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10
11
12
13
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15
16
17
18
19
20
21
22
23
24
25

INDEX TO EXAMINATION

WITNESS: RON WILSON

EXAMINATION:	PAGE
By Mr. Begakis	9
By Mr. Kosma	171

Ron Wilson
October 29, 2015

INDEX TO EXHIBITS

RON WILSON

Hybrid vs. Hylete

Thursday, October 29, 2015

Patricia Beck, CSR No. 12090

MARKED	DESCRIPTION	PAGE
Exhibit 1	Applicant's Notice of Trial Deposition	10
Exhibit 2	United States Patent for Apparatus and Method for Making an Ear Warmer and an Ear Warmer Frame dated November 17, 2009	21
Exhibit 3	United States Patent for Apparatus and Method for Making an Ear Warmer and an Ear Warmer Frame dated January 7, 2003	22
Exhibit 4	United States Patent for Eyeglasses Frame with Rotatable Temples dated November 16, 2004	23
Exhibit 5	United States Patent for Eyeglasses Frame with Rotatable Temples dated July 4, 2006	24
Exhibit 6	United States Patent for Hand Covering dated September 12, 2006	25
Exhibit 7	United States Patent for Apparatus and Method for Making an Ear Warmer and an Ear Warmer Frame dated July 26, 2005	26
Exhibit 8	United States Patent for Hand Covering dated September 12, 2006	27

1	APPEARANCES (CONTINUED):		
2	Exhibit 9	United States Patent for	27
3		Apparatus and Method for Making	
4		an Ear Warmer and an Ear Warmer	
		Frame dated August 16, 2011	
5	Exhibit 10	United States Patent Apparatus	28
6		and Method for Making an Ear	
		Warmer and an Ear Warmer Frame	
		dated December 27, 2005	
7	Exhibit 11	United States Patent for	29
8		Apparatus and Method for Making	
9		an Ear Warmer and an Ear Warmer	
		Frame dated May 18, 2004	
10	Exhibit 12	United States Patent for	29
11		Apparatus and Method for Making	
		an Ear Warmer and an Ear Warmer	
		Frame dated May 6, 2014	
12	Exhibit 13	JACO VIDA, LLC, Web Page	36
13	Exhibit 14	United States Design Patent for	52
14		Shorts dated June 12, 2012	
15	Exhibit 15	United States Design Patent for	54
		Waistband dated January 17, 2012	
16	Exhibit 16	United States Patent for	54
17		Lower-Body Garment Having a	
18		Secure Waist Assembly dated	
		February 28, 2012	
19	Exhibit 17	United States Patent for	55
20		Athletic Undergarment and	
		Protective Cup Assembly dated	
		August 21, 2012	
21	Exhibit 18	United States Patent and	91
22		Trademark Office, Trademark	
		Electronic Search System	
23	Exhibit 19	Picture of Drawings of the	91
24		Hylete Icons	

25

Ron Wilson
October 29, 2015

1	EXHIBITS (CONTINUED) :		
2	Exhibit 20	Wikipedia Search for Eurostile Type Font	97
3			
4	Exhibit 21	Under Armour Font	98
5			
6	Exhibit 22	Batman Logos	101
7			
8	Exhibit 23	United States Patent for Garment Waist Assembly dated October 6, 2015	102
9			
10	Exhibit 24	Men's Health, The Best Fitness Gear Internet Search	110
11			
12	Exhibit 25	Hylete Facebook Page	111
13			
14	Exhibit 26	Board.CrossFit.com Web Page	112
15			
16	Exhibit 27	Board.CrossFit.com Web Page	113
17			
18	Exhibit 28	Blog from Wodville	115
19			
20	Exhibit 29	Reviews of Hylete Onnit Cross-Training Shorts 2.0	116
21			
22	Exhibit 30	Pages 101 through 111 of Jentgen's Deposition Transcript	120
23			
24	Exhibit 31	WayBack Macine Web Page	130
25			
	Exhibit 32	Screenshot of YouTube Video	130
	Exhibit 33	Screenhsot of YouTube Video	132
	Exhibit 34	Photograph	133
	Exhibit 35	Screenshot of YouTube Video, Demo with Rob Orlando	134
	Exhibit 36	Screenshot of Instagram Page	135
	Exhibit 37	Partial Transcript of Page 69 of S. Martinez	136
	Exhibit 38	Hybrid Athlete Web Page	138

1	EXHIBITS (CONTINUED) :		
2	Exhibit 39	Hybrid Athlete Web Page	139
3	Exhibit 40	Rogue Web Page	140
4	Exhibit 41	Hybrid Athletic Performance Facebook Page	140
5	Exhibit 42	Hybrid Athletic Performance Web Page	142
6	Exhibit 43	Hybrid Athletics Facebook Page	143
7	Exhibit 44	Hybrid Athletics, Ltd. Facebook Page	144
8	Exhibit 45	Hybrid Athletics Community Facebook Page	145
9	Exhibit 46	Hybrid Athletic Club Facebook Page	146
10	Exhibit 47	Athletic Hybrid Fitness Facebook Page	146
11	Exhibit 48	Hybrid Athletics Facebook Page	146
12	Exhibit 49	Copy of The Hybrid Athlete Book	148
13	Exhibit 50	Rogue Fitness Web Page	148
14	Exhibit 51	Hybrid Athletics and Hylete Logos	149
15	Exhibit 52	Hybrid Athletics Apparel Web Page	154
16	Exhibit 53	Hybrid Athletics Apparel Web Page	155
17	Exhibit 54	Hylete Web Page	156
18	Exhibit 55	Hybrid Athletics Facebook Page	157
19	Exhibit 56	Hylete Facebook Page	157
20	Exhibit 57	Picture of Hammerhead Kettlebell	158
21			
22			
23			
24			
25			

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBITS (CONTINUED) :

Exhibit 58	Trademark Search System	159
Exhibit 59	Partial Deposition Transcript, Page 12 and Page 40 and 41	161
Exhibit 60	Google Search H on Apparel	164
Exhibit 61	Picture of Four Icons	168

Ron Wilson
October 29, 2015

1 SOLANA BEACH, CALIFORNIA

2 THURSDAY, OCTOBER 29, 2015, 1:00 p.m.

3
4 RON WILSON,

5 having been administered an oath, was examined and

6 testified as follows:

7
8 MR. BEGAKIS: I'll start by having everybody
9 in the room identify themselves, with the witness
10 going last, and any third parties in attendance to
11 explain why they're here.

12 MR. KOSMA: My name is Michael Kosma. I'm
13 with the Whitmyer IP Group. I'm here on behalf of
14 Hybrid Athletics, and with me is Sarah Munn.

15 THE WITNESS: Ron Wilson, cofounder and CEO
16 of Hylete.

17
18 EXAMINATION

19 BY MR. BEGAKIS:

20 Q. Mr. Wilson, as you know, this is a
21 deposition. And although no judge is in attendance,
22 you're expected to tell the truth, the whole truth,
23 and nothing but the truth.

24 A. Yes, I understand that.

25 Q. You will have an opportunity to review your

1 deposition before it's entered in. Do you understand
2 that?

3 A. I understand that as well.

4 (Exhibit 1 was marked for identification by
5 the court reporter.)

6 BY MR. BEGAKIS:

7 Q. Mr. Wilson, I've handed you what is being
8 marked as Exhibit 1. Do you recognize this document?

9 A. I do. It's the notice of trial deposition
10 for me to appear here today.

11 Q. Is that why you're here today?

12 A. It is.

13 Q. Mr. Wilson, where do you live?

14 A. I live at 930 Via Mil Cumbres,
15 C-u-m-b-r-e-s, Solana Beach, California 92075.

16 Q. What is your current title at Hylete?

17 A. CEO, which stands for chief empowerment
18 officer.

19 Q. Mr. Wilson, can you explain -- describe your
20 education level.

21 A. Yeah. I'll go back to college, I guess. I
22 went to undergrad at Virginia Tech. Received an
23 industrial and systems engineering degree from there
24 in 1991.

25 Q. Does Virginia Tech have a good engineering

1 program?

2 A. It's usually considered a top engineering
3 school in the country. Don't know exactly where they
4 rank, but it's definitely up there.

5 MR. KOSMA: I'll object to the answer as
6 hearsay and speculation.

7 BY MR. BEGAKIS:

8 Q. What years were you there?

9 A. I was there from 1986 to 1991.

10 Q. During your time there, were you involved in
11 any sports?

12 A. During my time there, I did play like the
13 regular team sports, not for the college itself, but
14 basketball, flag football, things of that nature. But
15 I had become -- through playing high school football,
16 I had become very involved in fitness, in particular
17 weightlifting, and other types of running.

18 I did what -- when I attended Virginia Tech,
19 I became involved with what's called a weight club.
20 The Virginia Tech facilities, while -- I'll still go
21 on record that they're a very good engineering school,
22 despite the objection. That the facilities for
23 fitness were very inadequate.

24 Prior to meeting a lot of students who were
25 in particular powerlifters and Olympic lifters, had

1 formed a club and obtained some space on campus to
2 have -- essentially pay their own dues through a club
3 membership and essentially have their own fitness
4 center that would have, at the time, much better
5 equipment than what was available at the free gym on
6 campus.

7 It was called the Virginia Tech Weight Club,
8 and it consisted of 2,500 members on average on a
9 regular basis who all paid at the time -- this will
10 date myself -- \$40 a semester, which was considered
11 expensive at the time. But that gave me access to a
12 much better facility.

13 And that was really the one thing when I
14 toured Virginia Tech that I was kind of disappointed
15 in. Then I found this club and became part of it.
16 Over time, the club continued to grow. We continued
17 to have a lot of cash because we were running out of
18 space to put equipment in.

19 So when I was a junior, I became involved
20 with the club heavily. I became vice president of
21 that club, and ultimately the president my final year
22 of school. The club -- since we couldn't obtain any
23 other space, and we had over \$100,000 in the bank as a
24 club, so I secured a location adjacent to campus that
25 was in walking distance at a local mall that happened

1 to be going out of business -- or almost going out of
2 business. So there was a lot of available space and
3 essentially moved the Virginia Tech Weight Club to
4 that mall.

5 Because we were no longer on campus, we had
6 to change our name to VTWC, Inc. Via a text message
7 that I just received from a fellow friend, classmate,
8 and person that worked out there while I was there as
9 well, it's since grown to essentially five times the
10 size. It's still in existence with thousands of
11 members. It's still a really nice club.

12 It's a cool experience, one, because I
13 wanted to have a better fitness center, but it gave me
14 a lot of experience in terms of running a gym as well,
15 and hiring people and knowing the equipment brands and
16 things of that nature. So since 1988 I've been kind
17 of -- always had a bug for this space in general.

18 MR. KOSMA: I'll object to the answer as
19 hearsay to the conversation with the owner of the
20 VTWC.

21 THE WITNESS: I'm the one that actually
22 created the VTWC.

23 MR. KOSMA: The owner.

24 THE WITNESS: No. I actually only spoke to
25 a friend, both text message and picture -- he took a

1 picture of himself in front of the beautiful VTWC sign
2 and said, "Hey, I know you haven't back to campus for
3 a while, but they continue to improve upon what you
4 created, and it still exists today. And I work out
5 there. It's fantastic."

6 And that was a conversation that I had with
7 him, post a text message, in person, so I did not
8 speak to anyone else other than my friend on a direct
9 basis.

10 BY MR. BEGAKIS:

11 Q. Were you involved in any bodybuilding events
12 during your time at Virginia Tech?

13 A. I trained for bodybuilding, but I was never
14 good at it, the diet, but I was very passionate in my
15 business. My training partner at the time practiced
16 bodybuilding. He was also a gymnast and a cheerleader
17 at Virginia Tech. He had all the -- he would have
18 been a great CrossFitter in today's world: 5 foot 6,
19 could do all the body weights, strong as an ox.

20 But he wanted to participate in bodybuilding
21 and had shied away from it because he had attempted a
22 couple of previous bodybuilding -- essentially
23 competing in some previous bodybuilding competitions.
24 There was rampant anabolic steroid use at the time,
25 even at the events that were considered to be tested,

1 so we decided to test and hold our own amateur
2 competition at Virginia Tech, which we did.

3 That was my last year there. That was the
4 first time we had this. It gave everybody within the
5 Virginia Tech Weight Club an opportunity to compete in
6 something on kind of an amateur basis with not the
7 fear that they would be going up against someone that
8 would ultimately take drugs to enhance their
9 performance.

10 We attracted just over 25 males and about
11 eight females that participated and drew about 5,000
12 people from the campus into the event. And then I
13 have no knowledge whether it continues today, but I
14 know the following year it did continue because I was
15 asked to come back and participate as a judge in the
16 event.

17 MR. KOSMA: Let me object to this whole line
18 of questioning as irrelevant to the trademark dispute.

19 THE WITNESS: I think we're establishing
20 that -- we'll go through a lot of history. So maybe
21 it will become relevant later.

22 BY MR. BEGAKIS:

23 Q. When you were at Virginia Tech, did you --
24 did you work for any companies?

25 A. Yeah, so I co-oped at General Electric.

1 Q. What do you mean when you say you "co-oped"?

2 A. So my second year at Virginia Tech I was
3 accepted into the co-op program. I was hired by
4 General Electric which was about an hour away. From
5 my second year, first semester, through my fourth
6 year, I basically traded off between going to school
7 one quarter or semester and then working a semester or
8 during the summer.

9 So I worked at General Electric where it was
10 a large engineering -- large engineering component as
11 well as a large manufacturing plant. I was exposed to
12 a lot of practical applications for what I was
13 studying.

14 Q. What year did you graduate Virginia Tech?

15 A. 1991.

16 Q. Where did you work after you graduated?

17 A. I went to a company called Cooper
18 Industries, which at the time was a Fortune 100
19 company, about 7 billion in sales. They had a program
20 called -- essentially manufacturing management program
21 where they not only educated you through their head
22 corporation, their corporate headquarters in Houston,
23 Texas, but also put you in various factories and
24 various assignments, with the concept being that you
25 could acquire knowledge more quickly and essentially

1 be a more effective manager at whatever factory
2 location that they need you throughout the United
3 States.

4 I did that for two years. And then by year
5 two, having worked altogether about a year and a half
6 at General Electric, I decided I did not want to step
7 into a factory every day, and I was really looking for
8 something different.

9 I was -- being from West Virginia, being the
10 first person to go to college in my family, at that
11 point I was happy with making good money, but then I
12 was not happy with the environment where it was not
13 pushing me.

14 So I began applying for grad school
15 essentially as soon as I completed the program. So my
16 second year of work with Cooper Industries I was
17 accepted to the Wharton School of Business. And I
18 went there for an MBA program beginning in 1993 with
19 an emphasis on entrepreneurial management.

20 Q. What was your goal in attending Wharton?

21 A. My goal in attending Wharton was to
22 effectively start a company, hopefully while at
23 Wharton, but certainly right after Wharton. My
24 anticipation was that I would be in the context, not
25 only to meet with initial business partners, but meet

1 other potential people to network with to realize that
2 goal.

3 Q. Were you successful in doing that?

4 A. I was. I was. Within the first four to
5 five weeks, I met several people who all indicated
6 that their goal was to essentially not work for
7 someone else and start a company right out of school.

8 As time went on, those numbers dwindled as
9 large job opportunities, summer internships
10 transpired. But myself and another individual started
11 a company which would go through many names, but
12 ultimately become a company called 180s, Inc.

13 During our second year at school, we had
14 looked at a lot of different product ideas. We both
15 had a design engineering background, and we were
16 trying to apply what we were learning at the Wharton
17 School to something practical that we could actually
18 do something with when we graduated.

19 During that time we developed an ear warmer
20 that wraps around the back of the head. We designed
21 it, developed it, had it produced in a small factory
22 in Philadelphia, and we put in \$2,500 each to produce
23 these units. We had a few hundred produced, and we
24 literally went on campus, got permission to sell them
25 on campus. Fortunately it was a cold winter, and we

1 sold through those units. We used the profits to
2 reinvest to build more units. Ultimately we sold
3 about a thousand units.

4 Because of that, a lot of people in our
5 class who just thought we were potentially crazy for
6 getting a Wharton School degree MBA and then
7 redesigning an earmuff, had become big fans. Not only
8 of the product, but of our business model and our idea
9 and said they would invest.

10 So we held a meeting, and 18 other students
11 invested collectively \$100,000 to allow myself and my
12 business partner to pursue this idea beyond grad
13 school, which we did.

14 Q. How successful did this company become?

15 A. At its peek, we did just under \$50 million
16 in sales.

17 MR. KOSMA: I'm going to object to that
18 answer as speculation and hearsay.

19 THE WITNESS: It's not speculation. I was
20 the CEO, and I had direct knowledge of all of the
21 financials of the company when that transpired.

22 BY MR. BEGAKIS:

23 Q. Where were you selling these earmuffs?

24 A. So originally we were fortuitous that one of
25 our classmates had interned with this new little

1 company called QVC, which is a home shopping network.
2 And he encouraged us, because he saw how much product
3 was being sold there, to at least talk to them.

4 We were very avid that we were not going to
5 do that. We were going to create a cool branded
6 snowboard company, and 180s was going to be -- this
7 product would be the lead product of this lineup.

8 After his insistence we decided to meet with
9 him, and I started watching QVC just to do due
10 diligence and realized that they were selling a lot of
11 products as he said. Almost at times a million
12 dollars a day of just one product. It was a good
13 opportunity.

14 In particular, they were selling normal,
15 everyday goods. Sony stereos, things that are name
16 brands. And there was no negative connotation.
17 Because people who watched QVC liked QVC, and people
18 who didn't watch QVC paid no attention to it. It was
19 essentially a late-night infomercial.

20 We met with them. They wanted the product,
21 and we proceeded to take that \$100,000, build product,
22 essentially go on air on QVC. And skipping ahead, we
23 were very successful there, which spawned our ability
24 to essentially grow this company, not only with ear
25 warmers, but with a lot of other products as well.

1 Q. So you developed other products at 180s as
2 well?

3 A. The ear warmer continued to do amazing. At
4 its height, we were in 11,000 retail doors. We also
5 wanted to build other products. We were young and we
6 had a lot of cash flow coming in from that product,
7 and we thought we could pretty much build anything and
8 have it be successful.

9 Q. You were actively involved in designing
10 these products?

11 A. I was actively involved in the -- my two
12 primary things I did at the time were -- we did a lot
13 of finance side of the business, raising money in
14 particular. And then on the design, both the product
15 as well as the websites.

16 (Exhibit 2 was marked for identification by
17 the court reporter.)

18 BY MR. BEGAKIS:

19 Q. Mr. Wilson, I'm handing you what's been
20 marked into evidence as Exhibit 2. Do you recognize
21 this document?

22 A. I do.

23 Q. What is this document?

24 A. This is a patent from 2009. One of several
25 that we received for ear warmers.

1 MR. KOSMA: I'm going to object to this
2 document. It seems to be not a complete document.

3 THE WITNESS: This is the top page of the
4 patent, just to reference the number.

5 BY MR. BEGAKIS:

6 Q. The summary page?

7 A. Yeah, the summary page. It's a patent, and
8 I'm listed on it. I'm listed last, not because I was
9 the least involved; I was last because of Wilson.

10 Q. For the sake of brevity --

11 A. It's one of many patents that was issued
12 during my time effectively at 180s.

13 MR. KOSMA: Object to this document as well.
14 It's not a complete document. I'm going to object
15 that these documents were not produced prior to today
16 and under TTAB sanction order should not be used at
17 trial.

18 (Exhibit 3 was marked for identification by
19 the court reporter.)

20 BY MR. BEGAKIS:

21 Q. Mr. Wilson, I'm handing you what's been
22 marked as Exhibit 3. Do you recognize this document?

23 A. I do. Once again, this is the top page of a
24 U.S. patent that is readily found at USPTO.gov. I
25 just went and actually did a search and obviously

1 printed out a few patents that are held that have my
2 name as an inventor. This is another one. You can
3 type that patent number into USPTO.gov and readily get
4 the full patent.

5 (Exhibit 4 was marked for identification by
6 the court reporter.)

7 BY MR. BEGAKIS:

8 Q. Mr. Wilson, I'm handing you what's been
9 marked into evidence as Exhibit 4. Do you recognize
10 this document?

11 MR. KOSMA: Same objections.

12 THE WITNESS: Yes. This is another top page
13 of a patent that was readily found at USPTO.gov. This
14 one -- this one was unique. This was one of a few
15 sunglass patents that we had.

16 I particularly like this one because this
17 patent was a utility patent that -- where we created
18 sunglasses that you can actually wrap the sunglass
19 temples around the front of the frame, which actually
20 provided two benefits. It provided the ability for
21 you to stick it in your pocket and have it actually
22 wrap around your leg, and the temples themselves
23 protect the lenses from being scratched or even
24 dropped. They help protect the lenses.

25 BY MR. BEGAKIS:

1 Q. So you were designing some unique apparel
2 technology, correct?

3 A. We believed so. They were unique enough to
4 receive US -- United States Patent Trademark Office's
5 utility patent.

6 MR. KOSMA: Same objections to this exhibit.

7 (Exhibit 5 was marked for identification by
8 the court reporter.)

9 BY MR. BEGAKIS:

10 Q. Mr. Wilson, I'm handing you what's been
11 marked into evidence as Exhibit 5. Do you recognize
12 this document?

13 A. I do. This is another patent that we
14 received, kind of the same idea, the same concept, but
15 we had different executions of it. We were very big
16 about seeing a product and really creating a think
17 tank. Figuring out every possible great way we can
18 create a product that might have a different
19 application.

20 We viewed ourselves as an intellectual
21 property company. And this was another one of our
22 sunglasses, and this is a patent -- the front page of
23 a patent, once again, readily found in USPTO.gov, if
24 you choose to type in the patent number that's
25 indicated on the top of the sheet.

1 MR. BEGAKIS: I'm presuming same objections?

2 MR. KOSMA: Exhibit 6, same objections.

3 (Exhibit 6 was marked for identification by
4 the court reporter.)

5 BY MR. BEGAKIS:

6 Q. Mr. Wilson, I'm handing you what's been
7 marked as Exhibit 6. Do you recognize this document?

8 A. I do. This is another patent, another
9 design project I was involved with. This was a -- we
10 were expanding obviously beyond ear warmers. We had
11 several segments of our business, including we had
12 winter accessories and had gotten into winter apparel.

13 We had a beach product line. We had a
14 fashion line called Facciabella. We had four
15 different kind of unique entities that we were trying
16 to create intellectual property on products and
17 technologies that we could deploy across one or more
18 of those divisions.

19 This one was a simple idea of people blowing
20 into their hands or taking their gloves off to blow on
21 their fingers. So the idea that I had really came
22 from an HVAC system in trying to move air from one
23 point to another point. Having a lot of knowledge of
24 different manufacturing techniques.

25 So my concept, my original concept -- and

1 other people helped perfect it, thus the reason
2 there's other inventors -- was to create a bladder
3 system that could be wedged inside of any glove that
4 you would actually have a port that could be covered
5 on the back of said glove, whether it's a work glove,
6 a fashion glove, ski glove.

7 If you were to blow into that port, that air
8 would travel down -- much like an HVAC system, down
9 those -- it was actually a bladder that was welded,
10 and it would go down those channels that were open,
11 and then drop that air into your fingertips so you
12 wouldn't have to take your gloves off if you were
13 sitting.

14 In particular, my thought on this one was
15 sitting in stadiums in cold days and wanting to have
16 your fingers be warmer. That one too can be found in
17 USPTO.gov.

18 (Exhibit 7 was marked for identification by
19 the court reporter.)

20 BY MR. BEGAKIS:

21 Q. Mr. Wilson, I'm handing you what's been
22 marked into evidence as Exhibit 7. Do you recognize
23 this document?

24 A. I do. It's another ear warmer patent that
25 added to essentially our patent portfolio, which

1 became a valuable piece of what 180s was worth. Just
2 another one that can be found online for the full
3 patent.

4 MR. KOSMA: Same objections to Exhibit 7.
5 I'm just going to object to all this line of testimony
6 as irrelevant.

7 (Exhibit 8 was marked for identification by
8 the court reporter.)

9 BY MR. BEGAKIS:

10 Q. Mr. Wilson, I'm handing you what's been
11 marked as Exhibit 8. Do you recognize this document?

12 MR. KOSMA: Same objection to Exhibit 8 as
13 well.

14 BY MR. BEGAKIS:

15 Q. What is this document?

16 A. It's another patent that can be found at
17 USPTO.gov. It's another execution of the bladder
18 covering. I received also another utility patent.

19 (Exhibit 9 was marked for identification by
20 the court reporter.)

21 BY MR. BEGAKIS:

22 Q. Mr. Wilson, I'm handing you what's been
23 marked into evidence as Exhibit 9. Do you recognize
24 this document?

25 MR. KOSMA: Same objection.

1 THE WITNESS: Yes. This is another patent
2 that can be found in USPTO.gov. And it's another
3 execution of ear warmers, ear warmer technology that
4 obtained a utility patent from the patentry office.

5 (Exhibit 10 was marked for identification by
6 the court reporter.)

7 BY MR. BEGAKIS:

8 Q. Mr. Wilson, I'm handing you what's been
9 marked into evidence as Exhibit 10. Do you recognize
10 this document?

11 MR. KOSMA: Same objections.

12 THE WITNESS: Yes. This is another patent
13 that can be found at USPTO.gov.

14 BY MR. BEGAKIS:

15 Q. For the record, you're an owner in all of
16 these patents that were --

17 A. To be listed as an inventor, you have to
18 have something constructive in terms of one of the
19 independent claims on that patent. Yes, I worked on
20 all of these. Really, a lot to the point that I never
21 want to see another ear warmer again at some point.

22 MR. KOSMA: You can hand him multiple
23 exhibits at once, just so you know. You can give him
24 all the patents at once and say, look at Exhibits 3 to
25 10, for time's sake.

1 (Exhibit 11 was marked for identification by
2 the court reporter.)

3 BY MR. BEGAKIS:

4 Q. I'm handing you what's been marked as
5 Exhibit 11. Do you recognize this document?

6 MR. KOSMA: Same objections.

7 THE WITNESS: Yes. It is another patent
8 that can be found at USPTO.gov. It's another
9 execution for a ear warmer technology. That was a
10 utility patent by the Patent Trademark Office.

11 (Exhibit 12 was marked for identification by
12 the court reporter.)

13 BY MR. BEGAKIS:

14 Q. Rather routine at this point, but I'm
15 handing you what will be marked into evidence as
16 Exhibit No. 12. Do you recognize this document?

17 MR. KOSMA: Same objections.

18 THE WITNESS: Yes. This is another patent.
19 Front page of a patent that can be found at the
20 USPTO.gov. That was another technology for ear
21 warmers.

22 And, you know, significance of some of the
23 sheer amount of technology that was here was that at
24 the height of \$50 million in sales, \$28 million of
25 that was coming from ear warmer business across

1 multiple brands that could be found at Macy's, at
2 Nordstrom, Dick's Sporting Goods, Sports Authority.
3 Essentially every catalog in outdoor. L.L. Bean. The
4 QVC obviously.

5 And we filed -- you know, many of these also
6 got filed on an international basis as well. But we
7 understood the importance of the intellectual property
8 here. And also we put a lot of design and
9 development, time and energy to make sure that we got
10 rewarded for our ideas on these patents.

11 It was procuring in a lot of cash flow. It
12 was pulling at its height 110 people, creating a lot
13 of new brands and a lot of new ideas coming out of it.
14 But the ear warmer was essentially the cash cow that
15 was allowing it all to happen.

16 Even though we were all bored -- looks like
17 maybe we all are here, hearing about ear warmers -- it
18 was important that we did our due diligence, spent our
19 time, regardless of the cost, to make sure that we
20 protect our intellectual --

21 MR. KOSMA: I'm going to object to the
22 answer as hearsay and nonresponsive to the question.

23 BY MR. BEGAKIS:

24 Q. When did you leave 180s, Mr. Wilson?

25 A. Well, first, I didn't leave 180s. I had

1 essentially gone through ear warmers and all these
2 other things, and unlike the manufacturing jobs that I
3 had previously, I had a lot of satisfaction that, hey,
4 not only am I my own boss, if you will, as it turns
5 out, you end up having a business partner, board of
6 directors. You end up with a lot of bosses whether
7 you like it or not.

8 But what I really started to lose passion
9 for is randomly designing stuff across all kinds of
10 categories that I will term -- they had brand value,
11 if you will, but it was preferential brand value.
12 Meaning, if somebody had cold ears, they would
13 potentially select ear warmer -- or 180s' ear warmer
14 over an earmuff. It was like selecting Clorox bleach
15 over a no-name bleach, a preferential brand.

16 What it was not was a lifestyle brand.
17 That's what I was yearning for. I was yearning for a
18 brand that people would wear the brand because they
19 wanted to wear it, because they wanted to be
20 associated with the lifestyle of that brand.

21 I was particularly infatuated with West
22 Coast brands, action sports brands, surf brands. I
23 think I spent most of my time in the PacSuns of the
24 world, looking at Hurleys, the Billabongs, the
25 Volcoms, and really -- even attended shows like the

1 action sports retail here in San Diego. That's when I
2 kind of caught the bug, that I wanted to create
3 something that got me to San Diego, got me into the
4 lifestyle brand that I owned part of, that I can help
5 create in fashion.

6 Q. So what did you do?

7 A. So I did two things. We were very fortunate
8 that 180s was doing quite well. My business partner
9 and I had very different ideas, and we definitely
10 struggled at times. And we both agreed that one of us
11 needed to run the company, and the other one can sit
12 back and essentially collect a lot of money and do
13 whatever they wanted to do.

14 I offered it to him and he said, no, I
15 really like this stuff. He loved patents. He was the
16 one that really worked on the claims construction and
17 things of that nature. I liked designing the
18 products, but the patent side was not something
19 that -- I fell asleep every time I read one.

20 So the company was much more fashion for him
21 than it was for me. I said, "Okay. I'll be the one
22 that goes and does something else." He knew what I
23 wanted to do as well, was to create a new brand.
24 Actually, we're still great friends today. Very
25 supportive of it.

1 Q. To be clear, what was your arrangement like
2 at 180s at this point?

3 A. At 180s, I then essentially took -- I
4 remained chairman of the board. I stepped down as
5 co-CEO. I still received compensation as chairman.
6 And due to our class -- we had different classes of
7 shareholders, and over time and a lot of different
8 entities and different people participating -- I won't
9 go through it ad nauseam, but I had a class of shares
10 based upon this ear warmer original idea that afforded
11 me royalty checks out of the company. So I was
12 getting these royalty checks, and my role as chairman
13 allowed me not only to have a nice living, but have
14 money available to invest in a new venture.

15 Q. So what new venture did you invest in?

16 A. So I began working on how could I take surf,
17 how could I take sports, how could I take something
18 and create a lifestyle brand and have it be something
19 that would primarily be clothing based, but leverage
20 everything that I knew how to make from almost every
21 possible consumer product category.

22 So I ended up selecting -- the idea that I
23 had was essentially to do a board short that would be
24 a performance board short. When I looked at all the
25 board shorts at the time, they were not -- they had a

1 similar look. They had very antiquated, in my
2 opinion, waist systems.

3 They had fabrics that -- I was seeing much
4 better fabrics outside the surf industry. I mean, the
5 action sports industry, surf industry. Because of my
6 knowledge of what we were doing and really looking at
7 advanced fabric technologies at 180s.

8 Part of the reason was that we were working
9 on military projects and trying to do things for the
10 military to create a better -- basically we were
11 trying to create a better experience for the soldier
12 in terms of what they wore, make it a better offering,
13 and we were part of that.

14 At one point we were awarded a \$60 million
15 government contract at 180s to produce jackets that we
16 designed. I saw this. I saw an opportunity to take
17 these performance things I've been doing at 180s and
18 apply them to the surf industry, and the board shorts
19 seemed like the natural place to start.

20 Then at the same time, iPods, cell phones
21 were becoming much more prevalent, and I saw an
22 opportunity to address basically what I term back in
23 2003 as essentially a water -- an athlete who wanted
24 to be both in water and land.

25 Q. A hybrid athlete of sorts?

1 A. Hybrid athlete. The athlete -- hybrid,
2 meaning water, and then cross over. Standup paddling
3 was getting big. Really, Larry Hamilton would be kind
4 of the most notable of these people because he's a
5 world-class surfer, standup paddler, does mud obstacle
6 runs. He even has one coming out under his own name.

7 What I wanted to do was protect these
8 electronics that you might have that you would
9 potentially get wet. So my first attempt was to
10 create -- much like some of these glove ideas, was to
11 create a waterproof pocket embedded in board shorts.

12 Ended up not being able to make it part of
13 the product itself, but created a curved mechanism
14 that fit neatly in the pocket, based upon my sunglass
15 concept, that allowed you to have this removable
16 pocket and different sizes in all kinds of board
17 shorts, women and men, that would allow you to put a
18 phone or anything of value in there and essentially go
19 from land to water and participate in sports.

20 Struggled with coming up with names for this
21 company. We always struggled with 180s to come up
22 with names, even more relevant to come up with names,
23 that you could have a domain, domain dot-com in
24 particular, available in very easy fashion.

25 Ended up calling the company -- at some

1 point I just kind of gave up and I said need to call
2 this something. And I had been going to Costa Rica a
3 lot, so I ended up calling it JACO VIDA. Essentially
4 that was the name of the company. And then I couldn't
5 get the domain JACO, or at the time it was pronounced
6 "haco" but spelled J-A-C-O. I just went after a
7 stylized mark and just called it a day. And I created
8 with one other designer the JACO logo.

9 MR. KOSMA: I'm just going to object to the
10 question as leading and the answer as nonresponsive.

11 (Exhibit was marked for identification by the
12 court reporter.)

13 BY MR. BEGAKIS:

14 Q. I'm handing you what's been marked into
15 evidence as Exhibit 13. Do you recognize this
16 document?

17 A. I do.

18 MR. KOSMA: I'm going to object to this
19 document really quickly under the TTAB sanction order.

20 THE WITNESS: I just typed this in to find
21 effectively the date that I started JACO VIDA, or the
22 date that I started actually working on it earlier in
23 terms of concept and the date that I actually filed
24 the LLC in Maryland.

25 BY MR. BEGAKIS:

1 Q. What date is that?

2 A. The date of formation was September 25th,
3 2005.

4 Q. Mr. Wilson, I'm handing you what's been
5 marked as 14. Do you recognize this document?

6 MR. KOSMA: I'll object to this document
7 under TTAB sanction order, and it doesn't seem to be a
8 complete document.

9 THE WITNESS: Yes. Before I address this
10 document, let me cut back up to how this document has
11 significance.

12 So I set off to start this -- effectively
13 this high-performance athletic board short company.
14 And at the time that was happening, unfortunately, I
15 had been really consumed with JACO VIDA, and 180s had
16 gone down a path of really kind of overspeculating on
17 its growth. Building way too many ear warmers,
18 analog and everything else.

19 And they experienced a warm winter that
20 year, and they built a new facility, a new corporate
21 headquarters, so there was a lot of cash drain. They
22 stumbled upon hard times. Did not go to the
23 bankruptcy route.

24 I actually stepped back in briefly to help
25 try to position the company for acquisition, strategic

1 acquisition. And we selected investment bankers.
2 Went down the strategic acquisition routes. We were a
3 little late to the game. K-1 was buying everyone at
4 the time. I think they finally ran out of money right
5 about the time we got our book out on the market.

6 We were not successful finding a strategic
7 buyer quick enough, but we did have another hedge fund
8 come in that my business partner had faith in that
9 could kind of solidify the situation. They did that.

10 Unfortunately they continued to struggle at
11 some point due to some covenants, and my agreement --
12 not my agreement, but the class of shareholders that
13 allowed me to receive royalties terminated, which kind
14 of put me on a finite amount of cash to start a
15 business. I had already gone down pretty heavily on
16 the JACO VIDA side, building inventories, built
17 product, things of that nature.

18 At that time I built a full line of shorts,
19 three different styles, sizes, men's, women's,
20 multiple t-shirts. Not just t-shirts you bought at
21 the shelf. Actually physically finding fabric,
22 creating patterns, creating a block. A "block"
23 meaning the fit of the garment. Very important in the
24 apparel industry.

25 The action sports industry then created this

1 new block. A lot of companies were using essentially
2 the same cut. They were calling it a slim fit, and it
3 was having great success because it was fitting
4 these -- in particular, like the skateboarder surfer
5 who tended to be skinny but wanted something a little
6 tighter, and other t-shirts were too big for them in
7 terms of their body makeup.

8 MR. KOSMA: I'll object that the answer is
9 nonresponsive. The witness is testifying in the form
10 of a narrative and, you know, this deposition should
11 go as a question and answer.

12 MR. BEGAKIS: I will for the record
13 temporarily withdraw entry of Exhibit 14.

14 THE WITNESS: I'm still back on the last
15 exhibit of JACO VIDA and describing circumstances that
16 make that exhibit relevant, and also my personal
17 awareness of being the one that started it.

18 BY MR. BEGAKIS:

19 Q. You talked about difficulty with 180s. What
20 happened at that point?

21 A. So once my cash flow was cut off, I was in a
22 position where I needed to make a choice. I had
23 produced all the product that I needed. I no longer
24 had the wherewithal to fund the business and basically
25 live.

1 So I decided to take all the product I had
2 in Baltimore. I came to one last show, one last
3 action sports retailer here in San Diego. And I've
4 been here several times. And I decided that I'd
5 rather take what I have, come here to San Diego and
6 see if I could essentially make JACO VIDA a success by
7 having easier access to ultimately a more active
8 lifestyle consumer based in Southern California.

9 Q. Would you say it was difficult to promote a
10 surf company in Maryland?

11 A. Yeah. Looking back on it, it was a pretty
12 foolish idea. It was what I wanted to do. Ultimately
13 it got me here, so it was the right idea.

14 Q. What year was this?

15 A. Would have been 2007.

16 Q. So what happened when you moved to San Diego
17 in 2007?

18 A. 2007, I had a website, the JACO Clothing dot
19 com website. Also, I had jacovida.com. I had several
20 websites.

21 Q. Were these e-commerce websites?

22 A. E-commerce websites. I was still getting
23 orders from that. I had independent reps working for
24 me, still trying to sell the products throughout the
25 country.

1 Q. While you were in San Diego, were there any
2 other companies you got involved with?

3 A. Yes. Due to what I had already stated that
4 I needed, I was running out of cash quickly. I needed
5 to find some type of employment. So I looked around
6 for relevant companies, some space that seemed to be
7 an opportunity.

8 Two companies that I interviewed with and
9 received job offers with were H2O Audio, which was a
10 maker of -- they were the first makers of iPod
11 waterproof cases and waterproof headphones, and I was
12 familiar with them. They were here also based in
13 Solana Beach.

14 Actually, I wasn't in Solana Beach at the
15 time, but they were based in Solana Beach at the time.
16 I take that back. The founder was based in Solana
17 Beach. The company was based in Sorrento Valley.

18 The second company was a company called
19 Gathering Storm, and Gathering Storm was interesting
20 because they were the Taylor Made accessory bags and
21 accessory licensee, as well as the Adidas golf bags
22 and accessories licensee.

23 At the time I interviewed with them. And
24 they had just received the Adidas golf license. They
25 had the Taylor Made license previously. They were

1 looking for somebody to help on the Adidas golf side.

2 Q. Which company did you choose?

3 A. I ended up choosing H20 Audio simply because
4 they were an entrepreneurial startup. The only reason
5 I spoke to them is that I listened to a podcast of the
6 founder CEO Christian Mahala. They had just recently
7 received \$5 million of financing from Steel Point
8 Capital Partners.

9 They had that amount of money, and they were
10 in the iPod space, and Apple was also obviously one of
11 the hottest topics that you could possibly talk about.
12 That seemed like a space that was growing, and I just
13 spent my last two years and maybe my last \$2 trying
14 things that were waterproof. I felt it was very
15 serendipitous that they had an opportunity and they
16 had money to bring in someone new. I chose them. I
17 turned down the Gathering Storm offer.

18 Q. What was your title there at H20?

19 A. I came in as director of marketing.

20 Q. How did that title change over time?

21 A. About 30 days later they named me VP of
22 marketing. Even though my title was marketing, I was
23 heavily involved in websites, which I had a lot of
24 experience in the 180s sense. I began redesigning
25 their product line, along with one other individual

1 and one house side industrial designer, to essentially
2 make their -- hopefully make their product a little
3 more formfitting and fit a wider variety of devices.

4 They were building products specifically for
5 one instance of a Nano or a Nano 2 or a regular iPod.
6 When Apple made a change, they had to buy all the
7 molds. So we tried to come up with some other
8 solutions that would be more flexible and not have to
9 essentially go back to the drawing board every time
10 Apple was introducing a new product, which they were
11 doing at a very rapid pace at the time.

