

EXHIBIT 104

Nelson, et al. v. Cuban, et al.
United States District Court, Northern District of California
Case No. 3:09-CV-682 PJH

*Exhibit 104 to Supplemental Declaration of John D. O'Connor in Opposition to
Defendant's Special Motion to Strike*

Oral Deposition of **Floyd Jahner**

Date: May 20, 2009

Volume:

Case: Richard Roe, et al. v. John Doe, Mark Cuban, et al.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN CALIFORNIA

RICHARD ROE, RICHARD ROE II, DON)
A. NELSON, Individuals,)
)
Plaintiffs,)

vs.)

CASE NO:
3:09-CV-682 PJH

JOHN DOE, MARK CUBAN, an)
individual; and DALLAS)
BASKETBALL, LTD., a partnership,)
and DOES 1 through 10,)
)
Defendants.)

ORAL DEPOSITION OF
FLOYD JAHNER
May 20th, 2009

ANSWERS AND DEPOSITION of FLOYD JAHNER,
taken at the instance of the Plaintiffs, on the 20th
day of May, A.D., 2009, between the hours of 2:54 p.m.
and 4:22 p.m., in the above styled and numbered cause
at the offices of Jackson Walker, L.L.P., 901 Main
Street, Suite 6000, in Dallas, Dallas County, Texas,
before Jerry L. Callaway, RDR, a Certified Shorthand
Reporter in and for the State of Texas, pursuant to the
Federal Rules of Civil Procedure and the provisions
stated on the record.

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6 **APPEARANCES**
7
8
9 **APPEARING FOR THE PLAINTIFFS:**
10 **Mr. John D. O'Connor**
11 **O'CONNOR AND ASSOCIATES**
12 **One Embarcadero Center**
13 **Tenth Floor, Suite 1020**
14 **San Francisco, California 94111**
15
16 **APPEARING FOR THE DEFENDANTS:**
17
18 **Ms. Amanda L. Bush**
19 **JACKSON WALKER, L.L.P.**
20 **100 Congress Avenue**
21 **Suite 1100**
22 **Austin, Texas 78701**
23 **Also Present:**
24 **Mr. Robert Hart**
25

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1 **haven't you?**
2 **A. A few.**
3 **Q. A few preliminary matters, Mr. Jahner. Today**
4 **are you the CFO of Dallas Basketball?**
5 **A. Yes.**
6 **Q. And were you the CFO back in June of 2006?**
7 **A. Yes.**
8 **Q. Also the CFO in March of 2005?**
9 **A. Yes.**
10 **Q. Was one of your job duties keeping track for**
11 **financial purposes of contractual obligations?**
12 **A. Yes.**
13 **Q. You needed to know when you – when and how**
14 **much you should pay on a particular contract?**
15 **A. Yes.**
16 **Q. You also would like to know if a contract's**
17 **been terminated so you won't make payments that you**
18 **shouldn't make, true?**
19 **A. Yes.**
20 **Q. All right. Generally, regarding Mr. Nelson,**
21 **you had had various discussions both with Mr. Cuban and**
22 **Mr. Nelson stemming from a time period in June, July,**
23 **and August 2006, correct?**
24 **A. Yes, various conversations with Mr. Nelson and**
25 **at least possibly some e-mails conversations with**

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1 **FLOYD JAHNER,**
2 **having been first duly sworn, testified as follows:**
3 **EXAMINATION**
4 **BY MR. O'CONNOR:**
5 **Q. State your full name, please.**
6 **A. Floyd Jahner.**
7 **Q. Who is your present employer?**
8 **A. Dallas Basketball, Ltd.**
9 **Q. Also known as the Dallas Mavericks?**
10 **A. Correct.**
11 **Q. And do you report in part to Mark Cuban?**
12 **A. Indirectly, yes.**
13 **Q. You sometimes have direct e-mail communication**
14 **with him and sometimes get instruction or direction**
15 **directly from Mr. Cuban?**
16 **A. Yes.**
17 **Q. Okay. You are familiar, Mr. Jahner, with the**
18 **circumstances surrounding the contractual dispute**
19 **between former Mavericks coach Don Nelson and the**
20 **Mavericks?**
21 **A. Generally, yes.**
22 **Q. Okay. You have been deposed in this case, and**
23 **you have also testified at arbitration, correct?**
24 **A. Correct.**
25 **Q. You have seen a lot of lawyers in this case,**

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1 **Mr. Cuban.**
2 **Q. Okay. Is it fair to say that all of your**
3 **communications on this subject about what to do, what**
4 **not to do, and why with Mr. Cuban were conducted by**
5 **e-mail?**
6 **A. Generally most would be done by e-mail. I**
7 **can't say exactly all of them were.**
8 **Q. Okay. Let me refer to page 739, line 17 to --**
9 **to page 740, line 9 of your arbitration testimony. Let**
10 **me read it.**
11 **MS. BUSH: Are you referring to the**
12 **transcript, John?**
13 **MR. O'CONNOR: Yes, I am. I am sorry.**
14 **Q. (BY MR. O'CONNOR) Transcript of the**
15 **arbitration. First of all, Mr. Jahner, do you recall**
16 **testifying in the arbitration before Judge Ashworth in**
17 **the contractual dispute between Don Nelson and Dallas**
18 **Basketball?**
19 **A. Yes.**
20 **Q. Okay. Let me read to you and maybe you can**
21 **read along with me starting at page 739, line 17.**
22 **"Question: Okay. I want to talk just a**
23 **little bit about the failure to pay the consulting**
24 **salary that you discussed at some length with**
25 **Mr. Harper. First is it fair to say that all of your**

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1 communications on this subject about what to do, what
 2 not to do, and why with Mr. Cuban were – was conducted
 3 by e-mail?
 4 "Answer: Yes.
 5 "Question: Okay. If we want to know
 6 precisely what was said by each party, we've got a
 7 written record of it, right?
 8 "Answer: All of my -- all of my
 9 conversations with Mr. Cuban generally were all via
 10 e-mail, yes.
 11 "Question: Okay. And so in terms of
 12 Mr. Harper asking you about what Mr. Cuban might have
 13 intended or might have been thinking about when he told
 14 you to do this or that, all you know is the same thing
 15 the rest of us know, what's in these e-mails, right?
 16 "Answer: Correct."
 17 Those were true answers under oath at the
 18 time you gave them, weren't they, Mr. Jahner?
 19 A. Yes.
 20 Q. Okay. And, generally speaking, that's the way
 21 Mark Cuban did business; he sent e-mails back and forth
 22 to employees?
 23 MS. BUSH: Objection, form. Go ahead and
 24 answer.
 25 A. Generally, he communicated via e-mail, yes.

