

Exhibit A



**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

**MARK MONSOUR, SHEILA MONSOUR AND
MONSOUR'S, INC.**

vs.

MENU MAKER FOODS, INC.

Case No. 05-1204-MLB

**DEPOSITION OF CORPORATE REPRESENTATIVE,
MARK MONSOUR
March 14, 2006**

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CORPORATE REPRESENTATIVE, MARK MONSOUR 3/13/2006

Page 9

1 once?

2 A Most likely.

3 **Q What were the nature of the cash flow**

4 **problems that Monsour's, Inc. was experiencing in,**

5 **oh, I don't know, how about November of 2001?**

6 A Let me tell you why I think the cash flow

7 problems arose. Does that work?

8 **Q Well, okay.**

9 A I think when September 11th happened we

10 lost, you know -- that hurt the industry. That hurt

11 America. We experienced 200,000 decline in sales --

12 decline weekly in sales. Now to give you a little

13 bit of background, I bought slightly under a \$6

14 million company from Pete; okay? And we had almost

15 -- we had -- we had grown substantially. And the

16 good news about when you're growing your new revenue

17 is additional cash flow; right? And there is a

18 timing difference between when you buy something and

19 when you pay for it and when you collect for it. We

20 were pretty good at collecting. And pretty good

21 about taking the terms to pay, which is a good

22 business practice. Well, when you have a decline in

23 your revenue coming in, your sales, and on top of

24 that, I believe our buyers were slow to respond and

25 added increased inventory to our numbers, that just

Page 10

1 caused a cash flow problem. Does that answer your

2 question, sir?

3 **Q I think it does, but I'm going to ask the**

4 **Reporter to read back whatever the heck my question**

5 **was.**

6 MR. DEVAUGHN: I can tell you. You

7 asked him what were the cash flow problems in

8 November of 2001.

9 **Q (By Mr. Wachtel) Okay. If I ask you**

10 **again what the cash flow problems were in November,**

11 **2001, would your answer be any different than that**

12 **which you have given me now?**

13 A It would be a summary, decreased sales.

14 **Q I'm sorry?**

15 A The summary would be decreased sales.

16 **Q Decreased sales in the amount of what per**

17 **month?**

18 A I'd say anywhere from 600 to 900,000.

19 **Q And those would be both produce and**

20 **inventory?**

21 A No, it was mostly food service, really.

22 People stayed home and ate. So the grocery stores

23 sales, retail actually was fine.

24 **Q Okay. During that same period of time,**

25 **were you adding to the company's -- during that same**

Page 11

1 **period of time, was the company purchasing or leasing**

2 **trucks and trailers?**

3 A That's correct.

4 **Q During that same period of time, was the**

5 **company incurring costs for freezer repair work?**

6 A I would probably have completed most of

7 the freezer work prior to, because I had -- I had --

8 when we talk freezer work, what you're talking about

9 is compressors to run the machinery, and I had redone

10 that. I had redone -- I had redone the machine room.

11 **Q Prior to September 11th?**

12 A Yeah.

13 **Q Was it --**

14 A It would have been maintenance, that would

15 have been it.

16 **Q During that period of time did Monsour's,**

17 **Inc. add any computers or new computer programs to**

18 **its inventory?**

19 A Nothing of significant dollars. The most

20 significant dollars there would have been the

21 leasing, the leases, because the leases came in

22 higher than we expected. The actual dollars off of

23 the leases came higher than we expected.

24 **Q Do you remember how much Monsour's would**

25 **have spent during the year 2001 to make repairs to**

Page 12

1 **its freezer?**

2 A I wouldn't even -- I wouldn't even guess.

3 **Q Would the records of that exist somewhere?**

4 A In the financial statements.

5 **Q No, would the actual invoices exist**

6 **somewhere?**

7 A I wouldn't know where, really.

8 **Q With regard to the amount of money that**

9 **might have been spent to upgrade computer systems**

10 **during that period of time, would that -- would the**

11 **invoices for that exist somewhere?**

12 A Probably. Yeah, they would have existed;

13 where they exist today --

14 **Q My questions is: Do they exist today?**

15 A Where? I don't know.

16 **Q Okay. I will come back to that. In**

17 **Monsour's, Inc.'s answers to interrogatories, in**

18 **particular interrogatory No. 1, Monsour's was asked**

19 **to give certain information about its indebtedness.**

20 **Now I only have my copy of those -- that**

21 **interrogatory answer.**

22 MR. WACHTEL: I would Xerox it, Dustin,

23 if you want me to. Or I will just ask him about it.

24 MR. DEVAUGHN: Go ahead and ask him,

25 then let him refresh his recollection. I mean we can

CORPORATE REPRESENTATIVE, MARK MONSOUR 3/13/2006

Page 41

1 through his coffee, and different programs he has,
 2 actually make him a very strong point in the food
 3 service business. So I think the real point was we
 4 thought of a merger or partnership or something like
 5 that. Or -- and that was discussed in many different
 6 ways. I wouldn't even begin to -- you know, brain
 7 storm sessions or whatever. And I -- we would talk,
 8 we would partner, and I would come up with ideas, he
 9 would come up with ideas. And that's how it began.

10 **Q Uh-huh.**

11 A You know, and we talked about first the
 12 purchase. I had a dollar figure that I threw out to
 13 him and we -- and those figures were knocked around,
 14 and it began -- you know, I think actually \$2 million
 15 was our asking price at the beginning.

16 **Q You believe what?**

17 A \$2 million was my first sking price. And
 18 over time that number went down to where it was maybe
 19 -- you know, maybe something. And then it was buy
 20 the inventory. Buy the produce. Get the customers
 21 for free, in effect.

22 **Q Let me see if I understand you. The**
 23 **negotiations took some period of time, commencing**
 24 **either in November or earlier of 2001; fair**
 25 **statement?**

Page 42

1 A Say it again.

2 **Q The negotiations with Mr. Graves took some**
 3 **period of time; fair statement?**

4 A Right.

5 **Q They commenced either in November or**
 6 **earlier in 2001; true?**

7 A Right.

8 **Q In the negotiations and the discussions,**
 9 **various different methods were discussed?**

10 A Yes.

11 **Q A partnership?**

12 A (Witness nodded.)

13 **Q Right? A possible partnership?**

14 A Right.

15 **Q A possible acquisition of stock sale of**
 16 **the company, where Mr. Graves would acquire the**
 17 **company, its assets and its debt; right? We talked**
 18 **about that.**

19 A Many things were discussed.

20 **Q Right. You talked about that, didn't you?**

21 A (Witness nodded.)

22 **Q You talked about an asset purchase; right?**

23 A (Witness nodded.)

24 **Q Right?**

25 A Correct.

Page 43

1 **Q If I understood your testimony correctly**
 2 **-- well, I'm sorry. That's a bad question. When**
 3 **there were discussions about Mr. Graves buying the**
 4 **entire company as an entity, what value -- what was**
 5 **the purchase price, if any, that you asked of Menu**
 6 **Maker Foods for that kind of an acquisition?**

7 A I think that was \$2 million.

8 **Q \$2 million?**

9 A Yes.

10 **Q Eventually the discussions became**
 11 **narrowed, at least in part, to an asset purchase?**

12 A Right.

13 **Q Right? What figure did you suggest in**
 14 **your negotiations to Mr. Graves was the value of the**
 15 **inventory?**

16 A At any one given time I wouldn't have
 17 actually given him a value of the inventory. I would
 18 have let the inventory value be what it was.

