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February 12, 2016

VIA ECF

Hon. George B. Daniels
United States District Judge
Southern District of New York

**Re: Cargian v. Breitling USA, Inc.
Civil Action No.: 15-cv-01084**

Your Honor:

We represent defendant Breitling USA, Inc. (“Breitling” or “Defendant”) in this matter. We respectfully submit this letter in response to plaintiff Fred Cargian’s (“Plaintiff”) letter-motion (Docket No. 34) pursuant to FRCP 72(a) seeking review of Magistrate Judge Pitman’s denial of Plaintiff’s application for a second deposition of Sebastien Amstutz, Defendant’s Vice-President. As will be explained below, Magistrate Judge Pitman’s decision to deny Plaintiff’s discovery motion seeking the second deposition of Mr. Amstutz was neither clearly erroneous nor contrary to law. Therefore, Plaintiff’s Rule 72(a) motion should be denied.

I. Factual Background

By way of background, Breitling terminated Plaintiff’s employment as a sales representative at the end of 2013 for legitimate and non-discriminatory reasons. Specifically, in the three to four years prior to his termination, Plaintiff’s sales numbers relative to his goals were consistently among the lowest in the company and were steadily declining. Plaintiff regularly acted disrespectfully and inappropriately to his supervisors, including, among other things, cursing at Breitling’s President in front of clients at an event, openly declaring in front of the sales team that he would not work past 5 pm, and making unprofessional remarks in his self-evaluation. It was for these reasons, among others, that Breitling terminated Plaintiff’s employment.

II. Plaintiff’s Misrepresentation to the Court

In Plaintiff’s instant motion, his counsel has blatantly and falsely misquoted from the transcript of the January 21, 2016 phone conference before Magistrate Judge Pitman that was held to address Plaintiff’s request to take a second deposition of Sebastien Amstutz, Breitling’s Vice-President.

In his motion, Plaintiff contends that the bonus calculation formulae and numbers that can be

found on the documents that were produced to Plaintiff after Mr. Amstutz's deposition are not self-evident or easily discernable based upon Mr. Amstutz's prior testimony on these topics, and therefore the Magistrate Judge erred in denying Plaintiff's request for a second deposition of Mr. Amstutz. In an effort to support this point, Plaintiff cites to the transcript of the conference with Magistrate Judge Pitman, claiming that "even Defendant does not agree that the calculating process is simple and easily discernable from the face of the document." (Docket No. 34, page 7). To that end, counsel claims that when the Magistrate Judge asked whether the math worked out the same for all of the sales reps, "Defense counsel replied [citing to transcript] 'Your Honor, we could not really quite figure it out. I might have spent an hour because you know, it was complicated. We could not figure it out.'" (Plaintiff's Letter Motion, Docket No. 34, pages 7-8, allegedly citing to transcript of proceedings before Magistrate Pitman).

Gallingly, in trying to make this point, Plaintiff's counsel has attributed *her own* statements in the proceedings before Magistrate Judge Pitman, to defense counsel. Even a cursory look at the section of the transcript Plaintiff cites, shows that *it was Plaintiff's counsel herself, not Defendant's counsel*, who was claiming and arguing that the calculations were complicated and that she could not figure them out:

MAGISTRATE JUDGE PITMAN: Was there – were the numbers on Cargian's summary similar, and did the math work out the same way?

MS. GOODMAN: Your Honor, we could not really quite figure it out. I might have spent an hour because it – you know, it was complicated. We could not figure it out.

(Transcript of January 21, 2016 teleconference with Magistrate Pitman, attached hereto as Exhibit "A", at 29:7-14)¹. It is utterly clear from the transcript that it was "MS. GOODMAN" who made these statements, and not, as she represents to this Court in her letter motion, defense counsel. Ms. Goodman, an extremely experienced practitioner, has absolutely no excuse for conflating her own name with the name of defense counsel and for falsely attributing her own argument with Defendant's argument.

Plaintiff's egregious and blatant misrepresentation to the Court about the proceedings in front of Magistrate Judge Pitman, attributing her very own statements to those of the opposing party, should be grounds alone to deny the instant motion².

III. Plaintiff Has Not and Cannot Show That Magistrate Judge Pitman's Decision Was "Clearly Erroneous"

Aside from Plaintiff's deliberate misquoting of the record, the instant motion should also be denied because Plaintiff has failed to sustain his burden to show the Magistrate Judge's decision was

¹ In her motion, Plaintiff also claims that this colloquy occurred on page 32-33 of the hearing transcript. *See* Docket No. 34, page 8. In fact, it occurred on page 29 of the transcript. Indeed, throughout his motion, Plaintiff miscites the hearing transcript to the wrong pages.

² While Defendant does not affirmatively seek sanctions for Plaintiff's deliberate misrepresentation to the Court at this time, Defendant notes that the Court, on its own, "may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b)." FRCP R. 11(c)(3).

clearly erroneous or contrary to law. On a motion pursuant to FRCP 72(a) challenging a Magistrate Judge's ruling on a non-dispositive issue, the District Court must consider and "modify or set aside any part of the order that is clearly erroneous or is contrary to law." Fed. R. Civ. R. 72(a). "Under this highly deferential standard, magistrate judges are 'afforded broad discretion in resolving discovery disputes, and reversal is appropriate only if that discretion is abused.'" *Storms v. US.*, 13-CV-0811, 2014 WL 3547016, at *4 (E.D.N.Y. July 16, 2014) (quoting *McNamee v. Clemens*, No. 09-CV-1647, 2014 WL 1338720, at *2 (E.D.N.Y. Apr. 2, 2014)).

Here, Magistrate Judge Pitman duly considered and fully addressed the arguments made in connection with Plaintiff's discovery motion; his decision was neither clearly erroneous nor contrary to law. He heard more than half an hour of oral argument on the issue of Plaintiff's request for a second deposition of Mr. Amstutz. After oral argument, Magistrate Judge Pitman properly denied Plaintiff's request on the basis that the recently produced document concerning the additional sales representatives' bonuses were identical in form to the documents previously produced regarding Plaintiff, and nothing prevented Plaintiff from inquiring about how all bonuses were calculated at Mr. Amstutz's deposition. (Magistrate Judge Pitman's Endorsement, Docket No. 33).

A. Relevant Procedural History

On July 28, 2015, Magistrate Judge Pitman ordered Defendant to produce "the portion of the personnel files of the [sales representatives] identified by [P]laintiff that include performance reviews, sales performance [and] compensation." (Docket No. 22). Defendant responded to the Court's Order and provided all such documents from the personnel files of these alleged comparators to Plaintiff prior to Mr. Amstutz's deposition. The documents in Plaintiff's possession before Mr. Amstutz was deposed included a bonus compensation sheet for Plaintiff for 2012 (Attached hereto as Exhibit "B").

On December 9, 2015, at Mr. Amstutz's deposition, it was brought to Defendant's attention that there were documents similar to Exhibit "B" with handwritten bonus compensation notes that existed for each of Breitling's sales representatives but that had not yet been produced to Plaintiff. However, as will be discussed below, Plaintiff was aware that such documents existed at the time of Mr. Amstutz's deposition. Plaintiff questioned Mr. Amstutz extensively about the bonus structure, system, and calculations. Mr. Amstutz confirmed that the bonus structure, system, and calculation for the sales representatives were exactly the same as for Plaintiff. Furthermore, during Mr. Amstutz's deposition, Plaintiff used the bonus compensation sheet (Exhibit "B", marked as Exhibit 14 at the Amstutz deposition) that was already in his possession.

After Mr. Amstutz's deposition, Defendant conducted a search for documents containing handwritten bonus compensation notes for the other sales representatives. During its search, Defendant located them in a *separate location* at the company, as these documents had not been kept in the same location as the personnel files of the sales representatives (thus, the reason they were not produced with the remainder of the personnel file documents pursuant to the prior Court Order that had specifically referenced "personnel files"). In January 2016 all of these bonus compensation documents for all of the sales representatives were produced to Plaintiff without any objection.

Subsequently, Plaintiff made an application to Magistrate Judge Pitman to take a second

deposition of Mr. Amstutz to question him about the bonus compensation documents that had been produced to Plaintiff after Mr. Amstutz's deposition had taken place. The supplementally produced bonus documents are wholly identical in structure, format, categories, and content to the bonus compensation documents previously provided to Plaintiff before Mr. Amstutz's deposition; the only difference is the handwritten numbers set forth on the documents for each sales representative (*see* example of subsequently produced bonus compensation sheet, attached hereto as Exhibit "C").

B. Magistrate Judge Pitman Correctly Found that Plaintiff had a full opportunity to question Mr. Amstutz about Breitling's Bonus Structure

With the use of the bonus compensation documents that were in Plaintiff's possession (marked as an exhibit at the deposition, Exhibit "B" attached herein) at Mr. Amstutz's deposition, for approximately *47 pages* of testimony, Plaintiff's counsel questioned Mr. Amstutz, in great detail regarding Breitling's bonus structure, bonus calculations, bonus format, bonus components, and bonus process. (*See* relevant portions of Amstutz deposition, attached hereto as Exhibit "D", pages 75-119). In fact, the format of the very bonus compensation sheets at issue in this motion were discussed, wherein counsel questioned Mr. Amstutz about each component of the bonus and how it was calculated. *Id.*

In reaching his decision, the Magistrate Judge specifically reviewed and compared the bonus compensation sheet that was used (and extensively questioned about) during Mr. Amstutz's deposition with a sample of one that had been produced after Mr. Amstutz's deposition.³ (*See* Exhibit "B" and Exhibit "C" respectively, attached herein). Magistrate Judge Pitman determined that the recently produced documents concerning the additional sales representatives' bonuses were identical in form to the documents previously produced, and nothing had prevented Plaintiff from asking Mr. Amstutz about how all bonuses were calculated at his deposition (Magistrate Judge Pitman's Endorsement, Docket No. 33). Thus, having duly considered both sets of documents and making a reasonable and specific determination that they are similar enough to have provided Plaintiff ample opportunity to question Mr. Amstutz on the bonus calculation process and structure for Breitling's sales representatives, Plaintiff cannot show that the Magistrate Judge "clearly erred" or issued a ruling contrary to law. Accordingly, Magistrate Judge Pitman's decision should be granted the appropriate deference and Plaintiff's motion should be denied.

