

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

CASE NO.: 502012CA023358XXXXMBAG

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

Plaintiff(s),

vs.

ORIGINAL

WARREN MOSLER, MOSLER AUTO CARE
CENTER, INC., (MACC), a Florida
Corporation, d/b/a Mosler Automotive, and
ALAN RICHARD SIMON,

Defendant(s).

PROCEEDINGS BEFORE

HONORABLE DONALD HAFELE

DATE: August 24, 2018

TIME: 1:50 p.m. - 5:01 p.m.

1 APPEARING ON BEHALF OF PLAINTIFF(S):

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11 BY: DAVID A. REINBLATT, ESQ.

12 BE IT REMEMBERED, that the following
13 proceedings were taken in the above-styled cause before
14 the Honorable DONALD HAFELE, at the Palm Beach County
15 Courthouse, 205 North Dixie Highway, Room 10D, in the City
16 of West Palm Beach, County of Palm Beach, State of
17 Florida, on August 24, 2018, to wit:

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1 P-R-O-C-E-E-D-I-N-G-S

2 - - - -

3 THE COURT: Good afternoon, everybody.

4 Thanks for your patience. Running short a deputy,
5 we were able to get one of our finest. So thank
6 you.

7 We're ready to go.

8 All right. Wagner versus Mosler. We
9 have -- thank you all. We have a plaintiff's
10 motion for sanctions for spoliation of
11 evidence.

12 And have you gentlemen done your
13 appearances for the court reporter?

14 MR. ZAPPOLO: Well, we might as well say them
15 on the record. Scott Zappolo and Jeffrey Farwell
16 are here, along with our client, James Wagner, on
17 behalf of the plaintiff.

18 THE COURT: Okay. Thank you.

19 MR. REINBLATT: David Reinblatt on behalf of
20 Warren Mosler and Mosler Auto Care Center.

21 THE COURT: All right. Thank you as well.

22 All right. Mr. Zappolo, how did you
23 envision proceeding with the hearing this
24 afternoon?

25 MR. ZAPPOLO: Your Honor, counsel and I

1 discussed in the hallway, we have at least two
2 non-party witnesses that we've agreed we'll take
3 out of order so as not to inconvenience the
4 witnesses too much.

5 THE COURT: All right.

6 MR. ZAPPOLO: With respect to how the hearing
7 itself would proceed. Mr -- well, counsel has
8 said to me that he thinks that you might enjoy a
9 little bit of a primer, briefing, et cetera, on
10 what the standard of law is. And I don't
11 necessarily disagree, unless Your Honor tells us
12 that you've handled these hearings and you're up
13 to speed on this.

14 THE COURT: No, I've handled them before.
15 And I understand the elements necessary. I've
16 read your respective reasoning, which has
17 reiterated those issues. So I don't think we need
18 to do that.

19 MR. ZAPPOLO: Okay. With that being said,
20 the plaintiff is ready to go ahead and put on
21 witnesses.

22 Mr. Reinblatt, do you have anything you
23 want to tell the Court before we begin?

24 MR. REINBLATT: Your Honor, as Mr. Zappolo
25 said, we talked about this. I think maybe

1 depending on how things unfold, we may want to
2 have legal arguments at a later time in the
3 hearing.

4 THE COURT: Sure. You can do that at the
5 end.

6 MR. REINBLATT: We can deal with that as it
7 comes.

8 THE COURT: Yeah. No, we can do that in the
9 end as a form of closing the matter.

10 MR. ZAPPOLO: Then thank you, Your Honor. At
11 this time we would like to invoke the rule. And
12 we will call the first witness. I guess it would
13 be Jill Wagner, so we can get her out of here.

14 THE COURT: Sure. All right. That's fine.

15 All right. The rule of sequestration
16 simply means that anybody who may be a witness
17 and is not a party to the case would have to
18 remain outside during other witness' testimony.

19 So I'd ask you to -- attorneys to instruct
20 your witnesses accordingly.

21 MR. ZAPPOLO: There's one issue. Is
22 Ms. Klaker here as a corporate representative?

23 MR. REINBLATT: Not today.

24 Your Honor, you can tell us how to guide
25 us maybe. Ms. Klaker is a former employee of

1 Warren Moslers. She has knowledge about the
2 lawsuit. No decision has been made on if she
3 would end up testifying at an eventual trial.
4 There's a possibility. So I don't know if we
5 want her to wait outside or not.

6 THE COURT: All right. Warren Mosler is
7 here?

8 MR. REINBLATT: He's not here.

9 THE COURT: Okay. Well, then -- I think she
10 would just be a witness and not anything other
11 than a witness.

12 MR. REINBLATT: She's just not testifying
13 today.

14 THE COURT: Okay. Well, if she's not
15 testifying, I don't have a problem with her being
16 here.

17 MR. ZAPPOLO: As long she's not going to
18 be -- they're not going to say she can rebut
19 something she heard.

20 THE COURT: No.

21 MR. ZAPPOLO: I have no problem.

22 THE COURT: No.

23 MR. REINBLATT: Not today, Your Honor.

24 THE COURT: Mr. Reinblatt is representing to
25 me for the purposes of this hearing, and this

1 hearing only, that she's not going to testify.

2 That's fine.

3 Whether she testifies at a later time at
4 trial, or something like that, as far as this
5 Court would be concerned, the Rule of
6 Sequestration wouldn't apply to a later
7 proceeding.

8 MR. ZAPPOLO: Thank you.

9 MR. REINBLATT: Just wait outside for a
10 couple of minutes.

11 MR. ZAPPOLO: Ms. Wagner, if you would come
12 on up, please.

13 THE COURT: All right. Ms. Wagner, would you
14 come on up.

15 THEREUPON,

16 JILL WAGNER,
17 a witness herein being of lawful age, and being first
18 duly sworn in the above cause, testified on her/his oath
19 as follows:

20 THE COURT: All right.

21 MR. REINBLATT: Do I need to move the easel?

22 THE COURT: No. All right. Mr. Zappolo, the
23 witness is seated. You may proceed.

24 DIRECT EXAMINATION

25 BY MR. ZAPPOLO

1 Q Thank you, Your Honor.

2 Ms. Wagner, could you please tell the Court
3 your name for the record.

4 A Jill Wagner.

5 Q And a couple of preliminary matters. You were
6 previously married to the plaintiff, James Wagner,
7 correct?

8 A Yes.

9 Q Okay. But you are not anymore?

10 A Correct.

11 Q Now, just by way of some quick background.
12 Could you tell the Court about your educational training,
13 undergraduate degree, et cetera?

14 A Sure. I have 2 degrees. One in
15 biochemistry. And one in chemistry. And a minor in
16 biotechnology. And I went to Virginia Tech.

17 Q Okay. So you would agree you're a pretty
18 well-educated woman?

19 A I could be more educated, but...

20 Q Moving right along. After working after --
21 excuse me, after graduating from college, you had a
22 number of different jobs, but you ultimately ended up
23 working for what company that's relevant to these
24 proceedings today?

25 A Mosler Auto Care Center.

1 Q Okay. And what was your job description at
2 Mosler Auto Care Center?

3 A I had three separate jobs while I was at
4 Mosler.

5 Q Could you please explain those to the Court,
6 and give us a kind of a chronology. What was the first,
7 what was the next?

8 A Sure. The first one was simply a job to
9 stock parts on a shelf. And that's because I had --
10 now 16-year-old triplets -- but at the time they were
11 4. And I wanted some adult stimulation so I would have
12 taken just about any job while they were at VPK during
13 the day, you know, just to rest my brain a little bit.

14 Q All right.

15 A When I was there they found out that I had, I
16 guess, the education that I had. And I had worked in a
17 much -- you know, project engineering capacity,
18 business leader in the past. And at the time Warren
19 was looking for some more leadership.

20 Q Warren would be Mr. Mosler?

21 A Yes.

22 Q Thank you.

23 A So I ended up challenging the prices on some
24 of the parts. I ended up as the purchasing manager as
25 a result of that. And then after that he really wanted

1 some more leadership that the gentleman he had --
2 amazing production supervisor -- one of the best people
3 I've met in my entire lifetime. He just didn't have
4 the education to take it to the next level, which was
5 what Warren asked me to do, ultimately. So I became
6 the general manager.

7 Q Okay. So you ultimately became general
8 manager. And when did you become general manager,
9 approximately?

10 A I knew you were going to ask me that. I'm
11 trying to remember.

12 THE COURT: Sometimes it's easier to remember
13 the approximate age of your children, puts it in
14 some prospective.

15 THE WITNESS: That's a good idea.

16 BY MR. ZAPPOLO

17 Q Rather than have you rack your brain, I see
18 you're trying, and I can appreciate that.

19 THE COURT: You can give an approximation if
20 you want.

21 THE WITNESS: Okay. I left end of 2011
22 beginning of 2012. I think I was doing it for
23 about six years. They would have been 4. I'm
24 going to go with 2008-ish, maybe.

25 BY MR. ZAPPOLO

1 Q Okay. That's a great estimate. Approximately,
2 2008. And for purposes of this hearing, that's fine.
3 Because you left in approximately 2011 or 2012, right?

4 A Correct.

5 Q And what do you know, if anything, about what
6 happened to the business when you left in 2011, 2012?

7 A I mean, I know I had to lay off a lot of
8 folks because we weren't doing well because of
9 recession. That was very hard. I remember that
10 because that was challenging.

11 Q Do you remember anything at all about any
12 sales?

13 A No, I really don't. I think at that point I
14 know they were going to sell -- I mean, I noticed
15 something, they were trying to sell the company.

16 Q Okay.

17 A There were many suitors that came and went.

18 Q Okay.

19 A But I don't -- I don't -- I never really got
20 in any particulars of any of those.

21 Q But for the last five years -- so from roughly
22 2008 until 2012, when you left, what was your job title
23 again?

24 A Well, I had two of them. General manager and
25 VP of global operations. So I really came in and I

1 shut down the overseas operation. It's more
2 manufacturing what I did.

3 THE COURT: Can you describe the business to
4 me?

5 THE WITNESS: Sure.

6 THE COURT: These guys have been before me in
7 the past, but we have in excess of 1500 files,
8 it's hard to keep track of every file. So tell me
9 what the business was.

10 THE WITNESS: It was a manufacturing facility
11 for the Mosler MT900S, which was a 2,500-pound
12 carbon fiber zero to 60 in 2.9 super car. And
13 they were handmade. They weren't mass produced.
14 You think automotive, you think engineering
15 plants, this was really handmade. There were -- I
16 want to say five or six manufacturing cells, four
17 or five guys in each one and they would learn that
18 part of the car. And so, they would move it to
19 the next stage. And so, it took about a year to
20 make the first one. And I know in total they made
21 65 -- some of that was over in Europe before we
22 came on board -- before I came on board.

23 THE COURT: And Mr. Mosler, is he an
24 American?

25 THE WITNESS: He is an American.

1 THE COURT: Okay. And you said some were
2 made in Europe, some were made here in the United
3 States?

4 THE WITNESS: Yes.

5 THE COURT: That was the sole business of the
6 company was to make these automobiles?

7 THE WITNESS: Yes.

8 THE COURT: Okay.

9 MR. ZAPPOLO: Your Honor, may I --

10 THE COURT: Thank you.

11 MR. ZAPPOLO: I'm sorry.

12 THE COURT: That's okay.

13 MR. ZAPPOLO: May I approach the witness,
14 Your Honor?

15 THE COURT: Sure.

16 BY MR. ZAPPOLO

17 Q Just to follow-up on the Court's questioning.
18 I'm showing you what's been marked as Plaintiff's Exhibit
19 Number 1 for identification purposes.

20 Can you identify what that is?

21 A That's the Mosler 900S.

22 Q And I'm showing you what's been marked as
23 Plaintiff's Exhibit Number 2.

24 Do you know what that is?

25 A I don't know.

1 Q Okay. That's fine. Thank you.

2 Your Honor, I'm going to tie up Exhibit
3 Number 2 on Mr. Wagner. Counsel is stipulating to
4 Exhibits Number 1 and 2 into evidence.

5 THE COURT: Sure. These are photographs.

6 (Thereupon, Plaintiff's Exhibit Numbers 1
7 and 2 were was received in evidence)

8 BY MR. ZAPPOLO

9 Q Have you ever heard the term Raptor GTR?

10 A I have.

11 Q Okay. Do you know what kind of -- what was the
12 name of the car that the corporation was producing in
13 2012?

14 A I left right at the beginning. I don't know
15 what they named it. But I was under -- I don't know
16 what they ended up calling it because I had left the
17 company the end of 2011. So what they called it in
18 2012, I don't know what they landed on. I know I've
19 heard Raptor GTR. So that's, perhaps, what it's going
20 to be, but we didn't go into production -- at least not
21 while I was there.

22 Q Are you aware of whether or not Mr. Wagner
23 purchased any vehicles from the defendant corporation,
24 Mosler Auto Care Centers?

25 A Yes.

1 Q Does that refresh your recollection as to what
2 Exhibits Number 1 and 2 are?

3 A I've never seen a picture of Number 2. I
4 don't recognize the taillights.

5 THE COURT: I don't know which way is up and
6 which way is down to be perfectly honest with you.
7 Because what it looks like, this should be the
8 bottom, but it's -- the spelling is backwards.

9 MR. ZAPPOLO: We'll tie that all together
10 when my client takes the stand.

11 THE COURT: Okay.

12 MR. ZAPPOLO: Thank you. I just wanted to be
13 sure of what this witness knows.

14 THE COURT: I was talking about, for the
15 record, Exhibit 2. One appears to be rather easy
16 to decipher.

17 MR. ZAPPOLO: Thank you, Your Honor.

18 BY MR. ZAPPOLO

19 Q Now, just moving right along. I want to try to
20 expedite things so we don't keep you here all day
21 needlessly.

22 With respect to your activities as general
23 manager and vice president of global operations, even
24 though that aspect of your work was phased out, how did
25 you conduct business with Mr. Mosler?

1 A Mostly, since he is -- has a lot of other
2 entities that he was involved with -- most of what I
3 did was through the direction of Alan Simon, because he
4 talked mostly with Warren.

5 Q Okay. And just because his name is going to
6 come up in this hearing. Who is Alan Simon?

7 A He's an attorney for Warren.

8 Q Okay. So with respect to day-to-day operations
9 at the Mosler Auto Care Center plant -- factory -- where
10 the cars were being built, that was located where?

11 A It's West Palm Beach. I'm sorry, Riviera
12 Beach.

13 Q With respect to the daily activities in Riviera
14 Beach, that is where you would report to work each day,
15 correct?

16 A Correct.

17 Q Now, Mr. Mosler, where does he live -- or
18 during that time period, where did he live?

19 A I believe he had several residences. Part of
20 the time -- I think most of the time in St. Croix. I
21 know he had some other -- I know he had a place on
22 Singer Island.

23 Q So most of the time Mr. Mosler was down in St.
24 Croix in the U.S. Virgin Islands and you were reporting
25 to work here in Riviera Beach, right?

1 A Yes.

2 Q You said you had to deal with Alan Simon,
3 Mr. Mosler's attorney, correct?

4 A Yes.

5 Q Okay. What about the day-to-day minutia of the
6 business, like, could you order certain things or, you
7 know, as far as business decisions, how did you get those
8 business decisions made by Mr. Mosler?

9 A Really, it had already been established
10 before I got there with Dan, who was the general
11 manager before me, who I mentioned earlier. So he and
12 I would just know what we had to order. Because it was
13 a pretty established line of parts. And we just --
14 someone ordered a car, we took care of it.

15 Q Okay. When anything odd, out of ordinary came
16 up, how did you deal with Mr. Mosler?

17 A I usually would talk to Alan.

18 Q You had an e-mail address that you conducted
19 business with at Mosler Automotive, didn't you?

20 A Of course.

21 Q What was your e-mail address there?

22 A I really don't remember.

23 Q Okay.

24 A Sorry.

25 Q Does J Wagner at Mosler -- J Wagner at Mosler

1 Auto dot com refresh your recollection?

2 A That could very well be it.

3 Q Okay. And so, based upon your recollection,
4 about how many e-mails would you have to send in a week?

5 A To who?

6 Q To anyone, related to work?

7 A Maybe -- I just -- I'm sorry, I just don't
8 know. Since it's been so long since I worked there and
9 I've had other jobs -- if by comparison, I just don't
10 know to --

11 Q Was this a low pressure job? I mean, were
12 there things that happened -- I mean, these are special
13 order vehicles, right? These were specially
14 manufactured --

15 A A little pressure, though. It's an
16 established list. So it's not that hard to...

17 Q All right. And there were no problems with
18 changes of parts or parts unavailability, or anything
19 like that?

20 A Oh, I would call suppliers. I'm very
21 proactive on the phone. I do better on the phone than
22 e-mail, even to this day, to me.

23 Q What about -- do you recall ever there being a
24 time when one of the cars caught on fire?

25 A Yes.

1 Q Okay.

2 A Alan Simon's car.

3 Q Right. And did you exchange e-mails with
4 Mr. Simon about his car catching on fire? Insurance
5 claims, et cetera, things like that?

6 A No, I didn't handle any of that. That I can
7 recall. I mean, I knew of it. I was told of it. I'm
8 sure we spoke about it. I don't know if there were
9 e-mails about it. We did a lot on the phone, Alan and
10 I, because I've always been a phone person. I don't
11 know. I don't know if there were e-mails about it. I
12 just don't recall.

13 Q Let me ask you this. If I were to suggest that
14 you sent five e-mails a day, would that be surprising to
15 you?

16 A No.

17 Q Okay. If I were to suggest that you sent
18 between five and ten e-mails a day, would that be
19 surprising to you?

20 A No.

21 Q So that's -- between five and ten e-mails a day
22 is a reasonable estimate, wouldn't you say?

23 A Sure.

24 Q Okay. Could even been on the low side,
25 couldn't it?

1 MR. REINBLATT: Objection, Your Honor.

2 MR. ZAPPOLO: Withdrawn.

3 BY MR. ZAPPOLO

4 Q Moving along. Were you ever asked to search
5 for e-mails relative to this case while you worked for
6 Mosler?

7 A No, I was not.

8 Q Okay. Thank you. Now --

9 THE COURT: If I understand correctly,
10 though, she left --

11 MR. ZAPPOLO: You're correct.

12 THE COURT: -- 2011, 2012?

13 MR. ZAPPOLO: I'm just making sure we ask the
14 questions so that no one says after she stopped
15 working there or something.

16 THE COURT: Just for the record, where did
17 you go after you worked for Mosler?

18 THE WITNESS: Gateway Logistics. It's a
19 freight forwarding company.

20 THE COURT: No relationship whatsoever with
21 Mosler?

22 THE WITNESS: Not in the least. Well, they
23 shipped our cars for us around the world when
24 people ordered them and I developed a relationship
25 with the company.

1 THE COURT: I just want to make sure that
2 when you left the company you didn't have any
3 further business -- as far as your work was
4 concerned, you didn't do any further work for
5 Mosler?