19 **Q Be what it was. It has been testified in**
 20 **Mr. Graves' deposition that an inventory sale was**
 21 **initially suggested by you at 1.1 to 1.2 million**
 22 **dollars; is that true?**

23 A I would -- that would seem fairly accurate,
 24 yes.

25 **Q However, you were willing to let the value**

Page 44

1 **of the inventory speak for itself; right?**

2 A At that time.

3 **Q And at that time, what information**
 4 **regarding to inventory valuation did you give Mr.**
 5 **Graves?**

6 A I think it would have been the 1.1 to 1.2
 7 million dollars.

8 **Q Did you give it to him in writing?**

9 A I would have handed him an inventory
 10 report that would have had numbers, value, cost.

11 **Q Was that a multiple page report?**

12 A Yes, it would have been.

13 **Q Would it have included -- would it have**
 14 **included within it things other than just the**
 15 **inventory?**

16 A The inventory report would have been the
 17 inventory.

18 **Q We are talking about the food service.**

19 A Food service inventory.

20 **Q We are not talking about produce; right?**

21 A It would have been excluded, or should
 22 have been.

23 **Q Should have been?**

24 A I believe it would. Would have been.

25 **Q And that document should have reflected an**

CORPORATE REPRESENTATIVE, MARK MONSOUR 3/13/2006

Page 57

1 A That's correct.

2 **Q All right. It has been alleged in this**

3 **case that prior to the execution of the asset**

4 **purchase agreement, that Menu Maker or its agents and**

5 **employees did a due diligence inspection of the**

6 **assets that they were purchasing; do you recall that**

7 **being alleged in this case?**

8 A I know they had employees there looking at

9 our inventory prior to the execution of this

10 agreement.

11 **Q All right.**

12 A That's what I know. They had people there

13 who looked at the inventory prior to. Whether you

14 want to call it due diligence or whether you want to

15 call it completed, they had people there who looked

16 at the inventory prior to the execution of this

17 agreement.

18 **Q Why don't we just not call it anything at**

19 **all, and talk about what happened. When was the**

20 **first time that you know about during the**

21 **negotiations for the asset purchase agreement that**

22 **any Menu Maker employee did any inspection of any**

23 **kind of Monsour's assets?**

24 A I don't recall the dates. I recall

25 general time frames.

Page 58

1 **Q Well, give me a general --**

2 A Let me give you this information. They

3 would have had access to any information, any

4 financial reports, anyplace in my premises at any

5 time. Period.

6 **Q All they had to do is ask you; right?**

7 A Right.

8 **Q Okay.**

9 A And as a buyer to seller, as one who was

10 buying me. If I was buying something, I would want

11 to look at it, touch it, feel it, smell it. They had

12 the opportunity to do that at any point, bar none.

13 **Q In the period commencing in November,**

14 **2001, through January 31st, 2002, what Menu Maker**

15 **employees came to Monsour's and physically inspected**

16 **the inventory that was being sold?**

17 A I don't recall. But I will tell you, they

18 had the opportunity to do that.

19 **Q I don't dispute that with you at all,**

20 **sir. All I need to know is whether or not you can**

21 **name -- whether or not Monsour's, Inc. can remember**

22 **the name of one person.**

23 A Dick Graves.

24 **Q All right. Were you present when Mr.**

25 **Graves inspected the inventory?**

Page 59

1 A Me and Dick -- or Dick and me would walk

2 through. We spent time walking through there talking

3 about things.

4 **Q And of that time that you spent -- how**

5 **much time did you spend walking through, talking**

6 **about things?**

7 A I don't remember.

8 **Q Of that amount of time, how much was**

9 **dedicated to an inspection of the condition of the**

10 **inventory?**

11 A I don't recall.

12 **Q Okay. We know from Mr. Graves testimony**

13 **that he asked Fred -- I'm sorry. He asked Mr.**

14 **Schaeffer to go into the Monsour's freezer and take a**

15 **look at the Jon Graves meat products; do you remember**

16 **Mr. Schaeffer doing that?**

17 A I remember him doing that; if I was there

18 or something, no, but I remember that happened.

19 **Q Other than your recollection of Mr.**

20 **Schaeffer looking at the Jon Graves meat inventory,**

21 **and other than what you have just described about Mr.**

22 **Graves looking through the -- walking around the**

23 **plant with you and discussing things and looking at**

24 **assets, what other inspection of the assets prior to**

25 **the execution of the asset purchase agreement did**

Page 60

1 **Menu Maker Foods agents make, to the best of your**

2 **knowledge and recollection?**

3 A From what I can recall, there what times

4 that they had other people down there.

5 **Q Do you recall --**

6 A Who those people -- no, I wouldn't care to

7 recall who they were. You know, anyone of those

8 people who came from Menu Maker, they would have had

9 access to my place.

10 **Q If a Menu Maker representative had come to**

11 **you and said, "Here, I'm here to do an inspection of**

12 **the inventory," you would have said, "Go ahead on"?**

13 A For whatever reason.

14 **Q And you would have said, "Go ahead on";**

15 **right?**

16 A Right.

17 **Q And?**

18 A What information can I help you with?

19 **Q And you believe that that occurred, but**

20 **you do not remember who the people were, other than**

21 **those two people we have identified so far today?**

22 A That's correct.

23 **Q And you do not remember when during this**

24 **November to January 31 process that any of that**

25 **occurred?**

CORPORATE REPRESENTATIVE, MARK MONSOUR 3/13/2006

Page 73

1 develop customers.

2 **Q For marketing purposes?**

3 A Marketing and development.

4 **Q Marking and development, and not as just**

5 **income to be spent on other costs necessarily?**

6 A Yeah. Exactly.

7 **Q "Allowance Income," we talked about that.**

8 **Then the next column is "Less: Costs of Goods Sold";**

9 **what does that mean?**

10 A I believe what you have there is simply --

11 you have total sales at the very top, and your Less:

12 Cost of Goods Sold is probably your total of the Cost

13 of Goods sold. Those are just summary numbers, total

14 figures.