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1 Q. (BY MR. O'CONNOR) By the way, there may be –
 2 MS. BUSH: I may say objections.
 3 Q. (BY MR. O'CONNOR) There may be – from time
 4 to time your lawyer may object to a question I ask on
 5 the basis of form, and she needs to preserve these
 6 objections for the record. But unless she instructs
 7 you not to answer, you should go ahead and answer them,
 8 all right?
 9 A. All right.
 10 MS. BUSH: If I instruct you not to
 11 answer, that's different.
 12 THE WITNESS: Okay.
 13 Q. (BY MR. O'CONNOR) All right. You had various
 14 discussions with Mr. Nelson in July and early August of
 15 2006 about his consultant's salary, correct?
 16 A. Yes, I believe it was July/August time frame,
 17 yes.
 18 Q. Certainly in July you had those conversations,
 19 right?
 20 A. (Witness nods head.)
 21 Q. And at some point, perhaps sometime in early
 22 August, you also had conversations with Nelson's lawyer
 23 who I will refer to as O'Connor, right?
 24 A. Correct.
 25 Q. Okay. But am I correct that Mr. Cuban was not

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1 directly involved in conversations with Mr. Nelson
 2 about the consultant's issue during that time frame?
 3 MS. BUSH: Objection, form.
 4 A. That I don't know if he was or not.
 5 Q. (BY MR. O'CONNOR) You don't have any
 6 knowledge that he was, true?
 7 A. I don't have any knowledge that he
 8 communicated with anyone else regarding it.
 9 Q. You never saw an e-mail from Cuban to Nelson
 10 in that time frame, now let's stick with June, July,
 11 and early August of '06, up to August 15th just to make
 12 it simple, from July 1 to August -- from June 1 to
 13 August 15th of '06, you never saw any e-mails between
 14 the two of them, did you?
 15 A. I can't recall any specific that I can
 16 remember.
 17 Q. Okay. And you were never told by Mr. Cuban of
 18 any conversations he had with Nelson, true?
 19 A. Not that -- not that I can recall.
 20 Q. Okay. And in your conversations with Coach
 21 Nelson, he never referred to any conversations that he
 22 purportedly had with Mark, true?
 23 A. I can't specifically recall anything that
 24 where he stated he was talking with Mark.
 25 Q. Now, did there come a time in June of '06,

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1 Mr. Jahner, when the subject came up of what Mr. Nelson
 2 would be owed once his coaching term had ended on June
 3 30th of 2006?
 4 A. Yes, I believe that was in June.
 5 Q. Okay. And you have some exhibits in front of
 6 you, I think, that your lawyer has. Again, if I could
 7 turn your attention to Exhibit 7. You sent an e-mail
 8 on page 2 of Exhibit 7, did you not, at 1:56 in the
 9 afternoon on June 26th? Can you look at the last
 10 e-mail of this string?
 11 A. Yes.
 12 Q. Okay. You state to Mr. Cuban, "We are cutting
 13 all of the Nellie's benefits effective 6/30/06. He
 14 will get the consultant's salary and no benefits."
 15 Then you ask him some things about tickets, whether or
 16 not you need to change tickets and so forth. But let's
 17 stick to the statement, "he will get the consultant's
 18 salary and no benefits."
 19 Upon what did you base that statement,
 20 Mr. Jahner?
 21 A. That was just my interpretation of the deal at
 22 the time.
 23 Q. Okay. You had access to the various contracts
 24 in the Mavericks' files, correct?
 25 A. Correct.

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1 Q. Okay. You hadn't seen an amendment at that
 2 time in writing cutting out the obligation to pay
 3 Nelson that summer, true?
 4 A. Correct.
 5 Q. Under the contract at issue, at least in terms
 6 of the schedules in writing, Nelson was scheduled to
 7 start receiving consultant's salary at the end of his
 8 coaching term of June 30, 2006, and was to receive
 9 \$200,000 a year for the next five years. Was that
 10 roughly correct?
 11 A. Correct.
 12 Q. Okay. Had you reviewed the written contract
 13 when you say he will get the consultant's salary and no
 14 benefits?
 15 A. I can't recall if I actually went back to the
 16 contract or just my general understanding.
 17 Q. Okay. Now, Mark replies to you, quote,
 18 "Actually, I think he can keep the ticks if he pays
 19 us -- if he pays for them, and he no long" -- it's "no
 20 longer," "and he no longer gets the consultant's
 21 salary, if I remember correctly, that was part of the
 22 termination deal." Do you see that?
 23 A. Yes.
 24 Q. Okay. Now, you knew that Mark had had a
 25 personal meeting with Coach Nelson in March of '05

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1 when, to your understanding, Coach Nelson and Mr. Cuban
 2 agreed that Nelson would step down as coach; is that
 3 roughly correct?
 4 A. I'm not sure if they actually met personally
 5 or who or how that came about, but in March of '05,
 6 roughly, that is the time frame that he agreed --
 7 Q. Okay.
 8 A. -- to step down.
 9 Q. And you knew at least that after this
 10 conversation with -- between Nelson and Cuban in March
 11 of '05, that Nelson quit coaching the Mavericks,
 12 correct?
 13 A. Yes, as effective March '05.
 14 Q. Okay. Did you actually go to the press
 15 conference where the two of them announced what they
 16 were doing?
 17 A. I don't believe so.
 18 Q. Okay. But in any case, somewhere after that
 19 meeting, you came to the understanding that Coach
 20 Nelson would continue to be paid his coaching salary
 21 through June 30th of '06.
 22 A. Yes.
 23 Q. And, in fact, you as the CFO saw to it that he
 24 was paid his coaching salary through June 30th, '06.
 25 A. Correct.

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1 Q. And in addition to the current coaching salary
 2 that was due him, from time to time there were deferred
 3 compensation payments made as well.
 4 A. I'm trying to recall if a piece of that was
 5 deferred or if it was all current. I'm not certain
 6 right now.
 7 Q. Somewhere, and I don't -- it's not important
 8 for purposes of my discussion today, but there was some
 9 payment of deferred compensation somewhere before Coach
 10 Nelson left the organization, true?
 11 A. Honestly, I can't recall with certainty today.
 12 Q. Fair enough. Fair enough. It's not
 13 important. Not important.
 14 All right. Now, if you look at the
 15 e-mail you got from Mr. Cuban in response to yours of
 16 June 26th --
 17 A. Okay.
 18 Q. -- where he says, "He no longer gets the
 19 consultant's salary, if I remember correctly, that was
 20 part of the termination deal."
 21 Did you understand that the conversation
 22 that Coach Nelson and Mr. Cuban had in March of '05 was
 23 a deal in which they discussed the terms of Nelson's
 24 termination?
 25 MS. BUSH: Objection, form.