6 THE WITNESS: There was an overlap in
7 September. I remember that because they wanted me
8 to work at Gateway and they wanted to start on
9 boarding me and everything was kind of shutting
10 down with Mosler. So Warren and George, my new
11 boss at Gateway, agreed that I could do part-time
12 for both of them. But the two did not collide.

13 THE COURT: Are you able to remember, was
14 that '11 or '12?

15 THE WITNESS: That would have been '11.

16 THE COURT: Okay. Thanks.

17 THE WITNESS: I agreed to work with them
18 until the end of the year.

19 THE COURT: All right.

20 BY MR. ZAPPOLO

21 Q So your testimony is you worked for Mosler Auto
22 Care Center until the end of 2011?

23 A It might have been a couple weeks into 2012,
24 but it was right in there.

25 Q Did you ever do any consulting work, was that

1 kind of what was said? You said you split time or
2 something?

3 A That was consulting.

4 Q That was your consulting?

5 A Right. It wasn't 40 hours a week at that
6 point with him.

7 Q So if someone had referred to you as doing
8 consulting work, that's what you understood it to be, you
9 were just helping -- what were you doing when you were
10 consulting after you formally didn't work there, but you
11 were working part time?

12 A I was going into that office a couple of days
13 a week and going down to Gateway a couple of times a
14 week. And whatever needed -- you know, where are the
15 cars located, who are the owners of the car, that kind
16 of thing. Just trying to help get things together for
17 whoever would eventually buy the company.

18 Q Now, with respect to you as general manager at
19 that site. Did the -- did Mosler Auto Care Center have
20 its own computer system?

21 A Yeah. I mean, we all had computers.

22 Q Right. And it had its own e-mail address?

23 A Yes.

24 Q It had its own e-mail servers?

25 A Yes. Yes.

1 Q So after you left the employment of Mosler Auto
2 Care Center, and after you stopped doing the consulting
3 work, did you ever use the Mosler Auto Care Center
4 computers again?

5 A Not that I recall.

6 Q Okay. Fair enough. And do you remember a
7 gentleman by the name of Savvas Savopoulos?

8 A Savvas. Yes, I do.

9 Q Yes. And with respect to whether
10 Mr. Savopoulos was trying to purchase the Mosler Auto
11 Care Center business, what, if anything, do you know?

12 A I know he had approached me about working for
13 him. And I don't remember the time frame,
14 unfortunately. I wish I could. But I do know that --
15 I remember that because he told me that I could have
16 Fridays off and I was exited because I had little kids.
17 He was going to let me work Monday through Thursday and
18 have Fridays off. I know he was trying to buy the
19 business, but it didn't work out.

20 Q As a matter of fact, do you recall sending out
21 e-mails to people, including James Wagner, that
22 Mr. Savopoulos had already put his money down and things
23 of that nature?

24 A I know there were e-mails about it. I don't
25 remember the content. And I apologize, just been so

1 long. But I know that I did make them aware. I mean,
2 I think he did a lot more with Todd on it, to tell you
3 the truth, because he's the technical guy.

4 Q You mean -- when you said he, you mean
5 Mr. Savopoulos did a lot more interacting with -- and
6 when you say Todd, that's James Todd Wagner?

7 A Sorry.

8 THE COURT: That's okay.

9 BY MR. ZAPPOLO

10 Q Just so the record is clear. James Todd Wagner
11 is the plaintiff and people -- back then especially --
12 called him Todd?

13 A I always called him Todd.

14 Q So your understanding is that Mr. Wagner and
15 Mr. Savopoulos exchanged information amongst themselves?

16 A Yes. I mean -- yes.

17 Q And you, as the general manager of the company,
18 exchanged e-mails with other potential buyers, including
19 Mr. Savopoulos, correct?

20 A You know, when it came to actual buyers -- I
21 mean, because even Todd had a -- this guy Lee who was
22 trying to buy the company. I didn't interact with them
23 as much. Savvas was more because he wanted me to be
24 part of his team. So I interacted more with him. And
25 there was another guy that went through there. He was

1 a real jerk. I just remember that he was a piece of
2 work. Not -- I think the most volume I would have had
3 would have been was with Savvas.

4 Q The purchase price of this company, are you
5 generally aware? Are we talking about 50 bucks or are we
6 talking about lots more?

7 A I recall it being about 6 million.

8 Q So with the \$6 million transaction, people --
9 Mr. Savopoulos had gotten so far as to negotiate with you
10 what days you would be working, right?

11 A Right.

12 Q In a \$6 million transaction, do you have any
13 recollection of any documentation about that sale?

14 A That was something I didn't have -- I wasn't
15 party to that. That was between lawyers and Savvas --
16 he was just trying to convince me to work with him. It
17 wasn't something I was privy to. I don't even know the
18 parameters of the deal.

19 Q And when you say the lawyers, you mean
20 Mr. Simon?

21 A Yes. I mean, I know -- I don't know if there
22 is anybody else.

23 Q And Mr. Simon would have been acting on behalf
24 of Mosler Auto Care Center, correct?

25 A Yes.

1 Q And/or Mr. Mosler himself, right?

2 A I don't know how the company is structured.

3 Q So it would have been one or the other?

4 A Right.

5 Q Depending on how it was structured. Okay.

6 Thank you.

7 A Right.

8 Q Now, do you remember there being records; such
9 as, when Mosler built a car, were there books that
10 tracked where the parts came from, et cetera?

11 A I wish we were that high tech. I mean, we
12 knew where the parts came from. But tracking the
13 progress of the car, I guess we were -- I think Todd
14 put out some build books.

15 Q That's exactly what I was talking about.
16 Right.

17 A Yeah, but that was it. I mean, I guess I'm
18 used to other companies a lot more.

19 Q Just so we're clear. Mr. Mosler -- excuse me,
20 Mr. Wagner, James Wagner, he worked for this company,
21 too, right?

22 A Yes.

23 Q Okay. And did he have a Mosler Auto Care
24 Center e-mail address as well?

25 A He did.

1 Q And did you ever receive e-mails from him
2 during the time period that he worked for Mosler?

3 A Yes.

4 Q And did you ever send e-mails to him during the
5 time he worked for Mosler?

6 A Yes.

7 Q Do you know what happened to any of those
8 e-mails?

9 A No.

10 Q Nevertheless, when you were working there you
11 could have pulled up old e-mails on your computer, right,
12 just like most people in the America can?

13 A Yes.

14 Q You didn't have a destroy policy while there or
15 anything? You didn't destroy all e-mails after three
16 days or anything like that, did you?

17 A No.

18 Q Okay. So -- all right. And we're rolling
19 right along. Almost wrapping up here. By the way, you
20 were the actual -- when you were associated with Mosler,
21 you were listed on their corporate printout at the
22 Florida Secretary of State, correct?

23 A I remember I was on SunBiz dot org.

24 Q Right. So you stopped working with the company
25 and stopped all your affiliation with it in January,

1 approximately, of 2012?

2 A Yes.

3 Q Okay. Do you have any -- have you ever seen
4 the records of the Secretary of State that reflect how
5 long you were listed as the vice president of that
6 organization?

7 A I have not.

8 Q Would it surprise you to know that you were
9 listed as a vice president of Mosler Auto Care Center,
10 Inc. through the February 3, 2017 filing?

11 A That would surprise me.

12 Q Did you give permission for that?

13 A No.

14 Q As recently as last year, you weren't the vice
15 president of that company, were you?

16 A No.

17 Q Okay. Now, one other thing. When cars were
18 sold, as part of your job description with Mosler Auto
19 Care Center, did you sign any documentation, like
20 certificates of origin?

21 A Yes.

22 Q Okay. And you would agree with me -- what's
23 your understanding of what a certificate of origin does?
24 Why is it necessary?

25 A It's necessary so that you can title your

1 car.

2 Q And it has things on it such as the build date,
3 et cetera, right? The date the car was built?

4 A I don't recall it being more than a VIN
5 number.

6 Q Let's just have this --

7 A The model number. A statement about carbon
8 emissions.

9 Q Okay. I'm showing you what's been marked as
10 Plaintiff's Exhibit Number 3 for identification purposes.

11 Do you recognize the signature on the bottom
12 right-hand corner of that document?

13 A Yes.

14 Q And what -- whose signature is it?

15 A That's mine.

16 MR. ZAPPOLO: Okay. Counselor, we
17 stipulating to Exhibit Number 3?

18 MR. REINBLATT: What is the proposition that
19 it stands for?

20 MR. ZAPPOLO: Just one of the things that she
21 had to exercise. One of the things she had to
22 sign that relates to these certificates of origin,
23 which will come up later in the hearing.

24 MR. REINBLATT: Okay.

25 MR. ZAPPOLO: Thank you, Your Honor. Let the

1 record reflect that counsel has stipulated to
2 Plaintiff's Exhibit Number 3, the Mosler
3 Automotive Certificate of Origin for vehicle dated
4 October 25, 2007 in evidence.

5 THE COURT: Okay. That would be Plaintiff's
6 3 admitted, no objection. As was Number 2 for the
7 record.

8 (Thereupon, Plaintiff's Exhibit Number 3
9 was received in evidence).

10 MR. ZAPPOLO: Your Honor, that's all I have
11 for Ms. Wagner.

12 THE COURT: Okay. Thank you, Mr. Zappolo.
13 Mr. Reinblatt.

14 MR. REINBLATT: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. REINBLATT

17 Q Ms. Wagner, just have a few questions for you.

18 A Sure.

19 Q First, Plaintiff's Exhibit Number 3 that they
20 just showed you. For what year model was that, do you
21 recall?

22 A 2009, I would think.

23 Q May I approach her and show her a copy of the
24 exhibit?

25 THE COURT: Sure.

1 THE WITNESS: Oh, 2004. Okay.

2 BY MR. REINBLATT

3 Q So that certificate of origin was for the 2004
4 model cars?

5 A Yes.

6 Q Okay. Thank you. You were asked some
7 questions about Savvas Savopoulos and his efforts to
8 potentially purchase MACC.

9 Do you recall that?

10 A I do.

11 MR. REINBLATT: And, Your Honor, is it okay
12 if I refer to Mosler Auto Care Center as MACC
13 going forward just for simplicity?

14 THE COURT: Sure.

15 MR. REINBLATT: Thank you, Your Honor.

16 BY MR. REINBLATT

17 Q Is it possible Mr. Mosler and Mr. Savopoulos
18 spoke mostly via telephone to negotiate any potential
19 purchase?

20 A Absolutely. Warren is very big on the phone.

21 Q To your knowledge, were the two gentlemen good
22 friends?

23 A Yes, they were.

24 Q Do you happen to know the nature of negotiation
25 between the two parties?

1 A I don't.

2 Q Would it surprise you to know that Mr. Mosler
3 testified the negotiations never got that far?

4 A No. No. I mean, I know he was asking me if
5 I'd work for him, but doesn't mean he bought the
6 company. He's trying to see what --

7 Q So you don't know the nature of the
8 negotiations that are taking place. You know
9 Mr. Savopoulos approached you potentially if he had
10 purchased the company?

11 A Yes.

12 Q When your employment ended at MACC, did your
13 access to your e-mail also end at that time?

14 A I don't recall. But I don't recall going
15 into it for anything. I was pretty happy to be gone,
16 to be honest. To move on. Just -- next phase in life.

17 Q Do you also recall the date Mr. Wagner's
18 employment ended at MACC?

19 A I don't.

20 Q Was it before yours?

21 A Yes.

22 Q Do you know if Mr. Wagner's access to his
23 e-mail would have ceased at that point as well?

24 A I don't.

25 MR. REINBLATT: I have no further questions.

1 Thank you.

2 THE WITNESS: Thank you.

3 THE COURT: Okay. Thank you, counsel.

4 MR. REINBLATT: May I approach?

5 THE COURT: Sure. Any redirect based on that
6 cross?

7 MR. ZAPPOLO: No, I can cover anything I need
8 to with other witnesses.

9 THE COURT: All right, then. Please watch
10 your step. Thank you for time.

11 MR. ZAPPOLO: Your Honor, counsel is going to
12 call his witness out of order.

13 Just so the Court knows, I think we're
14 moving -- although that was longer than we
15 thought -- I think we are moving along fine.

16 THEREUPON,

17 JASON YOUNG,

18 a witness herein being of lawful age, and being first
19 duly sworn in the above cause, testified on her/his oath
20 as follows:

21 THE COURT: All right. Welcome, sir. And
22 your witness is seated, Mr. Reinblatt. You may
23 proceed, sir.

24 MR. REINBLATT: Thank you, Your Honor.

25 DIRECT EXAMINATION

1 BY MR. REINBLATT

2 Q Good afternoon, Mr. Young. Could you please
3 tell us where you currently work?

4 A Rossian Automotive.

5 Q And was Rossian ever known as RP High
6 Performance?

7 A Yes.

8 Q And what is your position there?

9 A Local sales and dealer acquisitions.

10 Q And how long have you been employed there?

11 A Four and a half years.

12 Q Are you here today in a capacity as a corporate
13 representative of Rossion?

14 A Yes.

15 Q Are you aware that the plaintiff in this case
16 has served the subpoenas on Rossion for documents?

17 A Yes.

18 Q Can you please explain for us, just a
19 narrative, the process that the company went through to
20 retrieve any responsive documents.

21 A We had our IT person that's at the facility
22 went through the computers that we acquired when we
23 purchased the assets of Mosler Automotive, found and
24 answered the questions that were given to them to the
25 best of their ability. And that information was given

1 to, at the time, our human resources person who put
2 that information into a -- through the computer and
3 filled out those -- whatever the questions were.

4 Q Did Rossion buy all the service computers from
5 MACC?

6 A Yes.

7 Q To the best of your knowledge, have all the
8 documents that were responsive to the subpoena been
9 provided to plaintiff?

10 A Yes.

11 Q Has anyone from plaintiff's counsel's office
12 contacted you to inquire as to any additional documents
13 that may exist?

14 A No.

15 Q Has anyone come to the Rossion offices to make
16 inquiries as to additional documents that may exist?

17 A No.

18 Q Has anyone from Rossion ever gone into the
19 computers or servers that were purchased from MACC and
20 deleted any information?

21 A No.

22 MR. REINBLATT: Thank you, sir.

23 THE COURT: Okay. Mr. Zappolo.

24 MR. ZAPPOLO: Yes, sir.

25 CROSS-EXAMINATION

1 BY MR. ZAPPOLO

2 Q You said that you worked for Rossion, formerly
3 known as RP High Performance?

4 A It's still known as RP High Performance.

5 Q Still known as RP High Performance. And that
6 organization back in 2011 did not own the servers that
7 you said your IT person reviewed, correct?

8 A Correct.

9 Q When did Rossion or RP High Performance
10 purchase the assets of Mosler Auto Care Center?

11 A Roughly around July of 2013, to my knowledge.

12 Q Okay. So prior to July 2013, Mr. Mosler and/or
13 Mosler Auto Care would have been in possession of those
14 of servers and all the e-mails that would have been on
15 them, correct?

16 A Correct.

17 Q Did you ever investigate as to how many e-mails
18 were actually on those servers when Rossion purchased the
19 servers?

20 A No.

21 Q So do you have any -- do you have any knowledge
22 as to whether or not Mosler Auto Care Center or
23 Mr. Mosler, or anyone working on their behalf, deleted
24 any e-mails prior to selling these servers to Rossion?

25 A No.

1 Q Okay. You just know that you didn't or no one
2 at Rossion, to the best of your knowledge, deleted any
3 e-mails?

4 A Correct.

5 Q But you have an IT person at Rossion, correct?

6 A Not a dedicated IT person, but someone that
7 is knowledgeable on the computer aspect of our
8 business.

9 Q And what is that person's name?

10 A Sean Kennedy.

11 Q And does Mr. Kennedy still work for Rossion?

12 A Yes.

13 Q Okay.

14 THE COURT: Just so the record is clear. Was
15 he there at the time that the business was
16 purchased or did he come after?

17 THE WITNESS: After.

18 THE COURT: How long after, would you say?

19 THE WITNESS: Even after me. Probably 20 --
20 give or take 2015, maybe.

21 THE COURT: Just so we know. When did you
22 first come on the scene?

23 THE WITNESS: I was hired December of 2013.
24 My first day of employment or meeting at the
25 facility was January 4, 2014.

1 THE COURT: Thank you for that clarification.

2 BY MR. ZAPPOLO

3 Q Okay. So the testimony that you're giving this
4 Court today is secondhand, right? You're just telling us
5 what the IT person, Sean Kennedy, told you, correct?

6 A Correct.

7 Q And you said that no one came to the -- came to
8 your facility and asked to do any inspection or anything
9 like that, correct?

10 A Correct.

11 Q Now, isn't it true that Mr. Wagner had tried to
12 come to the Rossion facility?

13 A Yes, he did stop by. But he did not specify
14 that he was there to inspect anything, he just dropped
15 by the facility.

16 Q In fact, when RP High Performance purchased the
17 assets of Mosler Auto Care Center, Mr. Mosler put a
18 clause in their lease that specifically specified that
19 Mr. Wagner was never to be allowed on the premises?

20 MR. REINBLATT: Objection, Your Honor.

21 Assumes facts not in evidence.

22 MR. ZAPPOLO: Are you aware of -- I'm sorry,
23 Your Honor.

24 THE COURT: That's fine. Go ahead, if you're
25 going to rephrase the question.

1 BY MR. ZAPPOLO

2 Q Are you aware of the purchase agreements
3 between RP High Performance and Mosler that were produced
4 in this case?

5 A Can you -- can you be more specific?

6 Q Well, did you review the documents that were
7 produced in this case before they were produced to the
8 plaintiff?

9 A No.

10 Q Okay. Are you aware of the provisions of the
11 lease that was granted to RP High Performance?

12 A No.

13 Q Okay. When RP High Performance produced
14 documents in this case, did it Bates stamp them on the
15 bottom right-hand corner with RP production and then what
16 it was in a folder and a Bates number?

17 A If that's what you have, that's what was
18 done.

19 Q Well, let me show you something -- not trying
20 to trick you at all -- never mind. I don't mean to
21 misrepresent Mr -- I was just advised that Bates stamp
22 was something that we did.

23 THE COURT: That's fine. Can you give me
24 your name again?

25 THE WITNESS: Jason Young.

1 THE COURT: Thank you, Mr. Young.

2 MR. ZAPPOLO: May I approach, Your Honor?

3 THE COURT: Yes.

4 BY MR. ZAPPOLO

5 Q I'm showing you what's been marked as
6 Plaintiff's Exhibit Number 4 for identification purposes,
7 and I put a yellow sticky on a specific page. But before
8 we go to that page, I'd just like you to take a cursory
9 look at that document and tell me if you recognize that
10 document, sir?

11 A No.

12 Q Okay. Then I guess I won't go into that with
13 you.

14 Thank you.

15 Nevertheless, are you aware of any
16 restrictions from James Wagner being allowed on the
17 RP High Performance properties?

