

E-Filed 10/19/09

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 16 MAITA DISTRIBUTORS, INC. OF  
 17 SAN MATEO COUNTY

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

CASE NO. 5:09-CV-02318 RMW

13 MAITA DISTRIBUTORS, INC. OF  
 14 SAN MATEO COUNTY, a California  
 15 corporation  
 16 Plaintiff,  
 17 v.  
 18 DBI BEVERAGE INC., a Tennessee  
 19 corporation,  
 20 Defendant.

21 HEARING DATE: October 30, 2009  
 22 TIME: 9:00 a.m.  
 23 DEPT: Courtroom 6, 4th Floor  
 24 Complaint Filed (in State Court):  
 25 May 6, 2009  
 26 Matter Removed on:  
 27 May 26, 2009  
 28 Judge: Hon. Ronald M. Whyte

29 MILLERCOORS, LLC, a Delaware limited  
 30 liability company,  
 31 Intervenor.

TO ALL PARTIES HEREIN:

32 The Court has read and considered Defendant DBI Beverage, Inc. ("DBI")'s  
 33 Administrative Motion for a Sealing Order ("Motion") in Support of Its Opposition to Plaintiff  
 34 Maita Distributors, Inc. of San Mateo County's Motion for Summary Judgment ("Opposition")

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1 and Plaintiff Maita Distributors, Inc. of San Mateo County's Response ("Response") and the

2 accompanying declaration of Marcus Maita, pursuant to Local Rules 79-5 and 7-11, to file

3 selected documents comprised of highly sensitive information regarding Plaintiff Maita

4 Distributors, Inc. of San Mateo County ("Maita")'s private negotiations under seal.

5 Maita's interest in protecting information concerning private negotiations overcomes the

6 right of public access to these records, and is a compelling reason to support the sealing of the

7 records. If the records are not sealed, there is a substantial probability that Maita's interests in

8 the confidential information will be prejudiced or used for improper purposes. The sealing is

9 narrowly tailored in that it is limited only to those documents containing such information.

10 Compelling reasons appearing therefor, this Court finds pursuant to Civil L.R. 79-5, that:

- (1) The documents to be sealed, or portions thereof, are entitled to protection under the law, that overcomes the right of public access to the record; and
- (2) The proposed sealing is narrowly tailored.

14 IT IS ORDERED THAT the Motion and Response to seal the highly confidential

15 information contained in and redacted from Exhibit A to the Declaration of Mark K. Slater In

16 Support of DBI's Opposition to Plaintiff Maita Distributors, Inc. of San Mateo County's Motion

17 for Summary Judgment, as shown in Exhibit I attached hereto, is GRANTED and that those

18 portions of documents are hereby ordered to be filed under seal. The unredacted exhibit  
19 shall be filed under seal; the redacted exhibit shall be filed in

20 DATED: \_\_\_\_\_  
21 10/19/09

22 UNITED STATES DISTRICT COURT  
23 *Ronald M. Whyte*

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

A Limited Liability Partnership  
Including Professional Corporations

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

Case No.: 5:09-CV-2318 RMW (HRL)

DECLARATION OF MARK K. SLATER  
IN SUPPORT OF DEFENDANT DBI  
BEVERAGE INC.'S OPPOSITION TO  
PLAINTIFF MALTA DISTRIBUTORS,  
INC. OF SAN MATEO'S MOTION FOR  
SUMMARY JUDGMENT  
FILED UNDER SEAL

Hearing date: October 16, 2009

Time: 9:00 a.m.

Dept.: Courtroom 6, 4th Floor

Complaint Filed (in State Court):

May 6, 2009

Removed:  
May 26, 2009

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**DECLARATION OF MARK K. SLATER**

I, Mark K. Slater, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am a partner with Sheppard, Mullin, Richter, & Hampton LLP, attorneys of record for Defendant DBI Beverage Inc. ("DBI"). I have personal knowledge of the following facts, and, if called as a witness, I could and would competently testify thereto.

