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1 THURSDAY, NOVEMBER 16, 2006 AT 10:20 A.M.

2 THE COURT: This is the matter of Robert Jean, et
3 al., versus Stanley Works, et al., case 04-1904, set for
4 evidentiary hearing pursuant to the order of referral of
5 District Judge Boyko.

6 Counsel, let's -- as we are all aware, we're
7 operating under time constraints, so let's skip the
8 preliminaries and go directly to calling the witnesses who
9 will be testifying today and tomorrow. Who will be first?

10 MR. TOCE, SR.: Don Goddard.

11 Judge, a preliminary housekeeping matter, just for
12 the record, I want to make sure our objection is preserved
13 to the Court's allowance of Stanley to call the three
14 witnesses that didn't submit affidavits in response to the
15 motion in the first place.

16 Secondly -- you want to answer?

17 MR. KILBANE: Go ahead.

18 MR. TOCE, SR.: And, secondly, the clients sworn
19 declarations were submitted to the Court on the original
20 motion in front of Judge Boyko, but to that extent, we offer
21 them again in the trial, as you suggested in chambers. We
22 will do that at this time, if it's okay with counsel.

23 THE COURT: Is that -- I have the original
24 declarations. And for the record, the in chambers
25 conference, in order to expedite this, I suggested to

1 counsel that if they were comfortable with it, I would
2 permit the witnesses to be shown copies of the previously
3 submitted declarations, ask if they were prepared to adopt
4 the declarations as their testimony today. Although, in
5 looking at them, they are all relatively brief. If they
6 have anything further to say on the subject, they can, then
7 just turn the witness over for cross-examination. Counsel
8 said that that could work.

9 So if you would have Mr. Goddard come forward, I'm
10 at the moment thumbing through my pile of declarations to
11 find his.

12 MR. TOCE, SR.: Could we question the witness from
13 the table.

14 THE COURT: Where ever you're comfortable.

15 DON GODDARD,
16 of lawful age, a witness called by the Plaintiff,
17 being first duly sworn, was examined

18 and testified as follows:

19 MR. TOCE, SR.: May I proceed, Your Honor?

20 THE COURT: Please.

21 DIRECT EXAMINATION OF DON GODDARD

22 BY MR. TOCE, SR.:

23 Q. Mr. Goddard, please introduce yourself to the court?

24 A. I'm Don Goddard from Salt Lake City, Utah.

25 Q. You previously submitted a sworn declaration in this

1 case?

2 A. Yes, I did.

3 Q. Have you had a chance to read over it?

4 A. Yes.

5 Q. Is everything you said in that affidavit still true,
6 accurate and correct?

7 A. It is true. There are a few things I would like to add
8 because it's kind of hard to elaborate on here.

9 Q. Okay. Let me ask you. Did you have a chance to see
10 the, what we have been referring to as, the acknowledgment
11 of receipt, the acknowledgement form?

12 A. Yes.

13 Q. And I believe your acknowledgment form was dated
14 September 15, 2001?

15 A. Correct.

16 Q. When you read the form in preparation for this hearing,
17 did you notice anything that might be incorrect about it?

18 A. As far as reading the form that I did sign?

19 Q. Right.

20 A. Yes. I did not receive half the things that were on
21 there.

22 Q. Okay. When you read the acknowledgment form after the
23 fact, do you now know the documents that were received by
24 you were not received by you?

25 A. They were not.

1 MR. KILBANE: Objection, to the form.

2 THE COURT: Please don't lead. First of all, do
3 we have a copy of that form?

4 MR. TOCE, SR.: Yes, Your Honor. May I approach?

5 THE COURT: Yes.

6 BY MR. TOCE, SR.:

7 Q. Let me show you this form that is going to be labeled
8 as plaintiff's Number 1 for identification purposes, which
9 purports to be the acknowledgment formed signed by Mr.
10 Goddard. Take a look at that, Mr. Goddard, and tell me if
11 you have seen that before and if that's your signature?

12 A. What was that question again?

13 Q. Tell me if you have seen that before?

14 A. Yes.

15 Q. And is that your signature?

16 A. Yes, it is.

17 Q. Explain to the Court how it is you are of the
18 understanding that you did not get the documents that are
19 listed on the acknowledgment form that you signed in
20 September?

21 MR. KILBANE: Objection. He stated earlier he
22 received half of them.

23 THE COURT: Yes. What documents that the form
24 reflects you received do you now maintain you did not
25 receive?

1 THE WITNESS: I received the catalog of listing
2 brochure. When I signed this it was the night I signed the
3 application also.

4 THE COURT: Do you have a copy of, spare copy of,
5 that for me as well, please?

6 MR. KILBANE: We do, Your Honor. We marked it as
7 PX-1.

8 THE COURT: It's marked Plaintiff's 1. And there
9 are on here, Attachment A, and there are 18 items listed,
10 and then there are Attachments B, C, D, E, F and G.

11 Which of those do you now say you did not receive?

12 THE WITNESS: It's hard to remember for sure
13 exactly what I did receive because it was a trusted friend
14 that signed me up, and at that time I probably would have
15 signed anything.

16 Q. Who was the gentleman that signed you up?

17 A. Mr. John Kelsey, and I have been friends with him since
18 1979.

19 Q. How close friends are you?

20 A. Real good friends.

21 Q. Tell us please why you do not believe that the
22 contracts that you were going to have to sign with MAC were
23 not given to you at the time the acknowledgment form was
24 signed by you?

25 A. The package I got was with a little MAC kind of tool

1 truck looking thing. And if I would have had the contract,
2 I probably -- the wife would have read over it for sure.

3 Q. When were you given contracts to look over at the
4 training in Columbus?

5 A. It was on Thursday, October 18, of '01.

6 Q. When you first had a chance to sit down and read over
7 the contracts, how did you know that you had never seen them
8 before?

9 A. It was a pretty good stack.

10 Q. Tell me a little bit, Mr. Goddard, about the signing
11 process at the end of the training in Columbus?

12 A. It was on the last day of our training. We had a
13 graduation in the morning, and then they took us back down
14 to the training center, and the MDSR went one way and us
15 traditionals went another way into like a lunch room almost,
16 with contracts laid out on the table. And that's the first
17 we'd seen them.

18 Q. How much time did you have to sign the contracts?

19 A. If I remember right, my flight was within two hours
20 when we got ready to sign.

21 Q. Were signature tabs in the documents where you were
22 suppose to sign?

23 Directing your attention to the signature.

24 A. Yes.

25 Q. Did anybody direct your attention to the contents of

1 the documents when you were signing them?

2 A. Not really.

3 Q. Was there anybody there when you were signing the
4 distributor agreements to answer any questions you had?

5 A. There were two gals in there. And we asked a few
6 questions. And we got the same response almost all the way
7 through, we'll get to you traditionals later.

8 Q. Have you ever signed a contract as complex as the MAC
9 agreement anywhere in your life?

10 A. No.

11 MR. KILBANE: Objection, move to strike that.

12 Q. How many people were in the room with you when you were
13 actually being directed to the signature tabs and signing
14 the documents?

15 A. If I remember correctly, there were just two, and then
16 one other distributor with me.

17 Q. And can you give us a time frame as to how long it took
18 you from the time you entered the room and the time you left
19 and the documents were signed?

20 A. A good half hour, 45 minutes.

21 MR. TOCE, SR.: One minute please.

22 (Pause.)

23 BY MR. TOCE, SR.:

24 Q. Mr. Goddard, is there anything else from your affidavit
25 that you would like to explain or elaborate on?

1 A. Probably just the fact that when I signed the first
2 group of papers I was invited up to dinner at John Kelsey's
3 house. It was very informal. We played on the computer and
4 he tested me there. And he had me sign the affidavit, and,
5 obviously, this acknowledgment. And he sent me home with a
6 little toolbox looking thing, with catalogs, and explaining
7 the pay by phone, and that was basically all I really seen.

8 Q. How long had you been looking into becoming a MAC Tools
9 distributor with Mr. Kelsey before September 15, 2001 when
10 you went to his house?

11 A. I had been talking to him off and on for about a year
12 or so.

13 Q. Where did you sign the acknowledgment form?

14 A. At his house in his basement.

15 Q. Do you remember leaving his house with a stack of
16 documents that would be reflective of all the things listed
17 on the acknowledgment form?

18 A. No. Like I said, it was just a little toolbox looking
19 pouch thing. It looked like the tool truck almost, had a
20 catalog and price list.

21 Q. Tell me a little bit about your formal education. Did
22 you get any education after high school?

23 A. No, high school.

24 Q. What have you done for the majority of your work life?

25 A. Mechanic.

1 MR. TOCE, SR.: I'll tender the witness, Your
2 Honor.

3 THE COURT: I assume -- your declaration says you
4 live in West Jordan, Utah. I assume that is where you and
5 Mr. Kelsey both live, where you and he got together.

6 THE WITNESS: Well, West Jordan and Salt Lake --
7 they are all little subdivisions of Salt Lake.

8 THE COURT: Yes.

9 THE WITNESS: He actually lived in Sandy.

10 THE COURT: Okay.

11 MR. TOCE, SR.: Your Honor, we offer into evidence
12 the acknowledgment form and his sworn declaration.

13 THE COURT: Excuse me. His declaration is already
14 in the record as ECF document 78. So I don't think it's
15 necessary to reoffer that.

16 I've gone through my packet and have found
17 declarations for all of the proposed witnesses, except in my
18 packet I couldn't find a Kelly Thompson declaration. I
19 assume it has been filed and for whatever reason I just
20 didn't get it segregated out. So when you call Kelly, being
21 one of those I'm not sure of, when you call Mr. Thompson, if
22 you would please provide me with a copy of his declaration,
23 I'd appreciate it.

24 MR. STEVENS, JR.: We definitely will, Your Honor.

25 MR. TOCE, SR.: I have it right here, sir.

1 THE COURT: All right. I'll add it to my stack.

2 MR. STEVENS, JR.: Your Honor, what is the Court's
3 preference on the affidavits that's already in evidence, do
4 we want to number them some way?

5 THE COURT: No, just have the witness, as Mr.
6 Goddard has done, testify that they are the affiant, the
7 declarant, that they have reviewed it, that they're prepared
8 to adopt it, and then as he has done, if they have anything
9 else -- oh, Mr. Wilson is going to go make me a copy -- if
10 they have anything else to say on the subject.

11 MR. FRIEDMAN: I actually have signed copies if
12 you want.

13 THE COURT: No. He's already gone to run a copy,
14 so that way we can return the one Mr. Thompson had to him.

15 Mr. Kilbane, sir.

16 MR. KILBANE: Thank you, Your Honor.

17 CROSS-EXAMINATION OF DON GODDARD

18 BY MR. KILBANE:

19 Q. Good morning, Mr. Goddard?

20 A. Good morning.

21 Q. I'm Tom Kilbane, representing the defendant.

22 Directing your attention to Plaintiff's Exhibit 1. You
23 did say that you did receive number 12, the pay by phone
24 form?

25 A. Yeah. Well, it was shown to me. I don't remember

1 signing anything.

2 Q. Well, as a matter of fact, you mentioned in your
3 affidavit that you received a packet of information. Do you
4 recall that?

5 A. Yeah, a catalog.

6 Q. Didn't you receive a packet similar to this, sir?

7 A. I can't see that far, sir.

8 Q. It's marked Defendant's Exhibit A.

9 Handing you what has been marked Defendant's Exhibit A.
10 Is that the packet you were given by Mr. Kelly December 15,
11 2001?

12 MR. TOCE, SR.: Your Honor, excuse me, objection.
13 We object to the use of this document. We don't know what
14 it is. He's never seen it before.

15 MR. KILBANE: Wait a second.

16 THE COURT: We don't know whether he has seen it
17 before.

18 MR. KILBANE: That's what I'm trying to find out.

19 THE COURT: That is the question for the house,
20 which Mr. Kilbane should have posed to Mr. Goddard and which
21 I will pose to Mr. Goddard, which is, would you please look
22 at what Mr. Kilbane has just handed you and tell us have you
23 seen that packet -- let's call it a packet, have you seen
24 that before? Does that look familiar to you?

25 THE WITNESS: It does not look familiar at all.

1 BY MR. KILBANE:

2 Q. Directing your attention to the last two pages of that
3 document. Are those not in fact the acknowledgment forms,
4 one of which has just been marked, the one signed by you, as
5 Plaintiff's Exhibit 1?

6 A. It is.

7 Q. Aren't there two acknowledgment forms at the very back
8 of that packet of information?

9 A. Yes, sir.

10 Q. And that is where you got the acknowledgment form you
11 signed as Plaintiff's Exhibit 1, isn't it, Mr. Goddard?

12 A. I do not recall receiving the booklet at all.

13 Q. And the packet receipt for the very first item is the
14 distributor agreement, correct?

15 MR. TOCE, SR.: Your Honor, I renew my objection.
16 The witness testified he never saw this document.

17 MR. KILBANE: Are you going to object?

18 He never saw it, the distributor agreement?

19 MR. TOCE, SR.: I promise you if you won't
20 interrupt me, I won't interrupt you if you extend the same
21 courtesy. For the record, she is going have to type this,
22 the objection is the witness said he's never seen the
23 document, and Mr. Kilbane is asking about the contents of
24 this document, which he just received for the first time two
25 minutes ago.

1 THE COURT: He can look at it and tell us what the
2 first document in that booklet is. He is, obviously,
3 capable of telling us what it is.

4 MR. KILBANE: Yes.

5 THE COURT: All right. Though I'm sure it speaks
6 for itself.

7 MR. KILBANE: Well, I'm going to continue on.

8 BY MR. KILBANE:

9 Q. It's the distributor agreement, is it not?

10 A. The first page says distributor information package.

11 Q. Right. And then the distributor agreement is
12 Attachment A-1, correct?

13 A. I can't find it yet.

14 Q. A-1?

15 A. A-1.

16 THE COURT: Mr. Kilbane, is this a specimen
17 booklet?

18 MR. KILBANE: Yes, it is.

19 THE COURT: Do you have a copy for me please?

20 MR. KILBANE: Yes. Unfortunately, this is the
21 same thing. They change by color and that. We have some
22 later versions that have a red copy.

23 THE WITNESS: No. Mr. Kelsey, was handing me
24 papers that were in a file slot in his office.

25 THE COURT: So, Mr. Goddard, your testimony is

1 that you did not receive a booklet such as that, which has
2 just been handed to you, but what you received from Mr.
3 Kelsey --

4 THE WITNESS: Individual papers.

5 THE COURT: All right.

6 MR. KILBANE: But I'm asking a different question,
7 Your Honor. I'm asking him on A-1, which is the distributor
8 agreement, the MAC distributor agreement. The version here
9 is a later version, March 8, 2002. I represent it's not
10 different because you said you've never seen any of these
11 documents.

12 Q. Have you seen this document before?

13 A. Not that I recall.

14 THE COURT: Mr. Goddard, for reference purposes,
15 if you look at the bottom of the page numbers, what Mr.
16 Kilbane is referencing starts with a designation A-1.

17 He found it. Okay.

18 And his question, is the packet that Mr. Kelsey
19 gave you, was that in that packet, to the best of your
20 recollection?

21 THE WITNESS: I do not remember seeing any of
22 this.

23 Q. Do you recall ever seeing that document at any time, a
24 version of that, at any time since your meeting in September
25 of 2001?

1 A. I do not recall.

2 Q. Okay. Let me hand you what has been marked as
3 Defendant's Exhibit B.

4 Handing you what has been marked as Defendant's Exhibit
5 B. In fact, isn't that the distributor agreement you signed
6 with the Stanley Company, Stanley Works?

7 A. That would have been signed on the last day of school.

8 THE COURT: Do you have a copy of B for Mr.
9 Goddard's counsel?

10 MR. KILBANE: A? Could you please -- of which
11 document?

12 THE COURT: B.

13 MR. TOCE, SR.: We have B, we don't have A, Judge.

14 MR. KILBANE: I said we have only a few forms, but
15 here is one similar to it.

16 THE COURT: Gentlemen, as long as Mr. Goddard has
17 disclaimed seeing any booklet that resembled A, it becomes a
18 non-issue.

19 MR. TOCE, SR.: Exactly.

20 MR. KILBANE: Well, I think it's still an issue,
21 Your Honor. He now has the contract which is identical to
22 the one in the book, and he's saying -- he earlier said he
23 never saw it, and now he admits that he signed it.

24 THE WITNESS: Is the date on that the last day of
25 school? So maybe I did the last day of school, but prior to

1 going to training I never saw this.

2 Q. Let's go back to your acknowledgment, PX-1.

3 You acknowledged that you received the distributor
4 agreement, did you not, as of September 15, 2001?

5 THE COURT: No. He has denied that he received it
6 on September 15, Mr. Kilbane.

7 MR. KILBANE: No, I'm --

8 THE COURT: He said he --

9 MR. KILBANE: I'm sorry.

10 THE COURT: You're talking about the
11 acknowledgment?

12 MR. KILBANE: Yes, Plaintiff's Exhibit 1.

13 THE COURT: I'm sorry. But your question was
14 couched in terms of the distributor agreement itself.

15 MR. KILBANE: Correct. At the time of the -- you
16 acknowledged at the time you signed this document that you
17 had received Attachment A, which included the distributor
18 agreement; did you not?

19 THE WITNESS: I'm not sure of that question.

20 THE COURT: The document that you signed on
21 September 15th.

22 THE WITNESS: Was the acknowledgment.

23 THE COURT: The signed acknowledgment includes --
24 it says I have received the following. And Mr. Kilbane's
25 question to you is, doesn't that document that you signed on

1 September 15th contain an acknowledgment that you received
2 Attachment A, which included 18 different items?

3 THE WITNESS: I did sign the acknowledgment on the
4 15th, but I did not receive all of this paperwork.

5 BY MR. KILBANE:

6 Q. But my first point is, on the distributor agreement,
7 you understand the distributor agreement would be your
8 agreement between Stanley Works and yourself with respect to
9 your job as a distributor; do you not?

10 A. I understand that, but I don't remember -- I didn't
11 sign anything prior to going to school except for an
12 application.

13 Q. I'm referring to the acknowledgment again. If you
14 never received Exhibit A-1, the distributor agreement, why
15 did you sign the acknowledgment?

16 A. I probably would have signed anything John put in front
17 of me that day.

18 Q. Did you ask John where are those attachments if you say
19 you did not receive them?

20 A. No, I did not.

21 Q. And you say you were given a box, correct?

22 A. Yes.

23 Q. And you're also telling the Court that in the box was
24 not this disclosure packet?

25 A. I have not seen that.

1 Q. Which we marked as Exhibit A?

2 A. I have not seen that packet.

3 Q. Do you still have the box and its contents?

4 A. I would have to look when I get home.

5 Q. You didn't remember seeing that distributor agreement
6 when you were on the stand, although it's the one you signed
7 a short time later?

8 MR. TOCE, SR.: Objection.

9 Q. Am I correct?

10 MR. TOCE, SR.: Objection. He's saying the
11 distributor agreement, Your Honor. And it's vague because
12 the one in the book is revised. This is 2002. The one he
13 signed is revised in 10-01, about a month after. So when he
14 was -- before he went to the trading this contract wasn't
15 even in existence.

16 MR. KILBANE: I made representation --

17 THE COURT: Gentlemen, let's not quibble. The
18 question would be generic, a distributor agreement.

19 MR. KILBANE: Yes, thank you. He said -- and the
20 fact is he said he did not see -- did not receive a
21 distributor agreement on September 15th, that he saw it and
22 signed it on October 18th. And that's his testimony.

23 BY MR. KILBANE:

24 Q. And at the time you signed this, going back to my
25 question, you did not ask for a copy of the distributor

1 agreement, is that correct?

2 A. No.

3 Q. And at the time of -- during the training session did
4 you ever ask for a copy of the agreement you were going to
5 enter into at any time prior to your training session?

6 A. No. I really didn't know what I was in for.

7 Q. Did you ask for additional time to review the
8 distributor agreement once you saw it?

9 A. We asked a few questions during the signing of all the
10 papers on the last day, but to tell you the truth, I can't
11 remember all that was in there.

12 Q. Do you recall asking anyone that I want an opportunity
13 to take this agreement and review it, I want some additional
14 time? Did you ever ask?

15 A. Not that I know of.

16 Q. And if you had looked at the agreement -- have you ever
17 looked at the agreement, which is Exhibit B?

18 Have you ever read the contents of Exhibit B, the
19 distributor agreement?

20 A. Not that I know of I have not.

21 Q. You never read it even until this day. And once again
22 you signed that agreement, correct?

23 A. Correct.

24 Q. And turning to page 19 of that agreement -- page 18,
25 I'm sorry. Do you have that?

1 A. Yeap.

2 Q. Do you see 19.3 in the middle of the page?

3 THE COURT: I'm sorry. Mr. Kilbane, the copy that
4 you said 19.3, because the copy that bears his signature,
5 page 18 --

6 MR. KILBANE: I meant page 17, Your Honor.

7 THE COURT: All right.

8 MR. KILBANE: I apologize.

9 THE COURT: It's page 17, sir.

10 THE WITNESS: Okay.

11 THE COURT: Clause 19.3.

12 Q. Do you see that paragraph, sir?

13 A. Yes, sir.

14 Q. And you've never read it before today, am I correct?

15 A. I have not.

16 Q. Okay. But looking at it now, is it clear in that
17 paragraph to you that you waived the right to have a claim
18 or dispute under this agreement or any other agreement
19 between you and us decided by a jury?

20 MR. TOCE, SR.: Objection, calls for a legal
21 conclusion by the jury.

22 THE COURT: Again, it speaks for itself.

23 Q. And that's clear to you that that provision, you're
24 waiving a right to jury, isn't it, sir?

25 A. Yes. I really don't understand.

1 Q. And you see the line above about claims being brought
2 in one year?

3 A. Um-hum. Yes.

4 Q. And did you also see in 20.1 the waiver of any punitive
5 damages? You see that now?

6 MR. TOCE, SR.: Objection, Your Honor. The
7 document speaks for itself. It doesn't add anything for the
8 mix here for the witness to acknowledge what the document
9 says. It says what it says.

10 THE COURT: It says what it says, but I think the
11 question I would expect somebody to ask of Mr. Goddard, did
12 you actually read this at the time you signed it.

13 MR. KILBANE: He already said he did not, Your
14 Honor.

15 THE COURT: All right.

16 MR. KILBANE: He answered in the negative. And
17 all I was trying to do is, if he had read the document and
18 seen these provisions, he wouldn't be submitting an
19 affidavit today saying that he's objecting to those
20 provisions.

21 THE WITNESS: Can I add something to that, sir?

22 Q. Yes. Are we clear on this?

23 A. Yes.

24 Q. Prior to today you have not reviewed the contract you
25 signed back on October 18, 2001, correct?

1 A. Correct.

2 MR. KILBANE: No further questions, Your Honor.

3 THE COURT: Redirect.

4 MR. TOCE, SR.: Yes, Your Honor.

5 MR. KILBANE: Thank you, Mr. Goddard.

6 REDIRECT EXAMINATION OF DON GODDARD

7 BY MR. TOCE, SR.:

8 Q. Mr. Goddard, look at item number 21 on page 17 on your
9 contract that Mr. Kilbane was asking you about. See that
10 paragraph in all capitals?

11 A. Um-hum. Yes.

12 Q. Assume that we read there, we read this contract, do
13 you have any idea what consequential damages are?

14 A. No.

15 MR. KILBANE: Objection.

16 THE COURT: Overruled.

17 Q. Do you know the difference between special damages and
18 indirect damages?

19 A. No.

20 Q. Do you know what tort means?

21 A. Pardon me?

22 Q. Do you know what tort, T-O-R-T, means?

23 A. No.

24 Q. Do you know anything about the doctrine of strict
25 liability? You know what that means?

1 A. No.

2 Q. So if -- assuming you had an opportunity to read the
3 documents before you signed them, was there enough time
4 provided by MAC for you to go find somebody to advise you on
5 what all that stuff meant?

6 MR. KILBANE: Objection to the form.

7 THE WITNESS: No.

8 THE COURT: Overruled.

9 Q. With your limited understanding of some of these
10 clauses, would it have been useless for you to read and try
11 to understand the legalese in the contract?

12 MR. KILBANE: Objection, Your Honor.

13 THE COURT: Sustained.

14 MR. TOCE, SR.: One second, Your Honor.

15 THE COURT: I'm going to declare my ignorance
16 right from the beginning. I'm not sure it would have been
17 clear to me from Judge Boyko's opinion, is the provision
18 that the defense is relying on, as far as compelling
19 arbitration, the clause 19.3?

20 MR. KILBANE: It's a three step process, Your
21 Honor. It's not just 19.3. It's 19, and that is the --
22 there is a three step resolution process that goes through
23 negotiations, mediation and arbitration. And I think
24 19.2(d) is really the arbitration clause. The waiver of
25 trial by jury is not what we're relying on, Your Honor.

1 That's an argument made by the plaintiffs.

2 THE COURT: There is a specific arbitration
3 clause. And now that I've looked at that, it does refresh
4 my recollection, because, obviously, if it was 19.3, then
5 the argument could be made there is no mandatory
6 arbitration. You simply would have to try your case to a
7 judge rather than to a jury, but it is the 19.2(d) that is
8 the critical clause.

9 MR. KILBANE: Correct, Your Honor.

10 You were finished?

11 MR. TOCE, SR.: No.

12 THE COURT: And now that I've looked at it, it
13 does refresh my recollection that that did appear in Judge
14 Boyko's opinion that I last looked at a couple of -- three
15 months ago.

16 BY MR. TOCE, SR.:

17 Q. Mr. Goddard, I was going to ask you one more question
18 and then let you go.

19 Could you please give us a visual picture when you
20 walked into the room to sign the contract what did it look
21 like? Was they all stacked up? Were they each by
22 themselves? Were they stuck together with tabs?

23 A. They had them all lined up where we were suppose to
24 sign, and it was kind of like a lunch room, basically.

25 Q. Say it was, if it was, a ten page document, you had to

1 sign on the last page, were documents already opened up to
2 the signature page where the tab was?

3 A. Yes. If I recall, yes.

4 Q. Was there anybody helping you with the documents, the
5 two ladies?

6 A. There were two ladies there.

7 Q. Did they direct you, help you find the signature page?

8 A. Yes.

9 MR. TOCE, SR.: That's it, Your Honor.

10 RE-CROSS EXAMINATION OF DON GODDARD

11 BY MR. KILBANE:

12 Q. Mr. Goddard, at any time did you ask anyone at MAC
13 Tools on the day of the contract signing that you wanted to
14 take the contract and have it reviewed with a lawyer?

15 THE COURT: Or by anybody?

16 THE WITNESS: We were asking a few questions and
17 they kept saying they had to get back to us later and never
18 did.

19 Q. My question was, did you ever ask any representative of
20 MAC Tools on that day for, that you wanted, for a copy of
21 the contract because you wanted to review it with somebody,
22 a lawyer, or advisor, or whatever?

23 Did you ever ask that question?

24 A. No.

25 MR. KILBANE: Thank you. No further questions.

1 MR. TOCE, SR.: Thank you, Mr. Goddard.

2 THE COURT: Mr. Goddard, thank you. You are
3 excused.

4 MR. TOCE, SR.: Our next witness, Your Honor, is
5 Carin Hadley.

6 CARIN HADLEY,
7 of lawful age, a witness called by the Plaintiff,
8 being first duly sworn, was examined
9 and testified as follows:

10 MR. KILBANE: I'm sorry. I thought you were
11 calling Mr. Thompson next. That's what you gave me.

12 MR. TOCE, SR.: Well, I changed my mind based on
13 your questions.

14 DIRECT EXAMINATION OF CARIN HADLEY

15 BY MR. TOCE, SR.:

16 Q. Good morning, Ms. Hadley. Would you please introduce
17 yourself to the Court?

18 A. My name is Carin Hadley. I live in Highland, Utah, and
19 my husband is Kent Hadley.

20 THE COURT: For the benefit of the court reporter
21 Carin Hadley spells her name, C-A-R-I-N.

22 Q. Who are you married to, Ms. Hadley?

23 A. Kent Hadley.

24 Q. And Mr. Hadley was at one time a MAC Tools distributor?

25 A. Yes, sir.

1 Q. What do you do for a living?

2 A. What do I do for a living. I am a speech language
3 pathologist with Intermountain Healthcare?

4 Q. How long have you been doing that?

5 A. I have been a speech pathologist for 23 years.

6 Q. Have you had a chance to review the affidavit, the
7 sworn declaration that we filed in this case sometime back?

8 A. With my name on it?

9 Q. Yes, ma'am.

10 A. Yes, I have.

11 Q. Is everything you swore in that affidavit true,
12 accurate and correct?

13 A. Yes, sir.

14 MR. TOCE, SR.: We offer her declaration to the
15 extent necessary.

16 THE COURT: No, it's not necessary because, again,
17 it is in the record as ECF document 55.

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

19 BY MR. TOCE, SR.:

20 Q. Tell us about the central auditory processing disorder
21 that your husband deals with?

22 A. Central auditor processing disorder is a disorder in
23 processing information. It's not a matter of can you hear
24 the sound of the phonics, or sounds in the word, it's a
25 matter of combining them, the matter, into the words, into

1 the sentence, into the thought. You have to take those
2 sounds, convert them to the cognitive thought.

3 He has a problem processing information quickly,
4 processing that information accurately. He needs it broken
5 up into small chunks of information so that he can
6 understand.

7 Q. So would that disorder result in your husband having a
8 difficult time absorbing a lot of complex information, such
9 as, a distributor agreement, in a very small amount of time?

10 A. Yes, sir.

11 MR. KILBANE: Objection.

12 THE COURT: Overruled.

13 Q. Did you, Ms. Hadley, inform MAC before your husband
14 went to training about this situation?

15 A. We went to Mr. Kelsey's home to have the first meeting,
16 that I recall. And at that time information was being given
17 to him verbally, and he needed to have it repeated, and I
18 believe I did mention at that time he had a hard time taking
19 information auditory in a fast manner, that he needs to
20 break it down step by step for him please.

21 Q. Now, you also went to Mr. Kelsey's home to be recruited
22 with your husband?

23 A. Yes, sir.

24 Q. At that meeting did your husband sign the
25 acknowledgment form that we've talked about earlier?

1 A. Can I see it, because I want to make sure I'm talking
2 about the right one.

3 Q. Let me show you what's going to be marked as
4 Plaintiff's Exhibit 2?

5 Let me show you what's been marked as Plaintiff's
6 Exhibit 2 for identification purposes, which purports to be
7 the acknowledgment form signed by your husband on October
8 11, 2001. I would ask have you seen that before?

9 A. The first time I saw it was yesterday.

10 Q. Do you recall signing, or Ken having to sign any form
11 or any documents at Mr. Kelsey's house when you went there
12 to be recruited?

13 A. I believe an application.

14 Q. Is that a big thick paper, or a couple of sheets of
15 paper, or one sheet?

16 A. No, it was not. It was individual sheets of paper, if
17 you will, very small amount of paper.

18 Q. Explain to us a little bit about your situation with
19 Kent and how that relates to either him or you signing a
20 contract that would bind you and him to serious obligations?

21 A. He has me read everything, such as, contracts like
22 this; or if I had seen it, I would have asked question. I
23 had not seen it prior to it coming to us in the mail. When
24 he buys a car, or mortgage lending, I'm probably the worse
25 person for that salesperson. I will read through and ask

1 questions. I have been known to strike out portions of
2 contracts saying I will not sign that. And I've left
3 business appointments if I did not feel my questions were
4 answered, or I was asked to sign something I was
5 uncomfortable with.

6 Q. Did you get the impression from Mr. Kelsey in that
7 recruitment meeting that a MAC Tool distributorship by your
8 husband would be a great financial opportunity for you all?

9 MR. KILBANE: Objection, leading.

10 THE COURT: Overruled.

11 THE WITNESS: I personally don't remember any
12 specific figures being given. What I recall from that
13 meeting, as far as financial, is he was asking our financial
14 obligation, our income stream, and what Kent would need to
15 generate to essentially make it the first year. Previously,
16 I know that Kent had been told by another director. I think
17 that was the impression we had.

18 Q. You said you were told another figure by another MAC
19 person?

20 A. Initially by another one, Kent talked to Bob Goddard.

21 Q. And initially Mr. Goddard said he would make a figure
22 in what as a MAC distributor?

23 A. To my recollection, this is from Kent, I wasn't in that
24 conversation, but he mentioned to Kent he had --

25 MR. KILBANE: Objection, hearsay. He's suppose to

1 be in the courtroom testifying. I don't know why she's
2 testifying as to this.

3 THE COURT: I will sustain the objection.

4 BY MR. TOCE, SR.:

5 Q. What was your understanding of the amount of financial
6 obligation involved with your husband Kent becoming a MAC
7 Tool distributor?

8 A. Can you clarify that question for me?

9 Q. Do you have any idea about how much credit you would go
10 look for if Kent joined MAC Tool distributor?

11 A. From the time --

12 MR. KILBANE: Objection, this seems to be outside
13 the scope, Your Honor. I don't know why we are getting in
14 financing. That sounds like the merits of the case.

15 THE COURT: Let me see. No, her affidavit does
16 talk about what investment was going to be required, and her
17 response to obtaining that information, her reaction to
18 obtaining that information. So it is within the parameters
19 of her declaration.

20 MR. KILBANE: Just so I'm clear on this, Your
21 Honor, I'm not saying it's not within the parameters, but it
22 has nothing to do with issues of what we are before the
23 Court on.

24 THE COURT: I will permit the question.

25 MR. KILBANE: I understand the ruling.

1 THE COURT: I will permit the question to stand
2 anyhow.

3 BY MR. TOCE, SR.:

4 Q. Do you remember the question?

5 A. I do. The question was what was our understanding of
6 what our debt would be.

7 Q. If you became a distributor, when you got back from the
8 training, what was your understanding at first about the
9 debt that would be incurred?

10 A. In discussion with Mr. Kelsey, it would be \$35,000.

11 Q. And when Kent came back to the training what did you
12 find out?

13 A. When documents came in the mail it was nearly \$90,000.
14 It was just horrifying to see that amount.

15 Q. From talking to Kent after he got back from the
16 training, what was your impressions as to whether they gave
17 him enough time or explanation when he was signing the
18 distributor agreement?

19 MR. KILBANE: Objection.

20 THE COURT: Sustained.

21 MR. TOCE, SR.: What's the basis of the objection?
22 I'm sorry.

23 MR. KILBANE: Leading.

24 THE COURT: Leading.

25 MR. KILBANE: And you're asking her for her

1 impression. It would be hearsay.

2 THE COURT: Yes. It was her impression of what
3 happened in Columbus, Ohio when she wasn't there.

4 BY MR. TOCE, SR.:

5 Q. Did you discuss it with your husband when he got back?
6 Did you discuss the actual contract signing?

7 When you got their contract in the mail, you started
8 reading, oh, my God. Did you go talk to your husband?

9 THE COURT: Well --

10 MR. KILBANE: Objection, hearsay.

11 THE COURT: Mr. Toce, Mr. Hadley is on your
12 witness list, and I would prefer to hear from him --

13 MR. TOCE, SR.: I understand.

14 THE COURT: -- what went down in Columbus, rather
15 than what she -- her secondhand understanding is from
16 talking to him when she got back.

17 MR. TOCE, SR.: Well, this is an unique situation,
18 Your Honor, and based upon his cognitive disability, and
19 also she has --

20 THE COURT: Excuse me.

21 MR. TOCE, SR.: She has understanding of that.

22 THE COURT: Mr. Toce, she said he had difficulty
23 processing information. She didn't say that he didn't know
24 the difference between being pressured and not being
25 pressured.

1 MR. TOCE, SR.: I understand. But what Kent
2 Hadley said is not hearsay by definition, it's a statement
3 of a party.

4 THE COURT: I will hear the statement from the
5 party, if you would, please.

6 MR. TOCE, SR.: Yes, sir.

7 BY MR. TOCE, SR.:

8 Q. What did you say to your husband when he got back from
9 the training about incurring the \$90,000 in debt?

10 A. When I saw that, I asked him did you ask anybody any
11 questions about what this information -- what you were
12 signing. And he said I asked --

13 MR. KILBANE: Objection, hearsay.

14 THE COURT: Again, I'll sustain the objection. If
15 we're going to have testimony about what occurred in
16 Columbus with Mr. Kent Hadley, I'll hear it directly from
17 Mr. Kent Hadley.

18 Q. We're running into a hearsay problem. You can't tell
19 me what somebody else said. You can tell me what your
20 understanding was or firsthand experience. Can you answer
21 my question without saying Kent said?

22 A. Okay. I understood Kent asked to call me.

23 MR. KILBANE: Objection.

24 THE COURT: Wait. Gentlemen, this is pointless.
25 It's in her declaration. It's here. She adopted it. I

1 will read it.

2 "I was also distress to learn the amount of credit
3 that had been extended. We were under the impression that
4 an initial investment of approximately \$35,000 would get us
5 started. When I saw the nearly \$90,000 obligation of credit
6 required, I was again very distressed."

7 That's in the declaration. She's adopted it.
8 It's called don't beat a dead horse.

9 BY MR. TOCE, SR.:

10 Q. Was one of the things you were stressed about that Kent
11 had signed these contracts without your having an
12 opportunity to review --

13 MR. KILBANE: Objection.

14 THE WITNESS: I'm sorry?

15 Q. Was one of the things you were stressed about was the
16 fact that Kent signed the contracts without giving you an
17 opportunity to review them first?

18 A. Yes.

19 MR. TOCE, SR.: Thank you. We tender.

20 MR. KILBANE: Thank you.

21 CROSS-EXAMINATION OF CARIN HADLEY.

22 BY MR. KILBANE:

23 Q. Your husband is a graduate of Brigham Young University?

24 A. No, sir.

25 Q. He attended there how many years?

1 A. I believe three.

2 Q. And did he not get a degree in sociology?

3 A. No, he did not.

4 Q. But he attended three years and a year at another
5 university, right?

6 A. My understanding, recollection of the college he had,
7 he transferred to Brigham Young University but he never
8 graduated.

9 Q. But he completed four years of college?

10 A. No, sir.

11 Q. How many years of college?

12 A. Three.

13 Q. Three years of college. Thank you.

14 Let me hand you what has been marked as Defendant's
15 Exhibit C.

16 Is this a copy of the application you said your husband
17 executed in your presence on October 11, 2001?

18 A. In my presence, no.

19 Q. I misunderstood your testimony.

20 A. In my presence, no. There is no fax number at the top
21 of this. It was our fax number sending it back.

22 Q. Okay. I misunderstood you. Your testimony is you were
23 at the meeting?

24 A. I thought.

25 Q. At the MAC distributor you signed nothing. You saw

1 nothing signed?

2 A. I thought I did. I don't recall this. There is a fax
3 number at the top of the document showing, I believe that's
4 Mr. Kelsey's fax number to our home, and that shows our fax
5 number sending it back.

6 Q. Well, let me direct your attention to Exhibit 2?

7 A. Page two.

8 Q. What's the fax number you see here that you say is your
9 fax number?

10 A. It's hard to read it, but it's 801-492-0101. That's
11 our fax number. That was our fax number at the time.

12 Q. So that means your husband would have signed this and
13 then faxed it back to MAC Tools?

14 A. Faxed it to Mr. Kelsey.

15 Q. Yes. Well, he's a representative of MAC Tools, isn't
16 he?

17 And did he consult with you before he signed the
18 affidavit and filled it out?

19 MR. STEVENS, JR.: I have a problem.

20 MR. KILBANE: It's my witness. If you don't
21 understand --

22 MR. STEVENS, JR.: Your Honor, I apologize, but we
23 keep -- with the copies you're presenting the witnesses, the
24 documents have footers and headers. There are fax number at
25 the top on both of these pages, but they're not on the copy

1 presented to the witness. I have a significant problem with
2 that, Your Honor.

3 MR. KILBANE: If you have a significant problem,
4 then you should not have marked it as Exhibit 2, our copy.
5 You came over for our copy and marked it. If you have
6 documents that you think are better or different, you should
7 make copies.

8 THE COURT: Gentlemen, I don't need the sparring.
9 The question is Mrs. Hadley's knowledge of the
10 circumstances.

11 I mean you do recognize this document as bearing
12 your husband's signature, correct?

13 THE WITNESS: Correct.

14 THE COURT: And I guess the real question is have
15 you seen it before?

16 Do you know anything about his having signed it?

17 THE WITNESS: Not to my recollection, no.

18 BY MR. KILBANE:

19 Q. And that was sent from your home?

20 A. Yes.

21 Q. But prior to sending it, did your husband, given his
22 issues about processing information, did he discuss it with
23 you?

24 A. This would not apply, sir. This is filling in, fill in
25 the blank task. This is not reading the document, detailed

1 documented information, or receiving auditory processing
2 detailed information. This does not apply.

3 Q. Now, I hand you Exhibit 2. Do you have that in front
4 of you?

5 A. I don't know what that is. Is that this?

6 Q. Yes, that's the acknowledgment, yes. And that's dated
7 and signed that very same day by your husband, is it not?

8 A. It appears to be.

9 Q. And dated as the same fax number, so it came from your
10 home?

11 A. Yes.

12 Q. And on here --

13 THE COURT: I'm sorry. Mr. Kilbane, what Exhibit
14 is this?

15 MR. KILBANE: Exhibit 2.

16 MR. FRIEDMAN: Plaintiff's Exhibit 2.

17 THE COURT: Which is?

18 MR. KILBANE: Which are the acknowledgements.

19 THE COURT: When you say she has seen this --

20 MR. KILBANE: Yes.

21 THE COURT: -- which I don't have a copy of, she
22 said she hadn't seen this before yesterday.

23 BY MR. KILBANE:

24 Q. Now, Exhibit 2 refers to a variety of documents. It
25 does not include the distributor agreement?

1 A. It list it.

2 Q. And do you know whether you or your husband at any time
3 asked for a copy of that before signing this acknowledgment?

4 A. Rephrase the question. I don't understand.

5 Q. Do you know whether you or your husband ever asked for
6 a copy of the distributor agreement or any other documents
7 that's listed in this disclosure?

8 A. I personally did not. My husband said the first time
9 he saw this thing was at training.

10 Q. And you mentioned a packet in your affidavit. Does
11 this look like the packet that you saw?

12 A. Not at all.

13 Q. Not at all?

14 A. Not at all.

15 Q. And that's Defendant's Exhibit A, I've shown you from
16 here. What's the difference between the packet you saw and
17 this packet?

18 THE COURT: Well, you heard her declaration
19 doesn't use the word packet, it uses -- it says I recall
20 getting a folder.

21 MR. KILBANE: Earlier on, Your Honor, she talks
22 about a large thing that Mr. Kelsey showed them at the
23 meeting.

24 THE WITNESS: That was a policy procedure manual.
25 It looked about five inches thick. That's what I'm

1 referring to. And it was his manual for his operation, is
2 my understanding.

3 BY MR. KILBANE:

4 Q. And at the time your husband went to the training in
5 Columbus did you accompany him?

6 A. I did not. I did not see a need to go.

7 Q. Were you aware the contracts would be reviewed and
8 signed at that hearing, at that training session?

9 A. Absolutely not, or I would have attended.

10 Q. But the fact is your husband never called when he found
11 the contract, asked you to come down, did he?

12 A. He was told he could not call me.

13 Q. You don't know that. You have no personal knowledge of
14 that statement?

15 MR. TOCE, SR.: Objection, you can't object to the
16 answer to your own question.

17 MR. KILBANE: You're wrong.

18 THE COURT: But it's, obviously, a hearsay
19 statement, and Mr. Kelsey will be on the witness stand.

20 MR. STEVENS, JR.: You had him.

21 MR. KILBANE: I move the statement be stricken.

22 MR. STEVENS, JR.: Mr. Hadley.

23 MR. TOCE, SR.: You said Kelsey you meant to say
24 Hadley.

25 THE COURT: I'm sorry Hadley. I misspoke.

1 BY MR. KILBANE:

2 Q. When your husband came home, you mentioned in your
3 affidavit that you were upset with him because he signed the
4 contract.

5 A. I was upset about what the contracts contained.

6 Q. You had reviewed the arbitration provision; did you
7 not?

8 A. I certainly did.

9 Q. And you explained what that was to your husband, do you
10 recall that?

11 A. I asked him, I said, "do you understand what this
12 says?" He said no. I said, "Did anyone explain what this
13 meant to you?" He said, no, we had 15 minutes to sign this
14 before he could go to the graduation, the book was tabbed
15 before we signed it, no one at any time explained that to
16 me.

17 Q. My question is, at the end of your affidavit where you
18 say you explained the arbitration provisions to your
19 husband.

20 A. Please repeat your question.

21 Q. What did you explain to your husband that you thought
22 the arbitration clause provided for?

23 What did you tell him?

24 A. I explained what my understanding was of arbitration
25 and that he had agreed to it.

1 Q. What was your understanding of arbitration as you
2 communicated to him?

3 A. That my understanding of reading that document, and I
4 am not a lawyer, my understanding of reading that document
5 was that he may have given away opportunities to legal
6 resolutions should we need them.

7 Q. Do you recall anything else you told him?

8 A. I think that summarizes it.

9 Q. After reviewing the documents did you or your husband
10 ever call MAC Tools saying we want to revise this agreement,
11 we changed our mind?

12 Did you ever call and object to these provisions?

13 A. I believe we talked to Mr. Kelsey about it.

14 Q. You believe. You did or you did not?

15 A. I'm trying to recall. I do know there was a discussion
16 with Mr. Kelsey. My understanding from that discussion was
17 it was signed. It was done. We were stuck.

18 Q. When was the discussion?

19 A. Exactly, I couldn't tell you, but it was probably early
20 2002 when we got the documents back.

21 Q. Did you participate in that discussion?

22 A. My husband often has me -- he speaks on the speaker
23 phone and I sit by him.

24 Q. I know that often happens. Did it happen in this
25 situation?

1 A. I want to say, yes, because something of this
2 importance he could have --

3 Q. You're speculating; are you not?

4 When you say I want to say, yes, you're guessing
5 whether you were?

6 A. I'm trying to be honest with you, sir, very honest.

7 Q. Well, I appreciate that. Well, that's why I am asking
8 you, honestly speaking, as you sit here today, you're not
9 sure you were in that discussion; am I correct?

10 A. I'm not sure when it took place.

11 Q. And also you are not sure you were in that discussion,
12 that you either listened in or participated in that
13 discussion; am I correct?

14 A. I don't think you are.

15 Q. Tell me again, do you recall being in it or not, yes or
16 no?

17 A. In his office sitting down in the chair I traditionally
18 sit down in his office while he's on the speaker phone, I
19 did recall that.

20 Q. And do you recall any objections to the arbitration
21 provisions?

22 A. My understanding, my recollection, that he was talking
23 to Mr. Kelsey about it. And what I recall being offered by
24 Mr. Kelsey was that we had signed it and it was a done deal
25 for us.

1 Q. Do you recall specifically talking about the
2 arbitration clause as opposed to your \$90,000 versus the
3 \$35,000?

4 A. I know \$90,000 got talked about.

5 Q. Yeah.

6 A. And I believe arbitration was part of the same
7 conversation.

8 Q. Just so I am clear. When you say I believe --

9 A. It's part of the training. I will try to get rid of
10 that kind of talk. My understanding is we did talk with
11 Kelsey about issues. We were told because it was signed it
12 was a done deal.

13 Q. What precisely do you recall being discussed about
14 arbitration?

15 You keep saying these issues. What was discussed about
16 arbitration?

17 A. What was discussed about arbitration?

18 Q. Yes.

19 A. We understood arbitration to mean that if we had need
20 for a legal recourse, arbitration would be the only option
21 according to what the document said.

22 Q. Yes. Did you object to that?

23 A. Yes.

24 Q. Why do you think a trial by jury is somehow preferable
25 to an arbitration?

1 A. I think to strip someone of their right is a problem
2 and that's how I see it.

3 Q. Was that articulated in this discussion?

4 A. Not in those exact words, but, yes.

5 Q. Was there any objection to the term, the one year
6 notice clause?

7 A. Not that I recall.

8 Q. Was there any objection to the limitation of damages?

9 A. I don't remember what that even is, sir.

10 Q. Following your discussion, if you participated with Mr.
11 Kelsey, did you ever send a letter confirming that
12 discussion, questioning that discussion, or an e-mail, or
13 fax, or communication of any kind?

14 A. When it was explained to us it was a done deal, there
15 was no need. We were in it. We were stuck.

16 Q. Did you ever communicate to any superiors of Mr.
17 Kelsey?

18 A. I don't know any superiors of Mr. Kelsey.

19 Q. Did you -- I take it you use the internet. Did you
20 access the web site and find out who the president and chief
21 operating officer was?

22 A. John Aden.

23 Q. Yes. Did you write Mr. Aden?

24 A. I did not.

25 Q. Did you communicate with Mr. Aden in any fashion?

1 A. Why would I do that?

2 Q. Since having the conversation, did you communicate with
3 him about whether it was a done deal and whether there could
4 be any revisions made?

5 A. It was not required.

6 Q. My question is did you ever do it?

7 A. Of course not.

8 MR. KILBANE: Thank you. No further questions.

9 THE COURT: Any redirect?

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

11 THE COURT: Ms. Hadley, thank you. You may step
12 down.

13 MR. STEVENS, JR.: Your Honor, under the rules of
14 completeness, could we check the last two exhibits that were
15 introduced, because the copies in Defendant's Exhibit 2 that
16 was submitted in connection with this motion, there are
17 headers and footers with fax numbers. I didn't believe the
18 copies that were reproduced contained those, or at least on
19 one of those I noted when it was up on the witness stand had
20 been partially obliterated. If nothing else, I would like
21 to know about the full set of documents, whether he
22 introduced them.

23 MR. KILBANE: I just want to make clear we do not
24 have --

25 THE COURT: Gentlemen, Ms. Hadley has testified

1 that the document was exchanged via fax. What more do I
2 need. She said she recognized her fax number as being on
3 the document. That's in the record. That's all we need.

4 MR. TOCE, SR.: I understand.

5 MR. STEVENS, JR.: I understand, Your Honor.

6 THE COURT: I'm satisfied with the copy. And the
7 copy that I have -- by the way, gentlemen, if you would
8 oblige me with copies of exhibits as you're handing them to
9 the witness, it would make my life much easier. I'm
10 satisfied with the copy that I have seen.

11 MR. STEVENS, JR.: Very well, Your Honor.

12 THE COURT: Your next witness, please.

13 MR. TOCE, SR.: Our next witness would be Kent
14 Hadley, Your Honor.

15 KENT HADLEY,

16 of lawful age, a witness called by the Plaintiff,

17 being first duly sworn, was examined

18 and testified as follows:

19 DIRECT EXAMINATION OF KENT HADLEY

20 BY MR. TOCE, SR.:

21 Q. Mr. Hadley, please introduce yourself to the Court?

22 A. My name is Kent Hadley, husband of Carin Hadley. I
23 live in Highland, Utah.

24 Q. And have you had a chance to review your sworn
25 declaration filed earlier in this case?

1 A. Yes.

2 Q. Is that a copy of it you have in front of you?

3 A. Yes.

4 Q. Is everything you said in that affidavit in 2005 still
5 true, accurate and correct?

6 A. Yes, sir, it is.

7 THE COURT: For the record Mr. Hadley's
8 declaration is ECF document 54.

9 Q. Mr. Hadley, how do you know that you didn't get a copy
10 of the distributor contracts that you were going to have to
11 sign to become a MAC dealer when you signed the
12 acknowledgment form saying that you did get them?

13 A. How do I know?

14 Q. Yes.

15 A. If I would have received a large packet like they're
16 talking about, I would have been frustrated and immediately
17 taken it to my wife to look at, because she understands
18 those things, and I don't.

19 Q. How long have you been married to your wife?

20 A. Twenty years.

21 Q. Have you ever signed a complex document --

22 A. Complex, no.

23 Q. -- like that without her input?

24 This is the first time?

25 A. This is the first time?

1 Q. This is first time you ever did that.

2 Let me talk to you about when you finally did see the
3 distributor agreement. When was that?

4 A. The last day of school.

5 Q. How long does school last?

6 A. It's about two weeks. I think we arrived on Monday. I
7 think we left on Thursday. It might have been Friday, but
8 it's almost a full two week period.

9 Q. And they call that the training in Columbus?

10 A. Yes.

11 Q. Give us a picture of what you all would do in those two
12 weeks?

13 A. Most of it was concentrated on the computer. We were
14 instructed that we would be purchasing a computer, that was
15 part of the investment that we made. And they taught us how
16 to use it, how to put the information that MAC applied to it
17 in it, when customers came on the truck how we would do
18 sales. They showed us some products while we were in the
19 class. Described the truck, how we would use it best. How
20 to avoid being robbed, little things like that.

21 Q. Was it from early in the morning until at night?

22 A. Yes.

23 Q. Eight hours a day, regular day?

24 A. Yes, it was an eight hour day.

25 Q. Did signing the distributor agreements come up during

1 those two weeks?

2 A. No.

3 Q. And if so when?

4 A. The discussion was the last day. And we found out we
5 were going to be signing contracts at the end of the day,
6 towards the end of day.

7 Q. So two weeks training, eight hours a day, that's ten,
8 80, 112 hours?

9 A. Give or take.

10 Q. Of that 112 hours of that two week training, how much
11 time was spent signing the documents by you?

12 A. Between 15 and 20 minutes.

13 Q. Did you feel -- did MAC provide you with ample time to
14 review documents before you signed them?

15 A. No. I was very frustrated.

16 Q. How many people were in your training?

17 A. In the course?

18 Q. How many new MAC distributor recruits?

19 A. It was about 30 guys.

20 Q. Did you notice any of the other recruits having similar
21 problems regarding the time provided by MAC?

22 A. Oh, yeah.

23 Q. To sign the documents?

24 A. There was a rumble in the group.

25 Q. Was there any rumbling about how soon the airplanes

1 were taking off, rides back home, and time pressure?

2 A. Yes. We had to hurry and get things done.

3 Q. Who was in the room with you when you are signing the
4 documents, distributor agreements, in Columbus?

5 A. There was a lady representing MAC, /HRA /STKEL. I
6 can't remember her last name. She had a bunch of rings on
7 her finger that's how I remember. It was two other MAC
8 distributors, a large conference table, I think a total of
9 six of us in the room at the time.

10 Q. Give us a picture of how the documents were setup for
11 signature?

12 A. They were tabbed. They weren't laid out. We weren't
13 given time to -- they weren't explained to us. They said
14 sign here, sign here. I might have even asked what does
15 this mean, and I would be given a brief description, but
16 that was it.

17 Q. Were the documents stacked up in one pile sitting at
18 the tabs, or laid out side by side?

19 A. I don't remember that.

20 Q. Were the documents turned on the signature tab page, or
21 were they laid with the first page up?

22 A. The way I remember that best is that she would open --
23 there would be a tab and she would lift it up and there was
24 a place for me to sign.

25 Q. So you remember she was going to the documents and she

1 just turned to a page that required your signature and then
2 directed you to sign that page?

3 A. That's correct.

4 Q. How many signatures about do you think was required on
5 that stack of documents, two, ten, twenty?

6 A. Probably ten to twenty.

7 Q. Is the fact that your acknowledgment form was received
8 by fax both to you and faxed out indicate to you anything
9 about whether that acknowledgment form truly had the giant
10 stack of documents which were listed on Exhibit A on the
11 acknowledgment form?

12 In other words, was it -- could you even fax that much
13 paper?

14 A. Oh, no. That was the comment my wife and I were
15 talking about is that we never saw those documents because
16 there was only about eight pages in the fax that we
17 received.

18 Q. And if the acknowledgment form would have been
19 delivered to you accurately with all the documents that
20 supposedly you were signing at receipt for, did you have the
21 capacity to receive that by fax?

22 Would it have been more than eight pages?

23 A. Yes. It would have taken probably two or three calls
24 to get all the pages through.

25 Q. Did MAC do anything different for you when you were at

1 the "training" in Columbus, in light of your central
2 auditory processing disorder that they were informed about
3 by your wife?

4 MR. KILBANE: Objection, assumes a fact not in
5 evidence. His wife thought she may have communicated.

6 THE COURT: And we don't know if the information
7 reached anybody in Columbus. She said that she thinks she
8 discussed it with Mr. Kelsey.

9 MR. TOCE, SR.: Who was a manager with MAC. And
10 that's the question I'm asking.

11 BY MR. TOCE, SR.:

12 Q. Mr. Hadley, did you experience any different procedures
13 than all the other new recruits that were at the training?

14 When it came time to sign the documents did they give
15 you more time, did they give you more people, did they
16 explain it more to you?

17 A. No.

18 Q. Did they even mention they knew you had that disorder?

19 A. Not at the signing, no. My instructors knew that I had
20 the disorder and they helped me a little bit more with some
21 of the course material. That's it.

22 Q. When it came to signing documents, they didn't advise
23 you of it?

24 A. No.

25 Q. What is the majority of your work life experience?

1 A. I'm a carpenter. I do remodeling, repair. I work with
2 tools. Slightly different from a mechanic's tools.

3 Q. I know Mr. Kilbane is going to ask it. Tell us about
4 what kind of college you have?

5 A. I actually have one year of college at Rick's College,
6 which is an LDS Mormon College up in Rexburg, Idaho.

7 Q. What kind of college was that?

8 A. It was a two years college, but it's a four year
9 college.

10 Q. Rexburg, Idaho, is that a junior college?

11 A. I guess a junior college.

12 Q. And did you go to BYU?

13 A. And I went to BYU for two years.

14 Q. Did you get a degree from either of those?

15 A. I received no degree.

16 Q. Did you do well when you went to college? Did you make
17 good grades?

18 A. That's relative, compared to my children, my children
19 do much better in grades. I have a son that has the same
20 condition I do that struggles. As far as good grades, I
21 don't remember classes that I failed. The class I remember
22 doing the poorest in was a Spanish class.