15 **Q Then I see a column titled "Gross Profit"?**

16 A That's correct.

17 **Q And what is that column telling me?**

18 A Your income less your cost of goods sold.

19 **Q And that is my projected gross profit for**

20 **some period of time; right?**

21 A Right. Weekly, monthly, annualized.

22 **Q Okay.**

23 A That would probably be an average.

24 **Q Average. And was this done for the -- to**

25 **consider the year going forward after the asset**

Page 74

1 purchase --

2 A Yes.

3 **Q -- agreement?**

4 A Yes.

5 **Q Then "G.P. %"; what is that called?**

6 A Gross profit percentage.

7 **Q Tell me what it means.**

8 A Sales, less cost of goods sold.

9 **Q So what does the, under weekly, "19.1%"**

10 **mean?**

11 A Gross. That is your gross profit of your

12 total sales.

13 **Q All right. To the right of that column, I**

14 **see in handwriting, "10% margin lowers the total**

15 **gross margin"; do you see that?**

16 A Yes.

17 **Q What does that mean?**

18 A What that is referring to is with Menu

19 Maker, what was agreed on was that we would sell Menu

20 Maker cost plus 10%.

21 **Q Which would be what, lower than the 19.1%**

22 **otherwise --**

23 A Exactly. That's why we lowered the

24 margin.

25 **Q What was the -- what was the normal gross**

Page 75

1 **profit for retail sales?**

2 A Higher.

3 **Q Higher than 19.1?**

4 A Yeah, that's why it's lower, because the

5 10% is having a -- or in effect.

6 **Q To the best of your recollection, how much**

7 **higher was it? Excuse me. To the best of your**

8 **recollection, what was it?**

9 A I wouldn't -- I wouldn't want to recollect

10 on that. I just know that it probably would have

11 been higher. How much higher, that's a moving

12 target.

13 MR. WACHTEL: Okay. Everything is here.

14 We might as well just go off the record and dispense

15 with that, because I am going to stay on this

16 document.

17 (WHEREIN, a recess was taken.)

18 **Q (By Mr. Wachtel) Back on the record.**

19 **With regard to Graves Exhibit 2, which you have**

20 **before you, does the section of this document that**

21 **was already -- that we have already talked about take**

22 **into consideration rebates that Monsour's would have**

23 **had to have given to its customers?**

24 A The revenue wouldn't take into effect

25 that.

Page 76

1 **Q Does that show up someplace else in this**

2 **document?**

3 A I'm going to have to look at this thing to

4 answer that question. I don't know offhand.

5 **Q Take a look.**

6 A Offhand, I didn't see that.

7 **Q All right. Would that be an important**

8 **consideration in trying to figure out the**

9 **profitability over the --**

10 A It would have an effect, that's correct.

11 **Q What was the -- if you know, what was the**

12 **average rebate that your customers would receive, in**

13 **a percent number?**

14 A If we got a quarter you might give them a

15 nickel.

16 **Q So it's about what, 20?**

17 A 20%.

18 **Q Do you know why that was not included in**

19 **this?**

20 A One, I'm not sure that it wasn't.

21 **Q All right.**

22 A But if it wasn't, no, I wouldn't.

23 **Q If you -- if Monsour's had not done the**

24 **asset agreement with Menu Maker, would Monsour's have**

25 **been as profitable in 2002 as it was in 2001?**

CORPORATE REPRESENTATIVE, MARK MONSOUR 3/13/2006

Page 77

1 A Would it have been as profitable what?
 2 **Q In 2002 as it was in 2001?**
 3 A That would be speculation, but I wouldn't
 4 know. It would be speculative on my part.
 5 **Q Okay. I know that you do not know the**
 6 **answer, but the proforma, like Graves Exhibit 2, is**
 7 **an estimation, right? Isn't it? A projection?**
 8 A Yes, of simply the retail business.
 9 **Q Well, project for me, if you will, whether**
 10 **or not had you not done the deal, if you can, whether**
 11 **or not, had you not done the deal with -- excuse me,**
 12 **Menu Maker, that you would have been as profitable in**
 13 **the retail side as you were the previous year?**
 14 A As a whole, the company probably would
 15 have been more profitable, because retail business
 16 always supported food service.
 17 **Q You think you would have been --**
 18 A More profitable.
 19 **Q -- more profitable. You may lay that**
 20 **aside, because I'm not going to ask you any more**
 21 **questions. I think if we give it to the Reporter.**
 22 **And I'm going to ask you some questions about the --**
 23 **about the asset agreement, and certain parts of it,**
 24 **and you may want to look at Exhibit No. 1. Section 1**
 25 **of the asset purchase agreement, which is Defendant's**

Page 78

1 **Exhibit 1, says at Section 1, Subsection 1.1, quote**
 2 **-- well, let me rephrase that. Section 1.1 says**
 3 **that "Subject to terms of this agreement, seller**
 4 **agrees to sell, free and clear of all liens, and**
 5 **buyer agrees to purchase the following assets: 1.**
 6 **All of the seller's inventory, except produce, (which**
 7 **is in good and wholesome condition and 100%**
 8 **resellable condition), which items are presently**
 9 **being sold to the current customer of buyer, or to**
 10 **the selected customers of seller. Buyer will make**
 11 **its best efforts to sell or assist in the sale of**
 12 **Monsour's remaining inventory. The parties estimate**
 13 **that the inventory to be purchased is estimated from**
 14 **\$750,000 to \$800,000 in value." Now how was the**
 15 **estimated value arrived at?**
 16 A Negotiation between Dick and I.
 17 **Q All right. Why was a hard number -- why**
 18 **was an estimated -- why were estimated numbers placed**
 19 **in this section of the agreement rather than a hard**
 20 **number?**
 21 A That was Dick's discretion, not mine.
 22 **Q That was something that Dick negotiated --**
 23 **Mr. Graves negotiated for, and you agreed to; right?**
 24 A Those -- those -- that range in the value.
 25 **Q All right.**

Page 79

1 A Dick's attorney drew this up.
 2 **Q Notwithstanding who drew it up, this is**
 3 **an estimated value that Mr. Graves was willing to**
 4 **agree upon, and that you were -- that Monsour's was**
 5 **willing to agree upon; isn't that correct?**
 6 A Inventory to be purchased, value 750,
 7 800,000.
 8 **Q Estimated value; right?**
 9 A Right.
 10 **Q All right. And as a part of that**
 11 **subsection, Menu Maker was to agree to use its best**
 12 **efforts to sell or assist Monsour's in the sale of**
 13 **whatever inventory remained; is that correct?**
 14 A That was in there.
 15 **Q Originally. I'm confused as to what that**
 16 **meant. Let me go back.**
 17 A It is in there.
 18 **Q Yes, and that's something to which you**
 19 **agreed to, that they -- that Menu Maker would either**
 20 **sell or assist Monsour's in the sale of whatever**
 21 **inventory remained?**
 22 A Yes.
 23 **Q And this was important to Monsour's, was**
 24 **it not?**
 25 A Absolutely.

