

# APPENDIX 2-5

## Arvia T 20151119 PA DC on 5-2-17

Scene	Designation	Source	Tx Duration	Elapsed	Remains	Media File	Barcode
1	6:14 -6:19	Arvia, Thomas 2015-11-19	00:00:13	00:00:00	00:54:29	Arvia_T-111715-1of5	M1.1
		6:14 Q. Good morning, Mr. Arvia.					
		6:15 A. Good morning.					
		6:16 Q. Would you please state and spell your full					
		6:17 name for the record?					
		6:18 A. Sure. First name is Thomas, T-h-o-m-a-s,					
		6:19 last name Arvia, A-r-v, as in Victor, i-a.					
2	8:12 -8:13	Arvia, Thomas 2015-11-19	00:00:05	00:00:13	00:54:16	Arvia_T-111715-1of5	M1.2
		8:12 Q. When did you begin working at Sears?					
		8:13 A. 1994.					
3	8:14 -8:16	Arvia, Thomas 2015-11-19	00:00:08	00:00:18	00:54:11	Arvia_T-111715-1of5	M1.83
		8:14 Q. How many positions have you held at Sears					
		8:15 throughout your 20 years?					
		8:16 A. 13.					
4	8:21 -8:23	Arvia, Thomas 2015-11-19	00:00:07	00:00:26	00:54:03	Arvia_T-111715-1of5	M1.3
		8:21 Q. What's your current position?					
		8:22 A. I'm a division vice president for product					
		8:23 management for Craftsman.					
5	8:24 -9:8	Arvia, Thomas 2015-11-19	00:00:24	00:00:33	00:53:56	Arvia_T-111715-1of5	M1.85
		8:24 Q. And what are the responsibilities of a					
		9:1 division vice president for product management?					
		9:2 A. Division vice president is the lead role for					
		9:3 the product management team. Product management for					
		9:4 Craftsman, the role encompasses all of Craftsman,					
		9:5 both tools and lawn and garden, all categories.					
		9:6 We're responsible for developing product assortments					
		9:7 and working with other teams to commercialize those					
		9:8 assortments.					
6	10:1 -10:17	Arvia, Thomas 2015-11-19	00:00:52	00:00:57	00:53:32	Arvia_T-111715-1of5	M1.4
		10:1 Q. Prior to your -- starting your position in					
		10:2 October 2013, what position did you hold at Sears?					
		10:3 A. I was DMM for the tools team.					
		10:4 Q. What is DMM?					
		10:5 A. Divisional merchandise manager.					
		10:6 Q. When did you start as division merchandise					
		10:7 manager for the tools team?					
		10:8 A. 2009. Back half of 2009.					
		10:9 Q. And you had that role until October 2013?					
		10:10 A. Correct.					
		10:11 Q. What were your responsibilities as DMM of					

10:12 tools, for tools?  
 10:13 A. As DMM, I was one of three DMMs in the  
 10:14 department. I had specific categories. Buyers would  
 10:15 report up to the DMMs, so we led -- we led the team  
 10:16 for essentially all activities for the retail side  
 10:17 for Sears and K-Mart.

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7      **10:18 -10:21**      Arvia, Thomas 2015-11-19      00:00:07      00:01:49      00:52:40      Arvia\_T-111715-1of5      M1.5

10:18 Q. What was the department?  
 10:19 A. The department was tools. Does that answer  
 10:20 your question?  
 10:21 Q. Yeah.

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8      **10:22 -11:8**      Arvia, Thomas 2015-11-19      00:00:35      00:01:56      00:52:33      Arvia\_T-111715-1of5      M1.6

10:22 A. I had a portion of the tools department.  
 10:23 Q. What portion of the tools department was  
 10:24 under your responsibility?  
 11:1 A. Under my responsibility was mechanics hand  
 11:2 tools, tool storage, garage door openers,  
 11:3 compressors, wet/dry vacs, automotive categories.  
 11:4 Q. What is included under mechanics hand tools?  
 11:5 A. Mechanics hand tools would be wrenches,  
 11:6 rachets, sockets.  
 11:7 Q. Does it include pliers?  
 11:8 A. Does not.

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9      **16:23 -17:13**      Arvia, Thomas 2015-11-19      00:00:59      00:02:31      00:51:58      Arvia\_T-111715-1of5      M1.7

16:23 Q. Mr. Arvia, Exhibit No. 2 is LoggerHead's  
 16:24 Rule 30(b)(6) deposition notice to Sears Holdings  
 17:1 Corporation.  
 17:2 Have you ever seen this document before  
 17:3 today?  
 17:4 A. I don't know specifically that I've seen  
 17:5 this document, but again, I'm familiar with  
 17:6 everything on here.  
 17:7 Q. And do you understand that there are certain  
 17:8 topics that are listed in Exhibit A to Arvia 2 and  
 17:9 some of those topics are the ones that Sears has  
 17:10 designated you to testify for the corporation?  
 17:11 A. If the question is a general question, do I  
 17:12 understand there's things I'm being asked to  
 17:13 represent, the answer to that is yes.

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10      **28:9 -28:20**      Arvia, Thomas 2015-11-19      00:01:04      00:03:30      00:50:59      Arvia\_T-111715-1of5      M1.9

[Link > P333.1](#)

28:9 Q. I'm introducing Arvia 4, which is a document  
 28:10 produced by Sears, with the last two Bates Nos. 75,  
 28:11 and this is an e-mail from Kim Schafer to you and  
 28:12 others sent December 8, 2011, subject: Wow, Look At

28:13 Those DRTV Sales.  
 28:14 Do you recognize this document?  
 28:15 A. I recognize this document.  
 28:16 Q. And is this e-mail a report about the DRTV  
 28:17 sales for the Bionic Wrench at a particular point in  
 28:18 time?  
 28:19 A. I would say yes, this is a point in time  
 28:20 view of performance of the Bionic Wrench.

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11	<b>29:24 -30:14</b>	Arvia, Thomas 2015-11-19	00:00:52	00:04:34	00:49:55	Arvia_T-111715-1of5	M1.10
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29:24 Q. You see in the e-mail Ms. Campana sent she  
 Link > P333.1.1 30:1 writes, "Attached is the Bionic Wrench DRTV update.  
 30:2 In four days we are already 111 percent to forecast,  
 30:3 line 42 is up 50 percent in sales over LY and  
 30:4 71 percent in margin."  
 30:5 Do you see that?  
 30:6 A. I do.  
 30:7 Q. What is LY? Is that last year?  
 30:8 A. That's correct.  
 30:9 Q. And what do you understand her to mean when  
 30:10 she said -- when she wrote "71 percent in margin"?  
 30:11 A. I understand her to mean that the margin  
 30:12 dollars generated for her category for the point in  
 30:13 time in question increased by 71 percent versus prior  
 30:14 year.