12 So it was really design and the website, and
13 then ultimately I was also -- I ended up making all
14 the sales calls with the head sales team. Pitched all
15 these new products that we had. I had experience
16 dealing with Target, Dick's Sporting Goods. I sat in
17 those meetings, so we pitched all those.

18 Q. Did you create any other e-commerce items at
19 this time?

20 A. Yes. We actually -- no. At that point, no,
21 we didn't create anything else. So I was there just
22 about a year, and I really wanted -- I liked where the
23 business was going. I thought I had an opportunity.
24 I thought the team was exceptional. I liked the
25 space, but I really wanted to have more control over

1 its destiny if I was willing to stay.

2 Q. So what did you do?

3 A. I approached -- because of that, I
4 approached Christian. We went out for dinner and had
5 a long conversation.

6 Q. Who is Christian?

7 A. Christian Mahala I mentioned before was the
8 CEO. He loved being out in the public with this
9 brand. He was a big surfer. He was a triathlete. He
10 loved hanging out with all the athletes.

11 We had Larry Hamilton as one of our
12 athletes. We had a lot of other popular -- I forget
13 her name. Natalie McConnell, the Olympic swimmer.
14 They were athletes sponsored by H2O Audio. I met with
15 both of those folks and done photo shoots.

16 That was the role he really liked. So I
17 would talk to him, "Why don't you do that? You're the
18 CEO. You kind of go out and be the face of the
19 organization." He appeared on CNN, things of that
20 nature. "Let me run the design, the marketing, and
21 the sales teams."

22 The conversation didn't go off as well as I
23 thought it would, so we ended up -- we ended up never
24 coming to a resolution. We said we would talk.

25 Before we even talked again, I happened to get a call

1 again from Gathering Storm.

2 Q. When did you get that call from
3 Gathering Storm?

4 A. Like the day before or two days before we
5 had dinner.

6 Q. What year would this be?

7 A. 2008.

8 Q. What was the context of this call?

9 A. So Mark Leposky, L-e-p-o-s-k-y, was the CEO
10 of Gathering Storm. He had been a former high-level
11 executive of Taylor Made. He was running the
12 day-to-day business of Gathering Storm.

13 I interviewed with literally all the
14 partners there, plus all their top people. He called
15 me up and asked, you know, how my H2O Audio job was
16 going and was curious if I would be interested in, if
17 they had an opportunity, to essentially buy or build
18 their own brand. And he knew I had a lot of
19 experience doing this, and said that, you know, that
20 was kind of what they were looking for.

21 In fact, there was another opportunity as
22 well, based upon when I talked to him and the things I
23 had done, that I had done on the website that they
24 were interested in, launching websites both for their
25 Taylor Made and Adidas accessories, as well as they

1 had just inquired their licensing right to create
2 Schutt Apparel. Schutt being a football helmet
3 company spelled S-c-h-u-t-t.

4 They basically had everything. Besides
5 helmets and shoulder pads, they didn't build anything,
6 and put Schutt on it. Then an internal person who had
7 been a former college football player was heading it
8 up so they saw some opportunity to help support that
9 brand. Building a digital marketing team, and then
10 assess a company to buy. That was at a space that
11 would be in the sporting goods industry.

12 Q. Was this opportunity appealing to you?

13 A. Absolutely. I basically -- it was a dream
14 job because I would come in, run the day-to-day on
15 websites, and then ultimately they gave me the
16 industrial designers of the golf division.

17 They allowed me to build my own buildout
18 to make it -- it was a very corporate feeling,
19 cubicle-type space. And I asked to be put in the
20 warehouse. I built a really cool 40-foot-high
21 ceiling, like airplane fan industrial design center.
22 It was a perfect space for me to work.

23 I was getting well paid, and they were
24 getting -- because of the chairman and the majority
25 shareholder at Gathering Storm, given his notoriety in

1 the golf industry and otherwise and the investments he
2 had made previously, he was getting a ton of potential
3 acquisition deals, investment deals. He would
4 basically look at them, and then he would just stack
5 them up at my desk. And there were a lot.

6 Q. What kinds of company offerings were you
7 seeing?

8 A. A lot of apparel. A lot of people were
9 trying to emulate the burgeoning success of Affliction
10 in particular. A lot of them were themed around mixed
11 martial arts, particularly UFC.

12 Those came through because the chairman, Jim
13 Stutts, S-t-u-t-t-s, and the third minority partner
14 were very, very big fans of the UFC. So they wanted
15 nothing more than potentially have a brand, you know,
16 in the MMA market. I never watched it, but I started
17 seeing a lot of deals and a lot of companies.

18 Q. Did you see an opportunity in this market?

19 A. I did. I didn't at first. My job was
20 essentially to act, you know, much like -- in some
21 cases evaluating the business prospects of an
22 industry. I was looking at it from an acquisition
23 standpoint or a merger standpoint, or however you want
24 to frame it.

25 I tried to assess the situation. I started

1 it because there were so many coming through. I
2 started to assess the market. The more I found out,
3 the more I became excited that maybe this is the next
4 big market. Is this the next skateboard market. Is
5 this the next surf market.

6 It seemed to be growing. It had all the
7 earmarkings of being a real big industry, so as I kept
8 seeing these opportunities. And also one of the
9 opportunities was to buy a management company who --
10 they were managing about 50 MMA fighters. We had a
11 couple two or three that were in the UFC, Ultimate
12 Fighting Championships, which at the time was the
13 largest.

14 There was a new fighting organization that
15 was going to be launched called Bellator, and they had
16 a secure contract with ESPN. It looked promising.
17 They were a little different format. It looked like
18 they could be a number-two competitor.

19 UFC at the time had Tapout. Tapout I was
20 aware of, not because I liked the brand or I followed
21 it, but I just remember them being a magic -- I was at
22 a trade show for apparel in Las Vegas, and the number
23 of people talking about Tapout, the number of people
24 wearing Tapout, we thought that if we could create a
25 brand in line with Bellator, there's a second

1 opportunity in this space.

2 Q. What products would this brand create?

3 A. So after looking at it all, I ended up
4 securing a deal to work with the management company,
5 and they had potential ownership. We formed a new
6 entity. What I brought back to the owners of
7 Gathering Storm was to take my JACO VIDA.

8 And there was an opportunity to do
9 prefilming on ESPN, and we had no product available.
10 So my concept was -- I've done shorts now for several
11 years. I get what needs to happen. The short I have
12 today, which would be great for in and out of water,
13 wasn't that kind of a hybrid athlete. Not a hybrid
14 athlete -- a mixed martial athlete doing a bunch of
15 different things.

16 I could design a new short, but we need to
17 get this stuff on air. We had all these people that
18 could be on. I happen to have in storage hundreds and
19 hundreds of specific headwear to what I then renamed
20 JACO instead of HACO. Hundreds and hundreds --
21 probably 700 t-shirts, thousand of shorts. I was able
22 to outfit all these people very quickly.

23 My proposition was that this is a good
24 space. I see you guys like it. I can design --
25 starting with the shorts, I can design a product. I

1 think I can obtain intellectual property on that
2 product and be in the States and be a legitimate -- in
3 the cage where everyone is watching ultimate fighting,
4 it's the only thing they're wearing. And to build off
5 of that. Build a lifestyle brand around this emerging
6 sport of MMA. They loved it. They were like, yeah,
7 absolutely.

8 Q. What was this new entity called?

9 A. So we created a new entity, and we leveraged
10 the domain name that we already had and called it JACO
11 Clothing. Basically took the logo that we had seen in
12 previous depositions on the JACO shorts, and I tried
13 to make it relate to MMA.

14 So I took each of those symbols and
15 recharacterized it. Came up with a brand statement
16 and kind of a creed, if you will. And I took the
17 first letter which was a J. It looked like someone
18 kneeling. I thought it was a very fundamental aspect
19 of mixed martial arts, of respect. Kind of jujitsu in
20 particular, centering on respect so that symbol, we
21 started calling it the respect symbol.

22 The second one, a triangle, is the strongest
23 geometric shape so I called it strength. The one that
24 used to be a wave, I didn't have much I could do with
25 that. It was a C so I called it courage. And the

1 final one, it was always -- had been designed with an
2 element of a matador which was relevant in Costa Rican
3 culture. Having a matador and bullfighting, bulls are
4 very tenacious. I called it tenacity.

5 So it became respect, strength, courage,
6 tenacity were the four symbols that created the JACO
7 logo.

8 Q. What was your financial arrangement in this
9 new entity?

10 A. So in exchange for -- I would still run what
11 they wanted to build: A digital marketing and
12 industrial design team. I would run that.

13 Q. At Gathering Storm?

14 A. Yes, for all the brands. They had
15 aspirations to add other brands, which they ultimately
16 did. I would run that. I would basically get this
17 new company off the ground, work with this management
18 company, and then leverage the internal resources that
19 were available and/or hire new people to support it.

20 In exchange for that, I basically had the
21 job providing me the ability to live. When I looked
22 at it -- and basically I gave them projections of how
23 much they had to spend. It was a lot of money. I
24 said it would probably take three to four years to
25 make this a brand that has any traction, a success

1 that might go to the next level.

2 For that I asked for 10 percent, and I
3 volunteered up. I know it's going to take three to
4 four years so I'm happy to take that 10 percent on
5 a -- investing over that four-year time period because
6 I know it's not going to happen overnight.

7 For me, that was enough to have enough skin
8 in the game, to make me want to get up on a Saturday
9 and work, and also have enough comfort and have a
10 steady income. And actually working with a great team
11 of people and really keeping my design and my web
12 skills very much intact.

13 As I kept adding brands, I was doing a lot
14 of work during the day and a lot of work during the
15 night, but it was a lot of fun what I was doing.

16 (Exhibit 14 was marked for identification by
17 the court reporter.)

18 BY MR. BEGAKIS:

19 Q. Okay, Mr. Wilson, I am now handing you what
20 has been marked as 14. Do you recognize this
21 document?

22 MR. KOSMA: My previous objections to this
23 document.

24 THE WITNESS: This is one. There will be a
25 few more. This is a design patent that can be found

1 at USPTO.gov.

2 BY MR. BEGAKIS:

3 Q. What is that?

4 A. This is one of the -- this is a design
5 patent. I started working on utility patents, and I
6 ultimately did figure out some other ways to get a
7 utility patent to create something functional within
8 the short.

9 But one of the things that I was aware of,
10 because working with the management company, is that
11 oftentimes if an MMA fighter, they liked your short,
12 but if you did not pay them, you did not sponsor them,
13 if they were on TV, they would cover up your logos or
14 anything that identified them as your short.

15 So I did a couple of things. I tried to
16 make a mid-length. The fabric was different, but I
17 added this little design element on the back that --
18 the idea was that even if some people were covering
19 them over, people would see that raised portion and
20 know that is a JACO short.

21 MR. KOSMA: Didn't you just say a couple of
22 these?

23 MR. BEGAKIS: Only one more after this one.

24 MR. KOSMA: I'm going to object again. A
25 document that was not produced previously in violation

1 of the TTAB order. I'm going to object to this whole
2 line of questioning as irrelevant.

3 (Exhibit 15 was marked for identification by
4 the court reporter.)

5 BY MR. BEGAKIS:

6 Q. Mr Wilson, I'm handing you what's being
7 marked into evidence as Exhibit 15. Do you recognize
8 this document?

9 A. I do.

10 Q. What is this document?

11 A. This is another design patent that -- you
12 know, in working with the intellectual property
13 attorney, we really constructed one with no logo, to
14 discuss the previous version I talked about, and then
15 one with our tenacity logo being showcased on this
16 back portion.

17 Q. I take that back. There's two more.

18 MR. KOSMA: You can do them together if you
19 want.

20 MR. BEGAKIS: I'm going to go the way I'm
21 going.

22 (Exhibit 16 was marked for identification by
23 the court reporter.)

24 BY MR. BEGAKIS:

25 Q. Mr. Wilson, I'm handing you what is being

1 marked into evidence as Exhibit 16. Do you recognize
2 this document?

3 MR. KOSMA: Same objections.

4 BY MR. BEGAKIS:

5 Q. What is this document?

6 A. This is another patent that was originally
7 on JACO Clothing. This is obviously the first page of
8 the patent number that you put in the USPTO site.
9 This was the utility patent that I received and
10 ultimately assigned the JACO Clothing. And later
11 transferred, as you can see, with a different company.
12 That essentially gave us utility patent protection for
13 what I deemed at the time, we called this the fight
14 short, the JACO fight short.

15 (Exhibit 17 was marked for identification by
16 the court reporter.)

17 BY MR. BEGAKIS:

18 Q. Mr. Wilson, I'm handing you what's being
19 marked into evidence as Exhibit 17. Do you recognize
20 this document?

21 MR. KOSMA: Same objections.

22 THE WITNESS: I do.

23 BY MR. BEGAKIS:

24 Q. What is this document?

25 A. Another patent. This is my sole invention

1 and later assigned to different companies based upon
2 other things. So this product -- so the only visible
3 part of the MMA attire in the cage was the short, but
4 everyone was wearing some type of cup system.

5 When I was working with athletes, I started
6 practicing at some level jujitsu, boxing, to
7 experience -- much like even H2 Audio, as much as I
8 hated to swim, I was swimming every morning so I
9 understood the product.

10 So I started watching what these guys were
11 wearing. They were wearing, in my opinion, very
12 antiquated technology. I had basically said, I think
13 I can develop a better cup that's designed
14 specifically for mixed martial arts that allows you to
15 go from the ground to standing up.

16 And in particular, what you don't face in
17 most other sports is an upper strike at approximately
18 a 45-degree angle, which you will experience many
19 times in Muay Thai, in particular, and/or karate.
20 It's a very painful hit because the cup doesn't
21 protect you. It becomes part of the problem.

22 So what I designed was I designed a
23 compression gear with essentially loop landing areas
24 that were fat basically sewn into the fabric. It's a
25 type of four-way stretch move fabric that I had access

1 to, that I was aware of.

2 Then the cup system itself, I had these
3 Velcro straps that had hooks on them, and the entire
4 cup went inside of a pocket. And then the straps
5 would go across the front of the waist, and there was
6 a T-connection that went under, through the legs, back
7 up and through, and fasten so that you could secure
8 the cup.

9 When you did get hit from underneath --
10 which I tested this product a little too much and it
11 was very painful. It did work. It allowed you to
12 take that Muay Thai kick that previously hadn't been
13 taken. This one, combined with this new short, that
14 four-way stretch, it basically out of nowhere put us
15 on the map.

16 Q. Was it a successful product?

17 A. Unbelievable. Overnight, people were like,
18 "Where did JACO come from?" We were doing other
19 things as well. These two products -- this product, I
20 can't tell you how many fighters they personally
21 thanked me for.

22 Q. Were you able to get new short designs
23 developed?

24 A. Yes. We immediately -- so there were -- so
25 Bellator was launching. I had 45 days to get the

1 product built. Obviously I didn't have to build at
2 production level. We wanted to sell, ultimately, but
3 I needed 40 pair of shorts to put on athletes that
4 were going to be participating in this Bellator series
5 that would be filmed and then later rebroadcast.

6 So I used the original JACO VIDA product
7 for the behind-the-scenes. Talked about them as
8 individuals. You know, developed the backstory like
9 they do with World Series of Poker where people start
10 to follow someone because they like their personality.
11 So that was done. I flew to China. I camped out
12 there. I did the original drawing, sent them off.

13 One of the folks at Gathering Storm had a
14 lot of sourcing contact, so he was flying over to
15 check on some golf bags or accessories. They had
16 probably at least a dozen factories, and he happened
17 to have a clothing background, so he and I hit it off.
18 His name is Chris Hingle.

19 So I go over to the factory. The second
20 factory I walk in, they had done some work for some
21 action sports companies. I'm in their old materials
22 room. I find some material, material I like that was
23 being used for a winter product. Like a winter base
24 layer. Like this I think would be -- we might need to
25 modify it a bit, but this would be I think a great

1 bike short too.

2 And they also had a lot of capability,
3 including protective equipment. Sitting in there, I
4 knew I had a factory already lined up that could build
5 this cup, as well as build the compression. Along
6 with it they were doing things like that for football
7 companies in particular. That came from the Shutt
8 football license that had opened up this opportunity.

9 So I ended up getting all that built.
10 Bellator launched, and it was an eight-week
11 tournament-style event that we had product on all
12 those folks. And then we started building the actual
13 production. That would have been when we were able to
14 sell on the market.

15 Q. Did you ever bring this version of the JACO
16 short to the CrossFit market?

17 A. Not this version.

18 So Gathering Storm, we were very focused on
19 MMA. Out of the gate they did extremely well. Our
20 very first year we did just under 300,000 in sales.
21 The following year we did 2 million in the MMA space
22 in particular. At the time, as JACO was growing, we
23 added another brand called Skins Compression.

24 Q. What is Skins Compression?

25 A. Skin Compression was an Australian company

1 that had large success in Australia selling this
2 product. Gathering Storm secured the USA distribution
3 rights, and those rights included being able to buy
4 all the product from Skins Australia. Essentially
5 market and sell it within the U.S. market to whatever
6 the marketing plan that we saw fit.

7 So it was a -- it had been under a previous
8 license previously. One individual came over with the
9 company Skins, and ultimately later on they rolled
10 that up under me and made me president, and I was
11 actually president of that company, along with JACO.

12 And in working with him, and then the fact
13 that we sat -- literally we had the brand sit kind of
14 side by side each other. He came back from a
15 CrossFit -- I don't know if it was regional games or
16 just an event and came back and actually said, "I saw
17 a bunch of people wearing the JACO fight shorts this
18 weekend." So there was some crossover. Somehow
19 people started wearing it totally organically, and it
20 was not in my radar.

21 Q. Did you see an opportunity in CrossFit?

22 A. I did. The more I talked to Steve, the more
23 I got kind of excited about it. And then kind of the
24 final touch was saying, well, we had already been
25 planning on -- I wear the shorts when I train, but I

1 want a lifestyle. I want a hybrid training short that
2 I can wear, not when I'm doing the jujitsu, with
3 pockets and things like that that catch fingers and
4 toes. There needs to be a clean exterior, but
5 something that you could train in.

6 So when you're not doing that -- and in our
7 MMA gym not only did we do MMA, but we also did very
8 CrossFit style, functional fit and style workouts.
9 Kettlebells, Turkish getups, jump rope, all those kind
10 of things.

11 So we did all those things, and I wanted a
12 short to kind of go to when you're not -- if you're
13 not grappling, everything else would work and you
14 could wear it out and about. So I took the patented
15 waistband and I redeployed it into a new product
16 called hybrid training short and that we started going
17 to market with.

18 Because of the wear in CrossFit, we decided
19 to go to the CrossFit games and just see how we would
20 be received. We had gotten a lot of exposure on TV.
21 When you saw JACO, there was a brief moment in time
22 that they had some notoriety that people would say,
23 oh, you're the UFC brand.

24 Q. What year did you go to CrossFit games?

25 A. This would have been 2011. So 2011, we go

1 there. We get a 10-foot booth. I had not been
2 previously. Like I said, we showed up. We had Skins
3 there as well. We already knew -- we kind of knew the
4 setup. We knew what happened.

5 So we set up. A few of us go to work.
6 Bunch of people come by and say, you're the UFC brand.
7 There was a few, actually, UFC fighters. There was
8 one that I remember, Jason McDonald, who also owned a
9 CrossFit affiliate. He had just worn our product and
10 won a fight. It was a big televised match. George
11 St. Pierre was the headliner. It was in Canada. It
12 was a big deal.

13 We have the cross-training short. We had
14 all our regular gear. Like, one of the very first
15 people to walk up -- even though it's really hot,
16 95 degrees, we had jackets in the background, and guys
17 are walking in going, "That's a cool looking jacket."

18 They put it on. And because the way we had
19 styled it and designed it in the block, it made the
20 CrossFit body. The body seemed to come out. People
21 do CrossFit, people say they would start to look
22 alike. It was fitting people really, really well.
23 They put the short on and said, "Wow, this is an
24 exceptional short."

25 Really, the only thing we kind of had to

1 overcome was the fact that we were an MMA brand. We
2 got a good enough reception that I started to look at
3 JACO as, you know, continuing our hybrid approach.
4 Let's not lose what we've established in UFC, mixed
5 martial arts. Let's add to it. Let's add this new
6 functional fitness movement that's happening. Let's
7 create a brand that can cross all those segments and
8 really give ourselves a bigger opportunity for growth.

9 Q. How much more of an opportunity did you see
10 in CrossFit and MMA?

11 A. As we started to sell, we started to garner
12 across -- people who participated in CrossFit and/or
13 functional fitness, we started to see more and more of
14 that. We started selling a lot more hybrid training
15 short. Way outselling the bike short.

16 Then to try to get some clarification --
17 well, some clarification of that, two things happened
18 at this time. We know CrossFit is big, so we're
19 starting to go down that path. And really recreating
20 the brand a bit to be a little more broad and figure
21 out a way to balance and sit and shroud MMA versus
22 CrossFit. But unfortunately, Gathering Storm began
23 experiencing financial difficulties.

24 Q. What happened with Gathering Storm?

25 A. In addition to JACO, which obviously was an

1 expense that they had to fund, they picked up Skins.
2 They bought the rights to that, which they had from
3 all the inventory, people, all the marketing
4 activities. At Skins, I actually raised my hand and
5 said, "This is about as much as I think we can
6 handle."

7 Q. In terms of new brands?

8 A. New brands. I'm running the digital team,
9 the industrial designer, and I'm trying to run JACO,
10 and then I also had Skins. Unfortunately it fell on
11 deaf ears. "All right. If you guys have the money
12 and you can hire the people."

13 I wasn't involved in the finances. I had my
14 budget for JACO, and I ran the other side, so I didn't
15 have any visibility to what was happening. But I
16 started hearing grumblings from vendors not getting
17 paid on time, things of that nature. I'd hear the
18 accounting department talking.

19 Q. Did they continue to acquire new brands?

20 MR. KOSMA: I'm just going to object to the
21 witness's previous answer as obviously lacking
22 personal knowledge, speculation. And I'm also going
23 to say that the testimony continues to be a narrative.
24 I'm going to object to the narrative form of response.

25 ///

1 BY MR. BEGAKIS:

2 Q. Did Gathering Storm continue to acquire new
3 brands despite your recommendation?

4 A. They did. They ended up not only acquiring
5 Arena swimwear, an Italian swimwear company which is
6 No. 2 in the world. Actually, No. 2 in the world was
7 Speedo, which was a huge investment. More people,
8 more inventory.

9 But then they opted to take on yet an
10 additional brand, which was another startup that
11 needed a tremendous amount of support in terms of both
12 cash, financing, and adding people, things of that
13 nature. So it stretched them really, really thin.

14 Q. What happened at this point to the company?

15 MR. KOSMA: I'm going to object again to
16 lack of personal knowledge and hearsay.

17 THE WITNESS: I was talking to the owners
18 and they said, yeah, cash was tight, but they would
19 work through it. And I had -- then I eventually said,
20 "I know you guys are in trouble." This is my
21 personal, firsthand knowledge.

22 I scheduled a meeting with Jim Stutts, the
23 majority shareholder, 51 percent of Gathering Storm
24 which held all the other entities beneath it,
25 including JACO Clothing. I said, "I know you guys are

1 in trouble. We need to figure out a way to make this
2 work. Why don't I try to go shop" --

3 "JACO Clothing is hot. JACO is hot. We
4 have a lot of things going for us. I think we'll do
5 2 million, 4 million next year. Let me go and can I
6 go shop this and try to find an investor. Somebody
7 essentially to purchase effectively your guys'
8 90 percent."

9 Q. So who did you shop this too?

10 A. So I started reaching out to kind of my
11 network. At the same time there was an individual,
12 his name had come up a couple of times, named Glen
13 Robertson.

14 Q. Who is Glen Robertson?

15 A. Glen Robertson was -- when I first heard of
16 him, he was a name who was a manager for fighters, and
17 he happened to have a few fighters that we were
18 sponsoring with JACO.

19 The fighter that was up and coming and the
20 most notable was Rashad Evans, and I actually heard
21 his name -- I was riding in a car with Rashad
22 coming -- we were in Canada at an expo. He was there
23 signing autographs. We were driving around from some
24 retail locations that we were in in Canada selling
25 JACO.

1 He was talking about Glen, and Glen had a
2 tool company that was sold at Home Depot. It was a
3 really big, successful company. He also now started
4 his management company.

5 I talked to Rashad and this other guy Rodney
6 who was kind of Rashad's handler, if you will, and
7 also kind of the guy that had the relationship with
8 Glen. I became good terms, essentially just talking
9 to Rodney and what was going on. They had seen what
10 JACO had done.

11 And then I mentioned that after I heard of
12 this guy and how -- potentially money and was
13 interested in the space, that we were actually -- the
14 other owners of JACO were interested in potentially
15 selling it.

16 Q. What was the proposed deal?

17 A. I didn't propose anything at that point. I
18 just said, you know, "I think Glen would want to talk
19 to you."

20 So I literally got back. And then when
21 Robinson called me up a day after I got back, said,
22 "Hey, can I talk to you?" I had never dealt with him.
23 Matt Paulson dealt with anything on that side of the
24 business. I happened to go up there for the fight.
25 It was a big fight. It was like a big to-do. So Matt

1 and I both went. And then Glen Robinson called and
2 said -- he just called up and said, "I want to buy
3 JACO."

4 Q. What were the terms, the details of the --

5 A. So the terms went on for quite some time.

6 Can we take a short break?

7 MR. BEGAKIS: Sure. Absolutely.

8 (Recess taken.)

9 BY MR. BEGAKIS:

10 Q. Mr. Wilson, roughly what year was the
11 negotiation between Glen Robinson and Gathering Storm
12 happening?

13 A. 2011 in -- 2011, around May.

14 Q. Were these negotiations for the acquisition
15 of JACO Clothing successful?

16 A. They were not.

17 Q. What happened?

18 A. I had essentially coordinated -- essentially
19 acted as kind of the intermediary between Glen
20 Robinson and Jim Stutts who was the majority owner.

21 Q. In the negotiations?

22 A. Negotiations to buy the entity JACO
23 Clothing, LLC, and they would buy effectively
24 90 percent of that entity. I would retain the
25 10 percent and actually get it upon the transaction.

1 And then they would receive -- at the time, in terms
2 of the deal, they were going to receive an aggregate
3 total for 90 percent of the business, just over
4 \$1.8 million.

5 Q. Did this deal get finalized?

6 A. The deal was finalized, and I expected
7 signature literally the next couple of days.

8 Q. But what happened?

9 A. At the same time, I believe they had made a
10 final decision. "They" being Gathering Storm. I
11 don't know exactly when the decision was made. I
12 wasn't privy to it. But I do know that they declared
13 bankruptcy prior to the deal getting signed.

14 Q. When did they declare bankruptcy?

15 A. Three to four days after their original
16 signatures were to take place to make the deal
17 transpire.

18 Q. What year was this?

19 A. 2011 -- it would have been the last week of
20 July in 2011.

21 Q. So what happened to JACO Clothing because of
22 bankruptcy?

23 A. So JACO Clothing was placed into bankruptcy,
24 and essentially all the assets would be managed on
25 behalf of the creditors, along with all the assets of

1 Gathering Storm. So everything they had, every golf
2 bag, every glove, every Shutt bag, every piece of --

3 Actually, I take that back. Arena and
4 Skins, because they had parent companies just prior
5 to the bankruptcy, had struck deals, essentially
6 repurchased and moved their -- give up distribution
7 agreements and take them away and like reassign them.
8 And I guess that was all approved through the ABC
9 proceeding.

10 So that happened. I immediately called --
11 because I had been in daily contact with Glen Robinson
12 who, up to that point, had told me everything I wanted
13 to hear. Had secured office space. Sent me checks to
14 get whatever I needed.

15 Q. Before he had --

16 A. He was so close. He actually even paid for
17 Matt Paulson to -- they had a lot of dealings in
18 Brazil. Both the tool company as well as all these
19 fighters that were in the tool offices all the time
20 that were from Brazil.

21 They had a guy down there, and he wanted to
22 wind up distribution and retail and bring it to
23 Brazil. So he actually paid for Matt Paulson to go
24 down there even prior to purchasing the company.

25 Ironically, Matt Paulson was down there, but

1 the company went bankrupt. I didn't have a phone
2 number so I e-mailed him. He told me we didn't have
3 jobs.

4 Q. What happened to JACO then after the
5 bankruptcy?

6 A. I called Glen Robinson. Glen had at least
7 three attorneys that I had worked with and knew of, or
8 aware of, doing trademark -- trademark and corporate
9 attorneys.

10 So he said, "Let me call you back." Called
11 me back an hour later. I guess he had conferred with
12 his attorneys. He said, "Well, first thing I need you
13 to do is go talk to Jim Stutts and find out who is
14 going to be managing the asset side."

15 Q. Did you do that?

16 A. I did. Actually, Jim -- I went in and
17 talked to Jim Stutts and said, "Hey, wish you guys
18 would have let me know that you were going to declare
19 it this quick because I did have some ownership in the
20 JACO Clothing entity and it wasn't cool that you guys
21 did that. Now, what I need from you -- and I
22 recognize you're trying to get this deal signed, but
23 what I need is just give me the name and information
24 because I would like to have an opportunity to speak
25 to that group, whoever it may be, to explain the

1 circumstances of JACO Clothing." And really tried to
2 orchestrate a deal to get those assets purchased by
3 Glen Robinson.

4 Q. Did they provide you with the bankruptcy
5 administrator contact information?

6 A. They did. I called them, and they were
7 already on site, which I didn't even -- they were
8 upstairs in another office already there. They
9 agreed -- not that day. I met with them the following
10 day.

11 Q. What did you do with their contact
12 information?

13 A. I just called them and they agreed, yes --
14 as a matter of fact, they wanted to talk to anybody
15 relevant. I said, "I have potential acquire," so they
16 wanted to talk to me as well. So I effectively just
17 set up a meeting to go talk about Glen and the fact
18 that we had a deal. I told him we had a deal on the
19 table that I thought was ready to be signed, and
20 there's been a lot of plans made.

21 What I didn't know, MMA space, is once you
22 were out, it couldn't sit on the shelf for six months.
23 In particular, the whole team would be -- more so than
24 the brand, potentially, not being able to be
25 resurrected. Obviously I resurrected brands before.

1 Q. Was Glen Robinson able to acquire JACO
2 Clothing?

3 A. Yes, he was. Actually, because of the asset
4 sale and the fact that the product was going to go
5 stale and the team was going to leave, I mean, he got
6 the entire -- all the inventory, all the intellectual
7 property, all the assets of the company. All assets
8 of JACO Clothing, LLC, he purchased for \$300,000.

9 MR. KOSMA: I'll object as speculation and
10 lack of foundation.

11 THE WITNESS: Glen Robinson specifically
12 called me. I was working with him. I was going to be
13 a partner in the business. He told me that he
14 purchased it for \$300,000.

15 MR. KOSMA: I'll object the answer is
16 hearsay.

17 THE WITNESS: He was so happy, because at
18 the time he was willing to spend, literally one week
19 before, 1.8 million. "That's just more money I can
20 put into JACO to make this thing soar."

21 BY MR. BEGAKIS:

22 Q. What happened to your equity in JACO
23 Clothing, LLC?

24 A. The original equity was gone, worthless
25 because the creditors now had it. The acquisitions

1 meant nothing.

2 But as part of this deal and as part of like
3 essentially agreeing to come on board as president,
4 run this company, Glen had already paid for an office
5 space right up the street in Leucadia and getting
6 essentially -- securing the team, if you will, with
7 the five people, as I saw it, that we needed.

8 Ironically, he had his own company so we
9 could leverage his operations. People much like we
10 had at Gathering Storm. You know, IT operations,
11 fulfillment, warehouse, those things. I would still
12 get my 10 percent. I would be the partner. I run it,
13 and he would give us access. Because he now owned
14 JACO to his 30-plus fighters with, you know, 20 of
15 them fighting UFC and the other ones fighting other
16 organizations. At the time, Strikeforce was sold out,
17 and Bellator or even K-1.

18 Seemed like a perfect setup. I said, "Well,
19 we need to work quickly," which he did. He actually
20 bought the assets. And because of kind of the
21 time-sensitive nature of not losing the ability to
22 sell all this product and taking advantage of what was
23 presumably one of the biggest events in MMA, which was
24 the UFC in Brazil that was coming in, and being part
25 of that, they agreed to sell it quickly, and he

1 purchased the assets. I guess perfected that in
2 literally a week.

3 Q. Was there a new entity formed?

4 A. There was.

5 Q. What was the name of this entity?

6 A. The new entity became JACO Athletics, LLC.

7 Q. When was this entity formed?

8 A. Based in Florida.

9 Q. When was this entity formed?

10 A. Basically just thereafter. I think they
11 formed it -- his attorneys formed it, but it was
12 formed between then and at least August 26th, because
13 August 26th we became employees of that entity.

14 Q. So what happened at this point?

15 A. So the team flew to Deerfield Beach,
16 Florida, where Glen Robinson owned a company called
17 Iron Bridge Tools.

18 Q. Was Matt Paulson on this team?

19 A. Yes, he was. The team consisted of Matt
20 Paulson, myself, Marion Reiter, R-e-i-t-e-r, Chris
21 Roy, C-h-r-i-s, R-o-y, Ryan Loco, and that was it at
22 the time.

23 Q. So you flew to Florida, and how did things
24 go with this new company?

25 A. So we were excited about flying the team to

1 Florida. We all had jobs. We had only gone a few
2 weeks without pay. My number-one priority was to try
3 to, one, secure this team a job. At least give JACO a
4 chance because we had spent so much time and energy
5 and was very passionate about it.

6 We did that. We basically went there to,
7 you know, sign up for health insurance, meet everyone,
8 all the people we would be working with. It was
9 supposed to be kind of an overall orientation. A
10 pretty typical signing confidentiality agreements or
11 invention agreements, things of that nature. I
12 expected fully to sign my documentation signifying my
13 ownership in the company.

14 Q. Did you receive this documentation?

15 A. I did not. He said they didn't have time to
16 get to it yet and he'd get it to me shortly.

17 Q. Did you receive that document later?

18 A. I did not.

19 Q. What happened?

20 A. I, on at least three different occasions,
21 inquired. Always had an excuse that it's coming,
22 don't worry about it. Even in person. The very first
23 time I was there, the lawyer that negotiated -- kind
24 of finished the deal and negotiated the deal with
25 Gathering Storm, he gave me a hug. He was so excited

1 that we got this company for 300,000, not 1.8 million.
2 "This is great." He was so happy.

3 Then a couple of months later, there had
4 already been some strange decisions and maneuvering.
5 I came down. Had another meeting. Matt and I were
6 essentially presenting the brand again. A meeting
7 with not only Glen, but some international
8 distributors that had previously worked with what is
9 the JACO Clothing as opposed to JACO Athletics that
10 had been super successful. One from Finland and one
11 from the UK. We had meetings set up.

12 So once again I expected -- he had told me
13 that they had the documentation. I even saw his
14 attorney. His attorney kind of avoided me. Kind of
15 walked down a different hallway. I didn't take too
16 much offense to it. The guy was strange. In
17 hindsight, I think I knew why he was doing it. Never
18 got it.

19 To add insult to injury, the meetings that
20 we were supposed to have, Glen didn't even attend one.
21 The guy who came from Finland, he wanted to be part of
22 the meeting. He didn't show up, so we could make no
23 decisions. He needed to sign off on one of the
24 distributorship.

25 The other meeting, the people that came from

1 the UK, they had done 600,000 in sales previously for
2 us, and he never paid attention to the presentation.
3 He just texted the whole time.

4 Q. Did you tell Glen that you did not receive
5 the paperwork?

6 A. Yes. So he once again said, "Oh, no, it's
7 coming. I'll get it to you." Literally, "You'll get
8 it like tomorrow." And we were leaving that day, of
9 course. I'm like, all right. He waited until I got
10 out of there. I did not receive it.

11 Q. What did you do?

12 A. At this point I saw the writing on the wall.
13 There had been all kinds of other maneuvers: Taking
14 Matt Paulson out on international distribution, taking
15 away his commissions, giving it to his guy, the
16 international tool sales who didn't know the first
17 thing about UFC and I don't think had ever done any
18 athletic endeavors in his life.

19 I had been removed from anything -- not that
20 I was involved with it, but a lot of the dealings that
21 Matt had with athletes of any type, I basically -- and
22 partially I never really dealt with that. Glen said
23 he would do it because he's managing athletes.
24 Arianny Celeste who was the most popular UFC ring girl
25 to wear JACO.

1 Rashad was friends with Jeremy Piven, and he
2 loved the product, and I didn't believe he was going
3 to wear it or do anything, but did happen to see the
4 Entourage movie and he was wearing JACO so it did
5 actually come true.

6 He was out there like saying, "I'm going to
7 take care of this piece of business. I'll work with
8 Matt. I know Matt knows these people, whoever they
9 are." So long story short, Matt had only been --
10 anyway, that's what it was. You'll ask me other
11 questions.

12 Q. You hadn't received any paperwork, correct?

13 A. No, no paperwork.

14 Q. And Glen had limited your role in the
15 company, correct?

16 A. Yeah. It was almost a systematic -- it
17 wasn't all at one time. It was systematically taking
18 pieces of things that I used to have and essentially
19 taking them under his fold, assigning a person in
20 Florida, and then even assigning his marketing guru,
21 as he called it, Karen Gough, G-o-u-g-h. She then
22 started showing up in the office here in Leucadia on a
23 regular basis presenting me with design ideas that had
24 originated either from Glen or from one of the
25 fighters.

1 Q. So what did you do?

2 A. I tried to be cordial about it and work
3 through the situations and talk it through. You know,
4 Karen talked to her at length and tried to figure out
5 what was going on.

6 Karen flat-out told me that -- actually, I
7 went to dinner with her. She made a mistake of having
8 one too many glasses of wine and told me that, "If you
9 don't move to Florida, there's no way Glen is going to
10 let you keep an office here." "Okay. Good
11 information," which is one of the fundamental things
12 that I told him from day one.

13 So I just kind of held that bug. And then
14 it was really the point that Matt Paulson came to me
15 and said, "Hey" -- we've heard this in a previous
16 deposition.

17 Q. What did Matt Paulson tell you?

18 A. Matt Paulson said, "Hey, Ron, I hate to do
19 this to you. You've done so many things for me. You
20 got me a job. Even though I wanted to move after you
21 gave me a job here, you figured out a way to make it
22 work." And just went through like all these things.

23 Like, "I've lost all passion. I can't work
24 with this guy Dave, Glen's tool distributor. I'm a
25 sales distributor for tools. I'm tired of Glen not

1 paying commissions or just changing what he says.
2 Basically I just can't do it anymore. I've lost all
3 passion. I love you. I love JACO. I love the team.
4 I don't want to leave you guys high and dry or
5 stranded, but this is what I'll do. I'll just give
6 you a date so hopefully you'll have enough time to
7 find somebody to not only bring them in, but make it a
8 very organized fashion so hopefully you guys won't
9 take a hit."

10 Q. What was your response?

11 A. I totally agreed with him. That was when --
12 I had been placating and trying to figure out how to
13 make it work for the benefit of the team. We liked
14 what we were doing once again. We had a cool little
15 office that we had set up. I had a cool loft design
16 area that I could just go do my thing and design
17 products. But I was dealing with them.

18 And then I consistently heard these -- I had
19 approached Glen, and then at some point he said -- I
20 basically then had restricted access to Glen because I
21 was supposed to go through Karen. "I'm really busy."
22 Karen would be his eyes and ears of just anything I
23 needed. "Deal with Karen." What I didn't realize was
24 I was reporting to Karen.

25 And that wasn't even the last straw. It was

1 the fact that Matt was going to leave, and, in
2 particular, the fact that promises were made and not
3 kept by Glen.

4 Q. So what did you do?

5 A. I took all these facts of what we
6 accomplished, all these things that had happened,
7 including -- kind of at the same time Karen had --
8 Karen had forwarded me an e-mail during the chain and
9 basically said that she was running JACO. I didn't
10 point that out in the e-mail. I mostly pointed out
11 the fact that commissions weren't paid. In
12 particular, I didn't have my agreement.

13 And the response came back -- it was pretty
14 quickly, about an hour -- rattling off about 20 things
15 that I had reportedly done incorrectly or had failed
16 upon. So I took the weekend and prepared responses
17 with data and things that refute that otherwise and
18 sent them back.