2. This declaration is submitted in support of DBI's Opposition to Plaintiff Maita Distributors Inc. of San Mateo's ("Maita") Motion for Summary Judgment.

3. DBI initiated arbitration with JAMS against Plaintiff as required section 25000.2 when the parties failed to reach an agreement over the fair market value of Plaintiff's distribution rights. Plaintiff refused to arbitrate.

4. On February 6, 2009, DBI was forced to bring a Petition to Compel

Arbitration ("Petition") in San Mateo Superior Court (the "San Mateo Action") against Plaintiff and two similarly situated distributors, Mussetter Distributing, Inc., and Elyxir Distributing, LLC (collectively "Former Distributors"). DBI was forced to bring the Petition because the Former Distributors refused to arbitrate and JAMS declined to continue with arbitration without a court order or their consent.

5. On April 22, 2009, I took the deposition of Maita's person most

knowledgeable, Mr. Marcus Maita ("Maita Deposition") in the San Mateo Action. The deposition transcript is marked "Confidential" pursuant to the stipulated protective order entered by the San Mateo Court on March 18, 2009. Attached hereto as Exhibit A is a true and correct copy of relevant excerpts from the Maita Deposition transcript.

6. At the Maita Deposition, I introduced 23 exhibits consisting of documents

produced by DBI and by Maita in the course of discovery in the San Mateo Action. These

documents reflect the history of the negotiations that DBI engaged in with Maita pursuant to

section 25000.2. Each of these documents is also marked "Confidential" pursuant to the stipulated

protective order entered by the San Mateo Court on March 18, 2009.

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7. Attached hereto as Exhibit B is a true and correct copy of Exhibit 2 to the

Maita Deposition.

8. Attached hereto as Exhibit C is a true and correct copy of the Amendment

to Martlet Importing Co. Inc Distributor Agreement and Martlet Importing Co. Inc. Distributor

Agreement, produced in this matter by MillerCoors (Bates labeled MCC00000171-255).

9. On September 16, 2009, I took the deposition of Andrew S. Christon. The

deposition transcript is marked "Confidential" pursuant to the stipulated protective order entered

by the San Mateo Court on March 18, 2009. Attached hereto as Exhibit D is a true and correct

copy of relevant excerpts from the Christon Deposition.

10. Attached as Exhibit E is a true and correct copy of the Court's Notice of

Entry of Order Denying Petition to Compel Arbitration in this case, dated May 11, 2009 (attaching

as Exhibit A Order Denying Petition to Compel Arbitration).

I declare under penalty of perjury under the laws of the United States that the

foregoing is true and correct.

Executed September 25, 2009 at San Francisco, California.

/s/ Mark K. Slater  
Mark K. Slater

**EXHIBIT "A"**  
**FILED UNDER SEAL**

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN MATEO  
SOUTHERN BRANCH

DBI BEVERAGE, INC., a Tennessee  
corporation, MILLERCOORS LLC, a  
Delaware limited liability  
company,

Petitioners,

vs

CASE NO. 481035

CERTIFIED  
COPY

MALTA DISTRIBUTORS, INC., a  
California corporation, ELIXIR  
DISTRIBUTING, LLC, a California  
limited liability company,  
MUSSETER DISTRIBUTING, INC., a  
California corporation,  
Respondents.

CONFIDENTIAL

VIDEOTAPED DEPOSITION OF MARCUS MALTA  
San Francisco, California  
Wednesday, April 22, 2009

Reported by:  
LORI STORES

CSR No. 12732

Job No. 110357

Q. Did you ever talk to Andy Christon about

the termination letter?

A. The only thing I could possibly remember

is just telling him it was coming at some point.

Q. Can you please look at page 1 of that

termination letter. I'm going to refer to

something during the deposition called a Bates

label. You'll see a stamped number in the bottom

right. It's page 1 of the letter, and the Bates

label is MAT6, just so we're looking at the same

thing.