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12	<b>50:2 -51:7</b>	Arvia, Thomas 2015-11-19	00:02:19	00:05:26	00:49:03	Arvia_T-111715-1of5	M1.11
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50:2 Q. I'm introducing Arvia Exhibit 7, which you  
 Link > P334.1 50:3 should have shortly on your screen. Arvia 7 is an  
 Link > P334.1.1 50:4 e-mail from Ron -- or Ran Duan to you and others  
 50:5 dated December 11, 2011, subject: DRTV Week 45  
 50:6 Update.  
 50:7 Let me know when you're ready?  
 50:8 A. Okay, I have it on the screen.  
 50:9 Q. Who is -- can you pronounce the gentleman's  
 50:10 name who sent you the e-mail?  
 50:11 A. I can. His name is Ran Duan. He was an  
 50:12 analyst on our finance team.  
 50:13 Q. What's your understanding for why Mr. Duan  
 50:14 sent this e-mail, Exhibit 7, to you?  
 50:15 A. This is an update on the DRTV performance  
 50:16 for all programs combined.  
 Link > P334.1.2 50:17 Q. He wrote to you in Exhibit 7, "Last week  
 50:18 DRTV totally generated 63K incremental units for  
 50:19 Bionic Wrench and Universal set resulting in  
 50:20 636 percent unit lift and 732K incremental margin."  
 50:21 Do you see that?

50:22 A. I do.  
 50:23 Q. What does it mean -- withdrawn.  
 50:24 Do you know what it means that DRTV  
 51:1 generated 63K incremental units for Bionic and  
 51:2 Universal?  
 51:3 A. I do. The finance team would establish a  
 51:4 baseline forecast for what a program would produce  
 51:5 without DRTV support, so the incremental is the  
 51:6 amount that it produced above and beyond what they  
 51:7 would estimate the baseline to be.

13	<b>51:14 -51:19</b>	Arvia, Thomas 2015-11-19	00:00:25	00:07:45	00:46:44	Arvia_T-111715-1of5	M1.12
		51:14 Q. The 636 percent unit lift referenced in					
		51:15 Exhibit 7 is referring to 636 percent lift from DRTV					
		51:16 compared to baseline forecast?					
	<a href="#">Link &gt; Hide</a>	51:17 A. In this example here, yes, the baseline					
		51:18 established was provided, created by this team and					
		51:19 this is performance above that baseline.					
14	<b>57:14 -58:2</b>	Arvia, Thomas 2015-11-19	00:00:40	00:08:10	00:46:19	Arvia_T-111715-1of5	M1.13
		57:14 Q. Are you aware, Mr. Arvia, whether the Bionic					
		57:15 Wrench outsold any other -- any Craftsman branded					
		57:16 hand tool for holiday 2011? Not together, but any					
		57:17 individual Craftsman tool?					
		57:18 A. I did not review a sales report of all items					
		57:19 in hand tools; however, I do recall a note from					
		57:20 Amanda stating that it was the number one tool in her					
		57:21 category at that point in time in the middle of					
		57:22 December, so I don't -- I don't recall anything at					
		57:23 this time at the end of December in those categories.					
		57:24 Q. Did Amanda's categories include Craftsman					
		58:1 tools?					
		58:2 A. They did.					
15	<b>58:20 -58:22</b>	Arvia, Thomas 2015-11-19	00:00:16	00:08:50	00:45:39	Arvia_T-111715-1of5	M1.14
	<a href="#">Link &gt; P462.1</a>	58:20 Q. I'm introducing Arvia 9, which you should					
		58:21 have shortly. This is another e-mail chain that					
		58:22 includes you. This one is dated May 9, 2012.					
16	<b>59:6 -60:1</b>	Arvia, Thomas 2015-11-19	00:01:02	00:09:06	00:45:23	Arvia_T-111715-1of5	M1.15
	<a href="#">Link &gt; P462.2.1</a>	59:6 Q. Mr. Kiss wrote to you and others on May 9,					
		59:7 2012, "Last holiday what did we move most/sell out					
		59:8 of?"					
		59:9 Do you see that?					
		59:10 A. I do.					
		59:11 Q. Did you receive this e-mail from Mr. Kiss on					
		59:12 May 9, 2012?					
		59:13 A. I did.					

		59:14	Q. Who is -- what was Bill Kiss's function at					
		59:15	Sears in May of 2012?					
		59:16	A. In May of 2012, Bill was the chief marketing					
		59:17	officer for the tools team.					
		59:18	Q. Chief marketing officer for all of tools?					
		59:19	A. That's correct.					
		59:20	Q. In response to Mr. Kiss's request,					
<a href="#">Link &gt; P462.1.1</a>		59:21	Mr. Whitney responded "Bionic," and then you respond					
<a href="#">Link &gt; P462.1.2</a>		59:22	"Yep, no question."					
		59:23	Is it accurate that you sent that e-mail,					
		59:24	"Yep, no question," on May 9, 2012?					
		60:1	A. That's accurate.					
17	<b>60:22-61:11</b>	Arvia, Thomas 2015-11-19	00:00:39	00:10:08	00:44:21	Arvia_T-111715-1of5	M1.16	
	<a href="#">Link &gt; Hide</a>	60:22	Q. It was so successful you knew off the top of					
		60:23	your head when the chief marketing officer of the					
		60:24	company asked you what was the product that Sears					
		61:1	moved the most in holiday 2012 that you immediately					
		61:2	knew it was the Bionic Wrench, right?					
		61:3	A. I would say -- the question's broader than					
		61:4	that. It says "What did we move the most, sell out					
		61:5	of?" That's broader than just what did we move the					
		61:6	most of, and yes, I had direct knowledge of that					
		61:7	through the DRTV programs.					
		61:8	Q. And when Adam answered Mr. Kiss's question					
		61:9	with Bionic, you understood, didn't you, Mr. Arvia,					
		61:10	that he was talking about which tool Sears moved the					
		61:11	most of, right?					
18	<b>61:14-61:15</b>	Arvia, Thomas 2015-11-19	00:00:05	00:10:47	00:43:42	Arvia_T-111715-1of5	M1.17	
		61:14	A. Yeah, I'm reading the question the same way.					
		61:15	What did we move the most/sell out of.					
19	<b>61:16-61:20</b>	Arvia, Thomas 2015-11-19	00:00:11	00:10:52	00:43:37	Arvia_T-111715-1of5	M1.18	
		61:16	BY MR. SKIERMONT:					
		61:17	Q. Was Bionic the only thing you sold out of in					
		61:18	holiday 2011 on the tools side?					
		61:19	A. It was not. We sold out of other DRTV					
		61:20	programs as well as shown in this e-mail.					
20	<b>64:17-65:15</b>	Arvia, Thomas 2015-11-19	00:01:22	00:11:03	00:43:26	Arvia_T-111715-2of5	M1.19	
		64:17	Q. Mr. Arvia, in the 2011 and 2012 time frame,					
		64:18	you and Mr. Whitney were both DMMs for tools,					
		64:19	correct?					
		64:20	A. Correct.					
		64:21	Q. Would you characterize yourselves as peers?					
		64:22	A. I would.					
		64:23	Q. Did Mr. Whitney ever confer or consult with					

64:24 you on discussions he was having with LoggerHead or  
 65:1 anything related to the Bionic Wrench?  
 65:2 A. There was one occasion.  
 65:3 Q. There was just one occasion?  
 65:4 A. One -- one that sticks out to me.  
 65:5 Q. What is the occasion that sticks out?  
 65:6 A. He initiated a contact with me on  
 65:7 February 17th, and that's when he told me that there  
 65:8 was a -- I believe the number is 55 percent price  
 65:9 increase on the table, and -- and he had some  
 65:10 questions he wanted to run past me.  
 65:11 Q. Why was he running them past you, do you  
 65:12 know?  
 65:13 A. Just for insight, feedback.  
 65:14 Q. I'm introducing Arvia Exhibit 10, which is  
 65:15 Sears 224.