Further, as was explicitly discussed at the conference with Magistrate Judge Pitman, at the time of Mr. Amstutz's deposition, Plaintiff was well aware that in 2013 one of the other sales representatives violated company policy, and Plaintiff could have questioned Mr. Amstutz what role, if any, such violation played in calculation that sales representative's 2013 bonus. At the time of Mr. Amstutz's deposition, Plaintiff's counsel was also aware that the sales representatives were paid a "Special Extra Bonuses". As such, she could have questioned Mr. Amstutz about why or how Special Extra Bonuses were paid to any or all of the sales representatives. Plaintiff's counsel chose not to do so.⁴ After having

³ Subsequent to (and on the same day as) the phone conference held with the Magistrate Judge Pitman, the parties faxed the Court a copy of the 2012 bonus compensation sheet that related to Plaintiff, which had previously been produced to Plaintiff prior to the Amstutz deposition and that had been used as an exhibit at the Amstutz deposition (Exhibit "B" attached herein). The Court had already been in possession of an example of the newly produced bonus compensation sheets, as it had been attached to Plaintiff's motion to Magistrate Judge Pitman (same document attached herein as Exhibit "C").

⁴ In fact, Magistrate Judge Pitman specifically noted that "nothing prevented counsel from asking Amstutz about the 'Special Extra Bonus' program and how such bonuses were calculated." (Magistrate Judge Pitman's Endorsement, Docket No. 33).

had a full and fair opportunity to depose Mr. Amstutz for an entire day, Plaintiff should not be given a second chance to ask questions that he now believes he should have asked at Mr. Amstutz's original deposition. Certainly, the Magistrate did not clearly err in declining to give Plaintiff a second bite at the apple for Mr. Amstutz's deposition and finding that Plaintiff's argument regarding the sales representative that violated company policy was "far afield" from the main issue.

C. The Magistrate Judge did not "Clearly Err" in Finding that the Bonus Calculations on the Supplemental Production are Readily Understandable

As discussed above, Plaintiff's counsel (and *not* Defendant's counsel) argued to Magistrate Judge Pitman that the bonus calculations that Mr. Amstutz testified about are not readily discernable on the subsequently produced bonus compensation sheets. However, Magistrate Judge Pitman directly addressed this issue. Having reviewed the bonus compensation sheets and holding that they are "identical in form to the documents previously produced", and thus the same methodology that Mr. Amstutz testified to (or would have testified to had he been asked) would apply to the subsequently produced bonus compensation documents (Magistrate Judge Pitman's Endorsement, Docket No. 33). In fact, during the phone conference, Magistrate Judge Pitman himself performed various arithmetic calculations and noted that it was "basic, second grade arithmetic" to add up the numbers on the bonus compensation sheet, once one understood what the categories of bonuses consisted of and how there were awarded (Exhibit "A", at 29:17-18). Applying the "highly deferential standard" that suits motions pursuant to Rule 72(a), the Magistrate Judge did not clearly err in his determination that a second deposition of Mr. Amstutz is not warranted under these circumstances.

IV. Conclusion

After deposing Defendant's witness, Mr. Amstutz, for nearly 6 hours, and having had a full opportunity to question him about Breitling's bonus structure and calculations, Plaintiff now seeks a second bite at the apple to depose Mr. Amstutz again to ask questions that counsel could have asked at Mr. Amstutz's original deposition. Magistrate Judge Pitman heard extensive oral argument, read submissions by the parties, reviewed the documents at issue, and then determined that Plaintiff had not sustained his burden to show why Defendant should be forced to produce a high-ranking witness for a second deposition. Despite blatantly misquoting the record of proceedings before Magistrate Judge Pitman, Plaintiff has not sustained his heavy burden of showing that the Magistrate Judge "clearly erred" or ruled "contrary to law" in his determination. Therefore, for the aforementioned reasons, we respectfully submit that Magistrate Judge Pitman's decision to deny Plaintiff a second deposition of Sebatien Amstuz was neither clearly erroneous nor contrary to law. Accordingly, Plaintiff's motion should be denied.

Respectfully submitted,
FOX ROTHSCHILD, LLP

/s/
Zev Singer, Esq.

CC: (by ECF) All Counsel of Record

Attachments

EXHIBIT A

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----X
3 FREDERICK M. CARGIAN,
4 Plaintiff,
5 -against-
6 BREITLING USA, INC.,
7 Defendant.

8 Civil Action No. 15-cv-01084
-----X
9

10 630 Third Avenue
11 New York, New York

12 January 21, 2016
13 11:55 a.m.

14 TELEPHONIC CONFERENCE WITH
15 MAGISTRATE JUDGE PITMAN, taken before Alexis
16 Perez Jenio, a Shorthand Reporter and Notary
17 Public of the State of New York.

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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

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2

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17 zsinger@foxrothschild.com

18

19 **ALSO PRESENT:**

20 **FRED CARGIAN**

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THE CLERK: Judge's chambers.

MR. SINGER: Good afternoon. It's the parties on the Cargian vs. Breitling matter.

THE CLERK: Okay.

MS. GOODMAN: This is Janice Goodman, attorney for the plaintiff.

THE CLERK: All right. For plaintiff, I have Ms. Goodman.

MR. SINGER: And for defendant, you have Zev Singer.

And we have a court reporter here for the deposition we're in the middle of. It's up to the Court whether the judge wants us to make a record of this or not, whatever the Court would prefer.

THE CLERK: Okay. I will let him know that the court reporter is there.

And I'm just going to put you on hold for a moment, and the judge will be with you shortly.

MR. SINGER: Thank you.

MS. GOODMAN: Thank you.

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(Pause)

MAGISTRATE JUDGE PITMAN: Good morning, this is Magistrate Judge Pitman. I understand that I've got Ms. Goodman on the line for plaintiff and Mr. Singer for defendant. Is that correct?

MR. SINGER: Yes, your Honor.

MS. GOODMAN: Correct.

MAGISTRATE JUDGE PITMAN: And I understand you're both at a deposition right now?

MR. SINGER: That's correct.

MAGISTRATE JUDGE PITMAN: Who's being deposed?

MR. SINGER: A third-party witness, your Honor.

MAGISTRATE JUDGE PITMAN: It sounds like it doesn't make any difference whether the witness is in the room or not. Did counsel concur?

MR. SINGER: They've already -- the witness and her counsel have actually stepped out, so.

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MS. GOODMAN: You're Honor, are you referring to the witness I requested to have the deposition of?

MAGISTRATE JUDGE PITMAN: Well, is that individual even there?

MS. GOODMAN: No.

MR. SINGER: No, your Honor.

MS. GOODMAN: No, Not here.

MAGISTRATE JUDGE PITMAN: The deposition has stopped?

MR. SINGER: Correct.

MAGISTRATE JUDGE PITMAN: All right. I am digitally recording the call, and if you want to have the reporter take it down also, that's fine.

MS. GOODMAN: I'd like to ask the reporter to take it down.

MR. SINGER: Whatever.

MAGISTRATE JUDGE PITMAN: All right, fine. All right.

The call is occasioned by a letter that plaintiff's counsel filed at about 7:30 last night, according to the ECF

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system. I take it you've seen it,
Mr. Singer?

MR. SINGER: I have seen it, your
Honor. I was in the process of
drafting a response to her when I saw
it.

MAGISTRATE JUDGE PITMAN: Okay.
Well, to save you from the trouble
of drafting, you can tell me what your
arguments are now.

Why don't I hear from Ms. Goodman
first, and then I'll hear from
Mr. Singer.

MR. SINGER: Thank you.

MAGISTRATE JUDGE PITMAN: Go ahead,
Ms. Goodman.

MS. GOODMAN: I think I spelled it
out in my letter. We -- on July 29th,
you ordered that personal reviews --
the personnel reviews of the sales reps
comparative to my client, who is the
plaintiff, were to be produced, and
among a number of other documents.

I received a lot of documents in

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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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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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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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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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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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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

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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

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

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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

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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

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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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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

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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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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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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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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MS. GOODMAN: Okay.

MAGISTRATE JUDGE PITMAN: It doesn't look like a different typeface.

MS. GOODMAN: Well, I was trying to -- okay. So it was in color.

MAGISTRATE JUDGE PITMAN: Okay.

MS. GOODMAN: So I don't know, you know, what that means. Is this the final figure? Is this actually what they were given at the end of the day, or is it something else? I just don't know that.

Then you'll see the same thing, total bonus due, 2012, and it says 45,000 plus. I don't know, is that in fact what was decided to give to him?

Then it says, total -- then you see some -- a bonus of 54,000, but next to it a handwritten 51,000, I don't know what that -- so those are just the things I just need for him to tell me, what -- explain that to me.

MAGISTRATE JUDGE PITMAN: All right. I want to give both sides an

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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

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

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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

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deposition last night, what Ms. Goodman had asked him was, in a sense, how was that number reached? Where did it come from? Were there numbers added together or multiplied? Was it a combination of the --

MAGISTRATE JUDGE PITMAN: You say Ms. Goodman asked how was that number reached. What's the "that number" that you're referencing?

MR. SINGER: The handwritten numbers.

MAGISTRATE JUDGE PITMAN: Okay. Go ahead.