18 A Yes.

19 Q Okay. And how do you know that?

20 A Through the previous president and the
21 gentlemen that signed that lease, Ian Grunis.

22 Q The lease that I just asked if you had seen and
23 you said no --

24 A You just put it in front of me, I just saw
25 it. And I just saw his name.

1 Q So Mr. Grunis told you that Mr. Wagner was not
2 allowed on the RP High Performance property, correct?

3 A While we were leasing the property, yes.

4 Q Okay.

5 A Correct.

6 Q Did -- were you privy to any of the sales
7 documents wherein RP High Performance purchased the
8 assets of Mosler Auto Care Center?

9 A To what aspect?

10 Q The sales agreement, any disclosures that were
11 made in the sales agreement?

12 A No.

13 Q Tab -- counsel, in our production, Tab E, one
14 of the first things it says, Request Number 1, there's a
15 sale of business agreement. It's, unfortunately, not
16 Bates stamped, but it is consecutively numbered at the
17 bottom.

18 MR. REINBLATT: The sale of business between
19 Mosler and RP.

20 MR. ZAPPOLO: Yes. And then it's got
21 exhibits; One with pictures of cars, et cetera.
22 I'm just going to show him the sale of business
23 agreement and then specifically I'll refer to Page
24 4.

25 And for the record, I'm just going to show

1 him on Pages 1 through 11 of the sale of
2 business agreement without all the attachments
3 in front of him.

4 May I approach, Your Honor?

5 THE COURT: Yes.

6 MR. ZAPPOLO: Thank you.

7 BY MR. ZAPPOLO

8 Q I'm showing you what's been marked for
9 identification purposes as -- I think we're up to
10 Plaintiff's Exhibit Number 5.

11 Have you ever seen that document, sir?

12 A No.

13 Q All right. When you first started working for
14 RP High Performance, did you ever have the opportunity to
15 see any of the servers that were in the building?

16 A Yes.

17 Q How many servers were there?

18 A The only one that I specifically saw would
19 have been in the assembly area.

20 Q Okay. Do you know how many servers there were
21 when James Wagner worked at Mosler Auto Care Center?

22 A No.

23 Q Did you have access to the CADD system, the
24 computer aided drawing system?

25 A Our engineering department did.

1 Q And is that the server for the CADD system that
2 you were just referring to or do you know?

3 A I don't know.

4 MR. ZAPPOLO: Okay. All right. That's all I
5 have, Your Honor.

6 Thank you.

7 THE COURT: Thank you, Mr. Zappolo.

8 Mr. Reinblatt, any redirect?

9 MR. REINBLATT: No redirect.

10 THE COURT: Thank you, Mr. Young, for your
11 time. Watch your step as you get down from the
12 witness stand.

13 Next witness, Mr. Zappolo.

14 MR. ZAPPOLO: Now, we call James Wagner to
15 the stand.

16 THE COURT: Mr. Wagner, if you would kindly
17 step forward and take the oath, please.

18 THEREUPON,

19 JAMES TODD WAGNER,
20 a witness herein being of lawful age, and being first
21 duly sworn in the above cause, testified on her/his oath
22 as follows:

23 DIRECT EXAMINATION

24 BY MR. ZAPPOLO

25 Q Would you introduce yourself to the Court,

1 please.

2 A James Wagner. Formerly director of
3 engineering for Mosler Auto Care Center through my
4 S Corporation, Super Car Engineering, Inc. Also,
5 president of Super Car Engineering, Inc.

6 Q Okay. James, it would go a lot quicker if you
7 just listen to my question and answer my question only.
8 Okay?

9 A Okay.

10 Q Now, with respect to all that I just said, when
11 did you first start working for Mosler Auto Care Center?

12 A January of 2004.

13 Q Okay. And from January 2004, were you directly
14 employed by Mosler Auto Care Center or were you employed
15 through another entity?

16 A I was employed through another entity.

17 Q Explain that to the Court, please?

18 A Warren Mosler asked me to form my own
19 S Corporation and work as a consultant for him and
20 Mosler Auto Care Center. So I formed Super Car
21 Engineering, Inc. as an S Corporation.

22 Q Okay. So while you were working for Mosler
23 Auto Care Center, initially, through Super Car
24 Engineering, what was your job description?

25 A Director of engineering.

1 Q Okay. And in your capacity as director of
2 engineering, did you use any computers?

3 A Yes, I did.

4 Q And did you use them on a daily basis?

5 A Yes.

6 Q And where was the computers that you used when
7 performing work for Mosler Auto Care Center located?

8 A One was under my desk. And then there was --
9 the CADD server was a separate thing. And the e-mail
10 server was a separate unit as well.

11 THE COURT: Just have a brief question for
12 you, just to clarify for myself. When you first
13 began, you said that you were asked to form your
14 own S corporation, which you did. You were
15 considered director of engineering. But you also
16 indicated that you were hired as a consultant.

17 THE WITNESS: Yes.

18 THE COURT: So I'm a bit confused. Were you
19 a contract -- were you a contracted employee, an
20 independent contractor, what was your
21 relationship?

22 THE WITNESS: I was an independent
23 contractor. And Warren just asked that I
24 introduce myself to people with the company as
25 director of engineering. So I did as he asked.

1 THE COURT: Okay. Thank you for that
2 clarification, sir.

3 BY MR. ZAPPOLO

4 Q Now, as with respect to the work that you did
5 for Mosler Auto Care Center, did you ever have to send
6 e-mails?

7 A Yes.

8 Q Okay. And what was the e-mail address -- let
9 me ask you this. What was your e-mail address when you
10 first started working at the Mosler facility?

11 A T Wagner at Mosler Auto dot com.

12 Q Okay. And did that ever change?

13 A No, it did not.

14 Q Okay. And so, about, approximately, how many
15 e-mails would you have to send just in general overall to
16 the whole world at large during the time period that you
17 worked there?

18 A Three or four a day.

19 Q Okay. Now, with respect to who you would send
20 e-mails to. Who do you recall sending e-mails to?

21 A I would send e-mails to Warren Mosler. I
22 would send them to Alan Simon periodically. Sometimes
23 to Pete Magnusson, who was the purchasing person. Dan
24 Carvallo, who was the general manager. Periodically
25 send e-mails to potential customers who were interested

1 in the car. Periodically, to journalists.

2 Q Okay. Now, you heard your wife -- former
3 wife -- testify earlier, correct?

4 A Yes. And -- Jill Wagner -- I thought you
5 were talking about initially when I first started
6 working there.

7 Q Okay. You would send e-mails to Jill Wagner?

8 A Yes. Frequently.

9 Q She was the general manager and you were the --
10 what was the title?

11 A Director of engineering.

12 Q And she testified that there might have been
13 e-mails between you and Mr. Savopoulos. Do you remember
14 that?

15 A There were a few, yes. He -- yes.

16 Q Now, with respect to Warren Mosler, what types
17 of e-mails relevant to this hearing -- okay, you know
18 what the issues are in this hearing, right?

19 A Yes.

20 Q So relevant to this hearing, that would be of
21 interest to the Judge right now, what types of e-mails
22 did you send to Warren Mosler and/or receive from Warren
23 Mosler at your e-mail address, T Wagner at Mosler auto
24 dot com, that are relevant to this hearing?

25 A With regard to the 2012 Mosler Raptor GTR, we

1 discussed what type of engine the new vehicle should
2 have. Went back and forth about whether it would be
3 normally aspirated or a standard super charged engine
4 or the twin turbo engine. And settled on the twin
5 turbo 7-liter engine.

6 MR. ZAPPOLO: Your Honor, may I have the
7 exhibits?

8 THE WITNESS: At the time, Warren, you know,
9 didn't have as much resources as he typically did.
10 So we wanted to do a running change for the 2012
11 model, a running change of the 2009 vehicle into
12 the 2012 vehicle. And so, that required fewer
13 emissions tests.

14 BY MR. ZAPPOLO

15 Q James, I don't want to -- we don't need to --
16 we're not trying the whole case today. So I'm just going
17 to move you right along.

18 A Okay.

19 Q Can you identify what is Exhibit Number 1?

20 A That's a 2012 Mosler Raptor GTR.

21 Q Okay. And is that different or the same car of
22 the MT900S?

23 A It is different. It has the same chassis,
24 but the engine, the air flow system -- many differences
25 between that model and the MT900S.

1 Q Okay. Thank you.

2 Now, Your Honor, I don't know whether you had
3 changed the sticker around, but it looks like someone
4 flipped the sticker.

5 THE COURT: I did.

6 MR. ZAPPOLO: I'm putting it back the way
7 that I had it on there the first time.

8 THE COURT: That's fine.

9 MR. ZAPPOLO: Because I believe it was right
10 side up.

11 BY MR. ZAPPOLO

12 Q I'm showing you what's been marked as
13 Plaintiff's Exhibit Number 2.

14 A Yes.

15 Q Is that right side up, that photo right now,
16 with the plaintiff's sticker on the bottom?

17 A That is.

18 Q And can you explain to the Court, as I'm
19 holding it out here, up here, what are these red things
20 on each side about 7/8ths of the way up the page?

21 A Those are the taillights.

22 Q Where is this picture taken?

23 A This picture is taken in the back room of the
24 Mosler Auto Care Center facility.

25 Q Where is the car?

1 A The car is up on a lift. So you are looking
2 at it from down below.

3 Q All right. So we're looking at the rear end.
4 And in the middle there, there is some silver portion.
5 Is that where the license plate would go?

6 A And it says Mosler on there.

7 Q Okay. Then -- so we're looking at a car that's
8 raised up in the air from the back side on the ground,
9 right?

10 A So you see this is the bottom of the car
11 here.

12 Q Right above where it says Plaintiff's Exhibit
13 2, that's the bottom?

14 A And that's the wing on top.

15 Q And up top there on the very top is a wing.
16 Okay. So, like, if you're looking at the back of a
17 sports car with one of those wings on it, that helps the
18 car stay grounded, that's the wing at the top of the
19 picture. And the bottom we have -- and just below the
20 red taillights, a little bit inward, we have two things,
21 what are those?

22 A Those are the turbos.

23 Q All right. So we're looking at the car from
24 the ground up.

25 And why is this picture important to you in

1 this case?

2 A That shows the car being built at the Mosler
3 facility.

4 Q And this is a car that, in this case,
5 Mr. Mosler has claimed is not a true Mosler product?

6 A That's correct.

7 MR. REINBLATT: Objection, Your Honor. Your
8 Honor, he doesn't know what Mr. Mosler's claim is.
9 He can't testify to that. So if there's a
10 document that says that, then, maybe but...

11 THE COURT: It's really not relevant for
12 today anyway. We're just dealing with a very
13 limited issue and that is the spoliation of --
14 alleged spoliation of evidence in the form of
15 e-mails.

16 MR. ZAPPOLO: Moving along, then, Your Honor,
17 yes.

18 BY MR. ZAPPOLO

19 Q So with respect to all the issues of the
20 changes between the 2012 Raptor GTR and the MT900S, are
21 those types of e-mails that you have exchanged with
22 Warren Mosler?

23 A Yes. Warren Mosler liked to get into the
24 technical details. So he was very involved. And since
25 he was in St. Croix, 90 percent of my conversations

1 with him were by e-mail. We also discussed sending the
2 car to the EPA testing via e-mail. He approved of
3 that.

4 Q Now, because it's important for -- and that's
5 important in this case because of your claims, right?

6 A Correct.

7 Q Okay. Because your assertions are that his
8 claims that this is not truly a Mosler product are belied
9 by the fact that you have all these e-mails going back
10 and forth?

11 A Yes.

12 Q Now, with respect to the type of the
13 certificate of origin -- I believe it was Exhibit Number
14 3 -- the certificate of origin, were those discussed with
15 Mr. Mosler by e-mail?

16 A Yes.

17 Q Okay.

18 A He knew about the certificates of origin.
19 You know, he was involved in the certification process.

20 Q And so, why are the certification -- e-mails
21 back and forth between you and Mr. Mosler about the
22 certification process -- relevant to this suit?

23 A Mr. Mosler paid for the certification work on
24 the 2012 Raptor GTR, as far as the test lab work. So
25 Warren Mosler paid to have the Raptor GTR shipped to

1 California to be tested at a test lab for emissions --
2 comparative emissions pertinent to what the EPA
3 requested, data-wise, to approve their running change
4 from the 2009 spec vehicle to the 2012 spec vehicle.

5 Q Okay.

6 A And that was all done and approved by e-mail.
7 And I believe Sylvia Klaker organized the shipping.

8 Q So the e-mails exchanged between you and
9 Mr. Mosler would tend to prove or disprove one of the
10 very important factual assertions that you've made in
11 this case, correct?

12 A Correct.

13 Q Now, approximately, how many e-mails would you
14 say -- very conservatively -- you sent or were exchanged
15 between T Wagner at Mosler auto dot com and Mr. Mosler's
16 e-mail address at Gmail, Warren dot Mosler at Gmail dot
17 com?

18 A Approximately, two per week.

19 Q Two per week, times 52 weeks a year. Over a
20 period of what?

21 A Pertinent to this case, the last fours years
22 I was there.

23 Q The last four years you were there. So two
24 e-mails a week at 52 weeks per year for four years is 416
25 e-mails that you know existed because you wrote them or

1 received them, right?

2 A Yes.

3 Q Now, when you left Mosler Auto, did you
4 download all your e-mails and take them with you?

5 A No. I did forward to my e-mail a couple that
6 I thought were especially important.

7 Q Okay.

8 A Other than that, no.

9 Q Did you ever go back and try to retrieve
10 e-mails? And, if so, what happened?

11 A I was blocked from entering the Mosler
12 building.

13 Q Okay. Now, there was testimony before about a
14 lease. Do you remember that?

15 A Yes, I do.

16 Q What do you recall about the lease that was
17 produced in discovery in this case between Mosler Auto
18 Care Center and RP High Performance?

19 A The lease specifically states that I'm not
20 allowed to be inside the Mosler building.

21 Q Okay. I'm going to dig that out in just a
22 minute, as I think that was pre-marked as Exhibit 4.

23 All right. I'm going to move along.

24 Ms. Klaker is here in the courtroom. You
25 recognize her?

1 A Yes, I do.

2 Q Okay. And approximately how many e-mails would
3 you exchange with Ms. Klaker during the time period that
4 you worked at the Mosler Auto Care Center on the Mosler
5 Auto Care e-mail servers?

6 A One every other week, at least.

7 Q Times 52 weeks a year. For what time period
8 that's relevant for this proceeding?

9 A About the same, four years.

10 Q So fifty-two weeks in a year, half an e-mail a
11 week for four years is 104 e-mails, right? Let me back
12 up. Of the 416 e-mails that you conservatively estimate
13 were exchanged between you and Mr. Mosler that are
14 relevant to the issues in this suit, during that
15 four-year period when you worked there and sent them on
16 the Mosler servers, how many were produced in this case?

17 A Zero.

18 Q Okay. Of the e-mails that you just testified
19 about sending and exchanging with Ms. Klaker. How many
20 e-mails were produced?

21 A Zero.

22 Q Now, let's go on to J Wagner. Jill Wagner
23 testified earlier today. Her e-mail was what?

24 A J Wagner at Mosler auto dot com.

25 Q And based upon your -- do you know how many

1 e-mails Jill Wagner exchanged with Warren Mosler during
2 that four-year time period?

3 A In my estimation, and also from my direct
4 conversations with Jill about this topic recently,
5 about one and a half per week.

6 Q Okay. So one and a half per week. Now,
7 besides your conversations with your ex-wife, Jill, what
8 do you personally have personal knowledge of?

9 A Since Jill's office was right next to mine,
10 I'd often be with her while we're typing e-mails to
11 Warren, crafting them together.

12 Q Okay. And when Ms. Wagner was typing an e-mail
13 to Mr. Warren Mosler for him to receive at his house in
14 the Virgin Islands and it was relevant to something
15 related to you, when, if ever, were you copied on those
16 e-mails?

17 A Frequently.

18 Q Okay.

19 A Frequently copied.

20 Q So is there any doubt in your mind that a whole
21 bunch of those e-mails existed?

22 A Absolutely. Including things like budgets.
23 Like, every week there was money transferred from
24 Warren Mosler's account to the MACC account. Jill had
25 to provide a budget. I helped her create the budget.

1 It went from her e-mail account directly to Warren
2 Mosler's account because Warren then had to transfer
3 money. I'm very surprised Jill didn't mention that in
4 her testimony.

5 Q Okay. Why are budgets are important with
6 respect to your claim about the hundred thousand dollars
7 that you put up -- that you gave to Mr. Mosler for your
8 initial purchase of the Mosler Auto Care Center?

9 A Well, Warren Mosler claims that because Lou
10 Lee told him so, that he could keep my money and use it
11 to pay bills for the Mosler account. That's from his
12 deposition.

13 Q Okay.

14 MR. REINBLATT: Objection, Your Honor. This
15 is getting into hearsay testimony.

16 THE WITNESS: It's in his deposition.

17 THE COURT: Shhhhhhh.

18 THE WITNESS: Excuse me.

19 THE COURT: Are there -- it's a good time to
20 remind you, especially if -- are we doing this
21 jury or non-jury?

22 MR. ZAPPOLO: Jury.

23 THE COURT: Do that in front of the jury, it
24 would not be a pretty situation for you.

25 THE WITNESS: I apologize.

1 THE COURT: You have two lawyers here that
2 can well take care of the arrangements. So,
3 please, don't do that again.

4 Anyway, I agree. We're getting a bit far
5 afield here. Let's try to concentrate on the
6 issues.

7 MR. ZAPPOLO: Your Honor.

8 THE COURT: I don't have a problem with
9 simply asking about the number of e-mails and he
10 would estimate from a given situation, but you do
11 want to stick to the issues at hand.

12 MR. ZAPPOLO: Just so I'm clear, Your Honor.
13 My understanding of the case law is that we have
14 to display to you why the e-mails are relevant to
15 our case in chief, and that's why I was asking
16 those things. If you think that it's obvious, you
17 know, we can just look at the pleadings ourselves
18 and I don't have to put those, I'm happy not to do
19 it.

20 THE COURT: Well, I mean, you're right, in
21 the steps there has to be a nexus between what you
22 claim to be spoliated evidence and the issues in
23 the case.

24 MR. ZAPPOLO: Would we leave that to argument
25 then?

1 THE COURT: That's fine.

2 MR. ZAPPOLO: Okay. Thank you, Your Honor.

3 Then we'll be able to move even quicker.

4 THE COURT: Thank you.

5 MR. ZAPPOLO: Thank you, Your Honor. That's
6 just what we were thinking when I was asking those
7 questions.

8 BY MR. ZAPPOLO

9 Q Moving right along. Alan Simon, there was
10 testimony about you exchanging e-mails with Mr. Simon.
11 Do you recall that testimony?

12 A Yes.

13 Q Okay. And did you exchange e-mails with
14 Mr. Simon during that last four-year period that you
15 think was relevant, that are e-mails related to the
16 issues -- only issues in this case?