Link > P343.1

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21      **65:24 -68:11**      Arvia, Thomas 2015-11-19      00:03:38    00:12:25    00:42:04    Arvia\_T-111715-2of5      M1.20

65:24 Q. So my question is, is Arvia Exhibit 10 the  
 66:1 e-mail that you just described?  
 66:2 A. That's the one I recall, yes.  
 66:3 Q. What did -- when -- in the first e-mail of  
 66:4 this chain, Mr. Whitney, after he discussed the price  
 66:5 increase that you just mentioned, he wrote "Is the  
 66:6 Clench Wrench an option?"  
 66:7            Do you see that?  
 66:8 A. I do.  
 66:9 Q. What's the Clench Wrench?  
 66:10 A. The Clench Wrench is a Craftsman item that  
 66:11 was under my categories, and what he was inferring by  
 66:12 this was is the Clench Wrench a potential option for  
 66:13 Q4, Q4 sales.  
 66:14 Q. What was your answer?  
 66:15 A. At this stage in the game, the answer was  
 66:16 yes, it's an option. This was very early in the  
 66:17 year. We are evaluating multiple options for DRTV  
 66:18 programs at the time.  
 66:19 Q. And you responded to Mr. Whitney's e-mail  
 66:20 that was entitled "Can you call me" --  
 66:21 A. I do.  
 66:22 Q. -- later that night.  
 66:23 A. Morning.  
 66:24 Q. Or the next day. And you said -- and you  
 67:1 said, "They," meaning LoggerHead, "are giving up  
 67:2 long-term stability for short-term gain."  
 67:3            Did you write that?

Link > P343.1.1

Link > P343.1.4

67:4 A. Yes.  
 67:5 Q. What were you referring to with respect to  
 67:6 long-term stability?  
 67:7 A. What I was inferring at that time was we had  
 67:8 a -- what we established in the other conversation  
 67:9 was a successful program in 2011.  
 67:10 Q. Why did you write that LoggerHead, in your  
 67:11 view, was giving up long-term stability for  
 67:12 short-term gain?  
 67:13 A. There was a -- a former buyer at Sears, his  
 67:14 name is Scott Moore; I think he initiated the Bionic  
 67:15 relationship, my understanding is, with Sears. He  
 67:16 was at Home Depot at the time, and -- and if there  
 67:17 was a -- if there was a chance they were going to go  
 67:18 to another retailer, that would spread the sales out  
 67:19 over time, over -- over multiple channels.  
 67:20 Q. Why would that be LoggerHead giving up  
 67:21 long-term stability?  
 67:22 A. If you look at the way the program was run  
 67:23 and the success of the program in 2011, it was driven  
 67:24 by DRTV, and DRTV is a vehicle that's used by Sears  
 68:1 in this space. Home Depot does not have a history of  
 68:2 using DRTV. Our other competitors use it on a very  
 68:3 limited basis.  
 68:4 Q. You also wrote, "No doubt Scotty is  
 68:5 repeating his program and they think they have a good  
 68:6 deal with Depot."  
 68:7 Do you see that?  
 68:8 A. I do.  
 68:9 Q. And is the Scotty that you are referring to  
 68:10 Scott Moore?  
 68:11 A. I did. It is, yes.

Link > P343.1.5

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22	<b>69:1 -69:19</b>	Arvia, Thomas 2015-11-19	00:01:03	00:16:03	00:38:26	Arvia_T-111715-2of6	M1.21
		69:1 Q. You also asked if he was free tomorrow and					
		69:2 you said you would give him a call. Did you have a					
		69:3 follow-up conversation to this e-mail exchange with					
		69:4 Mr. Whitney?					
		69:5 A. We did with a brief conversation.					
		69:6 Q. When did you have a brief conversation?					
		69:7 A. I don't believe -- this was a weekend when I					
		69:8 look back at the date for time frame, so I believe it					
		69:9 was a couple days later.					
		69:10 Q. And what do you recall about the					
		69:11 conversation you had with Mr. Whitney a couple of					
		69:12 days after this e-mail exchange in Exhibit 10?					

Link > Hide



		69:13	A. I recall two key concerns from Adam. Number					
		69:14	one was the changing of the economics of the program,					
		69:15	the proposed pricing, and the other one is the					
		69:16	proposed competitive -- competitive set, that if					
		69:17	Bionic Wrench was going to be sold at other channels,					
		69:18	it would potentially detract from Sears sales and					
		69:19	make the DRTV program less profitable.					
23	<b>75:23 -76:12</b>	Arvia, Thomas 2015-11-19	00:01:07	00:17:06	00:37:23	Arvia_T-111715-2of5	M1.26	
		75:23	Q. Ultimately what came of Mr. Whitney's					
		75:24	request for DRTV support for Dad's Day 2012 for the					
		76:1	Bionic Wrench?					
		76:2	A. I don't recall a specific action off of this					
		76:3	e-mail. I can confirm that Bionic Wrench was on DRTV					
		76:4	for Father's Day.					
		76:5	Q. And how did the Bionic Wrench do on DRTV for					
		76:6	Father's Day 2012, generally?					
		76:7	A. Based on what I recall, from the data that I					
		76:8	reviewed, the Bionic was -- came close to achieving					
		76:9	forecast; not quite the full forecast, and it was a					
		76:10	-- without subsidy, it was a break-even program. A					
		76:11	program that we, in hindsight, wouldn't have					
		76:12	otherwise done.					
24	<b>76:13 -76:21</b>	Arvia, Thomas 2015-11-19	00:00:31	00:18:13	00:36:16	Arvia_T-111715-2of5	M1.27	
		76:13	Q. Did any -- and for Father's Day, 2012 was					
		76:14	there DRTV support for Craftsman branded hand tools?					
		76:15	A. There was.					
		76:16	Q. Did any of them outsell the Bionic Wrench on					
		76:17	a unit basis?					
		76:18	A. Based on my recollection, there was no one					
		76:19	single Craftsman item that outsold the Bionic during					
		76:20	that time frame for our DRTV program. From a unit					
		76:21	sales standpoint.					
25	<b>87:20 -88:3</b>	Arvia, Thomas 2015-11-19	00:00:24	00:18:44	00:35:45	Arvia_T-111715-2of5	M1.29	
	<a href="#">Link &gt; P340.1</a>	87:20	Q. I am introducing Arvia Exhibit 14, which is					
		87:21	a long e-mail chain that you were roped into on the					
	<a href="#">Link &gt; P340.1.2</a>	87:22	first page --					
		87:23	A. Yes.					
		87:24	Q. -- with Kim Schafer since you -- or					
		88:1	forwarded you the e-mail chain on Saturday, July 28,					
		88:2	2012.					
		88:3	A. Okay.					
26	<b>88:22 -89:7</b>	Arvia, Thomas 2015-11-19	00:00:52	00:19:08	00:35:21	Arvia_T-111715-2of5	M1.30	
		88:22	Q. And is it -- like I said, I think we'll get					
		88:23	into the details eventually, but for the purpose of					

