

Exhibit B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

CASE NO.

vs.

12-CV-2826(DLC)

APPLE INC., et. al,

Defendants.

-----x

HIGHLY CONFIDENTIAL

VIDEOTAPED DEPOSITION

DAVID NAGGAR

JANUARY 30, 2013

1918 Eighth Avenue

Seattle, Washington

REPORTED BY:
PAUL J. FREDERICKSON, CCR, CSR
JOB NO. 28641

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1 **DAVID NAGGAR - HIGHLY CONFIDENTIAL**
2 **The decision that Amazon was not that interested**
3 **in an agency model, that was made by Mr. Bezos**
4 **previously?**
11:07:11 5 MR. SUTTON: Objection.
6 A. No, it was made in a group setting with --
7 Mr. Bezos was there but it was several of us
8 discussing the options with our lawyers.
9 **Q. And it was made earlier in the week?**
11:07:24 10 MR. KIPLING: Objection.
11 Which week are you talking about?
12 BY MR. PARKER:
13 **Q. Well, what I'm referring to is the witness**
14 **has testified he went to New York and said that Amazon**
11:07:31 15 **wasn't interested in the agency model.**
16 A. Yeah.
17 **Q. And I assume you were authorized by top**
18 **management to say that; am I right?**
19 A. Yeah, I -- I don't remember when we
11:07:41 20 discussed it with Jeff. This may have been something
21 Russ and I discussed. I don't remember.
22 **Q. Okay. All right.**
23 **The second to last paragraph, the last sentence**
24 **says:**
11:07:56 25 **"I assume this agency model will change where**

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1 **DAVID NAGGAR - HIGHLY CONFIDENTIAL**
2 **you earn your margin, more margin on best sellers and**
3 **less on the back list, but you may make more money with**
4 **this model."**
11:08:10 5 **Do you see that?**
6 A. I do.
7 **Q. Is that a true statement, in your judgment?**
8 MR. KIPLING: Object to the form.
9 Go ahead.
11:08:20 10 A. I -- I don't know. Can you clarify a
11 little bit for me?
12 BY MR. PARKER:
13 **Q. Well, my question is that under the agency**
14 **model would you make more margin on the best sellers**
11:08:29 15 **and less on the back list? Is that something you -- is**
16 **that a true statement?**
17 MR. FRIEDMAN: Object as to form.
18 A. I don't know. It is -- it is probably
19 true on best sellers. I don't know that it's true on
11:08:44 20 back lists.
21 **Q. Okay.**
22 **And it says but you -- and you understand "you"**
23 **to be Amazon. Am I right?**
24 A. Yes.
11:08:51 25 **Q. The way you interpret the document.**

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1 **DAVID NAGGAR - HIGHLY CONFIDENTIAL**
2 **"But Amazon may make more money with its model."**
3 **Do you see that?**
4 A. I do.
11:08:58 5 **Q. Do you believe that that -- that that's**
6 **true, that Amazon may make more money under the agency**
7 **model than it had been under the reseller model?**
8 MR. FRIEDMAN: Object to form.
9 MR. KIPLING: Object to form.
10 MR. SUTTON: Object to form.
11 A. I don't know under this specific proposal.
12 BY MR. PARKER:
13 **Q. Had Amazon ever looked at that, that is**
14 **looked at the economics of agency, whether from an**
11:09:25 15 **economic point of view it might be in Amazon's interest**
16 **to actually agree to the agency model?**
17 A. I just want to clarify something.
18 **Q. Please.**
19 A. You're referring to the agency model as a
11:09:36 20 monolithic uniform model.
21 You can see that in his email he's offering a 5
22 percent commission on best sellers and a 20 percent
23 commission on back list.
24 **Q. Right.**
11:09:48 25 A. Which is a very different economic

