PX 10

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

LOU BAKER, individually and on behalf of all others similarly situated,	:	Case No. 3:14-cv-2129-MMA-AGS
Plaintiff	:	
vs.	:	
SEAWORLD ENTERTAINMENT, INC., et al	:	
Defendants.	:	

CONFIDENTIAL

Videotape Deposition of FREDERICK D. JACOBS, VOLUME I, taken pursuant to Notice, at the law offices of Kessler, Topaz, Meltzer & Check, LLP, 280 King of Prussia Road, Radnor, Pennsylvania, commencing at 10:10 a.m., on TUESDAY, DECEMBER 18, 2018, before Rose A. Tamburri, RPR, CM, CCR, CRR, USCRA Speed and Accuracy Champion and Notary Public.

Job No. 3106831

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A. In most cases, I would -- let me -- let me back up.

So if -- if I went to a -- my supervisor, whether it was Tony or Jill or Jim Atchison, and of course Jim wasn't my supervisor, but had authority to -- and -- and got very specific direction, I would not then seek additional approval on the precise language that I was going to use to -- to resolve the media inquiry.

So if it was a -- a simple matter of fact, and I had specific direction on how to deal with it, I would deal with it and there would be no further approval that I would seek on the actual language.

Q. Were there any times in 2013 when you responded to a media inquiry from -- strike that -- when you responded to a media inquiry regarding Blackfish where you did not obtain approvals before responding, even though you were responding with new information, not information that was a canned answer from a prior answer?

MR. LOHNES: Objection to form.

MR. YOUNGWOOD: Objection to form.

THE WITNESS: So if I understand your question, did I answer a question based strictly on my own authority; is that correct, without any guidance on the substance of that response?

MR. D'ANCONA: That's what I'm asking.

THE WITNESS: I don't recall --

MR. D'ANCONA: Okay.

THE WITNESS: -- doing that.

BY MR. D'ANCONA:

Q. Blackfish premiered at the Sundance Film Festival in January of 2013. Do you recall that?

A. Yes, I do.

Q. And you went to see it at Sundance; right?

A. Yes, I did.

Q. And is it fair to say that Blackfish presents a -- a negative portrayal of SeaWorld?

A. Yes.

Q. You went in your capac -- you went to see the film in your capacity as a SeaWorld employee; correct?

A. Correct.

Q. What was your purpose in going to see it?

A. It was to -- and I was with two other executives, Chuck Tompkins, who was a senior member of our zoological staff and a -- and a very experienced animal trainer, and then an attorney, Matt Rearden, who was at that time responsible for intellectual property matters. At least that's my recollection.

So the -- the company had decided that the three of us would go and judge Blackfish based on our specific areas of expertise. So yes, that's -- that was the purpose of me going.

Q. What did you think of the film when you saw it?

A. I was really disappointed, frustrated by it. I had gone to Sundance in the hope that Blackfish could be easily dismissed, that it would be amateurish or plainly inaccurate, something that would give us the ability to deal with it quickly and with sort of minimum interruption to our business, but -- but what I saw really wasn't that at all.

It was a -- it was a very powerful and emotional film, extremely well made, and I felt represented a problem, very serious problem for us.

Q. Was Blackfish plainly inaccurate?

MR. YOUNGWOOD: Objection to form.

THE WITNESS: There were inaccuracies in it, but that -- my -- my primary takeaway from the film really was that it didn't give us an awful lot to work with in terms of inaccuracy.

And one of the reasons that we had brought Chuck was because he was a -- he was present for a lot of the things that were in Blackfish and would be able to answer that question better than I could; that is what was -- what was inaccurate, what was misleading, what was unfair. So that -- that's why he was present.

Matt was present, as I recall, because he could reflect on whether the filmmakers had -- had inappropriately used intellectual property of ours and perhaps we would have some defense there.

BY MR. D'ANCONA:

Q. When you say it didn't give you a lot to work -- an awful lot to work with in terms of inaccuracy, can you just explain what you mean?
A. Well, if -- if I, just based on my long time with the company, my sort of immersion in these animal rights issues over a long period of time, if I could just, in that short 80 or 90-minute span, begin to kind of catalogue things that are clearly wrong with the film, then we're about halfway to discrediting the film as an act of journalism, as an act of, you know, documentary filmmaking and essentially destroy it before it has any real impact on -- on us.
But the film had multiple cast members who were former SeaWorld employees, and that was one of the most damaging parts of the film, probably the most damaging, that these men and women who worked with killer whales, in the water with killer whales were actually members of the -- the cast of this film.
So there were things that I -- I don't recall anything specific, but there were

times in the film where I can say, well, you know what, that's not quite right or that's not right at all, but I don't remember leaving the theater thinking okay, this is a slam dunk for us.
Q. Slam dunk in terms of --
A. Defending.
Q. -- misrepresentations or inaccuracies?
A. Helping. That's right.
Q. Okay.
And you said you felt that the film represented a problem, "a very serious problem for us," can you explain what you meant by that?
A. Well, the -- the film is about the death of Dawn Brancheau, but it's more than that. It's -- the -- the thesis of the film is the death of Dawn Brancheau or the death of somebody was inevitable because SeaWorld shouldn't have been in the killer whale business to begin with, that killer whale display was intrinsically immoral and -- so if you -- if you look at all of the ways that a -- that that thesis can be presented to the

public, whether in a newspaper article or a TV story or a book, it had been cast in all those forms to -- to the point of, you know, January 2013.
There had been a very lengthy, scrupulously researched book by David Kirby, there had been a book by Tim Zimmerman, there had been long form articles in -- in -- in the newspaper and in magazines, thousands and thousands of television stories.
So we had reached this point where the -- where it felt like maybe, you know, we were starting to heal a little bit after the death of Dawn, and then Blackfish comes along and -- and tells the story in a way so much more emotional, so much more persuasive than anything that we had seen before.
I mean, if you were able to wade through the 450 pages of David Kirby's book, you might be left with outrage, but frankly, nobody was willing to wade through 450 pages.
Blackfish only requires you to sit there for, you know, 80 minutes or 90 minutes or whatever, and they're going to tell you the story and they're going to tell it to you in a

way that's -- that's emotional, highly selective, I should say that. That's one of our complaints with the film then and -- and for me now, is that the film is entirely selective in how it tells you a story.
Q. Selective in what sense?
A. Well, it's only those things that cast SeaWorld in a negative light gathered over a 54-year history, or whatever the history was. So to me, Blackfish was unfair and it was incomplete.
Q. SeaWorld had -- had SeaWorld been asked to participate in the making of Blackfish by the director?
A. Yes.
Q. And did -- did SeaWorld participate in the making of Blackfish?
A. We declined.
Q. So SeaWorld had the opportunity to participate, but declined to?
A. That's right.
Q. Okay.
After you saw the film, did you have a sense of how you thought it would affect potential SeaWorld customers who saw

it?
MR. YOUNGWOOD: Objection to form.
THE WITNESS: Yes.
BY MR. D'ANCONA:
Q. And what was that sense?
A. Well, I -- I felt it wasn't going to have a good effect. If you saw the film and were ambivalent about SeaWorld, this -- the real risk was that it was going to turn you, at a minimum, anti-SeaWorld and -- and in an extreme case, might turn you into an activist against SeaWorld.
It's very hard to watch that film and not have -- not leave with your opinion of SeaWorld altered in some way, and that way would almost always be negative.
Q. Did you think that Blackfish would only have an audience with people who were already animal activists?
A. I hoped that, but after seeing the film, my worry was that this story just became less -- you know, we've seen this many times where -- where some sort of work product would have only very limited appeal among people who already hate SeaWorld.

My worry with Blackfish was that it was so well made that the risk was that we were -- it was just going to be viewed by a lot more people, number one, and it would -- and it would take people who are either SeaWorld supporters or ambivalent on these issues and turn them into people who really don't want anything to do with us.
Q. And as 2013 progressed, do you believe that you observed people who were either SeaWorld supporters or ambivalent about SeaWorld turning against SeaWorld because of Blackfish?
A. Yeah.
MR. YOUNGWOOD: Objection to form.
THE WITNESS: Yes.
BY MR. D'ANCONA:
Q. And in what way did you see that?
A. Well --
MR. YOUNGWOOD: Objection to form.
THE WITNESS: -- you would see it -- and I had to be very careful that I wouldn't allow, you know, the -- the -- my experience working as SeaWorld's head of communications to sort of color my opinion on

this, meaning that I was getting all of this input, but there was this sample bias, because the input that I'm getting is -- is always negative.
So it was hard for me to judge whether people out in the world were consuming Blackfish, believing Blackfish and having their opinion altered by Blackfish, because all I was seeing was the tweets and the media inquiries and all of this negative input. So I had to continually remind myself that there's a big world out there and -- and -- and -- and maybe Blackfish isn't going to have that big of an impact.
But there were a couple of times in my -- you know, in my private life when I saw that Blackfish was having an impact. There was -- I was having lunch at a place in -- near my home and I wasn't wearing anything that would signify SeaWorld and I'm -- I'm watching the bartender and a couple of the -- the waiters and waitresses talking about Blackfish and -- and I'm listening very carefully to what they're saying. And I thought well, this is -- this is -- you know,

these are people who are in our neighborhood and they have clearly been affected by what they saw, and not in a way that's going to help SeaWorld.
I also had, in church of all places, people who had learned that I worked at SeaWorld and the capacity that I worked -- that I worked in, and would become very hostile to me.
So there -- you know, I -- I could see, you know, the sort of troubling influence that Blackfish was having and outside the -- the realm of just animal rights activists.
BY MR. D'ANCONA:
Q. When you mentioned in that answer inputs that were coming to you, did those include E-mails or letters from SeaWorld guests?
A. Yes, although I can't -- I don't have any specific recollection of a guest, you know, someone -- someone who had come and -- and -- and paid and enjoyed the -- presumably enjoyed the experience and then saying, you know what, I just saw Blackfish and now I'm mad.