MR. SINGER: The testimony -- again, I don't want to quote it because I don't have it in front of me, but, as Ms. Goodman talked about earlier, there was some combination between the subjective -- so I'll call it the subjective and objective bonus structure, which Mr. Amstutz explained how these numbers were arrived at; which part of it was based on sales,

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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

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1 subtraction, you're left with the
2 remainder of 51,265, which is the other
3 handwritten number there. So it looks
4 like the 3,120 was deducted from the
5 54,385.
6

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?

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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

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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

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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

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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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why did you give him an extra bonus of 8,960? Because that's also in a different color. That's in blue.

Then, also, my recollection -- and again, I'm not positive -- what is it -- the figures that are on the right-hand side that were in color, I do not -- I'm quite sure were not on the document that I had for Mr. Cargian.

MAGISTRATE JUDGE PITMAN: All right. All right.

Look, let me ask you to do this: Before I decide, I just want to see a couple of other things.

Mr. Singer, the deposition that's being conducted today is in your office, Mr. Singer?

MR. SINGER: No, it's at the third-party witness's office.

MAGISTRATE JUDGE PITMAN: All right.

MR. SINGER: But, your Honor, if I think I know where you're going --

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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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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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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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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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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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send me those documents, Mr. Singer, I
can give you and counsel a decision by
the end of the day. Okay?

MR. SINGER: Okay.

Thank you, your Honor.

MS. GOODMAN: Thank you, your
Honor.

MAGISTRATE JUDGE PITMAN: Okay,
thank you. Thanks. Bye.

(Time noted: 12:30 p.m.)

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C E R T I F I C A T E

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

I, ALEXIS PEREZ JENIO, a Notary Public, do hereby certify:

That this transcript is a true and accurate record of the telephonic proceedings as recorded stenographically by me.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of January, 2016.



ALEXIS PEREZ JENIO, CLR

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EXHIBIT B

Fred Cargian, NE 1

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

Sell in & sell out Goals

	Targets	Bonus		Achieved	Bonus Due
Sell In					
Total Region Sell in :	\$ 15,400,000	\$ 16,090	45%	80%	\$ 12,872
Total Regions Sell in:	\$ 109,000,000	\$ 5,360	15%	90%	\$ 4,824
Sell Out					
2012 goal = + 5% on region versus 2011 Sell out		\$ 7,150	20%	0%	\$ -
% of In House Movement in 2012 Sell out(13% target)		\$ 7,150	20%	100%	\$ 7,150
Total Sell In & sell out Goals		\$ 35,750	100%		\$ 24,846.00

Qualitative objectives

		Bonus		Achieved	Bonus Due
Total Number of visits:	20%	\$ 3,850	275	100%	\$ 3,850
Number of new qualified door opened :	20%	\$ 3,850	3	100%	\$ 3,850
Average sell in price:	20%	\$ 3,850	average price need to be above \$4 300	100%	\$ 3,850
Total Call report (80%):	20%	\$ 3,850	44 weeks of call reports	50%	\$ 1,925
Total IFP 1 & IFP2 in your region:	20%	\$ 3,850	100 IFP 1 and 100 IFP 2	50%	\$ 1,925

Total Qualitative Objectives 100% \$ 19,250 \$ 15,400

Total Bonus Due Year 2012 \$ 40,246

% 3,430 = 36,816

Special 2012 Extra Bonus: \$4,800

TOTAL 2012 BONUS: \$ 45,046

9 \$41,616

82%

????????

BONUS 2011: \$39,875

BREITLING_011

EXHIBIT 14
Amstutz
12/9/15

EXHIBIT C

Brian Criddle, WI

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

Sell in & sell out Goals

Sell In	Targets	Bonus	Achieved	Bonus Due
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	20%	\$ 6,500
% of In House Movement in 2012 Sell out(13% target)		\$ 6,500	20%	\$ 6,500

Total Sell in & sell out Goals **\$ 32,500** **100%** **\$ 30,550.00**

Qualitative objectives

		Bonus	Achieved	Bonus Due
Total Number of visits:	20%	\$ 3,500	100%	\$ 3,500
Number of new qualified door opened :	20%	\$ 3,500	100%	\$ 3,500
Average sell in price:	20%	\$ 3,500	100%	\$ 3,500
Total Call report (90%):	20%	\$ 3,500	75%	\$ 2,625
Total IFP 1 & IFP2 in your region:	20%	\$ 3,500	50%	\$ 1,750

Total Qualitative Objectives **100%** **\$ 17,500** **\$ 14,875**

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

Special 2012 Extra Bonus: **\$8,960**

TOTAL 2012 BONUS: **\$ 54,385** **\$ 51,265**
 109%
 BONUS 2011: **\$50,000** ok

Follow-up on emails.
 use of office okay.
 to friendly with awards?

EXHIBIT D

1

AMSTUTZ

11:47:33 2

(An off-the-record conversation was

11:47:38 3

held.)

11:47:38 4

A Okay.

11:47:38 5

Q If you'll see that in Amstutz-3, it

11:47:42 6

shows that Fred Cargian's total sales in 2012

11:47:46 7

was \$12,899,581. Do you see that?

11:47:56 8

A Yes.

11:47:56 9

Q And then, if you look at Amstutz-8, it

11:48:00 10

will show that Fred's total in 2012 was

11:48:03 11

\$9,809,464. Can you --

11:48:08 12

MR. SINGER: 465.

11:48:09 13

MS. GOODMAN: 465, okay. I

11:48:16 14

couldn't read it I, guess.

11:48:17 15

Q Can you explain the disparity between

11:48:20 16

those two charts that supposedly reflect sales

11:48:25 17

for 2012?

11:48:27 18

A No, I can't.

11:49:10 19

(Pause)

11:50:13 20

Q Again, if you look at -- no.

11:50:27 21

(Pause)

11:50:31 22

MS. GOODMAN: I might come back to

11:50:32 23

this one.

11:50:51 24

Q I would like to better understand how

11:50:53 25

the bonus system works for the sales

1

AMSTUTZ

11:50:56 2 representatives. And you're the officer who
11:50:58 3 signs off on all the employment contracts for
11:51:02 4 the sales reps. Is that correct?

11:51:04 5 A Yes.

11:51:10 6 MS. GOODMAN: This is 11.

11:51:15 7 MR. SINGER: 12.

11:51:16 8 (Five-page employment contract
11:51:16 9 letter dated March 1, 2011, from
11:51:16 10 Breitling to Fred Cargian, Bates
11:51:16 11 stamped Breitling_007 through 11, was
11:51:16 12 marked Exhibit Amstutz-12 for
11:51:28 13 identification.)

11:51:28 14 Q I'm showing you the employment contract
11:51:30 15 for Fred Cargian for 2011, Breitling 007 through
11:51:40 16 011. If you look at the third page, Breitling
11:51:49 17 009, now, is that your signature?

11:51:54 18 A Yes.

11:51:54 19 Q And you signed this contract for
11:51:58 20 Mr. Cargian's employment in 2011, correct?

11:52:02 21 A Correct.

11:52:02 22 Q If you look at the third page, which is
11:52:17 23 009 -- Breitling 009, Appendix A --

11:52:24 24 A Yes.

11:52:24 25 Q -- it says that the first part of the

1

AMSTUTZ

11:52:29

2

bonus is based on objective sales quotas,

11:52:33

3

correct?

11:52:33

4

A Yes.

11:52:34

5

Q Now, I understand that the numbers for

11:52:38

6

the potential bonus and sales budgets are

11:52:42

7

different for each sales rep, but in 2011, is

11:52:46

8

the formula for calculating the incentive

11:52:52

9

formula based on meeting sales goals the same

11:52:55

10

for all reps?

11:52:56

11

A Yes.

11:52:56

12

Q Were there ever any variations?

11:53:00

13

A No.

11:53:00

14

Q Is that true for every year? In other

11:53:04

15

words, was the formula used the same for every

11:53:10

16

sales rep?

11:53:11

17

A Yes.

11:53:11

18

Q Was there any year where there were any

11:53:16

19

variations for any sales rep?

11:53:25

20

A Not that I recall.

11:53:27

21

Q Okay. Now, it says that the

11:53:31

22

achievement sales goals accounted for 75 percent

11:53:36

23

of the entire projected potential bonus,

11:53:39

24

correct?

11:53:40

25

A Correct.

1

AMSTUTZ

11:53:41 2

Q Can you explain how that formula

11:53:44 3

worked?

11:53:48 4

A So you have Fred, in two thousand

11:53:54 5

and -- for his contract of 2011 had a potential

11:53:58 6

bonus of \$55,000. 75 percent of this bonus, so

11:54:05 7

it is a total of \$41,300 was potential bonus if

11:54:12 8

he was to achieve the sales figures of

11:54:27 9

\$24,995,000 in his region.

11:54:36 10

Q So he would get -- and if he had less

11:54:38 11

than \$24,995,000, what would be the percentage

11:54:47 12

he would receive for his total bonus?

11:54:50 13

A So you have in the -- in the little --

11:54:53 14

I'm going to say spreadsheet, or board, down,

11:54:56 15

that if he achieved 90 percent of his sales

11:55:01 16

goal, he would get 67.5 percent, or \$37,100

11:55:08 17

worth of bonus at the end of the year.

11:55:11 18

Q Where are you reading from? Can you

11:55:14 19

tell me, please?

11:55:15 20

A I am reading this here (indicating).

11:55:17 21

Q You're pointing to where it says,

11:55:21 22

"Annualized Equivalent" --

11:55:22 23

A Yes.

11:55:22 24

Q -- that chart?

11:55:23 25

A Yes.

1

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11:55:23 2 Q And what line -- so 100 percent he
11:55:26 3 would receive?