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1 **DAVID NAGGAR - HIGHLY CONFIDENTIAL**
2 proposition from a 30 percent commission across the
3 board.
4 **Q. Which is what you ultimately agreed to, 30**
11:09:56 5 **percent?**
6 A. With HarperCollins, yes.
7 **Q. Yes. All right.**
8 **Did you -- did Amazon -- okay, that's a very**
9 **good point.**
11:10:06 10 **Did Amazon ever do an analysis of the economics**
11 **of the agency model under any assumption, of commission**
12 **or whatever?**
13 MR. SUTTON: Objection.
14 A. I don't remember seeing a specific
11:10:21 15 financial analysis.
16 **Q. Did you have -- had you seen any analysis**
17 **that suggested that under certain assumptions Amazon**
18 **might make more money under the agency model?**
19 MR. SUTTON: Objection.
11:10:37 20 A. Not that I recall. I don't remember any
21 specific analyses.
22 BY MR. PARKER:
23 **Q. Wouldn't that be a logical thing to do?**
24 MR. SUTTON: Objection.
11:10:47 25 MR. KIPLING: Object to form.

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2 A. I don't know.

3 **Q. I mean, why would you reject it without**

4 **looking at the economics?**

11:10:58 5 MR. KIPLING: Same objection.

6 MR. SUTTON: Objection.

7 A. We're very focused on the customer

8 experience first and foremost. Build a great customer

9 experience, and customers will respond to it by

11:11:08 10 engaging in your service. And our strong feeling was

11 that the customer would not be benefited by a move to

12 an agency model.

13 **Q. Because?**

14 A. They would pay higher prices.

11:11:23 15 **Q. There would be no windowing. Isn't that a**

16 **benefit?**

17 MR. SUTTON: Objection.

18 MR. KIPLING: Objection to form.

19 A. There was -- that is not a standard part

11:11:31 20 the agency model that there be no windowing.

21 **Q. No. But in connection with your**

22 **negotiations on the agency model, you got agreements**

23 **that there wouldn't be any windowing. Am I right?**

24 MR. SUTTON: Objection.

11:11:41 25 A. I -- I believe you are in most cases.

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2 **Q. And that's a benefit to customers; right?**

3 A. Yes.

4 **Q. Okay.**

11:11:54 5 **Now, you talked about a meeting and you can't**

6 **remember exactly when it was. Was it -- was it before?**

7 **Do you think it was before your trip to New York or**

8 **after?**

9 A. The meeting I was referring to earlier?

10 **Q. Yes, sir.**

11 A. It would have been after.

12 **Q. Okay.**

13 **You can't remember a date?**

14 A. No, that's the one that was right after

11:12:12 15 the John Sargent visit.

16 **Q. Got it. Right.**

17 A. January 28.

18 **Q. All right.**

19 **And so Tim Leslie was there?**

20 A. Yes.

21 **Q. All right.**

22 **And who is Mr. Leslie?**

23 A. An AGC at Amazon.

24 **Q. I'm sorry, I don't know what --**

11:12:26 25 A. Associate general counsel.

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2 **Q. What are his duties and responsibilities?**

3 A. He is a lawyer at Amazon.

4 **Q. Business lawyer?**

5 MR. FRIEDMAN: Objection to form.

6 A. I'm not sure I understand that term.

7 BY MR. PARKER:

8 **Q. Was he working with you on negotiating the**

9 **agency contracts?**

10 A. At the time we were not negotiating agency

11 contracts.

12 **Q. But at the time you did, was he working**

13 **with you on those contracts?**

14 A. Yes, he was.

15 **Q. I mean, some lawyers work on litigation and**

16 **some lawyers work on --**

17 A. Oh, I see.

18 **Q. -- on contracts. He was more of a person**

19 **who would work on transactions and contracts --**

20 MR. SUTTON: Objection.

21 MR. FRIEDMAN: Object to the form.

22 **Q. Contracts the like; am I right?**

23 A. In my dealings with him, it was around

24 contracts. I don't know the rest of his

25 responsibilities.

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2 **Q. Thank you.**

3 **David Zapolsky?**

4 A. Yes.

5 **Q. Who is he?**

6 A. Another lawyer at Amazon.

7 **Q. And what were his responsibilities as far**

8 **as you know?**

9 A. I actually don't know. I mean, I know he

10 was a lawyer that was in many of our meetings but I

11 don't know what his specific job duties were.