19 Q. Then what happened?

20 A. Well, I was also in a position where they --
21 I was looking at -- I hadn't been getting ownership.
22 There was certainly, in my opinion, a breached
23 contract. I essentially found an attorney that --
24 went and consulted the attorney to see if I had any
25 case, what could I do. And her words to me were --

1 she listened to the whole story and said, "Well, I
2 think you need to extend one more olive branch. I
3 don't think you have a good case right now. It would
4 be different if he fired you," is what she said.
5 Okay. Made some fair points. Probably gave me some
6 good, sound advice, and I left.

7 I knew things were tenuous. I left the
8 meeting. I had been there a few hours. It was
9 March 16th, 2012. I left that meeting, and I
10 literally got a text message from Elise Dirksing who
11 was customer service at the time. We had hired her to
12 help out.

13 And I got a text message that Glen
14 Robinson's sister, the VP of IT, Dana Hones, D-a-n-a,
15 H-o-n-e-s, and this guy Rodney -- who was the original
16 guy I met. I forget his last name -- were at the
17 office, and they had been there since apparently
18 before the office had even opened. So I basically
19 drove back to the office.

20 Q. What happened when you drove back to the
21 office?

22 A. When I drove back to the office, I walked
23 in. They were sitting there. I had gotten back
24 basically just after lunch. And Glen Robinson's
25 sister was in charge of human resources. She asked me

1 to follow her upstairs because I had kind of like my
2 own office design area.

3 So I went up there with Dana. Rodney didn't
4 come. Just Dana. She informed me that I was going to
5 be terminated and asked me to sign documents, asked me
6 for my key, asked me where my computer was, things of
7 that nature. I obviously gave her the key. Gave her
8 whatever else they needed at the time.

9 I think the one thing that -- the one thing
10 she asked for, she asked me for like a Facebook admin
11 page. I said, "I can't give you the Facebook admin
12 page. It's not the way it works." I told Glen two
13 days before, you have to have a Facebook page, then I
14 can make you an admin. I can't give you access
15 otherwise, which fell on deaf ears. I said, "I
16 already told him he has to make a Facebook page if he
17 wants to be an admin. That's just the way it works.
18 You can't otherwise."

19 So gave her all that stuff. And then she
20 also asked me to sign a document waiving all my rights
21 to the intellectual property or something, and she was
22 willing to -- by California law, they had to give me
23 all my vacation hours owed, my final paycheck,
24 whatever.

25 They were very nice. They said if I signed

1 this document, that she would give me a dollar. I
2 said, "I think you misunderstand. That's the dollar
3 so it makes it binding. It's not that I have to
4 accept it. I think whoever told you to do that
5 mistook the information."

6 So anyway, I left. I already sensed it was
7 coming. In some ways it was a relief because I had
8 sent that letter stating my case finally and saying I
9 know this is what's going to happen, and it obviously
10 did.

11 Q. What day were you fired?

12 A. I was fired March 16th, 2012.

13 Q. After being fired, what did you do?

14 A. I went to the bar. Yeah, I drove home. I
15 went to a local restaurant bar. And I was friends
16 with everyone. Matt Paulson, great friends with him.
17 He was staying at my house. Ironically, he was living
18 in Salt Lake but flying all over the country, all over
19 the world, and happened to be at my house.

20 I went there and met up with some other
21 friends midafternoon and just kind of had some lunch
22 and had a few beers. The rest of the team ended up
23 coming by afterwards and just kind of like -- it was
24 kind of a -- I don't know -- therapy session of what
25 went wrong.

1 Q. Paid their respects?

2 A. Exactly. Everybody was pretty upset. They
3 had known that I had gone to an attorney to see what
4 kind of case I had. I was trying to figure out a way,
5 literally, to like undo the JACO -- like this asset
6 purchase, to see if there's any way that I could
7 somehow make an offer, get something -- make something
8 happen to just get it out of his hands, just find a
9 better investor. Turns out he really wanted JACO
10 anyway because it was him getting the opportunity to
11 dress up his MMA fighters as he saw fit.

12 Q. So what did you do?

13 A. So that night, nothing. The next day,
14 luckily I got with an attorney. I basically just let
15 JACO go and said I'm going to start something from
16 scratch.

17 Q. What new company did you start?

18 A. So Matt was there. I said, "I'm going to
19 start something new. I know it's going to be
20 something obviously in the space. Obviously I have to
21 use the resources that I have in terms of the
22 factories I've known forever, people," things of that
23 nature.

24 I thought there was a real opportunity. And
25 I'm still in that hybrid training market of CrossFit,

1 mixed martial arts, cardio kickboxing, functional
2 fitness, but also still incorporating MMA. I had so
3 many contacts, so many people, so many ideas that
4 really -- just kind of where I wanted to take JACO. I
5 had to kind of restart. I just need a new name, new
6 intellectual property, all those kind of things. So I
7 began working on the creation of the company name,
8 logo, and those products.

9 Q. When did you design the company name, logo?

10 A. The name was the first thing I worked on. I
11 had previous experience, as I articulated earlier,
12 with respect to JACO and having issues with getting
13 the trademark.

14 The other issue that I experienced
15 throughout my career, 180s, we finally got that domain
16 name many years later. It was held up in an Italian
17 vision wear company. Finally agreed to give it to us
18 because fortunately we knew someone they knew. They
19 literally gave it to us. They let us have it.

20 So the first thing I did was start looking
21 at names. We've been using the term, and I've been
22 using it since 2005, the hybrid athlete.

23 Q. So how did you use that --

24 A. One of the things obviously for trademark is
25 trying to make a fictitious name. So I started like

1 a little -- rearrange of that, plus cross-training
2 athlete. I was looking at other things too. Nothing
3 was really clicking. I'd do it, write it down, and
4 then type in the domain to see if it was available.

5 That was first and foremost, is that we
6 needed that domain name. Even like using the word --
7 I've had bad experiences when you have to say
8 something apparel because a lot of people misspell
9 apparel, so I wanted something that I could just
10 literally get the root name.

11 When I was working with hybrid athlete, I
12 kept repositioning those, and Hylete came up and I
13 liked the way it sounded because there was -- it
14 didn't come out and say hybrid athlete. Obviously if
15 you use that terminology, maybe you'd see that. But
16 the elite part of it was really kind of the -- the
17 audible portion of it is was what really kind of
18 struck me.

19 And then once -- the more I said it, the
20 more I liked it. I'm like, please let this domain be
21 here. When I search Google, I don't want to find
22 anything with Hylete.

23 Q. Did you find anything?

24 A. So the domain was clear. Sometimes I will
25 do this. Over the years I've had ideas. I've bought

1 a lot of domain names because I thought if I don't get
2 it this second, someone will get it right before me.
3 I had a lot of names, and I bought the two-year deal
4 so that benefited greatly for me.

5 So I get the Hylete name. And I had become
6 much more aware of social networking while at
7 Gathering Storm. We had a person kind of specializing
8 that on my team. I had a couple people. One that
9 created the content, and one that understood how to
10 manage it and effectuate that.

11 I think I didn't get a Facebook
12 account until -- basically we did JACO and I needed
13 now to manage this because I don't have anybody to do
14 it. So I need a Facebook account. I need to be an
15 admin to start understanding how this works. I lost
16 my resources, so I quickly tried to learn.

17 So I would go out and basically secure
18 Hylete Facebook and check off the boxes that I had
19 that. Then I go and I try to get Twitter, which I
20 really didn't have an understanding of, and still
21 don't understand why people use it, but obviously it's
22 very relevant. I can't get it. It's already taken.

23 Nothing came up, and I typed in Hylete into
24 Google again and realized there's a high school track
25 star in Texas, his previous name is actually Hylete.

1 And he's picked up a Twitter handle, picked up YouTube
2 handle, I guess, or name.

3 So obviously I had to come up with something
4 easy to spell, something easy to remember, so I ended
5 up selecting and having them available. Luckily the
6 kid only took his name and nothing else, no other
7 derivatives, at least, that affected us.

8 Q. Did you register a trademark in the term
9 Hylete?

10 A. I did. It was a few days later. Basically
11 in three days I came up with a name. I also searched
12 the USPTO for the name. In 72 hours I essentially had
13 the final product, if you will.

14 And then I reached out to the patent
15 attorney that I worked with for the two, three, four
16 patents at Gathering Storm, JACO Clothing company, and
17 essentially said, "Hey, I'm starting this new
18 company." Kind of the circumstance. And very briefly
19 just said, "Hey, I want to work with you to do not
20 only patents" -- because previously they were using
21 someone else for trademarks, but I wanted to use all
22 kinds of trademarks. "And I'd like you to handle
23 those."

24 So I sent him the name. I said, "Hey, I've
25 already checked this. Can you just go ahead and start

1 doing the file and whatnot for me?"

2 (Exhibit 18 was marked for identification by
3 the court reporter.)

4 BY MR. BEGAKIS:

5 Q. Mr. Wilson, I'm handing you what's been
6 marked into evidence as Exhibit 18. Do you recognize
7 this document?

8 A. I do. That's a search of the USPTO, the
9 TESS system, trademark electronic search system.

10 Q. What does this document display?

11 A. It pulls up the word mark "Hylete" that we
12 filed back in March 22nd -- so I guess six days after
13 I was fired -- in the International Class 25, which is
14 footwear apparel, headwear -- or headgear.

15 MR. KOSMA: I'm just going to object to this
16 document to the extent it wasn't previously produced
17 in violation of the TTAB order.

18 (Exhibit 19 was marked for identification by
19 the court reporter.)

20 BY MR. BEGAKIS:

21 Q. Mr. Wilson, I'm also handing you what is
22 being marked into evidence as Exhibit 19. Do you
23 recognize this document?

24 A. I do.

25 Q. What is this document?

1 A. So when I was designing logos, I selected
2 the name. Obviously felt secure there. It looked
3 clean across all normal standards of the first search,
4 the Google search, things of that nature. So then I
5 started working -- that happened very quickly. I
6 essentially had that Friday the 17th, and then I
7 started working on the icon.

8 Q. What were your inspirations in developing
9 the icon?

10 A. It first started that -- looking at other
11 brands that I respected, in particular, I liked what
12 Nixon had done.

13 Q. What had they done?

14 A. I liked the cleanness of their brand. I
15 liked the fact that they created a mark at the end of
16 their name that could be used with or without their
17 name. It was clean. It was unique. It was very
18 simple. I had learned a lot with respect to trying to
19 make things that fit into a square.

20 MR. KOSMA: There's a document in front of
21 the witness. I'm not sure it's introduced yet.

22 MR. BEGAKIS: I introduced Exhibit 19 into
23 evidence.

24 MR. KOSMA: You did. Okay. Sorry. I just
25 want to object to the document in violation of the

1 TTAB order, to the extent it is not already produced.
2 And I will listen to the testimony. I didn't know if
3 you were testifying about the document or not.

4 MR. BEGAKIS: That's fine.

5 THE WITNESS: I'm testifying from just my
6 personal recollection at this second. When I go to
7 the document, I'll say I'll now go to the document.

8 So I was designing it, a logo, and I knew
9 that making a square logo -- we had problems with this
10 at Gathering Storm with some of our brands. And not
11 being square, when it showed up on Facebook and other
12 social platforms, you really didn't see it.

13 So we really wanted to have a brand where
14 the icon would fit in a square, and kind of the name
15 with the icon that would fit in the square was an
16 advantageous way to have a logo to get better
17 visibility when posting on Facebook, in particular.

18 So drawing from the Hylete name -- I also
19 began writing a creed, much like I did at JACO
20 Clothing. The creed eventually came out, and I was
21 trying to compete with creed. It was really more
22 about the inside, and kind of the elite athlete,
23 drawing upon kind of the infinite depth of capacities
24 and how to push themselves.

25 So I leveraged that. I started -- the way

1 logos get developed, you have symbols and thoughts and
2 impressions and things that you're trying to convey.
3 It's not a process that you can directly describe in
4 words all the time, but I'm trying as best as possible
5 to get this on record.

6 So I go and I start looking up infinity
7 symbols. Of course the car comes up a lot. But then
8 I go back and start reaching the symbology of the
9 infinity symbol. And the infinite symbol wasn't
10 always -- most of the logos I did had two interlocking
11 first beat eight, and everything just looked too close
12 to infinity.

13 Then I started pushing those circles on top
14 of each other, which was another symbolology that
15 meant infinity throughout time. And then I started to
16 see even elements where it was just two circles that
17 weren't even touching creating an infinite symbology.

18 At the time, I ironically had just -- I
19 didn't have another computer. They had taken my
20 computer the day before. I was doing all hand
21 drawings, which I am not good at. I learned how to do
22 Photoshop because I was never a good artist, but
23 Photoshop I could do well.

24 So I started finding objects around the
25 house, coins. As a matter of fact, silver dollar,

1 pennies, nickels, anything in the kitchen, circle
2 shapes, trying to create something from the center
3 out. So I started writing. I had a bunch of
4 different circles and I start gravitating. I wanted
5 something that is top-heavy versus bottom-heavy. I
6 wanted something that's clean and crisp.

7 A lot of things I started with, they were
8 too overpowering. I was balancing the creativity with
9 the execution of the brand. I wanted something that
10 could also be both kind of circle gender, especially
11 if you just change the color of it based upon the
12 product of the apparel, as in whether it's male or
13 female.

14 So I started going to like more cleaner
15 lines. I wanted more points, less beefiness. More
16 about sharpness which would convey performance. Even
17 things that where someone looked at it, it would have
18 an edge that would almost be a weapon. So taking that
19 infinity from the inside and effectively making a
20 weapon out of it from the outside, which would be the
21 body, kind of the soul versus the body.

22 Started drafting that. And drafting over
23 and over and over and hundreds and hundreds of pages,
24 I think it was 48 hours without sleeping. And I
25 finally got to the point where I had a handful that,

1 okay, these are all different elements and they all
2 had different themes, but I basically had one that was
3 the one that I felt like was close to capturing it.

4 It still wasn't quite there. I didn't have
5 Photoshop. I literally didn't have a computer that
6 day. I didn't have a computer that I could use
7 Photoshop on. I had a tablet. I could search things
8 and that kind of stuff. I needed some help just kind
9 of cleaning it up, and for a logo you should get an
10 illustrator anyway because it should be vector art,
11 not a Photoshop document. So now to the exhibit.

12 BY MR. BEGAKIS:

13 Q. Does Exhibit 19 display some of the
14 iterations you came up?

15 MR. KOSMA: I'm just going to really quickly
16 object to the exhibit to the extent it was not
17 previously produced under TTAB order under sanctions.

18 THE WITNESS: I have my own feeling on this.
19 No. 7 was the one that kind of just spoke to me. I
20 didn't like the roundness.

21 You can see the left versus the right. The
22 left I did a better job. Like I said, I'm not an
23 artist certainly. But getting something more pointed,
24 so I ended up -- actually, I sent these unnumbered to
25 my brother at the time. My brother at the time, he

1 passed away. I sent those numbers unnumbered to him.
2 And he had been kind of basically giving feedback on
3 these. And so I had him list what his order was, and
4 I was kind of happy that he also listed No. 7 -- worst
5 to first, he listed No. 7 as his favorite, which I
6 kind of said, okay, let's do No. 7.

7 BY MR. BEGAKIS:

8 Q. Is the current Hylete logo -- does No. 7 on
9 this exhibit reflect the current Hylete logo?

10 A. It doesn't reflect the current, but it's the
11 closest representation of the current Hylete icon.

12 Q. What font did you use to display the Hylete
13 name?

14 A. When I started writing out Hylete -- I'll
15 refer to Exhibit 19. I know the standing objection.

16 The Hylete, I wanted each letter -- I put
17 everything in a square. I wanted each letter to fit
18 in a square. So I started writing out effectively
19 kind of what I wanted the font to look like. I went
20 on myfont.com to see what I could find that most
21 closely resembled that.

22 (Exhibit 20 was marked for identification by
23 the court reporter.)

24 BY MR. BEGAKIS:

25 Q. Introducing into evidence what's been marked

1 as Exhibit 20.

2 MR. KOSMA: I'm going to object to this
3 document. Again to the extent it was not previously
4 produced under the TTAB order.

5 BY MR. BEGAKIS:

6 Q. What is this document, Mr. Wilson?

7 A. This document is just a simple Wikipedia
8 search for the Eurostile font that's been around since
9 1962.

10 Q. Is this the font you chose for Hylete?

11 A. It is.

12 Q. What are some other examples of companies
13 that use Eurostile?

14 A. Geico, Sketchers, and probably most notably
15 Under Armour.

16 MR. KOSMA: I'm going to object as far as
17 hearsay, speculation, and lack of authentication. I'm
18 also going to object to this document also containing
19 hearsay and lack of authentication.

20 (Exhibit 21 was marked for identification by
21 the court reporter.)

22 BY MR. BEGAKIS:

23 Q. I'm handing you what has been marked as
24 Exhibit 21. Do you recognize this document?

25 MR. KOSMA: I'm going to object to this

1 document under the TTAB sanction order. You can go
2 on. I'll object to your testimony.

3 THE WITNESS: Yes. This is a -- this past
4 weekend I just plugged in what fonts are used just to
5 produce this document. It's a site that you can go on
6 and look for popular companies that are using fonts
7 and letters and things of that nature. This is
8 actually just a Google search.

9 BY MR. BEGAKIS:

10 Q. What is this document?

11 A. It pulls up the Under Armour H with the
12 Under Armour beneath it written out. It's a Eurostile
13 font.

14 MR. KOSMA: I'm going to object to the
15 document and testimony for lack of authentication and
16 hearsay.

17 BY MR. BEGAKIS:

18 Q. Mr. Wilson, when you developed the logo, did
19 anybody tell you the logo looked like anything?

20 A. Yes.

21 MR. KOSMA: Objection. Leading.

22 BY MR. BEGAKIS:

23 Q. What other symbols have people told you the
24 logo looked like?

25 MR. KOSMA: Objection. Leading.

1 THE WITNESS: So the reason I pulled the
2 Under Armour up is because that's been the most
3 notable one where people say, "That reminds me of the
4 Under Armour logo." The first one, the very first one
5 that someone referenced another logo specifically was
6 actually at the CrossFit games.

7 BY MR. BEGAKIS:

8 Q. What year?

9 A. That was in 2012. So it was the first games
10 we went to. It's the one that I essentially prepared
11 product to make to those games at 100 days from
12 March 17th. About 100 days, maybe slightly over, to
13 get to from the games to get to -- we secured a booth,
14 and I had to get all the product not only designed,
15 but flew to China, got a manufacturer.

16 Q. What symbol did they say?

17 A. The very first person that walked up, and
18 I've had several people since, said it looked like an
19 earlier Batman symbol.

20 MR. KOSMA: I'm going to object to the
21 testimony as hearsay, and object to this document
22 No. 22 as violating TTAB order.

23 MR. BEGAKIS: It's being entered now so help
24 yourself.

25 (Exhibit 22 was marked for identification by

1 the court reporter.)

2 BY MR. BEGAKIS:

3 Q. Submitting into evidence what is being
4 marked as Exhibit 22.

5 MR. KOSMA: Same objection.

6 BY MR. BEGAKIS:

7 Q. Do you recognize this document?

8 A. I do. These are various batman logos.

9 Q. Which logo is the one that the individual is
10 referring to?

11 A. I can't say for sure because he said an
12 earlier Batman logo. So I'm assuming, based upon my
13 visual take on this, would be 1993 on this document.

14 MR. KOSMA: I'll object to the witness's
15 testimony as speculation, hearsay, and the question as
16 leading.

17 BY MR. BEGAKIS:

18 Q. So aside from the Under Armour logo, are
19 there any other logos that people say the Hylete logo
20 looks like?

21 A. Not logos.

22 Q. Any other symbols of any sort?

23 A. Symbols, yes. I've had people say -- most
24 popular ones would be that it looks like some type of
25 shield, some type of weapon. Something you use in

1 martial arts. I had probably more people say that it
2 looked like some sort of alien head, or perhaps some
3 type of military plank.

4 Q. So Mr. Wilson, you developed the logo and
5 the name. What happened next?

6 A. I feverishly began developing a new short.

7 MR. KOSMA: I'm also going to object to the
8 last answer as hearsay.

9 MR. BEGAKIS: Regarding him developing a new
10 short?

11 MR. KOSMA: What people told him that the
12 logo looks like.

13 THE WITNESS: Well, these are actual
14 conversations. It's not what other people have told
15 me. It's what they told me.

16 (Exhibit 23 was marked for identification by
17 the court reporter.)

18 BY MR. BEGAKIS:

19 Q. Mr. Wilson, I'm handing you what's been
20 marked into evidence as Exhibit 23. Do you recognize
21 this document?

22 A. I do. This is a patent that was just
23 literally recently issued to us from my original
24 designs, and what I produced in terms of a new
25 patentable waist system to essentially make, you know,

1 the next version, in my mind, of what I thought an
2 ideal hybrid training short would be for the
3 functional fitness market.

4 MR. KOSMA: I'm going to object to the
5 document as violating TTAB sanction order and not
6 being previously produced.

7 BY MR. BEGAKIS:

8 Q. Does this document reflect the redesigns you
9 made to the short that Hylete sold?

10 A. Yes. So this document -- I went to design
11 the Hylete short. I obviously was no longer at JACO.
12 The intellectual property from JACO, including that
13 JACO patent for the waistband system that is still in
14 their JACO hybrid training short, I couldn't use that.
15 I had no access to it. Even though my name as an
16 inventor, I had no rights to it. I had signed them
17 away.

18 So I needed to create a new short. Not only
19 did I want to improve the functionality of the waist
20 system, I thought I could do something better. So
21 over the period of the next two to three weeks, with
22 very little sleep, all I did was focus on developing a
23 new short and fixing whatever I thought I could fix
24 with the previous JACO hybrid training short.

25 So the waist system -- the JACO hybrid

1 training patent had a panel in the back that was
2 connected across the top portion and the sides had
3 drawstrings attached that fit through a partial tunnel
4 and then reemerged at the front of the garment so that
5 you could tie it. With the thought process and
6 functionality being that you were able to tighten the
7 drawstring waist and it would tighten from the inside
8 to create a secure fit and the outside would still
9 like a board short. So looking at that, and still
10 referencing this new -- this is a patent, referencing
11 that patent.

12 Q. So were you able to design this new short?

13 A. Yes. So I designed this new short.

14 Q. How quickly did you design this new short?

15 A. The first drawings I got out in about ten
16 days.

17 Q. What did you do once you created the
18 drawings?

19 A. I sent those drawings to the factory. I
20 worked with lots of factories, but I had a unique
21 relationship with one factory in particular in
22 Qingdao, China, Q-i-n-g-d-a-o, Northern China. They
23 were building the JACO hybrid training shorts as well.
24 So I basically sent those drawings to them.

25 Q. Did you have a time line for developing

1 these new shorts?

2 A. Yes.

3 Q. What was the time line?

4 A. The CrossFit games.

5 Q. What year?

6 A. Transpiring in 2012 at the end of July. So
7 I had from March 17th till July. You know,
8 effectively I had to get them there ahead of those
9 games. I know it was 100 days. That's what I counted
10 out. So the 17th, 100 days later. So approximately
11 17th of July which was the date that we had to have
12 those shorts. And anything else that we could produce
13 to surround those shorts with respect to other apparel
14 items available, to not only sell at CrossFit games,
15 but use that as our launchpad for our online sales
16 initiative.

17 Q. Did you meet this time line?

18 A. We did. Not only met it, we exceeded it. I
19 was able to, by spending a great deal of time in China
20 and really honestly being pushed to the brink and
21 wanting to show that JACO was a success because of my
22 and my team's initiatives and efforts and not because
23 of Glen Robinson. I gave up a lot of sleep, and I
24 produced not only the first Hylete 1.0 shorts, I also
25 produced socks, knee-high compression socks that I

1 designed while I was there.

2 The company, the factory that I worked with
3 also had a second factory that produced socks for
4 Adidas Golf. So I went to that factory. In between
5 samples, things happening on the short, drove that
6 factory work with them on socks.

7 They were nice enough. They understood my
8 plight, the factory owner says, that I had been fired
9 and they had benefited. They had the JACO business.
10 They were still doing the JACO business. I encouraged
11 them to do the JACO business. I said, "I have all my
12 friends there. You're making money off them. This is
13 great. Don't do anything different."

14 So I got socks done for men and women in two
15 sizes. They were also -- while I was there, we
16 developed a women's short that we had limited
17 quantities available at the CrossFit games. And then
18 stateside was able to build t-shirts -- not really
19 build t-shirts, but basically embellish them. Used
20 other brands' t-shirts and embellish them just so we
21 could kind of round out our offering so I could
22 basically have more time, more than 100 days to get
23 this accomplished.

24 Q. How well were the original Hylete shorts or
25 the Hylete 1.0 shorts perceived at the CrossFit games?

1 A. Phenomenally. I left the booth probably
2 only twice per day every day. I put everything into
3 this. And Matt Paulson had taken his home mortgage --
4 his new home fund of \$50,000. His wife had signed off
5 on it, and I felt like I couldn't leave the booth no
6 matter what.

7 So I talked to almost every single person I
8 could. I was the front person. Everyone else would
9 help with like ringing them up and things of that
10 nature. I understood the short. They were extremely
11 well received.

12 I had a lot of people walking up, and I
13 would stop them and say, "Have you seen our new Hylete
14 short?" And on numerous occasions they would say,
15 "Those remind me of the JACO short." I said, "Well,
16 that makes sense because I designed the JACO short,
17 and this is effectively -- well, this is JACO 2.0.
18 This is a new company. I'm no longer at JACO. And
19 I've taken the JACO shorts, and I've tried to improve
20 upon them. I created a new waist system. You might
21 have noticed on the old JACO short that when you went
22 to tie the short down" --

23 Because the way it was constructed, there
24 was a lot of pinching, and there was a lot of weird
25 thing in the back that people might have noted. A lot

1 of people said, "Oh, yeah, I didn't really like that,
2 but I like the way they tighten down better than any
3 other short." I said, "Same fabric. As a matter of
4 fact, slightly better. It stretches a little more.
5 It's the next run of the fabric. Same mill. And then
6 additionally you might have noticed that the grommets
7 were metal on the JACO short. I replaced these with
8 sonic welded rubber grommets." Because certain people
9 found that the grommets would pop out over time, and
10 almost every single person said, yeah, I have a pair
11 that happened to.

12 So going on down the short said, "Well, the
13 other thing you might notice about these shorts are,
14 if you look at the original shorts" -- luckily there
15 were enough people wearing them. I could just point
16 someone out and said, "If you look at that" --
17 ironically, the booth right next to us had built a
18 pair of shorts. They were a Canadian company that
19 looked exactly like the JACO short, just a different
20 logo. Yeah, that's a different story.

21 I said, you know, that right-hand short had
22 a Velcro, but we really felt like we should have
23 another flap that goes over to create a more secure
24 fit than just relying upon a small tab. I know from
25 personal experience that tab, you keep pulling it and

1 eventually it will come off. Several people said,
2 "Yeah, great." Put them on. "Love it."

3 Then moving to the left side of the short,
4 we had this big square pocket, and it's low. I said,
5 you know, "I designed that short. I probably designed
6 it a little too much like a board short." And then
7 running, if I had a key or anything I forgot and left
8 it in there, I want it in there, it's rattling around,
9 it's hitting my knee. So I took that pocket as well
10 and I moved it up the hip. We call it pocket
11 placement so that it's in position so if you run or do
12 anything, it's secure against your hip and it doesn't
13 move around.

14 So in a nutshell, that was it. Then we were
15 early on, and I wanted to -- we had some other things
16 we were doing in terms of, hey, not only if you buy a
17 pair of shorts today -- fortunately I was able to
18 build these socks that were really inexpensive, and we
19 could also offer kind of these combo deals. It was
20 wildly successful.

21 And literally -- well, over the course of a
22 day, anybody that also had JACO shorts, I'm like,
23 "Hey, how do you like those shorts?" And probably one
24 out of two roughly, not to be exact, literally said,
25 "Wait, didn't I talk to you last year?" Because I had

1 done all the talking the previous year about the
2 shorts as well. That's the thing. I was the man of
3 the shorts. Everybody else was about t-shirts and
4 things of that nature.

5 Q. To the untrained eye, did the JACO shorts
6 look similar to the new Hylete shorts?

7 MR. KOSMA: Objections. Leading.

8 (Exhibit 24 was marked for identification by
9 the court reporter.)

10 BY MR. BEGAKIS:

11 Q. Strike that. Mr. Wilson, I'm handing you
12 what's been marked into evidence as Exhibit 24.

13 MR. KOSMA: I'm going to object to this
14 document under TTAB sanction order.

15 BY MR. BEGAKIS:

16 Q. What is this document?

17 A. This is just an internet search for Hylete
18 cross-training short, the Men's Health. This is the
19 original short that was launched at the CrossFit
20 games.

21 One feature I forgot as well. This short
22 had the ability that you could not only tie the short
23 from the outside, but the grommets went both
24 directions. You could tie it from the inside. You
25 could have a board short look, or you could tie it to

1 the inside if you were fearful of the string getting
2 caught doing some type of exercise and/or you just
3 didn't like the look of it.

4 Q. What did Men's Health have to say about this
5 short?

6 A. It's just one of the hottest new, best
7 fitness gear right now. Giving it some small accolade
8 that we produced a good short.

9 (Exhibit 25 was marked for identification by
10 the court reporter.)

11 BY MR. BEGAKIS:

12 Q. Mr. Wilson, I'm handing you what is being
13 marked as Exhibit 25. Do you recognize this document?

14 MR. KOSMA: I'm going to object to this
15 document as again not being previously produced under
16 TTAB order.

17 BY MR. BEGAKIS:

18 Q. Do you recognize this document?

19 A. I do.

20 Q. What is this document?

21 A. It's a post from Facebook actually obtained
22 through a search, just looking for this in Men's
23 Health. 2013, our first short got a snippet of best
24 fitness gear. But in 2014, with even further
25 improvements and styling and the other feature changes

1 that we made to the short, eliminating cargo pockets
2 and getting these diagonal internal zip pockets, they
3 selected us as the 2014 best training shorts.

4 To the left of the shorts is the picture
5 where they articulated that Lululemon had the best
6 shirt, we had the best short, Under Armour had the
7 best pair of cross-training shoes.

8 MR. KOSMA: I'll also object to this
9 document as it appears to be a non-public page.

10 (Exhibit 26 was marked for identification by
11 the court reporter.)

12 BY MR. BEGAKIS:

13 Q. Mr. Wilson, where was this?

14 A. For the record, I did a search and this came
15 up as a search.

16 Q. Mr. Wilson, I'm handing you what is being
17 marked as Exhibit 26. Do you recognize this document?

18 A. Yes. This is basically a post on
19 CrossFit.com.

20 Q. Can you read the post from one Wayne
21 Richard?

22 A. "The x-functional short" -- presumably the
23 cross-functional short. "Big fan of the new
24 cross-training short from Hylete. Great stretch,
25 breathability and feel."

1 MR. KOSMA: I'm also going to object to this
2 document under the TTAB sanction order as not being
3 previously produced. Testimony is hearsay, and the
4 document is hearsay.

5 THE WITNESS: I printed that from
6 CrossFit.com.

7 (Exhibit 27 was marked for identification by
8 the court reporter.)

9 BY MR. BEGAKIS:

10 Q. Mr. Wilson, I'm handing you what's been
11 marked into evidence as Exhibit 27. Do you recognize
12 this document?

13 A. Yeah. This is a post from CrossFit.com. So
14 essentially they're a community board of people who
15 post it.

16 Q. Can you read the post from one Matt Corley.

17 A. "Gear review: Hylete 1.0 Shorts. I've worn
18 these shorts around the house to bed, grappling and
19 for conditioning. For casual wear the shorts are very
20 comfortable, a lot like a pair of basketball training
21 shorts, and the graphics are subtle enough that your
22 significant other won't give you a hard time about it.

23 "The interior pocket is designed for a smart
24 phone and worked very well for that. While wearing
25 the shorts, I knew the phone was there from the

1 weight, but it didn't bang around or bother me like it
2 would in a looser pocket.

3 "For active wear they performed well. I
4 like the stretchiness of the fabric. Depending on
5 what you're doing and what you're putting in it, the
6 interior pocket may or may not be useful. The shorts
7 are very lightweight, and once I started to roll, I
8 didn't really notice them again.

9 "They dried quickly after training. I also
10 like the fact that the shorts have no Velcro. I've
11 had too many rash guards and other shorts ruined in
12 the wash when the Velcro closures come open and stick
13 to places it's not meant to be. The only concern I
14 had is the potential for abrading and piling of the
15 fabric from gnurling on bars while deadlifting or
16 other activities where you have a rough surface
17 against your legs.

18 "Hylete's shorts are comfortable, look good
19 and function well. You can wear them grappling,
20 lounging, CF-ing or even to that Tough Mudder that
21 you've had your eye on."

22 Q. Mr. Wilson, what is CF-ing?

23 A. Presumably CrossFitting.

24 "For the grappler they're not your typical
25 grappling shorts but that's okay. You can walk around

1 in public in these and you won't have random guys
2 coming up to you asking you if you train UFC.

3 "The shorts are \$60, which is consistent
4 with many CrossFit specific brands and higher end
5 grappling shorts such as Hayabusa," H-a-y-a-b-u-s-a,
6 "and Venum. Hylete was kind enough to provide us with
7 a special 25 percent off coupon code just for our
8 readers. Legends 25 using this code and flat rate
9 shipping you can get a pair of shorts delivered to
10 your house for less than \$50."

11 MR. KOSMA: I'm going to object to the
12 document under the TTAB order, and to the testimony in
13 the document as being hearsay.

14 MR. BEGAKIS: If we could take a five-minute
15 break, I need more exhibit tabs.

16 (Recess taken.)

17 (Exhibit 28 was marked for identification by
18 the court reporter.)

19 BY MR. BEGAKIS:

20 Q. Mr. Wilson, I'm handing you what is being
21 marked into evidence as Exhibit 28. Do you recognize
22 this document?

23 A. I do.

24 Q. What is this document?

25 A. It is a blog called Wodville that has to do

1 with Hylete's Mens Review.

2 Q. Can you read the first paragraph for me.

3 A. Yes.

4 "I'm extremely excited to bring this next
5 company to you, Hylete apparel. Despite the youth of
6 this company, they have succeeded in making a more
7 than impressive name for themselves. With an
8 aggressive marketing strategy and highly motivated
9 staff, they are on the move to be one of the best
10 CrossFit vendors out there today.

11 "They also provide discounts to their
12 military/first responder customers. Heidi and I have
13 just recently received additional apparel from Hylete,
14 and I absolutely love it."

15 MR. KOSMA: I'm going to object to the
16 document as being in violation of the TTAB order, and
17 also the testimony and the document pertaining as
18 hearsay and irrelevant. This whole line of
19 questioning is irrelevant as well, so I'm going to
20 object to it as well.

21 (Exhibit 29 was marked for identification by
22 the court reporter.)

23 BY MR. BEGAKIS:

24 Q. Mr. Wilson, I'm handing you what is being
25 marked into evidence as Exhibit 29. Do you recognize

1 this document?

2 A. Yes. This is a review of the Hylete Onnit
3 cross-training shorts 2.0. Or series of reviews.

4 Q. What is Onnit?

5 A. They're a supplement company. They also do
6 equipment. In particular, they have a crazy monkey
7 face that they make kettle bells out of. They
8 approached us to produce shorts for them and
9 essentially put this crazy monkey face on the bottom
10 left-hand leg.

11 Q. So you designed Hylete shorts that have
12 their logo on it as well?

13 A. Correct.

14 MR. KOSMA: I'm going to object to the
15 document and testimony as being in violation of the
16 TTAB order and hearsay.

17 THE WITNESS: They've been successful. Just
18 an odd relationship. I think the last time I looked,
19 we had sold them somewhere in the neighborhood of
20 25,000 to 30,000 product, shorts.

21 MR. KOSMA: I'm going to object to the
22 answer as there's no question pending, so it's
23 nonresponsive.

24 BY MR. BEGAKIS:

25 Q. Mr. Wilson, when did you first hear of

1 Rob Orlando?

2 A. First time I heard of Rob Orlando was near
3 the end of my -- essentially the same time that I was
4 having difficulties at JACO Athletics. Glen Robinson
5 owned JACO Athletics. I heard his name through the
6 fact that Matt and Glen --

7 Q. Matt who?

8 A. I'm sorry. Matt Paulson and Glen Robinson
9 were trying to get a deal done with him to be an
10 ambassador, another ambassador to the JACO Clothing
11 line.

12 Q. Do you know the details of Rob Orlando's
13 involvement with JACO?

14 A. I don't know the details. I do know they
15 were looking to pay him -- I know more details
16 obviously from depositions. I know they were paying
17 him some type of cash arrangement and supplying the
18 shorts.

19 MR. KOSMA: I'm going to object to the
20 answer as containing hearsay and speculation and
21 lacking personal knowledge.

22 BY MR. BEGAKIS:

23 Q. Mr. Wilson, when did you first hear of
24 Hybrid Athletics?

25 A. I've heard of Hybrid Athletics. And hybrid

1 athlete terms are very prevalent. And I've heard
2 these terms for quite some time, even if you think
3 about using the word hybrid athletes. I'm not sure
4 when I heard of Hybrid Athletics. The only time I
5 specifically knew I heard of Hybrid Athletics, if you
6 will, the one that we're referring to here, was when
7 Matt had contacted me with the issue regarding the
8 Hylete -- Hybrid Athletics tech pack that he had sent
9 with the logo.

10 Q. Mr. Wilson, when did you first see the
11 Hybrid Athletics logo?

12 A. I saw Hybrid Athletics logo on the tech pak
13 that Alise Dierksane had prepared for Matt Paulson.
14 Matt Paulson asked me to take a look at it and asked
15 me what basically -- because Rob had indicated to him
16 that we use the same font.

17 Q. Do you know if Rob Orlando ever came to an
18 arrangement with JACO?

19 A. I do now. They have -- the arrangement
20 happened. Actually, I have proof previous to that as
21 well he had signed the deal. After he didn't sign the
22 deal -- obviously through Matt is what I heard.

23 MR. KOSMA: I'm going to object to the
24 answer as hearsay and personal knowledge.

25 THE WITNESS: I don't know.

1 BY MR. BEGAKIS:

2 Q. To your knowledge, do you know if this deal
3 was a good one for Mr. Orlando?

4 MR. KOSMA: Objection. Speculation, lack of
5 personal knowledge, hearsay, leading.

6 THE WITNESS: I can't answer that. I really
7 don't know.

8 (Exhibit 30 was marked for identification by
9 the court reporter.)

10 BY MR. BEGAKIS:

11 Q. Fair enough. Mr. Wilson, I'm handing you
12 what is being marked as Exhibit 30. Do you recognize
13 this document?

14 A. I do.

15 Q. What is this document?

16 A. It's 101 through page 111 of Jentgen's
17 deposition.

18 Q. Mr. Wilson, can you read for me, first,
19 lines 10 through 25 on page 101 through line 2 on
20 page 102.

21 A. "When you say you'd see the shorts, is the
22 Hylete H on the shorts?" That was the question.

23 "Answer: Yes, and the Hylete H it was small
24 like the Hybrid H was in the same place of the short
25 most oftentimes, and the material was the same. Their

1 most popular version was a black version that I would
2 see most oftentimes. So it was very similar to the
3 short that we were wearing, and we were the ones that
4 were getting airtime on CrossFit headquarters, our
5 coaching staff and Rob, and because of his affiliation
6 with CrossFit/Strongman seminars and owning that
7 business and then also his prevalence as a games
8 athlete. They didn't have anybody. There's no
9 athlete of that quality who is repping their brand or
10 that kind of reach especially within the CrossFit
11 space or CrossFit Games athlete."

12 Q. Mr. Wilson, what is your opinion of this
13 excerpt by Mr. Jentgen?

14 A. My opinion, and I've read this whole
15 deposition, is that his confusion relates to the
16 shorts. And I can see that the shorts look similar to
17 a typical layman and that provided the initial source
18 of confusion. Not the source of confusion someone
19 would purchase.

20 I described the unique differences between
21 the revised Hylete short and the JACO short, but it
22 appears here that the problem, from Ian's perspective,
23 the way he states his answer, is that we had a similar
24 short, and that was why -- we had a similar short, and
25 it looked too close to what we know as the JACO short.

1 MR. KOSMA: Objection. Question is leading.
2 The witness's testimony as speculation, lacking
3 personal knowledge, assumes facts not in evidence --
4 or misstating evidence.

5 BY MR. BEGAKIS:

6 Q. Mr. Wilson, can you now read line 3 through
7 25 of page 102 and line 2 through 4 of line 103. You
8 can exclude my objection.