Page 80

1 **Q And then section 2 of that same Section 1**
 2 **talks about other intangible assets, which I won't**
 3 **trouble you with here. And you have told me, have**
 4 **you not, what you estimated -- I don't mean you, I**
 5 **really mean Monsour's, estimated the value of its**
 6 **inventory -- you told me what it estimated the value**
 7 **of its inventory was, which was between 1.1 and 1.2**
 8 **million dollars?**
 9 A That wasn't an estimate; that was an
 10 actual figure.
 11 **Q That's an actual figure?**
 12 A Supplied by the inventory valuation.
 13 **Q And you are just as sure as you possibly**
 14 **can be that that is an actual and correct figure?**
 15 A There is no doubt -- yes, that report -- I
 16 can tell you that for two reasons: One, we were
 17 constantly -- Mike Trisler's job was verifying
 18 inventory. That's what he did. He constantly
 19 valued inventory. Up one case, up or down,
 20 whichever way, he corrected it.
 21 **Q Okay. So --**
 22 A So it was pretty darn close.
 23 **Q Other than what has been produced in the**
 24 **way of discovery, what other documents does Monsour's**
 25 **have, if any, which could be relied upon to prove the**

CORPORATE REPRESENTATIVE, MARK MONSOUR 3/13/2006

Page 89

1 A They had access to any records they wanted
 2 at any time.
 3 **Q They had the ability to input information**
 4 **into your NDS system?**
 5 A They had employees in the building.
 6 **Q Prior --**
 7 A Yes, prior.
 8 **Q Who was --**
 9 A Matt Warford.
 10 **Q Prior?**
 11 A Matt Warford, an employee of Menu Maker.
 12 Paid by Menu Maker, prior to.
 13 **Q Who else?**
 14 A Gene Fields, prior.
 15 **Q Who else?**
 16 A I will consider that one and let you know,
 17 but those would be two key employees that would have
 18 all that information available at their fingertips,
 19 and that was one of their primary roles.
 20 **Q Did Matt Warford have access to Monsour's**
 21 **computer system?**
 22 A Yes.
 23 **Q Was it not password protected?**
 24 A Matt Warford was a senior buyer of
 25 Monsour's, Inc. who was paid my Menu Maker and was a

Page 90

1 liaison between us, and had access to all inventory
 2 records, and was key in Monsour's, Inc. of
 3 establishing that number.
 4 **Q Okay. Was the computerized system, the**
 5 **NDS system, password protected?**
 6 A To a degree, yes. And Matt Warford's
 7 password would have got him any information he would
 8 have needed. And Gene Fields would have had probably
 9 the utmost clearance and would have had access to
 10 almost any records.
 11 **Q And after those people left the employ of**
 12 **Monsour's, Inc., the passwords were not changed, and**
 13 **they were not denied access; is that what you are**
 14 **telling me?**
 15 A The information was valuable to those
 16 people, because they were purchasing the food -- Menu
 17 Maker was purchasing the food service part of the
 18 business, which I was no longer necessary on, so they
 19 would have had access to that, and they would not
 20 have been changed. And they did have access to that
 21 information on a daily basis, sir.
 22 **Q And with your permission.**
 23 A Yes, sir. And with my knowledge, and with
 24 Menu Maker's knowledge, including Dick Graves.
 25 **Q Do you have any place in the documents**

Page 91

1 **that you have given to your attorneys the last**
 2 **inventory that was conducted prior to the execution**
 3 **of the asset purchase agreement? If you know.**
 4 THE WITNESS: January 29th, is that
 5 right?
 6 MR. DEVAUGHN: Answer to the best of
 7 your ability.
 8 A Best of my knowledge, I think it was --
 9 what I seen in -- January 29th comes to mind. And I
 10 believe that that would be in my lawyer's possession,
 11 and hopefully in yours, too.
 12 **Q (By Mr. Wachtel) I'm sure that**
 13 **Mr. DeVaughn --**
 14 A The number I seen there was like a million
 15 one, something, generated from the computer system.
 16 **Q Of the assets that -- the food service**
 17 **assets, nonproduce, and I'm going to restrict all**
 18 **these questions to nonproduce for the time.**
 19 A I agree.
 20 **Q The assets that Monsour's had on hand at**
 21 **the time of the execution of the agreement, what**
 22 **percent of those assets do you think were in a**
 23 **wholesome and 100% resellable condition?**
 24 A Majority. But I do admit, you know, what,
 25 10, 20% maybe not.

Page 92

1 **Q When was the last time prior to the asset**
 2 **purchase agreement that you actually went through --**
 3 **you actually went through and inventoried all those**
 4 **assets?**
 5 A You see, I never did that. Because the
 6 company was mine, and as I was constantly interacting
 7 in that building, in my mind, I always knew what the
 8 inventory was, and I knew what was not good and I was
 9 constantly directing people as to dealing with things
 10 that needed to be taken care of, adjusted, removed,
 11 etc.
 12 **Q Okay.**
 13 A Because it's my money, or was my money at
 14 that point, or the company's money.
 15 **Q Do you have an opinion, as of the**
 16 **execution of the asset purchase agreement, how many**
 17 **of your food service -- excuse me. Do you have, with**
 18 **respect to the frozen goods, do you have an opinion**
 19 **in your mind what percentage of those were not**
 20 **wholesome and not 100% resellable?**
 21 A In the prior years leading up to it,
 22 especially when I bought the business from Pete,
 23 there was a lot of junk inventory there. One of the
 24 first things I did in that first year was I -- we
 25 brought in a big dumpster, and we filled that thing

CORPORATE REPRESENTATIVE, MARK MONSOUR 3/13/2006

Page 93

1 like two or three times, or we filled a truck up and
 2 took it out to the dump. In other words I took all
 3 of the old unsellable or dated merchandise and I got
 4 rid of it, because it served me no purpose to fill up
 5 space. Sometimes you buy right, sometimes you don't
 6 buy right. Sometimes a good deal, you get some
 7 inventory that, you know, you buy long on, it just
 8 doesn't sell the way you are expecting it to.
 9 Hopefully you give that back to the person you bought
 10 it from, and they take it back. Eliminate the
 11 problem. We were turning our inventory significantly
 12 much more in the years leading up to the asset
 13 purchase agreement. I would say the majority of the
 14 inventory was in good -- was in good shape.