If I could please direct your attention

to the bottom, you'll see a sentence written there

that reads, from Miller to you -- I'm sorry, to

your father, we appreciate your corporation in

negotiating in good faith with DBI Beverage to

ensure an efficient transfer of the distribution

rights.

Do you see that?

A. I'm sorry.

Q. Take your time.

A. Okay.

Q. You have that sentence in mind now?

A. Yes.

Q. Did Matita Distributors negotiate in good

10:51:32 1  
10:51:34 2  
10:51:40 3  
10:51:43 4  
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10:51:55 6  
10:51:58 7  
10:52:01 8  
10:52:03 9  
10:52:05 10  
10:52:08 11  
10:52:10 12  
10:52:12 13  
10:52:15 14  
10:52:20 15  
10:52:23 16  
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10:52:47 24  
10:52:51 25



10:52:55 1 Faith with DBI Beverage in your mind?

10:52:59 2 A. In my mind, yes.

10:53:01 3 Q. At all times?

10:53:03 4 A. I believe so.

10:53:10 5 Q. At this point in time -- that is when the  
10:53:13 6 termination letter was received -- had anyone  
10:53:16 7 conveyed formally, informally, indication,  
10:53:21 8 suggestion to DBI what they thought the value of  
10:53:26 9 Malta Distributors might be?

10:53:31 10 A. I'm sorry. After receiving this letter?

10:53:34 11 Q. Around the time of the letter.

10:53:35 12 A. Around the time of the letter?

10:53:37 13 Q. Let me reask it so we have a clean  
10:53:40 14 record. Up to the date of the letter, September 2,  
10:53:43 15 2008, had anyone on behalf of Malta conveyed to  
10:53:49 16 anyone on the DBI side of the table what they  
10:53:50 17 thought the value of the Malta distributorship was?

10:53:54 18 A. Not that I can recall.

10:53:56 19 Q. And you'll see when we go through the  
10:53:59 20 exhibits today, there are formal offer letters,  
10:54:02 21 there are informal suggestions. And I mean by any  
10:54:06 22 means.

10:54:08 23 A. Uh-huh. I can't remember.

10:54:40 24 MR. SLATER: I'd like to mark as  
10:54:42 25 Exhibit 4 a document Bates labeled from MATTA to

10:54:42 25  
10:54:40 24  
10:54:08 23  
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10:54:02 21  
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10:53:54 18  
10:53:50 17  
10:53:49 16  
10:53:43 15  
10:53:40 14  
10:53:37 13  
10:53:35 12  
10:53:34 11  
10:53:31 10  
10:53:26 9  
10:53:21 8  
10:53:16 7  
10:53:13 6  
10:53:10 5  
10:53:03 4  
10:53:01 3  
10:52:59 2  
10:52:55 1

A. Well, in bridging that gap and filling that hole with our company, there's things you can do to structure your company or that DBI could do in terms of being creative with manpower, operational costs, warehousing costs, fuel costs, utility costs.

I mean, there's plenty of synergies that can be created that contribute financially to DBI.

Q. Let me direct your attention to the sentence below -- two sentences, I suppose. It reads, in making an offer for the, cap R, Rights, please separately allocate the proposed purchase price to the MillerCoors rights, the Crown rights and all other rights DBI proposes to purchase.

Do you see that?

A. Is that on the same page?

Q. It's two sentences down on the same page.

A. Yes.

Q. Why was that beneficial to Matta?

MR. HURSH: Why did they want that?

BY MR. SLATER:

Q. Why was it -- yes. We can do it in that order.

Why did Matta request that?