23 I served a mission in Peru as a Mormon missionary. And
24 I came back and tried to take a Spanish class, and the
25 instructor felt sorry for me because of how hard I worked in

1 the class. The spoken and taught language -- I spoke
2 fluently in Peru, but struggled with the class when I came
3 back because of the condition.

4 Q. What was the reason you left the attempt to get the
5 degree in college?

6 A. I got a job as a finished carpenter and I realized I
7 loved it.

8 Q. Did the college know about your processing disorder?

9 A. No. That wasn't even known then probably.

10 Q. That wasn't known then? You didn't know about it then?

11 A. No. I learned about it four years ago.

12 Q. Were you present when your wife was talking to the MAC
13 people in Ohio informing them about your disorder?

14 THE COURT: She didn't talk to anybody in Ohio.
15 She talked to Mr. Kelsey in Utah.

16 THE WITNESS: That's correct.

17 THE COURT: Now, as I understand it, sir, your
18 disability is auditory. Does that -- does it have any
19 impact on your ability to process written information?

20 THE WITNESS: Yes.

21 THE COURT: All right.

22 THE WITNESS: There is some material I understand.
23 Textbooks I struggle with.

24 BY MR. TOCE, SR.:

25 Q. I looked at your distributor agreement that was in

1 evidence in the first book and noticed you signed it on the
2 15th of November 2001?

3 A. Okay.

4 Q. Did the document reflect that the president of MAC
5 Tools, Mr. John Aden, also signed on the same day?

6 Do you remember seeing him present?

7 A. On November 15th I was in school. John Aden wasn't
8 there.

9 Q. He wasn't even at the facility where you were?

10 A. No.

11 Q. Do you know how John Aden signed the contract the same
12 date as you did?

13 A. No, I don't.

14 Q. Did you see John Aden there?

15 A. No.

16 Q. Did anyone from MAC tell you he was there and going --
17 or going to show up?

18 A. No.

19 MR. TOCE, SR.: Thank you. In connection with the
20 testimony, Your Honor, we offer Mr. Hadley's distributor
21 agreement as Plaintiff's Exhibit 4.

22 We'll tender Mr. Hadley.

23 MR. KILBANE: Thank you.

24 CROSS-EXAMINATION OF KENT HADLEY

25 BY MR. KILBANE:

1 Q. Mr. Hadley, are you an owner of a company called
2 Accurate Building Solution?

3 A. That's correct.

4 Q. And are you still an owner?

5 A. Yes, sir.

6 Q. And that's been since 1995 or earlier for a period in
7 South Carolina?

8 A. I moved from South Carolina to Utah. The company came
9 with me.

10 Q. So you owned that company since about 1992?

11 A. Probably, yes, that sounds correct.

12 Q. Now, let me draw your attention again to Plaintiff's
13 Exhibit 2, the acknowledgment.

14 Do you have that in front of you?

15 A. I don't, but I'm familiar with it.

16 MR. KILBANE: I thought all the exhibits were
17 there.

18 MR. TOCE, SR.: I have my --

19 MR. KILBANE: The exhibit is going to stay up on
20 the witness stand. I'm sorry. That's our practice here.

21 MR. STEVENS, JR.: I'm sure by the end of the week
22 you'll have us well trained.

23 THE COURT: Yes. The exhibits should be left with
24 the clerk once the witness is done testifying. I do have my
25 copies.

1 BY MR. KILBANE:

2 Q. Drawing your attention to Exhibit 2. Do you have that
3 now in front of you?

4 A. I have that in front of me.

5 Q. And that was signed by you October 11, 2001?

6 A. That's correct.

7 Q. And your ability to review documents, the auditory
8 issue, you were able to comprehend this document, were you
9 not, a one page document?

10 A. That's correct.

11 Q. And you saw that it listed a number of items, some of
12 them very -- pretty important, like your distributor
13 agreement, correct?

14 A. Correct.

15 Q. And at the time you signed it you are telling the Court
16 that you hadn't seen any of these documents?

17 A. That's correct.

18 Q. Was it because these documents weren't important to
19 you?

20 A. No. It's simply because I trusted John Aden. He told
21 me I would see them later -- not John Aden, John Kelsey.

22 Q. Did you ask Mr. Kelsey or anybody else at MAC Tools
23 about a copy when you sent back the acknowledgment?

24 A. No.

25 Q. In view -- your wife frequently helps you review

1 documents, correct?

2 And in view of that issue and the fact that she would
3 not be in Columbus, did you think of contacting Mr. Kelsey
4 and saying I want to see the documents now rather than later
5 so my wife could review them with me?

6 A. I don't think like that.

7 Q. Did you ever make such a request to MAC Tools?

8 A. When I was in the training seminar towards the end, I
9 was told that I would see the documents. I think that was
10 Thursday or Friday, I can't remember which, that last day.
11 I said, "Can I call my wife because I understand I'm going
12 to see a pile load of papers here, and I understand I have
13 to sign them? I would like to call her and read them." I
14 was told I couldn't call her.

15 Q. Who told you?

16 A. I can't recall.

17 Q. You refer to a nice lady in your affidavit?

18 A. That was Rochelle at the signing.

19 Q. Did you ask her?

20 A. At the signing?

21 Q. Yes.

22 A. I was told before that I couldn't do it.

23 Q. My question was did you ask her?

24 A. If I would have legal counsel, counsel for my wife, did
25 I?

1 Q. Did you ask could your wife review them, could you take
2 the documents home and review them before signing them?

3 Did you ask her any of those questions?

4 A. No, I didn't.

5 Q. And do you recall who this individual was who
6 supposedly said no you couldn't call your wife?

7 A. I'm sorry. I don't remember who.

8 Q. You had the option, when they said you couldn't call
9 your wife, you had the option of saying I won't sign the
10 agreement?

11 A. Yes, that's correct.

12 Q. And you could have left the training and gone home?

13 A. Yes.

14 Q. And you knew you had that option that you could at any
15 time not sign any of these agreements; did you not?

16 A. You're saying that I knew that I had that option. I
17 didn't even think of it.

18 Q. But you were going to be a distributor. That's what
19 you were training for?

20 A. Un-huh.

21 Q. And you knew I'm going to sign these documents, or if I
22 don't like these documents, or if I don't want to, I could
23 leave. There was nobody forcing you to sign the documents,
24 correct?

25 Nobody was standing there with a gun saying sign these

1 documents?

2 A. No one was saying I had to sign those documents.

3 Q. And you, at the time, you had the documents did you
4 review them at all? Did you read what was written?

5 A. Okay. It wouldn't do me any good to review those
6 documents. That's why I depend on my bride.

7 Q. Have you ever purchased a home?

8 A. Yes, I have.

9 Q. And in signing -- how many homes have you purchased?

10 A. Well, I've built four homes for myself. And part of
11 that was the purchase, processing the closing.

12 Q. And owning a home is very important, isn't it?

13 A. It is.

14 Q. And, as a matter of fact, you did not read the
15 documents in connection with your real estate transaction,
16 did you?

17 A. My wife does, and occasionally I have an attorney join
18 me.

19 Q. Because you said what happened in Columbus was just
20 like a real estate sale, if I recall?

21 A. That's right. It was very similar.

22 Q. And you're not objecting to the real estate sales that
23 you experienced in the past, are you?

24 A. No.

25 Q. You're saying that was an okay experience because you

1 reviewed, and everything went fine, and you said that the
2 Columbus experience was like your real estate closing
3 experience?

4 A. No. I said I was frustrated.

5 Q. No. The last line of your affidavit says "it was like
6 a real estate closing."

7 A. That's correct.

8 THE COURT: Well, in fairness to Mr. Kilbane the
9 sentence reads in full: "It was like a real estate closing:
10 'Here are the papers sign them.'"

11 THE WITNESS: That's the way I felt.

12 Q. Correct. You're telling me your experience in real
13 estate closing; are you not? Is that right?

14 A. Okay. In your comparing --

15 THE COURT: He said he had his wife read the
16 papers.

17 BY MR. KILBANE:

18 Q. And in this situation did you read any of the papers
19 before you signed them, the documents?

20 A. I wouldn't remember that now. I'm sorry.

21 Q. You said you spent 15 minutes?

22 A. 15 to 20 minutes on a large stack of papers.

23 Q. Do you recall if you read any documents --

24 A. I don't recall.

25 Q. -- including the distributor agreement, before you

1 signed them?

2 A. I don't recall.

3 Q. So you may have read them?

4 A. I may have.

5 Q. And you may have read the distributor agreement,
6 correct?

7 A. I may have.

8 Q. And are you familiar with -- were you familiar with
9 arbitration at the time you read them?

10 A. No.

11 Q. You never heard of arbitration?

12 A. I didn't say that. I said I'm not familiar with it.

13 Q. You do know there is a legal alternative to the
14 courtroom called arbitration?

15 A. Some of that has been explained to me since.

16 Q. I know. But did you know that at the time?

17 A. No.

18 Q. And following the signing did you -- strike that.

19 MR. KILBANE: No further questions, Your Honor.

20 THE COURT: Gentlemen, housekeeping. I have two
21 copies of Mr. Hadley's distributor agreement. One marked as
22 Plaintiff's Exhibit 3 and one marked as Plaintiff's Exhibit
23 4.

24 MR. TOCE, SR.: That would be a mistake. Isn't
25 one enough?

1 MR. KILBANE: Yes, Your Honor.

2 THE COURT: All right. How about we keep three.

3 MR. STEVENS, JR.: And we'll take four back.

4 MR. TOCE, SR.: Are you sure they're both Hadley?

5 THE COURT: Oh, yes, they're both Hadley. So why
6 don't we keep three in the record and I will return the one
7 that was marked four. Save that for another Exhibit.

8 MR. TOCE, SR.: And we will have another Exhibit
9 for number four.

10 THE COURT: All right.

11 MR. TOCE, SR.: I have redirect. I have one
12 redirect, Your Honor.

13 REDIRECT EXAMINATION OF KENT HADLEY

14 BY MR. TOCE, SR.:

15 Q. Mr. Hadley, although you don't remember the specific
16 identity or name of the person at MAC that told you you
17 couldn't call your wife because there wasn't enough time, do
18 you know for sure that it was somebody with MAC Tools?

19 A. Oh, yeah. It was in that building where we received
20 the training.

21 Q. And?

22 A. At this stage it could have been a man or woman. I'm
23 not sure. I just remember that incident.

24 Q. And the stated reason why you couldn't call your wife
25 and talk about the contents?

1 A. We didn't have time we needed to keep the process
2 moving.

3 Q. From the time you were in there signing the contracts
4 on the last day how much time was available for you to get
5 your flight to go home?

6 A. As soon as we finished signing the contracts within --
7 less than an hour. Within minutes we took a shuttle over to
8 the corporate office where we had the graduation ceremony,
9 then we left for the flight.

10 Q. Did the lack of time and time pressure have an effect
11 on your ability to truly read the contracts and understand
12 them?

13 MR. KILBANE: Objection to the form.

14 THE COURT: Overruled.

15 THE WITNESS: I think the best most honest answer
16 to that, it wouldn't matter if I had more time to read them.
17 I can't -- I don't comprehend like that. If it's something
18 mechanical, mathematical I'm very good. As carpenter I use
19 geometry and math, and things like that, on a regular basis.
20 If it's mechanical, I can probably figure it out. But when
21 it comes to a textbook type of a situation, information
22 coming in to me, it will almost do me no good to read it
23 whatsoever. That's why I depend on my bride.

24 Q. Did you see the other recruits being frustrated over
25 the lack of time to review the documents and the rush

1 because their planes were leaving the same day?

2 A. I can't answer that and say I know.

3 MR. TOCE, SR.: Thank you, Mr. Hadley.

4 MR. KILBANE: Nothing further.

5 THE COURT: Mr. Hadley, did it occur to you to say
6 to someone at Stanley do I have the option of taking those
7 papers home to Utah with me and reading them over and
8 deciding whether I want to sign on the dotted line? Did
9 that thought ever occur to you?

10 THE WITNESS: In truth, I think I asked someone if
11 I could take these with me and I was simply told you'll get
12 a copy of them later to review. I think that's what
13 happened.

14 THE COURT: Did you hear anyone from Stanley say
15 -- did anyone from Stanley say to you, or say to the group
16 in your presence, either sign up today or you're never going
17 to be a Stanley distributor?

18 THE WITNESS: No, that wasn't said.

19 THE COURT: Gentlemen, either of you have anything
20 else for this witness, or may I excuse him?

21 MR. TOCE, SR.: He can be excused, Your Honor.

22 MR. KILBANE: Nothing further, Your Honor.

23 THE COURT: Mr. Hadley, thank you.

24 Your next witness.

25 MR. TOCE, SR.: Mr. Victor Wenzel.

1 VICTOR WENZEL,
2 of lawful age, a witness called by the Plaintiff,
3 being first duly sworn, was examined
4 and testified as follows:

5 DIRECT EXAMINATION OF VICTOR WENZEL

6 BY MR. TOCE, SR.:

7 Q. Mr. Wenzel, please introduce yourself to the Court?

8 A. I'm Victor Wenzel from Spring, Texas.

9 Q. Do you have a copy of your affidavit your sworn
10 declaration that you submitted in this case?

11 A. Yes, sir, I do.

12 Q. Have you had a chance to read over it and study it?

13 THE COURT: For the record, that is ECF document
14 73.

15 THE WITNESS: Yes, sir.

16 Q. Is everything you swore to in that declaration still
17 true and accurate and correct?

18 A. Yes, sir.

19 Q. I want to ask you about a few things you can elaborate
20 on.

21 How do you know that you did not get the distributor
22 agreements and contracts ahead of time as indicated on the
23 acknowledgment form you signed?

24 A. I didn't receive anything. The acknowledgment form
25 that I signed was signed the day that I went to sign the

1 contracts at the end of the course.

2 Q. Let me show you what's been marked as Plaintiff's
3 Exhibit 4, which purports to be the acknowledgment of
4 receipt by Mr. Wenzel on May 16, 2003.

5 Let me show you what has been marked as Plaintiff's
6 Exhibit 4 for identification and ask you if that's your
7 acknowledgment form?

8 A. Yes, sir.

9 Q. What's the date on your acknowledgment form?

10 A. May 16, '03.

11 Q. Let me show you what's been marked as Plaintiff's
12 Exhibit 4 for identification purpose.

13 MR. STEVENS, JR.: Five.

14 Q. Five, excuse me, your MAC Tools distributor contract.
15 I'm showing you the signature page. Is that your signature
16 on the contract?

17 A. Yes, sir.

18 Q. Sir?

19 A. Yes, sir.

20 Q. Your acknowledgment form and contracts say in the print
21 that you received those documents many days ahead of time
22 and you had five business days to review them. And you had
23 a chance to consult a lawyer. None of that is accurate, is
24 that right?

25 A. No, sir. I saw this the day that we finished up and

1 got our flights out of there.

2 Q. So you signed the acknowledgment form at the same time
3 you signed the distributor agreement?

4 A. Apparently so. It's one of the places they pointed for
5 me to sign.

6 Q. Did you ever ask anyone at MAC when you were being
7 recruited to provide you a copy of the documents that MAC
8 was going to want you to sign to as distributor?

9 A. Yes, sir, I did. They said they would be available
10 when I got to the training.

11 Q. Did you ask anybody at the training?

12 A. Yes. I talked to a couple of people there. They said
13 they were in print, or waiting for print, or something. I
14 forget what all the excuses were.

15 Q. So before you went to the training a MAC recruiter
16 called MAC and asked them for a copy of the contract and
17 they said get them in the training?

18 A. I talked to Frank Moler, I guess, the manager that
19 recruited them.

20 THE COURT: I'm sorry. What was that name?

21 THE WITNESS: Frank Moler, M-O-L-E-R.

22 Q. The district manager that recruited you?

23 A. The district manager that recruited me.

24 Q. And what did he tell you?

25 A. He was in such a hurry to get the thing done. And he

1 was covering two or three other district managers
2 territories, so he was a scatter brain about everything that
3 went on in my recruitment.

4 Q. So --

5 A. He got the documents that -- he asked for me to verify
6 whatever that MAC wanted. He managed to get me those
7 documents, but that's all I saw.

8 Q. So he managed to get you the application?

9 A. Application.

10 Q. One page, or two pages?

11 A. Right.

12 Q. And the acknowledgement form was one page.

13 No. You didn't get the acknowledgment form?

14 A. I didn't get the acknowledgement form.

15 Q. But the end result was that when you failed to receive
16 the documents ahead of time, you first inquired of MAC, and
17 you were told that you could get them in the training?

18 A. Right.

19 Q. What happened when you got to the training and asked
20 MAC for a copy of the documents?

21 A. They were waiting for them to come from headquarters.
22 We were at the warehouse end of it. They were waiting for
23 them to come from headquarters I think was one of the
24 excuses. I don't remember all of them total. It went on
25 for several days. Then they covered us up with so much

1 study material, I was studying most of the time. And then
2 they had me help another gentleman in class with his studies
3 to try to help him along, help him learn the computer and
4 stuff.

5 Q. Did you feel you -- how did you feel about the time you
6 were allotted by MAC for you to sign documents that you had
7 never seen before?

8 A. It wasn't fair at all.

9 Q. Did you travel -- arrange to leave shortly after
10 contracts were signed?

11 A. Yes, I did.

12 Q. Did you see frustration for any of the other MAC
13 recruits at the last minute before the planes were to take
14 off?

15 MR. KILBANE: Objection.

16 THE WITNESS: Yes. In fact, one gentleman left
17 off and didn't sign anything.

18 MR. KILBANE: Withdraw the objection.

19 Q. Let me show you what's been marked for identification
20 purposes, what purports to be the seminar end of training?

21 MR. FRIEDMAN: We'll just take a quick look. We
22 haven't seen it before.

23 MR. TOCE, SR.: You may not have seen it, but it's
24 generated by your company.

25 MR. KILBANE: Do you have our copy?

1 MR. TOCE, SR.: We do not have a copy. We can ask
2 Mr. Wilson perhaps to make a few, but we do not have extra
3 copies of it.

4 MR. TOCE, SR.: I want to make one point about it.

5 BY MR. TOCE, SR.:

6 Q. You did provide me with what's been marked as Exhibit
7 6?

8 A. Yes, sir.

9 Q. What is that?

10 A. That's the seminar training schedule that we were to do
11 while we were there.

12 Q. I just want to ask preliminary about the last block on
13 the exhibit. And the last of the 14 days of training is
14 what?

15 A. Is the 16th I guess. And that's when you signed your
16 contracts and graduated.

17 MR. TOCE, SR.: We offer Exhibit 6 and 4.

18 MR. KILBANE: May I see it?

19 THE CLERK: I'll make copies right quick.

20 BY MR. TOCE, SR.:

21 Q. Tell the Court where you got the agenda?

22 A. That came from the district manager. I believe he gave
23 it to me a day or two before I left.

24 Q. Of the 100 or so hours that made up the training in
25 Columbus when you were being recruited, how many of those

1 hours, if any, were spent getting you to sign the
2 distributor agreements?

3 A. It was somewhere between 20 and 25 minutes.

4 Q. Do you recall how many signature tabs was required for
5 the entire stack of documents?

6 A. Oh, Lord, I don't know, maybe 20.

7 Q. Tell us when you walked in the room finally to get the
8 contracts, were they stacked up on top of each other? Were
9 they laid out? How large was the stack?

10 A. It was a stack like this with pink tabs stuck all the
11 way through.

12 MR. TOCE, SR.: Let the record reflect the witness
13 indicated a stack of -- how high?

14 THE WITNESS: Seems like this high.

15 MR. TOCE, SR.: Six inches or so.

16 THE WITNESS: Four or five inches.

17 Q. Were documents stacked up and turned to the signature
18 pages with the tab on?

19 A. When she presented each document she just pulled it up,
20 turned to the tab, and asked me to sign it there.

21 Q. As the lady turned through the pages of various
22 documents getting to the signature page, did she point out
23 anything about the content of the documents you were about
24 to sign?

25 A. No, sir.

1 Q. Where did the training physically take place?

2 A. At the distribution center I guess, warehouse,
3 distribution center.

4 Q. Was the document signing at the same place as the
5 training was?

6 A. No, sir.

7 Q. Tell us about on the last day how you physically were
8 taken from where the training was to where the documents
9 were?

10 A. On the final day at the end of our class they put us on
11 a bus and took us down to MAC headquarters and made us hang
12 out downstairs for a little bit, and then took us up to
13 another room where we hung out for a while, and then started
14 calling us in two at a time to sign the documents.

15 Q. You say you hung out a little bit, ten minutes, hours?

16 A. It could have been two to almost three hours maybe. It
17 was a good couple of hours.

18 Q. How did you feel about waiting, doing nothing, when you
19 knew your plane was taking off at a certain time?

20 A. A lot of us we were very impatient.

21 Q. Did you feel time pressure?

22 A. Yes.

23 Q. Was it shared by the other 20 something people in your
24 training?

25 A. Yes. We were wanting to get done, get out of there,

1 get our flights.

2 Q. Did anybody ask you to read the contracts while you
3 were cooling your heels waiting to sign?

4 A. No, they were having computer problems or something.

5 Q. Did they give you the graduation ceremony before you
6 signed or after?

7 A. I think they did that to kill time. They did it before
8 you signed the documents.

9 Q. So you had a graduation ceremony at the headquarters
10 which took up how much more time?

11 A. 45 minutes or so, an hour.

12 Q. And MAC took you straight from the graduation ceremony
13 to the table where all documents had to be signed?

14 A. Right, they took us up to the offices.

15 Q. Did you feel any emotional or mental pressure regarding
16 your ability to back out of the deal, or not sign the
17 contracts because you had just been put through graduation
18 and given the certificate and cleared and patted on the
19 back?

20 MR. KILBANE: Objection.

21 THE WITNESS: Yeah.

22 THE COURT: Overruled.

23 THE WITNESS: We were pumped up. We were ready to
24 go. We had our trucks picked out. And we wanted to get
25 back and see our kids, start selling and working.

1 Q. Let me talk to you a little bit about what actually
2 happened at the seminar other than reviewing documents and
3 signing them.

4 Did the respective recruits get to pick out tools or
5 trucks or anything like that?

6 A. At one point we picked out trucks. It was pretty well
7 picked over, and I was running around in the back lot,
8 basically, and found a truck finally.

9 MR. KILBANE: I'm going to object, Your Honor.
10 It's outside the scope, not only outside the scope of the
11 affidavit, but it's outside the scope of this hearing.

12 THE COURT: I'll let it stand. I'm just curious
13 now, you picked out a truck -- you are down in Texas.

14 THE WITNESS: Yes, sir.

15 THE COURT: And you picked out a truck in
16 Columbus. They shipped the truck?

17 THE WITNESS: They have a driver drive it down to
18 you. He's suppose to be there within three days or so.
19 Mine got there I think four or five days later.

20 BY MR. TOCE, SR.:

21 Q. So, MAC showed you the truck and tools before you
22 signed the distributor agreement?

23 A. I don't even remember seeing -- I think at some point
24 they gave me an inventory of what would be on my truck
25 during training, but I never saw the actual tools. They

1 give us an opportunity to go through kind of the area where
2 you could pick out tools that could be -- if you wanted to
3 add it to your inventory.

4 Q. Did someone with MAC give you a commitment that you
5 could have the truck you picked out?

6 A. Yes.

7 Q. Before you signed the papers?

8 A. Before I signed the papers, yeah, I think so. I think
9 so.

10 Q. So in your situation you had a graduation ceremony.
11 You even went out and packed your truck and signed the
12 documents and reviewed them. That was the last thing you
13 did 15 or 20 minutes before you left to go back home, right?

14 A. Right.

15 MR. TOCE, SR.: One second, Your Honor, please.

16 Q. You've seen this gentleman right here?

17 A. I don't recall.

18 Q. Brubaker?

19 A. I don't recall.

20 Q. You've never seen him at MAC for training?

21 A. I don't think so.

22 MR. TOCE, SR.: Tender for cross.

23 CROSS-EXAMINATION OF VICTOR WENZEL

24 BY MR. KILBANE:

25 Q. Mr. Wenzel, you're a high school graduate?

1 A. Yes.

2 Q. And prior to becoming a MAC Tools distributor you were
3 a vice-president of sales and service?

4 A. More a service manager and I did sales for the company.

5 Q. And-- I'm sorry?

6 A. It was a title they gave me.

7 Q. I'm sorry?

8 A. It was a title they gave me.

9 Q. And a manager of Weeks Auto Electric?

10 A. Yes.

11 Q. But you became a MAC Tool distributor?

12 A. Right.

13 Q. And you signed your application about a month before
14 signing your distribution agreement, is that right?

15 A. The application I believe so. It was three weeks,
16 maybe a month.

17 Q. Okay. And following signing that application, if I
18 understood your testimony, you asked Mr. Moler for a copy of
19 the contract?

20 A. Right.

21 Q. And you seemed to say that he was short with other
22 things and did not get them to you?

23 THE COURT: Do you remember when you asked him?
24 How soon before training?

25 THE WITNESS: I know it was a couple of weeks

1 before. He had asked me to pick out a truck that was there
2 and use them, because they had two or three trucks there.
3 He actually had me meet him at the truck. I asked him to
4 bring the contract there. He said he would try to find a
5 copy and bring it.

6 I met him at the truck. He asked me to take over
7 from him to get service. I did that. And he said he
8 couldn't find a copy, he would get one in the next day or
9 two, or get one Fed-Exed.

10 Q. Did you follow up and ask him?

11 A. I called him, when I could get him on the phone,
12 because that was almost impossible, about four days I think
13 before we left. I called him at one point and asked him, I
14 still haven't received anything, can you, you know, tell me
15 what's going on. "Well, you should get it at class when you
16 get up there."

17 Q. Okay. And then you received Plaintiff's Exhibit 6 you
18 said before training, correct?

19 A. That was one of the pieces of paper he handed me, yes.

20 Q. And that showed that contracts would be signed in a two
21 hour 45 minutes period on May 16th, correct?

22 A. Correct.

23 Q. And when you arrived at training I understand you asked
24 for contracts then and you were told there was some computer
25 glitches?

1 A. They told me one time they were at corporate, and I was
2 at the warehouse section of it, they would get some brought
3 over. And then they started bombarding us with information
4 in the class.

5 Q. But that's what -- they indicated a several day delay,
6 correct?

7 A. I would guess so.

8 Q. That was at the beginning of the training period?

9 A. Right.

10 Q. And you had, after you had that conversation, you had
11 seven or eight days where you were in Columbus, correct?

12 A. Right.

13 Q. Did you ever again ask for contracts in advance of
14 closing?

15 A. I'm sure I did, the weekend that we were suppose to
16 have free I believe I asked for them that Thursday or Friday
17 again.

18 Q. Whom did you ask? You said you believe.

19 A. I think I asked the guy -- what was the gentleman's
20 name I asked?

21 Q. What was his response?

22 A. I don't remember his response, I really don't, at that
23 time.

24 Q. Are you sure?

25 A. I know he came -- I know I asked him and then the

1 conversation changed, or something happened. I don't
2 remember. It just got wandered away from. I don't
3 remember. He had asked me about a gentleman they were
4 having -- at the same time they talked to me about a
5 gentleman in the class that was having problems with the
6 computer system in learning it. And they asked me if I
7 would spend time over the weekend and help him. And I
8 agreed to do that.

9 Q. At the end of the conversation with this guy did you
10 have expectation that -- would you have an expectation you
11 have contracts, to review the contracts over the weekend, or
12 help another gentleman?

13 A. They moved the gentleman next to me by then. And I was
14 going to spend my weekend helping him catch up on the
15 computer and try to learn it.

16 Q. And on the day when the contracts were presented,
17 including the distributor agreement, did you read the
18 distributor agreement before you signed it?

19 A. We didn't have an opportunity to. I mean they gave us
20 20 or 30 minutes, you know, to sign and get out. We had
21 planes to catch, and I had been there two weeks. I wanted
22 to see my kids.

23 Q. Did anyone say anything about if you don't sign this
24 agreement, you're not going to be a distributor?

25 Did anyone refuse to give you time to review the

1 agreement?

2 A. I don't think they said that. They said if I don't
3 sign it now, they said they would put my inventory and truck
4 on hold.

5 Q. But you would have had the option to put it on hold
6 while you reviewed the agreement to decide whether you
7 wanted to enter into the agreement, correct?

8 A. They rushed us through it. They said you need to sign
9 it, put it in. I put my trust in MAC. I said I trust you.
10 You built this up, and I'm putting trust in y'all.

11 Q. You trust the other parties when you enter into a
12 business relationship?

13 A. I've never been in a contract agreement like this in my
14 life.

15 Q. With other contract agreements do you ordinarily review
16 your contracts before you signed them?

17 A. Well, I mean I guess. Review, you mean -- when I
18 bought my house she said it's standard things. We went
19 through it and that was it.

20 Q. Did you review the contract when you bought your house
21 or signed a pile of papers?

22 A. When we put through closing we moved through fast. We
23 signed pretty much everything.

24 Q. But you signed it without reviewing the documents in
25 that setting?

1 A. Signed it without reviewing some of them.

2 Q. On the morning of May 16th while you had the hour or
3 two hours, did you ask for a copy of the contracts to review
4 during that period?