15 **Q And that would be true -- that would be**
 16 **true with regard to that which was in the freezer?**

17 A True.

18 **Q And do you have a percentage of your -- in**
 19 **your mind of what items in that -- in the freezer**
 20 **might not have been wholesome and 100% resellable at**
 21 **the time of the asset purchase agreement?**

22 A I'm going to go out on a limb and say that
 23 at any time, that your average company would have 10%
 24 of inventory that is probably slow moving, dated, not
 25 as fresh as you want it to be. I think I have said

Page 94

1 that, 10, 20% would be maximum.

2 **Q With respect to the agreement, did Menu**
 3 **Maker breach the agreement with regard to your**
 4 **inventory other than produce?**

5 A There is prongs to the agreement. The
 6 first part of the agreement is inventory. They were
 7 to purchase a million one inventory at value of 750
 8 to \$800,000.

9 MR. DEVAUGHN: Speak up, Mark.

10 A They were to purchase inventory at a value
 11 of 750 to \$800,000.

12 **Q (By Mr. Wachtel) Are you telling me they**
 13 **breached that agreement, that part of the agreement?**

14 A Yes.

15 **Q When did they breach that part of the**
 16 **agreement?**

17 A When they did not purchase (inaudible).

18 MR. DEVAUGHN: Speak clearly.

19 A When they informed me they were no longer
 20 going to purchase additional inventory, at that point
 21 it was a breach.

22 **Q (By Mr. Wachtel) When did that happen?**

23 A I do not recall, but I know it happened.
 24 After the asset purchase agreement.

25 **Q Certainly. In April?**

Page 95

1 A Perhaps. I'm not going to say. I don't
 2 recall. I just know it happened.

3 **Q And they breached it with regard to items**
 4 **other than produce when they didn't buy what,**
 5 **\$700,000 worth of -- \$800,000 worth of inventory**
 6 **items other than produce, is that it?**

7 A Right. The agreement was they were to
 8 purchase the inventory, food service inventory.

9 **Q Uh-huh.**

10 A At a value between 750, \$800,000. That
 11 never occurred.

12 **Q All right. When did you first complain to**
 13 **anyone at Menu Maker Foods that Menu Maker had --**
 14 **that Menu Maker was not performing under Section 1 of**
 15 **the asset purchase agreement?**

16 A Between the four to six weeks, which was
 17 the time frame that Dick Graves told me the majority
 18 of the inventory would be gone from my building, the
 19 majority being almost it. That wasn't my number.
 20 That was his number. Two weeks on the floor, two
 21 weeks in order, then four to six weeks, that's when
 22 they would take the majority of my inventory.

23 **Q If I understand that correctly then, your**
 24 **first complaint to --**

25 A Dick Graves, in the fourth week.

Page 96

1 **Q You complained to Mr. Graves in the fourth**
 2 **week following the execution of the asset purchase**
 3 **agreement that Menu Maker Foods was not -- had not**
 4 **taken your inventory as it had promised to do?**

5 A It wasn't a complaint. At that time I was
 6 saying, "Okay, it's been four weeks now. Now it's
 7 going to happen; right?"

8 **Q All right. And then?**

9 A Majority should be gone by eight weeks.

10 **Q And when next after that did you discuss**
 11 **with anybody at Menu Maker Foods that the inventory**
 12 **items had not been taken?**

13 A Actually, at that point, Jim Senecaut, and
 14 maybe before that point, Matt Warford brought to me
 15 the fact that Menu Maker wasn't operating by the set
 16 procedure, and how we were to calculate the price.
 17 And I actually talked to some buyer, I don't remember
 18 who, over a 20 pound piece, when he was telling us
 19 what he was going to pay, and it was not anywhere
 20 near any type of cost I had ever seen, or our buyers
 21 had seen, but he said, "Take it or leave it."

22 **Q I see.**

23 A Twenty pound piece. Whoever that buyer
 24 would be here at Menu Maker, that would be the man.
 25 Then when they start taking freight allowances,

24 (Pages 93 to 96)

CORPORATE REPRESENTATIVE, MARK MONSOUR 3/13/2006

Page 105

1 are up on it. Good. Yeah. It is -- I apologize.
 2 My mistake.
 3 **Q It's not necessary to apologize. So if I**
 4 **understand you correctly, that Monsour's was unable,**
 5 **for whatever reasons, to supply Menu Maker with**
 6 **Colorado potatoes US No. 1 Centennial?**
 7 A Twelve months out of the year. Couldn't
 8 do it.
 9 **Q So it was agreed among the parties that it**
 10 **would not be necessary for my client to buy potatoes**
 11 **from Monsour's?**
 12 A Right. I need to add something to that,
 13 Val.
 14 **Q Sure.**
 15 A And then there was a time when Ron Orr
 16 called and asked us to bring in a load of potatoes
 17 for him.
 18 **Q Uh-huh.**
 19 A And he asked that to Dennis Hughes, or to
 20 me. But whoever, I made -- whoever it was, whether
 21 it was me calling back Ron to verify that, or Dennis,
 22 in other words I made sure that I verified it from
 23 his mouth over for my ears at least twice. So we
 24 brought that load of potatoes in for Menu Maker. In
 25 fact we even buy good labels, because we wanted to

Page 106

1 make sure we made him happy, because that was our
 2 entire point. We brought Gold Label Centennial
 3 potatoes in, a straight load, at the direction of Ron
 4 Orr. And once we got them in here, to our -- into
 5 our -- into our coolers, \$17,000, that load of
 6 potatoes, because they were expensive time of the
 7 year. That's when Ron Orr said, "I don't buy
 8 potatoes from you." I said, "Ron, I verified it from
 9 your mouth to my ear twice that you wanted me to
 10 bring these in." "I don't buy my potatoes from
 11 you." I let Dick know about it. And we had a load
 12 of potatoes in our cooler that cost us \$17,000 that
 13 Ron Orr personally ordered from me, and verified by
 14 Dennis Hughes and verified by Peter Monsour, and
 15 didn't want them. And they never took a single box.
 16 We threw them away.
 17 **Q When did you tell Mr. Graves about that?**
 18 **With regard to the potatoes that Mr. Orr ordered,**
 19 **when did you tell Mr. Graves about that?**
 20 A I told him about it right after that
 21 happened.
 22 **Q Uh-huh.**
 23 A I kept reminding him about it, too.
 24 **Q I'm sure you did. When did you tell him?**
 25 A After they were in our dock. After they