17 A Yes, I do.

18 Q Approximately, how many times per week did you
19 send an e-mail to Mr. Simon?

20 A Approximately, one per week.

21 Q For over four years, times 52 weeks. That
22 gives us 208 e-mails. Of the 208 e-mails you
23 conservatively estimate existed, how many were produced?

24 A Zero.

25 Q Okay. Now, there's testimony about

1 Mr. Savopoulos, and Jill Wagner exchanging e-mails with
2 Mr. Savopoulos. Did you tell us what your belief is as
3 to how much e-mail exchange was conducted between
4 Jill Wagner and Mr. Savopoulos?

5 A It would be my estimation about one per week
6 and between her and Savvas. To my understanding when
7 Jill told --

8 MR. REINBLATT: Objection, Your Honor.

9 Again, I'm not sure how he could know how many
10 e-mails were exchanged between Mr. Savopoulos and
11 Ms. Wagner if he wasn't a party to the e-mails?

12 MR. ZAPPOLO: I'm going to cover that.

13 THE COURT: All right. See if you can tie it
14 up.

15 BY MR. ZAPPOLO

16 Q How do you know what you're about to testify
17 to?

18 A Jill told me that the reason -- the primary
19 reason she was there as a consultant was to help the
20 buyers and move along the purchase process, and also to
21 deal with the Raptor GTR launch.

22 Q With respect to one particular e-mail that
23 Ms. Wagner admitted to having received, or -- excuse
24 me -- having sent an e-mail about Mr. Savopoulos already
25 having put down his deposit, do you remember receiving

1 that e-mail?

2 A I do.

3 Q Did you receive that on your Mosler Auto Care
4 Center dot com e-mail address?

5 A I don't recall.

6 Q Okay. Nevertheless, did they produce it in
7 this case?

8 A No.

9 Q Okay. So that's one that sticks out in your
10 mind. But you are aware, from your conversations, et
11 cetera, that you believe there are others, correct?

12 A Yes.

13 Q Okay. So that's another approximately -- you
14 said that -- how long would that have been going on for,
15 approximately a year?

16 A Yes.

17 Q So you are estimating another 50 e-mails exist
18 there, right?

19 A (witness nods head).

20 Q Okay. Now, with respect to -- so what do we
21 come up with a total number of e-mails that you expected
22 to receive when you sent out your request for production
23 of documents asking for all these different e-mails?

24 A I added them all up and I came up with about
25 1,200 e-mails I was expecting to receive.

1 Q And you received how many?

2 A Two.

3 Q Okay. Now, with respect to those e-mails. You
4 know they exist because you sent and/or received them.
5 The only problem with you not having them, is that you
6 don't have access to those MACC servers, correct?

7 A Correct.

8 Q All right. Now, I'd like to go into just one
9 issue that's relevant here about the timing, and when
10 Mosler Auto Care Center and/or Mr. Mosler should have
11 known that there was likelihood of litigation. Okay.
12 Can you explain to the Judge what was going on for
13 approximately a year prior to the filing of the lawsuit?

14 A So in June of 2011, I provided a hundred
15 thousand dollar deposit to buy the company. And then
16 shortly thereafter, Warren Mosler sold \$500,000 of the
17 assets without telling me. And then shortly
18 thereafter, Savvas Savopoulos put in a deposit.

19 Q Okay. And you know that because you received
20 that e-mail?

21 A I received an e-mail from Warren Mosler
22 saying that he already signed with Savvas. Savvas
23 started calling me. He wanted Savvas -- and Warren
24 Mosler wanted me to sign away my company's
25 distributorship, sign away my intellectual property,

1 and also give up my hundred thousand dollar deposit in
2 return for \$100.

3 Q Okay.

4 A And I got threatening calls.

5 Q Without going into too much detail. That's
6 what was going on?

7 A Correct.

8 Q Now, how were those conversations had?

9 A Phone and e-mail, both.

10 Q Okay. And when you exchanged e-mails with
11 Mr. Mosler about these issues, your hundred thousand
12 dollars, the fact that you wanted your money back, et
13 cetera?

14 A Yes.

15 Q What e-mail address were you using?

16 A During that time, my J dot Todd dot Wagner at
17 Gmail dot com e-mail address.

18 Q And so, we have the things that you have from J
19 dot Todd dot Wagner, correct?

20 A Yes.

21 Q But are there also e-mails that went from
22 the -- your Mosler Automotive e-mail address?

23 A Not after -- not when I was threatening the
24 lawsuit, no.

25 Q Okay. Now, J dot Todd dot Wagner at Gmail dot

1 com, that's the e-mail address you were using, correct?

2 I'm just -- may I approach, Your Honor?

3 THE COURT: Sure.

4 BY MR. ZAPPOLO

5 Q I'm showing you what's been marked as
6 Plaintiff's Exhibit Number 6 for identification purposes.

7 Can you identify that e-mail for the Court?

8 A Yes. This is the e-mail that I sent to
9 Warren Mosler and copied Alan Simon and Kelly Reagan.

10 Q So, let's just get this straight. This e-mail
11 is dated March 6, 2013, correct?

12 A Correct.

13 Q Now, this lawsuit was filed when?

14 A In December of 2012.

15 Q Okay. So this is slightly after the lawsuit
16 had been filed, correct?

17 A Correct.

18 Q But before Mosler Auto Care Center sold its
19 assets to RP High Performance, correct?

20 A Correct. Well, three months -- three or four
21 months before.

22 Q So the testimony was about July. And we have
23 this e-mail in March. So now is that an e-mail that you
24 sent to Warren Mosler?

25 A Yes, it is.

1 Q Okay. And that references side glazing and
2 lawsuit in it, correct?

3 A Correct.

4 Q Now, based upon this e-mail, who was --
5 Mr. Simon was their lawyer, right?

6 A Correct. Yes.

7 Q KLR at Reagan law offices dot com, who was
8 that?

9 A That's Kelly Reagan. That's my lawyer.

10 Q That's your lawyer. Okay. So this is months
11 after a lawsuit had already been filed. You're writing
12 and exchanging e-mails with Mr. Mosler, correct?

13 A Right.

14 Q And this e-mail references in it, from this
15 moment forward, unless a communication is a written
16 settlement proposal, Alan Simon may not communicate with
17 Kelly Reagan on the matter. Simon may verbally
18 communicate directly with me.

19 Is there any doubt -- what, if anything, do
20 you know of that would lead someone to believe that
21 there was not a lawsuit pending at this time?

22 A There's nothing to lead someone to say that.
23 There's even a sentence here, says, Kelly is going
24 forward with the lawsuit. It's very clear.

25 Q Because prior to that -- explain to the Court

1 what had happened. The suit was filed, and then what
2 happened?

3 A I was still trying to buy the company, trying
4 to just, you know, settle this as a gentleman without
5 going forward.

6 Q Without going into discussions about settlement
7 discussions -- just for the record, you filed the lawsuit
8 and then you and your lawyers were trying to negotiate
9 settlement of the suit, correct?

10 A Yes.

11 Q Okay. And there is at least evidence that you
12 say supports that everyone knew there was a lawsuit
13 filed?

14 A Yes.

15 Q In March of 2013, correct?

16 A (Witness nods head).

17 Q All right. Now, I'm showing you -- Your Honor,
18 at this point I'd like to move Plaintiff's Number 6 in
19 evidence.

20 THE COURT: Any objection?

21 MR. REINBLATT: No, Your Honor.

22 THE COURT: All right. So stipulated. Thank
23 you.

24 (Thereupon, Plaintiff's Exhibit Number 6
25 was received in evidence)

1 MR. ZAPPOLO: Exhibit Number -- does Your
2 Honor want to see it?

3 THE COURT: I'll take it.

4 BY MR. ZAPPOLO

5 Q All right. Now, a few minutes ago there was
6 discussion about a lease. Did you ever get to see the
7 lease between Mosler Revocable Trust in St. Croix and the
8 RP High Performance Group?

9 A I only saw it after RP High Performance
10 produced it to us.

11 Q Okay. And I'm going to ask you to flip to --
12 I'm showing you what's been marked as Plaintiff's Exhibit
13 Number 4 for identification purposes. And I flip to Page
14 3 -- excuse me -- Page 5, Paragraph 7-F. What, if
15 anything, does that have to do with your efforts to
16 obtain copies of e-mails that are relevant to this
17 lawsuit?

18 A Yes. This clause is in here disallowing me
19 from getting access to the building where the e-mail
20 server was.

21 Q Okay. Now, notwithstanding all the efforts
22 that you authorized your lawyers to send out requests for
23 production, et cetera, and they're all in the record and
24 the Judge has taken a look at them. This is you trying
25 to do some kind -- if you had done some type of self-help

1 and gone to the building, as was already testified to,
2 did you do that?

3 A I tried to.

4 Q And you were not able to do that, correct?

5 A Yes. I even sent a letter asking to go. And
6 I was rebuffed.

7 Q Okay. Just one moment, Your Honor, if I may.
8 Some of the documents that have been
9 requested in this case are related to the environmental
10 protection agency.

11 Do you remember that?

12 A Yes.

13 Q Okay. And you don't have to go into it, why
14 all that's relevant and everything, but I'm going to ask
15 you, did you reach out to the environmental protection
16 agency in order to try to obtain documents relevant to
17 this suit?

18 A Yes, I did.

19 Q Did you also -- prior to reaching out to the
20 EPA -- authorize your attorneys to do a request for
21 production of documents to the defendants vis-a-vis
22 documents exchanged between Mr. Mosler, MACC and the EPA?

23 A Yes, I did.

24 Q And with respect to the request for production,
25 what was the responses?

1 A Nothing.

2 Q Okay. And with respect to the EPA, did you
3 receive any correspondence from them?

4 A Yes, I received correspondence that Mosler
5 Auto Care Center had blocked my request, stating that
6 warranty information was confidential business
7 information.

8 Q Showing you what's been marked as Plaintiff's
9 Exhibit Number 7.

10 Do you recognize that document?

11 A Yes, I do.

12 Q Is that the letter you just referred to?

13 A Yes, it is.

14 MR. ZAPPOLO: Your honor, at this point I'd
15 like to move Plaintiff's Number 7 into evidence.

16 THE COURT: Any objection?

17 MR. REINBLATT: No, Your Honor.

18 THE COURT: All right. Seven will be
19 admitted without objection.

20 (Thereupon, Plaintiff's Exhibit Number 7
21 was received in evidence)

22 BY MR. ZAPPOLO

23 Q May I see Exhibit Number 3, please.

24 Mr. Wagner, Plaintiff's -- I'm showing you
25 what's been marked as Plaintiff's Exhibit Number 3.

1 And this kind of ties in with the EPA. Can you explain
2 to the Court why you want documentation relative to the
3 EPA, in light of the certificates of origin of
4 vehicles -- actually, you know what, we don't have to
5 cover that because the Judge is going to say we can tie
6 that in argument. So let's move along with that.

7 I'm going to check -- I'll let counsel start
8 his cross, just to keep things moving along, if I can
9 spend some time, I want to find out what I pre-marked
10 and didn't move into the evidence, with the Court's
11 permission.

12 THE COURT: Sure.

13 MR. ZAPPOLO: I'll tender the witness for
14 now.

15 THE COURT: Okay. Mr. Reinblatt.

16 MR. REINBLATT: Yes, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. REINBLATT

19 Q Mr. Wagner, do you know when the lease was
20 entered into between Warren Mosler and
21 RP High Performance?

22 A I'd have to look at the document. I wasn't
23 involved in it, so I don't know the answer off the top
24 of my head.

25 MR. REINBLATT: Your Honor, may I approach

1 and show the witness the lease?

2 THE COURT: Sure.

3 BY MR. REINBLATT

4 Q It's right at the top.

5 A Says, 28th of May, 2013.

6 Q Okay. Thank you.

7 At that point in time --

8 MR. ZAPPOLO: Why don't you go ahead and mark
9 the lease. Because I had pre-marked it as
10 Plaintiff's Exhibit Number 4.

11 MR. REINBLATT: Your Honor, I'm going to put
12 in --

13 MR. ZAPPOLO: Let's stipulate -- we'll just
14 stipulate to Plaintiff's Number 4 in evidence.
15 And that way he'll have the -- that was the
16 missing document.

17 THE COURT: Sure. Thank you.

18 MR. ZAPPOLO: We've already got Plaintiff's 4
19 in evidence. I apologize. I'm still looking for
20 5.

21 Plaintiff's 4 is in evidence, counsel.

22 (Thereupon, Plaintiff's Exhibit Number 4
23 was received in evidence)

24 BY MR. ZAPPOLO

25 Q Mr. Wagner, as of May 20, 2013, was this case

1 that we're here for today in active litigation?

2 A May -- define that.

3 Q Was Mr. Mosler, as of May 20, 2013, and MACC,
4 represented by counsel and actively litigating and
5 defending your allegations in the first initial
6 complaint?

7 A They had not been served yet, if that's what
8 you're trying to ask.

9 Q As of May 20, 2013 they had not been served?

10 A I don't believe so.

11 Q You testified earlier that you paid a hundred
12 thousand dollars to Mr. Mosler. Was that your testimony?

13 A Yes.

14 Q Is it not true that the hundred thousand
15 dollars was paid through a trust controlled by your
16 father and he's the trustee who issued the payments?

17 A It was sent on my behalf as a loan from my
18 father to me.

19 Q That's your current allegation in the 5th
20 Amended Complaint. That's not been proven as of yet, is
21 that correct?

22 A That's what I'm asserting. That's my
23 testimony.

24 Q Did you or SCI ever pay to MACC any monies to
25 make any changes to the Raptor GTR prior to your taking

1 complete possession of it?

2 MR. ZAPPOLO: Relevance.

3 MR. REINBLATT: Your Honor, we're talking
4 about prior e-mails. I think if we're going to
5 get into prior e-mails, if there's anything about
6 that, then it's relevant.

7 THE COURT: I'm going to sustain the
8 objection.

9 MR. REINBLATT: Okay.

10 BY MR. REINBLATT

11 Q You were asked earlier about the request for
12 information from the EPA.

13 Do you recall that?

14 A Yes.

15 Q And initially you were declined that
16 information, is that correct?

17 A That's true.

18 Q Were you eventually given that information?

19 A No.

20 Q No? The EPA did not provide you with the
21 information after Mr. Mosler withdrew any objection?

22 A I wasn't given anything. They didn't find
23 anything, as far as I know.

24 Q They didn't find anything. But any hold up in
25 you being given the documents was recalled, correct?

1 A That's correct.

2 Q Have you at any time claimed to have an
3 executed contract with Warren Mosler for the purchase of
4 the company?

5 A Yes.

6 Q Okay. And we went through that in your
7 deposition, do you recall?

8 A Yes.

9 Q At the end, you did not admit you never had an
10 executed contract, even though you claim to?

11 A I had an executed contract and I've misplaced
12 it. That was the testimony.

13 MR. REINBLATT: Your Honor, at this time I'd
14 like to mark as Defendant's Exhibit Number 1, the
15 deposition transcript of Mr. Wagner taken
16 January 28, 2016.

17 THE COURT: Okay.

18 MR. REINBLATT: Your Honor, may I approach
19 the witness?

20 THE COURT: Sure.

21 BY MR. REINBLATT

22 Q Mr. Wagner, could you read for us Lines 4
23 through 6 on Page 114?

24 A "Question: You don't have a signed executed
25 contract or agreement to purchase the company, do you?

1 No.

2 Question: Is it possible?"

3 Q That's enough. Just 4 through 6.

4 Thank you.

5 A There is other information about this topic
6 as it is mentioned. I had one, I lost it. This is
7 a --

8 Q If there's anything, Scott will take care of
9 it. Don't worry.

10 So you never had an executed signed contract
11 for the purchase of Mosler Auto Care Center, did you?

12 A I just testified that Warren executed one.
13 It was sent to me, faxed. And I've misplaced it.
14 There is also a lot of e-mail correspondence back and
15 forth regarding this topic, and the deposit -- we've
16 gone over this in great detail in my deposition, right.

17 Q Absolutely. In your deposition, do you recall
18 talking about alleged employments that you did not obtain
19 because they alleged defamatory statements?

20 MR. ZAPPOLO: Your Honor, outside the scope
21 and irrelevant to this proceeding.

22 MR. REINBLATT: Your Honor, I asked
23 Mr. Wagner at his deposition about his employment.
24 He said he didn't have any.

25 THE COURT: Okay.

1 MR. REINBLATT: He then later on, when I
2 deposed their expert, said he had gone through
3 e-mails and found information regarding
4 employment. Then proceeded to list 43 employments
5 he said he applied to. But I only found out
6 through his expert.

7 THE COURT: Okay.

8 MR. REINBLATT: So this gets into the whole
9 who has e-mails, who's hiding what?

10 THE COURT: Not the question you just asked.
11 If you want to rephrase it, I'll allow you to do
12 that.

13 Objection is sustained as to that
14 question.

15 BY MR. REINBLATT

16 Q Mr. Wagner, did you have e-mails with potential
17 employers that you claim you didn't obtain employment
18 from due to the alleged defamatory statements?

19 A Are you asking for e-mails from them to me
20 or --

21 Q Any correspondences between you and them.
22 Either way.

23 A What you may be referring to is me sending in
24 resumes via e-mail, or other means. If that's what you
25 mean, then, yes.

1 Q Did you provide those e-mails in discovery?

2 A I don't remember them ever being asked for.

3 Q When did your employment with MACC end?

4 A I believe it was January of 2011.

5 Q Okay. And Scott, basically, it was January 7,
6 2011. That's from his deposition.

7 MR. ZAPPOLO: If you represent that's what it
8 is, that's fine.

9 MR. REINBLATT: Page 56.

10 THE WITNESS: That sounds right.

11 THE COURT: That's fine.

12 MR. ZAPPOLO: Close enough, yeah.

13 BY MR. REINBLATT

14 Q And at that time, did you cease using your
15 Mosler e-mail address?

16 A Initially, I was allowed to use the T Wagner
17 at Mosler Auto e-mail for some other purposes from time
18 to time because I was still working on the
19 certification work for the Raptor GTR. And so, there
20 was a time when it was tapered off somewhat after
21 January.

22 Q When was that?

23 A I believe it was mid-April when I was -- of
24 2011 -- where I was no longer allowed in the MACC
25 building. So somewhere in between January 7 and

1 April 15.

2 I believe I still had access to the T Wagner
3 at Mosler Auto e-mail.

4 Q Okay. In discovery you produced a lot of
5 e-mails between yourself and Mr. Wagner [sic], is that
6 correct?

7 MR. ZAPPOLO: Mr. Mosler?

8 BY MR. REINBLATT

9 Q Sorry, Mr. Mosler. I'm sorry.

10 A Yes. Between myself and Mr. Mosler yes.

11 Q Those were on which e-mail address?

12 A J dot Todd dot Wagner at Gmail dot com. And
13 there may have been some from the MT900 Super Car at
14 Gmail dot com.

15 Q Beside your MACC work e-mail, prior to your
16 employment ceasing with MACC, did you ever use any other
17 e-mail address to communicate with Mr. Mosler?