		88:24	this exercise, can you describe generally what it was					
		89:1	Ms. Schafer was forwarding to you?					
	<a href="#">Link &gt; P340.1.3</a>	89:2	A. Yes. Generally Dan Brown from LoggerHead					
		89:3	was reaching out to Sam Solomon expressing some					
		89:4	concerns and so Kim was -- this was, based on the					
		89:5	timing estimate, a couple weeks after Adam left, so					
		89:6	Kim was looping me in in case there was any action I					
		89:7	needed to be involved in.					
27	<b>89:8 -89:14</b>	Arvia, Thomas 2015-11-19	00:00:19	00:20:00	00:34:29	Arvia_T-111715-2of5		M1.31
		89:8	Q. And do you see there about three hours or so					
		89:9	after Ms. Schafer forwarded the e-mail chain to you,					
	<a href="#">Link &gt; P340.1.1</a>	89:10	you replied on Saturday July 28th at 2:55 p.m. and					
		89:11	wrote, "This one is not going to have a happy ending					
		89:12	for either side."					
		89:13	Did you write that?					
		89:14	A. I did.					
28	<b>89:18 -90:16</b>	Arvia, Thomas 2015-11-19	00:01:38	00:20:19	00:34:10	Arvia_T-111715-2of5		M1.32
		89:18	Q. What did you mean by -- what sides were you					
		89:19	referring to?					
		89:20	A. My recollection is I was referring to Sears					
		89:21	and LoggerHead. It was an unfortunate situation; we					
		89:22	had a successful program together in 2011, and we					
		89:23	were not able to come to a resolution on that.					
		89:24	Q. What did you mean when you wrote "This is					
		90:1	not going to have a happy ending for either side"?					
		90:2	A. My recollection is that nobody wins in this					
		90:3	case. It was a successful program for LoggerHead in					
		90:4	2011 and it was a successful program for Sears in					
		90:5	2011. So -- so nobody wins when you're not having					
		90:6	access and being able to sell product. Can't come to					
		90:7	an agreement.					
		90:8	Q. Why did you think that this one was not					
		90:9	going to have a happy ending for Sears?					
		90:10	A. Because LoggerHead was a successful program					
		90:11	in 2011 and it was an item that, as we established,					
		90:12	sold a lot of units, drove margin for the department,					
		90:13	and -- excuse me, drove margin for the department.					
		90:14	So without it, you know, without it this					
		90:15	year, you know, there would be other things we would					
	<a href="#">Link &gt; Hide</a>	90:16	need to do to offset that.					
29	<b>95:4 -95:24</b>	Arvia, Thomas 2015-11-19	00:01:26	00:21:57	00:32:32	Arvia_T-111715-2of5		M1.33
		95:4	Q. How was the product that became the Max					
		95:5	Axess Locking Wrench initiated?					
		95:6	A. The first thing that I saw was an e-mail					

95:7 from Matt McDonnell to Jill Lowe and I think -- I  
 95:8 believe the date was February 22nd.  
 95:9 Q. Who is Matt McDonnell?  
 95:10 A. Matt McDonnell at the time was director of  
 95:11 product management for Craftsman.  
 95:12 Q. And you are referencing an e-mail from Matt  
 95:13 McDonnell, who is director of product management for  
 95:14 Craftsman, to Jill Lowe, who is an Apex employee, is  
 95:15 that correct?  
 95:16 A. That's what I recall and I believe I'm  
 95:17 correct that the 22nd was the date.  
 95:18 Q. And it was February 22, 2012?  
 95:19 A. Correct.  
 95:20 Q. Why did Mr. McDonnell reach out to Ms. Lowe  
 95:21 on February 22, 2012?  
 95:22 A. My recollection of the e-mail is it was a  
 95:23 very short one-line e-mail that said we may have an  
 95:24 opportunity. I don't recall the exact words.

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30      **96:1 -98:16**      Arvia, Thomas 2015-11-19      00:04:10      00:23:23      00:31:06      Arvia\_T-111715-2of5      M1.34

96:1 Q. Is it fair to say Sears first approached  
 96:2 Apex about designing a tool that became known as the  
 96:3 Max Axess Locking Wrench?  
 96:4 A. In my experience, that's not -- that's not  
 96:5 the process. The Sears team is responsible for  
 96:6 commercialization of the product in the Sears retail  
 96:7 store. The Craftsman team is responsible for  
 96:8 product.  
 96:9 Q. And so you're distinguishing between Sears  
 96:10 and Craftsman teams, right, in that answer?  
 96:11 A. Yeah, they're completely separate business  
 96:12 units. I'm sorry, yes, business units.  
 96:13 Q. So could you explain for the record this --  
 96:14 the relationship between Sears and Craftsman and how  
 96:15 the organizations work together?  
 96:16 A. So the relationship between Sears, the  
 96:17 retailer, and Craftsman, the business unit?  
 96:18 Q. Yes. And both entities, if I'm correct,  
 96:19 fall under the Sears Holding umbrella?  
 96:20 A. That's correct.  
 96:21 MR. HILMERT: And I'll just object it's  
 96:22 outside the scope, but I'm sure the witness knows the  
 96:23 answer, so go ahead and answer.  
 96:24  
 97:1 BY THE WITNESS:  
 97:2 A. The -- roughly between six and seven years

97:3 ago, new business units were formed at Sears Holdings  
 97:4 and that's the time that the KCD business unit was  
 97:5 formed. KCD stands for Kenmore Craftsman DieHard.  
 97:6 Craftsman is a portion of that business unit. And  
 97:7 then -- and prior to that time, the merchant team or  
 97:8 the Sears team would be -- would be in charge of  
 97:9 anything pertaining to product.

97:10 When that change was made six to seven years  
 97:11 ago, the Craftsman team was charged with -- with the  
 97:12 product portfolio for Craftsman specifically;  
 97:13 identifying needs and opportunities in the market and  
 97:14 then working with suppliers to -- to solve those  
 97:15 needs through product. And then the Sears -- the  
 97:16 Sears team remained as leading the retail business.

97:17 Q. And so the buyers that we have talked about  
 97:18 a couple of times, the buyers, Sears buyers, are on  
 97:19 the Sears -- the retail side are where the buyers  
 97:20 live within the Sears organization, correct?

97:21 A. Correct. If there is a title of buyer, it's  
 97:22 on the Sears retail side.

97:23 Q. And DMMs are also on the retail side, right?

97:24 A. That's correct, DMMs are on the retail side.

98:1 Q. And although the Sears retail and the KCD  
 98:2 business units are both part of Sears Holding, is it  
 98:3 fair to say that Sears buyers interact with Craftsman  
 98:4 like they do other vendors that are not within the  
 98:5 Sears organization?

98:6 A. I -- I would say it's very similar.

98:7 Q. How would you say it's different?

98:8 A. There are circumstances where suppliers will  
 98:9 have Craftsman product and non-Craftsman product. So  
 98:10 as a buyer, you may have a relationship with a  
 98:11 supplier for one of their brands, then you may have a  
 98:12 relationship with the same people at the same  
 98:13 supplier for Craftsman branded product as well.

98:14 And then the other distinction is that  
 98:15 Craftsman does not manufacture any product, so...  
 98:16 Craftsman as a brand unit within Sears.

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31      **99:1 -99:7**      Arvia, Thomas 2015-11-19      00:00:21    00:27:33    00:26:56    Arvia\_T-111715-2of5      M1.35

99:1 Q. So based on your review of the documents and  
 99:2 preparation for the deposition, it's -- it's Sears'  
 99:3 understanding is that someone from Craftsman  
 99:4 initiated contact with Apex about the product that  
 99:5 became the Max Axess Locking Wrench, correct?  
 99:6 A. Based on what I've reviewed, that's the

99:7 first thing that I saw.