9 A. "In your opinion, has the introduction of
10 Hylete H affected Hybrid's sales?

11 "Yes. On a lot of levels, like I mentioned,
12 the Hylete H in the contours of the actual logo
13 mirrors ours to the extent that there is confusion.
14 And with that confusion and the issues that we
15 experienced with JACO, I remember when we were
16 producing the shorts and the headaches that they had
17 in terms of they were in financial trouble in sourcing
18 shorts, so there were oftentimes the popular short
19 sizes were 32 and 34, and we couldn't keep them in
20 stock. So we would be waiting for months. And I
21 think by serving up ads that were targeted at me, who
22 worked at Hybrid Athletics like an employee, so
23 pointing at all of my interests, we're definitely
24 negatively affected by that.

25 "So somebody who is targeting our consumer

1 and targeting somebody of my interests because of the
2 confusion with the logo. And I've had conversations
3 where at regional events people would be wearing the
4 shorts and they would come to me and say, hey look,
5 Ian, I'm wearing your shorts. They are not our
6 shorts."

7 Q. Mr. Wilson, what is your opinion of this
8 statement?

9 A. He experienced a lot of confusion of the
10 shorts.

11 MR. KOSMA: I'm going to object to the
12 question as leading and the witness's answer as
13 speculation.

14 BY MR. BEGAKIS:

15 Q. Mr. Wilson, can you now read line 15 through
16 25 of page 105 and continuing on to lines 2 through 4
17 of 106.

18 A. "Specifically at the time, like I said, Rob
19 was doing extensive travel for the Strongman seminars,
20 and our international gigs were really prominent, and
21 good gear and the way the exchange rates worked, and
22 we just sold a lot of apparel.

23 "I used to pack suitcases up, and they would
24 be sold in Australia and in the UK at the seminars in
25 socials that we would have. And so they would clear

1 out all of our shorts, because it was just harder for
2 people in Spain, Italy, Greece, Australia to get
3 quality workout apparel, so they were willing to pay a
4 premium even for our shorts and our shirts."

5 Q. Mr. Wilson, what is your opinion of this
6 statement by Mr. Jentgen?

7 MR. KOSMA: Objection. Calls for a
8 narrative.

9 THE WITNESS: They're selling a lot of
10 shorts, JACO shorts.

11 BY MR. BEGAKIS:

12 Q. Mr. Wilson, can you read lines 23 through 25
13 on page 107 and lines 2 through 23 in the next page
14 108, excluding objections if you feel like it.

15 A. "Question: And what was the most searched
16 term? So most recently and whenever I've checked it,
17 it has always been the Go Heavy shirt was kind of the
18 first thing, just because that was like the really
19 buzz kind of item we had within the shorts for a
20 secondary in terms of search, and then third would be
21 the stone molds in terms of the terminology. And I'm
22 not sure what that is today, but that's what it's
23 always been since I've been on board.

24 "When you mentioned shorts, you're talking
25 about the shorts there in Exhibit 4?"

1 "Answer: Yes, these ones here. Exhibit 4.

2 "Question: You mentioned that people they
3 liked these shorts. What was said to you about the
4 shorts that made people like them?

5 "Answer: People have said that they like
6 them, the fight style. So I think it plays into there
7 was people working out in a gym setting, and then
8 CrossFit came onto the scene, and with that there was
9 like a style change. Some people were wearing board
10 shorts. These were more of a fight style short."

11 Q. Mr. Wilson, can you tell me your opinion of
12 this statement by Mr. Jentgen?

13 MR. KOSMA: Objection. Calls for
14 speculation.

15 MR. BEGAKIS: Curious how this question is
16 not leading, even though it's identical to the last
17 two questions, but okay.

18 MR. KOSMA: Leading too.

19 MR. BEGAKIS: I'll give it to you.

20 THE WITNESS: It's the second most searched
21 term of shorts, that's an indication from my vast
22 experience on site, and he seems to be indicating the
23 same thing, that they're very popular. That customers
24 were really liking the JACO short, and maybe the fact
25 that they did come from the MMA world, which obviously

1 I know because I designed them.

2 BY MR. BEGAKIS:

3 Q. Mr. Wilson, if you could read for me line 25
4 page 108 through line 2 of page 110.

5 A. "So as it relates to more of the
6 MMA-inspired short, so that was kind of where these
7 were borne out of I think in terms of fabrication, and
8 people liked they had a Velcro and drawstring
9 attachment for the waist. There was the side pocket,
10 the fact that they broke at the seam here, so they
11 kind of accommodated --

12 "Question: Broke at the seam where?

13 "Answer: So on the side of the short on the
14 seam, it just accommodates for movement a little bit
15 more, and then the material is good. We were again
16 doing a lot of things flipping tires with stones.
17 You're lapping them oftentimes, so you're sitting with
18 a stone which has jagged edges, and, depending on how
19 many times it's dropped, it could be pretty, the
20 surface could be uneven or not smooth, but the shorts
21 withstood the wear.

22 "So you were able to wear the shorts. They
23 would rip like a mesh short would or things of that
24 nature, so they're good to work out in, and then they
25 last too.

1 "That's the other thing. I mean, I have
2 mine from 2013 and I'm still wearing them now, and
3 they look about the same and wear about the same
4 so..."

5 Q. Mr. Wilson, what is your opinion about this
6 statement?

7 MR. KOSMA: Objection. Leading. Calls for
8 speculation.

9 THE WITNESS: The shorts are really
10 effective for the types of training performed.

11 BY MR. BEGAKIS:

12 Q. Mr. Wilson, if you could read lines 3
13 through 25 on page 110 through to line 16 on page 111.

14 A. "How would these shorts compare to the
15 Hylete shorts?

16 "Answer: The material is essentially the
17 same. The color in terms of the material is the same
18 I think. If you look at them, the cut is similar, the
19 athletic cut, so just above the knee, not too baggy,
20 not too short, a little bit more formfitting, but I
21 think the real direct correlation is in the material.
22 I think it's got to be the same blend.

23 "I haven't looked at a tag to analyze what
24 percentage is nylon and what percentage is anything
25 else, but I have to think that they are the same. It

1 appears to be the same. It has the same shine. So
2 the black shorts are very similar.

3 "Question: What about the logo placement?

4 "The logo placement is the same. So with it
5 on that, the left kind of thigh region at the lower
6 end, and then the drawstring as well was always
7 colored, and it matched the H. So this is another,
8 it's kind of unique to the shorts, but the drawstring
9 for the JACO shorts and the Hybrid Athletic shorts,
10 which are one and the same, and the drawstring for the
11 Hylete shorts, they always matched, so the drawstring
12 matched the logo color. And so like, if you're
13 wearing them, oftentimes you would see the string.

14 "And I don't own a pair of Hylete shorts,
15 but those are kind of the things just from my
16 perspective of seeing somebody wearing them that would
17 be the same.

18 "I haven't seen the inside to know how
19 similar they are, but just the material you can tell
20 looks the same, and it has that same break at the seam
21 and the pockets the same too I believe."

22 Q. Mr. Wilson, what is your opinion of this
23 statement by Mr. Jentgen?

24 MR. KOSMA: Objection. Leading. Calls for
25 speculation.

1 THE WITNESS: Reading it and understanding
2 it, I believe he believes that the shorts are very
3 similar, from his perspective.

4 BY MR. BEGAKIS:

5 Q. Mr. Wilson, based on that testimony, do you
6 believe the testimony here today about the JACO shorts
7 are relevant to this case?

8 A. Without a doubt. I've read his deposition.
9 I've listened to the other depositions of the success
10 Rob was having. It's not hearsay at this point
11 because I've listened to the testimony. I assume it
12 will not be corrected. I'll reread it again then.

13 The fact is that they were -- they, Rob's
14 team Hybrid Athletics, was having success with the
15 shorts. And without a doubt, there is, you know, a
16 lot of potential confusion in the sense that people
17 were confusing that, hey, are these the same shorts?
18 Simply because there was a JACO short that had Hybrid
19 Athletics on it after the fact, and then the Hylete
20 short, which was a short that was designed by the same
21 person, myself, and they were similar. He was right.
22 There were similarities, in his eyes, and what he
23 said, those similarities caused him some initial
24 confusion, but he wasn't quite sure. He was wrong
25 about 90 percent polyester and 10 percent Spandex.

1 MR. KOSMA: I'm going to object to the
2 answer as speculative and contains hearsay.

3 (Exhibit 31 was marked for identification by
4 the court reporter.)

5 BY MR. BEGAKIS:

6 Q. Mr. Wilson, I'm handing you what is being
7 marked into evidence as Exhibit 31. Do you recognize
8 this document?

9 A. I do.

10 Q. What is this document?

11 A. It's a WayBack Machine, a web archive that
12 is showing the Hybrid Athletics dot net site from
13 September 2nd, 2011.

14 Q. What is important about this screenshot?

15 A. The term Hybrid JACO shorts are preorder on
16 the site. Preorder for sale.

17 (Exhibit 32 was marked for identification by
18 the court reporter.)

19 BY MR. BEGAKIS:

20 Q. Mr. Wilson, I'm handing you what's been
21 marked into evidence as Exhibit 32. Do you recognize
22 this document?

23 A. Yes. It's a screen shot of a YouTube video
24 that I've watched of Rob Orlando.

25 Q. How many views does this YouTube video have?

1 A. This was back on 10/23. At that time,
2 290,511 views.

3 Q. Is it the most viewed Rob Orlando YouTube
4 video?

5 A. Yes.

6 Q. If you type in YouTube and have the capacity
7 to search by relevance, and you can also search by
8 number of views, and this would be the highest one
9 that comes up on the YouTube site for Rob Orlando.

10 MR. KOSMA: I'm going to object as the
11 witness is speculating, lacks personal knowledge, and
12 question is leading.

13 BY MR. BEGAKIS:

14 Q. Mr. Wilson, what t-shirt is Mr. Orlando
15 wearing?

16 A. So I typed in and found this -- I typed in
17 the Rob Orlando YouTube. And the same place that I've
18 seen depositions come from previously of other YouTube
19 videos of Rob Orlando, this was one that wasn't
20 included in previous depositions.

21 This is just another one available, readily
22 to the public. I watched this video. So this
23 screenshot may not do it justice. The shirt, I know
24 it. It is a JACO hybrid training t-shirt. And Rob is
25 also wearing the JACO shorts with the Hybrid Athletics

1 logo on the left front portion of the lower leg.

2 (Exhibit 33 was marked for identification by
3 the court reporter.)

4 BY MR. BEGAKIS:

5 Q. Mr. Wilson, I'm handing you what's being
6 marked into evidence as Exhibit 33. Do you recognize
7 this document?

8 A. Yeah. It's another video that I watched
9 that I downloaded on 10/23. It's another video that
10 Rob Orlando appears in. This one he is not wearing --
11 he's wearing a different t-shirt this time. He is
12 wearing -- I recognize it because I've seen his site
13 as well recently. Must have read Ian's testimony. It
14 actually reads "Go heavy or go F yourself." That's
15 that video.

16 Q. Mr. Wilson, is that the type of subject
17 matter that Hylete would display on its shirts?

18 A. No.

19 MR. KOSMA: Objection. Irrelevant.

20 THE WITNESS: No. In fact, when Matt
21 approached me to take the Hylete off the back of a
22 t-shirt which I was not a fan of, regarding Rob's
23 setback, but given the relationship that Matt was
24 trying to form with him, and Jim had spoken highly of
25 him, I was willing to do it, even though I wanted to

1 make sure we got our name out there early with our
2 icon.

3 When I did go look at the site, it did
4 concern me that that was front and center of the site,
5 because it was not the kind of slogan or message that
6 we would use. I'm not saying there's something wrong
7 with it certainly, but it's not right for our brand.

8 MR. KOSMA: I'm going to object to the
9 answer as nonresponsive.

10 (Exhibit 34 was marked for identification by
11 the court reporter.)

12 BY MR. BEGAKIS:

13 Q. I'm handing you what's been marked as
14 Exhibit No. 34. Do you recognize this document?

15 A. I do. It's an internet search, and it's a
16 picture of Rob.

17 Q. What is he wearing in this picture?

18 A. He's wearing a JACO hybrid training shirt,
19 and he also has on -- presumably. I can't tell for
20 sure. I can see the left pocket side. It has the
21 same Hybrid Athletics logo and the same placement. So
22 the JACO hybrid training short. Apparently he's just
23 dropped the bar or he's practicing telekinesis and
24 lifting it with his brain. Either he's dropped it or
25 he can lift objects with his mind. I think it calls

1 for speculation.

2 (Exhibit 35 was marked for identification by
3 the court reporter.)

4 BY MR. BEGAKIS:

5 Q. Probably.

6 Mr. Wilson, I am handing you what's been
7 marked as Exhibit 35. Do you recognize this document?

8 A. I do. This is another YouTube video that I
9 watched that you can find. You put in Rob Orlando,
10 another CrossFit video, produced video. Rob is
11 wearing a t-shirt with CFM on it.

12 Q. What does CFM stand for?

13 A. I have seen the CFM before in the concepts
14 with many CrossFit.

15 Q. But that's not Hybrid Athletics?

16 A. Not to my knowledge.

17 MR. KOSMA: Objection. Leading. Objection.
18 Speculation. I'm also going to object to all these
19 documents 31 to 35 as not being produced under TTAB
20 sanction order.

21 BY MR. BEGAKIS:

22 Q. I'm handing you what's been marked as
23 Exhibit 36. Do you recognize this document?

24 MR. KOSMA: Same objection to 36.

25 THE WITNESS: I think that's the same one.

1 MR. BEGAKIS: Withdrawing that exhibit.
2 (Exhibit 36 was marked for identification by
3 the court reporter.)

4 BY MR. BEGAKIS:

5 Q. I'm handing you what's been marked into
6 evidence as Exhibit 36. Do you recognize this
7 document?

8 A. Yeah. I looked at Rob's Instagram page, and
9 it's a picture of Rob wearing -- couldn't definitively
10 make it out there, but I did look at his website. I
11 know the character. It says Strongman on the front of
12 that picture.

13 Q. Does it display the Hybrid Athletics H?

14 A. Not in this picture.

15 Q. What is this picture on?

16 A. A magazine. I'm not familiar with magazines
17 in this space anymore. It says Muscle Performance,
18 and it appears to be a magazine that is coming out in
19 the future because it says 2016 at the top.

20 Q. And no display of the Hybrid H?

21 MR. KOSMA: Objection. Leading. Objection
22 to the document and testimony as violating the TTAB
23 order per sanctions because the document was never
24 before previously produced.

25 (Exhibit 37 was marked for identification by

1 the court reporter.)

2 BY MR. BEGAKIS:

3 Q. Mr. Wilson, I'm handing you what's been
4 marked into evidence as Exhibit 37. Do you recognize
5 this document.

6 A. I do.

7 Q. What is this document?

8 A. This is page 69 of the deposition of Syn
9 Martinez, S-y-n, Martinez.

10 Q. Mr. Wilson, can you read lines 7 through 25
11 ending with the period on line 25?

12 A. Yes. "Question: You said it might be, but
13 you didn't know if it was Rob's thing. What do you
14 mean by that?

15 "Well, the only thing that I've ever seen
16 that was 'Hy,' whether it was Hylete or Hybrid, was
17 Rob. That's all I knew. That's my only frame of
18 reference. And the H just looks, you know, like I
19 don't know. The H is not that stunning. It's the
20 fact for me that says Hylete, and all we used to talk
21 about was Hybrid Athletes, so we always talked about
22 creating what's in a Hybrid Athlete? How do you
23 create one? What is one? Like we defined it and
24 quantified that with certain tasks that they could be
25 able to do.

1 "So it just -- I just thought this was
2 something he was getting into, maybe didn't take my
3 advice to stay with the H. Maybe he decided to
4 upgrade."

5 Q. Mr. Wilson, what is the significance of
6 these statements by Mr. Martinez?

7 A. I read the full deposition, and Mr. Martinez
8 on record credits himself to telling Rob to use the H,
9 Rob's H on everything that he does. Whether it be a
10 wall, a stone, a t-shirt, and that was the branding
11 advice that he gave him. And this is his exact
12 statement.

13 He says that he believes Rob basically no
14 longer used the H because, in his eyes, it was Hybrid
15 Athlete and Hylete, that connotation that he believes
16 Rob owns.

17 MR. KOSMA: I'm going to object to the
18 answer as speculation.

19 BY MR. BEGAKIS:

20 Q. Mr. Wilson, are you familiar with
21 other usages of the term "hybrid athletics"?

22 MR. KOSMA: Objection. Leading.

23 THE WITNESS: Yes. "Hybrid athlete," as I
24 said previously, is a very common term. "Hybrid
25 athletics" is used -- it's prevalent.

1 What it boils down to -- I know this from
2 doing this since 2005. When you start talking about
3 trying to describe athletes and activities that cross
4 over, you're left with few choices when you go to the
5 thesaurus. You can use "cross." You can use
6 "hybrid."

7 A lot of the other choices, if you're
8 talking about a thesaurus, are not flattering, or in
9 some cases are actually quite offensive. You get
10 words like "mutt." Things that are not named a
11 company. Even "mixed" would be quite funny. If you
12 put it in front of martial arts, it plays. If you
13 said mixed fitness, presumably I think you wouldn't
14 know what you were doing.

15 So there's very few choices to describe the
16 space and describe something that transcends one
17 activity, or allows one person or activity to go
18 across multiple activities; thus the word "hybrid"
19 I've seen for quite some time across all kinds of
20 companies.

21 (Exhibit 38 was marked for identification by
22 the court reporter.)

23 ///

24 BY MR. BEGAKIS:

25 Q. Mr. Wilson, I'm handing you what's been

1 marked into evidence as Exhibit 38. Do you recognize
2 this document?

3 A. This is a web page of the Hybrid Athlete dot
4 com. I'm aware of these guys. Couple of brothers
5 that have a following and a bit featured in numerous
6 publications. They're listed there: Men's Fitness,
7 Shape, Women's Health, USA Today, DailyBurn,
8 Huffington Post, Yahoo News.

9 Q. They're using the term "hybrid athlete"?

10 A. Yes.

11 MR. KOSMA: I'm going to object to the
12 answer as hearsay, speculation, and document under
13 the -- document and testimony under TTAB sanction
14 order not being previously produced, provided to
15 Hybrid.

16 (Exhibit 39 was marked for identification by
17 the court reporter.)

18 BY MR. BEGAKIS:

19 Q. Mr. Wilson, I'm handing you what's been
20 marked into evidence as Exhibit 39. Do you recognize
21 this document?

22 A. Yeah. This is another -- I'm sorry. I got
23 confused myself. This is another Hybrid Athlete.
24 This is Hybrid Athlete dot net, different logo,
25 presumably different company, and they say "creating

1 hybrid athletes."

2 Q. So more usage of the term hybrid athlete?

3 A. Correct.

4 MR. KOSMA: Object to the testimony and the
5 document as not being produced in the TTAB sanction
6 order pertaining to hearsay and speculation.

7 (Exhibit 40 was marked for identification by
8 the court reporter.)

9 BY MR. BEGAKIS:

10 Q. Mr. Wilson, I'm handing you what's been
11 marked as Exhibit 40. Do you recognize this document?

12 A. I do. This is a short that's by RVCA,
13 R-V-C-A.

14 Q. What is significant about this document?

15 A. A hybrid short, it's available for purchase
16 on this website, on Rogue, R-o-g-u-e.

17 Q. So more usage of the term hybrid?

18 MR. KOSMA: I'm going to object to the
19 question as leading in previous testimony and the
20 document as violating TTAB sanction order and hearsay.

21 (Exhibit 41 was marked for identification by
22 the court reporter.)

23 BY MR. BEGAKIS:

24 Q. Mr. Wilson, I'm handing you what's been
25 marked into evidence as Exhibit 41. Do you recognize

1 this document?

2 A. Yes. This is a Facebook for Hybrid Athletic
3 Performance, and they're listed in the Facebook --

4 MR. BEGAKIS: Does counsel have something
5 they would like to say for the record?

6 MR. KOSMA: We're just quietly talking over
7 here. We're allowed to do that.

8 MR. BEGAKIS: Sorry to interrupt.

9 MR. KOSMA: John, your rudeness and your
10 lack of professionalism that has exuded in this
11 deposition is not appreciated. If we're going to
12 whisper quietly, and it's not interrupting you, it
13 does not mean you have to be rude to me and literally
14 insult me in my job.

15 I just want to say that if we want to
16 whisper quietly, and we're not interrupting your
17 conversation as -- having this deposition go on, you
18 shouldn't have a problem with it.

19 MR. BEGAKIS: I have done nothing to insult
20 you in any way, shape, or form. My professionalism
21 has been of the utmost, and I'm concerned that you're
22 talking and speaking over and distracting the witness
23 while he's testifying.

24 MR. KOSMA: As far as your professionalism
25 goes, you should go back and read the way you act

1 during these depositions and talk over counsel, and
2 tell me to talk over witnesses to get my objections
3 in. I really suggest you should go back and look at
4 the testimony and the way you've acted throughout
5 these depositions.

6 BY MR. BEGAKIS:

7 Q. I apologize for interrupting you.

8 Mr. Wilson, if you could go on.

9 A. Could you repeat the question?

10 Q. What is this document?

11 A. This is a Facebook page for a Hybrid
12 Athletic Performance Coach. That's the classification
13 that you have to sign up with on the Facebook page.

14 MR. KOSMA: I'm going to object to the
15 document as violating the TTAB sanction order and the
16 witness's testimony as hearsay and speculation.

17 (Exhibit 42 was marked for identification by
18 the court reporter.)

19 BY MR. BEGAKIS:

20 Q. Mr. Wilson, I'm handing you what's been
21 marked into evidence as Exhibit 42. Do you recognize
22 this document?

23 A. Yes. This is Hybrid Athletic Performance
24 dot com. This is their web page.

25 Q. Again, more usage of the term "hybrid

1 athletics"?

2 A. Yes, "hybrid athlete," "hybrid athletics."
3 This is Hybrid Athletic Performance.

4 MR. KOSMA: Again, I'm going to object to
5 the document violating TTAB order for sanctions. The
6 question as leading and the witness's testimony as
7 speculation, and this whole line of testimony as being
8 irrelevant as the market issue is not Hybrid Athletics
9 but it's an H. As far as counsel is confused of the
10 issues here, I would like to get going to the actual
11 case at issue.

12 MR. BEGAKIS: For the record, Counsel is not
13 confused. In fact -- Counsel is not confused at all.
14 Confusion in this case has been example of the use of
15 hybrid athletics. And as such, we're presenting
16 evidence to establish that fact.

17 MR. KOSMA: I'm going to counsel's answer as
18 testifying.

19 (Exhibit 43 was marked for identification by
20 the court reporter.)

21 BY MR. BEGAKIS:

22 Q. Mr. Wilson, I'm handing you what is being
23 marked into evidence as Exhibit 43. Do you recognize
24 this document?

25 A. I do. It's another Facebook page. This one

1 is Hybrid Athletics Sports and Recreation.

2 Q. More use of the term "hybrid athletics"?

3 A. Yeah. Appears not to be associated with Rob
4 Orlando's Hybrid Athletics.

5 MR. KOSMA: Again, object to the document
6 as violating TTAB order for sanctions not being
7 previously produced, as well as the information and
8 testimony relating to these documents as not being
9 previously provided in violation of the TTAB sanction
10 order, as the witness's answers containing hearsay,
11 speculation, lack of personal knowledge, and lack of
12 authentication in most of these documents.

13 (Exhibit 44 was marked for identification by
14 the court reporter.)

15 BY MR. BEGAKIS:

16 Q. Mr. Wilson, I'm handing you what's being
17 marked into evidence as Exhibit 44. Do you recognize
18 this document?

19 A. Yes. This is yet another -- I'm the one
20 that pulled these -- I pulled these after I read Syn
21 Martinez, in particular, among others. That was the
22 reason that I pulled that deposition read back, is
23 that he obviously stated on record that his confusion
24 was not with the H, but with other items. And I
25 wanted for myself say, that makes sense. I've heard

1 it.

2 So I did as anybody could do. I got on my
3 computer and I went to Facebook and I went to Google
4 and I started typing in "hybrid athletics" and "hybrid
5 athlete," and a lot of things come up, as I suspected.
6 This is yet another one. Hybrid Athletics, Gym
7 Fitness Center, personal trainer Facebook page.

8 MR. KOSMA: Same objections to the witness's
9 testimony and document.

10 (Exhibit 45 was marked for identification by
11 the court reporter.)

12 BY MR. BEGAKIS:

13 Q. Mr. Wilson, I'm handing you what's been
14 marked into evidence as Exhibit 45. Do you recognize
15 this document?

16 A. I do. This is another search -- another
17 result of the search of Facebook. This is a community
18 page where people can get together and talk about
19 hybrid athletics. And as far as I can tell, it does
20 not appear to have anything to do with Rob Orlando's
21 Hybrid Athletics.

22 MR. KOSMA: Same objections.

23 (Exhibit 46 was marked for identification by
24 the court reporter.)

25 ///

1 BY MR. BEGAKIS:

2 Q. Mr. Wilson, I'm handing you what's been
3 marked as Exhibit 46. Do you recognize this document?

4 A. I do. It's another search result. This was
5 Hybrid Athletic Club, a fitness center gym, physical
6 fitness. Once again, it does not appear to have
7 anything to do with Rob Orlando's Hybrid Athletics.

8 MR. KOSMA: Same objections.

9 (Exhibit 47 was marked for identification by
10 the court reporter.)

11 BY MR. BEGAKIS:

12 Q. Mr. Wilson, I'm handing you what's been
13 marked into evidence as Exhibit 47. Do you recognize
14 this document?

15 A. I do.

16 Q. What is this document?

17 A. This is another search, and the words
18 "hybrid athletics" in particular. This one was
19 Athletic Hybrid Fitness.

20 Q. Another derivative of "hybrid athletics"?

21 (Exhibit 48 was marked for identification by
22 the court reporter.)

23 MR. KOSMA: Objection. Leading. Same
24 objections violating TTAB order document that was not
25 previously produced. Speculation, and lack of

1 authentication.

2 BY MR. BEGAKIS:

3 Q. Mr. Wilson, I'm handing you what's being
4 marked into evidence as Exhibit 48. Do you recognize
5 this document?

6 A. I do.

7 Q. What is this document?

8 A. This again is another document that I went
9 to, readily available search engine, after I spent the
10 last week or so reading depositions and realized that
11 perhaps the confusion was with Hylete and people
12 thinking "hybrid athletics," a very generic term,
13 causing confusion, so therefore I'm producing it at
14 this point. It was never my intention to produce this
15 previously because I didn't realize it would be an
16 issue.

17 MR. KOSMA: Objection. Witness answer is
18 speculation. Nonresponsive to any question that's on
19 the record.

20 THE WITNESS: I was just establishing a
21 foundation for why I'm presenting these documents.

22 Hybrid Athletics, this is a gym -- this is
23 another distinct Hybrid Athletics logo from the other
24 ones we've already entered into evidence that are
25 exhibits. This is "Gym, Physical Fitness, Personal

1 Trainer."

2 MR. KOSMA: Same objections to this document
3 and testimony.

4 (Exhibit 49 was marked for identification by
5 the court reporter.)

6 BY MR. BEGAKIS:

7 Q. Mr. Wilson, I'm handing you what's been
8 marked into evidence as Exhibit 49. Do you recognize
9 this document?

10 A. Yes.

11 Q. What is this document?

12 A. This is a book that's available at the
13 JTS Strength MMA. The book is The Hybrid Athlete.

14 MR. KOSMA: Object to the document as
15 violating TTAB order sanctions, and the witness's
16 testimony as speculation and lacking personal.

17 (Exhibit 50 was marked for identification by
18 the court reporter.)

19 BY MR. BEGAKIS:

20 Q. Mr. Wilson, I'm handing you what has been
21 marked into evidence as Exhibit 50. Do you recognize
22 this document?

23 A. I do.

24 Q. What is this document?

25 A. This is a Rogue Fitness shirt. It's a Rob

1 Orlando shirt.

2 Q. What's significant about that shirt?

3 A. The significance to me, having started
4 companies and been doing branding for a long time and
5 with all the testimony, deposition testimony that has
6 been given, that Rob Orlando, you know, really used
7 his fame, his CrossFit connections, things of that
8 nature, to drive the success of his apparel company,
9 his Hybrid Athletics apparel company.

10 In particular, the only thing that matters
11 here is his H. His style and his H versus our style
12 and our H. So he wore this on all these shirts. I
13 find it confusing that he would allow his name to be
14 put on a shirt that supports Rogue rather than keeping
15 a consistent approach of supporting his own company
16 and trying to build an apparel brand.

17 MR. KOSMA: I'm going to object to the
18 witness's answer as speculation, lacking personal
19 knowledge, hearsay.

20 (Exhibit 51 was marked for identification by
21 the court reporter.)

22 BY MR. BEGAKIS:

23 Q. Mr. Wilson, I'm handing you what's been
24 marked into evidence as Exhibit 51. Do you recognize
25 this document?

1 A. I do.

2 Q. What is this document?

3 A. This is a document that has the Hylete icon
4 on the left-hand side and the Hybrid Athletics icon on
5 the right-hand side.

6 Q. Do you believe these logos look similar?

7 MR. KOSMA: Objection. Leading.

8 THE WITNESS: Absolutely not.

9 BY MR. BEGAKIS:

10 Q. Why do you not believe they look similar?

11 A. They look entirely different. Let me start.
12 First, as I talked about the design of the logo, which
13 I designed on the left, the Hylete logo. Two, the
14 center of the logo are effectively two circles. Rob
15 Orlando's Hybrid Athletics logo are two polygons.
16 Perhaps if you continued those lines and this space
17 would create two triangles. Fundamentally different
18 geometric shapes that we all learned at a very young
19 age.

20 Rob Orlando's logo on the right-hand side
21 has three distinct elements that are disconnected from
22 each other. The top element appears to be -- if you
23 look at them in isolation, which you have to if you
24 want to assess a logo and process it, the top one
25 looks like it could be some type of plane or some type

1 of wing instrument.

2 The middle section of the Hybrid Athletics
3 logo is connected by a thin line. This thin line is
4 very high in the overall aspect ratio, or the overall
5 bottom-to-top ratio on the upper half of that section.
6 So it's a high crossing the bar.

7 And it appears to be, having seen more yolks
8 lately than I wanted to see, that does look like a
9 yolk in the center. In some ways, it truly does
10 remind me of gym equipment, the more I look at it.

11 The third item is essentially a symmetrical
12 line that matches the top outline. So I feel like the
13 center portion is a solid portion. There's two other
14 elements that rest above and below. The center
15 element appears or looks like some sort of weight
16 equipment.

17 And you get a very -- this is a Hybrid
18 Athletics logo that has a very wide base at the
19 bottom. The other thing, when you look at logos and
20 the way they feel in space, I always picture in my
21 mind what would happen if you took this logo and you
22 physically made it out of something. This is one
23 physical object. If you laid this on a table, it
24 would be very strong. It would sit on the table and
25 be very pronounced.

1 The logo as well, definitely has what I
2 believe is a -- just from me looking at a lot of
3 logos, much more of a retro 1980s look. It reminds me
4 of another brand called Bad Boy. More of that old
5 bodybuilding brand that used to be around. Those are
6 the connotations that I get from Rob Orlando's logo,
7 Hybrid Athletics icon.

8 Also, even though not a lot, this does look
9 like stylized age, if that's what you want to see. Or
10 in particular, if it's used to substitute the letter
11 H, a word or a sentence or out in space. The other
12 thing, after looking at this for quite some time, in
13 some ways it looks like a very high-tech dollhouse to
14 me.

15 MR. KOSMA: I'm going to object to the
16 answer as irrelevant and speculation.

17 THE WITNESS: Going to Hylete, so the
18 left-hand lane side of the Hylete logo, it is one
19 consistent logo. There are no sections. There are no
20 breaks. There are no outlines. Everything comes to a
21 precise point, which is exactly how I wanted that to
22 be designed.

23 I originally had things go around it. Every
24 time I was working to kind of finalize this with the
25 designer who had access to the illustrator who was

1 working with me, I asked her to just keep making this.
2 I want everything to have a sharp point. I wanted to
3 feel like this is something that is potentially from
4 the future, that is strong, that has essentially --
5 it's a weapon.

6 I'm glad that that is a bolt in some people
7 that I talked to. Not a weapon in terms of a weapon
8 that hurts someone; a weapon that is a weapon of --
9 essentially creating a weapon and using your internal
10 aspects to create a weapon in terms of what we were
11 able to accomplish, whether it be at the gym, work,
12 life.

13 The other thing, as I said, is on the
14 right-hand side. So on the left-hand side, I have
15 Hylete's icon. It's very thin at the bottom. Comes
16 to a point. And the same thing, if you physically
17 make this into an object and you sat it on the table,
18 it would tip over. It is an object that appears to
19 have some ability to hold itself up with internal
20 forces, thus maybe the reason that people have seen
21 this as some type of alien object.

22 Certainly, if you would tip it up and didn't
23 have it be a shield or some type of propulsion to keep
24 it afloat, it would tip over. Which, once again, sets
25 a different connotation of what the logos are.

1 Q. Why is the discussion about the lack of
2 similarities between these logos relevant, Mr. Wilson?

3 MR. KOSMA: I'm going to object to the
4 previous answer as irrelevant and the question as
5 leading.

6 THE WITNESS: The whole case is about
7 whether these two logos look alike, and I don't see
8 how anyone looking at these two logos would think they
9 look alike. I can see how maybe if you say they're
10 similar, that they both are H's in a very broad
11 context like a lot of other logos are, then I'll give
12 you that.

13 I spent way too much time on this, looking
14 at all these documents and all these depositions, and
15 the only thing that keeps me sane is when I have to go
16 work on this stuff, I lay this on the desk as a
17 reminder that it comes down to these two logos and do
18 they look alike, and they do not look anything alike.

19 MR. KOSMA: I'm going to object to the
20 answer as nonresponsive and irrelevant.

21 (Exhibit 52 was marked for identification by
22 the court reporter.)

23 BY MR. BEGAKIS:

24 Q. Handing you, Mr. Wilson, what has been
25 marked into evidence as Exhibit 52. Do you recognize

1 this document?

2 A. Yes. This is just a page of Hybrid
3 Athletics Apparel dot com site. If you click on the
4 current top sellers, it just indicates -- this would
5 indicate the top seller presumably would be -- the
6 equipment shows up right off the bat. As we read in
7 Ian's Jentgen's deposition, a really successful shirt
8 for him has been the Go Heavy shirt.

9 Q. Do you see any shorts on that?

10 A. No. I looked at their site. It appears
11 there have been no shorts on their site during 2015.

12 MR. KOSMA: I'm going to object to this
13 document and testimony as lacking authentication,
14 lacking any time frame to the document. Also,
15 containing hearsay and not being previously produced
16 under TTAB sanction order.

17 THE WITNESS: I printed it out this morning.
18 I authenticated that.

19 (Exhibit 53 was marked for identification by
20 the court reporter.)

21 BY MR. BEGAKIS:

22 Q. Mr. Wilson, I'm handing you what's been
23 marked into evidence as Exhibit 53. Do you recognize
24 this document?

25 A. This is another document I printed out this

1 morning, Hybrid Athletics Apparel dot com. This is
2 essentially a screen shot effectively of my computer
3 looking at Hybrid Athletics Apparel dot com on the
4 page.

5 Q. Are there any shorts being sold on this?

6 A. No. I looked at the rest of the site and
7 did not find any shorts or any aspect of --

8 MR. KOSMA: I'm going to object to the
9 document as not being previously produced under the
10 TTAB order, lacking authentication, and hearsay.

11 (Exhibit 54 was marked for identification by
12 the court reporter.)

13 BY MR. BEGAKIS:

14 Q. Mr. Wilson, I'm handing you what's been
15 marked into evidence as Exhibit 54. Do you recognize
16 this document?

17 A. I do.

18 Q. What is this document?

19 A. This is a Hylete dot com -- this morning I
20 took a screen shot, printed it out at 8:00 a.m. This
21 is Hylete dot com home page.

22 Q. Does it look anything like the Hybrid
23 Athletics home page?

24 A. Not at all. If somebody were to compare
25 this site and the site that was just entered into as

1 an exhibit, obviously they're very different-looking
2 sites.

3 MR. KOSMA: Objection. Speculation.

4 (Exhibit 55 was marked for identification by
5 the court reporter.)

6 BY MR. BEGAKIS:

7 Q. Mr. Wilson, I'm handing you what's been
8 marked as Exhibit 55. Do you recognize this document?

9 A. I do.

10 Q. What is this document?

11 A. This is a Hybrid Athletics Facebook page.

12 Q. What does it say in the description of
13 services?

14 A. It says "Gym." And also you can -- it
15 indicates that -- this is from last week. That they
16 had 8,484 likes. And also reading Ian Jentgen's
17 testimony, that they really haven't gone up. And we
18 have provided side-by-side comparison previously, and
19 I believe it's pretty much the same number for the
20 Facebook page of Hybrid Athletics the gym.

21 (Exhibit 56 was marked for identification by
22 the court reporter.)

23 BY MR. BEGAKIS:

24 Q. Mr. Wilson, I'm handing you what's been
25 marked as Exhibit 56. Do you recognize this document?

1 A. Yes. This is current. This is actually
2 yesterday, the Facebook page for Hylete. Actually,
3 because the admin pops up when I go into it, I asked
4 my attorney to go to the page. The admin stats did
5 not pop up onto the site.

6 This is Hylete. We're classified as a
7 clothing company in the Facebook world and 150,195
8 likes after yesterday. Up from just over 100,000 I
9 believe that was previously submitted.

10 MR. KOSMA: I'm going to object, document 55
11 and 56, as not being previously produced under TTAB
12 sanction order. I'm going to object to No. 56 as well
13 that it lacks authentication. It appears that he
14 didn't actually get this document. His attorney
15 printed it. He doesn't have any personal knowledge of
16 it.

17 THE WITNESS: I watched him do it.

18 (Exhibit 57 was marked for identification by
19 the court reporter.)

20 BY MR. BEGAKIS:

21 Q. Mr. Wilson, I've just handed you what's been
22 marked into evidence as Exhibit 57. Do you recognize
23 this document?

24 A. Yes. I recognize the document, and I
25 recognize what's in the picture. I'm familiar with

1 Hammerhead Fitness.

2 Q. Is there a stylized H being displayed on
3 this product?

4 MR. KOSMA: Objection. Leading.

5 THE WITNESS: There's an H on a kettle bell.
6 And I know Hammerhead Fitness is a previous exhibit,
7 Atlas Stones, and they do a lot within the CrossFit
8 space with respect to producing product for gyms, in
9 particular, for CrossFit.

10 MR. KOSMA: Also, object that this document
11 is not being previously produced under the TTAB
12 sanction order.

13 (Exhibit 58 was marked for identification by
14 the court reporter.)

15 BY MR. BEGAKIS:

16 Q. Mr. Wilson, I'm handing you what's been
17 marked into evidence as Exhibit 58. Do you recognize
18 this document?

19 A. I do. It's a screen shot of the trademark
20 search system that shows --

21 Q. What does this display?

22 A. Displays the Hybrid Athletics H for
23 International Class 25.

24 Q. Do you know what other classes --

25 A. Yes. I'm familiar with the intellectual

1 property that's currently on the TT -- or the USPTO
2 with respect to Hybrid Athletics, and particularly the
3 H. They have the same stylized H for International
4 Class 41 for their seminars and fitness.

5 They just recently applied for this
6 International Class 25. The thing that strikes me as
7 quite peculiar is that during all these depositions,
8 there's been a lot made of Rob's popularity, training,
9 number of people that watch him. He's a subject
10 matter expert for CrossFit. He travels worldwide
11 during seminars. And he, as such, undoubtedly has to
12 be the biggest source of his income, his gym.

13 So he has taken this new stylized H. It's
14 new because I know he's previously submitted other
15 formations of this logo. Whatever happened, it didn't
16 come to fruition. This one has. He has also gone
17 after International Class 25. At the bottom you'll
18 see where it talks about the site, and it doesn't
19 appear to be currently and you can't find any the last
20 year.

21 But the thing that strikes me as really
22 peculiar is that nowhere do I find him filing
23 International Class 28.

24 Q. What is Class 28?

25 A. That would protect all his equipment. He's

1 not protected right now for his equipment, and I just
2 find it curious that he's gone to the efforts to file
3 an International Class 25, which happens to be our
4 International Class, but hasn't filed an International
5 Class 28. So it definitely struck me as an oddity,
6 for sure.

7 MR. KOSMA: I'm going to object to the
8 answer as assuming facts not in evidence, lacking
9 foundation, speculation, and lacking personal
10 knowledge.