A. Well, that request was done -- it was

11:02:44 1  
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11:03:23 10  
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11:03:48 18  
11:03:49 19  
11:03:56 20  
11:03:59 21  
11:04:01 22  
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11:04:06 24  
11:04:09 25

11:04:16 1 after discussion with Andy Christon. He viewed it  
 11:04:20 2 as the more beneficial way to request numbers for  
 11:04:26 3 the proposed purchase price. So he -- he just  
 11:04:36 4 believed that was the best way to do it.  
 11:04:39 5 Q. The best way for Maita, right?  
 11:04:41 6 A. Yes.  
 11:04:42 7 Q. What benefits did he think would accrue  
 11:04:44 8 to Maita by having an offer come back structured  
 11:04:48 9 this way?  
 11:04:49 10 MR. HURSH: Objection. That calls for  
 11:04:51 11 speculation.  
 11:04:51 12 You can answer. You can answer to what  
 11:04:55 13 he told you. You can't answer what he was  
 11:04:57 14 thinking.  
 11:04:58 15 THE WITNESS: Okay. Well, one of the  
 11:05:00 16 issues was that the termination letter, this whole  
 11:05:03 17 situation is pertinent to Miller and Coors. This  
 11:05:07 18 has nothing to do with our entire business.  
 11:05:09 19 So in one aspect, I wanted to get a value  
 11:05:14 20 for MillerCoors. With everything else pulled out,  
 11:05:17 21 including Crown and others, to explore other  
 11:05:23 22 potential avenues, other opportunities out there  
 11:05:27 23 for our business and either exploring offering  
 11:05:34 24 these brands to competing distributors or other  
 11:05:39 25 scenarios.

11:05:41 1  
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 11:05:58 9  
 11:06:01 10  
 11:06:06 11  
 11:06:14 12  
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 11:06:44 24  
 11:06:47 25

BY MR. SLATER:

Q. So in other words, you could go to another potential buyer knowing you had an offer that was distributor- or line-specific, right?

A. Yes.

Q. And that was a benefit to Malta, right?

A. Yes.

Q. And you saw nothing inappropriate in requesting or even requiring that an offer that came from DBI be structured that way, right?

A. That's how we wanted the offer.

Q. It's written here, furthermore, it is anticipated that DBI's proposed purchase of Malta's core business of MillerCoors rights also will include the purchase of most of the tangible assets currently used in the conduct of Malta's total business.

Do you see that?

A. Yes.

Q. Do you know why that was anticipated?

A. From what we've heard, that they do total asset purchases of businesses.

Q. Now, the tangible assets were never really a point of contention or dispute between the parties, were they?

BY MR. SIATER: 1

Q. And you have no reason to think that he 2

did, do you? 3

A. No. 4

Q. Was this Confidential Offering Memorandum 5

prepared for DBI? 6

A. Yes. 7

Q. This Offering Memorandum does not 8

indicate a purchase price that Matta is willing to 9

accept, does it? 10

A. No. 11

Q. At this point in time, did Matta have a 12

purchase price in mind that it would accept? 13

A. Probably not an exact purchase price, but 14

a range. 15

Q. And what was that range? 16

A. At the time of this, we would have highly 17

considered any offer in the [REDACTED] 18

[REDACTED] 19

Q. And for what? 20

A. For distribution rights. 21

Q. So just so we're saying the same thing, 22

for all distribution rights? 23

A. Yes. 24

Q. Can you please turn to page 2 of the 25

11:51:40 1

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11:52:01 8

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1 12:58:57 believes. Exhibit 6 is a two-page document Bates  
 2 12:59:00 labeled DBI/Matta 45, DBI/Matta 46.  
 3 12:59:05 (Whereupon, Exhibit 6 was marked for  
 4 12:59:05 identification.)

5 12:59:34 BY MR. SLATER:

6 12:59:42 Q. Had a chance to look at it?

7 12:59:43 A. Uh-huh.

8 12:59:45 Q. If I could just ask you to look at page 2

9 12:59:47 of the document entitled, Matta Distributors Sales

10 12:59:49 Stat FY 2007.

11 12:59:52 Do you see that?

12 12:59:52 A. Yes.

13 12:59:53 Q. Do you know who prepared this document?

14 12:59:55 And I mean just this page.

15 12:59:58 A. This was prepared by my controller,

16 13:00:02 Anselmo.