32	<b>102:3 -102:20</b>	Arvia, Thomas 2015-11-19	00:01:07	00:27:54	00:26:35	Arvia_T-111715-2of5	M1.36
	102:3	Did Matt McDonnell discuss the idea of					
	102:4	contacting Apex to develop this new product with					
	102:5	anyone before he sent that e-mail?					
	102:6	A. Based on what I reviewed, I don't have any					
	102:7	record of any discussion he had with anyone.					
	102:8	Q. What was Matt McDonnell -- so director of					
	102:9	product management was his title, correct?					
	102:10	A. Correct.					
	102:11	Q. Did he have authority in February of 2012 as					
	102:12	the director of product management to initiate new					
	102:13	product development directly with Apex without					
	102:14	getting approval from anyone else?					
	102:15	A. Yes, that was his category. Everything was					
	102:16	hierarchical; he had a boss, but yes, he had					
	102:17	authority to initiate projects.					
	102:18	Q. Why did Sears think there was an opportunity					
	102:19	to develop the product that became known as the Max					
	102:20	Axess Locking Wrench?					
33	<b>102:23 -103:4</b>	Arvia, Thomas 2015-11-19	00:00:11	00:29:01	00:25:28	Arvia_T-111715-2of5	M1.37
	102:23	A. I didn't read any document that -- that					
	102:24	inferred why there was an opportunity, I just saw					
	103:1	that there was an opportunity in Matt's words.					
	103:2	BY MR. SKIERMONT:					
	103:3	Q. Is Matt McDonnell still with Sears?					
	103:4	A. He is not.					
34	<b>107:5 -107:14</b>	Arvia, Thomas 2015-11-19	00:00:45	00:29:12	00:25:17	Arvia_T-111715-2of5	M1.38
	107:5	Q. Who makes the decision at Sears -- who makes					
	107:6	the final decision to buy or not buy a tool at Sears					
	107:7	within the organizational structure?					
	107:8	A. So when you say "final decision," I would					
	107:9	point out that there are multiple approval points, so					
	107:10	the ownership of a category goes on -- on a buyer, so					
	107:11	I would say the final approval would be the buyer and					
	107:12	the DMM. There are many approval points along the					
	107:13	way. It has to be signed off on by other support					
	107:14	groups.					
35	<b>109:18 -110:3</b>	Arvia, Thomas 2015-11-19	00:00:22	00:29:57	00:24:32	Arvia_T-111715-2of5	M1.39
	109:18	You understand Kaleta was the buyer for the					
	109:19	Bionic Wrench and the Max Axess Locking Wrench,					
	109:20	correct?					
	109:21	A. I understand.					
	109:22	Q. And you understand the DMM for those two					

109:23 products was Adam Whitney, correct?  
 109:24 A. I understand.  
 110:1 Q. And Whitney is Kaleta's boss, right?  
 110:2 A. At that point in time, Adam was Kaleta's  
 110:3 boss.

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36      **112:4 -112:7**      Arvia, Thomas 2015-11-19      00:00:17      00:30:19      00:24:10      Arvia\_T-111715-2of5      M1.40

112:4      Q. If Sears was only going to run DRTV for the  
 112:5      holiday 2012 period for either the Bionic Wrench or  
 112:6      the Max Axess Locking Wrench, who gets to make that  
 112:7      call?

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37      **112:10 -112:22**      Arvia, Thomas 2015-11-19      00:00:46      00:30:36      00:23:53      Arvia\_T-111715-2of5      M1.41

112:10      A. So I'll start by saying that as we review  
 112:11      DRTV programs as an organization, the -- the number  
 112:12      one goal is to create the best positive margin  
 112:13      outcome for the department. So at this point, every  
 112:14      buyer has candidates for DRTV.  
 112:15           So for the question of Max Axess Locking  
 112:16      Wrench versus Bionic Wrench, the decision on which  
 112:17      one to recommend for DRTV would be -- would be  
 112:18      largely influenced, if not, you know, owned, by Adam  
 112:19      and Stephanie. They would be the ones that would say  
 112:20      of these two we've evaluated and this is -- if we  
 112:21      were going to choose from one of these two, this is  
 112:22      the one we would choose.

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38      **114:9 -114:14**      Arvia, Thomas 2015-11-19      00:00:29      00:31:22      00:23:07      Arvia\_T-111715-2of5      M1.86

114:9      Q. Yeah. Is the entirety of your knowledge  
 114:10      about the decision making at Sears surrounding the  
 114:11      Bionic Wrench and the Max Axess Locking Wrench in the  
 114:12      spring/summer of 2012 based on documents?  
 114:13      A. So the entirety of my personal knowledge,  
 114:14      yes, is based on documents that I reviewed.

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39      **115:3 -115:7**      Arvia, Thomas 2015-11-19      00:00:15      00:31:51      00:22:38      Arvia\_T-111715-2of5      M1.87

115:3      Q. And -- and to the extent you are aware of  
 115:4      details today, that is solely based on Sears  
 115:5      documents that you've reviewed, correct?  
 115:6      A. That is correct. It's solely based on Sears  
 115:7      documents that I have reviewed.

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40      **118:15 -118:17**      Arvia, Thomas 2015-11-19      00:00:05      00:32:06      00:22:23      Arvia\_T-111715-2of5      M1.43

118:15      Q. Based on the documents you reviewed, who  
 118:16      would you identify as the decision maker in this  
 118:17      case?

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41      **118:20 -118:21**      Arvia, Thomas 2015-11-19      00:00:06      00:32:11      00:22:18      Arvia\_T-111715-2of5      M1.44

118:20      A. At that time, I would say it would be Adam

		118:21	and Stephanie.					
42	<b>125:19 -125:24</b>	Arvia, Thomas 2015-11-19	00:00:18	00:32:17	00:22:12	Arvia_T-111715-3of5	M1.45	
	<a href="#">Link &gt; P119.1</a>	125:19	Q. Mr. Arvia, I'm introducing 15, which is					
		125:20	APEX_7774. Is this the e-mail that you were					
		125:21	referring to where Matt McDonnell reached out to Jill					
		125:22	Lowe about an opportunity for Bionic 2.0?					
		125:23	A. That's the e-mail I was referring to					
		125:24	earlier.					
43	<b>129:23 -130:2</b>	Arvia, Thomas 2015-11-19	00:00:14	00:32:35	00:21:54	Arvia_T-111715-3of5	M1.46	
	<a href="#">Link &gt; Hide</a>	129:23	Q. The Craftsman hand tool product development					
		129:24	people reside in the same building as the hand tool					
		130:1	buyers from Sears?					
		130:2	A. Yes, that's correct.					
44	<b>144:3 -144:14</b>	Arvia, Thomas 2015-11-19	00:01:14	00:32:49	00:21:40	Arvia_T-111715-3of5	M1.47	
		144:3	Q. Apart from the general Sears specification					
		144:4	that you reviewed that was sent to Apex, did Sears					
		144:5	provide any specifications to Apex specific to the					
		144:6	Max Axess Locking Wrench that was under development?					
		144:7	A. At any point in time?					
		144:8	Q. Yeah.					
		144:9	A. So the way I'd describe it is a -- is a					
		144:10	feedback loop. If there was a market opportunity for					
		144:11	a product, the supplier, in this case Apex, would --					
		144:12	would work to create an execution of the product that					
		144:13	captured that market opportunity and there would be a					
		144:14	feedback loop from Sears.					
45	<b>146:13 -147:2</b>	Arvia, Thomas 2015-11-19	00:01:21	00:34:03	00:20:26	Arvia_T-111715-3of5	M1.48	
		146:13	Did Sears expect that Apex would use the					
		146:14	Bionic Wrench as a benchmark when developing the Max					
		146:15	Axess Locking Wrench?					
		146:16	A. I can say that competitive benchmarking is					
		146:17	-- is one of the elements that you would incorporate					
		146:18	into a product development process.					
		146:19	Q. Does that mean that Sears would expect Apex					
		146:20	to use the Bionic Wrench as a benchmark when					
		146:21	developing the Max Axess Locking Wrench?					
		146:22	A. So if you're -- if you're reviewing the					
		146:23	product and you're benchmarking, you should look at					
		146:24	all available product in the marketplace.					
		147:1	Q. If you're creating a Bionic 2.0, you should					
		147:2	probably look at the Bionic 1.0, is that fair?					
46	<b>147:5 -147:6</b>	Arvia, Thomas 2015-11-19	00:00:05	00:35:24	00:19:05	Arvia_T-111715-3of5	M1.49	
		147:5	A. We were creating a product for market					
		147:6	opportunity.					