11:55:27 4 A He would receive \$41,300 as an annual
11:55:32 5 total; 90 percent of the sales, he would get a
11:55:37 6 total bonus of \$37,100; and if achieving
11:55:43 7 80 percent of his sales goal, he would get the
11:55:46 8 bonus of 60 percent, equivalent to \$33,000.

11:55:50 9 Q Okay. Now, what happens if he got
11:55:55 10 95 percent of the -- if he met his sales goal of
11:56:01 11 95 percent?

11:56:01 12 A Between 90 and 99 percent, he would get
11:56:06 13 the \$37,100.

11:56:10 14 Q He would get 67.5 percent?

11:56:14 15 A Yes.

11:56:14 16 Q And the same would be true as between
11:56:16 17 80 and 90 percent?

11:56:22 18 A Correct.

11:56:24 19 Q And if he got under 80 percent, what
11:56:28 20 happens?

11:56:28 21 A He will get nothing on the sales side.

11:56:32 22 Q Nothing. So he has to get at least
11:56:37 23 80 percent to get any of his potential bonus.
11:56:39 24 Is that correct?

11:56:39 25 A To get any of the 75 percent of his

1

AMSTUTZ

11:56:42 2 bonus, correct.

11:56:44 3 Q Okay.

11:56:44 4 Now, the second part of the bonus is
11:56:54 5 based on achieving marketing and administrative
11:56:57 6 goals. Is that correct?

11:57:02 7 A Correct.

11:57:02 8 Q And in 2011, 25 percent of the
11:57:05 9 potential bonus was based on whether he achieved
11:57:08 10 the marketing and administrative goals, correct?

11:57:15 11 A Yes.

11:57:15 12 Q How was that -- how was it determined
11:57:18 13 whether in fact a sales rep met his or her
11:57:22 14 marketing and administrative goals?

11:57:29 15 A The sales -- and I mean, when I talk
11:57:37 16 about sales, I would say our sales director and
11:57:40 17 Thierry Prissert would evaluate the number of
11:57:44 18 visits, would evaluate the number of trainings,
11:57:48 19 would evaluate the number of call reports made
11:57:58 20 on time, call reports sent after a
11:58:01 21 visit -- after a store visit, and based on that,
11:58:04 22 would evaluate if yes or no, we would attribute
11:58:14 23 the 25 percent, or part of it.

11:58:16 24 Q Now, were there absolute standards? In
11:58:23 25 other words, you had to make a certain number of

1

AMSTUTZ

11:58:25 2 calls or a certain number of trainings before

11:58:28 3 you got anything?

11:58:29 4 A No.

11:58:29 5 Q So --

11:58:30 6 A It would differ from territories.

11:58:35 7 Q In what ways would it differ?

11:58:38 8 A I mean, if a territory has 42 doors,
11:58:41 9 you need to make more trainings than a territory
11:58:46 10 that had 35 doors.

11:58:47 11 Q And who makes those determinations of
11:58:51 12 how many trainings are required and how many
11:58:53 13 door visits are required, you know, to get --

11:58:57 14 A This is our sales director.

11:58:59 15 Q You're talking about Mr. Anderson?

11:59:09 16 A Yes.

11:59:09 17 Q And would Mr. Prissert make that
11:59:12 18 decision?

11:59:12 19 A He would be part of that decision, yes.

11:59:15 20 Q Now, you sat in on those personnel
11:59:18 21 reviews at the end of the year, correct?

11:59:21 22 A Correct.

11:59:21 23 Q So you would listen to the analysis
11:59:24 24 that --

11:59:24 25 MS. GOODMAN: Well, withdraw that.

1

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11:59:26 2 Q At those reviews, was it Mr. Prissert
11:59:31 3 who would direct them?

11:59:33 4 A Not always. The sales -- the figures
11:59:38 5 were presented by Mr. Anderson, and Mr. Prissert
11:59:43 6 would jump in when needed or when he felt that a
11:59:49 7 comment was needed.

11:59:50 8 Q So when they talked about who would --
12:00:04 9 to what extent, if at all, the individual sales
12:00:07 10 rep was going to get some part of that
12:00:10 11 qualitative bonus, who would make that
12:00:13 12 presentation?

12:00:19 13 A It would be both Mr. Anderson and
12:00:22 14 Thierry Prissert.

12:00:22 15 Q And is it Mr. Prissert who would tell
12:00:27 16 them, okay, based on all these facts we're going
12:00:30 17 to give you 10 percent of your qualitative
12:00:33 18 bonus?

12:00:39 19 A Yes, he would make the final -- the
12:00:43 20 final decision.

12:00:43 21 Q And did he have any writings to show,
12:00:46 22 okay, Fred Cargian only made 10 door visits and
12:00:51 23 only five trainings, therefore I'm only going to
12:00:56 24 give him 25 percent of whatever that bonus is?
12:01:02 25 Would there be any writing about that?

1

AMSTUTZ

12:01:04 2 A He didn't have personnel notes about
12:01:07 3 that.

12:01:08 4 Q He didn't make any notes?

12:01:10 5 A Mr. Anderson would have to document
12:01:13 6 showing the number of trainings or visits, but
12:01:18 7 not Mr. Prissert.

12:01:19 8 Q But no, I'm saying that when
12:01:22 9 Mr. Prissert, who made the final decision about
12:01:26 10 what percentage of the quantitative bonus a
12:01:29 11 sales rep would get, did he -- would he make any
12:01:35 12 notes saying, okay, I'm going -- the qualitative
12:01:41 13 bonuses were \$10,000, I'm going to give Fred
12:01:44 14 Cargian \$5,000? Would he make any notes as to
12:01:49 15 that and his reasons for it?

12:01:52 16 A No.

12:01:52 17 Q Did you make any notes?

12:01:55 18 A The only notes that I would mention or
12:02:02 19 do are the notes presented in the document.

12:02:05 20 Q Okay. I think you're looking at the
12:02:08 21 last page, Breitling -- you're looking at
12:02:11 22 Amstutz Exhibit 12?

12:02:13 23 A 12.

12:02:14 24 Q And the final page, being Breitling
12:02:18 25 011, correct?

1

AMSTUTZ

12:02:18 2

A Correct.

12:02:19 3

Q Okay. So that's --

12:02:22 4

A That's my handwriting.

12:02:25 5

Q That's your handwriting. Did you do

12:02:27 6

this on everybody's --

12:02:29 7

A Yes.

12:02:29 8

Q -- report?

12:02:30 9

A Yes.

12:02:30 10

Q Ah-hah. So if I asked for -- what is

12:02:35 11

this document called?

12:02:36 12

A This is the document --

12:02:37 13

Q When I'm saying "this," I mean

12:02:42 14

Breitling 011. What is that called?

12:02:45 15

A This is the document that is part of

12:02:47 16

the review.

12:02:49 17

Q Okay.

12:02:52 18

A And is a part of the way to distribute

12:02:55 19

the bonus.

12:02:56 20

Q Okay.

12:02:56 21

A So in that document, for example, we

12:03:00 22

see that there was a different attribution for

12:03:06 23

the sell-in and sell-out of 65 percent of the

12:03:10 24

bonus and the qualitative objective was

12:03:14 25

35 percent. So this document is not in relation

1

AMSTUTZ

12:03:21 2 with the contract.

12:03:22 3 Q This is not. It just was given in a
12:03:25 4 serial form, but it's not really part of the
12:03:28 5 contract?

12:03:28 6 A No.

12:03:29 7 Q Okay.

12:03:29 8 A I mean, it is -- I'm sorry, I -- it is
12:03:34 9 part of the contract.

12:03:34 10 Q But, I mean, the final document where
12:03:37 11 your notes are, that comes after the contract is
12:03:42 12 written and at this review session. Is that
12:03:45 13 correct?

12:03:45 14 A That comes at the review session.

12:03:47 15 Q Okay. Now, what would I call this?
12:03:50 16 Because I do not have, for any of the people,
12:03:54 17 this document with your notes on it.

12:03:56 18 A This is part of the review spreadsheet.

12:03:58 19 Q Okay. So would I call this the review
12:04:03 20 spreadsheet?

12:04:05 21 A Ah... yes.

12:04:07 22 Q And there should be one of these review
12:04:15 23 spreadsheets for each year for each sales rep.
12:04:19 24 Is that correct?

12:04:20 25 A Correct.

1

AMSTUTZ

12:04:20 2 Q And each one of them would show me what
12:04:28 3 the ultimate bonus was attributable to that
12:04:31 4 sales rep for that year. Is that correct?

12:04:33 5 A Correct.

12:04:34 6 MS. GOODMAN: Okay. We would like
12:04:35 7 a copy of those documents from each one
12:04:38 8 of the sales reps, including Fred
12:04:40 9 Cargian, because we only have one of
12:04:42 10 them for him. (RQ)

12:04:43 11 MR. SINGER: I believe there are
12:04:45 12 numerous of them attached to the
12:04:47 13 contracts that we have provided.

12:04:49 14 MS. GOODMAN: No, we haven't.

12:04:50 15 MR. SINGER: But we'll take it
12:04:52 16 under advisement and --

12:04:53 17 MS. GOODMAN: No, let me explain --

12:04:55 18 Q Am I right in explaining that attached
12:05:00 19 to every contract is what is Breitling 011, but
12:05:06 20 that attachment does not show the final bonus
12:05:10 21 ultimately given, correct?

12:05:12 22 A Correct.

12:05:12 23 Q Subsequently, a year later, when you
12:05:16 24 have your review session, you fill in what is
12:05:19 25 actually achieved and what the bonus actually

1

AMSTUTZ

12:05:23 2 was that was given, correct?

12:05:25 3 A Correct.