5 A. There wasn't anyone to ask. We were just sitting in a
6 room waiting for somebody to come out and process us, I
7 guess.

8 Q. Couldn't you leave the room and go find a MAC Tools
9 representative and go ask?

10 A. I guess. I mean I guess looking back maybe we should
11 have. I don't know.

12 Q. Well, if you were really interested in reviewing the
13 contract, why didn't you leave the room?

14 A. At that point I guess I was more interested in getting
15 home.

16 Q. Back to my question though. Nobody said if you wanted
17 more time to read, you're a big strong guy, nobody said you
18 can't read this before you sign?

19 A. Right.

20 Q. Nobody said that?

21 A. Right.

22 Q. There were some women working there that were helpful,
23 handing you agreements, telling you what the agreement was?

24 A. No. They never explained the agreement.

25 Q. I'm not saying they explained.

1 A. They pointed to the tabs and at the sign.

2 Q. They handed you the agreement. If you wanted to, you
3 could have sat down and read it and signed it?

4 A. No.

5 MR. TOCE, SR.: Objection, Your Honor. He already
6 said four times he didn't have time to read it.

7 MR. KILBANE: He obviously had time.

8 THE COURT: Overruled.

9 Q. You had an opportunity if you chose to review that
10 agreement prior to signing; did you not?

11 A. No, not the way they rushed us through.

12 Q. You mentioned that there was one individual who walked
13 out because he didn't have enough time to sign?

14 A. His flight was getting close and he didn't call anybody
15 back there to sign. He got discouraged and --

16 Q. You had an opportunity to walk?

17 A. My flight wasn't as close.

18 Q. You could have walked out at any time on that day?

19 A. I guess anybody could walk out.

20 Q. You don't have MAC Tools distributor, if you don't --

21 A. At that time we were pumped up ready to go to being a
22 distributor.

23 Q. If you don't like that agreement you could have elected
24 not to sign, correct?

25 A. I guess so.

1 Q. And did you ask at any time during that morning when
2 you were reviewing this that you wanted to take these home
3 for further review and then sign them and return them back?

4 A. No.

5 Q. And you said you were concerned if you did that that
6 you would have a delay in getting your truck, correct?

7 A. The truck and inventory and get it started.

8 Q. That was your choice, you could have asked MAC to hold
9 on to the truck and inventory, I want to time to review
10 these documents at home and I'll send them back. You could
11 have done that, correct?

12 A. I guess I could have.

13 MR. KILBANE: Okay. Thank you.

14 REDIRECT EXAMINATION OF VICTOR WENZEL

15 BY MR. TOCE, SR.:

16 Q. Just a few questions, Mr. Wenzel.

17 Who setup the training and what time devoted to that,
18 you or MAC?

19 A. MAC.

20 Q. You didn't have anything to do with setting the
21 contract signing at the last minute after you had been
22 pumped up, graduated, and gotten a truck and on your way to
23 being a MAC successful dealer, right?

24 A. No.

25 Q. Did all of the sales pitches and hustles you got at the

1 training go to becoming a MAC dealer have a tendency to --
2 that's a bad question. Let's try that again.

3 Let me ask you this. Look at your distributor
4 agreement. I believe it's Plaintiff's Exhibit 5.

5 On the signature page of Plaintiff's Exhibit 5 is there
6 any text in the document, or is it just the signatures?

7 A. Just signatures.

8 Q. When you were signing your documents in the 15 minute
9 signing session, did you only see this document with
10 signature tabs on the signature pages?

11 A. That's it.

12 Q. Did you have a chance to read the page before where it
13 says -- you see 22 page 18?

14 A. Okay.

15 Q. MAC is getting you to sign the documents. It says you
16 had the documents that they just handed you, not ten minutes
17 earlier, but they want you to acknowledge them, that you had
18 them for five days; is that right?

19 A. That's correct.

20 Q. MAC knew at the time they tried to get you to sign this
21 you hadn't had the documents for five days; is that right?

22 A. Right.

23 Q. If you had a chance to read this, is that something you
24 would have brought up?

25 A. Yes.

1 Q. But you didn't see this page?

2 A. I did not see that page.

3 Q. All you saw was the lady pointing to the tab on the
4 signature page?

5 A. Correct.

6 MR. TOCE, SR.: Nothing further.

7 MR. KILBANE: Just one.

8 RE-CROSS-EXAMINATION OF VICTOR WENZEL

9 BY MR. KILBANE:

10 Q. Drawing your attention to Exhibit 5, the signature
11 page --

12 A. Right.

13 Q. -- that you were just looking at with your counsel.

14 A. Okay.

15 Q. Do you see the important, statement there important?

16 Do you have the right spot?

17 Could you read that to us?

18 A. "Do not sign this agreement until you have read and
19 complied with the provisions of Exhibit C regarding oral
20 representations, if any, by us or by others on your behalf."

21 Q. Did you have time during the signing to understand and
22 comprehend that statement?

23 A. No. If I remember right there was a tab stuck over it.

24 Q. Did you go and look at Exhibit C?

25 A. I don't know anything about Exhibit C.

1 Q. Did you remove the tab if it was obscuring the page?

2 A. They flipped the page in front of it and said sign it
3 here. She flipped it closed and went on to the next?

4 Q. You as an adult had an option at each point of the way
5 to say no, you're going too fast, I want to look at this,
6 and I particularly want to look at what's important, or was
7 important obscured?

8 A. I didn't have a chance to know what I wanted to look.

9 Q. I'm talking about do you remember signing important, or
10 was that obscured as well?

11 A. Maybe not, I don't know.

12 Q. When you saw important and a tab, you didn't want to
13 see or take the time to find out what was the importance?

14 A. I guess I was -- my concentration was signing it and
15 getting out the door, and I signed where they pointed to
16 sign at.

17 Q. You were signing because you didn't care what was in
18 those agreements?

19 A. Oh, I cared what was in them.

20 Q. You cared, why did you not review it?

21 A. I put my trust in MAC Tools. They said it was all
22 legitimate and in good faith.

23 Q. Did you ask any questions of MAC Tools?

24 Did you ask whether there is an arbitration provision
25 in there?

1 A. I didn't know whether to ask that.

2 Q. Yes. You didn't care at the time --

3 A. I cared.

4 Q. -- whether there was arbitration in the contract, did
5 you?

6 A. I cared.

7 Q. That's why you didn't read the important thing on the
8 signature page of the agreement you were signing even though
9 you had 15 to 20 minutes.

10 You're saying you didn't have enough time to go and
11 read Exhibit C?

12 A. No, not with the stack of documents they had in front
13 of me.

14 Q. How long did you think it takes to sign 20 agreements.
15 You said 20 --

16 A. It was 20 minutes.

17 Q. You think it takes 20 minutes to sign your name 20
18 times?

19 A. It takes a little -- probably as messy as my signature
20 is it takes a few seconds.

21 Q. You say in your affidavit there is a provision you
22 don't like in your distributor agreement, correct?

23 A. Correct.

24 Q. And if you reviewed this distributor agreement at the
25 time you would have taken out each and every one of those

1 provisions you object to now that were in that agreement,
2 correct?

3 A. Yes.

4 Q. And you elected not to review that agreement but signed
5 it, correct?

6 A. Yes.

7 MR. TOCE, SR.: Objection, Your Honor.

8 THE WITNESS: I didn't have an opportunity to
9 review it.

10 THE COURT: It's argumentative. I'll sustain the
11 objection.

12 MR. KILBANE: No further questions.

13 MR. TOCE, SR.: Nothing further, Your Honor.

14 THE COURT: Thank you. You may step down.

15 (Luncheon recess had.)

16 MR. TOCE, SR.: I call Kelly Thompson to the
17 witness stand, Your Honor.

18 KELLY THOMPSON,

19 of lawful age, a witness called by the Plaintiff,

20 being first duly sworn, was examined

21 and testified as follows:

22 DIRECT EXAMINATION OF KELLY THOMPSON

23 MR. TOCE, SR.:

24 Q. Mr. Thompson, please identify yourself for the court?

25 A. My name is Kelly Thompson.

1 Q. And where are you from, Kelly?

2 A. Anchorage, Alaska.

3 THE COURT: Excuse me. Off the record.

4 (Discussion off the record.)

5 Q. Let me show you your sworn declaration and ask you if
6 you have had a chance to review that recently and did you
7 sign it?

8 A. I'm sorry. Could you repeat that?

9 Q. Did you have a chance to look over that and review it?

10 A. Yes, I have.

11 Q. And did you have a chance to review it recently?

12 A. Yes.

13 Q. Is there anything in your affidavit that is no longer
14 true, correct and accurate?

15 A. No, there is not. It's good.

16 Q. Tell us how you first became associated with MAC Tools?

17 A. I read a newspaper ad looking for employees and got
18 interviewed and became a MDSR, an employee of the company.

19 Q. So you didn't become a traditional dealer when you
20 joined MAC?

21 A. Yes.

22 Q. You are what's called a MDSR. Tell the court
23 essentially what that is?

24 A. That's essentially a traditional dealer, but I was an
25 employee of the company.

1 Q. What does MDSR stand for?

2 A. MAC direct sales rep.

3 Q. How does being an MDSR selling tools from the truck for
4 MAC differ from being a traditional selling the tool on the
5 truck for MAC?

6 A. You're essentially just a salesperson and cashier at
7 that point.

8 Q. As MDSR?

9 A. Um-hum. You're not so responsible for so much of the
10 business aspect.

11 Q. What happened to you around December of 2001 with the
12 MDSR program?

13 THE COURT: April 2003.

14 MR. TOCE, SR.: It's April 2003.

15 THE WITNESS: Thank you. Yes. April 9, 2003 is
16 when we all got the conference call and were fired. And at
17 that point it was said you're out of a job or you can
18 convert.

19 Q. To a traditional distributor?

20 A. To a traditional distributor.

21 Q. Let me show you what's marked as Plaintiff's Exhibit
22 Number 7 for identification purposes, which purports to be
23 your acknowledgment form.

24 Tell me if you have seen plaintiff's 7 before? Is that
25 your signature?

- 1 A. Yes, I've seen this before.
- 2 Q. You've seen this before?
- 3 A. Yes.
- 4 Q. Did you put a date there April 11, 2003?
- 5 A. Yes. Um-hum.
- 6 Q. How soon was that after you were fired as MDSR did you
7 sign this agreement?
- 8 A. We were fired on April, Wednesday, April 9th, and this
9 was, the entire stack of signature pages, was sent to me
10 overnight by Friday, the 11th.
- 11 Q. Did -- let me see if I understand.
- 12 You say you signed that acknowledgment form saying that
13 you received copies of all those documents listed on the
14 exhibit?
- 15 A. Yes.
- 16 Q. Did you in fact receive the documents?
- 17 A. No, I did not.
- 18 Q. Tell me what did you receive and how?
- 19 A. Well, on that day, on Friday the 11th, I received a
20 small stack of signature pages with little tabs where I
21 needed to sign and I needed to fax those back immediately.
- 22 Q. Who told you you had to fax those back immediately?
- 23 A. Dan Watkins.
- 24 Q. He was a --
- 25 A. I believe he was a regional manager at that point. And

1 then I needed to overnight the originals back to them.

2 Q. So in essence you received not the documents but just
3 the signature page on the documents?

4 A. Correct.

5 Q. And you were instructed by MAC to send those back
6 immediately the same day?

7 A. Yes.

8 Q. Would it have been possible for you to have the
9 documents reviewed, or get advice from counsel, or lawyers,
10 or anything?

11 A. No, not in that time frame, no.

12 Q. You didn't have them, did you?

13 A. No.

14 Q. When you signed the acknowledgment form on April 11th,
15 supplied by MAC, wanting you to acknowledge receipt of all
16 those documents one through 22 with attachments, with
17 Attachments A through G, did MAC know that you did not have
18 those documents when I asked you to sign receipt
19 acknowledging that you did?

20 A. Yes. They said the entire book would follow.

21 Q. Let me ask you this.

22 You heard Mr. Kilbane question Mr. Wenzel about why he
23 didn't just walk away from signing the paper, did you hear
24 that?

25 A. I did hear that.

1 Q. Okay. I'm sure he's going to ask you the same
2 question, but I'll ask you.

3 What, if anything, was going on in your life at the
4 time you had to sign the documents, that one period of hours
5 in that one day, what was going on in your life that may
6 have impacted your ability to just walk away?

7 A. I was fired two days before.

8 Q. So you had no job?

9 A. I had no job. I already basically lived from paycheck
10 to paycheck.

11 Q. Did you already have the truck?

12 A. Certainly.

13 Q. Did you have an inventory?

14 A. Yes, I did.

15 Q. What was your family situation at that time, did you
16 have any pressures or stresses coming from the family
17 situation?

18 A. I was having a little bit of trouble with my wife at
19 the time, nothing crazy or anything.

20 Q. So did you really feel free to walk away?

21 A. Absolutely not.

22 Q. Do you know why MAC only gave you one portion of one
23 day to sign or you were out?

24 A. I would say to protect themselves so they don't lose
25 their entire distributor force.

1 Q. What did you say the man's name was that you were
2 dealing with?

3 A. Dan Watkins.

4 Q. Were you aware that MAC paid Dan Watkins and other
5 district managers and regional managers a significant amount
6 of money for successful recruitment of people like you to
7 become distributors?

8 A. Oh, yes.

9 Q. Do you know how much money it was?

10 A. I believe it was like 500 bucks per distributor.

11 Q. MAC paid district managers and the regional managers
12 \$500 for every recruit they could get signed on the dotted
13 line?

14 A. That's my understanding.

15 Q. Did you know that Dan Watkins was being paid to recruit
16 you when he was telling you all the stuff about MAC was such
17 a great business opportunity?

18 A. I didn't know he was going to get a bonus.

19 Q. Did you know he was going to get cash money as soon as
20 he signed distributors?

21 A. No, I did not.

22 Q. The day, or several hours, that you had the signature
23 forms, would there be any way for you to formulate an
24 intelligent question about the contracts, if you didn't even
25 have them?

1 A. I would say no.

2 Q. Could you call anybody at MAC Tools during that couple
3 of hour window of opportunity to sign the pages and fax them
4 back?

5 A. No. One of the major problem of living in Alaska and
6 doing business with mostly eastern coast business was the
7 four hour time difference.

8 Q. What time did you receive the fax from MAC according to
9 the fax header on your acknowledgment form?

10 A. Actually I received them during about mid day. But on
11 my acknowledgment form I had faxed them back by 8:00 that
12 night.

13 Q. So when they were faxing you about midday, what time
14 would MAC's be closed?

15 A. MAC's generally shuts down by 5:00, but you could
16 almost never get anybody on the phone after 4:00.

17 Q. And it was a four hour time difference?

18 A. Correct.

19 Q. So if you got them around midday, midday your time,
20 west coast time, that was right about the time max would be
21 closing business for the day on the east coast?

22 A. That's correct.

23 Q. Do you have any formal education after high school?

24 A. Less than a year of college, basic courses.

25 Q. Why did you decide to stop going to college?

1 A. I had a job and preferred to go that route.

2 Q. Had you ever seen a set of contracts, which you finally
3 did see them, as complex and extensive as the distributor
4 agreements and direct sales agreements that you signed with
5 MAC?

6 A. No, I had not.

7 Q. Can you tell us why you would sign such significant
8 documents without having a chance to read them?

9 A. I had to get them back that day to -- in order to keep
10 my job. So --

11 Q. Did you ever have a relationship with the man that was
12 recruiting you?

13 A. With Dan Watkins?

14 Q. Dan Watkins.

15 A. He had been my district manager.

16 Q. What did you think about him, his character at the
17 time?

18 A. Dan was a salesman, straight and true. Everything he
19 did was sales oriented. He would get you to do what he
20 needed you to do.

21 Q. Did Dan tell you anything about you not having read the
22 contracts in the sense of you'll be okay, you'll be fine
23 quote unquote, they're just formal documents, anything like
24 that?

25 MR. KILBANE: Objection leading.

1 THE WITNESS: I was told to --

2 THE COURT: Overruled.

3 THE WITNESS: -- to basically relax and everything
4 is going to be just like it was when you were running your
5 own truck as an employee, sign the papers and get the ball
6 rolling.

7 Q. Did you ever go to a training in Columbus with other
8 new recruits?

9 A. Yes.

10 Q. Just a regular two week training that we're talking
11 about?

12 A. Correct.

13 Q. What percentage of the time involved with the entire
14 training was devoted to the contracts, with documents you
15 would be signing?

16 A. The last hour of the Thursday or Friday that ended the
17 training session.

18 Q. So would that be almost 99% of the time you intend
19 doing things other than talking about the undertaking in
20 these documents?

21 A. Yes.

22 Q. What other things happened in the majority of the time?

23 A. Computer training, little lessons on how to sell, but
24 mostly computer training and MBA program.

25 Q. Did the MAC people there make any efforts to convince

1 you that you should become a MAC distributor?

2 A. Absolutely, that was their whole focus the entire time
3 we were there.

4 Q. Were the people that were there recruiting you, trying
5 to convince you to become a distributor, were they salesmen?

6 A. The two trainers absolutely, they were not there to
7 beat us down. It was all the rah-rah MAC Tools, good
8 session.

9 Q. At the training did anyone with MAC warn you about some
10 of the risks that might be involved, some of the bad things
11 that could possibly happen to you, the fact that you're
12 going to have some accounts that are not collectible, the
13 fact that you're going to have some casualty loss that
14 affects your bottom line, the fact that you're going to have
15 to share some of the money you make with MAC advantage, if
16 you choose that program, any of those?

17 MR. KILBANE: Objection, outside of the scope of
18 the affidavit, outside the scope of the issues, and,
19 moreover, contravention of representation before lunch that
20 we're going to move these witnesses along.

21 THE COURT: I will overrule all three basis of the
22 objection.

23 Q. You may answer the question.

24 A. Repeat the gist of that for me please.

25 Q. I was hoping you wouldn't say that?

1 A. You asked me about if they talked about --

2 THE COURT: Risks.

3 Q. Disclosing the risk of potential pitfalls of being a
4 MAC distributor?

5 A. We devoted a few hours on how to get bad debt people
6 that wouldn't pay, not pulling over in a dark parking lot
7 and selling to some guy because you might get robbed, things
8 like that.

9 Q. When it came to the signature time, the last two weeks
10 of training, recruitment seminar, whatever it is, describe
11 for us the document signing process?

12 Did you have to go to another location?

13 A. Yes. Our training was at the distribution center on
14 one side of Columbus and the documents and graduation was at
15 their head office.

16 Q. How many people were in your training?

17 A. There are probably a little over 30 people in there.

18 Q. Did everybody get on the bus and go to the training --
19 to the signature place?

20 A. Correct.

21 Q. Did you have to wait there at the signature place for a
22 while cooling your heels?

23 A. A little bit while they got things ready for us, got
24 some tables.

25 Q. When they were ready, describe for us the process when

1 you walked in, how were the documents laid out, what the MAC
2 people do, all of that stuff?

3 A. At that point it was just, it was two by two, or six,
4 six. At the time it was all of us going through in a line,
5 going through. I don't remember how many MAC employees were
6 in there, one or two, pointing where to sign.

7 Q. Where to sign, the MAC personnel directed your
8 attention to the signature page?

9 A. Correct.

10 Q. Did they have tabs on them?

11 A. Yes, right where to sign.

12 Q. Did anybody with MAC point your attention to any of the
13 contents of the document you were signing like you're
14 waiving your right to a jury trial, you're waiving your
15 right to a court, you're waiving damages, you're waiving
16 limitation period, any of that stuff?

17 A. No, sir.

18 Q. How long did it take you to sign -- let me ask you
19 this. How many signatures were required on this stack of
20 documents, roughly?

21 A. Roughly, 15 or 20.

22 Q. And how long did it take you to turn all the pages,
23 find the signature for each document, and get your signature
24 on each one?

25 A. Talking about the documents and pointing where to sign

1 it, it was 15 minutes or so.

2 Q. Were there any time pressures due to your travel
3 arrangement at the time you were flipping through the
4 documents and trying to find the signature pages?

5 A. Absolutely.

6 Q. What was that?

7 A. It was pressure time to get on the airplane.

8 Q. Do you know of anyone who missed their flight because
9 document signing was so late?

10 A. We were all very close because September 11 just
11 happened a few moments ago and security procedures at the
12 airport were incredibly long.

13 MR. TOCE, SR.: One second, Your Honor.

14 (Pause.)

15 BY MR. TOCE, SR.:

16 Q. I just want to clear up one issue on bonus, your
17 understanding of the bonus that the DM got for recruiting
18 you.

19 Did you say what that amount was?

20 A. I recall a figure of \$500.

21 Q. Did you get that from him?

22 Did he tell you he was going to get \$500 if he could
23 get you to agree to become a distributor?

24 A. I heard it from him in conversation.

25 MR. TOCE, SR.: We'll tender, Your Honor.

1 THE COURT: As an employee you mentioned the
2 truck, did you own the truck as an employee?

3 THE WITNESS: No.

4 THE COURT: And as an employee how were you
5 compensated?

6 THE WITNESS: Weekly and a small commission and
7 possible bonuses.

8 THE COURT: So it was basically the salary, small
9 commission?

10 THE WITNESS: I think it was 10% and possible
11 bonuses.

12 THE COURT: And the truck and inventory were owned
13 by the company?

14 THE WITNESS: By Tools, yes.

15 THE COURT: And then when you went from that
16 program to become a distributor then, did you acquire the
17 truck in the inventory?

18 THE WITNESS: Yes, I did.

19 MR. KILBANE: Thank you, Your Honor.

20 CROSS-EXAMINATION OF KELLY THOMPSON

21 BY MR. KILBANE:

22 Q. Your Honor was going just to where I was.

23 When your counsel, Mr. Toce, was asking you about risk,
24 you said you had risk. You had no risk when you were an
25 employee, when you were an MSDR, am I correct -- MDSR?

1 A. No risk?

2 Q. No risk. You were an employee?

3 A. I was an employee, but I still sponsored a \$60,000
4 truck and \$80,000 worth of inventory.

5 Q. In terms of risk, in terms of whether you were going to
6 get paid or not paid, you were an employee and you were an
7 employee because you were paid with commission and bonuses,
8 correct?

9 A. A small salary, yes.

10 MR. KILBANE: I want to mark Exhibit D.

11 Q. Handing you what has been marked as Exhibit D, is that
12 a copy of the MAC Direct Sales Representative Agreement you
13 signed in 2001?

14 A. To my recollection.

15 Q. And that is dated December, 2001?

16 A. Correct.

17 Q. And this training you took in 2001 when you were an
18 employee, am I not correct, that this is the only document
19 you signed in Columbus?

20 A. I remember signing a lot of documents there.

21 Q. What other documents did you sign besides distributor
22 agreements?

23 A. That was almost five year ago. I can not recall the
24 contents of all those documents.

25 Q. You told Mr. Toce there was a stack of documents and

1 lots of signature pages, 20 signature pages.

2 If someone from MAC Tools comes up and testified that
3 that's the only document you signed as an employee, do you
4 have any basis to disagree with that testimony?

5 A. I know there were plenty of bank documents I had to
6 sign that day.

7 THE COURT: I'm sorry. You said bank?

8 THE WITNESS: Correct.

9 THE COURT: Bank documents.

10 BY MR. KILBANE:

11 Q. Bank and credit documents, I'm talking about documents
12 represented to the distributorship?

13 MR. TOCE, SR.: Objection. I think you confused
14 traditionals and MDSR.

15 THE COURT: Mr. Kilbane, the question you asked
16 was, was this the only document that he had to sign. And
17 you did not qualify it as the only document with regard to
18 representation. So his answer was he had to sign the bank
19 documents.

20 MR. KILBANE: And I appreciate that clarification.

21 BY MR. KILBANE:

22 Q. Other than bank documents, were there any other
23 documents other than the distributor agreement that you
24 signed in 2001?

25 A. As I recall, yes.

1 Q. What were they?

2 A. I do not know.

3 Q. Okay. Now, have you ever read this agreement that I
4 just handed to you as Defendant's Exhibit D?

5 A. I haven't read this for several years.

6 Q. But you did read it at one time?

7 A. Yes.

8 Q. And did you take exception to any of the provisions at
9 the time you read it?

10 A. No. I wasn't allowed to. You either signed this or
11 you don't have a job.

12 Q. I was talking about this agreement, yes, this
13 agreement.

14 You read that and did you take exception to any of the
15 provisions?

16 Did you object to any of the provisions?

17 A. No. Just like I said, if I took exception to this, it
18 was an employment agreement, then I would not be hired.

19 Q. My question is, are there any provisions in here you
20 disagree with?

21 A. Essentially, I don't feel I was qualified at all to
22 disagree with any of these things, not being well educated
23 on legal terms and things like that.

24 Q. You have a high school degree and one year of college;
25 is that correct?

- 1 A. Correct.
- 2 Q. And with respect to -- let's turn to page three,
3 paragraph E. You see that?
- 4 A. I do.
- 5 Q. It talks about you and MAC Tools agree to waive to the
6 full extent any claim to punitive damages. You see that?
- 7 A. Yes.
- 8 Q. Above that you also see an agreement to arbitration?
- 9 A. Yes.
- 10 Q. And, furthermore, on the next page, page four, you
11 agree that the binding arbitration will resolve any and all
12 disputes arising out of this agreement, correct?
- 13 A. Correct.
- 14 Q. And in H you understood that provision meant you were
15 waiving a right to have a jury; do you not?
- 16 A. I read it, and I really didn't know what that meant at
17 the time.
- 18 Q. You don't know what the right to jury means?
- 19 A. I do know what that means.
- 20 Q. Okay.
- 21 A. Thank you.
- 22 Q. And waiver means you're giving up the right to a jury?
- 23 A. Correct.
- 24 Q. You understood that?
- 25 A. Yes.

1 Q. So on this agreement, just so I understand, did you
2 ever go back to anyone at MAC Tools and say I object to any
3 of those provisions?

4 MR. TOCE, SR.: Objection, the question is vague.
5 When Mr. Kilbane says this agreement, I'm not sure the
6 witness says which one he's talking about.

7 MR. KILBANE: I'm talking about Exhibit D. It's
8 the only one marked.

9 THE COURT: It's the representation agreement.
10 And the question is, did he protest to anyone at MAC about
11 any of the contents.

12 THE WITNESS: And the answer to that would be we
13 were told at training that if you don't sign this stuff you
14 don't have a job. So I needed a job. I had already quit my
15 previous one, so I had to sign this.

16 Q. I'm going back to after you signed, you said you didn't
17 read it at the time.

18 THE COURT: Excuse me.

19 MR. KILBANE: I'm sorry.

20 THE COURT: Let's start with, is it your testimony
21 that you signed this without reading it?

22 THE WITNESS: Yes.

23 THE COURT: And after you had the opportunity to
24 read it, did you contact anyone at MAC and say, you know, I
25 read something in here I think is really unfair to me; or I

1 read something in here that I think stinks; I read something
2 in here that I don't understand, I want you to explain it to
3 me; did you do anything like that?

4 THE WITNESS: No, I did not.

5 MR. KILBANE: Thank you, Your Honor.

6 BY MR. KILBANE:

7 Q. Now, fast forwarding you to April 11, 2003. As I
8 recall -- well, first of all, you don't have to go back for
9 training when you become a traditional distributor, correct?

10 A. Correct.

11 Q. You don't do it twice. So when you were asking for the
12 training you were talking about 2001 to 2003 in connection
13 with the distributor agreement you presently have at MAC
14 Tools, correct?

15 A. Right.

16 Q. And you said you received the acknowledgment form and
17 some signature pages about mid day on April 11th?

18 A. Correct.

19 Q. By mid day, what did you mean, noon?

20 A. Noonish, yes.

21 Q. And you sent that back at 8:29?

22 A. Yes.

23 Q. So contrary to your affidavit where you said you had an
24 hour and a half to review, you actually had eight and a half
25 hours?

- 1 A. I was still on my route that day. Even though I was
2 out of a job, I had to collect money and things like that.
3 So I didn't get to review it right at nine.
- 4 Q. But if you chose to take it on your route and review
5 it, you had eight and a half hours to review it?
- 6 A. Hypothetically, yes.
- 7 Q. At any time did you call Mr. Watkins?
- 8 A. I talked to Dan Watkins, and his instruction was to
9 sign that, fax it back, send the hard copies back.
- 10 Q. He's in Seattle, right?
- 11 A. Right.
- 12 Q. So he was in the same time zone as Alaska?
- 13 A. I think that's an hour difference.
- 14 Q. This talk about Columbus being closed and a different
15 time here, was the individual you had contacted, did you
16 call him and say I've got signature pages, I've got
17 acknowledgment sheets saying I received all the documents,
18 but I haven't received all the documents, would you please
19 send them please?
- 20 A. And Dan said the book would follow.
- 21 Q. The book would follow?
- 22 A. The book with all the documents would follow.
- 23 Q. And did you get the book with all the documents?
- 24 A. Around the 20th of April.
- 25 Q. And in terms of signing, you, in fact, did not sign and

1 return the distributor agreement until April 14th, correct?