47	<b>147:8 -147:9</b>	Arvia, Thomas 2015-11-19	00:00:03	00:35:29	00:19:00	Arvia_T-111715-3of5	M1.50
		147:8 Q. How would you characterize the market					
		147:9 opportunity?					
48	<b>147:12 -147:14</b>	Arvia, Thomas 2015-11-19	00:00:09	00:35:32	00:18:57	Arvia_T-111715-3of5	M1.51
		147:12 A. I would characterize the market opportunity					
		147:13 as there was a potential for demand in the market for					
		147:14 this product.					
49	<b>147:16 -147:18</b>	Arvia, Thomas 2015-11-19	00:00:09	00:35:41	00:18:48	Arvia_T-111715-3of5	M1.52
		147:16 Q. And was Sears' understanding that there was					
		147:17 potential demand for Bionic 2.0 the fact that there					
		147:18 was demand for Bionic 1.0?					
50	<b>147:21 -147:24</b>	Arvia, Thomas 2015-11-19	00:00:18	00:35:50	00:18:39	Arvia_T-111715-3of5	M1.53
		147:21 A. So there was a demand for a product called					
		147:22 Bionic Wrench, and my interpretation is that -- that					
		147:23 the Craftsman team at this time felt there was an					
		147:24 opportunity for an additional product.					
51	<b>148:2 -148:20</b>	Arvia, Thomas 2015-11-19	00:01:46	00:36:08	00:18:21	Arvia_T-111715-3of5	M1.54
		148:2 Q. And that additional product would be a					
		148:3 Craftsman branded wrench that would compete with the					
		148:4 Bionic Wrench, is that fair?					
		148:5 A. Based on what I've reviewed, I would -- I					
		148:6 would say "complement" is a better word.					
		148:7 Q. Why would you say "complement" is a better					
		148:8 word than "compete with"?					
		148:9 A. Because based on -- based on what I					
		148:10 reviewed, the intent was that if there was an					
		148:11 opportunity with Craftsman, it would be additive to					
		148:12 the assortment.					
		148:13 Q. What time frame are you talking about when					
		148:14 you just testified that the intent was to have an					
		148:15 additive opportunity to the assortment?					
		148:16 A. I would say -- based on what I reviewed, I					
		148:17 would say April.					
		148:18 Q. At some point did the opportunity, from					
		148:19 Sears' perspective, change from being an additive one					
		148:20 to a replacement opportunity?					
52	<b>148:23 -148:24</b>	Arvia, Thomas 2015-11-19	00:00:05	00:37:54	00:16:35	Arvia_T-111715-3of5	M1.55
		148:23 A. I don't see anything that indicates it was					
		148:24 ever intended to be a replacement.					
53	<b>163:7 -163:9</b>	Arvia, Thomas 2015-11-19	00:00:28	00:37:59	00:16:30	Arvia_T-111715-3of5	M1.56
		163:7 Q. I'm introducing a document I'm marking Arvia					
	<a href="#">Link &gt; P373.1</a>	163:8 Exhibit 18. The first page is SEARS_648. Have you					
		163:9 seen Exhibit 18 before today?					



54	<b>163:10 -163:13</b>	Arvia, Thomas 2015-11-19	00:00:11	00:38:27	00:16:02	Arvia_T-111715-3of5	M1.89
	<a href="#">Link &gt; P373.1.1</a>	163:10 A. I've seen this. 163:11 Q. What is your understanding of the very good 163:12 news Ms. Lowe was reporting to Ms. Kaleta and others 163:13 regarding the handle width of the Max Axxess?					
55	<b>163:16 -163:20</b>	Arvia, Thomas 2015-11-19	00:00:18	00:38:38	00:15:51	Arvia_T-111715-3of5	M1.57
		163:16 A. My understanding is the good news is Apex is 163:17 able to reduce the width of the handle without 163:18 reducing the size range. In other words, they're not 163:19 changing the amount of fasteners that this tool would 163:20 be able to work with.					
56	<b>163:22 -163:22</b>	Arvia, Thomas 2015-11-19	00:00:02	00:38:56	00:15:33	Arvia_T-111715-3of5	M1.58
		163:22 Q. And why was this such good news?					
57	<b>164:2 -164:5</b>	Arvia, Thomas 2015-11-19	00:00:12	00:38:58	00:15:31	Arvia_T-111715-3of5	M1.82
		164:2 A. So by -- my understanding is that reducing 164:3 the width of the handle would improve the ease of use 164:4 of the product, allow it to be more accessible to a 164:5 wider range of users.					
58	<b>164:7 -164:14</b>	Arvia, Thomas 2015-11-19	00:00:23	00:39:10	00:15:19	Arvia_T-111715-3of5	M1.59
	<a href="#">Link &gt; P373.1.2</a>	164:7 Q. In the second paragraph of Ms. Lowe's e-mail 164:8 dated May 21st, she writes to Ms. Kaleta, "We can 164:9 reduce the width of the handle without reducing the 164:10 size range. The new handle width on the eight-inch 164:11 will be 120 MM, 4.75 inches. This is the same handle 164:12 width as the LoggerHead eight-inch." 164:13 Do you see that? 164:14 A. I do.					
59	<b>164:19 -165:2</b>	Arvia, Thomas 2015-11-19	00:00:38	00:39:33	00:14:56	Arvia_T-111715-3of5	M1.60
		164:19 Q. Was it good news that Apex had changed the 164:20 width of the handle to be the same handle width as 164:21 the LoggerHead eight-inch? 164:22 A. Where they're indicating it's the same width 164:23 as the LoggerHead eight-inch, that would be an 164:24 example of competitive benchmarking. The key here is 165:1 as Craftsman builds product for the -- for the 165:2 enduser, ease of use is a top priority.					
60	<b>165:21 -166:6</b>	Arvia, Thomas 2015-11-19	00:00:43	00:40:11	00:14:18	Arvia_T-111715-3of5	M1.61
	<a href="#">Link &gt; P373.2</a>	165:21 If you turn to page two of Exhibit 18, it's 165:22 an e-mail that's also dated May 21st from Jill Lowe 165:23 to Kaleta and others at Craftsman and she writes in <a href="#">Link &gt; P373.2.1</a> 165:24 the first sentence, "I have received the following 166:1 ship dates from our Asia team on the six-inch and 166:2 eight-inch Max Axxess adjustable wrench based on your					

166:3 request from last week of an estimated 250K  
 166:4 eight-inch wrenches and 70K six-inch wrench buy."  
 166:5 Do you see that?  
 166:6 A. I do.