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1 A. One, again, I am not certain they meant to
 2 discuss that; and I guess I wouldn't consider it a
 3 termination, I guess as, you know, he was continued to
 4 be paid under the deal. It was a -- if I remember
 5 correctly, you know, more of a -- I think the words
 6 were like change of duty or something.
 7 Q. (BY MR. O'CONNOR) Exactly. Exactly. Now,
 8 you've been involved in cases with employees where an
 9 employee will cut a deal with the company, and the
 10 company will agree that the employee can stay on for so
 11 long and get so much salary for so long, true?
 12 MS. BUSH: Objection, form.
 13 A. I'm familiar with deals like that.
 14 Q. (BY MR. O'CONNOR) Yeah. In other words, you
 15 are familiar with deals in which a company might say to
 16 the employee, we agree that we are going to keep paying
 17 your salary for six years -- for six months, rather,
 18 and you can stay on, and at the end of six months
 19 you've got to go, that sort of thing? Okay.
 20 A. Correct.
 21 Q. Okay. And what exactly their termination deal
 22 was as it related to oral conversations you may have
 23 had some questions about, correct?
 24 MS. BUSH: Objection, form.
 25 A. I guess I -- the only questions I had would be

1 just to get an understanding of what the deal was going
 2 forward.
 3 Q. (BY MR. O'CONNOR) Okay. Okay. You -- just
 4 to say now, Mark tells you that was part of the
 5 termination deal, that is to say not to pay the
 6 consultant's salary; that's what he told you, wasn't
 7 it? That's the way you took it, right?
 8 A. Yes. That he -- he basically didn't remember
 9 that as being part of the deal, so...
 10 Q. Okay. Okay. You went into your file, and you
 11 looked at an e-mail from Mr. Cuban back in March of
 12 1985 -- March of 2005, correct?
 13 Well, let me go to -- let me go to
 14 Exhibit 7, Mr. Jahner.
 15 A. Right.
 16 Q. And an e-mail from you June 27th at 7:36 a.m.
 17 A. Right, based on that e-mail, that would be
 18 correct, I went to the file to check that.
 19 Q. Okay. What you say is, "On the consultant's
 20 salary I waited to check my file this morning, but I
 21 have an e-mail from you back in March of 2005 which
 22 states his dollars stay the same and no changes to the
 23 contract. This would have us pay him \$2,000 (sic) per
 24 year for the next five years as a consultant."
 25 That's the way you interpreted

1 Q. (BY MR. O'CONNOR) Okay. So Mr. Cuban says,
 2 "Let's not pay it."
 3 As a result of what Mr. Cuban told you,
 4 you took the \$200,000 consultant's pay from the
 5 schedules for the next five years, correct?
 6 A. Yes.
 7 Q. Okay. You anticipated then that maybe Nellie
 8 would disagree with this, true?
 9 MS. BUSH: Objection, form.
 10 A. Didn't necessarily anticipate it. I just said
 11 if he doesn't, I guess, if he doesn't agree.
 12 Q. (BY MR. O'CONNOR) Okay. You say, "If Nellie
 13 doesn't remember this, can I have him e-mail/discuss
 14 with you," correct?
 15 A. Yes.
 16 Q. Okay. And Mr. Cuban says, "Just see what he
 17 comes back with. If he questions, we can go from
 18 there." That was -- these e-mails really reflect your
 19 state of knowledge of Mr. -- this is all you knew about
 20 Mr. Cuban's state of mind about that meeting are the
 21 e-mails we have in front of us. That's all you knew at
 22 least as of June 27th, '06, correct?
 23 MS. BUSH: Objection, form.
 24 A. I can't reply to his state of mind regarding,
 25 you know, his comments, I guess.

1 Mr. Cuban's e-mail back in 2005, where he says "no
 2 changes to the contract, dollars stay the same," right?
 3 A. Correct, except 200,000.
 4 Q. Yeah, what did I say?
 5 A. 2,000.
 6 Q. Yeah, 200,000. I'm sorry. I misspoke.
 7 Then Mr. Cuban replies, "I might have
 8 left it out of the e-mail, but we didn't agree that we
 9 would pay the \$200,000, so let's not pay it."
 10 After you saw this, did you think there
 11 might be some discrepancy between Mr. Cuban's
 12 remembrance of the oral conversation and agreement with
 13 Nelson and what was reflected in the e-mail?
 14 MS. BUSH: Objection, form.
 15 A. I don't say a discrepancy of his remembrance,
 16 I will just say my understanding that Mr. Cuban stated
 17 they agreed not to pay it, so...
 18 Q. (BY MR. O'CONNOR) Okay. You knew that it was
 19 possible that they could have talked in vague terms
 20 something to the effect of what I'll pay you is the
 21 coaching salary, and perhaps there is room for
 22 interpretation to imply that maybe there wasn't a
 23 consultant's salary agreed to, correct?
 24 MS. BUSH: Objection, form.
 25 A. Correct.

1 Q. (BY MR. O'CONNOR) Right. Exactly. I really
 2 should ask it another way.
 3 Other than is contained in these e-mails,
 4 you didn't get any other information from Mr. Cuban
 5 about his conversations with Mr. Nelson?
 6 A. Not that I am aware of.
 7 Q. Okay. So the first time that Mr. Nelson would
 8 be due any consultant's pay, if at all, would have been
 9 on July 15th of '06, that would be the first two-week
 10 pay period of the June 30 calendar year.
 11 A. Yes, correct.
 12 Q. Okay. Did Mr. Nelson call you up?
 13 A. Yes, later in July, I believe it was.
 14 Q. Okay. And he told you that the consultant's
 15 salary was not included in his compensation, right?
 16 A. Correct.
 17 Q. Okay. Let's go to Exhibit 8, and I think it's
 18 the second-to-the-last page, an e-mail from Mark -- or
 19 from you to Mark Cuban, July 26 at 3:56. Do you see an
 20 e-mail starting with "I got a call from Nellie"? I
 21 think it should be --
 22 A. Looks like on page --
 23 Q. Third page of the exhibit, of the e-mail
 24 chain.
 25 A. Okay.