17 13:00:04 Q. And what is Anselmo's exact title?

18 13:00:07 A. Controller, actually.

19 13:00:09 Q. Controller?

20 13:00:10 A. Yes.

21 13:00:11 Q. As you look at these numbers, do you have

22 13:00:13 any reason to think they're inaccurate?

23 13:00:16 A. No.

24 13:00:35 Q. At this point in time -- that is, the

25 13:00:39 date on this e-mail, Thursday, October 9, 2008 --

A. I laughed. No, I called -- I called Andy and asked him if he had gotten it. And he did.

And we just viewed it as, you know, not acceptable.

Q. Why wasn't it acceptable?

A. The price wasn't consistent with what we

were looking for.

Q. At this point in time, around October 15,

2008, what sort of price were you looking for?

MR. HURSH: You're talking about the date

of the letter, not when he talked to Andy now,

correct?

MR. SLATER: Good point. Yeah, let's

clarify that. I mean, it changed.

MR. HURSH: I don't know.

MR. SLATER: Let me set up some

foundation to make this easier.

Q. How long after getting the letter did you

talk to Andy?

A. After I got the e-mail, I think pretty

much immediately. I called him or e-mailed him. I

can't remember which one I did. But I talked to

him that day.

Q. Was that October 22, October 23, in that

time frame? If you know.

A. Somewhere around then. It's whenever we

13:07:41 1  
13:07:52 2  
13:08:05 3  
13:08:10 4  
13:08:15 5  
13:08:19 6  
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13:08:33 11  
13:08:35 12  
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13:08:46 18  
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13:09:00 21  
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13:09:04 23  
13:09:09 24  
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13:09:17 1 got the offer. It was basically -- basically that day we talked.

13:09:23 3 Q. And that day, what was the number that you had in mind?

13:09:34 5 A. That day, we were still basing our evaluation the same way we had all along, based on a range that was already established with Andy.

13:09:45 8 Q. And what was that range?

13:09:53 9 A. Well, the range was [REDACTED]

13:10:02 11 Q. Did that ever change over time?

13:10:05 12 A. No.

13:10:07 13 Q. So when you got this letter, you thought the dollar amount of the offer was too low, right?

13:10:15 15 A. Yes.

13:10:16 16 Q. And did you really laugh when you got it?

13:10:19 17 A. No.

13:10:21 18 Q. Is there anything else about it that you found objectionable?

13:10:23 19 A. The only thing I found objectionable is that it wasn't broken out the way Andy had requested.

13:10:39 22 Q. Up to this point in time, when you received this letter -- and the e-mail would tell us the exact day you got it, right?

13:09:17 1  
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13:09:40 7  
13:09:45 8  
13:09:53 9  
13:10:01 10  
13:10:02 11  
13:10:05 12  
13:10:07 13  
13:10:11 14  
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13:10:31 20  
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13:10:47 25



A. Yes.

Q. Had you ever -- or anyone on the Ippolito side -- ever conveyed to DBI what they thought an acceptable number was?

A. Not that I recall.

Q. Can you please look in the middle of the letter, second paragraph.

A. Uh-huh.

Q. There's a sentence here that reads, we have, however, calculated synergies we believe could be realized based upon the information we have received to date including an organization chart with compensation.

Do you see that?

A. Uh-huh.

Q. Do you recall any discussions between the Matia side and the DBI side discussing what those synergies were and whether the parties had different perceptions about what those synergies might be?

A. To the extent of what exact synergies can be realized, no. I don't recall any specific discussions about what they could be.