61	<b>166:21 -167:1</b>	Arvia, Thomas 2015-11-19	00:00:16	00:40:54	00:13:35	Arvia_T-111715-3of5	M1.62
		166:21 Q. And so it's fair to say, isn't it,					
		166:22 Mr. Arvia, that Stephanie Kaleta contacted Jill Lowe					
		166:23 the week prior to May 21st and asked for ship dates					
		166:24 for those volume of wrenches that Ms. Lowe writes					
		167:1 about in her e-mail, right?					
62	<b>167:4 -167:6</b>	Arvia, Thomas 2015-11-19	00:00:12	00:41:10	00:13:19	Arvia_T-111715-3of5	M1.63
		167:4 A. Yes, based on comments in Jill's e-mail, I					
		167:5 would speculate that this is a request that came from					
		167:6 Sears.					
63	<b>167:8 -167:18</b>	Arvia, Thomas 2015-11-19	00:00:35	00:41:22	00:13:07	Arvia_T-111715-3of5	M1.64
		167:8 Q. This is a document, Exhibit 18, that you					
		167:9 reviewed in preparation to be Sears' corporate					
		167:10 representative, correct?					
		167:11 A. It is.					
		167:12 Q. So you don't have any reason to question					
		167:13 that Sears requested ship dates from Apex for 320,000					
		167:14 thousand eight-inch and six-inch wrenches, right?					
		167:15 A. I can't confirm or deny based on a					
		167:16 communication from Sears, but if your question is do					
		167:17 I have any reason to question it, I have no reason to					
		167:18 question it one way or the other.					
	<a href="#">Link &gt; Hide</a>						
64	<b>207:23 -208:3</b>	Arvia, Thomas 2015-11-19	00:00:18	00:41:57	00:12:32	Arvia_T-111715-4of5	M1.65
		207:23 Q. Has Sears priced the Max Axess Locking					
		207:24 Wrench below the price point of the Bionic Wrench?					
		208:1 A. Pricing of any product is at the sole					
		208:2 discretion of the retailers. It's the retailer's					
		208:3 decision what to price a product at.					
65	<b>208:12 -209:1</b>	Arvia, Thomas 2015-11-19	00:00:54	00:42:15	00:12:14	Arvia_T-111715-4of5	M1.66
		208:12 Q. Who is the retailer that you are referring					
		208:13 to?					
		208:14 A. So in this case here, it's Sears.					
		208:15 Q. And in their sole discretion, has Sears					
		208:16 priced the Max Axess Locking Wrench at a price point					
		208:17 below the Bionic Wrench?					
		208:18 A. To answer that question would need to be					
		208:19 done at a given point in time. Sears is a high-low					
		208:20 promotional retailer who promotes products at various					
		208:21 times for various promotional strategies. So I would					
		208:22 guess over the past few years, we would find a time					

208:23 when Max Axess was priced lower and we would find a  
 208:24 time when Bionic Wrench was priced lower, based on  
 209:1 the margin commitments of the department.

66	<b>218:24 -220:2</b>	Arvia, Thomas 2015-11-19	00:02:02	00:43:09	00:11:20	Arvia_T-111715-4of5	M1.67
		218:24					What were Sears' financial expectations for
		219:1					the Max Axess Locking Wrench when it launched holiday
		219:2					2012?
		219:3					A. Financial expectations at launch time?
		219:4					Q. Yeah.
		219:5					A. So the way I think through that with any
		219:6					product launch, you're looking for a product that's
		219:7					going to create a profitable outcome for the company
		219:8					and -- and that's going to be incremental to not
		219:9					having that product there. So makes the assortment
		219:10					stronger with the product there.
		219:11					Q. And did Sears expect that the Max Axess
		219:12					Locking Wrench fit that bill?
		219:13					A. I would say that our expectations was that,
		219:14					based on the options we had for products to promote,
		219:15					that was -- that was one of the best programs we had
		219:16					to fit that bill for maximum margin outcome.
		219:17					Q. Did Sears expect the Max Axess Locking
		219:18					Wrench in holiday 2012 to do better or worse than the
		219:19					Bionic Wrench did holiday season 2011?
		219:20					A. Think our expectations are relative to other
		219:21					options that we have at that time more so than prior
		219:22					year, so this was among the best options we had at
		219:23					that time. So I would say among the programs we had,
		219:24					this was a DRTV program so it was among our best --
		220:1					among the best programs we had in the department to
		220:2					promote on DRTV.
67	<b>220:9 -221:3</b>	Arvia, Thomas 2015-11-19	00:01:15	00:45:11	00:09:18	Arvia_T-111715-4of5	M1.68
		220:9					What are the criteria for choosing which
		220:10					products Sears puts on DRTV?
		220:11					A. As -- as you know, there is an expense to
		220:12					DRTV, so when you evaluate a DRTV opportunity, you
		220:13					estimate the total margin opportunity of the product
		220:14					or program. You net that, you net out the expense of
		220:15					any DRTV, add in the impact of any subsidy, and you
		220:16					get a net margin impact.
		220:17					So the expectations are that we select the
		220:18					best programs that provide the best net impact from a
		220:19					margin standpoint.
		220:20					Q. And -- and estimating total margin and the
		220:21					other things you mentioned to -- for the criteria for

220:22 DRTV, those things are based on Sears' expectations  
 220:23 about how the product will do? It's -- Sears is kind  
 220:24 of running a model or a forecast of what it thinks  
 221:1 the likely profitability or sales of the product will  
 221:2 be?  
 221:3 A. Yes, that's fair.

68	<b>221:4 -221:10</b>	Arvia, Thomas 2015-11-19	00:00:32	00:46:26	00:08:03	Arvia_T-111715-4of5	M1.69
		221:4 Q. Does Sears have profit margin benchmarks for					
		221:5 the tool category and hand tool category in					
		221:6 particular?					
		221:7 A. So if I understand your question, yes, at					
		221:8 the category level there is a plan, you know, a plan					
		221:9 margin expectation at the category level, if that's					
		221:10 what you mean.					
69	<b>221:11 -221:16</b>	Arvia, Thomas 2015-11-19	00:00:19	00:46:58	00:07:31	Arvia_T-111715-4of5	M1.70
		221:11 Q. What is the plan margin expectation at the					
		221:12 category level for products like the Max Axess					
		221:13 Locking Wrench and the Bionic Wrench?					
		221:14 A. That would be at the category level, so we					
		221:15 wouldn't have it at a product level. So the hand					
		221:16 tools category would have an expectation.					
70	<b>221:17 -222:8</b>	Arvia, Thomas 2015-11-19	00:00:56	00:47:17	00:07:12	Arvia_T-111715-4of5	M1.71
		221:17 Q. What is the hand tools category profit					
		221:18 margin expectation at Sears?					
		221:19 A. I don't -- I didn't review that for this.					
		221:20 Q. Do you know just from having worked in hand					
		221:21 tools?					
		221:22 A. I can give you -- so I'll give you an					
		221:23 estimation. Hand tools, hand tools category,					
		221:24 historically delivers a better-than-average margin					
		222:1 outcome for the department. What I mean by that, the					
		222:2 hand tools category margin as a rate to sale is					
		222:3 better than the total margin for the tools					
		222:4 department.					
		222:5 So the expectation of anything in this hand					
		222:6 tool category would be that the margin rate would be					
		222:7 better than the average margin rate of the tools					
		222:8 department.					
71	<b>222:9 -222:11</b>	Arvia, Thomas 2015-11-19	00:00:12	00:48:13	00:06:16	Arvia_T-111715-4of5	M1.72
		222:9 Q. What was the average margin rate of the					
		222:10 tools department?					
		222:11 A. At that time, 30 to 31 percent.					
72	<b>264:1 -264:2</b>	Arvia, Thomas 2015-11-19	00:00:21	00:48:25	00:06:04	Arvia_T-111715-5of5	M1.88
		264:1 Q. Okay, I'm marking a document, introducing					