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1 Q. Okay. "I got a call from Nellie regarding his
 2 check and the 200,000 that we did not include in his
 3 compensation."
 4 You had told him your understanding that
 5 Mark said that you didn't agree that he would be paid
 6 this money, true?
 7 A. I told Mr. Nelson that it was Mark's
 8 understanding that it wasn't agreed to be paid.
 9 Q. Okay. Nellie disagreed with that, correct?
 10 A. Correct.
 11 Q. Okay. You then went back to Mr. Cuban, right?
 12 A. Correct.
 13 Q. Okay. The first thing he told you was have
 14 his attorney call and state his case, correct?
 15 A. Yes.
 16 Q. Okay. In your mind, Mr. Cuban was still
 17 contending that there hadn't been an agreement to pay
 18 consultant's salary, true? Was that your
 19 interpretation of this?
 20 A. I guess -- it would be my interpretation that
 21 in their agreement, I guess, that it was his
 22 interpretation not to pay that consultant's salary
 23 still at that point.
 24 Q. Okay. You discern from this that there was
 25 some gray area in their conversations around March of

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1 2005, correct?
 2 MS. BUSH: Objection, form.
 3 A. Yes. Yes, at that point.
 4 Q. (BY MR. O'CONNOR) Okay. Then you ended up
 5 forwarding him the e-mail from March of '05 saying that
 6 there was -- there were no changes, just a job
 7 reassignment, correct?
 8 A. Correct.
 9 Q. Let's go to the first e-mail. You say, "We
 10 did not amend contract. Per e-mails in March 2005
 11 copied below we left the contract as is."
 12 A. Yes.
 13 Q. Do you see that?
 14 A. Uh-huh.
 15 Q. The second page of this e-mail string has a
 16 redacted stamp, and does that redacted stamp refresh, I
 17 don't want to get into the substance, that you would
 18 have conferred with Robert Hart around this time to --
 19 to talk about this issue?
 20 MS. BUSH: Object as to form.
 21 Q. (BY MR. O'CONNOR) Well, not -- let me
 22 rephrase it, because I asked that improperly. Does
 23 this refresh you that you would have conferred with
 24 Robert Hart around this time? Don't tell me what you
 25 conferred about.

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1 A. I don't recall, but I could have.
 2 Q. Okay. But at some point here Mr. Cuban says,
 3 "you ask him, do you still want me to push it," and you
 4 say -- and Mr. Cuban replies, "no, pay him the blood
 5 money. Damn." Do you know why Mr. Cuban said "damn"
 6 there or why he called this "blood money"?
 7 MS. BUSH: Object to form.
 8 A. I have no idea.
 9 Q. (BY MR. O'CONNOR) To your knowledge, was
 10 there any bad blood between them?
 11 A. I am not aware.
 12 Q. Okay. Let's go to the next exhibit, if we
 13 can. Let's go to Exhibit 10, skip Exhibit 9. Okay.
 14 It says in Exhibit 10, this is an e-mail
 15 of July 27th, 2:17 p.m., you say, "I called him back
 16 and took one shot at negotiating something less than
 17 \$200,000 per year."
 18 "Calling him back," that's Nellie, right?
 19 A. Correct.
 20 Q. Okay. And if I understand your testimony in
 21 other places, you felt that there was enough of a -- a
 22 discrepancy or enough room for different versions that
 23 you thought that maybe the matter should be settled?
 24 MS. BUSH: Objection, form.
 25 Q. (BY MR. O'CONNOR) Correct?

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1 MS. BUSH: Objection, form.
 2 A. I just felt that there was obviously a
 3 discrepancy in the interpretation of what they were
 4 talking about --
 5 Q. (BY MR. O'CONNOR) Yeah.
 6 A. -- so feel maybe there is room to settle it
 7 and keep everybody happy.
 8 Q. Because one of the things you learned from
 9 both parties, from your limited talks with each,
 10 e-mails with Cuban, talks with Nellie, was that the
 11 consultant's salary wasn't talked about at all, right?
 12 MS. BUSH: Objection, form.
 13 A. Just say that it appears it wasn't discussed
 14 or resolved.
 15 Q. (BY MR. O'CONNOR) Right.
 16 A. To my knowledge.
 17 Q. Okay. You saw that at least there was some
 18 room to say this was an open issue, but the obligations
 19 were regarding the consultant's salary?
 20 A. Right, my understanding that, you know, that
 21 they hadn't resolved it, --
 22 Q. Right.
 23 A. -- you know, in complete form.
 24 Q. One of the possibilities that you envisioned
 25 was that the termination deal was supposed to end on

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1 June 30 of 2006; that is to say, when Mr. Cuban quit
 2 paying Nelson the coaching salary, then the contract
 3 was at an end.
 4 MS. BUSH: Objection, form.
 5 A. My understanding was I didn't know what they
 6 agreed to, whether it was --
 7 Q. (BY MR. O'CONNOR) Right.
 8 A. -- not necessarily a termination of the deal,
 9 whether it was extended on with different terms or
 10 what, so I was just asking.
 11 Q. I didn't mean to suggest there was only one
 12 interpretation. There were several possibilities that
 13 existed. For instance, the deal could have ended June
 14 30th of 2006, or Nelson could have still been
 15 contractually bound but just not paid, or Nelson could
 16 be bound and due to be paid. I mean, there are all
 17 those possibilities existed based upon what you saw,
 18 correct?
 19 MS. BUSH: Object to form.
 20 A. Yes. I mean, there are various possibilities
 21 of how they -- however it was structured. I'm not
 22 aware of that, yes.
 23 Q. (BY MR. O'CONNOR) The obligations of each
 24 party, that is to say the Mavericks on one side and
 25 Nelson on the other, those obligations were somewhat

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1 fuzzy or vague if you take into account the oral
 2 conversations between Nelson and Cuban?
 3 MS. BUSH: Objection, form.
 4 A. I would say yes.
 5 Q. (BY MR. O'CONNOR) You didn't think it was --
 6 just because Mr. Cuban sent you that one little e-mail
 7 saying "money stays the same," you didn't think that
 8 was black and white and resolved the matter of a
 9 finality, true?
 10 MS. BUSH: Objection, form.
 11 A. At that time that was probably just the best
 12 of my knowledge.
 13 Q. (BY MR. O'CONNOR) Sure.
 14 A. That was it.
 15 Q. Sure. Because he had told you that he had
 16 left something out of the e-mail, that is to say he had
 17 left the consultant's part out of the e-mail, right?
 18 If you go to Exhibit 9, after you tell him that you had
 19 an e-mail from March of 2005 saying the dollars stay
 20 the same, he responds, "I might have left it out of the
 21 e-mail, but we didn't agree that we would pay the
 22 200,000, so let's not pay it."
 23 That's one of the reasons that you
 24 thought there was some discrepancy or vagueness in the
 25 positions here regarding consultant's salary, correct?