12:05:26 4 MS. GOODMAN: The document that I'm
12:05:28 5 looking for is the spreadsheet that is
12:05:31 6 done a year later that Mr. Amstutz just
12:05:33 7 identified, which has the final numbers
12:05:37 8 in it. (RQ)

12:05:37 9 MR. SINGER: You mean the
12:05:39 10 handwritten numbers?

12:05:41 11 MS. GOODMAN: It will have
12:05:42 12 handwritten numbers and typed numbers.

12:05:44 13 MR. SINGER: I think they've been
12:05:46 14 provided.

12:05:46 15 MS. GOODMAN: No, they haven't.

12:05:48 16 MR. SINGER: But we'll check and
12:05:50 17 follow up.

12:05:50 18 MS. GOODMAN: Anything with
12:05:52 19 handwritten numbers has not been
12:05:54 20 provided.

12:05:54 21 MR. SINGER: Well, we're looking at
12:05:56 22 one now.

12:05:57 23 MS. GOODMAN: Yeah, we got one for
12:05:58 24 Fred.

12:05:59 25 MR. SINGER: We'll take it under

1
12:06:01 2
12:06:01 3
12:06:02 4
12:06:05 5
12:06:07 6
12:06:08 7
12:06:15 8
12:06:20 9
12:06:22 10
12:06:24 11
12:06:24 12
12:06:24 13
12:06:26 14
12:06:27 15
12:06:27 16
12:06:28 17
12:06:30 18
12:06:31 19
12:06:37 20
12:06:42 21
12:06:43 22
12:06:46 23
12:06:48 24
12:06:53 25

AMSTUTZ

advisement.

MS. GOODMAN: And also, I'm not sure I put it on the record, but those compensation spreadsheets I would like.

MR. SINGER: You have them. And that's what you were looking at in the exhibit.

MS. GOODMAN: No, this was a composite of some sort.

MR. SINGER: Of all the employees. These are the employees that are relevant to this and were pulled for you. I don't think you understood correctly.

MS. GOODMAN: I did understand.

MR. SINGER: Okay. You can ask for it.

MS. GOODMAN: I'm going to.

Q Now, let's go over Breitling 011. I'm right in understanding what you just said, that this document with your personal notes attached is not what would be attached to the actual contract itself when it's signed?

A This document (indicating)?

1

AMSTUTZ

12:06:55 2

Q Yes.

12:06:56 3

A I mean, this document without my notes.

12:06:59 4

Q Would be?

12:07:00 5

A Would be with the contract.

12:07:02 6

Q So we want the ones with your notes, is

12:07:05 7

what we're talking about. (RQ)

12:07:07 8

A But 2011 might be the first year where

12:07:10 9

we started to -- where the bonus was -- was --

12:07:16 10

Q Qualitative?

12:07:17 11

A Qualitative with -- I mean, correctly

12:07:21 12

equal -- I mean, I'm going to say presented this

12:07:24 13

way to the sales rep.

12:07:25 14

Q Okay. So the first time I could get

12:07:28 15

this is for the years 2011 and after. Is that

12:07:32 16

correct?

12:07:32 17

A Correct.

12:07:41 18

Q So explain to me for the year 2011,

12:07:48 19

Mr. Cargian's total bonus -- potential bonus was

12:07:56 20

\$55,000, correct?

12:08:01 21

A For which year?

12:08:03 22

Q 2011, what you're looking at right now.

12:08:07 23

A Yes.

12:08:07 24

Q And one quarter of that would be

12:08:10 25

attributable to the qualitative analysis,

AMSTUTZ

1
12:08:15 2 correct?
12:08:21 3 (Pause)
12:08:31 4 A Can you repeat, please?
12:08:33 5 Q Well, the total bonus is 55,000?
12:08:38 6 A Yeah.
12:08:38 7 Q Potential 55?
12:08:39 8 A Yes.
12:08:39 9 Q 75 percent of it is attributable to the
12:08:43 10 sale; 25 percent of it is attribute to the
12:08:46 11 qualitative --
12:08:47 12 A Yes.
12:08:47 13 Q -- review, correct?
12:08:51 14 A Yes.
12:08:51 15 Q What did he get in terms of the
12:08:55 16 qualitative review?
12:09:04 17 A This spreadsheet here is not for the
12:09:06 18 2011 review.
12:09:06 19 Q It isn't?
12:09:08 20 A No.
12:09:08 21 Q Oh, total -- you're right. It's total
12:09:13 22 2012.
12:09:16 23 A Um-hmm.
12:09:17 24 Q Huh. Thank you.
12:09:38 25 In 2012 it was different. It was

1 AMSTUTZ

12:09:41 2 65/35, correct?

12:09:45 3 A Correct.

12:09:45 4 Q Tell me whether -- this does not have
12:09:58 5 the final figures that he achieved in the total
12:10:01 6 sales does it, this document?

12:10:03 7 A This one.

12:10:04 8 Q For 2012.

12:10:11 9 A Well, I mean, this one does not have
12:10:14 10 the number, no, but achieved was 80 percent of
12:10:17 11 the sale number -- 80 percent of the 154.

12:10:21 12 Q So that meant he got --

12:10:24 13 A He got --

12:10:26 14 Q -- 90 percent of his bonus, so much of
12:10:29 15 the bonus attributable to the sale, correct?

12:10:32 16 A So he got \$12,872.

12:10:37 17 Q Now, that's the sales part?

12:10:38 18 A Yes.

12:10:39 19 Q And 35 is the qualitative, correct?

12:10:42 20 A I mean, you have to be careful. Is
12:10:45 21 that the sales part -- I mean, the sell-in --
12:10:53 22 it's based on sell-in, the first line,
12:10:58 23 45 percent of the -- the part of the bonus
12:11:06 24 linked to sales was distributed as follows,
12:11:10 25 45 percent for the sell-in, so Fred's numbers.

1

AMSTUTZ

12:11:14 2

Q And then?

12:11:18 3

A 15 percent based on the sell-in of all

12:11:24 4

the regions.

12:11:25 5

Q I see.

12:11:25 6

A So we put everybody together and said,

12:11:28 7

okay, so if every region is achieving their

12:11:31 8

sales, 15 percent of the bonus is going to be

12:11:35 9

attributing to that number.

12:11:38 10

And then we had also the sell-out goals

12:11:43 11

for... where we requested a 5-percent sell-out

12:11:53 12

more in 2012 than in 2011, and 20 percent of

12:12:00 13

that part of the bonus would be paid.

12:12:03 14

And then we requested of our sales rep

12:12:06 15

a target of 13 percent of the sell-outs to be

12:12:10 16

with our own in-house movement.

12:12:14 17

Q And explain to me what that is.

12:12:17 18

A The in-house movement?

12:12:20 19

Q Yes.

12:12:20 20

A It is Breitling watches equipped with

12:12:24 21

Breitling caliber, so a Breitling movement made

12:12:27 22

in house, fully made in house.

12:12:29 23

Q So what does the sales rep have to do

12:12:32 24

with the percent of in-house -- I don't

12:12:36 25

understand why this is a part of the sales goal

1 AMSTUTZ

12:12:39 2 of the salesmen.

12:12:39 3 A Because you want to push some models to
12:12:43 4 sell.

12:12:44 5 Q Okay.

12:12:44 6 A And you request your sales force to try
12:12:48 7 to achieve the target of 13 percent of the
12:12:51 8 watches that they sell to be watches with our
12:12:55 9 own movement.

12:12:56 10 Q Okay. Now, is that an individual goal
12:12:58 11 or is that a regional goal that's established
12:13:02 12 there? In other words, is that how many of
12:13:05 13 those in-house movements Fred Cargian sold or
12:13:09 14 how many of them were sold by the entire sales
12:13:12 15 force?

12:13:12 16 A So at that -- on that one, Fred...

12:13:23 17 Q It says he achieved 100 percent?

12:13:26 18 A On the in-house movement, Fred achieved
12:13:30 19 100 percent of the sales goal. So he basically
12:13:32 20 went on or over 13 percent of the -- his sales
12:13:36 21 with the in-house movement.

12:13:38 22 Q And I don't understand one thing
12:13:39 23 before: 2012 goal equals plus 5 percent on
12:13:43 24 region versus 2011 sell-out. And it says that
12:13:48 25 20 percent of the bonus is -- 20 percent of the

1

AMSTUTZ

12:13:55 2 quantitative bonus is dependent upon that
12:13:59 3 factor, and Fred didn't achieve that at all.

12:14:01 4 What does that mean?

12:14:02 5 A That means that the -- the sell-out --
12:14:12 6 the sell-out of the region did not go over
12:14:20 7 5 percent. That was the goal to be achieved in
12:14:23 8 2012.

12:14:24 9 Q Now, is that the goal for the whole
12:14:32 10 Breitling USA that we're talking about, or is
12:14:35 11 that just the goal for Mr. Cargian's region?

12:14:37 12 A Every sales representative had exactly
12:14:39 13 the same target.

12:14:40 14 Q But was the same target for his region?
12:14:45 15 He had to achieve that target in that region?

12:14:49 16 A The percentage for target is by region,
12:14:53 17 and every sales representative had the same
12:14:56 18 target to achieve. So every sales
12:14:59 19 representative had to achieve a sell-out goal of
12:15:03 20 5 percent over the past year in 2012. Every
12:15:09 21 sales representative had to achieve a percentage
12:15:17 22 of in-house movement sold of 13 percent as a
12:15:23 23 target.

12:15:23 24 Q Okay. But you'll see above, where it
12:15:27 25 says, "Total Region Sell In" and, "Total Region

1 AMSTUTZ

12:15:30 2 Sell In," one of those, the total region sell-in
12:15:34 3 15.4 --

12:15:35 4 A Yup.

12:15:35 5 Q -- is how much Cargian sold in his own
12:15:39 6 region?

12:15:39 7 A It's not how much he sold; it was the
12:15:42 8 target.

12:15:43 9 Q At the top, okay.

12:15:44 10 So his target was 15.4. The total
12:15:49 11 region sell-in of 109 was for the whole country?

12:15:55 12 A Correct.

12:15:55 13 Q Now, at the second part, the sell-out,
12:15:59 14 that's what I'm asking: Are those for
12:16:01 15 Mr. Cargian's territory or is it for the whole
12:16:05 16 country, the target?

12:16:07 17 A It's for Mr. Cargian's territory.

12:16:11 18 Q Okay. So he had to -- in his own
12:16:13 19 territory, he had to sell in-house movements at
12:16:21 20 3 percent -- or 13 percent of target?

12:16:25 21 A Yeah.

12:16:26 22 Q Okay.

12:16:41 23 In the total region's sell-in, that's
12:16:43 24 countrywide, does that include house accounts?

12:17:00 25 A I don't... I don't know.

1

AMSTUTZ

12:17:09 2 Q Who would know -- I mean -- oh --

12:17:12 3 A Chuck Anderson would, but I'm -- you
12:17:15 4 know what, I'm pretty much sure it does.

12:17:18 5 Q That includes --

12:17:21 6 A It includes house.

12:17:21 7 Q -- house accounts. So that, house
12:17:24 8 accounts, would be all those Tourneau accounts,
12:17:27 9 correct?

12:17:28 10 A Correct.

12:17:45 11 Q Now, again, I'm going back to when this
12:17:48 12 was produced. Since it now shows us in the
12:17:50 13 second -- when I say "this," Breitling 011,
12:17:56 14 which is part of Amstutz-12, it shows us in the
12:18:01 15 top boxes printed in, not your hand, how much
12:18:08 16 was achieved. Or am I reading this wrong?

12:18:18 17 A Yup.

12:18:19 18 Q So this document was printed in 2013
12:18:24 19 after the completion of the 2012 sales, correct?

12:18:28 20 A Correct.

12:18:29 21 Q Was a document such as this, Breitling
12:18:36 22 011, which would give us all of the figures, you
12:18:40 23 know, all of the achievements of each sale rep
12:18:44 24 and what they got on their qualitative, which is
12:18:47 25 your handwritten notes, was one of these, this

1

AMSTUTZ

12:18:50 2 spreadsheet, created for every sales rep

12:18:56 3 starting with 2011?

12:18:58 4 I understand before that you didn't

12:19:01 5 have it. Do you understand my question?

12:19:07 6 A We have it. For each of the sales
12:19:09 7 representative we have one document like this
12:19:12 8 that is filled in.

12:19:14 9 Q Okay. So we're going to call this
12:19:16 10 review spread -- filled-in review spreadsheet
12:19:22 11 for each sales rep --

12:19:25 12 A Um-hmm.

12:19:26 13 Q -- from 2011 through the present?

12:19:31 14 A Yeah.

12:19:31 15 Q Do you have it for -- do you have that
12:19:34 16 document, the review spreadsheet for each sales
12:19:37 17 rep, filled in for any period before 2011?

12:19:43 18 A I would need to check, because, as I
12:19:47 19 said, I am guessing that 2011 or 2012, now that
12:19:53 20 I see the spreadsheet, is the first time that we
12:19:57 21 had this as part of the contract.

12:20:00 22 Q So -- okay. So it might not be until
12:20:04 23 2012. Is that what you're saying?

12:20:06 24 A Correct.

12:20:07 25 MS. GOODMAN: So I'm going to ask

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AMSTUTZ

12:20:08 2

for it as 2011 to the present. And as

12:20:14 3

you will see, that it's not the

12:20:16 4

documents that you think you supplied

12:20:19 5

to me.

12:20:20 6

MR. SINGER: We'll take it under

12:20:22 7

advisement. (RQ)

12:20:38 8

MS. GOODMAN: 13.

12:20:39 9

(Six-page employment contract

12:20:39 10

letter dated February 16, 2012, from

12:20:39 11

Breitling to Fred Cargian, Bates

12:20:39 12

stamped Breitling_046 through 51, was

12:20:39 13

marked Exhibit Amstutz-13 for

12:20:46 14

identification.)

12:20:46 15

Q I'm showing you what's now been marked

12:20:48 16

as Amstutz Exhibit 13.

12:21:00 17

MR. SINGER: Did you want this the

12:21:01 18

attached at the end?

12:21:02 19

MS. GOODMAN: No. I was just

12:21:04 20

seeing that that was attached. That

12:21:09 21

was going to be something that I -- but

12:21:10 22

I think that issue has already been

12:21:13 23

resolved, so we don't have to do that.

12:21:16 24

MR. SINGER: So 13 is Breitling 46

12:21:20 25

to 51?

1
12:21:20 2
12:21:23 3
12:21:26 4
12:21:27 5
12:21:41 6
12:21:41 7
12:21:46 8
12:21:50 9
12:21:50 10
12:21:51 11
12:21:52 12
12:21:53 13
12:22:03 14
12:22:05 15
12:22:06 16
12:22:07 17
12:22:10 18
12:22:11 19
12:22:11 20
12:22:12 21
12:22:14 22
12:22:18 23
12:22:19 24
12:22:29 25

AMSTUTZ

MS. GOODMAN: Yes, Breitling 046 to
051.

MR. SINGER: Okay.
You can take that off.

BY MS. GOODMAN:

Q I'm showing you what's now been marked
as Amstutz Exhibit 13, Breitling 046 through
051.

Can you identify this document?

A Yes.

Q Tell me what it is.

A It is Fred Cargian's contract for two
thousand and...

Q '12?

A '12, sorry.

Q This is contract for 2012?

A Yes. Sorry.

Q Is that correct?

A Correct.

Q And if you look at the second page,
Breitling 047, left-hand corner, is that your
signature?

A Yes.

Q Let's look at the third page of that,

1

AMSTUTZ

12:22:31 2 Breitling 048, which is Appendix A.

12:22:35 3 A Yes.

12:22:41 4 Q There are still two components of the
12:22:45 5 bonus formula, correct?

12:22:48 6 A Correct.

12:22:48 7 Q And component 1 is still a sales
12:22:51 8 performance, and component 2 is still a
12:22:54 9 qualitative objectives performance, correct?

12:22:58 10 A Correct.

12:22:58 11 Q There is a change, however, in terms of
12:23:05 12 the division between the two, correct?

12:23:07 13 A Correct.

12:23:07 14 Q And this year, 65 percent -- in 2012,
12:23:11 15 only 65 percent of the bonus -- potential bonus,
12:23:16 16 was attributable to actual sales, correct?

12:23:20 17 A Correct.

12:23:20 18 Q And then 35 percent attributable to the
12:23:22 19 qualitative objectives, correct?

12:23:25 20 A Correct.

12:23:40 21 Q And as different from 2011, if you want
12:23:43 22 to look at the two and compare them, Amstutz-12
12:23:46 23 and Amstutz-13, in 2011, the component related
12:23:51 24 to actual sales was sort of a straight-numbers
12:23:54 25 thing. If you sold 100 percent of your goal,

1
12:24:03 2
12:24:06 3
12:24:06 4
12:24:09 5
12:24:09 6
12:24:12 7
12:24:13 8
12:24:16 9
12:24:18 10
12:24:22 11
12:24:25 12
12:24:27 13
12:24:35 14
12:24:50 15
12:24:52 16
12:24:55 17
12:26:22 18
12:26:22 19
12:26:24 20
12:26:25 21
12:26:25 22
12:26:25 23
12:26:39 24
12:26:39 25

AMSTUTZ

you got 100 percent of your bonus, correct?

A Correct.

Q That changed in 2012, correct?

A Correct.

Q And you explain to me what that change was?

A So I guess now we figure out.

Q Now we can figure out what that --

A So it's in 2012 that that change was made of distributing the bonus differently than in the prior years.

Q So I would like to mark 2011 separately -- I mean, the Breitling --

MS. GOODMAN: Excuse me, give me a minute here.

(An off-the-record conversation was held.)

MS. GOODMAN: Here, make this Amstutz-14.

(One-page spreadsheet titled "Fred Cargian, NE-1," Bates stamped Breitling_011, was marked Exhibit Amstutz-14 for identification.)

Q Okay. I'm showing you what has now

1

AMSTUTZ

12:26:42

2

been marked as Amstutz-14. This is Breitling

12:26:44

3

011, which is that review sheet. And this was

12:26:53

4

the final review sheet for Mr. Cargian in 2012,

12:26:56

5

correct?

12:26:57

6

A Correct.

12:26:57

7

Q And it had your handwritten notes of

12:27:00

8

what Mr. Cargian was actually given as his bonus

12:27:04

9

for 2012, correct?

12:27:05 10

A Correct.

12:27:05 11

Q And this is not a part of the -- this

12:27:13 12

document, Amstutz-14, was not a part of

12:27:19 13

Amstutz-13, which is the contract that you

12:27:21 14

entered into with Mr. Cargian in early 2012,

12:27:26 15

correct?

12:27:27 16

A Correct.

12:27:33 17

Q All that is attached is part of the

12:27:36 18

actual contract, is what's now -- is

12:27:41 19

Breitling 051, which is a statement about goals,

12:27:44 20

but not what has been accomplished, correct?

12:27:49 21

A Correct.

12:27:53 22

MR. SINGER: And, Counsel, just to

12:27:55 23

clarify the exhibits, we're leaving

12:27:57 24

Breitling 001 as the last page of

12:28:00 25

Exhibit 12?

1
12:28:00 2
12:28:03 3
12:28:04 4
12:28:09 5
12:28:12 6
12:28:16 7
12:28:22 8
12:28:26 9
12:28:27 10
12:28:32 11
12:28:36 12
12:28:39 13
12:28:59 14
12:29:00 15
12:29:00 16
12:29:03 17
12:29:07 18
12:29:11 19
12:29:14 20
12:29:21 21
12:29:24 22
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AMSTUTZ

MS. GOODMAN: Yes, I'm leaving -- because when documents were provided to us, it would seem that the belief was that Breitling 011 was part of Mr. Cargian's -- I guess I thought it was part of his 2011 contract; however, as Mr. Amstutz has pointed out, it is not. So we're going to leave Breitling 011 as part of a contract, Amstutz-12, and we're also going to have a separate exhibit that will be Amstutz-14.

(An off-the-record conversation was held.)

Q Now, you've explained to me -- I think when we went over Amstutz-14, you had explained to me how these various components were calculated under achievement -- under the sales achievement goals.

As I understand it, starting in 2012 Tourneau became a house account, correct?

A I would not recall what happened exactly with Tourneau.

Q You do recall it became a house

1

AMSTUTZ

12:29:32 2

account, no?

12:29:34 3

A No.

12:29:34 4

Q No? Okay.

12:29:50 5

Now, look at component 2 of Amstutz-13.

12:29:57 6

That's on Breitling 048, the third page. That's

12:30:01 7

the qualitative analysis, correct?

12:30:04 8

A Excuse me, you're on page 3?

12:30:07 9

Q Page 3 of 5, yes.

12:30:16 10

A That's the determination of the sale

12:30:18 11

goal, the presentation of the base salary and

12:30:21 12

the potential bonus, and then the explanation

12:30:24 13

about the components, the two components that

12:30:27 14

are going to make the -- the -- I mean, the

12:30:34 15

explanation of the two components of the bonus.

12:30:36 16

Q And did you ever hear that -- it just

12:30:39 17

says it includes, quote, the number of visits,

12:30:43 18

but did anybody ever establish how many visits

12:30:47 19

each sales rep must make in order to meet the

12:30:52 20

qualitative objective?

12:30:57 21

A If you take the Breitling 051, like the

12:31:01 22

last page, component No. 2, qualitative

12:31:09 23

objectives, you have the total number of visits.

12:31:15 24

Q It says it's worth 20 percent of that

12:31:20 25

part of the bonus --

1

AMSTUTZ

12:31:21 2

A Yeah.

12:31:22 3

Q -- but it doesn't say how many visits

12:31:25 4

equal 20 percent --

12:31:26 5

A Correct.

12:31:26 6

Q -- right?

12:31:27 7

A Correct.

12:31:28 8

Q And it does not give you an objective

12:31:32 9

how many new doors have to be opened in order to

12:31:35 10

meet that criteria, correct?

12:31:37 11

A No, it gives the -- I mean, I'm sorry,

12:31:41 12

for the total number of visits, it gives you --

12:31:44 13

we give a number of 275 for the number of visits

12:31:50 14

to be made. We give --

12:31:52 15

Q Where is that?

12:31:53 16

A If you take, under component No. 2 --

12:31:59 17

Q Yes.

12:31:59 18

A -- qualitative objectives, the total

12:32:03 19

number of visits.

12:32:04 20

Q 20 percent, it says.

12:32:06 21

A No, 20 percent of the target.

12:32:10 22

Q Okay.

12:32:10 23

A I mean, is the part of the bonus that

12:32:13 24

is going to be paid for the number of visits.

12:32:16 25

The number of visits to realize, 275.

1

AMSTUTZ

12:32:20 2

Q I see. I missed that. Okay.

12:32:22 3

And for the number of new doors

12:32:25 4

opened, 3, and then the price, average price,

12:32:27 5

needed to be above \$4,300?

12:32:30 6

A Correct.

12:32:31 7

Q 44 weeks of call reports?

12:32:35 8

A Correct.

12:32:35 9

Q And 100, what are IFP-1 and IFP-2?

12:32:40 10

A That's the two types of trainings --

12:32:43 11

Q Okay.

12:32:44 12

A -- that the sales representative is

12:32:47 13

doing while visiting stores.

12:32:49 14

Q Okay.

12:32:50 15

Now, there was produced by Breitling

12:33:00 16

Appendix C, but filled out with the numbers

12:33:08 17

actually achieved. Is that correct?

12:33:11 18

A Correct.

12:33:11 19

Q And who would have that document?

12:33:13 20

Where would that document be?

12:33:16 21

A It is the Document 14.

12:33:18 22

Q Yes. That's --

12:33:19 23

A And the document should be part of --

12:33:20 24

should -- it's part of the review.

12:33:23 25

Q And this should be for every one of

1
12:33:26 2
12:33:26 3
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12:33:31 5
12:33:31 6
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12:33:40 10
12:33:42 11
12:33:46 12
12:33:53 13
12:33:57 14
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12:34:04 16
12:34:05 17
12:34:09 18
12:34:12 19
12:34:17 20
12:34:20 21
12:34:21 22
12:34:25 23
12:34:27 24
12:34:29 25

AMSTUTZ

the --

A Correct.

Q -- sales reps, correct?

A Correct.

Q And your handwritten notes would be on every one of the sales reps' filled-out Appendix Cs, correct?

A No.

Q Why not?

A Because the correction that is wrote on the spreadsheet is for a sales representative that would have had a part of the -- or a midyear bonus paid, and I'm subtracting what has been paid midyear for the final total to be paid to the sale rep.

Q Yeah, but you also put in how much they were given on the qualitative.

On Mr. Cargian's -- what's that exhibit number?

MR. SINGER: 14.

Q On Mr. Cargian's 14, you handwrote how much he received in terms of the share of the qualitative bonus, correct?

A In which year you mentioned?

1

AMSTUTZ

12:34:30 2

Q Exhibit 14.

12:34:32 3

A Yeah.

12:34:32 4

Q Right. You did put that number in,

12:34:34 5

right?

12:34:35 6

A I put that number in. That is the

12:34:37 7

second part of the bonus that is paid to --

12:34:40 8

Q Right.

12:34:41 9

A -- Mr. Cargian, yes.

12:34:42 10

Q And you noted how much he actually got

12:34:45 11

paid. Not just what was potential, but how much

12:34:48 12

he actually got paid for 2012 in terms of the

12:34:51 13

second part of the bonus, correct?

12:34:54 14

A Correct.

12:34:55 15

Q And did you make that handwritten

12:34:56 16

notation on every one of the other sales reps?

12:35:00 17

A Yes.

12:35:19 18

Q Okay.

12:35:20 19

The change in the bonus system, I think

12:35:22 20

you already answered. I just want to make sure

12:35:25 21

there's no misunderstanding.

12:35:28 22

This new bonus system that you can find

12:35:30 23

in Amstutz-13 at page Breitling 048, that's the

12:35:38 24

same formula that was given to all of the sale

12:35:42 25

reps in that year?

1 AMSTUTZ

12:35:43 2 A Correct.

12:36:21 3 MS. GOODMAN: This is 15.

12:36:22 4 (Four-page employment contract
12:36:22 5 letter dated February 15, 2013, from
12:36:22 6 Breitling to Fred Cargian, Bates
12:36:22 7 stamped Breitling_018 through 21, was
12:36:22 8 marked Exhibit Amstutz-15 for
12:36:36 9 identification.)

12:36:36 10 Q Okay. I'm showing you what's now been
12:36:39 11 marked as Amstutz-15. It's Breitling 018
12:36:44 12 through Breitling 021. Can you identify this
12:36:49 13 document?

12:36:49 14 A Yes.

12:36:49 15 Q What is it?

12:36:51 16 A Fred Cargian's contract for 2013.

12:36:56 17 Q And if you look at page 2 of 5, that's
12:36:59 18 Breitling 019, is that your signature in the
12:37:02 19 left-hand corner?

12:37:03 20 A Yes.

12:37:09 21 Q And if you look at page 3 of 5 of
12:37:12 22 Amstutz-15, that's Breitling 020, we have the
12:37:21 23 formula once again set out, correct, the
12:37:24 24 bonus --

12:37:24 25 A Yes.

1

AMSTUTZ

12:37:24 2

Q -- formula?

12:37:26 3

12:37:31 4

And, once again, the bonus formula has changed from the prior year, has it not?

12:37:34 5

12:37:38 6

12:37:40 7

12:37:44 8

12:37:48 9

A Yes, I suppose so. We changed it -- we kind of change it every year, because, for example, I mean, if we talk about the component that is the in-house movement, we want the in-house movement to increase every year.

12:37:51 10

Q Okay.

12:37:52 11

12:37:58 12

12:38:02 13

12:38:05 14

12:38:10 15

A So basically all those percentages can potentially be changed a little bit depending on where we want to put the strength. It can be put more strength on the training instead of the strength on the visits, or something like this.

12:38:12 16

Q So the bonus structure is to --

12:38:15 17

MS. GOODMAN: Withdraw that.

12:38:17 18

Q They say, "We change it every year..."

12:38:21 19

That's you and Mr. Prissert?

12:38:22 20

12:38:26 21

12:38:27 22

12:38:37 23

A In general, it's Mr. Prissert and Chuck Anderson that are going to change those percentages or -- or -- or the balance of the bonus structure.

12:38:41 24

Q Did Ms. Bodman change it every year,

12:38:45 25

change the bonus structure every year?

1
12:38:48 2
12:38:50 3
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12:38:53 5
12:38:54 6
12:38:57 7
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12:39:05 10
12:39:08 11
12:39:10 12
12:39:13 13
12:39:15 14
12:39:18 15
12:39:23 16
12:39:26 17
12:39:29 18
12:39:36 19
12:39:39 20
12:39:43 21
12:39:44 22
12:39:46 23
12:39:48 24
12:39:53 25

AMSTUTZ

A Under Ms. Bodman --

Q Yes.

A -- we had the old version of the contract.

Q And that was a single bonus structure, a percentage of the sales made, correct?

A Correct.

Q And it was straight; you sell a million dollars worth, you get your 100 percent?

A I guess there was always an administrative part and a sell-in or a sales part.

Q What was the difference in how it was under Ms. Bodman?

A I mean, two different presidents, two different ways of trying to push the business.

Q Okay.

Has the business grown under Mr. Prissert? In actual sales, the number of the sales, has it grown?

A It's steady.

Q Has it grown, though?

A Well, you read the newspaper, as I do. The luxury industry is a tough industry.

1

AMSTUTZ

12:39:58 2 Q And when did the luxury industry start
12:40:01 3 being a tough industry?

12:40:03 4 A In 2008 and 2009.

12:40:05 5 Q And what was it like in 2010 and 2011,
12:40:09 6 still a tough industry?

12:40:11 7 A It got a little better, but it never
12:40:15 8 recovered completely.

12:40:19 9 Q Now, going back to Amstutz-15, page 3
12:40:22 10 of 5, the bonus system changed in a number of
12:40:27 11 ways. Originally, it was a 75/25 percent split
12:40:37 12 between actual sales and qualitative
12:40:40 13 achievement, correct?

12:40:41 14 A Correct.

12:40:41 15 Q Then in 2012 it went to 65/55 correct?

12:40:49 16 A Correct.

12:40:49 17 Q And now, it went to 60 percent in sales
12:40:53 18 and 40 percent of qualitative measures, correct?

12:40:58 19 A Correct.

12:40:58 20 Q And also, component 1 changed in terms
12:41:01 21 of how actual sales were measured?

12:41:06 22 A Correct.

12:41:06 23 Q Tell me about those changes.

12:41:23 24 A You want a comparison between 2012 and
12:41:26 25 2013?

1

AMSTUTZ

12:41:30 2

Q Yes.

12:41:49 3

A So for component No. 1 --

12:41:52 4

Q In two thousand-- yeah, okay.

12:41:55 5

A A, I don't think that there was a

12:41:58 6

difference; B, I do not think that there was

12:42:03 7

either a difference; C, same thing.

12:42:21 8

Q Okay.

12:42:31 9

A We added, in 2013, an increase of

12:42:37 10

sell-out of 10 percent versus last year for the

12:42:45 11

Tourneau doors.

12:42:45 12

Q What does that mean, increase -- that

12:42:48 13

Tourneau had to sell 10 percent more in 2013

12:42:53 14

than it sold in 2012? Is that -- do I

12:42:58 15

understand it correctly?

12:43:00 16

A Correct.

12:43:00 17

Q But the sales rep does not -- was no

12:43:03 18

longer selling to Tourneau; it was just

12:43:07 19

servicing Tourneau. Is that correct?

12:43:09 20

A The company was always selling to

12:43:11 21

Tourneau.

12:43:12 22

Q But the sales rep in each specific

12:43:14 23

territory was no longer selling to Tourneau. Is

12:43:19 24

that correct?

12:43:20 25

A Ah... each sales rep is visiting

1

AMSTUTZ

12:43:27 2 Tourneau as part of their region, and basically
12:43:32 3 the fact to visit Tourneau in your region and to
12:43:36 4 provide the right training to sales employees or
12:43:41 5 the sales force of Tourneau makes -- was one
12:43:45 6 objective in 2013 --

12:43:46 7 Q Okay.

12:43:47 8 A -- to be achieved by each of the sales
12:43:51 9 reps with the doors that he had at Tourneau.

12:43:56 10 Q Okay.

12:43:57 11 A We cannot distribute our products and
12:44:00 12 just sell them to somebody and not offer the
12:44:03 13 proper training or proper -- I mean, proper
12:44:10 14 standard for the watches.

12:44:12 15 Q Right.

12:44:12 16 A So that was part of their sales goal.

12:44:14 17 Q So when it says an increase of
12:44:21 18 10 percent versus last year by Tourneau, is that
12:44:22 19 for the individual sales rep's territory or was
12:44:26 20 that an increase nationwide?

12:44:29 21 A It was 10 percent nationwide. But, I
12:44:32 22 mean, depending on the number of the doors in
12:44:36 23 your territory, you would have maybe three doors
12:44:40 24 in one territory, two in another one.

12:44:44 25 Q Right.

1

AMSTUTZ

12:44:45 2 A Four in another one.

12:44:46 3 Q Right. But it says that part of the
12:44:50 4 bonus is based upon an increase of sell-outs of
12:44:55 5 10 percent versus last year by Tourneau. Does
12:44:58 6 that mean that the individual sales rep in his
12:45:01 7 or her territory had to have an increase of
12:45:04 8 sell-out by the doors in his or her territory,
12:45:10 9 or was the 10 percent versus last year
12:45:13 10 nationwide, so all of the Tourneau doors had to
12:45:16 11 increase by 10 percent, cumulatively?

12:45:19 12 A I would have to check.

12:45:20 13 Q You don't know the answer to that?

12:45:23 14 A Um... I don't know what the answer is
12:45:26 15 to that, if it was a sale goal by sales rep or
12:45:31 16 if it was as a total -- I mean, as a --

12:45:36 17 Q Who would know that? Would Thierry
12:45:42 18 Prissert know that?

12:45:43 19 A Yes.

12:45:45 20 And then component E, we asked for a
12:45:48 21 target of 20 percent --

12:45:50 22 Q Which was up from 10 percent of the
12:45:52 23 target?

12:45:53 24 A That was up from 13 percent of the last
12:45:56 25 year.

1

AMSTUTZ

12:45:57 2

Q Oh, okay.

12:45:58 3

12:46:10 4

And how did component 2 change from the prior year?

12:46:18 5

(Pause)

12:46:22 6

12:46:26 7

12:46:31 8

12:46:37 9

12:46:46 10

12:46:50 11

12:46:54 12

A So we put only three components to the -- to the -- I mean, three component in -- I mean, three components in the component 2 in 2013 versus one, two, three, four... five in 2012. And I guess, I mean, pretty much they stayed the same, only that we put a few of the components in one category.

12:46:56 13

12:47:01 14

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12:47:25 20

Q Well, the last category, 4, you had very specific goals in terms of how many visits, how many call reports had to go in and so forth.

Now it's just you have to -- well, what did it say? An overall quality of work bonus without any specifications as to what is -- without any objective standards. Is that right?

12:47:25 21

12:47:31 22

12:47:35 23

12:47:41 24

12:47:42 25

A We would need to see the last page that is missing in that document where we have maybe a clearer explanation than just a writing explanation.

Q Do you know why that last page,

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12:47:44 2
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12:47:56 6
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12:48:45 10
12:48:49 11
12:48:56 12
12:48:57 13
12:49:01 14
12:49:04 15
12:49:05 16
12:49:12 17
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12:49:17 20
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12:49:31 22
12:49:33 23
12:49:35 24
12:49:38 25

AMSTUTZ

Appendix C, is missing?

Appendix B is missing, too. Do you know why?

A No.

MS. GOODMAN: And we want (RQ) Appendix B and C for all contracts. It should have been there to begin with.

Q Now, you sat in all of the review sessions where general review was given and then an ultimate determination of bonus was made and written down.

Referring to 2013, was Brian Criddle awarded his entire bonus for meeting his qualitative objectives?

A I will have to check.

Q Where would you check?

A In his file.

Q Do you recall the session, the review session with Brian Criddle for 2013?

A No.

Q You don't recall anything that Mr. Prissert said to him in that session?

A I review 150 people. I don't remember exactly what was said.

1

AMSTUTZ

12:49:40 2

Q Okay. You don't remember that in 2013

12:49:43 3

it was uncovered that Mr. Criddle falsified his

12:49:48 4

reports?

12:49:50 5

A I remember.

12:49:51 6

Q Okay. And you remember that he claimed

12:49:56 7

to be in Las Vegas when in fact he was really on

12:50:00 8

personal business in Los Angeles?

12:50:03 9

A Correct.

12:50:04 10

Q Or vice versa. Do you remember that?

12:50:06 11

A Yes.

12:50:06 12

Q Was anything said about that in his

12:50:09 13

review of 2013?

12:50:12 14

A It was previously said to him. I don't

12:50:16 15

know if his review, if we still talked about it.

12:50:20 16

I don't recall that we talked about it in his

12:50:24 17

review.

12:50:24 18

Q And in discussing his bonus for the

12:50:31 19

qualitative portion, was he told, you know, you

12:50:36 20

aren't getting your bonus for the qualitative

12:50:40 21

session given what you did?

12:50:41 22

A I don't recall what we -- I mean, I

12:50:45 23

would need to check.

12:50:45 24

Q To the best of your recollection,

12:50:49 25

was -- did he receive at least some money for

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12:50:52 2
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12:51:04 6
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12:51:22 10
12:51:29 11
12:52:42 12
12:52:42 13
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12:53:01 19
12:53:03 20
12:53:05 21
12:53:08 22
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AMSTUTZ

the qualitative performance?

A I would need to check.

Q And is there any other way of checking besides -- besides looking at the -- his handwritten pages, which were like Appendix C to the contracts?

A That would be the only place where we would have a state -- the quality bonus --

(An interruption occurred.)

(Off the record)

BY MS. GOODMAN:

Q If you cannot locate these sheets that we don't have from Mr. Criddle's review, could you ask Mr. Criddle what he got?

A Sure.

MR. SINGER: Objection to the form.

Could he, as in is that possible? Is that what you're asking?

Q Yeah. Is it possible that you could get that information from Mr. Criddle?

A I don't think that he's going to recall exactly --

MR. SINGER: And, again, any requests --