So I don't recall anything -- you know, I do, I do recall one person doing that. And I said, well, okay, that's fair, but I just need to tell you that Blackfish -- and I agree with you, it's an emotional film, but if we could just get you back, if we could just get you back and we could maybe have you talk with some of our trainers and keepers and curators and veterinarians, maybe we could -- maybe we could convince you to still be a SeaWorld fan.

And that worked. So that was an offer I made a number of times. It was a very powerful, sincere offer. If you don't like what you saw in Blackfish, please come, see for yourself and -- and then make a decision.

Q. So when you got E-mails or letters from members of the public saying that they had seen Blackfish and they -- they didn't like SeaWorld, would you personally respond to the senders?

A. Sometimes.

MR. YOUNGWOOD: Objection to form.

MR. D'ANCONA: Okay.

BY MR. D'ANCONA:

Q. And do you recall any other instances when you had personal interactions with the senders of -- of letters or E-mails in, let's say, 2013, concerning Blackfish?

A. It wouldn't have been unusual at all for it, because my name was so well known and my E-mail was in such wide distribution for me to get an E-mail, and sometimes they would be easy to dismiss because they would abusive or profane, and other times they would be kind of, you know, just a very emotional plea, like please help me understand this because I was such a huge SeaWorld fan and I -- and I can't do it anymore.

So it wouldn't be unusual at all for me to respond to those E-mails and letters myself.

Q. And when you responded to the senders of E-mails and letters that you received, did you -- did you see that at least some of them were from people who were not necessarily animal activists, but just more mainstream regular people?

A. I -- yes, that's fair.

Q. Okay.

A. In fact, if somebody were to identify themselves in an E-mail or -- or letter as being an animal rights activist, I would probably dismiss it altogether because your opinion is formed and it's hard and there's no way that I'm going to be able to reach you, so I'm not going to waste my time.

Q. Did you think that watching Blackfish would make people less likely to come to SeaWorld's Orca parks?

MR. YOUNGWOOD: Objection to form.

THE WITNESS: Yes.

BY MR. D'ANCONA:

Q. Do you recall ever discussing that view with anybody else who worked at SeaWorld in 2013?

MR. YOUNGWOOD: Objection to form.

THE WITNESS: I don't recall any specific conversations, but I almost certainly would have. I mean, you can't -- if you watch Blackfish, your opinion about SeaWorld changes unless you came into it with a negative. That was my view, that -- that if you're going to -- if you watch this film and you have no other input about SeaWorld, you are going to

leave with a negative impression and -- and I'm certain that I had conversations like that with -- with others.

BY MR. D'ANCONA:

Q. So is it fair to say that you thought that to the extent people saw Blackfish, it would negatively affect public opinion about SeaWorld?

MR. YOUNGWOOD: Objection to form.

THE WITNESS: Yes.

BY MR. D'ANCONA:

Q. Did you think Blackfish would harm SeaWorld's reputation?

MR. YOUNGWOOD: Objection to form.

THE WITNESS: The only -- Blackfish could only do one thing, and that was damage SeaWorld's reputation. The question wasn't whether it would or not, but whether -- how much it would.

So it all really hinged on whether Blackfish became popular, became a kind of cultural phenomena, because so many commercially-distributed documentaries come and go without anybody ever seeing them. [redacted]

[redacted]

Q. But did you believe that if you saw increasing awareness of Blackfish and increasing association of Blackfish with SeaWorld, that that would correspond to, in your mind, an injury to SeaWorld's reputation?
A. Yes.
Q. Did you -- do you recall whether you reported back to anyone at SeaWorld's corporate office from Sundance?
A. Yes, I did.
Q. Who did you report back to?
A. I wrote probably a 6, 700-word memo,

for lack of a better term, that I presented, along with Chuck and Matt, to the -- I believe it was called at the time the Strategy Committee, which was senior leadership and then typically one layer of management below that. So it had 25 or 30 people, I guess.
Q. Okay. And we'll actually get to that in a few minutes when we get into the documents, I think.
Do you recall that Blackfish was picked up for distribution by CNN Films and Magnolia Pictures in January of 2013?
A. Yes.
Q. And it showed at various film festivals in the late winter and spring of 2013?
A. Yes.
Q. The film was released in -- in landmark theaters in certain cities in July of 2013; do you remember that?
MR. YOUNGWOOD: Objection to form.
THE WITNESS: That's my recollection.
BY MR. D'ANCONA:
Q. And do you remember that in the

spring of 2013 and the early and mid-summer of 2013, major media outlets, such as the LA Times or ABC News were -- were running stories on Blackfish?
A. Yes.
Q. Did the showing of Blackfish at film festivals and its release in movie theaters in July of 2013 and its coverage by mainstream media in the spring and summer of 2013, did that concern you --
MR. YOUNGWOOD: Objection.
BY MR. D'ANCONA:
Q. -- with respect to your -- your position at SeaWorld?
MR. YOUNGWOOD: Objection to form.
THE WITNESS: Yes.
BY MR. D'ANCONA:
Q. And why?
A. So long as the -- the film has either kind of this very limited art house following, you know, people who really like to go to art house cinemas and watch things like this, and -- and frankly, a lot of those people probably wouldn't be all that fond of SeaWorld to begin with.

So as long as it was confined to a very limited distribution among people who don't like SeaWorld to begin with, then that's no real problem for us. It's a tree falling in the woods.
But the media serves everybody, the mainstream media serves everybody. So you're either left with coverage that is negative because the film, itself, is negative, or you're left with coverage that inspires people to see something they wouldn't have otherwise seen.
So it was very concerning to me the more the mainstream media were interested in Blackfish, and that was certainly well before it even premiered in -- in theaters.
Q. And then you recall that Blackfish was shown multiple times on CNN in Oct -- in October of 2013?
A. Yes.
Q. And it was released on DVD and on iTunes and on Netflix thereafter?
A. Yes, although I don't recall the, you know, the progression, what happened when.
Q. Did there come a time in 2013 when

you believed that Blackfish had certainly had a negative effect on SeaWorld's reputation?
A. Well --
MR. YOUNGWOOD: Objection to form.
THE WITNESS: -- [redacted] but my own instinct was telling me that it was affecting the company's reputation, yeah.
BY MR. D'ANCONA:
Q. And did -- was it your view that the company's reputation was an important driver of attendance and revenues for SeaWorld?
MR. YOUNGWOOD: Objection to form.
THE WITNESS: The link between reputation and sales, I can't say that I'm an expert in that. I'm not sure anybody is an expert in that.
You know, the reputation research is complicated, it's highly sensitive to variables in terms of, you know, that day's media coverage. So for -- for -- to make conclusions about the rep -- the impact of reputation decay on your business is certainly outside of my area of expertise.
My instinct was, though, that

significant reputation decay could only do one thing, and that was damage the company's business.
BY MR. D'ANCONA:
Q. Did you discuss with any colleagues at SeaWorld in -- at any time in 2013 that you -- well, strike that.
Did you discuss with any colleagues at SeaWorld in 2013 the proposition that SeaWorld's reputation was being damaged by Blackfish?
MR. YOUNGWOOD: Objection to form.
THE WITNESS: I don't recall any specific conversations, but I'm -- I'm certain that I had them.
BY MR. D'ANCONA:
Q. Do you recall any discussions with colleagues at SeaWorld in 2013 that Blackfish was hurting SeaWorld's business?
MR. YOUNGWOOD: Objection to form.
THE WITNESS: I don't recall any specific conversations, but the -- you know, the -- the impact on the business, you know, there's multiple ways of looking at that. What was it costing us in terms of staff

resources? What was it costing us in terms of money to defend the company against it? The reputation issue, which I mentioned is -- is difficult to quantify and difficult to associate with performance, but is still a significant impact on the business.
So yeah, there were a lot of ways that Blackfish was affecting the business in 2013.
BY MR. D'ANCONA:
Q. To your knowledge, were -- were a lot of staff resources being devoted to responding to Blackfish?
MR. YOUNGWOOD: Objection to form.
THE WITNESS: Well, you'd have to define "a lot," but certainly the way I define it, yeah.
BY MR. D'ANCONA:
Q. Were you spending -- as a percentage basis, how much of your day-to-day work was being devoted to responding to -- to Blackfish in 2013?
A. It -- it started -- it gained over time, I guess is my point, so early in 2013, it might be a portion of every day. By the

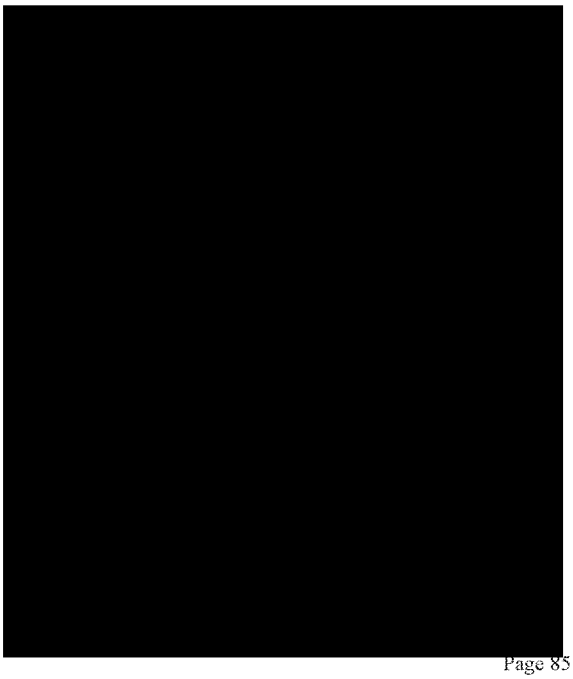
end of 2014, it was every minute of every day.
Q. How about 2013?
A. I'm sorry, 2013. You know, by the time that we were dealing with the -- the artist cancellations for Bands, Brew & BBQ, it was essentially all I was doing. And then throughout the rest of my SeaWorld career, it was essentially all I was doing.
Q. Were you aware of -- of other SeaWorld staff who were devoting as much time to responding to Blackfish as you were?
MR. YOUNGWOOD: Objection to form.
THE WITNESS: I don't know that anyone was devoting as much time to it as I was, but certainly anyone in the position of authority in the company was -- had demands placed on their time and -- and certainly, you know, whether it was our legal staff or our marketing staff or those of us in Corporate Affairs, it was a large and growing impact on our time and all the way up to Mr. Atchison.
BY MR. D'ANCONA:
Q. And how about at the -- at the staff level, the people who reported to you, were they spending a significant portion of their