Page 107

1 were in our coolers, then Ron Orr told me he didn't
 2 want them.
 3 **Q Would that have been February, March or**
 4 **April.**
 5 A Would have been February, March or April.
 6 **Q One of those three?**
 7 A One of those three months.
 8 **Q Were there any oral agreements with regard**
 9 **to the purchase of cabbage?**
 10 A Yeah.
 11 **Q And?**
 12 A Here, let me describe that agreement.
 13 **Q Okay.**
 14 A We would bring boxed medium cabbage in,
 15 and then be told by Ron Orr, we don't want boxed
 16 medium cabbage, we want sack, which is jumbo. Okay.
 17 Then we ordered sack jumbo in, only to be told by Ron
 18 Orr, we only use boxed, medium. Didn't matter.
 19 Didn't matter. Bring boxed medium in, that's not
 20 what he wanted. Bring sack jumbo in, that's not what
 21 he wanted. We played that game three times. I don't
 22 know if that's an agreement.
 23 **Q I don't know whether it is either. Let's**
 24 **explore it a little bit. I have been told that Menu**
 25 **Maker, for its cabbage for its customers needed large**

Page 108

1 **cabbage heads?**
 2 A That's jumbo.
 3 **Q Jumbo.**
 4 A Yeah.
 5 **Q Thank you. I have been educated.**
 6 A Okay.
 7 **Q I have been told that Monsour's was only**
 8 **able to supply a smaller head; is that true? Were**
 9 **they only --**
 10 A Completely inaccurate, Val.
 11 **Q I also have been told that there was the**
 12 **oral agreement reached with Monsour's that Menu Maker**
 13 **was at liberty to buy cabbage from some other source;**
 14 **is that also inaccurate?**
 15 A That agreement was reached after it became
 16 apparent that no matter what type of cabbage, as many
 17 other items, Val, that I would bring in, wasn't going
 18 to say the grade, because the man was going to change
 19 his mind and his -- and his -- and his specs, let's
 20 use specs, at any point that it suited him.
 21 **Q Was there another agreement reach that is**
 22 **not -- oral agreement reached with regard to**
 23 **mushrooms?**
 24 A Talking about oral agreements, it was
 25 always orally agreed that when we put the produce on

CORPORATE REPRESENTATIVE, MARK MONSOUR 3/13/2006

Page 133

1 **identify that -- I'm sorry -- to your lawyers that**
 2 **would identify that?**
 3 A No, and it wouldn't be a significant
 4 number, to tell you the truth. Okay? One way or the
 5 other.
 6 **Q Well, that's all we are looking for**
 7 **anyway. All right. Before moving on, what judgment**
 8 **liens, if any, are there, as we sit here today,**
 9 **against Monsour's, Inc.?**
 10 A Outside of PACA, I'm going to say my
 11 memory draws a blank, but that doesn't mean there
 12 isn't.
 13 **Q And we sort of discussed those kind of**
 14 **things in your deposition, didn't we?**
 15 A Right.
 16 **Q Then I won't go back and rehash that with**
 17 **you.**
 18 A I guess Pitt Plastics would be a name I
 19 should mention.
 20 **Q And the law on Pitt Plastics is whatever**
 21 **the law is to Pitt Plastics. Let me hand you yet**
 22 **another document. This is identified as Defendant's**
 23 **Exhibit 6. This document is multipages, and is Bates**
 24 **stamped 10051 through 53. I will tell you that it**
 25 **was provided to us by your counsel in discovery. It**

Page 134

1 **is the most legible copy that I have. But tell me**
 2 **what Exhibit 6 is.**
 3 A This is, I believe, Mike Trisler's
 4 handwriting, after I had -- or -- yeah, I believe --
 5 I believe it's Mike Trisler's handwriting. It's an
 6 employee -- it's a Monsour's employee handwriting.
 7 It's me trying to figure out what the actual problems
 8 are and solve them. Its one of the things -- one of
 9 the many things I did to try and satisfy Menu Maker.
 10 **Q So were you asking John Trisler to provide**
 11 **you with information?**
 12 A Not John.
 13 **Q Not John; Mike?**
 14 A Mike.
 15 **Q Sorry. And these are, you think, his**
 16 **notes responding to information you may have asked**
 17 **for?**
 18 A This was me sending a person up there
 19 trying to ascertain what is going on, I can figure
 20 out.
 21 **Q Up to Menu Maker Foods?**
 22 A Right.
 23 **Q All right. Now I can't read the first**
 24 **line of the first entry; do you know what it says?**
 25 A "Pictures developed --" and what was --

Page 135

1 **Q Do you know?**
 2 A I shows -- the thing he is talking about
 3 they are buying from C & C, and what's in their
 4 coolers. Show what products they carry, what
 5 products Menu Maker carries. Concerning produce.
 6 **Q The next -- there is a line beneath the**
 7 **first entry, and it says, the first two words, "Ed**
 8 **said," and then it says, Tomatoes vine ripe." Ed**
 9 **would be whom?**
 10 A Ed --
 11 **Q Fairchild?**
 12 A -- Fairchild. Here, their tomatoes they
 13 carry are vine ripe 6 x 6/5 x 6. Now that's --
 14 that's different sizes. 6 x 6 would be called large;
 15 5 x 6 would be extra large. "Their customers won't
 16 take. They want a gas green product." It's
 17 technical. I would like to make a comment here.
 18 **Q Go ahead.**
 19 A Okay. When it came to Ron Orr, I would
 20 send Ron Orr gas greens, and they would say, "They
 21 are not the right color. I want salmon." So then I
 22 would send him gas green salmons. "They are not the
 23 right size." So then would I get the sizing right,
 24 and then he would say, "I want vine ripe." So then I
 25 would send him vine ripe, and then he would say,

Page 136

1 "They are not red enough." Then I would send him
 2 redder tomatoes, and he'd say, "They are not the
 3 right size." And it got to the point that he would
 4 say every one of his tomatoes were exactly uniform
 5 and completely in size. And it didn't matter if I
 6 send him gas green, he wanted vine ripes. If I got
 7 it correctly, in the vine ripe, right size, right
 8 color, he would revert back to gas greens. Played
 9 the game three or four times. In fact on sometimes
 10 when I would send him tomatoes, he wanted credit. I
 11 would send him maybe 50 cases of tomatoes.
 12 Miraculously, he would need 70 cases of credit, when
 13 I only send him 50. That's an example. May not be
 14 true example, this was the mind set of Ron Orr, the
 15 buyer here, that I was running into.
 16 **Q Let us go back to this document, which is**
 17 **Exhibit 6. The third entry on page 10051 appears to**
 18 **be dated March 11th, 2002; do you have any reason to**
 19 **believe that the entry that follows that was not an**
 20 **entry made either on March 11th, 2002, or about**
 21 **information discovered on March 11th, 2002?**
 22 A They are talking about Menu Maker trailers
 23 here.
 24 **Q Absolutely, which is not what we asked**
 25 **you.**