12 **Q. You didn't then and you don't now?**

13 A. Now I know.

14 **Q. And what does he do now?**

15 A. Now he is general counsel.

16 **Q. Now he is a general counsel.**

17 **And approximately when did that happen?**

18 A. A few months ago, I believe.

19 **Q. Okay.**

20 **Very recently?**

21 A. Very recently.

22 **Q. Okay. Great.**

23 **Michelle Wilson. She is a lawyer?**

24 A. She was general counsel at the time.

25 **Q. Okay.**

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2 So she has now left the company, Ms. Wilson?

3 A. I don't know her status with the company.

4 She is snow longer general counsel.

11:13:47 5 Q. All right.

6 Mr. Bezos was there?

7 A. Yes.

8 Q. Mr. Kessel was there?

9 A. Yes.

11:13:54 10 Q. Laura Porco was there?

11 A. Yes.

12 Q. And you were there?

13 A. Yes.

14 Q. And Mr. Grandinetti was there?

15 A. Yes.

16 Q. All right.

17 So at that meeting did anybody outline the pros

18 and cons to Amazon of going to the agency model?

19 MR. KIPLING: I'm going to object and

11:14:12 20 instruct the witness not to answer about what was

21 discussed in the meeting.

22 I've conferred with him and it was in his view and

23 in my view a meeting at which legal advice was being

24 sought and delivered by the lawyers for the company.

11:14:25 25 THE WITNESS: That's correct.

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2 BY MR. PARKER:

3 Q. Were you personally seeking legal advice?

4 MR. KIPLING: He -- I'm not suggesting that

11:14:31 5 he was. I'm suggesting that Amazon was seeking legal

6 advice. That's my client. And on that basis I'm

7 instructing this employee of Amazon not to answer the

8 question.

9 BY MR. PARKER:

10 Q. Was there any --

11 MR. PARKER: I mean, Mike are you going to

12 block me on any question here? I mean, I can't ask any

13 question whatsoever?

14 MR. KIPLING: You've spent 20 minutes asking

11:14:53 15 him questions about this meeting which has probed who was

16 there, when it happened.

17 MR. PARKER: Right.

18 MR. KIPLING: How long it was, whether

19 documents were prepared, which I believe pretty much

11:15:02 20 exhausts what you're permitted to inquire about in a

21 meeting that's privileged.

22 MR. PARKER: All right.

23 Well, I'm --

24 MR. KIPLING: So beyond that I guess I --

11:15:10 25 yeah, I am. Beyond what you've done, unless you come up

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2 with something else that's permitted that doesn't invade

3 the privilege.

4 BY MR. PARKER:

5 Q. All right. What -- were there business

6 decisions that came out of this meeting?

7 A. Not as distinct from asking for lawyers'

8 counsel as to what we could do.

9 Q. Did you come up with a business strategy

10 for dealing with proposals by Mr. -- such as that

11 presented by Mr. Murray and others?

12 MR. KIPLING: You can answer yes or no to

13 this.

14 A. No.

11:15:46 15 MR. SUTTON: Objection.

16 BY MR. PARKER:

17 Q. So what did you come up with?

18 MR. FRIEDMAN: Objection.

19 MR. KIPLING: That -- instruct him not to

11:15:51 20 answer.

21 You can ask him about what he did after the

22 meeting and what Amazon did after the meeting.

23 MR. PARKER: Oh, I'm about to.

24 MR. KIPLING: Okay.

11:15:56 25 MR. PARKER: But I'm just asking.

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2 BY MR. PARKER:

3 Q. Was there any strategy of any kind that

4 came out of this meeting, strategic decisions for

5 Amazon?

11:16:04 6 MR. KIPLING: Object to the form.

7 And you can answer yes or no.

8 A. No.

9 Q. So how did you leave it when you left?

10 Were you going to have another meeting or were you

11 going to continue thinking about it or --

12 A. Yeah. We -- there is no definitive

13 decision when I left the meeting.

14 Q. Was there a decision to pull the buy

15 buttons on the Macmillan products on the Amazon site?