18 A I don't recall, so no.

19 Q No.

20 A I mean, it's possible. It would be an
21 extremely rare occurrence.

22 MR. REINBLATT: Your Honor, at this time I'd
23 like to attach a packet of e-mails as Defendant's
24 Exhibit Number 1.

25 THE COURT: Okay.

1 MR. REINBLATT: This will be Number 2, Your
2 Honor.

3 (Thereupon, Defendant's Exhibit Numbers 1
4 and 2 were received in evidence)

5 MR. REINBLATT: Your Honor, I'd like to show
6 this to the witness.

7 THE COURT: Sure. Go ahead.

8 BY MR. REINBLATT

9 Q Mr. Wagner, are these e-mails between yourself
10 and Mr. Mosler from 2010 from the MT900 Super Car e-mail
11 address?

12 A Yes. I think I mentioned MT900 Super Car
13 e-mail address just a few minutes ago, right?

14 Q Right. But I asked if you used any other
15 e-mail address to communicate with Mr. Mosler prior to
16 your employment ending. You said no.

17 A I said it would be a rare occurrence. I did.

18 Q But you did use other e-mail addresses,
19 correct?

20 A Yes, as shown here.

21 Q That's a rare occurrence, but there's quite a
22 few e-mails here?

23 A It shows the mass quantity of other ones
24 which are on the e-mail server that's gone.

25 Q And there's e-mails here from July -- from

1 November 2012?

2 A May I seem them again, please?

3 Q Okay.

4 A This first one is 6:46 p.m. Supposed to be
5 after hours, I'm at home. Let's see what the other
6 ones say.

7 At home, I don't have access to the Mosler
8 Auto one. So it seems logical I would use my own.

9 Here's another. Friday at 3:06 p.m.
10 4:01 p.m. 6:46 p.m. Again, after hours. 3:06 p.m.
11 Again, another 4:01 p.m. And 6:46 p.m.

12 Are you sure these aren't copied like -- you
13 have many of the same one.

14 Q Well, you --

15 A Because I saw several of them -- you gave
16 these to me, so several of them are at 6:46 p.m.
17 several have 4:01. This package looks large maybe
18 because you have several copies of the same thing.

19 MR. REINBLATT: Your Honor, not that I'd like
20 to argue with the witness, but just his discovery
21 was various chains of e-mail, I wanted to keep it
22 complete.

23 THE WITNESS: That's why it's so thick. You
24 have three copies of them all. It's only, like,
25 three e-mails there.

1 BY MR. REINBLATT

2 Q Do you know when the Plaintiffs -- sorry --
3 when the Defendants were served with the lawsuit?

4 A I don't know exactly.

5 MR. REINBLATT: Your Honor, as an exhibit to
6 our response to Plaintiff's motion, we did attach
7 the -- several pages printout of the docket. If
8 Mr. Zappolo agrees, Court can take judicial notice
9 of that.

10 MR. ZAPPOLO: That's fine, Your Honor.

11 BY MR. REINBLATT

12 Q The lawsuit was not served -- the first serving
13 was not until the end of June, 2012.

14 THE COURT: Okay. Thank you.

15 BY MR. REINBLATT

16 Q There is some discussion earlier of the e-mails
17 that you're standing for the proposition Mr. Mosler was
18 aware of a lawsuit that was being filed against him,
19 correct?

20 A Correct.

21 Q And in those e-mails, do you recall what was
22 discussed?

23 A Things such as me demanding my hundred
24 thousand dollars back. Not being -- you know, I worked
25 hard for the distributorship. And, you know, my

1 companies put all of its money into the Raptor GTR.

2 Also, phone conversations about it, text messages.

3 Q Plaintiff's Exhibit Number 6. Help refresh
4 your recollection. Would you please take a look at and
5 tell us what exactly was discussed in there that may be
6 subject to the lawsuit?

7 A The side glazing. Warren Mosler was refusing
8 to give me a replacement --

9 Q Please, just what's contained in the e-mail,
10 just so that we can get through this.

11 A That's what -- I'm explaining that. Says,
12 side glazing. That's about that topic.

13 Q Okay. What else is contained in that e-mail?
14 Which other issues?

15 A Kelly's going forward with the lawsuit.
16 Which is a safety critical issue, as shown in Alan
17 Simon's car burning to the ground. Your proposal to me
18 to forfeit the hundred thousand dollar deposit and
19 \$30,000 of warranty, TC claims. That's, you know,
20 obviously, a lot of money that I'm objecting to
21 forfeiting.

22 It's worth saying again, I have no interest
23 whatsoever in suing you or Mr. Simon. I seek only
24 fairness. Me paying \$137,000 plus, plus, plus, for a
25 piece of glass that is a legitimate warranty claim and

1 safety critical component that has a zero value to you,
2 doesn't constitute fairness.

3 In this e-mail, Warren Mosler -- this is
4 after --

5 Q Mr. Wagner, I'm not asking for an explanation.
6 I just want to know the contents of the e-mail. That's
7 it for now. Thank you.

8 Out of the issues in that e-mail, which are
9 still currently part of the 5th Amended Complaint?

10 A The \$100,000 deposit, \$37,000 of warranty
11 claims, inclusive of the side glazing.

12 Q Sorry, just so we can be clear. The 5th
13 Amended Complaint, the only warranty claim that still
14 exists is under the U.S. 42 USC 75.41, which has to do
15 with EPA emissions. And you specifically stated the
16 engine, fuel lines, the accelerator, and one other item,
17 which I can tell you right now -- sorry -- an alternator,
18 a throttle body engine, and a faulty fuel line.

19 So that's not part of the 5th Amended
20 Complaint, is it?

21 A Okay. I didn't realize that had been
22 eliminated. The warranty claims in general. This
23 e-mail is obviously five years ago.

24 Q I'm asking which of the parts of that e-mail
25 are still currently at issue in the 5th Amended

1 Complaint, pending before the Court. Is it true the only
2 issue pending before the Court from that e-mail in the
3 5th Amended Complaint is the \$100,000?

4 A No. The warranty issues are still -- they're
5 still part of -- the warranty issues are still there.

6 Q Limited to what's pled in the 5th Amended
7 Complaint, correct?

8 A I feel like you're asking for some legal
9 testimony I'm unable to give. I don't know what you're
10 talking about.

11 MR. REINBLATT: Your Honor, for
12 clarification. The 4th Amended Complaint
13 contained a general breach of car warranty that
14 was eliminated on summary judgment.

15 The 5th Amended Complaint alleged
16 specifically portions of the car that they're
17 claiming under specific federal statutes.

18 That's all I'm just trying to clarify
19 here.

20 THE COURT: All right. Do you understand the
21 question?

22 MR. REINBLATT: I'm not trying to drag this
23 out or trip him up.

24 THE COURT: I understand. If you were, I
25 would intervene.

1 Do you understand the question, sir?

2 THE WITNESS: I think, in general, I'll give
3 my best attempt at answering. The \$100,000 is
4 still there, obviously.

5 And the remnants of the warranty claim are
6 still there.

7 And I would testify that the warranty
8 issues that were eliminated from the lawsuit
9 were eliminated because I did not have access
10 to the spoliated data. If I had access to the
11 spoliated e-mails, which they explicitly --
12 Warren Mosler and I discussed it before I
13 bought the car that the warranty would be
14 upheld.

15 And that thing in the bill of sale was
16 only pertinent to when the car is being test
17 driven by a journalist. He wanted to be held
18 harmless for that.

19 So if I had the e-mails that have been
20 spoliated, I don't believe the Court would have
21 stricken or eliminated that part of the
22 lawsuit. I feel very strongly about that, in
23 fact.

24 MR. REINBLATT: Your Honor, to save time, can
25 I address this on legal arguments?

1 THE COURT: Sure.

2 MR. REINBLATT: Just to move us along.

3 BY MR. REINBLATT

4 Q Let's talk about the hundred thousand dollars.
5 You claim you're owed \$100,000 that was paid to
6 Mr. Mosler, correct?

7 A It's my testimony that Warren Mosler should
8 have returned the \$100,000 to me, yes.

9 Q Okay. And you are claiming that there's
10 e-mails that exist from your MACC e-mail address, that
11 were on the servers, that you do not have that are
12 relevant to proving the nature of that payment?

13 A There are -- I recall having some
14 conversations about that prior to me not having access
15 to the server.

16 Q Okay.

17 A As you will recall, the \$100,000 was given in
18 June of 2011. At that time, I no longer had access to
19 the Mosler Auto e-mail server. I do recall there being
20 some conversations between Warren Mosler and myself,
21 you know, for a significant period of time prior to
22 that e-mail being given. So I am fairly certain there
23 are e-mails from the two, Wagner at Mosler Auto to
24 Warren Mosler that had been, you know, spoliated.

25 Q Is it not true that in discovery, you yourself

1 have produced numerous e-mails --

2 A Yes.

3 Q -- for several months leading up to the
4 \$100,000 payment of the ongoing negotiations between you
5 and Mr. Mosler for your attempt to purchase either the
6 company in its entirety, or an asset purchase, and
7 discussion over this hundred thousand dollars was also
8 included in many of those correspondences, is that
9 correct?

10 A That's true.

11 Q Is it not true that you were constantly
12 negotiating with Mr. Mosler and the terms of the
13 negotiations continued to change?

14 A In general, things changed because Warren
15 Mosler directed something different. For instance --

16 Q But you continued to negotiate with him?

17 MR. ZAPPOLO: Objection, Your Honor. Let him
18 finish his answer.

19 THE COURT: Did you finish, sir? Anything
20 else you want to say?

21 MR. ZAPPOLO: You said for instance.

22 THE WITNESS: For instance, I put down
23 \$100,000 and I was going to be getting a
24 significant inventory of finished vehicles for the
25 purchase price. But then shortly thereafter,

1 without telling me, Warren Mosler sold those
2 vehicles out from under the deal. So then the
3 deal changed. So I was trying to adapt to what
4 Warren Mosler was doing. I didn't offer up
5 changes myself, that I recall. It was all Warren
6 Mosler changing his mind about things and
7 unilaterally, you know, doing stuff, like selling
8 assets out from under the deal.

9 BY MR. REINBLATT

10 Q So Mr. Mosler, who had a company that was
11 losing money, sold assets while continuing to negotiate
12 to sell the company to you and, eventually, to other
13 people, is that correct?

14 A Yes.

15 Q Okay. And leading up to the time that the
16 \$100,000 was paid, there are numerous e-mails of ongoing
17 and changing negotiations between you and Mr. Mosler up
18 until the point when the \$100,000 was paid, is that
19 correct?

20 During your discovery, we can pull them out
21 and go through them.

22 A I mean, up -- not right directly up and
23 until -- I mean, it depends on -- I feel like you are
24 not being specific enough that I can answer those
25 questions.

1 Q Was there not an e-mail on January 28, 2011,
2 the day before the \$100,000 was paid from you to
3 Mr. Mosler, saying you and Lou Lee are excited to
4 purchase the company, that you produced in discovery?

5 A You have to show it to me to remind me. And
6 how does that constitute changing anything?

7 MR. ZAPPOLO: Your Honor, we'll stipulate
8 that the plaintiff has produced e-mails relative
9 to this deal. Our concern, for the purposes of
10 this hearing, is that the defense has produced
11 none. That's what this is all about.

12 THE COURT: Okay.

13 MR. REINBLATT: Your Honor, I think I can
14 move on from this topic and address it afterwards,
15 just get us going.

16 THE COURT: All right.

17 BY MR. REINBLATT

18 Q Count IV of the complaint, the 5th Amended
19 Complaint, is fraudulent transfer, which is Mr. Mosler's
20 sale of the company to RP High Performance.

21 What e-mails do you believe have not been
22 provided or have been lost, that would be relevant to
23 that Count?

24 A One particular thing is that it was
25 disclosed, I would expect, to the buyer that Super Car

1 Engineering had a distributorship, a contractual
2 distributorship, Super Car Engineering had intellectual
3 property. And that these things were being, you know,
4 sold out from under Super Car Engineering. And Ian
5 would have to sort of deal with that risk of accepting
6 property that wasn't necessarily owned by Warren
7 Mosler.

8 I think that's very important.

9 Q Do you understand what the nature of the claim
10 is in fraudulent transfer?

11 A Fraudulent transfer? I'm not a lawyer, but
12 fraudulent transfer is essentially selling something
13 that isn't yours, for instance.

14 Q What you're alleging is that Mr. Mosler sold
15 the company, knowing about the litigation, and by doing
16 so has taken away potential assets for you to recover?

17 A Okay.

18 Q Do you believe there's any e-mails that would
19 be relevant to that? Or is the fact that Mr. Mosler sold
20 the company the evidence that you're going to rely upon?

21 A Well, it's very difficult for me to know what
22 exists and doesn't exist because I haven't seen it.
23 But I would expect that there's conversations between
24 Ian Grunis and Warren Mosler about the nature of what
25 was being sold and what potential liabilities are. In

1 fact, I saw in the purchase document, when they took
2 the deposit, Warren Mosler is actually disclosing the
3 existence of this lawsuit to Ian Grunis before he sold
4 it.

5 So Warren Mosler knew about this lawsuit.

6 Q In 2013, when he sold it to
7 RP High Performance?

8 A No, three months before he sold it. He only
9 took a deposit on March 26, 2013. And there's still
10 e-mails in May where Warren Mosler is asking Ian
11 Grunis. He discloses to the buyer before he sells it
12 that the lawsuit exists. There must have been e-mails
13 between Ian Grunis and Warren Mosler setting all that
14 up.

15 It's towards the end of the purchase
16 agreement. You produced it to me, so you must have
17 read it.

18 MR. REINBLATT: May I approach the witness?

19 THE COURT: Sure.

20 BY MR. REINBLATT

21 Q Mr. Wagner, I'm just going to show you -- and
22 this has been produced in discovery -- the sale of
23 business agreement?

24 MR. ZAPPOLO: I've, actually, Your Honor, if
25 I may, that was pre-marked by us as Plaintiff's

1 Exhibit Number 5. And the clerk was asking me to
2 track it down. So we can just stipulate
3 Plaintiff's Exhibit Number 5 in evidence.

4 THE COURT: Sure.

5 (Thereupon, Plaintiff's Exhibit Number 5
6 was received in evidence)

7 MR. ZAPPOLO: And that will move things right
8 along. And I've even tabbed the page Mr. Wagner
9 was referring to.

10 THE COURT: Thanks a lot.

11 BY MR. REINBLATT

12 Q Could you just please -- all I want from you
13 right now is to tell us the date that the agreement was
14 entered into, right at the top.

15 A Twenty-sixth of March, 2013.

16 Q That's the date the company was sold?

17 A Incorrect. You just got through testifying a
18 few minutes ago it was July, from your own guy, RP High
19 Performance, July 2013.

20 Q First of all, Mr. Young is not my guy. He's a
21 non-party witness. Number two, Mr. Young was not working
22 at the company at the time. He was trying to go off
23 memory of what he was told. Does that agreement not
24 speak for itself that it was March 26, 2013?

25 A This agreement is acceptance of a 10 percent

1 deposit only.

2 It was no -- wait. Wait.

3 Q That's my only question, Mr. Wagner.

4 Your Honor, there is no question pending for
5 the witness.

6 THE COURT: Just move on.

7 BY MR. REINBLATT

8 Q You assisted Mr. Mosler in obtaining the EPA
9 approval for the Raptor GTR, is that correct?

10 A My company, Super Car Engineering, did, yes.

11 Q Who's a party to this action, correct?

12 A Yes.

13 Q Were you compensated for that work?

14 A Super Car Engineering was not compensated for
15 that work.

16 Q In any way?

17 A Well, let me clarify that. During the time
18 when --

19 MR. ZAPPOLO: Objection, Your Honor.
20 Relevance.

21 THE COURT: Let's, again, stick to the issue
22 at hand.

23 MR. REINBLATT: Your Honor, I am. What I'd
24 like to get to is what e-mails are relevant to
25 these two counts involving that EPA approval.

1 THE COURT: You can ask that question.

2 THE WITNESS: Are you asking me the question?

3 BY MR. REINBLATT

4 Q What e-mails are relevant to your allegations
5 in Counts I and II of the complaint, of the 5th Amended
6 Complaint, that relate to, also, SCI's efforts obtaining
7 EPA approval that you claim were not compensated for?

8 A Warren Mosler asking me to do the work.
9 Saying that he can't pay me to do the work. Because he
10 was in financial straits. Warren Mosler's acceptance
11 of the final product, the certification.

12 That's actually one of the e-mails I
13 forwarded to myself, so I actually have that, where he
14 says good job. And asked Jill Wagner to prepare a
15 press release.

16 There is numerous e-mails that -- where
17 Warren Mosler is asking me to do work because he
18 doesn't have much money, he doesn't want to pay me for
19 it. But I'm -- SCI -- when I say I, I mean, SCI -- SCI
20 is getting an exclusive distributorship. SCI, you
21 know, is getting the vehicle and is going to be
22 involved in the company. And, you know, had an
23 agreement to buy the company. So SCI is willing to do
24 that. Then after the work was finished, then Warren
25 Mosler stripped it all away from me. That's about it.

1 Q Did SCI not get credits on the purchase of the
2 Raptor GTR as its work for obtaining the EPA approval?

3 A That's what I was mentioning earlier. This
4 is a little bit beyond the scope again. But for a
5 portion of it, yes.

6 Q That was the first four months of the work up
7 until April -- mid-April 2011, correct?

8 A Yes and no. There was other work I was doing
9 for the Mosler factory at that time as well -- or SCI
10 was doing for the factory as well. So I could say a
11 portion of that credit.

12 MR. REINBLATT: Your Honor, bear with me one
13 second, please.

14 THE COURT: Sure. Take your time.

15 MR. REINBLATT: Your Honor, I'll leave this
16 for my legal argument.

17 THE COURT: All right. Any other questions?

18 MR. REINBLATT: Just one second.

19 THE COURT: Sure.

20 BY MR. REINBLATT

21 Q At any point in time, do you know if any of
22 your lawyers who were representing you in this matter
23 have ever sent a letter to Warren Mosler, or MACC, to not
24 lose or destroy any evidence that would be relevant to
25 the action?

1 A Not that I'm aware of.

2 Q What e-mails do you believe are relevant to
3 your allegations regarding breach of the distribution
4 agreement?

5 A Most pertinent would be the e-mails between
6 Warren Mosler and Savvas Savopoulos. Savvas Savopoulos
7 did not want me to be a distributor. He wanted to
8 control all the distribution himself. And I had
9 exclusive distributorship that I had earned, paid for.
10 And so, there must have been e-mail conversations
11 between Warren Mosler and Savvas Savopoulos where they
12 were, like, hey, we got to get Todd out. Todd being
13 me, Super Car Engineering. Get Super Car Engineering
14 out of the deal. There was an e-mail -- one of the
15 ones that was produced -- where Savvas suggests that
16 Warren put pressure on me. Shortly thereafter, I got a
17 phone call from Warren Mosler saying -- I remember this
18 vividly because it was very intense -- Warren called me
19 up -- I thought he was to give me some good news, that
20 he was going to let me stay a distributor if Savvas
21 bought the company. Instead, he says, hey, Todd, you
22 should sign the deal. You know, I won't do it, but
23 Savvas is the type of guy who will sue you for
24 anything. And then you got to hire a lawyer at \$400 an
25 hour and defend yourself until you're broke. That's

1 the way things work in America. So he was trying to
2 pressure me to sign away my \$100,000 deposit, sign away
3 SCI's distributorship, sign away SCI's intellectual
4 property for \$100?

