22 into evidence.)

23 BY MR. ZAPPOLO:

24 Q Now that email dated November 18, 2011 talks
25 about a press release, correct?

1 **A Yes.**

2 Q All right. Now, and that email is from Jill
3 Wagner and at the time in 20 -- November 18th of 2011
4 Jill Wagner was what? She held what position at Mosler
5 Auto Care Center?

6 **A She was general manager and vice president of**
7 **global operations.**

8 Q And that's right in her signature block, isn't
9 it, on that document?

10 **A Yes, it is.**

11 Q And now you're aware that there was a car
12 called a RaptorGTR that the company was talking about
13 doing a press release, weren't you?

14 **A Yes.**

15 Q Okay. So you remember a few minutes ago when
16 I was asking you about whether the company made a
17 RaptorGTR and you said you didn't remember?

18 **A Yes.**

19 Q Does that refresh your recollection?

20 **A It does.**

21 Q Okay. So that company did, in fact, make a
22 RaptorGTR, correct?

23 **A Wait a minute. The RaptorGTR I think -- you**
24 **know, I don't know enough about it to go on.**

25 Q Okay.

1 **A About the name changing -- the name changed**
2 **and that's confusing to me.**

3 Q When did the name change?

4 **A I don't even know when the name changed.**

5 Q Okay.

6 **A But it's confusing to me. It went from the**
7 **MT900 to the RaptorGTR and --**

8 Q Okay. Well, in fairness, the MT900 was the
9 cars that Mr. Mosler had been producing, and Mr. Wagner
10 wanted to create a new car and it was going to be called
11 a RaptorGTR, right?

12 **A That makes sense.**

13 MR. WEBER: Objection, leading.

14 THE COURT: Overruled.

15 BY MR. ZAPPOLO:

16 Q You can answer.

17 **A That makes sense.**

18 Q Okay. And, in fact, you knew that Mr. Wagner,
19 through his company, Supercar Engineering, Inc., was
20 working on this certification or, excuse me, the EPA
21 certification so that that car could be sold legally in
22 the country, correct?

23 **A So it could be sold legally? Yes.**

24 Q Okay.

25 **A So it would pass emissions.**

1 Q Right?

2 A Yes.

3 Q And emissions -- and passing emissions was
4 required so you could sell the car legally in this
5 country, correct?

6 MR. WEBER: Objection, calls for a legal
7 conclusion.

8 THE COURT: Approach for a second.

9 (Thereupon, a sidebar conference was held.)

10 THE COURT: I don't recall whether the car
11 being licensed in the state was one of the issues
12 that was addressed by the verdict form.

13 MR. WEBER: On the verdict form? Say it
14 again. Whether what?

15 THE COURT: That's not one of the issues or is
16 it?

17 MR. WEBER: It's one of the statements.

18 MR. ZAPPOLO: I mean, the common knowledge at
19 the company was that he needed EPA certifications
20 so the company could sell the car.

21 MR. WEBER: Yeah, but you're asking a
22 different question. You're asking her whether --
23 you're asking her whether an EPA certification was
24 required for the car to be sold legally.

25 MR. ZAPPOLO: That was common knowledge in the

1 company.

2 THE COURT: What was the question again?

3 MR. ZAPPOLO: Oh, I can rephrase it to try to
4 cure the objection.

5 MR. WEBER: Yeah. You asked her to opine
6 whether that certification was allowing it to be
7 sold legally.

8 THE COURT: Are you asking whether or not they
9 were working on the certification period, or are
10 you asking whether --

11 MR. ZAPPOLO: No. I can ask it in two parts,
12 whether they were working on the certification,
13 number one, and whether they were working on the
14 certification so they could sell the car.

15 MR. WEBER: Yeah.

16 THE COURT: Okay.

17 (Thereupon, the sidebar conference was
18 concluded.)

19 BY MR. ZAPPOLO:

20 Q Okay. Ms. Klaker?

21 A Yes.

22 Q You were aware that Supercar Engineering,
23 Inc., through Todd Wagner, was working on the EPA
24 certification for that car, correct?

25 A Yes.

1 Q Okay. And why was SEI doing that?

2 A Working on the certification?

3 Q Yes. The EPA.

4 A So that it would pass emissions. The car
5 would pass emissions.

6 Q Okay. And in your mind what did passing
7 emissions mean?

8 A It means it would meet the requirement that
9 the government set for -- for those fumes or whatever.

10 Q Okay. And did you have any hopes about
11 whether or not the car would pass emissions?

12 A Of course we wanted it to pass.

13 Q Okay. And why would you care whether it
14 passed emissions?

15 A Because it's -- it was our product to start
16 with. It would be nice if it passed emissions.

17 Q Okay. Did it make a difference if it passed
18 emissions or not?

19 A If it doesn't pass emissions, you can't sell
20 it in the state of California. That, I know.

21 Q Okay.

22 A I'm sure there's other states that required
23 it.

24 Q Okay. Do you know -- have you ever heard the
25 acronym -- and when I say "acronym," it means words

1 spelled out by the first letters of each word.

2 **A Yes, sir.**

3 Q Have you ever heard of CARB, C-A-R-B?

4 **A Yes.**

5 Q Okay. Now what's your understanding as to the
6 difference between CARB and EPA certification?

7 **A I don't know.**

8 Q Okay. Fair enough.

9 Do you have any understanding as to -- never
10 mind. I'll do that some other way.

11 MR. ZAPPOLO: We moved 1004 into evidence,
12 correct?

13 THE COURT: Madam Clerk, that's Number 4,
14 right?

15 THE CLERK: Yes.

16 MR. ZAPPOLO: Okay.

17 BY MR. ZAPPOLO:

18 Q Just so we're clear, did you ever take issue
19 with the email that's marked for identification purposes
20 as 1004? It's in evidence as Plaintiffs' 4.

21 **A Is that the one that's in front of me?**

22 Q Yes. Do you ever recall responding to
23 Ms. Wagner and complaining about that proposed press
24 release?

25 **A I don't remember.**

1 Q Okay. Is that email -- I'm going to direct
2 you to the last three sentences of the first paragraph
3 that reads "However, he" -- referring to Mr. Wagner --
4 "has performed other aftermarket mods to his,
5 quote/unquote, Cubey GTR. This car has no warranty due
6 to the aftermarket mods. He signed a document to that
7 effect earlier this year."

8 When you testified earlier that you heard that
9 he had modified -- that Mr. Wagner had modified the car,
10 is that where you got that information?

11 A **We all knew he modified the car.**

12 Q Okay. Well, you said you knew he modified the
13 car, but the only thing you could come up with was the
14 turbochargers, right?

15 A **Right.**

16 Q But those were done at the factory, right?

17 A **Right, but that's a modification.**

18 Q Well, that was the -- that was the car that
19 Mosler Auto Care Center built, right?

20 A **Yes. But when -- it wasn't standard -- it
21 wasn't -- we didn't produce a car that had the
22 twin-turbos. Those were add-ons. That was a
23 modification.**

24 Q The MT900s didn't have twin-turbos, did they?

25 A **No.**

1 Q Okay. But the new designed car that
2 Mr. Wagner wanted to build, the RaptorGTR, did have
3 twin-turbos, didn't it?

4 A Are you talking about the 2012?

5 Q 2012, yes.

6 A Because we didn't build cars in 2012.

7 Q Okay.

8 A So even that was modified.

9 Q Okay. Now let's try -- let's back up.

10 In 2011, the car that SEI built, was it sold
11 to him in 2011 as a 2012 model year car?

12 A I don't recall that it was -- when it was sold
13 to him.

14 Q All right. Nevertheless, you do recall that
15 there were Bills of Sale, right?

16 A Sure, yes.

17 Q And I apologize, I may -- I may have just
18 misspoken. If I said that SEI built, I meant MACC
19 built, correct?

20 A I understand.

21 Q Okay. Let me see if I can find -- you, in
22 fact, were in charge of collecting checks, weren't you,
23 for Mr. -- for the SEI car?

24 MR. WEBER: Objection. What is the SEI car?

25 BY MR. ZAPPOLO:

1 Q Who selected the payment for the car that was
2 sold to Supercar Engineering, Inc.?

3 A We would take payments in our office. And I
4 believe they're listed on the invoices, the payments
5 that were made.

6 Q You recognize that there were invoices for
7 that car, correct?

8 A Yes.

9 Q Okay. I'm showing you what's been marked --
10 and I will take this one back --

11 A Okay.

12 Q -- as Plaintiffs' Exhibit 1247 for
13 identification purposes. Do you recognize that
14 document?

15 A Yes.

16 (Thereupon, Plaintiffs' Exhibit 1247 was
17 marked for identification.)

18 BY MR. ZAPPOLO:

19 Q Okay. And is there any reason to believe it's
20 not a true and correct copy of a document that you
21 possessed while working at MACC?

22 A Can you repeat the question? I was reading.

23 Q Sure. Is there any reason to believe it's not
24 a true and correct copy of the document that you
25 possessed while working for MACC?

1 **A No.**

2 Q Okay.

3 MR. ZAPPOLO: Your Honor, at this point I'd
4 like to move Plaintiffs' Exhibit Number 1247 in
5 evidence.

6 THE COURT: Any objection?

7 MR. WEBER: No objection.

8 THE COURT: That's Number 5?

9 THE CLERK: Yes, Your Honor.

10 (Thereupon, Plaintiffs' Exhibit 5 was received
11 into evidence.)

12 BY MR. ZAPPOLO:

13 Q Now I'd like to discuss with you Plaintiffs'
14 Exhibit Number 1247, which is now in evidence as Exhibit
15 Number 5, is an email from you to whom?

16 **A Warren Mosler.**

17 Q Okay. And it's dated what?

18 **A April 12, 2011.**

19 Q Okay. And the attachment to that email is
20 what?

21 **A Todd's final invoice.**

22 Q Okay. Now that's the final invoice for the
23 car, correct?

24 **A Yes, sir.**

25 Q Okay. Now, let's flip over to the second

1 page, which is the attachment to that email.

2 Okay. Now that says "Invoice Number 1376,"
3 correct?

4 **A Yes.**

5 Q And that invoice -- right below that it has a
6 picture of a car, right?

7 **A Yes.**

8 Q And it says MT900?

9 **A Yes.**

10 MR. ZAPPOLO: Your Honor, since the document
11 is in evidence, I'd like to present it to the jury
12 with the Court's permission.

13 THE COURT: Granted.

14 BY MR. ZAPPOLO:

15 Q It says MT900 on it, correct?

16 **A Yes.**

17 Q All right. Now that was the form of the
18 invoice that Mosler Auto Care Center used, correct?

19 **A It is.**

20 Q Okay. Because at that point Mosler Auto Care
21 Center was manufacturing cars called MT900s, correct?

22 **A Yes.**

23 Q Okay. Now that invoice is dated August 17,
24 2010, but your email is dated 4/12/2011.

25 **A It is.**

1 Q It is a fact, isn't it, that you just didn't
2 modify the date on the invoice each time you changed it?

3 A We never changed the date.

4 Q Okay.

5 A We always went with the original date that we
6 began the work.

7 Q Okay. So this jury can understand the
8 beginning invoice was created for the car that was sold
9 to Supercar Engineering, Inc. back on August 17, 2010,
10 correct?

11 A That we started building it for him.

12 Q The invoice, the first invoice for that car --

13 A What I'm trying to say is the car may or may
14 not have been paid for. We were just -- we created the
15 invoice on this date, August 17, 2010.

16 Q Right. And the car wasn't built on August 17,
17 2010, was it?

18 A I'm not really sure.

19 Q Okay.

20 A I wouldn't know if it was built or not built
21 completely.

22 Q Okay. Well --

23 A I get the information to put on these
24 invoices, that's my job.

25 Q Okay. So we have information on that. You

1 believe that information on that invoice to be correct?

2 **A Yes.**

3 Q Okay. So the car that was ultimately sold to
4 Supercar Engineering with this final invoice was chassis
5 55, old 32. Do you know what a chassis is?

6 **A Yes. It's a -- like a frame of a car.**

7 Q Okay. And it says "purchase," okay. So it
8 says "Chassis 55, old 32, purchased and exclusive
9 distributorship of Mosler vehicles in Thailand and
10 China," right?

11 **A Yes.**

12 Q And there's a dollar figure there. How much
13 did MACC charge for that car and the exclusive
14 distributorship rights?

15 **A It shows -- are you talking about the zero
16 balance?**

17 Q I'm talking about the 90 right below.

18 **A Oh, the 92 -- okay. I wasn't sure.**

19 Q Okay.

20 **A Because these are on different lines.**

21 Q Okay.

22 **A \$92,605.**

23 Q Okay. Now, in fairness, Mr. Wagner was
24 selling vehicles -- wasn't he? -- at that time?

25 **A He was trying to.**

1 Q Okay. Well, he did receive commissions on
2 sold vehicles, didn't he?

3 A On some, yes, he did.

4 Q Okay. And that's reflected on this invoice?
5 For example, chassis 36 commission, \$9,815. Chassis 58
6 commission, \$3,905.10. Chassis 67 commission,
7 \$3,924.10, right?

8 A Yes.

9 Q Okay. Now there's something in that line that
10 we should probably discuss to be completely transparent
11 that says "Reimbursement for dollars paid to MACC glass
12 shop employees, SEI project that MACC took over." Do
13 you know what that was talking about?

14 A Yes.

15 Q Okay. Explain to the jury what that was.

16 A Todd approached some of the MACC employees
17 behind administration's back and offered them -- offered
18 to pay them \$25 apiece if they would do a special
19 project for him, for his company, and the guys agreed to
20 it. They were getting good money and -- but it was all
21 to be kept on the down-low. And they were going to use
22 our building, our equipment, and our materials and
23 that's what they were doing.

24 Q Okay. Now, other people that work for MACC
25 used the MACC shop to do things, projects for

1 themselves, didn't they?

2 **A I don't know. I wasn't there to see that.**

3 Q All right. Well, you weren't there to see
4 this other -- this instance going on?

5 **A No, no, I wasn't there.**

6 Q All right. So this is what you heard,
7 correct?

8 **A Yes.**

9 Q Okay. Now, we then have some other line items
10 for commission times 11 payments and other commission.
11 And then there's an entry that says "January, three
12 weeks." Do you know what that entry was for?

13 **A No, I was not really listening to you because
14 I keep thinking about what you asked about other people
15 coming in and doing work.**

16 Q Okay.

17 **A The guy goes in -- went into the shop and did
18 a minor repair on his vehicle, that's quite different
19 than taking on a project that's thousands of dollars and
20 is going to take multiple weekends to complete and you
21 hide this all from the owner of the company, from the
22 general manager.**

23 Q Okay.

24 **A From everybody, and the only reason you got
25 discovered is because somebody came to the shop on a**

1 Sunday afternoon or Saturday afternoon and found it open
2 with all these guys working on your project?

3 Q Okay. So I notice a little bit of --

4 A Yeah, I'm angry.

5 Q -- agitation. You're angry? Okay.

6 A Uh-huh. I'll calm down because that really
7 was upsetting to me at the time.

8 Q Okay. So even though it wasn't you that
9 discovered it, you heard that that had happened from
10 someone else, correct?

11 A I knew it happened. I knew it did.

12 Q Okay. How did you know?

13 A Because Mr. Wagner was scrambling to correct
14 his bad judgment.

15 Q Okay. So there was an agreement, though, that
16 Mr. Wagner would turn over that project to MACC,
17 correct?

18 A That's because his wife would -- the general
19 manager thought it best, instead of terminating him,
20 best to have us take the project over and make it appear
21 as if it was our project. It was not.

22 Q Was it his wife or his ex-wife?

23 A I don't know at the time. I don't recall if
24 they were -- had been divorced already or not.

25 Q And, in fairness, you're not testifying as to

1 what Jill Wagner thought or why she did something, are
2 you? You can't?

3 **A No.**

4 Q Okay. So that's what you concluded, correct?

5 **A Oh, yes.**

6 Q Okay. Now below that, let's get back to my
7 question, which was there's an entry for "January, three
8 weeks." That's something you know about, right?

9 **A I'm not sure I know about it. It's been a**
10 **long time. It says "January, three weeks" --**

11 Q Right.

12 **A -- so I'm thinking -- I'm thinking it's -- it**
13 **was -- it would have been January of 2011.**

14 Q Okay.

15 **A I don't really know.**

16 Q Okay. Do you recall Mr. Wagner deferring his
17 compensation, allowing his -- what would have been paid
18 to him or to SEI to be applied towards this vehicle?

19 **A Yes, I do recall that.**

20 Q Okay. And that, in fact, is what these
21 entries on the invoice are for, correct?

22 **A That could very well be.**

23 Q Okay. So Mr. Wagner was working for his
24 company SEI, and rather than have MACC pay his company
25 or him directly, the company gave a credit against the

1 car that SEI was purchasing, correct?

2 **A Yes.**

3 Q Okay. And those are in there. And now I
4 noticed that it says "January, three weeks, February,
5 out one week plus 12.5 hours, see a note." And then it
6 says "March" and then it says "April, two weeks."

7 You would agree with me there's no entries on
8 this after the first two weeks of April 2011, correct?

9 **A Correct.**

10 Q Okay. But Mr. Wagner continued to work for
11 the company during that time period, didn't he?

12 **A I don't recall.**

13 Q Or SEI?

14 **A I don't recall.**

15 Q Okay. Was SEI, through Mr. Wagner, continuing
16 to work on getting the EPA certification during that
17 time period?

18 **A I don't know.**

19 Q Okay. Do you know when SEI, through
20 Mr. Wagner's efforts, obtained EPA certification for
21 Mosler Auto Care Center to build a 2012 car?

22 **A I really don't recall.**

23 Q All right. Now you testified earlier that you
24 have no reason to believe that this is not an accurate
25 bill, correct?

1 **A Correct.**

2 Q Okay. Now I'd like you to flip over to the
3 other side, the next page marked DEF11176 at the bottom.
4 Do you have that page?

5 **A Yes.**

6 Q Okay. Now there's an entry on the top, the
7 first entry and the second entry, for check valves. Do
8 you know what those are used for?

9 **A No.**

10 Q Okay. And then the next one, though, might
11 help you a little bit. It says "Optional equipment."
12 By the way, MACC allowed its purchase of vehicles to
13 purchase options, correct?

14 **A Yes.**

15 Q And in this case, MACC said that the
16 twin-turbos on the 2012 RaptorGTR were an option,
17 correct?

18 **A That's what it says.**

19 Q Okay. Would you agree with me that SEI
20 purchased the 2012 RaptorGTR with twin-turbos that the
21 company, MACC, put on that car as an option?

22 **A Yes.**

23 Q Okay. So it wasn't that he did aftermarket
24 modifications to the car, those twin-turbos were put on
25 by MACC at the company, correct?

1 **A** **But that's not the -- that -- I cannot agree**
2 **with.**

3 **Q** Okay. Let's go down a little more. The third
4 line item on that second page, "03-1048 micron filter
5 for turbo oil feed." That was for the turbochargers on
6 that car, right?

7 **A** **I don't know. I would guess so since it says**
8 **turbo in the name.**

9 **Q** Okay. The next line item, "Turbo fabrication
10 supplies." MACC charged SEI for the turbo fabrication
11 supplies that were put on this car, right?

12 **A** **Yes.**

13 **Q** Can we agree now that MACC put the turbos on
14 this car and they were not an aftermarket item?

15 **A** **Well, it would be aftermarket because the car**
16 **is built, he just wants to add different items to it.**

17 **Q** So --

18 **A** **So you take a standard vehicle, the standard**
19 **MT900, and the customer says "Well, now I want this on**
20 **it and that on it," and then so we ordered the parts and**
21 **the guys would put them on.**

22 **Q** Okay. Well, wasn't this vehicle actually
23 titled as an MT900, or was it titled as a RaptorGTR?

24 **A** **You know what? I don't -- I thought it came**
25 **off the floor as an MT900. I don't know how it got**

1 **changed.**

2 Q Okay.

3 **A I don't know the specifics. I know it got**
4 **changed.**

5 Q What representations were made to the United
6 States Environmental Protection Agency about the name of
7 the vehicle?

8 **A I don't know.**

9 Q Well, didn't Jill Wagner let you know that in
10 the prior -- Plaintiffs' Exhibit Number 4 in evidence
11 where she said "We're holding off until the new owner
12 picked the name because the certification name was done
13 as RaptorGTR"?

14 **A Fine.**

15 Q Okay. Can you agree with me now that the car
16 was certified as the 2012 RaptorGTR?

17 **A To the -- to the certification people?**

18 Q Yes.

19 **A Yes.**

20 Q The United States Environmental Protection
21 Agency.

22 **A Yes.**

23 Q Okay. Thank you.

24 Do you have any reason -- do you know of any
25 reason why other people associated with MACC would not

1 make that admission?

2 **A** **I don't know. This -- I can only speak for**
3 **myself. And I have a lousy memory and I'm not that --**
4 **I'm not a car junkie.**

5 **Q** **Okay. But you were there?**

6 **A** **Yes, I was. I was there to pay bills, answer**
7 **the phone, and mail.**

8 **Q** **Okay.**

9 **A** **I don't know about building a car. I just**
10 **know they look great and they ran wonderful.**

11 **Q** **I can certainly agree on that. Thank you.**

12 **A** **You're welcome.**

13 MR. ZAPPOLO: And I don't know. Ms. Clerk,
14 did we move Plaintiffs' 1247 into evidence?

15 THE CLERK: Yes.

16 MR. ZAPPOLO: We did?

17 THE COURT: That's 5, right?

18 THE CLERK: Yes.

19 THE COURT: Okay.

20 BY MR. ZAPPOLO:

21 **Q** **Now with respect to the MT900 cars, do you**
22 **ever recall there being a problem with them?**

23 **A** **Yes.**

24 **Q** **And obviously I'm talking about a big problem,**
25 **not just like a little tweaking problem?**

1 **A Yes.**

2 Q What was one of the major problems with the
3 MT900s that you were aware of?

4 **A I was made aware of the fact that there was a
5 problem. There may have been a problem with the gas
6 line on some of the cars.**

7 Q Okay. And what, if anything, did Mosler Auto
8 Care do regarding the gas line?

9 I'm sorry, did you not hear my question?
10 What, if anything, did Mosler Auto Care Center do with
11 respect to the problem with the gas line?

12 **A We notified our customers --**

13 Q Okay.

14 **A -- and made them aware of the situation and
15 that we were going to correct it.**

16 Q Okay. Supercar Engineering, Inc. was a
17 customer of Mosler Auto Care Center, wasn't it?

18 **A Yes.**

19 Q Okay. You said you were going to -- that MACC
20 was going to take care of it. Do you recall any
21 specifics about that?

22 **A Yes. We would trailer the vehicle and
23 close -- transport, bring it back to the shop, make the
24 correction, and trailer it back to the customer.**

25 Q I'm showing you what's been marked as

1 Plaintiffs' Exhibit Number 340, 340. Do you recognize
2 that document?

3 **A Yes.**

4 (Thereupon, Plaintiffs' Exhibit 340 was marked
5 for identification.)

6 BY MR. ZAPPOLO:

7 Q Is that something that you typed up?

8 **A It is.**

9 Q Okay. And earlier you referenced that you
10 would notify the customers. Was that such a
11 notification?

12 **A Yes, it is.**

13 MR. ZAPPOLO: Okay. At this point, Your
14 Honor, I'd like to move Plaintiffs' Exhibit Number
15 340 into evidence.

16 MR. WEBER: No objection, Your Honor.

17 THE COURT: Admitted as 6.

18 MR. ZAPPOLO: Okay.

19 (Thereupon, Plaintiffs' Exhibit 6 was received
20 into evidence.)

21 BY MR. ZAPPOLO:

22 Q Let me see that briefly.

23 **A Uh-huh.**

24 Q Now that document reads "Dear, Mr. Doe." It's
25 dated March 23, 2012, but it reads "Dear, Mr. Doe. It

1 has come to our attention that a defect which relates to
2 safety may exist in your Mosler MT900. The fuel lines
3 may be prone to fuel leakage which, in the presence of
4 an ignition source, creates a fire risk.

5 In order to avoid a potential fuel line
6 failure, Mosler Automotive will replace the fuel lines
7 in your vehicle at its cost and expense. It is
8 estimated that this fuel line replacement will take less
9 than one half day. In an abundance of caution, in all
10 caps, you should not operate your Mosler MT900 until the
11 fuel lines have been replaced. Please immediately
12 contact Mosler Automotive at a phone number or
13 sklaker@moslerauto.com to arrange replacement of the
14 fuel lines.

15 If you recently paid for a repair that
16 addresses the issue described in this letter, you may be
17 eligible for a refund of previously paid repairs. In
18 order to qualify for a refund, please send us your paid
19 original receipt, no photocopies. If you no longer own
20 the vehicle and have the name and address of the current
21 owner, please let us know and kindly forward this letter
22 to the new owner. We apologize for the situation. We
23 assure you with your assistance we will correct this
24 condition. Our commitment is to provide you with the
25 highest level of services. Very truly yours, Sylvia

1 Klaker."

2 Now my question to you is: Did these letters
3 go out?

4 **A Yes, they did.**

5 Q Okay. And it references, in the regarding
6 line, the VIN belonging to this customer. So you
7 identified vehicles by the VIN, right?

8 **A The VIN number, yes.**

9 Q Okay. And VIN stands for?

10 **A Vehicle identification number.**

11 Q Okay. And you knew that because you used to
12 work for the Florida Department of Motor Vehicles,
13 didn't you?

14 **A Yes, sir.**

15 Q Okay. So how many customers had their fuel
16 lines replaced?

17 **A I don't recall.**

18 Q Okay. At the time that this went out how did
19 MACC become aware of the fuel line problem?

20 **A I don't recall.**

21 Q Do you recall any cars catching on fire?

22 **A Yes.**

23 Q Okay. Whose cars caught on fire?

24 **A Alan Simon's car.**

25 Q Okay. And who is Alan Simon?

1 **A He was an attorney that worked for Mr. Mosler.**

2 Q Okay. Did anyone else's car catch on fire, do
3 you recall?

4 **A No.**

5 Q Okay. So the only one you remember is Alan
6 Simon, right?

7 **A Yes.**

8 Q All right. And I believe we moved Exhibit 340
9 into evidence, and I'll give that to the clerk.

10 Now with respect to Mr. Simon's car, what
11 knowledge, if any, do you have about any role that
12 Mr. Wagner may have played in an insurance claim?

13 **A I don't have any knowledge.**

14 Q Okay. Have you ever seen a picture of
15 Mr. Simon's car after it burned?

16 **A Yes, I think I did.**

17 Q Do you recall any conversations with Mr. Simon
18 about his car burning?

19 **A No.**

20 Q Do you recall any conversations with anyone
21 about whether or not Mosler Auto Care Center would honor
22 the recall about the fuel lines for Supercar
23 Engineering's vehicle?

24 **A I don't recall.**

25 Q Do you know whether Supercar Engineering's

1 vehicle, the 2012 RaptorGTR, had the exact same fuel
2 lines?

3 **A I don't know if it did or not. Do you want me**
4 **to look at this?**

5 Q Yes, please. For the record, you're looking
6 at Plaintiffs' Exhibit Number 340 for identification
7 purposes.

8 **A Yes. I remember this.**

9 Q Okay. I apologize. I apologize, is that 340
10 or -- I'm actually going to remark that as 59 because
11 I'm sure it's 59. I'm not sure if it's 340 as well,
12 so...

13 Now the same question, ID 59 --

14 **A Okay.**

15 MR. ZAPPOLO: Okay. And, Counsel, I'll give
16 you a copy, 59.

17 (Thereupon, Plaintiffs' Exhibit 59 was marked
18 for identification.)

19 BY MR. ZAPPOLO:

20 Q Now on the second page of Exhibit Number 59,
21 do you recognize that picture?

22 **A Yes.**

23 Q You've seen that before, right?

24 **A I have.**

25 Q Okay. And what is that?

1 **A** **It's the --**

2 Q Go ahead.

3 **A** **It's a picture of Alan Simon's car and it is**
4 **burned.**

5 Q Okay.

6 MR. ZAPPOLO: Counsel, do you object to us
7 moving that in now?

8 MR. WEBER: No objection.

9 MR. ZAPPOLO: Okay. At this point I'd like to
10 move Plaintiffs' Exhibit Number 59 into evidence.

11 THE COURT: Admitted as 7.

12 MR. ZAPPOLO: Thank you.

13 (Thereupon, Plaintiffs' Exhibit 7 was received
14 into evidence.)

15 BY MR. ZAPPOLO:

16 Q It's fair to say that car burned to the
17 ground, isn't it?

18 **A** **It did.**

19 Q Okay. And it's fair to say that your recall
20 notice for those fuel lines was warranted, isn't it?

21 **A** **Most certainly.**

22 Q Okay. Do you have any reason or any
23 understanding as to why -- any understanding as to
24 whether or not the fuel line in the 2012 RaptorGTR was
25 replaced by the company?

1 **A I don't remember.**

2 Q You didn't discuss that with anyone, did you?

3 **A I don't remember.**

4 Q Fair enough. Now, do you remember earlier
5 today you testified that you didn't have anything to do
6 with the negotiations of the sale of MACC or MACC's
7 assets to Mr. Wagner, correct?

8 **A Correct.**

9 Q Okay. Do you ever recall anyone telling you
10 you were in charge of the sale?

11 **A I don't recall anybody telling me that.**

12 Q Okay.

13 **A The guys would joke around sometimes and say I
14 was -- I was the boss. You know, I was the go-to girl
15 at the building because I've been there for so long, but
16 it was just a big joke.**

17 Q Who would joke around like that?

18 **A You know, the guys. You know, they call me
19 "Boss" or they say "She's the boss lady," but --**

20 Q You're talking about the --

21 **A The workers.**

22 Q In the shop?

23 **A Yeah.**

24 Q Not Mr. Mosler?

25 **A No. No.**

1 Q No reason he would joke like that, right?

2 A He jokes around, believe me, but he wouldn't
3 seriously tell me that I was in charge.

4 Q I'm showing you what's been marked as
5 Plaintiffs' Exhibit Number 1062. Your email address was
6 still sklaker@moslerauto.com, correct?

7 A It is, yeah.

8 (Thereupon, Plaintiffs' Exhibit 1062 was
9 marked for identification.)

10 BY MR. ZAPPOLO:

11 Q Okay.

12 A I love it.

13 Q Okay. Why don't you --

14 A This brings me back.

15 Q Why don't you just share with the jury what
16 you're laughing about.

17 A It's an email from Warren Mosler dated
18 March 19, 2012 to myself and copies Jacob Mosler, Alan
19 Simon, and Dan Carvalho. Dan Carvalho was our
20 supervisor, he supervised the guys; and Jacob Mosler is
21 Mr. Mosler's son.

22 And he says "Hi, Sylvia. You're in charge of
23 the sale to Todd." It's the first line. And then it
24 says "Do your best to make sure it happens as soon as
25 possible. Thanks."

1 And then he says "Alan, Jacob, and Dan are
2 standing by to assist as needed and help make sure it's
3 there for us. Thanks."

4 Q You think that email was a joke, right?

5 A I -- I didn't -- I don't negotiate for
6 Mr. Mosler, so when I got this email, it was like a joke
7 to me.

8 Q Okay. So your testimony to this jury is that
9 despite the plain language of that document, you thought
10 that was a joke and not serious, right?

11 A I'm sure that Mr. Mosler was saying "You're in
12 charge, go ahead, make it happen," and that would have
13 been fine, but to me it was kind of a joke, but I would
14 not be able to negotiate a sale.

15 Q Okay. Well, what if -- if Mr. Mosler told you
16 "You're in charge of the sale to Todd," did you act on
17 that?

18 A I don't recall. I asked him, "Okay. What are
19 the parameters? Is there a contract?" That's how much
20 I knew about it. "Is there a contract? Do you guys
21 have an agreement somewhere?"

22 Q Right. Do you recall receiving a response?

23 A I don't recall receiving it, but perhaps you
24 have something to show me.

25 Q Okay. Well, we'll get to that.

1 **A Okay.**

2 Q Now, do you recall any other conversations,
3 any verbal conversations with Mr. Mosler about you
4 handling the sale of MACC assets to James Todd Wagner?

5 **A MACC assets? No.**

6 Q Okay. MACC, the company.

7 **A No, sir.**

8 Q Okay. Either a share sale or the asset sale?

9 **A No.**

10 MR. WEBER: Objection, asked and answered.

11 THE COURT: Overruled.

12 BY MR. ZAPPOLO:

13 Q You can answer.

14 **A No.**

15 Q Okay. Thank you.

16 Nevertheless, did you ever see a contract?

17 **A Did I see a contract?**

18 Q For the purchase of MACC or either the shares
19 or MACC assets.

20 **A I don't know if I ever saw it. I don't recall
21 seeing it. I may have.**

22 Q Okay.

23 **A So much has happened in the last ten-plus
24 years, I'm sorry.**

25 Q Okay. So if someone were to say that you were

1 put in charge of the sale of MACC's assets or MACC's
2 shares in the company to James Todd Wagner, would that
3 be a true statement or a false statement?

4 **A Can you repeat that, please?**

5 Q Sure. If someone were to say that you were
6 put in charge of the sale of either -- let's do it two
7 ways.

8 If someone were to say that you were in charge
9 of handling the sale of the assets of MACC to James Todd
10 Wagner, would that be a true statement or a false
11 statement?

12 **A Seriously?**

13 Q Yes.

14 **A No. That would be false.**

15 Q That would be a false statement? Okay. Thank
16 you.

17 If someone were to say that you were put in
18 charge of handling the sale of MACC's shares to James
19 Todd Wagner, would that be a true statement or a false
20 statement?

21 **A That would be a false statement.**

22 Q Okay. Even if those words were uttered by
23 Mr. Mosler, correct?

24 **A Yes.**

25 Q Okay.

1 THE COURT: Can I see the attorneys for a
2 second?

3 MR. ZAPPOLO: Yes, sir.

4 (Thereupon, a sidebar conference was held.)

5 THE COURT: I don't know if you're going to
6 continue this line of questioning or switching
7 gears, I'm going to leave it up to you, it's your
8 witness, but around 3 o'clock or 3:30 or
9 thereabouts I'd like to give them a break. I can
10 give them a break now, truthfully.

11 MR. ZAPPOLO: Do you want to take a break now?

12 MR. WEBER: Can we take a break, Your Honor?

13 MR. ZAPPOLO: Yeah, that's fine.

14 THE COURT: Yeah. We've been going for a
15 while.

16 MR. WEBER: We need one.

17 (Thereupon, the sidebar conference was
18 concluded.)

19 THE COURT: All right. We're going to take a
20 ten-minute break so everybody can stretch their
21 legs a little bit and use the facilities if you
22 need to. Deputy.

23 THE COURT DEPUTY: Yes, Your Honor.

24 (Jurors exit the courtroom at 2:40 p.m.)

25 THE COURT: So you can use the restroom too.

1 You're testifying, so you cannot speak to the
2 attorneys or anybody else, okay? The subject
3 matter of your testimony you cannot discuss with
4 anybody until I tell you otherwise.

5 **THE WITNESS: Okay.**

6 THE COURT: All right.

7 MR. ZAPPOLO: Or text or email.

8 **THE WITNESS: Okay. I don't think I'm going**
9 **anywhere, so...**

10 THE COURT: So we'll take a ten-minute break.

11 MR. ZAPPOLO: Thank you, Your Honor.

12 (Thereupon, a short break was taken from
13 2:41 p.m. to 2:58 p.m.)

14 THE COURT: All right. Let's bring them out.

15 (Jurors entering the courtroom at 2:59 p.m.)

16 All right. Please be seated. You are still
17 under oath. It's your witness.

18 BY MR. ZAPPOLO:

19 Q Ms. Klaker, before the break we had gotten to
20 the point where I was asking you to confirm that anyone
21 that said that you were in charge of negotiating a sale
22 of MACC or MACC's stock or MACC's assets to Mr. Mosler
23 would be incorrect at best and, would you agree, lying
24 at worst?

25 A **Well, actually in reading this, he's telling**

1 me I'm in charge of the sale. He didn't say I was in
2 charge of negotiating the sale.

3 Q Okay. So you distinguish between -- what
4 would you be if you were in charge of the sale? What
5 would you be doing?

6 A I would be -- I do not recall ever negotiating
7 with Todd about the sale of this company.

8 Q You would agree with me that somebody in
9 charge takes control of the whole thing, right?

10 A Yes.

11 Q Okay. So we're crystal clear, you weren't in
12 charge of anything --

13 A I don't recall being in charge of it, no.

14 Q Okay. Can I see that exhibit?

15 A Uh-huh.

16 Q Thank you.

17 MR. ZAPPOLO: Ms. Clerk, do you reflect 1062
18 in evidence?

19 THE CLERK: No.

20 MR. ZAPPOLO: At this point, Your Honor, I'd
21 like to move Plaintiffs' Exhibit 1062 into
22 evidence.

23 THE COURT: Any objection?

24 MR. WEBER: No, Your Honor.

25 THE COURT: All right. Admitted as 7.

1 THE CLERK: 8, Your Honor.

2 THE COURT: 8.

3 MR. ZAPPOLO: Thank you.

4 (Thereupon, Plaintiffs' Exhibit 8 was received
5 into evidence.)

6 BY MR. ZAPPOLO:

7 Q Ms. Klaker, I'm showing you what's been marked
8 as Plaintiffs' Exhibit 1220 for identification purposes.

9 On May 2, 2012, you still shared the same
10 email address, right? Sklaker@moslerauto.com?

11 A Yes.

12 (Thereupon, Plaintiffs' Exhibit 1220 was
13 marked for identification.)

14 BY MR. ZAPPOLO:

15 Q And Alan Simon was still attorney for Mosler
16 Auto Care Center, correct?

17 A Yes.

18 Q Okay. Do you recall that document, ma'am?

19 A No, I don't. I'm sorry. It's been so many
20 years, but I'll read it if you'd like.

21 Q Sure.

22 A Yes. I don't recall this, I'm sorry.

23 Q Okay. Just so we're clear, you don't recall
24 being involved in discussions between the MACC
25 attorney -- or, excuse me, in email discussions between

1 the MACC attorney and James Todd Wagner?

2 **A I don't remember this email.**

3 Q Okay. Is there any reason to believe that
4 that's not a true and correct copy of an email that was
5 sent to you?

6 **A No.**

7 Q Okay. Do you need any more time reviewing it,
8 ma'am?

9 **A Yes. I'd like a little bit more time.**

10 THE COURT: Did you mean to turn that on?

11 MR. ZAPPOLO: I did, Your Honor. I didn't
12 realize that was on. And for the record, that's
13 the hover cam that we were discussing.

14 **THE WITNESS: Okay.**

15 BY MR. ZAPPOLO:

16 Q Okay. Now that email, does that refresh your
17 recollection about any conversations that were
18 transpiring between Mr. Simon, MACC's attorney, and
19 Mr. Wagner?

20 **A Vaguely.**

21 Q Okay. And do you recall any conversations
22 about MACC wanting Mr. Wagner to change the VIN number
23 and the manufacturer's Certificate of Origin for his
24 vehicle, the RaptorGTR?

25 **A Yes.**

1 Q Okay. And do you recall -- did you or anyone
2 make a decision that they wouldn't sell the company to
3 Mr. Wagner unless he agreed to change the VIN number and
4 the statement of origin for his car?

5 A I don't remember making that decision.

6 Q Okay. Nevertheless, does this Exhibit
7 Number 1220 refresh your recollection generally about
8 the issues that were being discussed in or about the
9 time frame of May 2, 2012?

10 A Yes, sir.

11 MR. ZAPPOLO: Okay. At this time, Your Honor,
12 I'd like to introduce -- I'd like to move
13 Plaintiffs' ID 1220 into evidence.

14 THE COURT: Any objection?

15 MR. WEBER: No objection, Your Honor.

16 THE COURT: Admitted as 9.

17 (Thereupon, Plaintiffs' Exhibit 9 was received
18 into evidence.)

19 BY MR. ZAPPOLO:

20 Q Now, at the top Mr. Simon, that's his email
21 address. Do you remember where Mr. Simon was on May 2,
22 2012? In what state?

23 A I don't.

24 Q Okay. And that is your email address,
25 correct?

1 **A It was at that time, yes.**

2 Q Okay. Now remember earlier I asked you about
3 Mosler Supercars, Inc.?

4 **A Yes.**

5 Q Does that document refresh your recollection
6 as to who Mosler Supercars, Inc. was?

7 **A Mosler Supercars, Inc. would be Todd.**

8 Q Right. Mr. Wagner had created a company
9 called Mosler Supercars, Inc., didn't he?

10 **A Yes.**

11 Q And you knew that, right?

12 **A Yes.**

13 Q Okay. And his plan was to have the assets of
14 MACC and/or the shares of MACC transferred into Mosler
15 Supercars, Inc., a company that he owned, correct?

16 **A I don't know.**

17 Q Okay. Fair enough.

18 Do you recall any conversations about
19 Mr. Mosler not wanting that to happen or wanting that to
20 happen one way or the other?

21 **A No.**

22 Q Okay. What did you understand Mr. Simon to
23 mean when he said "Regarding modification agreement, I
24 don't think it's necessary since both the VIN
25 number/MSO, and warranty issues need to be resolved

1 before Warren will sign any stock sales agreement"?

2 **A Can you repeat the question, please?**

3 Q I'm looking at that second full paragraph
4 regarding modification agreement. And Mr. Simon wrote,
5 "I don't think it's necessary since both the VIN
6 number/MSO and warranty issues need to be resolved
7 before Warren will sign any stock sales agreement."

8 **A And what about it?**

9 Q Okay. What do you recall as being discussed
10 during that time period, May 2, 2012, with respect to a
11 VIN/MSO and warranty issues?

12 **A I don't remember having -- I don't remember**
13 **the discussion, if we had it.**

14 Q Okay. See in bold, it says "Don't forget that
15 MACC will post a 'Buyer Beware' notice on its websites
16 if the VIN number/MSO are not corrected; time of the
17 essence."

18 Do you ever remember a "Buyer Beware" notice
19 being posted on MACC's website?

20 **A I don't know if it was. I have a vague**
21 **recollection of that. I didn't work the website, so...**

22 Q Do you recall --

23 **A I wouldn't know.**

24 Q I took your deposition in this case, right?

25 **A Yes, sir.**

1 Q Do you recall me asking you about that "Buyer
2 Beware" notice?

3 A I don't remember you asking me.

4 Q Okay. Would it refresh your recollection if
5 we went over your deposition testimony about that?

6 A You can, if you'd like.

7 Q Okay. Let me try and do this the quick and
8 easy way. I'm showing you what's marked as Plaintiffs'
9 Exhibit 358. I think I handed it to you upside down.
10 And I'd like you to focus your attention on the lower
11 center of the document.

12 A Uh-huh.

13 (Thereupon, Plaintiffs' Exhibit 358 was marked
14 for identification.)

15 BY MR. ZAPPOLO:

16 Q And in kind of a burgundy color, there's
17 something there. Does that refresh your recollection as
18 to whom --

19 A Yes.

20 Q -- if anyone, drafted the "Buyer Beware"
21 notice?

22 A Yes.

23 Q Okay. Who did that?

24 A I don't know. I didn't work the website.

25 Q Okay. Nevertheless, you do recall giving your

1 deposition on or about May 1, 2019, don't you?

2 **A Yes.**

3 Q And being asked about that?

4 **A I don't recall being asked.**

5 Q Okay.

6 **A Just because I don't recall doesn't mean you**
7 **didn't ask me.**

8 Q No, I understand. And we're going to get it
9 cleared up in front of the jury.

10 **A Okay.**

11 MR. ZAPPOLO: Counsel, page 154 of the
12 deposition transcript of Ms. Klaker.

13 MR. WEBER: Just hold on one second, Scott.

14 MR. ZAPPOLO: Absolutely. My apologies for
15 not having it on hand.

16 BY MR. ZAPPOLO:

17 Q Do you recall me asking you, during that
18 deposition, about a rusty burgundy color such as the
19 document in front of you right now?

20 **A Asking me --**

21 Q Yes.

22 **A -- what specifically?**

23 Q Do you recall me asking you questions about
24 the print that was written in there?

25 **A I don't recall you asking me questions.**

1 Q Okay.

2 A **But if you did, that's fine.**

3 Q Okay. And I'm going to -- if I may, Your
4 Honor, I apologize, I don't have multiple copies.

5 Do you recall I asked you -- Counsel, at page
6 154, line 2 -- "Question: Okay. And my question to you
7 is on the bottom there, in that kind of rusty burgundy
8 color there, it says 'Important Notice.' Did you have
9 anything to do with posting that notice?" And your
10 answer was?

11 A **"Yes."**

12 Q Okay. And then I asked you: "Okay. What did
13 you have to do with posting that notice?" And your
14 answer?

15 A **"I prepared it."**

16 Q Okay. And then I asked you: "Okay. And how
17 did you get it on to the website?" And you responded?

18 A **"I can't remember."**

19 Q Okay. So just to follow-up on that, I then
20 said: "Okay. You prepared it, what did you mean by
21 that?" And your answer was?

22 A **"I wrote it down and then I could have given
23 it to somebody, or I could have entered it. I don't
24 remember."**

25 Q Okay. Now, does that refresh your

1 recollection as to who typed the language on that
2 document?

3 **A Yes. I typed it.**

4 Q Okay.

5 **A I never disputed that I typed it, though.**

6 MR. ZAPPOLO: Okay. Your Honor, at this point
7 I'd like to move Plaintiffs' Exhibit 358 into
8 evidence.

9 THE COURT: Any objection? Hold on. Can I
10 see the attorneys for a second?

11 MR. WEBER: We have no objection.

12 THE COURT: All right. Admitted as 10 without
13 objection.

14 (Thereupon, Plaintiffs' Exhibit 10 was
15 received into evidence.)

16 MR. ZAPPOLO: That one's 10. This will be 11.

17 THE COURT: Hold on.

18 THE CLERK: This one is 9.

19 THE COURT: That's 9 and this is 10. All
20 right. Thank you.

21 MR. ZAPPOLO: Thank you.

22 (Thereupon, a sidebar conference was held.)

23 THE COURT: Is there somebody in the back
24 who's walking in trying to give you something? Is
25 that one of your witnesses?

1 MR. ZAPPOLO: No. I don't know. We can both
2 go back and see.

3 THE COURT: Yeah, go check and see. I want to
4 make sure that it's not anybody that's going to
5 listen.

6 Are we good?

7 MR. ZAPPOLO: We're fine, Your Honor.

8 (Thereupon, the sidebar conference was
9 concluded.)

10 THE COURT: All right. Thank you. This is
11 your witness.

12 MR. ZAPPOLO: Thank you.

13 BY MR. ZAPPOLO:

14 Q Ms. Klaker, I'd like you to go ahead and read
15 that notice that was posted on the MoslerAuto.com
16 website.

17 A "Important Notice. If you plan to purchase a
18 Mosler MT900, Photon, Raptor, RaptorGTR, or any other
19 vehicle produced by Mosler from anyone other than
20 directly from Mosler Automotive, be sure to check that
21 the vehicle identification number on the vehicle matches
22 the VIN number shown on the manufacturer's statement of
23 origin or the MSO or the state-issued certificate of
24 title, whichever document the owner provides as proof of
25 ownership. To avoid any issues, please contact Mosler

1 **Automotive for verification."**

2 Q Okay. So you posted that on that website --
3 or, I'm sorry, you didn't post it on the website, but
4 you drafted that language, correct?

5 **A I did.**

6 Q What was the purpose of drafting that
7 language?

8 **A It was to give prospective buyers a heads-up.**

9 Q A heads-up about what?

10 **A Perhaps having the wrong VIN number on the --**
11 **their vehicle that doesn't match the MSO.**

12 Q Okay. And who changed the VIN number on the
13 Supercar Engineering vehicle?

14 **A I don't know.**

15 Q Okay. Well, it's not your position that
16 Mr. Wagner changed the VIN number on the car, is it?

17 **A I don't know who changed it.**

18 Q Okay. Who wanted to change the VIN number on
19 that car after it was sold to Supercar Engineering?

20 **A I'm trying to remember. I can't remember.**

21 Q Well, wasn't it Mosler Auto Care Center's
22 position, as evidenced by the document that's now in
23 evidence, where Mr. Simon said MACC will post a "Buyer
24 Beware" notice on this website if the VIN number/MSO are
25 not corrected?

1 **A Yes, that's true.**

2 Q Okay. So Mosler Auto Care Center took the
3 position that Supercar Engineering's 2012 RaptorGTR had
4 the wrong MSO and VIN number, correct?

5 **A Yes.**

6 Q And it wanted to change them after it had sold
7 the vehicle to Supercar Engineering, correct?

8 **A We wanted to make a correction.**

9 Q You wanted to change that car to a 2009
10 MT900S, right?

11 **A We wanted to make the correction, yes.**

12 Q Okay. A correction to a vehicle that was
13 certified by the EPA as a 2012 vehicle, right?

14 **A We didn't build a 2012 vehicle.**

15 Q Didn't we just cover the EPA certification for
16 2012 vehicles?

17 **A It said that we -- that our 2012 passed
18 certification, yes.**

19 Q Okay. And that was the Supercar Engineering
20 car, right?

21 **A Yes.**

22 Q So it was represented to the United States
23 Environmental Protection Agency that the Supercar
24 Engineering car was a 2012 RaptorGTR, right?

25 **A Apparently.**

1 Q Okay. And yet, after that, MACC wanted to
2 change the VIN number and change the MSO to call that
3 car, instead of a 2012 RaptorGTR, a 2009 MT900, correct?

4 A I -- it appears so.

5 Q Okay. And Supercar Engineering didn't want to
6 do that, did it?

7 A I don't know.

8 Q And because Supercar Engineering didn't agree
9 and go along and change the VIN number and MSO, MACC
10 posted a "Buyer Beware" notice on its website, didn't
11 it?

12 A There is a "Buyer Beware" notice posted.

13 Q Right. And the only reason that "Buyer
14 Beware" notice was posted was because of Supercar
15 Engineering refusing to change its VIN number and
16 manufacturer's statement of origin after the fact,
17 correct?

18 A As I said earlier, my memory is vague about
19 what went down back then, so I'm being very careful how
20 I answer you.

21 Q Okay.

22 A I know there's something missing. I know
23 there's something missing in my memory.

24 Q Okay. But you do remember that Supercar
25 Engineering didn't want to change the numbers that had

1 been assigned to its vehicle, correct?

2 **A Correct.**

3 Q By the way, do you know how the VIN numbers
4 are generated?

5 **A I didn't have anything to do with the VIN
6 numbers.**

7 Q Do you know whether the government has to get
8 the formula for your VIN numbers?

9 **A I don't have anything to do with that.**

10 Q Who would have the information about how VIN
11 numbers were generated for MACC at that time?

12 **A I don't know.**

13 Q Do you know whether James Todd Wagner or
14 Supercar Engineering were the people that actually
15 generated the VIN numbers?

16 **A I don't know.**

17 Q Who, if anyone, instructed you to draft that
18 notice?

19 **A I believe Alan Simon.**

20 Q Okay. So Mr. Simon instructed you to draft
21 the "Buyer Beware" notice and have it posted on the
22 website, correct?

23 **A Yes.**

24 Q Do you know if MACC ever received any calls
25 about that beware notice?

1 **A I don't recall getting any phone calls over**
2 **it.**

3 Q What would you have done if someone would have
4 called and said "I'm trying to purchase a vehicle"?
5 What VIN number would you have given them for the 2012
6 RaptorGTR that SEI had?

7 **A I wouldn't give them any VIN number. If**
8 **they're talking to me, they're not getting anything**
9 **regarding a VIN number.**

10 Q Isn't that what the notice asked people to do?
11 "If you plan to purchase a Mosler MT900, Photon, Raptor,
12 RaptorGTR" --

13 So at the time you knew there was a Raptor or
14 a RaptorGTR, right?

15 **A Oh, yes.**

16 Q Okay.

17 -- "or any other vehicle produced by Mosler
18 from anyone other than directly from Mosler Automotive,
19 be sure to check the vehicle identification number on
20 the vehicle shown on the manufacturer's statement of
21 origin or the state-issued certificate of title,
22 whichever document the owner provides as proof of
23 ownership. To avoid any issues, please contact Mosler
24 for verification."

25 Who was going to handle people that contacted

1 Mosler for verification? Who was going to do that at
2 Mosler?

3 **A If I got the phone call, I would just refer**
4 **them to our general manager and she would handle it.**

5 Q Jill Wagner?

6 **A Yes.**

7 Q Do you have any idea what Jill Wagner would
8 have said about that vehicle?

9 **A No.**

10 Q It's not like somebody was out there spoofing
11 Mosler Auto Care products, was it?

12 **A I don't know.**

13 Q Other than the SEI dispute over the VIN number
14 and MSO for that vehicle, can you think of any other
15 reason why that notice would have been posted on the
16 website?

17 **A Can you repeat the question, please?**

18 Q Yes. Other than the dispute between Mosler
19 Auto Care Center that's evidenced in the email from
20 Mr. Simon, other than that dispute, can you think of any
21 other reason why that important notice that we called a
22 "Buyer Beware" notice would be posted on the MACC
23 website?

24 **A It was posted to make a correction that we**
25 **felt needed to be made.**

1 Q Okay.

2 A It was a correction.

3 Q Okay. And "a correction that we felt,"
4 meaning Mosler Auto Care Center?

5 A Yes.

6 Q Okay. Felt needed to be made was the car that
7 it sold as a 2012 RaptorGTR needed to be reclassified as
8 a 2009 Mosler MT900S, right?

9 A That's where I'm getting confused, so I'm not
10 going to answer that because I really don't know.

11 Q Did Jill Mosler even work for MACC in 2012?

12 A I beg your pardon?

13 Q Did Jill Wagner -- excuse me, I apologize.
14 Did Jill Wagner even work for Mosler Auto Care Center in
15 2012?

16 A I don't know when she left the company.

17 Q I'm showing you what's been marked as Exhibit
18 Number -- or marked for identification purposes as
19 Plaintiffs' 423. Do you recognize that document?

20 A I don't remember this.

21 (Thereupon, Plaintiffs' Exhibit 423 was marked
22 for identification.)

23 BY MR. ZAPPOLO:

24 Q Nevertheless, do you have any reason to
25 believe it's not a true and accurate copy of the records

1 of your emails during that time period?

2 **A No. You have two here.**

3 Q Thank you.

4 Within --

5 MR. ZAPPOLO: Oh, excuse me. At this point
6 I'd like to move Plaintiffs' Exhibit Number 423
7 into evidence.

8 MR. WEBER: Which one is that, Scott?

9 MR. ZAPPOLO: 423.

10 MR. WEBER: Which exhibit?

11 MR. ZAPPOLO: Didn't I give you a copy of
12 this?

13 MR. WEBER: Is it the one you scanned?

14 MR. ZAPPOLO: Yes.

15 MR. WEBER: Okay. No objection.

16 THE COURT: Admitted as Plaintiffs'?

17 THE CLERK: 11.

18 THE COURT: 11.

19 (Thereupon, Plaintiffs' Exhibit 11 was
20 received into evidence.)

21 BY MR. ZAPPOLO:

22 Q Okay. Now that document, Plaintiffs' 11, has
23 Mosler's stock sale agreement, 4/6/2012. That's the
24 date of the email. It's from James Todd Wagner to you
25 at your Mosler Auto address.

1 "Hi, Sylvia. I think this is a very positive
2 step. I will forward the draft agreement I sent
3 yesterday. I truly believe this is straight up per
4 Warren in my email agreements and has the right balance
5 fully described in the deal so an investor feels
6 comfortable, doesn't ask Warren to guarantee anything
7 beyond the wording Alan originally put into the stock
8 sale agreement. Feel free to call me when you have
9 digested everything."

10 That was Mr. Wagner sharing an Asset and Stock
11 Sale Agreement with you, right?

12 **A Yes.**

13 Q And no one else, correct?

14 **A I don't know who he shared it with.**

15 Q Okay. Well, at least the email doesn't
16 suggest that he shared it with anyone else, right?

17 **A Right.**

18 Q I'm going to ask you: Was there a time when
19 you were in charge of negotiating the sale to
20 Mr. Wagner?

21 MR. WEBER: Objection, asked and answered.

22 THE COURT: Overruled.

23 **THE WITNESS: I just simply don't remember**
24 **negotiating with him. You know that I would run**
25 **everything by Alan Simon.**

1 BY MR. ZAPPOLO:

2 Q Well, did Mr. Simon, as the company attorney,
3 did he have the authority to negotiate a sale?

4 A **He assisted me when I needed help.**

5 Q Okay. Did he assist you with negotiating a
6 sale of the assets and/or stock to Mr. Wagner?

7 A **Yes.**

8 Q Okay. So you were negotiating?

9 A **Apparently. Just because I don't remember**
10 **doesn't mean it didn't happen.**

11 Q Okay.

12 A **I understand that.**

13 Q But now it's not a joke that someone would
14 say --

15 A **No. I thought it was very funny when you put**
16 **that in front of me. Of course that made me laugh.**

17 Q Was that supposed to make Mr. -- was
18 Mr. Wagner in on the joke?

19 MR. WEBER: Objection, argumentative.

20 THE COURT: Sustained.

21 MR. ZAPPOLO: I'm sorry.

22 BY MR. ZAPPOLO:

23 Q I'm showing you what's been marked as
24 Plaintiffs' Exhibit Number 422 for identification
25 purposes.

1 (Thereupon, Plaintiffs' Exhibit 12 was marked
2 for identification.)

3 MR. ZAPPOLO: Your Honor, while she's reading
4 that, I'd like to publish Exhibit Number 10 in
5 evidence to the jury.

6 THE COURT: Granted.

7 MR. ZAPPOLO: Take a look at that and pass it
8 down for your convenience.

9 BY MR. ZAPPOLO:

10 Q Okay. I'm sorry, I can take that back.

11 A **That's okay.**

12 Q Okay. With respect to Plaintiffs' Exhibit
13 Number 422, you've had the opportunity to review that
14 completely?

15 A **I did.**

16 Q All right. And does that refresh your
17 recollection about things that were transpiring at MACC
18 with respect to the Mosler Asset and Stock Sale
19 Agreement dated 4/6/2012?

20 A **Yes.**

21 Q Okay. And you mentioned earlier that you
22 didn't -- you wouldn't negotiate something. Did you
23 have to get Mr. Mosler's approval on things at MACC?

24 A **I got, for this -- for this, I would go to**
25 **Alan because I don't have a legal mind, and I didn't**

1 **want to agree to anything before Alan said it was okay.**

2 Q Okay. So if I were to say the buck stops here
3 with respect to selling the assets of MACC, did the buck
4 stop with you, or did the buck stop with Mr. Mosler?

5 A **It stopped with Mr. Mosler.**

6 Q Okay. And so you might have negotiated and
7 done some back and forth with Mr. Wagner, but ultimately
8 it was Mr. Mosler's decision, correct?

9 A **The back and forth with me and Todd would have
10 been also -- would have also included Alan Simon, but,
11 yes, the buck stops with Mr. Mosler.**

12 Q Okay. Now, is there any reason to believe
13 that Plaintiffs' Exhibit 422 is not a true and correct
14 copy of an email that you received and were working with
15 at MACC on Friday, April 6, 2012?

16 A **No.**

17 MR. ZAPPOLO: Okay. At this point, Your
18 Honor, I'd like to move Plaintiffs' Exhibit 422
19 into evidence.

20 THE COURT: Any objection?

21 MR. WEBER: No, Your Honor.

22 THE COURT: All right. Admitted as 12.

23 (Thereupon, Plaintiffs' Exhibit 12 was
24 received into evidence.)

25 BY MR. ZAPPOLO:

1 Q Now, with respect to Exhibit Number 12,
2 Mr. Wagner wrote an email to Warren Mosler and Alan
3 Simon on April 5th, correct? And if you look right over
4 your shoulder at the screen, you can see it?

5 A Oh, okay.

6 Q Right?

7 A Yes.

8 Q Okay. And then Mr. Mosler responded on
9 April 6th, at 2:09 p.m., correct?

10 A Yes.

11 Q Okay. And if we look down this, you'll see
12 some indented language, that's -- you'd agree with me --
13 wouldn't you? -- that that's James Wagner's email and
14 then this "Okay" is Mr. Mosler's response, correct?

15 A Yes.

16 Q Okay. So we can -- if we track this email, we
17 read what James Wagner wrote on the 5th. And then if we
18 want to see Mr. Mosler's answer, we go on the edges here
19 to what Mr. Mosler answered on the 6th, right?

20 A Yes.

21 Q Okay. So at least on Friday -- excuse me, on
22 Thursday, April 5th, Mr. Wagner had written about a
23 revised stock sale agreement, which is now an Asset and
24 Stock Sale Agreement. Okay?

25 A Yes.

1 Q Now at that point the sale price was 650,000,
2 correct?

3 A Yes.

4 Q Okay. And he wanted to keep the Consuliers,
5 Intruders, Raptors, and have no risk of liability down
6 the road, correct?

7 A Correct.

8 Q Okay. And Mr. Mosler agreed with that
9 premise, correct?

10 A Yes.

11 Q And then Mr. Wagner wrote "Todd wanted" --
12 Todd meaning speaking of himself -- "wanted to get the
13 deal closed as quickly as possible. This requires an
14 agreement that stakeholder number 3 will feel
15 comfortable with."

16 So he was letting Mr. Mosler know that he had
17 a potential investor that wanted to see an agreement --
18 correct? -- and be comfortable with it?

19 A Yes.

20 Q And you understood that that was going on at
21 the time, right?

22 A I don't recall what I understood, but it makes
23 sense, yes.

24 Q Okay. And then Mr. Wagner wrote "The
25 investors wanted to get the deal done in a comprehensive

1 way with no risk of something, pardon my language,
2 biting them in the arse down the road," right?

3 This means definitive assets rather than
4 buying stock paper with the hope that the assets are
5 there, right?

6 **A Right.**

7 Q And Mr. Mosler said "Okay" to that, right?

8 **A Yes.**

9 Q All right. Now, do you recall any issues
10 between Mr. Wagner and Mr. Mosler about Mr. Wagner being
11 upset that when the sale price -- do you ever remember a
12 sale price being a million dollars or more?

13 **A Yes.**

14 Q Okay. And do you not have any understanding
15 as to how the sale price decreased from a million
16 dollars down to 650?

17 **A That was not my -- I had nothing to do with
18 the sale price.**

19 Q Okay. Just to be clear, do you have any
20 information about any of the assets of Mosler Automotive
21 Center being sold off while negotiating with James
22 Wagner at a million dollar sale price?

23 **A Excuse me?**

24 Q Do you have an understanding as to whether any
25 of the assets of Mosler Auto Care Center were sold off

1 after Mr. Wagner had agreed to a purchase price of a
2 million dollars?

3 **A I don't recall that.**

4 Q Okay. Do you recall cars being sold during
5 that time period?

6 **A During -- I recall cars being sold, but I
7 can't recall time periods --**

8 Q Okay.

9 **A -- that they were sold.**

10 Q All right. Just a little bit -- a while back
11 we talked about that invoice. And do you recall any
12 agreements as to Mr. Wagner being reimbursed for his
13 vacation time?

14 **A Yes.**

15 Q Okay. Do you remember an agreement that
16 Mr. Wagner will be reimbursed for his vacation time if
17 the company sold?

18 **A I remember reading that on the invoice, yes.**

19 Q Okay. I'm showing you what's been marked as
20 Plaintiffs' Exhibit 1248 for identification purposes.
21 Could you tell us what that document is?

22 **A It is an email from Warren --**

23 Q Hold on. I don't want you to tell everyone
24 what's on it, just in general, what is it? Is that an
25 email that you received?

1 **A Yes.**

2 (Thereupon, Plaintiffs' Exhibit 1248 was
3 marked for identification.)

4 BY MR. ZAPPOLO:

5 Q Okay. Is there any reason to doubt that
6 that's a true and correct copy of the email that you
7 received on or about 4/12/2011?

8 **A No.**

9 MR. ZAPPOLO: Your Honor, at this point I'd
10 like to move Plaintiffs' Exhibit 1248 into
11 evidence.

12 THE COURT: Defense?

13 MR. WEBER: No objection.

14 THE COURT: Admitted as 13.

15 (Thereupon, Plaintiffs' Exhibit 13 was
16 received into evidence.)

17 BY MR. ZAPPOLO:

18 Q Okay. Now you can tell the jury what that
19 document is about.

20 **A It is an email from Warren Mosler to myself**
21 **and earlier I had written to him -- should I read it?**

22 Q Sure.

23 **A It says -- I wrote to Mr. Mosler. I said,**
24 **"Jill says you two spoke earlier and worked out a deal**
25 **regarding the final invoice. Attached is what she**

1 prepared. She made some revisions and added a note
2 stating that Todd would be reimbursed vacation time when
3 he sells the company. I wanted to give you a chance to
4 review and approve before funds are exchanged."

5 Q And Mr. Mosler's response to you was?

6 A "Yes, approved. Thanks."

7 Q All right. Now do you know whether that
8 vacation time was ever reimbursed?

9 A I don't believe that it was.

10 Q Thank you.

11 Okay. By the way, just as a general principle
12 here, we've gone over a couple of emails now where
13 decisions had to be made and Mr. Mosler was copied and
14 he chimed in words like "Approved" and "Okay." Was that
15 the general way that business was done at MACC?

16 MR. WEBER: Objection, ambiguous.

17 THE COURT: Overruled.

18 BY MR. ZAPPOLO:

19 Q You can answer.

20 A Again, can you repeat the question?

21 Q Sure. I gave you the example that we've gone
22 over a couple of emails --

23 A Right.

24 Q -- where Mr. Mosler was copied with some
25 concepts and some questions. And then Mr. Mosler, in

1 this instance, answered "Approved" and on the other ones
2 he answered "Okay." And my question to you is: Is that
3 the way that business was generally conducted at MACC
4 with Mr. Mosler approving things like that via email?

5 **A Yes. Uh-huh.**

6 Q Okay. In fact, there were lots and lots of
7 emails that went back and forth between the people at
8 Mosler and Mr. Mosler -- excuse me, between the people
9 at Mosler Auto Care Center and Warren Mosler, correct?

10 **A Correct.**

11 Q Okay. So if we had to say the buck stops here
12 with someone with respect to the running of that company
13 in general, the answer would be whom?

14 **A Mr. Mosler.**

15 Q Thank you.

16 Please pardon me for not remembering, at the
17 beginning of your testimony you talked about some people
18 that were negotiating to purchase the company. Was Mark
19 Margolis one of those people?

20 **A The name sounds familiar, so he may have been.**

21 Q Okay. I'm showing you what's been marked as
22 Plaintiff's 1108 for identification purposes.

23 Do you recognize that document? Was your
24 email, on November 21, 2012, sklaker@moslerauto.com?

25 **A Yes.**

1 (Thereupon, Plaintiffs' Exhibit 1108 was
2 marked for identification.)

3 BY MR. ZAPPOLO:

4 Q Is there any reason to believe that
5 Exhibit 1108 for identification purposes is not a true
6 and correct copy of your email?

7 **A No.**

8 MR. ZAPPOLO: Your Honor, at this time I'd
9 like to move Plaintiffs' 1108 into evidence.

10 THE COURT: Defense?

11 MR. WEBER: No objection.

12 THE COURT: It will be admitted as 13.

13 THE CLERK: 14.

14 THE COURT: 14.

15 (Thereupon, Plaintiffs' Exhibit 14 was
16 received into evidence.)

17 BY MR. ZAPPOLO:

18 Q Now, could you please explain to the jury who
19 Mark Margolis is?

20 **A I don't know.**

21 Q Okay. Was -- he wasn't someone that you knew,
22 correct?

23 **A No.**

24 Q Okay. He wasn't someone that worked for
25 Mosler Auto Care Center for a number of years, was he?

1 **A Oh, no.**

2 Q He was an outsider, correct?

3 **A Yes. I didn't know who he was.**

4 Q Okay. Have you ever heard of Scorpion
5 Motorsports?

6 **A I had not heard of Scorpion Motorsports.**

7 Q Okay. Now Mr. Margolis was requesting
8 additional information, correct?

9 **A Yes.**

10 Q Okay. Now did you prepare a due diligence
11 packet for him so that he could have additional
12 information?

13 **A I'm sorry, I don't remember if I prepared a
14 due diligence package for him or not.**

15 Q Okay. Nevertheless --

16 **A There were many I prepared.**

17 Q Okay. When Mr. Margolis wrote "As of current,
18 it seems his claims are null and I do not see reason to
19 include him in this transaction," he was talking about
20 the transaction to purchase the assets of the company,
21 correct?

22 **A I don't know.**

23 Q All right. Well, did you have any
24 understanding as to whether Mr. Margolis was one of the
25 potential investors for James Todd Wagner?

1 **A I don't know.**

2 Q Did anyone ever discuss with you the fact that
3 Mr. Margolis was trying to circumvent Mr. Wagner's
4 attempts to buy the company?

5 **A If they did, I don't recall the conversation.**

6 Q Were you aware of any agreements between James
7 Todd Wagner and Mr. Mosler about Mr. Mosler having the
8 ability to or the inability to, as the case may be,
9 circumvent or go around James Todd Wagner at that time?

10 **A No.**

11 Q Okay. So you didn't think there was anything
12 wrong with receiving this email from Mr. Margolis -- did
13 you? -- at the time?

14 **A I didn't think there was anything -- excuse**
15 **me, I don't understand your question.**

16 Q Okay. You didn't see this email -- nothing --
17 this doesn't strike you as an improper attempt to go
18 around James Todd Wagner because you were aware of what
19 was going on, correct?

20 MR. WEBER: Objection, assumes facts not in
21 evidence.

22 THE COURT: Sustained.

23 BY MR. ZAPPOLO:

24 Q Did you perceive this email in a positive or a
25 negative light?

1 **A It didn't matter to me either way.**

2 Q Okay. Do you see there it says "I intend to
3 continue on my fact-finding and continue to assess the
4 potential threat by James"?

5 **A Yes.**

6 Q Okay. Do you know what that is referring to?

7 **A No, I don't.**

8 Q Are you aware of anyone who was having
9 conversations with Mr. Margolis around November 21,
10 2012?

11 **A No.**

12 Q Okay. Do you have any reason to believe that
13 Mr. Margolis was untrue when he stated a few weeks ago
14 he received a call from Todd, James nowadays?

15 **A I'm sorry? What was the question?**

16 Q Do you see up there on the second full
17 paragraph -- third full paragraph, I guess, where
18 Mr. Margolis wrote in short, "A few weeks ago I received
19 a call from Todd, James nowadays" --

20 **A Uh-huh.**

21 Q -- "telling me of his venture and asking for
22 assistance"?

23 **A Yeah, I see that.**

24 Q Do you have any reason to doubt that that was
25 true?

1 **A I have no reason to doubt it.**

2 MR. ZAPPOLO: Okay. 1108 is moved in,
3 correct?

4 MR. WEBER: 1108?

5 MR. ZAPPOLO: Is 1108 --

6 THE CLERK: Yes, as 14.

7 MR. ZAPPOLO: Okay. Thank you.

8 BY MR. ZAPPOLO:

9 Q Okay. I'm now showing you what's been marked
10 as Plaintiffs' Exhibit 872 for identification purposes.

11 Same usual question: Can you take a look at
12 that and tell me whether you believe there's any reason
13 to doubt that document is a true and correct copy of
14 your emails on or about the date that's on it?

15 **A No.**

16 (Thereupon, Plaintiffs' Exhibit 872 was marked
17 for identification.)

18 MR. ZAPPOLO: Okay. At this time I'd like to
19 move 872 into evidence, Your Honor.

20 THE COURT: Any objection?

21 MR. WEBER: No objection.

22 THE COURT: It will be admitted into evidence.
23 What number is that, Madam Clerk?

24 THE CLERK: 15, Your Honor.

25 THE COURT: 15, thank you.

1 (Thereupon, Plaintiffs' Exhibit 15 was
2 received into evidence.)

3 BY MR. ZAPPOLO:

4 Q Now earlier I think there was an email in
5 evidence that you asked "Okay. What are the parameters
6 of the contract?" Do you remember that discussion?

7 A Yes.

8 Q This email follows up on that -- right? --
9 from Warren Mosler?

10 A Yes.

11 Q And he said "Alan and Jacob have the prior
12 emails from Todd. 650,000 for all of the MT900 related
13 assets. Doesn't want the name Mosler, so we keep the
14 rights to that. We keep both Photons and the silver
15 prototype and a few of the Raptors and Consuliers,"
16 right?

17 A Yes.

18 Q So you asked Mr. Mosler if there was a
19 contract, and his response was Alan and Jacob have all
20 of the prior emails, 650,000 for all of the MT900
21 related assets. Doesn't want the name Mosler, so we
22 keep the rights to that. And we keep both Photons and
23 the silver prototype and a few of the Raptors and
24 Consuliers, right?

25 A Yes.

1 Q So that was Mr. Mosler telling you what the
2 contract was, right?

3 A That was Mr. Mosler answering my question,
4 yes.

5 Q Right. Your question was: Is there a
6 contract, right?

7 A What are the parameters?

8 Q Okay. What were the parameters, is there a
9 contract?

10 A Yes.

11 Q And his response was that, correct?

12 A Yes.

13 Q Okay. You understood -- didn't you? -- that
14 Mr. Wagner had an agreement with Mr. Mosler to buy the
15 assets for 650,000?

16 MR. WEBER: Objection, pre-conclusion.

17 THE COURT: Repeat your question.

18 MR. ZAPPOLO: You understood -- didn't you? --
19 that Mr. Wagner had an agreement with Mr. Mosler to
20 buy the assets for \$650,000?

21 THE COURT: Overruled.

22 THE WITNESS: At this point I thought they
23 were still negotiating.

24 BY MR. ZAPPOLO:

25 Q Okay. But when you asked what the parameters

1 of the deal were, was there a contract, that was your
2 answer, right?

3 **A Yes.**

4 Q Okay. There's no reference to "We still have
5 to negotiate this, we still have to negotiate that," is
6 there?

7 **A No.**

8 Q Okay. After Exhibit 872 was sent, Mr. Mosler
9 continued to sell off assets of the company?

10 MR. WEBER: Objection. Did you ask a
11 question?

12 MR. ZAPPOLO: Yes. I said after Exhibit 872
13 was sent, did Mr. Mosler continue to sell off
14 assets of the company?

15 MR. WEBER: Objection, ambiguous.

16 THE COURT: Overruled.

17 **THE WITNESS: I don't recall.**

18 BY MR. ZAPPOLO:

19 Q Do you recall having any conversations with
20 James Todd Wagner about his frustrations that he had an
21 agreement with Mr. Mosler and then assets were
22 disappearing out of the company?

23 **A No, I don't.**

24 Q Earlier we talked about a fire or -- happening
25 to Mr. Simon's car. Do you remember that?

1 **A Yes.**

2 Q Okay. Did Mr. Simon ever explain to you what
3 he thought happened with his car?

4 **A If he did, I don't remember.**

5 Q Okay. I'm showing you what's been marked as
6 Plaintiffs' Exhibit Number 209. Now we'd probably be
7 here until -- at least a few days. I don't want to
8 get -- but you have the option and right to go through
9 every page of that email.

10 My question to you is: Can you take a look at
11 that and tell this jury whether that is a true and
12 accurate representation of emails that you received
13 during that time period about those issues?

14 **A They seem to be the emails that we received.**

15 (Thereupon, Plaintiffs' Exhibit 209 was marked
16 for identification.)

17 BY MR. ZAPPOLO:

18 Q Okay. Thank you. I won't get bogged down in
19 the minutiae, but in fairness -- well, I need to move it
20 into evidence before we discuss it.

21 MR. ZAPPOLO: So at this point, Your Honor,
22 I'd like to move Plaintiffs' Exhibit 209 into
23 evidence.

24 THE COURT: Defense?

25 MR. WEBER: No objection.

1 THE COURT: Okay. Madam Clerk, that's 16?

2 THE CLERK: Yes, Your Honor.

3 (Thereupon, Plaintiffs' Exhibit 16 was
4 received into evidence.)

5 BY MR. ZAPPOLO:

6 Q Okay. And just in syllabus form, that's
7 Mr. Simon's explanation of what happened with respect to
8 the fire and his car, correct?

9 A Yes.

10 Q Okay. And at the bottom left-hand corner it
11 keeps saying of 18, of 18, of 18. It's because all this
12 came together, didn't it?

13 A You're asking me a question?

14 Q Yes.

15 A And you're asking me what?

16 Q At the bottom -- see at the bottom left-hand
17 corner --

18 A Yes, I see that.

19 Q It's kind of cut off. It says of 18?

20 A Yes.

21 Q And then if you go all the way to the back,
22 you get to 5 of 18, 6 of 18, 7 of 18, and then 8 of 18.
23 I pose to you that it appears as though that the 1 that
24 would precede those is cut off.

25 My question to you is this email is actually

1 18 pages long, correct?

2 **A Yes.**

3 Q Okay. Thank you.

4 And that email, if you go back in it, it talks
5 about the negotiations related to a purchase of the
6 company and/or its assets, correct?

7 **A Yes.**

8 Q Thank you.

9 And since we're dealing with big documents --
10 we talked earlier about you giving a deposition in your
11 case. Do you remember that?

12 **A Yes.**

13 Q And I actually subpoenaed you for that
14 deposition, right?

15 **A I believe so.**

16 Q Okay. And do you recall that at the
17 deposition I asked you to bring some documentation?

18 **A Yes.**

19 Q And you did bring documentation that day,
20 correct?

21 **A Yes.**

22 Q And then after the deposition you sent me some
23 more documents. Do you remember that?

24 **A No.**

25 Q Okay.

1 THE COURT: Can I see the attorneys for a
2 second?

3 (Thereupon, a sidebar conference was held.)

4 THE COURT: So it's clear we're not going to
5 finish this witness today. I know -- I'm not
6 stopping you, but I do want to tell you it's
7 4 o'clock. I promised them a dead stop at
8 5 o'clock, so when you find that there's going to
9 be a break in your line of questioning around 4:30,
10 give me the signal and that's when we'll recess
11 because what I don't want you to do is get into a
12 stride where all of the sudden it's, you know,
13 5:00 and I have told them I'd let them out by 5:00.

14 MR. WEBER: Okay.

15 THE COURT: So roughly 30 minutes from now --

16 MR. ZAPPOLO: Yes, sir.

17 THE COURT: -- start winding down.

18 MR. ZAPPOLO: Okay.

19 (Thereupon, the sidebar conference was
20 concluded.)

21 BY MR. ZAPPOLO:

22 Q Ms. Klaker, I'm showing you what's been marked
23 as Exhibit 1344 for identification purposes. I'd like
24 you to take a look at that stack of documents.

25 A Good grief. This is big.

1 Q Tell me.

2 A All right.

3 (Thereupon, Plaintiffs' Exhibit 1344 was
4 marked for identification.)

5 BY MR. ZAPPOLO:

6 Q I think it's about 101 pages, but I think if
7 you look at it quickly, my question to you is: In
8 looking at that, does that refresh your recollection
9 about whether or not you gave me approximately 101 pages
10 of documents after your deposition?

11 A If I sent you these, I don't remember.

12 Q Okay.

13 A If I did, I did.

14 Q Would you have given them to anyone else to
15 give to me? I want you to take a look at it and see if
16 those are things that you had in your possession.

17 A I'd like a copy of these.

18 Are you waiting for me?

19 Q Yes.

20 A These do appear to be what I may have sent
21 you, yes.

22 Q If you look at the bottom, you see there's a
23 little Bates stamp on it? It says SK00?

24 A Yes.

25 Q Okay. Does that help refresh your

1 recollection?

2 **A Yes.**

3 Q Okay. So those exhibits in 1344 were produced
4 by you, right? And there's no reason to believe that
5 they're not true and accurate copies of the things that
6 were sent?

7 **A I honestly don't remember sending them, but,
8 yes, I could have easily done that.**

9 Q Okay. What I'm going to do is I'm going to
10 ask the judge to admit them into evidence, and what we
11 need to hear from you is whether or not these documents
12 appear to be some type of fraudulent, made-up documents
13 or something like that.

14 **A No, they don't appear to be fraudulent to me.
15 I'm not an expert, but I probably did send these to you.
16 I just don't have any memory of it, I'm sorry.**

17 MR. ZAPPOLO: Okay. Counsel, at this point
18 I'd like to move 1344 into evidence.

19 MR. WEBER: We have no objection.

20 MR. ZAPPOLO: Okay. Thank you.

21 THE COURT: Madam Clerk, admitted -- is it 17?

22 THE CLERK: Yes, Your Honor.

23 THE COURT: Thank you.

24 (Thereupon, Plaintiffs' Exhibit 17 was
25 received into evidence.)

1 **THE WITNESS:** You can have these two. Can I
2 **keep this for a bit?**

3 MR. ZAPPOLO: Yes, if you'd like.

4 **THE WITNESS:** Thank you.

5 BY MR. ZAPPOLO:

6 Q Ms. Klaker, I'd like you to take a look on the
7 bottom right-hand corner at SK000042.

8 **A Okay.**

9 Q That is a true and correct representation of a
10 Mosler Automotive facsimile transmittal sheet, is it
11 not?

12 **A It is.**

13 Q Okay. And that fax is to James Wagner with a
14 fax number (310) 284-6501. Do you know where Mr. Wagner
15 was when that transmittal was sent?

16 **A No.**

17 Q Okay. It says "Please sign and fax back to
18 the 844-7701 number." And then it says "MSO will be
19 sent once signed Bill of Sale is signed. Good luck,"
20 right?

21 **A Yes.**

22 Q Now did you have anything to do with the
23 drafting of that Bill of Sale?

24 **A Preparing the Bill of Sale?**

25 Q Yes.

1 **A I did not.**

2 Q Okay. Now this Bill of Sale says "Provided,
3 however, that this Bill of Sale and assignment is
4 executed without recourse and without representations or
5 warranties of assignor whatsoever." And then it says
6 "Assignee further agrees to use vehicle to promote
7 Mosler Automotive and its successors."

8 Now based upon your experience at Mosler, was
9 that a standard clause in the Bills of Sale for vehicles
10 that Mosler sold?

11 **A What part are you reading? I'm lost.**

12 Q I'm sorry. If you look up on the screen --

13 **A Oh.**

14 Q -- where it says "Provided, however" --

15 **A Okay.**

16 Q And we're right there at SK000043.

17 **A Yes.**

18 Q Okay.

19 **A And what was your question?**

20 Q Yes. It revolves around this provided,
21 however clause. "Provided, however, that this Bill of
22 Sale and assignment is executed without recourse and
23 without representation or warranties of assignor
24 whatsoever. Assignee further agrees to use vehicle to
25 promote Mosler Automotive and its successors."

1 Now based on your experience at Mosler, was
2 that a common clause to include upon the Bill of Sale?

3 **A I wouldn't know.**

4 Q Oh, you wouldn't?

5 **A No, I didn't prepare these.**

6 Q Fair enough. Oh, you didn't have anything to
7 do with the Bills of Sale?

8 **A Right, I didn't.**

9 Q Oh, okay. I apologize.

10 **A That's okay.**

11 Q But there are things that you did have stuff
12 to do with in this package, correct?

13 **A Pardon me?**

14 Q There are things in this package that you did
15 have to do with, such as the invoices that are in there,
16 et cetera, right?

17 **A Yes.**

18 Q And we pretty much covered those things, so
19 I'm not going to rehash them.

20 Did you ever see a video -- sorry, I don't
21 mean to interrupt.

22 **A That's okay, go ahead.**

23 Q Do you feel like you need more time with 1344?
24 I was done asking questions about that.

25 **A No, it's okay. I need to put the binder on**

1 **it. I took the binder off.**

2 Q Okay.

3 **A Here you go.**

4 Q Did you ever have an opportunity to see a
5 video wherein the black Mosler RaptorGTR was featured
6 with Abby Cubey singing a song called "Feel My Fire"?

7 **A Yes.**

8 Q Okay. And when did you see that video or
9 under what circumstances?

10 **A I believe it was towards the end of 2011, and
11 I saw it on the Internet.**

12 Q Okay. And what caused you to see it on the
13 Internet?

14 **A I heard about it and I wanted to see it for
15 myself.**

16 Q Do you remember how you heard about it?

17 **A I remember getting a call from -- from a
18 representative from Billionaires' Row, I believe.**

19 Q Okay. And what more do you remember about
20 that conversation?

21 **A That conversation led to the discovery of this
22 video because we didn't know anything about it at the
23 shop.**

24 Q Okay. Now, did you have any understanding as
25 to whether or not Supercar Engineering, Inc. was tasked

1 with displaying the car in question?

2 **A No.**

3 Q Okay. Like, remember that Bill of Sale that I
4 just showed you?

5 **A Yes.**

6 Q You weren't aware of that clause in there that
7 said the car would be used to promote Mosler products?

8 **A Yes, I do recall.**

9 Q Okay. But you weren't aware of that at the
10 time, were you?

11 **A I wasn't even thinking about that.**

12 Q Okay.

13 **A To make a video, to use one of our cars to
14 promote in a video, we would have -- I would have
15 thought we would all know about it.**

16 Q Okay. Well, do you know whether it was a
17 contractual obligation of Supercar Engineering to
18 promote that vehicle?

19 **A I don't know.**

20 Q Okay.

21 **A I just know we were taken by surprise.**

22 Q Did you ever see any contracts between
23 Supercar Engineering and Mosler Auto Care Center whereby
24 Supercar Engineering, Inc. was going to be a distributor
25 of Mosler products in China and Thailand?

1 **A Yes.**

2 Q Okay. And as a part of that contract didn't
3 it require Supercar Engineering to promote Mosler
4 products?

5 **A Yes.**

6 Q Okay. So the video was to promote the
7 vehicle, correct?

8 **A I don't know --**

9 Q Okay.

10 **A -- the purpose of that video.**

11 Q Okay.

12 **A They didn't do a very good job if that is what
13 it was supposed to do.**

14 Q Do you know how many hits that video got?

15 **A Yes.**

16 Q How many?

17 **A Too many.**

18 Q Too many? A lot, right?

19 **A Oh, yeah.**

20 Q Do you have any estimation as to how many?

21 **A No. I just wish nobody would have seen it.**

22 Q Okay.

23 **A We were a laughingstock.**

24 Q Okay. Who was laughing?

25 **A Everybody was laughing, making fun of it.**

1 Q Who's everybody?

2 A **Well, anybody that I spoke to that saw it.**

3 Q Tell me someone that you spoke to that was
4 laughing about that video.

5 A **My husband, his buddies.**

6 Q Okay. What buddies?

7 A **I'm not going to sit here and name them all.**

8 Q Okay.

9 A **My friends. Anybody that saw it thought it
10 was ridiculous.**

11 Q Okay. Were any of the people that told you
12 the car was ridiculous --

13 A **No.**

14 Q -- shopping for supercars?

15 A **No, not the car, sir, the video.**

16 Q Okay. So the car was in the video, right?

17 A **It was. It was abused terribly.**

18 Q Well, people found -- the car was abused?

19 A **I thought so.**

20 Q Okay. What did you base that upon?

21 A **The way it was being driven and the way it was
22 being walked on with high heels on the roof of the car.
23 That's silly.**

24 Q Did you compare that video to other supercar
25 videos at the time?

1 **A** **I don't care about any other video -- any**
2 **other cars.**

3 Q Well, wasn't that kind of the standard type of
4 video for promoting supercars?

5 **A** **You know what, sir? That's just my personal**
6 **opinion.**

7 Q Right. But I want to understand what you're
8 basing that upon. Do you have any experience as to what
9 the standard supercar video looks like?

10 **A** **No.**

11 Q Okay. Prior to that, how much time did you
12 spend researching what should be in a supercar
13 promotional video?

14 **A** **I know it shouldn't be some girl with her**
15 **heels on our car.**

16 Q Do you know who the buyers for supercars
17 predominantly are?

18 **A** **Wealthy people.**

19 Q Are they males or females?

20 **A** **In my opinion, they're generally male.**

21 Q Okay. Now, Mosler Automotive, prior to that
22 video coming out, had done similar advertisements,
23 hadn't they?

24 **A** **No.**

25 Q They hadn't used any kind of scantily clad

1 women in any of its ads?

2 A I don't recall.

3 Q Were any Mosler supercars used in any rap
4 videos?

5 A I didn't see any, but perhaps there were.
6 There might have been one that was made in Miami, I
7 think.

8 Q Okay.

9 A But other than that, and I didn't see it
10 played out anywhere. It was just --

11 Q So you didn't have anything to compare the
12 Abbey Cubey video?

13 A It was just my personal opinion.

14 Q Right. But you weren't comparing it to what
15 the industry standard was for marketing of supercars,
16 were you?

17 A Was I comparing it --

18 Q Yes.

19 A -- to -- I can't say that I was comparing it
20 to any other supercar video. I just know it was lousy.

21 Q You don't have experience in the supercar
22 marketing, do you?

23 A I just know that -- I know what I like in
24 advertising, yeah, and that's the only thing that I --
25 that's the only way I can judge it is my own personal --

1 Q But you weren't in the -- you weren't a
2 shopper for a supercar at the time, were you?

3 A No.

4 Q Okay. But your husband did get a Mosler
5 vehicle, didn't he?

6 A He did.

7 Q He did. He didn't pay for it, though, did he?

8 A Oh, I'm sure he did. That was between him and
9 Mr. Mosler.

10 Q Okay. But you, as his wife, don't know of any
11 money changing hands, do you?

12 A I do not.

13 Q Now, I'd like you to take a look at -- I'm
14 going to show you what's been marked as Plaintiffs'
15 Exhibit 412, and I'm going to ask you the usual
16 questions. Any reason to believe that's not a true and
17 correct copy of your emails on or about the time that it
18 purports to be?

19 A This appears to be genuine.

20 (Thereupon, Plaintiffs' Exhibit 412 was marked
21 for identification.)

22 MR. ZAPPOLO: Okay. At this time, Your Honor,
23 I'd like to move Plaintiffs' Exhibit Number 412 for
24 ID into evidence.

25 MR. WEBER: No objection.

1 THE COURT: All right. Admitted into
2 evidence. Madam Clerk, Number 18?

3 THE CLERK: 18.

4 (Thereupon, Plaintiffs' Exhibit 18 was
5 received into evidence.)

6 BY MR. ZAPPOLO:

7 Q Now you mentioned earlier Billionaires' Row,
8 didn't you?

9 A I did.

10 Q Okay. And do you recall what symbol they
11 used?

12 A No.

13 Q Was that -- did they use an acronym BR for
14 Billionaires' Row?

15 A Probably.

16 Q Okay. And what was your understanding as to a
17 relationship between Billionaires' Row and Supercar
18 Engineering and/or James Todd Wagner?

19 A Very little.

20 Q Okay. But even of the little bit, what did
21 you know?

22 A That they had entered into some kind of
23 prospective agreement having to do with the video or the
24 car or something. I don't really know what they
25 discussed or what they were hoping to do.

1 Q Okay.

2 A **It didn't involve me or our shop.**

3 Q But Supercar Engineering was in negotiations
4 with Billionaires' Row whereby Billionaires' Row would
5 purchase vehicles, correct?

6 A **I don't know.**

7 Q Did you read the attachment to Exhibit 412?

8 A **Just now?**

9 Q Well, take a look at it.

10 A **You mean just now?**

11 Q No. Go ahead and take a look at it now and
12 tell me if --

13 A **Oh, okay.**

14 Q -- back when Exhibit 412 was written and
15 exchanged, does that refresh your recollection as to
16 whether or not you were aware of the fact of the
17 relationship or potential relationship between
18 Billionaires' Row and SEI?

19 A **I knew they had a relationship, but I didn't
20 know what all it entailed.**

21 Q Okay. Do you know how that relationship tied
22 into the distribution agreement for China and Thailand?

23 A **I don't.**

24 Q Do you know how that relationship tied into
25 the requirements of the Bill of Sale that the car be

1 used for marketing Mosler products?

2 **A I don't.**

3 Q Okay. Thank you.

4 Now, the -- I don't know whether I covered it
5 with you or not, but do you know whether Supercar
6 Engineering had one distribution agreement or two
7 distribution agreements?

8 **A I don't know.**

9 Q Okay. Did you ever have the opportunity to
10 review the distribution agreements?

11 **A I probably did; I just don't recall.**

12 Q Did you recall whether you did or didn't ever
13 give an opinion as to whether or not Supercar
14 Engineering had breached either of those agreements?

15 **A Did I have a what?**

16 Q An opinion. Do you ever recall giving an
17 opinion about whether or not Supercar Engineering had
18 breached one or both of those agreements?

19 **A I don't recall. I really don't.**

20 MR. ZAPPOLO: Your Honor, I'm within nine
21 minutes and I think this is going to run past what
22 you had suggested, so --

23 THE COURT: Let me talk to the attorneys for a
24 second.

25 (Thereupon, a sidebar conference was held.)

1 THE COURT: All right. We have about 40
2 minutes before 5 o'clock, but I want to get them
3 out by 4:45. I'm really giving you about 20
4 minutes. And you think you're going to start going
5 to a line of evidence that's going to take you
6 longer than 20 minutes to explore?

7 MR. ZAPPOLO: I think it's not going to take
8 past 4:30, but by 4:30, so I think it's going to
9 take about 15 minutes on this line, but I think if
10 we broke now, I can go home, sharpen my pencil and
11 knock it out tomorrow morning.

12 THE COURT: How much longer do you have with
13 this witness tomorrow?

14 MR. ZAPPOLO: I would say 30 minutes.

15 THE COURT: Cross-Examination tomorrow,
16 roughly how long?

17 MR. WEBER: What's that?

18 THE COURT: Cross-Examination tomorrow,
19 roughly how long? No rush.

20 MR. WEBER: I don't know. Let's see if he
21 actually ends in 30 minutes.

22 THE COURT: Okay. All right.

23 MR. ZAPPOLO: I will say, for the record, I
24 think we'll actually be done.

25 THE COURT: All right. I'll release the jury.

1 We'll reconvene tomorrow morning and I'll let her
2 know that she can't talk to anybody and we'll go
3 from there. Okay?

4 MR. ZAPPOLO: Okay.

5 MR. WEBER: Perfect.

6 (Thereupon, the sidebar conference was
7 concluded.)

8 THE COURT: All right. Ladies and gentlemen,
9 we are done for the day. I'm going to let you go.
10 Deputy.

11 THE COURT DEPUTY: Yes.

12 THE COURT: The jury is excused for the day.
13 Again, I'll remind you, please don't discuss this
14 case with anybody. Don't do any independent
15 research. Don't go on the Internet, look up the
16 names of these people, the places or items
17 involved. Don't discuss this case amongst
18 yourselves. If there's any violations to the rules
19 which I previously instructed you, please notify
20 the Court immediately.

21 Just like today, we'll meet at 9:30 outside.
22 So today was a better indicator of the temperature
23 in the courthouse. If you're comfortable, dress
24 comfortably. If you're not comfortable, dress
25 warmer. It's okay to have as many layers as you

1 want. I've had people showing up wrapped up in
2 blankets. So long as you can pay attention, it's
3 okay. Okay? Have a wonderful night.

4 JUROR SMITH: Thanks for lunch.

5 (Jurors entering the jury room at 4:25 p.m.)

6 THE COURT: So you are still testifying.
7 You're going to be testifying tomorrow. That means
8 today and tonight you're not to discuss your
9 testimony with anybody in any way, shape, or form.
10 Okay?

11 **THE WITNESS: Understood.**

12 THE COURT: All right.

13 THE COURT DEPUTY: Okay, ma'am, watch your
14 step coming down.

15 **THE WITNESS: Thank you.**

16 THE COURT: We will see you tomorrow morning.

17 **THE WITNESS: Yes.**

18 THE COURT: Okay.

19 THE COURT DEPUTY: Judge, they're coming out.

20 (Jurors exiting the courtroom at 4:26 p.m.)

21 THE COURT: Anything else today before we wrap
22 up?

23 MR. WEBER: No, Your Honor.

24 MR. ZAPPOLO: No, Your Honor.

25 MR. WEBER: We just entered the orders from

1 yesterday. I sent them to Mr. Zappolo for review,
2 and I'll have them printed out tomorrow if you're
3 okay with that, Scott.

4 MR. ZAPPOLO: Yeah, I'm pretty sure. I just
5 remember the one you just -- yeah, I think.

6 MR. WEBER: I'll bring it tomorrow.

7 MR. ZAPPOLO: Okay. I'll just double-check it
8 tomorrow.

9 THE COURT: If you want to bring hard copies
10 tomorrow -- I can tell you as of today, at like
11 10 o'clock, I'm without a judicial assistant until
12 next week, which means that, you know, I'm either
13 up here or I'm back there, but I can't do both, you
14 know, processing of, you know --

15 MR. WEBER: Gotcha.

16 THE COURT: So if you have a hard copy, I can
17 sign hard copies and give them to the clerk
18 tomorrow. That's the fastest way I can get it
19 done.

20 MR. WEBER: Okay.

21 MR. ZAPPOLO: And I want to say I don't think
22 I have a problem with it.

23 MR. WEBER: Okay.

24 MR. ZAPPOLO: I'm in a little bit of a brain
25 fog right now.

1 THE COURT: Okay. Deputy, are you with us
2 tomorrow?

3 THE COURT DEPUTY: No, I'm not, Your Honor.

4 THE COURT: Do you know who is?

5 THE COURT DEPUTY: Probably Derrick Shilling.

6 THE COURT: Can you talk to him about -- the
7 menus in the morning was great. What you did today
8 was perfect.

9 THE COURT DEPUTY: Yeah, I already did that.
10 I wrote him a letter.

11 THE COURT: Okay. Thank you very much.

12 All right. Have a wonderful night. See
13 everybody in the morning.

14 MR. WEBER: Feel better, Your Honor. Thank
15 you.

16 (Whereupon, the proceedings are adjourned at
17 4:28 p.m. and are continued on May 11, 2023 in
18 Volume III.)

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IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT,

IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. 50-2012-CA-023358-XXXX-MB

JAMES TODD WAGNER, SUPERCAR ENGINEERING,
INC., a Florida corporation,

Plaintiffs,

vs.

WARREN MOSLER, MOSLER AUTO CARE CENTER,
INC. ("MACC") a Florida corporation,
d/b/a Mosler Automotive,

Defendants.

_____ /

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VOLUME III - DAY 3

- - - - -

PROCEEDINGS BEFORE
HONORABLE LUIS DELGADO

DATE: MAY 11, 2023

TIME: 9:30 A.M. - 4:15 P.M.

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17 ALSO PRESENT:

18 James Todd Wagner, Plaintiff
19 Warren Mosler, Defendant
20 David Griffin, TruVid, LLC
21
22
23
24
25

1 I N D E X

2	WITNESS	PAGE
3	SYLVIA KLAKER	
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14

15 E X H I B I T S

16	EXHIBIT	DESCRIPTION	MARKED	RECV'D
17				
18	Plaintiffs' 19	was marked Exhibit 764	374	375
19	Plaintiffs' 20	was marked Exhibit 762	398	399
20	Plaintiffs' 21	was marked Exhibit 1352A	402	403
21	Plaintiffs' 22	was marked Exhibit 1007	405	405
22	Plaintiffs' 23	was marked Exhibit 765	409	409
23	Plaintiffs' 24	was marked Exhibit 218	413	413
24	Plaintiffs' 25	was marked Exhibit 219	419	420
25	Plaintiffs' 26	was marked Exhibit 1067	420	421

1

E X H I B I T S (cont.)

2

3 EXHIBIT DESCRIPTION MARKED RECV'D

4

5 Plaintiffs' 27 was marked Exhibit 1006 424 424

6 Plaintiffs' 28 was marked Exhibit 420 425 426

7 Plaintiffs' 29 was marked Exhibit 1221 427 427

8 Plaintiffs' 30 was marked Exhibit 1227 429 430

9 Plaintiffs' 31 was marked Exhibit 394 435 436

10 Plaintiffs' 32 was marked Exhibit 584 439 443

11 Plaintiffs' 33 was marked Exhibit 585 441 443

12 Plaintiffs' 34 was marked Exhibit 256 457 458

13 Plaintiffs' 35 was marked Exhibit 255 462 463

14 Plaintiffs' 36 was marked Exhibit 257 466 467

15 Plaintiffs' 37 was marked Exhibit 259 470 471

16 Plaintiffs' 38A-D was marked Exhibit 474 476
1345A-D

17

Plaintiffs' 39 was marked Exhibit 315 478 479

18

Plaintiffs' 40 was marked Exhibit 67 489 493

19

Plaintiffs' 41 was marked Exhibit 70 494 495

20

Plaintiffs' 42 was marked Exhibit 69 497 498

21

Defendants' 1 was marked Exhibit 240 445 446

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BE IT REMEMBERED, that the following proceedings were taken in the above-styled cause before Honorable Luis Delgado, Presiding Judge, at the Palm Beach County Courthouse, 205 North Dixie Highway, Courtroom 10-D, in the City of West Palm Beach, County of Palm Beach, State of Florida, on the 11th day of May, 2023, to wit:

- - -

THE COURT: All right. I got a note from juror number 2. Their father passed away last night. He left a message with my JA, but he's here today. I think that's a nice way of saying "I want to go home and be with my family."

MR. WEBER: Yeah.

THE COURT: Any objection to releasing him?

MR. ZAPPOLO: Can I consult with my client?

THE COURT: You're on day two of an 11-day trial with six plus one alternate. You know, again, if you guys need to go below six, you're allowed to do that, but if you don't agree to that at some point in the future, then this would be a mistrial; but, you know, if he asked me to go home, I can tell you I'm probably going to let him go home.

1 MR. ZAPPOLO: Your Honor, can I just consult
2 with my client very briefly? We'll be back in five
3 minutes.

4 (Thereupon, a short break was taken from
5 9:41 a.m. to 9:41 a.m.)

6 THE COURT: All right. Let's bring in juror
7 2.

8 MR. ZAPPOLO: I'll say for the record, Your
9 Honor, after consulting with Mr. Wagner, we agree,
10 the juror should be released.

11 MR. WEBER: And defendants agree too.

12 THE COURT: Okay. I don't know how he's going
13 to focus on anything.

14 MR. ZAPPOLO: Right. With everyone's
15 condolences.

16 THE COURT: Yeah.

17 MR. ZAPPOLO: And for the record, I'm dealing
18 with a similar situation. My mother-in-law -- I
19 just got married and my mother-in-law is --
20 suffered a stroke the night before we started
21 trial, so -- and I was talking with Mr. Weber about
22 the fact that I was at the hospital days before the
23 trial with -- dealing with issues with her, so I
24 totally sympathize, and as does Mr. Wagner.

25 THE COURT DEPUTY: All rise. Juror entering.

1 (Juror Daly entered the courtroom at
2 9:42 a.m.)

3 THE COURT: Mr. Daly, so we just got the note.
4 I'm sorry for your loss.

5 Okay. Do you want to go home?

6 JUROR DALY: Yes.

7 THE COURT: Please go home.

8 MR. ZAPPOLO: Thank you.

9 JUROR DALY: Thank you very much.

10 MR. WEBER: Thank you.

11 THE COURT: I will also tell you this: So,
12 we're not heartless or insensitive people. My
13 judicial assistant is actually on vacation, so when
14 you left the message, there was no one there to get
15 it.

16 JUROR DALY: Okay.

17 THE COURT: That's why you had to show up this
18 morning. I think if we had gotten that message
19 this morning things would have been a little
20 different.

21 JUROR DALY: I appreciate it.

22 THE COURT: Please be with your family.

23 JUROR DALY: Thank you so much, Judge.

24 (Juror Daly exits the courtroom at 9:43 a.m.)

25 THE COURT: All right. Anything else we need

1 to address before calling --

2 MR. ZAPPOLO: Yes, Your Honor, a couple of
3 brief issues. Mr. Weber has the two orders that we
4 discussed yesterday for entry.

5 THE COURT: Okay.

6 MR. ZAPPOLO: I have reviewed them and I agree
7 that they represent the court's ruling. And then
8 there's one administrative thing. We were planning
9 today to have some deposition transcripts read, and
10 Mr. Weber yesterday alluded to the fact that he
11 wanted Your Honor to make some rulings on those. I
12 don't know how Your Honor wants to handle those, so
13 if you can tell us, we can --

14 THE COURT: When are we going to get into the
15 depositions?

16 MR. ZAPPOLO: This afternoon. Well, depending
17 on how long Mr. Weber's Cross-Examination goes, I
18 guess, but I reasonably expect this afternoon.

19 THE COURT: And we -- do we have those
20 designations right now?

21 MR. WEBER: Yes, Your Honor. There's
22 designations, cross-designations, and objections to
23 designations.

24 THE COURT: And how many are there?

25 MR. WEBER: Well --

1 THE COURT: Is it like an hour's worth of
2 work? Is it 15 minutes worth of work?

3 MR. WEBER: I would probably say there's an
4 hour's worth of work.

5 THE COURT DEPUTY: Am I clear to bring the
6 other jurors in?

7 THE COURT: Put them in the jury room, yes.

8 I'd like to think they followed my
9 instructions because I said it like three or four
10 times, but usually when I excuse a juror, I ask if
11 you want me to tell them why I excused somebody so
12 they're not wondering why someone's not here
13 instead of focusing on what you're presenting to
14 them. Would you like me to do that, or would you
15 like to let it lie?

16 MR. WEBER: I think let it lie because once
17 you say one reason, you might get other reasons of
18 people asking to leave.

19 THE COURT: Okay.

20 MR. ZAPPOLO: I'll defer to whatever the Court
21 wants to do.

22 THE COURT: Okay. If you don't want me to do
23 it, then I won't do it. You know, I'd like to
24 think they didn't talk about it, but they might
25 have.

1 MR. WEBER: Yeah.

2 THE COURT: Okay. Depo designations, I'll
3 take a look at them real quick. I try to move
4 quick. When you say it's an hour, I'm optimistic,
5 but you guys have also been pretty reliable. When
6 you say an hour, it's probably an hour.

7 MR. WEBER: I think so, Your Honor. There's a
8 bunch of them, I'm sure.

9 MR. ZAPPOLO: And since I don't know how the
10 Court is going to handle it, I don't really know.

11 Would Your Honor be reading the transcript
12 himself or looking at the objection and ruling, or
13 are you going to take argument?

14 THE COURT: Well, so it's been my experience
15 that when I do depo designations, if I go over them
16 with you guys, a lot of the issues that we
17 addressed early on are redundant and so the parties
18 will say "Well, that's consistent with your ruling.
19 We'll do this and we'll do this," and you tend to
20 pick up steam if we do them together versus if I do
21 them on my own. I mean, I'm going to have to sit
22 back there probably for a couple of hours, so I'd
23 rather go over them with you guys in the courtroom.

24 MR. WEBER: Yeah.

25 MR. ZAPPOLO: Should we just tell the jury to

1 take a long lunch and we come back early and --

2 THE COURT: We'll tell them to take a long
3 lunch or we can excuse them at lunch too and we can
4 work on this in the afternoon. You know, I don't
5 want to lose half a day, but, you know, also,
6 frankly, I like to do stuff before trial too.

7 MR. WEBER: Yeah, I'd like to start in the
8 morning. I'd rather do it now.

9 MR. ZAPPOLO: Well, they're here. I don't
10 want to send them home and have them, like, come
11 back in the afternoon. So why don't we continue
12 with Ms. Klaker. I have two other witnesses that I
13 anticipate will be short today.

14 THE COURT: Okay.

15 MR. ZAPPOLO: And depending -- like I said, I
16 guess we're going to have to assess it as the day
17 goes on. Depending on how long Ms. Klaker goes, we
18 might be able to get my other two witnesses done
19 today. At least one of them has flown in from
20 Texas, I believe, so I'd like to get him. He's
21 relatively short.

22 THE COURT: If you're telling me this is going
23 to take an hour, then let's say you have other
24 witnesses. If we're busy until about 2:30 or 3:00,
25 I'll send them home at that point and we'll go over

1 this until the end of the day.

2 MR. ZAPPOLO: Sounds good, Your Honor.

3 THE COURT: Okay.

4 MR. ZAPPOLO: Yes.

5 THE COURT: Let me give this back to you
6 because if it stays up here, I don't want it to
7 disappear.

8 MR. WEBER: One other issue, Your Honor. One
9 of our witnesses, Rick Mancuso, we were going to
10 file a motion for him to appear by video
11 potentially. I haven't gotten Mr. Zappolo's
12 position on it. I asked him several times. Would
13 you entertain a witness appearing by video or --

14 THE COURT: Any objection by video? I thought
15 we did address this. I thought we did. This is
16 ringing a bell for me.

17 MR. WEBER: I mentioned it several times.
18 Mr. Zappolo hasn't given me his position to it.

19 MR. ZAPPOLO: My client is concerned about the
20 technical aspect of it, Your Honor, with not having
21 him live. I guess my question to Mr. Weber is what
22 type of presentation are we going to be getting
23 into? You know, when you take a Zoom deposition
24 and someone throws something up on the board and
25 then scroll up, scroll down and all that kind of

1 stuff, you know, you have problems with that.

2 Now I don't mind it being a problem for them,
3 and I say that tongue-in-cheek, but on my
4 Cross-Examination I'm concerned that, you know --

5 So the nature of your examination of
6 Mr. Mancuso is you're going to be using, like,
7 exhibits and things with him?

8 MR. WEBER: The same which we would be doing
9 here. I mean, we take Zoom depositions regularly
10 in all cases. There's no difference between me
11 showing a document on the projector or the court's
12 Elmo screen than him appearing by Zoom. It's the
13 exact same issue.

14 MR. ZAPPOLO: So I have to be -- I have to get
15 logistically set up to Zoom here in the courtroom
16 is what I'm understanding? Will that be next week?

17 I guess I'm assuming that will be next week so
18 I can try and get set up technologically on Monday
19 or whatever, Your Honor.

20 MR. WEBER: Our IT person's Elmo -- if you use
21 our IT person's Elmo, that will transfer the
22 document to him.

23 MR. ZAPPOLO: Okay. Great. And Mr. Mancuso
24 is the --

25 MR. WEBER: Our car expert.

1 MR. ZAPPOLO: Your car expert, right. Okay.
2 Under those circumstances, Your Honor, I think
3 that's a reasonable -- I mean, that's the way to
4 work it out. If we're both using the same
5 technology, I don't have to worry about that and we
6 can deal with it that way because I can just use
7 paper on the Elmo.

8 THE COURT: Okay.

9 MR. WEBER: The Court does hearings by Zoom
10 all the time; it's the same.

11 MR. ZAPPOLO: I know. It's a nightmare, I'm
12 sorry.

13 (Thereupon, a brief discussion was had off of
14 the record.)

15 MR. WEBER: Okay. That's it, Your Honor.

16 THE COURT: All right. Let's bring them out.

17 THE COURT DEPUTY: All rise, jury entering.

18 (Jurors entering the courtroom at 9:54 a.m.)

19 THE COURT: You may be seated. Let's bring in
20 Ms. Klaker.

21 MR. ZAPPOLO: Your Honor, may Mr. Weber and I
22 approach briefly?

23 THE COURT: Yes.

24 (Thereupon, a sidebar conference was held.)

25 MR. ZAPPOLO: Do we want to have juror number

1 1 shift down so she's got a better viewpoint?

2 THE COURT: So, it actually helps me
3 (Indicating) --

4 MR. WEBER: Yeah, I agree.

5 MR. ZAPPOLO: Okay.

6 THE COURT: -- when I look at my map. So I'll
7 kind of leave them there so when I look at my notes
8 and everything, that's final. So, we'll do that.

9 MR. WEBER: For the record, knowing when we're
10 referring to juror 7, we know exactly who it is
11 going forward.

12 THE COURT: Yeah, I have it here.

13 MR. WEBER: Totally.

14 MR. ZAPPOLO: Okay.

15 (Thereupon, the sidebar conference was
16 concluded.)

17 THE CLERK: Please raise your right hand. Do
18 you solemnly swear or affirm that the evidence
19 you're about to give is the truth, the whole truth,
20 and nothing but the truth?

21 **THE WITNESS: Yes.**

22 THE COURT: Plaintiff, it's your witness.

23 MR. ZAPPOLO: Thank you, Your Honor.

24 DIRECT EXAMINATION (cont.)

25 BY MR. ZAPPOLO:

1 Q Ms. Klaker, do you recall yesterday we were
2 talking about an individual named Mark at Scorpion
3 Motorsports?

4 **A I do.**

5 Q I'm showing you what's been marked as
6 Plaintiffs' Exhibit Number 764 for identification
7 purposes. At the time that 764 was written, your email
8 address remained the same, correct?

9 **A Yes.**

10 (Thereupon, Plaintiffs' Exhibit 764 was marked
11 for identification.)

12 BY MR. ZAPPOLO:

13 Q Okay. Now take a moment to look at that and
14 tell me, is there any reason to believe that Plaintiffs'
15 764 is not a true and correct copy --

16 **A No.**

17 Q -- of your email at the time?

18 **A No.**

19 MR. ZAPPOLO: Your Honor, at this point I'd
20 like to move Exhibit 764 into evidence.

21 THE COURT: Defense?

22 MR. WEBER: No objection.

23 THE COURT: Madam Clerk, what number is this?

24 THE CLERK: 19.

25 THE COURT: Number 19 admitted without

1 objection.

2 (Thereupon, Plaintiffs' Exhibit 19 was
3 received into evidence.)

4 BY MR. ZAPPOLO:

5 Q Now you told us yesterday that you were not
6 negotiating the sale of Mosler, correct?

7 MR. WEBER: Objection, misstates testimony.

8 THE COURT: Overruled.

9 **THE WITNESS: Right.**

10 BY MR. ZAPPOLO:

11 Q Okay. But you were privy to conversations
12 with people that were trying to purchase Mosler either
13 in an asset sale or in a stock sale, correct?

14 **A Yes.**

15 Q Okay. Such as Exhibit 764, which is now
16 Number 19 in evidence, correct?

17 **A Yes.**

18 Q Okay. Now, this email -- I just want to make
19 sure the jury knows how to read it when they go back
20 into the jury room. This email is copied to you up at
21 the top, right?

22 **A Yes. Uh-huh.**

23 Q And it's from Warren Mosler, correct?

24 **A Yes.**

25 Q All right. Now that's Warren Mosler

1 responding to Mr. Mark at Scorpion Motorsports, correct?

2 **A Yes.**

3 Q And the way we read this is, we read what Mark
4 at Scorpion wrote, and he wrote: "Warren, before I
5 begin, thank you for the opportunity to view the
6 factory."

7 By the way, did there ever come a time when
8 James Wagner wanted to view the factory after he left
9 there?

10 **A I don't remember. He was in and out a lot.**

11 Q Okay. You don't have any recollection of him
12 ever being denied access to the factory?

13 **A Oh, yes, I do remember. At one point we did
14 tell him he was not allowed on the property.**

15 Q Okay. Now Mark goes on: "That being said, I
16 have many follow-up questions and we'll try to get them
17 out in short order so you do not need to get tired of
18 hearing of me."

19 And he asked "One, please tell me who Supercar
20 Engineering is and the full nature of their interaction
21 with your company as well as any interconnection
22 involving intellectual property, claims to intellectual
23 property, and then there was a typo there, et cetera."

24 Mr. Mosler responded what?

25 **A You want me to read it?**

1 Q Okay.

2 A "No actual interconnection at this point in
3 time, and I'll sign a hold harmless to protect you
4 against any actions he might take."

5 Q Okay. And then he wrote?

6 A "A brief interview with him will assure you
7 he's truly mentally disturbed as will a brief
8 conversation with anyone who knows him. Unfortunately
9 he snapped a few years ago and is fundamentally
10 irrational now."

11 Q Okay. Now you understood, at the time that
12 this was written, that the people at Scorpion might be
13 purchasing Mosler Auto Center, correct?

14 A I'm assuming.

15 Q Okay. Now if Mosler Auto Center was sold,
16 James Wagner would have still been a distributor of
17 Mosler Auto Care Center cars, correct?

18 MR. WEBER: Objection, calls for a legal
19 conclusion.

20 THE COURT: Repeat your question.

21 BY MR. ZAPPOLO:

22 Q If Mosler Auto Care Center was sold,
23 Mr. Wagner's company -- I should have said SEI -- would
24 still have been a distributor for Mosler Auto Care
25 Center vehicles, correct?

1 MR. WEBER: Objection, speculation.

2 THE COURT: Sustained.

3 BY MR. ZAPPOLO:

4 Q Did you have an opportunity to review the
5 contract for distribution rights to Thailand and China?

6 A I'm sorry?

7 Q Did you have an opportunity to review the
8 distribution rights to Thailand and China?

9 A I didn't read it completely, but I did have
10 access to it.

11 Q Okay. And you never knew whether the contract
12 was binding upon anyone besides Mosler Auto Care Center,
13 do you?

14 A You know, because I wasn't -- I'm no authority
15 figure. I just prepared the paperwork that comes across
16 my desk and make copies of things. I'm not in the
17 position to make any decisions for our company.

18 Q Even though you were the person in charge?

19 A I wasn't in charge of the office, yes.

20 Q Okay. But you were in charge of --

21 A But this is big -- this is beyond me. The
22 negotiations were not something that -- I'm not going to
23 sign anything, but I am going to assist in getting
24 documents to the right people.

25 Q If you were such a low person on the totem

1 pole, as you characterize it, why were you included in
2 all this?

3 **A Because I was in the main office.**

4 **Q Okay.**

5 **A And I dealt with everybody that came in and
6 out of there, out of the building.**

7 **Q So this was a small company, wasn't it?**

8 **A Yeah. Uh-huh. Yes, sir.**

9 **Q Okay. How many employees?**

10 **A I don't know. I think maybe 35.**

11 **Q Okay.**

12 **A At full capacity, I believe.**

13 **Q Okay.**

14 **A But...**

15 **Q As far as the administration of those 35
16 people, who do we have? Who were the people at the
17 office that were administration?**

18 **A It would have been Jill Wagner, myself, Ann
19 Rodgerson, Jason, I believe.**

20 **Q Jason Mosler?**

21 **A No. No.**

22 **Q Okay.**

23 **A Jason, I can't remember his last name. I'm
24 sorry.**

25 **Q Okay.**

1 **A He was our purchasing agent.**

2 Q Okay. So I count four people plus Mr. Mosler,
3 is that fair?

4 **A He wasn't -- Mr. Mosler wasn't in the**
5 **building, but of course everything was -- we made him**
6 **aware of anything, any decisions that needed to be made**
7 **that Jill didn't make on her own.**

8 Q And he had good communication with those four
9 people, didn't he?

10 **A I don't know if he had good communication with**
11 **everybody, but he had good communication with Jill.**

12 Q Okay. Did he have good communication with
13 you?

14 **A He did.**

15 Q Okay. So you were kept in the loop on things,
16 right?

17 **A Pretty -- pretty much I would say, but I'm no**
18 **authority figure, that's just what I'm trying to --**

19 Q Right.

20 **A -- to get across.**

21 Q But among the administrative personnel at
22 Mosler Auto Care Center in November of 2012, was it
23 common knowledge that Mr. Mosler thought that Mr. Wagner
24 was mentally disturbed?

25 **A We all did.**

1 Q Okay. Now, let's touch on that for a minute.

2 You thought he was mentally disturbed, right?

3 **A I thought he was having a very difficult time.**

4 Q Okay. Well, there's a difference between
5 having a difficult time and being mentally disturbed.

6 **A Well, I'll just tell you what I saw myself
7 personally.**

8 Q All right. We're going to get into that, but
9 first I want to ask you a couple of preliminary
10 questions, okay?

11 **A Okay.**

12 Q You agree with me there's a difference between
13 having a difficult time and being mentally disturbed,
14 don't you?

15 **A They can coexist.**

16 Q Okay. But you understand there's a
17 difference, right?

18 **A There can be, yes.**

19 Q Okay. You've gone through difficult times in
20 your life, right?

21 **A Yes, I have.**

22 Q Did people accuse you of being mentally
23 disturbed because you're --

24 **A I don't know.**

25 Q Okay. Did you ever feel like -- let me back

1 up.

2 Your educational background, can you tell the
3 jury what your educational background is?

4 **A I completed two years of college.**

5 Q Okay. And that wasn't in, like, psychology or
6 psychiatry, right?

7 **A Yes. I majored in sociology and minored in
8 psychology.**

9 Q Okay. So based upon your two years of junior
10 college, what classes did you take?

11 **A It wasn't a junior college.**

12 Q Oh, I apologize.

13 **A It was a university, but --**

14 Q Okay. Based upon your two years at the
15 university, what classes did you take in order to help
16 you to evaluate people to determine whether or not they
17 were mentally disturbed?

18 **A I'm not sure I took any.**

19 Q Okay. So you're just like everybody else --
20 right? -- with respect to your ability to assess whether
21 or not someone is mentally disturbed, right?

22 **A I imagine I am. I don't really know what
23 other people think.**

24 Q Okay. Now did you ever share with Mr. Mosler
25 that you thought that he was -- that Mr. Wagner was

1 mentally disturbed?

2 **A I may have.**

3 Q Okay. You don't know?

4 **A Oh -- I clearly -- he knew I thought Todd was**
5 **having issues.**

6 Q Okay. Well, there's a difference between
7 having issues and being mentally disturbed, we just
8 discussed, right?

9 **A We did.**

10 Q Lots of people have issues, right?

11 **A Yes.**

12 Q Because someone's having an issue, do they
13 deserve to be labeled as mentally disturbed?

14 **A When they're raised to the level that I was**
15 **exposed to, yes.**

16 Q Okay. Let's talk about that.

17 **A Let's.**

18 Q Okay. You're waiting to tell us this, aren't
19 you?

20 **A Sir, I'll just answer any questions you ask**
21 **me.**

22 Q Right. Well, you want to tell this jury why
23 you think James Todd Wagner is mentally disturbed, don't
24 you?

25 **A I'll answer any question you ask me.**

1 Q My question was: You want to tell this jury
2 why you think James Todd Wagner is mentally disturbed,
3 don't you?

4 MR. WEBER: Objection, asked and answered,
5 argumentative.

6 THE COURT: Sustained. Let's move on.

7 BY MR. ZAPPOLO:

8 Q All right. Let's make a list of why you think
9 James Todd Wagner is mentally disturbed, okay. Go ahead
10 and tell us the first reason you think he's mentally
11 disturbed.

12 A I know his wife personally and they have had a
13 very -- had a very difficult divorce, and it continues
14 to this day even though the divorce has been final for
15 years.

16 Q Okay. Now at the time this was written,
17 November 20, 2012, was Mr. Wagner divorced from his
18 wife?

19 A I don't know.

20 Q Okay. Were there any issues going on between
21 them?

22 A I can't remember the date and their issues.

23 Q Okay.

24 A This was a long time ago.

25 Q Fair enough.

1 You would agree with me that lots of people go
2 through divorces, don't they?

3 **A Yes, sir.**

4 Q Does everyone who goes through a divorce
5 deserve to be called mentally disturbed?

6 **A I don't know.**

7 Q Okay. That's reason number one, correct?
8 Difficult divorce?

9 **A Yeah, I suppose.**

10 Q Okay. What's the second reason that you use
11 to conclude that Mr. Wagner was mentally disturbed?

12 **A When he started work for MACC in 2004, he was**
13 **a bit odd and he just -- he just got worse as the years**
14 **went by.**

15 Q Okay.

16 **A I'm -- I just saw him get -- become less and**
17 **less socially -- he's more -- he's just socially inept**
18 **and I just saw deterioration.**

19 Q Okay. He was socially inept. When did
20 Mr. Wagner start working for MACC?

21 **A In, I believe, 2004.**

22 Q Okay. And when did you determine that
23 Mr. Wagner was mentally disturbed?

24 **A I never said that I made that decision.**

25 THE COURT: Can I see the attorneys for a

1 moment?

2 MR. ZAPPOLO: Excuse us.

3 (Thereupon, a sidebar conference was held.)

4 THE COURT: I got a note from one of the
5 jurors. I don't know who sent it. I can read it
6 to you now or I can wait until the end and I can
7 remind them to hold any questions until the end of
8 the testimony. What would you like me to do?

9 MR. WEBER: I think we should do it now.

10 MR. ZAPPOLO: I say no, keep it until the end,
11 but that's fine. Whatever Your Honor -- it's up to
12 Your Honor.

13 THE COURT: So the parties want me to read
14 this. It says, "Will the lawyer define what he
15 means by mentally disturbed?"

16 MR. ZAPPOLO: Okay. So they have a question
17 about what mentally disturbed means?

18 MR. WEBER: Okay.

19 THE COURT: You know, I'm going to tell them
20 to hold all their questions until the end of the
21 testimony.

22 MR. WEBER: Yeah.

23 MR. ZAPPOLO: Okay.

24 THE COURT: I'm not going to address this, but
25 now you know, and now you know so you can address

1 it on Cross as well.

2 MR. ZAPPOLO: Okay.

3 MR. WEBER: If we want to, but we're not going
4 to ask her any questions unless we see how far --

5 THE COURT: Right. Right. But you know,
6 right.

7 (Thereupon, the sidebar conference was
8 concluded.)

9 THE COURT: Thank you. I will remind the
10 jurors that the time and place for juror questions
11 is at the conclusion of the testimony. It's your
12 witness.

13 BY MR. ZAPPOLO:

14 Q Okay. I think I had just asked you when
15 Mr. Wagner started working at Mosler and you said 2004,
16 am I correct?

17 A **I believe so, yes.**

18 Q Okay. And at what point did you determine
19 that Mr. Wagner had become mentally disturbed?

20 A **I'm not sure of the date. Of course I
21 wouldn't know the date, but things begin to happen.
22 Like, I went into the shop of the building and I had
23 kept seeing this large, large box, and I'm wondering why
24 the guys aren't doing anything about it. So I inquired
25 about it, and I found out that it was an engine that we**

1 purchased and that Todd had insisted we purchase even
2 though his junior engineer and the guys that actually
3 worked on the car told him it was never going to fit
4 into our vehicle. He ordered it anyway. It was
5 approximately 20 grand and it just sat there in a
6 corner. It's a waste.

7 Q Okay.

8 A He wouldn't -- he's the smartest guy in the
9 room he thinks, and he's extremely arrogant. He
10 wouldn't listen to anybody.

11 On another occasion he wanted to take our
12 purchasing agent outside so they could finish their
13 argument that they were having in the staff meeting. He
14 should have been fired for that.

15 And then on another occasion he wrecked one of
16 our cars because he went against company policy and
17 drove it on -- drove it from Fort Lauderdale, got on the
18 road to the shop in the rain, when we were supposed to
19 be trailering that vehicle for the customer to the shop,
20 and he got in a wreck because he got in a street race
21 with a Lotus and wrecked our car. He didn't listen to
22 anybody.

23 Q Okay. Is your answer complete?

24 A It is for now, yes.

25 Q Okay. Now, I had asked you when the date was

1 that you determined that Mr. Wagner was mentally
2 disturbed, and you told me you weren't sure. And that
3 wasn't a direct answer, but then you went on and gave me
4 some other examples which I would have followed up on
5 and we got them on the table, so let's discuss them,
6 okay.

7 You said first that Mr. Wagner ordered an
8 engine that wouldn't fit into a car and it was a
9 \$20,000 waste. Do you remember that?

10 **A I do.**

11 Q Okay. What aspect of ordering an engine for a
12 car and it doesn't fit in the car did you believe
13 somebody was mentally disturbed?

14 **A When the entire group is telling you it isn't
15 going to fit.**

16 Q Okay. Do you remember Mr. --

17 **A Let me finish.**

18 Q Okay. Go ahead, please.

19 **A And you're not listening. I'm not talking
20 about you, I'm talking about Mr. Wagner. He wouldn't
21 listen to anybody.**

22 Q Okay. Do you recall what Mr. Wagner's
23 response to the group was when it was suggested that the
24 motor wouldn't fit?

25 **A He just kept denying and saying that yes, in**

1 **his estimation, it would fit.**

2 Q So he believed it would fit?

3 **A Yes, sir.**

4 Q Okay. Who was challenging whether or not the
5 motor would fit?

6 **A The other engineer of the company and the guys
7 that worked on the car.**

8 Q Okay.

9 **A That installed -- you know, built it.**

10 Q Did Mr. Mosler approve the \$20,000 purchase?

11 **A I don't know.**

12 Q Well, in fact, Mr. Mosler approved things and
13 disapproved things, such as color of dashboards, makes
14 of dashboards on cars. Right down to the smallest
15 detail he was involved, wasn't he?

16 MR. WEBER: Objection, ambiguous.

17 THE COURT: Overruled.

18 **THE WITNESS: I don't know because I didn't
19 exchange -- I didn't speak about those items with
20 Mr. Mosler.**

21 BY MR. ZAPPOLO:

22 Q But you wrote the checks, didn't you?

23 **A I paid the bills, yes.**

24 Q Okay. So you were paying for this
25 \$20,000 engine, right?

1 **A Yes, sir.**

2 Q Okay. Is it your position that you didn't
3 confirm with Mr. Mosler that it was okay to send the
4 check for the \$20,000 engine?

5 **A I had no idea we had purchased it. It was**
6 **in -- it was in among the list of bills that had to be**
7 **paid for the week.**

8 Q Right. And at the end of the week, when the
9 bills had to be paid, an email went to Mr. Mosler saying
10 "We're going to pay for these things," correct?

11 **A Yes.**

12 Q And that was the common practice, wasn't it?

13 **A That I would send him a weekly list showing**
14 **what we were -- what we were paying for the -- what we**
15 **were going to be paying, yes.**

16 Q Right. Okay. That weekly list of what you
17 were going to bill and what you would be paying would
18 include things like turbochargers for the 2012
19 RaptorGTR, right?

20 **A I would imagine they did, yes.**

21 Q And Mr. Mosler would then approve those lists,
22 correct?

23 **A Yes.**

24 Q Okay. And that \$20,000 engine, was that paid
25 for?

1 **A Oh, I'm sure it was, yes.**

2 Q Okay. So it goes -- logic would imply that
3 Mr. Mosler approved that payment for that engine, right?

4 **A That's true.**

5 Q Okay. Now, the next thing you said was
6 Mr. Wagner was arrogant.

7 **A Yes.**

8 Q And I think you tied it into other people were
9 telling him something and he decided that he wanted to
10 purchase that engine, is that fair?

11 **A Yes.**

12 Q Okay. So what part of being arrogant
13 qualifies someone as mentally disturbed?

14 **A Well, when you couple it with other things**
15 **that I witnessed throughout the years, he's -- he's just**
16 **socially inept.**

17 Q Okay. Socially inept, how many people in this
18 country are "socially inept"?

19 **A I don't know.**

20 MR. WEBER: Objection. It seems like counsel
21 raised his hand for a survey.

22 THE COURT: Sustained.

23 MR. ZAPPOLO: For the record, I did air
24 quotes, Your Honor, okay.

25 MR. WEBER: It was sustained, just for the

1 record.

2 THE COURT: Let's move on. What's the next
3 question?

4 BY MR. ZAPPOLO:

5 Q What do you mean by "socially inept"?

6 A He doesn't behave like normal people in a
7 group setting that I've ever witnessed.

8 Q Does Mr. -- well, you said he wanted to finish
9 a discussion with the purchasing agent outside. Isn't
10 it appropriate, when you're having a disagreement with
11 an employee, to take it away from the other employees
12 and not air grievances in front of a whole crowd of
13 people?

14 A You don't understand. It wasn't a whole crowd
15 of people, it was a meeting that Jill was having with
16 some of her case staff, and they got into an argument
17 and he wanted him to step outside so that they could get
18 physical.

19 Q Mr. Wagner wanted to get physical with
20 someone?

21 A Yes, he did.

22 Q Okay. And did they get physical?

23 A No. His wife put a stop to it.

24 Q Okay. Who was the purchasing agent?

25 A Jason -- Justin Irby. I remember now, Irby,

1 **I-R-B-Y.**

2 Q Okay. Do you remember what that disagreement
3 was about?

4 **A I don't. I wasn't in the meeting.**

5 Q Okay. The next thing you said was that
6 Mr. Wagner wrecked a car, right?

7 **A Yes.**

8 Q You said the car was supposed to be trailered?

9 **A Yes.**

10 Q Okay.

11 **A And in an enclosed trailer.**

12 Q Okay. Now is not following the company
13 policy, is that a basis for being called mentally
14 disturbed?

15 **A No, but it should get you fired.**

16 Q Okay. But he wasn't fired, was he?

17 **A Unfortunately, he was not.**

18 Q Okay. By the way, right around that time
19 another Mosler vehicle was in an accident, wasn't it?

20 **A I don't know.**

21 Q Do you remember your husband's vehicle getting
22 in a wreck around that time period?

23 **A Yes.**

24 Q Okay. So your husband wrecked his car around
25 the same time as Mr. Wagner. Did you conclude that your

1 Honor.

2 THE COURT: What accident?

3 MR. ZAPPOLO: The accident that she attributes
4 to my client for being mentally disturbed.

5 MR. WEBER: Objection, relevance.

6 THE COURT: Sustained.

7 **THE WITNESS: Can you repeat the question?**

8 BY MR. ZAPPOLO:

9 Q No. The judge sustained the objection, so...

10 **A Oh, I'm sorry. You have to forgive me, I'm**
11 **tired.**

12 Q It's all right.

13 Is there anything else that you want to share
14 with this jury about why you thought Mr. Wagner was
15 mentally disturbed?

16 **A No.**

17 Q Okay. By the way, when you and I were having
18 that discussion, "mentally disturbed," what did you mean
19 by the phrase "mentally disturbed"?

20 **A He just doesn't behave the way I would expect**
21 **a normally -- a normal person behaves. He's odd and he**
22 **behaves inappropriately at times.**

23 Q Now, that document within this email -- oops.
24 Mr. Mosler wrote "Unfortunately he," meaning Mr. Wagner,
25 "snapped a few years ago and is fundamentally irrational

1 now."

2 Do you agree with that assertion?

3 **A Yes.**

4 Q Okay. What caused or what is the triggering
5 event for this alleged snapping?

6 **A I don't know. You'd have to ask Mr. Mosler.**

7 Q Okay. So you don't know about -- you don't
8 have anything to tell this jury about Mr. Wagner
9 snapping, right?

10 **A Excuse me?**

11 Q The assertion is that Mr. Wagner snapped. You
12 don't have any information about that, do you?

13 **A I'm not going to answer that because I don't
14 know what event Mr. Mosler is referring to, if anything.**

15 Q Okay. You don't have a particular event that
16 you concluded caused Mr. Wagner to snap, do you?

17 **A All I know is he started to behave very
18 differently and it just -- the more time went on, the
19 weirder he became. I used to go to lunch with him and
20 his wife all the time --**

21 Q Okay.

22 **A -- and he was -- seemed okay early on and then
23 he just started to deteriorate somehow.**

24 Q Did you stop going to lunch with him and his
25 wife?

1 **A We stopped going to lunch. She and I stopped**
2 **going to lunch with him, yes.**

3 **Q Okay. Was that when his wife had found out**
4 **that he was having an affair?**

5 **A That was -- it may have been. It may have**
6 **been. I don't remember the date.**

7 **Q At this point I'd like to move -- oh, I**
8 **apologize, 764 is in evidence.**

9 Ms. Klaker, I'm showing you what's been marked
10 as Exhibit 762. Do you recognize that document?

11 **A Yes.**

12 (Thereupon, Plaintiffs' Exhibit 762 was marked
13 for identification.)

14 BY MR. ZAPPOLO:

15 **Q Okay. And same usual question: Any reason to**
16 **believe it's not a true and correct copy of your emails**
17 **on or about that date?**

18 **A No.**

19 MR. ZAPPOLO: Okay. At this point I'd like to
20 move 762 into evidence.

21 THE COURT: Any objection?

22 MR. WEBER: No objection.

23 MR. ZAPPOLO: Okay.

24 THE COURT: Madam Clerk, is that 20?

25 THE CLERK: Yes, Your Honor.

1 (Thereupon, Plaintiffs' Exhibit 20 was
2 received into evidence.)

3 BY MR. ZAPPOLO:

4 Q Okay. Now Exhibit Number 20, which was 762
5 for identification but is now 20 in evidence, it again
6 references Todd snapped and the time he lent a guy named
7 Lew Lee something \$100,000 to make a nonrefundable
8 deposit to buy Mosler with 60 days to close. Now that
9 was who speaking?

10 **A Mr. Mosler.**

11 Q Okay. In this email, right.

12 Now, it says "We all told Todd not to do it,
13 that Lew was bogus, but he wouldn't listen to anyone.
14 Lew never did close. He was a total fraud, as we warned
15 Todd, and now Todd claims his \$100,000 deposit and he's
16 on a mission to get it back."

17 Now Mr. Mosler represents that the time that
18 Todd snapped was around the time he lent a guy named Lew
19 Lee something \$100,000. Does that refresh your
20 recollection as to when you concluded that Mr. Wagner
21 had, quote/unquote, snapped?

22 **A I thought he was acting weird long before**
23 **this.**

24 Q By the way, did you ever have any conversation
25 with Lew Lee?

1 **A No.**

2 Q Did you ever warn James Todd Wagner not to do
3 business with Lew Lee?

4 **A I didn't.**

5 Q Okay. Do you remember, just prior to those
6 exhibits, just a couple of months prior to that
7 Mr. Wagner trying to -- well, I'll leave that alone for
8 now. We'll deal with that a different way.

9 Now, you mentioned that Mr. Wagner was a
10 violent person, correct?

11 **A I didn't say he was violent.**

12 MR. WEBER: Objection, misstates the
13 testimony.

14 MR. ZAPPOLO: All right. I apologize, and
15 I'll rephrase it.

16 BY MR. ZAPPOLO:

17 Q You told the jury that one of the reasons that
18 you concluded that Mr. Wagner was mentally disturbed is
19 because he -- why don't you tell us again -- took a
20 purchasing agent outside, wanting to take a purchasing
21 agent outside? What was the phrase you used?

22 **A It was they were having a disagreement in a**
23 **meeting and it got heated and he asked Jason if he**
24 **wanted to step out -- take it outside, something along**
25 **those lines.**

1 Q Okay. Now, did you -- based upon that, did
2 you fear for someone's safety?

3 A No.

4 Q Okay.

5 A We had a lot of guys at the shop and they were
6 big and strong. They could have stopped any fights that
7 took place.

8 Q Okay. Do you remember yesterday -- do you
9 remember yesterday we spoke about the use of the glass
10 shop, the fiberglass shop, and you said it was not
11 authorized and then the company found out about it?

12 A Oh, when Todd used the shop and its supplies
13 to work on a project for his company?

14 Q Yes.

15 A Yes, I do recall that.

16 Q Okay. Well, in fact, did the company make a
17 profit on that job?

18 A No.

19 Q You're positive the company didn't make a
20 profit on that job?

21 A Yes.

22 MR. WEBER: Objection.

23 BY MR. ZAPPOLO:

24 Q Ms. Klaker, I'm showing you what's been marked
25 as 1359A [sic] for identification purposes. I'd like

1 you to review the top portion of that, and the second to
2 last sentence on the bottom of the first page.

3 **A I'm sorry, can you repeat that last part?**

4 Q And the second to last sentence on the bottom
5 of that page. The first line and the second to last
6 sentence on the first page.

7 **A You want me to read the first line?**

8 Q No, I don't want you to read it out loud. I
9 just want to ask you a couple of questions.

10 **A Oh, okay.**

11 (Thereupon, Plaintiffs' Exhibit 1352A was
12 marked for identification.)

13 BY MR. ZAPPOLO:

14 Q Now yesterday you weren't sure who that job
15 was for. Does the second to last line on the first page
16 refresh your recollection as to who that job was for?

17 **A Yes.**

18 Q Okay. And who was that person?

19 **A Greg Sidwell.**

20 Q Okay. And now on the first line of that page,
21 does that refresh your recollection or cause you to
22 change your testimony with respect to whether or not the
23 company made a profit?

24 **A No.**

25 Q No. Okay.

1 Nevertheless, the person that's in the email
2 chain at the bottom of the page, that's your email
3 address, right?

4 **A Yes.**

5 Q Do you have any reason to believe that that is
6 not a true and correct copy of the emails that were
7 exchanged at the company during that time?

8 **A No.**

9 MR. ZAPPOLO: Okay. At this point, Your
10 Honor, I'd like to move 1352A into evidence.

11 THE COURT: Defense?

12 MR. WEBER: No objection.

13 THE COURT: All right. Admitted as 21.

14 (Thereupon, Plaintiffs' Exhibit 21 was
15 received into evidence.)

16 BY MR. ZAPPOLO:

17 Q Now, below you said -- refreshed your
18 recollection that the person's name was Greg Sidwell,
19 correct?

20 **A Yes.**

21 Q Okay. Now Mr. Mosler was asking Jill Wagner
22 for a description of what happened, and she said she did
23 not agree with the description, "We did profit. I have
24 supporting documentation of hours worked. I gave Sylvia
25 the Excel spreadsheets with my notes from the project.

1 She wants the scrap of papers that the guys gave me
2 weekly. I entered them into Excel as Dan gave them to
3 me. I have zero interest in misrepresenting Todd's
4 project. I did not approve it, but we did profit from
5 it."

6 That doesn't refresh your recollection as to
7 whether or not you made a profit?

8 **A Oh, it refreshes my memory all right, but I**
9 **don't agree with her.**

10 Q Okay. Thank you.

11 Now along the lines of the mentally ill
12 comments, did you ever have a conversation with Matt
13 Farah?

14 **A I may have, but I don't really recall.**

15 Q Okay. Do you recall anything -- since you
16 don't recall whether you had a conversation with him,
17 you don't recall what you may have said to him, do you?

18 **A I'm guessing he called -- I know that he**
19 **called the shop. I would have answered the phone and**
20 **sent him over to Jill.**

21 Q Okay. There was a big controversy about that
22 at the office, wasn't there?

23 **A I don't know what you're talking about.**

24 Q Okay. I'm showing you what's been marked as
25 Plaintiffs' 1007 for ID purposes. Same questions: Any

1 reason to believe that's not a true and correct copy of
2 your emails at the time?

3 **A Well, this is my email, was my email.**

4 (Thereupon, Plaintiffs' Exhibit 1007 was
5 marked for identification.)

6 MR. ZAPPOLO: Right. I'd like to move
7 Exhibit 1007 into evidence.

8 MR. WEBER: No objection.

9 THE COURT: Madam Clerk, what number?

10 THE CLERK: 22.

11 THE COURT: 22.

12 MR. WEBER: Sorry, Your Honor. I was waiting
13 for you to ask before I responded.

14 THE COURT: No worries, we're good.

15 (Thereupon, Plaintiffs' Exhibit 22 was
16 received into evidence.)

17 BY MR. ZAPPOLO:

18 Q Now, this is a little more complex because we
19 have different people writing in an email chain, so I
20 want to be sure that the jury understands how to read
21 this, right.

22 Now the first thing is we have on Friday,
23 November 18th, at 5:36 James Todd Wagner wrote "Hi,
24 Warren. I went to ask Sylvia what Matt Farah may have
25 said when he called in. I have been under attack from

1 this guy and I need to figure out why. I haven't done
2 anything to him. Sylvia started talking about
3 certification and this particular car being changed
4 after it went through testing."

5 Now, you did tell this jury that the car had
6 been changed, correct?

7 **A I don't recall what I said.**

8 Q You don't recall what you told the jury
9 yesterday?

10 **A No, I don't.**

11 Q Okay.

12 **A But if I told them --**

13 Q If you told this jury yesterday that you
14 understood that the car had been changed, this email
15 would be consistent with that testimony, wouldn't it?

16 **A Yes.**

17 Q Okay. So back in 2011, Mr. Wagner
18 concluded -- and it was conveyed to Mr. Wagner that you
19 conveyed to Mr. Farah that you told him that the car had
20 been changed, correct?

21 **A That's what Todd said.**

22 Q Okay.

23 **A He was saying in this email.**

24 Q And you don't remember having a conversation
25 with James about that?

1 **A** **I don't remember. I'm sorry, I don't**
2 **remember.**

3 **Q** Okay. And then you said -- and then
4 Mr. Mosler responded: "First you announce that you are
5 suing me, so all correspondence now goes through Alan
6 cc'd." Alan was the company attorney, correct?

7 **A** **Excuse me?**

8 **Q** Alan was the company attorney, Alan Simon,
9 correct?

10 **A** **Yes.**

11 **Q** Okay. So, so far we know from this email that
12 James had concerns about what you had said to Mr. Farah.
13 He tried to express them to Mr. Mosler and Mr. Mosler
14 responded: "First you," meaning James Todd Wagner,
15 "announced you are suing me, so all correspondence now
16 goes through the company attorney," correct?

17 **A** **Yes, that's what it says.**

18 **Q** Did you ever get to the bottom about whether
19 or not James Todd Wagner announced whether he was suing
20 Mosler Auto Care Center or Mr. Mosler?

21 **A** **Did I ever get to the bottom of it?**

22 **Q** Yes.

23 **A** **What do you mean by that?**

24 **Q** Did you ever figure out -- did anyone ever
25 tell you whether that assertion was true, that

1 Mr. Wagner said he was suing somebody?

2 **A I know I heard it, but I don't remember who**
3 **told me or when I first heard about it. I just don't**
4 **remember that.**

5 Q Okay. Now, in response, James Todd Wagner
6 said "No. I said I'm protecting myself against MACC."

7 In fact, do you know -- did you ever hear
8 about a misunderstanding between Matt Farah and James
9 Wagner about who James Wagner was threatening to sue
10 over what Mr. Farah was writing?

11 **A I don't know the issues between those two**
12 **gentlemen.**

13 Q So you have no understanding as to whether or
14 not Mr. Wagner initially was going to sue the journalist
15 for misrepresenting --

16 **A I don't know that he was planning to do that.**

17 Q Okay.

18 **A I don't know.**

19 Q Okay. Thank you.

20 Now yesterday we spoke a little bit about
21 warranty items as they related to breaking glass. Do
22 you remember that?

23 **A As it related to breaking glass? I don't**
24 **remember.**

25 Q Okay. I'm showing you what's been marked as

1 Plaintiffs' Exhibit 765. Same usual question: Any
2 reason to believe it's not a true and correct copy of
3 your email from the time?

4 **A No.**

5 (Thereupon, Plaintiffs' Exhibit 765 was marked
6 for identification.)

7 MR. ZAPPOLO: Okay. At this time I'd like to
8 move 765 into evidence, Your Honor.

9 MR. WEBER: No objection.

10 THE COURT: Admitted as 23.

11 MR. ZAPPOLO: Thank you.

12 (Thereupon, Plaintiffs' Exhibit 23 was
13 received into evidence.)

14 BY MR. ZAPPOLO:

15 Q Ms. Klaker, were you the person that
16 determined that the warranty for the 2012 RaptorGTR was
17 void?

18 **A No.**

19 Q Okay. Yet you -- when Mr. Wagner wrote to you
20 on November 1, 2012, "The side glass breaking should be
21 covered under warranty," you wrote back, "The warranty
22 you reference is void and be advised that MACC will not
23 sell to you."

24 So who concluded that the warranty was void?

25 **A All I know is that it was on the Bill of Sale**

1 **that there was no warranty on that vehicle.**

2 Q Okay. You know that now?

3 A **I knew it then.**

4 Q Okay. When did you know it?

5 A **When I saw the Bill of Sale, when he purchased**
6 **the car.**

7 Q From day one you knew that the car had no
8 warranty?

9 A **Yes. Yes.**

10 Q And yet MACC performed warranty work on that
11 vehicle before the glass breakage, didn't it?

12 A **I don't know that they did. I just know they**
13 **performed work. What business is it of mine to know**
14 **whether it's under warranty or not? I know this car**
15 **came with no warranty.**

16 Q Okay. But you don't take -- you don't have
17 any evidence to suggest that the company, before the
18 glass breakage issue, was refusing to perform warranty
19 work on this car, do you?

20 A **Can you repeat that, please?**

21 Q Yes. You don't have any evidence or you can't
22 testify that before the glass breakage issue the company
23 refused to perform warranty work on this car, can you?

24 A **I know that the company wouldn't have**
25 **performed warranty -- anything under warranty because it**

1 didn't apply to Todd's car. He purchased the vehicle
2 without warranty. It says so clearly in the Bill of
3 Sale.

4 Q Okay. And your testimony is the company
5 didn't perform any warranty work?

6 MR. WEBER: Objection, asked and answered.

7 THE COURT: Overruled.

8 BY MR. ZAPPOLO:

9 Q You can answer.

10 A My testimony is that I'm not -- I don't know
11 what would have been -- what work they did.

12 Q Okay.

13 A Lord.

14 Q So you wrote "The warranty referenced is
15 void." Why didn't you write "There never was a
16 warranty"?

17 A I guess I chose my words differently than you
18 would have.

19 Q Okay. Well, I just want to be sure of your
20 position in front of the jury.

21 A Well, it's pretty clear. The warranty
22 referenced there is no warranty. There is no warranty.

23 Q Okay. Well, the warranty being voided is
24 different from there is no warranty?

25 A Well, it could have been -- it was voided when

1 **the Bill of Sale was signed. He agreed to it.**

2 Q Okay.

3 **A He agreed to purchase the vehicle without**
4 **warranty.**

5 Q So if there was never a warranty for that
6 car --

7 **A Oh, Lord have mercy.**

8 Q -- he couldn't have done anything to void the
9 warranty, correct?

10 **A I don't know what he could have done.**

11 Q Well, for example --

12 **A Oh.**

13 Q -- not agreeing to change a VIN number, would
14 that void a warranty?

15 **A I don't know.**

16 Q Not agreeing to change a manufacturer's
17 statement of origin, would that void a warranty?

18 **A What warranty if there's no warranty to void?**

19 Q Okay. But you didn't write that. You wrote
20 the warranty was void.

21 **A That's right. I wrote it the way I wrote it.**

22 Q Okay. Ms. Klaker, I'm showing you what's been
23 marked as 218 for identification purposes.

24 **A Would you like these two back?**

25 Q Yes, I'll take those. Thank you.

1 **A Okay.**

2 (Thereupon, Plaintiffs' Exhibit 218 was marked
3 for identification.)

4 BY MR. ZAPPOLO:

5 Q Same and usual question: On or about the date
6 of that document, was that your email? And is there any
7 reason to believe that this is not a true and correct
8 copy of your email at that time?

9 **A No.**

10 MR. ZAPPOLO: At this point I'd like to move
11 Exhibit 218.

12 MR. WEBER: Only that I received two copies
13 that are the same. Are they the same?

14 MR. ZAPPOLO: Yes.

15 MR. WEBER: I have no objection.

16 THE COURT: Admitted as 24.

17 (Thereupon, Plaintiffs' Exhibit 24 was
18 received into evidence.)

19 BY MR. ZAPPOLO:

20 Q That email, May 25, 2012, that's months before
21 you determined that the -- yes, months before you
22 determined that the warranty is void. There was
23 discussion you had about the 2012 MSO.

24 Now in November -- excuse me, in May of 2012,
25 Mosler Auto Care was holding Mr. Wagner --

1 MR. WEBER: I'm sorry, was that a question
2 when he said that or when he said "months before"?
3 It was sort of like -- there was no question.

4 THE COURT: Let's rephrase your question.

5 MR. WEBER: Yes, strike that portion.

6 MR. ZAPPOLO: Okay.

7 BY MR. ZAPPOLO:

8 Q Let's go back to this time period, May 25,
9 2012.

10 On May 25, 2012, where was the Supercar
11 Engineering vehicle, the 2012 RaptorGTR?

12 **A I don't know.**

13 Q Okay. Did there ever come a time when you
14 were aware that Mr. Wagner complained that Mosler Auto
15 Care Center was improperly holding that vehicle?

16 **A I don't recall. I really don't remember.**

17 Q You don't recall someone complaining about a
18 several hundred thousand dollar car being improperly
19 held?

20 **A I'm sorry, I don't -- I don't know what his
21 issues were specifically.**

22 Q Well, let's think about what was going on in
23 2012, in May of 2012.

24 **A Okay.**

25 Q Was the company selling cars?

1 **A** **I don't know.**

2 **Q** Okay. Well, you went to work there every day,
3 right?

4 **A** **Right.**

5 **Q** Okay. You were the person that was writing
6 the checks.

7 **A** **But I don't remember -- sitting here today,**
8 **it's 2023, this happened over ten years ago.**

9 **Q** Okay.

10 **A** **I'm sorry, I don't mean to be getting annoyed,**
11 **but I am getting annoyed because my memory isn't what it**
12 **used to be and this all -- I know these are emails and**
13 **they are refreshing my memory, but, honestly, I'm not**
14 **going to sit up here and make up stories.**

15 **Q** I'm not asking you to.

16 **A** **Okay then.**

17 **Q** I'm asking you what you know.

18 **A** **I just feel like I'm being hammered here. I**
19 **was the office person. I paid bills. I answered**
20 **phones. Yes, I heard a lot of talk.**

21 **Q** And you were one of the -- I think we covered
22 it -- four people in the administration of this company,
23 correct?

24 **A** **Yes.**

25 **Q** Isn't it fair to say that in May of 2012 the

1 company had been dramatically winding down?

2 **A Yes, of course the company was for sale.**

3 Q All right.

4 **A We were no longer building cars, but cars were**
5 **being sold that had already been built, fine, but I'm**
6 **not going to sit here and say oh, yes, and then go into**
7 **how many cars were sold and whatever.**

8 Q You just answered my question. The company
9 was winding down and you weren't building cars.

10 **A Right.**

11 Q So in May of 2012 the company was winding
12 down, you weren't building cars. What was going on at
13 the company that you wouldn't remember something as
14 dramatic as someone saying you're improperly withholding
15 my car?

16 **A Something was always going on with Todd.**
17 **There was always drama going on with him.**

18 Q Okay.

19 **A He was going to California, coming back, going**
20 **to California, coming back.**

21 Q Do you know why he was going to California?

22 **A I don't know.**

23 Q Did anyone complain about him going to
24 California?

25 **A Excuse me?**

1 Q Did anyone complain about him going to
2 California?

3 A No.

4 Q Were you aware -- I'm sorry.

5 Does it refresh your recollection if I was to
6 say he was going to California to try and find buyers
7 for the company?

8 A (No audible response.)

9 Q What about buyers for the car?

10 A I don't know. I told you already, I don't
11 know.

12 Q Okay. Now, nevertheless, Mr. Simon says you
13 need to deliver the original 2012 manufacturer's
14 statement of origin to MACC before you will be given the
15 2009 MSO and your MT can be released.

16 Now what was happening here was that was the
17 company trying to get Mr. Wagner to turn in a 2012
18 manufacturer's statement of origin and exchange it for a
19 2009 manufacturer's statement of origin and only then
20 would the company release his vehicle to him, correct?

21 A That's because the VIN number no longer
22 matched his MSO. The VIN number now matched the 2009
23 MSO.

24 Q Because the company changed it after delivery,
25 correct?

1 **A I don't know when it was changed.**

2 Q And because Mr. Wagner wouldn't agree to the
3 changing of the VIN number and the MSO, the company held
4 his car hostage, didn't it?

5 **A We wanted to make sure that everything**
6 **matched --**

7 Q Okay. Not only that --

8 **A -- so there wouldn't be -- there wouldn't be**
9 **any misinformation.**

10 Q Now the company was also charging him \$35 a
11 day for a storage fee, wasn't it?

12 **A I don't remember what was being charged, if**
13 **anything.**

14 Q Okay. That went on for some time, didn't it?

15 **A I don't recall how long it went on.**

16 Q Were you involved in the withholding of the
17 car and the requirement to swap out the MSO?

18 MR. WEBER: Objection, assumes facts not in
19 evidence.

20 THE COURT: Overruled.

21 BY MR. ZAPPOLO:

22 Q Were you involved in that process, ma'am?

23 **A Involved how?**

24 Q In any way.

25 **A I was involved as much as this email shows**

1 **that I was kept informed.**

2 Q Okay. Besides the email, is there anything
3 else that you recall about that?

4 **A I don't.**

5 Q I'm showing you what's been marked as
6 Plaintiffs' Exhibit 219.

7 MR. ZAPPOLO: And did we move 218 into
8 evidence?

9 THE CLERK: Yes.

10 MR. ZAPPOLO: Yes. Thank you.

11 (Thereupon, Plaintiffs' Exhibit 219 was marked
12 for identification.)

13 BY MR. ZAPPOLO:

14 Q So you're now looking at Plaintiffs' 219 for
15 identification purposes.

16 **A Yes.**

17 Q The usual questions: Does that truly and
18 accurately represent your email on or about the date it
19 was written?

20 **A Yes.**

21 Q Okay. Now as late as June 4, 2012, you wrote
22 to Mr. Wagner telling him about the storage fee and that
23 he had to give the company, you say "us," the 2012 MSO
24 in exchange for the 2009 MSO before we release the car
25 to you, correct?

1 **A Yes.**

2 Q Okay. Did you have any discussions with
3 anyone besides Mr. Simon about that process?

4 **A I don't recall.**

5 MR. ZAPPOLO: I'd like to, at this point, move
6 Exhibit 219 into evidence.

7 THE COURT: Any objection? Defense?

8 MR. WEBER: No objection.

9 THE COURT: Okay. Madam Clerk, what number?

10 THE CLERK: 25.

11 THE COURT: 25.

12 (Thereupon, Plaintiffs' Exhibit 25 was
13 received into evidence.)

14 BY MR. ZAPPOLO:

15 Q Now we talked about the purchase and sale of
16 the company's stock or its assets yesterday, so I want
17 to touch base on that very briefly.

18 I'm showing you what's been marked as
19 Plaintiffs' Exhibit 1067. Is there any reason to
20 believe that that's not a true and correct and accurate
21 copy of your email at that date?

22 **A No.**

23 (Thereupon, Plaintiffs' Exhibit 1067 was
24 marked for identification.)

25 MR. ZAPPOLO: Okay. At this point I'd like to

1 move Exhibit 1067 into evidence.

2 THE COURT: It's 26, right, Madam Clerk?

3 THE CLERK: Yes, Your Honor.

4 (Thereupon, Plaintiffs' Exhibit 26 was
5 received into evidence.)

6 BY MR. ZAPPOLO:

7 Q Do you ever recall Mr. Wagner having concerns
8 about a stock transaction and not being able to tell
9 what he was actually buying?

10 A I'm sorry, can you repeat that question?

11 Q Yes. Do you ever remember conversations with
12 Mr. Wagner about his concern that he was going to
13 purchase the stock of the company and not know what he
14 was actually purchasing?

15 A I don't recall, but this email implies that he
16 had issues.

17 Q Okay.

18 A Concerns, excuse me.

19 Q Even if it was an asset purchase, he was
20 concerned that he wasn't allowed to see the assets the
21 company held, correct?

22 A I don't really know how to interpret this.

23 Q Okay. Well, what response did you have, if
24 any, to Mr. Wagner when he said "As it now stands, it's
25 sort of like the T.V. show Storage Wars, pay

1 \$650,000 and open the box to see what's inside"? And he
2 said that with some levity according to the email.

3 Do you recall ever responding to that?

4 **A I don't see that, I'm sorry.**

5 Q The second full paragraph, it begins with "As
6 it."

7 **A "As it stands now"?**

8 Q Yes.

9 **A Oh, I see, yes. I see that.**

10 Q Do you recall ever responding to that or
11 having any discussions about that?

12 **A I don't remember. Is there a document you'd
13 like to show me to refresh my memory?**

14 Q No. I'm just asking. Do I need a document?

15 **A I'm not saying that you do.**

16 Q Okay.

17 **A I'm just saying that I don't recall.**

18 Q Okay. With respect to that side glass
19 issue --

20 THE COURT: Can I see the attorneys for a
21 second?

22 MR. ZAPPOLO: Yes.

23 (Thereupon, a sidebar conference was held.)

24 THE COURT: Would you like to take a break?

25 MR. WEBER: That sounds fine.

1 THE COURT: I'm going to talk to the deputy.

2 THE COURT REPORTER: Judge.

3 THE COURT: I said we're going to take a
4 ten-minute break. I'm going to have the deputy see
5 if they ordered lunch yet. But we'll take ten
6 minutes for a comfort break and let them walk
7 around for ten minutes and then we'll reconvene.
8 Okay?

9 MR. WEBER: Perfect.

10 THE COURT: Deputy, can I see you for a
11 moment?

12 (Thereupon, the sidebar conference was
13 concluded.)

14 THE COURT: All right. We're going to take a
15 ten-minute break. Use the facilities if you can,
16 please.

17 All right. We'll be in recess for ten.

18 (Thereupon, a short break was taken from
19 10:56 a.m. to 11:12 a.m.)

20 THE COURT: Please be seated.

21 All right. Let's bring out the jury.

22 THE COURT DEPUTY: Jurors entering.

23 (Jurors entering the courtroom at 11:13 a.m.)

24 THE COURT: All right. Please be seated,
25 everybody. It's your witness.

1 MR. ZAPPOLO: Okay.

2 BY MR. ZAPPOLO:

3 Q Ms. Klaker, I'm going to show you what's been
4 marked as Plaintiffs' 1006 for identification purposes.
5 And the usual question: Any reason to believe that's
6 not a true and accurate copy of your email from that
7 time period?

8 A This is my email.

9 (Thereupon, Plaintiffs' Exhibit 1006 was
10 marked for identification.)

11 BY MR. ZAPPOLO:

12 Q So is there any reason to believe it's not a
13 true and accurate copy of the email?

14 A No.

15 MR. ZAPPOLO: Thank you. At this point I'd
16 like to move Plaintiffs' 1006 into evidence.

17 THE COURT: Any objection? Defense counsel?

18 MR. WEBER: No objection. No objection I
19 said.

20 THE COURT: All right. Is that Number 27?

21 THE CLERK: Yes, Your Honor.

22 (Thereupon, Plaintiffs' Exhibit 27 was
23 received into evidence.)

24 BY MR. ZAPPOLO:

25 Q Now I'm trying to move along quickly, so I'm

1 not going to ask you questions other than this: This
2 was your explanation of what happened when James Todd
3 Wagner came into the shop on the afternoon of
4 November 18, 2011, correct?

5 **A Yes.**

6 Q Okay. And there's -- you didn't write
7 anything that you didn't feel is true, did you?

8 **A No.**

9 Q Okay. Thank you.

10 Now I'm showing you what's been marked as
11 Exhibit Number 420 for identification purposes. Same
12 question: Is there any reason to believe that's not a
13 true and accurate copy of the records of your email
14 during that time period?

15 **A No.**

16 (Thereupon, Plaintiffs' Exhibit 420 was marked
17 for identification.)

18 BY MR. ZAPPOLO:

19 Q Okay. Now earlier we saw an email that said
20 that the company wouldn't sell to Mr. Wagner. Do you
21 remember that email?

22 **A Yes.**

23 Q Okay. That one says that the company would
24 sell it to him if he did the swap that the company was
25 requesting, correct?

1 **A May I refresh my memory by reading it?**

2 Q Absolutely. Go ahead.

3 **A Go ahead with your question. I don't remember**
4 **what it was.**

5 Q That was you telling Mr. Wagner that the
6 company would do the -- would sell him the glass if he
7 would do the swap of the documentation that you guys
8 were looking for, right?

9 **A I said we do have the part and we'll be happy**
10 **to send it to them, being Atlantic Auto Glass, once we**
11 **receive the MSO, which is in your possession, yes.**

12 MR. ZAPPOLO: Okay. And I forgot whether I
13 moved this into evidence or not. Plaintiffs' 420
14 I'd like to move into evidence, Your Honor.

15 THE COURT: Any objection?

16 MR. WEBER: No objection.

17 THE COURT: Madam Clerk, Number 420 is Number
18 28?

19 THE CLERK: Yes.

20 (Thereupon, Plaintiffs' Exhibit 28 was
21 received into evidence.)

22 BY MR. ZAPPOLO:

23 Q Now that glass, you knew that it was important
24 to the value of that car, didn't you?

25 **A I knew Todd wanted it.**

1 Q You what?

2 A I knew that he wanted it.

3 Q Okay. You didn't know it was important to the
4 value of the car?

5 A I don't have an opinion one way or another. I
6 imagine he wanted it for the car.

7 Q I'm showing you what's been marked as
8 Plaintiffs' 1221 for identification purposes.

9 The usual question: Is that a true and
10 correct copy of your email during that time period?

11 A Yes.

12 (Thereupon, Plaintiffs' Exhibit 1221 was
13 marked for identification.)

14 MR. ZAPPOLO: Okay. At this point, Your
15 Honor, I'd like to move 1221 into evidence.

16 MR. WEBER: No objection.

17 THE COURT: Admitted as 29.

18 (Thereupon, Plaintiffs' Exhibit 29 was
19 received into evidence.)

20 BY MR. ZAPPOLO:

21 Q Okay. Ms. Klaker, that, in fact, is
22 Mr. Wagner reminding you that glass was a spare part
23 necessary to retain the value of the 2012 RaptorGTR,
24 wasn't it?

25 A Yes.

1 Q Okay. And that was in response to your email
2 saying you'd be happy to send the part, correct?

3 A Yes.

4 Q Just a couple more things, we're almost done.

5 A Good.

6 Q Okay. Now my last -- my second to last line
7 of questioning relates to the determinations.

8 Do you remember earlier in your testimony we
9 talked about the fact that there were two distribution
10 agreements? And please correct me if you told me that
11 you didn't remember that, or do you remember?

12 A I don't remember. I don't remember if there
13 was more than one distribution agreement. I really
14 don't know.

15 Q Okay. Fair enough.

16 And if I said China and Thailand or Saudi
17 Arabia and the United Arab Emirates, would that refresh
18 your recollection?

19 A All I know is those countries were involved,
20 yes.

21 Q Okay. Did you ever make any determinations as
22 to whether or not those distribution agreements had been
23 breached?

24 A No, I didn't make any determination.

25 Q And just so we're clear, you wouldn't have had

1 any reason to make such a determination?

2 **A My position at this company was to answer the**
3 **phones, the mail, be involved in the hiring and**
4 **termination of employees, that sort of thing.**

5 Q And you don't remember anyone ever asking you
6 to make a determination as to whether or not either of
7 those contracts had been breached?

8 **A Of course not. How would I know that?**

9 Q Okay. You don't recall ever going over either
10 of those contracts?

11 **A I don't remember. I honestly don't remember.**

12 Q Okay.

13 **A Why would I go over those contracts?**

14 Q Well, let's take a look at this.

15 **A If you got a document, refresh my memory.**

16 Q Let's look at 1227.

17 **A Okay. Jeez, that's a long time ago.**

18 Q Okay. You've had the opportunity to look at
19 Plaintiffs' 1227 for identification purposes. I'm going
20 to ask you the usual question: Is that a true and
21 accurate representation of your emails at the time?

22 **A Yes.**

23 (Thereupon, Plaintiffs' Exhibit 1227 was
24 marked for identification.)

25 MR. ZAPPOLO: Okay. Your Honor, at this point

1 I'd like to move 1227 into evidence.

2 THE COURT: Defense counsel?

3 MR. WEBER: No objection.

4 MR. ZAPPOLO: Okay.

5 THE COURT: Madam Clerk, was that 29?

6 THE CLERK: 30.

7 THE COURT: 30.

8 (Thereupon, Plaintiffs' Exhibit 30 was
9 received into evidence.)

10 BY MR. ZAPPOLO:

11 Q Now, in fairness, 1227 is a continuation of a
12 long email chain, right?

13 A Yes.

14 Q And we've had emails into evidence already,
15 like the one that I'm showing up on the hover board here
16 that says "Please don't make me read them," et cetera,
17 things like that. And I think you were chuckling as you
18 were flipping through all that, right?

19 A Yes. Yes. Yes.

20 Q Okay. So you would agree with me that this is
21 a continuous email chain, some of the documents are
22 already in evidence, and this is kind of just the
23 conclusion, right?

24 A Yes.

25 Q Okay. Now, this in blue --

1 **A Uh-huh.**

2 Q -- that was Mr. Simon writing to you on or
3 about October 20, 2011, right?

4 **A To me and Jill.**

5 Q And Jill, yes. And for the record, that's
6 Jill Wagner, okay.

7 And he says, "First, I have been advised that
8 Todd breached Section A3 of both agreements."

9 Did you advise Mr. Simon that James Todd
10 Wagner had breached Section A3 of both agreements?

11 **A I don't recall that it would have been me, no.**

12 Q Okay. That wouldn't have been your place,
13 right?

14 **A I don't -- I don't recall. Honestly, I don't**
15 **recall.**

16 Q Okay. And then there's a reference there
17 where Mr. Simon writes: "Second, regarding the contact
18 list on the website," what was the contact list on the
19 website?

20 **A I'm sorry, can you go over that again?**

21 Q Sure.

22 **A Repeat that.**

23 Q Where it says DEF7349 in the lower right-hand
24 corner.

25 **A 7439?**

1 Q 7349.

2 A Oh, yes, go ahead.

3 Q Okay. In the third paragraph from the bottom,
4 that begins with "Second."

5 A Yes.

6 Q It says: "Second, regarding the contact list
7 on the website." Do you know what he was referring to?

8 A No. I didn't work the website.

9 Q Okay. Do you know whether Mosler had contact
10 personnel and distributors on its website?

11 A They probably did. That would make sense, but
12 again, I didn't work the website. I didn't go on the
13 website.

14 Q Okay. I'll deal with that some other way.
15 Do you have any opinion as to what is written
16 on the first page of Plaintiffs' 1227, which is now into
17 evidence?

18 MR. WEBER: Objection, asking for improper lay
19 witness opinion.

20 THE COURT: Can I see the document?

21 MR. ZAPPOLO: Yes, Your Honor.

22 THE COURT: Can I see the attorneys?

23 (Thereupon, a sidebar conference was held.)

24 THE COURT: And why is this an improper lay
25 witness?

1 MR. WEBER: Because -- what is the opinion?
2 What kind of opinion is -- is she supposed to give?
3 Like, is it accurate? Like, what is the opinion?
4 What are you asking her?

5 MR. ZAPPOLO: I didn't get to finish my
6 question for the record, but do you have any
7 opinion as to whether what you wrote in there is
8 accurate?

9 MR. WEBER: Oh.

10 THE COURT: All right. Okay. I'll sustain
11 the objection.

12 (Thereupon, the sidebar conference was
13 concluded.)

14 BY MR. ZAPPOLO:

15 Q Do you know anything about whether or not
16 chassis 64 was exported to Saudi Arabia or the United
17 Emirates?

18 A **According to this email, it was not exported.**

19 Q Okay. Now, that is a different car than the
20 2012 RaptorGTR, is it not?

21 A **I don't know.**

22 Q Okay. This email is dealing with the
23 distributorship agreement for Saudi Arabia and the
24 United Arab Emirates, correct?

25 A **Yes.**

1 Q Okay. Not the contract that Mr. Wagner and
2 SEI are suing on in this case, correct?

3 A I don't know.

4 Q Okay. Fair enough. Thank you.

5 A Sure.

6 Q I'm almost done.

7 A Good.

8 Q Now I have our last two right here.

9 A Thank God.

10 Q I'm sure everyone's happy.

11 Explain to our --

12 MR. ZAPPOLO: Actually, Madam Clerk, can I see
13 the last exhibit, please? Thank you.

14 BY MR. ZAPPOLO:

15 Q One less document.

16 A You keep telling me.

17 Q All right. Last question I have for you is:
18 You talked about -- I mean earlier, I believe yesterday,
19 you talked about the manufacturer's statement of origin
20 for a vehicle. The MSO, do you remember those?

21 A Yes, sir.

22 Q And you talked about how you typed them up.
23 Do you remember that?

24 A Yes.

25 Q Okay. I'd like to show you one and ask you if

1 you recognize it.

2 I'm showing you what's been marked as
3 Plaintiffs' Exhibit 394. Do you recall typing up that
4 MSO?

5 **A I may have typed it up. Jill may have typed**
6 **it up or Ann Rodgeron may have typed it up.**

7 (Thereupon, Plaintiffs' Exhibit 394 was marked
8 for identification.)

9 BY MR. ZAPPOLO:

10 Q Okay. There's a person whose name appears in
11 some emails in this case, and I'd like to ask you: Can
12 you tell the jury who Mike Vietro is?

13 **A Mike Vietro is a gentleman that owned a**
14 **dealership in California.**

15 Q Okay. Was he a Mosler dealer in California?

16 **A Yes, he was.**

17 Q Okay. And I see on Exhibit 394 the
18 manufacturer's Certificate of Origin for the vehicle is
19 addressed to Mosler, Mike Motorsports, Inc. Do you know
20 who the principal was on that?

21 **A Mike Vietro.**

22 Q Do you know who this car was ultimately sold
23 to?

24 **A I don't know.**

25 MR. ZAPPOLO: Okay. At this point I'd like to

1 move Plaintiffs' 394 into evidence.

2 MR. WEBER: No objection.

3 THE COURT: Is that Number 31, Madam Clerk?

4 THE CLERK: Yes, it is.

5 (Thereupon, Plaintiffs' Exhibit 31 was
6 received into evidence.)

7 MR. ZAPPOLO: Okay. One quick moment, Your
8 Honor.

9 Thank you, Ms. Klaker. You'll be happy to
10 know that I have no further questions of you.

11 THE WITNESS: Okay.

12 THE COURT: Cross-Examination?

13 MR. WEBER: I don't have any questions for her
14 at this time, Your Honor.

15 THE COURT: Is she excused?

16 MR. ZAPPOLO: Is she going to testify for
17 them? You're releasing her from the entire trial?

18 MR. WEBER: No. We may call her.

19 THE COURT: You're going to recall her?

20 MR. WEBER: We may call her during our --

21 THE COURT: Your case in chief?

22 MR. WEBER: -- case in chief, yes. So not
23 right now, but we may call her later for our case
24 in chief.

25 THE COURT: Should she wait outside or will

1 you bring her back?

2 MR. WEBER: No.

3 THE COURT: Let me see the attorneys.

4 (Thereupon, a sidebar conference was held.)

5 THE COURT: You're not calling this witness
6 today, so I'm going to let her go home.

7 MR. WEBER: I mean, if he's going to --

8 THE COURT: We already have a witness outside.

9 MR. WEBER: Yeah. We don't have to ask her
10 any questions right now.

11 THE COURT: Okay. I'm going to see if they
12 have any questions and let her go.

13 MR. WEBER: All right.

14 (Thereupon, the sidebar conference was
15 concluded.)

16 THE COURT: All right. Any questions from the
17 jury? Seeing none, madam, please have a great day.

18 This trial is not over. You're going to be
19 recalled to testify. You are not to discuss
20 anything that you heard or saw in this courtroom
21 with anybody else in any format whatsoever. Do you
22 understand?

23 **THE WITNESS: I understand.**

24 THE COURT: Who's your next witness?

25 MR. ZAPPOLO: We call Sally Apgar, Your Honor.

1 THE COURT: Deputy, can I see you for a
2 moment?

3 Sally Apgar?

4 MR. ZAPPOLO: Sally Apgar.

5 THE CLERK: Please raise your right hand. Do
6 you solemnly swear or affirm that the evidence
7 you're about to give is the truth, the whole truth,
8 and nothing but the truth?

9 **THE WITNESS: I do.**

10 THE CLERK: Okay.

11 DIRECT EXAMINATION

12 BY MR. ZAPPOLO:

13 Q Good morning, Ms. Apgar.

14 **A Good morning.**

15 Q Could you introduce yourself to the jury,
16 please?

17 **A Sure. My name is Sally Apgar. I'm a licensed**
18 **private investigator in the state of Florida.**

19 Q Okay. And how long have you been a licensed
20 private investigator?

21 **A I got my license in 2009, and I've had my own**
22 **agency for the last nine years.**

23 Q Okay. And prior to obtaining your private
24 investigative license what did you do?

25 **A I was an investigative reporter for 25 to 28**

1 years from Boston to Minneapolis to Honolulu and then
2 here.

3 Q Okay. Are you familiar with James Todd
4 Wagner, the gentleman seated at the table?

5 A Somewhat.

6 Q Okay. And how did you become acquainted with
7 James Todd Wagner?

8 A He called me to do some background checking on
9 someone.

10 Q Okay. And who was that someone that you
11 actually did background checking on?

12 A Lee Lew.

13 Q Okay. If I were to say Lew Lee, would that --

14 A Lew Lee. There were a couple of permutations
15 of his name, and I don't have the report in front of me
16 and I did it three years ago, so --

17 Q Okay. I'm going to show you what's been
18 marked as Plaintiffs' Exhibit 584.

19 A Okay. Is my report in here? Oh, there it is.
20 Sorry, it's hiding.

21 Yeah, he was -- I had Lew Lee, Ralph Lew Lee,
22 RalphLewLee as one word, Ralph TA, Lew-Lee, Ralph Lee,
23 so there was a bunch of permutations of his name.

24 (Thereupon, Plaintiffs' Exhibit 584 was marked
25 for identification.)

1 BY MR. ZAPPOLO:

2 Q Okay. And based upon -- well, what did you
3 have to do to become a private investigator?

4 A Well, you take pretty much -- well, first of
5 all, I had to switch jobs and reinvented myself, but
6 pretty much what investigative reporters do is what
7 private investigators do, you dig into people's
8 background, you go into public documents, you just
9 find -- you interview people, you find out about them.

10 But to become a private investigator, I had to
11 take training in the state of Florida. You have to do
12 2,000 hours of field work. I didn't have -- and I
13 worked for the Public Defender's Office doing criminal
14 cases in the field and you take some training.

15 Q Okay. And you were able to obtain your
16 private investigator's license, right?

17 A Yes.

18 Q Okay. Now based upon your education and
19 training and experience, did you reach any conclusions
20 with respect to your investigation of Lew Lee?

21 A Yeah. The first thing that I went through --
22 I mean, overall do you mean on the report itself? Yeah.
23 The reporter in me, that's still very much alive in me,
24 looked at this and said this guy looks like a fraudster.

25 I mean, he -- fraudster's use money and lies

1 and not guns to steal people's money and that's what
2 these cases that I found look like.

3 Q Okay. Now are your findings accurately set
4 forth in your report?

5 A Yes.

6 Q And the backup information related to that?

7 A Yes.

8 Q Okay. Now I want to show you another
9 document. By the way, in your field, is it -- how often
10 is it that you have to go out of state?

11 A I really don't have to unless it's to
12 interview someone. I mean, like I'm doing a case now
13 that involves fraud and I needed birth certificates in
14 Haiti. Well, my client is not going to send me to
15 Haiti. I had somebody who got me the birth certificates
16 I needed and I was able to find the real birth
17 certificate and two forgeries which helped the case.

18 So, no, you use the sources you have to try to
19 get stuff, that's kind of common.

20 Q I'm showing you what's been marked as
21 Plaintiffs' Exhibit 585. Do you recognize that
22 document?

23 A Yeah. It's the assignment email that he sent
24 me.

25 (Thereupon, Plaintiffs' Exhibit 585 was marked

1 for identification.)

2 BY MR. ZAPPOLO:

3 Q Okay. And so when you referenced using people
4 out of the area, out of the state, is 585 such a
5 document?

6 A Yeah. What I remember from that one was I
7 only had some sketchy information. I was looking for a
8 birthdate and one of the -- and county courts handle
9 everything differently and in New Mexico, which is where
10 I figured he had property, so he had a voter's
11 registration, and that would typically have a birthday
12 on it.

13 Again, like Haiti, I am not going to fly out
14 to New Mexico to go into a clerk's office and fill out a
15 form that says "Can you tell me who this voter's
16 registration is?" So you use sources.

17 Q Okay. So based upon your education, training,
18 and experience, is that an acceptable practice in the
19 field of --

20 A Oh, yeah.

21 Q -- in the field of private investigations?

22 A Oh, yeah.

23 Q Okay. And do you have any reason to believe
24 that the information contained in both your report
25 within 584 and the report of 585 have any inaccuracies

1 or anything?

2 **A No. In fact, the person even went to the**
3 **extra step of having it certified by the clerk.**

4 Q Okay.

5 **A So I certainly have no reason to not believe**
6 **it.**

7 MR. ZAPPOLO: Okay. At this point, Your
8 Honor, I'd like to move 584 and 585 into evidence.

9 MR. WEBER: No objection.

10 MR. ZAPPOLO: And that's all the questions
11 that I have of you.

12 **THE WITNESS: Great.**

13 MR. ZAPPOLO: But Mr. Weber may have some
14 questions for you.

15 THE COURT: That's admitted as 32, right,
16 Madam Clerk?

17 MR. ZAPPOLO: Oh, there's two, Your Honor.

18 THE CLERK: 32 and 33.

19 THE COURT: Thank you.

20 (Thereupon, Plaintiffs' Exhibit 32 was
21 received into evidence.)

22 (Thereupon, Plaintiffs' Exhibit 33 was
23 received into evidence.)

24 THE COURT: Cross-Examination?

25 MR. WEBER: Yes, Your Honor, just a brief

1 question.

2 CROSS-EXAMINATION

3 BY MR. WEBER:

4 Q Good morning.

5 A Good morning.

6 Q What exactly was your assignment from James
7 Todd Wagner?

8 A It was basically to find out what I could --
9 what kind of background I had on the guy, I could on the
10 guy. Do you want me to say how I did that?

11 Q No.

12 A Okay.

13 Q Do you believe that a person named Lew Lee
14 does not exist?

15 A I have no reason -- I mean, I checked all the
16 different permutations of the name. It's just that he's
17 got an unusual name. Sometimes bureaucrats make
18 mistakes and it gets put in public documents, but you
19 have to sort of look through a lot of things to figure
20 out who's the person. That was a part of the reason I
21 needed the voter registration was I wanted to make sure
22 I had an exact birthdate so that I knew, you know, who
23 was who.

24 Q Did you look at any emails between James Todd
25 Wagner and Lew Lee?

1 A I don't -- I actually -- I'm not sure I
2 remember this one. I remember the email that he sent me
3 to assign me the case, but I don't -- I just don't
4 recall any emails between the two of them.

5 Q Okay.

6 A And I wouldn't expect to have been given that
7 either. It wouldn't be necessary for what I did.

8 Q I'm going to mark this as Exhibit 240.

9 A I think I did this in January of 2019, so it
10 was a while ago.

11 Q I'm going to hand you a document that's been
12 marked as Defendants' 240. Have you ever seen this
13 document before?

14 A No.

15 (Thereupon, Defendants' Exhibit 240 was marked
16 for identification.)

17 BY MR. WEBER:

18 Q Is this the first --

19 A I don't think so. I don't remember it.

20 Q What does this document purport to be?

21 A "Hi, Warren and Lew" -- it's an email. It's
22 an introduction between Warren Mosler of Mosler --

23 MR. ZAPPOLO: Objection, Your Honor. The
24 document is not in evidence yet. She's reading the
25 contents of the document.

1 THE COURT: Read it to yourself.

2 THE WITNESS: Oh, no, I never saw this. I
3 didn't know about this.

4 BY MR. WEBER:

5 Q Sitting here today, you never saw this
6 document?

7 A No. Uh-uh. I really didn't know much about
8 the case. I was just looking into him.

9 MR. WEBER: We wish to move this document into
10 evidence.

11 MR. ZAPPOLO: No objection, Your Honor.

12 THE COURT: All right. So Defense 240 without
13 objection admitted as Defendants' 1.

14 MR. WEBER: Defendants' 1.

15 (Thereupon, Defendants' Exhibit 1 was received
16 into evidence.)

17 BY MR. WEBER:

18 Q Hold on one second.

19 A Okay.

20 Q Do you recognize the email address in the
21 "From" field?

22 A In the "From" field? I assume that's the one
23 that my client used to email me. I don't know.

24 I mean it's jtoddwagner@gmail, so I'm assuming
25 that's the one he used. I don't know. I don't

1 **remember.**

2 Q And do you recognize this email address
3 here --

4 **A No.**

5 Q -- Warren Mosler?

6 **A No. I don't even think I read the complaint
7 in the case to do what I was being asked to do. It was
8 a straightforward background on someone, I don't need to
9 know that.**

10 Q Do you recognize this name right here, Lew
11 Lee?

12 **A Well, that's one of the permutations of the
13 names I did, but that's not an email I had. I had no
14 reason to have the man's email.**

15 Q What about this right here? Is this an email
16 address, HDTV1@mac.com?

17 **A It's set up like one. I assume it is one, but
18 I haven't seen it before.**

19 Q James Todd Wagner never gave you this email
20 address?

21 **A No. I didn't need an email address to do what
22 I was doing. I was looking at public records.**

23 Q Do you ever do anything aside from looking at
24 public records as part of your work?

25 **A Well, I pretty much found what I needed just**

1 by looking at public records. All I did was -- the
2 first thing I did is, as a licensed private
3 investigator, you get -- you are then qualified to use
4 public -- certain subscription databases. You use that
5 to find -- it gives you like -- it's like LexisNexis
6 that you might use in your office, but it shows you
7 different addresses of all of the places where people
8 work.

9 What I then do is I look at the addresses
10 where people work, and this was the first thing I did in
11 this one. And I saw that he had addresses in
12 California, near LA, and he had ones in New Mexico. So
13 the next step I do in looking at public records is court
14 cases. Court cases are great things to find out what
15 people are up to, whether it's financial things, if you
16 go to federal court, it's bankruptcy. It's not rocket
17 science, it's looking for records.

18 And this one I went to the Los Angeles County
19 Court to see what kind of court cases he had been
20 involved in, and that's where I found the judgment in
21 the fraud case.

22 Q I'm going to read this first line right here
23 where it starts with "It is." Can you see that on your
24 copy?

25 A Uh-huh.

1 Q What does that say there?

2 A "It is my pleasure to introduce you two as
3 possible future partners in the supercars business."

4 Q What's the next sentence say?

5 A "I have been working with Lew on the prospect
6 of buying majority stake or all of Mosler Auto Care
7 Center's assets."

8 Q Did Mr. James Todd Wagner ever tell you that
9 he had been working with Lew Lee on the prospect of
10 buying majority or all of Mosler Auto Care Center's
11 assets?

12 A No, it didn't -- it didn't pertain to my task
13 in this case. It was merely to look at Mr. Lew to find
14 out his background. I didn't have to know about any of
15 that.

16 Q Okay.

17 A I don't even think I read the complaint in the
18 case because it was a very clearcut "go find out about
19 this guy, go look at court records in California, go
20 look at them in New Mexico, go find any other
21 jurisdictions he's lived in." I mean my report's two
22 pages long and it's basically all about the cases.

23 Q This reference right here, Santa Fe Digital
24 Media --

25 A Yeah, that was the court case in California.

1 Q Did you ask James Todd Wagner about Santa Fe
2 Digital Media at all?

3 A No. I went to -- I went to the county -- it
4 was a Los Angeles case. I went to the site. You can
5 use a credit card, you sign up for the site; documents
6 are on the site, I started reading the documents.

7 There was a judgment against him for \$32,000.
8 He didn't pay, so another judgment was filed against him
9 in New Mexico trying to recover the judgment, but, you
10 know, the fact that he didn't pay the judgment shows me
11 he's a man that doesn't pay his bills when a court and a
12 judge asks him to.

13 And the contents of the case involving -- it
14 was Lew Lee -- no. It was Lew Lee, a partner, and Santa
15 Fe Digital. It was all about him trying to get -- he
16 was trying to -- he was trying to get -- he said he
17 wanted to get a bridge loan to expand his company, and
18 it was like 7.5 million. And he went to a guy and said,
19 "You know, I'm really close to getting this. I just
20 need \$25,000." And the lawsuit sets out -- he says
21 "I'll pay -- this is so important to me. I'll pay you
22 this and I'll give you 10 percent interest in 30 days."

23 30 days comes, he begs more time, and he puts
24 him off and he puts him off and he puts him off. And by
25 the end he says "I really need this. And this -- this

1 25,000 I borrowed from you, I'll pay you back \$200,000."

2 Q And you found that just by looking at public
3 records?

4 A Yeah. You -- it's the complaint in the suit.

5 Q Yeah. Did you ask James Todd Wagner if he had
6 done any research on Lew Lee?

7 A That's not what I was -- no. I mean, anybody
8 could go online and see them. You just have to pay for
9 them.

10 MR. WEBER: I have no further direction.

11 THE COURT: Cross-Exam -- or Redirect I mean?

12 REDIRECT EXAMINATION

13 BY MR. ZAPPOLO:

14 Q You mentioned earlier about fraudsters
15 stealing people's money by paper?

16 A Uh-huh.

17 Q You don't know what happened in this lawsuit,
18 do you?

19 A No. To tell you the truth, it was probably --
20 I can't remember what I charged him. It was 250 or
21 \$500. I have a lot of cases. I'm not going to read
22 everything in a case when I'm just asked to do a
23 background. I don't need to do that. It's not
24 pertinent to what I'm doing. I just want to find out
25 who this guy is, look at public documents. I didn't

1 **even do an interview in this case.**

2 Q Would it surprise you to know that some of the
3 words that you just uttered on the stand here mirror
4 some of the documents that Mr. Wagner was asked to sign
5 by Mr. Lew Lee or whoever he is?

6 A **Well, the one that I just summarized the**
7 **case -- you mean with the 7 million and the angel**
8 **investor and all that stuff?**

9 Q That was the Santa Fe --

10 A **Yeah.**

11 Q That was a California case, correct?

12 A **Yeah.**

13 Q Okay. Would it surprise you to hear that
14 there are substantially similar documents and similar
15 attempts here with James Wagner?

16 A **No, not at all because --**

17 Q Even though you didn't read any of the
18 paperwork in this case, right?

19 A **Can I say something about my background as an**
20 **investigative reporter?**

21 Q Sure.

22 A **That's what I did. I did white-collar crime,**
23 **Ponzi schemes. That's what I started doing. And there**
24 **was -- at the Minnesota Star Bulletin, where I worked**
25 **for nine years as a business reporter, I did that so I**

1 could follow the money in cases because I hadn't taken
2 finance in college.

3 There was a reporter about 20 years older than
4 me who won two Pulitzers before he was 40; him and I
5 were great friends. He's always giving me advice on
6 things and how to do things, and we did some stories
7 together. And he would always say to me, "You know,
8 most crooks only know how to crack a safe one way.
9 Figure out the pattern, figure out how they crack the
10 case, and then they use it again and again and again.
11 And if you find two or three of those, you got a RICO
12 case, you got a juicy front page story."

13 Q Okay. Now just the one last question. To be
14 crystal clear, did you ever have any discussions with me
15 or anyone over here about the specifics in those cases?

16 A No.

17 Q Okay. So as far as you know, the first time I
18 ever heard what you just talked about, about the
19 10 percent in 30 days and all that good stuff, was right
20 here in this courtroom, right?

21 A This is the first time we talked about it.

22 MR. ZAPPOLO: Thank you very much. That's all
23 I have.

24 THE COURT: Is this witness excused?

25 MR. ZAPPOLO: Yes, sir.

1 THE COURT: Madam, please have a great day.

2 **THE WITNESS: Thank you.**

3 THE COURT: This trial is not concluded.

4 **THE WITNESS: What?**

5 THE COURT: This trial is not concluded.

6 Please do not discuss your testimony or anything
7 you heard in this courtroom with anybody else until
8 this trial has concluded.

9 **THE WITNESS: Okay. Thank you, Your Honor.**

10 THE COURT: Can I see the attorneys?

11 (Thereupon, a sidebar conference was held.)

12 THE COURT: All right. Lunch is here. They
13 can pick it up right here and we'll let them eat
14 and stretch their legs.

15 Is there anything we want to address before I
16 go ahead and release them?

17 MR. ZAPPOLO: No. I have one other witness
18 lined up after lunch and then we would be doing a
19 reading, so how would Your Honor handle that?

20 THE COURT: So why don't we bring them back at
21 maybe an hour and fifteen now. So they're going to
22 go in there and grab their stuff and use the
23 restroom and eat and we'll come back at 1:15. How
24 long is that witness?

25 MR. ZAPPOLO: He's fairly brief.

1 MR. WEBER: What witness?

2 MR. ZAPPOLO: About 20 minutes. Hassan
3 Abboud.

4 MR. WEBER: I don't even know who that is.

5 MR. ZAPPOLO: He's one of the guys that
6 purchased the car from Mosler.

7 THE COURT: Okay. So we'll come back and take
8 a witness and I'll release them for the day and we
9 can tackle whatever else we need to do for the day,
10 okay?

11 MR. WEBER: Okay.

12 (Thereupon, the sidebar conference was
13 concluded.)

14 THE COURT: Okay. All right. Deputy, it's
15 lunchtime, so the food has arrived. Why don't
16 we -- we'll excuse the jury for lunch. We'll
17 reconvene at 1:15, just like yesterday.

18 So please grab your meal, go downstairs,
19 stretch your legs, get some sun if you want it,
20 grab some coffee if you need it. I've spoken to
21 the attorneys. I think today I'm going to let you
22 out a little early. There's some work that we have
23 to do, but for now why don't we gather back around
24 1:15, okay?

25 (Jurors exit the courtroom at 11:56 a.m.)

1 THE COURT: All right. 1:15.

2 MR. WEBER: Thank, Your Honor.

3 (Thereupon, a lunch break was taken from
4 11:57 a.m. to 1:18 p.m.)

5 THE COURT: Please be seated. Please be
6 seated. All right. Bring out the jury.

7 THE COURT DEPUTY: Jurors entering.

8 (Jurors entering the courtroom at 1:19 p.m.)

9 THE COURT: All right. Please be seated.
10 Plaintiff, it's your case.

11 MR. ZAPPOLO: Plaintiff calls Hassan Abboud.

12 THE COURT: Hassan Abboud?

13 MR. ZAPPOLO: Yes, sir.

14 THE COURT DEPUTY: Turn and face the clerk,
15 raise your right hand.

16 THE CLERK: Do you solemnly swear or affirm
17 that the evidence you're about to give is the
18 truth, the whole truth, and nothing but the truth?

19 **THE WITNESS: Yes.**

20 THE COURT: Whenever you're ready.

21 DIRECT EXAMINATION

22 BY MR. ZAPPOLO:

23 Q Would you introduce yourself to the jury,
24 please.

25 **A My name is Hassan Abboud.**

1 Q Okay. And Mr. Abboud, where do you live?

2 A **Houston, Texas.**

3 Q Okay. Now before today have you and I ever
4 met?

5 A **No.**

6 Q Are you familiar with the company Mosler Auto
7 Care Center?

8 A **Correct. I am.**

9 Q Yes, okay. Thank you.

10 And how do you know that company?

11 A **I bought a car from them.**

12 Q Okay. And about how long ago did you buy a
13 car from them?

14 A **Like 18 years -- I don't know. 18, 19 years.**
15 **2007.**

16 Q Okay. I'm showing you what's been marked as
17 Plaintiffs' Exhibit Number 256 for identification
18 purposes. Do you recognize that document?

19 A **Yes.**

20 (Thereupon, Plaintiffs' Exhibit 256 was marked
21 for identification.)

22 BY MR. ZAPPOLO:

23 Q Okay. And is there any reason -- I see a
24 signature on that document. Is that your signature?

25 A **Correct.**

1 Q Okay. Is there any reason to believe that's
2 not a true and correct copy of the document that it
3 purports to be?

4 A No. That's correct.

5 MR. ZAPPOLO: Okay. At this time, Your Honor,
6 I'd like to move Plaintiffs' 256 into evidence.

7 THE COURT: Any objection?

8 MR. WEBER: No objection.

9 THE COURT: Madam Clerk?

10 THE CLERK: 34.

11 THE COURT: Thank you.

12 MR. ZAPPOLO: Did you say 34?

13 THE CLERK: Yes.

14 MR. ZAPPOLO: Thank you.

15 (Thereupon, Plaintiffs' Exhibit 34 was
16 received into evidence.)

17 BY MR. ZAPPOLO:

18 Q Okay. Now you mentioned earlier that you
19 purchased a car. Can you tell the jury how that process
20 worked? Like what was the first step?

21 A I called the company and I got an interview
22 with them. I flew over, looked at the car, and decided
23 that I wanted one.

24 Q Okay. And where did you find out about the
25 car?

1 **A It was through magazines.**

2 Q Okay. And had you ever purchased like a
3 supercar or an exotic car before that car?

4 **A Yes.**

5 Q Okay. And based upon your experience, how
6 important is magazines and things like that for
7 advertising vehicles of that type?

8 **A They are very important.**

9 Q Okay.

10 **A They do reviews and stuff like that, so it's**
11 **important to people like me, if they want to buy a car,**
12 **to see a good review.**

13 Q Okay. When you said "people like me," what
14 did you mean?

15 **A People that like cars, that are motorheads.**

16 Q Motorheads?

17 **A Yes.**

18 Q All right. And, you know, there's lots of
19 people that -- in high school, you know, kids that did
20 shop class --

21 **A Yes.**

22 Q -- sometimes they were called motorheads. Do
23 you mean like people that like to tweak on their cars,
24 like that?

25 **A I'm a power plant engineer. I work on jet**

1 engines. I'm a technical guy, so I like to work on
2 them, yes.

3 Q I didn't even ask you that. What do you do
4 for a living?

5 A I'm a jet engine technician.

6 Q Okay. So you work on jet engines?

7 A Correct.

8 Q Okay. So, back to the process. I'm sorry, we
9 got offtrack a little bit. The process for buying one
10 of these cars for Mosler Auto Care Center was you --

11 A Fly over.

12 Q You flew in. You said you were interviewed?

13 A No. I was actually talking to Todd and I
14 believe Jill. That's her name.

15 Q Okay.

16 A And looked at the car, looked at the process,
17 and decided that I wanted to put a deposit and order a
18 car.

19 Q Okay. When you said you looked at the
20 process, what did you mean by that?

21 A I looked at how they built the car, what they
22 do, what kind of engine, what kind of transaxle and so
23 on and so on.

24 Q Okay. So you actually went to the factory
25 where they were building the cars?

1 **A** **If you want to call it a factory, yes, it is.**

2 Q Okay. You wouldn't call it a factory?

3 **A** **Well, I don't know if it's a factory. I think**
4 **they got a lot of pieces put together. I don't know if**
5 **you would call it a factory.**

6 Q Okay. Fair enough.

7 **A** **It's an assembly.**

8 Q Okay. Where the cars are manufactured?

9 **A** **Correct.**

10 Q Okay. So Exhibit 256, which is now 34 in
11 evidence, what is that? What is that document that's in
12 front of you?

13 **A** **This one?**

14 Q Yes.

15 **A** **That's my deposit.**

16 Q Okay. It says that it's a receipt for a
17 purchase deposit, right?

18 **A** **Correct.**

19 Q Okay. So on or about August 3rd of 2007 you
20 put down a \$35,000 deposit --

21 **A** **Correct.**

22 Q -- for a \$189,900 automobile, correct?

23 **A** **Correct.**

24 Q Do you remember what type of automobile you
25 were purchasing?

1 **A MT900S.**

2 Q MT900S. Do you remember what the S was for?

3 **A It's for street.**

4 Q Okay.

5 **A I had to think about that.**

6 Q That's all right. Thank you.

7 Now, did you pay for that car outright, or did
8 you pay for it some other way?

9 **A No, some other way.**

10 Q What way did you pay for it?

11 **A Financed it.**

12 Q Okay. I'm showing you what's been marked as
13 Plaintiffs' Exhibit 255. Do you recognize that
14 document?

15 **A Yes.**

16 (Thereupon, Plaintiffs' Exhibit 255 was marked
17 for identification.)

18 BY MR. ZAPPOLO:

19 Q Is there any reason to believe that that's not
20 a true and accurate copy of a document that you signed
21 at the second page?

22 **A No, it's true.**

23 Q Okay.

24 MR. ZAPPOLO: At this time, Your Honor, I'd
25 like to move Plaintiffs' Exhibit 255 into evidence.

1 MR. WEBER: No objection.

2 THE COURT: Is that 35?

3 THE CLERK: Yes.

4 (Thereupon, Plaintiffs' Exhibit 35 was
5 received into evidence.)

6 BY MR. ZAPPOLO:

7 Q Okay. Now Mr. Abboud, am I pronouncing that
8 right?

9 A **That's okay. I've been called worse than**
10 **that, so it's okay.**

11 Q Me too. All right. I do want to try to
12 pronounce your name properly.

13 A **No problem.**

14 Q Thank you. All right.

15 This document suggested it is a retail
16 installment sales contract with a simple finance charge.
17 Is that what you did?

18 A **Yes.**

19 Q Okay. Now I noticed that this says Luxury
20 Motorcars instead of MACC. What is Luxury Motorcars?

21 A **I believe it's a company that took care of all**
22 **the finance for Mosler. I'm not sure. I'm not**
23 **100 percent sure.**

24 Q Okay. Now it says that the car that you were
25 buying was a new 2004 Mosler MT900S?

1 **A Correct.**

2 Q Now you were purchasing that car in 2007,
3 right?

4 **A Correct.**

5 Q So were you purchasing a three-year-old car?

6 **A No. All Mosler's cars, I think they were**
7 **2004. I'm not sure if that's correct or not. They're**
8 **all 2004.**

9 Q Okay.

10 **A But mine was delivered in 2007. I'm not sure**
11 **if that's correct or not, but --**

12 Q Well, it certainly wasn't delivered to you
13 before you gave them a deposit, right?

14 **A No.**

15 Q And it wasn't delivered to you until after you
16 had signed a retail installment contract, correct?

17 **A Correct.**

18 Q All right. Now this document says it was
19 signed by you on or about 10/26 of '07, so October 26th
20 of '07. Does that seem correct to you?

21 **A Correct.**

22 Q Okay. So you gave your deposit in August and
23 then at the end of October you got your car; is that
24 right?

25 **A I don't remember the time frame, but it is.**

1 **It sounds right.**

2 Q But they didn't let you drive the car home --

3 **A No.**

4 Q -- or off the lot without having the financing
5 in place, right?

6 **A Correct.**

7 Q Okay. Now, do you have any understanding as
8 to what they were doing during that several months
9 between August and October?

10 **A Supposed to put the car together.**

11 Q Okay. So the car wasn't completed in August
12 of 2007, it was completed sometime around October of
13 2007?

14 **A Correct.**

15 Q Okay. Now did you ask any questions about
16 whether or not the car was manufactured legally or
17 anything like that?

18 **A No. I assume all that stuff would be taken
19 care of. You know, since they're building a car in the
20 United States, DOT, and so on and so on would be taken
21 care of. No, I did not ask.**

22 Q As you sit here today, did you have any
23 opinion as to whether that car was built legally?

24 **A Yes.**

25 Q And what is that?

1 THE COURT: Madam Clerk?

2 THE CLERK: 36.

3 THE COURT: Thank you.

4 (Thereupon, Plaintiffs' Exhibit 36 was
5 received into evidence.)

6 BY MR. ZAPPOLO:

7 Q Okay. Now that document dated September 10th
8 purports to be or suggests that it's from Luxury
9 Motorcars. That's the finance company, correct?

10 A Correct. Correct.

11 Q Okay. Now it says, "Included with this packet
12 is a Bill of Sale, new and improved finance contract,
13 and Texas Title Application. These and other forms may
14 need to be re-signed once we have confirmed completion
15 and delivery date for your vehicle in order to avoid a
16 sales tax penalty with Texas."

17 So as of September 10th, you hadn't received
18 your vehicle, had you?

19 A No.

20 Q Okay. It talks about your finance, "Please
21 note that your down payment has increased from 35,000 to
22 47,000, which includes documentary stamps paid to the
23 State of Florida, et cetera."

24 Did you ever follow-up? Do you recall talking
25 to anyone about why --

1 **A** **I did. And if I remember right, I paid sales**
2 **tax and -- you know, if I remember right. It's been a**
3 **while back.**

4 **Q** **Okay.**

5 **A** **But I did pay myself. You know, I don't think**
6 **we went through a different finance application.**

7 **Q** **Okay. Thank you.**

8 I'm showing you what's been marked as
9 Plaintiffs' Exhibit Number 258 for identification
10 purposes.

11 MR. ZAPPOLO: Counsel, do you stipulate to
12 that? I think it's already in evidence.

13 MR. WEBER: Is it or not? I mean --

14 MR. ZAPPOLO: I believe it is with Ms. Klaker.
15 Well, I'll ask the clerk.

16 Madam Clerk, could you pull the exhibit that
17 looks like that that's in evidence already?

18 THE CLERK: This one?

19 MR. ZAPPOLO: Yes, ma'am.

20 BY MR. ZAPPOLO:

21 **Q** **Let's just use this one then, Mr. Abboud. I'm**
22 **showing you what's been marked as Plaintiffs' Exhibit**
23 **Number 394 for ID, and it is in evidence as Exhibit**
24 **Number 31.**

25 **A** **Okay.**

1 Q Okay. Do you recognize that document?

2 A It looks like the title for my serial number,
3 VIN number.

4 Q It looks like a title, but it says Certificate
5 of Origin for a vehicle.

6 A Correct.

7 Q Okay. Now do you recall receiving that
8 document when you purchased your car?

9 A No. No. I would not receive that because I
10 believe Texas you have to go -- until you pay off the
11 car, you get the title. But I've never seen this, but
12 the VIN number is correct, 2009, the last four digits.

13 Q Okay. You remember the last four digits of
14 your car?

15 A Yes.

16 Q Okay.

17 A Yes.

18 Q And it represents that it's a 2004 Mosler,
19 correct?

20 A Correct. Yes.

21 Q And it says on there MT900S, and that's what
22 you told us, right?

23 A Exactly.

24 Q Who's Mosler Mike Motorsports, Inc.?

25 A Mike -- I believe Mosler Mike is the dealer in

1 **California, if I'm correct.**

2 Q Okay. If you flew from Texas to Florida, why
3 was your car -- why is Mosler Mike's name on
4 documentation related to your car, if you know?

5 A I don't know. I can't answer that. That's
6 something probably between Mosler and this gentleman. I
7 don't know.

8 Q Okay. But you didn't buy from Mosler Mike
9 Motorsports, Inc., did you?

10 A No.

11 Q Okay. Rather than have everyone waiting, I'm
12 going to have you take a look at what's been marked as
13 Plaintiffs' Exhibit 259 for identification purposes. I
14 will say for the record, I thought we already had this
15 in evidence, but I'll ask you. Do you recognize that
16 document?

17 A Yes.

18 (Thereupon, Plaintiffs' Exhibit 259 was marked
19 for identification.)

20 BY MR. ZAPPOLO:

21 Q And did you receive that document on or
22 about -- well, there's no date on it. Did you ever
23 receive that document?

24 A I did receive it with a kit, which is the fuel
25 lines.

1 MR. ZAPPOLO: Okay. At this point I'd like to
2 move Plaintiffs' Exhibit 259 into evidence.

3 MR. WEBER: No objection.

4 THE COURT: Is that 36?

5 THE CLERK: That's 37.

6 THE COURT: 37.

7 (Thereupon, Plaintiffs' Exhibit 37 was
8 received into evidence.)

9 BY MR. ZAPPOLO:

10 Q And you said you received this email -- I'm
11 sorry, this letter that is now in evidence as 37 with a
12 kit?

13 A Yes. What I define as a kit is the parts they
14 needed to do the modification.

15 Q Okay. And what was that modification that you
16 needed to do?

17 A It's the fuel lines.

18 Q Okay.

19 A If I remember right.

20 Q Okay.

21 A You're talking moons ago, man, so...

22 Q I understand and I appreciate your --

23 A Yeah, I think it's fuel lines. It was fuel
24 lines, yeah.

25 Q Okay. Do you have any understanding as to why

1 the fuel line kit was mailed to you?

2 **A** **Yes. They said there was some defect that**
3 **they thought that there might be a leak and the car**
4 **might catch on fire, if I remember right at that time,**
5 **so they asked everybody to modify it.**

6 **Q** **Okay. They didn't have you take your car to a**
7 **dealer or something?**

8 **A** **They requested for me to take it to a dealer,**
9 **but I did take it to a dealership, which he looked at**
10 **the car and said "I don't know what it is. I'm not even**
11 **going to work on it," so I had to take it to a**
12 **performance shop. I could have done it myself, but I**
13 **wanted somebody else to do it since it's a recall**
14 **basically.**

15 **Q** **Okay. And were you compensated for that?**

16 **A** **I don't think so. All I got was the lines.**
17 **I was wondering what you were looking at.**

18 **Q** **I'm sorry, were you saying something?**

19 **A** **No, I was just talking to her.**

20 **Q** **Okay. I'm sorry.**

21 Question for you: You said that you're kind
22 of a motorhead?

23 **A** **Yes, I am.**

24 **Q** **Do you remember what -- well, let me ask you**
25 **this: Do you still have the car?**

1 **A The Mosler?**

2 Q Yes.

3 **A No. It burned down.**

4 Q When did it burn?

5 **A Oh, a few years back. I don't remember what**
6 **year.**

7 Q Okay.

8 **A No, I don't own it anymore.**

9 Q Do you know what the cause of the fire was?

10 **A I wasn't there. It was in Indianapolis -- or**
11 **it was in Springfield, Illinois, I'm sorry, with a**
12 **friend of mine and he was driving it and it caught on**
13 **fire. Luckily him and his son was okay. I don't**
14 **remember what was the cause of it, I wasn't there.**

15 Q Okay. Would you recognize pictures of that
16 car if you saw it?

17 **A My car?**

18 Q Yes.

19 **A Yeah, of course.**

20 Q Now I'm showing you --

21 **A It better be a good picture of my car because**
22 **I liked my car.**

23 Q Okay. I'm going to show you what's been
24 marked as Plaintiffs' 1345.

25 **A Okay.**

1 Q A through D, like dog.

2 A Okay. Thank you.

3 (Thereupon, Plaintiffs' Exhibit 1345A-D was
4 marked for identification.)

5 BY MR. ZAPPOLO:

6 Q Okay. Take a look at 1345A.

7 A A, go ahead.

8 Q Do you recognize that?

9 A Yes, sir.

10 Q And what is that?

11 A That's the engine bay.

12 Q Okay. Is that a true and accurate
13 representation of the engine bay of your car?

14 A Correct. Yes, it is.

15 Q Okay. And then photo B, 1345B?

16 A That's my house and my license plate number,
17 MT900 and Mosler.

18 Q Okay. Is that a true and accurate
19 representation of your vehicle at the time that photo
20 was taken?

21 A Yes, sir.

22 Q Okay. 1345C, what is that?

23 A C, that's the rear -- the rear of the car.

24 Q Okay.

25 A Yeah.

1 Q Is that a true and accurate representation of
2 your vehicle?

3 A Yes, it is.

4 Q Okay. And 1345D, like dog, what is that?

5 A It's a picture of the engine bay again.

6 Q Okay. Now do any of these photographs show
7 any modifications to that vehicle from the time you
8 purchased it?

9 A No.

10 Q Okay.

11 A When you're talking about modification --

12 Q Changes.

13 A Changes?

14 Q Yeah.

15 A No.

16 MR. ZAPPOLO: Okay. Your Honor, at this time
17 I'd like to move 1345 A through D into evidence.

18 MR. WEBER: No objection.

19 THE COURT: 38, Madam Clerk?

20 THE CLERK: Yes.

21 MR. ZAPPOLO: What was that, Your Honor?

22 THE COURT: 38.

23 MR. ZAPPOLO: 38 A through D?

24 THE COURT: Yes. So this will be 38 composite

25 A through D.

1 MR. ZAPPOLO: Thank you.

2 (Thereupon, Plaintiffs' Exhibit 38A-D was
3 received into evidence.)

4 BY MR. ZAPPOLO:

5 Q Now 13 -- I'm sorry, Exhibit 38 that's now in
6 evidence, the first photograph there --

7 A A?

8 Q -- that's -- where's the front of the car?

9 A **It would be right there (Indicating).**

10 Q Okay. In the upper?

11 A **In the front.**

12 Q I understand that it's difficult to see.
13 There's like a gold square plate here on this.

14 A **Okay. That's the rear tire.**

15 Q This is the left rear tire or right rear tire?

16 A **Right.**

17 Q Okay. So this is the passenger's side rear
18 tire here?

19 A **Correct.**

20 Q So the front of the car is up there, right?

21 A **Correct.**

22 Q And because this is a rear engine car, the
23 engine is in the back, correct?

24 A **Yeah. Engine in the back, this is the rear
25 tire. The front of the car would be that way.**

1 Q Okay. What's this right in here?

2 A Which one?

3 Q Where I'm pointing with that.

4 A Those would be the headers.

5 Q Okay. Now what do you know about the headers
6 that came on that car?

7 A They're tube headers.

8 Q Tube headers?

9 A Yes.

10 Q Okay. Short tube or long tube?

11 A Well, long tube, but we define it as really
12 long, but in this car it's short; but, yes, it is a long
13 tube that it's considered.

14 Q Okay. So did it come from the factory that
15 way?

16 A Correct.

17 Q You didn't modify it, did you?

18 A No, sir.

19 Q Okay. Do you know what the EPA expected that
20 car to be manufactured with, either short tube or long
21 tube headers?

22 A No, I don't know what the EPA will be. I'm
23 assuming that it was in compliance with the DOT and the
24 EPA and so on. Like I said, I did not investigate that,
25 no.

1 Q Okay. Who did you rely upon to ensure that
2 the car that you were purchasing was manufactured
3 legally?

4 A **The factory, Mosler factory, engineering.**

5 Q Okay. Now I'd like to shift gears for a
6 moment.

7 A **I would.**

8 Q Did there ever come a time when you -- after
9 the purchase of your car where you saw any articles
10 about Mosler Auto Care Center?

11 A **I have seen a few articles, you know, relating
12 to a new design and also a possibility of, you know,
13 twin-turbos and so on, yes.**

14 Q Okay. Mr. Abboud, I'm showing you what's been
15 marked as Plaintiffs' Exhibit 315 for identification
16 purposes.

17 A **Okay.**

18 (Thereupon, Plaintiffs' Exhibit 315 was marked
19 for identification.)

20 BY MR. ZAPPOLO:

21 Q Do you recognize that document?

22 A **Yes.**

23 Q Okay. A few minutes ago I asked you about
24 articles. Is that one of the articles that you've seen?

25 A **Yes, I've seen this article, yes.**

1 MR. ZAPPOLO: Okay. Your Honor, at this time
2 I'd like to move Exhibit Number 315 into evidence.

3 MR. WEBER: No objection.

4 THE COURT: Plaintiffs' 39.

5 (Thereupon, Plaintiffs' Exhibit 39 was
6 received into evidence.)

7 MR. ZAPPOLO: I'll publish that for the jury,
8 please?

9 THE COURT: That's all right.

10 MR. ZAPPOLO: If you take a look and pass them
11 down.

12 JUROR DEL VALLE: Thank you.

13 BY MR. ZAPPOLO:

14 Q Mr. Abboud, I see on the first page of 315 it
15 says "Car and Driver."

16 A Yes.

17 Q What is "Car and Driver"? Can you tell the
18 jury?

19 A It's a car magazine. People like me read it
20 all the time. You know, gearheads like to read about
21 cars and "Car and Driver" and "Hotrods" and stuff like
22 that. It's a magazine with car articles.

23 Q Okay. And you talked about buying cars
24 before. As a person who buys cars and supercars and
25 things, how important is "Car and Driver" in your life?

1 A Oh, "Car and Driver" has been around for a
2 long time. It is very important.

3 Q Okay. And what, if anything, do you rely upon
4 "Car and Driver" for?

5 A Reviews, what they do, and their comments and
6 so on.

7 Q Okay. And do you look at the online versions
8 as well as the printed versions?

9 A Most of the stuff right now is online. You
10 hardly can get any copy. I mean you could order copies,
11 but, yeah, I do.

12 Q Okay. Now this article is entitled "The Final
13 Days of Mosler: One Supercar Left to Move, Company For
14 Sale."

15 When you saw that, what level of attention did
16 you give this article?

17 A Oh, it got my attention because I have one and
18 I was kind of concerned if the company is going under,
19 you know, what's going to happen to my parts --

20 Q Okay.

21 A -- if I need parts.

22 Q Parts are very important?

23 A Oh, it is, yes. Especially for a car to be on
24 the street, if you get in an accident and so on, which
25 in my case it did. I had a windshield that I had to

1 **replace.**

2 Q Okay. Were you able to replace the
3 windshield?

4 A **Yeah. I got a used one scratched from Mosler
5 because that was the only one they had.**

6 Q Right.

7 A **But I did replace it.**

8 Q So you had to -- so glass for these vehicles
9 was hard to come by?

10 A **It was very hard, yes.**

11 Q Okay.

12 A **I think it was the only one they had. I don't
13 think they were planning on making any.**

14 Q Okay. Did you do any investigation about what
15 you were going to do if you couldn't get another
16 windshield?

17 A **As a matter of fact I did. I talked to a
18 glass company and they said they will do a run if I put
19 up the money for like, you know, 20 windshields or so.**

20 Q You had to put up the money for 20 windshields
21 in order to get one?

22 A **Yeah, I did, but I just bought the used one
23 from Mosler and that was okay --**

24 Q Okay.

25 A **-- for me.**

1 Q All right. Now, in fairness, you've known
2 James Todd Wagner how long?

3 A Since 2007.

4 Q Okay. During that time when, if ever, have
5 you seen him do things that are odd?

6 A Engineers do a lot of odd stuff. I do odd
7 stuff too, but yeah, I mean, explain to me what "odd"
8 is.

9 Q Okay.

10 A I mean, when you're talking odd, you mean
11 something weird like --

12 Q Have you ever seen him do something weird?

13 A No.

14 Q Okay. What about things that are socially
15 inept?

16 A No.

17 Q Okay. Have you ever seen him be aggressive?

18 A No.

19 Q Okay. Now you had conversations with James
20 Todd Wagner about -- well, let me back up.

21 Did you ever have a conversation with James
22 Todd Wagner about exporting vehicles?

23 A Yes, sir.

24 Q Okay.

25 A I did.

1 Q Explain to the jury what you and Mr. Wagner
2 were talking about.

3 A Well, when they were developing this new
4 vehicle with the twin-turbo and so on, he wanted to
5 introduce it to the Middle East. And I have a lot of
6 connections in Saudi Arabia and United Emirates, so I
7 reached out to my friends over there and they were
8 willing to show the car over there.

9 Q How do you have connections in the United Arab
10 Emirates?

11 A I have family there. I grew up there. I was
12 born there.

13 Q Oh, okay.

14 A Yeah.

15 Q And do you know anybody over there, like
16 anyone of note?

17 A Are you talking about famous people?

18 Q Famous, rich, anything like that that would
19 help in the car distribution.

20 A Well, I don't know if this is really
21 politically correct, but I knew Osama bin Laden's
22 friends and so on.

23 Q Okay. People with -- what level of money did
24 they have?

25 A They have a lot of money, banks and so on and

1 **so on, yes.**

2 Q Okay. Did these people buy exotic toys?

3 A **Yes, they did.**

4 Q Things like supercars?

5 A **Yeah. A lot of princes and so on and so on.**

6 Q Okay. Did you have any concern about being
7 able to sell supercars in the country?

8 A **Yes. Yes. It has to be something very**
9 **reliable, especially in the desert, you know, with the**
10 **heat and so on.**

11 Q Okay.

12 A **You know, it has to be reliably tested and so**
13 **on, yes.**

14 Q Okay. Now I want you to take a look at a
15 specific provision. Did you have the opportunity to
16 read this entire article --

17 A **Yes, I did.**

18 Q -- in "Car and Driver"?

19 A **Yes, I did.**

20 Q Okay. Do you remember the last time you read
21 it was?

22 A **It was a long time ago.**

23 Q Okay. I want to take you back to when you
24 first saw this article, okay --

25 A **Yes.**

1 Q -- in "Car and Driver." What was your initial
2 reaction?

3 A I was concerned because there was a few things
4 in here that reflected on Todd, you know, and I ended up
5 reaching out to a couple of friends of mine about it,
6 you know, to see because I'm fixing to do business with
7 him, you know, in the Middle East and I didn't want to
8 look really bad, especially when the article starts
9 stating that he was a scammer and so on and so son.

10 Q Okay. So your personal experience was that
11 seeing this article gave you pause in doing business
12 with James Todd Wagner, right?

13 A Yes, it did.

14 Q Even though you had known him --

15 A Correct.

16 Q -- right?

17 A Well, I've known him sure, sure.

18 Q Okay. I think you said since about 2007 was
19 it?

20 A Correct.

21 Q So at the time this article came out, you had
22 known him about five years, right?

23 A Correct.

24 Q And you hadn't heard -- you didn't form any
25 negative opinions about him in those first five years

1 that you knew him, right?

2 **A No.**

3 Q But when you saw this article, you said you
4 were concerned --

5 **A Correct.**

6 Q -- about doing business with him?

7 **A Yeah. And I reached out to a few friends and
8 asked them about the article and if they read it. And
9 they did, some of them. And then after that I reached
10 out to Todd and talked to him about it.**

11 Q Okay. Now, let me ask you: Based upon your
12 experience in buying supercars, how important is the
13 reputation of a person who's selling a supercar?

14 **A Very important.**

15 MR. WEBER: Objection, improper lay opinion.

16 THE COURT: Sustained.

17 BY MR. ZAPPOLO:

18 Q Nevertheless, when you read the words "'He's
19 nothing. He's got some serious mental problems,' Mosler
20 said," what was your reaction?

21 **A I didn't want to do business with him.**

22 Q Why?

23 **A I was concerned.**

24 Q Okay. Now since you knew him did you do
25 anything special?

1 **A I called him and talked to him.**

2 Q Okay. And after speaking with him what
3 happened?

4 **A I heard he had issues between him and the**
5 **owner and that's something personal I didn't want to get**
6 **involved with, but I don't think -- you know, I didn't**
7 **see anything that prevented me from doing business with**
8 **him.**

9 Q Okay. But just on the face of the article,
10 you were concerned about doing business?

11 **A Absolutely, yes.**

12 Q Even though you knew him?

13 **A Yes.**

14 MR. ZAPPOLO: By the way, with respect to
15 Exhibit 315, that's -- if I'm not mistaken -- in
16 evidence, correct?

17 THE CLERK: Yes.

18 BY MR. ZAPPOLO:

19 Q Okay. With respect to the overall read of
20 315, that "Car and Driver" magazine, what was the
21 overall impression that it gave you? Not just reading
22 the one line, but reading the entire article.

23 **A It gave me that the company's in trouble and**
24 **it seems like the owner and the engineers, whoever**
25 **working there, were in trouble, you know. I mean, it**

1 was a lot of vibes from that article, yes, you know.

2 Q Okay. Did you get the feeling that, when you
3 read the whole article in its entirety, that that one
4 line about Mr. Wagner, "He's nothing, he's got serious
5 mental problems" -- did that -- did that say "Oh, well,
6 out of the whole article, that's just a minor thing"?

7 A No. No, it's a serious thing when somebody
8 says something like that, you know. I mean, to me,
9 it's -- I mean, a gentleman has been working with the
10 owner for a while and so he should know him better, and
11 if he stated that he is not capable of, you know, doing
12 the business, then I got to -- then I got to think about
13 that. I got to think about if I want to do business
14 with this guy.

15 Q So even if you read the whole article, that
16 line sticks out, right?

17 A It does.

18 Q What if someone was to say to you ah, that's
19 just like -- have you ever heard the phrase an
20 off-the-cuff comment?

21 A Oh, yeah.

22 Q Did you interpret that as an off-the-cuff
23 comment, something like someone would just say like at a
24 cocktail party "Oh, he's crazy," something like that?

25 A No.

1 Q Did you interpret that that way?

2 A That's jokingly around, yes, but not putting
3 it in writing, no.

4 Q Okay. Not -- well, in fairness, Mr. Mosler
5 didn't write this article, correct?

6 A I understand that.

7 Q But he was talking to a reporter?

8 A But he was talking to a reporter, yes.

9 Q Okay. So you treated it as a serious
10 allegation?

11 A It is. Yes.

12 Q I'm showing you what's been marked as
13 Plaintiffs' Exhibit 67. You mentioned earlier that
14 you've seen articles. Is this another one of the
15 articles that you've seen?

16 A I've seen, I think, the video.

17 (Thereupon, Plaintiffs' Exhibit 67 was marked
18 for identification.)

19 BY MR. ZAPPOLO:

20 Q Okay. By the way, when you saw the video --
21 and you mentioned the video after seeing the first page
22 of 67.

23 A Correct.

24 Q Did that strike your memory?

25 A Yes.

1 Q That's what reminded you of the video?

2 A Yes.

3 Q Now what did you think of the video?

4 A Personally? I didn't like it.

5 Q Okay. Did you think it would make you not
6 want to buy the car?

7 A No. No. I mean, I usually -- when I look at
8 a car, I look at a car. I don't look at the girl in
9 front of it.

10 Q Okay.

11 A As a matter of fact, when I go to the SEMA
12 Show or any other show, I tell the car -- you know, the
13 girls that are in there to pass away, I want to look at
14 the car. Just kind of move away, I want to take
15 pictures. So, yeah, I'll look past that.

16 Q Okay. You just said something and I want to
17 be sure the jury understands. The SEMA Show, what is
18 the SEMA Show?

19 A It's a specialty vehicle show in Vegas.

20 Q Okay.

21 A And, yeah, there's a lot of -- they show cars.
22 And actually, as a matter of fact, Mosler's car was
23 there one time. Not from Mosler, from another -- I
24 think John is his name that he purchased the car, he put
25 it over there and I was invited to go. And we looked at

1 it, and he made an awesome show for it. He had a
2 twin-turbo, big engine in there.

3 And there's a lot of girls, showgirls that
4 they go around and show the cars, you know, so...

5 Q So based upon your experience as a buyer of
6 these exotic, high-end type vehicles, frequently the
7 marketing includes --

8 A Show.

9 Q -- show women, right?

10 A Correct.

11 Q And how are the women dressed?

12 A Oh, respecting the women, I mean, they're
13 dressed, so -- I don't know. Don't get me in trouble.

14 Q In fairness, I'm not trying to get you in
15 trouble, but this is a court and we have to get out the
16 truth, right?

17 A Well, they dress, you know, showing a lot of
18 stuff, let me put it this way.

19 Q Showing a lot?

20 A Yes.

21 Q Would the word "provocatively" be appropriate?

22 A Yes. You got to remember I come from a
23 country that we don't do that stuff.

24 Q I understand. I understand. But in other
25 countries --

1 **A It is.**

2 Q -- they use scantily clad women --

3 **A Correct.**

4 Q -- to market --

5 **A To market.**

6 Q -- these high-end vehicles?

7 **A Correct, yeah. And I mean the video itself is**
8 **okay, but I didn't care for the -- you know, the dancing**
9 **or the girls or whatever, but that's besides the point.**

10 Q Okay. Have you ever seen other videos for
11 other supercars?

12 **A Yes.**

13 Q And were they similar in nature to that or
14 different?

15 **A Oh, yeah, definitely, yes. Yeah.**

16 Q Okay. So other supercar manufacturers produce
17 similar videos to that video, right?

18 **A Because that's what sells most of the time. I**
19 **guess. I guess.**

20 Q All right.

21 **A I'm not a salesman, I don't know.**

22 MR. ZAPPOLO: All right. At this point I'd
23 like to move Plaintiffs' Exhibit Number 67 into
24 evidence.

25 MR. WEBER: No objection.

1 THE COURT: All right. Admitted as -- is it
2 39?

3 THE CLERK: 40.

4 THE COURT: 40, okay.

5 (Thereupon, Plaintiffs' Exhibit 40 was
6 received into evidence.)

7 BY MR. ZAPPOLO:

8 Q Now, Mr. Abboud, within Exhibit 67 that's now
9 40 into evidence --

10 A Okay.

11 Q -- there are a number of comments in the back
12 of the article.

13 A Yes.

14 Q Do you see those?

15 A Yes. I see a few comments, yes.

16 Q Okay. Do you pay attention to those --

17 A To be honest --

18 Q -- when trying to understand what's going on?

19 MR. WEBER: Your Honor, can he let the witness
20 answer the questions before he interrupts them?

21 THE COURT: It's your witness, counselor.

22 BY MR. ZAPPOLO:

23 Q Do you pay attention to those as someone who
24 reads the articles to try to find out what's going on
25 with the vehicle?

1 **A I do read -- yeah, I do read them, yes.**

2 Q All right. I'm showing you what's been marked
3 as Plaintiffs' Exhibit 70 for identification purposes.
4 Do you recognize that document?

5 **A It looks familiar.**

6 (Thereupon, Plaintiffs' Exhibit 70 was marked
7 for identification.)

8 BY MR. ZAPPOLO:

9 Q Okay. Are you familiar with -- well, let me
10 back up.

11 Are you familiar with a periodical known as
12 the duPont REGISTRY?

13 **A Yes. I used to subscribe to some of these**
14 **magazines also.**

15 Q Okay. And how important is the duPont
16 REGISTRY in the supercar world?

17 **A Very.**

18 Q Okay.

19 **A They're a high-end magazine.**

20 Q Okay. And did you subscribe to the duPont
21 REGISTRY on or around 2011?

22 **A I had a subscription for them for a long time.**
23 **I don't remember if it was 2011 or not.**

24 Q Okay. Would you take a look at the second
25 page to Exhibit 70.

1 **A Okay.**

2 Q Do you remember ever reading about the things
3 that are described in the second page of Exhibit 70?

4 **A Yes.**

5 Q Okay. And I see there in the middle of the
6 page, the second full paragraph, it talks about a
7 promotional music video, et cetera?

8 **A Yes.**

9 Q I noticed there it has the word -- it says
10 "Mosler RaptorGTR" -- I apologize, excuse me.

11 MR. ZAPPOLO: At this time, Your Honor, I'd
12 like to move Plaintiffs' Exhibit 70 into evidence.

13 MR. WEBER: No objection.

14 THE COURT: All right. Admitted as 41.

15 (Thereupon, Plaintiffs' Exhibit 41 was
16 received into evidence.)

17 BY MR. ZAPPOLO:

18 Q Okay. Now I can talk about it. I'm going to
19 show you the second page.

20 **A Okay.**

21 Q The document reads "Released with a
22 promotional music video for some unknown artist called
23 Abby Cubey, the 2012 Mosler RaptorGTR," but the word
24 "Mosler" is crossed out, okay.

25 As someone who buys cars and investigates cars

1 using -- you know, looking at cars online and
2 everything, what significance would it be to have the
3 word "Mosler" crossed out?

4 **A Well, then you don't know who actually is**
5 **behind it, you know. I mean, if you just say RaptorGTR,**
6 **you know, without the Mosler, the Mosler name should**
7 **have been there in my opinion.**

8 Q Okay. Well, does that -- as a purchaser of
9 such vehicles, what would something like that do to your
10 willingness to pay full price for a vehicle?

11 **A Oh, I wouldn't -- I wouldn't buy it.**

12 Q Okay. Or if you were to buy it, would you pay
13 the same price as you would otherwise?

14 **A No.**

15 Q How much would you discount the price in
16 general?

17 **A I wouldn't know. I'd have to look at the car,**
18 **you know.**

19 Q Okay.

20 **A But a lot.**

21 Q Okay. Now, I'm going to show you another
22 portion just above that where the article says "Mosler
23 says the RaptorGTR is not one of its products and
24 refused to comment further."

25 Would that have the same impact as what we

1 just discussed?

2 **A Correct.**

3 MR. WEBER: Objection, vague.

4 THE COURT: Overruled.

5 BY MR. ZAPPOLO:

6 Q And your answer was?

7 **A Yes.**

8 Q Okay. Thank you.

9 I'm showing you what's been marked as
10 Plaintiffs' Exhibit Number 69 for identification
11 purposes. Is that another one of the articles that you
12 saw?

13 **A Yeah. I vaguely remember this, yes.**

14 (Thereupon, Plaintiffs' Exhibit 69 was marked
15 for identification.)

16 BY MR. ZAPPOLO:

17 Q Okay. And as a purchaser of exotic vehicles
18 such as the Raptor, would this be the type of thing that
19 you would consider when deciding whether or not to
20 purchase a vehicle?

21 **A Yeah.**

22 MR. ZAPPOLO: Okay. Your Honor, at this time
23 I'd like to move Plaintiffs' Exhibit Number 69 into
24 evidence.

25 MR. WEBER: No objection.

1 THE COURT: All right. Admitted as 41, Madam
2 Clerk?

3 THE CLERK: 42.

4 THE COURT: 42.

5 (Thereupon, Plaintiffs' Exhibit 42 was
6 received into evidence.)

7 BY MR. ZAPPOLO:

8 Q Now this article kind of references other
9 articles, doesn't it?

10 A Correct.

11 Q That are already in evidence like "How This
12 Crappy Music Video Set Fire To One Man's Dream," right?

13 A Yeah.

14 Q And just like before, there are other
15 comments, correct?

16 A Yeah, correct.

17 MR. ZAPPOLO: And I believe this is in
18 evidence, so I can give this to the clerk.

19 And that's all the questions I have for you.

20 Thank you for your time.

21 THE WITNESS: Okay.

22 THE COURT: Cross-Examination?

23 MR. WEBER: No, Your Honor. No questions.

24 THE COURT: Is this witness excused?

25 MR. ZAPPOLO: He is.

1 THE COURT: Sir, please have a great day.

2 This trial is not concluded, so do not discuss your
3 testimony or anything you heard in this courtroom
4 until this trial has concluded.

5 **THE WITNESS: I'm headed to the airport and**
6 **going home.**

7 THE COURT: Have a wonderful flight.

8 **THE WITNESS: Thank you.**

9 THE COURT: Can I see the attorneys?

10 (Thereupon, a sidebar conference was held.)

11 THE COURT: I'm going to cut them loose for
12 the day?

13 MR. ZAPPOLO: Yes.

14 MR. WEBER: Yes.

15 THE COURT: Okay. And we'll go over the depo
16 designations and we'll tell them 9:30 tomorrow
17 morning?

18 MR. ZAPPOLO: Yes.

19 MR. WEBER: Yes.

20 (Thereupon, the sidebar conference was
21 concluded.)

22 THE COURT: Okay. All right. Ladies and
23 gentlemen, it is 2 o'clock. I'm going to release
24 you for the day. There's some work that we have to
25 do, but I think it's going to involve a lot of back

1 and forth, maybe not a whole lot of work on your
2 end, and so we are just going to get that work done
3 on our own today and we'll pick up tomorrow
4 morning. 9:30 just like today, okay?

5 I noticed that people have dressed warmer.
6 Have a wonderful night.

7 Oh, and again, as a reminder, please don't
8 discuss this case with anyone outside of the
9 courtroom. Don't discuss it with yourselves.
10 Don't look up the names or people involved. Don't
11 look up any videos. Don't look up any cars. Don't
12 look up anything associated with this case.

13 The only way for this to be fair is for you to
14 consider the evidence when it's presented in front
15 of all of these people, subject to
16 Cross-Examination, subject to their arguments,
17 okay? I will see you tomorrow at 9:30.

18 (Jurors exit the courtroom at 2:11 p.m.)

19 THE COURT: While they do that, we'll take a
20 ten-minute break and then we'll reconvene.

21 (Thereupon, a short break was taken from
22 2:12 p.m. to 2:34 p.m.)

23 THE COURT: All right. So I handed you back
24 your designation papers that you guys have given
25 me?

1 MR. WEBER: Say that again, Your Honor.

2 THE COURT: I gave you back your depo
3 designations?

4 MR. WEBER: Yes.

5 THE COURT: All right. And I guess you're
6 going to pop that on the screen here? Is that what
7 you're doing, or do you have a hard copy for me?

8 MR. WEBER: I have a hard copy for Your Honor.
9 I think that would be easier. I tried to highlight
10 the specific parts for you to try to make it
11 easier.

12 THE COURT: Oh, wonderful, I like easy.

13 MR. WEBER: Yep.

14 THE COURT: All right. So I got four in front
15 of me. I've got Plaintiffs' Notice of Deposition
16 Designations for Trial, Defendants' Notice of
17 Filing Objections and Counter Deposition
18 Designations, Plaintiffs' Notice of
19 Counter-Deposition Designations for Trial
20 (Responsive to Defendants' Designations filed
21 March 10, 2023)," and I have Defendants' Notice of
22 Filing Deposition Designations.

23 How do we tackle this.

24 MR. ZAPPOLO: I think in order, Your Honor.

25 It would be Plaintiffs' Notice of Deposition

1 Designations for Trial.

2 THE COURT: Okay.

3 MR. ZAPPOLO: Then Defendants' Notice of
4 Deposition Designations, and then Plaintiffs'
5 Notice of Counter-Deposition Designations, and
6 Defendants' Notice of Filing Objections and
7 Counter-Deposition Designations, if that makes
8 sense.

9 THE COURT: You said the last one was
10 Plaintiffs' Notice of Counter-Deposition
11 Designations for Trial?

12 MR. ZAPPOLO: Defendants' Notice of Filing
13 Objections and Counter-Deposition Designations.

14 THE COURT: All right. I have them in that
15 order in front of me right now then.

16 Okay. So starting with Plaintiffs' Notice of
17 Deposition Designations for Trial, and I guess
18 we're looking at the deposition of Clifford Atiyeh.

19 MR. ZAPPOLO: Atiyeh.

20 THE COURT: All right. Which I've got in
21 front of me right now.

22 Page 4, lines 10 through 11. Where it says
23 "Examination by Mr. Zappolo"?

24 MR. ZAPPOLO: Yes.

25 MR. WEBER: Yes.

1 THE COURT: Okay.

2 MR. WEBER: You know, because I wasn't in the
3 case at that time, Your Honor, so I don't want the
4 jury to be confused because it looks like
5 Examination by Mr. Reinblatt, who is the old
6 counsel. So I don't know if we need that part in
7 there.

8 THE COURT: Okay. So I think it's important
9 for the jury to know who's asking what. I
10 understand your position on the objection.

11 Any objection to saying "Examination by the
12 Plaintiff" or "Examination by, you know, counsel
13 for Mr. Wagner"? And then on the other side it
14 reading "Examination by, you know, Defendant" or
15 "Examination by Counsel for Mosler"?

16 MR. ZAPPOLO: I don't have an objection. I
17 just wanted to be able to distinguish between the
18 two sides.

19 THE COURT: I agree, it's important.

20 MR. WEBER: Totally. I agree.

21 THE COURT: All right. So which one of those
22 do you want to use? Plaintiff/Defendant or do you
23 want to use the name of the parties?

24 MR. WEBER: I think we should use
25 "Plaintiff/Defendant." I think it's easier.

1 MR. ZAPPOLO: Okay.

2 THE COURT: All right. So why don't we edit
3 lines 10 and 11 to say "Examination by Plaintiffs'
4 counsel."

5 Page 5, 14 through 21. "Question, can you
6 please tell us your name, sir?

7 "Answer: Clifford Atiyeh.

8 "Question: And Mr. Atiyeh, do you have a
9 middle name?

10 "Yes.

11 "Question: And what is that?

12 "Halley."

13 And then it actually goes on further and it
14 says "How do you spell that?" So --

15 MR. WEBER: Just to expedite this, Your Honor,
16 that one is not objected to. It might make sense
17 for you to look at our notice of objections and
18 cross-designations because that shows their
19 page-line reference, and in that table shows the
20 corresponding objections.

21 I think that will save you time so you're not
22 reading ones that are not objected to.

23 THE COURT: All right. So let's see
24 Defendants' Notice of Objections.

25 MR. WEBER: And just for the record, I don't

1 think the plaintiff has filed any objections at all
2 to the designations.

3 MR. ZAPPOLO: We don't have any objections.

4 THE COURT: All right. So your next objection
5 is page 9, lines 1 through 25.

6 MR. WEBER: Correct.

7 THE COURT: All right.

8 "Question: Okay, thank you. I'd like you to
9 turn your attention to Plaintiffs' Exhibit Number 2
10 and paragraph number 2. If you see at paragraph
11 number 2 it reads: I, meaning you, wrote the
12 article titled 'The Final Days of Mosler: One
13 supercar left to move, company for sale.'"

14 Now if I refer your attention to Plaintiffs'
15 2A, is that the article that the paragraph 2 in
16 Plaintiffs' Exhibit Number 2 is referencing?

17 "Answer: Yes.

18 "Question: All right. And it says further in
19 that second paragraph of Exhibit Number 2, it says
20 that, meaning the article, was published on 'Car
21 and Driver' magazine's website. Do you recall your
22 article being published on 'Car and Driver's'
23 website?

24 "Answer: Yes.

25 "Question: Okay. And further, it says on or

1 about November 15, 2012, do you recall that article
2 being published on or about November 15, 2012?

3 "Answer: Yes."

4 And your objection is?

5 MR. WEBER: It was like a very confusing
6 exchange, Your Honor, that I saw there. And
7 perhaps we can limit it to just one of those yeses.

8 THE COURT: I mean, I agree, it's a little
9 long-winded, but I'm going to overrule the
10 objection.

11 All right. Let's move on to the next one.

12 MR. WEBER: Okay.

13 THE COURT: Page 10, 5 through 9.

14 It's a part of the question. The objection
15 part is "Exhibit A, is Plaintiffs' Exhibit Number
16 2A a true and correct copy of your article as
17 initially published back in November of 2012?"

18 "Answer: Yes."

19 MR. WEBER: I was just going to say read the
20 whole question rather than --

21 THE COURT: "All right. And the next sentence
22 on paragraph 2 of Exhibit Number 2 says a true and
23 correct copy of the article as initially published
24 is attached hereto as" --

25 MR. ZAPPOLO: Your Honor, if I may clarify for

1 the record, what I was doing here was going through
2 Mr. Atiyeh's affidavit that he served.

3 Mr. Atiyeh's affidavit is Exhibit 2.

4 Mr. Atiyeh's -- Affidavit of Clifford Atiyeh. He
5 says "Attached hereto" -- in his affidavit he says
6 "I wrote the article titled 'The Final Days of
7 Mosler,'" et cetera, et cetera, "a true and correct
8 copy of your article as initially published is
9 attached hereto as Exhibit A."

10 So I asked him: "Within Exhibit 2, you say
11 this is the true and correct copy. Is 2A actually
12 a true and correct copy?" He says, "Yes."

13 THE COURT: You know, it reads funky, but, you
14 know --

15 MR. ZAPPOLO: I guess here's my question for
16 the Court and for Mr. Weber is: How are we going
17 to address the exhibits in this?

18 Are we going to be moving them in at the time
19 of the questions or --

20 THE COURT: Are they attached to the
21 deposition?

22 MR. ZAPPOLO: They are attached to the
23 deposition.

24 THE COURT: I mean, I guess you guys can
25 figure that out, but I mean -- like I said, just

1 because something is, you know, perhaps not poetry,
2 doesn't mean that it's going to be excluded.

3 I'm going to overrule the objection on page
4 10, lines 5 through 9.

5 All right. Page 10, lines 22 through page 13,
6 line 7. Let's see, I'm going to read this one
7 quietly because it's long.

8 And your objection is compound?

9 MR. WEBER: Yeah. On line 11 on page 12, it
10 wasn't clear where the question was because it says
11 "And then it says jockeys between three other
12 full-time gigs," so is he reading it there?

13 MR. ZAPPOLO: Yes.

14 MR. WEBER: And then it says "The phrase, the
15 type of personality that sells cars, is in quotes,
16 was that a quote attributed by you?"

17 MR. ZAPPOLO: I'm reading from Exhibit
18 Number 3, which is his article. And I say -- it
19 says, right. "Plaintiffs' Exhibit Number 3 begins
20 with the words Weill Mosler. Is that referring to
21 Mr. Mosler?

22 "Yes.

23 "And then it says 63," because the article
24 says "Mosler, 63," and then it says "jockeys
25 between three other full-time gigs, economist,"

1 blah, blah, blah.

2 So I was just going through and breaking up
3 and making sure of what the entire sentence meant.

4 THE COURT: Objection is overruled.

5 Again, you know -- I mean, if you're
6 uncomfortable, they can process whatever it is
7 they're going to process, but -- all right. Let's
8 move on.

9 MR. WEBER: 14, 13, line -- 14, line 13
10 through line 22.

11 THE COURT: I thought we were on page 13, 11
12 through 14.

13 MR. WEBER: Oh, I thought we just did that
14 one, Your Honor.

15 MR. ZAPPOLO: Oh.

16 THE COURT: I thought we did the one before
17 that.

18 MR. WEBER: 11, 22 is the one I identified as
19 the compound one.

20 THE COURT: Let's see. We just did page 10
21 through 13, line 7, and so now we're on 13, line 11
22 through page 14, line 11.

23 MR. WEBER: Oh.

24 THE COURT: Your objection number 7 is the one
25 we're on.

1 MR. WEBER: We're on 7, okay. 7 is the one
2 that I was speaking about -- this is the one I read
3 where it was unclear whether he was reading from
4 the article or if it was attributable direct quotes
5 by Mr. Mosler. Because if you look at 13, line 11,
6 he says "Okay. Now, further down in Exhibit
7 Number 3, it says" this, and then he says "That
8 is -- that sentence is part paraphrasing by you of
9 what Mr. Mosler told you that he didn't want to run
10 the business anymore, and then the words in quotes,
11 if anybody ever buys it, that's a direct quote by
12 Mr. Mosler, correct?"

13 So there are two sentences there. There's two
14 questions almost there. "That sentence is part
15 paraphrasing by you" --

16 MR. ZAPPOLO: Your Honor, Exhibit -- The
17 "Final Days of Mosler" article by Mr. Atiyeh has
18 already been admitted into evidence. I want to put
19 this thing up on the screen, I'm going to read the
20 transcript, and I'm going to follow along on the
21 document with my finger as I'm quoting the article,
22 and then you'll see -- I read along and I say that,
23 and then I say "That's a direct quote by
24 Mr. Mosler, correct?"

25 "Answer: Yes."

1 That's the way I did it with the witness. We
2 had it up, we went through and read word for word,
3 and then I pause and say "That's a direct quote
4 from Mr. Mosler, correct?" And he said "Yes."

5 MR. WEBER: It's very unclear from the
6 transcript.

7 MR. ZAPPOLO: But when you track the article
8 and read the transcript, it's crystal clear.

9 THE COURT: All right. I mean, the
10 transcript -- and you said this is attached to the
11 deposition?

12 MR. ZAPPOLO: And it's already in evidence --
13 yes, and it's in evidence.

14 THE COURT: All right. The objection is
15 overruled. Let's move on to number 8, page 14,
16 lines 13 through 22.

17 MR. WEBER: So it's really not clear from this
18 little excerpt what he is referring to when he says
19 "Do you recall Mr. Mosler telling you that?"

20 "From what I understand, yes."

21 Now remember, one of the issues here is
22 whether Mr. Mosler actually said the statement at
23 issue, the one single statement at issue in this
24 article.

25 MR. ZAPPOLO: That's not true, Your Honor.

1 MR. WEBER: That is true.

2 MR. ZAPPOLO: That's not --

3 THE COURT: Hold on.

4 MR. ZAPPOLO: If you read page 14, from line 2
5 through, it becomes clear what the question is
6 about.

7 THE COURT: "Do you have any recollection of
8 going out and trying to look up and trying to price
9 a Mosler MT900S Photon at the time or did you get
10 it from his conversations with him?"

11 MR. WEBER: I think he meant "from my
12 conversation."

13 THE COURT: It's that last part that I don't
14 understand the diction. "His conversation with
15 him"?

16 MR. ZAPPOLO: I don't know whether that's a
17 typo by the transcriptionist or what, but the
18 reality of it is the answer is "Everything here is
19 from my conversation."

20 MR. WEBER: What does that mean? That's --

21 MR. ZAPPOLO: We're talking about "Mr. Mosler
22 informing you that Mosler Automotive was still
23 trying to sell that 2012 Mosler MT900 Photon at a
24 price of \$479,000."

25 And I said, "Did you go out and look that up

1 online?"

2 He said, "No. Everything here is from my
3 conversation."

4 MR. WEBER: It's unclear whether that means
5 something that actually was spoken to him or
6 following the conversation is where he got the
7 information.

8 MR. ZAPPOLO: Right. That's subject to
9 argument, Your Honor. I mean, those are the words
10 in the transcript. It's not an objectionable
11 question.

12 THE COURT: Yeah.

13 MR. ZAPPOLO: And his response is "Everything
14 here is from my conversation."

15 THE COURT: I mean, I think I'm -- I'm just
16 reading it and I think the depo is perhaps a little
17 hard to understand, but it's your evidence and I
18 think you can present it. I don't -- I'm going to
19 overrule the objections.

20 Let's move on to the next one. Number 10, 22
21 lines --

22 MR. WEBER: Actually, number 9.

23 THE COURT: Number 9.

24 MR. WEBER: Yeah.

25 THE COURT: Page 19 --

1 MR. WEBER: Yeah.

2 THE COURT: -- lines 5 through page 21, line
3 7.

4 MR. WEBER: Specifically on line 14 it says "I
5 believe it was Mr. Mosler," so he's speculating
6 there, Your Honor. He doesn't --

7 MR. ZAPPOLO: But that's argumentative.
8 That's argument. That's not --

9 THE COURT: Hold on. All right. That's
10 overruled.

11 MR. WEBER: And then on -- it says on 19, 24
12 "So Mr. Mosler told you that Mr. Wagner, you say
13 allegedly, demanded Mosler quote, he's out there
14 billing himself as everything and he doesn't have
15 anything, that quote is attributable to who?"

16 Besides the fact that question is worded so
17 poorly, it's like attributable meaning what? You
18 know, did he say it or didn't he say it? Because
19 that's the heart of this case, and we object to
20 that. What does that mean?

21 MR. ZAPPOLO: I'm clarifying, at line 20, "All
22 right. And the article goes on. When he, the 'he'
23 that is referenced in the article is Mr. Wagner,
24 correct?"

25 "Answer: Yes.

1 "So Mr. Mosler told you that Mr. Wagner, you
2 say allegedly, demanded Mosler pay him \$100,000,
3 was that information that you got from Mr. Mosler
4 or Mr. Wagner?

5 "Answer: That was from Mr. Mosler."

6 MR. WEBER: But you're reading a
7 different one. We're on --

8 MR. ZAPPOLO: 19 to 20. Are you -- I think
9 counsel is jumping over to 21.

10 MR. WEBER: No, we're on 9 -- we're on 19. We
11 already ruled on the other one. We're talking
12 about 19, starting on line 24 --

13 MR. ZAPPOLO: Page 19.

14 MR. WEBER: -- going to 21, 7. It says "All
15 right. And then the next quote, he's out there
16 billing himself as everything and he doesn't have
17 anything, that quote is attributable to who?

18 "To Mr. Mosler."

19 MR. ZAPPOLO: I'm sorry, I'm missing where
20 counsel is reading from. I'm on page 19 of the
21 deposition transcript.

22 THE COURT: He's on page 20.

23 MR. WEBER: 21. 20, 21.

24 THE COURT: 20, 21?

25 MR. WEBER: Yeah.

1 MR. ZAPPOLO: Okay. So what's -- on page --
2 so the objection starts on page 20, not on page 19?

3 From what I can see, the next thing that we're
4 up to was objection number 10, which begins on 22.

5 MR. WEBER: Well, no, this is all within 9. 9
6 is like two pages almost of the transcript.

7 MR. ZAPPOLO: Okay. So Your Honor has cleared
8 the transcript page 19 through what line?

9 THE COURT: Give me a moment.

10 MR. ZAPPOLO: Thank you.

11 THE COURT: From 21 through line 7 the
12 objection is overruled. Let's go on to number 10,
13 page 22.

14 MR. WEBER: Speculation, Your Honor. He
15 doesn't even know --

16 THE COURT: Sustained.

17 MR. ZAPPOLO: I'm sorry, Your Honor. The
18 person that writes for the magazine is not allowed
19 to opine that it's one of the largest circulations?

20 THE COURT: He said he doesn't have a specific
21 number. You know, he said --

22 MR. ZAPPOLO: If I said the New York Times is
23 one of the largest, you know, most read
24 publications in the country, I'm not allowed to say
25 that?

1 I mean by analogy, Your Honor, I'm just having
2 trouble understanding why someone would have to
3 have the number, the specific circulation count,
4 which varies from month to month.

5 MR. WEBER: He doesn't have the knowledge.
6 He's saying he doesn't have the knowledge.

7 MR. ZAPPOLO: He doesn't know the specific
8 numbers, but he knows it's one of the largest. I
9 mean, you don't even know your specific caseload,
10 but you know you've got a lot.

11 THE COURT: Well, the question is: "Do you
12 know how large the 'Car and Driver' circulation is
13 compared to other automotive magazines?"

14 MR. ZAPPOLO: Yes. And his response is "it's
15 one of the largest."

16 THE COURT: "It's one of the largest."

17 MR. ZAPPOLO: Right.

18 MR. WEBER: He says, "I don't have a specific
19 number, but I know it's one of the largest."

20 MR. ZAPPOLO: I don't think you have to have a
21 number to know that --

22 THE COURT: I'm going to overrule the
23 objection. I don't like the question -- yeah, I
24 don't know how many of these magazines there are.
25 Today I heard "duPont" and I heard "Car and

1 Driver."

2 MR. ZAPPOLO: There aren't that many. And he
3 also mentioned --

4 MR. WEBER: He doesn't know. Mr. Zappolo
5 doesn't know, he's not an expert.

6 MR. ZAPPOLO: Ask your co-counsel, who's a car
7 guy.

8 THE COURT: Well, so here's my question:
9 Today I heard of two. I don't know if there's two
10 or 200. I don't know how, you know -- but if it's
11 one of the largest --

12 If it's one of the largest two, great. If
13 it's one of the largest 200, great. I guess that's
14 an argument Mr. Weber can make. The objection is
15 overruled. Let's move on to the next one.

16 MR. WEBER: So he says, on 22, based upon --
17 so if you look above, the question is on page 22,
18 line 9. "Approximately how many readers do you
19 understand the 'Car and Driver' magazine has?

20 "Do you mean currently?"

21 And the question then is "Back in 2012."

22 All of the counsel there except for
23 Mr. Zappolo object.

24 He responds, "I wouldn't know the exact
25 number."

1 And then 21 is "Based upon your knowledge and
2 experience, is it over a million?

3 "Objection.

4 "Yes."

5 I mean this is -- again, this is pure
6 speculation.

7 THE COURT: That is speculation, I think. If
8 you don't know a specific number, how do you know
9 it's over a million?

10 MR. ZAPPOLO: People. We do that all the
11 time, walking people down.

12 THE COURT: I'm going to sustain that.

13 MR. ZAPPOLO: Okay. I understand, Your Honor,
14 I'm not arguing.

15 THE COURT: 21 through 24, the objection is
16 sustained. That's -- let's see. I guess it's
17 number 11, right?

18 MR. WEBER: Yeah.

19 THE COURT: In part of number 11.

20 All right. Let's go on to number 12, page 23,
21 line 15 through page 24, line 6.

22 MR. WEBER: I don't even understand -- I read
23 this now, I still don't even understand what the
24 question is.

25 MR. ZAPPOLO: It's verifying that it was

1 published in "Car and Driver" magazine. I might
2 have said something earlier and I wasn't sure, or I
3 misstated "Car and Driver" or I called it some
4 other car magazine.

5 THE COURT: And again, I don't know if there's
6 a transcription issue here --

7 MR. WEBER: I don't understand the question at
8 all, Your Honor.

9 THE COURT: Well, did you call the car
10 magazine and then now you're trying to say it's
11 "Car and Driver" magazine? Is that --

12 MR. ZAPPOLO: I honestly don't remember, so I
13 guess when I look and I ask about Plaintiffs'
14 Exhibit Number 2 earlier in the deposition -- you
15 know, this was on the fly when I'm doing this,
16 so --

17 THE COURT: I think I know what you're trying
18 to do.

19 MR. ZAPPOLO: I was just trying to --

20 THE COURT: I don't know that -- I think
21 you're trying to seek clarification here. Are you
22 worried that you didn't call it "Car and Driver"
23 magazine?

24 MR. ZAPPOLO: I think I was. I think I was
25 concerned that I may have omitted the word "and

1 Driver" and called it "Car Magazine."

2 THE COURT: I think you did cover that when I
3 look at the transcript, though, so I don't know
4 what that adds to the deposition.

5 MR. ZAPPOLO: Okay. I'll agree to strike it,
6 Your Honor, if you think it's redundant and you
7 think it was clear before.

8 THE COURT: You're right, depositions are on
9 the fly, but I don't think you really need the
10 clarification.

11 MR. ZAPPOLO: Okay.

12 THE COURT: All right. So we'll sustain that
13 one.

14 25, lines 5 through -- page 25, lines 5
15 through 7.

16 MR. WEBER: Just relevance, Your Honor. I
17 don't understand what the email address has to
18 do --

19 THE COURT: Well, do you want his email
20 address out there for the whole world?

21 MR. ZAPPOLO: There are emails between
22 Mr. Atiyeh and Mr. Wagner in this case.

23 THE COURT: Okay. All right. The objection
24 is overruled.

25 Page 26, lines 8 through page 27, line 2.

1 MR. WEBER: I'm fine with that one, Your
2 Honor.

3 THE COURT: Okay. Page 29, lines 13 through
4 14.

5 MR. ZAPPOLO: Covered by we'll call it
6 "Defendants' counsel"?

7 THE COURT: Yep. That's what we decided to
8 do.

9 All right. So I guess someone is going to
10 edit that.

11 MR. ZAPPOLO: I'm writing it on my version
12 right now and I will photocopy this when I go back
13 to the office for the -- we have a college student
14 coming in to read.

15 THE COURT: Oh, wonderful.

16 MR. ZAPPOLO: They're in the pre-law.

17 THE COURT: Wonderful. So you're going to
18 examine the college student?

19 MR. ZAPPOLO: Yes.

20 THE COURT: So this is actually my preferred
21 way of having depositions read if I'm asked because
22 I think it makes easy for the finder of fact to
23 follow along instead of one person reading both
24 sides.

25 If you have someone who's going to play the

1 other role, it makes it easier. I think it helps
2 the brain process the information.

3 All right. Page 29, lines 13 we addressed.

4 Page 32, lines 19 through page 33, line 23.

5 MR. WEBER: It's not clear when and to what
6 they were referring to when he says "You said that
7 you spoke directly to Warren Mosler; is that
8 correct?"

9 When and in what context did you speak to
10 Warren Mosler?

11 MR. ZAPPOLO: Your Honor, himself I believe
12 says --

13 THE COURT: Hold on, let me get through it.
14 All right. The objection's overruled.

15 And then I guess we're going to page 47, line
16 22 through 25.

17 MR. WEBER: This is just the same.

18 THE COURT: Okay. So we'll fix that.

19 MR. ZAPPOLO: Hold on. Let me make sure I get
20 this. "Continued Examination by Plaintiffs'
21 Counsel"?

22 THE COURT: Correct. Page 48, line 16 through
23 25.

24 MR. WEBER: I think it should be starting at
25 15. And then it's unclear what information is

1 being referred to there. And that's the heart of
2 the case is: Did Mr. Mosler actually say the
3 things that -- the one statement in the article
4 that's at issue?

5 THE COURT: "All right. And then I just have
6 one more thing. You said Mr. Mosler contacted you
7 when he gave you the information related to the
8 article, he reached out to you by telephone,
9 correct?"

10 Do you --

11 "Answer: No.

12 "Question: Okay. So did he email you and
13 then request like a phone number and then you
14 followed up with your telephone call that you
15 talked about earlier?

16 "Yes, that's correct."

17 All right. The objection's overruled. Let's
18 go on to 49, lines 19 through page 50, line 8.

19 MR. WEBER: That's fine, Your Honor. We'll
20 withdraw that one.

21 THE COURT: Okay. So that's the deposition
22 of --

23 MR. ZAPPOLO: Mr. Atiyeh.

24 THE COURT: So now Matthew Farah's deposition.
25 Matthew Farah, Matthew Farah's deposition.

1 MR. ZAPPOLO: Yes.

2 THE COURT: All right.

3 MR. ZAPPOLO: Page 5, by the court's prior
4 ruling, "Examination by Plaintiffs' counsel."

5 THE COURT: Okay. So we'll just fix that.
6 Page 8, line 22 through page 9, line 3.

7 MR. WEBER: No objection to those. The first
8 one starts on 5, Your Honor.

9 THE COURT: I'm sorry?

10 MR. WEBER: Number 5 is where the objection
11 starts.

12 THE COURT: Oh, I'm looking at the wrong
13 column, you're right.

14 All right. Page 14, line 16 through page 15,
15 line 3.

16 MR. WEBER: So what is the relevance of this?
17 I mean --

18 THE COURT: I'll strike lines 19 through page
19 15, line 1. I think the context of the question
20 is: Do you remember about the first time that you
21 heard of Mosler.

22 "Answer: I'm sorry. I don't recall. It's
23 when the cars were being raced," and that's how it
24 should read.

25 MR. WEBER: Yeah.

1 THE COURT: There's a bunch of stuff in the
2 middle seeking clarification. I don't think that's
3 going to help the finder of fact.

4 All right. Page 15, lines 10 through 20.

5 MR. WEBER: He's correcting the thing that he
6 just answered in the last excerpt.

7 THE COURT: Oh, we should strike all of that.

8 MR. WEBER: Correct.

9 THE COURT: Yeah.

10 MR. ZAPPOLO: So it would be striking up until
11 page 15, line 13 -- line 14, his answer?

12 THE COURT: Correct. Yeah. The question is
13 "When did you first hear about Mosler?"

14 The answer should read "The first time I heard
15 of Mosler is when they were building the
16 Consulier." Maybe that's French, but I'm from
17 South Florida, so Consulier.

18 All right. Let's see. "If that's not the
19 correct pronunciation" -- okay.

20 All right. So then we'll move on to the next
21 one.

22 MR. WEBER: "No. The answer was no," number
23 10, Your Honor.

24 THE COURT: I thought -- you're withdrawing
25 your objection to number 10?

1 MR. WEBER: No. The next one is number 10,
2 page 18.

3 THE COURT: Oh, okay. Line 16 through 20.

4 "The Witness: No. The answer was no, I have not.

5 "By Mr. Zappolo: Okay. Well, as we sit here
6 today, do you know what this lawsuit's about?"

7 What's the relevance? That's kind of a weird
8 exchange.

9 MR. WEBER: I agree.

10 MR. ZAPPOLO: If you look earlier, I was
11 asking him: "So if you could, I'd like to shift
12 gears now a little bit and ask" -- on the prior
13 page, on 17 -- "and ask, have you heard about the
14 Wagner Supercar Engineering versus Warren Mosler
15 and Mosler Auto Care Center, Inc. lawsuit before
16 you were asked to testify today?"

17 And there's a lot of talk and he answers "No.
18 The answer was no, I have not."

19 MR. WEBER: I just don't understand what this
20 designation is. It ends on a question.

21 THE COURT: Yeah.

22 MR. ZAPPOLO: "Well, as we sit here today, do
23 you know what this lawsuits about?"

24 And then counsel interject themselves some
25 more, and then he says "I have had some

1 conversations with my attorney. Beyond that, I
2 have no knowledge of the lawsuit at all."

3 And then I follow-up: "Have you spoken with
4 anyone else besides your attorney?

5 "No."

6 MR. WEBER: You're ending on a question that's
7 not answered.

8 MR. ZAPPOLO: Which one are you talking about?
9 I was just reading through to page 19.

10 MR. WEBER: It says, "I have had some
11 conversations with my attorney. Beyond that, I
12 have no knowledge of the lawsuit at all."

13 He doesn't know. So what's the relevance of
14 all this?

15 MR. ZAPPOLO: Right. I'm trying to establish
16 that he's not being coached or anything like that.
17 He says "Look, I talked to my attorneys, but no one
18 else." Just so we're clear --

19 THE COURT: All right. So the objection is
20 sustained. Let's go to number 11.

21 MR. ZAPPOLO: Your Honor, can I get
22 clarification since I'm crossing it out on my
23 thing? Where would the last portion that my person
24 would be able to read be?

25 THE COURT: All right. Let me back up. We're

1 on page 18, right?

2 MR. ZAPPOLO: Yes.

3 THE COURT: 16 through 20.

4 MR. ZAPPOLO: Because at the top of 18 I'm
5 asking the question and if you cut it off,
6 there's -- the question floats in space.

7 THE COURT: Yeah. Really, I mean, I don't
8 think you should read page 17, lines 24 through 18,
9 line 3, you know.

10 MR. ZAPPOLO: The Court doesn't see a benefit
11 to asking a witness if they know what the lawsuit
12 is about before going into questioning?

13 THE COURT: Well, I mean --

14 MR. ZAPPOLO: I certainly do. "No, I don't
15 know what the lawsuit is about," so their answers
16 are cleaner and pure. If they know what it's
17 about, they might have bias or taint.

18 THE COURT: Well, they're under oath. I don't
19 see that, but I'm okay cutting all that out. 16
20 through 20 needs to come out. It just leaves page
21 17, line 24 through page 18, line 3 kind of just
22 hanging out out there. I guess the alternative --

23 MR. ZAPPOLO: We should at least leave page
24 18, line 16 and 17 "No, I have not."

25 I ask him did you -- I asked him "Have you

1 heard about the lawsuit before you were asked to
2 testify today?" In that's 17 to page 18, and then
3 the answer is "No. No, I have not."

4 THE COURT: You know what? It is your case in
5 chief and I want you to present your case the way
6 you want to. Lines 16 and 17 can stay. We'll
7 strike 18, 19, and 20.

8 MR. ZAPPOLO: All right. And then I presume
9 the court's ruling would carry over into page 19,
10 lines 1 through 7. It's consistent.

11 THE COURT: Just give me a moment.

12 MR. ZAPPOLO: Okay.

13 THE COURT: Yeah, that's fine.

14 MR. ZAPPOLO: Okay.

15 THE COURT: What number are we on right now?

16 MR. WEBER: 12. We have no objection -- well,
17 is the person going to be reading this part? This
18 is the part where it says exhibits were marked.

19 THE COURT: Page 19, line 17 through 19?

20 MR. WEBER: Yeah. That's not actually
21 testimony.

22 THE COURT: Are you reading that?

23 MR. ZAPPOLO: Well, it gives the jury the
24 understanding of what's going on.

25 Exhibit 4 was marked for identification. My

1 next question is "Now, Mr. Farah, I'd like you to
2 flip to the third page of that exhibit."

3 THE COURT: I mean, I agree you have to let
4 them know that, I think, you're looking at Exhibit
5 Number 4. Why don't you read line 15 and 16
6 instead and then go on?

7 MR. WEBER: Yeah.

8 THE COURT: Because that's actually testimony.

9 MR. ZAPPOLO: Mr. Brenner's an attorney, so
10 it's counsel talking.

11 MR. WEBER: But it would read 15, 16, and 22.

12 THE COURT: Who is Mr. Brenner? Was that the
13 defendants' counsel?

14 MR. ZAPPOLO: No. He was the private counsel
15 for Mr. Farah attending the deposition.

16 THE COURT: All right. No, you do need to let
17 them know what you're looking at; overruled.

18 Let's go on to the next one. 13, page 19,
19 lines 24 through page 20, line 12.

20 MR. WEBER: Your Honor, this is, I believe,
21 one of the statements that's not at issue in this
22 case. There's been multiple -- this is the article
23 where there's multiple comments in the actual
24 article.

25 It was marked as an exhibit today. It's "The

1 Truth About Cars" article. I can show you, Your
2 Honor. I think it will help Your Honor if you have
3 a copy.

4 THE COURT: Oh, we had a ruling -- we had a
5 hearing on this -- right? -- about the comments?

6 MR. WEBER: Yeah, this is the comments one.
7 There's only one comment at issue, and the question
8 is whether you're going to allow testimony about
9 all of the other comments.

10 MR. ZAPPOLO: Counsel opened the door in his
11 opening statement that people commented and it
12 wasn't a big deal, et cetera, words to that effect.
13 I don't have it right off -- you know, I don't have
14 the transcript.

15 THE COURT: What was my ruling on that?

16 MR. WEBER: Well, it's only the four
17 statements at issue in the case. Mr. Zappolo tried
18 to back it up and say we're suing about other
19 issues, other statements, but it's only four
20 statements at issue in the case.

21 THE COURT: Is this already in evidence?

22 MR. WEBER: Yes.

23 MR. ZAPPOLO: Yes.

24 MR. WEBER: That was today.

25 THE COURT: All of it's in evidence?

1 MR. ZAPPOLO: Yes.

2 THE COURT: Well, if it's already in
3 evidence --

4 MR. ZAPPOLO: Exactly.

5 THE COURT: -- you know --

6 MR. ZAPPOLO: And it's that person's comments
7 that are in evidence that I'm asking him about.

8 MR. WEBER: But there's comments that are
9 supposedly for Warren Mosler which are not the
10 subject of the defamation lawsuit.

11 MR. ZAPPOLO: Mr. Mosler can -- I disagree.
12 Part of that goes directly to Count X when he says
13 "This is not for me."

14 We have a factual dispute as to what
15 Mr. Mosler is talking about there. Mr. Mosler can
16 take the stand and tell the trier of fact his
17 position, and we will be able to argue what it
18 means.

19 THE COURT: I'm sorry, where is this comment?
20 I read on, it says -- can you tell me where -- it
21 says there's a post describing Matt Farah dated
22 November 15, 2011. I'm looking for that date in
23 here and I see Alex French, Grizzly DJ, Ronnie
24 Schreiber, Jim Bowski, Get A Car, Get A Check, Cole
25 Derrick Kindler, Oren Weissman, and then Mad

1 Science. All of them are on November 21st. I
2 don't see anything dated November 15th.

3 MR. WEBER: November 15th starts at -- no, the
4 page number is not on this, Your Honor.

5 THE COURT: Am I looking at the right exhibit?

6 MR. WEBER: Yeah, you are. It's one, two,
7 three -- the fifth page.

8 THE COURT: The fifth page.

9 MR. WEBER: The fifth page and it's the
10 third -- it's the second quote on the fifth page,
11 November 15th at 10:48 p.m.

12 THE COURT: At what time?

13 MR. WEBER: Oh, you know what? There's two
14 articles. It's this one.

15 THE COURT: Oh, okay. 2011, huh?

16 MR. WEBER: Yeah.

17 MR. WAGNER: That was the good old days.

18 THE COURT: Oh, okay. All right.

19 MR. WAGNER: The glory days will pass you by.

20 MR. WEBER: So that's not one of the
21 statements at issue.

22 MR. ZAPPOLO: But it does put the entire
23 circumstance into context and it was referenced in
24 defense's opening.

25 THE COURT: Well, you know, what the attorneys

1 say is not evidence.

2 MR. ZAPPOLO: But --

3 THE COURT: How does --

4 MR. ZAPPOLO: We're going to argue over that.
5 It's in evidence already, so we're going to argue
6 this. It's fodder for argument because it's
7 already in evidence. Why not have the person who
8 made the comment be able to testify about it? That
9 surely could assist the trier of fact in
10 determining whose argument about what all that
11 stuff means is the more persuasive.

12 THE COURT: So the statement is, from Mr. Matt
13 Farah, is a comment to this article titled -- from
14 a website called "The Truth About Cars." I don't
15 know what the name of the article is. Is it "We
16 Interrupt Your Global Business News To Bring You...
17 Edited With Additional Fun Info"?

18 I guess it's labeled 40 and the comment is
19 "Yeah, I wasn't trying to, quote, call you out,
20 unquote, or anything like that, but I just learned
21 of the whole CON yesterday and thought TTAC would
22 be a perfect place to unleash the truth about
23 Mosler RaptorGTR."

24 MR. ZAPPOLO: He had just -- he had just found
25 out about the con, meaning my client's a con

1 Artist. He had just spoken to Mr. Mosler and he
2 concluded the whole thing was a con. That
3 absolutely goes to the heart of this case.

4 MR. WEBER: I mean, that's not even in the
5 comment, what you just said.

6 MR. ZAPPOLO: "I just learned about the whole
7 con yesterday," and I'm going to tie that in.

8 Mr. Farah heard Mr. Mosler's comments and
9 concluded that James Wagner was running a con.

10 MR. WEBER: It doesn't say anything about
11 Mr. Mosler in that comment.

12 MR. ZAPPOLO: When he says "I just learned
13 about it yesterday," I can tie that in, Your Honor.

14 MR. WEBER: There's no evidence of what he's
15 referring to.

16 MR. ZAPPOLO: Warren Mosler is testifying
17 about that in his deposition, and it's -- and I
18 believe it's even further explained later on.

19 MR. WEBER: What page?

20 MR. ZAPPOLO: In this.

21 MR. WEBER: Where?

22 THE COURT: How are you going to tie that in?
23 You know, we're kind of getting into the woods
24 here, but --

25 MR. ZAPPOLO: He says, "I found out about the

1 whole con yesterday." There are other documents
2 that say that yesterday he spoke to Mr. Mosler. So
3 if he spoke to Mr. Mosler yesterday and then he
4 writes "I found out about the whole con
5 yesterday" --

6 MR. WAGNER: This explains further in the
7 deposition --

8 MR. WEBER: I think --

9 THE COURT REPORTER: Wait.

10 MR. WEBER: That doesn't mean that it's
11 Mr. Mosler who said it to Mr. Farah. You're
12 assuming something that's not even said in this
13 transcript.

14 MR. ZAPPOLO: You know what? You can just sit
15 here and you can just say "Oh, he could have talked
16 to a million people," but the fact is he talked to
17 Mr. Mosler and a bunch of other people wouldn't
18 have been conveying that Mr. Wagner was a con
19 artist.

20 MR. WEBER: They did. They sure did. That's
21 what they said.

22 MR. ZAPPOLO: Well, then Mr. Mosler can take
23 the stand and say who Mr. Farah --

24 THE COURT: Hold on. Hold on. Let's not talk
25 to each other.

1 I thought the defamatory statements that we
2 were here for were mental health and he has
3 nothing.

4 MR. ZAPPOLO: Several articles, Your Honor.
5 If you look at the complaint, there's several
6 articles that are defamatory. The "He's nothing
7 and he's got severe mental problems" is the only
8 one that's subject to the punitive damages claim.

9 THE COURT: Okay.

10 MR. ZAPPOLO: That's the distinguishable fact.

11 MR. WEBER: And there's only one statement in
12 this article, and that's not it.

13 MR. ZAPPOLO: And the timing of the comments
14 makes it more likely than not that Mr. Mosler made
15 them, and Mr. Mosler is saying "I can't confirm or
16 deny."

17 THE COURT: All right.

18 MR. ZAPPOLO: Well --

19 THE COURT: I think I've got enough. All
20 right. The objection is overruled. If I feel like
21 it's different, I'll instruct the jury later.
22 Let's move on to the next one.

23 MR. WEBER: I think we are on 15, Your Honor,
24 of 24, page 24.

25 THE COURT: All right. Overruled. What's the

1 next one?

2 MR. WEBER: 16, page 25, line 14 through 25.

3 Based on your ruling, you're going to overrule this
4 one too.

5 THE COURT: I am.

6 All right. 26, lines 8 through line 17.

7 Let's see.

8 All right. Overruled.

9 Let's go to page 29, line 8 through 12;
10 overruled.

11 Page 29, 22 through 25. It's just a question.

12 MR. ZAPPOLO: And the answer is on page 30.

13 MR. WEBER: And this says "I cannot give you
14 an accurate answer."

15 He says, "No, I don't recall."

16 "You know, if this has to hinge on a period of
17 12 hours, I cannot give you an accurate answer to
18 that."

19 He says, "No, I don't recall."

20 MR. ZAPPOLO: "I have no reason to believe
21 that the conversation didn't happen on or about
22 that day. If I said today, then I would take that
23 at face value."

24 THE COURT: All right. Overruled.

25 Page 30, line 18 through page 32, line 11.

1 All right. Overruled.

2 Page 32, lines 15 through page 33, line 7.

3 MR. WEBER: It seems like this one ends on an
4 objection.

5 THE COURT: What's the objection?

6 MR. WEBER: Withdraw this one, Your Honor.

7 THE COURT: Let's strike line 7 on page 33.

8 MR. WEBER: It's very confusing how it's set
9 up like this.

10 MR. ZAPPOLO: I wasn't going to read line 7 or
11 8, Your Honor, on page 33.

12 THE COURT: All right. Number 22, page 36,
13 lines 9 through 15.

14 MR. WEBER: We'll withdraw that one.

15 THE COURT: All right. Page 36, line 25
16 through page 37, line 7.

17 MR. WEBER: We object to this one because it
18 assumes there is a distributor agreement.

19 THE COURT: What did you say? It assumes
20 what?

21 MR. WEBER: It assumes there is a distributor
22 agreement.

23 MR. ZAPPOLO: There's a signed document, Your
24 Honor.

25 MR. WEBER: And you'll see that even the

1 lawyer objected to that, "Lacks foundation."

2 MR. ZAPPOLO: It's a signed document. Exhibit
3 7 is the Exclusive Distributorship of Mosler
4 Products in China and Thailand, and it's signed by
5 Warren Mosler on 11/17 of 2011 -- or, excuse me,
6 2010.

7 THE COURT: Do you have Exhibit 7 on you? Can
8 I see it? It's attached here, actually?

9 MR. ZAPPOLO: I don't know whether counsel's
10 copy was there in binding and attached Exhibit 7.

11 If you look down at the bottom right, there's
12 the Exhibit 7 sticker, and on the second page is
13 Mr. Mosler's signature.

14 THE COURT: I can give this back. I don't
15 want it to fall apart on you.

16 All right. The objection's overruled.

17 37, lines 10 through 21.

18 MR. WEBER: We'll withdraw that one based on
19 the prior ruling.

20 THE COURT: All right. And then page 39, line
21 8 through page 40, line 10.

22 MR. WEBER: We'll withdraw that one.

23 THE COURT: All right. So then we're at
24 number 25, correct? Page 41, lines 19 through 24?

25 MR. WEBER: Yep. Again, this is not a

1 statement at issue in this article.

2 MR. ZAPPOLO: It's a statement defaming -- it
3 goes directly to Count X, injurious falsehood about
4 the car.

5 MR. WEBER: But it's not a statement they're
6 complaining of in their claim.

7 MR. ZAPPOLO: It tends to make it more likely
8 than not that Mr. Mosler made the other statements
9 defaming the car.

10 MR. WEBER: That sounds like improper
11 character evidence.

12 MR. ZAPPOLO: It has nothing to do with his
13 character.

14 THE COURT: All right. Objection's overruled.
15 So now we hop to page 52?

16 MR. WEBER: Yep.

17 THE COURT: All right. The objection's
18 overruled.

19 Page 53, lines 18 through page 54, line 6.
20 All right. Objection's overruled.

21 MR. WEBER: Note he doesn't actually recall
22 it, Your Honor, he's just lying about it.

23 THE COURT: But what he says is "if I wrote
24 that, that's what he told me at the time. My
25 memory would have been very fresh."

1 It sounds a lot like a past recollection
2 recorded: Someone who makes a statement in the
3 past, had memory of it in the past, knew that it
4 was accurate in the past, and then he can't
5 remember it now. I think that's past recollection
6 recorded.

7 MR. ZAPPOLO: Yes, sir.

8 THE COURT: All right. Let's see. What
9 number are we on now?

10 MR. WEBER: We are on --

11 MR. ZAPPOLO: 28.

12 MR. WEBER: -- 28.

13 MR. ZAPPOLO: And we'll change that to
14 defendants' counsel.

15 THE COURT: All right. 29, page 64, lines 4
16 through 21.

17 MR. WEBER: Note that it's saying that "allow
18 me to note there are things I said in that comment
19 that do not relate to my phone call with
20 Mr. Mosler."

21 THE COURT: I'm sorry, repeat that.

22 MR. WEBER: Note that it's saying that "allow
23 me to note there are things I said in that comment
24 that do not relate to my phone call with
25 Mr. Mosler."

1 MR. ZAPPOLO: And he immediately thereafter
2 says "I later spoke to Mr. Mosler personally who
3 backed up all the things that I said in this
4 initial comment." So he's telling the whole story
5 and putting it all in context.

6 MR. WEBER: The concern, Your Honor, is these
7 journalists don't even know what they wrote and
8 what they got from Mr. Mosler. So they say, you
9 know, early on, that Mr. Mosler said this and then
10 later on he's clarifying and saying that actually
11 some things aren't --

12 THE COURT: I think this goes to the weight of
13 the evidence, not to the admissibility. I think
14 that's the argument you have to make to the finder
15 of fact, but I'm not going to prevent the plaintiff
16 from making or presenting their evidence, so they
17 can make their arguments as well.

18 All right. That objection is also overruled.
19 Page 66, lines 5 through 24.

20 MR. ZAPPOLO: Line 6 should be "By Plaintiffs'
21 Counsel," Your Honor.

22 MR. WEBER: Scott, did you say that's supposed
23 to be "Plaintiffs' Counsel"?

24 MR. ZAPPOLO: I changed it to "Plaintiffs'
25 Counsel."

1 MR. WEBER: Which page is that? 30?

2 MR. ZAPPOLO: Page 66, line 6.

3 MR. WEBER: Okay. Yep.

4 THE COURT: All right. That's overruled. So
5 that concludes Matt Farah?

6 MR. WEBER: Yes.

7 THE COURT: So now we're going to read the
8 deposition of Abby Cubey.

9 All right. We'll start with -- I guess it's
10 number 3, page 8, lines 11 through 14.

11 MR. WEBER: Yeah, we'll withdraw that one.

12 THE COURT: Okay. What about page 9, line 6
13 through 24?

14 MR. WEBER: I think it's cutting off part of
15 her answer, but...

16 THE COURT: We're on page 9, line 6 through
17 24.

18 MR. WEBER: Yeah.

19 THE COURT: It's just background. It's all
20 background information.

21 MR. WEBER: Yeah.

22 THE COURT: I'm okay with that as long as it
23 doesn't go on and on forever.

24 All right. So let's go page 10, lines 14
25 through 18.

1 MR. WEBER: Yeah, this is relevance, but I
2 guess counsel is going to argue this goes to some
3 sort of bias even though she clearly knows James
4 Todd Wagner.

5 THE COURT: Yeah. I mean, I know why you want
6 to say these things. You know, I don't know that
7 they prove anything if opposing counsel doesn't
8 really go into it, but I'm going to let you do it.
9 I'll overrule the objection.

10 Let's move on to the next one. Page 10, line
11 25, through page 11, line 11.

12 MR. ZAPPOLO: No, Your Honor. No objections
13 to those. We're down to 9.

14 THE COURT: I'm sorry. Yeah, we're at page
15 13, line 14 through page 18, line 3.

16 MR. WEBER: This is just completely irrelevant
17 what she's talking about here, Your Honor.

18 MR. ZAPPOLO: She's an international business
19 person.

20 THE COURT: Yeah. You know, I let you go into
21 that in the very beginning. I specifically said a
22 little French, speak whatever, immigrated at 14,
23 but, you know, I don't know --

24 MR. ZAPPOLO: Page 16, I'm asking her about
25 the RaptorGTR.

1 THE COURT: Give me a minute. I'm getting
2 there. I'm getting there.

3 All right. So how much of this is really
4 relevant?

5 MR. ZAPPOLO: They already put down the song
6 and, you know, through the video, et cetera. It
7 was nominated for -- she says she's up for a Grammy
8 award for the song. The fact that she's got
9 international business connections. Manny Pacquiao
10 was interested in the car, potential buyer for the
11 vehicle. Nobody is going to dispute that he had
12 the money to buy this car.

13 She's a very successful businessperson,
14 running multiple businesses, international
15 businesses. She is the person who was dealing with
16 the video, intended to take it to go viral. There
17 are plenty of videos that she compared it to.
18 There are a bunch like Ferrari videos out there. A
19 lot of it, really. I mean --

20 THE COURT: All right.

21 MR. ZAPPOLO: She's a member of the Diplomatic
22 Council, a lot of different businesses, et cetera,
23 international network of individuals.

24 MR. WEBER: She's not a car expert. She's
25 not --

1 THE COURT: So I don't think any of that is
2 relevant. I'm going to strike most of it.

3 Page 15, line 1 through 19 I think are
4 relevant for our discussion or for the trial. A
5 lot of her personal background, personal
6 experiences, relationships seem tangential
7 collateral, not going to prove or disprove any
8 material issue of fact in this case.

9 MR. ZAPPOLO: She was a potential investor,
10 Your Honor, as we get into later, so all that stuff
11 becomes relevant. Her family ran one of the
12 largest car dealerships in the Asian REM.

13 THE COURT: Is she going to testify about that
14 down here?

15 MR. ZAPPOLO: Later on I believe it's in
16 there, yes.

17 THE COURT: All right. Then maybe I'll come
18 back to it and revisit it, but right now I only see
19 page 15, lines 1 through 19 are relevant. Let's
20 move on to the next one.

21 So we're on page 18, line 7 through page 19,
22 line 24?

23 MR. WEBER: Correct. And this ends in the
24 middle of a question.

25 THE COURT: So, again, I think some of this --

1 I'm not seeing the relevance, specifically page 18,
2 line 7 through 23.

3 MR. ZAPPOLO: The China market is what
4 Mr. Wagner was required under his contract to
5 sell -- to display the cars in and target that
6 market. She was assisting with the video to target
7 the China market.

8 MR. WEBER: It seems like it's actually the
9 video, the music video she's talking about. She's
10 marketing the music video.

11 THE COURT: As far as page 18, starting at
12 lines 24, that seems relevant.

13 MR. WEBER: Right.

14 THE COURT: Where she says she tried to help
15 him sell the car and she had potentially lined up
16 one, two, three, four, however many buyers, and
17 then specifically says that they backed off because
18 of the articles, I mean that seems relevant. Above
19 that, I don't -- I don't see the relevance. So I'm
20 going to sustain the objection on page 18, line 7
21 through 23.

22 Overrule the objection starting at line 24 on
23 page 18.

24 All right. Page 20, line 7 through 21, line
25 4.

1 MR. WEBER: Again, Your Honor, this is about
2 her cosmetics business.

3 MR. ZAPPOLO: There's the tie-back to the
4 earlier business discussion, Your Honor. She has
5 connections in China because she has technological
6 things going on in China.

7 What we're trying to do here is also establish
8 that she's not just a singer, she's an
9 international businessperson --

10 THE COURT: Right.

11 MR. ZAPPOLO: -- with ties in China.

12 THE COURT: So I'm inclined to sustain the
13 objection for number 11.

14 Page 23, line 11 through --

15 MR. ZAPPOLO: Can we hold on just a minute,
16 Your Honor? I want to make sure I cross it off on
17 this document so we don't make a mistake tomorrow.

18 Page 20, line 7 through 21, line 4.

19 Thank you, Your Honor. Please go ahead.

20 MR. WEBER: We'll keep this one, Your Honor.
21 We'll withdraw this objection.

22 THE COURT: For page 23, line 11 through page
23 25, line 15?

24 MR. WEBER: Yeah.

25 THE COURT: That's the last one that I had to

1 give you, right?

2 MR. WEBER: I think it goes on.

3 THE COURT: No, no, there's another page.

4 MR. ZAPPOLO: On page 25, there's "Examination
5 by Mr. Weber." I'll change that "By Defendants'
6 Counsel."

7 THE COURT: So I guess we're at number 15,
8 starting on page 26, line 24 through page 27, line
9 24.

10 MR. WEBER: So page 26, line 24 is in the
11 middle of a question.

12 THE COURT: Yeah, I'm reading from above. I
13 started reading at line 21.

14 MR. WEBER: And what -- "Anything. Can you
15 tell me about when?"

16 THE COURT: All right. That's overruled.

17 Page 28, line 8 through page 29, line 1. All
18 right. That's overruled.

19 Page 29, line 21 through page 30, line 8.

20 MR. WEBER: We'll withdraw that one, Your
21 Honor.

22 THE COURT: All right. So we're going to go
23 to page 30, line 19 through 21; overruled.

24 Go to page 32, line 4 through 33, line 8.

25 MR. WEBER: We'll withdraw that one too.

1 THE COURT: So now we're at 34, line 17
2 through 19. What's the relevance of that?

3 MR. ZAPPOLO: He asked the question. I
4 just --

5 THE COURT: Oh.

6 MR. ZAPPOLO: This is what -- you know, kind
7 of this mud-slinging stuff earlier in the case that
8 I quote "Just calm down now," but they were
9 accusing Mr. Wagner of having --

10 THE COURT: I get it. Look, is that going to
11 be in or out?

12 MR. WEBER: We don't want it in.

13 MR. ZAPPOLO: I -- as long as they're not
14 going to -- you know, like I said, Your Honor --

15 THE COURT: Are you going to read it?

16 MR. ZAPPOLO: I don't need to read it now as
17 long as there's not going to be any comments by
18 them about it.

19 MR. WEBER: I think -- first of all, I think
20 it's wrong. I think Mr. Wagner has testified that
21 they were dating, so I think she's dead wrong.
22 So --

23 MR. ZAPPOLO: Okay.

24 MR. WEBER: -- there's a conflict, so let's
25 keep it in. We withdraw.

1 THE COURT: Okay. Overruled.

2 MR. ZAPPOLO: We'll withdraw it.

3 MR. WEBER: No, we're keeping it in.

4 THE COURT: All right. Let me move on.

5 Page 34, line 21 and page -- page 34, line
6 21 -- oh, okay. Yeah, we don't need to read that.
7 That's just the one line about he didn't hear the
8 answer.

9 MR. ZAPPOLO: Okay.

10 THE COURT: Page 35, lines 4 through 13.

11 MR. WEBER: We'll leave that all in.

12 THE COURT: Okay. All right. We just
13 addressed that. You know, I don't know all the
14 facts of your case. You guys know your case better
15 than I do, you know. If it is relevant in any way,
16 shape, or form, it is what it is, but we don't need
17 to have a super-salacious kind of trial here,
18 nothing scandalous.

19 I'm going to let you guys figure this out and
20 you guys know your case better than I do on the
21 facts.

22 MR. ZAPPOLO: And what I would say, Your
23 Honor, is prior to the ruling that you made
24 yesterday -- remember I said in my motion I thought
25 we were going to have to deal with a whole lot of

1 extraneous facts in this case, and I prepared the
2 case that way because I thought I had to. This --
3 The passages at 34 and 35 are no longer
4 relevant in my mind.

5 THE COURT: Okay. Well --

6 MR. ZAPPOLO: And so --

7 THE COURT: -- you guys can figure this out
8 amongst yourselves.

9 MR. ZAPPOLO: If I don't read it, I have the
10 option to not read those, right?

11 MR. WEBER: Then don't read them.

12 MR. ZAPPOLO: I have the option not to read
13 them, correct, Your Honor?

14 THE COURT: You have the option not to read
15 them. It's your chase in chief.

16 MR. ZAPPOLO: All right. I will let counsel
17 know and say on the record that I'm not going to
18 read the phrases of 34 and 35. I don't think
19 they're any longer relevant to the issues to be
20 tried in this case.

21 MR. WEBER: They might be.

22 MR. ZAPPOLO: Okay. Well, if he's going to
23 bring it up --

24 THE COURT: You guys figure that out. I'm
25 going to move on to the next one.

1 All right. Let's see. I think we're at page
2 37, lines 12 through 15.

3 MR. ZAPPOLO: Yes.

4 THE COURT: All right. That's overruled.

5 Pages 38, lines 24 through 39, line 9.

6 MR. WEBER: She's just speculating here, Your
7 Honor.

8 THE COURT: Yeah, she is speculating, but, you
9 know, where's the objection at the deposition?

10 MR. ZAPPOLO: And her family has an exotic car
11 company in the Philippines.

12 THE COURT: And that's one of the things I've
13 been noticing is, you know -- I know you were not
14 the counsel at the time, were you?

15 MR. ZAPPOLO: He was.

16 MR. WEBER: I'm the one that's asking the
17 question, Your Honor.

18 THE COURT: Oh, you were asking the question?

19 MR. ZAPPOLO: He's asking the question and now
20 he's objecting to it.

21 MR. WEBER: Yeah, I'm objecting to her answer.
22 I'm asking the question; I'm getting speculative
23 answers.

24 MR. ZAPPOLO: He asked the question and didn't
25 like the answer, so --

1 THE COURT: Okay.

2 MR. ZAPPOLO: -- I'd like to read it.

3 THE COURT: Give me a minute.

4 All right. It is a little too speculative for
5 me. Objection's sustained.

6 MR. ZAPPOLO: He asked the question, there was
7 no objection.

8 MR. WEBER: I can't really object to the
9 answer after she answers my question.

10 MR. ZAPPOLO: I'm not arguing with the Court.

11 THE COURT: Do we need the clerk for anything?

12 MR. ZAPPOLO: No.

13 MR. WEBER: No.

14 THE COURT: Madam Clerk, have a great day.

15 All right. So I sustained 22. Let's move on
16 to 23, page 40, line 20 through page 42, line 12.

17 MR. ZAPPOLO: Your Honor, just for
18 clarification: Within the prior objection -- I
19 know you sustained it -- her parents, who were
20 going to potentially buy, are -- own -- were going
21 to invest are owners of a car dealership and they
22 import and export cars in the Philippines, and your
23 determination is that's not relevant?

24 MR. WEBER: It doesn't say they're involved.

25 It doesn't say they're involved at all. They're

1 just speculating.

2 THE COURT: Hold on.

3 MR. ZAPPOLO: In her prior testimony she
4 said they were interested in investing.

5 MR. WEBER: She doesn't know. She's
6 speculating.

7 THE COURT: Hold on. No, I'm good with my
8 ruling.

9 All right. Let's move on to the next one.
10 Line 20 on page 40 through page 42, line 12.

11 MR. WEBER: I think we're on --

12 THE COURT: Number 23?

13 MR. WEBER: Yeah.

14 MR. ZAPPOLO: Yes.

15 MR. WEBER: I mean, I think we have to keep
16 these in if Your Honor is going to allow the other
17 ones in, so --

18 MR. ZAPPOLO: Yeah, I agree, for consistency.

19 MR. WEBER: Yeah. For consistency, we'll keep
20 them in, Your Honor, but we'll withdraw the rest of
21 them.

22 THE COURT: You're going to withdraw the rest
23 of them?

24 MR. WEBER: Yeah, because if you take this out
25 but leave the other ones in, then it takes away my

1 Cross of her, so --

2 THE COURT: Okay. Then we're done with the
3 deposition of Abby Cubey?

4 MR. WEBER: Yeah.

5 THE COURT: Am I saying that right, Abby
6 Cubey?

7 MR. ZAPPOLO: Cubey.

8 THE COURT: Cubey, all right. So now we're on
9 to the deposition of Alan Simon?

10 MR. ZAPPOLO: Yes, sir. Unfortunately, this
11 is a long one.

12 MR. WEBER: This is the last one, but it's the
13 longest one, Your Honor.

14 THE COURT: All right. I've got another one
15 here, Benjamin Greene.

16 MR. WEBER: You're right.

17 MR. ZAPPOLO: Oh, we do have Benjamin Greene.

18 MR. WEBER: On and on.

19 THE COURT: I don't see any objections to
20 Benjamin Greene.

21 MR. WEBER: Yeah, we may not have objected to
22 theirs, that's why.

23 THE COURT: Do you want these back?

24 MR. WEBER: Yes, please.

25 MR. ZAPPOLO: And I guess one other question,

1 Your Honor, before we move on to Mr. Simon -- and I
2 guess I'll discuss with counsel to see what we're
3 going to do. We have our designations, their
4 counter-designations, then we did some
5 counter-counter-designations. Would the Court like
6 them all read through at one time for continuity,
7 or am I reading just by designations and then
8 reading until his case in chief and he's going to
9 read his short counter-designations and then I'm
10 going to have to get up on rebuttal and read my
11 counter-counter-designations?

12 THE COURT: How do you want to proceed,
13 Mr. Weber?

14 MR. WEBER: I think that you should read yours
15 in your case in chief and then I'll read mine in my
16 case in chief.

17 MR. ZAPPOLO: And then I'm going to have to
18 come back and read my rebuttal.

19 THE COURT: I guess it makes sense too because
20 if you're not going to read all of your stuff, then
21 perhaps it limits the way things are introduced and
22 maybe you can cut back. We'll do it that way.

23 MR. ZAPPOLO: Okay.

24 THE COURT: All right. Now on the deposition
25 of Alan Simon, there is a lot. Let's see, are you

1 calling Alan Simon tomorrow?

2 MR. ZAPPOLO: I will defer to whatever the
3 Court wants to do on this. If you were thinking
4 like you would take it at some point --

5 THE COURT: I only have 15, 20 minutes left in
6 me today.

7 MR. ZAPPOLO: Right. That's fine, Your Honor.
8 One thing that I would say is we are actually --
9 well, I don't know how -- you know, I say
10 tongue-in-cheek getting close to the end of what
11 we're doing, we have -- we have the reading of
12 these transcripts, which are not going to take
13 long. I think the longest was Mr. Simon and he
14 runs about 45 minutes --

15 THE COURT: Oh, okay.

16 MR. ZAPPOLO: -- depending on whatever your
17 objections are, and of course depending on exhibits
18 or things like that as we read with them.

19 THE COURT: Who are you calling tomorrow?

20 MR. ZAPPOLO: Tomorrow I was planning on
21 reading my transcripts and starting with
22 Mr. Mosler.

23 THE COURT: I feel like that's going to go for
24 a long time.

25 MR. ZAPPOLO: Mr. Mosler is going to go for a

1 long time.

2 THE COURT: Is that going to be a one-day or
3 two-day examination?

4 MR. ZAPPOLO: That's going to be -- it's going
5 to be a day probably.

6 THE COURT: Okay. All right. Then I'm going
7 to walk away from Alan Simon today. I'm going to
8 let you guys review Alan Simon to see if you want
9 to see -- if you're able to withdraw some of these
10 objections or not.

11 MR. WEBER: Yeah.

12 THE COURT: And then, you know, that way you
13 guys can kind of figure out -- if tomorrow
14 Mr. Mosler is getting examined, it's probably going
15 to be a big day. You probably have a long night
16 tonight, so --

17 MR. WEBER: I would think that it's not going
18 to be one day. I mean, based on our current case,
19 I would almost --

20 THE COURT: Okay. Are we still thinking we're
21 going to finish in eleven days?

22 MR. ZAPPOLO: I do. I think, you know, even
23 if I wrap up -- because what I have to do,
24 honestly, is after Mr. Simon and the reading of
25 these things, then I put Mr. Wagner on the stand to

1 just kind of tie everything together and explain
2 why, you know, it all works, and then I think I'll
3 be done within -- you know, I should be able to
4 wrap up on like Wednesday and that gives counsel
5 equal time.

6 THE COURT: All right. Keep in mind we have
7 to charge the jury and do jury instructions.

8 Alan Simon's deposition I'll address at some
9 point later, maybe tomorrow or the day after, I
10 suppose. We can do that maybe during lunch or
11 maybe at the end of the day too, but I'll let you
12 guys pare it down a little bit more so that we
13 don't have to go into it --

14 MR. WEBER: Yeah.

15 THE COURT: -- because it is long.

16 The jury instructions, I did want to touch
17 base over that. We have plenty of time to wait
18 until then, but keep in mind we are going -- you
19 know --

20 MR. ZAPPOLO: Can we --

21 THE COURT: -- I like the idea that you're
22 going to rest around Wednesday so that they do get
23 equal time. Keep in mind our charge conference.
24 You know, if I have to read a 50-page verdict to
25 the jury, our charge to the jury is going to be

1 half a day, you know.

2 MR. WEBER: Yeah.

3 THE COURT: So keep that in mind too, plus
4 they have to deliberate.

5 MR. WEBER: Yeah.

6 MR. ZAPPOLO: The only thing I would ask Your
7 Honor is do you want to pick a day or a time and
8 say we're going to go through our charge conference
9 on this day, so that we can just plan for it and be
10 prepared?

11 THE COURT: Yeah. We'll do it next week.

12 MR. ZAPPOLO: Okay. I'll work on it over the
13 weekend and try and work off of the long --

14 THE COURT: I don't want you to do it until
15 after you've rested. Now I'm not saying it's going
16 to have to -- because I've only heard a couple of
17 your witnesses, but, you know, I have had cases
18 where, after some motions, the issues that get
19 presented to the jury are significantly pared down
20 and so, you know, there's no point in working on
21 that until we know what that's going to be, right?

22 MR. WEBER: Exactly.

23 THE COURT: So, all right. Don't worry about
24 jury instructions until after you've rested and
25 after we've addressed the motions.

1 It could be that you get everything you want.

2 It could be that it's pared down a little bit. We
3 don't know, but there's no point in doing a bunch
4 of work that is premature.

5 MR. WEBER: Yeah. And I might have a
6 significant Cross, Your Honor. I might have a day
7 of Cross for Mr. Wagner. There are a lot of emails
8 in this case --

9 MR. ZAPPOLO: Unfortunately, there are.

10 MR. WEBER: -- that we have not seen.

11 THE COURT: No, I can tell.

12 MR. WEBER: Yeah, there's a lot.

13 THE COURT: Just keep in mind, you know, you
14 have six people. You know, they're going to make
15 the decisions; make your information easy for them
16 to process.

17 MR. WEBER: Yeah, absolutely.

18 THE COURT: Okay.

19 MR. WEBER: Thank you, Your Honor.

20 THE COURT: All right. Have a great night.

21 MR. WEBER: You too.

22 THE COURT: See you tomorrow morning.

23 (Whereupon, the proceedings are adjourned at
24 4:15 p.m. and are continued on May 12, 2023 in
25 Volume IV.)

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT,

IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. 50-2012-CA-023358-XXXX-MB

JAMES TODD WAGNER, SUPERCAR ENGINEERING,
INC., a Florida corporation,

Plaintiffs,

vs.

WARREN MOSLER, MOSLER AUTO CARE CENTER,
INC. ("MACC") a Florida corporation,
d/b/a Mosler Automotive,

Defendants.

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VOLUME IV - DAY 4

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PROCEEDINGS BEFORE
HONORABLE LUIS DELGADO

DATE: MAY 12, 2023

TIME: 9:30 A.M. - 4:31 P.M.

1 APPEARING ON BEHALF OF PLAINTIFFS:

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17 ALSO PRESENT:

18 James Todd Wagner, Plaintiff
19 Warren Mosler, Defendant
20 David Griffin, TruVid, LLC
21
22
23
24
25

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BE IT REMEMBERED, that the following proceedings were taken in the above-styled cause before Honorable Luis Delgado, Presiding Judge, at the Palm Beach County Courthouse, 205 North Dixie Highway, Courtroom 10-D, in the City of West Palm Beach, County of Palm Beach, State of Florida, on the 12th day of May, 2023, to wit:

- - -

THE COURT DEPUTY: Court is in session.

THE COURT: Reading of depositions, just the standard instruction?

MR. ZAPPOLO: Yes, Your Honor.

THE COURT: Okay. So you're about to read the testimony of so and so. Make sure you treat it like they're testifying in person?

MR. ZAPPOLO: Yes.

THE COURT: Okay.

THE COURT DEPUTY: Jurors entering.

(Jurors entering the courtroom at 9:47 a.m.)

THE COURT: All right. Please be seated. Plaintiff, it's your case.

MR. ZAPPOLO: Thank you, Your Honor. We call Clifford Atiyeh via deposition.

THE COURT: Clifford Atiyeh?

1 MR. ZAPPOLO: Yes, sir. There's someone
2 outside.

3 THE COURT DEPUTY: Is he outside?

4 MR. ZAPPOLO: A reader is outside.

5 THE COURT: All right. We're going to bring
6 in a reader for the deposition of Mr. Clifford.

7 Members of the jury, the sworn testimony of
8 Mr. Atiyeh was given before trial and will now be
9 presented to you. You are to consider and weigh
10 this testimony as you would any other evidence in
11 this case.

12 THE CLERK: Please raise your right hand. Do
13 you solemnly swear or affirm that the evidence
14 you're about to give is the truth, the whole truth,
15 and nothing but the truth?

16 **THE WITNESS: I do.**

17 THE COURT DEPUTY: Watch your step, sir, going
18 in, and watch your step coming back down.

19 THE COURT: All right. Mr. Zappolo, you're
20 going to read the deposition now?

21 MR. ZAPPOLO: Yes, sir.

22 THE COURT: Just to be clear for the jury, I
23 read them the instruction. This is not Mr. Atiyeh.

24 MR. ZAPPOLO: Yes.

25 THE COURT: This is a deposition and you're

1 instructed to consider this evidence as you would
2 any other evidence in this case, same way. Please
3 continue.

4 MR. ZAPPOLO: From the deposition of July 10,
5 2018, Examination of Clifford Atiyeh.

6 Examination by Plaintiffs' Counsel.

7 EXAMINATION

8 BY PLAINTIFFS' COUNSEL:

9 Q Can you please tell us your name, sir?

10 **A Clifford Atiyeh.**

11 Q And Mr. Atiyeh, do you have a middle name?

12 **A Yes, Halley.**

13 Q And what is that?

14 **A Oh, I'm sorry. Halley.**

15 Q Mr. Atiyeh, who did you work for in or about
16 November 2012?

17 **A I am an independent contractor.**

18 Q All right. And did you ever do any
19 independent contractor work for the "Car and Driver"
20 magazine?

21 **A Yes.**

22 Q Okay. Thank you. I'd like you to turn your
23 attention to Plaintiffs' Exhibit Number 2.

24 MR. ZAPPOLO: Mr. Atiyeh, could you move that
25 microphone a little closer to you, please, to make

1 sure the jury can hear you?

2 THE READER: Is that better?

3 MR. ZAPPOLO: That is. Thank you.

4 Counsel, I'd like to move Plaintiffs' 314,
5 which was Plaintiffs' Exhibit Number 2 in the
6 deposition, into evidence.

7 MR. WEBER: No objection.

8 THE COURT: All right. Admitted without
9 objection. Madam Clerk, what number are we on?

10 THE CLERK: 42.

11 THE COURT: 42. Admitted as 42.

12 MR. ZAPPOLO: Okay.

13 THE CLERK: Your Honor, that's 43. Sorry.

14 THE COURT: 43?

15 THE CLERK: Yes.

16 THE COURT: Thank you, Madam Clerk. Admitted
17 as 43.

18 (Thereupon, Plaintiffs' Exhibit 43 was
19 received into evidence.)

20 BY PLAINTIFFS' COUNSEL:

21 Q Okay. Thank you. I'd like you to turn your
22 attention to Plaintiffs' Exhibit Number 2 and paragraph
23 number 2. If you see at paragraph number 2 it reads I,
24 meaning you, wrote the article titled 'The Final Days of
25 Mosler: One supercar left to move,' company for sale.

1 Now if I refer your attention to Plaintiffs' 2A, which
2 is Exhibit 315 in evidence for the record, is that the
3 article that paragraph 2 in Plaintiffs' Exhibit Number 2
4 is referencing?

5 **A Yes.**

6 Q All right. And it says further in that second
7 paragraph of Exhibit Number 2, it says that, meaning the
8 article, was published on "Car and Driver" magazine's
9 website?

10 **A Yes.**

11 Q Okay. And further -- and further, it says on
12 or about November 15, 2012, do you recall that article
13 being published on or about November 15, 2012?

14 **A Yes.**

15 Q Is Plaintiffs' Exhibit Number 2A a true and
16 correct copy of your article as initially published back
17 in November of 2012?

18 **A Yes.**

19 Q Okay. At Plaintiffs' Exhibit Number 2,
20 paragraph number 3, it reads "the article was updated by
21 me shortly after it was published," is that true? Do
22 you recall that?

23 **A The article was updated, yes.**

24 Q All right. And does that article remain on
25 the magazine "Car and Driver's" website still today?

1 **A Yes.**

2 Q And I guess the next question is, is
3 Plaintiffs' Exhibit Number 2B a true and correct copy of
4 the updated article?

5 **A Yes, it is.**

6 MR. ZAPPOLO: Okay. Plaintiffs' 316 is 2B.
7 At this point I'd like to move Plaintiffs' Exhibit
8 316 into evidence.

9 THE COURT: Any objection?

10 MR. WEBER: No objection.

11 THE COURT: Madam Clerk, is it 44?

12 THE CLERK: Yes.

13 (Thereupon, Plaintiffs' Exhibit 44 was
14 received into evidence.)

15 BY PLAINTIFFS' COUNSEL:

16 Q Okay. So Plaintiffs' Exhibit 2B is a true and
17 correct copy of the updated article?

18 Your answer at line 10.

19 **A Yes, it is.**

20 Q Okay. Thank you.

21 Now I'd like you to take a look at Plaintiffs'
22 Exhibit Number 3. At this time what I'd like you to do
23 is compare Plaintiffs' Exhibit 3 to Plaintiffs' Exhibit
24 2A because I'm going to ask you if Plaintiffs' Exhibit
25 Number 3 is a true and correct copy of a blown-up

1 portion -- I'm going to ask you if Plaintiffs' Exhibit
2 Number 3 is a true and correct copy of a blown-up
3 portion of Plaintiffs' 2A. Please take your time and
4 review the two documents, and when you're ready to
5 answer the question, let me know.

6 **A Okay.**

7 Q All right. Is Plaintiffs' Exhibit Number 3 a
8 true and correct copy of a blown-up, of a portion of 2A?

9 **A Yes.**

10 MR. ZAPPOLO: At this point, Your Honor, I'd
11 like to move Plaintiffs' 317 into evidence.

12 MR. WEBER: No objection.

13 THE COURT: Madam Clerk, 45?

14 THE CLERK: Yes, Your Honor.

15 MR. ZAPPOLO: I'm sorry, what was that?

16 THE COURT: Number 45.

17 MR. ZAPPOLO: Thank you.

18 (Thereupon, Plaintiffs' Exhibit 45 was
19 received into evidence.)

20 BY PLAINTIFFS' COUNSEL:

21 Q All right. Thank you. We blew it up just so
22 it's easier to read.

23 Plaintiffs' Exhibit Number 3 begin with the
24 words "Weill Mosler --

25 I'm sorry, it should say "Wow, Mosler." But

1 is that referring to Warren Mosler?

2 **A Yes.**

3 Q All right. And then it says jockeys between
4 other full-time, gigs, economist, hedge fund manager and
5 three-time independent and democratic political
6 candidate. (He recently lost his latest Congressional
7 bid in the Virgin Islands)- he blames himself for not
8 having the type of personality that sells cars. The
9 phrase "the type of personality that sells cars" is in
10 quotes. Is that a quote attributed to you by
11 Mr. Mosler?

12 **A Yes.**

13 Q Okay. And the information that you got in
14 that section of this article, that was information that
15 was conveyed to you by Mr. Mosler, correct?

16 **A Yes.**

17 Q Do you remember where Mr. Mosler was when you
18 and he had the conversation where he conveyed the
19 information?

20 **A The Virgin Islands.**

21 Q Okay. Now further down in Exhibit Number 3,
22 it says that Mosler said that while he no longer wants
23 to run the business, he would consider consulting for a
24 new owner, quote, if anyone ever buys it, closed quote.
25 That is -- that sentence is part paraphrasing by you of

1 what Mr. Mosler told you that he didn't want to run the
2 business anymore, and then the words in quotes, if
3 anybody else buys it, that's a direct quote by
4 Mr. Mosler, correct?

5 **A Yes.**

6 Q So you're quoting verbatim the words he said
7 to you, correct?

8 **A In that quote, yes.**

9 Q Yes, okay thank you.

10 Now then you wrote his final car, a 2012
11 MT900S Photon, is unsold with a price of
12 \$479,000, correct?

13 **A Yes.**

14 Q All right. Now, that was in reference to
15 Mr. Mosler informing you that Mosler Automotive was
16 still trying to sell that 2012 MT900 Photon at a price
17 of \$479,000, right?

18 **A Yes.**

19 Q Okay. Do you recall Mr. Mosler telling you
20 that?

21 **A From what I understand, yes.**

22 Q Okay. Do you have any recollection of going
23 out and trying to look up and trying to price a Mosler
24 MT900S Photon at the time or did you get it from his
25 conversations with him?

1 **A Everything here is from my conversation.**

2 Q Let's go further down in Plaintiffs' Exhibit
3 Number 3 where it picks up with after Mr. Wagner left.
4 Do you see that Mr. Atiyeh?

5 **A Yes.**

6 Q All right. After Wagner left, the article
7 reads, Mosler already was in talks to sell his company.
8 Who told you that information?

9 **A I believe it was Mr. Mosler.**

10 Q Okay. And the next line, when a potential
11 deal went south, Mosler blamed Wagner for ruining it.
12 Did Mr. Mosler convey that information to you?

13 **A Yes, he did.**

14 Q All right. And the article goes on, when he,
15 the 'he' that is referenced in the article is Mr.
16 Wagner, correct?

17 **A Yes.**

18 Q So Mr. Mosler told you that Mr. Wagner, you
19 say allegedly, demanded Mosler pay him \$100,000. Was
20 that information that you got from Mr. Mosler or
21 Mr. Wagner?

22 **A That was from Mr. Mosler.**

23 Q Okay. And then there's a quote, 'In return
24 for agreeing not to sue the new owner.' Whose quote is
25 that?

1 **A That is also Mr. Mosler.**

2 Q Okay. And then it says Mosler refused. Was
3 that from Mr. Mosler as well, correct?

4 **A Yes.**

5 Q All right. The next line, there's a quote --
6 MR. ZAPPOLO: I don't know why this is blurry
7 on us. I'll correct that technical problem.

8 BY PLAINTIFFS' COUNSEL:

9 Q All right. The next line there's a quote, he
10 is nothing. Who is the 'he' that that is referring to?

11 **A Mr. Wagner.**

12 Q Okay. And then it says he's got some serious
13 mental problems. Who's the 'he' that's being referred
14 to there?

15 **A Mr. Wagner.**

16 Q And that whole quote is attributable to
17 Mr. Mosler as I read your article, correct?

18 **A Yes.**

19 Q All right. And then the next quote, he's out
20 there billing himself as everything and he doesn't have
21 anything, that quote is attributable to who?

22 **A To Mr. Mosler.**

23 Q Okay. So Mr. Mosler was talking about who
24 when he said he's out there?

25 **A Mr. Wagner.**

1 Q Mr. Atiyeh, how long have you been an
2 automotive journalist?

3 A **Approximately ten years.**

4 Q All right. Do you know how large the "Car and
5 Driver" circulation is compared to other automotive
6 magazines?

7 A **I don't have a specific number, but I know
8 it's one of the largest.**

9 Q Page 25. The Clifford Atiyeh@live.com is your
10 email address?

11 A **Yes.**

12 Q Mr. Atiyeh, I'd like you to flip to the second
13 page of Exhibit Number 4.

14 MR. ZAPPOLO: At this point I'd like to move
15 Exhibit 318 into evidence, Your Honor.

16 MR. WEBER: No objection.

17 THE COURT: Madam Clerk, is that 45?

18 THE CLERK: 46.

19 THE COURT: 46.

20 (Thereupon, Plaintiffs' Exhibit 46 was
21 received into evidence.)

22 MR. ZAPPOLO: The second page of Exhibit
23 Number 4 -- all right. I'm sorry, I'll re-read.

24 BY PLAINTIFFS' COUNSEL:

25 Q Mr. Atiyeh, I'd like you to flip to the second

1 page of Exhibit Number 4. Just so we're clear, on the
2 second page of Exhibit Number 4, do you see it says on
3 top right-hand corner Thursday, November 15, 2012 at
4 3:17 p.m.? Are we on the same page?

5 **A Yes.**

6 Q All right. And there is an email that's
7 attributable to you at your email address to James Todd
8 Wagner, correct?

9 **A Yes.**

10 Q And within that email, you conveyed to
11 Mr. Wagner the "Car and Driver," correct, with a
12 hyperlink?

13 **A Yes.**

14 Q So the "Car and Driver" article was already
15 written, correct?

16 **A Yes.**

17 MR. ZAPPOLO: And then we have Examination by
18 Defendants' Counsel.

19 BY DEFENDANTS' COUNSEL:

20 Q You said that you spoke directly to Warren
21 Mosler; is that correct?

22 **A Yes.**

23 Q Prior to preparing to draft this article, had
24 you spoken to Warren Mosler for any other reason?

25 **A No.**

1 Q Did you speak to Warren Mosler on the phone or
2 was it in person?

3 A It was on the phone.

4 Q How did you get his phone number?

5 A I contacted his company.

6 Q Which company was that?

7 A The Mosler Automotive Company, whatever it was
8 called.

9 Q Do you recall who you spoke to there?

10 A I had emailed the company directly.

11 Q Okay. And someone there gave you Mr. Mosler's
12 telephone number?

13 A Mr. Mosler contacted me directly.

14 Q How many times did you speak with him?

15 A I only spoke with him once.

16 Q Did anyone assist you in preparing this
17 article?

18 A No.

19 MR. ZAPPOLO: Continued Examination by
20 Plaintiffs' Counsel.

21 BY PLAINTIFFS' COUNSEL:

22 Q You said Mr. Mosler contacted you when he gave
23 you the information related to the article, he reached
24 out by telephone, correct, to you? Page 48.

25 A No.

1 Q Okay. So did he email you and then request
2 like a phone number and then you followed up with your
3 telephone call that you talked about earlier?

4 A Yes, that's correct.

5 Q Remember earlier I asked you where exactly in
6 the Virgin Islands Mr. Mosler was? I see on the first
7 page of the article, let's see, let's take a look at
8 Exhibit Number 2A. The quote is I don't have the energy
9 to do another car or anything else, close quote, said
10 Mr. Mosler, speaking of the Virgin -- speaking from the
11 Virgin Islands. I'm sorry, correction to the testimony.

12 I don't have the energy to do another car or
13 anything else, close quote, said Mosler, speaking from
14 St. Croix in the U.S. Virgin Islands. Does that refresh
15 your recollection?

16 A Yes, that does.

17 Q Okay. And were you speaking to him in
18 St. Croix?

19 A Yes, that's what he told me.

20 MR. ZAPPOLO: That is the end of the testimony
21 of Clifford Atiyeh.

22 THE COURT: Cross-Examination?

23 All right. Members of the jury, we're
24 continuing the testimony of Clifford Atiyeh.
25 Again, you're to give this testimony the same

1 weight as you would any other evidence.

2 CROSS-EXAMINATION

3 BY DEFENDANTS' COUNSEL:

4 Q Mr. Atiyeh, whose words are in the quotations
5 there, the final Mosler supercar to be built?

6 A I believe that was Mr. Wagner's.

7 Q Okay. Did Mr. Mosler ever talk about the
8 final Mosler supercar to be built?

9 A No.

10 MR. WEBER: That's it.

11 THE COURT: Redirect?

12 MR. ZAPPOLO: I'm sorry, Your Honor. I'm
13 still marking something.

14 MR. WEBER: Oh, sorry, one more thing. Sorry,
15 Your Honor.

16 BY DEFENDANTS' COUNSEL:

17 Q Let me go back to it in a second. You
18 mentioned the car value of \$700,000. Where did you get
19 that number from?

20 A That was Mr. Wagner.

21 Q Did you ever verify that value of the car?

22 A No, only with Mr. Wagner.

23 MR. WEBER: No more questions, Your Honor.

24 MR. ZAPPOLO: Did he leave? I'm sorry, Your
25 Honor. Was he excused? He just got up and left?

1 Can I be excused from the jury, Your Honor? Thank
2 you.

3 THE COURT: Whenever you're ready.

4 MR. ZAPPOLO: Thank you, Your Honor.

5 REDIRECT EXAMINATION

6 BY PLAINTIFFS' COUNSEL:

7 Q Mr. Atiyeh, do you still have your deposition
8 transcript in front of you?

9 A I do.

10 Q Okay. I'd like you to flip to page 15.

11 A Page 15?

12 Q Yes.

13 A I'm here.

14 Q And we're going to start at line 22.

15 A Got it.

16 Q Plaintiffs' counsel asked: At the time that
17 you wrote this article, did you understand that the
18 RaptorGTR was a Mosler product?

19 A I'm going to object --

20 MR. ZAPPOLO: Wait, wait. You're not reading
21 that thing. You're going to jump down to question
22 at page 17, line 19.

23 Never mind, let's skip forward to page 18,
24 line 11.

25 BY PLAINTIFFS' COUNSEL:

1 Q Further down in Plaintiffs' Exhibit Number 3,
2 it says Wagner brought it -- excuse me, bought it
3 shortly before leaving the company in January 2011. Do
4 you have any information as to whether or not James
5 Wagner purchased the RaptorGTR from Mosler Automotive?

6 And there was an objection by counsel: You
7 mean other than what's published in this article?

8 Plaintiffs' counsel said yes, and there was a
9 renewed objection. And we left that there, I guess.

10 MR. ZAPPOLO: Page 36, I want to jump forward,
11 please.

12 Okay. Your Honor, I'm not even going to
13 bother with that, Your Honor. It becomes
14 convoluted. I'm just going to withdraw the
15 question, and at this point I will excuse the
16 reader with the court's indulgence and apologies.

17 And can I have a moment just to make sure that
18 the clerk has the proper exhibits?

19 THE COURT: Yes.

20 MR. ZAPPOLO: Your Honor, at this time we call
21 Abby Cubey by deposition. Should I run out and
22 just get her?

23 THE COURT: All right. Members of the jury,
24 the sworn testimony of Abby Cubey was given before
25 trial and will now be presented to you. You are to

1 consider and weigh this testimony as you would any
2 other evidence in this case.

3 THE CLERK: Please raise your right hand. Do
4 you solemnly swear or affirm that the evidence
5 you're about to give is the truth, the whole truth,
6 and nothing but the truth?

7 **THE WITNESS: Yes.**

8 MR. ZAPPOLO: From the deposition of Abby
9 Cubey, Los Angeles, California, Thursday, May 30,
10 2019.

11 Abby Cubey, having been first duly
12 administered the oath, was examined and testified
13 as follows: Examination by Plaintiffs' Counsel.

14 EXAMINATION

15 BY PLAINTIFFS' COUNSEL:

16 Q Can you tell us your name for the record,
17 please?

18 **A Abby Cubey.**

19 Q And, Ms. Cubey, do you have a middle name?

20 **A No.**

21 Q And where do you live?

22 **A I live in Los Angeles.**

23 Q How long have you lived at your address in Los
24 Angeles? Page 8.

25 **A About six, seven years. But I have multiple**

1 **places, yes.**

2 Q Page 9. Okay. Thank you. I'd like to ask
3 you a little bit about your background. Can you tell me
4 what nationality are you?

5 A **I am Filipino. I was born in the Philippines**
6 **I moved here for about 14 years now.**

7 Q Okay. And do you speak any languages besides
8 English?

9 A **Yes. I speak multiple.**

10 Q What languages do you speak?

11 A **I speak French, Chinese, Filipino, English,**
12 **little bit of Russian and Japanese.**

13 Q Do you do a lot of traveling?

14 A **Yes.**

15 Q And do you travel throughout the world or just
16 to specific places?

17 A **Just specific places that I do business in.**

18 Q What places or what countries besides the
19 United States do you do business?

20 A **Singapore, Philippines, China, Germany,**
21 **Estonia. The rest, I don't -- yeah, that's it.**

22 Q Page 10. Okay. We've never spoken before
23 until just a couple of minutes ago?

24 A **No.**

25 Q Is that correct?

1 **A That's correct. We just started, right?**

2 Q Okay. And after you left high school, did you
3 have any other formal education like college? Page 11.

4 **A Yes. I went to St. Mary's College first, and**
5 **then I went to Georgetown University.**

6 Q Did you obtain any degree from St. Mary's
7 College?

8 **A Yes.**

9 Q What degree?

10 **A My God. Business management.**

11 Q Was that a bachelor's degree in business
12 management?

13 **A Yes.**

14 Q Okay. Thank you. And then you mentioned
15 Georgetown. What did you -- what did you do at
16 Georgetown?

17 **A Business. I got my MBA there.**

18 Q You got an MBA from Georgetown?

19 **A Uh-huh.**

20 Q Is that correct?

21 **A Correct.**

22 Q Page 12. Do you hold any professional
23 licenses?

24 **A No. I'm a business owner.**

25 Q Can you explain to me what you've done for

1 work, how you've made a living since you graduated with
2 your MBA from Georgetown? Page 12, line 9.

3 **A When I was in Maryland, I had a retail store.**
4 **I sold it, moved to California, and started my health**
5 **care business.**

6 Q Okay. What was the retail store? What did it
7 sell?

8 **A It sells Oriental -- it's Oriental market**
9 **pretty much. Anything that's coming from Asia, I sell**
10 **over there.**

11 Q Okay. Is it fair to say that you have
12 business connections in Asia?

13 **A Yes.**

14 Q You have business -- and when I say Asia, I'm
15 talking specifically about China. But also do you
16 include Singapore as part -- as a place you have
17 business connections?

18 **A Yes. Correct.**

19 Q You also include the Philippines?

20 **A Yes.**

21 Q What about Thailand? Do you have any
22 connections in Thailand?

23 **A My business partner lives there.**

24 Q Okay. Now, you mentioned you sold your retail
25 store in Maryland and you moved to California, and you

1 said you started another business out there. What's
2 that business?

3 **A That business is a home health hospice agency.**

4 Q Have you had other businesses besides that
5 one?

6 **A Yes. I have a skin care company that's in 27**
7 **countries.**

8 Q Okay. Without asking you all of the
9 countries, are they basically around the Asian rim? You
10 know what the Asian rim countries are?

11 **A Yes. It's Asia and Europe pretty much. We**
12 **just lunched -- we just launched U.S. about a year ago**
13 **January. A little over a year ago.**

14 Q Do you have anything to do with the marketing
15 of any products in Asia, Europe, or the United States?

16 **A Absolutely. Yes.**

17 Q And what do you do as far as marketing?

18 **A I strategize what would be the -- what would**
19 **be the best way to market the products. And that's been**
20 **I believe my strength, and I believe I do well.**

21 Q Okay. You mentioned other countries. I'm
22 sorry, other companies. What other companies are you
23 involved with or have you been involved with in the
24 last, say, ten years?

25 **A I'm about to launch my -- actually, about to**

1 launch our technology that I am very hands-on with.

2 It's remote monitor -- remote patent monitoring.

3 Q Patient.

4 A Patient monitoring.

5 Q Monitoring.

6 A Monitoring.

7 Q Thank you.

8 Okay. Any other type of businesses that
9 you're -- you've been affiliated with over the last ten
10 years or so?

11 A It's primarily health care. I'm partners with
12 a few pharmacies here in Southern California and --

13 Q Okay.

14 A -- that's really it.

15 Q All right. James mentioned to me an
16 accounting firm.

17 A Oh, correct. Yes. I just started that
18 actually very recently.

19 Q Okay.

20 A So I have an accounting firm in Burbank.

21 Q All right. Now, I'd like to take you to
22 change gears for a minute and ask you are you familiar
23 with a -- if I were to say the word RaptorGTR, would you
24 know I was talking about?

25 A Of course.

1 Q Okay. And what is the RaptorGTR?

2 A It's a -- it's a supercar that's owned by
3 Mosler.

4 Q Okay. Now, let me ask you this: Did you have
5 anything to do with the promotion of that supercar?

6 A Yes.

7 Q Would you explain to us what you did to
8 promote that car?

9 A I -- when I first move here in L.A., I wanted
10 to try out my singing career, and that I happened to met
11 James through a friend of mine, and we discussed. I
12 told him what my -- what connections I have because I --
13 actually, I'm a member of a diplomatic council, and I
14 thought that I could help basically launched the
15 video -- I mean the company.

16 Q Okay. What is the diplomatic council?

17 A The diplomatic council is basically a -- it's
18 a -- it's an organization. It's basically -- mainly
19 it's a -- it's an organization that's -- I need to take
20 a pause because it's a very big word. It's a group of
21 people that basically have businesses all over the
22 world. So it's -- it's -- it's more like a network of
23 individuals that has businesses that's -- we help each
24 other pretty much. That's what it is. So I'm ahead of
25 the diplomatic council in L.A.

1 Q All right. And how -- who was the person that
2 introduced you to James Wagner?

3 A I believe actually it's Louis and Captain.

4 Q Okay. And what did those people do?

5 A They're in -- I believe they're a fashion
6 designer. I think so. Yes.

7 Q Okay. Did you have anything to do with
8 Mr. Wagner presenting the car to any people that would
9 be considered famous?

10 A Absolutely. Yes.

11 Q Who did you facilitate him meeting to present
12 the car to?

13 A I introduced him to Manny Pacquiao who happens
14 to be a good friend of mine.

15 Q Mr. Pacquiao, the boxer?

16 A Correct.

17 Q Okay. And at that time, he was very --

18 Oh, sorry. I said okay.

19 A And at that time, he was very interested with
20 the car.

21 Q Okay. So you were the -- you were talking
22 about -- you said you were launching a singing career.
23 Have you been nominated for any awards or anything like
24 that related to your singing career?

25 A Yes. I got nominated three -- three

1 categories for that particular song that was in the
2 video in Los Angeles music award, and I was in the
3 consideration for the Grammy at that time as well.

4 Q Is that the light my fire song?

5 A "Feel My Fire," yes.

6 Q "Feel My Fire," I apologize.

7 Now you said you were assisting with that.

8 What did you do with respect to the video? What was
9 your job?

10 A What was my job? Was -- my job is basically
11 to -- to sort of create the idea of the launch as I
12 believe it would -- it would be best to do it, the video
13 the way was filmed to my market basically to create a
14 viral video like any other artist would do.

15 Q Okay. And did you have any viral videos,
16 like, in mind that you were trying to be similar to that
17 were popular or anything?

18 A I mean, there's plenty of videos that I could
19 compare. I mean, there's a bunch of, like, Ferrari
20 videos out there that's -- that will have gone viral.
21 And, you know, I've been to a bunch of car shows. You
22 know, I -- I believe that it's -- I think it was a way
23 to basically -- it could have gone viral to be honest,
24 but it was --

25 Q Okay.

1 **A** **It's more like -- I'm sorry. I have a lot of**
2 **emotion about this because it's -- it's -- it's kind of**
3 **hard to comprehend.**

4 Q Okay. Thank you. You mentioned a minute ago
5 that you had a market or some -- a target market in
6 mind.

7 MR. ZAPPOLO: Please jump forward to -- I
8 apologize -- page 18, line 24.

9 BY PLAINTIFFS' COUNSEL:

10 Q Okay. All right. I'd like to ask you some
11 questions about after the -- after the video about that
12 same time. Were you trying to assist Mr. Wagner in
13 effectuating sales of the RaptorGTR?

14 **A** **Absolutely. Yes.**

15 Q Okay.

16 **A** **I've got -- I've got potential buyers actually**
17 **and that -- the sad part is because of the articles that**
18 **came out, they backed off.**

19 Q Okay. Can you tell me about any particular
20 buyers that you can recall?

21 **A** **Sheikh of Kuwait. I have another one that's**
22 **basically was my partner then in my health care business**
23 **and then --**

24 Q Just for clarification Sheikh of Kuwait.

25 **A** **Sheikh of Kuwait.**

1 Q The question was: Who was that?

2 A Well, and Manny Pacquiao as well.

3 Q Pacquiao.

4 A Pacquiao.

5 Q Okay. You mentioned the Sheikh Kuwait?

6 A Yes.

7 Q Manny Pacquiao, and then you said a business
8 partner of yours?

9 A Yeah. His name is Dr. Sabahi.

10 Q Sabahi.

11 A Sabahi.

12 Q Okay. And you said he was your business
13 partner?

14 A At that time, yes.

15 Q Okay. Did you have knowledge as to whether or
16 not he could afford to purchase that car?

17 A Of course, yes.

18 MR. ZAPPOLO: Moving forward to page 23.

19 BY PLAINTIFFS' COUNSEL:

20 Q All right. Now, there's just one other thing
21 I'd like to -- area that I'd like to ask you about and
22 that's the attempts to purchase Mosler Auto Care Center.
23 Do you have any information related to attempts to
24 purchase the Mosler Auto Care Center?

25 A There's -- I believe there's multiple

1 **attempts, yes.**

2 Q Okay.

3 **A But I don't recall a bunch of --**

4 Q Were you involved in any attempt?

5 **A I believe one or two. Yes. But I don't --**
6 **like I don't recall.**

7 Q Okay. Were you aware of your -- your business
8 partner you said Dr. Sabahi. Were you aware of any
9 attempts that he was making to be involved in the
10 purchase of Mosler Automotive?

11 **A Yes.**

12 Q And what do you recall about that?

13 **A The Mosler Automotive car. Yes. He wanted to**
14 **buy the car.**

15 Q Okay. Are you aware of whether he wanted to
16 try and buy the company as well?

17 **A There was a discussion. Yes.**

18 Q And what came of that discussion?

19 **A He backed out because of the -- the stuff**
20 **that's out there.**

21 Q When you say the stuff that's out there, what
22 do you mean?

23 **A There was a -- I believe there was an article**
24 **about a burnt engine. I don't know exactly. I don't**
25 **recall all of that, but this is just basing on what I**

1 remember. And the -- what -- what it says out there
2 that it's -- the car was fake, it wasn't Mosler, and
3 then he called me, and that's -- and he said that I will
4 not pursue.

5 Q When you say it was -- the car was fake and it
6 was not Mosler, it was not a Mosler car?

7 A Yes, I mean you can see it's all over the
8 Internet.

9 Q Okay. Were you and/or any of your family
10 members ever interested in investing in the company?

11 A Yes. We were going to invest half a million
12 dollars. Yes.

13 Q Okay. Who is we?

14 A Me, my mom. My family overall.

15 Q Okay. And did your family have the means to
16 invest that much money?

17 A Yes.

18 Q Okay. And what happened to your desire to
19 invest in the company?

20 A It -- it's -- out of all the bad press there,
21 I mean, we can't do it. It's just not good for us.

22 MR. ZAPPOLO: And then we have Examination by
23 Defense Counsel.

24 EXAMINATION

25 BY DEFENDANTS' COUNSEL:

1 Q The question was: You just testified that you
2 and your family are planning to invest \$500,000 into the
3 purchase of MACC; is that right?

4 A **That's correct.**

5 Q Which members of your family were planning to
6 invest that \$500,000?

7 A **It's both my mom and my dad.**

8 Q Page 26, line 21. When were you, your mother,
9 and father planning to invest the \$500,000 in purchasing
10 MACC?

11 A **In the -- in the -- in the -- I don't -- are
12 you asking me for dates to be specific?**

13 Q Anything. What can you tell me about when?

14 A **Basically towards from the very beginning. I
15 think I believe that the company could grow well, that
16 it could be successful, not just in Asia. It could be
17 successful everywhere.**

18 Q When you say from the beginning, what year are
19 you referring to?

20 A **The year -- I believe it was 2012, yes, when
21 it was presented to me. The opportunity was presented
22 to me.**

23 Q And when did you, your mother, and father
24 determine not to invest \$500,000 for the purchase of
25 MACC?

1 **A** **After reading all the stuff that's online.**

2 **Yes.**

3 **Q** **And when was that?**

4 **A** **The same year. 2012, I believe or '13. I'm**
5 **not sure.**

6 **Q** **What is your -- what's your net worth -- what**
7 **was your net worth in 2012?**

8 **A** **I don't recall.**

9 **Q** **Was it over \$500,000?**

10 **A** **Yes.**

11 **Q** **Was it over a million dollars?**

12 **A** **Yes.**

13 **Q** **Was it over 2 million?**

14 **A** **Yes.**

15 **Q** **Was it over 10 million?**

16 **A** **No.**

17 **Q** **Was your net worth of your mother and father**
18 **above \$5 million?**

19 **A** **Yes. You can search them up.**

20 **Q** **Okay. You said that you did not -- you, your**
21 **mother and father did not invest the \$500,000 for the**
22 **purchase of MACC because the bad press was not good for**
23 **you; is that right?**

24 **A** **Yes. Because -- yeah. It was just because of**
25 **bad press. I don't -- I don't actually -- I haven't had**

1 a chance to actually look to any articles that are out
2 there prior to coming here because I've been very busy.

3 Q What articles are you referring?

4 A That the James Wagner's car is fake. It's not
5 Mosler.

6 Q So you haven't read any of the articles you're
7 referring to; is that right?

8 A I have read it years and years ago, but prior
9 to coming here, I haven't.

10 Q Do you remember the name of any of the
11 articles?

12 A No.

13 Q And what specifically in the articles caused
14 you not to invest the \$500,000?

15 A From what I recall that there was a burnt and
16 then the -- that the car was fake, it wasn't Mosler, and
17 it didn't pass the -- I believe it didn't pass the
18 emission test. There was some sort of test that it
19 didn't pass.

20 Q What was the test that did not pass?

21 A I'm not sure. I think it's the emission. I'm
22 not sure exactly. I don't recall anymore because, like
23 I said, I don't -- I did not -- don't go back to the
24 Internet anymore and try to -- it's not my business.

25 Q Are you part of any videos that have gone

1 viral?

2 **A** **If you're -- if you're referring to the "Feel**
3 **My Fire" video, that's -- that's -- yes.**

4 **Q** You mentioned a Dr. Sabahi as someone who was
5 interested in purchasing MACC; is that right?

6 **A** **Correct.**

7 **Q** When was Dr. Sabahi interested in purchasing
8 MACC?

9 **A** **2012, I believe.**

10 **Q** What was Dr. Sabahi's net worth in 2012?

11 **A** **You can ask him. I don't know.**

12 **Q** Do you know that -- I'm sorry. Go ahead.

13 **A** **I don't know, but you can ask him. He's -- to**
14 **my knowledge, I mean, he's my -- he was my business**
15 **partner, and he has multiple practices, and he owns a**
16 **medical group over here in Southern California at the**
17 **time.**

18 **Q** You mentioned --

19 **A** **And he likes --**

20 **Q** -- that --

21 **A** **He likes very fast cars, exotic cars overall.**

22 **Q** What -- you mentioned also that -- do you know
23 why Dr. Sabahi did not purchase MACC?

24 **A** **Do I know exactly why? Is that what your**
25 **question is?**

1 Q Yes.

2 A In the beginning, he -- he told me about the
3 articles.

4 Q What article?

5 A That the 2012 Mosler -- RaptorGTR is not owned
6 by Mosler and that it was fake.

7 Q What article are you referring to?

8 A Article that's online. You should look into
9 it on the computer.

10 MR. ZAPPOLO: Changing forward to page 37.

11 BY PLAINTIFFS' COUNSEL:

12 Q Did James Todd Wagner ask you to say anything
13 specific during your testimony today?

14 A Oh, no. Not at all. I don't let people
15 dictate to me what I should say and I should not say.

16 MR. ZAPPOLO: Page 40, line 20.

17 BY PLAINTIFFS' COUNSEL:

18 Q You said you showed the car to the Sheikh of
19 Kuwait; is that right?

20 A Yes. Sheikh Jaber.

21 Q Sheikh Jaber.

22 A Sheikh Jaber.

23 Q When did you show the car to the Sheikh of
24 Kuwait?

25 A When?

1 Q Yes.

2 A 2012 right after we finished filming, I
3 believe. But I don't recall which -- what date exactly.

4 Q Why did the Sheikh of Kuwait not purchase the
5 car?

6 A The same answer. I'm going to say the same
7 thing. Because of the --

8 Q You don't know, correct?

9 A No. To answer, no. I'm going to say because
10 of the bad press that's associated with it.

11 Q How do you know that?

12 A He's a friend of mine as well. He comes in
13 and out of Kuwait --

14 Q Kuwait.

15 A -- Kuwait and here, and sometimes basically
16 they -- they stay in L.A. about -- for about three to
17 six months.

18 Q What bad press are you referring to?

19 A That's about the -- that the car is fake.

20 Q How do you know he didn't buy it because of
21 the bad press?

22 A Because that's what I been told.

23 Q Who told you that?

24 A He did.

25 Q When did he tell you that?

1 **A** **Right -- 2012, I believe. I don't recall the**
2 **dates. He was just not interested because of --**

3 **Q** **Because of the issues with the car?**

4 **A** **Yeah. He was not interested in the -- after**
5 **reading the article.**

6 **Q** **Who read the article?**

7 **A** **The Sheikh of -- it's -- it's not just him.**
8 **It's actually also his people. Because he's actually**
9 **been in the car and test drove the car as well.**

10 **Q** **When was the last time that you spoke to any**
11 **attorney for James Todd Wagner?**

12 **A** **I never.**

13 **Q** **Until today, correct?**

14 **A** **Yes. Until -- yeah. Until right now. He's**
15 **on the phone.**

16 MR. ZAPPOLO: Page 44, Examination by
17 Plaintiffs' Counsel.

18 BY PLAINTIFFS' COUNSEL:

19 **Q** **Ms. Cubey, since you mentioned the R33, is**
20 **that the R33 Car Exchange?**

21 **A** **Yes.**

22 **Q** **Okay. And you mentioned Dr. -- the doctor who**
23 **used to be your business partner. I'm sorry, I forgot**
24 **his name?**

25 **A** **Sabahi.**

1 Q Sabahi.

2 A Sabahi.

3 Q Question: And did he ever own any exotic
4 cars?

5 A Yes. He's got plenty actually. He's got
6 quite a collection.

7 Q And what -- he's got a collection of exotic
8 cars?

9 A Yes.

10 Q Is that more than three?

11 A More than three, yes.

12 Q Okay. Do you know approximately how many
13 exotic cars he owns?

14 A At the time I recall he had 11. But he also
15 owns a dealership.

16 Q When you say 11 cars, we're talking about cars
17 like Lamborghini, Ferraris, McLarens type of cars?

18 A He's got classic cars. He likes cars that's
19 like -- he likes -- he likes cars in general. Yes.

20 Q Okay. But we're talking about he had
21 supercars, like very expensive cars, correct?

22 A Yes. He has Ferraris, I believe. I don't
23 exactly the model. I don't recall anymore.

24 MR. ZAPPOLO: That is the end of the reading
25 for Ms. Cubey.

1 THE COURT: Please have a seat.

2 MR. ZAPPOLO: I think he's --

3 THE COURT: Yeah, have a seat. He's going to
4 have his assistant read.

5 MR. ZAPPOLO: Oh, thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY DEFENDANTS' COUNSEL:

8 Q Are you part of any videos that have gone
9 viral?

10 A If you're referring -- if you're referring to
11 the "Feel My Fire" video, that's -- that's -- yes.

12 Q Other than the "Feel My Fire" video, have you
13 been part of any videos that have gone viral?

14 A No. Because my career was over after that.

15 Q I'm sorry. I didn't understand your answer.

16 A No.

17 Q Aside from "Feel My Fire" video, have you been
18 a part of any other videos that have gone viral?

19 A No.

20 Q You mentioned a Dr. Sabahi as someone who was
21 interested in purchasing MACC; is that right?

22 A Correct.

23 Q What -- when was Dr. Sabahi interested in
24 purchasing MACC?

25 A 2012, I believe.

1 Q What was Dr. Sabahi's net worth in 2012?

2 A You can ask him. I don't know.

3 Q Do you know that -- I'm sorry. Go ahead.

4 A I don't know, but you can ask him. He's -- to
5 my knowledge, I mean, he's my -- he was my business
6 partner and he has multiple practice, and he owns a
7 medical group over here in Southern California at that
8 time.

9 Q You mentioned --

10 A And he likes --

11 Q -- that --

12 A He likes very fast cars, exotic cars overall.

13 Q What -- you mentioned also that -- do you know
14 why Dr. Sabahi did not purchase MACC?

15 A Do I know exactly why? Is that what your
16 question is?

17 Q Yes.

18 A In the beginning he -- he told me about the
19 articles.

20 Q What article?

21 A That the 2012 Mosler -- RaptorGTR is not
22 beyond by Mosler and that it was fake.

23 Q Which article are you referring to?

24 A Article that's online. You should look into
25 it on the computer.

1 Q Do you know the title of that article?

2 A I don't recall the title.

3 Q Was the article published in 2012?

4 A I believe in 2012. Yes.

5 Q Do you know the exact date the article was
6 published?

7 A No.

8 Q Hello.

9 A No.

10 Q What was the terms under which Dr. Sabahi was
11 interested in purchasing MACC?

12 A Mainly because of the reason why -- he got so
13 excited about the 2012 Mosler, and at that time, it was
14 presented as one of one.

15 Q My question is what were the terms under which
16 Dr. Sabahi was interested in purchasing MACC?

17 A Terms, I don't recall.

18 Q You mentioned that you and your mother and
19 father were interested in investing \$500,000 to purchase
20 MACC. What were the terms under which you would invest
21 \$500,000 to purchase MACC?

22 A To be the exclusive distributor. I want -- to
23 work basically with James Wagner to distribute cars in
24 Asia.

25 Q When were you going to invest the \$500,000?

1 **A 2012.**

2 Q Was there any written agreement that reflected
3 that you were going to invest \$500,000?

4 **A No. Because of the -- like I said, because of**
5 **the articles that are out there being published.**

6 Q No agreement to invest \$500,000 was ever
7 finalized; is that right?

8 **A It was never finalized, yes.**

9 MR. WEBER: No further questions, Your Honor.

10 MR. ZAPPOLO: Nothing further, Your Honor.

11 That concludes the testimony of Abby Cubey.

12 And at this time the plaintiff calls Warren
13 Mosler to the stand.

14 THE COURT: Actually, let me see the attorneys
15 for a moment.

16 (Thereupon, a sidebar conference was held.)

17 THE COURT: All right. So it's 10:30. I see
18 this is going to be many days.

19 MR. ZAPPOLO: It's going to be.

20 MR. WEBER: Yes.

21 MR. ZAPPOLO: We're not finishing today.

22 THE COURT: Right. So we're not finishing him
23 today.

24 MR. ZAPPOLO: Correct.

25 THE COURT: Maybe tomorrow.

1 MR. WEBER: Yes. What about Matt Farah? We
2 have one more designation we need to read. Are you
3 going to read Matt Farah or no?

4 MR. ZAPPOLO: Well, we intend to read Matt
5 Farah after Mr. Mosler.

6 MR. WEBER: Okay.

7 THE COURT: I think you said you guys were
8 going to work out the designations.

9 MR. WEBER: No, that was Alan Simon.

10 MR. ZAPPOLO: That was Alan Simon.

11 THE COURT: Did you do that yet?

12 MR. WEBER: No, but Matt Farah we did.

13 MR. ZAPPOLO: Yeah.

14 THE COURT: And I don't know -- Mr. Greene,
15 you said there were objections to it?

16 MR. WEBER: Yeah, we'll work those out.

17 MR. ZAPPOLO: Okay. So Mr. Greene and
18 Mr. Farah would be read after -- excuse me,
19 Mr. Simon and Mr. Farah will be read.

20 THE COURT: It is 10:38. We have -- 11:38 --
21 almost an hour and a half before we break for
22 lunch.

23 MR. ZAPPOLO: Yes.

24 THE COURT: Should I give them a bathroom
25 break before we go on to Mr. Mosler?

1 MR. WEBER: Yes.

2 THE COURT: Okay. All right. Let me go ahead
3 and do that.

4 MR. WEBER: Thank you, Your Honor.

5 (Thereupon, the sidebar conference was
6 concluded.)

7 THE COURT: All right. Deputy, and ladies and
8 gentlemen, we're about to get into some testimony
9 and I think it's going to carry us through lunch,
10 so perhaps now is the best time to take a short
11 break, use the facilities if you need to. You
12 know, stretch your legs, do what you need.

13 We'll reconvene in about -- we'll say ten
14 minutes and then we'll call Mr. Mosler in as a
15 witness. Okay. We'll take a ten-minute recess.

16 (Jurors exit the courtroom at 10:39 a.m.)

17 (Thereupon, a short break was taken from
18 10:39 a.m. to 10:56 a.m.)

19 THE COURT: Let's bring out the jury.

20 (Jurors entering the courtroom at 10:56 a.m.)

21 All right. Please be seated. Plaintiff, it's
22 your case.

23 MR. ZAPPOLO: The plaintiff calls Warren
24 Mosler, Your Honor.

25 THE COURT DEPUTY: Watch your step right here.

1 Stand here, raise your right hand.

2 THE CLERK: Do you solemnly swear or affirm
3 that the evidence you're about to give is the
4 truth, the whole truth, and nothing but the truth?

5 **THE WITNESS: I do.**

6 THE COURT DEPUTY: Step this way. Watch your
7 step as you go up.

8 DIRECT EXAMINATION

9 BY MR. ZAPPOLO:

10 Q Would you introduce yourself to the jury,
11 please.

12 **A My name is Warren Mosler.**

13 Q And where do you live, Mr. Mosler?

14 **A I live in St. Croix, U.S. Virgin Islands.**

15 Q How long have you lived there?

16 **A 20 years.**

17 Q Since 2003, correct?

18 **A Since 2003.**

19 Q Okay. So at all times material in this
20 lawsuit you've lived in the St. Croix Island of the
21 United States Virgin Islands, correct?

22 **A Yes.**

23 Q Okay. Now I want to go over just a few
24 background things with you just to make sure that
25 everyone has a complete understanding. What is a

1 Consulier?

2 **A That is a two-seat sports car that I built.**

3 **Is that enough?**

4 Q Approximately when did you -- in the time
5 frame of this lawsuit, when was that car being built?

6 **A Oh, the first one was delivered in maybe 1988**
7 **and I stopped production/construction in 1992, I think.**

8 Q Okay. Now, in fairness, was that car fast
9 compared to other cars of its type?

10 **A I hit a top speed of 130 miles per hour.**

11 Q Okay. And what was your purpose in building
12 the Consulier?

13 **A I -- I believe that I could build a car that**
14 **was light enough to outperform any other car built on a**
15 **racetrack that would also get 30 miles to the gallon.**
16 **That wasn't happening. And that, because of that,**
17 **people would want to buy it.**

18 Q Okay. Now, you mentioned you could build a
19 car that was faster than any other car on the racetrack
20 and because of that -- and I'm paraphrasing of course --
21 people would want to buy it.

22 Was there an intended crossover between the
23 racetrack and street cars? Do you understand the
24 question?

25 **A No.**

1 Q Okay. Well, some companies, like Ford,
2 when --

3 A Yeah.

4 Q -- introducing the Ford GT --

5 A Yeah.

6 Q -- they built that car to win at Le Mans,
7 wouldn't you agree?

8 A Yes.

9 Q Okay. And they hoped that that was going to
10 make them one of the premiere performance car builders
11 at least in America -- right? -- and maybe the world?

12 A Right.

13 Q So more people would buy Ford street cars
14 because the racing car was a success, would you agree
15 with that?

16 A Would I agree with what? That Ford did that?

17 Q Yes.

18 A Right. Ford was trying to --

19 Q Okay.

20 A -- sell more Fords, yes.

21 Q And motorcycle companies do that too? They
22 build their race motorcycles --

23 A Right.

24 Q -- their race bikes and the race bikes do well
25 and that transitions over into higher sales for the

1 street legal vehicles, right?

2 **A Yes.**

3 Q And you understood at all times during this
4 case -- at any time relevant to this case, even all the
5 way back to 1988, that there was a difference between a
6 race car and a street legal car, right?

7 **A In general, yes.**

8 Q Okay. Now do you remember the movie "Days of
9 Thunder," Tom Cruise?

10 **A I do, yeah.**

11 Q Okay. And you remember he has the guy who,
12 like, runs his crew and helps build his car and Tom
13 Cruise says to him "Well, you know, what do we care
14 about a car? It's a stock car." And there's a
15 response, right? "There ain't nothing stock about a
16 stock car."

17 Do you remember that scene in the movie?

18 **A I can't remember the movie, but I did see it.**

19 Q Okay. Well, you would agree with me that, in
20 the racing circuit, a lot of people try and push the
21 envelope to make their cars perform better, right?

22 **A Right.**

23 Q Okay. Now, in fairness to you, you did build
24 such a good car --

25 **A Yeah.**

1 Q -- that the racing circuits felt it necessary
2 to handicap your car, right?

3 A **That's right.**

4 Q Okay. Now your methodology and your mindset
5 towards building these better cars was that you could
6 build them lighter, correct?

7 A **Correct.**

8 Q And you equated lighter with not only faster,
9 but didn't you equate that with safety?

10 A **Well, it was the safest car ever tested.**

11 Q I'm sorry?

12 A **It was the safest car ever tested at that
13 time.**

14 Q Okay. And was -- did the light weight have
15 anything to do with the safety for the car?

16 A **Not per se, no.**

17 Q When you said it was the safest car ever
18 tested, you're referring to the Consulier, correct?

19 A **The Consulier, yes.**

20 Q Okay. So the Consulier was the safest car
21 ever tested at the time. Do you know why?

22 A **Well, when they tested it, the test results
23 showed that it was superior to the other cars that had
24 been tested.**

25 Q And what test are you talking about?

1 A Well, the Department of Transportation has
2 crash-test requirements that we went through.

3 Q Okay. Now, how did you build the Consulier in
4 general terms? Like, did you build it from the ground
5 up? Did you design the frame and start from scratch
6 with making your own engine block and things like that,
7 or can you explain to the jury what you did?

8 A Well, you might think of an egg with a motor
9 in it, and the Consulier was like an eggshell. The
10 exterior of the car was the shell, but it also is
11 what -- it was all the structural integrity of the car.
12 So you could jump on the top of the car, hit it with a
13 sledgehammer, it wasn't going to break.

14 So the -- it's called an exoskeleton -- I
15 don't want to be technical here, but -- and that was
16 the -- that's what kept the car from twisting and
17 turning and kept -- the structural integrity was on the
18 outside. It didn't have a separate frame inside, okay,
19 and that's called a monocoque structure. Kind of like a
20 boat, where the hull is the structure, it's on the
21 outside and that's what keeps the boat going, you know,
22 from twisting and turning and breaking.

23 And by having the bodywork do double duty, it
24 would keep the rain off, keep the wind out, and at the
25 same time it was the structure -- the weight of the car

1 was a lot less. It was dramatically lower than other
2 cars.

3 Q Okay. Now --

4 A And it was a lot stronger. You know how
5 strong an egg is. It's the strongest shape, and that
6 was the whole theory behind doing it.

7 Q Okay. So it was you designed the Consulier
8 body around that concept of having the exoskeleton, like
9 an egg --

10 A Yeah.

11 Q -- be very strong?

12 A Right.

13 Q And it was also lightweight?

14 A Yes.

15 Q And what did that do for the performance of
16 the car?

17 A Well, the lighter the vehicle, you know, it
18 means you're going to get better fuel economy and the
19 same engine will make it accelerate much more quickly
20 and it will go around corners better so all your
21 accelerations increase. Its ability to change speed, go
22 from slow to fast or fast to slow or left to right, its
23 ability to change speed is enhanced by having less
24 weight to try and change the direction.

25 If you're -- take your pickup truck and drive

1 it in the snow or something and step on the brakes, it's
2 going to slide. If you fill it up with a bunch of
3 bricks and make it heavier, it's going to slide a lot
4 further before you can stop it.

5 You always want to have less weight to be able
6 to control -- it's easier to control less weight than
7 more weight.

8 Q Okay. Now did the exoskeleton design, did
9 that have anything to do besides the weight -- well, let
10 me back up.

11 You said -- you gave the example of a pickup
12 truck with a lot of weight sliding further. And in your
13 mind, that makes the car less safe because it doesn't
14 have the same braking distance, correct?

15 A Well, you know, safety is a multifaceted
16 thing. If you're in a collision with another car, the
17 bigger, heavier car is going to win; but if you're in a
18 collision with a wall, then that's not an advantage to
19 the heavier car and it might cause it to be less safe.

20 So there are all kinds of circumstances when
21 you use the word "safety" that you have to, you know,
22 apply it to.

23 Q Okay. But your idea, your concept for
24 building better cars definitely focus around making them
25 lighter, would you agree with that?

1 A That was a fundamental -- you have certain
2 fundamentals when you're trying to become -- I was a
3 very competitive person and I wanted a car that could
4 outperform all other cars on a racetrack. Not on top
5 speed, but lots of cars could go faster, that wasn't my
6 concern, but cornering, braking, that type of thing,
7 accelerations. That's what I wanted, a car to
8 outperform any car on the racetrack, in a road
9 racetrack.

10 When you have a circle track like NASCAR,
11 that's just how fast you perform. It's not so much a
12 corner track. If you go out to Moroso, the road track
13 out here where there's corners, that's the kind of place
14 that I wanted my car to outperform.

15 Q Okay. So --

16 A It was a narrow-focused car.

17 Q All right. And that was the Consulier and you
18 built that for how many years?

19 A The first delivery was 1988. I think the
20 first running test car was maybe 1987.

21 Q Okay. And did you sell any Consuliers?

22 A I sold maybe 50 or 60, not -- with that many
23 years, not very many.

24 Q Okay. Now at that time were you very hands-on
25 in the company, like going to the shop on a regular

1 basis?

2 **A** **I lived in -- in the neighborhood. You know,**
3 **it was on my way to work and so I'd stop by in the**
4 **mornings. I'd stop by in the afternoons to see what was**
5 **going on and try and direct things the best I could.**

6 **Q** **Okay. And then you had employees working for**
7 **you, correct?**

8 **A** **Yes, yes.**

9 **Q** **All right. Now, how was the Consulier**
10 **received by the everyday driving public?**

11 **A** **They didn't know about it.**

12 **Q** **Okay. Because you didn't advertise it, did**
13 **you?**

14 **A** **Well, I had some advertising, but it's not the**
15 **car that the everyday driving public would care about.**
16 **It wasn't aimed at them. It was relatively expensive**
17 **back then. It was \$60,000, when a family sedan might**
18 **have been 15,000 or 20,000, so it was an expensive car.**
19 **And it was a narrow-focused car.**

20 **Q** **Okay. Now did it have like an -- did it have**
21 **like a angular windshield or anything like that?**

22 **A** **No.**

23 **Q** **Okay. Now after you stopped making the**
24 **Consulier, what was the next car design that you came up**
25 **with?**

1 A I stopped producing cars and then I just -- I
2 had the shop and -- you know, you might say I had a car
3 disease, okay, and so I started building one-off cars
4 just sort of to entertain myself. I liked to -- I had
5 ideas I wanted to try out to see how they'd go. And
6 there were certain races you could enter that were --
7 that these cars would qualify for.

8 Q Okay.

9 A And so I was building one-off race cars, you
10 might say, one-off road cars and for the next four or
11 five years.

12 Q All right. And then did there come a time
13 when you got back into the design of cars, like the
14 Consulier, the road -- excuse me, the road track
15 racing -- what are we going to call that for the jury's
16 benefit?

17 A Well, let me explain this: There's a class of
18 racing called, for example, Showroom Stock. You're only
19 allowed to race street cars, you can't run stock cars,
20 and personally that's what I used to race. I had a
21 Volkswagen Rabbit and I'd go out and race my car in
22 Showroom Stock categories.

23 And I was like a okay, amateur driver. I went
24 to the run-offs in Atlanta and I finished, I think, 11th
25 in my class of 30. And I figured it was because

1 everybody else was cheating and had more power, of
2 course. And so I went and did that. I talked to them
3 and found out what they were doing and I did the same
4 thing and then I finished 10th, so I still wasn't very
5 good, but I was okay. I knew how the cars worked and I
6 knew something about driving and I raced for probably 20
7 years myself --

8 Q Okay.

9 A -- in this type of Showroom Stock category.
10 It's kind of the least expensive racing you can do.

11 Q All right.

12 A Put gas and tires on the car and go and race
13 it.

14 Q All right. And then what about the Consulier?
15 What kind of class --

16 A So what I understood from racing was how to
17 make a car get around the track faster, which was to
18 have it, you know, be light enough, okay. Because any
19 time you could -- the lightness was always the major
20 factor.

21 Any time you want to penalize a car or
22 handicap it, they would add weight. That's what they do
23 in racing. It's like horse racing, they add weight to
24 the horses, okay. They do the same thing with the cars.

25 And I thought, with this understanding and my

1 understanding of advanced composites, that I could build
2 a sports car that could outrun every other sports car,
3 you know, like Corvettes and Nissan turbos and Porsches
4 and that type of thing because they all weighed
5 3200 pounds, 3400 pounds, and I could build a car that
6 weighed maybe 2000 pounds, which is exactly what the
7 Consulier came in at. And so it easily outran all of
8 these cars, not only in races, but in events -- in
9 events sponsored by the likes of "Car and Driver."

10 They'd invite me to an event where they were
11 showing off all the new cars, and it would humiliate the
12 other cars, and they'd get very upset that they invited
13 me, and that happened repeatedly.

14 They started a race series for supercars they
15 called it, but it was for all road cars. It had to be
16 the way this car was sold road legal with normal tires,
17 normal engines. And I went out there with my cars for a
18 supercar series car with 175-horsepower engines and had
19 cars who were racing against Corvettes and Porsches and
20 with 400, 500-horsepower, and they were laughing at us
21 for even going out there. And the announcer before the
22 race saying "And there's the Consulier with the
23 175-horsepower." They'd say "Wow, that doesn't really
24 belong in this race."

25 Well, we qualified for second, fourth, and

1 fifth and won the race and then they -- and then they
2 started handicapping us and kicked us out.

3 I, you know, felt good about that. I felt
4 this car was a success. We demonstrated that if you buy
5 one of these cars, you've got something that's vastly
6 superior to the other cars that it was competing
7 against.

8 Q Okay. So you mentioned -- I just want to be
9 clear on the series here.

10 A Yeah.

11 Q It may become important later.

12 A Oh, the IMSA Supercar Series?

13 Q Okay. So that was the IMSA Supercar Series?

14 A IMSA.

15 Q And what's IMSA stand for?

16 A International Motorsports Association.

17 Q All right. Now, are those races run in the
18 United States or abroad or both?

19 A That was the U.S. It was for cars
20 manufactured U.S. legal, and we had to qualify for that.

21 Q Did the car have to be manufactured in the
22 United States?

23 A Yes. Well, I don't know. No. It just had to
24 be manufactured to be legal for U.S. roads.

25 Q Okay. So after you -- you mentioned earlier

1 that you were a competitive guy, and then in the "Car
2 and Driver" events you'd humiliate the other cars, and
3 then these race series started penalizing you. What
4 would they do? Add weight or --

5 **A Yeah. They told us we had to add 300 pounds**
6 **of weight.**

7 Q Okay. And so you took that as kind of a badge
8 of honor, right?

9 **A Sure.**

10 Q Here we are, the little guy; we're racing up
11 against the big guys.

12 **A Yeah.**

13 Q They're handicapping us.

14 **A Yeah. And then with the 300 pounds, we came**
15 **in second or something. And the next race we actually**
16 **won the race, and then they announced it was not in any**
17 **of the other manufacturers' interest to have Consulier**
18 **race with them, so they decided to disqualify us. We**
19 **weren't allowed to race after that.**

20 Q Okay. And they didn't give a reason other
21 than it wasn't in the big super -- the big companies'
22 interest to race with you?

23 **A That's right. They specifically made a press**
24 **release, yeah.**

25 Q Okay. Well, not to toot your own horn here --

1 A Yeah.

2 Q -- but go ahead, that was like a big feather
3 in your cap, right?

4 A I thought so.

5 Q Porsche --

6 A Let's put it this way: I got a lot of
7 satisfaction out of that.

8 Q Porsche --

9 A I had --

10 Q Go ahead. I'm sorry.

11 A We were allowed to race these in the local
12 races here in the West Palm Beach area, so I'd go out
13 and drive them myself, and I was a good enough driver
14 and I would say -- I remember one of my promotions,
15 "This car is good enough to win races even with me
16 driving." That was one of my promotional --

17 Q Okay. So --

18 A And so I had a lot of fun with that. We went
19 all around driving them and racing them ourselves. I
20 let the guys at the shop drive. The mechanics would
21 drive the cars.

22 Q Okay. And after the -- after you -- for want
23 of a phrase, after the Consulier got banned from these
24 competitions --

25 A Yeah.

1 Q -- is that why you stopped producing it?

2 A No.

3 Q Okay.

4 A I stopped producing it after, you know, sales
5 dried up in 1992.

6 Q Okay. And what happened in 1992 that caused
7 sales to dry up, in your estimation?

8 A So I -- really the guy from down here, Roy
9 Chapin, I don't know if anybody knew him, you know, was
10 running the company doing sales. We didn't have a lot
11 of sales. Again, we sold maybe 50 or 60 over, I don't
12 know, four years, something like that.

13 So, you know, it certainly wasn't enough to
14 make a profit, but -- and we -- we did promotional
15 events to help promote the car since we weren't allowed
16 to go racing, and one of them was called the
17 \$100,000 Challenge.

18 Q Okay. And explain to the jury the
19 \$100,000 Challenge.

20 A I said that I would give \$100,000 to any car
21 that could run -- manufactured U.S. legal, same as our
22 car, that could run a faster lap at Sebring, a shorter
23 course, than our new prototype, which I had, which was
24 the Consulier with the new -- with a different engine in
25 it. It was a 16-valve engine that Carroll Shelby had

1 **given me after visiting him in California.**

2 Q Okay. I want to stop just for a minute to
3 make sure that the jury is following us.

4 **A Yeah.**

5 Q Sebring, what is that?

6 **A That's a racetrack here in Florida.**

7 Q Okay. And based upon your experience in the
8 industry, how famous is the Sebring Raceway?

9 **A It's well-known.**

10 Q Well-known, okay.

11 **A Sure.**

12 Q And what type of a racetrack? Is it circular?
13 Is it --

14 **A No. It's a road racetrack.**

15 Q Road racetrack. And when we say "road
16 racetrack," that's what we described earlier. We mean
17 that it goes up and might have one long straightaway and
18 then a bunch of curves and sometimes they throw an S in
19 there --

20 **A Right.**

21 Q -- to make the cars really, you know, shake up
22 and perform, right?

23 **A Right.**

24 Q Okay.

25 **A Sebring has two configurations, a four-mile**

1 **and then a two-mile, and that was on the two-mile.**

2 Q Okay. So you yourself --

3 **A Yeah.**

4 Q -- individually --

5 **A Yeah.**

6 Q -- had like an open bet, "I'll pay anyone
7 \$100,000 that could beat my new prototype Consulier with
8 a 16-valve engine on that track"?

9 **A Right.**

10 Q Okay. And --

11 **A Anyone with a car manufactured U.S. legal.**

12 Q U.S. legal.

13 **A You couldn't just show up with a Formula 1
14 race car --**

15 Q Okay.

16 **A -- although somebody did.**

17 Q Because car racing -- in a certain sense, it
18 is kind of like wrestling, right? You have like your
19 weight class, right? And you have certain --

20 **A Yeah.**

21 Q -- certain types of cars race against other
22 certain types of cars, and a Formula 1 car might be able
23 to just blow away --

24 **A Right.**

25 Q -- like a drag car because you wouldn't take a

1 drag car on a S-shaped track, right?

2 **A Right, right.**

3 Q Drag cars are really good going straight, but
4 Formula 1 cars are really good on curves, right?

5 **A Right.**

6 Q Okay. So for racing fairness, they separate
7 out those different types of cars?

8 **A Well, they have events where only certain
9 types of cars qualify, yeah.**

10 Q Right. And you were very particular. You
11 said you'd give \$100,000 to anyone who had a U.S. legal
12 car that could beat your car on the Sebring short track,
13 right?

14 **A Right. Because our claim was that we were the
15 top performance car manufactured U.S. legal.**

16 Q Did you have a name for that car?

17 **A The Sebring car? It's casually referred to as
18 the Shelby. I don't know if it had a name.**

19 Q Okay.

20 **A It was a -- you know, it was what was called a
21 Series 2 car. The first Series 2 car had a regular
22 engine. It might have been called the 16-valve or
23 something.**

24 Q Okay. Now, how did you make that wager? Did
25 you just tell your friends or did you announce it?

1 A I announced it, told people. And Roy Chapin
2 promoted it. I don't remember exactly how.

3 Q Okay.

4 A But it was pretty well publicized. We got a
5 lot of response.

6 Q Okay. And did anyone try to take you up on
7 that bet?

8 A Oh, yeah. Yeah, there were probably 15 or 20
9 cars out there.

10 Q Okay. And so was this like one day?

11 A It was two days, Saturday and Sunday.

12 Q Okay. And so you had a two-day event at
13 Sebring?

14 A Uh-huh.

15 Q At the short track and people showed up and
16 brought their cars, and they raced your updated
17 prototype of the Consulier with the 16-valve engine?

18 A Right.

19 Q All right.

20 A Well, they didn't race. It was whoever could
21 run the fastest lap time.

22 Q Okay.

23 A So we went -- we gave them all an opportunity
24 to run, you know, their fastest lap over the weekend.

25 Q Okay. Beat the clock, right?

1 A Right.

2 Q Okay.

3 A So Peter Farrell had showed up with the Mazda
4 team. They had this new hot turbo Mazda thing. They
5 were out practicing and he came up to me and I guess
6 they came to win. They had a whole truck load full of
7 tires and press.

8 And about -- on Saturday, at some point, he
9 comes up and says "Look, we can't win this, but we'd
10 like to at least come in second place. Could you take
11 everyone off the track so we can run ourselves to make
12 sure we get a clean lap?" I said, "Sure. Whatever you
13 want."

14 And, by the way, our mechanics were available
15 to help everybody else on the track if they had problems
16 with their cars or tires. We were working on all of the
17 cars. It was a very friendly event.

18 Q Okay.

19 A And it was a very cooperative event.

20 And so Peter takes his -- Peter Farrell, is
21 that the name? Maybe. He took -- he was a pro driver.
22 They were running in the supercar series. And they take
23 the cars and they disappear for a couple of hours and
24 come back and they pour in this purple ooze into the
25 fuel tank. They wanted to get the fastest lap. And

1 they went out there and ran something like a minute and
2 23 or a minute and 24 seconds, and they actually came in
3 second. And so I guess it justified their expense of
4 getting there.

5 Okay. With the fill-up in my car, I did a
6 minute and 20 so, I mean, it wasn't even close, and the
7 next car back was maybe a minute and 28 seconds. It was
8 a big, big gap and all because of the weight.

9 Q All right.

10 A We had no other secret sauce, just the weight.

11 Q Now, did anyone ever claim that they should
12 have collected that \$100,000?

13 A Yeah. So --

14 MR. WEBER: Objection, relevance, Your Honor.

15 THE COURT: Hold on.

16 **THE WITNESS: Right. So --**

17 THE COURT: Hold on.

18 MR. ZAPPOLO: It goes to the history of his
19 propensity to honor agreements.

20 THE COURT: Overruled. I'm sorry. Objection
21 sustained.

22 MR. ZAPPOLO: Okay. Well, we'll move on then.

23 BY MR. ZAPPOLO:

24 Q After that car --

25 A Yeah.

1 Q -- what was the next car that you recall
2 building by name? Like the -- and let me just be clear
3 with you. From time to time you would update and make
4 modifications to your cars, right?

5 A **Yeah.**

6 MR. WEBER: Objection, relevance.

7 MR. ZAPPOLO: I'm trying to get to the car,
8 the type, the body style, and everything that is at
9 issue.

10 THE COURT: Overruled.

11 BY MR. ZAPPOLO:

12 Q So from time to time you would make
13 modifications to cars and change the body styles, et
14 cetera. What was the next body style after the
15 Consulier?

16 A **Well, like I said, I was building cars. I'd**
17 **get ideas and I had this idea that if you used a V**
18 **windshield, kind of like in the old cars -- rather than**
19 **a big, flat windshield, a curved windshield, it would**
20 **perform better than -- it would get around the track**
21 **faster. We'd have less drag and it would run better.**

22 **And so I -- as a prototype I built -- it**
23 **looked like a pair of sunglasses with a big V**
24 **windshield. Shane Lewis was my driver. We went out**
25 **there with one of my cars and we raced it with a regular**

1 windshield on it, took it around Moroso, and took the
2 lap times and then I put this other thing over the front
3 and he goes -- he comes back and he's a half a second
4 faster. And he goes, "I don't believe it" because
5 that's a lot.

6 So we take it off and he runs it again and put
7 it on and sure enough this thing was making this go a
8 half a second faster.

9 Q Okay.

10 A So instead of just having a Band-Aid, we built
11 it into a car. That was the project.

12 Q And so just to move things along quickly for
13 the jury's understanding, that V-shaped windshield car,
14 what did you call that?

15 A I called that the Raptor.

16 Q Okay. So that was the Raptor.

17 Now, that's not the Raptor that we're here
18 talking about, right? That was the first car that you
19 manufactured that was called the Raptor, right?

20 A Yeah. This was probably 1994, '95.

21 Q Okay. All right. And how were the sales of
22 that vehicle?

23 MR. WEBER: Objection, relevance.

24 THE COURT: Overruled.

25 THE WITNESS: Okay. So I didn't, like,

1 manufacture this vehicle for sale. I still had
2 some Consuliers out there, and I had a -- I took a
3 regular -- I had done some other modifications.

4 I put a V8 inside one of the Consuliers, a
5 Chevrolet V8 in the back and replaced it with a
6 Chrysler engine and it got heavier. It got up to
7 about 2400 pounds, but it was very quick and -- but
8 with the V windshield, we entered it into the "Car
9 and Driver" One Lap of America and won the event.
10 After which they properly said "You can't come back
11 here anymore with that thing." They hated it.

12 BY MR. ZAPPOLO:

13 Q Okay. Now, in fairness, they didn't like the
14 V-shaped windshield either, did they?

15 A They did not like that at all.

16 Q Okay. So your car that was faster than
17 everything, it was put down -- panned in the "Car and
18 Driver" media world as --

19 A No. They flattered the car, they just didn't
20 like the looks.

21 Q Right. So they said the car performed
22 wonderfully?

23 A Yeah.

24 Q But for want of a better phrase, it was kind
25 of ugly, right? That was their words?

1 A Well, it was mixed. Some people loved it,
2 others hated it.

3 Q Okay.

4 A The same thing with the Consulier. I remember
5 going into a magazine with the Consulier and 20 people
6 came out to look at it, the editor in chief and all the
7 staff. The staff loved it. They thought it was great,
8 and the editor in chief said it was the worst looking
9 car he ever saw.

10 So I think it appealed more to the younger
11 people than the older people, but whatever. I was
12 building weaponry, right. This car was built to win, to
13 outperform, and it's like coming up with a new stealth
14 fighter for the Air Force, but they don't -- it
15 outperforms every airplane out there, but they're not
16 going to buy it because they don't like the way it
17 looks. You know, I wasn't worried about that.

18 Q Okay. You weren't worried about that even
19 though you were trying to sell these -- ultimately you
20 were going to try and sell these cars to the general
21 public, right?

22 A Well, you know, members of the general public,
23 but not -- no. People who appreciated what this
24 weaponry could do.

25 Q Okay.

1 A You don't buy weaponry based on looks. I
2 mean, some people do obviously, but not everybody. I
3 was going to people who appreciated what it could do.

4 Q Okay.

5 A And it turned out there were a lot fewer than
6 I thought.

7 Q All right. So after that Raptor with the V
8 windshield --

9 A Yeah, yeah.

10 Q -- what was the next permutation of the car
11 design that you did?

12 A That was --

13 Q And I'm not trying to be, you know, very
14 specific, like one car, one-off, or anything like that.
15 I'm trying to talk about overall.

16 A Yeah. I started -- I came up with an ideal
17 car that was Consulier-based and I called it the Raptor
18 R2K just for an internal designation --

19 Q Okay.

20 A -- in the year 2000.

21 Q And what was different about that car from
22 prior cars?

23 A It was the Consulier structure. Because I had
24 the V8 car with the Raptor, but it was -- it was, you
25 know, cobbled together. These things were, you know,

1 Frankenstein-type creations, so I wanted to do a clean
2 sheet of paper version and so that's what the Raptor R2K
3 was. And, to me, that was the ultimate performance car
4 that I ever built, but it never got completed because it
5 got interrupted by what became the MT900.

6 Q Okay. Now we're up to the MT900?

7 A Yeah.

8 Q All right. And approximately when did you
9 decide that you were going to start building a car and
10 call it the MT900?

11 A Well, you know, I didn't go looking for the
12 emails for that, but it's probably -- I'm sure it's all
13 documented. It's probably 1997-ish.

14 Q All right. And MT900 stands for what?

15 A Mosler, Trenne 900 kilograms.

16 Q Okay. So --

17 A And it was supposed to weigh 900 kilograms
18 when it was empty, no fuel. So it was kind of a joke,
19 you know, a pun, MT900.

20 Q Okay.

21 A 900 kilograms empty, Mosler, Trenne. You
22 know, it had a cute name.

23 Q So Mosler was you, correct?

24 A Right.

25 Q What about Trenne?

1 A Rod Trenne. Rod Trenne came in and approached
2 me as a designer for Unigraphics. He had been working
3 as a designer for Corvette and he had some new -- he had
4 CATIA software, if I got all this right, and this was
5 state-of-the-art at the time and it was -- Unigraphics
6 was the company doing this and Unigraphics -- his story
7 was that Unigraphics wanted to promote their software by
8 having the car built using their software.

9 Q Okay.

10 A And he came in with a picture of the car that
11 he had designed using their software.

12 Q Okay. So he said --

13 A And --

14 Q I'm sorry, go ahead.

15 A Go ahead. Go ahead.

16 Q No, I just -- so he approached you and said --

17 A Yeah.

18 Q -- "I've got this great design for a car"?

19 A Yeah.

20 Q "And I did it on this Unigraphic software.

21 And if you'll build the car" --

22 A Yeah.

23 Q -- "then we'll be able to promote our

24 Unigraphic software" --

25 A Right.

1 Q -- "by saying our software was used to create
2 this supercar"?

3 A Right, right, right, right.

4 Q A play on words again, right?

5 A Yeah.

6 Q Supercar versus it's a super car, right?

7 A Very clever.

8 Q Okay. So excuse me for one second.

9 MR. WEBER: Your Honor, may I give Mr. Mosler
10 a bottle of water?

11 MR. ZAPPOLO: Absolutely. Yeah.

12 BY MR. ZAPPOLO:

13 Q Now, Mr. Mosler, when you said that, that
14 reminded me of something that I couldn't quite remember,
15 but I asked my client.

16 A Good.

17 Q That concept of companies that have these
18 super programs for designing vehicles and other things,
19 they frequently like to pair up with supercar companies
20 and say our -- you know, our car is -- or that car was
21 designed using our software, don't they?

22 A I've never heard of it, but I'll take your
23 word for it.

24 Q Okay. Well, that's what Rod Trenne wanted to
25 do, right?

1 **A Yeah.**

2 Q Okay.

3 **A Yes. So --**

4 Q And he was willing to let Mosler Auto Care use
5 that company's software for free as a tradeoff, right?

6 MR. WEBER: Objection, relevance.

7 THE COURT: What is the relevance?

8 MR. ZAPPOLO: It's all going to be tied in in
9 just a minute.

10 THE COURT: All right. Overruled.

11 **THE WITNESS: That was a part of it, but there**
12 **was a lot more to it.**

13 BY MR. ZAPPOLO:

14 Q Okay. In fact, at another time later that's
15 relevant to this case, there is a company called Siemens
16 that did the same thing, right?

17 **A I think they might have, like, bought**
18 **Unigraphics or something. It was a part of the same**
19 **company.**

20 Q Okay. A part -- so the same company?

21 **A I think so.**

22 Q And at times relevant to this lawsuit there
23 was -- the Unigraphics/Siemens company was advertising
24 that it was partners with Mosler Auto Care Center in
25 designing the MT900, right?

1 MR. WEBER: Objection, relevance.

2 THE COURT: Overruled.

3 **THE WITNESS: They were out of the picture by**
4 **then, but we had -- we carried the decode or**
5 **something as part of our original agreement on the**
6 **car, but they were out of the picture by that time**
7 **as far as I remember.**

8 BY MR. ZAPPOLO:

9 Q Okay.

10 **A Maybe not. I don't know.**

11 Q We'll see, but --

12 **A You're talking about 2012?**

13 Q Yeah. At some point in that general time
14 frame. We'll get some documents later.

15 **A Yeah. You could be right.**

16 Q Okay. I'm not trying to trick you, I'm just
17 trying to make sure that the jury has an understanding
18 about different things before we put this all together.

19 **A Yeah.**

20 Q Okay. So we had the MT900, the Mosler, Trenne
21 900-kilogram car, and you started producing that and did
22 you do the same thing as the other cars, have different
23 variants of that vehicle? Like there was an MT900 and
24 an MT900S, right?

25 **A Well, you're skipping a lot of steps there.**

1 Q Okay. I don't want to skip over anything if
2 you think it's important.

3 A If you want to skip steps, it's okay. If you
4 don't want --

5 Q If you think it's important for the jury to
6 have a complete understanding of what was going on,
7 please share it. If not --

8 A Well, I don't want to be here any longer --

9 MR. WEBER: Objection, relevance.

10 THE COURT: All right. Sustained. Let's move
11 on.

12 BY MR. ZAPPOLO:

13 Q All right. We'll just move right along, but
14 my question was: There was an MT900 and an MT900S,
15 correct?

16 A You know, you're talking about -- the project
17 car in-house was the MT900. When we first sold the
18 street legal road car, I'm thinking it was an MT900S,
19 but I can't --

20 Q Okay.

21 A I don't know that for a fact, but there was
22 not, you know, a distinction that I remember like
23 being -- the MT900 was an internal distinction for the
24 car. They're all MT900's.

25 I think the S was the street car and that was

1 like what we first started producing, the first one
2 sold. So I don't think there was an MT900 sold as a
3 street legal car. I think the first street legal car
4 was the S, but, again, I could be wrong on that.

5 Q Okay. Just to clarify this --

6 A Yeah.

7 Q -- the MT900 wasn't the race car that was
8 racing on the racing circuit, and then the MT900S wasn't
9 the car that was being sold out to the general public?

10 MR. WEBER: Objection, relevance.

11 THE COURT: Overruled.

12 THE WITNESS: I think I remember an MT900R
13 being ready for a race, but you might be right. I
14 don't know.

15 BY MR. ZAPPOLO:

16 Q All right. So if Mosler's website had on it
17 MT900 and then a MT900S --

18 A Yeah.

19 Q -- you think they were one in the same car?

20 A I'd have to look at the website. I don't
21 know.

22 Q Okay. But you have no recollection of the
23 differences between the MT900 and the MT900S, correct?

24 A I don't have a -- not in the way you just
25 stated it.

1 Q Okay.

2 A You know, you gave me a hypothetical of what
3 might be on the website and I don't know. I'd have to
4 look at it.

5 Q Now, I want to take you forward to a time when
6 you met James Todd Wagner, all right. Can you tell the
7 jury about that? How did you meet him?

8 A You know, I have no recollection of how I met
9 him. We were discussing that earlier.

10 Q Okay.

11 A You know, I don't remember.

12 Q Do you ever recall Mr. Wagner being interested
13 in purchasing a car from MACC?

14 A In 20-, like, -11 after he had been there or
15 when he -- what?

16 Q Prior to being there.

17 A Huh?

18 Q Prior to working for the company.

19 A I don't remember.

20 Q Okay. Let's try it a different way. Do you
21 ever recall meeting a woman by the name of Jill Wagner?

22 A I don't recall meeting her, no. I don't
23 recall her initially.

24 Q Nevertheless, at one point Jill Wagner became
25 an employee of -- and when we say MACC, I mean Mosler

1 Auto Care Center, right?

2 **A Yeah.**

3 Q Okay. Now -- and by the way, do you
4 differentiate -- let me back up.

5 Mosler Auto Care Center builds cars --
6 correct? -- or used to build cars?

7 **A Yeah. That was the -- I believe that was the
8 manufacturer.**

9 Q Okay. So you agree with me that Jill Wagner
10 worked for Mosler Auto Care Center at one point, right?

11 **A Yeah.**

12 Q All right. Do you remember what she initially
13 started doing?

14 **A She was in parts, I believe.**

15 Q Okay. Do you remember what her qualifications
16 for that job were?

17 **A She had had automotive experience is my
18 recollection.**

19 Q Do you remember what type of experience?

20 **A Not -- nothing I would just say under oath. I
21 don't remember. I'd have to look it up.**

22 Q Okay. Fair enough.

23 And James Todd Wagner started working for the
24 company at some point, right?

25 **A Yes.**

1 Q All right. Do you remember when?

2 A I don't have a recollection from memory. I
3 can go look at the emails and determine. I have
4 documentation, but I don't have a specific memory.

5 Q Okay. Fair enough. And maybe we'll get into
6 those and maybe we won't, but I just want to understand
7 what you recall.

8 Do you recall what James Todd Wagner did when
9 he first started working for the company?

10 A My vague recollection is he was working on
11 something called link-X suspensions and he had a
12 couple -- an SUV that he had modified to be running with
13 the link-X suspension.

14 THE COURT REPORTER: Can you speak up?

15 THE WITNESS: I said he had an SUV that was
16 modified with the link-X suspension.

17 BY MR. ZAPPOLO:

18 Q Link-X, right? L-I-N-K hyphen X?

19 A Yeah.

20 Q Right. Now, when we were talking about
21 racing, you were talking about -- earlier about going
22 around corners fast and things like that. Suspension is
23 very important --

24 A Yeah.

25 Q -- just like weight, isn't it?

1 **A Yeah.**

2 Q Okay. So do you remember what Mr. Wagner's --
3 why you hired Mr. Wagner?

4 **A I don't. I don't specifically remember why I**
5 **hired him, no.**

6 Q Do you remember his qualifications?

7 **A His qualifications were that he had an**
8 **engineering background and he wanted to work.**

9 Q Okay.

10 **A And he was enthusiastic and articulate and I**
11 **wanted -- and I thought the link-X concept had promise.**
12 **Not in racing, but in road cars, and I wanted to give**
13 **him a chance.**

14 Q Okay.

15 **A Yeah.**

16 Q Do you recall whether Mr. Wagner first started
17 working for the company as an employee, or was he an
18 independent contractor of sorts?

19 **A I don't remember.**

20 Q Okay. Do you remember ever discussing with
21 Mr. Simon, the company's attorney, about setting up
22 James Todd Wagner with a company?

23 MR. WEBER: Objection, calls for
24 attorney-client privilege.

25 THE COURT: Approach.

1 MR. ZAPPOLO: I'll just waive the question,
2 Your Honor. We don't have to.

3 THE COURT: Okay.

4 BY MR. ZAPPOLO:

5 Q Do you remember a company called Supercar
6 Engineering, Inc.?

7 A I remember the name, yeah.

8 Q Okay. Do you remember why that company was
9 formed?

10 A Todd wanted to form it.

11 Q Okay. Todd didn't -- Todd meaning James Todd
12 Wagner, right?

13 A Yeah, yeah.

14 Q Okay. At the time that's the name he used,
15 wasn't it? Todd Wagner?

16 A Yeah.

17 Q Okay.

18 A That's how I knew him.

19 Q Okay. Now when James Todd Wagner started
20 working for MACC, he started working through the
21 company, Supercar Engineering, Inc., correct?

22 A I don't recall, but I'll take your word for
23 it. It didn't matter to me.

24 Q All right.

25 A It's whatever he wanted. I was very

1 **supportive of what he was trying to do.**

2 Q Okay. What was he trying to do?

3 **A He was trying to do his link-X suspension**
4 **system, market it, promote it.**

5 Q Okay. And you had hoped that that link-X
6 suspension system could be used on the MT900S street
7 vehicles, didn't you?

8 **A No.**

9 Q No? Okay.

10 **A It wasn't applicable to it. I didn't believe**
11 **it was applicable to the racetrack.**

12 Q I said street vehicles.

13 **A Yeah.**

14 Q And you said you didn't think it was
15 applicable to the racetrack?

16 **A Right.**

17 Q Okay. So --

18 **A So I was manufacturing cars that people could**
19 **take to a racetrack and be the top performance car in**
20 **the room.**

21 Q Okay. All right. Now through your experience
22 with building the various cars that we've discussed with
23 the jury at this point, you came to have some knowledge
24 about what was necessary to sell cars legally in the
25 United States, didn't you?

1 **A Yes.**

2 Q Okay. And you mentioned earlier
3 crash-testing?

4 **A Yes.**

5 Q Did your cars go through this crash-testing
6 procedure?

7 **A Yes.**

8 Q Okay. And very briefly I'm going to -- I'm
9 going to rattle something off and you tell me if I say
10 it wrong. Basically the crash-testing procedure is
11 where you take a car to a test facility and they run
12 various fake crashes on it, either head-on, rearward, on
13 the side impact, or at an angle and they determine how
14 much the car crumples and whether or not the car meets
15 federal safety standards, is that fair?

16 **A That's correct.**

17 Q All right. Now what other types of testing is
18 required in order to sell cars in the United States?
19 You mentioned street legal.

20 **A Yeah. Back then you had -- the Environmental**
21 **Protection Agency had to give you some kind of**
22 **Certificate of Conformity or something like that to be**
23 **able to sell cars.**

24 Q Okay. Now you knew that you had to comply
25 with the EPA requirements in order to sell the cars,

1 right?

2 **A** **Yeah. The requirement was that you get the**
3 **Certificate of Conformity.**

4 **Q** **Okay. And once -- how did you get the**
5 **Certificate of Conformity?**

6 **A** **Well, you have to self-certify the car.**

7 **Q** **Okay. And how was that done?**

8 **A** **What you do is you determine that the car will**
9 **pass, and then you have to send that documentation to**
10 **the EPA, and they have to decide whether to accept it or**
11 **not. If they accept that documentation, then they give**
12 **you a Certificate of Conformity.**

13 **Q** **Okay.**

14 **A** **They reserve the right to come in and test the**
15 **car any time they want.**

16 **Q** **Okay.**

17 **A** **But they have to buy a car when they test it,**
18 **so I was hoping they'd do that so I could, like, sell**
19 **one more car, but they never did.**

20 **Q** **Okay. So it's true, isn't it, that all of the**
21 **cars, all of the vehicles that came out of the Mosler**
22 **Auto Care Center factory that were sold for use on the**
23 **streets of America were EPA self-certified vehicles?**

24 **A** **I don't word it that way, so I'm trying to**
25 **think if that's a true statement or not.**

1 Q Okay.

2 A So why don't you give me that in two parts
3 again or three parts.

4 Q Let's try it very simply.

5 A Okay.

6 Q Did Mosler Auto Care Center ever sell a
7 vehicle for use on the streets in America that was not
8 in strict conformance with the EPA certification
9 requirements?

10 MR. WEBER: Objection, calls for a legal
11 conclusion.

12 THE COURT: Overruled.

13 THE WITNESS: I'd say -- I'm trying to think
14 of any cars that we sold that we -- I didn't sell
15 anything that I represented as compliant that was
16 not compliant.

17 BY MR. ZAPPOLO:

18 Q Did Mosler Auto Care Center represent that it
19 was selling street legal vehicles?

20 A If we had street legal vehicles, we would sell
21 it, but there were people who wanted to buy cars that
22 maybe weren't street legal and we would sell them to
23 them, but then they -- it was their own problem. They
24 were just noncertified cars.

25 Q Okay. Well, you were here yesterday when

1 Mr. Hassan Abboud took the stand and said that he
2 presumed that since he was buying a car from you, that
3 it was street legal, right?

4 **A Yeah. His was.**

5 Q His was street legal?

6 **A As far as I know. I mean, he wasn't one of**
7 **the people who wanted, you know, a car with the roll**
8 **cage in it or wanted a car with something else and then**
9 **we did sell that as a street legal car. We sold it as a**
10 **car -- you know, as a non-street legal car for lack of a**
11 **better word.**

12 Q So if someone came to Mosler Auto Care Center
13 and said "Look, I'm on the racing circuit. I want to
14 take one of your cars and take it out there and race it
15 at" --

16 **A Right.**

17 Q -- "Sebring only and I don't want to drive it
18 home at the end of the day" --

19 **A Right.**

20 Q -- "I want you to build me the most souped-up
21 fastest thing you can make" --

22 **A Yeah.**

23 Q -- it was clear that the car wasn't,
24 quote/unquote, street legal, right?

25 **A Right, right, right.**

1 Q And you would build him a car that didn't
2 necessarily comply with EPA certifications, correct?

3 A Right.

4 Q Okay.

5 A And it did. It didn't, you know, carry a
6 title that said it complied --

7 Q Okay.

8 A -- you know.

9 Q And when someone purchased a car --

10 A Yeah.

11 Q -- that was supposed to comply with the EPA
12 requirements, there was -- there were two things that
13 were produced at Mosler Auto Care Center: A Bill of
14 Sale, correct?

15 A I -- go ahead.

16 Q And we see one of those in evidence, right?
17 Is that a yes?

18 A I guess so.

19 Q Okay. And a manufacturer's statement of
20 origin, correct? Or a Certificate of Origin?

21 A Yes.

22 Q Okay. And the manufacturer's Certificate of
23 Origin is what says that the car is EPA-certified,
24 correct?

25 A I would have to look at it again. I don't

1 **know if it says that or not.**

2 Q Okay. I'm just wondering what you recall
3 right now. We're going to go into some things and look
4 at those.

5 Now with respect to the crash-testing --

6 **A Yeah.**

7 Q -- if a vehicle went through crash-testing and
8 it was certified by the Department of Transportation as
9 having passed a crash worthiness test --

10 **A Right.**

11 Q -- right? -- were you supposed to modify the
12 frame of that vehicle again before you sold it?

13 **A Were we supposed to?**

14 Q Yes.

15 **A We weren't supposed to do anything.**

16 Q You weren't supposed to modify it, right?
17 After the government certified --

18 **A It was not a requirement, no. They didn't
19 require that you modify it.**

20 Q Well, if a car was -- had to be certified as
21 crash worthy --

22 **A Yeah.**

23 Q -- by going through those tests, you were
24 supposed to test the vehicle as you were going to sell
25 it, weren't you?

1 **A Right, right.**

2 Q And that doesn't take a lawyer to know, that's
3 just common sense, right?

4 **A Right.**

5 Q Okay. And the same thing with the EPA
6 certification --

7 **A Right.**

8 Q -- right?

9 Okay. Now, you mentioned the
10 self-certification process. Let's go over that a little
11 bit.

12 **A Yeah.**

13 Q Self-certification is, you said, when you take
14 numbers and you submit them to the Environmental
15 Protection Agency, right?

16 **A Yes.**

17 Q And what types of numbers are those?

18 **A They would be -- you would be analyzing the
19 emissions under various conditions that come out of the
20 tailpipe, for example.**

21 Q Okay. Because you don't want too much carbon
22 dioxide or carbon monoxide coming out of a car that's
23 driving down the street, right?

24 **A Yes. That's -- that's the reason the
25 legislation is there.**

1 Q Right. To stop pollution, correct?

2 A Right.

3 Q All right. So where do those numbers come
4 from for Mosler Auto Care Center?

5 A I have somebody like Todd do the work and then
6 gather the numbers.

7 Q Okay. Now before James Todd Wagner did that
8 work, who did that work for MACC?

9 A You know, I was trying to think about that the
10 other day and I -- I don't remember who it was. I don't
11 know if it was just -- I don't think it was just the
12 mechanics. I had a composites engineer named Dave
13 Nesbitt, and I don't recall that he was EPA, but he
14 might have been.

15 Q Okay. Did Alan -- to your recollection, did
16 Alan Simon have anything to do with that?

17 A He might have helped with the documentation
18 for whoever was doing the actual work. You know what?
19 We might have sent it out to a laboratory to do it.

20 Q Okay.

21 A I might not have had anybody in-house do it
22 because I know at one point Todd said the car went to
23 the laboratory to do those things.

24 Q Okay.

25 A So the Consulier could have been -- it was a

1 long time ago. It could have been laboratory-tested at
2 an EPA laboratory --

3 Q Okay.

4 A -- so there may not have been anybody
5 in-house.

6 Q But just like with the crash worthiness
7 test --

8 A Yeah.

9 Q -- a layperson knows that you're not supposed
10 to get a car EPA-certified and then change the emissions
11 in the vehicle and then sell it as street legal, right?

12 A That's correct. That would be a violation of
13 that law.

14 Q So the things that affect the emissions in a
15 vehicle based upon your experience are what?

16 A That affect them?

17 Q Yeah.

18 A The fuel.

19 Q Okay. If you change the valves, could that
20 affect the EPA, the numbers?

21 A Yeah.

22 Q If you change the engine timing, could that
23 affect it?

24 A Yes.

25 Q Okay. If you change the camshaft which -- and

1 would you explain to the jury what a camshaft is?

2 **A A camshaft is the thing that causes the valves**
3 **to go up and down.**

4 Q Okay. And it's powered -- on the one hand you
5 got the pistons going up and down as the engine fires
6 and it turns that shaft and it's oblong, right?

7 **A Yeah.**

8 Q And so at one point when the piston goes down,
9 it might push a different part of the camshaft up and it
10 opens the value and vice versa. So whenever we see an
11 engine -- a video of an engine, we see this thing
12 spinning at the bottom of the engine and then we see the
13 big pistons going up and down and then valves opening
14 and closing all in perfect timing, right?

15 **A Right.**

16 Q And it's very important that all of those
17 things stay in certain timing so that you don't have the
18 valves open, like the exhaust valve open before the
19 spark explodes on the spark plug, otherwise you get
20 burned gas going out of the tailpipe and out into the
21 atmosphere and causing pollution, right?

22 MR. WEBER: Objection, relevance.

23 THE COURT: Sustained.

24 BY MR. ZAPPOLO:

25 Q You would agree with me that changing those

1 components changes the configuration of the engine for
2 its EPA certification, wouldn't you?

3 MR. WEBER: Objection, relevance.

4 THE COURT: Overruled.

5 MR. ZAPPOLO: It's a issue.

6 **THE WITNESS: Yeah, not per se. I mean, you**
7 **could change the valves to a different manufacturer**
8 **that has a different weight and it might not change**
9 **the emissions as long as it's opening and closing**
10 **and sealing properly, but you could change to a**
11 **different kind of valve that has a leak in it and**
12 **it never would pass if it didn't seal properly.**

13 BY MR. ZAPPOLO:

14 Q Okay. So the same thing with a flywheel. A
15 flywheel can affect that as well, right?

16 A Well, the flywheel affects the timing. So if
17 you change the timing, that would affect the emissions,
18 but not the flywheel per se necessarily.

19 Q Okay. But the changing of the flywheel would
20 potentially change the timing which changes the EPA
21 figures, right? The pollution figures.

22 A The car probably wouldn't run at all. I
23 mean --

24 Q Well, if you took it to an extreme, right?

25 A Well, you wouldn't have to do much to be

1 **extreme, but, look, you can change parts to cause the**
2 **engine to run dirty. It's certainly possible.**

3 Q Now we were talking about the EPA, okay, about
4 pollution --

5 **A Yeah.**

6 Q -- emissions and things. I want to shift
7 focus a minute because we want to talk about the state
8 of California, okay?

9 **A Yeah.**

10 Q Based upon your experience in the industry,
11 does the state of California have additional
12 requirements related to pollution control?

13 **A They used to, yeah.**

14 Q Okay. And what was that called?

15 **A It's called CARB, C-A-R-B.**

16 Q Okay. And what does that acronym CARB stand
17 for?

18 **A If I recall correctly, it's California Air**
19 **Resources Board.**

20 Q Okay. And does the California Air Resources
21 Board put more stringent or less stringent requirements
22 upon cars to be sold in California?

23 **A More stringent.**

24 Q Okay. More stringent than the EPA, correct?

25 **A Yes. More stringent than the basic rules.**

1 Q Just so that we're clear, the EPA certifies
2 vehicles and once a car is EPA-certified, it can be sold
3 anywhere in the United States according to the federal
4 government, correct?

5 A Correct.

6 Q All right. Now, there are some states that
7 honor CARB requirements, which are heightened
8 requirements, right?

9 A Right.

10 Q The cars have to run cleaner?

11 A Yes.

12 Q All right. And obviously California is one of
13 them?

14 A Uh-huh.

15 Q Right?

16 A Yeah.

17 Q Okay. Can you think of any other states that
18 require CARB certification?

19 A I don't recall now.

20 Q Okay. There aren't many of them, are there?

21 A Uh-uh.

22 Q Okay. As a matter of fact Mosler Auto Care
23 Center has sold vehicles to people who have -- well, let
24 me back up.

25 Isn't it true that some people, when

1 purchasing supercars, title their vehicles in states
2 other than the state in which they live?

3 MR. WEBER: Objection, hypothetical.

4 THE COURT: Sustained.

5 BY MR. ZAPPOLO:

6 Q Have you ever known -- have you ever -- well,
7 let me back up.

8 Mosler Auto Care Center works with another
9 company that you own or has in the past, right? Luxury
10 Motorcars, I believe?

11 A Okay. So I don't know about "works with."
12 That was a used carlot.

13 Q Okay.

14 A That wasn't a -- that had nothing to do with
15 the factory or the manufacturing.

16 Q You have a company that assists purchasers of
17 Mosler Auto Care vehicles with getting their cars titled
18 in their representative states, correct?

19 A We --

20 Q I'm sorry, did you answer that question?

21 A That wasn't -- that's not a specific reason
22 for that company. I think --

23 Q I understand.

24 A I think you're referring to Hassan's car,
25 which was a one-off, which I had a guy over there who

1 **helped me out. He helped this guy, you know, do what he**
2 **needed to be done, so we gave him an assist.**

3 Q Okay. So Mosler Auto Care Center doesn't --
4 well, let me back up.

5 As you sit here today, you don't know whether
6 people titled their vehicles, that were purchased from
7 Mosler Auto Care Center, in states other than which they
8 reside?

9 MR. WEBER: Objection, misstates the
10 testimony.

11 THE COURT: Objection sustained. Next
12 question, please.

13 BY MR. ZAPPOLO:

14 Q Do you know, as you sit here today, whether
15 any purchaser of a vehicle from Mosler Auto Care Center
16 titled their vehicle in a state other than the state in
17 which that person resided?

18 MR. WEBER: Objection, relevance.

19 THE COURT: Can I see the attorneys for a
20 second? Deputy, can you come up?

21 (Thereupon, a sidebar conference was held.)

22 THE COURT: Do they have their lunch yet?

23 THE COURT DEPUTY: They're getting them right
24 now.

25 THE COURT: It's getting brought up?

1 THE COURT DEPUTY: Yes.

2 THE COURT: Okay. All right. So once they
3 bring it up, we'll take a break. It's about five
4 minutes to noon.

5 The question right now is about other people
6 and what they did? What is the relevance here?

7 MR. ZAPPOLO: Because they made the statement
8 to a national publication, not -- international
9 publication that -- the car that Supercar
10 Engineering purchased was not certifiable and could
11 not be driven. It was not street legal. It
12 couldn't be driven on the streets.

13 THE COURT: Let's ask about that car, let's
14 not ask about other people's cars.

15 MR. WEBER: That specific car at issue. The
16 specific car at issue in this case, not anybody
17 else's.

18 THE COURT: All right. Hold on. Hold on.
19 Once you do that, how long do you think the line of
20 questioning will be?

21 MR. ZAPPOLO: Five minutes and we'll break for
22 lunch.

23 (Thereupon, the sidebar conference was
24 concluded.)

25 THE COURT: Okay.

1 BY MR. ZAPPOLO:

2 Q Okay. Mr. Mosler, earlier we touched upon a
3 car that was -- it's been referred to in this litigation
4 as the 2012 RaptorGTR.

5 A Yes.

6 Q You're familiar with the car that we're
7 talking about even though I understand, in fairness,
8 your position is that's not a RaptorGTR, right?

9 A So you're answering the question for me?

10 Q No. I'm just making sure that we understand
11 your position. I don't want to be --

12 A Look, if Todd says it's a RaptorGTR, it's a
13 RaptorGTR. I'm not arguing with what he calls it. He
14 can call it anything he wants.

15 Q Okay.

16 A I've always been supportive of what he's
17 trying to do.

18 Q What did the company call the car when it was
19 sold to Supercar Engineering, Inc.?

20 A Todd's car.

21 Q What did the Bill of Sale say?

22 A I'd have to take a look at it.

23 Q You've bought cars before in your life, right?

24 A Yeah.

25 Q And when the Bill of Sale comes out, it's got

1 the make and the model of the car, right?

2 **A Right.**

3 Q Okay. What did the make and the model of the
4 Bill of Sale of the vehicle that was sold to Supercar
5 Engineering say it was?

6 MR. WEBER: Objection, asked and answered.

7 THE COURT: Overruled.

8 **THE WITNESS: I can't remember.**

9 BY MR. ZAPPOLO:

10 Q Okay.

11 **A If you show it to me, I'll tell you.**

12 Q Now, this litigation has been going on for
13 years, correct?

14 **A Yeah.**

15 Q During all that time have you not taken a
16 moment to look to see what's --

17 MR. WEBER: Objection, argumentative.

18 THE COURT: Sustained.

19 BY MR. ZAPPOLO:

20 Q What about the manufacturer's Certificate of
21 Origin document?

22 **A Why don't you show it to me? I can give you
23 the answer.**

24 Q Well, I'm asking you what you recall, sir.

25 **A I can't recall. I've seen thousands of**

1 documents. I can't recall what each one said in detail.

2 Q Okay. So during the entire course of this you
3 haven't looked at it?

4 MR. WEBER: Objection, argumentative.

5 THE COURT: Objection sustained. Let me see
6 the attorneys again.

7 (Thereupon, a sidebar conference was held.)

8 THE COURT: All right. So now I'm going to
9 break for lunch, okay?

10 MR. ZAPPOLO: Okay.

11 MR. WEBER: Yes, sir.

12 THE COURT: And I'll have them come back at
13 1:15, okay?

14 MR. ZAPPOLO: Yes.

15 MR. WEBER: Yes.

16 (Thereupon, the sidebar conference was
17 concluded.)

18 THE COURT: Okay. All right, Deputy, it's
19 lunchtime. I'm going to release the jurors for an
20 hour and some change. We'll reconvene at
21 1:15 today, just as the past couple of days.

22 Every time I let you go for lunch, you know, I
23 feel obligated to remind you: Please don't discuss
24 this case amongst yourselves. Please don't discuss
25 this case with anyone else. Don't use the Internet

1 or any other electronic device in order to look up
2 the names, places, or people involved in this case,
3 okay?

4 We'll break for an hour and 15 minutes. Get
5 some coffee, enjoy your lunch.

6 (Jurors exit the courtroom at 12:01 p.m.)

7 THE COURT: All right. Mr. Mosler, you're
8 testifying. While you're testifying, you're not
9 allowed to communicate with counsel about your
10 testimony. Do you understand? So you can't
11 discuss this case during the next hour or so.

12 **THE WITNESS: Okay.**

13 THE COURT: Okay. I anticipate you're going
14 to go all day today and overnight, so tonight you
15 won't be able to discuss your testimony with your
16 attorney either, okay?

17 **THE WITNESS: Oh, okay. I thought we were**
18 **leaving at 5 o'clock.**

19 THE COURT: We are. We are.

20 **THE WITNESS: I thought you said we were going**
21 **all night.**

22 THE COURT: We're going to leave at 5:00 and
23 we're going to meet tomorrow -- or on Monday, which
24 I guess means over the weekend you can't discuss
25 your testimony.

1 MR. WEBER: Tuesday, Your Honor. Tuesday
2 we're coming back.

3 THE COURT: Tuesday. So it's quite some time,
4 but, understand, while you are testifying --

5 MR. WEBER: Yeah.

6 **THE WITNESS: Yeah.**

7 THE COURT: -- until you conclude your
8 testimony, you are not to discuss your testimony
9 with your attorney, okay?

10 **THE WITNESS: Okay.**

11 THE COURT: You might be able to discuss
12 things like what time we need to be there on
13 Tuesday. You might be able to discuss things like
14 should I wear this? But as far as substantive
15 information about this case, you are not to discuss
16 with your attorney. Do you understand?

17 **THE WITNESS: Got it.**

18 THE COURT: Okay. All right. We'll take a
19 recess. We'll be back at 1:15.

20 (Thereupon, a lunch break was taken from
21 12:03 p.m. to 1:28 p.m.)

22 THE COURT DEPUTY: All rise. Court is now in
23 session.

24 THE COURT: All right. Please be seated.

25 Let's bring out the jury.

1 THE COURT DEPUTY: Jurors entering.

2 (Jurors entering the courtroom at 1:29 p.m.)

3 THE COURT: All right. Please be seated,
4 everyone.

5 Mr. Mosler, you're still under oath from
6 earlier today. Plaintiff, it's your witness.

7 MR. ZAPPOLO: Thank you, Your Honor.

8 BY MR. ZAPPOLO:

9 Q Mr. Mosler, before we broke for lunch do you
10
11 remember talking about building street legal cars?

12 **A Yes.**

13 Q Okay. By the way, when you were -- what is
14 mosler@rocketmail.com?

15 **A That was an email address I had way back.**

16 Q Okay. I'm showing you what's been marked as
17 Plaintiffs' Exhibit 1171 for identification purposes.
18 Do you recognize that document?

19 **A Yeah.**

20 (Thereupon, Plaintiffs' Exhibit 1171 was
21 marked for identification.)

22 BY MR. ZAPPOLO:

23 Q Okay. And you were here yesterday when I was
24 going through documents, a lot of documents with
25 Ms. Klaker, right?

1 **A Yes.**

2 Q Okay. I'm going to ask you, is there any
3 reason to believe that that's not a true and correct
4 copy of your email on or about the time that it purports
5 to be?

6 **A No.**

7 Q Okay.

8 **A No reason to believe -- to not believe that.**

9 Q I'd like to direct your attention to page 2.

10 **A Page 2?**

11 Q Yeah.

12 MR. ZAPPOLO: Well, as a matter of fact, Your
13 Honor, at this point I'd like to move Defendants'
14 11 -- Plaintiffs' 1171 into evidence.

15 MR. WEBER: I haven't finished reading it yet,
16 Your Honor, give me one minute.

17 Thank you. Your Honor, I object to the
18 relevance of this one.

19 THE COURT: Let me see the attorneys.

20 (Thereupon, a sidebar conference was held.)

21 MR. WEBER: This is from -- it's an email from
22 2006, Your Honor, even before this case, which is
23 2012. I don't see how it has anything to do with
24 any of the questions in this case.

25 MR. ZAPPOLO: It talks about the sequence of

1 events and how my client is going to testify.

2 It's -- the email at page 2 talks about the
3 sequence of events of building their U.S. legal
4 cars at the Florida shop.

5 THE COURT: Okay. All right. I'll sustain
6 the objection. So this is evidence I'm going to
7 carve -- I don't think that prohibits you from
8 saying this is how you build whatever cars in
9 question, but how another car was built is evidence
10 of another time, another place, involving another
11 vehicle. All right. Objection. Sustained.

12 MR. ZAPPOLO: That's the procedure.

13 MR. WEBER: From 2006.

14 THE COURT: All right.

15 MR. ZAPPOLO: I understand, Your Honor.

16 (Thereupon, the sidebar conference was
17 concluded.)

18 BY MR. ZAPPOLO:

19 Q Mr. Mosler?

20 A Yes.

21 Q The sequence of building the MT900S's was --

22 A Yes.

23 Q Do you remember specifically what it was?

24 A No.

25 Q Does the second page of Exhibit 1171 refresh

1 your recollection?

2 **A Down at the bottom? Oh, the sequence of**
3 **events? Oh, I see. Yeah, I see that.**

4 Q Okay. Does that refresh your recollection as
5 to the sequence of events of how U.S. legal cars, like
6 the MT900s's, were built at the Mosler Automotive
7 factory?

8 **A No, I think that was one particular car.**

9 Q Okay. What particular car was that?

10 **A I can't say. It was the one in "Car and**
11 **Driver." I'd have to see the one in the magazine.**

12 Q Okay. So for the "Car and Driver" car --

13 **A Yeah.**

14 Q -- that was the sequence of events?

15 **A Right.**

16 Q Okay. So you understand that this is
17 different from the sequence of events that normally
18 transpired?

19 **A Yes.**

20 Q Okay. What was the sequence of events that
21 normally happened when building a car?

22 MR. WEBER: Objection, relevance.

23 THE COURT: Sustained.

24 MR. ZAPPOLO: Your Honor, may I be heard
25 sidebar?

1 (Thereupon, a sidebar conference was held.)

2 THE COURT: So the evidence of how a vehicle
3 was built, how is that relevant as to how the
4 vehicle in question was built?

5 MR. ZAPPOLO: It directly goes into the issue
6 of they used to ship parts back and forth overseas.

7 One of the issues that Ms. Sylvia Klaker has
8 already testified about is that Mr. Wagner wrecked
9 a car by driving recklessly, et cetera. We intend
10 to put on evidence to say the true cause of that is
11 related to the shipping back and forth overseas of
12 the parts of these cars, et cetera.

13 THE COURT: You can still do that, but how
14 other cars were built is not relevant.

15 MR. ZAPPOLO: It's the company's process of
16 building it.

17 THE COURT: Right. Just because someone did
18 something 100 times one way doesn't mean they did
19 it the first way this time.

20 MR. WEBER: Exactly.

21 THE COURT: That is probative of how that
22 happened in the past with another vehicle. I think
23 you can get into how this vehicle was built, what
24 the process was, and then make your argument that
25 it wasn't your client's fault that the vehicle was

1 destroyed, but evidence of another vehicle is not
2 probative on that issue.

3 MR. WEBER: Exactly.

4 THE COURT: All right. Thank you.

5 (Thereupon, the sidebar conference was
6 concluded.)

7 BY MR. ZAPPOLO:

8 Q Mr. Mosler --

9 A Yeah.

10 Q -- let's talk specifically about the 2012
11 RaptorGTR.

12 A Todd's car?

13 Q Yes.

14 A Okay.

15 Q SEI's car, right?

16 A Todd.

17 Q Okay. We can agree that it was purchased by
18 Supercar Engineering, Inc.?

19 A I guess I'd have to see the exact title. I
20 know it was purchased by Todd.

21 Q Okay. Let's talk about how that car was
22 built.

23 A Yeah.

24 Q Can you explain to the jury how that car was
25 built?

1 A From my recollection, that was what we called
2 the Bricklin car. So I hired a small manufacturer in
3 England called Bricklin Technologies to build 20 cars
4 after painfully discovering that we couldn't build cars
5 efficiently in the U.S., and I thought maybe they could
6 do a better job than I could. And they convinced me of
7 that, and so we wound up -- most of those cars were sold
8 in the UK. Some of them were imported to the U.S., I
9 believe. And Todd's cars -- Todd's car was one of
10 those.

11 Q Okay. So the RaptorGTR --

12 A Yeah.

13 Q -- did that follow the process of the second
14 page of Exhibit 1171?

15 A I think it came into the country as a nearly
16 complete car, so I don't know if that follows this thing
17 or not.

18 Q Okay. Why don't --

19 A There wasn't a lot of normal, we have a lot of
20 different cars. I mean, we didn't sell our cars.

21 Q Let's stay specifically with the 2012
22 RaptorGTR.

23 A Okay.

24 Q You said that it was -- where did -- where was
25 the frame made?

1 **A** **I think that was welded up in the UK,**
2 **Bricklin.**

3 **Q** **Okay. And then where was the engine put on**
4 **that car?**

5 **A** **I can't remember whether they put it in or**
6 **they -- I believe they put it in.**

7 **Q** **Was it ever removed to add things?**

8 **A** **I don't know.**

9 **Q** **Okay.**

10 **A** **Most of the cars I'd say no, but in Todd's car**
11 **maybe it was. I don't know.**

12 **Q** **Okay. Did you have any particular notes or**
13 **anything like that that would refresh your recollection**
14 **as to how that car was built and what sequence or where**
15 **the parts came from, anything like that?**

16 **A** **If you have an email or something, but I**
17 **didn't write it down myself at the time. I didn't keep**
18 **track of it.**

19 **Q** **I'm just asking you because --**

20 **A** **Oh, no, I don't have anything.**

21 **Q** **All right. So that car, the 2012 RaptorGTR --**
22 **let me back up.**

23 You were here yesterday when Ms. Klaker was
24 testifying about a car that Mr. Wagner had an accident
25 in?

1 **A Yes.**

2 Q Do you remember that testimony?

3 **A Yes.**

4 Q Okay. Whose car was that?

5 **A I don't know because they didn't tell me about**
6 **that until well afterwards. I don't know. All I heard**
7 **was it was a client's car. I don't know which car.**

8 Q Okay. Since you don't know whether -- what
9 client's car it was, do you have any understanding as to
10 whether it was a Bricklin car?

11 **A No. I don't know.**

12 Q Okay. Do you have any understanding as to
13 where the tires for that vehicle were purchased?

14 **A No.**

15 Q Do you have any understanding as to what type
16 of tires were on that car?

17 **A No.**

18 Q Do you have any understanding as to how old
19 the tires were on that car?

20 **A No.**

21 Q Same question with Mr. Randy Klaker's car.

22 **A Yeah.**

23 Q Did you have any understanding as to how old
24 his tires were?

25 **A No.**

1 Q Did you have any understanding as to what type
2 of tires they were?

3 A No.

4 Q Did you have any understanding of when the
5 tires were purchased?

6 A No.

7 Q I'm going to show you what is in evidence as
8 Plaintiffs' 1345A through D. I'd like you to flip back
9 to the second page there, B like "boy."

10 A Uh-huh.

11 Q Do you have that picture in front of you?

12 A Yeah.

13 Q Okay. You were here yesterday when Mr. Hassan
14 Abboud testified about that being his car, correct?

15 A Yes.

16 Q All right. Now in that picture we see very
17 distinctive taillights in the back, correct?

18 A Am I looking at the right car? This picture?

19 Q Yes.

20 A Okay. It looks like the regular taillights to
21 me.

22 Q We have four taillights.

23 A Yeah.

24 Q That's the MT900S taillight configuration,
25 isn't it?

1 **A At the time, yes.**

2 Q Okay. Did it ever change?

3 **A It could have. I mean, I don't remember. I**
4 **don't have a specific recollection of it changing.**

5 Q Well --

6 **A I know at the time those were the taillights.**

7 Q Well, when you say it could have, you don't
8 have any specific recollection of it changing, do you?

9 **A No. I remember talk of changing the**
10 **taillights. I don't know if it ever happened. I was in**
11 **St. Croix and wasn't concerned about the taillights.**

12 MR. ZAPPOLO: Okay. Can I have Plaintiffs'
13 Exhibit Number 3 in evidence?

14 Thank you.

15 BY MR. ZAPPOLO:

16 Q I'm going to show you what's been marked as
17 Plaintiffs' Exhibit Number 3 in evidence.

18 **A Yeah.**

19 Q Do you recognize that document?

20 **A Yes.**

21 Q That photograph?

22 Okay. And what's that a photograph of?

23 **A Can you show this to the jury?**

24 Q We can, but I'm just asking you first.

25 **A That's a car in the shop.**

1 Q Okay. Do you know what car that is?

2 A I saw that it was -- it could be anyone, but
3 that looks to me like the same Todd's car.

4 Q That's the 2012 RaptorGTR while it's in
5 progress of being built, correct?

6 A Right.

7 Q And the way we can identify that very quickly
8 from this rearview picture of it or rear-end picture of
9 it is the single taillights, correct?

10 A That would be consistent with the car, sure.

11 Q Okay. And we know that this is built in the
12 Mosler shop --

13 A Yes.

14 Q -- because we can recognize the background and
15 that very particular checkered floor on the right top
16 corner, correct?

17 A Yeah. Absolutely.

18 Q And on the left-hand side there, that scoop --

19 A Yeah.

20 Q -- that's a turbo air intake being worked on,
21 correct?

22 A Yes.

23 Q Okay. So as we discussed, I'm pointing up on
24 the screen now the single taillight, the turbo scoop --

25 A Right.

1 Q -- and the floor of the shop in the
2 background, right?

3 A Right. This started off as just a brand new
4 car, a normal car.

5 MR. ZAPPOLO: Okay. Publishing Exhibit 3 in
6 evidence to the jury, Your Honor.

7 BY MR. ZAPPOLO:

8 Q Now with respect to those taillights, do you
9 remember having any discussions about that with
10 Mr. Wagner?

11 A Not specifically, no.

12 Q Do you remember having discussions with anyone
13 about those taillights?

14 A Yeah. No, I remember there were discussions
15 about the taillights, but I don't remember the
16 specifics.

17 Q Okay. Did anyone ever tell you that the
18 taillights on the MT900S looked too much like Corvette
19 taillights?

20 A They probably did. I don't recall
21 specifically.

22 Q Okay. And Mr. Wagner suggested that they be
23 changed --

24 A Right.

25 Q -- so that the car didn't look like a

1 Corvette, correct?

2 **A Okay. I have no problem with that.**

3 Q Okay. But you were a fan of the Corvette, the
4 four taillights, weren't you?

5 MR. WEBER: Objection, relevance.

6 THE COURT: Overruled.

7 **THE WITNESS: Yeah, but I also wanted to sell**
8 **cars. I was a bigger fan of selling cars.**

9 BY MR. ZAPPOLO:

10 Q Okay. And you thought that the way to sell
11 cars was to make them lighter, correct?

12 **A That's right.**

13 Q All right. And Mr. Wagner thought that the
14 way to sell cars was to have better looking cars with
15 increased horsepower, right?

16 **A Yes.**

17 Q Okay. Now at the time that you had this
18 difference of opinion about what sells cars, Mr. Wagner
19 was working as -- on behalf of Supercar Engineering as
20 the chief engineer at Mosler, correct?

21 **A Yeah, I think he was the only engineer at**
22 **Mosler.**

23 Q Okay. While we're looking for that, there
24 came a time, didn't there, in --

25 MR. ZAPPOLO: Do you have 393?

1 BY MR. ZAPPOLO:

2 Q I'm showing you 393 for identification
3 purposes.

4 A Yeah.

5 Q You were here yesterday. Ms. Klaker said she
6 couldn't identify that car. Can you identify that car?
7 Without showing it to the jury, sir.

8 A Sorry. Yeah, that looks like Todd's car.

9 Q Okay. And do you recognize the background?

10 A Yes.

11 Q Okay. And what's that background?

12 A That's the shop.

13 Q Okay. That's in the back of the Mosler Auto
14 Care Center shop?

15 A Yes.

16 Q And that's the completed 2012 RaptorGTR,
17 correct?

18 A Well, I don't know if it's completed, but it's
19 Todd's car.

20 MR. ZAPPOLO: Okay. At this point, Your
21 Honor, I'd like to move Plaintiffs' Exhibit 393
22 into evidence.

23 THE COURT: Any objection?

24 MR. WEBER: No objection.

25 THE COURT: Madam Clerk, what number is it?

1 THE CLERK: 47.

2 THE COURT: 47, thank you.

3 MR. ZAPPOLO: Thank you.

4 (Thereupon, Plaintiffs' Exhibit 47 was
5 received into evidence.)

6 BY MR. ZAPPOLO:

7 Q So we have, by comparison, the picture of the
8 rear end of the RaptorGTR. And what are these, sir,
9 down here?

10 I'm sorry, if you can look up on the screen.

11 **A Turbocharger. It looks like it.**

12 Q Okay. Now there's one on each side, right?

13 **A Yes.**

14 Q Okay. Now was that a novel configuration for
15 a place to put turbochargers on vehicles at that time?

16 **A I hadn't seen it.**

17 Q Okay. That was an idea that Mr. Wagner came
18 up with, wasn't it?

19 **A Yes.**

20 Q Nowadays are you aware of whether other
21 companies have adopted the same process?

22 **A I am not. I haven't kept up with it.**

23 Q But by comparison, the MT900 had nothing like
24 that in the back, correct?

25 **A Correct.**

1 marked for identification.)

2 BY MR. ZAPPOLO:

3 Q Okay.

4 **A I'm glad you produced these, by the way.**

5 Q Now I'd like to --

6 MR. ZAPPOLO: Your Honor, I'd like to admit

7 Exhibit Number 12 -- excuse me, before I ask

8 that --

9 BY MR. ZAPPOLO:

10 Q Mr. Mosler, 1295 has a number of pictures in
11 it, wouldn't you agree?

12 **A Yes. Good pictures.**

13 Q And could you tell us, just very generally, do
14 those pictures reflect your testimony about the design
15 of the cars and how the framing of them and everything
16 is built?

17 **A No. They were unique to this car.**

18 Q And what car was this?

19 **A This is the Photon.**

20 Q A Photon?

21 **A Yeah.**

22 Q Okay. Now that Photon was completed when?

23 **A I don't know exactly.**

24 Q Does the first page refresh your recollection
25 as to when that was -- that car was completed, the

1 approximate timeframe?

2 **A** **Let me take a look. Well, March 2009, so**
3 **probably not long after that, a few months maybe. It**
4 **looks like it was a couple of months away.**

5 **Q** **That car was -- that car became the Photon,**
6 **correct?**

7 **A** **Yeah.**

8 **Q** **All right. And now the Photon was a car that**
9 **was -- that you had championed and you wanted to be the**
10 **face of the company, wasn't it?**

11 **A** **It's a car I wanted to build. I actually**
12 **wanted to have it for myself.**

13 **Q** **Okay. You weren't building it to be an**
14 **underperformer, were you?**

15 **A** **I was building it to win the Lightning Lap at**
16 **"Car and Driver" with one of my cars in the collection,**
17 **and if somebody else wanted to buy one, we could discuss**
18 **it.**

19 **Q** **Okay. This is about the same time period that**
20 **Mr. Wagner was conceptualizing the MT -- excuse me, the**
21 **2012 RaptorGTR, correct?**

22 **A** **It could be. 2009.**

23 **MR. ZAPPOLO:** And at this point, Your Honor,
24 I'd like to move Exhibit Number 1295 into evidence.

25 **MR. WEBER:** No objection.

1 THE COURT: Madam Clerk, what number?

2 THE CLERK: 48.

3 MR. ZAPPOLO: What number, please?

4 THE CLERK: 48.

5 MR. ZAPPOLO: Okay.

6 (Thereupon, Plaintiffs' Exhibit 48 was
7 received into evidence.)

8 BY MR. ZAPPOLO:

9 Q I'd like you to look at page 2 of that --
10 Well, first we have -- well, the first page of
11 that exhibit shows a Hewland motor plate.

12 A Yeah.

13 Q Would you explain to the jury what is going on
14 there, what that meant?

15 A This car had a Hewland crash box in it so it
16 needed a motor plate.

17 Q So if we go ahead to the second picture --
18 Maybe it's a little blurry right here. Maybe
19 I need to put it up on the screen to make it a little
20 more visible. We'll do it that way too.

21 What is this structure here? If you can look
22 on the screen, sir, what is this structure?

23 A That's the subframe.

24 Q That's the subframe? Okay.

25 And this stuff that the subframe is around is

1 what?

2 **A The motor in it.**

3 Q The motor, okay. And then these tubes right
4 here coming out of --

5 **A Exhaust --**

6 Q -- the motor?

7 **A Exhaust tubes.**

8 Q Exhaust headers?

9 **A You can call them headers, yeah.**

10 Q Okay. And you had -- you were here yesterday
11 when Mr. Hassan Abboud was talking about long tube
12 headers, correct?

13 **A Yes.**

14 Q Okay. And now what's right up over here?
15 Right there where the headers come down and then they
16 scoop back up, what is that?

17 **A I don't know. I can't tell what you're
18 talking about. The what? Does this matter for
19 something?**

20 Q Yes, sir.

21 **A Okay. All right.**

22 Q Is it -- if I were to suggest that that's
23 where the catalytic converter went --

24 **A Oh, yeah, okay.**

25 Q Yes. That's where the catalytic converter

1 was, right?

2 **A Right.**

3 Q Okay. Now, do you know whether that car was
4 built with the catalytic converter that was
5 EPA-certified for the vehicle?

6 MR. WEBER: Objection, relevance.

7 THE COURT: Overruled.

8 **THE WITNESS: This vehicle hadn't -- you know,
9 wasn't -- hadn't been certified yet.**

10 BY MR. ZAPPOLO:

11 Q When it was sold was it ever certified?

12 **A It was never sold as a certified vehicle.**

13 Q Okay. This car was never driven on the
14 street?

15 **A I drove it on the street, yeah.**

16 Q Okay. So you drove a noncertified vehicle on
17 the street?

18 **A I did.**

19 Q Okay. And you mentioned earlier that you
20 would have sold it if somebody wanted to buy it, right?

21 **A No. You know, normally you say "in all
22 fairness." If you want to --**

23 Q Well, in all fairness --

24 **A You always say "in all fairness." I didn't
25 say that. Could we read back what I said?**

1 Q We'll just let everyone recall what you said.

2 A You agree that wasn't what I said?

3 Q My question -- I don't know exactly what you
4 said, but I -- and I'm not here to debate with you, so
5 I'm just going to --

6 A How could you get a quote --

7 Q -- move on and ask another question.

8 THE COURT: All right. So what we're here for
9 right now is Direct Examination.

10 THE WITNESS: Okay.

11 THE COURT: The way it works is the attorney
12 asks the witness questions.

13 THE WITNESS: Okay. Could you please read
14 back the question that he asked me?

15 MR. ZAPPOLO: Ms. Court Reporter, can you read
16 back that question, please?

17 THE COURT REPORTER: "Okay. And you mentioned
18 earlier that you would have sold it if somebody
19 wanted to buy it, right?"

20 THE WITNESS: Right. So, you misquoted me.
21 The answer was -- what I said was that if somebody
22 wanted to buy one, we would have built one for him
23 or something like it.

24 BY MR. ZAPPOLO:

25 Q Okay. All right. Now, this email is

1 referring to that car that became the Photon. It says
2 photos MT900?

3 **A Yeah.**

4 Q So you were calling this car that was going to
5 be the Photon an MT900, correct?

6 **A Yes.**

7 Q But it was going to be different than an
8 MT900, wasn't it?

9 **A Well, it was going to be what it was.**

10 Q Right. So true or false, every car that
11 Mosler ever built was an MT900?

12 **A That Mosler ever built? False.**

13 Q Okay. I apologize. Since it started
14 building -- since it started building MT900s, were all
15 of its cars MT900s?

16 **A I can't say we didn't build the odd car for
17 somebody that wasn't an MT900.**

18 Q Okay.

19 **A But --**

20 Q You would agree with me then --

21 **A -- they were all -- that body style was
22 casually called MT900.**

23 Q Okay.

24 **A We weren't -- it wasn't a legal term.**

25 Q Okay. But Mr. -- the car for Supercar

1 Engineering, Inc. --

2 **A Yeah.**

3 Q -- did not share the same body style and it
4 was recognized to be the RaptorGTR, correct?

5 **A No. Even Sylvia said oh, that's an MT900.
6 They all, in our minds, were MT900s when they had the
7 generic body style. Some of them were modified and had
8 other, you know, reference names given to them.**

9 (Phone rings.)

10 THE COURT: Hold on. Let's wait for the phone
11 to be turned off.

12 JUROR HILLIER: I'm so sorry.

13 THE COURT: Are we ready?

14 JUROR HILLIER: Yes. Sorry.

15 BY MR. ZAPPOLO:

16 Q Do you know how the car -- the 2012 RaptorGTR
17 was certified, what the name it was certified to the EPA
18 under?

19 **A I can't recall.**

20 Q Okay. In fact, when Mosler Auto Care Center
21 sold vehicles, it sold them with any number of different
22 engine, exhaust manifold, headers, catalytic converter
23 configurations, didn't it?

24 **A Could you repeat that? I think the answer is
25 yes, but I just want to hear it one more time.**

1 MR. ZAPPOLO: Can you read that back, please,
2 Ms. Court Reporter?

3 THE COURT REPORTER: "Okay. In fact, when
4 Mosler Auto Care Center sold vehicles, it sold them
5 with any number of different engine, exhaust
6 manifold, headers, catalytic converter
7 configurations, didn't it?"

8 **THE WITNESS: Yes. True.**

9 BY MR. ZAPPOLO:

10 Q I'm showing you what's been marked as
11 Plaintiffs' Exhibit 1149 for identification purposes.

12 I'm going to ask my usual question. Is there
13 any reason to believe that's not a true and correct copy
14 of an email that you received on or about that time?

15 **A It's good. Uh-huh. It's good.**

16 (Thereupon, Plaintiffs' Exhibit 1149 was
17 marked for identification.)

18 BY MR. ZAPPOLO:

19 Q I'm sorry, sir, if you answered that -- are
20 you still reading it?

21 **A I'm sorry. What's the question?**

22 Q Is there any reason to believe --

23 **A No, it's good.**

24 Q It's good? So meaning it's a true and correct
25 copy of your email?

1 **A Yeah.**

2 MR. ZAPPOLO: At this time, Your Honor, I'd
3 like to move Exhibit 1149 into evidence.

4 MR. WEBER: Objection, relevance again.

5 THE COURT: All right. Can I see the
6 attorneys?

7 MR. ZAPPOLO: Yes.

8 (Thereupon, a sidebar conference was held.)

9 THE COURT: Can I have the document? What's
10 the relevance?

11 MR. ZAPPOLO: At the time they were certifying
12 to build the car -- the EPA allowed them to build
13 street legal cars only one way, the way they were
14 EPA-certified. This is a direct indication that
15 they were building them in multiple different
16 configurations that were not compliant with the
17 EPA.

18 Mr. Wagner called that to Mr. Mosler's
19 attention. Mr. Mosler got mad at him, hence the
20 defamation.

21 MR. WEBER: It is nowhere in the allegations
22 in this case ever.

23 MR. ZAPPOLO: It goes to the motivation as to
24 saying Mr. Wagner is crazy.

25 (Thereupon, the sidebar conference was

1 concluded.)

2 THE COURT: Overruled, admitted as --
3 Madam Clerk, is that Number 49?

4 THE CLERK: Yes, Your Honor.

5 (Thereupon, Plaintiffs' Exhibit 49 was
6 received into evidence.)

7 BY MR. ZAPPOLO:

8 Q Now then, let's just go through this email, if
9 we could, to make sure the jury has a complete
10 understanding.

11 This says Subject: Dyno results/exhaust
12 systems.

13 A Yes.

14 Q What does Dyno results mean?

15 A This motor was tested on what's called a
16 dynamometer, which gives you various kinds of
17 information such as horsepower.

18 Q Okay. And just -- I don't think we covered it
19 before, vehicles are -- supercars and everyday vehicles
20 are often measured or compared by their
21 horsepower-to-weight ratio, correct?

22 A Yeah.

23 Q So horsepower is part of a big thing when
24 you're dealing with cars, and especially supercars,
25 correct?

1 **A Yeah.**

2 Q All right. So this was -- who's Mike K?

3 **A He runs the engine shop. He's got his own**
4 **shop there.**

5 Q Okay. That's Mike?

6 **A Mike Kovacs.**

7 Q Mike Kovacs, okay. And his company was
8 called?

9 **A Total Engine Concepts, TEC, T-E-C.**

10 Q TEC, Total Engine Concepts. And Total Engine
11 Concepts operated out of the same building as Mosler
12 Auto Care Center, correct?

13 **A Yes.**

14 Q All right. Did you own Total Engine Concepts?

15 **A I did not.**

16 Q Did you own any part of it?

17 **A No.**

18 Q Okay. So, nevertheless, Total Engine
19 Concepts, Mike Kovacs, wrote to you "Here are the Dyno
20 results for the LS7 for the Photon." What is LS7?

21 **A That's the designation of the Corvette engine**
22 **that was in it.**

23 Q Okay. Remember earlier you testified that
24 these are kind of Frankenstein cars?

25 **A Yeah.**

1 Q Okay. That's because you were taking a Chevy
2 engine and putting it into your car, correct?

3 A In this case, yeah.

4 Q In this case, right.

5 A Well, no, that referred to -- well, it doesn't
6 matter. In this case that's what we were doing.

7 Q Okay. But that's -- that was how Mosler Auto
8 Care Center built its cars from day one, right?

9 A Yeah. We bought parts and assembled them,
10 yeah.

11 Q Right. You bought parts and assembled them
12 and sometimes they were Chevrolet engines that you would
13 assemble into a vehicle and sometimes you'd use
14 Chevrolet engines and another manufacturer's rearview
15 mirrors perhaps, correct?

16 A Always.

17 Q Always. Okay.

18 So that's what you were meaning when you said
19 a Frankenstein car, right?

20 A I can't -- I think so. Yeah, I don't
21 remember. It was yesterday, wasn't it?

22 Q It was yesterday?

23 A Was I on this morning?

24 Q Yes. This morning, sir.

25 A Can I take a nap?

1 Q I'm sure we all wish we could, certainly.

2 A That was this morning?

3 Q In any case, now it says the Dyno results for
4 the LS7 for the Photon. So was this before the engine
5 was actually put into the Photon car for you?

6 A Well, it certainly got put in after this. It
7 was probably in there before. I don't know.

8 Q Okay.

9 A Maybe this is right out of the crate. I can't
10 tell from this.

11 Q All right. Now engine is an LS7 with forged
12 pistons.

13 All right. So that's a Chevrolet engine that
14 Chevrolet typically put into their Corvette and it had
15 forged pistons, correct?

16 A You know, I just know about as much of this as
17 you do. I don't know if that meant -- it looks like
18 that's what it means. I don't know.

19 Q Okay. What is the World Challenge?

20 A Chevrolet had a racing series of Corvettes and
21 they have -- they all use the same stock street motors.
22 And this is to the best of my recollection because I
23 never raced in the series, so I just read about it in
24 "Car and Driver" and things like that.

25 And they would sell engines to be used for

1 people who were racing in that series. You get a better
2 price if you bought an engine that way than if you
3 bought it at the dealer maybe.

4 Q Okay.

5 A So, but that was how we bought our -- some of
6 our engines, I guess, from Chevrolet. At least that's
7 how we bought that engine at that time from Chevrolet.

8 Q This engine had a World Challenge spec --
9 specification camshaft. That was a racing camshaft,
10 right, sir?

11 A Well, it was the camshaft used in that race
12 series. One of the reasons for the engine and the
13 engine -- the series was to improve durability.
14 Chevrolet didn't want their engines blowing up around
15 the track. Most of the modifications were more about
16 durability, but, yes, it was used in a race so you can
17 say it was a racing camshaft.

18 Q Okay.

19 A It was problematic.

20 Q It had World Challenge valve springs and
21 retainers to match the cam, right?

22 A Yeah.

23 Q Because when you change the cam, you have to
24 change other parts in the engine to match it?

25 A Right.

1 Q Okay. It had an upgraded main cap and
2 cylinder head?

3 A Yeah.

4 Q I'm sorry. Cylinder head studs, right?

5 A Yeah.

6 Q And it had upgraded cylinder head studs
7 because that car was producing more horsepower and more
8 pressure, so it had to have upgraded cylinder head
9 studs, correct?

10 A How do you know that?

11 Q I'm asking you. Is that correct?

12 A Oh, you're asking me? No, not necessarily.

13 They might have wanted some that would have lasted an
14 hour under racing conditions because maybe the standard
15 ones would break under racing conditions.

16 Q Now, then we had some things here. Long tube,
17 28-inch long primary inch and 7/8 diameter with 3-inch
18 by 24-inch long tailpipe, standard Dyno air box, no
19 filter on tests, 568-foot pounds at 5200rpm.

20 A Yeah.

21 Q 648-horsepower at 6500rpm.

22 A Yeah.

23 Q So that was one test of this engine with one
24 configuration, correct?

25 A Yeah. Those were the -- those long tube

1 things there, that was a part of the dynamometer. That
2 was Mike's stuff, that wasn't what was in the car.

3 Q But ultimately you did use long tube headers
4 in these vehicles, correct?

5 A I don't know. I'd have to look at the
6 picture, you know, but he would test engines on
7 different headers to compare horsepower. You know, that
8 was part of his testing.

9 Q All right. Nevertheless, to make this shorter
10 and move along --

11 A In fact, I recall a heated discussion about we
12 tried the standard Corvette headers and they actually
13 produced more horsepower than these long tube modified
14 ones, which I wanted in the car. And I know one of the
15 customers wanted the other ones because they thought
16 they looked better in his car, which happened to be a
17 race car so it didn't matter for anything else, but I
18 think the standard Corvette headers actually produced
19 more horsepower than the modified ones.

20 Q Right. And you didn't want to use those, you
21 wanted to use the others, correct?

22 A I wanted to use the standard ones.

23 Q Didn't you just testify that you wanted to use
24 the other ones?

25 A No. I had a customer who wanted them because

1 he said they looked better --

2 Q Okay.

3 A -- even though they produced less horsepower,
4 but that's -- you know, I did not consider myself an
5 expert on finding buyers for these cars.

6 Q Okay. Nevertheless, you would agree with
7 me --

8 A Yeah.

9 Q -- that the cars that came out of the Mosler
10 factory did not have the exact same components as the
11 components that were the factory stock engines, right?

12 A You know, we have to go by a specific car.

13 Q Okay. Can you tell us one car that came --
14 that was sold by Mosler Auto Care Center as an MT900S
15 that was -- the engine and its components were exactly
16 the same as the stock engines for Corvette?

17 A Okay. None of them were exactly the same, so
18 you're correct on that, but they were in the -- they
19 were in a configuration that I believed was consistent
20 with our EPA Certificate of Conformity, you know, what
21 was in it.

22 So like Todd, for example, would have certain
23 ideas that were usually pretty good and he'd test it and
24 it would pass, and so that went on to our EPA
25 certification, but it wasn't exactly what came out of

1 the factory.

2 So just to answer your question, I think it's
3 no, if I remember it correctly.

4 Q At that time the company -- well, Mr. Kovacs
5 felt that the company was losing too much -- that would
6 be too much power through the exhaust system and too
7 much through the drivetrain, and to fix the exhaust
8 would mean trying to fit a long tube header in a very
9 confined space, right?

10 A On the Photon?

11 Q Yes.

12 A I wasn't there in the shop when it was
13 happening, so, you know, he didn't tell me about it.
14 You know, if he said it, he said it.

15 Q By the way, back to -- do you have 1295 up
16 there still, the thick one?

17 A When this was going on, I was in St. Croix,
18 so...

19 Q Right. Okay. Who is Chet Phillip?

20 A Chet Phillip was worked in the shop and he was
21 pretty much the head guy while he was there in the shop.

22 Q Okay. Who is advancedracing.net?

23 A I don't know. I could guess, but I don't
24 exactly know.

25 Q Did Chet Phillip ever move to Indiana and open

1 a shop?

2 **A The specific answer to your question is no.**

3 Q Okay. What's the general answer to my
4 question then?

5 **A You need to re-ask the question.**

6 Q My question --

7 **A Chet Phillip did not move to Indiana to open a
8 shop.**

9 Q Did he move to Indiana?

10 **A Yes.**

11 Q Okay. Did he end up opening a shop in
12 Indiana?

13 **A Not to my knowledge.**

14 Q Did you ever ship a car to Chet Phillip in
15 Indiana in order for him to strip down the car and make
16 it lighter?

17 **A Yes, I did.**

18 Q Okay.

19 **A Well -- yeah, okay, I'll leave it.**

20 Q Okay. And how did Chet Phillip make the car
21 lighter?

22 **A Exactly as you have in those -- those
23 modifications in the diagram were all done in
24 Indianapolis by Chet Phillip.**

25 Q Okay. Now you were trying to save weight when

1 you were building cars, correct?

2 **A Right.**

3 Q All right. One of the ways to save weight was
4 to put smaller catalytic converters on the car, correct?

5 **A That would save weight, yeah.**

6 Q And you did that, didn't you?

7 **A I put as small as I could put on it that would
8 still be U.S. legal if we were going to use them for --
9 you know, sell them to somebody to drive on the road.**

10 Q Okay. What did -- how did you determine which
11 catalytic converter catalyst would be still street
12 legal?

13 **A I relied on Todd for something like that.**

14 Q What about before Mr. Wagner? Was anyone
15 dealing with that?

16 **A There was, you know, at the time. If we did
17 it before that, it would have been whoever was in the
18 shop.**

19 Q Okay. But you made it a point repeatedly to
20 say that Mr. Wagner wasn't an employee of Supercar
21 Engineering, but an independent contractor, correct?

22 **A I made a point to that?**

23 Q Did you ever make a point --

24 **A I don't remember that.**

25 Q -- of stressing that Mr. Wagner was not a

1 Mosler Auto Care employee but rather --

2 **A In this hearing? This trial or previous --**

3 Q No, I'm talking about --

4 **A Oh, before? Yes, okay.**

5 Q Yes. Right? When Todd -- you wanted press
6 releases to say that Mr. Wagner wasn't --

7 **A Yes, yes. I wanted press releases to be**
8 **technically correct, so I would put things like that in**
9 **there.**

10 Q Okay. So to be technically correct --

11 **A Yeah.**

12 Q I think at one point we asked the buck stops
13 with whom, right?

14 **A No.**

15 Q So Mosler Auto Care Center --

16 **A It's the buck started with me.**

17 Q Okay. Well --

18 **A It stopped with all the employees after I gave**
19 **it to them.**

20 Q All right. Well, let's rephrase that a little
21 bit. Who's ultimately responsible for the vehicles that
22 leave the Mosler Auto Care Center --

23 **A I am.**

24 Q -- facility? You personally?

25 **A Yeah. I've never blamed anybody else.**

1 Q Okay.

2 A If it's not right, it's a failure of
3 management.

4 Q And at one point James Todd Wagner came to you
5 and told you --

6 A Yeah.

7 Q -- the catalysts are too small, these cars
8 aren't legal, correct?

9 A I don't recall, but I'll take your word for
10 it.

11 Q Okay. Do you ever recall him telling you that
12 you can't use long tube headers because that's not what
13 the EPA testing was done with?

14 A I don't know the context, so I can't answer
15 that.

16 Q Do you ever remember Mr. Wagner telling you
17 that the flywheels were supposed to be 20 -- let me see.

18 MR. WEBER: 25.8 pounds.

19 BY MR. ZAPPOLO:

20 Q -- 25.8 pounds and you were building cars that
21 had lighter flywheels and therefore they were not
22 compliant with EPA standards?

23 A Yeah, I remember a flywheel discussion. That
24 sounds right, but I don't remember the details.

25 Q Okay. And that conflicted with your

1 methodology or your intended way to build cars lighter,
2 right?

3 **A Always.**

4 Q Okay. So you wanted to build cars lighter and
5 you were willing to use non-EPA regulated parts, and
6 Mr. Wagner told you you can't do that, correct?

7 **A Not true. That was three parts and all those**
8 **parts are not true.**

9 Q Let's talk about something else.

10 Mr. Chet Phillip, one of the other ways he made
11 the car lighter was he took the tubes, the body tubes
12 and those body tubes, how were they made?

13 **A They were fabricated.**

14 Q Okay. And instead of manufacturing those
15 tubes at .083 inches, he made them at .049 inches,
16 correct?

17 **A Something like that.**

18 Q Okay. But the cars hadn't been crash tested
19 with the tubes at .049 inches, had they?

20 **A No.**

21 Q Okay. So you took thinner tubing --

22 **A Yeah.**

23 Q That was the structure for the car, you made
24 it thinner?

25 **A Yeah.**

1 Q And Mr. Wagner told you that you couldn't do
2 that, didn't he?

3 A I don't remember him saying that, but he might
4 have.

5 Q And that tubing -- shrinking down that tubing,
6 that's a safety feature for those cars, isn't it?

7 A I mean it is something that adds to safety,
8 sure.

9 Q Okay. So when you made the engine EPA
10 modifications that caused more pollution; and when you
11 made the frame modifications, that made the cars less
12 structurally sound and less safe, wouldn't you agree?

13 A You know, it's possible, but not necessarily,
14 okay. I don't want to get defensive, but they were done
15 in a way where, in my judgment and Chet's judgment, they
16 were safe enough. You know, they were adequately safe.

17 And that car was never sold as a street car.
18 It was never going to be sold as to somebody to run in
19 the street except me.

20 Q But your mission with Mosler Auto Care Center
21 was to build street legal cars that could be raced on
22 the weekend, correct?

23 A It was to build street legal cars that would
24 outperform on the track, so I would have to say, no,
25 your statement is not correct.

1 Q Didn't you mention earlier in your testimony
2 that you wanted people to be able to race it at the
3 track and drive it home?

4 A That was in a different context.

5 Q What context was that?

6 A Well, for one thing, they didn't have roll
7 cages in them so you can't enter them in a race. You
8 know, that statement makes, like, no sense.

9 Q But you wanted the vehicles to be as capable
10 as race cars, didn't you?

11 A I wanted them to be able to run faster laps
12 than any other car manufactured U.S. legal.

13 Q Laps on race tracks?

14 A Yes.

15 Q Okay.

16 A They have events called Track Days where
17 people take out their street cars and they run them
18 around the track. It's not racing.

19 Q I'm showing you what's been marked as
20 Plaintiffs' Exhibit 1148 for identification purposes.

21 Same question as usual: Is there any reason
22 to believe that Plaintiffs' Exhibit 1148 is not a true
23 and correct copy of your email on or about the time it
24 was sent?

25 A It looks good, yeah.

1 (Thereupon, Plaintiffs' Exhibit 1148 was
2 marked for identification.)

3 MR. ZAPPOLO: Okay. At this time, Your Honor,
4 I'd like to move Exhibit 1148 into evidence.

5 THE COURT: Defense?

6 MR. WEBER: Can I have a second, Your Honor?
7 It's a big document here.

8 Objection on relevance, Your Honor.

9 THE COURT: Let me see the attorneys.

10 (Thereupon, a sidebar conference was held.)

11 MR. ZAPPOLO: It talks about the things the
12 witness was just talking about here. We have the
13 .049 inches thick and the honeycomb tube --

14 THE COURT REPORTER: Mr. Zappolo, I can't hear
15 you.

16 MR. ZAPPOLO: It talks about all of the
17 different changes that were going on. He said
18 that's how you build a sports car, which is
19 Mr. Mosler's -- I'm just taking the point home that
20 it's very common knowledge in this company and
21 anyone associated with the company.

22 MR. WEBER: If he wants to build race --

23 MR. ZAPPOLO: Even if it's bigger --

24 MR. WEBER: That is nowhere in the claims or
25 defenses in this case.

1 MR. ZAPPOLO: It's the motivation for why he
2 defamed my client. It's the maliciousness because
3 of the malicious intent of defaming my client.

4 MR. WEBER: It's still nowhere in the claims
5 or defenses of this case.

6 MR. ZAPPOLO: It doesn't have to be. It's
7 motivation for him to prove the malice and the
8 intent to harm Mr. Wagner. Mr. Wagner came out and
9 said they're building sports cars. Mr. Mosler had
10 to convince them that he was crazy.

11 MR. WEBER: We have never made such
12 allegations in this case ever. Your whole
13 allegation for this case is that Savvas Savopoulos
14 was supposedly going to purchase the company and
15 supposedly Mr. Mosler made the supposed statements
16 supposedly to take away Mr. Wagner's
17 distributorship agreement. There's nothing else.

18 MR. ZAPPOLO: We're going to get into the
19 monetary aspects of it as well, but that doesn't
20 mean that none of this is true. It is true and
21 there's documentation.

22 The monetary component is true, but it's not
23 the only component in the motivation to defame
24 Mr. Wagner.

25 MR. WEBER: We object, Your Honor. This is

1 way beyond the scope of the claims and defenses in
2 this case. It's not even relevant to this case.

3 MR. ZAPPOLO: How -- he testified how he
4 builds a sports car in the first line in this
5 document.

6 MR. WEBER: One sports car doesn't mean the
7 sports car is the one at issue in this case. The
8 one sports car at issue in this case --

9 MR. ZAPPOLO: This document at the seventh
10 page -- what started this is the MT900 and he
11 testified under oath -- this is all stuff that he's
12 testifying about.

13 THE COURT: All right. So as far as the basis
14 for examination of the statements that are a basis
15 for the complaint of defamation, statements -- I'm
16 trying to remember the actual complaint.

17 MR. WEBER: I have it.

18 THE COURT: Can I see it? What page is it
19 again?

20 MR. ZAPPOLO: 9 and 10, Your Honor. He said
21 he made the allegations. He made them with
22 malicious intent. This goes to form the basis of
23 his malicious intent. It's the only requirement of
24 the pleading that we show that he did it with
25 malicious intent. No one ever asked my client why

1 do you think he was mad at you or anything like
2 that.

3 MR. WEBER: This is not inside your claims or
4 defenses in this case.

5 MR. ZAPPOLO: It goes to the malicious --

6 MR. WEBER: It's not in the complaint. You
7 know it's not.

8 MR. ZAPPOLO: I'm not going to say another
9 several million dollar swing in a purchase price is
10 not also a motivating factor, but the funny thing
11 is, Your Honor --

12 MR. WEBER: That was your only argument.

13 MR. ZAPPOLO: These things -- we're going
14 through these finding other stuff. These are
15 defendants' documents that were given to us in
16 2019. After I get the documents dumped, I'm
17 supposed to go back and amend everything again?

18 MR. WEBER: That was four years ago. Four
19 years ago you amended --

20 MR. ZAPPOLO: That --

21 MR. WEBER: Hold on. You amended your
22 complaint after you got the documents in 2019.

23 MR. ZAPPOLO: And --

24 MR. WEBER: So if there was a theory after you
25 got those documents in 2019, then you should have

1 amended. You don't amend it during trial.

2 MR. ZAPPOLO: I'm not amending anything during
3 trial.

4 MR. WEBER: You amended it.

5 MR. ZAPPOLO: This is the evidence on the
6 malice. We pled malice just like we need to. You
7 tried to dismiss it. Judge Hafele said it's pled
8 properly and this is the evidence that matches the
9 malice and it dovetails with his prior testimony.

10 (Thereupon, the sidebar conference was
11 concluded.)

12 THE COURT: The objection is overruled.
13 Madam Clerk, what number is that?

14 THE CLERK: 50.

15 (Thereupon, Plaintiffs' Exhibit 50 was
16 received into evidence.)

17 BY MR. ZAPPOLO:

18 Q You have Plaintiffs' 1148 in front of you,
19 right, Mr. Mosler?

20 A Is there numbers? Oh.

21 Q On the back.

22 A Oh, yeah, I got it.

23 Q And that is now in evidence as Plaintiffs'
24 Exhibit Number 50.

25 A Yeah.

1 Q Who is stephane@moslercouk?

2 A **Stephane Cote, he was a mechanic in the UK.**

3 Q Okay. And it says -- now just so that we
4 understand how we read this, the language here that's
5 indented, where it says, for example, "Hi, all. The
6 Photon was originally built with ZMI titanium brake
7 rotors and calipers."

8 A **Right.**

9 Q Then there's some language that's out a little
10 bit --

11 A **Yeah.**

12 Q -- and it says "Actually, we got some steel
13 thin rotor and smaller diameter, maybe 13-inch brakes,
14 with lightweight that was more than enough to lock the
15 wheels at speed."

16 That writing, the second beginning with
17 "Actually" and ending with "to lock the wheels at
18 speed," that was you writing back, correct?

19 A **I think that was them.**

20 Q Oh, that was them?

21 A **Well, maybe it was me. I don't know.**

22 Q All right. So this could have been
23 Mr. Stephane writing to someone else and then the entire
24 thing was forwarded to you?

25 A **Yeah. Yeah.**

1 Q Okay.

2 A It might have been, but it's all good stuff
3 so.

4 Q All right. It's all good stuff. They were
5 making you aware of all the things that were being
6 changed and then your reaction was "That's how you build
7 a sports car," right?

8 A Yeah. Well, this car was built in maybe 2000.
9 That was the original Photon that was used in the
10 MotorTrend test that set nine performance records and
11 established us as the top performance car in the world
12 in that test, which was a record. Nobody else had done
13 that.

14 And then it would up getting sent to England
15 where it was over there and I drove it around. Well, I
16 only drove it once when I was over there. And then they
17 had changed the engine. They put a -- well, a 7-liter
18 engine in it and they had run it.

19 Q Okay. And that's reflected at page 2 of the
20 exhibit, right?

21 A Yeah. These are -- I guess these are all the
22 things we talked about doing or not doing. Yeah, the
23 stock 5.7. I think they put the 7-liter engine in.

24 Q Okay.

25 A And it was -- you know, it was my personal car

1 and they were working on it for me.

2 Q Okay. But that references some of the other
3 testimony that you gave. For example, the .049-inch
4 thick box section, right?

5 A Well, that was what we did on the first
6 Photon, so the second one was just the same as the first
7 one.

8 Q Okay. Now --

9 A We had always determined .049 was adequate, I
10 just wanted to go a little bit overboard. And for the
11 small amount of weight for a street car and the extra
12 safety, we went for the higher gauge.

13 Q So you're crystal clear that the Photon wasn't
14 going to be the new car of the company going forward,
15 right?

16 A I'm not crystal clear, I'm just telling you
17 now it wasn't. We never built any -- that one was built
18 for me and I still have it.

19 Q If someone said something along the lines of
20 the Photon is going to be the, you know, the car or the
21 face of the company going forward, or anything like
22 that, you would have certainly corrected them, right?

23 A What if there were no hypotheticals?

24 Q Well, I just want to know, sir --

25 A Yeah.

1 Q -- if someone would have said that, you would
2 have certainly corrected them, correct?

3 MR. WEBER: Objection, hypothetical.

4 THE COURT: Sustained.

5 **THE WITNESS: Thank you.**

6 BY MR. ZAPPOLO:

7 Q Did anyone ever say anything like that to you,
8 that they understood that the Photon was going to be
9 the -- you know, the key car for MACC going forward?

10 **A I don't recall. They might have. There might**
11 **have been a lot of people that said that, I don't know.**
12 **There certainly wasn't somebody writing a check to build**
13 **it.**

14 THE COURT: Why don't we take a break now for
15 about ten minutes. It's 2:30. I think this case
16 is document heavy and --

17 MR. ZAPPOLO: It is definitely.

18 THE COURT: -- I think the jury needs a brief
19 moment.

20 **THE WITNESS: Is it a.m. or p.m.? Is it**
21 **2:30 a.m.?**

22 THE COURT: Why don't we take ten minutes.

23 (Jurors exit the courtroom at 2:33 p.m.)

24 THE COURT: We'll be in recess for ten
25 minutes.

1 MR. WEBER: Can we talk about the issue for
2 the motivation when we come back, Your Honor?

3 THE COURT: Well, you can go ahead and take a
4 break and -- I guess we can bring it up and talk
5 about it now.

6 So the rationale and the reason I'm letting
7 him do it is I mean it was pled. You know, the
8 pleading is weak and thin I think on that issue.
9 It's not specific, but I don't think it needs to be
10 because it pleads the ultimate issue.

11 Is it addressed in your pretrial stipulation
12 anywhere?

13 MR. WEBER: I don't think so.

14 THE COURT: So absent that, I think I have to
15 give them the ability to go into it and that's why.

16 Frankly, I would love to limit the scope of
17 the litigation, but I don't think I can without
18 creating an issue. I'll let you look into it.

19 MR. WEBER: Yes. Sorry. Take your break,
20 Your Honor.

21 THE COURT: I also anticipate taking another
22 ten-minute break at about 3:30 and then 4:30 if
23 we're still going; but because we're going over all
24 of these documents, I can see them getting a little
25 tired and I don't blame them, so we'll break about

1 every hour for about five, ten minutes.

2 MR. WEBER: Great. Thank you, Your Honor.

3 (Thereupon, a short break was taken from
4 2:34 p.m. to 2:58 p.m.)

5 MR. WEBER: Your Honor, can I finish that one
6 issue real quick?

7 THE COURT: Oh, yes.

8 MR. WEBER: So it's not in the pretrial
9 stipulation, Your Honor, and I want to show you one
10 thing in the motion, if I could. Can I approach?

11 Now, remember Mr. Zappolo just blamed the
12 document production on supposedly not being able to
13 amend his complaint in 2019. This is -- he filed
14 this motion after the document production. Look
15 how he describes the motivation.

16 There's nothing in there about certification.
17 It's all about this alleged -- take advantage of
18 Plaintiffs' efforts to sell MACC to Savvas
19 Savopoulos. There's nothing about selling cars
20 without the EPA certification.

21 THE COURT: What's the docket number?

22 MR. WEBER: Of this motion?

23 THE COURT: Yes. Or when it was filed.

24 MR. WEBER: It's 10/31/2019. They're
25 basically trying to amend their complaint at trial.

1 THE COURT: 10/31/2019?

2 MR. WEBER: Correct. Take a look at page 15
3 of that motion. Page 15, Your Honor.

4 MR. ZAPPOLO: The whole basis for -- and I
5 don't know whether the witness should be sitting
6 here listening to this, but I'll say it anyway,
7 the -- no, actually, I don't want the witness
8 hearing this.

9 MR. WEBER: He's a party to the case. You
10 can't amend -- I mean, he's sitting here when other
11 witnesses are testifying.

12 MR. ZAPPOLO: And this is the first time I'm
13 hearing this argument in front of him, but all
14 right, Your Honor, I'll tell you: The hypocrisy
15 here is rampant, okay. The reckless disregard for
16 Mr. Wagner and his rights that is required to be
17 shown by the punitive -- which is what we were
18 required to show for punitive damages is abundantly
19 evidenced by the fact that every car this company
20 built was an illegal car and the only car that
21 anyone says or suggests is illegal and not legally
22 driven on the roads is the one car that was.

23 MR. WEBER: This is a brand new theory at
24 trial.

25 THE COURT: Hold on. What page are we looking

1 at again?

2 MR. WEBER: 15. 15 of their motion.

3 MR. ZAPPOLO: It's not a new theory.

4 MR. WEBER: It literally says "Motivation for
5 the Malicious Defamation has been Discovered," and
6 he launches into this whole explanation of this
7 theory. There's nothing about their --

8 THE COURT: Give me one moment.

9 MR. ZAPPOLO: You can have more than one basis
10 for someone doing what they're doing.

11 MR. WEBER: He wrote -- he says --

12 THE COURT REPORTER: Wait.

13 MR. WEBER: Oh, sorry. I'll let the judge
14 finish.

15 MR. WAGNER: Count X is about what --

16 MR. ZAPPOLO: Count X, Your Honor, is about
17 defaming the car. That has nothing to do with
18 punitive damages and he's defaming this car.

19 THE COURT: Where's your punitive damage
20 motion?

21 MR. WEBER: 10/31/19.

22 THE COURT: That's the motion?

23 MR. WEBER: Yes, Your Honor.

24 MR. ZAPPOLO: But you're completely ignoring
25 Count X, which is defaming the vehicle.

1 THE COURT: I'm not following the defaming the
2 vehicle. I thought your rationale was that all of
3 this was essentially, you know, bad blood between
4 the two and that was the motivator for the alleged
5 defamation.

6 MR. ZAPPOLO: It is. He's defaming that -- he
7 defamed Mr. Wagner and he defamed the vehicle. And
8 the interesting thing is he says the vehicle is not
9 legal to -- to drive on public streets.

10 The problem is that's the only car this
11 company produced that was legal to drive on public
12 streets, and that's what we're getting into here.

13 THE COURT: Okay. So here's my position: I'm
14 going to overrule the objection. I do think that
15 it is at least the evidence of the motivation for
16 it, but what I don't want to see happen, and I
17 think I'm starting to see a little bit in the
18 trial, less theatrics, more facts presentation
19 wise, okay.

20 All right. Let's bring out the jury.

21 THE COURT DEPUTY: Jurors entering.

22 (Jurors entering the courtroom at 3:03 p.m.)

23 THE COURT: All right. Please be seated.

24 All right. As far as these exhibits, are we
25 done publishing them?

1 MR. ZAPPOLO: Yes, I can take them back.

2 May I proceed, Your Honor?

3 THE COURT: Please.

4 BY MR. ZAPPOLO:

5 Q Mr. Mosler, before we took the break you had
6 testified, I believe, a couple of times that the Photon
7 that you were building was strictly for your own use,
8 correct?

9 A Correct.

10 Q Okay.

11 A Well, I'd say it never got sold anyway. I
12 still have the car.

13 Q Well, that's a different answer, isn't it?
14 You testified repeatedly that the car was for your own
15 use, correct?

16 A Yes, sir.

17 Q All right. If the car was for your own use,
18 there would be no reason for you to have a press release
19 about it, would there be?

20 A There would be plenty of reasons.

21 Q Okay. And so a press release "Warren Mosler's
22 built himself a great car" or something like that,
23 that's not for sale to the public?

24 A At that time, no. The whole press release was
25 to put favorable publicity on the company.

1 Q Okay. I'm showing you what's been marked as
2 Plaintiffs' 636 for identification purposes.

3 And the usual question: Is there any reason
4 to believe that's not a true and correct copy of your
5 email on or about the time it was written?

6 A It looks good.

7 (Thereupon, Plaintiffs' Exhibit 636 was marked
8 for identification.)

9 BY MR. ZAPPOLO:

10 Q Okay. In fact, on June 28, 2010, you asked
11 Mr. Wagner to do a press release for the Mosler Photon,
12 correct?

13 A Uh-huh.

14 Q Is that a yes?

15 A Yeah.

16 Q Okay. And at the last page of that Exhibit
17 Number 636 --

18 A Yeah.

19 Q -- Mr. Wagner did, in fact, draft you a press
20 release, correct?

21 A Yep.

22 Q Now that was for your car that was not for
23 sale, correct?

24 A Right. Let me read the rest of it.

25 Q Why don't you go ahead and read that for the

1 jury.

2 **A Okay.**

3 Q Starting with Mosler --

4 **A I wanted to inform you that our annual**
5 **Lightning Lap event --**

6 Q No, sir. I'm talking about the press release.

7 **A Okay. I'm on the wrong page. Further back?**
8 **Is it up here?**

9 Q Yes. The last page.

10 MR. WEBER: Is this in evidence yet, Scott?

11 MR. ZAPPOLO: I'm sorry, I thought I moved
12 that in. I apologize. Please don't read anything.
13 I apologize, Your Honor. At this point I'd
14 like to move --

15 **THE WITNESS: Okay. Got it.**

16 MR. ZAPPOLO: -- Plaintiffs' Exhibit 636 into
17 evidence.

18 MR. WEBER: No objection, Your Honor.

19 THE COURT: All right. Madam Clerk, what
20 number is this?

21 THE CLERK: 51.

22 THE COURT: Thank you.

23 (Thereupon, Plaintiffs' Exhibit 51 was
24 received into evidence.)

25 BY MR. ZAPPOLO:

1 Q Okay.

2 A Yeah. Right at the bottom, "Pricing for the
3 new Photon starts at 379, is now available for purchase
4 in the United States."

5 THE COURT REPORTER: Can you speak up, please?

6 THE WITNESS: Do I need to read it again?

7 BY MR. ZAPPOLO:

8 Q Well, I asked you to read the entire thing,
9 but you jumped right to the bottom, so --

10 A Right. That's the part you want, right?

11 Q Right at the bottom -- well, actually, no, but
12 okay.

13 A Okay. I'm just trying to save time.

14 Q All right.

15 A What would you like me to read? The whole
16 thing?

17 Q Let me just ask you this: That was a press
18 release that James Todd Wagner did at your direction,
19 correct?

20 A Correct.

21 Q All right. And the information contained
22 within that press release was information that you had
23 given to him like -- I'm sorry, was information you had
24 given to him, correct?

25 A All right. Some of it I got from him.

1 Q Okay.

2 A Probably most of it.

3 Q Now was this an acceptable type of press
4 release?

5 A You know, it was okay. I didn't want to
6 discourage him too much. So words like "demolish,"
7 that's not my language, that's his language.

8 Q Okay.

9 A That type of thing, but it was close enough.

10 Q Okay. But the "ultralight street weapon,"
11 that's a phrase you would use, right?

12 A No. You know, that's Todd, but it's okay, I'm
13 not --

14 Q Didn't you just use the word "weapon" in front
15 of this jury?

16 A Yeah, but I never used it in the press like
17 this. Not in that way, not like Todd. What did he call
18 it? A ultralight street weapon. I don't know.

19 Q Now --

20 A I don't talk about fighting in the streets.

21 Q -- this references that the -- it has a lower
22 drag bodywork that narrows the car by 3.5 inches,
23 correct?

24 A Yes, yes.

25 Q All right. Now that was another issue that

1 you and Mr. Wagner were going back and forth about. He
2 thought a lower, more aggressive stance with a wider
3 body was more appealing to the public --

4 **A Okay.**

5 Q And you wanted to go narrower --

6 **A Yeah.**

7 Q -- for more speed, correct?

8 **A Yeah. For less drag, yeah.**

9 Q Less drag, okay. Thank you.

10 So it is true -- does that refresh your
11 recollection at all as to whether or not Mosler Auto
12 Care Center was going to sell the Photon?

13 **A Well, it's exactly like I said before: If**
14 **someone wanted to buy cars, then we would have to build**
15 **them street legal at their direction. I wasn't going to**
16 **build cars if we didn't have any orders. We didn't have**
17 **any orders and we never got any orders, so I just kept**
18 **the car.**

19 Q Now you mentioned earlier something about a
20 "Car and Driver" event. Can you refresh my recollection
21 as to what you were talking about there?

22 **A "Car and Driver" event? Which one was that?**

23 Q Was I mistaken?

24 **A I think that was the Lightning event, this one**
25 **right here.**

1 Q Okay. Let me ask: Did there ever come a time
2 when the Mosler Photon was featured in the "Car and
3 Driver" magazine?

4 A **Featured? Well, yeah, it was in it.**

5 Q Right. Okay. I'll take those and get them
6 out of your way.

7 I'm showing you what's been marked as
8 Plaintiffs' Exhibit 737 for identification purposes.

9 A **"Car and Driver." "Battle of the Fastest
10 20" --**

11 Q Sir, don't read anything --

12 A **Oh.**

13 Q -- because there are rules about what we can
14 discuss.

15 A **Okay.**

16 (Thereupon, Plaintiffs' Exhibit 737 was marked
17 for identification.)

18 BY MR. ZAPPOLO:

19 Q At this point do you recall Exhibit 737 coming
20 out?

21 A **I don't recognize it. I know it came out, but
22 I don't recognize this particular version.**

23 Q If you would flip --

24 A **I think I read it online.**

25 Q Okay. If you would flip to page 49 on the

1 bottom right, it looks like this.

2 **A Yeah. This one here?**

3 Q Yes.

4 **A Okay.**

5 Q Now you said a minute ago you thought you had
6 read it online?

7 **A Right.**

8 Q Okay. Does Exhibit Number 737 look like the
9 article that you read back whenever you read it?

10 **A Yeah. Exactly.**

11 Q Okay. So you were aware of this article at
12 the time that it came out, correct?

13 **A Uh-huh. Yes.**

14 MR. ZAPPOLO: Okay. Your Honor, at this time
15 I'd like to move Plaintiffs' Exhibit 737 into
16 evidence.

17 MR. WEBER: No objection.

18 THE COURT: Madam Clerk, is that 52?

19 THE CLERK: Yes.

20 THE COURT: Thank you.

21 (Thereupon, Plaintiffs' Exhibit 52 was
22 received into evidence.)

23 BY MR. ZAPPOLO:

24 Q Okay. And we have "Car and Driver" magazine,
25 February 2011, correct?

1 **A Yeah.**

2 Q All right. And if we go back to page 50 --
3 oh, excuse me, 49 --

4 **A Yeah.**

5 Q -- we have the write-up on the Mosler
6 Photon --

7 **A Right.**

8 Q -- along with a very complimentary picture of
9 an orange car. What car is that?

10 **A The Photon.**

11 Q Okay.

12 **A Oh, there you go. I see the color.**

13 Q Now, that article is doing what? What was
14 that whole article about?

15 **A They took all of the latest cars to see who
16 could get around the track the fastest --**

17 Q Okay.

18 **A -- in the least amount of time.**

19 Q And that event was called what?

20 **A The Lightning Lap.**

21 Q Okay. And I think you mentioned that earlier
22 in your testimony, that's why I wanted to be sure.

23 This was the "Car and Driver" Lightning Lap?

24 **A Yeah.**

25 Q Now I noticed on this page that I'm showing

1 you, as part of that exhibit there's like a "5" on it
2 and there are others that are -- like they have
3 things -- different indications.

4 How did the Mosler Photon fair in that
5 Lightning Lap?

6 **A I think it won overall. It was the fastest**
7 **car.**

8 Q Okay.

9 **A The lowest lap time.**

10 Q Okay. But I see in the article they say "We
11 bet the guys at Mosler aren't satisfied."

12 **A Yeah.**

13 Q In fact, you weren't satisfied, were you?

14 **A I was certainly glad that we did all that, but**
15 **my expectations were that it would be, you know, several**
16 **seconds a lot faster.**

17 Q Right. You anticipated that in that years
18 Lightning Lap --

19 **A Yeah.**

20 Q -- your Photon was going to shave four seconds
21 off the prior MT900 time --

22 **A Right.**

23 Q -- at the same event?

24 **A Right, right.**

25 Q Okay. And it didn't, did it?

1 A No.

2 Q And you blamed James Todd Wagner for that,
3 didn't you?

4 A Well, I don't know about blaming him. What
5 are you pointing to?

6 Q Did you have words with Mr. Wagner about that?

7 A Well, I questioned what happened.

8 Q Okay.

9 A Because he was up there, I wasn't there.

10 Q Right.

11 A And apparently there was a -- something in the
12 suspension setup that -- let's put it this way: It was
13 slower in the corners and faster in the straightaways,
14 so we were just wondering what happened. And, you know,
15 so I questioned him about the suspension setup and what
16 he had done with it.

17 Q And you're telling this jury your competitive
18 nature didn't take over and you didn't accuse him of
19 setting up the car wrong for that event?

20 A I questioned whether he set it up right or
21 wrong. I asked him for all of the specs and looked
22 through them.

23 Q Okay. Just very polite and matter-of-factly
24 you had that conversation with him, right?

25 A I could have been -- I don't know.

1 Q Huh?

2 A I could certainly -- I'm not the type that
3 like raises my voice or shouts or anything, but I could
4 have been stern.

5 Q You were upset because the car didn't perform
6 the way you anticipated it would, correct?

7 A I was disappointed. I wanted to know why.

8 Q You had a lot of money into the Photon, didn't
9 you?

10 A I mean, I had the cost of building the car,
11 the same as any other car.

12 Q You considered this performance of the Photon
13 a public embarrassment, didn't you?

14 A An embarrassment? No.

15 Q Yes.

16 A We won over all of the other cars. It was a
17 personal thing for me versus my -- you know, that we
18 were unable to, like, do better than we did the last
19 time, but we certainly -- look at the cars we ran. You
20 know, it wasn't like we were the top performance car in
21 the world.

22 Okay. It could have been faster and that's
23 what we wanted to know, what can we do to fix it to make
24 it better?

25 Q But to be a top performance car of the year

1 you need to be passionate, don't you?

2 **A I don't know. That might be one of my faults,**
3 **that I'm not passionate enough, if that's what you're**
4 **saying.**

5 Q No. I'm asking you: Don't you feel like you
6 were passionate about making -- having a car that would
7 do better than the old car?

8 **A I was focused on it, yeah.**

9 Q Now notwithstanding the car's performance
10 there, did you ever hear James refer to an article as a
11 "Fabulous Photon" article?

12 **A I don't know. I can't remember.**

13 Q Did the Photon get good press?

14 **A I don't remember bad press. Maybe it did, I**
15 **don't know.**

16 Q Did you ever remember being upset about
17 anything of a writer had written about the Photon?

18 **A Possibly writers -- I don't know about upset,**
19 **but writers write things all the time that are**
20 **completely wrong. So it wouldn't surprise me that it**
21 **happened with the Photon, but I can't remember it.**

22 Q I'm showing you what's been marked as
23 Plaintiffs' Exhibit 297.

24 **A Thank you.**

25 (Thereupon, Plaintiffs' Exhibit 297 was marked

1 for identification.)

2 BY MR. ZAPPOLO:

3 Q Do you recall that document, sir?

4 A **Not yet.**

5 Q Take a look. I'm not trying to rush you.

6 A **Each page looks good so far.**

7 Q Okay. My question is: Do you recall
8 receiving and reviewing that article on or about the
9 date that it was purportedly written on the first page?

10 A **It says right here "Warren Mosler's clear
11 mission is to build amazing cars, not to sell them."**

12 Q Mr. Mosler?

13 A **Yeah.**

14 Q I'm sorry, the rules --

15 A **Oh, I'm sorry.**

16 Q We can't read things until we get them into
17 evidence and that's what I'm trying to do.

18 A **Oh.**

19 Q Do you have any reason to believe this is not
20 a true and accurate copy --

21 A **No, I do not.**

22 Q -- of the article that you reviewed on or
23 about that time?

24 A **No.**

25 MR. ZAPPOLO: Okay. Your Honor, at this point

1 I'd like to move Plaintiffs' Exhibit 297 into
2 evidence.

3 MR. WEBER: No objection.

4 THE COURT: Madam Clerk, is that Number 53?

5 THE CLERK: Yes, Your Honor.

6 THE COURT: Thank you.

7 (Thereupon, Plaintiffs' Exhibit 53 was
8 received into evidence.)

9 BY MR. ZAPPOLO:

10 Q So this article is entitled "First Drive:
11 Mosler Photon," and it's dated May 5, 2011, correct?

12 A Yeah.

13 Q Okay. Would you agree with me that this was a
14 flattering article of the Mosler Photon?

15 A So far, what I've read, it looks good.

16 Q Okay. Do you recall being upset about any
17 part of this article?

18 A I don't recall. I'm trying to read it to see
19 if there's something in here.

20 Q Okay.

21 A Well, it says in here that "Mosler has just
22 announced a new partnership with Santa Fe Digital
23 Media."

24 Q Right. And that's --

25 A I might not have liked that part.

1 Q Okay. So that's on the second, third,
2 fourth -- that's on the sixth page of the exhibit,
3 correct?

4 A Okay.

5 Q Is that a yes?

6 A I didn't count the pages.

7 Q All right. I'll go ahead and represent to you
8 that that's on the sixth page of the exhibit. And I'd
9 like to cull that up for the jury to see.

10 A It says here I designed the nose after the
11 face of the most beautiful, exotic woman I've ever seen.
12 I probably wasn't happy with that, but --

13 Q Okay. Now the part that you just read from,
14 on page 6 of the exhibit, read along with me, if you
15 would.

16 A Oh, that's just --

17 Q Mosler --

18 A Oh, no. Wait until you see the 2012 Raptor,
19 so that wasn't about it.

20 Q Mosler --

21 A Go ahead.

22 Q "Mosler has just announced a new partnership
23 with Santa Fe Digital Media that will allow it to
24 perform computational fluid dynamics and structural
25 engineering on an ORCA supercomputer capable of five

1 petaflops."

2 **A Yeah.**

3 Q Now, we talked earlier in front of this jury
4 about the fact that these companies want you to use
5 their software and things like that, right?

6 **A Yeah.**

7 Q Okay. So that's kind of along the same lines,
8 right?

9 **A Yeah, except it wasn't true.**

10 Q Right. We're going to get to that, don't
11 worry.

12 **A Okay.**

13 Q "That's computer-geek-speak for five
14 quadrilling calculations per second -- or the computing
15 power of something like a billion and a half iPhone
16 4s."

17 Back then the iPhone 4 was like the premier
18 phone, right?

19 **A Right.**

20 Q Okay. "Just wait until you see the 2012
21 Raptor," says a giddy Wagner.

22 So the author was attributing that quote to
23 James Wagner, correct?

24 **A Yeah.**

25 Q "It's going to blow your mind. It gets a

1 massive injection of sex appeal -- in fact, I designed
2 the nose after the face of the most beautiful, exotic
3 woman I've ever seen. The power plant adds another
4 level of exotic to the surface, featuring twin Garrett
5 turbos as an integral part of the exterior design. With
6 100 more horses and weighing 500 pounds less [than the
7 Photon], the Raptor is going to whip the Pagani Huayra.
8 And with the turbos just inches from the atmosphere, it
9 sounds like you're driving a fighter jet."

10 Now the Pagani Huayra, can you tell anything
11 to the jury about that car at the time?

12 **A I don't know the details of that car. It was**
13 **a high-dollar -- I don't even know where it was**
14 **produced.**

15 Q The car was about \$2 million, wasn't it?

16 **A It could have been, yeah.**

17 Q Okay. So Mr. Mr. Wagner was telling this
18 person that he thought that the 2012 RaptorGTR was going
19 to whip the Pagani Huayra --

20 **A Yeah.**

21 Q -- a \$2 million car, right?

22 **A Yeah.**

23 Q Okay. And it says "And here we were, not even
24 done being excited about the Photon yet. Stay tuned."

25 **A Yeah.**

1 Q And then it says "On Sale: Now." It doesn't
2 say Mr. Mosler's private vehicle, right?

3 "Price: \$394,500," and the engines and specs.

4 A Right. It doesn't say that, but it wasn't
5 this particular car that was for sale.

6 Q Okay. And you would agree with me that this
7 is a very flattering article about the Photon, isn't it?

8 A Overall. I don't see any problem with what
9 they said about the Photon.

10 Q Right. But you did have an issue with that
11 portion that we just read to the jury, didn't you?

12 A When I read it, it kind of rubs me the wrong
13 way.

14 Q Okay. It rubbed you the wrong way back on
15 May 5, 2011, didn't it?

16 A I don't remember, but obviously it did if
17 you've got something to show me.

18 Q Well, do you have any recollection about being
19 upset with James Todd Wagner after reading that article?

20 A I don't recall.

21 Q You seemed to go right to the sixth page of it
22 and tell us that was what you took issue with.

23 MR. WEBER: Objection, argumentative.

24 THE WITNESS: Because you weren't watching me
25 read the whole thing.

1 THE COURT: Sustained.

2 BY MR. ZAPPOLO:

3 Q Okay. Moving along.

4 A I'd like to state for the record that I read
5 the article from the beginning and didn't notice that
6 page until I got to it.

7 Q Mr. Mosler, I'm showing you what's been marked
8 as Plaintiffs' Exhibit Number --

9 A Can the jury see this?

10 Q I just had it up on the screen, sir.

11 A Okay. The last page is particularly
12 descriptive.

13 Q Okay. Sir, I'm going to ask you questions,
14 your attorney can ask you questions when we get done,
15 okay. I'll take those to make sure we don't mix them
16 all up.

17 I'm showing you what's been marked as
18 Exhibit 1240 for identification purposes.

19 A Yeah.

20 (Thereupon, Plaintiffs' Exhibit 1240 was
21 marked for identification.)

22 BY MR. ZAPPOLO:

23 Q Do you recognize that document?

24 A Yes.

25 Q Is there any reason to believe that's not a

1 true and correct copy of your email on or about the time
2 it was written?

3 **A No.**

4 MR. ZAPPOLO: Okay. At this point, Your
5 Honor, I'd like to move Plaintiffs' Exhibit 1240
6 into evidence.

7 MR. WEBER: No objection.

8 THE COURT: Madam Clerk, that's 54?

9 THE CLERK: Yes, Your Honor.

10 THE COURT: Thank you.

11 (Thereupon, Plaintiffs' Exhibit 54 was
12 received into evidence.)

13 BY MR. ZAPPOLO:

14 Q Now, Mr. Mosler, who is Thomas Olofsson?

15 **A He worked for me for my company at AVM.**

16 Q Okay. AVM is what?

17 **A It's a securities dealer.**

18 Q Okay. So you were forward -- and this
19 document says "regarding Mosler Photon in automobile
20 magazine." That was referring to Exhibit 53 that is in
21 evidence now, correct?

22 **A Yeah. That means there's a prior email
23 somewhere.**

24 Q Well, it's referring to this document that
25 I've got up on the screen --

1 **A Yeah.**

2 Q -- that we were just looking at, right? The
3 article?

4 **A Yeah.**

5 Q Okay. So if we read this, we read this from
6 the bottom up, right?

7 **A Yeah.**

8 Q Okay. And here, on the second page, we have
9 some reviews and other things.

10 I need to ask you something. Do you -- back
11 then did you put -- have a thing called a Google Alert?

12 **A Maybe.**

13 Q Do you know what a Google Alert is?

14 **A Yeah.**

15 Q Could you explain to the jury what a Google
16 Alert is?

17 **A You give Google the name -- a name out of a
18 series of letters or whatever you want to give it and
19 then if that shows up on the Internet, it sends you
20 those articles.**

21 Q Okay. And you, in fact, during that time
22 period, used to have a Google Alert for Mosler, correct?

23 **A Yeah, probably.**

24 Q Okay. So whenever something hit the Internet
25 with "Mosler" in it, you got an alert from Google,

1 right?

2 **A Yeah, right.**

3 Q So you knew the instant things came out online
4 about Mosler, right?

5 **A Well, I'd see the headline, yeah.**

6 Q Right. And then you would go ahead and look
7 at it if you wanted to?

8 **A Yeah.**

9 Q Okay. So here we have -- on May 6th you wrote
10 and you attached this article, correct?

11 **A Yeah.**

12 Q Okay. And then Mr. Olofsson wrote back -- you
13 wrote to him at 7:33 attaching the article. At
14 9:12 a.m. he wrote back "Do you have one for me."

15 **A Right.**

16 Q Okay. Indicating that he wanted to buy it,
17 right?

18 **A No. I was going to give it to him.**

19 Q Oh, okay.

20 **A He wasn't buying it.**

21 Q Oh, okay. Just like you had given one to Alan
22 Simon?

23 **A Yeah.**

24 Q Did you give one to Ms. Klaker's husband?

25 **A Randy, yeah.**

1 Q Did you give another car to Jill Wagner?

2 A I think Jill got a Consulier.

3 Q Okay. And when Mr. Wagner was starting at the
4 company, wasn't he supposed to get a car?

5 A I don't remember.

6 Q Okay. He didn't get one, though, did he?

7 A I don't remember. I don't remember giving him
8 a car.

9 Q Do you remember having a conversation with
10 Mr. Wagner about him foregoing the car because the
11 company -- he was trying to make the company successful?

12 A Oh, could have been, yeah. I mean, I don't
13 remember, like, not doing what I said I would do
14 unless --

15 Q Okay.

16 A -- there's some good reason. I always do what
17 I say I'm going to do.

18 Q So you said "For sure," right?

19 A I said what?

20 Q You wrote back to him "For sure"?

21 A Yeah, yeah.

22 Q And that didn't mean he was going to buy one.
23 You were going to give him one, right?

24 A Right.

25 Q Okay. And then he wrote back at 9:15 a.m.,

1 like right away --

2 **A Yeah.**

3 Q -- "Seriously - do you have any available
4 now?" And you wrote back at 9:22 --

5 **A Yeah.**

6 Q -- "The only Photon is the one in the UK. You
7 can have it after it runs on Top Gear if you want."
8 What is Top Gear?

9 **A It was a car show or something in the UK.**

10 Q Okay. "Or we can make a new one in Florida
11 which will take the rest of the year" --

12 **A Yeah.**

13 Q -- "or would you want a preowned one that
14 could be rebuilt to your specs as desired"?

15 **A Yeah.**

16 Q Now, do you know whatever came of that?

17 **A He took a standard MT900 base model.**

18 Q Okay. Now when you were going to build him
19 one in Florida that would take the rest of the year, you
20 were going to build him a Photon, right?

21 **A This is a hypothetical, right?**

22 Q Well, that's what you meant when you said "We
23 could build you one, a new one." You were going to
24 build a new Photon for him, right?

25 **A Well, a new car for him.**

1 Q Okay.

2 A If he wanted a Photon, I would have had to --
3 I would have either talked him out of it or figure out
4 how to do that before the end of the year. I don't know
5 if I could have done that.

6 Q Just so we're clear, you said in the article
7 about a Photon.

8 A Yeah.

9 Q He says "Do you have one for me?" He was
10 referring to a Photon?

11 A Right.

12 Q You said, "We could build you one, but it
13 might take until the end of the year," correct?

14 A Yeah.

15 Q So you were talking about building him a
16 Photon?

17 A Do you see at the top where he says
18 "Seriously"? We used to tease each other, "Yeah, for
19 sure." You know, that was like banter. And then he
20 goes "Seriously - do you have any available now"?

21 Q Didn't you just tell this jury you do what you
22 say?

23 A Yeah.

24 Q Okay.

25 MR. WEBER: Objection, argumentative.

1 THE COURT: Sustained.

2 THE WITNESS: Okay. And then it says "The
3 only Photon is the one in the UK." So the one we
4 have here I said wasn't available.

5 I said the only one was the one in the UK. I
6 didn't offer him the one we have here.

7 BY MR. ZAPPOLO:

8 Q You offered him the one that was in the UK
9 because that was the only one, correct?

10 A The only one available, see...

11 Q You said the only Photon --

12 A "Do you have any available now?" You got to
13 put things in context to get the actual situation.

14 Q All right. How many Photons --

15 A "Do you have any available now?"

16 "The only Photon is the one in the UK" --

17 Q Right.

18 A -- to his question about what's available now.

19 Q Okay. So there was more than one Photon?

20 A Yes.

21 Q Okay.

22 A We've already established that. You've
23 already given me build things on both Photons.

24 Q Well, we had the Photon from years prior, and
25 then this one that came out in 20 --

1 **A** **Yeah. The Photon where you showed me the .049**
2 **tubes, that was in the UK with Stephane. It was still**
3 **there. That was the MotorTrend car that was on the**
4 **cover of MotorTrend.**

5 Q Nevertheless --

6 **A** **"Nevertheless."**

7 Q -- you said "We can make a new one in Florida
8 which will take the rest of the year."

9 **A** **Yeah.**

10 Q Simple question --

11 MR. WEBER: Objection, asked and answered,
12 relevance.

13 MR. ZAPPOLO: I haven't asked the question
14 yet, Your Honor.

15 THE COURT: Finish your question.

16 BY MR. ZAPPOLO:

17 Q -- did you have EPA certification to build a
18 Photon in that year?

19 **A** **We had EPA -- I could have built an**
20 **EPA-certified car. It would have had an EPA-certified**
21 **motor in it, which would have been the exact same car**
22 **that I've been calling the Photon.**

23 Q Right. You would have had to have built
24 him -- let's see. What year is this, 2011? Was there a
25 certification --

1 A Yeah, I might not have --

2 Q -- for any vehicles in 2011?

3 A It would have -- you know, it would have had
4 to have been -- I could have sold him a leftover 2004
5 maybe.

6 Q Right.

7 A Which is what he actually bought. I think he
8 bought a leftover 2004.

9 Q Well, the only EPA certifications that the
10 company got was for a 2004 MT900, correct?

11 A Yeah.

12 Q And a 2009 MT900, right?

13 A Yeah.

14 Q Or a 2012 RaptorGTR, correct?

15 A Say that again.

16 Q Or a 2012 RaptorGTR, correct?

17 A I don't know. I'd have to look at the
18 documentation. By that time I wasn't paying much
19 attention.

20 Q Okay.

21 A But I know we're talking about Tommy here,
22 which car I could have given him, and I think he wound
23 up with -- I think he did wind up with a 2004, but it
24 might have been a '9. It was a silver car.

25 Q Now after that article came out did you tell

1 anyone that James Wagner needed to have his mouth
2 wrapped in duct tape?

3 **A Well, I must have or you wouldn't have asked**
4 **the question, so...**

5 Q Okay. Well, do you recall that?

6 **A I don't recall that, no.**

7 Q I'm showing you what's been marked as 1359B.

8 **A Yes.**

9 (Thereupon, Plaintiffs' Exhibit 1359B was
10 marked for identification.)

11 BY MR. ZAPPOLO:

12 Q Same question: Is there any reason to believe
13 that that's not a true and correct copy of your email,
14 sir?

15 **A That's a true and correct copy of my email.**

16 Q Okay. And if you look down at the bottom of
17 the first page, the second line up from the bottom, on
18 the right-hand side --

19 **A Oh, yeah, yeah.**

20 Q -- does that refresh your recollection as to
21 whether you ever told anyone that Todd, Mr. Mosler --
22 or, excuse me, Mr. Wagner needs his mouth wrapped in
23 duct tape?

24 **A Yeah, it looks like I did say that.**

25 MR. ZAPPOLO: Okay. At this point, Your

1 Honor, I'd like to move 1359B into evidence.

2 MR. WEBER: No objection.

3 THE COURT: Admitted as 55, Madam Clerk?

4 THE CLERK: Yes, Your Honor.

5 **THE WITNESS: It was definitely critical.**

6 MR. ZAPPOLO: I'm sorry, what was that, Your
7 Honor?

8 THE COURT: 55.

9 MR. ZAPPOLO: Thank you.

10 (Thereupon, Plaintiffs' Exhibit 55 was
11 received into evidence.)

12 BY MR. ZAPPOLO:

13 Q Now, who's Tom Marsh?

14 **A Tom Marsh was the independent candidate for**
15 **governor in 2010 in Connecticut when I was running for**
16 **senator in Connecticut in 2010.**

17 Q Okay. So did you forward that article to him?

18 **A I think that's what this shows.**

19 Q Look down here.

20 **A I think that's what it shows, yeah.**

21 Q On May 6th, 6:55 a.m., automobilemag.com?

22 **A That's what it looks like, yeah.**

23 Q And did you write to Mr. Marsh --

24 **A Yeah.**

25 Q -- as well as other undisclosed recipients?

1 Do you remember who you sent that email to?

2 **A I don't.**

3 Q Okay. But at least Mr. Marsh because he sent
4 it back to you, correct?

5 **A Yeah.**

6 Q Okay.

7 **A It should be in your documents.**

8 Q You wrote "A good write-up, but the claimed
9 quotes from me were fabricated."

10 **A Uh-huh.**

11 Q Right?

12 **A Uh-huh.**

13 Q Now, you made that same mistake just now in
14 front of this jury -- didn't you? -- when you were
15 reading that section of the article where Mr. Wagner was
16 being quoted about the 2012 Raptor?

17 MR. WEBER: Objection, mischaracterizes the
18 testimony.

19 THE COURT: Objection sustained. Let's
20 rephrase your question.

21 BY MR. ZAPPOLO:

22 Q When we were reviewing this page of that
23 article, didn't you initially say --

24 **A Oh, we can have it read back.**

25 Q -- that you were misquoted?

1 **A We can have it read back.**

2 Q I don't want to take all the time, I just --
3 you don't recall that?

4 **A I said something. It might have been that,**
5 **you know, what I initially --**

6 THE COURT: All right. Let's move along.

7 MR. ZAPPOLO: Fair enough.

8 BY MR. ZAPPOLO:

9 Q So my question, sir, is --

10 **A Yeah.**

11 Q -- what, if anything, did you do to correct
12 the author of that article when you thought that the
13 quotes from you were fabricated?

14 **A First of all, I'd have to go back and read the**
15 **article again. I don't think I did anything, but I**
16 **don't know that it's not true without rereading the**
17 **article.**

18 Q At the time you said that the claimed quotes
19 were fabricated, right?

20 **A Right. But I'd have to go back now and see**
21 **what they were that I said were fabricated. I can't --**
22 **I don't remember. There was a lot in that paragraph**
23 **that you said, and I don't know if there was anything he**
24 **said about where he quoted me.**

25 I know one time he was talking about the 2012

1 car and I didn't realize that's what he was talking
2 about. There was a quote about that, but I don't
3 remember this without going back and looking at the
4 article --

5 Q Okay.

6 A -- to see what he -- I might have thought he
7 said about me.

8 Q Now --

9 A Obviously I thought he said some things were
10 from me. That's not what I -- what happened when I read
11 the article.

12 When I read the article, I thought he was
13 talking about the Photon and it turned out he was
14 talking about the GTR or whatever it is, Raptor, and
15 that was what I remarked that I had overlooked. I
16 didn't say anything about claimed quotes from me that
17 were -- when I --

18 Q You weren't referring to the claimed quotes
19 from you?

20 A Not what I remember. I remember referring to
21 the fact that it was a Raptor when I thought it was a
22 Photon.

23 Q Okay.

24 A Where he started talking about the performance
25 or the horsepower, I just said that's not right. And

1 **then I said oh, he's talking about the Raptor, it's not**
2 **the Photon.**

3 Q Okay. When you wrote --

4 **A Yeah.**

5 Q -- "A good write-up but the claimed quotes
6 from me were fabricated" --

7 **A Yeah.**

8 Q -- you were not talking about the quotes from
9 you?

10 **A I'm talking -- I didn't say that. You keep**
11 **doing this.**

12 Q I'm sorry, sir.

13 **A I'm talking about the quotes from me. I was**
14 **not talking about my miss -- my quick misread where I**
15 **thought he was talking about the Photon when he was**
16 **talking about the Raptor, okay.**

17 **Why won't you just give me the article? I'll**
18 **show you.**

19 Q Let's just keep moving on.

20 **A Oh, okay.**

21 Q Now, Mr. Marsh you said was -- you said he was
22 running for governor or something?

23 **A Yes, governor of Connecticut.**

24 Q And he was tied in somehow with Congress,
25 correct? Or he was in the Washington, D.C. area?

1 A I think he spoke with members of Blumenthal's
2 D.C. staff, so he was talking to -- Blumenthal was -- by
3 this time he was the senator of Connecticut and so he
4 was talking to his staff perhaps in D.C., so that was
5 what you were getting at?

6 Q Okay.

7 A So he was the mayor in Vermont or town manager
8 at that time and somehow he dropped in on Blumenthal's
9 office because we had met him while campaigning in
10 Connecticut.

11 Q And this person was trying to coordinate a
12 meeting between you and senators that you could walk
13 with them between -- while they were going from one
14 building over to the Senate building, correct?

15 A Okay. Where is this now? Oh, so the two of
16 you can continue your conversation on the walk over.
17 Since I guess the last email I sent indicated that he
18 had a meeting in the Senate building at around 4:30, so
19 the two of you can continue the conversation and walk
20 over.

21 I remember meeting with Blumenthal at that
22 time with him in D.C.

23 Q What were you meeting with him about?

24 A I think it was the same trip. To discuss, you
25 know, monetary policy economics now that he won as

1 senator.

2 He and I had met -- I had been running against
3 him and we had some conversations during the campaign,
4 and he very much appreciated what I had to say and
5 wanted to discuss it now that he was senator, so I was
6 talking to him about it --

7 Q Okay.

8 A -- at that point in time.

9 Q I noticed the trade mission to China is
10 referenced in there. That was about the same time that
11 James Todd Wagner was trying to distribute cars in China
12 and Thailand, wasn't it?

13 A Yeah. So --

14 Q Okay. Did you ever put in a good word for
15 Supercar Engineering to distribute your supercars to
16 China?

17 A Okay. He had been working on Tuesday morning
18 to schedule -- I wasn't there to sell the cars. If I
19 had been there acting as a car salesman as opposed to an
20 economic consultant, I would not have ever been invited
21 back.

22 Q Okay.

23 A But anyway, this guy Ben -- I don't know who
24 he was. I didn't know him at all. I only met with
25 Blumenthal and Sanders. I met with Bernie Sanders and

1 **his staff, Matt Starr, who was a friend of mine.**

2 Q Now, at the time that this -- the last several
3 exhibits -- at the time that all that stuff was taking
4 place, do you remember what was going on with respect to
5 negotiations between you and James Todd Wagner about a
6 \$100,000 deposit to purchase Mosler?

7 A **Well, there's a full email chain that's like**
8 **watching the videotapes, and there's hundreds of them,**
9 **and so it's all there.**

10 Q Okay. I'm going to show you what's been
11 marked as Plaintiffs' Exhibit 1269.

12 A **Yeah. May 6th.**

13 (Thereupon, Plaintiffs' Exhibit 1269 was
14 marked for identification.)

15 BY MR. ZAPPOLO:

16 Q Usual question, sir: Do you have any reason
17 to believe that's not a true and correct copy of your
18 email on or about the time that it purports to be?

19 A **I don't have any reason to object.**

20 MR. ZAPPOLO: Okay. At this time, Your Honor,
21 I'd like to move Plaintiffs' Exhibit 1269 into
22 evidence.

23 MR. WEBER: No objection.

24 THE COURT: All right. Madam Clerk, 56,
25 right?

1 THE CLERK: Yes, Your Honor.

2 (Thereupon, Plaintiffs' Exhibit 56 was
3 received into evidence.)

4 BY MR. ZAPPOLO:

5 Q Now tell me when you've had the opportunity to
6 review that because I'm going to ask a few questions.

7 A I reviewed the first page.

8 Q Okay. Well, go ahead and review the whole
9 thing. While you're doing that, can I take these?

10 A Yeah. Okay. Why don't you go ahead and ask
11 your question. I may have to go back and look to answer
12 your question.

13 Q Okay. My question was: Is there any reason
14 to believe that's not a true and correct copy of your
15 email on or about -- oh, we already moved that into
16 evidence, didn't we?

17 Okay. So we read this email backwards, don't
18 we?

19 A Yes.

20 Q Okay. So let's go back to the third page at
21 the bottom.

22 A One, two, three. Okay.

23 Q And James Todd Wagner told you on May 2, 2011,
24 at 11:27 a.m., "Hi, Warren. I'm flying back to LA in a
25 couple of hours. There's a 70 percent chance that I'll

1 come back with a \$100,000 check in hand when I return
2 the following Tuesday."

3 **A Okay.**

4 Q "If not that day, then 99 percent certain by
5 the end of the week. I've made all of the changes that
6 you requested with the exception of a \$100,000
7 nonrefundable deposit giving MSI exclusivity of four
8 months instead of three due to the expectation that it
9 will take the full four months for the remainder."

10 **A Uh-huh.**

11 Q And then he wrote -- because we skip over this
12 because that was your response, right?

13 **A Yeah.**

14 Q When we read these, as we've established
15 before, your response at 3:41 p.m. on that same day was
16 what, sir?

17 **A 3:41 p.m., "The deposit can be refundable if
18 someone else buys the company."**

19 Q Right. And that's what happened here, isn't
20 it? Someone else bought the company?

21 **A Not then.**

22 Q Right. But eventually someone else did buy
23 the company, correct?

24 **A Right, but these were negotiating points. We
25 never had a signed agreement or anything.**

1 Q Okay. You never had a signed agreement?

2 A No.

3 Q Your position was that -- by the way, in the
4 trade world historically have you needed signed
5 agreements?

6 MR. WEBER: Objection, calls for a legal
7 conclusion, improper lay witness opinion.

8 THE COURT: Sustained.

9 MR. ZAPPOLO: He works in the industry, Your
10 Honor.

11 THE COURT: What's the next question, please?

12 MR. ZAPPOLO: Thank you.

13 BY MR. ZAPPOLO:

14 Q Nevertheless, you told James Todd Wagner, on
15 May 2nd, as part of your negotiations, as you say,
16 that --

17 A Yes.

18 Q -- the deposit could be refundable if someone
19 else buys the company, right?

20 A This was a part of the negotiation dated on
21 May -- early May.

22 Q May 2, 2011, at 3:41 p.m. --

23 A Right.

24 Q -- you wrote that, correct?

25 A Yeah. That he rejected and was

1 **renegotiated --**

2 Q Sir --

3 **A -- over and over.**

4 Q -- you can --

5 **A Oh, no, I agree.**

6 Q I'm just trying to move through this. Thank
7 you.

8 **A All right.**

9 Q All right. So at 3:41 p.m. you said the
10 deposit could be refundable if someone else buys the
11 company.

12 **A Yes.**

13 Q James Wagner wrote back, at 3:55 p.m., okay.
14 And the first thing he said, "I'll ask if they're
15 willing to pay 200k for that car," and that references
16 something over here, right? He had asked his investor
17 to buy a car, right?

18 **A Yeah, something.**

19 Q And they were offering 150,000, and you
20 said -- you said it was \$200,000 for the car, so he said
21 "I'll ask if they're willing to pay for that."

22 **A Right.**

23 Q And then he said, "So I understand you fully,
24 the \$100,000 gives is 3 months of exclusivity as opposed
25 to four months and becomes refundable upon the following

1 circumstances" --

2 **A Wait, wait, where am I reading? Okay. I'm**
3 **reading up, go ahead.**

4 Q Right. May 2, 2011, at 3:55 p.m. --

5 **A Yeah.**

6 Q -- Mr. Wagner wrote, right?

7 **A Yeah.**

8 Q "So I understand you fully, the 100k" --
9 100,000k, which is redundancy -- "gives is 3 months of
10 exclusivity as opposed to four months and becomes
11 refundable upon the following circumstances."

12 **A Yeah.**

13 Q "A, MSI does not close within the 3 months; B,
14 another party purchases the MACC assets after the
15 three-month period. Am I understanding correctly?
16 Todd."

17 **A Yeah.**

18 Q And you wrote back at 4:56 p.m. --

19 **A Yeah.**

20 Q -- when he wrote earlier, you responded to his
21 **A and B where he wrote "A, the 100k is refundable upon**
22 **the following circumstance."**

23 **A Where am I reading?**

24 Q Right here on the same page.

25 **A Okay.**

1 Q DEF11942.

2 A Okay. I see --

3 Q At 3:55 --

4 A Okay. I see 3:55, "Ask if they were willing
5 to pay."

6 Q Okay. James Todd Wagner said MSI -- "It's
7 refundable if MSI does not close within the 3 months."

8 A Yeah, yeah.

9 Q And you said "No," right?

10 A Right.

11 Q You didn't agree to that?

12 A Okay.

13 Q But then he said "It's refundable if another
14 party purchases the MACC assets after the 3-month
15 period." And you said?

16 A "Yes."

17 Q Okay.

18 A Yeah, absolutely.

19 Q So at that point you had agreed that you would
20 refund the money if someone else bought the assets,
21 correct?

22 A Yeah, in that context.

23 Q Okay. And James Todd Wagner wrote back later
24 on, okay?

25 A Yeah.

1 Q What did he write back?

2 A Oh, "I have forwarded our composite
3 agreement" --

4 Q No.

5 A -- "with the" --

6 Q Lower on the page because, remember, we have
7 to read up.

8 A Okay. "Additional elements" --

9 Q If you look right here, sir -- if you pop your
10 head up on the screen right there --

11 A Okay.

12 Q See that?

13 A Yeah. "Understood and accepted," where's that
14 here?

15 Q Right on the bottom.

16 A I see "Understood and accepted," yeah.

17 Q So he went through and he clarified what the
18 agreement was about the refundability of the
19 \$100,000 deposit.

20 A Okay.

21 Q He thought two things; you said no to one and
22 you said yes to the other, that the \$100,000 was
23 refundable if someone else bought the company.

24 A Right.

25 Q And he responded "Understood and accepted,"

1 correct?

2 **A Right.**

3 Q Now --

4 **A Exactly. That would have been good.**

5 Q And then he said "As an additional element, if
6 we're nearing the end of the three-month term and are
7 fully expected to close with the time still unable, we
8 could put in a second \$100,000 for another two months of
9 exclusivity." And you responded?

10 **A "Sounds okay."**

11 Q Right. All right.

12 Now, on May 6th we're talking about a
13 composite agreement. Do you remember that composite
14 agreement?

15 **A Just from the documentation. I don't have it
16 an actual memory of it, just from reading this.**

17 Q All right.

18 **A There was so many of these.**

19 Q May 6th, at 6:01 p.m., okay?

20 **A May 6th, 8:39, this is another one.**

21 Q No. I'm over here. I'm on the first page
22 now.

23 **A Okay.**

24 Q And I apologize for putting that up with my
25 notes, but let me get a clean copy here.

1 **A Okay.**

2 Q May 6th, at 6:01 p.m., you wrote "Optional
3 good faith deposit."

4 **A Yeah.**

5 Q And you wrote in and capitalized "The deposit
6 is forfeited," right?

7 **A "The buyer does not complete this transaction.
8 The additional deposit is 450." Yeah, that was my
9 writing. I wrote that.**

10 Q So on May 2nd you and Mr. Wagner had gone back
11 and forth and you had wrote that if another party
12 purchased MACC assets after the three-month period, he'd
13 get his refundable -- the deposit was refundable to him,
14 correct?

15 And then on May 6th you were trying to inject
16 that the deposit was forfeited, correct?

17 **A The additional deposit.**

18 Q Okay.

19 **A This was his counterproposal where I rejected
20 points of his counterproposal.**

21 Q It says "The deposit is forfeited," and then
22 later it says "The additional deposit is forfeited."

23 **A Oh, let me see. Yeah, okay.**

24 Q Right?

25 **A Right.**

1 Q That was you changing the prior agreement, but
2 what happened between May 2nd, when you had that
3 agreement with Mr. Wagner, and May 6th?

4 A I don't know. Do you know something that
5 happened?

6 Q Well, we've discussed it here today, did it
7 not strike you?

8 A No.

9 Q The May 5th article came out, didn't it?

10 A Oh, okay.

11 Q The May 5th article that you said James Todd
12 Wagner should have his mouth duct taped --

13 A Yeah.

14 Q -- right?

15 A (Nods head.)

16 Q In fact, you were mad about that article and
17 what you wanted to do then was change the terms of your
18 deal with him to say that he could not get his
19 \$100,000 back because of what he said to that
20 journalist, correct?

21 A Well, I don't know if that's correct, but I
22 did change it. Well, I don't know. I'm getting
23 bleary-eyed reading what I changed.

24 I know that -- you know, it says what it says.
25 I don't know what else I changed, so now I'll have to go

1 back and look at -- you know, these were going back and
2 forth and changing by the minute. And we didn't have
3 any side mutual agreement and -- I don't know.

4 **W**ould you like me to go back and read all of
5 the documents again? Does it matter? Does it matter?

6 **Q** Whatever you'd like when your attorney asks
7 you questions, sir.

8 **A** Oh, jeez. All right.

9 **Q** I'm just trying to get out some facts here.
10 Now --

11 **A** You know, are you, like, implying I wasn't
12 entitled to change my opinion for any reason?

13 **Q** Mr. Mosler, there's no question pending. I'll
14 be right with you.

15 **A** Okay.

16 **Q** And I just say that because we're not supposed
17 to banter back and forth.

18 **A** Oh, okay.

19 **Q** There's rules, okay? Thank you.

20 **A** Yeah.

21 **Q** Now, on May 2, 2011 --

22 **A** Okay.

23 **Q** -- who was the vice president of Mosler Auto
24 Care Center?

25 **A** I'd have to look it up.

1 Q Was it Jill Wagner?

2 A It looks like they had changed the agreement
3 before I did those things, but go ahead.

4 Yeah, Jill Wagner was most likely the vice
5 president.

6 Q I'm showing you what's been marked --

7 A My recollection is it was Jill Wagner, but
8 you've got the documents, I'm sure.

9 Q I'm sorry, I'm trying very hard not to talk
10 over each other so the court reporter can get
11 everything.

12 A Yeah.

13 MR. ZAPPOLO: Do I need to slow down, or are
14 we at a good pace?

15 THE COURT REPORTER: You're good.

16 MR. ZAPPOLO: Thank you.

17 BY MR. ZAPPOLO:

18 Q I'm showing you what's been marked as
19 Plaintiffs' Exhibit 833. Usual question: Is that a
20 true and correct copy of your email at or around the
21 time that it purports to be?

22 A Yes.

23 Q Okay. So on May --

24 (Thereupon, Plaintiffs' Exhibit 833 was marked
25 for identification.)

1 MR. ZAPPOLO: At this point, Your Honor, I'd
2 like to move Plaintiffs' Exhibit 833 into evidence.

3 MR. WEBER: I'm going to object under the rule
4 of completeness. May we approach, Your Honor?

5 THE COURT: Yes.

6 (Thereupon, a sidebar conference was held.)

7 MR. WEBER: This is a multipage document, Your
8 Honor, and he's only doing the first page for some
9 weird reason, I don't know why.

10 THE COURT: Well, I don't know that it's a
11 weird reason, but do you have the full document?

12 MR. ZAPPOLO: I don't know what the full
13 document is. This is what I have.

14 MR. WEBER: It's Exhibit 204 on the
15 Defendants' exhibit list.

16 THE COURT: Well, it's got a Bates-stamped
17 number on it at the bottom, so why don't we look
18 for that to see if you have the full document and
19 then see if you want to introduce it.

20 MR. ZAPPOLO: Okay.

21 THE COURT: I'll give you guys a couple of
22 minutes to go look for it.

23 MR. ZAPPOLO: Thank you.

24 (Thereupon, the sidebar conference was
25 concluded.)

1 MR. ZAPPOLO: Your Honor, I believe I have --

2 THE COURT: All right. Let's approach.

3 (Thereupon, a sidebar conference was held.)

4 THE COURT: All right. I see a Bates number
5 11776. I think this was the subject of previous
6 litigation.

7 MR. WEBER: Yes, Your Honor.

8 THE COURT: So now we have an entire document.
9 Are you looking to admit the entire document?

10 MR. ZAPPOLO: Yes. He says he objects to it.

11 MR. WEBER: That's the document, Your Honor.

12 THE COURT: Any objection?

13 MR. WEBER: No objection to that one.

14 (Thereupon, the sidebar conference was
15 concluded.)

16 THE COURT: Okay. All right. The exhibit is
17 admitted without objection. Number 57, Madam
18 Clerk?

19 THE CLERK: Yes, Your Honor.

20 MR. ZAPPOLO: I'm sorry, what was that?

21 THE CLERK: 57.

22 (Thereupon, Plaintiffs' Exhibit 57 was
23 received into evidence.)

24 MR. WEBER: You've given him a different
25 document. He's got the old one.

1 MR. ZAPPOLO: Yeah, I'll take that one back
2 from you, sir. Thank you.

3 MR. WEBER: And I need a copy too, please.

4 MR. ZAPPOLO: You said it was your 204.

5 BY MR. ZAPPOLO:

6 Q Mr. Mosler, I'm showing you what's been
7 marked -- remarked now, corrected, as Exhibit 833.

8 A Okay.

9 Q Have you had the opportunity to look at that?

10 A I'm reading it again.

11 Q Okay.

12 A Okay.

13 Q All right. Let's start at the back of that
14 exhibit, the last page.

15 A Yeah.

16 Q You would agree -- well, let me back up.

17 At this point, Mr. Mosler, is 833 a true and
18 accurate copy of your email on or about the time that
19 this purports to be?

20 A Yes.

21 MR. ZAPPOLO: At this point, Your Honor, I'd
22 like to move 833 into evidence.

23 THE COURT: Any objection?

24 MR. WEBER: No objection.

25 THE COURT: Is this number 58, or are we still

1 talking about 57 right now?

2 MR. WEBER: I think this is 57.

3 THE CLERK: 833 is 57.

4 THE COURT: So we're still talking about 57?

5 MR. WEBER: This is actually 57.

6 MR. ZAPPOLO: This is 57? Okay. So this is
7 in evidence as 57. Thank you.

8 BY MR. ZAPPOLO:

9 Q I'd like you to flip to the back page.
10 There's nothing significant there, is there, Mr. Mosler?

11 A **The back page?**

12 Q Yes.

13 A **No.**

14 Q Flipping back one page, there's nothing
15 significant there, is there?

16 A **No.**

17 Q Flipping back another page, there's nothing
18 significant there, is there?

19 A **No.**

20 Q Flipping back to the next page, that's the
21 email information that I just went over with you in
22 another exhibit, correct?

23 A **Right, right, yes.**

24 Q Okay. So now we're getting to the front page.
25 That's the continuation reading up from the bottom of

1 the emails that we just went over?

2 **A Yeah.**

3 Q The significance of this document is that you
4 forwarded that email string to Jill Wagner, the vice
5 president of the company at the time, didn't you?

6 **A Okay.**

7 Q Right?

8 **A Yeah.**

9 Q That's because you wanted Ms. Wagner to
10 understand --

11 **A To be up-to-date.**

12 Q -- the terms of the agreement, right?

13 **A Right, right, right.**

14 Q Okay. Thank you.

15 Mr. Mosler, I'm showing you what's been marked
16 as Plaintiffs' Exhibit 223 for identification purposes.

17 Do you recognize that document?

18 **A I accept it, but I don't -- I don't remember
19 seeing it. That's November 8th. Okay. So now we're
20 skipping ahead to November 8th from May?**

21 Q I'm sorry, where do you see November 8th? You
22 have 223 in front of you?

23 **A Yeah. I got this.**

24 Q Hmm, that's not the same 223 I have.

25 Oh, it's because this is 233, not 223.

1 MR. ZAPPOLO: Can you get me 223, please?

2 Thank you.

3 Excuse me, Your Honor. I apologize, one quick
4 moment.

5 Okay. Now, Ms. Clerk, do I have 240 or do
6 you? Defendants' 240 or Defendants' Exhibit
7 Number 1, their 240.

8 THE CLERK: I have it.

9 BY MR. ZAPPOLO:

10 Q Mr. Mosler, you said a couple of times there
11 was never a signed agreement. Do you remember that?

12 A Those weren't my words.

13 Q Okay. Well --

14 A My words were at that point in time there was
15 not a mutual --

16 Q Was there ever a signed --

17 A There was never a mutually signed agreement.

18 Q Never a mutually signed agreement, okay.

19 So you would agree that when you and
20 Mr. Wagner negotiated about the purchase of the company,
21 Mr. Wagner sent you a signed agreement, wouldn't you?

22 A I don't know. I'd have to see which one
23 you're talking about there.

24 Q You have no recollection of Mr. Wagner sending
25 you a signed agreement?

1 **A** **I have recollection of a lot of things. I**
2 **have a complete email chain of all of the agreements**
3 **that were sent back and forth, about 30 of them.**

4 **Q** Share with this jury, if you would, what you
5 recall about who signed any agreement as between you and
6 MACC on the one hand and Mr. Wagner and any company
7 affiliated with him on the other.

8 **A** **My only recollection is that early on, maybe**
9 **it was in April, I signed an agreement, sent it to him,**
10 **and he rejected it.**

11 **Q** The only recollection that you have is that
12 you signed an agreement, sent it to him, and he rejected
13 it?

14 **A** **Yeah, I don't recall another one. I'm not**
15 **saying it didn't exist, I'm saying I just don't recall.**

16 **Q** Okay. Now, your attorneys moved a document
17 into evidence yesterday, Defendants' Exhibit 1. I'd
18 like to share that with you.

19 That's June 3, 2011, correct?

20 **A** **Yeah.**

21 **Q** And that document that is in evidence, that
22 was the document where --

23 **A** **Okay.**

24 **Q** -- Mr. Wagner --

25 **A** **So you're skipping ahead?**

1 Q Sir, I have to --

2 A Okay. Go ahead.

3 Q I have to finish my question, please.

4 That was the -- Defendants' Exhibit 1 was the
5 email introduction wherein Mr. Wagner introduced you to
6 a Mr. Lew Lee, correct?

7 A Yes.

8 Q All right. And Mr. Wagner told you, quote, It
9 is my pleasure to introduce you two as possible future
10 partners in the supercar business.

11 A Yeah.

12 Q He then wrote, "I have been working with Lew
13 on the prospect of buying the majority stake of all of
14 Mosler Auto Care Center's assets. Warren had told me
15 that this was his desire as well."

16 Is there anything untrue about that that
17 you're aware of?

18 A Can I amend my previous statement first?

19 Q Sure.

20 A Okay. I also recall, and it is documented,
21 that -- I think this was your question -- we
22 subsequently had a signed agreement at the end of June.
23 That was a mutual agreement that was signed between
24 myself and Santa Fe Partners, which was Lew, and they
25 were partners at the end of the month, so that would

1 have been the other one. I thought we were still
2 talking about the agreements back on the May 5th email.

3 Q Let's talk about that.

4 A So anyway, can we go on this now?

5 Q No. Let's go down that road for a minute.

6 You said that you had a signed contract with
7 Santa Fe Partners -- right? -- a minute ago?

8 A Well, a letter of intent.

9 Q A letter of intent? Okay.

10 Now Santa Fe Digital Media was introduced to
11 you by James Todd Wagner via this email, wasn't it?

12 A That's correct.

13 Q Now, Mr. Wagner said in the next line in
14 Defendants' Exhibit Number 1, "This introduction is
15 covered under the Exclusive Investment Brokering
16 Agreement that Warren and I executed a few months ago,"
17 right?

18 A That's what he says.

19 Q Okay. Now, you didn't write back "No, it's
20 not," did you?

21 A If I did, it would be in an email somewhere.

22 Q Right. You don't recall writing that back,
23 "No, I don't know what you're talking about" or anything
24 like that, right?

25 A No.

1 Q Could you explain to the jury what the
2 Exclusive Investment Brokering Agreement was that you
3 signed a few months prior to June 3, 2011?

4 A I'd have to look it up. I don't have a
5 specific recollection.

6 Q I'm going to show you what's been marked as
7 Plaintiffs' Exhibit 181. I'm going to ask you the usual
8 questions: Is there any reason to believe that that's
9 not a true and correct copy of an email that was written
10 on or about the date it purports to be?

11 A No.

12 (Thereupon, Plaintiffs' Exhibit 181 was marked
13 for identification.)

14 MR. ZAPPOLO: At this point, Your Honor, I'd
15 like to move Plaintiffs' Exhibit 181 into evidence.

16 MR. WEBER: No objection.

17 THE COURT: Madam Clerk, that's 58?

18 THE CLERK: Yes, Your Honor.

19 THE COURT: Thank you.

20 (Thereupon, Plaintiffs' Exhibit 58 was
21 received into evidence.)

22 BY MR. ZAPPOLO:

23 Q Okay. Now Exhibit 181 is an email from James
24 Todd Wagner to you and Jill Wagner dated April 1, 2011,
25 correct?

1 **A Correct.**

2 Q All right. And he explained to you within
3 that email "As you know, for several months I have been
4 pursuing a financial partner to help my company that I
5 formed for the purpose, Mosler Supercars, Inc., to
6 purchase the MACC assets. The road has been very much
7 longer and more difficult than I could have imagined,
8 and I have invested a nontrivial amount of my own money
9 into legal advice/documents, et cetera.

10 After speaking with numerous individuals in
11 groups, one group has emerged as very legitimate. I'm
12 not going to through down a date estimate, but things
13 are progressing in a very, very positive way. If
14 everything does work out as I'm hoping it will, Jill and
15 I will continue to run the company and take a shot at
16 the Mosler name and the Raptor supercar to the level it
17 deserves with a major marketing campaign.

18 At some point during the next two weeks I
19 would like to introduce you to this group. My investors
20 and I would like you to review the attached Exclusive
21 Investment Brokering Agreement prior to the meeting.
22 MSI has signed a similar agreement with them and their
23 backers. I know you've been very frustrated with the
24 process of selling MACC. No matter what I've always
25 been a believer in the product and its potential. I

1 very much want to have a company to see the Raptor
2 through to being a globally-recognized, exceptionally
3 engineered car that is a commercial as well as
4 performance success. Agreement is attached."

5 And there attached to that email is an
6 Exclusive Investment Brokering Agreement, right? Do you
7 recall seeing that?

8 **A Yes.**

9 Q Do you ever recall signing that?

10 **A I can't remember. Probably. I don't have a**
11 **recollection right this minute. I can't remember much**
12 **of anything right now. It's been five hours now, sorry.**

13 Q Okay. Let me see if I can help you.

14 Mr. Mosler, I'm showing you what's been marked
15 as Plaintiffs' Exhibit Number 82 for identification
16 purposes. Do you recognize that document?

17 **A I certainly do. You could have saved some**
18 **time if you had just given me this to begin with. Yeah,**
19 **I signed the agreement.**

20 (Thereupon, Plaintiffs' Exhibit 82 was marked
21 for identification.)

22 MR. ZAPPOLO: Okay. At this point I'd like to
23 move Plaintiffs' Exhibit 82 into evidence.

24 MR. WEBER: No objection.

25 THE COURT: 59.

1 (Thereupon, Plaintiffs' Exhibit 59 was
2 received into evidence.)

3 BY MR. ZAPPOLO:

4 Q That is your signature on Exhibit 59, correct?

5 A **82, right?**

6 Q Plaintiffs' 82 for identification purposes,
7 moved into evidence as Exhibit 59, yes.

8 A **Oh, okay. Dated April 1st.**

9 Q Okay. What about that's your signature,
10 correct?

11 A **Yes.**

12 Q Okay. And you agreed -- between Warren Mosler
13 and J. Todd Wagner, okay, grants Todd and the
14 corporation that Todd represents, Mosler Supercars, Inc.,
15 exclusive rights to purchase Mosler Auto Care Center's
16 assets on behalf of any investor that Todd or MSI
17 presents to Warren or MACC. Warren nor MACC may sell
18 MACC assets directly to any investor whom MSI or Todd
19 introduces to Warren, correct?

20 A **Correct.**

21 Q All right. Now, the email that I just showed
22 you was James Todd Wagner introducing that Lew Lee
23 person to you, correct?

24 A **Correct.**

25 Q So you knew, pursuant to Exhibit 59, that you

1 were -- that Warren nor MACC may sell MACC assets
2 directly to any investor, right?

3 You knew that Mr. Wagner -- when he wrote you
4 and introduced you to Mr. Lew Lee, he said "This is
5 covered by our Exclusive Investment Brokering
6 Agreement," right?

7 **A Correct.**

8 Q Okay. And yet a few minutes ago you said that
9 you had signed a contract with Lew Lee -- or, I'm sorry,
10 Santa Fe Digital Media -- or letter of intent you said,
11 I apologize. You said you signed a letter of intent --

12 **A Yeah.**

13 Q -- right?

14 **A Yeah.**

15 Q Was Mr. Wagner copied on that?

16 **A I'd have to look it up.**

17 Q In fact, Mr. Wagner wasn't aware that you were
18 having discussions with Lew Lee behind his back, was he?

19 **A Well, there's two parts to that. I don't -- I
20 believe he knew full well, and also I wouldn't say it
21 was behind his back.**

22 Q Did -- was Mr. Wagner copied at the time that
23 the letter of intent was exchanged between you and Lew
24 Lee on behalf of Santa Fe Digital Media?

25 **A I'd have to look that up.**

1 Q You'd have to look that up did you say?

2 A Yeah.

3 Q Okay.

4 A I'd have to look at the documents. I don't
5 remember who I copied on what.

6 Q Now, it is the letter of intent between you
7 and Santa Fe Digital Media that you rely upon to suggest
8 that Mr. Wagner and Mr. Wagner's father didn't --
9 weren't to be credited with the \$100,000 deposit, right?

10 A Not true. That's not what we rely upon.

11 Q Okay. Well, your position in this lawsuit is
12 that the \$100,000 was wired to you for the benefit of
13 Santa Fe Digital Media, not Mr. Wagner or Mr. Wagner's
14 company, correct?

15 A Not entirely true.

16 Q Okay. What's not true about that?

17 A Mr. Wagner was involved and a party with Lew
18 in his endeavor, Santa Fe Digital Media, whatever it was
19 called.

20 Q What was their relationship at the time?

21 A They were working together the entire time.

22 Q Did they have any agreements?

23 A They let me know they were working together.
24 They certainly led me to believe and we have
25 documentation of exactly how they did work together.

1 Q Mr. Wagner and Mr. Lee were negotiating for
2 Mr. Lee to step into the shoes of Mr. Wagner's position
3 and his ability to buy the company, correct?

4 A I don't follow.

5 Q Well, weren't Mr. Wagner and Mr. Lee
6 negotiating to allow Mr. Lee, and/or whatever company he
7 was going to use, to buy the assets of Mosler Auto Care
8 Center?

9 A Were they negotiating between themselves?

10 Q You just said there was a contract and they
11 were working together. Was there an agreement between
12 them that you were aware of?

13 A Yes.

14 Q Okay. And what were the terms of that
15 agreement?

16 A I'd have to look it up.

17 Q Okay. As you sit here, you don't know?

18 A I can't repeat it --

19 Q Fair enough.

20 A -- from memory right now the terms of their
21 agreement.

22 Q All right. So can I see what exhibits you
23 have there, please? May I have those? Thank you.

24 So in Defendants' Exhibit Number 1, when
25 Mr. Wagner wrote that Mr. Lee was a possible future

1 partner in the supercar business --

2 **A Yeah.**

3 Q -- on June 3rd, did you ever come to have any
4 other knowledge besides he was a possible future
5 partner?

6 **A Yes.**

7 Q Okay. And when did you come to that
8 information?

9 **A I'd have to check the email trail for the**
10 **exact date and time.**

11 Q Okay. Nevertheless, you don't debate -- you
12 don't refute that \$100,000 was wired into your account
13 by Mr. Wagner's father, correct?

14 **A That is correct. The wire came in from the**
15 **father's account.**

16 Q Yes. Okay. You just dispute what the purpose
17 of that wire was, correct?

18 **A I mean, I don't think I dispute it.**

19 Q Okay.

20 **A The purpose was a \$100,000 nonrefundable**
21 **deposit that we've been talking about forever.**

22 Q Well, you keep saying the word
23 "nonrefundable." We just covered a bunch of information
24 today about the refundability versus non-refundability,
25 correct?

1 **A Not correct.**

2 Q Okay. Not correct?

3 **A Those were discussion terms. The actual**
4 **letter of intent was clearly marked in plain English**
5 **that it was nonrefundable.**

6 Q The letter of intent was with Santa Fe Digital
7 Media, not Mr. Wagner's company, right?

8 **A It was in full knowledge of -- you know, I'll**
9 **go through the documentation.**

10 Q And in the email exchange --

11 **A That's not true at all.**

12 Q And in the email exchange with Santa Fe
13 Digital Media didn't Lew Lee say Mr. Wagner had nothing
14 to do with the deal?

15 **A No, that's not what he said. That's out of**
16 **context.**

17 Q Okay. Well, we'll pull up the documents.

18 **A I mean, those --**

19 MR. ZAPPOLO: Your Honor, it's probably -- may
20 we approach?

21 (Thereupon, a sidebar conference was held.)

22 MR. ZAPPOLO: Your Honor, this is probably a
23 good time to break because I'm going to start in on
24 that concept that we went through, and I will try
25 to sharpen my pencil over the weekend so I can do

1 it more expeditiously.

2 MR. WEBER: Hopefully he really sharpens it,
3 Your Honor, because, I mean, this is like how long
4 have we been here, Your Honor?

5 THE COURT: How much longer do you have of
6 this witness?

7 MR. ZAPPOLO: Probably an -- I was going to
8 say two hours, but I think we can be done in an
9 hour.

10 THE COURT: Okay. All right. We'll take a
11 break now. That will give you time to get out of
12 here.

13 MR. WEBER: Right.

14 THE COURT: It's almost 4:30. If they get out
15 of here now it will be before 5:00, which is what I
16 promised them. All right. We'll cut them loose.

17 (Thereupon, the sidebar conference was
18 concluded.)

19 THE COURT: All right. Ladies and gentlemen,
20 so I think this is a good time to take a break for
21 the day.

22 Deputy, before the jury leaves today, if you
23 can please get their phone numbers.

24 THE COURT DEPUTY: Okay.

25 THE COURT: My assistant will be back in on

1 Monday and that way we will be able to reach out to
2 them if we can.

3 Monday, remember, is a day that I have to
4 tackle other cases. It gives the attorneys the
5 time to go to their office and deal with other
6 clients. It gives you the opportunity to go back
7 to your work and deal with your employers.

8 Your employers are probably going to ask why
9 you have to come back on Tuesday. Just tell them
10 that's the judge's schedule. If you need anything
11 from me on Monday to speak to your employers on
12 Tuesday, then have them reach out to my office,
13 okay, but otherwise I will see you back here on
14 Tuesday at 9:30. Okay?

15 All right. Now, again -- it's never been an
16 issue. It's never been an issue. And I don't
17 think it ever will be an issue, but I have to bring
18 it to your attention, and that is that, you know,
19 your attendance is compelled on Tuesday, right. So
20 make sure that your employers understand that you
21 must be here on Tuesday.

22 When -- you know, the language is pretty awful
23 and scary and I don't want to go into it, but I've
24 read it to you earlier, but if you are not present,
25 it could lead to a mistrial, which comes at a

1 tremendous expense to the attorneys which means we
2 have to start all over, it becomes a tremendous
3 expense to the parties and we have to start all
4 over, and it's also a tremendous expense to the
5 taxpayers because they've lost the use of this
6 courtroom for a week, and then we have to start all
7 over. That could subject individual jurors to
8 penalties both civil and criminal in nature.

9 It's never gotten to that. I don't think it
10 will with any of you, so I will see you on Tuesday
11 at 9:30. I'm certain of that, okay.

12 Again, over the weekend, as tempting as it
13 might be, you're directed, instructed, and
14 compelled not to discuss the case with your family
15 members, your friends; not to discuss it amongst
16 yourselves; not to look up the names and people
17 involved; not to look up anything on the Internet
18 regarding this case.

19 Again, you're supposed to decide this case
20 together and only on the evidence presented in this
21 courtroom and only after you've received all of the
22 evidence, heard all of the arguments, and been
23 instructed on the law, but not a moment before
24 then.

25 All right. The attorneys have graciously

1 agreed again to provide lunch for you next week and
2 so they'll continue to do that. And I think that's
3 all we need to cover until Tuesday.

4 All right. Deputy, they're excused. We'll
5 see them on Tuesday at 9:30. Please have a
6 wonderful weekend. Don't forget on Monday night to
7 pack a jacket for the courtroom.

8 JUROR SMITH: We won't forget that.

9 (Jurors exit the courtroom at 4:29 p.m.)

10 THE COURT: All right. Mr. Mosler, you're
11 still testifying and so because you're still
12 testifying, you're not to discuss this case with
13 your attorney. Do you understand that?

14 **THE WITNESS: Yes.**

15 THE COURT: Okay. All right. On Monday I
16 have roughly -- it says 21, I don't think it will
17 be 21, cases including some special set hearings.
18 I have some special set hearings and I don't think
19 they're coming into the courtroom, but they might;
20 so, you know, if you're going to pick anything up,
21 right now would be the time to do it.

22 If there's anything that you think you want to
23 not take with you, then the deputy can put it in
24 the jury room and then we'll make sure that you get
25 it back before the jury comes back in on Monday --

1 or on Tuesday.

2 So, you know, if there's something you don't
3 want to transport back to your office, then it will
4 be on you to make sure that you get it back before
5 the jury comes back.

6 MR. ZAPPOLO: We can leave things in the
7 outside rooms, correct, Your Honor?

8 THE COURT: Yeah. You can leave those things
9 in those storage rooms. I don't think anybody is
10 going to use them Monday.

11 MR. WEBER: Okay. Great.

12 THE COURT: That might actually be a better
13 place, so we'll use the storage rooms and we won't
14 go in the jury room.

15 MR. WEBER: Perfect.

16 THE COURT: All right. Anything else I need
17 to address?

18 MR. WEBER: No, Your Honor.

19 MR. ZAPPOLO: No, Your Honor.

20 THE COURT: Okay. All right. Then we're in
21 recess until Tuesday morning.

22 (Whereupon, the proceedings are adjourned at
23 4:31 p.m. and are continued on May 16, 2023 in
24 Volume V.)

25

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT,

IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. 50-2012-CA-023358-XXXX-MB

JAMES TODD WAGNER, SUPERCAR ENGINEERING,
INC., a Florida corporation,

Plaintiffs,

vs.

WARREN MOSLER, MOSLER AUTO CARE CENTER,
INC. ("MACC") a Florida corporation,
d/b/a Mosler Automotive,

Defendants.

_____ /

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VOLUME V - DAY 5

- - - - -

PROCEEDINGS BEFORE

HONORABLE LUIS DELGADO

DATE: MAY 16, 2023

TIME: 9:30 A.M. - 4:45 P.M.

1 APPEARING ON BEHALF OF PLAINTIFFS:

2 ZAPPOLO & FARWELL, P.A.
3 BY: SCOTT ZAPPOLO, ESQUIRE
4 4360 Northlake Boulevard
5 Suite 101
6 Palm Beach Gardens, FL 33410
7 (561) 627-5000

8 APPEARING ON BEHALF OF DEFENDANTS:

9 WEBER LAW
10 BY: STEVEN D. WEBER, ESQUIRE
11 TEVON ETIENNE, ESQUIRE
12 JOSHUA KILLINGSWORTH, ESQUIRE
13 777 Brickell Avenue
14 Suite 500
15 Miami, FL 33131
16 (305) 377-8788

17 ALSO PRESENT:

18 James Todd Wagner, Plaintiff
19 Warren Mosler, Defendant
20 David Griffin, TruVid, LLC
21
22
23
24
25

1 I N D E X

2 WITNESS PAGE

3 WARREN MOSLER

4 Direct Examination (cont.) By Mr. Zappolo 812

5 JONATHAN FRANK

6 Direct Examination By Mr. Zappolo 1017

7

8

9

E X H I B I T S

10

11 EXHIBIT DESCRIPTION MARKED RECV'D

12 Plaintiffs' 60 was marked Exhibit 802 816 822

13 Plaintiffs' 61 was marked Exhibit 294 831 831

14 Plaintiffs' 62 was marked Exhibit 254 834 836

15 Plaintiffs' 63 was marked Exhibit 893 846 847

16 Plaintiffs' 64 was marked Exhibit 408 850 861

17 Plaintiffs' 65 was marked Exhibit 1359D 867 868

18 Plaintiffs' 66 was marked Exhibit 289 869 870

19 Plaintiffs' 39 was marked Exhibit 39 872

20 Plaintiffs' 67 was marked Exhibit 1256 873 874

21 Plaintiffs' 68 was marked Exhibit 983 883 883

22 Plaintiffs' 69 was marked Defendants' 223 903 904

23 Plaintiffs' 70 was marked Exhibit 1161 909 909

24 Plaintiffs' 71 was marked Exhibit 1260 914 915

25

1

E X H I B I T S (cont.)

2

3 EXHIBIT DESCRIPTION MARKED RECV'D

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5 Plaintiffs' 72 was marked Exhibit 1353 916 917

6 Plaintiffs' 73 was marked Exhibit 65 920 920

7 Plaintiffs' 74 was marked Exhibit 290 923 923

8 Plaintiffs' 75 was marked Exhibit 68 937 939

9 Plaintiffs' 76 was marked Exhibit 1014 947 948

10 Plaintiffs' 77 was marked Exhibit 1041 951 951

11 Plaintiffs' 78 was marked Exhibit 522 955 955

12 Plaintiffs' 79 was marked Defendants' 368 960 961

13 Plaintiffs' 80 was marked Exhibit 1029 965 966

14 Plaintiffs' 81 was marked Exhibit 1033 972 973

15 Plaintiffs' 82 was marked Exhibit 827 975 976

16 Plaintiffs' 83 was marked Exhibit 1199 977 978

17 Plaintiffs' 84 was marked Exhibit 1231 982 983

18 Plaintiffs' 85 was marked Exhibit 1232 984 984

19 Plaintiffs' 86 was marked Exhibit 7 985 985

20 Plaintiffs' 87 was marked Exhibit 1235 990 991

21 Plaintiffs' 88 was marked Exhibit 976 994 994

22 Plaintiffs' 980 was marked Exhibit 980 996

23 Plaintiffs' 89 was marked Exhibit 981 999 1000

24 Plaintiffs' 90 was marked Exhibit 260 1005 1006

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E X H I B I T S (cont.)

EXHIBIT	DESCRIPTION	MARKED	RECV'D
Plaintiffs' 91	was marked Exhibit 1063	1008	1008
Plaintiffs' 92	was marked Exhibit 746	1011	1011
Plaintiffs' 93	was marked Exhibit 321	1012	1013
Plaintiffs' 319	was marked Exhibit 319	1014	
Plaintiffs' 1353A	was marked Exhibit 1353A	1026	
Plaintiffs' 94	was marked Exhibit 1353B	1037	1038

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BE IT REMEMBERED, that the following proceedings were taken in the above-styled cause before Honorable Luis Delgado, Presiding Judge, at the Palm Beach County Courthouse, 205 North Dixie Highway, Courtroom 10-D, in the City of West Palm Beach, County of Palm Beach, State of Florida, on the 16th day of May, 2023, to wit:

- - -

THE COURT DEPUTY: Jury entering.
(Jurors entering the courtroom at 9:43 a.m.)

THE COURT: All right. Thank you very much.
Please be seated. All right. Thank you very much.
Madam Clerk, will you swear in the witness, please.

THE CLERK: Yes.

THE WITNESS: Good morning.

THE CLERK: Please raise your right hand. Do you solemnly swear or affirm that the evidence you're about to give is the truth, the whole truth, and nothing but the truth?

THE WITNESS: I do.

THE COURT: All right. Thank you.
Mr. Zappolo, it's your witness.

MR. ZAPPOLO: Thank you.

1 DIRECT EXAMINATION (cont.)

2 BY MR. ZAPPOLO:

3 Q Mr. Mosler, I want to start to pick up where
4 we left off on Friday, but I just want to be very clear
5 on something as far as your testimony.

6 True or false, the RaptorGTR is a Mosler Auto
7 Care Center product?

8 MR. WEBER: Objection, vague.

9 THE COURT: Overruled.

10 **THE WITNESS: You'd have to define what a**
11 **Mosler Auto Care Center product is. I mean,**
12 **that's --**

13 BY MR. ZAPPOLO:

14 Q Was it manufactured by Mosler Auto Care
15 Center?

16 **A So can I ask you to explain manufacturing? I**
17 **can't answer true or false to that. It was manufactured**
18 **in England originally.**

19 Q Okay. Was it manufactured -- was it finally
20 assembled for driving on public streets by Mosler Auto
21 Care Center?

22 **A Okay. So you've changed your first question,**
23 **true or false question, so now I have to do the same**
24 **with this one.**

25 **It was assembled in the Mosler Auto Care**

1 Center building by a combination of some Mosler
2 employees and Todd working on it himself, who I think
3 was probably in the capacity of SEI, but it was
4 assembled largely in our building.

5 Q Okay. That would make it a Mosler Auto Care
6 Center vehicle, correct?

7 A According to you.

8 Q Well --

9 A You have to define what a Mosler Auto Care
10 Center vehicle is. And if that's how you define it,
11 that's what it is.

12 Q All right. Let's try this --

13 A You can't look up in the dictionary what a
14 Mosler Auto Care Center vehicle is.

15 Q Well, you can't look up in the dictionary what
16 a Ford is, right? But you understand when you see a
17 Ford car, it's a Ford car, right?

18 A No.

19 MR. WEBER: Objection, compound.

20 THE COURT: Overruled.

21 THE WITNESS: No. When I see a Ford GT40, I
22 know it was manufactured in England by another
23 company contracted by Ford.

24 BY MR. ZAPPOLO:

25 Q A Ford vehicle -- but its contract -- as we

1 sit here today, you will not acknowledge that the 2012
2 RaptorGTR was manufactured by Mosler Auto Care Center?

3 **A** It's too vague of a statement for me to
4 acknowledge it. I have to be precise. Everything I've
5 written for 30 years gets examined by people and, you
6 know, I haven't been called out in over 30 years because
7 I'm very careful about what I say.

8 **Q** Okay. You're very careful about what you say?

9 **A** Yes.

10 **Q** Especially when you speak to journalists,
11 right?

12 **A** Yeah.

13 **Q** Okay. So saying he's got serious mental
14 problems --

15 **A** Yeah.

16 **Q** -- that was thought out by you, wasn't it?

17 **MR. WEBER:** Objection, assumes facts not in
18 evidence.

19 **THE COURT:** Overruled.

20 **THE WITNESS:** Okay. Number one, I don't
21 recall the conversation. I don't recall saying
22 that. This is a statement that he attributed to
23 me. He doesn't even remember me saying it. If you
24 look at his testimony, he was asked if I said it,
25 he said "Well, I attribute it to Mosler."

1 BY MR. ZAPPOLO:

2 Q And you were here when we read the entire
3 transcript, right?

4 A Yeah.

5 Q Well, when we read the portions of the
6 transcript and he said --

7 A Yeah.

8 Q -- "If I put it in there, he said it" or words
9 to that effect, right?

10 A No. He said he attributed it to me.

11 MR. WEBER: Objection, mischaracterizes the
12 testimony from the witness.

13 THE COURT: Repeat your question.

14 MR. ZAPPOLO: I'll move on, Your Honor.

15 BY MR. ZAPPOLO:

16 Q You won't acknowledge that the author of that
17 article says that you said those words to him, correct?

18 A I got to translate that riddle, okay.

19 Q Okay. Let's try this: You know what? We'll
20 put up the exhibit and we'll go through it word for word
21 in a little bit. All right?

22 A Yeah.

23 Q True or false --

24 A Here we go.

25 Q -- at the time that those statements were

1 attributed to you --

2 **A Yeah.**

3 Q -- about Mr. Wagner having serious mental
4 problems, you believed James Todd Wagner had serious
5 mental problems?

6 **A Okay. Again, in the casual sense of those
7 words, if you -- I believed that much, and I still do.**

8 Q Okay. Now when you say "serious mental
9 problems," you mean he's insane, right?

10 **A You're telling me what I mean, or are you
11 going to ask me what I mean?**

12 Q I just said you mean he's insane, right?

13 **A No.**

14 Q No? Okay. Did you ever tell anyone that
15 Mr. Wagner was arguably legally insane?

16 **A I remember using that casually in an email to
17 a potential buyer.**

18 Q Okay. I'll show you what's marked as
19 Plaintiff's Exhibit 802. Is that the email you're
20 referring to?

21 **A Yes.**

22 (Thereupon, Plaintiffs' Exhibit 802 was marked
23 for identification.)

24 BY MR. ZAPPOLO:

25 Q And those are your words on that paper, right?

1 **A Yes.**

2 MR. ZAPPOLO: All right. At this time, Your
3 Honor, I'd like to move Exhibit 802 into evidence.

4 MR. WEBER: We object, Your Honor.

5 THE COURT: Let's approach.

6 (Thereupon, a sidebar conference was held.)

7 THE COURT: The reason I'm having you guys
8 approach on these things is because we're talking
9 about emails and I want to see them while we're
10 going over them otherwise, you know, your
11 objections are out of context for me.

12 MR. WEBER: Yeah.

13 THE COURT: All right. So I'm looking at the
14 exhibit. What's your objection?

15 MR. WEBER: It's inadmissible character and
16 propensity evidence. In short, Mr. Zappolo is
17 saying just because Mr. Mosler wrote this email,
18 therefore, he must have said the statement at
19 issue, and that's inadmissible propensity under
20 rule 404.

21 MR. ZAPPOLO: I'm talking about what he meant
22 by that term, "serious mental problems." He
23 acknowledged he was insane and he said that he's
24 told others that he believed Mr. Wagner had serious
25 mental problems. He talked about the email in

1 particular since he brought up arguably legally
2 insane and the jury should be able to see the
3 email.

4 THE COURT: And you're saying this is --

5 MR. WEBER: He's trying -- Mr. Zappolo is
6 trying to use this email to show just because
7 Mr. Mosler wrote in the email that says he is
8 arguably legally insane, that he must have also
9 made the actual statement that he has mental
10 serious problems because, remember, that's a
11 disputed issue of fact whether he actually said
12 that statement.

13 THE COURT: Okay. What was the date of the
14 statement that is at issue today?

15 MR. WEBER: 2012. This is -- I think it's
16 September 2012.

17 THE COURT: Okay.

18 MR. WEBER: The article --

19 MR. ZAPPOLO: Your Honor, at issue right now
20 is the date on that email, which is July 5, 2013.

21 THE COURT: Which is a year after the
22 statements in your complaint?

23 MR. ZAPPOLO: Yes.

24 THE COURT: Okay. All right. Objection
25 sustained.

1 (Thereupon, the sidebar conference was
2 concluded.)

3 **THE WITNESS:** I'd like to show that to the
4 jury, if possible, so they can see the date was a
5 year after --

6 THE COURT: So Mr. Mosler --

7 **THE WITNESS:** Oh, I'm sorry.

8 THE COURT: -- wait until there's a question
9 pending.

10 **THE WITNESS:** Okay.

11 BY MR. ZAPPOLO:

12 Q A year after the journalist says that you made
13 the comments --

14 **A Yes.**

15 Q -- to him, that Mr. Wagner has serious mental
16 problems, you believed that James Wagner was arguably
17 insane, right?

18 MR. WEBER: Objection, argumentative, same
19 grounds.

20 THE COURT: Approach.

21 (Thereupon, a sidebar conference was held.)

22 THE COURT: So I would agree with you, but he
23 did just open the door. He used the words -- "a
24 year after" came out of his mouth on the stand
25 unprovoked.

1 MR. WEBER: Okay.

2 THE COURT: So, you know, what you can do, you
3 know, because I can see this happening, you know,
4 really for both of your clients -- you know, I've
5 seen your client not being able to control himself
6 and your client being unable -- you know, it's a
7 natural human reaction, they're very passionate
8 about this particular case. If you want to take a
9 minute and tell him or instruct him how to be a
10 witness -- not necessarily how to answer, but I'm
11 talking about if both of you wanted to do that with
12 your representative clients for a minute, I'll let
13 you do that now; or you don't have to, but right
14 now he did open the door and the objection is
15 overruled.

16 MR. WEBER: We would like to take a minute,
17 Your Honor.

18 MR. ZAPPOLO: And I would say based upon that,
19 he offered it, so I can admit the document into
20 evidence.

21 THE COURT: Yeah. That's fine.

22 MR. WEBER: Can we take a minute so I can
23 speak to him?

24 THE COURT: Yeah. Okay. I'm going to excuse
25 the jury for a second.

1 (Thereupon, the sidebar conference was
2 concluded.)

3 THE COURT: Deputy, I need to talk to
4 everybody for a moment, if you can put the jury in
5 the jury room.

6 I'll be back in two minutes.

7 (Thereupon, a short break was taken from
8 9:54 a.m. to 10:01 a.m.)

9 THE COURT DEPUTY: Jury entering.

10 (Jurors entering the courtroom at 10:01 a.m.)

11 THE COURT: Please be seated. Plaintiff, it's
12 your witness.

13 BY MR. ZAPPOLO:

14 Q Mr. Wagner [sic], a minute ago we were looking
15 at Exhibit Number 802. That's a true and correct copy
16 of an email that you wrote on or about the date that
17 it's purported to be, correct?

18 A **You did refer to me as Mr. Wagner, right?**

19 Q I apologize, Mr. Mosler. Is that a --

20 A **Freudian slip.**

21 Q Is that a true and correct copy of your email,
22 sir?

23 A **Yes.**

24 MR. ZAPPOLO: Okay. At this time, Your Honor,
25 I'd like to move Exhibit 802 into evidence based

1 upon the prior rulings.

2 THE COURT: So we've already addressed this?

3 MR. ZAPPOLO: Yes, sir.

4 THE COURT: So that's admitted -- Madam Clerk,
5 what number are we at?

6 THE CLERK: 60.

7 THE COURT: 60?

8 THE CLERK: Yes.

9 THE COURT: Thank you.

10 (Thereupon, Plaintiffs' Exhibit 60 was
11 received into evidence.)

12 BY MR. ZAPPOLO:

13 Q Now, Mr. Mosler, you were saying that this
14 email was about a year after the comments to Clifford
15 Atiyeh, correct?

16 **A Yes.**

17 Q In fact, the Clifford Atiyeh document -- that
18 article came out on about November 15th of 2012,
19 correct?

20 **A I don't remember the exact date, but it sounds**
21 **right.**

22 Q Okay. So that would only be about roughly 7
23 months --

24 **A 7 months.**

25 Q -- right?

1 **A Yes.**

2 Q Okay. Now at this point when you're talking
3 about someone having serious mental issues, and in your
4 email 802 you coupled it with "he has nothing," that's
5 another phrase that turned up somewhere else in one of
6 the articles, correct?

7 **A Yes.**

8 Q Okay. And then you said "Wagner has serious
9 mental issues and is arguably legally insane." So is it
10 just coincidence that your words were the same words
11 that were used in articles about Mr. Wagner?

12 MR. WEBER: Objection, speculation.

13 THE COURT: Sustained.

14 BY MR. ZAPPOLO:

15 Q Now, who is the person that 802 -- excuse me,
16 Exhibit Number 60, which is in evidence -- is directed
17 to?

18 **A Ian Grunes.**

19 Q Okay. And who is Mr. Grunes?

20 **A He was involved in the purchase of my**
21 **inventory at the end of the -- when I sold it.**

22 Q Was he one of the purchasers of Mosler Auto
23 Care Center?

24 **A I don't know. I'd have to look at the**
25 **document. I know he was involved with the -- in the**

1 purchase. I don't remember what entity bought it or
2 whether he was -- what exactly -- I don't remember the
3 details. You know, I have another -- I work full time
4 in the financial markets.

5 Q Okay. Now can we agree that Exhibit 737,
6 which is in evidence as Exhibit 52, was published on or
7 about February of 2011?

8 A Okay.

9 Q All right. And you'd agree with me that this
10 blowup is a copy of that page about the --

11 A Yeah. Yes.

12 Q Okay. About the Photon?

13 A Yes.

14 Q All right. And you didn't object to this
15 article about the Photon coming out in February of 2011,
16 correct?

17 A I did not formally object to it.

18 Q Okay. And I believe we addressed last week
19 the "We bet the guys at Mosler aren't satisfied." That
20 was because of the car turning in a lap that was not
21 four seconds faster than the prior car, correct?

22 A Well, by "prior car," you have to specify what
23 you meant there.

24 Q Well, the prior car that had won the Lightning
25 Lap.

1 A Okay. So we won the Lightning Lap twice, once
2 a year or two or three earlier, and then with this next
3 car we won it again. We beat the top performance cars
4 in the world, so that was good, but we didn't beat our
5 own record which was something we had been hoping to do.

6 Q Okay. And we've already covered the
7 discussions about the suspension, the setup of the car,
8 et cetera --

9 A Yes.

10 Q -- that you had attributed to James Todd
11 Wagner, correct?

12 A Well, so, you know, Todd set up the car to the
13 best of his ability, and I decided to let him do it
14 rather than a couple of other guys in the shop. And
15 from review of the data, there was -- at that point in
16 time, there was a problem with the suspension setup
17 because the car was faster in the straightaways, but it
18 was slower in the corners, and it was a lighter car and
19 it had a narrower rear tract. There were a lot of
20 reasons why it should have been faster in the corners,
21 and so I suspected that the problem was a setup problem
22 and so I didn't know what the specific setup problem
23 was.

24 Q Okay. Now, we also discussed on Friday
25 Exhibit Number 297 for ID, 53 in evidence. We referred

1 to that as a "Fabulous Photon" article. Do you remember
2 that?

3 **A Yeah. There were different articles so I kind**
4 **of get them confused.**

5 Q There you go.

6 **A Yeah.**

7 Q I'm letting you take a look at that.

8 **A Yeah.**

9 Q Now that document, it had some information in
10 it, didn't it? That you forwarded to others in order
11 for them to see the article -- right? -- about your car,
12 the Photon?

13 **A Probably. I don't remember. The document**
14 **should be there if I did.**

15 Q Okay. As a matter of fact -- well, just a
16 quick summary question for this. When you forwarded the
17 article that you have in front of you --

18 **A Yes.**

19 Q -- it talks about the Photon, but it also has
20 some references to the RaptorGTR in it, doesn't it?

21 **A Yes.**

22 Q And yet, when you forwarded that article to
23 your friends --

24 **A Yeah.**

25 Q -- about the Photon --

1 **A Yeah.**

2 Q -- you actually cut out the verbiage about the
3 RaptorGTR, didn't you?

4 **A Well, if you say so. I'd have to look at it.**

5 Q Okay. You don't recall doing that?

6 **A I don't. I don't recall any of this really.
7 I have to go by the documentation.**

8 Q Okay. Well, we'll show that to you.

9 **A Sorry. And, you know, in the interest of
10 time, I'll take your word for it that I cut that out.**

11 Q Okay. Thank you.

12 So you didn't want your friends to know about
13 the 2012 RaptorGTR, did you?

14 **A Are you answering for me or asking me a
15 question?**

16 MR. ZAPPOLO: I'm sorry, Your Honor.

17 **THE WITNESS: Say it again.**

18 BY MR. ZAPPOLO:

19 Q You didn't want your friends to know about the
20 2012 RaptorGTR, did you?

21 **A That's not true one way or the other.**

22 Q Okay. And yet you cut out the references to
23 the RaptorGTR when you forwarded the article to your
24 friends, correct?

25 MR. WEBER: Objection, asked and answered.

1 THE COURT: Overruled.

2 THE WITNESS: Okay. So Mosler has just
3 announced a new partnership with Santa Fe Digital
4 Media. I don't want to mislead them. I hadn't
5 announced that there had been a partnership.

6 Okay. And then the rest of it is about a
7 different car. "Just wait until you see the 2012
8 RaptorGTR says a giddy Wagner, it's going to blow
9 your mind." You know, it had nothing to do with
10 what I was sending them. I was sending them
11 information about the Photon. I didn't withhold
12 any Photon information when I said it.

13 BY MR. ZAPPOLO:

14 Q Right. The Photon was your baby; the
15 RaptorGTR was Mr. Wagner's, correct?

16 A Well, it still was -- you know, had the basic
17 shape of my car and it was identified by people as --
18 you know, it would be like -- it would have some -- I
19 don't know what you call it. Halo effect or something
20 on what we were doing.

21 We were manufacturing the beginnings of the
22 car and then he was going to be the corrected tuner that
23 would have finished the car, so just like maybe Callaway
24 starts with a Corvette and then finishes it and it
25 becomes a Callaway Corvette. So it was -- I'm not sure

1 **what you're getting at.**

2 Q You were -- Mosler Auto Care Center was
3 producing two cars simultaneously with different ideas
4 about how to make them go faster. Your car
5 was making -- the Photon --

6 **A Yeah.**

7 Q -- was lighter equals more speed.

8 **A Yeah.**

9 Q Mr. Wagner's vision was higher
10 horsepower-to-weight ratio and more aesthetically
11 pleasing would sell more, correct?

12 **A Okay. So we had two prototypes. We had the**
13 **Photon as a prototype for a car and then he had his car,**
14 **which I don't know if it was -- I don't think it was**
15 **completed yet, was another -- it was a prototype for a**
16 **different direction, but I had done turbocharged cars**
17 **before. It wasn't, like, new for me to have MT900s with**
18 **turbochargers.**

19 Q What's the first MT900 with twin-turbochargers
20 located behind the catalyst and towards the rear of the
21 car visible like the 2012 RaptorGTR?

22 **A I hadn't put them all the way to the rear, but**
23 **they had been -- I don't know, were they behind the**
24 **catalyst? I don't even remember. I think so.**

25 Q Right. Now --

1 **A But we -- yeah, go ahead.**

2 Q -- you were also upset that there were
3 comparisons being made between the 2012 RaptorGTR and
4 another car, the Pagani Vuayra, correct?

5 **A Well, upset -- again, for me personally -- I
6 don't think is the right word.**

7 Q All right. I apologize. I think I misspoke.
8 I should have said Huayra, H-U-A-Y-R-A.

9 **A I don't even know what that is.**

10 Q Okay. But you were -- you didn't want
11 comparisons being made between Mosler vehicles and other
12 car manufacturers' vehicles, did you?

13 **A In this particular instance it's not -- it
14 wouldn't have been my first choice for that.**

15 Q But you had done that in the past yourself,
16 hadn't you?

17 **A Yes.**

18 Q Okay. As a matter of fact, you had done
19 comparisons from your car to Ferraris, hadn't you?

20 **A Yes.**

21 Q As a matter of fact -- did we talk earlier
22 about your decision about advertising and where you
23 chose to advertise Mosler Auto Care Center vehicles?

24 **A Right. Well, I don't remember.**

25 Q Okay. Are you familiar with the publication

1 known as Grass Roots Motorsports?

2 **A Yes, I am.**

3 Q Okay.

4 **A Yeah.**

5 Q Second page of Exhibit 294. Is that an ad
6 that you -- that Mosler Auto Care Center ran in Grass
7 Roots Motorsports?

8 **A Yes.**

9 (Thereupon, Plaintiffs' Exhibit 294 was marked
10 for identification.)

11 BY MR. ZAPPOLO:

12 Q Okay. Is there any reason to believe that's
13 been modified or it's not the true and correct copy of
14 the advertisement?

15 **A No, no reason.**

16 MR. ZAPPOLO: Okay, Your Honor, at this point
17 I'd like to move Exhibit 294 into evidence.

18 MR. WEBER: No objection.

19 THE COURT: Admitted as Exhibit 61.

20 (Thereupon, Plaintiffs' Exhibit 294 was
21 received into evidence.)

22 BY MR. ZAPPOLO:

23 Q If we move to the second page of that --

24 **A Yeah. Do you have the year this came out? I**
25 **don't see the date.**

1 Q Do you recall the -- yes. This is back as
2 early as October of 2007, correct? On the first page,
3 the bottom left corner.

4 A Oh, yeah, right. October 2007, right.

5 Q Okay. Right.

6 Okay. So Mosler Auto Care Center, under your
7 direction, for years had been comparing its car to
8 things like Ferraris in publications, correct?

9 A Yeah. I did that one time and that was years
10 earlier, yes.

11 Q Okay. Your testimony is that you've never
12 done that again after that?

13 A I think I might have ran that ad another time,
14 but after -- after it didn't work, I stopped doing it.

15 Q Okay.

16 A You can see where Todd got his idea, right
17 from my own ad.

18 Q So Mr. Wagner got his ideas from your
19 advertising efforts, correct?

20 A It looks like it, yeah.

21 Q Okay. And you're emphasizing and comparing
22 the MT900 to a Ferrari at that point, right?

23 A Yeah. Yeah.

24 Q Okay. Now you mentioned in your ad you said
25 up to 800 U.S. legal horsepower?

1 **A Yes.**

2 Q You put that in there because you wanted the
3 public to know that you were manufacturing U.S. legal
4 street cars, correct?

5 **A Yes.**

6 Q But you weren't manufacturing U.S. legal
7 street cars, were you?

8 MR. WEBER: Objection, calls for a legal
9 conclusion.

10 THE COURT: Overruled.

11 **THE WITNESS: In 2007, yes, we were.**

12 BY MR. ZAPPOLO:

13 Q Okay. In 2008, were you?

14 **A Until we stopped manufacturing, whenever that**
15 **was. I don't remember when that was.**

16 Q In 2007 -- in 2007 Mosler Auto Care Center was
17 producing and selling the 2004 MT900S, correct?

18 **A Yes.**

19 Q Okay. Now the Certificate of Conformity --

20 **A Yes.**

21 Q -- issued by the EPA allowed those cars to be
22 sold if they were completely assembled by December 31,
23 2004, correct?

24 **A I was -- I'll take your word for it, but I was**
25 **under the impression that they had to be started by then**

1 **and could be finished, you know, sometime after that.**

2 Q The language on the document itself --

3 **A Yeah.**

4 Q -- that you've seen actually says they have to
5 be completed, correct?

6 **A I'd have to take another look, but...**

7 Q All right.

8 **A In the interest of time, I'll concede that it
9 says that on there.**

10 Q Okay. Mr. Mosler, I'm showing you what's been
11 marked as --

12 I'm showing you what's been marked as Exhibit
13 Number 254 for identification purposes.

14 **A Yeah. This was --**

15 (Thereupon, Plaintiffs' Exhibit 254 was marked
16 for identification.)

17 BY MR. ZAPPOLO:

18 Q I'd like you to flip to the portion where
19 information is -- look at the last two pages of that
20 document.

21 **A Okay.**

22 Q Would you agree with me that the last two
23 pages are Certificates of Conformity that we were just
24 discussing, correct?

25 **A Yes.**

1 Q And those were issued to Consulier Industries
2 a/k/a Mosler Automotive, correct?

3 A Yes.

4 Q Okay. Now those are the documents you just
5 were -- we were just discussing, right?

6 A Well, you said something about 2004.

7 Q Yes.

8 A This says 2009.

9 Q Okay. Is there any reason to believe that the
10 2004 is any different --

11 A I was under the impression that we had to
12 start the cars by 2004, and so maybe it is different. I
13 don't know.

14 Q All right. Well, let's talk about 2009 then
15 going forward, okay?

16 A Okay.

17 Q The second to last page is 2009, and the very
18 last page has an effective date of what year?

19 A 2009? What am I looking at now?

20 Q The last page.

21 A The last page is 2012 model year.

22 Q Right. So the second to last page is the
23 Certificate of Conformity by the EPA for the 2009 model
24 year cars, and the last page is the Certificate of
25 Conformity for the 2012 RaptorGTR, correct?

1 **A Correct.**

2 Q Okay. And there's no reason to believe that
3 those aren't true and correct copies of the documents
4 that you received?

5 **A I have no reason to believe they're not true
6 and correct copies of the documents I've received.**

7 MR. ZAPPOLO: All right. At this time, Your
8 Honor, I'd like to move Plaintiffs' Exhibit 254
9 into evidence.

10 MR. WEBER: No objection, Your Honor.

11 THE COURT: Madam Clerk, that's 62?

12 THE CLERK: Yes.

13 THE COURT: Thank you.

14 (Thereupon, Plaintiffs' Exhibit 62 was
15 received into evidence.)

16 BY MR. ZAPPOLO:

17 Q So let's talk about that for a moment, okay.
18 The last page of 254, which is in evidence now as -- I'm
19 sorry, Ms. Clerk?

20 THE CLERK: 62.

21 MR. ZAPPOLO: 62, thank you.

22 BY MR. ZAPPOLO:

23 Q You would agree with me that that's the
24 Certificate of Conformity for the RaptorGTR, correct?

25 **A Which one are we talking about?**

1 Q The last page of the document.

2 A **Does it say that on here?**

3 Q If you look on the screen, sir, I'm pointing
4 to it about the third way down of the page.

5 A **Yes, I see that.**

6 Q Okay.

7 A **That's what it says.**

8 Q So the model covered is the RaptorGTR?

9 A **Yes.**

10 Q You didn't have a Certificate of Conformity
11 for a Photon, did you?

12 A **No.**

13 Q You didn't have a -- well, did you have a
14 Certificate of Conformity for a MT900 for 2012?

15 A **No.**

16 Q Now this document says that its effective date
17 was August 12, 2011. Do you remember receiving an email
18 from Mr. Wagner on or around that time informing you
19 that he received this Certificate of Conformity?

20 A **Yeah, I've seen it going through the**
21 **documents.**

22 Q Okay. Do you remember what your response was?

23 A **I think I was very pleased when he received**
24 **it.**

25 Q Okay. Would the phrase "good job" --

1 **A Yes, definitely. It was a huge effort.**

2 Q It was a huge effort by Supercar?

3 **A Yes.**

4 Q Who was employing Mr. Wagner?

5 **A Yeah.**

6 Q By the way, did Mosler Auto Care Center pay
7 Supercar Engineering for all the work that it did?

8 **A Sure.**

9 Q Did it pay Supercar Engineering any money
10 between the middle of April 2011 and August 12, 2011?

11 **A My understanding is that Todd was fully
12 compensated and then some for everything he did.**

13 Q Okay. What evidence do you have that proves
14 that?

15 **A Well, there's the documentation that we got.**

16 MR. WEBER: Objection, vague.

17 THE COURT: Overruled.

18 BY MR. ZAPPOLO:

19 Q You can answer.

20 **A It's all -- there's a whole lot of
21 documentation about that. And look, I don't ever owe
22 anybody money. I pay them right away. So if there had
23 been any discussion about me owing him money, he would
24 have said something and I would have paid him.**

25 **If he secretly had me owing him money and**

1 didn't tell me, you know, that's possible, I guess.

2 But, you know, I gave him a car at a substantial
3 discount. He made hundreds of thousands of dollars of
4 profit, so it's probably the best year he ever had. He
5 used money to pay his father back. I don't know, I
6 thought I took good care of him.

7 Q You concede that Mr. Wagner paid his father
8 back the \$100,000 that was wired to you, correct?

9 A I heard that in the testimony, yeah.

10 Q You don't have any reason to doubt that, do
11 you?

12 A No.

13 Q Okay. So Mr. Wagner, James Todd Wagner is
14 actually the person that suffered the \$100,000 loss,
15 you'd agree, right?

16 A Yeah, that's as far as I know at this point in
17 time, yes, but I don't have any documentation of it.

18 Q Okay.

19 A I just have testimony.

20 Q Now, this document, the last page of
21 Exhibit 254 references an expiration date of 12/31/2012.
22 You knew that at the time that it was issued -- right?
23 -- because you read the document?

24 A No, I didn't read the document. I didn't see
25 it until this case.

1 Q Okay. Well, you still take the position that
2 Mosler Auto Care Center -- well, let me back up.

3 Did Mosler Auto Care Center obtain a
4 Certificate of Conformity for the 2012 RaptorGTR that
5 was purchased by Supercar Engineering, Inc.?

6 A **That's what I'm looking at in front of me, so**
7 **I'll say yes --**

8 Q Okay. Now --

9 A **-- in this documentation.**

10 Q -- let's back up one page. And we have the
11 2009 MT900S Certificate of Conformity, correct?

12 A **Correct.**

13 Q Okay. Now, you're aware that the certificate
14 covers only those new motor vehicles or vehicle engines
15 which conform in all material respects to the design
16 specifications that apply to those vehicles or engines
17 described in the documentation required by 40CFR parts
18 85, 86, et cetera, and which were produced during the
19 2009 model year production period stated on the
20 certificate of said manufacturer, correct?

21 A **That's what it says.**

22 Q Okay. Now --

23 A **Do you know how they define model year?**

24 Q I'm asking you. Your attorney can ask you
25 questions later, sir.

1 **A Okay.**

2 Q I'm going to go ahead, otherwise we're going
3 to go back and forth and I don't want to do that. I
4 just want to convey information here.

5 So with respect to the -- whether or not the
6 vehicles or engines conformed in all material respects
7 to the design specifications that were submitted to the
8 EPA, you've already admitted that the cars that you were
9 selling were modified. They had different components on
10 them, correct?

11 **A I don't -- I'm not sure what the context of
12 that is.**

13 Q Remember yesterday we were --

14 **A Yeah.**

15 Q Excuse me, on Friday we were talking about
16 flywheels. We were talking about engine catalyts and
17 you put on lighter ones because you thought they would
18 be better, et cetera, and all that?

19 **A Right. You know, you were looking at the
20 Photon there, which was a prototype.**

21 Q Okay.

22 **A I'm not sure that applied to the regular 2004
23 MT900 --**

24 Q Okay.

25 **A -- S.**

1 Q Now on the bottom there it says "In the case
2 of completely assembled vehicles, this Certificate of
3 Conformity covers only vehicles which are completely
4 manufactured prior to January 1, 2010." And that ties
5 in with the expiration date, correct?

6 A Yes.

7 Q And you know that companies like Ford and
8 Chevy have to have their vehicles recertified every
9 single year with the EPA, correct?

10 A I don't know that.

11 Q Okay. You knew that Mosler Automotive Center
12 was supposed to have its cars recertified for every year
13 based upon when the cars were going to be completely
14 manufactured, correct?

15 A Yes, starting in 2009. I don't know that for
16 the 2004.

17 Q Okay. Well, let's back up one page on that
18 document, sir.

19 A Uh-huh.

20 Q That's the Certificate of Conformity for the
21 2004 MT900, correct?

22 A That's what it looks like, yeah. This is the
23 first time I've seen it.

24 Q Okay. And that language in the paragraph at
25 the end there, "In case of completely assembled

1 vehicles," et cetera, that's the same as the language we
2 were talking about for the 2009, isn't it?

3 A Which part?

4 Q The last paragraph.

5 A The last paragraph? Yes, prior to January 1,
6 2005.

7 Q Okay. So you knew that the vehicles had to be
8 completely manufactured prior to January 1, 2005,
9 correct?

10 A Well, according to this, but --

11 Q Right.

12 A -- that's just a part of it.

13 Q According to the federal government's
14 documentation, right?

15 A Well, this is not their entire documentation.

16 Q Okay.

17 A So they have small vehicle manufacturers'
18 regulations and all kind of other things and, you know,
19 I relied on legal opinions. And, you know, my legal
20 told me that it was based on Mosler Auto Care Center
21 when the car was started and not when it was completed,
22 which might have been a -- I don't know, I can only
23 speculate, it might have been a small manufacturer
24 exemption or something like that, or I might have been
25 given the wrong information. Maybe I was building

1 **illegal cars, but you can't tell just from this**
2 **document.**

3 Q That document for 2004 had an effective date
4 of 12/14/2004, so the 2004 model year was certified so
5 long as cars were manufactured prior to January 1, 2005,
6 but you have the time frame of between December 14, 2004
7 and January 1, 2005 to manufacture those vehicles,
8 correct?

9 A **That's what it says here.**

10 Q Okay. Now, Mr. Wagner called that to your
11 attention once Mr. Wagner got involved in this process,
12 didn't he?

13 A **He may have. I mean --**

14 Q Okay.

15 A **I would hope he did if he saw it.**

16 Q And you didn't stop selling 2004 vehicles in
17 2005, did you?

18 A **I don't believe I did.**

19 Q And you sold, quote/unquote, 2004 vehicles in
20 2006, didn't you?

21 A **I don't remember the years, but we sold some**
22 **vehicles.**

23 Q Do you remember Mr. Hassan Abboud talking
24 about --

25 A **Yeah.**

1 Q -- his car and his car was manufactured after
2 the Certificate of Conformity had expired, wasn't it?

3 A His car was manufactured in England and
4 imported under a different regulation.

5 Q It was -- well, was he told that he was buying
6 an English car or a Mosler car?

7 A Well, it was -- I don't know. I don't know
8 what he was told. Todd was his salesman. I don't think
9 I ever met the guy.

10 Q Did you continue to tell others that your
11 vehicles were street legal even after Mr. Wagner
12 informed you of the problems with the EPA certification
13 and the manufacturing dates?

14 A I don't recall a specific conversation either
15 way, but if you've got a document that I did, I'll take
16 a look at it.

17 Q Okay. Now with respect to the use of the name
18 Raptor and RaptorGTR, you said it was a prototype,
19 right? Just like the Photon, right?

20 A Yeah. Generically, in the casual definition
21 of the word "prototype."

22 Q Okay. Well, you remember earlier you told
23 this jury you had to be precise?

24 A Yeah.

25 Q Okay. Well, was it casually that you were

1 using the name "Photon" and "Raptor" as prototypes, or
2 was it that's what you were doing?

3 **A I don't understand the question.**

4 Q Well, you seem to qualify your answer now.

5 **A Well, they were prototypes in that you build a**
6 **car to demonstrate what you've done and then if that**
7 **particular car is -- you know, may or may not be**
8 **representative of what you actually produce when you**
9 **take orders and produce more cars, so you have to build**
10 **one as I -- maybe I should call it a "demonstrator" as**
11 **opposed to a "prototype." I don't know, there's no**
12 **official word for it.**

13 Q Well, we'll try and pick up a little bit of
14 steam here.

15 I'm showing you what's been marked as
16 Plaintiffs' Exhibit Number 893 for identification
17 purposes.

18 **A Yeah.**

19 (Thereupon, Plaintiffs' Exhibit 893 was marked
20 for identification.)

21 BY MR. ZAPPOLO:

22 Q You were copied on that email, correct?

23 **A Yes.**

24 Q Okay. Is there any reason to believe it's not
25 a true and correct copy that was sent to you on or about

1 the date it's referenced?

2 **A Yes. It's good.**

3 Q Okay. Now that was Mr. Wagner --

4 MR. ZAPPOLO: I'm sorry, Your Honor. At this
5 point I'd like to move Plaintiffs' 893 for
6 identification purposes into evidence.

7 MR. WEBER: No objection.

8 THE COURT: Madam Clerk, 63?

9 THE CLERK: Yes, Your Honor.

10 (Thereupon, Plaintiffs' Exhibit 63 was
11 received into evidence.)

12 BY MR. ZAPPOLO:

13 Q Okay. Now that was Mr. Wagner telling you and
14 several others on March 7, 2011 about using the Raptor
15 and RaptorGTR in advertising for the Mosler Challenge,
16 right?

17 **A Yes, yes.**

18 Q Okay. And you understood that that's what was
19 going to happen, correct?

20 **A Oh, yeah.**

21 Q Okay. So you understood that you were holding
22 out to the world on the Internet that the RaptorGTR was
23 a Mosler product, correct?

24 **A We were -- the goal was to preserve the**
25 **tradename because it was going to expire, and so we**

1 looked at the rules and I was -- again, I work in
2 financial markets all day and people in the shop, Todd
3 and others, were saying what we got to do is have some
4 kind of minimum exposure somewhere enough to keep the
5 trademark, and how do we do this and who can we get to
6 do it?

7 Well, Berry Van Elk had one of our cars that
8 was racing in the Dutch Supercar Series and Martin Short
9 was -- Rollcentre, who was in Europe, was a distributor
10 over there, was a friend of theirs, and they agreed to
11 display this decal or whatever it was on the car so that
12 we could preserve the copyright so that Todd could have
13 it for his car.

14 MR. ZAPPOLO: Could you read back my question,
15 please, Ms. Court Reporter?

16 THE COURT REPORTER: "Okay. So you understood
17 that you were holding out to the world on the
18 Internet that the RaptorGTR was a Mosler product,
19 correct?"

20 **THE WITNESS:** Well, that's something --

21 MR. WEBER: Objection, asked and answered.

22 THE COURT: Let's approach for a second.

23 (Thereupon, a sidebar conference was held.)

24 THE COURT: I'm going to overrule the
25 objection, but I'm going to remind you that it's

1 Tuesday, 10:35. Tomorrow is the halfway point.

2 MR. ZAPPOLO: Yes, I understand, Your Honor.

3 THE COURT: Okay.

4 MR. ZAPPOLO: Yes. My client wants it put on
5 this way, and I'm accommodating to my client.

6 THE COURT: I just want to put it on there
7 that the halfway point is tomorrow.

8 MR. ZAPPOLO: I understand.

9 THE COURT: You know, equal time is equal
10 time.

11 MR. ZAPPOLO: Understood.

12 THE COURT: And so tomorrow, at the close of
13 business, you're going to rest one way or the
14 other.

15 MR. ZAPPOLO: I understand.

16 THE COURT: And, you know -- okay.

17 MR. ZAPPOLO: Yes, Your Honor.

18 MR. WEBER: And I just want to know -- I mean,
19 Mr. Zappolo is the lawyer here and so --

20 THE COURT: I'm not worried about that.

21 MR. WEBER: -- he's got to put his case on.

22 THE COURT: We'll have a conversation, but now
23 everybody's on notice. Okay?

24 (Thereupon, the sidebar conference was
25 concluded.)

1 BY MR. ZAPPOLO:

2 Q The long answer that you just gave to that
3 question, it doesn't need to change, does it? Can you
4 answer my question?

5 A I don't remember what it was.

6 Q All right. Can you answer the question yes or
7 no, you knew that you were holding out on the Internet
8 to the world that the Raptor and RaptorGTR were Mosler
9 products, correct?

10 A We were holding out to the world that the
11 Raptor and RaptorGTR were trademarks owned by Mosler --

12 Q Okay.

13 A -- so that we could use them on any product
14 that we wanted.

15 Q There's page -- I'm showing you what's been
16 marked as 408 for identification purposes. That is, in
17 fact -- well, I'm sorry. Do you recognize that?

18 A No, I never saw that until this trial. I
19 think I saw it yesterday -- well, it wasn't yesterday,
20 last week.

21 (Thereupon, Plaintiffs' Exhibit 408 was marked
22 for identification.)

23 BY MR. ZAPPOLO:

24 Q Okay. Doesn't 408 actually represent what was
25 said to be done on 893?

1 **A What was said to be done?**

2 **Q The direction --**

3 **A Yes, yes. That was how they decided to**
4 **preserve the trademark, by putting this out.**

5 **Q Okay.**

6 **A Yeah.**

7 **Q That's how they decided, okay. Didn't we**
8 **establish earlier that with respect to the things that**
9 **went on at Mosler Auto Care Center, you were the guy the**
10 **buck stops here?**

11 **A Yes.**

12 **Q Do you remember that?**

13 **A No, I agree. I'll take responsibility.**

14 **Q Okay.**

15 **A But I got -- you know, I approved their**
16 **request. I had no idea the trademark was expiring.**

17 **Q So --**

18 **A They came in the last minute rushed and we had**
19 **to do this, so I said "Okay, fine."**

20 **Q So you approved the placement that's evidenced**
21 **on Exhibit 408, correct?**

22 **A This is -- is this on our website? Where was**
23 **this? Is this a picture of a computer screen?**

24 **Q Yes.**

25 **A Or is it Dutch Supercar? What is this?**

1 Q If you look on the top left corner, you see
2 the Mosler Challenge?

3 A Okay. This is on their website, is that what
4 you're saying?

5 Q Didn't the Mosler Challenge have a website?

6 A It wasn't my website, that was a part of Dutch
7 Supercar Challenge. It was a category over there.

8 Q Okay.

9 A So they're the ones who were promoting their
10 different race categories.

11 Q So you agreed to the Dutch Supercar Challenge
12 putting the Mosler Raptor and RaptorGTR mark on their
13 site, correct?

14 A Yes. Brought to you by this car, which was
15 Todd's tuner car --

16 Q Okay.

17 A -- that we were hoping --

18 Q Now a tuner car?

19 A Yeah. I was hoping it was going to sell.

20 Q Tuner car, explain to this jury what you mean
21 when you say "tuner car."

22 A A tuner car is something like -- it's actually
23 the car that Hassan had before he bought the MT900. He
24 had a Corvette tuner car. It was a Corvette that
25 somebody put turbochargers on and sold it to him because

1 it has a lot more power and it's very popular, very
2 attractive.

3 There are a lot of tuner companies that are
4 wildly successful taking Corvettes and then putting
5 turbochargers and the like on them or Vipers. You see a
6 Venom Viper and 1000 horsepower Viper and they put
7 turbochargers on it and sell the cars. And Dodge sells
8 the Viper and Hennessey sells his add-ons and they all
9 do very well. I thought it was a good business model
10 for us to do that.

11 Tuner cars have lower hurdles to federal, you
12 know, restrictions. They can do things that the factory
13 can't do without going through a lot of trouble. So
14 there's more leeway because they're small volume, small
15 production, and they're allowed to do things.

16 Q You would agree with me, wouldn't you, that
17 referring to someone's vehicle as a tuner car is a
18 derogatory term?

19 A I don't think so. I always liked the idea
20 because I really liked the Callaway Corvettes. I was a
21 friend of Reeves Callaway and he had Boris Said drive it
22 for him at the Supercar Challenge with top professional
23 drivers. And the same thing with these -- you know, I
24 was tempted to buy one over the years, actually.

25 Q I'm trying to move along quickly.

1 **A I'm sorry.**

2 **Q You disagree, right? You're telling the jury**
3 **that referring to a car as a tuner car is not a**
4 **derogatory phrase, right?**

5 **A I said for me it's not. For other people it**
6 **could be. They could look at a car and say "That's not**
7 **a Ferrari, that's a tuner car."**

8 **Q Right.**

9 **A I'm not disagreeing that people do that.**

10 **Q And you knew that at the time, right?**

11 **A No. I knew that tuner cars were getting a lot**
12 **more money than the base cars. If a Corvette was**
13 **\$60,000, the tuner car was getting 90,000, 100,000,**
14 **120,000.**

15 **Q But not if it wasn't a true Corvette, right?**

16 **A Yes. Callaway would take a Corvette and then**
17 **turn it into a Callaway Corvette tuner car and he would**
18 **double the value. It was huge.**

19 **Q But it was acknowledged?**

20 **A He has his own private helicopter. This guy**
21 **was doing really well.**

22 **Q It was acknowledged, though, that that was a**
23 **Corvette to begin with and then it was a souped-up**
24 **Corvette, correct?**

25 **A Right.**

1 Q Okay. Not it was not a Corvette to begin
2 with --

3 A Well --

4 Q -- because Corvette didn't -- Chevrolet didn't
5 come out and say "That's not our car, that's not a
6 Corvette"?

7 A Right. There was not a Chevrolet final
8 product. It started off as a Chevrolet.

9 Q Right.

10 A Todd's car was a MT900. Just like Sylvia
11 said, it was a European car and then he enhanced it and
12 was going to get more money, and I thought that was
13 great.

14 Q Okay. So, for example, like an Eddie Bauer
15 Edition Ford Bronco, right?

16 A Yeah, that's a little different. That's
17 factory -- you know, that's a cosmetic edition.

18 Q Well, that's a factory --

19 A Cosmetic edition.

20 Q It's done at the factory, correct?

21 A Well, I don't know where it's done, but it's a
22 cosmetic edition.

23 Q Okay.

24 A So look at the AMG Mercedes.

25 Q A factory --

1 **A Yeah.**

2 Q -- car that is then modified in some way at
3 the factory is still that company's vehicle, isn't it?

4 MR. WEBER: Objection, hypothetical.

5 **THE WITNESS: It depends on --**

6 MR. WEBER: Objection, hypothetical.

7 THE COURT: Overruled.

8 **THE WITNESS: It depends on the modification.**

9 **If you put different seats in, you know, seat**
10 **covers or something, that's one thing. If you do**
11 **something that's affecting the emissions or the**
12 **other things like that, then the factory would**
13 **either have to recertify the car itself or it would**
14 **have to -- or the tuner can certify the car and**
15 **have it approved. There's two different paths you**
16 **can take.**

17 BY MR. ZAPPOLO:

18 Q Well, the RaptorGTR was certified to the
19 EPA --

20 **A Yeah.**

21 Q -- correct?

22 **A Yeah.**

23 Q And it was built exactly as it was certified
24 to the EPA, wasn't it?

25 **A I don't know, I didn't build it.**

1 Q Well, you say Mr. Wagner did, right?

2 A Yeah. Yes.

3 Q Okay. You don't have any evidence to tell
4 this jury that Mr. Wagner built the 2012 RaptorGTR not
5 conforming with the EPA certification requirements, do
6 you?

7 A I don't think so.

8 Q Okay. So that whole -- that whole discussion
9 that you just had about people modifying, et cetera,
10 that doesn't apply to this situation, does it?

11 A Well, I think it does.

12 Q You acknowledge that you have no evidence that
13 Mr. Wagner modified that car from the EPA standards,
14 correct?

15 A I don't -- I have no evidence that he did
16 that, no, but that's not the whole criteria for --

17 Q That car was issued a Bill of Sale by Mosler
18 Automotive Center, correct?

19 A Yes.

20 Q Okay. That car was certified to the EPA as
21 being a Mosler product, right?

22 A That's correct.

23 Q That car was manufactured --

24 A As far as I know.

25 Q -- within the time period of EPA

1 certification, correct?

2 **A That's what the document shows here.**

3 Q Okay. And yet it's your position that that's
4 not a Mosler vehicle, correct?

5 **A Well, it was -- the whole point of the whole**
6 **exercise was that it was done by SEI to be his vehicle.**
7 **It was his company. That's why he formed the company,**
8 **so he could have his own car.**

9 Q SEI, at the time, was an independent
10 contractor working for Mosler Auto Care Center, correct?

11 **A Correct.**

12 Q So the people responsible for that vehicle --
13 its manufacturer was Mosler Auto Care Center, correct?

14 **A Well, responsibility was Bricklin in Europe**
15 **sold to Todd and then he did the thing -- you know, and**
16 **then he paid to have it done out of, you know, his own**
17 **money to -- to do all the modifications. I didn't pay**
18 **for it, he did.**

19 Q You keep saying modification, the
20 quote/unquote modification.

21 **A All right. The completion. He completed the**
22 **car out of his own money. I didn't pay for it.**

23 Q The car was completed at the Mosler Auto Care
24 Center, correct?

25 **A Yeah, at Todd's expense.**

1 Q Okay. Just like when someone buys a car from
2 Ford?

3 A Yeah.

4 Q Cars are manufactured at Ford and then people
5 pay for it, correct?

6 A Well, you don't buy a half-built car from Ford
7 and then go into the Ford factory with your -- you know,
8 to pay for the guys to build it for you. You can't use
9 an analogy like that. We were just a few guys in a
10 garage, we're not Ford.

11 Q You are, however, responsible for the
12 manufacturing of that car to the federal government's
13 standard, correct?

14 A I was -- you're talking about me?

15 Q MACC.

16 A MACC was responsible --

17 Q Yes.

18 A -- for the work Todd did when he finished it
19 on his own, paying people to do it for himself?

20 Q What evidence do you have that he had other
21 people doing things on his own?

22 A The car was in the shop. In fact, he was --
23 he had hired -- I'm trying to remember the
24 documentation. It's all documented, but --

25 Q The car was in Mosler Auto Care Center's shop,

1 wasn't it?

2 **A Yes.**

3 Q Okay. And Mosler Auto Care Center personnel
4 and/or Mosler Auto Care Center's independent contractors
5 were working on that car up until the date that it was
6 completed --

7 **A Yes.**

8 Q -- according to the EPA standard, correct?

9 **A He was paying -- he was paying for my people**
10 **to do it.**

11 Q He was, right. And there's a Bill of Sale
12 that reflects all the payments, correct?

13 **A Right.**

14 Q And there's an invoice that we have in
15 evidence and it references things like turbochargers,
16 right?

17 **A Yes, yes.**

18 Q This car's --

19 **A Yeah.**

20 Q The turbochargers to this car did not modify
21 this car from the way it was designed and the way it was
22 represented that Mosler Auto Care Center was going to
23 build it, correct?

24 **A I think we're arguing semantics now, so I**
25 **don't think there's anything left to say.**

1 Q Okay. Nevertheless, 408, is there any reason
2 to believe that that's not a true and correct
3 representation of the website that you authorized?

4 A No.

5 MR. ZAPPOLO: Okay. At this point, Your
6 Honor, I'd like to move Plaintiffs' Exhibit 408 for
7 identification into evidence.

8 MR. WEBER: No objection.

9 THE COURT: Madam Clerk, 64?

10 THE CLERK: Yes, Your Honor.

11 (Thereupon, Plaintiffs' Exhibit 64 was
12 received into evidence.)

13 MR. ZAPPOLO: And Ms. Clerk, is 893 in?

14 THE CLERK: Yes, that's 63.

15 MR. ZAPPOLO: Thank you.

16 BY MR. ZAPPOLO:

17 Q Is the Photon an official Mosler product?

18 A It's a prototype that was built by Mosler
19 Automotive, by MACC, by my people that I paid.

20 Q Would you say it's an official Mosler product?

21 A I don't know. It depends on the context, I
22 guess. It's not something manufactured street legal at
23 that point, at this point in time. Is it a product that
24 Mosler did? Sure.

25 Q Did you ever say that the RaptorGTR was not

1 certifiable for public sale?

2 **A I don't think I said that.**

3 Q Did you ever hear anyone say that the
4 RaptorGTR would not pass emissions?

5 **A I might have said that, that it was something
6 different.**

7 Q Okay. Now the RaptorGTR will pass emissions,
8 won't it?

9 **A No.**

10 Q What do you base that assertion upon?

11 **A The cold start test. It wasn't going to pass
12 that.**

13 Q Okay. Now what -- can you please explain to
14 the jury everything you know about the cold start test
15 and why you believe that the 2012 RaptorGTR would not
16 pass a cold start test.

17 MR. WEBER: Objection, compound question.

18 THE COURT: Sustained.

19 BY MR. ZAPPOLO:

20 Q Why won't the RaptorGTR pass the cold start
21 testing?

22 **A Because Todd told me it wouldn't.**

23 Q Okay. Did Mr. Wagner ever tell you that he
24 had, in fact, found a way to have the 2012 RaptorGTR
25 pass the cold start test?

1 **A No.**

2 Q Okay. So the only evidence that you have is
3 what you're saying Mr. Wagner said to you, correct?

4 **A Yes.**

5 Q Okay. If the car will, in fact, pass the cold
6 start test, your assertion that it would not be an
7 error, correct?

8 **A Correct.**

9 Q And you understand that saying that a vehicle
10 will not pass emissions can seriously impact the
11 vehicle's value, correct?

12 **A There's a nuance here that might make that**
13 **statement not true. And, you know, as a general**
14 **statement, that might be true, but in this specific case**
15 **there's more to it.**

16 Q Okay. This car was being sold for driving on
17 public roads in the United States of America, correct?

18 **A Yes.**

19 Q Okay. So saying that it wouldn't pass
20 emissions would negatively impact its value, correct?

21 **A It could under circumstances, sure.**

22 Q Well, the 2009 MT900 passed the cold start
23 test, right?

24 **A No.**

25 Q No? So all the cars that you sold, you sold

1 knowing that it wouldn't pass the cold start test?

2 A I think the 2004s might have been okay, but I
3 forget the model year of the Corvette engines where Todd
4 was trying to get them to pass and couldn't do it and so
5 we took another tact.

6 Q What was that?

7 A We got -- we had contacts with Chevrolet that
8 Todd traced down and they told us not to bother to try
9 and pass it because the engine will not pass it, and
10 their own cars have not passed the test and we didn't
11 know how they got them through, and Todd came up with
12 the idea that we could -- instead of sending in data
13 that showed we passed the test, we could just make the
14 statement that we've done -- set up the car -- the
15 engines exactly the same way that it is in a Corvette.
16 And since Corvette's got EPA approval, then they should
17 approve ours, and the EPA agreed to that.

18 And so we got our Certificate of Conformity
19 based on our representation that what we've done is
20 identical to what Corvette had done, and so it was legal
21 to sell it for the U.S. roads. And that was the story
22 that I got in St. Croix from Todd and the others in the
23 shop.

24 Q So you know that Mr. Wagner consulted with the
25 Chevrolet engineers in order to make sure that the car

1 would, in fact --

2 **A** I don't know that. I know that -- I think it
3 might have been the people at the lab he was working
4 with, not himself. I'm not saying he did it directly,
5 but he was working with a lab at the time that we
6 were -- I was paying for and I don't know if -- I
7 think -- I can't say whether it was the lab people or
8 himself right now. It is documented, though, who spoke
9 with the people at General Motors.

10 **Q** Okay. True or false, you don't know what work
11 James Todd Wagner did with respect to that cold start
12 test, do you?

13 **A** Well, just what was reported to me in the
14 emails at the time. I know he did a lot.

15 **MR. ZAPPOLO:** Your Honor, I don't know whether
16 you want to take a morning brief break or not or
17 how you want to handle that.

18 **THE COURT:** All right. Why don't we take a
19 ten-minute break.

20 **THE COURT DEPUTY:** Court will be in recess
21 briefly.

22 **THE COURT:** Come back in five. We'll break
23 around noon for them.

24 **MR. WEBER:** Thank you, Your Honor.

25 (Thereupon, a short break was taken from

1 10:56 a.m. to 11:07 a.m.)

2 THE COURT DEPUTY: Court is back in session.

3 THE COURT: You can bring in the jurors.

4 (Jurors entering the courtroom at 11:07 a.m.)

5 All right. Please be seated. Plaintiff, it's
6 your witness.

7 BY MR. ZAPPOLO:

8 Q Mr. Mosler, a few minutes ago we were looking
9 at Plaintiffs' 893 marked for identification purposes in
10 evidence now as Exhibit 63, and you told the jury that
11 that was about someone else wanting to use the
12 trademarks, right? Mr. Wagner, I believe you said,
13 needed to -- wanted to use the trademarks, et cetera, to
14 preserve them.

15 A Yeah. We wanted to preserve the copyright or
16 the trademark or whatever it was.

17 Q Well, Mosler Auto Care Center wanted to
18 preserve that, correct?

19 A Yeah, whoever it was issued to. Todd picked
20 it up that it was expiring.

21 Q Because Mosler Auto Care Center wanted to use
22 the name Raptor and RaptorGTR, correct?

23 A Well, we wanted to preserve it. I had already
24 sold it to Ford for the use of their trucks years
25 earlier and so the trademark, I thought, had some

1 economic value.

2 Q Okay.

3 A It wasn't so much about using it as to
4 preserve the economic value.

5 Q And we talked about the Mosler Challenge
6 website, 408.

7 A Yeah.

8 Q Okay. Now when you saw that website, you were
9 excited that that had been done, weren't you?

10 A You know, I hadn't seen that website, but --
11 that I can recall, but if I had seen it, I would have
12 been like -- it would have given me a good feeling.

13 Q Okay. I'm showing you what's been marked as
14 Plaintiffs' 1359D. In fact, is that a true and correct
15 copy of the email that you sent --

16 A Yeah.

17 Q -- in response to when the Raptor logo was
18 added to the header of the website.

19 A Yeah.

20 (Thereupon, Plaintiffs' Exhibit 1359D was
21 marked for identification.)

22 MR. ZAPPOLO: Okay. At this time, Your Honor,
23 I'd like to move 1359D into evidence.

24 MR. WEBER: No objection, Your Honor.

25 THE COURT: Madam Clerk, that's 65?

1 THE CLERK: Yes, Your Honor.

2 (Thereupon, Plaintiffs' Exhibit 65 was
3 received into evidence.)

4 BY MR. ZAPPOLO:

5 Q Now 1359D actually references or has a link to
6 moslerchallenge.nl, correct?

7 A Yes.

8 Q And that's the same website
9 moslerchallenge.nl, correct?

10 A Yes.

11 Q Okay. And that's on the Exhibit 408?

12 A Yeah.

13 Q Okay. So that was referred to as a Mosler
14 website by Mr. Van Elk. Who's Berry Van Elk?

15 A He was one of the drivers in the Dutch
16 Supercar Challenge and he raced a Mosler.

17 Q Okay.

18 A An MT900.

19 Q Okay. So he added the Raptor and RaptorGTR
20 marks to the website and your response was "Nice,"
21 correct?

22 A Right. But that was his website, but it was
23 the sec -- the Mosler section, as we showed in the last
24 photograph. It wasn't, like, our website. Yeah, and I
25 said "Nice." I don't know if I had seen it or not, I

1 **just flipped back. I'm trying to see --**

2 Q Now, by the way --

3 **A I don't know if I saw it or not.**

4 Q -- on the Mosler Auto Care Center website --

5 **A Yeah.**

6 Q -- there was a place for people who wanted to
7 potentially purchase a vehicle to reach out to dealers
8 and people that could sell them cars, correct?

9 **A I've seen that recently also. I never went
10 there at the time.**

11 Q I'm showing you what's been marked as
12 Plaintiffs' Exhibit 289.

13 **A Okay.**

14 (Thereupon, Plaintiffs' Exhibit 289 was marked
15 for identification.)

16 BY MR. ZAPPOLO:

17 Q Do you have any reason to believe that
18 that's -- Exhibit 289 is not a true and correct copy of
19 that section of the Mosler Auto Care website?

20 **A I don't, but --**

21 MR. ZAPPOLO: Okay. At this point, Your
22 Honor, I'd like to move Plaintiffs' Exhibit 289
23 into evidence.

24 MR. WEBER: No objection.

25 THE COURT: Madam Clerk, 65?

1 THE CLERK: 66.

2 THE COURT: 66.

3 MR. ZAPPOLO: I apologize, Your Honor, I think
4 I only gave -- did yours only have one page? It
5 should be two pages. Is there two?

6 MR. WEBER: It's two pages.

7 MR. ZAPPOLO: Does yours have two pages,
8 Mr. Mosler?

9 **THE WITNESS: Yes.**

10 MR. ZAPPOLO: Okay. I just want to be sure
11 you have the correct copy.

12 (Thereupon, Plaintiffs' Exhibit 66 was
13 received into evidence.)

14 BY MR. ZAPPOLO:

15 Q Okay. And that referenced Alan Simon as a
16 person to inquire if you wanted to purchase an MT900,
17 and we have Mike Vietro for California, Mr. Simon for
18 other states, correct?

19 **A Yeah. I was surprised we didn't have somebody
20 from other planets, you know, in case.**

21 Q Okay. But we had James Todd Wagner for these
22 other states in the United States, correct?

23 **A Let's see, what did they have? It could be,
24 yeah. Where are you looking? Oh, yeah.**

25 Q The third name down on the list.

1 **A Yes, yes, yes.**

2 Q Okay. So you recognize that James Todd
3 Wagner -- we talked about this in deposition, right?
4 And you recognize that Mr. Wagner was a non-stocking
5 distributor for those states.

6 If someone wanted to purchase a vehicle from
7 one of those states, they get referred over to
8 Mr. Wagner to sell a car, correct?

9 **A Yeah. This was all informal, yes.**

10 Q Okay. And then we have other people for
11 different states, like Germany and Central and South
12 America, Saudi Arabia and Dubai. That was Mr. Wagner as
13 well, correct?

14 **A That's what's on there, yeah.**

15 Q And China is James Wagner as well, correct?

16 **A Yeah.**

17 Q Okay. And Russia, correct?

18 **A Russia, yeah.**

19 Q And Thailand?

20 **A And Thailand.**

21 Q Okay. So you recognized -- you individually,
22 on behalf of Mosler Auto Care Center, recognized
23 Mr. Wagner as a distributor of Mosler vehicles, correct?

24 **A Well, here it was a -- it was contact -- you**
25 **know, who to contact. And if an inquiry came in, who**

1 would handle it.

2 Again, there's only four or five guys in the
3 shop with no cars, so it's a pretty ambitious website.

4 Q Okay. Nevertheless, you did sign distribution
5 agreements with James Todd Wagner, correct?

6 A Yeah. That was something different.

7 Q Okay. But the distribution agreement did
8 cover China and Thailand, correct?

9 A It sounds right. I'd have to go back and
10 check, but it's all documented.

11 Q Okay. Now when speaking with the reporters,
12 or at least with one reporter in this case, you told the
13 reporter that Mr. -- well, you know what? We'll get to
14 that. I'll deal with that separately.

15 Now, Exhibit Number 39, this was when Mr. Alan
16 Simon's car -- about the time that it caught on fire,
17 correct? Burnt to the ground?

18 A Yeah.

19 (Thereupon, Plaintiffs' Exhibit 39 was marked
20 for identification.)

21 BY MR. ZAPPOLO:

22 Q Okay. And that was about -- it was sometime
23 in the October 2011 time frame, correct?

24 A Correct.

25 Q Okay. Now right after that, did you become

1 aware of Mr. Wagner and Mr. Simon having a falling out
2 over whether or not Mr. Wagner would -- over what
3 Mr. Wagner had said to an insurance adjuster about
4 Mr. Simon's car?

5 **A You know, I don't remember the details, but I**
6 **do remember they -- you know, they were having some --**
7 **it was confrontational.**

8 Q Right. And because of that confrontation, it
9 was suggested that Mr. Wagner be removed from the
10 company website, correct?

11 **A Who suggested that?**

12 Q Well, do you not recall that?

13 **A Removed from the website? I don't know. You**
14 **know, if it's documented, I'll acknowledge it, but I**
15 **don't remember it.**

16 Q Okay. So only if it's documented will you
17 acknowledge that?

18 **A I guess. I don't know. Some evidence I just**
19 **don't remember.**

20 Q I'm showing you what's been marked as
21 Plaintiffs' 1256 for identification purposes. Do you
22 recognize that?

23 **A Oh, from Jill Wagner. It says here Jill**
24 **wanted him to be removed from the website.**

25 (Thereupon, Plaintiffs' Exhibit 1256 was

1 marked for identification.)

2 BY MR. ZAPPOLO:

3 Q Hold on. Don't tell everyone what it says.

4 A Oh, okay.

5 Q My first question to you as usual is: Is
6 Exhibit Number 1256 for identification purposes a true
7 and correct copy of your email on or around the time
8 that it was sent?

9 A It looks like it, yes.

10 MR. ZAPPOLO: At this point, Your Honor, I'd
11 like to move 1256 into evidence.

12 MR. WEBER: No objection.

13 THE COURT: Madam Clerk?

14 THE CLERK: 67.

15 (Thereupon, Plaintiffs' Exhibit 67 was
16 received into evidence.)

17 BY MR. ZAPPOLO:

18 Q Now we're looking at 1256, which is number 67
19 in evidence. You would agree with me that Jill Wagner
20 wrote that she wanted to remove --

21 A Right. Yeah.

22 Q Jill Wagner wanted to remove him. That "him"
23 is James Todd Wagner, correct?

24 A Yeah.

25 Q Okay. From the website as a contact because

1 he doesn't represent the company anymore?

2 **A Yeah.**

3 Q What was that based upon?

4 **A I don't know.**

5 Q And he most recently was called by the
6 insurance adjuster on Alan's car fire claim?

7 **A Yeah.**

8 Q So she wanted to remove Mr. Wagner from the
9 company's website because Mr. Wagner had been called and
10 contacted by an insurance adjuster, correct?

11 **A Well, it's just what it says.**

12 Q Okay.

13 **A I wanted to remove him from the website as a
14 contact because he doesn't represent the company
15 anymore, and I can only speculate what she was referring
16 to. And he most recently was called by the insurance
17 adjuster on Alan's car fire claim. He has been out of
18 the picture since April and doesn't need to be involved.**

19 Q Okay. So we have Mr. Simon's car catches on
20 fire. Mr. Wagner talks to an insurance adjuster and
21 then we have the suggested removal of him from the
22 website and you did what?

23 **A I agreed. I just --**

24 Q Okay. Now that would impact Mr. Wagner's
25 ability to sell vehicles, wouldn't it?

1 **A You know, I can't say one way or the other why**
2 **that would.**

3 Q Well, if someone were looking to buy a Mosler
4 product in the state of Florida and they went on the
5 website, and Mr. Wagner was no longer on the website as
6 the contact person for the state of Florida, that would
7 impact his ability to sell the vehicle, wouldn't it?

8 MR. WEBER: Objection, hypothetical.

9 THE COURT: Sustained.

10 **THE WITNESS: So I mean, you know, all I have**
11 **is documentation, but just because he's not on the**
12 **website doesn't mean that if it's his client, he**
13 **can't sell a vehicle. But it was all moot anyway,**
14 **there were no buyers buying cars.**

15 BY MR. ZAPPOLO:

16 Q Do you remember around this same time anyone
17 talking to -- well, let me back up.

18 Do you remember a gentleman by the name of
19 Benjamin Greene?

20 **A I've heard the name come up, but I don't**
21 **remember specifically who or what it was all about.**

22 Q Okay. Now did you ever have any exchanges
23 with Mr. Wagner about whether or not Mr. Greene felt
24 there was a feud between the two of you?

25 **A I don't recall that.**

1 Q Was that happening about the same time as all
2 this, within a month or two?

3 A I don't know. Could be.

4 Q Could be?

5 A I don't recall.

6 Q Okay. Did you ever have any conversations
7 with anyone about what Mr. Greene and Jill Wagner had
8 discussed?

9 A Was he an employee, Mr. Greene?

10 Q Mr. Greene is a journalist.

11 A Oh, a journalist?

12 Q Yes.

13 A That doesn't ring a bell.

14 Q Okay.

15 A My bell doesn't work so well anymore.

16 Q Okay. Did you ever instruct anyone at Mosler
17 Auto Care Center to suggest that the RaptorGTR was not
18 a -- was merely a rumor?

19 A You know, I'd have to see the documentation.
20 I really don't recall any of this, I'm sorry.

21 Q Okay.

22 A Again, I have a full-time job in the financial
23 markets.

24 Q You had a full-time job in the financial
25 markets, but you had several different companies that

1 you were also running, correct?

2 MR. WEBER: Objection, relevance.

3 THE COURT: Sustained.

4 BY MR. ZAPPOLO:

5 Q Did your performance -- well, let me back up.

6 When you say you had several different
7 companies, are you suggesting to the jury that you
8 didn't have the time to pay attention to what was going
9 on at Mosler Auto Care Center at the time?

10 A I, you know, did the best I could in the time
11 I had.

12 Q Okay. And the time that you had was limited
13 because, as you keep referencing, you were running --
14 what is it you were doing?

15 A It was my, you know, investment company of
16 St. Croix.

17 Q Okay. Mr. Wagner actually worked for one of
18 your investment companies at one point, didn't he?

19 A He did, yeah. I gave him an opportunity there
20 and I can't remember -- I was trying to remember what
21 happened to that because I thought he had some promise.
22 I don't recall what happened.

23 Q Do you remember a gentleman by the name of
24 Jack Baruth?

25 A I know I've heard the name, and I don't

1 **remember exactly what he was or what he did.**

2 Q Well, that's actually in evidence already as
3 67.

4 MR. ZAPPOLO: Ms. Clerk, do you have
5 Exhibit 67 for identification purposes in evidence?

6 THE CLERK: Yes.

7 MR. ZAPPOLO: You do?

8 THE CLERK: 67?

9 MR. ZAPPOLO: Six, seven, yes.

10 THE CLERK: 1256?

11 MR. ZAPPOLO: No. I mean, it would have been
12 67.

13 THE CLERK: Oh, Number 40.

14 MR. ZAPPOLO: Plaintiff's 40?

15 THE CLERK: Yes.

16 MR. ZAPPOLO: Okay. There it is.

17 BY MR. ZAPPOLO:

18 Q All right. That document is marked as
19 Exhibit 67 for identification purposes, in evidence as
20 Exhibit Number 40.

21 This article came out just after the car fire,
22 et cetera, correct?

23 **A Yeah. What was the date of the car fire?**

24 Q Well, we agreed, I thought earlier, that it
25 was sometime around the beginning of October 2011,

1 correct?

2 **A Okay. Yeah. So this is November.**

3 Q Right. So a month -- on November 15, 2011 we
4 have Exhibit Number 67, which is in evidence as 40.

5 **A Uh-huh.**

6 Q Now that document was published, as you see on
7 the first page, on or about -- excuse me, November 15,
8 2011, correct?

9 **A Yeah.**

10 Q Okay. Now did you speak to Jack Baruth?

11 **A You know, I don't recall. If he says -- I'd**
12 **have to look and see what he says, but I don't have any**
13 **recollection of speaking with him.**

14 Q Okay. Do you remember any conversations with
15 James Todd Wagner about what was going on with Jack
16 Baruth and "The Truth About Cars" article during that
17 time period?

18 **A At this moment I can't remember. If you show**
19 **me some documentation, I might be able to remember**
20 **something.**

21 Q Nevertheless, you agree with me that based
22 upon conversations with you, Mr. Baruth got the
23 impression that Mr. Wagner was a con man, correct?

24 MR. WEBER: Objection, mischaracterizes --
25 assumes facts not in evidence.

1 THE COURT: Sustained.

2 **THE WITNESS: Why would you say that?**

3 MR. WEBER: Hold on, Mr. Mosler, wait for the
4 question.

5 **THE WITNESS: Oh.**

6 BY MR. ZAPPOLO:

7 Q What about conversations with Matt Farah?

8 **A So that last thing wasn't the question then?**

9 Q Did you -- did you tell Mr. Farah that
10 Mr. Wagner was not a distributor of Mosler products?

11 **A I don't know. If you've got that document,**
12 **let me read it and see what I actually told him, what he**
13 **says I told him.**

14 Q Okay. We're going to get there.

15 **A I don't remember talking to him.**

16 Q Okay.

17 **A I got to go back there and see what I wrote.**

18 Q I just want to be sure what your recollection
19 is.

20 True or false, James Todd Wagner had a signed
21 contract that was signed by you to distribute Mosler
22 vehicles in China and Thailand?

23 **A I believe true.**

24 Q Okay. Now, in fact, as part of his -- as part
25 of that contract, Mr. Wagner was required to show the

1 2012 RaptorGTR, wasn't he?

2 **A That's my recollection. I'd have to see the**
3 **document.**

4 Q And the purchase of the 2012 RaptorGTR was all
5 interwoven with that distribution contract, wasn't it?

6 MR. WEBER: Objection, calls for a legal
7 conclusion.

8 THE COURT: Repeat your question.

9 MR. ZAPPOLO: I said that the purchase of the
10 2012 RaptorGTR was interwoven with the distribution
11 contract.

12 THE COURT: Overruled.

13 **THE WITNESS: I don't know what "interwoven"**
14 **means.**

15 BY MR. ZAPPOLO:

16 Q Okay. Well, let's try this: The invoice says
17 that that car was being purchased pursuant to a
18 distribution contract, correct?

19 **A Oh, I don't recall the invoice, but, you know,**
20 **if that's what it says, that's what it says.**

21 Q While we're preparing to shift gears here, I
22 want to touch upon a couple of other things.

23 Yesterday, when we left off, we were talking
24 about a letter of intent between you and Lew Lee. Do
25 you remember that testimony?

1 **A Yes.**

2 Q Okay. I'm showing you what's been marked as
3 Plaintiffs' 983 for identification purposes. Do you
4 recognize that document?

5 **A Yeah.**

6 (Thereupon, Plaintiffs' Exhibit 983 was marked
7 for identification.)

8 BY MR. ZAPPOLO:

9 Q Okay. Is that the letter of intent that you
10 were referring to on Friday?

11 **A I think so. Friday is a long time ago, but**
12 **yes.**

13 Q Okay. And if you flip to page 2 of that
14 document, is that your signature on it?

15 **A Yes.**

16 MR. ZAPPOLO: Okay. At this time, Your Honor,
17 I'd like to move 983, Plaintiffs' ID 983 into
18 evidence.

19 MR. WEBER: No objection.

20 THE COURT: Madam Clerk, it's 68?

21 THE CLERK: Yes, Your Honor.

22 (Thereupon, Plaintiffs' Exhibit 68 was
23 received into evidence.)

24 BY MR. ZAPPOLO:

25 Q Now, Mr. Mosler, this document is dated

1 June 29, 2011, correct?

2 **A Yes.**

3 Q Okay. And it is a letter of intent from Santa
4 Fe Digital Media to Mosler Automotive and Warren Mosler,
5 correct?

6 **A Yes.**

7 Q Okay. Now, at the time that you got this
8 letter of intent --

9 **A Yes.**

10 Q -- you had already received the document
11 that's already in evidence, that's the exclusive
12 brokering agreement whereby Mr. Wagner asked you to sign
13 it before he let you meet Lew Lee so that you wouldn't
14 circumvent him, correct?

15 **A Correct.**

16 Q Okay. This document wasn't shared with
17 Mr. Wagner until long after this lawsuit was filed,
18 correct?

19 **A I don't know that.**

20 Q It wasn't shared by you, was it?

21 **A No.**

22 Q You don't have an email where you said "Hey,
23 James, your partner has sent me a letter of intent,"
24 right?

25 **A Right.**

1 Q Okay. Because at the time you knew that
2 Mr. Lee was not Mr. Wagner's partner in any sense,
3 didn't you?

4 A **That's a lie.**

5 Q That's a lie? Okay.

6 So at this point you had been negotiating with
7 James Todd Wagner for the purchase of your company or
8 the company's assets, correct?

9 A **Correct.**

10 Q And what was the purchase price that James
11 Todd Wagner was going to pay?

12 A **You know, it depends on the day. It changed
13 by the minute.**

14 Q Okay. You don't remember on June 29th what
15 the price point was?

16 A **I'd have to go back and look at the
17 documentation. It's all clearly spelled out.**

18 Q Okay. Well, was James Wagner interested in
19 buying the building?

20 A **You know, one day he was and one day he
21 wasn't. I have to go back and look at the
22 documentation. There were a lot of documentation, a lot
23 of emails.**

24 Q This document purports to send a nonrefundable
25 deposit, right?

1 **A Yes.**

2 Q Okay. And that's kind of the big rub in this
3 case, right? Whether the money that was sent -- that
4 was wired to you was refundable or nonrefundable,
5 correct?

6 **A Well, I wouldn't call it a rub, I'd say in**
7 **plain English it's nonrefundable.**

8 Q Okay. In plain English it's nonrefundable
9 according to Lew Lee, correct?

10 **A Yeah. Lew Lee and --**

11 Q Okay.

12 **A -- Santa Fe Digital Media.**

13 Q Okay. Now, you don't have any writing where
14 James Wagner, after May the 2nd, has said "Okay. I
15 agree that the deposit will be nonrefundable," correct?

16 **A We have documentation to that effect in --**
17 **yes.**

18 Q We covered the May 2nd --

19 **A Yeah.**

20 Q -- emails back and forth where you say it can
21 be refundable if someone else buys the company, and
22 Mr. Wagner goes back and says -- you know, under this
23 circumstance you say no, and then another you say it can
24 be refundable if someone else buys the company in that
25 May 2nd email, right?

1 **A Yes, but that was not any kind of a final**
2 **agreement.**

3 Q Okay. Well, let's talk about this for a
4 second. This document says the purchase price was
5 \$4,850,000. Was that where you and Mr. Wagner were at
6 with the negotiations at that point?

7 **A Well, I'd say yes because he was a partner**
8 **with Santa Fe Media.**

9 Q Okay. Now at this point you didn't -- you
10 weren't privy to any documentation between Mr. Wagner
11 and Santa Fe Digital Media, were you?

12 **A No.**

13 Q Okay. So the only thing that you had was that
14 email that's in evidence where it has Mr. Wagner
15 introducing you to Mr. Lew Lee as a potential future
16 partner, correct?

17 **A I'd have to go back and look at exactly what**
18 **that email said.**

19 Q Now, in this instance it says "MACC and SFDM
20 shall mutually prepare an agreed list of all assets of
21 MACC which shall be incorporated in a definitive
22 purchase and sale agreement for this transaction, and
23 the transaction will include the real property." That
24 was the building, right?

25 **A Uh-huh.**

1 Q Okay. Now, Mr. Wagner had been upset with you
2 in the months prior because he couldn't get an asset
3 list, correct?

4 A I'd have to go back and check. I don't
5 remember what he was upset about or not upset about.

6 Q The document reads: "It is understood that
7 MACC and SFDM are entering into this letter of intent
8 and this transaction acting as principals, on their own
9 behalf, and that no Broker is representing either party
10 in this transaction."

11 That's specifically to get around the
12 agreement that you had signed with James Todd Wagner,
13 isn't it?

14 A Well, first of all, this is from Lew Lee who
15 was Todd's partner, so you don't get around a broker if
16 Todd's one of the principals who's buying this. You
17 know, I thought --

18 Q We agree that Mr. Wagner had introduced you
19 two as potential future partners, right? Double
20 qualification, potential future, right?

21 A Okay. Well --

22 Q And you don't have any documentation to -- at
23 the time you didn't have any documentation to suggest
24 that he was partners, right?

25 A Can I see that email of introduction again?

1 Q We're going to be here all day, sir. I'm just
2 trying to move along.

3 A I have no idea if you're quoting it correctly.

4 Q Okay. Just so we're clear, you don't recall
5 your testimony on Friday regarding this issue, correct,
6 Mr. Mosler?

7 A Pardon me?

8 Q Just so we're clear, you don't recall your
9 testimony on Friday regarding this issue, right?

10 MR. WEBER: Objection, mischaracterizes the
11 testimony, vague.

12 THE COURT: Sustained.

13 THE WITNESS: I could not repeat my testimony.

14 MR. WEBER: Hold on, Mr. Mosler, wait.

15 THE WITNESS: Sorry.

16 BY MR. ZAPPOLO:

17 Q Defendants' 1, "Hi, Warren and Lew. It is my
18 pleasure to introduce you two as possible future
19 partners in the supercar business." So "possible
20 future," that was the two qualifiers that I just
21 referenced.

22 A Right. That was for me and Lew.

23 Q Okay. So you and Lew Lee were going to be
24 future partners and cut out Mr. Wagner?

25 A According to Todd.

1 Q So you knew that Mr. Wagner was not doing
2 business with Lew, it was going to be you and Lew Lee
3 going forward?

4 A No, that's not what it says.

5 Q Okay.

6 A It doesn't say he was not going to do it. It
7 said -- see, look, you mischaracterized that email
8 clearly, right? And then you lay it on -- the
9 mischaracterization on me and then you go --

10 Q You would agree with me the document says what
11 the document says, right?

12 A Yeah.

13 Q Okay. So let's just move on.

14 A This is terrible.

15 MR. ZAPPOLO: No, Your Honor.

16 THE COURT: Let's approach.

17 (Thereupon, a sidebar conference was held.)

18 THE COURT: So I can sense frustration by him
19 and tell him in front of the jury right now, you
20 know, not to say anything, listen to the question
21 pending, and that we're going to remain civil and
22 that the jury should disregard the last comment.

23 MR. WEBER: Yeah.

24 (Thereupon, the sidebar conference was
25 concluded.)

1 THE COURT: All right. Mr. Mosler, I know
2 you're being examined and it's inherently
3 uncomfortable. Answer the questions that's posed
4 of you and nothing more.

5 **THE WITNESS: Can I ask you a question, Your**
6 **Honor?**

7 THE COURT: Let's maintain our civility and
8 the jury will disregard the last comment.
9 Plaintiff, it's your witness.

10 MR. ZAPPOLO: Thank you.

11 BY MR. ZAPPOLO:

12 Q Page 2 of the letter of intent --

13 **A Yes.**

14 Q -- it says: "MACC and SFDM and their
15 respective agents and employees shall maintain strict
16 confidentiality as to the parties, any terms,
17 conditions, and any subsequent contract or agreements
18 entered into between SFDM and MACC in connection with
19 the transaction contemplated herein."

20 Now that -- is that why Mr. Wagner wasn't told
21 about this letter of intent at the time by you?

22 **A No.**

23 Q You would agree with me that you had the
24 ability to email James Todd Wagner and say "Hey, I had a
25 nice meeting with Lew Lee" or "I had a nice conversation

1 with Lew Lee" or referenced the fact that you were doing
2 things directly with Lew Lee at any time, didn't you?

3 MR. WEBER: Objection, hypothetical.

4 THE COURT: Sustained.

5 BY MR. ZAPPOLO:

6 Q Nevertheless, you never included Mr. Wagner in
7 your email exchanges with Lew Lee about this letter of
8 intent, did you?

9 MR. WEBER: Objection, assumes facts not in
10 evidence.

11 THE COURT: Overruled.

12 **THE WITNESS: Is there a question?**

13 BY MR. ZAPPOLO:

14 Q Yes. You never included James Wagner in your
15 exchange with Lew Lee --

16 **A I don't see an exchange. Is there an exchange**
17 **where I didn't -- do you have one?**

18 Q You traded documentation related to this
19 letter of intent with Lew Lee, correct?

20 **A Do you have -- do you have it?**

21 Q Do I have to have it?

22 MR. ZAPPOLO: I'm sorry, Your Honor.

23 **THE WITNESS: Well, I don't have a**
24 **recollection of exchanging anything with Lew Lee.**

25 BY MR. ZAPPOLO:

1 Q Okay.

2 A **If you have it, I'll take a look at t.**

3 Q Okay. Let's look at the second page of the
4 document.

5 A **Yeah.**

6 Q This document was electronically signed by Lew
7 Lee, correct?

8 A **That's what it says, yes.**

9 Q And it says it was signed on 6/29, correct?

10 A **Yes, yes.**

11 Q Now we understand that Lew Lee lived where?

12 A **Texas or California or something. I don't
13 know.**

14 Q Okay. New Mexico?

15 A **Cyberspace.**

16 Q Okay.

17 A **I don't know where.**

18 Q Right. And you were located where?

19 A **My residence was St. Croix, U.S. Virgin
20 Islands.**

21 Q Okay. So it makes sense that this document
22 had to be transmitted after Lew Lee signed it for you to
23 sign it on the same day, correct?

24 A **Yes.**

25 Q And when you signed this document, did you

1 forward it to Mr. Lee?

2 **A I have no idea.**

3 Q Doesn't common sense suggest that you
4 forwarded it to Mr. Lee?

5 **A I suppose, but that's not my answer.**

6 Q Okay. But you didn't, after signing this,
7 forward this to James Todd Wagner, did you?

8 **A I don't know what I did with it.**

9 Q You can't tell this jury that you forwarded
10 that document to James Todd Wagner, can you?

11 **A I can't tell them anything. I don't have a
12 recollection of what I did with it.**

13 Q Okay. Now Lew Lee -- at the time that this
14 document was signed June 29, 2011, you had already told
15 James Wagner not to do business with Lew Lee, hadn't
16 you?

17 **A I don't recall in those many words.**

18 Q Did you -- what did you -- what do you recall
19 telling James Todd Wagner about whether or not he should
20 do business with Lew Lee?

21 **A I don't have a recollection of exactly what I
22 might have told him one way or the other.**

23 Q Do you remember suggesting that Mr. Wagner
24 should not do business with Lew Lee because you were
25 concerned about Mr. Lew Lee being a con man?

1 **A** You know, I'd have to see the documents. I
2 just can't take your word for this stuff.

3 **Q** Okay. As we sit here today, can you tell this
4 jury whether you believed, on or about June 29, 2011,
5 whether or not Mr. Lew Lee was a con man?

6 **A** It was my -- I thought -- you know, it was my
7 opinion or whatever -- it was my -- what would I call
8 it? Anyway, that anybody working with Todd or buying my
9 business was suspect.

10 **Q** Okay. Because they were working with
11 Mr. Wagner, right?

12 **A** No, I didn't say that.

13 **Q** Okay. Well, why were they suspect?

14 **A** Because, you know, I considered the business
15 worthless. The prices I was asking were -- all I had
16 was a garage full of cars, okay. You were buying the
17 used cars or the partially built cars and you were
18 buying the building. There was no price put on the
19 business. There were no sales, no nothing. Nobody
20 would buy the business. It had a zero value.

21 **Q** The business had a zero value?

22 **A** In my opinion, yes.

23 **Q** That you sold to RP High Performance for
24 \$500,000?

25 **A** Correct.

1 Q Okay.

2 A They bought -- that was the value of the
3 cars --

4 Q Okay.

5 A -- and the warehouse. They were buying used
6 cars.

7 Q Well, the cars had value, correct?

8 A Yes.

9 Q And the cars were owned by MACC, right?

10 A Yes.

11 Q Okay. So the business did have value even if
12 it was just the assets, correct?

13 A No, the car business itself didn't have any
14 enterprise value to be exact.

15 Q Now the \$100,000 that came in -- let me back
16 up for just a second.

17 We were talking a few minutes ago about the
18 money coming in, et cetera. I just want to be sure for
19 the jury's purpose: Was there an agreement with respect
20 to whether the \$100,000 would be refundable or not, or
21 was there no agreement with Mr. Wagner?

22 A It's right here, nonrefundable deposit. He
23 was a party to Santa Fe Digital Media.

24 Q You agree with me that your whole -- that the
25 whole crux of your position relies upon whether or not

1 James Todd Wagner was a partner in Santa Fe Digital
2 Media?

3 A Number one, he was a party to the Santa Fe. I
4 don't know if he was technically a partner or
5 shareholder or principal or whatever he was, but he was
6 a part of it. And he was promoting it and he was -- you
7 know, he and Lew were working together.

8 Q But the \$100,000 --

9 A Yeah.

10 Q Let's just be clear on this: Do you have any
11 documentation to suggest that James Wagner had given up
12 his desire to purchase Mosler Auto Care Center?

13 A My impression was this was him expressing his
14 desire with Lee to buy it and he, you know --

15 Q But you didn't share any of that with him?

16 A He was Santa Fe Digital Media. He was a part
17 of Santa Fe Digital Media. It was already him making
18 the offer. There was nothing to share with him or
19 anybody else.

20 Q Well, he was making the offer on behalf of
21 Mosler Auto Care Center, Inc., correct?

22 A Well, sometimes. And sometimes he was a part
23 of Santa Fe Digital Media.

24 Q And Mosler Supercars, Inc. is who he had been
25 negotiating with you for months about purchasing Mosler

1 Auto Care Center either as a stock purchase or as an
2 asset purchase, right?

3 **A I believe that's what the documentation shows,**
4 **yes.**

5 Q And so Mr. Wagner had his own company to do
6 this deal, correct? And he was looking for investors.
7 You knew that, right?

8 **A Yeah. He was trying to get around his deal**
9 **with Lee, Lew Lee.**

10 Q There's a lot of -- when was his deal with Lew
11 Lee?

12 **A He had been working with Lew Lee all along to**
13 **purchase the company also.**

14 Q Well, he had been working with others as
15 well --

16 **A Yes.**

17 Q -- to try and raise capital, right?

18 **A That's what he said, but I never saw them.**

19 Q Just like you had been working with others to
20 try and sell the company, correct?

21 **A They were totally different people, but yes.**

22 Q Well, just because you had been working with
23 others to buy the company, that didn't make them your
24 partner, did it?

25 **A Say that again.**

1 Q Just because you had been working with others,
2 that didn't make them your partner, did it?

3 A No, I was selling to them.

4 Q Okay. In reality, you knew at the time --

5 A He and Lew Lee were buying together. They
6 were the partners. I didn't have a partner when I was
7 selling. It was me selling.

8 Q Okay. Here's the thing: You understood that
9 Mr. Wagner was looking for capital to assist him in
10 purchasing MACC, correct?

11 A That's what he said, but his father testified
12 he'd give him the money any time he wanted it.

13 Q Right. And so you understood that Mr. Wagner
14 didn't want to necessarily use his father's money --

15 A Right.

16 Q -- even though he could, but rather Mr. Wagner
17 was trying to, quote/unquote, do it on his own or with
18 other investors, correct?

19 A That's one possibility.

20 Q Okay. And Mr. Wagner had been going out and
21 traveling to California and entertaining other investors
22 and you knew about that, didn't you?

23 A I've heard testimony about it.

24 Q Okay. Well, at the time weren't you privy to
25 Mr. Wagner being out in California --

1 **A I don't remember.**

2 Q -- and saying he was meeting with investors in
3 California?

4 **A I'm sure he sent some emails to that effect,**
5 **yes.**

6 Q Right. And he -- so you understood that
7 Mr. Wagner was looking at different sources of potential
8 funding --

9 **A Yeah.**

10 Q -- to purchase, correct?

11 **A Yes.**

12 Q All right. Now, when you were selling the
13 company, did anyone say they did not want James Todd
14 Wagner to be a distributor of the company's vehicles?

15 **A I believe Savvas said that, yeah.**

16 Q Savvas Savopoulos. Now Savvas Savopoulos was
17 a friend of yours, correct?

18 **A Yeah.**

19 Q Okay. And Savvas Savopoulos was going to --
20 at one point you and Savvas Savopoulos had a contract
21 where Savvas was going to purchase the company, correct?

22 **A Yes.**

23 Q Okay. Now Savvas Savopoulos was going to pay
24 more than James Wagner was going to pay, right?

25 **A I don't remember that. You know, I don't know**

1 **exactly what he was paying, but I know it was more.**

2 Q Okay. So you were going to take the money
3 from your friend for the company that you didn't think
4 was worth anything other than the vehicles?

5 A **No. I was going to take the money for the**
6 **vehicles that he was buying, which I thought were fairly**
7 **priced from my friend. I didn't get premium for the**
8 **company.**

9 Q Now at the time that that was going on, was
10 this lawsuit already pending?

11 A **I don't remember.**

12 Q Was this lawsuit threatened to be brought?

13 A **It might have been.**

14 Q Now at the time you understood that Mr. Wagner
15 had taken the position that he had a signed distribution
16 contract for Mosler products in China and Saudi Arabia,
17 correct?

18 A **That's correct.**

19 Q China and Thailand, excuse me. And do you
20 recall ever receiving any word from Mr. Savvas
21 Savopoulos to put any pressure on Mr. Wagner so that he
22 wouldn't buy the company or that he'd give up any rights
23 that he claimed to have?

24 A **Well, it's two separate questions.**

25 Q Okay. Well, let's deal with the first one

1 then. Do you recall Savvas Savopoulos suggesting to you
2 that you should put pressure on Mr. Wagner so Mr. Wagner
3 wouldn't try to buy the company?

4 **A You know, I don't -- I recall there was**
5 **something, but I don't know that it was that --**

6 Q Okay.

7 **A -- so I'd have to see the documentation.**

8 Q All right. Do you recall ever having any
9 conversations with Savvas Savopoulos wherein
10 Mr. Savopoulos asked you to put pressure on James so
11 that he would not claim that he had distribution rights
12 to Mosler products?

13 **A I don't know that he used the word "put**
14 **pressure."**

15 Q Okay.

16 **A But, again, I'd have to see the document.**

17 Q By the way, when we were talking about that
18 May 2nd email exchange earlier about whether or not you
19 agreed that the deposit would be refundable if someone
20 else buys the company, do you ever recall a follow-up
21 email chain like about a week later?

22 **A I'm sure there were. There were continuous**
23 **emails, it just never stopped. So if you show it to me,**
24 **I'll be happy to comment.**

25 MR. ZAPPOLO: Okay. Ms. Clerk, I believe we

1 had 1357 already. Should we be 1357B?

2 THE CLERK: I have a 1359B.

3 MR. ZAPPOLO: No, 1357. Well, Counsel, I can
4 mark it as one of your documents or I can mark it
5 as one of mine.

6 MR. WEBER: Whatever you want to do.

7 MR. ZAPPOLO: Okay. Well, let's mark it as
8 Defendants' 223.

9 (Thereupon, Defendants' Exhibit 223 was marked
10 for identification.)

11 BY MR. ZAPPOLO:

12 Q Mr. Mosler, I'm showing you what's been marked
13 for identification purposes as Defendants' 223. The
14 usual question: Is that your -- is there any reason to
15 believe that's not a true and correct copy of your email
16 on or about the time that it was sent?

17 A No.

18 Q Okay. Now that was a week after the May 2nd
19 exchange about refundability, correct?

20 A I can't remember. It was a week after May 2nd
21 for sure.

22 Q Okay. And within that document you'd agree
23 again that the -- let me back up.

24 MR. ZAPPOLO: At this point, Your Honor, I'd
25 like to move Defendants' Exhibit 223 into evidence.

1 THE COURT: Defense?

2 MR. WEBER: No objection.

3 THE COURT: Madam Clerk, what number?

4 THE CLERK: 69.

5 THE COURT: Thank you.

6 MR. ZAPPOLO: I'm sorry, 223 was what?

7 THE CLERK: 69.

8 (Thereupon, Plaintiffs' Exhibit 69 was
9 received into evidence.)

10 BY MR. ZAPPOLO:

11 Q Now, Mr. Mosler, you would agree with me that
12 on or about May 7th there was still conversations
13 between you and James Todd Wagner about the
14 refundability of the \$100,000 deposit, correct?

15 A Yeah. There was continuous discussion about
16 all kinds of things.

17 Q Right. And the way we read this email is we
18 have May 7, 2011 at 10:44, James Wagner wrote: The
19 sequence of our negotiations as I recall was: Todd, 5
20 months exclusive if nonrefundable; Warren, 3 months --
21 and the "W" is Warren and the "T" is Todd -- 3 months if
22 nonrefundable; Todd, 4 months exclusive if
23 nonrefundable; Warren, 3 months exclusive and is only
24 refundable when someone else buys the assets. "T,"
25 Todd, agreed to that.

1 Todd requested an additional 2 months
2 exclusive (not 3 months) upon deposit of additional
3 \$100,000 of the same agreed-upon terms as the first
4 100,000; Warren agreed. And then you wrote back on
5 May 9, 2011, you had it refundable if no close. Right?

6 But earlier on the 7th James Todd Wagner had
7 written: "In retrospect, we should have just locked
8 that down, but I suggested via the doc and pointing out
9 the change in the doc, helping move the company onward
10 by using 30,000 of the deposit for the purpose of adding
11 value to the company, so now I'm suggesting that we just
12 omit this portion and lockdown what we've already agreed
13 to in email." And your response, sir, was?

14 A "Good."

15 Q "Good"?

16 A Yeah.

17 Q You agreed that Mr. Wagner said let's just
18 omit the \$30,000 issue and lockdown what we've already
19 agreed to in email? By saying "Good," you were agreeing
20 to that, weren't you, sir?

21 A At that point, yes.

22 Q Okay.

**23 A Of course he changed it again, the final
24 agreement, or we never got a final agreement.**

25 Q So there was no agreement about the

1 \$100,000 of the refundability?

2 **A At that point there was no -- there was no**
3 **agreement for the sale or purchase of the company that**
4 **had that in there one way or the other. We did have a**
5 **mutual agreement on full terms for the sale of the**
6 **company.**

7 Q So if someone gave a deposit for the potential
8 purchase and you never reached an agreement, you never
9 even reached an exclusive period, did you?

10 **A There's so many hypotheticals in there, I**
11 **can't follow what your question is.**

12 Q Well, let me back up.

13 **A If someone did what?**

14 Q If someone gave a deposit, right?

15 **A Okay. What would they give a deposit --**

16 Q If anyone gives a deposit.

17 **A They just walk in and drop off money?**

18 MR. WEBER: Objection, it's a hypothetical.

19 THE COURT: Sustained.

20 BY MR. ZAPPOLO:

21 Q Why did James Todd Wagner give a deposit?

22 **A On June 29th?**

23 Q Yes.

24 **A On June 29th I received a nonrefundable**
25 **deposit from Santa Fe Digital Media which was some kind**

1 of partnership between Lew Lee and Todd.

2 Q That is your position? You're sticking with
3 it? The money was forwarded to you by Mr. Wagner,
4 Sr. --

5 A Yes.

6 Q -- on behalf of Santa Fe Digital Media,
7 correct?

8 A Well, I've seen the documentation
9 subsequently.

10 Q Okay. On the day of though?

11 A The day of I didn't know where the money was
12 coming from.

13 Q Right. And on the day of you took that money
14 and what did you do with it?

15 A On the day of, the money arrived in my bank.
16 I was the owner of a small bank, Enterprise Bank in
17 North Palm Beach, and it went into my -- I had given
18 them wire instructions and it went into that account
19 EV11 it's called, I believe is the designation.

20 Q And then you had that money transferred out to
21 another one of your companies, correct?

22 A Correct.

23 Q And that company was your private company that
24 you owned solely to do what?

25 A That was a company I had to -- that owned

1 **some -- I set it up to own some aircraft.**

2 Q Okay. So you took that money, the
3 \$100,000 that was supposed to be for a down payment,
4 whomever was buying --

5 **A Right.**

6 Q -- and you put it into a company where you had
7 an aircraft?

8 **A Yeah. It's another account at the same bank.**

9 Q Okay. You didn't keep it in the Mosler Auto
10 Care Center company's account, didn't you?

11 **A It didn't come into the Mosler Auto Care
12 Center accounts.**

13 Q Okay.

14 **A It came into my personal account.**

15 Q And if you were going to refund that money,
16 how were you going to refund that money to whomever?

17 MR. WEBER: Objection, hypothetical.

18 THE COURT: Sustained.

19 BY MR. ZAPPOLO:

20 Q I'd like to talk with you about that \$100,000
21 and the timing of it, okay.

22 On June 3, 2011, you were suggesting that a
23 press release go out saying that James Todd Wagner was
24 not employed by Mosler, correct?

25 **A I'd have to see the documentation. I just**

1 **can't take your word for it.**

2 Q Okay. I'm showing you what's been marked as
3 Plaintiffs' Exhibit Number 1161 for identification
4 purposes. Do you recognize that document?

5 **A Can you repeat your question as you stated it?**

6 (Thereupon, Plaintiffs' Exhibit 1161 was
7 marked for identification.)

8 BY MR. ZAPPOLO:

9 Q Exhibit 1161 for identification purposes,
10 that's a true and correct copy of your email, isn't it?

11 **A Yes.**

12 MR. ZAPPOLO: Okay. At this point I'd like to
13 move Plaintiffs' Exhibit 1161 into evidence.

14 MR. WEBER: No objection.

15 THE COURT: Madam Clerk, is that 70?

16 THE CLERK: Yes.

17 (Thereupon, Plaintiffs' Exhibit 70 was
18 received into evidence.)

19 BY MR. ZAPPOLO:

20 Q Okay. Now, this document references a Google
21 Alert. We talked about a Google Alert on Friday,
22 correct?

23 **A Yeah.**

24 Q Okay. Now Warren Mosler wrote: "In fact,
25 Wagner went as far as to say that the car had been

1 specifically built to compete with the Pagani Huayra."

2 That was something that you were upset about, wasn't it?

3 **A Again, maybe I have an emotional problem or**
4 **something. I don't, like, get upset. I was responding**
5 **to it.**

6 Q Okay. You were responding to the fact that a
7 Google Alert had let you know that there was an article
8 out there that says 2012 Mosler Raptor to compete with a
9 Pagani Huayra, right?

10 **A You know, I'm not sure -- there's something in**
11 **that article, yeah. There could have been something**
12 **else in that article too.**

13 Q And in response to seeing that --

14 **A That's just the title of the article.**

15 Q And in response to seeing that article in
16 early June of 2011 --

17 **A Right.**

18 Q -- you wanted to do a press release and
19 something along the lines of what is printed on that
20 page, correct?

21 **A Yes.**

22 Q Now you also said, though, interesting there:
23 "Todd and I," that's James Todd Wagner and you, "are at
24 an impasse where he refuses to allow me to speak with
25 his backers."

1 Those were his financial backers, such as Lew
2 Lee and others, correct?

3 **A Yeah, I didn't know who they were.**

4 Q Okay. Mr. Wagner refuses to allow you to
5 speak with his backers before you signed an exclusive
6 agreement with him, correct?

7 **A Correct.**

8 Q That's what was going on in the beginning of
9 June 2011, correct?

10 MR. WEBER: Objection, vague.

11 THE COURT: Overruled.

12 BY MR. ZAPPOLO:

13 Q Correct? You can answer.

14 **A Yeah. June 3rd it says right here.**

15 Q Right.

16 THE COURT: Mr. Zappolo, can I see you for a
17 second?

18 (Thereupon, a sidebar conference was held.)

19 THE COURT: How much longer have you got
20 before I break them for lunch?

21 MR. ZAPPOLO: I can let them break now.

22 MR. WEBER: How much more for the entirety?

23 MR. ZAPPOLO: I'm trying to cut it down once
24 this stuff comes in.

25 THE COURT: Listen, it's your case. You

1 present it how you want.

2 MR. ZAPPOLO: My client -- Your Honor, I
3 understand and I'd appreciate it if you understood
4 that my client wants me to present it a certain
5 way.

6 THE COURT: Tomorrow, at the end of the day,
7 we will rest. The defendants will have equal time.

8 (Thereupon, the sidebar conference was
9 concluded.)

10 THE COURT: Deputy, so at this point we're
11 going to break for lunch. I don't want to tease
12 the jury, I know they saw the food going in.

13 We're going to break for lunch just like, you
14 know, last week. You can take your food, go walk
15 around downstairs and stretch your legs if you want
16 to. It's pizza, so I don't know how it's going to
17 be -- I don't know what --

18 THE COURT DEPUTY: It's a bunch of different
19 stuff.

20 THE COURT: Oh, okay. All right. So why
21 don't we reconvene we'll say 1:15, okay?

22 All right. We're in recess until 1:15.

23 Mr. Mosler, do you remember my instructions?

24 **THE WITNESS: Not to talk to anybody about the**
25 **case.**

1 THE COURT: Correct. All right. Come back in
2 an hour and 15. We're in recess.

3 (Thereupon, a lunch break was taken from
4 12:08 p.m. to 1:21 p.m.)

5 MR. WEBER: Your Honor, just one thing before
6 we start. You know --

7 THE COURT: Deputy, one second.

8 MR. WEBER: -- Mr. Zappolo had a few questions
9 where he was misinterpreting the document or
10 stating things that the document didn't say to
11 Mr. Mosler, so Mr. Mosler had a concern that you
12 instructed him to listen to the question.

13 Mr. Zappolo is misstating those documents
14 before he's asking the question to Mr. Mosler, and
15 so Mr. Mosler needs to be able to respond and
16 explain that, you know, this question doesn't make
17 any sense because you're not stating what's in the
18 document.

19 THE COURT: So, Mr. Mosler can respond to the
20 question. It's after the question has been
21 completed and we wait five, ten seconds, and then
22 the comments afterward is what I was addressing.

23 As far as the context of the documents,
24 there's going to be Cross-Examination. You have
25 the ability to rehabilitate the witness, okay?

1 MR. WEBER: Okay.

2 THE COURT: All right. Let's bring them out.

3 THE COURT DEPUTY: Jury entering.

4 (Jurors entering the courtroom at 1:23 p.m.)

5 THE COURT: Thank you very much. Please have
6 a seat.

7 Mr. Mosler, you're still under oath from
8 earlier today. Plaintiff, it's your witness.

9 BY MR. ZAPPOLO:

10 Q Mr. Mosler, when we broke for lunch, we were
11 talking a little bit about a document, and have you ever
12 heard of a anti-work-around document?

13 A I don't know that I've ever seen one.

14 Q Okay. I believe there's a document that we
15 were talking about earlier that is the exclusive
16 brokering agreement. Do you remember that?

17 A I remember the title.

18 Q Okay. I'd like to show you what's been marked
19 as Plaintiffs' Exhibit Number 1260 for identification
20 purposes.

21 Is there any reason to believe that
22 Exhibit 1260 is not a true and correct copy of an email
23 that you sent?

24 A No reason to believe that.

25 (Thereupon, Plaintiffs' Exhibit 1260 was

1 marked for identification.)

2 MR. ZAPPOLO: All right. At this point I'd
3 like to move Exhibit 1260 into evidence, Your
4 Honor.

5 MR. WEBER: No objection.

6 THE COURT: Madam Clerk, that's 70?

7 THE CLERK: 71.

8 (Thereupon, Plaintiffs' Exhibit 71 was
9 received into evidence.)

10 BY MR. ZAPPOLO:

11 Q Mr. Mosler, Exhibit 71 in evidence is an email
12 chain whereby Mr. Wagner was telling you that there was
13 an anti-work-around document that prohibits you from
14 cutting him out of deals, and then he asked do you still
15 wish to talk to his investors, correct?

16 A Yes. Correct.

17 Q Okay. And you said earlier Mr. Wagner had
18 been working with Mr. Lew Lee for a long time, right?

19 A I don't think that's exactly what I said.

20 Q Okay. He had been working with him for how
21 long when you first met Mr. Lee?

22 A I don't remember. You know, when I first met
23 him?

24 Q Right.

25 A I don't think I ever met him.

1 Q All right. Nevertheless, the wire that's at
2 issue here, the \$100,000 wire, was on June 9, 2011,
3 correct?

4 A Correct.

5 Q Okay. So as close as June 3, 2011, Mr. Wagner
6 was reminding you of this document that prohibited you
7 from going around him and cutting deals and cutting him
8 out of it, correct?

9 A Correct.

10 Q By the way, yesterday we touched on something
11 I'd like to just touch on briefly today.

12 MR. ZAPPOLO: Counsel, 1353.

13 (Thereupon, Plaintiffs' Exhibit 1353 was
14 marked for identification.)

15 BY MR. ZAPPOLO:

16 Q Do you remember yesterday we were talking
17 about a company called Siemens and computers and using
18 them for drafting --

19 A Yes.

20 Q -- of doing things?

21 Is Exhibit Number -- is Exhibit 1353 a true
22 and correct copy of your email?

23 A Yes.

24 MR. ZAPPOLO: Okay. At this time, Your Honor,
25 I'd like to move Exhibit 1353 into evidence.

1 MR. WEBER: No objection.

2 THE COURT: Madam Clerk, 72, please?

3 THE CLERK: Yes, Your Honor.

4 THE COURT: Okay.

5 (Thereupon, Plaintiffs' Exhibit 72 was
6 received into evidence.)

7 BY MR. ZAPPOLO:

8 Q Now Exhibit 72, was Jill Wagner telling you
9 that she was going to be working with Siemens -- and
10 Siemens was a computer company, correct?

11 A Correct.

12 Q All right. And she was telling you that she
13 was going to be working with Siemens on becoming their
14 next case study. And what is a case study?

15 A I'm not sure in this case.

16 Q All right. Well, did she do -- do you recall
17 reviewing anything like the documents that are attached
18 to Exhibit 72 in evidence?

19 A No, I don't recall them, but it looks good.

20 Q Okay. Do you see how it references Mosler
21 Automotive, at the third page or fourth page of the
22 document, as the manufacturer of the MT900 supercar?
23 Two models in production, MT900R for racing and the
24 MT900S, a U.S. manufactured street legal road car?

25 A Yeah, I see that.

1 Q Okay. Well, that kind of contradicts your
2 testimony about the company manufacturing things
3 overseas and bringing it over, right?

4 A Well, we did both.

5 Q Okay.

6 A So it doesn't conflict with anything.

7 Q Okay.

8 A This is their document, by the way, not mine.

9 Q This wasn't the document that Jill Wagner, the
10 vice president of global operations, was working with
11 them on?

12 A She might have been working with them on it,
13 but this -- it looks like they prepared this document.

14 Q Okay.

15 A We were not capable of any of this.

16 Q Okay. The images that were prepared or that
17 were provided to Siemens, that's the front end of the
18 RaptorGTR, isn't it? At DEF006251.

19 A It's certainly an MT900. It may be the Raptor
20 iteration. It looks a little bit like it, yeah.

21 Q Okay.

22 A It looks like Todd's notice that he wanted to
23 finance it.

24 Q Okay. And on the next page, the bottom right,
25 DEF006253 --

1 **A Oh, yes, single taillights.**

2 Q Yes.

3 **A Right. So this was Todd's work.**

4 Q Well, this was Jill Wagner letting you know,
5 as early as August of 2010 --

6 **A Yeah.**

7 Q -- that this was something that --

8 **A That Siemens was interested in.**

9 Q -- Siemens and Mosler Auto Care were working
10 on together that was going to be presented to the
11 public, correct?

12 **A Well, it was a proposal, yeah.**

13 Q By the way, did Mosler Auto Care ever pay that
14 \$250,000 a year for the software?

15 **A No, no.**

16 Q Or did it get it for \$0?

17 **A We've been getting it for 0 for a long time.**

18 **This was a way to try and keep it.**

19 Q Okay.

20 **A This does not say that Siemens was doing any
21 automotive work or doing anything with us.**

22 Q We spoke earlier about a document called the
23 Certificate of Origin --

24 **A Yeah.**

25 Q -- for a vehicle. I'm showing you what's been

1 marked as Plaintiffs' Exhibit Number 65. Do you
2 recognize that as the Certificate of Origin for a
3 vehicle that was sold by MACC to Supercar Engineering?

4 **A Yes.**

5 (Thereupon, Plaintiffs' Exhibit 65 was marked
6 for identification.)

7 MR. ZAPPOLO: Okay. At this point, Your
8 Honor, I'd like to move Plaintiffs' Exhibit 65 into
9 evidence.

10 MR. WEBER: No objection.

11 THE COURT: Madam Clerk, 73, please?

12 THE CLERK: Yes.

13 (Thereupon, Plaintiffs' Exhibit 73 was
14 received into evidence.)

15 BY MR. ZAPPOLO:

16 Q So the Certificate of Origin for a vehicle
17 dated August 21, 2011 for a 2012 Mosler RaptorGTR was
18 signed by -- do you know whose signature that is?

19 **A I don't.**

20 Q Does Jill --

21 **A Oh, okay.**

22 Q Do you recognize it to be Jill Wagner, your
23 vice president of global operations?

24 **A I know Jill Wagner, but I don't recognize the**
25 **signature.**

1 Q Okay. Nevertheless, you recognize that that
2 vehicle, with that VIN number --

3 A Yeah.

4 Q -- was sold to Supercar Engineering, correct?

5 A Right.

6 Q Okay.

7 A It says this vehicle has a California
8 emissions system.

9 Q Right. Now, in fact, that car did not have a
10 California emissions system, did it?

11 A I don't think it did, but it says it does
12 here.

13 Q Okay. Now was that something that you used to
14 try to get Mr. Wagner to change the VIN number on that
15 car?

16 A Okay. It wasn't -- I don't believe it was me
17 personally, but I know Jill did that.

18 Q Okay. Did you want James Todd Wagner to
19 change the VIN number on the 2012 RaptorGTR?

20 A My recollection is that it was a mutual
21 agreement between Todd, Jill, Alan, and so I agreed to
22 it.

23 Q What motivation did James Todd Wagner have to
24 change the VIN number of his car, of the Supercar
25 Engineering car?

1 **A** **There was a good motivation, I just don't**
2 **remember what it was.**

3 **Q** **Okay.**

4 **A** **It's in the documents, though.**

5 **Q** **Okay. And when changing the VIN number,**
6 **Mosler Automotive Center wanted to change the year from**
7 **2012 to 2009, correct?**

8 **A** **That's my recollection.**

9 **Q** **And change it from a 2012 RaptorGTR to a 2009**
10 **MT900, correct?**

11 **A** **I don't remember that part, but it could be.**

12 **Q** **And that suggested change of the vehicle's**
13 **designation from a 2012 model year to a 2009 model year**
14 **didn't happen until after August of 2011, did it?**

15 **A** **I don't know the dates.**

16 **Q** **Well, MACC certainly didn't want to change**
17 **this information before Exhibit Number 6 -- Exhibit**
18 **Number 73, which is now in evidence, was created, did**
19 **it?**

20 **A** **Which exhibit is that?**

21 **Q** **That's the Certificate of Origin for the**
22 **vehicle.**

23 **A** **Oh, right, right. So it would have to be**
24 **after that.**

25 **Q** **It would have been after that, right?**

1 **A Just as a point of logic, not as something I**
2 **remember.**

3 Q Common sense, right?

4 **A Logic, yeah.**

5 Q Okay. Now we were speaking before the lunch
6 break about a distributorship contract. I'm showing you
7 what's been marked as Plaintiffs' Exhibit 290, 290 for
8 identification purposes.

9 I'd like you to flip to the second page. Do
10 you recognize the signature on that document?

11 **A Yes, that's my signature.**

12 (Thereupon, Plaintiffs' Exhibit 290 was marked
13 for identification.)

14 BY MR. ZAPPOLO:

15 Q All right. Is this a true and correct copy of
16 the document that you signed?

17 **A I believe so.**

18 MR. ZAPPOLO: At this point, Your Honor, I'd
19 like to move Plaintiffs' Exhibit 290 into evidence.

20 MR. WEBER: Hold on one second, Your Honor.
21 No objection, Your Honor.

22 THE COURT: Madam Clerk, that's admitted as
23 74, please?

24 THE CLERK: Yes, Your Honor.

25 (Thereupon, Plaintiffs' Exhibit 74 was

1 received into evidence.)

2 BY MR. ZAPPOLO:

3 Q Now Exhibit 290 for ID, and in evidence as 74,
4 is an exclusive distributorship contract for China and
5 Thailand dated November 16, 2010, correct?

6 A Correct.

7 Q All right. And that was a 25-year exclusive
8 distribution rights for China and Thailand for all MACC
9 designed vehicles to SEI, correct?

10 A Correct.

11 Q Now, as a person who was building supercars,
12 you recognize China and Thailand to be very lucrative
13 supercar markets, didn't you?

14 A No.

15 Q No? Okay. Besides the United States, where
16 is your opinion one of the highest -- one of the top
17 three countries for purchase of supercars?

18 MR. WEBER: Objection, calls for improper lay
19 opinion.

20 THE COURT: Overruled.

21 THE WITNESS: To me, the main areas were
22 California and Florida, but I don't know about the
23 rest of the world.

24 BY MR. ZAPPOLO:

25 Q Okay. You knew, however, that James Todd

1 Wagner wanted to market supercars in China and Thailand,
2 correct?

3 **A Yes.**

4 Q And did you have any discussions with him
5 about why he wanted to go half a world away to sell
6 cars?

7 **A I was just happy he wanted to do it --**
8 **anything to sell a car. I liked working with Todd. We**
9 **worked well together. Very good creativity.**

10 Q So he was creative, but mentally ill?

11 **A Well, you keep doing this, okay? I didn't say**
12 **mentally ill.**

13 Q He had mental -- severe mental problems?

14 **A A lot of talented people oftentimes are not**
15 **quite there in other ways and it's not being mentally**
16 **ill.**

17 Q Okay. Now the term's for 25 years and the
18 condition was that SEI must purchase chassis 32 for
19 \$92,065 as previously agreed.

20 Supercar Engineering did purchase that car,
21 correct?

22 **A He did, yes.**

23 Q Okay. And we have the documents. You were
24 sitting here when Ms. Klaker testified about that,
25 right?

1 **A That's right.**

2 Q Okay. And we have Bills of Sale and we have
3 Certificates of Origin and all that good stuff. There's
4 no doubt that he purchased -- that Supercar Engineering
5 purchased that car, correct?

6 **A That's correct.**

7 Q Okay. And it says "Prior to the date of this
8 agreement, SEI has paid \$66,882.28 on chassis 32." You
9 believe that to be a true statement, right?

10 **A No reason to doubt it.**

11 Q Okay. "And a contract is in place requiring
12 SEI to pay for the remainder price of chassis 32 in
13 equal installments over the next 15 months." Do you
14 believe that to be true?

15 **A That's what it says.**

16 Q Okay. Now, "Chassis 32 must be exported to
17 Thailand or China within 18 weeks after chassis 32 has
18 been completed by MACC."

19 **A That's what it says.**

20 Q The expected completion date is January 15,
21 2011, correct?

22 **A Yes.**

23 Q All right. But the car wasn't completed by
24 that time, was it?

25 **A I don't remember.**

1 Q Okay. There's no way that the car could have
2 been exported until after it was finally manufactured,
3 correct?

4 A I don't know. You know, we imported cars that
5 weren't complete. I don't know. This was all done by
6 Todd. This was his initiative and that's what he
7 believed, and he wrote it down and had me sign it.

8 Q "Chassis 32 must be presented to at least one
9 press outlet in Thailand and China." And he did that,
10 didn't he?

11 A I don't remember, but, again, that was his --

12 Q Do you remember an AAP News Wire? You
13 responded to it?

14 A AAP News Wire? I don't remember that name.

15 Q Okay. I'll move on then.

16 "Beginning calendar year 2011, SEI must
17 purchase at least three MACC vehicles to be marketed,
18 approximately one vehicle every 20 days in the
19 Thailand-China distribution territory, and every
20 calendar year of the exclusive distributorship
21 territory."

22 A Right.

23 Q And then "Each vehicle must be paid for in
24 full prior to export and delivery to SEI from MACC from
25 the United States or any location."

1 Now those were what SEI had to do, right?

2 **A The terms of the exclusive distributorship.**

3 Q Right. But another set of terms was supply of
4 MACC vehicles to SEI?

5 **A Right.**

6 Q Beginning in calendar year -- you understand
7 what a calendar year is, right?

8 **A Yes.**

9 Q Starting in January and ending in the end of
10 December, right?

11 **A Correct.**

12 Q Okay. "Beginning calendar year 2011 until the
13 end of the exclusive distributorship term for 25 years,
14 MACC agrees to supply SEI with a minimum of three MACC
15 vehicles in every calendar year."

16 That was what MACC agreed to, correct?

17 **A That's what it says, yeah.**

18 Q Okay. Now vehicle list prices were 329,000
19 plus options for MT900S/Raptor body vehicles.

20 **A Uh-huh.**

21 Q Are we still debating whether Mosler Auto Care
22 Center was producing Raptor cars?

23 **A Well, we never produced it. Nothing -- they
24 were never produced. There was no production.**

25 Q So SEI -- so Mosler Auto Care Center didn't

1 produce any Raptor vehicles?

2 **A You know, Todd built a prototype and that was**
3 **the only one that ever got built.**

4 Q Okay. Now that's -- those prices --

5 **A Or the demonstrator, whatever you want to call**
6 **it.**

7 Q The prices are for a 7.0 liter V8 engine and
8 6-speed manual transmission. And then it goes on to say
9 \$389,000 plus options for a Photon.

10 That was the other car that Mosler Auto Care
11 Center was anticipating selling to the public, wasn't
12 it?

13 **A Yeah, I was hoping to sell anything. If**
14 **people wanted to buy Consuliers, I would sell them.**

15 Q But it wasn't that the Photon was just your
16 car for you to drive, we had the two types of vehicles
17 that this company was going to sell. They were going to
18 sell the Raptor and they were going to sell the Photon,
19 right?

20 **A What do you mean "going to sell"? You have to**
21 **have a buyer. You can't decide to sell something.**
22 **Somebody has to want to buy it.**

23 Q The company had a business plan to sell
24 Raptors and Photons, correct?

25 **A The business plan was to build a prototype and**

1 **see if anybody would buy it.**

2 Q And in anticipation of that --

3 **A Yeah.**

4 Q -- you entered into a contract for
5 Mr. Wagner's company, Supercar Engineering, to be a
6 distributor of the vehicles that you anticipated
7 producing, and he was going to distribute them in China
8 and Thailand, correct?

9 **A We entered into a contract for him to try and**
10 **sell it and feel protected that I wasn't going to cut**
11 **him out, which I didn't do.**

12 Q All right. "Prices were fixed for orders
13 placed prior to December 31, 2012, and prices were
14 subject to change thereafter."

15 That's because the supercar market, just like
16 any other market, fluctuates, correct?

17 **A Todd is the one that put it in there, I just**
18 **agreed to it.**

19 Q Okay. And you agreed to it because you knew
20 that prices for supercars fluctuate, correct?

21 **A Well, I think -- I don't think that was the**
22 **reason, no.**

23 Q Nevertheless, you signed the contract,
24 correct?

25 **A Yeah.**

1 Q Okay. Then we have "Forfeit of exclusive
2 distribution rights." You never declared Supercar
3 Engineering in breach of this agreement, did you?

4 A I don't have a recollection of doing that.

5 Q You just declared that this contract is void
6 because Mosler Auto Care Center wasn't producing any
7 vehicles, right?

8 A I didn't say the contract was void because of
9 that.

10 Q Okay.

11 A I don't believe.

12 Q What was the -- do you remember the
13 phraseology you used?

14 A You'd have to --

15 Q When speaking with any -- I'm asking you if
16 you recall the phrases that you used in describing to
17 any journalist whether or not Supercar Engineering had a
18 contract for distribution.

19 A I don't recall making those kind of statements
20 to any journalist, no.

21 Q Okay. "SEI will forfeit its exclusive
22 distribution rights in China and Thailand immediately
23 upon failure to perform any of the terms 2 through 6 in
24 paragraph A, provided that MACC has fulfilled its
25 obligation to supply vehicles as described in paragraph

1 B."

2 Since MACC didn't supply any vehicles, that
3 paragraph can't come into effect, can it?

4 **A Why not?**

5 Q Well, it says provided how -- provided, right?

6 **A Yeah.**

7 Q So the requirement for paragraph 1 to act as a
8 forfeit of SEI's distribution rights would be that MACC
9 has fulfilled its obligation to supply vehicles.

10 **A Well, a couple of things. Todd was in charge**
11 **of sales and production, so he's on both sides of this.**
12 **You know, and we didn't produce anything because we**
13 **didn't sell anything. If he had any orders, he would**
14 **have built the cars and delivered them.**

15 Q Supercar Engineering was an independent
16 contractor for the company, right?

17 **A Supercar Engineering was, yeah.**

18 Q Okay. Now, even if SEI forfeited its
19 exclusive distribution rights, SEI would still be
20 allowed to sell vehicles that are already completed and
21 being offered for sale in China and Thailand on a
22 nonexclusive basis, correct?

23 **A That's what it says, yeah.**

24 Q Okay. Now, then we have a distributor
25 discount and there's information about the discount that

1 the distributor, SEI, was going to get on the vehicles,
2 correct?

3 **A Excuse me, sir. Could you see if your dad's**
4 **okay?**

5 **Okay. Go ahead.**

6 Q Paragraph D just deals with discounts for
7 distributors, correct?

8 **A Yeah.**

9 Q Okay. Now, I want to focus on paragraph E,
10 specifically paragraph E2. "This agreement will be
11 binding upon all future MACC designs and future owners
12 of MACC assets."

13 Now that was your agreement with Supercar
14 Engineering, correct?

15 **A Correct.**

16 Q That the agreement would be passed on to
17 whomever purchased MACC assets, correct?

18 **A That's correct.**

19 Q Now, in this case you understood that James
20 Todd Wagner hoped it would be MSI, Mosler Supercars,
21 Inc., the company he hoped to buy the assets with?

22 **A Yeah.**

23 Q But if MACC assets were purchased by another
24 entity --

25 **A Yeah.**

1 Q -- James Todd Wagner could rely upon paragraph
2 E2, couldn't he?

3 A Yeah. Assuming the rest was okay, sure.

4 Q So if Supercar -- I'm sorry. If Mosler Auto
5 Care Center sold its assets to another company, that
6 other company was supposed to be obligated to honor this
7 agreement, wasn't it?

8 MR. WEBER: Objection, hypothetical.

9 THE COURT: Overruled.

10 THE WITNESS: Yeah. Assuming it was still
11 intact, sure.

12 BY MR. ZAPPOLO:

13 Q Okay. Now, in fact, Mosler Auto Care Center's
14 assets were sold to another company --

15 A Yeah.

16 Q -- correct?

17 A Correct.

18 Q RP High Performance, correct?

19 A Correct.

20 Q All right. Now rather than honoring or
21 requiring RP High Performance to honor this contract,
22 you told RP High Performance that Mr. Wagner's company,
23 SEI, had no rights, correct?

24 A I can't take your word for it, I'd have to see
25 the documents.

1 Q You don't recall that?

2 A You know, when you say it like that, I have to
3 see the documents.

4 Q Do you recall -- all right. Just to be
5 clear --

6 A I can't just take your word for it.

7 Q I'm not asking you to take my word. I'm
8 asking you your recollection, sir.

9 A I don't know.

10 Q Do you recall --

11 A I can't right now recall that specifically.

12 Q Okay.

13 A Those words specifically.

14 Q Do you recall ever telling anyone at RP High
15 Performance that you would indemnify that company for
16 claims by Mr. Wagner?

17 A Yes, I remember that.

18 Q Okay. And that was because you knew that
19 Mr. Wagner had the position that whomever bought the
20 company's assets would still have to sell his company
21 cars -- correct? -- pursuant to this agreement?

22 A Wrong.

23 Q No? Well, how would you -- how come you
24 indemnified it then?

25 A To give them the comfort to buy it, I was

1 comfortable indemnifying because I knew there were no
2 claims, no valid claims.

3 Q At the time that RP High Performance
4 purchased, that was in 2013, right?

5 A Yeah.

6 Q This lawsuit was filed when, sir?

7 A I don't know.

8 Q It was filed in 2012, wasn't it?

9 A 2012?

10 Q Okay.

11 A If you say so.

12 Q So this lawsuit had already been filed?

13 A Right.

14 Q Mr. Wagner had already asserted the position
15 that you were breaching this agreement, and you sold the
16 company and you told the purchaser that you would
17 indemnify them, correct?

18 A Correct.

19 Q Okay. Mr. Mosler, about a year and a half
20 earlier than you sold the assets of Mosler Auto Care
21 Center, you had taken the position that the contract,
22 the distribution contract that we just showed the jury
23 didn't exist, correct?

24 A I don't know. Show me something.

25 Q Well, do you remember speaking with a

1 gentleman by the name of Matt Hardigree?

2 **A No, I don't have any recollection of the**
3 **conversation.**

4 Q While we're getting to that, I'm going to move
5 on.

6 Mr. Mosler, I'm showing you what's been marked
7 as Plaintiffs' Exhibit 68 for identification purposes.

8 **A Okay.**

9 (Thereupon, Plaintiffs' Exhibit 68 was marked
10 for identification.)

11 BY MR. ZAPPOLO:

12 Q Do you recognize that document?

13 **A I do.**

14 Q Okay. Now, you would agree with me -- take a
15 moment to review that.

16 **A Uh-huh.**

17 Q Within that document, Mr. Hardigree says that
18 he had a conversation with you, correct?

19 **A Which page?**

20 Q Well, throughout the article, but let's try
21 this: Do you ever recall telling anyone that Mr. Wagner
22 was a pest?

23 **A Not -- I don't have a specific recollection of**
24 **that.**

25 Q Okay. Let's go to page 3 of Exhibit 68.

1 **A Yeah.**

2 Q Down at the bottom.

3 **A Yeah.**

4 Q Does that refresh your recollection?

5 **A Yeah, I've seen this in writing before.**

6 Q I'm sorry?

7 **A Was this an online article? I think I've seen**
8 **it.**

9 Q Okay. So you've seen this document before,
10 correct?

11 **A Yeah. Yes.**

12 Q And did you tell Mr. -- did you ever tell
13 anyone that part of the deal for the purchase of Mosler
14 assets was that Mr. Wagner would not be involved?

15 **A Well, what are you referring to here?**

16 Q The last line on page 3.

17 **A Oh, I see it. In fact, part of the**
18 **documentation for the sale of Mosler is that Todd is not**
19 **involved -- it must have been in some documentation at**
20 **the time to sell to somebody else.**

21 Q Okay. Now you did have the opportunity to
22 review this document, you said before, correct?

23 **A Yeah, at some point. I don't remember too**
24 **much of it.**

25 Q Okay.

1 **A But go ahead.**

2 MR. ZAPPOLO: Your Honor, at this time I'd
3 like to move Plaintiffs' Exhibit 68 into evidence.

4 MR. WEBER: No objection.

5 THE COURT: Madam Clerk, is that Number 75?

6 THE CLERK: Yes.

7 THE COURT: All right. Admitted as 75.

8 (Thereupon, Plaintiffs' Exhibit 75 was
9 received into evidence.)

10 BY MR. ZAPPOLO:

11 Q Okay. Now Exhibit Number 75, that picture,
12 where it says "Jalopnik Exclusive," is an article by
13 Matt Hardigree dated November 21, 2011. That picture on
14 the front, do you recognize where that picture comes
15 from?

16 **A It looks like something out of the music**
17 **video.**

18 Q Okay. Right. The video that was played
19 during the opening in this case, correct?

20 **A Yeah, yeah.**

21 Q Okay. Now, I want you to see where we're
22 talking here within this article that says "He," meaning
23 Mr. Wagner or Supercar Engineering, Inc., "bought the
24 RaptorGTR from Mosler and planned to market and sell the
25 car internationally through a distributorship agreement

1 with his former company," right?

2 **A Yeah, I don't see that. Which part? Where**
3 **are you?**

4 Q I'm sorry. I'm on page 3, just below the
5 picture of the car.

6 **A Yeah, okay.**

7 Q All right. And then it says "the only
8 problem? The agreement may not exist." Those are the
9 words of Mr. Hardigree, correct?

10 **A Yeah, uh-huh.**

11 Q Okay. Now there's a quote there: Quote, he
12 goes around claiming he has a distributorship agreement.
13 He's a distributor of nothing because we're not
14 producing a car, Warren Mosler tells me in a phone call
15 on Friday, correct?

16 **A Correct.**

17 Q All right. Now when you said "claiming he has
18 a distributorship agreement," you could have phrased
19 that -- well, let me back up.

20 You said those words to Mr. Hardigree during a
21 phone call, didn't you?

22 **A I don't recall the phone call at all or saying**
23 **anything to him, so he's attributing those to me.**

24 Q Okay. You're not denying that you said that
25 to this jury, are you?

1 **A** **I can't confirm or deny it. I don't remember**
2 **the conversation.**

3 **Q** **Okay. But it sounds like something you would**
4 **say?**

5 **A** **Well, I think Todd and I would both agree that**
6 **these guys twist words all the time, take things out of**
7 **context, but so I'll just leave it at that.**

8 **Q** **Well, wasn't it your position, on or about**
9 **November 21, 2011, that Supercar Engineering was a**
10 **distributor of nothing because Mosler Auto Care Center**
11 **wasn't producing a car?**

12 **A** **I don't think I had an official position at**
13 **that point.**

14 **Q** **But if --**

15 **A** **But it's not to say it's not a true statement.**

16 **Q** **If someone had wanted to buy a car --**

17 **A** **Yeah.**

18 **Q** **-- pursuant to the distributorship agreement**
19 **that we just covered --**

20 **A** **Yeah.**

21 **Q** **-- Mosler Auto Care Center would have been**
22 **obligated to produce the car, right?**

23 **A** **Is that a hypothetical?**

24 **Q** **Isn't that what the agreement calls for?**

25 **A** **Okay. Could you restate the question?**

1 Q Didn't the exclusive distributorship of Mosler
2 products in China and Thailand agreement require Mosler
3 Auto Care Center to produce cars if James Wagner's
4 company, Supercar Engineering, had a buyer?

5 MR. WEBER: Objection, vague and calls for a
6 legal conclusion.

7 THE COURT: Rephrase the question.

8 BY MR. ZAPPOLO:

9 Q Based upon your knowledge of the agreement
10 between the distribution agreement between MACC and SEI,
11 if SEI had a buyer for a car, wasn't MACC obligated to
12 build such car?

13 MR. WEBER: Objection, calls for a legal
14 conclusion.

15 THE COURT: Overruled.

16 **THE WITNESS: The agreement just says what it**
17 **says. I'm not a lawyer right now. I certainly**
18 **have done that, you know, but I can't say that**
19 **legally that's what this distributor agreement**
20 **requires without talking to somebody who knows the**
21 **law.**

22 BY MR. ZAPPOLO:

23 Q So after you --

24 **A I would have been more than happy to do that.**

25 Q Okay. But rather than say that, you said "He

1 goes around claiming he has a distribution agreement.
2 He's a distributor of nothing because we're not
3 producing a car."

4 **A Okay. You did it again. Do you want to**
5 **rephrase the question, please?**

6 Q No. Let's go down to the paragraph below.

7 "Mosler wants nothing to do with Wagner, whom
8 he calls a pest." You did refer to Mr. Wagner, when
9 speaking to Mr. Hardigree, as a pest, correct?

10 **A Okay. One more time, that's what it says**
11 **here. That's what he's saying I said. I don't have a**
12 **recollection of saying it, so...**

13 Q Where's your email to Mr. Hardigree saying
14 "You misquoted me. I never called Mr. Wagner a pest"?

15 **A There isn't one.**

16 Q You were happy for the world to know that you
17 thought that Mr. Wagner was a pest, weren't you?

18 **A It sounds like your opinion; that's not mine.**

19 Q Well, if you didn't want the world to know
20 that you thought Mr. Wagner was a pest, why didn't you
21 correct the article?

22 **A Look, I don't go around correcting all these**
23 **journalists' articles. They say a lot of bad things**
24 **about me I never bothered to correct.**

25 Q You don't mind when people say bad things

1 about you in the press?

2 **A I don't like it, but, you know, they do it and**
3 **the reality is there's nothing you can do about it. I**
4 **have known that for a long time.**

5 Q You got lawyers to file lawsuits and say
6 that -- and try to correct the record, don't you?

7 MR. WEBER: Objection, relevance and assumes
8 facts not in evidence, and that's it.

9 THE COURT: Sustained. Let's move on, please.

10 BY MR. ZAPPOLO:

11 Q The quote, in fact, part of the documentation
12 (for the sale of Mosler) is that Todd is not involved,
13 says Mosler.

14 You can't confirm or deny whether you said
15 that or not, correct?

16 **A I can't.**

17 Q Okay. Nevertheless, as you sit here today, do
18 you know whether the documentation for the purchase of
19 Mosler Auto Care Center, in fact, requires that
20 Mr. Wagner not be involved?

21 **A Well, it doesn't have the context of which**
22 **documentation he's talking about.**

23 Q Okay. Any documentation. Are you aware of
24 anyone who wanted to buy MACC and didn't want James Todd
25 Wagner involved?

1 **A I believe Savvas didn't want James Todd Wagner**
2 **involved.**

3 Q Okay. We'll get to the Savvas documents in a
4 little bit.

5 On the next page there's some -- a quote
6 attributable to Jill Wagner. I'm not going to ask you
7 about that, but it does say she believes her ex-husband
8 was attempting to sell the car. That would be the
9 RaptorGTR, correct?

10 **A I'm supposed to say what she believes from an**
11 **article by somebody who's attributing a quote to her?**

12 Q When you read this, you don't understand --
13 all right. Never mind, I'll move on.

14 MR. WEBER: Objection --

15 MR. ZAPPOLO: Never mind. Withdrawn.

16 MR. WEBER: Objection --

17 MR. ZAPPOLO: Withdrawn. Withdrawn.

18 THE COURT: What's the next question, please?

19 BY MR. ZAPPOLO:

20 Q The reference there is that Jill Wagner
21 doesn't think that you would sell it to him. Did you
22 ever say anything, to the best of your knowledge, that
23 would lead anyone to believe that you would not sell the
24 company to James Todd Wagner?

25 **A Well, it's -- you know, I didn't -- I don't**

1 know if "believe" is the word, but it would have
2 surprised me if he had come up with the money to buy it.
3 He had been struggling with the money for so long that I
4 really didn't think the sale would be to him because I
5 didn't think he would have the money. It wasn't
6 anything more than that.

7 Q Are you familiar with a magazine called the
8 duPont REGISTRY?

9 A Yes.

10 Q I believe this is -- actually, let's back that
11 up.

12 MR. ZAPPOLO: Plaintiffs' 70 is already in
13 evidence?

14 MR. WEBER: Scott, this is Plaintiffs' 70.

15 MR. ZAPPOLO: I'm sorry, it's Plaintiffs' 70
16 for ID. I believe -- Ms. Clerk, is it in evidence?

17 THE CLERK: I have 70 as 1161.

18 MR. WEBER: 70 is the email.

19 MR. ZAPPOLO: 70 is the Plaintiffs' ID number.

20 THE CLERK: Yes. It's 41.

21 MR. ZAPPOLO: 41, thank you.

22 BY MR. ZAPPOLO:

23 Q You understood the ramifications of your
24 speaking with journalists was that other journalists
25 were repeating the concepts of what you were saying.

1 For example, that other journalists would pick up and
2 say that Supercar Engineering didn't have a distribution
3 agreement, correct?

4 MR. WEBER: Objection, vague, speculation.

5 THE COURT: Repeat your question.

6 MR. ZAPPOLO: You understood that the effect
7 of speaking with one journalist is that other
8 journalists would repeat what was said, correct?

9 THE COURT: And the objection was vague?

10 MR. WEBER: Vague and speculation. What's
11 the --

12 THE COURT: Speculation sustained.

13 BY MR. ZAPPOLO:

14 Q Now, with respect to the discussions earlier
15 about the 2012 RaptorGTR, based upon Mr. Wagner, through
16 SEI's marketing efforts, you did receive contact from
17 someone who was interested in the 2012 RaptorGTR, didn't
18 you?

19 A I don't recall.

20 Q Mr. Mosler, I'm showing you what's been marked
21 as Plaintiffs' Exhibit 1014 for identification purposes.
22 Do you recognize that document?

23 A Yes.

24 (Thereupon, Plaintiffs' Exhibit 1014 was
25 marked for identification.)

1 BY MR. ZAPPOLO:

2 Q And that's a -- is there any reason to believe
3 that's not a true and correct copy of your email on or
4 about the time it was written?

5 A It is.

6 Q Okay.

7 MR. ZAPPOLO: Your Honor, at this time I'd
8 like to move Plaintiffs' Exhibit 1014 into
9 evidence.

10 MR. WEBER: No objection.

11 THE COURT: Madam Clerk, Number 76?

12 THE CLERK: Yes.

13 THE COURT: Thank you.

14 (Thereupon, Plaintiffs' Exhibit 76 was
15 received into evidence.)

16 BY MR. ZAPPOLO:

17 Q Within Exhibit 76 we read that email chain
18 backwards. On or about November 19, 2011, Nabeel Khan
19 from India's top trade magazine on automotive, he
20 wrote -- he asked "How many cars do you produce and
21 what's your major market? Please give details of the
22 prices."

23 How is the new car RaptorGTR different from
24 earlier products of Mosler, et cetera, right?

25 Now Mr. Short forwarded that to you for

1 response, didn't he?

2 **A Yes.**

3 Q And Martin Short is the UK dealer that we saw
4 in the website pages earlier today, right?

5 **A Yes.**

6 Q So the person from India reached out to Martin
7 Short, asked a bunch of questions about the car and the
8 company, and Martin Short forwarded it to you for
9 response, correct?

10 **A Correct.**

11 Q And your response to this person Nabeel was
12 "We did build one car to that spec which Todd bought
13 earlier this year, and we could build more to order."

14 That's because that was a part of the plan,
15 wasn't it? That Mosler Auto Care Center would build the
16 2012 RaptorGTRs and distribute them pursuant to the
17 distribution agreement, right?

18 **A No, wrong.**

19 Q I'd like to talk to you -- remember earlier we
20 were talking about Mr. Lew Lee and things got a little
21 bit -- there was a little bit of anxiety in the room
22 when we were talking about Lew Lee and whether or not he
23 was a con man and things like that? Do you remember
24 that testimony generally?

25 MR. WEBER: Objection, mischaracterization

1 of --

2 THE COURT: Sustained.

3 BY MR. ZAPPOLO:

4 Q Do you remember the testimony about Lew Lee?

5 A In general.

6 Q And do you remember whether or not you felt
7 that Lew Lee was a con man?

8 A I remember the testimony. That wasn't what I
9 said, that's what you said.

10 Q Okay. Did you ever feel that he was a con
11 man?

12 A Okay. So I'll stay with my previous answer
13 which was that -- something about, you know, he was
14 suspect, I think is the word I used, because of the --
15 knowing the state of the company and the state of the
16 business, that anybody trying to buy this business, my
17 first thoughts are, you know, there's something suspect
18 about this guy. Do you recall me using that word
19 "suspect"?

20 Q I recall "suspect."

21 A Okay.

22 Q So were there other people that were
23 attempting to buy the company that were suspect?

24 A Yes.

25 Q Okay. Now, was one of those people the

1 subject of a discussion between you and your son, Jacob
2 Mosler, on or about the end of December of 2011?

3 **A I don't recall.**

4 Q I'm showing you what's been marked as
5 Plaintiffs' Exhibit Number 1041 for identification
6 purposes.

7 The usual questions: Is that a true and
8 correct copy of your email on or about the time that it
9 was -- purports to have been written?

10 **A Yes.**

11 (Thereupon, Plaintiffs' Exhibit 1041 was
12 marked for identification.)

13 MR. ZAPPOLO: At this time, Your Honor, I'd
14 like to move Plaintiffs' 1041 into evidence.

15 MR. WEBER: No objection.

16 THE COURT: Madam Clerk, is that 77?

17 THE CLERK: Yes.

18 THE COURT: Thank you.

19 (Thereupon, Plaintiffs' Exhibit 77 was
20 received into evidence.)

21 BY MR. ZAPPOLO:

22 Q Now, December 28, 2011, that's about six
23 months after Wagner, Sr. wired \$100,000 into your
24 account, correct?

25 **A Yeah.**

1 Q Okay.

2 A It was June 29th.

3 Q And Jacob Mosler, your son, had come to you
4 and talking about someone who was interested in
5 purchasing the company. Do you recall that?

6 A I don't, but I see it now.

7 Q Okay. You don't recall -- do you recall --
8 does this refresh your recollection?

9 A No. I recognize the name Furman, but I forgot
10 the details.

11 Q Okay. Can you recall your son Jacob telling
12 you that after some Internet research, this person
13 appeared to be a pathological liar?

14 A I don't recall it, but I see it.

15 Q Okay. Now, and Jacob wrote to you that the
16 guy was absolutely awful, et cetera, correct?

17 A Yeah.

18 Q And your response was "He's a total red flag,
19 but if he's talked someone out of money to give me in
20 the next week, it's not my problem."

21 So you were going to allow this person, who
22 was a total red flag, to talk someone else out of money
23 to give to you in an attempt to buy the company,
24 correct?

25 MR. WEBER: Objection, mischaracterizes the

1 facts -- assumes facts not in evidence.

2 THE COURT: Overruled.

3 THE WITNESS: I was making a hypothetical

4 statement to make a point --

5 BY MR. ZAPPOLO:

6 Q Okay.

7 A -- you know.

8 Q And the point was you didn't care if someone
9 else was getting fleeced as long as you got the money in
10 your pocket, right?

11 A That was not the point I was trying to make.

12 Q Next, you asked -- he said -- your son
13 responded very, very true, and then you told your son to
14 ask that person for an immediate good faith deposit for
15 you and to nurse it along for another week, right?

16 A That's what it says.

17 Q Was this just a scam to get people to give you
18 deposits that you didn't think were going to be able to
19 close?

20 A I didn't say nonrefundable deposit.

21 Q Oh, so this person's deposit would have been
22 refundable?

23 A I didn't say that either. That would have
24 been negotiated, but --

25 Q Well --

1 **A** Well, I always look -- I never look for
2 nonrefundable deposits without some kind of special
3 circumstance.

4 **Q** So the special circumstance was that Supercar
5 Engineering and James Todd Wagner wanted to buy, so
6 their deposit was going to be nonrefundable, but
7 everyone else's was refundable?

8 **A** No, that's not the -- that wasn't the
9 circumstance.

10 **Q** You had concluded that Lew Lee was a snake oil
11 salesman type of guy, didn't you?

12 **A** I don't know if "concluded" is the word, but I
13 think I used language like that. Well, I don't know,
14 I'd have to see the documentation. It sounds like
15 something from my deposition.

16 **Q** You told me Lew Lee is some wild -- he's kind
17 of a fast-talking, like a snake oil salesman type of
18 guy.

19 **A** Yeah, like a snake oil. That's different than
20 saying -- you really go out of your way to distort what
21 I'm saying, just like the journalists do.

22 **Q** Sir, I was just reading from your transcript.

23 **A** Yeah, yeah.

24 THE COURT: What's the next question?

25 **THE WITNESS:** Whew.

1 BY MR. ZAPPOLO:

2 Q I'm showing you what's been marked as
3 Plaintiffs' Exhibit 522 for identification purposes. Do
4 you recognize that document?

5 A Yes.

6 (Thereupon, Plaintiffs' Exhibit 522 was marked
7 for identification.)

8 BY MR. ZAPPOLO:

9 Q Okay. Did you, in fact -- well, back up. Is
10 there any reason to believe that's not a true and
11 correct copy of the documents of Mosler Auto Care Center
12 on or about that time?

13 A No.

14 MR. ZAPPOLO: Okay. At this point I'd like to
15 move 522 into evidence, Your Honor.

16 MR. WEBER: No objection.

17 THE COURT: Admitted as Number 78.

18 (Thereupon, Plaintiffs' Exhibit 78 was
19 received into evidence.)

20 BY MR. ZAPPOLO:

21 Q And that would be the document admitted into
22 evidence as Exhibit 78. Jill Wagner wrote: "Warren has
23 asked me to inform all potential investors that he's
24 accepted a nonrefundable deposit for a 60-day lockout
25 period from an interested party." Do you remember who

1 the interested party was?

2 **A I think that was Savvas.**

3 Q Okay. Savvas Savopoulos. Now, Savvas
4 Savopoulos had a nonrefundable deposit. Do you remember
5 how much it was?

6 **A I'd like to confirm it with the documents, but
7 in the interest of time, I'll say \$60,000 maybe.**

8 Q Okay.

9 MR. ZAPPOLO: Your Honor, the screen seems to
10 have stopped working. Do you have any control over
11 the T.V. screen?

12 THE COURT: No.

13 MR. ZAPPOLO: It's up here, but not showing
14 there.

15 THE COURT: Deputy, do you have the remote for
16 the T.V.? Maybe it went into sleep mode.

17 You know what, Deputy? While we work this
18 out, let's give the jury a ten-minute break. We'll
19 be in recess for a few minutes.

20 (Jurors exit the courtroom at 2:19 p.m.)

21 MR. ZAPPOLO: Your Honor, is it possible -- we
22 have an expert outside that I understand may need
23 to be traveling tomorrow. Is it possible to take
24 him out of order? I was just told there's an issue
25 there.

1 THE COURT: Well, I mean, we still have to do
2 Cross and Redirect.

3 MR. WEBER: And we don't know how long this
4 guy is going to take.

5 MR. ZAPPOLO: I don't think he's going to be
6 that long.

7 THE COURT: I thought this was going to be
8 only an hour today.

9 MR. ZAPPOLO: As did I until I went back and
10 my client informed me of all of the stuff that
11 needed to be covered.

12 THE COURT: You know, any reason why this
13 expert can't testify by Zoom?

14 MR. WEBER: He can testify by Zoom. There's
15 no problem with that.

16 THE COURT: We can let him testify by Zoom.

17 MR. WEBER: Yeah. I think it will be way too
18 confusing if we do an expert --

19 THE COURT: I agree, because it's been almost
20 two days with a couple of days in between. Let's
21 just say for continuity and for the jury to
22 understand the issues --

23 MR. ZAPPOLO: Okay.

24 THE COURT: -- but --

25 MR. ZAPPOLO: My client is going to tell our

1 witness and see what the answer is.

2 MR. WEBER: And, Your Honor, for scheduling
3 purpose, we may not Cross-Examine Mr. Mosler now.
4 We may do it later on our Direct.

5 THE COURT: That's your right.

6 All right. So I think we're calling court
7 tech to try to help you out with this.

8 MR. ZAPPOLO: I don't want to -- I can't wait.
9 I'm on the clock, as the Court has told me, Your
10 Honor, so I'm going to have to just deal with it
11 and move along.

12 THE COURT: Are you sure?

13 MR. ZAPPOLO: I'll be publishing and asking
14 people to pass things down.

15 THE COURT: That might take you longer than
16 waiting five, ten minutes for them to show up.

17 MR. ZAPPOLO: All right. If they can come in
18 five to ten minutes, that would be great.

19 THE COURT: They'll be here quick. They're
20 pretty good about that.

21 MR. ZAPPOLO: Okay. Thank you, Your Honor.

22 THE COURT: If anything, we'll just go without
23 a ten-minute break at the end of the day because
24 normally I give them a break at 2:30, so I took
25 them a few minutes early. I give them a break at

1 3:30 and 4:30, but maybe we do without one of those
2 if we lose a lot of time, you know.

3 MR. WEBER: Your Honor, I will have an
4 extensive Cross of Mr. Wagner, though, just so you
5 know. That will be --

6 THE COURT: I believe it.

7 MR. WEBER: Yeah.

8 THE COURT: Okay. All right. I'm going to
9 step off and get a cup of coffee and I'll be back
10 in a few minutes. I think they'll be here soon,
11 but I'm aware, you know, it's been three or four
12 minutes already. I'm not going to punish you for
13 that delay. That's not your fault, Mr. Zappolo,
14 so -- but we'll be back in a few.

15 MR. ZAPPOLO: Thank you.

16 (Thereupon, a short break was taken from
17 2:22 p.m. to 2:32 p.m.)

18 THE COURT: All right. Let's bring out the
19 jury, please.

20 THE COURT DEPUTY: Jury entering.

21 (Jurors entering the courtroom at 2:34 p.m.)

22 THE COURT: All right. Please be seated.

23 MR. ZAPPOLO: May I proceed, Your Honor?

24 THE COURT: Yes.

25 MR. ZAPPOLO: Thank you.

1 BY MR. ZAPPOLO:

2 Q Mr. Mosler, before the break we were talking
3 about Exhibit 78 in evidence, that October 7, 2011,
4 9:21 a.m. email from Jill Wagner. It says it's to Jill
5 Wagner, but you received that, didn't you?

6 A You know, I don't know. Maybe I did.

7 Q Didn't Ms. Wagner send that email out via
8 blind copy so that the potential purchasers wouldn't
9 know who all the other potential purchasers were?

10 A That's what it looks like, yeah.

11 Q And Mr. Wagner would have been one of those
12 potential purchasers that received that, correct?

13 A I would not know that.

14 Q Do you recall receiving any response from
15 James Todd Wagner in response to Exhibit 78?

16 A I wouldn't recall whether there was a response
17 or not.

18 Q Okay. I'm showing you what's been marked as
19 Defendants' 368. Does that refresh your recollection as
20 to whether or not you received a response from James
21 Todd Wagner to Exhibit 78?

22 A It looks like it.

23 (Thereupon, Plaintiffs' Exhibit 368 was marked
24 for identification.)

25 BY MR. ZAPPOLO:

1 Q Okay. Is there any reason to believe that
2 Defendants' 368 is not a true and correct copy of the
3 email that you received on or about the time it was
4 sent?

5 A No reason to believe that.

6 MR. ZAPPOLO: Your Honor, I'd like to move
7 Defendants' 368 into evidence.

8 MR. WEBER: No objection.

9 THE COURT: Admitted without objection. Madam
10 Clerk, is it 78?

11 THE CLERK: It's Defendants', so that's number
12 2.

13 MR. ZAPPOLO: Well, I had admitted another
14 Defendants' Exhibit earlier and we kept it in
15 Plaintiffs' line, so I think it would stay in
16 Plaintiffs' line since I'm moving it.

17 THE COURT: Yeah. Let's admit it as
18 Plaintiffs' 78.

19 THE CLERK: 79, Judge.

20 THE COURT: 79? Thank you.

21 THE WITNESS: Can you show this to the jury?

22 MR. ZAPPOLO: Yes, once it's in evidence.
23 Yes.

24 (Thereupon, Plaintiffs' Exhibit 79 was
25 received into evidence.)

1 BY MR. ZAPPOLO:

2 Q Okay. So we have Jill Wagner sent an email
3 out where she informed all potential investors that he,
4 meaning you, had accepted a nonrefundable deposit for a
5 60-day lockout period.

6 Then James Wagner wrote to you that same day
7 later on "Hi, Warren. The more I think about how things
8 went down, the more it upsets me. You said in your text
9 it was first come, first served. In our text
10 conversation you confirmed that I had made the first
11 offer yet you signed with Savvas without giving me a
12 chance to meet or beat the offer. It just doesn't make
13 sense. A normal business move would be to have us bid
14 against each other. Is there some other force at work
15 here?" Do you recall responding to this email?

16 A I don't recall.

17 Q Okay. It goes on to say: "No one has worked
18 anywhere near as hard as I have on this deal, plus I
19 have toiled on making the company worth anything. I had
20 to redo all the certification work and invent the
21 powertrain pathway wherein the product could be
22 certified. Without question your company would be
23 worthless now without my effort that you haven't paid me
24 for. So, again, what gives?"

25 So in this email James Wagner was telling you

1 that he hadn't been paid for the EPA certification work,
2 correct?

3 **A It doesn't say that.**

4 Q Isn't that what the -- "that you haven't paid
5 me for," doesn't common sense mean -- reflect that it
6 reflects --

7 MR. WEBER: Objection.

8 BY MR. ZAPPOLO:

9 Q -- it indicates --

10 THE COURT: What's the objection?

11 BY MR. ZAPPOLO:

12 Q -- the prior sentence --

13 MR. WEBER: Speculation.

14 THE COURT: Sustained.

15 BY MR. ZAPPOLO:

16 Q "I had to redo all the certification work and
17 invent the powertrain."

18 **A Yeah.**

19 Q Did he do that?

20 **A Well, no one else did.**

21 Q Right. Was he paid for that work?

22 **A I believe he was, yeah.**

23 Q But you don't have copies of checks to
24 reference that, do you?

25 **A Not in my pocket or anything.**

1 Q Okay. Well, then we'll see what your attorney
2 comes up with.

3 On top of all that he writes "I have a
4 \$100,000 deposit with you." So he was --

5 A Yeah.

6 Q -- still saying that he or Supercar
7 Engineering still had the \$100,000 deposit, correct?

8 A Yeah. In the previous sentence, when he says
9 "Without question, your company would be worthless now
10 without my effort," these are other efforts other than
11 what he just described that have been unpaid. Efforts
12 to sell the company that he discussed earlier, he felt
13 he was doing me a good service with his efforts to sell
14 the company. Maybe he was, but that was --

15 Q Certification was a big deal, wasn't it?

16 A It was a big deal for him, yeah.

17 Q Well, it was a big deal for potential buyers,
18 wasn't it?

19 A Yeah. I'm talking about what this sentence
20 means.

21 Q Well, it was a big deal for the potential
22 buyers of Mosler Auto Care Center that the 2012 Raptor
23 certification had been achieved, correct?

24 A It didn't come up as an issue when I was
25 discussing it as a major big deal.

1 Q When you received the 2012 RaptorGTR
2 certification, you forwarded that to others, correct?

3 A I don't recall now.

4 Q Now, the person that was referenced in the
5 October 7th email was Savvas Savopoulos, right?

6 A In the October 7th email, yeah.

7 Q Okay.

8 A The earlier one, yeah.

9 Q All right. Now you were aware that
10 Mr. Savopoulos, as part of his due diligence and/or
11 attempts to purchase MACC, wanted James Todd Wagner and
12 Supercar Engineering, Inc. to sign documentation,
13 weren't you?

14 A Yes.

15 Q Okay. I'm showing you what's been marked as
16 Plaintiffs' Exhibit Number 1029 for identification
17 purposes. Do you recognize that document?

18 A Yes.

19 (Thereupon, Plaintiffs' Exhibit 1029 was
20 marked for identification.)

21 BY MR. ZAPPOLO:

22 Q Is there any reason to believe that that's not
23 a true and correct copy of the email that was sent on or
24 about the date that it purports to be?

25 A It's true, that's what Savvas wanted to do.

1 MR. ZAPPOLO: Okay. So at this point, Your
2 Honor, I'd like to move Plaintiffs' Exhibit 1029
3 into evidence.

4 MR. WEBER: No objection.

5 THE COURT: Madam Clerk?

6 THE CLERK: 80.

7 THE COURT: Thank you.

8 (Thereupon, Plaintiffs' Exhibit 80 was
9 received into evidence.)

10 BY MR. ZAPPOLO:

11 Q Now, that email dated December 1, 2011 was
12 from Savvas Savopoulos, your friend who was going to
13 potentially buy the assets or the company, and he sent
14 it to James Todd Wagner and copied you, correct?

15 A Correct.

16 Q All right. And then he was asking James Todd
17 Wagner to please sign and send the attachment of the
18 Mosler agreements for Todd Wagner, correct?

19 A Correct.

20 Q All right. Now that agreement was a
21 Termination and Release Agreement, right?

22 A Yeah. I'd have to read it again.

23 Q Okay. Now let's just go through that.

24 A Yeah. That's the title, yeah.

25 Q The second page, okay?

1 **A Yeah.**

2 Q Under number 1, the consideration or what was
3 being paid to James Todd Wagner to sign this Termination
4 and Release Agreement was what?

5 **A \$100.**

6 Q Okay. And what was being terminated there?

7 **A "Any and all contracts, agreements,
8 relationships, options, arrangements, obligations or
9 commitments, whether oral or written, inclusive or
10 noninclusive, of any kind" -- do you want me to read the
11 whole thing?**

12 Q No, you don't need to, but basically he was --
13 if he would have signed this, he was agreeing to the
14 termination of all agreements, including the
15 distribution contract, correct?

16 **A Hold on. Yeah, I suppose.**

17 Q "Any other agreements in the summary of email
18 and verbal agreements" -- now that would have also
19 included the May 2nd agreement about the refundability
20 of the \$100,000 deposit, wouldn't it?

21 **A I don't think so. That was not in any
22 agreement.**

23 Q Summary of email and verbal agreements?

24 **A Yeah, but that was not for any particular
25 contract, that was just negotiated terms. There was**

1 never any mutual agreement on that contract. There were
2 no liabilities based on that.

3 Q You're aware that Mr. Wagner had told -- were
4 you aware that Mr. Wagner told Mr. Savvas Savopoulos
5 that he had an email agreement that the \$100,000 was
6 refundable?

7 A I don't remember.

8 Q Did Savvas Savopoulos ever discuss with you
9 Mr. Wagner's position that since he had worked with your
10 company, and email deals were done all the time, that he
11 thought that an email exchange between the two of you
12 was binding?

13 A You know, I don't recall that conversation.
14 I'd like to see the documents if you have them.

15 Q Okay. And any agreements contemplated by the
16 document dated November 16, 2010 titled Exclusive
17 Distributorship of Mosler Products in China and
18 Thailand, that's the agreement that we just showed the
19 jury a little while ago, right?

20 A Let me say, you know, Todd had never put up a
21 deposit pursuant to that term, those May terms.

22 Q Where was the deposit requirement in
23 Plaintiffs' Exhibit 74 in evidence?

24 A Which one's that?

25 Q That's the Exclusive Distributorship of Mosler

1 Products in China and Thailand. There was no
2 requirement that Mr. Wagner put up any deposit for that,
3 was there?

4 **A No.**

5 Q Okay.

6 **A Did I say there was?**

7 Q You just said he had never put up a deposit.

8 **A Oh, you're talking about the \$100,000 deposit**
9 **that you just mentioned.**

10 Q It was also asking SEI and James Todd Wagner
11 to give up intellectual property rights, correct?

12 **A Yeah, if there were any.**

13 Q Okay. And moral rights, artists' rights,
14 intellectual property rights, trademarks, correct?

15 **A Yeah, anything. You know, if there are any,**
16 **they would be given up with this. It doesn't say there**
17 **are any, it just says if there are any, then he'd give**
18 **them up. It's pretty standard language.**

19 Q Pretty comprehensive language, right?

20 **A Yeah. Well, he's lawyer.**

21 Q Who's a lawyer?

22 **A Savvas.**

23 Q Okay. Not Mr. Wagner, correct?

24 **A No. The guy who wrote this.**

25 Q And then there was language that included a

1 release. "Hereby absolutely, unconditionally,
2 irrevocably, and fully released forever discharging
3 covenant not to sue the company in any of its past,
4 present, or future parent entities, divisions,
5 affiliates, subsidiaries, related business entities,
6 stockholders, equity holders, directors," et cetera,
7 right?

8 **A That's what he said.**

9 Q Any and all claims, as broad as possible?

10 **A Yes.**

11 Q So for \$100 --

12 **A Yeah.**

13 Q -- Mr. Savvas Savopoulos expected James Todd
14 Wagner to give up all of his claims to everything in the
15 world: The \$100,000 deposit, the defamation claims,
16 everything in the world, correct?

17 MR. WEBER: Objection, assumes facts not in
18 evidence.

19 THE COURT: Overruled.

20 **THE WITNESS: Okay. You use the word**
21 **"expected." This isn't something where you**
22 **expected him to do anything.**

23 BY MR. ZAPPOLO:

24 Q When you draft a document for someone to sign,
25 you don't expect that they're going to sign it?

1 **A** Well, they might expect -- you just said --
2 not to expect him to sign it, you just said it expected
3 him to give all this up.

4 **Q** That's what the document would have done had
5 James Todd Wagner signed it, correct?

6 **A** It's an offer, okay. He offered \$100 in
7 return for signing this.

8 **Q** Right. And just on the balance here?

9 **A** Yeah.

10 **Q** I'll give you \$100 if you'll give up your
11 claims to \$100,000 --

12 **A** Yeah.

13 **Q** -- if you'll give up your claims to be a
14 distributorship --

15 **A** Yeah.

16 **Q** -- if you'll give up your claims for
17 defamation, if you'll give up your claims for getting
18 paid for the work that you did for EPA certifications,
19 right?

20 **A** No.

21 **Q** That's what this document would have done had
22 Mr. Wagner signed it, correct?

23 **A** No. No. Of course this is what you do all
24 the time. You know, I told Savvas I didn't think the
25 claims were worth anything. I thought he was overpaying

1 for \$100 because I didn't think there were any valid
2 claims, and he didn't think there were either.

3 Q Okay. Now you wanted James Todd Wagner to
4 sign this document, didn't you?

5 A I don't know what "wanted" means.

6 Q You didn't -- didn't you want James Todd
7 Wagner to sign that agreement so that your friend would
8 go ahead and purchase the company?

9 A That's a good question. Show me some
10 documentation, if you've got it.

11 Q Do I have to have documentation for you to
12 answer the question, sir?

13 A That question, yes.

14 Q Okay.

15 A Because you don't have any.

16 Q Let's go with this documentation then.

17 A Yeah, okay.

18 Q I'm showing you what's been marked as
19 Plaintiffs' 1033 for identification purposes.

20 Same usual questions: Is there any reason to
21 believe that's not a true and correct copy of your
22 email?

23 A That looks like a true and correct copy.

24 (Thereupon, Plaintiffs' Exhibit 1033 was
25 marked for identification.)

1 MR. ZAPPOLO: Okay. At this point I'd like to
2 move Plaintiffs' Exhibit 1033 into evidence.

3 MR. WEBER: No objection.

4 THE COURT: Madam Clerk, 81, please?

5 THE CLERK: Yes.

6 (Thereupon, Plaintiffs' Exhibit 81 was
7 received into evidence.)

8 BY MR. ZAPPOLO:

9 Q You recommended to James Todd Wagner, on
10 December 3rd, that he should agree not to be involved in
11 Mosler in exchange for any liability for what you've
12 done, right?

13 A Right.

14 Q Okay. Now liability for what he'd done, you
15 thought that you had claims against James Todd Wagner at
16 that time, right?

17 A I thought that he had liability. I didn't
18 have any intention of -- it wasn't a threat. I don't do
19 that. I don't go around suing people like this.

20 Q Did you ever have a conversation with James
21 Todd Wagner about the fact that -- or discussing whether
22 or not Savvas Savopoulos sues people to get what he
23 wants done?

24 A I don't remember a conversation, but if you've
25 got something, you can show it to me. But, you know, he

1 **was a lawyer, so I don't know.**

2 Q Okay. Now, Mr. Savvas Savopoulos wrote to you
3 on December --

4 Actually, the first thing is James Wagner
5 said, on December 10, 2011, that a reply would be sent
6 out early next week. And the response from
7 Mr. Savopoulos to you was "Doesn't sound like he,"
8 meaning James Todd Wagner, "is happy. Any pressure you
9 can put?"

10 **A Yeah.**

11 Q Remember earlier I asked you in front of this
12 jury whether or not you had been asked to put any
13 pressure on James Todd Wagner to give up his rights?

14 **A Right. Remember I asked if you had any**
15 **documentation, so here it is.**

16 Q Right. Well, here's the documentation, right?

17 **A Yeah.**

18 Q You didn't remember that before just seeing
19 this document, sir?

20 **A I didn't, but --**

21 Q Nevertheless, would you agree that your friend
22 Savvas Savopoulos asked you to put pressure on James
23 Todd Wagner --

24 **A Yeah.**

25 Q -- to sign the documentation giving up those

1 rights for \$100, correct?

2 **A Yes. Yes, that's the way he is.**

3 Q So as part of Mr. Savopoulos' nonrefundable
4 deposit --

5 **A Yeah.**

6 Q -- did Mr. Savopoulos and you or MACC ever
7 enter into a contract?

8 **A I can't remember. I think there's a
9 documentation of some kind of contract somewhere.**

10 Q Now, I'm showing you what's been marked as
11 Plaintiffs' Exhibit 827. Do you recognize that
12 document?

13 **A Yes.**

14 (Thereupon, Plaintiffs' Exhibit 827 was marked
15 for identification.)

16 BY MR. ZAPPOLO:

17 Q Same question: Is there any reason to believe
18 that's not a true and correct copy of the email around
19 the time it purports to be?

20 **A That's correct, yeah.**

21 MR. ZAPPOLO: Your Honor, at this time I'd
22 like to move 827 into evidence.

23 MR. WEBER: No objection.

24 THE COURT: Madam Clerk, that's Number 82?

25 THE CLERK: Yes.

1 THE COURT: All right.

2 (Thereupon, Plaintiffs' Exhibit 82 was
3 received into evidence.)

4 BY MR. ZAPPOLO:

5 Q Now earlier you said that Mr. Savopoulos, you
6 thought, gave a \$60,000 deposit.

7 A Yeah, I guess not.

8 Q It was a \$50,000 deposit, right?

9 A Yeah. Thanks for telling me.

10 Q Okay. So now you said that Savvas Savopoulos'
11 deposit was nonrefundable, correct?

12 A Was it for 60 days? Is that what I got wrong?

13 Q You testified that the deposit was
14 nonrefundable, correct?

15 A That's right. That's right.

16 MR. ZAPPOLO: Okay. I'm sorry, what was 827
17 in evidence as?

18 THE CLERK: 82.

19 BY MR. ZAPPOLO:

20 Q Who is Evelyn Richards?

21 A She used to work for me in St. Croix.

22 Q Okay. This email chain that's in evidence is
23 Exhibit 82. It shows that the \$50,000 deposit --

24 A Yeah.

25 Q -- that you said was nonrefundable by Savvas

1 Savopoulos --

2 **A Right.**

3 Q -- was, in fact, actually refunded to him,
4 wasn't it?

5 **A Yes.**

6 Q Okay. But James -- the Supercar Engineering
7 nonrefundable deposit wasn't refunded to it, correct?

8 **A That's correct.**

9 Q And with respect to Savvas Savopoulos,
10 remember we talked earlier about whether certification
11 was a big deal to potential purchasers of the company?

12 **A Yes.**

13 Q I'm showing you what's been marked as
14 Plaintiffs' 1199 for identification purposes. Do you
15 recognize that document?

16 **A Yes.**

17 (Thereupon, Plaintiffs' Exhibit 1199 was
18 marked for identification.)

19 BY MR. ZAPPOLO:

20 Q Is there any reason to believe that's not a
21 true and correct copy of your email on or about the time
22 that it purports to have been sent?

23 **A No reason.**

24 MR. ZAPPOLO: At this point I'd like to move
25 1199 into evidence, Your Honor.

1 MR. WEBER: No objection.

2 THE COURT: Madam Clerk, admitted as 83?

3 **THE WITNESS: Yes.**

4 (Thereupon, Plaintiffs' Exhibit 83 was
5 received into evidence.)

6 BY MR. ZAPPOLO:

7 Q Now, this language: "Hi, Jill and Warren.
8 Please find the official 2012 RaptorGTR certification
9 document attached. Needless to say, this has been a
10 monumental undertaking and I'm infinitely happy to have
11 it behind me."

12 That was James Todd Wagner writing to you,
13 correct?

14 **A Where am I looking? Okay. Yeah.**

15 Q As a matter of fact was that just sent to Jill
16 and Warren or was there someone after that comma?

17 **A I don't know.**

18 Q Okay. We'll go into that later, but
19 nevertheless, you agree that you took what James Todd
20 Wagner wrote, whether you modified it or didn't modify
21 it, but you forwarded it to potential purchaser Savvas
22 Savopoulos, correct?

23 **A Correct.**

24 Q Okay. Because you saw value in the
25 certification, correct?

1 **A** Because I was just keeping him informed as to
2 the state of the company for whatever reason.

3 **Q** That was a success for the company, correct?

4 **A** I suppose, yeah.

5 **Q** Okay. That was a benefit to the company that
6 was provided by James Todd Wagner and Supercar
7 Engineering, correct?

8 **A** You know, I'd say yes, it was a benefit and
9 that, you know, if Savopoulos doesn't -- Savvas doesn't
10 buy it, then Todd can go forward and he can make a lot
11 of money selling these cars. I think he had plans for a
12 whole different -- a whole different set of plans for
13 the company.

14 **Q** Do you remember the person, Mr. Furman, that
15 we were talking about earlier?

16 **A** Yeah.

17 **Q** Now, on June 29th, when you found out that
18 \$100,000 had been deposited into your account -- whether
19 the deposit was refundable or nonrefundable is not my
20 question. My question is very specific: Did that
21 \$100,000 buy any exclusivity?

22 **A** What's that mean?

23 **Q** Well, there were times that you told people
24 that you would only entertain an offer from one person
25 at a time.

1 **A I'd have to go back and look at that letter**
2 **again.**

3 Q Do you remember all of the emails back and
4 forth that we've talked about, and they've been shown to
5 this jury that say exclusive for three months and --

6 **A Yeah.**

7 Q You knew what I was talking about with
8 exclusivity, right? In those --

9 **A Yeah, I knew what you were talking about --**

10 Q Okay.

11 **A -- but I couldn't tell what three-month period**
12 **because it's been going on for, like, years.**

13 Q Okay. Well, whether it was with Lew Lee or
14 whether it was with James Todd Wagner or one of his
15 companies, was there any exclusivity that was purchased
16 with that \$100,000?

17 **A How it was purchased would be in a letter of**
18 **intent, so I would have to look at that and take a look,**
19 **if it's in there. I don't think -- it was a deposit,**
20 **not a purchase.**

21 Q Okay. But did the deposit give any
22 exclusivity?

23 **A Well, that would be in the letter of intent.**

24 Q This letter of intent doesn't reference
25 exclusivity, does it?

1 A I was asking you. I have to read it again.

2 Q I'm sorry?

3 A I can read it 100 times, I still don't
4 remember.

5 Q I think you've got it up on the podium in
6 front of you, sir.

7 A I might be making a big mistake, but I'll take
8 your word for it.

9 MR. WEBER: No -- objection. No question
10 pending.

11 THE WITNESS: Is that the letter of intent up
12 there?

13 BY MR. ZAPPOLO:

14 Q This is the letter of intent, yes.

15 A Well, why don't you put it up on the screen to
16 save time.

17 Q Okay.

18 A Is that it?

19 Q Yes.

20 A Okay.

21 Q Exhibit 68 in evidence is now on the screen
22 for you to read dated June 29, 2011.

23 A Good. Should deliver a nonrefundable
24 deposit -- September 1st, 4,850,000.

25 Q Tell me when you want me to flip it.

1 **A Okay. Is that the whole thing? So I don't**
2 **see anything about exclusivity in that.**

3 Q Okay. Now we'll go to the second page.

4 **A I don't see exclusivity.**

5 Q Okay. Now, you would agree with me, though,
6 that James Todd Wagner had been discussing and
7 negotiating with you exclusivity as a reason to make a
8 deposit, correct?

9 **A What do you mean "negotiating"? Yeah, I mean,**
10 **that was a part of an ongoing discussion of several**
11 **months -- several months before.**

12 Q Okay. I'm showing you what's been marked as
13 Plaintiffs' Exhibit 1231 for identification purposes.

14 Same question: Is there any reason to believe
15 that's not a true and correct copy of your email on or
16 about the time it was purported to have been written?

17 **A No, no reason to believe that.**

18 (Thereupon, Plaintiffs' Exhibit 1231 was
19 marked for identification.)

20 BY MR. ZAPPOLO:

21 Q Okay. Now Mr. Furman says that, from his
22 records, the original prices and discussions --

23 MR. ZAPPOLO: I'm sorry, Your Honor, did I
24 move 1231 into evidence?

25 THE COURT: No.

1 MR. ZAPPOLO: I should move -- at this point I
2 move 1231 into evidence.

3 MR. WEBER: No objection.

4 THE COURT: Madam Clerk, is that 84?

5 THE CLERK: Yes.

6 MR. ZAPPOLO: Okay.

7 (Thereupon, Plaintiffs' Exhibit 84 was
8 received into evidence.)

9 BY MR. ZAPPOLO:

10 Q Okay. Mr. Furman wrote "I believe from my
11 records, the original prices and discussions between us
12 were on June 30th." That would be the day after the
13 \$100,000 was wired to you, right?

14 A **Where are we going now? Back to the first**
15 **page?**

16 Q On the first page.

17 A **I'll read it up here. Okay. So that says**
18 **dated August -- okay. Yeah, yeah.**

19 Q Okay. Sorry.

20 Okay. So the day after you received the
21 \$100,000 wire you were talking with Mr. Furman to try to
22 get him to give you 100,000 -- excuse me, you were
23 talking to him about him potentially buying the company,
24 correct?

25 A **It doesn't say that. There was a discussion**

1 and he was looking to buy the company, so I'll say that.

2 You know, he sent me an email on August 14th
3 about -- saying that we had a discussion on June 3rd.
4 Whether we had it or not, I don't know.

5 Q I'm showing you what's been marked as
6 Plaintiffs' Exhibit 1232 for identification purposes.

7 The usual question: Is there any reason to
8 believe that's not a true and correct copy of the email
9 on or about the time it purports to be?

10 A No.

11 (Thereupon, Plaintiffs' Exhibit 1232 was
12 marked for identification.)

13 MR. ZAPPOLO: At this time I'd like to move
14 Plaintiffs' 1232 into evidence, Your Honor.

15 MR. WEBER: No objection.

16 THE COURT: Madam Clerk, 85, please?

17 THE CLERK: Yes.

18 (Thereupon, Plaintiffs' Exhibit 85 was
19 received into evidence.)

20 BY MR. ZAPPOLO:

21 Q So into August, according to Exhibit 85, you
22 wrote Mr. Furman that he still hadn't told you how much
23 he was prepared to pay, correct?

24 A Where am I looking at? Oh. Yeah, that was
25 responding to something he said.

1 Q Now you remember earlier I asked you about an
2 Asian press release, something along those lines?

3 A Yeah.

4 Q I'm showing you what's been marked as
5 Plaintiffs' Exhibit Number 7. Do you recognize that
6 document?

7 A Yeah. I've already seen this, right.

8 (Thereupon, Plaintiffs' Exhibit 7 was marked
9 for identification.)

10 BY MR. ZAPPOLO:

11 Q And I'd like you to flip back to the second
12 page. Is that you responding to that?

13 A Oh, yeah.

14 MR. ZAPPOLO: Okay. At this point, Your
15 Honor, I'd like to move Plaintiffs' Exhibit Number
16 7 into evidence.

17 MR. WEBER: No objection.

18 THE COURT: Madam Clerk, 86?

19 THE CLERK: Yes.

20 (Thereupon, Plaintiffs' Exhibit 86 was
21 received into evidence.)

22 BY MR. ZAPPOLO:

23 Q Now Plaintiffs' Exhibit Number 7 for
24 identification purposes and in evidence as 86 is from
25 the Asian Release News Service, correct?

1 **A Yeah.**

2 Q Okay. And that is an article about the
3 RaptorGTR, correct?

4 **A Correct.**

5 Q And it is touting the RaptorGTR's advances,
6 such as use of car --

7 **A Oh, excuse me. It's about the RaptorGTR
8 video. "Covered via an extreme music video" is right in
9 the title. This is a story about the video.**

10 Q All right. Now, it breaks cover, meaning it
11 is released, correct?

12 **A Yeah, the video was released.**

13 Q No, the car broke cover. The car was
14 released --

15 **A Oh, okay.**

16 Q -- via the video, correct?

17 **A Is that what it says? Yeah, okay, that's what
18 it says. Being watched via an extreme music video, yes.**

19 Q Right. The launch was on November 15, 2011,
20 correct?

21 **A That's the date of this article.**

22 Q Right. But that was the date of the launch of
23 the 2012 RaptorGTR, wasn't it?

24 **A It could be.**

25 Q Okay. And Mr. Wagner, through Supercar

1 Engineering, had already had it released out through the
2 Asian news service, correct?

3 **A Somebody did.**

4 Q And that was a requirement of his distribution
5 contract that we discussed earlier, wasn't it?

6 **A Oh, I don't know. I'd have to look into that.**
7 **This is the first I've heard of that, that this would**
8 **fit that requirement.**

9 Q Okay. Let's look at Exhibit 74, paragraph A4:
10 "Chassis 32 must be presented to at least one press
11 outlet in Thailand and China" --

12 **A Yeah.**

13 Q -- right?

14 **A Yeah.**

15 Q And so that's what Supercar Engineering and/or
16 Mr. Wagner was doing with Exhibit Number 86, which is in
17 evidence, correct?

18 **A I understand your position.**

19 Q All right. Now, this had a -- this article
20 talks about things such as how the car was made,
21 correct?

22 **A Let's see. Yeah.**

23 Q It talks about the car being carbon fiber?

24 **A Yeah.**

25 Q The result of this construction concept

1 combined with a twin-turbocharged, 7-liter power plant.

2 It talks about the engine in the car, right?

3 **A Yeah.**

4 Q It talks about the horsepower-to-weight ratio
5 of the car, correct?

6 **A Yes.**

7 Q It compares it and it says it's 36 percent
8 higher than the \$1.7 million Bugatti Veyron, correct?

9 **A Correct.**

10 Q And it goes on to say how power-to-weight
11 ratio is the primary variable to determine the rush of
12 acceleration, low weight, low center of gravity, et
13 cetera. These are all things that are talking about the
14 car, aren't they?

15 **A Yes.**

16 Q Okay. It does say that Ms. Cubey launched the
17 video, okay?

18 **A Uh-huh.**

19 Q And above that, the intro line says that the
20 car is being launched. "New 2012 Mosler RaptorGTR,
21 number 001 features an 838-horsepower, 7.0-liter, forged
22 V-8 twin-turbo power plant accelerating only
23 2580 pounds. The ultralight street missile is built,"
24 et cetera.

25 That article is predominantly about the

1 vehicle that's being released -- isn't it? -- via the
2 video?

3 **A Well, I don't know. I mean, it's both.**

4 Q Okay. Now you took it upon yourself to write
5 into that and write a comment about that, correct?

6 **A Yeah, yeah.**

7 Q And you said "This is not from me. Mosler is
8 not involved with this. Warren Mosler," right?

9 **A Yes.**

10 Q Okay. You understand that someone can easily
11 think that Warren Mosler was writing "This is not from
12 me. This car that's being described in the article is
13 not from me, and that Mosler is not involved with that
14 car," correct?

15 MR. WEBER: Objection, speculation.

16 THE COURT: Sustained.

17 **THE WITNESS: I took it from the title that it**
18 **was about the video. That's what I was reading.**

19 BY MR. ZAPPOLO:

20 Q But when you read the article, you can see the
21 article talks about the traits of the vehicle, correct?

22 **A It does talk about the vehicle for sure.**

23 Q Okay.

24 **A Do you have this article with the photo?**

25 Q I'm not with you, sir.

1 **A I think that was the video, photos of the**
2 **video.**

3 Q I just wanted to go back to -- we were doing
4 the timeline of \$100,000. I want to talk to you about
5 some things.

6 We had 1161 is in evidence, but I want to go
7 to ask you: Do you remember a time when Mr. Wagner was
8 talking about a potential buyer for the car and Mosler
9 Auto Care Center took the position that the car wasn't
10 yet finished?

11 **A I don't remember.**

12 Q Okay. I'm showing you what's been marked as
13 Exhibit 1235 for identification purposes. Do you
14 recognize that document?

15 **A Yes.**

16 (Thereupon, Plaintiffs' Exhibit 1235 was
17 marked for identification.)

18 BY MR. ZAPPOLO:

19 Q And the same usual question: Is there any
20 reason to believe it's not a true and correct copy of
21 your email on or about the time that it purports to be?

22 **A No.**

23 MR. ZAPPOLO: Okay. At this time I'd like to
24 move Plaintiffs' 1235 into evidence, Your Honor.

25 MR. WEBER: No objection.

1 THE COURT: Madam Clerk, 87?

2 THE CLERK: Yes.

3 (Thereupon, Plaintiffs' Exhibit 87 was
4 received into evidence.)

5 BY MR. ZAPPOLO:

6 Q All right. 1235 is dated 6/28/2011. That's
7 just before the \$100,000 deposit, isn't it?

8 A **June 28th?**

9 Q Yes.

10 A **Yeah.**

11 Q The \$100,000 deposit was June 29th, correct?

12 A **Right, right.**

13 Q Okay. And this was James Todd Wagner, on
14 June 27th, saying that he was meeting with three fully
15 qualified buyers on Wednesday.

16 A **Uh-huh.**

17 Q If Mr. Wagner was partnered up with Lew Lee,
18 he wouldn't be meeting with other qualified investors
19 the day before, would he?

20 MR. WEBER: Objection, speculation.

21 THE COURT: Sustained.

22 BY MR. ZAPPOLO:

23 Q The fact is you knew that Mr. Wagner was not
24 exclusively only looking for investments from Lew Lee
25 during that time period, correct?

1 **A** **I guess I presumed that he's -- I'm trying**
2 **to -- I can't remember the circumstances. They are**
3 **documented. I don't remember them, but --**

4 **Q** Well, Mr. Wagner told you two days before
5 \$100,000 wire went into your account that he was meeting
6 with other investors, correct?

7 **A** **Right. I think he was trying to sell the car**
8 **to raise the money for Lew Lee.**

9 **Q** Raise money for Lew Lee? Why would he want to
10 raise money for Lew Lee?

11 **A** **To buy the company. They were partners.**

12 **Q** Well, he was meeting with other investors.

13 **A** **Well, maybe he was trying to cut Lew Lee out.**

14 **Anyway --**

15 **Q** If he sold the car for \$700,000, he would have
16 had the money to buy the company, wouldn't he?

17 **A** **So --**

18 MR. WEBER: Objection, speculation.

19 THE COURT: Sustained.

20 BY MR. ZAPPOLO:

21 **Q** You knew how much he was trying to sell the
22 car for, didn't you?

23 **A** **No. I didn't even know he was trying to sell**
24 **it.**

25 **Q** All those articles out there that say

1 \$700,000 RaptorGTR, you didn't know he was trying to
2 sell it for 700,000?

3 MR. WEBER: Objection, vague. Which articles?
4 When?

5 BY MR. ZAPPOLO:

6 Q You have read articles that said
7 \$700,000 purchase price, haven't you?

8 THE COURT: Sustained.

9 **THE WITNESS: Do I answer the question?**

10 MR. WEBER: No. He sustained the objection.
11 Please rephrase the question.

12 MR. ZAPPOLO: All right. Let's move on.

13 BY MR. ZAPPOLO:

14 Q Did you ever tell Lew Lee that you were not
15 happy with James Todd Wagner on or about June 28, 2011?

16 **A I don't remember saying that to Lew Lee at
17 all.**

18 Q Did you ever tell Lew Lee that gentlemen by
19 the name of Brad and Jim, that you would not sell the
20 company if James Todd Wagner had a lead in the
21 operation?

22 **A I don't know who those people are, and I don't
23 recall saying that to them.**

24 Q Remember we were speaking earlier about --
25 well, I think this is maybe perhaps a different number.

1 We already spoke about a document on June 3, 2011 and an
2 anti-work-around document, didn't we?

3 **A Yes.**

4 Q Okay. Just to be safe, I'm going to ask you:
5 Is 976 a true and correct copy of your email on or about
6 the time it purports to be?

7 **A Yes.**

8 (Thereupon, Plaintiffs' Exhibit 976 was marked
9 for identification.)

10 MR. ZAPPOLO: Any objection, Counsel, to
11 moving 976 in?

12 MR. WEBER: No objection.

13 MR. ZAPPOLO: Thank you.

14 THE COURT: Madam Clerk, is that 88?

15 THE CLERK: Yes.

16 THE COURT: Thank you.

17 (Thereupon, Plaintiffs' Exhibit 88 was
18 received into evidence.)

19 BY MR. ZAPPOLO:

20 Q Now, when you got that letter of intent that
21 you signed on the 29th of June, 2011, you had actually
22 already been in conversations with Mr. Lew Lee for some
23 time, hadn't you?

24 **A A little bit of time. Todd had introduced me**
25 **to him finally.**

1 Q You had been in contact with him as early as
2 June 7, 2001 -- or 2011, correct?

3 A I'd have to double-check the date. It sounds
4 right.

5 Q Between June 7, 2011 and June 29, 2011, did
6 you copy Mr. Wagner with any emails between you and Lew
7 Lee about a letter of intent for Santa Fe Digital Media
8 to purchase the assets of Mosler Auto Center?

9 A You know, I'd have to see the documentation on
10 that.

11 Q You don't recall anything about being very
12 careful not to include Lew Lee's business partner, as
13 you called him, in emails?

14 A I don't.

15 Q So it's just coincidence -- it's just
16 coincidence that Mr. Wagner wasn't copied with all these
17 emails?

18 MR. WEBER: Objection, speculation.

19 THE WITNESS: I said I don't recall.

20 THE COURT: Sustained.

21 BY MR. ZAPPOLO:

22 Q I'm showing you what's been marked as
23 Plaintiffs' Exhibit 980 for identification purposes. Do
24 you recall receiving Plaintiffs' Exhibit 980?

25 A This letter of intent?

1 Q Yes.

2 A You gave it to me before, didn't you?

3 Q Well, that's a different date, isn't it, sir?

4 A Oh, June 7th, yeah.

5 (Thereupon, Plaintiffs' Exhibit 980 was marked
6 for identification.)

7 BY MR. ZAPPOLO:

8 Q Okay. Did you get the June 7th letter of
9 intent --

10 A I don't know.

11 Q -- before signing the June 29th letter of
12 intent?

13 A It looks like it.

14 MR. ZAPPOLO: All right. At this point I'd
15 like to move Plaintiffs' 980 into evidence, Your
16 Honor.

17 THE WITNESS: This doesn't --

18 MR. WEBER: We're going to object.

19 THE COURT: Hold on, Mr. Mosler.

20 All right. Let's approach.

21 (Thereupon, a sidebar discussion was had.)

22 MR. WEBER: So I'm going to object on the
23 grounds of authenticity. There's no cover email
24 showing that it was ever sent to Mr. Mosler. I
25 think Mr. Mosler is confused because at first he

1 thought it was the original letter of intent that's
2 already in evidence. And this is not a document
3 that the defendants have produced; you can see it
4 was produced by plaintiffs here.

5 So we're going to object on authenticity
6 grounds.

7 MR. ZAPPOLO: I asked him --

8 MR. WEBER: He was confused over this. He
9 thought it was the original one that we looked at
10 that's already in evidence.

11 THE COURT: So the objection is authenticity.
12 Why don't you go back and cover it and if it
13 doesn't placate it, I'll give it the weight as to
14 admissibility.

15 (Thereupon, the sidebar discussion was
16 concluded.)

17 BY MR. ZAPPOLO:

18 Q Okay. Mr. Mosler, you were having
19 conversations with Lew Lee about Santa Fe Digital Media
20 purchasing the assets of Mosler Automotive in the
21 beginning of June 2011, weren't you?

22 A I don't recall that.

23 Q You don't recall that? Do you recall -- was
24 Mosler Automotive's address 2391 Old Dixie Highway,
25 Riviera Beach --

1 **A Yes.**

2 Q -- in June of 2011?

3 **A Yeah.**

4 Q Okay. This document, a lot of the -- well,
5 let me back up.

6 There are -- do you ever recall a purchase
7 price of \$4 million from Santa Fe Digital Media being
8 offered?

9 **A I don't know. You know, there's so many
10 numbers being thrown around.**

11 Q Do you ever recall being offered a position on
12 the board of directors of Santa Fe Digital Media --

13 **A I don't.**

14 Q -- for consulting services?

15 **A I don't remember.**

16 Q This doesn't refresh your recollection as to
17 any discussions like that whatsoever, correct?

18 **A I don't think so. I mean, I talked to Lew
19 once or twice and he might have said something like
20 that, but I don't remember this document.**

21 Q Do you remember a few minutes ago we talked
22 about exclusivity with the \$100,000 wire?

23 **A Can I ask you a question? Is this the actual
24 size of the document?**

25 MR. WEBER: Hold on. Mr. Mosler, you cannot

1 ask him questions. Wait, okay? Don't ask him any
2 questions about the documents, not now.

3 BY MR. ZAPPOLO:

4 Q Do you remember earlier I was asking you about
5 exclusivity as it related to the \$100,000 wire?

6 A Yes.

7 Q Do you ever recall receiving an email from
8 James Wagner that referenced exclusivity of
9 \$100,000 wire in the same email?

10 A I'd have to see the email.

11 Q All right. I'm showing you what's been marked
12 as -- did I give you the one that was marked?

13 MR. WEBER: Yes, you sure did.

14 MR. ZAPPOLO: Thank you.

15 BY MR. ZAPPOLO:

16 Q I'm showing you what's been marked as
17 Plaintiffs' 981 for identification purposes.

18 Notwithstanding its size, do you recognize the
19 document?

20 A Yes.

21 (Thereupon, Plaintiffs' Exhibit 981 was marked
22 for identification.)

23 BY MR. ZAPPOLO:

24 Q Is there any reason to believe it's not a true
25 and correct copy of the document or the email --

1 **A No.**

2 Q -- at the time that it was purported to be
3 created?

4 **A No.**

5 MR. ZAPPOLO: At this point, Your Honor, I'd
6 like to move 981 into evidence.

7 MR. WEBER: No objection.

8 THE COURT: Madam Clerk, is that 89?

9 THE CLERK: Yes.

10 THE COURT: Thank you.

11 (Thereupon, Plaintiffs' Exhibit 89 was
12 received into evidence.)

13 BY MR. ZAPPOLO:

14 Q Now, this document is from James Wagner to you
15 to Lew Lee. Do you know who Brad Odegard is?

16 **A I never met him.**

17 Q Do you know who Jim Hurley is?

18 **A I don't think so.**

19 Q Okay. It's dated June 27th, 6:56 p.m.

20 **A Yeah.**

21 Q The subject is \$100,000 deposit for the
22 purchase of Mosler Automotive assets.

23 **A Right.**

24 Q Mr. Wagner wrote to you "Hi, Warren and Lew.
25 Lew Lee and I successfully arranged the financing to

1 purchase Mosler Automotive per the signed asset purchase
2 agreement dated 4/17/2011."

3 Do you know if Mr. Wagner had any relationship
4 with Lew Lee on 4/17/2011?

5 **A I didn't -- no, I don't know anything about**
6 **it.**

7 Q Okay. Do you have a copy of the
8 4/17/2011 signed asset purchase agreement?

9 **A I don't know. I'd have to look it up.**

10 Q It would make sense that you would have --
11 that you would have looked for it in the course of this
12 litigation, correct?

13 **A Yes. So it's probably there. I mean, I'm not**
14 **saying -- I don't have it on me.**

15 Q Okay. So if you have it, you anticipate it
16 will be produced at this trial?

17 **A I would think you'd already have it if I had**
18 **it. I know -- I don't have it.**

19 Q Okay.

20 **A If it's not produced, I didn't have it.**

21 Q There was no response to this email saying
22 "Wait, what are you talking about signed agreement?
23 There's no signed agreement."

24 You don't recall sending anything like that,
25 do you?

1 **A No.**

2 Q Okay. Now Mr. Wagner wrote "Per agreement, we
3 will wire \$100,000 into the Mosler Automotive account
4 tomorrow, Tuesday. Please provide wire transfer
5 instructions so that the funds can be wired
6 expeditiously."

7 **A Right.**

8 Q Per the agreement, this deposit entitles
9 Mosler Supercars, Inc., MSI --

10 **A Yeah.**

11 Q -- three months of exclusivity within which
12 the deal must be closed. Per agreement, this
13 \$100,000 is only refundable in the event Mosler
14 Automotive/Mosler Automotive assets are sold to another
15 party after the three-month exclusivity period ends.

16 **A Yeah.**

17 Q That's the September 2, 2011 email exchange,
18 isn't it? That language mirrors the September -- excuse
19 me, the May 2, 2011 email exchange, correct?

20 **A It could. I'd have to see it, but --**

21 Q And that's James Todd Wagner letting you know
22 that \$100,000 was going to be wired for Mosler
23 Supercars, Inc., correct?

24 **A This is a proposal.**

25 Q This was an email, wasn't it, sir?

1 **A It's an email proposal. He proposed this via**
2 **email to do this.**

3 Q This was James Todd Wagner explaining to you
4 that there was going to be \$100,000 wired to your
5 account or wired to you because he wanted the wire
6 transfer instructions.

7 **A It does not say anywhere that I accepted these**
8 **terms.**

9 Q But you didn't send anything back that says
10 "What are you talking about? I don't accept those
11 terms," did you?

12 **A I might have because we had a -- the deal**
13 **changed over the next two days, substantially.**

14 Q The deal changed between you and Lew Lee and
15 never was included with James Todd Wagner, correct?

16 **A Well, we're going to show that he was**
17 **included.**

18 Q Okay.

19 **A I would not have accepted this deal.**

20 Q But you accepted the 100,000, correct?

21 **A Nonrefundable.**

22 THE COURT: Can I see the attorneys?

23 (Thereupon, a sidebar conference was held.)

24 THE COURT: I would really like to keep going
25 and not take a break to make up for the several

1 minutes we lost, but I can see them --

2 MR. ZAPPOLO: Yeah, we can do it now.

3 THE COURT: I can see them, they need a break.

4 MR. WEBER: Sure, I agree.

5 (Thereupon, the sidebar conference was
6 concluded.)

7 THE COURT: All right. Deputy, I think it's
8 time we have a ten-minute break.

9 All right. We'll be in recess for ten.

10 (Thereupon, a short break was taken from
11 3:31 p.m. to 3:45 p.m.)

12 THE COURT: Okay. Let's get the jury.

13 THE COURT DEPUTY: Jury entering.

14 (Jury entering the courtroom at 3:45 p.m.)

15 THE COURT: All right. Please be seated.

16 BY MR. ZAPPOLO:

17 Q Mr. Mosler, two days before the \$100,000 was
18 wired do you recall having any conversations or, excuse
19 me, exchanging any emails with Lew Lee about whether or
20 not he was authorized to speak on behalf of James Todd
21 Wagner or any companies such as Mosler Supercars, Inc.,
22 that was affiliated with Mr. Wagner?

23 A Or Santa Fe Digital Media that was affiliated
24 with Mr. Wagner?

25 Q Well, let's just talk about -- my question,

1 sir -- can you answer my question? Can the reporter
2 read back --

3 **A I would have to see the documentation. There**
4 **were several documents for those two days. I'd feel**
5 **better looking at the documentation than trying to guess**
6 **from memory.**

7 Q My question was: Do you recall?

8 **A No.**

9 Q I'm showing you what's been marked as
10 Plaintiffs' Exhibit Number 260 for identification
11 purposes. Do you recognize the document?

12 **A Yes.**

13 (Thereupon, Plaintiffs' Exhibit 260 was marked
14 for identification.)

15 BY MR. ZAPPOLO:

16 Q Same usual question: Is there any reason to
17 believe it's not a true and correct copy of your email
18 on or about the time it purports to be?

19 **A No.**

20 MR. ZAPPOLO: At this point, Your Honor, I'd
21 like to move Plaintiffs' 260 into evidence.

22 MR. WEBER: No objection.

23 THE COURT: Admitted, Madam Clerk, 90?

24 THE CLERK: Yes.

25 THE COURT: Thank you.

1 (Thereupon, Plaintiffs' Exhibit 90 was
2 received into evidence.)

3 BY MR. ZAPPOLO:

4 Q Now Exhibit 90 in evidence is an email from
5 SFDM1. Whose email address is that?

6 A **Santa Fe Digital Media.**

7 Q Okay. That was Lew Lee, correct?

8 A **Correct.**

9 Q Okay. And it's dated 6/27 --

10 A **Yes.**

11 Q -- 2011?

12 A **Yes.**

13 Q We can agree that's two days before the wire
14 was made, correct?

15 A **Yes.**

16 Q Okay. Now, he's apologizing for the emails
17 that were sent to you by Todd Wagner. Do you know what
18 he was apologizing about?

19 A **He was afraid that Todd had somehow soured me
20 on their deal and he was trying to, you know, keep it
21 together; that deal that he and Todd had to buy, you
22 know, my stuff, my building and the cars.**

23 Q He told you that he was speaking only for
24 himself and Santa Fe Digital Media, and he promised that
25 Santa Fe Digital Media would be the sole owner of

1 Mosler, correct?

2 **A Yeah.**

3 Q And he went on to say he was prepared to meet
4 whatever price you wanted for the sale of the name and
5 all the assets of the company, correct?

6 **A Right.**

7 Q Now, with respect to that document, sir --

8 **A Yeah.**

9 Q -- you recognized that this was Lew Lee
10 setting up Mr. Wagner to cut him out of the deal, didn't
11 you?

12 **A Not at all.**

13 Q Do you remember giving a deposition in this
14 case, sir?

15 **A Yeah.**

16 Q Okay. Do you remember giving your deposition
17 on August 19, 2020?

18 **A Yes.**

19 Q Do you remember talking about that document
20 that is now marked as Exhibit 90?

21 **A I don't remember the discussion, but it's all
22 written down there, so I don't have to remember it.**

23 Q Did you ever believe that Lew Lee was setting
24 up James Todd Wagner by suggesting that you were upset
25 with him?

1 **A** **I might have believed it at one time, but I**
2 **don't believe it now after seeing all of the**
3 **documentation.**

4 Q Okay. Apologies to the Court and to the
5 counsel, along with the jury, Your Honor. Some of the
6 documents I have are a little small. Let me show it to
7 you to see if you can read them.

8 Mr. Mosler, I'm showing you what's been marked
9 as Plaintiffs' Exhibit 1063 for identification purposes.
10 The usual question: Is there any reason to believe
11 that's not a true and correct copy of the email --

12 **A** **No.**

13 Q -- at the time that it purports to be?

14 (Thereupon, Plaintiffs' Exhibit 1063 was
15 marked for identification.)

16 MR. ZAPPOLO: At this point, Your Honor, I'd
17 like to move Plaintiffs' Exhibit 1063 into
18 evidence.

19 MR. WEBER: No objection.

20 THE COURT: Madam Clerk, that's 91?

21 THE CLERK: Yes.

22 (Thereupon, Plaintiffs' Exhibit 91 was
23 received into evidence.)

24 BY MR. ZAPPOLO:

25 Q Now, the day after Exhibit Number 90, the day

1 after June 27th, when Mr. Lew Lee said he speaks only
2 for himself and SFDM, he followed up again and wrote to
3 you: "Sleeping uneasily over this. I awoke and
4 actually offered him," that's James Todd Wagner, "a job
5 as an automotive consultant with a new media venture
6 that SFDM will launch in 2012 for 250k a year on the
7 specific premise that he would entirely step aside from
8 the future operations of Mosler."

9 You were aware of that the day before the wire
10 transfer was made of \$100,000 into your bank account
11 correct, sir?

12 **A I saw this email and that was Lew talking, so**
13 **to speak, but I didn't believe it for a minute.**

14 Q You didn't believe what Mr. Lew Lee was
15 telling you when he was telling you that Mr. -- when he
16 told you that there was a premise that Mr. Wagner would
17 entirely step aside from the future operations of
18 Mosler?

19 **A No. Anybody could see what he was doing,**
20 **okay. It was just a ploy.**

21 Q Well, that's what I was asking you about
22 before, sir.

23 **A Yeah.**

24 Q It was a ploy. Mr. Lew Lee was trying to
25 drive a wedge in between you and James Todd Wagner,

1 correct?

2 **A No, no, no, that's not the ploy.**

3 Q What was it? Okay.

4 **A What was the ploy? The obvious ploy, to**
5 **answer your question, is that Lew Lee thought that**
6 **somehow Todd had offended me and that I might not -- I**
7 **might back out or something, so he's trying to come up**
8 **with something to butter me up and assure me of**
9 **something that he thought I was worried about, that I**
10 **wasn't at all worried about, and concoct this thing to**
11 **just try and seal the deal and he was working with Todd**
12 **with this.**

13 Q But you didn't copy Mr. Wagner on anything
14 even though you thought Mr. Wagner was a part of this
15 deal, correct?

16 **A Do you have something where I didn't copy him?**

17 Q Well, we covered already -- where's the copy
18 of the email to James Todd Wagner about the letter of
19 intent?

20 **A Oh, that's all. That was two days later.**
21 **We're talking about on the 28th.**

22 Q I'd just like to wrap up with something just
23 to make sure that we cover something.

24 Do you recall earlier conversations with you
25 about whether or not you agreed to indemnify RP High

1 Performance for claims by Mr. Wagner?

2 **A Yeah.**

3 Q I'm showing you what's been marked as
4 Plaintiffs' Exhibit 746.

5 **A Yeah.**

6 (Thereupon, Plaintiffs' Exhibit 746 was marked
7 for identification.)

8 BY MR. ZAPPOLO:

9 Q Any reason to believe that's not a true and
10 correct copy of your email on or about the time that
11 it's purported to be?

12 **A No reason to believe it's not a true and**
13 **correct copy.**

14 MR. ZAPPOLO: At this point, Your Honor, I'd
15 like to move Plaintiffs' Exhibit 746 into evidence.

16 MR. WEBER: No objection.

17 THE COURT: Madam Clerk, is that 92?

18 THE CLERK: Yes.

19 (Thereupon, Plaintiffs' Exhibit 92 was
20 received into evidence.)

21 BY MR. ZAPPOLO:

22 Q So when Ian Grunes wrote to you that he was --
23 he certainly appreciated that you were willing to
24 indemnify RP High Performance --

25 **A Yeah.**

1 Q -- that was not an untrue statement, correct?

2 You agreed to indemnify RP High Performance?

3 A Yes. That's the only way I could sell.

4 Q And ultimately RP High Performance was sold,
5 correct?

6 MR. WEBER: Objection, mischaracterizes --

7 BY MR. ZAPPOLO:

8 Q I'm sorry. Mosler Auto Care Center was sold
9 to RP High Performance, correct?

10 A I think the cars were sold and I don't know
11 that anything else was sold except I sold them some
12 cars. And they didn't need any indemnification for
13 buying the cars from me.

14 Q It was an asset sale, correct?

15 A Right. Cars are called assets, yeah, but it's
16 just cars. Maybe 25 cars or 30 cars or something.

17 Q I'm showing you what's been marked as
18 Plaintiffs' Exhibit 321. Do you recognize that package
19 document?

20 A Yes, it looks familiar. It's been a long time
21 since I saw this.

22 (Thereupon, Plaintiffs' Exhibit 321 was marked
23 for identification.)

24 BY MR. ZAPPOLO:

25 Q Okay. Let me scroll back. On the bottom

1 right corner there's a Bates stamp that says Wagner
2 Trial ID 001982 and 1983. Are those your signatures,
3 sir?

4 **A No, I don't think so. Maybe it is. Maybe I**
5 **was just scribbling on the computer thing, but that's**
6 **not my normal signature.**

7 Q Do you have any reason to doubt that these are
8 true and accurate copies of the documents that
9 effectuated the sale of the assets?

10 **A Not until now. No. The copy -- everything**
11 **looks -- it's a true and accurate copy of what**
12 **effectuated the sale, but it sure doesn't look like my**
13 **signature at all. I don't know where that came from.**

14 Q But as far as the documents themselves?

15 **A Yeah.**

16 Q Okay.

17 **A Yeah.**

18 MR. ZAPPOLO: At this point I'd like to move
19 321 into evidence, Your Honor.

20 MR. WEBER: No objection.

21 THE COURT: Madam Clerk, it is 93?

22 THE CLERK: Yes.

23 (Thereupon, Plaintiffs' Exhibit 93 was
24 received into evidence.)

25 BY MR. ZAPPOLO:

1 Q And you're aware that we obtained copies of
2 emails and other things exchanged between you and/or
3 people at Mosler Auto Care Center and RP High
4 Performance related to this litigation, correct?

5 A I guess so, yeah.

6 Q Okay. I'm showing you what's been marked as
7 Plaintiffs' Exhibit Number 319. Related to that, can
8 you take a look at those and tell me if there's any
9 reason to believe that those are not true and accurate
10 copies of the emails exchanged between RP High
11 Performance and MACC representatives during that time
12 period?

13 A It looks good.

14 (Thereupon, Plaintiffs' Exhibit 319 was marked
15 for identification.)

16 MR. ZAPPOLO: All right. At this point, Your
17 Honor, I'd like to move Plaintiffs' 319 into
18 evidence.

19 MR. WEBER: We object, Your Honor.

20 THE COURT: Let's approach.

21 MR. WEBER: This is a 50-page --

22 (Thereupon, a sidebar conference was held.)

23 THE COURT: Let me see the document.

24 MR. WEBER: There are multiple emails and
25 documents, it's not just one document. And so is

1 there one specific document? Like, what are we
2 referring to in this packet of multi-emails from
3 other people other than Warren Mosler?

4 THE COURT: Okay. All right. So, objection
5 sustained. You can break it up in piecemeal, I
6 suppose.

7 MR. ZAPPOLO: Okay.

8 (Thereupon, the sidebar conference was
9 concluded.)

10 BY MR. ZAPPOLO:

11 Q Keep 319 in front of you, sir.

12 Do you know who Xan, X-A-N, Moody Stuart was?

13 A **Oh, not personally, but he was -- I think he**
14 **was a buyer.**

15 Q Okay. Do you have any understanding as to
16 whether or not he had connections in China?

17 A **I was -- no firsthand knowledge. You know,**
18 **there were plenty of rumors floating around, but I**
19 **didn't have firsthand knowledge.**

20 Q Well, the first page of Exhibit 319, about
21 two-thirds of the way down --

22 A **Yeah.**

23 Q -- does that refresh your recollection as to
24 whether or not the purchasers had any connections in
25 China?

1 **A "Many thanks. I speak with my Chinese**
2 **friends" -- he says he does. So he mentions his Chinese**
3 **friends and --**

4 Q Okay. Don't go into it. I just wanted to
5 know whether that refreshed your recollection or not.

6 **A That's what I'm saying, secondhand stuff.**

7 Q Okay. Thank you. That's -- believe it or
8 not, that's all the questions I have for you,
9 Mr. Mosler.

10 **A Really?**

11 THE COURT: Cross-Examination?

12 MR. WEBER: As tempted as I am, Your Honor,
13 I'm going to wait until my case in chief.

14 THE COURT: All right. Mr. Mosler, please
15 have a seat.

16 **THE WITNESS: Pardon me? Oh, okay.**

17 THE COURT: Plaintiff, who's your next
18 witness?

19 MR. ZAPPOLO: Jonathan Frank, Your Honor.

20 THE COURT: Deputy, are there any questions
21 from the jury?

22 All right. Seeing none, your next witness is?

23 MR. ZAPPOLO: Jonathan Frank, Your Honor.

24 THE COURT: All right. Is he outside?

25 MR. ZAPPOLO: He is.

1 THE COURT DEPUTY: Face Madam Clerk and she's
2 going to swear you in. Please raise your right
3 hand.

4 THE CLERK: Do you solemnly swear or affirm
5 that the evidence you're about to give is the
6 truth, the whole truth, and nothing but the truth?

7 **THE WITNESS: Yes.**

8 THE COURT DEPUTY: And have a seat on the
9 witness stand right over here.

10 THE COURT: Plaintiff, it's your witness.

11 MR. ZAPPOLO: Thank you.

12 DIRECT EXAMINATION

13 BY MR. ZAPPOLO:

14 Q Good afternoon.

15 **A Hello.**

16 Q Would you introduce yourself to the jury,
17 please.

18 **A Hi. I'm Jonathan Frank.**

19 Q Okay.

20 **A Nice to meet you guys.**

21 Q What do you do for a living, Mr. Frank?

22 **A I own the Auto Toy Store. The company is**
23 **about a 30-year-old exotic car dealership in Florida. I**
24 **also own Specialty Auto Leasing, which we lease exotic**
25 **cars as well.**

1 Q Okay. And when you say "exotic cars," what do
2 you mean? Please explain to the jury.

3 A Ferrari, Lamborghini, Rolls-Royce, specialty
4 cars like the SSC. Moslers, we've sold quite a few of
5 those. We were a dealer for Mosler at one point. And
6 we do some of the most unique vehicles that you can
7 find.

8 Q Okay. Now are you generally aware of the
9 allegations in this lawsuit?

10 A Yes.

11 Q Okay. Now, could you just explain to the jury
12 your background about how you got to be where you are,
13 your education in the car field, your training,
14 experience, et cetera.

15 A I've been in the car business for close to --
16 let's see -- 20-plus years. I've worked for multiple
17 exotic car stores, starting with the Sony Corvette or
18 Corvette Specialty Store. I went on to a leasing
19 company called First Choice Financial where we learned
20 the financing end of the business.

21 I've always wanted to work for the Auto Toy
22 Store. It was one of my favorite stores. It's actually
23 a world famous exotic car dealership. It was the
24 largest when I first started in the business about 20
25 years ago, and I've basically loved the store. I

1 applied there time after time and finally they hired me
2 after I was working for their competition trading cars
3 back and forth with them.

4 After working for their store for
5 approximately 15 years, I ended up buying it from the
6 previous owner, so now I own it.

7 Q Now, based upon your experience in the car
8 industry over the years, what are some of the things
9 that are important when -- for buyers of exotic cars?
10 Like, what do they consider?

11 A What do they consider?

12 MR. WEBER: Objection. He hasn't been
13 qualified as an expert.

14 BY MR. ZAPPOLO:

15 Q How many cars -- I mean, I thought we -- I'll
16 just go ahead and ask him other questions.

17 A Yes.

18 Q How many cars have you sold over the years?

19 A Thousands, maybe tens of thousands. Honestly,
20 I'd have to look back.

21 Q Okay.

22 A But, yeah.

23 Q And of those tens of thousands, how many of
24 those have been exotic cars?

25 A 90 percent.

1 Q Okay. And when we say "exotic cars," and I
2 just use the word "exotic cars," could you explain to
3 the jury what we mean by that?

4 A Anything high line, out of the ordinary,
5 specialized vehicles. You know, anything from
6 custom-made to custom-built to even vehicles that are,
7 you know, customized, high horsepower cars. You know,
8 anything with exotic branding. Cars that just, you
9 know, are sold in limited quantities.

10 Q Okay. Would Mosler Auto Care Center vehicles
11 qualify as those types of vehicles?

12 A Absolutely.

13 Q Okay. And you've been selling them for how
14 long?

15 A Mosler, I think we first started selling them
16 in -- I think it was 2009.

17 Q So is there a difference between selling
18 high-end exotic supercars and selling like your average
19 Ford or Chevy vehicle?

20 A I'd say so.

21 Q Okay. Can you explain to the jury what the
22 difference is?

23 A Well, regular transportation is a need for
24 most people. When it comes to exotic vehicles as
25 something they want, it's more of a pleasure item and

1 it's -- you know, people that need a car, they'll go and
2 choose whatever they want. People that are buying
3 exotics, they can really, you know, search out all the
4 features and the options, and so it's a lot harder to
5 deal with.

6 Q Okay. So what types of things are important
7 based upon your experience in the exotic car sales
8 industry for buyers of the high-end supercars?

9 A The look of the vehicle, the power of the
10 vehicle, the handling of the vehicle, the curb appeal,
11 the features.

12 Q Okay. And when these cars are priced, what
13 are some of the considerations that you have used over
14 the years based upon your education and experience in
15 pricing vehicles?

16 A Pricing vehicles? Well, basically all of the
17 above. You know, everything from how the vehicle looks
18 to how the vehicle has been taken care of to, you know,
19 what a vehicle is going to take to maintain. The
20 handling, the performance. You know, all of the specs
21 of the vehicle.

22 Q Over the years have you had conversations with
23 potential purchasers of such vehicles?

24 A Yes.

25 Q Okay. And what impact, if any, or what role,

1 if any, have reviews on magazines dedicated to cars, et
2 cetera, had in those conversations?

3 **A** **Reviews are great. They're a high impact on**
4 **the buyers.**

5 Q Okay. And can you explain to the jury some of
6 the places that -- excuse me, some of the periodicals
7 that you would have had conversations with people about
8 high-end supercars over the years?

9 **A** **Everything from -- every publication out there**
10 **from MotorTrend, you know, duPont REGISTRY, Road and**
11 **Track, "Car and Driver." There's, you know, endless**
12 **publications. Plus, in the past, you know, 10 to 15**
13 **years social media has come into play in a big way as**
14 **well.**

15 Q Okay. When you say "social media," what about
16 like -- are any of the things that you -- any of these
17 periodicals that you just referenced, any of these
18 magazines, are they online?

19 **A** **Yes.**

20 Q Okay. And what impact, if any, do comments on
21 the online articles have?

22 MR. WEBER: Objection, vague, not qualified as
23 an expert.

24 THE COURT: Overruled.

25 **THE WITNESS: Okay. Comments online, they do**

1 have an impact. A lot of times there are people
2 that will comment on vehicles that they've owned
3 and let others know how they feel about it and
4 comments are important too. We get a lot of
5 questions not only when, you know, someone reads
6 the articles, but about the comments that are on
7 the articles as well.

8 BY MR. ZAPPOLO:

9 Q Okay. What -- how important is -- well, let
10 me back up. Are you familiar with the phrase
11 power-to-weight ratio?

12 A Yes.

13 Q Okay. How important is power-to-weight ratio
14 for people who are shopping for supercars?

15 A It's very important.

16 Q Why is that?

17 A Why is that? If the power-to-weight ratio is
18 going to give you a car that's going to perform much
19 better, if you have something that has a higher
20 power-to-weight ratio than a heavier car with the same
21 horsepower --

22 Q Okay.

23 A -- you'll have a slower vehicle.

24 Q Okay. So are you familiar with the car that's
25 been called the 2012 RaptorGTR?

1 **A Yes.**

2 Q What information about the
3 horsepower-to-weight ratio are you aware of?

4 **A It's the highest horsepower-to-weight ratio**
5 **out of anything of its time.**

6 Q Okay. When you say "of its time," what time
7 period are you talking about?

8 **A Yes. The year that it was produced.**

9 Q And how do you know that?

10 **A From all of the publications and everything**
11 **written online.**

12 Q Okay. So did you take the time to do any
13 investigation as to that car's horsepower-to-weight
14 ratio in comparison to other vehicles of its time?

15 **A I'd say the same type of investigation, which**
16 **is looking up all of the specs that are provided online.**

17 Q Okay. And did you take that information --
18 and based upon your work in the supercar industry
19 selling cars, et cetera, did you find these sources that
20 you found to be reliable?

21 **A Yes.**

22 Q And did you create any comparisons of the
23 cars -- did you create any comparisons between the
24 supercars in that time period, 2012?

25 **A Oh, I'm not sure what you mean by did I create**

1 **any comparisons.**

2 Q Well, did you ever compare the 2012 RaptorGTRs
3 to a 2018 McLaren Senna?

4 A **In that year? No, because the '18 hasn't come**
5 **out, but are you talking about recently?**

6 Q Yes.

7 A **Recently I did, yes.**

8 Q Okay. And did you compare it -- what other
9 cars did you compare it to?

10 A **The LaFerrari, the Bugatti Veyron, what else?**
11 **The Senna, the Koenigsegg Agera. I believe that was**
12 **about it.**

13 Q Okay. Now, did you have a file related to
14 this case?

15 A **I do have a file.**

16 Q Okay. And within your file -- did you
17 actually turn over your file at one point to counsel?

18 A **The file that I have is at my office.**

19 Q Right. But did you turn over copies of it to
20 counsel? Like with your chart, et cetera?

21 MR. WEBER: Objection, let him answer the
22 question.

23 **THE WITNESS: Yeah.**

24 THE COURT: Overruled.

25 **THE WITNESS: With that chart, yes.**

1 BY MR. ZAPPOLO:

2 Q Okay. I'm going to show you what's been
3 marked as 1353A for identification purposes.

4 Do you recognize that document?

5 A Yes.

6 (Thereupon, Plaintiffs' Exhibit 1353A was
7 marked for identification.)

8 BY MR. ZAPPOLO:

9 Q And without going into the details of it, what
10 is that document?

11 A It's a comparison of power-to-weight ratio in
12 the cars.

13 Q So is that the comparison that you did?

14 A Yes.

15 Q Okay. And you typed up 1353A?

16 A Yes.

17 Q Okay. And where did you get the information
18 for 1353A?

19 A Online sources.

20 Q Okay.

21 MR. ZAPPOLO: Your Honor, at this point I'd
22 like to move 1353A into evidence.

23 MR. WEBER: We object, Your Honor.

24 THE COURT: All right. Let's approach.

25 (Thereupon, a sidebar conference was had.)

1 MR. WEBER: I don't think he's properly
2 qualified to establish the numbers on this chart.
3 I don't think he's laid any type of foundation for
4 what's here, and I think it fails the Daubert
5 because there's no methodology or generally
6 accepted procedure that would support what is on
7 this document. It's his opinion.

8 MR. ZAPPOLO: That's what experts do is give
9 opinions. He's a person who's an expert in car
10 sales, the industry, and he's been working in the
11 industry for 20-plus years. He works with high-end
12 cars at one of the -- at one of the largest car
13 dealerships for this type of vehicle in the world.

14 THE COURT: All right. So the testimony I
15 heard was that this gentleman's been in the car
16 industry for decades; that in those 20 or 30 years
17 of experience he's sold tens of thousands of cars;
18 that 90 percent of those cars are quote/unquote
19 exotic cars, which is the car in question, or the
20 type of car in question for this case. His
21 testimony about what the buyers of the vehicles
22 were looking for I think is something he's
23 qualified to testify about since he sold 10,000 of
24 them.

25 Here we're looking at a document that was

1 compiled based on online resources. You know, the
2 veracity of those online resources, I don't know,
3 you know. And because they're online, I don't know
4 if the -- anything that is reliable.

5 MR. ZAPPOLO: He testified that he relies upon
6 them in his industry.

7 THE COURT: Right.

8 MR. ZAPPOLO: So that's what experts do. They
9 redetermine whether or not something is reliable
10 and that's what they base their opinion upon.

11 THE COURT: Okay. Well, other than him
12 getting them off the Internet, how is that
13 specialized in any way, shape, or form?

14 MR. ZAPPOLO: Because that's what he does for
15 a living. He can discern whether or not that's a
16 reliable source of information.

17 THE COURT: Hold on.

18 MR. ZAPPOLO: That's -- getting the
19 information off the Internet does not require
20 specialized knowledge. This is not a compilation.
21 This is him rating --

22 THE COURT: What's the rating? I'll see --

23 MR. WEBER: He's forecasting rarity too. He's
24 making forecasts.

25 THE COURT: Hold on, hold on, hold on. Let me

1 see. So where's the rating?

2 MR. ZAPPOLO: If you look here on the first or
3 the second column, it says carbon fiber body -- if
4 you look at the second column, it says carbon fiber
5 body, yes, no, and then below that there's a
6 number. See, 5 RaptorGTR rating. The ranking down
7 further, he gives McLaren Senna, 5. Further
8 there's Koenigsegg Agera, 5.

9 In this instance he gives each of them a 5 and
10 I can ask him why he rated them a 5 and for others
11 he gives different numbers, different numerical
12 ranks. For example, horsepower to -- the
13 power-to-weight ratio he gives them different
14 figures. All -- and all of this is so that he can
15 give an opinion as to what he thinks that this car
16 would sell for and be worth.

17 THE COURT: And this analysis is getting away
18 because it seems like a subjective analysis, peer
19 review relying on the industry. I don't know, how
20 is this something that is not -- how do you make
21 it --

22 MR. WEBER: Also, he's merely guessing on the
23 rarity. You'll see under the Raptor column, he
24 puts 25 units per year. It's an established fact.

25 THE COURT: But I'm --

1 MR. ZAPPOLO: He's not guessing about
2 anything, he's giving his opinion as to -- it's
3 like looking at -- it's like an art person comes in
4 and says this is a Michaelangelo, it's worth more
5 than Bob down the street's painting.

6 THE COURT: So that's different than this.
7 The scale is subjective. Is he the only person
8 that uses this exact scale?

9 MR. ZAPPOLO: He's the person that created
10 this chart.

11 THE COURT: He's the only person that uses
12 this scale. I don't know how --

13 MR. ZAPPOLO: These are all the things that
14 everyone considers in the industry.

15 THE COURT: So I'm going to sustain the
16 objection as far as, you know, raw data, raw facts,
17 raw figures. You know, he can talk about his
18 knowledge about cars, why one would be valued at a
19 certain amount because he sold 10,000, but this
20 1 through 10 scale, it's just a little too
21 subjective for me. The objection is sustained.

22 BY MR. ZAPPOLO:

23 Q Mr. Frank, you testified earlier of the
24 thousands of cars you sold being supercars, et cetera.

25 A Yes.

1 Q How much is a -- well, let me back up.

2 Do you know what the power-to-weight ratio of
3 a 2013 McLaren P1 car was?

4 A I'll have to -- it's on this list right here.

5 The '13 P1 is 537-horsepower per ton.

6 Q Okay. And how much did that car sell for?

7 A The McLaren P1 sold for approximately

8 1.15 million.

9 Q Okay. And what's the horsepower -- the
10 power-to-weight ratio of a 2013 Ferrari LaFerrari that
11 you mentioned earlier?

12 A It's 543 per ton.

13 Q And what is that car selling for?

14 A 1.4 million.

15 Q Okay. And what is the horsepower-to-weight
16 ratio of a 2013 Bugatti Veyron SuperSport?

17 A It's 552 per ton.

18 Q How much did that car sell for?

19 A Approximately 2.4 million.

20 Q Okay. And how much is the -- what's the
21 power-to-weight ratio of a 2011 Koenigsegg Agera?

22 A 599.

23 Q Okay. And how much did that car sell for?

24 A 2.5 million.

25 Q Okay. And then let's talk about a 2012

1 RaptorGTR. What was its power-to-weight ratio?

2 **A 649 per ton.**

3 Q Based upon the horsepower-to-weight ratio,
4 what would you expect the 2012 RaptorGTR to sell for?

5 **A We estimated 700,000.**

6 Q Okay. Now when you gave that estimate, did
7 you consider certain things such as brand recognition?

8 **A Yes.**

9 Q Did you consider the size engine?

10 **A Yes.**

11 Q Did you consider whether or not the car was
12 made of carbon fiber or not?

13 **A Yes, we did.**

14 Q Okay. Did you consider its top speed?

15 **A Yes.**

16 Q Okay. Now within your file you kept certain
17 things. Did you -- let me back up.

18 Based upon your experience in selling cars,
19 how many cars do you believe would have been able to be
20 sold of a RaptorGTR?

21 MR. WEBER: Objection. May we approach, Your
22 Honor?

23 (Thereupon, a sidebar conference was held.)

24 MR. WEBER: Lack of foundation because they
25 haven't established his experience of forecasting

1 the amount of cars that could be sold. Based on
2 the car -- there's only one car, this Raptor, so is
3 he qualified to opine as to how many of this one
4 car could potentially have been sold?

5 THE COURT: Okay. So this is someone who sold
6 a lot of cars of this type of car, and the question
7 is how many of these types of cars does he think
8 could have been sold. Now did you ask during the
9 past one year? 12 years?

10 MR. ZAPPOLO: I can focus it to one time
11 frame.

12 THE COURT: What time frame?

13 MR. ZAPPOLO: I can -- well, I can focus it to
14 2012 when the contract was at issue, if they had
15 built 25 per year, so I'll go ahead and talk about
16 that.

17 THE COURT: Okay. All right. Objection
18 sustained. I think you're allowed to
19 Cross-Examination on the issue.

20 I'm sorry. I said sustained, but I meant it
21 was overruled.

22 MR. WEBER: Yeah, that's fine.

23 THE COURT: I'm going to let him get into the
24 issue.

25 (Thereupon, the sidebar conference was

1 concluded.)

2 BY MR. ZAPPOLO:

3 Q Mr. Frank, I want to focus on based upon your
4 knowledge of the car industry, how many RaptorGTRs do
5 you believe could have been sold in 2013?

6 A I'd say absolutely as many as the factory
7 could produce with their history. Basically, you know,
8 all supercars, especially, you know, in the past
9 five-plus years, have been sold out way in advance
10 usually with a waiting list and it's just -- you know,
11 it's been harder and harder to get your hands on cars
12 these days.

13 Q Okay. And since the cars become harder and
14 harder to get ahold of, what happens to their price?

15 A The value goes up.

16 Q Okay. So what would -- do you have any
17 opinion as to what you can sell a RaptorGTR in 2023 for?

18 A I'd -- if you look at a car like the
19 competitor, the Koenigsegg Agera, that was like for
20 \$2.5 million. Right now they're trading for \$5 million,
21 so approximately double what they were selling for
22 originally.

23 The same thing with the LaFerrari. That's
24 selling for close to three times what it was sold for
25 originally. It was at 1.4, now they're at \$5 million.

1 **So today's current date, I mean you could probably say**
2 **they're worth a million-plus if they were out there.**

3 Q Okay. Now you've sold MT900s, haven't you?

4 **A Yes, I have.**

5 Q Okay. Now what opinion, if any, do you have
6 of the price comparison of the MT900 that was selling
7 for 329,000 as compared to a RaptorGTR at 700,000?

8 **A It was a great value at the 329,000 entry**
9 **point.**

10 Q Okay. And what about the \$700,000 price?

11 **A It's twice the car. It's, you know, just a**
12 **much more powerful, much better car.**

13 Q Now based upon your experience in the
14 industry, what impact would the manufacturer or the
15 owner of a vehicle manufacturer going public saying that
16 a vehicle was fake, what would that do to the value of
17 the car?

18 **A I think that would hurt the value in a huge**
19 **way.**

20 Q Okay. Now, are you aware of where Supercar
21 Engineering, Inc. was going to try to effectuate the
22 sales of the RaptorGTR? Do you know where he was going
23 to sell the cars?

24 **A Yes.**

25 Q Okay. Sorry.

1 **A Yes.**

2 Q Where was he going to sell the cars?

3 **A Overseas. Croatia, Thailand.**

4 Q Okay. And do you have any opinion as to
5 whether or not this type of car would sell well
6 overseas?

7 **A I assume it would.**

8 Q Okay. Have you dealt with international
9 purchasers before?

10 **A Yes, I have.**

11 Q Okay. Being based in South Florida, what
12 percentage, approximately, of your purchasers are
13 international purchasers?

14 **A I'd say over the years maybe 5 percent total.**

15 Q Okay. Now, give me one quick second.

16 I'd like you to explain to the jury, if you
17 could, the considerations between a base model,
18 non-turbocharged versus a model that is turbocharged and
19 upgraded. For example, a Porsche.

20 **A Okay.**

21 Q Do you know what a Porsche, like a -- can you
22 explain to the jury the comparisons and what it does to
23 pricing?

24 **A Your current 911s, they start at about 100,000**
25 **for a base model vehicle. They have a few upgrades you**

1 can go with, but if you go for the turbocharged model,
2 top of the line, you're going over double the price.

3 So currently a Porsche 911 Turbo S, you're
4 looking at about \$250,000 for the same car with better
5 suspension, better engine, better drivetrain.

6 Q Are you aware of how much the 2011 Mosler
7 Photon was priced at?

8 A Yes.

9 Q Do you recall? What was it?

10 A I think it was somewhere in the mid-4s.

11 Q Okay. Do you know what that -- how much
12 horsepower that car had?

13 A The Photon? Not exactly.

14 Q Okay. Based upon your experience in the
15 industry -- we talked about the importance of articles
16 and things. I'm showing you what's been marked as
17 1353B. Can you explain to the -- without going into
18 details, what is that?

19 A What is this?

20 Q What is it? Yeah.

21 A That's a copy of Automobile Magazine.

22 (Thereupon, Plaintiffs' Exhibit 1353B was
23 marked for identification.)

24 BY MR. ZAPPOLO:

25 Q Okay. And it has comparisons of vehicles,

1 correct?

2 **A Yes, it does.**

3 Q Based upon -- how often do you refer to these
4 things when talking with customers and clients about
5 purchasing vehicles?

6 **A Constantly.**

7 Q Okay. And so based upon your experience, are
8 purchasers of supercars -- do they pay attention to
9 things such as 1353B?

10 **A Yes.**

11 MR. ZAPPOLO: Okay. At this point, Your
12 Honor, I'd like to move 1353B into evidence.

13 MR. WEBER: No objection.

14 THE COURT: Madam Clerk, are we at 94?

15 THE CLERK: Yes, Your Honor.

16 THE COURT: Thank you.

17 (Thereupon, Plaintiffs' Exhibit 94 was
18 received into evidence.)

19 BY MR. ZAPPOLO:

20 Q Your experience in the industry requires you
21 to deal with automobile scarcity, doesn't it?

22 **A Yes.**

23 Q Okay. And automobile scarcity, based upon
24 your experience, can be caused by such things as what?

25 **A Scarcity?**

1 Q Yes.

2 A Supply and demand. Unbelievably, you know,
3 COVID has created a big problem, which thank God that's
4 over.

5 Q Have you -- what about Ferrari? How do they
6 manufacture their cars?

7 A I'm sorry, what's the question?

8 Q How does Ferrari manufacture their cars?

9 A How do they manufacture?

10 Q Yes, their cars. How are their cars made?
11 Are they made in like a big, huge factory?

12 A Oh, yes. Yes, of course.

13 Q Okay. And do they have any specialty vehicles
14 that are manufactured by hand?

15 A Yes, they do.

16 Q Okay. And do the vehicles that are
17 manufactured by hand, do those go for a premium?

18 A Yes.

19 Q Okay. Do you know whether Mosler Auto Care
20 Center factory or shop was doing things with a factory
21 setup or more hands-on, by hand?

22 A More hands-on.

23 Q Okay. So if Mosler Auto Care Center -- how
24 many -- do you have any understanding as to how many
25 vehicles they could produce in a year?

1 **A How many they could?**

2 Q Yes.

3 **A No, I don't.**

4 Q Okay. Just one moment.

5 Based upon your experience, if Mosler Auto
6 Care Center had built 25 RaptorGTRs per year between
7 2012 and 2023, do you think that those cars could have
8 been sold for prices range -- well, what would the price
9 range for those vehicles be?

10 **A The GTR, I estimate at 700,000.**

11 Q Okay. Up until 2023 would they still be
12 selling at 700?

13 **A I think they would be selling for more.**

14 Q They would be selling for more?

15 **A Yes.**

16 Q How much more? Would it be fair to say a
17 million dollars?

18 **A Yes.**

19 Q Okay. That's a very conservative estimate of
20 markup, isn't it?

21 **A Yes, it would be.**

22 Q Okay. Especially given the fact that in 2012
23 and 2013, cars with less horsepower-to-weight ratio were
24 selling for over a million dollars way back then,
25 correct?

1 **A Yes.**

2 MR. ZAPPOLO: Okay. That's all that I have
3 for you. Thank you, sir.

4 THE COURT: Cross-Examination?

5 MR. WEBER: Yes, Your Honor.

6 THE COURT: Let me see the attorneys real
7 quick.

8 (Thereupon, a sidebar conference was held.)

9 THE COURT: How long do you have for
10 Cross-Examination?

11 MR. WEBER: I don't know, Your Honor. I mean,
12 I know you don't want to go past 5:00.

13 THE COURT: Well, we promised them.

14 MR. WEBER: So I think we should break now and
15 do it in the morning.

16 THE COURT: Is he coming in tomorrow?

17 MR. ZAPPOLO: I don't know. We rushed. I
18 rushed through Mr. Mosler in order to get him on
19 the stand now. I mean, I basically rushed through
20 him.

21 THE COURT: Why don't we excuse the jury and
22 we'll address this, okay?

23 MR. ZAPPOLO: Okay. Thank you.

24 (Thereupon, the sidebar conference was
25 concluded.)

1 THE COURT: All right. Deputy, so at this
2 point we're going to take a break for the day.
3 We've got 20 minutes left in the day, but I don't
4 think we're going to conclude in that 20 minutes.
5 So, all right.

6 Ladies and gentlemen, tomorrow morning, same
7 as today, 9:30. Please don't be tardy. I
8 appreciate you showing up.

9 As I've instructed you in the past, don't
10 discuss this case with anybody else. Don't look up
11 the names or people involved in this case. Don't
12 use the Internet to learn about this case. Don't
13 discuss this case with your family members, your
14 friends, or amongst yourselves until it's time to
15 do so. Okay?

16 All right. Thank you very much.

17 (Jurors exit the court room at 4:40 p.m.)

18 THE COURT: Mr. Zappolo, is there anything up
19 here that's in evidences that should be with the
20 clerk?

21 MR. ZAPPOLO: Yes. There are several things.
22 I need to probably spend some time with the clerk
23 before we leave for the day. I'm going to grab
24 these, sorry.

25 THE COURT: All right. And so we have to

1 conclude your testimony tomorrow.

2 **THE WITNESS: Okay.**

3 THE COURT: I told the jury to be here at
4 9:30. I think realistically we will probably start
5 around 9:45.

6 **THE WITNESS: Okay.**

7 THE COURT: Okay?

8 **THE WITNESS: All right. Sounds good. See**
9 **you in the morning.**

10 THE COURT: So I will see you tomorrow
11 morning.

12 **THE WITNESS: Perfect.**

13 THE COURT: All right. Anything else to
14 address?

15 MR. WEBER: Not at this time, Your Honor.

16 MR. ZAPPOLO: No, Your Honor.

17 THE COURT: All right. Then we will be in
18 recess until 9:30 tomorrow. Have a wonderful
19 night, everybody.

20 MR. WEBER: Thank you, Your Honor.

21 MR. ZAPPOLO: Thank you.

22 THE COURT: Oh, I'm sorry, there is one more
23 thing. You're excused, sir. Oh, sir --

24 MR. ZAPPOLO: You can't talk to anybody.

25 THE COURT: -- so you are testifying.

1 **THE WITNESS: Yes.**

2 THE COURT: So until your testimony is
3 concluded, you're not to discuss this case with the
4 attorneys nor discuss your testimony with anybody
5 else until I release you from that. Okay?

6 **THE WITNESS: Okay. You got it.**

7 THE COURT: All right. Have a wonderful
8 night.

9 MR. ZAPPOLO: Thank you.

10 Okay. All right.

11 THE COURT: All right. So it's just us now.
12 So tomorrow is Wednesday. Tomorrow is the halfway
13 point.

14 MR. ZAPPOLO: Yes.

15 THE COURT: Tomorrow the plaintiff will rest.

16 MR. ZAPPOLO: Yes.

17 THE COURT: And so be mindful of your time.
18 You have very little of it left.

19 MR. ZAPPOLO: Yes.

20 THE COURT: That will give the defense equal
21 time to present their case in chief, so be mindful.

22 You know, what I -- you know, I can tell you
23 what I've not seen happen very, very often -- not
24 that it doesn't happen, but I think the defense has
25 been very courteous with their Cross-Examination

1 and I think they've only taken a few minutes worth
2 of Cross-Examination, and so be mindful of your
3 time tomorrow.

4 If you can be as efficient as possible with
5 your inquiries, then let's be as efficient as
6 possible with your inquiries so that we don't waste
7 tomorrow. Tomorrow's a very important day for
8 plaintiff. It's their last day to present their
9 case, okay?

10 MR. ZAPPOLO: Yes, sir.

11 THE COURT: All right. Have a wonderful
12 night, everybody.

13 MR. ZAPPOLO: Thank you, Your Honor.

14 MR. WEBER: Thank you, Your Honor. Your
15 Honor, just one clarification though. My
16 Cross-Examination might not finish tomorrow
17 depending on when Mr. Zappolo ends, so it won't be
18 held against me, right?

19 THE COURT: Cross-Examination of --

20 MR. WEBER: Let's say Mr. Wagner. I assume
21 he's going to call Mr. Wagner.

22 THE COURT: No, I assume that if there's
23 Cross-Examination of Mr. Wagner, that can go into
24 the next day.

25 MR. WEBER: Okay. Perfect.

1 THE COURT: Especially since the purpose of
2 Cross-Examination is are the favorable facts
3 discredited by unfavorable facts, so it can serve
4 your case as well, but, you know, the -- all of the
5 prior witnesses, there's been very little
6 Cross-Examination.

7 MR. WEBER: Yeah.

8 THE COURT: So if there's some
9 Cross-Examination on one witness, I get it. If we
10 go over a little bit because of Cross-Examination,
11 I get it. But generally, you know, my guidance
12 tomorrow to both of you is the equal time, you
13 know, demarcation.

14 MR. WEBER: Perfect. Thank you, Your Honor.

15 THE COURT: All right. Have a wonderful day.

16 (Whereupon, the proceedings are adjourned at
17 4:45 p.m. and are continued on May 17, 2023 in
18 Volume VI.)

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IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT,

IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. 50-2012-CA-023358-XXXX-MB

JAMES TODD WAGNER, SUPERCAR ENGINEERING,
INC., a Florida corporation,

Plaintiffs,

vs.

WARREN MOSLER, MOSLER AUTO CARE CENTER,
INC. ("MACC") a Florida corporation,
d/b/a Mosler Automotive,

Defendants.

_____ /

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VOLUME VI - DAY 6

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PROCEEDINGS BEFORE

HONORABLE LUIS DELGADO

DATE: MAY 17, 2023

TIME: 9:30 A.M. - 4:48 P.M.

1 APPEARING ON BEHALF OF PLAINTIFFS:

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17 ALSO PRESENT:

18 James Todd Wagner, Plaintiff
19 Warren Mosler, Defendant
20 David Griffin, TruVid, LLC
21
22
23
24
25

I N D E X

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EXHIBIT	DESCRIPTION	MARKED	RECV'D
Plaintiffs' 40	was marked Exhibit 40	1073	
Plaintiffs' 95	was marked Exhibit 1353C	1085	1087
Plaintiffs' 96	was marked Exhibit 1202	1208	1209
Plaintiffs' 97	was marked Exhibit 903	1211	1212
Plaintiffs' 98	was marked Exhibit 1291	1214	1214
Plaintiffs' 99	was marked Exhibit 1076	1218	1219
Plaintiffs' 100	was marked Exhibit 904	1221	1222
Plaintiffs' 101	was marked Exhibit 611	1228	1229
Plaintiffs' 102	was marked Exhibit 80	1231	1232
Plaintiffs' 103	was marked Exhibit 27	1234	1234
Plaintiffs' 104	was marked Exhibit 28	1235	1236
Plaintiffs' 105	was marked Exhibit 30	1236	1237
Plaintiffs' 106	was marked Exhibit 302	1242	1242
Plaintiffs' 156	was marked Exhibit 156	1243	

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BE IT REMEMBERED, that the following proceedings were taken in the above-styled cause before Honorable Luis Delgado, Presiding Judge, at the Palm Beach County Courthouse, 205 North Dixie Highway, Courtroom 10-D, in the City of West Palm Beach, County of Palm Beach, State of Florida, on the 17th day of May, 2023, to wit:

- - -

MR. WEBER: Your Honor, one issue with lunch. We're handed the menu, how are we ordering?

THE COURT: So Deputy, can you take their order?

THE COURT DEPUTY: They have it. They have their order.

THE COURT: So then you guys handle that amongst yourselves.

MR. WEBER: Where does it get delivered to?

THE COURT: 10-D.

THE COURT DEPUTY: 10-D.

MR. WEBER: Okay.

THE COURT: All right. Can we get started?

MR. WEBER: Yep, ready.

THE COURT: Okay. Are you ready to call your next witness?

1 MR. WEBER: We are going to cross-examine
2 Mr. Frank.

3 THE COURT: That's right. Is he outside?

4 MR. ZAPPOLO: Yes.

5 THE COURT DEPUTY: Jury entering.

6 (Jurors entering the courtroom at 10:07 a.m.)

7 THE COURT: All right. Please be seated.

8 THE COURT DEPUTY: Face the clerk and raise
9 your right hand.

10 THE CLERK: Do you solemnly swear or affirm
11 that the evidence you're about to give will be the
12 truth, the whole truth, and nothing but the truth?

13 **THE WITNESS: Yes.**

14 THE CLERK: Thank you.

15 THE COURT: Cross-Examination.

16 MR. WEBER: Yes, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. WEBER:

19 Q Good morning, Mr. Frank.

20 **A Good morning.**

21 Q Are you ready?

22 **A Yes.**

23 Q So Plaintiff, James Todd Wagner, and SEI hired
24 you to be a witness in this case, right?

25 **A Yes.**

1 Q And you're being paid to appear today,
2 correct?

3 A Yes.

4 Q Now you have never attempted to forecast the
5 sales of vehicles as an expert witness in a case prior
6 to this case, right?

7 A No.

8 Q Well, by "no" you mean you have not --

9 A Right.

10 Q -- been an expert witness in another case,
11 right?

12 A I have been an expert witness in multiple
13 cases, but not forecast pricing.

14 Q Okay. So this is your first time that you
15 forecasted sales as part of a lawsuit, right?

16 A Well, my job and my business is to forecast
17 pricing; but in a courtroom, this is my first time.

18 Q Now you make your predictions for your
19 business as to sales based on online sites, previous
20 sales, and your prior experience, right?

21 A Oh, there's a lot more that goes into it than
22 that, but those are three of the main things.

23 Q Well, let's take a look at your deposition
24 when you were asked this very question.

25 A Okay.

1 Q Let's pull it up. Let's look at page 10.

2 That's 9.

3 I'm going to refer you to page 10 of your
4 deposition. Can you see this right here? It says: "Is
5 there any difference between forecasting a value of a
6 car versus how many cars would be sold, right?" And you
7 said "Sure."

8 And then I questioned you: "Are you aware of
9 any generally accepted methods of forecasting sales of
10 cars?" And you testified: "I'd say just by going
11 previous sales results and experience in the business
12 that -- that's the way."

13 Do you remember that answer?

14 A Yes.

15 Q You were testifying under oath, right?

16 A Yes.

17 Q And then I questioned you: "Are you aware of
18 any other method for forecasting buying of car sales
19 other than looking at previous sales results and
20 experience in the business?"

21 MR. ZAPPOLO: Your Honor, objection.

22 THE COURT: Let's approach.

23 (Thereupon, a sidebar conference was held.)

24 THE COURT: What's the objection?

25 MR. ZAPPOLO: Improper impeachment. Number

1 one, he's projecting -- for the record, he's
2 projecting the deposition transcript, the entire
3 page is on there. I've objected to these questions
4 and there's been no ruling on this.

5 THE COURT: What's the objection?

6 MR. ZAPPOLO: The objection is improper
7 impeachment. It doesn't -- the questions don't --
8 his impeachment doesn't mention the questions that
9 asks --

10 THE COURT: I thought the rules said a
11 deposition could be used for any rules whatsoever.

12 MR. WEBER: Yeah, for impeachment.

13 MR. ZAPPOLO: But that's not impeachment, Your
14 Honor.

15 THE COURT: I mean, impeachment would be one
16 purpose, but can't you for any purpose?

17 MR. ZAPPOLO: He's not a party, Your Honor.
18 That's the expert witness he's talking about. He's
19 just trying to go over the expert witness's
20 testimony, but he's mixing apples and oranges with
21 his question.

22 MR. WEBER: I am not. He just testified there
23 are other ways to forecasting.

24 THE COURT: Okay.

25 MR. WEBER: He testified --

1 THE COURT: The objection is overruled. Now
2 are there any other objections that have popped up
3 during the deposition transcript that I need to be
4 aware of at this point?

5 MR. ZAPPOLO: Well, I object to just
6 projecting the deposition transcript in front of
7 the jury. You don't -- that's not a proper way to
8 impeach someone. You ask them: Did I ask you
9 this? Yes. And what was your answer? You don't
10 put up a whole deposition transcript.

11 THE COURT: I think in criminal court that
12 would be correct, but in the civil courtroom you
13 can use a deposition for any purpose. The
14 objection is overruled. You can continue to
15 project the deposition.

16 MR. WEBER: Thank you.

17 (Thereupon, the sidebar conference was
18 concluded.)

19 BY MR. WEBER:

20 Q Now, Mr. Frank, I want to show you the
21 question. "Are you aware of any other method for
22 forecasting buying of car sales other than looking at
23 previous sales results and experience in the business?"
24 Your answer was "No. I'd say that's what I'd go off
25 of." Do you see that?

1 **A Yes.**

2 Q And that was your truthful answer --

3 **A Yes.**

4 Q -- during your deposition, right?

5 **A My answer: "Experience in the business covers**
6 **a lot more than just the three things that you**
7 **mentioned."**

8 Q Now, you do not know the percent accuracy of
9 your forecast of sales in the business, right?

10 **A No.**

11 Q You don't know?

12 **A A percentage? No. I haven't -- no.**

13 Q And you agree that there could be
14 circumstances under which prior sales do not indicate
15 future sales of a vehicle, right?

16 **A Most of the time they do.**

17 Q But your answer just admits that there could
18 be circumstances when they don't, right?

19 **A I'm sure there could be, yes.**

20 Q And you don't use any formula to predict
21 future sales, right?

22 **A Not a specific formula.**

23 Q And you don't post your forecast of sales
24 online anywhere, right?

25 **A No.**

1 Q Meaning you do not post them, right?

2 A No.

3 Q When you say "No," it makes it seem like
4 you're disagreeing, so I want to be clear for the record
5 because there's a court reporter who's taking everything
6 down.

7 A I've had tons of postings over the years
8 through many publications, through social media, and I
9 mean you're asking me a very vague question. So, you
10 know, if you're asking, you know, specifically -- just
11 it's a little confusing.

12 Q So you don't know? You don't know, sitting
13 here today, whether you've made postings online
14 forecasting the amount of future sales for a vehicle?

15 A In the past 20-plus years I'm sure I have made
16 postings like that, but it's not something that I do
17 regularly.

18 Q And how accurate were those postings?

19 A I'd have to look back in 20 years of postings
20 and see which ones you're talking about to get that
21 answer.

22 Q Now you have never forecasted any auto sales
23 to obtain financing from a bank, right?

24 A Forecasted auto sales to obtain financing? My
25 dealership is not funded by a floor plan. I self-fund

1 **my dealers. Is that what you're asking?**

2 Q I want you to listen to the question.

3 **A Yes.**

4 Q And it's either a yes or a no. You have never
5 forecasted auto sales to obtain financing from a bank?

6 **A I've forecasted auto leasing, not auto sales
7 for funding, for bank funding.**

8 Q Now how would you characterize Mosler Auto
9 Care Center? Is it a manufacturer?

10 **A Yes.**

11 Q James Todd Wagner has never owned an
12 automobile manufacturer, right?

13 **A Not that I know of.**

14 Q And SEI has never operated as an automobile
15 manufacturer, right?

16 **A Not that I know of.**

17 Q And you were a former Mosler dealer, right?

18 **A Yes.**

19 Q You never owned a company that manufactured
20 automobiles?

21 **A No.**

22 Q You mean correct, right?

23 **A Correct.**

24 Q And you never worked for a car -- for a
25 company that manufactured automobiles, correct?

1 **A Correct.**

2 Q Now MACC -- let me back up.

3 Now you forecasted yesterday that over 20

4 Raptors could be sold, right?

5 **A Yes.**

6 Q MACC, the defendant in this case, has never

7 produced 20 vehicles in a single year, right?

8 **A Yes.**

9 Q And you do not know whether MACC could have

10 built 20 Raptors in a single year, right?

11 **A Correct.**

12 Q You could not say for sure what the volume of

13 sales the RaptorGTR would be if MACC was producing them

14 still, right?

15 **A Correct.**

16 Q The number of sales would depend on whether

17 the production was there, right?

18 **A Yes.**

19 Q And the volume of sales would depend on the

20 funding behind MACC, right?

21 **A The volume of sales would depend on the**

22 **funding behind MACC?**

23 Q Yeah. If MACC did have adequate funding, then

24 they could have produced cars, right?

25 **A Yes.**

1 Q And if Mosler, Warren Mosler, sold MACC, then
2 you would agree that would negatively impact sales for
3 MACC, right?

4 A It depends who they sold it to and what the
5 terms of the deal were.

6 Q And you're aware that Mosler did wind up
7 selling MACC, right?

8 A Yes.

9 Q And he began trying to sell MACC in 2010,
10 right?

11 A I'm not sure of the date.

12 Q So you don't even know when he started selling
13 it, correct?

14 A Started selling it? I'm not sure of the year
15 when he started the sales process.

16 Q Now MACC only ever produced a single
17 RaptorGTR, right?

18 A Yes.

19 Q And you do not know how long it took MACC to
20 produce that single RaptorGTR, right?

21 A Correct.

22 Q And you do not know how -- you do not know the
23 manufacturing capabilities of MACC, right?

24 A Correct.

25 Q And marketing would impact the volume of the

1 sales of the car, right?

2 **A Yes.**

3 Q And the volume of sales would depend on who
4 was marketing the car, right?

5 **A Yes.**

6 Q And you do not know how SEI and James Todd
7 Wagner would have marketed the RaptorGTR, right?

8 **A Yes.**

9 Q You do not know how James Todd Wagner, SEI,
10 did advertise the RaptorGTR?

11 **A I know of some of their advertising, but, no,
12 I don't know all of it.**

13 Q You're not aware of any plan by James Todd
14 Wagner, SEI, to market the RaptorGTR, right?

15 **A I have not seen a plan.**

16 Q Now if Wagner or SEI were not aggressively and
17 actively marketing the RaptorGTR, you agree that would
18 impact the volume of sales, right?

19 **A Yes.**

20 Q Now you compared the Raptor to the Ferrari
21 LaFerrari, right?

22 **A Yes.**

23 Q You've heard of the Ferrari LaFerrari
24 obviously?

25 **A Of course.**

1 Q All Ferrari LaFerrari's were presold before
2 they were built, right?

3 A Yes.

4 Q And you've sold some Mosler automobiles,
5 right?

6 A Yes.

7 Q But none of the Mosler automobiles you sold
8 were presold before you got them, right?

9 A Correct.

10 Q You mentioned yesterday what sales would have
11 been in 2013 of the RaptorGTR, right?

12 A 2013?

13 Q You don't recall?

14 A Refresh my -- I'm not sure what you're asking.

15 Q Well, MACC wasn't producing vehicles in 2013,
16 right?

17 A Okay.

18 Q Do you agree?

19 A Yeah.

20 Q And you do not know why RP High Performance
21 did not produce any Mosler vehicles in 2013, right?

22 A No.

23 Q Meaning you do not know, right?

24 A I don't know.

25 Q Okay. Now you've never actually seen a

1 RaptorGTR in person, correct?

2 **A Correct.**

3 Q You are basing your opinion only on
4 information you received online, right?

5 **A Yes.**

6 Q Do you know what a rolling dynamometer is?

7 **A Yes.**

8 Q What is a rolling dynamometer?

9 **A It's a Dyno that you test horsepower.**

10 Q Do you know what horsepower to the wheel is?

11 **A Yes.**

12 Q What is horsepower to the wheel?

13 **A Horsepower produced to the rear wheel of
14 course on the Dyno.**

15 Q Has anyone ever tested the RaptorGTR's
16 horsepower to the wheel?

17 **A That I don't know.**

18 Q Now you relied on information from the
19 Internet to come up with production numbers of the
20 RaptorGTR based on cars with what you thought were
21 similar horsepower to the RaptorGTR, right?

22 **A Yes.**

23 Q You mentioned power-to-weight ratio yesterday,
24 right?

25 **A Yes.**

1 Q The power-to-weight ratio cannot be used alone
2 to determine the values of a car, right?

3 A Yes.

4 Q Instead, you have to look at the whole
5 vehicle, right?

6 A Yes.

7 Q The RaptorGTR started with a Corvette base
8 engine, correct?

9 A Correct.

10 Q The engine used in the RaptorGTR was not
11 originally manufactured or designed by MACC, correct?

12 A Yes.

13 Q You compared the RaptorGTR to cars from
14 Ferrari, Porsche, McLaren, Lamborghini, Bugatti, and
15 Koenigsegg, right?

16 A Yes.

17 Q Now Ferrari manufactures its own engines,
18 right?

19 A They do.

20 Q Porsche manufactures its own engines, right?

21 A Yes.

22 Q McLaren manufactures its own engines, correct?

23 A Correct.

24 Q Lamborghini manufactures its own engines,
25 correct?

1 **A That's half and half. They use a lot of Audi**
2 **engines.**

3 Q Bugatti manufactures its own engines with the
4 help of Volkswagen, right?

5 **A With the help of Volkswagen, yes.**

6 Q Koenigsegg manufactures its own engines,
7 right?

8 **A Yes.**

9 Q And it's because those car brands manufacture
10 their own engines that they get the price that they're
11 demanding for those vehicles, right?

12 **A I wouldn't say it's just because of that.**

13 Q It's also the heritage of those brands, right?

14 **A Yes.**

15 Q Now what was the cost to produce the
16 RaptorGTR?

17 **A That I don't know.**

18 Q Sitting here today, you have no idea what it
19 cost to make that car, right?

20 **A Yes.**

21 Q Now you testified that the RaptorGTR could be
22 sold for \$700,000, right?

23 **A Yes.**

24 Q If the RaptorGTR was sold by MACC for
25 \$700,000, what would the profits to MACC have been on

1 that car?

2 **A I wouldn't know.**

3 Q Do you believe that a profit margin of over
4 100 percent is reasonable in the exotic car industry?

5 **A Yes.**

6 Q Do you believe a profit margin to MACC of
7 100 percent is reasonable on the RaptorGTR?

8 **A Yes.**

9 Q What if someone said that a profit margin of
10 50 percent was reasonable in the exotic car industry?

11 **A I don't know the profit margins of builders of
12 vehicles, so I'd be guessing.**

13 Q What if James Todd Wagner had testified under
14 oath that he believed that only 50 percent margin was
15 reasonable in the exotic car industry? What would you
16 say to that?

17 **A Well, I think for the manufacturer I'd hope
18 that there would be more, but, once again, that's not
19 something that I have the knowledge of.**

20 Q Now MACC only ever sold one RaptorGTR, right?

21 **A Yes.**

22 Q And you do not know how much SEI purchased
23 that car for from MACC, right?

24 **A I don't.**

25 Q No Mosler vehicle has ever sold for \$700,000,

1 right?

2 **A No.**

3 Q Again, has a Mosler vehicle ever sold for
4 \$700,000?

5 **A I'm not aware of any that have.**

6 Q To be clear, you're not aware of any Mosler
7 vehicles that have sold for \$700,000, right?

8 **A That's correct.**

9 Q Now James Todd Wagner has never sold a car to
10 the Auto Toy Store for \$700,000, right?

11 **A No, he has not.**

12 Q The most anyone ever paid for a Mosler
13 vehicle, in your experience, was about 300,000 to
14 \$350,000, right?

15 **A 350,000 was what we sold them for.**

16 Q And those were --

17 **A At the time.**

18 Q I'm sorry, go ahead.

19 **A At the time.**

20 Q And that was for three of Mosler's
21 500-horsepower cars, right?

22 **A Yes.**

23 Q You sold those three cars for \$350,000?

24 **A Yes, approximately 350.**

25 Q Now the car in this case was eventually sold,

1 the RaptorGTR, right?

2 **A Yes.**

3 Q And do you know how much that car was sold
4 for?

5 **A I don't.**

6 Q Do you know why the buyer paid what he paid
7 for that vehicle?

8 **A Are we talking about the sale to James?**

9 Q Let me ask the question differently.

10 **A Yes.**

11 Q Did SEI ever sell the RaptorGTR to anybody?

12 **A Okay. SEI is?**

13 Q The plaintiff in this case.

14 **A Okay.**

15 Q James Todd Wagner's company.

16 **A Yes, the car was sold.**

17 Q How much did SEI sell the RaptorGTR for?

18 **A I'm not sure. The only publicized information**
19 **that I saw on the sale of that car was going through**
20 **Barrett-Jackson for approximately, I think, 260,000. I**
21 **think it was in 2016.**

22 Q And you don't know why it sold for that
23 amount, right?

24 **A Because Mosler said that it was not a real car**
25 **and there was a lot of issues going on with the history**

1 of the car.

2 Q And where did you get that information from?

3 A Online.

4 Q You just -- did you speak to the buyer of the
5 car?

6 A I did not.

7 Q So there's an article that you found that
8 specifically says that car sold for that amount because
9 of comments online?

10 A There's -- no. There's no article that says
11 that it sold for that amount because of comments, but I
12 believe I was at Barrett-Jackson the year that it was
13 sold and I was speaking about the car.

14 Q You're just speculating as to why the buyer
15 paid that amount, right?

16 A With discussions with the buyers that were
17 there.

18 Q Now heritage influences the value of cars
19 sold, right?

20 A Yes.

21 Q Now Mosler does not have the same level of
22 heritage as Porsche, right?

23 A I'd agree.

24 Q Mosler doesn't have the same level of heritage
25 as Ferrari, right?

1 **A Yes.**

2 Q Mosler does not have the same level of
3 heritage as Lamborghini, right?

4 **A Correct.**

5 Q The power-to-weight statistic is not the only
6 determiner of value for an automobile?

7 **A No, it's not.**

8 Q The power-to-weight ratio is not the prime
9 factor that you used to determine the value of the
10 RaptorGTR, right?

11 **A No.**

12 Q Instead, you look at the RaptorGTR as a whole,
13 right?

14 **A Yes.**

15 Q Now the RaptorGTR, as you described it, was an
16 upgraded version of the MT900S, yes?

17 **A Yes.**

18 Q Basically you testified that the whole car was
19 modified, right?

20 **A It's a modified car.**

21 Q Now you've seen the "Feel My Fire" video with
22 Abby Cubey, right?

23 **A Yes.**

24 Q And you saw this video in approximately 2019?

25 **A It could have been, yes.**

1 Q Immediately following the "Feel My Fire" video
2 from SEI, you did not receive any orders for the
3 RaptorGTR, right?

4 A No.

5 Q Meaning you did not receive any orders, right?

6 A No.

7 Q You did receive an order?

8 A No, I did not.

9 Q Okay.

10 A I wasn't offered the car to sell through my
11 dealership at the time.

12 Q You agree that all publicity is good
13 publicity, right?

14 A Most of it, unless the manufacturer says that
15 the car isn't real is not good publicity.

16 Q Well, let's pull up your deposition.

17 A Yes.

18 Q Let's go to your deposition.

19 A Yes, I said the music video would be good
20 publicity whether people liked it or not, if that's what
21 you're getting at.

22 MR. ZAPPOLO: What page?

23 MR. WEBER: 33.

24 BY MR. WEBER:

25 Q Now when discussing the music video, you did

1 say that -- "Do you believe the music video helped sales
2 of the RaptorGTR?

3 "Answer: I don't think that the car was given
4 the chance for it to help or hurt sales. I believe any
5 publicity is good publicity. Whether it's good or bad,
6 it gets people talking about the car and that's -- you
7 know, that's something that's required in order to build
8 a market."

9 You were testifying truthfully, right?

10 **A Yes.**

11 Q Okay. Now I'm handing you what's been
12 previously marked as Plaintiffs' Exhibit 40, okay.

13 Now you can see the document marked as
14 Plaintiffs' Exhibit 40?

15 **A (Witness nods head.)**

16 (Thereupon, Plaintiffs' Exhibit 40 was marked
17 for identification.)

18 BY MR. WEBER:

19 Q Now, you've seen this document before, right?

20 **A Yes.**

21 Q Now I want to draw your attention to the
22 bottom of the seventh page where you see a name called
23 The Guru. Do you see that?

24 **A No. I see at the bottom Matt Farah -- oh,
25 that's us. Page 6? Here. Okay. The Guru, yeah, I see**

1 it.

2 Q And then following that, there's a comment,
3 right? The next page.

4 And the comment is not from Warren Mosler,
5 right?

6 A **The next page you're saying?**

7 Q Correct.

8 A **On which part?**

9 Q Where it says "Matt, don't let him fool you."
10 That's not a comment from Warren Mosler, right?

11 A **Okay. There's nothing under Matt Farah. It's
12 blank on mine.**

13 Q Well, you're on the -- let me show you.

14 A **I'll show you here.**

15 Q Right here --

16 A **Okay.**

17 Q -- on the bottom. Do you see that comment
18 from The Guru?

19 A **Okay. On the very bottom there's The Guru,
20 and there's nothing below it on the page again.**

21 Q And then flip to the next page.

22 A **Okay.**

23 Q And then there's a comment, right?

24 A **Yes.**

25 Q And that comment is not from Warren Mosler,

1 right?

2 **A No. It's from The Guru, who, I believe, says**
3 **that they worked for Mosler in the previous comments.**

4 Q And the comment says "Matt, don't let him fool
5 you. His 'turbo' Moslers have not once passed
6 emissions. He's such a good engineer, he thought
7 installing catalytic converters in the up-pipe,
8 pre-turbo would keep them clean enough to pass
9 emissions. Not to mention that on a 7PSI (TT remember),
10 it was only making 500whp. Out of an LSX, that's a
11 joke. I am running 14psi (same boost level in a single
12 turbo as his TT setup was running) out of an engine with
13 half the cylinders and am making 508whp.

14 Todd is a moron and has never left his crappy
15 little window-less office at the West Palm Beach
16 location. You should see the hack-job of a
17 rear-suspension he developed for his Ford Expedition.
18 When engineers fail is what that car should be called."
19 You see that, right?

20 **A I see that.**

21 Q And during your deposition you were asked
22 about that comment, right?

23 **A I don't remember being asked about that**
24 **comment.**

25 Q Do you agree that this comment would

1 negatively affect the value of the RaptorGTR?

2 **A I think that all comments are considered and**
3 **the source is considered. So you'd have to look at the**
4 **source and when you're calling the chief engineer of a**
5 **product, you know, all these names, it seems like**
6 **there's a personal vendetta there.**

7 Q Let's go to your deposition.

8 Let's skip ahead one more page. Do you see
9 another comment from The Guru on the bottom?

10 **A Yes, I do.**

11 Q And then you flip the page again and there's
12 the comment, right?

13 **A Well, that's on the same page, this one. It's**
14 **got links to -- it's this? That right there?**

15 Q It's this one and then the next page.

16 **A Okay.**

17 Q So now we're at the top of the page and you
18 see the comment that begins with "Hey, Todd"? Do you
19 see that?

20 **A Yes.**

21 Q And it says "Hey, Todd. Does this piece of
22 crap still have the catalytic converters before the
23 turbos? Who left who? I'd imagine Jill would not be
24 very pleased to know you're running around with a cute
25 little Asian named Abby Cubey making quite possibly the

1 worst music video and private plug ever created in the
2 history of product advertising music videos. I
3 desperately hope that this video shows up on Beavis and
4 Butthead." You saw that, right?

5 **A I saw that, yes.**

6 Q Now let's go to your deposition. Now you see
7 right here -- now let's go one page back.

8 Do you see the comment right here where it
9 says "Okay. I used to work for Mosler Supercars"?
10 That's the first comment you read from The Guru, right?

11 **A All right. You're saying -- you're asking if
12 that's a comment that I read from The Guru?**

13 Q Well, let's look at the bottom here. It
14 says -- it starts with "Matt, don't let him fool you.
15 His turbo Mosler has not once passed emissions." That's
16 the comment I just read -- right? -- from The Guru?

17 **A Okay.**

18 Q Let's go to the next page. And then it
19 continues on, "He is such a good engineer." Do you see
20 that?

21 **A Yes.**

22 Q And then when asked about these comments: "So
23 these two separate comments by someone named The Guru,
24 do you believe that those would negatively impact the
25 value of the RaptorGTR?"

1 "Answer: Yes, sounds like it's -- sounds like
2 it's someone that's got a personal vendetta with him,
3 someone that he worked with." You see that, right?

4 **A Yeah. I believe that's what I just said as**
5 **well.**

6 Q And you were testifying truthfully there,
7 right?

8 **A Yes.**

9 Q You believe those comments could negatively
10 impact the value of the RaptorGTR?

11 **A Yes.**

12 Q Now you have never seen a full magazine test
13 of the RaptorGTR, right?

14 **A I have seen magazine articles or actually**
15 **online articles, not magazines.**

16 Q What is the magazine test?

17 **A Well, the magazine test -- I mean, old school,**
18 **you're talking magazines, print, but now most stuff is**
19 **online. Beyond that, I mean, most people don't pick up**
20 **the paper publications anymore.**

21 Q And you have not been present physically for
22 any magazine tests or publication tests of the
23 RaptorGTR, right?

24 **A I have not.**

25 Q You have never verified the performance specs

1 of the RaptorGTR by actually testing the car, right?

2 **A No.**

3 Q Meaning you have not --

4 **A I have not.**

5 Q Okay. And you do not know whether the
6 RaptorGTR would perform as advertised, right?

7 **A I don't.**

8 Q In fact, the one time that it was reviewed by
9 Matthew Farah, he said it took a crap, right?

10 **A That I'm not sure.**

11 Q Mr. Frank, you're going to go to this page
12 right here. Just go backwards.

13 **A There you go.**

14 Q There you go.

15 Okay. So we're looking at the comment
16 section, and this is not a comment by Warren Mosler,
17 right?

18 **A Let me see who it's by. It looks like Matt
19 Farah.**

20 Q And you see, in that second paragraph, he says
21 "I tested this very car on the season finale of 'The Car
22 Show.'" Do you see that?

23 **A Where is this?**

24 Q Look at the screen.

25 **A Okay. But is that in this document here?**

1 Q Yes. It's the second --

2 A **Because I can't read that far out, I'm sorry.**

3 Q Take a look at the second paragraph.

4 A **Okay.**

5 Q We'll do it together.

6 A **Right there. Okay. Gotcha.**

7 Q You're with me?

8 A **Yeah.**

9 Q Great. So it starts with "I tested this very
10 car on the season finale of 'The Car Show.'" That's
11 Matthew Farah writing that, right?

12 A **Yes.**

13 Q It says "The car's owner and singer girlfriend
14 pictured above were in attendance," right?

15 A **Yes.**

16 Q Now I want to go right here to -- in the
17 middle of the paragraph it says: "Well, on the
18 100-degree day at the Mojave runway where I was supposed
19 to top that car out, the RaptorGTR took a crap and
20 wouldn't make boost. The car's owner, who also claimed
21 to be Mosler's top engineer, blamed the heat. I was
22 annoyed since they build these cars in Florida where
23 it's hot pretty much all the time.

24 20 minutes after the car crapped out, I was
25 able to nearly top out a bone stock 4GT on the same

1 runway proving that factory designed cars were better
2 than small volume exotics, even if the stock car makes
3 300 less horsepower than the RaptorGTR." You saw that?

4 **A Yes.**

5 Q Now you would agree that reliability affects
6 the value of a car, right?

7 **A Yes.**

8 Q And you would agree that this comment could
9 negatively impact the value of the RaptorGTR, right?

10 **A Yes.**

11 Q Do you know what turbo lag is?

12 **A Yes.**

13 Q What is turbo lag?

14 **A It's a lack of turbo boost to lower RPMs.**

15 Q Do you know what kind of tires the RaptorGTR
16 used?

17 **A I don't.**

18 Q Could the RaptorGTR's tires have gone
19 240 miles an hour?

20 **A Once again, I don't know what tires they used.**

21 Q Have you ever seen the results from a 0 to
22 60-mile an hour test of the RaptorGTR?

23 **A I believe that all the specs were listed on
24 multiple websites.**

25 Q Have you ever verified the specs for the

1 RaptorGTR 0 to 60 test?

2 **A I haven't verified.**

3 Q You agree that the RaptorGTR was rear-wheel
4 drive only, right?

5 **A Yes.**

6 Q What is the best 0 to 60 time that you've ever
7 seen a rear-wheel, street legal car do?

8 **A Oh, under 3 seconds.**

9 Q Which car was that?

10 **A The Tesla right now will do it.**

11 Q Was the Tesla you just mentioned a four-wheel
12 drive car?

13 **A Yes.**

14 Q So it was not a rear-wheel drive car?

15 **A No. The McLaren 720S will also do it and
16 that's rear-wheel drive.**

17 MR. WEBER: I have no further questions, Your
18 Honor.

19 THE COURT: Redirect.

20 REDIRECT EXAMINATION

21 BY MR. ZAPPOLO:

22 Q You just saw a bunch of comments put up on the
23 screen by counsel. Do you remember all those comments
24 that were up there?

25 **A Yes.**

1 Q And the one of the person -- The Guru, do you
2 know who The Guru is?

3 A I don't.

4 Q Okay. The Guru is somebody who didn't bother
5 using their name on that website, correct?

6 A Correct.

7 Q Okay. But the comments that are attributable
8 to someone by name in these things that you viewed are
9 comments attributable to Mr. Mosler, correct?

10 A I'm sorry?

11 Q Comments that are attributable to someone by
12 name, that you've seen, are comments attributable to
13 Mr. Mosler, right?

14 MR. WEBER: Objection, mischaracterizes facts.

15 THE COURT: Overruled.

16 THE WITNESS: Yes.

17 BY MR. ZAPPOLO:

18 Q Now you said earlier that it sounds like
19 someone has a personal vendetta with respect to The
20 Guru. Based upon your experience in the industry, do
21 people filter those things, those comments like that --

22 A Do people --

23 Q -- like you just did? You said it sounds like
24 a personal --

25 A Yeah. If you see someone making comments like

1 **that, yeah, you definitely don't take them as seriously.**

2 Q Okay. Are you familiar with how many
3 horsepower the Z06 has roughly?

4 **A What year Z06?**

5 Q The current Z06.

6 **A Oh, the current Z06? No.**

7 Q That's all right. Now, there was a comment
8 before and you were asked about this car being -- the
9 2012 RaptorGTR being modified. Do you remember that
10 testimony?

11 **A Yes.**

12 Q Okay. I want to focus on that word "modify"
13 for a minute. Were you suggesting that the car had been
14 modified at the factory or modified after it left the
15 factory?

16 **A Modified at the factory.**

17 Q At the factory?

18 **A Yes.**

19 Q And based upon your experience in the field,
20 is there a difference between a car that's modified at
21 the factory versus after it left the factory?

22 **A Absolutely.**

23 Q Okay. And which is better?

24 **A Factory modification.**

25 Q Okay. Are those frowned upon in the industry?

1 **A Not at all.**

2 Q Okay. That's -- there was talk about
3 different websites that you viewed, et cetera --

4 MR. ZAPPOLO: That's all that I have, Your
5 Honor.

6 THE COURT: Is this witness excused?

7 MR. ZAPPOLO: I'm sorry, Your Honor?

8 THE COURT: Is he excused?

9 MR. ZAPPOLO: Well, Your Honor, can I ask one
10 question, please?

11 THE COURT: Yes.

12 MR. ZAPPOLO: I apologize.

13 BY MR. ZAPPOLO:

14 Q You referenced yesterday having documents in a
15 file and you were asked about articles and things today,
16 correct --

17 **A Yes.**

18 Q -- that you reviewed? Okay.

19 I'm showing you what's been marked as 1353.

20 Is that one of the articles that you had reviewed?

21 **A Yes.**

22 (Thereupon, Plaintiffs' Exhibit 1353C was
23 marked for identification.)

24 BY MR. ZAPPOLO:

25 Q Okay. And at page 2, is that some of the

1 comparisons of the power-to-weight ratios that were
2 made?

3 **A Yes.**

4 MR. ZAPPOLO: Okay. At this point, Your
5 Honor, I'd like to --

6 BY MR. ZAPPOLO:

7 Q And those were the same horsepower-to-weight
8 ratios that were discussed amongst your testimony,
9 correct?

10 **A Correct.**

11 MR. ZAPPOLO: Okay. At this point, Your
12 Honor, I'd like to move 1353 into evidence.

13 THE CLERK: Your Honor, if I may? I have
14 1353B. Would this be A or --

15 MR. ZAPPOLO: Let's go with C just to be
16 certain, just to be clear.

17 THE COURT: Okay.

18 THE CLERK: It's 95, Your Honor.

19 MR. WEBER: One second. Sorry, Your Honor.
20 Let me take a look at this. Your Honor.

21 We have no objection, Your Honor.

22 THE COURT: All right. Admitted without
23 objection. What's the number, Madam Clerk?

24 THE CLERK: 95, Your Honor.

25 THE COURT: Thank you very much.

1 THE CLERK: Thank you.

2 (Thereupon, Plaintiffs' Exhibit 95 was
3 received into evidence.)

4 THE COURT: All right. Mr. Zappolo, anything
5 else?

6 MR. ZAPPOLO: We're complete, Your Honor.

7 THE COURT: Is he excused?

8 THE CLERK: May I have the exhibits back,
9 please?

10 MR. ZAPPOLO: Unless there are questions --

11 THE COURT: Are there any questions from the
12 jury?

13 All right. Seeing none, sir, you're excused
14 for the day. This trial is not over, do not
15 discuss your testimony with anybody else.

16 **THE WITNESS: Okay. Thank you.**

17 THE COURT: Next witness, please.

18 MR. ZAPPOLO: I call James Todd Wagner, Your
19 Honor -- oh, excuse me. We call Matt Farah via
20 deposition, Your Honor. We have a reader.

21 THE COURT: Let's approach for a second.

22 (Thereupon, a sidebar conference was held.)

23 THE COURT: So these are the depo designations
24 that we were waiting on? Did we go over them?

25 MR. WEBER: No, this one we did.

1 MR. ZAPPOLO: We did Matt Farah.

2 THE COURT: Okay. And how long is this going
3 to take?

4 MR. ZAPPOLO: Six minutes.

5 THE COURT: Oh, okay. Okay. All right.

6 MR. WEBER: But then he's going to -- but then
7 are you calling James Todd Wagner? Because it's
8 almost lunchtime.

9 MR. ZAPPOLO: Yes.

10 THE COURT: Okay.

11 MR. ZAPPOLO: After Matt Farah.

12 (Thereupon, the sidebar conference was
13 concluded.)

14 THE COURT: Okay. All right. Ladies and
15 gentlemen, you're about to read or hear the
16 deposition of Mr. Farah. You are to consider this
17 evidence as you would any other evidence in this
18 trial.

19 MR. ZAPPOLO: May we proceed, Your Honor?
20 With our apologies to the Court and the jury and
21 opposing counsel for the delay.

22 This is from the deposition of Matt Farah,
23 Tuesday, December 12, 2017.

24 Examination by plaintiffs' counsel, page 5.

25

EXAMINATION

1

2 BY PLAINTIFFS' COUNSEL:

3 Q Mr. Farah, you and I have not had the pleasure
4 of meeting either on the phone or face-to-face, I don't
5 believe, but my name is Scott Zappolo and I have the
6 pleasure of representing Mr. Wagner in a lawsuit.

7 All right. And do you have a business
8 address?

9 A Yes.

10 Q Complete answer.

11 A Yes, I do.

12 Q What is that?

13 A 5555 Inglewood Boulevard, that's Inglewood
14 with an I, Suite 202, Culver City, California 90230.

15 Q Bottom of page 10.

16 All right. Can you tell me, do you have any
17 class that you attended after high school?

18 A Yes. I went to college. I have a bachelor of
19 fine arts degree.

20 Q And what is your bachelor of fine arts degree
21 in?

22 A Photography.

23 Q Okay. And where did you obtain the bachelor
24 of fine arts degree?

25 A University of Pennsylvania.

1 Q Page 12. All right. And in the end of 2005
2 or thereabouts, where did you next begin working?

3 A Gotham Dream Cars, which is an exotic car
4 rental agency of New Jersey.

5 Q And what were your job duties there?

6 A I would pick up and drop off cars with the
7 customers, inspect them, clean them, transport them in
8 trailers, look after them if they were on display at
9 shows or events, that sort of thing.

10 Q All right. And how long did you work for
11 Gotham Dream Cars?

12 A Well, approximately the end of 2005, right
13 after I left the previous job, until approximately the
14 end of 2006.

15 Q After you left Gotham Dream Cars, what was
16 your next employment?

17 A I started an auto detailing shop with a friend
18 of mine that we called the New York Motor Club.

19 Q All right. And how long did that last?

20 A That lasted until -- well, it overlapped with
21 the subsequent job, but it lasted until approximately
22 the end of 2008.

23 Q And what was the other job that overlapped
24 with that? When did you start doing that?

25 A Working for a company called Next New

1 **Networks.**

2 Q And what was your job description there?

3 **A Video host and producer.**

4 Q And what show were you the video host of?

5 **A The show is called Garage 419.**

6 Q And what was the 419, like an area code?

7 **A It was the address of a studio on Park Avenue**
8 **in Manhattan.**

9 Q Okay. And how long did you work for the New
10 Networks?

11 **A Until approximately April or -- April or May**
12 **of 2009.**

13 Q Okay. Do you remember about the first time,
14 approximately, of course, that you heard of Mosler
15 Motorcars or Warren Mosler?

16 **A The first time I heard of Mosler is when they**
17 **were building the Consulier. If that's not the correct**
18 **pronunciation, let me know. One of their very early**
19 **cars, and I remember reading about that in one of my**
20 **many magazine sub subscription when I was a kid in the**
21 **'90s. I then remember it from racing afterwards.**

22 Q So after you left your employment with New
23 Networks in April or May 2009, what did you do?

24 **A Just to clarify, the company is called Next**
25 **New Networks, just so you're aware.**

1 **The following thing I did, I was let go from**
2 **that company when they sold to Google. And myself and**
3 **my cameraman, Todd Morningstar, started what became The**
4 **Smoking Tire, which is my current YouTube channel.**

5 Q All right. And so from approximately or
6 sometime after April or May of 2009 through the present
7 day, you've got a YouTube channel called The Smoking
8 Tire, correct?

9 A **That's correct.**

10 Q I'd like to ask, did there ever come a time
11 when you did any writing for any publications?

12 A **Yes, I have written for many publications.**

13 Q And what type of writing have you done?

14 A **I have primarily done car reviews; however, I**
15 **also have an editorial-style column as well.**

16 Q And who was the publisher of your
17 editorial-style column?

18 A **The drive.com, which is owned by Time,**
19 **Incorporated.**

20 Q And when did you do your car reviews -- excuse
21 me. And when you would do your car reviews, who would
22 publish those?

23 A **Well, obviously -- pardon my use of the word**
24 **"obviously" -- I first and foremost published them**
25 **myself. I have quite a large audience both on my**

1 YouTube channel and my pod cast and my website. And so
2 first and foremost for myself. I have also hosted --
3 I'm sorry -- are we talking about the writing,
4 specifically?

5 Q Yes.

6 A Okay. I've written for Jalopnik, which is a
7 blog; I've written for Popular Mechanics; I've written
8 for roadandtrack.com. That's all I can recall at the
9 moment.

10 Q So if you could, I'd like to shift gears now a
11 little bit and ask, have you heard about the Wagner
12 Supercar Engineering versus Warren Mosler and Mosler
13 Auto Care Center, Inc., lawsuit before you were asked to
14 testify today?

15 A No. The answer was no, I have not.

16 MR. ZAPPOLO: Okay. At that point Exhibit 4
17 was marked for identification. And Counsel,
18 Exhibit 4 is?

19 MR. WEBER: Exhibit 40.

20 MR. ZAPPOLO: Exhibit 40. Ms. Clerk, can I
21 trouble you for Exhibit 40 again?

22 THE CLERK: Yes.

23 MR. ZAPPOLO: Thank you.

24 BY MR. ZAPPOLO:

25 Q Now, Mr. Farah, I'd like you to flip to the

1 third page of that exhibit. At the bottom line there's
2 a picture of -- or an outline of an individual that says
3 Matt Farah, and it's dated November 15, 2011 at
4 6:10 p.m. Do you see that?

5 **A Yes, I do.**

6 Q And then if you flip to the next page, there's
7 something there that purports to be comments that were
8 written by you. Do you see that?

9 **A Yes, I do.**

10 Q All right. And take a moment, if you would,
11 and please tell me if you recognize those comments as
12 being the ones that you wrote on or about November 15,
13 2011 at 6:10 p.m.

14 **A Okay. Give me a second, please.**

15 **Okay. I have read it.**

16 Q All right. And my question was, do you
17 recognize it as being a post that you made on or about
18 November 15, 2011 at 6:10 p.m.?

19 **A Yes.**

20 Q Okay. Thank you. I'd like you to please flip
21 to the next page, and in the middle of the page there is
22 a post that is ascribed to Matt Farah, November 15, 2011
23 at 10:48 p.m. Can you read that and tell me is that
24 something you recognize as being your posting?

25 **A Yes. I mean, yeah, okay.**

1 Q Okay. Thank you.

2 I'd like you to flip back another three pages
3 and on the bottom of that page it says Matt Farah,
4 November 16, 2011 at 12:59 p.m., and then the posting is
5 on the next page.

6 Can you please take your time and read that
7 posting. It's a long one. And tell me if you recognize
8 that as being your posting.

9 A **Yeah, that looks like me.**

10 Q Okay. Now within that posting you'll see
11 there's something that says "He included the following
12 documents to prove the RaptorGTR is a genuine Mosler
13 product designed for sale." And then it looks like
14 something that says "Certificate of Emissions" and
15 there's a <http://www>.

16 All right. Now if you look within your post
17 on November 16th at -- I'm sorry, <http://www>.

18 Now if you look within your post on
19 November 16, 2011 at 12:59 p.m. you wrote "He included
20 the following documents to prove that the quote/unquote
21 RaptorGTR is a genuine Mosler project designed for
22 sale." Those were your words, correct?

23 A **They were.**

24 Q All right. And then there's a link to a
25 Certificate of Emissions and a certificate of origin,

1 and you put those in your post, correct?

2 **A Yes, I did.**

3 Q Can we flip to the next page in Exhibit 4,
4 please. It is a posting by Matt Farah, November 17,
5 2011 at 5:09 a.m. Did you make that post, sir?

6 **A Yes.**

7 Q All right. Now, based upon your November 17th
8 5:09 a.m. posting, it says "I spoke with Warren Mosler
9 today."

10 What is "today" if you made that posting at
11 5:09? Did you speak with Warren Mosler between midnight
12 and 5:00 a.m., or is there some type of time issue that
13 you are aware of?

14 **A I -- I don't recall; however, I didn't call**
15 **him in the middle of the night. It was -- it was not a**
16 **wake-him-up-in-the-middle-of-the-night phone call, so...**

17 Q Okay. What was your purpose in contacting
18 Warren Mosler?

19 **A He was the only person at the time who I**
20 **thought could confirm whether or not the RaptorGTR was a**
21 **genuine Mosler product...**

22 Q Was a genuine Mosler product -- can you please
23 continue?

24 **A ... or not.**

25 Q Okay. So with respect to the November 17th

1 posting, did you contact Mr. Mosler, or did he contact
2 you?

3 **A There -- I got Mr. Mosler's phone number and I**
4 **called him.**

5 Q Okay. Do you recall speaking to anyone other
6 than Warren Mosler regarding whether or not the
7 RaptorGTR was, in fact, a true Mosler company product?

8 **A No, I don't recall.**

9 Q Okay. Now, within the November 17th posting
10 you wrote, "I spoke with Warren Mosler today." So you
11 spoke with him on or about November 17, 2011, correct?

12 **A You know, if this has to hinge on a period of**
13 **12 hours, I cannot give you an accurate answer to that.**
14 **If you want to give it, you know, did it happen within a**
15 **couple days, I mean, I have no reason to believe that**
16 **the conversation didn't happen on or about that day. If**
17 **I say today, then I would take that at face value.**

18 Q All right. Now I'm just trying to nail down
19 the timeline here because if we back up on
20 November 16th, you said you got an email from Todd
21 Wagner, the owner of the car in question.

22 **A Uh-huh.**

23 Q And it said -- and you wrote "He," meaning
24 Todd Wagner, "is not very happy with me. His email
25 reads as follows," and you included it.

1 And then it appears -- you say "Now it's
2 possible that the RaptorGTR is a genuine Mosler product,
3 so far has been limited to one copy, but that's not the
4 whole story." Now later on you say, "It seems at least
5 as of June 3rd, Todd Wagner actually was the head of
6 engineering at Mosler, but this morning I called
7 Mosler's office and a representative steadfastly claimed
8 Wagner does not work there now and should not be
9 considered a representative of the company."

10 Does that refresh your recollection as to
11 whether or not you spoke to anyone prior to your
12 conversation with Warren Mosler on or about
13 November 17th?

14 **A As I said just a minute ago, I don't recall**
15 **speaking with anyone --**

16 Q Please slow down.

17 **A Oh, my apologies.**

18 Q Go ahead.

19 **A As I said just a minute ago, I don't recall**
20 **speaking with anyone else; however, at the time I wrote**
21 **this, everything in the post here was true to the best**
22 **of my knowledge. And I -- if I said I called someone at**
23 **Mr. Mosler's, then I would take that at face value as**
24 **well.**

25 Q "At face value" meaning you don't write things

1 that you didn't do, correct?

2 **A** **That's correct. I mean, I think that is a**
3 **sweeping generalization that I don't want to cover my**
4 **entire life, but I think that in this comment as it**
5 **pertains to this situation, everything I wrote in the**
6 **comment is true to the best of my knowledge,**
7 **including -- and that while I will stipulate that I do**
8 **not recall any conversation with someone else at Mosler,**
9 **if I wrote that I called, then I think I can safely say**
10 **that I called.**

11 **Q** I'd like to back up to the November 15th
12 comment, in the middle of the page. It says
13 November 15, 2011 at 10:48 p.m.

14 **A** **10:48 p.m. Yeah, okay. I have it.**

15 **Q** All right. And you wrote "Yeah, I wasn't
16 trying to quote/unquote call you out or anything like
17 that, but I just learned of the whole con yesterday and
18 thought PTAC would be the perfect place to unleash the
19 truth about the quote/unquote Mosler RaptorGTR."

20 So as of November 15, 2011 at 10:48 p.m., give
21 or take time change hours or things like that, you were
22 under the impression that James Wagner was somehow
23 conning people into believing that the RaptorGTR was an
24 official Mosler product, correct?

25 **A** **I would say that as of November 15th that that**

1 is correct; that I did not believe that the RaptorGTR
2 was a genuine Mosler product. Yes, that's correct.

3 Q Sure. November 15, 2011 at 6:10 p.m. when you
4 wrote the post that's in front of you that's a part of
5 Exhibit Number 4 to today's deposition, were you aware
6 of whether or not James Wagner and/or any company
7 associated with Mr. Wagner was a licensed distributor of
8 Mosler Automotive?

9 A No.

10 Q Thereupon, Exhibit 7 was marked for
11 identification.

12 MR. ZAPPOLO: And just for clarity, to move
13 things along, Counsel has stipulated that Exhibit 7
14 is the Exclusive Distributorship of Mosler Products
15 and --

16 MR. WEBER: Well, hold on. I didn't say
17 "exclusive." It's just the same exhibit that's
18 already been admitted into evidence.

19 MR. ZAPPOLO: That is entitled "Exclusive
20 Distributorship of Mosler Products in China and
21 Thailand," correct?

22 MR. WEBER: All I'm saying is it's the same
23 exhibit.

24 THE COURT: Let's read the deposition.

25 MR. ZAPPOLO: Ms. Clerk?

1 THE CLERK: Yes.

2 MR. ZAPPOLO: Can you find me that document?

3 I believe it's pre-marked as 7 from yesterday.

4 MR. WAGNER: Scott, I think it's 290.

5 MR. ZAPPOLO: I think it's 290.

6 THE CLERK: I have it as 74.

7 MR. ZAPPOLO: You have it as 74? Okay. That

8 looks different. It looks like this.

9 Thank you. Okay. Exhibit 290, in evidence as

10 74. I'm sorry, I believe we were at page 36, line

11 9. Let's pick up there.

12 BY PLAINTIFFS' COUNSEL:

13 Q Sure. November 15th at 6:10 p.m. when you
14 wrote the post that's in front of you that's a part of
15 Exhibit Number 4 to today's deposition, were you aware
16 of whether or not James Wagner and/or any company
17 associated with Mr. Wagner was a licensed distributor
18 for Mosler Automotive?

19 A No.

20 Q Thereupon, Exhibit 7 marked for
21 identification. The witness stated?

22 A At the time, no, I was not aware of any
23 Distributor Agreement.

24 Q Okay. So you were not aware of Exhibit 7 at
25 the time that you wrote that post, correct, within

1 Exhibit Number 4?

2 **A No, I was not aware.**

3 Q Okay. When you spoke with Mr. Mosler in
4 the -- whatever time frame I guess it was on or about
5 November -- let's back up -- November 17th, did
6 Mr. Mosler tell you that Mr. Wagner had a
7 Distributorship Agreement?

8 **A I don't recall.**

9 Q Yet Mr. Mosler made it clear to you that the
10 RaptorGTR was not a Mosler product, correct?

11 **A Yes, he did.**

12 Q Okay. Let's back up for a minute. On your
13 November 15, 2011 post at 6:10 p.m., will you flip the
14 page from where it shows that it -- so there's a good --
15 it shows what it says, "So here's a good story for
16 you" --

17 **A Yeah.**

18 Q -- one complete paragraph. And a second
19 paragraph that begins, "But that's not the good part."
20 You wrote, This guy contacted us as a representative of
21 Mosler saying he wanted to get the -- get the car on the
22 show. The "this guy" that you were referring to was
23 whom?

24 **A I believe I'm referring to Mr. Wagner.**

25 Q Okay. So at least back in 2011, you recall

1 that Mr. Wagner contacted us, being the show, as a
2 representative of Mosler, meaning Mosler Automotive,
3 saying he wanted to get the car on the show, correct?

4 **A Yes, that's correct.**

5 Q So when you're -- back then your recollection
6 was that Mr. Wagner represented himself to "The Car
7 Show" as being a representative of Mosler Automotive and
8 he wanted to get the RaptorGTR on your show to promote
9 that vehicle, correct?

10 **A To the best of my knowledge, yes, that's**
11 **correct.**

12 Q Nevertheless, your understanding is that
13 because of Warren Mosler's statement to producers at
14 "The Car Show," that the producers at "The Car Show" and
15 others at "The Car Show," including yourself, concluded
16 it was not -- I'm sorry -- that the RaptorGTR was not a
17 Mosler product, correct?

18 **A Correct.**

19 Q Page 52. All right. Would you agree with me
20 that on or about November 15, 2011 at 6:10 p.m., you had
21 reached the conclusion that Mr. Wagner was a con man?

22 **A Yes.**

23 Q Okay. And then when we flip forward, you
24 actually had conversations with Mr. Mosler, correct?

25 **A Yes, I did have a conversation with**

1 **Mr. Mosler -- one.**

2 Q Okay. And he said -- and he confirmed that
3 the twin-turbo conversion to the RaptorGTR Mosler 900S
4 will not pass emissions and is not certifiable for
5 public sale, correct?

6 A That -- yeah. I mean, again, I don't recall
7 some of the more specific details of that conversation,
8 but if I wrote that, that's what he told me at the time.
9 My memory would have been very fresh then, so I would
10 say that if I said that, then I would stand by it now.

11 Q Examination by defense counsel.

12 Okay. If we go back to the comments, the
13 first one on November 15th at 6:10 p.m., you typed in
14 your comment, "A phone call to Warren Mosler revealed
15 that this guy didn't actually work for Mosler at all."

16 You just testified that you called a Mosler
17 company and spoke to someone. Do you know if you ever
18 actually spoke to Warren Mosler regarding if the
19 plaintiff was, in fact, working for a Mosler company at
20 that time?

21 A As I said before, as of the time of the
22 writing of this first comment, I didn't speak to
23 Mr. Mosler.

24 Q Okay.

25 A Later I spoke to Mr. Mosler personally who

1 backed up all the things I said in this initial comment.

2 Q Further examination by plaintiff's counsel.

3 Mr. Farah, you testified a minute ago that
4 Ms. -- when you spoke to Mr. Mosler, he backed up
5 everything you said in your initial comment. The
6 initial comment that you were referring to was your
7 November 15, 2011 at 6:10 p.m. comments?

8 A Allow me to clarify that because I realize
9 that there are things I said in that comment that do not
10 relate to my phone call with Mr. Mosler. So please let
11 me clarify the statement that I made about that.

12 When I spoke with Mr. Mosler, he said that
13 Mr. Wagner did not work for him, was not representing
14 the company, Mosler Automotive, and that the RaptorGTR
15 was not his product.

16 And I thought that was consistent with the
17 fact that the RaptorGTR did not exist on Mosler's
18 website or marketing, or any of that kind of stuff.

19 MR. ZAPPOLO: That's the end of the
20 transcript, Your Honor.

21 THE COURT: Cross-Examination?

22

23 CROSS-EXAMINATION

24 MR. WEBER: Start on page 43.

25 BY DEFENDANTS' COUNSEL:

1 Q And the red flags when you saw the car
2 personally at the Mojave airstrip were what?

3 A The car did not have any Mosler badging on it,
4 which I found odd. The simple fact that Mr. Wagner
5 wanted the car to be on the program was odd, to be
6 perfectly honest. Small first-season television
7 productions are rarely contacted out of the blue by
8 small batch supercar manufacturers. And just the fact
9 that -- that we had -- they had the car at all was
10 strange; the cars was not working right was strange
11 because of the car's success in endurance racing; to
12 have a car that overheated was odd. And the fact that
13 the -- the Ms. Cubey's song turned on every time you
14 started the car, I thought that was very odd for a
15 demonstrator vehicle.

16 There was a combination of things that were
17 not in line with my previous experience with
18 demonstrator cars having to do with that vehicle.

19 Q You wrote, "The RaptorGTR thing is just a name
20 he made up for this one car, which isn't surprising
21 considering the lack of creativity. Speaking as someone
22 who owns a vehicle also called Raptor, the badges looked
23 like they were hand-cut from double-sided vinyl."

24 A Yes.

25 Q Those are the -- those -- let me back up.

1 What are the badges you were referring to
2 there?

3 **A They were the ones that said RaptorGTR. I**
4 **again repeat that the car did not have any Mosler**
5 **badging. It said RaptorGTR on it in vinyl.**

6 Q All right. You would admit to me that in
7 hindsight it does appear that the car that you tested
8 was, in fact, manufactured by Mosler, wouldn't you?

9 **A I would say that the chassis and the body and**
10 **probably the interior were manufactured by Mosler. I**
11 **could stipulate that; the power train, I have no idea.**

12 Q What changes were made to the power train on
13 the RaptorGTR after it left the factory that you are
14 aware of?

15 **A Sir, I don't know at what point the**
16 **twin-turbos were put on this vehicle, but I know that**
17 **the Mosler MT900S is not sold with twin-turbos. So I**
18 **can't tell you when they were put on, but I can tell you**
19 **this car's twin-turbos -- twin-turbocharge in the MT900S**
20 **is not.**

21 Q Okay. But as you sit here today, you still
22 doubt that the RaptorGTR that you saw tested is an
23 official Mosler product, correct?

24 **A Okay.**

25 Q 48, line 22.

1 A I've seen very little evidence to the
2 contrary.

3 Q But you've accepted other vehicles as being
4 genuine Ford products, haven't you, without certificate
5 of origin?

6 Oh, hold on a second. You're on 49, 3.

7 A I have seen -- I have not seen sufficient
8 evidence to suggest that it is a genuine Mosler product.

9 Q Okay. So when Mr. Wagner showed you the
10 certificate of origin for a vehicle, that wasn't enough
11 for you?

12 A Sir, as I said in my original comment, I'm not
13 a specialist on small batch supercars. So, frankly, you
14 can send me a certificate of origin, but I don't even
15 know what a certificate of origin is. And this document
16 that was sent, the certificate of origin, is not
17 original. It's a Xeroxed copy of something. I don't --
18 I frankly don't -- I don't know what a certificate of
19 origin is. I have never seen one for another vehicle
20 ever in my whole life, so I don't know what to tell you.

21 Q And do you recall that music video? This is
22 58.

23 A I do. I would say that music video is
24 unforgettable.

25 Q Okay. And why is that?

1 A Because it's terrible.

2 Q Did you ever speak to anyone that works at the
3 Mosler Auto Care Center?

4 A There are several different company names
5 thrown around in these proceedings.

6 Q Right.

7 A I spoke to someone who worked for Mr. Mosler.
8 I could not tell you the specific name of the company
9 that the person worked for.

10 Q And when was it that you spoke to that person?

11 A It was -- I can probably tell you. I mean, it
12 was -- it was on or about November 16th. It would have
13 to have been the person who gave -- who -- well -- I --
14 yeah, I called Mr. Mosler's office and a representative
15 denied Mr. Wagner works there now.

16 Q Okay.

17 A And I -- I spoke to somebody.

18 Q Do you happen to have the name of the person
19 you spoke to?

20 A I do not. I'm sorry.

21 Q You're on 64, 15.

22 A As I said before, as of the time as of the
23 writing of this first comment, I didn't speak to
24 Mr. Mosler.

25 Q Okay.

1 **A** **I later spoke to Mr. Mosler personally who**
2 **back up all the things that I said in this initial**
3 **comment.**

4 **Q** **Mr. Farah, you testified a minute ago that**
5 **when you spoke to Mr. Mosler, he backed up everything**
6 **you said in your initial comment. The initial comment**
7 **that you were referring to was your November 15, 2011 at**
8 **6:10 p.m. comments?**

9 **A** **Allow me to clarify that because I realize**
10 **that there are things I said in that comment that do not**
11 **relate to my phone call with Mr. Mosler. So please let**
12 **me clarify the statement I made about that.**

13 **When I spoke with Mr. Mosler, he said**
14 **Mr. Wagner did not work for him, was not representing**
15 **the company, Mosler Automotive, and that the RaptorGTR**
16 **was not his product.**

17 **Q** **All right. Let me -- all right. He didn't**
18 **volunteer whether or not there were any contracts**
19 **between Mosler Automotive and Mr. Wagner or any company**
20 **controlled by Mr. Wagner for distribution, did he?**

21 **A** **I don't recall.**

22 **MR. WEBER: No further questions.**

23 **THE COURT: Mr. Zappolo?**

24 **MR. ZAPPOLO: Nothing further, Your Honor.**

25 **THE CLERK: Your Honor, Exhibits, please.**

1 MR. ZAPPOLO: Yes.

2 THE CLERK: Thank you.

3 THE COURT: Can I see the attorneys?

4 Mr. Weber.

5 (Thereupon, a sidebar conference was held.)

6 THE COURT: So now you're going to call the
7 plaintiff. I called you up just for timing
8 purposes.

9 MR. ZAPPOLO: Okay.

10 THE COURT: It's a hard stop at 12 o'clock
11 today, so at 11:55 I'm going to cut you off and put
12 them in the jury room. If the food is here, great.
13 If not, they'll get it. And I'm going to take a
14 break until about 1:15. So it's a hard stop at
15 11:55 just so you can pace yourself. Okay?

16 MR. WEBER: There's a problem with the food.
17 Several of the jurors ordered antipasto salad, but
18 the deputy told me to choose something randomly,
19 but I don't think that's a good idea. If they
20 wanted antipasto salad, I don't think they'll be
21 happy if I choose something randomly and they don't
22 like it.

23 THE COURT: I think you should choose it.

24 MR. WEBER: Yeah? A salad?

25 THE COURT: You guys are paying for it, just

1 get them a salad. It won't make a difference.

2 MR. WEBER: Okay.

3 THE COURT: But, you know -- yeah, look, you
4 guys have been more than nice enough.

5 MR. WEBER: Okay.

6 THE COURT: You know, if they want something
7 else, they can go buy it at this point.

8 MR. WEBER: All right.

9 THE COURT: But, you know, we have to get the
10 show on the road.

11 MR. WEBER: Yeah.

12 THE COURT: I don't want to wait just to
13 address the lunch.

14 MR. WEBER: Exactly.

15 THE COURT: So hard stop at 11:55.

16 MR. WEBER: Okay.

17 MR. ZAPPOLO: All right. Plaintiff calls
18 James Todd Wagner, Your Honor.

19 THE COURT DEPUTY: Swear in with the Madam
20 Clerk. Raise your right hand, please.

21 THE CLERK: Do you solemnly swear or affirm
22 that the evidence you're about to give will be the
23 truth, the whole truth, and nothing but the truth?

24 THE WITNESS: I do.

25

DIRECT EXAMINATION

1 BY MR. ZAPPOLO:

2 Q Good morning.

3 A **Good morning.**

4 Q Would you introduce yourself to the jury,
5 please.

6 A **Hi. I'm James Wagner.**

7 Q Okay. And Mr. Wagner, have you ever gone by
8 any other names?

9 A **Yes. My mom and dad called me "Todd" when I
10 was born.**

11 Q And when did you use "Todd Wagner" or up until
12 when?

13 A **I went by "Todd Wagner" up until approximately
14 April of 2012.**

15 Q Okay. And when were you born?

16 A **January 5, 1971.**

17 Q Okay. So '71 through 2012 you used the name
18 "Todd," correct?

19 A **Yes.**

20 Q All right. When you stopped using the name
21 "Todd," what name did you begin to use?

22 A **My first name, "James."**

23 Q Why did you change your name or why did you
24 start using the name James in 2012?

25 A **Well, I was unemployed and had been for a**

1 better part of a year. Much of that time was working on
2 the distributorship for Mosler products. And then after
3 all this stuff exploded, I needed to get a job and there
4 was so much defamation about me online under the name
5 "Todd Wagner," that I -- even with my credentials, that
6 I thought were fairly good, I couldn't get a job, and --

7 Q Okay. Now after you began -- then you said
8 you started using the name "James." What other
9 issues -- what other things did you do with respect to
10 trying to find a job?

11 A Well, I changed my name to "James" on my
12 resume, which is still my first name, and I did get some
13 interviews. Then I -- in one particular instance it was
14 for a jet engine sales position. When he called me back
15 and said "Are you Todd?" I was like "Yeah."

16 So apparently he had called the Mosler factory
17 and they gave him a -- you know, a dump about me and so
18 I didn't get that job, and then I took the next step of
19 taking Mosler off of my resume entirely.

20 Q Okay. And after you changed -- you went back
21 to using the name "James" and/or when you started using
22 the name "James" and you took Mosler Auto Care Center
23 off your resume, what happened with respect to your job
24 search?

25 A I got a job within two weeks --

1 Q Okay.

2 A -- in Connecticut.

3 Q And why did you take a job in Connecticut?

4 A I was desperate at that point. I mean, I was
5 just broke and needed something and this -- I had to
6 jump on it.

7 Q Okay.

8 A It paid fairly well.

9 Q All right. And how did you -- how did you
10 work out the logistics of that job in Connecticut?

11 A I told them I could start in three days and
12 packed up my stuff and drove to see -- my cousin lived
13 there, so I rented a room from him, so it helped him and
14 it helped me with the inexpensive rent.

15 Q Okay. I want to start off with a few
16 questions about your educational background. Can you
17 explain to the jury about your education, starting with
18 college?

19 A Yes. I went to Virginia Tech for engineering
20 school and received a Bachelor's of Science in
21 Engineering. I went to focus on aerospace. I was very
22 interested in jets and aerodynamics and race cars, so I
23 focused on a lot of aerodynamic studies.

24 Q Okay. And there are some documents in
25 evidence that reference or display some --

1 A **Yes.**

2 Q -- parts of cars and things.

3 A **Yes.**

4 Q Like the nose piece here and the --

5 A **Airflow management around the canopy, the**
6 **wings.**

7 MR. WEBER: Objection, leading --

8 THE COURT: Overruled.

9 MR. WEBER: -- the question.

10 BY MR. ZAPPOLO:

11 Q Okay. What role did your aerospace interests
12 in airflow technology, et cetera, interest play in your
13 work on the cars at Mosler Auto Care Center, if any?

14 A **Well, just looking at these photos, so the**
15 **original body shape was done by Rod Trenne, as**
16 **Mr. Mosler testified, and so I was upgrading it from**
17 **there with the next generation of the same, you know,**
18 **basic chassis because all that was excellent. All the**
19 **basic chassis, the roof structure, all of it was**
20 **excellent.**

21 Q When you say "excellent," what do you mean?

22 A **Well, it was very well-designed. All of the**
23 **best materials in the world. Carbon fiber, the roof**
24 **structure was a U-shape that came up, and it was like**
25 **almost like three-eighths of an inch thick, solid carbon**

1 fiber. And when they tested it, they did a roof crush
2 test, so they put like a -- I can't remember the exact
3 weight. It's like maybe 1500 pounds on the upper
4 corner, and it's the strongest car that Tesla had ever
5 tested, so that was excellent.

6 Q Okay.

7 A So he --

8 Q But as an engineer, did you have -- what, if
9 any, suggested changes to the body did you make?

10 A Yes. Well, in here, you can see the sort of
11 things that are scooping off to the side. That's the
12 air outlet for the radiator and it's --

13 Q You're indicating an exhibit with a hood of a
14 car picture, right?

15 A With the car that's orange.

16 Q Okay.

17 A So there's a big kick-up of the front which
18 kicks air up over the top of that air outlet which
19 creates a low pressure zone right where the air is
20 coming out of the radiator, so that low pressure sucks
21 the air out and it pulls it way far away from the body.
22 Because the original design wasn't like that and the hot
23 air would come right into the windows, so when you put
24 the windows down, you're just getting, you know, a sauna
25 because the radiator outlet was coming right into the

1 car, so this would help with that.

2 Q Okay.

3 A Also a larger intake for the nose for more
4 airflow. And the back was very open so that we could
5 exhaust all of the heat from the turbos. And a lot of
6 modern supercars have adopted this where the rear of the
7 bumper is larger, just honeycomb, so it looks really
8 cool. And the exhaust, it's such a great suction to
9 pull the hot air out of the engine bay.

10 Q Okay. Now we got a little bit sidetracked
11 there with your engineering degree. Do you have any
12 other degrees?

13 A Yes. I had the opportunity to go to Yale for
14 my MBA.

15 Q Okay. And, by the way, when you were at --
16 working on your mechanical engineering degree, what was
17 your grade point average?

18 A 3.7 out of 4.

19 Q Right. Now while you were at Yale, did you do
20 anything for a living?

21 A Well, I raised some venture capital for new
22 suspension technology that I had invented and patented.
23 I have three patents on that, so that was something I
24 did in parallel with my studies.

25 Q Okay. You were here when Mr. Mosler testified

1 about something called link-X?

2 A Yes. That was link-X, link-X suspension.

3 Q And can you explain to the jury what the
4 link-X suspension does?

5 A Yes. So, so like if you imagine my forearm is
6 a tire, and it started driving towards you and you turn
7 this way, the car wants to go that way, centrifugal
8 force (Indicating). So there's a force on the tire this
9 way to push to make sure that the vehicle doesn't slide.

10 So if you can imagine it, you push here, the
11 tire wants to do that. And the body also --

12 Q And for the record, you're indicating and your
13 arms are moving --

14 A Yes.

15 Q -- and you're showing the tilt?

16 A Yes.

17 Q Okay.

18 A So, essentially, I created the geometry that
19 allows -- when the tire does that, the body goes in the
20 opposite direction. So it inverts that overturning
21 moment so that the two can become an equilibrium around
22 the corner without having to have springs absorb the
23 overturning movement.

24 So the car can be very softly sprung and be
25 very nice over bumps if it goes around corners like a

1 race car even if it's a SUV.

2 Q Okay. What, if anything, came of this link-X?

3 A Oh, I sold it to Metaldyne.

4 Q Who's Metaldyne?

5 A They're a supplier for automotive companies.

6 It's called Tier 1 Automotive Supplier. They provide

7 suspension modules for the big automakers.

8 Q Okay. So when you say "the big automakers,"
9 who are you talking about?

10 A Ford, GM. I don't know if they do

11 Lamborghini. Those are the big ones.

12 Q Okay. After you left -- I'm sorry, you said
13 you got a job in Connecticut. What were you doing in
14 Connecticut?

15 A I was designing the machines that make
16 microchips.

17 Q Okay. Compared to cars, how precise is that
18 one?

19 A It's ridiculously insane. One of the
20 accuracy -- and a lot of this was in the optics area,
21 which I was not in. The accuracy is akin to taking a
22 flashlight and hitting a quarter that's sitting on the
23 moon, so this is the type of accuracy. You need to
24 make, like, I'd say 13.5 nanometer wide wires, you know,
25 bazillions of them on a chip. It's really cool stuff.

1 Q Okay. Now, did you -- do you have any other
2 hobbies or anything that you do that applies -- that is
3 related in any way to this case?

4 A I take my cars on the track and I volunteer
5 for Kids Racing for Life where you drive kids who have
6 health problems around the race track. It's sort of a
7 kind of a derivative of Make-A-Wish but just on a very
8 small basis, just like one day, one or two days.

9 Q Okay. You've been in the courtroom. I think
10 I've used the phrase, maybe other people have used the
11 phrase, "car guy."

12 A Oh, absolutely.

13 Q Can you tell the jury, what's a car guy?

14 A That's me. I mean, I'm a car guy inside and
15 out. I love cars and I love thinking about cars. I
16 dream about them all the time and I think about
17 improving them. It's -- it's my passion.

18 Q Okay.

19 A Well, it was my passion.

20 Q All right. Now I'd like to take a few minutes
21 to talk about the allegations in this complaint, okay,
22 very specifically, and I'm going to go through some of
23 the things that perhaps ought to be considered here.

24 The first thing I'd like to talk with you
25 about is your claim related to unjust enrichment for

1 Environmental Protection Agency approvals. Can you
2 explain to the jury how the EPA process works?

3 A So the EPA process, you have -- you send a
4 proposal into the EPA and a -- you know, they approve
5 and tell you what tests you have to run. And then you
6 run those tests and then you send the data back to them.

7 And then there's also onboard diagnostics
8 which is really, really, really challenging, especially
9 for the California side. The California side is all but
10 impossible for a small volume manufacturer. The fact
11 that I was able to sort of reverse-engineer all of the
12 code that was in the General Motors ECU for 2009, I'm
13 actually shocked that it actually worked out.

14 Q Okay. I want to interrupt you for a second.

15 A Okay.

16 Q Because you used the phrase "onboard
17 diagnostics." Is there an acronym that's used for that?

18 A OBD or OBD-II.

19 Q Okay.

20 A It's a little port --

21 Q Okay.

22 A -- that you stick it in.

23 Q You mentioned a port. Would you explain to
24 the jury what you meant by that.

25 A You may -- down in the footwell is a little,

1 like, rectangular plug. And you see these things on
2 T.V. once in a while. Like you plug it in, like the
3 insurance, and they can -- they can get feedback from
4 the car to see if you're driving like a grandma or if
5 you're driving like a, you know, a race car driver.

6 Q Okay. What other information can you get from
7 an OBD-II port?

8 A Air/fuel ratio, knock.

9 Q Okay.

10 A Also --

11 Q Why is air/fuel ratio important in this case?

12 A Well, air/fuel ratio is just a standard thing
13 that -- 14.7 to 1 is the standard for burning fuel. So
14 14.1, 14.7 -- wait. I think it's 14.1. I think it's
15 14.7. 14.7 pounds of air for every pound of fuel, so
16 there's a lot more air than fuel. So that's why you
17 need, you know, big turbos and all that to get a lot of
18 air in to make power.

19 Q Okay. Well, so you were talking about the
20 process of the EPA certification. I kind of cut you
21 off.

22 A Yes.

23 Q I want to back up and just ask you: When was
24 the first time you were asked to do any work for EPA
25 certification at Mosler Auto Care?

1 **A I think it started in early 2008.**

2 Q Okay.

3 **A Approximately.**

4 Q And what was your task with respect to EPA
5 certification in 2008?

6 **A Well, we were going to integrate a 7-liter
7 engine into the chassis and we did a light --**

8 Q For what car?

9 **A For the Mosler MT900S.**

10 Q Okay. So your first foray into an EPA
11 certification was for the EPA certification for the
12 MT900S for what model year?

13 **A It wound up being a 2009 model year.**

14 Q Okay. So based upon your -- well, let me back
15 up.

16 Who did you have to interact with in order to
17 work on this EPA certification?

18 **A Joel Ball at the Environmental Protection
19 Agency. And there was another fella named Pevehouse.
20 His last name was Pevehouse. I think he was more on the
21 onboard diagnostics side.**

22 Q Okay.

23 **A So there's literally two sides. One is the
24 onboard diagnostics, and one is the emissions side.**

25 So the emissions side is the same for

1 California as it is for the rest of the country, so that
2 is identical. The one thing that is different is the
3 onboard diagnostic side, which for the whole country,
4 the federal, they allowed us to just use the General
5 Motors ECU and their monitors.

6 Q What is an ECU?

7 A Oh, engine control unit.

8 Q Okay. And what does an engine control unit do
9 in a vehicle?

10 A It controls air/fuel ratio, monitors for
11 knock, the timing of the spark.

12 Q Okay.

13 A And those things.

14 Q The air/fuel ratio, knock, and the timing of
15 the -- well, wait. What do you mean when you say
16 "knock"?

17 A Well, we get a preignition. And if the fuel
18 ignites before the intended spark ignites it, that's --
19 it just makes a little knocking noise on the engine and
20 you just make sure that that doesn't happen.

21 Q Okay. And what does that do? If that timing
22 of the fuel being ignited is off in an engine, what
23 impact, if any, can that have on pollutants into the
24 air?

25 A Well, it can change the pollutants of it and

1 **it can also damage the engine, so...**

2 Q Okay. So you had mentioned that -- pardon me.
3 You had mentioned the air/fuel ratio, knock, and what
4 was the third thing?

5 **A Timing.**

6 Q Okay.

7 **A Ignition timing.**

8 Q And all these things affect what with regard
9 to what the EPA is concerned about?

10 **A Well, it's the tailpipe emissions.**

11 Q Okay. The emissions of the vehicle for
12 pollutants into the air, correct?

13 **A Oh, on the particular drive cycle that they**
14 **test it on. So the drive cycle is a prescribed**
15 **acceleration curve where you accelerate, you know, at a**
16 **certain -- from this speed to this speed in this amount**
17 **of time, and it's the same for all cars. So even like a**
18 **Yugo from way back when would have to do this curve. So**
19 **it's a very gentle curve, an easy -- so for a supercar,**
20 **you're barely breathing on the throttle when it's doing**
21 **the curve.**

22 Q Okay. And why is that -- is that a concern?

23 **A It's a concern?**

24 Q Is that a concern when trying to get a car
25 certified, a supercar certified?

1 **A** **Well, I mean, I don't know what you mean by**
2 **"concern."**

3 Q Okay. I'll just move along.

4 So you mentioned you were working with the EPA
5 and you mentioned that the EPA allows you to use
6 something. What do they allow -- what does the -- well,
7 let me back up.

8 I believe there was some testimony about
9 self-certification. Do you know what that phrase means?

10 **A** **I think that's more on the crash-testing side.**

11 Q Okay. And what about --

12 Okay. So how does the EPA know whether or not
13 a car pollutes?

14 **A** **Well, you send them the data.**

15 Q Okay. And where do you get the data?

16 **A** **From the test lab.**

17 Q Where do you -- and who is the test lab that
18 Mosler Auto Care Center used?

19 **A** **There was a few of them. They're mostly out**
20 **in California.**

21 Q Okay. And, by the way, when you were doing
22 this work, who were you -- were you working for Mosler
23 Auto Care?

24 **A** **Yes.**

25 Q Okay.

1 **A For most of the time.**

2 Q And were you ever employed by -- well, let me
3 back up.

4 What is Supercar Engineering?

5 **A Supercar Engineering is my company.**

6 Q Okay. Now were you employed by Supercar
7 Engineering?

8 **A Yes. And Supercar Engineering was the
9 subcontractor to Mosler as an independent contractor.**

10 Q Okay. Now, who -- why did you go to work for
11 Mosler Auto Care Center through this conduit of Supercar
12 Engineering?

13 **A Mr. Mosler asked me to --**

14 Q Okay.

15 **A -- at the very beginning.**

16 Q Who actually formed the company Supercar
17 Engineering?

18 **A Mr. Mosler's attorney, Alan Simon.**

19 Q Okay. So rather than being a direct employee
20 of the company, you had your own company, Supercar
21 Engineering, and you worked through that company as an
22 independent contractor for Mosler Auto Care Center,
23 correct?

24 **A Yes. And I also did independent contractor
25 work for some other things from time to time as well,**

1 but that's not really a part of this case.

2 Q Okay. So you performed that work. Who
3 benefited from the work that you did for the EPA
4 certification?

5 A MACC. MACC did. It was all for them.

6 Q Why -- why do you say that MACC benefited?

7 A Well, they're the ones who received the EPA
8 Certificate of Conformity for their cars.

9 Q So what -- what does that mean? What does
10 that matter?

11 A That means they can actually do business.
12 They can actually sell cars if they have that, but of
13 course as you saw earlier, the years they didn't have it
14 they kept building cars anyway.

15 Q Okay. Well, did anyone at MACC know that
16 Supercar Engineering was doing this work?

17 A Of course. Mr. Mosler asked me to, asked
18 Supercar Engineering to do.

19 Q Okay. Did you have conversations with anyone
20 else or share information with anyone else at MACC about
21 your efforts to get that EPA?

22 A Jill Wagner knew about it. She was also an
23 officer of MACC and she was the administrative contact
24 for all the EPA certifications stuff, and she's the one
25 who signed them and knows all that stuff.

1 Q Is all that -- the last line of questioning
2 about who benefited, et cetera -- true with respect to
3 the 2012 certification as well?

4 A Absolutely. It was for MACC. It's assigned
5 to Consulier/Mosler Automotive. Both of those combined
6 entities are part of MACC, which is owned by Warren
7 Mosler.

8 Q Okay. So when, if ever, did SEI obtain the
9 EPA approvals for the 2009 MT900S?

10 A It was in December of 2009.

11 Q Okay. And with respect to timing of that
12 certification, what was important?

13 A Well, it expired December 31, 2009, so it only
14 had, like, two weeks to build cars legally, but that
15 didn't matter to Mr. Mosler.

16 Q Okay. Now, what is a running change?

17 A A running change is something that's very
18 common in the automotive industry. It essentially
19 allows the manufacturer to do derivatives of the
20 original design and then do an engineering analysis of
21 how it would affect the emissions and provide the
22 engineering analysis to the EPA, and they evaluate your
23 analysis and then either approve it straight out, that
24 it's fine, you can just -- you don't have to do
25 anything, or they ask for a subset of tests to validate

1 that what you've told them is true.

2 Q Okay. With respect to this case, is a running
3 change important at all?

4 A Yes.

5 Q Explain to the jury why.

6 A So for the 2012 RaptorGTR, at that time
7 Mr. Mosler didn't want to spend a lot of money on
8 certification, but we obviously needed a new model
9 because the company was failing. Even the Photon, as
10 beautiful as it is, it still didn't have those features
11 that the customers wanted. You know, the Corvette
12 taillights were still there and it didn't have an exotic
13 power plant. So I invented a way to keep all of the
14 engine configuration the same so that the catalyst is
15 right up against the engine just like it is in the 2009
16 and all that is identical.

17 So then we have mufflers. So you have the
18 engine and then the manifolds, where the air is coming
19 out of the engine, and then it comes into the catalyst
20 and the catalyst cleans the emission. And then from
21 there, it went back to mufflers in the 2009 car.

22 So my proposal to the EPA was let us take the
23 mufflers off and put turbos there, but they're very --

24 Q You said turbos. You mean --

25 A Turbochargers.

1 Q Okay. And what is a turbocharger for anyone
2 who might not know much about cars?

3 A A turbocharger is essentially like a turbine,
4 like a jet engine on one side, and a compressor on the
5 other side. It's like a jet engine in reverse.

6 So the exhaust is, of course, flowing like a
7 river through the pipe and it goes into this turbine and
8 it makes it spin and it will spin really -- 160,000
9 RPMs, so it's flying in there like a jet engine. And
10 then so that spinning is on a shaft that goes over to
11 the other side, which is the cold side of the turbo and
12 it is a compressor.

13 So, essentially, it takes the air and, like,
14 squeezes it down into a denser amount so you can get --
15 so you can take this much air and squeeze it into this
16 much space and then move that into the engine so then it
17 has more air so it can burn more fuel so it makes more
18 power. And it's very efficient because it doesn't
19 actually -- you're using the exhaust flow, which is
20 really wasted energy, and using that to compress the
21 air.

22 So it's a very, very elegant design. It's
23 been around for a long time and now it's very, very
24 common in cars.

25 Q Okay. So just so we're clear on this, when

1 the engine is going through its firing sequence and the
2 engine is firing, it creates an explosion in the engine,
3 correct?

4 **A Right.**

5 Q Okay. And when the explosion happens, what's
6 created?

7 **A Exhaust.**

8 Q Okay. And the exhaust is in the form of what?

9 **A Gas.**

10 Q Gas, okay. So the exhaust gases then go
11 where?

12 **A Out the exhaust. Well, they go into the
13 manifold and they go out the -- the exhaust gas goes
14 into the catalyst.**

15 Q The exhaust manifold?

16 **A Yes, which is like tubes.**

17 Q Okay.

18 **A And then it goes into the catalyst, which is
19 like just like a pipe that has lots of little honeycomb
20 inside.**

21 Q I want to stop you for a minute. We heard
22 some testimony about headers and long tube headers.
23 Where does that play into this?

24 **A Oh. Well, so all of the cars were certified
25 with the General Motors -- what's called a manifold. So**

1 **there's a little bit of difference --**

2 **A manifold and a header are similar and then**
3 **they both carry the exhaust gas, but a manifold is a**
4 **very tight, small thing, and those are better for**
5 **emissions because the catalyst needs heat in order to**
6 **work. So --**

7 Q So when you say "catalyst," we hear about
8 things being stolen off cars.

9 **A That's the catalyst being stolen off cars.**

10 MR. WEBER: Objection, hypothetical,
11 speculation.

12 THE COURT: Let's approach.

13 MR. ZAPPOLO: I'll just move on, Your Honor.

14 I'll withdraw it.

15 **THE WITNESS: Yeah.**

16 BY MR. ZAPPOLO:

17 Q Is there another name for -- or another common
18 name that people use when they talk about --

19 **A Cats. Cats. They call them cats.**

20 Q Okay. What is a catalytic converter?

21 **A It cleans out the exhaust.**

22 Q With respect to catalysts, how is a catalyst
23 different from a catalytic convert?

24 **A They're the same.**

25 MR. WEBER: Objection, relevance.

1 THE COURT: What is the relevance?

2 MR. ZAPPOLO: I wanted to -- because we have
3 common parlance and I want the jury to understand
4 what the terminology is and use here.

5 THE COURT: Overruled.

6 THE WITNESS: Okay. So, catalysts. So I
7 think I know where you're going with this. So,
8 like, the Photon had long tube headers which means
9 the exhaust would cool off by the time it got to
10 the catalyst, which means the catalyst wouldn't
11 work as well which is why it's illegal.

12 Also, the catalyst itself is a very small,
13 ultralightweight one, which is in line with --
14 Warren Mosler wanted ultralight everything. And so
15 it didn't work as well.

16 And so it wasn't certified that way, but
17 Mr. Mosler wanted it built that way because it's in
18 line with the "ultralight is everything"
19 philosophy.

20 BY MR. ZAPPOLO:

21 Q Okay. Who made the decision about how the
22 Mosler MT900S were ultimately built?

23 MR. WEBER: Objection, relevance.

24 THE COURT: Overruled.

25 THE WITNESS: Mr. Mosler. It's his money.

1 **It's his company.**

2 BY MR. ZAPPOLO:

3 Q Okay.

4 **A He's the one making the calls.**

5 Q All right. And what impact, if any, did SEI,
6 as an independent contractor, have on those decisions?

7 **A Well, I would certainly make decisions on --**
8 **well, not decisions, let me back up -- made suggestions**
9 **on things. And I mean, generally speaking, Warren and**
10 **I, I thought, worked pretty well together. I was doing**
11 **the invention stuff and he would approve this or that.**
12 **And there was some things we disagreed on obviously, but**
13 **overall I felt very lucky to have that job --**

14 Q All right.

15 **A -- at the time.**

16 Q Now we were talking about running change and
17 we got offtrack a little bit. So, back to the running
18 change. Explain to the jury how running change is
19 important.

20 **A So it just allows -- allows the manufacturer**
21 **to have a new model or a new derivative of the model**
22 **without the enormous expense of going through all the**
23 **testing again.**

24 Q Okay. So with respect to the 2012 RaptorGTR
25 certification process, how does running change apply?

1 **A** Well, as it was mentioned earlier, we did an
2 engineering analysis and mentioned to them that we were
3 going to use large turbos and that on the drive cycle,
4 which I was mentioning earlier, that it's very easy for
5 a supercar like this to go on without hardly any
6 throttle. So the turbos are so large, they're only
7 serving the same function as a muffler. So that's what
8 we presented to the EPA. And they're like oh, okay.

9 And it does make sense. You hear about turbo
10 lag, the Raptor intentionally had a turbo lag, so the
11 power was up high.

12 **Q** Right. And there was a line of questioning
13 before with Mr. Frank --

14 **A** Right. Yes.

15 **Q** -- about turbo lag.

16 **A** Yes.

17 **Q** Was Mr. Frank -- well, let's back up.

18 Did you retain Mr. Frank to give any
19 engineering analysis or --

20 **A** No.

21 **Q** -- any type of opinion --

22 **A** No.

23 **Q** -- about turbo lag or anything like that in
24 this case?

25 **A** No, not at all.

1 Q Okay. To the best of your knowledge, is he
2 qualified to give such testimony?

3 A I'm sure he knows what it is, but --

4 Q All right. But explain to the jury how turbo
5 lag applies -- is relative to the 2012 RaptorGTR since
6 it's been brought up.

7 A The engineering analysis we took is that we
8 were going to take all of the test data from the 2009
9 car, which I was the one managing the certification for
10 that, which it passed, and said okay. We're going to
11 make -- use this exact same engine and all that. The
12 catalysts are up before the turbos, as I was just
13 mentioning. And then the turbos aren't building boost
14 during this drive cycle, and like any sort of, like,
15 really weak car can go through the drive cycle.

16 So the Raptor is super, super lightweight,
17 2580 pounds, and also very streamlined, so -- and all
18 that's taken into account as far as the acceleration.
19 So you're really just sort of like touching the throttle
20 and it's going (audible noise), you know, so it never
21 actually builds boost, therefore, the turbos are just
22 acting like mufflers, therefore, it's equal. It's the
23 same.

24 Q Okay. And did you present that information to
25 the Environment Protection Agency?

1 A Yes. And Warren Mosler knew all about it.

2 Q Okay. And what was the result?

3 A They said that it looks okay, but they wanted
4 to do a catalyst temperature comparison.

5 Q And who had to do a catalyst temperature
6 comparison?

7 A Well, we sent it to the test lab out in
8 California.

9 Q Okay. And were there emails, back and forth
10 communication?

11 A Yes. Mr. Mosler knew every single thing about
12 it. Every step of the way, he approved everything,
13 including the cost to ship it out there. Everything.

14 Q And what was the ultimate result?

15 A The catalyst temperatures were very
16 comparable. The Raptor was slightly hotter but, like,
17 on average, like, 0.9 percent, which isn't much at all.
18 And hotter is better. So the EPA guy said since hotter
19 is better -- and this is in line with what I was talking
20 about earlier.

21 In the Photon, the catalyst would be very cold
22 because a lot of heat from the exhaust is, like, exiting
23 through the long tube headers before it gets to the
24 catalyst.

25 Q So just so we're clear, you mentioned earlier

1 heat helps the catalyst to remove pollutants?

2 **A Exactly.**

3 Q Okay. So the EPA -- you were saying the EPA,
4 did they -- what was the ultimate result of all of this
5 effort?

6 **A We achieved certification and one email says**
7 **"You're a go on durability."**

8 Q Okay.

9 **A So we got certification, which is an enormous**
10 **win, an enormous win. We finally had a product that**
11 **could be profitable because it had all these exotic**
12 **elements that, you know, Mosler's idea or vision didn't**
13 **have.**

14 Q Okay. Now there's a -- when you ultimately
15 got the EPA certification, do you remember that day?

16 **A Yes.**

17 Q What was the --

18 **A August 12, 2011.**

19 Q Okay. August 12, 2011. And what did you do
20 when you found out you had EPA certification?

21 **A I started dancing. I was very happy. I mean,**
22 **I was like, you know, probably like I'm going to feel**
23 **after this trial is over. It was a long, long, long**
24 **journey, and we achieved something truly great.**

25 **We had the highest power-to-weight ratio car**

1 on the planet. And Mosler should have been thrilled,
2 and he was. He said "Good job" with three exclamation
3 points. And this is something that would have made his
4 company profitable, like super profitable. From running
5 at basically breakeven for years, it would wind up
6 making a profit, a big one.

7 Q When, if ever, did Mosler Auto Care Center
8 tell you "Don't do this work"?

9 A Never.

10 Q Okay. When did, if ever, did Mosler Auto Care
11 Center or anyone there tell you they didn't want you to
12 do the work for EPA certification?

13 THE COURT: Mr. Zappolo.

14 MR. ZAPPOLO: Yes, sir. Yes, should he answer
15 the question?

16 THE COURT: No. We're going to -- Deputy, can
17 we put the jury in the waiting room? We're going
18 to break for lunch now. I'm not sure if the lunch
19 is here yet, but we do have to take a break now.
20 We'll reconvene -- we'll say 1:30, okay. So we'll
21 be in recess until 1:30.

22 You're on the stand. Do not discuss your
23 testimony with anybody else, including your
24 attorney, okay?

25 THE WITNESS: Okay.

1 (Jurors exit the court room at 11:57 a.m.)

2 MR. ZAPPOLO: Did you say 1:15, Your Honor?

3 THE COURT: 1:30.

4 (Thereupon, a lunch break was taken from
5 11:58 a.m. to 1:41 p.m.)

6 THE COURT DEPUTY: Come to order. Court's
7 back in session.

8 THE COURT: All right. Please be seated.

9 All right. Let's bring them out.

10 THE COURT DEPUTY: Jury entering.

11 (Jurors enter the courtroom at 1:42 p.m.)

12 THE COURT: All right. Please be seated.
13 Plaintiff, it's your witness.

14 MR. ZAPPOLO: Thank you, Your Honor.

15 THE COURT: Just a reminder, you're still
16 under oath from earlier today.

17 **THE WITNESS: Yes, sir.**

18 BY MR. ZAPPOLO:

19 Q Mr. Wagner, when we broke for lunch, we were
20 talking about your EPA certifications, et cetera.

21 **A Yes.**

22 Q The documentation that are in evidence with
23 the copies of the EPA certifications that were testified
24 about in this case, those are true and correct copies of
25 the EPA certifications for the 2009 model year and the

1 2012 model year that you obtained via Supercar
2 Engineering's work on behalf of Mosler Auto Care Center,
3 correct?

4 **A Yes.**

5 Q Now, there's a Bill of Sale in -- excuse me,
6 an invoice in evidence that talks about credits and
7 debits for the 2012 RaptorGTR, correct?

8 **A Yes.**

9 Q Okay. And does that document have anything to
10 do with EPA certification payments?

11 **A Well, it shows I'm getting some credits
12 towards the purchase of a 2012 RaptorGTR in exchange for
13 cash for doing that -- for SEI doing that work.**

14 Q Okay. Well, SEI was getting credits towards
15 SEI's purchase of the Raptor, correct?

16 **A Yes. That's right.**

17 Q All right. Now, it's -- I understand it's
18 difficult to keep in mind, like, SEI versus James
19 Wagner, but I need to ask this question: Did Supercar
20 Engineering have an agreement with Mosler Auto Care
21 regarding those credits?

22 **A Yes. They are to continue until certification
23 had been achieved, but then later on Mr. Mosler decided
24 to cut them off as of April 15, 2011.**

25 Q Okay. So how long did -- once you got that

1 EPA certification -- I think you told the jury it was
2 like August 12th or something of 2011, right?

3 A Yes. Interestingly, there was a little bit
4 more that wound up being done after the fact for the
5 durability part.

6 Q Okay.

7 A That was achieved in September 28th I think is
8 when they gave me that. I'm not sure.

9 Q So even though you did the EPA certifications,
10 you continued with automobile work and engineering
11 related to the related issue of durability testing?

12 A Yes.

13 Q Okay. And what's durability testing?

14 A That is ensuring that the catalysts are going
15 to last, you know, like a warranty, so it's not going
16 to, like, degrade and fall apart. And of course it's a
17 General Motor's catalyst on this car, so it was already
18 tested for that durability.

19 Q Okay.

20 A And so that was -- essentially, we were
21 adopting General Motors' durability.

22 Q Okay. And that was a requirement for the EPA,
23 correct?

24 A Yes.

25 Q All right. Now, in this case you have a claim

1 for breach of the warranty for the -- or, excuse me, SEI
2 has a claim for breach of the warranty for the 2012
3 RaptorGTR, correct?

4 **A Yes.**

5 Q All right. And that's -- that warranty is
6 specific -- what does the durability testing have to do
7 with that warranty?

8 **A Well, that's a part of what is covered under**
9 **the federal warranty that cannot be waived. So the**
10 **engine, you know, the valves -- anything that**
11 **essentially handles the air and fuel because that's what**
12 **makes emissions has to be warrantied.**

13 Q And that -- those -- that equipment that's in
14 the car has to last how long according to EPA
15 guidelines?

16 **A Oh, boy.**

17 Q Well, related to the durability test.

18 **A It's either 150,000 miles. I think that's**
19 **what it is, but it's been quite a while. I'm not fully**
20 **sure.**

21 Q Okay. Nevertheless, did you have warranty
22 issues with the 2012 RaptorGTR before that warranty
23 period expired?

24 **A Yes.**

25 Q Okay. And we're going to talk about that in a

1 little while, but I just wanted to touch on that.

2 So now, even though Supercar Engineering was
3 subcontracted with MACC, was there any understanding as
4 to vacation time for James Todd Wagner?

5 **A Yes, I did earn vacation time.**

6 Q Okay. So you earned vacation. Who agreed to
7 pay for James Todd Wagner's vacation time?

8 **A MACC.**

9 Q Okay. Now you were here when Sylvia Klaker
10 testified about that, weren't you?

11 **A Yes.**

12 Q Do you disagree with her agreement that you
13 had been paid for your vacation time?

14 **A That's correct, I had not.**

15 Q And that vacation time had been earned while
16 you were working on what thing for MACC?

17 **A Certification.**

18 Q Okay. So your claim is for the -- what time
19 period does your claim for the EPA certification or does
20 SEI's claim for the EPA certification cover?

21 **A It ends -- all of the work was completed fully**
22 **September 28th, and it was started around maybe late**
23 **2009.**

24 Q But you were -- in fairness, you were given
25 credit towards the car for --

1 **A Yes. I'm sorry, I misunderstood.**

2 Q Okay.

3 **A So it was between April 16th and**
4 **September 28th.**

5 Q Okay. That's what you're asking this jury to
6 award --

7 **A Yes.**

8 Q -- you damages for? Or award SEI damages for,
9 correct?

10 **A Yes.**

11 Q And how should this jury calculate that
12 damage?

13 **A Well, two possible ways. One is just an**
14 **hourly rate that I was being paid, and the other is what**
15 **is the value of what was created.**

16 Q Okay. What is the -- what was your hourly
17 rate?

18 **A At the time I was earning the equivalent of**
19 **75,000 a year.**

20 Q Okay. And what does that equate to?

21 **A 6,250 per month.**

22 Q And do you recall the breakdown of that?

23 **A It was about five and a half months that I**
24 **hadn't been paid, so I believe it's like \$34,000.**

25 Q Okay.

1 **A Something in that range.**

2 Q And then the vacation time?

3 **A That's \$1,809, I believe.**

4 Q Okay. Now, what does fairness have to do with
5 this? Well, let me back up.

6 Did you have a written contract for this?

7 **A It was in emails, which I consider to be a
8 written contract. Mr. Mosler trades hundreds of
9 millions of dollars in securities via emails.**

10 Q Okay.

11 **A So I consider this to be a binding contract.**

12 Q Okay. Well, what about fairness with respect
13 to that? Do you have anything to tell the jury about
14 fairness about whether or not you should be paid for
15 that?

16 **A Yes. Of course, in fairness, I should be
17 paid.**

18 Q Okay. Now with respect to you have another
19 claim related to that if the jury doesn't find that, and
20 that's called quantum meruit. Do you have any
21 understanding as to how -- well, let me back up.

22 Do you consider yourself a reasonable person?

23 **A Yes.**

24 Q Okay. Based upon your experience as a
25 reasonable person, would a reasonable person expect to

1 pay for the work that SEI did for MACC?

2 **A Yes, of course.**

3 MR. WEBER: Objection, speculation.

4 THE COURT: Repeat your question.

5 MR. ZAPPOLO: I said based upon his knowledge
6 as a reasonable person, would a reasonable person
7 expect to pay for the work and the benefit
8 conferred upon MACC for the EPA certification work?

9 THE COURT: Let's approach.

10 (Thereupon, a sidebar conference was held.)

11 MR. WEBER: Based upon his experience as a
12 reasonable person, would a reasonable person expect
13 to be paid?

14 THE COURT: I'm sustaining the objection. I
15 think, you know, he worked there. He knows what he
16 was getting paid. You can ask him, but, you know,
17 as worded, the objection is sustained, okay.

18 (Thereupon, the sidebar conference was
19 concluded.)

20 BY MR. ZAPPOLO:

21 Q Did you expect to get paid for work?

22 **A Yes, I did.**

23 Q Now, the next count that you have brought in
24 this case -- or, excuse me, the next count that Supercar
25 Engineering has brought against Mosler Auto Care Center

1 is for breach of a distributorship agreement. Are you
2 generally aware of that?

3 **A Yes.**

4 Q Okay. Now, in the simplest terms, can you
5 explain to the jury what your claim is about?

6 **A Yes. So Mr. Mosler wanted to open up new**
7 **markets, and I did as well. And the Mosler products had**
8 **not been introduced into China or Thailand or many of**
9 **the other countries in Asia and also the United Arab**
10 **Emirates and Saudi Arabia.**

11 Q Okay.

12 **A You remember my friend, fellow Mosler owner,**
13 **Hassan Abboud. His family is from Saudi Arabia and has**
14 **a lot of contacts there, so I had a nice tie-in to help**
15 **me get launched there, and so my company agreed to buy**
16 **the chassis 32 which became chassis 55 with the running**
17 **change to the RaptorGTR --**

18 Q All right.

19 **A -- for that --**

20 Q So we're clear, that's the --

21 **A This --**

22 Q This car?

23 **A Yes.**

24 Q That's in evidence, right?

25 **A Yes.**

1 Q You said chassis 32, chassis 55.

2 A Well, this became chassis 55 with the running
3 change. So it was 32 originally and then as Mosler did
4 the running change, which we described to the EPA to
5 describe the RaptorGTR, the chassis number was changed
6 to 55.

7 Q Okay. So any time the jury sees documentation
8 in evidence that says "chassis 32" or "chassis 55" --

9 A It's that vehicle.

10 Q -- they're referring to this car --

11 A Yes.

12 Q -- the 2012 RaptorGTR?

13 A Correct.

14 Q All right. Now, within the invoice that's in
15 evidence, what reference, if any, is there to this
16 distribution agreement?

17 A The purchase of the car is part and parcel
18 with the purchase of the distributorship. It's
19 mentioned in the top line of the invoice.

20 Q Okay.

21 A And that matches with the email agreements
22 which we had.

23 Q Okay. Explain to the jury how you -- how SEI
24 believes MACC breached the agreement.

25 A Well, I mean, fundamentally, it made it

1 impossible to sell the cars by saying the car's a fake
2 and all of the stuff we've heard.

3 I mean, how can I go off and sell a
4 \$700,000 car when the owner of the company is saying
5 it's a fake and people concluding from that that I'm a
6 con artist?

7 If I tell them that this is, you know, the
8 next Mosler product and then they call the owner and he
9 says it's a fake, of course they're going to assume that
10 I'm trying to con them.

11 Q Okay.

12 A And that's what they did.

13 Q So based upon that, did -- well, when did MACC
14 fail to manufacture or supply cars to SEI?

15 A Well, the entire time they didn't make
16 anything --

17 Q Okay.

18 A -- after this one.

19 Q Now if someone were to ask you "Did you have
20 orders for cars?" what would your response be?

21 A I had orders -- people ready, lined up, but
22 then the launch happened and Mosler just, you know,
23 knocked it on its face and then they were like no way.

24 Even -- you know, you heard Abby through the
25 speakers. I mean, she -- you know, I met with some of

1 these people, not all of them. Like Dr. Sabahi, I met
2 him. And this was a hot commodity. The car looked
3 great. It was exotic.

4 I mean, it sounded like they were driving a
5 fighter jet. It was (audible noise) because the turbo
6 was right there, so it's spinning in the atmosphere. It
7 was just a sensory experience unlike anything that I've
8 ever driven before.

9 Q Okay.

10 A And it just got annihilated.

11 Q Now, you say that the car got annihilated --
12 well, you said "it," I apologize. So what were you
13 referring to when you said "it got annihilated"?

14 A Well, the RaptorGTR and its image at the
15 launch, it just got destroyed.

16 Q Okay.

17 A All the big car magazines, you know, duPont
18 REGISTRY, which is like the very, very high-end cars,
19 they actually had an article -- I think it's in evidence
20 already, I'm not sure, but where they put Mosler
21 RaptorGTR, but then they put a strike-through in the
22 "Mosler" as a little bit of a taunt because they were
23 trying to tell the whole world that it's not Mosler.

24 Q Okay.

25 A And they got that information from, I know for

1 certain, Jill Wagner, whose the vice president of global
2 operations. And I saw this because she --

3 When all of this stuff was happening, I had no
4 idea what was going on. I actually thought these
5 journalists were making it up and I actually was, like,
6 really angry with them. I was like "Gosh, what are you
7 talking about? There's no way. There's no way." I
8 mean, it just seems so improbable that the owner of the
9 company finally had a product that could be profitable,
10 like mega profitable and he just -- it just -- it was so
11 far beyond the realm of possibility, I thought the
12 journalists were making it up. That was my conclusion.

13 My analytical mind was like -- and I talked to
14 Mosler about it. He's like, "Well, okay, point?" He
15 just tried to make it -- be sneaky about it. He didn't
16 admit to doing it. He wanted me to think that I was
17 thinking that the journalists were making it up. He
18 wasn't a man that stood up and said, "Yeah, I was the
19 one who did it." I get -- all right.

20 Q I'm showing you what's been -- I understand.
21 Take your time.

22 A I'm a little, yeah.

23 Q Okay. Now, with respect to Exhibit Number 40
24 in front of you, I want to talk about one of your claims
25 related to trade libel or commercial disparagement.

1 Can you explain to the jury what you're suing
2 for in that count?

3 **A Well, what I understand that to mean is**
4 **when -- say if you have a mouse trap --**

5 Q Let's just go to the claims in this case.

6 **A Okay. Okay.**

7 Q What are you suing for?

8 **A Trade libel means that someone says "Oh, this**
9 **product is bad" for whatever reason and that's untrue.**

10 Q Okay.

11 **A So you're, essentially, like -- it's sort of**
12 **like defamation but against a thing, a product.**

13 Q Okay.

14 **A It's defamation against a product is probably**
15 **the easiest way to say it.**

16 Q All right. So, what was said --

17 And, by the way, what's the product that SEI
18 is suing on behalf of?

19 **A The 2012 RaptorGTR, which SEI owned.**

20 Q Okay. That SEI owned. And so who suffered
21 the damage when that product, the 2012 RaptorGTR was
22 defamed?

23 **A Well, SEI did, but I'm the 100 percent owner**
24 **of SEI, so me as well.**

25 Q Okay. But SEI is bringing that claim,

1 correct?

2 **A Yes.**

3 Q All right. Now, what was untrue that was said
4 about that car?

5 **A Well, everything that -- we've gone through a
6 lot of this, I don't want to reiterate it, but the car
7 was a fully legitimate EPA-certified Mosler product.**

8 Q Okay. So stop, please.

9 **A Yes.**

10 Q Within Exhibit Number 40, "The Truth About
11 Cars" article where Mr. Mosler stated the car will not
12 pass emissions and is not certifiable for public sale,
13 was that a true statement or false statement?

14 **A That's a false statement.**

15 Q Okay. How do you know that's a false
16 statement?

17 **A Well, because we have the EPA certification.**

18 Q Okay. And what about if someone were to say
19 "Oh, yeah, you might have EPA certification, but it
20 was -- it won't pass emissions"? What do you say to
21 that?

22 **A No.**

23 Q Okay. Who did the -- who handled that whole
24 process?

25 **A The EPA certification?**

1 Q Yes.

2 A My company did, SEI.

3 Q Okay. So who's in the best position to know?

4 A My company is. I am.

5 Q Okay. Did anyone ever ask you whether it
6 would pass emissions?

7 A No.

8 Q Okay.

9 A I mean, Mosler was happy about it. There's an
10 email that says "Good job."

11 Q Okay.

12 A So that's why I was so perplexed. I was so
13 perplexed at the time. I was like "You said good job
14 and now this?"

15 I couldn't, at the time, like, conceptualize
16 why and I still am struggling with that a decade later,
17 but I think I know why now.

18 Q Well, with respect to struggling to understand
19 what was going on, there are documents that -- emails in
20 evidence where you were talking to journalists that had
21 written articles that you're suing on, correct?

22 A Yes.

23 Q Okay. What was your initial reaction when
24 someone would say something that you thought was untrue?

25 A Well, one of them, Benjamin Greene, I wrote

1 him an email saying "This is wrong." I said, "I am
2 going to clear my name and Warren Mosler's name."

3 Q Okay.

4 A And I said that because I really thought
5 Mr. Mosler was being victimized here because the car is
6 legitimate, and it was his ticket to making all of his
7 \$50 million investment in MACC back. He could have made
8 his money back. And so I was like how on Earth --
9 there's no way he would do this.

10 I mean, it seemed illogical to people who --
11 like, you know, ordinary people walking around Publix,
12 that you'd have this golden goose and you'd just break
13 its neck.

14 Q Okay. Now --

15 A I'm sorry, I'm getting a little overexcited.
16 I'll chill.

17 Q I understand. That's why I'm trying to pause
18 so you can calm down for a minute.

19 Now, evidence that the 2012 RaptorGTR is, in
20 fact, a Mosler product, what evidence can you think of
21 just off-the-cuff as you sit here in front of the jury?

22 A It was entirely built inside the Mosler
23 factory. All of the invoices for its construction were
24 invoiced from the Mosler factory to Supercar
25 Engineering. Supercar Engineering --

1 Q Who approved payments at Mosler Auto Care
2 Center?

3 A Who approved payments?

4 Q Who approved for making payments? You
5 remember Ms. Klaker testified about something --

6 A Yeah. She put the invoice in, but then she
7 sent everything to Mr. Mosler and he approved
8 everything.

9 Q So as you sit here today, is there any way at
10 all that you could fathom that Mr. Mosler could not
11 understand that that was a Mosler Auto Care Center
12 vehicle?

13 A Zero. I mean 000.0000.

14 Q All right. So let's say that Mr. Mosler
15 thought that you had modified the car. What would you
16 explain to this jury about that position?

17 A I think that's baloney.

18 Q Okay.

19 A He doesn't think that; he knows that.

20 Q Okay. Well --

21 A He's made that up after the fact to help cover
22 his comments with trade libel.

23 Q Well, did you modify anything at all having to
24 do with the EPA certification or crash-test worthiness
25 or anything like that with respect to the car?

1 **A** **No way. That makes the car less valuable.**
2 **It's a factory correct, highest power-to-weight ratio**
3 **car on the planet at the time. Why on Earth would I**
4 **spend money to make it less valuable? That is a**
5 **completely illogical thing to do, and I didn't even have**
6 **the money to do it at that time. I was all in on this.**
7 **Like my entire life savings was buried in that beautiful**
8 **piece of equipment.**

9 **Q** **Okay. With respect to the distributorship**
10 **contract that's in evidence, what was the requirements**
11 **about presenting the car to any media outlets?**

12 **A** **It was required to present the car in at least**
13 **one media outlet in China and Thailand.**

14 **Q** **And when you did that -- by the way, is one of**
15 **those in evidence?**

16 **A** **Yes. It's sitting right over there.**

17 **Q** **Oh, okay.**

18 You may recall that I'm showing you now the
19 Asia Release News Service, right?

20 **MR. WEBER:** Scott, can you move back a tiny
21 bit so I can see it?

22 **MR. ZAPPOLO:** Oh, I apologize.

23 **MR. WEBER:** All right.

24 **BY MR. ZAPPOLO:**

25 **Q** **Okay. What reaction do you recall Mr. Mosler**

1 giving when this release went out?

2 **A** Well, he -- he sent me an email saying "Is
3 this your work?" And I'm like "Yeah."

4 **Q** Okay. Well, so --

5 **A** In a derogatory tone, at least that's the way
6 I received it. And then I looked on the article and he
7 says "Mosler is not involved in this."

8 **Q** Okay. You were here when he testified about
9 that, right?

10 **A** I think it's on the other side too.

11 **Q** It's not.

12 **A** Oh, okay.

13 **Q** You were here when he testified about that,
14 right?

15 **A** Yes.

16 **Q** Okay. And the distinguishing factor of --
17 what do you have to say about when Mr. Mosler wrote
18 "Mosler's not involved in this"? What was he writing
19 about with respect to this?

20 **A** He was writing about the car. The article is
21 about the car. The music video was just sort of
22 something to create a little bit of buzz, something
23 different. Like we see the everyday every day. There's
24 something different and unusual that would make people
25 remember it and create a viral video.

1 And Abby is one-quarter Chinese -- if I
2 remember, she's one-quarter Filipino and one-quarter
3 Chinese and half-Spanish, so she has a lot of -- she's
4 from a fairly wealthy family. So she's the creator
5 behind the music video for the most part. I mean, I
6 contributed and I did the stunt driving and things like
7 that, but the blowing fire and stuff is her.

8 Q Right. Let's talk about that for a minute.

9 What other Mosler products have, if any, have
10 been used in music videos?

11 A All of them.

12 Q Okay. Can you explain to the jury what you
13 mean by that?

14 A Well, it's -- I mean, music videos are a part
15 of the pop culture. And, you know, not a lot of people
16 are watching T.V. anymore, so, like, music videos and
17 things like this is a way to create buzz about car
18 products.

19 Q Okay.

20 A So one of the illegally built 2004 Raptor --
21 not Raptor, sorry -- illegally built 2004 MT900S was in
22 a Triple C music video called "Go." It was the red one
23 doing doughnuts and everything, and Mosler loved it. He
24 sent it to his kids and said "Hey, look at this."

25 Q Okay.

1 **A** **There was a 2009 silver one which was in a**
2 **Young Jeezy, Drake, and DJ Khaled video called --**

3 **Q** **Hold on. Drake and DJ Khaled, the rappers?**

4 **A** **Yes.**

5 **Q** **Okay.**

6 **A** **And the music video is called "Fed Up." I did**
7 **the stunt driving in that as well. And this car was in**
8 **a Flo Rida music video.**

9 **Q** **Flo Rida?**

10 **A** **Flo Rida.**

11 **Q** **Okay.**

12 **A** **Flo Rida, Erika Jayne. It wasn't driven, it**
13 **was static in that one. They were sitting on it.**

14 **Q** **Okay. So this was -- so with respect to**
15 **whether this was commonplace or really rare to have the**
16 **car -- a Mosler Auto Care product used in a video, where**
17 **was it on the scale of common to really rare?**

18 **A** **I think the cars have been in a total of five**
19 **music videos.**

20 **Q** **Okay. Counting the one that you did?**

21 **A** **Yes.**

22 **Q** **Okay. So that's -- you did 20 percent of the**
23 **music videos that the cars have been -- that Mosler Auto**
24 **Care Center products have been featured in?**

25 **A** **That's correct, yes.**

1 Q Okay. So if someone were to say that's
2 outrageous that you did a music video, what would you
3 say to that?

4 A **It's baloney. It's just a red herring.**

5 Q Okay. Now with respect to the marketing
6 budget at Mosler Auto Care Center, what was it while you
7 were there?

8 A **I guess \$1,300 a month, near 0.**

9 Q \$1,300 a month? Okay. And --

10 A **For that Grass Roots Motorsports ad that was**
11 **shown earlier.**

12 Q That was -- that's in evidence, correct?

13 A **Yes. That was the only thing.**

14 Q Okay. So --

15 A **Which I think is part of why the company**
16 **struggled. Mr. Mosler didn't want to spend that money**
17 **on marketing.**

18 Q Right. Mr. Mosler, when he was on the stand,
19 he said you were doing manufacturing and sales, right?

20 A **Yes. I was doing everything I could to make**
21 **his dream come true, and it was my dream as well. I**
22 **mean, I was busting my butt. All -- I gave him my**
23 **heart, soul, all of my mind, everything. It was -- I**
24 **was all in to help his dream happen.**

25 Q Well, you were legally insane to do that,

1 weren't you?

2 **A** I mean, I know you're not trying to make me
3 laugh a little bit, but I thought I was doing something
4 good. And I thought I was doing something good for the
5 world. And in looking back, I should have been --

6 In the future I'm going to be applying my
7 abilities to doing things that are generally good for
8 the world, and not supercars. Not to say that supercars
9 don't have a place in the world, but anyway...

10 **Q** Can I have this back, please?

11 **A** **Yeah.**

12 MR. ZAPPOLO: Ms. Clerk, can I have 39,
13 please, in evidence?

14 THE CLERK: Yes.

15 BY MR. ZAPPOLO:

16 **Q** Now while she's getting that, I want to
17 continue with you and ask you: When were you diagnosed
18 as having severe mental problems?

19 **A** **Never.**

20 **Q** When were you diagnosed as having mental
21 problems at all?

22 **A** **Never.**

23 **Q** What if the other side took the -- well, let
24 me back up.

25 Had you ever conveyed to Mr. Mosler that you

1 had severe mental problems?

2 **A No.**

3 Q Had you ever told him that you had mental
4 problems of any kind?

5 **A No.**

6 Q I believe there was some testimony about you
7 having a car accident. Do you remember that?

8 **A Yes.**

9 Q Okay.

10 **A I do remember that.**

11 Q Explain to the jury, what was the cause of
12 that car accident?

13 **A The rear tires on my car, the car that -- it
14 wasn't my car, the car that I was driving at the time,
15 were expired and they were six years old. The tires
16 should be replaced after five years. And these tires
17 had been bought because they were very rare. They were
18 only on the Porsche Carrera GT, which is the exotic car
19 that Paul Walker was in when he was killed out in
20 California, the fiery crash.**

21 Q What was determined to be the cause of that?

22 **A The expired rear tires were the cause of that
23 crash that killed him. And those tires were bought six
24 years prior and then they were put on the boat --**

25 Q Hold on. Wait. Those tires?

1 **A The tires that were on the car that I crashed.**

2 Q All right. Let's try this: What was the name
3 of the owner of the vehicle that you were involved in a
4 crash with?

5 **A It was a Mosler Auto Care Center-owned**
6 **vehicle. It was leased to someone, but it was owned by**
7 **Mosler Auto Care Center.**

8 Q Okay. So Mosler Auto Care Center leased the
9 car to someone and put six-year-old tires on it?

10 **A That's correct, yes.**

11 Q Okay. And tell me what you know about -- or
12 tell the jury what you know about the tires that were on
13 that car.

14 MR. WEBER: Objection, relevance.

15 THE COURT: Sustained.

16 BY MR. ZAPPOLO:

17 Q Do you know of anyone else who had an accident
18 in a Mosler Auto Care Center vehicle?

19 **A Yes.**

20 MR. WEBER: Objection, relevance.

21 THE COURT: Sustained.

22 MR. ZAPPOLO: It goes to the claim. I'm
23 sorry, Your Honor.

24 THE COURT: Approach.

25 (Thereupon, a sidebar conference was held.)

1 THE COURT: How does this prove this claim?

2 MR. ZAPPOLO: This goes to the malice, Your
3 Honor. They're saying one of the reasons that he
4 supposedly has mental -- severe mental problems is
5 when -- the evidence of that, from their testimony,
6 is that he's got -- that he got into this accident.
7 The facts are -- the true facts are that there were
8 not one, not two, but three Mosler Auto Care Center
9 vehicles that were in crashes within a three-month
10 period all because of these defective tires that
11 were on the vehicle.

12 They know darn well that there was no -- that
13 he had nothing to do with that accident; that the
14 tires were the problem. And for them to say he's
15 insane because he's recklessly driving or doing
16 reckless things in that car is totally unfounded
17 and this should be --

18 THE COURT: All right. Objection sustained.

19 (Thereupon, the sidebar conference was
20 concluded.)

21 BY MR. ZAPPOLO:

22 Q Can you think of -- what were the other
23 reasons that were given for evidence of your severe
24 mental problem? Do you remember any?

25 A That I got divorced was one of them.

1 Q Okay.

2 A This is what defendants is saying. I'm
3 mentally ill because of this.

4 Q I understand. What else?

5 A They say that I fell in love with the nanny at
6 my house.

7 Q Okay.

8 A And, I mean, I can attest to that. I mean, I
9 fell in love with her while I was married to someone who
10 was my boss and who treated me very poorly. And I did
11 actually break up with her and then tried again with my
12 wife, and the aggression that she showed to me just
13 continued, and I couldn't -- I would rather stare down
14 the barrel for the rest of my life or die of a heart
15 attack --

16 Q Stop, stop. Please stop. I don't want you to
17 go --

18 A Anyway, the divorce.

19 Q I understand. Is there anything else that was
20 given as a basis?

21 A They said something about I had a risky eye
22 surgery.

23 Q Okay. Explain to the jury about your eyes.

24 A Okay. So when I was in 8th grade I was dating
25 a young lady. And when I went over to her house and we

1 were out in the backyard and her little brother tapped
2 me on the shoulder, and I turned around and he poked me
3 in the eye with a straw. Like, I don't know why little
4 kids do these things, but it hurt me.

5 And it got worse over time. It got to like a
6 big, red splotch on my eyeball, and I woke up in pain
7 every day from it. And there was a surgeon out in
8 California who would actually sort of, like, just
9 basically shave it off.

10 Q Okay.

11 A And I did that, it was wonderful, and that
12 pain was all gone and -- but they were saying that means
13 I'm mentally ill.

14 Q Okay.

15 A If there's anything else, I don't remember.
16 It was all silly stuff.

17 Q Okay. Now --

18 A Oh, and didn't they say I had like a head
19 injury? It was actually because I broke my leg, but
20 then Jill testified that it was a head injury, but it
21 was my leg. I had a big scar on my leg.

22 Q Okay.

23 A I have the medical records, so that's also
24 silly, just making things up.

25 Q Well, you say "silly," but you've alleged that

1 these things were said with ill will, malice, spite.

2 A No. Their defenses for it are silly. Like,
3 they're making up these defenses that is nonsense.

4 Q Okay. What evidence do you have to share with
5 this jury that the comments that the car -- that --
6 excuse me, that you have severe mental problems were
7 made with malice or spite or just a reckless disregard
8 for your rights?

9 A Well, Mr. Mosler knows that a RaptorGTR was a
10 Mosler product. Even though he sent his -- Sylvia up
11 here to say it's just an MT900, he knows it's a Mosler
12 product. He knows I own it. He knew I had my life
13 savings in it, and he went and destroyed the value of it
14 knowing that it would hurt me.

15 Q Okay.

16 A And at the same time he wanted to -- you know,
17 you saw how he got angry about the Photon article
18 because the Raptor looked like it was better than the
19 Photon; so his vision looked here, whereas my vision
20 looked here (Indicating).

21 Q And for the record, you're indicating one --

22 A One down is the Photon and the RaptorGTR is --
23 was superior. And the journalists out in the world were
24 creating buzz about the Raptor and forgetting all about
25 his Photon and that made him really angry.

1 On June 3rd is when he said we need a press
2 release saying that Mr. Wagner's comments don't
3 represent Mosler and Mosler builds the MT900 -- the
4 Mosler Photon is manufactured U.S. legal, which of
5 course is a lie, so he wanted to promote his Photon as
6 being a Mosler product, even though it's illegal in,
7 like, five different ways, and then push my Raptor down.

8 It's like this competitive nature. It's like
9 he wanted to compete against me and in order to win, he
10 had to shove me down. And I noticed him doing that, and
11 that's why he also wanted to make my deposit forfeitable
12 at that moment --

13 Q Okay.

14 A -- which I didn't agree to that.

15 Q Right. And we have in evidence -- we have
16 May 2nd, right? May 2nd email exchange, right?

17 A Right. Where the deposit was going to be
18 refundable. He offered that, and I accepted that.

19 Q Okay.

20 A And I never imagined he would do this stuff
21 behind my back, just sort of like fabricate up fake
22 documents to say he gets to keep it. It's absurd.

23 Q So the May 2nd email exchange that's in
24 evidence, you said Mr. Mosler offered that the deposit
25 could be refundable if someone else buys the company,

1 correct?

2 **A Yes. He made the offer.**

3 Q And that's in the documents, right?

4 **A Absolutely.**

5 Q And then later on up in the chain you did
6 clarify what that meant, right?

7 **A I immediately clarified it.**

8 Q Okay.

9 **A And he said yes. So we had a clear meeting of**
10 **the minds that my \$100,000 deposit bought me three**
11 **months of exclusivity, and if I didn't close within the**
12 **three months and someone else bought it, I got my money**
13 **back. I felt comfortable with that. That's why --**

14 Q By the way, you keep saying "me," bought "me"
15 exclusivity. Who was doing the buying?

16 **A Well, it was me or my company.**

17 Q Okay. Now Mr. Mosler testified that there
18 were a lot of different negotiations and different
19 permutations of the purchase attempts by you or your
20 companies. Is that true?

21 **A I think that's a bit misleading. It also**
22 **tries to -- it tries to meld -- the agreement about the**
23 **\$100,000 deposit was clear.**

24 Q Okay.

25 **A It was that. We agreed that I was going to**

1 buy it for \$1 million and it included X number of
2 assets. If I wanted to pay 4 million, I'd have the
3 building as well. So that was the deal: 1 million for
4 the company, including several -- three finished cars
5 and then the building. But then during my exclusivity
6 period he sold off three of the cars without telling me.

7 So it's like you put a deposit on to buy a car
8 and then you go to buy the car and there's no engine in
9 it. And the guy's like "Well, you agreed to buy this
10 car for a million dollars."

11 "Well, where's the engine?"

12 He's like "Oh, the engine is gone, so what?
13 Give me the money."

14 It's like that kind of ridiculous stuff. You
15 can't do that. You just can't do that. I mean, imagine
16 if you go to the car dealership and you put a deposit
17 down and he goes "There's no engine," and they still
18 want you to buy the car.

19 Q Okay. Let's keep on track.

20 A I know.

21 Q Okay. So you testified a minute ago that you
22 were going to buy the company or its assets. And just
23 so that we're clear, if there are emails that pop up
24 about asset purchase versus a share or stock purchase,
25 explain to the jury what was going on.

1 A Okay. So shares in a company are, of their
2 own, worthless. It's just whatever the shares own.

3 So, like, if you buy a share of GM, if GM
4 sells off all its assets, it's not worth anything. So
5 it's whatever -- the stock owns the company and the
6 company owns assets.

7 So, and I want to take one step back to this
8 fella, Savvas Savopoulos. He's the person who Warren
9 wanted to buy the company, not me.

10 Q Okay.

11 A Savvas -- he agreed to Savvas that he would
12 buy the stock and the assets. It was a hybrid stock and
13 asset sale, and that makes perfect sense as the way it
14 should be. You have to identify what the stock is and
15 then what the stock owns.

16 Q Why was it important -- what did the stock own
17 that wouldn't have been transferred by just a simple
18 asset sale?

19 A I don't think I follow that.

20 Q Could you purchase the EPA certification?

21 A That was linked to the stock.

22 Q Okay. So how important was the EPA
23 certification?

24 A Without the EPA certification, that company is
25 100 percent worthless. It's actually worth less than

1 the zero because the insurance fraud and liability
2 associated with that car was about \$220,000.

3 Q For the record, you're indicating a picture of
4 the burnt Alan Simon car?

5 A Alan Simon car, yes.

6 Q All right. We're going to talk about that one
7 in a minute.

8 So you were talking about asset purchase
9 versus stock purchase and then you said Mr. Savvas was
10 doing a hybrid one?

11 A Yes. Let me -- I can kind of explain this in
12 one fail swoop if you --

13 Q Please do.

14 A And so that's a reasonable purchase. So that
15 way you're getting the stocks. You know, you're getting
16 the EPA certification and you're getting the assets,
17 which the assets are like the jigs to make the frames,
18 the molds to make the body, spare parts, engines,
19 transmissions, all of those things that go into making
20 the car, so you really need both.

21 And Savvas was going to get both and
22 Mr. Mosler knew that and was fine with it, and that was
23 the correct way to go. During this --

24 So now I'm going to explain the progression of
25 my attempts to buy the company.

1 Q Okay.

2 A So it was, first, \$1 million for three
3 finished cars -- or used cars, but they were still
4 finished cars; and a bunch of Consuliers, which were
5 much older cars; and all of the jigs and the molds and
6 all of the components we need to actually build a whole
7 bunch more cars and, like, go for this.

8 Q Okay.

9 A Then he sold off the finished cars without
10 telling me, and then so I was like "Well, okay. So you
11 sold off \$600,000 worth of used cars. I'll pay you
12 500,000." This is technically --

13 Q You just jumped, and I think your mind jumped.
14 So you said Mr. Mosler sold off \$600,000 worth of cars.

15 A So I said "I'll pay you less money."

16 Q So then you told Mr. Mosler what after finding
17 out that Mr. Mosler had sold off those cars without
18 telling you?

19 A I said, "Okay. I'll agree to a lower price of
20 \$500,000."

21 Q Okay.

22 A And he agreed to that.

23 Q All right.

24 A And let me finish, okay?

25 Q Yes.

1 A So then I went back to my investor and said
2 "This is the situation." And I came back and said
3 "Okay. Let's have closing documents."

4 Then he told me he would change his mind, he's
5 going to have his son run the company. And so I'm like,
6 "All right. Well, am I going to get my money back?"

7 And then a little -- a short while later I saw
8 Mr. Mosler's son and Mr. Mosler too. They did a public
9 launch of the Photon again. It's still illegal, but
10 they tried -- essentially tried it again. So they
11 shoved the Raptor down and then said, "Okay. Here's the
12 Photon. This is a real Mosler product" even though it's
13 totally illegal and it flopped the second time.

14 So then I said, "Hey, Mosler, Mr. Mosler,
15 let's do a win-win scenario. Your son can have a
16 distributorship in the U.S.A. and I'll pay
17 \$150,000 more," and he agreed to that. I called it a
18 win-win proposal.

19 We could have done this together. We could
20 have done this together, you know that, right? All this
21 time we could have done this --

22 Q Please stay focused over here.

23 A Okay. So he agreed to that, and I'm like
24 "Great, let's do it." But then Alan Simon, who did the
25 insurance fraud and burnt the car there, tried to get me

1 to pump it up, which I thought was really unethical. I
2 didn't do it.

3 When I didn't comply with the insurance
4 pump-up request, they stripped me off of the website as
5 a distributor. Now all this --

6 Q Now there are emails in evidence about that?

7 A Emails in evidence about that, so --

8 Q Emails about removing you from the website?

9 A They didn't tell me. It was all done in
10 secret behind my back. All of this stuff was all
11 secret. You know, why not step up and be a man and just
12 tell me, you know.

13 Q Okay.

14 A All right. So getting on with it.

15 So then Mr. Mosler, through his attorney,
16 unilaterally changed the -- one, he took out
17 \$150,000 worth of assets, so now I'm paying 150,000 more
18 and getting 150,000 less. So technically I'm paying
19 another 300,000 is what I agreed to, but I still said
20 okay. I would be willing to do that because it was
21 worth it to me, but then he does something really,
22 really, really, really -- what reminds me of what he
23 tried to do to that guy Furman and his investor.

24 So he said "Okay. You can buy the company,
25 but you can only buy the stock and I'm not going to tell

1 you what the stock owns." And we -- and Alan Simon
2 forced the liability associated with that insurance
3 fraud to be owned by the stock.

4 So, in other words, the only thing I
5 definitively knew I would be buying for \$650,000 is
6 liability associated with that burned car.

7 Q Okay.

8 A Which is, like, negative \$220,000. So he
9 engineered the documents so he could just -- after
10 taking the money, oh, he's going to get a full release.
11 So he could screw me. He could just say, "Okay. You
12 got the stock. You're not getting any assets at all."
13 And he engineered the documents to allow himself to do
14 that.

15 I objected and objected and objected, and he
16 wouldn't relent. He wanted me to be a victim of a scam,
17 a second scam. That's how much he seems to hate me, for
18 whatever reason, even though I did everything I could to
19 make his company into something successful. Which is so
20 extraordinary, I can't even fathom why except I kind of
21 do know a little bit, but --

22 Q All right. Now let's -- I want to -- let's
23 take a breath.

24 A Okay.

25 Q Okay. I would like to talk to you a little

1 bit about the -- what you kept on referring to as
2 "insurance fraud," okay.

3 Now, do you know how much Mr. Simon's MT900
4 was worth?

5 A Well, let me say I knew the MSRP of that
6 model --

7 Q Yes.

8 A -- was \$189,000.

9 Q \$189,000. Now when, if ever, did you have an
10 opportunity to speak with an insurance adjuster after
11 that car burned down?

12 A So Alan Simon, on October 3rd, sent me that
13 email that had that picture and then he called me on the
14 phone.

15 Q Okay.

16 A And I learned over time that lawyers are smart
17 guys. They do the dirty work on the phone because
18 there's no evidence of it.

19 Q Okay.

20 A So for 19 minutes he had -- forced me to have
21 this phone stuck to my ear while he kept berating me and
22 pushing me and pushing me and pushing me and pushing me
23 to say ostensibly this -- there's actually some stuff in
24 writing in Exhibit 302. So he said -- I got to take a
25 breath.

1 He said the car is worth \$329,000, which is
2 what the 2009 models are being priced at because it was
3 built in 2009 and don't forget my options. He wanted me
4 to make sure that his options, which he paid
5 \$11,000 for, got captured in whatever he was going to
6 get.

7 I said, you know, "The car is 2004, it's not a
8 2009," and he berated me and pushed me and pushed me and
9 pushed me for 19 minutes. And then finally, you know, I
10 was basically in a stupor at this point in time. I said
11 okay to get him off the phone. I okayed him to get off
12 of the phone, but I didn't do it. And when he found
13 out, he called me up and said --

14 Q Wait.

15 A Okay.

16 Q When, if ever, did you speak to an insurance
17 adjuster?

18 A Okay. And then maybe a week and a half later
19 someone called me.

20 Q Okay. Do you have any idea how that person
21 got your phone number?

22 A Of course, Alan Simon. Alan Simon told me he
23 was going to give my number to the insurance adjuster.

24 Q Okay.

25 A And they did call and --

1 Q Just so we're clear, the first -- the area
2 code for your phone number?

3 A Is 203.

4 Q And what state is that affiliated with?

5 A Connecticut.

6 Q Okay. So if there's some documentation that
7 refers to a Connecticut dealer, is that you?

8 A Right. Yes.

9 Q Whether or not you were a Connecticut dealer?

10 A Yes.

11 Q Okay.

12 A So he calls me up. At this point I remember
13 very clearly, it was much shorter, he said, "I only got
14 \$190,000 and he told me he was a distributor from
15 Connecticut, and you have a Connecticut phone number so
16 I know it was you." And I'm on the phone thinking like,
17 bro, you got \$1,000 more than MSRP for a car that's
18 used, that's built illegally, and it's actually seven
19 model years old for 5800 miles and you're screaming at
20 me about it? I couldn't bloody believe it.

21 Q Okay.

22 A And then it was like the very next day they
23 stripped me off the website behind my back.

24 Q Okay.

25 A The very next day.

1 Q So let's talk about the fire itself. You were
2 here when Mr. Abboud testified about the recall,
3 correct?

4 A Yes.

5 Q Okay. Were you aware of that recall?

6 A No one told me about it. I wound up hearing
7 about it from the other customers that I've been friends
8 with. Some of them, they called me. Mike from
9 Springfield, Illinois called me about it.

10 Q Well, do you remember what that recall was
11 about?

12 A The fuel lines coming loose.

13 Q Okay. Can you explain to the jury the
14 comparison between the MT900 fuel lines and the 2012
15 RaptorGTR fuel lines?

16 A They're identical.

17 Q Okay.

18 A So, and Alan Simon, interestingly, was the
19 person -- these fuel lines had come off in a couple of
20 different places. One was in the Czech Republic, one
21 was in -- actually, one happened twice up in
22 Springfield, Illinois. Mike -- my friend Mike talked to
23 me about it.

24 One guy was John Gocha in California. I think
25 the California distributor, Mike Vietro, described in an

1 email -- and we have it somewhere in here, I can pull it
2 up -- it's like a 50 PSI firehose full of fuel in the
3 engine bay. And of course that's like -- you know like
4 a flamethrower? It's like fuel and they burn it so it's
5 like a flamethrower in the engine bay.

6 Q Okay.

7 A Hassan's car looks like that now too.

8 Q And no one told you --

9 A No one told me.

10 Q -- about the potential fire hazard --

11 A Yeah.

12 Q -- of the --

13 A Yeah, burning alive inside that thing? No.

14 That's malice if there ever was one.

15 And then when I demanded -- once I find out
16 about it, I said, "Tell me what this is, give it to me,"
17 they refused. They flat out refused, never did it, even
18 though I demanded it like five times.

19 Q Now, I want to talk to you about -- there's
20 some documentation in evidence about defective side
21 glass. Do you remember that?

22 A Yes.

23 Q Okay.

24 A Broken side glass.

25 Q I'm sorry?

1 **A It broke.**

2 Q It was broken?

3 **A The glass itself wasn't defective, the**
4 **mechanism pinched it and it made it crack, yeah.**

5 Q Okay. Now, there's also stuff in evidence
6 about a glass shop.

7 **A Yes.**

8 Q Is there a difference between --

9 **A That was -- yes, that means fiberglass.**
10 **Fiberglass shop.**

11 Q Okay.

12 **A We didn't make -- we didn't make clear glass,**
13 **we made fiberglass and carbon fiber --**

14 Q Okay. I just wanted to be sure we covered
15 that.

16 Now with respect to the window --

17 **A Yes.**

18 Q -- did you believe that was originally covered
19 under some type of--

20 **A Yes.**

21 Q -- warranty?

22 **A It happened somewhat frequently and that's why**
23 **we redesigned the side windows to just be a single pane.**

24 Q Okay.

25 **A This window was designed in England.**

1 Q All right. Now there is something on your
2 Bill of Sale that says that the car is sold as is,
3 correct?

4 A No, it doesn't say as is.

5 Q What does it say?

6 A It says "Without representations or warranties
7 whatsoever," which is stuff we've also seen inside of,
8 like, other things. I didn't -- I didn't know it meant
9 no warranty.

10 Q Okay.

11 A And so we did have -- there's an email string
12 between Jill and myself, which I believe has been
13 intentionally withheld from me, where MACC agrees to
14 honor the entire warranty except for the engine.

15 I don't have that document. I have a similar
16 one for the Saudi Arabia car, but not for this.

17 Q Okay. I just want to be sure for this jury,
18 though, you're not actually -- that's not a claim for
19 this jury to consider about the glass, is it?

20 A Correct. Correct.

21 Q Okay.

22 A But it's worthwhile saying they refused to
23 give it to me unless I signed a full release giving up
24 my \$100,000 to Mr. Mosler, which is absurd.

25 Q Okay. To the point would they -- when you

1 offered to -- did you ever --

2 When, if ever, did you ever offer to buy that
3 glass?

4 A Yes. I said, "If you don't want to honor the
5 warranty, I'll just buy it," and they wouldn't allow me
6 to buy the glass.

7 Q Okay. Now did you ask him for a price or
8 anything like that?

9 A All they said -- Sylvia, who was here earlier,
10 said "Be advised MACC will not sell to you."

11 Q That's in evidence, correct?

12 A Yes, it is.

13 Q Okay. Now, let's talk about the claims that
14 you are suing for. What items that are related to the
15 federal warranty regarding the EPA controls in that car
16 are you complaining about?

17 A Well, the -- through some means, the valve
18 broke. So a valve is a part of the emissions control
19 process, so the engine failing would create emissions,
20 and they also -- the throttle body, which is a part of
21 the airflow path, failed.

22 Q Okay.

23 A And I think that's it. But the engine itself
24 failed, so...

25 Q So a part of the emissions is you discussed

1 earlier the spark, correct?

2 **A The spark and the --**

3 Q Well, how does the -- the spark is generated
4 by electricity, right?

5 **A Yes.**

6 Q What generates electricity in the vehicle?

7 **A The alternator. Oh, the alternator, yes.**

8 Q Okay.

9 **A The alternator failed as well.**

10 Q Okay. And did MACC --

11 **A No.**

12 Q -- honor the federally mandated warranty as to
13 those issues?

14 **A No, they did not.**

15 Q Okay. Now you talked about an engine. I want
16 to talk to you about a time when your car was -- well,
17 let me back up.

18 Did you have complete control over the -- or
19 did SEI have complete control over the 2012 RaptorGTR at
20 all times between when it purchased it and when it
21 ultimately sold it?

22 **A No.**

23 Q Okay. Explain to the jury when you lost --
24 when SEI lost control of that vehicle.

25 **A It has to do with that "Buyer Beware" notice**

1 which is sitting over there.

2 Q Okay. The "Buyer Beware" notice that's
3 sitting in evidence?

4 A Yes. So a lot of this stuff was very
5 confusing to me at the time, and that comes through one
6 of the articles where the journalist says "He seems just
7 surprised and confused," and that was -- that was true.
8 I was surprised and confused by what was going on.

9 So after the trade libel, the one thing I've
10 learned -- and I've been scammed by other -- in another
11 instance, but I've learned that con artists and
12 criminals not just -- and it makes sense, they want to
13 do the dirty work and get away with it. That's the key
14 point. One thing that's consistent among any wrongdoer
15 is they seem to want to get away with it.

16 In this case, Mr. Mosler did trade libel. He
17 knew he was doing it. He knew the car was legitimate.
18 He knew he was beating the daylights out of me by
19 essentially taking away my nest egg and, like, setting
20 it on fire. But he wanted to get away with it, so they
21 concocted a plan. They said that since the car doesn't
22 have California Air Resources Board executive order,
23 they were concerned.

24 And there's no big deal about a car not having
25 CARB. It just means they can't title the car in

1 California. People buy cars in California and title
2 them in Montana all the time because they don't have to
3 pay the 13 percent tax. So it's no being deal about
4 having CARB, but they insisted because the car doesn't
5 have CARB, you know, we need to, you know, change the
6 VIN.

7 Q What's the VIN?

8 A The VIN is the VIN number.

9 Q VIN, vehicle --

10 A Identification number.

11 Q Okay.

12 A And I said this is silly. I wanted to buy the
13 company, so that was the carrot that they dangled in
14 front of me. They said, "Okay. We'll let you buy the
15 company if you let us change the VIN, that way we know
16 we won't have any liability."

17 And I'm thinking well, this is ridiculous.
18 They've been building cars illegally the entire time and
19 just because this car doesn't have CARB, which doesn't
20 even really matter at all -- I mean, it's a little bit
21 nice, but it really doesn't matter for selling
22 supercars, that they're going to go to all these lengths
23 for that car, but there was a deception from the
24 beginning. They never were going to allow me to buy the
25 company.

1 And when I asked for -- I said -- they said,
2 "Oh, you have to sign and do all this first," which is
3 classic con artist 101. They want to get your money
4 first and then they're going to do something, but they
5 never do it and they never intended to do it. So he was
6 dangling the promise of letting me buy MACC, making my
7 dream come true --

8 I remember in your opening, Mr. Weber, you
9 said I was heartbroken, you're right.

10 Q Excuse me. Stay on track, just tell the
11 jury --

12 THE COURT: Let's not talk to the other
13 attorneys.

14 THE WITNESS: I apologize.

15 THE COURT: Just answer the questions only.

16 THE WITNESS: Okay. I will.

17 THE COURT: Let's not address other people,
18 please.

19 THE WITNESS: Okay. I won't do it again.

20 Okay. Understood.

21 So they're dangling the promise of letting me
22 buy MACC for the \$650,000. They said Mr. Mosler
23 has a condition and that condition is you have to
24 let them change the VIN to 2009, and then when I
25 buy the company, I can change it back. This was

1 **completely absurd to me, but I'm like if this is,**
2 **like, what it takes to unlock the log jam, fine.**

3 **So --**

4 BY MR. ZAPPOLO:

5 Q Okay. Did you believe it was appropriate to
6 change the VIN number?

7 A **No. It was ridiculous to.**

8 Q Okay.

9 A **I think it's actually illegal to do things**
10 **like that, but they wanted to do it. And for whatever**
11 **reason, it was like a must have. "I'm not going to let**
12 **you buy the company unless you do this."**

13 Q Okay. But what was your intent if you -- did
14 you allow --

15 A **Them to change the VIN?**

16 Q -- them to change the VIN?

17 A **No, I didn't. Because they never signed the**
18 **document that let me buy the company, they just took**
19 **control of it after threatening to do that so I wouldn't**
20 **be able to buy the car.**

21 Q "To do that," you're indicating the blowup of
22 the --

23 A **"Buyer Beware" notice.**

24 Q -- "Buyer Beware" notice?

25 A **Imagine buying a car, a supercar like this,**

1 and then the manufacturer puts a "Buyer Beware" notice
2 on their website. It is cuckoo-for-cocoa-puffs and it
3 just is part of this deception, this monumental -- it's
4 a monumental con.

5 So they wanted to con me into letting them
6 create -- change the VIN and then they can say, "Look,
7 Todd, I didn't do any trade libel. It's a 2009 just
8 like I said, and it wouldn't have passed emissions."

9 That was his plan. He wanted to escape the
10 trade libel, get away with it, by changing the VIN and
11 then say, "Look, Todd, you agreed that it wasn't a
12 RaptorGTR." That was what they were doing.

13 Q Okay. Did you ever agree this car was not a
14 2012 RaptorGTR?

15 A Absolutely not.

16 Q Did you ever entertain the possibility that
17 you might change something or what have you --

18 A No.

19 Q -- in order to effectuate this --

20 A It was the highest power-to-weight ratio in
21 the planet. It was the golden goose.

22 Q Let's talk about that for a minute. Do you
23 remember when Mr. Frank was on the stand and there was a
24 question -- he was being questioned about dynamometers
25 and --

1 **A Yes.**

2 Q -- wheel horsepower and other things?

3 **A Yes.**

4 Q Okay. Now just so that we're clear, there's a
5 document in evidence that has everyone's -- a bunch of
6 different vehicles' horsepower.

7 How are those horsepower calculated, at the
8 wheels or at the engine?

9 **A At the engine is typically what it is.**

10 Q Okay.

11 **A It's always at the engine.**

12 Q It's always at the engine based upon your
13 experience in the industry?

14 **A Yes.**

15 Q All right. Now with respect to that, explain
16 to the jury why someone might argue that this car, the
17 2012 RaptorGTR's horsepower was somehow different.

18 **A Okay. So gears running in oil and dry shafts
19 and differentials and all these things are metal running
20 in oil and they create drag. The exhaust is also -- I
21 think actually -- no, let me back up.**

22 It's from the engine, it goes through the
23 transmission and the differential to the wheels. And
24 the drag inside of those devices reduces the power that
25 the wheels see. So if we took the transmission off and

1 **stuck something on the engine, it would be this power,**
2 **but --**

3 Q And for the record you're indicating high?

4 **A High.**

5 Q Okay.

6 **A And as it goes to the transmission and gets to**
7 **the wheels, it's lower.**

8 Q Okay.

9 **A And that amount lower is typically about**
10 **15 percent. On the Mosler, because it actually ran a**
11 **Porsche transaxle that was inverted -- it was inverted**
12 **because it was designed for a rear engine Porsche, but**
13 **we had a mid-engine car, so we had to flip it upside**
14 **down. So because we flipped it upside down, the gears**
15 **ran in a big wash of oil, so it created more drag than a**
16 **typical configuration.**

17 **So we actually lost, you know, 20, 22 percent**
18 **of the engine power coming from the engine to the**
19 **wheels.**

20 Q Okay. Now, is there anything untrue about the
21 claimed horsepower of the car?

22 **A No.**

23 Q Okay. By the way, remember I made the mistake
24 of asking Mr. Frank if he knew what a 2023 Z06
25 horsepower was or something?

1 **A Yes.**

2 Q Do you know that?

3 **A 670-horsepower.**

4 Q 670-horsepower is a 2023 Corvette Z06?

5 **A Yes.**

6 Q Okay. Now this was a 2012?

7 **A '11. Oh, 2012, but built in 2011, which is**
8 **normal.**

9 Q Right. Which is normal. Like people -- a lot
10 of times they'll buy a car --

11 **A Yes.**

12 Q -- and it's the next model year because it's
13 already been certified for that model year, correct?

14 **A Right.**

15 Q All right. Now --

16 **A And I think it's worthwhile mentioning more**
17 **about when the -- oh, sorry, never mind.**

18 Q The -- and now you made me forget where I was
19 going, but that's all right.

20 **A I didn't finish my train of thought at all**
21 **when the car was at the MACC factory.**

22 Q Yes, that's where I was going. Thank you.

23 **A Okay. So while the car was at the MACC**
24 **factory, I said, "Here's all the sale documents you**
25 **promised." I actually signed them first and sent them.**

1 I said, "Okay. These are the two things:
2 I'll agree that you can do the 2009, but it's contingent
3 upon you signing the sale document, specifically
4 contingent upon that."

5 Q Okay.

6 A But they never signed it, so I never agreed
7 for it to be changed to the 2009 VIN. They ripped the
8 windshield off and changed the VIN anyway and then they
9 held the car hostage --

10 Q Okay.

11 A -- threatening to charge me \$35 a day until I
12 complied with signing an acknowledgment that the car was
13 a 2009. So they're doing extortion to try and get their
14 trade libel wiped off the board.

15 They weren't going to give me my car back
16 unless I agreed it was a 2009, therefore, Mr. Mosler is
17 innocent of the defamation. That's what this all is
18 about. He wanted to lock in the defamation and get away
19 with it.

20 Q Okay.

21 A And blackmail to get control of the car by
22 threatening that. They got control of the car, and then
23 extortion to try to get me to sign something. And I
24 never did, and I did actually call him out for
25 extortion. I said, "Do I need to call the cops here?"

1 And then they let me have the car back. I never signed
2 that thing.

3 Q By the way, at one point the car was out of
4 your -- SEI's possession. Did the car ever have to go
5 anywhere and be repaired?

6 A Yes. I mean, this is --

7 Q Explain that to the jury.

8 A This is even more bizarro and at the time I
9 didn't recognize it. I mean, now I see -- you know, it
10 took five years to get the documents. The documents
11 we're looking at, it took me five years to get them out
12 of Mr. Mosler. He's hiding them the whole time, so a
13 lot of this stuff I didn't know for a long, long time.

14 Q Explain to the jury what happened with respect
15 to when you needed to have the car repaired.

16 A Okay. So I was in Connecticut working and so
17 I sent a wrecker to the Mosler factory to pick it up,
18 and they told me the clutch didn't work. And the clutch
19 was a little bad when I was in Connecticut -- when I was
20 in California.

21 And so I sent a wrecker and I sent it over to
22 Braman Porsche. And it got there and they said they
23 couldn't get the car to turn over. And, you know, I'm
24 trying to survive, make a living. I'm flying back and
25 forth. You know, I didn't -- I said, you know, "Can you

1 try and fix it? You know, what's going on?"

2 Q Why were you flying back and forth?

3 A Well, I lived in Connecticut.

4 Q Okay.

5 A And so I'd have to fly down here to see the
6 car, so I'm trying to just do this stuff remotely as
7 best I can.

8 So they said "I can't get it to turn over at
9 all." So they ship it over to the Lamborghini of Palm
10 Beach and they said that they took the spark plugs out
11 and cranked it over and water sprayed everywhere.

12 Q Who had that vehicle before it got shipped
13 over to the Lamborghini of Palm Beach?

14 A Mr. Mosler, his son, was at the factory.

15 Q Have you ever seen a vehicle get water into
16 its engine accidentally like that?

17 A Never.

18 Q Okay. What impact -- what effect would water
19 in a vehicle's engine have?

20 A It depends, but, I mean, you could get
21 hydrolock. Like the valve was trying to open, but the
22 engine is full of water, it can crack it, and that's
23 basically what happened.

24 The car -- so they got all the water out and
25 got it started again. It never did run quite right and

1 then a couple of weeks later it exploded basically. Not
2 exploded, but all of the internal stuff was just
3 destroyed.

4 And at the time, like, it really was so hard
5 for me to fathom -- I can't imagine someone sabotaged my
6 car. I mean, this is so far outside the bounds of
7 possibility, but now that I have seen all the dirty
8 stuff they're doing behind the scenes and everything, it
9 doesn't surprise me. It's like every single thing they
10 can possibly think of to hurt me, they did.

11 Like, how can I sell a \$700,000 car with the
12 side glass cracked? They knew that. So they withheld
13 the side glass in order to make it impossible for me to
14 sell the car so I'd remain weak and vulnerable.

15 Q I want to try to spend some time here dealing
16 with a couple issues. You mentioned a couple of minutes
17 ago --

18 MR. ZAPPOLO: Ms. Clerk, could I trouble you
19 for an exhibit? Well, it was pre-marked as 69.
20 What is it in evidence as?

21 THE CLERK: It is 42.

22 MR. ZAPPOLO: 42, please. Thank you.

23 THE CLERK: You're welcome.

24 BY MR. ZAPPOLO:

25 Q Mr. Wagner, you were talking earlier about

1 what journalists were concluding about your efforts to
2 sell --

3 **A I think it's over there.**

4 Q -- the 2012 RaptorGTR, correct? Don't worry
5 about it.

6 I'm showing you what's been marked as -- can
7 you tell me what that document is on the back side,
8 please?

9 **A It's "The Truth About Cars," it's**
10 **the publication.**

11 Q What's the exhibit number on the back that's
12 in evidence?

13 **A Oh, 42. It's our 69, their 42.**

14 Q Okay. In evidence as Exhibit Number 42. I'd
15 like you to flip to the second page there.

16 Do you see where it says "After some
17 discussion, Wright indicated to me he was going to have
18 Matt Hardigree cover the story, and covered it he has,
19 complete with calls to all the major players. While one
20 might suggest that Matt's article is perhaps overly
21 sympathetic to J. Todd Wagner, it is nonetheless an
22 interesting balance and well-researched."

23 What do you believe about the research that
24 was done with respect to these articles?

25 **A Well, the research is they called Mr. Mosler.**

1 **They called Jill Wagner, his vice president, my ex-wife.**

2 Q Okay.

3 **A Me, Abby Cubey.**

4 Q Okay.

5 **A And Matt Farah, the fellow who was the one who**
6 **commented on the original "Truth About Cars" article**
7 **saying the car was a fake and non-Mosler product, and**
8 **all that stuff.**

9 Q Okay. But that document goes on to say "It is
10 nonetheless an interesting balance and well-researched."
11 Between that and the duPont REGISTRY article -- which is
12 in evidence, correct?

13 **A Yes.**

14 Q Okay. On the same topic, I'd imagine that
15 potential -- what's that word?

16 **A Marks.**

17 Q Okay.

18 **A As in like a con.**

19 Q And then it's crossed out and then it says
20 "Customers for the RaptorGTR will find all the
21 information they need," right?

22 **A Yes.**

23 Q So --

24 **A So this journalist has concluded, from seeing**
25 **all this stuff that Mr. Mosler -- you know, all these**

1 journalists talked to Mr. Mosler. He's the man. He is
2 the man. You know, he's famous in the hedge fund world
3 and, you know, promoting monetary theory, which is
4 basically printing money as much as possible, and they
5 believe him and they don't believe me. And Mr. Mosler
6 has, you know, my ex-wife backing him up and --

7 Q Okay.

8 A -- that --

9 Q So is it fair to say that this -- the
10 defamatory statements are picked up again and again and
11 again?

12 A Again and again and again. And obviously
13 these journalists, who are in this industry, are
14 believing them to be true.

15 Q Okay. And what, if anything, does that do
16 to -- oh, by the way, when they're talking about you and
17 saying that your -- that people that might deal with you
18 are marks or that you're a con man or something like
19 that --

20 A Yeah. A mark is actually when a con man tries
21 to steal from them.

22 Q I understand, but my question to you is:
23 Compared to you privately or in your professional
24 occupation, which are they talking about here? Which --

25 A My professional occupation as a distributor

1 for MACC.

2 Q And as a distributor for MACC and/or as a --

3 A As an engineer doing consulting work for other
4 people.

5 Q Okay.

6 A I mean, who's going to hire me? Who's going
7 to hire me when they think I'm a con artist and it's in
8 all these major publications all over the Internet?

9 At the time, when you searched "Todd Wagner,"
10 I was number one. Even though there's a famous guy
11 named Todd Wagner who knows Mark Cuban, I was the number
12 one hit on all this stuff.

13 Q You know that how?

14 A Because I checked it out. I searched myself
15 and I was like oh, jeez. Like the top, like, three
16 things are this stuff.

17 Q Okay.

18 A This was getting that much circulation.

19 Q So this -- well, what if somebody was saying,
20 "Oh, it's just an offhand comment"?

21 A He's trying to get away with it is what he's
22 trying to do.

23 Q By the way, in the Clifford Atiyeh quote of
24 Mr. Mosler, Mr. Atiyeh wrote "After Wagner left, Mosler
25 was already in talks to sell his company. When a

1 potential deal went south, Mosler blamed Wagner for
2 ruining it when he allegedly demanded," he being you,
3 "allegedly demanded Mosler pay him \$100,000, quote, in
4 return for agreeing not to sue the new owner."

5 A Yes.

6 Q Okay. Can you explain to the jury what facts
7 you know of that surround those comments?

8 A Yes. This is even more extraordinary. Well,
9 I don't know if there's anything more extraordinary than
10 this.

11 So obviously I had the \$100,000 deposit.
12 During this time frame I was basically busted. I had no
13 idea what was going on or why.

14 Q When you say you were busted, what do you
15 mean?

16 A Broke.

17 Q Okay.

18 A I had no -- nothing. I had no job, no -- I
19 was -- so Mr. Mosler knew that and they -- after,
20 essentially, like beating the daylights out of me and
21 I'm on the ground, he's like "Here, sign this."

22 Q What was that?

23 A That Termination and Release Agreement where
24 I'd have to sign away my intellectual property, my
25 exclusive distributorship, which I had two -- I'm only

1 suing on one, but I had two -- and my \$100,000 in return
2 for \$100. And Mosler said, "You should sign it in
3 exchange for me not sending my two attorneys after you
4 to sue me for anything."

5 Oh, and then there's an email, which I think
6 is in the record, where it says, like, "Any pressure you
7 can put."

8 Q Okay.

9 A So Mr. Savvas Savopoulos, they know each other
10 from the private jets. They fly private jets to D.C.
11 and things like that. So he says to Mr. Mosler "Any
12 pressure you can put?" And I didn't know all this stuff
13 was happening. All this stuff was going on behind my
14 back.

15 Q Now --

16 A But I actually got a phone call from
17 Mr. Mosler and he just tells me, "Hey, Todd, you know,
18 you're outmatched here. I won't do it, but Savvas is
19 the type of guy who will sue you for anything and then
20 you'll have to hire a lawyer for \$400 an hour to defend
21 yourself until you're broke. That's the way things work
22 in America."

23 So at that point I was obviously very
24 intimidated because I knew Savvas had -- I think what it
25 was is Mr. Mosler was wanting to do the threat, but he

1 didn't want to put his name on it, but he did follow
2 through on that threat. He actually sued me because I
3 didn't sign that document, and I had to spend two years
4 in court over that, essentially, because I didn't
5 surrender everything I had to him. And it wasn't to
6 Savvas, it was to him. That document was to surrender
7 everything I had to him. If I didn't sign it, he'd sue
8 me. For millions, he said.

9 Q Were you aware of anyone ever advising
10 Mr. Mosler of the damage that was being done to you and
11 your ability to gain employment?

12 A Yes. I think Jill, who was his vice president,
13 said that what's being printed continues to mutilate me.

14 Q I'm showing you what's been marked as
15 Plaintiffs' 1202. Do you recognize that document?

16 A Yes, I do.

17 (Thereupon, Plaintiffs' Exhibit 1202 was
18 marked for identification.)

19 BY MR. ZAPPOLO:

20 Q Are you a recipient of that document?

21 A Yes, I was.

22 Q Do you have any reason to believe it's not a
23 true and correct copy of the email that you received on
24 or about that time period?

25 A No.

1 MR. ZAPPOLO: At this point, Your Honor, I'd
2 like to move Plaintiffs' 1202 into evidence.

3 MR. WEBER: No objection.

4 THE COURT: Madam Clerk, what number is it?

5 THE CLERK: 96, Your Honor.

6 THE COURT: Thank you.

7 (Thereupon, Plaintiffs' Exhibit 96 was
8 received into evidence.)

9 BY MR. ZAPPOLO:

10 Q Now this was Jill Wagner, on November 29th of
11 2011, sending it -- sending an email to you, Abby Cubey,
12 and cc'ing Warren Mosler, correct?

13 A Yes.

14 Q All right. And what did Jill write about what
15 is printed?

16 A She writes "What is printed just continues to
17 mutilate Todd over and over and will make it virtually
18 impossible for him to gain employment."

19 Q Okay. Now did you ever have any exchange with
20 Mr. Mosler about trying to correct what was out there in
21 this, you know --

22 A Numerous times.

23 Q -- to try to mitigate the damage that was
24 being done?

25 A Yeah, I didn't know it was him. I thought for

1 sure it wasn't him. I was actually talking to him and
2 saying, "Hey, let's fix this. Let's put a press release
3 out there. This is some misunderstanding."

4 You know, he knew he did it, but he kept
5 secretly -- you know, he was slyly trying to dissuade me
6 from doing that because he wanted -- he wanted the pain
7 to stick.

8 Q Now I'm not sure whether we covered this
9 before, but I want to be sure that we have it.

10 You spoke earlier about the -- remember the
11 "Fabulous Photon" article?

12 A Yes. It was a great article. It was one of
13 the best ever, and he still got mad about it.

14 Q Okay.

15 A Which is --

16 Q And you said that Mr. Mosler got mad about it,
17 and I believe you referenced him talking about the
18 deposit being forfeited. Do you remember that?

19 A That was the second time. So he -- let me
20 just clarify that. So the "Fabulous Photon" article
21 came out May 2nd. It was amazing. Mosler cut out the
22 part about the Raptor and sent it around to his friends.

23 Q Okay. And if the jury pays particular
24 attention and compares the article to the email that's
25 in evidence, that Mr. Mosler sent to his friends,

1 they'll be able to pick up that the information about
2 the RaptorGTR is --

3 **A Is gone.**

4 Q -- is omitted, right?

5 **A Yes. Correct.**

6 Q Okay.

7 **A And that happened and he had to -- you know,**
8 **he got upset about that stuff. And maybe -- oh, you're**
9 **right. He said, "I want the money to be forfeited at**
10 **that moment."**

11 Q I'm showing you what's been marked as
12 Plaintiffs' 903 for identification purposes.

13 Are you a recipient of that document?

14 **A Yes, I am.**

15 (Thereupon, Plaintiffs' Exhibit 903 was marked
16 for identification.)

17 BY MR. ZAPPOLO:

18 Q Okay. And is there any reason to believe it's
19 not a true and correct copy of the document that was
20 forwarded on or about the time it purports to be?

21 **A No.**

22 MR. ZAPPOLO: Okay. Your Honor, at this point
23 I'd like to move Plaintiffs' 903 into evidence.

24 MR. WEBER: No objection.

25 THE COURT: Okay. Madam Clerk, let's admit

1 that, please.

2 **THE WITNESS: Yes. 97, Your Honor.**

3 (Thereupon, Plaintiffs' Exhibit 97 was
4 received into evidence.)

5 BY MR. ZAPPOLO:

6 Q Now, this was how many days after the
7 "Fabulous Photon" article?

8 A One.

9 Q Okay. And Mr. Mosler wrote --

10 A He wrote, essentially, he -- he cut out of our
11 deal documents where the 100,000 was going to be
12 refundable after someone else bought the company, and he
13 put in all capitals "The deposit is forfeited."

14 Q How did you interpret that as to his demeanor
15 towards you on that day?

16 A Obviously he was pissed. Instead of letting
17 me get the money back, he wanted to pocket it because he
18 was pissed, I'm presuming. Of course I didn't agree to
19 this, but he still made a run at it.

20 And it seems pretty clear now since I haven't
21 gotten it back for 12 years that it was his intent for
22 me to never get it back. And the thing that is so
23 ridiculous about this is he doesn't need money, he just
24 wants my suffering.

25 Q Do you remember when Mr. Frank was on the

1 stand and they were asking him questions about any press
2 being good press and things like that?

3 **A Yes.**

4 Q Of course I'm paraphrasing.

5 Okay. Did there ever come a time when you had
6 any interaction with Mr. Mosler about someone claiming
7 something about a Mosler Auto Care vehicle that was
8 improper and Mr. Mosler's reaction to that?

9 **A Are you talking about the Landshark?**

10 Q Yes.

11 **A Yes.**

12 Q Explain to the jury about that, please.

13 **A So the Mosler owner name was John Gocha. He**
14 **bought one of the illegally built 2004 MT900S and he put**
15 **on a press release.**

16 He was also, at some point, interested in
17 buying the company and Mr. Mosler wanted to sell it to
18 him for \$50 million. So this fellow, John Gocha, put
19 out a press release and was essentially building --
20 building this car into a 2,500-horsepower MT900 GTR XX
21 Landshark, something along those lines, but Landshark
22 for short.

23 Q Okay. I'm showing you what's been marked as
24 Plaintiffs' Exhibit Number 1291. Do you recognize that
25 document?

1 **A Yes, I do.**

2 (Thereupon, Plaintiffs' Exhibit 1291 was
3 marked for identification.)

4 BY MR. ZAPPOLO:

5 Q Is there any reason -- and you actually had
6 forwarded that document, correct?

7 **A Yes.**

8 Q Okay. And is there any reason to believe it's
9 not a true and correct copy of the document that was
10 sent by you?

11 **A No.**

12 MR. ZAPPOLO: At this point, Your Honor, I'd
13 like to move Plaintiffs' Exhibit 1291 into
14 evidence.

15 MR. WEBER: No objection.

16 THE COURT: Madam Clerk, is that 98?

17 THE CLERK: Yes, Your Honor.

18 THE COURT: Thank you.

19 (Thereupon, Plaintiffs' Exhibit 98 was
20 received into evidence.)

21 BY MR. ZAPPOLO:

22 Q Now, so you said that the gentleman was
23 advertising the Landshark was having a whole lot of
24 horsepower --

25 **A 2,500-horsepower.**

1 Q Right. Now on Exhibit Number 98, which is in
2 evidence, Mr. Mosler wrote you on or about May 9, 2009,
3 "Not possible on anything remotely DOT EPA legal and
4 likely bogus, but hopefully good PR," correct?

5 A Yes.

6 Q Okay. What, if anything, did that tell you
7 about Mr. Mosler's belief about telling the truth in
8 advertising?

9 A He seemed to -- he seemed to think it was fine
10 that the car was not appropriate, and he didn't do
11 anything to make the public think it was inappropriate.
12 He essentially didn't do anything to fix it, even though
13 he thought it was bogus.

14 Q Now, there's been some talk about you buying
15 the company and about you -- or you or one of the
16 companies that you owned or controlled buying the
17 company and/or you and/or one of the companies -- or,
18 excuse me, and SEI being a distributor of Mosler
19 products, right?

20 A Yes.

21 Q All right. How do those two relate? Like,
22 for example, did you care if someone else bought the
23 company?

24 A No, that would be fine. I really was very
25 happy to just be a distributor. That would be, in some

1 regards, the most fun part of it. Building cars was
2 also fun, but it was hard work.

3 Distributing is also hard work, but I think I
4 enjoyed that more. I enjoyed the sales process, talking
5 to the customers and making their little dream come
6 true, so I was happy as a clam to be an exclusive
7 distributor in China and Thailand and also Saudi Arabia
8 and Dubai, and I would have made a really, really,
9 really good living doing that.

10 Q Okay.

11 A And so if someone else bought the company, I'd
12 get my \$100,000 deposit back and I'm still a
13 distributor, that's great for me. If I get to buy the
14 whole company, that was also great for me. Either way
15 was fine.

16 Q Did you spend any time -- while we're working
17 on that, on a separate note, but along the same line,
18 did you work with Mr. Savopoulos at all?

19 A Yes.

20 Q Okay. Were you invited to work with him?

21 A Yes. I mean, usually when you buy a company,
22 the people who have the know-how, you want to retain
23 them --

24 Q Okay.

25 A -- because they're the ones who know how to

1 make things work. And it's usually something that's
2 often a contingency to typically say "I'll buy the
3 company only if I can get an employment contract to keep
4 the people."

5 Q Okay. Now, in your case, were you offered an
6 employment contract?

7 A Nope.

8 Q Okay. Do you know if --

9 A Offered a kick in the butt.

10 Q Do you know anyone else that was offered any
11 employment contracts with Savvas Savopoulos?

12 A Ms. Wagner, my ex-wife.

13 Q Now with respect to the manufacturer's
14 statement of origin that's in evidence related to the
15 2012 RaptorGTR, that document says that the car has
16 California emissions, correct?

17 A It does, yes.

18 Q Okay. And explain to the jury, did you type
19 that?

20 A No, I did not. Ms. Klaker typed all the MSOs.
21 And it was her sort of standard of fact thing to type
22 that in to all of the cars, even though none of those
23 cars previously actually had California emissions.
24 Because in order to have the California emissions, you
25 already had to have EPA, and none of them had EPA

1 because they were all built illegally and after the
2 certification expired and all that stuff we've already
3 gone through.

4 Q Just so we're clear, there were EPA
5 certificates for the other cars, correct?

6 A Yes, but they didn't build the cars in the way
7 they said they would and the way they tested them. And
8 also, they're built after the certification had expired.

9 Q Okay. Well, did you ever fight anyone on
10 converting the MSO to reflect that the car did not have
11 California emissions?

12 A No, absolutely not. Like I said, I'll take --
13 you know, I'll take the other one. "It was an honest
14 mistake" I think is the words to that effect I said to
15 Sylvia.

16 Q I'm showing you what's been marked as
17 Plaintiffs' Exhibit 1076. Did you write that email?

18 A Yes, I did.

19 (Thereupon, Plaintiffs' Exhibit 1076 was
20 marked for identification.)

21 BY MR. ZAPPOLO:

22 Q Okay. And is there any reason to believe that
23 email chain is not a true and correct copy of the email
24 chain exchanged on or about the date it purports to be?

25 A No.

1 MR. ZAPPOLO: Okay. Your Honor, at this point
2 I'd like to move Plaintiffs' Exhibit 1076 into
3 evidence.

4 MR. WEBER: No objection.

5 THE COURT: Is that an email?

6 THE CLERK: Yes, Your Honor. 99.

7 THE COURT: 99?

8 THE CLERK: 99, yes, sir.

9 THE COURT: All right. Admitted as 99.

10 (Thereupon, Plaintiffs' Exhibit 99 was
11 received into evidence.)

12 BY MR. ZAPPOLO:

13 Q Okay. And at this point you said to
14 Ms. Klaker and Warren Mosler and Mr. Simon and Jacob
15 Mosler, et cetera, "I have no problem whatsoever with
16 having the current MSO exchanged for the one that does
17 not state that the vehicle has California emissions.
18 That inclusion was an honest mistake."

19 A Yes.

20 Q Okay. Now it also talks about your
21 frustrations -- doesn't it? -- with the car and deal
22 discussion?

23 A Yes. It's sort of this whole con artist 101
24 where someone comes and says "Okay. If you do this,
25 I'll do that," and then they take this and don't give

1 you that.

2 This is basically what they have been doing.
3 I even say this here, I said, "All agreements have two
4 sides. One, what is given; and two, what is taken.
5 It's not fair to negotiate, give and take set," like two
6 things, give and take, "and then subsequently decide not
7 to give but still take," which is what they've been
8 doing, like, this whole process.

9 I mean, and all this stuff, when I look back
10 on it, is so bizarro. Like, if he just -- he agreed to
11 sell me the company for \$650,000, and he would have got
12 a full release. All of the defamation gone. I'll say
13 okay, fine, just let me buy the company and let bygones
14 be bygones. Instead, he sold it to someone else for
15 \$150,000 less and intentionally took on the liability
16 associated with all of this defamation. So that was how
17 badly he wanted me to not have MACC and wanted me to not
18 be successful selling cars.

19 That, to me, is like -- that illustrates
20 beyond any shadow of a doubt this guy was malicious
21 against me, the guy who was always trying to help him.
22 And I created this beautiful thing that would have
23 gotten his \$50 million investment recouped. So that's
24 why I'm like I can't imagine it was him, but it was, and
25 he was sneaky about it and he wouldn't admit it. He's

1 **still that way.**

2 Q Mr. Wagner, a few minutes ago we were talking
3 about your discussions with Savvas Savopoulos, about him
4 potentially buying the company, correct?

5 A **Yes.**

6 Q Okay.

7 A **Yes.**

8 Q I'm showing you what's been marked as Exhibit
9 Number 904 for identification purposes. Do you
10 recognize that document?

11 A **Yes, I do.**

12 (Thereupon, Plaintiffs' Exhibit 904 was marked
13 for identification.)

14 BY MR. ZAPPOLO:

15 Q Did you send that document?

16 A **Yes, I sent that to Mr. Savopoulos.**

17 Q And does that document reflect your work
18 product and gathering of information from
19 Mr. Savopoulos?

20 A **Yes, it does.**

21 MR. ZAPPOLO: Okay. At this point, Your
22 Honor, I'd like to move Plaintiffs' Exhibit 904
23 into evidence.

24 MR. WEBER: No objection.

25 THE COURT: Madam Clerk, is that Exhibit 100?

1 THE CLERK: Yes, Your Honor.

2 THE COURT: Thank you.

3 (Thereupon, Plaintiffs' Exhibit 100 was
4 received into evidence.)

5 BY MR. ZAPPOLO:

6 Q Okay. You would agree with me that you were
7 responding to a request of a summary regarding Supercar
8 Engineering, Inc.'s distribution agreements in emails,
9 correct?

10 A Yes, I was.

11 Q Okay. And why were you doing that?

12 A Well, Mr. Savopoulos said "Oh, don't be
13 alarmed, but I just want to know the nature of your
14 distributorship agreements from Mosler products."

15 Q Okay.

16 A "Trust me."

17 Q By the way, remember when Mr. Mosler was on
18 the stand and he was saying he wanted you to buy the
19 company and he --

20 A Yeah.

21 Q -- basically wanted no ill will? He talked
22 earlier about the fact that he sued you, but I want to
23 ask you: Back then, in December of 2011, did Mr. Mosler
24 ever tell you that he'd be suing you?

25 A Yes. Yes, he did. As part of this sort of

1 theme, he called me and said he's going to sue me into
2 bankruptcy and all of this for everything. He did
3 something like that. He threatened to sick his two
4 in-house lawyers on me, something to that effect.

5 THE COURT: Can I see the attorneys?

6 Mr. Weber, Mr. Zappolo.

7 (Thereupon, a sidebar conference was held.)

8 THE COURT: It's been almost two hours. I
9 kind of want to give them a break. Can I give them
10 ten minutes?

11 MR. ZAPPOLO: Yes, absolutely.

12 MR. WEBER: Yes, sir. Thank you, Your Honor.

13 (Thereupon, the sidebar conference was
14 concluded.)

15 THE COURT: Okay. Deputy, it's that time to
16 take our first break for the afternoon. Why don't
17 we take 10, 15 minutes.

18 All right. We'll be back. I'll see the
19 attorneys in 10, and I'll see the jury back in 15.

20 THE COURT DEPUTY: There was a question.

21 THE COURT: Oh, can I have it? Thank you.

22 Mr. Wagner, if you want to take a break for 10, 15
23 minutes, that's okay.

24 (Jurors exit the courtroom at 3:17 p.m.)

25 THE COURT: Can I see the lawyers?

1 (Thereupon, a sidebar conference was held.)

2 I'm not a fan of this word, but any, quote,
3 guesstimate, unquote, how many more days/weeks the
4 jurors' obligation will be? Asking for planning
5 purposes. Thanks.

6 I'm going to tell them that, you know, we're
7 going to be done next week.

8 MR. WEBER: He's got to be finished today,
9 right, Your Honor?

10 THE COURT: Well, he has to finish his Direct
11 today. You can go on your Cross tomorrow.

12 MR. WEBER: Yeah.

13 THE COURT: And Redirect is shorter than Cross
14 obviously, so if he has to do Redirect in his case
15 in chief after the next couple of days, he'll have,
16 you know, the remainder of the time in your case.

17 I would love for you to rest on Thursday so
18 they can deliberate on Friday. That verdict form
19 is 50 pages. It's going to take me an hour just to
20 read the verdict form to them. So charging the
21 jury at the end of this is going to take some time
22 as well, you know.

23 MR. ZAPPOLO: Your Honor, while we're here and
24 on the record, we can probably deal with something
25 quickly. I need to make a record and you denied my

1 motion for reconsideration as to our expert as to
2 damages, Ms. Cinnamin O'Shell.

3 THE COURT: Yes.

4 MR. ZAPPOLO: I came to realize that we had an
5 exhibit that was not filed with her affidavit,
6 Exhibit C. It was like 600 pages. And last night
7 I found them and I went through that whole thing to
8 make sure any private information was redacted and
9 so I filed that last night. I would be remiss if I
10 didn't ask you to reconsider that motion with the
11 exhibit, et cetera, and I'm just making my record.

12 THE COURT: Okay. But we're at the end almost
13 of your case in chief. In order for me to go
14 through 600 pages and in order for opposing counsel
15 to go through 600 pages is going to take a
16 significant amount of time.

17 MR. ZAPPOLO: I will say for the record the
18 600 pages are just -- they're types of documents.
19 **A lot of it is copies of the complaint, but there**
20 **are things that Ms. O'Shell considered that she**
21 **included in her affidavit.**

22 So I do think it is somewhat redundant, to be
23 honest with you, but I wanted to make sure it was
24 in the record that -- from my estimation,
25 Ms. O'Shell did a phenomenal job with her original

1 affidavit. I don't think that the addition adds
2 much, but I wouldn't be doing my job if I didn't
3 mention it.

4 THE COURT: Well, I mean, I'm going to deny it
5 right now because it's an unfair surprise to
6 opposing counsel since we're in the middle of the
7 trial. It's 600 pages so I don't want to change
8 the landscape for opposing counsel at the very last
9 second.

10 MR. WEBER: And he just said it's redundant,
11 it doesn't change anything, so Your Honor's
12 previous logic applies and his motion should be
13 denied like the last motion.

14 THE COURT: Okay. We've addressed that. As
15 far as the note, they want to know when they're
16 going to be done, and I am going to tell them next
17 week we're going to be done.

18 MR. WEBER: Correct.

19 THE COURT: I promised them we'd end every day
20 at 5:00, and we've been doing that, and I told them
21 we're going to be done next Friday and I am
22 going -- I want you to be done on Thursday so I can
23 give it to them and they can break on Friday
24 afternoon.

25 Again, reading the verdict form is going to

1 take me an hour for the jury instructions and for
2 them to go through and answer all of the questions
3 on the verdict form is probably going to take them
4 an hour once they figure out what they want to do.
5 If I don't give it to them to start deliberating
6 before lunch on Friday --

7 MR. WEBER: Yeah.

8 THE COURT: -- it's going to be very, very
9 late. I need them at least four hours to
10 deliberate.

11 MR. WEBER: Okay. Thank you, Your Honor.

12 THE COURT: So I'll answer this question at
13 the end of the day.

14 MR. WEBER: Okay.

15 THE COURT: But, for now, we'll take another
16 five, six minutes for you guys to use the restroom,
17 whatever you need to do. We'll bring them back out
18 and we'll be done.

19 MR. WEBER: So what time is he going to be
20 finished today?

21 THE COURT: Before 5:00.

22 MR. WEBER: 5 o'clock? Okay.

23 THE COURT: Before 5:00, yeah.

24 All right. I'll be back in five minutes.

25 (Thereupon, a short break was taken from

1 3:22 p.m. to 3:46 p.m.)

2 THE COURT DEPUTY: Come to order.

3 THE COURT: All right. Let's bring them out.

4 THE COURT DEPUTY: Jury entering.

5 (Jurors entering the courtroom at 3:46 p.m.)

6 THE COURT: Okay. Please be seated.

7 Plaintiff, it's your witness.

8 MR. ZAPPOLO: Thank you, sir.

9 BY MR. ZAPPOLO:

10 Q Mr. Wagner, I'm showing you what's been marked
11 as Plaintiffs' Exhibit 611. Do you recognize that
12 document?

13 A Yes, I do.

14 (Thereupon, Plaintiffs' Exhibit 611 was marked
15 for identification.)

16 BY MR. ZAPPOLO:

17 Q Earlier you were talking about threats to sue
18 you. Is that a true and correct copy of the email that
19 you received on or about the date it purports to be?

20 A Yes, it is. It looks like it was just a
21 couple of days after I got their verbal threat that
22 Savvas would sue me into bankruptcy.

23 MR. ZAPPOLO: Okay. At this point, Your
24 Honor, I'd like to move Plaintiffs' Exhibit 611
25 into evidence.

1 MR. WEBER: No objection.

2 THE COURT: Admitted -- Madam Clerk, is that
3 Exhibit 101?

4 THE CLERK: Yes, Your Honor.

5 MR. ZAPPOLO: Thank you.

6 (Thereupon, Plaintiffs' Exhibit 101 was
7 received into evidence.)

8 BY MR. ZAPPOLO:

9 Q You had retained an attorney to deal with the
10 issues in this case, right?

11 A Yes. I had Kelly Reagan.

12 Q Okay. And Mr. Mosler wrote that now that he's
13 retained -- excuse me -- that you had retained
14 Ms. Reagan to represent you, the end of his patience had
15 been reached.

16 A Yes.

17 Q Now up until that point you had been dealing
18 with Mr. Mosler's lawyers for years, hadn't you?

19 A You mean Alan Simon?

20 Q Yes.

21 A Yes.

22 Q Okay. And then we have the -- what you
23 characterized as a threat: "Please advise him," meaning
24 you, "if he doesn't back off as of Monday, I'll be
25 directing both of my in-house attorneys to go after him

1 to the maximum degree allowed by law and for as long as
2 it takes to bring him to justice."

3 So that's what you were referring to earlier,
4 correct?

5 **A Yes, and he sent it to me. So he didn't just**
6 **send it to my lawyer, he made sure that I saw the**
7 **threat.**

8 Q Okay. Thank you.

9 Now I'm going to keep moving right along here.

10 Do you remember earlier you were testifying
11 about not knowing what was in the -- what were the
12 assets for the \$650,000 purchase price?

13 **A Correct. Yes.**

14 Q Okay. And 106 --

15 **A But they refused to tell me. They refused to**
16 **put in the documents.**

17 Q And we need to move along here.

18 **A Okay.**

19 Q And 1067, which is in evidence as Plaintiffs'
20 Exhibit 26, is where you called that to people's
21 attention, correct?

22 **A Yes. Right. There's a T.V. show called**
23 **Storage Wars where people bid on a --**

24 Q That's okay.

25 **A Okay. Gotcha.**

1 Q We don't need the commentary, we need to move
2 right along because we have to finish quickly, okay?

3 A Okay.

4 Q So you were concerned that there was no
5 provision for expecting the assets of the corporation.
6 You said you kept putting it in and it keeps
7 disappearing, correct?

8 A Yes.

9 Q And that's when you made the Storage Wars
10 analogy, and you were testifying about it earlier,
11 correct?

12 A Yes.

13 Q You testified a few minutes ago about the
14 requirement that you sign some documentation before
15 Mr. Mosler would agree to the stock sale agreement. Do
16 you remember that?

17 A Yes, I do.

18 Q I'm showing you what's been marked as
19 Plaintiffs' Exhibit Number 80.

20 A Yes.

21 (Thereupon, Plaintiffs' Exhibit 80 was marked
22 for identification.)

23 BY MR. ZAPPOLO:

24 Q Do you recognize that document?

25 A I do.

1 Q Okay. Is there any reason to believe it's not
2 a true and correct copy of the document you received on
3 or about the date it purports to be?

4 A No.

5 MR. ZAPPOLO: Okay. At this point, Your
6 Honor, I'd like to move Plaintiffs' Exhibit 80 into
7 evidence.

8 MR. WEBER: No objection.

9 THE COURT: Madam Clerk, Plaintiffs' 102?

10 THE CLERK: Yes, Your Honor.

11 (Thereupon, Plaintiffs' Exhibit 102 was
12 received into evidence.)

13 BY MR. ZAPPOLO:

14 Q Now that email is dated May 14, 2012, correct?

15 A Yes.

16 Q All right. And this is what you are
17 referencing: "Please find attached the acknowledgment
18 that your MT has no warranty from MACC. You need to
19 sign and deliver this acknowledgment to MACC before the
20 stock sale agreement can be finalized," signed by
21 Warren.

22 A Yes.

23 Q Correct?

24 A This is when they were dangling the carrot.

25 They're calling it my MT now to try and like, you

1 **know -- it's a RaptorGTR, but you heard them --**

2 Q Okay. And then there were also references to
3 revising the stock agreement as though the prerequisites
4 regarding the VIN -- prerequisite meaning beforehand,
5 right?

6 **A Yes. That's how con artists work. They say
7 you have to do this first and then don't worry.**

8 Q We don't need the -- we don't need the
9 commentary.

10 **A Okay.**

11 Q We just need to understand what was
12 transpiring here, okay?

13 All right. And then we have the general
14 release and other information --

15 **A Yes.**

16 Q -- in the documentation, correct?

17 **A Yes. Alan Simon specifically released a
18 signed reliability and put insurance fraud on to MACC,
19 which I was wanting to buy.**

20 Q I'm trying to keep these things straight with
21 the clerk. Thank you.

22 Earlier you testified about putting
23 journalists on notice. Do you remember putting
24 Mr. Clifford Atiyeh on notice --

25 **A Yes.**

1 Q -- that his article was --

2 A **Defamatory, yes.**

3 Q Okay.

4 A **I wasn't putting him on notice, but I was just**
5 **noticing that the article was defamatory. I wasn't**
6 **trying to, like, say he did something intentionally.**

7 Q I'm showing you what's been marked as
8 Plaintiffs' Exhibit Number 27 for identification
9 purposes. Do you recognize that document?

10 A **Yes.**

11 (Thereupon, Plaintiffs' Exhibit 27 was marked
12 for identification.)

13 BY MR. ZAPPOLO:

14 Q Did you write that document?

15 A **Yes, I did.**

16 MR. ZAPPOLO: At this point, Your Honor, I'd
17 like to move Plaintiffs' Exhibit 27 into evidence.

18 MR. WEBER: No objection.

19 **THE WITNESS: So --**

20 THE COURT: 103 will be admitted without
21 objection.

22 (Thereupon, Plaintiffs' Exhibit 103 was
23 received into evidence.)

24 BY MR. ZAPPOLO:

25 Q Now you were attempting to -- on November 15,

1 2012, you were attempting to get Mr. Atiyeh to set the
2 record straight, weren't you?

3 **A Yes.**

4 Q Okay. Do you recall what Mr. Atiyeh's
5 response was?

6 **A Something to the effect of "I agree that
7 comments are harsh. They've all been attributed to
8 Warren Mosler since he's the one who said them."**

9 Q Okay. I'm showing you what's been marked as
10 Plaintiffs' Exhibit Number 28 for identification
11 purposes. Do you recognize that document?

12 **A I do.**

13 (Thereupon, Plaintiffs' Exhibit 28 was marked
14 for identification.)

15 BY MR. ZAPPOLO:

16 Q Is that a true and correct copy of the
17 document that you received --

18 **A Yes, it is.**

19 Q -- on or about the date that it was
20 purportedly sent?

21 **A Yes, sir.**

22 MR. ZAPPOLO: At this point, Your Honor, I'd
23 like to move Plaintiffs' Exhibit 28 into evidence.

24 MR. WEBER: No objection.

25 THE COURT: Madam Clerk, 104, please?

1 **THE WITNESS: Yes, Your Honor, 104.**

2 (Thereupon, Plaintiffs' Exhibit 104 was
3 received into evidence.)

4 BY MR. ZAPPOLO:

5 Q And there is the comment that you were just
6 referring to, correct? "While certain comments and
7 allegations are indeed harsh, they are all cited to
8 Mosler"?

9 **A Yes.**

10 Q Okay. Do you recall writing back to
11 Mr. Atiyeh?

12 **A Yes. We had several emails back and forth**
13 **around this time.**

14 Q I'm showing you what's been marked as
15 Plaintiffs' Exhibit Number 30 for identification
16 purposes.

17 **A Yes.**

18 (Thereupon, Plaintiffs' Exhibit 30 was marked
19 for identification.)

20 BY MR. ZAPPOLO:

21 Q Did you write that email on or about the time
22 that it purports to have been sent?

23 **A I did.**

24 MR. ZAPPOLO: Okay. At this point, Your
25 Honor, I'd like to move Plaintiffs' Exhibit 30 into

1 evidence.

2 MR. WEBER: No objection.

3 THE COURT: Madam Clerk, 105?

4 THE CLERK: Yes, Your Honor, 105.

5 (Thereupon, Plaintiffs' Exhibit 105 was
6 received into evidence.)

7 **THE WITNESS: This was about 11 months after I**
8 **got the threatening phone call from Mr. Mosler.**

9 BY MR. ZAPPOLO:

10 Q Okay. Now, during that time period you wrote
11 to Mr. Atiyeh: "A portion of the story about the
12 \$100,000 that Warren strategically omitted is this: I
13 had and still have a \$100,000 deposit in place to buy
14 Mosler Automotive."

15 A Yes. He made it sound like I was extorting
16 \$100,000 in order to not sue Savvas, but I just wanted
17 my \$100,000 back. I mean, what's so wrong with that? I
18 mean, really?

19 Q Okay. And the portion here, on the phone
20 Warren said to me "I won't do it" but asked -- that was
21 who?

22 A Savvas Savopoulos.

23 Q Okay. "Is the type of guy who will sue you
24 for anything. What you'll have to do is hire an
25 attorney for \$400 an hour and defend yourself until

1 you're broke. That's the way things work in America,"
2 correct?

3 A Yes.

4 Q Okay.

5 A And one thing Mr. Mosler said at the beginning
6 of this, I didn't put here, was he said "You're
7 outmatched here." He's the guy with the private jet and
8 I'm the guy who's nothing.

9 Q Okay. Now, with respect to -- by the way,
10 with respect to "outmatched," are you affiliated with
11 any companies recently that have that name or use that
12 mark?

13 A Yes. I founded a company called
14 Outmatched.org.

15 Q And why weren't you just working at your -- at
16 a job, an engineering job?

17 A Well, for the most part this is because I got
18 a 7-foot tall stack of documents all mixed up. I've
19 been working on preparing for this. And also through
20 this experience, I've recognized how vulnerable most
21 people are to someone who has immense resources and are
22 willing to do whatever it takes to destroy someone.

23 If I didn't have my dad, there's no way I'd be
24 able to be here. I survived 11 years and so I've done a
25 lot of healing over these last ten years. And my dad is

1 going to back me.

2 Q Take a moment.

3 A I have been blessed with a very strong mind.
4 I can solve very complex problems very easily, and I
5 gave that mind to him for seven years. And so I have
6 invented a way to help people who can't afford a lawyer
7 to fight back against guys who they're outmatched
8 against.

9 And, you know, I have a business plan and the
10 website is up. And it technically is going to utilize
11 guys like you, Mr. Zappolo, who, when you retire, you
12 have all this wealth of knowledge and you know how to
13 operate the system in your particular area of expertise.
14 And if you want to train an artificial intelligence
15 engine, which are things that you can -- that are
16 somewhat commodities now, and so then someone can go and
17 find and utilize your expertise for free.

18 And the one thing about this is it really is
19 going to be completely clean. Like no one, not even me,
20 is going to make money on this. And it will also
21 facilitate -- one of the worst parts about being scammed
22 like this is you feel so stupid and alone and, you know,
23 and you're facing this gigantic bill that's going to
24 come.

25 So, like, one thing, I got scammed another

1 time with -- I had to fight back three and a half years
2 ago and I got all my money back, all my legal fees back
3 plus more, and I have been helping other victims of this
4 particular scam so this way people can very efficiently
5 find other past victims of a particular scam and then
6 those people are also very willing to help you.

7 Q All right.

8 A So, but this -- anyway, I know we don't have
9 much time, but it's going to be awesome.

10 Q All right. I'd like to -- now, just so that
11 it's not lost, did we talk at all about whether or not
12 you told Warren Mosler about cars being built illegally,
13 et cetera?

14 A I did from time to time.

15 Q Okay. And 7 -- excuse me, Exhibit 765 for
16 identification, Exhibit Number 23 in evidence, that was
17 one of the times, correct?

18 A Right. Yes.

19 Q Okay. And you mentioned earlier that the
20 catalyts were wrong, built after the certification date
21 had expired. We didn't discuss about flywheels, though.
22 Can you explain to the jury why flywheels are important?

23 MR. WEBER: Objection, relevance.

24 THE COURT: What's the relevance?

25 MR. ZAPPOLO: The -- you know what? I'll just

1 move on, Your Honor. I'm going to just keep going.

2 BY MR. ZAPPOLO:

3 Q Mr. Wagner, you testified earlier about the
4 demand by Mr. Simon to have you absorb or have your
5 company absorb the potential liability for the insurance
6 fraud, correct?

7 A **Yes.**

8 Q Okay. And at the same time weren't you
9 demanding your \$100,000 back?

10 A **Yes. I demanded it back several times, I
11 think.**

12 Q What response did you get?

13 A **No, ostensibly. And they'd say "Oh, well, you
14 know, that money is not yours, I'm keeping it." Just
15 various -- you know, he would refer to "Oh, I have
16 documentation that says I get to keep it." And I'd say
17 "Well, all right, tell me. Show it to me," and he never
18 would.**

19 Q Okay.

20 A **In 12 years, he's never shown me what
21 documentation that he's relying on to keep my money for
22 12 bloody years.**

23 Q I'm showing you what's been marked as
24 Plaintiffs' Exhibit 302. Do you recognize that
25 document?

1 **A Absolutely. Yes.**

2 (Thereupon, Plaintiffs' Exhibit 302 was marked
3 for identification.)

4 BY MR. ZAPPOLO:

5 Q Any reason to believe that's not a true and
6 correct copy of the document that you authored on or
7 about the time that it was purportedly sent?

8 **A This is true and correct.**

9 MR. ZAPPOLO: Okay. At this point, Your
10 Honor, I'd like to move Plaintiffs' 302 into
11 evidence.

12 MR. WEBER: No objection.

13 THE COURT: Admitted as 106. Madam Clerk, is
14 that correct?

15 THE CLERK: Yes, Your Honor.

16 (Thereupon, Plaintiffs' Exhibit 106 was
17 received into evidence.)

18 BY MR. ZAPPOLO:

19 Q Now just for quickness now, you wrote "I
20 demand that you return the \$100,000 deposit to James
21 Wagner this week," correct?

22 **A Yes.**

23 Q And just to be clear on that, the -- who, if
24 anyone, paid your father back for that \$100,000?

25 **A I did.**

1 Q Okay.

2 A I paid him back.

3 Q Now, if someone were to say that the video was
4 an unauthorized video and that's what caused Mr. Mosler
5 to deal harshly with you, what would your response be?

6 A That is one of those after-the-crime
7 fabrications to try and get away with it, to say it was
8 because of the video.

9 And the video worked. It got 1.5 million
10 views. That's probably ten times more than the number
11 of anything that Mr. Mosler has done marketing-wise
12 since. You saw the guy in India. You know, he never
13 had any exposure at all to India and the largest car
14 magazine in India wanted to run a story on it. He wants
15 to build a Raptor, but he kept me out of it. I had no
16 idea until I got these documents.

17 Q I'm showing you what's been marked as
18 Plaintiffs' Exhibit 156 for identification purposes. Do
19 you recognize that document?

20 A Yes, I do.

21 (Thereupon, Plaintiffs' Exhibit 156 was marked
22 for identification.)

23 BY MR. ZAPPOLO:

24 Q Okay. Is there any reason to believe that
25 it's not a true and correct copy of an email chain on or

1 about the time it purports to be?

2 **A No.**

3 MR. ZAPPOLO: At this time, Your Honor, I'd
4 like to move Plaintiffs' 156 into evidence.

5 MR. WEBER: Can we approach, Your Honor, for a
6 second?

7 THE COURT: Yes.

8 (Thereupon, a sidebar conference was held.)

9 MR. WEBER: Scott, was this document produced
10 during the case?

11 THE COURT: I'm sorry?

12 MR. ZAPPOLO: I believe it was.

13 MR. WEBER: Because there's no --

14 MR. ZAPPOLO: My mark of 156 is on it.

15 MR. WEBER: There's no Bates number on it, and
16 that's just my own question. I don't remember this
17 document, so --

18 MR. ZAPPOLO: I don't -- honestly, I don't
19 know. My client gave it to me.

20 MR. WEBER: I have to look at it.

21 MR. ZAPPOLO: I thought it was.

22 THE COURT: Take a look at it and see if -- I
23 mean, I wouldn't know if it was produced in advance
24 or not. I'm relying on both of you guys to tell
25 me.

1 MR. ZAPPOLO: As counsel asked that question,
2 I obviously don't -- I can't say that it has been.
3 I honestly don't know. I'll try to look at my
4 exhibits to see --

5 THE COURT: What I'll do is I'll put a
6 standing objection for now. I'll let you look at
7 this document, but we're short on time and I want
8 to move on.

9 (Thereupon, the sidebar conference was
10 concluded.)

11 BY MR. ZAPPOLO:

12 Q Okay. While we're dealing with another issue,
13 I want to back up and talk about -- remember we were
14 talking earlier about the breach of the federal warranty
15 and your claims related to the alternator replacement,
16 replacing the throttle body, repairing the engine, and
17 the fuel line fix?

18 A Yes.

19 Q Can you explain to the jury what dollar figure
20 that cost you out of pocket that should have been
21 covered by a warranty?

22 A The engine was approximately \$20,000. Sylvia
23 mentioned that number too earlier with that other
24 engine. That's about what they cost.

25 The clutch was \$7,200. The alternator was

1 about \$1,500. The throttle was 850, approximately. And
2 then there's some labor costs in there.

3 Q Okay.

4 A That's it.

5 Q Thank you. Now with respect to the \$100,000,
6 the \$100,000 deposit, when should that \$100,000 deposit
7 have been returned?

8 A Definitively, as soon as the Mosler assets
9 were sold to RP High Performance, which happened in July
10 of 2013.

11 Q So since July 2013 -- in July of 2013 -- if
12 you gave them a couple of weeks to do the math and the
13 calculation, would you say August 1, 2015?

14 A Absolutely. 2013.

15 Q 2013, excuse me. That would give Mr. Mosler
16 or Mosler Auto Care Center enough time to do the
17 calculation --

18 A It was Mr. Mosler because it went directly to
19 him personally.

20 Q Okay. How much is your name worth?

21 A It's worth everything. I've worked my whole
22 life to have a reputation and have a career. I have
23 worked my whole life to have a career.

24 And even, like, when I went back for some of
25 my Yale reunions I had, you know, "James" on my thing,

1 **you know, trying to recreate my --**

2 Q When you say "thing," you mean your nametag?

3 A **My nametag. Nametag. And they're like**
4 **"What's going on?" And then, you know, kind of explain**
5 **that, you know, I'm going by James now.**

6 **I've worked my whole life for my reputation.**
7 **You know, friends who I was going to do business with**
8 **didn't want to do business with me.**

9 Q Okay. Now --

10 A **It's sort of humiliating, you know.**

11 Q -- I want to talk to you -- shift gears a
12 minute about the defamation to the car.

13 You've -- there's been repeated testimony
14 about a \$700,000 price tag for the 2012 RaptorGTR,
15 correct?

16 A **Yes.**

17 Q Okay. What did it ultimately sell for?

18 A **\$300,000.**

19 Q Okay. Did you have any discussions with
20 anyone as to why you couldn't get more than \$300,000 for
21 it?

22 A **Yes. I mean, the side glass was broken.**
23 **Who's going to buy a \$700,000 car with the side glass**
24 **broken?**

25 Q Okay.

1 A And it was one of a kind. It had a special
2 cut. There's no way. And of course I didn't have the
3 money to go and, like, make molds and all that special
4 cut. So that plus all of the defamation. Everyone
5 thought it was a fake. So everyone thought it was an
6 MT900 that I --

7 I think it was Alan Simon -- I think he went
8 on to the -- one of these articles, the attorney. He
9 said "pimp appeal." He said the MT900 had "pimp
10 appeal."

11 He did it secretly too. He called himself
12 Raptor-ESQ. No, sorry, Racer -- I'm sorry, Racer
13 Esquire. He said the MT900 had "pimp appeal." So he
14 intentionally -- Mr. Mosler's attorney went in and piled
15 on to the defamation to make everyone think it's just an
16 MT900, which Mr. Mosler came up here and said it.
17 Sylvia came up here and said it. All of Mr. Mosler's
18 people are backing him up on this because they're all
19 paid by him.

20 Q Okay. Now, so you had priced the car at
21 \$700,000, correct?

22 A Yes.

23 Q Explain to the jury --

24 A And Mr. Mosler knew that.

25 Q Explain to the jury how you priced that car at

1 700,000.

2 A I priced it actually at a very good deal
3 considering what other cars -- I think most of them are
4 like a million, a million two. Some are \$2 million that
5 have a lower power-to-weight ratio and the same body
6 construction.

7 Q Hold on. You just said have a lower
8 power-to-weight ratio?

9 A Oh, lower price. I'm sorry, let me back up.
10 I'm just a little flustered still.

11 So there are several different competitive
12 vehicles, like the Bugatti Huayra or something like
13 that, I don't know how to pronounce it. It has
14 730-horsepower and weighed like 500 pounds more. So it
15 had a much lower power-to-weight ratio than this, but it
16 had the same construction, all carbon fiber body and
17 chassis. All those things were equivalent.

18 And that was priced at like, I think,
19 1.5 million or 2 million at the time, so it's basically
20 half price, so it was a tremendously good value at
21 \$700,000.

22 Q Okay. You had sold Mosler vehicles in the
23 past, correct?

24 A Yes.

25 Q Okay. Absent the derogatory statements made

1 about the car, what level of confidence do you have that
2 you would have been able to sell that car for 700,000?

3 **A 100 percent I would have been able to sell ten**
4 **of them easily. There was some interest. And it is at**
5 **such a tremendous value.**

6 **And then of course in China it's a completely**
7 **new market for that and it's the highest -- as far as,**
8 **like, the rush of acceleration you get, this is the best**
9 **thing on the market at the time.**

10 Q Okay. Now you testified earlier that you have
11 an MBA, correct?

12 **A Yes.**

13 Q All right. Now as part of your MBA training
14 did you ever learn how to do business projections?

15 **A Yes. I took classes on entrepreneurship and**
16 **accounting. We did business projections, and I raised**
17 **\$2 million in venture capital to develop the suspension**
18 **technology, so I have done this before.**

19 Q Okay. And as part of your business
20 projections, did you do financial projections about how
21 you thought the company or companies were going to make
22 money?

23 **A Absolutely. You had to do that to raise**
24 **capital.**

25 Q Okay. And you did that in school and in real

1 life, correct?

2 **A Yes.**

3 Q Okay. Did you do any for -- related to this
4 case?

5 **A Absolutely.**

6 MR. WEBER: Objection, improper lay opinion.

7 THE COURT: Sustained.

8 MR. ZAPPOLO: He's the owner of the business,
9 Your Honor.

10 THE COURT: Let's approach.

11 (Thereupon, a sidebar conference was held.)

12 THE COURT: All right. So the testimony is
13 that while he was in college, he took some classes
14 on this particular matter?

15 MR. ZAPPOLO: Yes, but he's also the owner of
16 the business and the owner of the business can
17 testify about lost profits. And part of his lost
18 profits analysis was related to his financial
19 projections which were done prior to the defamation
20 in question and so, therefore, based upon the case
21 law, and even Mr. Weber's expert --

22 THE COURT: Show me a case on this.

23 MR. WEBER: How can he do it before the expert
24 witness?

25 THE COURT: Hold on. You have to show me a

1 case on this.

2 MR. ZAPPOLO: I have this brief memo that was
3 provided to me by someone that works for me, but
4 there are actually --

5 THE COURT: What case?

6 MR. ZAPPOLO: -- expert witness testimony
7 about lost profits.

8 THE COURT: So I guess what you're citing is
9 Nebula Glass vs. Reichhold, 454 F.3d 1203.

10 MR. ZAPPOLO: Yes, Your Honor. I have a copy
11 of the treatise too, which I'm trying to find it
12 right now which actually lays this out. I believe
13 it was a Florida Bar article on discussing damage
14 calculations and that -- as a matter of fact it
15 ties in both --

16 MR. WEBER: Well, it says to the extent
17 necessary.

18 THE COURT: Well, first of all, I'm reading
19 it -- you know, just so you know, I'm one of these
20 people that likes statutes and cases that interpret
21 statutes and sometimes I don't even like the cases.
22 Like, really, I like the statutes. But for
23 something like this, I can imagine that we would
24 have to rely on case law because it wouldn't be
25 addressed by statute.

1 I'm looking at a memorandum, and so I'm
2 looking for the case cited in your memorandum so I
3 can read the case, and the only case I see is
4 Nebula Glass vs. Reichhold, 454 F.3d 1203. This
5 might be a memorandum about it, but I want the
6 case.

7 MR. ZAPPOLO: I don't have the case here with
8 me, Your Honor.

9 THE COURT: I can look it up.

10 MR. ZAPPOLO: But I think I have the treatise
11 that lays out the whole logic of the case law with
12 me. Can I go grab it?

13 THE COURT: I'll take a look at it, but,
14 again, a treatise is not movement, but I'm looking
15 for binding authority.

16 MR. ZAPPOLO: But if it's binding --

17 MR. WEBER: And this is 11th Circuit Federal
18 Law, which is not binding.

19 MR. ZAPPOLO: There is a Florida Bar CLE that
20 the Federal Business Nature Chapter 17 referred to.

21 THE COURT: Was this attached to one of your
22 motions?

23 MR. ZAPPOLO: I'm sorry?

24 THE COURT: Was this attached to one of your
25 motions?

1 MR. ZAPPOLO: Yes.

2 MR. WEBER: They cited this in furtherance of
3 pleading lost profits.

4 MR. ZAPPOLO: But it talks about the -- it's
5 the bottom right, Your Honor, page 8, section 17.3,
6 lost profit damages. It talks about the standard
7 jury instructions --

8 MR. WEBER: It doesn't say anything about --

9 THE COURT: So, you know, so looking at -- I'm
10 considering your arguments and it says here:
11 "There's no requirement in any Florida case law to
12 which the undersigned is aware that requires lost
13 profits evidence be proffered by an expert
14 witness."

15 And so what I'm -- you know, it doesn't tell
16 me a whole lot, but what I'm doing in my analysis
17 is deciding whether or not the information would
18 require specialized training and knowledge. And so
19 the information that you're about to present, how
20 was it synthesized, how was it created, and does it
21 require any kind of specialized knowledge or
22 expertise?

23 If the answer is yes, then that would require
24 an expert witness. Now you've listed the party as
25 a witness, but did you list him as an expert

1 witness as to this?

2 MR. ZAPPOLO: No. And I'll read from page 10
3 of that document. The owner of an injured business
4 is presumed competent to testify in support of a
5 lost profits claim or lost business value --

6 THE COURT: What's the Florida case citing?

7 MR. ZAPPOLO: Mercury Marine Division of
8 Brunswick Corp. v. Boat Town U.S.A., Inc., 444
9 So.2d 88, Florida 4th DCA 1984.

10 MR. WEBER: Look at the next sentence:
11 "However, there is an exception to this allowance
12 in instances where it is established that any
13 evidence when the owner does not have knowledge of
14 the business sufficient to raise his or her
15 testimony above that is speculative."

16 In this case SEI has --

17 THE COURT: I'm going to put them in the jury
18 room for ten minutes. You're going to have to, I
19 guess, establish --

20 MR. WEBER: I mean, it's in evidence that SEI
21 has not sold any cars except for this one car.

22 THE COURT: So I guess what we're going to do
23 on this particular issue is I want to put them in
24 the jury room and I want to hear what you're going
25 to say, how it's going to be presented to the jury,

1 so I can make the determination as to whether or
2 not he's competent to testify about this particular
3 fact, okay?

4 MR. ZAPPOLO: All right.

5 (Thereupon, the sidebar conference was
6 concluded.)

7 THE COURT: Deputy, I need about ten minutes
8 with the attorneys. It's going to take a little
9 longer. It's going to be about ten minutes,
10 roughly, so while you're in there, if you want to
11 use the facilities, it's a good time.

12 (Jurors exit the courtroom at 4:25 p.m.)

13 THE COURT: All right. Please have a seat.
14 You're about to go through a process that sometimes
15 is called voir dire.

16 Mr. Zappolo, whenever you're ready.

17 MR. ZAPPOLO: Thank you.

18 VOIR DIRE EXAMINATION

19 BY MR. ZAPPOLO:

20 Q Mr. Wagner, we were talking earlier about your
21 education and training with respect to business
22 prospectuses and business models, correct?

23 A Yes.

24 Q Okay. And did you do a business prospectus or
25 business model relative to SEI and SEI being a

1 distributor of Mosler Auto Care Center vehicles?

2 **A Yes, I did.**

3 Q Okay. And is that -- and you made that
4 available to me and that was one of the things that I
5 was about to introduce into evidence with you, correct?

6 **A Yes.**

7 Q Okay. Now when creating that business model
8 or business prospectus, did you include information that
9 was -- where did you get the information?

10 **A There was online sources, my own personal
11 experience. There's also a large independent analysis
12 of market research. I have that here too.**

13 Q Okay.

14 **A The large ones, 106 pages long. I did
15 extensive research to put those projections together.
16 And also my knowledge of -- I know the customers very
17 well. I knew what things they liked and disliked about
18 the original MT900, and those things were being fixed in
19 the Raptor.**

20 **Similar to Jonathan Frank, I've been in this
21 business for a long time. I've been involved in the
22 sales. I know the competitive vehicles. I did a
23 competitive landscape.**

24 Q And did you do those comparisons within your
25 business prospectus?

1 **A Yes, I did.**

2 Q And did you use figures that you had -- that
3 you knew were valid for want of a better phrase --

4 **A Yes.**

5 Q -- for expenses and things like that?

6 **A Absolutely. I have been doing this for a
7 while.**

8 Q Okay. And based upon your personal knowledge
9 and your educational background, you came up with these
10 business plans, correct?

11 **A Yes, sir.**

12 Q Okay.

13 **A And this is not the first time I have done
14 this. I have done this a few times now.**

15 Q Okay. And so you weren't like -- you weren't
16 consulting about some other business, this is a business
17 that you had been living with for how long?

18 **A Seven years.**

19 Q Okay.

20 THE COURT: I am going to give you two more
21 minutes.

22 MR. WEBER: I have a question. How many
23 cars --

24 THE COURT: Hold on. Hold on. Mr. Zappolo,
25 two more minutes of voir dire and then I'm going to

1 give Mr. Weber about five minutes and then we'll
2 bring the jury back in.

3 MR. ZAPPOLO: Okay.

4 BY MR. ZAPPOLO:

5 Q Based upon your experience in the industry, is
6 there any reason to believe that your prospectus is like
7 wild or fanciful or made-up?

8 A **No. I believe it's actually on the
9 conservative side.**

10 Q Okay. And you were investing your own time,
11 money, and efforts in that, correct?

12 A **Yes. And I believed in it and I was willing
13 to invest my time and money into it because I knew it
14 was going to be a big payoff.**

15 Q And based upon your efforts, et cetera, and
16 things that you learned as you worked through the
17 business, did you modify your business prospectus?

18 A **Yes, of course. As I learned new information,
19 I integrated that into the business prospectus. It was
20 a living document. But it does -- of course, once I
21 publish it, it is valid at that time.**

22 **As soon as the RaptorGTR got certified, that
23 changed things.**

24 MR. ZAPPOLO: Okay. Thank you.

25 THE COURT: All right. So real quick, we're

1 voir-diring on this issue. This is not
2 Cross-Examination.

3 MR. WEBER: Yeah. Yeah.

4 VOIR DIRE EXAMINATION

5 BY MR. WEBER:

6 Q For what years have you forecasted sales for
7 SEI?

8 A **For what years? I think I forecasted for 2011**
9 **through 2015 in this particular document.**

10 Q What method did you use to forecast sales for
11 SEI for those years?

12 A **I looked at past performance, competitive**
13 **analysis between the different vehicles, similar to what**
14 **Jonathan Frank does. And I've also looked at the**
15 **projections. There's actually independently produced**
16 **projections. I have them here. It's like 106 pages**
17 **thick where independent -- I'm not sure. You know, they**
18 **cost like \$6,000.**

19 Q How many cars had SEI sold prior to 2011?

20 A **Public record --**

21 MR. ZAPPOLO: I object to that line of
22 questioning, Your Honor. The case law is clear.
23 It's even in the jury instructions that you don't
24 have to have a prior track record in order to have
25 lost profits done.

1 MR. WEBER: He just said prior sales are a
2 part of his analysis. He literally just testified
3 to that.

4 THE COURT: Overruled.

5 **THE WITNESS: So there's the 2009 MT900, and**
6 **this is a completely different model of the MT900.**
7 **I had sold three or four. SEI sold three or four.**

8 BY MR. WEBER:

9 Q So you sold one prior car prior to 2011,
10 right?

11 MR. ZAPPOLO: Objection, misstates the
12 testimony.

13 BY MR. WEBER:

14 Q What is the number of cars that you -- SEI
15 sold prior to 2011?

16 **A I believe it was three or four.**

17 Q Okay. So for almost -- what years were those
18 three or four cars sold in?

19 **A I think they were in 2009, 2010.**

20 Q How did you extrapolate selling those cars,
21 three or four cars --

22 **A I did not extrapolate. It's a completely**
23 **different car.**

24 Q -- in 2009 or 2010 to selling cars between
25 2011 and 2015?

1 A So you're misstating my testimony. I did not
2 do an extrapolation. This is a completely new model.
3 So I validated the competitive landscape of what other
4 vehicles, which didn't have the weird things like the
5 Corvette taillights in it, I looked at -- did a
6 competitive analysis, horsepower-to-weight ratio, the
7 different construction, carbon fiber body, carbon fiber
8 chassis, and looked at the other cars and what their
9 sales are.

10 So I wasn't comparing it against the vehicle
11 that had failed. That would be invalid extrapolation.
12 I compared it against vehicles that had succeeded with
13 the same attributes or even subpar attributes of what
14 the RaptorGTR had.

15 MR. ZAPPOLO: Can I ask a simple question?

16 THE COURT: Hold on. Are you done? You have
17 about one more minute.

18 BY MR. WEBER:

19 Q Which cars did you choose to compare to the
20 Raptor?

21 A The Pagani Huayra, the Ferrari LeFerrari.
22 They're in my business plan.

23 Q And you based that on the chart that Jonathan
24 Frank prepared, right?

25 A No, no, no. This was my analysis done well

1 before Jonathan Frank was hired as a witness, but
2 similar technique. And that's what you do, you look at
3 the competitive landscape and the competitive
4 landscape --

5 Q Jonathan Frank's chart was based on his
6 objective ratings as to brands of cars, wasn't it?

7 A No, no, no.

8 Q That's what he testified to yesterday.

9 A There was specific power-to-weight ratio, what
10 type of construction it had, yes or no; carbon fiber,
11 yes or no; exclusivity volume, which is exclusivity,
12 things like that. There's a lot of very objective
13 elements to that.

14 Q Has SEI ever sold 20 cars in one year?

15 MR. ZAPPOLO: Objection, relevance.

16 THE COURT: All right.

17 MR. ZAPPOLO: One question, Your Honor.

18 THE COURT: Let me move on to Mr. Zappolo, and
19 then I'll give you a ruling.

20 VOIR DIRE EXAMINATION (cont.)

21 BY MR. ZAPPOLO:

22 Q Are you familiar with the projected sales
23 accounting method?

24 A Yes.

25 Q Okay. Is that what you did here?

1 **A** **Yes.**

2 **Q** Okay.

3 MR. WEBER: What's the projected sales
4 accounting method?

5 THE COURT: All right. We're done. We're
6 done.

7 MR. WEBER: He doesn't know.

8 THE COURT: All right. Give me a second.

9 All right. So we're talking about a nonexpert
10 witness. You know, you've given me a treatise to
11 review. I haven't had the opportunity to review
12 all of the cases in the treatise. We're here in
13 the middle of the trial. We have another half hour
14 left in the day. But I'm considering this your
15 argument and your argument is that the owner of an
16 injured business is presumed competent to testify
17 in support of lost profits or a claim of lost
18 business value, however, there's an exception to
19 this allowance in instances when it is established
20 that any evidence when the owner does not have
21 knowledge of the business sufficient to raise his
22 or her testimony above that is speculative, and I
23 have concerns that some of this is speculative in
24 nature.

25 We're talking about Internet research. We're

1 talking about modifications to cars and whether
2 those modifications would be well received or not.
3 We're talking about, you know, comparisons to other
4 cars. I think perhaps this would have been
5 something that required specialized knowledge or
6 expertise. The objection is sustained. Let's
7 bring the jury out.

8 MR. ZAPPOLO: Your Honor, I appreciate it.
9 I'm not arguing with the Court.

10 THE COURT: Well, that's why I wanted you to
11 do the voir dire so you have a record.

12 MR. ZAPPOLO: I understand and I thank you,
13 Your Honor, for that. I wouldn't be doing my job
14 if I didn't renew my motion to allow Cinnamin
15 O'Shell to testify.

16 THE COURT: I know.

17 MR. ZAPPOLO: Thank you. Your Honor, may we
18 instruct the witness before everyone comes out on
19 what your ruling means.

20 THE COURT: Sure.

21 MR. ZAPPOLO: Mr. Wagner, that means that
22 you're not to testify -- you're not to talk about
23 projected damages for that count. All right?

24 **THE WITNESS: Understood.**

25 MR. ZAPPOLO: Your Honor, what about the

1 aspect that he has a contract that requires certain
2 things. Can he testify about damages pursuant to
3 the --

4 THE COURT: Well, that's speculative, right?

5 MR. ZAPPOLO: Well, okay.

6 THE WITNESS: So just so I'm -- I want to make
7 sure I'm clear. I don't want to break any rules,
8 can I ask for clarification?

9 So the three car per minimum in the contract,
10 that I'm allowed to talk about?

11 MR. ZAPPOLO: That's where I was going to go
12 with it, Your Honor.

13 THE COURT: I mean, if you can tie it to
14 something that's nonspeculative. This case -- do
15 you have a document?

16 MR. ZAPPOLO: Yes. We have --

17 THE COURT: That's already in evidence? The
18 document is already in evidence?

19 MR. ZAPPOLO: Yes, it is. Yes, Your Honor.

20 MR. WEBER: Yes.

21 THE COURT: All right.

22 THE COURT DEPUTY: Jury entering.

23 (Jurors entering the courtroom at 4:37 p.m.)

24 THE COURT: Okay. Please be seated.

25 Plaintiff, it is your witness. It is 4:35.

1 MR. ZAPPOLO: Yes, Your Honor. Based upon
2 your ruling, I need to find the document.

3 DIRECT EXAMINATION (cont.)

4 BY MR. ZAPPOLO:

5 Q Mr. Wagner, do you recall testifying about the
6 distribution contract --

7 A Yes, I do.

8 Q -- in this case?

9 A Yes, I do.

10 Q Wherein SEI was to distribute Mosler Auto Care
11 Center products --

12 A Yes.

13 Q -- in China and Thailand?

14 A Yes, sir.

15 Q Do you recall how many cars Mosler Automotive
16 Corporation was required to sell to -- excuse me, to
17 manufacture and to sell to SEI pursuant to that
18 agreement?

19 A Three per year for 25 years.

20 Q Okay. Do you remember what the cost per car
21 was going to be?

22 A Yes. 329,000 less a 13 percent distributor
23 discount.

24 Q Okay. And --

25 A I think it's about \$286,000, approximately.

1 Q Okay. So, \$286,000. Now based upon your
2 experience selling supercars, which we've established
3 already based upon the invoice that gave you credit for
4 selling Mosler Automotive vehicles, correct?

5 A Yes.

6 Q Based upon that experience, how much was it
7 going to cost you to -- or Supercar Engineering to sell
8 each car? What was the overhead?

9 A Well, the overhead itself is not that high.
10 The more I spent on the marketing and all that, of
11 course the more cars I would be able to sell. If I was
12 only allowed to sell three, then the cost per car was
13 probably around \$10,000 in marketing.

14 Q Okay. So if you could sell the cars, what did
15 you anticipate selling the cars for?

16 A \$700,000.

17 Q Okay. And you had discussed why you thought
18 \$700,000 was a reasonable price, right?

19 A Yes.

20 Q Absent the defamation, correct?

21 A Absent the defamation.

22 Q Okay. So it's \$700,000 minus your cost per
23 vehicle and the related overhead. What was the profit
24 that the company would have received?

25 A Approximately \$400,000 per vehicle.

1 Q Okay. \$400,000 per vehicle for -- the very
2 basic minimum was how many vehicles per year?

3 A **Three per year.**

4 Q Okay. So that's \$1.2 million per year. How
5 long was that contract?

6 A **25 years.**

7 Q Okay. So 1.2 million for 25 years, correct?

8 A **Correct.**

9 Q Right. Now is that a pie-in-the-sky estimate
10 or is that conservative?

11 MR. WEBER: Objection.

12 THE COURT: Sustained.

13 BY MR. ZAPPOLO:

14 Q How many cars did you actually think that,
15 based upon your experience, was selling cars that
16 Supercar Engineering would be able to sell?

17 MR. WEBER: Objection. This goes outside the
18 scope.

19 THE COURT: Sustained.

20 BY MR. ZAPPOLO:

21 Q You understood that the contract provided for
22 minimums, correct?

23 A **Correct. Yes.**

24 Q What, if anything, led you to believe that
25 you'd only be able to sell the minimums required by the

1 contract?

2 **A Nothing. I think I could sell a lot more than**
3 **that.**

4 MR. ZAPPOLO: Okay. And that's all the
5 questions that I have, Your Honor.

6 THE COURT: Let's approach.

7 (Thereupon, a sidebar conference was held.)

8 THE COURT: All right. So we start
9 Cross-Examination in the morning?

10 MR. WEBER: Yes.

11 THE COURT: Tomorrow I'm going to be done at
12 11:10, 11:15.

13 MR. WEBER: Okay.

14 THE COURT: I have to take a longer lunch
15 tomorrow.

16 MR. WEBER: Okay.

17 THE COURT: And we'll talk about that more in
18 a little bit, but I'm going to cut them loose now
19 and address that question and tell them we'll be
20 here until next Friday.

21 MR. WEBER: Okay.

22 THE COURT: And --

23 MR. WEBER: So I understand you're going to
24 start a 11:15 and then break for lunch?

25 THE COURT: No, no. We're going to start

1 tomorrow as soon as I'm done with my morning
2 docket. I have a hard stop at 11:15, 11:10.

3 MR. WEBER: Okay. Gotcha.

4 THE COURT: I have to be in Delray by noon and
5 be back for the afternoon.

6 MR. WEBER: Gotcha.

7 THE COURT: So what I'm going to do is if I
8 can leave here at 11:30, get to Delray by noon, I
9 can be there for an hour, I can be back here by
10 about 1:30. So, you know, for estimating purposes,
11 you can figure Cross-Examination will start in the
12 morning and we'll go in the afternoon.

13 MR. WEBER: Perfect. Thank you, Your Honor.

14 THE COURT: Let me address that question and
15 then we'll be done.

16 MR. WEBER: Perfect. Thank you.

17 (Thereupon, the sidebar conference was
18 concluded.)

19 THE COURT: All right. Ladies and gentlemen,
20 so it's come -- it's 4:42, but I think it's a good
21 time to break for the day.

22 There was a question from one of you earlier
23 asking me about scheduling. This case will
24 conclude next Friday. So not this Friday, but next
25 Friday. Today is -- May 26th. This case will

1 conclude on May 26th, okay?

2 Again, I promised all of you -- well, I
3 promised one of you that we would be out every day
4 by 5 o'clock. So between now and the 26th we'll be
5 out by 5 o'clock every day. The 26th will be the
6 last day.

7 The only caveat I have for you is that perhaps
8 the 26th will be a little bit longer. Really that
9 will depend on your deliberations, but the
10 presentation of evidence will have to conclude by
11 the 26th, okay?

12 Again, please don't do any research on this
13 case. Don't look up any names or people involved
14 in this case. Don't discuss this case with your
15 family members, your friends, or amongst yourselves
16 until it's time to deliberate, okay? We'll
17 reconvene tomorrow at 9:30 in the morning.

18 All right. Have a wonderful night.

19 (Jurors entering the jury room at 4:44 p.m.)

20 THE COURT: Mr. Mosler, you can step down.

21 MR. ZAPPOLO: Wagner.

22 THE COURT: I'm sorry, I'm sorry.

23 MR. ZAPPOLO: We've all done it, Your Honor.

24 THE COURT: It's been a long day. I'm sorry,
25 please have a seat.

1 All right. So, Mr. Wagner, you're in the
2 middle of testifying, so you can't discuss this
3 case with your attorney, okay?

4 **THE WITNESS: Understood.**

5 THE COURT: Tomorrow morning we'll pick it up
6 with Cross-Examination. I will tell you
7 Cross-Examination is inherently uncomfortable.
8 It's intended to be uncomfortable, okay?

9 **THE WITNESS: Okay. I'm fine.**

10 THE COURT: So I'm just letting you know that
11 now.

12 **THE WITNESS: Okay. Thank you.**

13 THE COURT: And the reason I'm telling you
14 that is because I can see that this is a very
15 personal matter for you. It's very important to
16 maintain your stability, okay?

17 **THE WITNESS: Yes, Your Honor.**

18 THE COURT: I don't think that will be an
19 issue with Mr. Mosler or with you, but I'm going to
20 admonish both of you to remember that tomorrow you
21 have to be civil with each other and the
22 Cross-Examination is inherently uncomfortable,
23 okay?

24 **THE WITNESS: Got it.**

25 THE COURT: Okay. Some people don't do well

1 with it, but it is inherently uncomfortable, and
2 it's designed to be that way.

3 **THE WITNESS: I will meditate in the morning.**

4 THE COURT: All right. I know you guys are
5 buying lunch for the jurors. Let's get that
6 handled first thing in the morning tomorrow. We're
7 going to break no later than, like I said, 11:15.
8 We'll break for about a two-hour lunch tomorrow and
9 then we'll reconvene in the afternoon.

10 There are some things that I think I need to
11 review from both of you that probably need to --

12 THE COURT DEPUTY: Jury entering.

13 (Jurors exit the courtroom at 4:46 p.m.)

14 THE COURT: -- that I need to review from both
15 of you. So there are motions that are always made
16 at the conclusion of the case or not. If that's
17 the case, if you have anything in writing that you
18 want me to review, bring it with you and give me
19 time to review it. I don't know -- do we
20 anticipate that we're going to conclude Mr. Wagner
21 tomorrow?

22 MR. WEBER: I think it will be close, Your
23 Honor, because we're basically going to break from
24 11:00 to 1:30, right? So I don't think we will.

25 THE COURT: I try to make up with it. Like

1 today I think I cut out one of the breaks to give
2 the jury -- I thought they were doing okay, so we
3 did without one of the breaks. I might do the same
4 again tomorrow, okay. So we'll do what we can
5 tomorrow to try to wrap that up.

6 MR. WEBER: Perfect.

7 THE COURT: Anything else I need to address?

8 MR. WEBER: No, Your Honor.

9 MR. ZAPPOLO: Just one clarification. You
10 said you wanted written motions --

11 THE COURT: No, I don't want written motions.
12 If you have something written for me to review,
13 that's okay, you can give it to me. I always have
14 to address motions -- sometimes I have people give
15 me stuff at the very last second, you know.

16 MR. ZAPPOLO: Okay.

17 THE COURT: You know, which I guess I don't
18 mind, but it takes time to digest.

19 MR. ZAPPOLO: I understand, Your Honor. Just
20 because I'm anticipating the jury instructions
21 right now --

22 THE COURT: Well, that's the other thing we
23 need to discuss.

24 MR. WEBER: Yeah.

25 THE COURT: You know, and that's not something

1 that I think we need to get into until after we
2 address all of the motions, okay?

3 MR. WEBER: Exactly.

4 THE COURT: I thought there was a deposition I
5 had to review.

6 MR. WEBER: No, not anymore.

7 THE COURT: Okay.

8 MR. ZAPPOLO: Not anymore.

9 THE COURT: All right. Then I guess that's
10 all the housekeeping for today, right?

11 MR. WEBER: Yes.

12 THE COURT: All right. I'll see everybody
13 tomorrow at 9:30.

14 MR. WEBER: Thank you, Your Honor.

15 THE COURT: All right. We're in recess.

16 (Whereupon, the proceedings are adjourned at
17 4:48 p.m. and are continued on May 18, 2023 in
18 Volume VII.)

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IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT,

IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. 50-2012-CA-023358-XXXX-MB

JAMES TODD WAGNER, SUPERCAR ENGINEERING,
INC., a Florida corporation,

Plaintiffs,

vs.

WARREN MOSLER, MOSLER AUTO CARE CENTER,
INC. ("MACC") a Florida corporation,
d/b/a Mosler Automotive,

Defendants.

_____ /

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VOLUME VII - DAY 7

- - - - -

PROCEEDINGS BEFORE

HONORABLE LUIS DELGADO

DATE: MAY 18, 2023

TIME: 9:30 A.M. - 4:41 P.M.

1 APPEARING ON BEHALF OF PLAINTIFFS:

2

ZAPPOLO & FARWELL, P.A.
3 BY: SCOTT ZAPPOLO, ESQUIRE
4360 Northlake Boulevard
4 Suite 101
Palm Beach Gardens, FL 33410
5 (561) 627-5000

6

7 APPEARING ON BEHALF OF DEFENDANTS:

8

WEBER LAW
9 BY: STEVEN D. WEBER, ESQUIRE
TEVON ETIENNE, ESQUIRE
10 JOSHUA KILLINGSWORTH, ESQUIRE
777 Brickell Avenue
Suite 500
11 Miami, FL 33131
(305) 377-8788

12

13 ALSO PRESENT

14 James Todd Wagner, Plaintiff

15 Warren Mosler, Defendant

16 David Griffin, TruVid, LLC

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I N D E X

WITNESS PAGE

JAMES TODD WAGNER
Cross-Examination By Mr. Weber 1282

E X H I B I T S

EXHIBIT DESCRIPTION MARKED RECV'D

Defendants' 2	was marked Exhibit 9	1284	1285
Defendants' 3	was marked Exhibit 98	1290	1291
Defendants' 4	was marked Exhibit 97	1294	1295
Defendants' 5	was marked Exhibit 111	1298	1300
Defendants' 6	was marked Exhibit 112	1302	1303
Defendants' 7	was marked Exhibit 115	1305	1306
Defendants' 8	was marked Exhibit 117	1306	1307
Defendants' 9	was marked Exhibit 119	1309	1309
Defendants' 10	was marked Exhibit 127	1310	1311
Defendants' 11	was marked Exhibit 128	1314	1314
Defendants' 12	was marked Exhibit 129	1315	1316
Defendants' 13	was marked Exhibit 133	1316	1317
Defendants' 14	was marked Exhibit 134	1319	1320
Defendants' 15	was marked Exhibit 136	1321	1322
Defendants' 16	was marked Exhibit 135	1326	1327
Defendants' 17	was marked Exhibit 140	1329	1330

1 E X H I B I T S (cont.)

2	EXHIBIT	DESCRIPTION	MARKED	RECV'D
3	Defendants' 39	May 2, 2011 document		1410
4	Defendants' 40	was marked Exhibit 7	1412	1413
5	Defendants' 41	was marked Exhibit 206	1418	1419
6	Defendants' 42	document		1422
7	Defendants' 43	was marked Exhibit 213	1425	1426
8	Defendants' 44	marked as Exhibit 215	1423	1426
9	Defendants' 45	was marked Exhibit 218	1428	1428
10	Defendants' 46	was marked Exhibit 212	1429	1430
11	Defendants' 47	was marked Exhibit 219	1432	1432
12	Defendants' 48	was marked Exhibit 224	1435	1436

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BE IT REMEMBERED, that the following proceedings were taken in the above-styled cause before Honorable Luis Delgado, Presiding Judge, at the Palm Beach County Courthouse, 205 North Dixie Highway, Courtroom 10-D, in the City of West Palm Beach, County of Palm Beach, State of Florida, on the 18th day of May, 2023, to wit:

- - -

THE COURT: Okay.
THE COURT DEPUTY: Come to order.
(Jurors entering the courtroom at 10:13 a.m.)
THE COURT: All right. Thank you very much.
Everyone have a seat.
All right. Madam Clerk, please swear in the witness.
THE CLERK: Do you swear or affirm that the testimony you're about to give will be the truth, the whole truth, and nothing but the truth?
THE WITNESS: I do.
THE COURT: All right. Cross-Examination.
MR. WEBER: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. WEBER:

Q Good morning, Mr. Wagner.

1 **A Good morning, Mr. Weber.**

2 Q Thank you. So we're now going to
3 cross-examine you and we're going to do things
4 semi-chronologically, put everything in this case
5 somewhat in context. So I know we've been getting a lot
6 of documents from your attorney, and I'm going to try to
7 put everything chronologically and lay it out.

8 I think a good way to start is with your claim
9 regarding the \$100,000 deposit. And so in this case
10 you're seeking a return of \$100,000, correct?

11 **A Yes. Plus interest and so forth as well.**

12 MR. WEBER: I'm going to mark this document as
13 defense?

14 THE CLERK: Yes, Your Honor.

15 MR. WEBER: I'm going to mark this document.

16 THE COURT: Is that Defendants' 3, I think?
17 Is that where we're at?

18 MR. WEBER: For trial, it's going to be ID'd
19 as Defendants' 9, but I think we're on --

20 THE COURT: Defendants' 9?

21 MR. WEBER: Well, we're not admitting it into
22 evidence, right? I mean, we're just marking it for
23 trial, I think.

24 THE CLERK: If you want to mark them for
25 trial, yes.

1 MR. WEBER: Yes.

2 THE COURT: Okay. So this is not being
3 admitted into evidence?

4 MR. WEBER: Well, not yet, but it will be,
5 hopefully.

6 (Thereupon, Defendants' Exhibit 9 was marked
7 for identification.)

8 BY MR. WEBER:

9 Q Mr. Wagner, I'm handing you what's been marked
10 as document number 9, Defendants' 9 for identification.
11 Take a moment to look at that document.

12 **A Yes. This is a 2010 document. All of the**
13 **issues we were talking about have been 2011, so... okay,**
14 **go ahead.**

15 Q Is this document that's been marked as
16 Defendants' 9 for identification an email exchange
17 between you and Warren Mosler?

18 **A It is.**

19 MR. WEBER: I'm going to ask to move this
20 document into evidence.

21 MR. ZAPPOLO: No objection.

22 THE COURT: All right. So, Madam Clerk, what
23 number are we on for defense?

24 MR. WEBER: 2, I think. We've only admitted
25 1.

1 THE CLERK: 2.

2 THE COURT: So this will be Defendants' 2,
3 thank you.

4 (Thereupon, Defendants' Exhibit 2 was received
5 into evidence.)

6 BY MR. WEBER:

7 Q Now let's start at the bottom of the chain,
8 which is an email from you to Warren Mosler on July 30,
9 2010. Do you see that?

10 A Yes.

11 Q Can you see the projector okay, Mr. Wagner?

12 A Yes, I can. It's fine.

13 Q Okay. That will make it a little easier.

14 So this is an email from you to Warren Mosler
15 July 3, 2010. And you sent this email to Mr. Mosler
16 because you were interested in assembling a group of
17 investors to purchase MACC or its assets, correct?

18 A Yes. May I ask you to put it just a tiny bit
19 towards me, the screen, just a little bit? Just like
20 five degrees would be enough. I want to make sure the
21 jury can see it, but it's a little bit off. That's
22 fine.

23 You know what? Never mind because then it
24 makes this all messed up.

25 Q Okay. And so you sent this email because you

1 were interested in purchasing MACC or its assets, right?

2 **A Yes.**

3 Q And in furtherance of doing so, you told
4 Mr. Mosler that you've been working with some of your
5 Yale contacts, local contacts here, and you believe that
6 you can pull together the financial investment necessary
7 to buy Mosler Auto and take us into profitability,
8 right?

9 **A Yes.**

10 Q At the time MACC was not profitable, right?

11 **A I believe MACC was more or less breakeven from**
12 **what I understood during this time period. Maybe like a**
13 **smidgen like, you know -- it was very, very, very, very,**
14 **very close to breakeven.**

15 **We actually did a cash flow analysis, actually**
16 **my ex-wife did, and I believe around this time it**
17 **actually showed a bit of a profit around this time**
18 **period.**

19 Q Well, let's --

20 **A Not a lot, a little bit.**

21 Q And so in response to this email, you see a
22 reply from Warren Mosler, right?

23 **A Yes.**

24 Q And interlined in your original email you see
25 okays, right?

1 **A Yes. That's the way Mr. Mosler worked.**

2 Q You see "okay" in response to different
3 paragraphs.

4 Now that doesn't mean he's necessarily
5 creating a binding agreement to what you are writing in
6 this email, right?

7 **A I disagree.**

8 Q So you think --

9 **A This is the way he operated. He'd trade -- I**
10 **worked for his hedge fund for a while. He would trade**
11 **hundreds of millions of dollars and swap, I think,**
12 **currencies in Japan or whatever and the emails would**
13 **look just like this. They're just emails. They're**
14 **little cryptic emails with "okay" like this and trades**
15 **are made.**

16 Q So this email right here, do you believe
17 Warren Mosler's okays here create a binding agreement
18 between you and Warren Mosler?

19 **A I'd have to look through the whole thing,**
20 **but --**

21 Q Well, let's --

22 **A This is his word.**

23 Q Okay. Let's look at the email. So you
24 believe that Warren Mosler agreed that the new owner's
25 company to be called Mosler Supercars to own 80 percent,

1 you retain 20 percent. He said "okay," you believe that
2 was a binding agreement right there?

3 **A Yes.**

4 Q The email says purchase price for 80 percent
5 ownership, inventory of 2.5 million plus 10 million
6 equals 12.5 million. 80 percent of this is 10 million.
7 Okay, you believe that's a binding agreement?

8 **A Yes. I made an offer, he accepted. That's a**
9 **meeting of the minds. That is, for lawyer speak, a**
10 **contract.**

11 Q And all the way down, all of the okays, right?

12 **A This is the way he operated. It was via**
13 **emails like this. It wasn't via phone even though --**
14 **we'll get there, but...**

15 Q Now in response to Mr. Mosler's reply, you
16 wrote "Sweet! On it!" Right?

17 **A Uh-huh. Yes.**

18 Q And then Mr. Mosler wrote "Also, keep the
19 other possibilities open even though yours gets
20 priority," right?

21 **A Yes, he did write that.**

22 Q And he wrote that because, in addition to you
23 trying to buy MACC or its assets, there were others out
24 there who were also trying to buy MACC or its assets,
25 right?

1 **A Yes, and that was fine.**

2 Q And you were also looking for other people
3 that might be interested in buying MACC or its assets,
4 right?

5 **A Buying or investing in my deal, yes. And,**
6 **again, as I testified earlier, I wanted MACC to succeed.**
7 **I had exclusive distributorship in two of the very new**
8 **markets for MACC. I was very happy for someone else to**
9 **buy it and build the cars and I would distribute them.**
10 **That was 100 percent fine with me.**

11 And this is around 2010. My \$100,000 deposit
12 went in a full year later, at the end of June 2011. So
13 all of this created a binding contract at the time --

14 Q There's no question pending right now,
15 Mr. Wagner.

16 **A Okay.**

17 Q And in response, you wrote "Understood,"
18 right?

19 **A Yes. That was my understanding of our**
20 **contract.**

21 Q Okay. So you just testified under oath that
22 you believe you were in a contract as of July 3, 2010,
23 at 4:55 p.m. Yet even though you believe you have a
24 contract, Mr. Mosler is telling you "Keep the other
25 possibilities open"?

1 **A** **Right. I have a contract to buy there. If he**
2 **sells it to someone else, that's okay. I have a**
3 **contract to buy it at those terms. If he sells it to**
4 **someone else, I'm not going to object. I'm not going to**
5 **try and say "Hey, you have to sell it to me for this."**

6 **I have an agreement with Mr. Mosler to buy the**
7 **company on those exact terms.**

8 MR. WEBER: Okay. This next document I'm
9 going to mark as Number 98 for identification.

10 (Thereupon, Defendants' Exhibit 98 was marked
11 for identification.)

12 BY MR. WEBER:

13 **Q** **Mr. Wagner, I'm approaching and handing you**
14 **document 98 for identification.**

15 Do you recognize document number 98?

16 **A** **Yes. I can page through it real quick, but**
17 **more or less.**

18 **Q** **It's another email chain to you --**

19 **A** **This is following on to the email we just went**
20 **through.**

21 **Q** **It's an email chain between you and**
22 **Mr. Mosler, right?**

23 **A** **Yes.**

24 MR. WEBER: Now, move Exhibit Number 98 into
25 evidence.

1 MR. ZAPPOLO: No objection.

2 THE COURT: Madam Clerk, this is Defense 3?

3 THE CLERK: Yes, Your Honor.

4 MR. WEBER: It's Defense 3.

5 THE COURT: Thank you. All right. Admitted
6 without objection.

7 (Thereupon, Defendants' Exhibit 3 was received
8 into evidence.)

9 **THE WITNESS: May I ask you to move the**
10 **projector a little bit over this way? That way it**
11 **will be nice and square. I know it's up to you,**
12 **but --**

13 MR. WEBER: It looks okay, I think.

14 **THE WITNESS: Okay.**

15 BY MR. WEBER:

16 Q Okay. So now we are on July 12th, and we have
17 another email that follows up from the last email.

18 **A It says July 14th.**

19 Q July 14th -- oh, scroll down.

20 Sorry, July 13th we have another email. And
21 you see here an email from Warren Mosler --

22 Oh, right here. I'm sorry, July 12th we have
23 an email from you to Warren Mosler. And you're
24 responding and you are asking Mr. Mosler about a
25 paragraph of the letter of intent. Do you see that?

1 **A Yes.**

2 Q And in response, you have another email from
3 Mr. Mosler where he is discussing the same language,
4 right?

5 **A This highlighting isn't on this, what I have**
6 **here. Where do you want me to -- do you want me to read**
7 **this -- a part of that that's highlighted?**

8 Q Well, would you agree that you and Mr. Mosler
9 are negotiating about the LOI, which stands for letter
10 of intent, right?

11 **A Let me read this real quick.**

12 Q Go ahead.

13 **A Because it's a lot of words here.**

14 Q Of course.

15 **A Can I just read it out loud, that way they can**
16 **hear it too?**

17 Q No.

18 **A Okay.**

19 Q Go ahead and read it to yourself. Tell me
20 when you're ready.

21 **A Okay. I think I've read it.**

22 Q Okay. So you and Mr. Mosler, in this
23 document, are discussing language for a letter of
24 intent, right?

25 **A It seems so.**

1 Q Okay. Let's scroll up.

2 And we have another email on July 14th where
3 you're responding to an email from Mr. Mosler. And,
4 again, you see interlined comments from Mr. Mosler,
5 "Right, okay, okay," and he's responding to your
6 comments about this letter of intent, right?

7 A Yes. Is this the same thing from before or
8 no? Okay. Is this like a part of the tag? I'm just
9 trying to figure it out.

10 Q You tell me when you're ready.

11 A This stuff is a little bit -- yes. So that's
12 the way -- the value of 100 percent of everything at
13 \$10 million -- okay. It just disappeared, but, yes, so
14 he's agreeing to that.

15 Q And then you respond to his email and you
16 write -- one of the things you write is "Who should I
17 talk regarding the amount, if any, of the mortgage on
18 the RivBch building?" And the building is where MACC
19 was --

20 A Right. Riviera Beach, yeah.

21 Q And Mr. Mosler writes "Not necessary. Working
22 on refinancing now, so better to wait until you have
23 your partners lined and ready to go." Because you were
24 still in the process of assembling a consortium of
25 investors to raise financing to purchase MACC, right?

1 **A** Yes, you're right. And you actually touched
2 on something that was somewhat important, a consortium
3 of investors. And just as you stated, it was Mr. Mosler
4 and I's sort of common vernacular to call them
5 "partners," but they were just investors.

6 We called suppliers for subframes -- they were
7 partners. Every single person at Starbucks is called a
8 partner by their CEO. I've seen this on CNBC. So the
9 word "partner," whenever you see this, is sort of common
10 vernacular for someone you're doing something with, like
11 a potential, possible future investor.

12 MR. WEBER: Okay. I am going to mark this as
13 97 for identification.

14 (Thereupon, Defendants' Exhibit 97 was marked
15 for identification.)

16 BY MR. WEBER:

17 Q Okay. Mr. Wagner, I have handed you what's
18 been identified as 97. Do you see that document?

19 **A** I do.

20 Q This is another email exchange between you,
21 Mr. Mosler, and Jill Wagner is in the cc, right?

22 **A** Yes.

23 MR. WEBER: I'm going to move this document
24 into evidence.

25 MR. ZAPPOLO: What number was that?

1 MR. WEBER: 97.

2 MR. ZAPPOLO: Thank you. No objection.

3 THE COURT: Madam Clerk, is that 4?

4 THE CLERK: Yes, Your Honor.

5 THE COURT: Thank you.

6 (Thereupon, Defendants' Exhibit 4 was received
7 into evidence.)

8 BY MR. WEBER:

9 Q Okay. Now you'll see that this document
10 starts where the last document left off, right? Do you
11 recognize that?

12 A Yes. Yep.

13 Q Okay. And in response to the last document,
14 you attach something to your email to Mr. Mosler, right?

15 A Yes, a letter of intent.

16 Q A Word document, letter of intent, right?

17 A Yes. And I know you keep putting the emphasis
18 on the word "right," but you don't have to do that, I'll
19 just answer.

20 Q And do you see that doc? That means it's a
21 Word document, right?

22 A Yes.

23 Q Okay. And then you said "Hi, Warren. Revised
24 LOI is attached," right?

25 A Yes. I'm sorry, I'm giggling because you keep

1 saying "right" like it's some sort of big thing. It's
2 not, it's just a thing. It's just an attachment. This
3 is all one whole year before my \$100,000 deposit.

4 Q Okay. So now we're looking at your Word
5 document attachment, right? Now this is the letter of
6 intent that you sent to Mr. Mosler.

7 It says right here "It's the intent of the
8 parties to enter into a definitive agreement for the
9 purchase of the assets and inventory of MACC, the asset
10 purchase agreement." What is an asset purchase
11 agreement?

12 A That's an agreement to purchase assets.

13 Q Which would be signed by the parties to
14 consummate a deal, right?

15 A Yes. That would be something that
16 memorializes the agreement that is definitively defined
17 in an email from back here, July 3, 2010.

18 Q Now let's scroll down to H. Now, can you see
19 H?

20 A Yes.

21 Q Now, one of the words in H is "nonrefundable
22 deposit." Do you see that?

23 A Yes, I do see that.

24 Q Tell this judge and this jury what you
25 understand "nonrefundable deposit" to mean.

1 **A Nonrefundable deposit would mean that I would**
2 **have to close on the deal.**

3 **Q And in this document, though, it says right**
4 **here, "Although this Mosler Supercar/SEI asset purchase**
5 **deal receives priority, all parties understand that MACC**
6 **will continue to be marketed in good faith to potential**
7 **buyers until a nonrefundable deposit of \$500,000 is paid**
8 **to Warren by SEI, and that Warren continues to have the**
9 **option to sell MACC and all of its contents to another**
10 **buyer until that time," right?**

11 **A Right. So this is saying that before Warren**
12 **sells it to anyone, but if I put in a \$500,000 deposit,**
13 **then I have to close to utilize my deposit. And I can**
14 **always utilize my deposit, he doesn't get to pocket it.**

15 **Q Now was this a binding contract?**

16 **A Well, this particular writing right here, I**
17 **don't know if that was ever signed or not.**

18 **Q Well, scroll up. Is this document, this Word**
19 **document that you sent to Mr. Mosler in your email, was**
20 **this a binding contract when you sent it to Mr. Mosler?**

21 **A When I sent that -- just the attachment to**
22 **him? I'm a little bit confused.**

23 **Are you trying to conflate sending this thing,**
24 **which is unsigned, with the emails where he's agreeing?**
25 **I think you're trying to mix those things up.**

1 Q Well, you've already testified under oath that
2 you thought that prior email constituted a binding
3 agreement. Now you've sent Mr. Mosler a Word document
4 letter of intent, right? So do you believe this Word
5 document letter of intent constitutes a binding contract
6 as well?

7 A Well, what I'm going to say, I'm going to
8 definitively say that what we agreed to in email, that
9 was a binding contract.

10 I made an offer; he accepted. That is what is
11 a contract. So this -- these pieces of paper, as they
12 sit alone, are not because this is me sending the offer.

13 Q So --

14 A Not -- he hasn't yet accepted it. So as it
15 sits alone just as an attachment there, I don't think
16 that constitutes a contract. I'm not a lawyer, but
17 that's my understanding.

18 MR. WEBER: I'll mark this next document as
19 111 for identification.

20 (Thereupon, Defendants' Exhibit 5 was marked
21 for identification.)

22 BY MR. WEBER:

23 Q Mr. Wagner, I'm showing you what's marked as
24 111.

25 Now, you know --

1 A Oh.

2 Q -- who Savvas Savopoulos is, right?

3 A **Yes. This is the "Please don't be alarmed by**
4 **the following" -- yeah, right.**

5 Q Okay. And yesterday you mentioned that Warren
6 Mosler supposedly knew Savvas Savopoulos because of some
7 private jet relationship, right?

8 A **Yes. Mr. Mosler advises the Federal Reserve,**
9 **so he gets to go inside the building and that's all done**
10 **in D.C. Savvas Savopoulos also lived in D.C. and both**
11 **of them have private jets. They've discussed their**
12 **private jets in some of the emails, so, you know, they**
13 **apparently know each other -- it is my -- it is my**
14 **surmise --**

15 Q You're guessing? You're guessing, right?

16 A **I put together the two things and -- I'm not**
17 **just guessing.**

18 Q Okay.

19 A **They both have private jets, they both fly in**
20 **and out of D.C. That's the way I understood --**

21 Q Okay.

22 A **-- how they know each other.**

23 Q So it's speculation, right?

24 A **It's not speculation.**

25 Q You don't actually know what you testified to

1 under oath, do you?

2 **A I believe that to be true.**

3 Q Okay. So you don't know whether Mr. Mosler
4 knows Savvas' father, for instance?

5 **A Oh, no, I know nothing about that.**

6 Q And you don't know that Savvas' father lives
7 in St. Croix as well, right?

8 **A Oh, no, I did not know that.**

9 Q Okay. So now let's take a look at 111.

10 **A Okay.**

11 Q That's another email exchange that has you on
12 it. And Savvas Savopoulos is on it as well as
13 Mr. Mosler, right?

14 **A Did you say signed or on?**

15 Q I said it's another email exchange where you
16 are on the email, along with Savvas Savopoulos and
17 Warren Mosler, right?

18 **A Yes. That's correct.**

19 MR. WEBER: Move this document into evidence.

20 MR. ZAPPOLO: No objection, Your Honor.

21 THE COURT: Madam Clerk, that's Number 5?

22 THE CLERK: Yes, Your Honor.

23 (Thereupon, Defendants' Exhibit 5 was received
24 into evidence.)

25 BY MR. WEBER:

1 Q Okay. So now, Mr. Wagner, this document is
2 dated July 31, 2010, the same month as the same
3 documents we just showed you, right?

4 A Yes.

5 Q Okay. And the reason this is the same month
6 is because in conjunction with you trying to purchase
7 MACC and MACC's assets, other people are also interested
8 in purchasing MACC and MACC's assets, right?

9 A Yes, and that's perfectly reasonable.

10 Q And Savvas Savopoulos is one of those people
11 who was interested in purchasing MACC and MACC's assets,
12 right?

13 A Absolutely.

14 Q And you knew that Savvas Savopoulos had the
15 funds to purchase MACC and MACC's assets, right?

16 A Yes. I knew he flew into Riviera Beach on his
17 private jet to buy, so, yeah, I knew he had the money.

18 Q And so on July 31, 2010, Mr. Savopoulos sends
19 you this email and says "I hope your trip is going well.
20 Please don't be alarmed by the following, but I need
21 some help in my diligence of the companies."

22 A Right.

23 Q Diligence is due diligence, right?

24 A Yes.

25 Q And due diligence involves someone looking

1 into the company and making sure that everything is
2 right before they purchase, right?

3 **A Yes.**

4 Q Okay. And in part of the email here you see
5 Mr. Savopoulos asking you to provide certain
6 information --

7 **A Yes.**

8 Q -- in furtherance of Mr. Savopoulos' due
9 diligence, right?

10 **A Yes, yes, and we did. We gave him everything**
11 **he wanted.**

12 Q Well, we'll get to that.

13 **A Okay.**

14 Q We'll get to that.

15 **A And just to remind the jury, this is one whole**
16 **year before all of the events about this lawsuit started**
17 **taking place.**

18 MR. WEBER: I'm going to mark this one as 112
19 for identification.

20 (Thereupon, Defendants' Exhibit 112 was marked
21 for identification.)

22 BY MR. WEBER:

23 Q Okay. Mr. Wagner, I'm handing you what's been
24 marked as 112 for identification. Take a moment to look
25 at that email.

1 Have you read it, Mr. Wagner?

2 **A Yes.**

3 Q Okay. The document marked as 112 for
4 identification is another email exchange between you,
5 Savvas Savopoulos, and Warren Mosler, right?

6 **A I mean, sort of. I mean, there's only one**
7 **page. There's more stuff here, but the portion at the**
8 **top is the latest within the string.**

9 MR. WEBER: Move this document into evidence.

10 MR. ZAPPOLO: No objection.

11 THE COURT: Madam Clerk, it's Number 6?

12 THE CLERK: Yes, Your Honor.

13 THE COURT: Thank you. I appreciate it.

14 (Thereupon, Defendants' Exhibit 6 was received
15 into evidence.)

16 BY MR. WEBER:

17 Q Okay. So you can see in 112 that the initial
18 email is the one we just saw, right?

19 **A Uh-huh. Yes.**

20 Q And you respond "Hi, Savvas. Everything is
21 going well on the opposite side of the planet. I expect
22 to have most, if not all, the information below to you
23 by the end of the day Wednesday," right?

24 **A Yes.**

25 Q And you were saying that because you were

1 providing information to Savvas in furtherance of his
2 due diligence?

3 **A Yes, absolutely. I would be very delighted**
4 **for him to have owned the Mosler company, and I'd be a**
5 **distributor, and we could all go off and do great things**
6 **together. That would have been 100 percent fine with**
7 **me.**

8 Q We're not there yet, Mr. Wagner.

9 **A Okay.**

10 Q We'll get there, okay?

11 **A All right.**

12 Q I want to go through this chronologically so
13 everyone understands what happened, okay?

14 **A Okay. Gotcha.**

15 Q And you were going to get information for
16 Savvas because you were in charge of things like
17 compliance, right?

18 **A Well, Mr. Mosler asked my company, Supercar**
19 **Engineering, to do work on certification; but as far as**
20 **who was in charge of compliance, that's Mr. Mosler.**

21 Q But you were on the ground doing the
22 compliance work, doing the EPA approval work, right?

23 **A So my company and also Jill Wagner, who was an**
24 **officer of MACC, and she signed all the documents and**
25 **things like that, we were both working on it. Most of**

1 the technical stuff was being done by my company, and
2 Ms. Wagner was doing more of the administrative stuff,
3 all on behalf of Mr. Mosler.

4 MR. WEBER: Okay. I'm going to mark this
5 document as 115.

6 (Thereupon, Defendants' Exhibit 115 was marked
7 for identification.)

8 BY MR. WEBER:

9 Q I'm handing you a document that's been marked
10 as 115 for identification. It's an email from you to
11 Savvas Savopoulos, correct?

12 A Yes. Do you by chance have this in color?
13 Because this has also colors to indicate the different
14 responses back and forth, and it's all in black and
15 white and it's really hard to read.

16 Q Well, I'm not even going to go into that.

17 A Okay.

18 Q I just want to show you the document, okay?

19 A It's going to be very confusing like this,
20 just to let you know.

21 MR. WEBER: Okay. Well, let's move this
22 document into evidence.

23 MR. ZAPPOLO: I believe it's already in
24 evidence as one of the plaintiffs'.

25 MR. WEBER: I think it might be.

1 MR. ZAPPOLO: Yeah, I think it is.

2 **THE WITNESS: It's in color that way too, so**
3 **it might be easier.**

4 MR. WEBER: Okay. Do you know which one it
5 is?

6 MR. ZAPPOLO: No objection. I don't know
7 which one it is. I'm sorry, I apologize.

8 MR. WEBER: All right. Well, there's no
9 objection, let's move it into evidence.

10 THE COURT: Madam Clerk, Number 7?

11 THE CLERK: Defendants' Number 7.

12 THE COURT: Okay. Thank you.

13 (Thereupon, Defendants' Exhibit 7 was received
14 into evidence.)

15 BY MR. WEBER:

16 Q Okay. So August 10th, a few days later, you
17 send Mr. Savopoulos information which you categorize as
18 "Please find the summary you requested regarding the
19 Supercar Engineering, Inc's distributorship agreements
20 and emails," right?

21 **A Yes.**

22 MR. WEBER: Okay. I'll mark this as 117.

23 (Thereupon, Defendants' Exhibit 117 was marked
24 for identification.)

25 BY MR. WEBER:

1 Q Okay. Now I'm handing you what's marked as
2 117 for identification.

3 A There's no questions about this one? This is
4 big. Okay.

5 Q Okay. 117 is another email exchange. This
6 one is an email from you to Savvas Savopoulos, right?

7 A Yes, it is.

8 MR. WEBER: Move this document into evidence.

9 MR. ZAPPOLO: No objection.

10 MR. WEBER: Okay.

11 THE COURT: Madam Clerk, is that Number 8?

12 THE CLERK: Yes, Your Honor.

13 THE COURT: Thank you.

14 (Thereupon, Defendants' Exhibit 8 was received
15 into evidence.)

16 BY MR. WEBER:

17 Q Now 117 is an email from you to Savvas
18 Savopoulos and this one's subject is "Certification."
19 Do you see that?

20 A I do.

21 Q And you wrote "All documents attached must be
22 kept confidential," right?

23 A Yes.

24 Q Now, you wrote "The important certification
25 documents for our vehicle are attached," right?

1 **A Correct. Yes.**

2 Q And then you wrote at the bottom, "Please call
3 (no email, please) with any questions regarding the
4 attached documents."

5 **A Yes. You see Mr. Mosler is cc'd on this.**

6 Q So people sometimes don't want things in email
7 because they're afraid of what might come up, right?

8 **A Oh, I'm not afraid of what might come up here.**

9 Q Oh, you're not?

10 **A No, no.**

11 Q Okay.

12 **A But he should be.**

13 Q Okay. So tell me, why didn't you want
14 Mr. Savopoulos to respond with email questions regarding
15 these documents?

16 **A So my company was contracted to help
17 Mr. Mosler and his company. It was clear to me that
18 Mr. Mosler knew his cars were being built illegally, and
19 he didn't want that being leaked out. That was
20 Mr. Mosler's desire, and you saw that earlier here.**

21 **He tried everything to shuck and jive and not
22 admit he had been building illegal cars this whole time.
23 So my company was doing as it was asked.**

24 MR. WEBER: I'm going to mark this next
25 document as 119 for identification.

1 (Thereupon, Defendants' Exhibit 119 was marked
2 for identification.)

3 BY MR. WEBER:

4 Q I'm showing you 119.

5 Okay. Mr. Wagner, you've been handed what's
6 been marked as 119 for identification. This is, again,
7 an email exchange. This one is from Savvas Savopoulos
8 to you, right?

9 **A Yes, it is. And every time you do the**
10 **"right," it just makes me giggle a little bit. If you**
11 **could just ask me in a normal tone, there's nothing --**
12 **you know, anyway, do what you want, I guess. Okay.**

13 MR. WEBER: Move this document into evidence.

14 MR. ZAPPOLO: No objection.

15 THE COURT: Madam Clerk, Number 9, please?

16 THE CLERK: Yes, Your Honor.

17 THE COURT: Thank you.

18 (Thereupon, Defendants' Exhibit 9 was received
19 into evidence.)

20 BY MR. WEBER:

21 Q Okay. So this is another email from Savvas
22 Savopoulos to you, and Mr. Savopoulos writes "Todd,
23 these are just the certificates. I need the supporting
24 data/submission plus the 2004 info," right?

25 **A Yes.**

1 Q So Mr. Savopoulos had received what you sent
2 him and he's asking you for more information, right?

3 A Yes, he is. The 2004 information was all held
4 by Alan Simon, the fellow whose 2004 car burned to the
5 ground, so I believe he got that information from him.

6 And in addition, what he received from
7 Mr. Alan Simon was the gas guzzler taxes that MACC was
8 supposed to pay and Alan -- Mr. Mosler told -- he
9 told -- Mr. Mosler told me that Alan Simon was going to
10 pay the gas guzzler taxes, but Alan Simon never did, so
11 that was tax evasion on behalf of MACC.

12 Savvas Savopoulos found out about that and
13 that's one thing that upset him and why he backed away
14 from buying during this time, it was the tax evasion on
15 the gas guzzler taxes for the 2004 Mosler MT900S
16 vehicles.

17 MR. WEBER: I'm going to mark this next
18 document as 127 for identification.

19 (Thereupon, Defendants' Exhibit 127 was marked
20 for identification.)

21 BY MR. WEBER:

22 Q Okay. Mr. Wagner, I'm showing you Number 127
23 for identification. This is another email exchange.
24 This is an email from Savvas Savopoulos to you with
25 emails in the chain, right?

1 **A Yes.**

2 MR. WEBER: Move this document into evidence.

3 MR. ZAPPOLO: No objection.

4 THE COURT: Madam Clerk, is that Number 9?

5 THE CLERK: No, Your Honor. It's Defendants'
6 10.

7 THE COURT: Thank you.

8 (Thereupon, Defendants' Exhibit 10 was
9 received into evidence.)

10 BY MR. WEBER:

11 Q Okay. So now you see here there's an email
12 August 19, 2010. This is the email we just looked at,
13 right?

14 **A Yes. I think, yes. Yes.**

15 Q And then in the next email we see a follow-up
16 email on August 21, 2010, where it looks like Savvas
17 Savopoulos is saying "Any update/info? I really need
18 this," right?

19 **A Yes, two days later. He's being inpatient --**

20 Q Scroll up.

21 **A -- on a Saturday.**

22 Q And then there's another email from
23 Mr. Savopoulos that says "It is an integral part of the
24 viability of the company" --

25 **A Indeed.**

1 Q -- "and needs to be reviewed by my lawyers.
2 My next meeting with them is Monday morning. I need the
3 paperwork. Can someone explain the name problem (the
4 second part of my email)," right?

5 A Yes.

6 Q Keep scrolling up.

7 And then you respond, "Hi, Savvas. Jill and I
8 will look into this Monday. We would like to know more
9 about your plans for the company if you purchase a
10 majority interest. Is there a good time to call you
11 Monday?"

12 Now you were worried that if Savvas bought the
13 company, that you would no longer be a part of MACC,
14 weren't you?

15 A I was concerned that he would try and rip off
16 my distributorship, which is what he eventually
17 attempted to do, or Mr. Mosler encouraged him to do.
18 I'm not sure exactly who did what, but I was concerned
19 he wasn't going to honor the distributorship that I had
20 already invested in.

21 At this point in time I had already put down a
22 deposit for what eventually became the RaptorGTR and I
23 spent a lot of time developing the company. And his
24 sort of like "Don't be concerned, Todd. I'm not trying
25 to screw you" email that you brushed over here, it made

1 it clear that he was trying to see if he could get
2 around my document, my agreements. And so --

3 Q Did you --

4 A -- I was concerned here, yes.

5 Q Did you have a signed distributorship
6 agreement as of August 21, 2010?

7 A By August 21st? This is actually very
8 intriguing, okay. So I want to explain, if you don't
9 mind?

10 Q Well, why don't you say "yes" or "no."

11 A I had an agreement in email with Mr. Mosler.
12 That big document that is in color, that you didn't want
13 to ask me any questions about, everything about that is
14 in there and in excruciating and fine detail, but you
15 didn't want to ask me any questions about it because
16 obviously it would expose the fact that there was an
17 agreement between Mr. Mosler and myself and I -- in the
18 July 2010 time frame.

19 And now here we're in August and
20 Mr. Savopoulos is trying to, you know, shuck and jive
21 and see if he can like, you know, cut out my
22 distributorship and so, yes, I am concerned.

23 Q Now, in response, Mr. Savvas Savopoulos writes
24 "I pushed my meeting to 2:00 p.m. to get you guys some
25 extra time. Does it look like I'll have the

1 documentation by then?" Right?

2 **A Yes. You're reading it off the screen, man.**

3 MR. WEBER: Number 128 for identification.

4 (Thereupon, Defendants' Exhibit 128 was marked
5 for identification.)

6 BY MR. WEBER:

7 Q Okay. You've been handed document, Number 128
8 for identification. This is another email. This is an
9 email from you to Savvas Savopoulos and others, right?

10 **A Yes, it is.**

11 MR. WEBER: Okay. Move this document into
12 evidence.

13 MR. ZAPPOLO: No objection, Your Honor.

14 THE COURT: Madam Clerk, is this Number 11?

15 THE CLERK: Yes, Your Honor.

16 THE COURT: Thank you.

17 (Thereupon, Defendants' Exhibit 11 was
18 received into evidence.)

19 BY MR. WEBER:

20 Q So this document is an email from you to
21 Savvas Savopoulos a few days later, right?

22 **A I think -- it's actually the same day.**

23 Q It's actually the same day, right?

24 **A Yes.**

25 Q Okay. And so now, in 128, you're not

1 providing Mr. Savopoulos the information he's asking
2 for, are you?

3 **A** **In this we were talking about a different**
4 **topic. I mean, it still says "Certification." That was**
5 **common that we always continue on this string, so I'm**
6 **asking -- I said we were working on it, and we were.**
7 **And it was a giant pile of documents, which I explained**
8 **here, an enormous pile of documents. And I'm taking the**
9 **opportunity to ask him if, though I am here --**

10 **At this point in time Jill and I are divorced,**
11 **and I am promoting Jill, my ex-wife, to have an**
12 **employment contract here, and also myself. So I am**
13 **acting as an advocate for my ex-wife and myself to have**
14 **employment contracts in the event that Mr. Savopoulos**
15 **does buy MACC.**

16 **Q** **And so you're asking about terms where you**
17 **would like to be hired in case Savvas Savopoulos**
18 **purchases MACC, right?**

19 **A** **Yes, I'm doing exactly that.**

20 **MR. WEBER: This is Number 129 for**
21 **identification.**

22 **(Thereupon, Defendants' Exhibit 129 was marked**
23 **for identification.)**

24 **BY MR. WEBER:**

25 **Q** **I'm handing you another document. This is an**

1 email from Savvas Savopoulos to you, correct?

2 **A Yes.**

3 MR. WEBER: Move this document into evidence.

4 MR. ZAPPOLO: No objection.

5 THE COURT: Madam Clerk, Number 12, please?

6 THE CLERK: Yes, Your Honor.

7 (Thereupon, Defendants' Exhibit 12 was
8 received into evidence.)

9 BY MR. WEBER:

10 Q Savvas Savopoulos is in this email -- which is
11 a few days later, right? This is August 27th.

12 **A It's four days later.**

13 Q He's asking you for an update on additional
14 documents for his due diligence, right?

15 **A Yes.**

16 MR. WEBER: I'm marking this next document as
17 133.

18 (Thereupon, Defendants' Exhibit 133 was marked
19 for identification.)

20 BY MR. WEBER:

21 Q I'm handing you a document that's been marked
22 as Exhibit 133 for identification. This is another
23 email exchange between you and Mr. Savopoulos, right?

24 **A So Mr. Savopoulos -- and this is all true of
25 pretty much of all of these things -- Mr. Savopoulos is**

1 sending emails to me, Jill Wagner, Warren Mosler, and a
2 whole bunch of other people here, so it's to all of us.

3 MR. WEBER: Move this document into evidence.

4 MR. ZAPPOLO: What number was it?

5 MR. WEBER: This is 133.

6 MR. ZAPPOLO: Okay. No objection.

7 THE COURT: Madam Clerk, is that Number 13?

8 THE CLERK: Yes, Your Honor.

9 (Thereupon, Defendants' Exhibit 13 was
10 received into evidence.)

11 BY MR. WEBER:

12 Q Now this is another email a few days later
13 from Savvas Savopoulos, and the subject is "Questions
14 from DOT compliance diligence lawyers," right?

15 A Yes.

16 Q And attached to that document is "Questions
17 for Mosler.doc." It's a Word document, right?

18 A Right. It's questions from Mosler, meaning
19 Warren Mosler or MACC?

20 Q And Mr. Savopoulos writes "Please review and
21 answer the attached," yes?

22 A Yes, that's what it says.

23 Q And then let's go down to the attachment.
24 There's questions including, among other things,
25 questions about EPA regulatory compliance, yes?

1 A Yes.

2 Q Now you would be the one to answer these
3 questions for MACC, right?

4 A No. Why would I be the one to answer -- I'm
5 an independent contractor. The guy sitting right there,
6 your client is the guy who answers these questions. He
7 shoveled some of them to his lawyer, Alan Simon, who I
8 think -- well, I talked to Alan Simon on some of them
9 too, but the thing about the gas guzzler tax came from
10 Alan Simon. Warren Mosler asked me to talk to Alan
11 Simon about some of these things as well.

12 Q Well, let me ask you this: Do you remember if
13 you were tasked with responding to these questions for
14 Mr. Savopoulos?

15 A My company, Supercar Engineering, did answer
16 some of these questions, and Alan Simon answered some of
17 them. I think Warren Mosler answered some of them
18 directly himself.

19 Q So just to be clear, did you --

20 A I think Jill did too. I think Jill may have
21 answered some of them too.

22 Q Hold on, Mr. Wagner. Wait for the question.

23 MR. ZAPPOLO: Objection, Your Honor. He needs
24 to finish his answer.

25 THE COURT: Overruled.

1 BY MR. WEBER:

2 Q Just to be clear, you do remember that your
3 company, SEI, was tasked with answering these compliance
4 questions, or at least some of them, for Mr. Savopoulos,
5 right?

6 A Some of them, yes. Mr. Mosler asked me to
7 comply with all of Savvas Savopoulos' requests, and my
8 company did.

9 MR. WEBER: Mark this next document as 134 for
10 identification.

11 (Thereupon, Defendants' Exhibit 134 was marked
12 for identification.)

13 BY MR. WEBER:

14 Q I'm handing you a document that's been marked
15 134 for identification. Mr. Wagner, 134 for
16 identification is another email exchange, right?

17 A Yes.

18 Q Okay. Between you and Mr. Savopoulos and
19 others, right?

20 A Yes. Me, Savvas Savopoulos, Jill Wagner, and
21 Warren Mosler, yes.

22 MR. WEBER: Okay. Move this document into
23 evidence.

24 MR. ZAPPOLO: No objection.

25 THE COURT: Madam Clerk, Number 14?

1 THE CLERK: Yes, Your Honor.

2 (Thereupon, Defendants' Exhibit 14 was
3 received into evidence.)

4 BY MR. WEBER:

5 Q Okay. So on the bottom of the email you can
6 see that it starts with the last email we looked at,
7 right?

8 A Yes. And usually these things have all that
9 stuff after this, but it's kind of odd that it's just
10 this one page, but in any case I'm not going to --
11 whatever. Okay.

12 Q And you wrote "I will review and reply. This
13 will take some time," yes?

14 A Yes.

15 Q And Mr. Savopoulos then followed up a few days
16 later, "Todd, please update on status," yes?

17 A Yes. Are you sure this is actually in
18 evidence, I guess? Anyway, go ahead. It just seems
19 like the structure is strange. Usually they're all
20 indented. The fact that they're like one, two, three,
21 four like that seems odd. I haven't seen when it looks
22 that structure. You know, they're all in one line like
23 that. It just seems strange.

24 Q And then Mr. Savopoulos wrote -- oh, you wrote
25 actually, "Hi, Savvas. I am working on this along with

1 my other duties (mainly Photon setup), and I have been
2 out for surgery the last two days. I hope to have it
3 complete by the end of next week," correct?

4 **A Yes.**

5 Q Okay.

6 **A And can I ask you, is this actually how**
7 **Mr. Mosler produced this? I really don't remember**
8 **seeing this structure. I looked through this 7-foot**
9 **tall pile of documents like three times, I just don't**
10 **remember this.**

11 MR. WEBER: Move to strike as nonresponsive.

12 THE COURT: Sustained.

13 MR. WEBER: I'm going to mark this next
14 document as 136 for identification.

15 (Thereupon, Defendants' Exhibit 136 was marked
16 for identification.)

17 BY MR. WEBER:

18 Q I'm handing you a document that's been marked
19 as 136 for identification.

20 **A Okay.**

21 Q Okay. I have handed you a document that's
22 been marked as 136 for identification. This is another
23 email. This one is from you to Warren Mosler, right?

24 **A Yes.**

25 MR. WEBER: Move this document into evidence.

1 **THE WITNESS:** I don't know. Just --
2 something's strange with these things, honestly. I
3 don't know, I just feel a smidge uncomfortable with
4 some of this -- the way this is being presented.

5 Like all of this stuff that we have, all of
6 the signature blocks and everything like this,
7 they're all missing from these things. I don't
8 know, just something is strange. It just
9 doesn't -- I feel like we should verify some of
10 this stuff.

11 **MR. WEBER:** Move to strike as nonresponsive.

12 **THE COURT:** Sustained.

13 **MR. ZAPPOLO:** I am not going to object at this
14 time.

15 (Thereupon, Defendants' Exhibit 15 was
16 received into evidence.)

17 **BY MR. WEBER:**

18 **Q** Okay. So this is an email from you to Warren
19 Mosler a few days later, September 17, 2010.

20 **A** **Yes.**

21 **Q** And in this email, while Mr. Savopoulos is
22 asking you for information, you are now conveying to
23 Mr. Mosler information about your efforts to purchase
24 MACC, right?

25 **A** **Yes. I think it is very fair to say that**

1 Mr. Savopoulos and I were both interested in buying MACC
2 around the same time, if that's what you're trying to
3 get to. That's perfectly reasonable.

4 Q Now look at this sentence right here. You
5 wrote "Please keep this potential deal confidential from
6 Savvas" --

7 A Right.

8 Q -- "except in that you have to disclose the
9 LOI once it is signed."

10 A Exactly. I don't want all of the things I'm
11 talking to him disclosed to my competitor. But later
12 on, like in 2011, when I asked for -- you know, "Can I
13 see Savvas' deal?" Mr. Mosler said "No."

14 So it's a perfectly reasonable thing, for my
15 discussions with Warren Mosler about these things, to be
16 kept confidential from my competition.

17 Q So sitting here today under oath, are you
18 alleging that Mr. Mosler didn't share information with
19 you about the terms under which Savvas Savopoulos was
20 trying to purchase MACC?

21 A So I didn't quite catch one of the words
22 there, but --

23 Q Well, let me rephrase it for you.

24 A Okay.

25 Q Sitting here today under oath, are you

1 alleging that in 2010 Mr. Mosler didn't share with you
2 the terms under which Savvas Savopoulos was trying to
3 purchase MACC?

4 A Okay. So maybe there's a smidge
5 misunderstanding. I said on the second time in 2011.

6 So this is 2010. This is one whole year
7 before the events we were discussing with -- you know,
8 up until now in the case. This is a whole year earlier.

9 So in 2011, so Mr. Savopoulos came back -- so
10 Mr. Savopoulos left here. He said he didn't want to buy
11 MACC because of the tax evasion on the gas guzzler
12 taxes, the fact that MACC had been building illegal cars
13 the whole time and whatever liability was attached to
14 that, and -- I think those were the two main issues.

15 So then my company achieved the EPA
16 certification on the 2012 RaptorGTR and Mr. Mosler
17 immediately -- even though I had a deposit in place and
18 three months of exclusivity during that time, Mr. Mosler
19 then sent that information to Savvas to attract his
20 interest. So he attracted Mr. Savvas' interest as a
21 competitor to me while I had the \$100,000 deposit in
22 place and three months of exclusivity -- let me finish,
23 okay.

24 Q We're not there yet, Mr. Wagner.

25 A I'm finishing answering your question, okay.

1 Q I don't think you are.

2 A I am. I am. This is next, right now.

3 Q I don't think you are answering my question.

4 A So when Savvas --

5 THE COURT: All right. Let's -- let me see
6 the attorneys for a second.

7 (Thereupon, a sidebar conference was held.)

8 THE COURT: Okay. For time management
9 purposes, we have about ten minutes before we break
10 just to give you a heads-up, okay?

11 MR. WEBER: I'm moving very swiftly, Your
12 Honor, so I think we'd like to finish today, if
13 possible.

14 THE COURT: Oh, wonderful. Yeah, I just want
15 to give you that time management.

16 MR. WEBER: Okay.

17 THE COURT: But in about ten it will be a hard
18 stop; or if thereabouts you look at me and tell me
19 that you're, you know, at a good spot, we'll break
20 at that point. Okay?

21 MR. WEBER: Okay. Understood.

22 (Thereupon, the sidebar conference was
23 concluded.)

24 THE WITNESS: So may I finish?

25 MR. WEBER: There's no question pending right

1 now, Mr. Wagner.

2 MR. ZAPPOLO: Okay. Your Honor, the question
3 was -- can he finish his answer?

4 THE COURT: Right, there is no question
5 pending.

6 MR. ZAPPOLO: But he was in the middle of
7 finishing an answer when we got called up to see
8 you.

9 THE COURT: So it's defense counsel's witness
10 at this time to control.

11 MR. ZAPPOLO: Okay.

12 BY MR. WEBER:

13 Q I'm showing you what's been marked as 135 for
14 identification.

15 Now, Mr. Wagner, you've been handed what's
16 been marked as Exhibit 135 for identification, right?

17 **A Yes.**

18 (Thereupon, Defendants' Exhibit 135 was marked
19 for identification.)

20 BY MR. WEBER:

21 Q Now, this is an email exchange between you and
22 Mr. Mosler, right?

23 **A Yes.**

24 MR. WEBER: Move this document into evidence.

25 MR. ZAPPOLO: No objection.

1 MR. WEBER: Okay.

2 THE COURT: Madam Clerk, this is Number 15?

3 THE CLERK: Entered as Number 16, Your Honor.

4 THE COURT: 16. Thank you.

5 (Thereupon, Defendants' Exhibit 16 was
6 received into evidence.)

7 BY MR. WEBER:

8 Q Okay. So this is one of the emails in --
9 who's Robyn S. Hankins?

10 A She was my lawyer at the time.

11 Q Is she still your lawyer?

12 A No. Mr. Zappolo is my lawyer now.

13 Q And following that email you sent Mr. Mosler
14 another letter of intent to purchase Mosler Automotive,
15 Word document, right?

16 A Yes.

17 Q And you wrote "Attached is the LOI that we
18 have discussed before in nonexclusive terms," right?

19 A Yes, nonexclusive terms.

20 Q And then you wrote "Basically if MSI can come
21 up with the money and the company is still available at
22 the time MSI has the money, this is our agreed-upon
23 deal," right?

24 A Yes.

25 Q So let me ask you this question, Mr. Wagner:

1 If you had a binding contract to purchase MACC
2 approximately two months before this email --

3 **A Right.**

4 Q -- how could MACC have been sold if it wasn't
5 to you and you were okay with it?

6 **A Okay. Can you rephrase your question, please?**

7 Q Well, you testified that you had a binding
8 contract with Mr. Mosler via email to purchase MACC
9 about two months earlier --

10 **A Yes.**

11 Q -- in July of 2010, right?

12 **A Yes.**

13 Q But here you're saying "Basically, if MSI
14 comes up with the money and the company is still
15 available" -- meaning someone else might purchase it --
16 right? -- before MSI has the money --

17 **A That's exactly what "nonexclusive" means.**

18 Q -- this is our agreed-upon deal, right?

19 **A That's exactly what "nonexclusive" means,
20 exactly what you are reading here.**

21 I mean, you're doing all of this emphasis and
22 drama, but there's no drama here. If I can come up with
23 the money to buy under those terms, I have the right to
24 buy. Done, that's it. That's all there is to it.

25 Q And if you don't come up with the money, then

1 you don't have the right to buy it, right?

2 A If I don't -- I still have the right to buy
3 it. If I don't come up with the money, then obviously I
4 can't close. I always have the right to buy it if I
5 come up with the money.

6 At this point it was \$10 million and I did not
7 come up with \$10 million to buy MACC at this time. And
8 this -- interestingly, this LOI has all sorts of
9 inventory in it, which is obviously what is necessary to
10 create a reasonable purchase.

11 MR. WEBER: I'm going to mark this as 140.

12 (Thereupon, Defendants' Exhibit 140 was marked
13 for identification.)

14 BY MR. WEBER:

15 Q I'm handing you a document that has been
16 marked as 140.

17 A This definitely looks incomplete.

18 Q Now 140 is another email exchange between you
19 and Mr. Mosler, correct?

20 A I don't know, man. I just can't agree to that
21 with this. This is a piece of paper. It's cut off from
22 here down. This is absurd. This -- I can't. I simply
23 can't agree to this one, man. The whole thing -- you
24 must have it all.

25 MR. WEBER: Move this document into evidence.

1 **THE WITNESS:** This is just too much right
2 **here. Really, you got to do better.**

3 MR. ZAPPOLO: Give me a moment.

4 MR. WEBER: Move to strike all of the
5 witness's comments.

6 THE COURT: All right. Sustained.

7 Mr. Wagner, let's keep our comments to a
8 minimum.

9 **THE WITNESS:** Okay. I mean, I just -- I don't
10 **think this is fair. I don't know what to say about**
11 **it.**

12 THE COURT: Now I'm going to instruct you for
13 the second time in about one minute to keep your
14 comments.

15 **THE WITNESS:** Okay.

16 MR. ZAPPOLO: No objection, Your Honor.

17 BY MR. WEBER:

18 Q Did you hear that, Mr. Wagner?

19 **A Yes, I did.**

20 Q Okay. So let's put up --

21 THE COURT: What number is that, Madam Clerk?

22 THE CLERK: Defendants' Number 17.

23 THE COURT: Thank you.

24 (Thereupon, Defendants' Exhibit 17 was
25 received into evidence.)

1 BY MR. WEBER:

2 Q Now 140 is another email between yourself and
3 Mr. Mosler. And here, on September 18, 2010, a few days
4 later, you see an email from Mr. Mosler. He says
5 "Amended and attached as amended, will print, sign,
6 scan, and email to you if okay. At this point let me
7 know who the buyer with sufficient details for me to
8 move forward, including an email from the potential
9 buyer as to his interest, thanks."

10 Do you see that?

11 **A I do see that on the screen, yes.**

12 Q Okay. And the buyer that's being referred to
13 is the person, or persons, that you are speaking to to
14 try and raise money to purchase MACC and its assets,
15 correct?

16 **A Yes. It would be the investor in my deal. He**
17 **apparently wants to talk to him is what I'm gathering**
18 **from reading this right now.**

19 Q And in response to Mr. Mosler's comments, you
20 wrote "This deal appears different from our original
21 agreement, that I have been relying on for the purpose
22 of assembling a consortium of investors who can take the
23 company forward."

24 And the reason you wrote that is because you
25 are communicating with the people that you are using to

1 try and raise the money to show them the terms under
2 which you might purchase MACC, right?

3 A Well, again, this is -- there's nothing here.
4 It's hard for me to say what is here. I mean, usually
5 there's -- the other information associated with this
6 email would be here, so it's difficult for me to answer.

7 I'll say it's difficult for me to answer that
8 based on this single piece of paper you gave me.

9 Q So sitting here today under oath, you can't
10 recall whether you wanted to bring terms under which you
11 might purchase MACC to potential investors to try and
12 raise financing to purchase MACC?

13 A Okay. So, I believe I understand your
14 question. It's not so much based upon this, but it's
15 just based upon holistically. So holistically, yes, I
16 wished to work with a consortium of investors that would
17 provide capital for a deal where my company would
18 purchase MACC and people that put in the money would own
19 an equity share. My company, in MACC, would own an
20 equity share. My company, SEI or Supercar
21 Engineering -- I had both SEI and Supercar Engineering,
22 Inc. that I owned at this time. I think it was at this
23 time I owned both.

24 So, yes, so fundamentally, even though this
25 email is a bit incomplete here, it was my objective to

1 raise -- I mentioned earlier my Yale contacts and other
2 people I knew from the automotive industry to get -- I
3 even contacted some of the MT900 owners and said, "Hey,
4 guys, do you want to own, like, 10 percent of MACC?"
5 Since we have a group of people who would then come and
6 present the \$10 million to Mr. Mosler and then we would
7 buy MACC. That is basically what was going on here.

8 MR. WEBER: Your Honor, I think this is a good
9 spot.

10 THE COURT: Okay. All right. Deputy, so
11 we're going to break for lunch. There's some
12 business that I need to get to and so we're going
13 to take a little bit longer lunch today. I want
14 you back here at 1:30 today, please. Okay?

15 Again, don't discuss this case with anybody.
16 Don't discuss it amongst yourselves. If you see
17 the attorneys in the hallways, and especially since
18 we're breaking for a little bit longer today,
19 they're not ignoring you or avoiding you, but
20 they're following my instructions. If anybody
21 communicates with you about this case, bring it to
22 the deputy's attention, and he'll bring it to me
23 immediately. Okay?

24 (Jurors exit the courtroom at 11:17 a.m.)

25 THE COURT: All right. Again, I'm going to

1 remind you that Cross-Examination is inherently
2 uncomfortable, okay. It is intended to be that
3 way. You're not the first person that's been
4 cross-examined and you won't be the last person
5 that is cross-examined. It is inherently
6 uncomfortable.

7 I don't think anybody here envies anybody
8 who's got to endure Cross-Examination, but it's
9 very important that we behave ourselves accordingly
10 in the courtroom, okay.

11 MR. ZAPPOLO: May I make one statement, Your
12 Honor? Your lawyer is doing his job.

13 THE COURT: Oh, absolutely. Absolutely.

14 **THE WITNESS: Okay. Gotcha. Gotcha. I hear**
15 **you and I apologize to the Court for -- I**
16 **understand.**

17 THE COURT: Okay.

18 **THE WITNESS: I understand.**

19 THE COURT: And so I will caution you that
20 there are rules that all of us have to follow.
21 There's things that the juries can hear and things
22 that juries are not supposed to hear. Your
23 attorney and opposing counsel are familiar with the
24 rules of procedure and the rules of evidence in a
25 courtroom.

1 Sometimes things happen where, you know,
2 people say things that they're not supposed to say
3 and it opens doors that shouldn't be opened. And
4 so it's very important that you ask -- or answer
5 the questions that are posed of you and nothing
6 more.

7 Cross-Examination is inherently uncomfortable.
8 Right now the witness belongs to the defense and so
9 the defense can control the witness.

10 **THE WITNESS: Okay.**

11 THE COURT: We'll come back at 1:30, and we
12 will continue this trial. Okay?

13 MR. ZAPPOLO: Thank you.

14 MR. WEBER: Thank you, Your Honor.

15 THE COURT: All right. Thank you very much.

16 (Thereupon, a lunch break was taken from
17 11:19 a.m. to 2:06 p.m.)

18 THE COURT DEPUTY: Jury entering.

19 (Jurors entering the courtroom at 2:06 p.m.)

20 THE COURT: All right. Please be seated.

21 All right. Let's continue Cross-Examination.

22 You're still under oath from earlier today.

23 **THE WITNESS: Yes, sir.**

24 BY MR. WEBER:

25 Q Okay. Mr. Wagner, where we last left off, we

1 were on this document. And you had written to
2 Mr. Mosler that his edits to the letter of intent appear
3 "different from our original agreement, that I have been
4 relying on for the purpose of assembling a consortium of
5 investors who can take the company forward," and that
6 was on 9/18/2010. Do you see that?

7 **A Yes, I do.**

8 Q Okay.

9 MR. WEBER: I'm going to mark this as 147.

10 (Thereupon, Defendants' Exhibit 147 was marked
11 for identification.)

12 BY MR. WEBER:

13 Q So I handed you a document that's been marked
14 for identification as Defendants' 147. Do you see this
15 document?

16 **A Yes, I do.**

17 Q This is another email exchange. It's from
18 Mr. Mosler and it's to you, and Mr. Alan Simon, right?

19 **A Yes.**

20 MR. WEBER: Okay. Move Exhibit 147 into
21 evidence.

22 MR. ZAPPOLO: No objection, Your Honor.

23 THE COURT: Madam Clerk, is that Number 19?

24 THE CLERK: That's 18, Your Honor.

25 THE COURT: Defendants' 18?

1 THE CLERK: Yes, Your Honor.

2 THE COURT: Thank you. All right.

3 Defendants' 18.

4 (Thereupon, Defendants' Exhibit 147 was
5 received into evidence.)

6 BY MR. WEBER:

7 Q All right. So, Mr. Wagner, I'm showing you
8 Defendants' 18. And the original email is an email from
9 Mr. Savopoulos dated September 21, 2010 to Mr. Mosler.
10 And then that message is forwarded by Mr. Mosler to you
11 and Alan Richard Simon, right?

12 A Yes.

13 Q And Mr. Mosler writes to you "Highly
14 confidential. Comments welcome."

15 The attachments are the Sigma-Mosler Asset
16 Purchase Agreement, Mosler Summary of Transaction.

17 Now this Sigma-Mosler Asset Purchase Agreement
18 is the document that by which Savvas was attempting to
19 purchase MACC and its assets, correct?

20 A I presume so, yeah.

21 Q And this other attachment, the Mosler Summary
22 of Transaction, is a summary of the terms under which
23 Savvas sought to purchase MACC and its assets, correct?

24 A That would make sense. I didn't look through
25 this whole book, but I presume so.

1 I didn't look through the entire document.
2 **This is a very thick document and everything, so I**
3 **didn't look through it all, but I'm presuming what**
4 **you're saying is correct.**

5 MR. WEBER: I'll mark this as Exhibit 148.

6 MR. ZAPPOLO: What was the last document
7 number?

8 MR. WEBER: 147, I believe.

9 MR. ZAPPOLO: Thank you.

10 (Thereupon, Defendants' Exhibit 148 was marked
11 for identification.)

12 BY MR. WEBER:

13 Q And I'm handing you a document. Take a look
14 at this document. Have you read it?

15 A **Yes.**

16 Q 148 is another email. This is from Savvas
17 Savopoulos to you and others.

18 A **To me, Warren Mosler, and Jill Wagner, and a**
19 **whole bunch of people from apparently a law firm.**

20 MR. WEBER: Move this document into evidence.

21 MR. ZAPPOLO: No objection.

22 THE COURT: Madam Clerk, is that 19?

23 THE CLERK: Yes, Your Honor.

24 (Thereupon, Defendants' Exhibit 19 was
25 received into evidence.)

1 BY MR. WEBER:

2 Q So you'll see this document is actually dated
3 the same day as the last document that we saw,
4 September 22, 2010, just a little bit later, right?

5 A Yes.

6 Q And Mr. Savopoulos says "Todd, any update? We
7 really need this info." And he's referring to the
8 answers to the certification questions, right?

9 A Let me take a look. I presume so. This email
10 is also cut off here, so I'm not sure.

11 Q You can see the original email says "Subject:
12 Follow-up answers to Mosler certification questions."

13 And the next message is dated September 17,
14 2010, 5:20, where you respond "Hi, Savvas. I'll dig
15 into this early next week. Have a nice weekend, Todd."

16 And then the next message which we started
17 with is where Savvas is following up, right?

18 A Yes. I think we should add some context here.

19 Q Well, there's no question pending.

20 A All right.

21 MR. WEBER: I'm going to mark this document as
22 149.

23 (Thereupon, Defendants' Exhibit 149 was marked
24 for identification.)

25 BY MR. WEBER:

1 Q Mr. Wagner, I want you to take note of that
2 last document we showed you. The date, okay?

3 A Yeah.

4 Q I'm handing you another document. The
5 document I just handed you is another email exchange
6 from you to Mr. Savopoulos and others, and it's also
7 dated May 2010?

8 A Yes, that's correct.

9 MR. WEBER: I move this document into
10 evidence.

11 MR. ZAPPOLO: What was the first number?

12 MR. WEBER: What was the ID number?

13 MR. ZAPPOLO: The ID number, yes.

14 MR. WEBER: 149.

15 MR. ZAPPOLO: Can I have just a quick sidebar?

16 (Thereupon, a sidebar conference was held.)

17 MR. ZAPPOLO: This is outside of my Direct.

18 It seems that this entire line of questioning is
19 well outside of anything that I asked about. He's
20 talking about things that are a year before my line
21 of inquiry. If he's going to say it somehow
22 relates -- like I said, on the record, if counsel
23 somehow thinks it's related to my questioning --

24 MR. WEBER: It's 100 percent related. It's
25 from 2010 and it sets up a recoupment defense and

1 also the real reason why Savvas Savopoulos provided
2 him with that notice of termination. It's totally
3 in rebuttal to the entire motivation for why --

4 THE COURT: Let me see --

5 MR. WEBER: -- Savvas Savopoulos sent the
6 notice to him. And it shows that the real
7 motivation for Mr. Wagner was he's going to block
8 Savvas' deal.

9 MR. ZAPPOLO: The real motivation for
10 Mr. Wagner to do what a year before Mr. Wagner
11 was --

12 MR. WEBER: Well, you have to establish the
13 relationship to show that Mr. Wagner sees that
14 Savvas Savopoulos is capable of buying the company.

15 Todd Wagner knows that he's going to buy it
16 come October and that's why he manufactures the
17 claim that causes Savvas Savopoulos to move away at
18 the end of December. That sets up the whole
19 relationship --

20 MR. ZAPPOLO: Which defense is that?

21 MR. WEBER: The recoupment defense.

22 MR. ZAPPOLO: Recoupment?

23 MR. WEBER: Yes, that's right. It's there,
24 look in the pleading. It's in the pretrial stip.
25 It's in the pleading. It's there setting up the

1 relationship.

2 MR. ZAPPOLO: I don't think it has anything to
3 do with my Direct, but I'll -- I don't want to --
4 you know, I don't want to play games and, you know,
5 just have him call him back later, so --

6 THE COURT: Okay. All right.

7 MR. ZAPPOLO: You know, from a logistical
8 standpoint, technically, I don't think it's
9 appropriate, but I'm going to -- while I understand
10 it is my right, I'm not going to waste the Court's
11 time and the jury's time.

12 THE COURT: Okay.

13 (Thereupon, the sidebar conference was
14 concluded.)

15 MR. WEBER: Any objection to this coming into
16 evidence?

17 MR. ZAPPOLO: No.

18 THE COURT: Madam Clerk, Number 20, please?

19 THE CLERK: Yes, Your Honor.

20 **THE WITNESS: This is the context I was**
21 **talking about.**

22 (Thereupon, Defendants' Exhibit 20 was
23 received into evidence.)

24 BY MR. WEBER:

25 Q Okay. So, Mr. Wagner, in this document you're

1 responding to Mr. Savopoulos' last email. Can you go
2 down one page? And now go up.

3 And you write to Mr. Savopoulos: "I'm working
4 on it. We are track-testing the Photon this afternoon.
5 If all goes well there, I will have more time to work on
6 the doc the end of this week."

7 You were telling Mr. Savopoulos that you had
8 other things going on for MACC and therefore you
9 couldn't answer his questions, right?

10 **A Yes. Warren Mosler had asked SEI and**
11 **basically most of the MACC factory to focus on the**
12 **Photon, so that's what we were doing. We were doing**
13 **what Mr. Mosler asked us to do. And so the amount of**
14 **work involved here is gigantic, and I can't do both.**
15 **That was the context I was referring to earlier.**

16 MR. WEBER: I'm going to mark this document as
17 151.

18 (Thereupon, Defendants' Exhibit 151 was marked
19 for identification.)

20 BY MR. WEBER:

21 Q I'm handing you the document that's marked as
22 151. This is an email again from you to Warren Mosler,
23 same date, September 22, 2010, right?

24 **A Yes.**

25 MR. WEBER: Move this document into evidence.

1 MR. ZAPPOLO: No objection.

2 THE COURT: Defendants' Exhibit 21 without
3 objection.

4 (Thereupon, Defendants' Exhibit 21 was
5 received into evidence.)

6 BY MR. WEBER:

7 Q Now let's go back to 149. Now we saw in the
8 previous document that you told Savvas, at 1:57 p.m., on
9 September 22nd, that you were essentially too busy,
10 right? Now let's go to the next document.

11 Same day, 2:45 p.m., you're writing Mr. Mosler
12 an email and what you're doing in this document is
13 you're conveying information to Mr. Mosler about
14 Mr. Savopoulos' asset purchase agreement, correct?

15 A He had asked me for comment, and I'm
16 commenting here. Mr. Mosler sent that document to me
17 saying "Comment, please." And here I'm responding to
18 what Mr. Mosler wanted me to comment on, that's it.

19 Q So you put aside Mr. Savopoulos' questions and
20 you decided I'm going to comment on Mr. Savopoulos'
21 asset purchase agreement. And in your questions to
22 Mr. Savopoulos -- Mr. Mosler -- I'm sorry.

23 In your comments to Mr. Mosler you write: "I
24 am 95 percent certain that I will be able to pull my
25 deal together. I expect to know definitively in 30

1 days." Do you see that?

2 **A Yes, I do see that.**

3 Q Now what you're doing in this document is you
4 are pooh-poohing Mr. Savopoulos' offer and asking --

5 **A No, I'm not.**

6 Q -- Mr. Mosler for more time to let you pull
7 together your deal, aren't you?

8 **A No, that's absolutely not true. Mr. Mosler**
9 **had a concern that there was some element of Savvas'**
10 **deal -- this "insider party debt," this phrase that's in**
11 **the first paragraph, Mr. Mosler was concerned about that**
12 **and somehow that could have possibly -- I don't remember**
13 **the exact terms, but something that could have been**
14 **adverse to Mr. Mosler.**

15 So he asked me, you know, since I have some
16 financial background from my MBA, if I thought it was a
17 problem. And looking at it, I said, yeah, I can see why
18 you were -- he was concerned about it. Mr. Mosler was
19 concerned about Savvas' deal.

20 Q You were concerned about the deal. And, in
21 fact, you were especially concerned about this sentence
22 right here, "plus you have to buy out the distributors,
23 with that amount coming out of the \$2 million" because
24 you thought --

25 **A Sure.**

1 Q -- that you were a distributor at that time,
2 you were afraid that Mr. Savopoulos would end your
3 relationship with MACC; isn't that right?

4 A I have a right to defend my company's rights
5 and contractual rights, so yeah. I mean, he would have
6 to buy me out. He would have to buy out the distributor
7 in Germany, the distributor in the UK, and the
8 distributor in California.

9 Obviously you can't have a contract with
10 someone and then just wipe it out because you feel like
11 it. So, you have to buy them out. You have to be fair.
12 This is just about fairness.

13 THE CLERK: Pardon me, Your Honor. I think we
14 may need to have Defendants' Exhibit 20 admitted
15 into evidence on the record, please.

16 THE COURT: I'm sorry.

17 MR. ZAPPOLO: No objection, Your Honor.

18 MR. WEBER: No objection.

19 THE COURT: All right. So 20 has been
20 admitted without objection. 21 has been admitted,
21 and now we're at what number? You said Number 22,
22 correct?

23 THE CLERK: The next exhibit that will be
24 admitted, that will be introduced at this time,
25 presumably, will be Number 22.

1 THE COURT: Okay.

2 MR. WEBER: I have an exhibit to give you,
3 right.

4 THE COURT: Okay. So that's where we're at?

5 MR. WEBER: Yeah.

6 THE COURT: Wonderful.

7 MR. WEBER: This is 150. This will be 22.

8 THE CLERK: Okay. Thank you.

9 (Thereupon, Defendants' Exhibit 150 was marked
10 for identification.)

11 BY MR. WEBER:

12 Q Mr. Wagner, I'm handing you another document.
13 It's another email exchange. This is from Mr. Mosler to
14 Savvas Savopoulos, yourself, Ms. Jill Wagner and others,
15 right?

16 A Yes. He's asking Jill to take priority on
17 doing the certification documents for Savvas.

18 Q Same day, right?

19 A Yes, same day.

20 MR. WEBER: Let's move this document into
21 evidence.

22 MR. ZAPPOLO: Which number again?

23 MR. WEBER: This is 150.

24 MR. ZAPPOLO: No objection, Your Honor.

25 THE COURT: All right. So this is 22?

1 MR. WEBER: 22.

2 THE CLERK: Yes, Your Honor.

3 THE COURT: All right. Admitted as
4 Exhibit 22.

5 (Thereupon, Defendants' Exhibit 22 was
6 received into evidence.)

7 BY MR. WEBER:

8 Q Now we see this is September 22, 2010, 9:18.
9 So this is later in the day, right, Mr. Wagner?

10 **A Yes, it's later in the day.**

11 Q And Mr. Mosler is telling Ms. Wagner, with you
12 cc'd, "Hi, Jill. Please give whatever priority you can,
13 thanks."

14 **A Right.**

15 Q In response to Savvas Savopoulos' lower email,
16 "Todd, any update? We really need this info" because
17 Mr. Mosler wants to sell MACC and he's looking for a
18 buyer and he knows that Mr. Savopoulos has the means to
19 do it, correct?

20 **A He knows Mr. Savopoulos has the means to do**
21 **it, and I'm working on the Photon, and so he has Jill do**
22 **the certification documents for Mr. Savvas. Yes, that's**
23 **what's going on here.**

24 MR. WEBER: I'm going to mark this next
25 document as 156.

1 (Thereupon, Defendants' Exhibit 156 was marked
2 for identification.)

3 BY MR. WEBER:

4 Q I've handed you a document which is another
5 email exchange. It's an email from you to Mr. Savvas
6 Savopoulos dated September 24, 2010, right?

7 **A Yes.**

8 MR. WEBER: Move this document into evidence.

9 MR. ZAPPOLO: No objection.

10 THE COURT: This is 23?

11 THE CLERK: Yes, Your Honor, Number 23.

12 (Thereupon, Defendants' Exhibit 23 was
13 received into evidence.)

14 BY MR. WEBER:

15 Q Okay. Let's scroll down.

16 Okay. So this chain begins on September 24,
17 2010, two days after we left off from the last document.
18 And in this document you had written to Mr. Savopoulos
19 with an attachment, right?

20 **A Yes.**

21 Q With some of the answers to the questions that
22 he was looking for for his due diligence, right?

23 **A I presume so. I don't see it here, but I**
24 **presume so.**

25 Q And you wrote "I will continue working on this

1 as feasible."

2 And in response, Mr. Savopoulos wrote
3 "Unfortunately, 'as feasible' won't work." You knew
4 Mr. Savvas was on a deadline and looking to close,
5 right?

6 **A There was no deadline. What's the deadline?**
7 **There's no actual event that would cause some deadline.**
8 **He just was pushing. There's no deadline.**

9 Q And here's your response, you wrote -- one of
10 the things you mention in the first sentence, "I can
11 give you my word that I'm quite overwhelmed with work at
12 the moment, and if we fail at 'Car and Driver,' it is
13 much worse than letting an existing compliance issue
14 remain unresolved a bit longer."

15 And the compliance issue you're referring to
16 is what Mr. Savopoulos is asking you about in
17 furtherance of getting the due diligence so he can
18 continue with his purchase of MACC, right?

19 **A Well, from what I remember from this moment in**
20 **time is he was concerned about the illegal cars and then**
21 **of course there was the tax evasion stuff. And so I'm**
22 **presuming he just wants to sort of dig into it to see**
23 **what the ramifications of those things are.**

24 And, you know, I don't really want to touch
25 it, honestly, but -- so I'm happy to do my engineering

1 stuff on the Photon that Mr. Mosler wants me to do. And
2 as Mr. Mosler said in the earlier email, he tasked Jill
3 with doing this stuff. And I'm sure Mr. Mosler had his
4 attorney, Alan Simon, doing some of it too. I actually
5 know he did some of that because some of the gas guzzler
6 tax evasion stuff came from Alan.

7 Q Okay. I have handed you another document.
8 This is an email from you to Mr. Mosler, right?

9 A Yes.

10 (Thereupon, Defendants' Exhibit 158 was marked
11 for identification.)

12 MR. WEBER: Move this document into evidence.

13 MR. ZAPPOLO: Which was it for ID?

14 MR. WEBER: 158.

15 MR. ZAPPOLO: No objection, Your Honor.

16 THE COURT: Madam Clerk, Number 24, please?

17 THE CLERK: Yes, Your Honor, 24.

18 (Thereupon, Defendants' Exhibit 24 was
19 received into evidence.)

20 BY MR. WEBER:

21 Q Now September 28th, a few days later, and you
22 emailed Mr. Mosler an asset purchase agreement draft,
23 right?

24 A Yes.

25 Q And do you recall an asset purchase agreement

1 is the document that formalizes your offer to purchase
2 MACC, right?

3 A Yes.

4 Q And you want to know if Mr. Mosler agrees to
5 it, which is why you wrote "Please let me know if this
6 looks okay to you," correct?

7 A So let me just make one clarification.

8 Q It's a yes or no.

9 A We had an email agreement and then he wanted
10 this stuff put into this Word format. We still had an
11 email agreement --

12 Q Mr. Mosler asked you to put it into an asset
13 purchase agreement? Is that what your testimony is?

14 A I believe so, or maybe this is something we
15 had to do to formalize it. But as far as the terms of
16 the agreement, it was set up and were agreed to via
17 email.

18 And then typically what seems to happen, not
19 being a lawyer, is then you have the terms in the email
20 and then you have, you know, a much larger formalized
21 document for hand signatures, but that doesn't
22 invalidate the email agreement, meeting of the minds,
23 which occurred, I don't know, two months ago at this
24 point.

25 Q You needed an asset purchase agreement and you

1 needed an asset purchase agreement signed because you
2 knew there were three steps to purchasing MACC. One,
3 you have to agree to the asset purchase agreement. Two,
4 a deposit has to be put in. And three, you have to
5 close. I want you to remember that. Do you agree with
6 that?

7 A I don't think I do agree with that. I don't
8 think there was a requirement for a deposit.

9 Q Okay.

10 A I think I don't agree with that, so I'm going
11 to say no, I do not agree with that.

12 Q I want you to remember that, okay, Mr. Wagner?

13 A Yeah. And, you know, to be clear on this,
14 this was all -- this was done nine months before I put
15 in my \$100,000 deposit, so this is way before the events
16 of this case.

17 And I have not read this particular thing in
18 that time, so it has been 13 years since I first read
19 this because this, to me, seems irrelevant to the issues
20 of the case, so I don't -- I can't remember exactly
21 what's in here.

22 Q I've handed you a document that's been marked
23 as Number 160. Now, 160 is an email exchange between
24 you and Mr. Mosler, right?

25 A Yes.

1 (Thereupon, Defendants' Exhibit 160 was marked
2 for identification.)

3 MR. WEBER: Now. Move this document into
4 evidence.

5 MR. ZAPPOLO: No objection.

6 THE COURT: Madam Clerk, 25?

7 **THE WITNESS: Yes, Your Honor.**

8 (Thereupon, Defendants' Exhibit 25 was
9 received into evidence.)

10 BY MR. WEBER:

11 Q We see, on September 28th, the email that we
12 just looked at, right?

13 **A Yes.**

14 Q And if we scroll up, Mr. Mosler makes the
15 comment "Looks good. Didn't see any funds at signing?"

16 That means that Mr. Mosler was looking for
17 funds to be provided in conjunction with signing and not
18 just at closing with the purchase, right?

19 **A That confirms what I said earlier: That it's
20 not in here, that I have to find it.**

21 Q What do you understand that comment to mean
22 then?

23 **A He's saying "Didn't see any funds at signing?"
24 That's what it says.**

25 Q And then in response you wrote "Good. At this

1 stage I want to get the wording approved. When I have
2 the 3 million in the bank to make this happen, you'll be
3 the first to know," right?

4 **A Yes.**

5 Q You didn't have \$3 million at this point to
6 purchase MACC?

7 **A In my bank account? No, I did not.**

8 Q And then you wrote here, "In a couple weeks
9 I'll have a more definitive read on everything." You're
10 still trying to figure out how to purchase MACC, right?

11 **A There's another important thing here to state.**
12 **In answer to your question, at this moment in time MACC**
13 **has built nothing but illegal cars, and personally I**
14 **would not want to be doing that if I owned the company.**

15 **So Mr. Mosler wants \$3 million for a company**
16 **that doesn't have an operating certification nor an**
17 **operating ability to build cars, so I'm very, very**
18 **hesitant here. I know that there is potential to have**
19 **additional vehicles certified in the future. I know**
20 **that is a potential, but there's not a certainty at all**
21 **here, so this is a big chunk of money.**

22 Q And you wrote "If you can share, has Savvas
23 budged?" Meaning you want to know whether Savvas has
24 changed --

25 **A I'd like to know --**

1 Q -- his terms of this agreement because you
2 perceived them not to be fair to Mr. Mosler. Again, you
3 were trying to push Mr. Mosler away from Savvas' deal
4 and towards your deal; isn't that right?

5 A **So, Step 1, Warren Mosler said I'm concerned**
6 **about this because it looks like there's a debt thing**
7 **that would cause something -- it seemed like there was a**
8 **little bit of a sneaky debt something or other. I can't**
9 **remember exactly what it was, it was 13 years ago, that**
10 **could wind up backfiring on Mr. Mosler. So he asked for**
11 **my advice on it, and I thought it was suspect, just like**
12 **he thought it was suspect, so I asked him if Savvas had**
13 **budged on that suspect area of his -- Savvas' deal.**

14 Q And Mr. Mosler responded "Says he's moving
15 forward, but no money yet and seems to have issues with
16 compliance, et cetera."

17 A **Exactly.**

18 Q You were the only person who was providing --

19 A **That's the gas guzzler tax evasion.**

20 Q Mr. Wagner --

21 A **Mr. Savvas thinks what Mr. Mosler has been**
22 **doing so far is wrong and he's questioned about getting**
23 **into the middle of it --**

24 Q We just saw --

25 A **-- which is very reasonable.**

1 Q -- the documents where Mr. Savopoulos is
2 waiting for information from you for certification,
3 right?

4 A And from Jill. Mr. Mosler wants us to do this
5 stuff.

6 Q And --

7 A And he has his attorney do the same thing.

8 Q And Savvas was having issues with compliance.
9 Did you provide all of the information that Savvas
10 wanted as of this date when you were going back and
11 forth with Mr. Mosler about your asset purchase
12 agreement?

13 A I don't remember. And he was getting it from
14 three different sources. I was one of them, and I was
15 working on the Photon. My company was working on the
16 Photon primarily.

17 Q Now --

18 A And there's an email where Mr. Mosler tells me
19 to give -- my company to give the Photon priority, so
20 Mr. Mosler is directing me in that direction --

21 Q Well --

22 A -- not this direction. So he has his other
23 people working on this.

24 Q You want to get the wording approved because
25 you're about to go to your investor. And now I want to

1 mention a name: Lew Lee. Okay?

2 Now I understand your position today is that
3 Lew Lee is a con man, right?

4 **A Everyone knows Lew Lee is a con man and**
5 **there's actually no person in the social security**
6 **register named Lew Lee.**

7 Q Well --

8 **A It's a completely fictitious thing.**

9 Q -- that may be your position today,
10 Mr. Wagner, but as of September 28, 2010, you very much
11 believed in Lew Lee; isn't that right?

12 **A I did. I did not realize he was a con man at**
13 **the time. I don't know at what point Mr. Mosler knew he**
14 **was a con man. That's an item for later, I guess.**

15 Q And you would say that -- and as you mentioned
16 yesterday -- Lew Lee wasn't the only time you had been
17 conned. I believe you mentioned another incident
18 recently with treasure, right?

19 **A Yes, I was a victim with a different client as**
20 **well, so I've had a lot of training in this area.**

21 Q I'm handing you a document --

22 **A Oh, yeah.**

23 Q -- trial Exhibit Number 28. You recognize
24 this document, right?

25 **A This is not in the production, right?**

1 Q It's a printout.

2 MR. ZAPPOLO: What number is it?

3 (Thereupon, Defendants' Exhibit 28 was marked
4 for identification.)

5 BY MR. WEBER:

6 Q Do you recognize this document?

7 A **My lawyer needs to look at this for a second,
8 if you don't mind. But I'll look it over.**

9 Q Do you recognize this document, Mr. Wagner?

10 A **I'm waiting for my attorney to --**

11 Q No, I'm asking you a question.

12 A **Okay.**

13 Q Mr. Wagner, do you recognize this document?

14 A **This particular document, no, I've never seen
15 this before, but I know there is a Palm Beach Post
16 article. And I'm willing to look this over and read it,
17 if you don't mind. This wasn't in your production. If
18 you give me a minute, I can read it. Is that okay?**

19 Q It's a --

20 MR. WEBER: Well, move this document into
21 evidence.

22 MR. ZAPPOLO: I'm going to wait until my
23 client reviews it.

24 THE COURT: Let me see the attorneys.

25 (Thereupon, a sidebar conference was held.)

1 THE COURT: All right. So you're waiting to
2 see if --

3 MR. ZAPPOLO: The question was: Do you
4 recognize it? He said he didn't.

5 MR. WEBER: No, he said he did recognize it.
6 He said he knew it was a Palm Beach Post article
7 and he'd like to review it.

8 MR. ZAPPOLO: I want him to answer your
9 question and then I'll respond with an objection.

10 THE COURT: Do you want the jury to leave for
11 five minutes?

12 MR. ZAPPOLO: No. He's reviewing it right
13 now. I'd like time to go back, if you ask him the
14 question whether he recognizes the document, and
15 then I'll --

16 THE COURT: Okay.

17 MR. ZAPPOLO: I will say for the record, I
18 believe I'm inclined to not object to it, but I
19 just want him to answer the question.

20 (Thereupon, the sidebar conference was
21 concluded.)

22 THE COURT: Okay. Your witness.

23 BY MR. WEBER:

24 Q Do you recognize the document?

25 A I'm halfway through reading it, and it does

1 look like an article that appeared in the Palm Beach
2 Post.

3 MR. ZAPPOLO: No objection, Your Honor.

4 THE COURT: Okay. Is that 26?

5 THE CLERK: Yes, Your Honor.

6 (Thereupon, Defendants' Exhibit 26 was
7 received into evidence.)

8 BY MR. WEBER:

9 Q This document shows a Palm Beach Post article
10 from 2015 after commencement of this lawsuit, right?

11 A Yes.

12 MR. ZAPPOLO: Let me see the first paragraph.

13 THE WITNESS: So this is approximately three
14 years --

15 BY MR. WEBER:

16 Q Hold on one second, Mr. Wagner. Hold on one
17 second. There's no question pending.

18 A Okay.

19 Q Now this article concerned treasure hunters,
20 and it concerned a separate lawsuit where you believed
21 you were conned out of money, right?

22 A Yes, that's correct.

23 Q And this article appears online, right?

24 A Yes. I don't think it's still online. It may
25 be, but I'm not sure. But it did appear online for many

1 years. The con artist here tried to get the article
2 taken off the Internet because it was prohibited -- it
3 was making it more difficult for them to pull in more
4 victims. That was one of the purposes I had of having
5 this article posted is to protect other potential
6 victims of this scam. And it worked, actually.

7 There was another victim out in Minneapolis, I
8 believe. A bank, they got conned out of a million
9 dollars and this article and the work I did to
10 essentially dissect and unravel this extraordinarily
11 complex scam helped them -- I'm not sure if they got all
12 the money back or not, but there was a lawsuit that they
13 filed that this research I did helped them with.

14 Q Okay. So let's talk about Lew Lee. You first
15 met Lew Lee when he contacted MACC, right?

16 A Yes. He sent me --

17 Q Hold on. And you met Lew Lee for the first
18 time when he contacted MACC about purchasing an
19 automobile and Sylvia Klaker told you to call him,
20 correct?

21 A So this one --

22 Q Is that right, Mr. Wagner, or not?

23 A No, it's incorrect.

24 Q Okay. Hold on. Let's go back to --

25 A That is incorrect. I did not meet him.

1 Q Do you want me to go back to your testimony?

2 A Go ahead. Yes. Sure.

3 Q Well, you may not have met him in person, but
4 you spoke to him on the phone, correct?

5 A I spoke to someone, some human being. I do
6 not know exactly who it is. And now I know that his
7 name is most likely Ralph TA Lew-Lee and he uses all
8 sorts of fake names because he uses cons -- he's a
9 professional con artist. One of the names he uses is
10 Lee Lew-Lee, which is what he used when he incorporated
11 SFDM, Inc.

12 Q And SFDM stands for Santa Fe Digital Media,
13 correct?

14 A Yeah. He used a fake name for that as well.
15 Or if it's him or someone else, I don't really know.

16 Q Mr. Wagner, does SFDM stand for Santa Fe
17 Digital Media?

18 A I presume so.

19 Q You don't know?

20 A I don't know any of this stuff because it's
21 all a scam.

22 Q That name --

23 A Over the last up, down, left, right, inside,
24 and out --

25 Q In 2010 --

1 **A -- Mr. Mosler is now utilizing this con artist**
2 **to help con -- for him to con me.**

3 Q In 2010, 2011, you knew that SFDM stood for
4 Santa Fe Digital Media, didn't you?

5 **A Most likely, but it's still -- I didn't know**
6 **what it was, and now I know that it was nothing but a**
7 **con.**

8 MR. WEBER: Move this document into evidence.

9 MR. ZAPPOLO: No objection.

10 THE COURT: Madam Clerk, is that 27?

11 **THE WITNESS: And here it says Mr. Lee, it**
12 **doesn't say Lew Lee.**

13 THE CLERK: Yes, Your Honor.

14 MR. ZAPPOLO: I'm sorry. Counsel, what ID
15 number was that?

16 MR. WEBER: 27.

17 MR. ZAPPOLO: No --

18 MR. WEBER: 83.

19 THE COURT: Madam Clerk, you said 27?

20 THE CLERK: It's Defendants' Number 27.

21 THE COURT: Thank you.

22 (Thereupon, Defendants' Exhibit 27 was
23 received into evidence.)

24 BY MR. WEBER:

25 Q So this email is dated April 25, 2010, several

1 months back from where we left off, but it's from HDTV1.
2 You understand that to be an email used by a person that
3 goes by the name Lew Lee, correct?

4 **A No, I really don't.**

5 **Q Okay.**

6 **A There were all sorts of people on this team,**
7 **this con team. I have no idea who that is. There's no**
8 **name, HDTV_1@mac.com.**

9 **Q So sitting here today under oath, you're**
10 **telling me that you don't know --**

11 **A No.**

12 **Q -- that this is Lew Lee's email address?**

13 **A No, I don't. There is no Lew Lee. I mean,**
14 **this is all a con and there's a team of them and who**
15 **knows what -- who's typing behind this email. I**
16 **definitely do not know.**

17 **MR. WEBER: I'll mark this as 168A.**

18 **(Thereupon, Defendants' Exhibit 168A was**
19 **marked for identification.)**

20 **BY MR. WEBER:**

21 **Q Now I'm showing you a document. It's an email**
22 **from Mr. Lee to you, correct?**

23 **A It's -- it says Mr. Lee at the top, but that**
24 **does not mean that I have any confidence that it was**
25 **actually one singular person typing this thing. I have**

1 no idea who's typing this thing. And remember, there's
2 a team of people and it was deception left, right,
3 inside and out.

4 MR. WEBER: Move this document into evidence.

5 MR. ZAPPOLO: No objection, Your Honor.

6 THE COURT: Madam Clerk, is that 28?

7 THE CLERK: Yes. Defendants' 28.

8 (Thereupon, Defendants' Exhibit 28 was
9 received into evidence.)

10 BY MR. WEBER:

11 Q Okay. So here we see an email dated
12 October 25, 2010. And it's an email from Mr. Lee. Can
13 we zoom in on the email address so they can see?
14 HDTV1@me.com.

15 And it says "Todd, thought you would really
16 enjoy this... Boeing CFD. This is where our partnership
17 will take MSI in the high-performance automotive arena.
18 TTYL," which I think stands for talk to you later, "L."
19 And then we see "Lew Lee" on the bottom, right?

20 A There is no person in the entire country in
21 the social security register named Lew Lee. None.

22 Q You've heard of Mosler Supercars,
23 Incorporated, right?

24 A Yes. That is my company and the acronym was
25 MSI.

1 Q And we see MSI mentioned right there, right?

2 A Right there. Yes, right there.

3 Q Okay.

4 A So this is -- so --

5 Q Hold on, Mr. Mr. Wagner. Hold on one second.

6 Okay. I'm handing you another document. It's
7 an email dated October 25, 2010, correct?

8 A Yes.

9 (Thereupon, Defendants' Exhibit 168B was
10 marked for identification.)

11 MR. WEBER: Okay. Move this document into
12 evidence.

13 MR. ZAPPOLO: ID number?

14 MR. WEBER: 168B.

15 MR. ZAPPOLO: 1 --

16 MR. WEBER: 168B.

17 THE WITNESS: This is a perfect example --

18 MR. WEBER: Hold on one second, Mr. Wagner.
19 There's no question pending.

20 THE WITNESS: Okay.

21 MR. WEBER: Is that moved into evidence?

22 MR. ZAPPOLO: No objection.

23 THE COURT: All right. Madam Clerk, is that
24 29?

25 THE CLERK: Yes, Your Honor.

1 THE COURT: Thank you.

2 (Thereupon, Defendants' Exhibit 29 was
3 received into evidence.)

4 BY MR. WEBER:

5 Q Okay. So now this is an email dated
6 November 4, 2010?

7 A Yes.

8 Q And it's an email from you, Todd Wagner.

9 A Yes.

10 Q And you used the email address
11 MT900supercar@gmail.com, correct?

12 A Yes, I did.

13 Q And it's an email address we just saw,
14 HDTV_1@mac.com, correct?

15 A Correct.

16 Q And there's an attachment, and it says
17 "Mosler-Siemens SFDM Tech Partnership Signed," correct?

18 A Yes.

19 Q Can we scroll down.

20 Now the attachment -- let's pause right
21 there -- has Mosler Automotive on the top.

22 A Correct.

23 Q Is that MACC's letterhead?

24 A Yes, it is.

25 Q Did you tell Mr. Mosler that there was going

1 to be a Mosler-Siemens SFDM joint technology
2 partnership?

3 **A I don't know for sure.**

4 Q You didn't tell him, right?

5 **A I don't know for sure, but as director of**
6 **engineering, we -- he wanted to have a partner with**
7 **supercomputer stuff, so --**

8 Q So you made the decision to enter into this
9 partnership with SFDM, correct?

10 **A Yes, I think that's fair.**

11 Q Let's just take a look at this email. It says
12 "SFDM has just finished work on ORCA," and there was a
13 mention of ORCA in an article that we saw and we'll get
14 to it. Do you remember that?

15 **A Yes.**

16 Q Let's keep scrolling down.

17 And there's your signature block. And did you
18 sign this -- did you sign this agreement?

19 **A I believe so. I don't see it here. Oh, it is**
20 **on the next page. It is signed, yes.**

21 Q Now, at this point in time --

22 **A So this is a technical partnership.**

23 Q Hold on one second. At this point in time,
24 November 20 -- yeah, October 2010 -- I'm sorry.

25 November 2010, you had already discussed with Mr. Lew

1 Lee the prospect of purchasing MACC with him, right?

2 **A** That, I would expect so. I mean, as far as
3 the exact timing, I'm not certain, but I think it is
4 most likely true, yes, that he would be an investor in
5 SF -- sorry. Whoever --

6 You know, again, I was being deceived this
7 entire time. This is a guy saying he's going to do
8 this, but he has no means or ability to do it and I
9 bought it. He -- I had, in my life, not encountered
10 people who are so good at lying and I was suckered,
11 which is a part of why I'm going to try and help people
12 who have been suckered in this way as the next stage of
13 my life.

14 **Q** Now, simultaneously -- I'm handing you a
15 document -- while all this is going on with Lew Lee --

16 I'm handing you a document. It's an email
17 exchange --

18 **A** Yes.

19 **Q** -- between you and Mr. Mosler, right?

20 **A** Yes.

21 **Q** And --

22 (Thereupon, Defendants' Exhibit 169 was marked
23 for identification.)

24 MR. WEBER: Well, let me move this document
25 into evidence. Any objection?

1 MR. ZAPPOLO: What ID number?

2 MR. WEBER: 169.

3 MR. ZAPPOLO: No objection.

4 THE COURT: Admitted as 30, Madam Clerk?

5 THE CLERK: Yes, Your Honor.

6 (Thereupon, Defendants' Exhibit 30 was
7 received into evidence.)

8 BY MR. WEBER:

9 Q Okay. Let's go to the first part.

10 While -- simultaneously, while you're
11 discussing with Lew Lee, you were also discussing with
12 Mr. Mosler the distribution agreements for SEI, right?

13 A I'm sorry, I just zoned out for a second. Can
14 you repeat that first part of the question?

15 Q No worries. At any time you don't understand
16 my question, let me know.

17 A Yeah, yeah.

18 Q Okay?

19 A Of course.

20 Q So this document begins November 16, 2010. So
21 simultaneously, while you're having discussions with Lew
22 Lee, you're also doing your job with MACC and you're
23 working towards getting a distributorship agreement
24 signed for SEI and MACC, right?

25 A Well, simultaneously with talking to someone

1 who's a con artist who seems to be going by the name Lew
2 Lee and other investors as well. I was flying back and
3 forth to California. I was talking to 9595 Investments.
4 I was talking to Rossion, all sorts of things also at
5 this exact same time.

6 Q 9559 Investments, is that the number --

7 A 9595 Investments. They're out in California.
8 I was meeting with them as well. So there were a lot of
9 potential investors.

10 Q And Mr. Lew Lee knew them as well, correct?

11 A Yes, he did.

12 Q Now let's look at this --

13 A Or whoever that is. I keep saying "he," but
14 there was like a woman involved with them and the two
15 other guys.

16 Q Was it Abby Cubey?

17 A No, it was not Abby Cubey.

18 Q Are you sure?

19 A I'm positive.

20 Q Okay.

21 A It was someone named Carol Joyce, big hair.

22 Q Let's look at this email, November 16, 2010.
23 So Mr. Mosler says "with a few changes attached," he's
24 referring to changes to the distributorship agreement,
25 right?

1 **A Yes. Yes, this is --**

2 Q And so now --

3 **A Mr. Mosler is a co-scrivener --**

4 Q Hold on.

5 **A -- on the distributorship agreement.**

6 Q All right. Now there's a back and forth here
7 where you're talking about distributorship agreements,
8 right?

9 **A Yes.**

10 Q And then the next email there's other edits,
11 right? And now you write "Yes, those are fine. V-3
12 revision attached." Let's scroll up.

13 And now there's a discussion about prices.
14 These are prices for the cars under the distributorship
15 agreement, right?

16 **A Yes.**

17 Q And then we scroll up. And we say "Higher
18 prices give you more money." Keep scrolling up. And
19 let's see. "Everything can be changed with a mutual
20 agreement and these are the final documents here."

21 You send Mr. Mosler Word documents for the
22 distributorship agreements, correct?

23 **A Absolutely. Yes.**

24 Q Now, did you tell Savvas Savopoulos about
25 these documents?

1 **A Why would I do that?**

2 **Q Well, Savvas Savopoulos is in the process of**
3 **doing due diligence on the company. Did you mention**
4 **these documents to Savvas Savopoulos?**

5 **A No. I'm pretty sure I explicitly did not**
6 **because he didn't own the company at the time. Why**
7 **would I share company distributorship information with**
8 **him while I am talking to Warren Mosler?**

9 **And actually, come to think of it, this is in**
10 **November 16, 2010, right? Savvas Savopoulos had already**
11 **withdrawn at this point, so --**

12 **Q Are you sure about that, Mr. Wagner?**

13 **A I am 99.9 percent sure he had withdrawn.**

14 **That's --**

15 **Q Well, let me remind you, you're under oath**
16 **today --**

17 **A No, I'm telling you the truth.**

18 **Q -- so I don't want you to speculate.**

19 **A Okay.**

20 **Q It sounds like you're speculating under oath.**

21 **A Let me --**

22 **MR. ZAPPOLO: Objection, Your Honor,**
23 **argumentative.**

24 **THE COURT: Sustained.**

25 **THE WITNESS: Let me then clarify something,**

1 okay. I am as sure as I can be that Savvas
2 Savopoulos had withdrawn, and I know this because
3 the first version of this distribution document was
4 sent July 16, 2010 because I had already put down
5 money for the car and we had already had an
6 agreement for my company to buy the RaptorGTR, the
7 car that became the RaptorGTR, and the distribution
8 and all of that.

9 So shortly after I sent the distributorship
10 agreements to Mr. Mosler, he then attracted the
11 interest of Mr. Savopoulos. And so Mr. Mosler,
12 even though he had an agreement with me, kicked the
13 can down the road and so it delayed me, delayed me,
14 and delayed me for four whole months because he
15 wanted to sort of strip away my distributorship.
16 But then when Savvas had withdrawn, Mr. Mosler said
17 "Okay. I'll sign it over to you because I want the
18 money." Because we were going to be paying for
19 cars. We were already -- we already were paying
20 for cars, so I think this shows some disingenuous
21 of Mr. Mosler. He made an agreement.

22 BY MR. WEBER:

23 Q I've --

24 A All right. Listen, it's fine.

25 Q I've handed you document 170. Take a look at

1 it.

2 **A Mr. Savopoulos had already left at this time.**

3 (Thereupon, Defendants' Exhibit 170 was marked
4 for identification.)

5 BY MR. WEBER:

6 Q Now, the document I handed you is an email
7 exchange between you and Mr. Mosler, right?

8 **A It's between me, Warren Mosler, and Jill
9 Wagner.**

10 MR. WEBER: And we'll move this document into
11 evidence.

12 MR. ZAPPOLO: What number was it for ID?

13 MR. WEBER: 170.

14 MR. ZAPPOLO: No objection.

15 THE COURT: Admitted as -- Madam Clerk, is
16 that 30 or 31?

17 THE CLERK: Defendants' Number 31.

18 THE COURT: Thank you.

19 (Thereupon, Defendants' Exhibit 31 was
20 received into evidence.)

21 BY MR. WEBER:

22 Q Now, in this email which picks off from the
23 last email, Mr. Mosler writes "Works for me. How is it
24 for the new buyer who wants to close by January 4th?
25 Run it by him." Was that referring to Mr. Savopoulos?

1 **A No.**

2 Q Is that Mr. Lew Lee?

3 **A Well, one thing I'll say is this --**

4 Q Well, hold on, answer the question. Was Lew
5 Lee the new buyer?

6 **A No.**

7 Q Well, you just say in this above email,
8 "already have via our email agreement," so it was either
9 Lew Lee or Savvas Savopoulos. Who was it?

10 **A So new buyer -- you should be using the word
11 "investor." The investor is the person there.**

12 **So, remember, we're writing emails here.
13 We're typing an email and sometimes we use the shorter
14 word. We're not thinking this is going to be a part of
15 a lawsuit.**

16 **So Mr. Mosler should have said "How is it for
17 my new potential investor?" But that's a whole lot of
18 words and instead he says "new buyer."**

19 Q Yeah, this is just an email exchange, isn't
20 it?

21 **A This particular thing is just an email
22 exchange, right.**

23 Q And until it's formalized in a signed
24 document --

25 **A No.**

1 Q -- it's not --

2 A No. This --

3 Q Oh --

4 A This is not --

5 Q -- so this is the exception?

6 A No. Wait. Stop.

7 Q No.

8 A This particular thing is just us talking about
9 things. This is not -- this does not offer an agreement
10 of things.

11 Q Who makes the decision when you're just
12 talking and when you're actually entering into an
13 agreement, Mr. Wagner? How does that work?

14 A If there's an explicit meeting of the minds.
15 He's just asking a random question, "How is it for the
16 new buyer who wants to close by January 4th? Run it by
17 him." He's not asking for an agreement here.

18 Q Well, let's show you --

19 A And up ahead it says -- let me finish my
20 answer, please. I'm describing the distributorship
21 document, and I tell Mr. Mosler this, meaning the
22 distributorship documents, just formalizing what we
23 already agreed in email. Writing an email about where
24 to go -- you know --

25 Q And the document --

1 **A** -- "What do you think about the sky?"
2 **doesn't -- isn't an agreement, that's just "What do you**
3 **think about the sky?"**

4 **Q** I've handed you a document that's marked as
5 184. Let me know when you're ready.

6 **A** **I'm ready.**

7 (Thereupon, Defendants' Exhibit 184 was marked
8 for identification.)

9 BY MR. WEBER:

10 **Q** It's an email from you to Lew Lee, correct?

11 **A** **It's from me to the con artist team, whoever**
12 **that is.**

13 MR. WEBER: Move this document into evidence.

14 MR. ZAPPOLO: No objection.

15 THE COURT: Madam Clerk, 32, please?

16 THE CLERK: Yes, Your Honor.

17 (Thereupon, Defendants' Exhibit 32 was
18 received into evidence.)

19 BY MR. WEBER:

20 **Q** Now let's zoom in.

21 "Mosler Anti-Circumvent Letter Scan" is the
22 subject. And you wrote "Good luck, Brother Lew" --

23 **A** **Yep.**

24 **Q** -- meaning Lew Lee, right?

25 **A** **Well, I was under the false impression that he**

1 was a honest person at this point.

2 Q Now scroll down.

3 A Or -- and I didn't know about the con team at
4 this point. If the con artists came up and said "Hey,
5 we're con artists" from the beginning --

6 Q Hold on a second, sir.

7 A -- then it wouldn't work.

8 Q Hold on, Mr. Wagner. There's no question
9 pending.

10 Okay. Again, you're using the Mosler
11 Automotive letterhead on this document, right?

12 A Yes.

13 Q That's MACC's letterhead?

14 A Mr. Mosler wanted me to be -- my company be
15 designated director of engineering of MACC.

16 Q Now this is an agreement that you wrote --

17 A Oh, this is on --

18 Q -- between Santa Fe Digital Media, SFDM --
19 does that refresh your recollection as to what SFDM
20 stands for?

21 A It's still a fraud. It is still a fraud.

22 Q Exclusive rights to invest in Mosler
23 Supercars, Inc. That's your company, right?

24 A Exactly. There's a potential investor.

25 Q Per the previously agreed-upon terms of

1 \$5 million for 40 percent?

2 **A Yes.**

3 Q "MSI" --

4 That's your company, correct?

5 **A Right.**

6 Q -- "agrees not to accept direct investment
7 from any investors who have been or who will be working
8 with or investing in SFDM."

9 **A Right.**

10 Q Do you see that?

11 **A Yes.**

12 Q This exclusive investment offer terminates
13 April 30, 2011, right?

14 **A Yes.**

15 Q Now did SFDM pay you \$5 million?

16 **A No, they did not.**

17 Q They didn't?

18 **A They didn't have the capability to.**

19 Q What happened?

20 **A They didn't pay it and that's it.**

21 Q So when April 30th --

22 **A If you say you're going to buy a car and you
23 don't come up with the money, that's it. "Hey, I'm
24 going to buy this car for \$5 million or even for
25 \$5,000," if you don't get the money, that's it. That's**

1 the end of it.

2 Q So you walked away from Lew Lee when he
3 wouldn't give you the \$5 million, right?

4 A He kept promising more and more things, so, I
5 mean, it was -- this is -- this is what my position on
6 it was, and I think Mr. Mosler had a similar position --

7 Q Hold on one second, Mr. Wagner.

8 A I'm not finished answering my question. You
9 asked --

10 Q Now --

11 A If he showed up with the money, it was fine.
12 He didn't ever show up with the money, and he never
13 could have because he was a con artist. Just because
14 someone says they're going to do something, they have to
15 do it in order for it to mean anything.

16 Q I'm handing you a document marked as 185.

17 MR. ZAPPOLO: What is it?

18 MR. WEBER: 185.

19 (Thereupon, Defendants' Exhibit 185 was marked
20 for identification.)

21 BY MR. WEBER:

22 Q Okay. So let's -- well, take a look at this
23 document. Let me know when you're ready.

24 A This is really, really small on this. Can you
25 just put it on the board? I could probably see it

1 **better.**

2 MR. WEBER: Well, move the document into
3 evidence.

4 MR. ZAPPOLO: No objection.

5 MR. WEBER: Okay.

6 THE COURT: Madam Clerk, is that 32?

7 THE CLERK: Defendants' 33, Your Honor.

8 THE COURT: 33, thank you.

9 (Thereupon, Defendants' Exhibit 33 was
10 received into evidence.)

11 BY MR. WEBER:

12 Q So, let's zoom in. Let's start from the
13 bottom.

14 Things were getting serious between you and
15 Lew Lee. You're talking about buying MACC. You think
16 Lew Lee has the money. You know Warren will not
17 negotiate with you anymore until he gets an email from
18 the buyer. Remember we saw that in the prior emails
19 that we went through today.

20 So now let's scroll down to the bottom?

21 MR. ZAPPOLO: Objection, testimony.

22 **THE WITNESS: Yeah, I don't think that's true.**

23 BY MR. WEBER:

24 Q Hold on. You don't think that's true?

25 THE COURT: Hold on, rephrase your question.

1 BY MR. WEBER:

2 Q Let's go to 130 -- it's 140. Pull up 140,
3 which is Defendants' 17.

4 Remember Mr. Mosler told you back in
5 September, "At this point let me know who the buyer with
6 sufficient details for me to move forward, including an
7 email from the potential buyer as to his interest,
8 thanks." Do you remember that?

9 A You said something about a deposit, didn't
10 you, just a second ago?

11 Q I don't think so.

12 A I thought you did.

13 Q So let's go back to that email.

14 So let's scroll down to the bottom where it
15 begins and zoom in.

16 Okay. So you see right here, there's an email
17 from Lew Lee, right?

18 A Yes.

19 Q And --

20 A Or con team.

21 MR. ZAPPOLO: Sorry, Counsel, what do you have
22 on the screen?

23 MR. WEBER: Can you see it? It's the bottom.
24 It's the last page.

25 MR. ZAPPOLO: Of 130 in evidence?

1 MR. WEBER: We're working from the bottom up.

2 MR. ZAPPOLO: Thank you.

3 BY MR. WEBER:

4 Q You'll see there's an email from David Scluk.

5 Do you know who that is?

6 A No, I do not know who that is.

7 Q And it says "Lee talked with my investor today

8 and he has board approval to evaluate the business

9 model." Keep scrolling up.

10 A Yeah.

11 Q There's more, another email, and eventually we

12 get to an email to you. Keep going.

13 Now you see the email here where Mr. Lew Lee

14 is talking about an investor with 20 percent of SFDM for

15 \$110 million, \$15 million of which will go into account

16 immediately. You saw that email because it was in this

17 chain, right?

18 A I presume so.

19 Q Keep scrolling up.

20 A I don't know. I mean, was it back in the

21 chain somewhere? I don't always scroll to the very

22 bottom of chains of emails.

23 Q And he wrote to you "Hi, Todd" -- oh, no, go

24 back.

25 He wrote "Terms are being drawn up this week

1 and our financial team is flying into BH next week to
2 sign. Investor will get 20 percent of SFDM for
3 \$110 million, \$15 million of which is to go into escrow
4 account immediately."

5 **A Right.**

6 Q It says --

7 **A The bottom says this type of thing over and
8 over and over and over again at some point.**

9 Q It says "We look forward to a very healthy
10 long-term relationship with MSI as interlocking
11 corporate partners."

12 **A Look forward to it if they put some money in,
13 which they never could because it was a scam from the
14 beginning.**

15 Q And you wrote in response "Hi, Lee. My face
16 hurts from smiling."

17 **A Yes, I was --**

18 Q Because you were excited.

19 **A Of course I was.**

20 Q Yeah. You got somebody --

21 **A They made a promise that I believed to be
22 true.**

23 Q And you think you've got the money. You know
24 Savvas Savopoulos has dropped out by January.

25 **A Yes.**

1 Q And you're almost there, right? You were
2 almost there?

3 A I was almost there, yes.

4 Q So now you wrote "I'm turning 40 tomorrow. I
5 couldn't wish for a more amazing birthday surprise."

6 Now let's go to 187. Meanwhile, while this is
7 all going on with Lew Lee, others are still trying to
8 purchase MACC, right?

9 A I am not sure about that at the time.

10 MR. WEBER: Mark this as 187.

11 (Thereupon, Defendants' Exhibit 187 was marked
12 for identification.)

13 BY MR. WEBER:

14 Q Do you remember someone named Mark Brown came
15 up?

16 A Oh, the guy --

17 Q Hold on, Mr. Wagner.

18 A Oh, this is the RV guy.

19 Q Hold on. Hold on. Do you remember Mr. Mark
20 Brown, another potential buyer of MACC?

21 A Yeah. I don't know that Mark Brown is his
22 real name either. He parked an RV in the parking lot of
23 MACC for three weeks and he was saying oh, he was going
24 to buy MACC. It was ridiculous.

25 MR. WEBER: So move this document into

1 evidence.

2 **THE WITNESS: He lived in the parking lot of**

3 **MACC --**

4 MR. WEBER: Hold on, Mr. Wagner. Hold on.

5 Move this document into evidence.

6 MR. ZAPPOLO: No objection.

7 THE COURT: Madam Clerk, Number 34?

8 THE CLERK: Yes, Your Honor.

9 (Thereupon, Defendants' Exhibit 34 was
10 received into evidence.)

11 BY MR. WEBER:

12 Q Okay. Now --

13 **A Are there any questions on this or no?**

14 Q Hold on. Now Mark Brown, we just mentioned,
15 is someone else who was looking to purchase MACC, right?

16 **A Yes, sir.**

17 Q And he wrote an email on January 19, 2011, and
18 let's scroll down. And he mentions a compliance
19 extension issue.

20 **A Uh-huh. Yes.**

21 Q And he writes "It is unacceptable that you
22 have deferred the responsibility to Todd on this issue
23 when, in fact, you are clearly the person responsible
24 and in charge of Mosler. Todd's comment to Angel that
25 we didn't want to open that can of worms by inquiring to

1 the agency, whose agency is responsible, is not
2 acceptable either."

3 You didn't want potential buyers poking around
4 because you knew that there were issues?

5 **A That was a misstatement here.**

6 Q Or was it, conversely, that you didn't want
7 them to purchase MACC because you were speaking to Lew
8 Lee?

9 **A Neither of those things are true. And if**
10 **you'd like me to explain, I will. But if you're going**
11 **to cut me off, you can cut me off, whatever you want to**
12 **do, but neither of those things you said are true.**

13 Q Let's go to 188.

14 **A You don't want me to explain? Okay. Fine.**
15 **This says Raptor here on the bottom too. All right.**

16 MR. WEBER: Mark this as 194 in evidence.

17 (Thereupon, Defendants' Exhibit 194 was marked
18 for identification.)

19 BY MR. WEBER:

20 Q You've been handed a document which is another
21 email exchange between you and Lew Lee, correct?

22 **A Well, it's between me and the con artist team,**
23 **whatever they are.**

24 MR. WEBER: Move this document into evidence.

25 MR. ZAPPOLO: No objection.

1 THE COURT: Madam Clerk, it's 35?

2 THE CLERK: Yes, Your Honor.

3 (Thereupon, Defendants' Exhibit 35 was
4 received into evidence.)

5 MR. ZAPPOLO: What's the ID number?

6 MR. WEBER: 194.

7 MR. ZAPPOLO: Thank you.

8 BY MR. WEBER:

9 Q Now this is another email exchange. Let's
10 start with the original email. March 7, 2011, we're
11 getting closer to June now.

12 Mr. Lee wrote "SFDM board of directors," and
13 you'll see your name right there, CEO, MSI, Inc. MSI,
14 Inc. being your company, right?

15 A Yes. So he had created a fraudulent board of
16 directors to try and butter me up to make it feel like
17 it was legitimate. They never had any board meetings,
18 none of this stuff. This is just baloney upside down
19 and inside out.

20 Q And you wrote a response, "I am truly
21 honored" --

22 A Yes.

23 Q -- didn't you?

24 A I didn't know it was a scam at the time.

25 Q Now you heard your own private investigator

1 witness saying that she looked at public documents to
2 determine that she thought Lew Lee was a con man. Did
3 you do any due diligence on Lew Lee when you were
4 talking to him?

5 **A No, I did not. For -- from my perspective,**
6 **I -- if he showed up with money, great. If not, I had**
7 **other potential investors.**

8 **My dad was always there as backup. I didn't**
9 **want to say "Hey, dad would you back me?" But he always**
10 **would. My dad definitely had the wherewithal to buy**
11 **MACC and all of this. So my dad was a big part of the**
12 **founding of The Weather Channel that got sold to NBC for**
13 **I think it was \$3 billion or something.**

14 **Q How much?**

15 **A I think it was 3 billion.**

16 **Q And how much did he get of that 3 billion?**

17 **A I've never asked him, actually, but I know he**
18 **has more than enough to buy MACC.**

19 **Q Well, we'll get to your father in a minute.**
20 **I'm going to mark this as trial ID 200.**

21 **Now, this is another email exchange between**
22 **you and Mr. Mosler, right?**

23 **A This is from me to Warren Mosler and Jill**
24 **Wagner.**

25 **(Thereupon, Defendants' Exhibit 200 was marked**

1 for identification.)

2 MR. WEBER: Move this document into evidence.

3 MR. ZAPPOLO: No objection.

4 THE COURT: Madam Clerk, 36?

5 THE CLERK: Yes, Your Honor, 36.

6 (Thereupon, Defendants' Exhibit 36 was
7 received into evidence.)

8 BY MR. WEBER:

9 Q Okay. So this document begins with an email
10 from you to Warren Mosler. Just scroll up to the date
11 one slide higher.

12 It's dated April 18, 2011, approximately a
13 month after you were just appointed to SFDM's board of
14 directors.

15 **A I was not appointed to SFDM's board of**
16 **directors. That was just him scamming.**

17 Q Well, you thought you were, right?

18 **A I thought so.**

19 Q You wrote "Good morning, Warren. I have
20 attached the revised asset purchase agreement." And
21 again, we're talking about an asset purchase agreement
22 like we discussed before, right?

23 **A I presume so.**

24 Q Now, scroll up. Mr. Mosler responds -- now
25 let's stop here.

1 Now, April 18, 2011, you're writing to
2 Mr. Mosler, and I want to focus in on this paragraph
3 right here which begins with "Tomorrow."

4 **A Which page is that on? Okay. I think I see**
5 **it.**

6 Q You wrote "Tomorrow, I'm flying out to
7 California on SEI's dime to talk to my investors and
8 show them the new product. I am pushing things as
9 quickly as possible. The next step requires a signed
10 agreement from you that I can present to the investor
11 group."

12 **A Right.**

13 Q "No one is going to put money down on an
14 unknown deal, so the first step is to nail down the
15 deal."

16 You agree the deal wasn't nailed down until
17 the asset purchase agreement was signed, correct?

18 **A Incorrect. We had -- Mr. Mosler and I had an**
19 **agreement in an email that was binding. Nevertheless,**
20 **it always made sense to have a, you know, formalized**
21 **thing with a signature on it at the end.**

22 And you'll note here that I'm flying out to
23 California. The con artist team is out of Santa Fe, New
24 Mexico, so these are different people I'm talking to;
25 9595 Investments, and Abby was working on this as well.

1 Q You wrote step 2 is to get the deposit in
2 which locks in the deal until the closing three months
3 from now. Step 3 is to close the deal.

4 A Yes. At this point in time, which is now like
5 five --

6 Q Hold on.

7 A -- seven months later than what we talked
8 about.

9 Q Let's scroll up. In response, Mr. Mosler
10 provides comments to your asset purchase agreement,
11 right?

12 A Yes.

13 Q And then you respond. You tell Mr. Mosler
14 that you have made additional revisions. Keep scrolling
15 up.

16 A Right. These are detail elements, not the
17 fundamental deal.

18 Q Now, on April 25, 2011, Mr. Mosler says "Just
19 signed and scanned back to Jill with some mods."

20 A Right.

21 Q Meaning that he signed but made additional
22 modifications, correct?

23 A He made one modification that I remember. He
24 put -- in the upper left corner of the front page I
25 think it was where it said like to become exclusive, it

1 needs a \$100,000 nonrefundable deposit is what he wrote
2 at that time.

3 Q And he wrote "I reserve the right to sell to
4 another party before closing without a
5 \$100,000 nonrefundable deposit."

6 A Yes. Words to that effect were scribbled on
7 to the front page of what he signed and sent back to me.

8 Q Let's keep going up. And you wrote "Fully
9 understood. Thanks."

10 And then you replied again with additional
11 edits, and Mr. Mosler responded "It costs me a lot more
12 than that to keep it open for you." And that's because
13 MACC was losing money and the reason that Mr. Mosler
14 wanted a nonrefundable deposit is because the money that
15 would be given to keep the company open would go towards
16 spending it on the company, right?

17 A That is incorrect. He put this money -- the
18 100,000 I did send -- into his private jet, so -- and at
19 this point in time the company was breakeven. It was
20 still selling cars and had very few employees.

21 And, you know, some of the employees -- like
22 one of them is getting -- I think his ex-wife is getting
23 400,000 a year. So I don't know if he's counting that
24 as far as the costs involved, but the company itself was
25 cash flow neutral.

1 Q You just testified that Mr. Mosler put that
2 money towards a private jet. How did he put that money
3 towards a private jet?

4 A I think it was something we went over in his
5 deposition earlier, so I wired the money in and he sent
6 it over to Raymo, which is --

7 Q How did that go to his private jet?

8 A He told me it was for his airplane.

9 Q Who told you that?

10 A Mr. Mosler testified to it.

11 Q He said it was for his private jet?

12 A Or airplane, so -- I know he has a private
13 jet, so I figured that's what it was. Maybe it's a
14 private propeller plane, I'm not sure.

15 Q You're just basing it on what you think you
16 heard, right?

17 A Well, I know he had a private jet and actually
18 at some point in time I heard there was more than one,
19 but --

20 Q You're speculating whether that money went to
21 the jet, right?

22 A It went to an airplane.

23 Q Okay.

24 A Okay.

25 Q You don't know which airplane and who owns it,

1 right?

2 **A Well, it is his airplane. He said that.**

3 Q Mr. Mosler owns it himself? You know that --
4 you're testifying under oath today.

5 **A He said it went to -- it was his account at**
6 **Enterprise National Bank. It went to what I understood**
7 **to be his account that owned an airplane. I understood**
8 **that to be his private jet. If I'm mistaken on that, if**
9 **it's a propeller plane or something like this instead of**
10 **a jet, I don't know.**

11 Q You responded "Can we compromise at four
12 months?" You were negotiating about the asset purchase
13 agreement, right?

14 **A Well, okay. So can I speak without being**
15 **interrupted for a moment? I just want to be able to**
16 **speak the whole thing here. Is that okay?**

17 Q Hold on one second. Let me just show you this
18 document.

19 **A All right.**

20 THE COURT: Can I see the attorneys?

21 (Thereupon, a sidebar conference was held.)

22 THE COURT: I think they're starting to look a
23 little -- I'm going to give them ten.

24 MR. WEBER: Yeah.

25 (Thereupon, the sidebar conference was

1 concluded.)

2 THE COURT: Okay. We're going to take ten
3 minutes. We'll take fifteen. Please use the
4 facilities and stretch your legs for a little bit
5 and do some jumping jacks.

6 Mr. Wagner, if you want to use the restroom,
7 you'll have time. Okay?

8 All right. We'll be in recess for about ten
9 minutes.

10 (Thereupon, a short break was taken from
11 3:18 p.m. to 3:43 p.m.)

12 THE COURT DEPUTY: Come to order.

13 THE COURT: Please be seated. Let's bring
14 them out.

15 THE COURT DEPUTY: Jury entering.

16 (Jurors entering the courtroom at 3:44 p.m.)

17 THE COURT: All right. Please be seated.

18 It's your witness.

19 BY MR. WEBER:

20 Q Mr. Wagner, before we took the break, I
21 believe you mentioned something about Mr. Mosler sending
22 \$400,000 to his ex-wife while you were under oath,
23 right?

24 A Yes. It's in one of the documents in here
25 Savvas discovered that MACC would send \$400,000 a year

1 to his ex-wife as part of something. I was never a
2 party to it, I just saw it in the documents, that's all.

3 Q Tell me everything you know about that
4 allegation you just made under oath.

5 A It's not an allegation, it's something I saw.
6 I mean, you can probably find the document.

7 Q Tell me everything you know about it.

8 A There was \$400,000 sent to the ex-wife and
9 then something about it gets to be reimbursed, so I'm
10 not sure why that is, but that's all I know about it.

11 Q What date was that?

12 A That was when Savvas was doing some due
13 diligence. We can probably find it.

14 MR. ZAPPOLO: Your Honor, can we approach?

15 (Thereupon, a sidebar conference was held.)

16 MR. ZAPPOLO: I wanted to caution counsel, I
17 think he's asking the questions about something
18 that may be contained within Mr. Mosler's tax
19 returns that remain confidential, so I don't want
20 to --

21 MR. WEBER: No. I'm trying to get to the
22 bottom of this allegation. He's made a pretty
23 serious allegation under oath and I'm trying to
24 understand the basis --

25 MR. ZAPPOLO: I will represent that I'm pretty

1 sure it might be in his tax return, in Mr. Mosler's
2 tax returns.

3 MR. WEBER: Well, he just testified under oath
4 he knows, so it is what it is.

5 MR. ZAPPOLO: I'm just -- he opened the door
6 to his tax returns and I want to caution counsel
7 about that, and I don't want my client to be
8 penalized if he's asking a question about something
9 that's supposed to be confidential. While I think
10 my client maybe doesn't realize where he knows that
11 information from -- and that may be because I've
12 never allowed him to keep any copies of any tax
13 returns. We've kept them, as I've testified in a
14 prior hearing. I've not given him access --

15 MR. WEBER: How would he know that? How would
16 he know they were on the tax returns if you never
17 gave him access?

18 MR. ZAPPOLO: Perhaps I misspoke. He's been
19 allowed to view them on my computers at my office.

20 MR. WEBER: Which is perfectly legal and
21 allowable.

22 MR. ZAPPOLO: You made it look like a big deal
23 and you're looking at me funny, Counsel, but that's
24 not the point. My point is that Mr. Wagner has
25 been allowed to look at Mr. Mosler's tax returns.

1 There's an order to keep that confidential. I
2 think that he's --

3 MR. WEBER: I think he said everything he
4 knows and I don't know if I need to ask him about
5 it.

6 THE COURT: Do you want to move on?

7 MR. ZAPPOLO: Yeah.

8 MR. WEBER: I'll move on.

9 MR. ZAPPOLO: Okay.

10 (Thereupon, the sidebar conference was
11 concluded.)

12 BY MR. WEBER:

13 Q Now I had marked a document as 202 for
14 identification. Mr. Wagner, I'm handing you a document
15 that's been marked as 202 for identification. The
16 document 202 is another email exchange. It's from you
17 to Warren Mosler, right?

18 A **Yes. I think this is actually like three days**
19 **before he offers to make the deposit refundable.**

20 (Thereupon, Defendants' Exhibit 202 was marked
21 for identification.)

22 MR. WEBER: Move this document into evidence.

23 MR. ZAPPOLO: No objection.

24 THE COURT: Madam Clerk, is that Number 36?

25 THE CLERK: No. It's Defendants' Number 37,

1 Your Honor.

2 THE COURT: Thank you very much.

3 (Thereupon, Defendants' Exhibit 37 was
4 received into evidence.)

5 BY MR. WEBER:

6 Q Now I'm showing you the document, and let's
7 scroll down.

8 Now we saw in the last email chain that
9 Mr. Mosler just signed and scanned back to Jill with
10 some modifications, which you understood to be
11 modifications. You understood -- keep scrolling up.

12 A Hold on. There's one part here I'd like to
13 identify.

14 Q Hold on, Mr. Wagner.

15 A Okay. Go ahead.

16 Q And then keep scrolling up. And you wrote
17 "Warren, I have revised the agreement fixing the
18 revocable and also changing the five months to four
19 months."

20 So you're changing terms in the draft as the
21 first agreement, correct?

22 A Okay. So --

23 Q Is it correct or not? You're continuing to
24 make edits to the draft asset purchase agreement,
25 correct?

1 A Mr. Mosler gave me the option to put in
2 \$100,000 deposit nonrefundable as an option. And I'm
3 like oh, I don't know about this, so then we keep going
4 back and forth.

5 So we had an agreement, Mr. Mosler decided to
6 mark up the signed document. So I'm like "Oh, this
7 feels a little bit sketchy." So then we talked back and
8 forth about it. And he unilaterally did that. He
9 didn't ask me about that beforehand. And, again, it was
10 an option to put a nonrefundable deposit. An option, I
11 didn't have to do it.

12 Q Now, there were different drafts of agreements
13 between -- sent between you and Warren Mosler whereby
14 you sought to purchase MACC's assets, correct? Yes or
15 no?

16 A There were several, but they did not -- the
17 document about how the \$100,000 would be handled was
18 never changed.

19 Q And then you went back and forth, and there
20 was no duly executed asset purchase agreement where both
21 you and Warren Mosler had signed, right?

22 A There is the asset purchase agreement that
23 both of us signed. I signed it and Mr. Mosler signed it
24 and put the scribbles on it. So technically both of
25 us -- both of us had a signature on that document.

1 It was sent -- scanned and sent to Jill at the
2 Mosler factory. And I remember seeing it at the Mosler
3 factory, but eventually I wasn't allowed back into the
4 Mosler factory.

5 Q And was --

6 A Anyway, you asked me the question. I'm just
7 explaining the entire detail, but --

8 Q There's no executed contract which is a
9 meeting of the minds, correct?

10 A I disagree about that.

11 Q Okay. Well, do you remember being deposed in
12 this case?

13 A Yes. I was deposed while he was still hiding
14 the evidence, so --

15 MR. WEBER: Move to strike.

16 THE COURT: Sustained.

17 BY MR. WEBER:

18 Q Now I want to show you, on page 12 --

19 MR. ZAPPOLO: Can I have the date of that
20 deposition, Counsel?

21 MR. WEBER: This is the January 28, 2016.

22 **THE WITNESS: Okay. It's the fact that we**
23 **didn't get the documents until June 2019.**

24 MR. WEBER: Hold on. Move to strike.

25 THE COURT: Sustained.

1 BY MR. WEBER:

2 Q Now I want to show you that Count V of your
3 complaint is where you're suing for breach of contract
4 in this case regarding the \$100,000 deposit, correct?

5 A **Would you mind expanding it a little bit?**

6 Q You need to zoom in? Can you zoom in a little
7 bit?

8 It says, "Is there any written contract that
9 applies to Count V of the complaint? Count V of the
10 complaint is the one we're suing for breach of the
11 agreement with respect to the \$100,000 deposit," right?

12 A **Yes.**

13 Q Yes?

14 A **I'm still -- I'm trying to read, sir. It's so
15 small.**

16 Q Well, answer the question: Is Count V of your
17 complaint the claim where you're alleging your breach of
18 contract for the \$100,000 deposit?

19 A **Yes.**

20 Q Now it says, on page 12, "Question: Okay. Is
21 there any written contract that applies to Count V of
22 the complaint?

23 "Answer: There were many different drafts of
24 this agreement produced. At one point in time I sent a
25 draft and Warren scribbled on the front of it is. So I

1 sent the draft to sign. And it was the agreement as I
2 understood it to be. He scribbled something on the
3 front that he'd like to have a \$100,000 deposit and he
4 signed that, and then we bent back and forth again and
5 again and again and again and again and again, but --

6 "Question: Is there an executed contract that
7 applies to Count Number V?"

8 Go to the next page.

9 "Answer: No. There's no meeting of the
10 minds." Do you see that?

11 **A Yes.**

12 Q Were you testifying under oath?

13 **A Yes, I was testifying under oath. So no
14 meeting of the minds --**

15 Q Now --

16 **A -- because he kept unilaterally changing
17 everything. This was a very complex thing, but as far
18 as how the \$100,000 would be refunded if someone else
19 bought the company, that --**

20 Q Mr. Wagner, there's no question pending.

21 **A -- that there was a meeting of the minds on.**

22 MR. WEBER: Move to strike.

23 THE COURT: Sustained.

24 **THE WITNESS: Mr. Mosler kept unilaterally
25 changing everything.**

1 BY MR. WEBER:

2 Q Now I'm showing you what I'm going to mark as
3 204 in evidence. Well, not yet in evidence.

4 It's an email conversation between you and
5 Mr. Mosler which includes an email from Warren Mosler
6 and Jill Wagner.

7 (Thereupon, Defendants' Exhibit 204 was marked
8 for identification.)

9 MR. WEBER: I believe it's in evidence
10 already. Any objection?

11 MR. ZAPPOLO: No objection.

12 THE COURT: Okay. Madam Clerk, what number?

13 THE CLERK: Defendants' 38.

14 THE COURT: Thank you.

15 (Thereupon, Defendants' Exhibit 38 was
16 received into evidence.)

17 BY MR. WEBER:

18 Q Okay. So now a few days after the document we
19 saw we have this document, which is dated May 2, 2011.

20 Now let's scroll down and it picks off -- it
21 picks up from where the last email left off. Now scroll
22 back up.

23 **A It says the deposit can be refundable if**
24 **someone else buys the company.**

25 Q Keep scrolling up. Now was this document,

1 Mr. Wagner, that you say in this case represents
2 confirmation of an "oral" agreement between you and
3 Mr. Mosler, correct?

4 **A So --**

5 Q Was it, yes or no?

6 **A I'm not a lawyer. I'm not a lawyer.**

7 Q Yes or no?

8 **A This --**

9 Q You are in this case --

10 **A -- is --**

11 Q You are alleging --

12 MR. ZAPPOLO: Objection, answer.

13 BY MR. WEBER:

14 Q -- that there is an oral agreement between you
15 and Mr. Mosler that was confirmed by this email, yes or
16 no?

17 **A So this -- now that I have a more full**
18 **understanding of how this is supposed to go, this is a**
19 **written agreement. I think the word "oral" -- again,**
20 **I'm not a lawyer. I'm just trying to sort of --**

21 **This is a written agreement. He made the**
22 **offer, I accepted the offer, this is the agreement. And**
23 **then he confirms the fact that this is the agreement by**
24 **forwarding it to his vice president, who's also an**
25 **officer of MACC. So the two officers of MACC, Warren**

1 Mosler and Jill Wagner, agree that my \$100,000 deposit,
2 if I choose to deposit it -- and that's still
3 optional -- is refundable if someone else purchases MACC
4 and I get exclusivity.

5 Q Now you know what interrogatories are in the
6 case, right?

7 A Yes.

8 Q They're questions that you answer under oath,
9 is that fair to say?

10 A Yes, that's fair to say.

11 Q Meaning that before you answer the question
12 that is posed to you, right, you have to write the
13 answer down; and then when you've completed all of your
14 answers to the interrogatories, then you swear under
15 oath that the answers are true, correct?

16 A Yes, that's true.

17 Q Okay. And you've responded to interrogatories
18 in this case, right?

19 A Yes.

20 MR. WEBER: Now move this document into
21 evidence.

22 MR. ZAPPOLO: No objection.

23 MR. WEBER: Okay.

24 THE COURT: Madam Clerk, 39?

25 THE CLERK: Yes.

1 (Thereupon, Defendants' Exhibit 39 was
2 received into evidence.)

3 BY MR. WEBER:

4 Q Let's put 7 up there. Now these are your
5 responses to interrogatories served in this case. And
6 where we have answer, that is your sworn answer. Let's
7 go to the last page.

8 A **Yes, I know it's my sworn answer.**

9 Q Meaning that when you respond to them, you
10 swore under oath that the answers are true, correct?

11 A **That's correct.**

12 Q I just want to make sure the jury understands
13 the import the same way they would to you responding
14 verbally, okay.

15 Now let's scroll up to number one. Now the
16 question was: "Identify the valid contract in paragraph
17 33 of your complaint," which is this contract that
18 you're alleging exists for the \$100,000, right?

19 A **Okay. So --**

20 Q Hold on. Is that correct or no?

21 A **This is a contract.**

22 Q Mr. Wagner, is the contract that you're
23 alleging in your Sixth Amended Complaint?

24 A **May I read it?**

25 Q Well, is it or not?

1 **A I would like to read it, please.**

2 Q I don't want you to read your answer. I just
3 want to know, is it in your complaint or not?

4 **A Okay. Please ask the question again.**

5 Q Well, let me put it this way: It says, "The
6 valid contract alleged in paragraph 33 of plaintiffs'
7 proposed Sixth Amended Complaint is the same contract
8 that I have testified previously on several occasions.
9 In simplest terms, it is the agreement reached between
10 Warren Mosler and myself whereby he wishes to sell the
11 assets of MACC to me and/or a company that I
12 designated." You saw that part?

13 **A Yes.**

14 Q Okay. Now let's go to the second part right
15 here.

16 "For further clarity, the progression of our
17 agreement was as follows: First, Warren Mosler signed
18 the written agreement to sell MACC and its assets for
19 \$3 million," next page, "(including the building).
20 Thereafter, he agreed orally to sell the assets (without
21 the building) for \$1 million, and we clarified (via
22 email) our understanding as to what 'nonrefundable'
23 meant (the deposit would be returned if 'another party'
24 purchases the MACC assets after the three-month
25 period)."

1 And then you referred to this right here,
2 which is a Bates number, which I'm going to show you in
3 a second. "The deposit was then wired by my father's
4 trust on my behalf."

5 **A Yes.**

6 Q Did I read that correctly?

7 **A You read that perfectly correct.**

8 Q Okay. Now --

9 **A So there are two --**

10 Q Hold on. Hold on one second, Mr. Wagner.

11 Now can you flip back to the last document.

12 And we see, on 204, the Bates number here is DEF011776.

13 So this is the document that you're referring to?

14 **A Yes.**

15 Q Hold on. Right?

16 **A Yes.**

17 Q Now, one second. Now I'm going to show you
18 another set of interrogatories.

19 (Thereupon, Defendants' Exhibit 7 was marked
20 for identification.)

21 MR. WEBER: Move this document into evidence.

22 MR. ZAPPOLO: No objection.

23 THE COURT: Madam Clerk, 39?

24 THE CLERK: Defendants' Number 40, Your Honor.

25 THE COURT: Thank you very much.

1 MR. ZAPPOLO: I'm sorry. Did you say 41?

2 THE COURT: 40.

3 THE CLERK: 40.

4 MR. ZAPPOLO: Oh, four, zero. Thank you.

5 (Thereupon, Defendants' Exhibit 40 was
6 received into evidence.)

7 BY MR. WEBER:

8 Q Okay. Now I want to go to interrogatory
9 number 2. Mr. Wagner, do you recognize this document?

10 A Yes.

11 Q Okay. Let's go to number 2.

12 Okay. Now, interrogatory number 2 asks you to
13 identify, with respect to Count V -- that's the one
14 about the \$100,000, right? -- "Identify when, by day,
15 month, and year, that the alleged oral agreement was
16 formed between you and Warren Mosler."

17 Now let's look at the answer.

18 "Answer: I don't recall the exact day of the
19 first time Warren Mosler and I agreed that the
20 \$100,000 was to be refundable. However, the first
21 written confirmation of this oral agreement was sent to
22 me by Warren Mosler on May 2, 2011 via an email that
23 Warren Mosler sent to me at MT900supercar@gmail.com with
24 a cc to Jill Wagner, vice president of global operations
25 for MACC, at jwagner@moslerauto.com. See Bates-stamped

1 document DEF011776 - so I am confident that the oral
2 agreement was reached on or about that date (perhaps the
3 same day, perhaps a day or so before)."

4 Did I read that correctly?

5 **A Yes.**

6 Q Okay. So this document right here, the
7 purpose of this case, you are alleging that by May 2nd
8 you had reached an "oral" agreement, correct? And that
9 is the oral agreement by which Warren Mosler agreed that
10 \$100,000 was refundable within three months after
11 another person purchases MACC, right?

12 MR. ZAPPOLO: Objection.

13 **THE WITNESS: No.**

14 MR. ZAPPOLO: Totally misstates the evidence
15 and documentation.

16 THE COURT: Overruled.

17 **THE WITNESS: No, it doesn't say that.**

18 BY MR. WEBER:

19 Q It says right here "another party purchased
20 the MACC assets after the three-month period, yes."

21 So you're saying that the \$100,000 is
22 refundable that -- after the three-month period, which
23 you allege exists for you to close, that if someone else
24 purchases MACC, then it will be refunded to you, right?

25 MR. ZAPPOLO: Objection. Totally misstates

1 the documentation.

2 THE COURT: Overruled.

3 THE WITNESS: Okay. May I --

4 BY MR. WEBER:

5 Q Yes or no?

6 A There's three months of exclusivity. After
7 the three months of exclusivity that my company has, f
8 someone else buys the company, I'm supposed to be
9 refunded the \$100,000 immediately, not after another
10 three months.

11 Q That's based on an oral agreement, correct?

12 A It's based upon this agreement. As far as
13 like what "oral" means in, like, legal terms, this is an
14 email agreement. From my perspective, as a layman, this
15 was Warren Mosler's bond.

16 Q You --

17 A Whether you call it an "oral agreement" or a
18 "written agreement," I don't know, but --

19 Q Well --

20 A -- this is the exact same format that Mosler
21 trades hundreds of millions of dollars in a hedge fund.

22 Q I'm not asking about --

23 MR. WEBER: Move to strike.

24 THE WITNESS: This is his bond.

25 BY MR. ZAPPOLO:

1 Q Mr. Wagner, you are suing this case on an oral
2 agreement. We just saw your interrogatory answer,
3 correct?

4 **A I have to look at the complaint to see what**
5 **you're talking about.**

6 Q You don't even know what you're suing under,
7 do you?

8 **A I'd like to see the complaint to see what**
9 **you're talking about.**

10 Q Well, let's go back to Exhibit 7.

11 **A This clearly means --**

12 Q Hold on, Mr. Wagner, there's no question
13 pending. Let's go to page --

14 "So, again, for further clarity, the
15 progression of our agreement was as follows: First,
16 Warren Mosler signed the written agreement to sell MACC
17 and its assets for \$3 million (including the building).
18 Thereafter, he agreed orally to sell the assets (without
19 the building) for \$1 million, and we clarified (via
20 email) our understanding as to what 'nonrefundable'
21 meant. The deposit will be returned if another party
22 purchases the MACC assets within the three-month
23 period."

24 **A Right.**

25 Q So you --

1 **A So the oral part is about it being 1 million**
2 **for just MACC alone without the building.**

3 Q Now you already testified there was no signed
4 asset purchase agreement. And we've seen in evidence
5 the deposit that you're referring to here --

6 **A So back up for a second.**

7 Q -- was not wired until June, right?

8 **A You just said something --**

9 Q Hold on, Mr. Wagner. We already know the
10 deposit, which was wired by your father's trust on your
11 behalf, wasn't wired until June, right?

12 **A It was wired on June 29th.**

13 Q June 29th. This email is dated May 2nd --

14 **A Right.**

15 Q -- 2011, right?

16 **A Uh-huh.**

17 Q Okay.

18 **A Yes. What's the big deal?**

19 Q So now let's put that down.

20 Even though you have an alleged oral
21 agreement, which you -- put this down -- which you
22 allege was confirmed by -- put up 204 -- which you
23 allege was confirmed by this email with respect to the
24 non-refundability --

25 **A Right. And we didn't get this email until**

1 June 19, 2019.

2 Q -- you continued sending asset purchase
3 agreements to Mr. Mosler, right?

4 A I apologize. Please repeat your question.

5 Q Even though you allege that you had an
6 agreement with Mr. Mosler to purchase MACC's assets by
7 this date on May 2, 2011, you continued negotiating and
8 sending asset purchase agreements to Mr. Mosler,
9 correct? Yes or no?

10 A This, what you're showing on the screen, was
11 never renegotiated. So there are two things: One is
12 how the \$100,000 deposit is refundable. That was never
13 changed. We had an agreement for him to sell the whole
14 company for \$1 million, but he sold off \$600,000 of
15 assets during my exclusivity period.

16 So then after that, after I discovered it --
17 he kept it secret from me -- I came back and said "Hey,
18 you just sold off all of the assets."

19 Q It was a secret. Nobody knew; is that right?

20 A Nobody knew. He didn't tell me. So now this
21 is the whole analogy I was saying before. He takes the
22 deposit for you to buy a car and then you go to buy the
23 car and there's no engine in the car and you're like
24 "Hey, where's the engine?"

25 MR. WEBER: Okay. Let's mark 206 for

1 identification.

2 (Thereupon, Defendants' Exhibit 206 was marked
3 for identification.)

4 BY MR. WEBER:

5 Q Take a look at this document.

6 A **Yes, I see it. It is an email.**

7 Q 206 is an email from you to Mr. Mosler,
8 correct?

9 A **Yes.**

10 MR. WEBER: Move this document into evidence.

11 MR. ZAPPOLO: No objection.

12 THE COURT: Madam Clerk, what number?

13 THE CLERK: Defendants' 41.

14 THE COURT: Thank you very much.

15 (Thereupon, Defendants' Exhibit 41 was
16 received into evidence.)

17 BY MR. WEBER:

18 Q You wrote 206. You wrote that same day,
19 approximately two hours later, "Understood, and
20 accepted. As an additional element, if it so happens
21 that we are nearing the end of the three-month term we
22 are fully expecting to close, but are at the time still
23 unable to, could we put in a second \$100,000 for another
24 two months of exclusivity," right?

25 A **Yes, sir.**

1 Q You are continuing to negotiate the deal,
2 aren't you?

3 A That is untrue. I understood and accepted
4 what we had agreed to earlier, and then there's an
5 additional thing which I proposed to him, and he agreed
6 to that as well.

7 So we agreed upon the terms of the
8 refundability. He offered; I accepted. I replied back
9 I understood and accepted. We had a full meeting of the
10 minds on this element, this element of the deal.

11 Q Can you narrow a contract like that? Can I
12 accept this element, but not everything else? Is that
13 possible?

14 A So --

15 Q Hold on.

16 A Am I allowed to answer?

17 Q Yeah, you can answer. Do you think that's
18 possible to narrow in on one term and say "Oh, I'm
19 accepting this settlement but not anything else"? Go
20 ahead, Mr. Wagner.

21 A Okay. So as I was saying earlier, there are
22 two independent -- related, but independent agreements.
23 One is what Mr. Mosler and I signed and Mr. Mosler
24 scribbled on that gave me the option, the option to put
25 in a \$100,000 deposit.

1 **Since that came unilaterally -- I can tell**
2 **you're going to interrupt me, please let me finish.**

3 Q Well, Mr. Wagner, if you're going -- if you're
4 answering my question, yes. If you're going on a
5 tangent, then you can't --

6 **A I'm explaining, that's all.**

7 Q Go ahead, explain.

8 **A I just -- for the record, can you ask the**
9 **question again, please?**

10 Q Do you believe that with Mr. Mosler you could
11 accept one of the terms that you're negotiating, form a
12 contract, but then continue negotiating about all the
13 other terms?

14 **A You're totally misstating everything. There**
15 **are two independent agreements that are somewhat**
16 **related. And if you let me explain the whole thing, I'm**
17 **happy to.**

18 Q Well, let's look at this next document.

19 **A All right.**

20 Q Let me know when you're ready.

21 **A I am ready.**

22 MR. WEBER: I'll move this document into
23 evidence.

24 MR. ZAPPOLO: No objection.

25 MR. WEBER: Okay.

1 THE COURT: Madam Clerk, what number? 42?

2 THE CLERK: Yes, 42.

3 THE COURT: Thank you.

4 (Thereupon, Defendants' Exhibit 42 was
5 received into evidence.)

6 BY MR. WEBER:

7 Q Now this document -- let's scroll down -- it
8 picks up where the other one left off.

9 You wrote your comment; Mr. Mosler wrote
10 "Sounds okay" --

11 A For that second element --

12 Q -- right?

13 A -- of we have another possibility as an option
14 to put in another \$100,000 deposit for an additional two
15 months of exclusivity, an option.

16 Q Let's scroll up. Keep going.

17 And you replied "Hi, Warren. I had forwarded
18 our composite agreement with the small changes to my
19 lawyer. She suggested that we clean up the structure of
20 the agreement a bit to make the payments sequence
21 clearer."

22 You wrote "The content is the same, see
23 attached," and you attached another Word document, asset
24 purchase agreement, correct?

25 A Yes.

1 Q Now let's look at 215. Now you've seen this
2 document earlier on.

3 (Thereupon, Defendants' Exhibit 215 was marked
4 for identification.)

5 MR. WEBER: Move this document into evidence.

6 MR. ZAPPOLO: No objection.

7 THE COURT: Madam Clerk, 43?

8 **THE WITNESS: This is on the day of the**
9 **"Fabulous Photon."**

10 MR. WEBER: Hold on, Mr. Wagner, just hold on.

11 BY MR. WEBER:

12 Q Now, scroll down. Now in response to your
13 document, which we saw in the last email -- scroll up --
14 Mr. Mosler made an edit, right? Just as you had made
15 edits further down in the chain. Just keep scrolling
16 up.

17 You wrote "This seems different from what we
18 agreed to." Keep scrolling up. Mr. Mosler wrote in
19 response "There were parts you put in that we hadn't
20 agreed to and I changed some of them for your review."

21 And you wrote "smiley face, I'll check
22 everything over." You were continuing to negotiate with
23 Mr. Mosler, correct?

24 **A I am trying to pacify the beast here. He's**
25 **all pissed off about the "Fabulous Photon" article, and**

1 I don't know why. That's happening in another email
2 string.

3 Q We'll get to it.

4 A I said, "This seems different from what we
5 agreed to," translates "Hey, what are you trying to do,
6 man?"

7 I never agreed to this change that he wants to
8 make, "If the buyer does not complete this
9 transaction" -- what was it here? This is the -- what
10 seems to be now the good faith deposit scam.

11 So it reads --

12 MR. WEBER: Move this document --

13 THE WITNESS: "Three months from the date of
14 the first good faith deposit, the deposit is
15 forfeited and the buyer may add his option to
16 deposit another \$100,000 good faith deposit to
17 extend this agreement for an additional three
18 months. If the buyer does not complete this
19 transaction, the additional deposit is forfeited."

20 We did this in response to the angry that the
21 Raptor is outshining his Photon baby.

22 MR. WEBER: Move this document into evidence.

23 MR. ZAPPOLO: What is it?

24 MR. WEBER: 215.

25 THE CLERK: We need to put into evidence on

1 the record Defendants' Exhibit 43.

2 MR. ZAPPOLO: I think that is 215, isn't it?

3 THE CLERK: 213 ID, entered as 43.

4 MR. ZAPPOLO: I don't have a 213.

5 MR. WEBER: We put that one in.

6 THE CLERK: We didn't announce it for the
7 record.

8 THE COURT: All right. So what number would
9 that be, Madam Clerk?

10 THE CLERK: ID'd as 213, entered as 43.

11 THE COURT: All right. So be it.

12 So now we're on 44?

13 MR. ZAPPOLO: Mr. Weber just told me this one
14 is 215.

15 MR. WEBER: Yes.

16 MR. ZAPPOLO: Is this 213? Is that what
17 they're talking about?

18 THE CLERK: That hasn't been entered yet.

19 MR. ZAPPOLO: Okay. So --

20 MR. WEBER: We've already agreed to 213.

21 MR. ZAPPOLO: I have agreed that 213 for
22 identification purposes should be admitted into
23 evidence, and that would be Exhibit 43, correct?

24 THE CLERK: Yes.

25 MR. ZAPPOLO: Okay.

1 (Thereupon, Defendants' Exhibit 213 was marked
2 for identification.)

3 (Thereupon, Defendants' Exhibit 43 was
4 received into evidence.)

5 MR. WEBER: And now we're on --

6 MR. ZAPPOLO: As long as Your Honor agrees.

7 MR. WEBER: Yeah.

8 MR. ZAPPOLO: And now the next document is
9 215, Mr. Weber?

10 MR. WEBER: Correct.

11 THE CLERK: Now we're up-to-date at this time
12 and I need a copy of it.

13 MR. WEBER: This is 215.

14 THE COURT: All right. Thank you very much.

15 MR. WEBER: Okay. No objection, Scott?

16 MR. ZAPPOLO: You're on 215, correct?

17 MR. WEBER: Correct.

18 MR. ZAPPOLO: No objection.

19 THE COURT: All right. And that's 44?

20 MR. WEBER: This is 44.

21 THE CLERK: Yes.

22 THE COURT: Thank you very much.

23 (Thereupon, Defendants' Exhibit 44 was
24 received into evidence.)

25 BY MR. WEBER:

1 Q You wrote -- this email pulls up where the
2 last one left off, right, Mr. Wagner?

3 A Yes. Yeah.

4 Q And you wrote "For the sake of simplicity, how
5 about we just stick with what we agreed to and get it
6 done?"

7 A Right. Because we had agreed to the deposit
8 being refundable if, after my three months of
9 exclusivity, someone else bought the company.

10 Q You wrote "If you delete the section about the
11 30k for the nose (or you can put at your option) then
12 the doc that my lawyer just edited (dated May 5th)
13 should be our full meeting of the minds."

14 A Yes.

15 Q Do you see that?

16 A Yes.

17 Q Because at that point there was no meeting of
18 the minds, correct?

19 A No. And if you're referring to my deposition
20 testimony in 2006, I think I was misunderstanding your
21 question at the time. Because there were so many times
22 when Warren would agree to something and I would go
23 forward on it and then he would then gut the deal. And,
24 again, that was 2016 and I didn't have -- it's a fact.
25 I didn't have these documents we've been going over

1 **because Mr. Mosler still had them himself.**

2 MR. WEBER: Move to strike.

3 THE COURT: Sustained.

4 BY MR. WEBER:

5 Q This next document identifying as 218. This
6 next document is another email exchange between Warren
7 Mosler and yourself, right?

8 A **Yes.**

9 (Thereupon, Defendants' Exhibit 218 was marked
10 for identification.)

11 MR. WEBER: Move this document into evidence.

12 MR. ZAPPOLO: No objection.

13 THE COURT: Madam Clerk, 45?

14 THE CLERK: Yes 45, Your Honor.

15 THE COURT: Thank you.

16 (Thereupon, Defendants' Exhibit 45 was
17 received into evidence.)

18 BY MR. WEBER:

19 Q Now this document is May 7th, and you'll see
20 that it's picking up from where the last document left
21 off. And it's -- Mr. Mosler is responding to your
22 comment "Not quite. We had agreed the deposit were
23 nonrefundable before you changed it to two refundable
24 deposits. I think the way I have it is a very good deal
25 for you." But you didn't sign this asset purchase

1 agreement, did you?

2 **A** **So this document very much confirms the fact**
3 **that we had defined the term "nonrefundable" to be**
4 **refundable after someone else buys the company.**

5 **So we had agreed if the deposit were**
6 **nonrefundable -- meaning what we had agreed on May 2nd,**
7 **five days prior to this, that's what he meant,**
8 **Mr. Mosler meant by "nonrefundable." That term is not**
9 **forfeit, it is refundable upon someone else buying the**
10 **company.**

11 **I would have not put in \$100,000 if Mr. Mosler**
12 **could just gut the company like he did and then say**
13 **"Sorry, man, I'm keeping your money."**

14 **Q** **Now, let's go to Exhibit 212. Now while all**
15 **this is happening -- I'm handing you what's been marked**
16 **for trial designation 212.**

17 **We have an email exchange on a different**
18 **subject.**

19 **A** **The "Fabulous Photon" article.**

20 **Q** **Now, what was --**

21 **(Thereupon, Defendants' Exhibit 212 was marked**
22 **for identification.)**

23 **MR. WEBER: I'll move this document into**
24 **evidence.**

25 **MR. ZAPPOLO: No objection.**

1 THE COURT: Madam Clerk, number?

2 THE CLERK: Number 46, Your Honor.

3 THE COURT: Thank you very much.

4 (Thereupon, Defendants' Exhibit 46 was
5 received into evidence.)

6 BY MR. WEBER:

7 Q You just mentioned the "Fabulous Photon"
8 article, right?

9 A Yes, sir.

10 Q So now let's look at this email. May 6, 2011,
11 Warren Mosler writes to you "Nice automobile write-up of
12 the car. Did you actually make those statements to
13 them? Also, seems I was misquoted as well?"

14 Now look at your response, "Thanks. I haven't
15 seen the final article yet, but I wasn't shy about
16 extolling the level of the machine. The journalist and
17 I have become fast friends and I just got a text from
18 him before reading this. The writer said the to make
19 the article flow, he needed to alter your quote
20 somewhat. I hope you're happy with the end result."

21 Do you see that?

22 A I do see that, yes.

23 Q And Mr. Mosler wrote "Quite the opposite - not
24 at all happy with it. He should have run it by me. I
25 don't think you'll like what he said you said either."

1 Now do you understand that your email right
2 here is confirming that a journalist had altered a quote
3 from Mr. Mosler that appeared in an article, correct?

4 **A In this instance, yes, but in all the articles**
5 **where he's defaming me, we had confirmation from the**
6 **journalist that he said exactly that. So just because**
7 **one journalist does something, and I think it was pretty**
8 **minor, does not mean that all of the journalists do.**

9 Q This journalist, he altered Mr. Mosler's
10 quote --

11 **A Yes.**

12 Q -- to make the article flow; isn't that right?

13 **A He did.**

14 Q Now --

15 **A But saying I have severe mental problems**
16 **doesn't make any article flow, man.**

17 Q Were you there when the author of those
18 articles wrote those articles?

19 **A No, I was not there in his presence.**

20 Q And you weren't on the phone when any of these
21 authors allegedly spoke to Mr. Mosler, right?

22 **A They definitely spoke to him on the phone,**
23 **it's not alleged.**

24 Q You were not on the phone with any of these
25 authors when they allegedly spoke to Mr. Mosler,

1 correct?

2 **A No, sir, I was not.**

3 Q Let's go to 219.

4 Okay. I'm handing you what's been marked as
5 219 for identification.

6 (Thereupon, Defendants' Exhibit 219 was marked
7 for identification.)

8 MR. WEBER: Move this document into evidence.

9 MR. ZAPPOLO: No objection.

10 THE COURT: Madam Clerk, 47?

11 THE CLERK: Yes, Your Honor.

12 (Thereupon, Defendants' Exhibit 47 was
13 received into evidence.)

14 BY MR. WEBER:

15 Q Now, this is -- I'm showing you an email
16 exchange between you and Warren Mosler. You see that?

17 **A Yes.**

18 Q And attached is a Word document, asset
19 purchase agreement, correct?

20 **A Yes.**

21 Q Now below that -- and I want you to watch the
22 screen, Mr. Wagner, or you can just follow along on your
23 paper, but there is an email from you and Robyn Hankins,
24 right?

25 **A Yes.**

1 Q Now scroll down. Keep going, stop there.

2 Here we have an email from you, Todd Wagner,
3 to Robyn Hankins and you wrote "Hankinator" -- that's
4 your slang for referring to the lawyer, right?

5 A Her firm's name is "Hankins & Ator," so I
6 mean --

7 Q Okay. You wrote "The below gives Lew, et al,
8 some comfort as we can extend the safe zone wherein no
9 one can usurp our deal."

10 A Yes.

11 Q Do you know anybody named Lew?

12 A No, not really. He's a part of the con team
13 who's -- I think his real name is Ralph. That's what it
14 looks like from his voter registration card anyway, or
15 whoever that is.

16 Q You're referring to Lew Lee, right?

17 A I think it's Ralph, actually. His real name
18 is Ralph. Ralph TA Lew-Lee is his last name, so it's --

19 Q Now --

20 A And he was going to be an investor in my deal.

21 Q Let's --

22 A And of course that was all fraud because he
23 doesn't have any money, had no ability to do any of this
24 stuff even though --

25 Q Now let's look at --

1 **A** **-- he said he did over and over and over**
2 **again.**

3 **Q** Let's look at what you're referring to when
4 you say the below.

5 **A** **Okay.**

6 **Q** Your May 2nd email between Warren Mosler and
7 Todd Wagner, you see that? Let's go one more below.

8 **A** **I hear a lot of emphasis. It must be**
9 **important.**

10 **Q** And there is the document we just saw --

11 **A** **Right.**

12 **Q** -- which is DEF011776, right?

13 **A** **So my deposit's refundable, duh. I mean, what**
14 **are you really trying to point out with all that drama?**

15 **Q** Hold on, Mr. Wagner.

16 **THE COURT:** Stop.

17 **THE WITNESS:** Sorry, I apologize.

18 **THE COURT:** We're in a courtroom --

19 **THE WITNESS:** I apologize. I apologize, Your
20 **Honor.**

21 **THE COURT:** -- and we will maintain our
22 civility at all times.

23 **THE WITNESS:** Yes, I know. I'm just a little
24 **tired.**

25 **MR. ZAPPOLO:** Your Honor, I will say for the

1 record, I want it noted that counsel is using
2 interesting tones.

3 THE COURT: I'm cautioning everybody at this
4 point: Let's maintain our civility. Please
5 continue.

6 BY MR. WEBER:

7 Q Mr. Wagner, you had run by -- these terms that
8 you were negotiating with Mr. Mosler, you ran those by
9 Lew Lee, didn't you?

10 A You just stated "negotiating," so that is a
11 misnomer.

12 Q Did Lew Lee know about this email on May 2,
13 2011?

14 A So Ralph or whoever the con team person is
15 behind this particular email -- and I have no idea -- no
16 way of knowing who of the team it is -- I confirmed with
17 them, him, her, whoever it is, that the deposit that I
18 was planning to put in would be refundable if someone
19 else bought the company.

20 That was the agreement that I had with
21 Mr. Mosler. I'm letting my prospective possible
22 investor know that's going on.

23 Q Okay. Now we're going to go to 224. I'm
24 handing you a document that's been marked for
25 identification 224.

1 (Thereupon, Defendants' Exhibit 48 was marked
2 for identification.)

3 MR. WEBER: Move this document into evidence.

4 MR. ZAPPOLO: No objection.

5 THE COURT: Madam Clerk, is that 48?

6 THE CLERK: Yes, Your Honor.

7 (Thereupon, Defendants' Exhibit 48 was
8 received into evidence.)

9 THE COURT: Can I see the attorneys for a
10 moment?

11 MR. WEBER: Yes.

12 (Thereupon, a sidebar conference was held.)

13 THE COURT: All right. Just time management,
14 I'm not rushing you, I know we have all of the day
15 tomorrow and we have another five days including
16 tomorrow, tomorrow plus four. So, you know, it's
17 your Cross. Your case in chief for the most part
18 and so, you know, I'm not rushing you. I'm just
19 letting you know we're going to be done in the next
20 30 minutes so between now and the next 30 minutes,
21 if you find a place you want to stop, let me know.

22 MR. WEBER: Okay.

23 THE COURT: And we'll keep going for now,
24 okay?

25 MR. WEBER: Okay. Perfect.

1 (Thereupon, the sidebar conference was
2 concluded.)

3 BY MR. WEBER:

4 Q Okay. Let's put up this document, 224.

5 So now let's start at the bottom. Mr. Wagner,
6 this is an email exchange between you and Lew Lee,
7 correct?

8 A This is an email between me and whoever the
9 con team is. Carol Joyce, she's a part of the con team.

10 Q Who else is a part of the con team?

11 A Ralph, and he also uses the name Lew. He also
12 uses the first name Lee. So in some instances, like in
13 the fake SFDM, Inc. filing he made, he called himself
14 Lee Lew-Lee, so Lee Lew-Lee, so maybe we should just
15 call him Lew/Ralph/Lee.

16 Q Why didn't you provide your private
17 investigator with your emails between you and Lew Lee?

18 A That wasn't the point of what she was going to
19 do. After the fact, Mr. Mosler apparently, you know,
20 went behind my back to this fellow to create some sort
21 of fake document to bind me, which is what he says
22 anyway, unless I'm understanding him incorrectly. I --
23 after he's saying this stuff and won't -- he --

24 Q Okay.

25 A Relaxing. After all of this stuff, I'm like

1 "What's going on here?" So then I hired a private
2 investigator to find out who this person was and that's
3 when they came up with all this stuff. How he runs this
4 scam all over the country with different fake names.
5 Who knows if any of those names are actually his.

6 Q So let's start at the bottom.

7 A It could be George.

8 Q You know, we have an email. Mr. Lew Lee is
9 telling you sorry -- well, the email says "Sorry for the
10 delay, but they are wiring us with the first batch being
11 released on Tuesday. I have been promised all the funds
12 will hit our account before Friday."

13 Scroll up. And then there's an email -- oh,
14 right here. You write "Sweet. We're getting closer to
15 Monster sponsorship of Ken Block stunt video that will
16 go on MTV with Abby" --

17 That's referring to Abby Cubey, right?

18 A Yes, it is.

19 Q -- "singing her first hit: Somebody turn the
20 electric on. You da man." And you wrote again "My gf
21 is hot," referring to Abby Cubey, right?

22 A I mean, there is a bit of an interesting
23 element to that. I kind of -- Abby's a lesbian, okay.
24 I mean, just to not beat around the bush. I didn't know
25 it at the time. I was very smitten with her, but I --

1 after this, I realized that she's gay. So, anyway.

2 Q Then Mr. Lew Lee wrote "Cool."

3 You wrote "Did the forwarded email mean that
4 your \$5 million of bridge loan funds will be 100 percent
5 in by Friday?" Scroll up.

6 A Yes. This is how con artists work. They just
7 promise all this stuff. They say all these things, but
8 there's nothing whatsoever real or truthful about them.

9 Q And then Mr. Lew Lee wrote to you, on
10 May 16th, "Hi, Todd. No. I clarified with them by
11 phone after the email. Answer, this is only 100k on
12 Friday. However, that said, we also have a face-to-face
13 meeting in Minneapolis on Friday, the same day the funds
14 will hit the bank.

15 This meeting is with a construction firm that
16 will put up an additional 500,000 cash plus an effective
17 \$30 million against our \$125 million bond to buy the
18 land and build the building."

19 A For the supercomputer. And the supercomputer
20 was -- he was saying that the supercomputer could be
21 used by Mosler to help with the complication of fluid
22 dynamics to improve the downforce lower the drag. That
23 was the nature of the partnership that he was promising.

24 He said, "Hey, I'll give you free
25 supercomputer time," and I was like, "Okay. Great," and

1 **that's that.**

2 Q And you put it in the article, right?

3 A **Because I believed him to be truthful, but I**
4 **was naive about the evil inside men.**

5 MR. WEBER: Your Honor, I think this is a good
6 place to pause.

7 THE COURT: Okay. Can I see the attorneys for
8 a moment?

9 (Thereupon, a sidebar conference was held.)

10 THE COURT: All right. So we're going to
11 break now. We'll reconvene tomorrow and finish
12 your Cross-Examination tomorrow?

13 MR. WEBER: Yes.

14 THE COURT: Okay. What time do you think
15 you'll finish Cross?

16 MR. WEBER: I think that it might take all
17 day, to be honest with you, Your Honor.

18 THE COURT: Okay. All right. Again, you
19 know --

20 MR. WEBER: It's my time.

21 THE COURT: -- you have time to put on your
22 case in chief. Obviously you get Redirect and
23 again Redirect is, you know, limited.

24 MR. ZAPPOLO: Shorter.

25 THE COURT: Yeah. So, you know, I'm not so

1 much worried about you getting time at this point.
2 And I guess, technically, when you finish your
3 Cross and you wrap up your Redirect, you'll rest?

4 MR. ZAPPOLO: Yes. Well, I just -- I'm just
5 going to need at least five minutes with my client
6 between the time that I finish my Cross and making
7 the decision to rest with my client's Cross, so I
8 need just a break there or something --

9 THE COURT: Okay.

10 MR. ZAPPOLO: -- to talk with him to make
11 sure.

12 THE COURT: Okay. You got time, yeah. The
13 reason I'm thinking about it is because if you're
14 going to go all day tomorrow and you're not going
15 to finish tomorrow, maybe you will finish --

16 MR. WEBER: Yeah.

17 THE COURT: Depending on whether or not you're
18 able to do a brief Redirect tomorrow, if you're
19 going in to Tuesday, then probably we'll hear
20 motions on Tuesday. Does that make sense?

21 MR. ZAPPOLO: Yes.

22 THE COURT: Okay. So be prepared to argue
23 your motions. It's been, you know, eight and a
24 half, nine days, maybe ten days by then of trial.
25 So as you make your arguments, you know, and as you

1 defend your positions, I'm going to need you to
2 highlight the record for me because I've taken a
3 bunch of notes --

4 MR. WEBER: Perfect.

5 THE COURT: -- but it has been nine, ten days,
6 okay?

7 MR. WEBER: Okay.

8 THE COURT: So make it easy for me to
9 understand because if I don't understand, then I'll
10 either grant or deny the case, all right. So
11 sharpen your pencils.

12 MR. WEBER: Yeah. My only concern is that on
13 Tuesday we're arguing motions and that's furthering
14 cutting in my time to present my defense case, Your
15 Honor.

16 THE COURT: How much time do you think you
17 need for motions? An hour?

18 MR. WEBER: I don't know. I don't know. I
19 just don't know because then I'll only have like
20 part of Tuesday, Wednesday, and Thursday basically
21 to put on my case because Friday you want to do --

22 THE COURT: I think what you guys should do is
23 over this weekend, or maybe tomorrow or whatever,
24 go over your remaining exhibits, confer if they're
25 going to be -- because most of them have been --

1 both sides -- plaintiff hasn't really objected to
2 exhibits. Instead of, you know, authenticating
3 every exhibit, it's going to save you time if
4 you --

5 MR. WEBER: Yeah.

6 THE COURT: -- just do an omnibus stipulation
7 and that way everybody can flow.

8 MR. WEBER: Okay.

9 THE COURT: So that will save you some time.
10 But, you know, the hundred-plus exhibits for
11 plaintiff; you've got 46 --

12 MR. WEBER: Yeah.

13 THE COURT: -- for the defense. At this
14 point, you know, a lot of time has been spent
15 laying the predicates for exhibits that have been
16 stipulated to.

17 MR. WEBER: Yeah.

18 THE COURT: Unless you need to explain those
19 documents for the jury, you know, we don't need to
20 go into the predicates, so that's a substantial
21 amount of time you can save from having to do that.

22 MR. WEBER: That's true.

23 THE COURT: So take some time and see what you
24 can stipulate to and the omnibus stipulation is
25 appropriate.

1 MR. WEBER: All right. Thank you.

2 THE COURT: All right. I'm going to let them
3 go. We'll reconvene tomorrow at 9:30.

4 MR. WEBER: Okay. Thank you.

5 (Thereupon, the sidebar conference was
6 concluded.)

7 THE COURT: Okay. All right. Deputy, we're
8 going to call it a day for today. It is 4:40, so
9 we will call it a day today. We'll reconvene
10 tomorrow at 9:30, okay.

11 As always, please, when you go home, don't
12 discuss this case with anybody that you know.
13 Don't discuss this case amongst yourselves until
14 it's time to do so, and don't look up the names of
15 people or places involved in this case. Okay?

16 All right. We'll be in recess until tomorrow.
17 Mr. Wagner, you're testifying so you still can't
18 discuss your testimony in the case until we
19 conclude your testimony, okay?

20 **THE WITNESS: Yes, sir.**

21 THE COURT: Okay. We'll reconvene tomorrow
22 morning. Have a good night.

23 MR. ZAPPOLO: Thank you, Your Honor.

24 (Whereupon, the proceedings are adjourned at 4:41 p.m.
25 and are continued on May 19, 2023 in Volume VIII.)

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT,

IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. 50-2012-CA-023358-XXXX-MB

JAMES TODD WAGNER, SUPERCAR ENGINEERING,
INC., a Florida corporation,

Plaintiffs,

vs.

WARREN MOSLER, MOSLER AUTO CARE CENTER,
INC. ("MACC") a Florida corporation,
d/b/a Mosler Automotive,

Defendants.

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VOLUME VIII - DAY 8

- - - - -

PROCEEDINGS BEFORE

HONORABLE LUIS DELGADO

DATE: MAY 19, 2023

TIME: 9:30 A.M. - 5:01 P.M.

1 APPEARING ON BEHALF OF PLAINTIFFS:

2

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6

7 APPEARING ON BEHALF OF DEFENDANTS:

8

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12

13 ALSO PRESENT:

14 James Todd Wagner, Plaintiff

15 Warren Mosler, Defendant

16 David Griffin, TruVid, LLC

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I N D E X

WITNESS PAGE

JAMES TODD WAGNER

Cross-Examination (cont.) By Mr. Weber 1450

E X H I B I T S

EXHIBIT DESCRIPTION MARKED RECV'D

Defendants' 49 was marked Exhibit 608 1451

Defendants' 50 was marked Exhibit 228 1453 1453

Defendants' 51 was marked Exhibit 231 1460 1460

Defendants' 52 was marked Exhibit 232 1464

Defendants' 53 was marked Exhibit 235 1468

Defendants' 54 was marked Exhibit 238 1470

Defendants' 55 was marked Exhibit 245 1472

Defendants' 56 was marked Exhibit 256 1476 1476

Defendants' 57 was marked Exhibit 259 1483 1484

Defendants' 58 was marked Exhibit 259B 1487 1488

Defendants' 59 was marked Exhibit 258 1489

Defendants' 60 was marked Exhibit 261 1490

Defendants' 61 was marked Exhibit 262 1492

Defendants' 62 was marked Exhibit 265 1493

Defendants' 63 was marked Exhibit 270 1495

Defendants' 64 was marked Exhibit 271 1497

Defendants' 65 was marked Exhibit 282A 1501

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E X H I B I T S (cont.)

EXHIBIT	DESCRIPTION	MARKED	RECV'D
Defendants' 66	was marked Exhibit 282B		1503
Defendants' 67	was marked Exhibit 266		1506
Defendants' 68	was marked Exhibit 283		1508
Defendants' 69	was marked Exhibit 289		1509
Defendants' 70	was marked Exhibit 307		1513
Defendants' 71	was marked Exhibit 312		1518
Defendants' 72	was marked Exhibit 313		1519
Defendants' 73	was marked Exhibit 315		1520
Defendants' 74	was marked Exhibit 316		1523
Defendants' 75	was marked Exhibit 319		1534
Defendants' 76	was marked Exhibit 328		1538
Defendants' 77	was marked Exhibit 333		1543
Defendants' 78	was marked Exhibit 39		1558
Defendants' 79	was marked Exhibit 189		1561
Defendants' 80	was marked Exhibit 191		1563
Defendants' 81	was marked Exhibit 193	1564	1565
Defendants' 82	was marked Exhibit 195	1566	1567
Defendants' 83	was marked Exhibit 340		1568
Defendants' 84	was marked Exhibit 367	1580	1580
Defendants' 85	was marked Exhibit 368		1582
Defendants' 86	was marked Exhibit 415		1585

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E X H I B I T S (cont.)

EXHIBIT	DESCRIPTION	MARKED	RECV'D
Defendants' 87	was marked Exhibit 421		1588
Defendants' 88	was marked Exhibit 420		1590
Defendants' 89	was marked Exhibit 19	1598	1602
Defendants' 90	was marked Exhibit 18		1602
Defendants' 91	was marked Exhibit 473		1607
Defendants' 92	was marked Exhibit 477		1609
Defendants' 93	was marked Exhibit 482		1611
Defendants' 94	was marked Exhibit 479		1612
Defendants' 95	was marked Exhibit 422		1613
Defendants' 96	was marked Exhibit 481		1621
Defendants' 97	was marked Exhibit 490		1623
Defendants' 98	was marked Exhibit 503		1626
Defendants' 99	was marked Exhibit 504		1628
Defendants' 100	was marked Exhibit 38	1630	1630
Defendants' 101	was marked Exhibit 449	1635	1636
Defendants' 102	was marked Exhibit 453		1637
Defendants' 103	was marked Exhibit 569		1639
Defendants' 104	was marked Exhibit 577		1640

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BE IT REMEMBERED, that the following proceedings were taken in the above-styled cause before Honorable Luis Delgado, Presiding Judge, at the Palm Beach County Courthouse, 205 North Dixie Highway, Courtroom 10-D, in the City of West Palm Beach, County of Palm Beach, State of Florida, on the 19th day of May, 2023, to wit:

- - -

THE COURT DEPUTY: Come to order.

THE COURT: Let's bring them out.

THE COURT DEPUTY: Jury entering.

(Jurors entering the courtroom at 10:30 a.m.)

THE COURT: All right. Please be seated.

Mr. Wagner.

THE CLERK: Please raise your right hand. Do you solemnly swear or affirm that the evidence you're about to give is the truth, the whole truth, and nothing but the truth?

THE WITNESS: I do.

THE COURT: Cross-Examination.

MR. WEBER: Thank you, Your Honor.

CROSS-EXAMINATION (cont.)

BY MR. WEBER:

Q Good morning, Mr. Wagner.

1 **A Good morning, Mr. Weber.**

2 Q Sir, just to recap where we are, pull up
3 internal 7, which was marked as Defendants' Exhibit 39.
4 Yesterday we were looking at your answers to
5 interrogatories.

6 **A Yes.**

7 Q Can you zoom in on the answer of that first
8 paragraph. And we read about how you alleged that
9 Mr. Mosler signed a proposed written agreement with some
10 handwritten changes by him on it, and here you have a
11 Bates number DEF011178, correct?

12 **A Yes.**

13 MR. WEBER: Now I'd like to admit what's been
14 ID'd as Defense 608 into evidence. I believe it's
15 without objection, right, Mr. Zappolo?

16 MR. ZAPPOLO: Yes, sir.

17 THE COURT: All right. Madam Clerk, what
18 number is that?

19 THE CLERK: 49.

20 THE COURT: 49.

21 MR. ZAPPOLO: And, counsel, for ID purposes,
22 what number was that?

23 MR. WEBER: 608.

24 (Thereupon, Defendants' Exhibit 49 was
25 received into evidence.)

1 BY MR. WEBER:

2 Q So, Mr. Wagner, remember 11178, okay?

3 A Okay.

4 Q Which is this document. It's an email
5 exchange between you and Mr. Mosler.

6 A Yes, it seems so.

7 Q And this is the same email exchange we saw
8 yesterday which was admitted into evidence as
9 Defendants' 36, which was --

10 A Yes, it does look familiar.

11 Q -- internal 200. And we saw that document in
12 the context of the chain --

13 A Yes.

14 Q -- 200, correct?

15 A Yes, absolutely.

16 Q Okay. Now let's go back to 7. Go to the
17 upper paragraph again. And then you wrote "Therefore,
18 we clarified the term 'nonrefundable' in written emails"
19 and you referred to DEF011776, which is Defense
20 Exhibit 38, internal 204.

21 You remember this document, correct,
22 Mr. Wagner?

23 A Yes, I do.

24 Q And go back to 7.

25 A This is one of our favorites.

1 Q And now let's zoom back in. We're at this
2 document, which you've identified as DEF011450. This is
3 another document which you allege showed that you and
4 Mr. Mosler clarified the term "nonrefundable," right?

5 A Yes, that's correct. I'd like to see 11450
6 just to refresh my recollection, but yes. I mean, the
7 one you just showed is -- it shows very clearly -- this
8 is one of the ones that, you know, he didn't send to me
9 until 2019 -- where he's confirming to his vice
10 president -- so the two officers of MACC are in
11 agreement that that's the -- the understanding for the
12 refundability of the \$100,000 deposit.

13 Q So I'm handing you a document that I'm going
14 to mark as internal 228.

15 (Thereupon, Defendants' Exhibit 228 was marked
16 for identification.)

17 MR. WEBER: Move this document into evidence.

18 THE WITNESS: I've seen this before in the
19 document production.

20 MR. ZAPPOLO: I'm sorry. No objection, Your
21 Honor.

22 THE COURT: Madam Clerk, Number 50?

23 THE CLERK: Yes.

24 (Thereupon, Defendants' Exhibit 50 was
25 received into evidence.)

1 BY MR. WEBER:

2 Q All right. So let's pull up this document.
3 Now we're at 11450, which is the document you referred
4 to in your interrogatory, right?

5 A Yes.

6 Q And it's dated May 19, 2011. Do you see that?

7 A Yes, I do, sir.

8 Q And so you are alleging that this part here,
9 specifically May 7th, shows clarifications of the term
10 "nonrefundable." Let's go to the next page where there
11 are discussions between you and Mr. Mosler, correct?

12 A So this is -- it even says "the sequence of
13 our negotiation as I recall was," so I am clarifying --

14 So I sent an agreement signed. He signed it
15 with some scribbled on things that he said if it's going
16 to be exclusive, I have the option to, "the option to"
17 is important, put in \$100,000 nonrefundable. That's
18 what he wanted. But then I was like I don't know if I
19 feel good about this, so then we went through
20 negotiations on that particular element, just that
21 element that he wanted.

22 So I -- number one, "T," which is Todd --

23 Q Well, Mr. Wagner, I don't want you to explain
24 the document.

25 A Okay, okay, all right.

1 Q You agree that this just shows negotiations,
2 not a final agreement, correct?

3 MR. ZAPPOLO: Object to form.

4 THE COURT: Overruled.

5 **THE WITNESS: I disagree with that.**

6 BY MR. WEBER:

7 Q You disagree? Okay. Do you remember being
8 deposed in this case?

9 **A Yes, I was deposed around seven years ago.**

10 Q Okay.

11 **A Could I have this in paper format by chance?**

12 Q Here, Mr. Wagner. So you've been handed a
13 copy of the transcript of your deposition. I just want
14 to point you to --

15 MR. ZAPPOLO: What page and line?

16 MR. WEBER: This is page 36 --

17 MR. ZAPPOLO: Which deposition?

18 MR. WEBER: -- line 11, the January 28, 2016
19 deposition.

20 **THE WITNESS: Okay.**

21 BY MR. WEBER:

22 Q And it says here on page 11 --

23 MR. ZAPPOLO: Hold on a minute.

24 MR. WEBER: I'm going to read it, Mr. Zappolo.

25 BY MR. WEBER:

1 Q You believe that that reflects --

2 MR. ZAPPOLO: I need to pull it up so I can
3 see what --

4 BY MR. WEBER:

5 Q -- you have an agreement --

6 MR. ZAPPOLO: Your Honor, can I have a minute
7 to pull up the deposition, please?

8 THE COURT: Hold on.

9 **THE WITNESS: Yeah, and I didn't --**

10 THE COURT: Hold on.

11 **THE WITNESS: This particular document --**

12 MR. WEBER: Hold on, Mr. Wagner, hold on.

13 **THE WITNESS: Okay, okay.**

14 MR. ZAPPOLO: This is 2021?

15 MR. WEBER: No, 2016.

16 MR. ZAPPOLO: Thank you. And what page are
17 you on?

18 MR. WEBER: 36.

19 MR. ZAPPOLO: Thank you. Thank you, Your
20 Honor, I'm ready.

21 BY MR. WEBER:

22 Q So now let's look at your testimony. The
23 question was, on line 11, if you believed that that
24 reflects proof of you having an agreement to purchase
25 MACC.

1 MR. ZAPPOLO: Objection.

2 BY MR. WEBER:

3 Q "Answer: Okay."

4 MR. ZAPPOLO: Counsel, you said page 36? This
5 is page 36, line 11.

6 MR. WEBER: You're on the wrong transcript.
7 This is May 3rd.

8 MR. ZAPPOLO: No, this is --

9 **THE WITNESS: May I point out one thing?**

10 THE COURT: No.

11 MR. WEBER: Hold on, Mr. Wagner.

12 BY MR. WEBER:

13 Q Now let's look at the answer. "Okay. There's
14 an email from May 7, 2011 that this is what I just read
15 was essentially in answer to. The sequence of our
16 negotiations, as I recall, was T, 5 months EC, excluded,
17 if nonrefundable; W, 3 months if nonrefundable; T, 4
18 months excl if non-ref; W, 3 months excl and is only
19 nonrefundable when someone else buys the assets."

20 **A Yes, that's the one.**

21 Q Hold on, Mr. Wagner. T, agreed to that; T
22 agreed additional -- scroll down on the right side, and
23 now scroll down on the left side.

24 MR. ZAPPOLO: Your Honor, there's an
25 objection --

1 THE COURT: Let's approach.

2 MR. ZAPPOLO: -- in the deposition.

3 (Thereupon, a sidebar conference was held.)

4 THE COURT: Which page and line?

5 MR. ZAPPOLO: It seems to me six or seven
6 years later that my client was reading from
7 something and he wasn't reading it correctly.

8 MR. WEBER: Are you looking at the screen,
9 Scott?

10 MR. ZAPPOLO: I'm just telling you, okay.

11 THE COURT: Okay. Well, I'll let you address
12 that in your Redirect. Overruled.

13 (Thereupon, the sidebar conference was
14 concluded.)

15 BY MR. WEBER:

16 Q Okay. "T, requested additional two months
17 excl (not three months) upon deposit of additional" --
18 can you scroll down on the left side -- "100,000 on the
19 same agreed-upon as the first" -- you have to zoom out a
20 little bit -- "on the same agreed-upon terms as the
21 first 100,000. W, agreed."

22 A Yes. "W" is Warren Mosler.

23 Q Hold on, Mr. Wagner. There's another sentence
24 down here that says "You had it refundable if no close."
25 That's Warren Mosler's reply.

1 "Question: Okay. The two emails you were
2 just reading were emails that you drafted?

3 "Answer: The first one that I read, I
4 drafted. The second one I had drafted."

5 And Warren Mosler replied back: "You had it
6 nonrefundable if no close."

7 "Question: Okay. In both of those emails
8 that you just read for the record, you identified what
9 was going on as negotiations; is that correct?

10 "Answer: Yes.

11 "Question: Okay. Do you believe that
12 negotiations means that you have a finalized deal?

13 "Answer: Negotiations do not mean a finalized
14 deal."

15 Do you remember giving that testimony?

16 **A So negotiations occurred until we had a final**
17 **agreement. At the end Warren agreed. He agreed.**

18 **So you have negotiations until you have an**
19 **agreement, then it's agreed, that's it. This is so**
20 **simple. I mean, what is the punch line here? He just**
21 **gets to keep my money just because?**

22 MR. WEBER: I'm going to mark this next
23 document into evidence.

24 **THE WITNESS: He said agreed, that's agreed.**

25 MR. WEBER: This is internal Defendants' 231.

1 Move this document into evidence.

2 (Thereupon, Defendants' Exhibit 231 was marked
3 for identification.)

4 **THE WITNESS: And it's worth noting that --**

5 MR. WEBER: Hold on, Mr. Wagner, there's no
6 question pending.

7 **THE WITNESS: Okay.**

8 MR. ZAPPOLO: What ID number was this?

9 MR. WEBER: 231.

10 MR. ZAPPOLO: No objection.

11 THE COURT: Madam Clerk, is that 51?

12 THE CLERK: Yes.

13 THE COURT: Okay.

14 (Thereupon, Defendants' Exhibit 51 was
15 received into evidence.)

16 BY MR. WEBER:

17 Q Now a few days later we have an email from
18 Warren Mosler to you dated May 23, 2011, right?

19 **A Yes.**

20 Q And Mr. Mosler's email is in response to your
21 email of the same day. And in your email to Mr. Mosler,
22 you wrote "Jill" -- which is referring to your ex-wife
23 Jill Wagner, correct?

24 **A Yes, and Mr. Mosler's vice president --**

25 Q "Jill told me you weren't interested in

1 talking further until I had the deposit in-hand, thus
2 the silence while working on that." You wrote "We
3 signed the deal docs on our end Friday." Let's stop
4 there.

5 So when you say "we signed the deal docs on
6 our end Friday," you're referring to you signed the
7 asset purchase agreement on your end, correct?

8 **A So there's important context to this in the**
9 **previous email. Can we go back to that?**

10 Q It's a yes or no, Mr. Wagner. Are you
11 referring to the signed asset purchase agreement on your
12 end?

13 **A So Mr. Mosler asked Jill Wagner --**

14 Q Mr. Wagner --

15 **A -- did Todd have any --**

16 Q Your attorney can provide the context on your
17 examination.

18 **A I don't think he can necessarily. I mean, he**
19 **wasn't living this the way I was.**

20 Q It's either yes or no. Did that mean that you
21 signed the asset purchase agreement on Friday?

22 **A Let me read this and then ask your question**
23 **again, okay. Is that fair?**

24 Q You can read it.

25 **A All right. So I'll just read this out loud.**

1 "Hi, Warren. Jill told me" --

2 Q Mr. Wagner, I want you to answer the question.

3 A Okay.

4 Q I don't want you to read it out loud.

5 A Let me just read it to myself then. That's
6 upsetting you.

7 Q It's not upsetting me. I want you to read the
8 document and I want you to answer the question.

9 A Okay. So what was your question?

10 Q When you wrote here "we signed the deal docs
11 on our end Friday" --

12 A Yes.

13 Q -- you're referring to you and your investor
14 at the time signing the asset purchase agreement, right?

15 A No.

16 Q And then you wrote "I'm expecting the 100K
17 deposit on Wednesday." And Mr. Mosler wrote "Good
18 news." And then you wrote "Could you please look over
19 the deal docs now?"

20 You're writing that to Mr. Mosler. You're
21 referring to the asset purchase agreement, correct?

22 A So I want Mr. Mosler to --

23 Q Is it a yes or a no?

24 A Okay. Ask your question since you're not
25 letting me answer anything.

1 Q When you wrote "Could you please look over the
2 deal docs now" to Mr. Mosler --

3 A Yes.

4 Q -- you're referring to the asset purchase
5 agreement?

6 A The asset purchase agreement -- my asset
7 purchase agreement, mine and mine alone.

8 Q And then you wrote Mr. Mosler, "In a mad rush
9 and no computer for a while, email signed docs to review
10 and I signed them."

11 And then you wrote "Also, I heard that you
12 were interested in selling the company itself without
13 the building. Could you put in an option for that
14 path?"

15 And Mr. Mosler wrote "I would like to leave
16 our deal as is." Now --

17 A Right. Our deal, Mr. Mosler and me. That's
18 the "our." If I had other investors --

19 Q Hold on, Mr. Wagner.

20 A -- who are going to back me, that's fine. It
21 could be Ralph. It could be Lee. It could be Lew Lee,
22 whoever. It could be 9999 Investments or 9595
23 Investments. It could have been Abby Cubey. It could
24 be Dr. Sabahi, who had the money to do it. My dad
25 certainly had the money to do it. It could have been

1 **anyone. This was my deal.**

2 MR. WEBER: Move to strike.

3 THE COURT: Sustained.

4 MR. WEBER: Defendants' internal 232. Move
5 this document into evidence.

6 MR. ZAPPOLO: No objection.

7 MR. WEBER: This is Defendants' Exhibit --

8 THE COURT: 52.

9 THE CLERK: 52.

10 (Thereupon, Defendants' Exhibit 52 was
11 received into evidence.)

12 BY MR. WEBER:

13 Q Okay. I'm showing you what's been marked as
14 Defendants' Exhibit 52. It's another email exchange
15 from you to Warren Mosler dated May 24th.

16 Okay. Do you remember the date of the last
17 document I showed you?

18 **A May 23rd.**

19 Q Now, in response to Mr. Mosler's request that
20 you send him the signed deal document on your end, you
21 didn't send him a signed asset purchase agreement,
22 correct?

23 **A Okay. So, I mean, there's something in here I
24 need to look at in this stack of stuff.**

25 Q Do you want to take a minute to look and see

1 if it's in there?

2 **A Yes.**

3 Q Okay.

4 **A I can look over it again and research what the**
5 **answer is here.**

6 Q I have no problem letting you do that.

7 **A All right. What was that question again,**
8 **please?**

9 Q The last document we looked at was May 23rd.

10 **A Yes.**

11 Q And now we're looking at a document on
12 May 24th.

13 **A Okay.**

14 Q Mr. Mosler asked you to send him the signed
15 deal documents that you referred to.

16 **A Yes, exactly.**

17 Q Now --

18 **A And look, it says MSI. It's my company. It's**
19 **not cons; Ralph, whoever.**

20 Q You sent him a document the next day --

21 **A Yes.**

22 Q -- and it's a Word document, correct?

23 **A Yes, it's a Word document.**

24 Q Did you send him the signed deal documents on
25 your end?

1 A Obviously the document here, and a part of
2 that includes three finished cars. Those three finished
3 cars were sold off secretly.

4 Q Did you send Mr. Mosler the signed deal docs
5 on your end?

6 A Okay. I'm looking in the back to see. No,
7 they're not signed at this point.

8 Q And tell me what the purchase price is
9 identified in this asset purchase agreement.

10 A Give me a second. I'm paging through this
11 stuff.

12 Okay. So there's a section here called
13 purchase -- payment of purchase -- well, purchase price.
14 As consideration for the acquisition assets, buyer shall
15 pay seller a total of \$3 million and 20 percent of the
16 Mosler Supercars, Inc., shares. Essentially, Mosler
17 Supercars, Inc. would have 80 percent and Mr. Mosler
18 would own 20 percent.

19 Q Okay. That's good. So now even though --

20 A And that included the building.

21 Q -- you allege that as of May 2nd you had an
22 oral agreement whereby you were going to purchase MACC's
23 assets for a million dollars, you are still sending
24 Mr. Mosler an asset purchase agreement that listed the
25 purchase price of \$3 million, right? Is that yes or no?

1 A "Right?" So the oral agreement was for
2 \$1 million excluding the building. This includes the
3 building.

4 Remember, he said earlier he wanted the
5 building left in? But he did at some point, around this
6 vicinity or maybe slightly after, say "You can have the
7 company and the assets for \$1 million without the
8 building." And that math makes sense because he wanted
9 \$3 million for the building.

10 Q Okay.

11 A \$3 million for 80 percent is equivalent to
12 4 million for 100 percent. So the 4 million minus the
13 3 million for the building, equals 1 million for the
14 building.

15 Q Next document.

16 A All that math makes sense. There's no punch
17 line here.

18 MR. WEBER: The next document is internal 235.
19 Scott, we're going to move this document into
20 evidence.

21 MR. ZAPPOLO: Hold on, please. No objection.

22 THE COURT: Madam Clerk, what number?

23 THE CLERK: 53.

24 THE COURT: 53?

25 THE CLERK: Yes.

1 THE COURT: Thank you.

2 (Thereupon, Defendants' Exhibit 53 was
3 received into evidence.)

4 BY MR. WEBER:

5 Q Now this document is dated May 31st. It's a
6 few days later from the last one we looked at, right?

7 A Yes, it is.

8 Q And it has another Word document attached to
9 it, correct?

10 A Yes.

11 Q And then you wrote "Hi, Warren. It took me a
12 bit of time, but I found the doc from the 5th, which is
13 our complete meeting of the minds that we discussed and
14 agreed to in email. It includes" --

15 A Yes.

16 Q -- "making the 30,000 for the new Raptor nose
17 your option."

18 A Yes.

19 Q "As I said before, I have the docs signed on
20 my end with my investors. You signing/scanning/faxing
21 this to me will start the ball rolling to get the
22 \$100,000 deposit."

23 Now when you wrote this --

24 A And notice it says "\$100,000 deposit," not
25 "nonrefundable."

1 Q You, again, didn't send Mr. Mosler the signed
2 copy of the asset purchase agreement, right?

3 A I'm asking him to look it over and make sure
4 he's okay with it. And one thing I want to make very
5 clear here is there are two separate things. There's
6 one, which is the understanding and agreement upon the
7 refundability of any deposit I have the option to make;
8 and two is the details on the actual buying the
9 building, buying the company, and all those things.

10 That understanding and full meeting of the
11 minds on how my deposit, if I decide to give it, is
12 refunded is never, ever changed. And you're going to
13 keep going through all these things that have nothing to
14 do with that, right?

15 MR. WEBER: Move to strike.

16 THE COURT: Sustained.

17 MR. WEBER: Now, the next document is internal
18 238. Move this document into evidence.

19 MR. ZAPPOLO: I'm sorry, Your Honor. No
20 objection.

21 THE COURT: Madam Clerk, 54?

22 THE CLERK: Yes.

23 MR. ZAPPOLO: What number?

24 THE CLERK: 54.

25 MR. ZAPPOLO: Thank you.

1 (Thereupon, Defendants' Exhibit 54 was
2 received into evidence.)

3 BY MR. WEBER:

4 Q Okay. Now we have another document. This
5 document is a few days after the last document, correct?

6 A Yes, it is.

7 Q And you'll see in this chain that it picks up
8 where the last one left off, right?

9 A Yes. Discussing the terms for --

10 Q And in response --

11 A -- the purchase, not the deposit.

12 Q -- Mr. Mosler wrote "Can I talk to the
13 investor?"

14 And you wrote "After you sign the agreement,
15 absolutely."

16 And then Mr. Mosler wrote "I need some kind of
17 financials on the counter-parties before signing as at
18 least two other buyers are looking at the company."

19 Now, you wrote "Hi, Warren. The company I am
20 working with is a new company who is getting
21 \$5.9 million in on June 10th and a much bigger slug
22 later." You're referring to Lew Lee's SFDM, correct?

23 A I'm referring to the con team run by Ralph and
24 his people. Might be Lew, might be Lee. It's that con
25 team is who this is.

1 Q And then you wrote "In other words, they don't
2 have past financials." How did you know they didn't
3 have past financials?

4 A They told me this.

5 Q And then you wrote "This document is just an
6 offer to sell." The document you're referring to is the
7 asset purchase agreement you sent to Mr. Mosler,
8 correct?

9 A Yes.

10 Q And then you wrote "When you sell a house, you
11 sign a contract agreeing to sell for X. Then if the
12 buyer comes in and pays X, they get the house. If they
13 don't pay, they don't get it," correct?

14 A Yeah. That's pretty much it in a nutshell.

15 Q Now, let's go to -- do you remember
16 Plaintiffs' Exhibit 88?

17 A If they came up with the money, it would be
18 great. I think Mr. Mosler thought the same thing. If
19 they came up with the money, great. If not, who cares.

20 Q Hold on, Mr. Wagner. There's no question
21 pending.

22 A All right.

23 Q Now you remember Plaintiffs' Exhibit 88. This
24 document was shown, which was to Mr. Mosler, and we're
25 about to show it in context.

1 **A Okay.**

2 Q So you remember this document, right,
3 Mr. Wagner?

4 **A Yes, I do.**

5 MR. WEBER: Okay. Move this document into
6 evidence.

7 MR. ZAPPOLO: I'm sorry, what number is this?

8 MR. WEBER: This is internal 245.

9 MR. ZAPPOLO: No objection.

10 MR. WEBER: Okay.

11 THE COURT: Madam Clerk, 54?

12 THE CLERK: 55.

13 MR. WEBER: This is 55.

14 THE COURT: 55, thank you.

15 (Thereupon, Defendants' Exhibit 55 was
16 received into evidence.)

17 BY MR. WEBER:

18 Q Okay. So we just saw in the last document
19 that Mr. Mosler asked you for information about the
20 buyer that you were corresponding with, correct?

21 **A He asked for information about my potential**
22 **future investor, yes.**

23 Q Okay. So let's scroll to the bottom of this?

24 **A And he says "investors" here.**

25 Q Let's start at the bottom.

1 **A That is the key word, or one of the many key**
2 **words.**

3 Q Okay. So now here we have an email from
4 Mr. Mosler on June 3rd, a few days after the last email
5 we saw. Not the one plaintiffs' exhibit, but the one
6 before that.

7 **A It says he was angry about the Raptor article.**

8 Q And look at the bottom here where it says
9 "Please work to get that out ASAP, thanks."

10 And it says "Todd and I are at an impasse
11 where he refuses to allow me to speak with his backers
12 before I sign an exclusive agreement with him." Do you
13 see that part on the bottom?

14 **A Yes, I do. And he's all upset with his public**
15 **statements are his own and do not represent those of**
16 **Mosler. And how -- oh, in fact, Wagner went as far as**
17 **to say that the car has been specifically built to beat**
18 **the Pagani Huayra.**

19 Q And then you wrote --

20 **A Hold on.**

21 Q In your next email response you wrote --
22 you're responding to Mr. Mosler and you wrote "The
23 agreement is in no way exclusive until we put the
24 100,000 in."

25 **A Right.**

1 Q "That is clear in our communications and in
2 the document itself."

3 A **Exactly.**

4 Q Let's scroll up.

5 MR. ZAPPOLO: I'm sorry, where was the last
6 thing you just read from?

7 MR. WEBER: Right here (Indicating).

8 BY MR. WEBER:

9 Q And there's another email from Mr. Mosler.
10 Mr. Mosler responds to your email. Keep going up.

11 You respond on June 3rd at 9:47. Keep
12 scrolling up.

13 A **Okay.**

14 Q Now keep scrolling up. There's more
15 conversation. And then finally on June 3, 2011 you
16 wrote "Also, I discussed it with Jill and I am willing
17 to introduce you to my investors. The anti-work-around
18 document that you signed several months ago that
19 prohibits you from cutting me out of the deal would
20 apply. Do you want to talk to them?"

21 And Mr. Mosler said "Yes."

22 A **Right. "Prohibits you from cutting me out of
23 the deal would apply."**

24 Q Now --

25 A **You didn't quite say that right.**

1 Q We'll get there, Mr. Wagner.

2 A **That's exactly what he did immediately --**

3 Q And now --

4 A **-- after this. I trusted him and he signed a**
5 **document making me think I could trust him.**

6 Q And that same day, Mr. Wagner -- I'm going to
7 show you Defense Exhibit 1.

8 A **Yes.**

9 Q We get to this email, June 3, 2011.

10 A **Possible --**

11 Q Hold on, Mr. Wagner. Mr. Wagner, one minute.

12 A **Okay.**

13 Q Now we get to this email, June 3, 2011, and
14 you are introducing Mr. Lew Lee to Warren Mosler in
15 response to all of the negotiations that proceeded, and
16 Mr. Mosler is asking you for information about the
17 potential buyer, right?

18 A **I disagree with your characterization of all**
19 **of the negotiations that happened earlier. That's not**
20 **accurate. What was going on earlier in this email is**
21 **Mr. Mosler got pissed off --**

22 Q Hold on, Mr. Wagner.

23 A **-- mysteriously.**

24 Q Now let's go to 256, internal 256.

25 A **Possible future partners, that's it.**

1 Q Now remember, Mr. Mosler was asked during his
2 testimony -- he was asked the question about a
3 \$90,000, right? Do you remember that?

4 A A \$90,000?

5 Q Correct. A \$90,000.

6 A In Mr. Mosler's part? I must have missed
7 that.

8 Q Okay. You don't remember that?

9 Okay. I'm handing you what's marked as
10 Defense Exhibit 256.

11 A Is this in evidence in ours?

12 (Thereupon, Defendants' Exhibit 256 was marked
13 for identification.)

14 MR. WEBER: It's internal 256. Move this
15 document into evidence.

16 THE WITNESS: I still don't remember going
17 through this.

18 MR. ZAPPOLO: No objection.

19 THE COURT: Madam Clerk, what number?

20 THE CLERK: 56.

21 THE COURT: Thank you.

22 (Thereupon, Defendants' Exhibit 56 was
23 received into evidence.)

24 BY MR. WEBER:

25 Q Now, this is a lengthy email, but it's an

1 important one that I'm going to go through with you,
2 Mr. Wagner.

3 **A Okay.**

4 Q This is a June 16, 2011 email between you and
5 Lew Lee, right?

6 **A This is between me and the con artist team,
7 including someone named Ralph.**

8 Q And now we're going to scroll down. Keep
9 going.

10 **A Oh, this is actually James Hurley. He's one
11 of the team members.**

12 Q Hold on, Mr. Wagner. Please just wait for the
13 question.

14 **A Well, you asked -- I'm following up on the
15 question that you asked previously, so it says James
16 Hurley.**

17 Q Where I want you to go is on page -- you know
18 what? This chain starts at the top. Because this is
19 from your Gmail, we have to start at the top of this
20 document.

21 **A Okay.**

22 Q So here we have an email from you -- well,
23 from James Hurley to you and Lew Lee with the subject
24 "Standby Escrow Agreement." And Mr. Hurley is sending
25 you an escrow agreement, correct?

1 MR. ZAPPOLO: Objection, Your Honor. That's
2 not what this document is. The title of it is
3 "Standby LC Escrow."

4 THE COURT: Overruled.

5 BY MR. WEBER:

6 Q And it says "Here is a complete copy of the
7 escrow agreement," correct?

8 A **This is -- I now know this to be completely**
9 **bogus stuff.**

10 Q Mr. Wagner --

11 A **I can't really characterize what it is. It's**
12 **just a gigantic mess.**

13 Q Well, let's scroll down.

14 A **Don't ask me to tell you what it is.**

15 Q Hold on, Mr. Wagner, one minute.

16 And you received the escrow agreement,
17 correct?

18 A **I'm not going to characterize this as an**
19 **escrow agreement. I'm not going to do that.**

20 Q Now, let's look at the email. Right here
21 "Robyn S. Hankins," we remember that name from the other
22 day. She is the lawyer for you, or was the lawyer for
23 you, right?

24 A **Yes. Which page?**

25 Q And she wrote to you "Did you tell them that

1 you would front money?" That's what Ms. Hankins said to
2 you, right?

3 **A She's asking me.**

4 Q She's asking you whether you told Lew Lee
5 whether you would front money, right?

6 **A I hear lots of drama, so you must mean there's**
7 **some punch line here. What is the punch line? I mean,**
8 **I'm trying to -- I'm trying to find the page here for**
9 **the first thing.**

10 Q It's okay, Mr. Wagner.

11 **A I'll look up here.**

12 Q I want you to understand the question.

13 **A So did you --**

14 Q Do you understand my question, Mr. Wagner?

15 **A "Did you tell them that you would front**
16 **money?" Okay. Now what's your question?**

17 Q Ms. Hankins is asking you whether you told Lew
18 Lee and his associates that you would front money,
19 right?

20 **A Yeah. She's asking me if I told the con team**
21 **that I would front money. Of course we didn't know it**
22 **was a con team at this time, but --**

23 Q Scroll down. And then you wrote "Three days
24 ago I told them I would consider asking my dad if I was
25 completely convinced it was a safe investment."

1 **A** **Exactly. I would consider it if I thought it**
2 **was safe.**

3 Q And then --

4 **A** **Didn't do it.**

5 Q And then Robyn Hankins said "What do you
6 think?" Keep scrolling down.

7 And then you wrote "What I think is that I'm
8 too emotionally wrapped up I this to evaluate properly."

9 **A** **Yeah.**

10 Q "I want to see the follow-up docs. I also
11 don't see the mechanism wherein the escrow is forfeited.
12 Is that because there is o way to lose it or because
13 this is a deceptio?"

14 **A** **It was a deception.**

15 Q What does that mean, "deceptio"?

16 **A** **I felt it was a deception.**

17 Q Okay. Now --

18 **A** **I was definitely suspicious of the con team at**
19 **this point.**

20 Q Mr. Wagner, hold on one second. Well, this is
21 June 17th, right?

22 **A** **Yes, June 17th.**

23 Q Let's remember this date.

24 Then Robyn Hankins wrote "Nothing about this
25 gives me any comfort level. Maybe when you see him in

1 CA" -- what is that state, CA?

2 **A California.**

3 Q Remember we were looking at documents where
4 you were flying to California?

5 **A Yes.**

6 Q "He can explain the problem with you and give
7 you comfort. I cannot imagine any legitimate basis for
8 you to fund 90K." Remember the 90K?

9 **A Yes.**

10 Q Do you remember what the 90K was for? Tell
11 this judge and this jury what this 90K was for.

12 **A I don't remember we went through this with
13 Mr. Mosler, okay. I don't think we did.**

14 Q Well, the transcript will reflect, but tell
15 this judge and this jury what you remember the 90K to be
16 for.

17 **A This was -- and I'm going to try to say this
18 with a straight face now that I know this was all a
19 scam.**

20 **So what they were saying is if you put in
21 \$90,000 as some sort of 1 percent of the standby letter
22 of credit thing, that that would somehow unlock and be
23 able to get the bridge loan for \$9 million. It was
24 sketchy. I was pretty naive at this time, and I was
25 very emotionally wrapped up in this. So they tried to**

1 scam my dad out of \$9 million or me out of \$90,000, but
2 they were unsuccessful.

3 Q So, scroll down. Stop there. Now here --
4 scroll up just a tiny bit just to show the date.

5 On June 17th you wrote "My father is satisfied
6 with the documentation. I was 90 percent sure about
7 that before approaching him," but -- let's scroll down
8 to -- you later corrected your email and you said there
9 was a typo. "This is a tragic moment for such a word to
10 be omitted. In other words, my father is not willing to
11 provide the 90,000."

12 A Right.

13 Q "The documentation didn't meet the scrutiny
14 and he was very perplexed as to why the \$90,000 was
15 needed."

16 A Yes, I'm perplexed as to why you're presenting
17 this. This actually hurts your case big time. There's
18 no bloody way I was going to give Lew Lee \$100,000. No
19 bloody way.

20 Q Well, we'll get to that in a minute.

21 A I already knew or was really close to knowing
22 that he -- you know, something was suspect. And if he
23 showed up with money and said "Hey, Todd, here's the
24 money to" -- if he was going to invest in my company and
25 get 45 percent of my company, then I would buy MACC.

1 **If that happened, great. If not, who cares.**

2 **I certainly, absolutely, positively was not going to**
3 **give Lew Lee a \$100,000. No way.**

4 Q Instead, you were going to put your car up for
5 collateral, right?

6 **A Yes, I was --**

7 Q Okay.

8 **A -- if --**

9 Q So let's move this document in evidence.

10 **A -- my lawyer was --**

11 Q Hold on, Mr. Wagner. Hold on.

12 MR. ZAPPOLO: Your Honor, he's allowed to
13 explain.

14 MR. WEBER: I didn't ask for an explanation.

15 THE COURT: So right now the witness belongs
16 to the defense. You will have an opportunity to
17 Redirect.

18 MR. WEBER: Let's move this document into
19 evidence. It's internal 259.

20 **THE WITNESS: And I'll admit to being naive at**
21 **this time, okay? For sure.**

22 (Thereupon, Defendants' Exhibit 259 was marked
23 for identification.)

24 BY MR. WEBER:

25 Q Okay.

1 **A All right. Let's go.**

2 MR. WEBER: Let's admit this document into
3 evidence as Defendants' -- are we good?

4 THE CLERK: I'm not sure if there was an
5 objection or not.

6 MR. WEBER: Is there any objection, Scott?

7 MR. ZAPPOLO: No objection, Your Honor.

8 THE COURT: What number, Madam Clerk?

9 THE CLERK: 57, Your Honor.

10 THE COURT: Thank you.

11 (Thereupon, Defendants' Exhibit 57 was
12 received into evidence.)

13 BY MR. WEBER:

14 Q So here's what happened: Your father was
15 willing to provide the 90,000, we're not at the 100,000
16 yet.

17 June 19th, a few days after your email to
18 Mr. Lew Lee --

19 **A Yes.**

20 Q -- you circulated SFDM and SEI and Raptor
21 talking points. "Raptor" refers to the car, right?

22 **A Yes. So -- yes.**

23 Q Okay. Now let's go to the attachment. Now
24 this is a letter you wrote to Lew Lee and his
25 associates --

1 **A Yes.**

2 Q -- whereby you were outlining how you planned
3 with Lew Lee to obtain the funding that would ultimately
4 be used to purchase MACC and its assets, right?

5 **A It was a possible future thing. It was an
6 option. I had several other options. If you pick one
7 and say I had no other options, that is completely
8 untrue.**

9 Q And you were willing -- SEI -- as part of your
10 proposal, SEI will allow the Raptor to be used as
11 collateral for the 90,000 escrow for the letter of
12 credit that allows the 7 million bridge loan to go
13 through, right?

14 **A Yes, provided my attorney was confident I had
15 no risk of losing it. This was silly now.**

16 **Okay. At this point I was like -- and even
17 something in this paragraph -- since you have it up here
18 and now it's in evidence, I should be allowed to read
19 this.**

20 Q You can read it to yourself, but there's no
21 question pending right now, Mr. Wagner.

22 **A Dude, that is so sneaky.**

23 THE COURT: All right. Deputy, can we put the
24 jury in the room for a moment?

25 **THE WITNESS: I apologize.**

1 THE COURT: Can I see the attorneys?

2 (Thereupon, a sidebar conference was held.)

3 THE COURT: I'm about to read him the riot act
4 just to give you a heads-up, okay?

5 MR. WEBER: Okay.

6 (Thereupon, the sidebar conference was
7 concluded.)

8 (Jurors exiting the courtroom at 11:17 a.m.)

9 THE COURT: Have a seat.

10 Okay. I have explained to you at least three
11 or four times to maintain your civility.

12 **THE WITNESS: Yes, sir, I apologize.**

13 THE COURT: Now I discussed this with you
14 several times. I've heard your testimony. I
15 understand your background. You seem like a very
16 intelligent man --

17 **THE WITNESS: Yes.**

18 THE COURT: -- and so it's hard for me to
19 believe that you don't comprehend what I said.

20 **THE WITNESS: Yes, sir.**

21 THE COURT: Either you're intentionally
22 ignoring my command to maintain civility in the
23 courtroom for whatever purpose, or you're not
24 understanding. It's hard for me to believe that
25 you're not understanding when I'm telling you to

1 maintain civility in the courtroom.

2 **THE WITNESS: Yes, sir. I understand, sir.**

3 THE COURT: This is my final warning to you.

4 **THE WITNESS: Yes, sir. I understand fully,**
5 **sir.**

6 THE COURT: Let's bring the jury back out.

7 MR. ZAPPOLO: Your Honor, may I say one thing
8 to my client? Listen to the question and answer
9 his question and that's it.

10 **THE WITNESS: Okay.**

11 MR. ZAPPOLO: Can we be any clearer, anyone in
12 this room?

13 **THE WITNESS: Yes, I understand. Yes, thank**
14 **you.**

15 MR. ZAPPOLO: Okay.

16 THE COURT DEPUTY: Jury entering.

17 (Jurors entering the courtroom at 11:20 a.m.)

18 THE COURT: All right. Please have a seat.

19 Cross-Examination.

20 BY MR. WEBER:

21 Q Okay. Mr. Wagner, I'm handing you a document.
22 This is a document that is being marked as 259B
23 internal.

24 (Thereupon, Defendants' Exhibit 259B was
25 marked for identification.)

1 MR. WEBER: Move this document into evidence.

2 MR. ZAPPOLO: As I stipulated previously while
3 we were out.

4 THE COURT: Madam Clerk, what number? 58?

5 THE CLERK: 58, Your Honor.

6 THE COURT: Thank you.

7 (Thereupon, Defendants' Exhibit 58 was
8 received into evidence.)

9 BY MR. WEBER:

10 Q Okay. Here we have a document. It's an email
11 from you to Lew Lee with the subject "Draft letter to
12 Warren: Please review ASAP," correct?

13 A **This is an email between me and two members of**
14 **the con team; possibly Ralph, possibly Jim.**

15 Q And it's a draft email that you wanted them to
16 review before you sent it to Warren Mosler, correct?

17 A **Yes, that's correct.**

18 Q And, in fact, after Lew Lee approved this
19 email, you did send it to Mr. Mosler, correct?

20 A **Yes. This defines the refundability of the**
21 **\$100,000 deposit.**

22 Q Now let's zoom in on the signature block,
23 Mr. Wagner.

24 As of June 27th, a few days later, you wrote
25 your name, Mosler Supercars, Inc., Santa Fe -- there's a

1 typo -- Digital Media, correct?

2 **A Yes.**

3 Q You're identifying yourself as part of Santa
4 Fe Digital Media, right?

5 **A They had, I believe fraudulently, stated that**
6 **they had just unilaterally elected me to their board and**
7 **had successfully deceived me into believing that they**
8 **were going to do this.**

9 MR. WEBER: I'm going to mark this document.
10 This is internal 258. Now move this document into
11 evidence.

12 MR. ZAPPOLO: No objection.

13 THE COURT: Madam Clerk, 59?

14 THE CLERK: Yes.

15 (Thereupon, Defendants' Exhibit 59 was
16 received into evidence.)

17 BY MR. WEBER:

18 Q Same day, you send the document that you had
19 Lew Lee approve -- and zoom in on the signature block --
20 and you even corrected the typo in your signature block.
21 Let's zoom out for a second.

22 Now this email is from you to Warren Mosler,
23 Lew Lee, and the others, correct?

24 **A These are, I believe, members of the con**
25 **artist team that has Ralph as part of its crew.**

1 Q And you mentioned the \$100,000 deposit for the
2 purchase of Mosler Automotive assets, right?

3 A So am I allowed to read it?

4 Q And then you wrote "Please provide wire
5 transfer instructions so that the funds could be wired
6 expeditiously."

7 And then you wrote "Per agreement, this
8 deposit entitles Mosler Supercars, Inc., MSI, 3 months
9 of exclusivity within which the deal must be closed,"
10 and you refer to the agreement again.

11 And in response -- put this message down --
12 Mr. Mosler asked you for a copy of the agreement you're
13 referring to, right?

14 A Are you going to show me the document?

15 Thank you.

16 Q I handed you document internal 261.

17 MR. WEBER: Move this document into evidence.

18 MR. ZAPPOLO: No objection.

19 THE COURT: Madam Clerk, Number 60?

20 THE CLERK: Yes.

21 (Thereupon, Defendants' Exhibit 60 was
22 received into evidence.)

23 BY MR. WEBER:

24 Q Okay. Let's bring up 261.

25 Now, in response to that email Mr. Mosler said

1 "Please forward me a copy of that signed agreement,
2 thanks. I can't recall the terms and conditions," but
3 you didn't send him a signed copy of the agreement,
4 right?

5 **A I think at this point it was misplaced.**

6 Q Mr. Wagner, you didn't send him a signed copy
7 of the agreement, correct?

8 **A No, I did not.**

9 Q Instead, you wrote "The Word file is
10 attached." You wrote "The signed copy has the Consulier
11 portions X'd out by you and you added the portion about
12 the \$100,000 deposit in handwriting on the signature
13 page. I have the actual signed document back in
14 Florida."

15 **A Yes.**

16 Q But you didn't have the signed document back
17 in Florida, right?

18 **A Well, it was faxed to Jill Wagner at the
19 Mosler factory and remained there, and I think it
20 somehow got misplaced. So last I knew, it was somewhere
21 in the Mosler factory, and at some point I wasn't
22 allowed to go back to look for it. And it does say
23 \$100,000 deposit, not --**

24 Q But that's not what you told Mr. Mosler, is
25 it, Mr. Wagner?

1 **A** **I thought I had it at my house, but I could**
2 **never find it there, so it must have been in the factory**
3 **still.**

4 Q Well, let's see what you said. This is going
5 to be internal 261.

6 MR. ZAPPOLO: 262.

7 MR. WEBER: I'm sorry, 262. You're right, you
8 got me. Okay. Move this document into evidence.

9 MR. ZAPPOLO: No objection.

10 THE COURT: Madam Clerk, 61?

11 THE CLERK: Yes.

12 (Thereupon, Defendants' Exhibit 61 was
13 received into evidence.)

14 BY MR. WEBER:

15 Q Your response -- Mr. Mosler wrote "You didn't
16 accept that contract and made subsequent proposals that
17 I never agreed to, best I can remember?" And we saw the
18 back and forth between you and Mr. Mosler earlier on.

19 **A** **That's not what this is referring to.**

20 Q And you said --

21 **A** **I think you're trying to conflate this.**

22 Q -- "I'm at a loss to understand why you would
23 say we don't have a purchase agreement. I have the
24 signed copy in my safe in Florida." Let's pause there.

25 You did not have a signed copy in your safe in

1 Florida, right?

2 **A I thought I did, but I did not.**

3 Q You checked your safe?

4 **A Yes.**

5 Q You don't have a copy in your safe, right?

6 **A Right. Mr. Mosler, he signed it and sent it**
7 **to me and he never produced it to me either.**

8 Q And you wrote "As you know, I have been
9 working diligently for the company without compensation
10 to bring the transaction to close."

11 Now you wrote again "Please send me wire
12 instructions so that we can move forward at the end."

13 **A And may I speak on anything?**

14 Q Hold on one second. Now, in response -- let's
15 go to 265, internal 265.

16 MR. WEBER: Move this document into evidence.

17 MR. ZAPPOLO: No objection.

18 MR. WEBER: This is Defendants' what number?
19 Defendants' 62 moved into evidence, Your Honor?

20 THE COURT: Yes.

21 MR. ZAPPOLO: No objection.

22 THE COURT: Madam Clerk, 62.

23 (Thereupon, Defendants' Exhibit 62 was
24 received into evidence.)

25 BY MR. WEBER:

1 Q Mr. Mosler wrote to you, with Lew Lee on the
2 email, "The email trail clearly shows you rejected my
3 signed offer and countered the proposals, which went
4 back and forth several times without resolution,
5 particularly over the issue of my requirement to spend
6 30,000 on your new nose mold, which you added to the
7 agreement and sent it to me without at the same time
8 drawing my attention to the change, perhaps hoping I
9 didn't notice it. I believe the way we left it was I
10 wasn't even going to read any more of your contracts
11 until you actually had a deposit ready to send."

12 Do you remember that email from Mr. Mosler?

13 **A Yes. And I had a deposit ready to send, and**
14 **this is regarding the two different agreements. One is**
15 **the purchase of the company, and then how the**
16 **\$100,000 deposit was going to be handled. The**
17 **\$100,000 deposit being handled was never ever, ever,**
18 **ever changed.**

19 Q And then --

20 **A Never.**

21 Q -- Mr. Mosler wrote "I'm happy to come to an
22 agreement with you, but there is no actual contract at
23 this point. If you don't see it that way, we have
24 nothing further to discuss."

25 In response to this email did you say "Hold

1 on. We do have a contract. Here's what it is"? Is
2 that what you said?

3 **A I believe I said that earlier, I'm at a loss**
4 **to understand. I didn't know at this time he had**
5 **circumvented me. What he agreed not to do -- he was**
6 **talking to Lew Lee behind my -- or the con team behind**
7 **my back.**

8 Q Is that what you believe, Mr. Wagner?

9 **A Yes, it is.**

10 Q Is that what you believe happened in this
11 case?

12 **A I absolutely do.**

13 Q We'll get there. Now let's look at what's
14 marked as internal 270.

15 MR. WEBER: Move this document into evidence.

16 MR. ZAPPOLO: No objection.

17 THE COURT: Madam Clerk, 63, please.

18 (Thereupon, Defendants' Exhibit 63 was
19 received into evidence.)

20 BY MR. WEBER:

21 Q Now this document picks up where the last one
22 left off. You wrote -- with Lew Lee on the email, on
23 June 28th -- and this is just one day before the
24 \$100,000 was wired by your father, correct?

25 **A This is between me, Warren Mosler, and one of**

1 the members of the con team. I was just talking with,
2 you know, Lew, but now I'm thinking it's Ralph.

3 Q Mr. Wagner, June 28th is one day before --

4 A Yes.

5 Q -- the \$100,000 was wired by your father?

6 A That's correct. Yes.

7 Q Right. And then you wrote "Good morning,
8 Warren. I was just talking with Lew. He is very
9 excited about taking your company forward, as I am.
10 Reading the agreement, we had so many versions through
11 time that I believe I may have sent the wrong electronic
12 one by accident. The 30,000 for the nose isn't
13 important, and I don't recall that being in the signed
14 version either. Would you like to work from the latest
15 version that I emailed in May which encompassed
16 everything that we agreed to in email? I believe that
17 version was dated 5/4/2011, but I want to verify that to
18 ensure there aren't any misunderstandings."

19 That's an accurate reading of that email,
20 right?

21 A Yes.

22 Q Now, in response to your email, Lew Lee sent
23 you an email, correct?

24 A I imagine he did. Yes, I think so.

25 Q Let's go to 271. This will be marked as

1 internal 271.

2 MR. WEBER: Move this document into evidence.

3 MR. ZAPPOLO: No objection.

4 THE COURT: Madam Clerk, 63?

5 THE CLERK: 64.

6 THE COURT: 64?

7 THE CLERK: Yes.

8 THE COURT: Thank you.

9 (Thereupon, Defendants' Exhibit 64 was
10 received into evidence.)

11 BY MR. WEBER:

12 Q Here, we have an email from Lew Lee to you.
13 Again, June 28th is one day before your father did the
14 wire transfer to Mr. Mosler, right?

15 A Yes.

16 Q Let's scroll down.

17 And below Mr. Lew Lee's email, we see the
18 email we just saw, correct?

19 A Yes.

20 Q Now let's scroll back up to Mr. Lew Lee's
21 email.

22 It says "Brother, perhaps I am mistaken, but I
23 believe you are really taking the wrong tack here.
24 Warren is NOT happy with you at this time."

25 And it's true because you had just told

1 Mr. Mosler that you had a signed agreement and

2 Mr. Mosler said that you're wrong, right?

3 **A No, that's not. He's not happy with me**
4 **because he's angry about the "Fabulous Photon" article**
5 **and the fact that the RaptorGTR is getting buzz and**
6 **populating and his Photon is being dismissed.**

7 Q And then --

8 **A He spent a year and a half on the Photon.**

9 Q -- Mr. Lee wrote "The week before last, he
10 basically stated to Brad, Jim, and myself that he would
11 not sell the company if you have a lead in its
12 operation."

13 **A Yeah, exactly. He's that mad. He's trying to**
14 **exclude me from the company. That's what this con**
15 **team -- and I think they were actually telling the truth**
16 **here, mysteriously.**

17 Q And you wrote "That is why I offered you 250K
18 a year to be EVP of Automobile 1 plus the monetary
19 equivalent of the 45 percent of 5 million, and the
20 reality of continuing as the engineer and consultant. I
21 really don't know what to say, but I would say be really
22 careful here in pressing the issue. We will have to
23 officially distance SFDM from you if Warren rejects this
24 last email overture. We can always work around it
25 later, but we really have to win the war now. Please

1 understand I cannot overstate how thin the political ice
2 is here."

3 Now you knew, after that email, that Lew Lee
4 had to take the lead in negotiating with Mr. Mosler,
5 correct?

6 **A No.**

7 Q You didn't know that?

8 **A No. And you're saying "negotiations," so**
9 **there's no negotiations going on. There's certainly no**
10 **negotiations going on about how my deposit would be**
11 **refundable. You keep trying to sneak in -- I'm sorry,**
12 **I'm going to be quiet now.**

13 Q Let's go to -- put this document down -- the
14 letter of intent, Plaintiffs' 68.

15 Remember, this is the letter of intent dated
16 June 29, 2011. And one of the terms in this letter of
17 intent, June 29, 2011, included the term about the
18 nonrefundable deposit, which we see here (Indicating).
19 And you knew Mr. Lew Lee had sent this document to
20 Mr. Mosler because following the signing of this
21 document, you worked with Lew Lee to close before
22 September 1st; isn't that right?

23 **A Absolutely, positively incorrect.**

24 Q You did not work -- sitting here today, under
25 oath, tell this judge and this jury that you didn't work

1 with Lew Lee to close before September 1st.

2 **A** **I know that I'm under oath. And you stated in**
3 **your question that I knew Lew Lee had sent this to**
4 **Mr. Mosler, and I did not. I absolutely did not. This**
5 **was all done behind my back. And I believe Mr. Mosler**
6 **knew that it was behind my back and that's why there's a**
7 **clause in here to make sure I don't know about it.**

8 **Q** **Well, let's break it down. Do you agree that**
9 **you worked with Lew Lee to close before September 1st?**

10 **A** **I was hoping that he would come up with the**
11 **money at all times, not necessarily before**
12 **September 1st. My exclusivity ended September 29th. I**
13 **didn't know that this stuff was going on.**

14 **Q** **Which stuff?**

15 **A** **Everything was kept secret from me.**

16 **Q** **So did you know about the September 1st --**

17 **A** **So at the time -- remember --**

18 **Q** **Hold on. Which time? As of June 29th you**
19 **knew about September 1st?**

20 **A** **No, I did not.**

21 **Q** **You did not?**

22 **A** **Absolutely did not.**

23 **Q** **Impossible?**

24 **A** **I --**

25 **Q** **Put this document down. Tell --**

1 A So --

2 Q At this time, June 29th, did you know that Lew
3 Lee had entered into an agreement with Warren Mosler
4 whereby Lew Lee and his company, SFDM, were trying to
5 close the purchase by September 1, 2011?

6 A No, I didn't. I knew I had exclusive -- well,
7 I knew they were hoping to close by September 1st. I
8 didn't know there was any sort of deadline because my
9 exclusivity ended September 29th, and this was kept
10 secret.

11 Of course they wanted to close as soon as
12 possible; Mr. Mosler wanted that. And now I know from
13 this that he was going to get even more money. I'm
14 going to stay quiet.

15 MR. WEBER: We'll mark this as internal 282A.
16 282A, move this document into evidence.

17 MR. ZAPPOLO: No objection.

18 THE COURT: Madam Clerk?

19 THE CLERK: 65.

20 THE COURT: Thank you.

21 (Thereupon, Defendants' Exhibit 65 was
22 received into evidence.)

23 BY MR. WEBER:

24 Q Okay. Let's put up this document. I just
25 want to actually start below, so scroll up.

1 Now, Mr. Wagner, this document is an email
2 exchange between you and Lew Lee and we have Robyn
3 Hankins, your former attorney on there, right?

4 **A This is between me and Ralph, whoever, member**
5 **of the con team might be operating this email. Again, I**
6 **have no idea who was actually operating this email.**

7 Q Now June 29th, you see an email from Robyn
8 Hankins. She said, "I had an opportunity this morning
9 to make the edits you requested. There is still a
10 disparity in the term. Todd indicated the lifetime."

11 You were negotiating with Lew Lee on June 29th
12 your involvement after he purchased MACC, correct?

13 **A So this is entirely separate from the**
14 **\$100,000.**

15 Q Yes or no?

16 **A Can I -- can you ask your question one more**
17 **time, please?**

18 Q On June 29th you and Lew Lee were negotiating
19 your continued involvement in MACC after it was
20 purchased by SFDM?

21 **A This is a potential employment contract of his**
22 **supercomputer company, and the supercomputer company**
23 **would own MACC, so -- and it's all baloney anyway. I**
24 **mean, it's kind of -- it's just him blowing smoke to try**
25 **and deceive me.**

1 Q Mr. Lew Lee responds -- keep going up.

2 Lew Lee writes "Robyn, I think we can do an
3 addendum in the next few days. Let me sign right now
4 before I leave for the Albuquerque meeting. I trust you
5 both implicitly and you are my good friends and
6 colleagues."

7 You wrote, on June 29th, "Thank you. I feel
8 the same way. We've won." You then write "Please do
9 the same thing as before, electronic then hand signature
10 on top. My dad is on the way to the bank now."

11 Now you knew that Lew Lee had signed the
12 letter of intent and you sent your father to the bank to
13 make the \$100,000 deposit to Mr. Mosler, correct?

14 **A Absolutely, positively incorrect.**

15 Q Let's go to 282B. I'm handing you what's been
16 marked as 282B.

17 MR. WEBER: Okay. Move this document into
18 evidence.

19 MR. ZAPPOLO: No objection.

20 THE COURT: Madam Clerk, 66.

21 (Thereupon, Defendants' Exhibit 66 was
22 received into evidence.)

23 BY MR. WEBER:

24 Q Okay. Again, June 29th, same date as the
25 letter of intent. You see emails between you, Lew Lee,

1 and your attorney Robyn Hankins, correct?

2 **A This is -- it says "SFDM1," and these are two**
3 **members of the con team. I don't know who they are.**
4 **Robyn Hankins I know, and of course it's my email there.**

5 Q Let's scroll down. There's an attachment to
6 this email, and the attachment is called "SFDM Wagner,"
7 and it's called "Purchase and Employment Agreement."
8 Keep scrolling down.

9 And it states right here "SFDM and MSI" --
10 MSI is your company, right?

11 **A My company, yes.**

12 Q -- "are referred to collectively as the
13 parties." And you refer to here Wagner, through your
14 company, has invested a great deal of time, effort, and
15 expertise in establishing the Mosler brand and in
16 working towards the purchase of MACC. And now you're
17 entering into an agreement with SFDM, right?

18 **A This agreement only becomes --**

19 Q Hold on, Mr. Wagner. And you wrote here, "For
20 in consideration of his agreement to forgo, on his own
21 behalf and on behalf of MSI, certain rights set forth in
22 the agreement, both written and verbal, between Wagner,
23 MSI, and MACC/Warren Mosler and SFDM," that's a typo,
24 "whatever form, whether a stock or an asset transaction.
25 SFDM will pay Wagner \$2.5 million payable as follows."

1 And you entered into this agreement because
2 you knew Lew Lee had signed the letter of intent with
3 Warren Mosler, right?

4 **A Absolutely, positively incorrect.**

5 Q Take this document down.

6 Now, you testified previously under oath that
7 Lew Lee had nothing to do with the \$100,000 deposit,
8 correct?

9 **A That's correct.**

10 Q You testified, at the time of the
11 \$100,000 wire transfer, Lew Lee was just an investor
12 working with you to try to purchase the company.

13 **A Yes. That's correct.**

14 Q You testified that your father's living trust
15 made a deposit.

16 **A That's correct.**

17 Q The name of your father's trust is James D.
18 Wagner Living Trust?

19 **A Yes.**

20 Q Your father, as a trustee, authorized the
21 \$100,000 to Mosler on your behalf?

22 **A On my behalf. Yes, my behalf.**

23 Q When you asked your father to transfer the
24 \$100,000 to Mosler, you told him it was a deposit to buy
25 MACC?

1 **A My deposit to buy MACC, not Lew Lee's deposit.**

2 Q This is internal 266.

3 **A Moving on to the next.**

4 Q You're handed internal 266.

5 MR. WEBER: Move this document into evidence.

6 I'm sorry, one second.

7 Okay. Any objection to 266?

8 MR. ZAPPOLO: No.

9 MR. WEBER: Okay. Let's show you 266. No,
10 sorry. Hold on. Your Honor, admitted as?

11 THE COURT: Madam Clerk, 67?

12 THE CLERK: Yes.

13 (Thereupon, Defendants' Exhibit 67 was
14 received into evidence.)

15 BY MR. WEBER:

16 Q Let's put up 266. June 29th, the same date as
17 the wire, Lew Lee wrote to you "Hi, Todd. Please find
18 two promissory notes, one for the 100K and the other for
19 the personal loan." And there's two attachments to the
20 document, correct?

21 **A Yes. This is from 4:00 a.m. on June 29th.**

22 Q Scroll down. Let's go --

23 **A And from the con team.**

24 Q Let's go to the attachment.

25 **A It's not Lew, it says SFDM.**

1 Q The first attachment says "Promissory note for
2 loan." And now let's go to the next attachment. The
3 next attachment is titled "Promissory note for Mosler
4 deposit." Can we zoom in on that?

5 And it says "Dear Todd. SFDM, Inc., hereby
6 pledges to pay in full, and without hesitation, by
7 7/30/11 \$110,000 to J. Todd Wagner. This represents the
8 sum of \$100,000 borrowed at a rate of 10 percent for a
9 total of \$110,000, signed June 29th," the same date as
10 the deposit sent by your father, correct?

11 A Yes, sir.

12 Q And this was because you were fronting the
13 money. You were fronting the \$100,000 deposit to Lew
14 Lee for the letter of intent, correct?

15 A Absolutely, positively not. This is his
16 attempt to con me.

17 Q Now let's see 283.

18 A Now this --

19 Q Hold on, Mr. Wagner, there's no question
20 pending. Now I'm going to show you internal 283.

21 MR. WEBER: Let's move this document into
22 evidence.

23 MR. ZAPPOLO: No objection.

24 THE COURT: Madam Clerk, 68?

25 THE CLERK: Yes.

1 (Thereupon, Defendants' Exhibit 68 was
2 received into evidence.)

3 BY MR. WEBER:

4 Q I'm showing you this document that's marked as
5 68. It's an email from you to Lew Lee, and you wrote
6 "Hi, Lew. The \$100,000 wire transfer to Warren B.
7 Mosler went out at 3:10 p.m. and should be there in 30
8 minutes. Tracking number" -- now can we do a comparison
9 of Plaintiffs' 1 with this document?

10 On the right we have what's been marked as
11 Plaintiffs' 1, on the left we have the email. Can we
12 zoom in on the tracking numbers?

13 283 is the tracking number. And we see the
14 tracking number on Plaintiffs' 1. And Plaintiffs' 1 was
15 a statement your father testified to showed the wire
16 from his trust account, right?

17 A The wire for my \$100,000 deposit, yes --

18 Q Let's back up, please.

19 A -- from his trust account. And it says
20 "deposit." It doesn't say "nonrefundable deposit" on
21 there because I had no idea --

22 Q Hold on, Mr. Wagner.

23 A All right.

24 Q There's no question pending.

25 So, 283. You wrote to Mr. Lew Lee "This is

1 one of the most beautiful days of my life. Thank you
2 for being my best friend and partner. You have my
3 loyalty permanently, and I will do everything in my
4 power to make our venture a resounding success."

5 Take this one document down, and I'll show one
6 more document, Your Honor, and then a brief lunch.

7 289. This is internal 289. I've handed you
8 the document marked as 289 internally.

9 MR. WEBER: Move this document into evidence.

10 MR. ZAPPOLO: No objection.

11 THE COURT: Madam Clerk, 69.

12 (Thereupon, Defendants' Exhibit 69 was
13 received into evidence.)

14 THE COURT: Can I see the attorneys for a
15 second?

16 MR. WEBER: Yes.

17 (Thereupon, a sidebar conference was held.)

18 THE COURT: So I know you want to break for
19 lunch, but it's ten till noon and I don't think
20 they're getting their food here until 12:30, so
21 it's another 40 minutes.

22 MR. WEBER: Okay. Yeah, that's fine.

23 THE COURT: Do you want to keep going, or if
24 you need a break, I'll give you a break right now
25 too.

1 MR. WEBER: Let's give them a ten-minute break
2 so they're not thinking --

3 THE COURT: All right. So let's take a
4 ten-minute break.

5 MR. WEBER: Yeah. Ten minutes because they
6 haven't taken a break yet, right?

7 THE COURT: So I'll tell them 12:30-ish.

8 MR. WEBER: Let me just do this one document.

9 THE COURT: Okay.

10 (Thereupon, a sidebar conference was held.)

11 MR. WEBER: Okay. The document was admitted
12 correct, Madam Clerk?

13 THE CLERK: Yes.

14 BY MR. WEBER:

15 Q Okay. I'll show this document. We have
16 July 1st. It's an email exchange from Lew Lee to Jill
17 Wagner and Warren Mosler. And Mr. Lew Lee writes "Hi,
18 Jill. Warren was so kind as to assure me verbally
19 yesterday evening that he has granted us full
20 exclusivity through September 1st."

21 You knew that Lew Lee had signed the letter of
22 intent with Mr. Mosler, correct?

23 A No, I did not.

24 Q You knew --

25 A I was all confused about what was going on

1 **here. No one told me anything.**

2 Q You knew --

3 **A I did not know.**

4 Q -- that Lew Lee was going to wire the one
5 \$100,000 to Mr. Mosler, correct?

6 **A Absolutely, positively not.**

7 Q You knew --

8 **A No.**

9 Q -- that Lew Lee had until September 1st to
10 close the purchase, correct?

11 **A So may I explain a little bit before we --**

12 Q Yes or no, Mr. Wagner?

13 **A I'm just asking -- at this point no --**

14 Q All right.

15 **A -- because I glossed over --**

16 Q Mr. Wagner --

17 **A I didn't really --**

18 Q Mr. Wagner --

19 **A -- get --**

20 Q -- there's not a question pending, please.

21 **A Okay.**

22 MR. WEBER: Let's put this document down and
23 then we'll take a break, Your Honor.

24 THE COURT: Okay. Deputy, we're going to take
25 a ten-minute break.

1 So normally we would break for lunch right
2 about now, but the attorneys have ordered for you
3 and it's not here yet. We're going to break around
4 12:30, but we are going to take a ten-minute break
5 so that everybody can use the facilities. Okay?

6 (Thereupon, a short break was taken from
7 11:54 a.m. to 12:10 p.m.)

8 THE COURT DEPUTY: Come to order.

9 THE COURT: All right. Let's bring them out.

10 THE COURT DEPUTY: Jury entering.

11 (Jurors entering the courtroom at 12:10 p.m.)

12 THE COURT: Please be seated. Your witness.

13 MR. WEBER: Thank you, Your Honor.

14 BY MR. WEBER:

15 Q Okay. Mr. Wagner, when we had just left off
16 we were on June 2011, and we saw that in July 2011. Now
17 I want to draw your attention to what's previously
18 marked Plaintiffs' Exhibit 4.

19 Do you remember this document when Mr. Mosler
20 was questioned about it?

21 A **Yes. The single taillights and all that,**
22 **uh-huh.**

23 Q And there was a question to Mr. Mosler about
24 who the new owner in this email was referring to, right?

25 A **We were holding off until the new owner picked**

1 the name because the certification name was done as
2 RaptorGTR and the name was going to be changed. Well,
3 the name was potentially going to be changed.

4 Q Do you remember the question to Mr. Mosler
5 about the identity of the new owner?

6 A The identity of the new owner?

7 Q Do you know who the "new owner" is referring
8 to?

9 A At this point in time it was going to be my
10 company, Supercar Engineering.

11 Q Let's take this down for a second.

12 I've handed you what's been marked as internal
13 307.

14 MR. WEBER: Move to admit this into evidence.

15 MR. ZAPPOLO: No objection.

16 THE COURT: Madam Clerk, is that 69?

17 THE CLERK: 70.

18 THE COURT: 70. Thank you.

19 (Thereupon, Defendants' Exhibit 70 was
20 received into evidence.)

21 BY MR. WEBER:

22 Q Let's start on the bottom. Your email on
23 August 12, 2011, where you were announcing the
24 certification, was to Lew Lee, Jill Wagner, and Warren
25 Mosler, right?

1 **A This is for the certification of the 2012**
2 **RaptorGTR, yes.**

3 Q And Mr. Mosler replied "Good job," right?

4 **A Yes, he was happy. That's why I was so**
5 **surprised all this stuff went down later on.**

6 Q And Jill Wagner wrote "What name should we use
7 for the press release?" Right?

8 **A Yes.**

9 Q And then Mr. Mosler wrote "We can hold off on
10 the press release until month end, so if Lew buys the
11 company, the name becomes his call, thanks." Do you see
12 that?

13 **A Yes, I do.**

14 Q Do you know the "Lew" Mr. Mosler is referring
15 to in this email?

16 **A This is, you know, one member of the con team,**
17 **I presume.**

18 Q Is that Ralph?

19 **A Ralph.**

20 Q George?

21 **A I don't know if it's Ralph. It could be**
22 **George. I don't know what his real name is, and I'd**
23 **love to see him actually come to trial and say who he**
24 **is, but --**

25 Q It's Lew Lee that's being referred to in this

1 email, right?

2 **A** **I don't know who it is, sir.**

3 **Q** Zoom in.

4 **A** **I do not mean to be difficult here, but I**
5 **really don't know who it is, and -- can I finish or no?**

6 **Q** Right here.

7 **A** **Yes. So --**

8 **Q** You don't -- sitting here today under oath,
9 you don't know that the "Lew" mentioned in this email
10 refers to Lew Lee?

11 **A** **So if --**

12 **Q** Yes or no, does the "Lew" referred to in this
13 email refer to Lew Lee?

14 MR. ZAPPOLO: Your Honor, can we approach?

15 MR. WEBER: Hold on. Let him answer the
16 question.

17 THE COURT: No, I want to hear it.

18 (Thereupon, a sidebar conference was held.)

19 MR. ZAPPOLO: This has gone back and forth so
20 many times, it's gotten kind of tedious. I wonder
21 if counsel would agree in stipulation that we can
22 inform Mr. Wagner that there's a stipulation that
23 when counsel is referring to "Lew Lee,"
24 Mr. Wagner -- you know, it's Mr. Wagner's position
25 that we don't know -- he doesn't know who that

1 person's real name is.

2 THE COURT: Okay. So there's no agreement
3 that I can see.

4 MR. WEBER: I'm not agreeing to that.

5 THE COURT: Okay. So let's go back and finish
6 the question.

7 MR. ZAPPOLO: It's clear that any time he uses
8 "Lew Lee," my client is going to say the same
9 thing.

10 THE COURT: I'm sorry?

11 MR. ZAPPOLO: I said it's clear that any time
12 that counsel uses the name "Lew Lee," my client is
13 entitled to say "Who's Lew Lee?"

14 (Thereupon, the sidebar conference was
15 concluded.)

16 THE COURT: Okay. It's your witness.

17 BY MR. WEBER:

18 Q Mr. Wagner, the question remains: Does the
19 "Lew" here refer to Lew Lee, yes or no? And "yes" or
20 "no" only.

21 (Siri on phone: Sorry, can you say that
22 again?)

23 **THE WITNESS: I was thinking the same thing.**

24 BY MR. WEBER:

25 Q Let me ask the question again to you,

1 Mr. Wagner. Yes or no, the "Lew" in this email refers
2 to Lew Lee?

3 A No, there is no Lew Lee in existence in the
4 United States. I don't know who it is and certainly --

5 I don't know what's going on behind my back
6 here, so I'm confused about a lot of things that are
7 going on. People type emails and, you know, it's
8 shorthand for things. And, you know, he was going to be
9 my investor, that's the way I saw it, and I had no --
10 there's nothing in my mind to think anything was
11 different.

12 So I wasn't going to go and say "Oh, wait,
13 no," you know, he was going to be my investor and
14 Mr. Mosler knew he was potentially going to be my
15 investor, and so I thought that's what he was referring
16 to.

17 Q Mr. Wagner, I've handed you a document.

18 A I didn't imagine I would have to clarify.

19 Q This is internal 312.

20 MR. ZAPPOLO: Counselor, can I ask -- was 307
21 moved and admitted?

22 MR. WEBER: Yes.

23 MR. ZAPPOLO: As?

24 MR. WEBER: What number?

25 THE CLERK: 70.

1 MR. ZAPPOLO: Thank you.

2 MR. WEBER: Move internal 312 into evidence.

3 MR. ZAPPOLO: No objection.

4 THE COURT: Number 71.

5 (Thereupon, Defendants' Exhibit 71 was
6 received into evidence.)

7 BY MR. WEBER:

8 Q Okay. We'll put up internal 312. Here we
9 have an email, August 22, 2011, from Warren Mosler to
10 Lew Lee and yourself, correct?

11 A It's from Warren Mosler to someone on the con
12 team and to me.

13 Q And Mr. Mosler says "Hi, ready to close this
14 week?" Right?

15 A Yes. And in the context of I had no idea what
16 was going on behind my back.

17 Q And you knew --

18 A And I thought he meant that he was -- Lew
19 would be --

20 Q Mr. Wagner, you knew that closing had to occur
21 by September 1st, right?

22 A No, I didn't.

23 Q Let's go to --

24 A And this will be -- Lew would be investing in
25 my deal and he may want to step into my deal or invest

1 in --

2 Q Hold on a second, Mr. Wagner, we'll get there.

3 A Okay. Fine.

4 Q I'm handing you the document marked as
5 internal 313.

6 MR. WEBER: Move this document into evidence.

7 MR. ZAPPOLO: No objection.

8 THE COURT: 72?

9 MR. WEBER: Yes, Your Honor.

10 (Thereupon, Defendants' Exhibit 72 was
11 received into evidence.)

12 BY MR. WEBER:

13 Q Now, I'm showing you another document. It's
14 an email from Lew Lee to Warren Mosler and you. Can we
15 zoom in on the bottom just to show Mr. Wagner the
16 context?

17 We see the email we just saw, and then we see
18 Mr. Mosler's response with you included on the email --
19 with Lew Lee telling Mr. Mosler, with you on the email,
20 "We are still looking at closing on the 1st," correct?

21 A So this is from the con artist Ralph, whoever
22 it is, and he would often say he's going to close on his
23 supercomputer deal which would have the money available
24 that he could then pay me \$2.5 million if he wanted to
25 step into my deal, but it was always my deal, and I

1 **didn't know what had gone on behind my back.**

2 Q You had no idea?

3 **A No.**

4 Q Right. Okay. Well, let's --

5 **A I didn't.**

6 Q -- see the next document. This is internal
7 315.

8 **A Thanks.**

9 MR. WEBER: And move this document into
10 evidence.

11 MR. ZAPPOLO: No objection.

12 THE COURT: Madam Clerk, that's Number 73?

13 THE CLERK: Yes.

14 THE COURT: Thank you.

15 (Thereupon, Defendants' Exhibit 73 was
16 received into evidence.)

17 BY MR. WEBER:

18 Q Okay. Let's put up 315.

19 Okay. So, Mr. Wagner, this is an email
20 exchange between you, Mr. Lew Lee, and others, correct?

21 **A This is three or four members of the con team,**
22 **and I don't see myself on here, but perhaps I was**
23 **blind-copied.**

24 Q Because this email is from your inbox,
25 correct?

1 **A Yes, it is.**

2 Q So now let's scroll down. Oh, before we do,
3 do you see the attachments, "Business Sale MACC,
4 8/29/2011 MACC"? Do you see that?

5 **A Yes, I see those.**

6 Q And this is an email exchange with you on it?

7 **A I see that.**

8 Q And dated August 29, 2011, right?

9 **A I see those, yes.**

10 Q And now let's scroll down to the next email.
11 And then we see an August 30, 2011 email, 9:55 a.m.,
12 from you to Lew Lee. And you wrote "Hi, Lew. There's
13 some big things left out of this agreement regarding
14 buying Mosler Automotive (Mosler Auto Care Center)" --
15 You even put it in parentheses to clarify,
16 right?

17 **A Yes.**

18 Q Meaning MACC, correct?

19 **A Yes, MACC.**

20 Q -- "that must be included. If Jim didn't
21 catch this" --

22 Jim meaning Lew Lee's associate, correct?

23 **A One of the con team, yeah, I presume.**

24 Q -- "it might be wise to have Robyn" -- meaning
25 your attorney, right?

1 **A That's my attorney, yes.**

2 Q -- "review the docs." And then you put in
3 parentheses "(quietly)." Tell this judge and this jury
4 why you said "quietly" in parentheses.

5 **A I actually have no idea. I don't remember why**
6 **I would have said that back then.**

7 Q And you made comments in this email to the
8 agreement to purchase MACC, right?

9 **A Yes. It was because I had a deposit down and**
10 **I still, in every single way, believed that my deposit**
11 **was refundable.**

12 **If Lew Lee popped up with the money and wanted**
13 **to step into my deal and buy me out, my position for**
14 **\$2.5 million and all that, that would be fine.**

15 Q Next document --

16 **A And nowhere, at any time, did anyone say "Hey,**
17 **Todd, we changed the deposit to be nonrefundable**
18 **forever." No one ever told me that.**

19 Q This is internal 316.

20 **A Ever. Mr. Mosler could have said that at any**
21 **time, but he never did either.**

22 Q You've been handed a document that's been
23 marked internal 316.

24 MR. WEBER: Move this document into evidence.

25 MR. ZAPPOLO: No objection.

1 THE COURT: Madam Clerk, 74?

2 THE CLERK: Yes.

3 (Thereupon, Defendants' Exhibit 74 was
4 received into evidence.)

5 BY MR. WEBER:

6 Q Exhibit 74 is another email exchange between
7 you and Mr. Lew Lee, right?

8 A It's from some element of the con team, I
9 don't know who, and me.

10 Q It's dated August 30, 2011, correct?

11 A Yes.

12 Q Just before the September 1st deadline,
13 correct?

14 A There was not a September 1st deadline as far
15 as I knew of my deal.

16 Q And it says "Hi, Todd. FYI, please look
17 over." Now let's scroll down this email.

18 In this chain with Lew Lee, you see Alan
19 Simon, MACC's attorney, right?

20 A Yes. So they were --

21 Q Keep scrolling.

22 A -- talking -- excluding me in this stuff and
23 then I wind up seeing part of it at the end. It's
24 interesting that --

25 Q Next we see the email --

1 **A** **-- Mr. Mosler excluded me.**

2 **Q** Hold on, Mr. Wagner, hold on.

3 **A** **Okay.**

4 **Q** There's another email from Alan Richard Simon,
5 between Alan Richard Simon and Lew Lee and Warren
6 Mosler.

7 **A** **Well --**

8 **Q** And he's saying "Your requested revisions have
9 been made to the sale of business agreement," right?
10 Now let's keep going.

11 You see another email, which you received by
12 virtue of this email, in the chain. James Hurley, Lew
13 Lee's associate, emailing Alan Richard Simon, MACC's
14 attorney. Let's keep going.

15 Again in the chain Alan Richard Simon to James
16 Hurley. It says "I have an appointment tomorrow
17 afternoon accordingly based on a 9/1 closing date.
18 Please send your comments tonight or tomorrow morning so
19 they can be addressed." Keep going.

20 Another email: "We have been provided with
21 your draft copy of the sale of business agreement in
22 connection with the referenced planned acquisition,"
23 correct? Keep going.

24 **A** **Wait, wait. Do you want me to answer? You**
25 **said "correct." Am I going to answer or no?**

1 Q Do you see that written there, yes or no?

2 A I see --

3 Q Yes or no?

4 A I see emails that are excluding me between
5 Warren Mosler and his attorney and the con team, and
6 they explicitly exclude me because they're keeping it a
7 secret from me. That's the thing here, okay?

8 Q Keep going. Keep going down.

9 A Mr. Mosler knows he's supposed to keep this
10 secret from me.

11 Q Here's an email with you on it, James Hurley,
12 and Lew Lee. Again in the chain we see Alan Richard
13 Simon from MACC, correct?

14 A Hold on a second. Where are you? I really
15 can't read the screen. It's too small for me from here,
16 so I have to follow it here or we can blow it up.

17 Q Which part would you like blown up,
18 Mr. Wagner?

19 A Whatever you're pointing at. I'm not trying
20 to be difficult, but this print is not that great. Just
21 relax, let me -- I'm doing the best I can for you, I
22 promise.

23 Q Are you okay, Mr. Wagner?

24 A I absolutely am. I'm just trying to follow
25 along.

1 Q Do you need a break?

2 A No, I do not. What page are you on?

3 Q It's the August 30, 2011 email.

4 A Can you give me the Bates number? I can
5 follow that -- okay. All right. I can see it now up
6 there.

7 Q And it's in the chain with the email --

8 A Okay.

9 Q -- between you and Lew Lee, right?

10 A So down below it says from Alan --

11 Q Hold on. Can you see that, Mr. Wagner? I
12 want to make sure you're following me.

13 A I can see everything here.

14 Q Okay. Keep scrolling down.

15 A I can see that I'm excluded from the part
16 where Warren Mosler and his attorney are talking about
17 this thing. I'm excluded --

18 Q Again, you see an email from Alan Richard
19 Simon in the chain --

20 A Excluding me. I'm excluded with Lew Lee and
21 all of this stuff.

22 Q -- and James Hurley and the sale of business
23 agreement.

24 A I am --

25 Q Hold on, Mr. Wagner. Keep going.

1 And then you have a comment here. Do you see
2 the email from James Hurley to you with two attachments?
3 This is August 30th. One is called "Business Sale MACC
4 Marked Revision." That's a purchase agreement for MACC
5 from Mr. Lew Lee, right?

6 **A Do you have it here?**

7 Q You don't know?

8 **A I don't know.**

9 Q Okay. Let's keep going.

10 **A If it's here --**

11 Q There's an email from you in response to Lew
12 Lee's email with "FYI, please look over."

13 **A Right.**

14 Q Mr. Lew Lee sent you the draft purchase
15 agreement for MACC, correct?

16 **A So --**

17 Q Well, yes or no?

18 **A Lew Lee and Mr. Mosler --**

19 Q Mr. Wagner, I don't want an explanation. Yes
20 or no?

21 **A Okay. All the secret discussions --**

22 Q Mr. Wagner, Mr. Wagner, I'm asking you --

23 **A -- are being forwarded to me here.**

24 Q I'm asking you to answer my question.

25 **A All right. So --**

1 Q Yes or no --

2 A -- answer?

3 Q -- did Lew Lee send you the purchase agreement
4 that he was using to purchase MACC?

5 A **Someone from the con team apparently did.**

6 Q And you wrote in response "I stand corrected"?

7 A **Right.**

8 Q Keep scrolling down.

9 And more comments in the chain. Keep going.

10 You wrote to -- this is -- Mr. Lew Lee wrote
11 to you "Thanks"?

12 A **Someone from the con team wrote me "Thanks."**

13 Q Now September 1st rolls around. You and Lew
14 Lee did not close on your purchase of MACC, correct?
15 Yes or no?

16 A **You are mischaracterizing that Lew Lee and
17 me --**

18 Q Let's --

19 A **It's really an incorrect question.**

20 Q -- put it in your terms.

21 A **Okay.**

22 Q On September 1st did Lew Lee close his
23 purchase of MACC?

24 A **So the con --**

25 Q Is it a yes or a no, Mr. Wagner?

1 A There's no Lew Lee in existence. I don't --
2 I'm not going to --

3 Q Let me put it in a different way. Is the
4 person who you thought was Lew Lee -- did the person you
5 thought was Lew Lee close his purchase of MACC on
6 September 1st?

7 A As I understand it from seeing things in the
8 document dump I got in 2019 --

9 MR. WEBER: Move to strike.

10 THE WITNESS: I'm just trying to explain. No,
11 he didn't.

12 BY MR. WEBER:

13 Q Mr. Wagner --

14 A I'm really not trying to be difficult, sir.
15 No, he did not because there was some extenuating
16 circumstance.

17 Q I understand. I'm asking you questions,
18 right?

19 A Yes. I'm sorry, I apologize. I'm really -- I
20 will -- I'm just going to be quiet and just -- no,
21 whoever it was behind that email did not close.

22 Q Now, previously Lew Lee had told you that he
23 had guaranteed financing in place, right?

24 A The con team very frequently said things like
25 this and it was all a lie.

1 Q Lew Lee was the investor that you were
2 focusing on to provide funds in furtherance of
3 purchasing MACC, right?

4 A **He was one of several. And it's not Lew Lee,**
5 **it's maybe Ralph, the con team, I don't know. And that**
6 **is an important thing: This is all a con.**

7 Q However, if you needed funds from other
8 people, then you could have asked your father, right?

9 A **Absolutely.**

10 Q However, you never had a firm commitment from
11 your father where he would provide you funds, right?

12 A **That is incorrect.**

13 Q That's incorrect? Okay.

14 A **That's absolutely incorrect.**

15 Q Pull up your deposition.

16 A **He would have done it.**

17 Q Hold on, Mr. Wagner. There's no question
18 pending.

19 This is your deposition taken February 2016.

20 Let's go to page 27.

21 Let's start here on line 15 --

22 A **Can you zoom in, or can you give me the**
23 **packet?**

24 Q Page 11 -- I'm sorry, page 27.

25 A **Okay.**

1 Q Now, let's look at your answer on 15: "Um, if
2 I needed funds from other people, I would be able to get
3 it from my family.

4 "Question: From who in your family?

5 "Answer: From my father.

6 "Question: Did you ever have an agreement
7 with him that he would provide you funds to purchase
8 MACC?"

9 MR. ZAPPOLO: Hold on, is this a different
10 deposition?

11 MR. WEBER: It's a different deposition.

12 MR. ZAPPOLO: What deposition is this?

13 MR. WEBER: The February 2016 one. Do you
14 need time to get it?

15 MR. ZAPPOLO: Yes. Give me a moment, please.

16 MR. WEBER: No problem.

17 MR. ZAPPOLO: Or if you guys have a copy --

18 MR. WEBER: We'll be happy to provide you with
19 a copy.

20 MR. ZAPPOLO: Thank you.

21 BY MR. WEBER:

22 Q "Question: Did you ever have an agreement
23 with him that he would provide you funds to purchase
24 MACC?

25 "Answer: We had discussed it.

1 "Question: Did you have any firm commitments
2 from your father to provide you with funds?

3 "Answer: No, not from him."

4 Do you remember giving that testimony in this
5 case?

6 **A Yes. We never had anything in writing. He**
7 **said he would, and I would only do it in the event that**
8 **I felt confident that it was a good investment for him.**
9 **And I needed to have signed stuff in place and to**
10 **lump --**

11 **All right. I'm going to stay quiet on this.**
12 **My father certainly would have and had the money to do**
13 **it.**

14 Q Hold on, Mr. Wagner. There's no question
15 pending.

16 Now, after Lew Lee failed to close, you were
17 heartbroken, right?

18 **A No.**

19 Q No?

20 **A Absolutely not.**

21 Q Your testimony today is that you were not
22 heartbroken when Lew Lee failed to close on
23 September 1st?

24 **A No. Why would I care?**

25 Q You didn't pour your heart out to Abby Cubey

1 in an email?

2 **A Pour my heart out?**

3 Q Yeah.

4 **A Let me see what you got.**

5 Q Well --

6 **A I had plenty of other options.**

7 Q Well, did you --

8 **A If it was a great option -- if Lew Lee**
9 **actually was legitimate, it would have been great and**
10 **fine, but it's not like I was heartbroken. And I always**
11 **had exclusive distributorship. If someone else bought**
12 **the company, that was totally fine with me at all times.**

13 **They'd give me my \$100,000 deposit back and I**
14 **get to be an exclusive distributor and someone else is**
15 **doing the hard work and building the cars.**

16 Q You didn't express disappointment to --

17 **A Of course I was a little disappointed.**

18 Q Hold on, Mr. Wagner. Let me finish the
19 question.

20 **A Okay, okay. I thought you were finished.**

21 Q You didn't express disappointment to Abby
22 Cubey immediately after Lew Lee failed to close the
23 purchase of MACC on September 1st, yes or no?

24 **A I expressed disappointment, I imagine, but --**

25 Q Let's look at another document.

1 **A That's it.**

2 Q Let's look at internal 319.

3 MR. WEBER: Move this document into evidence.

4 MR. ZAPPOLO: No objection.

5 THE COURT: Madam Clerk, what number?

6 THE CLERK: 76.

7 THE COURT: Thank you.

8 THE CLERK: Sorry, 75.

9 (Thereupon, Defendants' Exhibit 75 was
10 received into evidence.)

11 BY MR. WEBER:

12 Q It's a composite email. Let's start with the
13 first one. September 2nd, Lew Lee sends an email.
14 There's no "To" -- the email address is in the "To"
15 field. Do you see that?

16 **A Yes. It's the con team man to the con team**
17 **group and probably other people, including me.**

18 Q And you got this document because you were
19 blind carbon-copied, correct?

20 **A I presume that's how this is, yeah.**

21 Q And Mr. Lew Lee is providing a September 1st
22 update because he failed to close the deal on
23 September 1st, right?

24 **A It doesn't say that here. He was just giving**
25 **a September 1st update. This was the stuff he did**

1 regularly claiming that oh, it's just another week away
2 and da, da, da. This is just a part of his scam. He
3 was probably running scams all over the country very
4 similar to this.

5 Q Let's scroll down.

6 A Which I have no doubt about it. This is going
7 back to the \$1 million.

8 Q And there's a second email included in this
9 document, September 4, 2011?

10 A Yes.

11 Q It's an email from you to Lew Lee?

12 A Yes.

13 Q And you go right back trying to purchase MACC
14 with Lew Lee, don't you?

15 You couldn't purchase it by September 1st, but
16 you're not giving up. You want to make another run at
17 it, don't you?

18 A Could you just ask the question succinctly so
19 I know exactly what you're talking about?

20 Q I'll ask it again.

21 A Okay.

22 Q On September 4th, you wanted to take another
23 run at trying to purchase MACC with Lew Lee, correct?

24 A If Lew Lee becomes an investor, that's fine.
25 If not, I don't care. And here, you can see that the

1 purchase price is 500,000 because Mr. Mosler stripped
2 out all the assets secretly.

3 So it's like the whole analogy I was making
4 earlier. You go and put a \$10,000 deposit down to buy a
5 \$100,000 company, and when you go to buy it and it's
6 "Oh, there's no engine."

7 "Well, why is there no engine?"

8 "Oh, I sold off the engine." And so, you
9 know, it makes no sense to actually buy it when he's
10 gutted the company. He has -- he's breached --

11 Q Let's take a look at your email here,
12 September 5, 2011.

13 A It's now \$500,000.

14 Q You wrote to Ms. Abby Cubey "Hottie, I think
15 I've finally stumbled upon a sweet nickname for my girl.
16 I keep thinking about 'honey' and I don't want to have
17 the same nickname as everyone else. I think you're
18 really hot and when I think of you and say 'hottie,' it
19 makes me smile. Below is the update from Lew." That's
20 referring to Lew Lee, correct?

21 A That's someone from the con team.

22 Q Named Lew Lee, right?

23 A I don't know what his name is. We've gone
24 over this a thousand times.

25 Q "After I sent him the exec summary that I sent

1 to you, I'm starting to have some peace about
2 everything."

3 By "everything," you're referring to Lew Lee
4 failing to close by September 1st, right?

5 A Well, it's that and the fact that Mr. Mosler
6 gutted the company without telling anybody.

7 Q "This is a big test to see if we can push
8 through the valley of disappointment" because you were
9 disappointed that Lew Lee failed to close on
10 September 1st, right?

11 A I was mildly disappointed. If it worked out,
12 great. And Mr. Mosler had honored his agreement and not
13 gutted the company -- so the thing is even if Lew Lee
14 was a legitimate human being and he did go to close on
15 September 1st -- not that there was any deadline that
16 I --

17 You know, my exclusivity extended until
18 September 29th. It was breached because Mr. Mosler sold
19 off the three finished cars. He did that, and he
20 actually testified about that. One of them went to
21 Thomas Olofsson. We never knew that until now, but it's
22 just unreasonable in every way.

23 And so, yeah, I was disappointed by the
24 actions of Mr. Mosler and I was disappointed in the fact
25 that, you know, this guy keeps promising the moon and

1 obviously he was a con artist, and I was an idiot who
2 was believing that.

3 Q I'm showing you what's been marked 328.

4 MR. WEBER: Move this document into evidence.

5 MR. ZAPPOLO: No objection.

6 THE COURT: Madam Clerk, what number?

7 THE CLERK: 76.

8 THE COURT: Thank you.

9 (Thereupon, Defendants' Exhibit 76 was
10 received into evidence.)

11 BY MR. WEBER:

12 Q Okay. I'm showing you 328. And a few days
13 later, after you had mentioned the \$500,000 to Lew Lee,
14 you sent this email to Warren Mosler on September 19,
15 2011, correct?

16 A Yes, sir.

17 Q And with Lew Lee you were taking another
18 shot --

19 A No.

20 Q -- at purchasing MACC, correct?

21 A No, absolutely incorrect. It doesn't even say
22 that here. You're just inserting it yourself.

23 Q So you don't think --

24 A This has nothing to do with Lew Lee at all.

25 Abby Cubey is one of my potential investors here and

1 also Dr. Sabahi, who was her business partner. His head
2 of security at one of the big LA hospitals in the
3 surgery center --

4 Q And it says "We are prepared to pay
5 \$500,000 on October 1st."

6 A Yes.

7 Q "That will leave us with enough money to
8 bootstrap the company forward. Are you open to this?"
9 Meaning you were making another attempt to purchase MACC
10 with Lew Lee, right?

11 A Absolutely, positively incorrect. Not with
12 the --

13 Q And you knew --

14 A -- con team. At this point I had -- you know,
15 whatever the con team was, it was pretty clear that they
16 were --

17 Q And you knew --

18 A And I still had exclusivity during that time.

19 Q Hold on, Mr. Wagner, hold on. And you knew
20 that it was not enough to call off the others offering
21 twice that because Mr. Mosler told you there were others
22 who were now trying to purchase MACC, right?

23 A Yes, he did.

24 Q On September 19th --

25 A He did state that.

1 Q -- you knew that others were purchasing --
2 were interested in purchasing MACC because Lew Lee's
3 exclusivity until September 1st had lapsed, right?

4 A No, absolutely not. I mean, even in the LOI,
5 which isn't even a contract, it doesn't say anything
6 about exclusivity, right?

7 Q Well, we saw the email from Lew Lee where it
8 said that Mr. Mosler had promised him exclusivity until
9 September 1st. Do you remember that email? Do you want
10 me to pull it up?

11 A Go ahead and pull it, up sure.

12 Q Okay. July 1st --

13 A I mean, I remember it.

14 Q Okay. You do remember?

15 A It's from the con team. And if Mosler wanted
16 to just volunteer that to him --

17 Q Hold on, Mr. Wagner, there's no question.

18 A -- who cares.

19 Q Let's just establish, you do remember the
20 September 1st -- the July 1st email I showed you where
21 Warren Mosler promised Lew Lee exclusivity until
22 September 1st, correct? You do remember, yes or no?

23 A I remember seeing it on the screen here. At
24 the time I kind of glossed over the fact that it was
25 only two months. I thought it was three months.

1 **Anyway, whatever.**

2 Q Now --

3 **A It's not important in this scheme.**

4 MR. WEBER: Your Honor, may we approach for a
5 second? Thank you.

6 (Thereupon, a sidebar conference was held.)

7 THE COURT: Now would be a good time for a
8 break, okay?

9 MR. WEBER: Yeah.

10 THE COURT: So we'll break for lunch. It's
11 12:45. I'd like to give them at least an hour to
12 eat and stretch their legs and that puts them back
13 here at 1:45, okay?

14 MR. WEBER: Perfect.

15 THE COURT: It's a late lunch, but it is what
16 it is.

17 MR. WEBER: Okay.

18 (Thereupon, the sidebar conference was
19 concluded.)

20 THE COURT: Ladies and gentlemen, it's been a
21 long morning. We're going to break for lunch now.
22 I'd like to give you guys about -- why don't we
23 meet outside with the deputy -- we'll say 1:45,
24 1:50, okay? That will give you guys about an hour
25 to eat and stretch your legs a little bit and we'll

1 come back. I appreciate your patience.

2 All right. We'll be in recess for about an
3 hour.

4 (Thereupon, a lunch break was taken from
5 12:46 p.m. to 2:18 p.m.)

6 THE COURT DEPUTY: Come to order. Court is
7 now in session.

8 THE COURT: All right. Let's bring them back
9 in.

10 THE COURT DEPUTY: Jury entering.

11 (Jurors entering the courtroom at 2:18 p.m.)

12 THE COURT: All right. Please be seated.
13 It's your witness.

14 MR. WEBER: Thank you, Your Honor.

15 BY MR. WEBER:

16 Q Mr. Wagner, where we left off, we were in
17 September 2011, and we were on Exhibit 328 internal.

18 Just to refresh your recollection of where we
19 were in the timeline when we left before the break, we
20 were on September 19, 2011. Do you remember?

21 **A Yes.**

22 MR. WEBER: Okay. Scott, do you have any
23 objection?

24 MR. ZAPPOLO: I'm sorry, what was it you just
25 flashed? Because my last exhibit was 57; is that

1 correct?

2 MR. WEBER: No.

3 MR. ZAPPOLO: I apologize. No objection.

4 THE COURT: Madam Clerk, what number?

5 THE CLERK: 77.

6 (Thereupon, Defendants' Exhibit 77 was
7 received into evidence.)

8 BY MR. WEBER:

9 Q Okay. I'm handing you internal 333.

10 Okay. Let's go to the bottom of this chain.

11 Okay. So now we are on September 20, 2011.

12 That is the date after the email we just saw, right?

13 A Yes.

14 Q And this document is an email exchange between
15 you and Warren Mosler, correct?

16 A Yes. I mean, I see it over to Jill and
17 Sylvia, yes. Yeah.

18 Q Now there's an email here, September 20, 2011,
19 at 2:50 p.m., from Warren Mosler. And do you see where
20 it says "Also, I'm thinking the chance of the others
21 closing this week is slim, so if you want to come to an
22 agreement for an October 1st closing sub to the others
23 preempting you, let me know." Do you see that?

24 A Yes, I do.

25 Q And he's writing that in response to your

1 email sent after September 1st when the person who you
2 will not refer to as Lew Lee failed to close because now
3 you've approached Mr. Mosler with a new offer to
4 purchase MACC, right?

5 **A Well, it's not necessarily like you're saying**
6 **this and this. I knew that Lew Lee's \$10 million -- who**
7 **knows \$50 million thing he kept promising didn't happen,**
8 **so all right, fine.**

9 **And at this time I already knew that**
10 **Mr. Mosler had gutted the company, so -- and that's why**
11 **the price is now 500,000. And he gutted it way before**
12 **September 1st, just for the record.**

13 Q So, let's see. On September 20th you
14 respond --

15 **A Yes, this is a long time.**

16 Q -- "Yes, that would be great. Since you've
17 recently been through the exercise, could you modify
18 what you had previously and send to me for review?"

19 Meaning that because Mr. Mosler had just been
20 through the exercise with Lew Lee, you wanted him to
21 modify the purchase and sale agreement and send it to
22 you, correct?

23 **A No, that's incorrect.**

24 Q Okay. Well, let's keep scrolling up.

25 Now the next email is Warren Mosler. He

1 writes to you "Let's start from scratch. I'm asking
2 \$1 million upfront in exchange for the MT900 inventory,
3 and all that goes with it, with me keeping 20 percent of
4 the new business. Your turn."

5 Let's scroll up. And you respond now with
6 this 500 offer, right?

7 **A Yes. So Mr. Mosler had breached the**
8 **\$1 million that I had by selling off the assets. So**
9 **instead of like, you know, having a fit about it, I'm**
10 **like all right. Let's just have a lower price. I still**
11 **wanted to buy the company, and I still had the deposit**
12 **in place.**

13 Q Nowhere in here do you say that, you know,
14 "Mr. Mosler, you breached our prior agreement and
15 sold" --

16 **A I try not to --**

17 Q Hold on, Mr. Wagner.

18 **A Okay. Go ahead.**

19 Q Nowhere in this email do you say "Mr. Mosler,
20 you breached our agreement and you sold off the
21 inventory," correct?

22 **A I try not to be mean.**

23 Q Yes or no?

24 **A No, it's not my style.**

25 Q Okay. Let's scroll up.

1 Now this is a in-line email. This is going to
2 be a little tricky to read, but there's actually two
3 emails in the next email here.

4 The original email is your September 20th
5 email at 3:39 p.m., and then you see Warren Mosler's
6 reply interlineated in your email. Is that fair to say?

7 **A Yes.**

8 Q Okay. So it looks like you wrote "The guys
9 doing this wanted 100 percent for \$500,000."

10 That's referring to Lew Lee, right? We saw
11 your September 4th email.

12 **A No, it is not.**

13 Q You wrote "It's monster-risky."

14 **A Well, that is true.**

15 Q And then --

16 **A It is monster-risky.**

17 Q -- you wrote -- actually, Mosler wrote "I can
18 just keep selling the inventory and get that much."

19 Meaning that Mr. Mosler had this inventory and
20 he could just sell the inventory and get
21 \$500,000 without even selling MACC itself, correct?

22 **A Oh, I presume that's what he's talking about,**
23 **sure.**

24 Q Then you wrote "Yes, of course your stuff can
25 stay." And then you wrote "We don't need much space for

1 the five guys we usually have. How much are taxes?"

2 Mr. Mosler wrote "Don't know," correct?

3 **A Correct.**

4 Q Now scroll up.

5 Now, you wrote -- let's zoom in on this email.

6 This is September 20th, 3:49. You wrote "I understand

7 where you're coming from, but as you know, it's a cash

8 vacuum." You wrote "it's a cash vacuum" referring to

9 MACC, right?

10 **A Yes. Well, I'm here trying to sort of like**
11 **not make him jack the price up. You know, I'm trying to**
12 **say "Hey, you know, it's risky. Make sure you give us a**
13 **good price."**

14 Q And you wrote "There's major work to be done
15 to get something to profitability" because you knew, as
16 of September 20, 2011, that MACC was not profitable. It
17 was a cash vacuum, right?

18 **A It was cash flow neutral around this time. I**
19 **think there's plenty of documents showing Jill Wagner's**
20 **projections showing that it was not that way. In the**
21 **past it had been, but a long time ago when the cars were**
22 **not as good.**

23 Q And then you wrote "There are also risks with
24 future certifications and airbags exemptions, et
25 cetera."

1 What are the risks of future certifications
2 you're referring to there?

3 **A Over time, out in the future, you would have**
4 **to do some simulations for -- it's a side impact -- a**
5 **new side impact was coming up. I think it's like a pole**
6 **strike, so imagine you're going sideways in a car and**
7 **you hit a telephone pole. But that actually wouldn't be**
8 **that difficult to pass in the Mosler because all of the**
9 **people are way inside.**

10 So it's like an enormous crash structure being
11 on the outside edge of the door and then where the
12 people are sitting. So it would be easy to add some
13 more carbon fiber in there, but it would probably pass
14 just the way it is because the chassis is so, so, so
15 strong. They said it's the strongest car that the test
16 lab ever tested in a roof crush, and the roof is a part
17 of that structure that would protect it against that
18 impact.

19 Q You knew that certification referred to EPA
20 certification when you wrote this email, didn't you,
21 Mr. Wagner?

22 **A Certification is both the crash stuff and the**
23 **EPA. The EPA --**

24 Q And you wrote --

25 **A -- I wasn't concerned about so much, it was**

1 **that pole strike that I was referring to.**

2 Q And you wrote "It's a mine field that many
3 people have backed away from for good reason."

4 You're referring to people that had looked
5 into purchasing MACC and then backed away from it when
6 they failed to get the answers they wanted from you in
7 response to their issues about compliance, like we saw
8 with Savvas and Mark Brown, right?

9 A **No, that's incorrect.**

10 Q And then you wrote "I know the possibilities
11 better than anyone, and I'm scared" --

12 A **That's true.**

13 Q -- "out of my mind... but there is potential."

14 A **There is potential.**

15 Q And then you wrote "The chassis is
16 spectacular." Is that the Raptor you're referring to?

17 A **The chassis is the actual -- like the main
18 center part of the car and the roof structure.**

19 Q Of the Raptor, correct?

20 A **Of the RaptorGTR, yeah, and it's excellent.**

21 Q And you wrote "It just needs to be profitable.
22 That's the tough part, especially on a 10-year-old
23 design." Because you knew even the Raptor had
24 challenges --

25 A **No.**

1 Q -- because it was a 10-year-old design. And
2 even though you're sitting here today saying how
3 profitable it would be in September of 2011, you knew
4 there were obstacles, correct?

5 A **Incorrect. The chassis is the center part of**
6 **the car. It's the same on the MT900 as it is on the**
7 **RaptorGTR. That is the structural elements and that**
8 **part is excellent.**

9 And, holistically here, I had observed
10 **Mr. Mosler trying to shuck and jive when he was selling**
11 **off assets and all these things. So imagine you go and**
12 **you're looking for a house. You don't come to the house**
13 **and say "Oh, wow, I love this house. This is my dream**
14 **house. I'll pay you whatever you want."**

15 **No. You go in and try and keep your game face**
16 **on. This is me keeping my game face on.**

17 Q Okay. So now let's look at the next email.
18 You wrote "I mean no disrespect whatsoever, but knowing
19 what it takes to get the chassis into a saleable
20 condition and the time, nine months from this point, I
21 don't want to put my neck on the line." Because you
22 didn't --

23 What you're doing in this email is summed up
24 in this last line here, "You can take this as your
25 fall-back position in the event the other guys don't

1 come through." Because you knew, again on
2 September 20th, that other people were seeking to
3 purchase MACC and you did not have any exclusive right
4 to purchase MACC despite your testimony that you
5 allegedly had three months from the date of the \$100,000
6 deposit; isn't that right?

7 **A No, that's incorrect.**

8 Q So if you had an exclusive right to try and
9 purchase MACC, according to you, from the date you put
10 in the \$100,000, why would you take this as a fall-back
11 position and why would you not say anything when you're
12 on all of the documents with Lew Lee?

13 **A Okay. So which -- there's two questions, I**
14 **think, there. Do you want to ask one first and then the**
15 **other?**

16 Q Well, let me put it this way: You knew that
17 you didn't have any exclusive right to purchase MACC
18 three months after the \$100,000 deposit on June 29th,
19 correct?

20 **A I had an exclusive right to buy the company**
21 **with all of the assets that were still there, the three**
22 **cars included, for \$1 million.**

23 Q Yet you were willing to be the fall-back
24 position even if the other guys couldn't come through,
25 right?

1 A So Mr. Mosler breached that by selling off the
2 three cars, so that changes the sort of landscape for
3 what it's going to take to sort of bring it to
4 profitability.

5 And as I mentioned to you guys before, I was
6 happy being a distributor. I would get my \$100,000
7 back. I'd be an exclusive distributor in China,
8 Thailand, Saudi Arabia, and I would make a boat load of
9 money doing that and have a lot of fun.

10 So I was at all times happy to simply be a
11 distributor. And if I helped with engineering, that
12 would be just fine. There's nothing wrong with that.

13 Q So by your own testimony just now, you
14 basically agree that you didn't have an agreement with
15 Mr. Mosler --

16 MR. ZAPPOLO: Objection.

17 BY MR. WEBER:

18 Q -- as of September 20th because you just said
19 that --

20 THE COURT: Let's approach.

21 BY MR. WEBER:

22 Q -- in your mind he breached --

23 (Thereupon, a sidebar conference was held.)

24 THE COURT: What's the objection?

25 MR. ZAPPOLO: Totally misstates the testimony.

1 He just said -- he just said by your own testimony
2 you agree --

3 THE COURT: It's Cross-Examination. He's
4 allowed to interpret the witness. That's why it's
5 one of the best vehicles to ascertain through --
6 you're going to have the ability to do Redirect and
7 the jury will have the ability to reject or accept
8 portions of his testimony. That's their function.
9 Overruled.

10 (Thereupon, the sidebar conference was
11 concluded.)

12 BY MR. WEBER:

13 Q Okay. Mr. Wagner, do you want me to repeat or
14 rephrase the question for you?

15 A Sure, whatever you like.

16 Q There was no agreement between you and
17 Mr. Mosler even in your theory of what happened because
18 you're alleging that, as of September 20th, Mr. Mosler
19 breached the alleged agreement because he allegedly sold
20 off the assets, correct?

21 A One more time, please. There was a lot there.

22 Q Well, it's a lot. I'm trying to get it out as
23 best as I can.

24 A All right. One more time, please.

25 Q All right. Let me try it again. Your theory,

1 sitting here today, is that from the date that the
2 \$100,000 was put in, you believe that you had exclusive
3 rights from three months from June 29th to purchase
4 MACC. Are you following me?

5 **A Yes, that is correct.**

6 Q But by your own testimony, you say Mr. Mosler
7 breached that alleged agreement by then selling off the
8 assets, right?

9 **A Yes, that is true.**

10 Q So don't you agree, even under your own
11 theory, that after that alleged sell-off, you have no
12 more agreement with Mr. Mosler?

13 **A I mean, there was an agreement that he**
14 **breached. As far as like if this is asking for a legal**
15 **conclusion, I don't know, I'm a little confused here.**
16 **But regardless, I'm just trying to get along here. He**
17 **did it and I don't like it, but he did it and it's done.**
18 **So instead of, like, going off in the corner and crying**
19 **about it, I just come back and said, "Hey, you know, you**
20 **did this, all right, \$500,000, and let's just move on**
21 **with our lives."**

22 Q Well --

23 **A "And if you want someone else to buy it,**
24 **that's fine." At all times I'm perfectly fine just**
25 **being a distributor. I would have been fine if Savvas**

1 **bought it so long as he honored his agreements.**

2 Q Well, the reality is there was no such
3 agreement between you and Mr. Mosler because the
4 \$100,000 was put in through Lew Lee's deal which you
5 agreed to, right?

6 A **No, no, no, no, no, no.**

7 Q And you just mentioned --

8 A **No.**

9 Q -- Savvas. As of September 2011, you were
10 aware that Savvas was back to attempting to purchase
11 MACC, correct?

12 A **After my company achieved the RaptorGTR**
13 **certification, Mr. Mosler sent that to everybody and**
14 **they all wanted to come back because that's what made**
15 **the company valuable and, in my view, that seemed a**
16 **little underhanded. He didn't tell me he was doing**
17 **that. He did that all behind my back, just like**
18 **everything else was behind my back.**

19 Q Let me ask you the question again: Yes or no,
20 you knew, in September 2011, that Savvas Savopoulos --
21 who we saw back in 2010 earlier in the examination --

22 A **Right.**

23 Q -- was now reengaged and we're about to see
24 that Savvas Savopoulos is again about to start
25 attempting to purchase MACC, right?

1 A Yes. I'm trying to, like, just -- I keep
2 hearing you say "right" with all this emphasis in it.
3 It takes me a minute to kind of -- I'm trying not to
4 laugh or anything, okay? I'm really trying hard.

5 So in October 7th -- on October 7th --

6 Q We're not there yet.

7 A Well, you asked me when I knew, and that's the
8 date I knew because I got an email about it on
9 October 7th. Not now, this is September 20th. On
10 October 7th I was informed by Ms. Wagner.

11 Q So you didn't know before October 7th that
12 Savvas Savopoulos had reengaged and was seeking to
13 purchase MACC prior to October 7th?

14 A No, I did not.

15 Q Okay. We'll get there. I want you to look at
16 this line right here. And you said, "And you know I'm
17 already insane for working for nothing for the last
18 eight months."

19 When you said "I'm already insane," did you
20 mean legally insane or just casually insane?

21 A You know the answer to this. I do not mean
22 legally insane. I was just saying I've been going all
23 in on this. And I was, I was all in. My mind, body,
24 soul, every dollar I had was in on this.

25 Q So just casually insane you were, right?

1 **A I was speaking off-the-cuff.**

2 Q Now you wrote "I'm already insane for working
3 for nothing for the last eight months."

4 We're going to take a little diversion here.

5 You were referring to the EPA approval work, right? You
6 can put that down.

7 **A Oh, sorry, I was just looking at the screen.**

8 **So eight months from September, so Mr. Mosler laid me**
9 **off with zero severance --**

10 Q Hold on. It's a yes-or-no question. You're
11 referring to EPA approval work, right?

12 **A Yes.**

13 Q Because one of the claims in this case is SEI
14 is alleging that it was unpaid for certain EPA approval
15 work. We're going to take a little diversion here.

16 **A Okay.**

17 Q So you're alleging that work was in 2011,
18 right?

19 **A Yes.**

20 Q And in 2004, SEI began doing work for MACC
21 pursuant to a written contract, right?

22 **A Yes. A written contract that --**

23 Q Exhibit 39.

24 **A -- expressly expired on December 31, 2004.**

25 Q I'm handing you a document, which is internal

1 39.

2 MR. WEBER: Move this document into evidence.

3 MR. ZAPPOLO: No objection.

4 THE COURT: Madam Clerk, is that number 78?

5 THE CLERK: Yes.

6 THE COURT: Thank you.

7 (Thereupon, Defendants' Exhibit 78 was
8 received into evidence.)

9 BY MR. WEBER:

10 Q Okay. Pull up 39.

11 Now Exhibit 39, which is admitted as
12 Defendants' 78, is the Consultant Agreement, which is
13 the written contract, right?

14 A Yes.

15 Q Now under this contract, SEI was given monthly
16 payments, right?

17 A Yes.

18 Q SEI would submit invoices to MACC and then
19 payment was tendered, right?

20 A Yes.

21 Q For SEI's approval of work, you were paid
22 for -- SEI's EPA approval work, you were paid only in
23 terms of credits towards the purchase of the car,
24 correct?

25 A One more time. I just feel like there was

1 **something missing there.**

2 Q Instead of -- well, spoiler alert, I'm going
3 to be reading from your transcript, but for SEI's
4 approval work, you were paid only in terms of credits
5 towards the purchase of the car, right?

6 **A So --**

7 Q Wait. Yes or no?

8 **A No.**

9 Q Okay. Let's pull up number 2.

10 Mr. Wagner, do you remember your deposition on
11 in February 2016, correct?

12 **A Yes.**

13 Q You testified under oath that day, right?

14 **A Say that again.**

15 Q You testified under oath that day?

16 **A Yes.**

17 Q Go to page 100.

18 Okay. So look right here on line --

19 **A Is this the same one I have here?**

20 Q Do you have it there, Mr. Wagner?

21 **A I think so.**

22 Q Okay.

23 **A Yes.**

24 Q Okay. Let's start here on line 5. Actually,
25 let's start here on line 12. It writes "Anyway, in

1 2011, beginning of January 2011 I was laid off. Warren
2 wanted Supercar Engineering to continue working to
3 finish the certification of the RaptorGTR. Warren
4 Mosler paid Supercar Engineering only in terms of
5 credits toward the purchase of the RaptorGTR --

6 "Question: Okay.

7 "Answer -- that year.

8 "Question: So when you bought the RaptorGTR,
9 you got a reduced rate based on credits to SEI? Is that
10 how I'm understanding it?

11 "Answer: Supercar Engineering did all the
12 purchasing, but part of the -- instead of paying
13 Supercar Engineering this amount, then taking it" --
14 next page -- "back in the purchase, it was just credits
15 off." Do you remember that testimony?

16 **A Yes.**

17 Q Okay. The payments through the credits were
18 made by Sylvia Klaker noting it on the invoice for the
19 car specifically the amount that had been taken off from
20 the car based on the credits, right?

21 **A Right.**

22 Q Those credits extended until the middle of
23 April, right?

24 **A Right, but payments had been made --**

25 Q Hold on, Mr. Wagner. There's no question

1 pending.

2 **A There's a misunderstanding and -- okay. Fine.**

3 Q Okay. I'm handing you a document, which I am
4 marking for trial identification as 189.

5 MR. WEBER: Move this document into evidence.

6 MR. ZAPPOLO: No objection.

7 THE COURT: Madam Clerk, 79, please?

8 THE CLERK: Yes.

9 (Thereupon, Defendants' Exhibit 79 was
10 received into evidence.)

11 BY MR. WEBER:

12 Q Okay. Start at the bottom of this email.
13 We're going back in time a little bit, but this is
14 February 3, 2011. This document should be moved into
15 evidence as an email exchange between you and Warren
16 Mosler, right?

17 **A Yes.**

18 Q And on February 3, 2011, you wrote "As of now,
19 I owe \$22,966.11 on C32." C32, again, being the car,
20 right?

21 **A The car that became the RaptorGTR, yes.**

22 Q You wrote "Through the end of this month, I'll
23 have worked on the certification project for 7 weeks
24 without pay. (Work going toward SEI's purchase of C32
25 as agreed)." Do you see that?

1 **A Yes, I do.**

2 Q So you weren't working without pay, you
3 were -- your work was going towards SEI's purchase of
4 C32, right?

5 **A I wasn't getting any money in the bank, so I**
6 **was essentially having to live off of savings during**
7 **this --**

8 Q By choice --

9 **A -- up until --**

10 Q -- right?

11 **A -- April 15th.**

12 Q By choice?

13 **A Quasi by choice. Mr. Mosler laid me off**
14 **without choice. He laid off the other people without**
15 **choice, and we know Warren gave no severance whatsoever.**

16 Q But did you agree that your work with SEI --
17 SEI's EPA approval would go towards SEI's purchase of
18 C32?

19 **A Yes.**

20 Q Okay. Let's take this one down. 191.

21 I'm handing you a document that's marked for
22 identification as 191.

23 MR. WEBER: Move this document into evidence.

24 Any objection?

25 MR. ZAPPOLO: No objection.

1 THE COURT: Madam Clerk, is that Number 79?

2 THE CLERK: 80.

3 THE COURT: 80, thank you.

4 (Thereupon, Defendants' Exhibit 80 was
5 received into evidence.)

6 BY MR. WEBER:

7 Q Okay. We see here another email exchange from
8 you to Warren Mosler and Jill Wagner, correct?

9 A **That's between me and the two officers of**
10 **MACC.**

11 Q Again, this is February 3, 2011?

12 A **Yes.**

13 Q This is an email exchange, but this blue here
14 is your writing, correct?

15 A **Yes.**

16 Q So your --

17 A **It's black and white I have here, but on the**
18 **screen it's blue.**

19 Q The original email, where you wrote is "To
20 finalize purchase of the car, SEI would then pay MACC
21 \$6,434.98. SEI through myself will also finish out the
22 month working on the certification process," right?

23 A **Right.**

24 Q Meaning that SEI will continue working on the
25 EPA approval through the month of February 2011, right?

1 **A And that was going to continue on until**
2 **certification had been achieved.**

3 Q And then Mr. Mosler responded "Agreed on your
4 car, will wrap it up before closing."

5 And then you responded in this current email,
6 "Thank you. I'm expecting a loan to come in Tuesday, so
7 I should be able to buy it Wednesday."

8 You were talking about the chassis 32,
9 correct?

10 **A The base chassis, yes.**

11 Q Did you buy it on Wednesday?

12 **A I don't think so. I think -- I think**
13 **something changed, like the closing that he -- we're**
14 **discussing here didn't happen or something, like, along**
15 **those lines. I'm not remembering precisely, but --**

16 MR. WEBER: Mark this next document as trial
17 Exhibit 193.

18 (Thereupon, Defendants' Exhibit 193 was marked
19 for identification.)

20 BY MR. WEBER:

21 Q I'm handing you a document that's been marked
22 as trial Exhibit 193.

23 **A Okay.**

24 MR. WEBER: Move this document in evidence.

25 Any objection?

1 MR. ZAPPOLO: No objection.

2 THE COURT: Madam Clerk, 81?

3 THE CLERK: Yes.

4 (Thereupon, Defendants' Exhibit 81 was
5 received into evidence.)

6 BY MR. WEBER:

7 Q Okay. Let's got to the bottom.

8 **A So this is what I was referring to.**

9 Q Hold on, Mr. Wagner, there's no question
10 pending yet.

11 So now we see, in the end of February 23,
12 2011, you say "Hi, Warren. The certification work is
13 going very well. It will take more time to complete it,
14 and I'm still hoping that the company will be sold in
15 the next couple months. Are you okay with extending my
16 furlough through March with SEI being credited toward
17 the China car with what I would have otherwise earned in
18 salary for my work on certification, et cetera?"

19 Meaning that you were being paid, again this
20 time through the end of March, but this time through
21 credits and not through payments of money, right?

22 **A Yes.**

23 Q Now let's look -- keep going.

24 Do you see how it says here in this next email
25 "Mr. Mosler, February 23, 2011, any sales pending?"

1 He's asking you whether you have any sales of
2 cars pending, correct?

3 **A He's asking if sales are pending in general.**
4 **He's cc'ing Jill Wagner to see if, you know --**

5 Q For the whole company?

6 **A For the whole company, yeah.**

7 Q Okay. Let's scroll up.

8 You wrote "No sales pending." No sales in the
9 entire company as of February 23, 2011, right?

10 **A Yes. The original MT900 was -- had run its**
11 **course at this point. And the Corvette taillights had**
12 **always -- they had always been an issue from the**
13 **beginning. Even Mike Vietro, who's a Corvette dealer,**
14 **begged Mr. Mosler to get rid of the Corvette thing if he**
15 **could.**

16 MR. WEBER: Okay. Mark this next document as
17 195.

18 **THE WITNESS: So the Raptors would make it**
19 **profitable.**

20 (Thereupon, Defendants' Exhibit 195 was marked
21 for identification.)

22 BY MR. WEBER:

23 Q I'm handing you what's been marked as 195 into
24 evidence.

25 MR. WEBER: Any objection to moving this into

1 evidence?

2 MR. ZAPPOLO: No objection.

3 THE COURT: Madam Clerk, is that Number 82?

4 THE CLERK: Yes.

5 THE COURT: Thank you.

6 (Thereupon, Defendants' Exhibit 82 was
7 received into evidence.)

8 BY MR. WEBER:

9 Q Okay. Let's put this document back up.

10 Okay. This is another email. This one is
11 from you to Warren Mosler and Jill Wagner, correct?

12 **A Yes. It's me and the two officers of MACC.**

13 Q And, again, this email is referring to the
14 email approval work, also known as the certification
15 work, correct?

16 **A Yes.**

17 Q And let's look at the bottom paragraph. You
18 wrote "I would like to extend my furlough/SEI credit
19 toward C32 program until the end of April. I would
20 continue with certification and hang in there in hopes
21 that the company will find new capital and continue on.
22 Is this okay with you?" Right?

23 **A Yes.**

24 Q And again, you're agreeing in an email -- in
25 fact, you're requesting to extend your credit until the

1 end of April, correct?

2 A Right. Yes. I would like to continue until
3 certification has been achieved. That's what makes the
4 company profitable.

5 And Mr. Mosler kept, you know, trying to go
6 month by month getting approval, and he cut it off in
7 the middle of April instead of the end of April or even
8 beyond. It says "I'm told" --

9 Q Hold on, Mr. Wagner. I'm handing you what's
10 been marked as 340.

11 MR. WEBER: Any objection to moving this into
12 evidence?

13 MR. ZAPPOLO: What was the number?

14 MR. WEBER: Internal 340. Any objection to
15 moving this document into evidence?

16 MR. ZAPPOLO: No.

17 MR. WEBER: Okay.

18 THE COURT: Madam Clerk, is that 82?

19 THE CLERK: 83.

20 THE COURT: 83, thank you.

21 (Thereupon, Defendants' Exhibit 83 was
22 received into evidence.)

23 BY MR. WEBER:

24 Q Now, in this lawsuit, you are claiming unpaid
25 work from April to September -- what date?

1 **A September 28th is when the last payment came**
2 **through.**

3 Q And this email is dated September 30, 2011,
4 right?

5 **A Yes.**

6 Q Now let's look at this email right here. It's
7 an email from you to Warren Mosler and Jill Wagner,
8 right? It's dated September 29th?

9 **A Yes.**

10 Q And you state here "In exchange for all of the
11 unpaid work I did on certification and the \$1,800 of
12 vacation pay that you were going to pay me once the
13 company sold, would you grant me the exclusive rights to
14 the design for online gaming?"

15 Now, first of all, what is all of the unpaid
16 work that you're referring to there?

17 **A From April 16th until September 28th, when the**
18 **final durability was granted by the EPA.**

19 Q Now, let's look here. "Todd was paid in
20 credits towards his car for certification work." And
21 that's as of September 30, 2011, correct?

22 **A Up until April 15th. She just left out that**
23 **part of it.**

24 Q Well, that's not what it says, right? You're
25 claiming that you did additional work sometime starting

1 in April that was not covered by your email to Warren
2 Mosler --

3 **A Yes.**

4 Q -- that we saw on the last email even though
5 your email said that you wanted to extend your furlough
6 and credit toward the end of April, correct?

7 **A Boy, that was a big one. Can you say it one
8 more time?**

9 Q Do you want me to show you the last document
10 again?

11 **A Merely ask the last question again. It's such
12 a run-on. And we've been trying to get Jill Wagner to
13 testify, but she's seemed to have gone on a coincidental
14 vacation.**

15 Q Well, let's explore that now that you brought
16 it up. Do you know why --

17 Well, let me put it this way: Do you remember
18 threatening --

19 MR. ZAPPOLO: Your Honor, can we have a
20 sidebar, please?

21 THE COURT: Let's approach.

22 (Thereupon, a sidebar conference was held.)

23 MR. WEBER: He brought it up.

24 MR. ZAPPOLO: It appears as though -- I don't
25 think he brought it up -- he said we've been trying

1 to get her to testify. That is related to the fact
2 that we've had a process server out looking for her
3 for weeks and she's evading our service of process.

4 MR. WEBER: You have to explain why she's not
5 here.

6 MR. ZAPPOLO: Well, you don't get to
7 speculate.

8 MR. WEBER: I'm going to ask her -- I'm going
9 to ask Mr. Wagner about the facts and his
10 intimidation of the witness, which is --

11 MR. ZAPPOLO: No way. That's not proper at
12 all. He didn't say anything about that.

13 THE COURT: All right. Objection sustained.
14 Let's move on.

15 (Thereupon, the sidebar conference was
16 concluded.)

17 BY MR. WEBER:

18 Q Pull up 195.

19 In the last document with you and Warren
20 Mosler and Jill Wagner, you see how you wanted to extend
21 the credit until the end of April?

22 A Yes.

23 Q Now let's go back to the email before, 340.
24 So even though, in this document you admit that you
25 extended the credit until April, you're still claiming

1 that you did work that was unpaid from the middle of
2 April, approximately, on, correct?

3 A You're saying I admit that I extended it
4 through April, that is not what I testified. That is
5 not what I said. I was asking could I, and Mr. Mosler
6 said no.

7 Q So your testimony sitting here today is that
8 Mr. Mosler said no to this?

9 A He agreed to April 15th and that's the end of
10 it.

11 Q That's it? That's what he said? When does he
12 say that?

13 A For getting the credits, yes. I'm pretty sure
14 there's plenty of stuff in the 7-foot tall pile of
15 things that we got in --

16 MR. WEBER: Move to strike.

17 THE COURT: Sustained.

18 BY MR. WEBER:

19 Q Now today, during your testimony, you claimed
20 that you were --

21 Well, have you submitted any invoices for this
22 work that you're claiming?

23 A Mr. Mosler made it clear that he would not pay
24 credits past April 15th, so why would I send in an
25 invoice just to like, you know, have them thrown back in

1 my face?

2 Q Well, the fact is you don't know whether SEI
3 submitted invoices for work, correct?

4 A Well, I -- since SEI is my company, I don't
5 remember sending any invoice in after April 15th because
6 I knew Mr. Mosler wouldn't pay them.

7 Q Well, that's not what you said in your
8 deposition, is it?

9 A All right. Let's see what it says.

10 Q You didn't -- you believed that SEI was being
11 paid under the consultant contract, right?

12 A This deposition you're talking about was seven
13 years ago and it's gigantic, if you would just let me
14 know what you're talking about.

15 Q You were relying on the consultant contract
16 for this claim, right?

17 A Mr. Weber, honestly, I'd like to see what it
18 is you're referring to.

19 Q In your deposition, when you were under oath,
20 you claimed unpaid work for April 15, 2011 to September,
21 12, 2011 when EPA approval was given, correct?

22 MR. ZAPPOLO: Objection, improper impeachment.

23 He's --

24 THE COURT: Approach.

25 (Thereupon, a sidebar conference was held.)

1 THE COURT: All right.

2 MR. WEBER: He's changing his story, Your
3 Honor. I don't have to show him the transcript to
4 show when he was lying.

5 MR. ZAPPOLO: You have to ask him what his
6 position was and then the classic "Remember I asked
7 you that question during your deposition?" And
8 then we bring out the deposition and go over it.

9 THE COURT: Okay. So, again, in a criminal
10 case I would agree with you, but this is different.
11 You can read the deposition for any purpose
12 whatsoever. You're using this --

13 MR. ZAPPOLO: No. He pointed to the screen.

14 MR. WEBER: The transcript isn't there. I'm
15 not reading it yet.

16 MR. ZAPPOLO: Yeah, exactly.

17 THE COURT: But it is in the transcript?

18 MR. WEBER: I'm going to defer to the
19 transcript after I question him. I want to see how
20 he responds to the question.

21 MR. ZAPPOLO: He doesn't need to say what's in
22 the transcript and then not use it.

23 MR. WEBER: Well, I'm asking him --

24 THE COURT: Okay. Again, I don't think he has
25 to lay a predicate because the rule says you can

1 use the deposition for whatever purpose, but you
2 have to use the deposition.

3 MR. WEBER: Okay.

4 THE COURT: And so you know, if you're going
5 to be throwing that statement out there, then, you
6 know, you need to use the deposition.

7 MR. WEBER: Okay.

8 THE COURT: If you're going to ask me to rely
9 on that, then I think it's very clear the
10 deposition can be used for whatever purpose, but
11 that means you have to use the depo. Okay?

12 MR. WEBER: Okay.

13 (Thereupon, the sidebar conference was
14 concluded.)

15 BY MR. WEBER:

16 Q Mr. Wagner, you remember being deposed on
17 May 3, 2016?

18 A Is this the same one I have here? This is
19 February 8, 2016.

20 Q Can you see the screen?

21 A Pretty much.

22 Q Okay.

23 A Sort of.

24 Q Let's go to page 58.

25 A That's tough.

1 Q Now do you say here -- on line 3 it says "Did
2 SEI submit invoices for the work it completed to MACC?

3 "Answer: The -- I'm not certain. I have to
4 look and see if the invoice was submitted, but the
5 payment was made via Sylvia Klaker noting on the invoice
6 for the RaptorGTR that this amount had been taken off of
7 what was owed. And each month she, you know, updated
8 that with a, you know, a new, you know, discount on the
9 price of the RaptorGTR." Do you see that?

10 A Yes. Up until April 15th and then it stopped.

11 Q Now I'm going to show you page 64, line 3:
12 "How much do you believe is owed for work done by SEI
13 after April 15, 2011?"

14 A There you go.

15 Q "Answer: I'm going by memory here. My
16 original SEI -- I mean, SEI was being paid by MACC
17 during the course of our deal. I think it was -- I
18 remember it was the contract we just looked over.

19 "You had a consulting contract, right?"

20 A Oh, yes, yes. Now I get what you're saying.

21 Q "I remember that was the contract we just
22 looked over. \$8,660 per week for 32 -- for a month --
23 for 32 hours per week of work, and I think it comes out
24 roughly to \$10,000 per month for a full workweek."

25 A Oh, right.

1 Q Now, you remember what I just showed you is
2 back in 2016 you testified that you were supposedly
3 supposed to be paid under the consulting contract,
4 right?

5 A **I was paid at that rate.**

6 Q Well, no. That answer showed you believed you
7 were to be paid for the work after April that you're
8 claiming this lawsuit under the consulting contract, but
9 sitting here in this courtroom for trial, you testified
10 the other day that you're actually claiming a
11 different --

12 A **A lesser amount.**

13 Q You've changed your story. Now you're
14 claiming that you should be paid an amount based on a
15 salary that you were owed, correct?

16 A **If Mr. Mosler wants to pay me 10,000 a month,
17 that's okay with me.**

18 Q Well, I just want to -- one time you're
19 testifying that you're owed this money under the
20 consulting contract; now in this trial you're testifying
21 under oath that you're owed the money under a
22 \$75,000 contract. So which one is it?

23 A **You know, the easy way to find this out is to
24 look on to the invoice itself, and it should be easy to
25 do the calculation right there.**

1 Q The easy answer is you don't know what you're
2 owed because you're not owed anything, correct?

3 A No, that's incorrect.

4 Q You don't know how many hours SEI worked on
5 this alleged EPA approval work, correct?

6 A That is incorrect.

7 Q What is -- you said you worked on the project
8 approximately 50 percent of your time, right?

9 A What I testified back in 2016, I don't recall.
10 I mean, that was seven years ago. And at the time -- if
11 you look on the invoices, that will capture it very
12 well. I mean, all this was, like, 13 years ago now.

13 Q The fact of the matter is you have no idea
14 exactly how many hours you allegedly worked, even
15 assuming that you did do work from April to September,
16 correct?

17 A I don't know how many hours I worked. I can
18 look at my invoice and figure it out.

19 Q Sitting here today, what is the exact amount
20 of hours that you allege that SEI worked on this EPA
21 approval work from April to September?

22 A I can't pull it out of my straight memory. I
23 have to look at the documents.

24 Q And that's because you were owed no money
25 because, as Jill Wagner explained, all the work that you

1 did or SEI did was paid through credits for the
2 RaptorGTR, correct?

3 A She was just saying I was paid something. She
4 didn't put an end date on it. She didn't say "paid all
5 the way through to the end." She didn't say all this.

6 It would be great if she came and testified
7 about this, right? So Todd was paid credits toward his
8 CARB certification work. She doesn't say he was paid
9 completely. She didn't say he was paid all the way
10 through to its completion.

11 Q So you're speculating what Ms. Wagner meant
12 there, aren't you?

13 A The facts are I wasn't paid anything after
14 April 15th.

15 Q Because you weren't owed anything.

16 A That's incorrect.

17 Q Now, let's pick up where we left off.

18 A And the invoice --

19 Q On October 7, 2011, you knew an interested
20 party had put down a deposit for exclusivity to purchase
21 MACC, correct?

22 A I had been told that by Jill Wagner.

23 Q Hold on.

24 A Okay. So I can't say I knew that, I was told
25 that. Whether that was a deception or not, I don't know

1 **for sure.**

2 Q Well, I'm handing you what's been marked as
3 trial number 367. Do you recognize this document?

4 **A Yes.**

5 (Thereupon, Defendants' Exhibit 367 was marked
6 for identification.)

7 MR. WEBER: Move this document into evidence.

8 MR. ZAPPOLO: No objection.

9 THE COURT: Madam Clerk, what number?

10 THE CLERK: 84.

11 THE COURT: Thank you.

12 (Thereupon, Defendants' Exhibit 84 was
13 received into evidence.)

14 BY MR. WEBER:

15 Q This document is an email from Jill Wagner
16 that you received blind carbon-copied, correct?

17 **A That's correct.**

18 Q And it was through this email that you learned
19 that Savvas Savopoulos had put down a nonrefundable
20 deposit for a 60-day lockout period, right?

21 **A So you're saying I "learned" as if I learned**
22 **something truthful, but we now know that this was a**
23 **deception. Mr. Savopoulos gave a -- what Mr. Mosler**
24 **wanted me to believe was a nonrefundable deposit, but,**
25 **in fact, it was refundable and he refunded it, so this**

1 **was a deception here.**

2 Q By October 2011, you understood that Savvas
3 Savopoulos had put down a deposit for the purchase of
4 MACC, yes or no?

5 A **I had been told that, yes.**

6 Q Now referring back to your deposition
7 transcript --

8 A **And --**

9 Q Hold on, Mr. Wagner, hold on.
10 Do you remember your deposition on June 29,
11 2021?

12 A **Yes.**

13 Q You testified under oath that day?

14 A **Yes.**

15 Q Let's go to page 49.

16 "Question: Is it fair to say that in
17 October 2011 you are aware that Savvas was seeking --
18 Savvas Savopoulos was seeking to purchase either MACC or
19 MACC's assets?"

20 You wrote, "Warren Mosler told me that was the
21 case, but there is no way for me to directly know
22 because I wasn't a party to it, but that's what Warren
23 Mosler led me to believe at this time." Is that
24 accurate?

25 A **Yeah. That's more or less what I'm stating**

1 here. And actually there's another email from
2 Mr. Mosler that is more relevant to that than this where
3 he says the same thing, "nonrefundable," which is also
4 another deception to reinforce this initial deception.

5 Q Now you knew, as your prior testimony
6 revealed, that Savvas Savopoulos had the means to
7 purchase MACC, correct?

8 A Absolutely, and I'd be fine with him to
9 purchase it.

10 Q That day --

11 A It would have been totally fine with me.

12 Q Let's look at 368.

13 A All he had to do was honor his agreements.
14 Boom, done, that would be it.

15 Q That same day, Mr. Wagner -- this is 368.

16 A The same day?

17 MR. WEBER: This is trial ID 368. Any
18 objection to moving this document into evidence?

19 MR. ZAPPOLO: No objection.

20 MR. WEBER: Okay.

21 THE COURT: Madam Clerk, what number?

22 THE CLERK: 85.

23 THE COURT: Thank you.

24 (Thereupon, Defendants' Exhibit 85 was
25 received into evidence.)

1 BY MR. WEBER:

2 Q Okay. I'm showing you Exhibit 85. It's
3 another email. This one is an email from you to Warren
4 Mosler, right?

5 A Yes.

6 Q Now do you see this email is also October 7,
7 2011?

8 A Yes.

9 Q The same day as the last one, right?

10 A Yes. And also there's another one where
11 Mr. Mosler says it's nonrefundable too.

12 Q And you mentioned Savvas here, so that same
13 day you knew it was Savvas who had put the deposit in,
14 correct?

15 A So Jill told me that someone, and then
16 Mr. Mosler told me Savvas specifically, but you skipped
17 over that email, but it's fine.

18 Q Now, in this email you wrote "On top of ALL
19 that, I have \$100,000 deposit in with you."

20 You're referring to the money that your father
21 sent in in June 29th, correct?

22 A Yes. That was my deposit. My deposit, not
23 what you want it to be.

24 Q That was the same deposit that was sent in for
25 Lew Lee's letter of intent, correct?

1 A No.

2 Q Now following Mr. Savopoulos putting this
3 deposit, you were desperate to purchase MACC, correct?

4 A **I was not desperate to purchase MACC.**

5 Q You released the music video with Abby Cubey,
6 correct?

7 A **That was like a month and a half later.**

8 Q You asked Savvas Savopoulos if you could work
9 with him because you knew he could close the deal,
10 correct?

11 A **So now we're getting to what I was referring
12 to earlier. I was delighted for Savvas Savopoulos to
13 buy the company. He had the money to do everything that
14 needed to be done so long as --**

15 Initially I was upset because it seemed, like,
16 kind of wrong that he didn't -- Mr. Mosler didn't, like,
17 give me the same terms. He just like -- he only wanted
18 Savvas to buy it. That seemed wrong to me
19 fundamentally.

20 A couple of days later I was like, okay, he
21 wants to buy it, that is fine. I'll have my
22 distributorship. I have a signed agreement and that is
23 gravy for me.

24 Q Do you recall your email that we just saw
25 where you said "Oh, it's monster-risky. I'll sit back

1 and let the other guys try to close"? Do you want me to
2 show you that email again?

3 **A No, I remember it.**

4 Q Okay. And you remember how you and Lew Lee
5 failed to close on September 1st, right?

6 **A No.**

7 Q Well, let me show you this document. This is
8 Exhibit 415.

9 **A I would be delighted for Savvas to buy it if**
10 **Mr. Mosler and Savvas honored their agreements. That's**
11 **all they had to do, honor their written agreements. And**
12 **there's numerous emails where I'm saying "Hey, Warren,**
13 **just honor your agreements," and he's like "No" --**

14 MR. WEBER: Any objection --

15 **THE WITNESS: -- and he's pissed.**

16 MR. WEBER: -- to moving this document into
17 evidence?

18 **THE WITNESS: Sorry.**

19 MR. ZAPPOLO: What ID number?

20 MR. WEBER: This is internal ID 415.

21 MR. ZAPPOLO: No objection, Your Honor.

22 THE COURT: Madam Clerk, 86?

23 THE CLERK: Yes.

24 (Thereupon, Defendants' Exhibit 86 was
25 received into evidence.)

1 BY MR. WEBER:

2 Q Okay. I'm showing you document internal ID
3 415 --

4 A Yes.

5 Q -- Defendants' 86.

6 A This is all that I was talking about.

7 Q October 24, 2011. This document is an email
8 from you to Savvas Savopoulos, right?

9 A Yes, it is.

10 Q And --

11 A "Working Together" it's titled.

12 Q -- you wrote to Mr. Savopoulos "I've been
13 thinking about our conversation some more. As I said on
14 the phone, if you get the company, I would like to talk
15 to you about being involved."

16 A Yes.

17 Q In response, Mr. Savopoulos did not want you
18 involved if he purchased the company, correct?

19 A He never responded to this email.

20 Interesting; not at all.

21 Q Putting aside this email, you understood that
22 Savvas Savopoulos did not want you involved in MACC if
23 he purchased MACC, correct?

24 A I didn't know that. I mean, that's misstating
25 anything. He didn't reply back here. And,

1 fundamentally, Mr. Mosler trades hundreds of millions of
2 dollars and has to honor his agreements. I thought for
3 sure Mr. Mosler would honor his agreements, his written
4 agreements.

5 He put his hand signature on it that the
6 distributorship would be binding upon the new owner.
7 The new owner here was going to be Savvas; so,
8 Mr. Mosler, I was wondering why didn't you simply honor
9 your agreements? There would have been no issue
10 whatsoever if he just honored his agreements. We all
11 could have made money together. It would have been
12 delightful.

13 Q You continued to try and raise money because
14 you still wanted to try to purchase MACC, and you
15 stumbled into a group called Billionaires' Row, correct?

16 A I was still trying to -- those are two fairly
17 independent things, so...

18 Q Do you recall Billionaires' Row?

19 A I do recall Billionaires' Row.

20 Q It was another con, right?

21 A It was.

22 Q So this is the -- how many cons now that
23 you've fallen into?

24 A I mean, counting the good faith deposit scam,
25 that's three. So the good faith deposit scam --

1 Q Okay.

2 A -- the treasure scam, and this Billionaires'
3 Row scam, but I didn't lose any money on the
4 Billionaires' Row scam.

5 Q You didn't?

6 A No.

7 Q All right. Let's look at the documents.

8 A No, I didn't lose any money on that.

9 Q Let's show 421, internal 421. Take a look at
10 this document marked as internal 421.

11 MR. WEBER: Any objection to this document in
12 evidence?

13 MR. ZAPPOLO: No objection.

14 THE COURT: Madam Clerk, 87; is that correct?

15 THE CLERK: Yes.

16 THE COURT: Thank you.

17 (Thereupon, Defendants' Exhibit 87 was
18 received into evidence.)

19 BY MR. WEBER:

20 Q Okay. Let's pull up this document.

21 So this is another scam, this one in
22 October 2011, right?

23 A Yes.

24 Q And you wrote to Mr. Mosler "I'm immensely
25 embarrassed that these guys 'got' me to the extent they

1 did, but although they tried to extort \$10,000 from me,
2 I've only lost time and travel expenses and lost
3 opportunities."

4 We see here at the end of the document they
5 stole \$10,000 from Abby. That's Abby Cubey, right?

6 **A Yes. They did steal \$10,000 from Abby Cubey**
7 **it turns out. These were -- these were scumbags on the**
8 **same level as the Ralph Lew Lee, whoever, con team that**
9 **Mr. Mosler teamed up with to try and con me out of**
10 **\$100,000.**

11 Q And Mr. Mosler was supportive of you when you
12 told him about Billionaires' Row, wasn't he?

13 **A I think he said something like "Don't worry**
14 **about it." Something along those lines.**

15 Q Because Mr. Mosler wanted you to succeed,
16 correct? I'm handing you internal 420.

17 **A I doubt that after what I've seen. Especially**
18 **since the 2009 stuff that was going on behind my back,**
19 **he didn't want me to succeed.**

20 MR. WEBER: Any objection to moving this
21 document into evidence?

22 **THE WITNESS: He wanted me to be comfortable.**
23 **He wanted to deceive me into believing I could**
24 **trust him. That's what the best con artists do.**

25 MR. WEBER: This is for internal 420.

1 MR. ZAPPOLO: 420? No objection.

2 THE COURT: Madam Clerk, 88, please?

3 **THE WITNESS: Yes.**

4 (Thereupon, Defendants' Exhibit 88 was
5 received into evidence.)

6 BY MR. WEBER:

7 Q When you wrote to Mr. Mosler, he wrote "Glad
8 you're on it and let me know if I can help" because he
9 was supportive of you, wasn't he?

10 A That is an extraordinary stretch given that
11 one sentence. These guys were -- they posted something
12 on the Internet and I was trying to get it down. And
13 then he asked if he could help with that, I'm presuming,
14 but this --

15 Q He wrote --

16 A -- does not mean he's supportive.

17 Q He wrote "Thanks, the unwinding is going well.
18 I'll let you know if I run into any roadblocks, but I
19 don't see any at the moment."

20 A Right.

21 Q As you sit here today, you might think he
22 wasn't supportive, but in October 25, 2011, he was
23 supporting you and you believed it, or at least he was?

24 A He was self-interested in having what those
25 guys put on the Internet removed, that's it.

1 Q And you gave Mr. Mosler some information about
2 Billionaires' Row and Mr. Mosler said "Okay. Thanks,"
3 right?

4 A Yes.

5 Q Now you mentioned something on the Internet
6 from Billionaires' Row. It's a video, right?

7 A Yes. Some sort of thing that they did on
8 their own. It was part of their -- I don't know exactly
9 how -- what they expected to gain from it, but it was
10 just some -- okay.

11 Q And you're dancing around topless in that
12 video, right?

13 A So this was part of the --

14 Q Hold on. Yes or no?

15 A When you say "topless," I'm a man, okay? So
16 I -- I think I had a shirt on, if I remember correctly.

17 Q Did you have a shirt on, or did you have no
18 shirt at all?

19 A I don't recall precisely. I really don't
20 remember. It was a long, long time ago and we were
21 goofing off there and they somehow got ahold of the
22 footage and then put it online and I didn't even know it
23 was there. I should have --

24 I don't have one of these Google Alerts. I
25 did wind up seeing it I think it was for the first --

1 wait. Maybe I saw it back then. I must have seen it
2 back then because I was trying to get them to take it
3 off. Not take off the shirt, then take it off the
4 Internet.

5 Q And we're not talking about the Abby Cubey
6 video, we're talking about an entirely separate video,
7 right?

8 A Yes. This is something -- I don't remember
9 what their objective was, but they were scumbags. They
10 were trying to scam stuff. They were trying to scam me
11 out of \$100,000 -- not 100,000 -- \$10,000, and they did
12 scam Abby out of 10, and that sucked. I have learned a
13 lot about how con artists work and I'll use my training
14 in the next part of life.

15 Q You've seen the video, right?

16 A I'm pretty sure I saw it back then, but I have
17 not seen it recently.

18 MR. ZAPPOLO: Can we approach, Your Honor?

19 (Thereupon, a sidebar conference was held.)

20 MR. WEBER: Your Honor, how can I show him the
21 video for authentication purposes before I publish
22 it to the jury?

23 THE COURT: Which video?

24 MR. WEBER: The Billionaires' Row video.

25 MR. ZAPPOLO: Objection to relevance. I don't

1 know what this has anything to do with any of the
2 allegations.

3 THE COURT: So the objection is authentication
4 or just based on relevance?

5 MR. ZAPPOLO: I haven't seen the video.

6 THE COURT: We'll put them in the jury room
7 and you can review it.

8 MR. ZAPPOLO: If counsel --

9 MR. WEBER: The video is totally on the
10 Internet. It has been around and people are
11 complaining about it and now it's down to blaming
12 him. It is relevant.

13 MR. ZAPPOLO: If you're going to go down that
14 line of information, I want my client to see it.

15 MR. WEBER: Yeah, but before I post it to the
16 jury, I think I have to authenticate it.

17 THE COURT: And the relevance is again what?

18 MR. WEBER: This is just another thing that's
19 on the Internet regarding Mr. Wagner, and that any
20 alleged damages -- we don't think there are any
21 damages -- are from other things and not any
22 statements that he's alleging from my client.

23 MR. ZAPPOLO: So now I think -- so now I can
24 go out on the Internet and find things about
25 Mr. Mosler and they become relevant?

1 MR. WEBER: No.

2 MR. ZAPPOLO: The allegation is in his
3 complaint.

4 MR. WEBER: And one of our defenses is that
5 any damages is not from people Googling Mr. Wagner
6 and finding the articles, the four articles at
7 issue, it's from all of these other public things
8 out there about Mr. Wagner: The treasure hunter
9 article, which you saw; the Billionaires' Row
10 video, which everybody saw; and diminished the
11 brand and caused damage. So it's not the
12 statements that are at issue, it's these other
13 things. It goes to cause, proximate cause damages
14 and associated damages.

15 MR. ZAPPOLO: I disagree with it.

16 THE COURT: The objection is authenticity?

17 MR. ZAPPOLO: As of right now, it's
18 authenticity.

19 THE COURT: All right. I'll excuse the jury
20 and we'll bring them back in after he's watched he
21 video.

22 Does he need to watch the whole thing or can
23 he watch like 30 seconds of it?

24 MR. WEBER: It's a 30-second video.

25 THE COURT: Okay. All right. We'll excuse

1 the jury.

2 MR. WEBER: All right.

3 (Thereupon, the sidebar conference was
4 concluded.)

5 THE COURT: Deputy, I think now is a good time
6 for about a 10, 15-minute break.

7 So now is a good time -- if you need to go in
8 there and use the facilities, please do so. We'll
9 take 15.

10 (Jurors exit the courtroom at 3:26 p.m.)

11 THE COURT: All right.

12 MR. WEBER: So the defense proffers trial ID
13 number 19, the video. In response to your request,
14 we will show Mr. Wagner the video and you can tell
15 us if you continue to object to it.

16 MR. ZAPPOLO: As I said, if he authenticates
17 it, I won't have an objection, but I will see what
18 it is.

19 MR. WEBER: Okay. Let's play the video.

20 (Video begins playing.)

21 THE COURT: Is there audio?

22 MR. WEBER: There is no audio.

23 MR. ZAPPOLO: This is the "Feel My Fire"
24 video.

25 **THE WITNESS: So this is not --**

1 THE COURT: Yeah, this is what we watched
2 earlier.

3 THE WITNESS: No.

4 MR. WEBER: This is the trailer for the
5 Billionaires' Row video. This is not what we
6 watched earlier, it's different.

7 MR. ZAPPOLO: Okay.

8 BY MR. WEBER:

9 Q And, Mr. Wagner, you're in this video,
10 correct?

11 A So I think this is -- I was looking for
12 topless me. Did I miss it or -- it's still on the
13 Internet?

14 Q Hold on, Mr. Wagner.

15 A Oh, there I go. Okay. That was me over there
16 on the side.

17 MR. ZAPPOLO: Where?

18 BY MR. WEBER:

19 Q Right there, correct?

20 A Yes. My glory days.

21 (Video is paused.)

22 MR. WEBER: Do you have any objection,
23 Mr. Zappolo?

24 MR. ZAPPOLO: Mr. Wagner, do you think that's
25 a doctored video in any way, shape, or form?

1 **THE WITNESS:** It looks --

2 MR. ZAPPOLO: Any recollection?

3 **THE WITNESS:** -- generally like what I
4 **remember, yeah.**

5 MR. ZAPPOLO: Okay. No objection then.

6 THE COURT: Okay.

7 MR. ZAPPOLO: As long as it's played in real
8 time, Your Honor.

9 MR. WEBER: What do you mean "real time"?

10 MR. ZAPPOLO: Real time. I don't want the
11 video slowed down or dramatized or anything like
12 that.

13 MR. WEBER: Well, we're going to stop it to
14 show Mr. Wagner so the jury can see --

15 MR. ZAPPOLO: He needs to play the video in
16 its entirety and then he can go back to it.

17 MR. WEBER: Yeah, I'll play the video in its
18 entirety and then I'll --

19 THE COURT: All right. It seems like you guys
20 have an agreement, so what I'm going to do -- I
21 told the jury I'd give them 15, so I'll give you
22 guys the remaining 12 to go use the restroom. So
23 we'll count this as our break in the afternoon,
24 okay?

25 MR. WEBER: Thank you, Your Honor.

1 (Thereupon, a short break was taken from
2 3:28 p.m. to 3:53 p.m.)

3 THE COURT DEPUTY: Come to order.

4 THE COURT: All right. Please be seated.
5 Let's bring them out.

6 Oh, hold on, Deputy, one moment. I've got
7 3:53, okay. And, again, I told them before 5:00,
8 so you have roughly an hour and seven minutes.

9 MR. WEBER: Yeah, we're not going to finish.

10 THE COURT: Huh?

11 MR. WEBER: We're not going to finish.

12 THE COURT: You're not going to finish today?
13 All right. Then I'm not going to feel bad if I cut
14 you off at 4:40 or 4:45 thereabouts.

15 All right. Let's bring them out.

16 THE COURT DEPUTY: Jury entering.

17 (Jurors entering the courtroom at 3:54 p.m.)

18 THE COURT: All right. Please have a seat.

19 MR. WEBER: Okay. Move Exhibit 19 -- trial
20 identification Exhibit 19 into evidence. Any
21 objection?

22 MR. ZAPPOLO: And that is without objection
23 given the prior work that we have done.

24 (Thereupon, Defendants' Exhibit 19 was marked
25 for identification.)

1 BY MR. WEBER:

2 Q Okay. So, Mr. Wagner, I'm going to show you a
3 video. Let me know if you recognize it, okay?

4 A Okay.

5 (Video begins playing.)

6 (Video is paused.)

7 Q Now, Mr. Wagner, this video is the video put
8 on the Internet by Billionaires' Row, correct?

9 A Yes. I didn't know this was going on. This
10 was something that was going on in LA.

11 Q And you're in this video, correct?

12 A Yes. And they got some video footage of me
13 without my approval and that's --

14 Q Play the video.

15 A I didn't catch it the first time, but when you
16 did the slo-mo, I saw -- I saw the 12 years ago me.

17 (Video begins playing.)

18 Q This is you right there, right?

19 A That is most of me, yeah.

20 Q Well, keep showing the frame. And people
21 recognized you in the video, correct?

22 A I didn't know of anyone who contacted me about
23 this, so I don't -- I don't think that many people saw
24 this. This little con team -- I guess they were
25 thinking of doing something on Fox that obviously never

1 happened, so I became aware of it.

2 (Video is paused.)

3 Q And --

4 A I think maybe Abby told me something about it,
5 and it was a problem because they conned her out of
6 \$10,000. I don't know, anyway --

7 Q And people contacted Mr. Mosler and told him
8 the video damaged the brand, correct?

9 A I was not aware of that, I don't think, at the
10 time.

11 Q And people contacted Ms. Jill Wagner --

12 A I think --

13 Q -- and asked her whether she knew you were
14 appearing in a video without your shirt on, correct?

15 A Well, I wasn't a party to that. I mean, so --

16 Q But you knew it was happening, correct?

17 A No. At the time I -- my only -- I mean,
18 again, if Ms. Wagner were here to testify, I think --
19 So I don't know when. I've seen things in the
20 document dump about this, but I didn't know it at the
21 time. I learned about it -- or I at least read things
22 about it in 2019, which is like eight years later.

23 Q And approximately the same time as this video,
24 the Abbey Cubey "Feel My Fire" video was released,
25 correct?

1 **A No.**

2 Q What date was the Abby Cubey "Feel My Fire"
3 video released?

4 **A That was released November 13th of 2011.**

5 Q Okay.

6 **A This is sort of some time before**
7 **October '19 according to what the video shows. I don't**
8 **know exactly when it was put on the Internet or**
9 **anything.**

10 MR. WEBER: Scott, I'm going to move our
11 internal Exhibit 18, "Feel My Fire" video, into
12 evidence.

13 MR. ZAPPOLO: Is that the one you put in
14 opening?

15 MR. WEBER: In opening.

16 MR. ZAPPOLO: In opening? Okay. No problem.

17 **THE WITNESS: That was not actually the video.**
18 **That was something different. Did you guys modify**
19 **that?**

20 BY MR. WEBER:

21 Q Now --

22 MR. ZAPPOLO: What number was that? I'm
23 sorry.

24 MR. WEBER: This is internal 18, and Defense
25 Exhibit Number --

1 THE CLERK: 90.

2 MR. WEBER: -- 90.

3 THE COURT: Madam Clerk, what are the numbers?

4 THE CLERK: The first video is now 89, and the
5 one that was just handed to me is 90.

6 THE COURT: Thank you.

7 (Thereupon, Defendants' Exhibit 89 was
8 received into evidence.)

9 (Thereupon, Defendants' Exhibit 90 was
10 received into evidence.)

11 MR. ZAPPOLO: So 90 --

12 THE COURT: So 89 and 90, they were admitted
13 without objection, correct?

14 MR. WEBER: Correct.

15 MR. ZAPPOLO: And I just want to be sure which
16 is which, Your Honor, I apologize.

17 MR. WEBER: 89 is exhibit internal 19.

18 MR. ZAPPOLO: It became 89?

19 **THE WITNESS: It didn't look like the video to**
20 **me.**

21 BY MR. WEBER:

22 Q Hold on, Mr. Wagner, there's no question.

23 **A All right.**

24 Q And in the wake of these two videos, we had
25 the first article up here, right?

1 You mentioned November 15, 2011, and it came
2 to what was previously marked as Plaintiffs' Exhibit 40.
3 The date, November 15, 2011, which is the first -- which
4 contains one of the statements you're suing in this case
5 about, correct? Yes or no?

6 **A I believe so.**

7 Q And we have Plaintiffs' Exhibit 86, which is
8 also dated November 15, 2011, correct?

9 **A Yes. The global knowledge --**

10 Q Hold on, Mr. Wagner, hold on.

11 **A Okay.**

12 Q And this Plaintiffs' Exhibit 86 is another
13 article which contains a statement upon which you're
14 suing on in this case, right?

15 **A It's the interference with the --**

16 Q Yes or no?

17 **A Yes.**

18 Q And then we have this article, which is
19 another one, which we have dated November 22 --

20 **A That's the date I printed it out. It was
21 published before then.**

22 Q -- 2011? What date was it published?

23 **A I'm not 100 percent sure, but I saw -- I think
24 it's on November 16th.**

25 Q And this article also contains a statement

1 that you allege Mr. Mosler made and which you're suing
2 about in this case, right?

3 **A Yes.**

4 **Q** Now, following all of those articles, you
5 wrote to Mr. Mosler because you believed there was a
6 misunderstanding in light of the video because there are
7 two RaptorGTRs, right?

8 **A Yes. I couldn't believe Mr. Mosler would be,**
9 **you know, carpet-bombing his own company, so I figured**
10 **there must be some misunderstanding with the journalist.**
11 **I had no idea what was going on.**

12 **Q** And --

13 **A It took me a long time to figure it out.**

14 **Q** And you believed that the journalists could
15 misunderstand because there were two RaptorGTRs,
16 correct?

17 **A That was one of my --**

18 **Q** Yes or no?

19 **A -- theories as a possibility, which is why I**
20 **ran it by Mr. Mosler so that we could mitigate the**
21 **damage in case there was a misunderstanding, but**
22 **Mr. Mosler refused to do any mitigation whatsoever. He**
23 **let all the damage stick --**

24 **Q** So let's --

25 **A -- as much as possible.**

1 Q -- recap what's happened. Now we're in
2 November 2011 and we're about to enter December 2011,
3 and one of the defenses in this case by Mr. Mosler and
4 MACC is that you knew that SEI -- that Savvas Savopoulos
5 was about to close on MACC, and you and SEI
6 intentionally interfered with that business relationship
7 to stop Savvas' closing.

8 And as of December 1, 2011 -- let's recap --
9 you had an affair with the nanny. You were divorced
10 from Jill. You had a strained relationship with her.
11 You and Lew Lee failed to close by September 1st. Lew
12 Lee had not repaid your \$100,000 deposit. You were
13 conned by Billionaires' Row. You got an illness while
14 you were in Thailand.

15 **A No.**

16 Q The Raptor took a crap during a road test with
17 Matthew Farah. The video received feedback that wasn't
18 what you hoped. And then worst of all, you knew that
19 Savvas Savopoulos was about to close on MACC. And then
20 on December 1st Savvas Savopoulos sent you a document to
21 sign, right?

22 **A I disagree with all of those statements you**
23 **said up until then. I don't know which part of them**
24 **you're considering to be your question. Those are your**
25 **defenses; I disagree with all of them.**

1 The document that was sent on December 1st was
2 actually on behalf of Warren Mosler. He was the one to
3 benefit from all those things, including he wanted to
4 get a full release so he could keep my \$100,000 deposit.

5 Q Mr. Savopoulos sent you a document to sign
6 that you knew would have ended your relationship with
7 MACC, correct?

8 A That document that Mr. Savopoulos sent was
9 intended to take away SEI's distributorship agreements,
10 take away SEI's intellectual property, the intellectual
11 property which made the company worth more than zero,
12 the RaptorGTR certification, and the invention of the
13 powertrain.

14 Q Mr. Wagner --

15 A I'm trying to answer your question in its
16 completeness.

17 Q -- did you see this document or not? That's
18 the question.

19 A He sent a document. I will agree he sent a
20 document; however, I don't really characterize it the
21 way you have characterized it.

22 Q I'm handing you internal 473.

23 A "Yes, I hope you had a nice Thanksgiving.
24 Please sign."

25 Q Hold on, Mr. Wagner. Do you recognize what's

1 been marked as 473?

2 **A Yes, I do.**

3 MR. WEBER: Any objection moving this into
4 evidence?

5 MR. ZAPPOLO: No objection. I believe it's
6 already in.

7 THE COURT: Madam Clerk, what's the number?

8 THE CLERK: 91.

9 (Thereupon, Defendants' Exhibit 91 was
10 received into evidence.)

11 BY MR. WEBER:

12 Q Pull up 473. And this is the document -- the
13 email which was sent to you. It says "Todd, I hope you
14 had a nice Thanksgiving. Please sign and send,"
15 correct?

16 Now did Mr. Savopoulos send any other
17 documents like this to other persons at MACC?

18 **A I do not know that for certain. I was not**
19 **party to those.**

20 Q Was one of those documents sent to Martin?

21 **A Martin Short? You'll have to ask Mr. Mosler**
22 **or Martin Short about that. I don't know.**

23 Q Was one of these documents sent to Mike
24 Vietro?

25 **A Again, I was not party to whatever was sent to**

1 those people, so I really can't testify about it.

2 Q But instead, you're willing to testify and
3 speculate as to why this document was sent to you,
4 correct?

5 A Well, I can read it and see what it intends.
6 It's pretty clear.

7 Q Where does it say that this document was sent
8 to you for what you're speculating?

9 A I'm not speculating, it's written in here.
10 Not on this page, but on the documents itself it's
11 written in, you know, excruciating -- it's plain
12 English, but excruciating plain legalese English of what
13 it intends to do.

14 Q You inferred in this case a motivation behind
15 this document, correct?

16 A The motivation is very clear. It wants to
17 take SEI's exclusive distributorships, take its
18 distributorships in one-third of U.S.A., several states
19 including Florida; wants to take my intellectual
20 property and wants to give a full release to Warren
21 Mosler to absolve him of the defamation, to absolve him
22 of the trade libel, and to allow him to keep my \$100,000
23 forever. That's what this does. It essentially takes
24 everything away from me for 100 bucks. That's what it
25 does, it does exactly that.

1 Q Now in your response --

2 A **It's not --**

3 Q -- you wrote an email to Mr. Mosler.

4 MR. WEBER: This is internal 477. Any
5 objection to it being admitted?

6 **THE WITNESS: And I was sued because I --**

7 MR. WEBER: Hold on, Mr. Wagner.

8 **THE WITNESS: All right.**

9 MR. ZAPPOLO: No objection.

10 THE COURT: All right.

11 (Thereupon, Defendants' Exhibit 92 was
12 received into evidence.)

13 BY MR. WEBER:

14 Q So you wrote to Mr. Mosler on December 3,
15 2011 -- it was marked as Defendants' 92 -- and this is
16 an email from you to Mr. Mosler, correct?

17 A **Yes.**

18 Q And you made -- you told Mr. Mosler that
19 Savvas sent you a document regarding various issues
20 associated with winding up SEI's Mosler Supercars and
21 your own involvement with the company, correct?

22 A **Yes.**

23 Q And --

24 A **There's more, but that's a part of it.**

25 Q -- you attached a Word document to the email.

1 Let's go to the first page, please.

2 **A Yes. During this time Mr. Mosler was**
3 **threatening me.**

4 Q Now what you did in this document is you set
5 forth different points, and one of them is -- let's go
6 to the last page --

7 **A So this says "draft for discussion."**

8 Q Hold on, Mr. Wagner. You wrote "In return for
9 turning over SEI's distributorship and relinquishing all
10 claims to intellectual property created by SEI and Todd
11 Wagner during the consulting and employment period, SEI
12 will be paid," and then you listed amounts, right?

13 **A Yes.**

14 Q Now in response to this email Mr. Mosler asks
15 you to work it out with Savvas, right?

16 **A Something about that.**

17 Q Because Savvas was about to close on MACC.
18 I'll hand you what's been marked internally as 482.
19 Take a moment, let me know when you're ready.

20 MR. WEBER: Any objection to moving this into
21 evidence?

22 **THE WITNESS: For clarity, the Termination and**
23 **Release Agreement did not have Savvas as a**
24 **signatory or a beneficiary --**

25 MR. WEBER: Hold on, Mr. Wagner.

1 **THE WITNESS: -- anywhere. All --**

2 MR. WEBER: Are you finished reviewing the
3 document?

4 MR. ZAPPOLO: I'm sorry. Over the crosstalk,
5 I don't know what exhibit --

6 MR. WEBER: Is there any objection to --

7 MR. ZAPPOLO: What exhibit was this pre-marked
8 as?

9 MR. WEBER: 482.

10 MR. ZAPPOLO: 482, thank you.

11 MR. WEBER: Any objection to admit it?

12 MR. ZAPPOLO: No objection, Your Honor.

13 THE COURT: What number, Madam Clerk?

14 THE CLERK: 93.

15 THE COURT: Thank you.

16 (Thereupon, Defendants' Exhibit 93 was
17 received into evidence.)

18 BY MR. WEBER:

19 Q Let's put up 482. In response, Mr. Mosler
20 told you try -- "Try to work it out with and let me know
21 if there are any roadblocks, thanks. I'm in a mad rush
22 all weekend, sorry."

23 And what did you do after Mr. Mosler sent you
24 that document?

25 **A Sent me this email you mean?**

1 Q Yeah.

2 A I don't -- is this after I sent the --

3 Q You sent your same Word document --

4 A Oh.

5 Q -- to Savvas, correct? Yes or no?

6 A Yes. I don't know why there's all this drama.

7 I apologize.

8 MR. WEBER: Exhibit marked internally 479, any
9 objection to admitting this into evidence?

10 MR. ZAPPOLO: No objection, Your Honor.

11 THE COURT: Madam Clerk?

12 THE CLERK: 94.

13 THE COURT: Thank you.

14 (Thereupon, Defendants' Exhibit 94 was
15 received into evidence.)

16 BY MR. WEBER:

17 Q And we see, on December 3rd, in response to
18 Savvas' original email that we saw, you wrote to him
19 "Nice to hear from you. I have attached a draft
20 resolution of everything comprehensively. In the spirit
21 of ease of reading it, it is in the term sheet."

22 It's the same document you sent to Mr. Mosler,
23 correct?

24 A I don't see it here, but that would be my
25 belief.

1 Q And then Mr. Mosler wrote "Todd, just read it.
2 My suggestion is you should agree to not be involved in
3 Mosler in exchange for any liability for what you've
4 done."

5 And then you wrote "Hi, Warren. Can you get
6 rid of the articles? The \$100,000 was referring to the
7 money my father sent in."

8 Now, by that, you're referring to the money
9 that Lew Lee had put in through you, correct?

10 A No.

11 Q Well, let's go to -- I'm going to hand you a
12 document that's marked as 422.

13 A Okay.

14 MR. WEBER: Any objection to moving in
15 document 422?

16 MR. ZAPPOLO: No objection, Your Honor.

17 THE COURT: Madam Clerk?

18 THE CLERK: 95.

19 (Thereupon, Defendants' Exhibit 95 was
20 received into evidence.)

21 BY MR. WEBER:

22 Q Earlier you wrote -- can you zoom in on the
23 bottom email? You had wrote to Mr. Mosler around the
24 same time as the articles we just saw on November 14,
25 2011. Scroll down.

1 You wrote "Hi, Warren. It has a few weeks
2 since I requested that you provide documentation showing
3 where you have a right to keep my \$100,000 even
4 though" --

5 **A I know there isn't any.**

6 Q -- "you entered into a exclusive sale
7 agreement with another party." You're referring to Lew
8 Lee, right?

9 **A No.**

10 Q "I am sure there is no such documentation, so
11 I respectfully request that you return the deposit."

12 And in response, Mr. Mosler told you "The
13 deposit was from Lew. He says he's coming into big
14 money this week, so you should be okay."

15 And then you responded "Hi, Warren. In the
16 event that you sell the company to Savvas, I will get
17 the full 100,000 back immediately, correct?"

18 And we scroll up, and Mr. Mosler responded
19 "Stop trying to trick me, thanks."

20 And then you responded "It's not a trick, it's
21 a deposit, a big one. Long ago we agreed that any
22 deposit would be returned in the event you sold the
23 company to someone else." Scroll up.

24 Mr. Mosler told you "The deposit I had was on
25 behalf of Lew and it's expired, and I haven't sold the

1 company yet in any case." Scroll up.

2 You forwarded Mr. Mosler's email to Lew Lee,
3 didn't you?

4 **A I wanted to figure out what the heck was going**
5 **on.**

6 Q And what did Lew Lee tell you?

7 **A Nobody would tell me anything. Mr. Mosler and**
8 **Lew Lee were a con team to create this fake document.**

9 Q Mr. Wagner, in response to your email, Lew Lee
10 told you "Gentlemen, not to worry, SFDM will absolutely
11 return Todd's nonrefundable deposit which was made on
12 behalf of SFDM. This will happen by 12/18 and possibly
13 by 12/1. We also will close on Mosler in that time
14 period."

15 **A Yes. This, to me, proves definitively --**

16 Q Lew Lee acknowledged that he had borrowed --

17 **A -- that Mr. Mosler now --**

18 Q -- the \$100,000 from you, and you put that
19 \$100,000 on behalf of Lew Lee, didn't you?

20 **A Absolutely not. This shows that Mr. Mosler**
21 **and Lew Lee conspired to run a con against me together.**
22 **And here, Mr. Mosler's other con partner is pulling up**
23 **his side of the bargain, making this paperwork saying**
24 **"Todd's nonrefundable deposit."**

25 Q Is this a fourth con that you've fallen for

1 now?

2 **A This is the same --**

3 Q The same con?

4 **A -- deposit con, and Mr. Mosler and Lew Lee**
5 **conspired together to run against me.**

6 Q Do you think it's a problem having your
7 father --

8 **A This is fraudulent inducement.**

9 Q Mr. Wagner, do you think it's a problem having
10 your father, who sold The Weather Channel, and you're
11 falling for all these cons?

12 **A Say it again.**

13 Q Do you think it's a problem having your
14 father, who sold The Weather Channel to someone and
15 having access to all this money, and his heir is falling
16 for all these cons?

17 **A I think that's super rude and my father does**
18 **not have \$3 billion, if that's what you're referring to.**
19 **He was an executive so he has, you know, a good amount**
20 **of money.**

21 **And I have learned through this, I have**
22 **learned how Mr. Mosler and other con artists work. And**
23 **although I was naive when I was younger, I am no longer**
24 **naive. And one thing I'm going to do with the rest of**
25 **my life is make sure other people don't get conned the**

1 way I did.

2 Q And so knowing that Lew Lee would nonetheless
3 return your nonrefundable deposit --

4 A No, I did not know that.

5 Q -- you made a demand -- let's go back to --
6 you made a demand for Savvas for the money because you
7 didn't get it from Lew Lee.

8 A You're misstating, sir.

9 Q Because you wrote "The \$100,000 referring to
10 the money my father sent in" -- now let's pull up the
11 Word document and see Savvas' --

12 A I had no idea what was going on --

13 Q Hold on, Mr. Wagner.

14 A -- behind my back this entire time. I was
15 completely in the dark for what -- and Mr. Mosler, at
16 any time, could have shown me the document. This is 12
17 years later. Mr. Mosler has never shown me this LOI.
18 Never.

19 Q Now, in the document you sent to Mr. Mosler,
20 you didn't mention a request for the \$100,000 that your
21 father sent in.

22 MR. ZAPPOLO: What document are you
23 displaying, Counsel?

24 MR. WEBER: This is internal 477, and the
25 other one is going to be 479.

1 BY MR. WEBER:

2 Q Do you see in the exhibit on the right you
3 mentioned "The \$100,000 is referring to the money my
4 father sent in," but in the Word document --

5 A **Can you make it bigger, please?**

6 Q -- that you sent to Mr. Mosler and
7 Mr. Savopoulos -- in paragraph 5 here, where you set
8 forth your demand, you don't mention that the \$100,000
9 is with respect to the money your father sent in, right?

10 A **So there's a mischaracterization.**

11 Q Where is the money your father sent in
12 referenced in this document?

13 A **Well, what's here -- you said it was a demand.
14 It says "Draft for discussion," that's all. You
15 intentionally misnoted this as a demand. It's a draft
16 for discussion. It says that on this page.**

17 Q Can you answer my question, Mr. Wagner?

18 A **Please repeat it.**

19 Q Where in this document that you sent to
20 Savvas, who you knew was about to close on MACC --

21 A **I didn't know he was about to close.**

22 Q -- does it say --

23 A **I didn't have that knowledge.**

24 Q -- that -- Mr. Wagner, let me finish my
25 question, please.

1 **A Okay.**

2 Q Where in this document does it say the
3 \$100,000 is referring to the money your father sent in?

4 **A Okay. So just so there's clarity on the**
5 **record --**

6 Q Can you answer the question or not?

7 **A -- the first part --**

8 Q It doesn't say it, does it?

9 **A The first part --**

10 MR. ZAPPOLO: Counsel, Your Honor --

11 MR. WEBER: He has not answered the question.

12 THE COURT: Overruled.

13 BY MR. WEBER:

14 Q Are you going to answer the question?

15 **A Is the question where, on here, does it say my**
16 **father's \$100,000 deposit -- is that what your question**
17 **is, not the first part?**

18 **I'm really confused because I disagree with**
19 **the first part of the question, and the second part**
20 **sounded like a question.**

21 Q Mr. Wagner --

22 **A Okay.**

23 Q -- does this document that you sent to
24 Mr. Savopoulos and Mr. Mosler identify the \$100,000 as
25 the \$100,000 your father sent in?

1 A Wait, let me take a look. I see something
2 about I need to get rid of the articles in order to get
3 a job, but all right. So we're in paragraph 5, okay.

4 So it was paid to me and I will pay back my
5 dad, so it doesn't explicitly say that here.

6 Q It does not say that, right?

7 A That's correct.

8 Q And Mr. Savopoulos, in response, told you that
9 he would not pay you the \$100,000, correct? Correct,
10 Mr. Wagner?

11 A Let me take a look at this. I don't recall
12 exactly what it was.

13 Q I'm handing you what's been marked as internal
14 481.

15 A Do you want me to answer the question or not?

16 Q We're going to --

17 MR. WEBER: Any objection moving this document
18 into evidence?

19 **THE WITNESS:** Okay. So I'm guessing you don't
20 want me to answer? All right.

21 MR. ZAPPOLO: I'm sorry, what number is this
22 one?

23 MR. WEBER: This is internal --

24 **THE WITNESS:** And just for clarity, that whole
25 document was to benefit Mr. Mosler, so it would be

1 **Mr. Mosler who's paying the \$100 or more, not**
2 **Savvas.**

3 MR. WEBER: 481. Hold on, Mr. Wagner.

4 **THE WITNESS: All right.**

5 MR. WEBER: Any objection?

6 MR. ZAPPOLO: No objection.

7 THE COURT: Madam Clerk, what number?

8 THE CLERK: 96.

9 THE COURT: Thank you.

10 (Thereupon, Defendants' Exhibit 96 was
11 received into evidence.)

12 BY MR. WEBER:

13 Q Mr. Savopoulos responds to your email and said
14 "The only thing we can offer beyond the agreement we
15 sent is that we will request of Jalopnik and the
16 AutoBlog that they remove the articles; however, there
17 are no guarantees that they'll comply and we can't be
18 expected to chase every link on the Internet. It
19 doesn't seem we have legal standing to demand anything
20 of the journalists and websites. Please sign the
21 agreement and send it back. We'll countersign and
22 return."

23 When he's referring to the agreement, he's
24 referring to the document he sent to you on December
25 1st, correct?

1 A Yes. And it says "Todd, the only thing we" --
2 the "we" being Savvas and Warren Mosler somehow
3 together -- I'm not sure what their together was, but
4 that document is entirely to help Mr. Mosler take all of
5 my intellectual property and take all of my
6 distributorship rights, absolve him from the defamation,
7 absolve him from the trade libel.

8 Q But instead of just saying no to
9 Mr. Savopoulos, you contacted a lawyer, right?

10 A Around this time?

11 Q You contacted --

12 A Probably.

13 Q -- Kelly Reagan, correct?

14 A Somewhere in this time frame, yes. I mean, I
15 had been -- I had my butt kicked pretty hard here and I
16 didn't know what was going on. I know it's pretty clear
17 Mr. Mosler was not going to honor his agreements.

18 MR. WEBER: Hold on, move to strike.

19 **THE WITNESS:** That's the reason why I hired a
20 lawyer, so you know --

21 THE COURT: Sustained.

22 **THE WITNESS:** -- you asked.

23 BY MR. WEBER:

24 Q You hired Mr. Kelly Reagan and you had him
25 send a letter to Mr. Mosler. I'm handing you what's

1 document internal 490.

2 MR. WEBER: Any objection to admitting this
3 into evidence?

4 MR. ZAPPOLO: Give me just a minute,
5 counselor. Okay. This document is what ID?

6 MR. WEBER: Internal 490. Any objection to
7 moving it into evidence, Mr. Zappolo?

8 MR. ZAPPOLO: No.

9 THE COURT: All right. 97, Madam Clerk?

10 THE CLERK: Yes.

11 THE COURT: Thank you.

12 (Thereupon, Defendants' Exhibit 97 was
13 received into evidence.)

14 BY MR. WEBER:

15 Q You hired Mr. Kelly Reagan and he sent a
16 letter to Mr. Mosler which is shown in this document,
17 correct?

18 A Yes.

19 Q And let's go to the letter part.

20 In the letter it discussed resolving all
21 disputes between SEI, yourself, and MACC, correct?

22 A Yes.

23 Q And the reason --

24 A It's a proposal.

25 Q -- you mentioned MACC in this letter is

1 because you knew that if you asserted claims against
2 MACC, that that would interrupt Savvas Savopoulos' due
3 diligence process, correct?

4 **A No.**

5 Q Because Savvas Savopoulos, as you already
6 knew, was researching compliance issues, certification
7 issues; and if a claim was brought against MACC, that
8 would further disrupt Savvas' purchase of MACC, correct?

9 **A No.**

10 Q Scroll down. And you wrote "We understand
11 that Mosler is in discussions with Savvas to sell to
12 Mosler. Supercar and Wagner have no desire to interfere
13 with or inhibit that transaction; however, they are
14 prepared to do whatever is necessary and appropriate to
15 protect their rights."

16 **A I think most people would feel like they have**
17 **the right to protect their rights --**

18 Q Now --

19 **A -- right?**

20 Q -- after you sent this letter to Warren and
21 MACC, Savvas Savopoulos -- let me take a step back.

22 You don't mention any dispute with Warren
23 Mosler in this letter, right?

24 **A I'm not understanding -- I'd have to read the**
25 **whole thing to answer your question fully.**

1 Q Well, just look at the first sentence. It
2 says "The purpose of this letter is to discuss resolving
3 all disputes between Supercar Engineering, Inc. and Todd
4 Wagner and Mosler Auto Care Center d/b/a Mosler
5 Automotive." Do you see that?

6 A Yes.

7 Q And the reason you asserted claims against
8 MACC is because you knew Savvas would have an objection
9 to that, correct?

10 A No. No.

11 Q Now let's put this document down.
12 Savvas withdrew from purchasing MACC or its
13 assets shortly after your letter, correct?

14 A As far as I understand, he withdrew around the
15 27th, right before Mr. Mosler tried the second good
16 faith deposit scam against my current investor.

17 Q So that would be about four weeks later. In
18 fact, you were told that Savvas had withdrawn from
19 trying to purchase MACC --

20 A At some point --

21 Q -- correct?

22 A -- I was informed someone told me that
23 eventually.

24 Q I'm handing you what's been marked as internal
25 503.

1 MR. WEBER: Any objection to admitting this
2 document?

3 MR. ZAPPOLO: No objection.

4 THE COURT: 98, Madam Clerk?

5 THE CLERK: Yes, Your Honor.

6 (Thereupon, Defendants' Exhibit 98 was
7 received into evidence.)

8 BY MR. WEBER:

9 Q Pull up Defendants' 98. Defendants' 98 is
10 another email. This one is a chain. The first one
11 starts with an email from you, and Mr. Mosler
12 responds -- I don't know if you can zoom in on this, the
13 response from Mr. Mosler.

14 Mr. Mosler writes "Over to Jill for comment,
15 thanks. And unfortunately, there are no serious buyers
16 anymore, so most likely it will just be wound down
17 further."

18 Because as of December 30th, following your
19 letter, Savvas withdrew, correct?

20 A All sorts of things could have happened
21 between December 3rd and this. One thing my letter was
22 intending to do, and it did that well, was to assert my
23 company's rights, contractual rights.

24 I offered a very reasonable, super cheap, in
25 fact, way to get out of it and pay the \$100,000 deposit

1 back. He had to pay it back. And was Mr. Mosler was
2 supposed to pay it back, not Savvas.

3 Q And you wrote -- and Mr. Mosler wrote "And
4 unfortunately there are no serious buyers," meaning
5 buyers of MACC, correct?

6 A That's Mr. Mosler's statement. You'll have to
7 ask him exactly what he means by that, but --

8 Q And he wrote "So most likely it will just be
9 wound down further." Because Mr. Mosler had been trying
10 to sell MACC since 2010, and now the last serious buyer
11 had walked away.

12 A I was a serious buyer the entire time, but he
13 kept blocking me from buying it. Three times he blocked
14 me from buying it. The first time by gutting the
15 company, taking the engine out basically; and the second
16 time he agreed to the 500,000, and then he just changed
17 his mind and said his son was going to run it; and then
18 I offered him even more money, and he agreed to it, and
19 then he took all the assets out and the only thing I
20 would know for sure I was buying is the liability from
21 his lawyer's insurance fraud.

22 So, I was a serious buyer. He didn't want me
23 to buy it. He didn't want me to succeed in the wake of
24 his failure.

25 Q Here is what I'm marking as trial ID number

1 504.

2 MR. WEBER: Any objection to admitting this
3 document into evidence? Any objection?

4 MR. ZAPPOLO: No objection.

5 THE COURT: Madam Clerk, 99?

6 THE CLERK: Yes.

7 (Thereupon, Defendants' Exhibit 99 was
8 received into evidence.)

9 BY MR. WEBER:

10 Q And then a few days later, after Mr. Mosler
11 told you there were no more serious buyers, January 3,
12 2012 "Update on the next-in-line buyer?" is your subject
13 line, correct?

14 A Yes.

15 Q And this document is an email from you to
16 Mr. Mosler and you wrote "Hi, Warren. Is the company
17 going to be bought by the next buyer (I forget the
18 person's name)? I have spoken with my investor and some
19 others as well and received positive feedback."

20 A Yes.

21 Q Again, you're referring to Lew Lee, aren't
22 you?

23 A Absolutely, positively not.

24 Q Now --

25 A This was Dr. Sabahi out in LA, Abby Cubey, and

1 my dad.

2 Q I'm going to take a brief diversion here.

3 MR. WEBER: Your Honor, may we approach
4 actually?

5 THE COURT: Yes.

6 (Thereupon, a sidebar conference was held.)

7 MR. WEBER: Are we going until 5:00?

8 THE COURT: It's up to you guys.

9 MR. WEBER: I think we should go to 5:00 as
10 much as possible, otherwise it's going to be tough.

11 MR. ZAPPOLO: That's fine.

12 THE COURT: Okay.

13 (Thereupon, the sidebar conference was
14 concluded.)

15 BY MR. WEBER:

16 Q Now one of the claims in this case is that SEI
17 is alleging that MACC breached a warranty for the car,
18 your car, that's owned by SEI, right?

19 A Yes.

20 Q SEI purchased the car on August 25, 2011 --

21 A Yes.

22 Q -- and the last payment was made on the date
23 of the Bill of Sale, correct?

24 A I believe that's correct. Something along --
25 close to that anyway.

1 Q I am going to mark this document as internal
2 38.

3 Mr. Wagner, you've been handed a document
4 marked as internal 38. Do you recognize this document?

5 A Yes, I do.

6 (Thereupon, Defendants' Exhibit 38 was marked
7 for identification.)

8 MR. WEBER: Any objection to moving this
9 document into evidence?

10 MR. ZAPPOLO: None, Your Honor.

11 MR. WEBER: Okay.

12 THE COURT: Madam Clerk, is it 100?

13 THE CLERK: Yes.

14 THE COURT: Thank you.

15 (Thereupon, Defendants' Exhibit 100 was
16 received into evidence.)

17 BY MR. WEBER:

18 Q Okay. So we're looking at the Bill of Sale
19 for the car, correct?

20 A Yes. It's a little blurry, but yep.

21 Q Okay.

22 A Yes.

23 Q And when SEI purchased the car, SEI completed
24 the documentation which included the Bill of Sale,
25 right?

1 **A SEI executed the Bill of Sale, is that what**
2 **you mean?**

3 Q Well, SEI agreed to the terms of the Bill of
4 Sale, correct?

5 **A Yes.**

6 Q When SEI signed the Bill of Sale, it agreed to
7 it, right?

8 **A Yes. SEI and Jill Wagner, who's an officer of**
9 **MACC as vice president of operations.**

10 Q And the Bill of Sale, in this paragraph right
11 here, which says "Provided, however," says that
12 "Provided, however, that this Bill of Sale and
13 Assignment is executed without recourse and without
14 representations or warranties of assignor whatsoever,"
15 correct?

16 **A Yes, it does.**

17 Q And you saw this language in the Bill of Sale
18 when SEI signed it, right?

19 **A And it also says after that "Assignee further**
20 **agrees to the use" --**

21 Q Yes or no, Mr. Wagner?

22 **A Yes, and I thought I'd refer to the next**
23 **sentence.**

24 Q You thought this language meant it was a
25 disclaimer and you did not care, correct?

1 **A** **I'm not fully sure I know what that means,**
2 **but --**

3 **Q** You don't remember thinking that this
4 language, when you signed it, meant it was a disclaimer
5 and you did not care about it?

6 **A** **Well --**

7 **Q** Yes or no?

8 **A** **I thought it referred to -- disclaimer? I**
9 **thought it meant that when journalists are driving the**
10 **car, that MACC, if something happened, wouldn't be**
11 **liable for it.**

12 **Q** Well, let's go to your deposition.

13 **A** **Is this the one I have here?**

14 **Q** Okay. Let's go to page 127.

15 The question was "Okay. Without
16 representation of warranties, do you see that language?

17 "Answer: I do.

18 "Question: Okay. And you signed this
19 document. So you agreed, when you purchased the
20 vehicle, that there would be no warranty on the vehicle
21 by signing this agreement; is that correct?

22 "Answer: This is language that was in the
23 other Bill of Sale agreements that I saw. And I didn't
24 add it in here. It was slipped in there and, again, I
25 thought it was just meant sort of like some sort of

1 disclaimer of some sort, and I didn't care. I didn't
2 realize that Warren Mosler was trying to throw away his
3 original agreement that we agreed upon prior to my
4 making payments on the car." Do you remember that
5 testimony?

6 **A** **Yeah. I thought it had something to do with**
7 **the Assignee further agrees to use the vehicle to**
8 **provide Mosler Automotive -- to promote --**

9 **So the next sentence after the first one says**
10 **"Assignee," which is me, or my company, "further agrees**
11 **to use the vehicle to promote Mosler Automotive and its**
12 **successors, and thus is the reason why because SEI had a**
13 **distributorship and needed to go and market the car,"**
14 **so --**

15 **Q** **The Raptor --**

16 **A** **The Raptor --**

17 **Q** **-- the car --**

18 **A** **-- which was used for marketing for MACC.**

19 **That's what Mr. Mosler and --**

20 **Q** **Mr. Wagner --**

21 **A** **-- his vice president -- okay.**

22 **Q** **-- the car doesn't have California**
23 **emissions -- California Air Resources Board approval,**
24 **right?**

25 **A** **So the car --**

1 Q Yes or no?

2 A You've miss -- you've misstated what it is.

3 I'm not sure --

4 Q CARB stands for the California Air Resources
5 Board, correct?

6 A That is true, yes.

7 Q And the Raptor, the car at issue here, did not
8 have California CARB emissions approval, correct?

9 A There is no such thing as that, really. I
10 just want to be straight with the technical word.
11 Should I explain the technical part of it to you?
12 California --

13 Q Hold on, Mr. Wagner.

14 A Okay, okay.

15 Q Let's go to 90.

16 "Now, did the RaptorGTR have California CARB
17 emissions approval?

18 "Answer: This has nothing to do with
19 California CARB."

20 Next page, "I'm asking you a separate
21 question.

22 "No, it did not.

23 "Okay. Did you ever tell anyone that it did
24 have the California CARB emissions approval?

25 "I don't believe I ever did, no."

1 Do you see all that?

2 **A Yes. So --**

3 Q And was that your sworn testimony in your
4 deposition?

5 **A Yes. So at that time I was being asked those**
6 **questions, I didn't go through the trouble to nail down**
7 **the technical detail --**

8 Q Well, Mr. Wagner --

9 **A -- and I can do that now, if you'd like.**

10 Q -- didn't you agree --

11 **A Or not.**

12 Q -- to -- we'll mark this document. It's
13 internal 449.

14 **A I would love to give you the technical**
15 **analysis if you want it. If you don't, it's okay.**

16 (Thereupon, Defendants' Exhibit 449 was marked
17 for identification.)

18 BY MR. WEBER:

19 Q I'm showing you a document that's been marked
20 as internal 449. You agreed to change the VIN number of
21 the car, correct?

22 **A No.**

23 MR. WEBER: Can we move this document into
24 evidence? Any objection?

25 MR. ZAPPOLO: No objection.

1 THE COURT: Madam Clerk?

2 THE CLERK: 101.

3 THE COURT: Thank you.

4 (Thereupon, Defendants' Exhibit 101 was
5 received into evidence.)

6 BY MR. WEBER:

7 Q Defendants' 101 is an email from you to Warren
8 Mosler and Jill Wagner dated November 22, 2011, and you
9 wrote "Hi, Warren and Jill. I am writing to indicate
10 that I am willing to have SEI's chassis 55 converted
11 back to 2009 spec." Do you see that?

12 A Yes. This is one week after the launch when
13 Mr. Mosler was beating the daylights out of me and I was
14 bloody on the street, and he said that, you know,
15 basically he'll relent, you know, if --

16 This is happening and I'm, like, desperate and
17 there were --

18 Q Mr. Wagner --

19 A -- also additional things that had to happen
20 in addition to this.

21 Q -- now isn't the reason --

22 A And it wasn't at the time, so I'm willing
23 to --

24 Q Hold on, Mr. Wagner.

25 A -- solve some -- because I didn't know it was

1 **him. I thought --**

2 Q That same day --

3 **A Mr. Mosler made me think it was my fault.**

4 Q Mr. Wagner, I know you think that --

5 **A No, I know that.**

6 Q Well, let's just focus, okay?

7 **A Okay.**

8 Q That same day Jill Wagner explained that you
9 agreed to have MACC issue the certificate of origin as
10 of 2009 and that your car will be considered an
11 aftermarket treatment concept car, and that your car's
12 VIN number will be changed to the 2009 number, didn't
13 she?

14 **A You'll have to show me that. I don't remember**
15 **that.**

16 Q Okay. Let's go to 453. I'm handing you a
17 document that's been marked as 453 internally.

18 MR. WEBER: Any objection to moving this
19 document into evidence?

20 MR. ZAPPOLO: No objection.

21 THE COURT: Madam Clerk, is that 102?

22 THE CLERK: Yes.

23 (Thereupon, Defendants' Exhibit 102 was
24 received into evidence.)

25 BY MR. WEBER:

1 Q Okay. So this is Defendants' 101, which is
2 11/22/2011 at 2:04 p.m. And now let's go to Defendants'
3 102, same date, 3:35:07 p.m. And you're on this email,
4 correct?

5 A I am on this email between Jill Wagner and
6 Warren Mosler, yes.

7 Q And it says "Warren, Todd has agreed to have
8 MACC issue the certificate of origin as a 2009, and his
9 car will be considered an aftermarket treatment concept
10 car. The VIN will be changed to a 2009 number. Todd
11 has agreed to the following press release," do you see
12 that?

13 A Yes. I did not agree to this; this is her
14 statement.

15 Q And you didn't agree -- can we go back to the
16 prior email?

17 You didn't agree to have SEI's chassis 55
18 converted back to 2009 spec either, did you?

19 A I would be willing to do that at the -- I
20 was -- at the time --

21 Imagine, like, beating someone to death and
22 holding a gun over their head and saying "Okay. Would
23 you agree to this so I don't kill you?" That's
24 basically what was going on here.

25 This guy wanted to capture all of the value of

1 the RaptorGTR for himself and in order to do that, he
2 needed to wipe me off the board. And he did it secretly
3 behind the scenes and then made me think it was all my
4 fault. And I'm being threatened and all this stuff and
5 he's, you know, this mega powerful dude and I'm broke.

6 Q It's a conspiracy, right?

7 A It's him and all of his paid people.

8 Q They were conspiring against you, is that what
9 you believe?

10 A Mr. Mosler is directing his people to --

11 Q In a conspiracy --

12 A -- come after me.

13 Q -- out to get you, right?

14 A Now, stop that.

15 Q Chassis 55 refers to the car, right? Chassis
16 55 is the same as chassis 32, which is the RaptorGTR?

17 A That is the RaptorGTR --

18 Q Okay.

19 A -- and everyone knew it.

20 Q Now let's go to 569. This is internal 569.

21 MR. WEBER: Any objection to this document?

22 MR. ZAPPOLO: No objection.

23 THE COURT: Madam Clerk, 103?

24 THE CLERK: Yes.

25 (Thereupon, Defendants' Exhibit 103 was

1 received into evidence.)

2 BY MR. WEBER:

3 Q Okay. You're being shown what's been marked
4 as Defendants' 103. It's an email exchange. This email
5 is from you. This is in April 2012, correct?

6 A Yes.

7 Q And when you write here "As Warren said in
8 email, and Jacob confirmed verbally in our meeting,
9 Warren is fine with the car staying as-is with no
10 warranty whatsoever," you're referring to the Bill of
11 Sale that you signed for the car which already says
12 there's no warranty whatsoever, correct?

13 A No. He's trying to get me to do this here.

14 Q 577. And then a few days later --

15 A They invent the nonsense of the car not --

16 Q Hold on, Mr. Wagner.

17 A Okay.

18 MR. WEBER: Any objection to this document
19 being admitted into evidence?

20 MR. ZAPPOLO: No objection.

21 THE COURT: Madam Clerk?

22 THE CLERK: 104.

23 THE COURT: Thank you.

24 (Thereupon, Defendants' Exhibit 104 was
25 received into evidence.)

1 BY MR. WEBER:

2 Q We have an email -- Defendants' 104 is an
3 email from Sylvia Klaker to you, Mr. Mosler, Alan Simon,
4 and Jacob Mosler, correct?

5 A Yes.

6 Q And Ms. Klaker explained to you in this email
7 "You're aware that the MSO states the vehicle is a
8 2012" --

9 "Vehicle" is referring to your car, right?

10 A Yes.

11 Q -- "and has passed CA emissions, which is not
12 true." And you agree, the car has not passed California
13 emissions, correct?

14 A No, I do not agree with that. It passed
15 California emissions. The one thing it does not have is
16 the onboard diagnostics aspect for California, and
17 that's for an executive order that allows you to title
18 the car in California.

19 You can still sell the car in California, but
20 you just have to title it in Montana or any one of the
21 other states that doesn't require the car to have
22 executive order. The emissions part are identical
23 between California and the rest of the country.

24 Q And it goes on to state --

25 A Sylvia Klaker is mistaken here.

1 Q It states "The fact that you added
2 twin-turbos, which won't allow the car to pass
3 emissions, is not our concern. The change needs to be
4 made," which is referring to changing the car to a 2009,
5 correct? Which you agreed to on November 22nd, right?

6 A I did not agree to that.

7 Q And you've understood that for some time now.
8 "The warranty issue has also been discussed, and we all
9 understand that you agreed and signed it yourself,"
10 referring to the Bill of Sale, right?

11 A I agreed to the Bill of Sale. I signed it.
12 If I misunderstood one of the terms --

13 Q Let's scroll down.

14 A But the car is a 2012 RaptorGTR --

15 Q Hold on, Mr. Wagner.

16 A -- as the Bill of Sale says.

17 Q And then --

18 A Here, they want to strip that away so that
19 they can have the RaptorGTR certification all to
20 themselves and I get nothing. That is the overarching
21 plan being executed here by Mr. Mosler and all of his
22 longtime employees, who have been paid and owe their
23 whole livelihood to this man. They're doing everything
24 they will --

25 They're lying for him, and I can actually

1 **prove Jill Wagner was lying under oath. If she would**
2 **come in and testify, I could prove that to you**
3 **definitively.**

4 Q And you know why Ms. Jill Wagner isn't here?
5 It's because you threatened her, correct?

6 MR. ZAPPOLO: Objection, Your Honor.

7 THE COURT: Let's approach.

8 **THE WITNESS: Absolutely not.**

9 MR. WEBER: You just looked at your attorney.

10 MR. ZAPPOLO: Stop.

11 (Thereupon, a sidebar conference was held.)

12 MR. WEBER: Your Honor --

13 THE COURT: All right.

14 MR. ZAPPOLO: He can't use that.

15 THE COURT: So the problem is your client
16 keeps bringing her up. You know, if you think he's
17 opened the door -- I've counted at least a handful
18 of times where it's been addressed even after we've
19 addressed it at the bench, but, you know, there's
20 constant additional comments and remarks from your
21 client about questions not posed. Frankly, he's
22 been impermissibly communicating with the jury and
23 it's got to stop. But for this particular
24 instance, he has opened the door and I am going to
25 allow the defendant to go into this at this point.

1 We're going to break. It's ten till the close
2 of business and I promised them I'll get them out.

3 MR. WEBER: Okay. Can I have like a brief
4 five minutes?

5 THE COURT: You can have five minutes to wrap
6 up --

7 MR. WEBER: Okay.

8 THE COURT: -- on this particular issue.
9 We'll stop and then, you know -- again, you know, I
10 know everybody's told your client to stop with the
11 additional comments. You know, it could get heavy.
12 It can get heavy next week, okay? All right.

13 MR. WEBER: Thank you, Your Honor.

14 (Thereupon, the sidebar conference was
15 concluded.)

16 BY MR. WEBER:

17 Q Mr. Wagner, you sent Jill Wagner a text
18 message through your father's partner, Christopher
19 Lunsford, whereby you told her you would remove a lien
20 from her house if she changed her testimony in this
21 case, didn't you?

22 A **Absolutely, positively not.**

23 Q Did a judge find that you intimidated --

24 MR. ZAPPOLO: Your Honor --

25 BY MR. WEBER:

1 Q -- Ms. Jill Wagner?

2 THE COURT: All right. Let's approach.

3 (Thereupon, a sidebar conference was held.)

4 THE COURT: All right.

5 MR. WEBER: That's what happened. It's
6 additional notice --

7 THE COURT: No, no.

8 MR. ZAPPOLO: That's absolutely incorrect,
9 Your Honor. That's a mistrial.

10 MR. WEBER: That's what happened.

11 THE COURT: Let's stop that one. What I don't
12 want is I don't want the jury to think the Court is
13 going to process this in any way, shape, or form
14 or has an opinion.

15 MR. ZAPPOLO: I move for a corrected ruling.
16 That order has been vacated, so you shouldn't be
17 referring to that.

18 MR. WEBER: The judge found --

19 THE COURT: All right. I'm going to sustain
20 the objection.

21 MR. ZAPPOLO: And this judge --

22 THE COURT: I will tell the jury to disregard
23 the last comment, okay?

24 MR. ZAPPOLO: I -- I move for a mistrial just
25 for record purposes.

1 THE COURT: We'll address that in a moment.

2 MR. ZAPPOLO: Thank you.

3 (Thereupon, the sidebar conference was
4 concluded.)

5 THE COURT: All right. The jury will
6 disregard the last comment. It is 4:53, but I'm
7 going to let you go for the weekend. Remember, we
8 come back on Tuesday. Not Monday, but Tuesday at
9 9:30.

10 You're not to look up the names or places of
11 the people involved, discuss this case amongst
12 yourselves or with family members or with friends.
13 You're not to discuss this case until it's time to
14 discuss it amongst all of you collectively during
15 your deliberations. But I will see you on Tuesday
16 at 9:30, okay?

17 Oh, hold on. And again, the last question
18 will be disregarded by the jury, okay?

19 (Jurors entering the jury room at 4:55 p.m.)

20 MR. ZAPPOLO: Your Honor, before we go
21 forward -- I think you're going to address my
22 recent motion -- I loathe to make such a motion,
23 especially at this point.

24 THE COURT: No, no, I get why you made the
25 motion. One, if you don't make it, you don't

1 preserve the record.

2 MR. ZAPPOLO: Right. Exactly.

3 THE COURT: But I am prepared to rule on it
4 because it is a part of the conversation we need to
5 have, and that is I'm going to deny your motion.

6 One -- the things that I'm weighing are: One,
7 I gave the jury an instruction, all right. Two, it
8 is a snippet of a question that didn't get
9 completed or answered. I don't see a whole lot of
10 harm, but also brought about as a result of
11 extraneous comments made by the witness on a
12 repeated basis.

13 And, again, I mentioned it, but it's pretty
14 obvious to me that there's impermissible
15 communication between the witness and the jury
16 during and throughout his Cross-Examination.
17 That's got to stop, okay?

18 And so I understand the frustration associated
19 with Cross-Examination. It is inherently
20 uncomfortable. Being questioned in a way that is
21 intended to portray your testimony in the worst
22 possible light is inherently uncomfortable.

23 We've talked about civility, but the
24 additional comments to the jury are also
25 impermissible. We're going to answer the questions

1 that are posed of us. The plaintiffs' counsel will
2 have the opportunity to rehabilitate during his
3 Redirect Examination, but a lot of these uninvited
4 comments have drawn this.

5 And so I don't see the prejudice to either
6 party. I actually see a jury that's heard a lot of
7 impermissible comments and a portion of the
8 questions. When I weigh that together, I've
9 determined that a mistrial is inappropriate at this
10 time.

11 Okay. Now, we're going to break for the
12 weekend. You're not allowed to talk about this
13 case with your attorney --

14 **THE WITNESS: Yes.**

15 THE COURT: -- but I am going to allow you to
16 discuss how to testify with your attorney.

17 **THE WITNESS: Okay.**

18 THE COURT: I think that's important. You can
19 do that here before you leave for the day.

20 MR. ZAPPOLO: Your Honor, I have some
21 logistics -- I haven't been able to speak to my
22 client in -- you know, since before last weekend.
23 I have, like, logistical issues that I need to
24 address with him. It's not anything about his
25 testimony.

1 THE COURT: That's fine.

2 MR. ZAPPOLO: I certainly would never do that.
3 Okay. So I can talk to him?

4 THE COURT: You're allowed to talk to your
5 attorney, you just can't talk about your testimony
6 about the case.

7 MR. ZAPPOLO: I haven't --

8 THE COURT: I want you to discuss courtroom
9 etiquette with your attorney before you leave here
10 today.

11 Again, I understand it's frustrating. I
12 understand it's frustrating.

13 **THE WITNESS: There's more to it than you know**
14 **too before --**

15 THE COURT: I don't --

16 **THE WITNESS: -- and I --**

17 THE COURT: I'm not unempathetic or
18 sympathetic to any of the parties that are present,
19 but our system works in a certain way, and I
20 understand that being cross-examined is not
21 comfortable. It's unpleasant. It can keep people
22 awake at night. It can give people anxiety.

23 I understand that Cross-Examination can feel
24 like the things that are said are misconstrued.

25 You answer the questions that are posed to you

1 because that's the way our system works. Your
2 attorney will have the opportunity to Redirect.

3 With the additional comments, we're going to
4 have impermissible communication with the jury,
5 which is not tolerated or accepted. We're taking a
6 lot of time to talk about it today. Next week I'm
7 not going to be as patient, okay?

8 **THE WITNESS: May I ask one other thing?**

9 THE COURT: Talk to your attorney.

10 **THE WITNESS: Okay.**

11 THE COURT: Speak to your attorney.

12 (Private discussion with Mr. Zappolo.)

13 MR. ZAPPOLO: Nothing. Nothing, okay? I
14 can't be any clearer; nothing. Sit mute until the
15 judge instructs you to answer.

16 If you think it's an impermissible question or
17 some argument and I don't raise an objection, you
18 sit there quietly until he asks the judge to compel
19 you to answer the question.

20 **THE WITNESS: Okay.**

21 MR. ZAPPOLO: Do not say -- I'm saying this on
22 the record because I want you to understand I'm
23 covering my butt right now, okay?

24 **THE WITNESS: I understand.**

25 MR. ZAPPOLO: Because this judge is very upset

1 and frustrated with the way this is going, okay?
2 And you're running the risk of having your claims
3 stricken and that's not my fault because we --

4 THE COURT DEPUTY: Jurors entering.

5 (Jurors exit the courtroom at 5:00 p.m.)

6 THE COURT: Okay. We're going to conclude for
7 the day. Listen to your attorney. You know, I'm
8 not one to raise my voice, I don't yell at people,
9 but we've discussed this now several times. Next
10 week could get heavy.

11 All right. We're going to break for the week.
12 I'll see everybody on Tuesday.

13 MR. WEBER: Thank you, Your Honor.

14 **THE WITNESS: Your Honor, I apologize.**

15 (Whereupon, the proceedings are adjourned at
16 5:01 p.m. and are continued on May 23, 2023 in
17 Volume IX.)

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IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT,

IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. 50-2012-CA-023358-XXXX-MB

JAMES TODD WAGNER, SUPERCAR ENGINEERING,
INC., a Florida corporation,

Plaintiffs,

vs.

WARREN MOSLER, MOSLER AUTO CARE CENTER,
INC. ("MACC") a Florida corporation,
d/b/a Mosler Automotive,

Defendants.

_____ /

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VOLUME IX - DAY 9

MORNING SESSION

- - - - -

PROCEEDINGS BEFORE

HONORABLE LUIS DELGADO

DATE: MAY 23, 2023

TIME: 9:30 A.M. - 12:08 P.M.

1 APPEARING ON BEHALF OF PLAINTIFFS:

2

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6

7 APPEARING ON BEHALF OF DEFENDANTS:

8

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12

13 ALSO PRESENT:

14 James Todd Wagner, Plaintiff

15 Warren Mosler, Defendant

16 David Griffin, TruVid, LLC

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I N D E X

WITNESS	PAGE
JAMES TODD WAGER	
Cross-Examination (cont.) By Mr. Weber	1659

E X H I B I T S

EXHIBIT	DESCRIPTION	MARKED	RECV'D
Defendants' 105	was marked Exhibit 534		1686
Defendants' 106	was marked Exhibit 460		1698
Defendants' 107	was marked Exhibit 475		1704
Defendants' 108	was marked Exhibit 628	1709	
Defendants' 109	was marked Exhibit 40		1732
Defendants' 110	was marked Exhibit 101		1734
Defendants' 111	was marked Exhibit 543		1736

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BE IT REMEMBERED, that the following proceedings were taken in the above-styled cause before Honorable Luis Delgado, Presiding Judge, at the Palm Beach County Courthouse, 205 North Dixie Highway, Courtroom 10-D, in the City of West Palm Beach, County of Palm Beach, State of Florida, on the 23rd day of May, 2023, to wit:

9

- - -

10

THE COURT DEPUTY: Court is in session.

11

THE COURT: All right. Are we ready?

12

MR. WEBER: Yes, Your Honor.

13

THE COURT: All right. Cross-Examination.

14

Can I see the attorneys for a second?

15

(Thereupon, a sidebar conference was held.)

16

17

18

19

All right. So I called you up here to give you a heads-up. So you need to conclude your evidence with enough time to get the verdict form to them on Friday, okay?

20

21

22

MR. WEBER: Okay. I'm not even -- Scott hasn't even closed his case yet. How are we going to do that?

23

24

THE COURT: I know it's going to be up to you guys to be as efficient as possible.

25

MR. WEBER: It's not possible, Your Honor. He

1 hasn't closed his case.

2 MR. ZAPPOLO: That's because he put
3 1,000-something exhibits in.

4 THE COURT: So I think the silver lining is
5 that a lot of your case in chief is also being
6 conducted right now, and so that's the silver
7 lining, okay?

8 And again, you know, on Wednesday of last week
9 was the midway point and by then you told me that
10 your last witness was Mr. Wagner, who's on the
11 stand now. And so you've had two days with
12 Mr. Wagner, so that's almost like two days of your
13 case in chief. And so you have roughly today plus
14 we have four days total, and we told them we'll get
15 them out of here by Friday.

16 Next Tuesday I've got to call another case up
17 for trial and so there's just not a lot of wiggle
18 room there. We have very tight schedules, so let's
19 be as efficient as possible. And again, you know,
20 I think both of you guys work really well together.
21 I understand perhaps that sometimes your clients
22 have animosity with each other, but you guys work
23 really well together. I think we could have maybe
24 saved a day of trial if, instead of bringing forth
25 exhibits -- I have not seen but maybe three

1 exhibits where there's been objections. The other
2 almost 197 exhibits have been agreed to. So I mean
3 at the very start of the trial you could have
4 stipulated to 200 exhibits and just started asking
5 questions about the exhibits.

6 So let's be as efficient as possible. You
7 know, we have until Friday to get this thing
8 wrapped up. Okay?

9 MR. ZAPPOLO: I need to say for the record,
10 yes, I think we work decently together, but I've
11 been -- I did ask counsel about these things
12 pretrial and I got a stack of objections.

13 If you look at the pretrial stipulation, he
14 objected to almost every one of my exhibits for
15 five or six different reasons, and then at trial he
16 agrees to them.

17 MR. WEBER: For the record, that's not true.

18 THE COURT: From where I'm sitting, both of
19 you guys are working well with each other. That's
20 my observation from where I'm sitting. If there's
21 some dirty laundry, you've hidden it really well.
22 Kudos to you for that. I appreciate that, but from
23 where I'm sitting, you guys have worked really,
24 really well together and I appreciate that.

25 Again, I'm just letting you guys know Friday

1 is it. Friday is it, you know. What I don't want
2 to see happen is on Friday we declare a mistrial
3 and look these six people in the face and tell them
4 it's been for nothing because it's a mistrial.

5 MR. WEBER: For the record, though,
6 Mr. Zappolo spent two days with Mr. Mosler calling
7 him on his case in chief and Ms. Klaker, and that
8 was a significant amount of days in this trial.

9 THE COURT: Yeah, but I gave him halfway. It
10 was halfway. And he told me this is the last
11 witness, and at the halfway point you took over
12 Cross-Examination.

13 I can't imagine Redirect is going to take a
14 long time. You know, I'm not going to give you
15 forever and ever and ever on Redirect on this
16 case --

17 MR. ZAPPOLO: I understand.

18 THE COURT: -- because equal time is equal
19 time and so, you know, equal time is equal time.
20 All right.

21 MR. ZAPPOLO: Thank you.

22 (Thereupon, the sidebar conference was
23 concluded.)

24 (Jurors entering the courtroom at 9:46 a.m.)

25 THE COURT: All right. Please be seated,

1 everybody. Thank you.

2 Madam Clerk swear in the witness.

3 THE CLERK: Please raise your right hand. Do
4 you solemnly swear or affirm that the evidence
5 you're about to give is the truth, the whole truth,
6 and nothing but the truth?

7 **THE WITNESS: I do.**

8 THE COURT: Thank you. It's your witness.

9 MR. WEBER: Thank you, Your Honor.

10 CROSS-EXAMINATION (cont.)

11 BY MR. WEBER:

12 Q Good morning, Mr. Wagner.

13 **A Good morning, Mr. Weber.**

14 Q Okay. I'm going to show you what's been
15 previously marked as Plaintiffs' Exhibit 74. Can you
16 see that okay, Mr. Wagner?

17 **A Yes.**

18 Q Okay. This is the document you previously
19 identified as the China-Thailand distributor agreement
20 between SEI and MACC, right?

21 **A "The Exclusive Distributorship of The Products**
22 **in China and Thailand" I believe is the name.**

23 Q And you had drafted this document, right?

24 **A Mr. Mosler and I drafted it together back and**
25 **forth several times. I believe the final version is**

1 **version 4.**

2 Q Which came from you to Mr. Mosler, right?

3 **A Yes. The final version was approved by**
4 **Mr. Mosler and sent to him and he signed it.**

5 Q Now let's look at paragraph C, term 1.

6 You see in paragraph C, term 1, where it says
7 "SEI will forfeit its exclusive distribution rights in
8 China and Thailand immediately upon failure to perform
9 any of terms 2 through 6 in paragraph A, provided that
10 MACC has fulfilled its obligation to supply vehicles as
11 described in paragraph B," correct?

12 **A Yes.**

13 Q Okay. So let's go back to paragraph A. Now
14 paragraph A, term 2, refers to chassis 32. That's the
15 RaptorGTR car at issue in this case, correct?

16 **A Yes, it is.**

17 Q Paragraph A-3 says that "C32 must be exported
18 to Thailand or China within 18 weeks after C32 has been
19 completed by MACC," correct?

20 **A Yes, it says that.**

21 Q The RaptorGTR was never exported to Thailand
22 or China, correct?

23 **A That is correct.**

24 Q The car, the RaptorGTR was only ever
25 transported by SEI to Los Angeles and the Mojave Desert,

1 correct?

2 **A It also went to Las Vegas for a Manny Pacquiao**
3 **fight and probably a couple other little places.**

4 Q A-4 states that "C32 must be presented to at
5 least one press outlet in Thailand and China," correct?

6 **A Yes.**

7 Q The RaptorGTR was never brought to Thailand
8 and China to be presented to a press outlet, correct?
9 Yes or no?

10 **A So when you say "brought to" --**

11 Q Let me state my question again.

12 **A Okay.**

13 Q The car, the RaptorGTR was never brought to
14 Thailand or China and presented to a press outlet there,
15 correct?

16 **A So it wasn't physically --**

17 Q Yes or no, Mr. Wagner?

18 **A I'm trying to understand the question. You**
19 **mean physically brought there or presented there as -- I**
20 **just want to make sure I'm clear.**

21 Q The RaptorGTR was never physically brought to
22 Thailand or China and presented to a press outlet there,
23 correct?

24 **A It was never physically brought to China or**
25 **Thailand.**

1 Q The only -- let's go to A-5. A-5 states
2 "Beginning calendar year 2011, SEI must purchase at
3 least three MACC vehicles to be marketed (approximately
4 1 vehicle every 120 days) in the Thailand/China
5 distribution territory in every calendar year of the
6 exclusive distributorship term," correct?

7 A Yes, this says that.

8 Q After SEI signed this document, the only car
9 that SEI purchased from MACC was the RaptorGTR, right?

10 A That is correct. None else were available for
11 purchase.

12 Q SEI only purchased that one vehicle, correct?

13 A Yes.

14 Q Let's go to paragraph A-6, which states "Each
15 vehicle must be paid for in full prior to export and
16 delivery to SEI from MACC from the United States or any
17 other location," correct?

18 A Yes.

19 Q And again, the only vehicle that SEI paid for
20 in full from MACC was the RaptorGTR, correct?

21 A Yes. The 2012 Mosler RaptorGTR.

22 Q After RP High Performance bought MACC's
23 assets, SEI did not place any orders with RP High
24 Performance, correct?

25 A No.

1 Q Yes or no?

2 A Oh, I'm sorry. So --

3 Q You did not place any orders with RP High
4 Performance, correct?

5 A That's correct.

6 Q Okay. Now, you have claims for defamation and
7 trade libel in this case, correct?

8 A Yes.

9 Q Let's look at -- now this article contains one
10 of the comments that you're suing Mr. Mosler for in this
11 case, right?

12 A Yes.

13 Q And specifically, the comment that you're
14 suing Mr. Mosler for in this case appears here on this
15 November 16th comment, correct?

16 A Yes.

17 Q Now this article is dated November 15, 2011,
18 right?

19 A Yes.

20 Q And that's approximately a month after the
21 Abby Cubey "Feel My Fire" music video was released,
22 correct?

23 A Absolutely incorrect. It's the exact same
24 day.

25 Q Okay. The exact same day as the music video,

1 right?

2 **A Yes. They were launched concurrently.**

3 Q Now the title of the article is "First, 2012
4 838-horsepower, 240-mile an hour Mosler RaptorGTR
5 hyperexotic, breaks cover via an extreme music video."
6 Did I read that accurately?

7 **A Yes.**

8 Q Now SEI issued a press release that caused
9 this article to be written, correct?

10 **A Yes. This is a part of presenting the car in
11 China and Thailand, yes.**

12 Q The video was published by Abby Cubey, right?

13 **A Abby Cubey published the video, yes.**

14 Q SEI was involved in the video because SEI
15 provided the RaptorGTR as a prop in the video, correct?

16 **A Yes, that's true.**

17 Q And SEI provided the money towards the
18 production of the video, right?

19 **A I -- SEI provided some of the money towards
20 the video.**

21 Q And the video is mentioned in the title of
22 this article, right?

23 **A Yes.**

24 Q Now MACC did not directly request this video
25 to be produced, correct?

1 **A** **No. It requested that the RaptorGTR be used**
2 **to promote Mosler Automotive and its successors, and**
3 **this was an endeavor in fulfillment of that contractual**
4 **obligation.**

5 **Q** Let me ask that question again, Mr. Wagner.

6 **A** **Okay.**

7 **Q** Listen to my question: MACC did not directly
8 request that this video be produced, right?

9 **A** **Correct.**

10 **Q** MACC did not provide any financing for the
11 video, correct?

12 **A** **Correct.**

13 **Q** MACC did not have any personnel present at the
14 filming of the video, correct?

15 **A** **Well, incorrect.**

16 **Q** Do you remember being deposed in this case?

17 **A** **Yes, and if I could clarify.**

18 **Q** Hold on, Mr. Wagner, no question's pending.

19 Mr. Wagner, do you recall being deposed on
20 February 8, 2016 in this case?

21 **A** **Yes.**

22 **Q** Let's go to page 53. And do you recall being
23 asked question: "Did MACC have any personnel present at
24 the filming of the video?"

25 "Answer: No."

1 Do you recall that testimony?

2 **A Yes, I do and --**

3 Q And were you testifying truthfully during your
4 deposition?

5 **A Yes. I thought you meant people who were on
6 the direct payroll of Mr. Mosler, but Supercar
7 Engineering was a distributor and part of MACC in that
8 regard; so when I answered just now, that's what I was
9 referring to.**

10 Q MACC did not have anyone involved in the
11 editing or production of the video either, correct?

12 **A MACC's direct employees were not involved in
13 the production or editing of the video, that's correct.**

14 Q And Warren Mosler was not involved in the
15 editing or the production of the video, right?

16 **A That's correct.**

17 Q Warren Mosler did not provide any financing
18 for the video, right?

19 **A That is correct.**

20 Q And Warren Mosler did not directly ask you for
21 the video to be produced, correct?

22 **A That's correct.**

23 Q Now let's look at the next document. This was
24 previously moved into evidence as Plaintiffs' Exhibit
25 41. Oh, I'm sorry, this is previously marked as

1 Plaintiffs' Exhibit 40.

2 Now, this article is another subject of your
3 trade libel and defamation claim in this case, and
4 specifically a comment written by Matt Farah, correct?

5 **A Well, it's --**

6 **Q Yes or no?**

7 **A It's related to a comment written by Matt**
8 **Farah.**

9 **Q Specifically, the comment that you are suing**
10 **Mr. Mosler about in this case is here, correct?**

11 **A Can you zoom in a little bit?**

12 **Q Yes or no?**

13 **A May I read it?**

14 **Q Yes.**

15 **A Do you want me to read it out loud or just to**
16 **myself?**

17 **Q You can read it to yourself. Let me know when**
18 **you're ready.**

19 **A Yes, that is the trade libel.**

20 **Q Now, in addition to that comment from Matt**
21 **Farah in this article, there are other comments that**
22 **mentions you and the RaptorGTR in this article, right?**

23 **A Yes.**

24 **Q And Matt Farah tested the car in the Mojave**
25 **Desert, right?**

1 A Yes.

2 Q And he made two runs in the car in the Mojave
3 Desert, right?

4 A Yes.

5 Q And during your deposition you described the
6 performance during the second run, correct?

7 A Is this the deposition from seven years ago?
8 I mean, I presume so, but it's seven years ago, so I may
9 not -- my memory may not be perfect about what you asked
10 me, but I think that's what you asked me. I don't
11 recall specifically.

12 Q And you said that the car was not tested in
13 environments like Matt Farah had tested it beforehand,
14 correct?

15 A Yes. That was an extraordinary -- you know,
16 Mojave Desert in August, high noon. There was a jet
17 black, fresh tar asphalt, so it was like black. We had
18 tennis shoes on. We had to dance on top of the pavement
19 because it was so hot. And so it was extraordinary
20 temperatures. It wasn't enough temperature grading
21 between the ambient air being picked up off the ground
22 and the engine to cool it down well.

23 Q And you had no doubt that his comments about
24 the car during that test were truthful, right?

25 A Can you show me which comments you're talking

1 about?

2 Q Well, were Mr. Farah's comments about the car
3 during the test truthful or not?

4 A There were all sorts of comments that he made.
5 I'd like you to show me specifically which ones they
6 are, if you don't mind.

7 Q So as of November 15, 2011, were you still
8 employed by MACC?

9 A Can you zoom in on this, please?

10 Q Matt Farah's comment says that the car's
11 owner --

12 Which is referring to you, correct?

13 A Yes.

14 Q -- also claimed to be Mosler's top engineer.
15 Were you employed by MACC as of November 15, 2011?

16 A I was related to MACC as an exclusive
17 distributor.

18 Q Were you employed by MACC as of November 15,
19 2011?

20 A No.

21 Q Next, it says "I was annoyed since they build
22 these cars in Florida, where it's hot pretty much all
23 the time." The RaptorGTR was built in Florida, correct?

24 A Yes. It was built inside the MACC factory in
25 Florida.

1 Q He then wrote "20 minutes after the car
2 crapped out I was able to nearly top out a bone-stock
3 Ford GT on the same runway." Were you present for the
4 test on the Ford GT?

5 A Yes, I was.

6 Q And do you see where he wrote "proving why
7 factory-designed cars work better than small volume,
8 exotics, even if the stock car makes 300 less horsepower
9 than the RaptorGTR"? Do you see that comment?

10 A I do see that, yes.

11 Q Now, let's refer to this point. It says "The
12 badges looked like they were hand-cut from double-sided
13 vinyl." He's referring to the badges on the RaptorGTR,
14 right?

15 A I presume so.

16 Q And did you agree that the badges looked like
17 they were hand-cut from double-sided vinyl?

18 A And that's a bit of a catty comment. They
19 were carbon fiber with -- that were cut on a mill and
20 then they had tape on the backside to attach them. All
21 of the Mosler decals are attached with that type of
22 material.

23 Q And then he says "So we'd been had by a con
24 man trying to pass off his own homebrew tuner kit as a
25 genuine Mosler product." That's something that

1 Mr. Farah wrote, correct?

2 **A Yes. He concluded that after talking to -- or**
3 **his people talking to Mosler Automotive or Warren**
4 **Mosler, I'm not sure which.**

5 Q You don't know who he spoke to, correct? As
6 you just testified, you don't know exactly who he spoke
7 to, correct?

8 **A So.**

9 Q Mr. Wagner, true or false, as you just
10 testified, you don't know exactly who he spoke to,
11 right?

12 **A Mr. Matt Farah, in his deposition, was very**
13 **clear --**

14 Q True or false --

15 **A Mr. Farah spoke to Warren Mosler. That is a**
16 **true statement. There are two different events of phone**
17 **calls to -- one to MACC and one directly to Warren**
18 **Mosler himself. There are two separate events. You're**
19 **trying to confuse them, I believe.**

20 Q Well, this comment was on -- scroll up a
21 little bit -- down -- next page.

22 It doesn't say here that Mr. Farah spoke to
23 anybody at MACC or Mr. Mosler, does it? Yes or no?

24 **A It does not say that here in this one.**

25 Q Now, I'm going to show you -- let's go through

1 the article.

2 Okay. Now, this comment doesn't say from
3 Mr. Mosler, right?

4 **A No. But we spoke with his attorney, Alan**
5 **Simon, who's a racer and also an esquire, the ESQ. And**
6 **it became pretty clear that Alan Simon was the guy**
7 **secretly making this comment.**

8 Q You're speculating. You don't know for a
9 fact, under oath today, whether that was Alan Simon,
10 correct?

11 **A I do not know for absolute certain, but I am**
12 **darn as close to certain as I can be.**

13 Q Okay. Under oath today --

14 **A Yes.**

15 Q -- Mr. Wagner --

16 **A I'm speaking under oath, I know that.**

17 Q So the comment says "On one hand Mosler should
18 be pissed because this music video is humiliating." Did
19 you agree with that?

20 **A I disagree with that.**

21 Q "And because this car, described as coming
22 from Mosler, ran so poorly on your show." Do you agree
23 with that?

24 **A I disagree with that.**

25 Q And it says, "And then on the other hand, at

1 least the Mosler name is getting out, and any Cubey GTR
2 sales will start with them having to buy a car from
3 Mosler." Do you see that?

4 **A I see that.**

5 Q Did you agree with that?

6 **A I absolutely do not agree with that.**

7 Q Now let's go to the next page. November 16th,
8 we have a comment from someone named TheGuru. And you
9 don't know who that is, correct?

10 **A I don't know who it is, but it's someone who**
11 **doesn't have the guts to give their real name.**

12 Q And it says "lol, Todd, you are so full of
13 horseshit. It's coming out of your ears." Do you agree
14 with that comment?

15 **A No.**

16 Q Do you think that comment portrays you in a
17 positive light?

18 **A No. This is an angry person.**

19 Q It says "You couldn't engineer your way out of
20 a wet paper bag." Do you agree with that comment?

21 **A No.**

22 Q It says "Remember your shitty, LSX TT setup
23 that had the catalytic convertors before the turbos and
24 then just open down-pipes." Do you agree with that?

25 **A Yes, that's what it says here.**

1 Q Do you agree with that comment?

2 A **Can you read it one more time? There's a lot**
3 **of information in that one sentence.**

4 Q It says "Remember your shitty, LSX TT setup
5 that had the catalytic converters before the turbos and
6 then just open down pipes." Do you agree with that?

7 A **So I'm not going to repeat the curse words**
8 **that are in there. I disagree with the curse words**
9 **elements. The eventual design of the RaptorGTR did have**
10 **the turbos after the catalysts, which is what was**
11 **required by the EPA.**

12 Q Did you agree that your LSX TT setup was
13 shitty?

14 A **No.**

15 Q What about the way he characterized your
16 brilliant way to pass emissions? Do you agree with
17 that?

18 A **Can you zoom in a little bit? I can't read**
19 **the rest of it.**

20 Q We're going to -- there's a curse word there,
21 pretty explicit, so I'm not going to read that part out
22 loud, but can you see this, Mr. Wagner?

23 A **It's cut off on the right-hand side.**

24 Q Did you agree with the way he characterized
25 your way to pass emissions?

1 A So, I mean, it's obviously a lot of cursing
2 going on there.

3 Q Yes or no?

4 A I'm answering your question, sir. I'm trying
5 my best, okay. There's a curse word in here and there's
6 "brilliant" right after it. I mean, this is a really
7 weird sentence.

8 So MACC contracted with SEI to develop the new
9 twin-turbo system for its next model. The system, the
10 invention, the invention that eventually made MACC into
11 something valuable, was that the turbos were going to be
12 in place of the mufflers. This was presented to the
13 EPA. The EPA approved the engineering description and
14 the engineering analysis and asked for some testing.
15 The testing was done, and it passed, and the EPA
16 approved. I mean, simple as that. This guy -- maybe
17 this is Warren Mosler, I don't know.

18 Q You don't know? Okay. So let's scroll to the
19 next comment.

20 A TheGuru, that sounds like him.

21 Q Hold on, Mr. Mosler -- I mean, Mr. Wagner.

22 Now we're going to go to another comment.

23 This is from Matt Farah. Do you see this on
24 November 16, 2011?

25 A Yes.

1 Q And the comment continues on to the next page.
2 Can you see this comment?

3 A **It's very, very small, but I can generally see**
4 **the shape of it.**

5 **Okay. That's better.**

6 Q Okay. Now this comment from Mr. Wagner says
7 that "But this morning, I called Mosler's office, and a
8 representative steadfastly claimed Wagner does not work
9 there now." And that's right because as of
10 November 16th you did not work there, correct?

11 A **I was not a -- on the payroll employee, but**
12 **SEI was a distributor, and obviously the person they**
13 **spoke to omitted that fact.**

14 Q And then Mr. Farah writes "In my comment, I
15 referred to Wagner as a 'con man' which may have been a
16 bit inaccurate, since at one time he did work for Mosler
17 and is an actual engineer. However, at the time he
18 presented the car to us at the taping of 'The Car Show,'
19 he was no longer associated with the company, as I was
20 led to believe he was." Do you see that comment?

21 A **Yes, I do.**

22 Q So you understand that Mr. Farah is saying
23 that he referred to you as a con man because he
24 understood that he was led to believe that you were
25 still associated with the company, correct?

1 **A** **So Mr. Farah thought I was a con man because**
2 **someone at MACC said I wasn't associated with MACC. I**
3 **absolutely was associated with MACC as an exclusive**
4 **distributor. That's the key word. It's not that I was**
5 **an employee, I was a distributor, an exclusive**
6 **distributor.**

7 **Q** **And then he says "The RaptorGTR didn't run**
8 **properly, and Wagner blamed it on heat." Do you agree**
9 **with that comment?**

10 **A** **Yes.**

11 **Q** **"The Ford GT ran just fine, and was not**
12 **affected at all by the same heat." Do you agree with**
13 **that comment?**

14 **A** **The Ford GT was running a little bit later in**
15 **the day, so it was but, generally speaking, yes, it was**
16 **more or less the same conditions.**

17 **Q** **And then he wrote "Abby Cubey's song is**
18 **horrible, and anyone driving the car is forced to listen**
19 **to at least the first few seconds of it." Do you agree**
20 **with that comment?**

21 **A** **That is not anyone who drives it ever. There**
22 **was a CD in the CD player that did -- when we started**
23 **the car, that was the first song that would come on.**

24 **Q** **You modified the car so that it played the**
25 **song when it was turned on, right?**

1 **A** **No. It was just a CD in the CD player, that's**
2 **it. That's not a modification of the car.**

3 **Q** **That's not what it says here, does it?**

4 **A** **Well, he doesn't --**

5 **Q** **Does it say here in this sentence that there**
6 **was a CD player in the car and that's why the car was**
7 **playing the song?**

8 **A** **He probably didn't see that. That was the CD.**
9 **The CD is hidden inside. It's in the CD player inside.**

10 **Q** **And that's not what the comment says, correct,**
11 **Mr. Wagner?**

12 **A** **No. He didn't add that, you know, trivial**
13 **detail, but that's what it was.**

14 **Q** **Now let's go to the next comment here.**

15 **A** **Oh, Alan Simon again.**

16 **Q** **Well, you don't know -- you're speculating**
17 **again, aren't you, Mr. Wagner?**

18 **A** **I am 99.999999 percent sure it's Alan Simon.**

19 **Q** **And you understand you're under oath here**
20 **today?**

21 **A** **I do.**

22 **Q** **So when you say that, you are testifying**
23 **supposedly truthfully?**

24 **A** **Yes.**

25 **Q** **So can you not make comments, just answer the**

1 questions.

2 Now, Mr. Wagner, do you see the comment from
3 raceresq November 16th at 2:26 p.m.?

4 **A Yes. I read that as racer esquire.**

5 Q And it says "The certificates appear to refer
6 to the original Mosler MT900, before Todd Wagner pimped
7 it into a, quote, RaptorGTR, close quote, Cubey GTR."
8 Do you agree with that comment?

9 **A No, absolutely not. The certificate was for
10 the 2012 RaptorGTR. And this person, who is most likely
11 Mr. Mosler's attorney started piling on here, is trying
12 to say that it's something else, which is what all of
13 those people are doing.**

14 Q The next comment -- we have another comment
15 from TheGuru.

16 **A TheGuru. TheGuru is very interested in this
17 for some reason, I wonder why.**

18 Q Mr. Wagner, please. TheGuru's comment says
19 "Matt, don't let him fool you, his 'turbo' Mosler have
20 not once passed emissions." Do you agree with that
21 comment? Just yes or no.

22 **A No.**

23 Q He wrote -- TheGuru wrote "He is such a good
24 engineer. He thought installing catalytic converters in
25 the up-pipe, pre-turbo would keep them clean enough to

1 pass emissions." Did you agree with that comment?

2 **A Yes. The catalyst needed to be right after**
3 **the manifold, so before the turbos, yeah.**

4 Q He wrote "Not to mention that on 7psi (TT
5 remember) it was only making 500whp. Out of an LSX,
6 that's a joke." Did you agree with that comment?

7 **A No, I don't agree with that comment.**

8 Q What about this comment: "Todd is a moron and
9 has never left his crappy little window-less office at
10 the West Palm Beach location"? Did you agree with that
11 comment?

12 **A No.**

13 Q Did you think that comment reflected
14 positively on you?

15 **A No. I mean, this is mean. This is a mean**
16 **dude.**

17 Q And then --

18 **A Or girl, I don't know.**

19 Q Then you see "You should see the hack job of a
20 rear suspension he developed for his Ford Expedition."
21 Did you agree with that comment?

22 **A No.**

23 Q It says "When engineers fail is what that car
24 should be called." Do you agree with that comment?

25 **A No.**

1 Q Now we're going to scroll down. So now we
2 reach the comment upon which you are suing Mr. Mosler
3 over, right? Do you see it, yes or no?

4 A Yes, it is there.

5 Q And it's dated November 17th and it's from
6 Matt Farah, correct?

7 A Yes.

8 Q And it says "I spoke with Warren Mosler today,
9 who confirmed the twin-turbo conversion to the RaptorGTR
10 Mosler MT900S will not pass emissions and is not
11 certifiable for public sale."

12 Now do you know what EPA confirmatory testing
13 is?

14 A Yes.

15 Q Has the RaptorGTR ever passed EPA confirmatory
16 testing?

17 A The EPA does --

18 Q Yes or no?

19 A Seldom -- it was never asked to pass. It was
20 never taken or requested to be tested at all.

21 Q The EPA --

22 A So, no.

23 Q -- has never requested that the RaptorGTR be
24 tested for confirmatory testing, correct?

25 A For confirmatory testing, that's correct.

1 Q And nobody knows, sitting here today, whether
2 it would pass confirmatory testing, correct?

3 A It will.

4 Q Well, you're under oath --

5 A Yes.

6 Q -- today. I don't want you to speculate.

7 A I'm not speculating; it will.

8 Q You cannot sit here today and say with
9 100 percent certainty it will pass confirmatory testing
10 because it hasn't happened yet, correct?

11 A It will pass confirmatory testing.

12 Q You believe it would, right?

13 A I believe it will and I believe Mr. Mosler
14 knows it will. The car is ultralightweight, ultra
15 streamlined. The confirmatory testing is on the same
16 acceleration curves. It has like 6,000 pounds of trunks
17 on the same engine and that passes -- this will pass
18 easily.

19 Q Let's just scroll down to this statement right
20 here. It's from someone named slowkills. Do you see
21 that?

22 A I see that, yep.

23 Q They wrote "These are other items about my
24 story which are unequivocally true. Abby Cubey's song
25 is horrible... Fact." Did you agree with that comment?

1 **A No. Slowkills, who's that?**

2 Q I want to keep scrolling down to your comment.
3 Now you wrote a comment on November 16th here, correct?

4 **A Yes.**

5 Q And you wrote "Matt Farah was instructed not
6 to post the private Mosler documents." What private
7 Mosler documents did you send to Matt Farah?

8 **A I sent him -- or Supercar Engineering sent him
9 the Bill of Sale for the car and also the manufacturer's
10 Certificate of Origin for the car, which is MACC's
11 attestation that the vehicle is legitimate and
12 certifiable for public sale.**

13 Q And then we have this comment from
14 Mr.FixIt1599. Do you see that?

15 **A Yes.**

16 Q He wrote "I have to say this, the fact that
17 Matt was sent the documents about the required emissions
18 tests, et cetera, then when he posted them and Todd came
19 back with the response that he wasn't SUPPOSED to share
20 them with us, tells the lie." Did you agree with that
21 statement?

22 **A No.**

23 Q This person wrote "My thought is Todd thought
24 that once Matt saw those official reports, he would
25 assume they were real, just like he and Jack assumed the

1 car was real and approved." Did you agree with that
2 comment?

3 **A It's not they should assume they're real, they**
4 **can even call the EPA.**

5 Q Next the person wrote "Well, you know what
6 they say when you ass-u-me something, this also brings
7 about the fool me once parable." Did you agree with
8 those comments?

9 **A No.**

10 Q We have another comment. This is from a
11 person named CAD_jockey on November 18, 2011. Do you
12 see that?

13 **A Yes, I see that the person is called that.**
14 **He's using that kind of fake name here, that's all it**
15 **is.**

16 Q He wrote "Working on the Mosler MT900 was a
17 project I was very proud of, as were all of the
18 employees involved. Now, in the last couple years or so
19 Todd's actions, and narcissism have seriously tarnished
20 that, which is sad for all involved." Do you see that
21 comment?

22 **A I see that comment, yes.**

23 Q Do you agree with CAD_jockey's comment?

24 **A No.**

25 Q Next we have a comment from sportyaccordy. Do

1 you see that?

2 **A I see someone using the screen name**
3 **sportyaccordy.**

4 **Q** The person wrote "This is truly fascinating.
5 Do you guys ever post on a message board where someone
6 got caught in a lie? This is like that, but 10 million
7 times more epic. I'm at a loss for words." Do you
8 agree with that comment?

9 **A** No. I didn't lie, but the whole world was
10 believing that I was a con artist because Mr. Mosler is
11 persuasive and everyone thinks he's going to tell the
12 truth, but he wasn't, and we outlined that here.

13 **Everyone knew the RaptorGTR was a legitimate**
14 **Mosler product, and he and everyone working for him were**
15 **all unilaterally saying it wasn't. My company was a**
16 **distributor, but they were believing him and making the**
17 **conclusion that I'm lying and I'm a con artist.**

18 **MR. WEBER:** I'm going to mark this document as
19 Defendants' 534 for identification.

20 I move this document into evidence. Any
21 objection?

22 **MR. ZAPPOLO:** No objection.

23 **THE COURT:** Madam Clerk, what number?

24 **THE CLERK:** 105.

25 **THE COURT:** 105.

1 (Thereupon, Defendants' Exhibit 105 was
2 received into evidence.)

3 BY MR. WEBER:

4 Q Now, Mr. Wagner, you're being shown a document
5 which is being marked as Defendants' 105. Do you see
6 it?

7 A Yes.

8 Q It's an email from you to Warren Mosler,
9 correct?

10 A Yes.

11 Q And attached to it, you have a press release,
12 correct?

13 A Yes. A press release draft.

14 Q And now this is dated approximately three
15 months after the article that we just saw and the
16 comments, correct?

17 A Approximately, yes.

18 Q Okay. So now let's scroll down. This is a
19 press release that you drafted attached to this email,
20 correct?

21 A Yes.

22 Q Approximately three months after those
23 comments in the article that we just saw, right?

24 A Yes, and the article --

25 Q Keep scrolling down.

1 Now do you see in number 1 it says "A former
2 Mosler employee, who now apparently works for Speed
3 Channel, encountered" -- well, let's start here.

4 You wrote "Below is the chain reaction that
5 was created by two scandal-seeking journalists, who
6 refused to check facts and further twisted clear facts."
7 Do you agree with that statement?

8 **A So at the time --**

9 Q Yes or no?

10 **A No, I do not agree with that statement now,
11 now that I understand what happened behind my back. Now
12 I know very differently, but back then --**

13 Q This is three months after the article you
14 just saw?

15 **A It took me years to figure out what really
16 went on.**

17 Q You wrote "A former Mosler employee, who now
18 apparently works for Speed Channel, encountered Matt
19 Farah and told him 'something' about me and the
20 RaptorGTR." Do you see that?

21 **A Yes, I do.**

22 Q Now let's scroll to 2. When you refer to Matt
23 in number 2, you're referring to Matt Farah, correct?

24 **A Yes. Yes, that's true.**

25 Q And you wrote "Matt became excited about an

1 opportunity to slap Abby." That's referring to Abby
2 Cubey, correct?

3 **A Yes.**

4 Q "Because he didn't like her song, and he
5 further wrote what the disgruntled former employee told
6 him without bothering to check facts nor calling me to
7 verify what he had supposedly been told," correct?

8 **A Yes. Now I believe the disgruntled former
9 employee was Mr. Mosler.**

10 Q And you wrote "Matt's posting directly
11 discredited and insulted me and ignorantly degraded the
12 Mosler product." Did you agree with that?

13 **A His -- Matt believed what Warren Mosler had
14 told him, so there's a lot of things there.**

15 Q And you wrote "As an important note about
16 Matt's character, Matt was extremely disrespectful to
17 Abby in person when he first met her in August." Is
18 that true?

19 **A I was not happy with the way he treated her.
20 He wasn't a gentleman, in my view.**

21 Q You wrote "Matt portrays an arrogant person in
22 spite of his jovial on-camera persona. Succinctly, I
23 would describe Matt Farah as a jerk." You agree with
24 that, correct?

25 **A I think Matt Farah was rude to Abby both in**

1 **person and also what he wrote and, yes, I think he --**

2 Q And then you wrote "In Matt's public posting,
3 Matt states that the words came directly from Warren
4 Mosler. They did not." You wrote that, yes or no? Yes
5 or no?

6 **A I wrote that believing what Mr. Mosler had**
7 **told me. He was lying about the fact that he didn't do**
8 **it.**

9 MR. WEBER: Move to strike.

10 THE COURT: Overruled.

11 BY MR. WEBER:

12 Q You wrote "Jill Wagner did an internal
13 investigation about this issue and only found that one
14 person who called the factory without giving his name
15 and asked about Todd," correct?

16 **A I wrote this at the time.**

17 Q And you wrote "This person was directed to the
18 Mosler production supervisor/head mechanic, since Jill
19 wasn't in the factory at the time. Since the production
20 supervisor didn't know who this person was, the
21 production supervisor only told the mystery caller that
22 Todd didn't work there anymore." Do you see that?

23 **A Yes.**

24 Q Mr. Mosler, Warren Mosler was not the
25 production supervisor of MACC, correct?

1 **A No, he was not the production supervisor.**

2 Q And then you wrote "He neglected to state that
3 Todd was a distributor because he didn't know who he was
4 talking to." Do you see that?

5 **A Yes, I see it.**

6 Q And you wrote "The production supervisor acted
7 appropriately. Jill suspects that this mystery person
8 was Matt Farah," meaning the person that called,
9 correct?

10 **A Yes. And there's -- now I understand this is
11 a mistake. I was being told things and believing things
12 when I was being told deceptions over and over again.**

13 Q And you wrote, in number 4, "After reading
14 Matt's comments, other journalists apparently got
15 excited about a potential scandal." Did you agree with
16 that?

17 **A I believed that at the time because I couldn't
18 fathom that Mr. Mosler would do this stuff to his own
19 company.**

20 Q And then you wrote "To be fair, many
21 journalists only made side mention of Matt's comments or
22 simply decided to not write anything at all." Meaning
23 that they -- these other journalists, who got excited
24 about the possible scandal and who wrote about you and
25 the car -- some of them didn't even mention Matt's

1 comments in the article, correct?

2 **A Yes. They were getting their own information**
3 **directly from Mr. Mosler and the MACC factory, but I**
4 **wasn't aware of that. This is me trying to figure out**
5 **what's going on and being deceived all along the way and**
6 **trying to mitigate the disaster that came out believing**
7 **that Mr. Mosler wouldn't do this --**

8 Q And then you wrote --

9 **A -- but I was wrong.**

10 Q -- in number 5, a person named Benjamin
11 Greene, correct?

12 **A On day 3, yes.**

13 Q Okay. Now this is the third article for which
14 you're suing Mr. Mosler in this case for defamation and
15 trade libel, correct?

16 **A Yes.**

17 Q And it's this article that was written by
18 Benjamin Greene who you just referred to in the document
19 we just saw, right?

20 **A Yes.**

21 Q And specifically, the comment for which you
22 are suing -- you and SEI are suing Mr. Mosler appears
23 here on page 2, correct?

24 **A Yes.**

25 Q And it says "Mosler says the RaptorGTR is not

1 one of its products and refused to comment further." Do
2 you see that?

3 **A Yes, I do see that here.**

4 Q And now it doesn't say one of "his" products,
5 it says one of "its" products, correct?

6 **A Correct. So --**

7 Q And the Mosler here is referring to MACC
8 because it's Mosler, the company, says the RaptorGTR is
9 not one of its products, correct?

10 **A It could very well be Warren Mosler stating
11 that about his own company.**

12 Q And you don't know who said this comment,
13 right?

14 **A So someone -- as far as I know from Benjamin
15 Greene's deposition, someone, a man at Mosler, conveyed
16 this information to the journalist.**

17 **Also, Jill Wagner, a week before the music
18 video launched at all, told Mr. Greene that the launch
19 of the car was just a rumor.**

20 Q But you don't know what, if any, information
21 came from Mr. Mosler, and you believe that most likely
22 it was Dan Carvalho who is now deceased, correct?

23 **A I mean, if you're referring to a deposition I
24 took seven years ago before I knew -- remember, and
25 again, I know this is a sensitive topic.**

1 Q Yes or no?

2 A Please ask the question again.

3 Q You don't know what, if any, portion of that
4 comment came from Mr. Mosler and you said that it was
5 obviously a person who worked at Mosler and most likely
6 Dan Carvalho, who is now deceased, correct?

7 A So you are referring to what I wrote three
8 months after the launch when I didn't know exactly
9 Warren Mosler had done all this stuff.

10 Q Well, sitting here today, you don't know that
11 Mr. Mosler said that, do you?

12 A I know that it was either Warren Mosler
13 himself, and that's the most likely person, or it's
14 Mr. Mosler told someone else, someone else in his
15 employ, to state that.

16 So all of the sudden everyone loved the
17 RaptorGTR. There was a moment in time when they all
18 decided "Oh, there is no RaptorGTR and there is no SEI
19 distributorship" without telling me. They decided to
20 start saying these things to everyone.

21 Q Now here we see this comment on the bottom.
22 It states "We will let you know more about this train
23 wreck in the happening as it unfolds. If you really
24 must watch the video (it isn't great), it is included
25 below." Do you see that?

1 **A** **Yes, I do.**

2 **Q** Now you claim that statement right here
3 personally affected you, correct?

4 **A** **The train wreck, the train wreck of my whole**
5 **life and my dreams, everything, yeah. I mean, that**
6 **really mega affected me, and it still does now. When I**
7 **read this stuff, it still, like, takes me out.**

8 **Q** And there's no attribution to Mr. Mosler
9 there, correct?

10 **A** **Oh.**

11 **Q** Yes or no?

12 **A** **He --**

13 **Q** Yes or no?

14 **A** **It does not specifically say Warren Mosler in**
15 **that sentence. No, it does not.**

16 **Q** Now, let's go back to -- now that article was
17 written in November 2011, correct?

18 **A** **Yes. I believe it was published approximately**
19 **one or maybe two days after the launch of the car, the**
20 **car meaning the 2012 RaptorGTR.**

21 **Q** So let's go to number 5.

22 **MR. ZAPPOLO:** Is it Plaintiffs' or
23 Defendants'?

24 **MR. WEBER:** This is what we just saw.

25 **MR. ZAPPOLO:** Okay.

1 BY MR. WEBER:

2 Q Number 5 on the press release from Mr. Wagner.
3 Okay. So here we have, in bullet point 5, "On day
4 number 3, Benjamin Greene, at the duPONT Registry, wrote
5 to me an email about what Matt wrote." Benjamin Greene
6 is the author of the article we just saw, correct?

7 A Yes.

8 Q And you told -- you wrote, "I told Benjamin in
9 no uncertain words that Benjamin's misunderstandings are
10 a results of Matt's failure in 'journalism.' And
11 furthermore, I asked him to help me clear my and Warren
12 Mosler's name," correct?

13 A Absolutely. Yes.

14 Q And you wrote "I asked Benjamin to simply wait
15 to write anything until I get things sorted out." Do
16 you see that?

17 A Yes. I wanted to clear Warren Mosler's name.
18 I thought he was being damaged, but he was the one doing
19 it.

20 Q And you wrote --

21 A That's what's so astonishing about all this.

22 Q -- in number 6, "Instead of waiting and losing
23 the opportunity to gain fame from the 'expose' on the
24 same day as my email reply to Benjamin's questions,
25 Benjamin wrote a tabloid-style article about an

1 'ex-family feud' between Jill and myself, and
2 furthermore stated in his article that I was suing
3 Mosler." Do you see that?

4 **A Yes.**

5 **Q** Now did you agree that there was a -- did you
6 agree that his article was about an ex-family feud
7 between Jill and yourself?

8 **A** He had made a conclusion, after talking to --
9 it was either Warren Mosler himself or another man at
10 Mosler, that stuff going on had something to do with my
11 ex-wife.

12 **A** And now I know -- you know, I knew -- eight
13 years later I saw -- I guess later on I saw that Jill
14 had told him -- Jill, being my ex-wife and Mr. Mosler's
15 vice president, that it was a rumor that the RaptorGTR
16 was being launched, and I didn't know she did that.

17 **Q** Was it true that you were suing Mosler as of
18 the date of Benjamin Greene's article in November 2011?

19 **A** Absolutely not. I was trying to defend Mosler
20 and that's what -- I think he had thought in his head,
21 because he heard all this stuff from Mosler that's
22 destroying me, bashing me, and he probably assumed that
23 my words meant I was going to sue in retaliation, but I
24 was actually trying to defend Mosler. I really thought
25 the journalists were making this up. I thought that

1 **hook, line, and sinker.**

2 Q And then you wrote "Warren and Jill saw the
3 article, and at the time they thought it was the truth.
4 Since the article is in the world-renowned publication,
5 the duPont REGISTRY, a large slice of supercar world
6 thought Benjamin's article was true, but his article
7 was, in fact, false," right?

8 A **His article was from false information that he
9 got from Mr. Mosler and from Mr. Mosler's vice president
10 and MACC and anyone on that side created the false
11 impression in his mind, and so what he wrote was, in
12 fact, false. It was trade liable.**

13 Q Well, what you're referring to as what you're
14 saying is false was that you were suing Mosler because
15 you wrote then "As a consequence, numerous smaller
16 online press outlets published that I was suing Mosler."
17 Do you see that?

18 A **Right. It's comprehensive. It's this aspect
19 of the RaptorGTR is a fake, and I'm suing Mosler. Those
20 things combined wound up being believed by everyone.
21 And I can kind of see where they did believe it because
22 it certainly sounds compelling, especially if the
23 factory is saying that. And the factory --**

24 Q Hold on, Mr. Wagner.

25 MR. WEBER: Okay. I'm going to mark this

1 document as 460 for identification. Move this
2 document into evidence. Any objection?

3 MR. ZAPPOLO: No objection, Your Honor.

4 THE COURT: Madam Clerk, what number is this?

5 THE CLERK: 106.

6 THE COURT: Defendants' 106.

7 (Thereupon, Defendants' Exhibit 106 was
8 received into evidence.)

9 BY MR. WEBER:

10 Q Okay. Now I'm showing you what's been marked
11 as Defendants' 106. Do you see that?

12 **A Yes, I do.**

13 Q Now let's look -- Defendants' 106 is an email
14 exchange from you to Warren Mosler, right?

15 **A Yes.**

16 Q And it's dated November 28, 2011, just after
17 the Benjamin Greene article we just saw, right?

18 **A Approximately 12 days after the article.**

19 Q And you wrote "I'm trying to get a job in the
20 area," because you were no longer working for MACC at
21 the time, correct?

22 **A SEI was a distributor, but not a MACC
23 employee.**

24 Q "So that Jill and I can continue
25 co-parenting." Because you were divorced from Jill

1 Wagner at the time, correct?

2 **A Yes.**

3 Q And you wrote "The problem I'm running into is
4 that my work at Mosler is a huge chunk of my experience
5 and the fabricated 'news' about me suing Mosler and the
6 various other nonsense is everywhere." Do you see that?

7 **A Yes, I do see that.**

8 Q And then you wrote "No one will hire me after
9 reading all of this stuff." Do you see that?

10 **A Yes, I do.**

11 Q And you wrote in this email that it was the
12 fabricated news about you suing Mosler which was causing
13 you a problem in getting hired, correct?

14 **A And all of the stuff. It was holistically
15 that I'm a con artist and the whole suing Mosler
16 precipitated from Benjamin Greene thinking that I'm
17 lying and so I'm going to sue him.**

18 **So all of this precipitated from Mr. Mosler
19 and the people who work for him all stating the same
20 thing, that the RaptorGTR is a fake and I'm not a
21 distributor, so they all -- everyone -- all these
22 journalists believed what he's saying, they think I'm a
23 con artist.**

24 Q And you wrote "Generally Speaking, I believe
25 there may have been significant failures in journalistic

1 integrity and fact-checking. Central to this is the
2 journalist from the duPont REGISTRY." Meaning Benjamin
3 Greene, right?

4 **A Right.**

5 Q "Who twisted my" -- meaning your, right? --
6 "very clear words into more of the 'tabloid' journalism
7 that was initiated by Matt Farah of The Car Show/Speed
8 Channel."

9 And when you say "who twisted my very clear
10 words," you're referring again to you suing Mosler,
11 right?

12 **A Yes, I am at this point in time because,**
13 **again, I didn't know what the truth was.**

14 Q Now let's look at number 1 in this email. You
15 wrote "I thought that everyone at the factory would have
16 been informed about the EPA certification, but I think
17 at the time the video came out many people did not
18 know." You wrote that, right?

19 **A Yes. I mean --**

20 Q And then you wrote, at the end of this
21 paragraph, "There was not money nor time in the budget
22 to get California certification, but this is probably
23 only 10 percent of Mosler's global market, so it isn't a
24 big need in my professional opinion." And the RaptorGTR
25 did not have California certification, correct?

1 **A** It did not have a California executive order
2 so that the car can be titled in California, but it can
3 still be sold to California residents who then have to
4 title it in a different state, like Montana, which is
5 commonly done and everyone knew that. Everyone at MACC
6 knew there was no California executive order. It was no
7 secret.

8 **Q** Now you wrote in number 3, "Secondhand
9 information, Matt Farah" --

10 He was the one who wrote the second comment we
11 saw, right?

12 **A** **Yes.**

13 **Q** -- "Host from The Car Show on Speed Channel,
14 found out about this and made a 'stealth' call into the
15 factory without giving his name, and (it seems) spoke
16 with Dan, who only told Matt that I didn't work there
17 anymore." The Dan you're referring to is Dan Carvalho,
18 right?

19 **A** **Yes. In this writing, yes, I'm referring to**
20 **that.**

21 **Q** And you wrote "Matt did not call me to
22 confirm. This is a theme throughout... no one bothers
23 to call me to get any clarification. I now believe they
24 don't call me because they WANT the juicy story and are
25 afraid I will be able to clarify everything and kill

1 their story." The "they" you're referring to there is
2 the journalists, right?

3 **A Yes. At this point in time I thought the**
4 **journalists were making it up because Mr. Mosler was not**
5 **admitting that he had done it.**

6 Q Well, you're saying the journalists want a
7 juicy story and they don't want to clarify what you
8 believed to be true, right?

9 **A That was my -- that was my conclusion at the**
10 **time because I believed Mosler wouldn't do this stuff.**
11 **That's the only logical conclusion based upon my --**

12 Q You wrote "They want a juicy story because
13 they make money off scandalous stories." Again, you're
14 referring to the journalists, right?

15 **A Yes. That was my belief at the time I wrote**
16 **this.**

17 Q And you wrote "This is the underbelly of
18 automotive journalism." Meaning that as a swipe at
19 automotive journalists, right?

20 **A Yes, I was. I thought there was no way on**
21 **God's green Earth that Mr. Mosler would do this.**

22 Q Now in number 6 you wrote "On Friday,
23 Benjamin" --

24 You're again referring to Benjamin Greene?

25 **A Yes.**

1 Q -- "then writes me and asks me some bizarre
2 questions that I presume came from Matt's post, and I
3 told him in no uncertain terms that this was a failure
4 in 'journalism.' It further states that I wish to clear
5 my name and Warren's name. Benjamin decides to twist my
6 words into the attached article about an ex-family feud
7 and that I'm suing Mosler." Do you see that?

8 **A Yes.**

9 Q And you believed that he twisted your words
10 and you didn't actually sue Mosler as of November 2011,
11 right?

12 **A I believed that Mr. Mosler was telling me the**
13 **truth, but I now know he was lying to me.**

14 Q Well, Mr. Mosler didn't tell you that you were
15 suing Mosler, right?

16 **A No, but --**

17 Q That was Benjamin Greene who twisted your
18 words, correct?

19 **A Even when I asked him about it, he didn't**
20 **admit that he's the one who was saying this stuff. He**
21 **shucked and jived and everything, and I couldn't fathom**
22 **that he would do this. It still to this day is**
23 **mind-boggling.**

24 Q Now let's look at --

25 MR. WEBER: I'll mark this document as 475 for

1 identification. I'll move this document into
2 evidence. Any objection?

3 MR. ZAPPOLO: No objection.

4 THE COURT: Madam Clerk, is that 107?

5 THE CLERK: Yes, Your Honor.

6 (Thereupon, Defendants' Exhibit 107 was
7 received into evidence.)

8 BY MR. WEBER:

9 Q Okay. Mr. Wagner, you're looking at
10 Defendants' Exhibit 107. It's an email from you to
11 Warren Mosler and Jill Wagner, correct?

12 A Yes.

13 Q And it's an email where, again, you attached a
14 press release, correct?

15 A Yes. A draft press release.

16 Q And one of the things you state in this email
17 is "I'm intentionally not stating that I'm representing
18 Mosler in this, these are just my words," correct?

19 A Right.

20 Q Because you're no longer working for MACC as
21 of December 1, 2011, correct?

22 A Well, that's not the reason. I'm just -- this
23 is me just stating my side of things on my own, or
24 wanting to anyway.

25 Q Now look at the bottom paragraph. You wrote

1 "We have the world's ear. I want to take this
2 opportunity to convey a beautiful message. At the same
3 time, it is important to me that the wrongful
4 publication about my suing Mosler be clearly
5 extinguished." Again, you're referring to Benjamin
6 Greene's article saying that you were suing Mosler,
7 right?

8 **A Yes, I was not suing Mosler. He**
9 **misunderstood.**

10 Q And you wrote "That is the type of web-yuk
11 that will plague me for the rest of my life if it isn't
12 dealt with." Meaning, again, the Benjamin Greene
13 statement that you were suing Mosler, right?

14 **A It's holistically the whole thing. And here**
15 **Warren Mosler and Jill Wagner know that this is going to**
16 **plague me for my whole life, and they do nothing to**
17 **help.**

18 Q Now let's go to the attachment.

19 Okay. Now let's go to page 2. Now in the --
20 you wrote "Still others twisted facts (I don't know if
21 it was intentional or not)." You're referring to
22 journalists when you say that, correct?

23 **A At the time I believed Mr. Mosler could not**
24 **have possibly done this, so the only conclusion was that**
25 **the journalists made it up. Now I know differently.**

1 Q You wrote "One journalist took my written
2 words 'there has been a monumental lapse in judgment and
3 failure in 'journalism' that has resulted in your
4 misunderstanding. I very much hope you will help me
5 clear my name and Warren Mosler's name' and twisted them
6 into stating that there is an ex-family feud between
7 Jill Wagner and myself and then went out to state flatly
8 that I was suing Mosler." You wrote that, right?

9 A Yes.

10 Q And you wrote "None of those things are true.
11 Jill and I have always been committed to remaining
12 friends, and we have done a great job at that." Do you
13 see that?

14 A Yes, that was true.

15 Q And you wrote "No matter what the
16 circumstances, I would NEVER sue Mosler." Do you see
17 that?

18 A Yep.

19 Q You're referring to Warren Mosler?

20 A That was my belief at the time. I didn't know
21 he had done this to me and I -- and he --

22 Q Well, you saw the articles at the time, right?

23 A And I didn't believe he had done it because it
24 just was so evil. I just couldn't fathom that it was
25 him. It was so destructive. It's just so pointless.

1 Q And then you wrote "Four days after the
2 article was published" --

3 You're referring to the Benjamin Greene
4 article again where it said that you were suing Mosler,
5 right?

6 A Let me see. I'm not for sure which one I'm
7 talking about. Most likely that is, yes. Okay. I got
8 it.

9 Q And you wrote "the publication simply took the
10 article down, but there are reprints of this all over
11 the web now." You're referring to the Benjamin Greene
12 article?

13 A Yes. And the holistic aspect of that the
14 Mosler RaptorGTR is a fake. They even took the word
15 Mosler and put a strike-through in it to kind of like,
16 you know, drive home the point that I'm saying this is a
17 Mosler but, hey, the factory says it's not, and they
18 believed the factory. They think I'm lying.

19 Q And it wasn't anybody from MACC who put the
20 strike-through that Mosler word in the article, correct?

21 A The journalist --

22 Q The journalist did that, correct?

23 A -- concluded that that was an appropriate
24 thing to do based upon talking to Mr. Mosler and the
25 MACC factory.

1 Q Well, you don't know who -- again, you are
2 speculating.

3 A That is my affirmative belief.

4 Q You're speculating though, right?

5 A That is my affirmative belief.

6 Q You already testified that you don't know
7 whether it was Mr. Mosler or someone at the factory, yet
8 you keep on repeating that it was Mr. Mosler.

9 A That's what -- I was present at the deposition
10 of Benjamin Greene and he was very adamant that he spoke
11 to a man at Mosler and they gave him -- and also an
12 email with Jill Wagner, Mr. Mosler's vice president and
13 fellow officer of MACC --

14 Q And again --

15 A -- and they gave him information. He believed
16 it because it came from the factory and thought I'm a
17 con artist, I'm a liar. Because I'm just this little
18 guy over here with a car, but the factory is saying it,
19 and they can't believe that the factory is lying. And I
20 couldn't believe it either. I really couldn't believe
21 this was happening. And it took me years to really
22 figure it out definitively.

23 MR. WEBER: Mark this document as 628 in
24 evidence -- I mean for identification. Move this
25 document into evidence. Any objection?

1 MR. ZAPPOLO: No objection.

2 THE COURT: Madam Clerk, Number 108, please.

3 (Thereupon, Defendants' Exhibit 108 was
4 received into evidence.)

5 BY MR. WEBER:

6 Q Okay. Please zoom in a little bit. It's a
7 little bit fuzzy.

8 Okay. This is an email from you to David
9 Houston, correct?

10 A Yes.

11 Q And David Houston was affiliated with the
12 "Truth About Cars" article which we saw from Matt Farah,
13 right?

14 A Well, I mean tangentially David Houston was
15 the producer of "The Car Show" and Matt Farah was an
16 employee of "The Car Show" and Matt Farah wrote comments
17 on the "Truth About Cars article"; so, yes, he's sort of
18 in the chain, so to speak, I guess.

19 Q And you wrote in this email that you wanted to
20 have the video of "The Car Show" featuring the RaptorGTR
21 removed from all online sources. That's referring to
22 the video where Matt Farah reviewed the RaptorGTR in the
23 Mojave Desert, right?

24 A Yes.

25 Q Where he wrote that it took a crap, correct?

1 **A If you insist.**

2 Q Yes or no?

3 **A He -- so he wrote a comment in the "Truth About**
4 **Cars" article about something akin to the words you used.**
5 **He stated that in there, yes.**

6 Q And then you wrote "The video, combined with
7 Matt's intentionally destructive comments, have made it
8 impossible to sell the RaptorGTR." Do you see that?

9 **A Yes.**

10 Q "It has also crippled the company as whole."
11 Do you see that?

12 **A Yes.**

13 Q And then you wrote "If this is done, I will
14 sign a full release to 'The Car Show,' Speed Channel and
15 your production company. There is no real value to you
16 of these videos being up." Meaning the videos where
17 Matt Farah tested the RaptorGTR in the Mojave Desert,
18 right?

19 **A Yes, right. And then --**

20 Q And then you wrote --

21 **A -- the jet black asphalt at high noon in**
22 **August.**

23 Q -- "They only serve to be destructive to me
24 and my company." You're referring to the videos, right?

25 **A I'm referring to The Car Show review where the**

1 car, on the second run, after it had sea-soaked, it went
2 into the limp mode at the end of the Standing Mile
3 event.

4 THE COURT: Can I see the attorneys for a
5 second?

6 MR. WEBER: Yes.

7 (Thereupon, a sidebar conference was held.)

8 THE COURT: Maybe we should take a brief
9 break, okay?

10 MR. WEBER: Yeah, okay.

11 THE COURT: We'll take 10, 15?

12 MR. WEBER: Yeah, that's fine.

13 (Thereupon, the sidebar conference was
14 concluded.)

15 THE COURT: All right. So we're going to take
16 our first break. Why don't we come back in about
17 ten minutes.

18 All right. We'll be in a brief recess.

19 (Thereupon, a short break was taken from
20 11:23 a.m. to 11:24 a.m.)

21 THE COURT: All right. Please be seated.
22 Let's bring them out.

23 THE COURT DEPUTY: Jury entering.

24 THE COURT: Can I see the attorneys for a
25 second?

1 MR. WEBER: Yes.

2 (Thereupon, a sidebar conference was held.)

3 THE COURT: So whenever it's time, I think
4 what we're going to do is -- their food is across
5 the street. I'm just going to have the deputy walk
6 them over there --

7 MR. WEBER: Oh, yeah.

8 THE COURT: -- so they can stretch their legs
9 and get some sun.

10 MR. WEBER: That's better.

11 THE COURT: That will be, you know, again
12 close to noon.

13 MR. WEBER: You said 12 o'clock you have
14 something, right?

15 THE COURT: I do, but it's stipulated, but I
16 need to go on the record and accept it.

17 MR. WEBER: Okay.

18 THE COURT: And so we'll break for an hour.

19 MR. WEBER: So 11:55 I should stop?

20 THE COURT: Yeah. And they'll come back
21 within the hour.

22 MR. WEBER: Okay. Thank you, Your Honor.

23 (Thereupon, the sidebar conference was
24 concluded.)

25 THE COURT DEPUTY: Jury entering.

1 (Jurors entering the courtroom at 11:27 a.m.)

2 THE COURT: All right. Please be seated.

3 It's your witness.

4 MR. WEBER: Thank you, Your Honor.

5 BY MR. WEBER:

6 Q Are you ready, Mr. Wagner?

7 A **Yes, sir.**

8 Q I'm showing you what's been previously marked
9 as Plaintiffs' Exhibit 39. This is the last article
10 which contains a comment that you're suing about in this
11 case, correct?

12 A **It is one of their comments that we're suing**
13 **on, yes.**

14 Q Now this article is dated November 15, 2012,
15 correct?

16 A **Yes.**

17 Q And it was written by Mr. Clifford Atiyeh,
18 correct?

19 A **Yes. This is one full year after the launch**
20 **of the 2012 RaptorGTR.**

21 Q Now you don't agree with all of the statements
22 of Mr. Atiyeh in this article, correct?

23 A **What do you mean by I don't agree with?**

24 Q Well, there are sentences in this document,
25 aside from that attributed to Warren Mosler, which you

1 do not agree with, correct?

2 **A I'd like for you to show me which ones you're**
3 **talking about. I mean it's a five-page article.**

4 Q Okay. So let's scroll down to the next page.

5 **A Can you zoom in, please?**

6 Q Now this is the first paragraph of the
7 article, correct?

8 **A Yes.**

9 Q So you agree that there is an inaccuracy in
10 this article when it says "He hasn't sold a car for the
11 past two years," correct?

12 **A So, yes. MACC sold the 2012 RaptorGTR to my**
13 **company.**

14 Q In 2011, right?

15 **A Yes.**

16 Q So that's an inaccuracy in the article,
17 correct?

18 **A Yes. Apparently Mr. Mosler told him that and**
19 **that's inaccurate.**

20 Q Next, we have in the one, two, three -- in the
21 fourth paragraph down it says "Mosler said he sold '10
22 or 12' cars a year, employing up to 40 employees at a
23 time."

24 You think that's another inaccuracy, correct?

25 **A I think -- I mean, Mr. Mosler obviously told**

1 him this, and I recall we got up to about 18 cars a year
2 at the peak of production.

3 Q You weren't present for any phone call between
4 Mr. Atiyeh, the author of this article, and Mr. Mosler
5 right?

6 A No, of course not.

7 Q Now keep scrolling down.

8 We get to this paragraph which is called "As
9 the supercar world turns." Do you see that in this
10 section?

11 A Yes, I do.

12 Q And do you see here it says "What happened
13 next is the stuff of soap operas"?

14 A I do see that.

15 Q This isn't the first time -- November 2012
16 isn't the first time that someone has referred to the
17 interactions between you, Jill Wagner, and MACC as a
18 soap opera, right?

19 A What are you referring to?

20 Q Well, didn't you hear the family feud in one
21 of the articles from Benjamin Greene?

22 A Oh, Benjamin Greene mentioned some sort of
23 family feud. He didn't clarify exactly what he meant,
24 but something along those lines.

25 Q Now we have a sentence here, where it says

1 "When a potential deal went south, Mosler blamed Wagner
2 for ruining it, when he allegedly demanded Mosler pay
3 him \$100,000, quote, in return for agreeing not to sue
4 the new owner, Mosler refused."

5 Now you discussed suing MACC when you demanded
6 the \$100,000 from Savvas Savopoulos, didn't you?

7 **A So you're making a misstatement there. I**
8 **think two misstatements in that sentence, so I have to**
9 **say no.**

10 Q Did you demand a payment of \$100,000 that your
11 father sent in in December 2011?

12 **A From Savvas Savopoulos? Is that what you**
13 **mean? I never demanded anything from Savvas Savopoulos.**

14 Q Well, you sent your proposed draft resolution
15 to Mr. Savopoulos, didn't you?

16 **A I believe I sent that to Warren Mosler.**

17 Q You don't recall sending it to Mr. Savopoulos
18 again?

19 **A Oh, you know, I think -- hold on, let me back**
20 **up. So I sent it to Warren Mosler and he said I should**
21 **send it to Savvas.**

22 Q And you didn't send it to Savvas, right?

23 **A Yes. And it says draft resolution, draft for**
24 **discussion, or something along those lines, if I**
25 **remember correctly.**

1 Q And then you later clarified in your email
2 that the \$100,000 referred to in your draft is referring
3 to the \$100,000 your father sent in, remember?

4 A Yes. Mr. Mosler agreed, in no uncertain
5 terms, that I would get my \$100,000 deposit back if
6 someone else bought the company, and then somewhere
7 along the lines he decided to just snake the money
8 instead.

9 Q Now you discussed suing MACC when you were
10 asking for the return of that \$100,000 back in
11 December 2011, didn't you?

12 A Could you repeat that? I apologize.

13 Q You discussed suing MACC back in December 2011
14 when you asked for the return of that \$100,000, didn't
15 you?

16 A I don't think so. I just wanted him to honor
17 his agreements. All along this path, if Mr. Mosler had
18 simply honored his agreements, we both would be making
19 money. I'd be making cars -- you know, selling cars in
20 China; he'd be making a ton of money. Everything would
21 be hunky-dory, but he never wanted to honor his
22 agreements, not one.

23 Q You may have discussed suing MACC --

24 A You have to show me something. I really don't
25 recall that, actually.

1 Q -- when you were making your demands to have
2 the \$100,000 returned, correct?

3 A I expected him to honor his agreements to send
4 back the money if he was going to sell it to someone
5 else. I mean, what's the big deal here? What's the
6 punch line?

7 I don't remember saying I was going to sue him
8 for it; I demanded it back. If he's going to sell it to
9 someone else, he agreed to give me my deposit back, so
10 of course I'm going to demand it back in the event he
11 sells it to someone else, or if he blocks my ability to
12 utilize that money, which he did three times.

13 Q Now, this sentence doesn't use the word
14 "extortionist," does it?

15 A But it sure makes it seem like it is. I'm
16 demanding \$100,000. He doesn't say that I'm demanding
17 my deposit back, he's just saying I'm demanding
18 \$100,000 in return for not agreeing to sue the new
19 owner, and that's not true. He's making me look like an
20 extortionist here.

21 Q Now this next sentence -- this is the sentence
22 in the article that you and SEI are suing Mr. Mosler
23 over in this article, correct? It reads "'He's nothing.
24 He's got some serious mental problems,' Mosler said.
25 He's out there billing himself as everything and he

1 doesn't have anything." Do you see that?

2 **A** **Yep. "He's nothing. He's got some serious**
3 **mental problems." That is definitively defamation.**

4 **Q** You don't know what the "He's nothing" means,
5 right?

6 **A** **It means I'm nothing. That's what it means.**
7 **It means I'm nothing.**

8 **Q** But you don't know what that means?

9 **A** **Yeah, I do.**

10 **Q** You would be speculating as to what that
11 means, right?

12 **A** **If I told somebody they're nothing, I would**
13 **think it means they're dirt. They're stupid. They have**
14 **no idea what they're doing. They're worthless. That's**
15 **what it means.**

16 **Q** Well, you remember being deposed in this case,
17 right?

18 **A** **Of course.**

19 **Q** You will be speculating as to what it means,
20 right?

21 **A** **No.**

22 **Q** Okay. Let's pull up.

23 Okay. Do you remember your deposition on
24 June 29, 2021?

25 **A** **Yes.**

1 Q Let's go to page 51. During your deposition
2 you were asked: "What does the 'he's nothing' mean?"

3 And you wrote "I mean, I would be speculating.
4 Warren Mosler was the one who said it. Warren Mosler
5 said this, not me. So it's difficult for me to
6 speculate on what he meant by that. What it indicates
7 to me, just speculating, is that it means that I am
8 dirt, I'm worthless." Do you remember that testimony?

9 A Yes.

10 Q You don't know what it meant. You're
11 speculating as to what it means.

12 A I know what it meant. It means I'm dirt. I'm
13 worthless. That's what I know it means. If anyone said
14 that to anyone else -- I heard someone say it to someone
15 else, that's exactly what I believe it meant.

16 Q And you were asked about what you called "the
17 mentally ill" portion of this article, right?

18 A Yes.

19 Q Now --

20 A I presume so.

21 Q Now, the mentally ill portion, as you
22 described it, is here, right?

23 A Yes.

24 Q And you were not present during any
25 conversation between Mr. Mosler and Mr. Atiyeh, right?

1 **A That's correct.**

2 Q You were not on any phone call between
3 Mr. Mosler and Mr. Atiyeh, correct?

4 **A Correct.**

5 Q You don't know what was said before and after,
6 if there was any phone call between Mr. Atiyeh and
7 Mr. Mosler, right?

8 **A How could I know that if I wasn't on the phone
9 call? No, of course I don't know what was said
10 specifically. All I can know is what journalists wrote.**

11 Q And you --

12 **A And he testified that it's accurate under
13 oath.**

14 Q Well, you wrote -- you described the mentally
15 ill portion as "He's got some serious mental problems."
16 That part, right? That's the part you're complaining
17 about, correct?

18 **A Holistically. When I say holistically, two
19 things: "He's nothing. He's got some serious mental
20 problems." You put those two things together and it's
21 way worse than just one singular comment.**

22 Q Now --

23 **A He's actually going out of his way to sort of
24 buttress that whole "He's nothing, but he's got serious
25 mental problems." And of course no one is going to hire**

1 someone when they read something like that about them,
2 especially, you know, for something in a management
3 level. No way.

4 Q In response to this article, you spoke to the
5 editor, correct?

6 A I stated to Clifford Atiyeh that what is
7 written is defamatory and, of course, this time I'm, you
8 know, trying to put my life back together.

9 Q I didn't ask you what you said to him. I just
10 want to know: You spoke to the editor, right?

11 A Down a few weeks later he wound up calling me.

12 Q You asked him to retract the serious -- the
13 mentally ill portion, correct?

14 A Yes, of course I did.

15 Q You said you were not mentally ill to him,
16 right?

17 A Yes.

18 Q "Car and Driver" did not retract this part,
19 did it?

20 A They did retract that part.

21 Q You asked him to tone down the mentally ill
22 part, didn't you?

23 A No.

24 Q And he did tone down the mentally ill part of
25 this article, didn't he?

1 **A No. You're stating miss -- you're stating**
2 **something very wrong here. What are you talking about?**

3 Q Do you remember being deposed in this case?

4 **A Yes.**

5 Q Okay. Do you remember your deposition on
6 February 8, 2016?

7 **A Yes. Seven years ago.**

8 Q Let's go to page 70. Just scroll up so we can
9 see the question.

10 The question was: "Okay. Did you ask him
11 about that quote, the direct quote from Mr. Mosler?

12 "Answer: I asked him after this came out. I
13 emailed him. I believe our email correspondence is in
14 the production somewhere. And I asked him to retract it
15 because I did not do this. And I was not mentally ill
16 as was in the original version. But he insisted that
17 Warren Mosler said it, and said he deferred to his
18 editor at 'Car and Driver,' the head guy, and that's the
19 person who eventually called me and we spoke about it at
20 length, and he agreed to take out the portion about the
21 suspension setup and the Photon, and I think he toned
22 down the mentally ill part." That was your testimony,
23 correct?

24 **A "Toned down the mentally ill part," okay. I**
25 **didn't ask him specifically to tone it down, I told him**

1 to take it out, and he did take it out.

2 Q You knew the author or the editor of this
3 article toned down -- just like we saw previously, the
4 journalist modified a quote attributed to Mr. Mosler to
5 make the article flow better, didn't you?

6 A No.

7 Q Are you saying your testimony there is not
8 correct?

9 A There's a whole lot more to that deposition,
10 and it still made it look like I'm a bad guy. The
11 article still wound up portraying what Mr. Mosler wanted
12 to be portrayed in the article, it just wasn't near as
13 bad.

14 So that particular sentence was removed, but
15 you're still getting an unpleasant feeling from the
16 article as a whole due to what Mr. Mosler told Clifford
17 Atiyeh.

18 Q Well, that's why the quote is attributed, but
19 not actually from Mr. Mosler, right? Because it's not
20 exactly what Mr. Mosler said, if anything?

21 A That's incorrect.

22 MR. ZAPPOLO: Objection. Never mind, Your
23 Honor, I'll withdraw it.

24 MR. WEBER: I didn't hear what he said.

25 THE WITNESS: Do you want to ask the question

1 again?

2 THE COURT REPORTER: He said "That's
3 incorrect."

4 BY MR. WEBER:

5 Q Now you don't know what this part of the
6 statement means either, "He's out there billing himself
7 as everything and he doesn't have anything." You don't
8 know what that part means either, do you? You'll be
9 speculating as to what that means, correct?

10 A Mr. Mosler said it, this journalist attributed
11 it to him. If you're asking if I can climb directly
12 into Mr. Mosler's brain and determine exactly what he
13 meant, no. No one can do that, but "He's out there
14 billing himself as everything and he doesn't have
15 anything" is something derogatory about me being out
16 there talking about the RaptorGTR, talking about my
17 company's distributorship, and him saying that what I'm
18 saying is false. I don't have a distributorship.

19 "He doesn't have anything" I presume means
20 that, you know, my company doesn't have a
21 distributorship or doesn't have a deposit in place. It
22 could mean -- it could mean he's saying I don't have a
23 deposit in place which sort of buttresses his assertion
24 that I'm an extortionist asking for my \$100,000 back,
25 something along those lines.

1 Q Now one of the things you're claiming is that
2 the comments allegedly attributed to Mr. Mosler
3 prevented you from getting a job, correct?

4 A **It made it extraordinarily difficult.**

5 Q But you testified that once you took MACC off
6 your resume, you got a job within two weeks; isn't that
7 right?

8 A **That's correct.**

9 Q Because once you took MACC off your resume,
10 potential employers stopped calling MACC, correct?

11 A **Correct.**

12 Q And they stopped speaking to Sylvia Klaker,
13 who was answering their phones, right?

14 A **Sylvia Klaker does answer the phones and
15 deliver whatever messages Mr. Mosler wants her to
16 deliver.**

17 Q And after you took MACC off your resume, you
18 found the job in April 2012, right?

19 A **Yes.**

20 Q And you worked for that employer from
21 April 2012 to March 15, 2013, right?

22 A **Yes.**

23 Q And you continued working for that employer in
24 2014?

25 A **I considered -- I continued working for that**

1 employer via an engineering subcontractor so I could
2 move back to Florida.

3 Q And you were making a higher salary than you
4 did at MACC at Belcan, correct?

5 A The salary that I was supposed to earn at MACC
6 was \$75,000 a year plus 2 percent of sales, so it had a
7 lot of potential upside from that. Plus I was an
8 exclusive distributor, so I was willing to take a lower
9 salary because I was getting these additional benefits
10 and becoming a distributor. And all of these things I
11 was trying to contribute to the whole by taking a lower
12 base salary.

13 Q And in 2014 you were showing \$130,279 as wages
14 for Belcan, correct?

15 A That sounds about right.

16 Q While you were working at Belcan, you did not
17 hear anyone there make any comment about any of the
18 alleged defamatory statements or articles, correct?

19 A Well, I was going by James Wagner at that time
20 and there was no Warren Mosler resume, so that was how I
21 ducked the axe.

22 Q You never sought any type of treatment for
23 emotional distress, right?

24 A I did a lot of healing during that time and --

25 Q You never went to any doctors for any

1 emotional distress, correct?

2 **A I don't think I did. No, I don't think I did.**

3 Q Now the --

4 **A Not directly.**

5 Q -- RaptorGTR was the only one ever produced,
6 right?

7 **A The 2012 RaptorGTR is the only one that MACC**
8 **produced, yes.**

9 Q And the RaptorGTR was completed August 25,
10 2011, the date of the Bill of Sale, right?

11 **A Or just shortly before, something along those**
12 **lines.**

13 Q And SEI purchased the RaptorGTR for
14 approximately \$130,000, correct?

15 **A All in, that sounds more or less right.**

16 Q SEI has never sold a car for \$700,000, right?

17 **A That is true.**

18 Q You were not aware of MACC ever selling a car
19 for \$700,000?

20 **A There are no other RaptorGTRs to sell.**

21 Q You're the one who came up with the list price
22 of \$700,000 for the Raptor, right?

23 **A Warren and I had spoken about it for sure**
24 **about the price being a lot higher so the car could make**
25 **more money. The prices of the earlier cars, that didn't**

1 have the exotic flavor and had the lower power and the
2 sort of Corvette knockoff look, only made the company
3 just barely break even.

4 Q You believe a profit margin of 50 percent is
5 very reasonable in the exotic car and exotic luxury
6 industry, true?

7 A Oh, absolutely. A lot of these luxury items
8 have like 90 percent profit margins.

9 Q You believe a markup of 50 to 60 percent is a
10 normal markup for the RaptorGTR, correct?

11 A Yes. Absolutely.

12 Q And the cost to manufacture the RaptorGTR was
13 approximately \$200,000, right?

14 A Yes.

15 Q Now SEI began making its efforts to market the
16 RaptorGTR immediately upon purchasing it from MACC,
17 correct?

18 A Yes.

19 Q But SEI did not immediately obtain any orders
20 for the RaptorGTR, right?

21 A Well, it was -- I was basically all in on the
22 vehicle. I didn't do a lot of -- I didn't do any
23 advertising early on until -- I planned to do it after
24 the launch.

25 So what I was doing early on was basically

1 word of mouth. Abby had a lot of contacts, Abby Cubey.

2 We were showing it to the -- one of the princes of --

3 Q No orders, right, Mr. Wagner?

4 A There were no orders before the launch, no.

5 Q The Raptor takes six to nine months to
6 produce, correct?

7 A Yeah, that's about right.

8 Q You eventually -- well, SEI eventually sold
9 the RaptorGTR for \$300,000 to Lawrence Kaplan, correct?

10 A Yes.

11 MR. WEBER: I'll mark this document as trial
12 identification Number 40.

13 I'm handing you what's been marked for trial
14 identification as Number 40. Move this document
15 into evidence.

16 MR. ZAPPOLO: No objection. We're going to
17 have to deal with the designation on this.

18 THE COURT: Let's approach.

19 (Thereupon, a sidebar conference was held.)

20 THE COURT: So there's no objection so it's
21 going to be admitted, but what's the designation
22 that's got to be addressed?

23 MR. ZAPPOLO: It says "Confidential-not to be
24 used except as per court order," and I think a
25 couple of other documents that says used by

1 consents of the parties have confidential
2 designations on it, so we're just wanting to have
3 to deal with that as a housekeeping issue.

4 MR. WEBER: Well, the order for this document
5 basically says it can only be used for the case, so
6 it's being used for the case as far as I'm
7 concerned.

8 THE COURT: Okay.

9 MR. ZAPPOLO: Well --

10 THE COURT: So is this document admitted into
11 evidence? It's a part of the court file?

12 MR. WEBER: Yeah, it's got to be.

13 THE COURT: Okay. All right.

14 MR. ZAPPOLO: So, so I think there was a -- I
15 think the prior order said it's not. We're going
16 to have to deal with that at some point.

17 THE COURT: Why don't we address that after
18 the trial.

19 MR. ZAPPOLO: Right. Exactly.

20 (Thereupon, the sidebar conference was
21 concluded.)

22 THE COURT: All right. Madam Clerk, that's
23 admitted as what number?

24 THE CLERK: 109.

25 THE COURT: 109?

1 THE CLERK: Yes.

2 (Thereupon, Defendants' Exhibit 109 was
3 received into evidence.)

4 BY MR. WEBER:

5 Q Okay. I'm showing you what's been admitted as
6 Defendants' 109. Do you recognize this document?

7 A Yes, I do.

8 Q This was the contract for the sale of the
9 RaptorGTR. Can you zoom in?

10 And the RaptorGTR -- it says the RaptorGTR was
11 sold for \$300,000, correct?

12 A Yes.

13 Q Okay. The next paragraph. And on this
14 document it stated "The vehicle does not have California
15 emissions and, therefore, cannot be titled in California
16 nor the other 11 states which require California
17 emissions," correct?

18 A Yes. "Titled" is the key word there.

19 Q "Additionally, this vehicle is being sold
20 without a manufacturer's warranty due to the fact that
21 Mosler Automotive has ceased doing business," correct?

22 A Yes.

23 Q Now you mentioned a Saudi prince, yes or no?

24 A Yes.

25 Q You did not ever speak to the Saudi prince

1 yourself, correct?

2 **A** **I did speak to him on the phone one time.**
3 **Abby put him on the phone with me when I was in**
4 **Connecticut and he was in LA visiting, and so I did**
5 **speak with him on the phone. I never met him in person.**

6 **Q** **You mentioned Dr. Sabahi, right?**

7 **A** **Yes. Yes.**

8 **Q** **The reason Dr. Sabahi didn't want anything to**
9 **do with MACC is because he heard of the insurance fire**
10 **thing with Alan Simon's car, correct?**

11 **A** **Yes. He was going to be one of my investors**
12 **and my third-person attempt for \$650,000. And, you**
13 **know, he knew about all the zits and the warts of the**
14 **things with all of Mosler claiming that the car was**
15 **illegitimate and so forth.**

16 **Q** **Well --**

17 **A** **But with -- he wasn't down for absorbing the**
18 **liability of Mr. Mosler's attorney's insurance fraud of**
19 **\$220,000. That part kind of scared him off.**

20 **Q** **It was the insurance fire claim that scared**
21 **Dr. Sabahi off, correct?**

22 **A** **That's correct. The insurance --**

23 **Q** **Now you remember --**

24 **A** **-- fraud is a big deal, you know.**

25 **Q** **-- Hassan, who came to court, right?**

1 **A Yes.**

2 MR. WEBER: And let's mark this document as
3 Defendants' 101 for identification.

4 You've been handed a document. Move this
5 document into evidence.

6 MR. ZAPPOLO: No objection.

7 THE COURT: Madam Clerk, 110?

8 THE CLERK: Yes.

9 (Thereupon, Defendants' Exhibit 110 was
10 received into evidence.)

11 BY MR. WEBER:

12 Q Okay. I'm showing you what's been moved into
13 evidence as Defendants' 110, I believe.

14 Now this is an email from you to Mr. Mosler,
15 correct?

16 **A Yes.**

17 Q And you're discussing Hassan in this email,
18 right?

19 **A Yes.**

20 Q And in this email Hassan -- you're telling
21 Mr. Mosler that Hassan can't get outside financing
22 because the banks don't know the car and there is no
23 NADA data, right?

24 **A Yes.**

25 Q And then you scroll -- let's scroll up to the

1 next email.

2 With respect to Hassan, you wrote "He can't
3 afford 6 years." Meaning he can't afford 6 years worth
4 of financing, right?

5 **A I'm presuming so.**

6 Q You wrote "He has 3 kids in college (I spent
7 the night at his house when I got stuck in Houston). He
8 probably just shouldn't be buying a car like this,"
9 right?

10 **A Yes.**

11 Q Because you knew that Hassan didn't have the
12 type of money to buy a car like this, didn't you?

13 **A He was not one of the typical guys who was
14 writing a check for this car, no. He was very
15 passionate about the car and wanted it, but it was a
16 financial stretch for him.**

17 Q Now let's go back to Lew Lee for a minute.
18 You agree that you loaned Lew Lee's company SFDM
19 \$100,000, right?

20 **A Absolutely not. And Lew Lee is not anyone's
21 real name in this country. He's probably Ralph.**

22 Q You remember the promissory notes that we saw
23 that were entered into evidence, right?

24 **A Those were offer letters.**

25 Q Did you reject those promissory notes?

1 **A I rejected the \$100,000 offer letter, yes.**

2 Q I'm marking this as 543 for identification.
3 I'm handing you what's been marked as 543 for
4 identification.

5 **A Okay.**

6 MR. WEBER: Now, move this document into
7 evidence. Any objection?

8 MR. ZAPPOLO: No objection.

9 THE COURT: Madam Clerk, 111?

10 THE CLERK: Yes.

11 (Thereupon, Defendants' Exhibit 111 was
12 received into evidence.)

13 BY MR. WEBER:

14 Q Okay. I'm showing you what's been marked as
15 111 in evidence. Zoom in.

16 It's an email which begins on February 12 --
17 February 21, 2012 at 12:39 p.m. Do you see that?

18 **A Yes.**

19 Q It's an email from the person who goes by Lew
20 Lee and that you received, right?

21 **A Yes. It looks like he has a blind copy list
22 and I'm on it.**

23 Q And he wrote "Dear colleagues, we received
24 this today. BCC is finally moving forward appropriately
25 on the 7 million." Referring to SFDM's bridge loan,

1 right?

2 **A I don't know what it's referring to, sir.**

3 **This is all just fake stuff. This is just a part of the**
4 **team of scammers.**

5 Q This is 2012, February 2012. You see that
6 date, right?

7 **A Yes, I do.**

8 Q Let's scroll down. Keep going.

9 And your response to Mr. Lew Lee's email, you
10 wrote "Hi, Lew. This is great news. Please take a
11 moment and put yourself in my shoes. I can hold off on
12 pressing Warren on the topic, but I want to see the
13 documents that are (according to Warren) linked to the
14 \$100,000 deposit my dad put in."

15 That's referring to the money that your father
16 sent to Warren Mosler on June 29, 2011, right?

17 **A So Warren Mosler --**

18 Q Yes or no?

19 **A -- is not saying --**

20 Q Yes or no?

21 **A Ask your question again.**

22 Q When you say "linked to the \$100,000 deposit
23 my dad put in," you're referring to the money that your
24 father wired to Warren Mosler on June 29, 2011, correct?

25 **A The \$100,000 that I'm referring to is what my**

1 dad sent to Warren Mosler from my deposit, but now
2 Warren Mosler and his other con team members are trying
3 to say it's not my money.

4 So I'm trying to figure out what the heck is
5 going on. No one is telling me anything. Mr. Mosler
6 still, 12 years later, has not sent me this document
7 that he claims allows him to keep my money. 12 years
8 later.

9 Q Now then you wrote "Please send the docs
10 today. No matter what the circumstances surrounding the
11 request, I'm entitled to see them." You see that,
12 right?

13 A Exactly. It's all being kept secret from me.

14 Q Now, go down. Keep going.

15 In response, Lew Lee wrote to you "Hi, Todd.
16 We will simply return the 100K to you from the bridge."
17 Meaning the bridge loan that was supposed to come in
18 from Lew Lee, right?

19 A I have no idea what this actually is. It's
20 all a con and clearly --

21 Q Well, you loan --

22 A -- Mr. Lew Lee and Mr. Mosler had collaborated
23 on the con, so now --

24 Q You had formed --

25 A -- Ralph is trying to state this --

1 Q You had formed --

2 A -- to back up what Mr. Mosler wants
3 communicated.

4 Q You --

5 A Mr. Mosler stole the money from me.

6 Q You understood that you had loaned Lew Lee the
7 \$100,000 and that he would be paying you back from the
8 bridge loan once it came through as of February 21,
9 2012, correct?

10 A Untrue.

11 Q Well, you may feel differently today, but as
12 of February 21, 2012, your understanding was that you
13 had loaned Lew Lee \$100,000 and he was going to pay you
14 back from the bridge loan, correct?

15 A No.

16 Q Let's look at the next document. I'm sorry,
17 scroll down.

18 You wrote on February 22, 2012, the next day,
19 "Hi, Lew. Thank you very much!!" Meaning that Lew Lee
20 would pay you back the \$100,000, correct?

21 A If Lew Lee popped up and gave me \$100,000,
22 that would be wonderful.

23 Q Because you had loaned it to Mr. Lew Lee?

24 A Mr. Mosler is who owed it to me, but if
25 someone else paid me back and Mr. Mosler asked him to

1 pay me back, that would be fine, but the money was owed
2 to me, period.

3 Q Now you wrote --

4 A End of story.

5 Q -- the ideal --

6 A If the guy in the sky pops up and sends it,
7 that's fine. That doesn't mean I loaned it to him. He
8 may be paying it back on behalf of Mr. Mosler. I don't
9 know here. But Mr. Mosler is the guy who owes me the
10 money. I sent it to him and his personal account.

11 Q Then you wrote "The ideal is if everything
12 works out with SFDM, but I absolutely need a backup plan
13 of some sort."

14 And you wrote "The ideal is if everything
15 works out with SFDM" because you loaned the money to
16 SFDM and SFDM was supposed to pay you back from the
17 bridge loan, correct?

18 A No.

19 Q And then you said "I absolutely need a backup
20 plan of some sort." You said that in case Lew Lee
21 didn't pay you back the \$100,000, correct?

22 A No. Mr. Lew Lee here or whoever the fuck -- I
23 apologize. I do apologize. I did not mean to say that.

24 Ralph, whoever it is, was still claiming he'd
25 be able to get the money to invest in Supercar

1 **Engineering's efforts to buy MACC so he kept promising**
2 **that and promising that and promising that and promising**
3 **that and promising that, which is what con artists do.**
4 **They can promise the world because they have no interest**
5 **or no even hope of following through, but they're hoping**
6 **they can scam some money out of the victims from along**
7 **the way.**

8 Q And keep scrolling down.

9 You wrote "Nothing in life works out as you
10 plan, so backup plans make good business sense."

11 **A Exactly. For the capital to buy MACC.**

12 Q And we keep scrolling down, and we get to
13 another email between you and Lew Lee, correct? On
14 February 23, 2012, right?

15 **A Yes.**

16 Q And this one says "Todd, the 100K is gone.
17 Warren's document clearly says that it's nonrefundable
18 and that the time limit is only 30 days." Do you see
19 that?

20 **A I see that.**

21 Q That's referring to the \$100,000 deposit that
22 your father sent in on June 29th, correct?

23 **A Incorrect.**

24 Q Mr. Lew Lee wrote to you "We'll cover you. I
25 know it's been months, but we will cover the 100K. You

1 have my word on that." Again, referring to the 100K
2 that your father sent in on June 29th, correct?

3 **A Incorrect.**

4 Q Scroll down. Put that document down.

5 Now you didn't tell Mr. Lew Lee that it's not
6 really Lew Lee that owes you the money, it's Warren, did
7 you? In those emails did you say "No, it's Warren that
8 owes me the money, not Lew Lee"?

9 **A No, I didn't say that.**

10 Q Because it was Lew Lee that owed you the money
11 you, correct?

12 **A Incorrect.**

13 Q Lew Lee conned you. That's what you're
14 alleging today, right?

15 **A Lew Lee and Warren Mosler together, they
16 collaborated behind my back to put together this LOI,
17 letter of intent, which isn't even technically a
18 contract as far as I understand it.**

19 Q What did Lew Lee get from the con according to
20 you?

21 **A Mr. Mosler was the sole beneficiary of the
22 con.**

23 Q What did Lew Lee get?

24 **A I'm not sure if Mr. Mosler kicked him back
25 anything or not, but --**

1 Q What did Lew Lee get?

2 A I have no idea, if anything.

3 MR. WEBER: Okay, Your Honor, we have no
4 further questions.

5 THE COURT: Okay. Let me see the attorneys.

6 MR. WEBER: I'm sorry, Your Honor, I didn't
7 see the time.

8 (Thereupon, a sidebar conference was held.)

9 THE COURT: Are you done with Cross?

10 MR. WEBER: Yes.

11 THE COURT: All right. So you're going to do
12 Redirect and end the afternoon?

13 MR. ZAPPOLO: Right.

14 THE COURT: We're going to do the same amount
15 of time. I am going to have them back -- it's
16 12:05 -- at 1:10. I'm going to let the deputy walk
17 them over.

18 MR. WEBER: I apologize, Your Honor. I didn't
19 see the time.

20 THE COURT: Don't worry about it, you're good.
21 You're good. Five minutes, I didn't want to stop
22 you.

23 I'm going to let the deputy walk them if
24 they're ready to go and they're going to be
25 released from there and be back here at 1:10, okay?

1 MR. WEBER: Thank you, Your Honor.

2 (Thereupon, the sidebar conference was
3 concluded.)

4 THE COURT: All right. Deputy, we're going to
5 break for lunch. Again, during lunch please do not
6 discuss this case with anybody else, including
7 amongst yourselves, all right?

8 Your lunch is downstairs and across the
9 street. The deputy is going to walk you and escort
10 you there. From there, you're released. We'll be
11 back here at 1:10, okay? But you know, I hope it's
12 a nice day outside and you get a little sunshine.

13 All right. See you at 1:10.

14 (Jurors exit the courtroom at 12:07 p.m.)

15 THE COURT: All right. So when we come back,
16 it's going to be Mr. Zappolo's witness. Once
17 you've concluded there, then I guess we'll be
18 addressing motions at some point today, is that
19 correct, Mr. Weber?

20 MR. WEBER: Yes.

21 THE COURT: All right. Wonderful. That means
22 that today and tomorrow we're going to have to do
23 some work because today and tomorrow is when we'll
24 finalize jury instructions, okay?

25 All right. So you can step down, enjoy your

1 lunch.

2 MR. WEBER: Your Honor, just so I know, at the
3 close of this case, when we make our motion, can I,
4 like, print something out and then come back here?
5 How do you want to do that? How do you want to
6 handle that?

7 THE COURT: If you want to hand me something
8 to read, you can just make sure Mr. Zappolo gets a
9 copy of it.

10 MR. WEBER: Perfect.

11 THE COURT: All right. We'll be back in about
12 an hour.

13 (Thereupon, a lunch break was taken at
14 12:08 p.m. and the proceedings are continued by
15 another court reporter in Volume X.)

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IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. 50-2012-CA-023358-XXXX-MB

JAMES TODD WAGNER, SUPERCAR ENGINEERING,
INC., a Florida corporation,

Plaintiffs,

vs.

WARREN MOSLER, MOSLER AUTO CARE CENTER,
INC. ("MACC") a Florida corporation,
d/b/a Mosler Automotive,

Defendants.

- - - - -
VOLUME X - DAY 9

AFTERNOON SESSION

- - - - -
PROCEEDINGS BEFORE THE
HONORABLE LUIS DELGADO

DATE: TUESDAY, MAY 23, 2023

TIME: 1:25 P.M. - 7:07 P.M.

1 APPEARING ON BEHALF OF PLAINTIFFS

2 SCOTT ZAPPOLO, ESQ.
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6 APPEARING ON BEHALF OF DEFENDANTS:

7 STEVEN D. WEBER, ESQ.
8 TEVON ETIENNE, ESQ.
9 JOSHUA KILLINGSWORTH, ESQ.
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12 Miami, FL 33131
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12 ALSO PRESENT:

13 James Todd Wagner, Plaintiff

14 Warren Mosler, Defendant

15 David Griffin, TruVid, LLC

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I N D E X

WITNESS	PAGE
JAMES TODD WAGNER	
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E X H I B I T S

PLAINTIFF'S	DESCRIPTION	ADMITTED
No. 107	Music Video	1806
No. 108	Email	1808
No. 109	List of Assets	1809
No. 110	Email	1811
No. 111	Document Re: Wagner-Lee	1815
No. 112	Email Chain	1816
No. 113	Email	1819

1 BE IT REMEMBERED, that the following testimony and
2 proceedings were taken in the above-styled cause before
3 Judge Luis Delgado, at the Palm Beach County Courthouse,
4 Courtroom 10D, City of West Palm Beach, County of Palm
5 Beach, State of Florida, beginning at 1:25 p.m., on
6 Tuesday, the 23rd day of May, 2023, to wit:

7 - - -

8 THE COURT DEPUTY: Jury entering.

9 THE COURT: Mr. Wagner, you're still under
10 oath.

11 **THE WITNESS: Yes, sir.**

12 THE COURT: Redirect.

13 MR. ZAPPOLO: Thank you, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. ZAPPOLO:

16 Q Mr. Wagner, you've been on the stand for
17 sometime now.

18 **A Yes.**

19 Q Of the counts in this complaint, are there any
20 of the counts that you don't feel that Mr. Weber covered
21 with you when he went through all these documents?

22 **A Boy, I have to think about that for a second.**

23 Q Okay. Let's go through them very quickly,
24 okay.

25 Would you agree -- and this is just

1 preliminary. I just want to show that we're on the same
2 page here.

3 Would you agree that Mr. Weber asked you
4 questions about your EPA approval work?

5 **A He did in some --**

6 Q Okay. Thank you.

7 So the unjust enrichment and quantum meruit
8 counts, let's see, would you agree he asked you
9 questions about your claim related to breach of contract
10 for the \$100,000 deposit?

11 **A Yes.**

12 Q Okay. And would you agree with me that he
13 also asked you questions related to the \$100,000
14 deposit, about whether or not someone was unjustly
15 enriched by that?

16 **A Yes.**

17 Q And the same thing about the fraudulent
18 inducement related to the \$100,000?

19 **A Yes, more or less.**

20 Q Okay. And with respect to the federal
21 warranty claims, you remember the questions about the
22 throttle body, the engine and all that kind of stuff?

23 **A Yes.**

24 Q You agree he asked you questions about those,
25 right?

1 **A Yes.**

2 Q Now, you agree with me that he asked you
3 questions about your defamation earlier today, right,
4 your defamation count?

5 **A Yes.**

6 Q And I believe at one point you were talking
7 about the car and et cetera. So would you agree with me
8 that you were asked questions about the injurious
9 falsehood, commercial disparagement of the 2012 Raptor?

10 **A Yes.**

11 Q Okay. Now -- so Mr. Weber introduced all
12 these documents, right?

13 **A Yes.**

14 Q I'll put them right up here for a second.
15 I'll ask you a few follow-up questions, okay,
16 because I don't want to -- although we could, we'd be
17 here for the next week, right --

18 **A Yes.**

19 Q -- addressing every single one of those
20 documents, would you agree, the 100 and something
21 documents in evidence?

22 **A Yes.**

23 Q Okay. So I just need to address them in kind
24 of a larger fashion. I also want to make sure that we
25 focus on a couple of things, and that is, very

1 specifically, I want to be sure we focus on what was
2 happening when.

3 **A Yes.**

4 Q You remember Mr. Weber asked you -- was asking
5 you questions about certain emails and pointing out the
6 dates on them, correct?

7 **A Yes.**

8 Q All right. So just to refresh everyone's
9 recollection, what was the date that the \$100,000 wire
10 was made by your father?

11 **A June 29th, 2011.**

12 Q Now, with respect to that date, okay, please
13 tell this jury who anywhere in the whole wide world
14 knows better than you do what information you were aware
15 of on June 29th, 2011.

16 **A I'm the only one.**

17 Q Okay. Now, on June 29th, 2011, with respect
18 to -- and, by the way, I know there was a lot of back
19 and forth about Lew Lee. And, for the record, I'm
20 putting that name in air quotes, okay.

21 Now, when I say Lew Lee, I'm talking about the
22 person that you've repeatedly testified to as a conman,
23 as whatever his name was as a potential group of people,
24 okay?

25 **A Okay.**

1 Q So when I'm seeing Lew Lee, it's with air
2 quotes; is that fair?

3 A **That's fair.**

4 Q All right. So with respect to Lew Lee's
5 ability to circumvent you or go behind you or any
6 company that you represent's back and cut a side deal
7 with Warren Mosler, what did you know on June 29th,
8 2011?

9 A **I knew that Mosler had Lew Lee's phone number.**

10 Q Okay. But with respect to whether or not Lew
11 Lee was allowed --

12 A **No, not allowed to.**

13 Q -- allowed to circumvent you --

14 A **Oh, absolutely not.**

15 Q Okay. And what document is in evidence in
16 this case --

17 A **The exclusive investment broker agreement that
18 Mr. Mosler and I signed, I think it was April, where he
19 explicitly said he would not go behind my back and cut
20 me out of any potential investor that I brought to
21 him -- potential investor that my company brought.**

22 Q And my handwriting is atrocious, but I'm
23 putting that on this board above June 29th, 2011 or
24 before, okay?

25 A **Yes.**

1 Q So before June 29th, 2011, you knew that
2 Mr. Mosler had signed a document saying that he was not
3 to circumvent you?

4 A Yes. I think it was April 1st, 2011, to be
5 specific.

6 Q Well, you know what --

7 A It doesn't matter.

8 Q -- I'm trying for big picture here. I just
9 want to -- because otherwise we'll get bogged down and
10 we'll be here for years, okay?

11 A I understand.

12 Q So you knew that.

13 A Yes.

14 Q And with respect to that document, when you --
15 when you allowed Mr. Mosler to speak with, air quotes
16 again, Lew Lee, okay, were there emails to that effect?

17 A Yes. And I reminded him that he was not
18 allowed to circumvent me.

19 Q Okay. All right.

20 A I made it very, very clear.

21 Q And those emails are in evidence, correct?

22 A Yes.

23 Q So not withstanding anything, any other
24 questioning, any of the stuff that Mr. Weber was talking
25 about, we know that, right, about that time?

1 **A We know it was June 3rd, 2011.**

2 Q Okay. Now, prior to June 29th -- now, by the
3 way, prior to June 29th, 2011 -- go ahead, there's a
4 whole stack of documents in front of you. Please show
5 this jury what email or what document is dated prior to
6 June 29th, 2011 that reflects that you knew that Lew Lee
7 and Warren Mosler had entered into some letter of intent
8 or contract or any other type of side agreement.

9 **A No, there's nothing there.**

10 Q Okay.

11 **A Nothing at all.**

12 Q So --

13 **A I didn't even know until years later.**

14 Q Okay. So no matter how many times Mr. Weber
15 asked you that was on behalf of Lew Lee and you said no,
16 is there anything that -- any documentation?

17 **A No.**

18 Q Okay.

19 **A Everyone knows that.**

20 Q What -- now, let's be -- I want to be brutally
21 open and honest here. In your mind, did you ever refer
22 to Lew Lee as a partner?

23 **A I used the word partner because we used that**
24 **word all the time at MACC.**

25 Q And, for example, with respect to MACC, there

1 was discussions about a company called Siemens. You
2 remember that?

3 **A Yes.**

4 **Q** How do partner and Siemens tie in together?
5 What should the jury know?

6 **A** **Siemens and MACC were partners, technology**
7 **partners essentially. Siemens gave MACC free use of**
8 **very expensive software and Siemens in return got to**
9 **promote the fact that they were -- their software was**
10 **being used to design a supercar.**

11 **So it was sort of like a mutually**
12 **beneficial -- it was called a partnership. It's common**
13 **jargon in the manufacturing world. Even our suppliers,**
14 **we called them a partner. Everyone's a partner in one**
15 **way or another.**

16 **Q** Okay. And like if we -- have you ever seen
17 racing events referencing it?

18 **A** **Yes. And like Formula One, they had like**
19 **global partners of Formula One, Rolex, you know, et**
20 **cetera, et cetera, et cetera. They call them global**
21 **partners of Formula One.**

22 **Q** Based upon your experience in the industry, is
23 anybody who's referred to as a, quote, unquote, partner
24 like that able to bind one of the other companies?

25 **A** **No.**

1 MR. WEBER: Objection. Calls for lay expert
2 opinion testimony.

3 THE COURT: Sustained.

4 MR. WEBER: Strike that from the record, Your
5 Honor.

6 THE COURT: That's granted.

7 BY MR. ZAPPOLO:

8 Q Okay. Now, in that stack of documents, please
9 point out to the jury where the agreement is between you
10 and Sante Fe Digital Media or Lew Lee that says that
11 Mr. Lew Lee or any of his companies or anything --
12 anyone associated with him could change any agreement
13 that you had with Warren Mosler.

14 A **There is none.**

15 Q Okay. Now, we have documents in evidence. Do
16 you happen to remember the email chain where you confirm
17 what your understanding was with respect to the
18 refundability?

19 A **Yes, that was on May 2nd, 2011.**

20 Q Okay.

21 A **Just before --**

22 Q And we have the -- and there are documents in
23 evidence. If you would refresh your -- refresh my
24 recollection, who is the person that offered that the
25 money could be refundable?

1 **A Warren Mosler offered it.**

2 Q And that's in evidence, right?

3 **A Yes.**

4 Q Okay. And then did you do anything to confirm
5 it?

6 **A Yes. I even wrote back, just so I'm
7 understanding correctly, the money's refundable after
8 the three months, A, and he said no; then after when
9 someone else buys the company, he confirmed yes.**

10 **So after the three months exclusivity expired
11 and someone else bought their company, I would get my
12 money back.**

13 Q Okay. Now --

14 **A I could utilize my money at anytime.**

15 Q Now, I was taking notes and I remember at one
16 point you put your hands up in the air. You remember
17 doing that?

18 **A Yes.**

19 Q Explain to the jury what you were doing with
20 the gestures with your hands in the air.

21 **A Yes. So at all times after Warren Mosler
22 offered --**

23 Q And, for the record, you're putting your
24 hand -- one hand up in the air now too, right?

25 **A My left hand. My right is to the jury.**

1 So Warren Mosler offered that I would get my
2 money back if someone else bought the company. I
3 confirmed it with him. We agreed to that. Mr. Mosler
4 forwarded that distinct and clear agreement to his vice
5 president, Jill Wagner, to show that, okay, the two
6 officers of MACC know this is the deal regarding the
7 \$100,000 deposit.

8 And then on the other side, we had the actual
9 documentation for buying MACC, a million dollars for
10 three finished cars and a whole bunch of tooling and
11 things like that, but then Mr. Mosler sold off the three
12 finished cars -- or I guess he said gave them away, he
13 said, for one of them.

14 Q Okay. I want --

15 A But that didn't change this.

16 Q Okay.

17 A He breached this, but it did not change the
18 refundability of my \$100,000 deposit.

19 Q And you had testified two separate agreements,
20 right?

21 A Two separate things.

22 Q All right. Now, I also heard you testify
23 about price changes and why prices changed, all right?

24 A Yes.

25 Q I want you to imagine for a moment that the

1 defendant's position is somehow true, that there was
2 some agreement that your money would be nonrefundable
3 and that agreement was found within one of these asset
4 purchase agreements, okay?

5 **A Okay.**

6 Q Now, in fairness, do you believe that to be
7 true?

8 MR. WEBER: Objection. Speculation.

9 THE COURT: Sustained.

10 BY MR. ZAPPOLO:

11 Q What if --

12 MR. WEBER: Objection. Speculation.

13 THE COURT: Sustained.

14 BY MR. ZAPPOLO:

15 Q Do you know what their position is with
16 respect to where the agreement about non-refundability
17 is?

18 **A More or less. I don't think Mr. Mosler can**
19 **come up with definitively this. The letter of intent**
20 **that he executed between himself and Lew Lee behind my**
21 **back is what allows him to keep my \$100,000 deposit.**

22 Q Okay. Now, according to their position, when
23 was that deal struck?

24 **A June 29th, 2011.**

25 Q Okay. Is that before or after you had

1 instructed that the money be wired?

2 **A I don't know.**

3 Q All this stuff is going on at the same time,
4 right?

5 **A I have no idea it's going on.**

6 Q But you had no idea it was going on.

7 Now, I wanted to express -- I want it to be
8 crystal clear with the jury. You had -- what was the
9 name of the company you were intending to purchase
10 that's in all those documents that are in evidence?

11 **A Mosler Supercars, Inc.**

12 Q Mosler Supercars, Inc.

13 **A MSI.**

14 Q And JTW for James Todd Wagner, right?

15 **A Yes.**

16 Q Okay. Now, you were -- and who were you
17 negotiating with for the purchase of MACC, either --

18 **A Well, Warren Mosler initially for the first
19 time.**

20 Q And at some point who else?

21 **A At some point, Sylvia Klaker became a third
22 person. Sylvia Klaker was in charge, according to
23 Mr. Mosler.**

24 Q What did Ms. Klaker say?

25 **A She said she wasn't in charge.**

1 Q Okay. All right. Now, did there come back to
2 another time that you were dealing with Mr. Mosler
3 again?

4 A Well, that was actually -- Sylvia Klaker was
5 the third one. So the second one was between those two.

6 So after Mr. Mosler had secretly sold off the
7 three finished cars and I discovered it, I was like,
8 okay, you know, of course it was done. I mean, he had
9 already -- the cars were gone. I go, I still would like
10 to buy the company.

11 So he said, okay, how about \$500,000, which
12 was actually, you know, I think, more, effectively, than
13 the original offer because the three finished cars,
14 although they were used cars, they were worth more than
15 500,000 collectively.

16 Q Okay.

17 A So that was a sweeter deal for Mr. Mosler.

18 Q What were our -- what were the three price
19 negotiating points again?

20 A So first it was \$1 million for three finished
21 cars and all the tooling, the jigs, the molds, et
22 cetera, all the -- and the spare parts.

23 Q Okay.

24 A Spare chassis to build cars.

25 Then the second time, the three finished cars

1 are gone. So now it's just the jigs, the molds, the
2 parts and chassis, those things, and that was 500,000.
3 Then Mr. Mosler blocked that by saying he wanted his son
4 to run the company.

5 And shortly thereafter, Mr. Mosler and his son
6 launched another totally illegal car after the RaptorGTR
7 called the MT900 SP Photon.

8 Q Okay.

9 A Which had no certification work at all, still
10 had the totally illegal, you know --

11 Q So what was going to be the price point on it?

12 A \$479,000.

13 Q No, not the car. I'm talking about when you
14 were trying to buy the car.

15 A Oh, okay, okay, okay.

16 So after Mr. Mosler launched the MT900 SP
17 Photon, another illegal car, and I saw that, I was like,
18 you know -- it seems ridiculous, but I went back to him
19 and said, hey, how about we just do this together, your
20 son can have exclusive distributorship for the United
21 States, he can build these cars and sell them there and
22 that's fine, he can do that, and then I'll, you know,
23 work on selling the RaptorGTR and so forth elsewhere.

24 Q All right.

25 A So we could collaborate on this.

1 Q Mr. Wagner, I want you to listen to my
2 question.

3 A All right.

4 Q What was that third price point?

5 A 3 -- oh, sorry. \$650,000.

6 Q Okay. So wait a minute. The third one was
7 650,000?

8 A Yes.

9 Q Please explain to the jury why.

10 A Well, Mr. Mosler said he didn't want to build
11 the cars, but he said if you pay another \$150,000 you
12 can have the company. So essentially he wanted another
13 \$150,000 sweetener on top of the 500,000. I said, yes,
14 let's do that.

15 Q All right. Now, this 150,000, that was for --
16 how many cars were involved in that deal?

17 A There were no finished cars at all.

18 Q Okay.

19 A Well, maybe like one or two of the really old
20 Consuliers. There may have been none actually.

21 Q Okay.

22 A Because he stripped those out after initially
23 giving them to me.

24 Q So we've got price points that are probably in
25 documentation, either ours or theirs --

1 **A Yes.**

2 Q -- at different points. 1,500,000 or 650,000,
3 right?

4 **A Yes, in that sequence.**

5 Q Okay. Now, you testified and you were
6 cross-examined on the fact that you didn't have that
7 money in your pocket, did you?

8 **A No.**

9 Q Okay. So let's talk about how you were going
10 to pay this and clean that all up, okay?

11 **A Okay.**

12 Q So, number one, who's your fallback position,
13 absolute fallback position?

14 **A My dad was always my fallback position.**

15 Q Okay.

16 **A But I preferred to do it on my own.**

17 Q All right. But in order to get either -- by
18 the way, was your dad -- with respect to the \$1 million,
19 what do we know about your dad?

20 **A He could have paid that.**

21 Q Okay.

22 **A And another million in working capital. He
23 definitely has that.**

24 Q All right. So at the same time period with
25 respect to the 500,000, same question with your dad?

1 **A Absolutely.**

2 Q All right. And the 650,000?

3 **A Yes, always.**

4 Q Okay. Now, you testified on direct and cross
5 that you didn't necessarily want to use your dad, but he
6 was a fallback, right?

7 **A Yes.**

8 Q So what other investors had you been speaking
9 with?

10 **A Abby Cubey's family in Asia, they would be
11 perfect partners to be investors. If they invested,
12 they also have contacts for selling the cars in Asia.
13 So it was perfect because Asia was a totally new market
14 for Mosler. They didn't have any of their Corvette
15 taillight stigma or anything.**

16 Q What kind of business did the Cubey family
17 have?

18 **A It was R33 performance or something. They had
19 a big exotic car dealership.**

20 Q R33 car performance, car dealership?

21 **A Yeah.**

22 Q What types of cars did they sell?

23 **A Lamborghinis, Ferraris, Bugattis, Koenigsegg.
24 All the big boys.**

25 Q And we have -- Abby Cubey's testimony was read

1 to the jury, right?

2 **A Yes.**

3 Q And you don't take issue -- what, if anything,
4 in her testimony --

5 **A I know exactly who her dad is.**

6 Q Okay. What that she testified do you take
7 issue with?

8 **A Nothing.**

9 Q Okay. Great.

10 Now, we mentioned some other people. Who else
11 was a potential source of money to do any of these
12 deals?

13 **A Dr. Sabahi.**

14 Q Okay.

15 **A He was Abby Cubey's business partner. He was
16 head of surgery for one of the big LA hospitals and
17 owned a surgery center, had a huge exotic car
18 collection. So he was very interested in this from a
19 hobby perspective and also as an investment prospective.**

20 Q All right. What others were potential
21 investors for you?

22 **A Rossion, I actually talked to Rossion.**

23 Q Rossion, remind the jury who Rossion is.

24 **A They're -- they became RP High Performance.**

25 **They're the ones who eventually did buy Mosler. I'm the**

1 one who cultivated that potential investor and Mosler
2 just took them.

3 Q Okay. Notwithstanding non-circumvent -- or
4 what was the thing, exclusive --

5 A Exclusive investor brokering agreement. I
6 even reminded him about that. I don't think he cared
7 anything about honoring any agreements with me. He just
8 signed stuff to lure me into during work that he would
9 then scoop up.

10 Q Let's keep going. We're making good progress
11 here. Who else was a potential investor?

12 A 9595 Investments in LA.

13 Q Hold on.

14 A I talked with -- there's several other like
15 Gotham Motorsports in New York, I remember. There was a
16 big yacht club, they had an investment.

17 Q There's somebody that they discussed with you
18 on cross-examination, and I think it's in some of those
19 documents in there, BBC, Billionaire Boys Club or
20 something, was it?

21 A No.

22 Q Oh, Billionaire's Row. I apologize.

23 A Billionaire's Row. Yeah, I mean, they stated
24 they would be interested in investing.

25 But, you know, it's like these teams of con

1 **artists, the one thing they all have in common is they**
2 **just -- they lie as fluently as they breathe.**

3 Q All right. Now, there was another potential
4 source of money that we've all talked about and I've
5 been putting in air quotes, right?

6 A Oh, Ralph.

7 Q Okay. Let's just -- for simplicity, we're
8 going to -- I'm going to write it up here, okay, on this
9 board, Lew Lee in quotes.

10 Now, he also had Sante Fe Digital Media, which
11 was SFFF, right?

12 A FF -- SFDM.

13 Q SFDM. I'm sorry. I might be dyslexic. SFDM,
14 okay. But the documents will bear that out, right.

15 And you've testified repeatedly that that
16 person or persons, et cetera, was a con, right?

17 A Yes.

18 Q Now, as part of -- to be completely
19 transparent, on June 29th, 2011, what had Lew Lee, Sante
20 Fe Digital Media, et cetera, expressed to you about
21 their ability to fund any one of these 1,500,000 or
22 \$650,000 deals?

23 A Oh, they said, oh, no problem, another couple
24 weeks and, you know, this is gonna --

25 Q Another couple weeks and --

1 **A Another couple weeks, another couple weeks.**

2 Q All right. And what was the stated reason for
3 having to wait for the money?

4 **A Some bridge loan this or something.**

5 Q Hold on. Bridge loan?

6 **A Random things, yeah.**

7 Q All right. We've got a bridge loan, right?

8 **A They -- I don't know.**

9 Q So explain to the jury what was going on here.

10 **A I really can't explain. I mean, they would**
11 **just sort of spew out all this stuff. I remember like**
12 **144A, this. I didn't know what the heck he was talking**
13 **about.**

14 Q Okay.

15 **A He obviously used a lot of stuff to make it**
16 **seem like it was legit.**

17 Q Now -- so MSI was negotiating and it had all
18 these potential investors, right?

19 **A Yes.**

20 Q At what point, if ever, was MSI and/or James
21 Todd Wagner not in middle of the investors and the
22 purchase deal?

23 **A Never.**

24 Q Not withstanding, all the times that Mr. Weber
25 said, oh, you were doing this on behalf of Lew Lee,

1 weren't you?

2 **A This is nonsense. This is what they're trying**
3 **to make the jury believe.**

4 Q Okay. But you were -- and there's documents
5 in evidence. You were actually exchanging documentation
6 with Lew Lee or Sante Fe Digital Media. Would you
7 explain -- and those are in their documents, right?

8 **A Yes.**

9 Q Okay. Please explain to the jury why.

10 **A Well, he -- he -- Lew Lee told me that Warren**
11 **Mosler is not happy with me.**

12 Q Okay. Stop.

13 Is there a document in evidence that says --
14 reflects that?

15 **A I don't know.**

16 Q Okay. Well, we'll let -- that's all right.
17 Go ahead.

18 **A I have no idea if it's in there or not.**

19 Q To the best of your recollection, correct?

20 **A Yes.**

21 And then he gave me sort of a sweetheart
22 offer, said that he would pay maybe two and a half
23 million dollars and give me a ten year \$250,000 a year
24 employment contract and I could still -- my company
25 could still be a distributor, you know, its exclusive

1 distribution rights would continue and, you know, he
2 said he would come up with the money. And if he did,
3 that would be great, but --

4 Q Okay. So --

5 A That doesn't mean I loaned him \$100,000, no
6 way.

7 Q So there's documents in there about -- on or
8 around this time period. You admit you were discussing
9 with Lew Lee or whoever, Sante Fe Digital Media, about
10 them potentially paying you two and a half million
11 dollars. What was that negotiation about?

12 What were they going to pay you two and a half
13 million dollars for?

14 A To sort of step into my position.

15 Q To step into your position, okay.

16 So if -- now, let's back up. Do any of the
17 documents say, yes, I agree, you can have my position?

18 A No.

19 Q Okay. What was Lew Lee or Sante Fe Digital
20 Media or -- I think there's some other names in there.
21 Do you remember any of them, other companies?

22 A Can you ask the question again?

23 Q Do you remember the name of any other
24 companies Lew Lee was throwing around at that time?

25 A I mean, I've seen that they say LHX.

1 Q LHX, oh, okay.

2 A Yeah, he just made it up.

3 Q Okay. By the way, you heard Mr. Weber
4 throughout the cross-examination of you and everything
5 talk about how that money was for you -- the \$100,000
6 was for Lew Lee and Sante Fe Digital Media, right?

7 A Right. He said that over and over.

8 Q What documents are in evidence about --

9 A Zero. Sorry. Finish the question.

10 Q What documents are in evidence about who Lew
11 Lee and/or his final negotiation with Mr. Wagner was
12 actually doing -- excuse me, with Mr. Mosler was
13 actually doing business on behalf of on that day?

14 A Could you ask the question again? I kind of
15 got mixed up.

16 Q Sure. I'm sorry.

17 What documents do you recall, if any, that are
18 actually in evidence that reflect who Mr. Lew Lee was
19 trying to finalize a deal on behalf of with respect to
20 Sante Fe Digital Media or LHX?

21 A I don't even know.

22 Q Okay. Well, we'll just have to take a look at
23 those.

24 All right. I want to back up a little bit
25 too. You remember a few minutes ago we had the hands in

1 the air and the one thing?

2 **A Yes.**

3 Q So you testified repeatedly that you are suing
4 for the \$100,000 pursuant to the agreement related to
5 the refundability of the deposit, right?

6 **A Yes.**

7 Q Not any alleged agreement to allow you to buy
8 the company's assets, right?

9 **A Correct. I'm not suing for specific**
10 **performance or anything like that on the -- on the one**
11 **to buy MACC, just not getting my deposit.**

12 Q Now, there is testimony and there's
13 documentation in evidence -- yours and/or ours, maybe
14 both, I don't know -- that reflects you referencing a
15 signed agreement. And I think at one point you called
16 it an April 5th signed agreement or something else.

17 Explain to the jury what you believe
18 transpired there.

19 **A Mr. Mosler and I had agreed on terms for**
20 **purchasing the company and I had a document drafted and**
21 **signed it and sent to him. He signed it and then**
22 **scribbled on the front that it's not exclusive until --**
23 **unless I put in a \$100,000 deposit.**

24 It wasn't required that I put in a \$100,000
25 deposit. He said it's not exclusive until then. And he

1 sent it to Jill Wagner, the other officer of MACC, at
2 the MACC factory. I think I was in California at the
3 time.

4 And then, of course, it was a surprise to me,
5 and so I just -- you know, I wasn't going to put in
6 \$100,000 in a nonrefundable format. I guess he sort of
7 picked up on that, so he later offered a refundable.

8 Q Okay. So with respect to that, where's that
9 contract signed by Mr. -- signed by you and signed by
10 Mr. Mosler with his notation? Where is that document?

11 A I presume it's still in the MACC factory.
12 Mr. Mosler should have one in his office. It's not in
13 evidence here.

14 Q We've not seen it --

15 A Right.

16 Q -- since the day that you signed it and sent
17 it off to Mr. Mosler, right?

18 A Correct.

19 Q Now -- so you're not suing on that contract,
20 are you?

21 A No, no, I'm not. I'm not suing on that. I'm
22 only suing on the agreement of how my \$100,000
23 conditionally refundable deposit would be refunded. And
24 the MACC assets were sold, so the money should come back
25 to me. It's really that simple and it's really --

1 Q By the way, with respect to this negotiation
2 for the \$2.5 million dollars, what was the assignment of
3 MSI or your rights to one of these agreements?

4 What was it contingent upon, if anything?

5 A Well, it would be MSI allowing them to buy
6 MACC.

7 Q Okay. Now, in order to have the rights to
8 sell for \$2.5 million, what was your understanding with
9 respect to what you had to do related to \$100,000?

10 A Well, I put in the \$100,000 deposit for myself
11 and that locked in my position. I could have my dad or
12 these other guys, you know, make the transaction. But
13 if they want to pop it up to two and a half million
14 dollars and gave me that instead, that would be a
15 win-win for me.

16 Q So you paid the 100,000 to secure your rights?

17 A To secure my exclusivity.

18 Q Okay. And then --

19 A My exclusivity.

20 Q And then you were at the same time negotiating
21 selling off with the exclusivity to whomever, right?

22 A Yes. I've got to use it myself and buy the
23 company or sell that off for two and a half million
24 dollars, which is a great deal because I'd still be
25 distributor. And I kind of prefer to be a distributor

1 **anyway.**

2 Q I'm going to ask you again. Even in that
3 document that you were negotiating with Lew Lee or
4 whomever, okay, what, if anything, in that document says
5 that anyone gets the ability to change your deal with
6 MACC?

7 **A Nothing whatsoever.**

8 Q Those documents are in evidence, right?

9 **A Yes.**

10 Q We don't have to go through it all and spend
11 hours.

12 **A No.**

13 Q All right. I'm trying to do things big
14 picture here, so we're moving on.

15 Now, the letter of intent and everything, you
16 remember I asked you about June 29th, 2011?

17 **A Yes.**

18 Q Okay. And when you became aware of Lew Lee or
19 whomever going behind your back, right?

20 **A Right.**

21 Q Okay. Now, document Defense Exhibit 111 is in
22 evidence, right? You were just asked about this a
23 little while ago, okay.

24 And on February 21st, 2012, you wrote to Lew
25 Lee, I want to see the documents that are, according to

1 Warren, linked to the \$100,000 deposit my dad put in,
2 right?

3 **A Right.**

4 Q So as of February 21st, 2012, roughly seven
5 months after your deposit, you're writing to Lew Lee
6 saying, hey, where are the documents, right, what is
7 everyone talking about?

8 **A Mr. Mosler keeps saying he gets to keep my
9 money. He keeps saying he has documentation.
10 Mr. Mosler won't give it to me.**

11 Q Okay.

12 **A And so I was like, what's going on.**

13 Q So you're asking Lew Lee to give you the
14 documents?

15 **A Yes.**

16 Q The person who supposedly you were a partner
17 with --

18 **A Yes.**

19 Q -- and you knew all about?

20 **A I'm entitled to see them.**

21 Q Okay.

22 **A Mr. Mosler's saying he gets to keep my money
23 because of this document. He won't even show me the
24 document. Even 12 years later, he hasn't shown it to
25 me.**

1 Q Okay.

2 A So I'm trying to figure out what it is.

3 Q Now -- and then we had some testimony about
4 this email that's still part of Defense 111.

5 Mr. Lew Lee writing you on February 21st: Hi,
6 Todd, we will simply return the 100K to you from the
7 bridge.

8 "From the bridge," what does that mean?

9 A The Brooklyn Bridge.

10 Q Was there a -- what, if anything, do you know
11 about an alleged bridge loan?

12 A I don't know. It's probably something like
13 that. He's just -- it's a bunch of absolute nonsense.

14 Q Okay.

15 A And I would bet that Mr. Mosler asked him to
16 say that to kind of, like, seal up the scam.

17 Q I just want --

18 A Okay. Sorry.

19 Q Okay. Did you ever get that \$100,000?

20 A No.

21 Q Who benefited from that \$100,000?

22 A Warren Mosler.

23 Q I want to stay on -- I'm trying to stay on
24 track here with some stuff. Let me just go through --
25 get back on our -- do you remember you were presented

1 with -- and I don't know where it is here. I'm going to
2 have to try and figure it out. I don't want to spend
3 too much time on it though.

4 Do you recall -- let me back up. Do you
5 remember during your cross-examination, Mr. Weber
6 presented you with a contract? And it's in evidence.

7 Do you remember that?

8 **A Yes.**

9 MR. WEBER: Objection. Vague.

10 THE COURT: Overruled.

11 BY MR. ZAPPOLO:

12 Q A contract for -- between SEI and MACC where
13 SEI was doing some type of work, do you remember what
14 year it was?

15 **A Was it the technical partnership?**

16 Q Yes.

17 **A Yes.**

18 Q Do you remember when that was?

19 **A I remember that.**

20 Q Okay. When did that -- there's no doubt, and
21 you admit --

22 **A And that --**

23 Q Hold on.

24 There's no doubt, and you admit, that that was
25 a signed agreement between MACC and SEI, don't you?

1 MR. WEBER: Objection. Vague, Your Honor.

2 Approach?

3 THE COURT: All right. Come on up.

4 (A side-bar conference was held.)

5 THE COURT: The objection's vague. You asked
6 about a signed agreement. He asked you to show the
7 agreement.

8 MR. WEBER: Yeah, what is he talking about?
9 He doesn't even know.

10 MR. ZAPPOLO: It will just take me a few
11 minutes to dig it out. Counsel should know exactly
12 what he did with it.

13 MR. WEBER: Nobody knows what he's talking
14 about.

15 THE COURT: It's not about the document, it's
16 about the jury. Objection sustained.

17 (Side-bar conference concluded.)

18 BY MR. ZAPPOLO:

19 Q If you would start at the top of that stack
20 without messing up those exhibits, I'm going to start at
21 the bottom of my stack, and please identify that
22 document, please, okay, for the jury.

23 A All right. I recall it had the Mosler
24 letterhead on it, I think.

25 Q Just find the exhibit, please.

1 And, Mr. Wagner, I think we probably crossed
2 each other. I don't want to waste time here. You
3 referenced an agreement from like 2010 or something a
4 while back. Do you remember any agreement between SEI
5 and MACC in like -- that was signed by you back in,
6 like, 2010 or 2011?

7 **A Exclusive --**

8 Q Earlier than that, 2000- -- go ahead. You
9 talked about a technology agreement or something?

10 **A Oh, it's a technology partnership.**

11 Q Technology partnership, okay.

12 **A Yes.**

13 Q Do you recall that being in evidence?

14 **A I do.**

15 Q Okay. Well, anyway --

16 **A It was between SFDM and MSI. They were gonna**
17 **give us computer time for free, like Siemens gives**
18 **software for free, and then they would get to promote in**
19 **their marketing the fact that their supercomputer was**
20 **being used to help develop the world's fastest supercar.**
21 **That was kind of the nature of it.**

22 **I saw it. I'm pretty sure I saw it here.**

23 Q It was referencing -- I was thinking about an
24 agreement between SEI and MACC. Do SEI and MACC have
25 any agreements whereby SEI was going to do work for

1 MACC?

2 **A** **Oh, the consulting agreement?**

3 Q Yes.

4 **A** **Oh, yes, I saw that here, if that's what**
5 **you're talking about.**

6 Q You saw that, okay. Can you please get that
7 out, please.

8 **A** **I thought you were talking about something**
9 **else.**

10 Q No. Just tell me what exhibit that was. I
11 know it has an appendix on it.

12 **A** **Yes.**

13 Q Let's try Exhibit Number 78.

14 **A** **Yup. Found it.**

15 Q Okay. Now, remember, Mr. Weber was reviewing
16 Exhibit 78 with you when we were talking about your --
17 the work for the \$100,000?

18 **A** **Yes.**

19 Q Okay. And he introduced at that time Exhibit
20 Number 78 to suggest that you had a contract that
21 covered the work that you were doing for MACC. Do you
22 remember that?

23 **A** **Yes, I do remember that now.**

24 Q On the EPA approvals, right?

25 **A** **Yes.**

1 Q Now, I just want to call the jury's attention
2 to this. That agreement was dated when?

3 A It was January 2004, or February.

4 Q 9th day of February 2004?

5 A Yes.

6 Q Now, the term of that document at paragraph 3
7 says the term of this agreement shall commence upon the
8 date first written above and shall expire upon the date
9 written in the appendix.

10 A Yes.

11 Q So if we flip back to the appendix, we have
12 expiration date of contract. What is that expiration
13 date of that contract?

14 A December 31st, 2004.

15 Q Okay. So Mr. Weber took the position that
16 this consultancy agreement that expired back on
17 12/31/2004 was the supposed contract for SEI to be
18 compensated for its work on EPA approvals and that are
19 being sued over for 2000- -- excuse me -- between
20 April 16, 2011 and September 28, 2011, right?

21 A Yes, that's what he was trying to do.

22 Q Please explain to the jury, what, if anything,
23 this agreement that is in evidence that's Exhibit Number
24 78 has to do with SEI's work in -- between April 16,
25 2011 and September 28, 2011?

1 **A** **It doesn't have anything to do with it. It**
2 **does not have anything to do with it.**

3 **Q** **Okay. By the way, while we're doing this, you**
4 **remember like the first half a day that you were on the**
5 **stand under cross-examination with Mr. Weber, he was**
6 **introducing a whole bunch of documents from like 2010,**
7 **et cetera?**

8 **A** **Yes.**

9 **Q** **What of those documents dated in 2010, which**
10 **ones do those refer to or are related to the work that**
11 **SEI was doing between April 16, 2011 and September 28,**
12 **2011?**

13 **A** **They had nothing to do with it.**

14 **Q** **So what's really the first operative date**
15 **that's important in this case as far as --**

16 **A** **Mr. Mosler wanted to stop paying me and told**
17 **me he was going to stop paying me on April 15th, 2011.**

18 **Q** **Okay. Did they?**

19 **A** **They did stop, yes.**

20 **Q** **Did you agree to that?**

21 **A** **I didn't want that, but I also -- my**
22 **distributorship, I wanted to maintain the value of that**
23 **and Mr. Mosler said he wanted it to keep going. So I**
24 **presumed I'd be getting a payoff from having the**
25 **exclusive distributorship, but he stripped that away**

1 from me too.

2 Q So because he took all those things away, you
3 want to get paid for your work, right?

4 A Absolutely.

5 Q Now, we need to discuss a little bit -- and I
6 want to straighten this out a bit. I apologize. So I'm
7 just going to move these out of the way.

8 I want to discuss with you the exclusive
9 distributorship agreement that is in evidence.

10 A Yes.

11 Q Do you remember Mr. Wagner went over that,
12 okay?

13 A Mr. Weber.

14 Q I'm sorry. Mr. Weber went over that with you,
15 Mr. Wagner, right?

16 A Yes.

17 Q Now, specifically --

18 A Can you scoot it over to the right a little
19 bit?

20 Q I apologize.

21 He called your attention to, A, paragraph 3:
22 Chassis 32 must be exported to Thailand or China within
23 18 weeks after chassis 32 has been completed by MACC.

24 A Yes.

25 Q Expected completion date is January 15, 2011.

1 Was that chassis completed by January 15,
2 2011?

3 **A No.**

4 MR. WEBER: Objection. Asked and answered.

5 THE COURT: Sustained.

6 BY MR. ZAPPOLO:

7 Q With respect to 18 weeks after the chassis was
8 completed --

9 **A Yes.**

10 Q -- what happened in the interim?

11 **A In the interim, Mr. Mosler told the whole**
12 **world that their car was fake, that it didn't have a**
13 **distributorship, my company didn't have a**
14 **distributorship. And all these journalists concluded**
15 **the fact, because they heard it from the big man, that**
16 **the car that I was promoting -- promoting through a**
17 **distributorship was illegitimate and fake and I was a**
18 **conman. So my world exploded.**

19 Q With respect to whether or not MACC -- by the
20 way, were you allowed in the MACC facilities at that
21 time period?

22 **A No.**

23 Q With respect to MACC -- MACC's production of
24 vehicles, what, if anything, had Mr. Mosler told the
25 journalists during that same -- in that same 18-week

1 period?

2 **A** **He told the journalists they're not producing**
3 **a car.**

4 Q Okay.

5 **A** **A car, a car.**

6 Q So --

7 **A** **And the 18 weeks didn't expire until**
8 **approximately Christmastime. So well before the**
9 **expiration of the 18 weeks, Mr. Mosler, you know, bombed**
10 **the whole thing.**

11 Q He told you he wasn't -- they weren't
12 producing cars, right?

13 **A** **And that the RaptorGTR is a fake, I don't have**
14 **a distributorship, I mean, everything. He just**
15 **essentially, like, just nuked it.**

16 Q So with respect to your claim that Mosler --
17 you understand that Mosler is taking -- MACC is taking
18 the position that you breached because you didn't buy
19 cars, right?

20 **A** **Right.**

21 Q What is your counter-position with respect to
22 those facts?

23 **A** **The contract says they have to produce the**
24 **cars.**

25 Q Okay. And --

1 **A If they don't produce the cars, there's no**
2 **breach function.**

3 Q And what had Mr. Mosler told the world about
4 whether or not they were producing any?

5 **A Not producing cars.**

6 Q And what did you interpret that as?

7 **A That I didn't have the ability to buy one.**

8 Q Because who was in breach?

9 **A Mr. Mosler's in breach.**

10 Q Or?

11 **A And MACC.**

12 Q Okay.

13 **A Mr. Mosler was directing everything that MACC**
14 **does.**

15 Q Okay. Now, with respect to S -- the paragraph
16 5, beginning calendar year 2011, SEI must purchase at
17 least three MACC vehicles, if in the latter part of 2011
18 SEI had in fact tried to purchase three MACC vehicles --

19 **A They would have said no.**

20 Q Okay.

21 **A He made it clear to me that they won't sell to**
22 **me, period.**

23 Q Well, at that point, how did side glass come
24 into your thought process?

25 **A Well, one of the problems I was -- so, common**

1 in the cars is --

2 Q No, what -- just focus on the question, okay?

3 A Sorry.

4 Q As you're thinking about whether or not MACC
5 is going to sell you cars, what knowledge did you have
6 about MACC's willingness to sell to you?

7 A They weren't even going to sell me a piece of
8 side glass.

9 Q Now, with respect to SEI purchasing those
10 cars, there was someone else that was mentioned, a
11 boxer. Who was that?

12 A Oh, Manny Pacquiao.

13 Q Okay. So you had these potential investors.
14 And you also had potential buyers of vehicles, didn't
15 you?

16 A Yes.

17 Q Okay. What happened to the interest of those
18 people once the articles came out?

19 A Disappeared, disappeared.

20 Q Okay.

21 A No one's gonna buy a \$700,000 car when the
22 owner of the company says it's a fake.

23 Q Now, based upon your conversations with them
24 and your experience in sales as one of the -- you were
25 one of the highest sales producers --

1 **A Yes.**

2 Q -- at MACC, weren't you?

3 **A I, you know, took points on the vast majority**
4 **of the engineering, the invention, all that stuff, and**
5 **also I interfaced with the customers and --**

6 Q Okay. Based upon your experience interfacing
7 with customers for MACC, being one of the -- if not the
8 highest sales -- volume salesperson for MACC and your
9 conversations with these purchasers, I know you said the
10 price was 700,000, but do you think you could have sold
11 it for --

12 MR. WEBER: Objection. Speculation.

13 THE COURT: Sustained.

14 BY MR. ZAPPOLO:

15 Q Did you ever offer the car -- the 2012
16 RaptorGTR for less than 700,000?

17 **A No. And actually one of the customers, a**
18 **prince from Saudi Arabia, was gonna pay 1.2 million and**
19 **then this stuff happened and, boom, it was just**
20 **annihilated.**

21 Q So you were in discussions to sell for 1.2
22 million?

23 **A Yes, that first car, chassis number -- serial**
24 **number 001.**

25 Q And now you did sell the Raptor -- the 2012

1 RaptorGTR for how much?

2 **A \$300,000.**

3 Q Now, that was -- the actual sale price was
4 discussed and there's a document in evidence, right?

5 **A Yes.**

6 Q But what wasn't covered is the negotiation for
7 that price, right? How did you negotiate to that price?

8 **A I was just desperate, man. I -- you know,**
9 **he --**

10 Q Did you just roll over and say, okay, give me
11 300?

12 MR. WEBER: Objection. Beyond the scope of
13 cross-examination. He just admitted --

14 THE COURT: Hold on. Repeat your question.

15 MR. ZAPPOLO: I was asking about the
16 negotiation for that price. They admitted the sale
17 document into evidence.

18 THE COURT: Sustained.

19 MR. WEBER: Can we approach, Your Honor?

20 THE COURT: Yes.

21 (A side-bar conference was held.)

22 THE COURT: You're talking about the sale for
23 \$1.2 million?

24 MR. ZAPPOLO: No. I'm talking about the
25 ultimate sale price for the 2012 RaptorGTR, which

1 counsel moved into -- the sale document into
2 evidence during his cross-examination of 300,000.

3 MR. WEBER: You said -- earlier you just said
4 that you never went into the reason for that price
5 and now you're starting to ask him questions about
6 that price.

7 MR. ZAPPOLO: No, I didn't say it.

8 THE COURT: Hold on.

9 Overruled.

10 (Side-bar conference concluded.)

11 BY MR. ZAPPOLO:

12 Q Tell me your side of the negotiations that
13 ultimately resulted in the document that's in evidence
14 reflecting a \$300,000 sale price?

15 What was your first number? What was it
16 reduced to? Why did you reduce it?

17 A I had been trying for quite sometime to sell
18 the car and then this fellow called me and, you know, he
19 -- he first offered -- I can't remember if he started --
20 it was 350,000 and then I think just before he came down
21 he said, you know, 325. And then when he actually got
22 down, flew down, he saw the side glass broken. He's
23 like, you know, I'm not gonna pay more than 300. And I
24 took it. I --

25 Q Okay.

1 **A** **I took it and ran basically. So the side**
2 **glass cost me \$25,000.**

3 **Q** **Now, with respect to the ultimate purchaser of**
4 **MACC, MACC's assets, have they been making the 2012**
5 **RaptorGTR?**

6 **A** **I don't have firsthand knowledge. I don't --**
7 **I don't believe so, but I don't know.**

8 **Q** **Okay. Because there was a question like why**
9 **didn't you -- have you bought cars from them.**

10 **A** **Right.**

11 **Q** **Based upon your experience with them -- I**
12 **think you mentioned Rossion RP. Who was affiliated with**
13 **that company?**

14 **A** **Ian Grunes.**

15 **Q** **Okay.**

16 **A** **He was the president and a friend of mine.**

17 **Q** **And what do we know about documents that are**
18 **in evidence, emails to Mr. Grunes about you?**

19 **A** **Mr. Mosler's telling Ian Grunes that I have**
20 **some sort of mental problems and other things like that.**

21 **Q** **Okay.**

22 **A** **And he also indemnified Rossion so they**
23 **wouldn't have to honor the distributorship my company**
24 **has. So Mr. Mosler wanted to lock in the fact I could**
25 **not benefit from the RaptorGTR. It's extraordinary.**

1 Q Now, by the way, when did Mr. Mosler tell you,
2 hey, I got the \$100,000 in from Lew Lee or Sante Fe
3 Digital Media?

4 A Never.

5 Q In fairness, there is an email or something in
6 evidence that says that the \$100,000 was from Lew,
7 right?

8 A After the fact. So I think he's trying to
9 distort -- he's, at this point, running the scam and he
10 needs to put things in to try and like, you know,
11 solidify it.

12 Q Okay.

13 A But he does admit something in there.

14 Q What reason, if any, was ever given to you for
15 the big gap between June 29th, 2011 and whenever that
16 email was saying, hey, that's Lew Lee's deposit?

17 A No one ever said anything that I can remember.

18 Q But what do we know about the documents that
19 are in evidence with respect to confidentiality?

20 A Oh, right. So the -- as far as I can tell,
21 the singular and only agreement in this whole odyssey
22 that Warren Mosler honored was the agreement that he
23 made with the Lew Lee con team to keep that information
24 otherwise secret from me. That's the only thing he
25 honored. Of all the -- of maybe like a dozen

1 agreements, that's the only one he honored, which is
2 really amazing actually. He --

3 Q Now, if Mr. Mosler had truly believed that you
4 were affiliated with Lew Lee and/or Sante Fe Digital
5 Media, would it have been a breach of a confidentiality
6 agreement to discuss that with you?

7 MR. WEBER: Objection. Calls for a legal
8 conclusion.

9 THE COURT: Overruled.

10 **THE WITNESS: Could you ask it one more time?**

11 BY MR. ZAPPOLO:

12 Q If you were truly affiliated and Mr. Mosler
13 truly believed you were affiliated with Sante Fe Digital
14 Media and/or Lew Lee, wouldn't it have been a breach for
15 him to talk to you about it?

16 A I don't know. I have to look at the factual
17 wording. I thought it was -- he wanted no one to know
18 about it except for him and Mr. Lew Lee.

19 Q Right. So if you were truly affiliated with
20 Mr. Lee, it would have been okay for you to talk -- him
21 to talk to you about it, right?

22 A I really don't know the answer to this.

23 Q Okay.

24 A All I know is he didn't. Mr. Mosler kept it
25 secret from me, which is part and parcel to the scam.

1 He needed to keep the secret from me.

2 Q Now --

3 A Because if he told me, there would have been
4 no fuck -- I'm sorry. I really apologize, I really do.

5 Q All right. Just --

6 A I can't believe this stuff has happened. All
7 this stuff is just so extraordinary to me, man. I --
8 all right. Okay. I apologize again. I'm so sorry.

9 Q Just take a breath.

10 A Okay.

11 Q Now, during the time period -- what was the
12 time period that the defense says their agreement was?

13 A Time period?

14 Q Yes.

15 A I think it was 60 days.

16 Q Okay. So June 29th --

17 A The secret LOI, the scam thing? I think it
18 was 60 days.

19 Q So that was July, August. And then they
20 said --

21 A But there's nothing in there that says
22 exclusivity.

23 Q What does September 1st have to do with this
24 case?

25 A Could be the date that the con team said they

1 **would be able to come up with the money.**

2 Q Okay. Now, what, if anything, do we know
3 happened to assets of Mosler Auto Care Center between
4 June 29th and September 1st, 2011?

5 A **Mr. Mosler sold off the crown jewels, the**
6 **three finished cars.**

7 Q So whether on June 29th, 2011 there was an
8 agreement with -- with you, MSI and/or James Todd
9 Wagner, or if on June 29th, 2011 there was an agreement,
10 which I understand you don't concede, with Sante Fe
11 Digital Media and/or LHX, what happened during that time
12 period with respect to that agreement?

13 A **Mr. Mosler -- a large material breach by**
14 **Mr. Mosler.**

15 Q So no matter who there was an agreement with
16 during this time period, there was a breach?

17 A **Absolutely.**

18 Q I'd like to shift gears for a moment and ask
19 you about your claim or Supercar Engineering's claim for
20 breach of a federal warranty, okay?

21 A **Okay.**

22 Q You were the person at MACC that was involved
23 in getting the EPA approvals, correct?

24 A **Mr. Mosler had tasked my company with that,**
25 **yes.**

1 Q And you were the individual, the human being
2 that was supposed to do that, right?

3 A Yes, I was the point person.

4 Q Now, with respect to the federal laws
5 regarding that, is that something that's allowed to be
6 waived by the company?

7 A No.

8 Q So if there's a document in evidence that
9 says, oh, this is without representations or warranties,
10 can they do that?

11 A No.

12 MR. WEBER: Objection. Calls for legal
13 conclusion.

14 THE COURT: Approach.

15 (A side-bar conference was held.)

16 THE COURT: So I let the first one go, but we
17 are talking about a lot of things that are -- you
18 know, he can't opine on. So let's back away from
19 all that, okay. I sustain the objection.

20 MR. ZAPPOLO: Yes, Your Honor. But I will
21 state for the record that the federal statute and
22 all the related codes are mandatory. It's not his
23 to waive. It's an obligation of the manufacturer.
24 So we're going to be discussing that later today.

25 MR. WEBER: That's a legal argument though.

1 That's nothing factual.

2 THE COURT: Stay away from legal conclusions.

3 I let the first one go. Let's stay away from
4 those, okay?

5 MR. ZAPPOLO: Yes, sir.

6 (Side-bar conference concluded.)

7 BY MR. ZAPPOLO:

8 Q Mr. Wagner, I'm showing you up on the screen
9 Defendant's Exhibit Number 66 in evidence.

10 Do you remember earlier I was talking with you
11 about an agreement between Lew Lee or Sante Fe Digital
12 Media and you that was being negotiated on or around
13 June 29th, 2011?

14 A Yes.

15 Q Okay. Is this that document that was being
16 negotiated?

17 A Yes.

18 Q Okay. So that document reads: For and in
19 consideration of his agreement to forego on his own
20 behalf and on behalf of MSI -- that was you, right?

21 A Yes.

22 Q -- certain rights set forth in the agreements,
23 both written and verbal, right?

24 A Yes.

25 Q Okay. And that's what you've been talking

1 with this jury about, written agreements and verbal
2 agreements with Warren Mosler, correct?

3 **A Yes.**

4 Q Between Wagner, MSI and MACC/Warren Mosler,
5 and SFDM -- SF -- upon SFDM acquiring all or
6 substantially all of the assets of MACC, in whatever
7 form, whether a stock or an asset transaction, SFDM will
8 pay Wagner 25 -- \$2,500,000 payable as follows, right?

9 **A Yes.**

10 Q This talks about you wanted to enter into a
11 series of related transactions. When was this agreement
12 going to act as a transfer of MSI's rights to purchase
13 MACC or MACC assets?

14 **A Upon them coming up with the money to pay this**
15 **amount, the 1 point --**

16 Q Okay.

17 **A It's 1.25 million initially and also**
18 **simultaneously the money to buy Mosler.**

19 Q On June 29th, 2011, how much did you think
20 that agreement to purchase -- the ability to purchase
21 MACC's assets was worth?

22 **A How much do I think the ability -- I think**
23 **it's actually worth more than the \$5 million in total**
24 **here.**

25 Q Okay.

1 **A** **I think there's a lot of money to be made with**
2 **the RaptorGTR.**

3 **Q** **Okay. So --**

4 **A** **Mr. Mosler could have made 50 million.**

5 **Q** **So, true or false, on June 29th, 2011, without**
6 **getting any money from Lew Lee or Sante Fe Digital**
7 **Media, you transferred MSI's rights over to Lew Lee?**

8 **A** **Oh, no way, no way.**

9 **Q** **When did the agreement contemplate you were**
10 **going to transfer the rights?**

11 **A** **Upon them showing up with the money. It was a**
12 **show me the money type of thing. If they actually got**
13 **all these things that they were, we now know,**
14 **fraudulently claiming they were gonna do, at the time if**
15 **they popped up with this money then that would be fine.**
16 **I still have my exclusive distributorships. They would**
17 **be doing their stuff. I would get paid the front money**
18 **and plus the ten-year employment contract.**

19 **Q** **Now, the Abby Cubey Feel My Fire video is in**
20 **evidence, right?**

21 **A** **Well, some derivative of it is.**

22 **Q** **Now, there was also a video that was played**
23 **during your cross-examination and there was a picture of**
24 **you standing in the background shirtless. Do you**
25 **remember that?**

1 **A Yup. Yes.**

2 Q How long were you on the screen during that
3 video?

4 **A Like one second, maybe less.**

5 Q Maybe less than a second, okay.

6 Now, the assertion being that that -- you
7 being in a video shirtless is -- I don't know. Do you
8 understand what the assertion is, what that has to do
9 with anything?

10 **A You could explain it to me what they are
11 trying to claim with that, but --**

12 Q Okay.

13 **A I didn't approve of that video being posted in
14 any case, but even so --**

15 Q Nevertheless --

16 **A We were just there.**

17 Q Does that video necessarily shine a light
18 derogatorily upon you?

19 **A No. I mean, I looked pretty good back then.**

20 Q Does it shine a light derogatorily upon Mosler
21 Auto Care Center?

22 **A No.**

23 Q Or Mosler's products?

24 **A No.**

25 Q What videos are you aware of that did similar

1 things and who were they signed off on by?

2 **A Mr. Mosler signed off on his cars being in rap**
3 **videos --**

4 Q Okay. Let's talk about --

5 **A -- and sending it to his kids.**

6 Q -- one of the -- just one of those rap videos.

7 MR. ZAPPOLO: Counsel, Exhibit 664.

8 MR. WEBER: No objection.

9 MR. ZAPPOLO: No objection.

10 Your Honor, I'd like the record to reflect
11 there's no objection to us playing Exhibit 664 for
12 the jury.

13 BY MR. ZAPPOLO:

14 Q Would you explain to the jury what I'm about
15 to show them?

16 **A This is a Triple C -- I think it was Young**
17 **Jeezy in there. It's a rap video called Go.**

18 Q Okay.

19 **A Go, with an exclamation point.**

20 Q For simplicity, I'm just going to play it here
21 for the jury. I apologize.

22 (Music video played.)

23 (Music video stopped.)

24 BY MR. ZAPPOLO:

25 Q Okay. Now, Mr. Wagner, you were affiliated

1 with Mosler Auto Care Center when that video was played,
2 correct, when that came out?

3 **A Yes.**

4 Q Who authorized that video?

5 **A Mr. Mosler.**

6 Q How many shirtless people are in that car
7 doing burnouts, car doors open, et cetera, et cetera?

8 **A Yes, there's a lot of shirtless action in
9 there.**

10 Q When, if ever, did you ever hear Mr. Mosler
11 accuse those people are misrepresenting the car,
12 injuring his brand, anything like that?

13 **A Never. He showed it to his kids. They
14 thought it was cool.**

15 MR. ZAPPOLO: Your Honor, I believe 664 has
16 been moved and admitted into evidence. I just want
17 to be sure of that.

18 THE COURT: As what number?

19 MR. ZAPPOLO: Miss Clerk, it was plaintiff's
20 exhibit. What are we up to now?

21 THE CLERK: 107.

22 MR. ZAPPOLO: 107. I'd like to move 664 for
23 identification purposes into evidence as to
24 Plaintiff's Exhibit 107.

25 THE COURT: Defense?

1 MR. WEBER: No objection.

2 THE COURT: Madam Clerk, what number is it?

3 THE CLERK: 107.

4 THE COURT: That's Plaintiff's 107?

5 THE CLERK: Correct.

6 THE COURT: Thank you.

7 (Plaintiff's Exhibit Number 107 was admitted
8 into evidence.)

9 MR. ZAPPOLO: Your Honor, this is actually a
10 good time to break. I can clean up and then
11 expedite.

12 THE COURT: Can I see the attorneys.

13 (A side-bar conference was held.)

14 THE COURT: How much longer have you got with
15 the witness?

16 MR. ZAPPOLO: I think only about a half hour.

17 THE COURT: Half hour?

18 MR. ZAPPOLO: Yes.

19 THE COURT: I'd rather go for the next half
20 hour and stop at 3:15. Because I usually give them
21 a break at 2:30 and so --

22 MR. ZAPPOLO: That's fine.

23 THE COURT: So then at 3:30 you can wrap up at
24 the end of --

25 MR. ZAPPOLO: I'm just letting Your Honor know

1 my documents are on the floor out of order now, so
2 it's going to take me a minute to get through them.

3 THE COURT: Okay. So we'll take a ten-minute
4 break.

5 (Side-bar concluded.)

6 THE COURT: Deputy.

7 (Jury out at 2:45.)

8 THE COURT: All right. We'll be in recess for
9 about ten.

10 (A recess was held from 2:46 to 3:00.)

11 THE COURT: Let's bring them in.

12 THE COURT DEPUTY: Jurors entering.

13 (Jury entered at 3:02.)

14 THE COURT: All right. Please be seated.

15 BY MR. ZAPPOLO:

16 Q Mr. Wagner, do you recall a line of
17 questioning that resulted in you discussing that you
18 were actually initially trying to -- threatening to sue
19 people in order to clear both yours and Warren Mosler's
20 name?

21 A Yes. Well, not directly threatening to sue,
22 but wanting to clear it up.

23 Q I'm showing you what's been marked as
24 Plaintiff's Exhibit Number 431 for identification
25 purposes.

1 MR. ZAPPOLO: Counsel, any objection to its
2 admission?

3 MR. WEBER: No objection.

4 THE COURT: Madam Clerk, what number?

5 THE CLERK: 108.

6 (Plaintiff's Exhibit Number 108 was admitted
7 into evidence.)

8 BY MR. ZAPPOLO:

9 Q Okay. Now, as late as November 17th, 2011,
10 you were actually writing to Benjamin Greene saying that
11 you would -- as part of Exhibit 108, you said: I'm
12 actually quite happy to receive your e-mail as it lends
13 proof to my libel claim. I will provide you with all
14 the documentation to prove that myself and my company
15 are in the right. Once I provide you with the proof, I
16 very much hope you will help me clear my name and Warren
17 Mosler's name.

18 A Yes.

19 Q Okay. So this is what you were talking about
20 earlier when you were saying you were confused, et
21 cetera, and you thought there's no way Warren Mosler was
22 saying these things?

23 A Exactly. I mean, he wrecked his own company
24 just to wreck me. That is so far outside the realm of
25 normal life existence I could possibly think of. I just

1 **couldn't -- that was two days after the launch, that**
2 **email.**

3 Q Now, there was some other testimony about a
4 comparison of the assets. Do you remember that a little
5 while ago? The assets that were in the company at one
6 point and then --

7 **A Oh, and sold off.**

8 Q When ultimately it was purchased?

9 **A Yes.**

10 Q Okay. I'm showing you what's been marked as
11 Plaintiff's 1211, list of assets.

12 **A Yes.**

13 MR. ZAPPOLO: Mr. Weber?

14 MR. WEBER: No objection.

15 THE COURT: Madam clerk, what number?

16 THE CLERK: 109.

17 (Plaintiff's Exhibit Number 109 was admitted
18 into evidence.)

19 BY MR. ZAPPOLO:

20 Q Okay. And that document reflects assets that
21 Ian Grunes was discussing purchasing out of Mosler in
22 April of 2013, correct?

23 **A Yes.**

24 Q Okay.

25 **A It says Mosler update.**

1 Q By the way, you mentioned to this jury that
2 you had conversations with Ian Grunes as well. Do you
3 remember that?

4 A Yes. We had breakfast at IHOP on 45th Street
5 about once every four to six weeks when I was trying to
6 -- I thought the two of us, you know, MACC and Rossion
7 as a combined entity would be great because he had a
8 4-cylinder car, Mosler had an 8-liter twin turbo. So it
9 became like the model range between the two of them. So
10 it would really make a nice -- a lot of synergies
11 between the two to combine them.

12 Q After Mr. Mosler wrote that you were legally
13 insane in that email that's in evidence, what happened
14 to your relationship with Ian Grunes?

15 A He has not talked to me since.

16 Q Did you ever discuss with Mr. Grunes the value
17 of EPA certifications and things?

18 A Oh, yes. I mean, it was -- having EPA
19 certification for the highest power weight ratio of car
20 on the planet at the time with this exotic, beautiful
21 body, you know, it didn't have the Corvette hangover
22 anymore. It was a golden goose. It was worth millions.
23 I thought it was worth 5 to 10 million by itself, which
24 is why I was expecting that much from, you know, the con
25 team, but I didn't know at the time it was a con team.

1 Q In fact, that valuation for the EPA
2 certification is encompassed within Plaintiff's 109 in
3 evidence, isn't it?

4 A Yes.

5 Q Okay. Back along the lines of who you were
6 planning on suing, do you remember a little while ago
7 you testified under cross-examination Ms. Jill Wagner
8 notifying Benjamin Greene that the car -- the 2012
9 Raptor was not coming out, that it was a rumor?

10 A Yes. That was one week before the launch.

11 Q Showing you what's been marked as Plaintiff's
12 200. Flip to the second page, please.

13 MR. ZAPPOLO: Counsel, may I -- I'd like to
14 move 200 into evidence.

15 MR. WEBER: No objection.

16 THE COURT: Madam Clerk, was that number 105
17 -- I'm sorry, 110?

18 THE CLERK: Yes.

19 (Plaintiff's Exhibit Number 110 was admitted
20 into evidence.)

21 BY MR. ZAPPOLO:

22 Q Okay. Now, Plaintiff's Exhibit 110 in
23 evidence is an email exchange between Jill Wagner and
24 Benjamin Greene, correct?

25 A Yes.

1 Q Okay. Now, on November 8th, Benjamin Greene
2 wrote to Ms. Wagner: My name is Benjamin Greene. I
3 work for the Dupont Registry.

4 The Dupont Registry is that picture of -- that
5 article with the picture of the Mustang on the front,
6 right?

7 A Yes. It's a Camaro, I think.

8 Q A Camaro, okay. Whatever.

9 "I hear you'll be unveiling a new car on
10 11/11/11 and wanted to see if you could provide us with
11 details or information."

12 And Ms. Wagner's response was?

13 A "Hi, Benjamin. That is a rumor."

14 Q So a week before the global launch that you
15 were doing of the 2012 RaptorGTR, someone at Mosler --

16 A Is shutting it down.

17 Q By the way, was that before or after the video
18 came out?

19 A That was before the video came out.

20 Q And what do you know about -- if you read the
21 emails and things in the articles that are in evidence,
22 you know, there's the email chains after them, the
23 comment sections?

24 A Yes.

25 Q What do you know about the comments that were

1 made to at least one journalist as far as timing to when
2 the launch was done?

3 **A** **He said that he found out about the whole con**
4 **yesterday. So he's writing on the day of the launch**
5 **saying that he found out about the con yesterday, the**
6 **day before the music video came out. So it had nothing**
7 **to do with the music video with Mr. Mosler.**

8 **Q** **Now, there was talk and examination of you**
9 **about an alleged agreement between Sante Fe Digital**
10 **Media and Mills Wagner, MSI. Do you remember that on**
11 **cross? I think we've covered it a lot, right?**

12 **A** **Can you repeat it?**

13 **Q** **Sure. There was a lot --**

14 **A** **I'm wearing out a bit. I'm tired.**

15 **Q** **There were a lot of questions of you about**
16 **your supposed partnership with Lew Lee, et cetera,**
17 **remember that?**

18 **A** **Yeah. That's what they're trying to claim,**
19 **yeah.**

20 **Q** **Okay. Now, what is Wagner-Lee?**

21 **A** **That was my business plan. At the time, the**
22 **con team were going to put in \$5 million to buy**
23 **45 percent of -- so they were gonna provide the capital.**
24 **I'll provide the distributorships and the intellectual**
25 **property and also the -- so essentially they would own**

1 45 percent in return for putting in \$5 million, which is
2 a typical type of deal for an angel investor.

3 So my company would still have controlling
4 interest. They were providing the capital, and because
5 they provided the capital they would get to have their
6 name on it. So it would be Wagner-Lee. Of course now
7 we know it was all nothing, but that's what it was at
8 the time.

9 And that's the way you get investors, you give
10 them what they want. They want their name on it, okay.
11 You give them percentage, they put in the capital and
12 you all together go forward and create something good.

13 Q And do recall how close to the June 29th, 2011
14 you were talking about Wagner-Lee?

15 A It wasn't -- it was fairly close, but I don't
16 remember the exact date. I don't think I remember the
17 other dates.

18 Q I'm showing you what's been marked as
19 Plaintiff's Exhibit 489. Does that refresh your
20 recollection?

21 A Yes.

22 Q Okay.

23 A It says May 31st, so about a month.

24 MR. ZAPPOLO: Counsel, I'd like to move 489
25 into evidence.

1 MR. WEBER: No objection.

2 THE COURT: Madam Clerk, is that 111?

3 THE CLERK: Yes.

4 THE COURT: Thank you.

5 (Plaintiff's Exhibit Number 111 was admitted
6 into evidence.)

7 BY MR. ZAPPOLO:

8 Q Okay. So not a deal with Sante Fe Digital
9 Media; if anything, it was going to be MSI or you would
10 negotiate Wagner-Lee, right?

11 A I'm not sure I understand the question.

12 Q Well, where's the business plan for Sante Fe
13 Digital Media to be your partner in all these documents?

14 A Oh. No, there was gonna be an investor, like
15 an angel investor. Like you buy stock in Ford, you
16 don't get to buy in for the contracts, you just own a
17 part of it.

18 Q Okay.

19 A You put in money, you get to own part of it.
20 There was a lot of potential.

21 Q Was any Wagner-Lee supercars deal ever
22 finalized?

23 A No. Nope.

24 Q There's a document in evidence, I believe,
25 that is -- do you remember a document in evidence where

1 you were asked questions about and commented about
2 Mr. Mosler forwarding your e-mail about the 2012 Raptor
3 certification to Savvas Savopoulos?

4 **A Yes. He did that without my knowledge.**

5 Q Now --

6 **A I didn't expect to be doing that since I still
7 had exclusivity.**

8 Q Who was your email originally sent to?

9 **A It was originally sent to Jill Wagner, Warren
10 Mosler and, you know, some member of the con team.**

11 Q Showing you what's been marked as 11 --
12 Plaintiff's 1166 for identification purposes.

13 MR. ZAPPOLO: Counsel, I'd like to move 1166
14 into evidence.

15 MR. WEBER: Is this your highlighting on it?

16 MR. ZAPPOLO: Yes. It's the only copy that I
17 have.

18 MR. WEBER: We have no objection.

19 THE COURT: Madam Clerk, 112?

20 THE CLERK: Yes.

21 (Plaintiff's Exhibit Number 112 was admitted
22 into evidence.)

23 BY MR. ZAPPOLO:

24 Q Now, I think you testified earlier about the
25 good job --

1 **A Yes.**

2 Q -- email, right?

3 **A Yes. Everyone was excited. This was gonna be**
4 **great for everybody.**

5 Q So on Plaintiff's Exhibit 112, which is now in
6 evidence, we have the original email of Friday,
7 August 12, 2011 regarding 2012 RaptorGTR certification
8 in the subject line. And you write, Hi, Jill, Lew and
9 Warren, right?

10 **A Yes.**

11 Q Now, within the documents in evidence, how --
12 is there another document that looks substantially
13 similar, but yet is different than that?

14 **A Yes. Warren Mosler, without my knowledge,**
15 **took the Lew out. He deleted that off and forwarded it**
16 **off to all the competitor -- competitive bidders who**
17 **would be competing against me even though I had**
18 **exclusivity at the time.**

19 Q So he took your e-mail showing what work you
20 had done and shared it with people that were bidding
21 against you?

22 **A Yes. And then eventually tried to have me cut**
23 **out.**

24 Q Now, by the way, this goes up a little further
25 in this email. We have the good job, and that's

1 August 12th. But then we go all the way forward to
2 November 17th, 2011 as part of this chain, right?

3 **A Yes. That's two days after the launch.**

4 Q Now, in fairness, you had other email chains
5 that were going on and were being exchanged during that
6 time period?

7 **A Yes. It was mayhem. I was trying to figure
8 out what was going on and -- you know, I had no idea.**

9 Q But I'd like to focus on this portion of the
10 chain.

11 **A Okay.**

12 Q On November 17, 2011, you wrote to who?

13 **A To Warren Mosler.**

14 Q Okay. You wrote, quote, this is your response
15 to the successful certification that was done per your
16 request, right?

17 **A Yes.**

18 Q And why did you send that email to Mr. Mosler?

19 **A Because I'm reading this stuff where a
20 journalist is saying that Warren Mosler told him the car
21 won't pass emissions and isn't certifiable for public
22 sale. So I'm like, Mosler, are you doing this.**

23 Q Okay. And what was his response?

24 **A "Okay, point?"**

25 **Like, I don't know. It's such a -- it's such**

1 a bizarre answer. And -- and he obviously never
2 admitted it.

3 And then there's another email later on. He
4 says, well, I was upset about it as you are. No, he
5 wasn't upset about it. He was happy that he was seeing
6 me burn.

7 Q You were blind copied on a couple of emails
8 that are in evidence. Do you remember testifying that
9 you were blind copied on some documents?

10 A Yes.

11 Q I'm going to show you another document marked
12 Plaintiff's 523 for identification purposes.

13 Do you recognize that document?

14 A Yes.

15 MR. ZAPPOLO: Counsel, I'd like to move 523
16 into evidence.

17 MR. WEBER: No objection.

18 THE COURT: Madam Clerk, is that 112?

19 THE CLERK: 113.

20 THE COURT: Thank you.

21 (Plaintiff's Exhibit Number 113 was admitted
22 into evidence.)

23 BY MR. ZAPPOLO:

24 Q Now, is Exhibit Number 113 such a document
25 that you were blind copied on?

1 **A Yes.**

2 Q And I noticed something. There's something
3 down on the bottom right hand corner that says PLTS
4 Production Fourth RTP. What is that?

5 **A That means it came from our production.**

6 Q Okay. Now --

7 **A Our side, we gave it.**

8 Q So this August 30th, 2011 email, that would be
9 just before the purported deadline for Lew Lee/Sante Fe
10 Digital Media, correct?

11 **A Yes.**

12 Q Okay. Now, in that email, Jill Wagner says to
13 Lew Lee and Warren Mosler: Hi, Lew. Disregard all
14 former documents. Attached is the proposed closing
15 draft. And it has business sale MACC.

16 Now, do you know exactly when you received
17 this email?

18 **A No. I mean, I would presume I received it on
19 the 30th from Jill. So Jill blind copied me.**

20 Q Now, this document is a sale of business
21 agreement between Mosler Auto Care Center and LHX, LLC,
22 right?

23 **A Yes.**

24 Q Weren't you just grilled about you had a deal
25 with Lew Lee and Sante Fe Digital Media?

1 **A I was grilled relentlessly.**

2 Q And who was there -- who was MACC actually
3 cutting a deal with?

4 **A According to this, it's LHX, LLC.**

5 Q Okay. And they were paying how much?

6 **A \$1 million.**

7 Q But at that point, you were negotiating at a
8 price point of what because of the assets being taken
9 out?

10 **A I don't know if -- I have to look and see, but**
11 **I think I was just sort of, like, cooling my heels at**
12 **the moment.**

13 Q Now --

14 **A But I think I expected a million dollars. I**
15 **didn't know what the assets were being sold off at this**
16 **time.**

17 Q Now, according to this document, on
18 August 30th, which would be well after the June 29th,
19 2011 deposit --

20 **A Yes.**

21 Q -- the purchase price for LHX to buy was how
22 much?

23 **A \$1 million.**

24 Q And how much would they have had to come up
25 with to close at closing?

1 A **The exact same, \$1 million.**

2 Q So what happened to the \$100,000?

3 A **Mr. Mosler knew that these guys didn't put in**
4 **\$100,000. He knew it was mine. And this email is like**
5 **the mic drop. It shows that he knew all along the**
6 **100,000's mine.**

7 He still wanted to sell it to Lew Lee. It was
8 a million dollar price and it had to come up with a
9 million dollars at closing. There's no credit for any
10 deposit because there wasn't one. Everybody had to go
11 through two weeks of this stuff. We knew it all along.

12 MR. ZAPPOLO: I think that's all the questions
13 I have for you, Mr. Wagner.

14 THE COURT: Please have a seat.

15 Oh, I'm sorry. Are there any questions from
16 the jury? Seeing none, please have a seat.

17 Can I see the lawyers, please.

18 (A side-bar conference was held.)

19 THE COURT: Do you rest?

20 MR. ZAPPOLO: We are going to rest after I
21 make a motion to amend the pleadings to conform to
22 the evidence. I have a brief writing for Your
23 Honor.

24 THE COURT: I'm going to excuse them.

25 Oh, you said you wanted to rest after you make

1 that motion?

2 MR. ZAPPOLO: Yes.

3 THE COURT: All right. Let me --

4 MR. ZAPPOLO: Because I have to make the
5 motion before.

6 THE COURT: Let me put them in the jury room.
7 Do you want to rest in front of them or do you just
8 want me to tell them you've rested when they come
9 back out?

10 MR. ZAPPOLO: Well, I haven't rested until I
11 make the motion.

12 THE COURT: Right, right, right.

13 MR. ZAPPOLO: If you want to reserve that --

14 THE COURT: No, no.

15 MR. ZAPPOLO: However you want to do it. If
16 you --

17 THE COURT: My question is -- all right.
18 Well, I guess it doesn't matter. Let's do it in
19 front of the jury.

20 MR. ZAPPOLO: As long as I haven't waived my
21 ability to make the motion. I'll make the motion
22 tomorrow, whenever you want.

23 THE COURT: Make the motion right now. Let me
24 put them in the jury room.

25 (Side-bar conference concluded.)

1 THE COURT: All right, Deputy, I need to talk
2 to the attorneys for about 10, 15 minutes.

3 THE COURT DEPUTY: Leave your pads on your
4 chairs.

5 (Jury out at 3:25.)

6 THE COURT: All right. What have you got for
7 me?

8 MR. ZAPPOLO: Very brief, Your Honor.

9 MR. WEBER: The motion should be denied, Your
10 Honor.

11 THE COURT: Give me a minute.

12 All right. Let me hear you.

13 MR. WEBER: So, Your Honor, with respect to --
14 there's three issues raised by this motion, as I
15 see it. The first issue is they want to amend
16 their complaint from seeking -- from a claim for
17 the unpaid EPA approval under unjust enrichment and
18 quantum meruit to one under expressed. That's how
19 I understand the first issue.

20 The problem is that they are saying that we
21 take the position that Defendant's Exhibit 78
22 constitutes the agreement regarding the EPA report.
23 That's not true. Actually it was Mr. Wagner who
24 testified in his -- Mr. Zappolo's first direct
25 testimony that it wasn't the consultant agreement

1 that actually governed his pay for the EPA approval
2 work. He actually testified that he was to be paid
3 based on his hourly rate of \$75,000 a year.

4 So he said -- so he was questioned by
5 Mr. Zappolo: And what does that equate to?

6 6,250 per month.

7 Question: And do you recall the breakdown of
8 that?

9 Answer: It was about five and a half months
10 that I hadn't been paid, so I believe it's like
11 34,000.

12 Question: Okay.

13 Answer: Something in that range.

14 Question: And the vacation time?

15 That's 1,809, I believe.

16 Question: Okay. Now, what does fairness have
17 to do with this? Well, let me back up.

18 Did you have a written contract for this?

19 Answer: It was in emails, which I consider to
20 be a written contract.

21 So they're not even going under this
22 consultant agreement, which Mr. Zappolo is putting
23 in his motion. Because aside from the fact that
24 that wasn't even mentioned in Mr. Wagner's
25 testimony, Mr. Wagner also just testified that the

1 consultant agreement doesn't apply because it had a
2 termination date of December 2004.

3 So he's trying to do something that is not
4 even consistent with what Mr. Wagner testified to
5 for this claim. So he shouldn't be allowed to
6 amend to include something that's not even part of
7 what Mr. Wagner testified to as part of his claim.

8 Now, we think as part of our defense to these
9 equitable claims, we're arguing that he's -- that
10 they should be -- they should be dismissed. So he
11 shouldn't be allowed to bring them.

12 MR. ZAPPOLO: May I respond briefly?

13 THE COURT: Can I see Exhibit 78, the
14 Plaintiff's 78?

15 MR. WEBER: It's the consulting agreement,
16 Your Honor.

17 THE COURT: I'm sorry, Defendant's 78.

18 MR. ZAPPOLO: Exactly, exactly, Your Honor.
19 It was raised-- my position is it was raised by
20 them in my case in chief as one of their
21 affirmative defenses.

22 MR. WEBER: It wasn't. It's two different
23 things. In your case in chief, you said it was
24 emails constituted a written contract. You
25 defeated your own claim.

1 MR. ZAPPOLO: I didn't -- I didn't --

2 THE COURT: Hold on. Hold on. I want to see
3 it.

4 MR. WEBER: We have the transcript, Your
5 Honor.

6 MR. ZAPPOLO: I didn't raise the consulting
7 agreement, you did.

8 MR. WEBER: It's on the monitor, Your Honor.
9 It was in his deposition that Wagner introduced
10 these conflating different -- it sure was. Look at
11 the transcript. In his deposition --

12 MR. ZAPPOLO: We're not here about
13 depositions. We're here about what happened in
14 trial. What happened in trial is you introduced
15 that in your cross-examination of him.

16 MR. WEBER: To impeach him --

17 THE COURT: Give me a minute.

18 MR. WEBER: To impeach him on his testimony
19 regarding the --

20 THE COURT: Hold on. Don't talk to each
21 other. Let me read this. I'm trying to follow
22 along, but ...

23 Can I see the next page?

24 How long is this document?

25 MR. GRIFFIN: It is 15 pages.

1 THE COURT: Madam Clerk, do you have another
2 copy?

3 THE CLERK: Yes.

4 MR. ZAPPOLO: I'll get it. What exhibit
5 number was it again, please?

6 THE CLERK: 78.

7 MR. ZAPPOLO: Here you go, Your Honor.

8 THE COURT: Thank you.

9 So you're asking to add breach of contract?

10 MR. ZAPPOLO: Yes, sir.

11 THE COURT: And currently there's unjust
12 enrichment.

13 MR. ZAPPOLO: And quantum meruit.

14 THE COURT: And quantum meruit.

15 The breach of contract count, this is for
16 unpaid work?

17 MR. ZAPPOLO: Correct.

18 THE COURT: Okay. And isn't that also what
19 the a quantum meruit claim is for?

20 MR. ZAPPOLO: Yes. But they're mutually
21 exclusive theories. If you have a contract, you
22 sue on the contract. If the contract claim fails,
23 just like with, you know, construction cases, you
24 sue for breach of contract. If someone says there
25 is no contract, you tack on the quantum meruit and

1 unjust enrichment, which are the equitable claims.

2 THE COURT: All right. Mr. Weber.

3 MR. WEBER: Your Honor can see that what we
4 actually said at trial is that -- may I approach,
5 Your Honor?

6 THE COURT: (Nods head.)

7 Is this the trial transcript?

8 MR. WEBER: Yes.

9 So what he said back on the 17th, Your Honor,
10 is -- Mr. Zappolo was questioning him and what --

11 Question: Okay. What is the -- what was your
12 hourly rate?

13 At the time I was earning the equivalent of
14 75,000 a year.

15 Okay. And what does that equate to?

16 6,250 per month.

17 And do you recall the breakdown of that?

18 It was about five and a half months that I
19 haven't been paid, so I believe it's like 34,000.

20 Okay.

21 Something in that range.

22 And then the vacation time?

23 That's 1,809, I believe.

24 Okay. Now, what does fairness have to do with
25 this?

1 Well, let me back up. Did you have a written
2 contract for this?

3 Answer: It was in emails, which I consider to
4 be a written contract.

5 He's talking about the EPA approval work. Now
6 fast forward to when I deposed him -- well, when I
7 cross-examined him in on the 19th. So what I was
8 doing was impeaching him because back when he was
9 deposed, what he testified to was --

10 Question: I remember, that was the contract
11 we just looked over, 8,660 per week or 32 per month
12 for 32 hours per week of work. My pay comes out
13 roughly 10,000 per month for a full work week.

14 Answer: All right

15 Question: Now, you remember what I just
16 showed you is back in 2016. You testified that you
17 were supposedly supposed to be paid under the
18 consulting contract, right?

19 Answer: I was paid at that rate.

20 Question: Well, no, the answer showed you
21 believed you were to be paid for the work after
22 April that you're claiming in this lawsuit under
23 the consulting contract, but sitting here in the
24 courtroom for trial you testified the other day
25 that you're actually claiming --

1 Answer: A lesser amount.

2 Question: You've changed your story. Now
3 you're claiming you should be paid an amount based
4 on the salary that you were owed, correct?

5 Answer: If Mr. Mosler wants to pay me 10,000
6 a month, that's okay with me.

7 Do you understand, Your Honor, he's got two
8 different sworn testimonies about what he's
9 alleging the contract that governs this claim. So
10 we're not saying that he's owed money under the
11 consulting agreement. We're just pointing out he's
12 lying about where he thinks the claim is.

13 MR. ZAPPOLO: The legal standard is whether
14 the issue was tried by the consent of the parties.
15 Nobody objected to my questions. Nobody objected
16 to his questions. It's an issue that's squarely in
17 front of the jury without objection. That's the
18 legal standard. That's why it should be allowed,
19 in the simplest term, Your Honor.

20 THE COURT: So I think this is probably one of
21 the things that happens when we introduce evidence
22 when it's not our case in chief, probably one of
23 the drawbacks. I know there's some efficiency to
24 it and that's why we talked about it, but, you
25 know, I can also see why this would happen when we

1 introduce evidence during the opponent's case in
2 chief. It also does prolong the testimony of the
3 witness. Perhaps we could have addressed motions
4 two or three days ago.

5 I understand your argument that you were
6 trying to impeach the witness and that it's
7 introduced solely for the purposes of doing so.
8 But impeachment evidence is not substantive
9 evidence, and this was admitted as substantive
10 evidence during the opponent's case in chief. So I
11 do think the issue was tried by consent. Your
12 motion is granted.

13 MR. ZAPPOLO: Thank you.

14 MR. WEBER: So that's one issue, Your Honor.
15 The second issue is that he thinks that the jury
16 could be confused as to the nature of the contract
17 sued upon, and so he's saying that the jury should
18 be instructed that Count VI can stand alone or
19 apart from the breach of contract in Count V.

20 I don't understand what he wants in his
21 instruction because there's two different
22 instructions for these claims if they're allowed to
23 proceed.

24 MR. ZAPPOLO: I just -- I just want -- here's
25 what's going on, Your Honor. Mr. Wagner has

1 testified his agreement that he's suing upon is
2 that Mr. Mosler agreed to refund his \$100,000
3 deposit. He testified, I believe, that they spoke
4 about it and that he had these May 2nd emails and
5 we've gone through it. We admitted the May 2nd
6 emails into evidence. Counsel, I think, admitted
7 the May 2nd emails into evidence in his
8 cross-examination of Mr. Wagner.

9 What my concern is is that counsel says, oh,
10 Mr. Wagner or SEI breached the agreement to
11 purchase MACC or that he's melding it in with the
12 agreement that -- he tries to push it all together
13 that that was Lew Lee's deal or something like
14 that. This is completely independent of that.

15 Mr. Wagner -- the relief sought and everything
16 is for the \$100,000. He's not saying, jury, I had
17 a contract to purchase and because Mr. Mosler
18 didn't sell it to me I should be getting the
19 benefit of that. He's saying I had an agreement
20 with Mr. Mosler that if I gave a deposit, that
21 under these circumstances it would be refundable,
22 those circumstances occurred and, therefore,
23 Mr. Mosler should have given me back my \$100,000.

24 I just don't want this getting all juxtaposed
25 and mixed up. And maybe it's a jury instruction

1 issue, but I'm raising it now to be sure that it
2 doesn't, you know, become a problem later.

3 THE COURT: Well, you guys are going to draft
4 jury instructions and give them to me, you know.
5 So, I mean --

6 MR. ZAPPOLO: You've already said that you
7 agree with their verdict form, Your Honor.

8 THE COURT: We're not going to --

9 MR. ZAPPOLO: Respectfully, I've got a bunch
10 of issues with it.

11 THE COURT: Well --

12 MR. ZAPPOLO: So --

13 THE COURT: Yeah.

14 MR. ZAPPOLO: But I don't want to argue with
15 the Court.

16 THE COURT: No, you guys are going to work on
17 it. I said I liked the format of theirs more. I
18 said it was really lengthy and detailed, but I
19 thought, you know, plaintiff's instructions were a
20 little inadequate.

21 So now that we're adding this County VI -- I'm
22 sorry, Count V, right?

23 MR. WEBER: Well --

24 MR. ZAPPOLO: Whatever we want to call it,
25 Your Honor. We can plug it in.

1 THE COURT: They've got to be modified.

2 All right. As far as --

3 MR. ZAPPOLO: I just want to be clear to the
4 jury the agreement that was sued upon is that the
5 deposit would be refunded upon the sale of MACC's
6 assets to another.

7 MR. WEBER: No, that's --

8 MR. ZAPPOLO: That's at the bottom of page 2.
9 That's what we pled. We pled for the \$100,000
10 back. That issue was clearly tried in front of
11 this jury repeatedly.

12 Mr. Wagner testified. You remember, Your
13 Honor, I said you were putting your hands in the
14 air and describing and explained that to the jury,
15 that's what that was about.

16 MR. WEBER: And that really made no sense at
17 all to anybody when you did that because the
18 reality is --

19 THE COURT: All right.

20 MR. WEBER: -- the claim is what's in your
21 complaint.

22 MR. ZAPPOLO: And the complaint is for the
23 \$100,000, not to force the sale of the business.

24 MR. WEBER: For an oral agreement.

25 MR. ZAPPOLO: And the law says and the

1 standard jury instruction even says contracts can
2 be oral, they can be written or they can be both.
3 And I think the testimony in this case is clear
4 that that's what we have here.

5 MR. WEBER: Well, we're moving aside from the
6 issue here. The issue before Your Honor right
7 now -- the second issue is do you give another
8 instruction that the jury can consider unjust
9 enrichment along and apart from the breach of
10 contract in Count V. That's the only issue before
11 Your Honor right now.

12 MR. ZAPPOLO: What?

13 THE COURT: The breach of contract is for the
14 unpaid work.

15 MR. ZAPPOLO: Right.

16 MR. WEBER: Well, no, because he hasn't -- you
17 already ruled on the unpaid work, right. His next
18 -- his second issue is with respect to the 100,000.
19 He has three claims related to the 100,000, a
20 breach of contract claim for the 100,000, an unjust
21 enrichment claim for 100,000, and fraudulent
22 inducement claim for the \$100,000.

23 The second issue before Your Honor through
24 this motion is he wants an instruction that the
25 unjust enrichment claim can be considered alone and

1 apart from the breach of contract for 100,000,
2 which is --

3 MR. ZAPPOLO: No.

4 MR. WEBER: -- already what's in the verdict
5 form. It says further, alternatively, the jurors
6 should be instructed that Count VI can stand alone
7 and apart from the purported purchase of the MACC
8 agreement also referenced in Count V.

9 MR. ZAPPOLO: Right. If look back, Your
10 Honor, at the bottom of page 2, plaintiff -- the
11 last paragraph, plaintiff is concerned that the
12 jury could be confused as to the nature of the
13 contract sued upon and somehow juxtapose/meld the
14 agreement that, quote, the deposit would be
15 refunded upon the sale of MACC's assets to another,
16 closed quote, which is what we sued upon. And
17 we're suing for the return of that deposit.

18 We don't want that agreement juxtaposed with
19 the agreement that, quote, Warren Mosely would sell
20 MACC's assets to Mr. Wagner. That's what they've
21 been doing in front of this jury.

22 MR. WEBER: No, we have not been doing that.

23 MR. ZAPPOLO: Then he shouldn't have an
24 objection to clarifying and just saying to the jury
25 the issue of the refundability.

1 THE COURT: I think in general -- I've been
2 listening to the trial too. It's -- you know, the
3 jury's got a tough job ahead of them, but I think
4 what you're saying is the jury instruction should
5 be as clear as possible.

6 MR. ZAPPOLO: Yes.

7 THE COURT: I think Mr. Weber is also
8 conveying that the jury instructions should be as
9 clear as possible. So I don't know that there's
10 anything for me to rule on because the jury
11 instructions should be as clear as possible.

12 MR. ZAPPOLO: Okay. Thank you, Your Honor.

13 MR. WEBER: But in both cases, he's suing for
14 the return of the \$100,000 deposit.

15 THE COURT: You guys are going to iron that
16 out. You guys will work that out and you guys are
17 going to give me proposed completed verdict forms
18 or instructions and I'll look them over. At this
19 point, that's the only thing that makes sense.
20 Because right now we're all agreeing the jury
21 instructions should be clear, but we don't know
22 what they are yet. So what are we spinning our
23 wheels for?

24 MR. ZAPPOLO: Okay.

25 MR. WEBER: The third dispute, Your Honor, is

1 he wants a jury instruction on contract formation.

2 So that's another thing that we should discuss.

3 THE COURT: So you attached -- are these the
4 standard instructions.

5 MR. ZAPPOLO: That is the -- those two are
6 standard jury instructions, Your Honor.

7 MR. WEBER: Which might be already in our
8 packet.

9 THE COURT: I mean, if they're standard
10 instructions, any objection to the standard
11 instruction?

12 MR. WEBER: Only if I have a competing one
13 because he's modified it. It's not the standard
14 concerning --

15 THE COURT: Okay. Well, we can address that
16 later. We can address that after hours. Right now
17 we're burning time with the jury. So I'll reserve
18 on issue three, okay. So I guess I'm reserving on
19 two and three because I want to see your
20 instructions. I granted plaintiff's motion as to
21 one.

22 And are you resting? Do you want to rest in
23 front of the jury?

24 MR. ZAPPOLO: It --

25 THE COURT: It's up to you. It's a style

1 issue, that's all.

2 MR. ZAPPOLO: I'm not going to -- I don't want
3 to waste the jury's time. We're going to bring
4 them back in. If I say I rest, then --

5 THE COURT: We're going to send them right
6 back out.

7 MR. ZAPPOLO: Send them right back out. So I
8 don't want to waste the jury's time.

9 THE COURT: Okay. So you rest?

10 MR. ZAPPOLO: Yes, we rest.

11 THE COURT: All right. Plaintiff rests.

12 MR. WEBER: We moved for a directed verdict,
13 Your Honor.

14 THE COURT: Okay.

15 MR. WEBER: I have a motion for directed
16 verdict here.

17 MR. ZAPPOLO: Your Honor, do you mind if I
18 sit --

19 THE COURT: It's four o'clock.

20 MR. ZAPPOLO: -- and read over his shoulder?

21 THE COURT: It's four o'clock. I'm looking at
22 -- you know, we've killed a rain forest with all
23 the paperwork in this case and I'm looking at a
24 document that is 30 pages long. I'd like to read
25 it. It's four o'clock. I'd like to read it and

1 hear argument. What's the likelihood we're going
2 to conclude this and put on another witness between
3 now and five o'clock?

4 MR. WEBER: We can put on Dr. Silverman, our
5 expert, yeah.

6 THE COURT: Okay. Do you want to do that now
7 and then address this afterwards?

8 MR. WEBER: As long as we're not waiving -- as
9 long as we're not waiving our directed verdict
10 motion.

11 THE COURT: Mr. Zappolo?

12 MR. ZAPPOLO: I agree, they're not waiving,
13 Your Honor.

14 THE COURT: Okay. So we'll address this at
15 the end of the day today, but let's bring the jury
16 in and let's do at least one more witness so that
17 we're moving along, okay.

18 MR. WEBER: Okay.

19 MR. ZAPPOLO: I apologize, Your Honor. I do
20 have a motion directed to this witness.

21 THE COURT: Okay.

22 MR. ZAPPOLO: So do you want to hear that now?

23 THE COURT: How long is this motion going to
24 take.

25 MR. ZAPPOLO: It shouldn't be long. It's

1 another brief.

2 THE COURT: What kind of -- is it an expert
3 witness or --

4 MR. ZAPPOLO: He's an expert, yes.

5 THE COURT: He's an expert.

6 MR. ZAPPOLO: It's not -- it's not like a
7 Daubert challenge. It's a three-page motion, Your
8 Honor.

9 THE COURT: Because Daubert challenges would
10 be untimely at this point.

11 MR. ZAPPOLO: Right.

12 MR. WEBER: It's a motion to exclude the
13 testimony of Dr. Silverman.

14 MR. ZAPPOLO: Right.

15 THE COURT: Isn't that what a Daubert
16 challenge is?

17 MR. ZAPPOLO: Right, but it's not for that
18 purpose, Your Honor. It's because of his -- it's
19 what his report says. His report basically says "I
20 have no opinion."

21 MR. WEBER: I don't think that's true.

22 MR. ZAPPOLO: In his own report he says his --

23 THE COURT: All right. Let me read the
24 motion.

25 MR. ZAPPOLO: Sure.

1 THE COURT: Once I've read the motion, I might
2 tell you that I'm not going to hear it. But let me
3 read it and just make sure that it is something
4 that is appropriate for right now.

5 MR. ZAPPOLO: Yes, sir.

6 THE COURT: Okay. I've read it.

7 So I guess what I'm gleaning from your motion
8 is it's not legally relevant.

9 MR. ZAPPOLO: Correct, Your Honor.

10 THE COURT: Okay.

11 MR. WEBER: Well, what he's actually saying --
12 he's challenging the reliability of the tests, Your
13 Honor, which is a Daubert motion.

14 THE COURT: I don't know that he's challenging
15 the reliability of it. When I read it -- granted I
16 would have liked to rule on this a couple weeks
17 ago, but from what he's saying, it doesn't really
18 help or not help the finder of fact, that the
19 probative value is very little because -- if I
20 quote here, the facts and data relied upon are
21 either not reliable or favor the plaintiff.

22 MR. WEBER: Your Honor, that's what he wrote.

23 THE COURT: Right.

24 MR. WEBER: That's what Mr. Zappolo wrote.

25

1 THE COURT: So I'm hearing from you now.

2 MR. WEBER: That's not what the expert wrote.

3 THE COURT: Yeah. No, that's what he wrote.

4 MR. WEBER: That's like a Daubert motion.

5 He's basically challenging the reliability of our
6 expert. Dr. Silverman is an expert who applied
7 generally accepted tests to Wagner and came to
8 opinions.

9 THE COURT: But what are the results of the
10 test?

11 MR. WEBER: I'll pull it up, Your Honor.

12 THE COURT: We're not going into the
13 reliability. I'm not going -- I'm not going to do
14 a Daubert motion. But if it's not going to assist
15 the finder of fact, then it's not legally relevant.
16 So tell me how this is going to help your case.

17 MR. WEBER: Well, because, Your Honor, it
18 shows based on Wagner's -- well, first of all, it
19 goes into Wagner's background. He explains how his
20 conduct was -- it can be interpreted as somebody
21 with serious mental problems basically, which is --
22 you know, if the statements --

23 THE COURT: Do you have a copy of it? Let me
24 read it.

25 MR. WEBER: A printout, yes. 622.

1 Mr. Zappolo basically made a bunch of
2 statements in here without attaching the full
3 report.

4 MR. ZAPPOLO: I quoted from the report.

5 MR. WEBER: Mr. Zappolo neglected to say that
6 Dr. Silverman administered three tests, which are
7 generally accepted in the field.

8 MR. ZAPPOLO: Not at all, Your Honor.

9 THE COURT: Stop. Stop.

10 MR. WEBER: And his own expert admitting that
11 she wasn't an expert after --

12 THE COURT: I'm not addressing your
13 reliability data. I'm not doing a Daubert
14 challenge at this point. Really, the only thing
15 I'm looking at the report for is to whether or not
16 there's an opinion that's going to materially prove
17 or disprove the facts in the case. That's really
18 all I'm looking for right now. I'm really --
19 that's why I said, you know, are we -- a legally
20 relevant analysis.

21 MR. WEBER: The truth, it goes to the truth.

22 THE COURT: So what I'm looking for is
23 information that is probative and not substantially
24 prejudicial one way or the other.

25 MR. WEBER: It goes to the truth of the

1 statement, which is one of the affirmative
2 defenses. Because one of the statements is that
3 Wagner had serious mental problems.

4 THE COURT: Show me where I'm looking in this
5 report. This report's long. What page?

6 MR. WEBER: So go to the psychological
7 testing.

8 THE COURT: What page is that?

9 MR. WEBER: On 7.

10 THE COURT: Page -- Dr. Silverman 7?

11 MR. WEBER: Yup.

12 I'm sorry, Your Honor. Page 7 right here like
13 this. There you go.

14 THE COURT: All right. So the first page 7.

15 MR. WEBER: Yes. That's psychological
16 testing, and then it's a summary of
17 recommendations.

18 THE COURT: This describes the test.

19 MR. WEBER: Right. It describes the test and
20 the results. It says that people who score in this
21 type of result indicate that individuals who score
22 in this way tend to present themselves as being
23 relatively free of psychological problems for the
24 purposes of influencing pending litigation. So
25 he's basically hiding the psychological problems

1 that he had to influence the pending litigation.

2 THE COURT: Can you hold on? Can you hold on?

3 So I think the strongest language in
4 Dr. Silverman's report is the last sentence in
5 favor of defendant's position, but there's a couple
6 mentions where -- I mean, he's clear. He's very
7 clear what he's saying.

8 MR. ZAPPOLO: The last --

9 THE COURT: Impossible to determine.

10 MR. ZAPPOLO: Right.

11 MR. WEBER: Because of how Wagner acted during
12 the test and answered the questions.

13 THE COURT: But it doesn't -- his analysis is
14 that it's impossible to determine. So it doesn't
15 prove or disprove your point. I think it's going
16 to be confusing to the jury. And some of the
17 material in the report is very prejudicial, you
18 know, a prior arrest.

19 So if Dr. Silverman had testified that it's
20 within a reasonable degree of medical certainty
21 that he did suffer from this at a certain point,
22 then perhaps it would prove or disprove that issue.
23 But for him to say that it is impossible to
24 determine doesn't prove or disprove the issue
25 because that circumstance could have existed, but

1 it may not have existed because it was impossible
2 to determine. So the finder of fact is going to
3 have to read a report that doesn't clarify whether
4 this condition existed or didn't exist because
5 their expert cannot determine that.

6 MR. WEBER: Well, only because of how Wagner
7 conducted himself during the test though. So, you
8 know, there's no Daubert hearing where Mr. Zappolo
9 could question about the relevancy of the topics.

10 THE COURT: No, I'm only going with a 403
11 analysis right now.

12 MR. WEBER: But what I'm saying is how --
13 Dr. Silverman, I would call him as a witness to
14 explain the relevancy of the report to what's going
15 on in this case and I'm not allowed to do that
16 because we never had a hearing on this issue.

17 So it really comes down to how Wagner acted
18 and deprived Dr. Silverman of the results impacted
19 Dr. Silverman's ability to reach a conclusion.

20 THE COURT: But it's hard to imagine that
21 Dr. Silverman would have -- as he did note that
22 Mr. Wagner did not participate and it's indicative
23 of mental illness -- at a certain point in time
24 consider that factor and then still reach the
25 conclusion that it's impossible to determine. And

1 so I think he did consider that factor. I just
2 don't think it assisted him. And because it didn't
3 assist him, I don't think it will assist the finder
4 of fact.

5 MR. WEBER: Well, he's saying that you have to
6 -- what Dr. Silverman is saying is that he's
7 interpreting the results. He actually did get test
8 results.

9 THE COURT: The strongest language that you
10 can rely on as the defendant is that Mr. Wagner was
11 not cooperative in providing both, period. While a
12 video of an automobile that plays the theme song of
13 a music video each and every time it is turned on
14 is not necessarily an indication of mental illness,
15 it may be interpreted as such. That's not very
16 strong at all.

17 MR. WEBER: Well, Your Honor --

18 THE COURT: The strongest language, which is
19 very clear, is where he states that whether there
20 is an actual mental health disorder is impossible
21 to determine. So impossibility is a very strong
22 word. It's not -- it's not a word that means that,
23 you know, if I had more time to evaluate my report
24 or had more -- you know, based on the data that I
25 have, I could reach that. It's impossible meaning

1 it's zero probability.

2 MR. WEBER: Well, you see it says similarly,
3 the case score measures defensiveness and the
4 underreporting of psychological problems. The
5 validity scale score results indicate that
6 individuals who provide answers to this test tend
7 to present themselves as being relatively free of
8 psychological problems.

9 THE COURT: Do you think the doctor ignored
10 that?

11 MR. WEBER: That's what he said.

12 THE COURT: But do you think he ignored that
13 factor?

14 MR. WEBER: No. I think that's the result.

15 THE COURT: I agree. I think he considered it
16 and still reached the determination it was
17 impossible.

18 MR. WEBER: But because of the score --

19 THE COURT: I'm going to sustain the
20 objection. Let me give this back to you.

21 All right. So if that witness is not going,
22 is there another witness we can put on?

23 MR. WEBER: I mean, not with the time we have,
24 Your Honor.

25 THE COURT: Okay. Then I'm going to release

1 them because we have 50 minutes and I want to read
2 your motion for directed verdict and have argument
3 on it, and I think that's going to take us through
4 the end of the day. I don't see the point having
5 them sit in the back room through the end of the
6 day if we're just going to be talking to each
7 other.

8 Let's bring them back out.

9 So I guess the 403 analysis, what I need to
10 say on the record, is low probative value, highly
11 prejudicial. That's why I sustained the objection.

12 THE COURT DEPUTY: Jury entering.

13 (Jury in at 4:15.)

14 THE COURT: Don't get comfortable. Don't get
15 comfortable. Don't get comfortable.

16 So it's 4:15. The attorneys and I need to
17 have a conversation. It's going to take a little
18 bit longer than I thought. I don't see us putting
19 on another witness between now and five o'clock, so
20 there's probably no point in keeping you guys
21 around till then.

22 I'm going to release you at this point.

23 Tomorrow at 9:30 we're going to reconvene. Again,
24 please don't discuss this case amongst yourselves
25 or with anybody else. Don't look up the names of

1 people involved in this case.

2 We'll pick up where we left off bright and
3 early 9:30 tomorrow morning, okay.

4 (Jury out at 4:15.)

5 THE COURT: All right. Why don't we take a
6 ten-minute recess while they're out and then I'll
7 start looking this over.

8 (A recess was held from 4:16 to 4:42.)

9 THE COURT: Thank you for that. I looked over
10 the records, gave them a good once over, but
11 clearly I'm going to need you to walk me through it
12 as well. I took some notes on these issues. Then
13 I guess we'll address how, you know, the motion to
14 conform the evidence -- the pleadings to conform to
15 the evidence is going to affect this.

16 Let's go ahead and get started.

17 MR. WEBER: So, Your Honor, the first claim
18 that's addressed by the motion are all the
19 equitable claims starting with counts I and II
20 regarding EPA approval.

21 THE COURT: Count I and II, all right.

22 MR. WEBER: So plaintiff Wagner testified that
23 there was a written contract that governed those
24 EPA rule claims, not the consultant agreement which
25 was filed and just moved to amend, Your Honor, but

1 supposedly these written -- these emails, which
2 plaintiff Wagner testified accounts to a written
3 contract. So you can't have the equitable claims
4 in the presence of an expressed agreement that
5 governs the same subject matter.

6 MR. ZAPPOLO: The law is clear things can be
7 pled in the alternative. We've -- we've been
8 granted permission to amend the pleadings to
9 conform with the evidence. We've got alternative
10 claims for breach of contract now and the two
11 equitable claims.

12 I will concede we don't get a double or triple
13 recovery on that, but the law is crystal clear on
14 that. Pleading in the alternative, it's in the
15 rule and everyone does it thousands of times a day.

16 MR. WEBER: Except now we're in trial and so
17 now we cannot -- now he has to decide between the
18 agreement or contract.

19 MR. ZAPPOLO: Not true at all, Your Honor. I
20 don't have to elect -- I don't have to elect a
21 remedy when you have mutually exclusive claims.
22 That's what these things are. They have different
23 elements, et cetera. And I know there's case law
24 on that. That's crystal clear.

25 THE COURT: Do you want to give it to me?

1 MR. ZAPPOLO: Let me look for some. I think I
2 might have some.

3 THE COURT: Because what's coming to mind is
4 independent tort doctrine, right?

5 MR. WEBER: Well, that's part of it. That's
6 fraudulent inducement, that claim, yes.

7 Your Honor, we have a case you can look up
8 where such a case was granted in verdict. Do you
9 want the number?

10 THE COURT: Please.

11 MR. WEBER: It is --

12 THE COURT: Is it the one you cited, Kovtan
13 vs. Frederiksen?

14 MR. WEBER: Kovtan vs. Frederiksen, yes. And
15 it's granting a motion for directed verdict. It's
16 affirming the trial court's granting.

17 MR. ZAPPOLO: Your Honor, I had a case that I
18 came across last night. I just happened to print
19 it out. I'm not sure where it is right now not
20 knowing that I was going to be hit with a 30-page
21 motion with case law in it. But I know there is
22 case law saying we are not compelled to elect a
23 remedy.

24 MR. WEBER: Mr. Zappolo should be prepared,
25 Your Honor. He prepared two different motions.

1 THE COURT: Hold on. Hold on. Let's stop.

2 MR. WEBER: He prepared two different motions,
3 Your Honor

4 THE COURT: Stop. I just want to hear
5 evidence -- I want see these cases, that's all.

6 MR. ZAPPOLO: Were you given a case, Your
7 Honor, by counsel? I didn't see it.

8 THE COURT: 449 So.2d 1. It's cited in his
9 material, but --

10 MR. ZAPPOLO: How would I have that? I don't
11 have that, Your Honor. Just to be clear --

12 THE COURT: It's a short case. I'll just read
13 it to you. It is out of the 2nd District,
14 March 21, 1984. It reads: Per curiam. In this
15 appeal appellant contends the trial court erred in
16 directing a verdict against appellant in his suit
17 to recover money damages for accounting services
18 rendered to appellee.

19 Upon review of the record, including the
20 briefs, and after hearing oral argument, we
21 conclude that appellant based his claim for relief
22 on the quasi-contract theory of contract recovery
23 however, during the course of the trial, appellant
24 testified that appellee expressly agreed to
25 compensate him for services, thereby proving the

1 existence of an expressed agreement between the
2 parties. It is well settled law -- it is well
3 settled that the law will not imply a contract
4 where an express contract exists during the same
5 subject matter, citing Hazen vs. Cobb, Williams vs.
6 Stewart, Poe vs. The Estate of Levy, Tobin and
7 Tobin Insurance Agency vs. Zeskind, and Solutec vs.
8 Young Lawrence Associates. Accordingly, we affirm
9 the trial court's granting of appellee's motion for
10 directed verdict.

11 MR. ZAPPOLO: It is ten minutes till 5:00 and
12 I have a 30-page memorandum, Your Honor.

13 THE COURT: Take your time. We're not going
14 to leave until we finish this today because --

15 MR. ZAPPOLO: The question is --

16 THE COURT: -- we're running out of jury time.
17 So if you need more time, I'll come back out in 15
18 minutes.

19 MR. ZAPPOLO: I don't know how I'm going to
20 research this stuff is my concern. Can we break
21 for the evening and I write a written response and
22 we rely on that?

23 THE COURT: We're running out of time. I
24 can't tackle this during the day. You know, one of
25 the reasons why I wanted to let them go at four

1 o'clock today was so that we could address this
2 today and call up the jury for trial tomorrow.

3 We're supposed to conclude this matter on
4 Friday. On Friday, my UMC is a little bit longer
5 because I actually have calendar call. So I'm
6 going to take the bench at nine o'clock and I won't
7 finish that until about 10:30, you know. It's
8 going to be a long morning. And Friday is the day,
9 so --

10 MR. ZAPPOLO: I understand, Your Honor. I
11 just -- I don't know that giving me ten minutes
12 right now is going to make any difference when I
13 don't have access to Westlaw. I don't know whether
14 this case is good law. I don't know what the facts
15 are, et cetera, et cetera.

16 THE COURT: Okay. So then I think what I'll
17 do is I'll issue a ruling and then you can come
18 back to me at some point in the future, I guess,
19 but that way I can power through.

20 MR. ZAPPOLO: Now, with respect -- okay. So
21 with respect to --

22 THE COURT: Count I and II.

23 MR. ZAPPOLO: -- Count I and II, I thought
24 Your Honor had allowed amendment to -- to the
25 expressed contract. So there's an issue here of --

1 THE COURT: So, I mean, if we're adding the
2 new count, I think it was -- what is that, Count V
3 that we talked about or Count VI?

4 MR. ZAPPOLO: I'm not sure what that was.

5 MR. WEBER: It would be like Count XI at this
6 point, but --

7 THE COURT: Okay. Well, if that count's
8 staying, then I don't know why I wouldn't strike
9 counts I and II if they're going to be subsumed by
10 that.

11 MR. ZAPPOLO: Because the jury could find that
12 there was no such agreement, and then we have the
13 quantum meruit claims. That's the whole point.

14 MR. WEBER: The whole point is that your
15 client disproved that an express agreement exists
16 on their case in chief. Under the law, direct
17 verdict is now proper on those equitable claims.
18 That's the point. That's what the case law says.
19 There's nothing else.

20 THE COURT: All right. Anything else on this
21 before I give you a ruling?

22 MR. ZAPPOLO: I mean, are they stipulating
23 there was a contract, Your Honor?

24 Because what I'm going to get now is they're
25 going to say, oh, no, there was no contract in

1 front of the jury. So what do I do then?

2 MR. WEBER: That's not how the rule works,
3 Mr. Zappolo.

4 MR. ZAPPOLO: That's what the practical
5 response here is. The case is supposed to be tried
6 on its merits.

7 THE COURT: So if you're telling me that they
8 had an express agreement --

9 MR. WEBER: That's not how it is, Your Honor.
10 How it is -- if you look at the rule, it says that
11 just by -- you can offer evidence and in the event
12 the motion is denied, you're not, like, conceding
13 that fact for the trial basically.

14 MR. ZAPPOLO: Well --

15 THE COURT: Well, the case -- hold on.

16 MR. ZAPPOLO: I'm sorry.

17 THE COURT: The case that you cited me said
18 that, you know, the parties proved the existence of
19 an expressed agreement between the parties. And
20 it's well settled law that the law will not imply a
21 contract where an express contract exists
22 concerning the same subject matter.

23 So the reason this was granted is because they
24 did have an expressed agreement and because they
25 proved the existence of this agreement.

1 MR. WEBER: Well, in this case, he's not even
2 suing under the express agreement.

3 MR. ZAPPOLO: Your Honor, this is exactly what
4 I said. The --

5 THE COURT: You guys are talking -- hold on.

6 MR. ZAPPOLO: I apologize.

7 THE COURT: But in your argument, you tell me
8 that plaintiff Wagner testified that there was an
9 express agreement, a binding contract, which is
10 memorialized over emails.

11 MR. WEBER: Right.

12 THE COURT: So --

13 MR. WEBER: He's not suing under that. That's
14 what I was trying to explain to Your Honor why
15 their motion to amend is so frivolous. Because he
16 basically amended his claim to assert something
17 that's separate from what he testified to.

18 Remember, he just amended his claim to assert
19 a breach of contract claim under a consulting
20 agreement. Here he testified that it's emails,
21 which constitute a contract. He has taken two
22 contradictory approaches in his sworn testimony as
23 to what is the alleged contract.

24 You follow me, Your Honor?

25 THE COURT: I am.

1 MR. WEBER: That's why his amendment's futile
2 and why this should all be stricken. You can't
3 have one -- you can't say one is the written
4 contract and also say the other is the written
5 contract. They're two different things and he's
6 swearing to both of them under oath. They're
7 necessarily --

8 THE COURT: No, I'm following you on that
9 position at this point, I get that. But as far as
10 this particular motion right now, the emails, were
11 they proven to be a contract or not?

12 MR. WEBER: Well, we haven't had a chance to
13 put on our defenses.

14 THE COURT: Right. So for directed verdict
15 purposes --

16 MR. WEBER: For directed purposes only, he has
17 proven it, yes. He's not allowed to continue to
18 plead in the alternative at this point. Now it's
19 up to us to defend against his allegation that
20 there's an express agreement. At some point, he
21 has to choose his theory. And these are equitable
22 claims anyway.

23 THE COURT: But that's not the way I'm looking
24 at it right now. Right now the way I'm looking at
25 it is in the light most favorable to the nonmoving

1 party whether or not I should dismiss this because
2 you're either proving this or not proving this,
3 right?

4 MR. WEBER: We haven't gotten to it on our
5 defense side. On his side, he has proven the
6 existence of this contract by testifying to it. He
7 has chosen his path. He cannot continue at trial
8 with both paths. And even if he did, the equitable
9 claims wouldn't be submitted to the jury. They
10 would be cited by Your Honor. They're equitable
11 claims, which we objected to in the pretrial stip
12 and our jury instructions. They're not to be tried
13 before the jury.

14 He's chosen his path, Your Honor. He's
15 testified to this written contract, emails. You
16 can't have it both ways.

17 THE COURT: Wait a minute.

18 All right. Mr. Zappolo, briefly.

19 MR. ZAPPOLO: I don't want to interrupt your
20 train of thought, Your Honor, but the case law is
21 -- there's a lot of case law on this. I do this
22 all the time. It's pled in the alternative. The
23 jury renders their verdict and then you are only
24 able to collect -- you only get a judgment on one
25 of the things.

1 We don't have to elect a remedy until after
2 the jury has determined because we pled it in the
3 alternative. It's anticipated by the rule, et
4 cetera, et cetera.

5 And I don't think it's appropriate for counsel
6 to say he's going to argue one thing to get a claim
7 knocked out, but then he's going to argue another
8 thing in front of the jury.

9 MR. WEBER: We have a right to put on our
10 defenses. It's your own testimony that's defeated
11 your claim.

12 THE COURT: So the defense is admit, but avoid
13 liability. And so if that's the case, then what
14 you're admitting is that you have a contract, but
15 then you're going to avoid liability some other
16 way.

17 MR. WEBER: Well, our -- our defense is that
18 he was already paid for the work.

19 THE COURT: So you admit -- but avoid
20 liability. Once you admit, you're -- and again,
21 I'm looking at the case that you've cited to me
22 where it says proving the existence of an express
23 agreement and the law will not imply a contract
24 where an express contract exists.

25 So here they granted it because there was a

1 contract. So if you're telling me that these
2 emails are a contract, right, then, okay, then you
3 present your defenses, which admit but avoid
4 liability.

5 MR. WEBER: As long as the emails that I'm
6 talking about are the same ones that he's talking
7 about.

8 THE COURT: Well, whatever is in your motion.

9 MR. WEBER: Well, he's -- Your Honor, he's
10 presenting his case. He has proven for his
11 purposes that an express agreement exists. That
12 annihilates his ability to now claim there's an
13 equitable contract.

14 MR. ZAPPOLO: What did I prove, Your Honor? I
15 didn't prove anything by that.

16 MR. WEBER: That's the point.

17 MR. ZAPPOLO: There's no proof on that.
18 There's no emails in evidence. There's no
19 specificity of terms or any of that kind of
20 stuff --

21 MR. WEBER: He literally testified --

22 MR. ZAPPOLO: -- which is required to prove a
23 contract.

24 MR. WEBER: He literally testified there's a
25 written contract governing the claim.

1 MR. ZAPPOLO: What are the terms?

2 MR. WEBER: It's your obligation to do that in
3 your case.

4 MR. ZAPPOLO: That's the whole point. I'm not
5 obligated to prove your defense.

6 MR. WEBER: I don't --

7 MR. ZAPPOLO: Your defense is no express
8 contract exists.

9 THE COURT: Stop.

10 You know, I'm looking at this I think maybe a
11 little too -- also a little -- a little tunnel
12 vision because some of the notes that I've written
13 myself here regarding these particular counts were
14 where I think I may have agreed with the defense as
15 to counts I, II and VI on damages.

16 Because don't damages need to be proven within
17 a reasonable degree of certainty? And the
18 testimony that I heard, which we just referenced
19 now, was about salaries getting paid for -- you
20 know, on a prorated basis, but that there was also
21 other work that happened during this time period.
22 And so how much of this salary is attributed to the
23 EPA work?

24 MR. ZAPPOLO: Remember, you have to -- the
25 Court has to take everything in a light most

1 favorable to us, give us all inferences. The
2 testimony -- there was no testimony about him doing
3 anything else during this time period other than
4 EPA work. There's no testimony other than that.

5 There's also documentation in evidence that he
6 was given credit for, quote, unquote, EPA work for
7 weeks that he worked. So Mosler was giving him
8 credit for weeks worked for EPA towards the car
9 payment. That's in -- that's in evidence with the
10 invoice.

11 But, Your Honor, here's the most -- here's
12 perhaps a more important thing. Exhibit Number 109
13 in evidence, intangible assets, value of
14 certification, \$5 million. Mr. Wagner testified,
15 well -- because he was asked, well, what's the
16 value of that. He said, well, either my salary for
17 the time that I worked or what's the -- whatever
18 the value of the EPA certifications is.

19 Here's a document in evidence, the value of
20 the EPA certifications.

21 THE COURT: Can I see that real quick? What
22 number is this? 109?

23 MR. ZAPPOLO: 109.

24 MR. WEBER: Let me address that in two points,
25 Your Honor. The value of the EPA certification is

1 different than the benefit conferred. And so,
2 first, he agrees that there's no testimony as to
3 what the exact hours that he allegedly worked are.
4 So that's the first thing. So that is sustained.

5 MR. ZAPPOLO: For the record, there was
6 testimony about his salary. Salary is not hourly.

7 MR. WEBER: And, Your Honor, what he did was
8 he approximated from his salary how many hours he
9 worked and then sought to base his damages based on
10 the amount of hours. When asked how many hours, he
11 could not provide the number at all. And there is
12 no documents in evidence that say how many hours he
13 worked.

14 MR. ZAPPOLO: Because salary employees don't
15 keep track of their hours, Your Honor, they're paid
16 on salary. That's the whole -- he did the math for
17 the number of months that he worked.

18 MR. WEBER: And he didn't even know. He was
19 guessing.

20 MR. ZAPPOLO: But there's documents in
21 evidence which show what MACC paid him per week and
22 we know the number of weeks that are claimed. The
23 number of weeks times his salary per week equals
24 the amount that he should have been paid or the
25 value of what he created, which in Exhibit 109 is

1 \$5 million.

2 MR. WEBER: The question was literally asked
3 do you know how many hours you worked, but he did
4 not know.

5 MR. ZAPPOLO: But hours are irrelevant when
6 you're paid by salary.

7 MR. WEBER: Not according to Mr. Wagner.

8 THE COURT: I stopped listening to both of you
9 a moment ago because I'm still reading. You guys
10 are talking back and forth to each other. You
11 should stop. Please address only me. The back and
12 forth communication just muddies the record. It
13 makes it hard for me to follow and can lead to a
14 breakdown in civility.

15 MR. WEBER: Your Honor, if I may?

16 THE COURT: Give me one second.

17 What do you want, Mr. Weber?

18 MR. WEBER: He's referring to 109. I mean, it
19 doesn't even say in this document what the
20 certifications are that he's referring to. So even
21 this document doesn't support his position.

22 And again, there's -- like Your Honor pointed
23 out, he failed to establish within a reasonable
24 degree of certainty how many hours he worked for
25 this work.

1 THE COURT: I'm trying to remember that
2 particular testimony so I can do it in my head.

3 MR. WEBER: I have it here, Your Honor, if you
4 want to see it. It's on page 8 of our motion.

5 THE COURT: All right. So that's a recurring
6 theme, I think, throughout the testimony is there
7 was a great deal of speculation that came out.

8 MR. ZAPPOLO: May I address that?

9 Exhibit Number 5 in evidence, the invoice,
10 references the pay that Mosler Auto Care Center was
11 paying Mr. -- was paying SEI and giving the credits
12 for the car. It says very clearly March, four
13 weeks; April, two weeks; January, three weeks. And
14 there are dollar figures that are associated with
15 that.

16 This whole hourly is just something that
17 counsel made up. SEI was being paid a salary for
18 doing that work, and there's no testimony that he
19 was doing anything other than EPA work during that
20 time period.

21 THE COURT: It's the last part that I'm --
22 it's dancing around in my head. So the hourly
23 issue, salary issue, that's not what I'm looking
24 at. It is, you know, did he work on this
25 exclusively and I'm trying -- in my head, I've been

1 really thinking about what was testified to, you
2 know.

3 I'm looking at your -- what is it, page 8, but
4 I don't have the court reporter and I recall him
5 struggling with this line of testimony, but --

6 MR. ZAPPOLO: My recollection was that I asked
7 him how long he had worked on the EPA
8 certifications and he talked about that and what
9 the requirements were. Because he said even though
10 we got the EPA cert, we then had to do the
11 continuation of the longevity testing and
12 everything for the cert. There's no testimony that
13 he was doing anything other than working on those
14 things at that time.

15 MR. WEBER: He testified --

16 MR. ZAPPOLO: So it's fodder for argument or
17 something, but --

18 THE COURT: I'm going to move on. I'm going
19 to deny it in the light most favorable to the
20 nonmoving party. I can see how the finder of fact
21 could rule in their favor.

22 Let's go on to the next one.

23 MR. WEBER: Well, for all the equitable
24 claims, I don't know if Your Honor's reserving
25 ruling, we would move for a directed verdict on all

1 those because there's an express agreement covering
2 them. So I don't know if Your Honor's reserving
3 ruling on all those. But if Your Honor's reserving
4 ruling, the next issue would be the directed
5 verdict on their Count III, breach of contract
6 claim. Because under the plain language of that
7 distribution agreement --

8 THE COURT: What page are we on?

9 MR. WEBER: This is page 12 -- I'm sorry, page
10 11. Bottom of page 11 is really where it starts.

11 Bottom of page 11, I'll give Your Honor a copy
12 of the distribution --

13 THE COURT: You're talking about your Count
14 III?

15 MR. WEBER: Yes.

16 THE COURT: All right. Let me hear you on
17 Count III.

18 MR. WEBER: So Count III, there's two aspects
19 of their claim here. First is that MACC was -- did
20 not manufacture and supply cars to SEI, but the
21 contract is clear that MACC did not have to provide
22 any vehicles to SEI until they paid for them.

23 I can provide the distribution agreement for
24 Your Honor.

25 THE COURT: I would like to see that, please.

1 MR. WEBER: Your Honor, this was the
2 Plaintiff's 74.

3 THE COURT: Thank you.

4 All right. So I've got 74. What paragraph am
5 I looking at?

6 MR. WEBER: If you look at term A6. It says
7 each vehicle was to be paid for in full prior to
8 export and delivery to SEI from MACC, United States
9 or any other location. The plain language is clear
10 that nothing has to be provided to SEI until it is
11 paid for by SEI.

12 MR. ZAPPOLO: The exact language of the
13 contract, each vehicle must be paid for in full
14 prior to export and delivery to SEI from MACC from
15 the United States or any other location. So prior
16 to export and delivery to SEI in another location.
17 So it doesn't require the things to be paid.

18 But also the testimony in this case, Your
19 Honor, is that Mr. Mosler said during the time
20 period when this contract was operational and there
21 was no question about a breach, Mr. Mosler told the
22 world they were not producing cars. That's called
23 an anticipatory breach. He breached it first by
24 telling the world we're not producing cars. That
25 negates my client's obligation to purchase or do

1 anything else. You can go ahead and sue on that.

2 If Mosler had turned around while we had sued
3 and come back and said, well, we're going to fix
4 that breach or whatever, the case law allows him to
5 do that. But it's crystal clear, it's a classic
6 case of anticipatory breach.

7 MR. WEBER: First of all, they have no defense
8 for anticipatory breach in response -- in their
9 reply to our affirmative defenses. But
10 additionally, the plain language is clear in this
11 contract and it's -- it's even right in harmony
12 within B1 about supplying. It is only when a
13 vehicle isn't paid for in full prior to export to
14 SEI that a vehicle must be delivered.

15 MR. ZAPPOLO: The testimony is, Your Honor,
16 that there were no cars to export or deliver. They
17 didn't build any.

18 MR. WEBER: And there's no testimony SEI paid
19 MACC and a car was not provided. There's no
20 testimony that ever happened.

21 THE COURT: Thank you very much, gentlemen.

22 MR. WEBER: That's the first part, Your Honor.

23 THE COURT: Talk about the second part,
24 chassis 32.

25 MR. WEBER: The second part of their -- of the

1 motion, Your Honor --

2 THE COURT: No, of that count, Count III. You
3 were going argue part two of it, which I thought
4 involved --

5 MR. WEBER: Sorry, Your Honor, I don't follow.

6 THE COURT: I'm on page 13 at the bottom of
7 point B.

8 MR. WEBER: Oh, because they forfeited their
9 distributorship rights.

10 THE COURT: That's part two of the argument,
11 isn't it?

12 MR. WEBER: Correct. The second part is that
13 they're claiming that MACC breached the
14 distributorship agreement because it sold SEI's
15 distributorship rights to RPI Performance.

16 But if you look at term C(1) of the
17 distributorship agreement, it says that SEI will
18 forfeit its exclusive distribution rights in China
19 and Thailand immediately upon failure to perform
20 any terms 2 through 6 in paragraph A, provided that
21 MACC has fulfilled its obligation to supply
22 vehicles described in paragraph B.

23 The evidence shows undisputedly that plaintiff
24 failed to perform terms A(3). A(3) required SEI to
25 export C32, which is the vehicle, Your Honor, to

1 Thailand or China 18 weeks after C32 has been
2 completed.

3 Mr. Wagner testified today that the car was
4 never exported to Thailand or China, so that term
5 was not complied with and, therefore, SEI forfeited
6 its exclusive distribution terms.

7 Additionally, in A(5) -- and it was in
8 evidence that C32 was completed by August 25th of
9 2011, which would have been by December 29th. So
10 they would have had to have been exported by
11 December 29th, 2011. Again, they never did it.
12 They never exported it to China or Thailand. So
13 they forfeited their rights.

14 Under A(5), it says that beginning calendar
15 year 2011, SEI must purchase at least three MACC
16 vehicles to be marketed, approximately one vehicle
17 every 120 days, in the Thailand/China distribution
18 territory every calendar year of the exclusive
19 distributorship term.

20 Again, it's undisputed that they only
21 purchased one vehicle in August. They were
22 required to purchase a vehicle every approximately
23 120 days. They signed the agreement, as you can
24 see, in November 2010. So they didn't purchase one
25 vehicle in March 2011. They didn't purchase one in

1 June 2011. They didn't purchase one until
2 August 2011 with the bill of sale. So they have
3 breached term A(5) as well.

4 MR. ZAPPOLO: As counsel points out, at the
5 time that Mr. Mosler went around saying that they
6 weren't building cars and saying these were not
7 MACC products, et cetera, Mr. Wagner and SEI still
8 had six weeks to import the RaptorGTR.

9 And his testimony, unrefuted on the stand, was
10 it wasn't done because what's the point when
11 they're not producing cars and they've said that --
12 they basically, you know, refuted the entire
13 agreement at that point.

14 MR. WEBER: Your Honor --

15 MR. ZAPPOLO: They wouldn't -- and by the way,
16 the testimony was they wouldn't sell him anything,
17 much less a car. They wouldn't sell him a pane --
18 a piece of glass. So they come in now say, oh,
19 well, he didn't purchase. The evidence in this
20 case is they wouldn't sell to him.

21 MR. WEBER: We're talking about pre
22 August 25th, 2011. That predates all the articles
23 which they're suing about, Your Honor. The
24 distribution agreement was signed in November 2010.
25 Mr. Zappolo doesn't have a good argument --

1 MR. ZAPPOLO: But --

2 MR. WEBER: -- why they didn't purchase more
3 than one vehicle during the calendar year 2011.
4 They had to purchase one every approximately 120
5 days in calendar year 2011 --

6 MR. ZAPPOLO: The testimony was --

7 MR. WEBER: -- and they failed to do so.
8 The first article wasn't until November 2011,
9 two months after they purchased their only vehicle.
10 They should have purchased one in March 2011,
11 June 2011, September 2011.

12 MR. ZAPPOLO: And the reality of it is, Your
13 Honor, they purchased the first one of its kind
14 when it was ready in August 2011. And the
15 testimony, unequivocal, is that there were no other
16 cars. How is he going to be held responsible for
17 buying vehicles that aren't manufactured and the
18 manufacturer said we're not building?

19 MR. WEBER: The distributorship contemplates
20 more than one type of vehicle, it clearly does, and
21 he had to pay for a car in order to receive it.

22 MR. ZAPPOLO: He didn't have to pay in order
23 to receive it. You don't have to -- by the way,
24 Your Honor, even if Mr. Wagner had shown up, here's
25 X number of \$100,000 for a new vehicle that I want

1 to sell, there were no vehicles to be had.

2 MR. WEBER: Look at B(2). It clearly
3 contemplates more than one type of vehicle. They
4 didn't purchase any vehicles except for the one at
5 issue in August.

6 MR. ZAPPOLO: The testimony --

7 MR. WEBER: They breached the agreement.

8 THE COURT: Give me a moment.

9 Well, I mean, I'm looking at it and I think
10 this agreement is not well written. You know, if
11 it were to go to the jury, I'm sure they would read
12 it as carefully as I'm reading it right now.

13 For example, I read A(5): Beginning the
14 calendar year 2011, SEI must purchase at least
15 three MACC vehicles to be marketed. And then
16 there's a parentheses. It says approximately one
17 vehicle every three days -- or, I'm sorry, 120
18 days.

19 But if I take that parentheses out, it says
20 must purchase at least three MACC vehicles to be
21 marketed, comma, in the Thailand/China distribution
22 territory in every calendar year of exclusive
23 distributorship term.

24 So there's an approximation of how it should
25 happen, but, you know, what does approximately

1 mean? Does it mean exactly once every 120 days or
2 does it mean roughly every 120 days? Does it mean
3 that that's what it would be if you were to do a
4 minimum of three in a year?

5 But what is really well written, I think, is
6 paragraph A(3). It says chassis 32 must be
7 exported to Thailand or China within 18 weeks after
8 chassis 32 has been completed by MACC, period.
9 There's an expected completion date, but that's a
10 very simple, singular clause. This must happen
11 within this time frame, and that did not happen.

12 All right. Your motion is granted as to Count
13 III.

14 MR. WEBER: The next one is the fraudulent
15 inducement claim. This is the independent tort
16 doctrine, economic loss rule, Your Honor.

17 It's undisputed --

18 THE COURT: We're on count what?

19 MR. WEBER: This is Count -- it's 7.

20 THE COURT: Count VII?

21 MR. WEBER: Yeah, Count VII.

22 THE COURT: All right.

23 MR. WEBER: The claim for fraud in the
24 inducement is that defendant Warren Mosler
25 misrepresented that the \$100,000 was refundable.

1 This is the heart of Mr. Wagner's claim for breach
2 of contract in that Mr. Wagner is claiming that
3 Mr. Mosler breached an agreement whereby the
4 \$100,000 was refundable -- and the testimony which
5 we've cited on page 16 supports that -- under the
6 theory the only -- where the only alleged
7 misrepresentation concerns the heart of the
8 parties' agreement.

9 Simply applying the label of fraudulent
10 inducement to a cause of action will not suffice
11 for sound policy rationale underlining the economic
12 loss doctrine, so the fraudulent inducement claim
13 is barred as a matter of law.

14 THE COURT: Mr. Zappolo.

15 MR. ZAPPOLO: The evidence before this jury
16 is -- shows the animosity between Mr. Mosler and
17 Mr. Wagner. It also shows the inconsistent
18 treatment between people that he said had a, quote,
19 unquote, refundable -- nonrefundable deposit.

20 Savvas Savopoulous allegedly had a
21 nonrefundable deposit and that meant to Mr. Mosler
22 that he got his money back because he did, yet with
23 James Wagner he induced him, said -- even offered
24 to him if you give me the \$100,000 and I sell it to
25 someone else, we'll give you your money back and

1 then, what happens, it gets treated differently.

2 So I think that the jury can certainly --

3 THE COURT: This will go to the jury.

4 What's the next argument?

5 MR. WEBER: Your Honor, may I just be heard on
6 this? What he just said has nothing to do with the
7 terms of the alleged claim. What he's saying is
8 fraud. He's saying the fraudulent
9 misrepresentation is that Mr. Mosler represented
10 that the \$100,000 would be refundable.

11 Can I show Your Honor the claim? Here's the
12 complaint. What he just told Your Honor has
13 nothing to do with the claim and the alleged
14 misrepresentation. The misrepresentation is that
15 the \$100,000 is refundable. That's the subject
16 matter of the agreement.

17 MR. ZAPPOLO: Right. If you give me the money
18 -- I'm sorry, Your Honor, if you're reading.

19 THE COURT: I am reading. Give me a minute.
20 What paragraph am I reading?

21 MR. WEBER: It starts on --

22 THE COURT: Count VII?

23 MR. WEBER: Count VII, fraudulent inducement.

24 THE COURT: I was reading Count IV.

25 MR. WEBER: I'm sorry.

1 THE COURT: It's my fault. I was reading
2 away.

3 MR. WEBER: Can I find it for Your Honor? I
4 apologize.

5 THE COURT: That's okay. We go from page 10
6 to page 12. We're missing page 11.

7 MR. WEBER: If I may have the document real
8 quick. I apologize.

9 Here you go, Your Honor.

10 THE COURT: All right. One more time.

11 MR. WEBER: The fraudulent -- the heart of the
12 fraudulent transfer claim is that -- is that
13 defendant Warren Mosler made a false statement of
14 fact when he agreed that the \$100,000 --

15 THE COURT: I get it. I follow you now.

16 MR. WEBER: Right. So if that's the
17 misrepresentation, that's the same thing as a
18 breach of contract claim.

19 THE COURT: I'm following you now, okay.

20 Mr. Zappolo.

21 MR. ZAPPOLO: The fraudulent inducement is --
22 assuming that there is no breach of contract on the
23 \$100,000, the fraudulent inducement tort claim
24 comes in. The \$100,000 -- saying that Mr. Mosler's
25 offering, even enticing the \$100,000, hey, if you

1 give me the 100,000, it can be refundable under
2 these circumstances is enticing Mr. Wagner and/or
3 SEI to make the deposit.

4 And then we go into Exhibit 77 in evidence.
5 Mr. Mosler does the same modus operandi with
6 another person. He doesn't think that person's
7 going to close. He says, hey, get me another --
8 give me a good faith deposit within months of when
9 he's dealing with Mr. Wagner.

10 THE COURT: It seems like the same thing,
11 Mr. Zappolo.

12 MR. WEBER: They can't --

13 THE COURT: I understand about the other
14 people and I understand about, you know, the
15 treatment of other people, but it seems like it's
16 the same thing.

17 MR. WEBER: If they can't be pled in the
18 alternative, Your Honor, that's the whole point.

19 MR. ZAPPOLO: Your Honor, you don't have to
20 have intent to breach a contract. You do have to
21 have intent to fraudulently induce someone. So
22 they're different causes of action.

23 MR. WEBER: Yes, they're not to be pled in the
24 alternative. That's the whole point of the
25 economic loss rule.

1 THE COURT: Anything else?

2 MR. ZAPPOLO: No, Your Honor. If I may make
3 -- after you make your ruling on this, I do have
4 one thing I would just like to proffer very briefly
5 for the record.

6 THE COURT: Well, tell me now.

7 MR. ZAPPOLO: Well, on your prior ruling, I
8 meant.

9 THE COURT: Oh, okay. Let's do that at the
10 end. Let's get through everything first.

11 All right. Motion is granted.

12 MR. WEBER: Next one is the breach of federal
13 warranty claim. I'm going to hand Your Honor --

14 THE COURT: Hold on. Hold on. Let me take
15 some notes here.

16 Okay.

17 MR. WEBER: I'm going to hand Your Honor the
18 bill of sale.

19 Your Honor, I'm going to put it on your
20 monitor. I apologize.

21 THE COURT: That's okay.

22 MR. WEBER: Okay. Your Honor, we're good. I
23 apologize.

24 THE COURT: This is Defendant's 100.

25 MR. WEBER: Defendant's 100 is the bill of

1 sale. And we're moving for a directed verdict as
2 to their Count VIII, which is the breach of federal
3 warranty.

4 The plain language of the bill of sale says
5 that it is executed without recourse and without
6 representations or warranties of assignor, which is
7 MACC, whatsoever. And as set forth in the law, the
8 written warranty governs. And the Magnuson-Moss
9 Warranty Federal Improvement Act, which they are
10 relying on, does not require manufacturer or seller
11 to extend written warranty with its product.

12 Here, SEI's testified that this Defendant's
13 Exhibit 100 is the bill of sale that they signed,
14 that they agreed to, and that they saw the language
15 in the bill of sale when SEI signed it. The
16 language is clear and unambiguous by saying it is
17 without recourse and without representations for
18 warranties whatsoever and, therefore, the plain
19 meaning, directed verdict is proper.

20 And that's just the first part.

21 MR. ZAPPOLO: 42 USC Section 7541 is what we
22 alleged in our complaint, which is mandatory
23 language that every manufacturer that manufactures
24 vehicles in the United States must comply with --
25 must be built and equipped so as to conform with

1 applicable regulations under 7521 and be free from
2 materials, defects, et cetera, et cetera, for its
3 useful life.

4 That's what the testimony was about in this
5 case. Mr. Wagner, who was the person who did the
6 EPA certification, testified about that. I've got
7 all of the federal code and other things.

8 And, Your Honor, this just makes sense. Ford
9 can't just say, oh, we're not going to comply with
10 EPA requirements, so we're going to wave it off to
11 everyone else. The whole purpose of this federal
12 statute is so that you don't have a bunch of
13 polluting cars out there. And the manufacturers
14 are the people that are responsible, and Mosler was
15 the manufacturer of this vehicle. So I've got
16 copies of 42 USC 7541.

17 The EPA's guidelines, which are also cited in
18 my -- in the complaint Title 40 talking about
19 control of air pollution, et cetera, which is
20 applicable and cited in my -- in the complaint.

21 And 49 USC 3, Section 30120, remedies for
22 defects, et cetera, those are the provisions that
23 are set forth in our complaint. And I've got
24 copies for Your Honor and copies for counsel. But
25 it's mandatory that the manufacturer grant a

1 warrant.

2 MR. WEBER: As set forth in our motion --

3 THE COURT: The enforcing agency is the United
4 States?

5 MR. WEBER: 42 USC 7541 doesn't have a private
6 cause of action. Instead the statute clearly
7 states that actions to restrain such violation
8 shall be brought by in the name of the United
9 States.

10 THE COURT: Show me where that is in the
11 statute.

12 MR. WEBER: That's at 42 USC 7553.

13 MR. ZAPPOLO: 75 what? I'm sorry.

14 MR. WEBER: 42 USC 7553.

15 THE COURT: 7553?

16 MR. WEBER: Yeah, 42 USC 7553.

17 I apologize, Your Honor. I'm sorry, Your
18 Honor. 7523. I apologize. 7523. You'll see that
19 7541 is within the statute.

20 THE COURT: That's what I'm looking for.
21 Where do you see that?

22 MR. WEBER: So it's better if I show, Your
23 Honor. See Westlaw? We're at 42 USCA Chapter 85.
24 So he's referring -- he's relying on 7541. It's 42
25 USC 7541. But if you look at 42 USC 7523 called

1 actions to restrain violations, you'll see that
2 actions to restrain such violation shall be by and
3 in the name of the United States.

4 THE COURT: You said chapter 85?

5 Subchapter --

6 MR. WEBER: (2), part A. So it's 42 USC --

7 THE COURT: So Title 42, Chapter 85,
8 subchapter (2) part A encompasses 42 USC 7521(b),
9 42 USC 7554. And you wanted me to look at 42 USC
10 7523, which is also part of that sub -- or
11 subchapter (2)?

12 MR. WEBER: Correct.

13 THE COURT: And it reads that the district
14 courts of the United States shall have jurisdiction
15 to restrain violations of this title and that
16 actions to restrain such violation shall be brought
17 by in the name of the United States and such
18 action, subpoenas for witnesses who are required to
19 attend a district court in any district may run in
20 any other district.

21 MR. WEBER: It says subpoenas for witnesses
22 who are required to attend a district court in any
23 district may run into another district.

24 THE COURT: Okay.

25 MR. ZAPPOLO: When you read, I think you

1 omitted something.

2 THE COURT: Tell me.

3 MR. ZAPPOLO: The documents 42 USC 7523 reads
4 (a), jurisdiction, the district courts of the
5 United States shall have jurisdiction to restrain
6 violations of -- and here's what you omitted.

7 THE COURT: Oh.

8 MR. ZAPPOLO: -- Section 7522(a).

9 THE COURT: You're right, you're right. Let
10 me see.

11 MR. ZAPPOLO: So, you know, I'm not --

12 THE COURT: Let's see. Let's see.

13 MR. ZAPPOLO: I'm not throwing stones. I
14 just --

15 THE COURT: No, no, no, I've got this thing on
16 here and it's hard to read.

17 MR. ZAPPOLO: I understand. I'm not even
18 throwing stones at Mr. Weber on this. I just --

19 MR. WEBER: 7541 is --

20 THE COURT: Hold on, hold on, hold on.

21 The following acts and the causing thereof are
22 prohibited -- let's see, that's subsection --
23 that's (a), numerated prohibitions. Parens --

24 MR. WEBER: (4) (d).

25 THE COURT: 4 --

1 MR. WEBER: (4) (d) .

2 THE COURT: (a) through (d)

3 MR. WEBER: 7541.

4 THE COURT: Okay. All right. I've read
5 those.

6 And thank you, Mr. Zappolo, for bringing it to
7 my attention. I think that was my oversight. But
8 I'm satisfied the United States is the enforcing
9 agency. Motion is granted.

10 MR. WEBER: Okay.

11 THE COURT: What's the next one?

12 MR. WEBER: The next one is the defamation
13 claims and trade libel claims, Your Honor.

14 Oh, just to be complete, Your Honor, it also
15 applies to -- there's no private cause of action
16 for any of the warranty claims, just to be
17 complete.

18 THE COURT: Those are count numbers?

19 MR. WEBER: That's also 49 USC 30118 and 49
20 USC 30120.

21 THE COURT: What are those counts?

22 MR. WEBER: That's also within the federal
23 warranty claim. 42 USC 755 -- I'm sorry, 7541, but
24 you'll see in C of our motion, page 19, we also
25 address the other parts of their federal warranty

1 claim. For those same reasons, there's no private
2 right of action. That's 49 USC 30118 and 49 USC
3 30120.

4 THE COURT: Mr. Zappolo, now that you have my
5 parameters as far as analysis --

6 MR. ZAPPOLO: I understand, Your Honor. I
7 understand your ruling.

8 THE COURT: All right. So those are granted
9 as well.

10 MR. WEBER: So this is the defamation and
11 trade libel claims, Your Honor. There are four
12 statements at --

13 THE COURT: I can't hear you, I'm sorry.

14 MR. WEBER: Next is the trade libel and
15 defamation claims, and there are four statements at
16 issue. I think -- I think the most efficient way
17 to do this, Your Honor, for purposes of the trade
18 libel claim is for you to go to page 29 because the
19 same statements that form the trade libel claim
20 also form the claim for defamation.

21 In Florida, a single publication gives rise to
22 a single cause of action. Florida's single
23 publication, single action rule precludes the
24 recasting of defamation claims as distinct causes
25 of action in tort if all of the claims arise in the

1 same defamatory publication.

2 We cite case law. In other words, when claims
3 are based on analogous underlying facts and the
4 causes of action are intended to compensate for the
5 same alleged harm, plaintiff may not proceed on
6 multiple counts of what are essentially the same
7 defamatory publication or events.

8 In this case, it's undisputed that SEI and
9 plaintiff Wagner are suing on these four statements
10 in the articles, and it's the same statements at
11 issue in the trade libel claim and the defamation
12 claim and, therefore, they are barred from bringing
13 a trade label claim because it is simply recasting
14 the defamation claim.

15 Do you see where you are in the motion, Your
16 Honor.

17 THE COURT: Yeah.

18 MR. WEBER: Okay.

19 THE COURT: I'm having a -- I read this like
20 an hour ago very quickly. In your materials -- is
21 it your case where you cite that, you know, even
22 when formed as something else, the court construed
23 it as defamation and so it was defamation?

24 MR. WEBER: That is not our case because he
25 has always had the defamation and trade libel.

1 THE COURT: All right.

2 MR. WEBER: And that's a common thing when
3 people allege something, but it's trying to get
4 around the defamation claim.

5 THE COURT: That's somebody else's case. It's
6 been a long day. And I read way too much.

7 As an aside, I'll tell you, one of the things
8 about this job that I don't like is that it's
9 destroyed my love of leisurely reading.

10 MR. WEBER: Likewise, Your Honor.

11 MR. ZAPPOLO: Agreed. One thing we can all
12 agree on.

13 THE COURT: All right. Mr. Zappolo.

14 MR. ZAPPOLO: Yes, Your Honor, without having
15 the benefit of the cases that counsel cites in
16 there, on its face, just reading his brief, they
17 talk about compensation for the same harm. These
18 are different harms that are pled differently,
19 number one.

20 Number two, if you look at the count for
21 defamation, Count IX, it has he is nothing, he has
22 severe mental problems, he goes around saying he
23 has everything, but he has nothing, that is not
24 included within the commercial disparagement count,
25 but the damages are different.

1 When I say that the Mosler --

2 THE COURT: But I think when you do that,
3 you're arguing his point. When you say that, you
4 know, the statements are the same, but damages are
5 different, I think you are arguing his point
6 regarding this, you know, single action.

7 MR. ZAPPOLO: But one -- one is the damages
8 done to -- to Mr. Wagner and the other is the
9 damages done to the commercial thing, the car. So
10 it's two different damages.

11 If the car could bring its claim in its own
12 right it would, but it can't. SEI is the owner of
13 the car and brings that -- that commercial
14 disparagement. If you look, that's who brings that
15 counts, the commercial disparagement. It's SEI.
16 The defamation is Mr. Wagner.

17 The party that's been injured is SEI for the
18 commercial disparagement. The party that's been
19 injured with Mr. Wagner's private cause of action
20 is Mr. Wagner. So you have two different
21 plaintiffs and therefore -- and two different
22 damages, so two different causes of action.

23 I think they're just blending this all
24 together. You know, I don't know that any of these
25 cases actually stand for that definitive

1 proposition that the company can't be damaged by
2 the same language.

3 For example, what if I were to say in a
4 disparaging statement that man is a pimp and his
5 wife is his whore. It's the same statement, but
6 each of them would have their own cause of action.
7 In this it's different because not only are we
8 doing -- it's a different cause of action, but
9 it's -- you know, it's different parties, but it's
10 also a different cause of action.

11 THE COURT: Right. So give me a minute. I'll
12 look at the complaint. Because your position is
13 they're separate plaintiffs with their separate
14 damages.

15 MR. ZAPPOLO: Correct.

16 THE COURT: So let me look at the complaint.

17 MR. WEBER: SEI is the plaintiff in the
18 defamation claim. SEI --

19 THE COURT: So Count IX, defamation, per se --
20 so what you're telling me is in the defamation
21 case, it would be appropriate to strike SEI and in
22 the trade libel case it would be appropriate to
23 strike Mr. Wagner?

24 MR. WEBER: Mr. Wagner's not a plaintiff in
25 trade libel.

1 MR. ZAPPOLO: Mr. Wagner --

2 MR. WEBER: SEI is a plaintiff in both the
3 defamation and the trade libel.

4 THE COURT: I'm sorry. So it would be
5 appropriate to strike SEI from the defamation
6 claim?

7 MR. ZAPPOLO: It would, Your Honor.

8 THE COURT: So it's granted in that regard.
9 What's the next one?

10 MR. ZAPPOLO: That's it, Your Honor.

11 MR. WEBER: Well, no, we have other points of
12 law in our argument for defamation. We have to
13 preserve our arguments.

14 We believe that they have not presented
15 sufficient evidence that Mr. Mosler stated the
16 statements, which is an element. Because with
17 respect to the first statement, that's the one with
18 the serious mental problems, Mr. Wagner testified
19 that he was not present for any of the statements
20 and the author only testified that he attributed it
21 to Mosler. So there's not -- attributable to Mr.
22 Mosler. So there's not sufficient evidence Mr.
23 Mosler made the statement.

24 THE COURT: Can I see that depo again?

25 MR. ZAPPOLO: Yes.

1 MR. WEBER: And Your Honor will recall that --
2 and Mr. Wagner testified in his deposition, which
3 we went through today -- that Mr. Atiyeh modified
4 the mentally ill portion of the article.

5 MR. ZAPPOLO: No, respectfully we disagree
6 with that.

7 THE COURT: I want to see the depo.

8 When it comes to these statements, there was a
9 lot of speculation, a lot of speculative testimony.
10 I want to see the depositions.

11 MR. WEBER: Page 20, Your Honor, it starts
12 there.

13 THE COURT: So I'm looking at page 20.

14 And then, Mr. Zappolo, I'll look at the same
15 deposition with whatever designations you want me
16 to look at, okay?

17 MR. ZAPPOLO: Yes, sir.

18 THE COURT: So I guess I'll start on page 19.

19 Question: So Mr. Mosler told you that
20 Mr. Wagner, you say allegedly, demanded Mosler pay
21 him \$100,000. Was that information you got from
22 Mr. Mosler or from Mr. Wagner?

23 Answer: That was from Mr. Mosler.

24 Question: Okay. And then there's a quote in
25 return for agreeing to not sue the new owner.

1 Whose quote is that?

2 Answer: That is also Mr. Mosler.

3 Question: Okay. And then it says Mosler
4 refused. That was from Mr. Mosler as well,
5 correct?

6 Answer: Yes.

7 Question: All right. The next line, there's
8 a quote, "He is nothing." Who is that referring
9 to?

10 Answer: Mr. Wagner.

11 Question: Okay. And then it says, "He's got
12 some serious mental problems." Who's the he that's
13 being referred to there?

14 Answer: Mr. Wagner.

15 Question: And that whole quote is
16 attributable to Mr. Mosler as I read your article,
17 correct?

18 Answer: Yes.

19 Question: All right. And then the next
20 quote, "He's out there billing himself as
21 everything and he doesn't have anything," that
22 quote is attributable to who?

23 Answer: To Mr. Mosler.

24 Question: Okay. So Mr. Mosler was talking
25 about who when he said "he's out there?"

1 Answer: Mr. Wagner.

2 Is that where you want me to stop?

3 MR. WEBER: Yes.

4 So it's attributable. He's not saying that he
5 actually said it. He's just attributing the quote.
6 And we've seen in this case --

7 THE COURT: But what does it mean to
8 attribute?

9 MR. WEBER: Well, it's just like we had that
10 one document where there was an article -- where
11 there was a quote attributable to Mr. Mosler, but
12 the author told Mr. Wagner that he modified Mr.
13 Mosler's quote to make it flow.

14 THE COURT: It says: Whose quote is that?
15 Whose quote is that?

16 Answer: That is also Mr. Mosler.

17 I think the context implies that the quotes
18 are attributable to Mr. Mosler. And what is a
19 quote? If I were to look at a dictionary -- I
20 think a quote will be -- the Q section of the
21 dictionary is really small. What is it, three
22 pages? I'm getting old.

23 **A quote, cite or appeal to is definition 1.**

24 **Definition 2, repeat or copy out of a passage from.**

25 **Definition 3, indicate the presence of an opening**

1 quotation marks. Definition 4, state the price.
2 Definition -- but really it's this, to repeat or
3 copy out of a passage from or the cite. So, you
4 know --

5 MR. WEBER: But he has to prove --

6 THE COURT: That's denied on those grounds.

7 MR. WEBER: We'll move to the third statement.
8 This is the one with Benjamin Greene.

9 THE COURT: I got this dictionary for being, I
10 think, salutatorian. Then I fell to number three
11 at the very last moment. So this was a gift. I've
12 had this since like 1998. If you look at the
13 words, I can't read that anymore.

14 MR. ZAPPOLO: I have a similar copy of the
15 Constitution, Your Honor. I've been keeping it for
16 years.

17 MR. WEBER: This is the next article. This is
18 the one that's the article from Benjamin Greene.
19 And the statement at issue in this article is,
20 "Mosler says the Raptor GTR is not one of its
21 products and refused to comment further."

22 Do you want me to show you where it is, Your
23 Honor?

24 THE COURT: I see it, paragraph 1.

25 MR. WEBER: There's been no proof that Mr.

1 Mosler made this statement. They have not read the
2 author's deposition testimony into evidence.
3 Mr. Wagner himself conceded that he did not know
4 whether Mr. Mosler said the statement. He said it
5 was either Mr. Mosler or somebody else who worked
6 at the factory.

7 And even just reading the statement, it
8 doesn't read like a person said it because "Mosler
9 says the Raptor GTR is not one of its products,"
10 meaning the company's products.

11 THE COURT: So your last argument, I think, is
12 the weakest because it says "Mosler says."

13 But regarding the first couple arguments,
14 Mr. Zappolo, how did you meet your burden of proof
15 on this one?

16 So I have here inadequate statement by, you
17 know, a Mr. or Mrs. -- who's the author of this?

18 MR. WEBER: Greene, Benjamin Greene.

19 THE COURT: Benjamin Greene, who is not
20 telling me where the statement came from. When
21 someone says "Mosler says," is that attributed
22 directly to Mr. Mosler or is that something that
23 came from someone who said Mr. Mosler says this and
24 therefore reported it that way?

25 So have you met your burden of proof on this

1 one?

2 MR. ZAPPOLO: I think that that's all fodder
3 for argument. It's a document in evidence without
4 objection where they're talking about Mosler. He
5 can say that means the company or that means
6 someone at the company or whatever, but I think in
7 the light most favorable to us, it comes in and
8 gets presented to the jury. In the light of all
9 the other comments and emails and other things --

10 THE COURT: No, no, no, no, no, no. We're
11 going to move on. Motion's overruled. You're
12 right, it was admitted without objection. I think
13 that goes to the weight of the evidence, not it's
14 admissibility at this point, it's already been
15 admitted. You can argue that point to the jury.

16 All right. What's the next one?

17 MR. WEBER: None of the statements are
18 defamatory, Your Honor. I think it's a matter of
19 law. None of the statements are defamatory. When
20 you read them in context, it can't be defamatory
21 because of all the context surrounding the
22 articles.

23 THE COURT: So for what count?

24 MR. WEBER: So this is again the -- well,
25 again, I don't think the trade libel claim can

1 stay. I know Your Honor had stricken SEI from the
2 trade libel claim, but I --

3 THE COURT: No, I struck Mr. Wagner from the
4 trade libel.

5 MR. WEBER: No, Wagner was never in the trade
6 libel.

7 THE COURT: I'm sorry. You're right.

8 MR. WEBER: You struck SEI from defamation.

9 THE COURT: Defamation.

10 MR. WEBER: But you're keeping defamation and
11 trade libel, those claims. I understand your
12 ruling.

13 THE COURT: Well, because we have different
14 plaintiffs. We have different plaintiffs on those.

15 MR. WEBER: But I don't think he can cast the
16 trade -- I don't think he can keep the trade libel
17 claim when he's suing on defamation.

18 THE COURT: I know. And that was that case I
19 was talking about that was dancing around in my
20 head. But I need to read a little bit more on
21 that. So for now, they're in.

22 MR. WEBER: Okay.

23 THE COURT: Obviously you can bring it back to
24 me at the close of your case, but I want to move
25 on.

1 MR. WEBER: So all four -- none of these
2 statements are defamatory. And this argument will
3 apply for both the trade libel and defamation
4 claims. The trade label is appropriate. But for
5 trade libel --

6 THE COURT: So I think you're bringing it up
7 because you're trying not to waive anything.

8 MR. WEBER: Right.

9 THE COURT: It's preserved.

10 MR. WEBER: Okay.

11 THE COURT: But as far as the defamation
12 counts, you're saying they're not defamatory and
13 you're making argument that the trade libel counts
14 are also not defamatory.

15 MR. WEBER: Correct.

16 THE COURT: Okay.

17 MR. WEBER: Because in context, the article --
18 the first article is the serious mental problems
19 article. I believe this is Plaintiff's 39 in
20 evidence.

21 THE COURT: So I'm looking at a Car and Driver
22 article from November 15th, 2012 by a Clifford -- I
23 can't pronounce his last name.

24 MR. ZAPPOLO: Atiyeh or Atiyeh.

25 MR. WEBER: Yup. And, Your Honor, once you

1 read this whole article in context, it cannot be
2 defamatory. There are multiple --

3 THE COURT: Is that for me or is that for the
4 jury?

5 MR. WEBER: I think as a matter of law you can
6 decide it. I think whether it's defamatory is a
7 question of law for Your Honor, and that's what the
8 case law says.

9 I think that once you read this article, it
10 intros the quote that's at issue in this article by
11 saying it's a soap opera. You have a back and
12 forth between these two people and the entire
13 context of the article has to be taken into
14 consideration. You can't just read this one quote
15 and --

16 THE COURT: So the line of cases you're
17 talking about are about hyperbole and about --

18 MR. WEBER: Opinion, hyperbole, rhetorical
19 opinion, yeah. And you can't read this article
20 based on the statement in isolation. You know, if
21 you read this whole article it reads like a soap
22 opera.

23 THE COURT: But again, I think in the light
24 most favorable -- even if I read it, you know, and
25 let's say that I were to agree with you, wouldn't

1 that still go to the jury? Because the jury could
2 read it and come to a different conclusion. And so
3 perhaps, you know, there's a rational jury out
4 there that could rule for the nonmoving party?

5 MR. WEBER: As a matter of law -- it's a legal
6 issue. It's not a factual issue. It's a legal
7 issue of whether it's defamatory. So Your Honor
8 will decide whether it's defamatory as a matter of
9 law. And once it's not defamatory -- even if it's
10 derogatory, it doesn't mean it's defamatory.

11 THE COURT: But you're asking me to say that,
12 you know, this is rhetorical, that this is an
13 exaggeration, this is how people talk, you would
14 say your best friend is crazy for doing something,
15 right?

16 MR. WEBER: Right.

17 THE COURT: But couldn't they come to a
18 different conclusion?

19 MR. WEBER: Well, they theoretically could,
20 but it's the law that governs whether something is
21 defamatory. It's not a fact -- that shouldn't be a
22 factual inquiry. It's based on the law. Your
23 Honor decides what is defamatory. And this is not
24 a defamatory statement just because of the --

25 THE COURT: Do you have a case that says I can

1 take that away from the jury?

2 MR. WEBER: In the summary judgment motion, I
3 do.

4 MR. ZAPPOLO: This is a recycling of a summary
5 judgment motion where Judge Hafele already looked
6 at it and said this wasn't --

7 THE COURT: We're beyond summary judgment.

8 MR. ZAPPOLO: Right. I understand.

9 THE COURT: So now I've heard evidence. So
10 now I've got -- the closer we get to the verdict,
11 the less --

12 MR. ZAPPOLO: Right.

13 THE COURT: So, I mean, it's an appropriate
14 time to raise it. I just want to make sure that
15 before I read the article this is indeed something
16 I can take away from them.

17 MR. ZAPPOLO: If we're going to talk about
18 what reasonable people can conclude, Judge Hafele I
19 deem to be a reasonable person and he said, look,
20 I'm reading this and this was not an off-the-cuff
21 statement. This is something that rises to the
22 level of allowing us to move forward on punitive
23 damages.

24 So a reasonable person read that article as
25 counsel's asking and said this arises to the level

1 of punitive damages. So I don't see how you can
2 take -- you know, take it away from the jury.

3 MR. WEBER: Punitive damages is different.

4 THE COURT: Yeah, I don't want to know about
5 punitive damages. I want you to give me the
6 authority that says that the court can read this
7 entire article, make a determination and that I can
8 take it away from the jury.

9 Because I'm inclined to think I can't, you
10 know, but if you have some authority, I want to
11 look at it.

12 MR. WEBER: Yup. Hold on one second, Your
13 Honor, I do.

14 THE COURT: While you do that, it's 6:15.
15 Does anyone want to take a five-minute break?

16 MR. WEBER: Yes. But I have a quote for you.

17 THE COURT: You do have a case.

18 MR. WEBER: Yup.

19 THE COURT: All right. What's your case?

20 MR. WEBER: It is 314 So.3d 353. So that's
21 314 So. 3d 353, Skupin vs. Hemisphere Media Group.
22 In addition, in Florida, whether a statement is one
23 of fact or opinion is a question of law for the
24 court and not a jury.

25 THE COURT: 353?

1 MR. WEBER: 314 So.3d 353.

2 THE COURT: Skupin vs. Hemisphere Media Group.
3 It's not a long opinion.

4 MR. WEBER: It begins, "Commentary or
5 opinion." Does Your Honor, see that?

6 THE COURT: I see it. Give me a minute.
7 Here you go, Mr. Zappolo.

8 MR. ZAPPOLO: Thank you.

9 THE COURT: Here, Mr. Weber.

10 MR. WEBER: Thank you, Your Honor.

11 THE COURT: While they're reading this, we'll
12 take a five-minute break.

13 (A recess was held from 6:20 to 6:28.)

14 THE COURT: So I think I can read these to
15 determine whether or not as a matter of law they're
16 defamatory. That Skupin case -- Dr. Skupin case
17 looks like at the motion to dismiss stage, so very
18 preliminary, he had enough alleged attached or that
19 he could infer to where he could make a
20 determination as a matter of law as to whether
21 these statements were defamatory.

22 Here, we're well beyond all that. Everything
23 that's going to be attached by the plaintiff is
24 already there and everything that is going to be
25 presented by the plaintiff has already been

1 presented.

2 So I think I can read these to see if there is
3 defamation as a matter of law. So I'm going to go
4 ahead and read the article, and then when I'm done
5 I guess I'll hear argument as to whether or not
6 they are indeed defamatory.

7 MR. WEBER: Okay.

8 THE COURT: Okay. Let me hear your arguments.

9 MR. WEBER: Your Honor, reading this document
10 as a whole, as Your Honor must do, it is not
11 defamatory. There are --

12 THE COURT: Is it just this document or is it
13 the entire case?

14 MR. WEBER: It's the statement in the
15 totality, examining not merely a particular phrase,
16 but all the words used in the publication. That's
17 what the law says. That's what this Skupin case
18 describes.

19 So you look at the publication and you must
20 construe the statement in its totality looking at
21 the publication as a whole.

22 THE COURT: Mr. Zappolo, I mean, it's just --
23 it's contained in two lines on page 3 of 9 of this
24 document, right?

25 MR. ZAPPOLO: Right. So what's -- he's saying

1 take it in context. When you look at that article,
2 the vast majority of that article is about Mr.
3 Mosler's political career. That's not giving the
4 basis for why he says --

5 THE COURT: Wait. No, this is the wrong
6 article. I didn't see anything about his political
7 career.

8 MR. ZAPPOLO: Final Days of Supercar?

9 THE COURT: Yeah, I thought it was just about
10 the winding down of his business. The final days
11 of Mosler from New -- from Car and Driver.

12 MR. ZAPPOLO: I apologize, Your Honor.

13 Okay. But look at -- first of all, the
14 question is is this an assertion of fact. I think
15 that a jury can read that in the light most
16 favorable to us and say, absolutely, that's an
17 assertion of fact.

18 The assertion of fact is he's got serious
19 mental problems, right? He's got some serious
20 mental problems, that's a statement of fact.
21 That's not a statement of opinion or anything like
22 that.

23 If you make a statement of fact about someone
24 and it's not true and it tends to injure them and
25 their reputation in their business, that's

1 defamation per se as a matter of law.

2 What do we have in this case? We've got
3 someone stating he's got some serious mental
4 problems. He doesn't say -- Mr. Mosler doesn't say
5 he doesn't -- he doesn't have a contract or any of
6 that kind of stuff. He doesn't say we've got a
7 dispute about this or he certainly doesn't put any
8 qualifiers in there, in my opinion. No, he says
9 factually he's got some serious mental problems.

10 Now, what do we know? People that are reading
11 this are -- they know from the context of the
12 article Mr. Mosler and Mr. Wagner have worked
13 together for years. So someone would sit there and
14 say, huh, a guy that's worked with Mr. Wagner for
15 years, he's concluded that Mr. Wagner has serious
16 mental problems.

17 So there's, like, hidden facts or suggestions
18 behind it and that's the -- you know, where all the
19 case law and all this stuff goes, you know, not
20 just on this one case. Whether it's a mixed
21 expression of opinion and fact is something that
22 goes to the jury.

23 I will tell you as well not having the benefit
24 of being able to brief this whole thing, but right
25 on its face, Your Honor, it's talking about fact.

1 And what we have in this -- what are the facts that
2 are before this jury? The facts that suggest -- or
3 that the people around Mr. Mosler, who Ms. Klaker
4 said, yeah, we all talked about it, et cetera, he
5 wrecked a car, he had -- he was socially inept and
6 he got a divorce or something.

7 THE COURT: But that's not in this article.

8 MR. ZAPPOLO: Exactly. So -- but also in this
9 case is Mr. Mosler's opinion of what does mental
10 problem mean. He says legally insane. He's told
11 the people from RP High Performance what he means
12 by that. Serious mental problems means legally
13 insane. That's in a document that's in evidence.

14 So when you look at this, "he's nothing," a
15 jury could certainly look at that and say, Your
16 Honor, do you want to be called nothing? Do you
17 want someone to call your family member nothing?
18 If you have a daughter or something, she's nothing,
19 she's got serious mental problems. That's stated
20 as fact, and it's an untrue fact.

21 We have testimony in this case that that
22 statement of untrue fact injured Mr. Wagner and his
23 reputation. Mr. Ghassan Aboud said, "When I read
24 that, I didn't want to do business with him."

25 So on its face, especially in the light most

1 favorable to us -- and by the way, Your Honor, this
2 isn't something that is just an off-the-cuff
3 comment. This is Mr. Mosler who called Clifford
4 Atiyeh. That's in the record too. Mr. Atiyeh says
5 Mr. Mosler called me.

6 This isn't something where Mr. Mosler would
7 have just, you know, accidentally, something
8 slipped up, oh, he's a little nuts or something
9 like that. Mr. Mosler went out of his way to call
10 Mr. Atiyeh and make these statements.

11 MR. WEBER: Those are all elements outside the
12 defamation. Whether it's citing whether this one
13 -- three separate --

14 MR. ZAPPOLO: Your Honor --

15 MR. WEBER: -- sentences are defamatory, you
16 have to look at the whole context of the article.
17 By the time you get to page 3 of 5, you are left
18 exactly how the author set it up, a soap opera.
19 And there are three statements: He's nothing,
20 period, which cannot be factually correct because
21 he's obviously something. People say people are
22 nothing all the time. It doesn't make it
23 defamatory.

24 And he's nothing, he's got some serious mental
25 problems actually supports that this is just

1 opinion and rhetoric because he's obviously
2 something.

3 And then he's out there billing himself as
4 everything and he doesn't have anything, it's a
5 nonsensical statement.

6 THE COURT: Give me a minute. I'm reading the
7 Skupin case one more time. I'm trying to find
8 where it says I'm limited to the four corners of
9 the publication in question, which could be Car and
10 Driver, or the context of the case, which would be,
11 I guess, all the testimony that I've heard.

12 MR. WEBER: But those are different elements,
13 I would say, Your Honor. Determining whether the
14 statement is defamatory is a separate question.

15 THE COURT: Right, right, right. So where
16 does this say that I can make determinations as a
17 matter of law based on this article only, not
18 everything else that I've heard?

19 MR. ZAPPOLO: This is the motion for directed
20 verdict. You have to consider everything that's
21 before the jury, Your Honor.

22 MR. WEBER: Well --

23 MR. ZAPPOLO: That's the standard that counsel
24 quotes in his motion.

25 THE COURT: I'm trying to read the Skupin case

1 one more time.

2 MR. ZAPPOLO: I'm sorry.

3 MR. WEBER: I think I have one for you.

4 THE COURT: All right. I've got it.

5 All right. So the Skupin case does say must
6 construe the statement in totality, examining not
7 merely a particular phrase or substance, but all
8 the words used in the publication.

9 MR. WEBER: Examine not merely a particular
10 phrase or sentence, but all the words.

11 THE COURT: No, I read the whole thing. I
12 read this whole article. I read the whole article,
13 and really what I thought the article was about was
14 about Mr. Mosler's business is dying.

15 And, you know, there is this line on page 3
16 about this being the stuff of soap operas and then
17 there's the fallout between Mr. Wagner and Mr.
18 Mosler and then it gets to the statements that are
19 at issue in this case, which, I guess, number one,
20 is he's nothing; number two is he's got some
21 serious mental problems; number three, he's out
22 there billing himself as everything and he doesn't
23 have anything. And those are the alleged
24 defamatory statements.

25 MR. ZAPPOLO: And the underlying fact there

1 that has to be determined is, is that a true
2 statement. Is James Wagner -- does he have serious
3 mental problems.

4 MR. WEBER: Well, no, that's a separate
5 element. Whether the statement is false is
6 separate than whether the statement is defamatory.
7 And this is simply not a defamatory --

8 MR. ZAPPOLO: It's one of the elements. I'm
9 sorry, Your Honor, I'll address my arguments to the
10 Court.

11 THE COURT: I'm just reading it over and over
12 again because I guess what has -- what's been
13 bouncing around in my head, you know, is that I
14 think this is a very personal issue. Sometimes
15 people say you don't want to meet your heroes
16 because they're only going to disappoint you.

17 I can't imagine what it would be like to be
18 Mr. Wagner. I think he really did look up to Mr.
19 Mosler and so these statements probably really hurt
20 his feelings significantly, significantly. But as
21 I read the statements, they sound like opinion,
22 rhetoric.

23 You know, it doesn't take away from the fact
24 that they're incredibly hurtful to him, but these
25 statements on their face with the rest of this

1 publication just sounds like, you know, an angry
2 Mr. Mosler giving off some opinions. But as far as
3 defamation --

4 MR. ZAPPOLO: So, Your Honor, if you rule
5 against me and I publish something to the Bar
6 Journal next week that says you have serious mental
7 problems that's okay?

8 MR. WEBER: Well, it's different.

9 THE COURT: I mean, you could do that. It's a
10 different analysis. I'm a public official. You
11 can say the most horrible things about me, it's
12 okay, you know.

13 But even if I were a private person, you know,
14 the way that these statements are worded, he's
15 crazy, people say that people are crazy all the
16 time. It's not necessarily defamatory.

17 MR. ZAPPOLO: Respectfully, Your Honor, people
18 saying, oh, he's nuts, he's crazy, that's one
19 thing. Saying he has serious mental problems,
20 that's a very definite different thing.

21 THE COURT: I disagree.

22 MR. ZAPPOLO: And in this case, we have the
23 definition of mental problems.

24 THE COURT: I disagree. I disagree. People
25 say things like this all the time. It doesn't

1 change the fact that it's hurtful. It doesn't
2 change the fact that it's meanspirited. But is it
3 defamatory, no. I think it is opinion and
4 rhetoric.

5 All right. Your motion is granted.

6 MR. WEBER: The next statement is the one in
7 "The Truth About Cars" article. Let me show you.
8 And you have to look at the whole thing, but that's
9 the comment is.

10 THE COURT: I'm reading the comment from "The
11 Guru?"

12 MR. WEBER: No, from Matt Farah.

13 THE COURT: Matt Farah?

14 MR. WEBER: It's right there.

15 THE COURT: I see it.

16 "I spoke with Warren Mosler today, who
17 confirmed the Twin Turbo conversion to the Raptor
18 GTR Mosler will not pass emissions and is not
19 certifiable for public sale."

20 Give me a minute to read this.

21 MR. ZAPPOLO: Your Honor, that's the
22 statement. That's the entire --

23 THE COURT: That's the entire statement?

24 MR. ZAPPOLO: Well, that's the entirety of
25 that statement. You don't have to read more than

1 you just did. It's untrue.

2 THE COURT: I think that is defamatory. That
3 one's different.

4 MR. WEBER: Well, Your Honor, you have to read
5 the entire publication, I think.

6 THE COURT: He just told me I have to read the
7 one statement.

8 MR. WEBER: Well --

9 THE COURT: It's also a comment within the
10 article. It's not really written by -- was this
11 article written by Mr. Farah? No, it was written
12 by Jack Baruth.

13 MR. WEBER: Right. But the comment at issue
14 is in within the entire publication. You have to
15 look at the entire -- the article and all the
16 comments in context.

17 THE COURT: No, I disagree. I'm looking at
18 the content. I think that's its own separate
19 publication.

20 MR. WEBER: Okay.

21 THE COURT: And it is -- again, Mosler GTR --
22 "The Raptor GTR Mosler MT900S will not pass
23 emissions and is not certifiable for public sale,"
24 yeah, on its face I think that's different than
25 saying that someone is, you know ...

1 MR. WEBER: We don't have -- I didn't put this
2 in our written motion, but ore tenus include the
3 other two in the motion.

4 THE COURT: What statement am I looking at?

5 MR. WEBER: This one is -- I'll show Your
6 Honor. This is the one we just went through.

7 THE COURT: Is it right here?

8 MR. WEBER: Yeah. Well, I think it's on the
9 next page actually, the Raptor GTR is not one of
10 its product, Mosler says Raptor is not one of its
11 products.

12 MR. ZAPPOLO: Where are you?

13 THE COURT: So this is one of the ones that's
14 either potentially trade libel or defamation,
15 right?

16 MR. WEBER: Right. Is that what we're
17 addressing?

18 MR. ZAPPOLO: I don't know what counsel is
19 asking you to read.

20 MR. WEBER: It's the Benjamin Greene article.

21 MR. ZAPPOLO: All right. Let me get it.

22 MR. WEBER: That one.

23 MR. ZAPPOLO: It's the same as your prior
24 ruling. It's the same logic, Your Honor.

25 THE COURT: I agree. All right. Denied.

1 What's the next one?

2 MR. WEBER: The last one is the comments in
3 the bottom of this article, which concerns the
4 music video.

5 MR. ZAPPOLO: That's the issue, Your Honor.
6 We respectfully disagree about what the comment is
7 about.

8 THE COURT: One response to first 2012
9 838-horsepower, 240 mile per hour Mosler Raptor GTR
10 hyper exotic car breaks cover via an extreme music
11 video. Comment number one from -- it says Warren
12 Mosler, this is not from me. Mosler was -- is not
13 involved with this.

14 This one, I'm not going to read the whole
15 article because, you know, I think the premise of
16 the comment is that the video is not from him
17 versus the car is not from him.

18 MR. ZAPPOLO: No, that's the debate, Your
19 Honor.

20 THE COURT: That's the debate?

21 MR. ZAPPOLO: That's the issue.

22 THE COURT: Okay.

23 MR. ZAPPOLO: So when you read that article,
24 our position is 85 percent of that article is about
25 the car.

1 THE COURT: Okay. Let me take a look at it.

2 What about the fact that it's so vague?

3 Because it says here "this is not from me. Mosler
4 is not involved with this." But what is this?

5 MR. ZAPPOLO: The car.

6 THE COURT: Because when I read it, I think
7 it's about the video.

8 MR. WEBER: Agreed, Your Honor.

9 MR. ZAPPOLO: The article is about the car,
10 the release of the car.

11 MR. WEBER: It's clearly about the video.

12 THE COURT: It says First 2012 breaks via
13 extreme music video. And I get the car's
14 mentioned, but so is the video. It's -- it really
15 could be either one. So what about the ambiguity
16 of it?

17 MR. ZAPPOLO: Subject to argument.

18 THE COURT: I'll deny it. The jury can figure
19 it out. But I think that is very ambiguous.

20 MR. WEBER: Okay. Your Honor, we have -- the
21 next part of the motion is -- with respect to that
22 same one that you just read, the statement is true,
23 it's not false, because Mosler's not involved with
24 the video.

25 THE COURT: Right. But in the light most

1 favorable to the nonmoving party, they're saying
2 it's the car and then he's saying he's not involved
3 with the car and that could be the issue. I think
4 there is an ambiguity there. I'll let the jury
5 figure it out.

6 MR. WEBER: Statement 2, which is the one --
7 "The Truth about Cars" article, the comments from
8 Matt Farah.

9 THE COURT: "The Truth About Cars" article?

10 MR. WEBER: The GTAC one.

11 THE COURT: Okay.

12 MR. WEBER: We said that the comment is true
13 because -- and plaintiff has failed to provide
14 evidence that the comment is false. There is no
15 evidence presented that --

16 THE COURT: So the testimony I heard from
17 Mr. Wagner was that it had already passed those
18 emission standards. I do see a conflict in the
19 light most favorable to the moving party. That's
20 denied on those grounds.

21 What's the next one?

22 MR. WEBER: Okay. Failed to prove actual
23 damages, Your Honor. It's all speculation what
24 their actual damages are.

25 THE COURT: Okay. Mr. Zappolo, what are your

1 damages?

2 MR. ZAPPOLO: Injury to reputation. This is
3 -- first of all, it's talking about him in his
4 profession. That's abundantly clear in this case.
5 So as a defamation, per se damages are presumed,
6 number one.

7 Number two, he's already talked about -- we
8 got evidence in front of this jury about the
9 difference between the car on the -- on that one
10 count, Count X.

11 THE COURT: Which ones are we talking about?
12 Which ones are we talking about? Let's do one at a
13 time.

14 MR. WEBER: So starting with the Truth About
15 Cars article.

16 THE COURT: The Truth About Cars article?

17 MR. WEBER: Yup.

18 THE COURT: So what are your damages on it
19 won't pass emissions?

20 MR. ZAPPOLO: And is not certifiable for
21 public sale. Mr. Wagner testified about -- and we
22 got testified from our expert saying he thinks the
23 car could be sellable for \$700,000. After the
24 comments come out and everything, Mr. Wagner could
25 only acquire 300,000 for the car. That's for the

1 car and the trade libel.

2 As far as Mr. Wagner --

3 THE COURT: Hold on. Hold on. On the trade
4 libel, denied.

5 What's the next one?

6 MR. ZAPPOLO: With respect to Mr. Wagner, that
7 count goes towards him, then -- and I apologize,
8 Your Honor, I'm trying to remember what all the
9 rulings are here and everything. But that's
10 suggesting -- that imputes to Mr. Wagner illegal
11 activity, selling cars that are not certifiable for
12 public sale.

13 MR. WEBER: He's not even mentioned in that
14 comment, Your Honor.

15 THE COURT: No, he's not.

16 What are his damages?

17 MR. ZAPPOLO: He's trying -- he's the one
18 selling that car.

19 THE COURT: So on trade libel, I denied, I
20 agree with you. But what about Mr. Wagner?

21 MR. ZAPPOLO: It imputes to him illegal
22 conduct.

23 THE COURT: All right. That's granted.

24 What's the next one?

25 MR. WEBER: The next is the Benjamin Greene

1 article. That's the one with the black and white
2 with the Raptor GTR is not one of its product.

3 No, not that one. The other one, Your Honor.

4 THE COURT: Okay.

5 MR. WEBER: That one you already ruled it's
6 defamatory. That one.

7 THE COURT: "Mosler says the Raptor GTR is not
8 one of his products and refused to comment
9 further."

10 MR. ZAPPOLO: Right. Obviously an untrue
11 statement and it's the same logic as before.

12 THE COURT: All right. So trade libel,
13 denied.

14 What are Mr. Wagner's damages on that comment?

15 MR. ZAPPOLO: It's the same thing. Mr. Wagner
16 is -- he's the person that's going out and saying
17 this is a Mosler product and Mr. Wagner says, no,
18 it's not -- I'm sorry, Mr. Mosler says, no, it's
19 not.

20 MR. WEBER: It's not a statement about
21 Mr. Wagner at all. It's about the car only.

22 THE COURT: It seems like these damages really
23 overlap there.

24 MR. WEBER: And that's why they can't be a
25 true libel and defamation claim.

1 THE COURT: As far as Mr. Wagner's concerned,
2 that's granted.

3 MR. WEBER: The last one is the article we
4 just looked at with the comments on the bottom.

5 THE COURT: And again, the comment, This is
6 not from me, Mosler is not involved with this."

7 MR. WEBER: Wagner's clearly not mentioned at
8 all in this comment. And Mr. Zappolo even conceded
9 that the article's about either the car or the
10 video. It's not about Mr. Wagner at all. And the
11 comment wouldn't even make sense in the context of
12 commenting about Mr. Wagner.

13 MR. ZAPPOLO: The comment is about --

14 THE COURT: It would not make sense in the
15 context of Mr. Wagner. I wouldn't say Mr. Wagner's
16 not Mr. Mosler.

17 MR. ZAPPOLO: Your Honor, all of these
18 things -- how much testimony do we have in front of
19 this jury about the journalist concluding that
20 Mr. Wagner's a con artist because he's trying to
21 sell this car that Mr. Mosler says is not a Mosler
22 product?

23 How can we say he doesn't -- his reputation
24 has not suffered damages by these comments? The
25 articles themselves conclude that he's a conman.

1 The journalists say that.

2 MR. WEBER: Only -- Your Honor, if I may, only
3 the Truth About Cars article mentions the conman.
4 This article does not mention that he is -- it
5 doesn't mention Wagner at all.

6 You have to look at the statement in the
7 context of the article. It doesn't even mention
8 Wagner. It's about the video or the car. It's
9 definitely about the video. But in the context of
10 the car, he's saying it's about the car.

11 MR. ZAPPOLO: Counsel can't have that both
12 ways. When you look at these things, it says so
13 we've been had by a conman, he strapped on his own
14 stuff or whatever.

15 THE COURT: So I think you just changed your
16 argument a little bit because I was asking what the
17 damages were when we were talking about the sale of
18 the car, which is why I was saying that the trade
19 libel makes sense for now, but it didn't make sense
20 as to damages for Mr. Wagner. But now you're
21 talking about, you know, something a little bit
22 different. You're talking about --

23 MR. ZAPPOLO: I'm talking about injury to
24 Mr. Wagner's reputation. It's talking about him
25 and his profession. And everyone reads these

1 things that Mr. Mosler says and they conclude
2 Mr. Wagner is a conman, and that's in writing.

3 MR. WEBER: Nothing in that article can be
4 inferred to be commenting about Mr. Wagner. It can
5 either be -- it should be inferred to be commenting
6 about the video.

7 THE COURT: Can I see the other articles
8 again?

9 Thank you.

10 All right. So as the Truth About Cars, that's
11 denied as to Mr. Wagner. I'm going to reverse
12 myself on that one.

13 As to the, I guess, press release on the music
14 video, denied.

15 And then as to the Dupont Registry article,
16 it's denied.

17 So I guess the only one I'm really saying is
18 Car and Driver.

19 MR. WEBER: Well, Car and Driver is -- okay.
20 That's it, Your Honor.

21 THE COURT: Is that it?

22 MR. ZAPPOLO: Your Honor, just so that -- just
23 for the record -- I'm not arguing with the Court.
24 I understand your ruling.

25 THE COURT: No, take your time. Take your

1 time.

2 MR. ZAPPOLO: My client would like me to make
3 sure I put on the record the distinction on the
4 distribution contract that he and/or I make that
5 the forfeiture of the distribution rights, which
6 seems to be what Your Honor ruled upon, that
7 paragraph C says that SEI will forfeit its
8 exclusive rights in China and Thailand immediately
9 upon failure to perform any of the items -- of
10 items 2 through 6 in paragraph A, which is what you
11 ruled upon. But it then says provided that MACC
12 has fulfilled its obligation to supply vehicles as
13 described in paragraph B.

14 And our position and we think the evidence in
15 this case is that MACC was not providing vehicles,
16 it did not provide vehicles, it could not provide
17 vehicles because it wasn't building vehicles. And
18 it announced that to the world. We think that's in
19 the record evidence in this case.

20 THE COURT: Okay.

21 MR. ZAPPOLO: Thank you, Your Honor, for
22 letting me proffer that. I guess we're done for
23 today.

24 MR. WEBER: We're done for today, Your Honor.

25 THE COURT: All right. So, I mean, we're

1 done, it's 7:00, but we're not really done. I
2 think I need some jury instructions and some
3 verdict forms from all of you. Friday is the last
4 day. Friday's the last day. I do have calendar
5 call in the morning, so we're going to get a little
6 bit of a late start.

7 But Friday is the last day. So everybody be
8 mindful that Friday is the last day. We've been
9 talking about Friday the 26th -- is Friday the
10 26th?

11 MR. WEBER: Yes, Your Honor.

12 THE COURT: We've been talking about Friday,
13 the 26th being the last day for the past two and
14 half weeks, so it's not a surprise to anybody.
15 This matter will conclude by then.

16 I might as well give you a drop -- you know, a
17 drop dead time. I would tell you that by --
18 because I saw how aggressive the jury instructions
19 and the verdict forms were, it's going to take me a
20 while to go through. I think it will take me at
21 least an hour, maybe more, just to charge the jury.

22 If I want to give them an hour to deliberate
23 before five o'clock, which I don't think it's going
24 to be enough, but let's say I wanted to do that, I
25 need at least maybe two and a half hours. By

1 two o'clock this case goes -- I start charging the
2 jury.

3 MR. WEBER: Two o'clock on Friday?

4 THE COURT: Two o'clock on Friday. So what
5 that means is the longer you guys take, the shorter
6 your summations are going to be, which it's going
7 to hurt, but, you know, that's -- that's the stick
8 that I'm using to motivate you guys to be efficient
9 with your time. Anytime that you guys are, you
10 know, not utilizing it efficiently, it's going to
11 eat up your summation time.

12 MR. WEBER: Okay.

13 THE COURT: So if you guys have five minutes
14 for summation, then that's what you guys have. But
15 that's the way it's got to be, okay.

16 All right. Let me give this back to you.
17 This is yours.

18 MR. WEBER: Thank you, Your Honor.

19 THE COURT: All right. We'll reconvene
20 tomorrow 9:30. Please talk to each other about the
21 verdict form and jury instructions.

22 If you rely on me to go over it with you guys,
23 I think you guys are going to lose another half day
24 of the trial. I don't want that to happen.

25 You know, now that we're here -- and now that

1 we're here obviously -- I do it every time, you
2 know, you don't have to listen to me, but perhaps
3 now that you have my rulings and perhaps now that
4 you guys are going to have to, you know, look at
5 your jury instructions and how to conform them,
6 it's never a bad idea to always reassess your
7 cases.

8 I don't get upset if people reach resolutions
9 in the middle of trial, but obviously that's not
10 always possible nor appropriate. Every case is
11 different. I'll let you guys navigate your case.
12 But wherever possible, the Court does encourage
13 agreements, okay. Have a great day.

14 MR. WEBER: Thank you, Your Honor.

15 MR. ZAPPOLO: Thank you.

16 (Thereupon, the proceedings are adjourned at
17 7:07 p.m. and are continued on May 24, 2023 in
18 Volume XI.)

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IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT,

IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. 50-2012-CA-023358-XXXX-MB

JAMES TODD WAGNER, SUPERCAR ENGINEERING,
INC., a Florida corporation,

Plaintiffs,

vs.

WARREN MOSLER, MOSLER AUTO CARE CENTER,
INC. ("MACC") a Florida corporation,
d/b/a Mosler Automotive,

Defendants.

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VOLUME XI - DAY 10

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PROCEEDINGS BEFORE

HONORABLE LUIS DELGADO

DATE: MAY 24, 2023

TIME: 9:30 A.M. - 5:04 P.M.

1 APPEARING ON BEHALF OF PLAINTIFFS:

2

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7 APPEARING ON BEHALF OF DEFENDANTS:

8

WEBER LAW
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12

13 ALSO PRESENT:

14 James Todd Wagner, Plaintiff

15 Warren Mosler, Defendant

16 David Griffin, TruVid, LLC

17

18

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1 I N D E X

2	WITNESS	PAGE
3	RICHARD MANCUSO	
4	Direct Examination By Mr. Weber	1949
5	Cross-Examination By Mr. Zappolo	1974
6	Redirect Examination By Mr. Weber	2027
7	DEPOSITION TESTIMONY READ BY MR. WEBER	
8	BENJAMIN GREENE	
9	Examination By Plaintiffs' Counsel	2049
10	DEPOSITION TESTIMONY READ BY MR. ZAPPOLO	
11	Cross-Examination By Mr. Zappolo	2059
12	WARREN MOSLER	
13	Direct Examination By Mr. Weber	2072

14

15

16

E X H I B I T S

17

18	EXHIBIT	DESCRIPTION	MARKED	RECV'D
19	Defendants' 112	was marked Exhibit 621	1952	1953
20	Defendants' 113	was marked Exhibit 93		2084
21	Defendants' 114	was marked Exhibit 178		2090
22	Defendants' 115	was marked Exhibit 264		2111
23	Defendants' 116	was marked Exhibit 260		2118
24	Defendants' 117	was marked Exhibit 280		2123
25	Defendants' 118	was marked Exhibit 293		2129

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E X H I B I T S (cont.)

EXHIBIT	DESCRIPTION	MARKED	RECV'D
Defendants' 119	was marked Exhibit 294		2132
Defendants' 120	was marked Exhibit 318		2139
Defendants' 121	was marked Exhibit 327	2141	
Defendants' 122	was marked Exhibit 330		2144
Defendants' 123	was marked Exhibit 335		2150
Defendants' 124	was marked Exhibit 338		2153
Defendants' 125	was marked Exhibit 380		2156
Defendants' 126	was marked Exhibit 381		2168
Defendants' 127	was marked Exhibit 396		2171
Defendants' 128	was marked Exhibit 128	2174	2174
Defendants' 129	was marked Exhibit 431		2177
Defendants' 130	was marked Exhibit 440	2178	
Defendants' 131	was marked Exhibit 419		2180
Defendants' 132	was marked Exhibit 445		2184
Defendants' 133	document		2191

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BE IT REMEMBERED, that the following proceedings were taken in the above-styled cause before Honorable Luis Delgado, Presiding Judge, at the Palm Beach County Courthouse, 205 North Dixie Highway, Courtroom 10-D, in the City of West Palm Beach, County of Palm Beach, State of Florida, on the 24th day of May, 2023, to wit:

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MR. ZAPPOLO: Before we bring the jury back, there's a couple of quick housekeeping issues to address.

13

THE COURT: Sure.

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MR. ZAPPOLO: The first is that I understand, just from logical inference seeing the person up on the screen, they're going to have their expert testify remotely. After that testimony, I see Ms. Robyn Hankins is here in the courtroom.

19

20

21

She's been subpoenaed by defense counselor. Ms. Hankins has asked me to raise to the Court that she has a court-ordered mediation today at 1 o'clock.

22

THE COURT: Oh.

23

24

25

MR. ZAPPOLO: I don't know how Your Honor wants to deal with that, handle that -- if you want to discuss that with Ms. Hankins and/or

1 Mr. Weber -- how we're going to deal with that
2 logistically.

3 MR. WEBER: We may not decide to call
4 Ms. Hankins, so let me -- let me have one second,
5 okay?

6 MR. ZAPPOLO: Okay. And counselor, you should
7 also know this because this may come into your
8 decision-making process: To the extent any
9 questions are asked about Ms. Hankins that are
10 attorney-client privilege, we're going to ask the
11 Court to instruct Mr. Weber not to go into those
12 issues that are attorney-client privilege because
13 we don't want her on the stand objecting -- you
14 know, and us having to object to attorney-client
15 privilege suggesting improperly to a jury that
16 we're not -- that we're trying to hide something or
17 something like that; that it's perfectly
18 appropriate for me to assert a privilege where
19 appropriate.

20 THE COURT: Well, that might not be an issue,
21 right?

22 MR. WEBER: Yeah. That might not be an issue.

23 (Thereupon, a short break was had from
24 9:46 a.m. to 9:47 a.m.)

25 MR. WEBER: We are not calling Ms. Hankins.

1 MS. HANKINS: Thank you, Your Honor. I have
2 been excused. Thank you for your time.

3 THE COURT: Have a good day.

4 MR. ZAPPOLO: Thank you.

5 And actually one or two very brief issues.
6 I'm not arguing with the Court, but I wouldn't be
7 doing my job if I didn't file a response to the
8 Defendants' Motion for Directed Verdict. I'm very
9 carefully presenting Your Honor with a copy of a
10 response.

11 And just so that the Court is aware, one of
12 the big issues is Your Honor said you need to
13 consider "the statement," and you read the whole
14 article. That's not the statement that was sued
15 upon, Your Honor. In all the jumble and everything
16 yesterday, it got lost in the translation here.

17 I think at one point I did say -- I don't have
18 the transcript, but at one point I did say that's
19 not what we've sued upon. The statements that
20 we've sued upon are Warren Mosler's statements to
21 the journalists. To consider what others did with
22 that or whatever when considering whether or not
23 the statement itself is defamatory we assert is
24 improper review of something that even
25 Mr. Wagner -- excuse me, even Mr. Weber's case law

1 does not suggest -- the case law that he presents
2 is all stuff about media people and what the
3 journalists actually said as being a defamatory
4 statement. Here, we're not suing for what
5 journalists said; we're suing for what Mr. Mosler
6 said to the journalists.

7 So even under their analysis, the only things
8 that you should be considering is the statements
9 that Mr. Mosler is quoted as having said to the
10 journalists. And at this point, in a directed
11 verdict motion, I think it is very important.

12 And further, in this instance, remember we
13 already had -- this is -- the timing of this is
14 really weird and suspect, and I dealt with that
15 because it doesn't consider --

16 THE COURT: Hold on.

17 MR. ZAPPOLO: -- their motion --

18 THE COURT: Let's say you do that. Let's say
19 you argue to me right now -- let's say I entertain
20 this for a second -- which I'm not sure I'm going
21 to, but let's say I entertain this. And you're
22 suing about statements that Mr. Mosler made to a
23 journalist, not the statements that the journalist
24 printed and published, correct?

25 MR. ZAPPOLO: Well, that's -- that's a

1 differential thing. I'm suing about what Mr. --
2 and I want to clarify: I'm suing about what
3 Mr. Mosler said to the journalist that then
4 prompted the journalist to write that whole
5 article.

6 THE COURT: Okay. Same analysis, we're good.
7 I'm not going to change my mind.

8 MR. ZAPPOLO: All right. So --

9 MR. WEBER: Can we begin, Your Honor?

10 MR. ZAPPOLO: Thank you, Your Honor, for
11 allowing me to make a record.

12 THE COURT: Because I thought you were talking
13 about statements made to the journalist, in which
14 case there would have been no damage, and then I
15 probably would have granted all of them, you know.

16 MR. ZAPPOLO: No, because the journalist
17 repeated, so that's the -- that's the gist of it,
18 but what you -- the statement in the case law is
19 what is actually said.

20 THE COURT: Okay. No, I follow. I
21 understand.

22 MR. ZAPPOLO: Okay.

23 THE COURT: All right. Let's bring them out.

24 MR. ZAPPOLO: And we had more related to the
25 one other issue is Count III. As the record shows,

1 SEI did attempt to purchase three vehicles as part
2 of its purchase agreement. It was trying to buy
3 all of the vehicles and all the stuff, and the
4 testimony is unrefuted that they -- Mr. Mosler sold
5 off the vehicles to others during that time period,
6 so there were no vehicles to buy; and that the
7 record evidence in this case clearly shows that
8 MACC didn't have vehicles to sell, so how could
9 Mr. Wagner have even purchased them?

10 MR. WEBER: Judge, our witness is ready, Your
11 Honor.

12 THE COURT: I'm waiting for the jury to come
13 out. Let's go off the record.

14 (Thereupon, a brief discussion was had off of
15 the record.)

16 THE COURT: All right. Let's go back on.

17 THE COURT DEPUTY: Jury entering.

18 (Jurors entering the courtroom at 9:52 a.m.)

19 THE COURT: All right. Please be seated. Let
20 me see the attorneys for one second.

21 (Thereupon, a sidebar conference was held.)

22 THE COURT: All right. This is just a fellow
23 reminder that you have until Friday, 2:00 p.m.
24 before I charge the jury, all right? Let's make
25 use of our time, okay?

1 MR. WEBER: Thank you, Your Honor.

2 (Thereupon, the sidebar conference was
3 concluded.)

4 THE COURT: Who's your first witness?

5 MR. WEBER: Your Honor, it is Rick Mancuso
6 that will be joining us by Zoom. He's on the
7 screen. I don't know if Your Honor can see him on
8 the monitor.

9 THE COURT: I can. Whenever you're ready.
10 Madam Clerk, I guess you can't do it; I'll do it.

11 MR. WEBER: I can bring the laptop over, Your
12 Honor.

13 THE COURT: No, that's okay.

14 Sir, raise your right hand. And do you
15 solemnly swear to tell the truth?

16 MR. WEBER: Rick, can you hear us?

17 THE COURT: The sound just came on.

18 MR. WEBER: Okay. Perfect.

19 THE COURT: All right. Raise your right hand.
20 Do you solemnly swear to tell the truth?

21 **THE WITNESS: Yes.**

22 THE COURT: Okay. You're now under oath. Do
23 you understand that, sir?

24 **THE WITNESS: I'm sorry, I couldn't hear you.**

25 THE COURT: You're now under oath. Do you

1 understand that, sir?

2 **THE WITNESS: I'm under oath, yes.**

3 THE COURT: It's your witness.

4 (Recording in progress.)

5 THE COURT: What are we recording?

6 THE VIDEOGRAPHER: We're just recording the
7 Zoom so the court reporter has the audio.

8 THE COURT: Okay. Mr. Zappolo -- let me see
9 the attorneys.

10 (Thereupon, a sidebar conference was held.)

11 THE COURT: All right. So I guess the court
12 reporter records the audio. I guess that's how
13 they -- everybody operates that way, we're all
14 familiar with that.

15 MR. ZAPPOLO: Right.

16 THE COURT: I guess right now are we recording
17 the session as well?

18 MR. WEBER: Well, I think he's recording the
19 video.

20 THE COURT: Okay.

21 MR. WEBER: Let me just ask -- I think we
22 should ask the court reporter if she can't hear it.
23 She should be able to hear it and record the audio,
24 I would think.

25 THE COURT: Well --

1 MR. WEBER: But it would be everybody. The
2 video is being recorded too.

3 THE COURT: Any objection to it?

4 MR. WEBER: I have none.

5 MR. ZAPPOLO: I would say if you're recording,
6 then it should probably be filed afterwards just as
7 part of the record.

8 THE COURT: Well, so that's my concern is I
9 don't want to have two records. We can have one
10 record; we have the court reporter's record. So if
11 you record it, that's one thing, but it's not going
12 in the court file and the court reporter is the one
13 maintaining the official record. We have one
14 official record.

15 So, that's my concern. If we're going to
16 record it, then it's only for her purposes to
17 transcribe something that should she need it. As
18 far as playback to the jury, we're not going to
19 have video playback to the jury because we're not
20 having video playback of any other witnesses. So,
21 if anything, we're going to read back like we'd
22 read back any other witness.

23 I want to have this conversation now because I
24 don't want there to be any confusion going forward.
25 We have one official record, that's Madam Court

1 Reporter, and it is not a Zoom recording.

2 MR. ZAPPOLO: Right.

3 THE COURT: That's being solely used for the
4 purposes of assisting our court reporter.

5 MR. ZAPPOLO: Should she need it.

6 THE COURT: Should she need it.

7 MR. WEBER: Should she need it. Should we ask
8 her, though, if she can't -- I mean, she should be
9 able to hear the audio. I don't know, maybe that
10 would solve the entire issue if she can just hear
11 the audio.

12 THE COURT: Why don't you both confer with
13 her.

14 (Thereupon, a brief discussion was had off of
15 the record.)

16 MR. WEBER: She can hear it, Your Honor. She
17 can record it.

18 THE COURT: So we don't need the recording?

19 MR. WEBER: No.

20 THE COURT: All right.

21 MR. WEBER: Thank you, Your Honor.

22 (Thereupon, the sidebar conference was
23 concluded.)

24 THE COURT: It's your witness.

25 MR. WEBER: Thank you, Your Honor.

DIRECT EXAMINATION

1

2 BY MR. WEBER:

3 Q Good morning, Mr. Mancuso. Can you hear me?

4 A **Yes, I can hear you.**

5 Q Perfect. Can you please state your name?

6 A **Richard Mancuso.**

7 Q And are you currently employed?

8 A **Yes.**

9 Q And where are you employed?

10 A **At Ferrari Lake Forest.**

11 Q And how long have you been employed there?

12 A **41 years and three months.**13 Q And what's your current title at Ferrari Lake
14 Forest? What's your title at Ferrari Lake Forest?15 A **I'm the president.**16 Q And can you give us a brief background with
17 respect to your experience in automobile sales?18 A **Yes. Previously I spent eight years with**
19 **Chevrolet in the retail business as a franchise general**
20 **manager and dealership, and then I was in the wholesale**
21 **car business for two years after that, and then spent**
22 **the next 41 years with Ferrari and various other brands.**23 Q And how many -- how many, if any, automotive
24 sales transactions have you managed?25 A **In excess of 7500.**

1 Q And do you have any experience appraising or
2 valuing vehicles?

3 A That's one of my primary functions in the
4 operations that were involved here today and has been
5 for the last 10 to 12 years.

6 Q Can you just describe your experience valuing
7 or appraising vehicles?

8 A One of the dimensions of that position is to
9 be able to determine the dollar value of a vehicle at
10 that moment and its ability to be retailed for more
11 money, wholesaled for the same money -- amount of money,
12 or to decline taking in a trade with no agreement as all
13 the values between buyer and seller.

14 Q And what does it mean -- were you ever
15 approved for an Aston Martin franchise?

16 A Yes.

17 Q What does that mean?

18 A It means that the manufacturer criteria for
19 operating the sales and service function at a dealership
20 comes with certain criteria and requirements and
21 expectations of how they expect you to perform of
22 meeting certain standards and performance charts. Not
23 only in the beginning process, but in ongoing
24 operations, and that was my specific function.

25 Q Were you ever approved for a Ferrari

1 franchise?

2 **A Yes.**

3 Q Were you ever approved for a Maserati
4 franchise?

5 **A Yes.**

6 Q Were you ever approved for a Porsche
7 franchise?

8 **A Yes.**

9 Q What is the Ferrari Dealer Advisory Board?

10 **A It is seven individuals from North America who**
11 **are approved Ferrari dealers, and we interface every two**
12 **weeks with the senior management in Ferrari North**
13 **America and also with management in Maranello in Italy**
14 **to describe the landscape for sales and service in North**
15 **America and share ideas with them as to popularity or**
16 **lack of popularity or any interpretations we have of**
17 **current market conditions.**

18 Q And how long have you been on the Ferrari
19 Dealer Advisory Board?

20 **A Since it started, which was about 15 years**
21 **ago.**

22 Q Now, did you prepare an expert report for this
23 case?

24 **A Yes.**

25 Q Okay. I've emailed you the internal document

1 621. Do you see that document?

2 **A Yes. I reviewed it.**

3 Q Hold on one second. Okay. Just give me one
4 second, Mr. Mancuso.

5 I'm marking this document as Defendants' 621
6 for identification.

7 This document 621 for identification is your
8 expert report for this case?

9 **A Yes.**

10 (Thereupon, Defendants' Exhibit 621 was marked
11 for identification.)

12 BY MR. WEBER:

13 Q And did you prepare this document?

14 **A Yes.**

15 Q And is this document relevant to this case
16 because it shows your opinions with respect to the car,
17 the RaptorGTR, at issue in this case?

18 **A Yes.**

19 Q And did you rely on your experience in
20 preparing this document?

21 **A I did, yes.**

22 Q And did you rely on your experience valuing
23 and appraising vehicles in preparing this document?

24 **A Yes.**

25 MR. WEBER: Okay. Defendants move this

1 document into evidence. Any objection?

2 MR. ZAPPOLO: No objection, Your Honor.

3 THE COURT: Madam Clerk, is that 112?

4 THE CLERK: Yes, Your Honor.

5 THE COURT: Thank you.

6 (Thereupon, Defendants' Exhibit 112 was
7 received into evidence.)

8 BY MR. WEBER:

9 Q Now is there any one factor that determines
10 the sales value of a vehicle?

11 A No.

12 Q What factors determine the sales value of a
13 vehicle?

14 A It may sound simple, but it becomes a series
15 of intricate items that determine the perceived value.
16 It's the first impression of a vehicle. It's the
17 design, the performance --

18 MR. ZAPPOLO: Your Honor --

19 THE WITNESS: -- the quality.

20 MR. ZAPPOLO: -- sidebar please.

21 THE COURT: All right. Hold on. Let me stop
22 you for a second. Let's approach.

23 (Thereupon, a sidebar conference was held.)

24 MR. ZAPPOLO: I believe this gentleman is
25 going to testify or is beginning to testify about

1 all of the things that you've excluded my expert
2 from testifying within his chart.

3 MR. WEBER: No. This is -- he doesn't even
4 mention the chart.

5 MR. ZAPPOLO: He's going to talk about a lot
6 of subjective things.

7 MR. WEBER: He hasn't mentioned any of that
8 yet.

9 MR. ZAPPOLO: All right. I'm just letting
10 everyone know if he mentions anything subjective, I
11 am going to be objecting and will move to strike.

12 MR. WEBER: He's not mentioned any subjective
13 factor.

14 THE COURT: I mean, I'm going to hear him for
15 a little bit, but I agree with Mr. Zappolo.
16 Nothing that would be, you know, unique --

17 So Mr. Zappolo's expert created a grid with a
18 matrix of some sort and he was the only person that
19 used such a matrix and so, you know, I excluded it.
20 I'm going to hear this. If it's the same analysis,
21 it will be the same analysis.

22 MR. WEBER: Fine.

23 (Thereupon, the sidebar conference was
24 concluded.)

25 BY MR. WEBER:

1 Q Sorry, Mr. Mancuso. Continue on with what you
2 believe the factors are.

3 A Again, there's not really one attribute. It's
4 a combination of attributes that make up the impression
5 which leads to the value of the cars. It's the quality;
6 the bespoke nature, meaning the hand-created and
7 hand-assembled version of it; the history of the car;
8 the history of the company; the success and sales; the
9 desire and need from the clients who are interested in
10 the cars; the way it is perceived; the mechanical
11 condition. How durable is the car? How exciting is it
12 to drive? How useable is it? How dependable is it?

13 All of these features go into it, and the more
14 of the features that are strong and dependable and the
15 more of these features are combined, the higher
16 theoretical value that the car becomes.

17 Q Now, have you ever heard of the Mosler brand
18 of vehicles?

19 A Yes.

20 Q And did anyone -- has anyone ever asked you
21 about purchasing a Mosler vehicle?

22 A No, not really.

23 Q Well, what are people's reactions when they
24 talk about Mosler vehicles?

25 A No one really knows what it is.

1 Q What does that mean?

2 MR. ZAPPOLO: Your Honor --

3 **THE WITNESS: It's not a brand --**

4 MR. ZAPPOLO: Your Honor, objection.

5 THE COURT: Hold on.

6 **THE WITNESS: -- recognized name.**

7 THE COURT: Overruled. Please continue.

8 BY MR. WEBER:

9 Q Keep going. Go ahead, Mr. Mancuso.

10 **A It doesn't have a market presence in terms of**
11 **visibility. Sometimes something can be so rare that it**
12 **almost ceases to exist in perception.**

13 Q Do you know what a kit car is?

14 **A Yes.**

15 Q What is a kit car?

16 **A A kit car would be a vehicle assembled from**
17 **various parts that are already on the market. For**
18 **example, you can go to a parts store, you can go to a**
19 **couple of parts stores and literally buy the parts to**
20 **build the car, and there's some companies that do that.**

21 Q Did anyone ever ask you if a Mosler car was a
22 kit car?

23 **A Yes.**

24 Q And why do you believe that was asked of you?

25 MR. ZAPPOLO: Objection, speculation.

1 THE COURT: Sustained.

2 BY MR. WEBER:

3 Q To your understanding, why -- why would
4 someone believe that a Mosler car is a kit car?

5 A Because of the source of the parts. There was
6 nothing that was designed specifically for that car and
7 made for that specific car in that purpose, and designed
8 and built here for that car; that it was a combination
9 of parts that already existed.

10 It would be, for example, like if you wanted
11 to build a watch. You could go to various watch stores
12 and buy parts and eventually you could build a watch.

13 Q Now, the car at issue in this case has
14 sometimes been referred to as the 2012 Mosler RaptorGTR.
15 Do you follow me?

16 A Yes.

17 Q Now is one of your opinions in this case that
18 \$700,000 is not an appropriate price for the RaptorGTR
19 car?

20 A Yes.

21 Q Why do you believe that \$700,000 is not an
22 appropriate price for the RaptorGTR car?

23 A Well, the content of the materials that goes
24 into the construction of the car doesn't add up to those
25 type of values. The support of the lack of 30, 40, 50,

1 60-year history, like other cars in the upper-end of the
2 sports car class have, doesn't exist with this vehicle.

3 There's no resales statistics for this
4 vehicle. There's no forward order bank for the vehicle.
5 There's no line of customers waiting. There's no
6 definitive facts or figures that you can put your hands
7 on to make a more accurate decision of what something
8 could be worth.

9 You look at it and you decide "What do you
10 think this thing costs and what do you think it could
11 trade for?" And I don't believe that it would trade for
12 anywhere near those numbers.

13 Q Let's talk about the -- what did you mean by
14 the proven resale value?

15 A Normally, for a brand, you can get some idea
16 from different auctions. You can see where sales may
17 have been posted or asking prices in newspapers.
18 There's some type of visibility of the brand or the
19 product, and it begins to give you perhaps a range of
20 where actual transactions might be happening.

21 Those are some of the attributes that would
22 help you form an opinion. And you could go on -- and of
23 course you can go on the Internet today and source these
24 a little bit easier, and you can look up 10 or 20 or 30
25 transactions per vehicle, you can begin to get some type

1 of guide --

2 MR. ZAPPOLO: Your Honor --

3 THE WITNESS: -- as to where actual sales have
4 taken place.

5 (Thereupon, a sidebar conference was held.)

6 MR. ZAPPOLO: My expert was chastised because
7 he got information off the Internet. Their expert
8 is now going in and saying he's relying on
9 information from the Internet to form his opinion.

10 MR. WEBER: That's not true. That's not what
11 he said. He said prior sales.

12 MR. ZAPPOLO: He said you can go on the
13 Internet and find them.

14 MR. WEBER: First of all, your expert wasn't
15 chastised.

16 MR. ZAPPOLO: He's getting the information
17 that was told by the Court to be not appropriate --

18 MR. WEBER: That's not what the Court --

19 MR. ZAPPOLO: -- to form an opinion.

20 MR. WEBER: -- is saying.

21 THE COURT: So what are you saying? He got on
22 the Internet and looked at stuff, websites?

23 MR. ZAPPOLO: He looked up the price of
24 comparable cars, which is equal. This expert is
25 testifying about --

1 MR. WEBER: That's not what your expert said.
2 He said he went on the Internet to look at the cars
3 and see what people were saying.

4 MR. ZAPPOLO: Well, he --

5 MR. WEBER: Their expert only relied on the
6 Internet, that was the problem. Internet and prior
7 sales, that's the problem. He's never seen the
8 car. He's never done anything.

9 MR. ZAPPOLO: No. My guy souped-up cars.
10 That's an entire misrepresentation.

11 MR. WEBER: Your Honor, he interrupted my
12 expert in the middle of testimony.

13 THE COURT: Hold on. Hold on. So far it's
14 different. If your -- your expert, on
15 Cross-Examination, can bring it out. And if you
16 bring it out, I'll exclude it. I'll tell the jury
17 to disregard it, but, you know, let's make sure
18 he's just not looking at what's on Wikipedia and
19 reading stuff, okay?

20 MR. WEBER: Mr. Zappolo will be able to
21 cross-examine him.

22 (Thereupon, the sidebar conference was
23 concluded.)

24 BY MR. WEBER:

25 Q Okay. Mr. Mancuso, sorry about that. Let's

1 talk about levels of heritage that you mentioned. How
2 does the level of heritage affect the price of a
3 vehicle?

4 **A** **Well, it increases the desire for the**
5 **potential buyer to own it. If the car has a great race**
6 **history, if it has a great show history, product**
7 **placement history, things like that increases the desire**
8 **of potential buyers. And the higher the desire, in**
9 **theory, the firmer and stronger the price will be.**

10 **Q** **How does the level of heritage of the Mosler**
11 **brand compare to brands like Porsche, Ferrari, Bugatti,**
12 **Koenigsegg, and Lamborghini?**

13 **A** **Well, Mosler has heritage because it's been**
14 **around for a while, for probably 10 or 15 years,**
15 **something like that, but it's up against brands that**
16 **have been around for 50, 60, 70, and 80 years and that**
17 **makes quite a bit of difference because they have a big**
18 **jump on the perceived values for the marketplace.**

19 **All the elements that people are interested in**
20 **having and becoming a part of doesn't really exist with**
21 **the Mosler brand at this point in time. These have**
22 **multiple victories and successes all over the world in**
23 **various countries, going back more than half a century.**

24 **Q** **Now, how does the -- does the engine of the**
25 **RaptorGTR affect its price?**

1 A I think that any engine has an impact on the
2 value of the car, either positively or negatively.

3 Q And do you recall whether the RaptorGTR used
4 the base Chevrolet engine?

5 A I believe that was the motor, yes.

6 Q And how does that affect the RaptorGTR's
7 price?

8 A Well, I think it further enhances the concept
9 that it's a kit car if the motor was purchased from a
10 different manufacturer, if the gauges were purchased
11 from a gauge manufacturer, following the way that one
12 would build a kit car. That's in the opposite direction
13 of some of the other more established exotic cars go.

14 Q And how does -- and how are the engines in the
15 other more established exotic cars that you referred to
16 manufactured compared to Mosler?

17 A Well, the harsh description of the Mosler
18 automobile is it's a Chevrolet motor. It's the same one
19 that's in a pickup truck.

20 When you go to the exotic and more expensive
21 cars, these are motors that would be designed in-house.
22 In Ferrari's case, these motors are actually cast
23 in-house. If you go to the very first start of the
24 production of the Ferrari, it's the engine. In the
25 majority of cases, where the prices are on the upper

1 end, those are 12-cylinder motors. The 12-cylinder
2 motors is always considered extremely special. Those
3 motors are casted and designed by Ferrari.

4 The very first stage in production is made
5 with the aluminum suits pouring bulk of aluminum into
6 the molds, sand molds, where they actually cast the
7 block from nothing and produce it in their factory right
8 there. That's how it starts. It's a very, very
9 detailed, complicated, and expensive process. It's not
10 just buying an engine in a box and plugging it into a
11 car.

12 Q Now when you had mentioned prior sales before,
13 you're not referencing websites like Wikipedia or
14 looking at sites that you would deem not authentic,
15 right?

16 A I don't use that as a source at all. I look
17 at auction reports from the primary auctions around the
18 world.

19 Q So when you say you might have looked at --
20 you might look, in some cases, at prior sales, you're
21 referring to results that are posted online from an
22 auction, for example, from the auction house showing
23 what a vehicle might have sold for, right?

24 A Yes. Correct.

25 Q Okay. Now, and would you also rely on prior

1 sales from your own dealership?

2 **A Yes. If I had them, absolutely.**

3 Q Perfect. Now, was the RaptorGTR, the car at
4 issue in this case, ever a \$700,000 vehicle in your
5 opinion?

6 **A No.**

7 Q Are there any other reasons why you think that
8 it was never a \$700,000 vehicle?

9 **A One of the reasons are the content of the
10 vehicle and the way it was constructed, but it's
11 basically a kit car. It would really put a cap on what
12 the value of the car could be because there's only so
13 much costs it would take in order to buy the parts.**

14 **So we all have an idea what that might be, and
15 my guess is it would be somewhere in the 150,
16 \$200,000 range, including the motors and everything
17 else, so I would look at that and that would be one of
18 my initial impressions.**

19 Q And how does -- one of the cars mentioned in
20 this case is the LaFerrari. Are you familiar with the
21 LaFerrari?

22 **A Yes.**

23 Q How does the RaptorGTR, the car at issue in
24 this case, compare to the LaFerrari?

25 **A Well, one's a kit car that's made from parts**

1 bins and the other one is an engineering and design and
2 racing masterpiece designed by some of the greatest
3 automobile designers in the world. It has a 12-cylinder
4 engine and it's a handmade car with cast motors and
5 carbon bodywork and hand-sewn seats and upholstery and
6 the spoke gauges and brakes. It's a completely special
7 and unique automobile.

8 Q Does Ferrari have a servicing network in
9 place?

10 A Yes. There's approximately 185 dealers around
11 the world.

12 Q Does Porsche have a servicing network in
13 place?

14 A Yes. They probably have somewhere -- I would
15 guess a world count of somewhere over 1,000 dealers.

16 Q Does the servicing network affect the value of
17 an automobile?

18 A It's integral to the value of the automobile
19 because when you spend money on the cars, you want to be
20 able to use them and drive them when you want. They
21 have to be able to start and stop and perform in all
22 weather conditions at the drop of a hat, much like an
23 airplane. It has to be ready to go all the time.

24 Q How would you describe the factory where
25 Ferraris are made?

1 A It's described, by most automobile people, as
2 the automotive Vatican of the world. It's like a holy
3 shrine of the automobile because of the history, the
4 race victories, the clients that have bought the
5 Ferraris over the years, the resale value, their forward
6 order banks, the desire for the car, and all of the
7 events and races that Ferrari has participated in all
8 over the world.

9 Q How would you, in your opinion, compare a
10 factory of a brand like Ferrari versus Mosler?

11 A Well, for example, the Ferrari factory, I
12 believe, is located on about 70 acres of land in
13 northern Italy in a town called Maranello. It employs
14 somewhere, I believe, around 5- or 6,000 people. It is
15 a state-of-the-art factory electronically, and it has
16 been rated as the best place in Italy to work.

17 So it's a spectacular showpiece of automotive
18 technology and heritage. It's the blending of all those
19 attributes from the past.

20 The factory that builds Mosler is a type of
21 industrial-type warehouse where you would do an assembly
22 center; parts would show up and you would bolt them
23 together. In Ferrari, they actually create the parts.
24 At the original Mosler factory, they're screwing the
25 parts on to the car. There's a difference.

1 Q Now, does a warranty and maintenance plan
2 affect the value of a car?

3 A Yes.

4 Q Tell us, in your experience, about the
5 warranty maintenance plans in place in exotic brands
6 like Ferrari, Porsche, or Lamborghini.

7 A Well, you have to remember that these plans
8 determine the ownership experience satisfaction with the
9 car, which determines the desirability of the car, which
10 either supports the value of the car's pricing or
11 detracts from the value of the car's pricing depending
12 on how good the support network is.

13 So it would be typical for any one of these
14 brands to have a minimum of three years' full warranty.
15 And in Ferrari's case, they have that and they also have
16 the seven-year maintenance plan, which is included as
17 part of the price, so the owners pay for no maintenance
18 for seven years.

19 And the other brands have support levels
20 perhaps not as aggressive as that from Ferrari, but
21 certainly they have the three years of coverage and some
22 version of additional support after that, and additional
23 programs you could come by that would extend the
24 warranties up to and probably exceeding 100,000 miles on
25 the car.

1 Q Do you know what power-to-weight ratio is?

2 A Yes.

3 Q What is power-to-weight ratio?

4 A Just measuring the horsepower against the
5 weight of the car which determines a lot of its
6 performance capabilities to accelerate.

7 Q Now --

8 A It wouldn't determine any other attributes of
9 performance, it would determine strictly acceleration.

10 Q In your experience, does the power-to-weight
11 ratio of a vehicle determine its price?

12 A No.

13 Q Why?

14 A It's one of the factors of the many factors.

15 Q Hold on, Mr. Mancuso. Why doesn't the
16 power-to-weight ratio determine a vehicle's price?

17 A Well, there's no relationship between the
18 speed and pricing. If there was, motorcycles would be
19 some of the most expensive vehicles on the planet
20 because they're faster than most every car on the
21 planet. They're not the most expensive, they're some of
22 the least expensive, but it doesn't have the other
23 attributes of performance and heritage that automobiles
24 have. It's one element --

25 Yes, performance is important. It's one

1 element, straight line summation, but there's also
2 braking, comfort, ease of entry, turning, cornering.
3 All of those play into this.

4 One element does not determine price, it's a
5 combination of things, and it's a very delicate balance.

6 Q Now, in your experience, does just because a
7 vehicle is low volume make it collectible?

8 A No.

9 Q Why?

10 A Sometimes it could be such low value that it
11 ceases to exist.

12 Q Why, in your experience, doesn't a low volume
13 necessarily translate to collectibility or high value?

14 A Low value can mean the car is not popular,
15 that it's not selling, no one wants to buy it, and then
16 it just goes away. That doesn't make it collectible.

17 Q Now is one of your opinions that buyers would
18 not solely rely on the Internet when purchasing a car
19 like the RaptorGTR, right?

20 A Correct.

21 Q And why is that?

22 A Because no one would look at one single
23 statement and accept it as the all-inclusive evaluation
24 of that car in supporting all elements of performance,
25 desirability, and pricing. The people that buy cars

1 like this are generally more knowledgeable than the
2 average consumer. They enjoy reading and sourcing
3 information, and in most cases they look for opinions.
4 They look for resale values. They look at auctions.
5 They look at listings. Much like someone looking for
6 real estate, they're looking for comps. They're looking
7 for things that they can compare.

8 Q Now one of your opinions in this case is that
9 the RaptorGTR, the car at issue, would not have sold 20
10 or more vehicles per year at a price of \$700,000 each,
11 correct?

12 A That's correct.

13 Q Why do you believe there's no basis for saying
14 that the RaptorGTR, the car at issue in this case, would
15 have sold 20 or more vehicles per year at a price of
16 \$700,000 or more?

17 A I thought very deeply about that because I
18 take a lot of pride in trying to be realistic about what
19 the values of cars are, and I asked myself, "How can I
20 forecast the future of the car out five years as far as
21 pricing and as far as volume goes?" And I can't come up
22 with any meaningful or rational thought process where I
23 could establish a statement to come out of it and say
24 "Here's what's going to happen for the next five years
25 and here's what the pricing level is going to be."

1 Because if I could do that, I think I'd be in the stock
2 market.

3 Q Well, does the prior sales and heritage and
4 all the factors you mentioned lead you to believe that
5 the RaptorGTR would have sold 20-plus vehicles per year
6 at a price of \$700,000 each?

7 A No, I cannot come up with those numbers. I
8 tried to look at it. Could I say "Okay. I'm trying to
9 forecast Aston Martins. I'm trying to forecast
10 Ferraris, products that I have a lot of experience with
11 and a lot of closeness to," and I couldn't possibly
12 forecast out more than selling the cars that I have or
13 the used cars that I would have of those variations
14 because I would have no basis other than simply
15 guessing.

16 One of the things that I would look at is
17 what's the order bank? How many sold cars do I have?
18 How many clients do I have waiting for these cars right
19 now? That's easy to do when you have an order bank of a
20 couple hundred cars. When you have no order bank at
21 all --

22 Q In your --

23 A -- you can paint the picture of no future for
24 it.

25 Q In your experience, was there an order bank

1 for Mosler vehicles?

2 A I'm under the impression the order bank was
3 zero; that they were shipping cars that were unsold if
4 someone wanted to buy them, but that was it.

5 There's kind of the simple answer right there
6 as to the future sales. No forward orders, that doesn't
7 look so good.

8 Q Hold on one second.

9 A To give you an idea, at Ferrari right now we
10 have 377 --

11 Q Hold on one second, Mr. Mancuso.

12 Sorry. What were you saying about Ferrari's
13 order bank?

14 A We have 377 orders in our dealership right now
15 waiting to be built. Ferrari has 35,000 orders waiting
16 to be built right now. There's three years of
17 production sold out.

18 I can give you a good idea of what those
19 numbers will be only because we have sold orders under
20 deposits and contracts. And the only way that Ferrari
21 accepts an order, so that they count it as a real order
22 for a real future sale, we have to submit a signed sales
23 contract. We have to submit a license -- a picture of
24 the driver's license of the individual buying the car.
25 We have to submit a copy of the deposit check that the

1 individual gave us. We have to submit a copy of a bank
2 statement showing that we took that deposit and put it
3 into the bank. Then they consider that a forward order,
4 and then they base their production and their parts
5 purchases and all of the requirements that they have for
6 building cars going forward. That's how it's initiated.

7 If you have zero order bank, that's an
8 indication right there of future sales. If you have
9 35,000 orders, it's a little easier to track and make a
10 guess because anything can upset that as well.

11 Q Well, now, Mr. Mancuso, does simply raising
12 the price of a vehicle allow entry in the supercar
13 market, in your opinion?

14 A No.

15 Q Why?

16 A You don't just decide you're going to be a
17 supercar maker and put a big price on something and
18 expect people to run in the door and buy the car. It
19 falls back on what are the attributes of the car? What
20 is the innate feeling when someone walks up to it?
21 What's the heritage of all the items that we talked
22 about earlier? What is the performance? What is the
23 heritage? What are the mass victories? Where has the
24 car been? What car shows has it been on? What rallies
25 has it been on? What ads has it been in? What movies

1 has it been in? What T.V. shows has it been in? How
2 many? Those are the things that add up.

3 Q Okay. Mr. Mancuso, I don't have any further
4 questions for you right now. The plaintiffs' counsel
5 may have some questions.

6 THE COURT: All right. Cross-Examination.

7 CROSS-EXAMINATION

8 BY MR. ZAPPOLO:

9 Q Mr. Mancuso, can you hear me?

10 A Yes. Fine.

11 Q Okay. My name is Scott Zappolo. I have the
12 pleasure of representing James Todd Wagner and Supercar
13 Engineering. You and I have never met, have we?

14 A No, we have not.

15 Q Okay. So I just want to back up a little bit.
16 There's some things that you covered with counsel that
17 are in your report that's now in evidence.

18 It says you were approved for a Aston Martin
19 franchise and approved for a Ferrari franchise and
20 approved for a Maserati franchise. Does that mean that
21 you have those franchises that you actually --

22 A I had those franchises.

23 Q Do you actually operate those franchises?

24 A I had those franchises for Aston Martin. From
25 1980 until 2016, we were the longest-running Aston

1 **Martin dealer in the world, and I sold it in 2016 to**
2 **another dealership.**

3 **I had Maserati from 1984 until 2016, and I**
4 **sold that franchise to another dealer.**

5 **And what's the other one you asked me about?**
6 **You mentioned three.**

7 Q I asked you about Ferrari.

8 A **I had Ferrari since 1982, and I still have**
9 **that.**

10 Q Okay. And then what about Porsche?

11 A **I had Porsche from '91 to '93, bought it and**
12 **then resold it in '93.**

13 Q Do you ever have a Mosler Auto Care Center
14 franchise?

15 A **I never had a franchise. I never had it.**

16 Q You never had rights to sell a Mosler Auto
17 Care vehicle, did you?

18 A **No.**

19 Q Okay.

20 A **I had some Consuliers in the early days.**

21 Q Okay. How many MT900s have you sold?

22 A **None.**

23 Q Okay. How many 2012 RaptorGTRs have you sold?

24 A **None.**

25 Q How many 2012 RaptorGTRs have you sat in?

1 **A None.**

2 Q Okay. How many 2012 RaptorGTRs have you seen
3 built?

4 **A None.**

5 Q Do you know how the 2012 RaptorGTR was built?

6 **A I have a good idea.**

7 Q Okay. A good idea; is that you think you
8 know, but you don't know?

9 **A I think I know, yes.**

10 Q Okay. Well, have you ever seen one built?

11 **A No.**

12 Q Okay. You testified earlier that, like,
13 Ferraris have specific molds and things. Are you aware
14 that the 2012 RaptorGTR had a specific nose mold?

15 **A Yes.**

16 Q Okay.

17 **A I would follow the text in a lot of articles
18 that I could see about Moslers throughout the years.**

19 Q Okay. So you would follow the articles and
20 things about Moslers throughout the years in your own
21 admission, right?

22 **A Yes.**

23 Q And this is yet -- this is a car that you say
24 is a unknown vehicle?

25 **A Yes, very much unknown.**

1 Q Even though you've known about it and followed
2 them for years?

3 A Yes, that's my business. I follow lots of
4 things like that. Anything related, I follow it.

5 Q Okay. Now people that purchase cars, they
6 follow them, don't they? They follow that type of
7 vehicle?

8 A Probably not with the intensity that I do.

9 Q Okay. But they review things such as popular
10 periodicals, correct?

11 A I would suppose they do. I don't know what
12 any individual would do, but I would think that might be
13 possible. I would think opinions would be important.

14 Q Okay.

15 A Anything that talks about it.

16 Q Okay. So you would agree with me that
17 publicity is important in setting a car's price, right?

18 A It would be -- well, possibly it would be one
19 of the elements.

20 Q Okay. And a manufacturer that suggested that
21 a car was not its own made vehicle, that would
22 negatively impact the price, wouldn't it?

23 A I'm not sure. Restate that, if you would.
24 I'm not sure I understood it or heard you.

25 Q Sure. If a manufacturer was to state to a

1 worldwide periodical that the vehicle was not made by
2 its company or it was not one of its company's products,
3 that would hurt the value, correct?

4 A Well, it would make someone want to find out
5 more of why you would make a statement like that, what
6 the reason for it was. It would certainly raise your
7 curiosity.

8 Q It would certainly make someone more akin to
9 think that it was a kit car, wouldn't they?

10 A I would that think the perception of a Mosler
11 would be, from the beginning, that it was a kit car, so
12 it would be consistent with the perception of the
13 vehicle at that point.

14 Q How many kit cars are featured in "Car and
15 Driver" magazine?

16 A Well, from time to time "Car and Driver" -- a
17 lot of the other periodicals have done tests on various
18 cars. They've done tests on dune buggies and
19 motorcycles. They've tested kit cars, semis, motor
20 homes.

21 The "Car and Driver" does a very wide scope on
22 testing things. Some of the other articles less so.
23 You're talking to a guy that at one point got 84
24 periodicals a month on automobiles, so my level of
25 intensity and studying these things and reading them and

1 looking for pieces of information would be higher than
2 the normal civilian walking around.

3 Q Okay. Now based upon that intense review of
4 periodicals, you know that the Mosler is actually
5 compared to other hyperexotic car manufacturers,
6 correct?

7 A You can compare it, yes.

8 Q Okay.

9 A That was the intention, yes.

10 Q So Mosler vehicles are compared to other
11 hyperexotics. We agree on that, right?

12 A That was the framing of it, yes, from a
13 performance standpoint.

14 Q Okay. Now a hyperexotic is what?

15 A That's an interesting question because there's
16 many phrases. There's exotic, now there's hypercars,
17 supercar, hybrid car. It's changing all the time. It's
18 a bit of a changing landscape. So let's just say what
19 you're referring to would be expensive, high-performance
20 cars; other expensive, high-performance cars.

21 Q Okay. Now when you say "expensive,
22 high-performance," hyperexotics are typically in the
23 million dollar range, aren't they?

24 A Not necessarily.

25 Q Okay.

1 A For example, the base price of a Ferrari 458
2 in calendar year 2011 was \$230,000 for a 458 coupe.

3 MR. ZAPPOLO: Okay. Counselor, how am I going
4 to show him documents in evidence? Can you pull it
5 up?

6 THE VIDEOGRAPHER: We can put it up on the
7 Elmo, or if you have a digital exhibit.

8 MR. ZAPPOLO: Okay. We have Exhibit Number 53
9 in evidence.

10 MR. WEBER: Do you have the paper? There's
11 highlighting on this document, right, Counsel?

12 MR. ZAPPOLO: Yes, there is highlighting on
13 it. It's on 297. It's to direct the witness's
14 attention to the document.

15 MR. WEBER: Well, is this the document in
16 evidence, or is this a modified document with
17 highlights?

18 MR. ZAPPOLO: That is Exhibit 297. That is in
19 evidence with my additional highlighting.

20 You can put that on the screen, right? Is
21 there any way to make that bigger?

22 BY MR. ZAPPOLO:

23 Q All right. So in this periodical, the author
24 holds a Mosler Photon vehicle -- by the way, did you
25 ever do a comparison between the Mosler Photon and the

1 2012 RaptorGTR?

2 **A No.**

3 Q Okay. But this is in a periodical that says
4 "Hovering one notch above Lamborghini and Ferrari on the
5 automotive specialness chart is a gaggle of companies
6 whose exotic names could just as easily be typos."

7 Koenigsegg, do you agree that Koenigsegg,
8 Pagani, Gumpert, Spyker, Donkervoort, are one notch
9 above Lamborghini and Ferrari on the automotive
10 specialist chart?

11 **A Yes.**

12 Q Okay. So Mosler is included within that class
13 of vehicle manufacturers, isn't it?

14 **A No.**

15 Q Okay. Let's go --

16 **A Not my opinion.**

17 Q Okay. Let's go ahead to the next page,
18 counsel.

19 The article reads, at the second page, "So
20 who's representing the good ol' U.S. of A? Well,
21 there's SSC." Are you familiar with SSC?

22 **A No.**

23 Q "Which likely infuriated half of Germany and
24 France when its Ultimate Aero proved even faster than
25 the world champ Bugatti Veyron. And then there's

1 Mosler, the other American supercar company, without a
2 crazy unpronounceable name."

3 So you would agree with me that, at least in
4 this national periodical, Mosler is being compared in a
5 class of vehicles that are a notch above Lamborghini and
6 Ferrari on the automotive specialist chart?

7 **A Maybe they are, but it doesn't mean anything.**
8 **It's not credible.**

9 Q Okay. Well, didn't you say that people go out
10 on the Internet and they look at articles and things
11 like that when deciding about purchasing vehicles and
12 pricing them?

13 **A It doesn't mean they believe it. They read**
14 **it, it doesn't make it true.**

15 Q Okay.

16 **A Just because someone says something, it**
17 **doesn't mean it's the truth; or they write something, it**
18 **doesn't mean it's the truth.**

19 Q Now which company has the history of building
20 ultralight vehicles?

21 **A Well, certainly Mosler would be one of those.**
22 **That would be -- I think those were very likely.**

23 Q Mosler was the first company to get into or to
24 emphasize building ultralight vehicles, isn't it?

25 **A I don't know if it was the first, but it was**

1 **certainly -- one of the target performance things I**
2 **believe was low weight.**

3 Q Okay. So you would agree with me that it's
4 been the -- one of the premier companies for building
5 low-weight, hyperexotic vehicles for years, wouldn't
6 you?

7 A I wouldn't agree with the use of the word
8 "premier." I would agree with the use of the word
9 "early."

10 Q You wouldn't say it's at least one of the
11 premier ultralight vehicles?

12 A No, I wouldn't.

13 Q Okay.

14 A The quality isn't there. It's a kit car.

15 Q It's a kit car. Now, how would -- and I
16 thought we established you weren't aware of how the
17 Mosler vehicles were built.

18 A It's a parts bin car. I haven't visited the
19 factory. I haven't studied the assembly line.

20 Q Okay. Now --

21 A I know about the cars. I know where the parts
22 come from.

23 Q Okay. Let's talk about -- you spoke a little
24 bit about parts. You would agree with me that just
25 taking parts and putting them on a vehicle, I think you

1 testified, makes the car less likely to be viewed as a
2 high-end vehicle. Is that a fair paraphrase of what
3 your testimony was?

4 **A Yes.**

5 Q Okay. So things like just using Corvette
6 taillights would not be advantageous if you're trying to
7 make a more expensive vehicle, correct?

8 **A Right.**

9 Q Okay. Did anyone ever tell you about the
10 comparison between the 2012 RaptorGTR and its taillights
11 and nose versus prior Mosler products?

12 **A No.**

13 Q Okay.

14 **A Because no one cares. I mean, it's not -- it
15 doesn't even register.**

16 Q That's your opinion, "No one cares," right?

17 **A That's exactly correct.**

18 Q Okay. So you certainly don't care?

19 **A I don't care about that. It's meaningless to
20 me.**

21 Q Okay. Now --

22 **A Because the car's already not making the cut
23 because it's a kit car.**

24 Q Okay. You do, however, understand that the
25 Mosler has been compared to Ferrari vehicles in

1 advertising and other things, don't you?

2 **A I don't know that I agree with that.**

3 **Advertising? Whose advertising? I don't understand**
4 **that.**

5 Q Well, let's try this: Let me show you what's
6 in evidence as Plaintiffs' Exhibit Number 61.

7 Okay. Now this Exhibit 61, which is in
8 evidence, it makes a comparison between a Mosler vehicle
9 and what kind of vehicle, sir?

10 **A I can't see it. I don't know what you're**
11 **talking about.**

12 MR. ZAPPOLO: Can you share screen, please?

13 THE VIDEOGRAPHER: Do you have your view on
14 gallery view, sir?

15 **THE WITNESS: Now I do, yes. Thank you.**

16 BY MR. ZAPPOLO:

17 Q Okay.

18 **A Okay. Okay. I see that, yes.**

19 Q Okay. What kind of car is that, sir? The red
20 one.

21 **A The red one is a Ferrari. It looks like a**
22 **Ferrari Enzo.**

23 Q Okay. And how much do Ferrari Enzo's sell
24 for?

25 **A That was around \$600,000.**

1 Q Okay. So Mosler was comparing its MT900 to a
2 Ferrari Enzo that's worth -- that sold for around
3 600,000, correct?

4 A Yeah. Yes.

5 Q Okay. Now also within this comparison by
6 Mosler there's the words "Lean, Mean, Green machine."
7 Do you know what that's suggesting?

8 A That it probably runs low emissions, I would
9 think.

10 Q Okay. And in this day and age how important
11 is something to be, quote/unquote, green?

12 A It has some importance.

13 Q Okay.

14 A Yes. By the way, I think that's an absurd ad,
15 just so you know my opinion on this, and people can
16 write ads. These are the things that hurt the
17 credibility of cars. These are the things that demean
18 the value of cars.

19 I would look at an ad like that and my opinion
20 would be that's absurd. It makes no sense at all, and
21 it has no credibility. It would further devalue a
22 Mosler in my mind.

23 Q Do you know who approved that ad, sir?

24 A I don't know. I have no idea. You're
25 probably going to tell me I did it, I don't know, but I

1 **don't recognize it. I mean, just because someone makes**
2 **an ad doesn't make it true.**

3 Q Sir, I'll be right with you.

4 Now you mentioned race heritage and winning
5 races. Do you remember that testimony?

6 **A Yes.**

7 Q Okay.

8 **A Yes.**

9 Q All right. You weren't here in the courtroom
10 when Mr. Mosler was testifying about all the races that
11 the Mosler vehicles had won over the years, were you?

12 **A No.**

13 Q Okay. And you weren't here when Mr. Mosler
14 was testifying about how the Mosler vehicles were
15 actually banned from competitions against high-end
16 supercars because they were winning too much, were you?

17 **A I read about that, and I'm somewhat familiar**
18 **with those attributes in the car.**

19 Q Okay. You're not refuting Mr. Mosler's
20 testimony, are you?

21 **A No.**

22 Q Okay.

23 **A To give you some sense of comparison, you**
24 **know, Ferrari, when we're talking about heritage --**
25 **because that's what you're driving at -- Ferrari won 16**

1 **Constructor Championships in the last 50 years and 15**
2 **Formula 1 driving championships. They won 241 Formula 1**
3 **races, and 790 podium races with their cars.**

4 Q And how many of those --

5 A **They won thousands of races.**

6 Q And how many of those races have banned
7 Ferrari from competition because they were winning?

8 A **Well, they have to follow certain rules.**

9 Q Okay. Now did you have any conversation with
10 Mr. Mosler about the required handicapping of their
11 vehicle and then --

12 A **No.**

13 Q -- the subsequent banning of their vehicles
14 from such races?

15 A **No. I would read about it. I think he came**
16 **in with real lightweight cars.**

17 Q So you're not here to contradict Mr. Mosler's
18 testimony in this case, are you?

19 A **I'm just here to recollect my history and**
20 **knowledge of the values and potential sales of cars and**
21 **reflect on it from a different perspective, apparently.**

22 Q Okay. How many McLaren Sennas have you sold?

23 A **McLaren Sennas?**

24 Q Yes.

25 A **Zero.**

1 Q Okay. You would agree with me that McLaren
2 Senna is considered a hyperexotic car, correct?

3 A I'm going to correct that. I think we've sold
4 one. We were a McLaren dealer, but --

5 Q Do you remember how much that car sold for?

6 A I think the car was 8- or \$900,000.

7 Q Okay. Are you familiar with a Brabham BT62?

8 A No.

9 Q Okay. You don't know anything about that
10 car's horsepower-to-weight ratio or anything like that,
11 correct?

12 A I don't because that's not a figure that I
13 would use for impressions or appraisals for any of the
14 vehicles we've been talking about.

15 Q What about a Hennessey Venom? What about a
16 Hennessey Venom?

17 A I'm aware of that car. Yes, made in Texas.

18 Q How many of those have you sold?

19 A We've sold none, but one of our clients has
20 bought one and we currently have one in our storage
21 built for him.

22 Q Okay. Do you know the value of that car?

23 A I believe the car traded in the mid-2 range,
24 mid-2 million range.

25 Q Mid-2 million? Okay. What about a Fittipaldi

1 EF7?

2 A I have heard of the car. I've never seen one
3 or heard of one other than in an article that a car like
4 that might exist.

5 Q Okay.

6 A You're going into such low volumes, it's hard
7 to even have feedback on some of those cars.

8 Q Well, low volume is what the MACC dealer is,
9 right? Your opinion is that MACC is a low volume car
10 manufacturer, isn't it?

11 A Wait. I'm not sure what you're referring to
12 when you say "MACC."

13 Q Mosler Auto Care Center is a low volume --

14 A Okay.

15 Q -- car manufacturer, is it not?

16 A I would think so because they didn't have a
17 lot of sales success.

18 Q Okay.

19 A I don't think that was by design. I think
20 that was the market keeping a lid on it.

21 Q Well, when your sales are not successful,
22 sometimes you change your product, right, sir?

23 A Yes.

24 Q Okay. And sometimes when you change your
25 product, and you give the populous what the populous --

1 population wants, your sales would increase, right?

2 **A If it was accepted by the people interested,**
3 **they determine what happens, yes.**

4 Q Right. And you've seen that in your business
5 of selling cars, correct?

6 **A Yes.**

7 Q Okay. You would agree with me that the 2012
8 RaptorGTR was a change from the Mosler MT900 series,
9 wouldn't you?

10 **A I think it was. I don't know precisely. For**
11 **instance, if you ask me to say what they were, I don't**
12 **know.**

13 Q Okay.

14 **A I know it had a different model designation.**

15 Q Okay. Now let's talk about the engine of that
16 car. You compared that engine to an engine that you
17 would find in a pickup truck. Do you remember that
18 testimony?

19 **A Yes. Yeah, I do.**

20 Q Okay. Now what evidence do you have to
21 present to this jury that that engine was not, for want
22 of a better phrase, souped-up?

23 **A I'm not sure what kind -- what you're asking**
24 **me.**

25 Q Well, let's try this: Where are the

1 turbochargers on the 2012 RaptorGTR?

2 **A Where are they?**

3 Q Yes.

4 **A I -- well, I don't understand the question.**

5 Q Where are --

6 **A Where are the turbochargers on it?**

7 Q Right.

8 **A It's -- okay.**

9 Q Where were they located?

10 **A I don't know.**

11 Q Do you know of any other car that's
12 manufactured from a factory that has turbochargers that
13 were located in the same place as the 2012 RaptorGTR?

14 **A I don't know where they were located, so I
15 couldn't comment on that.**

16 Q Right.

17 **A Were they located somewhere unusual? I don't
18 understand anything of what you're saying.**

19 Q You understand that engineering changes can
20 affect the perceived value of a vehicle, don't you?

21 **A If they're successful changes --**

22 Q Okay.

23 **A -- I would think so.**

24 Q What evidence, if any, do you have to suggest
25 that the engineering changes on the 2012 RaptorGTR were

1 not successful changes?

2 **A I don't even know what the changes were.**

3 Q Right. Do you know how many horsepower the
4 car had?

5 **A No. I would estimate it probably had 5- or
6 600, somewhere in there.**

7 Q Okay.

8 **A And normally estimated -- if it was a
9 turbocharged conversion, it would be higher than that.
10 Maybe 750 to 800-range, something along those lines.**

11 Q So you had originally estimated 500, but you
12 acknowledge that it could have been as high as
13 838-horsepower, right?

14 **A I think if it had twin-turbos or
15 superchargers, it could have been elevated to those
16 levels, yes.**

17 Q Okay. Now --

18 **A You know, you can put the horsepower up and
19 down based upon the pressure of the turbos.**

20 Q Right. And the turbos are affected by heat,
21 aren't they?

22 **A Yes.**

23 Q Okay. And so when you move a turbo further
24 away from the heat source, that makes the turbo more
25 efficient and probably last longer, right?

1 **A In theory, yes.**

2 Q Okay. Now, you are aware of Exhibit -- you're
3 aware of Exhibit Number 55 in evidence where the vice
4 president of global operations and general manager of
5 Mosler Auto Care Center refers to the 2012 RaptorGTR as
6 a hyperexotic supercar, right?

7 **A No, I'm not aware of that statement or**
8 **exhibit.**

9 Q Okay. I'm showing you a page of that exhibit.

10 **A Okay.**

11 Q We'll get the share screen here.

12 **A Okay.**

13 Q Since we're on Zoom, it's a little bit more
14 difficult to flip back and forth.

15 **A It's hard for me to -- I can't really read**
16 **that, but I'll assume what you're saying is correct,**
17 **that you can make that statement. The statement to me**
18 **would be meaningless.**

19 Q Okay. So how Mosler Auto Care Center referred
20 to its vehicle is meaningless to you, correct?

21 **A Yes. Just because someone says something**
22 **doesn't make it true, in my interpretation.**

23 Q Okay. Now the other article that we've shown
24 you that puts Mosler Auto Care Center's Photon in a
25 class of other hyperexotics, that means nothing to you

1 as well, correct?

2 **A It means nothing to me because it's not**
3 **credible. It makes no automotive sense at all.**

4 Q Okay. Now, you do agree that -- well, let me
5 back up.

6 You referenced earlier that you thought that
7 700,000 was not an appropriate price because there was
8 no 30, 40, or 50-year history of the vehicle. Do you
9 remember that testimony?

10 **A Yes. That was one of the missing elements.**

11 Q Okay.

12 **A One of many missing elements.**

13 Q One of many missing elements. But in your
14 report, you referenced and compare an Acura NSX. Is the
15 Acura NSX even in the same class as a 2012 RaptorGTR?

16 **A It's an interesting question. From a**
17 **technical standpoint, it's kind of state-of-the-art. It**
18 **has all the latest technology on it. You know, it's**
19 **built and designed by Honda, so from that design**
20 **standpoint and construction standpoint, it's a pretty**
21 **extraordinary car.**

22 It's been compared and it's been called a
23 practical sports car. It's a very opinionated car.
24 It's been called the practical sports car. It's been
25 called a technological marvel. It's a little bit of all

1 of the above.

2 Q Okay.

3 A It's a very interesting car.

4 Q So you're rendering your -- you're basing your
5 professional opinion upon opinions about such things
6 as -- about your opinion about the NSX, is that fair to
7 say?

8 A I'm basing it on my experience and my
9 knowledge of the company that produced the car, designed
10 the car, raced the car, and the elements that they put
11 into it, and the durability and the number of sales they
12 achieved, and the resale value that the cars had.

13 Q Okay.

14 A All of those elements, they all factor into
15 it. And they have quite a low price, by the way.

16 Q Now --

17 A It's a \$200,000 car.

18 Q Others in the industry have actually excluded
19 the Acura NSX from the hyperexotic category, haven't
20 they?

21 A They have because they've looked at what -- I
22 said earlier some looked at it as a practical sports
23 car.

24 Q So you acknowledge that, contrary to your
25 opinion, other people feel that the -- other people in

1 the industry feel that the Acura NSX is not even in the
2 same class as the 2012 RaptorGTR, correct?

3 A No, I didn't liken it to the RaptorGTR. I'm
4 saying that it occupies a very unique position within
5 the high-performance sports car class.

6 Q So it's not comparable to a 2012 RaptorGTR?

7 A I think it's a different car.

8 Q Okay. Well, in your opinion, in your report,
9 you compared -- you said as a reference point, and you
10 used some statistics related to the Acura NSX2, correct?

11 A Yeah. And that's the problem when you get
12 into pricing because you go up against information
13 published on a car that has thousands of sales and
14 backed up by an enormous company and they have a huge
15 network, and people will take those statistics and use
16 them as they try and evaluate the values of other cars.

17 I can tell you that when the NSX came out, it
18 was designed to be a Ferrari competitor. In fact, the
19 Japanese even stated -- and we thought this was a
20 credible statement from a company that had never done
21 cars like this -- they were going to show Ferrari how
22 it's done. And everybody heralded the Honda and the NSX
23 going after Ferrari. They were going to do it for a
24 quarter or a third of the price, but it just never
25 really took off.

1 And on paper, on paper it had some areas that
2 were better in performance than Ferraris did, but it
3 didn't have the entire package. So it's never really
4 had the success. In fact, the fact that you referenced
5 that car makes it even more pertinent in my opinion, as
6 I'm thinking about it, to the Mosler. On paper there's
7 a lot of things that, you know, look really good, but it
8 just doesn't work as a package.

9 Q Well, sir, I didn't reference the car, you did
10 in your report, didn't you?

11 A I did. I specifically chose that car --

12 Q Okay. Right.

13 A -- because that's one of the opinion basis of
14 the car. You linked the two together when you were just
15 asking me earlier --

16 Q Well, you chose a vehicle that's not a
17 hyperexotic car, correct?

18 A I chose a vehicle where people use it to form
19 opinions and where people use it to compare it as a
20 standard for pricing.

21 Q Sir, my question was: You chose a vehicle
22 that others consider not to be in the hyperexotic class,
23 correct?

24 A I chose a vehicle that I consider not to be in
25 the hyperexotic class at that point.

1 Q Okay.

2 A I don't know about -- I can't speak for
3 others.

4 Q All right. Just so we're clear on this, you
5 and others consider the Acura NSX not to be in the
6 hyperexotic class, correct?

7 A Well, you know, what? I think, as I said
8 earlier, there's a couple of different ways to look at
9 that car. It can be the practical sports car. I've had
10 a couple of cars, by the way.

11 Q Sir, yes or no?

12 A I don't know how to answer that question.

13 Q You can't answer that?

14 A It's not a yes-or-no answer.

15 Q Okay.

16 A I think it's a highly opinionated answer. It
17 can almost be how you want to use it. If you want to
18 drive it and use it like a hyperexotic car, it has all
19 the pieces to do it. If you want to use it like a
20 practical car, it has all the capabilities of doing it.
21 It has multiple capabilities.

22 Q Are you changing your earlier testimony from a
23 few minutes when you said --

24 A No. I'm responding to it. I'm digging a
25 little deeper in it.

1 Q So you're not changing your testimony that the
2 Honda NSX is not a hyperexotic, correct?

3 A I'm not changing my opinion, I'm trying to
4 define it better to bring more clarity to help you
5 understand it.

6 Q And you're not changing your testimony that
7 others besides you have considered the Acura NSX not to
8 be a hyperexotic, correct?

9 A I think there's people that think it's a
10 hyperexotic and I think there's people that think that
11 it's not a hyperexotic.

12 Q Okay. And you're not taking issue with Mosler
13 Auto Care Center's touting its 2012 RaptorGTR as a
14 hyperexotic supercar, are you?

15 A I'm not taking exception with it, just to say
16 that people can say whatever they want.

17 Q Okay.

18 A It doesn't make it true.

19 Q Okay. Now, you talked about appraisals and
20 things like that, and you said it's kind of like real
21 estate. You need comparables, right?

22 A You look for something that helps you form an
23 opinion that makes sense.

24 Q Right. Now, in this instance, you would look
25 for cars and compare cars in the same class, wouldn't

1 you?

2 You're not going to compare -- you're not
3 going to compare a Ferrari LaFerrari to a Chevy
4 Chevette, are you?

5 **A No. Are you asking me how I would appraise a**
6 **Mosler car? Is that the question?**

7 Q No, sir. I just want to be sure that you're
8 not -- that you don't think it's appropriate to compare,
9 for pricing purposes, cars of different classes.

10 **A That wouldn't make much sense, would it?**

11 Q Right. Okay. Now, you said that there are
12 factors that impact pricing, and you went through
13 someone's impression of the vehicle. That's subjective,
14 isn't it?

15 **A Yes, it is.**

16 Q Okay. And quality, that's highly subjective,
17 isn't it?

18 **A No.**

19 Q No? Okay.

20 **A It's pretty straightforward.**

21 Q Well, you would rate quality based upon an
22 opinion, right? What factors -- I'm sorry.

23 What empirical data do you have to share with
24 this jury about quality comparisons between the 2012
25 RaptorGTR and any other car?

1 **A** The components that go in would be
2 standardized -- what I would call "parts bin
3 components," something you can buy off the shelf at a
4 NAPA store or a General Parts store that every
5 neighborhood has.

6 **Q** So are you suggesting that something that's
7 purchased at a NAPA store is not quality?

8 **A** No, I'm not saying it's not quality. It's
9 common, it's not special, and it's not handmade.

10 **Q** Okay. Do you know how the RaptorGTR's -- have
11 you seen the interior of the RaptorGTR? I'm sorry, of
12 any of the Mosler products?

13 **A** Just pictures.

14 **Q** Just pictures. Do you know whether they
15 handmade their interiors?

16 **A** Well, just looking at the seats and so forth,
17 and looking at the gauges, they look to me like common
18 gauges that are available through parts catalogs --

19 **Q** Okay.

20 **A** -- and that have been perhaps slightly
21 modified.

22 **Q** What about the frames of the vehicles and the
23 chassis?

24 **A** I think the frame was probably assembled by
25 them. I would think the frame was designed and

1 assembled by them.

2 Q Right.

3 A The structural part of the frame, yes.

4 Q So a large portion of that car is handmade,
5 isn't it?

6 A I wouldn't say a large portion, I would say a
7 portion.

8 Q Okay.

9 A I mean, every car is certainly handmade at
10 some point when it has to be assembled because robots
11 aren't building the entire car.

12 Q Well --

13 THE COURT: Can I see the attorneys for a
14 second?

15 MR. ZAPPOLO: Sure.

16 (Thereupon, a sidebar conference was held.)

17 THE COURT: How much longer do you have on
18 Cross?

19 MR. ZAPPOLO: 15 to 20 minutes.

20 THE COURT: 15 to 20? Okay. And Redirect,
21 how long?

22 MR. WEBER: 15, 20 minutes.

23 THE COURT: I want to give them a break
24 because I think they look a little cooked, but 15,
25 20, 15, 20, that's 40 plus 10, that's about noon,

1 so that's about right. Okay.

2 MR. WEBER: Yeah.

3 THE COURT: I'll give them ten minutes right
4 now.

5 (Thereupon, the sidebar conference was
6 concluded.)

7 THE COURT: Mr. Mancuso?

8 **THE WITNESS: Yeah.**

9 THE COURT: We're going to take our ten-minute
10 break right now. We'll reconvene in about ten
11 minutes, okay?

12 **THE WITNESS: Fine. Thank you.**

13 THE COURT: All right. Deputy, we're going to
14 take ten minutes, so this is going to be our only
15 break before lunch, so if you need it, okay.

16 All right. We'll be in recess for ten
17 minutes.

18 (Thereupon, a short break was taken from
19 11:06 a.m. to 11:25 a.m.)

20 THE COURT DEPUTY: Come to order.

21 THE COURT: Let's bring them out.

22 So if we go 15 to 20 per side, we should be
23 done by lunch.

24 MR. WEBER: Yes.

25 MR. ZAPPOLO: Yes.

1 THE COURT DEPUTY: Jury entering.

2 (Jurors entering the courtroom at 11:26 a.m.)

3 THE COURT: All right. Please be seated.

4 It's your witness.

5 MR. ZAPPOLO: Thank you.

6 BY MR. ZAPPOLO:

7 Q Mr. Mancuso, I want to pick up where we kind
8 of left off a little bit.

9 A Sure.

10 Q How many supercars have you sold in China?

11 A I don't think any.

12 Q Okay. Because I noticed that your report
13 talks about the number of cars that could be sold in the
14 United States, right?

15 A Right.

16 Q Okay. So are you -- were you ever made aware
17 of the -- of any assertions of a distribution agreement
18 for distribution of Mosler products in China?

19 A No.

20 Q Okay. You haven't done any market surveys or
21 anything like that about the number of supercars being
22 sold every year in China, have you?

23 A No. We hear about it and read about the
24 Chinese market goes up and down sometimes during the
25 same year. It's in constant flux.

1 Q Okay. Well, sometimes it goes really high and
2 loud, right?

3 A It does.

4 Q Because they're making a lot of money over
5 there, aren't they?

6 A Sometimes they are.

7 Q And they have a lot of disposable income in
8 China, don't they?

9 A They are, but they're not stupid. They don't
10 spend money just like it's free.

11 Q Okay. Now --

12 A We have them try and buy cars from us. We've
13 never tried to send cars over there. Even Chinese
14 nationals that live in the United States try to buy cars
15 from us, so it can be very problematic and very
16 difficult to deal with at times.

17 Q So, Mr. Mancuso, in your report you wrote --
18 and I'm going to quote -- "There's no transfer of
19 saleability and/or desirability between an unauthorized
20 modification of a non-road legal, non-emission legal,
21 and a modern collectible Ferrari."

22 So you would agree with me that your opinion
23 is based upon your belief that the 2012 RaptorGTR had
24 non-authorized modifications on it, right?

25 A I don't remember if I was referring to that

1 **specific car or cars in general regardless of the**
2 **brand/make.**

3 Q Okay.

4 A **I think I was talking more generically about**
5 **automotive in general had a bigger landscape.**

6 Q Okay. Well, you understand that if someone
7 were to claim that there were unauthorized modifications
8 to a car, that could negatively impact the value of the
9 vehicle, correct?

10 A **Yes.**

11 Q Okay. Now, in this case do you know of any,
12 quote, unauthorized modifications to the 2012 RaptorGTR?

13 A **I don't know about anything about the car --**

14 Q Okay.

15 A **-- authorized, unauthorized, or anything about**
16 **it.**

17 Q Do you have any opinion or do you know
18 anything about any claims that the 2012 RaptorGTR is
19 non-road legal?

20 A **Not really, no. I don't know much about it.**

21 Q Okay. And you have no knowledge as to whether
22 or not the 2012 RaptorGTR would actually pass emissions,
23 do you?

24 A **No, I really don't.**

25 Q Okay. So that aspect of your report really

1 has no bearing on it, does it?

2 **A** **No, it does because what led me to those**
3 **conclusions and this position that I'm expressing right**
4 **now is the fact that because of the attributes that the**
5 **car doesn't have to compete in the exotic car classes**
6 **you referred to, I, early on, dismissed the car as a kit**
7 **car. It's in a completely different category, never to**
8 **return to the category others have an opinion that it**
9 **might be a part of. So in my mind, it was never a part**
10 **of it.**

11 **Q** **Because you thought that this was an**
12 **unauthorized modification of a non-road legal,**
13 **non-emission legal vehicle, right?**

14 **A** **Maybe one of the elements at that moment is**
15 **because of the quality of the car, the lack of history,**
16 **the lack of the sales, the lack of an order bank. It**
17 **wasn't a real car.**

18 **Q** **Sir --**

19 **A** **It was never a real car; it was a kit car.**

20 **Q** **I want to focus on what you wrote in your**
21 **report. Your words were "There is no transfer of**
22 **saleability and/or desirability between an unauthorized**
23 **modification of a non-road legal, non-emission legal**
24 **vehicle and a modern collectible Ferrari." Those are**
25 **underlined foundations for your opinion, aren't they?**

1 That the 2012 RaptorGTR is an unauthorized
2 modification of a non-road legal, non-emission legal
3 vehicle, those are underpinnings of your report and your
4 opinion, aren't they?

5 **A You know what? I'm confused by hearing my own**
6 **words that you're reading back to me at that point.**

7 Q Okay.

8 **A The way -- frame it simpler. If you talk to**
9 **me like I'm ten years old, it would be helpful.**

10 Q I'm just trying to -- I'm asking you -- well,
11 let me back up.

12 You used those words in your report, correct?

13 **A I believe so, yes.**

14 Q Okay. Now, do those words have any bearing on
15 your report?

16 **A Well, they would because I wouldn't put it in**
17 **there if they didn't have any bearing.**

18 Q Right. And so one of your underlying
19 assumptions in rendering your report was that the 2012
20 RaptorGTR is an unauthorized modification of a non-road
21 legal, non-emission legal vehicle, correct?

22 **A I think I was under the impression that that**
23 **particular car had been modified or changed somehow, and**
24 **those are the impressions that I had.**

25 Q Right.

1 **A And any modifications to the original**
2 **construction would be subject to question, yes.**

3 Q Okay. And you got those -- that impression
4 that the car had been modified from whom?

5 **A Just looking up things on videos. There's**
6 **some interesting videos on it where the car just looked**
7 **different to me. I don't -- you know, again, I'm not**
8 **that knowledgeable about the construction aspect of the**
9 **car, what was standard and what was not a standard.**

10 Q Right.

11 **A It just sounded like the car had a lot of mods**
12 **to it.**

13 Q Okay. But, nevertheless, your --

14 **A My opinion.**

15 Q -- your opinion is based upon the 2012
16 RaptorGTR having been modified from how it was created
17 at the factory, correct?

18 **A I think that's fair to say.**

19 Q Okay. And your opinion is at least partly
20 based upon your belief, from wherever it is, wherever it
21 came from, that the 2012 RaptorGTR is not road legal,
22 correct?

23 **A I suppose that's fair.**

24 Q Okay. And it's further true that your opinion
25 is based, at least in part, on your belief, wherever it

1 came from, that the 2012 RaptorGTR is not emissions
2 legal, correct?

3 **A I don't really know about emissions.**

4 Q Okay. But you included it in your report,
5 right? Non-emissions legal.

6 **A Well, if they had been modified differently**
7 **than an original, it could have affected the emissions.**

8 Q What information, if any, do you have to share
9 with this jury about any alleged modifications to the
10 2012 RaptorGTR that is different from when that -- the
11 information that was submitted to the Environmental
12 Protection Agency?

13 **A I don't know. I don't know what was**
14 **submitted. I don't know the specs on it. I was not**
15 **involved in the engineering aspect of it.**

16 Q All right. Thank you.

17 Now, do you know how much Mr. Mosler was
18 asking for the Photon that he was trying to sell about
19 the same time as the RaptorGTR?

20 **A No.**

21 Q Do you know about the comparison of -- or do
22 you have any information to compare the performance of
23 the Photon to the 2012 RaptorGTR?

24 **A No.**

25 Q But you did read articles that are at issue in

1 this lawsuit, right? Like Exhibit 53 that we showed up
2 on the screen before?

3 **A What was that? The pictures of the two cars,**
4 **the Ferrari and the Mosler?**

5 Q The one where I was talking about the -- and
6 I'll just read, "Covering one notch above Lamborghini
7 and Ferrari." Do you remember I put that up on the
8 screen for you to see?

9 **A I didn't see it, but I remember you reading it**
10 **to me.**

11 Q Okay. Well, that's something that's in the
12 public domain, right? The comparison of the Photon to a
13 Porsche 911 GT3?

14 **A Well, you're telling me it is. I don't**
15 **remember it nor did I see it when you said that.**

16 Q Okay. I want to read you something.

17 **A I don't agree with it either, by the way, just**
18 **so you know.**

19 Q Well, I want to read something that's from
20 Exhibit 53 in evidence.

21 And it's talking about the Photon at a local
22 track. And I'm quoting from Exhibit 53, "When a
23 volunteer stepped forward, he hopped into his
24 track-prepped Porsche 911 GT3 on slicks."

25 Based upon your knowledge of the car industry,

1 is a track-prepped Porsche 911 GT3 on slicks like just
2 an average car or is that a high-end vehicle?

3 **A High-end in performance or high-end in price?**

4 **What are you asking?**

5 Q High-end performance, isn't it?

6 **A A track-prepped Porsche on slicks would be a
7 couple of steps closer to a race car, yes.**

8 Q A 911 GT3, right?

9 **A Yes.**

10 Q Okay. I'm going on to read, quoting from 53,
11 "When we were told that he was the local Porsche club's
12 fastest instructor, we asked him to take it easy.

13 He didn't bother, and we're glad he didn't.
14 The Mosler's vast, curved windshield provided a
15 first-class, front-row view of the rear-engine Porsche
16 scrambling its way around corners, oversteering,
17 understeering, and countersteering. The Photon followed
18 along happily, nowhere near its limits, with a big-block
19 scream from the General Motors LS7 easily drowning out
20 the 911's flat-six wail, but only for a second at a
21 time. Any longer wide-open-throttle blasts and the
22 Porsche would have had a whole car shoved up its
23 engine-filled arse. In steady-state corners, the Photon
24 might understeer and its steering might not transmit
25 much information about what the front tires are doing,

1 but the g-forces it generates, your author's spinal cord
2 wasn't transmitting much useful information either.

3 We had time for only a few laps, but the
4 Photon's speed, cornering, and composure is dramatic.
5 The Photon is clearly more than a big engine strapped
6 into a light car -- indeed, a decade-long relationship
7 with Siemens has given Mosler access to supercomputers
8 for seriously advanced engineering."

9 Now that's a firsthand account of the Photon's
10 performance, correct?

11 **A It sounds like it. To me, I see something or**
12 **hear something like that and go "So what?"**

13 Q Okay.

14 **A That doesn't mean much.**

15 Q You don't think how a supercar performs is
16 important?

17 **A It's one element of several elements.**

18 Q Okay. But do you --

19 **A This is the old determining factor for**
20 **anything.**

21 Q Okay. But so we can agree that if the 2012
22 RaptorGTR performed better than the Photon, that would
23 be a pretty positive thing as far as pricing the
24 vehicle, wouldn't it?

25 **A No. I don't think it would have any impact at**

1 all on pricing.

2 Q Okay.

3 A The linkage of performance and pricing, I
4 don't agree with it at all.

5 Q So when people buy --

6 A It's not credible.

7 Q So when people buy supercars, they're not
8 looking for performance? Is that your testimony?

9 A You're saying it's everything that determines
10 the price.

11 Q I'm not --

12 A I'm saying it's something that's a factor.
13 You're overstating it.

14 Q It is a factor. We can agree with that,
15 right?

16 A That's all we can agree on when you start
17 talking performance and price. There's no connectivity
18 other than that small element right there.

19 Q You agree that there is connectivity between
20 performance of a supercar and its related price?

21 A Some, minuscule, minor.

22 Q Okay.

23 A You're basing everything on it and it's not
24 right. It's not -- my business is not --

25 Q Sir, I'm not basing everything. I've asked

1 you some, correct?

2 **A Yes.**

3 Q Didn't I repeatedly say at least one of the
4 factors is performance, right?

5 **A You're overstating it. You've been**
6 **overstating it.**

7 Q All right. Now the engineering of the vehicle
8 is important, isn't it?

9 **A Sure.**

10 Q Safety, the engineering safety of the vehicle
11 is important, isn't it?

12 **A These are all elements that go into it, yes.**

13 Q Okay. You would agree with me that a bare
14 carbon fiber is five times stronger than steel and one
15 of the most expensive materials used for structures in
16 supercars, wouldn't you?

17 **A I know that it's stronger than steel. I don't**
18 **know that it's five times stronger. I know that it's**
19 **stronger, and I know that it's more expensive.**

20 Q Okay. So the 2012 RaptorGTR was -- the
21 chassis and frame were built out of carbon fiber. You
22 know that, right?

23 **A I believe that's correct, yes.**

24 Q Okay. So that component makes it more
25 expensive to build than a lot of supercars or other

1 hyperexotics out there, doesn't it?

2 **A Well, as compared to one that might be**
3 **aluminum or steel, yes.**

4 Q Okay. And that carbon fiber is hand-done,
5 isn't it?

6 **A I think it is.**

7 Q Okay. Now, the body of the vehicle, the 2012
8 RaptorGTR, do you know what that was made out of?

9 **A No.**

10 Q Okay. So you don't know that it was made out
11 of carbon fiber?

12 **A That wouldn't surprise me if it was.**

13 Q Okay. And what about the interior?

14 **A What about it?**

15 Q Do you know what the interior was made up of?

16 **A No.**

17 Q Okay. Do you know what the seat buckets were
18 made of?

19 **A It would be probably aluminum, steel, or**
20 **carbon.**

21 Q Okay. Well, you wouldn't take issue if those
22 components were made of carbon fiber as well, right?

23 **A I take no issue at all with that --**

24 Q Okay.

25 **A -- in the same way.**

1 Q So you can agree with me that a large portion
2 of this car is handmade, right?

3 A I would agree that those specific pieces would
4 likely be handmade, yes.

5 Q You don't agree with me that those specific
6 pieces: The frame, the chassis, the body, the interior
7 components and seat buckets are not a large part of the
8 vehicle?

9 A I think they are, sure. I think that's a part
10 of it.

11 Q Okay. So you would agree with me then that a
12 large part of the 2012 RaptorGTR is handmade, wouldn't
13 you?

14 A Sounds like it, yes.

15 Q Okay. Now we've already talked about the
16 engine and the comparison of a, quote/unquote, stock
17 engine like you would put in a truck versus the engine
18 in the 2012 Raptor, so I want to keep moving along here.

19 You considered such issues as whether or not
20 the body was carbon fiber, didn't you?

21 A Consider it as far as what goes?

22 Q In your attempts to determine the volume of
23 sales and the sales price for the 2012 RaptorGTR.

24 A It would have a bigger impact on price, yes.

25 Q Okay.

1 **A** **And that would help the sales, yes.**

2 Q So you considered that, right?

3 **A** **I would be -- yes, I would agree with that.**

4 Q And you considered whether there was a carbon
5 fiber tub for the vehicle, right?

6 **A** **Yes.**

7 Q And we -- I think there was a discussion in
8 your Direct Examination about the power-to-weight ratio,
9 right?

10 **A** **Yes.**

11 Q You considered that, right?

12 **A** **Yes.**

13 Q Okay. And you considered -- we talked about
14 the engine that was used, correct?

15 **A** **Yes.**

16 Q All right. Now did you consider the -- I
17 think you testified about the rarity of the vehicle.
18 You considered that, right?

19 **A** **Yes.**

20 Q Okay. And you considered brand recognition,
21 right?

22 **A** **Yes.**

23 Q Did you --

24 **A** **The lack of brand recognition.**

25 Q Did you consider the top speed of the

1 vehicles?

2 **A No.**

3 Q You didn't consider --

4 **A Never thought about it.**

5 Q Okay. So top speed in a supercar is not an
6 important consideration for you?

7 **A Not anymore, frankly. It used to be, it's
8 fallen out of favor.**

9 Q Okay. What about its appearance?

10 **A Important.**

11 Q Important, okay.

12 And the price, correct? You thought about the
13 prices, about how many vehicles could be sold, correct?

14 **A Pricing has an impact on volume, correct.**

15 Q Okay. Now, do you have any empirical studies
16 that you use to compare the carbon fiber body of the
17 Mosler 2012 Mosler RaptorGTR to the -- any other exotic
18 car that you compared it to? Like when you said you
19 compared it to the Acura NSX, do you have any empirical
20 studies on that?

21 **A No, because what the manufacturers have been
22 doing is phasing in pieces of carbon here and there.
23 Some of them have carbon hoods and doors. Some of them
24 have carbon upper deck plates. They've been going
25 partially -- they've been going to partial carbon**

1 **construction.**

2 Q So you just considered that in the general
3 scheme of things in your opinion about those things,
4 correct? What you've done --

5 **A We know that the carbon body cars are more**
6 **expensive if it's a full carbon body.**

7 Q Right. But you don't have any empirical
8 studies that compare one car to another and the price,
9 et cetera?

10 **A No, other than the actual live auction reports**
11 **where the real values are set.**

12 Q Okay. And the same question with the carbon
13 fiber tubs. You don't have any empirical studies to
14 share with the jury about that, correct?

15 **A Just auction reports and cars that may have**
16 **had carbon pieces on them.**

17 Q And that was you going through and assessing
18 those and assigning some type of value to that in your
19 opinion, right?

20 **A I didn't assign values to them, the actual**
21 **marketplace did.**

22 Q Okay.

23 **A I would be reading it for understanding of**
24 **what cars are actually trading for as real value in the**
25 **real marketplace.**

1 Q So did you do any -- do you have any copies of
2 these things that you relied upon, the sales and et
3 cetera? They're not included with your report, that's
4 why I asked.

5 A I'd say that it's a moving target because the
6 data is alive. There's apps that track all that by
7 brand and they track all of that by sale and date and
8 history of the car. There's pretty exhaustive material
9 available. So I tend to look at what's the most recent
10 sales. Those are the ones that are most relevant.

11 Q So you took that into account when rendering
12 your opinion, the most recent sales, right?

13 A Yes.

14 Q Okay. But this projection was supposed to be
15 back from 2012, wasn't it?

16 A Yes, I believe so.

17 Q Okay. But you didn't use sales figures from
18 2012, did you?

19 A No. You were asking me generically how I
20 would appraise cars and determine the values.

21 Q Right.

22 A I don't have -- I don't have reports from that
23 point tied to those calendar years and those models
24 other than I was appraising cars during that time and
25 using the market availability of research at that time

1 to determine values at that time. And trying to project
2 it forward is where the difficulty comes in.

3 Q Okay. Now we're getting close.

4 A To what?

5 Q To me wrapping up.

6 A Oh, okay.

7 THE COURT: Very close, right?

8 BY MR. ZAPPOLO:

9 Q I'm just trying to give you a heads-up, okay?

10 A Okay.

11 THE COURT: Let me see the attorneys.

12 (Thereupon, a sidebar conference was held.)

13 THE COURT: All right. So 15, 20 minutes was
14 about ten minutes ago.

15 MR. ZAPPOLO: I'm sorry, Your Honor. I got --

16 THE COURT: Okay.

17 MR. ZAPPOLO: I got two things I want to
18 follow-up on.

19 THE COURT: Quickly.

20 MR. WEBER: He cuts into my time.

21 (Thereupon, the sidebar conference was
22 concluded.)

23 BY MR. ZAPPOLO:

24 Q Mr. -- I apologize. I forgot your name, sir.

25 A Mancuso.

1 Q Mancuso, thank you. I just want to put one
2 thing up on the -- oh, what does the 2012 RaptorGTR look
3 like?

4 A My first thought when you say that to me is it
5 looks like a race car.

6 Q Okay.

7 A It looks like a high-performance race car to
8 me.

9 Q All right. Not a kit car, correct?

10 A I think more in terms of racing because I
11 associate it with a racetrack.

12 Q Okay. Now --

13 A Yeah, I see a picture of it. I think it's a
14 good looking kit car.

15 Q Okay. Now that good looking, quote/unquote,
16 kit car you said has a -- the power-to-weight ratio
17 strictly relates to acceleration, but the weight of the
18 vehicle actually relates to other performance
19 characteristics of the vehicle, correct? Like cornering
20 and braking?

21 A Yes, sir, you're correct.

22 Q Now you've never sat in one of these cars,
23 have you?

24 A No.

25 Q So you don't know anything about the car's

1 braking, its comfort, its ease on entry, its turning,
2 it's cornering, et cetera, do you?

3 **A No, nothing other than what I read about it**
4 **and impressions that I would draw.**

5 Q Okay. And I wrote this down, you said you
6 couldn't come up with a meaningful or rational thought
7 process to opine as to future sales prices because you
8 thought that if you could do that, you'd be in the stock
9 market, right?

10 **A Right.**

11 Q So, in essence, you haven't been able to tell
12 this jury anything about sales volume or pricing other
13 than just the negative "I don't think it would have sold
14 at that ratio or at those numbers," right?

15 **A No. What I was saying is you can't guess at**
16 **it. You can't make a guess, and you can't make the**
17 **guess turn into the truth. That's the -- that's the**
18 **bridge I can't build.**

19 Q And so you're not making any guess, correct?

20 **A You can't -- I can't make an educated guess.**

21 Q Right. And so you can't give an opinion about
22 the true price value of the 2012 RaptorGTR --

23 **A Well, no, because --**

24 Q -- or the value -- excuse me, sir, let me
25 finish my question -- or the number of units that would

1 have been sold, correct?

2 A No, that's not correct. Because I can't make
3 that bridge, I can't get any farther with it. And you
4 can't project from a bridge that you can't build. It
5 can't be built. The sales number cannot be built. It
6 can't be established with any credibility or foundation,
7 in my opinion.

8 Q One way or the other, right?

9 A I don't understand what that means.

10 Q Your opinion goes one way or the other. You
11 can't project 20 units or you can't project not 20
12 units, can you?

13 A Well, based on the lack of the order bank, the
14 lack of resale, and the lack of comparable sales, if you
15 ask me an opinion, I would say that it's hard to see any
16 sales volume going forward.

17 Q Okay.

18 A And so then in terms of the 20-year would be
19 great for five years, I would say -- the first thing
20 that comes to mind -- impossible.

21 Q So you, when making that opinion, completely
22 disregard all the other factors that we've discussed,
23 correct?

24 THE COURT: Let me see the attorneys for a
25 second.

1 MR. ZAPPOLO: And that's my last question.

2 Thank you.

3 **THE WITNESS: Yes.**

4 MR. ZAPPOLO: That's my last question, Your
5 Honor. I'm done. Thank you.

6 Thank you. Mr. Weber may have some questions
7 for you.

8 THE COURT: Redirect.

9 MR. WEBER: Do you want to do it now or do you
10 want to wait?

11 THE COURT: No, now.

12 MR. WEBER: I'm not going to rush through,
13 Your Honor.

14 THE COURT: I know.

15 REDIRECT EXAMINATION

16 BY MR. WEBER:

17 Q Okay. Mr. Mancuso, can you hear me?

18 **A Yes.**

19 Q Okay. First, Mr. Zappolo asked you about your
20 report, but he didn't show it to you, right?

21 **A Right.**

22 Q You were relying on him to accurately say what
23 your report said, right?

24 **A Yes.**

25 Q Okay. So let's take a look at your actual

1 report, okay?

2 **A That's fine.**

3 Q Okay. So now I'm going to actually show you
4 your report and not ask you questions without showing it
5 to you.

6 So here we have your report in this case,
7 right?

8 **A Yes.**

9 Q Now let's go to your first opinion in this
10 case, which begins on page 3. Can you see that okay,
11 Mr. Mancuso?

12 **A I can see the report. It's difficult to read
13 it.**

14 Q Okay.

15 **A Okay. It's closer, now I can see it. I can
16 read it now.**

17 Q Okay. So let's scroll down a little bit.

18 **A Okay.**

19 Q First, you can see in number 1, "The music
20 video presented the vehicle in the worst possible
21 circumstances." What did you mean by that?

22 **A From a standpoint of exclusivity,
23 desirability, brand recognition -- if that was a brand
24 where I was representing one of the brands we talked
25 about earlier, I would have violated all the rules and**

1 regulations for presenting and showing products in an
2 unauthorized setting.

3 Manufacturers generally have to approve a
4 proper presentation of a product that parallels with the
5 original designs and market positioning of the product.
6 That was -- and that was the one that was just kind
7 of -- looked like a sort of a homespun video of some
8 type.

9 Q You didn't like the video, right?

10 A I wasn't a big fan of the video from a
11 professional standpoint, no.

12 Q Let's look at the next opinion. Can you see
13 that okay?

14 A Yes.

15 Q And your opinion was "There's no evidence that
16 Warren Mosler claimed a vehicle to be a fraudulent
17 vehicle." And what did you mean by that opinion?

18 A Well, I've never heard anything or read
19 anything or seen any opinions that that was ever said.
20 That was something I never heard before.

21 Q And what did you write -- what did you mean by
22 this opinion? You wrote "The way in which the
23 Plaintiffs' advertised the 2012 Mosler RaptorGTR in
24 connection with Abby Cubey diminished the value of that
25 vehicle beyond mechanical modification, even if there

1 were no actual modifications."

2 So, even if there were no actual
3 modifications, you believe that the value of the vehicle
4 was still diminished, correct?

5 A I do, and that's because of my Ferrari
6 background. And I can tell you that, from a brand
7 management and brand resale and brand protection and
8 future sales standpoint, we're under such extraordinary
9 regulations and so sensitive to the way things are
10 positioned.

11 For example, as a dealer, we can't even -- we
12 can't use any of their logos. We can't use -- we can't
13 publish a picture without approval from the factory. We
14 can't have other cars in the picture. We can't have
15 other things in the background. We can't lease cars to
16 people that are going to use them for ads, no matter
17 what they offer us, and they've offered us a lot of
18 money to use the cars.

19 We can't align them with other companies. We
20 can't align them with other personalities. That's not
21 within our purview to do that. Our brand is very
22 sensitive to situations where presentations seem to be
23 completely divorced from any rules or regulations. It's
24 a unique thing.

25 Q I want to show you that in 4 you wrote "The

1 alleged statement, that the vehicle will not pass
2 emissions, would not make the vehicle nearly
3 unsaleable." What did you mean by that?

4 **A Would not make the vehicle?**

5 Q You wrote "This is a very specific-focused
6 application of an automobile. The potential market of
7 the car would understand the areas where it could be
8 used and not be used." What do you mean by that?

9 **A Some owners would say "I'm going to use it
10 only on the track. I'll never drive it on a public
11 road," and they wouldn't care that it wouldn't pass
12 emissions.**

13 Q So --

14 **A So some owners might buy a car and not care at
15 all that it doesn't pass emissions and put an illegal
16 plate on it and drive it anyway.**

17 Q So does that mean that even if someone has
18 stated that the car will not pass emissions, even if it
19 was modified, even if it was not street legal, some
20 people wouldn't care?

21 **A Yeah. Some people wouldn't care, that's true.**

22 Q And why, for this specific-focused application
23 of an automobile, does that opinion apply to the Mosler
24 car, the car at issue in this case?

25 **A I'm not sure of the question that you're**

1 asking me.

2 Q Well, when you say "This is a very
3 specific-focused application of an automobile," you're
4 referring to the car in this case, right? The
5 RaptorGTR?

6 A Yes.

7 Q Okay. Now, next you wrote 5, "The potential
8 buyers of the 2012 Mosler RaptorGTR would not solely
9 rely on the Internet. The Internet is not a singular
10 source of information for buyers of high-performance
11 vehicles." What did you mean by that?

12 A Well, as I referred to earlier in previous
13 questioning, the clients or prospects that look at these
14 vehicles would certainly see what was on the Internet as
15 one of many sources that they may go to.

16 They might go to their friends. They might go
17 to a magazine. They might look on the Internet. They
18 might go on YouTube. They might look at newspaper
19 articles. They might look at race track summations.
20 They might talk to friends of theirs. They might go to
21 car clubs. They might go to seminars or car shows or
22 auctions or things like that.

23 There's a whole series of sources with
24 information and so we all know we're all drowning in
25 information at some point. That's true with cars as

1 well. There's no one single source that gives you a
2 yes-or-no decision.

3 Q Then you wrote number 6, "Just because a
4 vehicle is low volume does not make it collectible." Do
5 you see that one?

6 A Yes.

7 Q Then we have number 7. You wrote -- right?

8 A Well, let me back up to 6. You know what? It
9 doesn't mean -- it could mean it's not a good car
10 because no one's buying it. It could mean a sales
11 failure. So it doesn't mean collectible as expensive,
12 it could just mean the opposite.

13 Q And we see your opinion 7. We see your
14 opinion 8, right? Do you see -- you wrote, "I have seen
15 no evidence that Warren Mosler publicly derided the 2012
16 Mosler Raptor GTR in a way that would impact the 2012
17 Mosler RaptorGTR's selling price." What do you mean by
18 that?

19 A I never picked up any of the things that I
20 read or hear or see that give any opinions at all
21 regarding it. I never hit a screen anywhere or a
22 surface to a point where I had heard that.

23 Q You wrote --

24 A It was news to me.

25 Q -- 9, "There is no basis for saying that the

1 2012 Mosler RaptorGTR would have sold 20 vehicles per
2 year at a price of \$700,000 each in the United States."

3 Do you see that?

4 **A Yes.**

5 **Q** Now, what was your basis for stating that?

6 **A** **It's the single biggest thing I can't connect.**
7 **I can't build, as I talked about earlier, that bridge to**
8 **say "Okay. How could I come up with a forecast? If I**
9 **was going to come up with a forecast, how would I do it?**
10 **And how would I do it in this specific case with this**
11 **car?"**

12 **The information that I have, the real factual**
13 **information that I have: No order bank, no history, no**
14 **resale values, no auction reports, how would you even**
15 **construct anything other than a guess? I don't know how**
16 **to do it.**

17 **Q** And you wrote --

18 **A** **Because can you guess a quarter ahead? 90**
19 **days ahead? Maybe. A year and six months -- six months**
20 **to a year? It's stretching too far. It's not credible.**
21 **Five years? Impossible.**

22 **Q** You wrote --

23 **A** **Impossible.**

24 **Q** -- "Plaintiffs' witness suggests that during
25 the last recession there were lost sales of 20 per year

1 because the car was so fast. This is incorrect
2 reasoning as speed and high-performance over the last 15
3 years have never been as expensive as they have been
4 now."

5 And now you referred to vehicles under 100,000
6 with similar or better performance statistics, and
7 Mr. Zappolo questioned you why you wouldn't compare
8 different classes of vehicles. Do you remember him
9 asking you why you wouldn't compare different classes of
10 vehicles?

11 **A Yes.**

12 Q And one of the questions was -- well, I think
13 he said something like it will be inappropriate to
14 compare vehicles of different classes, right?

15 **A Yes.**

16 Q But why would you compare, for purposes of
17 valuing the RaptorGTR, to a car that wasn't in the class
18 of the RaptorGTR or a hyperexotic?

19 **A Why would we compare it?**

20 Q Well, would you compare -- would you ever
21 compare, let's say, a hyperexotic to a car that maybe
22 wasn't considered a hyperexotic because it had similar
23 performance characteristics?

24 **A You know, it's been so overdone that**
25 **everything is fast. Everything just keeps getting**

1 faster. Look at the electric cars now.

2 So, yeah, you just can't throw performance as
3 the sole determining factor of everything that affects
4 the car. Sales volume and pricing and resale, it just
5 doesn't connect. It doesn't make any sense to draw that
6 conclusion from it. I can't find a way where I could
7 build a semi-credible forecast. I can't find any
8 results where I could build something that I could say,
9 yes, I feel pretty good about it.

10 Q And number 10, opinion 10, you discuss the
11 heritage of the cars, correct?

12 A Yes.

13 Q And in 11 you discuss the LaFerrari?

14 A Yes.

15 Q In 12 you discussed whether the RaptorGTR is
16 equivalent to the LaFerrari or any other mods produced
17 by Ferrari, right?

18 A Yes. It's not equivalent in any way.

19 Q But you didn't see the language that
20 Mr. Zappolo referred to, did you?

21 A No. I was confused by some of that that was
22 being read to me.

23 Q And you didn't actually assume in your
24 analysis that the car -- the RaptorGTR was a modified
25 car, did you?

1 A No. No. That was -- I was surprised by that.
2 I had never thought really about modifications other
3 than I might have assumed there was some modification,
4 but I never raised that issue on my own.

5 Q Mr. Zappolo asked you how many cars you sold
6 in China. Did you understand that to mean like you
7 physically sold in China?

8 A Have we exported any cars to China, that's how
9 I assumed it was, and we have not.

10 Q But you have actual experience selling cars to
11 Chinese nationals who are in the United States, right?

12 A Yes.

13 Q Okay. And do those Chinese nationals value
14 cars any differently than how you valued in your opinion
15 as to the RaptorGTR in this case?

16 A They seem to be particularly interested in
17 very limited edition cars, such as the Ferraris that we
18 were selling. And in some cases they were involved in
19 cars where the performance was greater than they were
20 expecting. And there was --

21 There were some significant accidents by some
22 of the clients that were buying cars that had such
23 high-performance envelopes. It was, you know, kind of a
24 phenomena that slowed down a little bit. That goes up
25 and down all the time. Sometimes we have a lot of

1 business and most of the time we don't have much from
2 it, but when we do, it's -- it's interesting.

3 Q You saw a picture of a Ferrari Enzo and a
4 Mosler MT900, right?

5 A Yes.

6 Q How does the Ferrari Enzo compare to the
7 Mosler MT900 in your opinion for valuation purposes?

8 A There's no comparison at all. I look at one
9 as a kit car, and the other one is the real McCoy.

10 Q Why?

11 A There's a movie years ago called Ferris
12 Bueller's --

13 Q Mr. Mancuso, we don't have a lot of time. Why
14 is the Ferrari Enzo valued so highly in your opinion
15 versus the Mosler MT900?

16 A So I take the car from the frame up. One
17 example is the motor. The motor itself is handmade.
18 The motor itself in an Enzo probably costs \$150,000 for
19 openers, where the motor in the -- the motor in the
20 Mosler is probably \$5,000, \$6,000. How's that for a
21 difference?

22 The transmissions are all handmade by Ferrari.
23 The suspension, springs, everything is done by handmade
24 with these guys. There's a huge -- it's not even
25 comparable. One's a kit car, one's a masterpiece.

1 Q Mr. Zappolo asked you about the body, the seat
2 buckets being handmade, but did he ask you whether the
3 transmission was handmade in the RaptorGTR?

4 A No. He didn't talk about transmission.

5 Q Did he ask you whether there were Corvette
6 instrumentation in the RaptorGTR?

7 A No.

8 Q Did he ask you whether the steering column was
9 made by Corvette --

10 A No.

11 Q -- in the RaptorGTR?

12 A We didn't talk about that.

13 Q Does the transmission, the instrumentation,
14 and the steering column are handmade affect the value of
15 an automobile?

16 A Yes.

17 Q Mr. Zappolo asked you whether being "green" is
18 important in valuing a vehicle. Is the Ferrari a green
19 vehicle?

20 A Pretty close, yes.

21 Q Is the Lamborghini a green vehicle?

22 A More so than they've all been before. They've
23 been running almost negative, super-low emissions,
24 carbon emissions at this point.

25 Q Is being green the primary factor in valuing a

1 vehicle?

2 **A No.**

3 Q Now does lightweight translate to a high value
4 for a car?

5 **A There's no direct correlation to that unless**
6 **it has other impacts on the car, which it would in**
7 **performance.**

8 **For example, Lotuses are really superlight**
9 **cars. They'd never become expensive because of that.**
10 **They'd never be expensive because of their performance**
11 **and they're lightweight, so...**

12 Q Mr. Zappolo asked you about turbochargers. Do
13 you remember that?

14 **A Yes.**

15 Q He didn't tell you where the turbochargers
16 were located, but he asked you whether placing them in
17 an unusual place would affect the value of a car, right?

18 Does placing turbochargers in an unusual place
19 in a car necessarily impact the value of a car?

20 **A I guess if it works better, it might.**

21 Q Well --

22 **A But I don't know what the rationale for it**
23 **would be other than he did talk about cooling it better,**
24 **so...**

25 Q In your opinion, if the turbochargers were

1 placed on the car at issue in this case, the RaptorGTR,
2 in an unusual place, would that affect your opinion as
3 to the value of the RaptorGTR?

4 **A If I understood the reasoning for it, which I**
5 **don't understand, and I don't understand what the**
6 **framework of the question is either, I would just**
7 **default back and say it depends on if there was a**
8 **technical advantage for doing that.**

9 Q Would it justify a \$700,000 price for the
10 RaptorGTR?

11 **A No. No, it would not.**

12 Q Why do you --

13 **A I can't.**

14 Q Why do you laugh about that, Mr. Mancuso?

15 **A I'm sorry, what was that?**

16 Q Why do you laugh? Why would not -- why would
17 placing the turbochargers in the RaptorGTR still not
18 justify a \$700,000 price?

19 **A Because the price of 700,000 is absurd. It's**
20 **absurd at half the price.**

21 MR. WEBER: Okay. Mr. Mancuso, I have no
22 further questions.

23 THE COURT: All right. Deputy, and the
24 attorneys let me see you.

25 MR. ZAPPOLO: Your Honor --

1 THE COURT: Oh, I'm sorry. Do you have any
2 questions for this witness before I release him?
3 Seeing none, let me see the attorneys and let me
4 see the deputy.

5 (Thereupon, a sidebar conference was held.)

6 THE COURT: Okay. So I'm going to break now.
7 Do you want to come back in an hour, so 1:10,
8 1:20-ish?

9 MR. WEBER: 1:10.

10 MR. ZAPPOLO: Okay. And what witness are you
11 going --

12 MR. WEBER: We'll decide that.

13 THE COURT: Mr. Zappolo --

14 MR. ZAPPOLO: -- to call then? I just asked
15 what witness --

16 THE COURT: Oh, do you know?

17 MR. WEBER: I'm going to talk about it.

18 (Thereupon, the sidebar conference was
19 concluded.)

20 THE COURT: Okay. All right. Deputy, we're
21 going to break for lunch. Ladies and gentlemen,
22 just like yesterday, the deputy is going to walk
23 you across the street. I guess you guys must have
24 liked that. Again, please --

25 MR. WEBER: Do you want to excuse the witness?

1 THE COURT: I'm sorry. Mr. Mancuso, you're
2 excused. Please have a great day.

3 **THE WITNESS: Am I done for the day?**

4 THE COURT: This witness is released, correct?

5 MR. WEBER: Yes.

6 MR. ZAPPOLO: Yes, sir.

7 THE COURT: Have a great day, Mr. Mancuso.

8 **THE WITNESS: I'm sorry, I couldn't hear that.**

9 THE COURT: You're excused. Thank you. Have
10 a great day.

11 MR. WEBER: You're excused.

12 **THE WITNESS: Okay. Thank you.**

13 THE COURT: Okay. Thank you.

14 All right. Again, as always, please don't
15 discuss this case with anybody: Family members,
16 friends, or amongst yourselves until it's time to
17 do so. Don't use your telephones. Don't use the
18 Internet to look up the names, places, people
19 involved in this case.

20 It might be tempting. There's a lot of
21 conversation that's been had over the past 12 or so
22 days, but please don't do any research on your own.

23 Deputy, we're going to reconvene in about one
24 hour, so 1:10 we'll be back up here. Okay? Have a
25 great day.

1 (Jurors exit the courtroom at 12:12 p.m.)

2 THE COURT: All right. We're in recess until
3 lunch.

4 I'm not going to go over it right now or
5 during lunch, we're going to break, but if you have
6 it by the end of the day today, jury instructions
7 and the verdict form would be great; but if not,
8 then absolutely by tomorrow morning I'd like to
9 have them in my hand --

10 MR. WEBER: Okay.

11 THE COURT: -- so we can start looking them
12 over. I was supposed to have summary judgment
13 tomorrow at lunch; we'll see how that goes. But
14 tomorrow, in the evening at the very latest, I'd
15 like to have a finalized set because Friday -- in
16 the morning I have a long morning. We're going to
17 reconvene and then at 2 o'clock I'm charging the
18 jury.

19 MR. ZAPPOLO: I understand, Your Honor. I've
20 actually asked for the transcript from the rulings
21 yesterday because we were all over the place.

22 THE COURT: Okay.

23 MR. ZAPPOLO: I don't mean that in a bad way,
24 I just mean it's going to -- I need to figure that
25 out.

1 THE COURT: We were going for about two hours
2 yesterday.

3 MR. ZAPPOLO: Right.

4 THE COURT: I understand.

5 MR. ZAPPOLO: And there was some jumping back
6 and forth in different counts and other things, so
7 I need that transcript in order to try to put this
8 all together.

9 I'm sure Mr. -- I invite Mr. Weber to tell me
10 what his thoughts are.

11 MR. WEBER: I think it's pretty
12 straightforward. I don't know if we need the
13 transcript. I think we know what the rulings are.

14 THE COURT: All right. I'm going to address
15 that tomorrow. If you guys can give me a finalized
16 set, I want one set.

17 If there's an issue, then you can give me a
18 proposed competing sheet, but as far as most of it,
19 most of it should be pretty straightforward. Okay?

20 MR. WEBER: Yes, Your Honor.

21 THE COURT: That way we can just go through it
22 very quickly instead of having to compare many,
23 many pages at the same time.

24 MR. ZAPPOLO: Yes.

25 THE COURT: Okay. All right.

1 MR. WEBER: Thank you, Your Honor.

2 THE COURT: Have a good lunch.

3 (Thereupon, a lunch break was taken from
4 12:14 p.m. to 1:28 p.m.)

5 THE COURT DEPUTY: Court is session.

6 MR. WEBER: We're going to do a deposition
7 designation reading.

8 THE COURT: You're going to read a deposition?

9 MR. WEBER: Yeah.

10 THE COURT: All right. Designations are not
11 an issue?

12 MR. WEBER: Not an issue.

13 MR. ZAPPOLO: For the record, counsel is
14 waiving his objections, and so we're just going to
15 read what each side has designated.

16 THE COURT: Wonderful. Whose deposition is
17 this?

18 MR. WEBER: Benjamin Greene, Your Honor, the
19 author of the article with the strike-through, if
20 you remember.

21 MR. ZAPPOLO: Your Honor, before the jury
22 comes out, my client pointed out during the lunch
23 his impression was you hadn't read our motion or
24 our response with the incorporated motion for
25 reconsideration. I just want to --

1 THE COURT: Well, you gave it to me like two
2 seconds before --

3 MR. ZAPPOLO: I understand. My client is
4 asking that you take some time to read that and --

5 THE COURT: That's a reasonable request.

6 MR. ZAPPOLO: Thank you, Your Honor.

7 THE COURT: It's right here. I just can't do
8 it while we're in trial.

9 MR. ZAPPOLO: I totally understand, Your
10 Honor. I just --

11 THE COURT: And it's, you know, technically a
12 motion for reconsideration, which I guess I don't
13 have to grant. Let's approach.

14 THE COURT DEPUTY: Jury entering.

15 (Thereupon, a sidebar conference was held.)

16 THE COURT: Now I'm sensitive to your client,
17 I'm going to read it, but, again, you know, it is a
18 motion for reconsideration and technically we
19 already ruled on it, you know. So I don't want to
20 say I'm prejudiced to him, but I'll read it.

21 If it's Earth-shattering then, you know, I'll
22 address it in an Earth-shattering way, which is
23 going to upset everybody; but if it's not, it is
24 what it is. But it's a reasonable request. I
25 don't want him to feel ignored.

1 MR. ZAPPOLO: Thank you.

2 THE COURT: I don't want him to feel like he's
3 brushed aside. You know, I'll read it, I just
4 can't do it right this very second.

5 MR. ZAPPOLO: I understand, Your Honor. I
6 thank you for the Court's time.

7 MR. WEBER: Your Honor, what I would say is
8 that this is a distraction because we're just being
9 sandbagged for a motion for reconsideration during
10 trial and we've already put on witnesses. This is
11 going to upset the flow of the trial potentially
12 and Your Honor should not consider this motion for
13 reconsideration. I haven't even had a chance to
14 read it.

15 MR. ZAPPOLO: Your Honor --

16 THE COURT: It's a motion for reconsideration.
17 I don't need to grant it, but as a courtesy to his
18 client, I'm going to read it, but I'm just not
19 going to get to it in this very second. We have
20 testimony and obviously I'm paying attention to the
21 testimony because I have to consider objections
22 based on testimony.

23 So we're going to proceed with trial, but
24 perhaps at the end of the day today I will go
25 inside and read this. Okay?

1 MR. ZAPPOLO: Okay. Thank you.

2 (Thereupon, the sidebar conference was
3 concluded.)

4 (Jurors entering the courtroom at 1:31 p.m.)

5 THE COURT: All right. Please be seated.
6 Please be seated.

7 Ladies and gentlemen, we're going to have the
8 deposition read to you of Benjamin Greene. Just
9 like all the other depositions, I'm going to ask
10 that you please consider this as you would consider
11 any other evidence in this trial.

12 Okay. It's your witness.

13 MR. WEBER: Benjamin Greene.

14 Do you have to swear him in, Your Honor?

15 THE COURT: Well, they're already sworn in --
16 right? -- in the deposition?

17 MR. WEBER: I think you swore in the other
18 people.

19 THE COURT: Do you solemnly swear to tell the
20 truth?

21 **THE WITNESS: Yes.**

22 EXAMINATION

23 BY PLAINTIFFS' COUNSEL:

24 Q Okay. Now, that letter -- or that email,
25 excuse me, reads, 'My name is Benjamin Greene.' Of

1 course we know that's true. It says, 'I work for the
2 duPont REGISTRY.' We just covered that.

3 Now you went on to write 'I see you recently
4 released the Mosler RaptorGTR.' Where did you get that
5 information?

6 **A I believe there was a video online that was**
7 **released, and that's how people knew that it was**
8 **about -- or it came about.**

9 Q All right. And do you recall anything besides
10 seeing that video?

11 **A No.**

12 Q Okay. How did you come across the video?

13 **A Well, I mean, I kept my hand on the pulse of**
14 **what was going on in the industry. So as soon as**
15 **something like that would come open, I would normally**
16 **become aware from other blogs to Google set up with**
17 **every manufacturer's name. As soon as something is**
18 **posted on the web, I had a chance to see it.**

19 Q Okay. Great. Thank you.

20 You went on to write 'I just wanted to confirm
21 a couple of points with you.' That goes back to your
22 training with -- from the University of South Florida,
23 correct?

24 **A Yes.**

25 Q All right. Next you wrote 'It is my

1 understanding that the RaptorGTR is not an official
2 Mosler product.' Where did you get that understanding?

3 **A It's hard to say. I know that I spoke with**
4 **people at Mosler.**

5 Q You spoke with people at Mosler before
6 November 17, 2011, at 5:47 p.m., correct?

7 **A I can't recollect. I'm not sure of the dates**
8 **and times at this point.**

9 Q Okay. Let me ask you this: Back in November
10 of 2011, did you keep any notes of anything you were
11 doing relative to any articles?

12 **A I may have had stuff at duPont REGISTRY at**
13 **that time, but that's all -- I have no way of accessing**
14 **that.**

15 Q Okay. Do you remember having any telephone
16 conversations with anyone at Mosler?

17 **A Yes. I called Mosler, and then I emailed**
18 **them.**

19 Q Okay. So Mosler -- well, all right. And do
20 you recall speaking with anyone specifically at Mosler?

21 **A I spoke to a man on the phone.**

22 Q Do you remember that man's name?

23 **A No.**

24 Q Okay. Thank you. I appreciate that.

25 Now -- then you refer to aftermarket, as I was

1 reading along -- let me start from the beginning. You
2 wrote 'It's my understanding that the RaptorGTR is not
3 an official Mosler product, but an aftermarket product
4 offered by Supercar Engineering, Inc.' That last
5 clause, 'but an aftermarket product offered by,' do you
6 recall who told you that it was an aftermarket product
7 offered by Supercar Engineering?

8 **A Not directly, no.**

9 Q All right. Then you went on to ask a
10 question. 'So will it be up to customers to purchase a
11 Mosler MT900S in order to upgrade it to' -- sorry.
12 'Upgrade it.' Then it says 'RaptorGTR spec.' I guess
13 there's a little typo there. 'Does the \$700,000 price
14 tag include the \$350,000 MT900S?'

15 My question to you is: Do you recall where
16 you got the two figures for \$700,000 or \$350,000?

17 **A Not the \$700,000. I mean, maybe I looked on**
18 **their -- whatever website was offered for the car.**
19 **Looked around on the Internet to see what other people**
20 **were reporting the price tag to be. The \$350,000? I**
21 **mean, we kind of had -- we had buyer's guides. I**
22 **remember that Mosler was in those, so it was probably**
23 **just a roundabout figure that I knew they would cost.**

24 Q 'It appears that you and Mosler are not
25 currently on best of terms.' Do you remember why you

1 wrote that?

2 **A** When I spoke to someone at Mosler, they said
3 that this kind of came about because Todd and Jill had
4 separated.

5 Q So the man that you spoke to at Mosler said
6 that Todd and Jill had separated?

7 **A** Yes.

8 Q Sorry. You answered, I didn't hear you.

9 **A** Yes.

10 Q Okay. Thank you. That wasn't a conversation
11 with Jill Wagner, was it?

12 **A** I believe that the timeline goes, I called
13 Mosler. Spoke with the man. I'm not even sure how I
14 got her email address, but I followed up by email with
15 Jill and talked to her at some point -- at that point.

16 Q Okay. And do you recall having any verbal
17 conversations -- well, we already covered that. You
18 just never had any conversations with Mr. Wagner,
19 correct? Verbal? This is on page 15.

20 **A** That's correct.

21 Q I would like you to take a look at Exhibit 6
22 now.

23 (At this time Plaintiffs' Exhibit Number 6 was
24 marked for identification.)

25 Q Answer -- oh, go ahead.

1 **A Yes.**

2 Q And if you look to page 2, did you write
3 that -- is that a blog?

4 **A It appears to be.**

5 Q Okay. And did you write that portion of the
6 blog that begins with 'Supercar Engineering, Inc., SEI'?

7 **A I would guess so. I mean, I don't have any
8 reason to believe not.**

9 Q All right. Now, that -- is it fair to call a
10 blog an article?

11 **A Yes.**

12 Q Okay. With respect to this article, it says
13 that Supercar Engineering, Inc. is a Mosler distributor
14 for J. Todd Wagner. How did you come by that
15 information?

16 **A I mean, the ex-Mosler engineer -- that was
17 given to me, I believe, by the phone call with Mosler.**

18 Q That was a man that you spoke with at Mosler,
19 correct?

20 **A Yes.**

21 Q Do you know if that was Warren Mosler himself?

22 **A I would think not.**

23 Q Okay. Why do you think not?

24 **A He sounded as if he was giving me information
25 that he knew he shouldn't.**

1 Q Okay. And if we wanted to verify who that
2 individual was, you think there would be something in
3 your emails about that?

4 A No.

5 Q As you sit here today, do you know whether or
6 not that RaptorGTR was featured in the -- at the Mosler
7 factory?

8 A No.

9 Q But you wrote that it was an aftermarket
10 package for the MT900S based upon your telephone
11 conversation with the unknown gentleman at Mosler,
12 correct?

13 A Telephone and the email conversation.

14 Q Okay. Thus far in the email conversation that
15 we are aware of, I just know of Exhibit 3, 4, and 5,
16 correct? Are you telling me there are other emails
17 exchanged between you and someone at Mosler?

18 A That was with Jill.

19 Q Okay. With Jill? All right. So we are going
20 to get to that in just a minute. That was Jill Wagner,
21 correct?

22 A Yes.

23 Q Who did you believe Jill Wagner to be working
24 for at the time that you were exchanging emails with
25 her?

1 **A She was the heading up of Mosler at that time.**

2 Q Okay. When you say 'heading up,' she was like
3 some kind -- type of officer or had some official
4 capacity with Mosler Auto Motor, Inc., correct?

5 **A Yes.**

6 Q Now, you state -- sorry. It says 'Aftermarket
7 package GTR' -- (inaudible) calling it the RaptorGTR,
8 the 'T' that you were referring to is Supercar
9 Engineering calling the Raptor -- the car RaptorGTR?

10 **A Correct.**

11 Q Now, your suggestion in that line is that
12 Mosler itself was not calling the car the RaptorGTR?
13 Isn't that what you intend to convey?

14 **A Yes.**

15 Q Okay. So you were intending to convey to the
16 people that read your article that based upon your
17 interaction with the Mosler Automotive Center, Inc. that
18 Mosler produced a car called the MT900S and that
19 Supercar Engineering, Inc. was doing some aftermarket
20 work on the MT900S, and then that Supercar Engineering,
21 Inc. named the modified car a RaptorGTR, correct?

22 **A That's correct.**

23 Q All right. If we scroll down a little bit,
24 the next sentence says 'Mr. Wagner was married to
25 Mosler's general manager and vice president of

1 operations, Jill Wagner.' You got that information from
2 your telephone call, correct?

3 **A I mean, it's hard to say at this point. It**
4 **may have come from the Mosler website. It may have come**
5 **from the telephone calls or the emails. I'm not sure.**

6 Q Fair enough. Quite frankly, we understand
7 that to be a true statement. Let me ask you about the
8 next sentence. 'Mosler says the RaptorGTR is not one of
9 its products and refused to comment further.' Now,
10 where did you gather the information for that statement?

11 **A It was either from the phone call or the**
12 **emails.**

13 Q Okay. And so we will go forward with that in
14 just a minute.

15 All right. Below that, in the next paragraph
16 you wrote 'Released with a promotional music video for
17 some unknown artist called Abby Cubey (phon), the 2012
18 Mosler RaptorGTR features.' I want to focus on the word
19 Mosler. Do you see in this article it says Mosler, but
20 there's a cross marked through the middle of it?

21 **A Yes.**

22 Q Like a strikeout? Did you do that strike?

23 **A Yes. I believe the strike-through was on**
24 **purpose.**

25 Q What were you intending to convey with that

1 strike-through the word Mosler?

2 **A That it wasn't an official Mosler product.**

3 Q When you were talking about earlier that you
4 called Mosler Automotive, you spoke to a man there. You
5 don't know who that man was?

6 **A No.**

7 Q Can you say for certain the person or the
8 gentleman you spoke to was, in fact, even an employee of
9 Mosler?

10 **A Couldn't be sure.**

11 Q Have you ever spoken to Warren Mosler, to the
12 best of your recollection?

13 **A Not that I know of.**

14 Q Okay. So someone at Mosler Automotive Center,
15 Inc. stated that the RaptorGTR is not one of its
16 products, correct?

17 Mr. Reinblatt: Objection.

18 By Mr. Zappolo: Correct.

19 Mr. Zappolo: What did you say?

20 Mr. Reinblatt: I objected.

21 By Mr. Zappolo: I missed his answer.

22 By Mr. Zappolo:

23 Answer?

24 **A Correct.**

25 Q Okay. Thank you. And based upon the

1 information that was told to you, you concluded a fact
2 and reported a fact that SEI was releasing an
3 aftermarket package for the MT900S, correct?

4 **A That's correct.**

5 Q And you believed it was a fact that SEI was
6 the one calling the car the RaptorGTR and not Mosler,
7 correct?

8 **A That's correct.**

9 Q And you intended to convey those facts in your
10 article based upon your investigative reporting,
11 correct?

12 **A That's correct.**

13 MR. WEBER: No further questions, Your Honor.

14 THE COURT: Cross-Examination?

15 MR. ZAPPOLO: Yes, Your Honor.

16 CROSS-EXAMINATION

17 MR. ZAPPOLO: Page 3. The deposition of
18 Benjamin Greene. Line 3, Benjamin Greene, was
19 called upon and after being duly sworn, was
20 examined and testified as follows:

21 Direct Examination

22 By Mr. Zappolo:

23 Q Hello. Can you tell us your name, please?

24 **A Benjamin Greene.**

25 Q Down to line 24.

1 All right. Have you ever written any articles
2 for duPont REGISTRY?

3 A Yes. I was also a writer of the SEO
4 content --

5 THE COURT: I'm sorry, Madam, I can't hear
6 you. Can you pull up the microphone, please?
7 Thank you.

8 A Yes. I was also a writer of the SEO content,
9 so it's kind of a -- you start out as a writer and
10 maybe -- you work your way up to managing the online
11 profile of all the content. That becomes an SEO duty.

12 Q Were you a writer for the duPont REGISTRY in
13 November of 2011?

14 A Yes. I was their online editor in chief of
15 their buyer guide and did all the writing for their
16 blog.

17 Q Page 5.

18 All right. Now, I would like to get into the
19 substance of exhibits to this deposition. But before I
20 do that, I want to ask you, do you have any formal
21 training in journalism or anything like that?

22 A Yes. I was -- I went to the University of
23 South Florida. Graduated with a bachelor's in
24 journalism.

25 Q When did you get that?

1 **A That was 2007.**

2 Q Okay. All right. And did they teach at --
3 any classes at the University of Florida while you were
4 there about verifying sources or obtaining information
5 relative to the articles that you might be writing?

6 **A Yes.**

7 Q Okay. Did you take such classes?

8 **A Yes.**

9 Q All right. So do you have a general
10 understanding -- or do you have a general
11 understanding -- excuse me. Or did you have a general
12 understanding in November of 2011, that it was important
13 to write things accurately?

14 **A Yes.**

15 Q In your articles?

16 **A Yes.**

17 Q Okay. Did you try to do that for the duPont
18 REGISTRY in November of 2011? Did you try to write
19 accurate articles?

20 **A Yes.**

21 Q Okay. In the course of your attempts to write
22 accurate articles, did you reach out to people and
23 either ask them for information or quotes relative to
24 your articles?

25 **A Yes. I thought that, yes, you could sit there**

1 and be one who regurgitates, or you can be someone that
2 goes on and even -- that goes on and goes ahead and does
3 their investigative work, because Google --

4 Q I didn't mean to cut you off. Please -- if
5 you have anything else to say, please finish up your
6 answer.

7 A I'm just saying, it goes back to the whole --
8 it looks like original work, so it all goes hand-in-hand
9 to do some reporting.

10 Q All right. I'd like you to take a look at
11 Exhibit Number 3 now.

12 And Exhibit Number 3 is marked for
13 identification.

14 Do you have that in front of you, the
15 November 17, 2011, 5:47 p.m. email from you to JT
16 Wagner?

17 A Yes.

18 Q Did you write that email?

19 A It appears I did.

20 Q Okay. Do you have any recollection of writing
21 that email?

22 A I remember sending an email to Mr. Wagner,
23 yes.

24 Q Page 8.

25 The question is: You spoke with people at

1 Mosler before November 17, 2011, at 5:47 p.m.?

2 Answer: Line 14, page 8.

3 **A I can't recollect. I'm not sure of the dates**
4 **and times at this point.**

5 Q Okay. Let me ask you this: Back in November
6 of 2011, did you keep notes of anything you were doing
7 relative to any articles?

8 **A I may have had stuff at duPont REGISTRY at**
9 **that time, but that's all -- I have no way of accessing**
10 **that.**

11 Q Forward to page 11.

12 Okay. When you say you talked to her, did you
13 ever talk to Jill Mosler on the phone?

14 **A No.**

15 Q Did you ever talk to Jill Mosler in person?

16 **A No.**

17 Q Did you ever visit the Mosler facility?

18 **A No.**

19 Q Okay. So the only conversation that you would
20 have had with anyone affiliated with Mosler would have
21 been on the telephone, correct?

22 **A That's correct.**

23 Q Did you ever have a telephone conference or
24 conversation with James Wagner?

25 **A Telephone? Not me, no.**

1 Q Okay. And did you ever have a face-to-face
2 in-person conversation with James Wagner?

3 A No.

4 Q All right. I'm going to show you what's been
5 marked as Exhibit Number 4 to your deposition. Do you
6 have that in front of you?

7 A Yes.

8 Q All right. And that's a November 17, 2011,
9 9:36 p.m. email from JT Wagner to you, correct?

10 A Yes.

11 Q And did you receive that email on or about
12 November 17th around 9:30 in the evening?

13 A I can only guess that this is accurate.

14 Q Do you have any reason to believe it's not
15 accurate?

16 A No.

17 Q Okay. And Mr. Wagner wrote in Exhibit Number
18 4, quote, Hi, Benjamin. There has been a monumental
19 lapse in judgment and failure in journalism that has
20 resulted in your misunderstandings. This is all being
21 taken care of legally. I will be very happy to
22 assist -- happy to answer all of your questions once
23 things are squared away. I believe that will happen by
24 Monday of next week, closed quote.

25 Next paragraph reads, quote, I'm actually

1 quite happy to receive your email as it lends proof to
2 my libel claim. I will provide you with all the
3 documentation to prove that myself and my company are in
4 the right. Once I provide you with the proof, I very
5 much hope you will help me clear my name and Warren
6 Mosler's name. Sincerely, Todd.

7 Now when you received that, you didn't have a
8 conversation with Mr. Wagner as we already discussed,
9 right?

10 **A No.**

11 Q So the only information that you had from
12 Mr. Wagner is what was written in Exhibit Number 4,
13 correct?

14 **A Yes.**

15 Q And Mr. Wagner, at the end of his email to
16 you, said he was hoping to -- you would help him clear
17 his name and Warren Mosler's name?

18 **A Correct. That's correct.**

19 Q Okay. Now, you wrote back. I would like you
20 to look at Exhibit Number 5.

21 First it says okay.

22 This Friday, November 18, 2011, 11:01 a.m.
23 email, did you write that email, sir?

24 **A I guess I did. I don't have any reason to**
25 **believe I didn't.**

1 Q Okay. Just so we are clear, that was your
2 email address BGreen@dupontregistry.com, correct?

3 A That's correct.

4 Q All right. And you wrote, quote, Hello, Todd.
5 I am interested to hear more on how this all started and
6 what your current relationship is with Mosler. Let me
7 know when you're able to discuss the matter and provide
8 documentation. Thanks.

9 Do you remember writing any other emails
10 besides that email and the Exhibit Number 3 prior to
11 writing your -- is it a blog that you wrote?

12 A There was a blog, yes.

13 Q Okay. Do you recall writing or receiving any
14 other emails relative to this prior to publishing your
15 blog?

16 A Prior to, no.

17 Q Page 17.

18 Okay. I appreciate that. Let's go on in the
19 article or blog. It says, quote, We finished up with
20 the ex-Mosler engineer. J. Todd Wagner has released an
21 aftermarket package for the MT900S, close quote. Who
22 told you that SEI had released an aftermarket package
23 for the --

24 A Given the video showing this car that's
25 available and Mosler saying that's not them building

1 **this car, you know, therefore, it's something that's**
2 **offer after you buy the car aftermarket.**

3 Q Right. Have you ever been -- have you ever
4 seen the manufacturer's statement of origin for the
5 RaptorGTR that was featured in that video?

6 **A No.**

7 Q As you sit here today, do you know whether or
8 not that RaptorGTR that was featured in the -- at the
9 Mosler factory?

10 **A No.**

11 Q Okay. But you wrote that it was an
12 aftermarket package for the MT900S based upon your
13 telephone conversation with the unknown gentleman at
14 Mosler, correct?

15 **A Telephone and the email conversation.**

16 Q Okay. Thus far in the email conversation that
17 we are aware of, I just know of Exhibit 3, 4, and 5,
18 correct? Are you telling me there are other emails
19 exchanged between you and someone at Mosler?

20 **A That was with Jill.**

21 Q Okay. With Jill? All right. So we are going
22 to get to that in just a minute. That was Jill Wagner,
23 correct?

24 **A Yes.**

25 Q Who did you believe Jill Wagner to be working

1 for at the time that you were exchanging emails with
2 her?

3 **A She was the heading up of Mosler at that time.**

4 Q Then we're asking for Exhibit 7 to be marked.
5 Question, at page 21.

6 Wow. Great. Good for him. And what I would
7 like to do is have you look at the last entry in that
8 email chain that's been marked as Exhibit Number 7. I
9 see November 8th on page -- the second page at the very
10 bottom it says, quote, on November 8, 2011 at 2:03 p.m.
11 Benjamin Greene wrote.

12 **A Okay.**

13 Q You see that?

14 **A Yes.**

15 Q And that email read, quote, Hello, my name is
16 Benjamin Greene. I work for the duPont. I hear you
17 will be unveiling the new car on 11/11/11 and wanted to
18 see if you could provide us with details and
19 information.

20 Do you recall writing that? Then on the last
21 page it says 'Thank you for your information,'
22 typewritten name of Benjamin Greene, and it says,
23 quote/unquote, Online editor. That was your title at
24 the time, correct?

25 **A Yes.**

1 Q All right. And by the way, was your phone
2 number 727-573-9339 extension 2514?

3 A Yes. That sounds right.

4 Q Okay. Do you recall writing that email on
5 November 8th?

6 A I remember a correspondence with Jill. I
7 don't remember the exact emails.

8 Q Okay. Do you have any reason to believe that
9 not a true and accurate representation of an email that
10 you sent to Ms. Wagner on or about November 8, 2011?

11 A I would have no reason not to, no.

12 Q Fair enough. Now, just above that on page 2
13 of Exhibit 7 is Ms. -- something that purports to be
14 Ms. Wagner's response. It is dated November 8, 2011 at
15 2:06 p.m. She wrote, quote, Hi, Benjamin. That is a
16 rumor. All the best, Jill Wagner, GMVP of operations,
17 close quote. It says it was sent from her iPhone. Is
18 that one of the emails that you were referring to
19 earlier?

20 A I can only guess, yes.

21 Q All right. And did you understand from the
22 email that she was saying that it's a rumor that they
23 were unveiling a car on 11/11/11?

24 A Yes.

25 Q All right. She didn't say whether it was true

1 or false, did she?

2 **A What was true or false?**

3 Q Whether or not Mosler was releasing --
4 unveiling a new car on 11/11/11.

5 **A If she's saying it's a rumor, I would think**
6 **she's implying that it's false.**

7 Q Page 28.

8 Okay. And just to be clear, you and I have
9 never met before today?

10 **A That's correct.**

11 Q And we've never talked before today?

12 **A Correct.**

13 Q Page 30, line 19.

14 Okay. One more thing. It's kind of a broad
15 question. Is it a fair statement to say that
16 journalists will gather information and will form their
17 own individual impressions and/or opinions which they
18 then include in an article that they write?

19 **A I mean, you would hope they form the truth and**
20 **then provide that to the public.**

21 Q Okay. But you will do your best to put forth
22 the truth, but at the end of the day, it's what you can
23 gather from the information you've been able to obtain?
24 Is that a fair way to state it?

25 **A Yes.**

1 Q One last thing. In the article, which was
2 Exhibit Number 6, in that first paragraph middle way
3 through you wrote, quote, Mosler says the Raptor is not
4 one of its product and refused to comment further. You
5 see that?

6 A Uh-huh.

7 Q When you wrote 'Mosler' there, were you
8 referring to Mosler Automotive?

9 A I mean, only seeing Jill's emails, can I kind
10 of go back and make a puzzle about everything -- how it
11 went down? It seems to me that it came from the man who
12 I spoke to, and that he said it wasn't a product and
13 this is why they are broken up. You know, like I said,
14 I could tell that he did not feel that it was his place
15 to be forthcoming with this information, even though he
16 was being forthcoming and then he decided to not comment
17 further.

18 MR. ZAPPOLO: That's the end of the read-back,
19 Your Honor.

20 THE COURT: Redirect?

21 MR. WEBER: No, Your Honor.

22 THE COURT: Who's your next witness?

23 MR. WEBER: Mr. Warren Mosler.

24 THE COURT: Madam Clerk.

25 THE COURT DEPUTY: Face the clerk and raise

1 your right hand.

2 THE CLERK: Do you solemnly swear or affirm
3 that the evidence you're about to give is the
4 truth, the whole truth, and nothing but the truth?

5 **THE WITNESS: I do.**

6 THE COURT: It's your witness.

7 DIRECT EXAMINATION

8 BY MR. WEBER:

9 Q Good afternoon, Mr. Mosler. How are you
10 doing?

11 **A Good. Good afternoon.**

12 Q What's your current occupation?

13 **A I'm largely retired.**

14 Q And what was your career before you became
15 largely retired?

16 **A I was a financial professional. I ran an
17 investment company for 15 years in the 1990s, and then
18 in West Palm Beach I owned a small bank.**

19 Q Did you do anything newsworthy during your
20 career with the investment company?

21 **A Quite a bit. I would get interviewed
22 repeatedly -- well, you know, on an occasional basis by
23 the financial news media to discuss market situations
24 and things like that.**

25 Q And why would you be interviewed?

1 **A** **Just to get my opinion of what was happening**
2 **in the market, whether it was something that the Federal**
3 **Reserve was doing or the Treasury or some news item.**

4 **Q** **Why were you speaking with the Federal**
5 **Reserve?**

6 **A** **The Federal Reserve was looking for people**
7 **like myself who were major players in the financial**
8 **markets to get their feel as to what was going on out**
9 **there to better help them assess monetary policy.**

10 **Q** **And were you ever -- did you do anything**
11 **newsworthy with respect to the Fed?**

12 **A** **I can't recall. Did I get interviewed --**

13 **Q** **Well, was your being involved with the Federal**
14 **Reserve the subject of any news regardless?**

15 **A** **Not that I recall. These were confidential**
16 **meetings, or they were private meetings.**

17 **Q** **Were you -- aside from your career with the**
18 **investment company --**

19 **A** **Yeah.**

20 **Q** **-- did you have a career with MACC?**

21 **A** **Well, I tried. Yes, I was with MACC from 1985**
22 **until I sold it in 2013.**

23 **Q** **And did you have any career with MACC? Did**
24 **you do anything newsworthy during your career with MACC?**

25 **A** **Yeah, quite a bit.**

1 Q And what did you do that was newsworthy?

2 A Well, I was claiming to produce the number one
3 performance car in the world, which was a bit of a
4 challenge. And they would come out to my events and
5 write them up and they would ask to road test cars, that
6 type of thing. And then they did -- I was mentioned in
7 articles that they wrote over the years numerous times.

8 Q And were you ever quoted by the news media as
9 part of that?

10 A Yes.

11 Q And were there ever any inaccuracies in the
12 quotes?

13 A I'd say there were -- again, to use the same
14 word -- largely inaccurate. They were notoriously
15 inaccurate.

16 Q And did you chase the authors of those quotes
17 to correct them?

18 A No. It wasn't easy, but I made the decision
19 not to do that.

20 Q Why?

21 A Well, there's a huge disparity of power. They
22 control all the media. We rely on them for getting
23 information out there, and if you -- I was told if you
24 file a lawsuit against them, you're cutting off your
25 access to that kind of exposure, and it's just best to

1 let it go and move on and let it be forgotten after a
2 short period of time.

3 Q So why did you start MACC?

4 A I started it because I had come across some --
5 it's called technology, where I felt I could make a car
6 light enough so that it would be the top performance car
7 in the world, safest car in the world, and would get
8 30 miles a gallon, and I set out to do that.

9 Q And how did the public respond?

10 A That's a good question. Generally, not well.
11 I built the cars. They did everything they were
12 supposed to do that was done on a performance car. And
13 someone told me early on "You're going to find out there
14 just aren't that many enthusiasts out there who go by
15 performance when they buy a car." That turned out to be
16 the case.

17 Q And how did MACC perform financially?

18 A So the way it was set up is I would loan the
19 car money out of my personal account whenever it needed
20 funds, and then whenever it would generate funds through
21 sales or whatnot, it would partially pay back those
22 loans. And over time I was continuously loaning the
23 company money and when it closed, you know, the company
24 still owed me a lot of money.

25 Q And was MACC ever profitable?

1 A Not that I recall.

2 Q And did you ever decide to sell MACC?

3 A I decided I wanted to sell MACC sometime at
4 least in 2010.

5 Q And why did you decide to sell MACC?

6 A I had moved to St. Croix in 2003 full time
7 from -- from Florida. I was here in South Florida. The
8 factory was in Riviera Beach on Blue Heron and Old
9 Dixie. And I used to go there on my way to work. I
10 worked at the Forum in West Palm Beach every day and to
11 see what was going on.

12 I was kind of hands-on and worked with the
13 guys to develop the products. And once I moved to
14 St. Croix, I was completely out of touch and I just
15 didn't have any -- it just wasn't the same. And it
16 wasn't making any money and the sales were not there to
17 support the company, and I started entertaining offers,
18 you know, from people to buy it.

19 Q And who's James Todd Wagner?

20 A Todd came to work for me back -- I don't
21 recall the year.

22 Q And after you moved to St. Croix, did you
23 delegate any responsibilities to James Todd Wagner at
24 MACC?

25 A Yeah. I tried to keep him busy working. He

1 had valuable skills and I tried to utilize him, yeah.

2 Q And you know of Mr. Wagner's company, Supercar
3 Engineering, Inc., right?

4 A Yes.

5 Q And do you recall, generally speaking, any
6 work that SEI did for MACC?

7 A I think that was -- technically, it was all of
8 it. I wasn't -- it was a very informal type of thing,
9 so I would ask Todd to do something, whether it's a EPA
10 approval or distribute documents, and he would go ahead
11 and do them, but he was acting, I think, in the capacity
12 of Supercar Engineering. I'm not sure that I recall him
13 as an employee, but he may have been. It's not
14 something I was paying attention to.

15 Q Now were you going to close MACC if it
16 couldn't be sold?

17 A Yeah. I was already in the process of
18 closing, winding it down long before it sold.

19 Q And why is that?

20 A Well, let me back up. You know, MACC never
21 actually got sold so I had -- what MACC was, was a
22 warehouse full of guys and building cars and then I had
23 people in the office, a few people in the office keeping
24 track of things.

25 We built cars, promoted them, sold them,

1 and -- but we didn't sell all of them. There were a lot
2 of cars that hadn't sold that were piling up. And when
3 I -- we -- I slowed down the production of cars, so I
4 got down to very few employees and I was basically
5 maintaining the shop and maintaining the cars that we
6 had until they sold. We were selling cars and winding
7 it down that way towards the end.

8 Q So you've heard testimony from Mr. Mancuso
9 about state-of-the-art factories.

10 A Yeah.

11 Q Was MACC housed in a state-of-the-art factory?

12 A No. We had a warehouse on Blue Heron and Old
13 Dixie. It was 45,000 square feet, which felt large to
14 me, but not like automobile manufacturers.

15 Q How would you describe MACC's location?

16 A Well, Riviera Beach is kind of an -- was in an
17 industrial area. It was zoned industrial. And it's on
18 actually a fairly nice corner, but that was the zoning
19 when I bought it.

20 Q And how would you describe the MACC workplace
21 and the people that worked there generally?

22 A It was a big, like a open warehouse, divided
23 into a few areas, a few rooms, a showroom, a little bit
24 of an office area, and another area for an engine shop
25 and some storage, and that's where everything was

1 fabricated and put together.

2 Q Were there any personalities at MACC?

3 A Oh, yeah, yeah.

4 Q How would you describe the people that worked
5 there?

6 A I like to quote the former secretary defense,
7 "You have to fight with the Army you got." And I wanted
8 to build these cars.

9 I was confident that I could make cars that
10 were competitive, and I went out to find people. And I
11 did the best I could to put them together, but it was
12 people who had been working in local garages and had
13 been mechanics before that, and people who had been
14 working doing fiberglass for boat companies that came
15 over to work for me doing fiberglass for the cars, which
16 actually went to carbon fiber, but it's actually pretty
17 much the same process.

18 And it was a little bit of an eclectic, ragtag
19 type group that we put together and just did some
20 amazing things.

21 Q Now how did you go about trying to sell MACC?

22 A I didn't market it. I didn't think it was
23 worth anything, but people were coming to me and asking
24 about it. I put the building up for sale. I listed the
25 building, and it didn't sell, but -- you know, before, I

1 guess, 2013.

2 So the business itself never sold. It was an
3 asset sale, which means I just sold off the remaining
4 cars and the piles of junk that were in there. And I
5 don't recall marketing it any particular way, just
6 people who knew about it, heard about it, asked about
7 it, came in.

8 Q Now why didn't you think MACC was worth
9 anything?

10 A It was a money loser. We -- I found it
11 impossible to sell cars. Somebody who wanted to come in
12 and do it themselves would almost be starting from
13 scratch. They'd have an enormous job ahead of them
14 hiring people.

15 If you think of the inventory requirements
16 alone -- if you want to build 20 cars a year, for
17 example, and they're going to cost you \$300,000 a car,
18 that's \$6 million you have to have before the cars get
19 sold. They don't get sold right away and delivered.
20 And that's just for openers and then, you know, you have
21 a lot of other things involved. So somebody would have
22 to have \$10 million. It's a risk to come in and do this
23 right.

24 And not that there weren't people around who
25 wanted to do it, I always -- I mean, I was crazy enough

1 to do it, but it just didn't seem like the kind of thing
2 people would be tripping over to come in and do it.

3 Look, I was in the investment business. I
4 worked with investors for a long time and I raised
5 \$3.5 billion for my fund that I turned over to my
6 partners in the end of '97. I knew what investors would
7 like and what they were looking for, and this wasn't any
8 kind of investment that I would try to sell to anybody.

9 Q Why were the cars not selling?

10 A There was nothing wrong with the cars, they
11 did what they were supposed to do, they just -- like the
12 person who told me -- I forget what it was. There just
13 aren't that many car enthusiasts out there.

14 And, actually, the cars were selling in
15 Europe. Martin Short and Mosler Europe was selling a
16 few cars a year to people who wanted to take them
17 racing, which was very convenient because then we could
18 take these cars that weren't selling and weren't
19 complete, you know, didn't need to be street legal or
20 anything like that, and shipped them over to him in
21 England and then he would finish them as race cars, put
22 roll cages in them and whatnot. So that, you know -- so
23 part of my marketing was geared towards selling to
24 people who wanted to take them racing.

25 Q Now, you remember the name Savvas Savopoulos,

1 right?

2 **A Yeah, yeah, yeah.**

3 Q Now his name has been mentioned during this
4 trial, right?

5 **A Yeah.**

6 Q Savvas Savopoulos, was he one of the people
7 that was interested in purchasing MACC?

8 **A Yes.**

9 Q Now how did you come to know Savvas
10 Savopoulos?

11 **A His father -- his parents, Bill and Gail,
12 lived in St. Croix. They were neighbors of ours. We
13 saw them regularly. We saw Savvas when he came down to
14 visit.**

15 Q Okay. And you've heard testimony in this case
16 that you knew Savvas Savopoulos from the private jets
17 seen in Washington, D.C. What do you think about that?

18 **A That was sworn under oath, but it's not true.**

19 Q And why isn't it true?

20 **A Because that's not how I met him.**

21 Q Now, did you want Savvas Savopoulos to try and
22 purchase MACC?

23 **A Well, I knew his father and I had a discussion
24 with him ahead of time and I was telling him "Look, he's
25 going to lose a lot of money on this."**

1 I tried. I went through all of the numbers
2 with him and he said, "Yeah, I know. He really wants to
3 do it." He's a brilliant guy and he had a law degree
4 and knew his stuff and he had a lot of contacts. He
5 knew Stephane Ratel in Europe, who was the one that was
6 blocking us from racing internationally there.

7 We were able to run in the British GT, the
8 Spanish GT, the Supercar Series. We were winning and
9 selling a few cars now and then to teams. People wanted
10 to buy these cars and go out and beat their buddies who
11 were in Porsches and other things and -- but this person
12 Ratel wouldn't allow us to run in Germany and other
13 places.

14 So, he -- Savvas knew him and he said he
15 thought he could get it through -- we couldn't run it in
16 the 24 Hours of LeMans. People wanted to race there and
17 they brought these cars to race in, but we just weren't
18 allowed in. He knew people in NASCAR and knew people in
19 the Supercar Series, and he was just gung ho on
20 promoting this car and being able to distribute it, you
21 know, as a race car.

22 Q Did Savvas Savopoulos have the capability to
23 purchase MACC?

24 A Oh, yeah. He could purchase it ten times
25 over.

1 Q Did James Todd Wagner know that Savvas
2 Savopoulos could have purchased MACC?

3 A I believe so, yeah.

4 Q I'm marking this document as Defendants' 93
5 for identification. I'm handing you this document,
6 which is Defendants' 93 for identification.

7 MR. WEBER: Move this document into evidence.
8 Any objection?

9 MR. ZAPPOLO: No objection.

10 THE COURT: Madam Clerk, what number is this?
11 Defendants' what?

12 THE CLERK: 113.

13 THE COURT: Thank you.

14 (Thereupon, Defendants' Exhibit 113 was
15 received into evidence.)

16 BY MR. WEBER:

17 Q Okay. Mr. Mosler, you've been handed a
18 document that's been marked as Defendants' 118.

19 THE CLERK: 113.

20 BY MR. WEBER:

21 Q 113 in evidence. Mr. Mosler, just take a
22 minute to look at this email and let me know when you're
23 ready.

24 A Okay. Okay. Yeah.

25 Q So, Mr. Mosler, here we have -- starting at

1 the bottom, we have an email exchange between you Philip
2 Savopoulos and Savvas Savopoulos, right?

3 **A Starting at the bottom. June 29, 2010.**

4 Q And you wrote to Mr. Savopoulos "Probably
5 worth more to a different business than a car company,"
6 right?

7 **A Yes.**

8 Q And what did you mean by that?

9 **A I don't think he'd find a car company looking
10 to buy that building and make cars there. I thought he
11 might find an industrial company that wants a warehouse
12 or a machine shop or some other type of tenant.**

13 Q And why was that? Like --

14 **A Well, there aren't that many car companies in
15 the world. Most of them have gone out of business.**

16 Q Now I want you to scroll up to the top email.

17 **A To the top email? Okay.**

18 Q And this document is an email exchange between
19 you and Savvas Savopoulos, right?

20 **A Yes.**

21 Q And if we go to the top, you say "Thank you
22 for making Jill and Todd available yesterday. I really
23 enjoyed getting to know the business better."

24 **A Yeah.**

25 Q Do you see that?

1 **A Yes.**

2 Q Now did you introduce Savvas Savopoulos to
3 Jill and Todd Wagner as part of Savvas Savopoulos' due
4 diligence?

5 **A Yes.**

6 Q And why did you do that?

7 **A Because, you know, I'm a full disclosure**
8 **person. He was their contact point and I wanted him to**
9 **be able to know he's going straight to the people**
10 **involved and not getting any filtered information.**

11 Q Okay. I'm going to show you what's been
12 marked as Defendants' 18 previously. This is 147 for
13 identification.

14 Mr. Mosler, can you see this okay?

15 MR. ZAPPOLO: Counsel, did you say this was in
16 evidence?

17 MR. WEBER: Yes. It's 147.

18 MR. ZAPPOLO: Thank you.

19 **THE WITNESS: I can't read it. I probably**
20 **should be able to.**

21 BY MR. WEBER:

22 Q Hold on, show the whole thing. Show the whole
23 thing, don't zoom in anywhere.

24 Okay. I'm handing you what's been marked as
25 Defendants' 18.

1 Okay. Do you recognize this document?

2 **A Yes.**

3 Q So in this original document, it's an email
4 from you -- from Savvas Savopoulos to you.

5 **A Uh-huh.**

6 Q And attached was an asset purchase
7 agreement --

8 **A Uh-huh.**

9 Q -- that Savvas Savopoulos had sent to you,
10 right?

11 **A Right.**

12 Q And that was because Savvas Savopoulos was
13 seeking to purchase MACC, right?

14 **A Yes.**

15 Q And you forwarded it to Todd and Alan Simon,
16 right?

17 **A Yes.**

18 Q And why did you do that?

19 **A For their review.**

20 Q And why did you forward it to Mr. Wagner?

21 **A I wanted to hear his comments on what he
22 thought of the agreement. That's one of the things I
23 used him for.**

24 Q Now I'm handing you what's been previously
25 marked as Defendants' 21. This was previously marked as

1 151 for identification.

2 MR. ZAPPOLO: What's that in as?

3 MR. WEBER: 21.

4 BY MR. WEBER:

5 Q I'm showing you what's been previously marked
6 as Defendants' 21.

7 A Yeah.

8 Q And it's an email from Todd Wagner to you,
9 correct?

10 A Yes.

11 Q And it's dated September 22, 2010.

12 A Yeah.

13 Q And Mr. Wagner is commenting on Savvas
14 Savopoulos' asset purchase agreement, correct?

15 A Yes.

16 Q Now as of September 22, 2010, was Mr. Wagner
17 also purchasing Savvas Savopoulos' -- I mean MACC --
18 trying to purchase MACC?

19 A I believe that it started quite a bit sooner.

20 Q And do you know what Mr. Wagner's referring to
21 when he says here "I'm 95 percent certain that I will be
22 able to pull my deal together"?

23 A Let me just see where that is here.

24 Yeah, uh-huh.

25 Q And what did you understand that to mean?

1 A Well, that he's still actively looking to buy
2 it and looking to close, I guess, or have something in
3 30 days. And he's asking for 30 days.

4 Oh, I see then the remaining 60 days to close
5 if it takes that long.

6 Q Now, did you take a look at the comments
7 Mr. Wagner made to Mr. Savopoulos' asset purchase
8 agreement?

9 A Uh-huh.

10 Q What did you understand those comments to
11 mean?

12 A Well, it's something about wiping out my
13 equity stake, but I didn't really care about that.
14 Savvas offer for 500,000 less than the at-cost value of
15 the inventory, so he was saying that he's offering less
16 than what the inventory cost me, which might be a reason
17 not to take the offer, but it says "no value is given to
18 the intellectual property."

19 So he's trying to assist me with the valuation
20 of the company, indicating that, you know, it should be
21 selling for more than what Savvas has been offering me.
22 Plus you have to buy out the distributors, so I'm going
23 to lose that much. He's just giving me his opinion,
24 let's say, on whether or not this is a good deal for me
25 and the idea --

1 Q And why did you think he was giving you that
2 opinion?

3 A That's a good question. It's actually not
4 wrong. And I asked him to give me his opinion, and he
5 gave it to me. And it looks like he's downplaying the
6 offer, and I tended to agree with what was in there.

7 Q Okay. Let's put this one down.

8 A It seems like a throwaway to me. I don't know
9 what that refers to. It sounds good to me. He was
10 downplaying it more than I would have, for sure.

11 Q Mark this document for identification as 178.
12 Defendants' 178 for identification.

13 Mr. Mosler, can you see --

14 MR. WEBER: Move this document into evidence.

15 Any objection?

16 MR. ZAPPOLO: No objection.

17 THE COURT: Madam Clerk, is that 116?

18 THE CLERK: 114.

19 THE COURT: I'm sorry, what number?

20 THE CLERK: 114.

21 THE COURT: I thought we had 115 earlier.

22 THE CLERK: No, that was 113.

23 THE COURT: Thank you.

24 (Thereupon, Defendants' Exhibit 114 was
25 received into evidence.)

1 BY MR. WEBER:

2 Q Mr. Mosler, have you had a chance to take a
3 look at this document?

4 A Yes.

5 Q Okay. Let's scroll to the bottom email.
6 Wait, go up.

7 Okay. Now, Mr. Mosler, this document is an
8 email exchange between you and Ms. Klaker, correct?

9 A Yes.

10 Q And what is she complaining about in this
11 email to you?

12 A Okay. Todd told me about an email regarding a
13 job Todd agreed to do for Greg Sidwell.

14 Okay. I believe she may have left some
15 information out, so she was, like, reporting on what
16 happened in this particular event.

17 Q And what happened?

18 A According to Sylvia, that Todd -- he did not
19 receive approval -- he paid the guys \$25 an hour to work
20 for his company. He was using my shop; I think that was
21 the fiberglass shop. Jill found out because Dan had to
22 come to the shop that weekend and do some work. She
23 discovered the place was open and the guys were working
24 for Todd.

25 So he came in on a weekend unauthorized, went

1 into our fiberglass shop and was having -- he was paying
2 people to work on his project. Dan told Jill about it,
3 and she was angry because Todd put the business in
4 jeopardy. Luckily, no one was injured. Using MACC's
5 equipment and materials all without prior approval. At
6 that point Jill decided to make --

7 Q Mr. Mosler, I don't want you to read the whole
8 email out loud.

9 A I'm sorry, go ahead.

10 Q Do you recall that incident?

11 A Yeah. I recall it from the trial and the
12 documents, but I don't have a strong recollection at the
13 time.

14 Q Okay. Reading it now, do you recall it?

15 A Yeah.

16 Q Okay. What was your understanding of the
17 events?

18 A That Todd had taken it upon himself to go into
19 the glass shop, which was a couple of blocks away from
20 the main shop, and on a weekend, without telling
21 anybody, to do a job for this guy, George Sidwell.

22 Q And let's go up to the top --

23 A Yeah.

24 Q -- the top email.

25 A "It's bad"?

1 Q Ms. Klaker wrote "It's bad. We've fired
2 people for less than this which is why I thought you
3 needed to know the entire story." Did you agree with
4 that?

5 A I don't -- I don't think I did, but I don't
6 remember.

7 Q Did you think it was bad, though?

8 A At the time, yeah, I thought it was bad that
9 he did that.

10 Q In fact, you wrote right here "This is pretty
11 bad," right?

12 A Yeah. Where is that? Yeah, yeah.

13 You know, when Sylvia says something like
14 that, I am going to, you know, respond. And it looked
15 bad on the surface. What she said to me looked very bad
16 on the surface, but I reserve judgment. I don't come
17 to -- I don't shoot first and ask questions later or
18 anything like that, so, you know -- and then I forwarded
19 it to Jill.

20 Q And how did you treat Todd while you were at
21 MACC?

22 A I treated him with respect and very well, and
23 I had good discussions with him on the engineering side,
24 and worked with him a little bit on his link-X
25 suspension.

1 **And, you know, I wasn't there. I was in**
2 **St. Croix, I wasn't there a lot. I wouldn't see him in**
3 **person that often. Maybe, I don't know, ten times. I**
4 **don't know.**

5 Q Did you think you were patient with
6 Mr. Wagner?

7 **A Oh, of course. I'm patient with everybody.**

8 Q Anything you can recall about your being
9 patient with Mr. Wagner?

10 **A You'll have to show me something.**

11 Q Well, just what do you recall?

12 **A Well, you know --**

13 Q Let's -- I'm going to show you what's been
14 previously marked as Defendants' 37.

15 **A Yeah. April 29, 2011, yeah.**

16 Q Okay. This is Defendants' marked 202 for
17 identification, 202.

18 Okay. I'm going to switch gears a little bit.
19 Do you want some water, Mr. Mosler?

20 **A Oh, I'm good. Thank you.**

21 Q Okay. So let's go to the original email down
22 at the bottom.

23 **A Okay. How many pages back is it?**

24 Q April 18th is where it starts.

25 **A April 18th, 9:07?**

1 Q Correct.

2 A Yeah.

3 Q And you see how this email is in reference to
4 an asset purchase agreement that Mr. Wagner sent you?

5 A Yeah.

6 Q And what's your understanding of what an asset
7 purchase agreement is?

8 A This is an agreement to purchase, you know,
9 the remaining assets, which would be the cars and the
10 equipment and the warehouse.

11 Q And what's your understanding of the necessity
12 for an asset purchase agreement in Mr. Wagner's efforts
13 to purchase MACC or its assets?

14 A That would be the agreement, signed agreement,
15 mutual agreement to buy the company or what was the
16 assets of the company.

17 Q Okay. Now let's scroll up a bit to the next
18 email. It's April 18th at 3:09 p.m.

19 A Let me just point out in that previous one --

20 Q Sure.

21 A -- you see the stuff he'd come up with all the
22 time. I mean, I've done a lot of things.

23 Q Where are you, Mr. Mosler?

24 A I'm in that same email. "Good morning,
25 Warren. Todd, essentially there has to be some

1 definition of anti-dilution. The offer is 3 million for
2 80 percent and 4 million for 100 percent."

3 Q Hold on, Mr. Mosler, where are you reading
4 from?

5 A The one you just -- April 18th, 9:07 a.m.

6 Q Yeah.

7 A "Good morning, Warren."

8 Q Okay.

9 A He comes up with this stuff. Like, you know,
10 there has to be some definition to the anti-dilution.
11 Do you see that in the second line down?

12 Q Well, let's --

13 A The last line, he offers 3 million for
14 80 percent, 4 million for -- it's always "or." The
15 offer is for one of them. You don't have offers for one
16 or the other. You either make -- you know, he had all
17 of these compound offers all of the time, clear numbers.
18 For the floor of your retained 20 percent, so everything
19 he said had to be, like, interpreted.

20 Q Okay. Well, let's scroll up --

21 A Go ahead.

22 Q -- to the April 18, 2011 at 3:09 p.m. email.

23 A Yeah.

24 Q And you see where he says --

25 A Yeah.

1 Q -- in this email, where it begins with
2 "Tomorrow"? Can you see my pointer? I don't know if
3 you can see the screen.

4 A "Tomorrow," yes. "The next step requires a
5 signed agreement from you" --

6 Q Right.

7 A -- "that I can present to the investor group."

8 Q Right. It says "No one is going to put money
9 down on an unknown deal, so the first step is to nail
10 down the deal." What did you understand that to mean?

11 Well, it says "The next step requires a signed
12 agreement from you" --

13 A Right.

14 Q -- "that I can present to the investor group."

15 A Right.

16 Q What did you understand "the signed agreement
17 from you" he referred to?

18 A That would be a signed asset purchase
19 agreement.

20 Q And then you see step 2 is to get the deposit
21 in. What did you understand that to mean?

22 A To make a deposit. These are his steps, yeah.

23 Q Right. And step 3 is to close the deal. What
24 did you understand that to mean?

25 A That's to pay for it. To actually pay for it.

1 Q And you noticed, in the first paragraph, it
2 says "I just noticed where there was an old date on the
3 asset purchase agreement" --

4 A Yeah.

5 Q -- "4/17/2001 v2." How many asset purchase
6 agreements did you receive from Mr. Wagner in 2010, 2011
7 would you say?

8 A Numerous.

9 Q And why was that, to your understanding?

10 A We could never reach an agreement that we both
11 were comfortable signing, I guess. And he would send
12 something and I'd correct it and then he'd correct it
13 and send it back, and it was just a continuous, nonstop,
14 you know, negotiation process.

15 Q Now, did you want to reach a deal with
16 Mr. Wagner?

17 A Sure. If he wanted to buy all of the things
18 at a fair price, I would be happy to sell to him.

19 Q And did you ever have a countersigned asset
20 purchase agreement with Mr. Wagner?

21 A No.

22 Q Now, Mr. Mosler, I'm handing you what's been
23 marked as Defendants' Exhibit 38 in evidence. You can
24 keep that stack there. This is 204 for identification.

25 Okay. Mr. Mosler, do you see this document?

1 **A Yes.**

2 MR. ZAPPOLO: I'm sorry, Counsel. What was
3 that?

4 MR. WEBER: 204.

5 MR. ZAPPOLO: And what was it in evidence?

6 MR. WEBER: 38, I believe.

7 MR. ZAPPOLO: Thank you.

8 BY MR. WEBER:

9 Q Now, Mr. Mosler, this is another email
10 exchange between you and Mr. Wagner. And then you see
11 an email from you to Jill Wagner above it, right?

12 **A Yes.**

13 Q Ready?

14 **A Yes.**

15 Q Okay. So now, from Mr. Wagner's testimony,
16 you understand that he believes this email --

17 **A Yeah.**

18 Q -- shows confirmation of an agreement between
19 you and Mr. Wagner. You understand that, right?

20 **A Yes.**

21 Q Now, as of May 2, 2011, was there any
22 agreement between you and Mr. Wagner by which he was
23 going to purchase MACC or its assets?

24 **A No. This says "RE: Signing the asset purchase
25 agreement." So pursuant to that, we did not have an**

1 **agreement to sign.**

2 Q So what did you make of this email here
3 between -- with Mr. Wagner to you where he is writing to
4 you, and then in response you're saying no or yes?

5 A **The way I saw it at the time until -- you**
6 **know, until -- and even the way it reads now, is that**
7 **we're negotiating terms that will be a part of the asset**
8 **purchase agreement, and we're going back and forth on**
9 **those terms. And he had said, "I'll ask what they're**
10 **willing to pay (understanding fully the 100,000) gives**
11 **is" -- it should be "us" -- 3 months of exclusivity (as**
12 **opposed to 4 months), and becomes refundable upon the**
13 **following circumstances: MSI does not close within 3**
14 **months, no; and B, another party purchases MACC assets**
15 **after the 3-month period, yes."**

16 So that particular aspect of this particular
17 100,000 -- post-100,000 deposit, I agreed that part
18 could be included in a purchase asset agreement, and at
19 that point in time that part was okay to me. Then --

20 Q Well, could that part stand-alone as its own
21 agreement to purchase MACC?

22 A **Well, no. This was -- this particular thing**
23 **was about a deposit and its exclusivity, you know, gives**
24 **us 3 months of exclusivity (as opposed to 4 months) and**
25 **becomes refundable --**

1 So this would be a part of the asset purchase
2 agreement where they would put a deposit down and it
3 would get exclusivity as part of an asset purchase
4 agreement. That's the way I read this document at the
5 time. So it was -- now there could be any number of --

6 Next, he has to come up with, like, what's in
7 the asset purchase agreement. This is just a deposit,
8 terms for the deposit of the asset purchase agreement.
9 Once he comes up with an asset purchase agreement, if we
10 agree on it, it would then have this language in the
11 asset purchase agreement, and then I would look at the
12 whole asset purchase agreement to see if it was
13 acceptable. And if it was, I'd sign it and he could
14 sign it if he liked it.

15 Q What does it matter what's in the asset
16 purchase agreement?

17 A Well, because this is done under the --
18 pursuant to the subject matter "RE: Signing the asset
19 purchase agreement."

20 If he had just come out of the blue and said
21 "I want exclusivity for three months, would you give
22 that to me? You know, if I put \$100,000 deposit down
23 for an exclusive to sell an option to sell, you know, as
24 a stand-alone basis," then we could have negotiated that
25 and come up with a document and signed it and then that

1 would have been it. You know, some kind a limited
2 exclusivity with an option to bring in another client or
3 to have an ice cream shop there or whatever he wanted to
4 do, you know, that could be done, but this was the way I
5 read it then and I read it now, but I understand he's
6 changing this thing.

7 It was pursuant to this asset purchase
8 agreement as one of the terms of the asset purchase
9 agreement. And so I was looking for it later, the asset
10 purchase agreement, and it was never there.

11 Q I'm handing you what has been marked as
12 Defendants' Exhibit 43. This is 213 for identification.

13 MR. ZAPPOLO: 43 in evidence, 213 for ID.

14 BY MR. WEBER:

15 Q Now, Mr. Mosler, I want to -- I know it's a
16 multipage document that you're holding --

17 A Uh-huh.

18 Q -- but I want you to scroll down or page down
19 to the May 2, 2011 email we just looked at. It's on
20 page 3. Do you see it?

21 A Yeah.

22 Q Okay. And so following that email are there
23 additional negotiations between you and James Todd
24 Wagner?

25 A Yes.

1 Q And why?

2 A Because we hadn't reached an agreement that
3 both of us would agree and sign and execute.

4 Q Now, let's -- you see on page 2 -- drop one of
5 those pages in your hand and go to page 2.

6 You see where it says -- there's an email at
7 the bottom where it says "Hi, Warren. I had forwarded
8 our composite agreement with the small changes to my
9 lawyer"?

10 A Yes.

11 Q And that's referring to an asset purchase
12 agreement, right?

13 A Yes, as far as I know.

14 Q And in response, you wrote something which is
15 on the first page, right? Do you see a May 6th
16 6:01 p.m.?

17 A Yeah. I'm looking for what I wrote.

18 Q It says "Option: The good faith deposit."

19 A Yeah.

20 Q So were you commenting on the asset purchase
21 agreement with that email?

22 A Which part? Were there other parts you put
23 forth?

24 Q Well, it looks -- to me, it seems like --

25 A Oh, down at the bottom?

1 Q Yeah. Do you see where it says "This should
2 be left out of any contract"?

3 A **Yeah, yeah, yeah.**

4 Q Were those comments that you made?

5 A **Yeah. Yes.**

6 Q And is --

7 A **I didn't see it. It's blacked out here, so
8 it's hard for me to see it.**

9 Q Is the language that's caps'd on page one --
10 can you see it?

11 A **Yeah.**

12 Q It says "The deposit is forfeited." And it
13 says "The additional deposit is forfeited."

14 A **Yeah. That was a part of the negotiations.
15 Those are my points that I wanted to see.**

16 Q Those are your edits to the language in his
17 asset purchase agreement?

18 A **Yes.**

19 Q And then Mr. Wagner responds on page 1, "This
20 seems different from what we agreed to," right?

21 A **Yeah. Where is this?**

22 Q On page 1.

23 A **Yes, I see it.**

24 Q And how did you respond?

25 A **"There were parts you put in that we haven't**

1 agreed to, and I changed some of them for your review."

2 Q What are you referring to there?

3 A It looks like I'm referring to the things I
4 put in caps in the prior email.

5 Q Now, again, Mr. Wagner claims that, as of
6 May 2, 2011, there was an agreement for him to purchase
7 MACC, right? But this document is dated May 6, 2011.

8 A Yeah.

9 Q So why, if there was an agreement as of May 2,
10 2011 for him to purchase MACC, were you still writing
11 these emails as of May 6, 2011 with Mr. Wagner?

12 A Because there was no mutual signed agreement.
13 There was no meeting of the minds. At that time or even
14 at this time, as of May 6th, we still hadn't come
15 together on something we could execute.

16 Q Now I want to fast-forward to --

17 A Can I add something here?

18 Q Sure.

19 A The thing is, you know, things --
20 circumstances -- well, I guess it doesn't matter. I'll
21 wait for your next question, but it's a dynamic process
22 and things change over time from one week to the next.

23 The needs of his investors might change or he
24 gets feedback and has to change something or asks for a
25 change, and it was just continually going back and

1 **forth.**

2 Q I'm handing you what has been marked as
3 Defendants' Exhibit 51. This has been marked for
4 identification as 231.

5 A **May 23rd.**

6 Q Do you see the document, Mr. Mosler?

7 A **Yes.**

8 Q Okay. And do you see where it says "Jill told
9 me you weren't interested in talking further until I had
10 the deposit in-hand"?

11 A **Yes.**

12 Q Do you remember telling Mr. Wagner that?

13 A **Yes.**

14 Q And why did you want that?

15 A **This is time-consuming. I had a full-time job
16 in the financial market and I'm getting these 30-page
17 documents and this double-talk coming in and, you know,
18 I just didn't want to -- I lost confidence that there
19 was anything real going on here and I didn't want to
20 waste my time, so I wanted to make sure he had the money
21 to pay for it before I spent any more time on it.**

22 Q Now you heard testimony about how Todd could
23 get money from his father?

24 A **Yeah.**

25 Q So did you have any doubts that Todd could

1 come up with the money?

2 **A I did. I had serious doubts.**

3 **Q Why?**

4 **A I had asked Jill and the others about it, and**
5 **apparently his father had some money. I didn't realize**
6 **it until now, but it was how much he sold his company**
7 **for. But they said, yeah, he'd get in arguments with**
8 **him and he wouldn't give him the money and, you know,**
9 **they were having all kinds of issues about it.**

10 **They didn't think his father, you know, would**
11 **give him the money. It wasn't easy for him to go get**
12 **the money. And I heard his father testify the opposite,**
13 **so I don't know, but at the time I was under the**
14 **impression that it was always with great difficulty that**
15 **he could get anything out of his father.**

16 **Q And did Todd -- Mr. Wagner put up any money**
17 **thus far as of May 2011 in furtherance of trying to**
18 **purchase MACC or its assets?**

19 **A No.**

20 **Q And were you entertaining offers from other**
21 **buyers as of May 2011?**

22 **A There were other buyers talking, yeah, sure.**

23 **Q Now you remember a person by the name of Lew**
24 **Lee, right?**

25 **A Yes.**

1 Q Now do you recall when you first heard of Lew
2 Lee?

3 A I don't. I was introduced to him by Todd in
4 an email in June maybe.

5 Q June 2011, right?

6 A Yeah.

7 Q And you wanted to speak to Todd's investor
8 before you had any further discussions with Todd, right?

9 A Yeah. You know, these asset purchase
10 agreements are like 30-plus pages. I really don't want
11 to sit down and read and try and go through all of, you
12 know, all of the intricate clauses if there wasn't any
13 money and there weren't any investors, so just in the
14 interest of time. And I just wanted to make sure the
15 situation was real before I spent my time reading these
16 documents. And half the time I would be paying a lawyer
17 to read them sometimes. And then he would flake out and
18 it just wouldn't happen.

19 Here it says "Also, I heard you're interested
20 in selling the company, but without the building," so
21 now he's changing again. It just never stopped.

22 Q I'm handing you a document that's been
23 previously marked as Defendants' 59.

24 THE COURT: Apparently my keys are lost.

25 MR. WEBER: Do you want to take a break, Your

1 Honor, to find them?

2 THE COURT: No.

3 BY MR. WEBER:

4 Q I'm handing you a document that's marked as
5 Defendants' 59. This was previously marked as
6 Defendants' 258 for identification.

7 Mr. Mosler, can you see this document?

8 A Yes.

9 Q Okay. Now as of June 27, 2011, you had been
10 introduced by Mr. Wagner to Lew Lee, right?

11 A Yes.

12 Q And as of June 27, 2011, what did you
13 understand Mr. Wagner and Lew Lee's relationship to be?

14 A They were working together. You know, Todd
15 had introduced him to me as "My future partner," but
16 that they -- Lew was Todd's -- at least his client if he
17 was going to buy it, and they were just working as
18 partners closely together and whatever.

19 I didn't know the legal sense, but, you know,
20 they were interacting, interfacing together to work on
21 me.

22 Q And do you remember this email? Have you had
23 a chance to look at it?

24 A Yes.

25 Q And so what did you think of this email when

1 you saw it?

2 A Okay. So at the time "I have successfully
3 arranged the financing to purchase per agreement," which
4 I thought it was the asset purchase agreement. "We will
5 wire \$100,000 tomorrow. Please provide wire transfer
6 instructions so that the funds could be wired
7 expeditiously. Per agreement, this deposit entitles 3
8 months' exclusivity. The deal must be closed per
9 agreement, it's only refundable," et cetera.

10 So what I see now is some kind of an elaborate
11 scheme to trick me here. Because it says "Lew and I
12 have successfully arranged the financing to purchase
13 Mosler Automotive by the asset purchase agreement."

14 Q Well, hold on, Mr. Mosler. Before we get into
15 what you're reading as we see it here now --

16 A Okay.

17 Q -- reading this at the time back in
18 June 2011 --

19 A Okay.

20 Q -- what did you think?

21 A I thought this was -- they were looking to
22 wire a \$100,000 deposit per the asset purchase agreement
23 because it then says "per agreement," and it looked to
24 me like it referenced the asset purchase agreement. I
25 never thought otherwise.

1 Q You mean the asset purchase agreement between
2 you and Mr. Wagner?

3 A Yes.

4 Q Okay. And let's go to -- and then later on,
5 where it says "per agreement," it's still the same asset
6 purchase agreement. And then on the top it says
7 "Subject: \$100,000 deposit for the purchase of Mosler
8 Automotive assets."

9 Okay. Hold on one second. Mark this as 264
10 for identification.

11 I'm handing you a document that's marked as
12 264 for identification.

13 MR. WEBER: Move this document into evidence.

14 Any objection?

15 MR. ZAPPOLO: No objection.

16 THE COURT: Madam Clerk, what number?

17 THE CLERK: 115.

18 THE COURT: 115?

19 THE CLERK: Yes.

20 THE COURT: Thank you.

21 (Thereupon, Defendants' Exhibit 115 was
22 received into evidence.)

23 BY MR. WEBER:

24 Q Do you see this email, Mr. Mosler?

25 A Yes.

1 Q It's an email from you to Todd Wagner, Lew
2 Lee, and others, right?

3 A **Yes.**

4 Q And you wrote "Please forward me a copy of
5 that signed agreement, thanks. I can't recall the terms
6 and conditions." Do you see that?

7 A **Yes.**

8 Q And why did you write that?

9 A **Because, you know, all he says is to give him
10 wire instructions to send in a deposit where he had me
11 locked in on this asset purchase agreement dated
12 April 17, 2011, which I can't remember except I have a
13 pretty good recollection it's something that we changed.
14 It was something early in negotiations. And he's trying
15 to trick me again into something, I don't know what it
16 is.**

17 And so it's like just send me a copy of this
18 agreement before -- you know, tell me what you're
19 talking about in this asset purchase agreement before I
20 agree to it. I mean, I didn't even have a copy. So,
21 you know, that's what this email was about, just send me
22 a copy.

23 Q So you understood what he's referring to,
24 right?

25 A **Yeah.**

1 Q You didn't -- you weren't aware of any
2 agreement --

3 A No.

4 Q -- with Mr. Wagner as of June 27th at
5 6:58:37 p.m., right?

6 A No.

7 Q And why did you include Lew Lee and the others
8 on this email?

9 A They were involved in the previous one. They
10 were all working together.

11 Q Were you hiding the ball from Todd Wagner when
12 you were emailing Lew Lee?

13 A Was I what?

14 Q Were you hiding the ball --

15 A No, no.

16 Q -- when you were emailing Lew Lee?

17 A No. These people were all included. It was
18 full disclosure to everybody he had on -- he was working
19 with.

20 Q Okay. I'm handing you Defendants' Exhibit 60
21 in evidence. This is previously marked as 261 for
22 identification. Do you see this, Mr. Mosler?

23 A Yes.

24 Q It's another email, right?

25 A Yes. This is the April 17th agreement.

1 Q And was there any agreement that was signed,
2 to your knowledge, on April 17, 2011?

3 A No.

4 MR. ZAPPOLO: Counsel, what exhibit is up on
5 the screen?

6 MR. WEBER: Internal 261, 261 for
7 identification.

8 MR. ZAPPOLO: And it is?

9 MR. WEBER: Oh, the exhibit?

10 MR. ZAPPOLO: Thank you.

11 **THE WITNESS: I didn't have a copy of the**
12 **signed agreement.**

13 BY MR. WEBER:

14 Q And did you see where Mr. Wagner wrote "I have
15 the actual signed document back in Florida"?

16 A Yes.

17 Q What did you think about that statement?

18 A He just had no credibility. I couldn't go by
19 that. I had to have him send me things because it's
20 just been cut out so many times. And then he sends
21 this, and there's no information on the deposit.

22 Q Now, let's look at --

23 A And it's got some stuff in here, at that point
24 in time, that I would never agree to.

25 Q I'm handing you what was previously marked as

1 Defendants' Exhibit 62 --

2 **A Yeah.**

3 Q -- in evidence.

4 **A June 27th, the same day.**

5 Q So this is the same day. And there was a back
6 and forth of emails between you and Mr. Wagner on that
7 day; is that right?

8 **A Right. Yeah.**

9 Q And this is your email as of 6/27 at
10 10:34:18 p.m. You're emailing Mr. Wagner about this
11 issue, right?

12 **A Yes.**

13 Q And you're doing this in response to his email
14 chain --

15 **A Yeah.**

16 Q -- about an asset purchase agreement --

17 **A Yes.**

18 Q -- that he said was signed, right?

19 **A Yes. "RE: \$100,000 deposit for the purchase
20 of Mosler Automotive assets."**

21 Q So why did you send this email to Mr. Wagner?

22 **A Because he had sent me something that
23 presumably I had agreed to or something, or that he has
24 a signed copy back there. And I said "The email
25 trail" -- this is going back -- "you know, clearly shows**

1 you rejected my signed offer and countered the
2 proposal," which went back and forth several times
3 without resolution, particularly over the issue of my
4 requirement that he had put in there to spend \$30,000 on
5 his new nose mold, which he added and didn't even tell
6 me about, perhaps hoping I didn't notice it. Of course
7 that's what he did.

8 I believed the way we left it was I wasn't
9 even going to read any more of your contracts until you
10 actually had a deposit ready to send. And then I say
11 "I'm happy to come to an agreement, but there is no
12 actual contract at this point."

13 Q Now, Mr. Mosler, remember counsel was doing
14 something yesterday with his hands, like there's an
15 agreement over here --

16 A Yeah.

17 Q -- and an agreement over there?

18 A Yeah.

19 Q Now, anywhere in this chain of emails does it
20 say anything about an oral agreement based on emails
21 about the \$100,000 refundable deposit? Does it say
22 anything about that here?

23 A No.

24 Q Now he's referring to an asset purchase
25 agreement that he supposedly has signed, right?

1 **A Yes.**

2 Q Okay. What do you make of this --

3 **A That supposedly I had signed.**

4 Q What do you make of this "agreement over here,
5 agreement over there" testimony?

6 **A You know, I can look back from today and I can
7 see what he's trying to -- how he's trying to weasel out
8 of this thing, but certainly I don't think any rational
9 person would read it that way.**

10 Q So, now --

11 **A I can see what he's trying to do.**

12 Q Now let's look at -- go ahead.

13 **A I said if you don't see it that way, we have
14 nothing further to discuss. I mean, there's no
15 agreement here, period.**

16 **And if he did have some oral agreement, I've
17 got it in writing here that it's canceled, if there was.
18 I mean, the implication of the statement is clear: "I
19 have no agreement with you right now" in writing.**

20 Q And so when you wrote "I'm happy to come to an
21 agreement with you, but there is no actual contract at
22 this point" --

23 **A Right.**

24 Q -- did Mr. Wagner run to you and say "Oh, no,
25 there's an oral agreement"?

1 **A No, no.**

2 Q Or "There's an exchange of emails on May 2nd."

3 **A No.**

4 Q "That's our contract"?

5 **A No. No.**

6 Q Okay. Now I'm going to show you --

7 **A I didn't hear about that until this trial.**

8 Q Now, I'm going to mark this as Defendants'
9 Exhibit -- sorry, identification 260.

10 I'm showing you this document that's 260 for
11 identification.

12 MR. WEBER: Any objection to moving this
13 document into evidence?

14 MR. ZAPPOLO: I'm sorry. Is it this document?

15 MR. WEBER: Yes.

16 MR. ZAPPOLO: Okay. I'm sorry, no objection.

17 THE COURT: Madam Clerk, is that 116?

18 THE CLERK: Yes, Your Honor.

19 THE COURT: Thank you.

20 MR. ZAPPOLO: What is it for ID?

21 MR. WEBER: 260.

22 MR. ZAPPOLO: Thank you.

23 (Thereupon, Defendants' Exhibit 116 was
24 received into evidence.)

25 BY MR. WEBER:

1 Q Okay. So, Mr. Mosler, you can see the email,
2 right?

3 A Yeah.

4 Q And this is an email from Lew Lee to you,
5 right?

6 A Yes.

7 Q And it's at 6/27 at 10:36:20 p.m., right?

8 A Yeah. What's that? Two minutes later?

9 Q Well, it's in that same late night time frame
10 as all these emails.

11 A Yeah. Two minutes and four seconds later.

12 Q Right. So what's your understanding of this
13 email from Mr. Lew Lee?

14 A Lew Lee, you know, was articulate, heads-up
15 guy or whatever he was, and he sees what's going on
16 where Todd is trying to slip in the \$30,000 purchase,
17 you know, for me to enter into a contract without
18 telling me, and that's how he sees it.

19 And he's really upset and is trying to, like,
20 play good cop/bad cop type of thing and, you know,
21 smooth this over so they don't lose the deal. They're
22 worried now that I'm just going to walk away. I've
23 already said "We have no agreement, over," and he didn't
24 want this to be over.

25 And so he's trying to, like, smooth this deal

1 over, you know, kiss up to me and make up whatever, and,
2 you know, try and salvage the deal in any way possible.
3 He told me how wonderful I am and -- exciting, going to
4 help my reputation and all this stuff. It's just
5 like --

6 Q Were they buttering you up?

7 A Enough to make you sick, yeah.

8 Q I'm handing you what's been previously marked
9 as Defendants' Exhibit 63 --

10 A Yeah.

11 Q -- in evidence. This is 270 for
12 identification. So now we have an email that's dated
13 June 28, 2011, 7:31:47 a.m.?

14 A Yeah.

15 Q That's just after the email we just saw,
16 right?

17 A Yeah.

18 Q And it says "Good morning, Warren. I was just
19 talking with Lew. He is very excited about taking your
20 company forward, as am I."

21 Now did you understand that Mr. Wagner and Lew
22 Lee were working together at this point?

23 A Yeah. It looked to me like -- you know, you
24 have to kind of speculate on what happened, but Lew Lee
25 had read Todd the riot act and now Todd's, you know,

1 kind of like what we've seen and now he's back, you
2 know, on his best behavior trying to help salvage the
3 deal.

4 Q And what did you think about Mr. Wagner's
5 comments here where he says "Regarding the agreement, we
6 had so many versions through time, that I believe I may
7 have sent the wrong electronic one by accident"?

8 A Yeah.

9 Q What did you think about that?

10 A Same thing, Lew has read him the riot act.
11 You have to be conciliatory here and come up with
12 something just to save this contract. \$35,000 isn't
13 important, and I don't recall that being in the signed
14 version either. So he admits that he tried to slip it
15 in so, you know, whatever.

16 Q Now --

17 A "Would you like to work from the latest
18 version that I emailed in May?" This is still a month
19 old, right? There was no agreement to work from. I
20 don't know which one that was.

21 "Would you like to work from the latest
22 version that I emailed in May?" I wanted to verify to
23 ensure that there weren't any misunderstandings.

24 So he's still trying to work from old
25 agreements where there had been no agreement that had

1 **been back and forth, and I'm, you know, thinking "Why am**
2 **I wasting my time with these guys?"**

3 Q Now, did you understand Mr. Wagner to be
4 affiliated with SFDM as of this point?

5 A **Yeah. Absolutely.**

6 Q And why is that?

7 A **He's been with them for a long time, and he**
8 **even used their letterhead or whatever. He used that in**
9 **his own signature in various places.**

10 Q You're talking about what's been shown to you
11 previously?

12 A **It was fully disclosed that he was --**

13 Q Hold on, one second, Mr. Mosler. Okay. Go
14 ahead. Go ahead.

15 A **Yeah. There was no -- you know, it's been**
16 **fully disclosed that he was affiliated with them,**
17 **working with them as part of the deal. They were all**
18 **working together; that was never in dispute.**

19 Q You're referring to --

20 A **He made it a point to show that he was a part**
21 **of it.**

22 Q You're referring to the signature block --

23 A **Yeah.**

24 Q -- that Mr. Wagner put on his email to you
25 which shows Santa Fe Digital Media, right?

1 **A Yeah.**

2 Q And so for all intents and purposes, you
3 understand that James Todd Wagner was a part of Santa Fe
4 Digital Media as of June 2011?

5 **A Yes.**

6 Q Okay. Now mark this one as 280 for
7 identification.

8 I'm sorry, that's small text, but take a look
9 at that and let me know when you're ready.

10 MR. WEBER: Move this document into evidence.

11 MR. ZAPPOLO: No objection.

12 THE COURT: Madam Clerk, 116?

13 THE CLERK: 117.

14 THE COURT: Thank you.

15 (Thereupon, Defendants' Exhibit 117 was
16 received into evidence.)

17 BY MR. WEBER:

18 Q Okay. Mr. Mosler, I know it's small font --

19 **A Yeah.**

20 Q -- but can you see that okay?

21 **A Yeah.**

22 Q Okay. So now I want you to look at the first
23 email in the chain.

24 MR. WEBER: You got to zoom in, David. It's
25 really blurry.

1 BY MR. WEBER:

2 Q Okay. So this is the first portion of the
3 letter. You see it says "Dear Warren"?

4 A Yeah.

5 Q And Lew Lee is writing to you -- right? -- on
6 June 20, 2011?

7 A Yes.

8 Q And it says "Regarding the possibility of our
9 purchase, your company, SFDM, will be sending a formal
10 letter of intent tomorrow." Do you see that?

11 A Yes.

12 Q "The LOI will outline our intent to make this
13 deal go through very expeditiously." Did you understand
14 that Todd would be a part of SFDM?

15 A Yes.

16 Q Then it says "SFDM would like to tomorrow pay
17 you the earnest money deposit that you requested in our
18 conversation of two weeks ago." Do you see that?

19 A Yes.

20 Q And it says "SFDM would appreciate 'Right of
21 First Refusal' to match/exceed any offers that may arise
22 in this immediate period." Do you see that?

23 A Yeah.

24 Q And you understand that when Lew Lee was
25 writing to you about what SFDM would do, that Todd was a

1 part of that deal?

2 **A Yes.**

3 Q And so now let's scroll up.

4 Actually, scroll down for a minute. Now look
5 at this next portion. It says "In a heart to heart talk
6 with Todd in which I reiterated SFDM's position, he was
7 very apologetic to me and regretted the somewhat
8 arrogant tone that he displayed towards you in his
9 emails yesterday."

10 **A Yeah.**

11 Q Do you remember what's the date of this email?

12 **A The 29th, June 29th.**

13 Q And the email we saw previously was June 20th
14 at 7:34 or something, right?

15 **A Yeah.**

16 Q And then he said -- Mr. Lew Lee wrote to you
17 "I was much heartened by this. Youth is oft impetuous."

18 **A Yeah.**

19 Q And then Mr. Lew Lee wrote "Upon our written
20 agreement, Todd Wagner will not be among senior
21 management of the new Mosler, nor a partner in same. He
22 will, however, accept an important position with SFDM's
23 (2012) Automobile 1 venture as an automotive consultant.
24 We would like to hire him as an occasional engineering
25 consultant for the company."

1 **A Yeah.**

2 Q Do you see that?

3 **A Yeah.**

4 Q So you understood that Todd was on board, was
5 with SFDM. They'd be sending you a letter of intent,
6 right?

7 **A Yeah. Well, that's what this letter says,
8 yeah.**

9 Q So let's go to the response of this email
10 which said --

11 **A I --**

12 Q Go ahead.

13 **A No, go ahead.**

14 Q Scroll up. And in response, you wrote to Lew
15 Lee "Terms: \$100,000 nonrefundable deposit to be wired
16 June 29, 2011, closing no later than September 1, 2011,
17 balance at closing." And why did you do that?

18 **A The purchase includes the building and the
19 entire business. Because we didn't have any terms that
20 this letter of intent was pursuant to, so I wanted to
21 have a basic outline of those terms so it would be clear
22 what he was doing and we wouldn't get into my arguments
23 over what he was buying or not buying.**

24 Q Now, let's go to 278. Plaintiffs' 68, please.

25 Okay. I'm handing you what's been previously

1 identified as Plaintiffs' Exhibit 68 in evidence.

2 **A Uh-huh.**

3 **Q** Mr. Mosler, that's the letter of intent,
4 right?

5 **A Yes.**

6 **Q** Now, by this letter of intent, did you
7 understand that you would be receiving a
8 \$100,000 deposit?

9 **A I mean, that was -- that was their intention,**
10 **yeah.**

11 **Q** And was there language in the letter of intent
12 that showed the \$100,000 deposit was nonrefundable?

13 **A Yes.**

14 **Q** And where was that language?

15 **A Plain English, "Nonrefundable deposit." It's**
16 **in the beginning of the second paragraph, "SFDM shall**
17 **deliver a nonrefundable deposit in the sum of \$100,000."**

18 **Q** And why did you want a nonrefundable deposit?

19 **A** At that point in time I was reducing -- I was
20 letting people go. I was winding down the company. And
21 Todd had approached me at some point in there with the
22 idea that he didn't want me to do that because they were
23 going to need these people to build cars because these
24 were the people, remaining people, that could build
25 cars.

1 And I said, "Well, I'm not going to keep
2 paying for these people just because you claim you're
3 going to close in three months, you know. You're going
4 to have to pay for them if you want to do it." And so I
5 said, you know, that I wanted a nonrefundable deposit or
6 I'm just going to keep downsizing the way I have been
7 doing.

8 So they came up with this nonrefundable
9 deposit and I kept the people on for a couple -- three
10 months and then, you know, downsized. So I didn't
11 benefit from the \$100,000. It was used to keep people
12 on that I had no use for at that time.

13 Q Now following the \$100,000 deposit, we saw,
14 the other day, emails where Todd Wagner received them in
15 a blind carbon copy.

16 Now when Lew Lee/SFDM/James Todd Wagner were
17 trying to close the purchase of MACC following the
18 deposit of \$100,000, did you still understand that James
19 Todd Wagner was a part of the deal?

20 A Yes.

21 Q And did you tell Mr. Wagner that?

22 A I have to look at the document.

23 Q Okay. So let's look at --

24 A I don't recall what I said specifically.

25 Q -- 293. Mark this as 293 for identification.

1 Okay. 293 for identification.

2 MR. WEBER: Move this document into evidence.

3 MR. ZAPPOLO: No objection.

4 THE COURT: Madam Clerk, 118?

5 THE CLERK: Yes.

6 THE COURT: Thank you.

7 MR. ZAPPOLO: Is that 119?

8 THE COURT: 118.

9 MR. ZAPPOLO: Thank you.

10 (Thereupon, Defendants' Exhibit 118 was
11 received into evidence.)

12 BY MR. WEBER:

13 Q Okay. So this is an email exchange date of
14 August 4, 2011, right?

15 A Yeah.

16 Q Remember the letter of intent had SFDM closing
17 by September 1, 2011, right?

18 A Right.

19 Q Now let's do this backwards in a way. You
20 know, so you wrote in this top email "Todd get repaid
21 yet?"

22 A Yeah.

23 Q Do you see that?

24 A Yeah.

25 Q Now what did you mean by that?

1 **A** **So, you know, Jill had indicated or confirmed**
2 **that he borrowed the money from his father and so I was,**
3 **you know, wondering how that was going on, if he's got**
4 **the money from Lew to pay his father back.**

5 **Q** **Well, let's just explain that.**

6 **A** **Yeah.**

7 **Q** **The money that was -- the \$100,000 --**

8 **A** **Yeah.**

9 **Q** **-- came from the James D. Wagner Trust, right?**

10 **A** **Yeah.**

11 **Q** **But you wrote "Todd get repaid yet?" So who**
12 **did you think was going to repay Todd?**

13 **A** **Lew Lee.**

14 **Q** **And why did you think that?**

15 **A** **It was -- you know, I had come to understand**
16 **that Todd had lent Lew Lee the money to close -- for the**
17 **letter of intent.**

18 **Q** **Was there any doubt that Lew Lee and Todd were**
19 **working -- Mr. Wagner were working together as of**
20 **August 4, 2011 to close pursuant to the letter of**
21 **intent?**

22 **A** **I had no doubt.**

23 **Q** **And now we see, on August 4, 2011, Jill Wagner**
24 **writes "Hi, Warren. Lew and I spoke last night and his**
25 **first hurdle was passed yesterday with a bridge loan."**

1 **A Yeah.**

2 Q "He is expecting to be able to close by the
3 30th still. He is waiting on a second bridge loan that
4 he expects to come in about ten days." Do you see that?

5 **A Yeah.**

6 Q And what did you take that to mean?

7 **A That he was -- he had some -- he was claiming
8 that he had something going, and he needed a loan to tie
9 them over until some kind of a closing. And he was
10 going to use money from that to do this, and that was
11 his story.**

12 Q Would you say this email is consistent with
13 your belief that Lew Lee and Todd were working together
14 after the deposit of \$100,000 to close on the purchase
15 of MACC by SFDM?

16 **A Yes.**

17 Q Why?

18 **A Because his whole thing was about closing on
19 the loan, and that he expected to do it. I don't quite
20 follow the question.**

21 Q Well, if you didn't think that Todd --
22 Mr. Wagner and Lew Lee were working together after the
23 \$100,000, why would you have written "Todd get repaid
24 yet?"

25 **A Yeah. Right. No, no. No, I understand that**

1 part. I thought there was something more to your
2 question.

3 Q Now, let's go to -- let's mark this as
4 Exhibit 294 for identification.

5 Okay. Mr. Mosler, you've been handed what's
6 been marked 294 for identification.

7 MR. WEBER: Any objection to moving this
8 document into evidence?

9 MR. ZAPPOLO: No objection.

10 THE COURT: Madam Clerk, 119?

11 THE CLERK: Yes.

12 (Thereupon, Defendants' Exhibit 119 was
13 received into evidence.)

14 BY MR. WEBER:

15 Q Okay. Mr. Mosler, here's another email. This
16 one is from August 4, 2011. You mentioned Martin Short.
17 Who's Martin Short?

18 A He was in charge of what is called Mosler
19 Europe. And he was in the UK, still is. He's a race
20 car driver and fabricator, and he's got a company that
21 takes people racing.

22 Q Do you remember who this Raja Zaini is?

23 A I just don't.

24 Q Now let's go to page 2 at the bottom.

25 A Uh-huh.

1 Q Do you see that?

2 A **Yeah.**

3 Q It's an email from Martin Short. Do you see
4 that?

5 A **Yeah.**

6 Q And let's look at the "BTW Warren." Can you
7 see that there?

8 A **Yeah.**

9 Q This is August 4, 2011 after the \$100,000
10 deposit, right?

11 A **Yes.**

12 Q And it says "BTW Warren, I spoke with Todd."

13 A **Yes.**

14 Q We understand that to mean?

15 A **Todd Wagner.**

16 Q "He was confident (in a Todd way)." What do
17 you think he meant by that?

18 A **Just taking a cheap shot at Todd's character.**

19 Q "That he was getting the money" --

20 A **Yes.**

21 Q -- "and said \$6 million was being handed over
22 tomorrow as part of a supercomputer deal."

23 A **Yeah.**

24 Q What did you understand that to mean?

25 A **That was this thing -- that was this bridge**

1 loan and the whole deal somehow involved a
2 supercomputer.

3 Q A bridge loan, is that the Lew Lee bridge
4 loan, supercomputer?

5 A Yeah. The Lew Lee goings on.

6 Q Yeah. And then he goes "But he was asking if
7 I knew of potential investors, et cetera, and that some
8 luck was needed. All confusing Todd type stuff." What
9 does that mean?

10 A The same. You know, just the same reaction.
11 I don't want to generalize it, but it's sometimes Todd's
12 kind of hard to follow when he starts going into these
13 deals and what's going on.

14 Q Now, does this email from Martin Short support
15 your belief that Lew Lee and Todd were working together
16 to close on SFDM's purchase of MACC after the
17 January 29th deposit of the \$100,000?

18 A Everything supported that belief, and there
19 was nothing to the contrary.

20 Q Yeah, but how does Martin Short, a third party
21 saying this, support it?

22 A Todd coming up to him, talking, he was
23 confident that this deal was going to go through, so it
24 was just more evidence that he's working with Lew on
25 this deal and was being kept abreast of what was

1 **happening and knew all about what was happening. He's**
2 **still asking for investors for the deal.**

3 Q Okay. Now, I want to show you --

4 **A You know, mentioning the supercomputer deal**
5 **indicates it was the Lew Lee thing. It wasn't some**
6 **other deal, not that there couldn't have been other**
7 **deals also.**

8 Q Okay. You can put that one down. I'm handing
9 you what's been previously marked as Plaintiffs'
10 Exhibit 70, I believe. This is 307 for identification.

11 MR. ZAPPOLO: Did you say Plaintiffs'?

12 MR. WEBER: 70.

13 MR. ZAPPOLO: Thank you.

14 BY MR. WEBER:

15 Q Now you see here, Mr. Mosler, it's an email
16 from you to Jill Wagner, right?

17 **A Uh-huh.**

18 Q Mr. Wagner and Lew Lee, right?

19 **A Yes, yes.**

20 Q And this email is dated August 12, 2011,
21 right?

22 **A Yes.**

23 Q And you wrote "We can hold off on the press
24 release until month end." Why did you write "until
25 month end"?

1 **A Month end would be the closing date.**

2 Q What closing date?

3 **A Where Santa Fe Digital Media closes the**
4 **purchase.**

5 Q Purchase of what?

6 **A The asset purchase agreement of MACC.**

7 Q Pursuant to what?

8 **A Pursuant to the --**

9 Q Letter of intent?

10 **A -- letter of intent and the -- what's the**
11 **other notes I made?**

12 Q And then you wrote "So if Lew" --

13 Who's the Lew being referred to there?

14 **A Lew Lee.**

15 Q -- "buys the company, the name becomes his
16 call." Why did you write that?

17 **A Because here, he is in the process of working**
18 **with Todd to buy the company, and if there's going to be**
19 **a press release and it's going to be their company, let**
20 **them do it.**

21 Q And did Todd say "No, it's not Lew Lee who put
22 in the \$100,000, it's me"?

23 **A No. No. They were working together.**

24 Q That was Defendants' 70, actually, I'm sorry.

25 Okay. This is Defendants' 72 in evidence. It

1 was marked as 313 for identification.

2 MR. ZAPPOLO: Okay.

3 BY MR. WEBER:

4 Q Okay. So, let's scroll down.

5 Okay. So, Mr. Mosler, you wrote an email on
6 August 22, 2011. You wrote "Hi, ready to close this
7 week?" Right?

8 A Yes.

9 Q Scroll up. And then Lew Lee wrote to you and
10 Mr. Wagner, right?

11 A Yes.

12 Q And did you send your original email to James
13 Todd Wagner and Lew Lee?

14 A Does it say?

15 Q Here, let me show you Defendants' 71 in
16 evidence too.

17 A It doesn't say there. Oh, okay, yeah, it's
18 both of them.

19 Q You sent your original email to both of them
20 as well, right?

21 A Yes.

22 Q This is Defendants' 71 in evidence, right?
23 You wrote to Lew Lee and James Todd Wagner, right?

24 A Yes.

25 Q Why did you write to both of them on

1 August 22nd and say "Hi, ready to close this week?"

2 **A They were working together the whole time.**

3 **There was nothing to the contrary.**

4 Q Working together to do what?

5 **A To buy MACC.**

6 Q For what?

7 **A Pursuant to the assets pursuant to their**

8 **letter of intent.**

9 Q That had a closing date of what?

10 **A September 1st.**

11 Q So let's go back to the other one. So then we
12 see in this email Lew Lee responds and includes
13 Mr. Wagner and says "Warren, we are still looking at
14 closing on the 1st what." Did you understand that to
15 mean?

16 **A They're still looking both together. "We,"**
17 **they're looking to close on the 1st.**

18 Q And were you happy?

19 **A Yes.**

20 Q Now, I want to show you -- this will be marked
21 as 318. This was already marked in evidence.

22 I'm handing you what's been identified as 318
23 for identification.

24 MR. ZAPPOLO: 308?

25 MR. WEBER: 318 for identification. Move this

1 document into evidence.

2 MR. ZAPPOLO: No objection.

3 THE COURT: Madam Clerk, is that 119 or 120?

4 THE CLERK: 120.

5 THE COURT: 120?

6 THE CLERK: Yes.

7 THE COURT: Thank you.

8 (Thereupon, Defendants' Exhibit 120 was
9 received into evidence.)

10 BY MR. WEBER:

11 Q Okay. So, Mr. Mosler, we saw this document
12 yesterday --

13 A Yeah.

14 Q -- that Mr. Zappolo asked James Todd Wagner
15 about --

16 A Uh-huh.

17 Q -- right? It's dated August 30, 2011, just
18 before September 1st?

19 A Uh-huh.

20 Q Was it any surprise to you that Mr. Wagner
21 received this document?

22 A Was who surprised?

23 Q Were you surprised that James Todd Wagner
24 received this document?

25 A No.

1 Q Why?

2 A Let's see, from Jill to Lew Lee. Did it go to
3 him?

4 Q Well, you see James Todd Wagner is on the
5 email.

6 A Oh, it's his email. Yes, yes. No, there
7 were -- Jill would have sent it to both of them because
8 they were working together.

9 Q Together to do what?

10 A To buy the asset purchase agreement of MACC.
11 To buy my assets --

12 Q Now scroll down.

13 A -- and my building, I guess. No, now it's
14 just only the assets.

15 Q Do you know why the terms changed?

16 A At some point they asked to just buy the
17 assets. I don't recall why.

18 Q And why was that?

19 A I don't know. I have to see the
20 documentation.

21 Q Well, let's go to --

22 A Oh.

23 Q Go ahead.

24 A It was substantially less money, I know that.

25 Q Now, did Lew Lee and Todd, Mr. Wagner, close

1 on September 1st?

2 **A No.**

3 Q What happened?

4 **A Well, nothing happened.**

5 Q And so what happened -- what did you do with
6 your efforts to sell MACC after Todd and Lew Lee failed
7 to close?

8 **A Well, I continued entertaining offers.**

9 Q Now, I'm marking this as 327 for
10 identification. 327 for identification.

11 I'm handing you what's been marked 327 for
12 identification. Do you see this document, Mr. Mosler?

13 **A Yes.**

14 MR. WEBER: Move this document into evidence.

15 MR. ZAPPOLO: No objection.

16 THE COURT: Madam Clerk, 121?

17 THE CLERK: Yes.

18 THE COURT: Thank you.

19 (Thereupon, Defendants' Exhibit 121 was
20 received into evidence.)

21 BY MR. WEBER:

22 Q Now after September 1st passed --

23 **A Yeah.**

24 Q -- you went back to attempting to sell MACC,
25 right?

1 **A Yeah, the assets. They were always for sale.**

2 Q And on September 19, 2011, Mr. Wagner emailed
3 you that "I had been able to put together a few small
4 investors to take a shot at taking the company forward."
5 Do you see that?

6 **A Yes.**

7 Q "And we are prepared to pay \$500,000 on
8 October 1st."

9 **A Yeah.**

10 Q And then you respond, "Maybe. Not enough to
11 call off the others offering twice that." What did you
12 mean by that?

13 **A It was -- he said, "Are you open to this?"**

14 **And I said, you know, "Maybe." I said, "The**
15 **problem was the others were offering twice that," which**
16 **means there were others willing to pay 1 million for the**
17 **remaining cars and the assets, but enough to take a look**
18 **at it if they don't come through.**

19 Q And Mr. Wagner wrote "Completely, understood.
20 I'm getting things together and wait to see what
21 happens." Do you see that?

22 **A Yes.**

23 Q Now in September 2011, that's how many months
24 after May 2, 2011, after the alleged oral agreement or
25 written agreement by which Mr. Wagner says you agree to

1 sell MACC to him?

2 **A May, June, July, August, September -- five**
3 **months.**

4 Q Now, does this email say "No, Mr. Mosler, I
5 have a contract with you. I'm going to buy MACC"?

6 **A No.**

7 Q Did he say "Oh, I put the \$100,000 in. MACC
8 is mine for the taking"?

9 **A No.**

10 Q As of September 19, 2011, did you have an
11 agreement with the right hand, the left hand, or in the
12 middle?

13 **A Right now we have a mutual agreement that he's**
14 **going to wait and see if the others buy the company and**
15 **then maybe he'd come back. That's where we stand right**
16 **now.**

17 Q And why is that? And why would he agree?

18 **A It made sense to me because I had no**
19 **understanding that we had any kind of agreement.**

20 Q And neither did he, correct?

21 **A Right. Otherwise he wouldn't have done this.**
22 **He should have -- if he did, he should have made it**
23 **known to me.**

24 Q 330 for identification. I'm handing you
25 what's been marked as 330 for identification. 330 for

1 identification.

2 MR. WEBER: Move this document into evidence.

3 MR. ZAPPOLO: No objection.

4 THE COURT: Madam Clerk, 121?

5 THE CLERK: 122.

6 THE COURT: 122.

7 (Thereupon, Defendants' Exhibit 122 was
8 received into evidence.)

9 BY MR. WEBER:

10 Q I'm showing you what's been marked as
11 Defendants' 122. It's an email from yourself -- well,
12 from Jill Wagner to you and David Cole. Do you see
13 that?

14 A Yes.

15 Q And it says September 20th. "Hi, David. I
16 wasn't aware Todd delayed your efforts. There are no
17 contractual obligations to him at this point regarding
18 the purchase of the company. Let me know how I can
19 help." Do you see that?

20 A Yes.

21 Q Do you remember David Cole?

22 A I don't.

23 Q Was he the potential purchaser of the company?

24 A It sounds like it, but I don't recall.

25 Q Do you want to take a second look at the

1 email?

2 **A Yeah. Okay. Yeah, it's coming back to me**
3 **now.**

4 Q There's a lot of emails, right, Mr. Mosler?

5 **A Yes. My goodness.**

6 Q Do you recall David Cole being a potential
7 purchaser?

8 **A Yeah, I remember this email. I hadn't**
9 **recalled the name, but --**

10 Q And did you know Ms. Wagner said "I wasn't
11 aware Todd delayed your efforts"?

12 **A Yes.**

13 Q What did she mean by that, to your
14 understanding?

15 **A Well, in this email he was trying to buy the**
16 **company. He had a Middle East investor and they were**
17 **delayed due to the offer situation with Todd, whatever**
18 **that is, and so Jill was apologizing for that.**

19 Q Okay. I'm handing you what's been previously
20 marked as Defendants' 77 in evidence. This is 333 for
21 identification -- well, was 333 for identification.

22 Mr. Mosler, this is an email from James Todd
23 Wagner to you, the same date as the last email we saw,
24 right?

25 **A Yes.**

1 Q A few minutes after?

2 A Yes.

3 Q And in this email Mr. Wagner's emailing you "I
4 mean no disrespect whatsoever, but knowing what it takes
5 to get the chassis into a saleable condition," what did
6 that mean to you?

7 A That is some car -- what was it -- it was
8 something about -- which chassis is he talking about?
9 That needed work. It just needs to be -- I don't know.

10 Q Well, what about this part where he says "I
11 think a fair offer is \$500,000 for 90 percent and we pay
12 100 percent of the utilities until the building sells,"
13 what did you think of that?

14 A Still negotiating.

15 Q Negotiating for what?

16 A To buy the assets of MACC, buy MACC.

17 Q And what did you think of his offer?

18 A I didn't want to sell 90 percent to him. Oh,
19 I see. And then he wasn't going to -- he wanted free
20 space in the building and you can take this as your
21 fallback position. It wasn't an attractive offer to me
22 at all.

23 Q And what did you think about this language
24 here, "You can take this as your fallback position in
25 the event the other guys don't come through"?

1 A Well, he just heard, I guess, that David Cole
2 offered 7 million. He had known about the other offers
3 and he was kind of just sitting back in case they didn't
4 come through. He was hoping to buy it cheaper.

5 Q So now even though Mr. Wagner says he's having
6 a contract on May 2nd -- as of May 2, 2011 --

7 A Yeah.

8 Q -- why was he waiting until the other guys
9 don't come through?

10 A Because at this point in time he hadn't come
11 up with the notion that he had a contract. It's
12 something he came up with later.

13 Q There was no contractual relations --

14 A No.

15 Q -- between you MACC or Mr. Wagner, right?

16 A Right. As I made it crystal clear in writing
17 on June 27th or '8, whenever that the last email was.
18 27th, I guess.

19 Q And what did you -- let's look at the email
20 below where it says "I understand where you're coming
21 from, but as you know, it's a cash vacuum."

22 A Yeah.

23 Q Did you think MACC was a cash vacuum?

24 A Yeah.

25 Q Why?

1 **A** Because I kept putting cash into it and
2 nothing ever came out.

3 **Q** And then Mr. Wagner wrote "There is major work
4 to be done to get something to profitability."

5 **A** Yes.

6 **Q** Did you agree with that?

7 **A** Yes, totally.

8 **Q** Why did you agree with that?

9 **A** Because, you know, you can never agree to get
10 something to profitability. Even if it's
11 well-capitalized, which may have been \$10 million, and
12 with a capable executive, I just didn't see it
13 happening.

14 **Q** Did you think that Mr. Wagner would be a
15 capable executive?

16 **A** I wouldn't have hired him for that job, no.

17 **Q** How many people has Mr. Wagner supervised at
18 MACC?

19 **A** Including the ones that he supervised when he
20 entered the glass shop on an unauthorized basis over the
21 weekend? I don't know. That would probably be the
22 most.

23 **Q** So was he an executive at MACC? Did he
24 oversee --

25 **A** I didn't have titles like that, but he was an

1 engineer. He didn't have -- he'd have people working
2 for him from time to time on the project, but he -- and
3 he actually did a pretty good job organizing people in
4 the shop, so I can't take that away from him.

5 Q Now, what did you understand -- Mr. Wagner
6 wrote "There are also risks with future certification
7 and airbag exemptions, et cetera." What did you
8 understand that to mean?

9 A For one thing, those rules were always being
10 updated and changing and there were new things that had
11 to happen. We were dependent on small manufacturer
12 exemptions, I believe, from various types and any of
13 that could be taken away from it. It was an enormous
14 risk in the business with rules and regulations changing
15 or, you know, employees suing you. All kinds of risks.

16 Q Well, do you see where it says "future
17 certification"? What does that refer to? Hadn't
18 Mr. Wagner already done something to the certification?

19 A Yeah, but those things have a finite time. I
20 believe it was -- I thought I heard testimony that it
21 expired at the end of the year.

22 Q And Mr. Wagner wrote "It's a mine field that
23 many people have backed away from for good reason."
24 What did you think he was referring to there, to your
25 understanding?

1 received into evidence.)

2 BY MR. WEBER:

3 Q Okay. Put up 335 for identification. 123,
4 Defendants' 123. Mr. Mosler, can you see this document?

5 A Yes. September 22nd now.

6 Q September 22, 2011.

7 A Two days later.

8 Q It's an email from you to Mr. Wagner, and
9 below it there's an email from Mr. Wagner to you. And
10 he says "Hi, Warren. I have been keeping Lew" --

11 Who did you understand Lew to be?

12 A Lew Lee.

13 Q -- "apprised all along" --

14 A His partner.

15 Q Go ahead, sorry.

16 A Yeah. His partner. Go ahead.

17 Q "I have been keeping Lew apprised all along
18 the way of my endeavors to find a backup plan in the
19 event that his deal suffers further delays."

20 A Yes.

21 Q What did you understand him referring to
22 there?

23 A This thing that was supposed to have closed
24 September 1st.

25 Q What thing? The letter of intent?

1 **A The letter of intent to purchase the asset**
2 **purchase agreement.**

3 Q Which they failed to close on?

4 **A Pursuant to the letter of intent. Which they**
5 **failed to close on.**

6 Q And then it says "My group are acquaintances
7 who are" -- well, before I do that, what did you think
8 he meant by "backup plan"? Backup plan is like you
9 already have a plan, right?

10 **A Yes.**

11 Q And you have a backup plan in case the
12 original plan doesn't come through, right?

13 **A Yeah, Plan B.**

14 Q So then he wrote "All along, I have been
15 telling Lew all along that I prefer that he does the
16 deal." What did you understand that to mean?

17 **A That I prefer he does the deal. As above, my**
18 **group is the backup plan -- this may be the source of**
19 **the misunderstanding. I don't know of any**
20 **misunderstanding.**

21 **Anyway, to me, he's working with Lew for one**
22 thing for sure and then he prefers (as above, my group
23 is the backup plan), I guess doing it through Santa Fe
24 Digital Media rather than through MSI or whatever. I'd
25 have to be speculating on what he meant there.

1 Q He's keeping Lew on one hand --

2 A Yeah.

3 Q -- and then he's got a backup plan in the
4 other hand, right?

5 A Yeah. As above, my group, which is another
6 one, it's a backup plan if Lew doesn't come in.

7 Q Right. And if Lew's plan didn't work as of
8 September 1st, now he's got a backup plan, right?

9 A Right.

10 MR. WEBER: 338 for identification. 338 for
11 identification. 338 for identification.

12 Move this document into evidence.

13 MR. ZAPPOLO: No objection.

14 THE COURT: Madam Clerk, 124?

15 THE CLERK: Yes.

16 (Thereupon, Defendants' Exhibit 124 was
17 received into evidence.)

18 BY MR. WEBER:

19 Q Okay. Mr. Mosler, I'm showing you another
20 email.

21 A Yeah.

22 Q This one is -- begins with an email from
23 Mr. Wagner.

24 A Yeah.

25 Q On September 29, 2011, right?

1 **A Yeah.**

2 Q It says "Hi, Warren. Could you send a
3 contract for the purchase of Mosler Automotive's assets
4 for 500,000 for 90 percent, so I can have everything
5 reviewed in the event that Lew isn't able to get his
6 funding closed?" Who's the Lew he's referring to?

7 **A Lew Lee.**

8 Q Now as of September 29, 2011, which is
9 approximately four months after the May 2, 2011 email --

10 **A Yeah.**

11 Q -- why is Mr. Wagner asking for a contract for
12 \$500,000 when he says that he's got -- already had an
13 agreement for \$1 million to purchase MACC?

14 **A I don't know why he does what he does. He's
15 not -- he hasn't said anything about a deposit either.**

16 Q Is there any contract with Mr. Wagner at all
17 as of September 29, 2011?

18 **A No.**

19 Q Does he have any right to purchase MACC as of
20 September 29, 2011?

21 **A No.**

22 Q Only -- well, he's a part of the Lew Lee deal,
23 right? If Lew Lee is able to get his funding closed,
24 then, theoretically, he could purchase MACC under the
25 letter of intent, right?

1 **A** **Well, that was September 1st, right.**

2 **Q** **Oh, right.**

3 **A** **So September 29th, I would think -- I mean, if**
4 **he comes up with the money, I guess I would have sold**
5 **it, but he didn't.**

6 **Q** **And you would have --**

7 **A** **His time had come and gone by the letter.**

8 **Q** **And you wrote "I don't have one handy and**
9 **there's still another buyer at 1 million and 20 percent**
10 **and another at 700,000 ahead of you."**

11 **A** **Like I'm going to go and prepare a contract**
12 **for Mr. Todd.**

13 **Q** **And did Mr. Wagner say "No, I have a contract**
14 **with you. I'm the buyer of MACC as of September 29,**
15 **2011"?**

16 **A** **No, no.**

17 **Q** **Now, one of your defenses in this case is that**
18 **Savvas Savopoulos was going to purchase MACC and that**
19 **James Todd Wagner and SEI interfered with his purchase**
20 **of MACC, right?**

21 **A** **Yes.**

22 **Q** **Now did James Todd Wagner know that Savvas**
23 **Savopoulos had put down a deposit to purchase MACC?**

24 **A** **At some point he knew, yes.**

25 **Q** **This is 380 for identification. 380 for**

1 identification.

2 MR. WEBER: Move this document into evidence.

3 Any objection?

4 MR. ZAPPOLO: No objection.

5 THE COURT: Madam Clerk, 124?

6 THE CLERK: 125.

7 THE COURT: Thank you.

8 (Thereupon, Defendants' Exhibit 125 was
9 received into evidence.)

10 BY MR. WEBER:

11 Q Okay. Mr. Mosler, you're shown what's being
12 marked as Defendants' Exhibit 125?

13 A Uh-huh.

14 Q Now let's look at the bottom email. It looks
15 like an overlap. So this is an October 7, 2011 email
16 where we begin from Mr. Wagner to you. Do you see that?

17 A 16:52?

18 Q Yes. Correct. 16:52:20, do you see that?

19 A Yes.

20 Q Now what did you think of when you saw this
21 email?

22 A Let me see what it was. He was complaining
23 about me deciding to -- he thought I decided to sell to
24 Savvas and he was complaining about it and telling me
25 what a normal business move would have been. Telling me

1 **how hard he worked. Without question, it would be**
2 **worthless without his effort. It already was --**

3 THE COURT: Gentlemen, can I see you?

4 MR. WEBER: Yes.

5 (Thereupon, a sidebar conference was held.)

6 THE COURT: So I kind of found the testimony
7 today a little bit on the interesting side compared
8 to the testimony in the trial, but the jury
9 disagrees right now and wants to take a break.
10 They handed me a note saying the jury is requesting
11 a break.

12 MR. WEBER: Well, it's 4 o'clock, so yes.

13 THE COURT: So, you know, I'm in the zone, but
14 apparently they're running out, so I'm going to
15 take a ten-minute break, okay?

16 MR. WEBER: Okay.

17 (Thereupon, the sidebar conference was
18 concluded.)

19 THE COURT: Deputy, we're going to take a 10,
20 15-minute break.

21 (Thereupon, a short break was taken from
22 3:47 p.m. to 4:00 p.m.)

23 THE COURT DEPUTY: Come to order.

24 THE COURT: All right. Let's bring them in.

25 THE COURT DEPUTY: Jury entering.

1 (Jurors entering the courtroom at 4:01 p.m.)

2 THE COURT: All right. Please be seated.

3 Defendants, it's your witness.

4 BY MR. WEBER:

5 Q Okay. Mr. Mosler, ready?

6 A I'm ready.

7 Q Before we took our break, we saw in one of the
8 emails Mr. Wagner mentioned he thought the company had
9 potential. Do you remember that email? Not the one in
10 front of you. Do you remember that email just
11 generally?

12 A Oh, yeah. He talks about how difficult it
13 was?

14 Q Yeah.

15 A Yes.

16 Q Now one of the things I believe Mr. Wagner
17 thought might bring potential -- putting aside the
18 RaptorGTR, how was the performance of the other cars of
19 MACC?

20 A They were the top performance cars in the
21 world, and they still are 20 years later.

22 Q Go ahead.

23 A Yeah. They still are. They're still winning
24 races.

25 Q Can I have examples of any notable performance

1 by the Photon?

2 A The Photon won the event, the Lightning Lap up
3 there, and it didn't -- it wasn't -- it didn't have a
4 roll cage in it. It wasn't a track car, so it wasn't a
5 formal race car. It was built a road car and I kept it
6 personally and --

7 Q Was the Photon ever raced against a
8 motorcycle?

9 A No. You're thinking about the -- oh, yes, the
10 original Photon, excuse me. I was thinking of the
11 second one, the orange car that Todd put together which
12 was actually better finished. But, yeah, the first one
13 was road-tested by MotorTrend, set nine performance
14 records, and then it went to England to Martin Short and
15 he used it there to promote cars and found itself in a
16 head-to-head with a Ducati 999 motorcycle.

17 Q What's a Ducati 999 motorcycle? Is that a
18 fast motorcycle?

19 A Yeah. That was the baddest motorcycle of the
20 day at the time when it was -- and they had a T.V. show
21 where they would have this motorcycle go around a figure
22 8 track and then they'd bring out cars to try and see if
23 it could beat the Ducati, and no car had ever beaten it.
24 And Martin had arranged for the MT900, the first Photon,
25 to, you know, try its luck against a Ducati.

1 Q And what happened?

2 A **And it was the first car to beat the Ducati.**

3 Q Did that change the profitability of MACC?

4 A **No. But, you know, it was good publicity and**
5 **it was definitely a high point for the company to be the**
6 **first car to do that.**

7 Q Okay. Let's go to 380, which I think is
8 Defendants' 12 --

9 THE CLERK: -- 5.

10 MR. WEBER: 125 in evidence.

11 BY MR. WEBER:

12 Q Okay. So, Mr. Mosler, let's look at this
13 email. October 7, 2011 --

14 A **Yes.**

15 Q -- which I believe is the same day that
16 Mr. Wagner received the email about the deposit going
17 into MACC from Savvas, right?

18 A **Yeah.**

19 Q Now what did you think of Mr. Wagner's
20 comment, "A normal business move would be to have us bid
21 against each other"?

22 A **I didn't see that as a normal business move**
23 **from my business history, but, you know, there is no**
24 **definition of "normal," I guess.**

25 Q Did you have any obligation --

1 **A He was trying to criticize what I was doing.**

2 Q Did you have any obligation to have Mr. Wagner
3 and Savvas bid against each other to buy MACC?

4 **A None whatsoever.**

5 Q Hadn't he already had a chance to purchase
6 MACC through Lew Lee?

7 **A And more, more than one chance. It had been
8 offered to him continuously since, I don't know,
9 whenever.**

10 Q And he never came up with the money -- right?
11 -- to purchase it in whole?

12 **A Money? No. The only money was that \$100,000
13 deposit.**

14 Q And he wrote --

15 **A To which I needed to pay the people he wanted
16 me to keep on, nonrefundable.**

17 Q And then he wrote "Without question, your
18 company would be worthless now without my effort."

19 **A Well, that's true.**

20 Q And you have --

21 **A It was worthless both ways.**

22 Q He wrote "that you haven't paid me for." What
23 did you think about that?

24 **A I don't know what he was talking about. I
25 always pay people what I owe them. I don't have any**

1 **payables.**

2 Q And then he wrote "On top of all of that, I
3 have a \$100,000 deposit in with you." What did you
4 think of that?

5 A **It's, like, all right. Where's this coming**
6 **from?**

7 Q Okay. Let's go up to the next email.

8 A **Where are we now?**

9 Q It's October 7th at 4:59 p.m.

10 A **October 7th.**

11 Q On the --

12 A **Wait a minute. I got it. 4:59, yeah.**

13 Q Yeah.

14 A **Oh, I was just responding to his declarations.**

15 Q You wrote "First one with the cash was first
16 served."

17 A **Yeah.**

18 Q "First Lew, with his deposit, and your
19 repeated assurance he would close."

20 A **Yeah.**

21 Q What did you mean by that?

22 A **Well, he was talking about -- it was in**
23 **response to his questions.**

24 Q Are you talking about the letter --

25 A **"The first come, first served. You confirm**

1 **that I made the first offer yet you signed with Savvas."**

2 Q Hold on. You're looking at the wrong one.

3 **A But that's what this is in response to.**

4 Q You wrote "First Lew, with his deposit, and
5 your repeated assurance that he would close," what did
6 you mean about?

7 **A I was responding to what he said previously.**
8 **The more it upsets me --**

9 Q Right. You're talking about the letter of
10 intent and the \$100,000, right?

11 **A Yeah. He had his chance. I -- when he came**
12 **up with the letter of intent and the deposit, I -- he**
13 **was served. I mean --**

14 Q And now --

15 **A It was first come, first served and in that**
16 **sense --**

17 Q Now you wrote --

18 **A -- he had his chance.**

19 Q You wrote "Savvas is the second with his
20 nonrefundable deposit" because now, as of October,
21 Savvas had put in a deposit, right?

22 **A Yeah.**

23 Q And now you see Mr. Wagner reply "My offer for
24 \$500,000 was before Savvas."

25 **A Yeah.**

1 Q But we saw that in approximately
2 September '19, right?

3 A Yeah. He said the fall-back whatever.

4 Q Scroll up. Mr. Wagner wrote "I told you the
5 money was in the bank."

6 A Yeah.

7 Q Then he wrote "So in the interest of making
8 everyone happy, how about this? We pay \$1 million and
9 everyone rides off into the desert" -- can you scroll to
10 the right --

11 A Happy, yeah. I had a deposit and he's still
12 not 100 percent committed as he wants to do due
13 diligence. Take my money is what he's saying.

14 Q Go that way. Do you see where he's writing
15 he's still not 100 percent committed as he wants to do
16 due diligence?

17 A Yeah.

18 Q Go to the right.

19 He wrote "if tell Savvas that you mistakenly
20 though I" --

21 A It should be "thought."

22 Q -- "was out and return his deposit, I'm sure
23 he will be fine." Did you see what he wrote there?

24 A Yeah.

25 Q He tells Savvas that you mistakenly thought he

1 was out --

2 **A Yeah.**

3 Q -- and returned his deposit?

4 **A Yeah.**

5 Q "I'm sure he will be fine," what do you
6 understand that to mean?

7 **A He's asking me if I told Savvas Todd was out,**
8 **apparently, and I told him that was a mistake. And if I**
9 **give him the deposit back and let Todd buy it, and Todd**
10 **assured he'll be fine.**

11 Q Scroll up. Then you wrote "Talk to Savvas as
12 I've already signed with him."

13 Then Mr. Wagner wrote to you "One other
14 element, he may want to run for the hills when he finds
15 out two cars caught fire and one burned to the ground."

16 **A Yeah.**

17 Q What does that mean or what did you understand
18 that to mean?

19 **A That it's kind of like -- it's not exactly a**
20 **threat, but it's like a -- he's getting more intense**
21 **with his efforts to, you know, step in front of Savvas**
22 **here.**

23 Q Because that might impact Savvas' due
24 diligence --

25 **A Yeah.**

1 Q -- right?

2 A Yeah.

3 Q Because if Savvas were to find out the two
4 cars caught fire and one burned to the ground --

5 A Yeah.

6 Q -- then Savvas might stop his due diligence,
7 right?

8 A Right, right. So he's kind of threatening me
9 with that.

10 Q Let's scroll up.

11 And you forwarded it to Savvas, didn't you?

12 A Yeah.

13 Q And Savvas Savopoulos wrote "Sour grapes. I
14 trust you can get him to go away? I am talking to
15 Martin tomorrow." Martin is Martin Short, right?

16 A Yeah.

17 Q And then you wrote "Yes. He asked if he could
18 ask you if he could buy it, so just a heads-up if he
19 actually does."

20 You wrote "And you can just say no." Why did
21 you write that?

22 A Okay. So this is to Savvas. Yes, to sour
23 grapes. He asked if he could ask you if he could buy
24 it, so just a heads-up in case he asks you that.

25 I just wanted to let him know that Todd might

1 be asking Savvas to buy it if Todd could buy it instead
2 of Savvas.

3 Q And you told Savvas that he can just say no?

4 A Yeah.

5 Q Because Todd, Mr. Wagner has no right to buy
6 MACC, right?

7 A Well, and also don't worry about his threats,
8 yeah.

9 Q Well, then you wrote "The car burning is a
10 potential problem. I suspect Todd changed the resin
11 from what I had been using." What did you mean by that?

12 A Well, I had tested those cars personally where
13 I had taken the material, the fiberglass or carbon
14 fiber -- it's kind of the same resin, epoxy resin, and
15 tried to burn it, put a blow torch on them and it didn't
16 catch fire. So the fact that it caught fire is
17 somewhere the resin had changed.

18 I didn't know if it was Todd. This was not,
19 you know, a public chastisement of Todd. I just said if
20 the cars caught fire, there was some problem with the
21 resin that I didn't know about. So I had personally
22 tested for that. It was quite a while -- was years
23 before, so anything could have happened along the way.

24 Q Now let me show you 381 for identification.
25 381 for identification.

1 MR. WEBER: Move this document into evidence.

2 Any objection?

3 MR. ZAPPOLO: No objection.

4 THE COURT: Madam Clerk, is that 126?

5 THE CLERK: Yes, Your Honor.

6 THE COURT: Thank you.

7 (Thereupon, Defendants' Exhibit 126 was
8 received into evidence.)

9 BY MR. WEBER:

10 Q Okay. Now this is another email chain, same
11 day?

12 A Same day.

13 Q There's multiple email chains going on with
14 all of the people at MACC, right, Mr. Mosler?

15 A Yeah. Just what I needed, right?

16 Q And let's start here. In the first page, so
17 this is October 7th, the same date as the email with
18 Mr. Wagner?

19 A Yeah.

20 Q We just looked at, right?

21 A Uh-huh.

22 Q And you were emailing Ms. Wagner, right?

23 A From my email?

24 Q Do you see on the first page October 7th at
25 3:44?

1 **A October 7th at -- 2:00? This one here?**

2 Q At 3:44 p.m.

3 **A Okay. Got it.**

4 Q And you wrote "Todd's acting particularly
5 weird, demanding his money back from me."

6 **A Yeah.**

7 Q "I told him it was a deposit from Lew who owes
8 him the money." What did you mean by that?

9 **A That was in an email where Todd asked for his
10 \$100,000 back and I had responded saying, you know,
11 "Lew's the one who owes you the money. That was a
12 deposit from Lew."**

13 Q And Ms. Wagner wrote back to you that same
14 day, "I agree with you. The letter and money was sent
15 in for SFDM."

16 **A Yeah.**

17 Q What does that refer to, SFDM?

18 **A That's Santa Fe Digital Media.**

19 Q "And Todd's dad was the source."

20 **A Yes.**

21 Q The money he's referring to is the \$100,000
22 deposit, right?

23 **A Right.**

24 Q "I suspect his dad has been giving him a hard
25 time about not being paid back. He really should take

1 it up with Lew." And "Lew" means Lew Lee, right?

2 **A Yes.**

3 Q Did you agree with Ms. Wagner's assessment of
4 the situation?

5 **A Well, I accepted it and that was her**
6 **understanding. It really wasn't anything I could do**
7 **anything about.**

8 Q Now have you warned Mr. Wagner about Lew Lee?

9 **A I did. I don't exactly remember where or**
10 **when, but --**

11 Q Why did you warn him against Lew Lee?

12 **A Pardon me?**

13 Q Why did you warn Mr. Wagner against Mr. Lew
14 Lee?

15 **A He just seemed suspect to me.**

16 Q Why?

17 **A Well, anybody looking to buy this car company**
18 **seemed suspect to me and, you know, especially if**
19 **Todd -- you know, working with Todd, I saw him as kind**
20 **of like a mark for these guys and I just wanted him to**
21 **be careful, watch out for these guys.**

22 Q Okay. I'm going to show you 396 for
23 identification.

24 MR. ZAPPOLO: What number?

25 MR. WEBER: 396 for identification. Move this

1 document into evidence.

2 MR. ZAPPOLO: No objection.

3 THE COURT: Madam Clerk, is that 127?

4 THE CLERK: Yes, Your Honor.

5 (Thereupon, Defendants' Exhibit 127 was
6 received into evidence.)

7 BY MR. WEBER:

8 Q Okay. So here we have a continuation of the
9 previous email chain, right?

10 A Yes.

11 Q October 7th?

12 A Same day.

13 Q 2011. Let's go down one page.

14 Okay. So we see here, at 17:13, which is
15 5:13 in the afternoon, that was the email we just were
16 looking at a few documents before, right?

17 A Yes.

18 Q Now let's go up. And now you wrote "Happy to
19 ask him, but need to see proof first your funds are in
20 the bank and available."

21 And Mr. Wagner wrote on October 7th, that same
22 day, "Deal. I'll get that together over the weekend."
23 Do you see that?

24 A Yeah.

25 Q And then you wrote, about seven days later,

1 "Didn't happen?" Right?

2 **A Right, right.**

3 Q Why?

4 **A Why did I -- why did I write that?**

5 Q Yeah.

6 **A Well, here he said he was going to put funds**
7 **in the bank so that he could ask Savvas, you know, about**
8 **stepping out or whatever, and then he didn't do it.**

9 Q Was this consistent with Mr. Wagner's
10 experience over your interactions with Mr. Wagner and
11 him trying to purchase MACC?

12 **A That's how it always went down.**

13 Q Now given that his father apparently sold to
14 The Weather Channel for, by Mr. Wagner's own testimony,
15 over \$3 million --

16 MR. ZAPPOLO: Objection, misstates the
17 evidence.

18 BY MR. WEBER:

19 Q Given the testimony --

20 THE COURT: Objection sustained.

21 BY MR. WEBER:

22 Q Given the testimony that Mr. Wagner's father
23 apparently would have provided funding, why couldn't
24 Mr. Wagner get his funding together?

25 **A That's a good question. I was under the**

1 impression at the time his father wouldn't give it to
2 him.

3 Q Let's look at -- okay. You can put that down.
4 Now Mr. Mosler, you remember the "Feel My
5 Fire" video with Abby Cubey, right?

6 A Yes.

7 Q Now that came out -- and what was your
8 reaction to it?

9 A I didn't have much of a reaction. I was
10 hoping it would sell cars, whatever it was. You know,
11 he was going through this gold chain crowd, whatever
12 that is, and pays these telephone phone numbers for
13 supercars and hopefully it would work.

14 Q Was MACC involved in making the video?

15 A No. I didn't know anything about it.

16 Q Did MACC pay for the video?

17 A No, never asked to.

18 Q Did MACC produce the video?

19 A No.

20 Q Did MACC approve the video before it was
21 launched?

22 A No.

23 Q Did you pay, produce, or approve the video
24 before it was launched?

25 A No.

1 Q Were you consulted about the video?

2 A No.

3 Q When was the first time you knew about the
4 video?

5 A I don't know. Somebody must have told me or
6 something.

7 Q Did the video cause people to buy more cars
8 from MACC?

9 A I didn't notice it, no.

10 Q After the video was released did people
11 complain to you about the video?

12 A I did have some emails complaining about it.

13 Q Mark this as 414 for identification. 414 for
14 identification.

15 And it wasn't just you who received emails
16 about the video, right?

17 A That's what I was told, yep.

18 (Thereupon, Defendants' Exhibit 128 was marked
19 for identification.)

20 MR. WEBER: Move this document into evidence.

21 MR. ZAPPOLO: No objection.

22 THE COURT: Madam Clerk, is that 128?

23 THE CLERK: Yes, Your Honor.

24 THE COURT: Thank you.

25 (Thereupon, Defendants' Exhibit 128 was

1 received into evidence.)

2 BY MR. WEBER:

3 Q You remember Jeffrey Reiss, right?

4 A I know the name, yeah. I don't remember
5 meeting him.

6 Q He was one of the people interested in
7 purchasing MACC?

8 A Yes.

9 Q And he wrote "I just wanted to tell you how
10 sorry I am for you and your children having to deal with
11 Todd's derision. He is clearly uncouth in his
12 decision-making process. What kind of father partakes
13 in a music video with a bunch of 20-year old girls and
14 dances around topless on the Internet for life?" Did
15 Ms. Wagner talk to you about this email?

16 A I don't recall, she may have. Again, I was in
17 St. Croix working by email, so I don't remember if I
18 talked to her not.

19 Q Was Jeffrey Reiss the only person that
20 complained about the video?

21 A I recall others, but I can't specifically
22 remember now.

23 Q Mr. Reiss included YouTube links. Scroll
24 down. Keep scrolling.

25 He included various links. He included

1 pictures from YouTube and Facebook, correct?

2 **A Yeah, somewhere.**

3 Q Keep going.

4 **A Oh, yeah, I see the pictures.**

5 Q On Facebook. Keep going. And some of these
6 pictures had Todd, Mr. Wagner, in it, right?

7 **A Yes.**

8 Q That's Mr. Wagner shirtless in the video,
9 right?

10 **A Do I have to look?**

11 Q Keep going. Keep going.

12 Okay. Stop. Take that one down. 431.

13 Do you remember a person by the name of David
14 Kieffer?

15 **A Gatekeeper?**

16 Q Dave Kieffer?

17 **A Oh, Dave. Yeah, sure.**

18 Q 431 for identification. Who's Dave Kieffer?

19 **A He worked at the shop. He did the drawings,
20 design work.**

21 Q I'm handing you 431 for identification.

22 MR. ZAPPOLO: No objection.

23 THE COURT: Madam Clerk, 128?

24 THE CLERK: 129.

25 THE COURT: Thank you.

1 (Thereupon, Defendants' Exhibit 129 was
2 received into evidence.)

3 BY MR. WEBER:

4 Q Okay. I'm showing you 129 in evidence. This
5 is an email from Dave Kieffer to you, right?

6 A Yes.

7 Q Now I want you to look here. It says --
8 Mr. Kieffer writes to you on November 18, 2011, at
9 9:21:42 p.m., "Now I've gotten emails from an MT900
10 owner, that is concerned about the resale value of this
11 car due to Todd's shenanigans."

12 A Yes.

13 Q What did you think about that?

14 A You know, I wasn't happy about it, but it is
15 what it is.

16 Q And then he wrote "To quote him, this kind of
17 crap can ruin the name/rep of the car and it tarnishes
18 the brand and it disgusts me. I think Todd wants to be
19 a Rapper/DJ and this car should not be associated with
20 the circus acts that he has been putting on."

21 A Yeah.

22 Q And he wrote "Just passing the info along...
23 if owners are upset, I can't imagine potential buyers of
24 the business wouldn't be concerned." Do you see that?

25 A Yes, I see that.

1 Q Mark this as 440, 440 for identification.

2 440 for identification.

3 MR. WEBER: I move this document into
4 evidence.

5 MR. ZAPPOLO: No objection.

6 THE COURT: Madam Clerk, 130?

7 THE CLERK: Yes.

8 (Thereupon, Defendants' Exhibit 130 was
9 received into evidence.)

10 BY MR. WEBER:

11 Q Okay. I'm showing you Defendants' 130. It's
12 an email from you to Alan Simon and Mr. Wagner, right?

13 A Right.

14 Q It's November 19, 2011.

15 A Yep.

16 Q And you wrote "I'm getting a lot of this
17 stuff, which is also appearing in a growing number of
18 websites."

19 A Yeah.

20 Q You wrote "It's all negative. Haven't had one
21 positive comment." What did you mean by that?

22 A All of the comments were negative and
23 critical.

24 Q This person, Kevin Clark, wrote "Can you
25 please take back control of Mosler Automotive? At least

1 give some guidance. This is what Wagner about the new
2 Raptor. 'It gets a massive injection of sex appeal --
3 in fact, I designed the nose after the face of the most
4 beautiful, exotic woman I've ever seen.'" Did you see
5 that?

6 **A Yeah. Yes, yes.**

7 Q And what did you think of these negative
8 comments?

9 **A I was thinking this is not going to help**
10 **sales, number one. Number two, I can't control the**
11 **company from St. Croix, and just all the more reason why**
12 **I needed to discontinue what I was doing, wind the**
13 **company down, and sell the remaining assets the best I**
14 **could.**

15 Q Now, along the way Mr. Wagner ran into
16 Billionaires' Row, right?

17 **A Yes.**

18 Q Let's mark this as 419 for identification. Do
19 you remember what Billionaires' Row is?

20 **A Well, according to Todd, it's another scammer.**

21 Q You're being handed what's identified as 419.

22 MR. WEBER: Move this document into evidence.

23 MR. ZAPPOLO: No objection.

24 THE COURT: Madam Clerk, 131?

25 THE CLERK: Yes.

1 (Thereupon, Defendants' Exhibit 131 was
2 received into evidence.)

3 BY MR. WEBER:

4 Q And were you supportive of Mr. Wagner after he
5 fell to the hands of Billionaires' Row?

6 A Yes, I was sympathetic, I guess. "Glad you're
7 on it, and let me know if I can help."

8 Q And why was Mr. Wagner falling to the hands of
9 these con people, to your understanding?

10 A Well, if you knew his personality, I think he
11 had a disposition to that and he was also apparently a
12 target being an heir to a lot of money. And it's not
13 something he was doing deliberately, he just --

14 Q Now meanwhile, I'm handing you what's been
15 marked as Defendants' 95 in evidence.

16 A November 14th.

17 MR. ZAPPOLO: What is that marked as?

18 MR. WEBER: It's Defendants' 422 for
19 identification, 95 in evidence.

20 MR. ZAPPOLO: Thank you.

21 BY MR. WEBER:

22 Q Okay. So, Mr. Mosler, let's look at the
23 bottom of this email chain.

24 Can you see that this email starts on
25 November 14, 2011? Do you see that?

1 **A Yes.**

2 Q And Mr. Wagner wrote "Hi, Warren. It has a
3 few weeks since I requested that you provide
4 documentation showing where you have a right to keep my
5 \$100,000 deposit even though you entered into an
6 exclusive sale agreement with another party. I am sure
7 there is no such documentation, so I respectfully
8 request that you return the deposit." You saw that?

9 **A No, I don't see it on here.**

10 Q On the -- page 2.

11 **A I'm sorry?**

12 Q It's on the top of page 2.

13 **A Oh, the top of page 2? Okay.**

14 Q Right there.

15 **A Okay. Yeah. We have the right to keep the
16 \$500,000 deposit, so that would be the -- the letter of
17 intent... sale agreement with another party, I'm sure
18 there's no such documentation. Since I requested that
19 you provide the document -- yeah.**

20 Q Okay. And how did you respond?

21 **A It's just hard for me to -- the deposit was --
22 the deposit was from Lew.**

23 Q You wrote "He says he's coming into big money
24 this week so you should be okay," right?

25 **A Yeah. I see it now. Okay. Okay. The print**

1 is very small.

2 Q The deposit was from Lew?

3 A It came from Santa Fe Digital Media and it was
4 from -- you know, where Todd was involved as a partner,
5 director, or whatever he was, and it was pursuant to the
6 letter of intent that came in.

7 Q Now when you wrote the deposit was from Lew,
8 did Mr. Wagner write "No, the \$100,000 was for me"?

9 A No.

10 Q "And I have a May 2nd agreement whereby I'll
11 get the \$100,000 back immediately"?

12 A No. He asked me to -- no, he didn't do that.
13 He did the opposite.

14 Q And so he wrote "Hi, Warren. In the event
15 that you sell the company to Savvas, I will get the full
16 \$100,000 back immediately," right?

17 A Yes. That's what he said.

18 Q And what did you reply with?

19 A "Stop trying to trick me, thanks."

20 Q What did you mean by that?

21 A I don't know. He was saying something hoping
22 that I would agree with it so he could get the money.
23 He didn't have any basis for it.

24 Q And Mr. Wagner replied, and you again
25 responded "The deposit I had was on behalf of Lew and

1 it's expired, and I haven't sold the company yet in any
2 case." What did you mean by that?

3 A That the \$100,000 came in through Lew and it
4 had an expiration date where he was supposed to buy the
5 company and it expired. And he's asking me for the
6 money in case it sells, and there hasn't been a sale, so
7 the question is not --

8 Q You're not --

9 A -- has no applicability till then. And, you
10 know, he knows I used money to pay these people. It's
11 not like I had the money.

12 Q Now Mr. Wagner might say that you writing "and
13 I haven't sold the company yet in any case" admits that
14 you shouldn't return it if you sold the company, but are
15 you just responding to his accusation that he should get
16 the money back?

17 A Yeah. It's a response and, you know, if
18 somehow he's got some document from me, which I don't
19 know about and didn't sign and don't believe there was
20 one, then even then he wouldn't be getting his money
21 back. So he's not getting his money back now under any
22 of his presumptions.

23 Q So let's scroll up. And then Mr. Wagner
24 forwarded to Lew Lee, right?

25 A Yes.

1 Q Scroll up. And Lew Lee wrote to you and Todd
2 Wagner on November 14, 2011 "Not to worry. SFDM will
3 absolutely return Todd's nonrefundable deposit which was
4 made on behalf of SFDM." What did you understand that
5 to mean?

6 A Exactly what it says, that he would return it.

7 Q And --

8 A Todd's deposit.

9 Q And was that consistent with your
10 understanding that the \$100,000 was a nonrefundable
11 deposit?

12 A Yes. And again, I don't get a response from
13 Todd disagreeing with that, that I know of.

14 Q Now let's go to 445.

15 A It's November 14th.

16 Q Mark 445 for identification. 445 for
17 identification.

18 MR. WEBER: Move this document into evidence.
19 Any objection?

20 MR. ZAPPOLO: No objection.

21 THE COURT: Madam Clerk, what number?

22 THE CLERK: 132.

23 THE COURT: Thank you.

24 (Thereupon, Defendants' Exhibit 132 was
25 received into evidence.)

1 BY MR. WEBER:

2 Q Okay. So, Mr. Mosler, you see this document
3 dated November 21, 2011?

4 A Yes.

5 Q And it's from Savvas Savopoulos to you, right?

6 A Yeah.

7 Q And let's look -- do you know why Savvas
8 Savopoulos wanted Mr. Wagner to sign a document?

9 A He didn't want him to have any part of his
10 company after he bought it.

11 Q Was Mr. Wagner the only person that
12 Mr. Savopoulos wanted to sign the document?

13 A No. He wanted the other listed distributors
14 to sign also. He wanted -- he had his own business plan
15 and it didn't involve them.

16 Q And so Mike Vietro was another distributor,
17 right?

18 A Yes, yes.

19 Q And was Mike Vietro asked to sign a document?

20 A Yes.

21 Q And you remember Martin Short, right?

22 A Yes, yes.

23 Q And was Martin Short asked to sign a document?

24 A Yes.

25 Q Now Mr. Wagner wasn't being singled out,

1 right?

2 **A That's right.**

3 Q Let's go to 477. I'm handing you what's been
4 marked as Defendants' 92 in evidence, which is 477 for
5 identification.

6 So, Mr. Mosler, can you see this document?

7 **A Yes.**

8 Q And what did you think when you received this
9 document from Mr. Wagner?

10 **A What did I think?**

11 Q Do you recognize this document --

12 **A Yeah.**

13 Q -- the draft proposed resolution and
14 termination agreement?

15 **A Yeah. It looks like Todd come up with another
16 way to try and get his \$100,000 back.**

17 Q Well, at the time did you know that when you
18 read this document? Does it mention that the \$100,000
19 was from Mr. Wagner's father?

20 **A No. Wait a minute.**

21 Q It doesn't, correct?

22 **A I don't see it, no. It's just he's trying to
23 get 100,000 and the numbers match, so to speak. He's
24 pretty transparent with what he does, so that's my first
25 thought. He's trying to extort \$100,000 out of Savvas**

1 to get the money back to pay back his father because
2 Jill said he was putting pressure on him.

3 Q And he mentioned a claim against MACC in this
4 document, right? Let's go to the last page.

5 A Where is that?

6 Q Page 3 of 4.

7 A Yeah. Oh, I see. Yeah, yeah, yeah. Back
8 consulting fees. That's what he's trying to extort
9 money out of me too.

10 Q Do you see where it says, on the document, the
11 attachment?

12 A Yeah.

13 Q It says "In return for turning over SEI's
14 distributorship and relinquishing all claims to
15 intellectual property" --

16 A Oh, yeah, I see what he's doing here.

17 Q What was he doing here, to your understanding?

18 A He was -- yeah. He was trying to get his
19 \$100,000 back for his father, so he made it look like he
20 had other claims that added up to that amount.

21 Q Did he have claims?

22 A I mean -- no, no, but he listed it to make the
23 numbers work.

24 Q Now I'm going to hand you Defendants' Exhibit
25 96 in evidence.

1 **A Yeah. It's just conveniently added up to the**
2 **amount of his deposit.**

3 Q This is 481 internal.

4 Mr. Mosler, you've been handed a document.
5 It's another email exchange. This one is between you,
6 Mr. Wagner, and Savvas Savopoulos. Do you see that?

7 **A Yeah.**

8 Q Now, let's scroll down. Now, this email
9 exchange is regarding that same draft proposed
10 resolution and termination document we just saw, right?

11 **A Yes.**

12 Q And let's look at the email on the first page
13 where Mr. Wagner writes to you -- go up --

14 **A "\$100,000 was referring to the money my father**
15 **sent in."**

16 Q What did you understand that to mean?

17 **A You know, something that had already been**
18 **obvious to me, that he's just making it clear that my**
19 **intuition had been correct. He's trying to get back the**
20 **\$100,000. He's trying to come up with some way to get**
21 **the \$100,000 to pay back his father.**

22 Q Well, why wasn't it mentioned in the draft
23 proposed resolution and termination that he sent you, to
24 your understanding?

25 **A It's hard to get inside what he was thinking.**

1 **He marches to the beat of a different drum.**

2 Q And you didn't agree to return the \$100,000,
3 did you?

4 **A No.**

5 Q Did you have any obligations to return the
6 \$100,000 to Mr. Wagner?

7 **A No.**

8 Q Mr. Savopoulos hadn't even purchased the
9 company as of September 2011, right?

10 **A Well, I spent 100,000 at his direction. He**
11 **had the nerve to just come looking for it back under**
12 **these pretenses.**

13 Q Even assuming, under Todd's -- Mr. Wagner's
14 own theory --

15 **A Yeah.**

16 Q -- that he had an oral agreement whereby he
17 should receive the \$100,000 if MACC was sold to another
18 person, he would have no right to the \$100,000 at this
19 point because it wasn't yet sold to Savvas, right?

20 **A Well, if I understand his theory correctly, it**
21 **sounds right, yeah.**

22 **Also, on June 27th I had written clearly "We**
23 **have no agreements." It was long after that theory.**

24 Q Now did you agree to pay the \$100,000 to
25 Mr. Wagner?

1 **A No.**

2 Q And so what did Mr. Wagner do in response? Do
3 you recall?

4 **A No. I'd have to see the documents.**

5 Q Okay.

6 **A Fortunately it's all written down so I don't
7 have to rely on my memory for this.**

8 Q Okay. I'm handing you what's been marked in
9 evidence as Defendants' Exhibit 97.

10 **A Right.**

11 Q Do you recognize this document?

12 **A Yeah.**

13 Q Okay.

14 **A He went to an attorney.**

15 Q And what did you think when you received this
16 document?

17 **A I have to resolve all disputes, another set of
18 demands.**

19 Q And he said he had claims against MACC, right?

20 **A Yeah, somewhere. Mosler is doing a press
21 release to clear up any misunderstanding.**

22 Q Scroll down. Let's look at the first page of
23 the attachment, Mr. Mosler.

24 **A Okay.**

25 Q Do you see it?

1 **A Yeah.**

2 Q And Mr. Wagner's attorney refers to claims
3 against --

4 **A Right.**

5 Q -- MACC, right?

6 **A Yes. He rejects the terms of the proposed
7 termination and release agreement previously provided by
8 Wagner. So he's rejecting the agreement.**

9 Q So does this letter have any affect on
10 Mr. Savopoulos' due diligence?

11 **A Again, I'll have to check the documentation.
12 I believe this is when he left.**

13 Q Mr. Savopoulos didn't think this was a claim
14 that you could take lightly and wanted to be indemnified
15 from the claim, right?

16 **A Yeah, I did offer that. Do you have the
17 document?**

18 MR. WEBER: Move this document into evidence.

19 MR. ZAPPOLO: No objection.

20 THE COURT: Madam Clerk, is that 130?

21 THE CLERK: 3.

22 THE COURT: 133, thank you.

23 (Thereupon, Defendants' Exhibit 133 was
24 received into evidence.)

25 BY MR. WEBER:

1 Q Let me know when you're ready, Mr. Mosler.

2 A Go ahead.

3 Q Mr. Savopoulos wanted you to indemnify him,
4 right?

5 A I recall that, but I don't see where that's in
6 here.

7 Q Okay.

8 A Here it is, yes. "The alternative is to have
9 you indemnify, defend, and save MACC, et cetera,
10 harmless from these lawsuits. I would use my lawyers to
11 defend anything and want to hold back another
12 \$200,000 to cover these costs, whatever that might be.
13 What do you think?"

14 Q And did Savvas Savopoulos eventually back
15 out --

16 A He did.

17 Q -- from purchasing MACC?

18 A Yeah.

19 Q And after Mr. Savopoulos backed away, were
20 there any more serious buyers?

21 A Well, Todd was still there.

22 Q But you didn't think Mr. Wagner was a serious
23 buyer because he hadn't come up with the money yet,
24 right?

25 A Right.

1 Q And do you remember when -- what happened
2 after Mr. Savopoulos backed away?

3 A I'd have to see the documents, but somebody
4 showed up.

5 Q Who do you think showed up? Let's go back to
6 Defendants' Exhibit 99.

7 A Okay.

8 Q Who showed up, Mr. Mosler?

9 A Todd Wagner. On January 3rd, a little more
10 than a week later. "I have spoken with my investor and
11 some others as well and received positive feedback."

12 Q 504. Now you never reached an agreement with
13 Mr. Wagner to purchase MACC, right?

14 A Right.

15 Q Mr. Wagner asserts that Sylvia Klaker was in
16 charge of negotiations with him for purchasing the
17 company after Mr. Savopoulos stepped aside. What was
18 Ms. Klaker's role?

19 A Her role was if he wanted to talk about it, he
20 had to talk to her because I didn't want to talk to him
21 anymore.

22 Q And did Mr. Wagner have any agreement in 2012
23 to purchase MACC?

24 A No.

25 Q Now, one of the claims in this case is that --

1 MR. WEBER: Actually, Your Honor, may we
2 approach?

3 THE COURT: Yes.

4 (Thereupon, a sidebar conference was held.)

5 THE COURT: You have about ten minutes.

6 MR. WEBER: I know.

7 THE COURT: You have all of tomorrow and a
8 sliver of time on Friday.

9 MR. WEBER: I'm almost done, Your Honor. I'm
10 really going fast. I'm really going fast. I'm
11 going to be done by -- definitely by lunchtime
12 tomorrow. I would say definitely by lunchtime.

13 THE COURT DEPUTY: All right.

14 MR. WEBER: I can't go any faster, Your Honor,
15 it's impossible.

16 THE COURT: That's okay. That's okay.

17 MR. WEBER: There's too many documents.

18 THE COURT: I'm charging this jury at
19 2 o'clock on Friday with the instructions and it's
20 been my guidance for both of you guys because I
21 don't think either of you want a mistrial.

22 MR. WEBER: No.

23 MR. ZAPPOLO: No.

24 THE COURT: Okay. All right. So we'll break
25 now.

1 MR. WEBER: Unless you want to go past -- I
2 mean, I'll use the last ten minutes.

3 THE COURT: No. Use it. Use it.

4 MR. WEBER: Okay.

5 (Thereupon, the sidebar conference was
6 concluded.)

7 BY MR. WEBER:

8 Q Okay. Mr. Mosler --

9 A Yes.

10 Q -- you're aware that one of the claims in this
11 case is that SEI was not paid for certification work,
12 EPA approval work?

13 A Yes.

14 Q Do you believe there's any unpaid work?

15 A No.

16 Q Why do you believe there's no unpaid work?

17 A Well, number one, I pay all my bills. And
18 number two, I never -- nobody ever asked me for the
19 money or said anything. And when I looked back at the
20 circumstances, it doesn't make sense that the -- the
21 claim doesn't make any sense to me.

22 Q Why?

23 A Well, so I sold the MT900 to Todd who then --
24 you saw what he did to turn it into a Raptor, and the
25 certification was done on his car, which I paid for.

1 And I paid for his time doing all that work on his own
2 car with the idea that it might be something I could use
3 later on for certification, but after a certain point in
4 time it was taking a long time, it was -- it didn't have
5 any value to me anymore. I wasn't going to be doing
6 this and it was -- he had --

7 I had given him a substantial discount on the
8 car. He bought it for like a \$100,000 discount; he got
9 it for \$92,000. I then paid for all the parts, paid for
10 him to work on his car, which was fine. That was
11 becoming more valuable. He got the certification for
12 his car. It was the only one ever certified and he, you
13 know, subsequently sold the car due to all the efforts
14 and the investment I put in it for \$300,000.

15 So he's the only one who benefited. I never
16 had any benefit for -- there was no benefit for me doing
17 it and so at that point it wasn't that important. When
18 I look back, it wasn't that important for me to whether
19 he was doing what he was doing or not. And he made, I
20 don't know, a \$200,000 profit or something. He paid his
21 father back and then he comes to me looking for
22 compensation for doing work on his car.

23 Q Mr. Wagner was paid in credits towards the
24 certification work, right?

25 A Right, right. It came off the price of the

1 car.

2 Q Now I hand you what's been marked as
3 Defendants' Exhibit 83. This is 340 internal.

4 A And he agreed, after April 15th, to -- maybe
5 he says now he didn't like it, but he agreed not to do
6 it without pay and it made sense that he would agree to
7 do that.

8 Q Why?

9 A Now he's using my shop -- well, I don't know.
10 He was benefiting directly from the work he was doing.
11 It was on his own car.

12 Q Now as of September 30, 2011, Ms. Wagner wrote
13 to you "Todd was paid in credits toward his car for
14 certification work."

15 A Yes.

16 Q Do you have any reason to believe that was
17 false?

18 A No. You know, I thought he'd been paid for
19 whatever he was supposed to be paid for, and if he later
20 said it was this or that, fine, but at the time I had
21 every indication he had been paid.

22 Q Now you've heard --

23 A Now when he crashed his car, I paid \$50,000 to
24 get it fixed. I didn't bat an eye. I paid for things.
25 I don't leave outstanding bills.

1 Q What do you think the certification work, EPA
2 approval work that Mr. Wagner's claiming in this lawsuit
3 is worth?

4 A To who?

5 Q Well, Mr. --

6 A Someone --

7 Q -- Wagner has his own idea possibly of what he
8 thinks it's worth. What do you think it's worth?

9 A Well, personally, to me, it wasn't worth
10 anything.

11 Q Why?

12 A Because I didn't -- I thought the odds of his,
13 you know, being able to produce -- to buy cars from me,
14 you know, produced to his specs somehow -- I don't know
15 how that would be done -- and sell them was slim to
16 none. He just had no credibility.

17 I didn't think his odds of success were very
18 good for me to invest a lot of money in a certification
19 that was going to expire in a few months. You know, if
20 it was going to expire at the end of the year, which I
21 was led to believe here, as time goes by, it's not worth
22 throwing good money after bad. You might as well wait
23 for the next one, but for his car, it was certainly
24 worth it.

25 Q Now let's go to Plaintiffs' Exhibit 40,

1 please. Mr. Mosler, I am handing you --

2 **A By the way, these gaming rights, Jill didn't**
3 **want me to give them away. They're not worth anything.**
4 **I mean, the video games are all over. That's the first**
5 **time I started to appreciate the car is when it was in a**
6 **video game.**

7 Q Well, they're not at issue here, Your Honor --
8 I mean Mr. Mosler, so let's not talk about them.

9 **A All right.**

10 Q Plaintiffs' Exhibit 40 has just been handed to
11 you.

12 **A Yeah.**

13 Q It's an article, right?

14 **A Yes.**

15 Q Do you remember this article?

16 **A I remember seeing it, yeah.**

17 Q Now do you recall an individual, Matt Farah?

18 **A I've heard the name enough here, but I didn't**
19 **recall it before the trial, you know, when I was first**
20 **asked.**

21 Q Okay. Mr. Mosler, I'm going to put it on the
22 projector. I think this will help. Maybe you'll be
23 able to see it.

24 Let me have that back so we all know what
25 we're talking about here.

1 We're talking about this article, which is
2 marked as Plaintiffs' Exhibit 40, right? You can see
3 it?

4 **A Yeah.**

5 Q Okay. Now do you remember speaking with
6 Matthew Farah?

7 **A I don't recall the conversation.**

8 Q Okay. And one of the issues in this case is
9 the claim that -- regarding this comment right here
10 which states "I spoke with Warren Mosler today, who
11 confirmed the twin-turbo conversion to the RaptorGTR
12 Mosler MT900S will not pass emissions and is not
13 certifiable for public sale." Do you see that?

14 **A Yes.**

15 Q Now do you know what the cold start test is?

16 **A Yes.**

17 Q What's the cold start test?

18 **A When you first turn the key for some fraction
19 of a second, they measure the emissions, and that has to
20 fall within a certain range. It's a very minor type of
21 test.**

22 Q Had the RaptorGTR -- this car would have
23 passed the cold start test?

24 **A I was told no.**

25 Q Who told you that?

1 **A Todd Wagner.**

2 Q And would Todd Wagner know?

3 **A Yes, that was his job.**

4 Q Now do you know what EPA confirmatory testing
5 is?

6 **A Yes.**

7 Q What is EPA confirmatory testing?

8 **A That is -- on occasion they have the right to
9 come in and test a car that they've already given a
10 Certificate of Conformity on.**

11 Q Did you confirm to Matt Farah that the
12 "RaptorGTR" Mosler MT900S will not pass emissions?

13 **A I'd say no because it's not something I would
14 say if it's not true.**

15 Q Is there even a car called the RaptorGTR
16 Mosler?

17 **A No.**

18 Q And do you understand what "and is not
19 certifiable for public sale" means?

20 **A Let me take that back. You know, if they came
21 in on a conformity test, it wouldn't pass, but, you
22 know, that -- that question, you know, is ambiguous, but
23 go ahead, what was the next part?**

24 Q Well, why do you think it's ambiguous?

25 **A Say it again. It's blurry to me, I can't read**

1 it.

2 Q And what do you think "it's not certifiable
3 for public sale" means?

4 A Oh, yes.

5 Q Would you say that?

6 A I would never say that.

7 Q Why?

8 A Because it was. We did have a Certificate of
9 Conformity. Todd got that. He did a great job so it
10 was legal to sell publically.

11 Q Anything else?

12 A And I'm sure -- look, when I talk to people,
13 I'm very precise on this type of thing, so he --
14 whatever he heard me say, he, you know, rephrased it or,
15 you know, whatever, paraphrased it and got it wrong.

16 Q Okay. Let's go to --

17 THE COURT: Mr. Weber.

18 MR. WEBER: Yeah. I see, okay.

19 THE COURT: All right. Ladies and gentlemen,
20 it's 5 o'clock, maybe 5:01. It's time to go home.
21 We'll reconvene again tomorrow at 9:30.

22 Please don't discuss this case amongst
23 yourselves or with anybody else. Don't do any
24 research about the names, people, places involved
25 in this case. Deputy.

1 (Jurors exit the courtroom at 5:02 p.m.)

2 THE COURT: All right. Mr. Mosler, you're
3 still on the stand. Don't discuss your case with
4 your attorney. We will reconvene tomorrow at 9:30.

5 Okay. Gentlemen, you guys are going to --

6 MR. WEBER: We'll talk and get the jury
7 instructions for tomorrow, right.

8 THE COURT: Okay. And also I want you to
9 really kind of coordinate the case management.
10 Again, Friday at 2:00 p.m. I'm charging this jury.

11 MR. WEBER: Yep.

12 THE COURT: That means that you're going to
13 rest right away and you get a one-minute closing.
14 If we don't do this by 2:00 p.m. on Friday, then
15 all of this is for nothing, okay?

16 MR. ZAPPOLO: I will get equal time for
17 whatever closing, correct, Your Honor?

18 THE COURT: Sure. All two minutes of it.

19 MR. ZAPPOLO: I'm just saying if he wants to
20 play out the clock, I get equal time for whatever
21 the closing ends.

22 MR. WEBER: Well --

23 THE COURT: Well, look, as far as who wants to
24 play out the clock and whatnot, I don't see that
25 happening. Both of you have a lot of evidence.

1 You know, we allotted three weeks for this trial.
2 We're coming to the end of that third week. But
3 come Tuesday of next week, I've got to take another
4 trial, so --

5 MR. WEBER: Well, why don't we agree right now
6 how we apportion the remaining time so there's no
7 dispute?

8 MR. ZAPPOLO: Okay. I'm with that.

9 THE COURT: How you want to apportion your
10 remaining time?

11 MR. WEBER: Yeah. So we can end by 2 o'clock.

12 THE COURT: I'll let you guys figure that
13 out --

14 MR. WEBER: Okay.

15 THE COURT: -- and you will let me know.

16 All right. Well, have a great night. We'll
17 come back at 9:30 in the morning.

18 MR. ZAPPOLO: Thank you, Your Honor.

19 THE COURT: All right. We're in recess.

20 (Whereupon, the proceedings were adjourned at
21 5:04 p.m. and are continued on May 25, 2023 in
22 Volume XII.)
23
24
25

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT,

IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. 50-2012-CA-023358-XXXX-MB

JAMES TODD WAGNER, SUPERCAR ENGINEERING,
INC., a Florida corporation,

Plaintiffs,

vs.

WARREN MOSLER, MOSLER AUTO CARE CENTER,
INC. ("MACC") a Florida corporation,
d/b/a Mosler Automotive,

Defendants.

_____ /

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VOLUME XII - DAY 11

- - - - -

PROCEEDINGS BEFORE

HONORABLE LUIS DELGADO

DATE: MAY 25, 2023

TIME: 9:30 A.M. - 5:04 P.M.

1 APPEARING ON BEHALF OF PLAINTIFFS:

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17 ALSO PRESENT:

18 James Todd Wagner, Plaintiff
19 Warren Mosler, Defendant
20 David Griffin, TruVid, LLC
21
22
23
24
25

1 I N D E X

2	WITNESS	PAGE
3	WARREN MOSLER	
4	Direct Examination (cont.) By Mr. Weber	2217
5	Cross-Examination By Mr. Zappolo	2258
6	Redirect Examination By Mr. Weber	2340
7	Defendants Rest	2361

8

9

10

E X H I B I T S

11

12	EXHIBIT	DESCRIPTION	MARKED	RECV'D
13	Defendants' 134	was marked Exhibit 401		2219
14	Defendants' 135	was marked Exhibit 105	2223	2223
15	Defendants' 136	was marked Exhibit 428		2234
16	Defendants' 137	was marked Exhibit 71	2239	2239
17	Defendants' 138	was marked Exhibit 442		2240
18	Defendants' 139	was marked Exhibit 562	2249	2250
19	Defendants' 140	was marked Exhibit 474		2340
20	Plaintiffs' 114	was marked Exhibit 1355		2265
21	Plaintiffs' 115	was marked Exhibit 300		2281
22	Plaintiffs' 116	was marked Exhibit 969		2302
23	Plaintiffs' 117	was marked Exhibit 989		2310
24	Plaintiffs' 118	was marked Exhibit 980	2325	2327
25	Plaintiffs' 119	was marked Exhibit 633		2334

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BE IT REMEMBERED, that the following proceedings were taken in the above-styled cause before Honorable Luis Delgado, Presiding Judge, at the Palm Beach County Courthouse, 205 North Dixie Highway, Courtroom 10-D, in the City of West Palm Beach, County of Palm Beach, State of Florida, on the 25th day of May, 2023, to wit:

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MR. WEBER: Your Honor, before the jury comes in, do you want to talk about the jury instructions and the verdict form?

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THE COURT: Sure.

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MR. WEBER: So last night I sent Mr. Zappolo our proposed verdict form and jury instructions, and he has handed me this paper document with red lines. And, you know, I don't know if Your Honor has seen, but Mr. Zappolo has been filing motions for reconsideration still of your directed verdict form last night instead of working on this. So here we are, and I'm not really sure how handing me a paper form in red lines I'm supposed to comment on it.

24

25

And so I have a clean copy of what I emailed Mr. Zappolo in Word last night, and then I have

1 Mr. Zappolo's printed out copy with his electronic
2 red lines in it, and now he's filed two more
3 directed -- motions regarding the directed verdict
4 that Your Honor has entered, and I have an order
5 granting that motion here. And, you know, I think
6 this issue is put to rest and we need to move
7 forward because this is just cutting into our trial
8 time.

9 THE COURT: I want to talk about jury
10 instructions right now, okay?

11 MR. ZAPPOLO: And I'm glad to talk about jury
12 instructions. Counsel sent me, at 10:36 last
13 night, because I asked him while we were here -- I
14 said, "The judge said work off your verdict form,
15 so let's do that." He said, "I'll send it to you
16 tonight."

17 I got his documents at, like, 10:30-something,
18 so I was -- I'm operating on like an hour's sleep,
19 Your Honor. So I went through using his
20 documentation because that's what I understood. I
21 worked off of his verdict form --

22 THE COURT: All right.

23 MR. ZAPPOLO: -- and worked backwards and I
24 thought --

25 THE COURT: Gentlemen, work on them through

1 lunch today. Everybody will go to lunch and you
2 guys will work on that.

3 MR. ZAPPOLO: I'm sorry, Your Honor, I thought
4 you said -- did I mishear you?

5 THE COURT: You're going to work on it during
6 lunch today.

7 MR. ZAPPOLO: No, I heard that. I thought you
8 said you wanted to talk about jury instructions
9 now.

10 THE COURT: Yeah, but I'm not going to because
11 you guys need to confer more. So during the lunch
12 today you guys will sit in here and you guys will
13 work on jury instructions. You'll have a computer
14 up and you'll work on them.

15 We'll discuss them tonight. We're going to
16 have a late night tonight, but during lunch that's
17 what you guys will do. I'll go to lunch, everybody
18 else will go to lunch, and you guys are going to
19 work on this. Tell the deputy to come get me.

20 (Thereupon, a short break was taken from
21 9:40 a.m. to 9:47 a.m.)

22 THE COURT DEPUTY: Come to order.

23 THE COURT: All right. Please be seated.

24 MR. WEBER: Your Honor, one question for you.

25 Mr. Mosler wants to know if he can bring notes to

1 the witness stand.

2 THE COURT: So if you're on the witness stand
3 and you're testifying, you're testifying from
4 memory. If you have anything, you know, that is
5 going to assist you to remember, your attorney can
6 lay a predicate, but, generally speaking, you're
7 not to read your notes to the jury. You're not to
8 read anything that's going to help you remember to
9 the jury. You're testifying from memory, okay?

10 So I hope that's something that guides you,
11 but there are predicates that are going to be laid
12 and there are things that the attorneys are going
13 to know what to do.

14 All right. Actually, let me see the attorneys
15 for a second.

16 (Thereupon, a sidebar conference was held.)

17 THE COURT: I just want you to know this is
18 still denied. I looked it over, I'm not going to
19 read this again, but I don't want your guy to feel
20 like I didn't, you know -- it's just a recitation
21 of the facts and the articles.

22 MR. ZAPPOLO: Okay.

23 THE COURT: I've already gone through the
24 analysis, I considered the elements, and we've
25 already done it. I don't want to rehash it in

1 front of him, but you can let him know that I went
2 over it, but I'm not going to entertain it further.

3 MR. ZAPPOLO: And just for the record
4 purposes, you're pointing to Plaintiffs' Responses
5 to Defendants' Motion for Directed Verdict as to
6 Defamation Count VIIII, Exhibit 315 in evidence as
7 Plaintiffs' 39, with incorporated motions for
8 reconsideration?

9 THE COURT: Correct.

10 MR. ZAPPOLO: And thank you.

11 MR. WEBER: Just so Your Honor knows, there's
12 another one that he filed last night.

13 THE COURT: Well, I'm not looking at it.
14 We're beyond that. You can save your arguments.
15 You know, again, we've already taken witnesses,
16 we're moving on.

17 MR. ZAPPOLO: I understand that, I'm just
18 doing what I need to do for my client obviously for
19 record purposes.

20 THE COURT: Okay. All right. Let's bring out
21 the jury.

22 MR. ZAPPOLO: One last thing, Your Honor. I
23 think that if we can -- if I could ask Your Honor
24 and Mr. Weber just a couple of questions when we
25 break for lunch, it would probably help us to

1 expedite our process --

2 THE COURT: Ask him now because you have this
3 stuff and I'm free for lunch now.

4 MR. ZAPPOLO: Okay. There's a big, from my
5 perspective, a big issue on the verdict form and a
6 lot of the jury instructions. Mr. Weber has
7 inserted words that are, like, obviously favorable
8 to him. Like every time it says "deposit," it says
9 "nonrefundable deposit." It presumes that the
10 Court is instructing the jury that it's a
11 nonrefundable deposit. I don't think it's
12 appropriate.

13 THE COURT: So this should be discussed on day
14 one, so let's go through the modifiers. Obviously
15 you can argue it to the jury that it is a deposit;
16 it's either refundable or nonrefundable. I'm sure
17 you would like to see "nonrefundable deposit" on
18 the verdict form; you would like to see
19 "refundable," but either way it's a deposit, so
20 we'll call it a "deposit." Okay?

21 MR. WEBER: Is that the only issue you have,
22 Scott?

23 MR. ZAPPOLO: No. There are others also,
24 other things where he characterizes the comments.
25 He says the plaintiff is not suing on the comments

1 of Mr. Mosler, but rather what the journalist said,
2 and he gives like a diatribe about what the
3 journalist said and where it is and all these other
4 extraneous comments that are nowhere relevant to
5 the jury's consideration. They're there to
6 consider the statements that are made.

7 THE COURT: You're talking about the verdict
8 form?

9 MR. ZAPPOLO: On the verdict form and in the
10 jury instructions.

11 MR. WEBER: And I would say, Your Honor, the
12 jury needs to consider the context of the
13 statement, not just the statement in isolation and
14 so --

15 THE COURT: Hold on. Hold on. I do want to
16 have a shorter verdict form that we'll give to them
17 on Friday in the afternoon. It's after three
18 weeks, I think they get the context. Let's strip
19 it down a little bit.

20 MR. ZAPPOLO: And understanding the standard
21 jury instruction on that says you are to consider
22 the comments in the context of the presentation.

23 THE COURT: Yeah. If we get through this, as
24 quickly as possible during summation, you can argue
25 these things. You know, if we don't, then neither

1 of you is going to get much of a summation at all,
2 you know. And, you know, today's day 11. This was
3 set for 11 days. Tomorrow is day 12. And it's a
4 short day, but it's a bonus day, you know, so let's
5 not waste any more time. All right.

6 MR. WEBER: Do you have any other rejections
7 of my verdict form and jury instructions,
8 Mr. Zappolo?

9 MR. ZAPPOLO: Those are the general -- that's
10 the general gist of what I take issue with. I
11 accepted a lot of things, custom things.

12 For example, Your Honor, I will say to the
13 Court unfortunately the standard instruction
14 regarding defamation was removed from the standard
15 jury instruction; they say it didn't comport with
16 the law. Mr. Weber drafted one, and I think I was
17 okay with that.

18 I mean, there are a lot of -- other than the
19 comments I just made, there's not a lot of
20 things -- oh, and there's one other thing. One --
21 on his jury -- I'm sorry, on his verdict form he
22 references "and did we prove any other affirmative
23 defenses?" He missed a few affirmative defenses
24 that I recall being tried, but then he says "and
25 did we prove any other defenses?" It's a yes, no,

1 and then there's a catchall, and I don't think
2 that's proper to be thrown out in front of the
3 jury.

4 MR. WEBER: Well, to be clear, Mr. Zappolo has
5 made numerous rejections. He's crossed out entire
6 affirmative defenses. He's crossed out affirmative
7 defenses that are listed in our pleadings. He's
8 crossed out entire verdict form sections. He has
9 added language.

10 THE COURT: Okay. Well --

11 MR. WEBER: It's a mess, Your Honor.

12 THE COURT: -- I guess we'll address it in the
13 afternoon. I want -- I'm sorry, evening. I want
14 to get through as much testimony as possible. You
15 guys pretty much have all day of testimony, that's
16 it.

17 MR. WEBER: Just one thing on the record, Your
18 Honor. I specifically sent Mr. Zappolo a Word
19 document last night and then followed up again this
20 morning trying to get a Word document to facilitate
21 this, and he didn't send it to me. Instead, he
22 gives me this paper with red lines and obviously
23 it's impossible to edit, and I still don't have a
24 copy to edit, Your Honor.

25 MR. ZAPPOLO: I worked off of your document.

1 I can save --

2 THE COURT: Let's not go through this.

3 MR. ZAPPOLO: -- it on a thumb drive.

4 THE COURT: I'm going to bring out the jury
5 now.

6 (Thereupon, the sidebar conference was
7 concluded.)

8 THE COURT DEPUTY: Jury entering.

9 (Jurors entering the courtroom at 9:54 a.m.)

10 THE COURT: All right. Please be seated.
11 Mr. Weber -- Madam Clerk, will you swear in the
12 witness again.

13 THE CLERK: Yes.

14 THE COURT: Thank you.

15 THE COURT DEPUTY: Face Madam Clerk and raise
16 your right hand.

17 THE CLERK: Do you solemnly swear or affirm
18 that the evidence you're about to give will be the
19 truth, the whole truth, and nothing but the truth?

20 **THE WITNESS: I do.**

21 **DIRECT EXAMINATION (cont.)**

22 BY MR. WEBER:

23 Q Good morning, Mr. Mosler.

24 **A Good morning.**

25 Q Is that water okay?

1 **A Yeah, it's good.**

2 Q All right.

3 **A In case there's spontaneous combustion or**
4 **something.**

5 Q Okay. So you remember when Mr. Wagner was
6 testifying, he mentioned something about a
7 \$400,000 payment to your ex-wife? Do you remember
8 something like that?

9 **A Yes.**

10 Q Okay. And he was testifying under oath when
11 he gave his understanding of that payment, right?

12 **A Yes.**

13 Q And what did you think of that explanation?

14 **A Well, it's typical of how his mind seems to**
15 **work. If he -- he doesn't seem to understand the**
16 **difference between speculation and knowledge, and so he**
17 **swears to things under oath that are obviously, to me at**
18 **least, just speculation.**

19 Q To your understanding, was there anything
20 improper regarding that payment?

21 **A No, not at all.**

22 Q What was the payment for?

23 **A I was helping her out with payroll of the**
24 **company that we had together. That was her company**
25 **after the divorce and we would make the payroll to the**

1 employees, and then from time to time she would
2 reimburse the money. So it was just a payroll service.
3 It didn't have anything to do with taking the money in
4 or out of the company or anything like that.

5 Q Now when we spoke yesterday, you mentioned the
6 EPA approval work claim that Plaintiffs are asserting in
7 this case, right?

8 A Yes.

9 Q I'm going to mark this document as Defendants'
10 internal 401. I'm handing you what's marked as
11 Defendants' internal 401.

12 MR. WEBER: Move this document into evidence.
13 Any objection?

14 MR. ZAPPOLO: No objection.

15 THE COURT: Madam Clerk, what number?

16 THE CLERK: 134.

17 THE COURT: 134?

18 THE CLERK: Yes.

19 THE COURT: So, Defendants' 134. Thank you.

20 (Thereupon, Defendants' Exhibit 134 was
21 received into evidence.)

22 BY MR. WEBER:

23 Q All right. Mr. Mosler you've been handed
24 Exhibit 134. Do you see it?

25 A Yes.

1 Q Okay. This is internal 401.

2 Now, Mr. Mosler, this is an email exchange
3 between you and Mr. Wagner and Jill Wagner, right?

4 A Yes.

5 Q Now I want you to look at Mr. Wagner's email
6 here. He says "From April 15th through the final cert
7 award on September 12th, I was working on cert." Do you
8 see that?

9 A Yes.

10 Q And then he says "I was working on the project
11 approximately 50 percent of the time." So is he clear
12 on exactly how much time he's working on this EPA
13 approval work, allegedly?

14 A Well, he says "approximately 50 percent."

15 Q So how much exact time is that?

16 A That would be half.

17 Q Do you have any idea?

18 A Not exactly.

19 Q Is it unclear?

20 A It's definitely unclear.

21 Q Now I want to scroll down the email. Wait,
22 let's go up.

23 Now, Mr. Wagner also writes "My unpaid work on
24 certification is the primary reason why a new owner has
25 a chance to make something of the company." What did

1 you think about that?

2 **A Disagreed.**

3 Q Why?

4 **A Well, the primary reason was so that he could**
5 **finish his car and he could market the car and this**
6 **would be, I guess, a secondary thing.**

7 Q And do you see where Mr. Wagner wrote "It's
8 easily a value-add to you of 200,000 to \$300,000"?

9 **A Yeah.**

10 Q Do you see that?

11 **A Well, it was a value-add to him of 200,000.**

12 Q So it's fair to say that Mr. Wagner wasn't
13 claiming that this certification work was worth millions
14 of dollars, was he?

15 **A No, not at all.**

16 Q He was not claiming that it was worth millions
17 of dollars as of October 1, 2011, correct?

18 **A Correct.**

19 Q Do you agree that it was even worth 200,000 to
20 \$300,000?

21 **A No.**

22 Q And how much did you think it was worth?

23 **A Well, it was worth maybe that to him, but not**
24 **to me. I didn't have anything to gain specifically on**
25 **it that I could quantify certainly, and I made the**

1 **decision not to do it, not to pay for it.**

2 Q Okay. Now, I want to ask you about the
3 Consultant Agreement. Do you remember the Consultant
4 Agreement that Mr. Wagner testified about?

5 **A Yeah. I don't remember all of the details,**
6 **but he was working as a consultant.**

7 Q Here, Mr. Mosler, I'm handing you the
8 Consultant Agreement.

9 Now, Mr. Wagner is now asserting that he was
10 supposed to be paid that money under the Consultant
11 Agreement?

12 MR. ZAPPOLO: Objection, misstates the
13 testimony.

14 THE COURT: Overruled.

15 BY MR. WEBER:

16 Q Do you see that document?

17 **A I do.**

18 Q That document was terminated in 2004, right?

19 **A Right. Yeah.**

20 Q Okay. So it would have applied to the unpaid
21 certification work, right?

22 **A Not as written, no.**

23 Q And it never did, right?

24 **A Not that I know of.**

25 Q Okay. You can put this down.

1 Now, let's look at 105. We'll mark this
2 document as 105 for identification.

3 105 for identification. You can put that one
4 down.

5 **A Am I allowed to point to something here?**

6 (Thereupon, Defendants' Exhibit 105 was marked
7 for identification.)

8 BY MR. WEBER:

9 Q Sure. What do you want to show me?

10 **A That portion was applied to link-X suspension.**

11 Q Oh. Now I'm showing you what -- well, not
12 yet.

13 MR. WEBER: Move this document into evidence.

14 Any objection?

15 MR. ZAPPOLO: No objection.

16 THE COURT: 135, Madam Clerk?

17 THE CLERK: Yes.

18 THE COURT: Thank you.

19 (Thereupon, Defendants' Exhibit 135 was
20 received into evidence.)

21 BY MR. WEBER:

22 Q I'm showing you what's been marked as
23 Defendants' Exhibit 135 in evidence. Now, do you see in
24 this document how it refers to chassis 32?

25 **A Yes.**

1 Q And do you see where it says it was bonked
2 with a forklift twice? What does that mean?

3 A That means somebody drove a forklift into it,
4 the way I would interpret this.

5 Q So that means it was damaged; is that correct?

6 A Damaged, yes.

7 Q Okay. And chassis 32 is the RaptorGTR car
8 that's at issue in this case, right?

9 A Yes.

10 Q And then Mr. Wagner writes in his email to you
11 "I've been upgrading the C32 with my money for the last
12 3 to 4 weeks to bring it up to showable quality,
13 including things like water sealing, making the windows
14 work right, et cetera." What did you understand that to
15 mean?

16 A It was his car and he was working on it with
17 his own money to improve his own car.

18 Q Now just because Mr. Wagner was working on the
19 car at MACC, does that mean it's a MACC product?

20 A You know, I said this before and whatever
21 "MACC product" means, there's no specific definition,
22 but certainly not under -- you know, it depends on who's
23 talking, I guess. It's just not a legal term.

24 Q Now --

25 A It was certainly not anything that was ever

1 **discussed.**

2 Q What wasn't discussed?

3 A **Whether or not something was a MACC product or**
4 **a genuine this and that. Those aren't automotive terms.**

5 Q And was Mr. Wagner the one who decided what he
6 wanted to put on his car and not put on his car?

7 A **Yeah, he was the one. He was in control of**
8 **the car.**

9 Q Okay. Now I want to go back to Hassan. You
10 remember Hassan who came here and testified, right?

11 A **Yes.**

12 Q I'm going to hand you the document that was
13 previously marked as Defendants' 110 in evidence.

14 Now, what do you recall about Hassan?

15 A **At the time?**

16 Q Yes.

17 A **Not much. Most of my memory is just from**
18 **these emails that I saw, but, you know, I never -- I**
19 **don't think I ever met the guy. You know, Todd worked**
20 **with him.**

21 Q Did you ever speak to him about financing a
22 vehicle?

23 A **I did discuss it. I can't remember if it was**
24 **with Jill or with him or with Todd, but the vehicles**
25 **were financed. That was the only way he could buy it.**

1 Q Because he didn't have the money to purchase
2 the vehicle --

3 A No.

4 Q -- with cash, right?

5 A No. He had a good job. He was some kind of
6 engineer. You know, a smart guy, but he wasn't making
7 that kind of money.

8 Q Who do you think was like the typical person
9 who might purchase a car like this?

10 A Unfortunately, it turned out like him, a car
11 enthusiast who owned a turbocharged, aftermarket
12 Corvette and just wanted to have one of these and didn't
13 have the money. And that was one of our problems. That
14 turned out to be the people that wanted this car. They
15 liked cars, they were motorheads, but motorheads didn't
16 have the money.

17 Q And the people with cash weren't buying them,
18 right?

19 A No. Mike Vietro in California was plugged
20 into that group. He sold one to George Lucas because
21 his ten-year-old boy liked it.

22 And he had us on the Jay Leno show and then
23 Jay came out and drove the car and took it to his
24 garage. He did a great write-up on Jay Leno's garage,
25 and he didn't buy one. We just couldn't tap into that

1 **high-end group.**

2 Q Even Jay Leno didn't buy one?

3 **A I know.**

4 Q And how many cars does he have?

5 **A I don't know, a big garage full of cars.**

6 Q Okay. Let's go to -- yesterday you were asked
7 about "The Truth About Cars" article. Do you remember
8 this?

9 **A Yes.**

10 Q Okay. I was asking you about the statement
11 that Mr. Farah says that he allegedly confirmed with
12 you, right?

13 **A Yes.**

14 Q Now, we touched on this yesterday. Well, you
15 mentioned the cold start test, right?

16 **A Yes.**

17 Q Okay. And I think we didn't really finish
18 that subject.

19 **A Okay.**

20 Q And just remind me how a cold start test
21 relates to emissions.

22 **A Okay. So I can't read this from here, by the
23 way.**

24 Q Okay.

25 **A But that's okay, I remember it from yesterday.**

1 One of the things you have to do --

2 Q How about if I turn it for you, Mr. Mosler?

3 A I don't know. I just -- you know, I'm 74 this
4 year. When I was doing this stuff, I was like 54.

5 Q Hold on a second. How's that? Is that
6 better?

7 A Yeah, sort of. If you can just read to me the
8 part you want.

9 Q Well, the question is: How, if anything, does
10 the cold start test relate to emissions?

11 A That's one of the many requirements for a car,
12 and it happens when you first turn the key. It lasts
13 for a fraction of a second and they measure the
14 emissions when you first start it. And it has to be a
15 certain level and it's -- it's not something that
16 pollutes or doesn't pollute the atmosphere, the
17 material, it's something nobody notices, but it's a part
18 of the test and you have to get that done.

19 Q Now, you're not admitting that you actually
20 made this confirmation, right? You're just explaining
21 what the cold start test is, right?

22 A Right. Right. So what happened is Todd --
23 the way -- when Todd does emissions work, most of it is
24 you send the car to the laboratory and then you kind of
25 work with them and they do the test. When they were --

1 And my understanding, which came from
2 communications with Todd -- I didn't do this myself --
3 and per the emails, was that the engine would not pass
4 this cold start test and they were doing everything to
5 try to figure it out.

6 So I had contacts inside of General Motors.
7 Jim Minneker was the head of engines and Dave McLellan
8 was on the board. He had been the chief engineer and
9 head of Corvette for 17 years. Somehow they got
10 contacts through the lab to talk to, and they found out
11 that -- they told us don't bother trying to pass this
12 test because Corvette couldn't pass the test and they
13 didn't say -- they didn't want to say any more about it.
14 It had to be anonymous and, you know, confidential and
15 that type of thing.

16 Q And even Mr. Wagner thought the Z06
17 certification was questionable, didn't he?

18 A Yeah. He was the one who told me that, yeah.

19 Q And --

20 A See, we had bought a Corvette and taken it
21 apart and used it for these purposes. That was how we
22 got our engines. We bought a whole car and took the
23 engine out of it and used it. We didn't have access to
24 buy it directly at that time.

25 Q Speaking of that topic, I want to show you an

1 email. You heard Mr. Mancuso's testimony and you heard
2 Jonathan Frank's testimony, right?

3 A Yeah.

4 Q What did you think of the -- Mr. Frank's
5 opinion that the RaptorGTR would sell \$700,000, 20 units
6 per year?

7 A You know, I'm in investments and I have
8 investors -- I had investors. And working with them,
9 you have to like, you know, put a risk factor on those
10 things.

11 So if it's like there's a 50/50 chance you're
12 going to make 10 million and a 50/50 chance you're going
13 to lose 10 million, then the value of that is zero and
14 you can't get an investor. So there's always one in a
15 million chance you're going to get anything, but that's
16 not, whatever, you know, anything anybody would invest
17 in because you're probably going to lose all your money.
18 There's only one time you're going to make money, the
19 other times you're going to lose money.

20 And so what they're doing is forecasting
21 what's going to happen and that -- anything's a
22 possibility. You can have anybody walk in and buy a car
23 for a million dollars out of nowhere, but the
24 probability is low, okay. So the possibility is there,
25 no doubt -- anything is possible -- but the probability

1 for something like that is very low.

2 And look, the Federal Reserve is raising
3 interest rates and there's a big recession forecast next
4 year. Car sales are going to go to zero. You have all
5 kinds of risks that investors look at coming into this
6 which is why he could never raise any investor money for
7 this thing.

8 No matter how rosy the potential was or the
9 possibility, it's only a small percentage of
10 possibilities. It's not something you can put in the
11 bank. Rick told you what Ferrari goes through before
12 they'll even consider something to be a deposit because
13 everything is risk-adjusted. That's the term you use
14 when you're investing. What is the risk-adjusted
15 return?

16 Q And did --

17 A Yeah, go ahead.

18 Q And did MACC have vehicles that were presold?

19 A No, not at that point.

20 Q Did it have an order bank with presold
21 vehicles?

22 A No. We would -- I would occasionally get an
23 order from Martin Short if somebody wanted to buy a car
24 to go race it, and so we would take a car that had been
25 sitting there, modify it accordingly, and deliver it to

1 them. So in that sense we'd have an order every now and
2 then, but there weren't a lot of people waiting for cars
3 to put deposits down or anything like that.

4 Q And you heard the testimony about how the MACC
5 vehicles might have parts from different vehicles,
6 right?

7 A Yes.

8 Q And was that accurate?

9 A Oh, yeah, that was a badge of honor for me.
10 I'm out there taking, you know, Corvette apart, using
11 the engine, using a Porsche transmission. And it's
12 stock engines, I'm not even modifying them. And
13 Corvette steering wheel, Corvette gauges and brakes on a
14 car that costs \$30,000 at the time and putting it
15 together -- before that, counsel -- by putting it
16 together, Martin takes it and goes out on the racetrack
17 and he's beating all the high-end cars that were costing
18 far more money.

19 And, you know, especially the British being
20 efficient and conservative on that, they got a kick out
21 of that. So it was a badge of honor; it wasn't
22 something we tried to hide. But for people who are
23 buying cars on snob appeal -- and you can see from Rick
24 that's what I was up against. I talked to Ferrari
25 dealers about marketing the cars. They have this snob

1 appeal. Oh, well, all right. It starts with this
2 casting and guys wearing suits. And it's like fine,
3 your five seconds will last longer on the racetrack.

4 Q But you didn't have a factory in Maranello
5 that was state-of-the-art?

6 A No.

7 Q And you didn't have molten lava being poured
8 into sand cast to create your engine by hand?

9 A No. I just went out and bought the stuff.

10 Q Did you have a three-year warranty with a
11 network of service on any of these parts all over the
12 world?

13 A I had a \$160,000 car that could easily beat
14 the more expensive cars that were 4- or \$500,000, but
15 that didn't make my car worth that much just because I
16 could beat them.

17 Q Mr. Zappolo, yesterday, questioned Mr. Mancuso
18 about parts that might have been handmade in MACC. What
19 did you think about that?

20 A Yeah, that's negative for everybody. You
21 know, these guys have robotic welding machines to make
22 frames. We had to do it by hand. That wasn't like a
23 plus. If I could spend a million dollars on robotic
24 welding machines, fine, but if you're only making ten
25 cars, that's \$100,000 a car.

1 So, yeah, we had -- we had a ragtag group of
2 mechanics. I mean, I'm not trying to put them down.
3 They went out and beat the top factory mechanics. We
4 went to 24 Hours in Daytona and won the race against
5 factory teams Porsche, Ferrari, and Corvette, with suits
6 and racing suits and college degrees, and we didn't have
7 any of that, okay.

8 Look, my mother worked nights to support the
9 family. I didn't come from any money and I didn't have
10 this thing about snob appeal. I just was competitive
11 and liked to be able to build this thing and win races.

12 Q Let's take a step now back to -- let's mark
13 this one as 428 for identification. I'm handing you
14 what's marked as 428 for identification.

15 MR. WEBER: Move this document into evidence.

16 MR. ZAPPOLO: No objection.

17 THE COURT: Madam Clerk, what number?

18 THE CLERK: 136.

19 THE COURT: Thank you.

20 (Thereupon, Defendants' Exhibit 136 was
21 received into evidence.)

22 BY MR. WEBER:

23 Q Mr. Mosler, you're being shown Defendants'
24 Exhibit 136. So, Mr. Mosler, this is an email from
25 Mr. Wagner to you and you to Mr. Wagner, right?

1 **A Uh-huh.**

2 Q And so it looks like Mr. Wagner merely
3 confronted you about this comment where he says "Matt
4 Farah, from The Car Show, just posted that he spoke with
5 you and you told him that the car won't pass emissions,"
6 and how did you reply?

7 **A I replied "How would I know if it would pass
8 or not?"**

9 Q And what did you mean by that?

10 **A It's never been tested. I didn't know what
11 Matt Farah had actually said. I just have this thing
12 from Todd. I'm just answering his question.**

13 Q Right.

14 **A I'm just giving him an intellectually honest
15 answer, which I always do, to his question.**

16 Q So explain this to me like I'm a ten-year-old.

17 **A Yeah. So if you look at Matt Farah's -- I
18 didn't see the comment. And Todd --**

19 Q Hold on, let me show you the comment --

20 **A Yeah.**

21 Q -- just so you can have the context. Can you
22 see this okay, Mr. Mosler?

23 **A Yeah, if you can read me the comment.**

24 Q This is Matt Farah --

25 **A Yeah.**

1 Q -- who supposedly spoke with Warren Mosler
2 today --

3 A Yes.

4 Q -- who confirmed the twin-turbo conversion to
5 the "RaptorGTR" Mosler MT900S will not pass emissions
6 and is not certifiable for public sale.

7 A Okay. That's not a true statement. I didn't
8 say that. I would never say that. You can hear me
9 talking now, I explained it -- I explained it here twice
10 or three times now, and that's not what I said. The
11 same way, you know, a lawyer will ask me a question and
12 say "You said this" and I said "No, I didn't say that,"
13 and then he looks it up and it turns out to be correct.
14 So --

15 Q And that's a repeat thing for you. People --

16 A Yeah.

17 Q -- alter your quotes, right?

18 A Always. You've seen it happen 10, 15 times
19 the last time I was cross-examined.

20 Q And you saw it in that email with Mr. Wagner
21 telling you that the journalist altered your quote to
22 make it flow better; is that right?

23 A Exactly.

24 Q So explain your email to Mr. Wagner.

25 A Okay. So when I explained how this emission

1 thing worked, I say "You have to get a Certificate of
2 Conformity," it's called. "What you have to do is you
3 self-certify it. You send in your test information to
4 the EPA, and they will -- if they like it and they think
5 it's okay, they'll send you a Certificate of Conformity,
6 but they reserve the right any time to come in and test
7 it to see if it will pass."

8 Now, this -- they never came in to test this
9 car or any of my cars, and it wouldn't be worth their
10 while to do it. So what happened was -- we knew Todd
11 had discovered that the car from Corvette -- that
12 certain -- those Corvette engines would not pass the
13 cold start test, period. The lab couldn't get it to do
14 it.

15 So he had this idea, which I thought it was an
16 excellent idea, to tell the EPA, in our application,
17 that we had had a Corvette. We took the engine out. We
18 didn't change anything. We're using the exact same
19 engine as Corvette. They reported that they passed the
20 test, so we're going to assume that we would pass this
21 test. It's a very minor test. And the EPA accepted
22 that, and that was the understanding I got from Todd,
23 and it made sense.

24 So that made us perfectly legal to sell these
25 cars; however, we knew that if they ever took a car and

1 tested it, it wouldn't pass this particular cold start
2 test. I don't know what the penalty for that might have
3 been. It might have just been "You can't sell any more
4 cars." I don't know, it's probably not a lot. It
5 wasn't a big deal.

6 But from a purely intellectually honest level,
7 we knew that if these cars were tested, they wouldn't
8 pass. Now the journalist then takes that remark,
9 twisted it around the same way you've seen my other
10 remarks twisted, saying that "Oh, Mosler said this car
11 was not legal for sale" or something like that. I don't
12 remember talking to the guy. I don't know what he said,
13 but they just do that all the time. And, you know, if
14 you have a thin skin about it and go haul them into
15 court and suing them, you'll lose all your future
16 ability to have any publicity at all from that source.

17 Q Okay.

18 A And so I didn't do that.

19 Q I'm going to mark this document as 71 for
20 identification. 71 for identification. I'm handing you
21 document 71 for identification.

22 Just to recap what I think you said: Because
23 you had the base Corvette engine, you essentially told
24 the EPA that, "Look, if the Corvette's engine passed,
25 then so should we," right? Is that right?

1 **A Right, right.**

2 (Thereupon, Defendants' Exhibit 71 was marked
3 for identification.)

4 MR. WEBER: Now move this document into
5 evidence. Any objection?

6 MR. ZAPPOLO: No objection.

7 THE COURT: Madam Clerk, 137?

8 THE CLERK: Yes.

9 (Thereupon, Defendants' Exhibit 137 was
10 received into evidence.)

11 BY MR. WEBER:

12 Q Now you can see this email exchange between
13 you and Mr. Wagner and others on July 20, 2009, right?

14 **A Uh-huh.**

15 Q Mr. Wagner himself says the GM Z06
16 certification is questionable, right?

17 **A Yeah, this is another example, he says. The**
18 **other one -- you know, the cold start test was another**
19 **example, yeah, that he had discovered.**

20 Q So Mr. Wagner knew that the GM Z06
21 certification was questionable, just one other example,
22 right?

23 **A Yeah.**

24 Q Okay. Now mark this as 442 for
25 identification. I'm handing you 442 for identification.

1 Mr. Mosler, you've been handed document 442
2 for identification.

3 MR. WEBER: Move this document into evidence.
4 Any objection?

5 MR. ZAPPOLO: No objection.

6 THE COURT: Madam Clerk, 137.

7 THE CLERK: 138.

8 THE COURT: Thank you.

9 (Thereupon, Defendants' Exhibit 138 was
10 received into evidence.)

11 BY MR. WEBER:

12 Q Okay. Mr. Mosler, you're being shown
13 Defendants' Exhibit 138. This is another email exchange
14 between Mr. Wagner and yourself, right?

15 A Yes.

16 Q And he's talking about the RaptorGTR in this
17 email. And one of the things Mr. Wagner mentions in
18 this email to you is "I have intentionally not been
19 spreading around the certification concept in the public
20 domain." "Spreading around," do you see that?

21 A Yeah.

22 Q "Because it's not appropriate to do so." He
23 wrote fundamentally, the EPA approved it... so why mess
24 with it?" Do you see that?

25 A Yes.

1 Q What did you understand that to mean?

2 A Just exactly what we've been talking about,
3 that the idea of telling the EPA that we just did what
4 Corvette did and so it should -- and that would be the
5 reason they should approve it. And it worked, and the
6 EPA did approve it for that reason, but at the same time
7 we knew that if they came and tested it, it probably
8 wouldn't pass the test.

9 Q Now I want to show you the next -- well,
10 before we --

11 Now, Mr. Mosler, again, we're not saying you
12 made this statement, but one of the claims in this case
13 is that you did.

14 A Yes.

15 Q So even if you did make this statement --

16 A Yes.

17 Q -- that statement wouldn't have been malicious
18 or with negligence or with any sort of motive, right?

19 A Which statement is that?

20 Q This one right here. Any time --

21 A Yeah. No, no.

22 Q If you did speak to Matthew Farah, it wouldn't
23 have been for any malicious motive, right?

24 A No. It would have been explanatory.

25 Q And then he would have twisted your words,

1 right?

2 **A Right.**

3 Q Okay. Mr. Mosler, this is an additional
4 article at issue in this case.

5 **A Excuse me. He said he called me, right?**

6 Q Hold on one second. This is Plaintiffs'
7 Exhibit 41.

8 **A Oh, just to confirm: He called me, right?**

9 Q I would have to look back in the transcript.
10 I would have to look back.

11 **A Oh, okay.**

12 Q So, Mr. Mosler, this is the second --

13 **A Yeah.**

14 Q -- article that allegedly contains a statement
15 to you that's at issue in this case.

16 **A Yeah.**

17 Q And Mr. Wagner contends that when the
18 article -- it says here, "Mosler says the RaptorGTR is
19 not one of its products and refused to comment further."
20 It's saying that you said that statement, do you see
21 that?

22 **A Yes.**

23 Q Now did you say that statement?

24 **A No.**

25 Q Does it even make sense that you personally

1 said that statement given that it's -- it seems to be
2 referring to the company and not an individual?

3 **A That's what it looks like, yeah.**

4 Q Do you see how, when it's referring to
5 Mr. Wagner, it says "Mr. Wagner" here?

6 **A Yeah.**

7 Q And do you see how it refers to "Mr. Wagner"
8 here also?

9 **A Uh-huh.**

10 Q And it refers to "Mr. Wagner" here?

11 **A Uh-huh.**

12 Q And then it says "SEI, a Mosler distributor,"
13 referring to the company, right?

14 **A Yes, yes.**

15 Q And it says "run by ex-Mosler engineer"?

16 **A Right.**

17 Q Meaning ex-company engineer --

18 **A Right.**

19 Q -- right?

20 **A Right.**

21 Q And then it says "was married to Mosler
22 Automotive's general manager" --

23 **A Yeah.**

24 Q -- "in the company."

25 **A Yeah.**

1 Q And then it says "Mosler," which appears to
2 say the company, "says the RaptorGTR is not one of its
3 products."

4 A Right.

5 Q Do you agree that appears to refer to someone
6 at the company may have said that?

7 A Yes. And that's not my language anyway.

8 Q Why is that not your language?

9 A I don't use words like "it's a product" or,
10 you know, something like that. I would have just
11 explained exactly what it was, that's what I do. That
12 we built the car in the shop. Todd bought it from me.
13 He's done this.

14 I would have just explained the facts of what
15 happened. I don't try and -- I don't use that kind of
16 color, those kind of words to describe things. I just
17 describe things precisely.

18 Q Even if you did say this --

19 A Yeah.

20 Q -- would it have been with any motive,
21 malicious intent, negligence, or anything like that?

22 A No. No.

23 Q Okay. Mr. Mosler, I am going to show you what
24 was previously marked as Defendants' Exhibit 107. Do
25 you see this Defendants' Exhibit 107?

1 **A Yeah. Yes.**

2 Q Okay. And you remember this email exchange
3 between you and Mr. Wagner?

4 **A Yes. I've seen it, you know, over the last**
5 **few months.**

6 Q And it contains a statement here where, at the
7 bottom, it says "Mr. Wagner says at the same time it is
8 important to me that the wrongful publication about my
9 suing Mosler be clearly extinguished." Do you see that?

10 **A Yes.**

11 Q And he wrote "That is the type of web-yuk that
12 will plague me for the rest of my life if it isn't dealt
13 with."

14 **A Uh-huh.**

15 Q So as of December, after the two articles that
16 we just saw, what was Mr. Wagner concerned with, to your
17 understanding?

18 **A Okay. He was concerned about getting**
19 **maligned, I guess. Is that what you're asking?**

20 Q About him suing Mosler, right?

21 **A Oh, oh, yeah.**

22 Q And, in fact, he did threaten to sue Mosler,
23 right?

24 **A Yes.**

25 Q In response to Savvas Savopoulos is about to

1 close, correct?

2 **A That's right.**

3 Q Do you remember that cover letter from his
4 attorney?

5 **A Yeah. I'm sorry, I'm still reading this.**

6 Q Oh, go ahead.

7 **A Go ahead, keep asking the question.**

8 Q No, no. Let me know when you're ready --

9 **A Okay.**

10 Q -- otherwise you won't know.

11 **A I'm just getting to that last part.**

12 **Right. Okay. Go ahead.**

13 Q Okay. So let's go to the attachment. Do you
14 see the press release?

15 **A Yeah.**

16 Q Do you remember this press release?

17 **A Yes.**

18 Q Just let me know when you're ready.

19 **A Go ahead.**

20 Q Okay. What do you remember about this press
21 release?

22 **A Not much. I mean, I remember parts of it, but**
23 **I remember I kind of stopped reading it halfway through.**
24 **I don't care that much about it. I was busy working and**
25 **my real job. And Todd was writing press releases that**

1 looked like -- I didn't think anything could be more
2 unprofessional looking and sounding. You know, if
3 that's how he wants to represent his company, fine, but,
4 you know, good luck. I don't want to have any part of
5 it.

6 Q And do you see on page 2 --

7 A Yeah.

8 Q -- Mr. Wagner refers to "still others twisted
9 facts, one journalist took my written words" --

10 A This is page 2?

11 Q Yeah.

12 -- "and twisted them." Do you see it?

13 A Oh, yeah. "Still others twisted facts," yeah.

14 Q Did you agree with Mr. Wagner that journalists
15 were twisting facts?

16 A Oh, absolutely. They were doing it to me
17 forever. It's just a part of the game.

18 Q A part of the game, right?

19 A Yeah.

20 Q Anything else you want to add about this press
21 release?

22 A I'm glad you didn't make me read it. It's
23 just like -- I mean, I just highly recommend the jury
24 read this through to see what was going on here.

25 Q I'm showing you Defendants' Exhibit 106 in

1 evidence.

2 Okay. Mr. Mosler, I just handed you another
3 document. It's an email from Mr. Wagner to you, right?

4 **A Yes.**

5 Q And this is another email where he's telling
6 you that the problem he's running into is that "my work
7 at Mosler is a huge chunk of my experience and the
8 fabricated 'news' about me suing Mosler and the various
9 other nonsense is everywhere." Do you see that?

10 **A Yes.**

11 Q So what did you understand that to mean?

12 **A He's been trying to get a job and "the problem
13 I'm running into is that my work at Mosler is a huge
14 chunk of my experience and the fabricated 'news' about
15 me suing Mosler."**

16 Well, the news that he says was fabricated was
17 interfering with his ability to get a job, I guess. "No
18 one will hire me after reading all this stuff."

19 Q So what was Mr. Wagner attributing his
20 complaints to?

21 **A "The fabricated news about me suing Mosler"
22 seems to be the one he features the most. The rest is
23 various other nonsense.**

24 Q Okay. All right. You can put that one down.

25 All right. Mr. Mosler, now I'm showing you

1 another article that's at issue in this case. You
2 remember this document, right?

3 Actually, Mr. Mosler, I want to show you 562.
4 I'm marking 562 for identification. This is 562 for
5 identification.

6 **A It says here that Ezra Dyer from Automobile**
7 **Magazine was going to do an article and -- drove it and**
8 **was going to do an article. Do we have that anywhere?**
9 **Did that article ever come out? Is that in evidence.**

10 Q I have to think, Mr. Mosler.

11 **A Okay.**

12 Q I have to look.

13 **A I don't remember.**

14 (Thereupon, Defendants' Exhibit 562 was marked
15 for identification.)

16 BY MR. WEBER:

17 Q Yeah. I'm going to hand you what was
18 previously marked as Defendants' Exhibit 105.

19 **A Thank you.**

20 Q Did you want to mention something about that
21 article?

22 **A I can't remember. Well, in the interest of**
23 **time, I'll skip it for now.**

24 Q Are you sure, Mr. Mosler?

25 **A Yeah. Okay.**

1 Q You're good?

2 A Yeah. Thank you.

3 Q Okay. Take a look at 562, which I put right
4 there on your ledge.

5 MR. WEBER: Any objection moving this document
6 into evidence?

7 MR. ZAPPOLO: No objection, Your Honor.

8 THE COURT: Madam Clerk, what number?

9 THE CLERK: 139.

10 THE COURT: Thank you.

11 (Thereupon, Defendants' Exhibit 139 was
12 received into evidence.)

13 BY MR. WEBER:

14 Q Okay. So this is Defendants' Exhibit 139.

15 A Yeah.

16 Q It's another email exchange --

17 A Yes.

18 Q -- between you and Mr. Wagner, and it's dated
19 March 29, 2012, right?

20 A Yes.

21 Q And Mr. Wagner had made a Workmen's Comp
22 insurance claim against MACC, right?

23 A Right.

24 Q And in response to the email from Mr. Alan
25 Simon, you wrote to Mr. Wagner "Todd, do you still think

1 you have any other claims against us?" Right?

2 **A Right.**

3 Q Now did he say "Oh, I have all these claims
4 against you and MACC"? Did he --

5 **A No.**

6 Q What did he say?

7 **A He said "No, I don't." And I don't like
8 people -- owing anybody money, so I just want to know
9 about it. If I owe you money, tell me about it, and we
10 can discuss it, but I'm under the impression that I'm
11 paid in full with everyone, and he confirmed that.**

12 Q Okay.

13 MR. WEBER: Your Honor, can I take a
14 five-minute break and then I can wrap up?

15 THE COURT: Yes.

16 MR. WEBER: Okay.

17 THE COURT: All right. Deputy, we're going to
18 take a five-minute break.

19 (Thereupon, a short break was taken from
20 10:48 a.m. to 10:52 a.m.)

21 THE COURT DEPUTY: Come to order. Jury
22 entering.

23 (Jurors entering the courtroom at 10:54 a.m.)

24 THE COURT: All right. Please have a seat.

25 MR. WEBER: Thank you, Your Honor.

1 BY MR. WEBER:

2 Q Just a few more questions for you, Mr. Mosler,
3 unless you want to bring something up.

4 A Oh, just quickly on that.

5 Q Sure.

6 A So in the automobile article, he's comparing
7 it to Bugatti. What's it called? The Veyron. And it's
8 actually an article that compares four-wheel drive --

9 Q Hold on a second.

10 A -- four-wheel drive cars to two-wheel drive
11 cars. And I have made two-wheel drive cars --

12 Q Hold on one second. Let me just make sure we
13 can see what we're talking about here. Defendants' 105.

14 A All of our cars were just rear-wheel drive
15 cars. We didn't do any four-wheel drive cars.

16 Q Mr. Mosler, hold on one second, otherwise no
17 one is going to know what we're talking about.

18 A Sorry.

19 Q You're talking about Defendants' 105, right?

20 A Yeah. The attachment in the back, the
21 article.

22 Q Okay. Go ahead, keep going.

23 A So four-wheel drive --

24 Q This article right here, Mr. Mosler?

25 A Yeah. The Bugatti Veyron.

1 Q Okay. And what about it?

2 A The article is about the limits -- that the
3 rear-wheel drive reached its limits, which is what our
4 cars were.

5 Four-wheel drive has been shown superior to
6 the two-wheel drive, to rear-wheel drive; however, it
7 was not allowed in racing at the time. Audi had entered
8 four-wheel drive cars and they were bad for racing. And
9 so all of the competitive events were two-wheel drive
10 cars, which is what ours were.

11 So if you're going to be comparing yourself
12 against this car, which is a four-wheel drive, it's just
13 in another category. You don't have a chance. And
14 it's -- you know, I just want to make that point that
15 our technology -- it wasn't the latest technology.

16 I had spoken with Todd about going four-wheel
17 drive to try and get into -- you know, break into those
18 kinds of performance things, but -- and I had come up
19 with this idea of using a small, electric motor for the
20 front, but, whatever, it never materialized. We never
21 actually did it.

22 Q Let me make sure I understand.

23 A Yeah.

24 Q You're saying that it's not a valid comparison
25 to compare the RaptorGTR to cars like the Bugatti

1 because the Raptor was a two-wheel drive car and the
2 Bugatti was a four-wheel drive car, right?

3 A Yeah. I'm saying it's a whole different
4 category of -- you know, from a mechanical point of
5 view. It's --

6 If you notice -- it was mentioned earlier that
7 the new electric cars, Teslas and others now, are -- the
8 newer ones are faster 0 to 60 than the other cars and
9 they're all four-wheel drive, and what's enabling this
10 is like a hard acceleration. So it's not --

11 You can't compete with 0 to 60, for example,
12 with a two-wheel drive against a four-wheel drive, in
13 general. All of us equal four-wheel drives couldn't.
14 And it's also more useable, which is the point this
15 article was about.

16 With the two-wheel drive, it talks about it's
17 exciting and a handful and it was beyond his ability to
18 drive, but the four-wheel drive he just could do it. It
19 was controllable and everything else. And it's --

20 Yeah, so there are people -- anyway, I just
21 wanted to point that out when we're talking about
22 things, the future and ability --

23 Q That's another reason why your car might not
24 have sold, right?

25 A Well, a person buying the Bugatti for a

1 four-wheel drive would not buy our car. It was a
2 two-wheel drive car. Again, it's probably mainly sold
3 on snob appeal and not how fast the car would drive, you
4 know.

5 Q Okay. Let's move to this document. This was
6 the article that contained the last statement at issue.

7 Do you remember this article, Mr. Mosler?
8 It's titled -- can you see it okay?

9 A Not really. What does the title say?

10 Q It says "First 2012" --

11 A Yeah.

12 Q -- "838-horsepower, 240-mile an hour Mosler
13 RaptorGTR" --

14 A Yeah.

15 Q -- "hyperexotic car breaks cover via an
16 extreme music video," right?

17 A Yes.

18 Q And what was your understanding this article
19 was about?

20 A It was an article about this video that's
21 introducing the new Raptor, yeah.

22 Q And below the article there was a comment --

23 A Yeah.

24 Q -- right?

25 A Yeah.

1 Q And you did write this comment, right?

2 A Yes.

3 Q And what did you mean by this comment?

4 A I meant that this music video and this
5 presentation, whatever it was, wasn't from me. Mosler
6 was not involved, you know, with it.

7 What does it say? It's not involved with
8 this, yeah.

9 Q Okay.

10 A With the music video and the event. I wasn't
11 involved with the event.

12 Q And was the video from you?

13 A No.

14 Q And was Mosler or MACC involved with the
15 video?

16 A No.

17 Q Did you or MACC provide any funding for the
18 video?

19 A No.

20 Q Did you know -- did you or MACC know the video
21 was going to be released?

22 A No.

23 Q Did you -- were you at the video shooting?

24 A No.

25 Q Was anyone from MACC at the video shooting?

1 **A** **Not that I know of, except Todd.**

2 Q Todd wasn't working for MACC as of this date,
3 right?

4 **A** **No, he wasn't, but I just thought people could**
5 **imply from that that we were somehow connected with the**
6 **video and the presentation, and I just wanted to make it**
7 **clear that we weren't.**

8 Q Did you have any malicious motive or
9 negligence or any sort of intent that was with bad
10 motive towards Mr. Wagner or SEI with respect to this
11 comment?

12 **A** **No, not at all.**

13 Q And you have been receiving emails from
14 persons who were concerned about this comment -- this
15 video, right?

16 **A** **Concerned about the video.**

17 Q Yeah, the video.

18 **A** **Yes.**

19 Q Jeffrey Reiss, the prospective buyer, right?

20 **A** **Yeah.**

21 MR. WEBER: Okay, Your Honor, we have no
22 further questions at this time.

23 THE COURT: Redirect? I'm sorry --

24 MR. WEBER: Your Honor --

25 THE COURT: I'm sorry, Cross-Examination.

1 MR. ZAPPOLO: Cross, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. ZAPPOLO:

4 Q Just so we're clear, Mr. Mosler, you wanted
5 the world to know that you had -- that Mosler had
6 nothing to do with the Abby Cubey video, right?

7 A **Well, yes.**

8 Q Okay. But you didn't necessarily want the
9 Abby Cubey video taken down, did you?

10 A **No.**

11 Q Okay. And as a matter of fact, you told
12 Ms. Cubey she could continue and leave the video up,
13 right?

14 A **Sure.**

15 Q Okay. But now you're telling this jury that
16 that was hurting your brand?

17 A **I didn't say that, okay.**

18 Q Didn't you put on a whole bunch of -- didn't
19 you, just yesterday -- well, yesterday didn't you
20 introduce a whole bunch of emails and things where
21 people were mocking the video and saying it was bad for
22 your brand?

23 A **Yes, I did.**

24 Q Okay. So wasn't that the whole point in front
25 of this jury was to say that that video was hurting the

1 brand?

2 **A** You just said that I said the video was
3 hurting the brand. I did not go out -- I was not out
4 there saying the video was hurting the brand.

5 **Q** Okay. So all this testimony yesterday with
6 all those documents that are in evidence, they weren't
7 presented to this jury to show that the video was
8 hurting the brand?

9 **A** I didn't say that either.

10 **Q** Okay.

11 **A** You start off by -- you start off by quoting
12 me and it was not what I said, and this is what this
13 whole thing is about.

14 **Q** They were -- I'm trying to -- I'm trying to
15 understand --

16 **A** Yeah.

17 **Q** -- your position in front of this jury.

18 **A** Okay.

19 **Q** Yesterday you and your attorney put on, like,
20 five or six exhibits?

21 **A** Yes.

22 **Q** Okay. That were emails from people --

23 **A** Yeah.

24 **Q** -- that you said people were complaining about
25 the video hurting the brand, right?

1 **A Yes.**

2 Q Okay.

3 **A Those are -- those are in evidence.**

4 Q So you wanted the jury to know that your
5 position is that the Abby Cubey video was hurting the
6 brand, correct?

7 **A No.**

8 MR. WEBER: Objection. May we approach, Your
9 Honor?

10 THE COURT: Yes.

11 (Thereupon, a sidebar conference was held.)

12 MR. WEBER: I think he's trying to infer why I
13 put Exhibits on as Mr. Mosler's intent for showing
14 the documents.

15 THE COURT: All right. Overruled.

16 (Thereupon, the sidebar conference was
17 concluded.)

18 BY MR. ZAPPOLO:

19 Q You can answer that, Mr. Mosler.

20 **A I want the jury to know that other people**
21 **thought the video was hurting our brand.**

22 Q Okay. Did you think the video was hurting the
23 brand?

24 **A I didn't know. You know, I had comments from**
25 **other people. It was kind of an indication. You know,**

1 I had another job, it didn't -- I wasn't focused on
2 this.

3 Q Right. And so you -- as you just testified --

4 A Yeah.

5 Q -- you allowed Ms. Cubey to keep the video up,
6 right?

7 A I did.

8 Q Okay. And you even told her that, and you
9 exchanged emails with her, right?

10 A I did.

11 Q Okay. Thank you.

12 Now in that last document that was up --

13 A Yes.

14 Q -- where it said "Mosler's not involved with
15 this," do you remember that?

16 A Yes.

17 Q Okay. You chose the words to write on that
18 comment, right?

19 A Yes.

20 Q Okay. You signed those words, correct?

21 A Correct.

22 Q All right. So there's no doubt that you wrote
23 that, correct?

24 A Correct.

25 Q All right. Now when you wrote that, you chose

1 the words that you were going to type on to your
2 computer, didn't you?

3 **A I did.**

4 Q Okay. And rather than saying "Mosler has
5 nothing to do with this video" --

6 **A Yes.**

7 Q -- you said this, right?

8 **A Yes.**

9 Q Okay. And when you read that article, a large
10 portion of that article is about the release of the 2012
11 RaptorGTR, isn't it?

12 **A Yes.**

13 Q Okay. So it's reasonable for someone to read
14 that article and then read the article about the Raptor
15 2012 GTR and say -- when they read your comment -- "this
16 is referring to the RaptorGTR," isn't it?

17 MR. WEBER: Objection, speculation.

18 THE COURT: Overruled. Oh, sustained.

19 BY MR. ZAPPOLO:

20 Q You said something -- and I'm going a little
21 bit backwards here. You said something a few minutes
22 ago. You were commenting about snob appeal. Do you
23 remember that?

24 **A Yes.**

25 Q Okay. Well, snob appeal kept people from --

1 actually, snob appeal was one of the reasons that
2 Mr. Wagner wanted to change the body style on the MT900
3 when he was working on the -- when he was creating the
4 2012 RaptorGTR, isn't it?

5 **A Well, that's your statement. Is that a**
6 **question?**

7 Q Yes. That was one of the reasons that he
8 wanted to change the body style, right?

9 **A I never heard him use that word.**

10 Q Okay. But you -- you attributed it to snob
11 appeal. People don't like -- well, let me back up.

12 What is snob appeal?

13 **A People have loyalties. Ferrari people like**
14 **Ferraris; you know, Porsche people have Porsches. They**
15 **wear Porsche T-shirts and they have, like, fan clubs.**
16 **And it's an association. It's a social thing. Like a**
17 **Gucci handbag versus a Kmart handbag; the Kmart handbag**
18 **might be better, holds more and looks better, but**
19 **there's a certain snob appeal to Gucci, so I was using**
20 **it in that context.**

21 Q Okay. And your expert used a phrase
22 yesterday, "kit car." Do you remember that?

23 **A Yes, yes.**

24 Q Okay. And snobs don't like kit cars, do they?

25 **A That was interesting that our car was -- it**

1 **wasn't a kit car, but that was people's first**
2 **impressions. I've never seen it before. "Oh, is that a**
3 **kit car?"**

4 Q Okay. So Mr. Wagner's idea to avoid that
5 impression was to change the body style so it didn't
6 look like a Corvette, right?

7 A **Well, that's your testimony. I mean, he --**

8 Q Isn't that true that that's what Mr. Wagner's
9 plan was?

10 A **It wasn't to change the body style. He wanted**
11 **to change the taillights.**

12 Q And he was changing the nose, correct?

13 A **Right. But that wasn't because it looked like**
14 **a Corvette.**

15 Q He didn't have discussions with you about
16 getting rid of the Corvette taillights?

17 A **Yes. I just talked about the taillights. I**
18 **said yes.**

19 Q And didn't Mike Vietro, Corvette Mike out in
20 California, say one of the reasons he was having trouble
21 selling the cars is because people thought it looked too
22 much like a Corvette?

23 A **It could be. I don't remember the document**
24 **that he said that, but I'm sure there was some people**
25 **saying that.**

1 Q Okay.

2 A But Corvette was also -- well, it was a part
3 of the market strategy. Todd wanted to change it.

4 Q A few minutes ago you were having a discussion
5 with your attorney about four-wheel drive versus
6 all-wheel drive and you put up an article. 105 I
7 believe is in evidence.

8 A Yeah.

9 Q Do you remember that?

10 A Yes.

11 MR. ZAPPOLO: Okay. Any objection to that,
12 Counsel?

13 MR. WEBER: No objection.

14 MR. ZAPPOLO: Your Honor, at this time I'd
15 like to move Plaintiffs' Exhibit 1355 for ID into
16 evidence without objection.

17 THE COURT: Madam Clerk, what number?

18 THE CLERK: 114.

19 THE COURT: Plaintiffs' 114 without objection.

20 (Thereupon, Plaintiffs' Exhibit 114 was
21 received into evidence.)

22 BY MR. ZAPPOLO:

23 Q I'm showing you what's been marked as 1355 for
24 identification that is now in evidence as 114. That
25 idea for all-wheel drive -- Mr. Wagner came up with an

1 electric drive design -- right? -- where he was going to
2 have the rear-wheel drive gas power, but then he was
3 going to have electric motors on the front, right?

4 **A Yeah. I think that idea came from me, but I'm**
5 **not going to argue about it.**

6 Q Okay.

7 **A I had been working on that for a long time.**

8 Q And the discussion about that is found at, the
9 lower right-hand corner, DEF002885, correct?

10 **A I don't know. 2885?**

11 Q That's a conversation between -- or an email
12 exchange between you on the one hand and Savvas
13 Savopoulos, right?

14 **A Yeah. Yes.**

15 Q As far back as 2010?

16 **A Yes.**

17 Q J&T is who?

18 **A I don't know. Where is this?**

19 Q On the page 2885, on the bottom of the screen,
20 paragraph 4.

21 **A 2885 has got engine options --**

22 Q Look up on the screen, sir.

23 **A Oh, I'm sorry.**

24 Q Item 4, "all-wheel drive with variable bias?

25 Personally, that's not possible. No tunnel. J&T talked

1 about T's electric drive design for front wheels. To
2 me, it sounds like a lot of weight. May be counter to
3 Mosler philosophy," right?

4 **A Right.**

5 Q So Mr. Wagner, the engineer --

6 **A Yeah.**

7 Q -- was suggesting back as early as 2010 --

8 **A Yeah.**

9 Q -- putting electric wheels on the front of the
10 car, right?

11 **A Yeah. He talked to Savvas about that, right.**

12 Q Okay. And that's what that article was about,
13 right? That may be the end of the rear-wheel drive car?

14 **A Not the end of it, just the limitations on it.**

15 Q Okay.

16 **A They're still here today. I mean, they're
17 never going to end.**

18 Q Right. But we'll let the article speak for
19 itself about what he was talking about.

20 **A Yeah.**

21 Q But that was something Mr. Wagner was talking
22 about well prior, correct?

23 **A Yes, so was I. I mean, we were talking about
24 that well prior to that.**

25 Q Okay.

1 **A This was brainstorming with Savvas.**

2 Q So, by the way, with respect to brainstorming
3 with Mr. Savopoulos, part of that plan was that he
4 didn't need to feel obligated to keep anyone he wasn't
5 comfortable with, correct?

6 **A Yeah. Can you show me the document you're**
7 **talking about?**

8 Q It's up on the screen, sir.

9 **A Okay. Yes.**

10 Q Okay. So, I'm sorry. The capitalized in
11 that, those are your words, right? You were telling
12 Mr. Savopoulos he didn't have to feel obligated --

13 **A That's right.**

14 Q -- to keep him?

15 **A That's right.**

16 Q Now, your expert and everyone had talked about
17 the number of volume of cars that were potentially --
18 that could be sold. Do you remember that?

19 **A Yes.**

20 Q Okay. You disagree with your expert, don't
21 you?

22 **A Go ahead, tell me what you're talking about.**

23 Q Well --

24 **A Why are you so belligerent?**

25 Q I'm sorry?

1 **A Why are you being so belligerent?**

2 THE COURT: All right. Let's approach.

3 **THE WITNESS: I'm sorry.**

4 (Thereupon, a sidebar conference was held.)

5 THE COURT: Okay. So, for the record,
6 Mr. Mosler -- so, for the record, the Court finds
7 that Mr. Zappolo has not been belligerent.
8 Obviously he didn't draw any objections for
9 argument of the witness. I think Mr. Mosler is
10 impermissibly communicating with the jury. At this
11 point I'm going to tell him that he needs to stop,
12 and I am going to do that in front of the jury and
13 that the jury should disregard his last comment.

14 MR. ZAPPOLO: Okay.

15 THE COURT: All right.

16 (Thereupon, the sidebar conference was
17 concluded.)

18 THE COURT: Mr. Mosler --

19 **THE WITNESS: Yeah.**

20 THE COURT: -- so that last comment was
21 impermissible communication with the jury and
22 that's not going to happen again. Are you clear?

23 **THE WITNESS: Okay. I'm sorry.**

24 THE COURT: All right. The jury will
25 disregard the last comment. Go ahead, Mr. Zappolo.

1 MR. ZAPPOLO: Thank you, Your Honor.

2 BY MR. ZAPPOLO:

3 Q My question is: You disagreed with your
4 expert about the volume of cars that could be sold,
5 correct?

6 A I don't know that I do or I don't. You have
7 to be more specific.

8 Q Well, do you ever recall telling Mr. Zappolo
9 how many cars you anticipate could be sold?

10 A I'd have to look at the documentation. If
11 it's here, just show, me please.

12 Q Sure. In front of you, within Plaintiffs'
13 1355, which is now in evidence as 114 -- at the bottom
14 right-hand corner there's a Bates number --

15 A Yes.

16 Q -- that says DEF002908.

17 A Thank you.

18 Q We already established earlier that you were
19 the person speaking with all caps responding to
20 Mr. Savopoulos' questions, correct?

21 A Right.

22 Q All right. You wrote "If all ten cars are
23 sold, it's sort of a breakeven."

24 A Yes.

25 Q "When Thailand comes on, it should make some

1 okay money with 24 cars sold per year, serious money
2 selling 100 a year, which shouldn't be that hard to do."

3 **A Yeah.**

4 Q So, in your opinion, 100 cars per year
5 wouldn't be that hard to do, right?

6 **A Well, at that price, okay. That was assuming**
7 **we could -- the whole point of the Thailand exercise was**
8 **to bring the price down further, not \$700,000.**

9 Q And that's what Mr. Wagner was going to do in
10 his business model when he bought the company, correct?

11 **A I haven't seen that.**

12 Q You weren't aware that Mr. Wagner was going to
13 manufacture -- do a shift of manufacturing overseas in
14 order to cut the price?

15 **A I understood that, yeah, that was his thing he**
16 **wanted to do, yeah, and then --**

17 Q Now with respect to Defendants' Exhibit 139 in
18 evidence, that you just discussed a little while ago
19 with your attorney, Mr. Simon was the attorney for
20 Mosler Auto Care Center, correct?

21 **A I used him, yeah.**

22 Q Okay. Now on 3/29/2012 James Wagner said he
23 didn't have any claims against MACC, correct?

24 **A Correct.**

25 Q Now that was in direct response to a question

1 about workers' compensation claims, wasn't it?

2 **A Yes.**

3 Q Okay. Now, moving ahead, do you recall a
4 discussion about Defendants' 106 in evidence, the duPont
5 REGISTRY article, et cetera?

6 **A Yes.**

7 Q Okay. And I wrote something down. You said,
8 and I'm paraphrasing here, Todd's biggest concern seemed
9 to be about the allegation that he was suing. Do you
10 remember that?

11 **A Yes.**

12 Q Okay. But then you said the rest is other
13 nonsense, right?

14 **A Yes.**

15 Q Okay. And it talks about the various other
16 nonsense is everywhere, right?

17 **A Yes.**

18 Q All right. And at that point, in November of
19 2011, Mr. Wagner wrote to you -- he wants to communicate
20 what he found because you were here when he was
21 testifying about being confused about what was going on
22 with the articles coming out, et cetera, right?

23 **A I was here when he was confused, yeah.**

24 Q Right. And so you recall that Mr. Wagner was
25 trying to do some investigation in order to clear his

1 and your name at that point, wasn't he?

2 **A I remember that email to that effect.**

3 Q Okay. And he wrote "My hope is that once we
4 understand what happened, we can find a way to undo the
5 damage," right?

6 **A Yes.**

7 Q So that's what he was doing and that's what
8 you understood Mr. Wagner was doing back on November 28,
9 2011, right?

10 **A That's what he said in that email, yeah.**

11 Q Okay. And do you recall an email where Jill
12 Wagner wrote and she said "I don't know how he gets a
13 feud from this," words to that affect that's in
14 evidence?

15 **A I'd have to see it.**

16 Q Okay. We'll try and track that down.

17 I want to keep moving as quickly as we can.
18 So while they're looking for that, I'm going to ask you
19 some other questions.

20 **A Okay.**

21 Q Okay. Now you recall Defendants' Exhibit 107
22 in evidence was discussed with you, right?

23 **A I'd have to see it. I don't know it by
24 number.**

25 Q Well, okay. And I'm putting it up on the

1 screen for you, okay?

2 **A Okay.**

3 Q That's the December 1, 2011 email?

4 **A Yeah.**

5 Q You might recall because you were laughing in
6 front of the jury when you discussed it with your
7 attorney.

8 **A Okay.**

9 Q Okay. And in this email Mr. Wagner was still
10 concerned about being maligned, wasn't he?

11 **A Where are you pointing to?**

12 Q Well, in that email --

13 **A Yeah. Where in that email?**

14 Q The general gist of this email --

15 **A Oh, the general gist? Okay.**

16 Q Right.

17 -- is that he was trying to turn the situation
18 into something good, right? He wanted to clear up
19 misunderstandings --

20 **A Yeah.**

21 Q -- without pointing fingers?

22 **A Yeah. Yes.**

23 Q And help convey how amazing the Mosler chassis
24 is, right?

25 **A I agree, that's what he was trying to do.**

1 Q And before this email he had written you an
2 email, a conciliatory email, an apologetic email, hadn't
3 he?

4 A It could be read that way, yes.

5 Q Okay. Well, let's read it because it's
6 attached as part of Exhibit 107.

7 Last page. "Hi, Warren. This morning I
8 decided to go to church and spend some time praying and
9 thinking. I hadn't been in quite a while. While
10 praying about this situation, the one thing that kept
11 coming to me was to forget about my anger and
12 justification and just say I'm sorry. So setting aside
13 all circumstances and events outside of my control, I'm
14 sorry for the mistakes I've made. When I first came to
15 work for you almost eight years ago, your dream was my
16 dream. I truly put my heart and soul into everything
17 and tried my best to create a great product. I hope
18 some day we can put the past behind us and shake hands
19 to part ways peacefully, Todd."

20 A Yeah.

21 Q And Warren replied back -- that's you -- "I'm
22 not at all upset with you. I know you thought you were
23 doing what was best, and I wasn't there to provide any
24 feedback, Warren."

25 A Yeah.

1 Q And he wrote "To those who made mistakes and
2 perhaps mistreated Abby and me during this time, you are
3 forgiven. In 100 short years none of us are going to be
4 here to be angry. As one of my best friends often tells
5 me, quote, You got to breathe today. Be thankful.
6 Enjoy life, it's so beautiful. No wonder what we may
7 think, we haven't done anything to, quote/unquote,
8 deserve life. Whether we're tall or short, slim or not,
9 enjoying factory original boobies or robo boobies, life
10 and all of its amazing features are drawing on an
11 invisible glass inside our body is nourishment for
12 billions of cells that are somehow operating as a team
13 to propel us down the street is simply a gift. As an
14 engineer of one of the most complex and amazing vehicles
15 in the world, I believe that life is 100 billion plus,
16 plus, plus times more complex than anyone reading this
17 note could ever create. Think about that as you enjoy
18 life. Merry Christmas, Happy Holidays, and God Bless."

19 That was the email --

20 **A Yeah.**

21 Q -- that you were laughing about in front of
22 this jury, right?

23 **A Yes.**

24 Q And in this -- as part of this December 1st
25 email Mr. Wagner said he had written a press release to

1 clear up misunderstandings without pointing fingers and
2 help convey how amazing Mosler is, right?

3 **A Right.**

4 Q That was his attempt to try and clear
5 everything up, wasn't it?

6 **A Yes.**

7 Q But you didn't agree with sending out that
8 press release. You laughed at it, didn't you?

9 **A At the time I did not agree in sending it out,**
10 **yeah.**

11 Q As a matter of fact you had conveyed to --

12 **A It wasn't --**

13 Q -- James Wagner --

14 **A He was sending it out under his own company.**

15 Q Sir, there's no question.

16 **A Oh, I thought you asked me if I --**

17 Q The question is: At the time you had conveyed
18 to James Wagner that he wasn't to send out any press
19 releases, hadn't you?

20 **A This press release was when he was sending**
21 **out -- the email said he was sending it out under his**
22 **own company.**

23 Q Right. But you had told him you didn't want
24 press releases going out --

25 **A That's correct.**

1 Q -- right?

2 A You have to show me the email, but, you know,
3 I'll take your word for it in the interest of time.

4 Q Well, that's -- right. Well, that's the
5 truth, isn't it? You didn't want him sending out press
6 releases, right?

7 A Not without my approval.

8 Q Right. Because all press releases that went
9 out were approved -- all press releases that went out
10 with respect to the Mosler Auto Care Center were
11 approved by Warren Mosler, correct?

12 A Okay. They required my approval.

13 Q Okay.

14 A Okay. And I would not have approved this
15 press release, but it's his perfect right to send it
16 out. And I'm not out there criticizing it, I just went
17 it's not the way I would do it myself.

18 Q Okay. In fact, press releases about Mosler --
19 let me back up.

20 You're very particular about what is out in
21 the public domain about Mosler, aren't you?

22 A What is out there?

23 Q Yes.

24 A I don't have control of most of it.

25 Q Right. But you pay attention very

1 particularly, don't you?

2 **A I try to.**

3 Q Right.

4 **A I don't get it all; I get some of it.**

5 Q You spend a lot of time each day on Twitter
6 and monitoring things -- correct? -- like that?

7 **A Monitoring things? No.**

8 Q You got the --

9 **A I've -- go ahead.**

10 Q We talked in -- or the first time we got to
11 speak in front of this jury, we talked about the Google
12 Alerts that you have set, right?

13 **A Yes, yes.**

14 Q Okay. And you understand that when doing
15 press releases, that's either Mosler himself or Mosler
16 Auto Care Center speaking to the world, correct?

17 **A When doing press releases?**

18 Q That's the intent of a press release, isn't
19 it?

20 **A Well, that would be the intent of our press
21 releases, yeah.**

22 Q Right. And when you do press releases, you
23 either draft them yourself or you have someone else
24 draft them, right?

25 **A Yes.**

1 Q Okay. And that's when -- you sometimes draft
2 press releases that refer to -- refer the recipient or
3 the reader of the release to other people within Mosler,
4 right?

5 A In the press release?

6 Q Yes.

7 A It's possible, sure.

8 Q So that's you speaking through the employees
9 of Mosler, isn't it?

10 A You'd have to show me what you're talking
11 about.

12 Q You use employees of Mosler as your proxies
13 when you want to get word out about something, don't
14 you?

15 A You'd have to show me what you're talking
16 about. I don't specifically recall that stuff.

17 Q Well, isn't that true, sir --

18 A It might be.

19 Q -- that you have other people speak on your
20 behalf?

21 A It might be. I don't have a recollection of
22 that, but I'd certainly -- I'm not against it.

23 MR. ZAPPOLO: Okay. Counsel, Exhibit 300.

24 BY MR. ZAPPOLO:

25 Q I'm showing you what's been marked as

1 Plaintiffs' Exhibit 300 for identification purposes.

2 MR. ZAPPOLO: Counsel, any objection to that
3 being admitted into evidence?

4 MR. WEBER: No objection.

5 THE COURT: Madam Clerk, what number?

6 THE CLERK: 115.

7 (Thereupon, Plaintiffs' Exhibit 115 was
8 received into evidence.)

9 BY MR. ZAPPOLO:

10 Q Have you had an opportunity to review that
11 document, sir?

12 A Yes.

13 Q Okay. Exhibit Number 115 in evidence is an
14 example of such a press release, correct?

15 A Yes.

16 Q That you wanted to be released related to the
17 Lightning Lap, correct?

18 A This is an email -- a discussion in a press
19 release that I was going back and forth with Todd and
20 editing.

21 Q Okay. And so you wanted a press release about
22 the Lightning Lap victory, correct?

23 A Well, at this point in time I was preparing a
24 press release for that.

25 Q Right. And you were comparing the 2009 MT900

1 to a Lamborghini Murcielago, correct?

2 **A Let's see. I think yes.**

3 Q Now, by the way, let's talk for a minute about
4 the Lightning Lap. The Lightning Lap is a "Car and
5 Driver" event, right?

6 **A Yes.**

7 Q And that's a timed event, I think you told us
8 the first time we spoke in front of the jury --

9 **A Yes.**

10 Q -- where street legal cars run around the
11 track and they're timed, correct?

12 **A That's right.**

13 Q So it's not like a race, but it is a timed
14 event?

15 **A That's right.**

16 Q All right. And now you -- on behalf of --
17 well, you directed Mosler Auto Care Center to have the
18 2009 MT900S run that course, correct?

19 **A Correct.**

20 Q All right. Now, remember the first time we
21 talked that was a car that you had, the lighter than
22 EPA-certified flywheel, the long tube headers, the
23 catalyts smaller, et cetera, right?

24 **A I don't recall those specific details. I**
25 **remember you talking about them, but I don't remember**

1 **what they were --**

2 Q You don't recall admitting that?

3 A **-- on the car. I think that was -- I don't**
4 **recall admitting anything about the weight of the**
5 **flywheel because I had no recollection of that.**

6 Q Okay.

7 A **I recall that you showed me a dynamometer test**
8 **that had some of these things on it, but those were the**
9 **tests for the dynamometer, not necessarily what was in**
10 **the car --**

11 Q Okay.

12 A **-- which is another example of --**

13 Q 2011 Photon --

14 A **-- paraphrasing.**

15 Q -- had long tube headers, had the lighter
16 flywheel?

17 A **Which one?**

18 Q The 2011 Photon that's referenced in this
19 exhibit. That had the long tube headers, the lighter
20 flywheel, et cetera, right?

21 A **That was -- yeah, that could be.**

22 Q Okay. Now you remember, when we first spoke
23 in front of this jury, you talked about being a
24 competitive guy?

25 A **Yes.**

1 Q Okay. Making -- you referred to your vehicles
2 as weapons?

3 A Yes.

4 Q Okay. And you said that you learned from your
5 first racing experience that other people were cheating.
6 Do you remember that?

7 A I don't remember it, but I know that.

8 Q And you made changes in your vehicle to
9 accommodate for that, didn't you?

10 A Right. I was talking about my ability as a
11 driver. That was in my -- I raced for about 20 years
12 so.

13 Q And you described having a race engine in your
14 cars when you raced, right?

15 A A race engine?

16 Q Yes. Do you remember --

17 A Which cars were those?

18 Q I was talking about cars that you were
19 selling, and you said race engine. You had a race
20 engine in your vehicles.

21 MR. WEBER: Objection, speculation,
22 mischaracterizes the testimony.

23 THE COURT: Overruled.

24 BY MR. ZAPPOLO:

25 Q All right. Well, notwithstanding whether you

1 recall or not, did you ever have a race engine in the
2 2011 Photon?

3 **A** **So we bought what was called a crate motor,**
4 **which is basically a stock engine that was used in a**
5 **race series that used stock engines is my recollection.**

6 The engine we could get from Corvette, we
7 couldn't just -- unless you want to take a car and buy
8 it, they sold their engines separately. They called
9 them something like crate motors or something, and we
10 bought those. They were used in racing.

11 We tested it. It's the same engine, the same
12 horsepower, and it seemed to be -- it was roughly
13 identical, so, technically, it's a race engine because
14 it was used in races --

15 **Q** You didn't --

16 **A** -- but --

17 **Q** -- tell the jury in our first discussion about
18 a World Challenge cam being involved in those crate
19 engines that you bought specifically for racing?

20 **A** **I don't remember saying anything to the jury**
21 **about a World Challenge cam, but --**

22 **Q** World Challenge cam. You know what a World
23 Challenge cam is, don't you?

24 **A** **Yes.**

25 **Q** Okay. And that's why you bought the specific

1 motors for racing, right?

2 **A** **I don't buy these motors for racing. I bought**
3 **them for the prototype car because it was the only one**
4 **we could get.**

5 **Q** Okay. So the only engines you could get were
6 the racing engines?

7 **A** **The ones that we used -- yeah, the specific**
8 **engine, which was -- it was as close to a stock engine**
9 **as you could get and that's what the series was about.**

10 **Q** And these -- but these -- you just told this
11 jury --

12 **A** **So, technically --**

13 MR. WEBER: Objection, relevance, Your Honor.

14 THE COURT: What is the relevance?

15 MR. ZAPPOLO: It goes to his dishonesty, Your
16 Honor.

17 MR. WEBER: Your Honor, can we approach?

18 THE COURT: Objection sustained. The jury
19 will disregard the last comment.

20 BY MR. ZAPPOLO:

21 **Q** You've referenced those cars as street legal
22 on more than one occasion. We've seen documents in
23 evidence about that, correct?

24 **A** **Those cars?**

25 **Q** The cars that raced and won the VR -- VIR

1 Lightning Lap.

2 **A Cars --**

3 MR. WEBER: Objection, relevance.

4 THE COURT: Let's approach.

5 (Thereupon, a sidebar conference was held.)

6 THE COURT: All right. So we don't have a lot
7 of time today and right now we're talking about
8 prior bad acts which are impermissible, so go into
9 something substantive in the next few moments or
10 I'm going to terminate the Cross-Examination.

11 MR. WEBER: I'm doing a Redirect too. This is
12 ridiculous.

13 THE COURT: No. I already instructed the jury
14 to disregard the last comment. We're not going to
15 go into that.

16 (Thereupon, the sidebar conference was
17 concluded.)

18 BY MR. ZAPPOLO:

19 Q Within that document, you were pricing the
20 Photon at \$389,000, correct?

21 **A Correct.**

22 Q And you were also limiting production to 12
23 cars per year, correct?

24 MR. WEBER: Objection, relevance, Your Honor.

25 THE COURT: Overruled.

1 **THE WITNESS: Yeah. If that's what it says,**
2 **that was a part of the marketing.**

3 BY MR. ZAPPOLO:

4 Q Exhibit 70 that's in evidence is another
5 example of you asking that a press release be drafted
6 and sent out, correct?

7 **A Is that this up here?**

8 Q Yes. I apologize, let me try and zoom in on
9 this.

10 That email on June 3rd of 2011 is in response
11 to something Mr. Wagner --

12 **A Yeah.**

13 Q -- allegedly said. You said "We need a press
14 release stating something like Todd" --

15 **A Yeah.**

16 Q -- "Wagner has not been employed by Mosler
17 since blank when he left to establish his own consulting
18 firm" --

19 **A Yeah.**

20 Q -- "and attempt to raise funds by Mosler."
21 Now, at that point --

22 **A What was the date on that?**

23 MR. WEBER: Mr. Zappolo, what document in
24 evidence is that?

25 MR. ZAPPOLO: 70.

1 MR. WEBER: Plaintiffs' Exhibit 70?

2 MR. ZAPPOLO: Yes. ID 1161, in as 70.

3 **THE WITNESS: June 3, 2011, okay.**

4 BY MR. ZAPPOLO:

5 Q In June of 2011.

6 **A Yeah.**

7 Q And that was in reference to Mr. -- a press
8 release about the 2012 RaptorGTR, correct?

9 **A It doesn't say that anywhere, does it?**

10 Q Do you recall being upset that there was a
11 reference to a -- the 2012 RaptorGTR being built
12 specifically to beat the Pagani Huayra?

13 **A I remember that being in print somewhere and I
14 wanted to clarify our position.**

15 Q Right.

16 **A It wasn't going to a particular upsetting or
17 anything, I just wanted to clarify it.**

18 Q You wanted a press release saying that "His
19 statements" -- his meaning Mr. Wagner's -- "public
20 statements are his own and do not represent those of
21 Mosler. Mosler Automotive manufacturers and distributes
22 the Mosler MT900 Photon, the world's top performance car
23 manufactured U.S. road legal," correct?

24 **A Correct.**

25 Q We've already discussed whether or not that

1 Photon was road legal, haven't we?

2 **A** Look, you're -- that's not what we're talking
3 about. We're talking about manufacturing a car for sale
4 that's road legal versus building a demonstrator
5 prototype, my personal car, to, you know --

6 **And, you know, we've been through this before**
7 **and you still keep throwing up the same innuendo.**

8 THE COURT: Mr. Mosler --

9 **THE WITNESS: Oh I'm sorry.**

10 THE COURT: -- that's your second warning.

11 BY MR. ZAPPOLO:

12 Q Mr. Mosler, do you remember some testimony a
13 little while ago about the certification process?

14 **A Yes.**

15 Q You explained to this jury about a cold start
16 test, et cetera?

17 **A Yes. Yes.**

18 Q Okay. You were never present for any cold
19 start test, were you?

20 **A No.**

21 Q As a matter of fact, James Todd Wagner was the
22 person who was in charge of the cold start -- overseeing
23 the cold start testing on behalf of Mosler Auto Care
24 Center, correct?

25 **A Right.**

1 Q Okay. So he would know best at Mosler Auto
2 Care Center about the cold start test and whether or not
3 the car passed or wouldn't pass that, correct?

4 A I only know what he told me.

5 Q As a matter of fact Exhibit -- Defendants'
6 Exhibit Number 138 in evidence was where Mr. Wagner
7 offered to explain to you the 2012 certification concept
8 so you would feel comfortable with it, right?

9 A Yes.

10 Q Now, do you remember that you made a --
11 there's an email in evidence where you said "How would I
12 know if it would pass or not?" Right?

13 A Right.

14 Q Well, Mr. Wagner offered to explain to you
15 that it would, in fact, pass, right?

16 A No.

17 MR. WEBER: Objection, argumentative.

18 THE WITNESS: That's not what he explained.

19 THE COURT: Let's approach.

20 (Thereupon, a sidebar conference was held.)

21 THE COURT: All right. I am going to sustain
22 the objection. I'm going to excuse them because we
23 need a break in the next five minutes.

24 How much longer do you got with this witness?

25 MR. ZAPPOLO: Probably about an hour.

1 THE COURT: Okay. We'll come back at like
2 1:15, for about an hour, and then we'll do whatever
3 Redirect we have and then keep going.

4 I want to break because I want you to talk to
5 your clients for five minutes apiece, you know, and
6 let them know that their conduct in court is
7 starting to get under my skin. They're all trying
8 to communicate with the jury impermissibly. I
9 think they see through it, you know, but let me
10 excuse them and go from there, okay?

11 (Thereupon, the sidebar conference was
12 concluded.)

13 THE COURT: Deputy, we're going to break for
14 lunch now.

15 All right. So ladies and gentlemen, we're
16 going to break for lunch now. We'll come back
17 around 1:15.

18 Please don't discuss this case amongst
19 yourselves or with anybody else. Don't use your
20 telephones or the Internet or any other electronic
21 device to look up the names of people or places
22 involved in this case. Please don't do any of that
23 research.

24 Mr. Mosler, you can have a seat.

25 (Jurors exit the courtroom at 11:42 a.m.)

1 THE COURT: All right. They can break for
2 lunch in a minute. We're going to take a recess.
3 Both attorneys are going to talk to their clients,
4 but at both points, gentlemen, you've been
5 impermissibly communicating with the jury.

6 Your side comments are inappropriate for them
7 to hear. This is supposed to be tried on the
8 evidence and the merits, not your personal opinions
9 of what the attorneys are doing or your personal
10 opinions of whatever you're experiencing.

11 Now, again, I'm not one to raise my voice, but
12 I've had enough. And so I'm not going to raise my
13 voice, but there are consequences to actions and
14 I'm instructing everybody: Behave like you're in a
15 courtroom now. Because I won't raise my voice, but
16 I'm very, very -- I just don't raise my voice,
17 okay.

18 All right. We'll break for lunch. Have a
19 great day, gentlemen.

20 The attorneys will work on jury instructions.

21 MR. ZAPPOLO: Yes.

22 (Thereupon, a short break was taken from
23 11:43 a.m. to 1:26 p.m.)

24 THE COURT: All right. Please be seated. All
25 right. Let me see the lawyers.

1 (Thereupon, a sidebar conference was held.)

2 THE COURT: So how are our clients going to
3 do?

4 MR. WEBER: Okay.

5 MR. ZAPPOLO: They're going to be good.

6 MR. WEBER: Yeah.

7 THE COURT: Okay. All right.

8 MR. ZAPPOLO: Good.

9 THE COURT: I don't yell. I don't yell. But,
10 you know, I guess --

11 MR. ZAPPOLO: All right.

12 THE COURT: All right. Okay.

13 MR. WEBER: It's been almost three weeks, Your
14 Honor, we're almost there.

15 THE COURT: I know. I know. And I really try
16 not to yell. I try to smile a lot, I do, and I
17 think I have. I think I have, but, you know, we're
18 getting to the point -- I don't want to give it to
19 them -- I don't want the jury biased in any way or
20 the other, so -- all right. Let's wrap up today,
21 okay?

22 MR. WEBER: Yep.

23 MR. ZAPPOLO: Yes.

24 THE COURT: All right. So you told me you
25 have a little bit left.

1 MR. ZAPPOLO: I'm hoping to be done in an
2 hour. I'm going to rush as best as I can, Your
3 Honor.

4 THE COURT: Okay. After Mr. Mosler, how many
5 witnesses do you have?

6 MR. WEBER: I have to speak to him and then --
7 I don't know. Maybe one, but that's it.

8 THE COURT: All right. Be careful, summation
9 time.

10 MR. WEBER: Yeah, I know, Your Honor.

11 THE COURT: All right.

12 MR. WEBER: Thank you.

13 (Thereupon, the sidebar conference was
14 concluded.)

15 THE COURT: All right. Gentlemen, just a
16 reminder, we're in a courtroom. Let's maintain our
17 civility, okay?

18 THE COURT DEPUTY: Jury entering.

19 (Jurors entering the courtroom at 1:30 p.m.)

20 THE COURT: All right. Thank you. At ease.
21 It's your witness.

22 MR. ZAPPOLO: Thank you, Your Honor.

23 BY MR. ZAPPOLO:

24 Q Mr. Mosler, do you recall some conversations
25 earlier about certification work?

1 **A Vaguely, yeah.**

2 Q In general?

3 **A In general, yeah.**

4 Q Okay. And with respect to certification work,
5 there's EPA certification and then there's other testing
6 called the OBD-II testing, right?

7 **A No. That's all a part of EPA, I believe.**

8 Q Okay. Does the EPA have emissions testing and
9 OBD-II compliance testing?

10 **A Well, the onboard diagnostics is what controls**
11 **the elements of the car and the emissions, so it's a**
12 **part of the system.**

13 Q Okay.

14 **A But I might be misunderstanding something.**

15 Q All right. Well, with respect to -- there's
16 another aspect that I was wondering what you were
17 alluding to before, or in earlier testimony, is that
18 what, if anything, is your -- do you have to share with
19 this jury about the RaptorGTR's smart airbag exemption?

20 **A I don't have anything to share.**

21 Q Do you know anything about the smart airbag
22 exemption?

23 **A Not without checking the documents. I don't**
24 **recall.**

25 Q Okay. Who's Lance Tunick?

1 **A Doesn't ring a bell.**

2 Q There was a document that was moved into
3 evidence -- I believe it was earlier today --
4 Defendants' 134. And your attorney asked you questions
5 about this December -- excuse me, October 1, 2011 email
6 from James Todd Wagner to you --

7 **A Yeah.**

8 Q -- that's referencing his work between
9 April 15th and the final cert on September 12th.

10 Mr. Wagner wrote "I was working on the project
11 approximately 50 percent of the time."

12 **A Right.**

13 Q Do you recall that? And you were --

14 **A Yes.**

15 Q -- explaining how that was not work for the
16 company, but you thought that's Mr. Wagner working for
17 himself and his car, right?

18 **A I thought it was for the benefit -- that he
19 benefited by the work.**

20 Q Okay. Now, Mr. Wagner had written to you back
21 then --

22 **A Yeah.**

23 Q -- and said that it benefits the brand
24 exposure-wise, correct?

25 **A Correct.**

1 Q Okay. And he said "If the company were to be
2 sold without any certification, I'm fairly certain
3 offers would not be near as high." Do you remember
4 that?

5 A Yes.

6 Q And you then quantified or you gave an opinion
7 that you thought -- or let me back up.

8 What did you think the certification was
9 worth?

10 A Well, what I said was it was depending on from
11 whose point of reference. I thought it was a lot to
12 Todd because he had this car he wanted to sell as a
13 certified car.

14 It wasn't worth much to me because it was down
15 the road and it expires and, you know, there wasn't a
16 whole lot I was going to do with it at that point in
17 time.

18 Q Okay. Now, Mr. Wagner had written his unpaid
19 work on certifications is a primary reason why the new
20 owner has a chance to make something of the company.
21 It's easily a value-add to you of 200 to
22 \$300,000, correct?

23 A Yes, he wrote that for sure.

24 Q And you disagreed with that?

25 A I disagreed with that.

1 Q You think Mr. Wagner's wrong, the value is not
2 200 -- between 200 and \$300,000, correct?

3 A To me? Yeah, to me, I didn't think it was at
4 the time.

5 Q Well, just because you don't value something,
6 doesn't mean that it's not valuable, correct?

7 A Correct.

8 Q As a matter of fact, other purchasers or
9 potential purchasers of this company found it to be --
10 the certification to be extremely valuable, didn't they?

11 A Well, not -- you know, they might have talked
12 to Todd, but they don't --

13 Q It's a yes or no, sir.

14 A No.

15 Q No? Okay. Plaintiffs' 109 in evidence.
16 Mr. Grunes, who's that?

17 A Ian Grunes, the eventual buyer --

18 Q Okay.

19 A -- of the remaining cars.

20 Q And he valued the intangible assets of
21 certifications to be -- that's \$5 million, isn't it,
22 sir?

23 A Yes, it is.

24 Q Okay. And you would agree that to a company
25 like Ford, the certifications are worth a lot of money,

1 aren't they?

2 **A** **I could speculate. I don't know what they're**
3 **worth to a company like Ford. I know what they're worth**
4 **in my company.**

5 Q Commonsensically, certifications are worth a
6 lot of money to a company like Ford, right?

7 MR. WEBER: Objection, speculation.

8 THE COURT: Sustained.

9 BY MR. ZAPPOLO:

10 Q Now you were here when Mr. Wagner was
11 testifying and he said that he should be paid basically
12 his salary during that time period or whatever the
13 certifications were worth, right?

14 **A** **I don't recall that.**

15 Q Okay. You say "The certifications are worth
16 nothing." He wrote in the documentation to you "200 to
17 \$300,000." And Mr. Grunes writes "5 million," right?

18 MR. WEBER: Objection, asked and answered.

19 THE COURT: Overruled.

20 **THE WITNESS: Those are what's written in the**
21 **emails, yes.**

22 BY MR. ZAPPOLO:

23 Q I want to just touch on Defendants' 138. I
24 think I wrapped up -- right before lunch we were
25 wrapping up with Defendants' 138, and I was calling your

1 attention to Mr. Wagner writing to you that "The people
2 who are commenting on the outside don't understand the
3 concept (which was approved by the EPA), so they're
4 confused. Fundamentally, the EPA approved, so why mess
5 with it?"

6 That was the general consensus at Mosler Auto
7 Care Center, wasn't it?

8 **A I didn't take a general consensus. I can't**
9 **answer that.**

10 Q Okay. Well, did you ever have any
11 conversations or emails exchanged with anyone at Mosler
12 Auto Care Center about that issue?

13 **A You know, if you have them, I'd like to see**
14 **them.**

15 Q Well, my question is: Do you recall?

16 **A I had the conversation in emails with Todd on**
17 **that issue.**

18 Q Okay. I'm showing you Plaintiffs' 969 for
19 identification purposes.

20 MR. ZAPPOLO: Counsel, any objection to moving
21 it into evidence?

22 MR. WEBER: No objection.

23 THE COURT: Madam Clerk, what number?

24 THE CLERK: 116.

25 THE COURT: Plaintiffs' 116?

1 THE CLERK: Right.

2 (Thereupon, Plaintiffs' Exhibit 116 was
3 received into evidence.)

4 BY MR. ZAPPOLO:

5 Q Mr. Mosler, looking at Plaintiffs' Exhibit 116
6 in evidence --

7 A Yes.

8 Q -- I want you to flip back to about the midway
9 point, on the bottom right-hand corner DEF11065.

10 A Got it. Yeah.

11 Q And as you're looking at that email, does that
12 refresh your recollection at all to who Lance Tunick is?

13 A Oh, yes.

14 Q Okay. And who's Lance Tunick?

15 A Vehicle Services Consulting, Inc.

16 Q Okay. And what was he assisting MACC with?

17 A He was with compliance.

18 Q Okay. And do you recall anything about an
19 airbag exemption for the car?

20 A I don't recall, sorry.

21 Q Okay.

22 A I just don't.

23 Q There were emails in evidence about other
24 certification issues. Were those referring to airbag
25 exemptions?

1 **A** **I'd have to see those emails. I don't recall**
2 **at the moment which ones you're talking about.**

3 Q All right. If you don't recall, we're just
4 going to keep moving along.

5 Nevertheless, Mr. Tunick wrote to Mr. Wagner
6 back on October 15, 2010 "Things are well. As long as
7 Mosler filed 60 days before the exemption ended and has
8 proof -- like a FedEx receipt -- then the exemption
9 automatically continues until you hear otherwise."

10 **A** **Okay.**

11 Q "Why try to call? FYI a number of other
12 companies have also heard nothing in regards to an
13 extension request. Hope all is well with you."

14 Now, do you recall Mosler Automotive taking
15 any position as to whether or not it should call and
16 request an extension of its airbag exemption?

17 **A** **I have no recollection.**

18 Q Okay. Let's go up to the second page from the
19 front, DEF1103.

20 **A** **1103?**

21 Q Okay. Now just to be clear --

22 **A** **I don't see that.**

23 Q -- this email chain is on or about January 19,
24 2011, correct?

25 **A** **Well, this one says October 15, 2010.**

1 Q I'm sorry, are you on the first page of --

2 A Oh, the first page?

3 Q -- 116? Exhibit 116 in evidence is up on the
4 screen?

5 A Oh, okay. I thought we were still on this
6 one.

7 Q The first page.

8 A Yeah. January 19, 2011, right.

9 Q Right. That's about two weeks after James
10 Todd Wagner had been laid off, correct?

11 A I don't recall the day he was laid off.

12 Q All right. So reading from the bottom up, on
13 January 19, 2011 Jill Wagner wrote to you "Warren,
14 please see below from Lance Tunick, our certification
15 consultant. If we call to confirm the exemption, which
16 is entirely unnecessary, we could actually jeopardize
17 our certification."

18 A Yeah.

19 Q So Mosler Auto Care Center saw value in the
20 airbag certification, didn't it?

21 A Apparently.

22 Q And it didn't want to risk that by calling the
23 certification authorities and asking for an extension,
24 correct?

25 A That's how it reads, yes.

1 Q Okay. And she even said "There's no
2 additional info to give to Mark and Angel." Who are
3 Mark and Angel?

4 A I don't know.

5 Q "If they want me to push the governing body
6 against Lance's advice, I have to strongly urge against
7 it. If they have earnest money or a letter of credit
8 that shows they are serious buyers, then we could risk
9 it, but even then it isn't in their best interests if
10 they buy the factory, or in the best interests of the
11 future buyer. I'm happy to explain this to them with
12 your permission. It seems they need a scapegoat to back
13 out of the deal, and I can certainly play that role.
14 What they are asking may jeopardize our exemption,"
15 correct?

16 A Yeah, makes sense.

17 Q Now what is the comment from Mr. Mosler
18 "Careful, people will talk" regarding?

19 A From me? I don't know. It's out of context
20 here.

21 Q So at least as late as January of 2011, even
22 after Mr. Wagner had been laid off, the company sought
23 value in the certification work that he did, didn't it?

24 A He certainly saw value in the airbag exemption
25 that you just pointed out, if that's what you're asking.

1 Q All right. Now there was a discussion earlier
2 about Exhibit Number 534 in evidence, this Dyer
3 consequences article. You actually wanted -- you
4 mentioned to your attorney you wanted that read to the
5 jury.

6 So let's go ahead and reference this article,
7 which reads in part -- it's highlighted up on the
8 screen -- "The most incredible thing about the
9 all-wheel-drive Veyron is not its engine, but it's
10 drivetrain. A Veyron just digs in and goes. I try not
11 to indulge in hyperbole, but when I floor the Veyron, we
12 pass a tribe of Morlocks and the Wicked Witch of the
13 West, and the sky turns green and commuters fly past on
14 personal dirigibles and then I hit the brakes and we
15 return to our dimension."

16 This is a writer for a car magazine talking
17 about power and how wonderful it is to have good
18 horsepower, right?

19 A Well, he was talking about the benefits of
20 four-wheel drive that could utilize the horsepower.

21 Q Then he writes "A month or so later in Los
22 Angeles I nab the keys to a Mosler Raptor." That's the
23 RaptorGTR that's been at issue in this case, right?

24 A Yes.

25 Q "In case you're wondering, Mosler licensed the

1 name before. The Raptor weighs 2580 pounds and uses a
2 mid-mounted, twin-turbo, 838-horsepower, V8. It is a
3 rear-wheel drive. This time around the passenger seat
4 is occupied by a female vocalist named Abby Cubey. The
5 Raptor, you see, has its own theme song which is called
6 the, quote/unquote, 'Feel My Fire' and features Abby
7 Cubey singing breathily about driving fast and revving
8 engines and such.

9 So while stereo Cubey urges me to hit the gas,
10 actual Cubey is sitting right there and encouraging me
11 to do the same thing. Imagine if you were listening to
12 'Radar Love' on the radio by Golden Earring frontman
13 Barry Hay riding shotgun. You do what the song says and
14 speed into a new sunrise. So when a red light turns
15 green, I let out the clutch and get the Raptor rolling
16 across an intersection to an open span of gently curved
17 urban street.

18 As soon as we're pointing straight, I nail the
19 throttle and the car erupts in a base cacophony
20 accompanied by a brute shove of acceleration. I have a
21 split second to think 'Hey, this is fast, but
22 controllable.' Then the turbos hit. It's like a bomb
23 went off behind the rear bumper and we're surfing the
24 shock wave. I upshift and it happens again except now
25 we're going much faster. The rear end scrambles for

1 traction, I find myself countersteering at perhaps
2 65 miles per hour. I back off the gas because I'm not
3 ready to visit third gear with the Mosler Raptor on this
4 particular street, not even if Waylon Jennings were
5 sitting next to me singing the 'Dukes of Hazard' theme
6 song."

7 So you would agree with me that this is a
8 positive review of the 2012 RaptorGTR, correct?

9 A Not at all. Let me go back and read it to you
10 if you want.

11 Okay. So the car was under control, but the
12 turbos hit. We're surfing the shock wave, that's not a
13 good thing. I upshift and it was going much faster.
14 The rear end scrambles for traction versus the Bugatti
15 would stay planted because of the four-wheel drive. And
16 I found myself countersteering, which means the back end
17 is coming around and he's countersteering in the other
18 direction to try and keep it on the road.

19 None of this happened with the four-wheel
20 drive. That's why this article is about "Have two-wheel
21 drive cars reached their limit?" or whatever it is in
22 terms of being able to handle the horsepower. And it
23 goes on to talk about how there's -- what limits the
24 horsepower has traction.

25 So, no, this is saying this car is

1 out-of-date. It's the old. The new is the four-wheel
2 drive. Now I'm not saying -- I'm just saying what the
3 article is saying. It's pretty clear to me, as somebody
4 who understands cars, that that's exactly what it's
5 saying.

6 Q You don't think that when people read that,
7 that's a positive review of the Raptor?

8 A Not anybody with any knowledge of cars or how
9 they drive or anything else, no. It's a negative
10 review. Can I add something to that comment?

11 Q No, there's no question pending, unless your
12 attorney is going to do it.

13 Now, Mr. Mosler, do you remember when the
14 certification came in for the RaptorGTR?

15 A I remember it did, I don't know the exact
16 date. I'd have to look at the documents.

17 Q Okay. Was it sometime in August of 2011?

18 A It could be. I'd have to look at the
19 document.

20 Q Sorry for the delay.

21 MR. ZAPPOLO: Counsel, 989.

22 BY MR. ZAPPOLO:

23 Q Mr. Mosler, I'm showing you what's been marked
24 as Plaintiffs' 989 for identification purposes.

25 MR. ZAPPOLO: Any objection to moving that in

1 counsel?

2 MR. WEBER: No objection.

3 THE COURT: Madam Clerk, is that 117?

4 THE CLERK: Yes.

5 (Thereupon, Plaintiffs' Exhibit 117 was
6 received into evidence.)

7 BY MR. ZAPPOLO:

8 Q Mr. Mosler, I'm showing you what's been marked
9 as 989, now in evidence as Plaintiffs' 117.

10 A Yes.

11 Q This is an email from Savvas Savopoulos to you
12 on or about September 14, 2011, right?

13 A Yes.

14 Q Now the jury can look back and see, in the
15 exhibits around mid-August, when Mr. Wagner forwarded
16 the email and you wrote back "Great job" about the
17 certification for the 2012 RaptorGTR, right?

18 A Yeah, right.

19 Q So about a month after Mr. Wagner gets the
20 certification, you are in discussions with
21 Mr. Savopoulos --

22 A Yes.

23 Q -- about buying the company, correct?

24 A Yes.

25 Q All right. And Mr. Savopoulos wanted you to

1 terminate Todd, right?

2 **A Well, what are you pointing to here?**

3 Q The second page.

4 **A The second page?**

5 Q At the top.

6 **A Oh. I would need you to -- yes.**

7 Q Okay. He wanted you to terminate Todd --

8 **A Yes.**

9 Q -- try to get Todd to transfer the Raptor name
10 to the company --

11 **A Yes.**

12 Q -- and push Jill to provide answers to the
13 remaining due diligence questions, right?

14 **A That's the part -- those are the parts you
15 highlighted.**

16 Q Yes. Among other things, right?

17 **A Yes.**

18 Q But Mr. Savopoulos also wanted to -- you to
19 make sure all books and records are transferred from
20 accountants, lawyers, including Alan Simon, in St. Croix
21 to D.C. That's where Mr. Savopoulos lived, right?

22 **A Yes.**

23 Q So remember when there was all that
24 conversation about how James Todd Wagner was slowing up
25 and holding back the deal with Mr. Savopoulos?

1 **A** **I'd have to go back and see it.**

2 Q Do you remember that testimony here in this
3 trial?

4 **A** **Roughly.**

5 Q Okay. Well, this shows that Jill Wagner --

6 **A** **Yes.**

7 Q -- had to answer remaining due diligence
8 questions, books and records still need to be
9 transferred.

10 **A** **Yeah.**

11 Q You wanted to get Todd to transfer the name of
12 the Raptor to the company, terminate Todd. And part of
13 that terminating Todd was getting him to sign the
14 agreement that said that the company owed him nothing,
15 correct?

16 **A** **That was him terminating Todd, not me**
17 **terminating Todd. This says I needed to --**

18 Q Do you remember the documentation --

19 **A** **No.**

20 Q -- in this -- okay. That's in evidence.
21 Who benefits from those things? Who was
22 released from the claims?

23 **A** **The company -- the company that Savvas was**
24 **buying, MACC, after it sold.**

25 Q MACC?

1 **A Yeah.**

2 Q Okay. That you owned at the time?

3 **A At the time, that he was to buy.**

4 Q So before you sold the company --

5 **A Yeah.**

6 Q -- the company needed to get released from
7 Mr. Wagner's claims?

8 **A That was Savvas' demand.**

9 Q Okay. And that was a demand from Savvas that
10 you were trying to carry out against Mr. Wagner's
11 rights, correct?

12 **A I was not against anybody's rights.**

13 Q Well, asking someone to give up their rights
14 and sign a release, that's against his rights, isn't it?

15 **A No.**

16 Q Okay. So what obligation, besides you wanted
17 it, was there for Mr. Wagner to sign a release?

18 **A What was there in that?**

19 Q Yeah.

20 **A You know, he didn't say anything. He didn't
21 have to sign that release. If he didn't want to, it was
22 voluntary. There was no gun to his head. There wasn't
23 like some kind of -- what did you just call it?**

24 Q Right. So you agree with me then that there
25 was nothing wrong with Mr. Wagner not signing the

1 release, right?

2 **A I hadn't thought about that.**

3 Q He had an absolute right not to sign the
4 release, didn't he?

5 **A Sure.**

6 Q Okay. So him not signing the release isn't
7 something that should be held against him in this
8 courtroom, is it?

9 **A Signing the release per se, no.**

10 Q Okay. And you mentioned in your testimony he
11 got a lawyer, right?

12 **A Right.**

13 Q Savvas Savopoulos was a lawyer, right?

14 **A Yes.**

15 Q Savvas Savopoulos had lawyers working for him,
16 right?

17 **A Yes.**

18 Q You had Mr. Simon working for you?

19 **A Yes.**

20 Q But there was something wrong with James Todd
21 Wagner seeking legal advice?

22 **A Absolutely not.**

23 Q Okay.

24 **A It's not wrong.**

25 Q Okay. I just want to be sure.

1 By the way, Exhibit 414 was moved into
2 evidence during your earlier testimony where Jeffrey
3 Reiss wrote to Ms. Wagner about this YouTube video and
4 what kind of father partakes in a music video with a
5 bunch of 20-year-old girls and dance around topless,
6 right?

7 **A Something like that, yeah.**

8 Q Okay. Now, we're going to look at some of the
9 pictures and other things in here. Do you know where
10 that picture is?

11 **A I'm not sure.**

12 Q Okay.

13 **A It could be -- I don't know for sure. It's**
14 **kind of blurry.**

15 Q At the bottom it says "Vegas Babe." Does that
16 refresh your recollection at all?

17 **A No.**

18 Q Okay. A picture.

19 **A Yeah.**

20 Q That's something out of the video, that next
21 picture. Another picture, and then we have these two
22 pictures where Mr. Wagner is seen partially in the
23 background with his shirt off.

24 Do you remember those things were shown for --
25 do you disagree with Mr. Wagner's contention it was like

1 half a second?

2 **A It was very brief, yeah.**

3 Q Now these comments are referring to the Abbey
4 Cubey "Feel My Fire" video, aren't they?

5 **A Yeah. It looks like it, yeah.**

6 Q Okay. The comments there are not quite as
7 negative as you would have the jury believe, were they?

8 MR. WEBER: Objection, mischaracterizes his
9 testimony.

10 MR. ZAPPOLO: I'll rephrase, Your Honor.

11 BY MR. ZAPPOLO:

12 Q Do you characterize the comments at DEF07366
13 as negative of that video?

14 **A No. They look positive to me.**

15 Q Okay. So you acknowledge in front of this
16 jury that some people had negative comments and some
17 people had positive comments about the video, right?

18 **A Right.**

19 Q Okay. Even on the next page, Justin Kelly
20 Parsley says "Wait. Is that a Lambo? That's a
21 Lamborghini, right?"

22 **A Yes.**

23 Q So Abby Cubey says "No, it's a Raptor." So at
24 first glance people were looking at the Raptor and
25 saying "Wow, that's a Lamborghini," right?

1 **A** **Well, you're drawing a conclusion. I can't**
2 **say that.**

3 Q Abby Cubey is following up. She's on the --
4 who's this -- The Car Show pictures, right?

5 **A** **I don't know.**

6 Q This is probably from the day out in the
7 desert that's been talked about, correct?

8 **A** **It looks like it. I don't know, I wasn't**
9 **there.**

10 Q I just want to make sure that we have the
11 whole picture.

12 Now we have Exhibit 40, "The Truth About Cars"
13 article that was discussed during your Direct
14 Examination, correct?

15 **A** **Correct.**

16 Q All right. Now the statement that is at issue
17 references here, "I spoke with Warren Mosler today, who
18 confirmed the twin-turbo conversion to the,
19 quote/unquote, RaptorGTR Mosler MT900S will not pass
20 emissions and is not certifiable for public sale."

21 Now you see there -- you agree RaptorGTR is in
22 quotations marks, right?

23 **A** **Yes.**

24 Q Okay. But it then says Mosler MT900S. That's
25 what you and the people at MACC were referring to the

1 car as, right?

2 **A Todd's car?**

3 Q Yes.

4 **A I don't recall.**

5 Q By the way --

6 **A I called it Todd's car.**

7 Q You said Todd's car, Todd's car.

8 The documents that's in evidence, the EPA
9 certification documents, that doesn't say Todd's car on
10 it, does it?

11 **A No. No.**

12 Q It says 2012 Mosler -- I'm sorry, 2012 Mosler
13 RaptorGTR, correct?

14 **A In the interest of time, I'll take your word
15 for it.**

16 Q Okay. And by the way, you can't confirm or
17 deny whether or not you said those -- whether you
18 confirmed that to Mr. Farah, correct?

19 **A I will deny I said that. I can't confirm -- I
20 don't recall the conversation, but I did not say that.**

21 Q You don't recall the conversation, but you
22 deny that you said that?

23 **A Yes.**

24 Q And even though Mr. Farah says that you did?

25 **A That's correct.**

1 Q Okay. Now, was the -- there's been a lot of
2 focus in this trial on that video, right? The Abby
3 Cubey video played in your opening, right?

4 A I don't know what that means, but --

5 Q Well, you would agree with me that that's
6 played a large part in this trial, right?

7 A It's had a role in the trial.

8 Q Okay. Now, Mr. Farah said that he just
9 learned of the whole con yesterday and thought "The
10 Truth About Cars" would be a perfect place to unleash
11 the truth about the, quote/unquote, Mosler RaptorGTR,
12 right?

13 A That's what he wrote.

14 Q Okay. Now when he said he learned about the
15 truth yesterday, he was speaking on November 15th,
16 right?

17 A I'd have to look.

18 Q Well, that's up on the screen. Oops.

19 A There's nothing there.

20 Q There it is. Do you see November 15th?

21 A Yes. 10:48 p.m.

22 Q So that was the day of the global launch of
23 the 2012 RaptorGTR with that video, wasn't it?

24 A I believe so, yes.

25 Q Okay. So Mr. Farah learned that there was a

1 big con the day before on November 14th, didn't he?

2 **A If that's what he said, yeah.**

3 Q So even before this car was launched, even
4 before that video was published, we have the comment
5 from Mr. Farah that he learned about the con the day
6 before, and then earlier in that chain we have Matt
7 Farah saying that a phone call to Warren Mosler --
8 which, as we now know, had to have been the day
9 before -- right? -- on the 14th?

10 So you spoke with Matt Farah on the 14th, not
11 after the video came out, right?

12 **A According to this. I don't recall the**
13 **conversation.**

14 Q Okay. So the day before the video came out
15 you -- according to this documentation -- you spoke to
16 Matt Farah and you told him something along the lines of
17 James Todd Wagner didn't actually work for Mosler at
18 all, right?

19 **A I don't recall talking to him at all. I'm**
20 **sorry, I just don't recall.**

21 Q Well, that was your position at the time, that
22 James Todd Wagner didn't work for the company, right?

23 MR. WEBER: Objection, asked and answered.

24 THE COURT: Sustained.

25 BY MR. ZAPPOLO:

1 Q You have no recollection of telling Mr. Farah
2 that Mr. Wagner was just a guy who bought a standard
3 MT900S and strapped on the twin-turbos himself?

4 A You know, I have no recollection of the
5 conversation. I don't use words like "strapped on the
6 twin-turbos," but I don't recall this.

7 Q Do you recall having any conversations where
8 the gist of what you said was that Mr. Wagner bought a
9 standard MT900 --

10 A I don't remember.

11 Q -- and put on the turbos himself?

12 A I don't have a recollection of this guy
13 calling me or talking to me.

14 Q Okay. Now, it says "At one point he," meaning
15 Mr. Wagner, "did try to buy a controlling stake in
16 Mosler using his father's money." If you hadn't told
17 Mr. Farah these things, do you have any idea how he got
18 that information?

19 A I don't. I just said I don't recall the
20 conversation.

21 Q Okay. You testified several times about your
22 understanding that Mr. Wagner was working with Lew Lee,
23 right?

24 A Right.

25 Q Okay. Now, it was pretty clear to you that

1 Lew Lee was working on behalf of Santa Fe Digital Media
2 when you concluded that James Todd Wagner and Lew Lee
3 were working together, correct?

4 **A That's a compound question. Can you repeat**
5 **it?**

6 Q All right. What vehicle were James Todd
7 Wagner and Lew Lee going to use to purchase the company?
8 What corporate vehicle?

9 **A The car you mean or --**

10 Q No. When I say -- I'm sorry, let me back up.
11 Did you have any understanding as to whether
12 or not James Todd Wagner and/or Lew Lee were going to
13 use a company to purchase the assets of MACC?

14 **A The letter of intent came from Santa Fe**
15 **Digital Media, I know that.**

16 Q Okay. Now, on Exhibit 59, which is in
17 evidence, we have James Todd Wagner writing to you and
18 including Lew Lee, referencing a signed asset purchase
19 agreement that he said was between you and he, but we'll
20 go forward on that.

21 It says "Per the agreement, this deposit" --
22 excuse me, "Per agreement, this deposit entitles Mosler
23 Supercars, Inc.," MSI. Who owned MSI?

24 **A I believe that was Todd.**

25 Q Right. So as of July -- excuse me, June 27th,

1 at 6:56 p.m., Todd Wagner -- James Todd Wagner was
2 saying that Mosler Supercars, Inc., his company --

3 **A Yeah.**

4 Q -- was going to have three months of
5 exclusivity within which the deal must be closed?

6 **A Yeah.**

7 Q "Per agreement, this \$100,000 is only
8 refundable in the event Mosler Automotive and Mosler
9 assets are sold to another party after the three-month
10 exclusivity period ends," right?

11 **A That's what it says, yeah.**

12 Q Okay. So that was Mr. Wagner letting you know
13 his understanding, correct?

14 **A Right. If you look at the subject --**

15 Q Right. \$100,000 deposit.

16 **A For the purchase of Mosler Automotive assets.**

17 Q Right.

18 **A So that was the purpose of the deposit.**

19 Q To purchase Mosler Automotive assets.

20 **A Right.**

21 Q And the purchasing company was Mosler
22 Supercars, Inc., right?

23 **A Yes.**

24 Q And we can agree that at least as of
25 June 27th, at 6:56 p.m., everyone understood the company

1 that was buying the assets of Mosler Automotive Center
2 was Mosler Supercars, Inc., correct?

3 **A No. We can understand that he was making an**
4 **offer on behalf of Mosler Supercars, Inc. He didn't buy**
5 **it.**

6 Q I understand that, but his clear intent --

7 **A Okay.**

8 Q -- was Mosler Supercars, Inc. would purchase
9 the assets, correct?

10 **A Yes. That was the proposal he was making.**

11 Q Now you understood, at the time, that Lew Lee
12 was copied with that email because Lew Lee was going to
13 be an investor in Mosler Supercars, Inc., correct?

14 **A It's a possibility, sure.**

15 Q Okay. And then we have Exhibit 60, which is
16 in evidence. That's another exchange between you and
17 Mr. Wagner at 7:40 p.m. that night, right?

18 **A Yes.**

19 Q And Mr. Wagner said "Here's the Word copy.
20 The signed copy has the Consulier portions X-'d out by
21 you," et cetera.

22 Now that document is an asset purchase
23 agreement by Mosler Supercars, Inc., James Todd Wagner's
24 company, isn't it?

25 **A Yes.**

1 Q Okay. So it was still clear to you that the
2 purchasing entity was going to be Mosler Supercars,
3 Inc., correct?

4 A At that point in time.

5 Q Right. And you do agree that at this point
6 you had already had that document in place that said you
7 wouldn't circumvent Mr. Wagner by taking a deal with
8 someone that he brought to the table, right?

9 A Yes. I'd have to look at the details again,
10 but that's my general understanding.

11 Q Right. I don't want to slow things down, I
12 just want to make sure we're on the same page.

13 A Yeah.

14 Q Now, but you didn't tell Mr. Wagner that you
15 had already been in negotiations behind his back for --
16 with Lew Lee as early as June 7th, did you?

17 A I disagree that it was behind his back.

18 Q Okay. Now, 980. I'm showing you what's been
19 marked as Plaintiffs' Exhibit 980 for identification
20 purposes.

21 (Thereupon, Plaintiffs' Exhibit 980 was marked
22 for identification.)

23 MR. ZAPPOLO: Counsel, any objection?

24 MR. WEBER: Yeah. May we approach?

25 THE COURT: Yes.

1 (Thereupon, a sidebar conference was held.)

2 MR. WEBER: Isn't this just a letter-sized
3 version of the document that you tried to introduce
4 already? I think we're still on --

5 THE COURT: I'm sorry?

6 MR. WEBER: Isn't this a letter-sized version
7 of the legal-sized document that you tried to
8 introduce like six or seven days ago? I believe
9 so.

10 MR. ZAPPOLO: Since then counsel has
11 introduced a bunch of emails back and forth between
12 Mr. Mosler and Mr. Lew Lee and copying James Todd
13 Wagner.

14 MR. WEBER: But it's the same document. You
15 agree, right?

16 MR. ZAPPOLO: I believe it is.

17 THE COURT: What are you trying to prove with
18 this?

19 MR. ZAPPOLO: That he was violating the
20 non-circumvention agreement knowing that he was
21 dealing directly with Lew Lee without James Todd
22 Wagner's involvement at all.

23 MR. WEBER: But it's not even a claim in the
24 case whether he violated the circumvention
25 agreement.

1 MR. ZAPPOLO: But you're taking the position
2 that Lew Lee was acting on behalf of James Todd
3 Wagner, and this clearly shows that James Todd
4 Wagner had nothing to do with this stuff. Wagner
5 had an agreement that Mr. Mosler would not
6 circumvent, and this shows that he circumvented.

7 MR. WEBER: Well, I still object. I mean, you
8 can try to --

9 THE COURT: I'm going to overrule the
10 objection. How much longer have you got with this
11 witness?

12 MR. ZAPPOLO: Probably 20 minutes. It's
13 longer than I said. Sorry, I was looking at the
14 clock.

15 THE COURT: 20 minutes?

16 MR. ZAPPOLO: Of this witness.

17 (Thereupon, the sidebar conference was
18 concluded.)

19 THE COURT: Okay. Madam Clerk, what number is
20 that?

21 THE CLERK: 118.

22 THE COURT: Thank you. Plaintiffs' 118.

23 (Thereupon, Plaintiffs' Exhibit 118 was
24 received into evidence.)

25 BY MR. ZAPPOLO:

1 Q Now, Mr. Mosler --

2 A Yes.

3 Q -- 118 in evidence is actually a letter to you
4 from Santa Fe Digital Media, correct?

5 A Correct.

6 Q And that's about four days after you had asked
7 for and Mr. Wagner had granted you the ability to speak
8 with his investor directly, correct?

9 A Yeah. That's after I was introduced by email
10 by Todd to Lew Lee, as his investor or whatever it said.
11 I have to see how he introduced him. I don't remember
12 what he called him.

13 Q Right. So --

14 A It's his client.

15 Q Right. Now when you got this letter, there
16 was no copy to James Todd Wagner, was there?

17 A It doesn't say so. I wouldn't know if there
18 was or not.

19 Q Okay. As a matter of fact, this document says
20 that Santa Fe Digital Media is going to pay
21 \$4 million --

22 A Right.

23 Q -- for a percentage of the outstanding shares
24 for Mosler, right?

25 A Right.

1 Q So you had a \$4 million deal going on with
2 Santa Fe Digital Media at the same time that you were
3 entertaining discussions with James Todd Wagner for a
4 much lesser amount, didn't you?

5 A **I didn't have anything going on. He's just
6 sending me a letter. I didn't say anything. I didn't
7 solicit him or say anything; the guy sent me a letter.**

8 Q Okay. So if Mr. Lew Lee, I'll do the air
9 quotes, make everyone -- make sure we're consistent
10 here. If Mr. Lew Lee sent you a letter, that didn't
11 mean that that was your deal, did it?

12 A **This letter was exactly what it is, it's a
13 letter of intent.**

14 Q Okay. So a letter of intent is not a deal, is
15 it?

16 A **Well, a letter of intent is not a signed asset
17 purchase agreement.**

18 Q Okay. Well, it's not a contract, is it?

19 A **It expresses his intent. And depending on the
20 terms inside of it, there might be some obligations, but
21 I don't see that this one had any obligations.**

22 Q Okay. Well --

23 A **Because it said "upon execution of the
24 purchase agreement," which never happened.**

25 Q You've put some documents into evidence where

1 Lew Lee just sent James Todd Wagner some information
2 saying "Oh, I'll pay you this" or "I'll pay you that.
3 I'll pay you back your \$100,000," right?

4 **A Right.**

5 Q That's not an agreement, is it? Just like
6 this letter of intent wasn't an agreement?

7 **A We didn't say it was an agreement.**

8 Q You didn't say -- okay. True or false, this
9 letter of intent is an agreement?

10 **A No.**

11 Q Okay. It's not an agreement?

12 **A No.**

13 Q Because Lew Lee just sent it to you, right?

14 **A Yeah. Correct.**

15 Q Okay. And so, likewise, when Lew Lee just
16 sends things to James Todd Wagner, that doesn't mean
17 that he had such an agreement with James Todd Wagner,
18 right?

19 MR. WEBER: Objection, speculation.

20 THE COURT: Sustained.

21 BY MR. ZAPPOLO:

22 Q Okay. You had referred to Lew Lee as a snake
23 oil salesman, right?

24 **A Yeah. I forgot the context, but it was in the**
25 **context of the question at the time.**

1 Q You knew Lew Lee was kind of a con man, didn't
2 you?

3 A I didn't know him personally. I just thought
4 anybody who wants to buy my company has got some issues,
5 and I knew Todd and so people were -- who wanted to do
6 that I thought were suspect.

7 Q So your friend Savvas Savopoulos was suspect?

8 A You know, I knew his father and I knew him for
9 a while, so I -- you know, I knew he was real --

10 Q Okay.

11 A -- but I certainly questioned his judgment.

12 Q Okay. Just a couple of quick things to cover
13 with you.

14 You said earlier you were a full disclosure
15 person. Do you remember that testimony?

16 A Yes.

17 Q Okay. And Exhibit 113 in evidence is Savvas
18 Savopoulos thanking you for making Jill and Todd
19 available yesterday. That was what was going on here,
20 Jill and Todd were dealing with Savvas Savopoulos
21 because you told them to, didn't you?

22 A Yeah, at some point I --

23 Q Okay.

24 A -- assigned them tasks or something.

25 Q Now, you remember there's an email in evidence

1 where James Todd Wagner says to you, "Hey, you went
2 and -- you know, first come, first served. Why didn't
3 you -- a good businessman would let us bid against each
4 other"?

5 **A Yes.**

6 Q Well, that was a right that James Todd Wagner
7 would have had to try to buy this company himself?

8 **A A right?**

9 Q Yeah.

10 **A What right?**

11 Q He has a right to try and buy your company,
12 doesn't he?

13 **A He has a right to try, yeah. I'll agree with**
14 **the word "try."**

15 Q Okay. So there wasn't anything wrong with him
16 trying to buy your company, was there?

17 **A Per se, no.**

18 Q All right. One of the issues that came up
19 yesterday was a discussion about fuel lines. Do you
20 remember that -- or, excuse me, cars catching on fire.
21 Do you remember that?

22 **A Yes, a little bit.**

23 Q Okay. And you put in front of the jury
24 Exhibit 125, which is in evidence, right?

25 **A Yeah.**

1 Q And that's Savvas Savopoulos saying "sour
2 grapes" about James?

3 A Yeah.

4 Q "I trust you can get him to go away," that was
5 Savvas Savopoulos again telling you get James Todd
6 Wagner to go away, right?

7 A That's what it says. It is exactly what it
8 says.

9 Q Okay. Now, in response to that, you said the
10 car burning is a -- I'm sorry. "The car burning is a
11 potential problem." That was a potential problem for
12 the deal, that the cars were burning, right?

13 A No. That was -- well, it's a problem for me
14 and it would be a problem for somebody who bought the
15 company --

16 Q Okay.

17 A -- but --

18 Q And you said "I suspect Todd changed the resin
19 from what I had been using," right?

20 A Yes.

21 Q And you told this jury that you thought oh,
22 you went out and you actually tried to catch the cars on
23 fire, right? And you couldn't do it, so you thought
24 that Mr. Wagner had changed some resin and that's why
25 these cars were catching on fire, didn't you?

1 **A** **The thought occurred to me that the resin had**
2 **been changed and that might have been Todd since, you**
3 **know, he was working in the glass shop. I needed to**
4 **investigate what happened.**

5 **Q** **Okay. As early as 2009, cars were catching on**
6 **fire, weren't they?**

7 **A** **I don't remember the date it was.**

8 **Q** **I'm showing you what's been marked as 633.**

9 **MR. ZAPPOLO:** Any objection, Counsel?

10 **MR. WEBER:** No objection.

11 **THE COURT:** Madam Clerk, Number 118?

12 **THE CLERK:** 119.

13 **THE COURT:** 119, thank you.

14 (Thereupon, Plaintiffs' Exhibit 119 was
15 received into evidence.)

16 **BY MR. ZAPPOLO:**

17 **Q** **I'm showing you what's been marked as 633, now**
18 **119 in evidence. As early -- you would agree with me**
19 **that as early as January 21, 2009, you were copied with**
20 **emails from Mike Vietro talking about cars catching on**
21 **fire, could have caught fire, and potentially catching**
22 **on fire, and cars reeking of gas, right?**

23 **A** **Yes.**

24 **Q** **And that was tracked down at that time to the**
25 **fuel --**

1 **A Yeah.**

2 Q -- lines, correct?

3 **A Yes.**

4 Q Okay. Why didn't you say to Savvas Savopoulos
5 "Hey, yeah, we've been having a problem with the fuel
6 injector lines"?

7 **A I probably did. I mean, I told them we had an
8 issue with the Bricklin cars. And it wasn't the line
9 itself, it was a fitting. And, you know, we had sent
10 out the new fittings or whatever we did to make sure
11 that the cars in question, you know, were refitted.**

12 Q Well, in the email you -- why would you even
13 bring up the resin?

14 **A You know --**

15 MR. WEBER: Objection, relevance.

16 THE COURT: Sustained.

17 MR. ZAPPOLO: Madam Clerk, can I have
18 Plaintiffs' 57 in evidence?

19 BY MR. ZAPPOLO:

20 Q Now, I show you what's been entered into
21 evidence as Plaintiffs' 57. That's the email chain
22 that's been presented so much between you and
23 Mr. Wagner, right? Where it talks about --

24 **A Yes.**

25 Q Where Mr. Wagner wrote "So I understand you

1 fully, the \$100,000K gives you 3 months of exclusivity
2 (as opposed to 4 months) and becomes refundable upon the
3 following circumstances." He wrote A, MSI, Mosler
4 Supercars, Inc. does not close within the 3 months; and
5 you said no. And then he wrote B, another party
6 purchases the MACC assets after the 3-month period; and
7 you said yes. Right?

8 **A Right.**

9 Q Now your position is that's not a binding
10 agreement, right?

11 **A That itself is a partial -- a part of an**
12 **agreement, but that is not a stand-alone agreement.**

13 Q Okay.

14 **A You know, a binding agreement.**

15 Q All right. So in order for that to become an
16 agreement, it had to be made into a signed contract,
17 right?

18 **A It could have been other ways. It could be**
19 **coming to an agreement, but it's incomplete.**

20 Q Like he would perform on the agreement and
21 deposit the \$100,000 to you, would that make it become a
22 binding agreement?

23 MR. WEBER: Objection, speculation.

24 THE COURT: Sustained.

25 BY MR. ZAPPOLO:

1 Q As you sit here now, can you tell us what ways
2 you think that would become a binding agreement?

3 MR. WEBER: Objection, calls for a legal
4 conclusion.

5 THE COURT: Sustained.

6 BY MR. ZAPPOLO:

7 Q Nevertheless, yesterday you were testifying
8 about Defendants' Exhibit 117 in evidence, right? And
9 that was the email chain between you and SFDM, right?

10 A I can't see it.

11 Q And you were asked about why that document was
12 sent, and your words were that you had to know -- I'm
13 paraphrasing, the email was to set forth the agreement
14 between the parties, right?

15 A Yeah.

16 Q Okay.

17 A To the understanding --

18 Q So 117, that James Todd Wagner is not even
19 copied to, not a party to, that -- your position is
20 that's your agreement with James Todd Wagner, but the
21 email between you and James Todd Wagner specifically is
22 not an agreement. That's your position in this case,
23 right?

24 A Correct.

25 MR. ZAPPOLO: Thank you. That's all I have,

1 Your Honor.

2 THE COURT: Let me see the attorneys for a
3 second.

4 (Thereupon, a sidebar conference was held.)

5 THE COURT: All right. So that was an hour
6 and 10 minutes, roughly. Should I give them a
7 break now --

8 MR. WEBER: Sure.

9 THE COURT: -- for a little bit and then we'll
10 go into it?

11 MR. WEBER: Yeah.

12 THE COURT: I figure you don't have a lot to
13 cover.

14 MR. WEBER: No.

15 THE COURT: If you don't have a lot to cover,
16 then let's finish Mr. Mosler and let them -- is it
17 like 15 minutes or 45?

18 MR. WEBER: I'd say 30 minutes maybe.

19 THE COURT: 30 minutes? All right. Let's
20 give them ten minutes now.

21 MR. WEBER: Yeah.

22 THE COURT: We'll come back and we'll finish
23 up Mr. Mosler and we'll figure out whether you're
24 calling somebody else --

25 MR. WEBER: Okay.

1 THE COURT: -- and see what you're doing.

2 MR. WEBER: Perfect.

3 THE COURT: And then we'll go from there.

4 MR. WEBER: Excellent. Thank you, Your Honor.

5 (Thereupon, the sidebar conference was
6 concluded.)

7 THE COURT: Deputy, we're going to take a
8 ten-minute break.

9 All right. We'll be in recess for the next
10 ten minutes.

11 (Thereupon, a short break was taken from
12 2:27 p.m. to 2:50 p.m.)

13 THE COURT: All right. Let's bring them in.

14 THE COURT DEPUTY: Jury entering.

15 (Jurors entering the courtroom at 2:53 p.m.)

16 THE COURT: All right. Please be seated.

17 It's your witness.

18 MR. WEBER: Thank you, Your Honor. We'll mark
19 this 474 for identification. 474 for
20 identification. 474 for identification. Move this
21 document into evidence.

22 MR. ZAPPOLO: Excuse me, did you say 74?

23 MR. WEBER: 474 for identification. Any
24 objection?

25 MR. ZAPPOLO: No objection.

1 THE COURT: Madam Clerk, what number?

2 THE CLERK: 140.

3 THE COURT: 140?

4 THE CLERK: Yes.

5 THE COURT: All right. Defendants' 140 in
6 evidence.

7 (Thereupon, Defendants' Exhibit 140 was
8 received into evidence.)

9 REDIRECT EXAMINATION

10 BY MR. WEBER:

11 Q Now, Mr. Mosler, do you remember during
12 Mr. Zappolo's examination of you he asked you whether
13 you had -- whether you told Mr. Wagner not to send that
14 press release?

15 A I remember that, yeah.

16 Q And he made you think that you told Mr. Wagner
17 not to send that press release, right?

18 A That's what I recall, yeah.

19 Q But he didn't show you any document?

20 A No.

21 Q He didn't show you any email where you said
22 "Todd, Mr. Wagner, don't send that press release,"
23 right?

24 A Uh-huh.

25 Q And, in fact, you have an email in your hand

1 now, right?

2 **A Yes.**

3 Q And it's an email about that very press
4 release, isn't it?

5 **A Yes.**

6 Q Let's pull up the document. You didn't tell
7 Mr. Wagner not to send the press release, did you?

8 **A No, not at all. I mean, I did tell him -- no.
9 I said "SEI is your company, do as you please, but off
10 the record, this will make many things worse for you."**

11 Q So you left it up to Mr. Wagner to decide
12 whether he wanted to send --

13 **A Yeah.**

14 Q -- the press release, right?

15 **A Yes.**

16 Q But you didn't have the benefit of a document
17 in front of you when Mr. Zappolo was questioning you,
18 right?

19 **A That's correct.**

20 Q Now let's put this document down.

21 Now let's look at this document. This was
22 marked Plaintiffs' 118.

23 **A Yes.**

24 Q It was this letter of intent dated June 7th,
25 right?

1 **A Right.**

2 Q And unsigned, right?

3 **A Right.**

4 Q And do you actually know whether this was sent
5 to you?

6 **A I don't recall. I never recall getting it. I
7 saw this just now.**

8 Q And do you see at the bottom where it says
9 "Wagner's Production to MACC's 1st RFP"?

10 **A Yes.**

11 Q You're not Wagner, right?

12 **A No.**

13 Q You didn't produce any documents to MACC in
14 this case, right?

15 **A Right.**

16 Q And you don't -- Mr. Zappolo didn't show you
17 any email whereby this document was sent to you, right?

18 **A Right.**

19 Q You actually have no idea, sitting here today,
20 whether this document was ever sent to you, do you?

21 **A No, I have no idea. I had no recollection of
22 it when I saw it.**

23 Q Okay. And, in fact, you don't know whether
24 this document was just a draft between Mr. Wagner and
25 Lew Lee, like we saw in Defendants' Exhibit 58.

1 Remember this email, Mr. Mosler?

2 **A I can't see it, sorry. Yeah, yeah. Draft**
3 **letter, yes.**

4 Q The draft email, do you remember that?

5 **A Uh-huh.**

6 Q Now this letter of intent is unsigned, right?
7 This June 7th one. Do you see it?

8 **A It's what I have, yeah.**

9 Q You don't know whether it was sent to you, and
10 you don't know where it came from, is that fair to say?

11 **A Yes.**

12 Q Okay. Now, you were asked about the letter of
13 intent that was signed, which is Plaintiffs' 68, right?

14 **A Yes.**

15 Q This document was signed?

16 **A Yes.**

17 Q And you were also asked about this email. Can
18 you see that okay, Mr. Mosler? Do you want me to hand
19 it to you?

20 **A Yeah. I think it's pretty blurred, but it's**
21 **okay.**

22 Q Okay. This is marked as Exhibit Number 117.
23 Do you remember Mr. Zappolo showed you that email?

24 **A Yes. This is the one with the small print,**
25 **yeah.**

1 Q Mr. Zappolo asked you about this email --

2 A Yes.

3 Q -- right?

4 A Uh-huh.

5 Q And he said "Well, why don't you think" -- he
6 asked you whether this was an agreement, right?

7 A Right.

8 Q And you said no, right?

9 A Well, he did that about a couple of things.

10 Q But if you look --

11 A Oh, I don't think I have the same one, do I?

12 Q If we look at this email, you see that Lew Lee
13 actually tells you "SFDM will be sending a formal letter
14 of intent tomorrow" --

15 A Right.

16 Q -- right?

17 A Right.

18 Q "The LOI will outline our intent to make this
19 deal go through," right?

20 A Right.

21 Q And that's when you got the letter of intent,
22 Plaintiffs' Exhibit 68?

23 A Yes.

24 Q Which had the terms in it and which were
25 signed and which formed an agreement, correct?

1 **A Correct.**

2 Q And it's this document which mentions that the
3 \$100,000 is a nonrefundable deposit, correct?

4 **A That's correct. Yeah.**

5 Q Now, on the contrary, we have Defendants'
6 Exhibit 38 --

7 **A Yes.**

8 Q -- which is 204 internal, which is what
9 Mr. Wagner believes is an agreement, right?

10 **A Yes.**

11 Q But there was never an asset purchase
12 agreement that was signed by you and Mr. Wagner
13 following this email, right?

14 **A There never was one, no.**

15 Q Now, Mr. Zappolo asked you about this
16 document, which was admitted as Plaintiffs' 117.

17 **A Yes.**

18 Q And do you remember him asking you about this
19 paragraph here? Do you remember him asking you about
20 this paragraph?

21 **A Yes.**

22 Q And one of the provisions was "Terminate
23 Todd," right?

24 **A Yes.**

25 Q And Mr. Zappolo then asked you whether it was

1 actually Ms. Wagner who was to provide the answers,
2 right?

3 **A Uh-huh.**

4 Q But under this scenario that Mr. Zappolo was
5 running by you --

6 **A Yeah.**

7 Q -- Mr. Wagner was terminated, then it would
8 only be Jill Wagner left to provide the answers, right?

9 **A That's true.**

10 Q And Mr. Zappolo asked you whether there was
11 anything wrong with Mr. Wagner not signing the release,
12 and you said there's nothing wrong with signing a
13 release -- not signing the release per se, right?

14 **A Right.**

15 Q And you said "per se" very precisely --

16 **A Yeah.**

17 Q -- because Mr. Wagner just didn't decline to
18 sign the release, did he?

19 **A No.**

20 Q What did he do?

21 **A He countered saying that he would sign it if
22 he got his dad's \$100,000 returned.**

23 Q Which he had no right to, right?

24 **A Well, that's correct.**

25 Q And it's that Mr. Wagner just didn't sign the

1 release per se, right?

2 **A Right.**

3 Q He hid the fact that the \$100,000 was actually
4 the \$100,000 that his father sent in because it wasn't
5 mentioned in that draft proposed release and termination
6 document, correct?

7 **A He did that as well, yes.**

8 Q Now Mr. Zappolo kept on bringing up Ford Motor
9 Company.

10 **A Yeah.**

11 Q Is MACC Ford Motor Company?

12 **A No.**

13 Q Tell me all the ways you think MACC is not
14 Ford Motor Company.

15 **A In the interest of time, I think we all
16 understand I don't have hundreds of thousands of
17 employees and produce high-volume, low-priced cars,
18 mass-produced all over the world. I can't think of a
19 way that we're alike except that we're a licensed
20 manufacturer.**

21 Q Mr. Zappolo asked you why didn't you tell
22 Mr. Savopoulos there was an issue with the cars catching
23 on fire. Do you remember that?

24 **A Yes.**

25 Q But you remember that email that Mr. Wagner

1 sent you and he said "Well, maybe if you tell
2 Mr. Savopoulos about the two cars burning, he'll head
3 for the hills"?

4 **A Yeah.**

5 Q So Mr. Savopoulos did know?

6 **A Yes.**

7 Q And he knew because you forwarded Mr. Wagner's
8 email to him, right?

9 **A I did.**

10 MR. WEBER: Okay. Nothing further, Your
11 Honor.

12 THE COURT: Are there any questions from the
13 jury? We have one question?

14 Any other questions from the jury? Let me see
15 the lawyers.

16 (Thereupon, a sidebar conference was held.)

17 THE COURT: The question number one. "How can
18 you change the year of a car from 2012 to 2009
19 after the MSO is issued and the car" --

20 MR. WEBER: "And the car is sold."

21 THE COURT: "And why did you want to change
22 the year of the car?"

23 Question one, no legal objections?

24 MR. ZAPPOLO: No.

25 MR. WEBER: Well, it's irrelevant now because

1 the warranty claim was dismissed, I would say.

2 THE COURT: Okay. Question number two: "Were
3 all Mosler cars considered kit cars? If not, what
4 is the difference between previous Mosler cars
5 versus the 2012 GTR in question?"

6 MR. WEBER: No objection.

7 MR. ZAPPOLO: No.

8 THE COURT: All right. So question number
9 one, as far as relevance, if we're not here to
10 prove a matter that's already been disposed of,
11 then I think that's going to be confusing for
12 everybody.

13 MR. WEBER: Yeah.

14 MR. ZAPPOLO: Under what claim -- I'm sorry.
15 I'm trying to remember what claims are still
16 active.

17 THE COURT: Take your time. Do you want to go
18 get your documents?

19 MR. ZAPPOLO: Yes, please.

20 That's going to be a certification. If you're
21 talking about certifying a car as a 2012, then they
22 need to change it to a 2009, I think that impacts
23 the value of the worth, at least the rights to it.

24 MR. WEBER: I don't think so. That's not
25 even -- there's no issue in the verdict form or the

1 jury instructions about the year of the car.

2 MR. ZAPPOLO: What about the trade libel?

3 That goes directly to the trade libel.

4 MR. WEBER: Can I see it one more time?

5 MR. ZAPPOLO: He's defaming the vehicle.

6 THE COURT: "How can you change the year of a
7 car from 2012 to 2009 after the MSO was issued and
8 the car is sold? And why did you want to change
9 the year of the car?"

10 MR. WEBER: I mean, there's two exhibits on
11 point on this.

12 THE COURT: Well, then it's relevant and I'll
13 ask it.

14 MR. WEBER: Okay.

15 THE COURT: I mean, that's the point. It's --
16 I guess it's a compound question, so I'll probably
17 break it into a couple of questions.

18 "How can you change the year of a car from
19 2012 to 2009 after the MSO is issued and the car is
20 sold? And why did you want to change the year of
21 the car?" would be the second question.

22 The third question is: "Were all Mosler cars
23 considered kit cars?"

24 And then the fourth question would be: "If
25 not, what is the difference between the previous

1 Mosler cars versus the 2012 Raptor?"

2 So really it's two questions and they compound
3 them and ask four separate questions, okay?

4 (Thereupon, the sidebar conference was
5 concluded.)

6 THE COURT: All right. Mr. Mosler, so I have
7 four questions for you.

8 The first question is: How can you change the
9 year of a car from 2012 to 2009 after the MSO is
10 issued and the car is sold?

11 THE WITNESS: Well, you can do it because it
12 was done as a 2012 error, and it should have been
13 done as a 2009 all along. So what you're doing is
14 correcting an error that you discovered after the
15 fact.

16 THE COURT: And why did you want to change the
17 year of the car?

18 THE WITNESS: I hate to say I have to go back
19 to the documents, but to the best of my
20 recollection, the car -- oh, what was it? I'm
21 sorry, it's going to take me a minute to remember
22 this stuff. There's so much of it.

23 As a 2012, it had something to do with being
24 able to license it in California under CARB, and
25 there was something else in the emissions process

1 where it was mutually -- from my point of view,
2 sitting in St. Croix, it was mutually agreed that
3 it should be done. And so Jill and Todd, they both
4 agreed that it should be done. They both agreed to
5 do it.

6 And then the reason it became an issue is
7 because Todd knew the company wanted it done and
8 needed it done and he was using it as a leverage.
9 "Well, okay, I'll do it if you send me the side
10 glass" or something like that.

11 So it was kind of like this debt ceiling thing
12 in Washington, right? He was using that as a point
13 of leverage because he knew we needed it, even
14 though he agreed to it and recognized the reasons.
15 And here he goes back into those emails, but you'll
16 see exactly what the reason was, but that was --
17 the problem was that after he had agreed to do it,
18 he started using it as a point of leverage to get
19 something else he wanted.

20 THE COURT: Were all Mosler cars considered
21 kit cars?

22 THE WITNESS: They weren't kit cars, they were
23 manufactured -- I was a licensed manufacturer.
24 Actual kit cars are cars that are not built by
25 licensed manufacturers. You buy the parts and put

1 it together or have somebody assemble it for you.

2 So these were all manufactured cars, but when
3 somebody saw them, they didn't know what they were.
4 Their first reaction is "Oh, that's a kit car. It
5 looks like it's a kit car."

6 And I would be there -- and they told me it
7 was because the way the Consulier looked. It
8 looked like a kit car. And then I got Unigraphics
9 to do the MT900, and people would go "It's a
10 beautiful car. Is that a kit car?"

11 We couldn't get away from that stigma of a kit
12 car. And part of the reason was, as I testified,
13 that we use parts from other manufacturers and that
14 led people to use the word "kit car" when actually
15 it wasn't. It was -- we were a licensed automotive
16 manufacturer manufacturing a car that was --

17 We had the Certificate of Conformity. We had
18 passed the crash-testing. It was the safest car
19 they had ever tested and it was U.S. legal cars,
20 but people still look at it, "Oh, is that a kit
21 car?" Or I'd see the husband and wife walking by
22 at the show and the wife would go "Oh, that's a
23 beautiful car," and the husband would go "Yeah, but
24 that's a kit car." It's just something that's,
25 like, haunted us the whole time, and to this day.

1 THE COURT: Let me see the lawyers.

2 (Thereupon, a sidebar conference was held.)

3 THE COURT: Okay. So we have another question
4 coming, but the second part of that second question
5 I'm not going to ask because it says "If not,
6 what's the difference?"

7 MR. WEBER: Yeah.

8 THE COURT: So I think he's already covered
9 it. Any objection to that?

10 MR. ZAPPOLO: No.

11 THE COURT: "Is it illegal to change the VIN
12 number? If so, what circumstances would be --
13 would make it legal?"

14 MR. WEBER: There's definitely an objection.
15 Objection, that's a legal -- asking for a legal
16 conclusion.

17 MR. ZAPPOLO: I think it's a valid -- it's an
18 appropriate question, and there's testimony in the
19 case about changing VIN numbers. He's the owner of
20 the company that provides the VIN numbers on the
21 cars.

22 MR. WEBER: The question is: "Is it illegal
23 to change a VIN number?" It's specifically asking
24 for a legal conclusion.

25 THE COURT: All right. I'll sustain the

1 objection. Based on the questions I did ask, I
2 think he's covered that.

3 MR. WEBER: Yeah.

4 THE COURT: Do we need to go back into it,
5 those two questions?

6 MR. ZAPPOLO: If Mr. Weber doesn't want to, I
7 don't.

8 MR. WEBER: No.

9 THE COURT: Okay. All right. All right.
10 Thank you.

11 (Thereupon, the sidebar conference was
12 concluded.)

13 THE COURT: All right. So I determined that
14 the other question is not going to be read.

15 All right. Any other questions?

16 All right. Seeing none, Mr. Mosler, you're
17 excused.

18 MR. WEBER: May we approach, Your Honor?

19 (Thereupon, a sidebar conference was held.)

20 MR. WEBER: So we're not going to call any
21 other witnesses.

22 THE COURT: You rest?

23 MR. WEBER: We'll rest.

24 THE COURT: Okay. Okay. So as far as you
25 resting for the day, I guess what's next to

1 address?

2 MR. WEBER: Jury instructions and the verdict
3 form.

4 MR. ZAPPOLO: And the verdict form.

5 THE COURT: Okay. So then do we need the jury
6 for the rest of the day?

7 MR. WEBER: We can move for a directed verdict
8 on all of Plaintiffs' claims.

9 THE COURT: We'll address that in a minute.

10 MR. ZAPPOLO: What?

11 THE COURT: He's moving for a direct verdict.
12 He's making a motion, but do we need the jury for
13 the rest of the day?

14 MR. WEBER: I don't think so, Your Honor.

15 MR. ZAPPOLO: No.

16 THE COURT: Okay. So then tomorrow I think
17 what I'm going to do is -- how much time do you
18 guys need for closings, roughly?

19 MR. WEBER: I'll let Mr. Zappolo go first for
20 the plaintiff.

21 MR. ZAPPOLO: Do you have a calendar, Your
22 Honor? Just kidding.

23 THE COURT: So remember that tomorrow I have
24 calendar call at 9:00. I'll probably be done by
25 11:00. Honestly, I don't see myself -- now that we

1 have this, I don't see myself bringing them back
2 until after lunch and so I figure if I want to
3 charge the jury by 2:00, right? I can be prepared
4 to give you no more than an hour apiece.

5 MR. WEBER: Perfect.

6 THE COURT: Right. So if we go -- that would
7 take us to 3:00, right? So we can go 1:00 to 2:00,
8 2:00 to 3:00. I would charge the jury and send
9 them back.

10 Now, you know, provided that the charging of
11 the jury doesn't take an hour, depending on what
12 you guys worked out with the verdict form and jury
13 instructions, that means that we would charge them
14 at 3:00 to about 3:45, right? Then go back at
15 3:45 and we do this, you know -- or, you know, I
16 can bring them at noon tomorrow and tell them that
17 we're not going to have lunch, and you guys go from
18 12:00 to 1:00, 1:00 to 2:00. I can charge them
19 until about 3:00 and give them two hours to
20 deliberate before 5:00, being it's on a Friday.
21 Because what happens is if I don't let them go on
22 Friday, they're going to freak out.

23 MR. ZAPPOLO: Yeah.

24 MR. WEBER: Why can't we do this earlier? Why
25 can't he do his closing at 9:30 and I do mine at

1 10:30?

2 THE COURT: Because I have calendar calls in
3 the morning.

4 MR. WEBER: Oh.

5 THE COURT: So my calendar calls start at
6 9:00. I got 34 jury trials to address. I'm going
7 to move fast. I've got -- I'm going to move real
8 fast, don't get me wrong. It's calendar call, you
9 know. You guys have been on my calendar calls.

10 MR. WEBER: Okay.

11 THE COURT: You know, I think when you guys
12 were on the calendar call, there was like
13 70-something cases, but tomorrow I think there's
14 only 34 cases. Everything settled, okay?

15 MR. WEBER: Okay.

16 THE COURT: People are figuring things out.

17 MR. ZAPPOLO: Okay.

18 THE COURT: So, I mean, if you want to, I can
19 bring them in at 11:00 and you can go and do the
20 first portion of the opening, we can break for
21 lunch, you can go, and then we can bring them back
22 and read the charge if you want to do that.

23 MR. WEBER: I just want to get as early -- I
24 want them to have the verdict form as early as
25 possible.

1 THE COURT: That's the best way to do it is at
2 11:00. How do you feel about that? Tomorrow at
3 11:00 you'll start with your closing, you'll
4 reserve some time, we'll break for lunch as soon as
5 you're done. We'll come back an hour later, you'll
6 do your closing, you'll do your rebuttal with
7 whatever portion you have left.

8 So it's one hour total for each party. So I
9 don't know what kind of breakdown you want. Do you
10 know?

11 MR. ZAPPOLO: Not right now, but I will
12 tomorrow morning.

13 THE COURT: Okay. So if we did 11:00, you
14 know, I don't want to do -- you know, I hate to say
15 it, I really -- let me talk to the jury. Let me --
16 do you guys mind if I ask the jury?

17 MR. WEBER: No.

18 THE COURT: Do you want to skip lunch and we
19 just go through? If we need to feed them, maybe
20 just bring in Jimmy John's or something?

21 MR. WEBER: Yeah, let's see what they want.

22 THE COURT: And maybe we can get done a little
23 early.

24 MR. ZAPPOLO: I don't mind creating a
25 monologue. We can order Jimmy John's and have it

1 delivered to them.

2 THE COURT: Do you mind if I tell them we have
3 work to be done on our own and we have to release
4 them, but tomorrow we'll bring them in for closing
5 arguments and charge the jury with additional
6 instructions and the jury form and the verdict form
7 and this will take a couple of hours, but we can't
8 talk them until around 11:00?

9 And if they want to forgo lunch or have a
10 really heavy breakfast and finish the rest of the
11 day; or if they need food, they'll let us know and
12 we'll order Jimmy John's or pizza for them.

13 MR. WEBER: Okay.

14 THE COURT: Are you guys okay with that kind
15 of instruction?

16 MR. WEBER: Yeah. As long as -- you know, I
17 don't want -- yeah, that's fine. I don't want them
18 to, like, break in the middle of my closing.

19 THE COURT: No, no, no. That's why they're
20 going to -- that's -- if I do it this way, we don't
21 have to break at all. We can start at 11:00 and go
22 straight there. And if they need food, we'll give
23 them food so that way we're not doing, you know,
24 your opening, taking a break, doing your opening,
25 taking a break after that.

1 MR. WEBER: Yeah.

2 THE COURT: They can hear everything at once.

3 MR. WEBER: Okay.

4 THE COURT: Are you okay with that
5 conversation if I have it?

6 MR. WEBER: Yes.

7 MR. ZAPPOLO: Yes.

8 (Thereupon, the sidebar conference was
9 concluded.)

10 THE COURT: Okay. All right. Ladies and
11 gentlemen, it is 3:20, and I need to have a
12 conversation with all of you. Keep in mind it's
13 not a democracy, but it is something that I want to
14 take your input on, okay?

15 And generally, you know, we don't really have
16 these kind of conversations, but for time
17 management purposes, all the parties have agreed
18 that it's appropriate to do so.

19 At no point do I want to hear about this case,
20 okay? But we're going to release you for the day
21 in a moment. The only thing left for you to hear
22 is the arguments of the attorneys and the
23 instruction on the law.

24 So the defendant has rested. That's the
25 conclusion of the evidence. You're still not

1 allowed to confer or discuss this case amongst
2 yourselves until you hear the arguments of the
3 attorneys and the law as I instruct you.

4 Now, the arguments of the attorneys are going
5 to take about an hour apiece. For me to instruct
6 you on the law, it could take anywhere from 30
7 minutes to an hour.

8 Now, tomorrow it's impossible to take you at
9 9:30, like I have today, or the past three weeks.
10 The soonest I can take you tomorrow is 11 o'clock
11 in the morning. And so are all of you generally
12 okay with maybe having a really big breakfast,
13 showing up at 10:45, starting this three-hour
14 process at 11:00, going 11:00 to 12:00, 12:00 to
15 1:00, 1:00 to 2:00, and then you can begin your
16 deliberations?

17 And then around that time, if you guys so
18 choose, the parties will probably bring you some
19 Jimmy John's or some other kind of food for you to
20 eat while you're in the deliberation room, that way
21 you can start your deliberations tomorrow around
22 3 o'clock or around 2 o'clock thereabouts.

23 Are you generally okay with that? Just nod
24 your head yes if you're okay with that.

25 Anybody not okay with it go like this

1 (Indicating).

2 Okay. Then that's what we'll do. I please
3 ask you to have a very hearty breakfast, dress
4 warmly, get some caffeine. We'll reconvene
5 tomorrow at around 11:00, be here at 10:45.

6 At 11 o'clock we'll start with our closing
7 arguments; that will take about two hours, so 11:00
8 to 12:00, 12:00 to 1:00 and then -- 11:00 to 12:00,
9 12:00 to 1:00, and then around 1 o'clock I'll start
10 charging you and you'll get the verdict form and
11 start deliberating around 2 o'clock, okay?

12 Deputy, we're going to release them. Again,
13 do not discuss this case with anybody else. Do not
14 discuss this case amongst yourselves. Don't use
15 the Internet or any electronic device to do any
16 independent research about this case, about the
17 names of the people, the places involved, the items
18 involved. You're not to deliberate on this case or
19 discuss this case or make any decisions on your own
20 about this case. You're to keep an open mind until
21 you've heard the arguments of the attorneys, until
22 you've heard my instruction on the law, and until
23 all of you can collectively start your
24 deliberations. Okay?

25 Deputy, they're excused until -- let's say

1 10:45 outside the door tomorrow, okay?

2 (Jurors exit the courtroom at 3:24 p.m.)

3 THE COURT: Let's take ten minutes while they
4 clear out and then I'll come back and hear your
5 motions. All right. We're in recess for ten.

6 (Thereupon, a short break was taken from
7 3:25 p.m. to 3:29 p.m.)

8 THE COURT: All right. So the jury has said
9 something to the deputy, the deputy said it to me,
10 so I think it's appropriate to say it to you guys,
11 but they are wondering the schedule-wise about
12 deliberations.

13 So I think what I should tell them before they
14 go is that we promise them that they would get all
15 the evidence, all the law, and all the argument by
16 Friday, which is going to happen, but deliberations
17 are up to them. I'm going to tell them and I'm
18 going to --

19 Usually when I speak to the jury, I try to tie
20 it to the jury instructions, so that's a pretty
21 safe harbor for me. And I'm going to tell them
22 that I'm not in the back with them and I'm not
23 going to be in the room with them. I don't tell
24 them what to do. Their deliberations should take
25 as long as they think is appropriate. Whether that

1 means they have to come back on Tuesday to continue
2 the deliberations, it is entirely up to them, but
3 that they should take as long as they think is
4 appropriate to do so and to remind them that
5 they're here to accomplish justice. Okay?

6 MR. WEBER: Okay.

7 THE COURT: Are you guys okay with that?

8 MR. ZAPPOLO: Yes, sir.

9 MR. WEBER: Yep.

10 THE COURT: All right. Let's bring them out.

11 THE COURT DEPUTY: Jury entering.

12 (Jurors entering the courtroom at 3:30 p.m.)

13 THE COURT: All right. Please be seated.

14 Please be seated.

15 So the deputy's indicated to me that I think
16 the jury collectively had a question regarding
17 scheduling, specifically about deliberations.

18 So it's been a long time. We've had a very
19 lengthy trial, but three weeks ago, roughly, when
20 we first convened, what I told you was that it was
21 our intention -- and I think we met our
22 intention -- to, by Friday, tomorrow, give you all
23 of the evidence, arguments, and the law, and then
24 you start your deliberations.

25 Your deliberations will start tomorrow. Now,

1 I've read you an instruction, I'll probably read it
2 to you again tomorrow, that says that I'm not going
3 to be in the room with you and I can't tell you
4 what to do, and so what happens in there is
5 entirely up to all of you. And we are here to
6 accomplish a purpose, and that's to obtain justice.
7 And so it's a very solemn responsibility.

8 I know that none of you will rush through it.
9 You will take as long as you think is appropriate
10 to do what you are supposed to do. I've never seen
11 a jury not take the matter seriously, but it is
12 entirely up to you.

13 So, to answer your question, I'm prepared to
14 stay late tomorrow. You know, if at some point it
15 becomes evident that during tomorrow, no matter how
16 late we stay, that we need more time, then we'll
17 come back on Tuesday. Okay?

18 But that process is entirely up to you. We've
19 accomplished our end of the bargain, which was that
20 we would present to you the evidence, the law, and
21 the arguments by Friday. And I know that you will
22 take the matter very seriously. I know that you
23 will do your duty.

24 Is it possible that you'll reach a consensus
25 tomorrow? Yes. Is it possible that you'll reach a

1 consensus on Tuesday? Yes. But since I'm not in
2 there with you and I'm not going to be there to
3 tell you what to do and you guys -- well, ladies
4 and gentlemen are going to do your duty the way
5 that you're supposed to. I can't tell you when
6 you're going to conclude it. Okay?

7 As far as tomorrow, I'd be prepared to stay
8 late. You know, if you would like for me -- I
9 guess I'll commit to stay as late as 7:00 p.m.
10 tomorrow, okay? If you conclude before 7:00 p.m.,
11 then we'll conclude before 7:00 p.m.

12 If at 7:00 p.m. tomorrow I think that you guys
13 have not reached a decision, then maybe we should
14 come back next week, okay?

15 Does that answer everybody's question? Okay.

16 (Jurors entering the jury room at 3:33 p.m.)

17 THE COURT: Okay. Everybody okay with that?

18 MR. ZAPPOLO: Yes, sir.

19 MR. WEBER: Yes.

20 THE COURT: And I think that's appropriate,
21 tomorrow at 7:00 p.m. What I don't want to do is
22 make them feel like they have to race to make a
23 decision by 9:00 or 10:00 p.m. You know, I want
24 them to give it some serious thought, so 7:00 p.m.
25 is reasonable. 5:00 p.m. is the end of business

1 normally. We'll give them some additional time
2 just to make sure they don't have to come back on
3 Tuesday. But by 7:00 p.m., if it becomes evident,
4 I'll have them come back on Tuesday. Okay?

5 MR. WEBER: Okay.

6 THE COURT: Oh, or Monday. We should
7 actually --

8 THE COURT REPORTER: It's Memorial Day.

9 MR. WEBER: Monday is a holiday.

10 THE COURT: Oh, actually, Monday is Memorial
11 Day.

12 MR. WEBER: So how do you do it, Your Honor?
13 Do we wait in the courtroom with you while they're
14 deliberating?

15 THE COURT: No. I'll find a jury room for
16 them and they'll be in there and I'll pick a jury
17 here on another case.

18 MR. WEBER: So we will not be here with you,
19 right? I mean, what do you want us to do?

20 THE COURT: You should be within driving
21 distance.

22 MR. WEBER: Yeah. What do you want us to do?

23 THE COURT: You should be within a ten-minute
24 distance.

25 MR. WEBER: Okay.

1 THE COURT: Because if they have a question,
2 you want to be here to participate in that.

3 MR. WEBER: Yeah.

4 THE COURT: If they want playback, you're
5 going to want that.

6 You know, I've got a gut feeling they're not
7 going to come back on Tuesday. I think they're
8 going to make a decision tomorrow, that's my gut,
9 especially since I'm going to stay late for them.
10 But if they do want to come back on Tuesday, you're
11 going to want to be close.

12 MR. WEBER: Yeah.

13 THE COURT: If you're not close, and they have
14 a question, by the time you come back they might
15 change their mind on the question and just make a
16 decision, and you don't know if that question was
17 really important for you or not, so you're going to
18 want to be close.

19 THE COURT DEPUTY: Jury entering.

20 (Jurors exit the courtroom at 3:35 p.m.)

21 THE COURT: All right.

22 MR. ZAPPOLO: We'll be giving someone cell
23 phone numbers, right?

24 THE COURT: Oh, yeah. So, yeah, what I'm
25 going to have you guys do is probably leave your

1 phone numbers with the clerk.

2 All right. We have work to do right now.

3 MR. WEBER: Yes. Okay. Should we start?

4 THE COURT: Yes.

5 MR. WEBER: All right, Your Honor. So, Your
6 Honor, we handed you what should be printed out
7 copies with red lines of where there's
8 disagreement.

9 Do you want to start with the jury
10 instructions or the verdict form?

11 THE COURT: Oh, I thought you wanted to go
12 over your motions first.

13 MR. WEBER: Oh, the motion for directed
14 verdict?

15 THE COURT: Right.

16 MR. WEBER: Well, we renew our motion on all
17 counts, Your Honor. Again, they have not met their
18 burden of -- I'm sorry, I don't have a written down
19 motion at this time, Your Honor. But I think they
20 have not met their burden to prove there's a
21 contract between Mr. Mosler and James Todd Wagner
22 for the \$100,000.

23 THE COURT: All right. That's denied.

24 MR. WEBER: I think that the statements are,
25 again, not defamatory.

1 THE COURT: The only ones left are the trade
2 libel ones; is that correct?

3 MR. WEBER: Well, remember, there's three --
4 so Your Honor struck SEI from the defamation claim,
5 so Mr. Wagner has his defamation claim and SEI's
6 defamation claim; and there are three articles, the
7 same in each, and we don't think any of the three
8 remaining articles constitute -- or are defamatory.

9 THE COURT: Okay. All right. No, denied.

10 MR. WEBER: Again, we don't think that SEI can
11 bring a trade libel claim because it falls under a
12 defamation. It's a recast defamation claim.

13 THE COURT: All right. So my question on this
14 particular issue, you know, Mr. Zappolo, is you're
15 seeking \$100,000 on those defamation claims for
16 SEI?

17 MR. ZAPPOLO: No, sir.

18 THE COURT: No? Okay. Never mind, you're
19 right. All right. Denied.

20 MR. WEBER: With respect to the EPA approval
21 work, Your Honor, and this is going to come up in
22 the jury instructions, you have heard that they are
23 bringing this breach of contract claim for EPA
24 approval under this Consultant Agreement. Remember
25 that we had this back and forth when they moved to

1 amend to conform that claim to the pleadings?

2 Well, you have testimony from Mr. Wagner
3 saying it's a separate agreement other than the
4 Consultant Agreement, and Mr. Mosler has said that
5 the Consultant Agreement expired, so nobody agrees
6 that the Consultant Agreement governs these EPA
7 approval claims.

8 If you look at Mr. Wagner's testimony, he says
9 it's not the Consultant Agreement, he says it's a
10 chain of emails that constitute the contract. He's
11 only changed his motion to conform to the pleadings
12 once I brought in the consultant contract, and now
13 he's claiming the consultant contract governs the
14 EPA approval work.

15 I don't know if you follow that, Your Honor,
16 because it's confusing, but --

17 THE COURT: I did. I followed it, but it's
18 in. It's in now.

19 All right. So that motion is denied. What's
20 the next one?

21 MR. WEBER: He's, again -- well, that's it,
22 Your Honor.

23 THE COURT: Okay. All right. Now that we've
24 addressed that, let's go to jury instructions.

25 MR. ZAPPOLO: And if I may just for the

1 record, Your Honor, the plaintiff, likewise, renews
2 all of its prior motions related to Cinnamin
3 O'Shell, the directed verdict as to Count VIII, I, I, I,
4 and the directed verdict as to Count III. Thank
5 you.

6 THE COURT: Okay. And I'm not changing my
7 mind on those.

8 MR. ZAPPOLO: Thank you. I'm just making a
9 record.

10 MR. WEBER: Okay.

11 THE COURT: All right. Do we have a hard copy
12 for me to look at?

13 MR. ZAPPOLO: Yes. We have -- and, Your
14 Honor, during lunch, as directed, Mr. Weber and I
15 stayed and --

16 THE COURT: Oh, wonderful.

17 MR. ZAPPOLO: -- went through everything. We
18 put my --

19 THE COURT: So are both of these -- are these
20 competing or are these --

21 MR. WEBER: There's -- well, there's the
22 verdict form and then there's the jury
23 instructions.

24 THE COURT: Okay.

25 MR. ZAPPOLO: And they are red-lined to show

1 where we have disagreement. If there's no
2 disagreement on it, then we're good.

3 I guess since these are Mr. Weber's documents,
4 do you want to take the lead on going through these
5 and explain to the court what's going on?

6 MR. WEBER: Yeah, I think I can walk Your
7 Honor through this pretty quickly. Is it okay if I
8 sit down, Your Honor?

9 THE COURT: I'm sorry?

10 MR. WEBER: Is it okay if I sit down?

11 THE COURT: Oh, yeah.

12 MR. WEBER: Thank you. So let's start with
13 the jury instructions and go to --

14 MR. ZAPPOLO: I'm sorry. I don't mean to cut
15 off, but I do want to say on the record, based upon
16 Your Honor's ruling about the oral or written
17 contract terms and contract formation, essential
18 factual elements, Mr. Weber has agreed that he
19 believes the essential factual elements is already
20 within the jury instructions. He's not sure about
21 the oral written contract terms, but if they're not
22 in this package that you have, he's agreed he's
23 going to add them later.

24 MR. WEBER: Well, let me take a look at them
25 again.

1 THE COURT: All right. Let's go ahead and get
2 started. I'm looking at the jury instructions.

3 MR. WEBER: Right. So go to jury instruction
4 number 19, Your Honor.

5 THE COURT: All right. Hold on. So I've got
6 one that's titled page 1; it's crossed out.

7 MR. WEBER: Right. There's no red line on
8 that, Your Honor.

9 THE COURT: There's no red line. Page 2 has
10 no red line. Page 3 has no red line. I'm looking
11 at page 4, jury instruction number 14, no red line,
12 but that's where you want me to start?

13 MR. WEBER: No. Jury instruction number 19.

14 THE COURT: Okay. So page 4, 5, 6, 7, 8 are
15 all agreed to, correct?

16 MR. ZAPPOLO: Yes.

17 MR. WEBER: Correct.

18 THE COURT: All right. Wonderful.

19 All right. Jury instruction number 19.

20 MR. WEBER: Correct, Your Honor. And so the
21 red line is Mr. Zappolo's. He wants to add "must
22 prove all of the following by the greater weight of
23 the evidence" -- "by the greater weight of the
24 evidence" being his add, and not have it for each
25 element. You see how it says 1, 2, 3, how I used

1 to have it?

2 THE COURT: Okay.

3 MR. ZAPPOLO: What I did is --

4 MR. WEBER: But I think that, to be clear to
5 the jury, and I think the law is on my side, it's
6 each element that needs to be proved by a greater
7 weight of the evidence. And to be clear to the
8 jury, we should have that language before each
9 element.

10 MR. ZAPPOLO: I have had judges say "Why are
11 we saying it over and over and over again? We say
12 it one time and it applies to all the others."

13 THE COURT: All right. So I like saying it
14 over and over and over again.

15 MR. ZAPPOLO: Okay.

16 MR. WEBER: So next --

17 MR. ZAPPOLO: So then the jury instruction at
18 page 9, which is currently labeled number 19, will
19 read: SEI must prove all of the following: 1, SEI
20 must prove by the greater weight of the evidence
21 that SEI, et cetera; 2, SEI must prove by the
22 greater weight of the evidence that, et cetera,
23 correct? And the same for number 3.

24 THE COURT: Yes.

25 MR. WEBER: Correct.

1 Okay. The next is jury instruction number 20.

2 THE COURT: Okay. I'm looking at it.

3 MR. WEBER: Okay. And so this claim involves
4 the same work as in claim 1, okay, Your Honor?

5 And so I initially had something to avoid
6 confusion that said Count II involves the same work
7 as in Count I. This was to avoid jury confusion so
8 they're not thinking it's different work there.

9 And Mr. Zappolo struck out the language that
10 Count II involves the same work in Count I.

11 THE COURT: I mean, I'm confused by it and I
12 know what you're talking about.

13 MR. WEBER: Because it's -- they're pled in
14 the alternative.

15 THE COURT: Well, you can't recover on both.

16 MR. WEBER: Correct.

17 MR. ZAPPOLO: Correct.

18 THE COURT: Right.

19 MR. ZAPPOLO: But we send it to the jury and
20 the jury does what the jury does and then Your
21 Honor says --

22 THE COURT: Right.

23 MR. ZAPPOLO: -- they found for you on
24 contracts, so you don't get unjust enrichment.

25 And I've had judges tell me that they want it

1 that way. In case there's a future irregularity,
2 they don't have to go back and retry the case.
3 They just say well --

4 THE COURT: So where it says Count II involves
5 the same work, I want to strike that.

6 MR. WEBER: Okay.

7 THE COURT: And then you already have my
8 guidance on "the greater weight of the evidence"
9 issue.

10 MR. WEBER: Yes.

11 THE COURT: And let's see. You struck "If you
12 decide in favor of SEI for Count I, and you do not
13 decide in favor of SEI for Count II," and vice
14 versa, we'll strike that.

15 MR. ZAPPOLO: Yes.

16 THE COURT: All right. Let's go to count --
17 or jury instruction 21.

18 MR. WEBER: Yes, Your Honor. And so here
19 you'll see that the disputed language is whether
20 SEI claims that and MACC entered into a Consultant
21 Agreement or SEI claims that and MACC entered into
22 a contract.

23 And I wanted to say "Consultant Agreement" so
24 it's not ambiguous as to what they are claiming the
25 actual contract is at issue in this claim.

1 THE COURT: I mean, the Consultant Agreement
2 is a contract, isn't it?

3 MR. ZAPPOLO: No. That's the debate, and
4 that's what -- that's what caused me to raise the
5 motion yesterday.

6 Mr. Wagner testified about emails exchanged,
7 and counsel for the defense brought in this
8 consulting agreement that had expired by its own
9 terms.

10 THE COURT: Right.

11 MR. ZAPPOLO: So he's arguing that the
12 agreement is the consulting agreement that's
13 expired from our position; and we're arguing that
14 if there is a contract, it would be formed by the
15 emails.

16 MR. WEBER: Your Honor, if I may, remember
17 that during the directed verdict hearing I came up
18 to you and I showed you Mr. Wagner's testimony? I
19 said, Your Honor, I brought this up to impeach him.

20 And remember I showed you that testimony where
21 I said "This is the Consultant Agreement," and he
22 goes "Oh, yeah, that's the Consultant Agreement.
23 If you want to pay me more, then I'll take it."

24 And then you said something like "Well, you
25 brought it up, you opened the door, and therefore

1 it conforms to the evidence."

2 So he is alleging the claim under the
3 Consultant Agreement.

4 MR. ZAPPOLO: I didn't raise that as a claim,
5 Your Honor, they did. They said you got a
6 consulting agreement that covers this; we didn't.

7 So that's why I just said leaving it at my
8 suggestion was just leave in the contract, and let
9 counsel argue what he thinks the contract is, and I
10 argue what I think the contract is.

11 MR. WEBER: But we don't think there is a
12 contract, Your Honor, so it's ambiguous as to what
13 the contract is, even today.

14 THE COURT: Hold on. I guess really I think
15 the reason I asked the question I did is because
16 it's a contract capital C, like it's a proper noun.

17 MR. WEBER: And so remember, Your Honor, this
18 breach of contract claim wasn't in this case, okay?
19 This is like new to the case all of the sudden.
20 And so what is this contract they're referring to?

21 There's been no discovery on this issue. You
22 know, Mr. Wagner's testimony is conflicting because
23 remember his deposition testimony, he claimed it
24 was under the Consultant Agreement and then he also
25 claimed it's in the exchange of emails, and so what

1 is it?

2 THE COURT: So again, you know, I think the
3 reason I asked the question I did is because it
4 seems like a proper noun, but if you guys had some
5 agreement on the document -- you clearly don't -- I
6 think the best way to present this, so that both of
7 you can argue your points, is contract lowercase C
8 so it's not a proper noun, and you can argue that
9 there was this document or not this document or
10 these emails or not these emails or none. So let's
11 make that change.

12 All right. The next one is "and MACC agreed
13 to pay for such work." That's something you added?

14 MR. WEBER: That's something Mr. Zappolo
15 added.

16 MR. ZAPPOLO: Yes.

17 MR. WEBER: He wants it added.

18 MR. ZAPPOLO: SEI provided automotive work,
19 engineering, and/or work to obtain EPA approvals
20 and MACC agreed to pay.

21 THE COURT: All right. Let's strike that
22 because that's a part of what you're going to
23 argue.

24 MR. WEBER: The next line I believe is
25 consistent with Your Honor's ruling, make that

1 lowercase C.

2 THE COURT: Yes.

3 MR. WEBER: And then I'll conform the rest.

4 THE COURT: Wonderful.

5 All right. Number 22 looks good.

6 Jury instruction number 23: James Todd Wagner
7 claims he and Warren Mosler had --

8 MR. ZAPPOLO: An agreement. It's consistent
9 with the standard jury instructions saying
10 contracts can be written, oral, or both.

11 There's testimony that there was an oral
12 agreement backed up with these emails. The email
13 has gone back and forth whether that was the
14 acceptance and the agreement as set forth in the
15 emails.

16 MR. WEBER: We want to say "oral" agreement.
17 Again, be specific about what we are arguing about
18 here. Because, remember, there's a sworn
19 interrogatory where he says there was an oral
20 agreement to purchase MACC for a million dollars,
21 which was then confirmed in emails.

22 THE COURT: All right. So this is the one
23 where we were talking about Mr. Mosler
24 specifically?

25 MR. ZAPPOLO: Mr. Mosler -- whether or not

1 Mr. Mosler should return the \$100,000 deposit.

2 THE COURT: Okay. All right. We're not
3 talking about SEI or MACC, we're talking about
4 Mr. Wagner and Mr. Mosler, correct?

5 MR. ZAPPOLO: Correct.

6 THE COURT: And this was the testimony that I
7 saw on the screen regarding the emails?

8 MR. ZAPPOLO: Emails, yes.

9 THE COURT: Okay. And in the pleadings, did
10 we call these "oral" agreements in the pleadings?

11 MR. ZAPPOLO: I believe that -- I've got to
12 get the document. I don't want to misspeak, Your
13 Honor.

14 Okay. Breach of contract, approximately
15 Warren entered a valid contract where Wagner agreed
16 to purchase from Warren Mosler and Warren Mosler
17 agreed that if he sold MACC assets to another, he'd
18 refund the deposit pursuant to the contract.

19 It does not say either way, Your Honor.
20 That's why I thought the standard jury instruction
21 that says contracts can be written or oral and
22 subject to our argument.

23 MR. WEBER: And I would just say that I think
24 that the discovery bears out that it's an oral
25 agreement they were suing on.

1 THE COURT: But we all agree that they're
2 emails, right?

3 MR. WEBER: Well, there are -- there are
4 emails about this subject matter, but not some
5 email agreement. Remember, he's suing on this
6 May 2, 2011 --

7 THE COURT: No, I'm following. Okay. "Oral"
8 can stay. You added "that," "an oral agreement
9 that" -- does that really matter? Is that just --

10 MR. WEBER: Once we change it, then it's --
11 no, I don't have to have that.

12 THE COURT: All right. So let's just
13 grammatically fix that.

14 All right. So would return Mr. Wagner's
15 \$100,000 deposit if Mr. Warren Mosler sold MACC
16 assets to another.

17 MR. WEBER: We can agree to that. That's what
18 we have on the verdict form, right?

19 MR. ZAPPOLO: Right.

20 THE COURT: That can stay on?

21 MR. WEBER: Yeah.

22 THE COURT: All right. And everything else
23 that's crossed out?

24 MR. ZAPPOLO: That's gone.

25 MR. WEBER: Yeah.

1 THE COURT: Okay. By agreement, right?

2 MR. WEBER: Yep.

3 MR. ZAPPOLO: Yes.

4 THE COURT: Wonderful.

5 To recover damages from Warren Mosler -- and
6 we've already addressed that.

7 MR. WEBER: Correct.

8 MR. ZAPPOLO: So we're saying Wagner -- okay.
9 So you're taking out the top tier where I said --
10 where I said say it one time first and then don't
11 repeat it? We're taking out the first one and
12 we're repeating it on 1, 2, and 3?

13 THE COURT: You're repeating it.

14 MR. ZAPPOLO: Okay.

15 THE COURT: Warren Mosler denies James Todd
16 Wagner's claim and Warren Mosler asserts defenses
17 and responds to Warren Mosler. And then it says
18 "among other defenses, Mosler," and that's crossed
19 out.

20 And so as far as the other defenses, are you
21 going to mention them somewhere in your jury
22 instructions?

23 MR. WEBER: Well, I think -- I think they
24 should be mentioned here. I don't know why they're
25 being crossed out.

1 THE COURT: Well, they're not mentioned right
2 now at all. It just says "among other defenses."

3 MR. ZAPPOLO: Right.

4 MR. WEBER: We'll get rid of the "among other
5 defenses" part.

6 THE COURT: All right. So we'll strike "among
7 other defenses." And it says Mosler asserts that
8 the \$100,000 was a nonrefundable deposit, and then
9 we strike out that Wagner sought to return the
10 \$100,000 before MACC assets were sold to another,
11 that there was no contract with Wagner to purchase
12 MACC.

13 MR. WEBER: I think Mr. Zappolo actually
14 agrees to that, we just didn't get around to
15 changing it. That's in the verdict form.

16 MR. ZAPPOLO: Yes, I think that counsel is
17 correct. I think we agreed -- because we did this
18 kind of backwards. We did it on the verdict form
19 and then went back, and I think we probably just
20 missed this.

21 THE COURT: So what's your agreement? How is
22 it going to read?

23 MR. WEBER: It's going to read: Warren Mosler
24 asserts that the \$100,000 was a nonrefundable
25 deposit; that James Todd Wagner sought return of

1 the \$100,000 before MACC's assets were sold to
2 another; that there was no contract with James Todd
3 Wagner to purchase MACC; that James Todd Wagner
4 represented the \$100,000 was a nonrefundable
5 deposit, and is equitably estopped from trying to
6 get it back; that James Todd Wagner was working
7 with Lew Lee and SFDM and that \$100,000 deposit, et
8 cetera.

9 THE COURT: Okay. All right. That's your
10 agreement.

11 Jury instruction 24 looks good. 25 is
12 completely stricken out.

13 MR. WEBER: This is a form instruction, and
14 Mr. Zappolo objected to it.

15 MR. ZAPPOLO: I don't think it has any bearing
16 on anything.

17 THE COURT: Both an offering and acceptance
18 are required to create a contract both. Defendant
19 contends that the offer was withdrawn before the
20 offer was accepted. To establish that the offer
21 was not withdrawn, claimant must prove one of the
22 following: Defendant did not withdraw the offer.
23 Claimant accepted the offer before the defendant
24 withdrew it, or the defendant's withdrawal of the
25 offer was never communicated to claimant.

1 MR. ZAPPOLO: I see that as an improper burden
2 shift to the plaintiff to have to prove or disprove
3 their defense. That's not --

4 THE COURT: Well, for breach of contract,
5 isn't that what we have to do if there's a contract
6 that was breached and there's damages?

7 MR. ZAPPOLO: Yes, but we have the standard
8 contract formation jury instruction. This is
9 specifically about withdrawal of a contract -- of
10 an offer.

11 THE COURT: All right. Is that one of your
12 affirmative defenses?

13 MR. WEBER: Yeah. Well, yeah, because what
14 happened was that he's alleging there was --

15 THE COURT: But is it one of your affirmative
16 defenses?

17 MR. WEBER: That there's no contract? Yeah.

18 MR. ZAPPOLO: No. He didn't assert that it's
19 withdrawn.

20 THE COURT: No, a withdrawal of the contract.

21 MR. WEBER: That's not an affirmative defense,
22 it's that there's no -- withdrawing a contract is
23 not an affirmative defense. It goes to whether the
24 contract was actually formed. It goes to the
25 elements of a contract, whether there's an offer

1 and an acceptance.

2 THE COURT: Okay.

3 MR. ZAPPOLO: But I don't think that's -- are
4 you representing that's the standard jury
5 instruction?

6 MR. WEBER: You can look at it. That's --

7 THE COURT: I mean, I'm inclined to accept it.
8 I'm looking at it. It is law. It's not anything,
9 you know, crazy that people have conjured up on
10 their computer. It is law.

11 And the testimony that I heard is emails going
12 back and forth and people saying that, you know,
13 you agree or don't agree or know, and I think
14 that's up to the jury to determine what they're
15 going to accept or not accept.

16 All right. Number 25 comes in.

17 Number 26 there's no issues with.

18 Number 27 there's no issues with.

19 28 there are no issues with.

20 29 -- actually, let me stop. Let me back up.

21 On contract formation, can we reword that so that
22 it reads the names of the parties instead of
23 "claimant" and "defendant"?

24 MR. WEBER: Yes, Your Honor, I will do that.

25 THE COURT: Okay. Thank you.

1 MR. ZAPPOLO: And where is that at?

2 MR. WEBER: There's a few that have
3 "claimant," and we will change that. There's a few
4 that have that, actually. 28 has it. Number 23
5 has it.

6 THE COURT: Let's just make that conform with
7 the rest of them so as not to confuse the jury.

8 MR. WEBER: 26 has it as well, Mr. Zappolo.

9 THE COURT: So let's use the names of the
10 parties.

11 MR. ZAPPOLO: And my standard jury instruction
12 about contract formation is going to be added in
13 this area, correct?

14 MR. WEBER: Sure. Let me see it, though, just
15 to make sure. We'll do it numerically according to
16 the jury instruction.

17 MR. ZAPPOLO: Yes.

18 MR. WEBER: Number --

19 MR. ZAPPOLO: 416.3 and 416.5.

20 MR. WEBER: Can I see it, please?

21 MR. ZAPPOLO: Yes.

22 THE COURT: Doesn't that come before the
23 withdrawal of a contract?

24 MR. ZAPPOLO: It should be, yes. That's what
25 I said.

1 MR. WEBER: I think --

2 THE COURT: Did you form a contract? And then
3 if you formed a contract, did you withdraw it?

4 MR. WEBER: 416.3 is already in there,
5 Mr. Zappolo, if you look at jury instruction number
6 24. Do you see it?

7 MR. ZAPPOLO: Yes.

8 MR. WEBER: And then 416.5 would go right
9 after it. How about that?

10 MR. ZAPPOLO: Okay.

11 THE COURT: All right. And, again, just
12 wherever it says "defendant" and "claimant," let's
13 make sure that we use the names of the parties.

14 MR. WEBER: Yes, Your Honor.

15 THE COURT: All right. Let's go back to jury
16 instruction number 29. James Todd Wagner claims he
17 paid \$100,000 to Warren Mosler and Warren Mosler --
18 and it says -- "allegedly agreed to return" was
19 stricken through, and substituted with "accepted
20 the benefit of the \$100,000."

21 MR. ZAPPOLO: That's the element of the cause
22 of action.

23 MR. WEBER: Well, because that's what it is.
24 I mean, it's the same \$100,000 that's at issue in
25 their breach of contract claim. This is not

1 anything different. That's why these claims are
2 actually pled in the alternative.

3 MR. ZAPPOLO: I'd like to stick to the
4 standard, straightforward language, Your Honor, and
5 then the jury rules on those things.

6 And of course I object to the inclusion of
7 words like "allegedly agreed to return." That's
8 not unjust enrichment. Unjust enrichment is that
9 someone provided and someone accepted the benefit.

10 MR. WEBER: Well, voluntarily knowing -- I
11 mean you have to add all the elements then.

12 MR. ZAPPOLO: Why doesn't it read along the
13 lines of James Todd Wagner claims he paid \$100,000
14 to Warren Mosler and Warren Mosler accepted the
15 benefit of \$100,000.

16 And, you know, second paragraph, James Todd
17 Wagner claims he paid \$100,000 to Warren Mosler and
18 Warren Mosler alleges whatever, and then let the
19 jury decide. And then you go into your, you know,
20 in order to -- you know, Wagner must prove by the
21 greater weight of the evidence this, this, and
22 this.

23 MR. WEBER: James Todd Wagner claims he
24 paid -- have that second paragraph be James Todd
25 Wagner claims he paid the \$100,000 as part of a

1 refundable deposit?

2 MR. ZAPPOLO: I'm just tracking the elements
3 of the cause of action in this and I think
4 counsel -- this was -- the -- now it says paragraph
5 4. I think it should say 1, 2, and 3.

6 MR. WEBER: Yeah.

7 MR. ZAPPOLO: But that was Mr. Weber's initial
8 thought is that you track the elements. Wagner
9 conferred the benefit upon Warren Mosler through
10 the \$100,000.

11 The next one, you know, keeping in line with
12 Your Honor's ruling, we would put Mr. Wagner must
13 prove by the greater weight of the evidence that
14 Warren Mosler knowingly and voluntarily accepted
15 and retained that benefit bestowed by Wagner.
16 That's like the second element of unjust
17 enrichment.

18 And then now in paragraph 6 it would be
19 paragraph 3, James Todd Wagner must prove by the
20 greater weight of the evidence that Warren Mosler's
21 retention of the benefit is inequitable unless
22 Warren Mosler pays to Wagner the \$100,000.

23 So Mr. Weber and I both thought we would track
24 the elements of the cause and action.

25 THE COURT: Yeah, that's fine. It's the

1 second paragraph that, you know, I'm looking at. I
2 don't want it to read one-sided. I want the jury
3 to figure things out. The jury instruction I think
4 does read a little one-sided, doesn't it?

5 MR. WEBER: It says accepted the benefit of
6 the \$100,000. I mean, it's not -- there are
7 elements.

8 MR. ZAPPOLO: So then Mr. Mosler denies that
9 he accepted the benefit?

10 MR. WEBER: How about we just tie it to James
11 Wagner claims he paid a \$100,000 refundable deposit
12 to Warren Mosler?

13 MR. ZAPPOLO: That's fine.

14 MR. WEBER: Okay.

15 THE COURT: If that's your agreement, let's do
16 it.

17 MR. WEBER: And I'll conform the rest of it
18 with the respect to the greater weight of the
19 evidence language.

20 THE COURT: All right. Jury instruction
21 number 30.

22 MR. ZAPPOLO: This is where I attempted to
23 shorten and focus the jury instructions by taking
24 Mr. Weber's broken-out claims where he deals with
25 statement number 1, and then a separate instruction

1 for statement number 2 reiterating the same law,
2 and then a separate statement number 3
3 reiterating -- a separate instruction for statement
4 number 3 reiterating the same law over and over and
5 over.

6 So what I suggested, Your Honor, was just
7 change it to Wagner's claims plural for defamation,
8 defamation claims statements 1, 2, and 3. And then
9 I said during your deliberations, you will consider
10 three separate and distinct statements. Each
11 statement will be considered separately on the
12 verdict form. Those three statements are, and then
13 I laid out the three statements and then we would
14 talk about the elements of the cause of action that
15 are going to be considered by the jury three times
16 in a row.

17 MR. WEBER: And I like it broken out, Your
18 Honor, because the motion should be considered
19 independently.

20 The big change here is that I have a separate
21 jury instruction for each of the statements, and
22 Mr. Zappolo combined them into one instruction.

23 THE COURT: You have a separate jury
24 instruction for each statement? This is statement
25 1. I see statement 2.

1 MR. WEBER: Correct.

2 THE COURT: All right. This makes sense.

3 MR. ZAPPOLO: Right.

4 THE COURT: Statement 3.

5 MR. ZAPPOLO: I was just trying to shorten and
6 focus. And some judges like it, some judges don't,
7 Your Honor.

8 THE COURT: All right. Give me a minute.

9 I'm less concerned about it now timewise since
10 everybody's rested and we're just going to close
11 and charge the jury. I'm a lot less concerned.

12 So, Mr. Weber, you give a lot more background,
13 but the statement is encapsulated succinctly under
14 the paragraphs titled statement 1, statement 2, and
15 statement 3 of Mr. Zappolo's provided instruction,
16 correct?

17 MR. WEBER: Correct. And again, Your Honor,
18 remember, my position on this is that the statement
19 cannot be viewed in isolation. It has to have
20 context. Remember, I argued that this is really an
21 issue for the jury to decide -- I'm sorry, for Your
22 Honor to decide, but I think it's got to be viewed
23 in context.

24 If you just leave the statement in isolation,
25 it's so much different than seeing the context of

1 the article. I mean, there's no disputing that.

2 THE COURT: Right. But you have closing
3 arguments, you can make that argument. I think I
4 like Mr. Zappolo's instruction. We'll use that
5 one. We'll strike the other two instructions. Is
6 that it?

7 MR. WEBER: Let me just see.

8 MR. ZAPPOLO: No.

9 THE COURT: No, I'm sorry.

10 MR. ZAPPOLO: I think we do the same thing
11 with --

12 THE COURT: I'm sorry, I looked at a different
13 pile there.

14 MR. WEBER: And we need the greater weight of
15 the evidence, and for some reason it got omitted
16 there.

17 MR. ZAPPOLO: Yes. My position on that, Your
18 Honor, was that reiterating what the greater weight
19 of the evidence means --

20 THE COURT: Hold on one second. Hold on one
21 second. Because I got a little --

22 MR. WEBER: I don't know why the red line
23 didn't catch on there.

24 THE COURT: All right. So where are we now?

25 MR. ZAPPOLO: Page 22.

1 THE COURT: If the greater weight of the
2 evidence does not support the claim of Wagner on --

3 MR. WEBER: No. I'm sorry, Your Honor.

4 MR. ZAPPOLO: We're in agreement with that.

5 MR. WEBER: On 30, on jury instruction 30.
6 For some reason, in the defamation one, it doesn't
7 have the greater weight of the evidence in 1
8 through 5.

9 THE COURT: Jury instruction 30.

10 MR. WEBER: Yes. Just go back to the 1
11 through --

12 MR. ZAPPOLO: On page 21.

13 MR. WEBER: Yeah. Do you see that? For some
14 reason it didn't track.

15 THE COURT: On page 21? I'm looking.

16 MR. WEBER: Yes, the defamation one.

17 THE COURT: Jury instruction 30?

18 MR. ZAPPOLO: Oh, at the bottom of the page
19 are you talking about?

20 MR. WEBER: Where you have 1 through 5.

21 MR. ZAPPOLO: 1 through 4 in 21.

22 MR. WEBER: It's 1 through 5.

23 MR. ZAPPOLO: I would agree, based upon Your
24 Honor's prior ruling, that down at the bottom of
25 page 21 we would say -- like paragraph 1 would read

1 Mr. or James Todd Wagner must prove by the greater
2 weight of the evidence --

3 THE COURT: Okay. So you guys can conform
4 that.

5 MR. WEBER: Yeah.

6 THE COURT: Wonderful.

7 All right. 33 looks good. 34.

8 MR. ZAPPOLO: Oh, one issue, Your Honor, back
9 on page 22.

10 THE COURT: Oh, let me back up. Okay.

11 MR. ZAPPOLO: Mr. Weber and I had a respectful
12 disagreement about the -- if you look at greater
13 weight of the evidence means the more persuasive, I
14 didn't think it was necessary to read that every
15 time since it's already in an instruction earlier.

16 THE COURT: I mean, I don't mind reading it.
17 It's the law.

18 MR. ZAPPOLO: All right.

19 THE COURT: Okay.

20 MR. ZAPPOLO: I just think that -- and I'm
21 just saying for the record, I think that if you
22 just keep saying they have this greater weight of
23 the evidence burden, they have a greater weight of
24 the evidence burden, they have a greater weight of
25 the evidence burden, they have a greater weight of

1 the evidence burden, at a certain point it really
2 does get prejudicial to the plaintiff.

3 When you tell someone something but then when
4 you hammer it home like that, it really does become
5 prejudicial to us, even though it's the law. I
6 don't disagree with it being the law and I don't
7 disagree with the instruction that you give. What
8 I disagree with, respectfully, is giving it over
9 and over and over.

10 THE COURT: No, I think you're fine. It's the
11 law. You know, you can say the law 100 times, it's
12 still the law. It doesn't levy any harsher burden
13 or not, okay?

14 Let's go to -- 34 looks good. 35 looks good.
15 36 looks good. 37 looks good. 38 looks good.
16 Jury instruction 39.

17 MR. WEBER: Privileges. We have a
18 disagreement about whether I can assert this one.
19 It's in evidence. It's been unobjected to. It's
20 an affirmative defense. I mean, it's there. We
21 move to conform the pleadings to the evidence.

22 MR. ZAPPOLO: Isn't this the one that I asked
23 you if it was in your --

24 MR. WEBER: I said it was and you said it's
25 not.

1 MR. ZAPPOLO: Well, you did a word research
2 for "privilege," and it's not in there.

3 MR. WEBER: Well, it doesn't say "privilege,"
4 but it says he had good faith and, you know, what
5 other elements.

6 MR. ZAPPOLO: But that wasn't -- my position
7 is it wasn't pled. Counsel read something that
8 doesn't even refer to privilege. And he says,
9 well, that's the equivalent of that I pled
10 privilege. So Your Honor is going to have to --

11 MR. WEBER: Well, we move to amend the former
12 pleadings to the evidence. I mean, that's -- he's
13 testified that he has made the statement in good
14 faith, that --

15 THE COURT: Repeat that.

16 MR. WEBER: Mr. Mosler testified that he had
17 no ill motive when making this statement. I think
18 the evidence supports the privilege exists, it
19 wasn't objected to, and I think it should be there.

20 MR. ZAPPOLO: It's not pled. If they had pled
21 qualified privilege, I may have asserted the
22 counters to the qualified privilege defense.

23 MR. WEBER: Well, you didn't plead the breach
24 of a contract at all and --

25 MR. ZAPPOLO: No, but I didn't hear any

1 testimony about a qualified privilege.

2 MR. WEBER: Well, he wouldn't say "privilege."

3 MR. ZAPPOLO: "I had a privilege to do this or
4 a privilege to do that," there's no -- I don't
5 believe there's anything in this record pursuant to
6 anyone that said the word "privilege."

7 THE COURT: Give me a moment. All right. I'm
8 going to strike it. I also didn't hear enough -- I
9 contemplated conforming it to the pleadings, but
10 some of these elements just weren't broached.

11 All right. Number 40 looks good. 41 looks
12 good. 42.

13 MR. WEBER: This is the same issue as the
14 defamation one.

15 THE COURT: Okay. So let's treat it the same
16 way.

17 45 looks good. 46, what's wrong with 46?

18 MR. ZAPPOLO: Failure to state a cause of
19 action -- we don't ask a jury for the legal
20 determination of whether someone failed to state a
21 cause of action.

22 MR. WEBER: I mean, it's an affirmative
23 defense and we raised it, so --

24 MR. ZAPPOLO: We'll have to send the jurors to
25 law school to make that determination.

1 MR. WEBER: What do you mean?

2 THE COURT: Say it again.

3 MR. ZAPPOLO: I told him we'll have to send
4 the jurors to law school. That's a legal
5 determination whether someone stated a cause of
6 action. They're here as a fact-finder, not a legal
7 determiner.

8 THE COURT: Number 46, after close of
9 evidence, prior to closing, if the greater weight
10 of the evidence supports one or more of
11 Wagner/SEI's claims, then you shall consider the
12 defenses raised by Mosler and MACC.

13 In response to Wagner's claim, breach of
14 contract against Mosler, Mosler asserts Wagner's
15 claims barred by the affirmative defense of failure
16 to state a cause of action because MACC's assets
17 were not sold.

18 MR. ZAPPOLO: This double-dips with their
19 prior affirmative defense that I agreed to that
20 they could assert.

21 MR. WEBER: For --

22 THE COURT REPORTER: I'm sorry, what was that?

23 MR. WEBER: What do you mean by "double-dips"?

24 MR. ZAPPOLO: There was an earlier instruction
25 where you referenced Mr. Wagner asking for the

1 money back before the assets were sold.

2 MR. WEBER: Yeah, the prior breach.

3 THE COURT: What number is that?

4 MR. WEBER: We can call it the prior breach.

5 THE COURT: What number is that?

6 MR. WEBER: This is 46, but maybe I mislabeled
7 it as --

8 THE COURT: I'm looking for the one called
9 prior breach. What number is that?

10 MR. WEBER: It's affirmative defense 4, but I
11 don't know -- yeah, we'll call this a prior breach.
12 It's probably a typo.

13 THE COURT: Repeat that, Mr. Weber.

14 MR. WEBER: We'll call this one the prior
15 breach instead of failure to state a cause of
16 action.

17 THE COURT: Oh, okay.

18 MR. WEBER: Does that satisfy you,
19 Mr. Zappolo?

20 MR. ZAPPOLO: Yes.

21 THE COURT: Okay. All right. If you make
22 that -- with that amendment, I'll accept your
23 agreement.

24 Let's go on to 47. No oral or written
25 agreement between the two.

1 MR. WEBER: We have a statute of frauds
2 affirmative defense, so I think it's appropriate.

3 MR. ZAPPOLO: This is the same type of thing
4 where you're asking the jury to make a legal
5 conclusion. I don't think they're supposed to do
6 that.

7 MR. WEBER: They are making a legal
8 conclusion, Your Honor. They're applying jury
9 instruction law to the facts of the case.

10 THE COURT: Give me a minute. What happens if
11 you just strike "statute of frauds"?

12 MR. ZAPPOLO: Well, here's the concern that I
13 have: In response to Wagner's claim of breach of
14 contract, which 1, and then they say it's barred
15 by -- I'm sorry, what did Your Honor want to call
16 it?

17 THE COURT: It says it's barred because there
18 was no oral or written agreement between -- I need
19 to strike out the word "between."

20 MR. WEBER: Okay. I'll get rid of the "oral."

21 MR. ZAPPOLO: But we're not -- see, and it
22 says to sell MACC and/or MACC's assets to Wagner
23 for a million dollars. We're not suing on that.
24 We're not suing that Mosler -- and I specifically
25 covered that with my client on the stand. He's not

1 suing --

2 MR. WEBER: That's --

3 MR. ZAPPOLO: -- because they didn't sell the
4 company to him.

5 MR. WEBER: And, Your Honor, if you look at
6 their complaint, that's the whole contract upon
7 which they're suing under.

8 For example, if you look at Count V -- do you
9 have a copy for the judge?

10 THE COURT: I'm sorry?

11 MR. WEBER: I'm going to give you a copy of
12 the complaint so you can see. I can bring it to
13 Your Honor.

14 MR. ZAPPOLO: The Count III, breach of the
15 distributorship contract has been stricken, so we
16 can't refer to that.

17 MR. WEBER: No. It clearly does not refer to
18 that count because it says in the instruction that
19 it's referring to the 100,000.

20 MR. ZAPPOLO: Count V?

21 MR. WEBER: Paragraph 33, in approximately
22 June of 2011, Wagner and Warren Mosler entered into
23 a valid contract wherein Wagner agreed to purchase
24 MACC from Warren Mosler and Warren Mosler agreed
25 that if it sold MACC's assets to another, he'd

1 refund the deposit. I mean, it's pursuant to this
2 contract.

3 MR. ZAPPOLO: And the whole claim -- Wagner
4 sues Warren Mosler for \$100,000 refundable deposit.
5 That's what the claim is about. The wherefore
6 clause awarding damages in the amount of \$100,000.
7 If he was suing for the -- or any alleged breach of
8 not selling him the company, he would be going
9 after all that.

10 MR. WEBER: But then you wrote the purchase of
11 MACC was never finalized, and Warren Mosler
12 breached the contract. We did not refund the
13 \$100,000 deposit to Wagner upon selling MACC's
14 assets to another.

15 You're trying to break out the \$100,000
16 refundability thing to its own separate contract.

17 THE COURT: Amend this.

18 MR. ZAPPOLO: Okay.

19 THE COURT: I'm prepared to accept it, but
20 just cross out that language right there regarding
21 the statute of frauds. It's kind of confusing to
22 the jury, I think.

23 MR. WEBER: Okay.

24 THE COURT: So where it says "the claim is
25 barred" -- you should strike everything until it

1 says "because." "Barred because" is how it should
2 read.

3 And then we'll strike through the language
4 that says "by the affirmative defense of Florida
5 Statute of Frauds."

6 MR. WEBER: Okay.

7 THE COURT: I think that will confuse the
8 jury.

9 All right. Number 48, numbering issue?

10 MR. WEBER: Yes. I don't believe we actually
11 have a dispute there.

12 THE COURT: So you guys will fix that?

13 MR. WEBER: I don't think we have a dispute
14 there, right, Mr. Zappolo?

15 MR. ZAPPOLO: Yeah. I don't think there's a
16 dispute there. It's just formatting because we
17 were trading it back and forth.

18 THE COURT: Okay. 49 regarding the \$100,000.

19 MR. ZAPPOLO: That was agreed to, right?

20 MR. WEBER: Yes.

21 THE COURT: Okay. 50, in response to Wagner's
22 defamation claim and SEI's defamation claim, and --
23 so the defamation claim of SEI comes out. We've
24 addressed that mid-trial, correct?

25 MR. WEBER: Correct. I think that's actually

1 agreed to.

2 THE COURT: Okay.

3 MR. WEBER: It should read "In response to
4 Wagner's defamation claims and SEI's trade libel
5 claim."

6 MR. ZAPPOLO: Yes.

7 THE COURT: And then you strike through
8 "Mosler alleges there are numerous negative
9 statements"?

10 MR. WEBER: Yes.

11 MR. ZAPPOLO: Yes.

12 THE COURT: Okay. What about 51? I think we
13 addressed that earlier during the trial.

14 MR. WEBER: Yeah. Scott, do you still oppose
15 this one? We do have an affirmative defense on
16 that.

17 THE COURT: Where it says strike the verbal --

18 MR. WEBER: Yeah.

19 THE COURT: -- and then the adding of the word
20 deposit, any objections?

21 MR. WEBER: Agreed to strike "verbal."

22 MR. ZAPPOLO: And add "deposit."

23 MR. WEBER: Yes.

24 MR. ZAPPOLO: Okay. So that was agreed to.

25 THE COURT: Okay. 52.

1 MR. WEBER: Mr. Zappolo doesn't want this one,
2 but we think this is a valid affirmative defense.

3 The existence of an expressed contract that
4 governs the subject matter is an affirmative
5 defense to --

6 THE COURT: An expressed contract --

7 MR. ZAPPOLO: Are you ready, Your Honor? We
8 concede we don't get to --

9 THE COURT: Right.

10 MR. ZAPPOLO: -- be compensated twice. We
11 don't need to clutter the jury with this
12 decision-making process. They render their
13 decisions and then --

14 THE COURT: So, I won't give this instruction.
15 I'll address it post-trial.

16 MR. ZAPPOLO: There is one issue that just
17 popped into my brain. I think -- are we done?

18 THE COURT: 53. 54 is a formatting issue,
19 you'll fix 54. Hold on, there's two 54's.

20 MR. WEBER: Oh, okay. So, yeah, 54 -- I'm
21 sorry, Your Honor. What I did was they were
22 combined and I separated them out, so look at the
23 first 54.

24 THE COURT: That's the one I'm looking at.

25 MR. WEBER: Yes. Recoupment it should say.

1 THE COURT: Repeat that.

2 MR. WEBER: It should say Mosler and MACC
3 assert the affirmative defense of recoupment in
4 that number 54.

5 THE COURT: And that's the one you guys want
6 to keep?

7 MR. WEBER: Well, no. Mr. Zappolo objects to
8 that one.

9 MR. ZAPPOLO: Here's -- I don't object to
10 setoff because they're entitled to a setoff, but
11 recoupment --

12 Here's what happened, Your Honor. Mr. Weber
13 filed a counterclaim and this -- and it was for
14 alleged and purported tortious interference with
15 the relationship with Mr. Savvas Savopoulos.
16 Recoupment is an affirmative claim. It is like an
17 offensive claim.

18 You can't -- since it was determined that
19 their first attempt at bringing an offensive claim
20 or a counterclaim was barred by the statute of
21 limitations, he then, when he filed his answer and
22 affirmative defense the second time, filed this
23 recoupment, quote/unquote, affirmative defense, but
24 it's not. Because when you have a recoupment
25 defense, the other side can be compelled to pay you

1 money. It's really an offensive pleading.

2 So I don't have a problem with setoff, which
3 does the exact same thing, but you're not entitled
4 to seek affirmative relief against -- the defendant
5 is not entitled to seek affirmative relief against
6 Mr. Wagner when that statute of limitations has
7 lapsed.

8 MR. WEBER: And I would say that, Your Honor,
9 is definitely an affirmative defense and I can
10 provide you with a citation if Your Honor wants to
11 look it up.

12 THE COURT: You guys are just litigating the
13 first line of that instruction?

14 MR. WEBER: Well, if you look, the next 54 is
15 actually a setoff one. So it's now -- I had
16 combined setoff and the affirmative defenses in
17 one, but now it's -- one is recoupment and one is
18 setoff. They're based on the same underlying
19 facts.

20 MR. ZAPPOLO: Right.

21 MR. WEBER: But these have been in the
22 pleadings, Your Honor, for literally four years,
23 and they've been now tried to a jury. So I don't
24 know -- I believe that they have been now tried to
25 a jury and they are valid affirmative defenses. So

1 I would say that they're not claims, they're meant
2 to be asserted as affirmative defenses.

3 MR. ZAPPOLO: Their factual assertions are the
4 same between --

5 THE COURT: Hold on. Just reading them side
6 by side, they read exactly the same.

7 MR. ZAPPOLO: Exactly.

8 MR. WEBER: Correct. They used to be in the
9 same, but because Mr. Zappolo is objecting to
10 recoupment, I separated them out. That way we can
11 delete one.

12 MR. ZAPPOLO: Right. I don't have a problem
13 with setoff because that's a true affirmative
14 defense, but recoupment is an offensive plead.

15 THE COURT: But they don't know that. They're
16 just going to get the same instruction twice with
17 one word different.

18 MR. ZAPPOLO: Right.

19 MR. WEBER: Right.

20 THE COURT: Right?

21 MR. WEBER: So I had them combined initially,
22 but because Mr. Zappolo is objecting to recoupment,
23 I separated it out so we can strike one.

24 THE COURT: So what's the prejudice to either
25 one if you -- you know, we can call it tomatoes.

1 You know, they're entitled to the defense of
2 tomatoes and you read them the law and they go "Oh,
3 yeah, they're entitled to the defense of tomatoes
4 or they're not entitled to the defense of
5 tomatoes." Recoupment/setoff, what does it matter
6 what we call it? Recoupment/setoff or recoupment
7 and setoff?

8 MR. WEBER: He doesn't want "recoupment" at
9 all.

10 MR. ZAPPOLO: I don't want "recoupment."

11 THE COURT: You don't want just the word? You
12 just don't want the record "recoupment"?

13 MR. ZAPPOLO: The word "recoupment" is an
14 offensive claim.

15 THE COURT: So what's the prejudice to
16 Mr. Weber if we just call it a setoff?

17 MR. WEBER: They're two different affirmative
18 defenses.

19 THE COURT: Okay.

20 MR. WEBER: I mean, I will give you the cite,
21 Your Honor, you can look it up.

22 THE COURT: Yeah.

23 MR. WEBER: It is an affirmative defense.
24 It's not an offensive claim.

25 THE COURT: All right.

1 MR. ZAPPOLO: It is.

2 THE COURT: Well --

3 MR. ZAPPOLO: Okay. Well, hang on.

4 THE COURT: Let me ask the plaintiff, what's
5 the prejudice to you if we do call it recoupment?

6 MR. ZAPPOLO: Because a finding for recoupment
7 entitles them to collect, and that's not what
8 they're allowed to do. Because they tried to
9 collect by bringing the offensive claim of the
10 interference, and it was barred by the statute of
11 limitation.

12 THE COURT: Are you trying to collect, or are
13 you trying to setoff?

14 MR. WEBER: We are doing both.

15 MR. ZAPPOLO: See.

16 MR. WEBER: We have a setoff and a recoupment,
17 but, I mean, I'll show you -- Your Honor, I'll show
18 you the law.

19 THE COURT: All right. Let me see it.

20 MR. WEBER: Do you want the citation, Your
21 Honor?

22 THE COURT: Yeah. Let me write it down.

23 MR. WEBER: Here's the case I just easily
24 found on Westlaw where someone is asserting both
25 recoupment and setoff as affirmative defenses.

1 THE COURT: What's the citation?

2 MR. WEBER: This one is 858 So.2d 1080.

3 Mr. Zappolo, you can come over here and look too.

4 THE COURT: So.2d.

5 MR. WEBER: Here's a case right here, setoff
6 and recoupment are affirmative defenses. Second
7 District Court of Appeal.

8 MR. ZAPPOLO: There's no mention of it being
9 passed the statute of limitations on that.

10 MR. WEBER: Well, that's --

11 MR. ZAPPOLO: That's our offensive claim.

12 MR. WEBER: I don't want to --

13 THE COURT: No, hold on. Where was this
14 recoupment issue addressed?

15 MR. WEBER: Well, it was never addressed
16 actually, Your Honor. The counterclaim -- the same
17 set of facts was initially pled at the same time as
18 our recoupment affirmative defense, but the
19 counterclaim was found to be not a compulsory
20 counterclaim and dismissed, but --

21 THE COURT: What year?

22 MR. WEBER: This was like in 2019 or 2020, at
23 least.

24 MR. ZAPPOLO: Right. And so in response,
25 counsel then says "Oh, well, it's recoupment" --

1 MR. WEBER: No, that's not true.

2 MR. ZAPPOLO: -- as a defense.

3 MR. WEBER: They were served at the same time
4 because you can see that, in my answer in
5 affirmative defenses from June 12, 2020, the
6 counterclaim was there as well as the recoupment
7 affirmative defense. They were served
8 simultaneously and nobody ever moved to strike
9 recoupment, which is a timely affirmative defense.
10 Affirmative defenses are not time-barred.

11 THE COURT: Give me a minute.

12 MR. ZAPPOLO: Your Honor, when you're ready.

13 MR. WEBER: Yeah. Look, here's -- well, look,
14 it's a Supreme Court case.

15 MR. ZAPPOLO: It had negative treatment.

16 MR. WEBER: It's a Supreme Court of Florida
17 case. It's been cited 646 times.

18 MR. ZAPPOLO: And let's look at what the --

19 THE COURT: What's your citation?

20 MR. WEBER: This is a Supreme Court case,
21 Allie vs. Ionata. It says --

22 THE COURT: Hold on. What's the citation?

23 MR. WEBER: 503 So.2d 1237.

24 MR. ZAPPOLO: Common law --

25 THE COURT REPORTER: Do you want this on the

1 record? Can you speak up, please? I can't hear
2 you.

3 MR. ZAPPOLO: I'm reading from -- just from a
4 simple -- there's a good kind of treatise here,
5 Your Honor. Fla. Juris Section 81, relationships
6 of counterclaim to recoupment and setoff, lays it
7 out.

8 MR. WEBER: Let me see it.

9 MR. ZAPPOLO: There's a copy right there. It
10 takes all the issues and shows how they work
11 together.

12 MR. WEBER: Oh, look. Scott, look at the last
13 line. Nonetheless, there's --

14 MR. ZAPPOLO: Right. Recoupment is a purely
15 defensive matter.

16 MR. WEBER: Right. It's an affirmative
17 defense.

18 THE COURT: All right. Thank you.

19 Mr. Weber, I'm going to use your instruction.

20 MR. WEBER: Okay.

21 THE COURT: Let's move on. So, that's 54.

22 55 looks good. 56.

23 MR. WEBER: This is just about damages for the
24 setoff or recoupment. And what would be the -- you
25 have to imagine, if we prevail on our setoff or

1 recoupment defense, there's like a bucket. And if
2 Mr. Wagner and SEI win, there's a bucket. Your
3 Honor has to decide how to even that out at the end
4 basically. So this is an appropriate reward -- I'm
5 sorry, instruction. Right, Mr. Zappolo? I mean,
6 Mr. Zappolo, you only objected to it because you
7 objected to the recoupment.

8 MR. ZAPPOLO: I object to it because it's
9 suggesting that the defendant can collect from the
10 plaintiff when the defendant has not -- has no
11 counterclaim pending.

12 MR. WEBER: Well, it's --

13 MR. ZAPPOLO: To the extent that they would
14 get a setoff, I don't object.

15 MR. WEBER: But this -- I'm sorry, Your Honor,
16 I don't mean to respond to Mr. Zappolo, but the
17 purpose of this instruction is to tell the jury how
18 to determine the amount to award under the setoff
19 and recoupment defense. That's the point of it.

20 THE COURT: Yeah. Right now I'm going to say
21 yes to 56 until I look at the verdict form.

22 All right. 57 looks good. 58, 59, 60, 61, 62
23 are all okay.

24 Okay. Let's go through the verdict form.

25 MR. WEBER: It's been shortened, I would say,

1 Your Honor.

2 THE COURT: Say again.

3 MR. WEBER: It's been shortened from when you
4 last saw it. It's about half as long, so...

5 THE COURT: It's still pretty hefty. The
6 first one is the old testament, this one is the new
7 testament. All right.

8 MR. ZAPPOLO: On page 1, Mr. Weber and I had
9 agreed to call these just like Count A, Count B
10 because it was getting confusing with --

11 THE COURT: Okay. So there's an agreement as
12 to counts.

13 MR. WEBER: I'll do that for the jury
14 instructions. I noticed that I didn't switch it
15 there yet, but because the complaint has other
16 causes of action, so we're not conflating what's in
17 the complaint versus what's now, that's why we're
18 changing it to A, to letters.

19 MR. ZAPPOLO: Right.

20 THE COURT: So, so far through page 5 -- I see
21 no issues through page 7.

22 MR. WEBER: Correct.

23 MR. ZAPPOLO: And Mr. Weber has agreed that
24 he's going to straighten out the numbers because we
25 didn't know what you were going to rule on. So if

1 you find this, go to paragraph whatever. That will
2 all have to be straighten out after you make your
3 rulings today.

4 MR. WEBER: So this -- I think we're all
5 looking at C, right?

6 THE COURT: Correct.

7 MR. WEBER: That's the statute of frauds
8 affirmative defense.

9 Mr. Zappolo, are you okay with that?

10 THE COURT: I'm okay with it. What about 8?

11 MR. ZAPPOLO: Actually, well, Your Honor,
12 we're giving them the jury instruction about the
13 \$100,000 deposit. And if there's no contract in
14 writing, that doesn't mean that they win because
15 contracts can be oral or written or both.

16 So I think that on page 7, paragraph C, is an
17 improper defense.

18 MR. WEBER: But this goes to our statute of
19 frauds defense.

20 THE COURT: I mean, that is the statute of
21 frauds, isn't it?

22 MR. WEBER: Yes.

23 THE COURT: Certain agreements must be reduced
24 to writing.

25 MR. ZAPPOLO: But we have substantial

1 performance or complete performance here. It takes
2 it right back out. There's no question about that.
3 Mr. Wagner gave the \$100,000.

4 MR. WEBER: Well, for a different contract, I
5 would say. And there's no --

6 And also, Your Honor, there's no reply to our
7 affirmative defenses in this case where Mr. Zappolo
8 asserted, you know, performance or estoppel or some
9 other factual basis to assert, you know,
10 performance.

11 MR. ZAPPOLO: We don't have to. It's not
12 within the statute of frauds if you have the
13 performance.

14 MR. WEBER: But there's no contract in writing
15 that the \$100,000 was a refundable deposit and
16 Mr. Wagner did not perform -- I don't know.

17 MR. ZAPPOLO: It would have to say something
18 like that.

19 THE COURT: Let's cut out that language --

20 MR. ZAPPOLO: I'm sorry?

21 THE COURT: Let's cut out that language and
22 fix this. So what language are we adding to 24C?

23 MR. ZAPPOLO: And there's -- and Mr. Wagner
24 did not substantially perform.

25 THE COURT: Did not substantially perform

1 under?

2 MR. ZAPPOLO: Under the agreement.

3 THE COURT: How do you feel about that,
4 Mr. Weber? Did not substantially perform under the
5 agreement?

6 MR. WEBER: It's confusing, I think. My first
7 thought, potentially confusing.

8 THE COURT: What do you propose?

9 MR. WEBER: How about James Todd Wagner -- I
10 don't know, Your Honor. I would say --

11 Okay. We'll say there's no contract in
12 writing that the \$100,000 was a refundable deposit
13 and James Todd Wagner did not perform under it.

14 THE COURT: Did not perform under?

15 MR. WEBER: The contract.

16 THE COURT: Okay.

17 MR. ZAPPOLO: Wait.

18 MR. WEBER: Under that contract.

19 THE COURT: So there was no contract in
20 writing that the \$100,000 was a refundable deposit
21 and Mr. Wagner did not perform under that contract?

22 MR. WEBER: Correct.

23 THE COURT: All right. Mr. Zappolo, how do
24 you feel about that?

25 MR. ZAPPOLO: I think it's about as good as

1 we're going to get.

2 THE COURT: Okay.

3 MR. WEBER: Except we're going to use James
4 Todd Wagner, Warren Mosler, throughout, Your Honor.

5 THE COURT: Okay. On page 8, C and D are
6 crossed out.

7 MR. WEBER: It looks like there's a lettering
8 issue. It should be 1. There was no contract for
9 Wagner to purchase MACC.

10 THE COURT: That should be 1?

11 MR. WEBER: Well, it should just say -- as
12 either C or D, it should say there was no contract
13 for Wagner to purchase MACC as one sentence,
14 essentially.

15 THE COURT: Okay. There was no contract...
16 and there's no objection to that?

17 MR. ZAPPOLO: Yes. That's why I crossed it
18 out.

19 THE COURT: But what's your objection?
20 Because we're reading contract formation as an
21 instruction.

22 MR. ZAPPOLO: Right. But it's not -- the
23 contract, as I've said, is not for Wagner to
24 purchase MACC. That's not the issue.

25 The contract that's sued upon is the agreement

1 that the \$100,000 was to be refundable if
2 Mr. Mosler sold the assets to someone else.

3 MR. WEBER: And we -- Your Honor, what I would
4 say is we disagree. This is -- what I just showed
5 Your Honor in paragraphs 33 through 35 of Count V
6 of the Sixth Amended Complaint, I mean the whole
7 claim is set up that, in approximately June of
8 2011, Wagner and Warren Mosler entered into a valid
9 contract wherein Wagner agreed to purchase MACC
10 from Warren Mosler and Warren Mosler agreed --

11 THE COURT: No, I agree. I mean, how do you
12 contract to get your money back? Why even give him
13 the money if you're going to have a contract? The
14 contract is to purchase the company.

15 MR. ZAPPOLO: Your Honor, if I'm going to give
16 you -- here's a deposit and we'll either work out
17 an agreement or we won't, but if you sell the
18 assets to someone else, you'll give me my deposit
19 back. That's a valid agreement.

20 MR. WEBER: Paragraph 34 of the complaint
21 literally reads "pursuant to the contract" --

22 THE COURT: I'm looking at it. I'll give this
23 instruction.

24 MR. ZAPPOLO: Why don't we just stay
25 consistent to the prior one and say there was no

1 contract and let everyone argue?

2 THE COURT: Repeat that.

3 MR. ZAPPOLO: Why not stay consistent with
4 Your Honor's prior ruling and say -- just say there
5 was no contract and let everyone argue what the
6 contract or the contract terms were or were not?

7 THE COURT: Well, that's what it says -- oh.

8 MR. WEBER: My problem with that, Your Honor,
9 is they're breaking it up between contract to
10 purchase MACC and contract regarding refundability,
11 and that's not how the claim is set up.

12 MR. ZAPPOLO: The entire -- the wherefore
13 clause and everything, the caption, the title of it
14 is suing for the \$100,000 deposit.

15 MR. WEBER: Scott -- I'm so sorry, I don't
16 want to address Mr. Zappolo, but paragraph 34 says
17 that pursuant to the contract, Wagner caused to be
18 paid through an intermediary third party a \$100,000
19 refundable deposit to Warren Mosler for the
20 purchase of MACC.

21 It's not for -- it's for the purchase of MACC.
22 The purchase of MACC was never finalized, and
23 Warren Mosler breached the contract when he did not
24 refund the \$100,000 deposit to Wagner upon selling
25 MACC's assets to another.

1 MR. ZAPPOLO: And the testimony from
2 Mr. Wagner on the stand was "My deposit could still
3 be used to purchase MACC, and they're stripping
4 that away from me."

5 And the funny thing is I was about to say, I
6 feel like you mirrored -- it's deja vu all over
7 again because this is almost the exact argument
8 that we had in front of Judge Hafele who said --

9 MR. WEBER: Oh, no.

10 MR. ZAPPOLO: -- this is -- this is -- you got
11 this and an agreement for that.

12 MR. WEBER: No. First of all, I don't even
13 believe --

14 MR. ZAPPOLO: Yes.

15 MR. WEBER: -- that you remember anything that
16 happened --

17 THE COURT: Let's stop.

18 MR. WEBER: -- four years ago.

19 THE COURT: Let's stop. I'm not interested in
20 hearing it. Right now my only concern is if they
21 say there was no contract, does that mean there was
22 no contract? Or does that mean --

23 MR. ZAPPOLO: There was no contract regarding
24 the \$100,000. If you look at paragraph 20, which
25 was agreed to by counsel, did Wagner approve by the

1 greater weight of the evidence that Wagner and
2 Mosler entered into a contract whereby Mosler
3 agreed to return the \$100,000 deposit if MACC's
4 assets were sold to another? It tracks the
5 language in the paragraph.

6 THE COURT: Looking at paragraph 20, why do
7 you need this other portion under that analysis?

8 MR. ZAPPOLO: Well, they're asking for it,
9 Your Honor, I'm not.

10 MR. WEBER: Well, because there's no contract
11 to purchase MACC. I mean, what he's saying, Your
12 Honor, is that there's a contract to purchase MACC
13 and a contract regarding refundability.

14 He's tearing those two concepts apart when, in
15 reality, they are the same thing. They're all a
16 part of the same contract, allegedly.

17 MR. ZAPPOLO: Counsel is doing the same thing
18 that my client did on the stand, and I noted it in
19 front of the jury, that the one hand here and one
20 hand there.

21 THE COURT: I know.

22 MR. WEBER: And I collapsed them together, if
23 you noted, Your Honor. They're actually one thing
24 in the middle, they're not two things. That's all
25 a fallacy here.

1 MR. ZAPPOLO: The testimony was that they are.
2 He can argue, but the evidence in the case is from
3 Mr. Wagner's mouth, not anyone else's.

4 MR. WEBER: Your Honor, I want you to read the
5 complaint one more time because they're not
6 separated out like that in any reading of this
7 language.

8 THE COURT: All right. So Count V, breach of
9 contract, paragraphs 32 through 36 of the
10 complaint?

11 MR. WEBER: Correct.

12 THE COURT: All right. Fix it and leave it in
13 there. There was no contract for Wagner to
14 purchase MACC, yes or no?

15 Number 26.

16 MR. ZAPPOLO: The reasonable certainty defense
17 is in the jury instructions. You have to prove
18 your damages with reasonable certainty, so that's
19 in the finding that the jury has already made --

20 THE COURT: Where?

21 MR. ZAPPOLO: -- that Wagner was -- that
22 Wagner proved by the greater weight of the evidence
23 that Mosler was required to return the \$100,000
24 deposit. That's the --

25 THE COURT: Wait. Where are you reading?

1 MR. ZAPPOLO: I'm reading from back in
2 paragraph 23, so why would you have 26 if you have
3 23? If the jury determines that he was supposed to
4 return the \$100,000 deposit, why are we asking them
5 about did we prove reasonable -- with reasonable
6 certainty the amount?

7 MR. WEBER: Your Honor, it's to damages.

8 THE COURT: I mean, it does seem a little
9 redundant and they're going to get jury
10 instructions on payment, aren't they? I think one
11 of the ones you guys agreed to -- I mean, I didn't
12 read it to you guys.

13 MR. WEBER: Your Honor, I think that's the
14 law. I mean, they have to decide with reasonable
15 certainty. And I think it's good to have -- and I
16 want the question whether we've established
17 reasonable certainty.

18 MR. ZAPPOLO: Well, here's what we've got:
19 We've got the findings of the cause of action and
20 then we have their affirmative defenses and then he
21 wants to go back and second bite at the apple on
22 findings.

23 So that's -- that should be -- paragraph 26
24 should follow 23, if you're inclined to leave it in
25 there.

1 MR. WEBER: I don't mind moving it.

2 THE COURT: Yeah, I don't like breaking it up
3 like that. I do agree with you that it's a little
4 redundant, but I can understand why you want that
5 instruction. I don't like the placement of it. If
6 you're willing to move it, I think that makes it
7 better.

8 MR. WEBER: All right. We'll move 26 up.

9 MR. ZAPPOLO: To follow 23?

10 MR. WEBER: Yes.

11 THE COURT: All right. Then there's some
12 numbering issues on page 9, page 10, 11, 12, page
13 13.

14 Wagner is a public figure.

15 MR. ZAPPOLO: We had a summary judgment motion
16 on this. It was already determined that Mr. Wagner
17 is not a public figure.

18 MR. WEBER: Maybe --

19 MR. ZAPPOLO: And there's no evidence in here
20 to suggest that he was a public figure.

21 THE COURT: Anything on the record that we
22 discussed about him being a public figure?

23 MR. WEBER: I mean, he's released a music
24 video. He's in the music video. He's getting
25 quoted in the press. Yeah.

1 And I think Mr. Zappolo is referencing a
2 summary judgment motion from 2016-ish whereas we
3 asserted this public figure defense in 2020, and I
4 think that his conduct and SEI's conduct does raise
5 public figures.

6 MR. ZAPPOLO: Nobody -- there's no testimony
7 about that before this jury.

8 THE COURT: I mean, I don't even know how many
9 people watched this video and I don't know how many
10 people read these publications.

11 The testimony was that Mr. Wagner -- well,
12 jeez, I can't even quote it, but worked in like a
13 window-less room in Riviera Beach. No, not a
14 public figure. All right. We'll strike that.

15 Page 14, number 41. Did Mr. Wagner establish
16 with a reasonable certainty the amount of damages
17 that Mr. Mosler caused him to suffer by defamation
18 claim statement 1?

19 MR. WEBER: I think this cannot be moved and
20 it should stay where it is, Your Honor.

21 MR. ZAPPOLO: It should be up by --

22 THE COURT: You think what?

23 MR. WEBER: I think this one should not be
24 moved and it should stay where it is because it's
25 the damages part of this verdict form in this

1 claim.

2 MR. ZAPPOLO: I think it goes up in the claims
3 rather than in the affirmative defenses.

4 THE COURT: Say that one more time.

5 MR. ZAPPOLO: I think it goes up where the
6 claims are being determined rather than down where
7 the affirmative defenses are being determined.

8 MR. WEBER: It wouldn't make any -- Your
9 Honor, it wouldn't make any sense to move it up
10 there because 39 is did he prove that it caused
11 damages? And then if he did, did he establish with
12 certainty the amount?

13 THE COURT: Where do you want to move this,
14 Mr. Zappolo?

15 MR. ZAPPOLO: After 36.

16 THE COURT: Let me take a look.

17 MR. ZAPPOLO: 36, Did Wagner prove by the
18 greater weight of the evidence that because of the
19 falsity defamation claims statement 1, Wagner
20 suffered actual damages? Then it would read: Did
21 he establish with reasonable certainty the amount
22 of damages?

23 MR. WEBER: You know what, Judge? There's a
24 double. That's the problem.

25 THE COURT: There's what?

1 MR. WEBER: There's a double. If you look at
2 36 --

3 THE COURT: Okay.

4 MR. WEBER: -- it's the same as 39. It's
5 almost the same.

6 MR. ZAPPOLO: Right.

7 MR. WEBER: That's the problem. So it's
8 because --

9 THE COURT: So you want to have it after 36
10 and before 37? Is that what you're saying?

11 MR. WEBER: I think 36 -- because that's the
12 element. The falsity has to be the -- the falsity
13 has to be the cause of the damages, but there's a
14 separate inquiry as to the amount of damages
15 overall.

16 That's -- that's where Mr. Zappolo, I think,
17 is misstepping here because that falsity statement
18 is tied to it actually causing damages to him, but
19 then when you get to paragraph --

20 THE COURT: Yeah, I follow you.

21 MR. WEBER: Yeah.

22 THE COURT: Okay. It can stay where it is.

23 MR. WEBER: Okay.

24 THE COURT: I follow you now.

25 All right. 14, page 15 looks fine. Page 16,

1 I've already addressed.

2 MR. WEBER: Yes.

3 THE COURT: Page 17.

4 MR. WEBER: It appears to be the same issue.

5 MR. ZAPPOLO: I agree, Your Honor.

6 THE COURT: All right.

7 MR. ZAPPOLO: It's the same prior ruling.

8 THE COURT: Page 18. Page 19 I've already
9 addressed. Page 20 looks like also previously
10 addressed. Page 21 looks good.

11 MR. ZAPPOLO: Hold on, Your Honor. 19, public
12 figure you already addressed, right?

13 THE COURT: Correct. Page 22 I've already
14 addressed. Hold on.

15 MR. WEBER: We're on trade libel now.

16 THE COURT: Correct.

17 MR. WEBER: That's what -- yeah.

18 MR. ZAPPOLO: I think on page 22, paragraph
19 63, you probably agree that it should say: Does
20 the greater weight of the evidence establish the
21 following defenses by Mosler to SEI's claim?
22 Because this is an SEI claim.

23 MR. WEBER: Yes.

24 THE COURT: Okay. That's what caused me to
25 stop.

1 MR. ZAPPOLO: And then --

2 THE COURT: Because the Wagner stuff doesn't
3 really -- Mr. Wagner --

4 MR. ZAPPOLO: Right.

5 THE COURT: And then I've already addressed 23
6 by a prior ruling.

7 25, chapter -- or paragraph 70 should be the
8 same thing, correct? SEI?

9 MR. WEBER: Correct.

10 THE COURT: And so we'll strike that. I've
11 already addressed 26 by a prior ruling.

12 Let's see. Page 28 has also been addressed by
13 prior ruling.

14 Let's go to page 29. All right. Page 30,
15 Mosler and MACC's affirmative defense of
16 recoupment. Hasn't this already been addressed?

17 MR. WEBER: I believe so. Now it would stay.

18 THE COURT: Setoff has already been addressed.

19 MR. ZAPPOLO: So just so that I'm clear, the
20 recoupment/setoff is combined, the way counsel
21 wanted it originally?

22 THE COURT: Correct.

23 MR. WEBER: Well, hold on. I had combined
24 them in the --

25 THE COURT: Jury instructions.

1 MR. WEBER: -- jury instructions.

2 THE COURT: On the verdict form they're
3 separate.

4 MR. WEBER: They're separate.

5 THE COURT: Okay. That's that, right?

6 MR. WEBER: That's it, Your Honor. I'll type
7 this -- I'll double-check and send it to
8 Mr. Zappolo and we'll be all set.

9 MR. ZAPPOLO: And you're bringing -- are you
10 going to bring multiple copies for the jurors
11 tomorrow, Mr. Weber?

12 MR. WEBER: What, Scott?

13 MR. ZAPPOLO: I'm sorry. Are you bringing
14 multiple copies for the jurors tomorrow?

15 MR. WEBER: I'm going to email it to you
16 first.

17 MR. ZAPPOLO: Right.

18 MR. WEBER: Once you approve it, then I will
19 print it out.

20 MR. ZAPPOLO: Okay.

21 THE COURT: Okay. So what I would like is six
22 copies --

23 THE COURT REPORTER: Seven. I'd like one.

24 THE COURT: Seven copies, eight copies, nine
25 copies, ten copies.

1 MR. WEBER: Ten copies.

2 THE COURT: Okay? So each party gets one
3 copy, the court gets a copy, the court reporter
4 gets a copy, all of the jurors get a copy. 11
5 copies -- one for the clerk, okay?

6 MR. WEBER: 11 copies.

7 THE COURT: 11 copies. And I want one verdict
8 form -- two verdict forms. Do you want one?

9 THE COURT REPORTER: Yes, please.

10 THE COURT: Two verdict forms. One that is
11 stricken through all the way for the court
12 reporter, and one that I will read and give to the
13 jury. So all of them will get a copy of the jury
14 instructions, but they get only one verdict form.

15 MR. WEBER: Okay. So 11 copies of the jury
16 instructions, two verdict forms?

17 THE COURT: Well, let me strike that on the
18 verdict forms. One copy, two copy, three copy --
19 I'll take a copy.

20 You don't need a verdict form. Do you need a
21 copy of the verdict form?

22 THE CLERK: I will take one.

23 THE COURT: Okay. Let's make copies for
24 everybody again minus five. So we'll have 6 and
25 11.

1 One verdict form will be pristine, the others
2 will be marked through so that we know that they're
3 not going back to the jury room.

4 MR. WEBER: So you want a watermark through
5 them?

6 THE COURT: Yes.

7 MR. WEBER: What do you want it to say?

8 THE COURT: "Unofficial." And then that way
9 we can make sure that, you know, their decision is
10 just one decision.

11 MR. WEBER: Okay.

12 THE COURT: We don't want competing verdict
13 forms, all right? I only send one back.

14 All right. Anything else for today?

15 MR. WEBER: No, Your Honor.

16 MR. ZAPPOLO: No.

17 THE COURT: Okay. All right. Tomorrow at
18 11 o'clock.

19 MR. WEBER: Perfect.

20 THE COURT: All right. We're in recess.

21 (Whereupon, the proceedings are adjourned at
22 5:04 p.m. and are continued on May 26, 2023 in
23 Volume XIII.)

24

25

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT,

IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. 50-2012-CA-023358-XXXX-MB

JAMES TODD WAGNER, SUPERCAR ENGINEERING,
INC., a Florida corporation,

Plaintiffs,

vs.

WARREN MOSLER, MOSLER AUTO CARE CENTER,
INC. ("MACC") a Florida corporation,
d/b/a Mosler Automotive,

Defendants.

_____ /

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VOLUME XIII - DAY 12

- - - - -

PROCEEDINGS BEFORE

HONORABLE LUIS DELGADO

DATE: MAY 26, 2023

TIME: 11:00 A.M. - 9:30 P.M.

1 APPEARING ON BEHALF OF PLAINTIFFS:

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17 ALSO PRESENT:

18 James Todd Wagner, Plaintiff
19 Warren Mosler, Defendant
20 David Griffin, TruVid, LLC
21
22
23
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I N D E X

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WITNESS	PAGE
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BE IT REMEMBERED, that the following proceedings were taken in the above-styled cause before Honorable Luis Delgado, Presiding Judge, at the Palm Beach County Courthouse, 205 North Dixie Highway, Courtroom 10-D, in the City of West Palm Beach, County of Palm Beach, State of Florida, on the 26th day of May, 2023, to wit:

9

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11

THE COURT DEPUTY: All rise. Court is in session.

12

13

THE COURT: All right. Be at ease. So it's 11:20, one hour a piece for opening statements.

14

15

Plaintiff, how much time are you going to reserve for rebuttal?

16

MR. ZAPPOLO: Ten minutes, Your Honor.

17

THE COURT: So you want to go --

18

19

20

21

MR. ZAPPOLO: May I ask, if I go short, do I get the extra at the end or if I go long can I -- can I -- can I say I'm going to eat into it so I can kind of make that decision on the fly?

22

23

You're asking me for purposes of, like, reminders? Is that what I'm understanding?

24

25

THE COURT: I mean, you only get one hour and it's a hard stop.

1 MR. ZAPPOLO: Right. I understand that. I'm
2 just saying if I finish up early, do I get extra
3 time for rebuttal?

4 THE COURT: Yeah, you get one hour. You get
5 equal time.

6 MR. ZAPPOLO: All right. So I would like a
7 reminder at 45 minutes and then that way I'll stop
8 at 50 minutes.

9 THE COURT: Okay.

10 MR. ZAPPOLO: And then I'll have ten minutes
11 for rebuttal.

12 THE COURT: So you're asking for --

13 MR. ZAPPOLO: Actually, I take that back. I'd
14 like a reminder at 40 minutes to stop at 45 minutes
15 is my plan.

16 THE COURT: So you want 45/15?

17 MR. ZAPPOLO: 45/15 is the break.

18 THE COURT: With a five-minute warning?

19 MR. ZAPPOLO: Yes, sir.

20 THE COURT: All right. Madam Clerk.

21 THE CLERK: Okay.

22 MR. ZAPPOLO: And just so that Your Honor
23 knows, Mr. Weber and I have been working, shifting
24 back and forth. We're doing the final, final,
25 final review. There's a little tweak -- he's got a

1 printer here -- on one of the pages of the verdict
2 form that I've come across, and I'm just finishing
3 that up right now.

4 THE COURT: Okay. Well, I'm waiting for --
5 you guys are going to hand me a stack for the jury,
6 so what you guys give me is what I'm going to
7 charge the jury with.

8 MR. ZAPPOLO: Okay.

9 MR. WEBER: Your Honor, can we object to the
10 amount of time that Mr. Zappolo is taking for the
11 rebuttal? That he should only be allowed ten
12 minutes?

13 THE COURT: No, he gets one hour. So the
14 equal time presented was an hour, but because the
15 plaintiff brings the charge, they're allowed to
16 present their arguments, and they're allowed to
17 rebut what the defense will put on in the middle.
18 This is just the way we've done things in
19 courtrooms across America for hundreds of years.
20 Plaintiffs bring cases, and they're allowed to have
21 defense present their defense case, and then the
22 plaintiff will present a rebuttal portion.

23 MR. WEBER: Okay, Your Honor, we're good.

24 THE CLERK: They want a five-minute warning?

25 THE COURT: They want to go 45 with a

1 five-minute warning.

2 THE CLERK: Not the plaintiff, for defense.

3 THE COURT: Oh, I'm sorry. Mr. Weber, would
4 you like a five-minute warning?

5 MR. WEBER: I will -- my team over here is
6 going to give me warnings, so I think we're good.

7 THE COURT: I will tell both of you that it is
8 a hard stop after 60 minutes.

9 MR. ZAPPOLO: Yes.

10 THE COURT: So during your 60 minutes, at 60
11 minutes I'm just going to stand up and say "Thank
12 you, Mr. Weber, have a seat."

13 MR. WEBER: Yeah.

14 THE COURT: During your rebuttal, I'm going to
15 stand up and say "Thank you, Mr. Zappolo, you can
16 have a seat" mid-sentence.

17 MR. ZAPPOLO: I understand, Your Honor.

18 MR. WEBER: Perfect.

19 THE COURT: Okay. It is a hard stop. Those
20 are the rules.

21 What I told the jury was that we were going to
22 start with opening statements around 11:00, so it's
23 time. We're going to do two hours of openings.
24 I'm going to charge them. They're going to start
25 deliberating, and I guess we're going to provide

1 them lunch during their deliberations, so they're
2 not going to leave, they're going to be in there.
3 They're going to get stuck with something like
4 Jimmy John's.

5 THE COURT DEPUTY: According to the notes from
6 the other deputy, the plaintiff was supposed to buy
7 them lunch today.

8 THE COURT: Okay.

9 MR. ZAPPOLO: We'll buy lunch.

10 THE COURT: All right. But it will probably
11 be like Jimmy John's because I want it delivered
12 here. I don't want them to leave that room once
13 they start deliberating, okay?

14 MR. ZAPPOLO: Sure.

15 THE COURT: All right. As far as, again, the
16 jury instructions, you guys are working on it. I
17 kind of want them in my hand because the moment you
18 guys are done with your closings, I'm going to
19 start reading them.

20 So what you have a disagreement on, is that --

21 MR. ZAPPOLO: It's not a disagreement, it's
22 just --

23 MR. WEBER: A numbering issue.

24 MR. ZAPPOLO: It's just, like, numbering
25 instructions because like "If your answer is no,

1 proceed to question 32" and it should be 28 or
2 something like that, so we're just working that out
3 right now.

4 I think it's only -- as of right now, it's
5 only one -- it's two corrections on one page.

6 MR. WEBER: So instead of "Go to paragraph 5,"
7 it should say "Go to paragraph 7."

8 THE COURT: Okay.

9 MR. WEBER: It will only take a few minutes
10 and I can print those pages out individually. I
11 have an office printer in the conference room.

12 THE COURT: Okay. I don't want to keep them
13 waiting too, too long. We told them 11:00. We're
14 going to keep them here no later than 7:00 p.m.
15 It's a long day for them even though we started
16 late.

17 I guess I'll step off, and you let me know
18 when you guys are ready.

19 MR. ZAPPOLO: Yes.

20 MR. WEBER: Yes, Your Honor.

21 THE COURT: You know, for what it's worth, so
22 Mr. Mosler, Mr. Wagner, we're about to hear closing
23 arguments. The presentation of evidence is over.
24 The attorneys are now going to present the closing
25 arguments to the jury.

1 What I want both of you guys to know is that I
2 think both of your attorneys have worked really
3 hard on this case, okay? You know, kind of like
4 gladiatorial combat, when people go into it,
5 they're in peak performance shape, and by the end
6 of that gladiatorial combat both sides are looking
7 really, really, really bad. And your attorneys are
8 not looking really, really bad, but you can imagine
9 you're not going to win everything that they've
10 argued to me. That's just a part of the
11 gladiatorial sport.

12 And so, as you guys have watched the trial,
13 I'm sure there's times where they have prevailed in
14 arguments and times where they have not prevailed
15 in arguments. That doesn't mean they didn't work
16 hard, it's just the nature of this particular
17 system, this adversarial system. And from where
18 I'm sitting, I think both of your attorneys have
19 worked really, really hard. They both prevailed at
20 times and they've also not prevailed at times and
21 that's a part of this adversarial system, okay?
22 For what it's worth.

23 All right. Let me know when you guys are
24 ready.

25 MR. ZAPPOLO: Thank you, Your Honor.

1 MR. WEBER: Thank you, Your Honor.

2 (Thereupon, a short break was taken from
3 11:26 a.m. to 11:54 a.m.)

4 THE COURT DEPUTY: Court is back in session.

5 THE COURT: Please be seated. Where's my
6 copy?

7 MR. WEBER: They're not stapled, though, Your
8 Honor.

9 THE COURT: That's okay.

10 MR. ZAPPOLO: I have a stapler if you want.

11 THE COURT: That's fine.

12 MR. WEBER: So I have -- here's your original
13 without a watermark.

14 THE COURT: Verdict form and jury
15 instructions, right?

16 MR. WEBER: Yes. Here is the unofficial
17 verdict forms, so they have a watermark.

18 THE COURT: These are just verdict forms?

19 MR. WEBER: Those are just verdict forms.

20 THE COURT: All right. So let me ask you guys
21 this: I'm charging this jury at 2 o'clock. It's
22 noon. We're an hour behind, right? And so when I
23 read the jury instructions, you know, I always read
24 the verdict form to the jury. Do you guys want me
25 to read the verdict form to the jury, or do you

1 want them to read it on their own?

2 MR. ZAPPOLO: They can read it on their own.

3 MR. WEBER: I'm okay with them reading it on
4 their own.

5 THE COURT: Are you sure?

6 MR. WEBER: Yeah.

7 MR. ZAPPOLO: Yes, sir.

8 THE COURT: It's your verdict form. You guys
9 worked on it, so if you guys are very happy with
10 it, you know --

11 MR. ZAPPOLO: I'm going to be covering it with
12 them, telling them what they're going to be looking
13 at, so...

14 THE COURT: Okay.

15 MR. ZAPPOLO: But I'm going to tell them
16 that -- Your Honor, you're going to read the
17 verdict form to them and --

18 You're going to read the jury instructions and
19 the verdict form prior to closings or after
20 closings?

21 THE COURT: Well, if you don't want me to read
22 the verdict form, I'm not going to. I'm going to
23 say "The verdict form is here, and you'll be able
24 to read it in the back."

25 MR. ZAPPOLO: Okay. That's fine.

1 THE COURT: But that's what -- both parties
2 are okay with that?

3 MR. WEBER: I'm okay with you not reading the
4 verdict form, Your Honor.

5 THE COURT: Okay. And I think the reason for
6 that is, even though I traditionally do it, it is a
7 32-page verdict form and I think we want them to
8 deliberate as much as possible, right?

9 MR. ZAPPOLO: Yes.

10 THE COURT: Deliberation means they can
11 actually talk about the case together.

12 All right. So here's a copy for the
13 attorneys.

14 All right. And then I have my copy of the
15 verdict form and the jury instructions.

16 Where's Mr. Mosler? As soon as he comes in
17 we'll bring them in and you guys will start.

18 MR. WEBER: Yep.

19 MR. ZAPPOLO: For procedure, Your Honor, we're
20 closing and then you're reading law, or you're
21 reading law and then we're closing?

22 THE COURT: The only instructions I'm about to
23 give right now is the one about closing arguments.

24 MR. ZAPPOLO: Okay. Thank you.

25 THE COURT: Hold on, let me look at this real

1 quick. I'm reading these before --

2 MR. WEBER: Okay, Your Honor, we're ready.

3 THE COURT: Give me a minute. I'm reading
4 these before your closings, all through number 59,
5 right?

6 MR. WEBER: Yes, Your Honor.

7 THE COURT: All right. So 58 and 59 I'll read
8 after your closings, so I'm going to read up
9 through 57 right now.

10 MR. ZAPPOLO: I'm sorry, Your Honor, you're
11 reading -- in the back of this package that you've
12 just been handed, you're reading --

13 THE COURT: All the way up to 57, from number
14 11 through 57.

15 MR. ZAPPOLO: Okay.

16 THE COURT: 58 is after closing arguments.

17 MR. ZAPPOLO: Yes.

18 THE COURT: And 59 is after closing arguments,
19 but before they deliberate.

20 MR. ZAPPOLO: Yes.

21 THE COURT: So I'm going to read instructions
22 11 through 57 to them right now.

23 MR. ZAPPOLO: Thank you.

24 THE COURT: And then you guys go into your --
25 let's bring them out.

1 THE COURT DEPUTY: Jury entering.

2 (Jurors entering the courtroom at 12:02 p.m.)

3 THE COURT: All right. Thank you. Please be
4 seated.

5 All right. So I'm now going to read you the
6 law that you must follow in deciding this case.
7 Once I've concluded reading the law, you'll hear
8 the arguments of the attorneys, okay.

9 You're going to get a copy of these
10 instructions to go back with you once you start
11 deliberating. So they're going to sit there, but
12 you're going to get a copy of these instructions to
13 take back with you.

14 All right. In your deliberations, you will
15 consider and decide several distinct claims.

16 SEI is alleging claims for unjust enrichment,
17 quantum meruit, breach of contract against MACC
18 (related to "EPA approval work").

19 SEI is also alleging claims for trade libel
20 against Warren Mosler stemming from 3 statements.

21 James Todd Wagner is alleging claims for
22 breach of contract, unjust enrichment, and
23 defamation (stemming from 3 statements) against
24 Warren Mosler.

25 Although these claims have been tried

1 together, each is separate from the others, and
2 each party is entitled to have you separately
3 consider each claim as it affects that party.
4 Therefore, in your deliberations, you should
5 consider the evidence as relates to each claim
6 separately, as you would have had each claim been
7 tried before you separately.

8 In deciding this case, it is your duty as
9 jurors to decide the issues, and only those issues,
10 that I ask you to answer on a special form called a
11 verdict form. You must come to an agreement about
12 your verdict.

13 The evidence in this case consists of the
14 sworn testimony of the witnesses and all exhibits
15 received in evidence.

16 In reaching your verdict, you must think about
17 and weigh the testimony and any documents,
18 photographs, or other material that has been
19 received in evidence. Your job is to determine
20 what the facts are. You may use reason and common
21 sense to reach conclusions. You may draw
22 reasonable inferences from the evidence, but you
23 should not guess about things that were not covered
24 here. And you must always apply the law as I have
25 explained it to you.

1 General considerations: Let me speak briefly
2 about witnesses. In evaluating the believability
3 of any witness and the weight you will give the
4 testimony of any witness, you may properly consider
5 the demeanor of the witness while testifying; the
6 frankness or lack of frankness of the witness; the
7 intelligence of the witness; any interest the
8 witness may have in the outcome of the case; the
9 means and opportunity the witness had to know the
10 facts about which the witness testified; the
11 ability of the witness to remember the matters
12 about which the witness testified; and the
13 reasonableness of the testimony of the witness,
14 considered in the light of all the evidence in the
15 case and in the light of your own experience and
16 common sense.

17 Expert witnesses: You have heard opinion
18 testimony on certain technical subjects from
19 persons referred to as expert witnesses. Some of
20 the testimony before you was in the form of
21 opinions about certain technical subjects.

22 You may accept such opinion testimony, reject
23 it, or give it the weight you think it deserves,
24 considering the knowledge, skill, experience,
25 training, or education of the witness, the reasons

1 given by the witness for the opinions expressed,
2 and all the other evidence in the case.

3 Witness talked to lawyer: It is entirely
4 proper for a lawyer to talk to a witness about what
5 testimony the witness would give if called to the
6 courtroom. The witness should not be discredited
7 just because the witness talked with a lawyer about
8 his or her testimony.

9 SEI is a Florida corporation. MACC is a
10 Florida corporation. A Florida corporation is a
11 person under the law. All persons, whether Florida
12 corporations or individuals, are entitled to equal
13 treatment under the law.

14 **A Florida corporation can act only through its**
15 **agents, employees, and officers for acts and**
16 **statements that are made within the scope of their**
17 **duties as agents, employees, and officers.**

18 You should assume that the parties intended
19 the disputed terms in their contract to have their
20 plain and ordinary meaning, unless you decide that
21 the parties intended the disputed terms to have
22 another meaning.

23 You must first attempt to determine the
24 meaning of the ambiguous terms in the contract from
25 the evidence presented and the previous

1 instructions. If you cannot do so, only then
2 should you consider which party drafted the
3 disputed terms in the contract and then construe
4 the language against that party.

5 If a contract does not state a specific time
6 within which a party is to perform a requirement of
7 the contract, then the party must perform the
8 requirement within a reasonable time. What is a
9 reasonable time depends on the facts of each case,
10 including the subject matter and purpose of the
11 contract and the expressed intent of the parties at
12 the time they entered into the contract.

13 "Greater weight of the evidence" means the
14 more persuasive and convincing force and effect of
15 the entire evidence in the case.

16 All right. Count A - SEI claim for Unjust
17 Enrichment against MACC. SEI claims it provided
18 automotive work, engineering work, and/or work to
19 obtain EPA approvals to MACC between April 16, 2011
20 and September 28, 2011 (the "Work").

21 SEI must prove all of the following:

22 SEI must prove by the greater weight of the
23 evidence that SEI conferred the benefit of
24 automotive work, engineering work, and/or work to
25 obtain EPA approvals to MACC between April 16, 2011

1 **and April [sic] 28, 2011. Again, (the "Work").**

2 MR. ZAPPOLO: Your Honor, that was April and
3 September.

4 THE COURT: I'm sorry. April 16, 2011 and
5 September 28, 2011.

6 Number 2, SEI must prove by the greater weight
7 of the evidence that MACC knowingly and voluntarily
8 accepted and retained the Work bestowed by SEI;

9 Number 3, SEI must prove by the greater weight
10 of the evidence that MACC's retention of the
11 benefit is inequitable unless MACC pays to SEI the
12 value of the Work.

13 MACC denies SEI's claims and MACC asserts the
14 following defenses in response: That SEI has
15 unclean hands, that SEI was paid for the Work, that
16 an express agreement governs the Work, and that SEI
17 was paid under the Consultant Agreement with MACC.
18 If you decide that MACC has proven its defenses by
19 the greater weight of the evidence, then you must
20 rule in favor of MACC.

21 Count B - SEI's claim for Quantum Meruit
22 against MACC. SEI claims it provided automotive
23 work, engineering work, and/or work to obtain EPA
24 approvals to MACC between April 16, 2011 and
25 September 28, 2011. Again that's (the "Work").

1 SEI must prove all of the following:

2 SEI must prove by the greater weight of the
3 evidence that SEI conferred the benefit of
4 automotive work, engineering work, and/or work to
5 obtain EPA approvals to MACC between April 16, 2011
6 and September 28, 2011. Again (the "Work"); and

7 Number 2, SEI must provide -- or must prove by
8 the greater weight of the evidence that under
9 ordinary circumstances a reasonable person would
10 expect to pay for the benefit of the Work; and

11 Number 3, SEI must prove by the greater weight
12 of the evidence that MACC failed to prove -- failed
13 to pay SEI for the Work.

14 MACC denies SEI's claims and MACC asserts
15 defenses in response: That SEI was paid for the
16 Work, that an express agreement governs the Work,
17 and that SEI was paid under the Consultant
18 Agreement with MACC. If you decide that MACC has
19 proven its defenses by the greater weight of the
20 evidence, then you must rule in favor of MACC.

21 Count C - SEI's claim for Breach of Contract
22 against MACC. SEI claims that it and MACC entered
23 into a contract whereby SEI provided automotive
24 work, engineering work, and/or work to obtain EPA
25 approvals between MACC -- approvals to MACC between

1 April 16, 2011 and September 28, 2011. And again
2 that's (the "Work").

3 To recover damages from MACC for breach of
4 contract, SEI must prove all of the following:

5 Number 1, SEI must prove by the greater weight
6 of the evidence that SEI and MACC entered into a
7 contract; and

8 Number 2, SEI must prove by the greater weight
9 of the evidence that SEI did all, or substantially
10 all, of the essential things which the contract
11 required it to do; and

12 Number 3, SEI must prove by the greater weight
13 of the evidence that all conditions required by the
14 contract for MACC's performance had occurred; and

15 Number 4, SEI must prove by the greater weight
16 of the evidence that MACC failed to do something
17 essential which the contract required; and

18 Number 5, SEI must prove by the greater weight
19 of the evidence that SEI was damaged by that
20 failure.

21 MACC denies SEI's claims.

22 Compensatory damages is that amount of money
23 which will put SEI in as good a position as it
24 would have been if MACC had not breached the
25 contract and which naturally results from the

1 breach.

2 Count D - James Todd Wagner's claim for Breach
3 of Contract against Warren Mosler. James Todd
4 Wagner claims that he and Warren Mosler had an oral
5 agreement that Warren Mosler would return James
6 Todd Wagner's \$100,000 deposit if Warren Mosler
7 sold MACC's assets to another.

8 To recover damages from Warren Mosler for
9 breach of contract, James Todd Wagner must prove
10 all of the following:

11 James Todd Wagner must prove by the greater
12 weight of the evidence that James Todd Wagner and
13 Warren Mosler entered into a contract whereby
14 Warren Mosler agreed to return the \$100,000 if
15 MACC's assets were sold to someone other -- someone
16 another; and

17 Number 2, James Todd Wagner must prove by the
18 greater weight of the evidence that James Todd
19 Wagner did all, or substantially all, of the
20 essential things which the contract required him to
21 do; and

22 Number 3, James Todd Wagner must prove by the
23 greater weight of the evidence that all conditions
24 required by the contract for Warren Mosler's
25 performance had occurred; and

1 Number 4, James Todd Wagner must prove by the
2 greater weight of the evidence that Warren Mosler
3 was required to return the \$100,000 deposit; and

4 Number 5, James Todd Wagner must prove by the
5 greater weight of the evidence that James Todd
6 Wagner was damaged by that failure to return the
7 \$100,000.

8 Warren Mosler denies James Todd Wagner's
9 claims and Warren Mosler asserts defenses in
10 response. Warren Mosler asserts that the \$100,000
11 was a nonrefundable deposit, that James Todd Wagner
12 sought return of the \$100,000 before MACC's assets
13 were sold to another, that there was no contract
14 with James Todd Wagner to purchase MACC, that James
15 Todd Wagner represented the \$100,000 was a
16 nonrefundable deposit and is equitably estopped
17 from trying to get it back, that James Todd Wagner
18 was working with Lew Lee and SFDM, and that the
19 \$100,000 deposit was provided pursuant to a signed,
20 written agreement between MACC and SFDM. If you
21 decide that MACC has proven its defenses by the
22 greater weight of the evidence, then you must rule
23 in favor of MACC.

24 James Todd Wagner claims that the parties
25 entered into a contract. To prove that a contract

1 was created, James Todd Wagner must prove all of
2 the following:

3 The essential contract terms were clear enough
4 that the parties could understand what each was
5 required to do;

6 Number 2, the parties agreed to give each
7 other something of value. [A promise to do
8 something or not to do something may have value];
9 and

10 Number 3, the parties agreed to the essential
11 terms of the contract. When you examine whether
12 the parties agreed to the essential terms of the
13 contract, ask yourself if, under the circumstances,
14 a reasonable person would conclude, from the words
15 and conduct of each party, that there was an
16 agreement. The making of a contract depends only
17 on what the parties said or did. You may not
18 consider the parties' thoughts or unspoken
19 intentions.

20 Contracts may be written or oral. Contracts
21 may be partly written and partly oral. Oral
22 contracts are just as valid as written contracts.

23 Both an offer and acceptance are required to
24 create a contract. Warren Mosler contends that the
25 offer was withdrawn before the offer was accepted.

1 To establish that the offer was not withdrawn,
2 James Todd Wagner must prove one of the following:

3 Warren Mosler did not withdraw the offer; or

4 James Todd Wagner accepted the offer before
5 Warren Mosler withdrew it; or

6 Warren Mosler's withdrawal of the offer was
7 never communicated to James Todd Wagner.

8 If James Todd Wagner did not prove any of the
9 above, then the offer was withdrawn and no contract
10 was created.

11 Both an offer and acceptance are required to
12 create a contract. Warren Mosler contends that a
13 contract was not created because the offer was
14 never accepted. To establish acceptance of the
15 offer, James Todd Wagner must prove Warren Mosler
16 communicated his agreement to the terms of the
17 offer.

18 If Warren Mosler agreed only to certain
19 conditions, or if he introduced a new term into the
20 bargain, then there was no acceptance.

21 Ordinarily if a party does not say or do
22 anything in response to another party's offer, then
23 it has not accepted the offer. However, if Warren
24 Mosler or James Todd Wagner proves that Warren
25 Mosler and James Todd Wagner understood silence or

1 inaction to mean that the offer was accepted, then
2 there was an acceptance.

3 Warren Mosler or James Todd Wagner claims that
4 the original contract was modified, or changed.
5 Warren Mosler or James Todd Wagner denies that the
6 contract was modified. Therefore, Warren Mosler or
7 James Todd Wagner must prove that the parties
8 agreed to the modification.

9 The parties to a contract may agree to modify
10 its terms. You must decide whether a reasonable
11 person would conclude from the words and conduct of
12 Warren Mosler or James Todd Wagner that they agreed
13 to modify the contract. You cannot consider the
14 parties' hidden intentions.

15 **A contract in writing may be modified by a**
16 **contract in writing, by a subsequent oral agreement**
17 **between the parties, or by the parties' subsequent**
18 **conduct, if the modified agreement has been**
19 **accepted and acted upon by the parties in such a**
20 **manner as would make a fraud on either party to**
21 **refuse to enforce it.**

22 **Count E - James Todd Wagner's Claim for Unjust**
23 **Enrichment against Warren Mosler as to the \$100,000**
24 **Deposit. James Todd Wagner claims he paid a**
25 **refundable deposit of \$100,000 to Warren Mosler.**

1 James Todd Wagner must prove all of the
2 following:

3 James Todd Wagner must prove by the greater
4 weight of the evidence that James Todd Wagner
5 conferred a benefit upon Warren Mosler through the
6 \$100,000; and

7 Number 2, James Todd Wagner must prove by the
8 greater weight of the evidence establish that
9 Warren Mosler knowingly and voluntarily accepted
10 and retained that benefit bestowed by James Todd
11 Wagner; and

12 Number 3, James Todd Wagner must prove by the
13 greater weight of the evidence that Warren Mosler's
14 retention of the benefit is inequitable unless
15 Warren Mosler pays to James Todd Wagner the
16 \$100,000.

17 Warren Mosler denies James Todd Wagner's claim
18 and Warren Mosler asserts defenses in response.
19 Warren Mosler asserts that the \$100,000 was a
20 nonrefundable deposit, that Wagner sought the
21 return -- sought return of the \$100,000 before
22 MACC's assets were sold to another, that there was
23 no contract with Wagner to purchase MACC, that
24 Wagner represented the \$100,000 was a nonrefundable
25 deposit and is equitably estopped from trying to

1 get it back, that Wagner was working with Lew Lee
2 and SFDM, and that the \$100,000 nonrefundable
3 deposit was provided pursuant to a signed, written
4 agreement between MACC and SFDM. If you decide
5 that MACC has proven its defenses by the greater
6 weight of the evidence, then you must rule in favor
7 of MACC.

8 Count F - James Todd Wagner's Claims for
9 Defamation against Warren Mosler. During your
10 deliberations, you will consider 3 and distinct
11 statements. Each statement will be considered
12 separately on the verdict form. Those 3 statements
13 are:

14 Statement 1, "The twin-turbo conversion to the
15 'RaptorGTR' Mosler MT900S will not pass emissions
16 and is not certifiable for public sale."

17 Statement 2: "Mosler says the RaptorGTR is
18 not one of its products and refused to comment
19 further."

20 Number 3: "This is not from me. Mosler is
21 not involved with this. Warren Mosler."

22 To establish each of his claims for
23 defamation, James Todd Wagner must prove all of the
24 following:

25 Number 1, James Todd Wagner must prove by the

1 greater weight of the evidence that Warren Mosler
2 communicated the statement to a third party; and

3 Number 2, James Todd Wagner must prove by the
4 greater weight of the evidence that the statement
5 was false; and

6 Number 3, James Todd Wagner must prove by the
7 greater weight of the evidence that Warren Mosler
8 acted at least negligently concerning James Todd
9 Wagner; and

10 Number 4, James Todd Wagner must prove by the
11 greater weight of the evidence that, because of the
12 falsity of the statement, James Todd Wagner
13 suffered actual damage; and

14 Number 5, James Todd Wagner must prove by the
15 greater weight of the evidence the statement is
16 defamatory.

17 If the greater weight of the evidence does not
18 support the claim of James Todd Wagner on the
19 issues I have just mentioned, then your verdict
20 should be for Warren Mosler as to that claim.

21 "Greater weight of the evidence" means the more
22 persuasive and convincing force and effect of the
23 entire evidence in the case.

24 Negligence. Negligence is the failure to use
25 reasonable care, which is the care that a

1 reasonable -- reasonably careful person would use
2 under like circumstances. Negligence is doing
3 something that a reasonably careful person would
4 not do under like circumstances or failing to do
5 something that a reasonably careful person would do
6 under like circumstances.

7 Legal Cause. A statement is a legal cause of
8 damages if it directly produced, set up a natural
9 or continuous process that produced, or contributed
10 substantially to producing damages to the
11 Plaintiffs. It must be reasonable to say that, but
12 for that statement, the damage would not have
13 occurred.

14 Falsity. A statement is false only if it is
15 substantially and materially false, not just if it
16 is technically false.

17 A statement is not false if it is
18 substantially true.

19 A statement is substantially true if its
20 substance or gist conveys essentially the same
21 meaning that the truth would have conveyed.

22 A statement does not have to be perfectly
23 accurate if the "gist" or the "sting" of the
24 statement is true.

25 Defamatory. Words are defamatory when they

1 tend to subject one to hatred, distrust, ridicule,
2 contempt or disgrace, or tend to injure one in
3 one's business or profession.

4 To be actionable, a defamatory publication
5 must convey to a reasonable reader the impression
6 that it described actual facts about the plaintiff
7 or activities which she participated.

8 Opinion. In order to be regarded as
9 defamatory a statement must be one of fact, not
10 opinion.

11 Under Florida law, statements of pure opinion
12 are not actionable.

13 A statement is pure opinion, as a matter of
14 law, when it is based on facts which are otherwise
15 known or available to the reader or listener.

16 Commentary or opinion based on facts that are
17 set forth in the subject publication or which are
18 otherwise known or available to the reader or
19 listener are not defamatory.

20 Actual damages. "Actual damage" includes any
21 out-of-pocket economic loss, impairment of the
22 claimant's reputation, personal humiliation, mental
23 anguish and suffering, physical suffering, injury
24 to the plaintiffs' credit standing, loss of income,
25 and loss of reputation in the business community.

1 Truth and Good Motives. A statement that is
2 true and published with a good motive is immune
3 from defamation.

4 Burden of Proof on Defense Issues. If the
5 greater weight of the evidence supports one or both
6 of MACC or Warren Mosler's defenses, your verdict
7 should be for MACC or Warren Mosler and against
8 James Todd Wagner and SEI.

9 Count G - SEI's Claims for Trade Libel against
10 Mr. Warren Mosler. During your deliberations, you
11 will consider 3 separate and distinct statements.
12 Each statement will be considered separately on the
13 verdict form. Those 3 statements are:

14 Statement 1: "The twin-turbo conversion of
15 the 'RaptorGTR' Mosler MT900S will not pass
16 emissions and is not certifiable for public sale."

17 Statement 2: "Warren Mosler says the
18 RaptorGTR is not one of its products and refused to
19 comment further."

20 Statement 3: "This is not from me. Mosler is
21 not involved with this. Warren Mosler."

22 To establish each of its claims for trade
23 libel, SEI must prove all of the following by the
24 greater weight of the evidence (as to each
25 statement):

1 SEI must prove by the greater weight of the
2 evidence that Warren Mosler communicated the
3 statement to a third party; and

4 SEI must prove by the greater weight of the
5 evidence that the statement was false; and

6 SEI must prove by the greater weight of the
7 evidence that Warren Mosler knew or reasonably
8 should have known that the statement would result
9 in inducing others not to deal with SEI; and

10 Number 4, SEI must prove by the greater weight
11 of the evidence that the statement did play a
12 material and substantial part in inducing others
13 not to deal with SEI; and

14 Number 5, SEI must prove by the greater weight
15 of the evidence that the statement in question
16 caused actual damages to SEI.

17 If the greater weight of the evidence does not
18 support the claim of SEI on the issues I have just
19 mentioned, then your verdict should be for Warren
20 Mosler. "Greater weight of the evidence" means the
21 more persuasive and convincing force and effect of
22 the entire evidence in the case.

23 If the greater weight of the evidence supports
24 one or more of James Todd Wagner and SEI's claims,
25 then you shall consider the defenses raised by

1 Warren Mosler and MACC.

2 In response to James Todd Wagner's claim of
3 breach of contract against Warren Mosler, Warren
4 Mosler asserts that James Todd Wagner's claim is
5 barred by the affirmative defense of failure to
6 state a cause of action because the \$100,000 was a
7 nonrefundable \$100,000 deposit provided to Warren
8 Mosler pursuant to a signed, written agreement
9 between MACC and Santa Fe Digital Media,
10 Incorporated.

11 If the greater weight of the evidence shows
12 that the \$100,000 was a nonrefundable \$100,000
13 deposit provided to Warren Mosler pursuant to a
14 signed, written agreement between MACC and Santa Fe
15 Digital Media, then your verdict should be for
16 Warren Mosler.

17 If the greater weight of the evidence supports
18 one or more of James Todd Wagner and SEI's claims,
19 then you shall consider the defenses raised by
20 Warren Mosler and MACC.

21 In response to James Todd Wagner's claim for
22 breach of contract against Warren Mosler, Warren
23 Mosler asserts that James Todd Wagner's claim is
24 barred by the affirmative defense of a prior breach
25 because MACC's assets were not sold to another

1 before James Todd Wagner sought return of the
2 nonrefundable \$100,000 deposit.

3 If the greater weight of the evidence shows
4 that MACC's assets were not sold to another before
5 James Todd Wagner sought return of the
6 nonrefundable \$100,000 deposit, then your verdict
7 should be for Warren Mosler.

8 If the greater weight of the evidence of one
9 or more of James Todd Wagner and SEI's -- I'm
10 sorry. If the greater weight of the evidence
11 supports one or more of James Todd Wagner and SEI's
12 claims, then you shall consider the defenses raised
13 by Warren Mosler and MACC.

14 In response to James Todd Wagner's claim for
15 breach of contract against Warren Mosler, Warren
16 Mosler asserts James Todd Wagner's claim is barred
17 because there was no written agreement between
18 James Todd Wagner and Warren Mosler to sell MACC
19 and/or MACC's assets to James Todd Wagner for
20 \$1 million.

21 If the greater weight of the evidence shows
22 that there was no written agreement between James
23 Todd Wagner and Warren Mosler to sell MACC and/or
24 MACC's assets to James Todd Wagner for \$1 million,
25 then your verdict should be for Warren Mosler.

1 If the greater weight of the evidence supports
2 one or more of James Todd Wagner and SEI's claims,
3 then you shall consider the defenses raised by
4 Warren Mosler and MACC.

5 In response to James Todd Wagner's claim of
6 breach of contract against Warren Mosler, Warren
7 Mosler asserts that James Todd Wagner's claim is
8 barred by the affirmative defense of equitable
9 estoppel. To establish this defense, Warren Mosler
10 must prove all of the following:

11 Number 1, James Todd Wagner, SFDM, and Lew Lee
12 made representation and agreement that the \$100,000
13 was a nonrefundable deposit;

14 Number 2, Warren Mosler relied on James Todd
15 Wagner's, SFDM's, and Lew Lee's representations and
16 agreement that the \$100,000 was a nonrefundable
17 deposit. Warren Mosler relied on the
18 representation and agreement that the \$100,000 was
19 a nonrefundable deposit by, among other things,
20 giving SFDM, Lew Lee, and James Todd Wagner an
21 exclusive period until September 1, 2011 to close
22 its purchase; and

23 Number 3, Warren Mosler's reliance on James
24 Todd Wagner, SFDM's, and Lew Lee's representations
25 and agreement caused Warren Mosler to change his

1 position for the worse and Warren Mosler would be
2 prejudiced in having to return the \$100,000.

3 If the greater weight of the evidence shows
4 that James Todd Wagner is equitably estopped from
5 arguing that the \$100,000 was refundable, then your
6 verdict should be in favor of Warren Mosler. If
7 Warren Mosler does not prove its defense of
8 equitable estoppel, you shall consider Warren
9 Mosler's next defense.

10 If the greater weight of the evidence supports
11 one or more of James Todd Wagner and SEI's claims,
12 then you shall consider the defenses raised by
13 Warren Mosler and MACC.

14 In response to James Todd Wagner's claim of
15 breach of contract against Warren Mosler, Warren
16 Mosler asserts James Todd Wagner's claim is barred
17 by the affirmative defense of the doctrine of
18 agency and in that there was both actual agency and
19 apparent agency in that Lew Lee and SFDM were
20 acting for and/or with James Todd Wagner regarding
21 the \$100,000.

22 Warren Mosler alleges that James Todd Wagner,
23 Lew Lee, and SFDM agreed that the \$100,000 provided
24 to Warren Mosler, pursuant to the agreement between
25 MACC and SFDM, was a nonrefundable \$100,000

1 deposit.

2 Warren Mosler alleges that James Todd Wagner
3 represented, acknowledged, and accepted that SFDM
4 and Lew Lee were acting for him and/or with him to
5 purchase MACC assets, Lew Lee and SFDM accepted
6 that undertaking, and James Todd Wagner had control
7 over the actions of Lew Lee and SFDM. James Todd
8 Wagner's father loaned James Todd Wagner the
9 \$100,000.

10 Warren Mosler alleges that now that Lew Lee
11 and SFDM are unable to repay James Todd Wagner the
12 \$100,000 that was borrowed from James Todd Wagner,
13 James Todd Wagner has changed his position with
14 respect to the nonrefundable \$100,000 deposit by
15 seeking it from Warren Mosler.

16 Warren Mosler alleges that Warren Mosler
17 relied on the representations from James Todd
18 Wagner, Lew Lee, and SFDM that they were working
19 together to purchase MACC assets, and Warren Mosler
20 would be prejudiced if Wagner was allowed the
21 return of the nonrefundable \$100,000 deposit.

22 If the greater weight of the evidence shows
23 that Wagner, Lew Lee, and SFDM agreed that the
24 \$100,000 provided to Warren Mosler, pursuant to the
25 agreement between MACC and SFDM, was a

1 nonrefundable \$100,000 deposit, then your verdict
2 should be for Warren Mosler.

3 In response to James Todd Wagner's defamation
4 claims and SEI's trade libel claim, Warren Mosler
5 asserts the affirmative defense of superseding
6 cause.

7 Warren Mosler alleges that it cannot be shown
8 that any damage to James Todd Wagner or SEI was
9 proximately caused by any statement from Warren
10 Mosler and not one of the statements about James
11 Todd Wagner and/or SEI made by other persons or --
12 and/or entities.

13 Warren Mosler alleges any damages suffered by
14 James Todd Wagner and SEI were the results of third
15 parties' negative statements and/or republications
16 concerning and the music video released by James
17 Todd Wagner and SEI and not any statements
18 allegedly made by Warren Mosler about Plaintiffs.

19 If Warren Mosler proves that it cannot be
20 shown that any damage to James Todd Wagner or SEI
21 was proximately caused by any statement from Warren
22 Mosler and not one of the statements about James
23 Todd Wagner and/or SEI made by other persons and/or
24 entities, then your verdict should be in favor of
25 Warren Mosler.

1 Warren Mosler has raised the affirmative
2 defense of failure to mitigate. If Warren Mosler
3 breached an agreement to return the \$100,000
4 deposit to James Todd Wagner and the breach caused
5 James Todd Wagner damages, James Todd Wagner is not
6 entitled to recover for those damages which MACC
7 proves James Todd Wagner could have avoided with
8 reasonable efforts or expenditures. You should
9 consider the reasonableness of James Todd Wagner's
10 efforts in light of the circumstances facing it at
11 the time, including its ability to make the efforts
12 or expenditures without undue burden.

13 Any award of damages to James Todd Wagner
14 should not include damages which James Todd Wagner
15 could have avoided with reasonable efforts or
16 expenditures.

17 Warren Mosler and MACC assert the affirmative
18 defense of unclean hands.

19 To establish a defense of unclean hands, a
20 defendant must have relied on the plaintiffs'
21 misconduct.

22 In addition to acting in reliance on the
23 misconduct, the defendant must also prove a harm
24 that was caused by the misconduct.

25 Warren Mosler and MACC allege that the

1 Plaintiffs knew or should have known that the
2 nonrefundable \$100,000 deposit was not refundable
3 because the nonrefundable \$100,000 deposit was
4 nonrefundable pursuant to an agreement between MACC
5 and SFDM.

6 Warren Mosler sought a nonrefundable deposit
7 from any prospective buyer to fund MACC's continued
8 operations until the closing of the sale.

9 James Todd Wagner and MACC maliciously and
10 improperly prosecuted this lawsuit claiming the
11 nonrefundable \$100,000 deposit was refundable.

12 James Todd Wagner maliciously and improperly
13 brought this lawsuit, and sought to obtain a refund
14 for the nonrefundable \$100,000 deposit, only when
15 Lew Lee and SFDM could not repay James Todd Wagner
16 and Defendants properly sought to sell MACC's
17 assets to another.

18 Warren Mosler and MACC relied on James Todd
19 Wagner and SEI's representations that the \$100,000
20 nonrefundable deposit was provided pursuant to a
21 signed, written agreement between MACC and SFDM,
22 and that James Todd Wagner was working with Lew
23 Lee.

24 Warren Mosler and MACC asserts the affirmative
25 defenses of recoupment and setoff. Warren Mosler

1 and MACC claim that James Todd Wagner and SEI
2 intentionally and unjustifiably interfered with
3 Warren Mosler and MACC's contract and business
4 relations with Savvas Savopoulos which caused harm
5 to Warren Mosler and MACC.

6 To be liable for interfering with the
7 contractual relationship between Warren Mosler and
8 MACC and Savvas Savopoulos, James Wagner and SEI
9 must have acted intentionally to interfere with the
10 contractual relationship.

11 **A person who interferes with a contract**
12 **between two other persons if he or she induces or**
13 **otherwise causes one of them to breach or refuse to**
14 **perform the contract;**

15 **Number 2, Therefore, James Todd Wagner and SEI**
16 **must have known of the existence of the contractual**
17 **relationship, and they must have either intended to**
18 **induce or otherwise cause the breach of the**
19 **contractual relationship or acted knowingly that**
20 **their actions -- or acting knowing that their**
21 **actions were likely to cause that result;**

22 **Number 3, James Todd Wagner and SEI must have**
23 **also acted unjustifiably. Warren Mosler and MACC**
24 **must prove that James Todd Wagner and SEI acted**
25 **unjustifiably because James Todd Wagner and SEI**

1 committed a tort or committed other improper acts;

2 Number 4, a person who interferes with
3 another's contractual relationship using ordinary
4 business methods of competition does not interfere
5 improperly. But one who uses misrepresentations,
6 illegal conduct, or threats of illegal conduct has
7 no privilege to use those methods, and interference
8 using such methods is improper.

9 If the greater weight of the evidence does not
10 support Warren Mosler and MACC's claim, then your
11 verdict should be for James Todd Wagner and SEI.

12 However, if the greater weight of the evidence
13 supports Warren Mosler and MACC's claim, then your
14 verdict should be for Warren Mosler and MACC
15 against James Todd Wagner and SEI.

16 Legal cause generally. Interference with a
17 contract or business relationship is a cause of
18 loss or damage if it directly and in natural and
19 continuous sequence produces or contributes
20 substantially to producing such loss or damage so
21 that it can reasonably be said that, but for the
22 interference with a contract or business
23 relationship, the loss or damage would not have
24 occurred.

25 If you find for Warren Mosler and MACC, you

1 should award Warren Mosler and MACC an amount of
2 money that the greater weight of the evidence shows
3 will fairly and adequately compensate Warren Mosler
4 and MACC for such loss or damage as the greater
5 weight of the evidence shows was caused by James
6 Todd Wagner and SEI's interference with the
7 contractual relationship and business relation.

8 If you find for Warren Mosler and MACC, you
9 shall consider the amount of money which will put
10 Warren Mosler and MACC in as good a standing as
11 possible as it would have been if not for James
12 Todd Wagner and SEI's interference with the
13 contractual relationship and business relation and
14 which naturally results from the breach.

15 That is the law that you must follow in
16 deciding this case. The attorneys for the parties
17 will now present their final arguments. When they
18 are through, I will have a few final instructions
19 about your deliberations.

20 Plaintiff, whenever you're ready.

21 MR. ZAPPOLO: Thank you.

22 May it please the Court, Counsel, Ms. Clerk,
23 Deputy, and of course ladies and gentlemen of the
24 jury. Thank you on behalf of myself and James Todd
25 Wagner. Thank you for participating in the trial.

1 Thank you for all of the hard work that you've
2 done, the Court has done, the deputy and the clerk
3 and even counsel because this is a part of our
4 process. This is a part of America.

5 We don't go out and have, you know, fistfights
6 in the street. We don't go out and have gun
7 fights. We bring our grievances here to the court,
8 and we let a jury of our peers decide what justice
9 needs to be done.

10 It's not like T.V., is it? Not at all. I
11 have been told that many, many, many times, it's
12 not like T.V. And unfortunately you didn't get to
13 just take a snippet, like on T.V., and then go back
14 and make your decision. That would have made your
15 lives a lot easier. So we do appreciate that you
16 sat through all of the testimony and all of the
17 evidence. I'm sure both sides appreciate that.

18 This is not an easy task sometimes to figure
19 out 10, 12 years later what happened, sort through
20 it, apply the law, and render a verdict, but that's
21 your task. Sometimes it's difficult on some issues
22 and sometimes it's really easy.

23 Now, in my opening I told you that was my one
24 time -- one of my two times that I get to look each
25 of you in the eye and, you know, explain to you

1 back then what we expected we were going to prove,
2 but now I get to tell you what we did prove.

3 I get to explain "What does all this mean?"
4 I'm sure with the first -- well, not the first
5 witness, Mr. Wagner's father, who got on the stand
6 and said "I wired \$100,000." That was pretty
7 clear.

8 The evidence is pretty clear \$100,000 was
9 wired into Mr. Mosler's bank account. I would even
10 say that's like a fact beyond dispute, okay.
11 Nobody in their reasonable, right mind would
12 dispute that Mr. Wagner's father wired \$100,000 to
13 Mr. Mosler. I don't even think they're disputing
14 that. The dispute lies in why was it wired, on
15 whose behalf, et cetera. Well, we're going to talk
16 about that, but let's talk about evidence for a
17 moment.

18 As it was explained to you, evidence consists
19 of the testimony that you've seen on the stand and
20 heard on the stand and that came to you by live
21 witnesses, and it also came to you by testimony
22 that was read to you in the form of depositions.

23 Madam Clerk, can I have any exhibit for a
24 second? Thank you.

25 So we had live testimony and we had

1 deposition-read testimony, okay. And, you know,
2 some of the live testimony, if you forgot something
3 or you guys are fighting over it or whatever, you
4 can ask to have testimony read back to you. I
5 don't think that's necessary, but I want to make
6 sure that everyone knows you got tools at your
7 disposal. When you go back in the jury room,
8 you're going to have the verdict form -- a bunch of
9 jury instructions and you're going to have a single
10 jury verdict form, okay.

11 Now, when making the decision, reviewing the
12 evidence and everything, you're also going to have
13 stacks of documents. There's going to be one stack
14 for Plaintiffs' exhibits in evidence and one stack
15 for the Defendants' exhibits in evidence. And if
16 you look on the back of each of these, there's two
17 things: ID number and evidence number. That's
18 because we were presenting things to each other
19 throughout the trial -- or, excuse me, before the
20 trial and we marked them for identification
21 purposes, but here in trial we get them introduced.
22 Once the judge says it's okay for you guys to see
23 them, then the clerk marks in the back evidence,
24 and in this case this happens to be -- this is ID
25 number 9776 and in evidence 88, okay. And here's

1 one: ID 833, in evidence 57. These are just the
2 ones that the clerk happened to grab.

3 So I'm going to talk to you right now about
4 documents that are in evidence, by those numbers in
5 evidence. You guys may have been taking notes at
6 first by the ID numbers and things like that, so
7 I'm going to try and help you sort that out when
8 you go back in the jury room as efficiently as
9 possible.

10 I'm fairly confident that Mr. Weber is going
11 to do the same thing, but I don't know. I just
12 want to set that out for you, okay.

13 So now we're done with the presentation of the
14 evidence. You've heard the testimony, live and by
15 deposition, and you're going to get the documents
16 to review. Now it's your task to review all of the
17 evidence, go back there, and you finally get to
18 talk about the case. You finally get to talk to
19 each other. You finally get to look each other in
20 the eye and say "Hey, what do you think about this?
21 What do you think about that?" Okay.

22 And in that circumstance it kind of is like
23 T.V., okay? We've got all of these classic movies
24 about what goes on in the jury room because we
25 don't get to sit in. We don't get to say "Wait,

1 wait. You're saying that wrong. That's not what
2 he said" or anything like that. It's all up to
3 you. It's in your hands, okay. And I know, and we
4 all know, that you've been paying attention because
5 we watched you just like you watched us. We might
6 not look at you in the hallway because we're not
7 supposed to legally -- right? -- or we're not
8 supposed to try to persuade you or anything, so --
9 but, you know, the attorneys usually try to go a
10 little bit overboard, "Don't get accused of doing
11 something improper," but now I get to look you in
12 the eye, okay.

13 So your task is to review all the evidence,
14 discuss all the evidence, and then answer some
15 questions. Now, those questions, as the judge
16 mentioned in the jury instructions, come to you in
17 the form of a verdict form, okay. You get one
18 verdict form. So when you take it back there, it's
19 got some questions.

20 The judge didn't go over that with you, but
21 I'm going to because you're here and you know the
22 importance of the, quote/unquote, verdict. So it's
23 very important that you fill out this verdict form
24 properly, and I want to go over that with you
25 because that's your job. I want to make sure you

1 understand your task here, okay?

2 So, let's talk about the verdict form. The
3 verdict form that you get is going to go through
4 and track all of the law that the judge just read
5 to you, the counts.

6 Now during the case we may have said things
7 like "Count I, Count II," but now, when you go back
8 into the jury room, the jury instructions refer to
9 them as "Count A, Count B, Count C, Count D," and
10 the judge was reading to you about those. And so
11 the verdict form tracks that, okay?

12 The first thing that you're going to do is
13 talk about SEI, Supercar Engineering, Inc.'s unjust
14 enrichment claim against Mosler Auto Care Center
15 for the automotive work to obtain EPA approvals to
16 MACC between April 16, 2011 and September 28, 2011.
17 And it says "Please answer the following
18 questions."

19 So you guys discuss this, and the first
20 question is: "Did SEI establish by the greater
21 weight of the evidence" -- now I want to talk to
22 you about that. This is the first time it's come
23 up. The greater weight of the evidence, the judge
24 read you the instruction, okay. Greater weight of
25 the evidence is the jury's -- excuse me. Attorneys

1 always like to do this: I'm doing, like, the
2 balancing scale, right? You see Lady Justice. She
3 has the scales. Which way does the scale tip?

4 Some attorneys say "Oh, it's 50 percent plus
5 just a feather, just enough to tip it over."
6 That's all our burden is. This is not a criminal
7 case where we have to prove something beyond a
8 reasonable doubt. Nobody is going to jail over
9 this case or anything like that, so we have the
10 burden of proof by a preponderance of the evidence,
11 just a little more likely, okay, on one side. Just
12 enough to tip the scale.

13 Now, as to any defenses that the defense might
14 raise, they have the same burden. They have to tip
15 that scale in their direction on their defense.

16 So, "Did SEI establish by the greater weight
17 of the evidence that SEI conferred the benefit" --
18 "conferred the benefit." We talk about benefits
19 commonly used, "What are the benefits?" Something
20 that benefits them. That's good for one side,
21 okay, upon MACC.

22 We say you check that box. There's a line,
23 "Yes" or "No," and you check that, okay? As a
24 matter of fact I got a copy of the verdict form
25 here, okay. And this is what it looks like; I'm

1 showing it up on the screen.

2 "Did SEI establish by the greater weight of
3 the evidence that SEI conferred the benefit of
4 automotive work, engineering work, and/or work to
5 obtain EPA approvals to MACC between April 16, 2011
6 and September 28, 2011 (the 'Work')?"

7 "Yes." You check that box "Yes," okay.

8 Now, how do we know that we check that box
9 yes? Well, first of all, you got James Wagner's
10 testimony about it, okay? You don't have to take
11 James Wagner's testimony about it because even
12 Sylvia Klaker testified "Well, he didn't get paid
13 for his vacation time."

14 There's a document in evidence that's the
15 invoice. The invoice number is in evidence,
16 Exhibit Number 5. And there's several hundred
17 exhibits on each side, so if you want to write down
18 "Look at Exhibit Number 5, the second page," that's
19 that invoice that Ms. Klaker testified about and
20 some other people testified about.

21 And as you see on the invoice, he was getting
22 paid in March for four weeks, and he got \$6,388.04.
23 Look, in April, he only got paid for two weeks,
24 \$3,090.66. Nobody disputes that. That's a fact
25 beyond dispute.

1 And so the next question is: "Did he do that
2 work?" Well, after we look at Exhibit Number 5 --
3 which, by the way, remember Ms. Klaker testified
4 about vacation time? Vacation time had to be
5 reimbursed, 1,893.06. And I asked her "Was that
6 paid to him?" And she conceded "No, I guess it
7 really wasn't."

8 Mr. Wagner testified about that; he didn't get
9 it. It's kind of a fact beyond dispute. He didn't
10 get paid from April -- the first two weeks -- say
11 the 14th. The claim is for April 16th, so, you
12 know, a day. We're not going to mince hairs over a
13 day or whatever -- through September 28, 2011. So
14 that's the first document that's in evidence that
15 proves that issue.

16 The next thing that you should look at is
17 Exhibit Number 112 that's in evidence, Plaintiffs'
18 Exhibit 112. And that's the kind of famous "Good
19 job," okay. "Prepare a press release."

20 Mr. Wagner wrote, on August 12, 2011, "Please
21 find the official 2012 RaptorGTR certification
22 document attached," right?

23 That was the day, August 12, 2011, he obtained
24 the EPA approval. And do we know that they got a
25 benefit from it? Of course, because Warren Mosler

1 himself said "Good job. Jill prepare a press
2 release." They're going to let the world know that
3 MACC, Mosler Auto Care Center, had achieved this
4 EPA certification. That's a good thing for a
5 company to have. Warren Mosler can't sell cars
6 without it. MACC couldn't sell cars without it.
7 Well, they're not supposed to anyway. There's all
8 of these other side issues, but I'm trying to stay
9 focused on the verdict form and what your task is,
10 okay?

11 So Exhibit Number 112, "Good job. Prepare a
12 press release." Of course there was a benefit
13 conferred to MACC for that work.

14 The next thing I want you to look at is
15 Plaintiffs' Exhibit Number 62 in evidence. It
16 looks like this up on the screen (Indicating).
17 That's the United States Environmental Protection
18 Agency document, and it has the prior EPA
19 certifications that aren't sued upon, right? We
20 talked about the 2004 certification at some point
21 in the trial. It's not greatly important for you
22 filling out your verdict form, but if you go to the
23 last page of Exhibit Number 62, we see the
24 Environmental Protection Agency Certificate of
25 Conformity. It's issued to Consulier Industries

1 a/k/a, also known as, Mosler Automotive, the
2 defendant in this case, effective date of
3 August 12, 2011, expiration date of 12/31/2012. We
4 had a bunch of testimony about that, about whether
5 Warren Mosler was building illegal cars. Do you
6 remember that?

7 Okay. It's kind of an aside, but here, the
8 models covered the Mosler Automotive RaptorGTR.
9 This is the document that was shared from James
10 Todd Wagner to Jill and Warren Mosler on
11 August 12th, "Good job."

12 Now, incidentally, I'm surprised this didn't
13 come up, there was somebody else copied on that.
14 Jill, "Lew," meaning the, quote/unquote, air quotes
15 person, Lew Lee, right? The facts in this case are
16 crystal clear. Lew Lee was a potential investor.
17 Mr. Wagner was telling Lew Lee "Hey, good things
18 are happening here. This is a good, sound
19 investment."

20 So, and we talked about whether or not that
21 MACC had been building cars properly or illegally
22 beforehand. And you can see right in this
23 Certificate of Conformity, it covers only vehicles
24 which are completely manufactured prior to
25 January 1, 2013. So the Certificate of Conformity,

1 okay, does not cover vehicles offered for sale,
2 introduced, or delivered for introduction into
3 commerce prior to the effective date of this
4 certificate.

5 Well, here, so we know that Mosler Automotive
6 can sell cars between August 12, 2011 and
7 December 31, 2012 -- that's the 2012 model year
8 RaptorGTR, okay -- so long as they complied with
9 these Clean Air Act requirements, et cetera.

10 What do we know happened? MACC didn't produce
11 other cars during that time period, alls it had was
12 the 2012 RaptorGTR. But Mr. Mosler talks about
13 offering the Photon for sale. You saw him on the
14 stand admitting race motor, different cam. He said
15 he didn't remember it yesterday, but if you go back
16 to the first time he testified, I think your memory
17 will serve you, that it's pretty clear that he was
18 making that Photon a hot, souped-up car, and that's
19 entirely consistent with his personality, wanting
20 to win, realizing that other people -- thinking
21 other people racing were cheating and so he was
22 going to do something.

23 Remember all that testimony when he first took
24 the stand, how he was building weapons? How he
25 liked to win? How he was aggressive? How he

1 learned that other people were cheating, so he went
2 back and had to make changes? That's the type of
3 personality that we're dealing with here. That was
4 displayed on the stand in front of you. This is a
5 man who wants to win.

6 Apparently he's been pretty successful at it
7 because, as the testimony has shown, he's been able
8 to put \$50 million, give or take, investment into
9 what amounts to, essentially, him as a hobby.
10 There's testimony about him giving away cars and
11 other things, okay. But when he's on the
12 racetrack, he wants to win. When he was in those
13 shootout events for "Car and Driver," the Lightning
14 Lap and all that kind of stuff, he wanted to win,
15 no doubt about it.

16 Long tube headers weren't a part of the EPA
17 certification process. Catalysts weren't a part of
18 the certification process. Lighter flywheel, James
19 Todd Wagner testified about it is my recollection.
20 Mr. Mosler, look at when his memory got foggy on
21 certain things, but ultimately at the end he ended
22 up admitting "Yeah, these things weren't really up
23 to snuff legally, these cars that I was selling."
24 Maybe he didn't realize it at the time or what have
25 you. It doesn't really matter for purposes of this

1 because we're talking about "Did SEI provide this
2 service?" So your job on that is to check "Yes,"
3 okay.

4 The next question: "Did SEI establish by the
5 greater weight of the evidence that MACC knowingly
6 and voluntarily accepted and retained the Work
7 bestowed?" Yes. Yes. That "Good job" email.
8 MACC didn't say "Oh, wait, what are you doing? We
9 don't want that certification." They said "Good
10 job," and they did press releases about it. They
11 tried to sell more cars.

12 In evidence, and we're going to get to it in a
13 few minutes, some other things that certification
14 was good for for MACC.

15 Next question: "Did SEI establish by the
16 greater weight of the evidence that MACC's
17 retention of the benefit is inequitable?" Now,
18 ladies and gentlemen, "inequitable," that's just a
19 fancy way of saying "fair," okay. It's unfair that
20 they keep the benefit and don't -- all the work
21 that Mr. Wagner did and don't pay for it, okay?
22 That's what that's about.

23 So did we establish by the greater weight of
24 the evidence that MACC's retention of the benefit
25 is inequitable or unfair? Yes. We're here to do

1 justice in this courtroom, ladies and gentlemen,
2 yes. You apply the law, you apply your common
3 sense of the facts, and you check that box "Yes."

4 Now, the next question: "Does the greater
5 weight of the evidence establish the following
6 defenses by MACC to SEI's unjust enrichment claim?
7 SEI was paid for the work;" you check "No."
8 There's no evidence that he was paid for the work.

9 Mr. Mosler's only -- the only testimony in
10 this -- in that regard from them, for their
11 defense, is Mr. Mosler is saying "Well, I always
12 pay my bills." Where's the canceled check?
13 Where's the email, "James, here, here's the money
14 that we owe you"?

15 James Todd Wagner talked about that we've got
16 a cut-off date of August 12th there, 2011, for the
17 EPA approvals, but the unrefuted testimony here,
18 beyond dispute, was James Todd Wagner said, "I had
19 to keep working on this stuff because we had the
20 longevity tests that are still required for the EPA
21 approvals," okay. And he said it took him until
22 September 28th. He's not asking for years and
23 years; he's asking for a very specific time frame.
24 He delineated where it was very clearly. That's
25 not even disputed by them.

1 So, no, he wasn't paid -- that's James
2 Wagner -- and Sylvia Klaker admits at least for the
3 vacation time. And James Todd Wagner says, "Hey,
4 my vacation time was unpaid. I was earning that as
5 part of my work." He didn't get paid for that.

6 That express agreement governs the Work? No.
7 No express agreement governs that work, okay?
8 There's no express agreement. Like, where's the
9 contract? Where's the beef?

10 Now, interestingly, you guys might remember,
11 they tried to introduce a contract, and maybe
12 Mr. Weber is going to bring it up in his closing.
13 Look at that contract. It's back from 2004. And
14 remember, I said flip to the last page to
15 Appendix A. The contract expired within like a
16 year of when it was entered into. By its own
17 terms, the contract that they're trying to
18 introduce into this case, it expired on its own
19 terms. So, no, there's no contract. There's no
20 express agreement governing that work.

21 4C, "SEI was paid under the Consultant
22 Agreement" -- I'm sorry, that's the Consultant
23 Agreement that I expect they're going to present to
24 you, okay. Now, so you say "No" to each of those.

25 The next question is: "Did SEI establish,

1 with reasonable certainty, the value of the Work
2 SEI conferred?" Yes. Is there a reasonable
3 certainty? Yeah. We got documents in evidence of
4 how much he was getting paid, et cetera, et cetera.

5 Now here's an interesting thing, ladies and
6 gentlemen: If you're thinking about that, what's
7 the reasonable -- what is the reasonable certainty,
8 the value of the Work conferred? There's a
9 document in evidence, 109. And you saw James
10 Wagner on the stand, and he was testifying about
11 how much he should have been paid just straight,
12 you know, for his salary -- not hourly, salary,
13 because I anticipate they're going to come back and
14 say "Oh, he worked" -- you know, "He didn't show
15 how many hours he worked" or something. He doesn't
16 have to do that. It's reasonably certain he was
17 being paid a salary during that time period anyway.
18 Well, SEI was and conveyed it to him.

19 But Exhibit Number 109 in evidence, what's the
20 value of those EPA approvals? You don't have to
21 listen to Mr. Warren Mosler because he said, "Oh, I
22 wouldn't know."

23 Remember, I asked him yesterday: "Ford finds
24 serious value in those EPA certifications, doesn't
25 it?"

1 "Oh, I wouldn't know."

2 Well, common sense, ladies and gentlemen,
3 those certifications are worth a lot of money,
4 okay. Look at Exhibit 109 in evidence, please.
5 That's not from James Todd Wagner, that's not from
6 Mr. Mosler, that is from Ian Grunes, the guy that
7 ultimately was put together with the company that
8 bought the assets of MACC.

9 And what did that person, who was going to
10 invest his own money or have other people -- have
11 investors himself, which is exactly how that went
12 down if you read Exhibit Number 109 in evidence --
13 this is Mr. Grunes talking to his investors: "We
14 were buying the ability to produce a car that costs
15 in excess of \$10 million to develop."

16 Okay. So there's testimony 50 million,
17 10 million, what have you, into MACC by Mr. Mosler.
18 But intangible assets, when talking to his
19 investors, Ian Grunes said "Certifications were
20 \$5 million."

21 Now, when James Todd Wagner was on the stand,
22 he said, "Well, this is what I was getting paid or
23 whatever for the value of that stuff. I guess you
24 can pay me what they're worth." What are they
25 worth? Nobody came up and said, "They're not worth

1 \$5 million." You can go as far as \$5 million.

2 So, here's what I want you to do: Consider
3 everything, the totality, the whole circumstances,
4 the entire circumstances of the case, okay?

5 Now, because then we go to number 5 [sic].

6 "What is the value of the Work that should in
7 fairness be paid to SEI, if not already paid?"

8 Well, we know that it hasn't already been
9 paid, and I want you to consider the following,
10 ladies and gentlemen: First of all, we've got
11 Exhibit 109. That says basically our upper limit
12 of \$5 million, okay? But then look back at that
13 invoice, the second part of Exhibit 5, okay? And
14 look at this, we have -- vacation time we already
15 discussed. Sylvia Klaker already admitted it;
16 James Todd Wagner said it was a part of his work.

17 Vacation time is \$1,893.06. He was paid until
18 the second week of April 2011. His pay rate was
19 \$3,090.66 for two weeks; so 3,090.66 divided by two
20 gives us a pay rate of 1,545.33 per week.

21 30 days in September, April, June, and
22 November; May, July, August, October, and December
23 have 31; February has 28, and you can calculate the
24 number of weeks. It's 23 and a half weeks between
25 April 16th and September 28th, give or take a day.

1 A reasonable certainty, we're not here to mince
2 hairs, okay? We come up with \$35,542.89 plus the
3 vacation pay of \$1,893.06 which gives us
4 \$37,435.65. So what is it reasonably? Between
5 \$5 million and \$37,435.65, and that's your task.
6 Your task is to fill in that line "What is the
7 amount?" Okay.

8 We put the determination into your hands when
9 this is done. Thank you for making that
10 determination given the totality of all of the
11 evidence in the case.

12 Now, keep moving along, and I'm actually going
13 to pick up a little bit of speed. I want you to
14 note something on the verdict form. It's very --
15 it looks very complex and very daunting, but it's
16 actually very simple. When they ask -- and it says
17 over and over -- did the greater weight of the
18 evidence show or whatever? Okay. Does the greater
19 weight of the evidence establish -- I'm sorry, "Did
20 SEI establish by the greater weight of the
21 evidence," the answer is "Yes."

22 When you're considering their defenses,
23 they've got a question in like A, B, C. Alls you
24 have to do is check "No" if you want to rule in
25 favor of James Todd Wagner, and then you do your

1 calculations, et cetera, and fill in the answer on
2 the line.

3 So we have a claim -- so that's for the
4 initial claim of -- excuse me, that's the initial
5 claim of unjust enrichment.

6 The second claim for you to consider is called
7 quantum meruit, and that is pretty much the same
8 except it's a little bit different legally. Did
9 SEI provide a benefit? And then the question for
10 you at question -- interrogatory question number 8
11 on the verdict form is "Did" -- here it is. I'll
12 go ahead and show you how it's different. This one
13 says "Did SEI establish by the greater weight of
14 the evidence that under ordinary circumstances a
15 reasonable person would expect to pay for the
16 benefit of the Work?"

17 Well, that's easy. Yeah, under normal
18 circumstances, if somebody does work for your
19 company, a normal person expects to pay for it.
20 Maybe not Mr. Mosler, but a normal person does. A
21 normal person expects to pay, and does pay.

22 So that's the basic gist of Count II. And so
23 you go through Count II. You look at the
24 questions: "Did SEI establish by the greater
25 weight of the evidence?" Yes, yes, yes.

1 And when you come to question -- or paragraph
2 10, which has the A, B, C, "No." Did they
3 establish that SEI was paid for the work? No.

4 Did they establish an express agreement
5 governs the Work? No.

6 Was SEI paid under the Consultant Agreement?
7 No.

8 Then we go back: "Did SEI establish, with
9 reasonable certainty, that MACC caused it to suffer
10 damages?" Yeah, if you don't get paid -- common
11 sense, ladies and gentlemen, "I didn't get paid."
12 Everybody goes "Oh, that's too bad." You suffered
13 damages.

14 "What is the amount of money that under the
15 ordinary circumstances a reasonable person would
16 reasonably expect to pay for the Work?"

17 Well, if Ford is made up of reasonable people,
18 they pay millions of dollars for their EPA
19 certification work. If you're Ian Grunes, you
20 would pay up to \$5 million for that. He got a
21 deal. His email, that email in evidence, Ian
22 Grunes was getting a steal for this company and he
23 was happy to do it.

24 And then "Count C - SEI's claim for Breach of
25 Contract against MACC." Now, this is interesting.

1 This is where I actually -- you know, on a certain
2 level it's put in there because there's evidence
3 and talk about it. And James Todd Wagner, at one
4 point, said "Well, there were emails about me
5 getting paid." And we're not going to stand here
6 and be hypocritical and say "Emails aren't a
7 contract" because later on we talked to you about
8 emails being a contract.

9 So James Todd Wagner took the stand; he
10 testified truthfully. If he was trying to connive
11 something up and deprive them of a defense, okay,
12 he would have said "Oh, no." He testified
13 truthfully. There's emails, okay?

14 So, ladies and gentlemen, what you can do is
15 you can say "Well, all right. Those emails that
16 James Todd Wagner testified about" -- even though
17 there's no particulars. We don't have a copy of
18 the email to show you or anything like that. We
19 don't know what the terms are. Now look back to
20 contract formation in the jury instructions. You
21 have to have a meeting of the minds.

22 James Todd Wagner said meeting of the minds.
23 It's so funny because I think it's in -- something
24 like that or substantially similar to that is in
25 the jury instructions, okay, but that wasn't

1 proven. But if you want to go that far and say
2 "Well, this email that we don't know or whatever,"
3 you can find for James Todd Wagner in Count C for
4 breach of contract for failure to pay, okay.
5 That's up to you. The law is not perfect. We
6 don't get these perfect scenarios. I wish we had a
7 perfect scenario to share with you. This is called
8 life, okay? And this, in this courtroom, is where
9 life meets the law, meets common sense, meets
10 people to look at things and do justice, and that's
11 what our task is. But our task is to tell you what
12 the facts are, and the facts are that James said
13 "Well, there's some emails." We don't have them to
14 show you; we wish we did. They didn't have them to
15 show you; we wish they did. So we fall back on
16 these other things: Unjust enrichment, quantum
17 meruit, that the law provides when you don't have
18 that contract to look at, okay?

19 So then we look at Count D - Breach of
20 Contract against Warren Mosler as to the \$100,000
21 deposit.

22 Now, let's look at that. That, ladies and
23 gentlemen, is kind of where we shift gears. First
24 we were talking about EPA approvals for those
25 things, now we talk about the \$100,000 deposit

1 you've heard so much about. I'm going to pick up
2 some speed here because I only have a limited
3 amount of time, so I apologize. If I'm speaking
4 too fast, kind of wave your hands, and I'll try and
5 slow down, but I need to focus on certain things.

6 But with respect to that, did James Todd
7 Wagner -- the jury -- I'm sorry, the verdict form:
8 "Did James Todd Wagner prove by the greater weight
9 of the evidence that James Todd Wagner and Warren
10 Mosler entered into a contract whereby Warren
11 Mosler agreed to return the \$100,000 deposit if
12 MACC's assets were sold to another?" That, ladies
13 and gentlemen, is Exhibit Number 57. It's in
14 evidence. You may recall this, this is the email
15 exchange on May 2, 2011 between James Todd Wagner
16 and Warren Mosler.

17 Remember this, ladies and gentlemen, because
18 it's one of the things -- you know, you talk about
19 offer, acceptance, and everything -- Warren Mosler,
20 on page 2 of that exhibit, he said, "The deposit
21 can be refundable if someone else buys the
22 company." That's from Warren Mosler, okay, on
23 May 2nd.

24 Later on -- and, by the way, if you read this
25 thing through, James Wagner was getting on a plane,

1 okay. Warren Mosler says "Hey, the deposit can be
2 refundable if someone else buys the company."

3 Now, Warren Mosler took the stand and he was
4 saying, "Oh, I was always trying to help Todd." He
5 was kind of -- at that point he was going to
6 suggest that he's like this altruistic father or
7 grandfather figure or something, okay? Let's
8 imagine that he was being truthful and honest with
9 that, at least in that time period. Great, that's
10 what would happen, okay? Someone who's looking out
11 for, you know, a younger guy or whatever, "Sure, it
12 can be refundable if someone else buys the
13 company."

14 Remember James Todd Wagner said, "Look, I
15 was -- I always lost -- I lost the benefit of this
16 thing." We're going to get into that a little bit
17 later, but here's the email that we say --
18 remember, the jury instruction is "contracts can be
19 oral, contracts can be written, or contracts can be
20 both." What does the evidence in this case show?

21 James Todd Wagner talked about talking to
22 Warren Mosler, and we got an email that backs it
23 up. Do we have a meeting of the minds? Do we have
24 an offer, acceptance, things like that? Yes. It's
25 right here in Exhibit Number 57, right? James

1 wrote, "So I understand you fully, let's have a
2 complete understanding. \$100,000 gives is 3 months
3 of exclusivity (as opposed to 4 months) and becomes
4 refundable upon the following circumstances: A,
5 MSI does not close within the 3 months;" he said
6 "No, that wasn't the agreement." But "B, another
7 party purchases the MACC assets after the 3-month
8 period"; answer by Warren Mosler, "Yes." Okay.
9 Unequivocal, that was the agreement.

10 Now, what do we know about what happened after
11 that? We know from Mr. -- or pretty much everyone
12 in this case, they got the \$100,000 wire. That's
13 Exhibit Number 1 in evidence. You remember
14 Mr. Wagner's -- James Todd Wagner's father, there
15 it is, \$100,000 wired into Warren Mosler at
16 Enterprise Bank.

17 Mr. Mosler used to own the bank. We know
18 that's his account. He testified about it; I asked
19 him about it. And this is the important thing:
20 Mr. Mosler took that money. He didn't put it into
21 MACC's account. Remember his testimony? I hope
22 you do. There was big talk about that. Airplanes,
23 remember? He put it into the company that had
24 airplanes in it.

25 James Todd Wagner kind of conflated it a

1 little bit and said, "Oh, he put it into his plane"
2 or something like that. There was some big hoopla
3 about it, but there's no question: Mr. Mosler took
4 the money and put it into his company account where
5 he held airplanes. And I only say this because I
6 anticipate they're going to get up and say "Oh,
7 that money was used because Todd asked for it to be
8 used to pay employees" or something like that,
9 okay? But remember what he said: "I put it into
10 my airplane account," okay?

11 Now, what do we know then? Upon the sale to
12 another, the money should be paid, okay? We have
13 Exhibit Number 93 in evidence, the sale document
14 that LP -- excuse me, RP High Performance,
15 Mr. Grunes, cross-reference the email, was asking
16 for a \$5 million valuation and we have the -- this,
17 you know -- the \$50,000 -- excuse me,
18 \$500,000 purchase price. It's a fact beyond
19 dispute, RP High Performance purchased the assets
20 of MACC.

21 So they come up with a defense and they say
22 "Oh, he -- he breached it because he asked for the
23 money before we sold the assets to MACC." Ladies
24 and gentlemen, let's use our common sense. There
25 are emails in evidence where Warren Mosler said

1 "Oh, that deposit was from Lew Lee." That deposit
2 blah, blah, blah, blah, right? "That's not your
3 deposit." Of course common sense says a normal
4 person would say "I want my money back. There's
5 some kind of misunderstanding here. That isn't Lew
6 Lee's money." Lew Lee, right? "I want my money
7 back." Common sense says "Yeah, you asked for your
8 money back."

9 Let's try this, ladies and gentlemen: If
10 someone says "I will paint your house," and you say
11 "Well, I want you to give me \$5,000. I'm going to
12 hold it until you've painted the house just in case
13 you cause damage to my driveway. You spill paint
14 or something like that, I'm going to hold that
15 deposit," okay. And the guy paints your house and
16 he says, "I'll pay it back if some other thing --
17 if I sell my house" or something like that.

18 And the guy paints the house and he doesn't
19 spill the paint. He doesn't do any damage to your
20 house. And he comes to you and he says, "Hey, can
21 I have my \$5,000 back?" Has he breached some kind
22 of agreement? No. He's just asking "Can I have my
23 money back?"

24 That's what was going on here. There's no
25 breach by just asking for your money back,

1 especially under those circumstances. A normal
2 person would ask for their money back. There's a
3 bunch of emails where James Todd Wagner is saying
4 "I want my money back. Give me my \$100,000. That
5 was my \$100,000."

6 There's emails in evidence where, when
7 Mr. Mosler says "it's Lew Lee," James Todd Wagner
8 emails Lew Lee and says "Give me the documents.
9 Show me what he's talking about." Because the
10 testimony, unrefuted, was that James Todd Wagner
11 had asked Mr. Mosler "What are you talking about?
12 Give me the documents," but they wouldn't give them
13 to him. Why? Because in evidence, that letter of
14 intent was confidential between the parties. Who
15 are the parties to that? Santa Fe Digital Media
16 and MACC.

17 Where was Mosler Supercars, Inc., James
18 Wagner's company in all that? Do you remember how
19 the -- and it's really funny, I can't find the
20 dry-erase board. I was looking for it. I kept it
21 over there. Remember I had the dry-erase board up
22 here and I said, "Here's June 29, 2011. Where's
23 all this stuff before that?" Nope.

24 They say, "Oh, this June 7th letter of intent
25 that I got introduced into evidence yesterday is

1 four days after James Todd Wagner introduces
2 Mr. Mosler to his contact," but says "I've got this
3 protection. I've got this contract that says you
4 can't circumvent me," right? Just four days after
5 that, there's something from Santa Fe Digital Media
6 to them. It's clear Santa Fe Digital Media was
7 trying to circumvent them, was trying to circumvent
8 Mr. Wagner, but did Mr. Mosler speak up? No. He
9 dealt with them behind the scenes.

10 And then if you look, only like a month
11 afterwards or something, when James is going
12 "What's going on here? What's going on here?" --
13 he took the stand and looked everyone in the eye
14 and said, "I was just baffled. I was confused. I
15 didn't know what was going on. I wanted
16 information."

17 Where's the emails during that time period?
18 No. Like a month later or something we get "Oh,
19 that was Lew Lee's deposit." He's dumb-founded,
20 "Whoa, this is crazy. Give me my money back. This
21 is nuts," okay?

22 So that's what we have going on with that. So
23 did James Todd Wagner prove that Warren Mosler and
24 he entered into the contract where Mosler agreed
25 that the money would be paid back? Yes. And, by

1 the way, there's something in the jury instructions
2 about doesn't somebody have a duty to speak up or
3 something. Wouldn't Mr. Mosler have a duty to
4 speak up a little bit sooner?

5 Okay. He had that \$100,000, took that money,
6 didn't use it for the company, put it into his own
7 bank.

8 All right. Did we prove by the greater weight
9 of the evidence that all conditions required by the
10 contract for Warren Mosler's performance had
11 occurred? Yes. He gave him the \$100,000. That's
12 what James Todd Wagner had to do, give him the
13 \$100,000.

14 Warren Mosler -- according to that email and
15 that agreement, it was if he sold it to someone
16 else, he'd give James Todd Wagner his \$100,000
17 back. That happened, why didn't Mr. Mosler give
18 back the hundred grand? Okay.

19 So, "Did James Todd Wagner prove by the
20 greater weight of the evidence that Warren Mosler
21 was required to return the \$100,000 deposit?" Yes.

22 Question 22: "Did James Todd Wagner
23 establish, with reasonable certainty, the amount of
24 damages" -- \$100,000, that's not hard. That's not
25 rocket science; common sense.

1 "Does the greater weight of the evidence
2 establish the following defenses by Warren Mosler:
3 The \$100,000 was a nonrefundable deposit?" No, it
4 does not. All this smoke and mirrors with "Oh, Lew
5 Lee was working with him."

6 The evidence is pretty clear in this case, Lew
7 Lee was an investor. There's an email, remember?
8 When he introduced them to Mr. Mosler, he told
9 Mr. Mosler, "This is a potential future partner."
10 "Potential future," doubly qualified. Double
11 suspenders, okay?

12 Now, in fairness, are there -- did Mr. Lew Lee
13 put James Todd Wagner on the board of Santa Fe
14 Digital Media? Yeah.

15 James Todd Wagner said, "Yeah, it's on my
16 email. I understand that. Yeah, I got duped by
17 the con man."

18 Mr. Mosler referred to Lew Lee as a snake oil
19 salesman himself. Common sense, everybody in the
20 room knows that Lew Lee, Santa Fe Digital Media --
21 and I'm sorry that Mr. Wagner had to say it over
22 and over and over again in front of you, but when
23 you're questioned about something that assumes
24 something that's not true, especially when an
25 opposing attorney does it, common sense is, natural

1 **inclination is to get a little feisty and give a**
2 **little pushback, okay?**

3 THE CLERK: Five-minute warning, Counsel.

4 MR. ZAPPOLO: Thank you.

5 All right. I'm going to go past that, I'm
6 sure, so let's go through those defenses.

7 \$100,000 was nonrefundable? No.

8 MACC's assets -- he asked for the return
9 before that. Now that's not a -- that's not a
10 defense. It's not even appropriate under these
11 circumstances.

12 Did James Todd Wagner not perform under the
13 contract? He gave him the \$100,000 like he was
14 supposed to. There was no contract for James Todd
15 Wagner to purchase MACC. These are independent
16 things. You remember James Todd Wagner saying
17 "Here's -- by agreement, here's the \$100,000, and
18 I'm still trying to negotiate this, the purchase
19 price" and all that kind of stuff?

20 And why wasn't this just all locked down?
21 Because, unrefuted, Mr. Mosler kept moving the bar.
22 He kept on selling off assets for the company. And
23 maybe that makes sense because Mr. Mosler was
24 trying to just, you know, get some money out of
25 this and sell off the assets. I mean, that makes

1 sense. I'm not even beating the guy up over
2 disclosing about that, but the truth is he was
3 selling off the assets and so it's reasonable for
4 the price to change and you don't get to nail down
5 the contract, the specific contract terms. But, in
6 the meantime, while they were negotiating, he had
7 that email. And what do we know? You remember
8 yesterday, maybe it was the day before, Mr. Mosler
9 was on the stand and I showed him and he said,
10 "Well, we had this email from Lew Lee and we're
11 going to send the letter of intent tomorrow."

12 And I asked Mr. Mosler, "Well, why do we have
13 this?" Or someone asked Mr. Mosler; it might have
14 been his own attorney. He said, "Well, we had to
15 have the terms nailed down. We had to know what
16 the agreement was," words to that effect.

17 Well, so in that circumstance Mr. Mosler
18 accepted an email exchange as the agreement, but
19 when James Todd Wagner is dealing with him
20 directly, that's not an agreement. So just think
21 about that.

22 James Todd Wagner and Mr. Mosler are
23 exchanging emails back and forth. "Yes, no," and
24 everything you saw, that's not an agreement. But
25 when Mr. Mosler emails Lew Lee and omits James Todd

1 Wagner, that's a binding agreement upon James Todd
2 Wagner?

3 Their only evidence in this case, the only
4 person that can ever say anything about it is James
5 Todd Wagner. He said, "Absolutely not. I did not
6 know about this stuff. They were going behind my
7 back. It was a violation of my non-circumvention
8 agreement," right? And that's in evidence.

9 Okay. So did James Todd Wagner prove he
10 suffered damages by Warren Mosler? Of course he
11 did, okay?

12 How do we know that? His father testified.
13 He testified. He paid that \$100,000 that he
14 borrowed from his dad, and he paid that back.
15 Mr. Wagner's honoring his agreements; Mr. Mosler
16 isn't. So, how much damage? \$100,000.

17 Unjust enrichment is the same thought process
18 that we went through with the other unjust
19 enrichment, okay, claims and et cetera. I pretty
20 much covered that. I'm going to jump forward to
21 defamation.

22 Defamation Statement, okay. Item 40, okay. F
23 and G, defamation, these things come together.
24 Paragraph -- excuse me, Exhibit Number 40 in
25 evidence, okay, is the first statement that's

1 complained of.

2 Matt Farah says, "I spoke with Warren Mosler
3 today who confirmed the twin-turbo conversion to
4 the, quote/unquote, RaptorGTR Mosler MT900S will
5 not pass emissions, is not certifiable for public
6 sale." Oops, sorry about that, I was blocking the
7 screen. But it's on there, okay? Exhibit 40,
8 that's the one. Matt Farah, November 17th, that's
9 the statement we're claiming.

10 Now, ladies and gentlemen, the statement is
11 Warren Mosler's statement to Matt Farah; it's not
12 this whole article. We're not suing Mr. Mosler for
13 the contents of this article, be crystal clear on
14 that. We're suing Mr. Mosler for what he said to
15 Matt Farah. That's the statement. And the
16 statement was, as I just read to you, what
17 Mr. Farah conveyed.

18 And you remember Mr. Farah's testimony? I'll
19 put it in -- there was a couple. Matt Farah,
20 Clifford Atiyeh, okay? "I wouldn't put it in there
21 if it wasn't true" and things like that.

22 Mr. Mosler's testimony about these statements:
23 "I cannot deny or confirm." Common sense, ladies
24 and gentlemen. Someone says, "No, I didn't say
25 that." He doesn't even say "I didn't say that."

1 He says, "Well, I might have said something
2 similar," whatever. Look at what the truth is in
3 the jury instructions. What did the gist of what
4 Mr. Mosler convey to Matt Farah mean?

5 The gist of his comment, no matter what
6 someone wants you to conclude it was, I believe it
7 is exactly as Mr. Farah put in his article and
8 quoted, and the evidence reflects that, but the
9 gist is that that's not a Mosler product.

10 Okay. Now, here's the interesting thing about
11 that: There's --

12 THE CLERK: Time.

13 MR. ZAPPOLO: -- a suit for defamation.

14 How much time, ma'am?

15 THE CLERK: Time.

16 MR. ZAPPOLO: Time for coming up to?

17 THE CLERK: It's 45 minutes.

18 MR. ZAPPOLO: It's 45 minutes now?

19 THE CLERK: Yes.

20 MR. ZAPPOLO: All right. I'm going to
21 continue because I've got to. Very quickly, okay,
22 for about another five minutes and then I'm going
23 to sit down and come back later, but I want to
24 cover these things.

25 Okay. "The RaptorGTR Mosler MT900S" -- of

1 course James Wagner didn't call it the MT900S, he
2 called it the RaptorGTR -- "will not pass
3 emissions." What do we know? We know Mr. Wagner
4 is trying to sell that car. He's in the auto
5 business. He's a car guy. Talk about injuring
6 someone's reputation. Look at the defamation
7 instruction. It says if it's a statement that
8 would tend to injure someone in their business or
9 reputation. That's what he was, a car guy. When
10 you say a car guy is selling a car that won't pass
11 emissions, that's accusing them of doing something
12 illegal.

13 Now, here's the interesting thing, privately
14 Mr. Wagner had been -- had told us that he had been
15 telling Mr. Mosler that the cars Mr. Mosler was
16 selling were illegal. And that was true, no doubt
17 about it. Mr. Mosler admitted it even, okay? But
18 the one car that was actually built to spec as
19 governed by the EPA was the 2012 RaptorGTR,
20 Mr. Mosler -- Mr. Wagner's car. And Mr. Mosler
21 goes out and trashes it? By trashing that car, he
22 was trashing James Todd Wagner's reputation, his
23 name and good will in the community, make no doubt
24 about that.

25 And how do we know that? James Todd Wagner

1 used to go by "Todd." Now I had to say to you
2 "James Todd Wagner, James Todd Wagner." Ladies and
3 gentlemen, for 33 years of his life this man was
4 "Todd." He earned a master's -- a master's in
5 business administration as "Todd." He became an
6 engineer as "Todd." He came up with this
7 twin-turbo concept back here, very novel, very
8 creative, as "Todd." And then after these articles
9 and Mr. Mosler had unceremoniously fired him --

10 Remember the email, first thing working with
11 his buddy, Savvas Savopoulos? "Fire Todd," okay?
12 Unceremoniously fired after all the work he did, et
13 cetera. Okay. Now he had to change -- he was out
14 of work for a year. He changed his name and within
15 two weeks -- he changed his name and took Mosler
16 Automotive off his resume, and within two weeks he
17 gets a job. So that's the first statement.

18 The second statement -- so, same logic -- did
19 he prove it? Yes. Did he prove it? Yes. Okay.
20 The defenses, same logic. "It's opinion." That's
21 not an opinion. Mr. Mosler states factually "The
22 car will not pass emissions. It is not certifiable
23 for public sale." Of course it was.

24 There's an interesting one in there that's
25 37C, "substantially true and made with good

1 motive." Those things go together. People say --
2 laypersons always say "Well, if it's true, it's not
3 defamatory." Uh-uh. The law is "substantially
4 true and made with good motive." Where's the good
5 motive in saying that car won't pass emissions?
6 There is none, okay? Rhetoric and hyperbole? No,
7 he's stating a fact, okay? Did he prove actual
8 damages? Yes.

9 Now, here's the interesting thing about the
10 actual damages, reasonable certainty. If you look
11 at the jury instruction for damages, okay, "Words
12 are defamatory when they tend to subject one to
13 hatred, distrust, ridicule, contempt or disgrace,
14 or tend to injure one in one's business or
15 profession.

16 To be actionable, a defamatory publication
17 must convey to a reasonable reader the impression
18 that it described actual facts about the plaintiff
19 or activities which he or she participated." But I
20 wanted to go to damages because if you look at the
21 damages, the actual damages, the whole thing says
22 "actual." And they suggest "Oh" -- don't be fooled
23 by this. "'Actual damage' includes any
24 out-of-pocket economic loss" -- and for the other
25 counts we got the \$100,000, et cetera --

1 "impairment of the claimant's reputation, personal
2 humiliation, mental anguish and suffering" -- you
3 saw the man take the stand. You saw him try to
4 fight for his reputation, for his name in front of
5 you. Ten years later he's still been struggling
6 with that. What's that worth? The interesting
7 thing is, ladies and gentlemen, you get to
8 determine that. What's someone's reputation?
9 What's someone who was an engineer and is no longer
10 an engineer, what's that worth in the total
11 circumstances?

12 Okay. "Loss of income, and loss of reputation
13 in the business community," we leave that
14 determination to you for your common sense. We've
15 proven that those damages happened; you have to
16 quantify what those are. That's what the law says,
17 okay? So we put -- Mr. Wagner puts his hand --
18 puts that in your hands, right?

19 The logic for all of these is the same for all
20 of the trade libel issues, but the trade libel is
21 about the car, the same comments injured the car.
22 When Mr. Mosler said, you know, "It won't -- it
23 won't pass emissions," it's hard to sell a car that
24 won't pass emissions, okay?

25 The duPont REGISTRY article, that's in at 41,

1 page 2, "Mosler says the RaptorGTR is not one of
2 its products and refused to comment further."
3 They're going to comment and say "Oh, that was
4 someone at Mosler." But what do we have?
5 Mr. Mosler took the stand and said he gives the
6 press releases. He directs. Everyone said "The
7 buck stops with Warren Mosler." He told his staff
8 that, they repeated it, and that's publication and
9 that's how that went down.

10 And the same thing here -- look at this one,
11 Exhibit 86 in evidence. "This is not from me.
12 Mosler is not involved with this," look at that
13 article. 85 percent of that article is talking
14 about the car. Now he wants you to think that he's
15 talking about the video. The facts don't support
16 it, ladies and gentlemen.

17 And I'm going to yield and sit down now and
18 reserve the rest of my time, Ms. Clerk, however
19 much I have, for rebuttal.

20 THE CLERK: You have ten minutes left.

21 MR. ZAPPOLO: Ten minutes left, thank you.

22 MR. WEBER: May we approach, Your Honor?

23 THE COURT: Yes.

24 (Thereupon, a sidebar conference was held.)

25 MR. WEBER: Two things: One, should we do a

1 bathroom break before I begin? And two, we renew
2 our motion for directed verdict as to at least two
3 of the three statements because Mr. Zappolo said
4 that he's suing based on what Mr. Mosler allegedly
5 said to the journalist and not what's in the
6 article.

7 THE COURT: So this was something that we
8 covered yesterday, and I specifically asked you if
9 you were talking about statements made by Mosler to
10 the journalist --

11 MR. ZAPPOLO: Yes.

12 THE COURT: -- and you said no, but now --

13 MR. ZAPPOLO: No, no, no, I beg to differ,
14 Your Honor. Our position is it's consistently
15 there, that Mr. Mosler's statements are what got
16 Mr. Mosler sued.

17 And I even argued to you the other day, when
18 you granted the directed verdict against us, that
19 you shouldn't be considering all of the other
20 comments and things, Your Honor, it's what
21 Mr. Mosler said that got him sued.

22 MR. WEBER: There's literally no evidence as
23 to what was actually said to the journalist because
24 no one was there.

25 MR. ZAPPOLO: The journalist's article says

1 that --

2 THE COURT: We'll address that after closings.

3 We'll address it after closings one more time.

4 We'll take a ten-minute break right now. We'll let

5 them use the restroom and then we'll have one hour.

6 (Thereupon, the sidebar conference was

7 concluded.)

8 THE COURT: Deputy, we're going to take a

9 five-minute restroom break.

10 (Thereupon, a short break was taken from

11 1:37 p.m. to 1:50 p.m.)

12 THE COURT DEPUTY: Court is back in session.

13 THE COURT: All right. Please be seated.

14 Bring them out.

15 THE COURT DEPUTY: Jury entering.

16 (Jurors entering the courtroom at 1:51 p.m.)

17 THE COURT: All right. Please be seated.

18 Defense.

19 MR. WEBER: Thank you, Your Honor.

20 Okay. So when we did the jury selection,

21 remember I asked if everyone was familiar with

22 reading emails and whether you knew how to read

23 in-line with the comments? Now you've seen

24 probably close to 300 documents in this trial, and

25 the reason is because we believe the documents tell

1 the story. Almost like, you know, you look back in
2 time and the way these people were emailing back
3 and forth, you know, even ten years ago, it was
4 just rapid-fire communication. And so that's why I
5 asked that question, "I hope that you're able to
6 read and follow the emails."

7 So, like Mr. Zappolo, I'm going to show you
8 the verdict form because this is where you're
9 really going to make your decision. And just to
10 show you how it works, you're going to read, for
11 each of these counts, instructions. And then when
12 you read the question, you're going to say "Yes" or
13 "No." And in some of the questions, if you answer
14 "No," then you're going to skip questions.

15 So if you find, for example, that no benefit
16 was conferred, well, you might check "No" and then
17 you would skip all the way down to question 7, so
18 that will be the next count. And, similarly, if
19 you check "No" here, you would go to 13 and so on.
20 Or you might find "Yes" for one of the questions,
21 but "No" for another, and then you would skip to
22 the next section and so on.

23 And then for other instances, like when you
24 get to Defendants' affirmative defenses, you might
25 see multiple items that are listed, and then it

1 will say "If your answer to any of the above
2 questions is yes, then your verdict is for MACC on
3 the issues," and then you would skip to the next
4 topic and so on.

5 So it's not always that you would just answer
6 every single question all the way down. You have
7 to answer the question and then you look for the
8 prompt here to see which number you would go to
9 next.

10 Now, when you get all the way down to the
11 bottom, you're going to find that eventually you
12 have to sign it. So that's the end, okay? That's
13 generally how this form works. You're going to
14 encounter questions here, you're going to answer
15 "Yes" or "No," and then you're going to look below
16 it to see which question to go to next. That's the
17 general guideline that I'm going to give you for
18 how to follow this form. And I think hopefully
19 this is explanatory when you read it, but if you
20 follow the question numbers, you should not go
21 wrong.

22 So, let's talk about the issues one at a time
23 here. So first we have the EPA approval claim or
24 EPA certification. That's generally how it's been
25 referred to in this case.

1 You have seen, as I said, hundreds of emails.
2 You have seen emails about EPA approval from
3 February. You have seen emails about EPA approval,
4 asking to use SEI's work towards credits of the
5 payment all the way through March. You have seen
6 emails by Mr. Wagner asking for credit toward
7 payment of the car until the end of April.

8 You haven't seen any emails from Mr. Wagner
9 allegedly asking for payment for work done after
10 April 15th. Where is he requesting money April,
11 May, June, July, August, September? No. What you
12 see, seriously, is September 29th. That's when
13 Mr. Wagner all of the sudden brings up "Oh, I did
14 this unpaid work for certification." Well, we know
15 he was paid because you just saw the emails I just
16 showed you for that work.

17 Well, how come he wasn't complaining until
18 September 29th? Well, as I'm about to get to it,
19 the whole Lew Lee thing happened. He failed to
20 close, he needed money, and he knew he wasn't
21 getting the business because he knew Savvas
22 Savopoulos was also interested in the business. So
23 here he brings up this alleged video game thing and
24 he wants to get paid. And you'll see -- remember
25 Ms. Wagner immediately responds that Todd was paid

1 in credits towards his car for certification work.

2 Now, remember, we haven't seen any invoices
3 for Mr. Wagner during this mysterious April through
4 September time period. And you will also remember
5 that Mr. Wagner, in his own emails, contradicts
6 when he was allegedly doing this work.

7 Look, here he says April 15th through
8 September 12th. Let's look at the verdict form.
9 April 16th through September 28th. He doesn't even
10 know when he did this work.

11 Now another thing is, remember, that when we
12 did the testimony in this case, that he testified
13 that he should have been paid pursuant to his
14 \$75,000 contract. Now you might not have
15 remembered this, and I don't have a good way to
16 show it to you, but what I did was I showed him his
17 deposition transcript where I said "Well, do you
18 remember your deposition where you testified you
19 should have been paid under the consultant
20 contract?" And then he said, "Oh, yeah. If
21 Mr. Mosler wants to pay me more, then I'll take
22 that." He doesn't know which contract he thinks,
23 if anything, he should be paid under. And you can
24 ask to have that testimony read back, and I
25 encourage you to do so. But he doesn't even know

1 what he should be paid for, what time period, and
2 why. So I encourage you to use the tools at your
3 disposal in figuring this out.

4 And what amount of time was he working on this
5 alleged work? Well, let's look again at this
6 email. And just so you know, Defendants' exhibits
7 are largely in chronological order. I tried to
8 make a point of starting in 2010 and then working
9 all the way back. So once I put these back in
10 chronological order for you, you should be able to
11 go to the time period and find what you're looking
12 for. But let's look back at that document that I
13 just showed you, which was this one. Remember, he
14 says "I was working on the project approximately
15 50 percent of the time." So he doesn't even know
16 how much time he was working on this alleged
17 project.

18 So now let's go back to the verdict form. For
19 this question, the first one: Did SEI confer the
20 benefit? You would say "No." It's not even clear
21 that they conferred any benefit.

22 The next one: Did SEI establish that MACC
23 knowingly and voluntarily accepted it? "No."
24 Again, there's no evidence that they actually even
25 conferred this benefit.

1 And the testimony from Mr. Mosler is that this
2 was not a benefit towards MACC. This was a
3 benefit, if anything, only to Mr. Wagner because it
4 was his car. MACC was being sold. It was not
5 something that Mr. Mosler was interested in at all.

6 Next, we have the affirmative defenses. We
7 have: Was SEI paid for the work? We would say
8 there is no work, but if there was work, we paid
9 for it.

10 Mr. Mosler emphatically testified that he paid
11 his bills. And you'll even see that Mr. Mosler
12 paid for all the months that Mr. Wagner has emails
13 for asking for payment for this work. There's
14 literally no email, aside from the one where
15 Ms. Wagner sent where she says Mr. Wagner was paid
16 for the work, and I encourage you to look at the
17 exhibits.

18 "An express agreement governs the Work," okay.
19 It's an important one because what that defense
20 says, essentially, is that if there's an express
21 agreement that governs the Work, okay, then you
22 cannot have this claim because this claim is a
23 claim in equity, meaning that there's no contract.
24 So just under the circumstances, he should be paid
25 for it. But if you find there was an agreement

1 that governs the Work, then he can't have this
2 claim, and so you would check "Yes," and that would
3 just lead you to go to the next claim.

4 And the reason that you should check "Yes"
5 here is because you should ask for Mr. Wagner's
6 testimony to be read back to you because he clearly
7 says in his testimony that there was an exchange of
8 emails between him and Mr. Mosler which allegedly
9 constituted a contract on this issue.

10 In other words, Mr. Wagner testified under
11 oath that there was an email exchange which
12 constituted a contract for this work. And, again,
13 I encourage you to have that testimony read back to
14 you.

15 So, now let's go to the next one. What is the
16 value of the work? Well, again, it's completely
17 unclear. Mr. Wagner has not submitted any invoices
18 for this mystery time period. He admits that he
19 hasn't submitted invoices for this mystery time
20 period. He doesn't know exactly how much time he
21 spent on this work. He admits that he was doing
22 50 percent, approximately, of the time. So nobody
23 knows what, with reasonable certainty, the value of
24 the Work, SEI conferred is, and for that reason you
25 should also check "Yes." And, again, you would go

1 to the next question. And, again, I don't even
2 think you can answer the value, so I'm going to
3 skip right over that.

4 Now, this next claim is a quantum meruit
5 claim. It's pretty similar to unjust enrichment in
6 that it's alleging that there is no agreement, but
7 essentially that, under the circumstances, you
8 should think there is some sort of reason he should
9 be paid.

10 Now, what they're going to say, again, is you
11 should check "No," there was no benefit provided
12 for pretty much the same reasons I already said.
13 There's no evidence that this benefit was provided
14 during this time frame at all or any other time
15 frame after April 16th.

16 Now, does the evidence show that under
17 ordinary circumstances a reasonable person would
18 expect to pay for the benefit of the work? I would
19 say no, for the same reasons. We didn't even know
20 he was doing this work. We paid for the work.
21 There's no evidence, no emails -- you know, have
22 them show you an email. Look in the record where
23 he was asking for payment for I think like the five
24 months that he was allegedly doing this unpaid
25 work. It's not there; you can look.

1 Next, this is the important one, again, number
2 10. Does the evidence establish the following
3 defenses: "An express agreement governs the Work?"
4 Again, have Mr. Wagner's testimony read back to
5 you. Look for that part where he says there was an
6 exchange of emails by which he was to be paid for
7 this work. That should annihilate that claim right
8 there.

9 And the other questions are essentially the
10 same for the unjust enrichment. You'll see that
11 there.

12 Next, as kind of an alternative, Mr. Wagner or
13 SEI has a claim for breach of contract. Now, we
14 don't think there is a contract. Despite
15 Mr. Wagner's testimony, just to be clear, okay, we
16 do not concede there is a contract for this work,
17 okay. We do not believe Mr. Wagner.

18 So he is now claiming, though, there is a
19 contract, right? You have to understand, this is,
20 like, pled in the alternative basically. Remember
21 I just walked through that express agreement
22 affirmative defense in those last two claims? In
23 this claim he is claiming there is a contract,
24 okay.

25 So now you get here -- let's just say, for

1 example, that you answered, for the affirmative
2 defense for unjust enrichment, there's an express
3 agreement, right? "Yes," you would say, "express
4 agreement governs." So then you would go to the
5 next claim -- right? -- because here it says "If
6 you answer any of these questions 'Yes,' then you
7 go to question 7."

8 So then you would go to question 7, right?
9 Let's say you answered all of these questions
10 "Yes," right? Let's just say he established by the
11 greater weight of the evidence that all of these
12 were "Yes," and that's his burden. For every claim
13 you're going to see in this section, it's by the
14 greater weight of the evidence. Let's just assume
15 that is "Yes, Yes."

16 When we get to affirmative defenses, and then
17 you get to an express agreement, and then you write
18 "Yes, an express agreement governs the Work," then
19 you go to the next claim, right? You go to 13.

20 So then we get to 13, the breach of the
21 contract claim. Again, we deny that there's an
22 agreement. And they have to establish, by the
23 greater weight of the evidence, that SEI and MACC
24 agreed to a contract for automotive work. This is
25 for this time period, okay? What evidence, by the

1 greater weight of the evidence, have they provided
2 that shows there's a contract? That's what you
3 have to keep in mind here.

4 So you get the yes-or-no question. We would
5 say there's no evidence of an agreement other than
6 Mr. Wagner's self-serving testimony.

7 Now, did they establish a breach which would
8 be, essentially, that we didn't pay them for the
9 work? Where is the evidence that he asked for
10 payment? Where is the evidence that we didn't pay
11 him other than his self-serving emails? I
12 encourage you to look through the evidence. It's
13 going to be all at your fingertips. You can ask
14 questions. You can have testimony read back to
15 you, okay?

16 Now, let's go to the \$100,000 deposit. This
17 is the Lew Lee issue, okay. I have, at length,
18 gone through emails with you -- oh, sorry. I have,
19 at length, gone through emails with you regarding
20 Lew Lee. I mean, I went all the way back to 2010.
21 I took you through the chronology, and you will see
22 that the chronology starts essentially at
23 Defendants' Exhibit 38.

24 So if you get -- when you get the exhibits, if
25 you go to Exhibit 38 -- they're going to be

1 somewhat in chronology mostly, so you'll be able to
2 see that timeline unfold for you because that's how
3 I questioned Mr. Wagner on it, right?

4 And what you're going to see when you go there
5 is, remember, that there was constant communication
6 between Mr. Wagner and Lew Lee. And, really, the
7 heart of this claim is I would say, you know, did
8 Mr. Wagner work with Lew Lee? I mean, I think the
9 answer is yes. I mean, there's just so many emails
10 between the two of them that you can infer that
11 they were obviously working together. That's just
12 me. That's what I think. I think the way that the
13 emails flowed together, they couldn't possibly not
14 be working together. And so what I want to do now
15 is just to remind you of how this flow happened in
16 response to the verdict form.

17 So, let's go to this claim. Now, he --
18 Mr. Wagner has to prove that there was a contract
19 between him and Mr. Mosler whereby Mr. Mosler
20 agreed to return the \$100,000 deposit if MACC's
21 assets were sold to another.

22 Importantly is that interrogatory answer that
23 I showed you. Now remember I showed you this
24 document, Exhibit 39. This is Mr. Wagner's sworn
25 interrogatories where he set forth the deal flow,

1 okay? This is where he described his understanding
2 of how the deal was done, okay?

3 Now I want to show you -- if one of the jurors
4 doesn't have a notepad and needs one, I think you
5 might be able to ask for one if you want.

6 So what I'm going to do is show you the
7 interrogatories, okay. And you'll remember, in
8 this part of the interrogatory, he set forth the
9 progression as Mr. Wagner alleged it. And you'll
10 see that it begins here with a written agreement to
11 sell MACC and its assets for \$3 million. And then
12 what happened is he said thereafter, he agreed
13 orally to sell the assets (without the building)
14 for \$1 million, and we clarified (via email) our
15 understanding as to what "nonrefundable" meant.

16 Now, critically here, there is no "right hand,
17 left hand agreement," okay. It's critical that
18 you're with me here to understand what's going on
19 because Mr. Zappolo and Mr. Wagner are trying to
20 tell you there's two different agreements.

21 Mr. Wagner's sworn testimony here shows you
22 that they are intertwined. It's not two separate
23 agreements, it's an all-encompassing alleged
24 agreement whereby he was allegedly to buy MACC for
25 a million dollars. And as part of that agreement,

1 he would get a \$100,000 nonrefundable deposit that
2 would only be returned if "another party purchases
3 the MACC assets."

4 So it's not like he had an agreement to
5 purchase MACC and then an agreement regarding the
6 deposit; they are combined. And that is consistent
7 with the asset purchase agreement's back and forth
8 because the evidence is clear that Mr. Wagner
9 believed he needed to get an asset purchase
10 agreement. How many emails did we see with the
11 asset purchase agreement going back and forth? He
12 needed that to have it signed to go to his
13 investors so he can raise the financing for it.

14 And the reason that this is consistent is
15 because all of the terms would be in a cohesive
16 agreement setting forth all of the details,
17 inventory, closing time, all of the things that
18 Mr. Wagner needed to do to actually purchase MACC.
19 They are not two separate agreements as Mr. Wagner
20 is trying to say, okay?

21 Now, you'll note how vague this interrogatory
22 answer is about the flow of the deal, right? He
23 says -- remember this document, okay? This is the
24 May 2nd email, right? This is the May 2nd email
25 that he was -- that he's referring to in reliance

1 on his contract claim. But then he skips a
2 whole -- approximately two months and says "The
3 deposit was then wired by my father's trust on my
4 behalf."

5 Okay. So what happened between May 2nd and
6 June 29th? Well, we know what happened. There was
7 literally almost, I would say, 50 emails between
8 Mr. Mosler and Mr. Wagner.

9 So here is the May 2nd email, right? This is
10 the May 2nd email, right? And you'll remember the
11 Bates stamp -- the Bates stamp is that thing on the
12 bottom right there, right? So that was the one I
13 just showed you. So that's May 2nd right there,
14 right?

15 So what happened after May 2nd? Well, we get
16 this email, further negotiations. We got another
17 email, further negotiations. We get another email,
18 further negotiations. There's literally a lot of
19 documents here, okay. I'm not going to go through
20 them all because I have limited time, but there is
21 a stack of emails you're going to get, okay? And I
22 encourage you to go through them.

23 And what happens eventually is Mr. Mosler
24 tells Mr. Wagner that "I'm going to stop reading
25 these asset purchase agreements until I get to

1 speak to your investors," right?

2 And so what does Mr. Wagner do? Well, he
3 introduces Lew Lee. That is -- remember this
4 email. He introduces Wagner -- Wagner introduces
5 Lew Lee to Warren Mosler. Remember this email,
6 June 3, 2011, that's the introduction.

7 But what did we see prior to that date?
8 Remember, you're going to see it in the exhibits,
9 Mr. Wagner was appointed to the board of directors
10 of SFDM. There are numerous emails between Lew Lee
11 and Mr. Wagner. Literally, you're going to go
12 through this pile and you're going to see all of
13 the back and forth between them. And the reason
14 why is because they are working together.

15 And eventually what's going to happen is --
16 well, just as I said, here's the email whereby
17 Mr. Wagner introduced -- well, Mr. Mosler told
18 Mr. Wagner that he wasn't going to speak anymore
19 until he was introduced to the investors.

20 And what did Mr. Wagner do then? Meanwhile,
21 June 16th, remember this happened with the \$90,000?
22 Mr. Zappolo seemed to think that oh, Mr. Mosler was
23 speaking to Lew Lee on June 7th, but in reality,
24 Mr. Wagner is speaking behind the scenes with Lew
25 Lee about raising the funds to make a purchase of

1 MACC.

2 And remember the \$90,000 issue where he was
3 going to put his car -- he was going to use the
4 \$90,000 to make the bridge loan go through, and
5 then he was going to use his car as collateral for
6 Lew Lee's bridge loan? That's all in the
7 documents. But that didn't work out, and then we
8 go to the talking points. This is June 19th. Lew
9 Lee and James Todd Wagner, here he is -- Mr. Wagner
10 is literally telling James -- Mr. Wagner is telling
11 Lew Lee that he can use the car as the collateral
12 for the \$90,000 in cash, right? But that didn't
13 work out either. So then Mr. Wagner sends a draft
14 email to Lew Lee, remember this? The draft email,
15 the draft letter to Warren "Please review ASAP."

16 And look, remember this? Mr. Wagner is
17 identifying himself as Santa Fe Digital Media as of
18 June 27, 2011. And then when he actually sent the
19 email to Mr. Mosler, he actually changed the
20 signature block to correct the typo that we just
21 saw in the draft to Lew Lee.

22 Look at that. See that? There's even a typo
23 that he corrected when he finally sent the email to
24 Mr. Mosler. So any suggestion that Mr. Wagner was
25 not working with Lew Lee and SFDM is refuted by the

1 documents.

2 Next, they go right back with Lew Lee on the
3 email. Mr. Wagner goes back to trying to purchase
4 MACC. Look at the asset purchase agreement. Even
5 though he allegedly has some other agreement to
6 purchase MACC for \$1 million, he's still sending
7 asset purchase agreements.

8 Well, why? If he's got an enforceable
9 contract by email, why does he do the asset
10 purchase agreement? Why not just say right there,
11 "Well, Mr. Mosler, my father sold The Weather
12 Channel. I want to buy MACC," right? I mean,
13 isn't that the logical thing to happen in this
14 case? Why didn't Mr. Wagner just be like "Okay.
15 I'm ready to purchase MACC. My father will give me
16 the money"?

17 His father literally testified that if
18 Mr. Wagner had asked him for \$1 million or
19 \$2 million, then he would have given it to him.
20 You guys remember that? You can have the testimony
21 read back. And I said, "Well, did he ever ask you
22 for the money?" And his father said, "No."

23 Why not? Why didn't he just ask him for the
24 money? It doesn't make any sense. If Mr. Wagner
25 had a contract to purchase MACC, why didn't he just

1 go to his father and ask him for the money if it
2 was readily available? It doesn't make any sense.
3 And the reason it doesn't make any sense is because
4 Mr. Wagner never had a contract to purchase MACC,
5 right? He was still negotiating through these
6 asset purchase agreements and Lew Lee until they
7 finally got to the letter of intent, and that
8 letter of intent is the only contract regarding
9 MACC.

10 And what we saw is Mr. Wagner's emails to Lew
11 Lee telling Lew Lee that his father is on the way
12 to the bank. You remember that? His father is
13 literally on the way to the bank June 29th, the
14 same date as the letter of intent.

15 And remember, he also signed an agreement --
16 well, there was an agreement between Lew Lee and
17 Mr. Wagner. As requested by Mr. Wagner, SFDM,
18 here's the loan agreement that shows that
19 Mr. Wagner loaned Lew Lee the \$100,000 promissory
20 note from Mosler deposit. I don't understand how
21 there could be any other inference other than
22 that's the \$100,000 that was then wired to
23 Mr. Mosler by James Todd Wagner's father. Like,
24 there's no other inference that can be drawn there.

25 And if that wasn't worse, if that wasn't bad

1 enough, then you have Mr. Wagner literally sending
2 the tracking number for the \$100,000 to Lew Lee,
3 okay? The tracking number for the \$100,000 to Lew
4 Lee. And guess what? It matches the tracking
5 number on Plaintiffs' 1. Plaintiffs' 1 is the
6 statement from his father's trust account, okay?

7 I don't know if you recall, but during the
8 Cross-Examination of Mr. Wagner I put them up side
9 by side. It's hard to do that right now because
10 I'm using the Elmo thing, but if you look at them
11 side by side, they match, okay? Just to show you
12 where it is, where they match, it's here. You're
13 going to see it -- so here is the tracking number
14 on the thing, on the statement, and then you're
15 going to see the tracking number here on the email.

16 There's no other inference but that Mr. Wagner
17 knew exactly what his father was wiring the funds
18 for. And how else did Mr. Wagner get the wire
19 instructions other than Lew Lee? I mean, they were
20 working together to try and close this deal.

21 If that's not evidence enough, they continued
22 working together. Look, July 1st, after the
23 \$100,000 goes in, an email that Mr. Wagner got
24 where Mr. Mosler confirmed exclusivity through 9/1,
25 which is also the date in the letter of intent that

1 they have to close by. That's the exclusivity.

2 Remember -- well, I don't know if you
3 remember, Mr. Zappolo mentioned that there was no
4 exclusivity letter of intent. It's because it's
5 here, "confirmed exclusivity," which Mr. Wagner
6 got. Why wasn't Mr. Wagner like "Whoa, confirmed
7 exclusivity? I thought I had an oral agreement
8 back in May 2, 2011? What's going on here"?

9 But Mr. Lew Lee and Mr. Wagner continued to
10 try and close. You'll see Mr. Wagner was on the
11 emails with Lew Lee. There was no mystery here.
12 Nothing being withheld. Mr. Mosler is clearly
13 asking whether they're ready to close. Lew Lee is
14 saying "We are looking to close on the 1st."

15 Lew Lee and Mr. Wagner are working together on
16 the business sale agreements because Mr. Wagner
17 knows exactly what's going on. There's another
18 one. These are all in your packet. Mr. Wagner,
19 again, on the email -- now we're getting close to
20 September 1st -- and they failed to close and you
21 get Lew Lee's whatever rationale for not closing.

22 And remember that Mr. Wagner then writes to
23 Abby Cubey how he's disappointed: "I am starting
24 to have some peace about everything. This is a big
25 test to see if we can push through the valley of

1 disappointment." And if it wasn't clear enough, he
2 was talking about Lew Lee. This is in a chain of
3 emails with Lew Lee. Like, this is not some
4 separate thing going on here. This is an enormous
5 chain of emails with Lew Lee on it. Like, why
6 would that be if they weren't working together?

7 Okay. So let's get back to the verdict form.
8 So, in my opinion, this is a pretty quick one. But
9 what I would suggest, based on the evidence, is for
10 18, he has to -- Mr. Wagner has to prove by the
11 greater weight of the evidence that he and
12 Mr. Mosler entered into a contract whereby
13 Mr. Mosler agreed to return the \$100,000 deposit,
14 okay? He's got to prove that contract existed. If
15 you check "No," you will go right through this
16 topic, okay?

17 But if not, he then has to show by the greater
18 weight of the evidence that he has to do all of the
19 essential things which the contract required him to
20 do. Well, what did the contract require him to do?
21 Pay a million dollars? Like, what's the contract
22 that he's allegedly suing under?

23 Well, I would say he didn't do anything
24 because he didn't pay the million dollars, right?
25 Did he ever ask his father for the million dollars?

1 It's irrefutable that he did not because here we
2 are today, so that's another no.

3 20, did he prove by the greater weight of the
4 evidence that all conditions required by the
5 contract for Warren Mosler's performance had
6 occurred? Well, that's another "No." Because
7 remember, even assuming Mr. Wagner has a contract
8 to return the \$100,000 deposit if MACC's assets
9 were sold to another, guess what? MACC wasn't sold
10 until 2013, right? 2013. But even before MACC was
11 sold -- remember, there's the email that Lew Lee
12 then received where -- you're going to see it in
13 your packet. It's in November, okay? November 19,
14 2011 Wagner asks Mr. Mosler for the \$100,000, okay.

15 And in response, there's an email chain where
16 Mr. Mosler explicitly tells him that "No, this is
17 the \$100,000 that you and Lew sent in." And then
18 Mr. Wagner eventually forwards it to Lew Lee, and
19 Lew Lee responds to him and says "Yes, Todd, we
20 will repay you" or something like that. You're
21 going to see that in your packet.

22 Now, I'm not even done with that because I
23 haven't even mentioned the February email, 2012,
24 which I will -- if I can find it, I will show you
25 as well, which is supposed to be in your packet.

1 Remember where, February 2012, Mr. Wagner asks Lew
2 Lee for the documents so he has something for his
3 backup plan? Do you remember that, the backup
4 plan? He wants to know what he's working for in
5 the event that SFDM doesn't come up with this
6 money? That's going to be in your packet, okay?

7 February 2012, why does he need a backup plan?
8 Why is he waiting for SFDM to come up with this
9 money? Well, the reason he's waiting for SFDM to
10 come up with this money is because he loaned the
11 money to SFDM. That's the only reasonable
12 explanation for his email, okay? Like, why else
13 would he need a backup plan? So, that's also a
14 "No."

15 21 would also be a "No" because there is no
16 contract in the first place, but he's not required
17 to return the \$100,000. It's a nonrefundable
18 deposit. The letter of intent signed by Lew Lee
19 explicitly says "nonrefundable deposit."

20 And Mr. Zappolo tried to, like, do some
21 jujitsu saying "Well, why is this email a contract
22 but not that email?" Lew Lee's email specifically
23 said what the terms should be in the letter of
24 intent and then they had a letter of intent which
25 they then both signed forming a contract. The

1 \$100,000 was then put in, that's it.

2 Mr. Wagner's, on the other hand, is just a
3 vague, oral agreement: "Oh, I'm going to buy this
4 company for allegedly a million dollars and, you
5 know, it's going to be refundable." But the
6 testimony shows that there is no signed asset
7 purchase agreement between Mr. Mosler and
8 Mr. Wagner.

9 Now, if you should get to this place in this
10 subject, you're going to see our affirmative
11 defenses. I think they are somewhat
12 self-explanatory, and I have faith in you. Until
13 you get to this one, it's a little bit legally --
14 legalese, "Equitable Estoppel." It's in your
15 packet of jury instructions as jury instruction 46.

16 And, in a nutshell, what this one says is that
17 Mr. Mosler was allowed to rely on what was going
18 on, and Mr. Wagner can't now all of the sudden
19 change his position and claim that it was a
20 refundable deposit. Like, Mr. Wagner can just sit
21 there and let everything unfold and watch all these
22 emails and then turn around and say "Oh, no, it's
23 actually a refundable deposit." That's jury
24 instruction number 46. You'll see the numbering at
25 the top of the jury instructions.

1 Again, I mean, I don't even know -- 24 is
2 about damages if there's a contract. "No."

3 You're going to get -- if you get to his claim
4 for unjust enrichment, you have to think about
5 unjust enrichment as if there's no contract, okay?
6 If there's no contract in existence. And like I
7 said before with the EPA approval, then, based on
8 the circumstances, should he still get the money,
9 okay? That's how you kind of have to think about
10 it. Like, an alternative contract. Or are you
11 unjustly enriched for some reason?

12 And so now that's why this question is, for
13 26: Does the evidence establish that James Todd
14 Wagner conferred a benefit upon Warren Mosler
15 through the \$100,000 deposit? Now I would
16 emphatically say no because it was pursuant to the
17 letter of intent.

18 And, I mean, I would say that you have to just
19 skip down to the affirmative defenses after you say
20 "No" to everything -- I mean, if you get to the
21 affirmative defenses -- let's just say,
22 hypothetically, you say "Yes" here, "Yes" here,
23 "Yes" here. When you get to the affirmative
24 defenses, you will see that there's one that says a
25 contract, right? Because the contract annihilates

1 any claim that there was some unjust enrichment
2 from him receiving the \$100,000.

3 I'm not saying you should even get here, but
4 if you do, the letter of intent is clear that it is
5 nonrefundable.

6 How much time do I have?

7 MR. KILLINGSWORTH: 20 minutes.

8 MR. WEBER: I'm going to keep going.

9 Okay. Now we're in defamation, the defamation
10 claim. This is split up between the statements,
11 okay? What you're going to see here, when you get
12 to the defamation claims, it says "Defamation Claim
13 - Statement 1." It's going to track the jury
14 instructions.

15 When you get to the jury instructions, you're
16 going to see this is jury instruction number 30.
17 That's where the jury instructions are for the
18 defamation claims, okay? Again, you're going to
19 see the numbers on the top of the jury
20 instructions.

21 You're going to see the elements. He has to
22 prove by the greater weight of the evidence each of
23 these questions. And, again, I would say when you
24 get to Statement 1, you're going to see this full
25 description here so you know which one it's talking

1 about. See that?

2 But just to remind you, Statement 1 is this
3 article, okay? Statement 1 is Plaintiffs' Exhibit
4 40. And this is the one where you have to find the
5 comment in the long list of comments. And when you
6 eventually find it, it's here.

7 Now, let's talk about this right here. This
8 is it. So when you finally get to here, this is
9 November 17, 2011 at 5:09 a.m., okay. That's the
10 comment that's at issue in this big stack of
11 documents, okay?

12 So now let's talk about the jury instructions,
13 if I can do this somewhat side by side. The first
14 question is: Did he prove that Warren Mosler
15 communicated the statement to a third party?

16 So he has to prove, by the greater weight of
17 the evidence, that Mr. Mosler communicated this,
18 okay? This, this is the statement, all right? Did
19 Mr. Mosler communicate this? He emphatically did
20 not. In fact, it doesn't even make sense because
21 this isn't even from Mr. Mosler, okay? Some third
22 party, Matthew Farah, is writing something that he
23 thinks confirmed words, but we don't even know what
24 was actually said.

25 And if you look back at Matt Farah's

1 testimony, you will see that -- and you should have
2 it read back to you -- that he is not actually very
3 clear on what Mr. Mosler said to him. And he
4 actually goes back to the first comment, which is
5 not this one, which talks about something else,
6 okay?

7 Now, let's talk about this also. It is in
8 evidence and this is -- remember, there was an
9 email. The evidence shows that a journalist edited
10 a quote from Mr. Mosler to make it flow better. I
11 don't know if you remember that, but here it is.

12 It is undisputed that Mr. Mosler is quoted in
13 the media. And it is undisputed that at least one
14 time a writer altered a quote from Mr. Mosler to
15 make the article flow, okay? That's evidence.
16 That happened. And Mr. Mosler wasn't happy with
17 it. Mr. Mosler is quoted, the testimony shows,
18 frequently. And both Mr. Mosler and Mr. Wagner are
19 in agreement in this case that journalists twist
20 words.

21 You saw Mr. Wagner's emails yesterday where he
22 was complaining about the journalist was twisting
23 his words. So both parties agree that journalists
24 twist their words when they are writing quotes,
25 okay? Here, it's not even a direct quote. He's

1 not even quoting what Mr. Mosler supposedly said to
2 him. And Mr. Mosler doesn't even remember having
3 this conversation, okay? So who knows what
4 Mr. Mosler actually said.

5 Mr. Farah isn't actually even here to testify,
6 right? So he hasn't provided actual -- you know,
7 more than what's been read, right? So you don't
8 even know.

9 Now, let's go to the next one. So when you
10 get there, I would check "No," and then you would
11 skip to question 41. But in the event that you go
12 to 33, you can also find this question is false
13 because Mr. Wagner admitted in his testimony that
14 the car has not undergone confirmatory testing, so
15 nobody actually knows whether the car would pass
16 emissions. And it makes sense that Mr. Mosler
17 wouldn't even say this because you remember that
18 email where he emailed Mr. Wagner and said "How
19 would I even know whether it passed emissions or
20 not?" Because Mr. Mosler explained that it hasn't
21 been tested through confirmatory testing yet.

22 I am going to skip down to 35, the damages,
23 okay. He has to show -- Mr. Wagner has to show
24 that he has suffered actual damages, okay, because
25 of the statement. Not just damages generally,

1 because of the statement.

2 There has been no linkage of that specific
3 comment to any specific harm, okay? None. How are
4 you going to link the two? You can't, in my
5 opinion, because there's so much out there.

6 I mean, if you look at number 40 -- again,
7 remember, this is a multipage document, right?
8 There are numerous comments in this document that
9 are negative about Mr. Wagner. Mr. Wagner's own
10 expert testified that there were comments in this
11 document which impact the value of the vehicle
12 negatively. How can you possibly parse out one
13 comment from all of this and say whether Mr. Wagner
14 was actually damaged by the comment? You can't,
15 okay. So I would say that that one you have to
16 mark as a "No."

17 Now, let's go to Statement 2. Statement 2,
18 Statement 2 is this article. Actually, it looks
19 like this. You have to turn the page, okay.

20 This is Statement 2. It's the duPont REGISTRY
21 article, and you'll see it described here. Okay.
22 That's Statement 2. It's Plaintiffs' Exhibit 41,
23 okay? When you get to Statement 2, defamation,
24 it's Plaintiffs' Exhibit 41.

25 And it's not on the first page, you're going

1 to have to look for it. It's approximately here
2 (Indicating). There it is (Indicating), okay?
3 That's how you have to find it. It's in this whole
4 article, okay, with all of the other stuff.

5 All right. And now let's dissect this
6 statement. I think I did this yesterday when I was
7 questioning Mr. Mosler, but when you read this
8 article, the first hurdle you have to pass is did
9 Mr. Mosler actually make this statement? I would
10 say definitively no because it doesn't even say
11 Mr. Mosler made this statement when you actually
12 read it.

13 It says -- when you read the article, it says
14 "SEI, a Mosler distributor." Well, that doesn't
15 mean Mr. Warren Mosler obviously because of how
16 it's written. "A Mosler distributor," right? So
17 that word "Mosler" obviously refers to the company,
18 not a single individual.

19 And you can see that, again, consistently here
20 where it says "and run by ex-Mosler engineer,"
21 right? It wouldn't make any sense if that meant
22 ex-Warren Mosler engineer James Todd Wagner.

23 Just like when it says here, "a Mosler
24 distributor" -- that's not. That's not how it's
25 written -- "has released an aftermarket package for

1 the MT900S" -- which it is calling the RaptorGTR.
2 None of this is the statement, okay? -- "promises
3 Veyron competing specs and performance,
4 Mr. Wagner."

5 Look how the author differentiated individuals
6 rather than the company here. You see "Mr. Wagner
7 was married to Mosler Automotive's general manager
8 and vice president of operations Jill Wagner."
9 "Mosler," again referring to the company, "says the
10 RaptorGTR is not one of its" -- "its" is the
11 operative word there because if it was a person, it
12 would be a different pronoun -- "and refused to
13 comment further. Mr. Wagner tells us that he is
14 suing Mosler," again the company, "for libel and
15 will be filling us in on all the details as soon as
16 he is legally able to."

17 And remember, from this article, Mr. Wagner
18 himself claimed that journalists twist his words.
19 And it was Mr. Wagner who said that the journalists
20 were twisting his words and saying that he was
21 suing Mosler and that's why he's not going to get a
22 job.

23 Now, let's look at -- so for 41, I would say
24 the answer is a "No." And that -- and if you say
25 "No," then you would skip to question 50. If you

1 say "Yes," then you carry on.

2 So then we get to the falsity of it. Well,
3 let's look at the statement: "Mosler says the
4 RaptorGTR is not one of its products and refused to
5 comment further." Well, is it one of its products?
6 I would say the testimony says that Mr. Wagner made
7 modifications to it and it was no longer its
8 product. We have so much out there about the
9 video. It's not even clear if the author is
10 referring to the RaptorGTR or the Cubey GTR or what
11 vehicle he's even talking about there. Honestly,
12 this statement is so vague, I don't see how it can
13 be defamatory.

14 And note that it doesn't even talk about
15 Mr. Wagner here. Mr. Wagner himself is not
16 mentioned in this statement, so how could this
17 statement be defamatory about Mr. Wagner, okay?
18 Because this is Mr. -- when you get to this claim,
19 it's James Todd Wagner's claim for defamation
20 against Warren Mosler, okay? This is not SEI's
21 claim -- we'll get to that in a minute -- this is
22 Mr. Wagner's claim.

23 The statement isn't even about Mr. Wagner,
24 just like the last statement wasn't about
25 Mr. Wagner, right? This was about, allegedly, the

1 vehicle, so it can't be defamatory about
2 Mr. Wagner. Mr. Wagner's name isn't even mentioned
3 in this comment. It's not saying anything about
4 him.

5 Next, you get to -- I think that all of these
6 should be "No, no," but actual damages again: Did
7 he suffer actual damages -- did Mr. Wagner suffer
8 actual damages? Remember, this is did Mr. Wagner,
9 not SEI, okay? Did Mr. Wagner prove by the greater
10 weight of the evidence that he suffered actual
11 damages?

12 Again, for the same reasons I just discussed,
13 there is so much out there, how can he tie this
14 alleged statement to his damages? He has not,
15 okay? He has not. And I encourage you to look at
16 the documents, testimony. He hasn't done it. I
17 don't think it's possible. There's no expert
18 testimony linking that statement to any specific
19 damage to Mr. Wagner.

20 Then we get to the affirmative defenses again.
21 Again, let's look at 48. 47, 48 are actual
22 damages. "With reasonable certainty, the amount of
23 his damages," what are Mr. Wagner's alleged
24 damages? We have no idea, okay. We have no idea
25 what damages Mr. Wagner suffered. And he cannot

1 demonstrate any amount with reasonable certainty.

2 Again, this is not SEI, this is Mr. Wagner.

3 And one more point on this -- let me go to
4 this one first. The next statement, Defamation
5 Claim - Statement 3, this is the "This is not from
6 me. Mosler is not involved with this. Warren
7 Mosler." Okay. That's this article, and it is
8 Plaintiffs' Exhibit 86, okay? Now remember, the
9 only comment at issue is here (Indicating) on the
10 bottom.

11 Now this one, this issue 50, it's admitted
12 that he made the comment, so here you would click
13 "Yes" I would say. So then you would go to 51.

14 Does -- is the statement false? I would say
15 absolutely not. The testimony is clear, the
16 article itself is about the video. I encourage you
17 to read the whole article. I know that we've read
18 you excerpts of it because, honestly, just to read
19 the whole thing would take a lot of time and we
20 haven't read the entire thing verbatim to you, but
21 you can read it and you can decide whether it's
22 about the video or the car.

23 I think it's undisputedly about the video
24 because of how it's titled. It's "Car breaks cover
25 via an extreme music video." And if you read it,

1 yes, the car was mentioned, but he's talking about
2 the video. And it's unrefuted because Mr. Mosler
3 explained the comment, what he meant by it, that he
4 was talking about the video.

5 So the evidence is only one way: This is
6 about the video. It is definitely not about
7 Mr. Wagner because it wouldn't make any sense if it
8 was about Mr. Wagner. So this is not about
9 Mr. Wagner, and it can't even be interpreted to be
10 about Mr. Wagner, in my opinion.

11 Now, we get to the damages questions. And one
12 thing I want to mention about the damages questions
13 before I get to the trade libel claim --

14 THE CLERK: Five-minute warning, Counsel.

15 MR. WEBER: Thank you. It's very important
16 that you understand the testimony about
17 Mr. Wagner's employment, okay? Because Mr. Wagner
18 says "Oh, I lost my job. I couldn't find a job
19 because of all these articles out there."

20 It is critical that you understand that he
21 took MACC off his resume and then got a job. And
22 the testimony in the record shows that potential
23 employers were calling MACC and speaking to Sylvia
24 Klaker, and that is the reason why he wasn't
25 getting a job. And that's why it makes sense that

1 once he took MACC off his resume, potential
2 employers were no longer calling to get a reference
3 for a job, not speaking to Sylvia Klaker, and he
4 got a job, even though all this material is still
5 out there, right? That's the only logical
6 inference.

7 In other words, it's not the statements,
8 anything on the Internet that was preventing him
9 from getting a job. It was that he removed MACC
10 from his resume, employers didn't call -- potential
11 employers didn't call MACC. He didn't get a
12 negative review from Sylvia Klaker and, therefore,
13 he got a job. Despite everything that was going on
14 and that was still out there, that's the only
15 logical explanation for it. So it's not all of the
16 articles, it was the bad comments by Sylvia Klaker,
17 allegedly, when people called in response to
18 Mr. Wagner's resume.

19 And despite -- and put aside all of this other
20 stuff about -- that we've seen. We have the
21 treasure hunter article, remember that? People --
22 that was also available online. It was in the Palm
23 Beach Post. I don't know if you recall that. It's
24 in the folder. But there's an article where
25 Mr. Wagner was conned by treasure hunters, okay?

1 That's also available online.

2 So it wasn't even just this that we're talking
3 about. There's other things out there that could
4 have caused any damage, assuming there was damage,
5 to Mr. Wagner.

6 Now, let's look at the trade libel claims.
7 Again, you're going -- the trade libel claim is
8 essentially the same as the defamation claim in
9 that it's about these same statements, okay? So
10 you're going to look at the same comments in the
11 articles that we just went through, all right?
12 That's where you're going to look. And it's --
13 you're going to see Statement 1, Statement 2, and
14 Statement 3, okay? And it's the same analysis
15 essentially, but it's for SEI.

16 And for SEI, though, you have to consider the
17 value to the car, right? He's claiming \$700,000.
18 \$700,000 -- there's no evidence of \$700,000 in the
19 record that a Mosler car sold for \$700,000.
20 There's no evidence that Mosler ever sold 20
21 vehicles. There's no evidence of potential buyers
22 that could have purchased this car. There's just
23 not any reasonable certainty that SEI could have
24 done what Mr. Wagner says could have been done.

25 All these claims about performance were

1 already done by the Photon. Mr. Mosler mentioned
2 it. It was the only car that beat the Ducati. And
3 if you remember, Mr. Zappolo tried to have
4 Mr. Mosler look at that article yesterday and said
5 "Oh, look at this glowing article." And Mr. Mosler
6 said literally "Oh, no, wait. Look at this
7 paragraph where the author is complaining about the
8 car," the back steering or something like that.

9 So the performance of the car was not at the
10 level that SEI and Mr. Wagner thought. Remember,
11 in the article we just saw, the "Truth About Cars"
12 article when it was tested, it took a crap. That's
13 on the Internet. Everybody knows it, okay? The
14 car was not reliable. The expert testified that
15 reliability impacts the value. This is not some
16 sort of supercar that has demonstrated excellence
17 in performance and that would have sold for
18 millions of dollars, of course.

19 The value of -- also -- how much time?
20 Affirmative defenses, no investor money too. He
21 hasn't proved that anybody actually put any money
22 in. And Dr. Sabahi, Mr. Wagner testified that it
23 was the fire insurance claim that actually scared
24 him away and nothing else.

25 Affirmative Defense - Setoff. When you get to

1 this, this is literally where Mr. Wagner
2 manufactured the claim against MACC in order to
3 stop Savvas' deal. And the evidence shows that as
4 soon as Savvas Savopoulos backed away, he went
5 right back to trying to buy MACC.

6 Remember the claim document shows \$100,000 for
7 something, but the email from Mr. Wagner says that
8 the \$100,000 is actually his father's \$100,000,
9 which he didn't have any right to because MACC
10 wasn't even sold yet. So he had no right to demand
11 the \$100,000 and that's why he disguised it as this
12 ridiculous claim to Mr. Mosler rather than Savvas
13 Savopoulos.

14 Mr. Wagner actually wanted to negotiate with
15 Savvas Savopoulos about some distributor rights
16 with Savvas Savopoulos, but instead --

17 THE CLERK: Time.

18 MR. WEBER: Thank you.

19 THE COURT: Thank you. Plaintiff.

20 MR. ZAPPOLO: Okay. Everyone, I get ten
21 minutes to rebut, so I'm going to maybe speak
22 quickly, but I want to address one thing with you
23 right off the bat. The assertion just a few
24 minutes ago --

25 Oh, first of all, I was surprised to see them

1 throwing Sylvia Klaker under the bus, but okay, it
2 is what it is, right? Was Ms. Klaker, you know,
3 badmouthing James Todd Wagner? Well, I'd say how
4 many times did we cover the buck stops here,
5 Mr. Mosler is the person making this -- you know,
6 running the whole show from afar. He's the person.
7 So if Sylvia Klaker is saying bad things, obviously
8 it's coming from Warren Mosler. We didn't sue for
9 those things because we don't know what happened
10 when people are calling in or what have you, but we
11 do know this: For 33 years, that was Todd Wagner.

12 "Wagner" is a common surname. "Todd Wagner,"
13 okay. You know, "Everyone, hey, that's Todd
14 Wagner." We identify that person. But when he
15 switched his name to "James," then he got work.
16 How could you say, with a straight face, he hadn't
17 been defamed? When he changes his name, his
18 circumstances changed, okay? That's just -- I just
19 want to cover that really quickly.

20 Now, so going back to and covering the
21 information that they started with -- oops, where
22 is it? I got to get to it. Where is my notes
23 here? I apologize.

24 The first thing we talked about, the EPA
25 certification. Counsel raised the issue "Oh, there

1 are no invoices for him asking for that money,"
2 right? Okay. True. There are no invoices for him
3 asking for the money before April, but MACC was
4 paying it. So this whole thing "Oh, he didn't send
5 any invoices after the fact," that's a total red
6 herring. The evidence shows that he wasn't sending
7 invoices either way.

8 Second thing, the -- I'm sorry, I'm just
9 trying to read through my notes here.

10 Oh, the EPA benefits James Todd Wagner because
11 it was his car. It wasn't his car until he paid
12 for it after the EPA certifications. Look at the
13 EPA documentation. The EPA certification was
14 issued to MACC. Look at the correspondence. You
15 know, the buyer, the ultimate buyer said this has a
16 certification that's worth up to \$5 million. Who
17 benefited from that?

18 That's like saying that you, an individual,
19 benefited individually because their Ford car had
20 certification. It doesn't -- common sense, folks.

21 The alleged email, they raise that, and
22 counsel tried to argue "Oh, there's these emails
23 and everything that make up this other contract."
24 I covered that with you. I said, "We don't know
25 what they are. They aren't here. Where are they?"

1 If he wants to prove to you that that was -- the
2 emails are a separate contract --

3 And, by the way, who raised the issue of that
4 other -- the consulting agreement? They did. They
5 argue now "We're trying to say that that agreement
6 was covered by a consulting agreement." Look, it's
7 a Defendants' exhibit; they introduced it. And I
8 got up and said, "It's expired by its terms. Look
9 at the appendix." Whereas, we're changing the
10 contract and Defendants' Exhibit -- excuse me. I'm
11 sorry, I'm going to move right along here.

12 Okay. If there was no agreement, in fairness,
13 James Todd Wagner gets his \$100,000 back on the
14 \$100,000 claim. That's what equity is. That's
15 justice. And we're going to ask that.

16 By the way, the constant assertions, "They
17 were working together. They were working
18 together," meaning James Todd Wagner and Lew Lee.
19 News flash, ladies and gentlemen, people work with
20 their investors. James Todd Wagner thought Mr. Lew
21 Lee was going to be an investor, so it makes sense,
22 "Hey, investor, look, we got the certification.
23 This is a really good investment that you're about
24 to get into," okay?

25 And if you look at that, if Mr. Mosler did not

1 ask to meet Lew Lee, there wouldn't even be an
2 issue about this. Who initiated this whole problem
3 with the Lew Lee and the give and take?

4 Mr. Mosler.

5 Okay. The whole thing about the car for 90
6 grand, the evidence is clear, the documentation, he
7 wasn't biting on that. At that point he testified
8 "I was getting a little sketchy with this whole Lew
9 Lee thing. I wasn't going to, you know, do that."

10 Why didn't he just buy? Because he didn't
11 want to use his father's money, as he testified to.
12 It makes sense. And he wasn't able to close
13 because the cars were being sold off. The
14 contract -- the closing and everything was a moving
15 target for him and that's why you got so many
16 documents in evidence, okay, about them trying
17 to -- him trying to nail that down. Absolutely
18 there was two agreements: "Give me the \$100,000,
19 it can be a deposit, or it will be refundable if
20 someone else buys the company and we're going to
21 negotiate the deal."

22 Remember, James Todd Wagner testified a bunch
23 of times, "I wasn't allowed to use my own money to
24 close the deal after the fact. After all this blew
25 up, Mr. Mosler said 'Oh, that's not your money.'"

1 James Todd Wagner's emails --

2 THE CLERK: Five minutes, Counsel.

3 MR. ZAPPOLO: I'm sorry?

4 THE CLERK: Five minutes.

5 MR. ZAPPOLO: Five minutes, thank you.

6 Okay. Now, let's talk about this: There's a
7 thing that I want to talk about. Warren Mosler
8 thought Lew Lee was a snake oil salesman. He
9 testified to that right in front of you, okay.

10 Warren Mosler, the competitive guy, who would
11 cheat at car events and what have you, based upon
12 the testimony here, he saw an opportunity to get
13 money, okay? Who -- and he -- that's not the only
14 time. There's a document in evidence where Warren
15 Mosler is talking with his son, I'm sorry, about a
16 guy that they think is a total red flag, just like
17 Lew Lee. "Anybody that wants to buy the company is
18 crazy," remember? "Ask for an immediate good faith
19 deposit for me," says Warren Mosler to his son.
20 "Go ahead, let's go get another \$100,000 from
21 somebody who's got problems here," okay? We'll
22 call that "the good faith deposit scam," okay?
23 There's no way that there was a contract with
24 Warren Mosler. If you look at the documents that
25 says there's a contract -- their affirmative

1 defenses, there's a contract with James Todd
2 Wagner, uh-uh. Any contract was with Santa Fe
3 Digital Media and there's unrefuted testimony about
4 that.

5 Why would James Wagner be writing to people
6 saying "Hey, what's going on? Give me the
7 documents" if he was a part of it and in the loop?
8 It doesn't make sense. Matt Farah wrote what was
9 said to him, okay?

10 So, also, I just want to talk a little bit
11 about their last -- their setoff and the recoupment
12 thing. That's just them trying to come back and
13 trying to say that he owes them money somehow.
14 It's utterly absurd that -- that stuff starts at
15 like page 28 or 29 of the verdict form. "No, no,
16 no, no," okay?

17 By the way, Warren Mosler is the person who
18 said "How would I know about this stuff?" The jury
19 instruction, if you defame someone, you have to act
20 at least negligently. Look at the negligence
21 instruction. It says someone has to be careful.
22 What would a reasonably careful person do?

23 Warren Mosler, he -- if Warren Mosler had said
24 "It's a great car" and just kept -- or just kept
25 his mouth shut, like a reasonably cautious person

1 would do, none of this controversy would be here.

2 That's the defamation.

3 And what did that defamation do? Mr. Wagner's
4 reputation trashed and/or the car trashed, he
5 wouldn't have been able to export the car to China.
6 If he would have been able to just sell three cars
7 in two years, just the two-year time period there,
8 that's six times 400,000, that's \$2,400,000. The
9 14 months for the -- the original time period of 20
10 cars a year for \$100,000 profit is over \$9 million,
11 and three cars a year for the 25-year non -- as
12 even a nonexclusive distributor is over
13 \$30 million. We're talking about a lot of money
14 here. Mr. Mosler didn't seem to care about it. He
15 didn't care what he was doing. He didn't just --
16 he wasn't reasonably cautious and a prudent
17 individual as the jury instructions tell you he was
18 supposed to be. And so that, ladies and gentlemen,
19 is why we say yes, he's absolutely responsible for
20 the defamation. It cost the man to change his
21 name. Where I come from, that's a pretty big deal.
22 Thank you.

23 THE COURT: Thank you very much.

24 Members of the jury, you have now heard all
25 the evidence, my instructions on the law that you

1 must apply in reaching your verdict, and the
2 closing arguments of the attorneys. You will
3 shortly retire to the jury room to decide this
4 case. Before you do so, I have a few last minute
5 instructions for you.

6 During deliberations, jurors must communicate
7 about the case only with one another and only when
8 all jurors are present in the jury room. You will
9 have in the jury room all of the evidence that was
10 received during the trial. In reaching your
11 decision, do not do any research on your own or as
12 a group. Do not use dictionaries, the Internet, or
13 any other reference materials. Do not investigate
14 the case or conduct any experiments. Do not visit
15 or view the scene of any event involved in this
16 case or look at maps or pictures on the Internet.
17 If you happen to pass by the scene, do not stop or
18 investigate. All jurors must see and hear the same
19 evidence at the same time. Do not read, listen to,
20 or watch any news accounts of this trial.

21 You are not to communicate with any person
22 outside the jury about this case. Until you have
23 reached a verdict, you must not talk about this
24 case in person or through the telephone, in
25 writing, or electronic communication, such as a

1 blog, Twitter, email, text message, or any other
2 means. Do not contact anyone to assist you, such
3 as a family accountant, doctor, or lawyer. These
4 communications rules apply until I discharge you at
5 the end of the case.

6 If you become aware of any violation of these
7 instructions or any other instruction I have given
8 in this case, you must tell me by giving a note to
9 the bailiff.

10 Any notes you have taken during the trial may
11 be taken to the jury room for use during your
12 discussions. Your notes are simply an aid to your
13 own memory, and neither your notes or those of any
14 other juror are binding or conclusive. Your notes
15 are not a substitute for your own memory or that of
16 other jurors. Instead, your verdict must result
17 from the collective memory and judgment of all
18 jurors based on the evidence and testimony
19 presented during the trial.

20 At the conclusion of the trial, the bailiff
21 will collect your notes, which will be immediately
22 destroyed. No one will ever read your notes.

23 In reaching your verdict, do not let bias,
24 sympathy, prejudice, public opinion, or any other
25 sentiment for or against any party influence your

1 decision. Your verdict must be based on the
2 evidence that has been received and the law on
3 which I have instructed you.

4 Reaching a verdict is exclusively your job. I
5 cannot participate in that decision in any way and
6 you should not guess what I think your verdict
7 should be from something I may have said or done.
8 You should not think that I prefer one verdict over
9 another. Therefore, in reaching your verdict, you
10 should not consider anything that I have said or
11 done, except for my specific instructions to you.

12 Pay careful attention to all the instructions
13 that I gave you, for that is the law that you must
14 follow. You will have a copy of my instructions
15 with you when you go into the jury room to
16 deliberate. All the instructions are important,
17 and you must consider all of them together. There
18 are no other laws that apply to this case, and even
19 if you do not agree with these laws, you must use
20 them in reaching your decision in this case.

21 When you go to the jury room, the first thing
22 you should do is choose a presiding juror to act as
23 a foreman or foreperson during your deliberations.
24 The foreperson should see to it that your
25 discussions are orderly and that everyone has a

1 fair chance to be heard.

2 It is your duty to talk with one another in
3 the jury room and to consider the views of all the
4 jurors. Each of you must decide the case for
5 yourself, but only after you have considered the
6 evidence with the other members of the jury. Feel
7 free to change your mind if you are convinced that
8 your position should be different. You should all
9 try to agree, but do not give up your honest
10 beliefs just because the others think differently.
11 Keep an open mind so that you and your fellow
12 jurors can easily share ideas about the case.

13 I will give you a verdict form with questions
14 you must answer. I have already instructed you on
15 the law that you are to use in answering these
16 questions. You must follow my instructions and the
17 form carefully. You must consider each question
18 separately. Please answer the questions in the
19 order in which they appear. After you answer a
20 question, the form tells you what to do next.

21 Your verdict must be unanimous, that is, your
22 verdict must be agreed to by each of you. When you
23 have agreed on your verdicts, your foreperson must
24 write the date and sign it at the bottom and return
25 the verdict to the deputy or the bailiff.

1 If any of you need to communicate with me for
2 any reason, write me a note and give it to the
3 bailiff. In your note do not disclose any vote or
4 split.

5 You may now retire to decide your verdicts.

6 Normally I would have read you the verdict
7 form. The attorneys have agreed that you should
8 read it on your own. And because it is
9 substantial, it's going to save us a little bit of
10 time that you guys can deliberate. I think that's
11 the agreement of the parties. Deputy.

12 (Jurors exit the courtroom at 3:05 p.m.)

13 THE COURT: All right. Thank you.

14 All right. So I read those over, the way they
15 were typed, so I know there was a couple of things
16 that were read over twice, but that's what I did.
17 But I don't think there's any objections to the way
18 I read the instructions from anybody?

19 MR. WEBER: No.

20 MR. ZAPPOLO: No, sir.

21 THE COURT: Wonderful. Let's make sure that
22 all the evidence is correct before we send it back
23 to the jury room, so I need the attorneys to look
24 that over.

25 MR. WEBER: I got to give you the documents.

1 THE COURT: All right. Mr. Zappolo,
2 Mr. Weber, once the evidence is collected, the
3 deputy will take it back. I'm going to step off.
4 We'll be in recess.

5 (Thereupon, a short break was taken from
6 3:06 p.m. to 3:08 p.m.)

7 THE COURT: All right. So if everybody is
8 satisfied with the evidence, and once the clerk
9 collects it, we can send it back to them.

10 THE COURT DEPUTY: There's one question. One
11 of the jurors wants to smoke.

12 THE COURT: They want to take a smoke break?

13 THE COURT DEPUTY: Yes.

14 THE COURT: Okay. Well, Mr. Weber,
15 Mr. Zappolo, one of the jurors wants to take a
16 smoke break.

17 MR. WEBER: No problem.

18 THE COURT: Okay. So why don't we do this --

19 MR. ZAPPOLO: They're the boss.

20 THE COURT: -- why don't you --

21 THE COURT DEPUTY: Do you want me to get
22 another deputy to standby?

23 MR. WEBER: They can take a ten-minute break
24 anyway because we're doing this.

25 THE COURT: Yeah. Okay. Do you want them to

1 split up for ten minutes?

2 MR. WEBER: Yeah.

3 THE COURT: Okay. All right. Let's have them
4 take a -- why don't you walk them downstairs, tell
5 them to get coffee. Tell them lunch is going to be
6 ordered soon. Tell them to smoke their cigarettes.
7 And then tell them that they need to be back in
8 here at 3:20.

9 THE COURT DEPUTY: 3:20?

10 THE COURT: 3:25.

11 THE COURT DEPUTY: 3:25?

12 THE COURT: Yes.

13 THE COURT DEPUTY: Gotcha.

14 (Thereupon, a short break was taken at
15 3:09 p.m., and the jury receives the evidence at
16 3:30 p.m.)

17 (Jurors ask a question at 4:17 p.m.)

18 THE COURT DEPUTY: They are asking for a
19 calculator.

20 THE COURT: Okay. I have a calculator; I'm
21 going to send it back. This is a really simple
22 one. It just a basic-function calculator, that's
23 why I send it back.

24 I had a smaller one that looked like the same
25 thing, but I don't know where it went. So do you

1 guys want to look at it to see if it's okay to send
2 back?

3 MR. WEBER: It's fine.

4 MR. ZAPPOLO: It's okay, Your Honor.

5 THE COURT: All right. That's it.

6 MR. WEBER: Thank you.

7 MR. ZAPPOLO: Thank you.

8 (Thereupon, a short break was taken from
9 4:17 p.m. to 4:39 p.m.)

10 THE COURT: Okay. I have a question from the
11 jury. It's not a real in-depth question. It just
12 reads: "We want the evidence number of the
13 Consultant Agreement between MACC and SEI."

14 Now I can address this two ways: One, I can
15 bring them in here, line them up, and give them the
16 number, or I can write it on a Post-it Note and
17 send the Post-it Note back.

18 MR. WEBER: Post-it Note.

19 MR. ZAPPOLO: Post-it Note is fine.

20 THE COURT: All right. So what's the number?

21 MR. WEBER: One minute. Defendants' 78, I
22 would say. Yes, Defendants' 78.

23 THE COURT: It's okay if I write DEF Number
24 78?

25 MR. ZAPPOLO: Yes, that's fine.

1 MR. WEBER: Yes.

2 (Thereupon, a short break was taken from
3 4:40 p.m. to 6:20 p.m.)

4 THE COURT: There is a question from the jury.
5 Go to the verdict form.

6 MR. WEBER: Okay.

7 THE COURT: "The verdict form, question 30.
8 Need to know the definition of 'conferred.' Is
9 there a mistake or typo in question?"

10 What page is 30?

11 MR. WEBER: 11.

12 THE COURT: Oh, my God, they're only on 30?
13 Okay. Well, I'll ask you guys this: You know, I'm
14 willing to stay as long as I need to today. I told
15 them 7:00 --

16 MR. WEBER: Yeah.

17 THE COURT: -- but if they have the energy to
18 keep going, I'll keep going.

19 MR. WEBER: Yeah.

20 THE COURT: Okay.

21 MR. ZAPPOLO: We'll stay long.

22 MR. WEBER: I would just say --

23 THE COURT: Go to page 11. Question 30 reads:
24 "Did James Todd Wagner establish, with reasonable
25 certainty, the value of the benefit James Todd

1 Wagner conferred? Yes or no?"

2 What's the typo, if any?

3 MR. WEBER: I don't think they know what
4 "conferred" means.

5 MR. ZAPPOLO: Yeah. I think it's a vocabulary
6 request.

7 MR. WEBER: Yeah. They don't know what
8 "conferred" means. I think that's what they're
9 saying.

10 THE COURT: Okay. Well --

11 MR. ZAPPOLO: I don't know. Do we give them a
12 Webster's definition or --

13 THE COURT: What do you guys want to do?

14 MR. WEBER: Well, I'll print out a conferred
15 definition. I don't mind that. Let's see what it
16 will say.

17 MR. ZAPPOLO: Let's do it as long as there's
18 nothing absurd about the definition.

19 "To give something," yeah.

20 MR. WEBER: "To give (something, such as a
21 property or characteristic) to someone or
22 something."

23 THE COURT: Which one do you want to give, if
24 any?

25 MR. WEBER: Let's give them number 2.

1 MR. ZAPPOLO: Conferred --

2 THE COURT: Number 2?

3 MR. WEBER: Yeah, "to give" -- "to give to
4 someone or something." How about that one?

5 THE COURT: "To give (something, such as a
6 property or characteristic) to someone or
7 something"?

8 MR. WEBER: Yes. Are you looking at it?
9 Yeah.

10 THE COURT: Number 2, that's what you guys
11 want me to send back?

12 MR. ZAPPOLO: I don't know whether it's a
13 property or characteristic. I mean, it's to give
14 something. You confer the benefit, you gave them
15 something.

16 MR. WEBER: I'm okay with "to give something."

17 MR. ZAPPOLO: "To give something."

18 MR. WEBER: "To give something."

19 THE COURT: I'll just write that down and hand
20 it to them.

21 MR. ZAPPOLO: Yeah. "Confer, to give
22 something."

23 THE COURT: Okay.

24 MR. WEBER: I would write "Conferred means" --
25 Scott, he should write "conferred means to give

1 something"?

2 MR. ZAPPOLO: Yes.

3 MR. WEBER: "Conferred means to give
4 something."

5 MR. ZAPPOLO: Actually, since it's
6 "conferred," does it mean gave something, or should
7 we say "confer means to give something"?

8 MR. WEBER: I don't know. It should be like
9 you said, "to give something." "Conferred means to
10 give something."

11 MR. ZAPPOLO: Yes, "confer means to give
12 something."

13 THE COURT: How does this look?

14 MR. ZAPPOLO: Right.

15 MR. WEBER: Yeah.

16 THE COURT: Are you okay with that?

17 MR. WEBER: Yeah.

18 THE COURT: So it's a piece of paper that says
19 "Conferred: To give something."

20 (Thereupon, a short break was taken from
21 6:24 p.m. to 6:36 p.m.)

22 THE COURT: All right. Let me see it.
23 There's another question.

24 All right. So the question from the jury was,
25 and it reads: "Verdict, question 30, page 11, can

1 you rephrase the question, please?"

2 The parties have agreed to rephrase the
3 question, which I will send back to read: "Did
4 James Todd Wagner establish, with reasonable
5 certainty, the value of the benefit James Todd
6 Wagner conferred to Warren Mosler?" And then it
7 should say "Yes or no?"

8 MR. WEBER: Oh, yes.

9 MR. ZAPPOLO: And I guess there should be a
10 question mark at the end of that, Your Honor.

11 MR. WEBER: Well, but aren't they going to
12 mark it on the verdict sheet? How is that going to
13 work?

14 THE COURT: I don't know what they're going to
15 do, and so we're going to do this just to be safe.

16 MR. WEBER: Okay.

17 MR. ZAPPOLO: Yeah.

18 MR. WEBER: All right.

19 THE COURT: And then should I instruct them to
20 mark it on the verdict sheet?

21 MR. WEBER: I would say, yes, mark it on the
22 verdict sheet. Put "Mark it on the verdict sheet,"
23 right, Scott?

24 MR. ZAPPOLO: Yes.

25 THE COURT: All right.

1 (Thereupon, a short break was taken from
2 6:37 p.m. to 8:07 p.m.)

3 THE COURT: All right. At ease. I don't know
4 what they're going to do, you know, but there's
5 this magic to the jury system. What they might do
6 could be good for you, could be bad for you, could
7 be both, but this is the system. So the next
8 several moments you're going to be exercising
9 stoicism, okay?

10 MR. WAGNER: Understood, Your Honor.

11 THE COURT DEPUTY: Jury entering.

12 (Jurors entering the courtroom at 8:09 p.m.)

13 THE COURT: All right. Please be seated. All
14 right. I understand we have a verdict?

15 JUROR JORGENSEN: Yes, we do.

16 THE COURT: All right. Madam Clerk, let's
17 publish it, please.

18 THE CLERK: In the case of James Todd Wagner,
19 Supercar Engineering, Incorporated versus Warren
20 Mosler, Mosler Auto Care Center, Incorporated,
21 Verdict Form.

22 Count A - SEI's claim for Unjust Enrichment
23 against MACC. For SEI's unjust enrichment claim
24 against MACC as to automotive work, engineering
25 work, and/or work to obtain EPA approval to MACC

1 between April 16, 2011 and September 28, 2011,
2 please answer the following questions:

3 1. Did SEI establish by the greater weight of
4 the evidence that SEI conferred the benefit of
5 automotive work, engineering work, and/or work to
6 obtain EPA approvals to MACC between April 16, 2011
7 and September 28, 2011 (the "Work")?

8 Yes.

9 2. Did SEI establish by the greater weight of
10 the evidence that MACC knowingly and voluntarily
11 anticipated and retained the Work bestowed by SEI?

12 Yes.

13 3. Did SEI establish by the greater weight of
14 the evidence that MACC's retention of the benefit
15 is inequitable unless MACC pays to SEI the value of
16 the Work?

17 Yes.

18 4. Does the greater weight of the evidence
19 establish the following defenses by MACC to SEI's
20 unjust enrichment claim?

21 **A. SEI was paid for the Work? No.**

22 **B. an express agreement governs the Work? No.**

23 **C. SEI was paid under the Consultant Agreement**
24 **with MACC? No.**

25 **5. Did SEI establish, with reasonable**

1 certainty, the value of the Work, SEI conferred?

2 No.

3 Count B - SEI's claim for Quantum Meruit
4 against MACC.

5 For SEI's Quantum Meruit claim against MACC as
6 to automotive work, engineering work, and/or work
7 to obtain EPA approvals to MACC between April 16,
8 2011 and September 28, 2011, please answer the
9 following questions:

10 7. Did SEI establish by the greater weight of
11 the evidence that SEI provided a benefit to MACC in
12 the form of automotive work, engineering work,
13 and/or work to obtain EPA approvals to MACC between
14 April 16, 2011 and September 28, 2011 (the "Work")?

15 Yes.

16 8. Did SEI establish by the greater weight of
17 the evidence that under ordinary circumstances a
18 reasonable person would expect to pay for the
19 benefit of the work?

20 Yes.

21 9. Did SEI establish by the greater weight of
22 the evidence that MACC failed to pay SEI for the
23 Work?

24 Yes.

25 10. Does the greater weight of the evidence

1 establish the following defenses by MACC to SEI's
2 Quantum Meruit claim?

3 A. SEI was paid for the Work? No.

4 B. an express agreement governs the Work? No.

5 C. SEI was paid under the Consultant
6 Agreement? No.

7 11. Did SEI establish, with reasonable
8 certainty, that MACC caused it to suffer damages?

9 Yes.

10 12. What is the amount of money that under the
11 ordinary circumstances a reasonable person would
12 reasonably expect to pay for the Work?

13 \$33,894.

14 Count C - SEI's claim for a Breach of Contract
15 against MACC. For SEI's Breach of Contract claim
16 against MACC as to as to automotive work,
17 engineering work, and/or work to obtain EPA
18 approvals to MACC between April 16, 2011 and
19 September 28, 2011, please answer the following
20 questions:

21 13. Did SEI establish by the greater weight of
22 the evidence that SEI and MACC agreed to a contract
23 for automotive work, engineering work, and/or work
24 to obtain EPA approval between April 16, 2011 and
25 September 28, 2011?

1 Yes.

2 14. Did SEI establish by the greater weight of
3 the evidence that MACC breached that contract?

4 Yes.

5 15. Did SEI establish, with reasonable
6 certainty, that MACC's breach of the contract
7 caused SEI to suffer damages?

8 Yes.

9 16. Does the greater weight of the evidence
10 establish the following defenses by MACC to SEI's
11 Breach of Contract claim as to EPA approvals?

12 A. The contract terminated? No.

13 17. What is the amount of actual damages that
14 SEI suffered as a result of MACC breaching the
15 contract as to EPA approvals?

16 \$100,000.

17 Count D - James Todd Wagner's claim for Breach
18 of Contract against Warren Mosler as to the
19 \$100,000 deposit.

20 For James Todd Wagner's breach of contract
21 claim against Warren Mosler as to the \$100,000
22 deposit, please answer the following questions:

23 18. Did James Todd Wagner prove by the greater
24 weight of the evidence that James Todd Wagner and
25 Warren Mosler entered into a contract whereby

1 Warren Mosler agreed to return the \$100,000 deposit
2 if MACC's assets were sold to another?

3 Yes.

4 19. Did James Todd Wagner prove by the greater
5 weight of the evidence that James Todd Wagner did
6 all, or substantially all, of the essential things
7 which the contract required him to do?

8 Yes.

9 20. Did James Todd Wagner prove by the greater
10 weight of the evidence that all conditions required
11 by the contract for Warren Mosler's performance had
12 occurred?

13 Yes.

14 21. Did James Todd Wagner prove by the greater
15 weight of the evidence that Warren Mosler was
16 required to return the \$100,000 deposit?

17 Yes.

18 22. Did James Todd Wagner establish, with
19 reasonable certainty, the amount of damages that
20 Warren Mosler caused James Todd Wagner to suffer?

21 Yes.

22 23. Does the greater weight of the evidence
23 establish the following defenses by Warren Mosler
24 to James Todd Wagner's claim?

25 A. The \$100,000 was a nonrefundable deposit?

1 No.

2 B. James Todd Wagner sought return of the
3 \$100,000 before MACC's assets were sold to another?

4 Yes.

5 C. There is no contract in writing that the
6 \$100,000 was a refundable deposit and James Todd
7 Wagner did not perform under the contract? No.

8 D. There was no contract for James Todd Wagner
9 to purchase MACC? No.

10 E. Equitable Estoppel? No.

11 F. Lew Lee and SFDM was working on behalf of
12 James Todd Wagner for the non-refundability of the
13 \$100,000? No.

14 G. The \$100,000 deposit was provided pursuant
15 to a signed, written agreement between MACC and
16 SFDM which made the deposit "nonrefundable"? No.

17 24. Did James Todd Wagner prove by the greater
18 weight of the evidence that Warren Mosler caused
19 James Todd Wagner to suffer damages by Warren
20 Mosler not returning the \$100,000 deposit?

21 Yes.

22 25. What is the amount of actual damages that
23 James Todd Wagner suffered as a result of Warren
24 Mosler's breach of contract?

25 \$150,000.

1 Count E - James Todd Wagner's claim for Unjust
2 Enrichment against Warren Mosler as to the \$100,000
3 deposit.

4 For James Todd Wagner's unjust enrichment
5 claim against Warren Mosler as to the \$100,000
6 deposit, please answer the following questions:

7 26. Does the greater weight of the evidence
8 establish that James Todd Wagner conferred a
9 benefit upon Warren Mosler through the \$100,000
10 deposit?

11 Yes.

12 27. Does the greater weight of the evidence
13 establish that Warren Mosler knowingly and
14 voluntarily accepted and retained that benefit
15 bestowed by James Todd Wagner?

16 Yes.

17 28. Does the greater weight of the evidence
18 establish that Warren Mosler's retention of the
19 \$100,000 deposit is inequitable unless Warren
20 Mosler pays \$100,000 to James Todd Wagner?

21 Yes.

22 29. Does the greater weight of the evidence
23 establish the following defenses by Warren Mosler
24 to James Todd Wagner's claim?

25 A. The \$100,000 was nonrefundable? No.

1 B. James Todd Wagner sought return of the
2 \$100,000 before MACC's assets were sold to another?

3 Yes.

4 C. There was a contract with James Todd Wagner
5 for the \$100,000 deposit that made the deposit,
6 quote/unquote, nonrefundable? No.

7 D. Equitable Estoppel? No.

8 E. Lew Lee and SFDM was working on behalf
9 James Todd Wagner for the non-refundability of the
10 \$100,000? No.

11 F. The \$100,000 nonrefundable deposit was
12 provided to Warren Mosler pursuant to a signed,
13 written agreement between MACC and SFDM? No.

14 30. Did James Todd Wagner establish, with
15 reasonable certainty, the value of the benefit
16 James Todd Wagner conferred?

17 Yes.

18 31. What is the value of the benefit that
19 Warren Mosler voluntarily accepted and retained?

20 \$100,000.

21 Count F - James Todd Wagner's claim for
22 Defamation against Warren Mosler.

23 For James Todd Wagner's defamation claim
24 against Warren Mosler, please answer the following
25 questions:

1 Defamation Claim - Statement 1. The first
2 statement for your consideration is, quote, The
3 twin-turbo conversion to the 'RaptorGTR' Mosler
4 MT900S will not pass emissions and is not
5 certifiable for public sale, end quote.

6 32. Did James Todd Wagner prove by the greater
7 weight of the evidence that Warren Mosler
8 communicated Defamation Claim - Statement 1 to a
9 third party?

10 Yes.

11 33. Did James Todd Wagner prove by the greater
12 weight of the evidence that Defamation Claim -
13 Statement 1 was false?

14 Yes.

15 34. Did James Todd Wagner prove by the greater
16 weight of the evidence that Warren Mosler acted at
17 least negligently concerning James Todd Wagner?

18 Yes.

19 35. Did James Todd Wagner prove by the greater
20 weight of the evidence that because of the falsity
21 of Defamation Claim - Statement 1, James Todd
22 Wagner suffered actual damages?

23 Yes.

24 36. Did James Todd Wagner prove by the greater
25 weight of the evidence that Defamation Claim -

1 Statement 1 is defamatory?

2 Yes.

3 37. Does the greater weight of the evidence
4 establish the following defenses by Warren Mosler
5 to James Todd Wagner's claim?

6 A. The Defamation Claim - Statement 1 is
7 opinion? No.

8 B. The Defamation Claim - Statement 1 is
9 rhetoric and hyperbole? No.

10 C. The Defamation Claim - Statement 1 is true
11 or substantially true and made with good motive?
12 No.

13 D. Warren Mosler did not make the Defamation
14 Claim - Statement 1 in a negligent manner? No.

15 38. Did James Todd Wagner prove by the greater
16 weight of the evidence that Defamation Claim -
17 Statement 1 caused actual damages to James Todd
18 Wagner?

19 Yes.

20 39. Did James Todd Wagner establish, with
21 reasonable certainty, the amount of his damages,
22 that Warren Mosler caused him to suffer by
23 Defamation Claim - Statement 1?

24 Yes.

25 40. What is the amount of damages that James

1 Todd Wagner suffered as a result of Defamation
2 Claim - Statement 1?

3 \$250,000.

4 Count F - James Todd Wagner's claim for
5 Defamation against Warren Mosler.

6 For James Todd Wagner's defamation claim
7 against Warren Mosler, please answer the following
8 questions:

9 Defamation Claim - Statement 2. The second
10 statement for your consideration is, quote, Mosler
11 says the RaptorGTR is not one of its products and
12 refused to comment further, end quote.

13 41. Did James Todd Wagner prove by the greater
14 weight of the evidence that Warren Mosler
15 communicated Defamation Claim - Statement 2 to a
16 third party?

17 No.

18 Count F - James Todd Wagner's claim for
19 Defamation against Warren Mosler.

20 For James Todd Wagner's defamation claim
21 against Warren Mosler, please answer the following
22 questions:

23 Defamation Claim - Statement 3. The third
24 statement for your consideration is, quote, This is
25 not from me. Mosler is not involved with this.

1 Warren Mosler, end quote.

2 50. Did James Todd Wagner prove by the greater
3 weight of the evidence that Warren Mosler
4 communicated Defamation Claim - Statement 3 to a
5 third party?

6 Yes.

7 51. Did James Todd Wagner prove by the greater
8 weight of the evidence that Defamation Claim -
9 Statement 3 was false?

10 Yes.

11 52. Did James Todd Wagner prove by the greater
12 weight of the evidence that Warren Mosler acted at
13 least negligently concerning James Todd Wagner?

14 No.

15 53. Did James Todd Wagner prove by the greater
16 weight of the evidence that because of the falsity
17 of Defamation Claim - Statement 3, James Todd
18 Wagner suffered actual damages?

19 No.

20 54. Did James Todd Wagner prove by the greater
21 weight of the evidence that Defamation Claim -
22 Statement 3 is defamatory?

23 No.

24 Count G - SEI's Trade Libel claim against
25 Warren Mosler.

1 For SEI's trade libel claim against Warren
2 Mosler, please answer the following questions:

3 Trade Libel Claim - Statement 1. The first
4 statement for your consideration is, quote, The
5 twin-turbo conversion to the 'RaptorGTR' Mosler
6 MT900S will not pass emissions and is not
7 certifiable for public sale, end quote.

8 59. Did SEI prove by the greater weight of the
9 evidence that Warren Mosler communicated Trade
10 Libel Claim - Statement 1 to a third party?

11 Yes.

12 60. Did SEI prove by the greater weight of the
13 evidence that Trade Libel Claim - Statement 1 was
14 false?

15 Yes.

16 61. Did SEI prove by the greater weight of the
17 evidence that Warren Mosler knew or reasonably
18 should know that the Trade Libel Claim - Statement
19 1 would result in inducing others not to deal with
20 SEI?

21 Yes.

22 62. Did SEI prove by the greater weight of the
23 evidence that Trade Libel Claim - Statement 1 did
24 play a material and substantial part in inducing
25 others not to deal with SEI?

1 Yes.

2 63. Does the greater weight of the evidence
3 establish the following defenses by Warren Mosler
4 to James Todd Wagner's claim?

5 A. Trade Libel Claim - Statement 1 is opinion?

6 No.

7 B. Trade Libel Claim - Statement 1 is rhetoric
8 and hyperbole? No.

9 C. Trade Libel Claim - Statement 1 is true or
10 substantially true and made with good motive? No.

11 D. Warren Mosler did not make the Trade Libel
12 Claim - Statement 1 in a negligent matter? No.

13 64. Did SEI prove by the greater weight of the
14 evidence that Trade Libel Claim - Statement 1
15 caused actual damages to SEI?

16 Yes.

17 65. Did SEI establish, with reasonable
18 certainty, the amount of its damages that Warren
19 Mosler caused it to suffer by Trade Libel Claim -
20 Statement 1?

21 Yes.

22 66. What is the amount of damages that SEI
23 suffered as a result of the Trade Libel Claim -
24 Statement 1?

25 \$350,000.

1 Count G - SEI's Trade Libel claim against
2 Warren Warren Mosler.

3 For SEI's trade libel claim against Warren
4 Mosler, please answer the following questions:

5 Trade Libel Claim - Statement 2. The second
6 trade libel statement for your consideration is,
7 quote, Mosler says the RaptorGTR is not one of its
8 products and refused to comment further, end quote.

9 67. Did SEI prove by the greater weight of the
10 evidence that Warren Mosler communicated Trade
11 Libel Claim - Statement 2 to a third party?

12 No.

13 Count G - SEI's Trade Libel claim against
14 Warren Mosler.

15 For SEI's trade libel claim against Warren
16 Mosler, please answer the following questions:

17 Trade Libel - Statement 3. The third
18 statement for your consideration is, quote, This is
19 not from me. Mosler is not involved with this.
20 Warren Mosler, end quote.

21 75. Did SEI prove by the greater weight of the
22 evidence that Warren Mosler communicated Statement
23 3 to a third party?

24 Yes.

25 76. Did SEI prove by the greater weight of the

1 evidence that Statement 3 was false?

2 No.

3 Warren Mosler and MACC's Affirmative Defense -
4 Recoupment.

5 For MACC and Warren Mosler's recoupment
6 affirmative defense based on James Todd Wagner and
7 SEI's tortious interference with a business or
8 contractual relationship with Savvas Savopoulos,
9 please answer the following questions:

10 83. Did MACC and Warren Mosler prove by the
11 greater weight of the evidence that a business
12 relationship or contractual relationship existed
13 between Warren Mosler and MACC and Savvas
14 Savopoulos?

15 Yes.

16 84. Did MACC and Warren Mosler prove by the
17 greater weight of the evidence that James Todd
18 Wagner and SEI knew that a business relationship or
19 contractual relationship existed between Warren
20 Mosler and MACC and Savvas Savopoulos?

21 Yes.

22 85. Did MACC and Warren Mosler prove by the
23 greater weight of the evidence that James Todd
24 Wagner and SEI either intended to induce or
25 otherwise cause the breach of the business

1 relationship or contractual relationship or acted
2 knowing that their actions were likely to cause
3 that result?

4 No.

5 86. Did MACC and Warren Mosler, by greater
6 weight of the evidence, prove that James Todd
7 Wagner and SEI acted unjustifiably?

8 No.

9 87. Did MACC and Warren Mosler, by greater
10 weight of the evidence, prove that James Todd
11 Wagner and SEI caused actual damages to MACC and
12 Warren Mosler?

13 No.

14 88. Did MACC and Warren Mosler establish, with
15 reasonable certainty, the amount of damages
16 suffered as a result of James Todd Wagner and SEI's
17 interference?

18 No.

19 Warren Mosler and MACC's Affirmative Defense -
20 Setoff.

21 For MACC and Warren Mosler's setoff
22 affirmative defense based on James Todd Wagner and
23 SEI's tortious interference with a business or
24 contractual relationship with Savvas Savopoulos,
25 please answer the following questions:

1 90. Did MACC and Warren Mosler prove by the
2 greater weight of the evidence that a business
3 relationship or contractual relationship existed
4 between Warren Mosler and MACC and Savvas
5 Savopoulos?

6 Yes.

7 91. Did MACC and Warren Mosler prove by the
8 greater weight of the evidence that James Todd
9 Wagner and SEI knew that a business relationship or
10 contractual relationship existed between Warren
11 Mosler and MACC and Savvas Savopoulos?

12 Yes.

13 92. Did MACC and Warren Mosler prove by
14 greater weight of the evidence that James Todd
15 Wagner and SEI either intended to induce or
16 otherwise cause the breach of the business
17 relationship or contractual relationship or acted
18 knowing that their actions were likely to cause
19 that result?

20 No.

21 93. Did MACC and Warren Mosler, by greater
22 weight of the evidence, prove that James Todd
23 Wagner and SEI acted unjustifiably?

24 No.

25 94. Did MACC and Warren Mosler, by greater

1 weight of the evidence, prove that James Todd
2 Wagner and SEI caused actual damages to MACC and
3 Warren Mosler?

4 No.

5 95. Did MACC and Warren Mosler establish, with
6 reasonable certainty -- sorry, they didn't answer
7 that question.

8 So say we all, this 26th day of May 2023.

9 Shira Jorgensen, Foreperson.

10 THE COURT: Does anyone want to poll the jury?

11 MR. WEBER: Sorry?

12 THE COURT: Does anyone want to poll the jury?

13 MR. ZAPPOLO: No, Your Honor.

14 MR. WEBER: No, Your Honor.

15 THE COURT: All right. So ladies and
16 gentlemen, thank you. On behalf of the parties,
17 the lawyers, and the people of the State of Florida
18 do thank you for your time and consideration of the
19 case.

20 I also want to advise you of some special
21 privileges enjoyed by jurors. No juror can be
22 required to talk about the discussion that occurred
23 in the jury room, except by order of the court.

24 For many centuries our society has relied upon
25 juries for consideration of difficult issues. We

1 have recognized for hundreds of years that a jury's
2 deliberation and discussion and votes should remain
3 their private affair as long as they wish it.

4 Therefore, the law gives you a unique privilege not
5 to speak about the jury's verdict. The lawyers and
6 representatives are not permitted to initiate any
7 communication with you about the trial. However,
8 you can speak to the lawyers or anyone else about
9 the trial.

10 You also have the right to refuse to speak
11 with anyone. The request can come from those who
12 are simply curious or from those who seek to find
13 fault with you. It will be up to you to decide
14 whether to preserve your privacy as a juror.

15 So in a moment I am going to release you. I'm
16 going to hurry up because I know you want to go
17 home. You've given us so much of your time. You
18 know, we're really appreciative.

19 Deputy, can you pass out -- so what I have
20 here are, I guess, a few different things. One is
21 a letter. Some of you might need it for your
22 employer. You know, there's a certificate that's
23 printed with some assistance from the local bar
24 association. And then also I have given you a
25 little book.

1 So the first two are your tax dollars at work,
2 but I have given you a little book that I
3 personally buy every juror. That comes from my
4 pocket; no tax dollars is involved in that. But
5 it's a copy of our Declaration, our Constitution,
6 and Bill of Rights. I want you to have it. I
7 think there's really no more important words that
8 have ever been written by people for people.

9 You know, a little bit about me. I'll tell
10 you that I immigrated to this country when I was
11 five years old, but those documents give me an
12 incredible inspiration. And people who wrote those
13 documents, signed those documents, who believed
14 those documents, were willing to die for those
15 documents, left them behind for future generations
16 of Americans like myself. And so that is my
17 inheritance. I get to give it to my daughter.
18 It's the inheritance that you get to pass along to
19 the future generation of Americans.

20 The words that are in those books, or in that
21 book, are profound and important. You know, you
22 can go to other parts of the world where they will
23 brag about how they have buildings older than our
24 country, but what nobody has is a constitutional
25 republic order. Before our nation came into

1 existence, we were accustomed to a world where
2 people were governed by kings, warlords, and
3 tyrants, but that Constitution preserved a
4 government for the people. And it's been copied
5 sometimes with much less success.

6 You know, what you're going to see in there
7 are the promise of what America is supposed to be,
8 that's our Declaration; and then the mechanism to
9 accomplish that promise, which is our Constitution.

10 There are parts of this world where they have
11 words that sound pretty, and you can go to other
12 parts of the world where you can't worship the way
13 you want to or speak out against your government,
14 even though they claim to have the same rights.
15 But here, those rights actually mean something.

16 If you read those -- that book, it will tell
17 you that we believe that you're born with those
18 rights. They come from your creator, whoever you
19 may think that is, and they're yours, and that
20 Constitution is written to protect them. That's
21 why it's written in the negative where it says
22 "Congress shall pass no law." There are
23 prohibitions on government from taking your rights.
24 That is a unique thing that never had happened
25 before, you know.

1 And so I tell you that and I give you that
2 book because you've just given us three weeks of
3 your life. I know it wasn't easy. And I know that
4 when you showed up three weeks ago, some of you
5 were not excited about being with us for three
6 weeks. I can respect that. I can accept that.
7 It's rational. It's reasonable. But I've never
8 seen people sit for jury duty who didn't take it
9 seriously. That's something that I find also
10 comforting should I ever need a jury inspirational
11 when I think about the members of my community.
12 Everybody who's ever sat in those seats, I've all
13 seen them take it seriously.

14 Now, it is a lot, it is a lot to ask people to
15 sit and do this, but it's also one of the most
16 important things that Americans can do. And I told
17 you that at the very beginning, and I want to tell
18 you that again now: This is one of the most
19 important things that Americans can do is sit for
20 jury service.

21 There's a story that I tell only to people who
22 are sitting in a jury. Other people who are
23 important get to hear it because they're here, but
24 this is something that I really share with just
25 members of the panel, you know. But when I was in

1 my early 20s, I was enlisted in the Marines. And
2 if you were in the Marines in the early 2000s, you
3 found yourself overseas at one point or another.

4 And so I was there in 2004. I was a young
5 corporal. And for the first time in about
6 70-something years they were going to have their
7 very first democratic elections.

8 Now, for a little background, Iraq, in the
9 early 1900s, had representative government and then
10 somewhere in the late '50s, early '60s they began
11 to be governed by a series of tyrants that would
12 steal from their people and break their spirit.
13 But if you were a male, up until that point you
14 could elect your representatives.

15 So here we are, in the early 2000s, and
16 something that hadn't happened in a very long time
17 was about to happen. And we were told that we were
18 supposed to experience a lot of violence that day,
19 and so we were instructed to provide security and
20 fast response to ballot boxes. And I was young, I
21 was in my early 20s, and I remember not really
22 being very happy about it.

23 If you know anything about the Marine Corps,
24 you know it's got a very unique mission. And the
25 idea that Marines were going to have to go out

1 there and do what Marines do for someone I didn't
2 know, so that they could elect someone else that I
3 didn't know, and potentially some of us would get
4 hurt, didn't really sit well with me. I didn't
5 like it. By the end of the day that changed.

6 What I saw that day were people who had never
7 voted before cast their vote. It looked a little
8 something like this. I don't know if you remember
9 this from history (Indicating). But women had
10 never voted in that country before, and when they
11 would come out, they would smile. And the young
12 men were beating their chests, also with their
13 purple fingers, and it was something magnificent to
14 see, to watch people obtain a right that they never
15 had before. But what stays with me always, and
16 always gets to me a little bit, is when I think
17 about the men who were very old -- and now in the
18 1950s they were men who were very young. And when
19 they would come out of there, they were crying
20 because they lived in this darkness for 70 years
21 and for the first time in a long time they got to
22 do something that they used to be able to do. That
23 was also incredible. It changed my mind.

24 See, I've seen people obtain a right that
25 they've never had before, and I've seen people

1 regain a right that they thought they would never
2 ever have again, and both of those things are
3 magnificent. But what I think is more important is
4 when the people preserve their right, and I get to
5 see that every single day when members of the
6 community come in here and sit in those chairs and
7 do their duty for the people sitting over there.

8 Your actions for the past three weeks are what
9 makes the words in that book real; something you
10 can hold, touch, and pass on to the next generation
11 of Americans. Because this is how we preserve our
12 rights, by exercising them, even when it's
13 incredibly difficult for us or our personal
14 sacrifice.

15 You know, it just so happens that this weekend
16 is a wonderful weekend where we get to spend time
17 with people we care about because there was
18 wonderful people who never made it back home. And
19 words can't express the gratitude that we feel for
20 the brave and fallen, but our actions can. A lot
21 of these young men and women would probably trade
22 anything to be able to come back from wherever
23 they're at to have a little barbecue and spend time
24 with people they care about, and so I hope you're
25 able to do that instead. But, like I said, words

1 don't do justice and sacrifice for these brave
2 fallen, but our actions do sitting in those chairs
3 for three weeks, listening to a case like this, so
4 that our Constitutional rights can be preserved;
5 celebrate that.

6 Again, on behalf of the people of the state of
7 Florida, the attorneys, the parties, I thank you
8 for your service to us.

9 Deputy, these people are excused.

10 (Jurors exit the courtroom at 8:42 p.m.)

11 THE COURT: All right. So I need a judgment.

12 MR. WEBER: We're going to move for a judgment
13 notwithstanding the verdict on several claims.

14 THE COURT: All right. Let's look at the --
15 it is a lot to look at.

16 All right. So, specifically which claims?

17 MR. WEBER: Well, so I'll start with Count B,
18 and we'll provide a memorandum of law also, Your
19 Honor, but the quantum meruit -- Count B and Count
20 C are pled in the alternative, so he cannot have
21 both.

22 THE COURT: Well, I think Mr. Zappolo agrees
23 to that, don't you?

24 MR. ZAPPOLO: I believe so.

25 THE COURT: B and C cannot coexist. So B is

1 for \$33,894, and C is for \$100,000. Is that
2 correct?

3 MR. WEBER: That is not what I wrote down.

4 MR. ZAPPOLO: Yes.

5 THE COURT: Well, I'm looking at it. Field 12
6 was filled out to the tune of 33,894, and field
7 number 17 is for 100,000.

8 MR. WEBER: Correct.

9 THE COURT: Okay. All right. Well, let me
10 ask you this question: I guess you're asking about
11 Count B?

12 MR. WEBER: Well, let's start with Count B.

13 THE COURT: Okay.

14 MR. WEBER: I think that as an initial matter,
15 both of these counts cannot coexist together as a
16 matter of law. So I think Count B and C both need
17 to be dismissed because they cannot coexist.

18 And I think Count C also cannot exist because
19 they actually-- I do not think that SEI
20 established, with a reasonable certainty, the
21 amount of damages.

22 THE COURT: All right. So you're arguing both
23 counts to me, let's argue one at a time. Apart
24 from the fact that your position is they cannot
25 coexist, which Mr. Zappolo agrees, you're saying

1 that I should dismiss B because they both cannot
2 exist?

3 MR. WEBER: Correct.

4 THE COURT: And then you're attacking C
5 because they didn't address, with a reasonable
6 certainty, the damages?

7 MR. WEBER: Additionally, B cannot exist
8 because Mr. Wagner testified to the existence of an
9 express agreement. So B also cannot exist because
10 he testified that there isn't an express agreement.

11 THE COURT: So that was my question that I led
12 off with, which is why I think you had questions
13 about B. Because if they determined B and C, Count
14 B and Count C, how do you have a breach of a
15 contract --

16 So now you have a contract, so I don't think B
17 could exist, could it, Mr. Zappolo?

18 MR. ZAPPOLO: B doesn't exist if the jury
19 found the contract existed.

20 THE COURT: Okay. So now I agree with that
21 statement. Count C --

22 MR. WEBER: I don't think that they --

23 THE COURT: -- question 13 establishes a
24 contract?

25 MR. WEBER: Yes.

1 THE COURT: All right. So Count B should be
2 dismissed; is that correct?

3 MR. ZAPPOLO: B is dismissed because the jury
4 found the contract.

5 THE COURT: Okay. So addressing Count C, what
6 is the amount of damages that SEI suffered as a
7 result of MACC breaching the contract as to EPA
8 approvals? The answer is \$100,000, correct?

9 MR. ZAPPOLO: Yes.

10 MR. WEBER: That's what the jury found.

11 MR. ZAPPOLO: Yes.

12 THE COURT: All right. Now wasn't there some
13 evidence presented to the jury in the form of
14 documents about how much EPA approval could cost as
15 high as maybe \$5 million?

16 MR. ZAPPOLO: Yes.

17 MR. WEBER: There were some documents that
18 indicated where a third party may have thought it
19 would be valued at, but Mr. Wagner himself valued
20 between 200 and \$300,000.

21 THE COURT: Okay. Well --

22 MR. WEBER: There's no connection to \$100,000
23 to any number in this case. It doesn't even
24 correspond to the hours that SEI allegedly worked
25 on the EPA reward.

1 THE COURT: So I think there was some evidence
2 presented about some valuations. As far as the
3 specific \$100,000, I'm not certain.

4 I know the jury asked for a calculator, and
5 because there was some evidence of some value, how
6 the jury calculated the \$100,000 is beyond us, and
7 so I'm going to deny your request as to Count C and
8 grant your request as to Count B.

9 What's the next one?

10 MR. WEBER: The next one was Count D.

11 THE COURT: All right. Let me get there.
12 Count D?

13 MR. WEBER: Yeah, Count D. The jury actually
14 found in favor of Mr. Mosler with respect to his
15 affirmative defense in B, and that should have
16 ended the inquiry, 23B.

17 THE COURT: 23B?

18 MR. WEBER: B as in "boy." 23B as in "boy."

19 THE COURT: "James Todd Wagner sought return
20 of the \$100,000 before MACC's assets were sold to
21 another," that was the --

22 MR. WEBER: Prior breach.

23 THE COURT: -- the prior breach defense?

24 MR. WEBER: Yep.

25 THE COURT: Mr. Zappolo?

1 MR. ZAPPOLO: I don't think that they're just
2 asking for the money back. I think there's
3 actually a prior breach. There's no term in the
4 contract that they proved that was breached.

5 MR. WEBER: You weren't supposed to get the
6 money back until the sale of the company, which
7 hadn't occurred.

8 THE COURT: Hold on. Hold on. What's the
9 jury instruction number?

10 MR. WEBER: For which one, Your Honor? The
11 prior breach?

12 THE COURT: Correct.

13 MR. WEBER: The prior breach is jury
14 instruction number 46.

15 THE COURT: All right. Let's read that
16 together for a second.

17 If the greater weight of the evidence supports
18 one or more of James Todd Wagner and SEI's claims,
19 then you shall consider the defenses raised by
20 Warren Mosler and MACC.

21 In response to James Todd Wagner's claim of
22 breach of contract against Warren Mosler, Warren
23 Mosler asserts James Todd Wagner's claim is barred
24 by the affirmative defense of a prior breach
25 because MACC's assets were not sold to another

1 before James Todd Wagner sought return of the
2 nonrefundable \$100,000 deposit.

3 If the greater weight of the evidence shows
4 that MACC's assets were not sold to another before
5 James Todd Wagner sought return of the
6 nonrefundable \$100,000 deposit, then your verdict
7 should be for Warren Mosler.

8 Mr. Zappolo?

9 So that was the law of the case as we
10 instructed. Number 13, the inquiry reads: "Did
11 SEI establish by the greater weight of the evidence
12 that SEI and MACC agreed" -- I'm sorry, that's the
13 wrong field I'm reading.

14 MR. WEBER: Yes. You're reading 29 -- I'm
15 sorry, 29B as in "boy." 29B as in "boy," Your
16 Honor.

17 THE COURT: 29B.

18 MR. WEBER: Page 10 of the verdict form.

19 THE COURT: All right. "Does the greater
20 weight of the evidence establish the following
21 defenses by Warren Mosler to James Todd Wagner's
22 claim?"

23 James Todd Wagner sought return of the
24 \$100,000 before MACC's assets were sold to
25 another?"

1 And so, again, it reads: "Does the greater
2 weight of the evidence establish the following
3 defenses by Warren Mosler to James Todd Wagner's
4 claim?"

5 Yes, James Todd Wagner sought return of the
6 \$100,000 before MACC's --

7 MR. ZAPPOLO: 29 is Count E, Your Honor.

8 THE COURT: 29 is E?

9 MR. ZAPPOLO: E as in "echo."

10 THE COURT: I think they actually filled that
11 out a lot throughout the --

12 MR. WEBER: I'm sorry, 23B. 23B as in "boy."

13 THE COURT: The language reads the same.

14 MR. WEBER: Yeah, they're the same.

15 THE COURT: I think they did that for a couple
16 of them.

17 MR. ZAPPOLO: Right.

18 MR. WEBER: Yeah. 23B as in "boy" is the one
19 for the count we're discussing, page 7.

20 THE COURT: Mr. Zappolo?

21 MR. ZAPPOLO: I think the intent of the jury
22 on this verdict form is clear, that they wanted
23 Mr. Wagner to receive the -- you know, the benefit
24 of that award.

25 I argued -- I told -- I argued to the jury

1 150,000, that's not -- if he asks for it before --
2 remember, I gave the jury the analogy, if he asks
3 for it before, that's not a --

4 THE COURT: So I don't see --

5 MR. ZAPPOLO: -- breach as a matter of law.
6 It's not.

7 THE COURT: So I don't see an inconsistency
8 here. What I do see is, at the bottom of 23G, it
9 says if you answer to any of the above -- if your
10 answer to any of the above is "Yes," then your
11 verdict -- hold on -- then your verdict is for
12 Warren Mosler on James Todd Wagner's breach of
13 contract claim as to the \$100,000 deposit, and you
14 should proceed to question 26. And what they did
15 is they probably read that after, or they didn't
16 read that carefully, but they should have proceeded
17 to question 26.

18 MR. WEBER: That's right, Your Honor. That's
19 what the instruction says.

20 THE COURT: And so, all right, your motion is
21 granted as to Count D.

22 What's your next issue?

23 MR. WEBER: Count E, aside from being in the
24 alternative to Count D, I mean the jury also ruled
25 in favor on the affirmative defense --

1 THE COURT: Okay.

2 MR. WEBER: -- in 29B as in "boy" on page 10.

3 THE COURT: Any reason I shouldn't rely on my
4 prior ruling for the same rationale? I mean, the
5 instruction's worded identically almost.

6 MR. WEBER: You should rely on your prior
7 ruling, Your Honor.

8 THE COURT: Mr. Zappolo?

9 MR. ZAPPOLO: The answer to your question is
10 right now no. I think there are other reasons that
11 there's a problem with that, that I'll research and
12 deal with, but right here, as we sit, I think you
13 would remain consistent with your prior ruling.

14 THE COURT: All right. E is granted.

15 Let's go to F. Any issues with F?

16 MR. WEBER: You're talking about Count F,
17 Defamation Claim - Statement 1, correct, Your
18 Honor?

19 THE COURT: Correct.

20 MR. WEBER: On page 11? Yes, Your Honor. I
21 think there's several reasons we have.

22 First, during Mr. Zappolo's closing, he
23 clarified that they are not suing on the statement
24 in the article, they're suing on the alleged words
25 that Mr. Mosler allegedly said to the journalist,

1 which are not here, clearly, in the statement. So,
2 therefore, as a matter of law, the claim should be
3 dismissed. That's the first one.

4 MR. ZAPPOLO: That's not true, Your Honor. If
5 you look at the count in the Sixth Amended
6 Complaint, it says "Warren Mosler said to a
7 journalist."

8 Unfortunately we've already packed up our car,
9 it's almost 9 o'clock at night, but if you look at
10 the complaint, the complaint is clear. And I said
11 we've always been suing -- as I said earlier during
12 the sidebar, we've always been suing on what Warren
13 Mosler said.

14 MR. WEBER: And that's different than what's
15 written here in this article.

16 THE COURT: Give me a moment. Can I see the
17 article?

18 MR. WEBER: The what, Your Honor?

19 THE COURT: The article again. I'm trying to
20 remember --

21 MR. WEBER: It's Plaintiffs' Exhibit 40.

22 THE CLERK: They're in the deliberation room.

23 MR. WEBER: Do you want me to go there?

24 THE COURT: I'm just trying to remember which
25 one --

1 MR. WEBER: It's the red one with the
2 comments, the Matt Farah comments, Warren
3 Mosler confirmed --

4 THE COURT: It's the one with the red squares
5 on the top?

6 MR. WEBER: Yes, the red one. It's Warren
7 Mosler confirmed --

8 MR. ZAPPOLO: Warren Mosler confirmed
9 twin-turbo conversion.

10 I had Mr. Mosler on the stand. I said, you
11 know, you said this. I think that's the one he
12 said "I can't deny or confirm."

13 MR. WEBER: The car took a crap, Your Honor.

14 MR. ZAPPOLO: These are all of his positions.
15 And the jury found that, in paragraph 32, that the
16 greater weight of the evidence showed that Warren
17 Mosler communicated that statement to a third
18 party, the journalist, just as we sued him for.

19 THE COURT: The motion is denied.

20 What's the next one?

21 MR. WEBER: Can I make one more -- I have
22 other points on that one, Your Honor.

23 THE COURT: Okay.

24 MR. WEBER: Other evidence. That statement
25 cannot be defamatory as a matter of law. It's not

1 even a quote from Mr. Mosler. It's a third party
2 allegedly confirming what Mr. Mosler said to him.

3 There's no statement from Mr. Mosler there.
4 It's what a third party is interpreting his words
5 to be. There's actually no statement from
6 Mr. Mosler there.

7 THE COURT: Can I see the article again?

8 MR. WEBER: Yes. It's in there.

9 THE COURT DEPUTY: Which one is it?

10 THE CLERK: Just grab all of them.

11 MR. ZAPPOLO: When I had the gentleman on the
12 stand and said, "This is what you told the
13 journalist," and he said, "I can't confirm it or
14 deny it," but it's in the article that Warren
15 Mosler confirmed to me that the jury --

16 THE COURT: I want to read it real quick.

17 MR. WEBER: I'll get the article for you, Your
18 Honor.

19 THE COURT: I think I've looked at the article
20 like six or seven times, and all of these articles
21 are starting to blend together for me, so I want to
22 see this one.

23 MR. WEBER: This is the one where Mr. Wagner
24 is not even mentioned in the statement.

25 MR. ZAPPOLO: The 17th -- June -- the

1 November 17th comment, Your Honor.

2 MR. WEBER: I think it's further back, Your
3 Honor.

4 MR. ZAPPOLO: Mr. Mosler obviously talked to
5 him because that's what led Mr. Farah to conclude
6 that Mr. Wagner was a con man.

7 MR. WEBER: Yes, that's it. It's not a quote.
8 It doesn't even mention Mr. Wagner in it.

9 THE COURT: Madam Clerk, do you have a list of
10 all the exhibits?

11 THE CLERK: Yes.

12 THE COURT: Okay. All right.

13 MR. ZAPPOLO: The jury found it.

14 THE COURT: The evidence -- apart from
15 Mr. Wagner, that's your strongest evidence, right?

16 MR. ZAPPOLO: I'm sorry?

17 THE COURT: That's the strongest evidence is
18 the evidence of Mr. Wagner?

19 MR. ZAPPOLO: No. Mr. Mosler was on the
20 stand.

21 THE COURT: I'm sorry, Mr. Mosler.

22 MR. ZAPPOLO: He says, "I can't confirm or
23 not," but I went through it with him. These are
24 all his opinions: That it was not certifiable for
25 public sale, and then it wouldn't pass emissions.

1 That's what he was saying, and then the journalist
2 confirmed with him.

3 Your Honor, "That lady's a whore."

4 "Yes, she is." You just confirmed it. You
5 made it a defamatory statement.

6 THE COURT: I'm not really concerned about --
7 I'm only thinking about this statement.

8 MR. WEBER: It's not even about Mr. Wagner at
9 all. He's not even mentioned in the statement. It
10 can't be about him.

11 MR. ZAPPOLO: Your Honor, if you look at -- my
12 client wants to direct Your Honor to the whole
13 stuff in the prior thing. When you look at it, it
14 confirms that this is what Mr. Mosler was doing,
15 was defaming Mr. Wagner. The -- Mr. Farah
16 concluded Mr. Wagner was a con man from speaking to
17 Mr. Mosler, and the author even says that.

18 MR. WEBER: The author says that it was only
19 one time he spoke to Mr. Mosler, and this is not
20 what he said.

21 MR. ZAPPOLO: He said --

22 MR. WEBER: Your Honor, he doesn't even
23 mention Mr. Wagner in the statement at all.

24 THE COURT: All right. Well --

25 MR. ZAPPOLO: But it tends to injure him in

1 his trade and occupation, and what he's doing is
2 he's trying to sell that car. And I argued to the
3 jury he's likening what Mr. Wagner is doing to
4 committing a crime. And that's a perfectly logical
5 inference from the evidence that's before this
6 jury, and the jury found that Mr. Mosler
7 communicated the claim to a third party.

8 THE COURT: Well, so we have what the jury
9 said here, and I think that preserves your record,
10 but I agree with Mr. Weber: Granted as to D.

11 What's the next one? Is it D or, I'm sorry,
12 F?

13 MR. WEBER: It would be G is the next one.

14 THE COURT: No, no, no. The one I just
15 granted was F?

16 MR. WEBER: Count F, Statement 1.

17 THE COURT: Right. I have Statement 2, not at
18 issue.

19 Count F, Statement 3, not at issue.

20 G, Trade Libel Claim - Statement 1. It's the
21 same arguments?

22 MR. WEBER: Same arguments, but I have
23 additional arguments regarding this one.

24 MR. ZAPPOLO: That goes to the car itself.

25 MR. WEBER: The same arguments: It cannot be

1 defamatory. It's not a quote from Mr. Warren
2 Mosler. There's no evidence that he actually made
3 the statement. The author himself says that he
4 only spoke to Warren Mosler once and he didn't say
5 this. The whole comment is some third-party
6 writings.

7 THE COURT: What's your additional argument,
8 though? You've already made those arguments.

9 MR. WEBER: The additional argument is that
10 there's been no evidence that the amount of damage
11 was established with a reasonable certainty.

12 Frankly, I don't know how they even got to the
13 \$350,000 number because it wouldn't even correspond
14 to the price of the car minus -- it wouldn't even
15 correspond to the \$700,000 minus what the car was
16 actually sold for, so there's no rhyme or reason
17 for the amount of the number that they awarded for
18 damages in number 66.

19 MR. ZAPPOLO: That's what the jury --

20 MR. WEBER: And the evidence does not
21 establish, with reasonable certainty, the amount of
22 damages that SEI suffered from this statement.
23 There's nothing tying this statement to any
24 specific damages suffered by SEI.

25 There is other statements out there.

1 Mr. Wagner's expert testified that at least two
2 other comments in other publications at issue in
3 this case negatively impacted the value of the car.

4 MR. ZAPPOLO: Your Honor?

5 MR. WEBER: There's been no expert testimony
6 whereas one specific statement impacted SEI, so it
7 cannot be established with a reasonable certainty.

8 MR. ZAPPOLO: I object. Mr. Weber is just
9 trying to retry the case to Your Honor. This case
10 was tried to the jury. The jury heard conflicting
11 evidence about what the damages would be, et
12 cetera.

13 They concluded that Mr. Mosler made the
14 statements, and they concluded the amount of damage
15 that it caused. And there was a lot of testimony
16 about the valuation of damages in this.

17 THE COURT: So he's actually making a motion
18 notwithstanding the verdict, and we're going
19 through it now.

20 MR. ZAPPOLO: Right. I mean, this is a really
21 high bar to take these decisions away from the
22 jury. The jury made the determination that
23 Mr. Mosler had made the statements, and Your Honor
24 is just saying "No, they didn't." You're -- I
25 don't think you can --

1 MR. WEBER: That's the law.

2 MR. ZAPPOLO: -- argue backwards to the other
3 issues, Your Honor, but --

4 MR. WEBER: That's the law, Your Honor. This
5 is speculation. There's no expert testimony at all
6 tying this statement to any damage. It is
7 impossible to tie this statement to any specific
8 damage because of all the other statements out
9 there. It cannot be done.

10 MR. ZAPPOLO: One person says he lost 700,000,
11 one person says it's not worth anything, and the
12 jury weighs everything. They could have been
13 considering fit, finishes. They could have been
14 looking at pictures. They could have been
15 determining, well, horsepower-to-weight ratio is
16 not as important, but these other things are.

17 THE COURT: Well, so on this one in
18 particular, as far as damages are concerned, we did
19 hear from several other people about the valuation
20 of the vehicle one way or the other. There was
21 testimony that it was, you know, I believe called
22 hyperexotic car; other testimony that it was called
23 a kit car. The value I'm not going to disturb.

24 As far as the statement --

25 MR. ZAPPOLO: Mr. Mosler had the opportunity

1 to say "I didn't say that," and he didn't. It's
2 entirely reasonable on this record for the jury to
3 determine that Mr. Mosler made that statement to
4 Matt Farah --

5 MR. WEBER: It is not, and it also doesn't
6 even mention SEI.

7 MR. ZAPPOLO: -- in both counts.

8 MR. WEBER: The statement itself is not
9 defamatory. It is a third --

10 It's not defamatory. It's what a third party
11 wrote. Mr. Mosler didn't even communicate the
12 statement.

13 THE COURT: Stop both of you. Thank you.

14 MR. ZAPPOLO: The jury found it was --

15 THE COURT: Stop.

16 MR. ZAPPOLO: I'm sorry, Your Honor.

17 THE COURT: All right. Mr. Weber, let me
18 change my mind. I'm going to go back. I'm going
19 to deny your request on Statement 1, F, and I'm
20 going to deny on G.

21 And so I read the verdict form one more time,
22 and Mr. Mosler did testify about this matter. And
23 what I was thinking was that his actual words were
24 he couldn't confirm or deny, but the finder of fact
25 is allowed to accept or reject, and we instruct

1 them on how to gauge credibility of witnesses, and
2 so I think it would be wrong for me to take that
3 from them at this point.

4 Let's go on to the next one.

5 MR. ZAPPOLO: I believe that's the only other
6 place that damages were awarded, Your Honor.

7 THE COURT: Is that it?

8 MR. WEBER: We reserve our right to appeal the
9 remainder.

10 THE COURT: If you want to file written
11 motions, you can. You know, we're doing this now,
12 but okay.

13 MR. WEBER: All right, Your Honor.

14 MR. ZAPPOLO: Thank you, Your Honor.

15 THE COURT: So I guess you'll send me a
16 judgment?

17 MR. ZAPPOLO: Yes, Your Honor.

18 THE COURT: Who's going to send me a judgment?

19 MR. ZAPPOLO: I will.

20 MR. WEBER: We'll work together on it.

21 MR. ZAPPOLO: Plaintiffs.

22 THE COURT: Okay. All right. Well, both of
23 you good job.

24 MR. ZAPPOLO: Thank you, Your Honor.

25 MR. WEBER: Thank you, Your Honor.

1 THE COURT: You know, again, it's not
2 gladiatorial combat. There's actual case law that
3 says it shouldn't be turned into that, but I think,
4 you know, perhaps something more, you know, along
5 the lines of combat sport would be appropriate,
6 something with rules; but, you know, this is one of
7 the toughest things people do. I think you guys
8 did a great job.

9 MR. ZAPPOLO: Thank you, Your Honor.

10 MR. WEBER: Thank you, Your Honor.

11 THE COURT: Other than that, not everybody can
12 win, but the jury has spoken. All right.

13 MR. WAGNER: Your Honor, may I say thank you
14 and --

15 THE COURT: Have a wonderful day.

16 MR. WAGNER: -- I apologize for all of this.
17 All of this is very passionate for me and I lost my
18 cool.

19 THE COURT: It's okay, this case is important
20 to you.

21 All right. Everybody drive safe, it's late.

22 (Whereupon, the proceedings are concluded at
23 9:15 p.m.)

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COUNTY OF PALM BEACH)

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Dated this 6th day of June, 2023.



Angela Connolly, RPR, CRR, FPR-C

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Beth Kelly, FPR

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT,

IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. 50-2012-CA-023358-XXXX-MB

JAMES TODD WAGNER, SUPERCAR ENGINEERING,
INC., a Florida corporation,

Plaintiffs,

vs.

WARREN MOSLER, MOSLER AUTO CARE CENTER,
INC. ("MACC") a Florida corporation,
d/b/a Mosler Automotive,

Defendants.

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PROCEEDINGS BEFORE

HONORABLE LUIS DELGADO

DATE: MAY 9, 2023 - MAY 26, 2023

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17	Redirect Examination By Mr. Weber	2027
18	DEPOSITION TESTIMONY READ BY MR. WEBER	
19	BENJAMIN GREENE	
20	Examination By Plaintiffs' Counsel	2049
21	DEPOSITION TESTIMONY READ BY MR. ZAPPOLO	
22	Cross-Examination By Mr. Zappolo	2059
23	WARREN MOSLER	
24	Direct Examination By Mr. Weber	2072
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I N D E X

VOLUME XII

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Direct Examination (cont.) By Mr. Weber	2217
Cross-Examination By Mr. Zappolo	2258
Redirect Examination By Mr. Weber	2340
Defendants Rest	2361

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Closing Argument by Mr. Weber	2529
Closing Argument By Mr. Zappolo continued	2570
Verdict read by the Clerk	2591
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1	E X H I B I T S			
2	EXHIBIT	DESCRIPTION	MARKED	RECV'D
3	Plaintiffs' 1	was marked Exhibit 3	229	232
4	Plaintiffs' 2	was marked Exhibit 397	255	256
5	Plaintiffs' 3	was marked Exhibit 392	257	258
6	Plaintiffs' 4	was marked Exhibit 1004	260	260
7	Plaintiffs' 5	was marked Exhibit 1247	269	270
8	Plaintiffs' 6	was marked Exhibit 340	284	284
9	Plaintiffs' 7	was marked Exhibit 59	288	289
10	Plaintiffs' 8	was marked Exhibit 1062	291	298
11	Plaintiffs' 9	was marked Exhibit 1220	298	300
12	Plaintiffs' 10	was marked Exhibit 358	303	306
13	Plaintiffs' 11	was marked Exhibit 423	314	315
14	Plaintiffs' 12	was marked Exhibit 422	318	319
15	Plaintiffs' 13	was marked Exhibit 1248	324	324
16	Plaintiffs' 14	was marked Exhibit 1108	327	327
17	Plaintiffs' 15	was marked Exhibit 872	331	332
18	Plaintiffs' 16	was marked Exhibit 209	335	336
19	Plaintiffs' 17	was marked Exhibit 1344	339	340
20	Plaintiffs' 18	was marked Exhibit 412	350	351
21	Plaintiffs' 19	was marked Exhibit 764	374	375
22	Plaintiffs' 20	was marked Exhibit 762	398	399
23	Plaintiffs' 21	was marked Exhibit 1352A	402	403
24	Plaintiffs' 22	was marked Exhibit 1007	405	405
25				

1 E X H I B I T S (cont.)

2	EXHIBIT	DESCRIPTION	MARKED	RECV'D
3	Plaintiffs' 23	was marked Exhibit 765	409	409
4	Plaintiffs' 24	was marked Exhibit 218	413	413
5	Plaintiffs' 25	was marked Exhibit 219	419	420
6	Plaintiffs' 26	was marked Exhibit 1067	420	421
7	Plaintiffs' 27	was marked Exhibit 1006	424	424
8	Plaintiffs' 28	was marked Exhibit 420	425	426
9	Plaintiffs' 29	was marked Exhibit 1221	427	427
10	Plaintiffs' 30	was marked Exhibit 1227	429	430
11	Plaintiffs' 31	was marked Exhibit 394	435	436
12	Plaintiffs' 32	was marked Exhibit 584	439	443
13	Plaintiffs' 33	was marked Exhibit 585	441	443
14	Plaintiffs' 34	was marked Exhibit 256	457	458
15	Plaintiffs' 35	was marked Exhibit 255	462	463
16	Plaintiffs' 36	was marked Exhibit 257	466	467
17	Plaintiffs' 37	was marked Exhibit 259	470	471
18	Plaintiffs' 38A-D	was marked Exhibit	474	476
19		1345A-D		
20	Plaintiffs' 39	was marked Exhibit 315	478	479
21	Plaintiffs' 40	was marked Exhibit 67	489	493
22	Plaintiffs' 41	was marked Exhibit 70	494	495
23	Plaintiffs' 42	was marked Exhibit 69	497	498
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E X H I B I T S (cont.)						
	EXHIBIT		DESCRIPTION		MARKED	RECV'D
1						
2						
3	Plaintiffs'	43	was marked Exhibit	314	571	572
4	Plaintiffs'	44	was marked Exhibit	316		574
5	Plaintiffs'	45	was marked Exhibit	317		575
6	Plaintiffs'	46	was marked Exhibit	318		580
7	Plaintiffs'	1171	was marked Exhibit	1171	676	
8	Plaintiffs'	47	was marked Exhibit	393	252	691
9	Plaintiffs'	48	was marked Exhibit	1295	692	695
10	Plaintiffs'	49	was marked	1149	701	703
11	Plaintiffs'	50	was marked Exhibit	1148	719	723
12	Plaintiffs'	51	was marked Exhibit	636	734	735
13	Plaintiffs'	52	was marked Exhibit	737	739	740
14	Plaintiffs'	53	was marked Exhibit	297	745	747
15	Plaintiffs'	54	was marked Exhibit	1240	752	753
16	Plaintiffs'	55	was marked Exhibit	1359B	762	763
17	Plaintiffs'	56	was marked Exhibit	1269	770	771
18	Plaintiffs'	57	was marked Exhibit	833	782	784
19	Plaintiffs'	58	was marked Exhibit	181	792	792
20	Plaintiffs'	59	was marked Exhibit	82	794	795
21	Plaintiffs'	60	was marked Exhibit	802	816	822
22	Plaintiffs'	61	was marked Exhibit	294	831	831
23	Plaintiffs'	62	was marked Exhibit	254	834	836
24	Plaintiffs'	63	was marked Exhibit	893	846	847
25						

1	E X H I B I T S (cont.)					
2	EXHIBIT		DESCRIPTION		MARKED	RECV'D
3	Plaintiffs'	101	was marked Exhibit 611		1228	1229
4	Plaintiffs'	102	was marked Exhibit 80		1231	1232
5	Plaintiffs'	103	was marked Exhibit 27		1234	1234
6	Plaintiffs'	104	was marked Exhibit 28		1235	1236
7	Plaintiffs'	105	was marked Exhibit 30		1236	1237
8	Plaintiffs'	106	was marked Exhibit 302		1242	1242
9	Plaintiffs'	156	was marked Exhibit 156		1243	
10	Plaintiffs'	107	Music Video			1806
11	Plaintiffs'	108	Email			1808
12	Plaintiffs'	109	List of Assets			1809
13	Plaintiffs'	110	Email			1811
14	Plaintiffs'	111	Document Re: Wagner-Lee			1815
15	Plaintiffs'	112	Email chain			1816
16	Plaintiffs'	113	Email			1819
17	Plaintiffs'	114	was marked Exhibit 1355			2265
18	Plaintiffs'	115	was marked Exhibit 300			2281
19	Plaintiffs'	116	was marked Exhibit 969			2302
20	Plaintiffs'	117	was marked Exhibit 989			2310
21	Plaintiffs'	118	was marked Exhibit 980		2325	2327
22	Plaintiffs'	119	was marked Exhibit 633			2334
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E X H I B I T S (cont.)

EXHIBIT	DESCRIPTION	MARKED	RECV'D
Defendants' 1	was marked Exhibit 240	445	446
Defendants' 2	was marked Exhibit 9	1284	1285
Defendants' 3	was marked Exhibit 98	1290	1291
Defendants' 4	was marked Exhibit 97	1294	1295
Defendants' 5	was marked Exhibit 111	1298	1300
Defendants' 6	was marked Exhibit 112	1302	1303
Defendants' 7	was marked Exhibit 115	1305	1306
Defendants' 8	was marked Exhibit 117	1306	1307
Defendants' 9	was marked Exhibit 119	1309	1309
Defendants' 10	was marked Exhibit 127	1310	1311
Defendants' 11	was marked Exhibit 128	1314	1314
Defendants' 12	was marked Exhibit 129	1315	1316
Defendants' 13	was marked Exhibit 133	1316	1317
Defendants' 14	was marked Exhibit 134	1319	1320
Defendants' 15	was marked Exhibit 136	1321	1322
Defendants' 16	was marked Exhibit 135	1326	1327
Defendants' 17	was marked Exhibit 140	1329	1330
Defendants' 18	was marked Exhibit 147	1336	1337
Defendants' 19	was marked Exhibit 148	1338	1338
Defendants' 20	was marked Exhibit 20	1339	1342
Defendants' 21	was marked Exhibit 151	1343	1344
Defendants' 22	was marked Exhibit 150	1347	1348

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E X H I B I T S (cont.)

EXHIBIT	DESCRIPTION	MARKED	RECV'D
Defendants' 23	was marked Exhibit 156	1349	1349
Defendants' 24	was marked Exhibit 158	1351	1351
Defendants' 25	was marked Exhibit 160	1354	1354
Defendants' 26	was marked Exhibit 28	1359	1361
Defendants' 27	was marked Exhibit 83		1364
Defendants' 28	was marked Exhibit 168A	1365	1366
Defendants' 29	was marked Exhibit 168B	1367	1368
Defendants' 30	was marked Exhibit 169	1370	1371
Defendants' 31	was marked Exhibit 170	1376	1376
Defendants' 32	was marked Exhibit 184	1379	1379
Defendants' 33	was marked Exhibit 185	1382	1383
Defendants' 34	was marked Exhibit 187	1387	1388
Defendants' 35	was marked Exhibit 194	1389	1390
Defendants' 36	was marked Exhibit 200	1391	1392
Defendants' 37	was marked Exhibit 202	1401	1402
Defendants' 38	was marked Exhibit 204	1407	1407
Defendants' 39	May 2, 2011 document		1410
Defendants' 40	was marked Exhibit 7	1412	1413
Defendants' 41	was marked Exhibit 206	1418	1419
Defendants' 42	document		1422
Defendants' 43	was marked Exhibit 213	1425	1426
Defendants' 44	marked as Exhibit 215	1423	1426

	E	X	H	I	B	I	T	S	(cont.)			
	EXHIBIT									DESCRIPTION	MARKED	RECV'D
1												
2												
3												
4	Defendants'	45	was	marked	Exhibit	218					1428	1428
5	Defendants'	46	was	marked	Exhibit	212					1429	1430
6	Defendants'	47	was	marked	Exhibit	219					1432	1432
7	Defendants'	48	was	marked	Exhibit	224					1435	1436
8	Defendants'	49	was	marked	Exhibit	608						1451
9	Defendants'	50	was	marked	Exhibit	228					1453	1453
10	Defendants'	51	was	marked	Exhibit	231					1460	1460
11	Defendants'	52	was	marked	Exhibit	232						1464
12	Defendants'	53	was	marked	Exhibit	235						1468
13	Defendants'	54	was	marked	Exhibit	238						1470
14	Defendants'	55	was	marked	Exhibit	245						1472
15	Defendants'	56	was	marked	Exhibit	256					1476	1476
16	Defendants'	57	was	marked	Exhibit	259					1483	1484
17	Defendants'	58	was	marked	Exhibit	259B					1487	1488
18	Defendants'	59	was	marked	Exhibit	258						1489
19	Defendants'	60	was	marked	Exhibit	261						1490
20	Defendants'	61	was	marked	Exhibit	262						1492
21	Defendants'	62	was	marked	Exhibit	265						1493
22	Defendants'	63	was	marked	Exhibit	270						1495
23	Defendants'	64	was	marked	Exhibit	271						1497
24	Defendants'	65	was	marked	Exhibit	282A						1501
25	Defendants'	66	was	marked	Exhibit	282B						1503

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E X H I B I T S (cont.)

EXHIBIT	DESCRIPTION	MARKED	RECV'D
Defendants' 67	was marked Exhibit 266		1506
Defendants' 68	was marked Exhibit 283		1508
Defendants' 69	was marked Exhibit 289		1509
Defendants' 70	was marked Exhibit 307		1513
Defendants' 71	was marked Exhibit 312		1518
Defendants' 72	was marked Exhibit 313		1519
Defendants' 73	was marked Exhibit 315		1520
Defendants' 74	was marked Exhibit 316		1523
Defendants' 75	was marked Exhibit 319		1534
Defendants' 76	was marked Exhibit 328		1538
Defendants' 77	was marked Exhibit 333		1543
Defendants' 78	was marked Exhibit 39		1558
Defendants' 79	was marked Exhibit 189		1561
Defendants' 80	was marked Exhibit 191		1563
Defendants' 81	was marked Exhibit 193	1564	1565
Defendants' 82	was marked Exhibit 195	1566	1567
Defendants' 83	was marked Exhibit 340		1568
Defendants' 84	was marked Exhibit 367	1580	1580
Defendants' 85	was marked Exhibit 368		1582
Defendants' 86	was marked Exhibit 415		1585
Defendants' 87	was marked Exhibit 421		1588
Defendants' 88	was marked Exhibit 420		1590

1	E X H I B I T S (cont.)					
2	EXHIBIT	DESCRIPTION			MARKED	RECV'D
3	Defendants' 111	was	marked Exhibit	543		1736
4	Defendants' 112	was	marked Exhibit	621	1952	1953
5	Defendants' 113	was	marked Exhibit	93		2084
6	Defendants' 114	was	marked Exhibit	178		2090
7	Defendants' 115	was	marked Exhibit	264		2111
8	Defendants' 116	was	marked Exhibit	260		2118
9	Defendants' 117	was	marked Exhibit	280		2123
10	Defendants' 118	was	marked Exhibit	293		2129
11	Defendants' 119	was	marked Exhibit	294		2132
12	Defendants' 120	was	marked Exhibit	318		2139
13	Defendants' 121	was	marked Exhibit	327	2141	
14	Defendants' 122	was	marked Exhibit	330		2144
15	Defendants' 123	was	marked Exhibit	335		2150
16	Defendants' 124	was	marked Exhibit	338		2153
17	Defendants' 125	was	marked Exhibit	380		2156
18	Defendants' 126	was	marked Exhibit	381		2168
19	Defendants' 127	was	marked Exhibit	396		2171
20	Defendants' 128	was	marked Exhibit	128	2174	2174
21	Defendants' 129	was	marked Exhibit	431		2177
22	Defendants' 130	was	marked Exhibit	440	2178	
23	Defendants' 131	was	marked Exhibit	419		2180
24	Defendants' 132	was	marked Exhibit	445		2184
25	Defendants' 133		document			2191

1 E X H I B I T S (cont.)

2	EXHIBIT		DESCRIPTION		MARKED	RECV'D
3	Defendants'	134	was marked Exhibit	401		2219
4	Defendants'	135	was marked Exhibit	105	2223	2223
5	Defendants'	136	was marked Exhibit	428		2234
6	Defendants'	137	was marked Exhibit	71	2239	2239
7	Defendants'	138	was marked Exhibit	442		2240
8	Defendants'	139	was marked Exhibit	562	2249	2250
9	Defendants'	140	was marked Exhibit	474		2340

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