16 THE WITNESS: Okay?

17 A. Not in that meeting, no.

18 Q. There was at another meeting?

19 A. At some point later I was informed that we

11:16:43 20 were pulling the buy buttons from Macmillan but I was

21 not at the meeting where the decision was made.

22 Q. Okay.

23 By -- who informed you?

24 A. Russ.

11:16:51 25 Q. What did he say?

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2 A. He said, "We're going to buy pull the buy

3 buttons on the Macmillan books."

4 **Q. Did you tell him that that was not a very good**

5 **idea or did you agree with it or express any opinion at**

6 **all?**

7 MR. SUTTON: Objection, form.

8 A. No, I understood why we were doing it.

9 **Q. Did he ask for your opinion as to whether**

10 **that was a good strategy or not?**

11 A. Not at that point, no.

12 **Q. Did you express your opinion on whether**

13 **that was a good strategy or not?**

14 A. No. We had things to execute at that

15 point.

16 **Q. You just executed?**

17 A. At that point, yeah.

18 **Q. All right.**

19 **At any point did you express an opinion to**

20 **Mr. Grandinetti as to whether pulling the buy buttons**

21 **on Macmillan was a good idea?**

22 A. I'm --

23 MR. KIPLING: I'm going to instruct him not

24 to answer what was discussed at the meeting with the

25 general counsel of the company. But other than that, you

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2 can seek an answer.

3 BY MR. PARKER:

4 **Q. Go ahead.**

5 A. No. I mean, we discussed how we would

6 respond to being forced into a model we didn't like.

7 Removing buy buttons was one option.

8 **Q. Do you think it was a good idea?**

9 A. I think it was the right move.

10 **Q. It was a disaster, wasn't it?**

11 MR. SUTTON: Objection.

12 A. No.

13 **Q. Did customers like it?**

14 A. No.

15 **Q. Did that create a good customer experience**

16 **when the buy buttons on Macmillan were pulled?**

17 A. No. Which is exactly why it was such a

18 hard decision.

19 **Q. You made the decision anyway.**

20 A. The decision was made anyway.

21 **Q. Even if it was a bad experience for**

22 **customers in that -- in that instance?**

23 A. In the -- in our opinion moving to an

24 agency model was a worse experience for customers.

25 **Q. No, no. I'm talking about pulling the buy**

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2 **buttons on Macmillan.**

3 A. Right.

4 MR. FRIEDMAN: Objection to form.

5 MR. KIPLING: I think he is, too.

6 THE WITNESS: I think I --

7 MR. KIPLING: This is argumentative. Let's

8 get back to question and answer form.

9 BY MR. PARKER:

10 **Q. You said earlier you understood why Amazon**

11 **was pulling the buy buttons on Macmillan, four or five**

12 **questions ago. What -- why were they doing it?**

13 A. To show to what level we felt that moving

14 to an agency model was not a model we wanted to move

15 to.

16 **Q. You picked on Macmillan because they were**

17 **the smallest publisher?**

18 MR. SUTTON: Objection.

19 A. I don't believe we picked on Macmillan at

20 all. I believe Macmillan came out, presented a set of

21 terms of sale, presented us with an ultimatum, and

22 threatened us with an inability to offer customers new

23 releases if we didn't acquiesce to a move to an agency

24 model.

25 **Q. So why didn't you do it to everybody else**

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2 **too?**

3 A. No one else had presented us with the

4 ultimatum at that point.

5 **Q. You wanted to make an example out of**

6 **Macmillan?**

7 MR. SUTTON: Objection.

8 A. No, we were responding to the specific

9 offer that Macmillan had put in front of us.

10 **Q. What signal were you trying to send to the**

11 **marketplace?**

12 MR. SUTTON: Objection.

13 MR. KIPLING: Object to the form.

14 A. I don't believe we were trying to send a

15 signal. We were dealing with a very specific

16 instance.