5 Q And that was in a telephone call?

6 A That was in a telephone call. And I'll swear
7 to it.

8 Q That's fine. You're under oath already.

9 Did you ever get any orders for the Raptor
10 GTR to submit to MACC to produce a vehicle to be sold?

11 A That's the clever thing about Warren's
12 scheme. Is by publicly saying the vehicle was a fake,
13 no one would dare buy it. So I couldn't come up with
14 the money to buy the company.

15 Q At what point do you believe that Mr. Mosler
16 said that the car was a fake?

17 A Several journalists -- and you've been in
18 these depositions -- have testified that Warren Mosler
19 told these journalists that the car was not an official
20 Mosler product, would not pass emissions, et cetera.
21 He was disavowing the car publicly, and broadly. And
22 several journalists called into Mosler Auto Care Center
23 and, of course, they get Sylvia on the phone, and
24 Sylvia is obviously given instructions as to what to
25 tell the journalists.

1 Q So these are telephone calls, these are
2 journalists, these are articles online, or in print?
3 These aren't e-mails, are there?

4 A I'm sure there's e-mails between Warren and
5 Sylvia Klaker instructing her what to tell to the
6 journalists because that's the principal way they
7 communicated.

8 There's all sorts of stuff. And it's all
9 being hidden from me. So how could I exactly know?
10 But I know for sure from seeing the results that my
11 efforts to build a distributorship were thwarted
12 broadly. And this stuff also happened very shortly
13 after I didn't adhere to Alan Simon's requests either.
14 That was another thing that was not --

15 Q And all these e-mails that you've been talking
16 about today, they exist because you say they exist,
17 correct?

18 A It's very logical. I saw how -- I saw Jill
19 send e-mails frequently. I sent e-mails frequently.
20 I'll be talking to Sylvia and she said I need to check
21 with Warren Mosler about something. She would send an
22 e-mail in front of me. Yes, that's how Warren operated
23 his business. He lived in St. Croix. Everything was
24 sent by e-mail. It was very rare phone calls.
25 Everything was sent by e-mail. And I got zero. Zero.

1 You know this, zero.

2 MR. REINBLATT: Okay. Your Honor, I'm
3 finished with this witness for now.

4 THE COURT: Okay.

5 MR. ZAPPOLO: Brief redirect, Your Honor.

6 THE COURT: Sure.

7 REDIRECT EXAMINATION

8 BY MR. ZAPPOLO

9 Q Just with respect to something that came up.
10 We got -- Exhibit Number 5 has now been -- Exhibit 5 has
11 been admitted into evidence. Counsel was asking you
12 questions about the date of the sale of the business
13 agreement. And the first page of Exhibit 5 is dated,
14 26th day of March, 2013. And you testified, well, that
15 was the date that there was a security deposit put down
16 or something, right?

17 A Correct.

18 Q Now, I want you to -- we're talking about when
19 Mr. Mosler knew or should have known that litigation was
20 likely in this case. Okay?

21 A Yes.

22 Q Now, counsel raised with you that a date that
23 Warren Mosler was actually served with a complaint being
24 sometime in June.

25 Do you remember that?

1 A Yes.

2 Q But notwithstanding when they were served with
3 the complaint. What, if anything, in Plaintiff's Exhibit
4 Number 5 -- and I refer you to Page 4, Paragraph C -- is
5 clear evidence of when Mr. Mosler at least knew about the
6 case?

7 A This is a section on indemnification. Seller
8 will indemnify purchaser harmless from all claims,
9 litigation, and proceedings, et cetera. Then the
10 sentence that really drives it home is, to the best of
11 seller's knowledge, the only presently pending suits
12 are: James Todd Wagner and Super Car Engineering,
13 Inc., a Florida corporation versus Mosler -- Warren
14 Mosler, Mosler Automotive, Inc., and Alan Richard
15 Simon, and Auto-owners Insurance Company. ASO
16 Motorsports, Inc -- that's, obviously, another suit.

17 Q Okay.

18 A But here Warren Mosler is disclosing the
19 active suit to his potential buyer.

20 Q Right. So, Mr. Mosler discloses the suit to
21 his potential buyer on March 26, 2013, correct, prior to
22 the sale of the assets?

23 A Correct.

24 Q Now, with respect to when -- even before
25 that -- knew or should have known -- we've already got

1 another e-mail in the record -- but I want to take you
2 all the way back to 2011. Do you remember exchanging any
3 e-mails with Mr. Mosler at his Gmail account in 2011?

4 A Yes, I do.

5 MR. ZAPPOLO: What are we up to, what number?

6 THE CLERK: Plaintiff's 8.

7 BY MR. ZAPPOLO

8 Q Plaintiff's 8. I'm showing you what's been
9 marked as Plaintiff's Exhibit Number 8.

10 It was Exhibit Number 12 to the deposition of
11 Warren Mosler in this case.

12 That's an e-mail that you produced, right?

13 A Yes.

14 Q Because you had it from your J Todd Wagner at
15 Gmail account. That's an e-mail to Mr. Warren Mosler at
16 Warren dot Mosler at Gmail dot com.

17 This is when you're talking about being upset
18 about Mr. Mosler and your \$100,000 deposit, right?

19 A Yes.

20 Q And there's discussions there about Savvas
21 Savopoulos and him taking the deal out from under you.
22 And Mr. Mosler's position is first come, first serve?

23 A Right.

24 Q So as early as October 7, 2012 Mr. Mosler knew
25 you were upset, right?

1 A Yes.

2 Q Because you put it in writing to him?

3 A On top of that, I have a \$100,000 deposit
4 with you. If I treated you this way, how would you
5 feel?

6 Q And those are issues that are still pending in
7 this suit, right?

8 A Absolutely.

9 Q How many e-mails did you receive from Warren
10 Mosler at his Warren dot Mosler at Gmail dot com e-mail
11 address?

12 A You mean, in production?

13 Q In production in this suit.

14 A Two.

15 Q Okay.

16 A Two from Savvas.

17 Q Two between him and Savvas Savopoulos?

18 A Right.

19 Q How would you characterize those?

20 A The one had no content. The other one is
21 where Savvas is encouraging Warren Mosler to threaten
22 me -- to pressure me into signing the deal.

23 MR. ZAPPOLO: Okay. Your Honor, I'd like to
24 move Plaintiff's Exhibit Number 8 into evidence.

25 THE COURT: Okay. Any objection?

1 MR. REINBLATT: No.

2 THE COURT: So stipulated.

3 MR. ZAPPOLO: Just to wrap up, and we'll get
4 you off the stand, sir.

5 (Thereupon, Plaintiff's Exhibit Number 8
6 was received in evidence)

7 BY MR. ZAPPOLO

8 Q There was testimony a few minutes ago about
9 you being able to -- Mosler or Mosler Auto Care,
10 Mr. Mosler, or the company, withdrawing their objection
11 to the EPA. And they said, so you were able to get
12 documents. Just to be clear. Was the EPA able to
13 produce the documents that had been sent to them from the
14 Mosler Auto Care Center servers?

15 A No, it was too long.

16 Q Had Mr. Mosler preserved them, from either 2011
17 or 2012, or 2013, would you have been able to have those
18 documents today?

19 A Yes, I would. I sent them myself from my
20 e-mail server to the EPA. Both the 2009 car and the
21 2012 car.

22 Q Just to be clear. When you say your e-mail
23 server --

24 A Sorry. My e-mail, T Wagner at Mosler Auto
25 dot com.

1 Q Because that was directly stuff you were doing
2 during business hours on a daily basis, right?

3 A Right.

4 Q Now, there's one other question about whether
5 you had an executed contract. And I believe the
6 testimony, if you look at it, it says you don't have a
7 signed agreement, right? That was the testimony that's
8 in as Defendant's Exhibit Number 1, part of your
9 transcript, right?

10 A Right.

11 Q Just so it's clear. Tell the Judge why don't
12 you have the signed agreement?

13 A Because I misplaced it.

14 Q Okay. Now, but was there e-mail related to
15 that signed agreement?

16 A Absolutely.

17 Q Okay. And that e-mail was on the Mosler
18 servers?

19 A Yes, there was some on the Mosler servers and
20 then subsequently later on my personal server.

21 Q Because there was this -- there were changes in
22 other things that went on, as you said, because
23 Mr. Mosler, even though you thought you had a signed deal
24 and a done deal, he would do things, like, sell the
25 assets that you had a contracted for?

1 A Warren Mosler was driving the train. I was
2 adapting to what he was doing.

3 Q And there were -- in fairness -- there were
4 constant e-mails about those things, correct?

5 A Yes.

6 Q And some of the e-mails were from you at your
7 home at night, right?

8 A Yes.

9 Q And you've produced those, right?

10 A Right.

11 Q Okay. And -- but to fill in the gaps. Some of
12 the e-mails were from you while working in the daytime,
13 correct?

14 A Correct. The majority.

15 Q And do we have all those e-mails from when you
16 were working in the daytime?

17 A None. We have zero.

18 MR. ZAPPOLO: That's all I have.

19 THE COURT: Thank you, again.

20 All right, sir. Watch your step down,
21 there's stairs there.

22 Any other witnesses, Mr. Zappolo?

23 MR. ZAPPOLO: No, sir.

24 THE COURT: Mr. Reinblatt?

25 MR. REINBLATT: None, Your Honor.

1 THE COURT: Let's go ahead and take a
2 five-minute break and then come back and we'll
3 wrap up the legal arguments.

4 All right. We'll be in recess then for
5 about five minutes.

6 MR. ZAPPOLO: Your Honor, when you say legal
7 arguments. You mean, basically a closing, weaving
8 in the law?

9 THE COURT: Pardon me?

10 MR. ZAPPOLO: Basically a closing argument,
11 weaving in the law?

12 THE COURT: Yeah, just summarize your legal
13 positions in conjunction with the facts that have
14 been elicited today.

15 MR. ZAPPOLO: Thank you.

16 THE COURT: Thank you.

17 (Brief recess)

18 THE COURT: All right. Mr. Zappolo, you're
19 first.

20 MR. ZAPPOLO: Thank you, Your Honor. I'll be
21 tracking along in the binder that we gave Your
22 Honor.

23 THE COURT: I'm with you. Thank you.

24 MR. ZAPPOLO: If you care to follow along,
25 I'm going to tell you what I see in there.

1 The first thing I'd like to express to the
2 Court is the frustration that the plaintiffs
3 have had in this case with respect to the
4 discovery, and from our perception the run
5 around that we've been feeling.

6 Just to give Your Honor a taste. I'm
7 going to refer to a couple of requests very
8 quickly just to express the answers that were
9 given.

10 Now, mind you that these things are
11 e-mails relevant to either a \$100,000 deposit
12 or the sale of a business that Ms. Wagner
13 testified was in the neighborhood of
14 \$6 million. It ultimately ended up being less,
15 but it's a multi-million dollar sale, and, yet,
16 there's very scant documentation, other than
17 what Mr. Wagner has produced in this case that
18 he has.

19 And, unfortunately, Mr. Wagner only had
20 documents that he saw fit to send home to his
21 home e-mail address, or on the rare instances
22 when he sent documents from his home Gmail
23 address. So the vast majority of them, as his
24 testimony unrefuted says, were while he was at
25 work on his e-mail servers at the -- excuse

1 me -- at the MACC servers.

2 So, as an example. Tab J, Request Number
3 1. Document requested: All documents which
4 support the assertion by Warren Mosler at his
5 deposition that the \$100,000 transfer to Warren
6 Mosler by and/or behalf of James Todd Wagner
7 was utilized for purposes of paying MACC's
8 bills or keeping MACC's doors open and in
9 business.

10 And we go then to the response at Tab K-1.
11 None.

12 So, I reference there. He testified about
13 it, Your Honor. He says, oh, this is what was
14 used for. That was our agreement.

15 So you get a hundred thousand dollar
16 deposit and you say you get to use it for your
17 expenses.

18 Mr. Wagner says, no, we've got contracts
19 that we're negotiating back and forth. He's
20 got some of the documents related to the terms
21 of the contract. So we know that that's
22 something that was going on.

23 Mr. Mosler takes the position it was a
24 non-refundable deposit and I was going to use
25 it to keep the doors open. And Mr. Mosler --

1 and Mr. Wagner knew about it.

2 So we said give us all the things. He
3 says, none.

4 Okay. So we ask the same thing at Tab L
5 of the -- excuse me -- Tab J and K were of the
6 Corporation, Mosler Auto Care Center.

7 And the next tab, at Tab L, we're asking
8 for the same documents from Warren Mosler, the
9 individual.

10 Okay. And at Tab M, he says any such
11 documents were produced in response to
12 plaintiff's first request for production to
13 defendant.

14 Okay. Very interesting. Because then we
15 go back to Tab D, okay, in the book. And that
16 was the first request for production to the
17 defendants.

18 And then at Tab -- so if we look in Tab D,
19 the only thing that comes close to those
20 requests are Requests 1, 2, 15 and 16. One
21 requested all written correspondence between
22 Warren Mosler and MACC that references the
23 \$100,000 deposit submitted by James Wagner. So
24 maybe Mr. Mosler sent something over to someone
25 at MACC, his -- Ms. Wagner, you know, the

1 person running the show there, or Ms. Klaker,
2 something saying he says here's the \$100,000,
3 use this for expenses, or whatever.

4 So we ask for that. We ask for all
5 written correspondence that Warren Mosler is
6 relying upon to justify refusing to return
7 Wagner's \$100,000 deposit.

8 That's 1 and 2.

9 And then at 15 and 16 we ask all written
10 correspondence between Warren Mosler and MACC
11 employees regarding the return of Wagner's
12 \$100,000 deposit. And 16, all written
13 correspondence between Warren and Wagner
14 regarding the return of Wagner's \$100,000
15 deposit. You would think that there should be
16 some, as Mr. Wagner has testified unrefuted
17 that there was.

18 So we go to their response to Number 1,
19 asking for the correspondence. Which they said
20 we produced prior.

21 Well, when we go to the prior response,
22 the response was none, discovery is ongoing.

23 So they can't have it both ways. You
24 can't say we already produced it, but when I go
25 back and check they said there is none. And

1 then you get the caveat, discovery is ongoing.

2 Two, all written correspondence Mosler is
3 relying on to justify the --

4 THE COURT: Slow down. Slow down just a
5 little bit.

6 MR. ZAPPOLO: Sorry, Your Honor, I'm trying
7 to make it quick.

8 THE COURT: That's okay. But it makes the
9 court reporter --

10 MR. ZAPPOLO: Oh, I'm sorry.

11 THE COURT: -- unable to properly do the job
12 he needs to do. So just slow down a bit, I
13 appreciate that --

14 MR. ZAPPOLO: Absolutely.

15 THE COURT: -- you're trying to conserve
16 time.

17 MR. ZAPPOLO: Thank you.

18 So the long and the short of this, Your
19 Honor, is when we asked for it of the
20 corporation. They said there was none. When
21 we ask for these documents relating to the
22 \$100,000 of Warren Mosler, he said, I've
23 already produced it, see my prior discovery
24 responses. When we go back to the prior
25 discovery responses, they were not exactly

1 identical, but the closest we could come to any
2 mention of these \$100,000 issues are found at
3 1, 2, 15 and 16. And their responses to those
4 prior were none. Discovery is ongoing.

5 So they can't say that they produced it
6 and then when we go back and say, well, what
7 did you actually say, they said there was none.

8 And it just belies common sense, Your
9 Honor, that a \$100,000 deposit that we know
10 Mr. Wagner is very upset about and wants to get
11 his money back. That's just logic tells us he
12 would be doing that. He says, I was sending
13 e-mails to Mr. Mosler. We know we've got a
14 couple of them because he happened to send
15 those from his home at night to Mr. Mosler.
16 Mr. Mosler didn't even have the courtesy to
17 produce those back to us. We know at least
18 those exist.

19 Then with respect to anything on the MACC
20 servers, that's where he's spending his time on
21 a daily.

22 THE COURT: He being Mr --

23 MR. ZAPPOLO: He, meaning Mr. Wagner. And
24 Mr. Wagner's unrefuted testimony is about how many
25 e-mails he himself sent back and forth to

1 Mr. Mosler. It's in the hundreds.

2 Mr. Wagner's unrefuted testimony about
3 other issues in this case are that he was right
4 next to his wife Ms -- well, former wife now --
5 Jill Wagner. That he was present when she sent
6 Mr. Mosler e-mails about things that are
7 relevant in this case. And that he was even a
8 recipient. The only problem is, he was a
9 recipient of those e-mails at his work e-mail
10 address, which would have been on the MACC
11 server.

12 What else do we know, Your Honor?

13 So that first thing -- those first couple
14 of things those were just to give you the sense
15 of the frustration that we've got.

16 But if you go through these things as we
17 did in our motion, we laid out certain things
18 and we wove in Mr. Mosler's testimony about how
19 he should have things. There's testimony from
20 Mr. Mosler about how his computers -- he
21 either -- he doesn't have them anymore or he
22 discarded them after the lawsuit was pending.

23 As a matter of fact, on the day that I
24 took his deposition, Your Honor, we referred
25 to, and in his transcript, he whipped out his

1 cell phone and he started looking for e-mails.
2 I said, oh, is that the e-mail -- the phone
3 that you had. And he said, no. I got this new
4 phone yesterday. What happened to your old
5 one? Discarded it.

6 So the man has a habit of discarding
7 documents or discarding computers and things
8 when he knows -- or should have known -- that
9 litigation was imminent. And how do we know
10 that. We go back -- at the very least, Your
11 Honor, we know that on May 20, 2013 there was
12 an -- excuse me -- the sale of business was
13 March 26, 2013. We know that on that date they
14 disclosed to RP High Performance they were
15 involved in litigation with Mr. Wagner.

16 So for them to say that they didn't know
17 about this litigation -- for counsel to come in
18 here and argue that's all well and good. But
19 nobody testified to that. The only proof Your
20 Honor has before him is that at least by
21 March 26, 2013 Mr. Mosler and MACC told their
22 purchaser that there was litigation pending.

23 And what did they sell? From the
24 testimony we have, they sold the servers.

25 Well, they didn't have a right to sell

1 those servers, not at least without making
2 copies of it, Your Honor.

3 So then what do we do? We go ahead and we
4 subpoena Rossion -- or RP High Performance.
5 And we say give us these things. They say, we
6 gave them everything you had.

7 Well, we know that they didn't give us
8 everything they had. We didn't get one, you
9 know -- excuse me, we got two little e-mails.
10 Nothing from Rossion about this.

11 THE COURT: They said we gave you everything
12 that they, Rossion --

13 MR. ZAPPOLO: I apologize, Your Honor.

14 THE COURT: That's okay.

15 MR. ZAPPOLO: Let me clear those pronouns up.

16 THE COURT: No, that's okay.

17 MR. ZAPPOLO: The gentleman from RPI
18 testified that RPI had turned over everything that
19 they had --

20 THE COURT: Right. That's what I wanted to
21 clarify.

22 MR. ZAPPOLO: -- to counsel for Mr. Wagner.
23 That can't be true. Because Mr. Wagner testified
24 uncontroverted about all these e-mails that he
25 sent while at work. And it just makes sense, Your

1 Honor. People at work send e-mails. They're
2 sending tons and tons and tons of e-mails. And
3 none were produced. Zero.

4 So Mr.-- MACC and Mr. Mosler had an
5 obligation -- we would say as early as 2011,
6 the date of Plaintiff's Exhibit Number 8, when
7 Mr. Mosler and Mr. Wagner were having an e-mail
8 exchange and he's griping about this \$100,000.
9 Any reasonable person knows, hey, this is going
10 south and we're going to have some problems.

11 Mr. Mosler further should have known
12 better when he started negotiating with other
13 people, given the fact that he had an exclusive
14 sale agreement, which is in the record, with
15 Mr. Wagner, to sell the business. And yet, as
16 Mr. Wagner testified unconverted, and I think
17 maybe Ms. Wagner's testimony buttresses it a
18 bit, Mr. Mosler was selling off cars.

19 Now, their argument is that the company
20 was doing badly, et cetera. So that even makes
21 a little sense that Mr. Mosler was selling off
22 cars.

23 THE COURT: What would be the motivation --
24 explain to me the nexus between any purported
25 e-mails that may exist that were authored by

1 Mr. Mosler -- because if they are authored by
2 Mr. Wagner, he would have his own duty to keep
3 those e-mails. Even if he was an employee of
4 Mosler, he had the ability to keep copies, hard
5 copies, or, as you said, transfer all of his
6 e-mails, received or sent, to his own account --
7 private account.

8 MR. ZAPPOLO: But the testimony --

9 THE COURT: Excuse me.

10 MR. ZAPPOLO: Sorry.

11 THE COURT: So getting back -- I'd like you
12 to answer my question -- what is the record
13 motivation that Mosler would have had to ditch
14 whatever e-mails that you claim that he allegedly
15 ditched -- when we really don't know what those
16 e-mails may have been -- but, in other words, I
17 haven't seen -- and if you have them, show me,
18 please -- I haven't seen an e-mail that you say,
19 uh-huh, here is an e-mail that came from
20 Mr. Mosler that we preserved and that shows the
21 Court motive for Mosler to have spoliated the
22 remainder because of X or because of Y.

23 MR. ZAPPOLO: Now, that you asked the
24 question, after we've got people off the stand, I
25 can tell you what we have got in evidence.

1 THE COURT: Well, that's what closing is all
2 about. And that's what a Socratic method is.

3 MR. ZAPPOLO: Absolutely. Let me share with,
4 Your Honor.

5 THE COURT: In terms of -- I don't know --
6 again, it's Mr. Wagner who's making those sounds.
7 I'm going to give him a last warning.

8 MR. JAMES WAGNER: I apologize. What, was I
9 breathing heavy?

10 THE COURT: No. I think you reacted to the
11 word Socratic for whatever reason. I don't need
12 your reaction, sir.

13 Mr. Zappolo, you're an experienced lawyer.
14 You're held in very high regard by this Court,
15 and, as is, Mr. Farwell, and to the limited
16 degree I know Mr. Reinblatt. You're all
17 professionals.

18 The only reason I shared the commendation
19 is that I am going to trust that Mr. Farwell
20 and Mr. Zappolo speak with Mr. Wagner very,
21 very carefully and very, very strictly, that if
22 this type of behavior continues, particularly
23 if it's in front of a jury, I am very, very
24 vigilant. My hearing has not gone yet, nor has
25 my eyesight. So you have to make sure that you

1 stay away from any extraneous types of
2 commentary, inappropriate laughter,
3 inappropriate behavior, because it will reflect
4 poorly on the jury. Even if I don't see it, it
5 will reflect poorly on the jury. And, also,
6 it's not helpful to your cause, whether it be
7 before the Court or before the jury, and it
8 will be handled; albeit, in a dignified
9 professional way, it will communicate to this
10 jury the Court's displeasure if this type of
11 commentary continues.

12 There's two reasons. One, it's
13 disrespectful to the process. And two, by
14 making that type of extraneous comment -- that
15 goes for the lawyers as well -- it injects
16 things into this jury's mind -- or would inject
17 things into a jury's mind -- that would not be
18 evidence. Evidence comes from the witness
19 stand and any properly introduced exhibits.

20 So that's another reason why I am very,
21 very vigilant about not permitting extraneous
22 commentary or inappropriate behavior in the
23 courtroom.

24 So please be advised. And Mr. Zappolo,
25 please return to your argument, sir.

1 MR. ZAPPOLO: Thank you.

2 MR. JAMES WAGNER: Yes, sir.

3 MR. ZAPPOLO: I want to address your
4 question. And I just want to be sure your
5 question was, tell me what motivation there would
6 be to destroy evidence in this case?

7 THE COURT: Yeah. I mean, even if we get to
8 the point where I find that there's been
9 destruction, which, again, I'll need some further
10 argument in that regard, tell me what the motive
11 is -- tell me what Mr. Mosler would have to gain
12 from destruction -- and, again, I would prefer to
13 have something that provides me with at least some
14 trail that Mr. Wagner may have preserved that
15 comes from Mr. Mosler himself or somebody who
16 would be associated with Mr. Mosler; such as,
17 Mr. Simon, that you can show to me -- or can be
18 demonstrated by way of the evidence deduced
19 today -- that would provide such a motive.

20 MR. ZAPPOLO: Certainly, Your Honor. I have
21 certain things -- I wish I could give the Court
22 more, but I need to say for the record, Mr. Wagner
23 tried to do what Your Honor said. He tried to
24 go -- and there's evidence here today that
25 supports that -- he tried to go to MACC, and tried

1 to download the things off the MACC server.

2 THE COURT: Well, did he try to go to MACC or
3 try to go to RPI?

4 MR. ZAPPOLO: Well, he tried to go to RPI.

5 THE COURT: Right. And that would have been
6 after the sale. And RPI, as far as I'm concerned,
7 has every right to not permit him on its private
8 premise. Whether it be way of agreement with
9 Mosler or MACC, or just RPI's position. They're
10 not going to be opening up any computer servers
11 just to somebody who walks along, especially with
12 their probable knowledge of Mr. Wagner's soured
13 past with MACC and Mosler.

14 So, I want to make sure that I'm
15 understanding.

16 What I'm saying is, is that there's a
17 concomitant duty I would think -- and I'm not
18 using duty in a legal sense -- but I'm saying,
19 there would be an obligation of an equal nature
20 for Mr. Wagner to have preserved -- in fact,
21 perhaps, even a greater reason for Mr. Wagner
22 to have preserved any type of -- first term
23 that comes to mind is smoking gun. But I know
24 that that's not going to happen. But some kind
25 of paper trail, or e-mail trail, whatever you

1 want to call it, that would have set this up to
2 say, Judge, we have everything up to when
3 Mr. Wagner left. And here is the evidence that
4 shows the situation involving Mosler and MACC
5 vis-a-vis Mr. Wagner's \$100,000 deposit. And
6 then all of a sudden the paper trail ends and
7 Mosler goes ahead and sells the company, along
8 with the servers to RPI.

9 I haven't gotten any of that material yet.
10 And that's, you know, my concern. Because, you
11 know, as you know, the law sets forth
12 essentially three criteria -- and let's get to
13 those, so that we can speak about this in
14 context.

15 MR. ZAPPOLO: I think that putting this in a
16 timeline would help a little bit.

17 THE COURT: All right. Well, let me just
18 read into the record the understanding I have
19 about the legal requirements and we can go from
20 there. I thought they were set forth pretty well
21 somewhere, but having a little bit of difficulty
22 locating them.

23 Okay. It's set forth -- it says in
24 Mr. Reinblatt's response. It says,
25 quote/unquote, the Court must examine the

1 efforts made by the moving party to locate the
2 alleged missing or destroyed item.

3 The moving party must attempt to locate
4 the alleged missing or destroyed item and must
5 exert sufficient effort to locate it.

6 And I thought that there's also a criteria
7 that --

8 MR. REINBLATT: Your Honor, Page 5, of my
9 response.

10 THE COURT: Okay. I see. Thanks. That's
11 what I'm looking for. Thanks. Page 5, Paragraph
12 33. And that is one, whether the evidence existed
13 at one time. Two, whether the spoliator had a
14 duty to preserve the evidence. And three, whether
15 the evidence was critical to opposing party to
16 prove it's prima facie case in defense. And
17 that's cited in the 4th District Court of Appeal
18 case from 2006, Golden Yachts, Inc. versus William
19 Scott Hall, 920 So. 2d. 777.

20 That goes back to what I was saying, a bit
21 less articulate -- a bit less.

22 MR. ZAPPOLO: Eloquent.

23 THE COURT: Elegantly. Thank you. But there
24 has to be a nexus drawn between the allegedly
25 missing items -- if we get to that prong -- and

1 the claims that are being brought by the plaintiff
2 or by -- if it's an affirmative defense -- by a
3 defendant.

4 So that's what I'd like to hone in on are
5 these elements that have been so well set out
6 by the Fourth.

7 MR. ZAPPOLO: Yes, Your Honor. And we agree.
8 I think we've said similar things in our motion.

9 THE COURT: Yes.

10 MR. ZAPPOLO: First, whether the evidence
11 existed at one time. It is unrefuted, there is no
12 refuting testimony other than -- there is no
13 refuting testimony that this evidence -- these
14 e-mails, et cetera, did not exist. All the
15 evidence indicates it did exist. All the evidence
16 that's before you. Nobody said we didn't send
17 e-mails back and forth.

18 So, prong one checked.

19 Two, whether the spoliator had a duty to
20 preserve the evidence. That's based upon the
21 case law that when you know or should know that
22 litigation is reasonably, you know,
23 foreseeable, or likely, you then have a duty to
24 preserve the evidence.

25 You, Your Honor, are putting the onus on

1 Mr. Wagner. The Court's put the onus on the
2 defendant in the motion, which in this case is
3 MACC and/or Mr. Mosler. And shouldn't we both
4 have an onus on it, I guess, is what you're
5 saying? I understand the Court's position and
6 I want to address that right now.

7 THE COURT: No, I was just saying -- I wasn't
8 putting the burden on either side. What I was
9 saying is, is that it certainly would have made
10 sense to me, logically, that Mr. Wagner would have
11 been preserving e-mails from the inception of when
12 he would have made this \$100,000 deposit. There's
13 also a \$37,000 figure that's being thrown around
14 as well. What does that have to do with --

15 MR. ZAPPOLO: That's some stuff relative to
16 the warranty issues, Your Honor.

17 THE COURT: Did he also purchase a car or
18 something?

19 MR. ZAPPOLO: Yes, that's all interwoven
20 within this. The car was to be used as part of --
21 it was a demonstration car -- as part of his
22 worldwide distributorship rights, which they
23 didn't want to give them -- and the testimony
24 was -- Mr. Savopoulos did not want Wagner to have.
25 Hence, the motivation for Mr. Mosler to hide these

1 documents.

2 But let me be very specific. Your Honor
3 has a great point. It would have been
4 impossible, if you want to put an onus on
5 Mr. Wagner, while he was at MACC, to keep the
6 documents. There's two arguments that I need
7 the Court to understand. One, it would be
8 impossible for Mr. Wagner to have any e-mails
9 between Mr. Mosler at his Gmail account in the
10 Virgin Islands and Mr. Savvas up in Washington,
11 D.C.

12 THE COURT: Well, that I'll concede. But I
13 don't see --

14 MR. ZAPPOLO: It would be impossible.

15 THE COURT: -- I don't see the other
16 gentleman, Savopoulos, as being necessarily
17 critical to the analysis that we're dealing with
18 here. Because Savopoulos wasn't ultimately the
19 purchaser of the business. And those negotiations
20 are of minimal import, at least from this Court's
21 perspective, as it relates to this particular
22 motion.

23 In the grander scheme of things, it may
24 matter. But in terms of the spoliation,
25 it's -- it's focused against Mosler.

1 MR. ZAPPOLO: Mosler had a motivation to cut
2 out Mr. Wagner because he wanted to sell to
3 Mr. Savopoulos for more money. Therefore, all of
4 the exchanges between them, wherein when -- we
5 know Mr. Wagner testified there's at least one
6 e-mail from Mr. Savopoulos that we got that says,
7 put pressure -- the testimony was -- he
8 interpreted it as -- put pressure on Mr. Wagner to
9 get rid of him.

10 Well, if there's a bunch of e-mails back
11 and forth between Mr. Mosler and
12 Mr. Savopoulos, and Mr. Mosler says, well, I've
13 got this contract with Mr. Wagner, but I'd
14 rather sell to you for more money, that's
15 direct evidence of what we're trying to prove.
16 And we have no way of getting it other than
17 through Mr. Mosler or -- the problem is,
18 Mr. Savopoulos is now dead.

19 THE COURT: I was going to ask you if you
20 deposed him.

21 MR. ZAPPOLO: Mr. Savopoulos is dead, Your
22 Honor, unfortunately. He's actually very kind of
23 famous. He was the person that was up in
24 Washington, D.C., the people broke into his house,
25 he was a man of means, and it was all over the

1 newspapers, et cetera. But that's an aside. But
2 the only way we can get this is from Mr. Mosler's
3 Gmail account, that Mr. Wagner never had access
4 to, Your Honor.

5 Also, things from Mr. Mosler to Ms. Klaker
6 about things related to this case, as
7 Mr. Wagner has testified unrefuted to, we had
8 no access to at any time. Between Mr. Mosler
9 and Jill Wagner. He had no access to those
10 e-mails at any time. Other than the few that
11 he was copied with. And if Your Honor wants to
12 say he should have saved those, we would
13 respectfully disagree, because I'm going to
14 tell you that in my point two.

15 Anything between Mr. Mosler and
16 Mr. Simon -- and Mr. Mosler and Mr. Simon is an
17 interesting thing because Mr. Mosler used
18 Mr. Simon -- he was his lawyer sometimes -- he
19 was a lawyer, actually, I think in this case,
20 but he was also a defendant in this case. And
21 so, I don't know what's going on there with
22 people's mindsets, whether there -- maybe I
23 should have gotten a privilege log that, you
24 know, here are the things between Mr. Mosler
25 and Simon, but are privileged. We didn't even

1 get a privilege log, Your Honor.

2 THE COURT: Okay. Let me give you a few
3 minutes to wrap up.

4 MR. ZAPPOLO: And now I want the Court to
5 understand the timeline that will help you
6 understand why Mr. Wagner doesn't have a lot of
7 these e-mails. He was banned from MACC in April
8 of 2011. His \$100,000 deposit was not given until
9 June of 2011. So --

10 THE COURT: How is it -- wait. You said he
11 was banned in April of '11?

12 MR. ZAPPOLO: Banned from MACC.

13 THE COURT: But his deposit wasn't given
14 until June.

15 MR. ZAPPOLO: Yes. He was kicked out of the
16 company or -- Super Car Engineering is terminated,
17 et cetera. And he's told, you know --

18 THE COURT: He's kicked out of the company
19 but he wants to buy the company nonetheless from
20 the guy who kicked him out?

21 MR. ZAPPOLO: Yes, sir.

22 THE COURT: That's what I'm understanding.

23 MR. ZAPPOLO: Unfortunately, those are the
24 facts we have, Your Honor.

25 THE COURT: I didn't realize that. Okay. I

1 realized the facts, I didn't realize the timeline.

2 MR. ZAPPOLO: And then Mr. Savopoulos comes
3 on -- and Mr. Wagner negotiates a contract to
4 purchase the company in the 2011 -- summer of 2011
5 timeframe. And then Mr. Savopoulos comes on in
6 October of 2011.

7 So he wouldn't have had access to these
8 things. And if you listen to his testimony, he
9 was very clear about saying, no, I had that --
10 you know, I got those things from my Gmail
11 account. And I don't know whether the Court
12 picked up on the specificity that Mr. Wagner
13 was trying to give in his testimony there. It
14 was a little bit labored, but he was trying to
15 think what e-mail account it would have been
16 from, et cetera.

17 So if you look at the timeline, Your
18 Honor, you can understand how Mr. Wagner
19 wouldn't have been able to have all of these
20 documents that he is seeking under any
21 circumstances, especially not the ones amongst
22 the other parties.

23 And then, you know, he did testify, in all
24 candor to the Court, he did have some access at
25 one point, but it's not entirely clear, and

1 there's a lot of, you know, overlapping time.

2 So that's what our concern is with respect
3 to prong number 3. We think that the spoliator
4 in this case, Mr. Mosler and/or MACC, knew
5 about this stuff clearly from the evidence
6 that's in the record. The 2011 e-mails. And
7 then at least as early as, you know, he was
8 getting sued. The argument has kind of been
9 advanced that they didn't know they were sued
10 until they were served with the complaint.
11 That just belies credibility, Your Honor.

12 Then the third prong, whether the evidence
13 was critical to opposing party being able to
14 prove his prima facie case or defense.

15 Yes, Your Honor. And I started to go into
16 that with the witness about what elements, et
17 cetera. And when Mr. Reinblatt went into those
18 things with Mr. Wagner, I didn't object because
19 I know it's kind of the third prong, and I knew
20 we would be arguing it. So here we go.

21 Everything he asked Mr. Wagner about, why is
22 relevant to this Count or that Count.

23 Mr. Wagner answered perfectly. He came out and
24 said, no, I need the evidence -- I need these
25 documents because they would show what actually

1 transpired.

2 And in a situation such as this, it's
3 especially imperative.

4 The only person that benefits from the
5 destruction of this evidence is MACC and
6 Mosler. Their position in this, as we can see
7 from the beginning of my argument, was none,
8 none, none, none, no, but discovery is ongoing.
9 So that gives them the out that maybe they're
10 going to somehow miraculously discover
11 something if they think it's going to benefit
12 them later. And then, oh, we already produced
13 it. But when we looked at what they allegedly
14 already produced, they said none.

15 So, that's what our frustration is, Your
16 Honor. And we believe that under those
17 circumstances, that spoliation should be found.
18 That the prongs have all been met. And that
19 Mr. Wagner is entitled to the relief sought.

20 Also, Your Honor, just one brief thing
21 that's been touched upon that hasn't gotten
22 into -- we didn't get into it today. But
23 there's something very important here. The
24 bill of sale that is in evidence itself,
25 Exhibit Number 3, that has on it something

1 that's very telling. And it goes directly to
2 the EPA documentation, et cetera, argument as
3 to why we can't get the EPA things. And why
4 they are important.

5 That document shows a bill date or sale
6 date, excuse me, of 10/25/2007 with a model
7 year 2004.

8 If you know the law in this area, Your
9 Honor, you can only sell one of these cars.
10 The EPA certifications are good for one year.
11 This document on its face is prima facia
12 evidence of the Mosler Auto Care Center
13 violating federal law with respect to the sales
14 of automobiles in the United States.

15 Mr. Wagner was having e-mail exchanges
16 with Mr. Mosler about this stuff. All about
17 the EPA -- how long the certifications were
18 good, et cetera. And so, he has an absolute
19 motive to hide things related to the EPA. He
20 blocked us at the EPA.

21 You know, its odd, Your Honor, that not
22 only did they not produce the documents -- when
23 we tried to get them from the EPA, they
24 initially blocked it. They come in now and say
25 no harm, no foul. Well, we know why they did

1 that because they didn't want to be caught
2 with the selling of all these vehicles
3 illegally, which is what Mr. Wagner and Mosler
4 were e-mailing about back and forth. That's
5 number one.

6 Number two, it's very odd, Your Honor,
7 that we have leases that say, specifically, he
8 won't be allowed to be, you know, involved in
9 any transactions, et cetera. The bill of sale
10 specifically relates to, you know, Mr. Wagner.
11 They went very hard and out of their way to
12 block Mr. Wagner from access or having to do
13 anything with this company.

14 This man worked so hard not to sell this
15 company to Mr. Wagner after he took his
16 \$100,000 deposit, that he's absolutely
17 motivated to destroy evidence or withhold it.
18 We believe he's just withholding it. We
19 believe he's got this stuff and is
20 intentionally withholding it.

21 But the truth of the matter, it's all one
22 in the same, Your Honor. If he doesn't give it
23 and won't play by the rules, he has to be
24 punished for that.

25 THE COURT: All right.

1 MR. ZAPPOLO: Thank you, Your Honor.

2 THE COURT: Thank you very much.

3 MR. ZAPPOLO: Thank you for your time.

4 THE COURT: Mr. Reinblatt.

5 MR. REINBLATT: Yes, Your Honor.

6 Your Honor, is it okay if I stay at the
7 desk? It might be easier with my papers.

8 THE COURT: Sure.

9 MR. REINBLATT: Thank you, Your Honor.

10 I think the Court's touched on a good part
11 of this, that I'd like to discuss and get into.
12 I'd like to go through a few steps, but a key
13 point -- and Your Honor's raised this several
14 times -- there has to be a nexus to the alleged
15 counts in the complaint, of what they're
16 alleging has been not provided, what's been
17 spoiled. And I think, as we go through this,
18 we will see they have failed in that regard.

19 Mr. Wagner claims that there's e-mails
20 that exist. There is no other proof that these
21 e-mails exist. Were there e-mails on the
22 Mosler server once upon a time while the
23 company was in business? Absolutely, there's
24 probably e-mails at some point in time as a
25 company doing business. But there is no

1 independent proof that there are these e-mails
2 that the plaintiff says existed to support any
3 of their allegations.

4 The case law on this issue is pretty
5 straightforward, and Your Honor is well aware
6 of it.

7 And then the first issue I want to get
8 into to really talk about is at what point in
9 time is a party required to preserve evidence.
10 And at that point, what is required to be
11 preserved.

12 The complaint was filed in December of
13 2011, I believe -- 2012. It was not served on
14 Mr. Mosler or Mosler Auto Care Center until the
15 end of June of 2013. That's a six-month
16 period. Plaintiffs are relying on a couple of
17 e-mails they've shown that talk about a
18 potential complaint, or action. They don't
19 actually specify -- the first e-mail doesn't
20 specify a lawsuit. The second one says that a
21 lawsuit will be -- or that Ms. Reagan will
22 proceed with a lawsuit. It's unclear at that
23 point that anyone knew that a lawsuit had been
24 filed. Those e-mails actually only talk
25 about -- at issue in this current version of

1 the 5th complaint -- the \$100,000 deposit.

2 Mr. Wagner was trying to talk about the
3 other \$37,000 that has to do with a warranty.

4 This Court has already found summary
5 judgment as to a car warranty with the purchase
6 of the vehicle.

7 The only warranty issue that remains
8 before the Court is under federal statute
9 that's due to EPA emissions. And they specify
10 what parts of the car in the 5th Amended
11 Complaint.

12 There is no correspondence, there's no
13 e-mails, that would be relevant to those four
14 items that have been alleged here today.

15 In their motion they talk about e-mails
16 that should exist. They list 10 different
17 e-mails in Paragraph 10 which they should have
18 been retained. Those aren't relevant to any of
19 the issues in the current complaint before the
20 Court.

21 Mr. Wagner has produced countless e-mails
22 off of his personal e-mail accounts. He has
23 two of them: Jay Todd Wagner at Gmail dot com
24 and MT900 Super Car at Gmail dot com. They get
25 into a lot of these issues. Specifically,

1 let's talk about the \$100,000 deposit. We have
2 countless e-mails that were produced by
3 Mr. Wagner, went through them in deposition
4 with Mr. Wagner, over two separate days, that
5 talk about that. They go back -- and I had
6 pulled some here, Your Honor -- that go back as
7 far as April 2011, and in discussing
8 Mr. Wagner's attempt to purchase the company.
9 At points they talk about the deposit. The
10 nature of the \$100,000 changes from revocable,
11 non-revocable. Both parties are making
12 recommendations on the attempt to purchase the
13 company and the terms. There's actually a
14 draft sales agreement at one point. There's
15 evidence that leads up to the submission of
16 \$100,000 that help to prove the nature of this.
17 There is no e-mails that go back six months
18 that would be relevant when there's ongoing
19 negotiations when the terms continue to change.

20 Your Honor, at some point I do -- I'm
21 going to go step by step through the different
22 counts and address them. I just want to go
23 through a few of the arguments, if I may --

24 THE COURT: Like I said, let's, you know,
25 plan on about five additional minutes.

1 MR. REINBLATT: All right. There's also case
2 law, as cited in my response. Your Honor, I do
3 have case law we submitted, if you have a copy.

4 THE COURT: Keep in mind, I've heard the
5 evidence just now. And I also have gone through
6 the majority of the materials that were sent to me
7 in large binders.

8 MR. REINBLATT: Okay. Your Honor, that case
9 that I cited to you and there's other cases that
10 follow that talk about a moving party's burden to
11 attempt to locate any missing or destroyed items.
12 I think it's important to point out that
13 Plaintiff's case law that they cite to you on
14 spoliation doesn't involve e-mails. In fact, I
15 searched high and low, couldn't find any on this
16 specific issue. The cases they cite to you
17 involve known items that existed; such as, a
18 person's slipping on the ladder and suing and the
19 ladder is lost. Or a vehicle that was sent to the
20 trash yard and scrapped. This is a very different
21 situation. They already knew there was evidence
22 that existed. Here, you don't know it existed.

23 They issued two subpoenas to RP High
24 Performance. The company responded to the
25 subpoenas. We have documents here that they

1 provided. They're saying that's all we have.
2 Plaintiff has not taken any additional steps to
3 make a determination, whether it's coming to
4 the Court and asking for relief, deposing
5 employees of the company, maybe even requesting
6 an inspection by a computer expert of the
7 servers and the computers to attempt to locate
8 the information. It's a very high burden to
9 find spoliation. And the case law is very
10 clear. If the moving party hasn't made a
11 strong effort to obtain the alleged missing or
12 lost evidence, then they haven't reached their
13 burden to satisfy that.

14 Plaintiff's counsel, in their motion,
15 talked about Warren Mosler's conversations with
16 Savvas Savopoulos and his efforts to buy the
17 company. That's not at issue in the complaint.
18 I'm not really sure where that would go.
19 Mr. Savopoulos never bought the company. It
20 doesn't pertain to any issues in the complaint.
21 And, in fact, during the deposition of
22 Mr. Mosler, he was being questioned about his
23 interactions with Mr. Savopoulos. And he
24 corrected counsel to state that it was
25 telephone correspondence as the form of

1 conversation. Not e-mails.

2 There's also a line of case law that talks
3 about the fact that a party can't produce what
4 never existed. Plaintiff is saying, hey, these
5 e-mails existed. There is no additional proof
6 though, that they ever existed. After it's
7 been made to look -- attempted in good faith to
8 locate anything responsive. If they don't
9 exist, they don't exist. You can't just come
10 in and say, hey, by the way, these issues
11 exist.

12 And, Your Honor, if I may just very
13 briefly talk about the counts in the complaint.

14 The 5th Amended Complaint has 10 counts.
15 The first two have to do with the efforts of
16 Mr. Wagner, via his company, to obtain EPA
17 approval for the Raptor GTR, the one vehicle he
18 ultimately purchased and was trying to sell.

19 Mr. Wagner was compensated for that work
20 by a reduced price on the Raptor. That's
21 admitted to in deposition. The bill of sale
22 reflects it. He's claiming that after that
23 that -- and that goes up until mid-April that
24 he continued to do work -- and that there
25 should be e-mails. Well, if he was no longer

1 employed, would have been on his personal
2 e-mail, that say, oh, you're going to do more
3 work and we're going keep paying you. He
4 hasn't submitted invoices for the work he said
5 he did. There should be something else to
6 support that.

7 They tried to take us off track with
8 talking about the request to the EPA for
9 documents.

10 And just so the Court understands what
11 happened is. They made a request. Mr. Mosler
12 was made aware of the request. I think the EPA
13 contacted him and said should we release these
14 documents. He initially said no. It then came
15 to us as his lawyers, either directly or
16 indirectly through a third party, about that,
17 what should we do. We told him, no. It's a
18 public record. They have access to it. Let
19 them get whatever is there.

20 The objection to the production was
21 withdrawn and EPA responded saying we don't
22 have those documents.

23 So evidence that doesn't exist can't be
24 produced. The fact that the EPA doesn't have
25 what was requested, doesn't mean someone

1 destroyed them. If they are there with the
2 EPA, they're with the EPA.

3 Count III is the breach of the
4 distribution agreement.

5 That distribution agreement gave
6 Mr. Wagner the right to sell the car. And it
7 wasn't really worldwide, as was said. It
8 was -- and I can pull it -- it was Thailand,
9 China, and I believe a limited part of the U.S.
10 And I can check if we need full clarification.

11 But the allegations there are that Mosler
12 Auto Care Center failed to manufacture and
13 supply cars, sold the distribution rights to a
14 third party, which they didn't sell the
15 distribution rights. They sold the assets.
16 The distribution agreement is still in effect.
17 Those are the allegations. Failed to
18 manufacture and supply cars. An order was
19 never submitted for a car. They're not going
20 to manufacture a car if there is no order.
21 There' no e-mails that are relevant to that
22 cause of action. That's just the course of
23 business dealings that if there's an issue, it
24 would be flushed out via testimony.

25 THE COURT: All right. A few more minutes.

1 MR. REINBLATT: Trying to wrap it up, Your
2 Honor.

3 Count IV, Your Honor, is fraudulent
4 transfer. That's the sale of the company. I
5 don't believe there are any e-mails that are
6 relevant. They're saying he sold the company
7 when he knew about the lawsuit. That's more of
8 a legal question.

9 Several counts, Your Honor, have to do
10 with the \$100,000 deposit, which I believe I've
11 addressed sufficiently for the Court. But
12 there's plenty of e-mails about that.

13 Your Honor, there's the breach of the
14 federal warranty that I also addressed. That
15 has to do with EPA and emission control
16 systems. There is no e-mails that have ever
17 been alleged that exist related to that. There
18 wouldn't be because this is all stuff that
19 happened after Mr. Wagner wasn't an employee of
20 the company, after he took possession of the
21 car, when he admitted he was already using his
22 personal e-mail address.

23 And, finally, Your Honor, the last two
24 counts are regarding defamation and trade
25 libel, which have to do with the articles that

1 plaintiff attached to the 5th Amended
2 Complaint. The articles speak for themselves.
3 There is no e-mails that are relevant to a
4 determination if those are, in fact, defamatory
5 statements. For example, they brought up the
6 fact that Mr. Mosler was making comments that,
7 oh, this isn't my car. This isn't the product.
8 Those comments were made at the end of an
9 article that talked about a music video that
10 the plaintiff produced, where the car was
11 branded differently. It was branded as a Cuba
12 GTR. And that was the singer in the video,
13 where it made claims Mr. Mosler didn't want to
14 be associated with about the ability of the car
15 to reach 1,212 horsepower, which was never a
16 possibility. Mr. Mosler was just saying that
17 this is something that someone has bought from
18 me and is now doing other things with it.
19 That's all he was talking about. And, again,
20 there aren't e-mails that would be relevant to
21 that. That would be Mr. Mosler's testimony,
22 Mr. Wagner's testimony, and potential other
23 testimony.

24 So there has to be a nexus between the
25 spoiled -- allegedly spoiled items -- and the

1 counts in the complaint. Everything is
2 superfluous to this.

3 Again, just because someone says something
4 exists, doesn't mean it exists.

5 And I believe the case law is very clear
6 that plaintiff has not reached the burden
7 necessary for a finding of spoliation in any
8 manner.

9 THE COURT: Thank you very much, both sides.

10 I'm going to deny the motion, finding that
11 the three prongs that are required, that the
12 Court has read into the record, have not been
13 met.

14 Typically, as counsel knows, in these
15 cases we're dealing with tangible items, as
16 Mr. Reinblatt alluded to, ladders that,
17 perhaps, are missing or wrong, and somehow,
18 some way, that ladder is lost.

19 A piece of evidence that -- while the
20 Court takes time to set forth methods in which
21 testing would be done on the evidence, for
22 whatever reason that those directives are not
23 followed, or no directives in advance are
24 sought, and that piece of evidence is destroyed
25 through destructive testing means.

1 Something lost or destroyed, usually, as I
2 said, in my experience, has been always -- not
3 only with respect to matters dealing with
4 spoliation in the courtroom, but also case law
5 I'm familiar with, has all dealt with tangible
6 items.

7 Another distinction is that there is a
8 difference between potentially insufficient
9 discovery responses and the claim for
10 spoliation.

11 Spoliation is one of these red flags that
12 judges always become heightened as far as their
13 sensitivities are concerned, spoliation, fraud
14 on the court, common law fraud, emergencies,
15 things like that.

16 So we're attuned to these things, and the
17 burden is significant.

18 In this case, I think timing is
19 everything. And the difficulties, while
20 inherent in the process, don't measure up to a
21 spoliation situation.

22 The timing that I'm talking about, of
23 course, is when the business is sold to RPI,
24 it's sold with the hard drive material. And,
25 again, no one has provided any testimony to

1 suggest that the hard drive was not a necessary
2 part of the sale.

3 Typically, in these types of situations,
4 where the businesses are sold in their
5 entirety, customer information is being sold
6 along with the business. Documents, forms,
7 vendor information, all of those things are now
8 in computer hard drives that are part of a
9 business transaction.

10 So that's not unusual at all.

11 And there was no suggestion here that RPI
12 had engaged in any type of purging or anything
13 of that nature. Nor, frankly, was there any
14 evidence that has come to light here that
15 Mr. Mosler was guilty of anything in that vein
16 either.

17 Likewise, as I mentioned, if there was
18 something to show the Court, such as a paper
19 trail that stopped at a given time, or there
20 was something suspicious about the paper trail
21 stopping, or that Mr. Wagner maintained certain
22 e-mails for Mr. Mosler that created some type
23 of prejudicial affect as it related to
24 Mr. Mosler's position in the case. And then
25 Mr. Mosler couldn't produce those same

1 documents, or RPI couldn't produce those same
2 documents. Again, it might at least get to the
3 first prong of the three-prong analysis as set
4 forth by the Fourth in the case I mentioned,
5 Golden Yachts, Inc. versus Paul.

6 But, again, none of that has been provided
7 to the Court.

8 So the Court is unable to find that the
9 evidence as claimed to exist ever actually
10 existed.

11 And that further, under these facts, which
12 I've listened to carefully, that the alleged
13 spoliator, Mr. Mosler, had any duty to
14 preserve, because we haven't really established
15 what the evidence was that he was to preserve.

16 And, again, those ways of potentially
17 leading to that evidence has not be shown.

18 And, again, we don't get to the third
19 prong, but the Court, I'm sure, was careful in
20 its choice of words. And that is, using the
21 terminology, being able to prove its prima
22 facie case or defense.

23 And as Mr. Reinblatt spoke about, the
24 allegations of the complaint, there has been
25 nothing shown to the Court that even if such

1 e-mails existed, it would have been critical to
2 Mr. Wagner's potential ability to prove a prima
3 facia case; such as, in a contract. There's a
4 contract, there's a breach, and then there's
5 damages. That has not been shown to the Court.

6 So for those reasons, the Court is
7 respectfully denying the motion. Thanking both
8 sides for their excellent presentations, both
9 written and oral.

10 I'm going to return the materials back to
11 you, other than the motions themselves, since
12 I've written notes on them. They're not of any
13 consequence, but I don't want to give anyone an
14 unfair advantage if I wrote something in here
15 that may be suggestive of something that I
16 would be looking for or not looking for,
17 something that I'm finding would have been
18 important to me. So I'll give you back the
19 rest of the materials, other than the motion
20 themselves which I wrote on. If you want them.
21 If not, just put them in the recycle bin and
22 save a tree.

23 Thank you, again, to our court reporter as
24 well.

25 I want to wish you all a good weekend.

1 MR. ZAPPOLO: Thank you, Your Honor.

2 THE COURT: We'll be in recess.

3 MR. REINBLATT: Thank you, Your Honor.

4 THE COURT: I'll need an order. I don't know
5 how you detailed you want the order to be. But if
6 you're seeking a detailed order, or you're seeking
7 further review of my ruling today, then I would
8 require a detailed order. If you are not, then
9 simply writing denied is enough for the Court.

10 MR. ZAPPOLO: Shall we just say denied for
11 the reasons stated on the record?

12 THE COURT: No, the Fourth District frowns on
13 that procedure. So, would either have to be an
14 agreed upon form order, short. Or an agreed upon
15 order, lengthy. Depends upon the way you want to
16 go about the process.

17 MR. ZAPPOLO: I'll have to speak with my
18 client. Thank you.

19 THE COURT: No problem. Just prepare one for
20 me when you get the opportunity.

21 MR. ZAPPOLO: Thank you.

22 THE COURT: And, again, thank you all very
23 much.

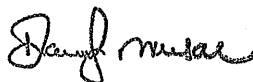
24 (Thereupon, the proceedings were
25 concluded at 5:01 p.m.)

C E R T I F I C A T E

THE STATE OF FLORIDA
COUNTY OF PALM BEACH.

I, DAVID L. MARSAA, Professional Reporter,
State of Florida at large, certify that I was
authorized to and did stenographically report the
foregoing proceedings and that the transcript is a
true and complete record of my stenographic notes.

Dated this 17th day of September, 2018.



DAVID L. MARSAA, COURT REPORTER

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