Q. Do you recall that the parties held -- apparently held different perceptions about what

13:10:50 1  
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13:11:42 20  
13:11:50 21  
13:11:54 22  
13:11:57 23  
13:11:59 24  
13:12:02 25

13:21:20 1 possible counter with Andy Christon?  
 A. Not that I can remember.  
 Q. To your knowledge, no brand-only counter was ever made from the Matta side to the DBI side; is that right?  
 A. When you say offer, you just mean one specific amount in terms of counter?  
 Q. Here is where I'm -- here is what I'd like to know: This e-mail reflects and is described as a brand-only offer for the Miller Legacy brand and the Molson Legacy brand portfolios.  
 You see that, right?  
 A. Right.  
 Q. Did anyone on the Matta side ever come up with a counteroffer to this brand-only offer?  
 A. At this point, no.  
 Q. Ever. In the discussions with the DBI side.  
 A. By e-mail confirmation or open general discussion or --  
 Q. Any means.  
 A. I can't remember if a specific amount was countered to them.  
 Q. Was a counter of any form in your mind

13:21:20 1  
 13:21:29 2  
 13:21:32 3  
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 13:21:58 8  
 13:22:01 9  
 13:22:04 10  
 13:22:08 11  
 13:22:10 12  
 13:22:12 13  
 13:22:14 14  
 13:22:14 15  
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 13:22:57 21  
 13:22:58 22  
 13:23:00 23  
 13:23:03 24  
 13:23:05 25

Q. Did you see this letter before it was sent?

A. I can't recall.

Q. Did you discuss the subject matter of the letter with Mr. Christon before it was sent?

A. Yes.

Q. What was the substance of that conversation?

A. I can't recall the exact substance matter. Just continuous frustration on our side that -- at the way this negotiation was going. It wasn't -- well, I guess it was just based on the frustration how the negotiations were going so far.

Q. In your mind, up to that point in time, October 31, 2008, Maiza had negotiated in good faith, right?

A. I believe so.

Q. And to this point in time, October 31, 2008, Maiza had made no offer or counter of any sort for either the sale of its entire business or any of the brand portfolios; is that right?

A. I don't think we ever got to that point. My question was, but you never made a counter or an indication of any sort to the DBI

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13:32:55 6  
13:32:56 7  
13:32:58 8  
13:33:02 9  
13:33:04 10  
13:33:08 11  
13:33:21 12  
13:33:32 13  
13:33:37 14  
13:33:38 15  
13:33:41 16  
13:33:46 17  
13:33:47 18  
13:33:48 19  
13:33:50 20  
13:33:55 21  
13:33:58 22  
13:34:07 23  
13:34:09 24  
13:34:12 25

Bates labeled MA167.

Q. Mr. Malta, have you seen this letter before?

A. Yes.

Q. To your knowledge, was there any counter or any response to this letter from the Malta side to the DBI side?

A. Not that I can recall.

Q. I just need to check my notes on something.

MR. SLATER: Exhibit 17, a document Bates labeled MA168.

(Whereupon, Exhibit 17 was marked for identification.)

THE WITNESS: Okay.

BY MR. SLATER:

Q. You wrote this e-mail, right?

A. Yes.

Q. Why did you write it?

A. Because, at the time, the discussions weren't getting anywhere. I think there were frustrations on both sides. And I felt we could maybe make some progress if Patty and myself got a little more involved.

Q. Was there a reason you selected Patty?

13:37:53 1  
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13:38:47 11  
13:38:51 12  
13:38:54 13  
13:38:54 14  
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13:39:19 19  
13:39:20 20  
13:39:23 21  
13:39:26 22  
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13:39:38 24  
13:39:40 25

13:59:37 1 left it at -- what was it? I think there was some  
 13:59:45 2 line item expenses they wanted to get. So I said,  
 13:59:48 3 I'll get those to you right away, which I did.  
 13:59:51 4 Q. And I believe you just testified that, in  
 13:59:53 5 the course of that meeting, Mr. Skinner made  
 13:59:56 6 another offer on behalf of DBI?  
 13:59:58 7 A. Uh-huh.  
 14:00:00 8 Q. Do you recall approximately what it was  
 14:00:01 9 or how it was made?  
 14:00:05 10 A. It was pretty much right at the beginning  
 14:00:08 11 of the meeting. And it was done -- it was broken  
 14:00:11 12 out as a multiple of EBITDA and just based on --  
 14:00:23 13 well, yeah, our EBITDA with their perceived  
 14:00:28 14 synergies put in it and multiplied by -- I want to  
 14:00:35 15 say  
 14:00:39 16 Q. In the course of that meeting, did you  
 14:00:42 17 convey any number you would accept on behalf of  
 14:00:45 18 Matta?  
 14:00:45 19 A. No.  
 14:00:46 20 Q. Did that meeting actually take place --  
 14:00:48 21 forgive me if I asked you this.  
 14:00:52 22 Did it actually take place on Monday,  
 14:00:56 23 November 24?  
 14:00:58 24 A. Yes, it did.  
 14:01:35 25 MR. SLATER: Can you mark this as next in

14:01:35 25  
 14:00:58 24  
 14:00:56 23  
 14:00:52 22  
 14:00:48 21  
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 14:00:08 11  
 14:00:05 10  
 14:00:01 9  
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 13:59:58 7  
 13:59:56 6  
 13:59:53 5  
 13:59:51 4  
 13:59:48 3  
 13:59:45 2  
 13:59:37 1

15, right?  
 A. Uh-huh.  
 Q. And your response is reflected in the e-mail above, right?  
 A. Yes.  
 Q. And was it your intention writing that e-mail to terminate the discussions?  
 A. At that point, yes.  
 Q. At that point, Monday, December 15, when you wrote this e-mail, is it fair to say that Matta had provided no numbers to the DBI side that would have been acceptable for the purchase of either its business or the brand portfolio?  
 A. Had Matta provided --  
 Q. The Matta side.  
 A. The Matta side?  
 Q. Yeah.  
 A. Not a specific amount, no.  
 Q. Had any offers been conveyed -- I'm going to say -- offers obviously came from the DBI and IBG side. And it was your judgment the numbers weren't high enough, right?  
 A. Right.  
 Q. Had the Matta side ever provided anything like a counteroffer back to the DBI side?

14:14:00 1  
 14:14:02 2  
 14:14:03 3  
 14:14:05 4  
 14:14:07 5  
 14:14:08 6  
 14:14:10 7  
 14:14:26 8  
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 14:14:31 10  
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 14:14:49 14  
 14:14:52 15  
 14:14:56 16  
 14:14:57 17  
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 14:14:59 19  
 14:15:01 20  
 14:15:05 21  
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A. Nothing in writing. No true official counteroffer at this point. Because we knew we were still quite a ways away.

And in my meeting with them in Sacramento, I pretty much conveyed that. That we're still a ways off, you know, with these offers. Hopefully we can close the gap.

And without giving them the specific, you know, amount, I was saying that the gap was still pretty wide. They understood it was still pretty wide.

Q. Did you convey anything in the Sacramento meeting about what number would be acceptable to the Matra side?

A. Not the specific number.

Q. I'm sorry, I shouldn't speak over your answers.

A. I apologize.

Q. Not at all.

What did you convey generally about -- other than what you've testified to -- about what would be acceptable to Matra?

A. Nothing completely specific. Just that the gap was still pretty wide. And that was -- that was pretty much it.

14:15:19 1  
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14:15:47 7  
14:15:50 8  
14:15:52 9  
14:16:02 10  
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14:16:20 19  
14:16:21 20  
14:16:22 21  
14:16:25 22  
14:16:31 23  
14:16:33 24  
14:16:41 25

14:15:19 1 A. Nothing in writing. No true official  
14:15:32 2 counteroffer at this point. Because we know we  
14:15:36 3 were still quite a ways away.  
14:15:39 4 And in my meeting with them in  
14:15:41 5 Sacramento, I pretty much conveyed that. That  
14:15:44 6 we're still a ways off, you know, with these  
14:15:47 7 offers. Hopefully we can close the gap.  
14:15:50 8 And without giving them the specific, you  
14:15:52 9 know, amount, I was saying that the gap was still  
14:16:02 10 pretty wide. They understood it was still pretty  
14:16:06 11 wide.  
14:16:07 12 Q. Did you convey anything in the Sacramento  
14:16:09 13 meeting about what number would be acceptable to  
14:16:12 14 the Malta side?  
14:16:13 15 A. Not the specific number.  
14:16:15 16 Q. I'm sorry, I shouldn't speak over your  
14:16:17 17 answers.  
14:16:18 18 A. I apologize.  
14:16:20 19 Q. Not at all.  
14:16:21 20 What did you convey generally about --  
14:16:22 21 other than what you've testified to -- about what  
14:16:25 22 would be acceptable to Malta?  
14:16:31 23 A. Nothing completely specific. Just that  
14:16:33 24 the gap was still pretty wide. And that was --  
14:16:41 25 that was pretty much it.

14:16:41 25  
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14:16:09 13  
14:16:07 12  
14:16:06 11  
14:16:02 10  
14:15:52 9  
14:15:50 8  
14:15:47 7  
14:15:44 6  
14:15:41 5  
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14:15:36 3  
14:15:32 2  
14:15:19 1



15, right?

A. Uh-huh.

Q. And your response is reflected in the e-mail above, right?

A. Yes.

Q. And was it your intention writing that e-mail to terminate the discussions?

A. At that point, yes.

Q. At that point, Monday, December 15, when you wrote this e-mail, is it fair to say that Maiza had provided no numbers to the DBI side that would have been acceptable for the purchase of either its business or the brand portfolio?

A. Had Maiza provided --

Q. The Maiza side.

A. The Maiza side?

Q. Yeah.

A. Not a specific amount, no.

Q. Had any offers been conveyed -- I'm going to say -- offers obviously came from the DBI and IBG side. And it was your judgment the numbers weren't high enough, right?

A. Right.

Q. Had the Maiza side ever provided anything like a counteroffer back to the DBI side?

14:14:00 1

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 13:39:19 19  
 13:39:20 20  
 13:39:23 21  
 13:39:26 22  
 13:39:32 23  
 13:39:38 24  
 13:39:40 25

Bates labeled MA167.  
 Q. Mr. Matta, have you seen this letter before?  
 A. Yes.  
 Q. To your knowledge, was there any counter or any response to this letter from the Malta side to the DBI side?  
 A. Not that I can recall.  
 Q. I just need to check my notes on something.  
 MR. SLATER: Exhibit 17, a document Bates labeled MA168.  
 (Whereupon, Exhibit 17 was marked for identification.)  
 THE WITNESS: Okay.  
 BY MR. SLATER:  
 Q. You wrote this e-mail, right?  
 A. Yes.  
 Q. Why did you write it?  
 A. Because, at the time, the discussions weren't getting anywhere. I think there were frustrations on both sides. And I felt we could maybe make some progress if Paty and myself got a little more involved.  
 Q. Was there a reason you selected Paty?

13:09:17 1 got the offer. It was basically -- basically that day we talked.

13:09:23 3 Q. And that day, what was the number that you had in mind?

13:09:34 5 A. That day, we were still basing our evaluation the same way we had all along, based on a range that was already established with Andy.

13:09:45 8 Q. And what was that range?

13:09:53 9 A. Well, the range was still [REDACTED]

13:10:02 11 Q. Did that ever change over time?

13:10:05 12 A. No.

13:10:07 13 Q. So when you got this letter, you thought the dollar amount of the offer was too low, right?

13:10:15 15 A. Yes.

13:10:16 16 Q. And did you really laugh when you got it?

13:10:19 17 A. No.

13:10:21 18 Q. Is there anything else about it that you found objectionable?

13:10:31 20 A. The only thing I found objectionable is that it wasn't broken out the way Andy had requested.

13:10:41 23 Q. Up to this point in time, when you received this letter -- and the e-mail would tell us the exact day you got it, right?

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13:10:07 13  
13:10:05 12  
13:10:02 11  
13:10:01 10  
13:09:53 9  
13:09:45 8  
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