17 **Q. How did that work out for Amazon?**

18 MR. FRIEDMAN: Objection, form.

19 A. Can you be more specific.

20 BY MR. PARKER:

21 **Q. Well, did it end up being a good strategy**

22 **for Amazon? Did it achieve any business objective by**

23 **doing that?**

24 MR. KIPLING: Object to the form.

25 A. It's hard to say. We wound up with a

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2 negotiated contract with Macmillan a week later. That

3 was the end result.

4 **Q. Sitting here today looking back on it, was**

11:20:16 5 **that a good idea, pulling the buy buttons on Macmillan?**

6 MR. FRIEDMAN: Object to form.

7 MR. KIPLING: Object to the form.

8 MR. SUTTON: Objection.

9 A. I believe it was the right decision.

11:20:26 10 **Q. You still do?**

11 A. Yes, I do.

12 **Q. All right. Okay.**

13 MR. PARKER: Let's do the next document.

14 [Discussion off the record.]

11:20:36 15 MR. PARKER: Oh, okay. All right. Fine.

16 We'll just do the tapes right now.

17 THE VIDEOGRAPHER: Here marks the end of disc

18 number one in the video deposition of David Naggar.

19 Going off the record. The time is 11:21.

11:21:05 20 [Recess at 11:20 a.m.]

21 [Resuming at 11:25 a.m.]

22 [Deposition Exhibit 7 marked.]

23 THE VIDEOGRAPHER: Here marks the beginning

24 of disc number 2 in the continuing video deposition of

11:25:10 25 David Naggar. Back on the record. The time is 11:25.

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2 **Q. All right.**

3 **So let's look at this document while you were**

4 **out of the room I marked as Exhibit No. 7, an email.**

11:26:13 5 **And you said you've seen it. Can you identify these**

6 **emails, sir?**

7 A. Yes. It is an email thread between

8 myself, Russ Grandinetti, Steve Kessel and Tim Leslie

9 about a conversation with Brian.

11:26:26 10 **Q. Okay.**

11 **And so the bottom email is one from Kessel to**

12 **Grandinetti and David Naggar saying:**

13 **"Let me know how the calls go today."**

14 **Were you instructed to make calls to the**

11:26:45 15 **publishers on January 25 of '10?**

16 A. We were either making or receiving phone

17 calls from publishers in followup to their -- the

18 meetings the previous week in New York.

19 **Q. And what can you remember about what you**

11:26:58 20 **were communicating to the publishers?**

21 A. We were continuing to voice our view that

22 it would be a very poor customer experience for us to

23 move to an agency model, that we didn't feel that

24 publishers were prepared to take on pricing. None of

11:27:20 25 them had hired any staff or done any other work to be

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2 EXAMINATION CONT'G

3 BY MR. PARKER:

4 **Q. We were talking about this meeting, and I**

11:25:19 5 **could not inquire about what happened at the meeting**

6 **but I can inquire about what you did coming out of the**

7 **meeting.**

8 **And so the question is, tell me what you did**

9 **coming out of the meeting.**

11:25:27 10 MR. SUTTON: Objection, form.

11 BY MR. PARKER:

12 **Q. Go ahead.**

13 A. Yeah. I -- we left the meeting without

14 making any final determinations as to what next steps

11:25:42 15 were. So I was really just waiting for a next step.

16 **Q. So you were just waiting for instructions?**

17 A. Sure.

18 **Q. Is it fair to state the meeting you're**

19 **talked about was on the 28th of January? Is that**

20 **right?**

21 A. I -- if that's the date that John Sargent

22 came out, yes.

23 **Q. Okay.**

24 A. I know it more in relation to that event

11:26:02 25 than the calendar.

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2 prepared to handle consumer pricing for thousands of

3 books in a digital environment, where it should be

4 dynamic. And that we didn't feel we wanted to move to

11:27:33 5 an agency model.

6 **Q. Did you commence discussions nonetheless**

7 **about what an agency model might look like at this**

8 **time?**

9 A. No. We were mostly in listening mode,

10 hearing what the publishers were going to put in front

11 of us.

12 **Q. And in a mode of resisting the move to**

13 **agency at that time?**

14 A. Correct.

15 **Q. All right.**

16 **With whom did you speak on January the 25th, you**

17 **personally?**

18 A. