

EISENBERG & SCHNELL LLP
ATTORNEYS AT LAW

February 4 , 2016

HERBERT EISENBERG
LAURA S. SCHNELL

JULIAN R. BIRNBAUM
Of Counsel

JANICE GOODMAN
Of Counsel
Direct Dial
212-869-1940
jg@janicegoodmanlaw.com

VIA ECF

Hon. George B. Daniels
U.S. District Court Judge
Southern District of New York
United States Courthouse
500 Pearl Street, Room 1310
New York, N.Y. 10007

Re: Cargian v Breitling USA
15 CV 01084 (GBD-HBP)
Appeal from Magistrate's Order

Dear Judge Daniels:

I represent Plaintiff in the above referenced employment discrimination action and submit this letter motion to appeal from Magistrate Judge Pitman's Order of January 21, 2016 (Exh. A) denying Plaintiff's request for a continuation of the deposition of Sebastian Amstutz ("Amstutz"), because critical documents were not produced until after the Amstutz deposition. Plaintiff requests that he be allowed to question Amstutz for up to two (2) hours on the newly produced documents.

BACKGROUND

This is an action brought pursuant to Title VII of the Civil Rights Act, ADEA, and the New York City and State Human Rights laws alleging discrimination on the basis of gender, (non-stereotypical male), sexual orientation (gay), and age (over 50). Plaintiff was employed by Breitling USA ("Breitling"), a high end watch maker, as a Sales Representative in the Northeast Region for 23 years when he was summarily terminated effective December 31, 2013.

As alleged in his complaint, Plaintiff's performance was outstanding. He was a prized employee until a new president, Thierry Prissert ("Prissert") was appointed. Prissert raised his sales goal by some \$13 million dollars, an amount impossible to reach and an increase significantly greater

THE WOOLWORTH BUILDING
233 BROADWAY, SUITE 2704
NEW YORK, NEW YORK 10279

PHONE 212.966.8900
FAX 212.966.2505
eisenbergschnell.com

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than that established for any of the other six (6) regional sales representatives, the comparators in this case. There is now also significant evidence that plaintiff was treated like “one of the girls”—excluded from sports conversations with Prissert, not included in marketing events with exposure to the clients, and generally on the periphery of the sales force.

In 2013, Prissert promoted Isaac Schafrath (“Schafrath”), a straight man in his early 30s with absolutely no sales experience, to Regional Sales Representative and gave him part of Plaintiff’s territory. At the same time, Plaintiff’s base salary was reduced by \$34,000. Upon plaintiff’s termination, Schafrath replaced him as the NE Regional Sales Representative, despite his unremarkable performance, subsequently demonstrated by the fact that he was removed from the selling position a year later. Plaintiff alleges that these adverse actions culminating in his termination were the result of his sexual orientation and his age.

PROCEEDING BEFORE MAGISTRATE JUDGE PITMAN

On July 29, 2015, over Defendant’s objection, Judge Pitman ordered that Defendant “produce the portion of personnel files of the comparators identified by plaintiff that include performance reviews, sales performance...compensation.” (Exh. B) Those comparators are the other Sales Reps employed during the relevant period. Production was made and Plaintiff was assured that everything that could be located was produced.

On December 9, 2015, I conducted the deposition of Amstutz, Vice President of Breitling . Among his responsibilities is participating in the performance reviews of each Sales Rep; making notations on a performance review sheet; and computing and designating the bonus each Rep is to receive as a reflection of his/her performance. At his deposition, Amstutz identified a review document from Cargian’s file which reflected comments made at the personnel review session and the bonus’ given as a consequence. (Exh. C) Although this document is prepared for all Reps, Defendant had not produced copies of those reviews for any of the other Reps. However, at his deposition Amstutz testified that there were such reviews for all reps and those were retained by the company.

Although it was clear that those documents should have been produced in the summer of 2015 pursuant to Judge Pitman’s Order, when I asked for them at the deposition, Defendant’s counsel insisted that I put the request in writing and that he would “take it under advisement.” To avoid contentious confrontation, I followed that request. To further prolong the process, Defendant’s counsel took the position that documents requested at a deposition were like any

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other document request and he had 30 days in which to respond. Defendant made no allowance for the fact that these documents should have been earlier produced pursuant to the Judge's Order.

The personnel review sheets which reflected performance review and bonus compensation were not produced until January 11, 2016, 6 months after the Judge's Order and one month after the Amstutz deposition. It was clear that to fully interpret the reviews given to comparators, Amstutz testimony was necessary. For example, in 2012 Plaintiff was given a Special Bonus of \$4,800, while from the material received on January 11, 2016 Plaintiff learned for the first time that a comparator, Brian Criddle ("Criddle"), received a special bonus of \$8,960. Plaintiff was denied an ability to question Amstutz on why Criddle, a comparator with a similar type of territory, was treated more favorably than Plaintiff since previously we had no documents providing that information. (Exh.D).

On January 18, 2016, I requested resumption of the Amstutz deposition for the limited purpose of questioning based on the documents just produced. Receiving no response, on January 20, 2016 Plaintiff petitioned Judge Pitman to compel production of the witness.¹ Judge Pitman held a telephone conference on January 21, 2016. (Exh E) At that conference Defendant asserted three (3) basic positions:

1. Defendant claimed it did not disobey the Court's earlier Order. While not denying that the contested review sheets fell within the definition of documents ordered to be produced, Defendant argued that "in a sense that those [documents] were not kept with the personnel files, for some reason or other, which we don't know—they were in a separate location, which—which we found out later." (Exh. E, Tr. 13-14)² Defendant went on to say it did not object to the production.

As Plaintiff pointed out to the Magistrate, this is not a motion for contempt or even for

¹ Time was of the essence since discovery was scheduled to close on January 31, 2016.

² Interestingly, Defendant never explained why it had produced Plaintiff's review form, yet did not realize that there should be similar documents regarding the comparators.

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sanctions.³ Plaintiff's only concern is that he is being prejudiced by denial of the opportunity to cross examine Amstutz on the issue of the disparity in bonuses, particularly as relates to those portions of the bonus based on subjective criteria. Without such ability, Defendant, on its summary judgment motion, may state any reason it wants to justify such disparities, and Plaintiff will be denied an opportunity to contest.

2. Defendant further claimed that Plaintiff spent ample time questioning Amstutz about the bonus structure in general using the Cargian document (Exh. C), and that Amstutz testified that the formula was the same for all Reps and, therefore, there was no need for further deposition. Defense counsel went on to conclude that just because there are different actual numbers that is not really relevant; Amstutz testified fully and completely and counsel had every opportunity to ask about the process, the calculations, how it was done, how it was calculated, and it was Plaintiff's fault if she did not ask the questions. (Exh. E, Tr. 15-16)⁴

Plaintiff submits that contrary to Defendant's position, the difference in numbers, that is how each Rep was evaluated, is very relevant. Although the process may have been the same, and certain formulas were the same, Plaintiff was clearly entitled to cross examine the witness as to the disparity in the numbers, particularly where there were disparities in bonus awards based on subjective criteria.

It is important for the Court to understand Breitlings bonus structure, which has two parts: (a) a certain percentage (which has changed over the years) is based on a quantitative analysis—that is sales made versus goals set. This is a simple arithmetic calculation; (b) the other part is a qualitative analysis some of which is based on subjective criteria.

From year to year the bonus formula was changed. (Exh.F, Tr. 100-101) and the importance of the qualitative (more subjective) bonus was expanded. In 2013 a new qualitative

³ Indeed, Defendant's failure to timely produce denied Plaintiff the opportunity to examine Prissert on the material. However, Plaintiff was prepared to limit his request to only reconvening the Amstutz deposition.

⁴ Plaintiff believes Defendant's claim that 30 pages of testimony was devoted to this subject is an overstatement. The Court was never directed to the 30 pages being claimed, which in any event is irrelevant.

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category was established “overall Quality of Work Bonus” with just vague components such as Reporting, training, visits & planning, Company Policy. (Exh F) Also, as described above, there was no formula for the awarding of Special Bonuses in 2012 and there were clear disparities in treatment where Plaintiff received the third lowest special bonus.

Moreover, Plaintiff indeed did ask the relevant questions about the bonus computations of the comparators based on the one document that she had which was only Exh. C, Cargian’s performance/sales review. However, as proof of why the documents were necessary for a full examination, the witness was not able to recall without the documents. For example, counsel attempted to examine Amstutz about whether Sales Rep “X”⁵ was given a bonus for quality of work in 2013. This became a significant issue. In 2013, X violated company policy by falsifying information on his expense account first regarding claims of visiting clients, when he was on personal business and second he claimed as business expense what were personal expenses. Defendant became aware of this misbehavior, and Counsel asked Amstutz whether X was given a bonus for qualitative work (“Quality of Work bonus) in light of his flagrant violations of company policies. Amstutz response was “I don’t recall what we –I mean I would need to check” I asked if to the best of his recollection did he receive at least some money for the qualitative performance . Again he responded “I would need to check” Then when I tried to probe Amstutz further counsel interrupted further questioning by demanding document requests be directed to him (Exh F, Tr. 118-122). This could lead to critical information relating to pretext. In light of his misconduct, why would he be given a more favorable bonus than Plaintiff. Clearly if I had the document regarding X’s salary/performance review that may well have refreshed his recollection to enable him to respond.

Because Plaintiff was denied cross examination on this issue, Defendant may well feel free to say whatever it wants on its summary judgement motion as to why there is a disparity, or how they came up with the special bonus, and subjective bonus calculation. Plaintiff having been denied any ability to cross examine will be unable to contest, or to use the information affirmatively to show disparate treatment.

3. Defendant’s final argument was that Plaintiff already exhausted his 7 hour limitation. Plaintiff submits that this fact is irrelevant. The way the deposition was conducted may

⁵ Though not required, to protect an uninvolved third party plaintiff will not use his name.

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well have changed based on having the requested documents. Much unnecessary time was spent trying to uncover information not available because of lack of records.

Moreover, the parties were on the record for only 6 hours and 6 minutes. The deposition began at 10:05 and ended at 5:46. There was a 10 minutes recess in the morning; a 1 hour 15 minute lunch break; one 5 minute recess in the afternoon and a second 13 minute recess later that afternoon.

B. Magistrate Judge's Decision

In denying Plaintiff's application, the Court adopted Breitling's argument that (1) Plaintiff had every opportunity to question Amstutz about the bonus structure; the formula used to determine bonus; and how each bonus was arrived at ; (2) the handwritten notes on the review papers could be easily deciphered and what could not be was too "trivial" to warrant reconvening a deposition. The Court totally ignored Plaintiff's argument regarding whether X was given a bonus in 2013 despite misbehavior. (Exh. E, Tr 35-37). The Magistrate ultimately dismissed the argument as "far afield". (Exh. E. Tr. 43-45).

For the reasons stated below, Plaintiff requests that the Magistrate's Order be reversed and that the Amstutz deposition be reconvened for two hours of questioning limited to matters related to the newly produced performance/sales reviews.

LEGAL STANDARDS

A Magistrate Judge's Order resolving a non-dispositive motion may be set aside if found to be "clearly erroneous or contrary to law." Fed. R. Civ. P. 72 (a); 28 USC § 636 (b)(1)(A). "A finding is clearly erroneous when although there is evidence to support it, the reviewing [body] on the entire evidence is left with the definite and firm conviction that a mistake has been committed. *Concrete Pipe and Products of Ca. Inc. V Constr. Laborers Pension Trust for Southern Cal.*, 508 U.S. 602, 622, 113 S. Ct. 2264 (1993)(citation omitted). See also, *Gualandi v. Adams*, 385 F. 3d 236,240 (2d Cir. 2004). An order is contrary to the law "when it fails to apply or misapplies relevant statutes, case law or rules of procedure." *Catskill Dev., L.L.C v. Park Place Entm't Corp.*, 206 F.R.D. 78, 86 (S.D.N.Y. 2002).

The Court has discretion to make a determination that it is fair and equitable under all the relevant circumstances to reopen a deposition. *Ganci v. U.S. Limousine Service Ltd.*, 2001 WL

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4407461 *2 (E.D.N.Y. , Sept. 21, 2011) citing *Innomed Labs LLC v Alza Corp.*, 211 FRD 237,239 (S.D.N.Y. 2002). “Courts will typically reopen a deposition where there is new information on which a witness should be questioned” *Id* citing *Vincent v Mortman, M.D. and Sharon OB/GYN Associates*, 2006 WL 726680 (D. Conn. March 17, 2006). See also; *Sentry Ins. V Brand Mgmt Inc.*, 2012 WL 3288178 *8 (E.D.N.Y. August 10, 2012); *Keck v. Union Bank of Switzerland*, 1997 WL 411931 *1 (S.D.N.Y. July 22, 1997)

A. The Magistrates Ruling Was Clearly Erroneous

There is little question but that the disputed documents should have been produced in August 2015 and been available for examination at all depositions. Moreover, there can be little doubt that the performance/sales reviews for 2011 - 2013 are consequential to Plaintiff’s claim that he was treated less favorably than the comparators in terms of his compensation once Prissert became President.

As this Court well knows, employers who discriminate are unlikely to leave a smoking gun. *Rosen v Thornburgh*, 928 F. 2d 528,533 (2d Cir. 1991). A plaintiff charging discrimination is usually constrained to rely on the cumulative weight of circumstantial evidence. *Id* (citations omitted) Therefore, a plaintiff who must shoulder the burden of proving [pretext] should not normally be denied the information necessary to establish that claim” *Lineen v Metcalf & Eddy, Inc.*, 1997 WL 73763 (S.D.N.Y. 1997).

In this instance, Plaintiff was denied an opportunity to cross examine Defendant’s witness on the rationale for granting his comparators higher bonuses, based on subjective criteria. Clearly plaintiff will be prejudiced in responding to the inevitable summary judgment motion having been denied access to this information.

It is also clear that failure to elicit the significant information was not the fault of Plaintiff. As the record demonstrates, counsel asked the relevant questions to ascertain information about the comparators, but the witness was unable to respond without the documents.

Also, the Magistrate’s belief that calculating the bonus based on the notations on the personnel/sales review sheets was self evident is misplaced. First, he only had one of the 6 documents in front of him. Second, even Defendant does not agree that the calculating process is simple and easily discernable from the face of the document. When asked by the Magistrate whether the math worked out the same way for all the sales reps, Defense counsel replied “Your Honor, we could not really quite figure it out. I might have spent an hour because you know, it

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was complicated. We could not figure it out.” (Exh. E. Tr. 32-33).

A continued deposition would not be cumulative or unduly burdensome and is consistent with Plaintiff’s entitlement under Rule 26. See: *Ganci*. Plaintiff submits that based on the totality of the circumstances it is clear that a mistake has been made. Fairness and equity requires the reconvening of the deposition and that Plaintiff be given the opportunity to cross examine on the belatedly produced documents.

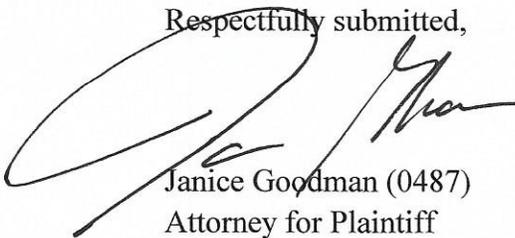
B. The Ruling is Contrary to the Law

In addition to the factors established in Point A above, the Magistrate committed legal error in dismissing as “far afield” Plaintiff’s request to question the witness as to whether a comparator (X) was given a bonus based on quality of work despite his submitting false expense and work reports. Clearly, plaintiff should have been entitled to develop evidence as to whether a comparator was treated as harshly as plaintiff for failure to abide by company rules.

CONCLUSION

For the above stated reasons, the Magistrate’s Order should be reversed; the deposition of Amstutz should be reconvened and Plaintiff should be allowed two hours of examination based on the belatedly produced documents.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Janice Goodman', is written over the typed name and title.

Janice Goodman (0487)
Attorney for Plaintiff

cc: Glenn Grindlinger, Esq. (Via ECF)
Zev Singer, Esq. (Via ECF)

EXHIBIT A

ENDORSEMENT

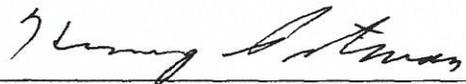
Frederick M. Carigan v. Breitling USA, Inc.

15 Civ. 1084 (GBD) (HBP)

Plaintiff's application to reconvene the deposition of Sebastian Amstutz is denied. The recently produced document concerning Brian Criddle is identical in form to the documents previously produced concerning plaintiff. The sales summary document that was produced concerning plaintiff alerted plaintiff's counsel to the fact that "Special Extra Bonuses" were paid and nothing prevented counsel from asking Amstutz about the "Special Extra Bonus" program and how such bonuses were calculated. The sales summary document produced concerning plaintiff, in conjunction with plaintiff's Performance Review also discloses the significance of the handwritten numbers on Criddle's sales summary: \$3,120 was received as a mid-year bonus (or advance against his total bonus) and the bonus actually paid to him at the end of the year was \$51,265. This sum is calculated as follows: \$45,425 ("Total Bonus Due Year 2012") + \$8,960 ("Special 2012 Extra Bonus") - \$3,120 (mid year bonus) = \$51,265.¹ The balance of the handwritten notations on the Criddle sales summary appear to be advice concerning sales practices and, in any event, are too trivial to warrant reconvening Amstutz' deposition.

Dated: New York, New York
January 21, 2016

SO ORDERED



HENRY PITMAN

United States Magistrate Judge

Copies transmitted to:

All Counsel

¹Although I am confident that my interpretation of Criddle's sales summary is correct, defense counsel is directed to advise me promptly if it is incorrect. Plaintiff may serve a request to admit to confirm that my interpretation is correct.

EXHIBIT B

From:
Sent:
To:
Subject:

NYS D. ECF - GBD-HBP
Wednesday, July 29, 2015 9:38 AM

CourtMail@nysd.uscourts.gov

Activity in Case 1:15-cv-01084-GBD-HBP Carigan v. Breitling USA, Inc. Order

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U.S. District Court

Southern District of New York

Notice of Electronic Filing

The following transaction was entered on 7/29/2015 at 9:37 AM EDT and filed on 7/28/2015

Case Name: Carigan v. Breitling USA, Inc.

Case Number: 1:15-cv-01084-GBD-HBP

Filer:

Document Number: 22

Docket Text:

ORDER: A conference having been held in this matter on July 27, 2015, during which several discovery issues were discussed, for the reasons stated on the record in open court, it is hereby ORDERED that: 1. Plaintiff's First Document Request 9 is denied without prejudice. Plaintiff or his counsel are directed to contact Ms. Bodman regarding her appearance for a deposition. I also direct defendant to ascertain Ms. Bodman's employment status, if any, with Breitling. A conference call will be held on Monday, August 3, 2015 at 2:00 p.m. to determine whether a further application will be necessary with respect to scheduling Ms. Bodman's deposition. 2. Defendant is to produce the portions of the personnel files of the comparators identified by plaintiff that include performance reviews, sales performance, disciplinary/misconduct reports, resumes to the extent that they reflect educational background and experience, compensation, self evaluations, and participation in marketing events. (As further set forth in this Order.) (Telephone Conference set for 8/3/2015 at 02:00 PM before Magistrate Judge Henry B. Pitman.) (Signed by Magistrate Judge Henry B. Pitman on 7/28/2015) Copies Sent By Chambers. (kko)

1:15-cv-01084-GBD-HBP Notice has been electronically mailed to:

Glenn Sklaire Grindlinger ggrindlinger@foxrothschild.com

Janice Goodman jg@janicegoodmanlaw.com

EXHIBIT C

Total Bonus Potential:	\$ 55,000	% of Total
Based On Sell In & Sell out Goal:	\$ 35,750	65%
Qualitative Objectives bonus:	\$ 19,250	35%

Fred Carliani, NE 1

Sell in & sell out Goals

	Targets	Bonus	Achieved	Bonus Due
Sell In				
Total Region Sell In:	\$ 15,400,000	\$ 18,080	45%	\$ 12,872
Total Regions Sell In:	\$ 108,000,000	\$ 5,360	15%	\$ 4,024
Sell Out				
2012 goal = + 5% on region versus 2011 Sell out		\$ 7,150	20%	\$ -
% of In House Movement in 2012 Sell out (13% target)		\$ 7,150	20%	\$ 7,150
Total Sell In & sell out Goals		\$ 35,750	100%	\$ 24,846.00

Qualitative objectives

	Targets	Bonus	Achieved	Bonus Due
Total Number of visits:	20%	\$ 3,850	100%	\$ 3,850
Number of new qualified door opened:	20%	\$ 3,850	100%	\$ 3,850
Average sell in price:	20%	\$ 3,850	100%	\$ 3,850
Total Call report (80%):	20%	\$ 3,850	50%	\$ 1,925
Total IFP 1 & IFP2 in your region:	20%	\$ 3,850	50%	\$ 1,925

Total Qualitative Objectives

Total Bonus Due Year 2012

Special 2012 Extra Bonus:

TOTAL 2012 BONUS:

\$ 15,400

3,130 = 36,816

4,616

82%

BONUS 2011:

\$38,875

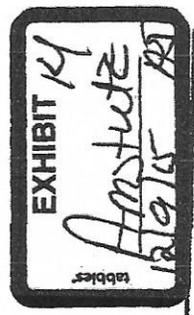


EXHIBIT D

Total Bonus Potential:	\$ 50,000	% of Total
Based On Sell in & Sell out Goal \$:	\$ 32,500	65%
Qualitative Objectives bonus:	\$ 17,500	35%

Brian Criddle, WI

Sell in & sell out Goals

	Targets	Bonus	Achieved	Bonus Due
Sell In				
Total Region Sell in :	\$ 15,200,000	\$ 14,630	45%	\$ 13,167
Total Regions Sell In:	\$ 109,000,000	\$ 4,870	15%	\$ 4,383
Sell Out				
2012 goal = + 5% on region versus 2011 Sell out		\$ 6,500	100%	\$ 6,500
% of In House Movement in 2012 Sell out (13% target)		\$ 6,500	100%	\$ 6,500
Total Sell in & sell out Goals		\$ 32,500	100%	\$ 30,550.00

Qualitative objectives

	Targets	Bonus	Achieved	Bonus Due
Total Number of visits:	20%	\$ 3,500	275	\$ 3,500
Number of new qualified door opened :	20%	\$ 3,500	2	\$ 3,500
Average sell in price:	20%	\$ 3,500	average price need to be above \$4 300	\$ 3,500
Total Call report (90%):	20%	\$ 3,500	44 weeks of call reports	\$ 2,625
Total IFF 1 & IFF2 in your region:	20%	\$ 3,500	100 IFF 1 and 100 IFF 2	\$ 1,750
Total Qualitative Objectives		\$ 17,500		\$ 14,875

Total Qualitative Objectives

Total Bonus Due Year 2012 \$ 45,425 / 3,120

Special 2012 Extra Bonus:

\$8,960

TOTAL 2012 BONUS:

\$ 54,385

100%

BONUS 2011:

\$50,000

follow up on emails.
use of office day.
to friendly with accounts?

\$ 51,265

ok

*FREDERICK M. CARGIAN VS.
BREITLING USA, INC.*

*TELECONFERENCE
January 21, 2016*



126 East 56th Street, Fifth Floor New York, New York 10022

PHONE: (212) 750-6434 FAX: (212) 750-1097

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Min-U-Script® with Word Index

1 UNITED STATES DISTRICT COURT
 2 SOUTHERN DISTRICT OF NEW YORK
 3 -----X
 4 FREDERICK M. CARGIAN,
 5 Plaintiff,
 6 -against-
 7 BREITLING USA, INC.,
 8 Defendant.
 9 Civil Action No. 15-cv-01084
 10 -----X
 11
 12 630 Third Avenue
 13 New York, New York
 14
 15 January 21, 2016
 16 11:55 a.m.
 17
 18 TELEPHONIC CONFERENCE WITH
 19 MAGISTRATE JUDGE PITMAN, taken before Alexis
 20 Perez Jenio, a Shorthand Reporter and Notary
 21 Public of the State of New York.
 22
 23 ELLEN GRAUER COURT REPORTING CO. LLC
 24 126 East 56th Street, Fifth Floor
 25 New York, New York 10022
 212-750-6434
 REF: 111528B

1 TELECONFERENCE
 2 **THE CLERK:** Judge's chambers.
 3 **MR. SINGER:** Good afternoon. It's
 4 the parties on the Cargian vs.
 5 Breitling matter.
 6 **THE CLERK:** Okay.
 7 **MS. GOODMAN:** This is Janice
 8 Goodman, attorney for the plaintiff.
 9 **THE CLERK:** All right. For
 10 plaintiff, I have Ms. Goodman.
 11 **MR. SINGER:** And for defendant, you
 12 have Zev Singer.
 13 And we have a court reporter here
 14 for the deposition we're in the middle
 15 of. It's up to the Court whether the
 16 judge wants us to make a record of this
 17 or not, whatever the Court would
 18 prefer.
 19 **THE CLERK:** Okay. I will let him
 20 know that the court reporter is there.
 21 And I'm just going to put you on
 22 hold for a moment, and the judge will
 23 be with you shortly.
 24 **MR. SINGER:** Thank you.
 25 **MS. GOODMAN:** Thank you.

1 A P P E A R A N C E S:
 2
 3 LAW OFFICES OF JANICE GOODMAN
 4 Attorney for Plaintiff
 5 61 Jane Street
 6 New York, New York 10014
 7 BY: JANICE GOODMAN
 8 (212) 869-1940
 9 jg@janicegoodmanlaw.com
 10
 11 FOX ROTHSCHILD, LLC
 12 Attorneys for Defendant
 13 100 Park Avenue, Suite 1500
 14 New York, New York 10017
 15 BY: ZEV SINGER
 16 (212) 905-2305
 17 zsinger@foxrothschild.com
 18
 19 ALSO PRESENT:
 20 FRED CARGIAN
 21
 22
 23
 24
 25

1 TELECONFERENCE
 2 (Pause)
 3 **MAGISTRATE JUDGE PITMAN:** Good
 4 morning, this is Magistrate Judge
 5 Pitman. I understand that I've got
 6 Ms. Goodman on the line for plaintiff
 7 and Mr. Singer for defendant. Is that
 8 correct?
 9 **MR. SINGER:** Yes, your Honor.
 10 **MS. GOODMAN:** Correct.
 11 **MAGISTRATE JUDGE PITMAN:** And I
 12 understand you're both at a deposition
 13 right now?
 14 **MR. SINGER:** That's correct.
 15 **MAGISTRATE JUDGE PITMAN:** Who's
 16 being deposed?
 17 **MR. SINGER:** A third-party witness,
 18 your Honor.
 19 **MAGISTRATE JUDGE PITMAN:** It sounds
 20 like it doesn't make any difference
 21 whether the witness is in the room or
 22 not. Did counsel concur?
 23 **MR. SINGER:** They've already -- the
 24 witness and her counsel have actually
 25 stepped out, so.

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1 TELECONFERENCE
 2 **MS. GOODMAN:** You're Honor, are you
 3 referring to the witness I requested to
 4 have the deposition of?
 5 **MAGISTRATE JUDGE PITMAN:** Well, is
 6 that individual even there?
 7 **MS. GOODMAN:** No.
 8 **MR. SINGER:** No, your Honor.
 9 **MS. GOODMAN:** No, Not here.
 10 **MAGISTRATE JUDGE PITMAN:** The
 11 deposition has stopped?
 12 **MR. SINGER:** Correct.
 13 **MAGISTRATE JUDGE PITMAN:** All
 14 right. I am digitally recording the
 15 call, and if you want to have the
 16 reporter take it down also, that's
 17 fine.
 18 **MS. GOODMAN:** I'd like to ask the
 19 reporter to take it down.
 20 **MR. SINGER:** Whatever.
 21 **MAGISTRATE JUDGE PITMAN:** All
 22 right, fine. All right.
 23 The call is occasioned by a letter
 24 that plaintiff's counsel filed at about
 25 7:30 last night, according to the ECF

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1 TELECONFERENCE
 2 system. I take it you've seen it,
 3 Mr. Singer?
 4 **MR. SINGER:** I have seen it, your
 5 Honor. I was in the process of
 6 drafting a response to her when I saw
 7 it.
 8 **MAGISTRATE JUDGE PITMAN:** Okay.
 9 Well, to save you from the trouble
 10 of drafting, you can tell me what your
 11 arguments are now.
 12 Why don't I hear from Ms. Goodman
 13 first, and then I'll hear from
 14 Mr. Singer.
 15 **MR. SINGER:** Thank you.
 16 **MAGISTRATE JUDGE PITMAN:** Go ahead,
 17 Ms. Goodman.
 18 **MS. GOODMAN:** I think I spelled it
 19 out in my letter. We -- on July 29th,
 20 you ordered that personal reviews --
 21 the personnel reviews of the sales reps
 22 comparative to my client, who is the
 23 plaintiff, were to be produced, and
 24 among a number of other documents.
 25 I received a lot of documents in

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1 TELECONFERENCE
 2 response to your order. There were no
 3 complete, filled-out reviews for most
 4 of the people, but I have regularly
 5 been assured that searches were made
 6 and we have everything.
 7 I then deposed a Mr. Amstutz.
 8 Mr. Amstutz is the vice president of
 9 the company and the person who
 10 participates in the annual reviews of
 11 each sales representative -- those are
 12 the comparators -- and not only
 13 participates, but takes notes down
 14 which show certain comments made at the
 15 review and, equally important, the
 16 bonuses that are given for the quality
 17 of work and quantity of work that the
 18 sales rep has done, pursuant, you know,
 19 under the bonus system. And he said,
 20 We have those documents, with his
 21 handwritten notes.
 22 I then asked for them. I was told,
 23 because I thought they were -- already
 24 should have been produced if they had
 25 them, and I was told that it would be

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1 TELECONFERENCE
 2 taken under advisement. And I was
 3 not -- Mr. Singer has consistently
 4 taken the position -- I don't agree
 5 with it, but I have not fought it --
 6 has consistently taken the position
 7 that he's entitled to 30 days in which
 8 to respond if documents are requested
 9 at a conference -- at a deposition. I
 10 therefor did not receive the documents
 11 until January 11th.
 12 There was some delay on my part,
 13 because at that point I was taking a
 14 belated vacation; but immediately upon
 15 reviewing the documents, I saw that,
 16 although they're precisely what I had
 17 asked for -- they appear to be
 18 precisely what I had asked for -- there
 19 were handwritten notes and figures in
 20 different -- you know, I can't tell
 21 whether they were subsequently-put-in
 22 figures, or just what they are. So I
 23 could not make any use of these
 24 documents without further deposition.
 25 Unfortunately, Mr. Amstutz, the

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1 TELECONFERENCE
 2 person who I was in fact going to
 3 depose, because I didn't have the
 4 documents at his deposition, I couldn't
 5 ask him about it, so I suggested to
 6 counsel that, you know, I get a
 7 one-hour brief deposition of
 8 Mr. Amstutz. It was okay with me if
 9 they wanted to do it by phone. I would
 10 be willing to do that, because all I
 11 want is for him to interpret these
 12 numbers for me so, you know, there's
 13 nothing mystical about the whole thing.
 14 We're on such limited time, and
 15 that's why I, you know, kept pressing
 16 Mr. Singer to at least tell me what
 17 their position was, and then ultimately
 18 came to you.
 19 What I would like to be able to do
 20 is this -- either I can do it today,
 21 tomorrow, or next Tuesday: I'll be out
 22 of town on Wednesday, and discovery
 23 closes on the 31st, so I think -- were
 24 there any questions? I think that
 25 spells out what my issues are.

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1 TELECONFERENCE
 2 **MAGISTRATE JUDGE PITMAN:** And the
 3 performance reviews produced on
 4 January 11th, those were the
 5 performance reviews for the comparators
 6 identified by plaintiff?
 7 **MS. GOODMAN:** Yes. And only for
 8 two years. You know, at that point, I
 9 said, okay, only for two thousand
 10 and -- I think it's 2012 and 2013.
 11 **MAGISTRATE JUDGE PITMAN:** All
 12 right.
 13 Mr. Singer, let me start by asking
 14 you, is there any dispute that these
 15 reviews were not covered by Paragraph 2
 16 of my July 28th order?
 17 **MR. SINGER:** Absolutely, your
 18 Honor.
 19 **MAGISTRATE JUDGE PITMAN:** Tell me
 20 why they're not covered by the
 21 July 28th order.
 22 **MR. SINGER:** Sure.
 23 They're not -- frankly, they're not
 24 performance reviews. It's like an
 25 addendum document -- it does -- it does

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1 TELECONFERENCE
 2 cover compensation. It talks about, as
 3 Ms. Goodman mentioned, the bonus
 4 structure, and the handwritten notes
 5 are numbers written in as to what
 6 bonuses the sales representatives
 7 received, which was completed at their
 8 performance review and was attached to
 9 their performance review. So that
 10 part, I don't dispute.
 11 Your order had indicated the -- to
 12 look for the personnel file documents,
 13 and I believe it was e-mail
 14 documents --
 15 **MAGISTRATE JUDGE PITMAN:** I'll read
 16 you exactly what Paragraph 2 says.
 17 Defendant is to produce the
 18 portions of the personnel files of the
 19 comparators identified by Plaintiff
 20 that include performance reviews; the
 21 sales performance;
 22 disciplinary/misconduct reports;
 23 résumés, to the extent they reflect
 24 educational background and experience;
 25 compensation; sales evaluations; and

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1 TELECONFERENCE
 2 participation in marketing events.
 3 **MR. SINGER:** Right.
 4 **MAGISTRATE JUDGE PITMAN:** Go ahead.
 5 **MR. SINGER:** So we're not disputing
 6 that these, in some versions of the
 7 performance reviews, these documents
 8 were certainly attached.
 9 In the personnel files, where we
 10 did pull all of the performance reviews
 11 and submit those at the time that your
 12 order was issued, those were not
 13 attached to those performance reviews.
 14 They were kept in a different location,
 15 which is what we found out
 16 subsequently. When it came up at
 17 Mr. Amstutz's deposition, they were
 18 requested by Ms. Goodman and we
 19 produced them in time.
 20 So, as far as the order covering
 21 those, it's our position that it did
 22 not, in the sense that those were not
 23 kept with the personnel files, for some
 24 reason or another, which we don't
 25 know -- they were in a separate

<p style="text-align: right;">Page 13</p> <p>1 TELECONFERENCE 2 location, which -- which we found out 3 afterwards. 4 The second point, your Honor, on 5 the merits, would be that, at 6 Mr. Amstutz's deposition, which I note 7 was the majority of the day -- it was 8 about seven hours -- there was one 9 performance review that did have this 10 handwritten bonus document attached to 11 it. I believe that was the plaintiff's 12 performance review. 13 And Ms. Goodman spent -- I was 14 checking it last night before she filed 15 her motion with the Court, when I was 16 drafting my response to her -- she 17 spent more than 30 pages questioning 18 Mr. Amstutz, not just about the 19 specifics of that one document, 20 Mr. Cargian's bonus structure, but the 21 bonus structure in general, how it 22 worked, how the numbers were arrived 23 at. She asked at least three or four 24 questions; Would this same process, 25 procedure, calculation apply to all the</p>	<p style="text-align: right;">Page 15</p> <p>1 TELECONFERENCE 2 had a chance to question the witness 3 about them. 4 Finally, your Honor, just as far as 5 procedurally here, I just want to note 6 frankly for the record, that 7 Ms. Goodman was aware, based on our 8 previous conversations, that this past 9 Monday I would not be in the office or 10 working. That's when she originally 11 requested a response on this further 12 deposition; Tuesday, I was in a 13 deposition with her all day and did not 14 have a chance to contact my client and 15 the partner on the case, who was 16 unavailable in the afternoon after the 17 deposition; and then on Wednesday, 18 yesterday, when I got back from court, 19 she gave me a self-imposed deadline of 20 the end of the day yesterday, and I was 21 still drafting my response to her when 22 she filed with the Court at 7:20 p.m. 23 So we do take issue -- we don't 24 believe she acted in good-faith 25 communication with us to try to resolve</p>
<p style="text-align: right;">Page 14</p> <p>1 TELECONFERENCE 2 other bonus sheets that exist? The 3 witness answered in the affirmative. 4 And then our position, in a sense, 5 your Honor, is that, yes, these were 6 produced late because they were not in 7 the personnel files. They were 8 produced. We didn't object to their 9 production. And she did have a full 10 and fair opportunity to question 11 Mr. Amstutz about these. 12 Just because it's a 6 instead of a 13 7 on a different sheet or a different 14 actual number that he wrote in for the 15 bonus calculation, he testified fully 16 and completely. And she had every 17 chance to ask him about the process, 18 the calculations, how it was done, how 19 it was calculated. He testified that 20 the formulas were the same for every 21 single sales representative. So our 22 position is, there's not a need for 23 further deposition of him based on 24 these documents because they weren't 25 covered by the order and because she</p>	<p style="text-align: right;">Page 16</p> <p>1 TELECONFERENCE 2 this issue. 3 MAGISTRATE JUDGE PITMAN: But 4 you're the attorney on the case, so 5 whether or not you get in touch with 6 the partner really doesn't make any 7 difference. 8 MR. SINGER: I understand. 9 MAGISTRATE JUDGE PITMAN: If your 10 firm, if Fox Rothschild has you working 11 on the case, you're the attorney with 12 full authority. 13 MR. SINGER: No, absolutely, 14 your Honor. Just, between the holiday 15 and then depositions with Ms. Goodman 16 on Tuesday -- 17 MAGISTRATE JUDGE PITMAN: No, I'm 18 not sure -- you know, to throw around 19 words like "not acting in good faith" 20 is fairly strong. 21 MR. SINGER: No, no, I apologize, 22 your Honor. I didn't mean -- 23 MAGISTRATE JUDGE PITMAN: It 24 generates more heat than light. 25 MR. SINGER: No, I absolutely</p>

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1 TELECONFERENCE
2 agree, your Honor. What I meant by
3 "good faith," I meant the requirement
4 in the rules to engage counsel before
5 seeking court intervention. I wasn't
6 accusing Ms. Goodman of bad faith or
7 ill intention. I -- I misspoke in
8 using that term. You're correct, your
9 Honor.
10 **MAGISTRATE JUDGE PITMAN:** All
11 right.
12 So I think that part of the problem
13 here is I don't think anyone
14 contemplated that the performance
15 reviews in the personnel files were
16 going to be incomplete. I mean, it
17 sounds like, if I understand you
18 correctly, the performance reviews in
19 the personnel files didn't have the
20 sales summaries attached to them.
21 **MR. SINGER:** That's correct, your
22 Honor.
23 **MAGISTRATE JUDGE PITMAN:** And --
24 **MS. GOODMAN:** If you notice, also,
25 your Honor, this --

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1 TELECONFERENCE
2 believe that's the case. I think we
3 had produced this sales summary without
4 the handwriting for a couple of the
5 other sales representatives; but I
6 believe -- I don't want to misspeak. I
7 haven't reviewed the whole file for
8 this -- that this may be the only one
9 with the handwriting with the filled-in
10 numbers on it. Yes, I believe that's
11 correct.
12 **MAGISTRATE JUDGE PITMAN:** All
13 right.
14 And where is Mr. Amstutz located?
15 **MR. SINGER:** His headquarters is
16 Connecticut; Wilton, Connecticut.
17 **MAGISTRATE JUDGE PITMAN:** Okay.
18 **MR. SINGER:** But I believe he's on
19 the road this week. I don't -- I
20 don't -- I actually don't know where he
21 is. They travel a lot, your Honor, so
22 I can't tell you exactly where he is in
23 the next few days.
24 **MAGISTRATE JUDGE PITMAN:** Okay. I
25 mean, he's not in Switzerland.

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1 TELECONFERENCE
2 **MAGISTRATE JUDGE PITMAN:** One
3 second. One second.
4 **MS. GOODMAN:** Oh, I'm sorry.
5 **MAGISTRATE JUDGE PITMAN:** If I
6 understand you to say -- and I just
7 want to make sure I understood you
8 correctly -- that when Mr. Amstutz was
9 deposed, the only document like
10 Exhibit B to Ms. Goodman's January 20th
11 letter that plaintiff had was the sales
12 summary -- I'm referring to that, I'm
13 characterizing that document as the
14 "sales summary" -- that the only sales
15 summary she had was the sales summary
16 for plaintiff.
17 **MR. SINGER:** I believe that's the
18 case. There may have been another one.
19 **MS. GOODMAN:** That's the only one
20 that they produced, your Honor.
21 **MR. SINGER:** I'm not certain.
22 **MAGISTRATE JUDGE PITMAN:** Let
23 Mr. Singer finish, Ms. Goodman.
24 **MS. GOODMAN:** Okay.
25 **MR. SINGER:** I believe that -- I

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1 TELECONFERENCE
2 **MR. SINGER:** That's correct.
3 **MAGISTRATE JUDGE PITMAN:** He's not
4 residing in Switzerland anywhere?
5 **MR. SINGER:** No, no, he lives here.
6 **MAGISTRATE JUDGE PITMAN:** All
7 right.
8 Ms. Goodman, what did you want --
9 you wanted to add some things?
10 **MS. GOODMAN:** Well, I just wanted
11 to say that, although I'm not -- it's
12 not a question of process that we're
13 looking for; it's interpretation of
14 these numbers.
15 And if you'll notice on my
16 Exhibit B, there are handwritten notes.
17 I only gave you one exhibit, and those
18 are notes that basically are reflecting
19 the evaluations.
20 I don't have the Amstutz deposition
21 in front of me and didn't think that we
22 would have to argue that point. I
23 don't recall how long was spent, but
24 Mr. Amstutz, I -- it was very clear
25 that this was one of the things that he

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1 TELECONFERENCE
2 considered of the review. This is --
3 he goes to these review meetings
4 annually with the sales rep, along with
5 Mr. Prissert, the president.
6 Mr. Amstutz is the note taker, and at
7 that meeting, they -- you know, he
8 writes notes about what is said at that
9 meeting, and he writes them on this
10 document, what is Exhibit B. And then,
11 they also insert what -- what kind of
12 bonus the sales rep will get as a
13 consequence of their performance. And
14 this becomes consequential because
15 there is a quantitative set portion of
16 the bonus, so maybe anybody could
17 figure that out; but there's also a
18 qualitative objective bonus, where
19 there's a lot more leeway in how that
20 is evaluated.
21 And also, something not mentioned,
22 some people seem to have been given a
23 special extra bonus. I'm not sure just
24 what that was. That was not discussed
25 at the deposition.

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1 TELECONFERENCE
2 So I -- I'm just looking for the
3 clarification of what his -- for him to
4 just read to me what his handwritten
5 notes are on the documents that he made
6 the handwritten notes on and what the
7 figures represent. Because you'll see,
8 on the right-hand side they're in a
9 different typeface. So I don't know
10 whether that's the actual final or
11 what -- just what that is. I just need
12 for him to testify about that.
13 **MAGISTRATE JUDGE PITMAN:** What
14 typeface are you referring to?
15 **MS. GOODMAN:** If you look at
16 Exhibit B, I see it did not -- if you
17 look at Exhibit B --
18 **MAGISTRATE JUDGE PITMAN:** I'm
19 looking at it.
20 **MS. GOODMAN:** Okay. You see where,
21 on the right-hand side it looks smudgy?
22 That's in color. That was in color on
23 the original.
24 **MAGISTRATE JUDGE PITMAN:** Yes,
25 that's what I would assume.

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1 TELECONFERENCE
2 **MS. GOODMAN:** Okay.
3 **MAGISTRATE JUDGE PITMAN:** It
4 doesn't look like a different typeface.
5 **MS. GOODMAN:** Well, I was trying
6 to -- okay. So it was in color.
7 **MAGISTRATE JUDGE PITMAN:** Okay.
8 **MS. GOODMAN:** So I don't know, you
9 know, what that means. Is this the
10 final figure? Is this actually what
11 they were given at the end of the day,
12 or is it something else? I just don't
13 know that.
14 Then you'll see the same thing,
15 total bonus due, 2012, and it says
16 45,000 plus. I don't know, is that in
17 fact what was decided to give to him?
18 Then it says, total -- then you see
19 some -- a bonus of 54,000, but next to
20 it a handwritten 51,000, I don't know
21 what that -- so those are just the
22 things I just need for him to tell me,
23 what -- explain that to me.
24 **MAGISTRATE JUDGE PITMAN:** All
25 right. I want to give both sides an

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1 TELECONFERENCE
2 equal number of chances to be heard.
3 Mr. Singer, do you want to add
4 anything?
5 **MR. SINGER:** You know, just on that
6 last point about the numbers, again,
7 your Honor, I think in -- in my
8 response, if I had been able to send it
9 to Ms. Goodman or had the time to
10 present it, I was reviewing
11 Mr. Amstutz's deposition, and
12 Ms. Goodman really did go line by line
13 with him on these documents, which --
14 which I note are the same format for
15 every single sales representative; in
16 other words, the same columns -- not
17 the same numbers, but the same
18 categories and columns.
19 She did go through it very
20 extensively and specifically with him:
21 What does this mean? How would this be
22 paid? How does this apply to other
23 sales representatives? And, you know,
24 he was deposed for an entire day. I
25 don't think the number 51 as opposed to

<p style="text-align: right;">Page 25</p> <p>1 TELECONFERENCE 2 a different number on a different sheet 3 would make a significant difference to 4 her. And, given that he's the vice 5 president of the company and he's 6 already been deposed, I just emphasize 7 our objection to her request. 8 That's all I have to say, your 9 Honor. Thank you. 10 MAGISTRATE JUDGE PITMAN: Let me 11 ask you this question: With respect to 12 the sales summary, the analog to 13 Exhibit B for Mr.... 14 MS. GOODMAN: Cargian. 15 MAGISTRATE JUDGE PITMAN: -- for 16 Mr. Cargian, that Ms. Goodman had, were 17 there similar handwritten numbers as 18 there are on this summary for 19 Mr. Criddle? 20 For example, in the middle of the 21 page, about four or five lines up from 22 the bottom, there's a line labeled, 23 Total Bonus Due, Year 2012. There's 24 the printed number, 45,425. And then 25 next to that, there's a handwritten</p>	<p style="text-align: right;">Page 27</p> <p>1 TELECONFERENCE 2 deposition last night, what Ms. Goodman 3 had asked him was, in a sense, how was 4 that number reached? Where did it come 5 from? Were there numbers added 6 together or multiplied? Was it a 7 combination of the -- 8 MAGISTRATE JUDGE PITMAN: You say 9 Ms. Goodman asked how was that number 10 reached. What's the "that number" that 11 you're referencing? 12 MR. SINGER: The handwritten 13 numbers. 14 MAGISTRATE JUDGE PITMAN: Okay. Go 15 ahead. 16 MR. SINGER: The testimony -- 17 again, I don't want to quote it because 18 I don't have it in front of me, but, as 19 Ms. Goodman talked about earlier, there 20 was some combination between the 21 subjective -- so I'll call it the 22 subjective and objective bonus 23 structure, which Mr. Amstutz explained 24 how these numbers were arrived at; 25 which part of it was based on sales,</p>
<p style="text-align: right;">Page 26</p> <p>1 TELECONFERENCE 2 number. Similarly, a few lines down it 3 says, Total 2012 Bonus. It says, 4 54,385, and then next to that is the 5 handwritten number 51,265. 6 Were there similar annotations, 7 similar handwritten annotations on the 8 summary for Mr. Cargian that 9 Ms. Goodman had at the prior 10 deposition? 11 MR. SINGER: Yes. 12 MAGISTRATE JUDGE PITMAN: And did 13 she explore what those numbers meant? 14 MR. SINGER: She did. 15 MS. GOODMAN: No, your Honor, I'm 16 not sure what Mr. Singer is now 17 referring to. 18 MR. SINGER: Well, I can explain -- 19 MS. GOODMAN: I can -- 20 MAGISTRATE JUDGE PITMAN: Let 21 Mr. Singer explain what he's referring 22 to, then, if you're not sure... 23 Go ahead, Mr. Singer. 24 MR. SINGER: Yes, no problem. 25 In reviewing Mr. Amstutz's</p>	<p style="text-align: right;">Page 28</p> <p>1 TELECONFERENCE 2 which part of it was based on general 3 performance, and other things, such as, 4 I think it was training visits and -- I 5 forgot the criteria he listed for how 6 that handwritten number was arrived at 7 and how they related to each other, was 8 there a formula or something of the 9 sort. 10 So it was explored, the -- where 11 the handwritten numbers on 12 Mr. Cargian's document came from, that 13 was explored. And, again, I was 14 counting the pages. This document -- a 15 similar document with the handwriting 16 at the deposition, was testified about 17 for, I think it was more than 30 pages. 18 MAGISTRATE JUDGE PITMAN: All 19 right. Just one second. 20 (Pause) 21 Well, I mean, I'm just doing some 22 quick math, and it looks like, on 23 Mr. Criddle, the handwritten 3,120 was 24 deducted from the total 2012 bonus, 25 54,385. When you make that</p>

<p style="text-align: right;">Page 29</p> <p>1 TELECONFERENCE 2 subtraction, you're left with the 3 remainder of 51,265, which is the other 4 handwritten number there. So it looks 5 like the 3,120 was deducted from the 6 54,385. 7 Was there -- were the numbers on 8 Cargian's summary similar, and did the 9 math work out the same way? 10 MS. GOODMAN: Your Honor, we could 11 not really quite figure it out. I 12 might have spent an hour because it -- 13 you know, it was complicated. We could 14 not figure it out. 15 MAGISTRATE JUDGE PITMAN: Well -- 16 MS. GOODMAN: But he just -- 17 MAGISTRATE JUDGE PITMAN: But this 18 is basic, second grade arithmetic. 19 MS. GOODMAN: Okay. But, for 20 example, this special extra bonus was 21 not on Mr. Cargian's, so that's 22 something -- 23 MAGISTRATE JUDGE PITMAN: No -- no, 24 hold on a second. Do you have 25 Mr. Cargian's sales summary?</p>	<p style="text-align: right;">Page 31</p> <p>1 TELECONFERENCE 2 last night in his transcript, that all 3 of the sales representatives, it was 4 the same process, the same format, and 5 the same categories, this now gives her 6 a second shot, in a sense, to -- to 7 clean up or to do more with what she 8 could have done in the first time. And 9 if she's saying she doesn't understand 10 it, but her chance was at the first 11 deposition. 12 MS. GOODMAN: No, you Honor, it -- 13 well, yes, my chances at the first 14 deposition -- if I may answer that one 15 very directly: One of the issues comes 16 up, was Mr. Cargian treated differently 17 than other sales reps? We found out, 18 through the discovery, that Mr. Criddle 19 was admonished because he had lied on 20 his expense reports, not only about 21 what was an expense -- a, you know, a 22 legitimate expense, but about his 23 whereabouts for several months in a 24 row. 25 Yes, I would like -- had I had this</p>
<p style="text-align: right;">Page 30</p> <p>1 TELECONFERENCE 2 MS. GOODMAN: No. The document 3 that Mr. Singer references is not here. 4 I went through the process -- 5 MAGISTRATE JUDGE PITMAN: One 6 second. One second. 7 Mr. Singer, do you have it? 8 MR. SINGER: I don't, your Honor. 9 I don't have it with me. 10 But, your Honor, to that point, of 11 the simple arithmetic, I don't disagree 12 with Ms. Goodman that it's complicated. 13 I remember Mr. Amstutz's testimony 14 being -- not that he was being elusive, 15 but, as you can see from the sheet, 16 there's a lot of -- other than the 17 handwritten numbers, there's also a lot 18 of other calculations in other 19 categories, which he went through with 20 her. 21 But, again, having gone through the 22 entire process with him, whether 23 complicated or not, on one of these 24 sheets, on how it all works, and then 25 him testifying to -- and I saw this</p>	<p style="text-align: right;">Page 32</p> <p>1 TELECONFERENCE 2 document, Mr. Criddle's -- 3 MAGISTRATE JUDGE PITMAN: But how 4 does his lying about his whereabouts 5 relate to this sales summary? 6 MS. GOODMAN: It's not just a sales 7 summary. That's the point. I don't 8 need to know about the quantitative. 9 It's down to the -- there's a 10 qualitative. The qualitative -- 11 MAGISTRATE JUDGE PITMAN: But hold 12 on. Hold on a second. 13 How does his lying about his 14 whereabouts, how is that connected with 15 Exhibit B to your letter? It seems to 16 me like it's coming out of left field. 17 MS. GOODMAN: No, your Honor, it's 18 not coming out of left field. What is 19 it, is it's -- I want to know -- I will 20 want to know of him to what extent, if 21 at all, was Mr. Criddle's bonus for the 22 qualitative -- not quantitative -- for 23 the qualitative part of his performance 24 affected by the poor review that he had 25 received for the year 2013. You're not</p>

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1 TELECONFERENCE
2 seeing that one. This is the 2012 copy
3 that I chose to attach. But, yes, I
4 think I'm entitled to know, how was
5 that achieved. Had I gotten this
6 document when I should have gotten this
7 document, I would have been able to ask
8 Mr. Amstutz that.
9 Let me point out, Mr. Amstutz's
10 deposition was not the full seven
11 hours. It was approximately five
12 hours, maybe a little more than that.
13 And Mr. Amstutz was a very -- a
14 non-evasive witness. He was an
15 excellent witness to the extent that,
16 you asked him a straight question, he
17 gave you a straight answer,
18 particularly on these technical
19 aspects. So I don't think my knowledge
20 of the process -- because I'm not
21 challenging the process. I'm
22 challenging -- I'm questioning the
23 results. So my knowledge of
24 questioning him on the process does not
25 answer, how did you get to give him --

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1 TELECONFERENCE
2 why did you give him an extra bonus of
3 8,960? Because that's also in a
4 different color. That's in blue.
5 Then, also, my recollection -- and
6 again, I'm not positive -- what is
7 it -- the figures that are on the
8 right-hand side that were in color, I
9 do not -- I'm quite sure were not on
10 the document that I had for
11 Mr. Cargian.
12 **MAGISTRATE JUDGE PITMAN:** All
13 right. All right.
14 Look, let me ask you to do this:
15 Before I decide, I just want to see a
16 couple of other things.
17 Mr. Singer, the deposition that's
18 being conducted today is in your
19 office, Mr. Singer?
20 **MR. SINGER:** No, it's at the
21 third-party witness's office.
22 **MAGISTRATE JUDGE PITMAN:** All
23 right.
24 **MR. SINGER:** But, your Honor, if I
25 think I know where you're going --

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1 TELECONFERENCE
2 **MAGISTRATE JUDGE PITMAN:** Let me --
3 let me -- let me eliminate the need to
4 speculate.
5 **MR. SINGER:** Okay.
6 **MAGISTRATE JUDGE PITMAN:** What I
7 think I would like to see before I
8 decide this is the performance review
9 and the sales summary that Ms. Goodman
10 had for Mr. Cargian; the documents that
11 she had at the Amstutz deposition that
12 she asked about. And I would also like
13 to see the performance review that went
14 with Exhibit B.
15 If I understood you correctly,
16 Mr. Singer, Exhibit B was attached to a
17 performance review. The copy of the
18 performance reviews in the personnel
19 file didn't have Exhibit B attached to
20 it, the sales summary. But Exhibit B
21 was attached to the performance review
22 as it existed in some other file.
23 **MS. GOODMAN:** Your Honor, I don't
24 think that's a quite totally accurate
25 description of what it was.

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1 TELECONFERENCE
2 Exhibit B is its unfilled-out form,
3 where the colored numbers are and the
4 handwritten numbers are, that is
5 attached to the contract that each
6 sales rep signs every year. Then, at
7 their performance review, it's broad.
8 And, I mean, you know, and then filled
9 out. I don't know whether it gets
10 reattached to the contract or not
11 reattached to it.
12 **MR. SINGER:** And, your Honor, I
13 think you're correct. That is exactly
14 right, that -- that Ms. Goodman is
15 correct, the unfilled-out portion is
16 attached to their contract at the
17 beginning of the year.
18 **MAGISTRATE JUDGE PITMAN:** Um-hmm.
19 **MR. SINGER:** I'm sorry, your Honor.
20 **MAGISTRATE JUDGE PITMAN:** Go ahead.
21 **MR. SINGER:** The filled-in portion
22 is completed at their performance
23 review at the end of the year or the
24 beginning of the next year. Sometimes
25 it's attached to the actual performance

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1 TELECONFERENCE
 2 review.
 3 For some reason, they weren't in
 4 the performance reviews that we had in
 5 the personnel file, so we can send you
 6 the underlying performance review that
 7 this could or would have been attached
 8 to for Mr. Criddle.
 9 **MAGISTRATE JUDGE PITMAN:** Okay.
 10 Can you send me that? And can you also
 11 send me what the performance review and
 12 the sales summary, that sheet, for
 13 Mr. Cargian that she asked Amstutz
 14 about.
 15 **MR. SINGER:** Yes, that's fine.
 16 That's in the Amstutz exhibits. I can
 17 pull those as well.
 18 **MAGISTRATE JUDGE PITMAN:** Do you
 19 think someone in your office can fax
 20 those to me this afternoon?
 21 **MR. SINGER:** Yes, if we -- there's
 22 a chance we will be finished in the
 23 deposition in the next hour or so, so I
 24 can do it. If not, I'll make sure you
 25 have it by three o'clock, if that's

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1 TELECONFERENCE
 2 okay, your Honor.
 3 **MAGISTRATE JUDGE PITMAN:** If you
 4 can get me to those to me by 3:00, I
 5 can give you a decision -- give you
 6 both a decision by the end of the day.
 7 Okay?
 8 **MS. GOODMAN:** Would you e-mail them
 9 to me, please?
 10 **MR. SINGER:** Yes.
 11 And, your Honor, how -- what's the
 12 best way? Fax, you said?
 13 **MAGISTRATE JUDGE PITMAN:** Yes, fax.
 14 (212) 805-6111.
 15 **MR. SINGER:** Okay. And I'll cc
 16 Ms. Goodman by e-mail so she gets it as
 17 well.
 18 **MAGISTRATE JUDGE PITMAN:** Okay.
 19 And I don't need a cover letter.
 20 I mean, if there's any other
 21 argument you want to make, Mr. Singer,
 22 I'm happy to hear you now, but I don't
 23 need a cover letter regarding it; I
 24 just need those documents.
 25 **MR. SINGER:** Yeah, that's fine,

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1 TELECONFERENCE
 2 your Honor. Thank you.
 3 And just one last point I do have
 4 to Ms. Goodman's about Mr. Criddle and
 5 his misrepresentation of his expenses:
 6 Getting this actual document of his
 7 actual handwritten bonus numbers didn't
 8 change the fact that she already knew
 9 at the Amstutz deposition that he had
 10 misrepresented his numbers to the
 11 company. And she certainly could have
 12 asked Mr. Amstutz how or what role, if
 13 any, that or other behaviors by other
 14 sales representatives played in their
 15 bonus.
 16 And, finally, your Honor, if you
 17 look at the qualitative objectives that
 18 she keeps referencing, while they're
 19 qualitative in the sense that they
 20 don't relate to sales, there are
 21 specific categories listed, as
 22 Mr. Amstutz testified to; number of
 23 visits, sell-in price, all of those you
 24 see percentages which relate to what
 25 part of their bonus for the qualitative

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 2 portion they will receive. I don't
 3 believe Mr. Amstutz testified that --
 4 and he could have been asked regarding
 5 what -- whether behavior or
 6 misrepresentation of expenses would
 7 have gone into those calculations.
 8 Having this document didn't change that
 9 she could have asked that question of
 10 Mr. Amstutz at the time.
 11 **MS. GOODMAN:** Not true. Let me
 12 just point out. This is a --
 13 **MAGISTRATE JUDGE PITMAN:** Well, I
 14 think --
 15 **MS. GOODMAN:** This is --
 16 **MAGISTRATE JUDGE PITMAN:** I think
 17 we're getting kind of far afield here.
 18 I think we're getting kind of far
 19 afield.
 20 **MS. GOODMAN:** Your Honor, then I
 21 ask that Mr. Singer send to you
 22 Mr. Criddle's 2013 -- not 2012, 2013,
 23 because, in fact, there is a change in
 24 how they decide the qualitative, and
 25 there is one section that is totally

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 2 open in terms of evaluations.
 3 And, secondly, I would like to
 4 point out, if it's not self-evident, I
 5 don't know, just sitting here looking
 6 at this document, I don't know what in
 7 fact Mr. Criddle actually got as his
 8 bonus, as his bonus in 2012, because I
 9 see 54,385 and I see 51,265. We don't
 10 know.
 11 **MAGISTRATE JUDGE PITMAN:** Well, you
 12 certainly could have asked that,
 13 though, at the Amstutz deposition.
 14 **MS. GOODMAN:** No, I didn't have
 15 this document.
 16 **MAGISTRATE JUDGE PITMAN:** You don't
 17 need the document to ask the question
 18 about what bonus he got.
 19 **MS. GOODMAN:** Oh, I did ask that
 20 question. He said he didn't know. And
 21 I asked him, Do you have anyplace you
 22 can find that out? And he said, Yes.
 23 And this is the document we have.
 24 **MAGISTRATE JUDGE PITMAN:** Okay.
 25 All right. All right. If you can just

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1 TELECONFERENCE
 2 send me those documents, Mr. Singer, I
 3 can give you and counsel a decision by
 4 the end of the day. Okay?
 5 **MR. SINGER:** Okay.
 6 Thank you, your Honor.
 7 **MS. GOODMAN:** Thank you, your
 8 Honor.
 9 **MAGISTRATE JUDGE PITMAN:** Okay,
 10 thank you. Thanks. Bye.
 11 (Time noted: 12:30 p.m.)
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1 C E R T I F I C A T E
 2
 3 N E W Y O R K)
 4) s s :
 5 F N E W Y O R K)
 6
 7 I, ALEXIS PEREZ JENIO, a Notary
 8 do hereby certify:
 9 That this transcript is a true and
 10 record of the telephonic proceedings as
 11 stenographically by me.
 12 I further certify that I am not
 13 to any of the parties to this action by
 14 marriage; and that I am in no way
 15 ed in the outcome of this matter.
 16 I N W I T N E S S W H E R E O F, I have hereunto
 17 and this 29th day of January, 2016.
 18
 19
 20
 21
 22
 23
 24 -----
 25 PEREZ JENIO, CLR

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1 AMSTUTZ
2 spreadsheet, created for every sales rep
3 starting with 2011?
4 I understand before that you didn't
5 have it. Do you understand my question?
6 **A. We have it. For each of the sales**
7 **representative we have one document like this**
8 **that is filled in.**
9 Q. Okay. So we're going to call this
10 review spread -- filled-in review spreadsheet
11 for each sales rep --
12 **A. Um-hmm.**
13 Q. -- from 2011 through the present?
14 **A. Yeah.**
15 Q. Do you have it for -- do you have that
16 document, the review spreadsheet for each sales
17 rep, filled in for any period before 2011?
18 **A. I would need to check, because, as I**
19 **said, I am guessing that 2011 or 2012, now that**
20 **I see the spreadsheet, is the first time that we**
21 **had this as part of the contract.**
22 Q. So -- okay. So it might not be until
23 2012. Is that what you're saying?
24 **A. Correct.**
25 **MS. GOODMAN:** So I'm going to ask

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1 AMSTUTZ
2 for it as 2011 to the present. And as
3 you will see, that it's not the
4 documents that you think you supplied
5 to me.
6 **MR. SINGER:** We'll take it under
7 advisement. (RQ)
8 **MS. GOODMAN:** 13.
9 (Six-page employment contract
10 letter dated February 16, 2012, from
11 Breitling to Fred Cargian, Bates
12 stamped Breitling_046 through 51, was
13 marked Exhibit Amstutz-13 for
14 identification.)
15 Q. I'm showing you what's now been marked
16 as Amstutz Exhibit 13.
17 **MR. SINGER:** Did you want this the
18 attached at the end?
19 **MS. GOODMAN:** No. I was just
20 seeing that that was attached. That
21 was going to be something that I -- but
22 I think that issue has already been
23 resolved, so we don't have to do that.
24 **MR. SINGER:** So 13 is Breitling 46
25 to 51?

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1 AMSTUTZ
2 **MS. GOODMAN:** Yes, Breitling 046 to
3 051.
4 **MR. SINGER:** Okay.
5 You can take that off.
6 **BY MS. GOODMAN:**
7 Q. I'm showing you what's now been marked
8 as Amstutz Exhibit 13, Breitling 046 through
9 051.
10 Can you identify this document?
11 **A. Yes.**
12 Q. Tell me what it is.
13 **A. It is Fred Cargian's contract for two**
14 **thousand and...**
15 Q. '12?
16 **A. '12, sorry.**
17 Q. This is contract for 2012?
18 **A. Yes. Sorry.**
19 Q. Is that correct?
20 **A. Correct.**
21 Q. And if you look at the second page,
22 Breitling 047, left-hand corner, is that your
23 signature?
24 **A. Yes.**
25 Q. Let's look at the third page of that,

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1 AMSTUTZ
2 Breitling 048, which is Appendix A.
3 **A. Yes.**
4 Q. There are still two components of the
5 bonus formula, correct?
6 **A. Correct.**
7 Q. And component 1 is still a sales
8 performance, and component 2 is still a
9 qualitative objectives performance, correct?
10 **A. Correct.**
11 Q. There is a change, however, in terms of
12 the division between the two, correct?
13 **A. Correct.**
14 Q. And this year, 65 percent -- in 2012,
15 only 65 percent of the bonus -- potential bonus,
16 was attributable to actual sales, correct?
17 **A. Correct.**
18 Q. And then 35 percent attributable to the
19 qualitative objectives, correct?
20 **A. Correct.**
21 Q. And as different from 2011, if you want
22 to look at the two and compare them, Amstutz-12
23 and Amstutz-13, in 2011, the component related
24 to actual sales was sort of a straight-numbers
25 thing. If you sold 100 percent of your goal,

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1 AMSTUTZ
 2 you got 100 percent of your bonus, correct?
 3 **A. Correct.**
 4 Q. That changed in 2012, correct?
 5 **A. Correct.**
 6 Q. And you explain to me what that change
 7 was?
 8 **A. So I guess now we figure out.**
 9 Q. Now we can figure out what that --
 10 **A. So it's in 2012 that that change was**
 11 **made of distributing the bonus differently than**
 12 **in the prior years.**
 13 Q. So I would like to mark 2011
 14 separately -- I mean, the Breitling --
 15 **MS. GOODMAN:** Excuse me, give me a
 16 minute here.
 17 (An off-the-record conversation was
 18 held.)
 19 **MS. GOODMAN:** Here, make this
 20 Amstutz-14.
 21 (One-page spreadsheet titled "Fred
 22 Cargian, NE-1," Bates stamped
 23 Breitling_011, was marked Exhibit
 24 Amstutz-14 for identification.)
 25 Q. Okay. I'm showing you what has now

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1 AMSTUTZ
 2 been marked as Amstutz-14. This is Breitling
 3 011, which is that review sheet. And this was
 4 the final review sheet for Mr. Cargian in 2012,
 5 correct?
 6 **A. Correct.**
 7 Q. And it had your handwritten notes of
 8 what Mr. Cargian was actually given as his bonus
 9 for 2012, correct?
 10 **A. Correct.**
 11 Q. And this is not a part of the -- this
 12 document, Amstutz-14, was not a part of
 13 Amstutz-13, which is the contract that you
 14 entered into with Mr. Cargian in early 2012,
 15 correct?
 16 **A. Correct.**
 17 Q. All that is attached is part of the
 18 actual contract, is what's now -- is
 19 Breitling 051, which is a statement about goals,
 20 but not what has been accomplished, correct?
 21 **A. Correct.**
 22 **MR. SINGER:** And, Counsel, just to
 23 clarify the exhibits, we're leaving
 24 Breitling 001 as the last page of
 25 Exhibit 12?

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1 AMSTUTZ
 2 **MS. GOODMAN:** Yes, I'm leaving --
 3 because when documents were provided to
 4 us, it would seem that the belief was
 5 that Breitling 011 was part of
 6 Mr. Cargian's -- I guess I thought it
 7 was part of his 2011 contract; however,
 8 as Mr. Amstutz has pointed out, it is
 9 not. So we're going to leave
 10 Breitling 011 as part of a contract,
 11 Amstutz-12, and we're also going to
 12 have a separate exhibit that will be
 13 Amstutz-14.
 14 (An off-the-record conversation was
 15 held.)
 16 Q. Now, you've explained to me -- I think
 17 when we went over Amstutz-14, you had explained
 18 to me how these various components were
 19 calculated under achievement -- under the sales
 20 achievement goals.
 21 As I understand it, starting in 2012
 22 Tourneau became a house account, correct?
 23 **A. I would not recall what happened**
 24 **exactly with Tourneau.**
 25 Q. You do recall it became a house

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1 AMSTUTZ
 2 account, no?
 3 **A. No.**
 4 Q. No? Okay.
 5 Now, look at component 2 of Amstutz-13.
 6 That's on Breitling 048, the third page. That's
 7 the qualitative analysis, correct?
 8 **A. Excuse me, you're on page 3?**
 9 Q. Page 3 of 5, yes.
 10 **A. That's the determination of the sale**
 11 **goal, the presentation of the base salary and**
 12 **the potential bonus, and then the explanation**
 13 **about the components, the two components that**
 14 **are going to make the -- the -- I mean, the**
 15 **explanation of the two components of the bonus.**
 16 Q. And did you ever hear that -- it just
 17 says it includes, quote, the number of visits,
 18 but did anybody ever establish how many visits
 19 each sales rep must make in order to meet the
 20 qualitative objective?
 21 **A. If you take the Breitling 051, like the**
 22 **last page, component No. 2, qualitative**
 23 **objectives, you have the total number of visits.**
 24 Q. It says it's worth 20 percent of that
 25 part of the bonus --

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1 AMSTUTZ
 2 Appendix C, is missing?
 3 Appendix B is missing, too. Do you
 4 know why?
 5 **A. No.**
 6 **MS. GOODMAN:** And we want (RQ)
 7 Appendix B and C for all contracts. It
 8 should have been there to begin with.
 9 Q. Now, you sat in all of the review
 10 sessions where general review was given and then
 11 an ultimate determination of bonus was made and
 12 written down.
 13 Referring to 2013, was Brian Criddle
 14 awarded his entire bonus for meeting his
 15 qualitative objectives?
 16 **A. I will have to check.**
 17 Q. Where would you check?
 18 **A. In his file.**
 19 Q. Do you recall the session, the review
 20 session with Brian Criddle for 2013?
 21 **A. No.**
 22 Q. You don't recall anything that
 23 Mr. Prissert said to him in that session?
 24 **A. I review 150 people. I don't remember**
 25 **exactly what was said.**

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1 **AMSTUTZ**
 2 Q. Okay. You don't remember that in 2013
 3 it was uncovered that Mr. Criddle falsified his
 4 reports?
 5 **A. I remember.**
 6 Q. Okay. And you remember that he claimed
 7 to be in Las Vegas when in fact he was really on
 8 personal business in Los Angeles?
 9 **A. Correct.**
 10 Q. Or vice versa. Do you remember that?
 11 **A. Yes.**
 12 Q. Was anything said about that in his
 13 review of 2013?
 14 **A. It was previously said to him. I don't**
 15 **know if his review, if we still talked about it.**
 16 **I don't recall that we talked about it in his**
 17 **review.**
 18 Q. And in discussing his bonus for the
 19 qualitative portion, was he told, you know, you
 20 aren't getting your bonus for the qualitative
 21 session given what you did?
 22 **A. I don't recall what we -- I mean, I**
 23 **would need to check.**
 24 Q. To the best of your recollection,
 25 was -- did he receive at least some money for

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1 AMSTUTZ
 2 the qualitative performance?
 3 **A. I would need to check.**
 4 Q. And is there any other way of checking
 5 besides -- besides looking at the -- his
 6 handwritten pages, which were like Appendix C to
 7 the contracts?
 8 **A. That would be the only place where we**
 9 **would have a state -- the quality bonus --**
 10 **(An interruption occurred.)**
 11 **(Off the record)**
 12 **BY MS. GOODMAN:**
 13 Q. If you cannot locate these sheets that
 14 we don't have from Mr. Criddle's review, could
 15 you ask Mr. Criddle what he got?
 16 **A. Sure.**
 17 **MR. SINGER:** Objection to the form.
 18 Could he, as in is that possible? Is
 19 that what you're asking?
 20 Q. Yeah. Is it possible that you could
 21 get that information from Mr. Criddle?
 22 **A. I don't think that he's going to recall**
 23 **exactly --**
 24 **MR. SINGER:** And, again, any
 25 requests --

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1 AMSTUTZ
 2 **MS. GOODMAN:** Okay. Let me
 3 say -- excuse me.
 4 **MR. SINGER:** -- for information or
 5 documents.
 6 **MS. GOODMAN:** Excuse me.
 7 **MR. SINGER:** -- will go through
 8 counsel.
 9 **MS. GOODMAN:** Please, let's review
 10 the question that I originally asked
 11 and then what the answer was, and then
 12 the interjection on what the answer
 13 was.
 14 (The requested portion of the
 15 record was read back by the court
 16 reporter.)
 17 **MS. GOODMAN:** Thank you. And I'll
 18 note that there's a significant change
 19 after the interjection by counsel, but
 20 we'll move on.
 21 Q. In --
 22 **MR. SINGER:** I would like to --
 23 Q. -- 2013 --
 24 **MR. SINGER:** I would like to say
 25 something before you ask your next

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1 AMSTUTZ
 2 question. This is now the third time,
 3 Ms. Goodman, that you've asked the
 4 witness to do something after the
 5 deposition. Any requests for
 6 information or documents should be
 7 addressed through counsel.
 8 **MS. GOODMAN:** I didn't ask -- I
 9 just asked if it was possible.
 10 **MR. SINGER:** Okay, that's fine.
 11 **MS. GOODMAN:** And at first it was
 12 possible, and then it wasn't possible.
 13 He wasn't sure -- he thought
 14 Mr. Criddle would no longer have it.
 15 That was clearly coaching the witness.
 16 But it's okay. We'll move on.
 17 **MR. SINGER:** It wasn't coaching --
 18 **MS. GOODMAN:** We will move on.
 19 Your witness is well prepared, and
 20 very cooperative. I'm not complaining.
 21 **MR. SINGER:** I object to your
 22 commentary on the record.
 23 **MS. GOODMAN:** No, I'm --
 24 **MR. SINGER:** I object to your
 25 testimony. I object to your testimony.

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1 AMSTUTZ
 2 2:00?
 3 **MS. GOODMAN:** 2 o'clock is good.
 4 (Luncheon recess: 12:55 p.m.)
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1 AMSTUTZ
 2 **MS. GOODMAN:** I'm complimenting him
 3 on the --
 4 **MR. SINGER:** Well, that can be off
 5 the record.
 6 Q. In 2013 was Rick Lambert awarded his
 7 entire bonus for meeting the qualitative
 8 objectives?
 9 A. **I don't recall.**
 10 Q. Are there documents that would tell us
 11 whether it did or did not?
 12 A. **The -- definitely his review sheet**
 13 **should show what was paid in terms of**
 14 **qualitative --**
 15 Q. Okay.
 16 A. **-- to Mr. Lambert.**
 17 **MS. GOODMAN:** I think this is a
 18 good time -- we're going onto something
 19 else so this would be a good time to
 20 break for lunch.
 21 **MR. SINGER:** How long do you want?
 22 **MS. GOODMAN:** I think we should
 23 take the hour.
 24 **MR. SINGER:** Full hour? I mean,
 25 whatever you want. So we're back at

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1 AMSTUTZ
 2 AFTERNOON SESSION.
 3 2:09 p.m.
 4 * * *
 5 **MS. GOODMAN:** Seth, just I want to
 6 put this on the record.
 7 **MR. SINGER:** Sure.
 8 **MS. GOODMAN:** During lunch, it was
 9 bought to my attention that I
 10 mistakenly -- in referring to
 11 Amstutz-4, I mistakenly in one of my
 12 questions, referred to the sales report
 13 for 2001.
 14 **MR. SINGER:** 2001.
 15 **MS. GOODMAN:** You knew that, too?
 16 **MR. SINGER:** I just heard it once.
 17 **MS. GOODMAN:** Yeah, once I did it.
 18 Is it okay if we authorize the reporter
 19 to change it to 2011?
 20 **MR. SINGER:** That's fine. That's
 21 fine.
 22 **MS. GOODMAN:** Okay. Thank you.
 23 EXAMINATION CONTINUED
 24 **BY MS. GOODMAN:**
 25 Q. Mr. Amstutz, I'd like to refer now to