11 (Exhibit 59 was marked for identification by
12 the court reporter.)

13 BY MR. BEGAKIS:

14 Q. Mr. Wilson, I'm handing you what's been
15 marked as Exhibit 59. Do you recognize this document?

16 A. I do. It's page 12 and page 40 to 41 of
17 Dave Castro's deposition. I was at the deposition.
18 Unfortunately, I read his deposition way too many
19 times.

20 Q. Can you recite for me -- can you read lines
21 2 through 9 of page 12.

22 A. Yes.

23 "Question: Do you visit CrossFit gyms
24 regularly?

25 "Answer: Yeah. I visit a lot of CrossFit

1 gyms.

2 "Question: When you travel, how often do
3 you visit CrossFit gym?

4 "Answer: So in the last year, since August
5 of last year to now, I've visited 143 different
6 CrossFit gyms. So you could say every other day I've
7 been to a CrossFit gym."

8 Q. What is your opinion of this statement?

9 A. I've been there for his testimony. He's
10 been going to a lot of gyms. And even as of recent,
11 he's made it a concerted effort to go to the gym. I'm
12 on Facebook now a lot. I've seen him at quite a few
13 gyms, and I believe he's telling the truth.

14 Q. Mr. Wilson, can you read lines 3 through 25
15 on page 40 and continuing on page 41 lines 1 through
16 9. Remove the objections.

17 A. "Mr. Castro, when you say you were confused,
18 what do you mean?

19 "Answer: The confusion was in who was
20 sponsoring, who held that booth and who was selling
21 gear at the CrossFit regional. I was confused in that
22 I thought it was his equipment or his gear.

23 "When you say 'his' -- quote, unquote.

24 "Answer: Rob Orlando. I thought Rob
25 Orlando's Hybrid was being represented in this booth;

1 but then when I asked them about it, I said, oh, this
2 is Rob's equipment or booth, they said no, this is
3 not. And they quickly informed me that it was a
4 different brand.

5 "So I was, like, that's interesting. At
6 this time I had no idea about, you know, any of the
7 history between them or between Rob and Hylete or if
8 there was any history. That was just the first
9 instance that it crossed my radar, and it caused me to
10 be confused in that I thought it was his brand, Rob
11 Orlando's brand.

12 "Question: Do you know anybody that works
13 at Hylete?

14 "Answer: No.

15 "Question: Do you know the name of any of
16 the people that you talked to at the 2013 regionals?

17 "Answer: Probably not, no. I don't
18 really -- I haven't seen it much, like it's doesn't --
19 it's not really crossed my radar."

20 Q. Mr. Wilson, what is the significance of this
21 statement?

22 MR. KOSMA: Objection. Leading. Calls for
23 speculation.

24 THE WITNESS: Mr. Castro visits a lot of
25 gyms. It's on record in his deposition that he's

1 visited 143 gyms since last August. The only thing he
2 cites, and it doesn't appear to be confusing from the
3 way I read it, he talked about equipment and gear and
4 not apparel. That his only documented evidence in
5 deposition, he's on record saying it was that one
6 instance, and he's been to 143 gyms and this issue has
7 not crossed his radar. The significance to me is that
8 there is no confusion, and it's in line with that
9 testimony.

10 MR. KOSMA: Object to the answer as
11 speculation.

12 (Exhibit 60 was marked for identification by
13 the court reporter.)

14 BY MR. BEGAKIS:

15 Q. Mr. Wilson, I'm giving you what's been
16 marked as Exhibit 60. Do you recognize this document?

17 A. Yes.

18 Q. What is this document?

19 A. Over the last couple of weeks I spent the
20 weekends working on this case to try to not disrupt my
21 business, and I decided there's been a lot of obvious
22 focus on H's, and it's a very crowded space in
23 International Class 25. It dawned on me Under Armour
24 obviously is not technically supposed to be an H. I
25 said what if I typed in "H" and "apparel" to see what

1 would come up.

2 Q. What came up?

3 A. What's interesting that came up is that
4 there's enough people that typed this in, that on the
5 very first page of the images the Under Armour logo
6 comes up. I mean, I know Kevin Plank, the founder of
7 Under Armour. I know it's supposed to be UA, and I'm
8 sure it frustrates him that people think it's an H.

9 MR. KOSMA: I'm going to object to this
10 document. It violates sanctions and the testimony as
11 being speculation.

12 BY MR. BEGAKIS:

13 Q. Mr. Wilson, has your business been disrupted
14 by this matter?

15 A. Significantly.

16 MR. KOSMA: Objection. Irrelevant.

17 THE WITNESS: So, yes. It's been not only
18 me personally, but we're a growing business. And we
19 obviously heard previous testimony from our CFO that
20 we are investing heavily in the future. We certainly
21 believe in the CrossFit movement, the CrossFit
22 community, and we stake a big claim to make sure that
23 we're part of this functional fitness movement.

24 We have put in a lot of time and effort.

25 I've got upwards now of 50 investors that have

1 invested in the company, the ideas and the people
2 here. We have 23 employees that count on this
3 business for their livelihood, their careers, where
4 they're going in the future.

5 I personally lead a lot of elements of this
6 business. I oversee effectively the whole company,
7 but I obviously have a unique set of skills when it
8 comes to the design of products and execution of
9 marketing programs. It's been severely impaired, in
10 particular as of the date that these depositions have
11 started.

12 And then most recently in the last few
13 weeks, I've had to dedicate all my free time to
14 familiarizing myself with this case and formulating
15 our response.

16 I'm frankly surprised by the fact that it
17 wasn't about the icon. It was about Hylete and hybrid
18 Athlete and shorts and things, and confusion about
19 shorts and things that ironically --

20 I wish I would have gone to the first
21 deposition, Ian's deposition. I didn't read it for
22 quite some time. I only got the recap from my
23 attorney. I just find it ironic that the short I
24 designed, that I then created a company at, that then
25 fired me, that I went and started over with, has come

1 back and now is being once again thrown in my face.
2 That because I designed it, someone else is upset that
3 it looks like their shorts.

4 I went at length to describe how they're
5 different. Upon close inspection, which happens in
6 our world, people get on the website. They ask
7 questions. They look at details. They come to an
8 event. 83 percent of our revenues are derived from
9 direct consumers. We don't put our products on the
10 shelf. People know who they're buying from. As does
11 Rob.

12 Rob sells on the internet. I know he sells
13 at seminars. Apparently that's been successful. It's
14 a hand-to-hand connection. He's talking to the
15 person. His people are talking to him. The lines of
16 communication are very clear. The channels are very
17 clear.

18 So if you take the icons and then you take
19 that and the fact that the shorts -- which presumably
20 Ian did not know I designed the shorts. I don't think
21 his testimony would have gone at length about how much
22 he loves them. I will say the only redeeming part
23 about all of this is I definitely appreciate the
24 compliments on the design of the shorts.

25 MR. BEGAKIS: Thank you, Mr. Wilson.

1 MR. KOSMA: I'm going to object to the
2 answer as irrelevant and speculation, lacking personal
3 knowledge.

4 (Exhibit 61 was marked for identification by
5 the court reporter.)

6 BY MR. BEGAKIS:

7 Q. Mr. Wilson, I'm handing you what's been
8 marked as Exhibit 61. Do you recognize this document?

9 A. I do. It is four icons. From left to
10 right: The Hylete icon, the Under Armour icon, the
11 Hybrid Athletics icon, and the Hurley icon.

12 Q. Mr. Wilson, how many years have you been in
13 the athletic apparel business?

14 A. Athletic apparel since late '90s, early
15 2000.

16 Q. Mr. Wilson, how many years have you been
17 into fitness?

18 A. Since 1985.

19 Q. How many gyms would you say you've been to,
20 roughly?

21 A. At least a few hundred.

22 Q. How many fitness events, CrossFit or
23 otherwise, have you been to?

24 A. A ton of fitness events, fitness and apparel
25 events. I've been to not only numerous CrossFit

1 events, but CrossFit games.

2 On two separate occasions I was at a
3 CrossFit regional event in Southern Florida. I've
4 been to the Mr. Olympia three different times, which
5 is hundreds of thousands of people walking in from all
6 fitness aspects of life. I've been to The Magic Show,
7 which is an apparel show and a lot of the bigger
8 brands are there.

9 That's a good summation. I've been to
10 events where I've certainly come across probably at
11 this point hundreds of thousands of people at one
12 point.

13 Q. So it's safe to say you've seen a lot of
14 athletes wearing fitness clothing?

15 A. Yeah. Whether it be in person, web, TV,
16 otherwise, absolutely.

17 Q. Have you seen any athletes in any gym or at
18 any event wearing the Hurley logo?

19 A. I have. I have obviously a unique
20 perspective on things. In particular, I pay attention
21 to shorts, construction of apparel, fabrics, things of
22 that nature, and Hurley obviously catches my eye.
23 Just because of the board short and the amount of
24 stretch they manage to get into that fabric is quite
25 phenomenal. Almost too much stretch, in my opinion,

1 but I've been really impressed with their product.

2 Q. Have you seen any athletes wearing clothing
3 displaying the Under Armour logo?

4 A. Yes. The 180s company that I referred to
5 earlier, we started in school in Philadelphia. Went
6 to Chicago for a brief period of time. About a year
7 in 1997 I went to Baltimore. From 1997 until this
8 day, the 180s company still resides there.

9 We were across the town from a little
10 company at the time called Under Armour, and I knew
11 Kevin, the cofounder. Actually came to parties. I've
12 seen that look for a long, long time. And having
13 lived in Baltimore, they continue to rise in terms
14 of -- now they're No. 2. No. 2 biggest brand in
15 sporting goods.

16 I'm surprised that Baltimore has not
17 included the Under Armour icon and the name at some
18 point because they own everything in Baltimore.

19 Q. Have you seen any athletes wearing clothing
20 displaying the Hylete logo?

21 A. Not as many as I'd like, but, yeah.

22 Q. Outside the context of this matter, have you
23 seen any athletes wearing clothing displaying the
24 Hybrid Athletics logo?

25 A. I have not.

1 MR. BEGAKIS: Take a five-minute break.

2 (Recess taken.)

3 MR. BEGAKIS: We have no further questions.

4

5 CROSS-EXAMINATION

6 BY MR. KOSMA:

7 Q. Mr. Wilson, in listening to you describe the
8 Hybrid Athletics H and the Hylete H, how long did you
9 spend comparing them, would you say, in this case?

10 MR. BEGAKIS: Objection. Calls for
11 speculation.

12 THE WITNESS: I don't understand the
13 question.

14 BY MR. KOSMA:

15 Q. How long would you say you spent personally
16 comparing the two logos in this case?

17 A. I can't honestly answer that question.

18 Q. Can you estimate how long you spent?

19 MR. BEGAKIS: Objection. Calls for
20 speculation.

21 THE WITNESS: Obviously over time it's been
22 more and more. I had initial reactions. My initial
23 reaction from the first time I saw it till today
24 remain the same.

25 ///

1 BY MR. KOSMA:

2 Q. How long would you say you spent looking at
3 the two?

4 MR. BEGAKIS: Objection. Asked and
5 answered.

6 THE WITNESS: A long time. I can't put a
7 number to it. Far less time that I've looked at an
8 Under Armour logo, but still a significant amount of
9 time.

10 BY MR. KOSMA:

11 Q. What area of the country would you say
12 Hylete is the most popular?

13 A. Can you speak up?

14 Q. What area of the country would you say
15 Hylete is the most popular?

16 A. We're pretty geographically diverse. Our
17 top markets would be Southern California. Actually,
18 Southern California, New York would be about the same,
19 and Florida. Those are the three.

20 Literally, we don't have a concentration. I
21 think the nature of the world today and social
22 networking, it's really about where -- honestly, the
23 concentration is relative to the proportion that do
24 some type of fitness. It relates to that. So it's
25 really not a function of where we are. As I said, we

1 sold 171 countries.

2 Q. In your opinion, the average CrossFitter at
3 a glance, could you see how they may be confused
4 seeing the Hylete H being the Hybrid H at a quick
5 glance?

6 MR. BEGAKIS: Objection. Calls for
7 speculation.

8 THE WITNESS: No. I couldn't see that. I
9 think that at a quick glance, no -- yes, I think they
10 could see at a quick glance, not confusion. They're
11 similar, they're H's. At a distance, everything looks
12 the same.

13 MR. KOSMA: No further questions.

14 MR. BEGAKIS: I don't think we have anymore.

15 (The deposition of RON WILSON concluded at
16 4:50 p.m.)

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Ron Wilson
October 29, 2015

DEPOSITION ERRATA SHEET

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Page No. 30 Line No. 12

Change: "pulling" should be "empolying"

Reason for change: not transcribed correctly

Page No. 34 Line No. 17

Change: "I've" should be I "had"

Reason for change: not transcribed correctly

Page No. 35 Line No. 3

Change: "Larry" should be "Laird"

Reason for Change: not transcribed correctly

Page No. 42 Line No. 5

Change: "Christian Mahala" should be "Kristian Rahaula"

Reason for change: not transcribed correctly

Page No. 121 Line No.

Change: "that" should be between "confusion" and "someone"

Reason for change: not transcribed correctly

Page No. 152 Line No. 9

Change: "age" should be "H"

Reason for change: not transcribed correctly

Page No. 152 Line No. 13

Change: "dollhouse" should be "dog house"

Reason for change: not transcribed correctly

**Ronald Lee
Wilson, II**
Digitally signed by Ronald Lee Wilson, II
DN: cn=Ronald Lee Wilson, II, o=HYLETE,
ou=HYLETE,
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Date: 2015.12.03 12:39:02 -0800'

12/03/2015

RON WILSON

DATED

1 STATE OF CALIFORNIA)
2 COUNTY OF SAN DIEGO) ss.

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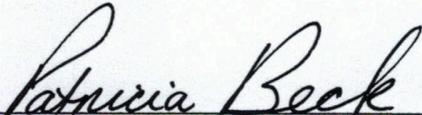
I, PATRICIA BECK, Certified Shorthand Reporter for the State of California, do hereby certify:

That prior to being examined, the witness named in the foregoing deposition was by me duly sworn to testify to the truth, the whole truth and nothing but the truth.

That said deposition was taken before me at the time and place therein set forth and was taken down by me in machine shorthand and thereafter was transcribed into typewriting under my direction and supervision, and I hereby certify the foregoing transcript is a full, true and correct transcript of my shorthand notes so taken.

I further certify that I am neither counsel for nor related to any party to said action nor in any way interested in the outcome thereof.

IN WITNESS WHEREOF, I have hereunto subscribed my name this November 13, 2015, at San Diego, California.


PATRICIA BECK
CSR NO. 12090

Ron Wilson
October 29, 2015

A			
a.m 156:20	added 26:25 53:17 59:23	amazing 21:3	apparently 83:17 133:22 167:13
ABC 70:8	adding 52:13 65:12	ambassador 118:10 118:10	APPEAL 1:2
ability 20:23 23:20 51:21 74:21 110:22 153:19	addition 63:25	amount 29:23 38:14 42:9 65:11 169:23 172:8	appealing 46:12
able 35:12 49:21 57:22 59:13 60:3 72:24 73:1 104:6 104:12 105:19 106:18 109:17 126:22 136:25 153:11	additional 65:10 116:13	anabolic 14:24	appear 10:10 145:20 146:6 160:19 164:2
abrading 114:14	additionally 108:6	analog 37:18	APPEARANCES 2:1 5:1
absolutely 46:13 50:7 68:7 116:14 150:8 169:16	address 34:22 37:9	analyze 127:23	appeared 44:19
accept 85:4	Adidas 41:21,24 42:1 45:25 106:4	and/or 51:19 56:19 63:12 111:2	appears 112:9 121:22 128:1 132:10 135:18 144:3 150:22 151:7,15 153:18 155:10 158:13
accepted 16:3 17:17	adjacent 12:24	Angeles 2:4	Apple 42:10 43:6,10
access 12:11 40:7 56:25 74:13 81:20 84:14 103:15 152:25	admin 84:10,11,14 84:17 89:15 158:3 158:4	angle 56:18	Applicant 1:9 2:7
accessories 25:12 41:22 45:25 58:15	administered 9:5	answer 11:5 13:18 19:18 30:22 36:10 39:8,11 64:21 73:15 102:8 117:22 118:20 119:24 120:6,23 121:23 123:12 125:1,5 126:13 127:16 130:2 133:9 137:18 139:12 143:17 147:17 149:18 152:16 154:4,20 161:8,25 162:4,19 162:24 163:14,17 164:10 168:2 171:17	Applicant's 4:8
accessory 41:20,21	administrator 72:5	answered 172:5	application 1:6 24:19
accolade 111:7	ads 122:21	answers 144:10	applications 16:12
accommodated 126:11	advanced 34:7	anticipation 17:24	applied 160:5
accommodates 126:14	advantage 74:22	antiquated 34:1 56:12	apply 18:16 34:18
accomplish 153:11	advantageous 93:16	anybody 72:14 89:13 99:19 109:22 121:8 145:2 163:12	applying 17:14
accomplished 82:6 106:23	advice 83:6 137:3 137:11	anyone 81:2 135:17 173:14	appreciate 167:23
account 89:12,14	affiliate 62:9	answered 172:5	appreciated 141:11
accounting 64:18	affiliation 121:5	answers 144:10	approach 63:3 149:15
acquire 16:25 64:19 65:2 72:15 73:1	Affliction 47:9	anticipation 17:24	approached 44:3,4 81:19 117:8 132:21
acquiring 65:4	afforded 33:10	antiquated 34:1 56:12	approved 70:8
acquisition 37:25 38:1,2 47:3,22 68:14	afloat 153:24	anyone 81:2 135:17 173:14	approximately 56:17 105:10
acquisitions 73:25	age 150:19 152:9	anyway 79:10 85:6 86:10 96:10	archive 130:11
act 47:20 141:25	aggregate 69:2	apologize 142:7	area 81:16 84:2 172:11,14
acted 68:19 142:4	aggressive 116:8	Apparatus 4:10,12 4:21 5:2,4,7,10	areas 56:23
action 31:22 32:1 34:5 38:25 40:3 58:21 176:19	agreed 32:10 72:9 72:13 74:25 81:11 87:17	apparel 7:18,20 8:4 24:1 25:12 38:24 46:2 47:8 48:22 88:8,9 91:14 95:12 105:13 116:5,13 123:22 124:3 149:8,9,16 155:3 156:1,3 164:4,25 168:13 168:14,24 169:7 169:21	Arena 65:5 70:3
active 40:7 114:3	agreeing 74:3		Arianny 78:24
actively 21:9,11	agreement 38:11,12 82:12		Armour 6:3 98:15 99:11,12 100:2,4 101:18 112:6 164:23 165:5,7 168:10 170:3,10 170:17 172:8
activities 64:4 114:16 138:3,18	agreements 70:7 76:10,11		arrangement 33:1 51:8 118:17 119:18,19
activity 138:17,17	ahead 20:22 90:25 105:8		art 96:10
actual 59:12 102:13 122:12 143:10	air 20:22 25:22 26:7,11 49:17		articulated 87:11 112:5
ad 33:9	airplane 46:21		artist 94:22 96:23
add 51:15 63:5,5 77:19	airtime 121:4		arts 47:11 50:19 56:14 63:5 87:1 102:1 138:12
	alien 102:2 153:21		aside 101:18
	alike 62:22 154:7,9 154:18,18		
	Alise 119:13		
	allow 19:11 35:17 149:13		
	allowed 33:13 35:15 38:13 46:17 57:11 141:7		
	allowing 30:15		
	allows 56:14 138:17		
	altogether 17:5		
	amateur 15:1,6		

Ron Wilson
October 29, 2015

<p>asked 15:15 45:15 46:19 52:2 83:25 84:5,5,6,10,10,20 119:14,14 153:1 158:3 163:1 172:4 asking 115:2 asleep 32:19 aspect 50:18 151:4 156:7 aspects 153:10 169:6 aspirations 51:15 Assembly 5:17,19 6:6 assess 46:10 47:25 48:2 150:24 asset 71:14 73:3 86:5 assets 69:24,25 72:2 73:7,7 74:20 75:1 assigned 55:10 56:1 assigning 79:19,20 assignments 16:24 associated 31:20 144:3 assume 129:11 assumes 122:3 assuming 101:12 161:8 athlete 6:24 7:2,15 34:23,25 35:1,1 49:13,14,14 87:22 88:2,11,14 93:22 119:1 121:8,9,11 136:22 137:15,23 139:3,9,23,24 140:2 143:2 145:5 148:13 166:18 athletes 44:10,12 44:14 56:5 58:3 78:21,23 119:3 136:21 138:3 140:1 169:14,17 170:2,19,23 athletic 5:19 7:4,5 7:11,12 37:13 78:18 127:19 128:9 141:2 142:12,23 143:3 146:5,19 168:13 168:14 athletics 1:5 7:7,8 7:9,14,17,18,20 7:22 9:14 75:6 77:9 118:4,5,24 118:25 119:4,5,8</p>	<p>119:11,12 122:22 129:14,19 130:12 131:25 133:21 134:15 135:13 137:21,25 143:1,2 143:8,15 144:1,2 144:4 145:4,6,19 145:21 146:7,18 146:20 147:12,22 147:23 149:9 150:4,15 151:2,18 152:7 155:3 156:1 156:3,23 157:11 157:20 159:22 160:2 168:11 170:24 171:8 Atlas 159:7 attached 104:3 attachment 126:9 attempt 35:9 attempted 14:21 attend 77:20 attendance 9:10,21 attended 11:18 31:25 attending 17:20,21 attention 20:18 78:2 169:20 attire 56:3 attorney 54:13 77:14,14 82:23,24 86:3,14 90:15 158:4,14 166:23 attorneys 71:7,9,12 75:11 attracted 15:10 audible 88:17 Audio 41:9 42:3 44:14 45:15 56:7 August 5:3,20 75:12 75:13 162:4 164:1 Australia 60:1,4 123:24 124:2 Australian 59:25 authenticated 155:18 authentication 98:17,19 99:15 144:12 147:1 155:13 156:10 158:13 Authority 30:2 autographs 66:23 available 12:5 13:2 33:14 35:24 49:9 51:19 88:4 90:5 105:14 106:17</p>	<p>131:21 140:15 147:9 148:12 Avenue 1:17 2:14 average 12:8 173:2 avid 20:4 avoided 77:14 awarded 34:14 aware 48:20 53:9 57:1 71:8 89:6 139:4 awareness 39:17</p> <hr/> <p style="text-align: center;">B</p> <hr/> <p>back 10:21 14:2 15:15 18:20 26:5 32:12 34:22 37:10 37:24 39:14 40:11 41:16 43:9 49:6 53:17 54:16,17 57:6 60:14,16 67:20,21 70:3 71:10,11 82:13,18 83:19,20,22,23 91:12 94:8 104:1 107:25 131:1 132:21 141:25 142:3 144:22 167:1 background 18:15 58:17 62:16 backstory 58:8 bad 88:7 152:4 bag 70:2,2 baggy 127:19 bags 41:20,21 58:15 balance 63:21 balancing 95:8 Baltimore 40:2 170:7,13,16,18 bang 114:1 bank 12:23 bankers 38:1 bankrupt 71:1 bankruptcy 37:23 69:13,14,22,23 70:5 71:5 72:4 bar 85:14,15 133:23 151:6 bars 114:15 base 58:23 151:18 based 33:10,19 35:14 40:8 41:12 41:15,16,17 45:22 56:1 75:8 95:11 101:12 129:5 basically 16:6 34:10,22 39:24</p>	<p>46:4,13 47:4 50:11 51:16,20,22 56:12,24 57:14 75:10 76:6 78:21 81:2,20 82:9 83:18,24 86:14 89:12,17 90:10 96:2 97:2 104:24 106:19,22 112:18 119:15 137:13 basis 12:9 14:9 15:6 30:6 79:23 basketball 11:14 113:20 bat 155:6 batman 6:4 100:19 101:8,12 beach 1:18 2:15 9:1 10:15 25:13 41:13 41:14,15,17 75:15 Bean 30:3 beat 94:11 beautiful 14:1 Beck 1:23 4:5 176:4 176:24 becoming 34:21 bed 113:18 beefiness 95:15 beers 85:22 Begakis 2:3 3:6 9:8 9:19 10:6 11:7 14:10 15:22 19:22 21:18 22:5,20 23:7,25 24:9 25:1 25:5 26:20 27:9 27:14,21 28:7,14 29:3,13 30:23 36:13,25 39:12,18 52:18 53:2,23 54:5,20,24 55:4 55:17,23 65:1 68:7,9 73:21 91:4 91:20 92:22 93:4 96:12 97:7,24 98:5,22 99:9,17 99:22 100:7,23 101:2,6,17 102:9 102:18 103:7 110:10,15 111:11 111:17 112:12 113:9 115:14,19 116:23 117:24 118:22 120:1,10 122:5 123:14 124:11 125:15,19 126:2 127:11 129:4 130:5,19</p>
--	--	--	---

Ron Wilson
October 29, 2015

131:13 132:4	109:4 112:23	brain 133:24	59:12 104:23
133:12 134:4,21	165:22	branch 83:2	buildout 46:17
135:1,4 136:2	bigger 63:8 169:7	brand 31:10,11,15	built 37:20 38:16
137:19 138:24	biggest 74:23	31:16,18,18,20	38:18 46:20 58:1
139:18 140:9,23	160:12 170:14	32:4,23 33:18	59:9 108:17
141:4,8,19 142:6	bike 59:1 63:15	44:9 45:18 46:9	bullfighting 51:3
142:19 143:12,21	Billabongs 31:24	47:15 48:20,25	bulls 51:3
144:15 145:12	billion 16:19	49:2 50:5,15	bunch 49:14 60:17
146:1,11 147:2	binding 85:3	51:25 59:23 60:13	62:6 95:3
148:6,19 149:22	bit 58:25 63:20	61:23 62:6 63:1,7	burgeoning 47:9
150:9 154:23	126:14 127:20	63:20 65:10 72:24	business 13:1,2
155:21 156:13	139:5	77:6 92:14 93:13	14:15 17:17,25
157:6,23 158:20	black 121:1 128:2	95:9 121:9 133:7	19:8,12 21:13
159:15 161:13	bladder 26:2,9	149:16 152:4,5	25:11 29:25 31:5
164:14 165:12	27:17	163:4,10,11	32:8 38:8,15
167:25 168:6	bleach 31:14,15	170:14	39:24 43:23 45:12
171:1,3,10,19	blend 127:22	branded 20:5	47:21 67:24 69:3
172:4 173:6,14	block 38:22,22 39:1	branding 137:10	73:13 79:7 106:9
began 17:14 33:16	62:19	149:4	106:10,11 121:7
42:24 63:22 87:7	blog 6:12 115:25	brands 13:15 20:16	164:21 165:13,18
93:19 102:6	blow 25:20 26:7	30:1,13 31:22,22	166:3,6 168:13
beginning 17:18	blowing 25:19	31:22 51:14,15	busy 81:21
behalf 9:13 69:25	board 1:2 31:5 33:4	52:13 64:7,8,19	buy 43:6 45:17
behind-the-scenes	33:23,24,25 34:18	65:3 72:25 92:11	46:10 48:9 60:3
58:7	35:11,16 37:13	93:10 115:4 169:8	68:2,22,23 109:16
believe 69:9 79:2	43:9 74:3 104:9	brands' 106:20	buyer 38:7
128:21 129:2,6	109:6 110:25	Brazil 70:18,20,23	buying 38:3 167:10
150:6,10 152:2	113:14 124:23	74:24	buzz 124:19
157:19 158:9	125:9 169:23	breached 82:22	
162:13 165:21	Board.CrossFit.com	break 68:6 115:15	C
174:8	6:10,11	128:20 171:1	C 50:25
believed 24:3	body 14:19 39:7	breaks 152:20	C-h-r-i-s 75:21
believes 129:2	62:20,20 95:21,21	breathability	C-u-m-b-r-e-s 10:15
137:13,15	bodybuilding 14:11	112:25	cage 50:3 56:3
bell 159:5	14:13,16,20,22,23	brevity 22:10	California 1:18 2:4
Bellator 48:15,25	152:5	Bridge 75:17	2:15 9:1 10:15
57:25 58:4 59:10	boils 138:1	brief 61:21 170:6	40:8 84:22 172:17
74:17	bolt 153:6	briefly 37:24 90:18	172:18 174:1,13
bells 117:7	book 7:15 38:5	bring 42:16 59:15	176:1,5,23
beneath 65:24 99:12	148:12,13	70:22 81:7 116:4	call 36:1 44:25
benefit 81:13	booth 62:1 100:13	brink 105:20	45:2,8 71:10
benefited 89:4	107:1,5 108:17	broad 63:20 154:10	109:10
106:9	162:20,25 163:2	broke 126:10,12	called 11:19 12:7
benefits 23:20	bored 30:16	brother 96:25,25	16:17,20 18:12
best 6:7 94:4 111:6	borne 126:7	brothers 139:4	20:1 25:14 36:7
111:23 112:3,5,6	boss 31:4	brought 49:6	41:18 45:14 48:15
112:7 116:9	bosses 31:6	budget 64:14	50:8,10,23,25
better 12:4,12	bother 114:1	bug 13:17 32:2	51:4 55:13 59:23
13:13 34:4,10,11	bottom 117:9 151:19	80:13	61:16 67:21 68:1
34:12 56:13 86:9	153:15 160:17	build 19:2 20:21	68:2 70:10 71:6
93:16 96:22	bottom-heavy 95:5	21:5,7 45:17 46:5	71:10 72:6,13
103:20 108:2,4	bottom-to-top 151:5	46:17 50:4,5	73:12 75:16 79:21
beyond 19:12 25:10	bought 38:20 64:2	51:11 58:1 59:4,5	115:25 152:4
big 19:7 24:15 35:3	74:20 88:25 89:3	106:18,19 109:18	170:10
39:6 44:9 47:14	boxes 89:18	149:16	calling 35:25 36:3
48:4,7 62:10,12	boxing 56:6	building 37:17	39:2 50:21
63:18 67:3,25,25	Boy 152:4	38:16 43:4 46:9	calls 43:14 124:7

Ron Wilson
October 29, 2015

125:13 127:7	44:18 45:9	class 19:5 33:6,9	color 95:11 127:17
128:24 133:25	certain 108:8	38:12 91:13	128:12
163:22 171:10,19	136:24	159:23 160:4,6,17	colored 128:7
173:6	certainly 17:23	160:23,24 161:3,4	com 40:19 139:4
camped 58:11	82:22 96:23 133:7	161:5 164:23	142:24 155:3
campus 12:1,6,24	153:22 165:20	classes 33:6 159:24	156:1,3,19,21
13:5 14:2 15:12	169:10	classification	combined 57:13
18:24,25	Certified 176:4	142:12	combo 109:19
Canada 62:11 66:22	certify 176:6,15,18	classified 158:6	come 15:15 35:21,22
66:24	CF-ing 114:20,22	classmate 13:7	38:8 40:5 43:7
Canadian 108:18	CFM 134:11,12,13	classmates 19:25	46:14 57:18 62:6
capability 59:2	CFO 165:19	clean 61:4 92:3,17	62:20 66:12 74:3
capacities 93:23	chain 82:8	95:6	79:5 84:4 88:14
capacity 131:6	chairman 33:4,5,12	cleaner 95:14	90:3 109:1 114:12
Capital 42:8	46:24 47:12	cleaning 96:9	123:4 125:25
capturing 96:3	Championships 48:12	cleanness 92:14	131:18 145:5
car 66:21 94:7	chance 76:4	clear 33:1 88:24	160:16 165:1
cardio 87:1	change 13:6 42:20	123:25 167:16,17	166:25 167:7
care 79:7	43:6 95:11 125:9	click 155:3	169:10
career 87:15	175:4,5,7,8,10,11	clicking 88:3	comes 94:7 131:9
careers 166:3	175:13,14,16,17	Clorox 31:14	152:20 153:15
cargo 112:1	175:19,20,22,23	close 70:16 94:11	154:17 165:6
case 82:25 83:3	changes 111:25	96:3 121:25 167:5	166:8
85:8 86:4 129:7	changing 81:1	closely 97:21	comfort 52:9
143:11,14 154:6	channels 26:10	closest 97:11	comfortable 113:20
164:20 166:14	167:16	closures 114:12	114:18
171:9,16	character 135:11	clothing 33:19	coming 21:6 29:25
cases 41:11 47:21	charge 83:25	40:18 50:11 55:7	30:13 35:6,20
138:9	check 58:15 89:18	55:10 58:17 65:25	44:24 48:1 66:19
cash 12:17 21:6	checked 90:25	66:3 68:15,23	66:22 74:24 76:21
30:11,14 37:21	124:16	69:21,23 71:20	78:7 85:7,23
38:14 39:21 41:4	checks 33:11,12	72:1 73:2,8,23	115:2 135:18
65:12,18 118:17	70:13	77:9 90:16 93:20	commissions 78:15
Castro 162:17	cheerleader 14:16	118:10 158:7	81:1 82:11
163:24	Chicago 170:6	169:14 170:2,19	common 137:24
Castro's 161:17	chief 10:17	170:23	communication
casual 113:19	China 58:11 100:15	club 7:11 11:19	167:16
catalog 30:3	104:22,22 105:19	12:1,2,7,15,16,20	community 7:9
catch 61:3	choice 39:22	12:21,22,24 13:3	113:14 145:17
catches 169:22	choices 138:4,7,15	13:11 15:5 146:5	165:22
categories 31:10	choose 24:24 42:2	CNN 44:19	companies 15:24
category 33:21	choosing 42:3	co-CEO 33:5	39:1 41:2,6,8
caught 32:2 111:2	chose 42:16 98:10	co-op 16:3	47:17 56:1 58:21
caused 129:23 163:9	Chris 58:18 75:20	co-oped 15:25 16:1	59:7 70:4 98:12
causing 147:13	Christian 42:6 44:4	Coach 142:12	99:6 138:20 149:4
Cedros 2:14	44:6,7	coaching 121:5	company 16:17,19
ceiling 46:21	circle 95:1,10	Coast 31:22	17:22 18:7,11,12
Celeste 78:24	circles 94:13,16	code 115:7,8	19:14,21 20:1,6
cell 34:20	95:4 150:14	cofounder 9:15	20:24 24:21 32:11
center 12:4 13:13	circumstance 90:18	170:11	32:20 33:11 35:21
46:21 95:2 133:4	circumstances 39:15	coins 94:25	35:25 36:4 37:13
145:7 146:5	72:1	cold 18:25 26:15	37:25 40:10 41:17
150:14 151:9,13	cites 164:2	31:12	41:18,18 42:2
151:14	claim 165:22	collect 32:12	46:3,10 47:6 48:9
centering 50:20	claims 28:19 32:16	collectively 19:11	49:4 51:17,18
CEO 9:15 10:17	clarification 63:16	college 10:21 11:13	53:10 55:11 59:25
19:20 42:6 44:8	63:17	17:10 46:7	60:9,11 65:5,14

Ron Wilson
October 29, 2015

67:2,3,4 70:18,24 71:1 73:7 74:4,8 75:16,24 76:13 77:1 79:15 86:17 87:7,9,17 90:16 90:18 106:2 107:18 108:18 116:5,6 117:5 138:11 139:25 149:8,9,15 158:7 166:1,6,24 170:4 170:8,10 compare 127:14 156:24 comparing 171:9,16 comparison 157:18 compensation 33:5 compete 15:5 93:21 competing 14:23 competition 15:2 competitions 14:23 competitor 48:18 complete 22:2,14 37:8 completed 17:15 compliments 167:24 component 16:10 compression 56:23 59:5,23,24,25 105:25 computer 84:6 94:19 94:20 96:5,6 145:3 156:2 concentration 172:20,23 concept 16:24 24:14 25:25,25 35:15 36:23 49:10 concepts 134:13 concern 114:13 133:4 concerned 141:21 concerted 162:11 concluded 173:15 conditioning 113:19 conferred 71:11 confidentiality 76:10 confused 139:23 143:9,13,13 162:17,21 163:10 173:3 confusing 129:17 149:13 164:2 confusion 121:15,18 121:18 122:13,14 123:2,9 129:16,24	143:14 144:23 147:11,13 162:19 164:8 166:18 173:10 connation 137:15 153:25 connected 104:2 151:3 Connecticut 2:10 connection 167:14 connections 149:7 connotation 20:16 connotations 152:6 considered 11:2 12:10 14:25 consisted 12:8 75:19 consistent 115:3 149:15 152:19 consistently 81:18 constructed 54:13 107:23 construction 32:16 169:21 constructive 28:18 consulted 82:24 consumed 37:15 consumer 33:21 40:8 122:25 consumers 167:9 contact 58:14 70:11 72:5,11 contacted 119:7 contacts 87:3 containing 98:18 118:20 144:10 155:15 contains 130:2 content 89:9 contents 174:6 context 17:24 45:8 154:11 170:22 continue 14:3 15:14 64:19 65:2 170:13 continued 5:1 6:1 7:1 8:1 12:16,16 21:3 38:10 150:16 continues 15:13 64:23 continuing 63:3 123:16 162:15 contours 122:12 contract 34:15 48:16 82:23 control 43:25 conversation 13:19 14:6 44:5,22	141:17 conversations 102:14 123:2 convey 94:2 95:16 cool 13:12 20:5 46:20 62:17 71:20 81:14,15 Cooper 16:17 17:16 coordinated 68:18 Copy 7:15 cordial 80:2 Corley 113:16 corporate 16:22 37:20 46:18 71:8 corporation 16:22 correct 24:2 79:12 79:15 117:13 140:3 174:11 176:16 corrected 129:12 correlation 127:21 cost 30:19 Costa 36:2 51:2 counsel 141:4 142:1 143:9,12,13 176:18 counsel's 143:17 count 166:2 counted 105:9 countries 173:1 country 11:3 40:25 85:18 172:11,14 COUNTY 174:2 176:2 couple 14:22 48:11 53:15,21 66:12 69:7 77:3 89:8 139:4 164:19 coupon 115:7 courage 50:25 51:5 course 78:9 94:7 109:21 court 10:5 21:17 22:19 23:6 24:8 25:4 26:19 27:8 27:20 28:6 29:2 29:12 36:12 52:17 54:4,23 55:16 91:3,19 97:23 98:21 101:1 102:17 110:9 111:10 112:11 113:8 115:18 116:22 120:9 130:4,18 132:3 133:11 134:3 135:3 136:1 138:22 139:17	140:8,22 142:18 143:20 144:14 145:11,24 146:10 146:22 148:5,18 149:21 154:22 155:20 156:12 157:5,22 158:19 159:14 161:12 164:13 168:5 covenants 38:11 cover 53:13 covered 26:4 covering 4:19,23 27:18 53:18 cow 30:14 crazy 19:5 117:6,9 create 20:5 24:18 25:16 26:2 32:2,5 32:23 33:18 34:10 34:11 35:10,11 43:18,21 46:1 48:24 49:2 53:7 63:7 95:2 103:18 104:8 108:23 136:23 150:17 153:10 created 13:22 14:4 23:17 35:13 36:7 38:25 50:9 51:6 89:9 92:15 104:17 107:20 166:24 creating 24:16 30:12 38:22,22 94:17 136:22 139:25 153:9 creation 87:7 creativity 95:8 creditors 69:25 73:25 credits 137:8 creed 50:16 93:19 93:20,21 crisp 95:6 cross 35:2 63:7 138:3,5 CROSS-EXAMINATION 171:5 cross-functional 112:23 cross-training 6:13 62:13 88:1 110:18 112:7,24 117:3 crossed 163:9,19 164:7 CrossFit 2:13 59:16 60:15,21 61:8,18 61:19,24 62:9,20
--	---	---	---