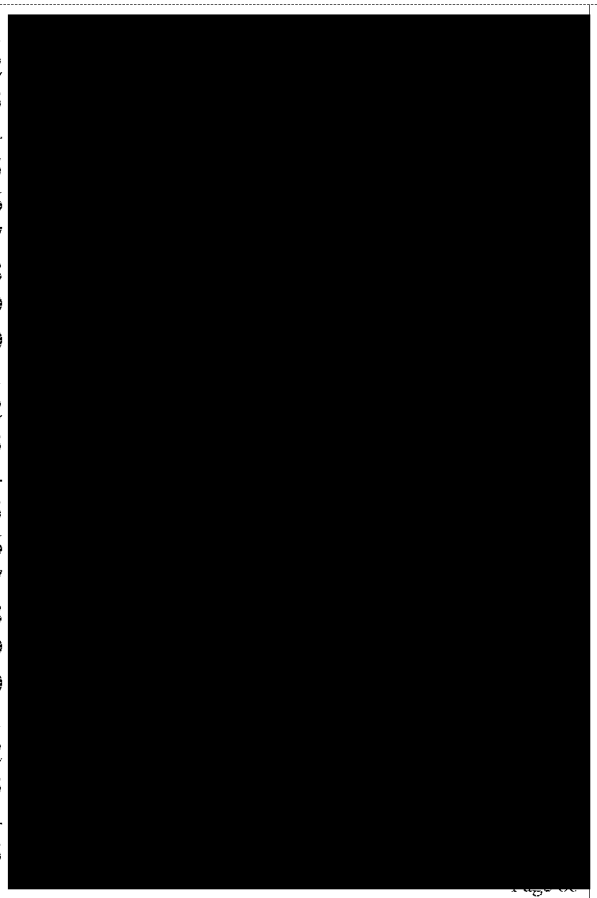
time responding to Blackfish issues?
A. Well, yes, assisting me and Jill in responding to Blackfish issues. We tried to relieve -- we -- at the time, we had divided our responsibilities in the folks who were subordinate to me between marketing and, kind of, issues, management or, you know, the -- the Corporate Affairs function, and we tried to relieve them, as much as we could, so that they could continue to try to, you know, grow the business rather than, you know, than defend it.
But there were times certainly when it was all hands on deck.
Q. And that was in 2013?
MR. YOUNGWOOD: Objection to form.
THE WITNESS: Toward the end of 2013. In the middle of 2013, you know, there were still plenty of gaps in your day where maybe you could get some other things done. And I don't want to say -- you know, there were other obligations that I had and if, you know, if I had to write a speech for Jim Atchison, I wrote it. So it wasn't, you know, 100 percent of every -- you know, every

moment, but it was the dominant part of my...
BY MR. D'ANCONA:
Q. As far as a -- an issue that -- that SeaWorld was responding to, was Blackfish the -- similar in terms of the amount of resources it required as other prior activist events, the books you mentioned, the movies you mentioned, I believe, or was it different?
MR. YOUNGWOOD: Objection to form.
THE WITNESS: The only thing that was even remotely similar to this was the Free Willy films, primarily the first Free Willy film, which was viewed, I think correctly, as an assault on marine mammal captivity, particularly killer whale captivity. So the only thing that was ever close to this was that, but I don't recall even that being as intense at its peak as -- as Blackfish was.
BY MR. D'ANCONA:
Q. So would it be inaccurate to say that Blackfish was just more of the same, as far as the demands placed on the company?
A. I would view that --
MR. YOUNGWOOD: Objection to form.
THE WITNESS: -- as inaccurate,

yeah.
I should say also that the -- the -- the film focuses on these issues, but it also gave kind of a focal point, a gathering place for people who wanted to -- to end what SeaWorld does with killer whales. So there was that whole dimension to it, also, that this was essentially the -- you know, a call to arms for animal rights people.
BY MR. D'ANCONA:
Q. Animal rights people used it as a -- as a weapon against SeaWorld?
A. That's right.
MR. YOUNGWOOD: Objection to form.
THE WITNESS: Well, as sort of like a call to action, sort of.
MR. D'ANCONA: Yeah.
THE WITNESS: If you don't believe us, watch the film.
MR. D'ANCONA: I see. Just a couple more things and then I think we should -- we should stop for a quick break.
BY MR. D'ANCONA:
Q. Shifting gears, SeaWorld announced a capital project to expand its -- its whale

tanks in August of 2014. Do you recall that?
A. Yes, I do.
Q. And -- and it was announced that that project would cost hundreds of millions of dollars roughly. Do you remember that?
A. Yes, I do.





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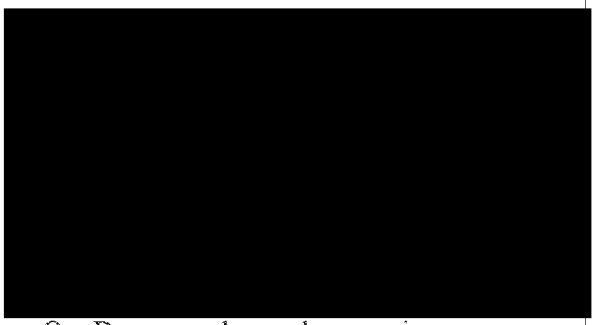
Q. In 2014, SeaWorld celebrated its 50th anniversary celebration. Do you recall that?
A. Yes, I do.
Q. And the celebration was planned to involve a tour of various cities, a kickoff event in New York City and other celebratory events.
Do you recall that?
A. Yes, I do.
Q. Do you recall that the kickoff event in New York City was cancelled?
A. Yes.
Q. What do you recall about that?
A. The -- when Blackfish was clearly some -- a club that could be used against SeaWorld, that became a very, very valuable tactic for the animal rights community. And what they would do is simply identify anyone who had decided to do business with SeaWorld in any -- you know, whether we buy from you or you buy from us, whether you wholesale tickets, whether you host events, whether you appear in our parks as an artist, all of those people were subjected to harassment and -- and Blackfish was the centerpiece of that.



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Q. Do you -- do you know -- in your mind, do you associate moving forward with the -- the -- the Blue World Project as -- as a response to Blackfish?
A. It seemed to me that we were moving forward with the Blue World Project because of the -- the -- the very sort of toxic atmosphere that was -- and Blackfish was part of it, but it wasn't the only part by any means. This is -- you know, this is a time of, you know, great controversy and criticism of SeaWorld and I think the -- the -- the feeling was let's -- you know, we need to make some dramatic moves here, and that was the -- the centerpiece of it. That was my -- that's my recollection, anyway.

So when it came to this event, my recollection is that we had attempted to publicize it. And -- and as I recall, it wasn't a -- like a general consumer thing, I think we were inviting VIPs or travel partners or something.
But anyway, the -- they had gotten wind of it, the animal rights folks had gotten wind of it and -- and started to harass the owner of the restaurant. And for that person and frankly others, that's -- that's easy math to do. It's like, you know, I can host this event and subject myself to protests and harassment, or I can just cancel it and be done with it. So I -- we had a lot of people making that decision.
Q. And to put a time frame on the -- the harassment of -- of partners and vendors and -- and sponsors, did that begin in 2013?
A. Yes.
Q. Did that begin in -- had that begun by September of 2013?
MR. YOUNGWOOD: Objection to form.
THE WITNESS: I would say so.
MR. D'ANCONA: Okay.

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BY MR. D'ANCONA:
Q. And did it -- had it begun in the summer of 2013? Were you hearing about partners or sponsors getting Blackfish-related harassment in the summer of 2013?
A. I can't think of anything --
MR. YOUNGWOOD: Objection to form.
THE WITNESS: -- anything specific, but yeah, I think when it became a really significant problem was when it was clearly working with those artists for -- if you could reach those people and influence them to do something as dramatic as publicly separate from SeaWorld, then you could reach anybody.
BY MR. D'ANCONA:
Q. And you're talking about the band cancellations in November and December of 2013?
A. Yes.
Q. And thereafter?
A. That's right.
Q. Okay.
How about the tour, the 50th anniversary celebration tour, do you recall

that that was impacted by Blackfish in any way?
MR. YOUNGWOOD: Objection to form.
THE WITNESS: I recall it was impacted, though I don't recall specifically how. If I recollect correctly, we just cancelled it, eventually we just cancelled it because it was -- every time we would have people out in the world doing anything, they would face protesters and abuse and harassment.
And then so would the people that we had chosen to partner with, whether it was a school -- you know, a lot of these appearances, when we go into markets, are in schools or a media outlet or a museum, another zoological institution, maybe. They would all be subjected to this harassment.
BY MR. D'ANCONA:
Q. At the bottom line, is it your opinion that SeaWorld's 50th anniversary celebration was impacted by Blackfish?
MR. YOUNGWOOD: Objection to form.
THE WITNESS: Yes.
BY MR. D'ANCONA:

Q. Other than the ways that you've mentioned, can you -- can you tell me any other ways how the 50th anniversary celebration in 2014 was -- was impacted?
MR. YOUNGWOOD: Objection to form.
THE WITNESS: Not beyond what I've told you, at least that I can recall.
BY MR. D'ANCONA:
Q. Do you recall discussing Blackfish's impact on the 50th anniversary celebration in 2014 with any SeaWorld colleagues?
A. I'm sure I did, but I don't recall any specific ones.
Q. Okay.
MR. D'ANCONA: I think we should take a short break.
THE VIDEOGRAPHER: Off the record at 11:41. This will end Disk No. 1.
(Whereupon, a recess was taken at the above time.)
(Whereupon, a document was marked, for identification purposes, as Jacobs Exhibit 1.)
THE VIDEOGRAPHER: The time now is 12:01, back on the record, beginning of Disk

No. 2.
BY MR. D'ANCONA:
Q. Welcome back, Mr. Jacobs. You understand that you are still under oath?
A. Yes.
Q. You've been handed a document marked as Jacobs Exhibit No. 1. Do you see that, sir?
A. Yes.
Q. Do you recognize this document?
A. Yes, I do.
Q. What is it?