2 A. No. I dated all that for that Monday and faxed it all
3 back that Friday, Friday the 11th.

4 Q. And you dated it April 14th or April 11th?

5 A. For the 14th, I recall signing most of the documents
6 and putting that Monday's date on it.

7 Q. Let me hand you what has been marked as Exhibit E.

8 Isn't this a copy of your distributor agreement of December
9 -- April 14, 2003?

10 A. That looks like the agreement, yes.

11 Q. And isn't April 14th the day you sent the agreement
12 back?

13 A. Physically sent it, yes.

14 Q. Yes.

15 A. But I faxed it all Friday.

16 Q. And you had the entire agreement at the time you faxed
17 it?

18 A. No, I did not.

19 Q. And you decided to sign an agreement saying -- did you
20 ask whether this agreement contained the same terms and
21 conditions as the 2001 agreement?

22 A. No, I did not.

23 Q. You never asked anybody at MAC Tools?

24 A. No.

25 Q. And you submitted an affidavit saying you objected to

1 those terms today, but you knew they were in your earlier
2 agreement, correct?

3 At the time you signed this document you knew those
4 terms were in your earlier agreement?

5 A. No. Actually, no, I didn't. I assumed they would be a
6 little different, going to different areas.

7 Q. I am talking arbitration, waiver of jury, no punitive
8 damages?

9 A. Repeat the question again please.

10 Q. Those limitations were in the original employee
11 distributor agreement, correct?

12 A. Correct.

13 Q. In 2001.

14 And did you ever ask anybody whether they had been
15 taken out or included --

16 A. No, I didn't.

17 Q. -- in the 2003?

18 A. I did not.

19 Q. And at no time did you ever tell MAC Tools that you
20 objected to those provisions?

21 A. No.

22 Q. In the period 2001 to 2003, correct?

23 A. Correct.

24 Q. And indeed the first time you indicated -- strike that.

25 When you received the documents on the 20th, did you

1 review them then?

2 A. I read through it, but I don't have legal counsel, so I
3 didn't go into it in any real depth.

4 Q. How much time did you spend reviewing the documents?

5 A. Not much, a few hours maybe.

6 Q. Did you get a booklet like this?

7 A. Correct.

8 Q. And that's how the document -- it took you -- that's
9 not six inches thick, right, that's what, about half an
10 inch?

11 A. If you say.

12 Q. And this --

13 A. I had to peruse through it because I don't understand a
14 lot of the terms in it.

15 Q. And this would be the same documents that you signed in
16 2003, all those pieces of paper you're talking about?

17 A. Again, I signed the signature pages before receiving
18 that.

19 Q. And when you received this, about how much time did you
20 spend perusing this? And I'm referring to go Defendant's
21 Exhibit A?

22 A. Like I already said, just a few hours maybe.

23 Q. A few hours.

24 And although you didn't have counsel, there was nothing
25 to preclude you from hiring counsel or going to some other

1 party, correct?

2 A. Correct, other than financial obligations.

3 Q. And you elected not to pursue that?

4 A. Correct.

5 Q. And you did acknowledge that you had the copies of the
6 contract in this acknowledgment of April 11th; did you not?

7 A. Because I had to sign that and get it back immediately,
8 yes, I did acknowledge that.

9 Q. And you knew this was inaccurate based on your
10 testimony?

11 A. Yes, but it's okay. Dan Watkins said sign it, get it
12 back, let's get your job rolling.

13 Q. Are you use to making a false statement for
14 acknowledgment?

15 Do you think this is an accurate statement of your
16 acknowledgment of the receipt of all those documents and
17 then to say you never got the documents?

18 A. Do I think it's an accurate statement?

19 Q. Yes.

20 A. I'm not sure how to answer the question really.

21 Q. Either you possessed the documents which you
22 acknowledged you did, or you did not. If you did not, that
23 means this acknowledgment is erroneous?

24 A. I'm going to go right back to saying I had to sign that
25 stuff to keep my job.

1 Q. The job had been terminated you say, and you were given
2 an opportunity to be a traditional distributor, correct?

3 A. Correct.

4 Q. And when you became a traditional distributor that was
5 your choice, was it not?

6 A. That is correct.

7 Q. And no one at MAC Tools was saying to you I'm pointing
8 a gun at your head and saying you've got to be a
9 distributor?

10 A. In essence that's exactly what they did. "You're
11 fired. You have the opportunity, or can you take off."

12 Q. I'm sorry. Aren't there other jobs in Alaska besides
13 being a tool distributor?

14 A. I'm sure there are.

15 Q. And you could have looked for other jobs in Alaska.

16 And while we're on the subject of Alaska, we keep
17 talking about the flights out of Columbus, and you had a
18 flight out of Columbus after the graduation back in 2001?

19 A. Correct.

20 Q. And how many hours did you have in order to get that
21 flight?

22 A. I don't recall exactly the whole time frame when my
23 flight left.

24 Q. Did you ever contemplate maybe changing the plane?

25 A. That cost extra money, so, no.

1 Q. Did you ever ask MAC Tools whether they would reimburse
2 you for a change?

3 A. No.

4 Q. Do you know what the policy is?

5 A. No.

6 Q. You don't know that their policy is to pay for the
7 change?

8 A. No, I did not know that.

9 Q. In any event, the cost of money, it was maybe in the
10 neighborhood of \$50 to \$100 back in those days?

11 A. I don't know.

12 Q. But you elected not to change flights instead of going
13 back on Friday, whatever the 16th is, you elected to go back
14 that evening, correct?

15 A. Correct. This was the first time I had been away from
16 my family since my kids were born, and that was two weeks.
17 I wanted to get home.

18 Q. But if you didn't have the flight, you could have said
19 -- you never asked people at MAC Tools, gee, I know
20 everybody else is rushing through to get a flight, but I'll
21 take mine tomorrow. I want some more time to review all
22 these agreements before I sign it.

23 You did not say that, did you?

24 A. I did not say that. I heard two trainers say if you
25 don't sign this stuff, you don't have a job.

1 Q. That's different from saying I want more time before I
2 sign it, if you don't sign the agreement, right, you're not
3 going to be a distributor?

4 But they did not tell you if you did not ask them
5 whether you could stay longer and review --

6 THE COURT: Wait. Wait. As I understand it, he
7 signed the distributor agreement in Alaska in '03. He was
8 in Columbus in '01.

9 MR. KILBANE: Yes. I made that distinction
10 earlier. Because in '03 he was at home. He wasn't under
11 any pressure. He had a lot of time. He wasn't in this
12 training. I was going back in 2001 to close up even though
13 that is not in dispute --

14 MR. TOCE, SR.: The point is in 2001 you --
15 objection.

16 MR. KILBANE: -- he asked anyone for additional
17 time to review the contract.

18 MR. TOCE, SR.: Objection. If that contract is
19 not in dispute, it's irrelevant. So ask him about --

20 THE COURT: Of course, his whole testimony about
21 if you don't sign you're out of a job relates to 2003 not
22 2001, because 2001 is when you first went to work for
23 Stanley.

24 THE WITNESS: It actually applies to both
25 identical --

1 THE COURT: Wait. In 2001 you weren't working for
2 Stanley at the time you signed the original agreement,
3 that's when you first went to work for Stanley, isn't that
4 right?

5 THE WITNESS: That's correct.

6 MR. KILBANE: That was the point I was trying to
7 make, Your Honor.

8 BY MR. KILBANE:

9 Q. And I just completed that line of questioning. And
10 we'd gone over 2003. And in 2003 there was no training
11 session, correct?

12 A. Correct.

13 Q. And you had the papers sent to your home and you did
14 not call anybody at MAC Tools to say I want a copy of the
15 agreement?

16 A. No. I already told you I called Dan and asked for it.

17 Q. He told you he was going to send it?

18 A. Um-hum.

19 Q. And you decided not to wait until they arrived?

20 A. He told me not to wait, to sign this stuff, get it in
21 and out.

22 Q. And you received those within a week of the distributor
23 contract?

24 A. Yeah.

25 Q. Directing your attention again to Exhibit D. How long

1 would it have taken you to have reviewed this during that
2 training session? Would you estimate?

3 A. To review it, read it correctly?

4 Q. Yes. Five, ten minutes?

5 A. Sure ten minutes.

6 Q. One final question.

7 The 2003 agreement is dated the 14th, as we indicated,
8 April 14th. Why would you use April 14th on the distributor
9 agreement and April 11th on the acknowledgment, if you were
10 sending them both back at the same time?

11 A. I don't recall.

12 Q. Isn't it conceivable that you actually had the
13 documents for the period from April 11th until April 14th
14 when you signed and sent back the distributor agreement?

15 A. No, they were in their hands Monday.

16 MR. KILBANE: Nothing further.

17 MR. TOCE, SR.: Yes, Your Honor. Thank you.

18 REDIRECT EXAMINATION OF KELLY THOMPSON

19 BY MR. TOCE, SR.:

20 Q. Mr. Thompson, when you were an MDSR, right before you
21 got fired and had the basic choice to convert, did MAC do
22 anything with regard to what it was paying you as MDSR right
23 before you had to make the decision to convert that impacted
24 your decision to convert?

25 A. Can you rephrase that?

1 Q. I thought you understood there was a change in the MDSR
2 pay. What they paid the MDSR, by a matrix or something,
3 does that list how you get paid as a MDSR?

4 A. I think that change happened before I started as an
5 employee.

6 Q. Do you remember any change in the way you were paid
7 immediately before you got fired and had to make this
8 decision to convert or go elsewhere?

9 A. I don't recall.

10 MR. TOCE, SR.: Thank you. No more questions.

11 THE COURT: Thank you, you're excused.

12 MR. KILBANE: I'm sorry. I had a question.

13 THE COURT: Oh, the only redirect was about what
14 was the change of pay. He said he didn't remember. So
15 there really is no point for recross.

16 MR. KILBANE: That's fine.

17 THE COURT: Did we identify for the record Mr.
18 Thompson's declaration is ECF document 66?

19 MR. KILBANE: Your Honor, rather than recall him
20 in our side of the case, I did have one question I wanted to
21 ask him about. And rather than recall him on our case maybe
22 I can just do it here.

23 THE COURT: All right.

24 MR. KILBANE: It's confusion.

25 THE COURT: Just stay right there.

1 REXCROSS-EXAMINATION OF KELLY THOMPSON

2 BY MR. KILBANE:

3 Q. What I don't understand -- I read your affidavit a
4 number of times. You have your affidavit with you?

5 A. Yes.

6 Q. And on page two or three you state the paperwork
7 arrived via overnight mail. On April 11th I got a large
8 stack of paper with many sign here tabs. You then talk
9 about, all right, I did not have time to read this entire
10 package. No where in your affidavit do I find the
11 statements that you now are making that all you ever got
12 were signature pages only. And indeed if they were
13 signature pages only, I do not understand how you would be
14 referring to them as a large stack.

15 So I want to be clear. Between the time you did this
16 affidavit and your testimony today, was there some piece of
17 evidence or something that refreshed your recollection that
18 you never received the documents but only the signature
19 pages?

20 A. No. But I would say that a large stack is a relative
21 term. I'm not referring to a stack of papers like this.
22 But when you have to sign 15 or 20 documents, it seemed
23 like --

24 Q. But you also say in the next paragraph because of time
25 pressure there was no time to review paperwork with anyone.

1 If there are only signature pages, what would you be
2 reviewing with someone else?

3 MR. TOCE, SR.: Objection, Your Honor. This is
4 outside the scope of redirect.

5 MR. KILBANE: No I'm not calling him on redirect.
6 I am calling him on the basis I would have called him on my
7 side of the case in order to expedite.

8 THE COURT: I'll permit the line of inquiry.

9 THE WITNESS: Repeat that for me again please.

10 BY MR. KILBANE:

11 Q. My question is, I'm trying to understand your
12 affidavit. If there were only signature pages, what
13 information would there have been to review with third
14 parties, which is what you said you didn't have enough time
15 to review?

16 A. Specifically, I don't know. I just knew they were
17 legal documents that I was signing.

18 Q. You are absolutely sure you did not get more than the
19 signature pages?

20 A. Yes.

21 Q. That you did get in some cases agreements?

22 A. I'm sure that I got signature pages.

23 Q. But are you sure as you're testifying here that you did
24 not get a single contract of any type other than the
25 signature pages?

1 A. As good as I can recall.

2 Q. Is that what you think you said in your affidavit?

3 A. Yes.

4 MR. KILBANE: No further questions. Thank you,
5 Your Honor.

6 MR. TOCE, SR.: Nothing further.

7 THE COURT: All right. Mr. Thompson, thank you.

8 MR. TOCE, SR.: Tim Blackwell, Your Honor.

9 TIM BLACKWELL,

10 of lawful age, a witness called by the Plaintiff,

11 being first duly sworn, was examined

12 and testified as follows:

13 DIRECT EXAMINATION OF TIM BLACKWELL

14 BY MR. TOCE, SR.:

15 Q. Please identify yourself for the court, Mr. Blackwell?

16 A. I'm Tim Blackwell from Delano, Minnesota.

17 Q. Did you have a chance to review recently the form
18 declaration you filed in this case last year?

19 A. This?

20 Q. Yes.

21 A. Yes.

22 THE COURT: For the record, Mr. Blackwell's
23 declaration is ECF document 70.

24 MR. TOCE, SR.: Thank you very much, Your Honor.

25 BY MR. TOCE, SR.:

1 Q. Mr. Blackwell, is everything in that sworn affidavit or
2 declaration still true, accurate and correct?

3 A. Yes.

4 Q. How -- who recruited you to become a MAC distributor?

5 A. I spoke with a MAC dealer and then he referred me to
6 Dick Todd.

7 Q. Who?

8 A. Dick Todd, he's the district manager.

9 Q. What representations did Mr. Todd make to you and your
10 wife about you becoming a MAC Tools distributor?

11 A. What do you mean by representations?

12 Q. You're at Mr. Dick Todd's house, right?

13 A. My house.

14 Q. Dick Todd is at your house?

15 A. Yes.

16 Q. Talking to you and your wife?

17 A. Yes.

18 Q. About becoming a MAC Tools distributor?

19 A. Yes.

20 Q. What representations did he make to you about being a
21 MAC Tools distributor was good, why, what was it like, why
22 you should you do it?

23 A. Basically, went over the thing: I drive the truck and
24 sell the stuff to mechanics, and keep a percentage of the
25 products.

1 Q. Did you get an understanding from talking to Mr. Todd
2 that you could make more money as a distributor than you
3 could at your old job?

4 A. Directly said, he did not directly say that, but,
5 again, in insinuation, or whatever word, I'm looking for
6 here, the insinuation is, yes, I worked for this other
7 company for ten years, I'm not going to walkway from, I
8 am --

9 Q. How much money were you making at your previous job?

10 A. About \$44,000 I think I had the year I left.

11 Q. You wouldn't quit a ten year job for less money, would
12 you?

13 A. No.

14 Q. So you must have got the impression that you would make
15 more money as a MAC distributor, right?

16 A. Correct.

17 Q. What I am asking is what happened to give you the
18 impression or understanding? Did Dick Todd tell you?

19 A. After it was said mechanics know what they want, they
20 will come to the truck and buy it, now that I think about
21 it, he gave us letters, A, B, C, D, and E. And we had one
22 -- each letter stood for a different, for lack of better
23 word, product line. And the percentage reflected what you
24 got of that product for so many buys.

25 Q. How long were you a mechanic?

1 A. Ten years.

2 Q. When you were a mechanic for ten years, did you buy
3 tools from your business from mobile tool distributors?

4 A. Just about every one.

5 Q. Did you know what you had paid for various tools and
6 boxes?

7 A. Yes. That's why I kind of came up with it from how
8 much they were making off of me.

9 Q. What you saw, the profit margin, that gave indication
10 as to how much money you thought you could make?

11 A. Correct.

12 Q. Did you hear from anyone from MAC that some of their
13 tool dealers were making in excess of \$100,000 a year?

14 A. Not from corporate people, no.

15 Q. Who did you hear it from?

16 A. Dealer.

17 Q. From the dealer?

18 A. Correct.

19 Q. Did Dick Todd put you in touch with that dealer?

20 A. Yes.

21 Q. Dick Todd didn't tell you you could make \$100,000 a
22 year. He told you to go to school for distributors and let
23 the tool distributor tell you how much he was making per
24 year; is that about right?

25 A. Yes, I guess.

1 Q. How much of the -- when did you go to the training?

2 A. June of '01, I think '02 it was.

3 Q. June 17, '02?

4 A. Um-hum.

5 Q. Let me show you what I'm going to mark as Plaintiff's
6 Exhibit number 8, which purports to be your acknowledgment
7 form signed by you.

8 Have you ever seen Plaintiff's Exhibit 8, the
9 acknowledgment form?

10 Do you recognize that as being the acknowledgment form
11 that we were talking about?

12 A. I can't really read it, but yeah it looks like the same
13 shape.

14 Q. You want to borrow these? Can you see it?

15 A. Good enough, yes.

16 MR. TOCE, SR.: Okay. We have a problem. I need
17 to work off the original. It doesn't have a date on it.
18 This one does.

19 Q. Is there a date on Plaintiff's Exhibit 8, the day you
20 signed the acknowledgment form, the day you received the
21 document?

22 A. No, sir.

23 Q. Do you remember receiving a bunch of documents from MAC
24 when you signed the acknowledgment form?

25 A. No.

1 Q. Do you remember when you signed this acknowledgment
2 form?

3 A. No.

4 Q. Did you sign the acknowledgment form before you left to
5 go to recruitment training, or did you first sign it when
6 you were in the recruitment training, or do you know?

7 A. I don't know. I didn't -- well --

8 Q. Let me show you what's been marked as Plaintiff's
9 Exhibit 8, which purports to be the distributor agreement.
10 I'm going to turn to the back signature page?

11 MR. FRIEDMAN: That's eight.

12 MR. TOCE, SR.: That's nine. I've got -- I marked
13 it right, but I said it wrong. It is nine.

14 MR. FRIEDMAN: Okay.

15 BY MR. TOCE, SR.:

16 Q. What's the date that you signed the distributor
17 agreement?

18 A. This one here is June 28th. That would be the last day
19 of our training.

20 Q. Do you know the president of MAC Tools signed the same
21 day as you?

22 A. I see that, yes.

23 Q. Did you see the president of MAC Tools at the
24 recruitment training?

25 A. No, sir.

1 Q. Did you hear anyone say he was suppose to be there, was
2 going to be there, or was coming to be there?

3 A. No. Can I elaborate on that?

4 Q. Sure.

5 A. When we were all sitting in the cafeteria at the
6 headquarters building --

7 Q. Waiting for the contract to be signed?

8 A. Yes. There was this young lady walking back and forth
9 out in the courtyard smoking cigarettes. And one of the
10 gentleman that worked for MAC that was bringing tables in,
11 that's his signature. He's not here. So she's down here
12 smoking.

13 Q. Did you get a complete copy of all the documents listed
14 in this Attachment A to the acknowledgement form?

15 A. When?

16 Q. Before you went to the recruit training?

17 A. Absolutely not.

18 Q. How do you know that?

19 A. Because the whole thing was a shambles.

20 Q. What do you mean?

21 A. Dick was going on vacation in Alaska. Well, whatever,
22 he was going on vacation in Alaska. I was told to be in
23 Columbus, so I made my airplane schedule, or whatever, for
24 in Ohio, I guess.

25 Q. Let me stop you there.

1 When you were told to be in Columbus, you were told by
2 someone at MAC?

3 A. Dick.

4 Q. Dick. Did Dick provide the time you should arrive and
5 time you should leave as well?

6 A. He just told me to be down there for the start of
7 training.

8 Q. How do you know what time to book the return home
9 flight?

10 A. It's the last day.

11 Q. Did MAC tell you that was the last day it ended about
12 5:00?

13 A. He said you would be down there two days, or fly out on
14 Friday -- or two weeks, you fly out on Friday. So I looked
15 for the best fares and got my airplane ticket.

16 Q. Proceed.

17 A. So anyway he takes off two or three days before I'm
18 heading down there and says if you have any questions call
19 this other guy, who is another DL.

20 Q. Okay.

21 A. So I get down there -- no. The day before I leave, I
22 get the drug test kit from MAC.

23 Q. From MAC, yes.

24 A. Yes. There wasn't anything there. So I jump on the
25 plane and brought it with me. And get down there and there

1 was supposedly going to be a shuttle down there, or whatever
2 it is. What I was told by Dick, I couldn't call any
3 shuttle. I called down and said what's going on and he said
4 just find a ride up. Where? So I found out this
5 information from him.

6 To make a long story short, got in my cab and drove up
7 there. Got out, went to register, there is no name on their
8 list for me. I didn't have that room. Okay. So I called
9 back. He straightens it all out and pretty much I got my
10 roommate and stuff. And I hadn't signed hardly anything. I
11 signed that thing where you put down how much your car
12 payment is.

13 Q. The break even expense worksheet?

14 A. Okay.

15 Q. You filled that out at the training or you filled that
16 out before?

17 A. No. We filled out our stuff at our dining room table
18 when Dick was there. That thing I signed and there was, you
19 know, an application, or whatever, and then the rest.

20 Q. When Dick presented the acknowledgment form for you to
21 sign, did Dick know as a matter of fact you hadn't
22 received --

23 A. This one?

24 Q. Yes.

25 A. I would assume so. I don't know when. As far as I'm

1 concerned, this probably -- I don't know. I don't know when
2 that got signed.

3 Q. Okay.

4 A. It didn't get signed before I got down there because I
5 didn't sign anything.

6 Q. It wasn't signed before you got down there?

7 A. No, sir. And then they had another form. They tried
8 to tell me what I was suppose to get in the drug kit.
9 That's why I mentioned that it would have come to the house.
10 He said oh, yeah, you should have that. I went downstairs
11 and I told, I think that's in here, Nicole Pizzenski, or
12 whatever it is, I told them I'm not mortgaging my home. I'm
13 going home. Give me my money back, and I'm out of here.
14 Then she called Picalo and Scott Raymond, or, whatever.

15 Q. So the document that you saw the first time that
16 bothered you because -- the mortgage from your house
17 document?

18 A. That's the first one, yes.

19 Q. You didn't see any of those contracts before you got to
20 group training?

21 A. Like I said, there was a couple of things, that break
22 even, or whatever you called it, there is a couple of little
23 favors.

24 Q. Tell the Court what happened when you said I'm leaving
25 I'm not mortgaging my house?

1 A. She said no, just settle down, and I'll call, I assume,
2 the building, headquarters building. And two other guys
3 showed up and talked me into signing. I called my wife and
4 said what do I do. She said, "They'll steer you right. Go
5 ahead and sign it."

6 Q. On the day of the signature day, last day of training,
7 did you get on the bus with the rest of the people in
8 training to go to another location to do the signing?

9 A. I road the bus over there, yes.

10 Q. When you got to the signing location was MAC ready or
11 did you all have to wait?

12 A. No. We waited quite some time.

13 Q. How long?

14 A. A couple of hours.

15 Q. In the time you were waiting did MAC come and give you
16 documents you had to sign so you could at least look offer
17 them at that time?

18 A. No. No. They were pretty scarce.

19 Q. Describe for us the actual signing of the papers when
20 you went into the room, finally. Where were the papers?
21 How were they arranged? What did the lady do with you?

22 A. Ours is kind of different from what everybody else did,
23 it seems to me anyway. We had our program, or ceremony, or
24 whatever, previous to the signing. So you got --

25 Q. So they graduated you and then you went to the signing?

1 A. Yeah.

2 Q. Okay.

3 A. So --

4 Q. If you chose not to sign would they ungraduate you?

5 A. I'd give them the paper back now.

6 Then they had us line up in two lines and then they put
7 three tables, or folding tables in the front, and everybody
8 kind of got in line and I signed. We had a couple of
9 seconds the last, you know, towards the end, and, basically,
10 just walked us up through it, you sat at that table. You
11 know they were all on one page for my name. Scott just
12 pulled it up, here.

13 Q. These 30 guys are walking down each side of a big long
14 table?

15 A. No, you walked up one side.

16 Q. Everybody got to look at specific documents and
17 everybody looked at documents that had their name on it?

18 A. Correct.

19 Q. The people came to talk to you. When the people showed
20 you your documents, how much time did they spend pointing
21 you to where you're suppose to sign, sign at the signature
22 tabs?

23 A. Maybe ten minutes at the most.

24 Q. How much time did they spend discussing the contents of
25 the documents with you?

1 A. It wasn't hardly any, no.

2 Q. How long did the whole thing take to sign all those
3 documents?

4 A. Like I said, about ten minutes. You see they didn't --
5 by backlogging us all, this sitting around time, I had to
6 go. So I was telling them, you know, we've got to get
7 going.

8 Q. You were afraid you were going to miss your airplane?

9 A. Correct.

10 Q. Do you feel like MAC set this up, put as much pressure
11 they could on you right at the time you were going, to have
12 you sign the documents?

13 MR. KILBANE: Objection.

14 THE COURT: Sustained.

15 Q. How did you get to the airport and not miss your
16 flight?

17 A. My roommate fortunately drove a pickup there and gave
18 me a ride.

19 Q. Did Dick Todd personally know about your situation not
20 having any documents before you went to the recruit
21 training?

22 A. I would assume.

23 Q. Not having received any of the contracts that you were
24 going to be required to sign before you went to the
25 recruitment training?

1 A. Yeah.

2 Q. In other words, was he the one that was going to get
3 you contracts or get someone at MAC to give you contracts?

4 A. I would imagine, yes.

5 Q. So if he was responsible for getting you the contracts
6 he didn't do it, then he would know you didn't have them,
7 right?

8 A. Yes.

9 Q. At your first meeting with Dick Todd at your house
10 about maybe becoming a MAC Tools distributor, did he bring
11 you anything?

12 A. That box.

13 Q. What was in that box?

14 A. Couple of key chains, pens, sales, like, sales fliers.
15 Then he had to go outside because there was a videotape that
16 wasn't in the box.

17 Q. But you didn't have the contracts in the box?

18 A. Just that application and a couple of other things.
19 That was it. I don't remember what they were.

20 Q. Had you already quit your job before you went to the
21 recruitment training?

22 A. Yes.

23 Q. How much money did you have to spend to get from
24 Anchorage, from the recruitment training, to spend for two
25 weeks --

1 A. Minnesota.

2 Q. Minnesota.

3 A. I think when it was all said and done about \$2100 after
4 I paid the cab and stuff to get me up, the truck.

5 Q. Did you already have the truck?

6 A. It was up to his house. He delivered it Friday or
7 Saturday after I got back from training.

8 Q. It was delivered after you got back from training?

9 A. Yes. He told me not to buy, you one, down there,
10 because he had one in the yard for me.

11 Q. The fact that you quit your job and had no income and
12 the fact that you spent a couple thousand dollars in
13 investing in it to come up to the training to become a
14 distributor impact your ability to walk away from the
15 document signing?

16 A. Yeah.

17 Q. You understand?

18 A. Yes.

19 Q. How so?

20 A. I had nothing else. I had to do it.

21 Q. If you walked away from contract signing, was MAC going
22 to reimburse you the \$2,000 you spent?

23 A. No. They wouldn't even give me money when I told them
24 I wanted to go home anyway.

25 MR. TOCE, SR.: Thank you.

1 CROSS-EXAMINATION OF TIM BLACKWELL

2 BY MR. KILBANE:

3 Q. Mr. Blackwell --

4 A. Yes.

5 Q. You did sign the affidavit prior to the training
6 period?

7 A. The application, yes.

8 Q. And that would have been April, correct?

9 You say the first recruitment was in May of 2002, but
10 your affidavit is dated in April?

11 A. Is that the one I mailed in, because they had me mail
12 one in.

13 Q. I think you faxed it?

14 A. Okay.

15 Q. But other than that, I know you were very clear on your
16 affidavit, you're very clear in your testimony today, your
17 testimony is you never signed any other document prior to
18 the training session?

19 A. I signed --

20 MR. TOCE, SR.: Objection, that mischaracterizes
21 his prior testimony. He didn't say any document. He said
22 the contracts. He did say he filled out the application.

23 MR. KILBANE: I'm sorry.

24 THE COURT: Other than the application and
25 acknowledgment form.

1 MR. KILBANE: No. He denied on cross that he had
2 signed the acknowledgement prior to the training. That's
3 where I'm going.

4 BY MR. KILBANE:

5 Q. Do you have that exhibit there?

6 A. Which one?

7 Q. Your acknowledgment.

8 MR. FRIEDMAN: Eight.

9 THE WITNESS: This one?

10 Q. Yes.

11 A. Yes.

12 Q. And you said you're sure you had not signed that before
13 the training?

14 A. Yes.

15 I don't recall signing before the training. Like I
16 said, two are three pieces of paper there. One was the
17 application. I remember very clearly we filled out one side
18 of the number thing.

19 Q. But I recall clearly your testimony, the record will
20 bear it out, you said you absolutely did not sign any other
21 documents, including the acknowledgement prior to the
22 training?

23 MR. TOCE, SR.: Same objection.

24 THE WITNESS: I misunderstood what you said.

25 Q. You misunderstood?

1 A. I maybe misunderstood the question too.

2 THE COURT: No. Mr. Kilbane, my notes say he
3 didn't know when he signed the acknowledgment form.

4 MR. KILBANE: That's where I'm going to. Why
5 don't I hand you Defendant's Exhibit F. Let me hand you
6 Defendant's Exhibit F, which has additional information from
7 eight.