	Link > P441.1	264:2	Exhibit 33. Is it up?					
73	<b>264:7 -265:14</b>	Arvia, Thomas 2015-11-19	00:02:05	00:48:46	00:05:43	Arvia_T-111715-5of5	M1.75	
		264:7	Q. And this is a document that was -- that is a					
		264:8	native version of a document produced to us at Sears					
	Link > P441.2	264:9	4171. Can you identify -- can you describe what					
		264:10	Arvia 33 is?					
		264:11	A. Arvia 33, which is up on screen, is an					
		264:12	example of an ad hoc -- excuse me, an ad hoc market					
		264:13	basket report.					
		264:14	Q. And what is an ad hoc market basket report?					
		264:15	A. This market basket report is representing					
		264:16	the Bionic Wrench for a period of time; the report					
		264:17	doesn't show a period of time, so I can't speak to					
		264:18	the time period.					
		264:19	And it's -- on the top of the report of it					
	Link > P441.2.1	264:20	gives the performance of the Bionic Wrench in and of					
		264:21	itself; sales, margins, units, and transactions.					
		264:22	Units is the total, number of sales units for this					
		264:23	time period, transactions is the total number of					
		264:24	transactions it appeared on. That number's going to					
		265:1	be lower; that would assume that a subset of people					
		265:2	bought more than one at a time.					
		265:3	The -- the next three are basket attachment					
		265:4	sales, basket attachment margin, basket attachment					
		265:5	units. Those numbers represent the sum total of any					
		265:6	other items that were purchased on a transaction that					
		265:7	also included a Bionic Wrench.					
		265:8	So what this does show is for those 114,000					
		265:9	transactions, we sold, for example purposes,					
		265:10	2.9 million and change for the Bionic Wrench, and					
		265:11	2.4 million in other stuff on those transactions.					
		265:12	It's a data output that gives you a sum total of the					
		265:13	transactions. It doesn't show causality. It doesn't					
		265:14	show what drove what.					
74	<b>268:18 -269:20</b>	Arvia, Thomas 2015-11-19	00:01:49	00:50:51	00:03:38	Arvia_T-111715-5of5	M1.76	
		268:18	Q. How long does it take to run a market basket					
		268:19	report?					
		268:20	A. I'm going to approximate a day. It's not a					
		268:21	-- the other systems we're referring to are Sears --					
		268:22	the Sears ad hoc reporting I'm referring to for ALEX					
		268:23	is stuff that's readily available on most associates'					
		268:24	systems. You run a report and it will come up in 15					
		269:1	to 60 minutes, depending on the complexity of the					
		269:2	report. These are done on a request basis.					
		269:3	Q. Where does Exhibit 33, this report, the					

269:4 basket report, how is it -- where does it come from?  
 269:5 A. I'm not aware of the specific system. It's  
 269:6 on a request basis, so transaction level data is --  
 269:7 it has more limited access, for example, than -- than  
 269:8 -- than more global data.  
 269:9 So what we would do in this case here, in  
 269:10 the tools team, is we would ask our finance team to  
 269:11 work with the team that houses the data and request  
 269:12 this report.  
 269:13 Q. And so what the market basket report at  
 269:14 Arvia 33 shows is that the -- the basket attachment  
 269:15 sales were nearly the same amount as the sales of the  
 269:16 item itself, is that fair?  
 269:17 A. Yes. What this report shows is the sum  
 269:18 total of other sales that were in the same  
 269:19 transaction as a Bionic Wrench, was within \$510,000  
 269:20 of sales of the Bionic Wrench.

75	<b>275:20 -276:7</b>	Arvia, Thomas 2015-11-19	00:00:31	00:52:40	00:01:49	Arvia_T-111715-5of5	M1.77
	Link > P476.1	275:20	Q. Exhibit 35 is an e-mail from Kim Schafer to				
	Link > P476.1.1	275:21	you on August 22, 2012, subject: Basket Builders.				
		275:22	Do you see that?				
		275:23	A. I do.				
		275:24	Q. And did you receive this e-mail from				
		276:1	Ms. Schafer August 22, 2012?				
		276:2	A. I did.				
		276:3	Q. And the question in this e-mail that				
		276:4	Ms. Schafer poses to you is, "What about the				
		276:5	Craftsman version of the Bionic?"				
		276:6	Do you see that?				
		276:7	A. I do.				
76	<b>276:8 -276:8</b>	Arvia, Thomas 2015-11-19	00:00:01	00:53:11	00:01:18	Arvia_T-111715-5of5	M1.78
		276:8	Q. What was she asking you?				
77	<b>276:11 -276:16</b>	Arvia, Thomas 2015-11-19	00:00:24	00:53:12	00:01:17	Arvia_T-111715-5of5	M1.79
		276:11	A. Some -- my recollection is in 2012 holiday,				
		276:12	there happened to be a program, a Sears storewide				
		276:13	program for basket builders, which was taking				
		276:14	specific items throughout the store and				
		276:15	cross-merchandising them in locations across the				
		276:16	store.				
78	<b>276:18 -277:2</b>	Arvia, Thomas 2015-11-19	00:00:32	00:53:36	00:00:53	Arvia_T-111715-5of5	M1.80
		276:18	Q. And what was she referring to when she said				
		276:19	"What about the Craftsman version of the Bionic?"				
		276:20	A. My assumption is that Kim was asking is --				
		276:21	is -- is there a Craftsman item that we have for this				

276:22 basket builders program.  
 276:23 Q. And the Craftsman item that she was asking  
 276:24 about she referred to as the Craftsman version of the  
 277:1 Bionic?  
 277:2 A. In her words, yes.

[Link > Hide](#)

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79	<b>277:4 -277:10</b>	Arvia, Thomas 2015-11-19	00:00:25	00:54:04	00:00:25	Arvia_T-111715-5of5	M1.81
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277:4 Did -- the Max Axess Locking Wrench had a  
 277:5 name by August 2012, didn't it?  
 277:6 A. It did.  
 277:7 Q. What's Ms. Schafer's position at Sears?  
 277:8 A. Ms. Schafer is the VP of inventory for the  
 277:9 tools department, so as of 8-22, this would not yet  
 277:10 have been available in Sears stores.

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Play Time for this Script: **00:54:29**

**Total time for all Scripts in this report: 00:54:29**