Ron Wilson
October 29, 2015

62:21 63:10,12,18 63:22 86:25 100:6 105:4,14 106:17 106:25 110:19 115:4 116:10 121:4,10,11 125:8 134:10,14 149:7 159:7,9 160:10 161:23,25 162:3,6 162:7,21 165:21 165:21 168:22,25 169:1,3 CrossFit.com 112:19 113:6,13 CrossFit/Strongman 121:6 CrossFitter 14:18 173:2 CrossFitting 114:23 crossing 151:6 crossover 60:18 crowded 164:22 CSR 1:24 4:5 176:25 cubicle-type 46:19 culture 51:3 Cumbres 10:14 cup 5:19 56:4,13,20 57:2,4,8 59:5 curious 45:16 125:15 161:2 current 10:16 97:8 97:9,10,11 155:4 158:1 currently 160:1,19 curved 35:13 customer 83:11 customers 116:12 125:23 cut 37:10 39:2,21 127:18,19	45:4 52:14 67:21 72:9,10 78:8 80:12 85:11 86:13 94:20 96:6 107:2 107:2 109:22 162:6 170:8 174:12 day-to-day 45:12 46:14 days 26:15 42:21 45:4 57:25 69:7 69:15 84:13 90:10 90:11 91:12 100:11,12 104:16 105:9,10 106:22 deadlifting 114:15 deaf 64:11 84:15 deal 49:4 62:12 67:16 69:2,5,6,13 69:16 71:22 72:2 72:18,18 74:2 76:24,24 81:23 89:3 105:19 118:9 119:21,22 120:2 dealing 43:16 81:17 dealings 70:17 78:20 deals 47:3,3,17 70:5 109:19 dealt 67:22,23 78:22 December 5:6 decided 15:1 17:6 20:8 40:1,4 61:18 137:3 164:21 decision 69:10,11 decisions 77:4,23 declare 69:14 71:18 174:4,7,10 declared 69:12 dedicate 166:13 deemed 55:13 Deerfield 75:15 defined 136:23 definitely 11:4 32:9 122:23 152:1 161:5 167:23 definitively 135:9 degree 10:23 19:6 degrees 62:16 delivered 115:9 Demo 6:20 department 64:18 depending 114:4 126:18 deploy 25:17 deposition 1:13 4:8	6:15 8:3 9:21 10:1,9 39:10 80:16 120:17 121:15 129:8 136:8 137:7 141:11,17 144:22 149:5 155:7 161:17,17,18 163:25 164:5 166:21,21 173:15 174:6 175:1 176:8 176:11 depositions 50:12 118:16 129:9 131:18,20 142:1,5 147:10 154:14 160:7 166:10 Depot 67:2 depth 93:23 derivative 146:20 derivatives 90:7 derived 167:8 describe 10:19 94:3 138:3,15,16 167:4 171:7 described 121:20 describing 39:15 description 4:7 157:12 design 5:13,14 18:15 21:14 25:9 30:8 43:12 44:20 46:21 49:16,24,25 51:12 52:11,25 53:4,17 54:11 79:23 81:15,16 84:2 87:9 103:10 104:12,14 150:12 166:8 167:24 designed 18:20 34:16 51:1 56:13 56:22,22 62:19 100:14 104:13 106:1 107:16 109:5,5 113:23 117:11 126:1 129:20 150:13 152:22 166:24 167:2,20 designer 36:8 43:1 64:9 152:25 designers 46:16 designing 21:9 24:1 31:9 32:17 92:1 93:8 designs 57:22 102:24	desk 47:5 154:16 despite 11:22 65:3 116:5 destiny 44:1 details 68:4 118:12 118:14,15 167:7 develop 56:13 developed 18:19,21 21:1 57:23 58:8 94:1 99:18 102:4 106:16 developing 92:8 102:6,9 103:22 104:25 development 30:9 devices 43:3 diagonal 112:2 Dick's 30:2 43:16 Diego 32:1,3 40:3,5 40:16 41:1 174:2 176:2,23 Dierksane 119:13 diet 14:14 differences 121:20 different 17:8 18:14 24:15,18 25:15,24 32:9 33:6,7,8 35:16 38:19 48:17 49:15 53:16 55:11 56:1 76:20 77:15 83:4 95:4 96:1,2 106:13 108:19,20 132:11 139:24,25 150:11,17 153:25 162:5 163:4 167:5 169:4 different-looking 157:1 difficult 40:9 difficulties 63:23 118:4 difficulty 39:19 digital 46:9 51:11 64:8 diligence 20:10 30:18 dinner 44:4 45:5 80:7 direct 14:8 19:20 127:21 167:9 direction 176:14 directions 110:24 directly 94:3 director 42:19 directors 31:6 Dirksing 83:10
D			
D-a-n-a 83:14 daily 70:11 DailyBurn 139:7 Dana 83:14 84:3,4 data 82:17 date 12:10 36:21,22 36:23 37:1,2 81:6 105:11 166:10 dated 4:11,13,15,17 4:19,22,23 5:3,6 5:8,11,13,15,17 5:19 6:6 175:25 Dave 80:24 161:17 dawned 164:23 day 17:7 20:12 36:7			

Ron Wilson
October 29, 2015

disappointed 12:14	136:7 139:2,12,13	128:11	107:17 150:14
disconnected 150:21	139:21 140:5,11	drawstrings 104:3	156:2 166:6
discounts 116:11	140:14,20 141:1	dream 46:13	effectuate 89:10
discuss 54:14	142:10,15,22	dress 86:11	effort 162:11
discussion 154:1	143:5,24 144:5,18	drew 15:11	165:24
display 91:10 96:13	145:9,15 146:3,14	dried 114:9	efforts 105:22
97:12 132:17	146:16,24 147:5,7	drive 149:8	161:2
135:13,20 159:21	147:8 148:2,9,11	driving 66:23	eight 15:11 94:11
displayed 159:2	148:14,22,24	drop 26:11	eight-week 59:10
displaying 170:3,20	149:25 150:2,3	dropped 23:24	either 79:24 133:24
170:23	155:1,13,14,24,25	126:19 133:23,24	Electric 15:25 16:4
Displays 159:22	156:9,16,18 157:8	drove 83:19,20,22	16:9 17:6
dispute 15:18	157:10,25 158:10	85:14 106:5	electronic 5:22
disrupt 164:20	158:14,23,24	drugs 15:8	91:9
disrupted 165:13	159:10,18 161:15	dry 81:4	electronics 35:8
distance 12:25	164:16,18 165:10	due 20:9 30:18 33:6	element 51:2 53:17
173:11	168:8	38:11 41:3	150:22 151:15
distinct 147:23	documentation 76:12	dues 12:2	elements 94:16 96:1
150:21	76:14 77:13	duly 176:8	150:21 151:14
distracting 141:22	documented 164:4	dwindled 18:8	166:5
distribution 60:2	documents 22:15	E	eliminating 112:1
70:6,22 78:14	84:5 134:19 144:8	e-commerce 40:21,22	Elise 83:10
distributor 80:24	144:12 147:21	43:18	elite 88:16 93:22
80:25	154:14	e-mail 82:8,10	embedded 35:11
distributors 77:8	doing 18:3 32:8	e-mailed 71:2	embellish 106:19,20
distributorship	34:6,17 43:11	ear 4:10,10,13,13	emerging 50:5
77:24	45:19 49:14 52:13	4:21,21 5:3,3,5,5	emphasis 17:19
diverse 172:16	52:15 57:18 59:6	5:8,8,10,10 18:19	employee 122:22
division 46:16	61:2,6 71:8 77:17	20:24 21:3,25	employees 75:13
divisions 25:18	81:14 91:1 94:20	25:10 26:24 28:3	166:2
document 10:8 21:21	106:10 109:16	28:3,21 29:9,20	employment 41:5
21:23 22:2,2,13	111:2 114:5	29:25 30:14,17	empowerment 10:17
22:14,22 23:10	123:19 126:16	31:1,13,13 33:10	emulate 47:9
24:12 25:7 26:23	138:2,14 149:4	37:17	encouraged 20:2
27:11,15,24 28:10	dollar 85:1,2 94:25	earlier 36:22 87:11	106:10
29:5,16 36:16,19	dollars 20:12	100:19 101:12	endeavors 78:18
37:5,6,8,10,10	dollhouse 152:13	170:5	ended 33:22 35:12
52:21,23 53:25	domain 35:23,23	early 109:15 133:1	35:25 36:3 42:3
54:8,10 55:2,5,20	36:5 50:10 87:15	168:14	43:13 44:23,23
55:24 76:17 84:20	88:4,6,20,24 89:1	earmarkings 48:7	49:3 59:9 65:4
85:1 91:7,10,16	doors 21:4	earmuffs 19:7 31:14	85:22 90:4 96:24
91:23,25 92:20,25	dot 40:18 130:12	earmuffs 19:23	energy 30:9 76:4
93:3,7,7 96:11	139:3,24 142:24	ears 31:12 64:11	engine 147:9
98:3,6,7,18,24	155:3 156:1,3,19	81:22 84:15	engineering 10:23
99:1,5,10,15	156:21	easier 40:7	10:25 11:2,21
100:21 101:7,13	dot-com 35:23	easy 35:24 90:4,4	16:10,10 18:15
102:21 103:5,8,10	doubt 129:8,15	edge 95:18	enhance 15:8
110:14,16 111:13	downloaded 132:9	edges 126:18	entered 10:1 100:23
111:15,18,20	dozen 58:16	educated 16:21	147:24 156:25
112:9,17 113:2,4	drafting 95:22,22	education 10:20	entire 57:3 73:6
113:12 115:12,13	drain 37:21	effective 17:1	entirely 150:11
115:22,24 116:16	drawing 43:9 58:12	127:10	entities 25:15 33:8
116:17 117:1,15	93:18,23	effectively 17:22	65:24
120:13,15 130:8	drawings 5:23 94:21	22:12 36:21 37:12	entity 49:6 50:8,9
130:10,22 132:7	104:15,18,19,24	66:7 68:23 72:16	51:9 68:22,24
133:14 134:7,23	drawstring 104:7	95:19 97:18 105:8	71:20 75:3,5,6,7
135:7,22,23 136:5	126:8 128:6,8,10		75:9,13

Ron Wilson
October 29, 2015

Entourage 79:4	evidence 21:20 23:9	8:4,5 10:4,8	87:14 122:15
entrepreneurial	24:11 26:22 27:23	21:16,20 22:18,22	123:9
17:19 42:4	28:9 29:15 36:15	23:5,9 24:6,7,11	experiences 88:7
entry 39:13	54:7 55:1,19 91:6	25:2,3,7 26:18,22	experiencing 63:23
environment 17:12	91:22 92:23 97:25	27:4,7,11,12,19	expert 160:10
equipment 12:5,18	101:3 102:20	27:23 28:5,9 29:1	explain 9:11 10:19
13:15 59:3 117:6	110:12 113:11	29:5,11,16 36:11	71:25
151:10,16 155:6	115:21 116:25	36:15 39:13,15,16	expo 66:22
160:25 161:1	122:3,4 130:7,21	52:16 54:3,7,22	exposed 16:11
162:22 163:2	132:6 135:6 136:4	55:1,15,19 91:2,6	exposure 61:20
164:3	139:1,20 140:25	91:18,22 92:22	extend 83:2
equity 73:22,24	142:21 143:16,23	96:11,13,16 97:9	extensive 123:19
ERRATA 175:1	144:17 145:14	97:15,22 98:1,20	extent 91:16 93:1
especially 95:10	146:13 147:4,24	98:24 100:25	96:16 98:3 122:13
121:10	148:8,21 149:24	101:4 102:16,20	exterior 61:4
ESPN 48:16 49:9	154:25 155:23	110:8,12 111:9,13	extremely 59:19
ESQ 2:3,9,14	156:15 158:22	112:10,17 113:7	107:10 116:4
essentially 12:2,3	159:17 161:8	113:11 115:15,17	exuded 141:10
13:3,9 14:22	164:4	115:21 116:21,25	eye 110:5 114:21
16:20,25 17:15	exact 109:24 137:11	120:8,12 124:25	169:22
18:6 20:19,22,24	exactly 11:3 69:11	125:1 130:3,7,17	Eyeglasses 4:15,17
26:25 30:3,14	86:2 108:19	130:21 132:2,6	eyes 81:22 129:22
31:1 32:12 33:3	152:21	133:10,14 134:2,7	137:14
33:23 34:23 35:18	EXAMINATION 3:1,5	134:23 135:1,2,6	
36:3 39:1 40:6	9:18	135:25 136:4	F
43:1,9 45:17	examined 9:5 176:7	138:21 139:1,16	F 132:14
47:20 55:12 56:23	example 143:14	139:20 140:7,11	fabric 34:7 38:21
60:4 66:7 67:8	examples 98:12	140:21,25 142:17	53:16 56:24,25
68:18,18 69:24	exceeded 105:18	142:21 143:19,23	108:3,5 114:4,15
70:5 74:3,6 77:6	exceptional 43:24	144:13,17 145:10	169:24
79:18 82:23 90:12	62:24	145:14,23 146:3,9	fabrication 126:7
90:17 92:6 100:10	excerpt 121:13	146:13,21 147:4	fabrics 34:3,4
102:25 113:14	exchange 51:10,20	148:4,8,17,21	169:21
117:9 118:3	123:21	149:20,24 154:21	Facciabella 25:14
127:16 151:11	excited 48:3 60:23	154:25 155:19,23	face 44:18 56:16
153:4,9 156:2	75:25 76:25 116:4	156:11,15 157:1,4	117:7,9 167:1
establish 143:16	exclude 122:8	157:8,21,25	Facebook 6:9 7:4,7
established 63:4	excluding 124:14	158:18,22 159:6	7:8,10,11,12,14
establishing 15:19	excuse 76:21	159:13,17 161:11	7:22,23 84:10,11
147:20	Executed 174:12	161:15 164:12,16	84:13,16 89:11,14
estimate 171:18	execution 27:17	168:4,8	89:18 93:11,17
Eurostile 6:2 98:8	28:3 29:9 95:9	exhibits 4:1 6:1	111:21 141:2,3
98:13 99:12	166:8	7:1 8:1 28:23,24	142:11,13 143:25
evaluating 47:21	executions 24:15	147:25	145:3,7,17 157:11
Evans 66:20	executive 45:11	existence 13:10	157:20 158:2,7
event 15:12,16	exercise 111:2	exists 14:4	162:12
59:11 60:16 167:8	exhibit 4:8,9,12,14	expanding 25:10	facilities 11:20,22
169:3,18	4:16,18,20,23 5:2	expected 9:22 69:6	facility 12:12
events 14:11,25	5:4,7,9,12,13,14	76:12 77:12	37:20
74:23 123:3	5:16,18,21,23 6:2	expense 64:1	fact 45:21 60:12
168:22,24,25	6:3,4,5,7,9,10,11	expensive 12:11	63:1 72:14,17
169:1,10	6:12,13,14,16,17	experience 13:12,14	73:4 82:1,2,11
eventually 65:19	6:18,19,20,21,22	34:11 42:24 43:15	92:15 94:25 108:4
93:20 109:1	6:24 7:2,3,4,5,7	45:19 56:7,18	114:10 118:6
everybody 9:8 15:4	7:8,9,11,12,14,15	87:11 108:25	125:24 126:10
86:2 110:3	7:16,17,18,20,21	125:22	129:13,19 132:20
everyday 20:15	7:22,23,24 8:2,3	experienced 37:19	136:20 143:13,16

Ron Wilson
October 29, 2015

166:16 167:19	57:20 62:7 66:16	104:15 105:24	follows 9:6
factories 16:23	66:17 70:19 74:14	111:23 116:2	font 6:2,3 97:12,19
58:16 86:22	79:25 86:11	117:25 118:2,23	98:8,10 99:13
104:20	fighting 48:12,14	119:10 120:18	119:16
factory 17:1,7	50:3 74:15,15	124:18 150:12	fonts 99:4,6
18:21 58:19,20	figure 53:6 63:20	163:8 165:5	foolish 40:12
59:4 104:19,21	66:1 80:4 81:12	166:20 171:23	foot 14:18
106:2,3,4,6,8	86:4	firsthand 65:21	football 11:14,15
facts 82:5 122:3	figured 80:21	fit 35:14 38:23	46:2,7 59:6,8
161:8	Figuring 24:17	39:2 43:3 60:6	footwear 91:14
failed 82:15	file 91:1 161:2	61:8 86:11 92:19	forces 153:20
fair 83:5 120:11	filed 30:5,6 36:23	93:14,15 97:17	foregoing 174:6,11
faith 38:8	91:12 161:4	104:3,8 108:24	176:8,15
fame 149:7	filing 160:22	fitness 6:7 7:12,16	foremost 88:5
familiar 41:12	filmed 58:5	11:16,23 12:3	forever 86:22
135:16 137:20	final 12:21 51:1	13:13 63:6,13	forget 44:12 83:16
158:25 159:25	60:24 69:10 84:23	87:2 103:3 111:7	forgot 109:7 110:21
familiarizing	90:13	111:24 138:13	form 39:9 64:24
166:14	finalize 152:24	139:6 145:7 146:5	132:24 141:20
family 17:10	finalized 69:5,6	146:6,19 147:25	format 48:17
fan 46:21 112:23	finally 38:4 85:8	148:25 159:1,6	formation 37:2
132:22	87:15,17 95:25	160:4 165:23	formations 160:15
fans 19:7 47:14	finance 21:13	168:17,22,24,24	formed 12:1 49:5
fantastic 14:5	finances 64:13	169:6,14 172:24	75:3,7,9,11,11,12
far 98:16 141:24	financial 51:8	fitting 39:3 62:22	former 45:10 46:7
143:9 145:19	63:23 122:17	five 13:9 18:5 74:7	formfitting 43:3
172:7	financials 19:21	five-minute 115:14	127:20
fashion 25:14 26:6	financing 42:7	171:1	formulating 166:14
32:5,20 35:24	65:12	fix 103:23	forth 176:12
81:8	find 36:20 41:5	fixing 103:23	fortuitous 19:24
fasten 57:7	58:22 66:6 71:13	flag 11:14	fortunate 32:7
fat 56:24	81:7 86:8 88:21	flap 108:23	fortunately 18:25
favorite 97:5	88:23 97:20 134:9	flat 115:8	87:18 109:17
fear 15:7	149:13 156:7	flat-out 80:6	Fortune 16:18
fearful 111:1	160:19,22 161:2	flattering 138:8	forwarded 82:8
feature 110:21	166:23	flew 58:11 75:15,23	found 12:15 22:24
111:25	finding 38:6,21	100:15	23:13 24:23 26:16
featured 139:5	94:24	flexible 43:8	27:2,16 28:2,13
February 5:17	fine 93:4	flipping 126:16	29:8,19 30:1 48:2
feedback 97:2	fingers 25:21 26:16	Floor 2:4	52:25 82:23 108:9
feel 112:25 124:14	61:3	Florida 75:8,16,23	131:16
151:12,20 153:3	fingertips 26:11	76:1 79:20 80:9	foundation 73:10
feeling 46:18 96:18	finished 76:24	169:3 172:19	147:21 161:9
fell 32:19 64:10	finite 38:14	flow 21:6 30:11	founder 41:16 42:6
84:15	Finland 77:10,21	39:21	165:6
fellow 13:7	fired 83:4 85:11,12	Flower 2:4	four 8:5 18:4 25:14
felt 42:14 92:2	85:13 91:13 106:8	flying 58:14 75:25	51:6,24 52:4
96:3 107:5 108:22	166:25	85:18	69:15 90:15 168:9
female 95:13	first 15:4 16:5	focus 103:22 164:22	four-way 56:25
females 15:11	17:10 18:4 30:25	focused 59:18	57:14
feverishly 102:6	35:9 41:10 47:19	fold 79:19	four-year 52:5
fictitious 87:25	50:17 55:7 59:20	folks 44:15 58:13	fourth 16:5
fight 55:13,14	62:14 66:15 71:12	59:12	frame 4:11,13,15,17
60:17 62:10 67:24	76:22 78:16 87:10	follow 58:10 84:1	4:22 5:3,5,8,11
67:25 125:6,10	87:20 88:5 92:3	followed 48:20	23:19 47:24
fighter 53:11 66:19	92:10 94:11 97:5	following 15:14	136:17 155:14
fighters 48:10	100:4,4,9,17	59:21 72:9 139:5	frankly 166:16

Ron Wilson
October 29, 2015

free 12:5 166:13
Friday 92:6
friend 13:7,25 14:8
friends 32:24 79:1
 85:15,16,21
 106:12
front 14:1 23:19
 24:22 29:19 57:5
 92:20 104:4 107:8
 132:1 133:4
 135:11 138:12
fruition 160:16
frustrates 165:8
fulfillment 74:11
full 23:4 27:2
 38:18 137:7
 176:16
fully 76:12
fun 52:15
function 114:19
 172:25
functional 53:7
 61:8 63:6,13 87:1
 103:3 165:23
functionality
 103:19 104:6
fund 38:7 39:24
 64:1 107:4
fundamental 50:18
 80:11
Fundamentally
 150:17
funny 138:11
further 111:24
 171:3 173:13
 176:18
future 135:19 153:4
 165:20 166:4

G

G-o-u-g-h 79:21
game 38:3 52:8
games 60:15 61:19
 61:24 100:6,9,11
 100:13 105:4,9,14
 106:17,25 110:20
 121:7,11 169:1
garment 5:16 6:5
 38:23 104:4
garner 63:11
gate 59:19
Gathering 41:19,19
 42:17 45:1,3,10
 45:12 46:25 49:7
 51:13 58:13 59:18
 60:2 63:22,24
 65:2,23 68:11

69:10 70:1 74:10
 76:25 89:7 90:16
 93:10
gear 6:8 56:23
 62:14 111:7,24
 113:17 123:21
 162:21,22 164:3
Geico 98:14
gender 95:10
general 13:17 15:25
 16:4,9 17:6
generic 147:12
geographically
 172:16
geometric 50:23
 150:18
George 62:10
getting 19:6 33:12
 35:3 40:22 46:23
 46:24 47:2 59:9
 64:16 69:13 74:5
 82:21 86:10 87:12
 96:23 111:1 112:2
 121:4 137:2
getups 61:9
gigs 123:20
girl 78:24
give 28:23 63:8
 70:6 71:23 74:13
 76:3 81:5 84:11
 84:14,22 85:1
 87:17 113:22
 125:19 154:11
given 46:25 132:23
 149:6
giving 78:15 97:2
 111:7 164:15
glad 153:6
glance 173:3,5,9,10
glasses 80:8
Glen 66:12,14,15
 67:1,1,8,18 68:1
 68:11,19 70:11
 71:6,6 72:3,17
 73:1,11 74:4
 75:16 77:7,20
 78:4,22 79:14,24
 80:9,25 81:19,20
 82:3 83:13,24
 84:12 105:23
 118:4,6,8
Glen's 80:24
glove 26:3,5,5,6,6
 35:10 70:2
gloves 25:20 26:12
gnurling 114:15
go 10:21 11:20

15:20 17:10 18:11
 20:22 26:10 33:9
 35:18 37:22 39:11
 43:9 44:18,22
 52:1 54:20 56:15
 57:5 58:19 61:12
 61:19,24,25 62:5
 63:19 66:2,5,6
 67:24 70:23 71:13
 72:17 73:4 75:24
 81:16,21 86:15
 89:17,19 90:25
 93:6,7 94:6,8
 99:1,5 124:17
 132:14,14 133:3
 138:4,17 141:17
 141:25 142:3,8
 152:23 154:15
 155:8 158:3,4
 162:11
goal 17:20,21 18:2
 18:6
goes 32:22 108:23
 141:25
going 9:10 13:1,1
 15:7 16:6 19:17
 20:4,5,6 22:1,14
 27:5 30:21 36:2,9
 36:18 43:23 45:16
 48:15 52:3,6
 53:24 54:1,20,21
 58:4 61:16 62:17
 64:20,22,24 65:15
 66:4 67:9 69:2
 71:14,18 73:4,5
 73:12 79:2,6 80:5
 80:9 82:1 84:4
 85:9 86:15,18,19
 91:15 95:14 96:15
 98:2,16,18,25
 99:14 100:20
 102:7 103:4
 108:12 110:13
 111:14 113:1
 115:11 116:15,19
 117:14,21 118:19
 119:23 123:11
 130:1 131:10
 133:8 134:18
 137:17 139:11
 140:18 141:11
 142:14 143:4,10
 143:17 149:17
 152:15,17 154:3
 154:19 155:12
 156:8 158:10,12
 161:7 162:10

165:9 166:4 168:1
golf 41:21,24 42:1
 46:16 47:1 58:15
 70:1 106:4
good 10:25 11:21
 14:14 17:11 20:12
 49:23 63:2 67:8
 80:10 83:3,6
 94:21,22 111:8
 114:18 120:3
 123:21 126:15,24
 169:9
goods 20:15 30:2
 43:16 46:11
 170:15
Google 8:4 88:21
 89:24 92:4 99:8
 145:3
gotten 25:12 61:20
 83:23
Gough 79:21
government 34:15
grad 17:14 19:12
graduate 16:14
graduated 16:16
 18:18
graphics 113:21
grappler 114:24
grappling 61:13
 113:18 114:19,25
 115:5
gravitating 95:4
great 14:18 24:17
 32:24 39:3 49:12
 52:10 58:25 77:2
 85:16 105:19
 106:13 109:2
 112:24
greatly 89:4
Greece 124:2
grommets 108:6,8,9
 110:23
ground 51:17 56:15
group 2:8 9:13
 71:25
grow 12:16 20:24
growing 42:12 48:6
 59:22 165:18
grown 13:9
growth 37:17 63:8
grumblings 64:16
guards 114:11
guess 10:21 70:8
 71:11 75:1 90:2
 91:12
guru 79:20
guy 67:5,7,12 70:21

Ron Wilson
October 29, 2015

77:16,21 78:15 80:24 83:15,16 guys 49:24 56:10 62:16 64:11 65:20 65:25 71:17,20 81:4,8 115:1 139:4 guys' 66:7 gym 12:5 13:14 61:7 125:7 145:6 146:5 147:22,25 151:10 153:11 157:14,20 160:12 162:3,7,11 169:17 gymnast 14:16 gyms 159:8 161:23 162:1,6,10,13 163:25 164:1,6 168:19	54:6,25 55:18 91:5,21 98:23 102:19 110:11 111:12 112:16 113:10 115:20 116:24 120:11 130:6,20 132:5 133:13 134:6,22 135:5 136:3 138:25 139:19 140:10,24 142:20 143:22 144:16 145:13 146:2,12 147:3 148:7,20 149:23 154:24 155:22 156:14 157:7,24 159:16 161:14 168:7 handle 64:6 90:1,2 90:22 handler 67:6 hands 25:20 86:8 hanging 44:10 happen 30:15 49:11 49:18 52:6 79:3 85:9 86:8 151:21 happened 12:25 39:20 40:16 44:25 58:16 62:4 63:17 63:24 65:14 66:17 67:24 68:17 69:8 69:21 70:10 71:4 73:22 75:14 76:19 82:6,19 83:20 85:19 92:5 102:5 108:11 119:20 160:15 happening 37:14 63:6 64:15 68:12 106:5 happens 161:3 167:5 happy 17:11,12 52:4 73:17 77:2 97:4 hard 37:22 113:22 harder 124:1 hate 80:18 hated 56:8 Hayabusa 115:5 head 16:21 18:20 43:14 102:2 headaches 122:16 headgear 91:14 heading 46:7 headliner 62:11 headphones 41:11 headquarters 16:22 37:21 121:4	headwear 49:19 91:14 health 6:7 76:7 110:18 111:4,23 139:7 hear 64:17 70:13 117:25 118:23 heard 66:15,20 67:11 80:15 81:18 118:2,5,25 119:1 119:4,5,22 144:25 165:19 hearing 30:17 64:16 hearsay 11:6 13:19 19:18 30:22 65:16 73:16 98:17,19 99:16 100:21 101:15 102:8 113:3,4 115:13 116:18 117:16 118:20 119:24 120:5 129:10 130:2 139:12 140:6,20 142:16 144:10 149:19 155:15 156:10 heavily 12:20 38:15 42:23 165:20 heavy 124:17 132:14 155:8 hedge 38:7 Heidi 116:12 height 21:4 29:24 30:12 held 19:10 23:1 65:24 80:13 87:16 162:20 helmet 46:2 helmets 46:5 help 23:24 32:4 37:24 42:1 46:8 83:12 96:8 100:23 107:9 helped 26:1 hereunto 176:21 hey 14:2 31:3 67:22 71:17 80:15,18 90:17,19,24 109:16,23 123:4 129:17 high 11:15 81:4 89:24 151:4,6 high-level 45:10 high-performance 37:13 high-tech 152:13 higher 115:4	highest 131:8 highly 116:8 132:24 hindsight 77:17 Hingle 58:18 hip 109:10,12 hire 51:19 64:12 hired 16:3 83:11 hiring 13:15 his' 162:23 history 15:20 163:7 163:8 hit 56:20 57:9 58:17 81:9 hitting 109:9 hold 15:1 153:19 home 20:1 67:2 85:14 107:3,4 156:21,23 Hones 83:14 honestly 105:20 171:17 172:22 hooks 57:3 hopefully 17:22 43:2 81:6,8 hot 62:15 66:3,3 hottest 42:11 111:6 hour 16:4 71:11 82:14 hours 83:8 84:23 90:12 95:24 house 43:1 85:17,19 94:25 113:18 115:10 Houston 16:22 Huffington 139:8 hug 76:25 huge 65:7 human 83:25 hundred 18:23 168:21 hundreds 49:18,19 49:20,20 95:23,23 169:5,11 Hurley 168:11 169:18,22 Hurleys 31:24 hurts 153:8 HVAC 25:22 26:8 Hy, ' 136:16 hybrid 1:5 4:3 6:24 7:2,4,5,7,8,9,11 7:12,14,15,17,18 7:20,22 9:14 34:25 35:1,1 49:13,13 61:1,16 63:3,14 86:25 87:22 88:11,14
H			
H 8:4 99:11 120:22 120:23,24 122:10 122:12 128:7 135:13,20 136:18 136:19 137:3,8,9 137:14 143:9 144:24 149:11,11 149:12 152:11 159:2,5,22 160:3 160:3,13 164:24 164:25 165:8 171:8,8 173:4,4 H's 154:10 164:22 173:11 H-a-y-a-b-u-s-a 115:5 H-o-n-e-s 83:15 H2 56:7 H20 41:9 42:3,18 44:14 45:15 haco 36:6 49:20 half 17:5 151:5 hallway 77:15 Hamilton 35:3 44:11 Hammerhead 7:24 159:1,6 hand 4:18,23 28:22 64:4 94:20 hand-to-hand 167:14 handed 10:7 158:21 handful 95:25 handing 21:19 22:21 23:8 24:10 25:6 26:21 27:10,22 28:8 29:4,15 36:14 37:4 52:19			

Ron Wilson
October 29, 2015

103:2,14,24,25	Hylete's 114:18	impaired 166:9	initiatives 105:22
104:23 118:24,25	116:1 153:15	importance 30:7	injury 77:19
118:25 119:3,4,5		important 30:18	inquired 46:1 76:21
119:8,11,12	I	38:23 130:14	inside 26:3 57:4
120:24 122:22	Ian 123:5 157:16	impressed 170:1	93:22 95:19 104:7
128:9 129:14,18	167:20	impressions 94:2	110:24 111:1
130:12,15 131:24	Ian's 121:22 132:13	impressive 116:7	128:18
131:25 133:18,21	155:7 166:21	improve 14:3 103:19	insistence 20:8
133:22 134:15	icon 92:7,9 93:14	107:19	inspection 167:5
135:13,20 136:16	93:15 97:11 133:2	improvements 111:25	inspirations 92:8
136:21,22 137:14	150:3,4 152:7	inadequate 11:23	Instagram 6:21
137:21,23,24	153:15 166:17	included 60:3	135:8
138:6,18 139:3,9	168:10,10,11,11	131:20 170:17	instance 43:5 163:9
139:15,23,24	170:17	including 25:11	164:6
140:1,2,15,17	icons 5:23 8:5	59:3 65:25 82:7	instrument 151:1
141:2 142:11,23	167:18 168:9	103:12	insult 77:19 141:14
142:25 143:2,2,3	idea 19:8,12 24:14	income 52:10 160:12	141:19
143:8,15 144:1,2	25:19,21 33:10,22	incorporating 87:2	insurance 76:7
144:4 145:4,4,6	40:12,13 53:18	incorrectly 82:15	intact 52:12
145:19,21 146:5,7	163:6	independent 28:19	intellectual 24:20
146:18,19,20	ideal 103:2	40:23	25:16 30:7,20
147:12,22,23	ideas 18:14 30:10	INDEX 3:1 4:1	50:1 54:12 73:6
148:13 149:9	30:13 32:9 35:10	indicate 155:5	84:21 87:6 103:12
150:4,15 151:2,17	79:23 87:3 88:25	indicated 18:5	159:25
152:7 155:2 156:1	166:1	24:25 119:15	intention 147:14
156:3,22 157:11	identical 125:16	indicates 155:4	interested 45:16,24
157:20 159:22	identification 10:4	157:15	67:13,14 176:20
160:2 162:25	21:16 22:18 23:5	indicating 125:22	interesting 41:19
166:17 168:11	24:7 25:3 26:18	indication 125:21	163:5 165:3
170:24 171:8	27:7,19 28:5 29:1	individual 18:10	interests 122:23
173:4	29:11 36:11 52:16	42:25 60:8 66:11	123:1
Hybrid's 122:10	54:3,22 55:15	101:9	interior 113:23
Hylete 1:8 4:3 5:23	91:2,18 97:22	individuals 58:8	114:6
6:9,13 7:17,21,23	98:20 100:25	industrial 10:23	interlocking 94:10
9:16 10:16 88:12	102:16 110:8	43:1 46:16,21	intermediary 68:19
88:22 89:5,18,23	111:9 112:10	51:12 64:9	internal 46:6 51:18
89:25 90:9 91:11	113:7 115:17	Industries 16:18	112:2 153:9,19
93:18 97:8,9,11	116:21 120:8	17:16	international 30:6
97:12,14,16 98:10	130:3,17 132:2	industry 34:4,5,5	77:7 78:14,16
101:19 103:9,11	133:10 134:2	34:18 38:24,25	91:13 123:20
105:24 106:24,25	135:2,25 138:21	46:11 47:1,22	159:23 160:3,6,17
107:13 110:6,17	139:16 140:7,21	48:7	160:23 161:3,4,4
112:24 113:17	142:17 143:19	inexpensive 109:18	164:23
115:6 116:5,13	144:13 145:10,23	infatuated 31:21	interned 19:25
117:2,11 119:8	146:9,21 148:4,17	infinite 93:23 94:9	internet 6:8 110:17
120:22,23 121:21	149:20 154:21	94:17	133:15 167:12
122:10,12 127:15	155:19 156:11	infinity 94:6,9,12	internships 18:9
128:11,14 129:19	157:4,21 158:18	94:15 95:19	interrupt 141:8
132:17,21 136:16	159:13 161:11	infomercial 20:19	interrupting 141:12
136:20 137:15	164:12 168:4	information 71:23	141:16 142:7
147:11 150:3,13	identified 53:14	72:5,12 80:11	interviewed 41:8,23
152:17,18 156:19	identify 9:9	85:5 144:7	45:13
156:21 158:2,6	illustrator 96:10	informed 84:4 163:3	introduced 92:21,22
163:7,13 166:17	152:25	initial 17:25	introducing 43:10
168:10 170:20	images 165:5	121:17 129:23	97:25
171:8 172:12,15	immediately 57:24	171:22,22	introduction 122:9
173:4	70:10	initiative 105:16	invention 55:25

Ron Wilson
October 29, 2015

76:11	jackets 34:15 62:16	jujitsu 50:19 56:6	knee 109:9 127:19
inventor 23:2 28:17	JACO 5:12 36:3,5,8	61:2	knee-high 105:25
103:16	36:21 37:15 38:16	July 4:17,22 69:20	kneeling 50:18
inventories 38:16	39:15 40:6,18	105:6,7,11	knew 32:22 33:20
inventors 26:2	49:7,20 50:10,12	jump 61:9	45:18 59:4 62:3,3
inventory 64:3 65:8	51:6 53:20 55:7	June 5:13	62:4 71:7 77:17
73:6	55:10,14 57:18	junior 12:19	83:7 87:18,18
invest 19:9 33:14	58:6 59:15,22	justice 131:23	93:8 113:25 119:5
33:15	60:11,17 61:21		136:17 170:10
invested 19:11	63:3,25 64:9,14	K	know 9:20 11:3 14:2
166:1	65:25 66:3,3,18	K-1 38:3 74:17	15:14 28:23 29:22
investing 52:5	66:25 67:10,14	karate 56:19	30:5 39:10 45:15
165:20	68:3,15,22 69:21	Karen 79:21 80:4,6	45:19 47:15,20
investment 38:1	69:23 71:4,20	81:21,22,23,24	52:3,6 53:20
47:3 65:7	72:1 73:1,8,20,22	82:7,8	54:12 58:8 60:15
investments 47:1	74:14 75:6 76:3	keep 80:10 108:25	63:3,18 65:20,25
investor 66:6 86:9	77:9,9 78:25 79:4	122:19 153:1,23	67:18 69:11,12
investors 165:25	81:3 82:9 86:5,9	keeping 52:11	71:18 72:21 74:10
involved 11:10,16	86:15 87:4,12	149:14	74:14 76:7 78:16
11:19 12:19 14:11	89:12 90:16 93:19	keeps 154:15	79:8 80:3 85:9,24
21:9,11 22:9 25:9	103:11,12,13,14	kept 48:7 52:13	86:19 93:2 97:15
41:2 42:23 64:13	103:24,25 104:23	82:3 88:12	102:25 105:7,9
78:20	105:21 106:9,10	kettle 117:7 159:5	108:21,24 109:5
involvement 118:13	106:11 107:15,16	Kettlebell 7:24	118:12,14,14,15
IP 2:8 9:13	107:17,18,19,21	Kettlebells 61:9	118:16 119:17,25
iPod 41:10 42:10	108:7,19 109:22	Kevin 165:6 170:11	120:2,7 121:25
43:5	110:5 118:4,5,10	key 84:6,7 109:7	126:1 128:18
iPods 34:20	118:13 119:18	kick 57:12	129:15 131:23
Iron 75:17	121:21,25 122:15	kickboxing 87:1	135:11 136:13,18
ironic 166:23	124:10 125:24	kid 90:6	136:19 138:1,14
ironically 70:25	128:9 129:6,18	kind 12:14 13:16	149:6 159:6,24
74:8 85:17 94:18	130:15 131:24,25	15:6 24:14 25:15	160:14 163:6,12
108:17 166:19	133:18,22	32:2 35:3 36:1	163:15 165:6,7
irrelevant 15:18	jacovida.com 40:19	37:16 38:9,13	167:10,12,20
27:6 54:2 116:18	jagged 126:18	44:18 45:20 49:13	174:6
116:19 132:19	January 4:13 5:15	50:16,19 60:13,23	knowing 13:15
143:8 152:16	Jason 62:8	60:23 61:9,12	knowledge 15:13
154:4,20 165:16	Jentgen 121:13	62:3,25 66:10	16:25 19:20 25:23
168:2	124:6 125:12	67:6,7 68:19	34:6 64:22 65:16
isolation 150:23	128:23	74:20 76:9,23	65:21 118:21
issue 87:14 119:7	Jentgen's 6:15	77:14,14 80:13	119:24 120:2,5
143:8,11 147:16	120:16 155:7	82:7 84:1 85:21	122:3 131:11
164:6	157:16	85:23,24 86:4	134:16 144:11
issued 22:11 102:23	Jeremy 79:1	87:4,5,6 88:16,17	149:19 158:15
issues 87:12 122:14	Jim 47:12 65:22	89:7 90:18 93:14	161:10 168:3
143:10	68:20 71:13,16,17	93:22,23 95:10,21	174:8
Italian 65:5 87:16	132:24	96:8,8,19 97:2,4	known 86:3,22
Italy 124:2	job 18:9 41:9 45:15	97:6,19 106:21	knows 79:8
item 124:19 151:11	46:14 47:19 51:21	109:19 115:6	Kosma 2:9 3:7 9:12
items 43:18 105:14	76:3 80:20,21	121:10 124:17,19	9:12 11:5 13:18
144:24	96:22 141:14	126:6,11 128:5,8	13:23 15:17 19:17
iterations 96:14	jobs 31:2 71:3 76:1	128:15 133:5	22:1,13 23:11
	John 2:3 141:9	152:24	24:6 25:2 27:4,12
J	johnbegakis@tsir...	kinds 31:9 35:16	27:25 28:11,22
J 2:9 50:17	2:5	47:6 78:13 90:22	29:6,17 30:21
J-A-C-O 36:6	JTS 148:13	138:19	36:9,18 37:6 39:8
jacket 62:17	judge 9:21 15:15	kitchen 95:1	52:22 53:21,24