[redacted]

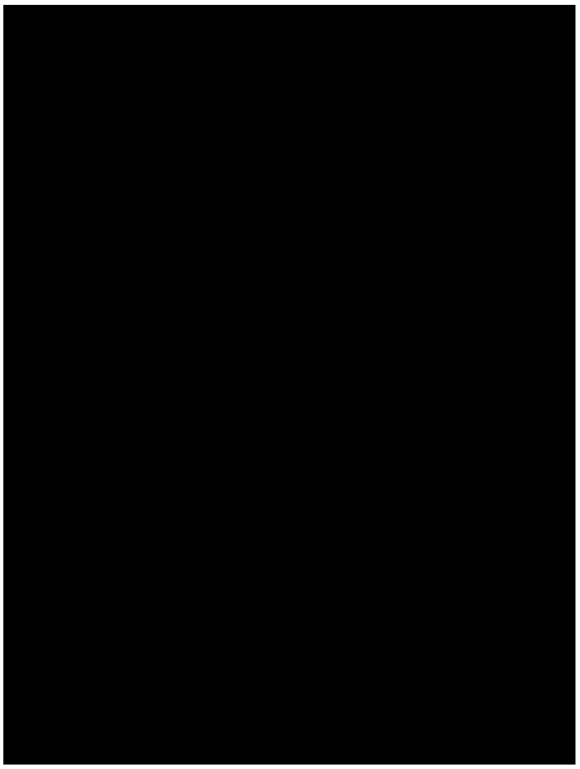
Q. And consistent with what you just

said, you -- you presented some discussion of these notes at the Strategy Committee meeting at SeaWorld in January of 2013?
A. And my recollection is that I spoke from them and then I likely gave this document to the participants of the -- the meeting.
Q. And what is the Strategy Committee?
A. The Strategy Committee was a -- the group of executives of the two highest levels in the corporation, so the -- the officers of the corporation, and generally speaking, the -- the -- the people who answered to the -- to the officers of the corporation. So down to the level of VP typically.
Q. Were you a Strategy Committee member in 2013?
A. In 2013, I was not.
Q. Okay.
Were you in 2014?
A. No, no.
Q. Okay.
A. I was briefly a member of the Strategy Committee when I answered to Jim Atchison in 2008-2009.
[redacted]

[redacted]

[redacted]
Q. Read that over and let me know when you've done so.
(Whereupon, the witness reviews the exhibit.)
THE WITNESS: I've read it.
BY MR. D'ANCONA:
[redacted]

[redacted]



BY MR. D'ANCONA:
Q. Do you recall any discussion of the points you just made in your prior answer at

the Strategy Committee meeting --
MR. YOUNGWOOD: Objection.
BY MR. D'ANCONA:
Q. -- in January 2013?
MR. YOUNGWOOD: Objection to form.
THE WITNESS: The only discussion that I recall was that a lot of people in the room seemed very disappointed in what I was saying. In fact, I can recall Jim Atchison saying, you know, sort of sarcastically, like, geez, thanks, Fred, or something like that, that would suggest nobody really wanted to hear what I was saying. I mean, they wanted to hear it, obviously it was an important matter, but they wanted to hear a different conclusion.
BY MR. D'ANCONA:
Q. Do you recall any other discussion about Blackfish at this Strategy Committee meeting?
A. No, I don't.
Q. And after January of 2013, did you see mainstream media take an interest in the film?
A. Yes.

Q. Including national news and entertainment programs?
MR. YOUNGWOOD: Objection to form.
THE WITNESS: Yes. Yes.
BY MR. D'ANCONA:
Q. And did you see a real impact to SeaWorld from that attention to the film from mainstream media?
MR. YOUNGWOOD: Objection to form.
THE WITNESS: Yeah, and I should say that the -- you know, the impact takes many forms, as I mentioned earlier. You know, they -- they -- the most obvious in media, it was staff resources. So between my group and the legal group and the public affairs and government relations group, you know, this was -- when it hit, it already had an impact because I had to fly to Utah to watch it and then, you know, spend time that I could have spent doing other things, analyzing it and preparing for it. So -- so there was an impact immediately.
It was not significant at that point, but my fear was that it would become significant.

BY MR. D'ANCONA:
Q. And -- and did it become significant?
A. Yeah.
MR. YOUNGWOOD: Objection to form.
THE WITNESS: Yes.
BY MR. D'ANCONA:
Q. And did it become significant by July of 2013?
MR. YOUNGWOOD: Objection to form.
THE WITNESS: I would say so, yeah.
MR. D'ANCONA: Okay.
BY MR. D'ANCONA:
Q. And did it remain -- did the staff resources devoted to responding to Blackfish remain significant, in your view, after July of 2013 and through August of 2014, at least?
MR. YOUNGWOOD: Objection to form.
THE WITNESS: Yeah, and I should say that when -- when you asked me whether the film had an impact, I include in that things that cascaded from the film. So media coverage, social media activity, protests. Anything that -- that seemed to me to be directly attributable to the film, I'd lump

into that category.
MR. D'ANCONA: I understand.
Okay. Thank you. You can set that document aside.
(Whereupon, a document was marked, for identification purposes, as Jacobs Exhibit 2.)
MR. D'ANCONA: Jacobs Exhibit No. 2 has been placed before you. Please take a minute to read through it.
THE WITNESS: I have.
MR. D'ANCONA: Okay.
BY MR. D'ANCONA:
Q. This is an E-mail from an E-mail address SWO-PR. Do you recognize that E-mail address?
A. Yes, I do.
Q. And what is it?
A. That is the -- the general E-mail account for the PR department at SeaWorld in Orlando.
Q. And it's an E-mail dated April 8th, 2013, to you. Do you see that, sir?
A. Yes.
Q. And the subject is forward:

Blackfish reference. The -- it appears the PR department at SeaWorld Orlando has forwarded to you a message related to Blackfish; is that fair?
A. Yes.
Q. Where -- and this is a message from a sender named [redacted] and it -- and it's dated April 6, 2013, down below.
Do you see that?
A. Yes, I do.
Q. Was there -- would you ordinarily receive E-mails or letters from members of the public that were sent to SeaWorld regarding Blackfish in 2013?
A. It's my recollection that we had instructed the SeaWorld parks to send anything Blackfish related to me rather than deal with it themselves.
Q. And why?
A. Well, Blackfish was a significant matter and it -- if -- if -- in this case, it's Dagmar who was the administrative assistant at -- for the PR department and the communications department. And given the significance of Blackfish, we really didn't

want to risk anyone, you know, commenting on, you know, sort of freelancing these responses to people like this because of the -- the risk that they might, first of all, say something wrong, or that their response might become public.
Q. Do you ordinarily respond to letters or E-mails that you received concerning Blackfish from members of the public?
A. As I mentioned earlier, if one was clearly beyond my ability to -- to reach them, that is somebody who was passionately anti-SeaWorld or abusive or threatening, I would just ignore it. Or in some cases, send it to our operations team because they had a security provision for things like that.
But if it was somebody like this who is -- you know, this is a letter written in good faith expressing genuine reservations with SeaWorld based on what she saw in Blackfish, this is the kind of thing that I would conceivably respond to myself.
Q. Do you know if you responded to this sender?
A. I don't recall responding to her.

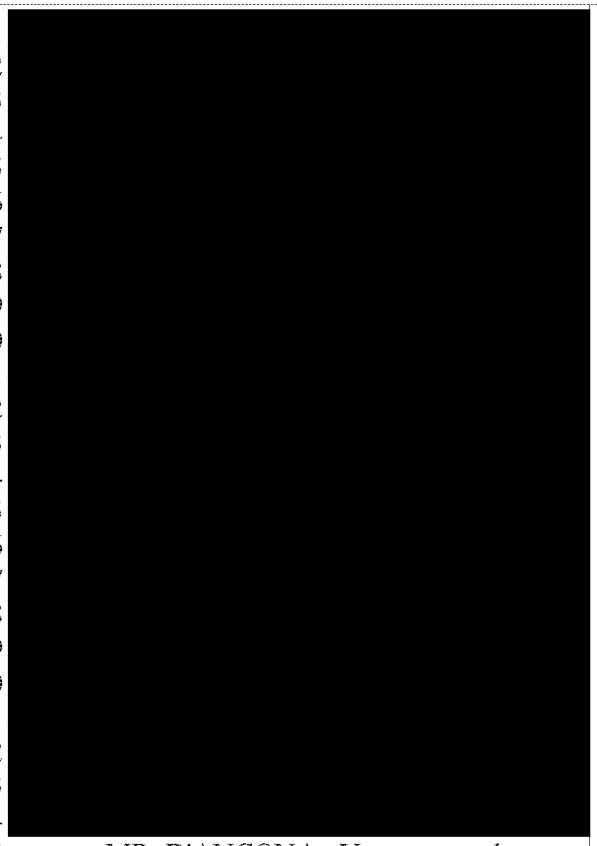
Q. How would you differentiate between a letter sent in good faith versus a letter sent from a -- a hardened activist who you wouldn't try to reach?
A. Well, the --
MR. YOUNGWOOD: Objection to form.
THE WITNESS: There are -- they'll give you clues, you know. They -- if you can sort of tease out the general talking points from the animal rights community about longevity or about, you know, the stereotypic behavior, anything that would sort of signal that these are talking points from a -- you know, from one of our opponents in the animal rights community, that was typically a clue.
But they -- you know, in order to do it this way, they would have to lie. They would have to say, you know what, I visited SeaWorld and I enjoyed the experience, but then I saw Blackfish.
You know, the -- the animal rights ones were usually pretty easy to -- to sniff out.
BY MR. D'ANCONA:
Q. Did you -- do you recall whether you

confirmed that she had, in fact, come with her family?
A. That's very difficult to do.
Q. Okay.
A. So I'm almost certain that I did not.
Q. Okay.
Do you recall whether in -- in, say, the first half of 2013, you -- you received other E-mails and letters from members of the public conveying that the sender had seen Blackfish and -- and would not come to SeaWorld?
A. I don't recall any specifically.
Q. Do you recall that generally letters like that started to come in after Blackfish was released?
A. Yeah.
Q. Do you recall an approximate volume of letters or E-mails like that that you had received in, say, the first half of 2013 before the theoretical release?
A. I --
MR. YOUNGWOOD: Objection to form.
THE WITNESS: It would be a -- it would be a guess.

MR. D'ANCONA: Okay.
THE WITNESS: And certainly it would -- it was my recollection it would track overall U.S. awareness of the film.
MR. D'ANCONA: I see.
BY MR. D'ANCONA:
Q. Did you take -- leaving aside letters from -- that you identified as coming from activists, did you take letters from -- from people who said that they had seen Blackfish and -- and would not be coming to SeaWorld after seeing it, did you take letters like that seriously?
A. Oh, yeah.
Q. Why?
A. Well, because the -- the -- the -- the threat to SeaWorld's business does not come in the form of people who hate SeaWorld already; the threat comes in the form of people who are either ambivalent or supportive of SeaWorld, but had their minds changed by Blackfish.
So if -- and the way I always looked at it was this person went to the trouble to write me. My worry is about the

100 people who didn't write me who just went off and lived their lives with a hardened opinion against SeaWorld.
Q. So did you view letters from consumers to the effect of I saw Blackfish and I -- I won't be coming to SeaWorld as a -- as a meaningful indicator of -- of public sentiment or consumer sentiment towards SeaWorld?
MR. YOUNGWOOD: Objection to form.
THE WITNESS: I don't know that I could draw any conclusions about if this was representative of broad or even narrow public opinion. All I know is that this one person and -- and it would be reasonable to conclude that -- that for every one, there's more out there, but whether that rises to the level of, you know, sort of this cultural influence, I -- I couldn't say.
MR. D'ANCONA: You can set that document aside.
(Whereupon, a document was marked, for identification purposes, as Jacobs Exhibit 3.)
BY MR. D'ANCONA:

[redacted]



MR. D'ANCONA: You can set that

document aside.
BY MR. D'ANCONA:
Q. What was it that made Blackfish so complicated and difficult, to use your words?
MR. YOUNGWOOD: Objection to form.
THE WITNESS: There was a couple of reasons. The first is the film was well made, so it was -- it was impossible to dismiss on creative grounds.
But the most difficult part was the authority of the people who are in it. You've got, I forget how many, six or seven people who were not only SeaWorld employees, but SeaWorld employees of a -- of a very exclusive fraternity, and that was the men and women who were in-water killer whale trainers. That, you know, there -- there can't be more than a few hundred people in the world who can claim that.
So to have them -- because they can speak from personal experience and with personal authority about what went on during their time. They're also -- they're trained to present to the public, so they're very -- rhetorically, they're very, very effective.

And then you combine that with the fact that at least some of them appeared to me to be genuinely contrite about what they did at SeaWorld. So that makes this extraordinarily difficult from my perspective.
BY MR. D'ANCONA:
Q. Blackfish was difficult to rebut?
A. It was --
MR. YOUNGWOOD: Objection to form.
THE WITNESS: It was difficult to rebut, and we had gone to some lengths to -- to analyze the film frame by frame, so some fine work that had been done cataloguing every inconsistency, everything in it that's misleading, every error in fact, everything in it, scrupulously cited, and that document exists to this day. And so they -- you know, you're looking at, you know, I think it's 69 or 70 things that -- that we found wrong with the film.
But my position at the time was if it's not on that list, then it must be right, and that's what we have to deal with, that's what we have to focus on. So that was my concern then.

And again, the -- the people in it, Jeff Ventre and John Jett, you know, all of those trainers, in-water trainers, some of the most experienced in the -- and John Hargrove -- you know, in the country, they know so much, and even if you could dismiss them all as, you know, disgruntled former employees with an axe to grind, you know, you're still left with people offering insights on their experiences at SeaWorld and they -- they're standing behind them. So that -- that made it very difficult from my perspective.
(Whereupon, a document was marked, for identification purposes, as Jacobs Exhibit 4.)
BY MR. D'ANCONA:
Q. So you've been handed what's been marked as Jacobs Exhibit No. 4. Before we get into this document, just a couple questions.
I believe you -- you mentioned this earlier, but do you -- do you recall that Blackfish was being covered by mainstream media including the show Nightline, ABC World News with Diane Sawyer, in June of 2013?

MR. YOUNGWOOD: Objection to form.
THE WITNESS: I don't specifically recall those media outlets, but I know that there was media attention, and the -- the document certainly suggests that that was something we were dealing with.
MR. D'ANCONA: Okay.
BY MR. D'ANCONA:
Q. So looking at the document, it's a -- it's a June 26, 2013, E-mail from Tony Taylor to a group of individuals, including yourself.
Do you see that, sir?
A. Yes.
[redacted]

[redacted]

[redacted]

[redacted]
Q. Did you anticipate further media attention to Blackfish as it was released in theaters?
A. Yes.
Q. Did you anticipate further media attention to Blackfish as it was shown on CNN?
A. We -- I -- I frankly kind of dismissed the prospect of the CNN airings because CNN had such poor ratings. I couldn't imagine that their brand new documentary division would be any different.
I didn't anticipate, I don't think anybody anticipated what they did. The lengths that they went to to promote the film with their news division and then their obsessive airing of it, hundreds of times they aired that film. I don't think -- I didn't anticipate that, I don't think anybody else anticipated it either.
Q. When did you recognize that CNN's

heavy promotion of the film was going to be greater than you'd expect?

A. Well, I think as soon as they really started to -- to -- you know, they were dispatching crews across, you know, all of their news programming. I found that deeply offensive as a, you know, as a former journalist. I thought it was an enormous breach of ethics and said so at every opportunity. And they didn't care, obviously, and I don't think anybody else cared either.

The fact that they were -- they had a financial interest in this film and that they were using the news division, which is supposed to be objective and fair-minded to promote it, I thought was outrageous. But even I was really surprised at the -- at the -- at the amount of -- of coverage that they were devoting. I think we had done some analysis later that, you know, they -- they were covering it six, seven times more than their competitors. To me, that was just outrageous.

[redacted]

[redacted]

Q. And if you saw an increase in

references to Blackfish, what would -- what would your takeaway be from that?

A. Well, that something had occurred to -- to in --

MR. YOUNGWOOD: Object to form.

THE WITNESS: -- excuse me, to increase the -- so yeah, so there might be -- you know, there -- there might be a letter-writing campaign for PETA or something, which would inspire social media activity that we would see in our monitoring.

Clearly any mainstream media coverage I would know about because they would have reached out to us. It was very unusual to have anyone in the media cover this story -- there were exceptions, but very unusual for them to cover this story without reaching out to us. A lot of the reviewers never bothered to -- to contact us. In fact, virtually none contacted us.

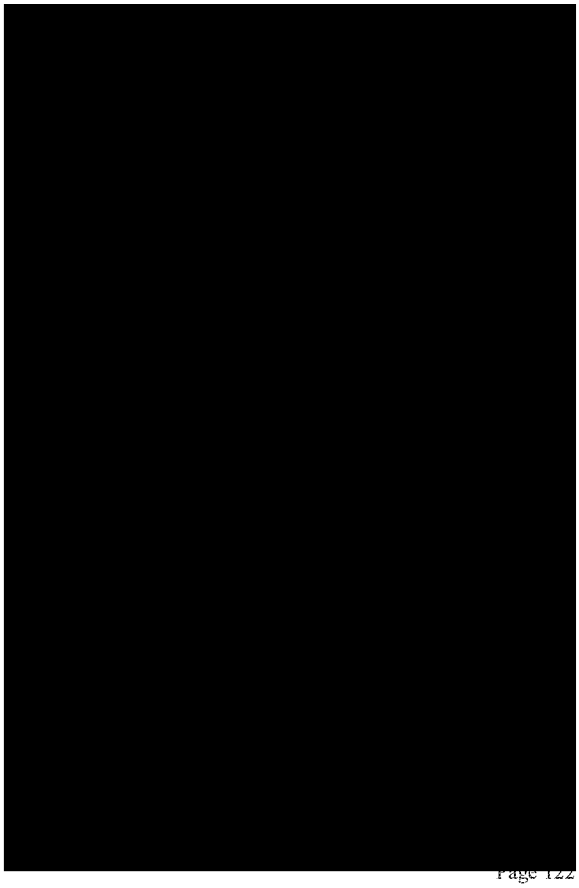
But other than that, we would know in advance if there was going to be a story in the paper or on TV about it. But it was the other things, the social things that were -- you know, that we needed to track to sort of

understand what the -- you know, what the tenor of the debate was.

BY MR. D'ANCONA:

[redacted]

BY MR. D'ANCONA:



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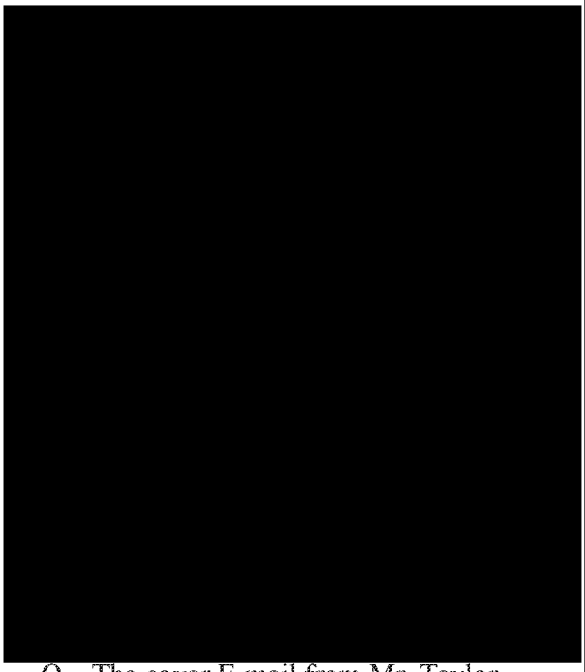

Q. The cover E-mail from Mr. Taylor references PulsePoint Group. Do you see that?
A. Yes, I do.
Q. What was PulsePoint Group's role with respect to SeaWorld's Blackfish response in 2013?

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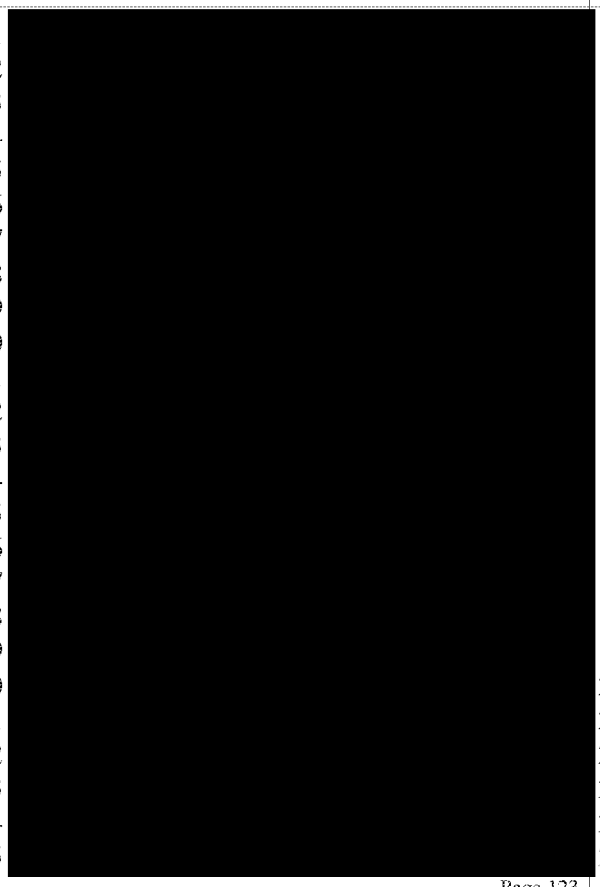

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A. Well, PulsePoint Group, right around this time, or presumably right before this time, had been hired to lead the campaign against Blackfish. They had hired or -- or subcontracted a portion of the plan to 42 West, which is a -- a communications firm that specializes in, you know, Hollywood film publicity. So I think -- I think Bob's -- Bob Feldman's instinct was that that kind of expertise could be useful, but the -- the, you know, 42 West is -- excuse me, PulsePoint Group was the company that -- the firm that the company decided to -- to take us through this.
Q. Had you worked with PulsePoint Group with respect to The Cove film?
A. I don't think so, no.
Q. Had you worked with PulsePoint Group with respect to any of the other films or books that came out about -- about the death of Miss Brancheau?
A. I don't recall ever working -- the -- working with PulsePoint Group before this, and then certainly I -- I think I would recall that. But they were hired as the result of

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the -- of a process that began, you know, several months earlier, and that was at the direction of Jim Atchison, who I believe was operating under the direction of the board of directors, that SeaWorld needed to have a communications agency, not just for Blackfish, but for, you know, any issues that might -- that might come up that would require, you know, good crisis management instinct.

So we had gone through a pretty lengthy process of identifying candidate agencies, and PulsePoint Group was one of them. They were one on my list, actually. So how we went from that process to actually contracting with them is -- some of that is a bit of a mystery to me, but...

Q. Had you worked with communication agencies around crisis management matters with respect to any of the prior books or movies that you mentioned related to the death of Miss Brancheau?

A. You know, it's possible that we had some boutique agencies that helped us with kind of tactical matters. We didn't have a, kind of an agency of record that I -- you

know, I would certainly recall. So we didn't have, you know, somebody on retainer that you would -- like an Edelman or something that you would call up.

Q. Was the -- was the -- were there more consultants involved in assisting SeaWorld with its Blackfish response than had been involved in assisting SeaWorld to respond to a prior PR crisis?

A. The -- yes, with one exception. The -- the -- like the death of Dawn Brancheau, we had a lot of consultant assistance that was given to us by Blackstone, so we had attorneys, we had public affairs experts, we had communications experts, we had the Blackstone communications team all assisting us during that early phase.

But as we -- as the dust sort of settled on that crisis, you know, other things would pop up; campaigns against us from animal rights organizations, the -- you know, the repeated OSHA trouble that we, you know, found ourselves in, which would be very newsworthy for a time.

But it was never -- it was always

my view that -- that unless you want to retain an agency on the scale that we used to retain Fleishman Hillard, that it was essentially useless. It would just take so much of my time to bring them up to speed and let them -- make them understand what the issues are and the culture. So it was just pointless, as far as I was concerned.

But the -- but Jim insisted that -- that we get an agency, and it just happened to coincide with Blackfish; that is the -- the -- the idea that we needed to have an agency of record predated Blackfish. But we -- since we had done all the work to -- to write the RFP and all that stuff, PulsePoint seemed like a good choice.

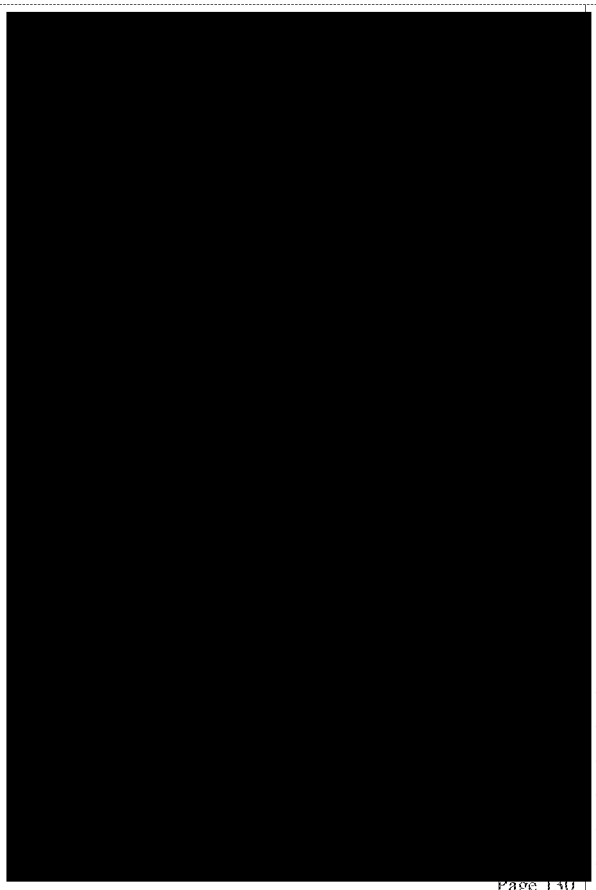
MR. D'ANCONA: Okay. Thank you. You can set that document aside.

Pull that document back out, Exhibit No. 4, please.

BY MR. D'ANCONA:

[redacted]

[redacted]



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Q. Okay.
In the first line you wrote --
actually, back up. Who is Miss Repass?
A. Kelly, at the time, was the director of research for the company.
Q. Okay.
And you wrote to Ms. Repass, "I know you've been in touch with our Blackfish consultants." Who did you mean by "our Blackfish consultants"?
A. I can't say for certain, but it's likely PulsePoint and perhaps Larry Iser who was one of our legal advisors.
Q. So did you consider PulsePoint a Blackfish consultant?
A. Yes.
Q. You go on to say, "It occurs to me that it would be useful to know more about national awareness of the film."
Why did you want to know more about national awareness of the film in July of 2013?
MR. YOUNGWOOD: Objection to form.
THE WITNESS: Because without -- if you didn't have that understanding, that

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MR. D'ANCONA: Okay. Now you can set that document aside.
(Whereupon, a document was marked, for identification purposes, as Jacobs Exhibit 5.)
MR. D'ANCONA: Sir, Jacobs Exhibit No. 5 has been placed before you. Please read it over.
(Whereupon, the witness reviews the exhibit.)
MR. D'ANCONA: For the record, this is an E-mail from Mr. Jacobs sent July 11th, 2013, to Kelly Repass. The Subject line is survey.
THE WITNESS: I've read it.
MR. D'ANCONA: Okay.
BY MR. D'ANCONA:
Q. And you sent this E-mail; correct, sir?
A. Yes, I did.

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how big a cultural phenomenon Blackfish was, you -- you risk making some very poor decisions.
Now, I was particularly at risk, because as I mentioned earlier, all I got was these negative inputs all day every day. So for me, it was useful to know how many people really do know about this movie. And if that number is really small, then we need to -- we need to respond appropriately. If that number is huge, that's a completely different path that we have to take.
So before we started making a lot of very, very costly decisions, I just felt like we needed to know what the real threat was.
BY MR. D'ANCONA:
Q. At the bottom of the E-mail you say, "I just spoke with Tony and he agrees." Do you see that?
A. Yes, I do.
Q. Do you recall discussing with -- strike that.
Is that Tony Taylor?
A. Yes, it is.

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Q. Do you recall discussing with Mr. Taylor the proposition of doing a survey concerning national awareness of Blackfish in July of 2013?
A. Yes, I do.
Q. What do you recall discussing with Mr. Taylor?
A. Well, because -- let me back up. PulsePoint Group had a connection that was unknown to me before -- before I started the search, the recruitment for this agency. And -- and that seemed to be an issue as we moved forward. And what I mean by that is I -- I sought out PulsePoint Group based solely on what I had -- the research I had done on their expertise, their crisis work, their work with issues similar to this. So that's why they were on my list and that's why I reached out to Bob with kind of a summary document explaining what we were prepared to spend and what we wanted to accomplish.
Q. That's Bob Feldman?
A. Bob Feldman, yes.
Q. And he's PulsePoint?
A. That's right.

Q. Okay.
A. And it was my understanding that at that point, Bob reached out to David D'Alessandro, who was our chairman of the board, because they were classmates at, I think it was Cornell, and I had -- so that conversation obviously occurred without me being present.
But apparently -- and I know this because either -- it was either Tony or Jim had conveyed to me that David thought that our approach in the RFP was all wrong. He said that it -- that it -- that we weren't likely to get anybody interested in representing us because the -- the -- you know, the scale of the retainer was too low, the -- the focus of the work was too narrow, and he felt we were out of line by -- by doing that, by -- by recruiting agencies in that way.
And I said look, this -- we are recruiting agencies based on the exact criteria given to us by Jim Atchison. It's that simple. Every word in it, you know, the focusing on mid to small agencies, a retained relationship of a modest amount of money, all

of those things were given to us, that direction was given to us by Jim, and I was simply following those directions really to the letter.
So the idea that we would dangle in front of somebody an enormous, you know, retainer, that was contrary to Jim's direction.
I didn't think too much about it after that, but we never completed the -- the process of recruiting. Not long after the process had begun, we simply hired PulsePoint Group.
Q. So how did that bear upon your thinking on or what you discussed with Mr. Taylor about running surveys to know more about national awareness of the film in July?
A. Well, given the relationship of Bob with David D'Alessandro, I was uncertain of my own authority, either as a tactical matter or as a strategic matter. And if the decision on who we were going to work with was being made at that level, then maybe I don't have the authority to do what I think is transparently a good idea, and that is to start gauging

public awareness.
So I went to Tony and he says, don't be ridiculous, it's a good idea, let's do it. And -- and he reminded me that I was the head of communications for SeaWorld Entertainment and -- and, you know, that comes with a certain amount of authority.
So I was -- I appreciated that very much because I wasn't now in the service of PulsePoint Group.
Q. I see.
A. PulsePoint was in the service of SeaWorld.

[redacted]

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[redacted]

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BY MR. D'ANCONA:

Q. Are you aware of an association in the United Kingdom called the Scout Association?

A. I believe that's a variant of the Boy Scouts of America, or their version of the Boy Scouts.

(Whereupon, a document was marked, for identification purposes, as Jacobs Exhibit 10.)

MR. D'ANCONA: For the record, Jacobs Exhibit No. 10 has been passed to the witness. It's an E-mail from Neil Foster on August 6, 2013, to Fred Jacobs and others.

[redacted]

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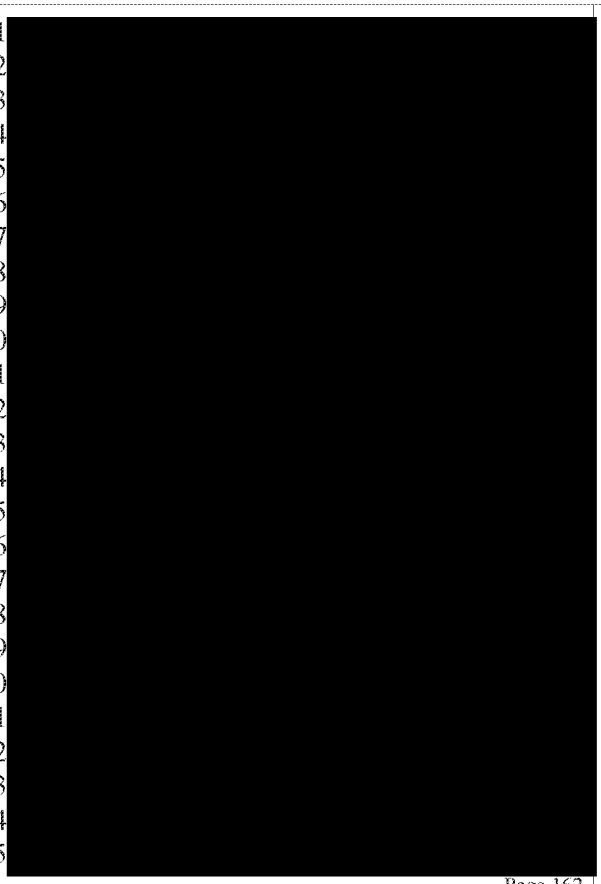

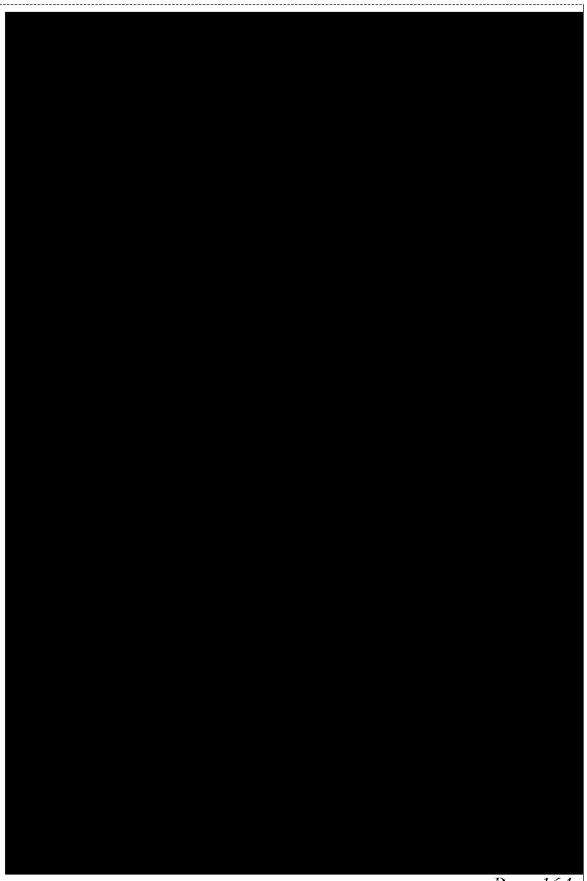

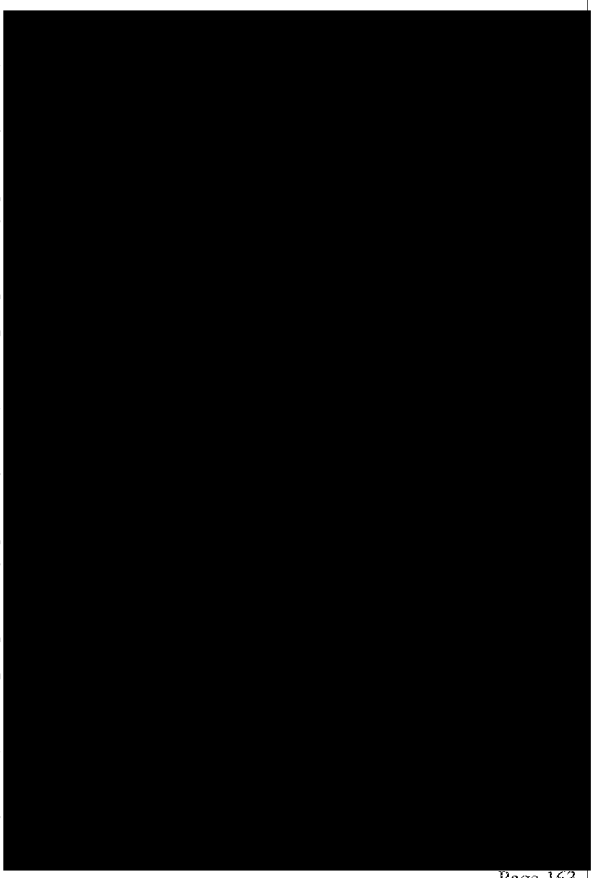

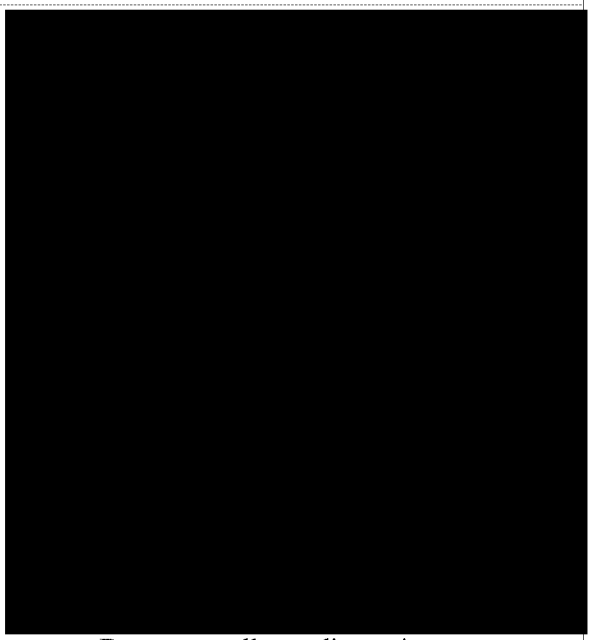

Do you recall any discussions about impacts of -- of Blackfish on tour operators actually getting people to come to SeaWorld after August of 2013?

A. Yes. It was always -- you know, there was always the potential issue that something like this would affect our -- our

to cut it off in October -- or excuse me, in August.

[redacted]

[redacted]

[redacted]

Q. In your mind, if someone intended to see the movie, was that -- did you view that as -- as bad news for SeaWorld?

A. Yeah.

Q. Okay.

Do you recall what you made of the fact that the national awareness level went from 5.2 percent the prior week to 7.9 percent in -- in week five?

A. I don't recall.

Q. Okay. That's a large growth in awareness over one week; would you agree with that?

A. I would.

Q. At the time of this E-mail, did you believe that increasing awareness and an intent to see Blackfish was injuring SeaWorld's reputation?

MR. YOUNGWOOD: Objection to form.

THE WITNESS: Would you repeat the

question?

MR. D'ANCONA: Sure.

BY MR. D'ANCONA:

Q. At the time of this E-mail when you had these study results, August 20th, 2013, did you believe that growing national awareness of Blackfish and intent to see the film was hurting SeaWorld's reputation?

MR. YOUNGWOOD: Objection to form.

THE WITNESS: Yes. Just a question of how much.

BY MR. D'ANCONA:

Q. Do you know of any analysis that had been done by August 20th, or around August 20th, 2013, to determine whether this increasing awareness of Blackfish seen in the survey data could be linked to an attendance impact at SeaWorld parks from people hearing or seeing both?

MR. YOUNGWOOD: Objection to form.

THE WITNESS: Yeah, I don't know if that research had been commissioned or even contemplated.

BY MR. D'ANCONA:

Q. Aside from whether it was done or

not, do you recall any discussions about the potential for research or the need to do research along those lines to -- to try to connect information in the data that you had about awareness of the film and intent -- intent to see the film and to connect that with potential attendance impact or business impact on SeaWorld?

MR. YOUNGWOOD: Object to the form.

THE WITNESS: Not that I recall, but you would, you know, look for a leading indicator. You know, you've got attendance softness someplace that you hadn't anticipated. You know, the -- you start to look for reasons why. But in the, you know, the theme park business, it's very, very difficult to determine why somebody didn't come. So to tie anything to attendance, you know, is a -- sort of an exercise in theory, opinion in a lot of cases. It's --

BY MR. D'ANCONA:

Q. Are you -- I'm sorry, I didn't mean to cut you off.

A. No, no. And I'm kind of getting out

of my sphere here, you know. That was sort of a marketing/sales thing.

Q. It was a -- it was a marketing/sales -- it was in the marketing/sales domain to analyze and determine reasons why people were not coming to the park?

A. Yeah.

MR. YOUNGWOOD: Objection to form.

BY MR. D'ANCONA:

Q. And is that -- was that true in your experience at -- at SeaWorld? Was the marketing and sales teams, it was within their -- the ambit of their responsibilities to explain reasons for why people were not coming to SeaWorld parks?

MR. YOUNGWOOD: Objection to form.

THE WITNESS: Yes.

MR. D'ANCONA: Okay.

BY MR. D'ANCONA:

Q. And would those be the marketing and sales people that you referenced in your prior answer, would those be the marketing and sales people at the particular parks?

MR. YOUNGWOOD: Objection to form.

THE WITNESS: Yes. And the corporate marketing and sales teams.

MR. D'ANCONA: Okay.

BY MR. D'ANCONA:

Q. Did you have any -- well, strike that.

[redacted]

[redacted]

MR. D'ANCONA: Okay. Okay. You can set that document aside.

(Whereupon, a document was marked, for identification purposes, as Jacobs Exhibit 13.)

MR. D'ANCONA: Jacobs Exhibit No. 13 is an E-mail from Mr. Jacobs on August 28th, 2013, to Darla Morse, "Subject: Re: (BN) SeaWorld Slashes Park Prices Amid Attendance Drop, Orca Critique."

BY MR. D'ANCONA:
Q. Do you see that, sir?
A. Yes.
Q. Have you had a chance to look over this E-mail?
A. Yes.
Q. Okay.
You sent this E-mail to Darla Morse; correct?
A. Yes.
Q. Okay.
And your E-mail at the bottom contains a copy of an August 28th, 2013, article that appeared in Bloomberg authored by Christopher Palmeri. Do you see that?
A. Yes, I do.
Q. Is this the Bloomberg reporter who you referenced in your testimony earlier this morning?
A. Yes.
Q. Okay.
The article generally addresses an attendance drop at SeaWorld in 2013; is that fair?
A. Yes.

Q. On the page of the exhibit bearing the Bates number ending 310, there is a paragraph that says, "The company is also coping."
Do you see that?
A. Yes, I do.
Q. "The company is also coping," it says, "with negative publicity from Blackfish released in U.S. theaters on July 19th, which began getting attention after its premier at the Sundance Film Festival in January. Quote, We can attribute no attendance impact at all to the movie, Jacobs said."
Do you see that?
A. Yes.
Q. Did you provide the quoted statement that appears there to a reporter from Bloomberg?
A. Yes.
Q. Was that a true statement when you made it?
MR. YOUNGWOOD: Objection to form.
THE WITNESS: No.
BY MR. D'ANCONA:
Q. It says --

A. That is in -- that is I could attribute -- let me -- let me clarify this.
Q. Yeah, explain.
A. For this statement to be true, not a single person who was contemplating a visit to SeaWorld and changed their mind because of Blackfish came. That -- so the statement is unequivocal and I just can't conceive that it isn't -- you know, that there wasn't at least one person out there who changed their mind about visiting SeaWorld because of Blackfish.
Q. When you made your statement, did you know whether it was -- you did not know whether it was true or not; is that fair?
MR. YOUNGWOOD: Objection to form.
THE WITNESS: I didn't believe it to be true.
MR. D'ANCONA: Okay.
BY MR. D'ANCONA:
Q. In the E-mail at the top of this thread from yourself to Darla Morse --
A. Um-hmm.
Q. -- I draw your attention to that.
Who is Darla Morse?
A. Darla was the chief IT officer for

the company at that time.
Q. And you're responding in your E-mail to a question from Ms. Morse, and you say, "I guess he figures our attendance softness is influenced in part by consumer response to Blackfish. It's a theory that is impossible to prove or disprove."
Do you see that?
A. Yes.
Q. When you say, "It's a theory that is impossible to prove or dis -- disprove," please explain what you meant.
A. Well, as I said earlier, it -- trying to determine why somebody didn't visit a theme park is difficult to do. It -- so the -- well, there's a couple of things. So whatever decrement that you're talking about, say it's -- you're down 100,000. So you have to determine, really through educated guesses, whether a single cause is responsible for that decrement, or multiple causes are responsible for that decrement. And then you apportion how much each of those is responsible for a given amount of the attendance decline.
So that's what I mean by the --

there's just simply no way to identify the 100,000 people who are going to come but then didn't, and then ask them or try to determine why is it that you decided not to come.

So was it -- you know, was it a financial issue? Was it an exchange rate issue? Was it a weather issue? What is it?

But absent that, it's very, very difficult to determine, you know, what -- why somebody didn't come.

Q. Why didn't you say that to Bloomberg? Why did you say -- if you didn't believe your statement to be true --

A. Um-hmm.

Q. -- instead you believed what you said to Miss Morse to be the case, why didn't you -- why didn't you say that to Bloomberg?

MR. YOUNGWOOD: Objection to form.

THE WITNESS: I was instructed to answer the question by Jim Atchison.

MR. D'ANCONA: I see.

BY MR. D'ANCONA:

Q. Are you aware of any -- any factual basis that Jim Atchison had in his possession that supported that statement when you made

recall like that.

BY MR. D'ANCONA:

Q. And you said that was with an executive?

A. I believe so. I mean, it's -- I -- the broad term would -- would sort of cover just about everybody in the corporate office, so it's -- you know, I wouldn't want to, you know, put more to it than that.

Q. Do you recall whether it was in calendar year 2013?

MR. YOUNGWOOD: Objection to form.

THE WITNESS: No.

BY MR. D'ANCONA:

Q. Do you recall it being a discussion of -- of statements to the effect that Blackfish is having no impact on the business?

MR. YOUNGWOOD: Objection to form.

THE WITNESS: Yes, it would be a statement about how unequivocal the -- the comment was, either in the paper or with analysts or -- or whatever -- whatever the context was, it was too unequivocal.

MR. D'ANCONA: Okay.

THE WITNESS: Josh, after this,

it?

A. No.

MR. YOUNGWOOD: Objection to form.

MR. D'ANCONA: Okay. You can set that document aside.

BY MR. D'ANCONA:

Q. Mr. Jacobs, did you ever say to Mr. Atchison that you did not believe what you said to the Bloomberg reporter to be true?

A. I don't believe so.

Q. Do you recall any discussions with any -- do you recall any discussions with any colleagues at SeaWorld in -- at any time in 2013 to the -- to the effect that that statement was not true?

MR. YOUNGWOOD: Objection to form.

THE WITNESS: I have a -- kind of a vague recollection of a conversation, and it's -- I can't even tell you who it was with, in which whoever the executive was said something to the effect of, we need to stop answering questions that way or questions that way or something to that effect, and I apologize that I don't have a keener memory of it, but that's the only conversation that I

can we get a quick break, very quick?

MR. D'ANCONA: Sure. You know what, we can take a break right now, before we get into the document.

THE WITNESS: Are you sure?

MR. D'ANCONA: Absolutely. Can we go off the record.

THE VIDEOGRAPHER: Off the record at 2:54.

(Whereupon, a recess was taken at the above time.)

(Whereupon, a document was marked, for identification purposes, as Jacobs Exhibit 14.)

THE VIDEOGRAPHER: The time now is 3:03, back on the record, beginning of Disk No. 4.

BY MR. D'ANCONA:

Q. Welcome back, Mr. Jacobs.

A. Um-hmm.

Q. You've been handed what's marked as Jacobs Exhibit No. 14. Have you got that before you, sir?

A. Yes.

Q. Have you had a chance to look that

over?
A. Yes, I have.
Q. Okay.

[redacted]

[redacted]

[redacted]

MR. D'ANCONA: Okay. You can set that aside.

(Whereupon, a document was marked, for identification purposes, as Jacobs Exhibit 15.)

BY MR. D'ANCONA:

Q. Mr. Jacobs, Jacobs Exhibit No. 15 has been placed before you. It is an E-mail from you on August 30th, 2013, to Jim Atchison, Tony Taylor, Jim Heaney, Marc Swanson and others.

A. Um-hmm.

Q. The subject is "LA Times Story."

Do you see that?

A. Yes, I do.

Q. Do you recall sending this E-mail?

A. Yes, I do.

Q. Okay.

What do you recall about sending this E-mail?

A. My recollection is that when the story appeared that my quote about slashing

prices required some explanation. So the -- it -- that seems to be why I sent it, so that they would know the full context of why I said that thing that I'm quoted as saying.

Q. I see.

Your E-mail copies an article by Hugo Martin from the LA Times; is that correct?

A. That's correct.

Q. Okay.

Do you recall that this article originally was published on August 29th?

MR. YOUNGWOOD: Objection to form.

THE WITNESS: I don't recall the date of publication.

MR. D'ANCONA: Okay.

BY MR. D'ANCONA:

Q. In any event, you are circulating this at 7:36 in the morning on August 30th; correct?

A. Yes.

Q. Okay.

In the LA Times story, you are quoted as saying, "We are not slashing prices, period, Fred Jacobs, vice president of