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1 MS. BUSH: Objection, form.
 2 A. To me that e-mail just put me on notice that
 3 there is still some things that -- that may have been
 4 or may not have been agreed to.
 5 Q. (BY MR. O'CONNOR) Yeah. Because Mr. Cuban
 6 could have meant in that e-mail when he says "the
 7 dollars stay the same," he could have just meant
 8 coaching dollars and not consulting dollars, right?
 9 MS. BUSH: Objection, form.
 10 A. He could have.
 11 Q. (BY MR. O'CONNOR) Right. You understood
 12 Mr. Cuban's position that he didn't agree to pay the
 13 \$200,000, and he was going to have you not pay it,
 14 right?
 15 A. Correct.
 16 Q. Okay. So what you did because there was some
 17 discrepancy in the various versions and possibilities
 18 here, you thought there was a basis for negotiating
 19 something less than \$200,000 a year, correct?
 20 A. Yes, because of the discrepancies that I
 21 heard, I felt there might be a possibility of settling
 22 in between for something.
 23 Q. Okay. You first tried to get Nellie to agree
 24 to less than \$200,000 per year, and he wouldn't agree
 25 to that, correct?

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1 A. Correct.
 2 Q. You started talking about a lump sum
 3 settlement, and you wanted him to throw out the first
 4 number to see if he would -- if there was something he
 5 would agree to, right?
 6 A. No. He noted that he wouldn't agree to take
 7 anything less, but he would be open to a lump sum
 8 settlement.
 9 Q. Then you wanted him to say the first number,
 10 correct?
 11 A. Correct. He asked -- I said, "What's fair to
 12 you?"
 13 Q. Right. And he threw out \$500,000, correct?
 14 A. Correct.
 15 Q. Okay. Now, you made the assumption -- well,
 16 strike that.
 17 You then send Cuban an e-mail and say "I
 18 think he will agree to a \$5,000 (sic) lump sum
 19 settlement," correct?
 20 A. It says "I think he'll agree to a \$500,000
 21 lump sum."
 22 Q. Did I say -- I keep misstating. I am getting
 23 tired. Let me say it again. Strike the last
 24 unintelligible question.
 25 You wrote to Mr. Cuban after talking to

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1 Coach Nelson, and you said, "I think he will agree to a
 2 \$500,000 lump sum settlement and then the \$200,000 per
 3 year goes away." That's what you discussed with
 4 Nelson, right?
 5 A. Correct.
 6 Q. Okay. And you used the term "settlement."
 7 Was this a settlement in your mind that would be a
 8 resolution of these conflicting views about what was
 9 agreed to back in March of 2005?
 10 MS. BUSH: Objection, form.
 11 A. To me that was a resolution of obviously the
 12 disagreement to pay and to not pay the \$200,000 per
 13 year for those next five years.
 14 Q. (BY MR. O'CONNOR) Okay. You can't remember
 15 today whether Nelson used the term "settlement" or
 16 "buyout" when he talked about the \$500,000; do I have
 17 that correct?
 18 A. In the conversation, I don't recall what words
 19 he used.
 20 Q. Okay. Let me see if this refreshes you. You
 21 had -- I know it's been a while since you have been to
 22 arbitration. First of all, let me go to 744 of the
 23 arbitration, lines 2 to 8. You are being
 24 cross-examined here, and Nelson's -- Nelson's lawyer
 25 asked you, "So there really wasn't a discrepancy

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1 anymore? Mr. Cuban had ultimately become convinced
 2 that you were right all along and said exactly what you
 3 told him he said in the e-mail he sent you in March of
 4 2005."
 5 "Answer: Unless Mark agreed to pay it
 6 versus obviously pursuing the discrepancy, you know,
 7 with the oral agreement that, you know, he perceived of
 8 not paying."
 9 This correctly reflects your state of
 10 mind that there still may be a discrepancy between the
 11 oral agreement and what you saw in writing, correct?
 12 A. Do you mind if I read back just to get
 13 context?
 14 Q. Sure. Sure.
 15 A. I am just trying to see what...
 16 (Pause.)
 17 A. Okay. I'm sorry, now that -- maybe the
 18 question again?
 19 Q. (BY MR. O'CONNOR) Yeah. Does this question
 20 and answer I just read accurately reflect what in your
 21 mind was a possible discrepancy between the oral
 22 agreement Mr. Cuban perceived of not paying and what
 23 was in writing?
 24 A. Right. I pointed out to Mark that if they
 25 orally agreed to something different, they may have, I

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1 am not aware of that, but this was what was still in
 2 writing at the time.
 3 Q. So you saw there might be a discrepancy
 4 between what was orally agreed to and what was in
 5 writing; fair enough?
 6 A. Correct.
 7 Q. Okay. Now, let's go to page 746 of your
 8 arbitration testimony when you are discussing your
 9 conversations with Coach Nelson on this lump sum
 10 settlement. Line 19, "And you can't remember the exact
 11 term he used, it may well have been, quote, settlement
 12 unquote, or quote, buyout, unquote, right?
 13 " Answer: It may have."
 14 A. Correct.
 15 Q. Okay.
 16 A. I see that. Correct.
 17 Q. Okay. And then let me go to the next
 18 statement.
 19 "Question: Certainly as soon as you
 20 send" -- let me stop there.
 21 After you had this conversation with
 22 Nelson, you went ahead and you drafted up yourself a
 23 draft of a some sort of a settlement agreement or
 24 contractual amendment reflecting this lump sum
 25 settlement, true?

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1 MS. BUSH: Objection -- objection, form.
 2 A. After approval from Mark and then
 3 myself/general counsel put together an amendment.
 4 Q. (BY MR. O'CONNOR) Okay. The way this worked,
 5 didn't you originally put together a draft and then
 6 send it to Robert Hart, the general counsel?
 7 A. I believe -- my recollection that is correct,
 8 that I believe I did a draft for him to comment on.
 9 Q. And I believe you've testified that then you
 10 could tell Mr. -- Mr. Hart made some changes before you
 11 got to the final draft?
 12 A. I believe that is correct, yes.
 13 Q. Okay. I know this is sort of old news,
 14 Mr. Jahner, but at the time of the arbitration we
 15 didn't have your initial draft. Do you know if that
 16 thing still exists or not?
 17 A. I am not certain.
 18 Q. All right. Okay. In any case, let me read to
 19 you from page 746 and 747, starting at the bottom of
 20 746, line three, and ask if this correctly reflects the
 21 state of things. You went ahead and sent the agreement
 22 after Mr. Hart reviewed and revised, and you sent that
 23 on to Nellie, right?
 24 A. Yes, via e-mail.
 25 Q. Okay. And just for the record, let me try to

1 acquaint you as to dates here. You had e-mailed him
2 per Exhibit 11, if you can look at Exhibit 11, on
3 Friday afternoon July 28th, you e-mailed him, Nellie,
4 and said that Robert had family functions. He would
5 review the draft and hopefully -- which would hopefully
6 be tomorrow, and we'll get it to you. Do you see that?

7 A. Yes.

8 Q. Okay. So your agreement with Nellie, at least
9 your tentative agreement on the lump sum settlement
10 would have been on the afternoon July 27th. You e-mail
11 him back July 28th, tell him it's going to come later.
12 And if we go to Exhibit 12, it's now Monday, July 31st,
13 and that's when you attach the file with the proposed
14 amendment to the contract, correct?

15 A. Correct.

16 Q. Okay. Now, you made the assumption that this
17 agreement was not a buyout or a termination, but that
18 it was just an acceleration of payments, correct?

19 A. Correct.

20 Q. Okay. But that was based on your assumption
21 as opposed to Nellie specifically telling you that,
22 true?

23 A. That was my recollection of the conversation
24 that we had, yes.

25 Q. Okay. Let me see if this helps you out here.

1 O'Connor, right?

2 A. Yes. I believe within a few days, if I
3 remember, in early August.

4 Q. Right. And I think you stated several times
5 that it could have been August 1, 2, or 3; is that
6 fair?

7 A. Approximate time frame.

8 Q. Okay. He got the thing on July 31st, and it
9 was within a day or two of that that -- that this
10 fellow O'Connor called you?

11 A. Correct.

12 Q. Okay. Now, 746, let's go to 746. Okay. Now,
13 if you go to the bottom of that page, line 23, the
14 question is as follows:

15 "Question: And certainly as soon as you
16 send the agreement to Mr. Nelson and gets in
17 Mr. O'Connor's hand and it's not a buyout or
18 settlement, it's a restructuring of a payment for one
19 payment instead of five years' worth of payments, you
20 find out that wasn't what Mr. Nelson was talking about.

21 "Answer: Correct.

22 "Question: Okay.

23 "Answer: Excuse me, at least not what
24 Mr. O'Connor wanted him to agree to.

25 "Question: All your conversations after

1 Okay. Let's -- go to the top of page 703. And this is
2 your lawyer Mr. Harper asking you questions at 703. Do
3 you have that in front of you?

4 A. Yes.

5 Q. Okay. Mr. Harper says:

6 "Question: All right. Now I know you
7 haven't been here for any testimony, but you know
8 Mr. Nelson seems to feel that the discussions that you
9 had with him in July of 2006 involved you actually
10 terminating his contract and buying him out.

11 "Answer: And I had -- I always had been
12 on the, you know, assumption that this deal was
13 strictly a, you know, cash versus -- now versus
14 payments later change just assuming he saw, had a need,
15 wanted cash and would take cash now versus waiting to
16 payments, you know, to settle it."

17 Essentially when Nellie said he would
18 take a lump sum settlement or buyout, you assume that
19 it was a cash now deal versus an actual termination,
20 fair enough?

21 A. Right. I assumed he just wanted -- was
22 willing to take cash now versus a payment stream over
23 five years.

24 Q. Okay. But shortly after you sent Nellie this
25 draft, you got a call from his lawyer, this fellow

1 that point were with Mr. O'Connor as his
2 representative, not Mr. Nelson, right?

3 "Answer: Yes."

4 Then let's go to the next question.

5 "And in fairness you could certainly see
6 that based on the conversation and your recollection of
7 it you had with Mr. Nelson, Mr. Nelson may very well
8 have been talking about a settlement or a buyout right
9 from the get-go?

10 "Answer: He could have been. My
11 interpretation was it was a restructure of the payment
12 schedule."

13 So again, looking at this testimony,
14 Mr. Jahner, is it fair that certainly Mr. Nelson's
15 representative informed you that Nellie wanted a
16 termination of the contract; whereas, you knew that the
17 Mavericks wanted to do this by way of an acceleration?

18 A. I knew on our side of the fence our
19 interpretation was it was an acceleration of payment;
20 and then based on the conversations with Mr. O'Connor,
21 my understanding now is that they wanted a, you know,
22 complete buyout and termination of the contract.

23 Q. So, again, we have sort of discrepant views of
24 what was meant by the \$500,000 lump sum settlement,
25 correct?

1 MS. BUSH: Objection, form.
 2 A. Correct.
 3 Q. (BY MR. O'CONNOR) Okay. And -- but you and
 4 Nellie, when you talked about the lump sum settlement
 5 before you talked to O'Connor, you didn't get into the
 6 level of detail about acceleration versus this versus
 7 that, did you?
 8 A. Not that I recall, no.
 9 Q. Okay. At any time that you are talking to
 10 Nelson in July on this issue -- on these issues, did he
 11 ever tell you that he wanted to work for five years and
 12 follow the noncompete?
 13 A. I don't believe he stated that.
 14 Q. As a matter of fact, when you talked to
 15 O'Connor, one of the issues you discussed was what
 16 would happen if he got another job and whether the
 17 offset provisions would apply such that he gets a new
 18 job that can be offset against deferred compensation?
 19 A. After discussion about the differences between
 20 buyout terms versus accelerations of payments, yes,
 21 those discussions did come up.
 22 Q. O'Connor clearly didn't want Nelson to be
 23 continually bound to a consultant's agreement and
 24 expressed that to you?
 25 MS. BUSH: Objection, form.

1 Mavericks is the Mavericks might be able to prevent him
 2 from going to another team; I mean, that's at least in
 3 your lay understanding --
 4 MS. BUSH: Objection, form.
 5 Q. (BY MR. O'CONNOR) -- that you might be able
 6 to prevent him from going to another team or get
 7 compensation for him going to another team?
 8 MS. BUSH: Objection, form.
 9 A. Yes. I mean, I guess there is circumstances
 10 where the Mavericks maybe could have prevented that
 11 with him not competing, that's correct.
 12 Q. (BY MR. O'CONNOR) In your time with the
 13 Mavericks you've have heard of cases in which in order
 14 to release a coach from a contract, a draft choice or a
 15 player might be given to another team.
 16 MS. BUSH: Objection, form.
 17 A. I am not certain on that. I know there were
 18 negotiations, I believe, just reading in the paper, of
 19 situations where somebody would have to agree to
 20 release them to talk and slash negotiate.
 21 Q. (BY MR. O'CONNOR) Right. My point is, these
 22 contractual provisions, keeping the contract alive and
 23 continuing, had some value for the Mavericks, true?
 24 A. Yes.
 25 Q. You and O'Connor argued as to exactly what