Ron Wilson
October 29, 2015

54:18 55:3,21	Larry 35:3 44:11	Leucadia 74:5 79:22	45:13 60:13 67:20
64:20 65:15 73:9	Las 48:22	level 10:20 52:1	69:7 73:18 75:2
73:15 91:15 92:20	late 38:3 168:14	56:6 58:2	78:7 83:10 86:5
92:24 96:15 98:2	late-night 20:19	levels 122:11	87:19 88:10 96:5
98:16,25 99:14,21	lately 151:8	leverage 33:19	102:23 109:21,24
99:25 100:20	launched 48:15	51:18 74:9	141:13 172:20
101:5,14 102:7,11	59:10 110:19	leveraged 50:9	little 19:25 38:3
103:4 110:7,13	launching 45:24	93:25	39:5 43:2 48:17
111:14 112:8	57:25	license 41:24,25	53:17 57:10 63:20
113:1 115:11	launchpad 105:15	59:8 60:8	81:14 88:1 103:22
116:15 117:14,21	law 2:3 84:22	licensee 41:21,22	108:4 109:6
118:19 119:23	lawyer 76:23	licensing 46:1	126:14 127:20
120:4 122:1	lay 154:16	life 78:18 153:12	170:9
123:11 124:7	layer 58:24	169:6	live 10:13,14 39:25
125:13,18 127:7	layman 121:17	lifestyle 31:16,20	51:21
128:24 130:1	lead 20:7 166:5	32:4 33:18 40:8	lived 170:13
131:10 132:19	leading 36:10 99:21	50:5 61:1	livelihood 166:3
133:8 134:17,24	99:25 101:16	lift 133:25	living 33:13 85:17
135:21 137:17,22	110:7 120:5 122:1	lifters 11:25	LLC 1:5 5:12 36:24
139:11 140:4,18	123:12 125:16,18	lifting 133:24	68:23 73:8,23
141:6,9,24 142:14	127:7 128:24	lightweight 114:7	75:6
143:4,17 144:5	131:12 134:17	liked 20:17 32:17	local 12:25 85:15
145:8,22 146:8,23	135:21 137:22	43:22,24 44:16	location 12:24 17:2
147:17 148:2,14	140:19 143:6	48:20 53:11 81:13	locations 66:24
149:17 150:7	146:23 150:7	88:13,20 92:11,14	Loco 75:21
152:15 154:3,19	154:5 159:4	92:15 125:3 126:8	loft 81:15
155:12 156:8	163:22	likes 157:16 158:8	logo 36:8 50:11
157:3 158:10	learn 89:16	liking 125:24	51:7 54:13,15
159:4,10 161:7	learned 92:18 94:21	limited 79:14	87:8,9 93:8,9,16
163:22 164:10	150:18	106:16	96:9 97:8,9 99:18
165:9,16 168:1	learning 18:16	line 15:17 25:13,14	99:19,24 100:4,5
171:6,14 172:1,10	leave 30:24,25 73:5	27:5 38:18 42:25	101:9,12,18,19
173:13	81:4 82:1 107:5	48:25 54:2 104:25	102:4,12 108:20
	leaving 78:8	105:3,17 116:18	117:12 119:9,11
L	left 83:6,7,9 85:6	118:11 120:19	119:12 122:12
L-e-p-o-s-k-y 45:9	96:21,22 107:1	122:6,7,7 123:15	123:2 128:3,4,12
L.L 30:3	109:3,7 112:4	126:3,4 127:13	132:1 133:21
lack 65:16 73:10	128:5 132:1	136:11 143:7	139:24 147:23
98:17,19 99:15	133:20 138:4	151:3,3,12 164:8	150:12,13,14,15
120:4 141:10	150:13 168:9	175:3,6,9,12,15	150:20,24 151:3
144:11,11 146:25	left-hand 117:10	175:18,21	151:18,21 152:1,6
154:1	150:4 152:18	lined 59:4	152:18,19 160:15
lacking 64:21	153:14	lines 95:15 120:19	165:5 169:18
118:21 122:2	leg 23:22 117:10	123:16 124:12,13	170:3,20,24 172:8
148:16 149:18	132:1	127:12 136:10	logos 6:4 7:17
155:13,14 156:10	Legends 115:8	150:16 161:20	53:13 92:1 94:1
161:8,9 168:2	legitimate 50:2	162:14,15 167:15	94:10 101:8,19,21
lacks 131:11 158:13	legs 57:6 114:17	lineup 20:7	150:6 151:19
laid 151:23	length 80:4 167:4	list 97:3	152:3 153:25
Lake 85:18	167:21	listed 22:8,8 28:17	154:2,7,8,11,17
land 34:24 35:19	lenses 23:23,24	97:4,5 139:6	171:16
landing 56:23	Leposky 45:9	141:3	long 44:5 79:9
lane 152:18	let's 63:4,5,5,6	listen 93:2	149:4 170:12,12
lapping 126:17	97:6	listened 42:5 83:1	171:8,15,18 172:2
large 16:10,10,11	letter 50:17 85:8	129:9,11	172:6
18:9 60:1	97:16,17 152:10	listening 171:7	longer 13:5 39:23
largest 48:13	letters 99:7	literally 18:24	103:11 107:18

Ron Wilson
October 29, 2015

137:14	51:23 52:13,14,15	managed 69:24	59:14,16 60:5,5
look 28:24 34:1	58:14 59:2 61:20	management 16:20	61:17 86:25 103:3
47:4 62:21 63:2	63:14 66:4 70:17	17:19 48:9 49:4	143:8
97:19 99:6 108:14	72:20 78:20 88:8	51:17 53:10 67:4	marketing 42:19,22
108:16 110:6,25	89:1,3 92:18 94:7	manager 17:1 66:16	42:22 44:20 46:9
111:3 114:18	95:7 105:23	managing 48:10	51:11 60:6 64:3
119:14 121:16	107:12,24,24,25	71:14 78:23	79:20 116:8 166:9
123:4 127:3,18	113:20 122:11	maneuvering 77:4	markets 172:17
133:3 135:10	123:9,22 124:9	maneuvers 78:13	martial 47:11 49:14
142:3 150:6,10,11	126:16 129:16	manufacturer 100:15	50:19 56:14 63:5
150:23 151:8,10	138:7 145:5 152:2	manufacturing 16:11	87:1 102:1 138:12
151:19 152:3,8	152:8 154:11	16:20 25:24 31:2	Martinez 6:23 136:9
154:7,9,18,18	159:7 160:8	map 57:15	136:9 137:6,7
156:22 167:7	161:25 162:10,12	March 83:9 85:12	144:21
170:12	163:24 164:21	91:12 100:12	Maryland 36:24
looked 18:14 33:24	165:24 166:5	105:7	40:10
41:5 48:16,17	169:7,13	Marion 75:20	matador 51:2,3
50:17 51:21 92:2	lots 104:20	mark 36:7 45:9	match 62:10
94:11 95:17 99:19	lounging 114:20	91:11 92:15	matched 128:7,11,12
99:24 100:18	love 81:3,3,3 109:2	marked 4:7 10:4,8	matches 151:12
102:2 108:19	116:14	21:16,20 22:18,22	material 58:22,22
117:18 121:25	loved 32:15 44:8,10	23:5,9 24:7,11	120:25 126:15
127:23 135:8	50:6 79:2	25:3,7 26:18,22	127:16,17,21
155:10 156:6	loves 167:22	27:7,11,19,23	128:19
172:7	low 109:4	28:5,9 29:1,4,11	materials 58:21
looking 17:7 31:24	lower 128:5 132:1	29:15 36:11,14	Matt 67:23,25 70:17
34:6 40:11 42:1	Lower-Body 5:16	37:5 52:16,20	70:23,25 75:18,19
45:20 47:22 49:3	luckily 86:14 90:5	54:3,7,22 55:1,15	77:5 78:14,21
62:17 82:21 87:20	108:14	55:19 91:2,6,18	79:8,8,9 80:14,17
88:2 92:10 94:6	Lululemon 112:5	91:22 97:22,25	80:18 82:1 85:16
104:9 111:22	lunch 83:24 85:21	98:20,23 100:25	86:18 107:3
118:15 152:2,12		101:4 102:16,20	113:16 118:6,7,8
154:8,13 156:3	M	110:8,12 111:9,13	119:7,13,14,22
172:2	machine 130:11	112:10,17 113:7	132:20,23
looks 30:16 101:20	176:13	113:11 115:17,21	matter 72:14 94:25
101:24 102:12	Macine 6:16	116:21,25 120:8	107:6 108:3
128:20 136:18	Macy's 30:1	120:12 130:3,7,17	132:17 160:10
150:25 151:15	magazine 135:16,18	130:21 132:2,6	165:14 170:22
152:13 167:3	magazines 135:16	133:10,13 134:2,7	174:5
173:11	magic 48:21 169:6	134:22 135:2,5,25	matters 149:10
loop 56:23	Mahala 42:6 44:7	136:4 138:21	174:8
looser 114:2	majority 46:24	139:1,16,20 140:7	MBA 17:18 19:6
Los 2:4	65:23 68:20	140:11,21,25	McConnell 44:13
lose 31:8 63:4	maker 41:10	142:17,21 143:19	McDonald 62:8
losing 74:21	makers 41:10	143:23 144:13,17	mean 16:1 34:4 73:5
lost 80:23 81:2	makeup 39:7	145:10,14,23	127:1 136:14
89:15	making 4:10,12,21	146:3,9,13,21	141:13 162:18
lot 11:24 12:17	5:2,5,7,10 17:11	147:4 148:4,8,17	165:6
13:2,14 15:20	43:13 93:9 95:19	148:21 149:20,24	meaning 31:12 35:2
16:12 18:14 19:4	106:12 116:6	154:21,25 155:19	38:23
20:10,25 21:6,12	153:1	155:23 156:11,15	meant 74:1 94:15
25:23 28:20 30:8	male 95:12	157:4,8,21,25	114:13
30:11,12,13 31:3	males 15:10	158:18,22 159:13	mechanism 35:13
31:6 32:12 33:7	mall 12:25 13:4	159:17 161:11,15	meet 17:25,25 20:8
36:3 37:21 39:1	man 110:2	164:12,16 168:4,8	76:7 105:17
42:23 44:12 45:18	manage 89:10,13	market 38:5 47:16	meeting 11:24 19:10
47:5,8,8,10,17,17	169:24	47:18 48:2,4,4,5	65:22 72:17 77:5

Ron Wilson
October 29, 2015

77:6,22,25 83:8,9 meetings 43:17 77:11,19 members 12:8 13:11 membership 12:3 men 35:17 106:14 men's 6:7 38:19 110:18 111:4,22 139:6 Mens 116:1 mentioned 44:7 67:11 122:11 124:24 125:2 merger 47:23 mesh 126:23 message 13:6,25 14:7 83:10,13 133:5 met 18:5 20:20 44:14 72:9 83:16 85:20 105:18 metal 108:7 Method 4:10,12,21 5:2,5,7,10 Michael 2:9 9:12 mid-length 53:16 midafternoon 85:21 middle 151:2 Mil 10:14 military 34:9,10 102:3 military/first 116:12 mill 108:5 million 19:15 20:11 29:24,24 34:14 42:7 59:21 66:5,5 69:4 73:19 77:1 mind 103:1 133:25 151:21 mine 127:2 minority 47:13 mirrors 122:13 misspell 88:8 misstating 122:4 mistake 80:7 mistook 85:5 misunderstand 85:2 mixed 47:10 49:14 50:19 56:14 63:4 87:1 138:11,13 mkosma@whipgroup... 2:11 MMA 47:16 48:10 50:6,13 53:11 56:3 59:19,21 61:7,7 63:1,10,21	72:21 74:23 86:11 87:2 125:25 148:13 MMA-inspired 126:6 model 19:8 modify 58:25 molds 43:7 124:21 moment 61:21 money 17:11 21:13 32:12 33:14 38:4 42:9,16 51:23 64:11 67:12 73:19 106:12 monkey 117:6,9 months 72:22 77:3 122:20 morning 56:8 155:17 156:1,19 mortgage 107:3 motivated 116:8 move 25:22 56:25 80:9,20 109:13 116:9 moved 13:3 40:16 70:6 109:10 movement 63:6 126:14 165:21,23 movie 79:4 moving 109:3 Muay 56:19 57:12 mud 35:5 Mudder 114:20 multiple 28:22 30:1 38:20 138:18 Munn 2:14 9:14 Muscle 135:17 mutt 138:10 myfont.com 97:20	35:22,22 87:21 89:1,3 Nano 43:5,5 narrative 39:10 64:23,24 124:8 Natalie 44:13 natural 34:19 nature 11:14 13:16 32:17 38:17 44:20 64:17 65:13 74:21 76:11 84:7 86:23 92:4 99:7 107:10 110:4 126:24 149:8 169:22 172:21 nauseam 33:9 near 118:2 neatly 35:14 need 17:2 36:1 49:16 58:24 66:1 71:12,21,23 74:19 83:2 87:5 89:14 89:14 115:15 needed 32:11 39:22 39:23 41:4,4 58:3 65:11 70:14 74:7 77:23 81:23 84:8 88:6 89:12 96:8 103:18 needs 49:11 61:4 negative 20:16 negatively 122:24 negotiated 76:23,24 negotiation 68:11 negotiations 68:14 68:21,22 neighborhood 117:19 neither 176:18 net 130:12 139:24 network 18:1 20:1 66:11 networking 89:6 172:22 never 14:13 28:20 44:23 47:16 67:22 77:17 78:2,22 94:22 135:23 147:14 new 19:25 30:13,13 32:23 33:14,15 37:20,20 39:1 42:16 43:10,15 48:14 49:5,16 50:8,9 51:9,17,19 57:13,22 61:15 63:5 64:7,8,19 65:2 75:3,6,24	86:17,19 87:5,5 90:17 102:6,9,24 103:18,23 104:10 104:12,13,14 105:1 107:4,13,18 107:20 110:6 111:6 112:23 160:13,14 172:18 News 139:8 nice 13:11 33:13 84:25 106:7 nickels 95:1 night 52:15 86:13 Nixon 92:12 no-name 31:15 non-public 112:9 nonresponsive 30:22 36:10 39:9 117:23 133:9 147:18 154:20 Nordstrom 30:2 normal 20:14 92:3 Northern 104:22 notable 35:4 66:20 100:3 notably 98:14 noted 107:25 notes 176:17 notice 4:8 10:9 108:13 114:8 noticed 107:21 108:6 notoriety 46:25 61:22 November 4:11,15 176:22 number 22:4 23:3 24:24 48:22,23 55:8 71:2 131:8 157:19 160:9 172:7 number-one 76:2 number-two 48:18 numbers 18:8 97:1 numerous 107:14 139:5 168:25 nutshell 109:14 nylon 127:24
N			
name 9:12 13:6 20:15 23:2 35:6 36:4 44:13 50:10 58:18 66:12,16,21 71:23 75:5 83:16 87:5,7,9,10,16,25 88:6,10 89:5,25 90:2,6,11,12,24 92:2,16,17 93:14 93:18 97:13 102:5 103:15 116:7 118:5 133:1 149:13 163:15 170:17 176:22 named 42:21 66:12 138:10 176:8 names 18:11 35:20			
O			
oath 9:5 object 11:5 13:18 15:17 19:17 22:1 22:13,14 27:5 30:21 36:9,18 37:6 39:8 53:24 54:1 64:20,24			

Ron Wilson
October 29, 2015

65:15 73:9,15	85:9 86:20,20	online 27:2 105:15	120:3 130:24
91:15 92:25 96:16	87:24 88:14 89:21	Onnit 6:13 117:2,4	131:3,9,14,17,19
98:2,16,18,25	90:3 92:2 103:11	open 26:10 114:12	132:10 134:9
99:2,14 100:20,21	118:16 119:22	opened 59:8 83:18	149:1,6 162:24
101:14 102:7	125:25 144:23	operations 74:9,10	Orlando's 118:12
103:4 110:13	157:1 164:24	opinion 34:2 56:11	144:4 145:20
111:14 112:8	165:19 166:7	82:22 121:12,14	146:7 150:15,20
113:1 115:11	169:19,22 171:21	122:9 123:7 124:5	152:6 162:25
116:15,20 117:14	occasions 76:20	125:11 127:5	163:11
117:21 118:19	107:14 169:2	128:22 162:8	outcome 176:20
119:23 123:11	October 1:14 4:4	169:25 173:2	outdoor 30:3
130:1 131:10	6:6 9:2	opportunities 18:9	outfit 49:22
133:8 134:18	odd 117:18	48:8,9	outline 151:12
137:17 139:11	oddity 161:5	opportunity 9:25	outlines 152:20
140:4,18 142:14	offense 77:16	15:5 20:13 34:16	outselling 63:15
143:4 144:5	offensive 138:9	34:22 41:7 42:15	outside 34:4 95:20
148:14 149:17	offer 42:17 86:7	43:23 45:17,21	104:8 110:23
151:23 152:15	109:19	46:8,12 47:18	170:22
153:17,18,21	offered 32:14	49:1,8 59:8 60:21	overall 76:9 151:4
154:3,19 155:12	offering 34:12	63:8,9 71:24	151:4
156:8 158:10,12	106:21	86:10,24	overcome 63:1
159:10 161:7	offerings 47:6	opposed 77:9	overnight 52:6
164:10 165:9	offers 41:9	Opposer 1:6 2:2	57:17
168:1	office 1:1 5:21	Opposition 1:5	overpowering 95:8
objection 11:22	28:4 29:10 70:13	opted 65:9	oversee 166:6
27:12,25 97:15	72:8 74:4 79:22	orchestrate 72:2	overspeculating
99:21,25 101:5	80:10 81:15 83:17	order 22:16 36:19	37:16
120:4 122:1,8	83:18,19,21,22	37:7 54:1 91:17	owed 84:23
124:7 125:13	84:2	93:1 96:17 97:3	owned 32:4 62:8
127:7 128:24	Office's 24:4	98:4 99:1 100:22	74:13 75:16 118:5
132:19 134:17,17	officer 10:18	103:5 110:14	owner 13:19,23
134:24 135:21,21	offices 70:19	111:16 113:2	28:15 68:20 106:8
137:22 146:23	oftentimes 53:11	115:12 116:16	owners 49:6 65:17
147:17 150:7	120:25 121:2	117:16 134:20	67:14
157:3 159:4	122:18 126:17	135:23 139:14	ownership 49:5
163:22 165:16	128:13	140:6,20 142:15	71:19 76:13 82:21
171:10,19 172:4	oh 61:23 78:6 108:1	143:5 144:6,10	owning 121:6
173:6	163:1	146:24 148:15	owns 137:16
objections 23:11	okay 32:21 52:19	155:16 156:10	ox 14:19
24:6 25:1,2 27:4	80:10 83:5 92:24	158:12 159:12	
28:11 29:6,17	96:1 97:6 114:25	orders 40:23	P
52:22 55:3,21	125:17	organically 60:19	P.C 2:3
110:7 124:14	old 58:21 107:21	organization 44:19	p.m 1:15,15 9:2
142:2 145:8,22	152:4	48:14	173:16
146:8,24 148:2	olive 83:2	organizations 74:16	pace 43:11
162:16	Olympia 169:4	organized 81:8	pack 119:8 123:23
objects 94:24	Olympic 11:25 44:13	orientation 76:9	PacSuns 31:23
133:25	once 22:23 24:23	original 25:25	paddler 35:5
obstacle 35:5	28:23,24 39:21	33:10 58:6,12	paddling 35:2
obtain 12:22 50:1	72:21 77:12 78:6	69:15 73:24 83:15	pads 46:5
obtained 12:1 28:4	81:14 88:19	102:23 106:24	page 3:5 4:7 5:12
111:21	104:17 114:7	108:14 110:19	6:9,10,11,16,21
obvious 164:21	146:6 153:24	originally 19:24	6:22,24 7:2,3,4,6
obviously 22:25	167:1	55:6 152:23	7:7,8,10,11,13,14
25:10 30:4 42:10	ones 74:15 101:24	originated 79:24	7:16,19,20,21,22
55:7 58:1 63:25	121:3 125:1	Orlando 6:20 118:1	7:23 8:3,3 22:3,6
64:21 72:25 84:7	147:24	118:2 119:17	22:7,23 23:12

Ron Wilson
October 29, 2015

24:22 29:19 55:7	31:21 47:11 160:2	20:17 25:19 26:1	118:21 119:24
84:11,12,13,16	parties 9:10 170:11	30:12 31:18 33:8	120:5 122:3
112:9 120:16,19	partner 14:15 19:12	35:4 45:14 47:8	131:11 144:11
120:20 122:7	31:5 32:8 38:8	48:23,23 49:17,22	145:7 147:25
123:16 124:13,13	47:13 73:13 74:12	51:19 52:11 53:18	148:16 149:18
126:4,4 127:13,13	partners 17:25 42:8	53:19 57:17 58:9	158:15 161:9
135:8 136:8 139:3	45:14	60:17,19 61:22	168:2
142:11,13,24	party 176:19	62:6,15,20,21,22	personality 58:10
143:25 145:7,18	passed 97:1	63:12 64:3,12	personally 57:20
155:2 156:4,21,23	passion 31:8 80:23	65:7,12 74:7,9	165:18 166:5
157:11,20 158:2,4	81:3	76:8 77:25 79:8	171:15
161:16,16,21	passionate 14:14	86:22 87:3 88:8	perspective 121:22
162:15,15 165:5	76:5	89:8,21 99:23	128:16 129:3
175:3,6,9,12,15	patent 1:1 4:9,12	100:3,18 101:19	169:20
175:18,21	4:14,16,18,20,23	101:23 102:1,11	pertaining 116:17
pages 6:14 95:23	5:2,4,7,9,13,14	102:14 107:12,25	140:6
paid 12:9 20:18	5:16,18,21 6:5	108:1,8,15 109:1	phenomenal 169:25
46:23 64:17 70:16	21:24 22:4,7,24	113:14 123:3	Phenomenally 107:1
70:23 74:4 78:2	23:3,4,13,17,17	124:2 125:2,4,5,7	Philadelphia 18:22
82:11 86:1	24:4,5,13,22,23	125:9 126:8	170:5
painful 56:20 57:11	24:24 25:8 26:24	129:16 145:18	phone 35:18 71:1
pair 58:3 108:10,18	26:25 27:3,16,18	147:11 153:6,20	113:24,25
109:17 112:7	28:1,4,12,19 29:7	160:9 163:16	phones 34:20
113:20 115:9	29:10,10,18,19	165:4,8 166:1	photo 44:15
128:14	32:18 52:25 53:5	167:6,10,15 169:5	Photograph 6:19
pak 119:12	53:7 54:11 55:6,8	169:11	Photoshop 94:22,23
panel 104:1	55:9,12,25 90:14	perceived 106:25	96:5,7,11
paperwork 78:5	102:22 103:13	percent 52:2,4	physical 146:5
79:12,13	104:1,10,11	65:23 66:8 68:24	147:25 151:23
paragraph 116:2	patentable 102:25	68:25 69:3 74:12	physically 38:21
parent 70:4	patented 61:14	115:7 129:25,25	151:22 153:16
part 12:15 32:4	patentry 28:4	167:8	picked 64:1 90:1,1
34:8,13 35:12	patents 22:11 23:1	percentage 127:24	picture 5:23 7:24
56:3,21 74:2,2,24	23:15 28:16,24	127:24	8:5 13:25 14:1
77:21 88:16	30:10 32:15 53:5	perfect 26:1 46:22	112:4 133:16,17
165:23 167:22	90:16,20	74:18	135:9,12,14,15
partial 6:22 8:3	path 37:16 63:19	perfected 75:1	151:20 158:25
104:3	Patricia 1:23 4:5	performance 7:4,5	piece 27:1 70:2
partially 78:22	176:4,24	15:9 33:24 34:17	79:7
participate 14:20	patterns 38:22	95:16 135:17	pieces 79:18
15:15 35:19	Paulson 67:23 70:17	141:3 142:12,23	Pierre 62:11
participated 15:11	70:23,25 75:18,20	143:3	piling 114:14
63:12	78:14 80:14,17,18	performed 114:3	pinching 107:24
participating 33:8	85:16 107:3 118:8	127:10	pitched 43:14,17
58:4	119:13,14	period 52:5 103:21	Piven 79:1
particular 11:16,25	pay 12:2 53:12 76:2	136:11 170:6	placating 81:12
20:14 21:14 26:14	118:15 124:3	perjury 174:10	place 34:19 69:16
35:24 39:4 47:10	169:20	permission 18:24	120:24 131:17
50:20 56:16,19	paycheck 84:23	person 13:8 14:7	176:12
59:7,22 72:23	paying 81:1 118:16	17:10 46:6 76:22	placed 69:23
82:2,12 92:11	peculiar 160:7,22	79:19 89:7 100:17	placement 109:11
93:17 104:21	peek 19:15	107:7,8 108:10	128:3,4 133:21
117:6 144:21	penalty 174:10	129:21 138:17	places 114:13
146:18 149:10	pending 117:22	167:15 169:15	plan 60:6
152:10 159:9	pennies 95:1	personal 39:16	plane 150:25
166:10 169:20	people 13:15 15:12	64:22 65:16,21	plank 102:3 165:6
particularly 23:16	18:1,5 19:4 20:17	93:6 108:25	planning 60:25

Ron Wilson
October 29, 2015

plans 72:20	113:15,16 139:8	135:24 137:24	100:11,14 117:20
plant 16:11	posting 93:17	139:14 144:7,9	159:3,8 170:1
platforms 93:12	potential 18:1 47:2	146:25 147:15	production 58:2
play 11:12	49:5 72:15 114:14	155:15 156:9	59:13
player 46:7	129:16	157:18 158:9,11	products 20:11,25
playing 11:15	potentially 19:5	159:11 160:14	21:1,5,10 25:16
plays 125:6 138:12	31:13 35:9 47:15	primarily 33:19	32:18 40:24 43:4
please 88:20	67:12,14 72:24	primary 21:12	43:15 49:2 57:19
plight 106:8	153:3	printed 23:1 113:5	81:17 87:8 166:8
plugged 99:4	powerlifters 11:25	155:17,25 156:20	167:9
plus 45:14 88:1	practical 16:12	158:15	professionalism
pocket 23:21 35:11	18:17	prior 11:24 22:15	141:10,20,24
35:14,16 57:4	practiced 14:15	69:13 70:4,24	profits 19:1
109:4,9,10 113:23	practicing 56:6	176:7	program 11:1 16:3
114:2,6 126:9	133:23	priority 76:2	16:19,20 17:15,18
133:20	precise 152:21	privy 69:12	programs 166:9
pockets 61:3 112:1	preferential 31:11	probably 49:21	project 25:9
112:2 128:21	31:15	51:24 58:16 83:5	projections 51:22
podcast 42:5	prefilming 49:9	98:14 102:1 107:1	projects 34:9
point 17:11 25:23	premium 124:4	109:5,23 134:5	prominent 123:20
25:23 28:20,21	preorder 130:15,16	163:17 169:10	promises 82:2
29:14 33:2 34:14	prepared 82:16	problem 56:21	promising 48:16
36:1 38:11 39:20	100:10 119:13	121:22 141:18	promote 40:9
42:7 43:20 65:14	presentation 78:2	problems 93:9	pronounced 36:5
67:17 70:12 75:14	presenting 77:6	proceeded 20:21	151:25
78:12 80:14 81:19	79:23 143:15	proceeding 70:9	proof 119:20
82:10 95:25	147:21	process 94:3 104:5	property 24:21
108:15 129:10	president 12:20,21	150:24	25:16 30:7 50:1
147:14 152:21	60:10,11 74:3	procuring 30:11	54:12 73:7 84:21
153:2,16 169:11	presumably 74:23	produce 18:22 34:15	87:6 103:12 160:1
169:12 170:18	112:22 114:23	99:5 105:12 117:8	proportion 172:23
pointed 82:10 96:23	133:19 138:13	147:14	propose 67:17
pointing 122:23	139:25 155:5	produced 18:21,23	proposed 67:16
points 83:5 95:15	167:19	22:15 39:23 53:25	proposition 49:23
Poker 58:9	presuming 25:1	91:16 93:1 96:17	propulsion 153:23
polyester 129:25	pretty 21:7 38:15	98:4 102:24 103:6	prospects 47:21
polygons 150:15	40:11 76:10 82:13	105:24,25 106:3	protect 23:23,24
pop 108:9 158:5	86:2 126:19	111:8,15 113:3	30:20 35:7 56:21
pops 158:3	157:19 172:16	134:10,19 135:24	160:25
popular 44:12 78:24	prevalence 121:7	139:14 140:5	protected 161:1
99:6 101:24 121:1	prevalent 34:21	144:7 146:25	protection 55:12
122:18 125:23	119:1 137:25	155:15 156:9	protective 5:19
172:12,15	previous 14:22,23	158:11 159:11	59:3
popularity 160:8	50:12 52:22 54:14	producing 122:16	provide 72:4 115:6
port 26:4,7	60:7 64:21 80:15	147:13 159:8	116:11
portfolio 26:25	87:11 89:25	product 18:14 19:8	provided 23:20,20
portion 53:19 54:16	103:24 110:1	20:2,7,7,12,20,21	121:17 139:14
88:17 104:2 132:1	119:20 131:20	21:6,14 24:16,18	144:9 157:18
151:13,13	140:19 154:4	25:13 33:21 35:13	providing 51:21
position 37:25	159:6 165:19	38:17 39:23 40:1	public 44:8 115:1
39:22 82:20	previously 31:3	42:25 43:2,10	131:22
109:11	41:25 47:2 53:25	49:9,25 50:2 56:2	publications 139:6
possible 24:17	57:12 60:8 62:2	56:9 57:10,16,19	pulled 100:1 144:20
33:21 94:4	77:8 78:1 90:20	58:1,6,23 59:11	144:20,22
possibly 42:11	91:16 96:17 98:3	60:2,4 61:15 62:9	pulling 30:12
post 14:7 111:21	103:6 111:15	73:4 74:22 79:2	108:25
112:18,20 113:13	113:3 131:18	90:13 95:12	pulls 91:11 99:11

Ron Wilson
October 29, 2015

purchase 66:7 86:6 121:19 140:15	138:9,11,19 152:12 160:7	real 48:7 86:24 127:21	55:1,19 71:22 91:6,23 98:24
purchased 72:2 73:8 73:14 75:1	162:12 166:22 169:24	realize 18:1 81:23 147:15	101:7 102:20 111:13,18 112:17
purchasing 70:24	quote 162:23	realized 20:10	113:11 115:21
pursue 19:12	QVC 20:1,9,17,17,18	89:24 147:10	116:25 120:12
push 93:24	20:22 30:4	really 12:13 13:11	130:7,21 132:6,12
pushed 105:20	R	17:7 24:16 25:21	133:14 134:7,23
pushing 17:13 94:13	R-e-i-t-e-r 75:20	28:20 31:8,25	135:6 136:4 139:1
put 12:18 16:23	R-o-g-u-e 140:16	32:15,16 34:6	139:20 140:11,25
18:22 30:8 35:17	R-o-y 75:21	35:3 36:19 37:15	142:21 143:23
38:14 46:6,19	R-V-C-A 140:13	37:16 43:12,22,25	144:17 145:14
55:8 57:14 58:3	radar 60:20 163:9	44:16 46:20 52:11	146:3,13 147:4
62:18,23 73:20	163:19 164:7	54:13 62:15,22,22	148:8,21 149:24
97:16 107:2 109:2	raised 53:19 64:4	62:25 63:8,19	154:25 155:23
117:9 134:9	raising 21:13	65:13,13 67:3	156:15 157:8,25
138:12 149:14	rampant 14:24	72:1 78:22 80:14	158:22,24,25
165:24 167:9	ran 38:4 64:14	81:21 86:9 87:4	159:17 161:15
172:6	random 115:1	88:3,16,17 89:20	164:16 168:8
putting 114:5	randomly 31:9	93:12,13,21 96:15	recollection 93:6
Q	rank 11:4	105:20 106:18	recommendation 65:3
Q-i-n-g-d-a-o	rapid 43:11	108:1,22 109:18	record 11:21 28:15
104:22	rash 114:11	114:8 120:6	39:12 94:5 112:14
Qingdao 104:22	Rashad 66:20,21	123:20 124:18	137:8 141:5
quality 121:9 124:3	67:5 79:1	125:24 127:9	143:12 144:23
quantified 136:24	Rashad's 67:6	142:3 149:6 155:7	147:19 163:25
quantities 106:17	rate 115:8	157:17 160:21	164:5
quarter 16:7	rates 123:21	163:18,19 170:1	recreating 63:19
question 30:22	ratio 151:4,5	172:22,25	Recreation 144:1
36:10 39:11	rattling 82:14	rearrange 88:1	redeeming 167:22
101:15 117:22	109:8	reason 26:1 34:8	redeployed 61:15
120:22 122:1	reach 121:10	42:4 100:1 144:22	redesigning 19:7
123:12 124:15	reached 90:14	153:20 175:5,8,11	42:24
125:2,15 126:12	reaching 66:10 94:8	175:14,17,20,23	redesigns 103:8
128:3 131:12	reaction 171:23	reassign 70:7	reemerged 104:4
136:12 140:19	reactions 171:22	rebroadcast 58:5	refer 97:15
142:9 143:6	read 32:19 112:20	recap 166:22	reference 22:4
147:18 154:4	113:16 116:2	receive 24:4 38:13	136:18
161:23 162:2	120:18 121:14	69:1,2 76:14,17	referenced 100:5
163:12,15 171:13	122:6 123:15	78:4,10	referencing 104:10
171:17	124:12 126:3	received 10:22 13:7	104:10
questioning 15:18	127:12 129:8	21:25 24:14 27:18	referred 170:4
54:2 116:19	132:13 136:10	33:5 41:9,24 42:7	referring 101:10
questions 79:11	137:7 141:25	55:9 61:20 79:12	119:6
125:17 167:7	144:20,22 155:6	107:11 116:13	reflect 97:9,10
171:3 173:13	161:18,20 162:14	reception 63:2	103:8
quick 38:7 71:19	164:3 166:21	Recess 68:8 115:16	refute 82:17
173:4,9,10	174:5	171:2	regarding 102:9
quickly 16:25 36:19	readers 115:8	recharacterized	119:7 132:22
41:4 49:22 74:19	readily 22:24 23:3	50:15	regardless 30:19
74:25 82:14 89:16	23:13 24:23	recite 161:20	region 128:5
92:5 96:15 104:14	131:21 147:9	recognize 10:8	regional 60:15
114:9 163:3	reading 129:1	21:20 22:22 23:9	123:3 162:21
quietly 141:6,12,16	147:10 157:16	24:11 25:7 26:22	169:3
quite 32:8 68:5	reads 132:14	27:11,23 28:9	regionals 163:16
96:4 119:2 129:24	ready 72:19	29:5,16 36:15	register 90:8
		37:5 52:20 54:7	regular 11:13 12:9

Ron Wilson
October 29, 2015

43:5 62:14 79:23
regularly 161:24
reinvest 19:2
Reiter 75:20
relate 50:13
related 176:19
relates 121:15
 126:5 172:24
relating 144:8
relationship 67:7
 104:21 117:18
 132:23
relative 172:23
relevance 131:7
relevant 15:21
 35:22 39:16 41:6
 51:2 72:15 89:22
 129:7 154:2
relief 85:7
relying 108:24
remain 171:24
remained 33:4
remember 48:21 62:8
 90:4 122:15
remind 107:15
 151:10
reminder 154:17
reminds 100:3 152:3
removable 35:15
Remove 162:16
removed 78:19
renamed 49:19
repeat 142:9
replaced 108:7
Reported 1:22
reportedly 82:15
reporter 10:5 21:17
 22:19 23:6 24:8
 25:4 26:19 27:8
 27:20 28:6 29:2
 29:12 36:12 52:17
 54:4,23 55:16
 91:3,19 97:23
 98:21 101:1
 102:17 110:9
 111:10 112:11
 113:8 115:18
 116:22 120:9
 130:4,18 132:3
 133:11 134:3
 135:3 136:1
 138:22 139:17
 140:8,22 142:18
 143:20 144:14
 145:11,24 146:10
 146:22 148:5,18
 149:21 154:22

155:20 156:12
 157:5,22 158:19
 159:14 161:12
 164:13 168:5
 176:5
reporting 81:24
repositioning 88:12
repping 121:9
representation
 97:11
represented 162:25
reps 40:23
repurchased 70:6
reread 129:12
resembled 97:21
resides 170:8
resolution 44:24
resources 51:18
 83:25 86:21 89:16
respect 50:19,20,21
 51:5 87:12 92:18
 105:13 159:8
 160:2
respected 92:11
respects 86:1
responder 116:12
response 64:24
 81:10 82:13
 166:15
responses 82:16
rest 85:22 151:14
 156:6
restart 87:5
restaurant 85:15
restricted 81:20
result 145:17 146:4
resurrected 72:25
 72:25
retail 21:4 32:1
 66:24 70:22
retailer 40:3
retain 68:24
retro 152:3
revenues 167:8
review 9:25 113:17
 116:1 117:2
reviews 6:13 117:3
revised 121:21
rewarded 30:10
Rica 36:2
Rican 51:2
Richard 112:21
riding 66:21
right 17:23 18:7
 38:4 40:13 46:1
 64:11 74:5 78:9
 83:3 89:2 96:21

108:17 111:7
 129:21 133:7
 155:6 161:1
 168:10
right-hand 108:21
 150:5,20 153:14
rights 60:3,3 64:2
 84:20 103:16
ring 78:24
ringing 107:9
rip 126:23
rise 170:13
Rob 6:20 118:1,2,12
 119:15,17 121:5
 123:18 129:10
 130:24 131:3,9,17
 131:19,24 132:10
 133:16 134:9,10
 135:9 136:17
 137:8,13,16 144:3
 145:20 146:7
 148:25 149:6
 150:14,20 152:6
 162:24,24 163:7
 163:10 167:11,12
Rob's 129:13 132:22
 135:8 136:13
 137:9 160:8 163:2
Robertson 66:13,14
 66:15
Robinson 67:21 68:1
 68:11,20 70:11
 71:6 72:3 73:1,11
 75:16 105:23
 118:4,8
Robinson's 83:14,24
Rodney 67:5,9 83:15
 84:3
Rogue 7:3,16 140:16
 148:25 149:14
role 33:12 44:16
 79:14
roll 114:7
rolled 60:9
Ron 1:13 3:3 4:2
 9:4,15 80:18
 173:15 174:17
 175:25
room 9:9 58:22
root 88:10
rope 61:9
Rotatable 4:15,17
rough 114:16
roughly 68:10
 109:24 168:20
round 106:21
roundness 96:20

route 37:23
routes 38:2
routine 29:14
Roy 75:21
royalties 38:13
royalty 33:11,12
rubber 108:8
rude 141:13
rudeness 141:9
ruined 114:11
run 32:11 44:20
 46:14 51:10,12,16
 64:9 74:4,12
 108:5 109:11
running 11:17 12:17
 13:14 41:4 45:11
 64:8 82:9 109:7
runs 35:6
RVCA 140:12
Ryan 75:21

S

S 6:23
S-c-h-u-t-t 46:3
S-t-u-t-t-s 47:13
S-y-n 136:9
safe 169:13
sake 22:10 28:25
sale 73:4 130:16
sales 16:19 19:16
 29:24 43:14,14
 44:21 59:20 78:1
 78:16 80:25
 105:15 122:10
Salt 85:18
samples 106:5
San 32:1,3 40:3,5
 40:16 41:1 174:2
 176:2,23
sanction 22:16
 36:19 37:7 99:1
 103:5 110:14
 113:2 134:20
 139:13 140:5,20
 142:15 144:9
 155:16 158:12
 159:12
sanctions 96:17
 135:23 143:5
 144:6 148:15
 165:10
sane 154:15
Sarah 2:14 9:14
sat 43:16 60:13
 153:17
satisfaction 31:3
Saturday 52:8

Ron Wilson
October 29, 2015

saw 20:2 34:16,16 34:21 46:8 60:6 60:16 61:21 74:7 77:13 78:12 86:11 119:12 171:23	55:11 60:21 61:19 63:9,13 79:3 82:24 86:3,6 88:4 88:15 93:12 94:16 96:21 97:20 119:10 120:21 121:2,16 128:13 133:20 151:8 152:9 154:7,9 155:9 160:18 164:25 173:3,8,10	series 58:4,9 117:3 service 83:11 services 157:13 servicing 122:21 session 85:24 set 37:12 62:5 72:17 77:11 81:15 166:7 176:12 setback 132:23 sets 153:24 setting 125:7 setup 62:4 74:18 severely 166:9 sewn 56:24 shape 50:23 139:7 141:20 shapes 95:2 150:18 shareholder 46:25 65:23 shareholders 33:7 38:12 shares 33:9 sharp 153:2 sharpness 95:16 sheer 29:23 sheet 24:25 175:1 shelf 38:21 72:22 167:10 shied 14:21 shield 101:25 153:23 shine 128:1 shipping 115:9 shirt 112:6 124:17 131:23 133:18 148:25 149:1,2,14 155:7,8 shirts 124:4 132:17 149:12 shoes 112:7 shoots 44:15 shop 66:2,6,9 shopping 20:1 short 33:23,24 37:13 49:11,16 53:8,11,14,20 55:14,14 56:3 57:13,22 59:1,16 61:1,12,16 62:13 62:23,24 63:15,15 68:6 79:9 102:6 102:10 103:2,9,11 103:14,18,23,24 104:9,12,13,14 106:5,16 107:10 107:14,15,16,21 107:22 108:3,7,12	108:19,21 109:3,5 109:6 110:18,19 110:21,22,25 111:5,8,23 112:1 112:6,22,23,24 120:24 121:3,21 121:21,24,24,25 122:18 125:10,24 126:6,13,23 127:20 129:18,20 129:20 133:22 140:12,15 166:23 169:23 shorthand 176:4,13 176:17 shortly 76:16 shorts 5:13 6:13 33:25 34:18 35:11 35:17 38:18 49:10 49:21,25 50:12 58:3 60:17,25 104:23 105:1,12 105:13,24 106:24 106:25 107:19 108:13,14,18 109:17,22,23 110:2,3,5,6 112:3 112:4 113:17,18 113:19,21,25 114:6,10,11,18,25 115:3,5,9 117:3,8 117:11,20 118:18 120:21,22 121:16 121:16 122:16,18 123:4,5,6,10 124:1,4,10,10,19 124:24,25 125:3,4 125:10,21 126:20 126:22 127:9,14 127:15 128:2,8,9 128:9,11,14 129:2 129:6,15,17 130:15 131:25 155:9,11 156:5,7 166:18,19 167:3 167:19,20,24 169:21 shot 130:23 156:2 156:20 159:19 shoulder 46:5 show 40:2 48:22 77:22 105:21 169:6,7 showcased 54:15 showed 62:2 93:11 showing 79:22 130:12
saying 60:24 79:6 85:8 133:6 164:5	seeing 24:16 34:3 47:7,17 48:8 128:16 173:4		
says 81:1 106:8 135:11,17,19 136:20 137:13 157:14	seen 50:11 67:9 107:13 128:18 131:18 132:12 134:13 136:15 138:19 151:7 153:20 162:12 163:18 169:13,17 170:2,12,19,23		
scene 125:8	segments 25:11 63:7		
scheduled 65:22	select 31:13		
school 11:3,15,21 12:22 16:6 17:14 17:17 18:7,13,17 19:6,13 89:24 170:5	selected 38:1 92:1 112:3		
Schutt 46:2,2,6	selecting 31:14 33:22 90:5		
scratch 86:16	sell 18:24 40:24 58:2 59:14 60:5 63:11 74:22,25 105:14		
scratched 23:23	seller 155:5		
screen 130:23 156:2 156:20 159:19	sellers 155:4		
Screenshot 6:18	selling 19:23 20:10 20:14 60:1 63:14 66:24 67:15 124:9 162:20		
screenshot 6:17,20 6:21 130:14 131:23	sells 167:12,12		
seam 126:10,12,14 128:20	semester 12:10 16:5 16:7,7		
search 5:22 6:2,8 8:2,4 22:25 88:21 91:8,9 92:3,4 96:7 98:8 99:8 110:17 111:22 112:14,15 124:20 131:7,7 133:15 145:16,17 146:4 146:17 147:9 159:20	seminars 121:6 123:19,24 160:4 160:11 167:13		
searched 90:11 124:15 125:20	sense 42:24 107:16 129:16 144:25		
second 16:2,5 17:16 18:13 41:18 48:25 50:22 58:19 89:2 93:6 106:3 125:20	sensed 85:6		
secondary 124:20	sent 58:12 70:13 82:18 85:8 90:24 96:24 97:1 104:19 104:24 119:8		
section 151:2,5	sentence 152:11		
sections 152:19	separate 169:2		
secure 5:17 48:16 57:7 76:3 89:17 92:2 104:8 108:23 109:12	September 4:19,23 37:2 130:13		
secured 12:24 60:2 70:13 100:13	serendipitous 42:15		
securing 49:4 74:6	Serial 1:6		
see 28:21 40:6 47:18 49:24 53:19			

Ron Wilson
October 29, 2015

shows 31:25 155:6
159:20
shroud 63:21
Shutt 59:7 70:2
side 21:13 32:18
38:16 42:1 43:1
60:14,14 64:14
67:23 71:14 109:3
126:9,13 133:20
150:4,5,20 152:18
153:14,14
side-by-side 157:18
sides 104:2
sign 14:1 76:7,12
77:23 84:5,20
119:21 142:13
signature 69:7
signatures 69:16
signed 69:13 71:22
72:19 84:25
103:16 107:4
119:21
significance 29:22
37:11 137:5 149:3
163:20 164:7
significant 113:22
140:14 149:2
172:8
Significantly
165:15
signifying 76:12
signing 66:23 76:10
silver 94:25
similar 34:1 110:6
121:2,16,23,24
127:18 128:2,19
129:3,21 150:6,10
154:10 173:11
similarities 129:22
129:23 154:2
simple 25:19 92:18
98:7
simply 42:3 129:18
single 107:7 108:10
sister 83:14,25
sit 32:11 60:13
63:21 72:22
151:24
site 55:8 72:7 99:5
125:22 130:12,16
131:9 132:12
133:3,4 155:3,10
155:11 156:6,25
156:25 158:5
160:18
sites 157:2
sitting 26:13,15

59:3 83:23 126:17
situation 38:9
47:25
situations 80:3
six 72:22 91:12
size 13:10
sizes 35:16 38:19
106:15 122:19
skateboard 48:4
skateboarder 39:4
Sketchers 98:14
ski 26:6
skills 52:12 166:7
skin 52:7 59:25
skinny 39:5
Skins 59:23,24 60:4
60:9 62:2 64:1,4
64:10 70:4
skipping 20:22
sleep 103:22 105:23
sleeping 95:24
slightly 100:12
108:4
slim 39:2
slogan 133:5
small 18:21 108:24
111:7 120:23
smart 113:23
smooth 126:20
snippet 111:23
snowboard 20:6
soar 73:20
social 89:6 93:12
172:21
socials 123:25
socks 105:25,25
106:3,6,14 109:18
Solana 1:18 2:15
9:1 10:15 41:13
41:14,15,16
sold 19:1,2 20:3
67:2 74:16 103:9
117:19 123:22,24
156:5 173:1
soldier 34:11
sole 55:25
solid 151:13
solidify 38:9
solutions 43:8
somebody 31:12 42:1
66:6 81:7 122:25
123:1 128:16
156:24
sonic 108:8
Sony 20:15
soon 17:15
Sorrento 41:17

sorry 92:24 118:8
139:22 141:8
sort 101:22 102:2
151:15
sorts 34:25
soul 95:21
sound 83:6
sounded 88:13
source 121:17,18
160:12
sourcing 58:14
122:17
South 2:4,14
Southern 40:8 169:3
172:17,18
space 12:1,18,23
13:2,17 41:6
42:10,12 43:25
46:10,19,22 49:1
49:24 59:21 67:13
70:13 72:21 74:5
86:20 121:11
135:17 138:16
150:16 151:20
152:11 159:8
164:22
Spain 124:2
Spandex 129:25
spawned 20:23
speak 14:8 71:24
172:13
speaking 141:22
special 115:7
specializing 89:7
specific 49:19
115:4
specifically 43:4
56:14 73:11 100:5
119:5 123:18
speculating 131:11
speculation 11:6
19:18,19 64:22
73:9 98:17 101:15
118:20 120:4
122:2 123:13
125:14 127:8
128:25 134:1,18
137:18 139:12
140:6 142:16
143:7 144:11
146:25 147:18
148:16 149:18
152:16 157:3
161:9 163:23
164:11 165:11
168:2 171:11,20
173:7

speculative 130:2
Speedo 65:7
spell 90:4
spelled 36:6 46:3
spend 51:23 73:18
171:9
spending 105:19
spent 30:18 31:23
42:13 76:4 147:9
154:13 164:19
171:15,18 172:2
spoke 13:24 42:5
96:19
spoken 132:24
sponsor 53:12
sponsored 44:14
sponsoring 66:18
162:20
sport 50:6
sporting 30:2 43:16
46:11 170:15
sports 11:11,13
30:2 31:22 32:1
33:17 34:5 35:19
38:25 40:3 56:17
58:21 144:1
square 92:19 93:9
93:11,14,15 97:17
97:18 109:4
ss 174:1 176:1
St 62:11
stack 47:4
stadiums 26:15
staff 116:9 121:5
stake 165:22
stale 73:5
Stamford 2:10
stand 134:12
standards 92:3
standing 56:15
97:15
standpoint 47:23,23
stands 10:17
standup 35:2,5
star 89:25
start 9:8 17:22
18:7 34:19 37:12
38:14 58:9 62:21
86:15,17,19 87:20
89:15 90:25 94:6
94:8 95:4 138:2
150:11
started 18:10 20:9
31:8 36:21,22
39:17 47:16,25
48:2 50:21 53:5
56:5,10 59:12

Ron Wilson
October 29, 2015

60:19 61:16 63:2 63:11, 11, 13, 14 64:16 66:10 67:3 79:22 87:25 92:5 92:7, 10 93:25 94:13, 15, 24 95:3 95:7, 14, 22 97:14 97:18 114:7 145:4 149:3 166:11, 25 170:5 starting 49:25 63:19 90:17 startup 42:4 65:10 State 174:1 176:1, 5 stated 41:3 144:23 statement 50:15 123:8 124:6 125:12 127:6 128:23 137:12 162:8 163:21 statements 137:6 states 1:1 4:9, 12 4:14, 16, 18, 20, 23 5:2, 4, 7, 9, 13, 14 5:16, 18, 21 6:5 17:3 24:4 50:2 121:23 stateside 106:18 stating 85:8 stats 158:4 stay 44:1 137:3 staying 85:17 steady 52:10 Steel 42:7 step 17:6 stepped 33:4 37:24 stereos 20:15 steroid 14:24 Steve 60:22 Stevens 1:17 stick 23:21 114:12 stock 122:20 stone 124:21 126:18 137:10 stones 126:16 159:7 stop 107:13 storage 49:18 Storm 41:19, 19 42:17 45:1, 3, 10 45:12 46:25 49:7 51:13 58:13 59:18 60:2 63:22, 24 65:2, 23 68:11 69:10 70:1 74:10 76:25 89:7 90:16 93:10 story 79:9 83:1	108:20 stranded 81:5 strange 77:4, 16 straps 57:3, 4 strategic 37:25 38:2, 6 strategy 116:8 straw 81:25 street 2:4, 9 74:5 strength 50:23 51:5 148:13 stretch 56:25 57:14 112:24 169:24, 25 stretched 65:13 stretches 108:4 stretchiness 114:4 strike 56:17 110:11 Strikeforce 74:16 strikes 160:6, 21 string 111:1 128:13 strong 14:19 151:24 153:4 strongest 50:22 Strongman 123:19 135:11 struck 70:5 88:18 161:5 struggle 38:10 struggled 32:10 35:20, 21 students 11:24 19:10 studying 16:13 stuff 31:9 32:15 49:17 84:19 96:8 154:16 stumbled 37:22 stunning 136:19 Stutts 47:13 65:22 68:20 71:13, 17 style 61:8, 8 125:6 125:9, 10 149:11 149:11 styled 62:19 styles 38:19 styling 111:25 stylized 36:7 152:9 159:2 160:3, 13 subject 132:16 160:9 submitted 158:9 160:14 Submitting 101:3 subscribed 176:22 substitute 152:10 subtle 113:21 succeeded 116:6	success 39:3 40:6 47:9 51:25 60:1 105:21 129:9, 14 149:8 successful 18:3 19:14 20:23 21:8 38:6 57:16 67:3 68:15 77:10 109:20 117:17 155:7 167:13 suggest 142:3 suitcases 123:23 Suite 2:14 summary 22:6, 7 summation 169:9 summer 2:9 16:8 18:9 sunglass 23:15, 18 35:14 sunglasses 23:18 24:22 super 77:10 supervision 176:15 supplement 117:5 supplying 118:17 support 46:8 51:19 65:11 supporting 149:15 supportive 32:25 supports 149:14 supposed 76:9 77:20 81:21 164:24 165:7 sure 30:9, 19 68:7 92:21 101:11 119:3 124:22 129:24 133:1, 20 161:6 165:8, 22 surf 31:22 33:16 34:4, 5, 18 40:10 48:5 surface 114:16 126:20 surfer 35:5 39:4 44:9 surprised 166:16 170:16 surround 105:13 suspected 145:5 swim 56:8 swimmer 44:13 swimming 56:8 swimwear 65:5, 5 sworn 176:8 symbol 50:20, 21 94:9, 9 100:16, 19 symbolology 94:8, 17	symbolology 94:14 symbols 50:14 51:6 94:1, 7 99:23 101:22, 23 symmetrical 151:11 Syn 136:8 144:20 system 5:22 8:2 25:22 26:3, 8 56:4 57:2 91:9, 9 102:25 103:13, 20 103:25 107:20 159:20 systematic 79:16 systematically 79:17 systems 10:23 34:2
T			
T-connection 57:6			
t-shirt 131:14, 24 132:11, 22 134:11 137:10			
t-shirts 38:20, 20 39:6 49:21 106:18 106:19, 20 110:3			
tab 108:24, 25			
table 72:19 151:23 151:24 153:17			
tablet 96:7			
tabs 115:15			
tag 127:23			
take 15:8 20:21 26:12 33:16, 17, 17 34:16 40:1, 5 41:16 49:7 51:24 52:3, 4 54:17 57:12 65:9 68:6 69:16 70:3, 7 77:15 79:7 81:9 87:4 101:13 115:14 119:14 132:21 137:2 167:18, 18 171:1			
taken 57:13 68:8 89:22 94:19 107:3 107:19 115:16 160:13 171:2 176:11, 12, 17			
talk 20:3 42:11 44:17, 24 67:18, 22 71:13 72:14, 16, 17 80:3 109:25 136:20 142:1, 2 145:18			
talked 39:19 44:25 45:22 54:14 58:7 60:22 67:5 71:17			

Ron Wilson
October 29, 2015

80:4 107:7 136:21 150:12 153:7 163:16 164:3 talking 48:23 64:18 65:17 67:1,8 110:1 124:24 138:2,8 141:6,22 167:14,15 talks 160:18 tank 24:17 Tapout 48:19,19,23 48:24 Target 43:16 targeted 122:21 targeting 122:25 123:1 tasks 136:24 Taylor 41:20,25 45:11,25 team 11:13 43:14,24 46:9 51:12 52:10 64:8 72:23 73:5 74:6 75:15,18,19 75:25 76:3 81:3 81:13 85:22 89:8 129:14 team's 105:22 teams 44:21 tech 10:22,25 11:18 11:20 12:7,14 13:3 14:12,17 15:2,5,23 16:2,14 119:8,12 technically 164:24 techniques 25:24 technologies 25:17 34:7 technology 24:2 28:3 29:9,20,23 56:12 telekinesis 133:23 televised 62:10 tell 9:22 57:20 78:4 80:17 99:19 125:11 128:19 133:19 142:2 145:19 telling 137:8 162:13 temples 4:15,17 23:19,22 temporarily 39:13 ten 104:15 tenacious 51:4 tenacity 51:4,6 54:15 tended 39:5	tenuous 83:7 term 31:10 34:22 87:21 90:8 124:16 125:21 130:15 137:21,24 139:9 140:2,17 142:25 144:2 147:12 terminated 38:13 84:5 terminology 88:15 124:21 terms 13:14 28:18 34:12 36:23 39:7 64:7 65:11 67:8 68:4,5 69:1 86:21 102:24 109:16 119:1,2 122:17 124:20,21 126:7 127:17 153:7,10 170:13 TESS 91:9 test 15:1 tested 14:25 57:10 testified 9:6 testify 176:9 testifying 39:9 93:3,5 141:23 143:18 testimony 27:5 64:23 93:2 99:2 99:15 100:21 101:15 113:3 115:12 116:17 117:15 122:2 129:5,6,11 132:13 135:22 139:13 140:4,19 142:4,16 143:6,7 144:8 145:9 148:3,16 149:5,5 155:13 157:17 162:9 164:9 165:10,19 167:21 Texas 16:23 89:25 text 13:6,25 14:7 83:10,13 texted 78:3 Thai 56:19 57:12 Thank 167:25 thanked 57:21 themed 47:10 themes 96:2 therapy 85:24 thereof 174:6 176:20 thesaurus 138:5,8 thigh 128:5	thin 65:13 151:3,3 153:15 thing 12:13 50:4 62:25 71:12 73:20 78:17 81:16 84:9 84:9 87:10,20 107:25 108:13 110:2 124:18 125:23 127:1 136:13,15 149:10 151:19 152:12 153:13,16 154:15 160:6,21 164:1 things 11:14 13:16 20:15 21:12 31:2 32:7,17 34:9,17 38:17 42:14 44:19 45:22 49:15 53:9 53:15 56:2 57:19 59:6 61:3,10,11 63:17 64:17 65:12 66:4 74:11 75:23 76:11 79:18 80:11 80:19,22 82:6,14 82:17 83:7 84:6 86:22 87:6,24 88:2 92:4,19 94:2 95:7,17 96:7 99:7 106:5 107:9 109:15 110:4 126:16,23 128:15 138:10 145:5 149:7 152:23 166:18,19 169:20 169:21 think 15:19 24:16 31:23 38:4 50:1 56:12 58:24,25 64:5 66:4 67:18 75:10 77:17 78:17 83:2,3 84:9 85:2 85:4 89:11 95:24 117:18 119:2 122:21 125:6 126:7 127:18,21 127:22,25 133:25 134:25 138:13 154:8 165:8 167:20 172:21 173:9,9,14 thinking 147:12 third 9:10 47:13 124:20 151:11 thought 19:5 21:7 26:14 43:23,24 44:23 48:24 50:18 72:19 86:24 89:1	103:1,20,23 104:5 137:1 162:22,24 163:10 thoughts 94:1 thousand 19:3 49:21 thousands 13:10 169:5,11 three 38:19 48:11 51:24 52:3 69:15 71:7 76:20 90:11 90:15 103:21 150:21 169:4 172:19 thrown 167:1 Thursday 4:4 9:2 tie 104:5 107:22 110:22,24,25 tight 65:18 tighten 104:6,7 108:2 tighter 39:6 till 105:7 171:23 time 11:10,12 12:4 12:9,11,16 14:12 14:15,24 15:4 16:18 18:8,19 21:12 22:12 30:9 30:19 31:23 32:19 33:7,25 34:20 36:5 37:14 38:4,5 38:18 41:15,15,23 42:20 43:9,11,19 48:12,19 52:5 55:13 59:22 61:21 63:18 64:17 66:11 68:5 69:1,9 70:19 73:18 74:16 75:22 76:4,15,23 78:3 79:17 81:6 82:7 83:11 84:8 94:4 94:15,18 96:25,25 104:25 105:3,17 105:19 106:22 108:9 113:22 117:18 118:2,3 119:2,4 123:18 131:1 132:11 138:19 149:4 152:12,24 154:13 155:14 163:6 165:24 166:13,22 170:6,10,12 171:21,23 172:6,7 172:9 176:12 time's 28:25 time-sensitive 74:21
---	---	---	--

Ron Wilson
October 29, 2015

times 13:9 20:11 32:10 37:22 40:4 56:19 66:12 126:19 161:19 169:4	115:2 trained 14:13 trainer 145:7 148:1 training 14:15 61:1 61:16 63:14 86:25 103:2,14,24 104:1 104:23 112:3 113:20 114:9 127:10 131:24 133:18,22 160:8	110:14 111:16 113:2 115:12 116:16 117:16 134:19 135:22 139:13 140:5,20 142:15 143:5 144:6,9 146:24 148:15 155:16 156:10 158:11 159:11	ultimate 48:11 50:3 ultimately 12:21 15:8 18:12 19:2 40:7,12 43:13 46:15 51:15 53:6 55:10 58:2 60:9 Unbelievable 57:17 Undergarment 5:19 undergrad 10:22 underneath 57:9 undersigned 174:4 understand 9:24 10:1,3 89:21 171:12 understanding 89:15 89:20 129:1 understood 30:7 56:9 89:9 106:7 107:10 undo 86:5 undoubtedly 160:11 uneven 126:20 unfortunately 37:14 38:10 63:22 64:10 161:18 unique 23:14 24:1,3 25:15 92:17 104:20 121:20 128:8 166:7 169:19 United 1:1 4:9,12 4:14,16,18,20,23 5:2,4,7,9,13,14 5:16,18,21 6:5 17:2 24:4 units 18:23 19:1,2 19:3 unnumbered 96:24 97:1 unquote 162:23 untrained 110:5 upgrade 137:4 upper 56:17 151:5 upset 86:2 167:2 upstairs 72:8 84:1 upwards 165:25 USA 60:2 139:7 usage 140:2,17 142:25 usages 137:21 use 14:24 86:21 87:23 88:15 89:21 90:21 96:6 97:12 98:13 101:25 103:14 105:15 119:16 133:6 137:8 138:5,5
tip 153:18,22,24 tired 80:25 tires 126:16 title 10:16 42:18 42:20,22 to-do 67:25 today 10:10,11 14:4 15:13 22:15 32:24 49:12 109:17 116:10 124:22 129:6 139:7 171:23 172:21 today's 14:18 toes 61:4 told 70:12 71:2 72:18 73:13 77:12 80:6,8,12 84:12 84:16 85:4 99:23 102:11,14,15 tomorrow 78:8 ton 47:2 168:24 tool 67:2 70:18,19 78:16 80:24 tools 75:17 80:25 top 11:2 22:3,23 23:12 24:25 45:14 94:13 104:2 135:19 150:22,24 151:12 155:4,5 172:17 top-heavy 95:5 topics 42:11 total 69:3 totally 60:19 81:11 touch 60:24 touching 94:17 Tough 114:20 toured 12:14 tournament-style 59:11 town 170:9 track 89:24 traction 51:25 trade 48:22 traded 16:6 trademark 1:1,2 5:21,21 8:2 15:18 24:4 29:10 71:8,8 87:13,24 90:8 91:9 159:19 trademarks 90:21,22 train 60:25 61:5	transaction 68:25 transcends 138:16 transcribed 176:14 transcript 6:15,22 8:3 176:16,16 transferred 55:11 transpire 69:17 transpired 18:10 19:21 Transpiring 105:6 travel 26:8 123:19 162:2 travels 160:10 tremendous 65:11 trial 1:2 4:8 10:9 22:17 triangle 50:22 triangles 150:17 triathlete 44:9 tried 43:7 47:25 50:12 53:15 72:1 80:2,4 89:16 107:19 trouble 65:20 66:1 122:17 true 79:5 174:7,9 174:11 176:16 truly 151:9 truth 9:22,22,23 162:13 176:9,9,10 try 37:25 63:16 66:2,6 76:2 89:19 164:20 trying 18:16 25:15 25:22 34:9,11 40:24 42:13 47:9 64:9 71:22 81:12 86:4 87:25 92:18 93:21 94:2,4 95:2 118:9 132:24 138:3 149:16 TSIRCOU 2:3 TT 160:1 TTAB 22:16 36:19 37:7 54:1 91:17 93:1 96:17 98:4 99:1 100:22 103:5	tunnel 104:3 Turkish 61:9 turned 42:17 turns 31:4 86:9 TV 53:13 61:20 169:15 twice 107:2 Twitter 89:19 90:1 two 17:4,5 21:11 23:20 32:7 41:8 42:13 45:4 48:11 54:17 57:19 63:17 84:12 90:15 94:10 94:16 103:21 106:14 109:24 125:17 150:13,14 150:15,17 151:13 154:7,8,17 169:2 171:16 172:3 two-year 89:3 type 6:2 23:3 24:24 41:5 56:4,25 78:21 88:4 101:24 101:25 102:3 111:2 118:17 131:6 132:16 150:25,25 153:21 153:23 172:24 typed 36:20 89:23 131:16,16 164:25 165:4 types 11:17 127:10 typewriting 176:14 typical 76:10 114:24 121:17 typing 145:4	
	U		
	U.S 22:24 60:5 UA 165:7 UFC 47:11,14 48:11 48:19 61:23 62:6 62:7 63:4 74:15 74:24 78:17,24 115:2 UK 77:11 78:1 123:24		

Ron Wilson
October 29, 2015

143:14 144:2	violation 53:25	61:11 70:12,21	151:9 152:13
useful 114:6	91:17 92:25	72:14,16 77:21	we'll 15:20 66:4
USPTO 55:8 90:12	116:16 117:15	80:20 86:9 87:4	we're 15:19 32:24
91:8 160:1	144:9	88:9 90:21 93:13	63:18 119:6
USPTO.gov 22:24	Virginia 10:22,25	95:4,6,9,15 97:16	122:23 141:6,7,11
23:3,13 24:23	11:18,20 12:7,14	97:17,19 109:15	141:16 143:15
26:17 27:17 28:2	13:3 14:12,17	132:25 144:25	158:6 165:18,23
28:13 29:8,20	15:2,5,23 16:2,14	151:8 152:21	172:16
53:1	17:9	153:2	we've 63:4 80:15
usually 11:2	visibility 64:15	wanting 26:15	87:21 147:24
utility 23:17 24:5	93:17	105:21	weapon 95:18,20
27:18 28:4 29:10	visible 56:2	wants 84:17	101:25 153:5,7,7
53:5,7 55:9,12	vision 87:17	warehouse 46:20	153:8,8,9,10
utmost 141:21	visit 161:23,25	74:11	wear 31:18,19 60:25
	162:3	warm 37:19	61:2,14,18 78:25
V	visited 162:5 164:1	warmer 4:10,10,13	79:3 87:17 113:19
vacation 84:23	visits 163:24	4:13,21,21 5:3,3	114:3,19 126:21
Valley 41:17	visual 101:13	5:5,5,8,8,10,10	126:22 127:3
valuable 27:1	Volcoms 31:25	18:19 21:3 26:16	wearing 48:24 50:4
value 31:10,11	volunteered 52:3	26:24 28:3,21	56:4,11,11 60:17
35:18	VP 42:21 83:14	29:9,25 30:14	60:19 79:4 108:15
variety 43:3	vs 1:7 4:3	31:13,13 33:10	113:24 121:3
various 16:23,24	VTWC 13:6,20,22	warmers 20:25 21:25	123:3,5 125:9
101:8	14:1	25:10 28:3 29:21	127:2 128:13,16
vast 125:21	W	30:17 31:1 37:17	131:15,25 132:10
vector 96:10	waist 5:17 6:6 34:2	wash 114:12	132:11,12 133:17
Vegas 48:22	57:5 102:25	wasn't 41:14 49:13	133:18 134:11
Velcro 57:3 108:22	103:19,25 104:7	64:13 69:12 71:20	135:9 169:14,18
114:10,12 126:8	107:20 126:9	79:17 81:25 91:16	170:2,19,23
vendors 64:16	waistband 5:15	94:9 96:4 129:24	web 5:12 6:10,11,16
116:10	61:15 103:13	131:19 166:17	6:24 7:2,3,5,16
venture 33:14,15	Wait 109:25	watch 20:18 160:9	7:18,20,21 52:11
Venum 115:6	waited 78:9	watched 20:17 47:16	130:11 139:3
version 54:14 59:15	waiting 122:20	130:24 131:22	142:24 169:15
59:17 103:1 121:1	waiving 84:20	132:8 134:9	website 40:18,19
121:1	walk 58:20 62:15	158:17	43:12 45:23
versus 63:21 95:5	114:25	watching 20:9 50:3	135:10 140:16
95:21 96:21	walked 77:15 83:22	56:10	167:6
149:11	100:17	water 34:23,24 35:2	websites 21:15
vice 12:20	walking 12:25 62:17	35:19 49:12	40:20,21,22 42:23
VIDA 5:12 36:3,21	107:12 169:5	waterproof 35:11	45:24 46:15
37:15 38:16 39:15	wall 78:12 137:10	41:11,11 42:14	wedged 26:3
40:6 49:7 58:6	want 17:6 28:21	wave 50:24	week 69:19 73:18
video 6:17,18,20	47:23 52:8 54:19	way 24:17 37:17	75:2 147:10
130:23,25 131:4	61:1,1 67:18 68:2	54:20 62:18 63:15	157:15
131:22 132:8,9,15	81:4 88:21 90:19	63:21 66:1 80:9	weekend 60:18 82:16
134:8,10,10	92:25 103:19	80:21 84:12,17	99:4
videos 131:19	109:8 141:15,15	86:4,6 88:13	weekends 164:20
viewed 24:20 131:3	150:24 152:9	93:16,25 107:23	weeks 18:5 76:2
views 130:25 131:2	153:2	108:2 121:23	103:21 164:19
131:8	wanted 13:13 14:20	123:21 141:20,25	166:13
violates 165:10	20:20 21:5 31:19	142:4 151:20	weight 11:19 12:7
violating 100:22	31:19 32:2,13,23	154:13 161:18	13:3 15:5 114:1
103:5 135:22	34:23 35:7 39:5	164:3 176:20	151:15
140:20 142:15	40:12 43:22,25	WayBack 6:16 130:11	weightlifting 11:17
143:5 144:6	47:14 51:11 58:2	Wayne 112:20	weights 14:19
146:24 148:15		ways 53:6 85:7	weird 107:24

Ron Wilson
October 29, 2015

welded 26:9 108:8
went 10:22 16:17
 17:18 18:8,24
 22:25 36:6 38:2
 44:4 57:4,6 68:1
 68:5 71:1,16 76:6
 80:7,22 82:24
 84:3 85:14,15,20
 85:25 97:19
 100:10 103:10
 106:4 107:21
 110:23 145:3,3
 147:8 166:25
 167:4 170:5,7
weren't 82:11 94:17
West 17:9 31:21
wet 35:9
Wharton 17:17,20,21
 17:23,23 18:16
 19:6
whatnot 91:1
WHEREOF 176:21
wherewithal 39:24
whisper 141:12,16
Whitmyer 2:8 9:13
wide 151:18
wider 43:3
wife 107:4
Wikipedia 6:2 98:7
wildly 109:20
willing 44:1 73:18
 84:22 124:3
 132:25
Wilson 1:13 3:3 4:2
 9:4,15,20 10:7,13
 10:19 21:19 22:9
 22:21 23:8 24:10
 25:6 26:21 27:10
 27:22 28:8 30:24
 37:4 52:19 54:6
 54:25 55:18 68:10
 91:5,21 98:6
 99:18 102:4,19
 110:11 111:12
 112:13,16 113:10
 114:22 115:20
 116:24 117:25
 118:23 119:10
 120:11,18 121:12
 122:6 123:7,15
 124:5,12 125:11
 126:3 127:5,12
 128:22 129:5
 130:6,20 131:14
 132:5,16 134:6
 136:3,10 137:5,20
 138:25 139:19

140:10,24 142:8
 142:20 143:22
 144:16 145:13
 146:2,12 147:3
 148:7,20 149:23
 154:2,24 155:22
 156:14 157:7,24
 158:21 159:16
 161:14 162:14
 163:20 164:15
 165:13 167:25
 168:7,12,16 171:7
 173:15 174:17
 175:25
wind 70:22
wine 80:8
wing 151:1
winter 18:25 25:12
 25:12 37:19 58:23
 58:23
wish 71:17 166:20
withdraw 39:13
Withdrawing 135:1
Withstood 126:21
witness 3:3 9:9,15
 13:21,24 15:19
 19:19 22:3 23:12
 28:1,12 29:7,18
 36:20 37:9 39:9
 39:14 52:24 55:22
 65:17 73:11,17
 92:21 93:5 96:18
 99:3 100:1 102:13
 113:5 117:17
 119:25 120:6
 124:9 125:20
 127:9 129:1
 131:11 132:20
 134:25 137:23
 141:22 147:17,20
 150:8 152:17
 154:6 155:17
 158:17 159:5
 163:24 165:17
 171:12,21 172:6
 173:8 174:5 176:7
 176:21
witness's 64:21
 101:14 122:2
 123:12 142:16
 143:6 144:10
 145:8 148:15
 149:18
witnesses 142:2
Wodville 6:12
 115:25
women 35:17 106:14

women's 38:19
 106:16 139:7
won 62:10
word 88:6 91:11
 119:3 138:18
 152:11
words 82:25 94:4
 138:10 146:17
wore 34:12 149:12
work 14:4 15:24
 16:16 17:16 18:6
 26:5 46:22 49:4
 51:17 52:9,14,14
 57:11 58:20 61:13
 62:5 65:19 66:2
 74:19 79:7 80:2
 80:22,23 81:13
 90:19 106:6
 126:24 153:11
 154:16
worked 13:8 16:9
 17:5 28:19 32:16
 71:7 77:8 87:10
 90:15 104:20
 106:2 113:24
 122:22 123:21
working 16:7 33:16
 34:8 36:22 40:23
 52:10 53:5,10
 54:12 56:5 60:12
 73:12 76:8 87:7
 88:11 92:5,7
 125:7 152:24
 153:1 164:20
workout 124:3
workouts 61:8
works 84:12,17
 89:15 163:12
world 14:18 31:24
 58:9 65:6,6 85:19
 125:25 158:7
 167:6 172:21
world-class 35:5
worldwide 160:10
worn 62:9 113:17
worry 76:22
worst 97:4
worth 27:1
worthless 73:24
wouldn't 26:12
 138:13
Wow 62:23
wrap 23:18,22
wraps 18:20
write 88:3
writing 78:12 93:19
 95:3 97:14,18

written 99:12
wrong 85:25 129:24
 133:6

X

x-functional 112:22

Y

Yahoo 139:8
yeah 10:21 15:25
 22:7 40:11 50:6
 65:18 79:16 85:14
 108:1,10,20 109:2
 113:13 132:8
 135:8 139:22
 144:3 161:25
 169:15 170:21
year 12:21 15:3,14
 16:2,5,6,14 17:4
 17:5,16 18:13
 37:20 40:14 43:22
 45:6 59:20,21
 61:24 66:5 68:10
 69:18 100:8 105:5
 109:25 110:1
 160:20 162:4,5
 170:6
yearning 31:17,17
years 11:8 17:4
 42:13 49:11 51:24
 52:4 87:16 88:25
 168:12,16
yesterday 158:2,8
yolk 151:9
yolks 151:7
York 172:18
young 21:5 150:18
youth 116:5
YouTube 6:17,18,20
 90:1 130:23,25
 131:3,6,9,17,18
 134:8

Z

zip 112:2

0

06901 2:10

1

1 4:8 10:4,8 162:15
1.0 105:24 106:25
 113:17
1.8 69:4 73:19 77:1
1:00 1:15 9:2
10 4:8 5:4 28:5,9

Ron Wilson
October 29, 2015

28:25 52:2,4	150,195 158:7	87:22 138:2	127:12 162:14
68:25 74:12	154 7:18	2006 4:17,19,24	30 6:14 42:21 120:8
120:19 129:25	155 7:20	2007 40:15,17,18	120:12
10-foot 62:1	156 7:21	2008 45:7	30-plus 74:14
10/23 131:1 132:9	157 7:22,23	2009 4:11 21:24	30,000 117:20
100 16:18 100:11,12	158 7:24	2011 5:3 61:25,25	300,000 59:20 73:8
105:9,10 106:22	159 8:2	68:13,13 69:19,20	73:14 77:1
100,000 12:23 19:11	16 4:15 5:3,16	130:13	31 6:16 130:3,7
20:21 158:8	54:22 55:1 127:13	2012 5:13,15,17,20	134:19
101 2:14 6:4,14	161 8:3	83:9 85:12 100:9	32 6:17 122:19
120:16,19	164 8:4	105:6	130:17,21
102 6:5 120:20	168 8:5	2013 111:23 127:2	323 2:5
122:7	16th 83:9 85:12	163:16	33 6:18 132:2,6
103 122:7	17 4:11 5:15,18	2014 5:11 111:24	34 6:19 122:19
105 123:16	55:15,19	112:3	133:10,14
106 123:17	171 3:7 173:1	2015 1:14 4:4 6:6	35 6:20 134:2,7,19
107 124:13	17th 92:6 100:12	9:2 155:11 176:22	36 5:12 6:21 134:23
108 124:14 126:4	105:7,10,11	2016 135:19	134:24 135:2,6
11 5:7 29:1,5	18 5:8,21 19:10	203 2:10	36th 2:4
11,000 21:4	91:2,6	21 4:9 5:20 6:3	37 6:22 135:25
110 6:7 30:12 126:4	180s 18:12 20:6	98:20,24	136:4
127:13	21:1 22:12 27:1	22 4:12 6:4 100:22	38 6:24 138:21
111 6:9,14 120:16	30:24,25 32:8	100:25 101:4	139:1
127:13	33:2,3 34:7,15,17	22nd 91:12	39 7:2 139:16,20
112 6:10	35:21 37:15 39:19	23 4:14 6:5 102:16	
113 6:11	42:24 87:15 170:4	102:20 124:12,13	<hr/> 4 <hr/>
115 6:12	170:8	166:2	4 4:14,17 23:5,9
116 6:13	180s' 31:13	24 4:16 6:7 110:8	66:5 122:7 123:16
12 4:19,23 5:9,13	19 5:23 91:18,22	110:12	124:25 125:1
8:3 29:11,16	92:22 96:13 97:15	25 4:18 6:9 15:10	4:50 1:15 173:16
161:16,21	1962 98:9	91:13 111:9,13	40 7:3 8:3 12:10
120 6:14	1980s 152:3	115:7,8 120:19	58:3 140:7,11
12090 1:24 4:5	1985 168:18	122:7 123:16	161:16 162:15
176:25	1986 11:9	124:12 126:3	40-foot-high 46:20
135 :12 36:15	1988 13:16	127:13 136:10,11	41 7:4 8:3 140:21
176:22	1991 10:24 11:9	159:23 160:6,17	140:25 160:4
130 6:16,17	16:15	161:3 162:14	161:16 162:15
132 6:18	1993 17:18 101:13	164:23	42 7:5 142:17,21
133 6:19	1997 170:7,7	25,000 117:20	43 7:7 143:19,23
134 6:20		25th 37:2	44 7:8 144:13,17
135 6:21	<hr/> 2 <hr/>	26 4:20,22 6:10	444 2:14
136 6:22	2 4:9 21:16,20	112:10,17	45 7:9 57:25 145:10
138 6:24	42:13 43:5 59:21	26th 75:12,13	145:14
139 7:2	65:6,6 66:5	27 4:23 5:2,6 6:11	45-degree 56:18
14 5:13 37:5 39:13	120:19 122:7	113:7,11	46 7:11 145:23
52:16,20	123:16 124:13	28 5:4,17 6:12	146:3
140 7:3,4	126:4 161:21	29:24 115:17,21	47 7:12 146:9,13
142 7:5	170:14,14	160:23,24 161:5	48 7:14 95:24
143 7:7 162:5 164:1	2,500 12:8 18:22	29 1:14 4:4 5:7,9	146:21 147:4
164:6	2.0 6:13 107:17	6:13 9:2 116:21	49 7:15 148:4,8
144 7:8	117:3	116:25	
145 7:9	20 6:2 74:14 82:14	290,511 131:2	<hr/> 5 <hr/>
146 7:11,12,14	97:22 98:1 174:12	2nd 130:13	5 4:16 14:18 24:7
148 7:15,16	2000 168:15		24:11 42:7
149 7:17	2003 4:13 34:23	<hr/> 3 <hr/>	5,000 15:11
15 5:14 54:3,7	2004 4:15 5:8	3 4:12 22:18,22	50 7:16 19:15 29:24
123:15	2005 4:22 5:6 37:3	28:24 122:6	48:10 115:10

Ron Wilson
October 29, 2015

148:17,21 165:25
50,000 107:4
51 7:17 65:23
 149:20,24
515 2:4
52 5:13 7:18 154:21
 154:25
53 7:20 155:19,23
54 5:14,16 7:21
 156:11,15
55 5:18 7:22 157:4
 157:8 158:10
56 7:23 157:21,25
 158:11,12
568 1:17
57 7:24 158:18,22
58 8:2 159:13,17
59 8:3 161:11,15

6

6 4:18 5:11 6:6
 14:18 25:2,3,7
60 8:4 34:14 115:3
 164:12,16
600 2:9
600,000 78:1
61 8:5 168:4,8
650 2:15
660-9916 2:5
69 6:22 136:8

7

7 4:13,20 16:19
 26:18,22 27:4
 96:19 97:4,5,6,8
 136:10
700 49:21
703-0800 2:10
72 90:12

8

8 4:23 27:7,11,12
8,484 157:16
8:00 156:20
83 167:8
85/837,045 1:7
867-1711 2:15

9

9 3:6 5:2 27:19,23
 161:21 162:16
90 66:8 68:24 69:3
 129:25
90071 2:4
90s 168:14
91 5:21,23

91213057 1:5
92075 2:15 10:15
930 10:14
95 62:16
97 6:2
98 6:3