8 Q. Doesn't that information -- you have a business Go FCR
9 Green; do you not?

10 A. I did.

11 Q. And doesn't that show you faxed back to Mr. Todd this
12 form back on, looks like, May 15th?

13 A. On the top here?

14 Q. On the top?

15 MR. TOCE, SR.: May 13th.

16 THE COURT: Actually, it's dated May 13th, fax
17 indicates it was transmitted on the 15th.

18 Q. Okay. It was a line below Go FCR Green that I was
19 trying to read the date on, Your Honor, that middle line.
20 But in any event this demonstrates that you did in fact sign
21 and send this back prior to --

22 THE COURT: I'm sorry. You're right. It shows
23 May 13, 4:40 P.M., Richard Todd.

24 MR. TOCE, SR.: Your Honor, I need to object
25 because MAC had all these documents at the time the motion

1 was submitted, his acknowledgement form. And it's in the
2 record. And it's the one that has no date on it. I don't
3 know where this new document came from, or how it got a date
4 on it, but somebody has to authenticate it. And,
5 additionally, may be precluded now, putting in a document
6 with a date and what you submitted has no date.

7 MR. KILBANE: I'm trying to authenticate it.
8 That's why I'm asking who owns Go FCR Green, isn't this the
9 fax number, and doesn't it show it was sent back to Richard
10 Todd. I am trying to authenticate it. What do you think
11 I'm doing?

12 MR. TOCE, SR.: Do you understand?

13 THE COURT: Yes, I understand the objection. And
14 I will permit the line of inquiry.

15 THE WITNESS: Is there a question?

16 Q. Yes.

17 A. What is it?

18 Q. Doesn't that indicate that you're using your Go FCR
19 Green to fax this form back to Mr. Richard Todd prior to the
20 commencement of training.

21 A. Actually, I think this one almost looks like it's
22 January 18, '02, doesn't it, sir, from my phone?

23 Q. Is that your fax number?

24 A. It is.

25 Q. And whether it's January 18th, maybe you put the wrong

1 date, the fact is you said there were no recruitments until,
2 you said, May of 2002 in your affidavit, correct?

3 A. When I sent in the one form, or whatever, whatever the
4 thing was in the mail, I couldn't tell you what the date was
5 on that.

6 Q. And on the dates, they are sometimes precise in your
7 affidavit. You say you signed your distributor agreement on
8 June 6th, do you not, the last paragraph of your affidavit?

9 A. I said all probably could have been, I didn't say
10 conclusively.

11 Q. You said I signed it on June 24th. We all know that's
12 a mistake now because we have an exhibit that shows you
13 signed it on June 28th?

14 A. What's June 6th.

15 Q. The date you put in your paragraph, last paragraph, of
16 your affidavit. "I've never seen the document before being
17 rushed to sign it on June 6, 2002." That's the wrong date,
18 correct?

19 A. It must be. I don't see where you're saying. Oh, here
20 we go.

21 Q. I'm saying do you have a wrong date in your affidavit,
22 and you may have had a wrong date in the fax.

23 Doesn't this demonstrate though that you sent back to
24 Richard Todd for training commenced in June, this
25 acknowledgment of the documents?

1 A. This one, yes.

2 Q. And it's your further testimony that you never had the
3 documents that you're acknowledging receipt of in this
4 acknowledgment?

5 A. Correct.

6 Q. So you signed this knowing you did not have the
7 documents, that it was an incorrect statement, correct?

8 A. Yeah.

9 Q. Yes.

10 Now, during the training period, you took the position
11 you weren't going to sign one of the mortgage documents and
12 indeed said you were going to go home, correct?

13 A. Correct.

14 Q. Did you take a similar position with respect to the
15 distributor agreement?

16 A. No.

17 Q. Did you ask for the distributor agreement when you
18 arrived at the training session?

19 A. No.

20 Q. You were there approximately ten days?

21 A. Right.

22 Q. And you never asked to review them?

23 A. No. They told us they would be available at the end of
24 the class, or whatever.

25 Q. That's not mutually exclusive from asking to see them

1 sooner, is it, sir?

2 Even though they're going to be available later, you
3 could have asked and said I want to see them earlier and
4 said I want to review them?

5 A. I would imagine.

6 Q. You could have done it, correct?

7 A. Yes.

8 Q. And when you were in that cafeteria, the waiting room,
9 am I correct that there were documents on the tables?

10 A. No, there wasn't, no, not at that time.

11 Q. Your testimony --

12 A. Not when we were hanging on in there.

13 Q. There weren't any of these forms of documents on the
14 tables when you were there?

15 A. When we were just loitering around in there?

16 Q. Yes.

17 A. No. They were setting up the tables and getting ready
18 for all the people to come downstairs.

19 Q. And you mentioned you received a document from Mr.
20 Todd?

21 A. Yes.

22 Q. Did it look like this?

23 A. Yes.

24 Q. And did you go through and look at all the contents?

25 A. Yeap.

1 Q. And it's your testimony -- when did you receive that,
2 again?

3 A. When he was at my home.

4 Q. Which would have been sometime in April, May of 2001?

5 A. Yes.

6 MR. TOCE, SR.: I think it was May, 2002.

7 MR. KILBANE: 2002.

8 BY MR. KILBANE:

9 Q. And you're saying -- let me ask you.

10 Did you upon opening this -- because he left this with
11 you?

12 A. He left me the box, yes.

13 Q. Did you see in there the packet, the disclosure
14 documents, including the distribution contract?

15 A. No.

16 Q. Did you -- when you got that acknowledgment, did anyone
17 show that it was the last two pages of Exhibit A?

18 A. No, because I didn't get the book.

19 Q. You're saying you got this box, but you didn't get the
20 book. Did you get the other contents?

21 A. I told you already what we got.

22 Q. MAC training?

23 A. No. That wasn't in there either. It was a weekly
24 flier in there. There was suppose to be a videotape in
25 there, that wasn't there. He had to go to car and get it.

1 There were two key chains. I think there was a little like
2 notebook you take notes on and peel it off and save the
3 notes.

4 Q. The videotape was in there?

5 A. No. He had to go to the car and get it.

6 Q. But he went and got it?

7 A. Yes.

8 Q. Was this document in there?

9 A. I can't see it.

10 Q. It's a brochure.

11 A. There was one like that flier.

12 MR. TOCE, SR.: Can we identify the document for
13 clarity of record.

14 THE WITNESS: Like that, smaller.

15 Q. Smaller, like this, not this?

16 A. Half the size.

17 Q. The one he identified -- I'm only interested in what he
18 said was in the box.

19 The toolbox, but it was smaller?

20 A. No. No. I said it was like that but it was about this
21 big.

22 Q. What did it have, what was the subject?

23 A. I don't know. I actually got one a week before from
24 the salesman.

25 Q. So the box was essentially empty?

1 A. Primarily, yes.

2 Q. Because you didn't have the big one, you didn't have a
3 contract, you didn't have the videotape?

4 A. There was no book in there. There wasn't any fliers in
5 there. It was a small weekly flier just like you got but
6 smaller.

7 Q. What else?

8 A. Two key chains, two pens, a note pad and that was
9 pretty much it.

10 Q. Did you open the box?

11 A. No, he did. He brought it in.

12 Q. Because this big huge box, that would not even fill up
13 the bottom of the box?

14 A. I know. That's what I'm saying. That's how I know
15 that book wasn't in there.

16 Q. Thank you.

17 A. Because it was sitting right on the dining room table.

18 Q. At the signing itself, when you did get there?

19 Did you ask for additional time to review the
20 agreements prior to signing?

21 A. No.

22 Q. Did anyone tell you you could not have additional time?

23 A. Could not have it, no.

24 Q. You had an option, if you had desired, to say I want
25 more time to review it before I sign it, and even though I

1 have a flight coming up, I could change that flight, but I'm
2 going to take the time I need to go through this and
3 understand these documents, correct?

4 A. I had 15 minutes to do that, yeah.

5 Q. Well, you could have asked for more time or said I'm
6 going to take more time?

7 A. I understand.

8 Q. The mortgage document you read it. There was something
9 in it you didn't like and you walked out of there, correct?

10 MR. TOCE, SR.: Objection.

11 THE COURT: Overruled.

12 A. Correct.

13 Q. And when you got to these documents instead of taking
14 the same position you did with the mortgage document you
15 just signed it without reading?

16 A. At that point I had been there two weeks. My plane was
17 leaving. I trusted the people.

18 Q. That was more important than what's contained in these
19 documents, correct?

20 A. It shouldn't have been.

21 MR. KILBANE: No further questions, Your Honor.

22 THE COURT: Any redirect?

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

24 THE COURT: You may step down.

25 MR. TOCE, SR.: We call Chris Shelton next.

1 CHRIS SHELTON,
2 of lawful age, a witness called by the Plaintiff,
3 being first duly sworn, was examined
4 and testified as follows:

5 (Discussion off the record.)

6 MR. TOCE, SR.: May I proceed, Your Honor?

7 THE COURT: Yes.

8 DIRECT EXAMINATION OF CHRIS SHELTON

9 BY MR. TOCE, SR.:

10 Q. Please identify yourself for the record, Mr. Shelton?

11 A. I am Chris Shelton, Morrice, Michigan.

12 THE COURT: That's S-H-E-L-T-O-N and the
13 declaration is ECF 58.

14 BY MR. TOCE, SR.:

15 Q. Mr. Shelton, let me show you what's going to be marked
16 as Plaintiff's Exhibit 10, is that right, what purports to
17 be, Mr. Shelton, your acknowledgment of receipt by
18 prospective distributor, dated 2-21-03, and ask if you have
19 seen that?

20 A. Yes.

21 Q. Before I get to that, you've had a chance to review
22 your sworn declaration in this case in 2005?

23 A. What's that?

24 Q. I'm changing gears on you a little bit. Did you have a
25 chance to review the sworn declaration you filed earlier in

1 this case?

2 A. Yes.

3 Q. Is everything in that affidavit still true, accurate,
4 and correct to the best of your knowledge?

5 A. No, I guess it's not, because I'm looking at my thing
6 here and it says, I'm assuming, the acknowledgment of
7 receipt by prospective distributor on my sheet.

8 THE COURT: No. No. The question was --

9 THE WITNESS: Right.

10 THE COURT: Is it?

11 THE WITNESS: Is it correct?

12 THE COURT: I'm sorry. Go ahead.

13 THE WITNESS: I'm saying in looking at this it
14 says, I wrote down here, my acknowledgment of receipt of
15 prospective distributor document was on March 26, 2003, and
16 it's dated 2-21-03, so that is incorrect, apparently.

17 Q. That is your signature on the acknowledgment form?

18 A. Right. Yeap.

19 MR. STEVENS, JR.: Well, the one they submitted in
20 the book is date 3-23-03. Here we go again.

21 MR. TOCE, SR.: Your Honor, I would like to
22 withdraw that Plaintiff's Exhibit and substitute it with the
23 one that was previously submitted by the defendant in
24 connection with --

25 MR. KILBANE: Your Honor, this appears to be one

1 of those situations where the witness has signed it twice.
2 He signed the earlier one and then signed another one in
3 training, because I believe both are his signatures and both
4 are there.

5 Q. Are both of these identical documents your signature,
6 your date? One says 2-21 and the one the judge has says
7 4-28?

8 THE COURT: No, I have one 2-21.

9 Q. That's the 2-21, where is the --

10 THE COURT: Well, gentlemen, I do not profess to
11 be a handwriting expert, but it is clear to me that the
12 signature of Mr. Shelton is not the same on both. Exhibit
13 10 is printed, the name is Christopher David Shelton. The
14 document that's in the book is printed, the name is,
15 Christopher D. Shelton. And the handwriting for the address
16 is different.

17 And I will now ask, Mr. Shelton, whether or not
18 that is in fact your signature and does that appear to be a
19 document that you completed?

20 THE WITNESS: It appears to be, yes.

21 THE COURT: So I would say that Mr. Kilbane,
22 obviously, is correct that we have two acknowledgements
23 signed by Mr. Shelton on different dates.

24 BY MR. TOCE, SR.:

25 Q. Is the signature on the 2-21 form the same as --

1 THE COURT: That's his signature.

2 MR. TOCE, SR.: 3-26.

3 THE COURT: But you can see that they were
4 different. That one says Christopher David Shelton. This
5 says Christopher D. Shelton. But they are not the same
6 documents with different dates.

7 Q. Do you ever sign your name different, David sometimes,
8 D sometimes?

9 A. No. It's usually Christopher D. Shelton. That's
10 usually the way I sign my name. And then if I write it
11 out -- I usually sign it Christopher D. Shelton.

12 THE COURT: Is that in fact your signature?

13 THE WITNESS: I believe so, it looks like it.

14 THE COURT: So the answer is we have two
15 acknowledgements signed by Christopher D. Shelton on two
16 different dates. And I will return the book to you.

17 MR. TOCE, SR.: We submitted some affidavits in
18 this case from a prior manager of MAC that said they
19 backdated, there was incentive of the manager to cheat
20 because it was, Your Honor, such pressure. And this manager
21 knew of incidents where documents were not what they
22 purported to be.

23 THE COURT: Mr. Toce, these are obviously two
24 different documents. The printed name is not the same on
25 both signatures, which he has acknowledged is his. If you

1 look at them, there is a difference. So this is not the
2 same document backdated. These are two different documents,
3 and I have made that determination.

4 MR. TOCE, SR.: Okay. I just want to be clear I
5 heard him verify his signature on one of them. I didn't
6 hear him verify his signature on both.

7 MR. KILBANE: He did say his signature was on
8 both.

9 THE WITNESS: I did say.

10 MR. TOCE, SR.: I'm sorry. I didn't hear that
11 part. I'm sorry. My bag.

12 THE COURT: And, Mr. Shelton, I will say I
13 appreciate your candor in correcting the mistake.

14 THE WITNESS: Oh, sure.

15 BY MR. TOCE, SR.:

16 Q. When you were talking about your affidavit, you went to
17 correct some dates. Let's just be really clear. Having
18 seen the Exhibit --

19 THE COURT: However, let me backup. Seeing as he
20 signed two of them, his affidavit is not in error when it
21 says "I understand I signed an acknowledgment document on
22 March 26, 2003, which would have been the beginning of the
23 training," because if in fact he signed two acknowledgements
24 he did indeed sign an acknowledgment on March 26th. It is
25 simply not the only acknowledgment. So the declaration is

1 not erroneous.

2 MR. TOCE, SR.: It's just -- I think if it was
3 complete, he would have said I understand I signed an
4 acknowledgement of receipt for the distributor documents on
5 March 26, 2003 and another one February 2, '03.

6 THE COURT: Now, that we've cleared up that point
7 we can certainly move on from there.

8 BY MR. TOCE, SR.:

9 Q. Let me ask you this, Mr. Shelton, you went to the
10 training in March of '03?

11 A. Yes, sir.

12 Q. Can you tell us if you remember when or if you signed
13 the acknowledgment form right before the training, or some
14 months before the training, or both?

15 A. I honestly don't remember signing either one, because
16 it seems to me if it was such an important document at the
17 time, either time, it would have stuck out in my mind. They
18 would have made a bigger issue out of this, this is the
19 contracts for MAC. I think they would have made sure I
20 understood without a doubt that these were contracts you
21 were signing for, and I don't recall that.

22 THE COURT: Let me pre-empt both Mr. Toce and Mr.
23 Kilbane and ask you the more important question, which is,
24 do you recall receiving the various documents identified on
25 the acknowledgment form on either February 21st or March

1 26th when you signed the acknowledgment?

2 THE WITNESS: Like I was saying, I don't. I
3 signed a lot of stuff, and I trusted people, I guess I
4 shouldn't have. So, no, I don't remember receiving that
5 stuff, and I signed it saying I did, but I don't recall.

6 Q. Do you remember being pulled out of the room during the
7 training to sign documents other than the last contract
8 signing date?

9 A. No.

10 Q. Because the March 26, 2003 document would have been
11 during the training that started on March 23rd?

12 A. Correct.

13 Q. Irrespective of whether you signed one or both, did you
14 get the documents that are listed in the acknowledgment form
15 that you signed?

16 A. Yes.

17 Q. No?

18 A. Yes.

19 Q. Before the training?

20 A. Before the training, not that I recall, no. I mean I
21 don't recall getting them.

22 Q. If you would have gotten the contracts ahead of time,
23 in other words, if the acknowledgment form was right, you
24 did in fact receive the contracts, what would you have done?

25 A. In training?

1 Q. No.

2 A. Before?

3 Q. Before.

4 A. It's getting late. I'm sorry.

5 I would have --

6 Q. If you would have gotten these contracts that you later

7 had to sign --

8 A. Right.

9 Q. -- before the training?

10 A. Um-hum.

11 Q. -- as described on acknowledgment form, what would you

12 have done, before the training?

13 A. I probably would have been thumbing through them,

14 looking through them a little bit. My wife would have gone

15 through them and gone through them with a fine tooth comb

16 and probably come up with some questions. That's what I'm

17 saying, if I did get them, why didn't they make it more, you

18 know, this is important, you know, you understand what

19 you're getting. You know, at the time it appears it wasn't

20 real important, here, I gave you this, sign this, that's

21 what it sounded like to me, because I don't recall. And I

22 know if we would have gotten it, my wife would have

23 remembered. If they would have told us these are important

24 documents, my wife would have remembered, and she did not.

25 Q. Well, when you finally did see the actual contracts at

1 the signing --

2 A. Um-hum.

3 Q. Do you recall being surprised that this was the first
4 time you had seen these things?

5 A. I wouldn't say surprised. I didn't know -- I mean I
6 knew there was going to be contract signing, but I didn't
7 know we was suppose to get them beforehand. So I don't know
8 if you call that surprised.

9 Q. Was the graduation and contract signing at a different
10 location?

11 A. Yes, it was at MAC's headquarters.

12 Q. So you had the same bus ride with all the people in the
13 class from the training center to signing the contract at
14 MAC headquarters?

15 A. I drove my truck down, so I wasn't on the bus. I was
16 by myself.

17 Q. You drove by yourself?

18 A. Yes.

19 Q. Before you went to the training, did MAC tell you what
20 time you should arrange your flight to get there or what
21 time you could arrange it right to leave?

22 THE COURT: If he drove his truck out, wouldn't
23 make much sense.

24 THE WITNESS: It would have been irrelevant for
25 me.

1 Q. You drove?

2 A. Yes.

3 THE COURT: Unless the truck took wings.

4 THE WITNESS: You've apparently seen me drive.

5 (Laughter.)

6 Q. When you got to the signing at MAC headquarters, were
7 they ready for you, or did you have to wait like others
8 testified?

9 A. No. We went in and did our graduation ceremony, like
10 somebody else stated. Everybody in the company comes down
11 to congratulate you. And I think before that we went in,
12 actually got a chance to look around their little store and
13 check out some of the products. And after the graduation
14 ceremony we went up the stairs and they had us all in a
15 lounge area and we was watching monster garage tapes they
16 was putting in for us.

17 And then they come out and they called you in. And,
18 see, you've heard other guys testify they went in two at a
19 time. It was just me and the gal that was with the
20 contracts. And she -- it was this little cubical. You just
21 sat down. And I don't remember tabs either, I just remember
22 signing here, sign here, this is such and such, you know, no
23 big long spill about what it was.

24 Q. Was the person helping you with the contract signing,
25 drawing your attention to the signature page, or to the

1 contents of the documents?

2 A. The signature page.

3 Q. How long did it take for you to sign all the papers?

4 A. 15 to 20 minutes, as I recall. That's what I wrote in
5 my affidavit here, whatever you call it here.

6 Q. Right. Prior to your becoming a MAC Tools distributor
7 what was your line of work?

8 A. I was an auto mechanic.

9 Q. For how long?

10 A. About 12 years I guess.

11 Q. Can you tell us how much of the recruitment training
12 was dedicated to selling the recruits on becoming a MAC
13 distributor?

14 A. I guess just about the whole thing was. You know as
15 far as I guess, if I understand you right, the basics, the
16 biggest majority of it was learning how to run their
17 computer, you know, how to say a customer comes on your
18 truck, what do you do. They show you how to put their name
19 in, their information.

20 Q. Was your use of that computer essential for you to send
21 money for MAC Tools in connection with your distributor
22 outlet?

23 A. Yes. It seemed like it was the biggest part of it,
24 because I know at one point through the class I thought,
25 man, they're not telling us anything about -- because that

1 computer did a lot of stuff. Their software did a lot of
2 things. You could put in and you recall business stuff in
3 there. And they never went over any of that. It may be
4 real brief, but the main focus on it was, you know, to
5 basically, that they got their cut of it.

6 Q. Was it more of a training or more of a selling?

7 A. I guess more of a selling. I mean because anybody can
8 stumble through and figure a computer out and that seems
9 like the major focus of it.

10 Q. According to the acknowledgment form that's dated
11 February '02 it was faxed to the DM?

12 A. Um-hum.

13 Q. Do you know why the form had to be faxed to the DM, was
14 there some rush to get it right away?

15 THE COURT: I'm sorry. Mr. Toce, you misspoke.
16 You said '02. It's '03.

17 MR. TOCE, SR.: I'm sorry, Your Honor.

18 THE WITNESS: This was faxed to Ryan Bingman being
19 the direct manager.

20 Q. Why did it have to be faxed, or why couldn't you put it
21 regular mail, or give it to him the next time you see him,
22 something like that?

23 A. No, I do not know why.

24 Q. All right. Tell us what factors that weighed against
25 you walking away from the document after the training, after

1 you attended, if you didn't like what they said?

2 A. Well, I'm going to start from the beginning. It's kind
3 of a whole picture. I was recruited by Bob Roberts. He was
4 the distributor that had come into my dealership that I
5 worked at. And I had known him from before. I worked with
6 him at a previous job. And I knew his wife.

7 And when he comes in I kind of also wanted to give
8 tools sales a try. And so I started talking to Bob about
9 it. And, man, he just painted a rosy picture, you know. He
10 told me you could make -- he could see the distributor
11 making \$100,000 plus. He had a brand new Harley in his
12 garage. He was doing great. He was a picture perfect
13 distributor. And, man, it looked good. I was -- I made
14 okay money, but 100 grand, that's a little bit, I mean quite
15 a bit, more than I made working for yourself.

16 They talked about the freedom, how free it was. And
17 then you know you go down to training. And I talked to Ryan
18 Bingman, his district manager. He ought to be a
19 motivational speaker, because every time I talk to him I'm
20 pumped up and he gets you excited about what you're going to
21 do.

22 Q. Had you already quit your other job?

23 A. I had not. I was still talking to these guys about it.
24 And when I decided to give it a try I gave my two weeks
25 notice?

1 Q. When you came up for recruitment training --

2 A. I quit my job.

3 Q. You gave your notice to the former employer?

4 A. Correct.

5 Q. You were fired up by positive talking about MAC. You
6 quit your other job.

7 How much money did you have to spend to come up with --

8 A. You figure about \$2,000 by the time I drove down, gas,
9 hotel, food. And then we got down to the training center
10 and they talked for -- talked for an hour. Showed you
11 around. Showed you all the tools they made. I was a
12 mechanic. I was excited about tools. I like tools. And,
13 man, that just excited you more. And then by the time they
14 got you through the class and everything, you were ready to
15 get your own truck and sell tools.

16 We wasn't thinking about contracts. We were thinking
17 about selling tools, you know. And so you get to the
18 signing, you know, you just -- you trusted them all this
19 way. You know, I worked with this guy. I knew his wife, I
20 worked with her, and you know, trusted these people.

21 And you think you can't go wrong because they told you
22 this all along. And you get to the signing and you know you
23 sign the documents, and away you go. And then it seems like
24 you're out there all alone. They aren't much more help
25 after that. You've got good credit, you know, and now

1 you're out there, and pretty much alone.

2 Q. So if you walked away when you didn't have a chance to
3 review the contracts ahead of time, you would have had to
4 come home empty handed, right, no job?

5 A. Yeap.

6 Q. You would have to explain to your wife why you spent
7 two grand, why you went up there and come back empty handed,
8 correct?

9 A. Um-hm.

10 Q. And I heard you say you're fired up about
11 distributorship and walking away would be contrary to the
12 spirit that they built up in you?

13 A. Yeap.

14 Q. Is that a fair summary?

15 A. Yeap.

16 Q. Did you get your truck -- when did you get your truck
17 and your inventory?

18 A. It was at my house before I got home from training, I
19 don't know two or three days before.

20 Q. Before you left the training?

21 A. Yes.

22 Q. So when you got in the truck to go to training, your
23 MAC truck full of tools was at your house?

24 A. Yes.

25 Q. How did that occur?

1 A. There was one day through the training, I believe it
2 was in the second week, where if you already picked out your
3 truck, they had it pulled out, had whatever inventory they
4 had for you on there, on your truck, and it was kind of a
5 little, you know, training of how to set your truck up. You
6 could put tools on it and what not. So we did that. And
7 you know it seems the tools were already on the truck.
8 After that they must have shipped it out. I don't know how
9 it come about they got there before I did. I was surprised
10 when my wife called and said the truck was there.

11 Q. Was the truck in the driveway when you left for
12 training?

13 A. Oh, no.

14 Q. It arrived when you were at the training?

15 A. Correct. Correct.

16 Q. Did you know that before the training was over, did you
17 talk to your wife and she told you the truck was there?

18 A. Oh, yeap. Yes.

19 Q. How many days was that before you were presented with
20 the contract to sign?

21 A. I don't know the exact date, two or three days.

22 Q. Was it the second week of training?

23 A. Yes. Yes. It must have been towards the end of the
24 week.

25 MR. TOCE, SR.: Thank you, Your Honor. We'll

1 tender.

2 CROSS-EXAMINATION OF CHRIS SHELTON

3 BY MR. KILBANE:

4 Q. Mr. Shelton, am I correct that when you went off for
5 training there was no guarantee that you would be a
6 distributor?

7 A. Yes. There is no guarantee.

8 Q. In fact, you take tests, and some people flunk the
9 tests and are asked to leave, correct?

10 A. I've never seen anybody flunk a test and asked to
11 leave. Everybody in my class passed it.

12 Q. But nobody told you when you gave up the job and went
13 off and spent the \$2,000, nobody at MAC Tools said you're
14 guaranteed at the end of this training session to be a
15 distributor?

16 A. No. They didn't say that. I knew that because they
17 put so much emphasis on, even the distributor that recruited
18 me, he put a lot of emphasis on, you know, the computer
19 training, you have to do this. You have to pass it. So it
20 was a lot riding on your shoulders.

21 Q. All right. Thank you.

22 And handing you Defendant's Exhibit A. You did receive
23 a copy of this booklet at some point in time; did you not?

24 A. I'm told I had. Yes. At what point I don't remember.
25 I don't recall.

1 Q. All right. After you referred to having received it?

2 A. Well, no, your Honor. In my affidavit I say I signed
3 this saying I got that. But like I say, I don't recall, you
4 know, I don't recall getting it.

5 Q. Oh, I misunderstood your affidavit. I thought you
6 located it at home, the document. You say you do have the
7 booklet of contracts and the distributor information package
8 on page two, but the copy you have still has the
9 acknowledgment document in it.

10 Do you see what I am referring to?

11 A. Yes. That was hindsight. I didn't realize at the time
12 I had that because they apparently didn't make it clear that
13 these were --

14 THE COURT: No. No. You misunderstand. Mr.
15 Kilbane's question, which is, did you eventually get a copy
16 of the booklet that he just put in front of you?

17 THE WITNESS: Yes. Yes. I had one.

18 Q. All right. We're on --

19 A. But --

20 Q. And you thought it was significant there was only --
21 there was one form of acknowledgment still in your copy?

22 A. Right. Right.

23 Q. Acknowledgment like exhibit, whatever it is, which is
24 Exhibit 10?

25 A. In hindsight, yes.

1 Q. And did you know that the book comes with two
2 acknowledgment forms, though?

3 A. No.

4 Q. That there are two exactly identical at the back of the
5 book?

6 A. No, I didn't know that.

7 Q. So is it conceivable that you executed one of these two
8 acknowledgments, sent it in, and then kept the book with the
9 other acknowledgment?

10 MR. TOCE, SR.: Objection, calls for speculation.

11 THE WITNESS: No.

12 THE COURT: No, I will let it stand.

13 Q. What's the answer? I'm sorry.

14 A. Yes, it is.

15 THE COURT: It is conceivable?

16 THE WITNESS: Repeat the question.

17 THE COURT: His question was, is it conceivable
18 that you received the booklet, pulled out one of the two
19 acknowledgements, and mailed that one in?

20 THE WITNESS: Yes. It is very conceivable that I
21 already received a booklet. And like I say, a booklet. I
22 didn't have -- realize, they didn't explain to me, that it
23 was all the documents that I had to read to understand or
24 take to a lawyer, nobody explained that to me.

25 Q. But then you may have received this booklet, or you did

1 receive this booklet?

2 A. Yes.

3 Q. Prior to --

4 A. Right.

5 Q. -- the training period?

6 A. Um-hum.

7 Q. Correct?

8 A. Yes.

9 Q. And --

10 A. What I don't understand is, if this was so important,
11 why didn't they make sure I knew, you know, when I signed
12 this, these are documents that are going to affect the rest
13 of your life, basically. But, you know, like you say, I
14 just thought it was a booklet.

15 Q. Let's turn to that. Because the acknowledgment -- and
16 is it your recollection you pulled the acknowledgement out
17 of the book and signed it?

18 MR. TOCE, SR.: Objection.

19 THE COURT: He doesn't recall it. He said it's
20 conceivable that he did.

21 Q. And with respect to the acknowledgment, you didn't read
22 that, but signed it?

23 A. Yes, I did.

24 Q. Is that Exhibit 8?

25 MR. FRIEDMAN: His acknowledgment or book?

- 1 THE COURT: No, his acknowledgment. His
2 acknowledgment is number 10.
- 3 Q. Did you read that before you signed it and faxed it.
- 4 A. I don't recall. You say before I faxed it. I don't
5 know if I faxed it.
- 6 Q. Or sent it back.
- 7 A. It was faxed, and like I said, I don't recall. You
8 know I got a fax, but I wouldn't have had it faxed at this
9 time, so I didn't fax it.
- 10 Q. But somehow it was returned to MAC Tools. I mean we
11 see the document.
- 12 A. Somehow, yes.
- 13 Q. Looking at it, it says in the beginning under
14 attachment A, MAC Tools's distribution agreement?
- 15 A. I don't see where you're reading.
- 16 Q. Attachment A-1?
- 17 A. You're reading copies of the distributorship and
18 financing agreement?
- 19 Q. Right. Yes. And then number one says MAC Tools'
20 distribution agreement?
- 21 A. Um-hum.
- 22 Q. Doesn't that sound like a contract, the distributor
23 contract, you subsequently signed?
- 24 A. I wouldn't know whether that's what that meant or not.
- 25 Q. And the same with the distributor purchase agreement?

1 A. Like I say --

2 Q. Does that sound like a contract?

3 A. Like I say, I don't recall reading this, so --

4 Q. And down in 16 and 17 is some pretty important things,
5 right, promissory note, including promissory note for
6 vehicle financing. Do you see that?

7 A. I don't know what the promissory note is.

8 Q. In order to get the vehicle that was at home when you
9 arrived back in Michigan, you had to arrange for financing,
10 correct?

11 A. Yes.

12 Q. Do you recall how much financing was involved?

13 A. I don't know, no.

14 Q. Was it in five figures? It was more than \$10,000?

15 A. I don't recall.

16 Q. You don't recall.

17 So here is a list of documents. You're not sure
18 whether you recall them, but in any event when you saw these
19 you did not go and look for the counter parts in the
20 booklet, Defendant's Exhibit A, correct?

21 A. Like I said --

22 MR. TOCE, SR.: Objection. The questions are
23 assuming a fact that's not in evidence, that he got that
24 book. That book has never been introduced into evidence.

25 MR. KILBANE: He just testified that --

1 THE COURT: He said it is conceivable.

2 MR. KILBANE: He moved beyond that, Your Honor.

3 THE COURT: All right. Let me ask him flat out.

4 Do you remember getting that booklet before you
5 went to training?

6 MR. TOCE, SR.: That specific booklet, right, sir?

7 THE COURT: Not that specific one, a booklet that
8 resembles the one that's sitting in front of you.

9 THE WITNESS: I do not.

10 THE COURT: Do you remember getting one of those
11 before you went to training?

12 THE WITNESS: No, I don't remember getting it.

13 THE COURT: Is it possible?

14 THE WITNESS: It's possible. I believe I signed
15 the sheet of paper.

16 THE COURT: But you don't recall.

17 THE WITNESS: No, I don't recall.

18 MR. KILBANE: I misunderstood. I thought you said
19 you do recall getting it, but no one told you how important
20 it was.

21 THE WITNESS: Right. I think such an important
22 document --

23 MR. KILBANE: That's why I understood you recall
24 receiving it, but no one told you it was important. That's
25 why I started walking down --

1 THE WITNESS: As far as I'm concerned, a booklet,
2 you said a booklet, as far as I'm concerned a booklet isn't
3 full of contracts. I mean that's what I am saying. I'm not
4 saying I don't remember getting it, but if they portrayed it
5 like you did, a booklet, here sign, you got a booklet, okay,
6 here I got a booklet , you know I was mislead. It would be
7 like I was mislead.

8 THE COURT: I know what Mr. Shelton is saying,
9 somebody should have waived a red flag under his nose for a
10 booklet that was going to affect his future.

11 THE WITNESS: I apparently signed two sheets of
12 paper. I don't recall it. I mean if it was such an
13 important document at the time, why didn't they tell me this
14 was important no matter where it happened.

15 Q. Just so I am clear, Defendant's Exhibit A also says
16 disclosure document and acknowledgment, which is ten, does
17 list the contents of the disclosure document; does it not?

18 A. Right, I see that, yes. But --

19 Q. Okay.

20 A. But at the time, like I said, before I don't remember
21 getting the booklet. I signed this. I mean it's got my
22 signature and I signed it. I didn't read it. I mean
23 somebody says here sign this, you've got this booklet. I do
24 this at work all the time, sign this saying you got your
25 handbook, okay. I didn't read down the thing. I trusted

1 that the guy that gave this to me was being honest with me.

2 And he apparently was not.

3 Q. I misunderstood.

4 Did somebody at MAC Tools say this was not an important
5 document?

6 A. No. No.

7 Q. They just sent it out?

8 A. No. No. That's not what I said.

9 Q. Okay.

10 A. I said if this was such an important document, why
11 didn't they say this to me.

12 THE COURT: Which brings me back to my
13 understanding. The testimony is somebody should have waived
14 a red flag in front of him. And that is very clear to me
15 that's what Mr. Shelton is saying.

16 MR. KILBANE: Right. And I'm trying to probe that
17 point, Your Honor. Exhibit 10, the point is that MAC Tools
18 wanted acknowledgment of the book, of receipt of that
19 booklet, doesn't that indicate to you because they wanted
20 acknowledgement signed and returned to itself that was
21 important to MAC Tools.

22 THE WITNESS: You say number ten --

23 MR. TOCE, SR.: Objection.

24 THE COURT: The acknowledgment.

25 MR. TOCE, SR.: Objection, he's asking this

1 witness what is important to MAC Tools.

2 THE COURT: I'll sustain the objection. Mr.
3 Kilbane, let's move on.

4 MR. KILBANE: Okay. Just one more question about
5 it.

6 BY MR. KILBANE:

7 Q. Didn't you regard the acknowledgment as the red flag,
8 as the Judge called it, isn't this a red flag to MAC Tools
9 the fact they wanted it signed and returned?

10 A. It wouldn't have been a red flag to me. I was trusting
11 the people who was giving this to me. I mean it should have
12 been a red flag on MAC's end before it was mine, because
13 they're recruiting me into this. And I feel like I should
14 have been, you know, given maybe more information, you know,
15 about the contracts.

16 Q. Prior to the training did you request the forms and
17 contract and distributor agreement from MAC Tools?

18 A. No, sir, I did not.

19 Q. And during the training did you request a copy of it
20 prior to the signing date?

21 Did you request a copy for review of any of the
22 contracts including the distributor agreement?

23 A. No. Like I said before, I trusted -- they had you all
24 pumped up about selling tools. I was going to sell tools,
25 you know. So I mean that was really, I mean shame on me,

1 kind of irrelevant. I trusted my -- I called him a friend
2 at the time. They recruited me, my district manager. I
3 just thought I could trust him.

4 Q. What misrepresentations did he make?

5 You keep saying you thought you should trust him. Did
6 he make any misrepresentations to you about these contracts?

7 Did he tell you there was no arbitration provision?

8 Did you ask him?

9 Did you ask about whether there was any limitations?

10 What misrepresentations did he make?

11 A. He didn't, and he didn't even make a -- he didn't
12 misrepresent them, but on the other hand, open up the book
13 and say hey, you know, you need to look at this, and this
14 here, and this here, make sure you understand those. He
15 didn't do that either.

16 Q. Did you get an agenda prior to the training session?

17 A. Such as?

18 Q. Show what the clauses were going to be and contract
19 signing was the last day?

20 A. I don't recall getting one of those beforehand. I know
21 we had one of those going through the class.

22 Q. So you knew at least by the time you started training
23 at the beginning of your training period --

24 A. Yes.

25 Q. -- that there were going to be contracts to be executed

1 by you?

2 A. Well, probably not until the last week. When you're
3 looking at that, you're not looking at the last day, you're
4 looking at, there is so much information you're trying keep
5 up, you're looking at what are we going to do tomorrow. So
6 I, you know --

7 Q. So even though Aden mentioned it, you really gave no
8 thought that you were going to be entering into a formal
9 contract with MAC Tools at the end of training?

10 A. I probably gave thought to it probably next to the last
11 day or something, but not prior to that. I was so busy
12 trying to keep up on my studies and all the -- so much
13 wealth of information they were giving, you're trying to
14 make sure you had that down, because that's what seemed to
15 be important, because that was what they were shoving at
16 you.

17 Q. In any event you did not ask for a contract for review
18 prior to -- well, at any time up until the signing ceremony?

19 A. As I said, no, I did not.

20 Q. And did you see any contracts around in the cafeteria
21 or any other locations during that training period?

22 A. No. They didn't do ours in the cafeteria. They had
23 the graduation. I believe he called the cafeteria, I
24 believe that's probably what it was. But, no, there was no
25 documents laying around.

1 Q. Sitting around for review like a magazine table,
2 nothing like that.

3 A. No. No.

4 Q. At the time of the signing I know it was just you
5 and --

6 A. Another gal.

7 THE COURT: He said it was one on one.

8 MR. KILBANE: That's what I said.

9 THE WITNESS: Me and another gal.

10 Q. And during that process did you ever say yes, I want
11 more time to review these documents before signing them?

12 A. Nope.

13 Q. And you could have had -- you did not have a plane
14 schedule. We found out you were going to be driving back to
15 Michigan?

16 A. Correct.

17 Q. So you had some time if you elected to stay longer to
18 sign these, correct?

19 A. Yeah, I could have. Yeah.

20 Q. But you never asked for more time or asked that, hey, I
21 want to take these home and read them, and if I like them
22 I'm signing them and return them to you tomorrow or the next
23 day. Did you ever make the offer?

24 A. No, I didn't think I had to. I mean who would have
25 thought we would have been here. I didn't for sure. So,

1 no, I didn't, I didn't think I had to.

2 Q. And when did you read the agreement -- have you read it
3 since you signed it?

4 A. No, I have not.

5 Q. You have never read the agreement?

6 A. No.

7 Q. So you still don't know what rights, if any, you have
8 with respect to arbitration or jury, or damages, correct?

9 A. Correct.

10 MR. KILBANE: I'm just about finished, Your Honor.

11 Government's Exhibit G.

12 BY MR. KILBANE:

13 Q. For the record, handing you Exhibit G. Is this a copy
14 of the distributor agreement you executed on April 4, 2003?

15 A. That's what it says.

16 Q. And am I correct this is also, Exhibit G, is a document
17 you have not read up to and including today?

18 A. Correct.

19 MR. KILBANE: Thank you. No further questions.

20 THE COURT: Any redirect?

21 MR. TOCE, SR.: A little, Your Honor.

22 REDIRECT EXAMINATION OF CHRIS SHELTON

23 BY MR. TOCE, SR.:

24 Q. Mr. Shelton, could you just pick this document up and
25 read it and understand it, or would you have to pay some

1 money to somebody to tell you what it means?

2 A. I probably would have to pay some money to somebody to
3 explain it to me because yeah, I don't understand it. I
4 mean, I don't understand some of the words on the other
5 sheet here. I'm a simple guy. I trusted other people.

6 Q. Do you know what consequential damages mean?

7 A. No.

8 Q. Punitive --

9 THE COURT: You don't need to go into that.

10 THE WITNESS: Like I said, I am a simple guy. I'm
11 do not use big words. So --

12 MR. TOCE, SR.: Thank you. That's all.

13 THE COURT: We'll do about ten minutes and then
14 we'll go for however long we need to finish up your last two
15 witnesses.

16 MR. TOCE, SR.: Thank you, Your Honor. Your
17 Honor, we call Harry also known as Danny Deemer.

18 DANNY DEEMER,
19 of lawful age, a witness called by the Plaintiff,
20 being first duly sworn, was examined
21 and testified as follows:

22 DIRECT EXAMINATION OF DANNY DEEMER

23 BY MR. TOCE, SR.:

24 Q. Thanks for coming, Mr. Deemer.

25 Would you please introduce yourself to the court?

1 A. Yeah. I'm Danny Deemer from Manns Choice,
2 Pennsylvania.

3 Q. Your given name is Henry Deemer?

4 A. Yes.

5 Q. But you prefer Danny?

6 A. Yeah. My dad was Henry. And they call me Danny. You
7 can call me whatever you want.

8 THE COURT: For the record his declaration is ECF
9 59.

10 Q. And you had a chance to review that declaration before
11 taking the stand today?

12 A. This one?

13 Q. Yes.

14 A. Yes.

15 Q. Is everything you swore to in that affidavit still true
16 and accurate to the best of your knowledge?

17 A. Yes, everything is true. Some things I wish I would
18 have added.

19 Q. Okay. Well, we'll get into some of that. If you come
20 across that in one of my questions, just go ahead and do it.

21 When did you first become a MAC distributor?

22 A. About March of 2002, I believe it was somewhere in
23 there.

24 Q. Did you ever receive any contracts before you went to
25 the initial recruitment training to become a MAC dealer in

1 the spring of 2002?

2 A. No, I never received any contract.

3 Q. Did you receive an acknowledgment form from MAC
4 requesting your signature acknowledging you received
5 documents whether you had actually gotten them or not?

6 A. I may have, that there I'm not sure. The day I filled
7 out a thing on the computer with interest in MAC, and like
8 the very next day that guy, my district manager, was
9 knocking at the door and he had one of those little boxes,
10 and I know it didn't have a big pack of paper or this in it.
11 The only big thing, full size thing, it had in it was a MAC
12 catalog, a price sheet, and then it had like a little folder
13 and a little booklet, just showing pictures like a MAC
14 dealer on his route, and just different stuff. But it did
15 not have --

16 Q. Are you sure that in the box given to you by the DM
17 that was recruiting you there was no booklet of contracts
18 similar, bound like this, similar to the one that Mr.
19 Kilbane has been talking about?

20 A. No, I'm positive there wasn't.

21 Q. Do you have -- do you know why you never got an
22 acknowledgment form like all of the rest of the people
23 before your training in 2002?

24 A. I would guess -- I don't know why I didn't. I didn't
25 know I was suppose to get it. I'm all new to it. I didn't

1 even know what I was suppose to be getting.

2 I did not get -- I don't know why I didn't get it. I
3 would say the reason I didn't get it is because they didn't
4 want you reading it would be my guess now, but back then I
5 had no idea anything about it.

6 Q. You -- okay. You said you expressed interest on the
7 internet site about becoming a MAC distributor and a DM was
8 at the door the next day?

9 A. Joe Quactrock.

10 THE COURT: What was that?

11 THE WITNESS: Joe Quactrock.

12 THE COURT: Do you know how to spell it?

13 THE WITNESS: No, I don't.

14 MR. MORRIS: Q-U-A-C-T-R-O-C-K.

15 MR. STEVENS, JR.: I object to the way he spells
16 his name.

17 (Laughter.)

18 MR. TOCE, SR.: Yes. We'll just say Q.

19 BY MR. TOCE, SR.:

20 Q. Mr. Q, was the guy who recruited you?

21 A. Yes.

22 Q. How much time elapsed between the time Mr. Q came to
23 your house and you became a MAC distributor and you went to
24 the training in Ohio?

25 A. Within a couple weeks I was there. Everything went

1 really quick. That day he was there I signed and filled out
2 an application. And he started telling me things. You need
3 one thing, he said, you need \$10,000 in the account. I said
4 well, I'm out because I ain't got it. We were broke at the
5 time. I didn't have no money in the bank.

6 Q. Who told you you needed \$10,000 of capitalization to
7 become a dealer?

8 A. Joe, that day he said you'll need -- he said -- he was
9 going through the requirements, asking me how my credit was,
10 and then he did that break even analysis thing. And he was
11 going over things you will need. And he said about the
12 money, and I said I don't have it. He asked if I could
13 borrow it off of somebody to show I have it. I said that I
14 don't know anybody to borrow it, I can't do that.

15 He said don't worry about that. He said a lot of
16 account areas you would need that, but your area, there is a
17 lot of money on the street, you'll be able to collect money,
18 start collecting right away. He said I don't really think
19 you'll need it. He said I think we can get around that with
20 you.

21 That's all I heard from him on that money.

22 Q. You were taken over a route that another dealer had
23 resigned from?

24 A. I think they fired him, the guy. He was an MDSR.

25 Q. Okay.

1 A. And I think they fired him. I don't know if he was
2 stealing inventory off the truck, or what all happened
3 there. I don't know, but --

4 Q. Okay.

5 A. Yeah, I took over his route.

6 THE COURT: Where is Manns Choice.

7 THE WITNESS: By Bedford, Pennsylvania. You ever
8 heard of that?

9 THE COURT: Yes.

10 THE WITNESS: Altoona, south of Altoona.

11 Q. So you went to training without the \$10,000, correct?

12 A. Yes.

13 Q. Where did you get the two or three thousand that was
14 needed to drive up here and stay in a hotel for a couple of
15 weeks and eat?

16 A. Actually, the money I got for the motel and stuff was
17 all out of my boy's savings account. That was all he had in
18 there was \$2,000. And I borrowed that. And we planned on
19 getting caught back up here and paying him back. And that
20 money was all we absolutely had even borrowing our kid's
21 money, you know. And Joe knew that. I told him that's all
22 I could afford to do was get the motel room with his money
23 and that was it.

24 Q. How much time did you have to read over and sign the
25 documents on the last day with the recruiter training?

1 A. I didn't have hardly any, they came and put them down
2 in front of me, the woman. They all had like little yellow
3 or red tabs, whatever, sticking out. First of all, she said
4 she needed to see proof of my money in the bank, whether it
5 would be a copy of my bank statement. I said I don't have
6 that. She said, "what do you mean you don't have it?
7 Didn't they tell you that?" And I told them I told my
8 district manager I didn't have a dime, and he told me to
9 come anyway. She said "well, I'll have to come back."

10 She took all the paperwork with her. She didn't leave
11 it for me to read. She took it with her. She was gone for
12 a little while. And she come back and asked me if there was
13 any way I could borrow money off my father, mother, anybody,
14 to put that money through my account just so we get through
15 that, because they couldn't finish the paper without that.
16 I told her I don't know anybody.

17 At the time my truck was already at my house. It was
18 three or four days there before that.

19 Q. How did that happen? Did you pick it out?

20 A. I picked it out the first week. And I think like at
21 the end of that first week we went to the fair grounds
22 building, we attempted to put up, start displaying our
23 truck. And they help you. It ain't really helping, pretty
24 much everything tears, tear the boxes apart. It ain't even
25 enough time to put everything away. I got not even half of

1 those boxes put away.

2 He said after you got home, you'll have more time to do
3 that, that's all we have time for now. And I went back to
4 class. And they have drivers drive it out to your house.
5 And my wife called me and said your truck is here already,
6 and that was three or four days before graduation. It was
7 already there.

8 Q. Before you signed the documents during the recruitment
9 process. Were you allowed to look at the new tools MAC had
10 for sale?

11 A. Yes. That's another thing also, they had like
12 secondhand stuff I think other people sent back or
13 something. I don't know, you know, but they had a whole
14 room of that you could go look at, and if you wanted stuff
15 like that, you could put it on your tool account and take it
16 home with you. Before I even signed the paper, I had my
17 pickup loaded up. I had toolbox on the back of my pickup.
18 I had all kinds of stuff. And my pick up was loaded already
19 before I even went there to sign the papers.

20 Q. What was the value of the tools that you bought at the
21 recruitment training and put in your pickup truck to drive
22 home and transfer to your MAC Tool truck?

23 A. I couldn't say how much I bought, reasonably four,
24 five, six thousand worth of stuff. One thing I brought was
25 a used snap on toolbox, because before I left to go out

1 there one guy I knew he wanted one. And he said if you can
2 find a decent side snap on box get it. My district manager
3 was telling me about, he said they got all kinds of used
4 tools, books, stuff like that, real cheap prices. There was
5 a good snap on box I got.

6 Q. Discount substantial?

7 A. Some of the things seemed like a good deal, some
8 didn't, you know. And I was pretty new to doing the tool
9 business. I didn't know what a used box -- some of them
10 looked like good deals to me maybe then, but I really didn't
11 have no experience.

12 Q. But you signed the distributor agreement.

13 Who at MAC told you you could actually buy tools and
14 put them on the account?

15 And how did they know what account to put them on if
16 you didn't sign the documents yet?

17 A. I don't know how. You had a tag that you wore. I
18 don't know if it just had your name on it or --

19 Q. A name with a number?

20 A. A number -- I can't really remember. I know I had to
21 show that tag to get to the warehouse. And the woman,
22 whatever you wanted, she would take and put a sticker like
23 on that toolbox with like your number on it, you know, and
24 stuff. And anything you wanted, they would take out of
25 there and put your number off your tag on it.

1 Q. Let me show you what's been marked as Plaintiff's
2 Exhibit 11.

3 Is that right, Mr. Wilson?

4 It's been marked for identification purposes and
5 purports to be your distributor agreement from March 8,
6 2002. And let me show you what this looks like. The
7 document with your signature on the contract.

8 Do you recognize your signature?

9 A. Yes, that's my signature.

10 Q. The date of March 3, 2002. Does that sound about the
11 time you were at the recruitment training and would have
12 signed the contract in the spring of '02? Is that right
13 March '02?

14 MR. STEVENS, JR.: March 8th.

15 THE WITNESS: Yes. I was going to say March 8th.

16 Q. March 8, '02?

17 A. Yes. That's about the right time.

18 Are you saying I signed that after training or before
19 training.

20 Q. I don't know when you signed it. I'm asking you
21 actually does the date that's written on there appear to be
22 about right?

23 A. Yes, that's about right. When -- I can't remember the
24 exact day I graduated school, and all that I know it was in
25 March.

1 Q. You never received a copy before they put it in front
2 of you to sign at the training?

3 A. No.

4 Q. And you never signed an acknowledgment form
5 acknowledging that you got it before the training?

6 A. No. If I did, I didn't know what I was signing, if I
7 signed. I know the day he came to the house. I filled out
8 an application, some papers and stuff, you know. But he
9 never once said anything about me, about any legal forms or
10 anything, or what I'm signing for. And I don't recall, you
11 know, getting any paperwork. I don't recall getting
12 anything back from them at the end of the day.

13 You know, Dave, he was there like paperwork. I didn't
14 have nothing. All I had was the MAC book, that little
15 brochure they had in there, which I forget all what's in
16 there, but I didn't have anything like that legal document.

17 MR. TOCE, SR.: We offer Plaintiff's Exhibit 11,
18 Judge.

19 Q. I'm confused about something. I'm going to mark as
20 Plaintiff's Exhibit 12 for identification purposes an
21 acknowledgment of receipt by prospective multi rep
22 distributor that's dated over a year after you had your
23 first route.

24 I'm going to show this to you and ask you if you would
25 -- and ask you if that looks like your signature?

1 A. Yeah, that's my signature. And this here would be, I
2 got a second route, a second truck about a year later or so.
3 And I had two trucks, you know at one point.

4 Q. You were already in business and you were a party to
5 one of these distributorship agreements. And they had you
6 sign an acknowledgment for the second route and not the
7 first route, is that right?

8 A. That's correct.

9 Q. Do you remember -- do you know where you were when you
10 signed this Plaintiff's Exhibit 12?

11 A. I was on the tool truck. I can't remember exactly
12 where because the district manager, which was a different
13 one at this time. This here route was a hometown route I
14 say in Bedford. And that was when they had done away with
15 the MDSR program.

16 That MDSR didn't want to buy the route. He came to me.
17 I was really skeptical. He kind of pressured me into it.
18 He said he'd give 50% off all the inventory. I said I don't
19 want to get a second route if it's going to make mine --
20 I'm afraid if I get -- it doesn't work out it could make
21 mine sink, because at the time I thought I was doing pretty
22 good with mine, and I didn't want it to hurt it. But he's
23 like we'll have it on two separate things, we won't let that
24 hurt that account at all. And you know --

25 Q. Okay.

1 A. But --

2 Q. Let me try to focus you on the signature on these
3 documents and what happened when you were recruited.

4 Did you go to a second recruitment training?

5 A. No. This here he brought to me.

6 Q. Plaintiff's Exhibit 12?

7 A. He gave it to me that day. And had me sign all them,
8 you know, and just -- you know here is where I need you to
9 sign. They had the same tabs on everything, you know, to
10 get everything started. My sister was going --

11 Q. Your sister was at the training?

12 A. I don't remember if she was at the training already or
13 getting ready to go, but everything moved so quick, you
14 know. I got the truck and --

15 Q. Let me see if I got this straight. You're already a
16 distributor, you got a truck and work?

17 A. Yeap.

18 Q. And your sister goes to training in '03 for a second
19 truck?

20 A. Yeap.

21 Q. But the truck is not for her. The DM brings the
22 document for the second truck for training to you on the
23 route and has you sign them like on the side of the road?

24 A. Yes. It was my truck. My sister is an employee of me.
25 Okay. So that's why I signed everything. It wasn't my

1 sister's truck. She just drove it.

2 Q. And I guess they didn't make you go to the training
3 because you already had been once?

4 A. Yes.

5 Q. Let me mark as Plaintiff's Exhibit 13 for
6 identification purposes, which will be the July 27, '03
7 contract distributor agreement.

8 Tell me if you've ever seen this before and whether
9 that's your signature on the back?

10 A. That's -- yeah, that's my signature, but like I said,
11 anything on here I know I did not even have a chance to read
12 it, and I don't believe I got any copies of this, you know.
13 If I signed, I know Rick brought a bunch of papers for me to
14 sign. Like I said, he had them tabbed, and I signed them
15 and he took everything with him.

16 Q. You're saying Plaintiff's Exhibit 12 and Plaintiff's
17 Exhibit 13 in May and July '03, documents were brought to
18 you at the same time by the DM on your route?

19 A. Yes. I was on the route and he brought them.

20 Q. Did he just have the signature pages, or did he have
21 the whole contract?

22 A. I believe he had the contracts because I remember him
23 going through just about like at school. He had them
24 tabbed. He didn't page through them and read anything.
25 He'd just fly through, right her, right here, sign here,

1 sign that there, get the next one, okay, I need you right
2 here, sign that and then he took them with him.

3 MR. TOCE, SR.: All right. We offer 12 and 13.

4 MR. KILBANE: No objection.

5 THE WITNESS: The other thing, I don't know if
6 it's any relevance, at the first signing when I didn't have
7 money and the lady left, she came back a little while later
8 and asked me if I could borrow it off anybody, and I said
9 no. And she left again and came back like an hour later and
10 said to just sign them anyway, and let me sign everything.

11 Q. So you were told the mandatory \$10,000 in
12 capitalization to be distributor was just waived in your
13 case?

14 A. Yes.

15 Q. They let you do it, become a distributor without the
16 money?

17 A. Yes. We signed it. I signed my papers quick and we
18 had to hurry up and head over to the orientation because I
19 had to wait around so long for her to figure out, I guess,
20 what to do with that.

21 Q. Do you know of any other requirements that MAC imposed
22 to be a distributor, like having to pass other written
23 tests, were those ever waived for you to become a dealer?

24 A. Written tests?

25 Q. Is it possible you have to pass these written tests to

1 become a distributor?

2 A. It did not happen to me. I know my brother-in-law,
3 after I got into it, he got into it. And he got out of it
4 fairly quick. He went belly up there. When he was out of
5 school he was calling me. He failed his tests the hard way
6 and they still passed him. I don't know what his exact -- I
7 mean he was so -- when they told -- the first day they told
8 him to turn the computer on, he didn't even know how to turn
9 the computer on, never touched it in his life. But his
10 final score I couldn't tell you exact, but it was in like
11 20%, 24%, 28%, and they still let him on.

12 So I can't say any kind of score they have you -- they
13 actually fail you out there because he thought he was going
14 to fail. He was like -- he called me all the time, each
15 night. He was like there ain't no way I'm making it through
16 this. And they passed him.

17 Q. When you say passed him?

18 A. They sent him on anyway.

19 Q. They let him sign the distributor agreement to become a
20 distributor even though he failed the written test?

21 A. That's correct.

22 MR. TOCE, SR.: Thank you, Mr. Deemer.

23 We'll tender.

24 CROSS-EXAMINATION OF DANNY DEEMER

25 BY MR. KILBANE:

1 Q. Good afternoon, Mr. Deemer.

2 A. Good afternoon.

3 Q. On Plaintiff's Exhibit 11 when you signed on March 8,
4 2002 --

5 A. Okay.

6 Q. -- did you ever read that document after you signed it?

7 A. No. After I signed it -- which one are you talking
8 about?

9 THE COURT: The distributor agreement.

10 Q. The 2002.

11 A. The first one I took, no, I never read that. You mean
12 prior to signing?

13 THE COURT: No, after.

14 Q. No, after.

15 A. Any time?

16 THE COURT: Yes.

17 THE WITNESS: I believe this they sent me after I
18 signed the second truck and stuff, sent the contracts back,
19 I kind of read over them, but it don't pay for me to even
20 read because I don't understand it, comprehend, any of that
21 stuff. But I did look over them at one time after.

22 Q. I'm referring to the first one, Exhibit 11. Did you
23 look at that one?

24 And when did you review that?

25 A. No, I never looked at that one, the first one.

1 Q. And you never went to an attorney or other advisor to
2 ask what was in the first contract?

3 A. No, I didn't. I didn't I know I was signing a
4 contract. If I signed that before I went to school, I
5 didn't even know that was a contract. I was never told it
6 was a contract. I know when Joe was there the first time, I
7 didn't know even know there was any legal papers there I was
8 signing. All I thought it was was stuff to do with the
9 application. I probably should have read the stuff more,
10 but I didn't. I wasn't even aware of what I was really
11 signing, everything went so quick.

12 Q. Did you ever ask for additional time to review the
13 contracts?

14 A. No, because I didn't even know it was a contract I was
15 signing.

16 Q. And if I direct your attention to page 17 of Exhibit
17 11 --

18 A. I don't have the exhibits here.

19 (Discussion off the record.)

20 THE COURT: What page do you want to take them to?

21 MR. KILBANE: I wanted page 17.

22 THE COURT: Here they are.

23 Q. On page 17, directing your attention to 19.3, paragraph
24 19.3.

25 A. Yes.

1 Q. You see that says waiver of trial by jury?

2 A. Un-huh.

3 Q. And you understand what that's saying, that you're
4 giving up a right to a jury?

5 A. That much, yes, I could understand that.

6 Q. And above that, claims must be brought in one year, you
7 would understand that?

8 A. Yeah.

9 Q. And then the fact --

10 A. That there actually -- I might not understand what that
11 means, claims brought in one year. Claim brought about
12 what? Is that missing too much inventory? You know that
13 there probably would have to be explained to me a little bit
14 there to really understand what it meant.

15 Q. Well, if you read, the rest of the paragraph talks
16 about any claims, controversy or disputes. You see that?
17 Why don't you take a look.

18 A. Yeah. Like I said, I don't really think I understand
19 if that's meaning what I am signing, committing to, no, I
20 probably wouldn't understand that.

21 Q. You would understand also on paragraph -- or page 16,
22 this is a provision about arbitration.

23 A. And actually arbitration, I wouldn't even know what
24 that meant. I'm not even sure what arbitration is.

25 Q. But you could have once again talked to somebody and

1 found out about it?

2 A. If I had them, I probably could. But I know the day
3 when I signed everything, that day, and what would have been
4 the day I signed this, I don't -- this is probably exactly
5 how he had this thing, right like this, with my application,
6 okay, I'm going to need you to sign right here quick, now
7 this is to get you involved in school, and this and that.
8 And I trusted the guy. I'm thinking I'm just signing the
9 application. He did not say one thing about them being
10 legal forms. And I signed it. He took it, folded it up,
11 took it with him.

12 Q. Let me try to get to the point I'm making.

13 A. Okay.

14 Q. Because you signed that contract on March 8, 2002.

15 A. Correct.

16 Q. You then went for a second route. Because your first
17 route was doing pretty well, right?

18 A. I thought it was, seemed like I was doing pretty good.

19 Q. And you decided to, I know you had some discussions,
20 you decided to do a second route. And you signed another
21 agreement on June 27, '03, correct?

22 A. Correct.

23 Q. And that's Exhibit 13. So there is a gap of what, a
24 year and three months?

25 A. That's correct.

1 Q. Sixteen months in which you could have reviewed this
2 agreement and looked at those provisions and sought counsel.

3 A. This agreement I never recall getting.

4 Q. Which agreement?

5 A. The first one, because even these guys asked for my
6 contract, the lawyers, and I don't have any of them from the
7 first truck. I don't believe, if it ever got sent to me,
8 that somehow I lost them, which I would not think, I'm
9 usually pretty good. I have file cabinets at the house. I
10 usually put stuff in there. And I do not have any contracts
11 from the first truck whatsoever. I don't know why. The
12 second truck I did get contracts after. The first truck I
13 didn't even have any to give them when they asked me for
14 them.

15 Q. Did you ever make inquiry or ask them about the
16 contracts?

17 A. I mean I'm new to this. I don't know what I was
18 suppose to get and what. I went to work. I worried about
19 working, not legal forms, if I go out of business, what I am
20 going to do for an attorney. I was worried about making
21 money, that's all, just working. I got up 5:00 in the
22 morning and I didn't get home until 11:00, 12:00 at night.
23 I done second shift. There is so much to worry about in
24 your job with your taxes and all that, that was all a new
25 learning experience for me. I didn't have time to think

1 about this stuff.

2 Q. Did you get any of the papers you signed on the first
3 truck?

4 A. Not to my acknowledgment. Like I said, if I did, I
5 don't know how they got lost. I didn't even have anything
6 to present to my attorneys on that.

7 Q. Well, where I was going to, if in fact MAC Tools did
8 send it out, you would have this a year and three months to
9 review it with counsel or otherwise to determine what
10 provisions you liked or did not like, correct?

11 A. That would be correct.

12 Q. And in fact you then signed an agreement, which is
13 Plaintiff's Exhibit 13, on June 27, '03, which has
14 arbitration provisions and limitations identical to the one
15 in the first contract, correct?

16 A. Yes.

17 Q. And prior to signing this, you received a set of the
18 documents on May 14, '03 for you to review, did you not, for
19 the second truck I'm referring to?

20 A. I don't know.

21 Q. I'm referring to 12.

22 A. I guess I did. I don't know if I got any -- no, this
23 here came by fax. This here paper, that's my fax number
24 right on top.

25 Q. That's --

1 A. I mean I got this paper, but I don't recall getting a
2 batch of papers, if that's what you're stating. I
3 apparently got this and faxed it back, or sent it back,
4 whatever I done with it, but I don't recall what I done with
5 that.

6 Q. Doesn't this indicate your fax, or is this your receipt
7 copy?

8 A. That's my receipt copy, page five.

9 Q. So as you sit here you're unsure whether you saw
10 Defendant's Exhibit A or any contents there of in May of
11 2003?

12 MR. TOCE, SR.: Objection.

13 THE WITNESS: That there, that I did not get.

14 MR. TOCE, SR.: Objection, not specific as to
15 time.

16 THE COURT: He said -- it doesn't make any
17 difference.

18 MR. KILBANE: I said 2003.

19 THE COURT: It doesn't make any difference what
20 time because he said he never seen it.

21 THE WITNESS: I never seen one of those books
22 right there until today.

23 Q. Okay. And at the time you compiled this on May 14, '03
24 did you ask for a copy of any of the documents that are
25 listed as having been received by you?

1 A. No, I didn't.

2 Q. And --

3 A. I really didn't know what, I mean I didn't read over
4 for the second truck or nothing. I just signed it and did
5 what I had to do to get it. I thought I was doing good with
6 the first one. I didn't even -- half this stuff I don't
7 even know what it is.

8 Q. With respect to the second truck, you have a contract
9 that's identical for the first truck. You apparently had no
10 problems with the terms and conditions of the first contract
11 because you didn't object?

12 THE COURT: He said he didn't have a copy, Mr.
13 Kilbane.

14 MR. KILBANE: He said he can't locate one. One
15 was sent to him.

16 THE WITNESS: I don't believe one was even sent to
17 me.

18 THE COURT: Hold it. Hold it. Hold it.

19 I do not intend to insult Mr. Deemer, but I really
20 believe Mr. Deemer when he says if he had seen it, he
21 wouldn't have understood it. I think he's probably a very
22 decent hard working man. And we'll leave it at that.

23 MR. KILBANE: Well, we'll agree with that
24 observation, Your Honor.

25 THE COURT: All right. And turning to the day of

1 the signing of the second contract, Plaintiff's Exhibit 13,
2 and I think based on your testimony, I think it's evident
3 you didn't ask for a copy of the contract to view before the
4 signing date.

5 THE WITNESS: No. Like I said, I was working
6 everyday, everything went, so far, everything, everyday was
7 -- while I was at work customers on the truck, talking and
8 phoning, telling me what to do, what we've got to do to get
9 the truck rolling, this and that, bringing the paperwork by.
10 And the day he brought the paperwork by and I signed, I
11 can't remember who was all on the truck with customers on
12 the truck.

13 Q. That's why I am a little bit confused. That's where
14 you said both acknowledgments, Plaintiff's Exhibit 12 and
15 13, and other papers, were signed, on your truck?

16 A. I didn't say this one. They faxed that one.

17 Q. I misunderstood.

18 A. I said all the big packet of papers were brought to me
19 was all signed on the truck. He brought a big envelope of
20 stuff to sign.

21 Q. There is gap of about better than a month from May 13th
22 to June 27th, between the acknowledgment and, you know,
23 execution of this, right, six weeks?

24 A. Um-hum.

25 Q. And at any time during this period did you ever ask for

1 a copy of any documents set forth on Exhibit 12?

2 A. No, I did not.

3 MR. KILBANE: Thank you, very much.

4 MR. TOCE, SR.: No further questions, Your Honor.

5 THE COURT: Mr. Deemer, thank you. You may step
6 down.

7 MR. TOCE, SR.: We're calling our last witness,
8 Mr. Dale Glime.

9 DALE GLIME,
10 of lawful age, a witness called by the Plaintiff,
11 being first duly sworn, was examined
12 and testified as follows:

13 DIRECT EXAMINATION OF DALE GLIME

14 BY MR. TOCE, SR.:

15 Q. Mr. Glime, please identify yourself for the court?

16 A. My name is Dale Glime. I'm from Lorain, Ohio, my
17 background is basically construction and route sales.

18 THE COURT: Your name is spelled G-L-I-M-E and the
19 declaration is document 79.

20 Q. This one declaration that the Judge just referenced,
21 did you have a chance to read over that since we submitted
22 it last year?

23 A. Yes.

24 Q. Is all the information that's in the sworn declaration
25 still true, accurate and correct to the best of your

1 knowledge?

2 You have to answer out loud so she can take it down.

3 A. Yes.

4 Q. Let me show you what's been marked for identification
5 purposes as Plaintiff's Exhibit 14, an acknowledgment, which
6 purports to be an acknowledgment of receipt by prospective
7 distributor of the document. Let me show it to you, Exhibit
8 14. And tell me if that's your signature?

9 A. Yes, that's my signature.

10 THE COURT: And what's the date on it?

11 Q. What's the date reflected you signed it?

12 A. 2-20-03.

13 Q. That document says that you are acknowledging receipt
14 of a whole bunch of papers, including the distributor
15 contract, that you will have to sign at the training?

16 A. Yes.

17 Q. Is that true, did you in fact receive the contracts
18 that you signed to be a MAC dealer on the date you signed
19 the acknowledgment?

20 A. On 2-20-03?

21 Q. Yes.

22 A. I have no idea. That was so confusing at the time. We
23 started that day late, and I didn't have time to review
24 contracts.

25 Q. You graduated training February 28, 2003?

1 A. Yes.

2 Q. So the 20th would have been kind of like the end of the
3 first week of training?

4 A. Yeah.

5 Q. Do you remember any day during the training where they
6 brought you a big stack of documents and had you sign an
7 acknowledgment?

8 A. I don't remember.

9 Q. How much time did you have to review the contractual
10 documents on the last day of training, in light of the fact
11 you've never seen them before?

12 A. Our last day of training we met at the warehouse. We
13 all drove. Well, the bus went to the home office, and I
14 drove and followed them. And we pretty much took a tour of
15 the home office, went into the store. We were able to
16 purchase some tools I believe. I can't remember. We sat
17 around for hours. And we had a graduation, and then we
18 signed papers.

19 Q. Were you aware that you were going to be required to
20 sign some rather complex legal contracts to become a MAC
21 distributor before you went up to Columbus for the
22 recruitment training?

23 A. Not that I remember, you know, I'm sure there was some
24 papers I had to sign. I didn't know what they were going to
25 be. I certainly didn't know they were going to be the

1 extent that they were.

2 Q. If you were able to -- you can read, right?

3 A. Oh, I can read.

4 Q. If you would have had time to read over that rather
5 lengthy --

6 A. I can read, but I can't comprehend.

7 Q. Would you understand it?

8 A. I wouldn't understand none of that, no. Well, some of
9 it, maybe, but not all of it.

10 Q. Now, when you were at the training when did you get
11 your truck, your MAC truck?

12 A. Well, before training I went with my district manager
13 and we picked out a truck I believe the week before. So we
14 picked out our truck and I had it all set. I don't know,
15 sometime during training, we loaded up the tools. I think
16 it was the last day during the first week. I'm not sure. I
17 can't remember.

18 THE COURT: You said --

19 THE WITNESS: We missed a day of training because
20 there was a terrible snow storm. That all got condensed.
21 And I was way behind in my training and I wasn't doing well
22 at all.

23 THE COURT: You say you picked out your truck?

24 THE WITNESS: I picked out my truck a week before.

25 THE COURT: Before you got the training?

1 THE WITNESS: Before I got the training, yes.

2 MR. TOCE, SR.: I would like to mark for
3 identification purposes Plaintiff's Exhibit 15, which is
4 three photographs. Have you seen those before?

5 THE WITNESS: Have I seen these before, the
6 photographs?

7 Q. The photographs, yes.

8 A. I took them.

9 Q. The one with The Productivity Company, is that you?

10 A. Yes. That was the proud day I was a MAC Tools
11 distributor.

12 Q. That was your MAC Tools truck?

13 A. Yes, that was mine.

14 Q. What day is that?

15 A. I don't know. That was a couple of weeks after I got
16 it maybe. I graduated in March, and I couldn't tell you the
17 exact day, but that was not too long after I got it. That's
18 where I stored it.

19 Q. How about the -- what are the pictures of, the other
20 two pictures?

21 A. The pictures -- these pictures here are pictures of, I
22 can't remember what day it was, but that was the day that we
23 took that. We were suppose to load our trucks up and all
24 our tools were loaded on the back of the tailgate and they
25 had two or three guys helping us load it. And at that point

1 nobody was checking any inventory while it was being loaded
2 and set.

3 And going to the point of did I trust MAC, yes, I did.
4 And I trusted them when I signed my papers too, because I
5 was told at that point trust MAC because 99% of their orders
6 are true. So what they were saying was 99% of their orders
7 are right.

8 Q. How much is -- what's the value of the inventory that
9 you have to buy from MAC as a distributor to start?

10 A. I think my total loan was \$60,000. My starting
11 inventory at that point was \$45,000.

12 Q. You sublet MAC people?

13 A. The other students in the class loaded the truck, some
14 guys didn't have their truck. Some guys had trucks in how
15 many states they have tools shipped to them. They had
16 nothing to do.

17 Q. So this was your truck after training?

18 A. Yes.

19 THE COURT: You drove this truck down after
20 training.

21 THE WITNESS: No. I brought it there and we
22 loaded it there. And I had to it -- it was shipped back by
23 drivers, who incidentally we had to take to the train
24 station afterwards.

25 THE COURT: So I thought you said you picked out

1 the truck?

2 THE WITNESS: I picked out the truck and stayed
3 there.

4 THE COURT: You went to Columbus before the
5 training --

6 THE WITNESS: Right.

7 THE COURT: -- before the training and picked out
8 the truck?

9 THE WITNESS: Before the training my district
10 manager --

11 THE COURT: Went back to Lorain.

12 THE WITNESS: I'm sorry.

13 THE COURT: And then went back to Columbus.

14 THE WITNESS: Right.

15 THE COURT: Got you.

16 THE WITNESS: Before the training there was a week
17 before I meet the district manager. And I went to training.
18 We were suppose to go out and verify accounts when he is
19 going to spend the whole time with me doing that. After the
20 first day he mysteriously disappeared. So I went out and
21 did it on my own after that. We went down and picked out a
22 truck and came back and continued to verify accounts.

23 Q. Did you know that you were going to be charged 60,
24 whatever, thousand to start inventory?

25 A. Yes.

1 Q. And you just trusted them that they were going to match
2 receipts?

3 A. Yes, absolutely. I'm a trusting person.

4 Q. Right.

5 A. I'll wait for the question.

6 Q. Let me show you what's marked as Plaintiff's Exhibit
7 16.

8 MR. TOCE, SR.: And we would offer 15 and 14.

9 MR. KILBANE: There has been no identification of
10 the two pages of photographs.

11 MR. TOCE, SR.: I'll just put in the three.

12 MR. FRIEDMAN: Which ones?

13 MR. TOCE, SR.: One, of the truck and, two, inside
14 of the truck.

15 MR. STEVENS, JR.: Why don't you put them all in.

16 THE COURT: Wait. Is 15 just the two photographs
17 and this cluster of boxes.

18 MR. STEVENS, JR.: I'm not sure. I thought it was
19 three photographs in 15.

20 MR. STEVENS, JR.: How many?

21 MR. TOCE, SR.: 15 is three pictures, two of the
22 inside of the MAC Tools truck, and one of the outside of the
23 MAC Tools truck.

24 THE COURT: So we need to mark those.

25 MR. TOCE, SR.: You want me to mark all 15?

1 THE COURT: Well, no. We need a sticker on them,
2 15-A, 15-B and 15-C.

3 MR. KILBANE: Since you asked, I am objecting on
4 relevance. I fail to see the relevance of these at all.

5 THE COURT: Let's get them marked and then you can
6 object.

7 THE WITNESS: The relevance --

8 THE COURT: Now, the way they're marked, A is the
9 clutter, B is him standing in the truck.

10 THE WITNESS: That's not me. That's another
11 distributor. That's the relevance.

12 THE COURT: B is somebody else standing in the
13 truck. And C is him standing next to the truck.

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

15 MR. KILBANE: And I renew the objection on
16 relevance, Your Honor. I don't see what this has to do with
17 the issues at all.

18 THE WITNESS: Can I answer that?

19 THE COURT: No.

20 THE WITNESS: Okay.

21 THE COURT: Truthfully, I have my reservation, but
22 there is no jury here, so I'm going to receive them anyhow.

23 BY MR. TOCE, SR.:

24 Q. Just for the edification of somebody whose never seen
25 the inside of a tool truck -- and who is the person standing

1 in 15-A?

2 A. He's another trainee. I don't really know his name.
3 He's from Washington, D.C., or Maryland. I don't remember
4 his name. I knew it at the time.

5 Q. Those were guys helping you load inventory in your new
6 truck?

7 A. Yes. There was other guys, him mostly, and a couple of
8 guys came on, and a couple guys floating trucks and doing
9 other things.

10 Q. You took that photo at the training to show you already
11 had the truck?

12 A. I took that at the training because it was a good time.
13 I was excited. I was getting involved in a new business and
14 I wanted to document it. I had no idea I was going to be
15 here showing it in a courtroom. You know this was for my
16 own personal reference. You know, I took it home and said
17 look, this is what I did. These are the people I met, you
18 know.

19 Q. Let me show you what's been marked for identification
20 purposes, this is the last photograph I am going to put in
21 as 16, and tell me if you took that picture?

22 A. What was that? Who are these people?

23 Q. Did you take that picture?

24 A. Yes, I took that picture.

25 Q. Where is that?

- 1 A. MAC headquarters the day we signed the contracts in the
2 morning.
- 3 Q. Who are those people?
- 4 A. These are people I went to school with.
- 5 Q. In your recruitment training class?
- 6 A. Um-hum.
- 7 Q. How long were you standing around like that?
- 8 A. We stood around for hours and hours and hours, a very
9 long time.
- 10 Q. What day of the training was that?
- 11 A. That was the last Friday of the training.
- 12 Q. Is that the training center, or is that the
13 headquarters you were signing the documents?
- 14 A. That's the headquarters where I signed the documents
15 and where we had the drawings.
- 16 Q. What were you waiting for in the picture?
- 17 A. I have no idea. We were waiting to sign papers and get
18 out.
- 19 Q. What were you told by MAC you were waiting for?
- 20 A. We knew we had to sign papers.
- 21 Q. You were waiting to sign the contract?
- 22 A. Yes.
- 23 Q. Did they give you a copy of them to look over while you
24 were waiting?
- 25 A. Nope. And to be honest with you, I didn't know the

1 contracts really had no -- I was too concerned about my time
2 anyway. At that time I was a MAC distributor. I passed my
3 class and I was ready to go.

4 THE COURT: Mr. Kilbane, you want to make your
5 objection, that I will overrule, and accept 16?

6 MR. KILBANE: Yes I have the same objection.

7 THE COURT: All right.

8 BY MR. TOCE, SR.:

9 Q. Let's talk a little bit about how you signed the
10 documents. When that group in Exhibit 16 was broken up and
11 you got to go, and getting busy, to sign contracts, how did
12 that look like with you?

13 A. I was in the class with probably 30 of us, probably 15
14 were MDSRs and 15 traditionals, and we were sitting up
15 around in the upstairs office waiting more and watching the
16 Jesse James show, about three episodes of that, before I got
17 into signing my paper. Same thing, you go in, there is a
18 stack of papers, and everything is tabbed for you to sign
19 there. You go through ten pages, sign that one, five pages
20 sign that one.

21 THE COURT: Was yours one on one, or were you with
22 a bunch of others.

23 THE WITNESS: I was one on one with the girl in a
24 cubical.

25 Q. Is the girl turning the pages of the document?

1 A. The girl is turning the pages of the document sometimes
2 five pages, ten pages at a time in the cubical.

3 Q. Was the lady turning the pages of the documents to
4 point you to the signature page?

5 A. Yes.

6 Q. Right?

7 A. Yes.

8 Q. Did you say she sometimes turned five, sometimes ten
9 pages at a time?

10 A. Yes.

11 Q. So she was, obviously, trying to get you to execute the
12 contracts correctly there and explain the contents of the
13 contracts?

14 MR. KILBANE: Objection.

15 THE WITNESS: Right. Sign the paper and going on,
16 which I'll be honest with you, I was busy on my route. I
17 was quite excited you know. And it took me a lot to get
18 through tool school, like I said, it was rough for me.

19 Q. The notion that if you had time to get a lawyer to look
20 at the contracts, or you were unclear about them you could
21 have walked away, right, just like Mr. Kilbane said?

22 A. Yeap.

23 Q. Okay. What were the things happening right then and
24 right there that prevented you from just walking away?

25 A. I didn't want to.

1 Q. Had you already quit your job?

2 A. I wasn't employed before I got employed with MAC. I
3 tried some other things being self employed. I tried
4 unsuccessfully to do some business finances, but that was a
5 big failure. You know, I wanted to get back in the route
6 business, and at that point I needed desperately to get on
7 the road and start making some money because I had already
8 not only been not working, but I invested another \$2,000 in
9 this class for my room and board and everything else that
10 came along with it.

11 Q. Are you saying you were so sold on being a MAC Tools
12 distributor you would have signed the documents no matter
13 what they said?

14 A. Yes. I'll wait.

15 Q. You can explain.

16 A. Well, when I got involved with MAC I was excited and
17 the way they wined and dined me before I became a
18 distributor and before I signed any kind of papers, I truly
19 believed that I was going to be in a partnership with MAC
20 even though I knew I was going to be self-employed. I
21 thought with the money they spent on me to get me recruited,
22 I thought they were going to be there to help me, and help
23 me and work with me. And that's why I trusted them. But I
24 found out soon after I got on my own that wasn't the case,
25 three months after.

1 Q. Can you tell us what percentage of training was devoted
2 to helping you learn about your business as opposed to
3 trying to sell you on becoming a MAC Tools distributor?

4 A. I honestly couldn't tell you because, like I said, I
5 was just trying, struggling, to learn the computer stuff.
6 And I know computers a little bit, but, you know, it's -- we
7 missed a day. And they told me I was behind. And I just
8 wasn't getting it. Other guys were leaving, going drinking,
9 and went home, or to the hotel. I'm practicing, you know, I
10 wasn't messing around. I was serious about it. You know, I
11 just went with the flow. I don't know the exact -- I was
12 just trying to get it down.

13 MR. TOCE, SR.: That's all. We'll tender, your
14 Honor -- before that --

15 BY MR. TOCE, SR.:

16 Q. Did you ever see this man, Mr. Mike Brubaker before?

17 A. Never.

18 MR. TOCE, SR.: Okay. Thank you. Tender the
19 witness.

20 MR. KILBANE: Thank you, Mr. Glime.

21 CROSS-EXAMINATION OF DALE GLIME

22 BY MR. KILBANE:

23 Q. You are from Lorain, right?

24 A. Yes.

25 Q. L-O-R-A-I-N, right?

1 A. Yes.

2 Q. You didn't prepare your affidavit?

3 A. I didn't type it.

4 Q. With respect to --

5 A. And I did notice that, so --

6 Q. Being close to Lorain I got a little chuckle out of it.

7 A. I'm sure you did.

8 Q. I know a woman that spells her name that way.

9 If I understand you, at the time you signed your
10 acknowledgment on the 20th, at the time you signed this on
11 February 20, 2003, I think your testimony was you don't
12 recall whether you received the documents at the same time
13 or not, is that correct?

14 A. I don't remember seeing any documents, because there
15 was so much paperwork there. And at the end of day I didn't
16 have no documents. So I obviously don't have them. So I
17 mean I don't remember signing the paper. I didn't have the
18 documents at the end of day. So, apparently, I didn't sign.
19 I mean I didn't have them.

20 Q. Okay. Good. And did you ask to review any of the
21 contracts before signing them?

22 A. Nope.

23 Q. And on the day that you were signing them you were down
24 there with your own vehicle?

25 A. Yes, I was.

1 Q. As opposed to a plane?

2 A. Yes, I was.

3 Q. You could have asked for time in order to review them?

4 A. I wasn't interested. I mean my concern was getting on
5 route and getting started. I already waisted -- I spent two
6 weeks in this class. I passed it. I wanted to go out and
7 make money. I've got bills to pay, you know. I made a
8 commitment to MAC, and I wanted to get out and do my job.
9 And then after that, once you get on your route, you don't
10 have time.

11 You know they mail these documents back, you don't have
12 time to review them. You know, I reviewed them three months
13 -- when I found out they put me on hold because I did all
14 the work they told me to do, they put me on hold, and I
15 reviewed the contracts, I had no idea I couldn't take them
16 to court, that's when I reviewed it.

17 Q. Okay. I think you're clear on this. But the bottom
18 line is you didn't ask at any time --

19 A. No, I didn't.

20 Q. -- to review it, so you could review it with a lawyer?

21 A. No.

22 Q. Or advisor?

23 A. No, I didn't.

24 Q. And that's because you were exceedingly happy to be a
25 MAC Tools distributor?

1 A. Yes.

2 Q. And, therefore, what was in the contracts was
3 unimportant on the day you signed it?

4 A. Pretty much.

5 MR. KILBANE: Thank you. No further questions.

6 MR. TOCE, SR.: Nothing further, Your Honor.

7 THE COURT: Thank you, sir. You may step down.

8 MR. TOCE, SR.: Which, Your Honor, that concludes
9 the presentation of the plaintiff's testimony for this
10 hearing.

11 MR. KILBANE: And since I forgot to thank some of
12 witnesses, I do thank you for your testimony.

13 THE WITNESS: Thank you.

14 Where do you live?

15 MR. KILBANE: Rocky River.

16 THE COURT: I don't believe all of Plaintiff's
17 Exhibits were offered as we were going along. I know some
18 were. I assume you were offering all of the exhibits that
19 have been identified.

20 MR. TOCE, SR.: That's correct, Your Honor.

21 THE COURT: Mr. Kilbane, the ones you found
22 objectionable, you already objected to in vein. And I
23 assume that the others you did not object to are
24 unobjectionable.

25 MR. KILBANE: That is correct. I think they were

1 almost joint exhibits and we would like to move our
2 exhibits.

3 THE COURT: I will receive Plaintiff's Exhibits 1
4 through 16. And do you want to move the admission of your
5 exhibits that you have identified so far. I assume there
6 are more coming.

7 MR. KILBANE: Yes, Your Honor. Just so I don't
8 forget about it.

9 THE COURT: Which of those are you going to object
10 to?

11 MR. TOCE, SR.: He has A, B, C, D.

12 THE CLERK: E, F, G.

13 MR. TOCE, SR.: I think the only one I objected to
14 was the booklet that no one could identify ever having
15 received.

16 THE COURT: Well, it has been alluded to as a
17 specimen, and for that limited purpose, understanding that
18 all of your witnesses -- I think one of them testified that
19 he remembers receiving it after the fact, but the others
20 they all said they didn't receive it up front. On the basis
21 that it's being offered as a specimen exhibit I will accept
22 it. And if that's the only one you're objecting to, all of
23 the Defendant's Exhibits that have been identified to this
24 point will be received.

25 Off the record.

1 (Discussion off the record.)

2 (Court adjourned.)

3 C E R T I F I C A T E

4 I certify that the foregoing is a correct
5 transcript from the record of proceedings in the
6 above-entitled matter.

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