1 Q. (BY MR. O'CONNOR) He expressed that Nelson
 2 wanted a termination, not a -- just merely an
 3 acceleration, correct?
 4 A. Correct. His offers included termination of
 5 the -- termination and/or I believe the term buyout of
 6 the agreement.
 7 Q. And you expressed to him that you doubted that
 8 a termination would be accepted.
 9 A. Correct.
 10 Q. Okay.
 11 A. Or words to that effect, yes.
 12 Q. Yeah. You didn't want to lose the noncompete
 13 because that might lose the offset provisions, right?
 14 MS. BUSH: Objection, form.
 15 A. There were various provisions of the contract
 16 that we would have wanted to keep in place.
 17 Q. (BY MR. O'CONNOR) Okay. And one of the
 18 effects of those provisions would have been at least a
 19 possible offset against compensation earned from any
 20 new team?
 21 MS. BUSH: Objection, form.
 22 A. Yes. There is a right of offset in the
 23 contract.
 24 Q. (BY MR. O'CONNOR) And one of the other
 25 consequences for the Mavericks that would help the

1 those provisions were, but you considered them to be of
 2 value to you, didn't you?
 3 A. Correct.
 4 Q. Okay. And O'Connor on behalf of Nelson, we
 5 will call him Nelson's lawyer, let you know they wanted
 6 a termination of the contract, right?
 7 A. Correct, a termination or a buyout, correct.
 8 Q. Or a buyout. And one of the consequences of a
 9 termination or a buyout would be that Nelson would be
 10 freed to go to another team without consequence, true?
 11 MS. BUSH: Objection, form.
 12 A. Depending on the structure of it, but, yes,
 13 most -- if it was a complete termination of the
 14 contract, yes, that would potentially be available,
 15 yes.
 16 Q. (BY MR. O'CONNOR) Okay. Now, at some point
 17 did Nelson's lawyer send you -- after you discussed
 18 this with him, did you receive a breach letter?
 19 A. Yes, I believe that was a few days after one
 20 of our conversations, if I'm correct.
 21 Q. Okay. And I think you reviewed it along with
 22 others who may have received it, yes, you've got a
 23 copy. If you can go to Exhibit 15, you -- you
 24 understood that Mr. Nelson was claiming breach of the
 25 contract by this letter, correct?

1 A. Yes, effective as of receipt of this letter.
 2 Q. Okay. Now, at this point to you it was very
 3 clear that there was a -- that the gulf between the
 4 parties was between settling this matter in a way that
 5 Nelson would terminate the contract versus keeping
 6 Nelson under contract, correct?

7 MS. BUSH: Objection, form.

8 Q. (BY MR. O'CONNOR) In other words, that's one
 9 of the issues that was involved. The Mavericks wanted
 10 to keep the contractual provisions in place except for,
 11 perhaps, the financial provisions. Nelson didn't want
 12 the contractual provisions in place.

13 A. Correct.

14 Q. At the same time, the Mavericks wanted to save
 15 money, if possible; fair enough?

16 MS. BUSH: Objection, form.

17 A. Right. I offered throwing something out there
 18 that may basically settle it in between, obviously.

19 Q. (BY MR. O'CONNOR) Right. You thought there
 20 was enough discrepancy in the situation that the matter
 21 could be settled somewhere between zero dollars and the
 22 full contractual amount, fair enough?

23 MS. BUSH: Objection, form.

24 A. Correct.

25 Q. (BY MR. O'CONNOR) Okay. But because of this

1 per paragraph 2; am I right on that?

2 A. Correct.

3 Q. But, otherwise, the effect of this, as you
 4 understood it, was to keep Nelson contractually bound
 5 for the next five years, true?

6 MS. BUSH: Objection, form.

7 A. Correct, he would continue under the other
 8 terms of that consultant agreement in that contract.

9 Q. (BY MR. O'CONNOR) So what you were told was
 10 that Nelson didn't want \$500,000 if he had to sign
 11 this, right?

12 MS. BUSH: Objection, form.

13 A. Basically the -- the offer was rejected by
 14 Mr. O'Connor and, you know, counteroffers.

15 Q. (BY MR. O'CONNOR) Right. They wanted some
 16 sort of a deal in which he would be able to walk away
 17 and wouldn't be contractually bound?

18 A. Correct. I believe both of those offers had
 19 that.

20 Q. Right. Right. As opposed to this agreement
 21 in which the club would have paid Nelson \$500,000, but
 22 he would have remained contractually bound. Fair
 23 enough?

24 A. Correct.

25 Q. Okay. And that would have -- that would

1 difference of opinion, there was never a situation in
 2 which you were ready to pay \$500,000 on behalf of the
 3 Mavericks to settle this matter.

4 A. We were prepared, I mean, as we sent out that
 5 letter to do it as a change in payment schedule and
 6 settle the matter.

7 Q. Right. Right. In other words, you weren't
 8 going to pay the \$500,000 unless Nelson agreed that it
 9 would be bound by all the contractual agreements as per
 10 the contract, correct, as per the contractual amendment
 11 that Mr. Hart drew up, correct?

12 A. Correct, he proposed an amendment of the
 13 change in payment terms, correct. Yes.

14 Q. Right.

15 A. And the contract would still be in existence.

16 Q. Okay. Let's go to Exhibit 13. Is Exhibit 13
 17 the amendment to the employment agreement that Mr. Hart
 18 gave to you to give to Nelson?

19 A. I need to look at it here.

20 Q. Take your time.

21 (Pause.)

22 A. Yes, I believe this is it.

23 Q. (BY MR. O'CONNOR) Yeah. And this calls, in
 24 essence, for the contract to remain in place except
 25 that the club would make a one-time payment of \$500,000

1 have -- this Sixth Amendment would, in your
 2 understanding, have continued to bind him to
 3 competition covenants, offset provisions, and the like,
 4 those sorts of provisions that are in the agreement,
 5 right?

6 MS. BUSH: Objection, form.

7 A. Correct.

8 Q. (BY MR. O'CONNOR) Okay. So what you knew
 9 certainly after talking to Nelson's lawyer was that
 10 Nelson did not want to be contractually bound to
 11 provisions like the noncompete and so forth?

12 A. Correct.

13 Q. Okay. Nelson or his representatives never
 14 represented to you that they would take \$500,000 and
 15 adhere to the noncompete clause; that was never stated,
 16 true?

17 A. On the second -- on the second option, his
 18 representatives stated they would agree to our form as
 19 long as there was an added form to it of a \$250,000
 20 buyout clause.

21 Q. In other words, they might agree to this, but
 22 only if they could get released from the -- from the
 23 contractual provisions?

24 A. Well, my understanding of that second
 25 counteroffer would have been -- the contractual

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1 provisions would have been in place with a separate
 2 buyout clause.
 3 Q. Right, which would have then released them
 4 from the contractual provisions?
 5 A. If they had went ahead and paid the additional
 6 payments, correct.
 7 Q. But one of things that Nelson and his
 8 representatives never said was you pay us \$500,000, and
 9 we will adhere to the noncompete for five years, true?
 10 A. No one said that directly to me, correct.
 11 Q. Okay. When you heard -- you heard Nelson got
 12 a job later on, right, with the Warriors?
 13 A. Correct.
 14 Q. Okay. And right before it was announced, you
 15 had been told to at least bring the consultant's salary
 16 current so that perhaps you wouldn't be in breach?
 17 MS. BUSH: Objection, form.
 18 A. Once we heard the rumors I believe and
 19 confirmed, we had discussed and said at that point we
 20 should -- we offered to pay and make it current.
 21 Q. (BY MR. O'CONNOR) Okay.
 22 A. And cover the breach there.
 23 Q. Yes. Because you were behind on the
 24 consultant's payments, right?
 25 A. We hadn't been making them as we had been

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1 negotiating the settlement.
 2 Q. If this -- if, in fact, you-all were bound to
 3 make consultant's payments, they weren't -- they
 4 weren't -- hadn't been made, right?
 5 A. Yes, they had not been made.
 6 Q. They hadn't. Okay. Now, whether that's a
 7 breach or not is another matter, but you knew you
 8 hadn't been making them, right?
 9 A. Correct.
 10 Q. Okay. You wanted to avoid a claim of breach
 11 anyway; that was the motive.
 12 MS. BUSH: Objection, form.
 13 Q. (BY MR. O'CONNOR) That was your thinking.
 14 A. At the point of going back to offering and
 15 making the payment understanding we obviously were at a
 16 disagreement in terms of the 500,000 or the cash, you
 17 know, settlement, yes.
 18 Q. You never claimed to Nelson or his
 19 representatives that by wanting a termination of the
 20 contract that they were defrauding you or deceiving
 21 you, true?
 22 A. I never claimed that, I don't believe.
 23 Q. Okay. Did you think that Nelson or his
 24 representatives had defrauded you or deceived you
 25 regarding this negotiation over the consultant's pay?

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1 A. Not as -- not as I had negotiated all that, I
 2 don't believe there was, you know, you know, any
 3 deceit. I was assuming it was just negotiation of cash
 4 versus longer term payout.
 5 Q. Okay. And as far as you know, the club never
 6 made a claim that Nelson had defrauded the club in
 7 these negotiations, correct?
 8 A. Not that I am aware of.
 9 Q. The only thing you can say is that between the
 10 time you talked to Nelson about a lump sum settlement
 11 and the time you talked to his lawyer a few days later,
 12 you may have had a different assumption about what he
 13 wanted versus what you wanted, correct?
 14 A. Correct.
 15 Q. Okay. You didn't consider that fraud on your
 16 part, and you didn't consider it fraud on Nelson's
 17 part, did you?
 18 A. No.
 19 Q. Okay.
 20 MR. O'CONNOR: Let's take a break. I
 21 really feel bad, Floyd, when I actually might end
 22 early. But this is what happens sometimes, and I
 23 apologize if I actually inconvenience you.
 24 (Recess for 16 minutes.)
 25 MR. O'CONNOR: This deposition will be

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1 adjourned with the reservation that this has been a
 2 deposition pursuant to the court's recent order and
 3 reserve the right should this litigation continue to
 4 talk to Mr. Jahner if need be; but, for present
 5 purposes, this deposition's concluded.
 6 MS. BUSH: We have no questions.
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1 **CHANGES AND SIGNATURE**
 2 **WITNESS: FLOYD JAHNER DATE OF DEPO: 5/20/2009**
 3 **PAGE LINE CHANGE REASON**
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1 **COUNTY OF DALLAS)**
 2 **STATE OF TEXAS)**
 3 **I, Jerry L. Callaway, RDR, certified**
 4 **shorthand reporter in and for the State of Texas, do**
 5 **hereby certify that the facts as stated by me in the**
 6 **caption hereto are true; that there came before me the**
 7 **forementioned named person, who was by me duly sworn**
 8 **to testify the truth concerning the matters in**
 9 **controversy in this cause; and that the examination was**
 10 **reduced to writing by computer transcription under my**
 11 **supervision; that the deposition is a true record of**
 12 **the testimony given by the witness.**
 13 **I further certify that I am neither**
 14 **attorney or counsel for, nor related to or employed by,**
 15 **any of the parties to the action in which this**
 16 **deposition is taken, and further that I am not a**
 17 **relative or employee of any attorney or counsel**
 18 **employed by the parties hereto, or financially**
 19 **interested in the action.**
 20 **Given under my hand and seal of office on**
 21 **this, the 27th day of May, A.D., 2009.**
 22 _____
 23 **Jerry L. Callaway, RDR, CSR 948**
 24 **Expiration Date: 12/31/2010**
 25 **Firm Registration No. 209**
5220 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270
(214) 855-5300

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1 **I, FLOYD JAHNER, have read the foregoing**
 2 **deposition and hereby affix my signature that same is**
 3 **true and correct, except as noted above.**
 4 _____
 5 **FLOYD JAHNER**
 6 **THE STATE OF _____)**
 7 **COUNTY OF _____)**
 8 **Before me, _____, on this**
 9 **day personally appeared FLOYD JAHNER, known to me (or**
 10 **proved to me under oath or through _____)**
 11 **(description of identity card or other document) to be**
 12 **the person whose name is subscribed to the foregoing**
 13 **instrument and acknowledged to me that they executed**
 14 **the same for the purposes and consideration therein**
 15 **expressed.**
 16 **Given under my hand and seal of office**
 17 **this _____ day of _____, 2009.**
 18 _____
 19 _____
 20 _____
 21 _____
 22 **NOTARY PUBLIC IN AND FOR**
 23 **THE STATE OF _____**
 24 _____
 25 _____

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 8 **E X H I B I T S**
 9
 10 **Ex # Description Pg Ln**
 11 8 **E-mail string most recent dated 17 17**
 12 **7/26/2006 to Jahner and Hart from**
 13 **Cuban, Re Nellie**
 14 10 **E-mail string most recent dated 20 13**
 15 **7/27/2006 to Jahner from Cuban, Re**
 16 **Nellie**
 17 11 **E-mail dated 7/28/2006 to mavs19 30 2**
 18 **from Jahner, Subject update**
 19 12 **E-mail dated 7/31/2006 to Mavs19 30 12**
 20 **from Jahner, Re update**
 21 13 **Proposed Sixth Amendment to 39 16**
 22 **Employment Agreement**
 23
 24
 25

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