CORPORATE REPRESENTATIVE, MARK MONSOUR 3/13/2006

Page 138

1 A In hindsight, my answer is yes.
 2 Q What was your opinion --
 3 A On 3-11. All I was trying to get done is
 4 get whatever problems were solved on my end that I
 5 could control. Not deal with the ever changing
 6 specifications, desires, thoughts, bullshit of a
 7 buyer here.
 8 Q Well, then let's lay that document aside
 9 for a moment and look at a document that is marked
 10 Defendant's Exhibit 7. I'm sorry. Defendant's
 11 Exhibit 7. That was produced by your counsel in
 12 discovery. I believe at the top of the document it
 13 says, "Dennis Hughes." Do you think I have read that
 14 correctly?
 15 A Yeah. That's my writing.
 16 Q That's your writing?
 17 A That's my writing.
 18 Q And that document --
 19 A Me and Dennis came to a meeting --
 20 Q Excuse me. Excuse me. I'm really trying
 21 to make it easy for the Court Reporter. And that
 22 document is dated in your handwriting 3-26-2002;
 23 right?
 24 A 3-26-02.
 25 Q Right. Look at the parenthetical note

Page 139

1 No. 3. It says, "The conversation I had with Ron Orr
 2 was not what you would say a positive one. In my
 3 opinion, we were set up to fail before we ever got
 4 started." Now that was a note that you wrote?
 5 A That's not my writing.
 6 Q It is not?
 7 A No.
 8 Q Do you recognize the handwriting --
 9 A This is Dennis Hughes' writing. That is
 10 my writing that says "Dennis Hughes" at the top.
 11 Q And so that date then, 3-26-02 would have
 12 been what, the date you received this document from
 13 Mr. Hughes?
 14 A Most likely.
 15 Q All right.
 16 A This was probably in reference to us
 17 either first meeting up here in this room with Dennis
 18 -- with Dick Graves, Ron Orr, Creighton Cox, Melvin,
 19 and a couple other people, either in preparation for
 20 coming up here, or after we got back from that
 21 meeting.
 22 Q All right.
 23 A When we were still trying to, in good
 24 faith, work out the problems.
 25 Q It was -- excuse me. Evidently, and from

Page 140

1 these notes, it was Mr. Hughes' opinion that
 2 Monsour's was being set up to fail before it ever got
 3 started, evidently under the agreement; did you
 4 discuss this opinion with Mr. Hughes?
 5 A Yes.
 6 Q When did you discuss it with him?
 7 A Probably close to this date, and I would
 8 have hold told him, "I don't care about Ron Orr; I
 9 believe Dick Graves will do what he says he's
 10 supposed to do, what the agreement calls for."
 11 That's where I had my complete faith. I had no faith
 12 in Ron Orr, as a person, or as a buyer. I do -- I
 13 did have complete faith in Dick Graves to do the
 14 right thing.
 15 Q Well, then who, if not Menu Maker Foods,
 16 was setting Monsour's up to fail before it ever got
 17 started?
 18 A Dennis Hughes is referring to Ron Orr.
 19 Q Okay.
 20 A And what I can say about that is the day
 21 after we signed this agreement, or shortly
 22 thereafter, the week after, when I was standing in my
 23 location with Ron Orr there, and I looked at Ron Orr,
 24 and I say to Ron Orr, "I guess you'll be buying your
 25 produce from me now, and we'll take good care of

Page 141

1 you." And that's when Ron Orr said, "Oh, really? I
 2 didn't know that." Which is in complete contrast to
 3 all the stuff we talked about here. And I said, "You
 4 act like I was telling something for the first
 5 time." And that's when he said to me the very first
 6 time, "I'm not going to do it." He said that about
 7 10 times, but that would be over time, Val.
 8 Q What was Mr. Hughes' title with Monsour's
 9 on --
 10 A Buyer. Pardon me.
 11 Q Let me see if I can finish that. On 3-26,
 12 2002, Dennis Hughes' title with Monsour's, Inc. was
 13 produce buyer; right?
 14 A Yes, sir.
 15 Q What did his job responsibilities entail?
 16 A Buying produce.
 17 Q I don't know what a produce buyer is, Mr.
 18 Monsour; can you enlighten me?
 19 A He would buy -- he would acquire produce
 20 from all sources, be it the West Coast, Texas,
 21 Mexico, Florida, etc. And get them -- acquire
 22 shipping and get them into our location in a timely
 23 manner.
 24 Q And as part of that job he would have been
 25 buying produce that was to be sold to Menu Maker

CORPORATE REPRESENTATIVE, MARK MONSOUR 3/13/2006

Page 142

1 Foods; am I right.
 2 A Yes.
 3 Q Was he a trusted employee?
 4 A Yes.
 5 Q Did you trust his judgment?
 6 A Yes, sir.
 7 Q Did you rely on him for advice?
 8 A No.
 9 Q Okay. In any event, by not later than
 10 March 26th, 2002, Mr. Hughes believed that Menu Maker
 11 Foods had set your company up to fail, and he had
 12 communicated that decision, that opinion to you;
 13 isn't that true?
 14 A That's his opinion.
 15 Q That's his opinion?
 16 A That's what is says right here.
 17 Q And you were aware -- was he your chief
 18 produce buyer?
 19 A He was the only produce buyer.
 20 Q Okay. Is it true that by April of 2002,
 21 you had discussed with Mr. Mitchelson, at least, the
 22 fact that Monsour's believed that Menu Maker was in
 23 violation of both the asset -- excuse me. The
 24 inventory portion of the asset purchase agreement,
 25 and the produce portion?

