

1 IN THE DISTRICT COURT OF THE UNITED STATES
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

3 ROBERT JEAN, ET AL.,)
4 Plaintiff,)
5 vs.) Cleveland, Ohio
6 THE STANLEY WORKS, ET AL.,) Civil Action
7 Defendant.) Number 1:04CV1904

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9 TRANSCRIPT OF PROCEEDINGS HAD BEFORE
10 THE HONORABLE DAVID S. PERELMAN,
11 MAGISTRATE JUDGE OF SAID COURT,
12 ON FRIDAY, NOVEMBER 17, 2006
- - - - -

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10 Proceedings recorded by mechanical stenography; transcript
11 produced by computer-aided transcription.

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1 FRIDAY, NOVEMBER 17, 2006 AT 1:00 P.M.
2 THE COURT: Are you ready to proceed?
3 MR. FRIEDMAN: Yes, Your Honor.
4 MR. TOCE, SR.: Yes, Your Honor.
5 THE COURT: And you will be calling as your first
6 witness.
7 MR. FRIEDMAN: Carrie Rasmussen.
8 CARRIE RASMUSSEN,
9 of lawful age, a witness called by the Defendant,
10 being first duly sworn, was examined
11 and testified as follows:
12 DIRECT EXAMINATION OF CARRIE RASMUSSEN
13 BY MR. FRIEDMAN:
14 Q. Good afternoon, Ms. Rasmussen.
15 Would you please state your name for the court please?
16 A. Carrie L. Rasmussen.
17 Q. And, Ms. Rasmussen, who are you employed by?
18 A. Stanley Works.
19 Q. And how long have you been employed by Stanley?
20 A. Approximately ten years.
21 Q. And can you describe the positions that you've held at
22 MAC's. We'll start from the first position?
23 A. Customer service representative.
24 Q. Okay. What did you do in that job?
25 A. Answer the phones in our call center from our

1 distributors and other vendors that may be calling.

2 Q. And approximately what years did you have that job,
3 roughly?

4 A. Roughly, from the time I started, and I held that
5 position for I think about two years.

6 Q. Okay. What next?

7 A. Then from there I went to our e-Commerce Department,
8 which was a new department that was starting for our
9 government, for government sales and other e-Commerce base
10 sales.

11 Q. Okay. And what about after that?

12 A. Then I went back to customer service as customer
13 service lead.

14 Q. And what was your next position?

15 A. Recruiting specialist.

16 Q. Recruiting specialist.

17 Now what year did you start that position?

18 A. Probably about 2002.

19 Q. Okay. And can you briefly tell us what your job
20 responsibilities were as recruiting specialist?

21 A. Contacting people who are interested in the MAC Tools
22 distribution to own their own business.

23 Q. And you're still in that position today?

24 A. I am.

25 Q. Okay. Now, you said contacting individuals who are

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1 interested in becoming distributors. Can you explain how a

2 potential distributor would first contact MAC, how the
3 process works?

4 A. Either through ads being run in the paper by
5 distributor referral, web site information, word of mouth,
6 any other way in which advertising can be done for people to
7 pick up the interest to contact us.

8 Q. Okay. So if someone were to make contact, interested
9 in being a distributor, that communication would go to you?

10 A. To myself and other people in our department, yes.

11 Q. Who else was in your department who was in your
12 department in 2003, 2002-2003?

13 A. Shelly Hightshoe and a young lady by the name of
14 Heather. And I think that was it.

15 Q. So a call would come from a prospective distributor.
16 What would you do, what was the first step in the process?

17 A. We walked through the prescreening process, as far as
18 we had a district manager to go over what the actual
19 opportunity is and what the requirements were to come on
20 board.

21 Q. That would be part of the telephone interview you would
22 do?

23 A. Yes.

24 Q. And you would take the results of that. What would
25 happen next?

1 A. If they passed the prescreen, or if they were still
2 interested in moving forward, then we would send them an

3 information packet and forward their information on to the
4 district manager in the field for them to contact.

5 MR. FRIEDMAN: Okay. I'm going to mark a
6 demonstrative exhibit. This will be I think H. Did we stop
7 at G?

8 THE CLERK: G, yes.

9 MR. FRIEDMAN: And if I could also get Exhibit A
10 from yesterday which is part of this packet. Do you have
11 the original of that.

12 THE CLERK: The book.

13 (Discussion off the record.)

14 MR. FRIEDMAN: For the record A is the 2004
15 disclosure, not the 2002, which I thought was marked
16 yesterday. And we'll figure it out.

17 BY MR. FRIEDMAN:

18 Q. Ms. Rasmussen, you described a package that you mailed
19 out to a prospective distributor after passing the initial
20 telephone interview that you did.

21 Can you look at Exhibit H that I just presented to you
22 and tell me whether that is the package that you would mail
23 out at that time? Is that what you were describing?

24 MR. TOCE, SR.: Objection, leading.

25 THE COURT: Overruled.

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1 THE WITNESS: Well, there is a disclosure
2 agreement, an application, a catalog, promotional items and
3 booklet and videotape. That appears to be the packet that

4 we would send out, yes.

5 Q. Okay. And you would send that to the prospective
6 distributor?

7 A. Yes.

8 MR. FRIEDMAN: And I'll tell you what, I'm going
9 to mark separately within Exhibit H, Exhibit I, because I
10 think I will have a problem with the record with the old
11 Exhibit.

12 Q. Exhibit I will be the 2002 disclosure you just
13 described, correct?

14 A. Yes.

15 Q. So you said you mailed that package out. Were there
16 ever situations in which the prospective distributor would
17 get that package from some source other than being mailed
18 out by you?

19 A. Yes.

20 Q. How would that work?

21 A. They could have received it directly from our district
22 manager.

23 Q. And where did the district manager receive the packages
24 from?

25 A. From us, we would send them quantities at a time.

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1 Q. And when you send these packages they had the
2 disclosure agreement in it, which is marked as Exhibit I?

3 MR. TOCE, SR.: Objection, leading.

4 THE COURT: Overruled.

5 THE WITNESS: Yes.

6 Q. Okay. So the distributor gets this package. What
7 happens next in the process?

8 A. The district manager should be contacting them for an
9 interview.

10 Q. Okay. The direct manager, that's somebody in the
11 field?

12 A. Yes.

13 Q. And the district manager at the regional has what work
14 basically?

15 A. I'm sorry?

16 Q. How does that work geographically, is it a set of them
17 for different territories?

18 A. Yes.

19 Q. And so a district manager holds an interview. And how
20 does that process work?

21 MR. TOCE, SR.: Objection, leading.

22 THE COURT: Overruled.

23 THE WITNESS: The district manager would normally
24 go to a prospect or person interested in the
25 distributorship, meet with them. They already have the

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1 packet, the person who's interested. And if they wanted to
2 continue in the process, they would fill out the application
3 and sign the back of the disclosure agreement, and the
4 district manager takes those items and fax them to us.

5 Q. So what would you do when you started those materials?

6 A. We start processing the application.

7 Q. Start the process of the application once you got those
8 materials?

9 A. Submitting the prospect for background check and also
10 for credit approval and send a drug screen packet.

11 Q. Okay. And how would communications be handled with the
12 prospective distributor with this part of the process?

13 A. By mail and also by phone call.

14 Q. Okay. Did you ever have any inquiries from any
15 prospective distributors about the contract documents prior
16 to them coming to Columbus?

17 A. Yes.

18 Q. Describe that.

19 MR. TOCE, SR.: Objection to the relevance. In
20 other words, if she has some information about these eight
21 people that are here, that's fine, but information that
22 other distributors got that aren't here, that didn't
23 testify, I think that's irrelevant to this hearing.

24 THE COURT: I'm assuming it's a predicate
25 question. I overrule the objection, with the understanding

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1 that what may have happened with others would not
2 necessarily be pertinent to the eight that have appeared.

3 MR. FRIEDMAN: I would like to speak to that, two
4 points. The witnesses that appeared, quite a few of them
5 testified that they were not sure what and when they got it.
6 So the process in the normal course is certainly relevant to

7 that. Second, none of the witnesses have testified what
8 happened, what they saw happening to other people, and that
9 was admitted. So that was also relevant to that.

10 THE COURT: Mr. Friedman, I didn't hear a single
11 one of the eight talk about having communications with a
12 representative of Stanley Works other than -- Stanley MAC,
13 other than the district managers who supposedly recruited
14 them. Unless I am sorely mistaken, I didn't hear anything
15 about any of them talking to anybody at MAC headquarters.

16 MR. FRIEDMAN: Agreed. What certainly is relevant
17 is the opportunity to speak to somebody, which was a
18 question that was asked, which was somebody who was
19 available at the other side of the phone who did communicate
20 with them in the normal course. Whether or not these eight
21 did that, certainly is relevant as to the testimony
22 yesterday that the opportunity was there, which was a
23 fundamental question at issue yesterday.

24 THE COURT: I will let her answer the question did
25 she ever get inquiries.

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1 THE WITNESS: Yes.

2 Q. Okay. And how did you respond to those inquiries about
3 the contracts?

4 A. I told them in the packet they had received there was a
5 thick gray book and their contractual agreements were in
6 there.

7 Q. Okay. Now, can you describe the process then for

8 bringing the prospective distributors into Columbus for
9 their training?

10 A. As long as they made their way through the process,
11 which would be past the criminal background, you know,
12 driving record, drugs, \$8,000 in the bank, and the other
13 list of contractual things that we might need from them,
14 such as paperwork and documents, we would ask them when they
15 would be ready to come to class and come to Columbus and
16 setup. We would make those arrangements for them. They
17 were responsible for making travel, and we would make hotel
18 arrangements for them.

19 Q. I ask you to pull out Exhibit I out of Exhibit H. And
20 if you'd look to the back of that document, there is an
21 attachment G?

22 A. Yes, there's two copies.

23 Q. And you're talking about a check list of documents that
24 would be in the file. Is that one of the things you're
25 describing?

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1 A. Yes.

2 Q. Can you tell us why they're two copies of that
3 disclosure?

4 A. One would be of their record to keep that was part of
5 the disclosure agreement, which we received, the other one
6 for our records to show that they had received the book.

7 Q. Okay. So you bring the prospective distributor to
8 Columbus after seeing their check list. What would happen,

9 what was your involvement next in that process?

10 A. On the first day of class we would go over and meet
11 with the class, obviously, because we have several
12 conversations with them throughout their process of getting
13 to Columbus.

14 MR. TOCE, SR.: Excuse me. I have an objection.
15 Your Honor, she's saying them. The foundation is not laid
16 as to them, our guys, or distributors in general?

17 THE COURT: I am assuming this is a description of
18 the process in general.

19 MR. TOCE, SR.: Thank you.

20 BY MR. FRIEDMAN:

21 Q. For the calendar year 2000, 2003 were you present for
22 every training?

23 A. Yes.

24 Q. And you're describing the first day of training, the
25 process I believe we got to. Can you please repeat what

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1 would happen on the first day of training?

2 A. On the first day of training we would go to the
3 distribution center where training classes were held. And
4 we would meet with each distributor individually, introduce
5 ourselves, and collect any additional documentation that had
6 not been turned in to us through the process before they got
7 to Columbus.

8 Q. Okay. Now, after that, what was your next involvement
9 in the process after that first day of training?

10 A. It would be signing day at that point.

11 Q. And signing day would be when?

12 A. When they would sign their loan agreements, that they
13 had them pay us for inventory if they were only coming in as
14 outside financing or cost, and sign their contractual
15 distributor agreement.

16 Q. Can you describe overall how that process worked on
17 signing day?

18 A. We would call one person back at a time into a private
19 area, which we could sit with them, explain to them what
20 they were signing, and follow through with the signing
21 process at that point.

22 Q. The calendar year is 2002, 2003, you say we. We is
23 who?

24 A. Myself and other recruiting specialist.

25 Q. And who is that?

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1 A. Shelly Hightshoe at that time.

2 Q. Okay. And so the two of you, to the best of your
3 recollection, were there for each signing day in 2002, 2003?

4 A. Yes.

5 Q. You said that you go to -- they go to headquarters and
6 you called them back, you say, one at a time for signing.

7 A. Yes. We would like to give them privacy in case they
8 had any questions or wanted to review anything.

9 Q. Your office or cubical?

10 A. Mostly in the cubical or office setting, depending on

11 what was available at the time.

12 Q. You had the prospective distributor there, and did you
13 have documents with you at that time?

14 A. Yes.

15 Q. And what did you tell them?

16 A. I told them that these would be their contractual
17 agreements that they would be signing. That there are two
18 copies, one would be for them and one would be for me. That
19 way they had their original signatures on their agreements
20 that they signed. And once they were signed and executed
21 through our president, then they would receive a mailed copy
22 from us so they could have them for the records. Also that
23 any time through the signing that if they had any questions,
24 that they could stop me, and they could review, or they
25 could read the material. And that -- but if they didn't

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1 have any questions, we would go right to the signature pages
2 and sign.

3 Q. Did you receive some training from someone as to giving
4 that instruction to the distributors?

5 A. Yes. Pat Stethem and Zella Coldiron.

6 Q. And did you have an understanding of what their
7 positions were prior to your being a screening specialist?

8 A. Yes.

9 Q. And what's your understanding of that?

10 A. My understanding is that they worked in the human
11 resource department and that was their job before it was

12 passed on to us.

13 Q. So you gave your instructions to the individual
14 distributor. And what would happen next?

15 A. They would sign on the agreement pages, or if they
16 needed to stop and review anything, they could. Sometimes
17 questions are asked exactly what they were signing, and I
18 told them that I can not interpret anything that they are
19 signing, that they would need to read the document on their
20 own.

21 Q. Did you ever tell a distributor that they didn't have
22 time to read documents?

23 A. No.

24 Q. Did you ever tell a distributor that they weren't
25 allowed to read the contents of the documents before

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1 signing?

2 A. No.

3 Q. Did you ever refuse a distributor who requested more
4 time to read the documents?

5 MR. TOCE, SR.: Objection, leading.

6 THE COURT: Overruled.

7 THE WITNESS: No.

8 Q. Did you ever have a situation where a distributor
9 didn't sign the document then?

10 A. Yes.

11 Q. Can you describe that?

12 A. I can remember one in particular where somebody was

13 asked to sign a guarantee of payment for performance and at
14 the top of the document its says please consult an attorney
15 before signing this. He said he didn't want to sign it. I
16 said that was fine, if he needed to take time to call an
17 attorney or review the document, he was more than welcome to
18 do so. We did not complete signing that day and the next
19 day he said -- he came back and said he was ready to sign.

20 Q. Did you ever have a situation where a distributor asked
21 for more time and you moved on?

22 A. Yes.

23 Q. When did that happen? What was that kind of situation?

24 A. On signing day we have normally quite a few people, so
25 if they were taking quit a long time reviewing the documents

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1 I just let them know I'm going to leave you here to review
2 and then I'm going to go grab somebody else to sign and then
3 I'll come back to them so they could sit in privacy as well
4 and review.

5 MR. FRIEDMAN: Okay. One moment, Your Honor.

6 THE COURT: Ms. Rasmussen, was there a normal
7 class size?

8 THE WITNESS: Back in 2002, 2003 it was probably
9 12 to 15 maybe for a normal class size.

10 MR. FRIEDMAN: No further questions at this time.

11 THE COURT: Were you here yesterday?

12 THE WITNESS: No, I was not. Do I look familiar?

13 THE COURT: No. There were a bunch of people

14 here. Because if Mr. Toce doesn't ask you a particular
15 question, eventually, I will, or maybe I will.

16 MR. TOCE, SR.: I was going to ask.

17 THE COURT: I'll do it first.

18 We had a number of witnesses testify yesterday
19 that they were -- I just asked you about the normal class
20 size. You said 12 to 15. We had a number of people testify
21 yesterday that the classes that they were in had around 30
22 people in them.

23 Do you recall classes of that size?

24 THE WITNESS: We've never had a class size of 30.
25 I believe the most that we've ever had in class is probably

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1 about 26, maybe 27. But back in 2002, 2003, I relatively
2 remember that our class sizes were smaller.

3 THE COURT: Counsel.

4 CROSS-EXAMINATION OF CARRIE RASMUSSEN

5 BY MR. TOCE, SR.:

6 Q. Ms. Rasmussen, how do you pronounce your name please?

7 A. Rasmussen.

8 Q. Rasmussen?

9 A. Um-hum.

10 Q. Thank you.

11 Ms. Rasmussen, you said that -- let me ask you this
12 question. Did you go over the documents signing with Dale
13 Glime?

14 A. It's possible that I did. I don't specifically recall

15 if I sat with him myself.

16 Q. You can't testify to firsthand knowledge today that you
17 had anything to do with Dale Glime signing his contract?

18 A. I can not.

19 Q. And that question would be answered the same way for
20 all eight of the people before the Court today, wouldn't it?

21 A. That is true. But there is a process that I stick to.
22 And if I did sit with any of them, then I would have stuck
23 to the process in which I described here.

24 Q. I understand the process, but you can not testify from
25 personal knowledge that you had anything to do with whatever

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1 process was applied by MAC for recruitment of Tim Blackwell,
2 Chris Shelton, Danny Deemer, Ken Hadley, Dale Glime, Kelly
3 Thompson and the group here before the Court, right?

4 A. Yes.

5 Q. Now, isn't it true that MAC's requirement for these
6 people to have cash, \$8,000, or \$10,000, whatever, was
7 acknowledgement by MAC without sufficient capitalization it
8 is a good chance the recruiter wouldn't be successful?

9 A. That is true.

10 Q. And isn't it true despite MAC's knowledge of new
11 recruits without cash would fail, that MAC still signed up
12 new recruits without cash?

13 MR. FRIEDMAN: Objection.

14 THE COURT: Overruled.

15 THE WITNESS: To my recollect that has never

16 happened.

17 Q. So you wouldn't have anything to add to this record
18 about MAC allowing Deemer to join MAC Tools when it was
19 clear he told MAC that he had no money in the bank?

20 MR. FRIEDMAN: Objection, relevance to the
21 arbitration class.

22 THE COURT: Overruled.

23 THE WITNESS: I'm sorry. Could you repeat your
24 question?

25 Q. You would have nothing to add?

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1 A. I could not answer that.

2 Q. You don't have any knowledge about that, right?

3 A. Yes.

4 Q. Isn't it true that there are other examples of
5 recruited distributors who were allowed to join the MAC
6 distributor sales force who likewise didn't have the \$8,000
7 in the bank?

8 A. Not to my recollection, no.

9 Q. Now, isn't it true that MAC's policy for recruiting
10 requires you, or whoever is doing the recruiting, to give
11 the information packet, including the contracts, to the
12 recruit at the first person interview?

13 A. To require for them to receive the contracts on the
14 first day; is that your question?

15 Q. The first time you interview them isn't it MAC's policy
16 that you give them the documents right then?

17 A. I don't think that's a policy, no.

18 Q. Do you know what the policy is of MAC regarding when
19 the new recruits should first be given the documents that
20 they're going to be asked to sign later?

21 A. I can not say with certainty, no.

22 Q. You were recruiting specialist with MAC and you don't
23 know the policy about providing the recruits with crucial
24 documents they are going to sign?

25 A. My recollection is that they must receive the

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1 disclosure agreements at least ten days before they sign
2 their contractual agreements.

3 Q. Isn't it true, ma'am, that MAC instructed his
4 distributors that the disclosure packet is required to be
5 given to each prospective MAC Tools distributor at the
6 earlier of the first meeting or ten business days prior to
7 signing the agreement?

8 A. I'm sorry. What was the question?

9 MR. FRIEDMAN: I'm going to object. It's
10 misleading. There is no instruction to the distributor.

11 THE COURT: The reference to distributor is
12 obviously --

13 MR. TOCE, SR.: I misspoke.

14 THE COURT: -- a misstatement.

15 BY MR. TOCE, SR.:

16 Q. The direction to the recruiter, the DM, anyone at MAC
17 that's recruiting somebody --

18 A. At the earliest time that we could give them this
19 information, yes, that is the better.

20 Q. Let me show you what I'm going to mark as Plaintiff's
21 Exhibit 17?

22 Let me show you what purports to be a document of MAC
23 Tools for persons involved -- the do's and don'ts of all
24 persons involved in the recruitment of distributors, and ask
25 if you have ever seen that?

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1 A. I've never seen this paper.

2 Q. Ma'am?

3 A. I've never seen that piece of paper.

4 Q. Do you have any reason to dispute that's not a MAC
5 document?

6 A. No.

7 Q. Does this language in the document look like something
8 MAC would put out to the recruitment people?

9 MR. FRIEDMAN: Objection.

10 THE WITNESS: Without me ever seeing it, I can't
11 say that.

12 THE COURT: Asked and answered.

13 Q. Let me ask this question. The box that Mr. Friedman
14 handed you with the Exhibit I, is I --

15 MR. FRIEDMAN: I is document H, the entire box.

16 MR. TOCE, SR.: H with I in it?

17 MR. FRIEDMAN: Correct:

18 BY MR. TOCE, SR.:

19 Q. You can't say from personal knowledge that any of the
20 eight people before the Court today got that box with
21 Exhibit I in it?

22 A. I can not say for sure, but following our process they
23 would have.

24 Q. Exactly. And you can't say from personal knowledge
25 whether your process was followed in connection with Danny,

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1 and Dale, and Kelly and the rest of the people?

2 A. Well if they had dealings with -- if they had dealt
3 with me, they would have received the packet.

4 THE COURT: But if they were dealing with a
5 district manager, you wouldn't know?

6 THE WITNESS: I can not say. I can not speak on
7 their behalf.

8 Q. And I don't want any information you don't know. But I
9 don't know is a good answer. But I want to -- I want to
10 know if you can testify that you gave, or you have personal
11 knowledge that that document was given to our people at any
12 time before they were trained?

13 MR. FRIEDMAN: Objection, asked and answered.

14 THE COURT: She answered. She said she can't say
15 that.

16 Mr. Toce, we can save a whole lot of time because
17 Ms. Rasmussen has no recollection of dealing with any of the
18 eight individuals who testified yesterday. So whatever line
19 of questioning you might have pertaining to personal contact

20 between her and them, the answer is, obviously, going to be
21 the same, correct?

22 THE WITNESS: Yes.

23 THE COURT: Okay.

24 MR. TOCE, SR.: Okay. Your Honor, thank you.

25 BY MR. TOCE, SR.:

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1 Q. The procedure that you testified to on direct about
2 sitting with the new recruits and turning their attention
3 and helping them sign the documents, okay, that procedure,
4 is that a MAC procedure?

5 A. Yes.

6 Q. Okay. If they had a question I understand about the
7 content of the document, you were forbidden from giving them
8 interpretations, right?

9 A. That is correct.

10 Q. So, for instance, isn't it true that if Dale Glime said
11 what's arbitration, you wouldn't answer that question, you
12 couldn't give your opinion on what arbitration is?

13 A. No.

14 Q. And the same answer would be true if they directed your
15 attention to any substantive question in the paragraphs of
16 the document, right?

17 A. That is correct.

18 Q. So in essence you were just there to get their
19 signatures on the paper, isn't that right?

20 A. Yes.

21 Q. Do you know a recruiting manager for MAC name Gene
22 Sheets.

23 A. Gene Sheets, no.

24 (Discussion off the record.)

25 Q. Do you know who the human resource person is in MAC?

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1 A. No.

2 Q. What the recruiting manager would be?

3 A. We didn't per say have a recruiting manager until the
4 distributor development team was formed.

5 Q. Until who?

6 A. Distributor development team was formed.

7 THE COURT: And when did that happen?

8 THE WITNESS: Early 2002.

9 THE COURT: But the name Gene Sheets does not ring
10 any bell to you.

11 THE WITNESS: No.

12 BY MR. TOCE, SR.:

13 Q. Isn't it true that, ma'am, that the document signing
14 circumstances took about ten to twenty minutes per person?

15 A. I would say more 15 to 20 minutes.

16 Q. You would say more?

17 A. More like 15 to 20 minutes.

18 Q. Isn't it true that the contract signing was many times
19 at different places than the recruitments last training?

20 A. I'm not sure that I understand your question.

21 Q. The training took place at one place, and then the

22 recruitments were oftentimes put on buses and carted to
23 another place to sign the contract, right?

24 A. Yes.

25 MR. FRIEDMAN: Objection, timeline. So it's more

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1 clear, it's changed since then.

2 Q. While she was there, the whole time you were there?

3 A. Since I have been there our process has changed, but
4 back in 2002, 2003 our distributors were trained at our
5 distribution center. And on our last day of seminar they
6 were brought to corporate headquarters, and they were to
7 sign their agreements there.

8 Q. Were you including promissory notes in the document
9 signing of the new recruits on the last day?

10 A. Yes, but I did not sign promissory notes with them.
11 Somebody else did that.

12 Q. The promissory notes were in the same packet of
13 documents with the contracts and all other things you had
14 them sign?

15 A. No. The promissory notes are in this document.

16 Q. Let the record reflect she's referring to Exhibit I?

17 A. The promissory notes are in Exhibit I, but we have --
18 Shelli or myself did not sign promissory notes with them.
19 We only signed their distributor contractual agreements.

20 Q. When were the promissory notes signed?

21 A. On the same day. They were just signed by somebody
22 else.

23 Q. Would some other people with MAC help their new
24 recruits with the signing of the promissory notes and other
25 documents, someone other than you?

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1 A. Yes.

2 Q. Who is that?

3 A. With their promissory notes, to the best of my
4 recollection, then it was Ken Malic.

5 Q. Would it be contrary to MAC's policy to sell a
6 prospective recruit \$60,000 worth of tools before he even
7 got to the training and before he even signed the
8 distributor agreement?

9 A. No. They would sign the promissory notes the same day
10 they signed their contractual agreements.

11 Q. Which is the last day of signing?

12 A. Last day of seminar.

13 Q. Last day of seminar.

14 Let me show you what's been marked as Plaintiff's
15 Exhibit 18. Which purports to be a promissory note by Dale
16 Glime. And I only have one copy.

17 Let me show you that promissory note. Do you notice
18 the date on top of this is February 14th?

19 A. The date on top.

20 Q. Date or --

21 A. February 14, 2003.

22 Q. Ma'am?

23 A. Is this the date?

24 Q. Yes. Date the note was signed is February 14, 2003?

25 A. Yeap.

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1 Q. Does that look like the promissory note that MAC used?

2 A. Appears to be, again, I didn't sign the promissory
3 notes, so I can't speak as to having exact knowledge on
4 this.

5 Q. I understand. But you did testify that it was signed
6 on the last day of training just by other MAC people, right?

7 A. Correct.

8 Q. So if Dale Glime went to training on February 20th and
9 graduated on February 28th, then MAC wouldn't have followed
10 it's own policy in getting him to sign the promissory note
11 on February 14th, right?

12 A. To my recollection I can't say. I don't know.

13 Q. I'm asking you what you do know, MAC policy that you
14 already testified to. And, in fact, you said they signed
15 the promissory note on the last day of training, right?

16 A. That is correct.

17 Q. So if Dale Glime's promissory note was signed before he
18 went to the training, then that would be a deviation from
19 MAC's policy which you testified about, right?

20 A. It would be if that's truly the date in which he
21 signed. Unfortunately, on date, there is no date by his
22 signature to indicate that he actually did sign February
23 14th.

24 Q. Well, that date on the note would be the date you

25 started charging interest on money, right?

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1 MR. FRIEDMAN: Objection.

2 THE WITNESS: If it was filed that date, I don't
3 know when the note actually started. And I guess you would
4 have to pull records to verify that.

5 Q. Can you give me any scenario?

6 THE COURT: Mr. Toce, before you pursue this
7 subject too much further, the fact is we don't have in the
8 record when Dale Glime was at MAC for training.

9 MR. TOCE, SR.: I believe you do, Judge. I
10 believe he testified he went from the 20th.

11 MR. TOCE, SR.: There would be evidence. I
12 believe, Judge, his distributor agreement is in evidence,
13 and it's dated February 28, the two week training. That
14 would put it back before the training.

15 THE COURT: 14 days from 28 is 14, so it could
16 have been signed the day he arrived. I don't know. I don't
17 know the exact date. And this witness is not competent to
18 testify as to when the note was actually signed.

19 MR. TOCE, SR.: Okay, Your Honor. We'll offer 18,
20 and if it's necessary to bring Mr. Glime back on rebuttal,
21 we'll do that.

22 MR. TOCE, SR.: Thank you, Ms. Rasmussen. No more
23 questions.

24 MR. FRIEDMAN: May I, Judge.

25 REDIRECT EXAMINATION OF CARRIE RASMUSSEN

1 BY MR. FRIEDMAN:

2 Q. Ms. Rasmussen, you were asked about your response to
3 questions about the distributor agreements. And you said
4 you did not give interpretations of it. What did you
5 respond to?

6 MR. TOCE, SR.: Objection, the predicate is
7 leading, although the last sentence was a question. The
8 predicate is leading the witness to an answer. It's
9 leading.

10 THE COURT: I'll overrule the objection. I don't
11 believe it's leading.

12 MR. FRIEDMAN: What response did you give?

13 THE COURT: As I understand his question is, what
14 did you tell these people when they asked you a question?

15 MR. FRIEDMAN: Thank you, Your Honor.

16 MR. TOCE, SR.: That would have been the right
17 question to ask.

18 MR. FRIEDMAN: That is what I asked.

19 MR. TOCE, SR.: Eventually.

20 THE WITNESS: I told them that they needed to
21 review or read documents on their own, that I could not
22 interpret or tell them exactly -- or tell them what they
23 were signing, that it was their responsibility to read it.

24 Q. Can you recall any time in 2002 and 2003 that you were
25 not present for the signing day?

1 A. No.

2 THE COURT: You never took that day off.

3 THE WITNESS: Not on signing day, we weren't
4 allowed.

5 Q. And all the signings were done with either you or Ms.
6 Hightshoe in 2002, 2003?

7 A. To my recollection, yes.

8 MR. FRIEDMAN: Thank you, no further questions.

9 THE COURT: One of the nice things about being a
10 judge in a nonjury case is I can ask almost any question
11 that I want where I think that you might help me understand
12 what's going on. And it's very hard for lawyers to object
13 to the judge's question, even though if it was one of the
14 them doing it, they might.

15 When you were involved in the process, let me
16 understand, when the prospect was coming to Columbus for
17 training, the impression I got yesterday, and tell me if I'm
18 right or wrong, is that they fronted the cost for their
19 transportation, if they had to get their plane, they fronted
20 the cost for the hotel, and then at some point they would be
21 reimbursed by MAC Stanley, is that how it worked or --

22 THE WITNESS: Yes.

23 THE COURT: If I am wrong -- okay.

24 THE WITNESS: We never reimbursed them with any
25 kind of check or cash back to them. It was reimbursed as

1 trade credit, which they had an account with us, which we
2 kept track of their invoices and credits that they may have
3 through MAC Tools. And then that dollar amount was credited
4 to their credit account so they could buy tools with it.

5 THE COURT: Were there ever instances when
6 somebody flunked?

7 THE WITNESS: Flunked class?

8 THE COURT: That they washed out of the program,
9 they did not become a distributor.

10 THE WITNESS: Yes.

11 THE COURT: And in a case like that, would they --
12 would MAC reimburse them for expenses they incurred, or did
13 they have to bear those costs themselves.

14 THE WITNESS: I can not answer that question. I
15 do not know.

16 THE COURT: Okay. Thank you.

17 THE WITNESS: You're welcome.

18 THE COURT: Counsel, anything further of Ms.
19 Rasmussen?

20 MR. TOCE, SR.: No, Your Honor.

21 MR. FRIEDMAN: No, Your Honor.

22 THE COURT: Thank you very much.

23 MR. FRIEDMAN: Our next witness would be Michael
24 Brubaker please, Your Honor.

25 MICHAEL BRUBAKER,

1 of lawful age, a witness called by the Defendant,

2 being first duly sworn, was examined

3 and testified as follows:

4 MR. TOCE, SR.: One minute counsel. Can we
5 approach, Your Honor, for a second.

6 THE COURT: Sure.

7 (Discussion off the record.)

8 DIRECT EXAMINATION OF MICHAEL BRUBAKER

9 BY MR. FRIEDMAN:

10 Q. Mr. Brubaker, would you please state your name and
11 spell it for the record?

12 A. Michael A. Brubaker, B-r-u-b-a-k-e-r.

13 Q. And, Mr. Brubaker, briefly can you give your
14 educational background?

15 A. I have a bachelor degree from Ohio State University.

16 Q. What year?

17 A. 1993.

18 Q. Still Bucks?

19 A. Right on, big weekend.

20 Q. What was your first employment after graduating from
21 OSU?

22 A. Through college and to help me get through college and
23 then after college I was employed by United Partial Service.

24 Q. What did you do for UPS?

25 A. While I was in school I was a package handler. And

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1 then I went to management with them after I graduated.

2 Q. How long did you work for UPS after you graduated from

3 Ohio State?

4 A. Not very long.

5 Q. What did you do next?

6 A. I went to work for Roadway Freight for a short time.

7 Q. What was your position with Roadway?

8 A. Manager.

9 Q. Okay.

10 A. Coordinator.

11 Q. What next?

12 A. MAC Tools.

13 Q. About what year did you start with MAC Tools?

14 A. 1995.

15 Q. And what was your first position at MAC Tools?

16 A. I'm sorry, 1990 -- yes, 1995, I was customer service

17 manager.

18 Q. What was your job responsibility as customer service

19 manager back in 1995?

20 A. Back then I ran about an 80 person call center

21 answering inbound telephone calls from our customers.

22 Q. That job was in Columbus?

23 A. I traveled to the Washington courthouse for just a

24 short time while the business was transitioning to Columbus.

25 Q. And what was your next position at MAC Tools after that

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1 position?

2 A. I was promoted to manager for a newly formed

3 distributor development center.

4 Q. And when was that?

5 A. 2002.

6 Q. Okay. And can you briefly describe your job
7 responsibilities about being promoted to some manager
8 position?

9 A. Yeah. My job responsibilities were to facilitate the
10 recruiting process and onboarding new distributors and
11 terminating of distributors exiting the business.

12 Q. When you first took that job, what did you do? What
13 was your first task?

14 A. The recruiting process.

15 Q. So you looked at what was being done in the past and
16 evaluated that?

17 A. We evaluated and made changes to make sure that we were
18 making sure our relationship was in tact and that new
19 candidates were being handled properly.

20 Q. And, again, early 2002, you said?

21 A. Yes, sir.

22 Q. Okay. So the process that you put in place, can you
23 briefly describe how that process would start with the
24 prospective distributor?

25 A. Yeah. Well, the first thing that we did to manage the

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1 relationship was to appoint two recruiting specialist that
2 would manage the contact with the candidates interested in
3 the opportunity, and ongoing throughout. In essence, you
4 deal with one person throughout your onboard process.

5 Q. And that's Ms. Rasmussen and Ms. Hightshoe, right?

6 A. Yes.

7 Q. And early 2002 you put them in that position of
8 recruiting specialist?

9 A. Yes.

10 Q. Okay. And can you -- what else did you implement at
11 that time?

12 A. What else did I implement?

13 Q. In terms of process for recruiting distributors?

14 A. Well, we reengaged in advertising activities. We also
15 trained our direct managers on how to handle applications,
16 hold interviews, and the rest of the onboarding process, so
17 they could be familiar to speak to it.

18 Q. Okay. Did you personally train those district
19 managers?

20 A. Yes.

21 Q. You did that in Columbus? You brought them all to
22 Columbus for that process?

23 A. Various locations, they were brought to Columbus. We
24 have an annual tools fair where we haul district managers in
25 every opportunity I can find.

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1 Q. There has been testimony about Exhibit H, the box
2 sitting next to you. Was the use of that box, the
3 presentation of the contents of that box, part of the
4 training that you're describing for district managers?

5 A. Yes.

6 Q. Can you describe what you instruct them on with regard
7 to that box?

8 A. Yes. To either have a box sent to the candidate as
9 early as possible, or distribute one themselves as soon as
10 possible, and then to cover in detail the contents of the
11 box, including the materials inside the videotape.

12 Q. 2002, 2003, what were the contents of every box that
13 you sent out?

14 A. Disclosure document, videotape, promotional fliers,
15 application, dust cover with application inside, some
16 training materials, and overview materials, and looks like
17 that's about it.

18 Q. Okay. And the disclosure documents you're describing,
19 that's Exhibit I?

20 A. Yes, sir.

21 Q. Now, how is that box presented to the distributors, how
22 do they get their hands on that?

23 MR. TOCE, SR.: Excuse me. One minute.

24 Objection. I just want to make it clear whether or not the
25 gentleman is talking about the process in general or my

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1 people?

2 THE COURT: He's talking about the process in
3 general, correct?

4 THE WITNESS: Yes, sir.

5 MR. TOCE, SR.: Thank you.

6 THE WITNESS: Can you repeat the question?

7 BY MR. FRIEDMAN:

8 Q. The question is, going back specifically in terms of
9 the training of the district managers, how were they
10 instructed to present the materials in this box to the
11 prospective distributor?

12 A. To setup an interview with the prospective distributor,
13 hopefully, with the spouse present, sit down at their home,
14 if possible, or at a restaurant, or over a meal, and share
15 the contents of the box and cover, detail the opportunity?

16 Q. Share the contents of the box, would you please
17 instruct them specifically to share the contents of what's
18 marked as exhibit I also?

19 A. Absolutely, to cover the purpose of the disclosure
20 document and to obtain the acknowledgment of receipt of the
21 disclosure document.

22 Q. Take out Exhibit I, and if you can just briefly
23 describe to the Court just the contents, walking through
24 what's at the start of it?

25 A. In the beginning there is an overview, summary of MAC

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1 Tools and Stanley Works, some of our history, the
2 obligations of the distributor and obligations of MAC Tools.
3 And then it gets into the different components of the
4 disclosure document, including the contract agreement, other
5 articles including how paperwork is setup, a corporate
6 entity, if necessary.

7 Q. You say to setup the corporate entity, if necessary.

8 Can you explain how that fits in?

9 A. When setting up a business you have an opportunity to
10 setup LLC, sole proprietor, or incorporated, et cetera.

11 Q. Got you. So you had the form to assist the distributor
12 in regards to corporate or individuals being a distributor?

13 A. Yes.

14 Q. And that's in these documents, those forms?

15 A. Yes.

16 Q. What else is in here, generally?

17 A. Information about the leadership team, both MAC and
18 Stanley executive summary, again, the contractual agreement
19 between MAC and Stanley, Exhibit A in particular is an
20 example of the route assignment that would be complete with
21 the distributor, so we could list their minimum of 325
22 customers, the security agreement, sample of what would be
23 the security agreement, promissory note. And let me see, as
24 I flip through here, certificate of the resolution for
25 incorporation, et cetera, other paperwork such as setting up

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1 MAC pay by phone, and other items that needed to be given to
2 the distributor so they could have a sample of those
3 documents before filling out the actual.

4 Q. Okay. There's been quite a bit of testimony in the
5 last two days about distributorship agreement and,
6 particular, paragraph 19. You heard that, correct?

7 A. Correct.

8 Q. Now, the distributor agreement I think you said is

9 Attachment A in this book?

10 A. Um-hum.

11 THE COURT: Before you get to that. He just
12 referenced something that caught my curiosity. You have to
13 have a minimum of 325 customers for your route.

14 THE WITNESS: Yes, sir.

15 THE COURT: If they're just coming in cold, they
16 would have zero customers, right?

17 THE WITNESS: No.

18 THE COURT: No?

19 THE WITNESS: Once you're an authorized MAC Tools
20 distributor, we actually complete what we call a route
21 survey. Sometimes that's done with the new distributor
22 prior to tool school, sometimes it's done after, so we can
23 present it on exit, a list of customers so they have a list
24 of shops and customers to call on the first day they hit the
25 street.

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1 THE COURT: It's not actual customers, potential
2 customers?

3 THE WITNESS: Potential customers, yes.

4 THE COURT: 325 places for them they could sell
5 tools to going in?

6 THE WITNESS: Yes, sir.

7 THE COURT: All right. Thank you.

8 BY MR. FRIEDMAN:

9 Q. Mr. Brubaker, at the back of that book there is

10 Attachment G that we have been talking about, correct?

11 A. Yes, sir.

12 Q. And do you have an explanation as to why there are two
13 copies?

14 Is that part of the policy you had to have two copies
15 of this document?

16 A. Absolutely.

17 Q. Can you explain why?

18 A. One to remain in the book for candidates to reference
19 later, and one for our records so that we could make sure
20 that they received a copy of the disclosure document.

21 Q. Okay. All right. Once an application was received
22 from the prospective distributor, what was the process then?

23 A. The application would be received and it would trigger
24 the rest of the process to hopefully find approval or make
25 sure that they could meet the criteria to become a

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1 distributor, including background check, safe driving check,
2 drug scan, approval for financing, if necessary.

3 Q. Did you have a form for Ms. Hightshoe and Ms. Rasmussen
4 to check off to see that these documents were there?

5 A. Yes, the check list.

6 Q. And that included attachment G?

7 A. Absolutely.

8 Q. There was some discussion yesterday about one
9 particular distributor who was a MDSR. Can you explain to
10 the Court what the MDSR program was?

11 A. Yes. Approximately 1997 we started a new
12 distributorship model where we would actually have employee
13 distributors on the truck and route that would manage our
14 inventory and do business as a store manager, if you will.

15 Q. So these were employees as opposed to independent
16 contractors like traditional distributors?

17 A. Yes, they were employees.

18 Q. So at the time MAC operated with both kinds of forces
19 in the field?

20 A. Yes.

21 Q. Was eventually there a decision to phase out MDSR?

22 A. Yes.

23 Q. And can you describe that to the court?

24 A. Yes. In 2003 we made a decision with Stanley Works to
25 close down the program and return to the sole mode of

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1 recruiting additional distributors, independent.

2 Q. And did you make an announcement to the employees that
3 their job would be terminated?

4 A. Yes.

5 Q. And when was that?

6 A. Approximately April 2003.

7 Q. And what were those MDSRs told about converting to be
8 traditional distributors?

9 A. They were automatically approved to become a
10 traditional distributor if they chose to do so. We offered
11 them financing regarding the past credit history, et cetera.

12 And the other checks, obviously, would remain in place, but
13 they would be able to purchase the distributorship and
14 remain in place as a traditional distributor.

15 Q. And did you oversee that process?

16 A. Yes.

17 Q. And MDSRs that sent the conversion forms in, what was
18 then sent to them in return?

19 A. They sent in the paperwork to become a traditional.

20 Q. To become converted?

21 A. They were sent the complete packet of information
22 including the distributor agreement, disclosure documents
23 and acknowledgment, et cetera, as well as some of the other
24 paperwork, pay by phone.

25 Q. And those documents they would have to sign, but they

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1 didn't come to Columbus to sign those?

2 A. Yes.

3 Q. How does that process work?

4 A. They were mailed to the prospective new traditional
5 distributors to be completed when they had time and returned
6 to us so that we could facilitate the rest of the process.

7 Q. Was there any policy or procedure in which a MDSR was
8 asked to date the agreement for a future date?

9 A. No.

10 Q. Can you think of any explanation why a MDSR would date
11 an agreement for a date in the future for when he signed it?

12 MR. TOCE, SR.: Objection, assumes facts not in

13 evidence, called speculation.

14 THE COURT: Overruled. Calls for some
15 speculation, but I will let him speculate.

16 THE WITNESS: I don't know why anyone would do
17 that.

18 Q. Thank you.

19 You said you had your two recruiting specialist, Ms.
20 Hightshoe and Ms. Rasmussen. To the best of your
21 recollection, the calendar year 2002, 2003, were there any
22 of the distributors who signed their contract with anyone
23 besides one of the two of them?

24 A. No.

25 Q. Okay. Next document is Exhibit J?

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1 MR. TOCE, SR.: What is it?

2 MR. FRIEDMAN: This is what we showed you before,
3 the contract.

4 MR. STEVENS, JR.: Danny Deemer packet?

5 MR. FRIEDMAN: Yes, exactly.

6 Q. Just briefly, is this a document that you found in MAC
7 records and kept in the ordinary course of business?

8 A. Yes.

9 Q. Okay. And can you tell the Court what the first page
10 of this document is?

11 A. Yes. The first page is a letter from a MAC employee to
12 Henry D. Deemer stating that enclosed were copies of the
13 disclosure documents that he had signed while he was in

14 Columbus, that we had retained the originals, and this was a
15 copy for him.

16 Q. And what's the date of it?

17 A. Wednesday, March 20, 2002.

18 Q. Now, Mr. Brubaker, what was your involvement in the
19 execution process of the documents, their questions, or
20 other issues?

21 A. As the documents were being executed, if anyone had any
22 questions, usually one of the two recruiting specialists
23 would come to me and ask me or tell me that someone would
24 have a question or needed time and the signing might be
25 delayed.

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1 Q. And that signing was back at headquarters where your
2 office was?

3 A. Yes. Right outside my office.

4 Q. There was testimony about a lounge in an area where
5 they were waiting, that prospective distributors were
6 waiting while one at a time they would go in with the
7 recruiting specialist.

8 Do you recall that testimony?

9 A. Yes.

10 Q. Did you have reading materials in that lounge?

11 A. I tried to put as much reading material out as
12 possible, yes.

13 Q. Did that include disclosure documents?

14 A. Yes.

15 Q. Again, 2002, 2003 time frame?

16 A. Absolutely.

17 Q. Did you ever have an experience where a distributor
18 requested more time to sign the documents and you got
19 involved?

20 A. Yes.

21 Q. Can you describe that?

22 A. Yes. The recruiting specialist had come to me and said
23 that an individual needed some time to review the documents
24 or make some phone calls, and the contract signing was going
25 to be delayed, and it was really an update for me. And we

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1 agreed that we would give them as much time as they needed.

2 Q. There was also some testimony yesterday about people
3 rushing to catch flights. Was there ever a situation where
4 someone had to delay a flight and you helped them out with
5 that?

6 A. Yes. I would directly assist to change their flight as
7 to whatever time was available. And we would also go ahead
8 and pay the change fee.

9 Q. And you remember that occurring?

10 A. Absolutely.

11 Q. You said that there were questions, the recruiting
12 specialists would bring the questions to you about the
13 documents. Ever have any prospective distributor ask a
14 question about the arbitration provision?

15 A. No.

16 MR. FRIEDMAN: One moment please.

17 (Pause.)

18 MR. FRIEDMAN: No further questions. Thank you.

19 MR. STEVENS, JR.: Your Honor, may we have a five
20 minute recess?

21 MR. TOCE, SR.: No.

22 THE COURT: Pardon?

23 MR. STEVENS, JR.: I was going to ask for a
24 recess.

25 MR. KILBANE: I agree with that, disagree with

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1 you.

2 THE COURT: All right. By majority vote we can
3 take a recess.

4 MR. KILBANE: I was agreeing with no recess.

5 MR. STEVENS, JR.: Counsel disagrees. I will
6 withdraw my request at this time, and humbly beg forgiveness
7 of all my compadres.

8 CROSS-EXAMINATION OF MICHAEL BRUBAKER

9 MR. TOCE, SR.:

10 Q. Mr. Brubaker, the last thing you said that if a recruit
11 needed more time to look over the document to call people,
12 that you would go ahead and change the flight and pay 50
13 bucks, or whatever it was, needed to change a flight?

14 A. If needed, I don't know how much.

15 Q. 50 or 100 bucks.

16 MR. FRIEDMAN: I think 50.

17 Q. Less than 100 bucks.

18 A. Approximately.

19 Q. Isn't it true, sir, that you never announced that in
20 advance to all the recruits if they were timed you would be
21 willing to change plane tickets?

22 You only did it when they came to the program in
23 assigning rooms, which is only one guy you remember in the
24 whole time you've been there?

25 A. No, it was not just one person. I can remember several

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1 instances of it. No, I did not announce that ahead of time,
2 but in the training the people that reported to me, it was
3 very clear that they had all the time that they needed.

4 Q. And you don't know that personally, you're hearing that
5 from your recruiters, right?

6 A. I don't know what? I'm sorry.

7 Q. You said it was your understanding from your
8 recruiters, I am assuming you're talking about these two
9 people, that people had all the time they needed?

10 A. It wasn't my understanding. It was a direction to
11 them, yes.

12 Q. But you weren't there?

13 A. I was not there.

14 Q. Okay. So you don't know if that was carried out or
15 not, do you?

16 A. Not personally, no.

17 Q. You said you recall several other people that you

18 changed their flights for and gave them more time to
19 document. Do you know any names of any of those people?

20 A. Not off the top of my head.

21 Q. And when you said several, you mean three, seven,
22 eight?

23 A. At least three to five that I can remember particular
24 instances where I directed my assistants to take care of the
25 circumstances.

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1 Q. Isn't it true in the time period you have been at MAC
2 Tools they recruited several thousand new MAC distributors?

3 A. In the entire time period I have been there, yes,
4 that's probably true.

5 Q. And you changed three times period to give them time?

6 A. No, just in that particular time, I did that, I don't
7 know, in mid 2002, 2003.

8 Q. The acknowledgment forms, let's talk about those.

9 Would you agree, sir, that it was fair and reasonable
10 for MAC to get those complex legal documents in front of new
11 recruits who were virtually, basically, unsophisticated,
12 uneducated, for the most part, mechanics, before they
13 approached you to being distributors?

14 MR. FRIEDMAN: Objection.

15 THE COURT: I'll sustain that objection.

16 MR. TOCE, SR.: What was the objection?

17 MR. FRIEDMAN: Assumes facts not in evidence, also
18 calls for speculation.

19 THE COURT: Well, also calls for his opinion,
20 which is the reason I sustained the objection, frankly.

21 MR. FRIEDMAN: What's the relevance?

22 THE COURT: Frankly, I don't care what the opinion
23 is. It's my opinion that counts.

24 MR. TOCE, SR.: You got that right.

25 BY MR. TOCE, SR.:

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1 Q. Well, tell me why MAC, not you personally, why MAC
2 wants the acknowledgment form?

3 A. I'm sorry. Why MAC wants --

4 Q. Why did MAC want distributor recruits to sign a form
5 evidencing that MAC sometime prior to the training had given
6 them the documents to look over?

7 A. So that we could make sure that they have received it.

8 Q. Did MAC consider the prior delivery of the distributor
9 agreement to the distributors in time for them to look it
10 over something that was fair to distributors?

11 A. Yes.

12 Q. Isn't one of the reasons why MAC did this because it
13 would otherwise be unfair to bring a recruit to the training
14 who was a mechanic all his life and at the last day stick
15 some documents in front of him that he had never seen before
16 and have a meaningful signature on it?

17 A. What's the question? I'm sorry.

18 Q. Wouldn't it --

19 THE COURT: The same one I sustained the objection

20 to that I haven' heard an objection to the second time
21 around.

22 MR. FRIEDMAN: Objection.

23 Q. Are you familiar with why MAC wanted these
24 acknowledgment forms?

25 A. Yes.

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1 Q. Are you familiar with why MAC wanted these distributors
2 to get the documents many days before they would actually
3 have to sign them?

4 A. Yes.

5 Q. Was one of the those reasons because it would be fair
6 to the new recruits to give them a heads up on documents and
7 have them look at them before they have them sign it?

8 MR. FRIEDMAN: Objection.

9 THE COURT: That one I will overrule.

10 THE WITNESS: I think it's fair, yes, that we
11 wanted them to have it in advance so they would have time to
12 review it.

13 Q. I agree with you. But did MAC use that fairness
14 principal you just enumerated as one of the reason to give
15 the document ahead of time?

16 A. Yes.

17 THE COURT: He is MAC.

18 MR. FRIEDMAN: Correct.

19 MR. TOCE, SR.: I know you said you didn't want
20 his opinion.

21 THE COURT: There is difference between asking him
22 to express his opinion as a witness and his capacity as a
23 representative of MAC.

24 MR. TOCE, SR.: Right. Thank you, Your Honor.

25 Q. In your job as MAC recruiting --

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1 THE COURT: You've already asked and answered --
2 it's been asked and answered.

3 Q. I was -- you had to know MAC's policy in recruiting new
4 distributors, right?

5 A. Yes.

6 Q. And you do know MAC's policies in that regard, don't
7 you?

8 A. Yes.

9 Q. Isn't it true that MAC didn't start using the
10 acknowledgement form until 2002?

11 A. I can't answer that question. I don't know until I
12 took the job.

13 Q. You say you took the job when?

14 A. 2002.

15 Q. Did MAC have the acknowledgments and disclosures in
16 place when you got there in 2002?

17 A. Yes.

18 Q. So if we asked, we could go get these disclosure
19 documents from each MAC distributor that was signed up even
20 before you took over the job?

21 A. I don't know.

22 Q. Is that correct?

23 A. I don't know.

24 Q. Did I understand you to tell us that you personally
25 trained district managers on how to answer questions that

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1 new recruits might have about the contents of the
2 distributor agreements?

3 A. Yes, on several occasions.

4 Q. With respect to new recruits or MAC requirements that a
5 new recruit waives his right for consequential damages and
6 indirect damages, what did you instruct the DMs to tell them
7 if they asked those kinds of questions?

8 A. If they asked a question about the provision in the
9 contract?

10 Q. About that particular provision?

11 A. To seek the advise of an attorney.

12 Q. Were there any providers, any questions regarding the
13 contents of the documents that MAC would actually answer for
14 them, or would the pat answer always be you need to ask
15 somebody else, get an attorney, whatever?

16 A. About the contents of the disclosure documents, only if
17 the procedure -- say, if they had a question about the pay
18 by phone --

19 Q. I'm talking about the question specifically about
20 contents and the terms and conditions in the distributor
21 agreement?

22 A. Can you restate the question?

23 Q. The terms and conditions in the distributor agreement,
24 if, as you say, you give them a lot of time to read it and
25 they were reading it and they called the DM and said what

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1 does it mean inconsequential damages I'm waiving, how did
2 you instruct the DM to answer that question?

3 A. To tell them that it would probably be best if they
4 sought the advice of an attorney.

5 Q. I heard you say that. I'm just trying to make it clear
6 that you instructed the DM to give the same answer about any
7 question by the recruit about substantive means and effect
8 about the terms of the distributor agreement?

9 A. Yes, or to contact me directly.

10 Q. Would you ever do more than you instructed the DMs, and
11 that is, you better have somebody look at it for you?

12 A. Would I ever say more than that?

13 Q. Yes.

14 A. No.

15 Q. Isn't it true, sir, that MAC Tools sometimes had new
16 recruits sign an acknowledgment form that they had received
17 copies of the distributor agreements when in fact MAC knew
18 they didn't?

19 A. No.

20 Q. Do you know Gene Sheets?

21 A. No, sir.

22 Q. Were you in the human resource department in December,
23 1999?

24 THE COURT: He wasn't even employed with MAC in
25 '99.

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1 MR. TOCE, SR.: No. He's been employed since '95.

2 THE COURT: I'm sorry.

3 MR. FRIEDMAN: He was in customer relations in
4 '99.

5 THE WITNESS: I have never been employed by the
6 human resource department, or as a member of HR, sir.

7 Q. What department are you in?

8 A. At what point?

9 Q. Now.

10 A. What department am I in now?

11 Q. Yes.

12 A. I'm distributor -- over the distributor development.

13 Q. Is that HR or a separate division of MAC?

14 A. No. It's a separate department within MAC Tools.

15 MR. TOCE, SR.: I think we've marked this Exhibit
16 already, haven't we?

17 MR. STEVENS, JR.: No.

18 BY MR. TOCE, SR.:

19 Q. Let me mark it as Plaintiff's Exhibit 19 for
20 identification purposes, which purports to be a form letter
21 to district managers recruiting new hires for MAC for new
22 distributorships.

23 Would you please read the contents of that please?

24 A. Yes, sir. "Thank you for your interest in MAC Tools."

25 Q. No, to yourself.

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1 THE COURT: Read it to yourself.

2 THE WITNESS: Okay.

3 MR. TOCE, SR.: Familiarize yourself with the
4 contents of the paper.

5 THE COURT: Mr. Toce, this document is dated
6 December 22, 1999. All of individuals that we are concerned
7 with here to the best of my recollection are in a time
8 period well past December of 1999; is that not correct?

9 MR. TOCE, SR.: I think you're right for the most
10 part, but I think there are one or two that were signed up
11 before '99.

12 MR. KILBANE: No.

13 MR. FRIEDMAN: No.

14 MR. STEVENS, JR.: In this group of people here
15 all are '01, '02, '03.

16 THE COURT: All past December '99, therefore,
17 anything that came out on signature of Gene Sheets December
18 1999 is irrelevant.

19 MR. TOCE, SR.: Unless that policy was followed
20 during the time period you're talking about, which is what I
21 was trying to find out.

22 THE COURT: There is no policy here. All the
23 letter says we are developing a new packet and we'll send it
24 to you when it's available. I'm assuming it was available
25 three years later, if not, MAC is surely in a whole lot of

1 trouble if it takes more than three years to develop a new
2 packet.

3 MR. TOCE, SR.: The relevance, Your Honor, is that
4 it's evidence that MAC would send acknowledgment formation
5 to new recruits asking them to execute acknowledgment forms
6 saying they got all those documents and in the same letter
7 saying we don't really have documents yet just go ahead and
8 sign the acknowledgment form.

9 THE COURT: A, it certainly is not, and, B, it's
10 December 22, 1999. We will not pursue Exhibit 19 any
11 further with this witness.

12 MR. FRIEDMAN: And it's no reference to the
13 acknowledgment form. It just says form.

14 THE COURT: Mr. Friedman, don't press it.

15 MR. TOCE, SR.: Let's mark it as Plaintiff's
16 Proffer Number 1.

17 THE COURT: It's marked as 19, and I'm cutting off
18 any inquire with respect to 19.

19 MR. TOCE, SR.: I understand your ruling with 19.
20 So for the record, I want to proffer it.

21 THE COURT: And it will be rejected. It's been
22 marked it's been offered and it's been rejected.

23 BY MR. TOCE, SR.:

24 Q. Has MAC ever had a policy, or any time you were there,
25 that distributors signed acknowledgment forms acknowledging

1 receipt of documents which MAC knew they did not receive?

2 A. A policy, no.

3 Q. Not a policy, did it ever happen?

4 A. Can you repeat the question?

5 Q. Isn't it true, sir, that many times MAC would have a
6 new recruit sign an acknowledgment receipt of documents form
7 when MAC knew that new recruits had not actually received
8 the document yet?

9 A. Not to my knowledge.

10 Q. Did you hear the testimony yesterday from a few of the
11 clients where the acknowledgment form was faxed to them in
12 connection with an eight page fax and MAC demanded them to
13 sign the acknowledgment form and fax it right back?

14 Do you remember that testimony?

15 A. I heard testimony that from one witness that they sent
16 and received an acknowledgment by fax.

17 Q. Did you see where it would be impossible or highly
18 improbable for MAC to fax the entire, whatever, 100
19 something pages of disclosure and contracts?

20 A. Yes, sir.

21 Q. And you would agree, would you not, that MAC wouldn't
22 fax the disclosure documents to anybody, a new recruit --

23 A. Probably not, but I can't say for sure. It could be
24 done.

25 Q. Did you hear the evidence from Mr. Blackwell and Mr.

1 Hadley that their acknowledgment forms were sent to them by
2 fax and MAC asked to send the acknowledgment form back by
3 fax that day?

4 A. I believe so, yes.

5 Q. Do you have any reason to dispute the fact that -- you
6 don't have any reason to dispute that testimony, at least,
7 in those peoples cases, do you?

8 A. No.

9 Q. Because you have no firsthand knowledge of how any of
10 those people before the Court today were recruited, right?

11 A. No, sir.

12 Q. Did you instruct the MAC recruiters to hype the
13 multitude distributable model to new recruits?

14 A. You say hype?

15 Q. Yes. To sell them on the idea of becoming MAC
16 distributors?

17 A. They were salesmen, of course, I did.

18 Q. Is it true that recruiting new tool distributors was a
19 high priority for MAC and consequently you?

20 A. Yes.

21 Q. Isn't it true that MAC would pay what you termed
22 bounties to the district manager to get new recruits to sign
23 on the dotted line, sometimes up to \$2,000 per signed new
24 distributor agreement?

25 A. I don't recall the word bounty. And their recruiting

1 has been a component of the bonus structure on and off.

2 THE COURT: Were bonuses up to \$2,000 or --

3 THE WITNESS: I can't speak to the levels, Your
4 Honor. It was a component of the salesman's bonus, and I'm
5 not involved in that.

6 THE COURT: You simply know there were bonuses,
7 you can not speak to the amounts.

8 THE WITNESS: I can say that at times it was a
9 component of the bonus structure, but at times it wasn't.

10 THE COURT: But as far as the amount, you're not
11 in a position to speak to that?

12 MR. TOCE, SR.: He's talking about two different
13 things, Judge.

14 BY MR. TOCE, SR.:

15 Q. Isn't it true, sir, that there was a bonus structure
16 pay to the DMs and the RMs on new recruits, right?

17 The more people they recruited, the bigger the bonus
18 they got under the pay scheme by MAC, right?

19 A. At different times, yes. And at other times, no.

20 Q. Right. At least at some times in addition to the
21 bonus, the recruiting DMs would get an additional amount of
22 cash up to \$2,000?

23 A. It could be at certain times there was additional
24 incentive.

25 THE COURT: Do you know what the amount of

1 additional incentive was?

2 THE WITNESS: I don't recall.

3 THE COURT: All right.

4 MR. TOCE, SR.: Could it be as high as \$2,000.

5 THE WITNESS: I suppose so.

6 Q. Could it be as high as \$3,000?

7 A. I really can't say, but I would think not that high.

8 Q. Well, if you're in charge of new recruit development
9 and you're in charge of training these DMs to go get these
10 recruits, how do you not know what they were paid by MAC to
11 get those number of recruits?

12 A. Because they reported to a regional manager, and my job
13 as sales support is to facilitate the process, not to manage
14 the district managers.

15 Q. If MAC had a policy to pay bounties a thousand to DMs
16 if they were successful in recruiting the new tools
17 distributors, how would you not know about that?

18 You were the one that was talking to them about why
19 they should recruit and what they would get if they do
20 recruit and why they should do it?

21 A. No, not necessarily what they would get if they do
22 recruit. I think I said at times they get incentives. I'm
23 not sure the amount.

24 Q. At times when there were bounties in place, isn't it
25 true you would know about it because the DM would have to

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1 know about it?

2 A. Yes.

3 Q. Because it was incentive by MAC to get the DM to
4 recruit more people, right?

5 A. Yes.

6 Q. And if you didn't tell them about it, it would be
7 useless to even pay them, because they recruit people
8 without a bounty?

9 A. No, it may not have been me to tell them about it.
10 They reported to regional managers that put an incentive in
11 place.

12 Q. But you dealt with regional managers too, didn't you?

13 A. I dealt with them, yes. They didn't report to me.

14 MR. TOCE, SR.: One second please.

15 (Pause.)

16 THE COURT: While there is a lull.

17 You mentioned that in April of 2003 you phased out
18 the MDSR program. Did the employee -- was employees who
19 were converting to traditionals do that directly through
20 you, or would that possibly have been done through their
21 district manager?

22 THE WITNESS: The district manager facilitated the
23 process, but all paperwork would have come through my
24 department.

25 THE COURT: It would have flowed through your

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1 department, but the contact between person to person with
2 regard to the conversion could have flown through the DM as
3 well as through you?

4 THE WITNESS: Predominantly it was the district
5 manager, yes.

6 THE COURT: All right.

7 BY MR. TOCE, SR.:

8 Q. Regarding the bounty question, you said you didn't
9 recall ever calling it bounty?

10 A. No, I didn't say that. I said at different time it's
11 different incentives, and I'm not sure of the amount.

12 Q. If I show you an e-mail dated "January 15, 2003, from
13 Mike Brubaker to MAC Tools regional managers, MAC Tools
14 managers, and the subject, recruiting, challenging winners,
15 sales dudes and dudettes: The winners of the Tool Fair
16 Bounty," would that refresh your recollection?

17 A. I suppose if I were to look at it.

18 MR. TOCE, SR.: For identification purpose a
19 printout, what purports to be a printout, of an e-mail by
20 Mr. Brubaker to his folks on January 15, 2003.

21 Q. Let me show you a rather crude printout of what
22 purports to be one of your e-mails and see if that rings a
23 bell.

24 A. Okay.

25 Q. Okay. So Exhibit 20 refreshes your recollection. In

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1 truth, you now remember that you referred to cash payments
2 for the recruitment of new directors as bounties?

3 MR. FRIEDMAN: I have no objection. And I want to
4 keep it in front of the witness so he can look at it.

5 THE WITNESS: Yes.

6 MR. TOCE, SR.: Thank you, sir.

7 We offer 20.

8 THE WITNESS: Can I elaborate?

9 MR. TOCE, SR.: No.

10 MR. KILBANE: We'll redirect.

11 Q. When you were training DMs to review these people, you
12 had to tell them to be enthusiastic about the business
13 opportunity the new recruit would have as new MAC
14 distributors, right?

15 A. In the selling process, yes.

16 Q. And you wanted the DMs to lead the recruits to believe
17 that being a MAC Tools distributor would be a better
18 economic livelihood for them as compared to what they were
19 doing, right?

20 A. No, I couldn't say that. We couldn't see the specific
21 outcome of any distributorship.

22 Q. I know you couldn't do that, but in general, for
23 instance, if the DMs told them they would have to incur
24 hundreds of thousands in debt, and probably bankruptcy in a
25 few years, that wouldn't be very effective recruiting, would

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1 it?

2 A. No, sir.

3 Q. What you probably did was opposite a feigned picture
4 that these guys would really make a good living as a MAC
5 Tools distributor?

6 A. We probably talked about opportunity and what was
7 possible, yes.

8 Q. In fact, MAC advertised for those distributors, right?

9 You testified when you got there you started
10 advertising the MAC Tools distributor economic opportunity,
11 right?

12 A. I don't think we ever discussed the economic
13 opportunity. We talked about opportunity to join the team
14 and being a part of owning your own business.

15 Q. Did MAC ever deal with media companies to formulate ads
16 to be put in trade journals or magazines advertising the MAC
17 Tools distributorship opportunity?

18 A. Yes.

19 Q. And didn't you tell these new recruits such things as
20 the MAC Tools distributorship could build their future?

21 A. I don't remember if we used that particular phrase, but
22 it's possible.

23 Q. But it sounds like something y'all would say, right?

24 And also that the MAC Tools distributorship had
25 excellent earnings potential, right?

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1 A. That's possible.

2 Q. So while you say when you got there MAC told the
3 recruiters they were forbidden from giving individual pro
4 forma projections as to how much money they thought one
5 person could make -- right?

6 A. Yes.

7 Q. But MAC told all of them that it would be a great
8 earning opportunity for them?

9 A. I don't recall if they ever used that phrase.

10 Q. How about excellent earning potential?

11 A. I don't recall.

12 Q. Let me show you what is going to be marked as
13 Plaintiff's Exhibit 21 for identification purposes.

14 THE COURT: This is all very interesting, but I'm
15 not sure what it has to do with the issues before this
16 Court. And I will ask Mr. Brubaker a question that you're
17 not going to be happy with.

18 Are you aware of any MAC Tools distributors that
19 did very well?

20 THE WITNESS: Absolutely.

21 THE COURT: Are you aware of MAC Tools
22 distributors whose earnings approached six figures?

23 THE WITNESS: Yes.

24 THE COURT: Are you also aware of MAC Tools
25 distributors who went broke?

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1 THE WITNESS: Yes, sir.

2 THE COURT: End of story. Some make it, some
3 don't.

4 BY MR. TOCE, SR.:

5 Q. Let me ask you this. Isn't it true that the majority
6 of MAC Tools distributors don't make it and don't stay, they
7 economically don't make it?

8 MR. KILBANE: Objection.

9 THE WITNESS: That's not true.

10 Q. How many members of the sales force can MAC handle at
11 the time you were there?

12 A. I'm sorry. I don't understand.

13 Q. In other words, I'm sure MAC had an infrastructure to
14 handle the distributor account to give them trucks, to give
15 them tools, and give them backup support in the office,
16 right?

17 My question is how many would be an ideal sales force
18 for MAC?

19 THE COURT: Mr. Toce, I'm going to cut off the
20 line of inquiry. It's not relevant to the issues before
21 this Court.

22 Now, what is relevant to the line of inquiry
23 before the Court, are you aware of any circumstances where a
24 potential distributor said to one of the ladies who reported
25 to you I want to take -- I'm not ready to sign all this

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1 stuff, I want the take it home with me, show it to an
2 attorney, and then make up my mind whether I want to sign or
3 not?

4 THE WITNESS: Yes, sir.

5 THE COURT: And you are aware of that happening?

6 THE WITNESS: Yes.

7 THE COURT: And when it happened what was the
8 response?

9 THE WITNESS: When that request came in?

10 THE COURT: Yes.

11 THE WITNESS: To take all the time that they
12 needed and contact us when they were ready to move forward.

13 Q. Can you identify how many times that happened over the
14 thousands of people that have come through MAC recruitment
15 while you were there?

16 A. No.

17 Q. I'm sorry?

18 A. From the time I was there, no.

19 THE COURT: From the time that you were in charge
20 of the process --

21 THE WITNESS: Yes.

22 THE COURT: -- can you give as a ballpark how many
23 times.

24 THE WITNESS: I would say at least a dozen.

25 Q. And how many recruits came through the door at the time

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1 you were there?

2 A. Several hundred.

3 Q. How large is the recruiting distributor force?

4 A. Right now?

5 Q. Yes.

6 A. About 1400 distributors.

7 Q. Is that the maximum amount MAC wants, or they want a
8 bigger force, or smaller force?

9 A. We continue to grow the business through recruiting.

10 We haven't identified the total scale.

11 Q. Isn't it true at some point you won't have enough
12 trucks or tools for new distributors?

13 A. Not that I've identified.

14 Q. Tell the judge about the turnover of MAC Tools
15 distributors and how that reflects or relates to your
16 recruitment efforts?

17 A. What would you like me to tell?

18 Q. What is the percentage of the sales force that you know
19 is 1400 that would turn over in a year?

20 MR. KILBANE: Note an objection to the line of
21 questioning, outside of the scope of this hearing.

22 THE COURT: I will note the objection and see if
23 he knows the answer to that.

24 THE WITNESS: Between 10 and 12%.

25 Q. If the MAC distributorship was such a viable economic

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1 business opportunity, why did you have to pay people to
2 recruit them?

3 THE COURT: So I'll sustain the objection that
4 hasn't been made.

5 MR. FRIEDMAN: I hadn't stood up yet, Your Honor.
6 Thank you.

7 MR. TOCE, SR.: You didn't have to.

8 BY MR. TOCE, SR.:

9 Q. Do you know a gentleman by the name of Scott Wayland?

10 A. I knew him.

11 Q. You knew he worked at MAC?
12 A. I knew him.
13 Q. He was a man, right?
14 A. Yes, sir.
15 Q. He was higher up in the MAC Tool chain than you were,
16 right?
17 A. He was a director at the time I was a manager.
18 Q. He was above you?
19 A. He was.
20 Q. Isn't it true you have no reason to dispute Mr.
21 Wayland's statement that tremendous pressure was put on
22 district managers to recruit people?
23 MR. FRIEDMAN: Objection, Your Honor.
24 THE COURT: Sustained.
25 Q. Is it true that the pressure on MAC by MAC on DMs to

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1 recruit people and the possible incentive resulted in some
2 of the DMs cheating on recruitment documents?
3 A. Not that I have ever been aware of.
4 Q. Sir?
5 A. No.
6 Q. You know of no instances where documents, recruiting
7 documents, were backdated?
8 A. Absolutely not.
9 Q. Has MAC ever threatened DMs with their jobs if their
10 recruitment efforts weren't up to a certain level?
11 A. No.

12 Q. MAC has never said to any district manager if you don't
13 recruit a certain amount of, number of, guys we're going to
14 take your job and find somebody who will do it?

15 A. No.

16 Q. If Mr. Wayland said that under oath, you wouldn't have
17 any reason to dispute it, would you?

18 MR. FRIEDMAN: Objection, Your Honor.

19 THE COURT: There is no evidence that Mr. Wayland
20 said it under oath.

21 MR. TOCE, SR.: With all due respect, Your Honor,
22 he filed a sworn affidavit in evidence in this case
23 originally that is considered by the court and is in the
24 record.

25 THE COURT: May I see it please?

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1 MR. TOCE, SR.: Yes, sir. It's got an ECF number.
2 That was the thing, remember, we had 23 people, but 25
3 affidavits, and two of the affidavits were with
4 nondistributor people.

5 MR. KILBANE: I thought that we had been through
6 this on the telephone. This was excluded in the telephone
7 conversation. It was on the telephone. Your Honor agreed
8 with me those two people that were not plaintiffs their
9 affidavits would not be considered because Judge Boyko only
10 referred to the plaintiffs' affidavits. And you ruled in
11 our favor. And now we have -- you also said they couldn't
12 call these two witnesses. Now we have Mr. Toce indirectly

13 attacking that ruling.

14 THE COURT: Mr. Kilbane, you don't have to press
15 it. I remember the conversation. And I remember what I had
16 to say about Judge Boyko's ruling and his order. And
17 without Mr. Wayland being here in person subject to
18 cross-examination, I can not and will not permit any line of
19 inquiry based on the Wayland affidavit. And I don't believe
20 Judge Boyko's ruling permits it.

21 MR. TOCE, SR.: Thank you, Your Honor.

22 For the record, MAC filed its motion to stay. The
23 plaintiffs filed a motion to submit evidence. Judge Boyko
24 allowed us to submit that record into the evidence. It is
25 in the record, with all due respect, it can be considered by

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1 the Court and should be considered by the Court.

2 THE COURT: It may be in the record, but not for
3 the purpose of this hearing.

4 MR. TOCE, SR.: They're not testifying here.

5 THE COURT: Mr. Toce, I ruled.

6 MR. TOCE, SR.: I still have to -- I'm going to
7 abide by the ruling. I still have to make a record.

8 THE COURT: You made your record.

9 BY MR. TOCE, SR.:

10 Q. Let me show you what has been marked as Plaintiff's
11 Exhibit 22 for identification, which purports to be a 2002
12 district manager bonus summary.

13 Does this document reflect bonuses we're talking about

14 earlier for people recruiting new distributors?

15 THE COURT: Let's start with has he ever seen it
16 before, is he familiar with it.

17 THE WITNESS: I have never seen this document
18 before.

19 Q. Are you familiar with the MAC district manager bonus
20 policy?

21 A. I wouldn't say I'm familiar with it. I know different
22 components of it, and it's changed over time. That's about
23 all I know.

24 Q. Is there anything in the documentation you take
25 exception, whether you've seen it or not, that doesn't

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1 coincide with MAC's policy for paying cash to DMs for
2 recruiting new distributors?

3 MR. FRIEDMAN: Objection. I was going to go about
4 it line by line. It's a long document.

5 THE COURT: No, he can read it. The question is
6 was there anything in there that he disagrees with.

7 THE WITNESS: No.

8 MR. TOCE, SR.: We would go ahead and offer.

9 Q. So basically 20, Plaintiff's 20 --

10 MR. FRIEDMAN: 22 I think.

11 THE COURT: 22.

12 Q. -- accurately reflects the bonus policy in place at MAC
13 in 2002 with regard to recruiting new distributors?

14 A. I can't say.

15 Q. Did you read it?

16 A. Yes. Yes. I don't know if that is accurate. I know
17 that the document by Scott Wayland -- I've never seen the
18 document, and I wasn't aware of the complete bonus structure
19 at that time.

20 Q. My question is do you have any knowledge that this
21 rendition of the bonus structure is wrong?

22 A. No.

23 MR. TOCE, SR.: We would go ahead and offer 20.

24 And 20 does have the 2000 recruit figure in it, doesn't it?

25 THE COURT: That's not 20, that's 22.

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1 THE WITNESS: This document does have the 2000
2 bonus structure in it.

3 THE COURT: Well, there is a qualification, it
4 starts within the quarter for new traditionals, not
5 generated via gain sharing. Do you know what gain sharing
6 means?

7 THE WITNESS: Yes, sir.

8 THE COURT: All right. Would you explain it to
9 me.

10 THE WITNESS: Gain sharing was a program that we
11 put in place for distributor referrals. If a current
12 traditional distributor referred a new distributor, they
13 were paid a percent bonus for that distributor's
14 performance, the new distributor's performance, over time,
15 2% the first year, 1% the second year, a half percent the

16 third year.

17 THE COURT: So the distributor could get an
18 override based on recommending somebody who was accepted as
19 a distributor as well.

20 THE WITNESS: Yes, sir.

21 THE COURT: And then in that case the DM, as I
22 read this, would not get the \$2,000 bonus.

23 THE WITNESS: No.

24 BY MR. TOCE, SR.:

25 Q. The DM would get the 2,000?

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1 THE COURT: He said no.

2 Q. Who gets it?

3 THE COURT: The way that he explained gain
4 sharing, if the distributor recommends somebody who becomes
5 a distributor, then the distributor would get in effect a
6 bonus. And if the distributor got a bonus, then the DM
7 didn't. That's the way this reads.

8 THE WITNESS: Correct.

9 Q. The \$2,000 bonus paid to traditional managers for new
10 traditionals -- that 2,000 goes to the district managers for
11 starts?

12 A. Unless another distributor referred, in that case the
13 district manager would not get the 2,000 bonus according to
14 this document.

15 Q. How many times would a situation be where the DM would
16 get the 2,000 as opposed to the gain sharing situation?

17 A. I don't know.

18 Q. You agree, Mr. Brubaker, do you not, and have so
19 stated, that MAC should operate with unquestionable
20 integrity?

21 A. That's one of our values.

22 Q. And while you were in the recruitment process you tried
23 to implement unquestionable integrity?

24 A. Yes.

25 Q. Well, let's talk about this for a second.

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1 Would you agree that a business model for recruiting
2 new distributors that sent everything for the number of
3 distributors, the drug test, the kit, the financial
4 applications, the credit applications, the personal profile,
5 and all the contracts, could be sent to that new recruit, he
6 could be advised to talk, get advice on the contracts, and
7 check it out, and if he still wanted to be a MAC dealer, to
8 send all that stuff back signed before the training, would
9 you agree that that would be of unquestionable integrity?

10 MR. KILBANE: Objection.

11 THE COURT: Sustained.

12 MR. TOCE, SR.: He is on cross, Your Honor.

13 THE COURT: Relevance.

14 MR. TOCE, SR.: The relevance is I was going to
15 get this witness to admit that this recruiting process that
16 he was involved with was far below unquestionable integrity,
17 but now he knows where I'm going.

18 THE COURT: Why would anybody sign a distributor
19 agreement before they became a distributor, Mr. Toce?

20 Why would anybody sign a promissory note before
21 they became a distributor?

22 MR. TOCE, SR.: Because they weren't effective
23 until MAC signed them. They would send them back. There
24 wouldn't need to be any signing.

25 THE COURT: I don't know that would be any better

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1 than waiting until they completed the process.

2 MR. TOCE, SR.: Because of the rush to sign the
3 paper, lack of ability to have independent advice.

4 THE COURT: Mr. Toce, if indeed a potential
5 distributor received the documents and had the opportunity
6 to seek advise of anyone who that person sought to consult,
7 it would make no difference whether they signed it then or
8 whether then signed it later.

9 MR. TOCE, SR.: If they had the documents ahead of
10 time, correct.

11 THE COURT: If they had the documents ahead of
12 time, and you have assume that they did get the documents
13 ahead of time, and you're asking wouldn't it have been a
14 better practice to have them sign them ahead of time, and
15 the answer, as far as I'm concerned, is absolutely not,
16 gentlemen. And I don't care if there would have been a
17 better business mold. The question before the house is was
18 MAC taking advantage of these potential distributors, not

19 could they have done it better, did they do it badly.

20 MR. TOCE, SR.: Well, that's what I am talking
21 about, Judge.

22 THE COURT: No, you're not. You're talking about
23 could they have done it better.

24 MR. TOCE, SR.: The evidence --

25 THE COURT: The question you asked this gentleman

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1 is wouldn't it have been better to do it another way, which
2 is not the same as did they do it badly the way they did it.

3 MR. TOCE, SR.: Well that's where I was going to
4 go with it, Judge.

5 THE COURT: Well, you were going about it badly as
6 far as I'm concerned. Go about it differently.

7 BY MR. TOCE, SR.:

8 Q. Would you agree, sir, that if the plaintiffs testified
9 truthfully that they didn't get the documents ahead of time
10 and saw them for the first time at the training, had no one
11 there to answer their questions, were pressured by flight
12 arrangements, or travel arrangements that were based on
13 times provided by you, that would not be a recruiting
14 process of unquestionable integrity, would it?

15 MR. FRIEDMAN: Objection.

16 THE COURT: Overruled.

17 THE WITNESS: If that were to be the case. First
18 of all, I think you said flight arrangements made by me. We
19 didn't make their flight arrangements, they did.

20 Q. When these people were coming to the training, don't
21 they ask you how long I have to be there?

22 And don't you tell somebody at MAC to say you need to
23 be here X time on Monday and leaving about X time on Friday,
24 don't you?

25 A. Yes.

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1 Q. Okay. So they make the flight arrangement in which you
2 tell them they are going to be there, the time you tell them
3 they're going to be there, right?

4 A. Yes.

5 Q. Now, can you answer my question?

6 MR. FRIEDMAN: Objection. Legal standards is not
7 unquestionable integrity.

8 THE COURT: I will overrule that objection.

9 THE WITNESS: Could you repeat the question?

10 THE COURT: All right. I'll do it again.

11 They don't get the documents, they get hustled
12 through the signing process, and they're under pressure to
13 catch a flight, is that the way it ought to be?

14 THE WITNESS: No, sir.

15 MR. TOCE, SR.: Thank you.

16 THE COURT: Thank you.

17 MR. TOCE, SR.: No more questions.

18 REDIRECT EXAMINATION OF MICHAEL BRUBAKER

19 BY MR. FRIEDMAN:

20 Q. Mr. Brubaker, you were asked about the size of the -- I

21 think it was you said 1400 was the current size of the
22 network. What was it in 2002?

23 A. If I recall maybe approximately 1150.

24 Q. And, again, just for the timing, Mr. Toce asked you
25 about turnover, was the turnover 10% to 14%?

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1 THE COURT: Actually he said 10% to 12%.

2 THE WITNESS: Yes.

3 Q. Again, talking about the time period 2002, 2003 those
4 answers are the same?

5 A. Yes.

6 Q. You were shown an e-mail, I don't have the Exhibit
7 number in front of me, 20, and it was a question about
8 bounty, you said you had something you wanted to elaborate
9 on. Would you like to elaborate now?

10 A. Yes. I understood the question to be that of a
11 district manager bonus question. That particularly
12 challenge was traditional referral use Tech 1,000 toolbox
13 for free and the MDSR's received a payroll bonus since they
14 were employees.

15 Q. So this was a bounty for distributors not district
16 managers in the e-mail?

17 A. Yes, sir.

18 Q. So you stand by your prior testimony that you never
19 used the bounty to describe a bonus for district managers?

20 A. No, sir.

21 Q. Just for the record , you said no.

22 THE COURT: Well, actually, if you look at Exhibit
23 20 it reads, "Here are the winners of the Tech 1,000 sets
24 and the MDSR's with the \$500 bonuses." Which is what Mr.
25 Brubaker has just testified to.

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1 MR. FRIEDMAN: Thank you.

2 Q. You heard Ms. Rasmussen testify --

3 THE COURT: I assume you'd like to now offer the
4 Plaintiff's Exhibit?

5 MR. FRIEDMAN: I'll withdraw my objection. I'm
6 not sure if I objected to that one.

7 BY MR. FRIEDMAN:

8 Q. You heard Ms. Rasmussen testify earlier that she
9 followed your instructions to tell distributors at the
10 signing that they could take as much time as they needed,
11 correct?

12 A. Yes.

13 Q. You don't think she was lying when she testified to
14 such today, do you?

15 MR. TOCE, SR.: Objection.

16 THE COURT: Sustained.

17 Q. Now, we also talked a little bit about attachment G,
18 the acknowledgment, correct?

19 A. Yes.

20 Q. And when you saw and executed the acknowledgment in the
21 file prior to training, you assumed that the distributors
22 were not lying when they executed the acknowledgment,

23 correct?

24 A. Yes.

25 MR. FRIEDMAN: No further questions.

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1 RECROSS-EXAMINATION OF MICHAEL BRUBAKER

2 BY MR. TOCE, SR.:

3 Q. If the disclosure document itself was incorrect at the
4 direction of the DM, who was recruiting the guy, that
5 wouldn't be the recruit lying, would it?

6 A. If the disclosure was incorrect?

7 Q. Yes. The new recruit signs. I just received all these
8 documents and he didn't. And he told the district manager I
9 don't have the document, the district manager just says just
10 sign anyway, we'll get the document to you later?

11 A. You said disclosing your document?

12 Q. Acknowledgment?

13 A. Acknowledgment was incorrect?

14 Q. I think that's what we're talking about, yeah,
15 acknowledgement form being incorrect.

16 A. Could you repeat the question?

17 Q. Under the circumstances testified by all of our people,
18 a district manager sends the acknowledgment form to the new
19 recruit, the new recruit says I don't have these documents,
20 and the district manager says just go ahead and sign an
21 acknowledgment form, we need that form to get you started on
22 your business, when the DM knew he didn't have the document,
23 the DM supplied the acknowledgment form, and he also was to

24 supply the documents, didn't supply the documents. Do you
25 understand?

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1 MR. FRIEDMAN: Objection.

2 Q. The question is that incorrect document would not be
3 the responsibility of a new recruit, it would be the
4 responsibility of the MAC DM under my scenario, wouldn't it?

5 MR. FRIEDMAN: Objection.

6 THE COURT: Overruled.

7 THE WITNESS: Yes.

8 Q. Did MAC ever tell you that they had done a study
9 showing that the distributors economic model without
10 automotive equipment specialists was doomed to economic
11 failure?

12 A. Not to my knowledge.

13 Q. If not you personally or anybody in your department,
14 but higher up in MAC, the president, the board of directors
15 knew that the distributors you were recruiting were doomed
16 to economic failure and they had you recruit them anyway,
17 that wouldn't be the right way to do it, would it?

18 MR. FRIEDMAN: Objection, outside the scope of
19 redirect.

20 THE COURT: It is outside the scope of redirect.

21 MR. TOCE, SR.: We move to introduce the exhibits
22 used with Mr. Wayland.

23 THE COURT: Do you know the answer to the question
24 I asked Mr. Rasmussen about, if somebody washed out, they

25 would end up eating their cost in attending the training?

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1 THE WITNESS: Yes, sir, I believe they would still
2 incur those costs.

3 THE COURT: So they would not be reimbursed by MAC
4 for the cost that they had incurred if they didn't
5 successfully complete the program?

6 THE WITNESS: Not at that time unless I made an
7 override based on customer service issue.

8 THE COURT: All right. Thank you.
9 What exhibits are you moving the admission at this
10 point?

11 MR. TOCE, SR.: All of them that I marked today,
12 to the extent they haven't gone in yet.

13 MR. KILBANE: I have H, I, J.

14 THE COURT: We're not dealing with your H, I, J.
15 We're dealing with 17 to 22.

16 MR. ARSHAWSKY: 17 to 22.

17 THE COURT: Other than the exhibit that I have
18 already rejected, do you have objection to any of the
19 others?

20 MR. FRIEDMAN: If I can just see them.

21 MR. TOCE, SR.: I think it's 21, Steve. The other
22 one in question, 19, you objected.

23 MR. KILBANE: 19 knocked out, Joe objects to 20, I
24 object to 17, December of 1996.

25 THE COURT: Yes. That's -- are you offering 17,

1 that's the 1996 do's and don'ts.

2 MR. TOCE, SR.: Yes, I would like to offer, but I
3 think you shut me down on that.

4 THE COURT: I will reject 17.

5 MR. KILBANE: No objection to 18.

6 THE COURT: Admitted.

7 MR. KILBANE: 19 we've already objected. So we
8 objected.

9 THE COURT: That's taken care of.

10 MR. KILBANE: No objection on 20.

11 THE COURT: Admitted.

12 MR. KILBANE: I'll object on 21. It's a bunch of
13 documents. I think they only talked about the first page.

14 MR. TOCE, SR.: Actually it's only the first page.

15 THE COURT: Shall we pull off the rest of it.

16 MR. FRIEDMAN: I won't object yet on the first
17 page.

18 THE COURT: 21 received.

19 MR. FRIEDMAN: And I object to 22.

20 THE COURT: For what it's worth I will receive it.

21 All right. You want to move the admission of your
22 additional documents at this time or do you want to wait
23 until we're done with your witnesses?

24 MR. FRIEDMAN: Whatever your preference.

25 (Discussion off the record.)

1 (Recess had.)

2 MR. FRIEDMAN: Ms. Shilli Hightshoe, Your Honor.

3 MR. TOCE, SR.: Your Honor, plaintiffs offered to
4 shorten the proceeding by agreeing that this witness will
5 give the same or similar answers to all of the questions
6 that were asked of Ms. Rasmussen, and if counsel agree she
7 would respond the same way if I did the same cross, we can
8 agree on that.

9 THE COURT: We don't need to reinvent the wheel
10 with Ms. Hightshoe that would reflect your examination to
11 whatever she has to say that is duplicative and cumulative
12 the testimony of Ms. Rasmussen, which is good news to her.

13 SHELLI HIGHTSHOE,
14 of lawful age, a witness called by the Defendant,
15 being first duly sworn, was examined
16 and testified as follows:

17 DIRECT EXAMINATION OF SHELLI HIGHTSHOE

18 BY MR. FRIEDMAN:

19 Q. Thank you. Ms. Hightshoe, who is your current
20 employer?

21 THE COURT: Let's first start with how do you
22 spell your name?

23 THE WITNESS: H-I-G-H-T-S-H-O-E and Shilli with an
24 I.

25 MR. TOCE, SR.: Just like it sounds phonetic

1 spelling.

2 THE COURT: I wanted to get it for the benefit of
3 the reporter.

4 BY MR. FRIEDMAN:

5 Q. Ms. Hightshoe, your current employer is?

6 A. McGraw Hills Company.

7 Q. And how long did you cease to be employed by MAC?

8 A. Since September 1st.

9 Q. And your leaving MAC was your choice, it was voluntary?

10 A. Oh, correct.

11 Q. In 2002, 2003 you had a recruiting specialist job like
12 you heard Mr. Rasmussen testify?

13 A. Correct.

14 Q. Just to be clear, in the time period, either you or Ms.
15 Rasmussen executed the distributor agreements with all of
16 the distributors?

17 A. Yes.

18 THE COURT: You ever get a sick day?

19 THE WITNESS: No. It was not allowed on signing
20 day.

21 Q. No sick days on Friday, correct?

22 A. Correct. If I wasn't there, Carri did it.

23 Q. I'm going to hand you some documents, first, what was
24 previously marked yesterday as Plaintiff's Exhibit Number 4.
25 I will just give you my copy unless we can -- and then what

1 we're going to mark as Defendant's Exhibit K?

2 THE COURT: Speaking of yesterday. I was scanning
3 my notes, which of your witness testified he had been in the
4 MDS program and got converted to a traditional?

5 MR. TOCE, SR.: Kelly Thompson.

6 BY MR. FRIEDMAN:

7 Q. Ms. Hightshoe, have you looked at Exhibit K?

8 A. Yes.

9 Q. Can you explain to the Court what that is?

10 A. That's Attachment G, the attachment.

11 Q. Mr. Wenzel?

12 A. Yes.

13 Q. Can you identify the writing "no" and crossed out?

14 A. That would be mine.

15 Q. Do you recall why did you write "no" and cross that
16 out?

17 A. At the time we were updating our disclosure agreement,
18 and when he first submitted the acknowledgment page it was
19 from the oldest closure agreement with the date of 4-15-03.

20 Q. So this document Exhibit K you had in the file prior to
21 Mr. Wenzel's training?

22 A. Yes.

23 Q. And then during training you crossed it out, wrote no
24 and had him execute Exhibit 4?

25 A. Correct.

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1 Q. And can you read the footers on the bottom of Exhibit K
2 and Exhibit 4 and explain what the footers say, the footer

3 on the resident corner, the date on Exhibit K?

4 A. March 8, 2002 as amended on December 20, 2002.

5 Q. And footer for Exhibit 4?

6 A. April 11, 2003.

7 Q. Did you know what changes happened in the disclosure
8 documents around April 2003?

9 A. I believe they were just -- the MDSR program was ending
10 so that information, I'm not really for sure.

11 Q. But you recall everyone in that class that had older
12 disclosure forms, acknowledgment forms -- let me start that
13 over again.

14 We have been using the terms, I get confused sometimes.
15 Do you recall whether for every one in that particular class
16 you took the old acknowledgment form and had them sign a new
17 one also?

18 A. Correct.

19 Q. You're not aware of any changes in the arbitration
20 provision of the distributor agreement between December,
21 2002 and April 2003?

22 A. No.

23 Q. You're not aware of any substantive changes in the
24 distributor agreement?

25 A. No.

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1 MR. FRIEDMAN: No further questions.

2 CROSS-EXAMINATION OF SHILLI HIGHTSHOE

3 BY MR. TOCE, SR.:

4 Q. Ms. Hightshoe, you've never looked at the prior version
5 of the distributor agreement to the current version line by
6 line to compare if there are any differences, have you?

7 A. No.

8 Q. So I guess the truth of the matter is why you don't --
9 you have no knowledge of differences, to be completely true,
10 you never looked and compared -- you never did the analysis
11 to see if there were any differences?

12 A. Correct.

13 Q. Plaintiff's Exhibit number 4 was the Wenzel
14 acknowledgment form, this one. It's your testimony that you
15 wrote no on Defendant's Exhibit K and struck a line through
16 the document?

17 A. Yes.

18 Q. And when did you do that?

19 A. I don't know.

20 Q. Would it have been at the training, or before, or
21 after?

22 A. It could have been before, whenever I received it.

23 Q. Okay. So if MAC submitted Plaintiff's Exhibit 4 as
24 evidence in opposition to or support of the motion to stay,
25 that would be the wrong document?

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1 MR. FRIEDMAN: Objection.

2 THE COURT: I'll overrule the objection, because
3 -- actually, I'll sustain the objection because it calls for
4 a legal conclusion which is beyond the witness's --

5 MR. TOCE, SR.: I'll rephrase, Judge.

6 BY MR. TOCE, SR.:

7 Q. Plaintiff's Exhibit Number 4 would not stand for what
8 it purports to stand for in the sense that this document
9 with Victor Wenzel's signature, purportedly acknowledging
10 the receipt of all those documents on P4, right?

11 A. Correct.

12 Q. But the truth of the matter, he didn't receive the
13 documents on P4 and that's why you struck out and put no on
14 Defendant's Exhibit K, right?

15 MR. FRIEDMAN: Objection, convoluted, but if she
16 understands.

17 THE COURT: Do you understand the question?

18 THE WITNESS: He received a disclosure agreement,
19 yes. He received that. That is what Exhibit K is.

20 THE COURT: Can I see Exhibit 4.

21 Q. You agree the two documents are inconsistent?

22 One says I received a bunch of documents, but the other
23 one is the same for -- with no and he didn't receive
24 documents, right?

25 A. No. He received documents twice.

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1 Q. You have no personal knowledge of what he received,
2 right?

3 A. Yes, I do, actually. I was there. I was the one who
4 signed Mr. Wenzel's documents.

5 Q. You remember?

6 A. I remember the name. I remember it.

7 Q. Do you remember him asking for a contract during
8 training when he got there?

9 A. No, he did not need to ask, we provided those.

10 Q. Mr. Wenzel testified that he did not have the documents
11 before he got to training. And when he got to training he
12 repeatedly asked for a copy of the contract.

13 Since you were involved with Mr. Wenzel, do you
14 remember him asking for copies of the contract that he
15 didn't have at the distributor seminar?

16 A. No.

17 Q. What does Mr. Wenzel look like?

18 A. I can't recall.

19 Q. You wouldn't know if he's five feet tall or six feet
20 tall?

21 A. No.

22 Q. You wouldn't know if he weighs 400 pounds or 100
23 pounds?

24 A. No. I remember the name.

25 Q. Okay. I'm confused. On Defendant's Exhibit K, the

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1 acknowledgement form signed by Mr. Wenzel, you struck a
2 whole line through it and put no. Why did you do that?

3 A. I could not use that as an acknowledgment.

4 Q. Why?

5 A. Because it was outdated. He did not have the new book.

6 We gave him the new book on the first day of class. And he

7 signed that disclosure again.

8 Q. Okay. So he gave his materials -- he got his
9 materials, his contracts that he had to sign, when he got to
10 the training, the correct contracts?

11 A. Correct.

12 Q. So Mr. Wenzel didn't have the correct distributor
13 documents, the contract distributor agreement, before he got
14 to the training, correct?

15 A. Not that I'm aware of.

16 Q. Right. Did you also participate in the MDSR conversion
17 to traditionals?

18 A. Yes.

19 Q. That must have been pretty hard time at MAC because
20 they were basically firing all the MDSRs, right?

21 A. I don't know what you mean by hard time.

22 Q. Well, I can't manage a really fun day that you get
23 fired from your job, right? I'm talking about being fired.

24 A. Okay.

25 Q. And that was in December of --

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1 A. I don't know the exact date.

2 Q. You don't remember when the conversion was?

3 A. Not the exact dates, no.

4 Q. If I told you MAC instituted the conversion program in
5 December -- April '03, does that sound right?

6 A. That could be, yes.

7 Q. Isn't it true that immediately prior to firing MDSRs

8 and offering them the right to convert their pay checks were
9 altered dramatically against them?

10 In other words, in December they got paid a lot less
11 money than they have been paid before. Do you remember
12 anything like that?

13 A. I have no idea.

14 MR. TOCE, SR.: One moment please.

15 (Pause.)

16 Q. I need some clarity on the dates here.

17 Defendant's Exhibit K is dated 4-15-03, correct?

18 A. Correct.

19 Q. And that's the one you say was invalid, incorrect,
20 because Mr. Wenzel didn't have the right documents?

21 A. Correct.

22 Q. Plaintiff's Exhibit 4 is dated 5-16-03. And it's your
23 testimony that plaintiff's 4 is the correct document,
24 correct acknowledgement with the correct contract, is that
25 right?

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1 A. Correct.

2 Q. And you said you gave it to him on the first day of
3 training, correct?

4 A. We gave them the book on the first day of the training.
5 We might not have received the disclosure back until signing
6 day.

7 Q. So you're saying the document now, Plaintiff's 4, is
8 not entirely accurate either, because he's acknowledging on

9 April 16, '03 that he has the documents, right, he received
10 the documents?

11 THE COURT: No, May 16, '03.

12 MR. FRIEDMAN: Objection, that's not what she
13 testified to.

14 THE COURT: Right. She said it's signed May 16,
15 '03, but that she may have given him the book earlier is
16 what she just said.

17 MR. TOCE, SR.: I was just trying to get clear
18 what she was saying.

19 Q. Is that right?

20 A. Yes.

21 Q. And so MAC would have no written evidence documenting
22 when Mr. Wenzel actually got the distributor agreement and
23 information packet other than Plaintiff's Exhibit 4 dated
24 5-16-03, right?

25 A. We have records that he received a disclosure agreement

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1 with similar documents on April 15th.

2 Q. You have no -- excuse me. I didn't mean to interrupt.

3 A. The two parts of the disclosure agreement didn't change
4 then. I don't see the difference.

5 Q. I'm talking -- when I am talking about acknowledgment
6 form, I'm focusing on the distributor agreement mostly.

7 Okay. And the only written evidence MAC has of when Mr.
8 Wenzel received the correct contracts is dated May 16th?

9 A. Right.

10 Q. And that would be the day he signed, became a
11 distributor?

12 A. I don't know that. I can't tell.

13 MR. FRIEDMAN: We can stipulate that his
14 distributor agreement was signed on May 16th. That's in
15 evidence already.

16 MR. TOCE, SR.: Is this document already in
17 evidence? It's the Victor Wenzel contract.

18 THE COURT: Mr. Friedman just stipulated it was
19 signed on May 16th.

20 MR. TOCE, SR.: I understand. I'm going to ask
21 something else about it.

22 THE COURT: Go ahead.

23 Q. Mr. John Aden's signature is also on the 16th?

24 A. Correct.

25 Q. Was he there that day?

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1 A. No.

2 Q. What's the process for getting Mr. Aden's signature?

3 A. We would go to his administrative assistant and ask for
4 the executive stamp and stamp the document and take it back
5 to her.

6 Q. That was the process for all distributor agreements?

7 A. Yes.

8 THE COURT: All right. Everybody in this room who
9 is shocked that Mr. Aden did not personally sign all the
10 distributor agreements raise their hand.

11 A distinct minority.

12 MR. TOCE, SR.: I didn't know it was a stamp.

13 Nothing further.

14 THE COURT: Anything further?

15 MR. TOCE, SR.: No, sir.

16 MR. KILBANE: Just very briefly.

17 REDIRECT EXAMINATION OF SHILLI HIGHTSHOE

18 BY MR. KILBANE:

19 Q. You were asked you had no written evidence that Mr.
20 Wenzel was given a second set of disclosure documents prior
21 to May 16th, but you have evidence?

22 A. Correct.

23 MR. TOCE, SR.: Objection, leading.

24 THE COURT: Well, no, she has testified. It's
25 really unnecessary to ask the question because Ms. Hightshoe

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1 unequivocally testified she remembered giving Mr. Wenzel the
2 new packet when he arrived for training. And as far as I'm
3 aware, because the focus is on the distributor agreement,
4 there is no evidence that there has been a change in the
5 distributor agreement between the timing of the two
6 acknowledgements. May I have those please.

7 I've looked at the acknowledgements and what I see
8 is there are some differences. For example, Attachment A in
9 the earlier version was simply described as the MAC Tools
10 distributor agreement in April 2003. It is described as the
11 MAC Tools distributor agreement and conversion addendum,

12 which the reference of conversion addendum, I would assume,
13 is related to the phasing out of the MDSR program.

14 The 2002 version has 22 items listed under
15 Attachment A, the 2003 version has 23 items listed. There
16 are also some other changes from the 2002 version to the
17 2003 version. On the 2003 version there is a document 15,
18 intention to convert to traditional distributorship form,
19 which did not appear on the 2002 version. There is also a
20 reference to a motor vehicle sub lease agreement (no
21 warranty on the 2003 version that did not appear on the 2002
22 version), otherwise they seem to track each other.

23 And with that --

24 MR. FRIEDMAN: No further questions.

25 THE COURT: -- neither of you have any further

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1 questions for Ms. Hightshoe. Thank you very much.

2 THE COURT: You're offering K, I assume?

3 MR. FRIEDMAN: Correct. And I don't think we went
4 over the ones I offered earlier this morning which are H, I
5 and J.

6 THE COURT: Those being?

7 MR. FRIEDMAN: H is the box, which I don't think
8 is up there.

9 THE COURT: H is the box and I is the booklet in
10 the box.

11 MR. TOCE, SR.: We object to that because there
12 has been no testimony that any of these plaintiffs ever got

13 that box with the same stuff in it.

14 THE COURT: Understood. And in fact the testimony
15 is that the one witness that did refer to receiving a box
16 said that was suppose to be in there, but wasn't.

17 MR. TOCE, SR.: Right.

18 THE COURT: With that understanding I will accept
19 H and I.

20 MR. TOCE, SR.: More importantly, Your Honor, no
21 witness from MAC connected that box to any of our guys.

22 THE COURT: No, I understand it is a specimen box.

23 MR. TOCE, SR.: Exactly, specimen.

24 MR. FRIEDMAN: I don't think J was objected to.

25 THE COURT: J.

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1 MR. FRIEDMAN: That's the Deemer letter.

2 THE COURT: THE Deemer letter.

3 Here are copies of the disclosure documents that
4 you signed.

5 MR. TOCE, SR.: I have to object to that because
6 Mr. Deemer would be the one to verify whether he got that,
7 I.

8 THE COURT: I think Mr. Deemer said he did get the
9 documents after the fact.

10 MR. TOCE, SR.: After the --

11 THE COURT: And this document, this letter,
12 verifies that he received them after the fact, the signed
13 copies.

14 MR. STEVENS, JR.: Not for that contract, Your
15 Honor. It was for the second contract of '03. He testified
16 that for that one he did not receive the documents.

17 THE COURT: Oh, in that case, I will receive it
18 anyway as evidence of a business record that indicates that
19 they were sent. So now we have a conflict in the evidence
20 as between his testimony he didn't receive copies and MAC's
21 letter that says we sent them to him.

22 MR. TOCE, SR.: But did we get testimony from any
23 of the witnesses?

24 MR. FRIEDMAN: Mr. Brubaker testified.

25 MR. TOCE, SR.: That he got that?

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1 MR. FRIEDMAN: No. Mr. Brubaker testified that
2 was a document kept in the ordinary course of business from
3 MAC files.

4 THE COURT: Was qualified as a business record.
5 So what that leaves us with is one more conflict in the
6 evidence.

7 MR. TOCE, SR.: I mean it may very well be a
8 business record, but you still have to put on evidence that
9 it actually even went to Mr. Deemer, someone saying he
10 mailed it to Deemer.

11 THE COURT: It's a business record, qualified for
12 admission as a business record. He says he didn't get it.

13 MR. TOCE, SR.: And no one says they mailed it to
14 him.

15 MR. FRIEDMAN: The last one that crossed out
16 acknowledgment.

17 THE COURT: And I will accept that.

18 MR. FRIEDMAN: I think that's all we offered.

19 THE COURT: Any rebuttal?

20 MR. TOCE, SR.: We call Danny Deemer, Your Honor.

21 DANNY DEEMER,
22 of lawful age, a witness called by the Plaintiff,
23 being previously first duly sworn, was examined
24 and testified as follows:
25

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1 DIRECT EXAMINATION OF DANNY DEEMER

2 BY MR. TOCE, SR.:

3 Q. Danny, please look at that document, which is in
4 evidence as a business record of MAC, but I want you to tell
5 us whether in fact you ever got that letter, and if you did,
6 did you get all the stuff that's supposedly attached to it?

7 A. I do not recall getting this letter or any attachments
8 with the first truck, like the big packet of papers. And
9 what this appears is, it would be like a header, you know,
10 with it. And if I did not receive my documents, how -- I
11 would not have received this now, like I did with the second
12 truck, but I didn't have nothing on the first one. I didn't
13 even have it to give to these guys.

14 Q. Is the letter of first page of J signed by anyone?

15 A. No.

16 Q. Have you ever gotten -- do the letters you received
17 from MAC, are they usually signed by someone on the
18 signature page?

19 A. I'm not sure on that one, might be if I signed it. I
20 mean if I have to sign it, I say, but --

21 Q. I'm talking about the first page on the cover letter,
22 Deb Mitchell never signed, the person who purportedly sent
23 or wrote this letter, never signed it?

24 A. No.

25 Q. Let me ask you about the expense of training.

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1 Do you remember the two or three thousand dollars we
2 talked about for travel and hotel and meals for that two
3 week period?

4 Did you hear the MAC witness testify that they have
5 reimbursed you for that in the form of credit, or toolbox,
6 or something?

7 A. Yes. I heard that.

8 Q. Is that true?

9 A. I didn't get a toolbox. I can't really recall that for
10 a fact whether I got anything on that or not. I couldn't
11 honestly answer that without going back to my computer and
12 seeing if I got it.

13 Q. Were you told by anyone at MAC or DM that because you
14 went to the training they were going to reimburse your cost,
15 tell us how much your cost were, or you give us a credit?

16 A. Not that I remember.

17 Q. Did MAC tell you anything that would lead you to expect
18 some sort of compensation, payment credit or otherwise, for
19 expense you incurred at the training?

20 A. Not that I remember, like I say, not that I remember.
21 If they were going to reimburse me, like I say, if he did
22 give me a credit, I couldn't honestly answer that to say
23 without looking at my stuff. It's too long ago to remember
24 that, for me to be 100% sure, you know.

25 MR. TOCE, SR.: That's fine. No more questions.

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1 MR. KILBANE: Just a few, Your Honor.

2 CROSS-EXAMINATION OF DANNY DEEMER

3 BY MR. KILBANE:

4 Q. Mr. Deemer, is it fair to say that the reason why you
5 believe you did not receive this Exhibit J is because you
6 can't locate copies of the documents, the contract documents
7 in your place of business or your home?

8 THE WITNESS: Yes, to a point, but also to go
9 about that, I never remembering getting them documents
10 neither, not that I lost them, I usually keep all my stuff,
11 you know, in a file, and they're not there. And I do not
12 remember having them, ever getting them.

13 Q. But, Mr. Deemer, are you aware that it's a common
14 business practice for someone to sign a letter, send it out
15 to you, and keep an unsigned copy in their files?

16 MR. TOCE, SR.: Objection.

17 THE WITNESS: I don't know.

18 MR. TOCE, SR.: Objection.

19 THE COURT: Overruled.

20 THE WITNESS: I don't know if that's a common
21 practice or not.

22 MR. KILBANE: Okay. Thank you. No further
23 questions -- one second.

24 (Pause.)

25 THE COURT: The bottom line, Mr. Deemer, you

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1 really don't know one way or another whether they issued
2 some kind of credit for the expenses you had in going to
3 training?

4 THE WITNESS: No. That I could not answer that
5 honestly today without --

6 THE COURT: Okay.

7 THE WITNESS: I don't remember that one, but I
8 don't remember them offering it. But I couldn't honestly
9 say if I did get it.

10 THE COURT: One way or the other?

11 THE WITNESS: I wouldn't want to comment on it.

12 Am I done?

13 THE COURT: You're done.

14 MR. KILBANE: Yes. No further questions. Thank
15 you, Mr. Deemer.

16 MR. TOCE, SR.: And Mr. Dale Glime.

17 DALE GLIME,

18 of lawful age, a witness called by the Plaintiff,

19 being first previously duly sworn, was examined
20 and testified as follows:

21 DIRECT EXAMINATION OF DALE GLIME

22 BY MR. TOCE, SR.:

23 Q. Mr. Glime, have you ever been told by anyone at MAC
24 that the expenses you incurred going TO training would be
25 reimbursed to you either in cash, or credit, or some other

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1 thing of value?

2 A. No.

3 Q. Did MAC ever reimburse you or give you anything of
4 value or credit for the expenses you incurred going to the
5 training?

6 A. No.

7 Q. On another matter. You gave me a promissory note
8 that's in evidence I think.

9 MR. TOCE, SR.: 17, Your Honor, could you please
10 show that to him.

11 Q. What is that a result of -- what is that?

12 A. Well, it looks like a promissory note I signed for a
13 loan for \$60,000 for a tool bill.

14 Q. Does that mean you bought \$60,000 of tools from MAC and
15 MAC extended you credit on a promissory note on that date of
16 the promissory note?

17 A. Yes.

18 Q. The day of the promissory note before you went to the
19 training?

20 A. Yes.

21 Q. When you were sitting down with the documents, you
22 already testified about the wait and frustration and kind of
23 rush process, but the fact that you already owed them
24 \$60,000, had \$60,000 in tools and the truck, did that impair
25 your ability to walk away from the table because you didn't

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1 understand the document?

2 A. Yes.

3 MR. KILBANE: Objection leading.

4 THE COURT: What?

5 MR. KILBANE: Leading.

6 THE COURT: It is, but I will permit it.

7 THE WITNESS: I don't remember signing it. I was
8 quite surprised to sign it when I got it, but when I signed
9 the statement I already had the truck filled with tools. It
10 was sitting there and I was quite shocked to sign this
11 before I went to school. I just saw it today.

12 And as a matter of fact, when I got home, my first
13 week on the route I had a truck note that was due, that was
14 actually late. And I was only out of school for one week.
15 So I can't imagine how that even happened.

16 Q. Did you have any concerns at the document signing that
17 if you changed your mind what would happen with the \$60,000
18 note and the tools and the truck?

19 A. I would have the tools and truck and nothing to do with
20 them. It's not even a black truck. It says MAC all over.

21 It's nothing I can do with it.

22 Q. Were you ever assured by MAC at the signing if you
23 signed the papers they'd pay \$60,000 back?

24 A. Absolutely not. As far as I was concerned, I was
25 hooked. I was done.

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1 MR. TOCE, SR.: Nothing further.

2 MR. FRIEDMAN: Let me just see the document. They
3 didn't have the document.

4 CROSS-EXAMINATION OF DALE GLIME

5 BY MR. KILBANE:

6 Q. With respect to your expense, Mr. Glime, did you ever
7 request reimbursement to MAC Tools?

8 A. I had no idea I could, nobody pointed that out to me.

9 Q. I take it you never did?

10 A. No.

11 Q. You never took an expense voucher for transportation
12 and sent it to MAC Tools?

13 A. I was told by the DM that I had to pay that if I wanted
14 to be an independent distributor, that was my responsibility
15 to pay it.

16 Q. You never submitted?

17 A. Absolutely not, I had no idea. If I could have, I
18 would have.

19 Q. With respect to Exhibit 18 I think your testimony was
20 you don't recall when you signed this?

21 A. I don't.

22 Q. And for all you know, you signed it on the same day.
23 It was the day you executed your distributor agreement,
24 correct?

25 A. There is no date on that, I won't know. I don't

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1 remember even having that paper. I said I was quite shocked
2 to see that paper was dated February 14th.

3 Q. You heard the testimony in here earlier of the woman
4 who said that the promissory notes were signed on the same
5 day as the distributor agreement?

6 A. Right.

7 Q. And do you have any basis to disagree with her
8 statement with respect to your situation?

9 A. Other than the date up top, no.

10 Q. And the date up top is?

11 A. February 14th.

12 Q. That indicates -- that didn't indicate that's the date
13 you signed it, correct, there is no date?

14 MR. TOCE, SR.: Objection, how can he fill out
15 paper I owe them \$60,000 before he even took a class in tool
16 school?

17 MR. KILBANE: The question here is when he signed
18 it, not what the date is.

19 THE WITNESS: I don't know when I signed it.

20 Q. And you have no evidence or recollection to disagree
21 with the witness who said you would have signed that on the
22 same day as you signed the distributor agreement?

23 A. Other than the date up top, no.

24 Q. Thank you.

25 If I recall your testimony earlier, you had received no

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1 documents prior to the commencement of training other than
2 the application?

3 A. Other than what my distributor -- or my district
4 manager gave me to sign.

5 Q. And am I correct that your district manager had not
6 given you a promissory note to sign prior to training?

7 A. I'm not sure what I signed prior to training.

8 Q. But in your affidavit you said you only -- you don't
9 mention in your affidavit having received a promissory note?

10 A. I didn't realize I signed papers. I don't know what I
11 signed. I can't remember what I signed.

12 Q. Because training did in fact begin after February 14th,
13 it started on February 17th, correct?

14 A. I'm not sure when it started, but I know I graduated
15 February 28th, so --

16 MR. KILBANE: Thank you. No further questions.

17 MR. TOCE, SR.: Thank you, Mr. Glime.

18 THE COURT: Mr. Glime, thank you.

19 MR. TOCE, SR.: Nothing further, Your Honor.

20 MR. FRIEDMAN: Nothing further.

21 MR. STEVENS, JR.: Your Honor, we could -- on that
22 last witness can we stipulate that February 17th was a
23 Monday in '03, February 28th was the following Friday. I

24 have a calendar right in front of me on the computer?

25 MR. KILBANE: Whatever it is, it is.

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1 MR. STEVENS, JR.: Just take judicial notice.

2 MR. KILBANE: Our stipulation doesn't change the
3 calendar.

4 THE COURT: Again, I didn't come out of the
5 cabbage yesterday. Considering Mr. Glime testified that he
6 picked out a truck, truck full of tools, before he ever went
7 to training, it wouldn't shock me if the distributor had
8 prepared a promissory note covering the cost of the truck
9 and the tools and shipped it to MAC for Mr. Glime to sign it
10 when he was done because, obviously, if he washed out, and
11 we have heard testimony that there were people who washed
12 out of the program, if he washed out, I can't imagine that
13 MAC was going to leave him in possession of a truck that
14 said MAC on it and \$40,000 worth of tools in it. I think we
15 all know that somebody would have beat him back home. By
16 the time he got back home that truck and the tools would
17 have been long gone.

18 We also know that Mr. Glime testified he had a
19 terrible time completing the program. And, quite frankly, I
20 will gleam from his testimony he was sort of amazed that he
21 didn't wash out. And I would wonder if one of the reasons
22 he didn't wash out is because he already had a truck with
23 \$40,000 worth of tools sitting in his backyard. And, folks,
24 we all know I do operate in a real world.

25

MR. TOCE, SR.: How do you operate, Your Honor?

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1 What did you say?

2 THE COURT: I said I do operate in the real world.

3 MR. TOCE, SR.: It's a lot simpler.

4 THE COURT: Well, we got done earlier than we had
5 I think expected. Nevertheless, I am not going to invite
6 you to make those 15 minute arguments that were suggested
7 the other day because I think you would all just assume
8 leave.

9 MR. KILBANE: Correct.

10 THE COURT: You have your briefing schedule. And,
11 again, do me a favor -- off the record.

12 (Discussion off the record.)

13 (Court adjourned.)

14 C E R T I F I C A T E

15 I certify that the foregoing is a correct
16 transcript from the record of proceedings in the
17 above-entitled matter.

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