Page 143

1 A That is exactly right.
 2 Q And did you --
 3 A By this time I had thrown over \$100,000
 4 worth of produce away that Ron or ordered and never
 5 taken, ever, and I had thrown it away.
 6 Q And that occurred when?
 7 A February, until April.
 8 Q And so by --
 9 A At a time when I didn't need to be
 10 throwing money away.
 11 Q And so by sometime between February and
 12 April of 2002, Monsour's, Inc. was aware, one, that
 13 the contract had been breached; correct?
 14 A Aware, one, that the person in charge of
 15 buying the produce never intended to actually do his
 16 end.
 17 Q Well, let me go back --
 18 A Menu Maker never substantially purchased
 19 all its produce from me.
 20 Q Let me go back --
 21 A Menu Maker never purchased more than 15%
 22 of its produce from me, ever, in any given week.
 23 Q Let me go back and reask my question. It
 24 is true that by your meeting with -- no. Excuse me.
 25 It is true that somewhere between February and April

Page 144

1 of 2002, Monsour's, Inc. knew that Menu Maker Foods
 2 was in violation of this agreement, didn't it?
 3 A Yes.
 4 Q And it is also true that somewhere between
 5 February and April of 2002, Monsour's, Inc. knew that
 6 it had been damaged by the breach of the agreement?
 7 A Yes, sir.
 8 Q And it communicated that to its lawyers;
 9 right?
 10 A And I communicated that to Dick Graves,
 11 too. You are correct. Correct.
 12 Q And it asked its lawyers for advice, not
 13 its current lawyers, but Mr. Mitchelson?
 14 A Yes.
 15 Q And Mr. Mitchelson advised what?
 16 A I was simply letting Mitchelson know what
 17 the inevitable was, due to the fact that non --
 18 breach of the contract, noncompliance, there was no
 19 way that I was going to stay in business.
 20 Q Did Mr. Mitchelson offer any advice at
 21 all?
 22 A Not to my recollection.
 23 Q Was there any --
 24 A I'm sure he did, but I haven't read his
 25 deposition.

Page 145

1 Q In any event, if he says he did, or if he
 2 said he didn't, do you dispute what he said?
 3 A I do not dispute what he would say.
 4 Q All right. Let's look at what has been
 5 marked as Deposition Exhibit No. 8.
 6 A I find No. 5, Dennis Hughes' notes to be
 7 accurate, too.
 8 MR. DEVAUGHN: Just answer his question.
 9 MR. WACHTEL: Excuse me. Off the
 10 record.
 11 (WHEREIN, a discussion was held off the
 12 record.)
 13 Q (By Mr. Wachtel) Let's talk briefly about
 14 Deposition Exhibit 8. I notice that on the upper
 15 left-hand corner of that one page exhibit is -- there
 16 are handwritten words, "Matt Warford"?
 17 A That is my writing.
 18 Q Is that what it says?
 19 A Yes, "Matt Warford." That is my writing.
 20 Q It is also dated 3-26-02?
 21 A Yes, sir.
 22 Q What is this document?
 23 A This is Matt Warford's -- Matt Warford had
 24 been telling me some things about the ongoing
 25 inventory purchase that Menu Maker -- or the items

CORPORATE REPRESENTATIVE, MARK MONSOUR 3/13/2006

Page 149

1 **Q** Were you present when Mr. Krueger gave his
 2 deposition --
 3 A No.
 4 **Q** -- in this case. Have you read it?
 5 A I don't think I actually have, no.
 6 **Q** In any event, you would not dispute with
 7 Mr. Krueger's opinion of what day it is he came to
 8 Monsour's and did his inspection?
 9 A No.
 10 **Q** And since there is -- you have not read
 11 his deposition, there is nothing that you would care
 12 to add to what he said about his inspection?
 13 A I have not read it, so you are right.
 14 **Q** For once today. That's good. Excuse me.
 15 Let me tell you where I get lost here, and maybe you
 16 can help me understand. If Menu Maker was wrongfully
 17 rejecting Monsour's produce, as you contend, why did
 18 you give them credits for the wrongfully rejected
 19 produce?
 20 A I never gave them credit. They took it.
 21 **Q** They took credits?
 22 A In fact sometimes he took credits for more
 23 than he purchased, which was amazing.
 24 **Q** Well, when Menu Maker food was taking
 25 these credits, you of course picked up the phone,

Page 150

1 called Mr. Graves and said words to the effect of
 2 "Dammit, Mr. Graves, you are wrongfully taking
 3 credits from me"; right?
 4 A When I addressed Dick Graves I was telling
 5 Dick Graves what Ron Orr was doing.
 6 **Q** Well, Ron Orr --
 7 A And I expected Dick Graves to correct that
 8 problem.
 9 **Q** Ron Orr was an employee of Menu Maker
 10 Foods; right? So you called Mr. Graves the first
 11 time somebody wrongfully took credits from you and
 12 complained; right?
 13 A After a while it became so old I didn't
 14 keep calling.
 15 **Q** Is the answer to my question yes or --
 16 A First time --
 17 **Q** -- no?
 18 A Correct.
 19 **Q** And the second time it happened you
 20 called?
 21 A That's correct.
 22 **Q** And what were you told?
 23 A He would take care of it.
 24 **Q** And the third time it happened, you
 25 called; right?

Page 151

1 A Perhaps.
 2 **Q** Okay. Did you have, other than to just
 3 call and -- and like a voice crying in the wilderness,
 4 did you have something else that you could do to
 5 complain?
 6 A See, I was bound by an agreement, sir, to
 7 supply them produce and to sell them inventory.
 8 **Q** Right.
 9 A And I intended to keep my end of the
 10 agreement. That's what I kept on doing, keeping my
 11 end of the agreement. That's what -- that's what my
 12 outlook was, keep my end of agreement.
 13 **Q** According to Mr. Krueger, who is offered
 14 to us as an expert in produce, and I think he was
 15 also once upon a time in his life a Federal
 16 Government produce inspector, Mr. Krueger tells us
 17 that if your produce was being wrongfully rejected,
 18 you could have called for an inspection of that
 19 produce; is that not true?
 20 A That would be news to me. Because the way
 21 that you could call inspection on the produce, when I
 22 received it from my supplier, I had two days to call
 23 for me to get my produce inspected.
 24 **Q** Right.
 25 A Now I didn't know that once I had taken

Page 152

1 possession of that produce, and you know what, he
 2 makes a great point. I wish I would have done that,
 3 that had been the case, but I had the next best
 4 thing, I had the guy who would have done that. I had
 5 a retired guy that would have done it, doing my
 6 reports to me. And since -- money -- money was
 7 something I wasn't long on. I was doing everything I
 8 could to keep my expenses down.
 9 **Q** Let me ask you this: if Mr. Krueger
 10 acknowledged that -- your expert, not mine, indicates
 11 that if the produce that you sold to Menu Maker, that
 12 was wrongfully rejected, if his opinion is that you
 13 could have called for an inspection on that, are you
 14 telling me he is wrong?
 15 A No, I'm telling you, one, he never told me
 16 that. Two, the requirements -- the produce
 17 requirements set forth in the agreement, my stuff met
 18 every one of them.
 19 **Q** Well, that may very well be, but I didn't
 20 ask you that.
 21 A No, not by my standards, but by Federal
 22 standards, anyone's standards. I'd be glad to go
 23 over them with you.
 24 **Q** If Mr. Krueger wrongly believed that you
 25 could have complained to the government -- excuse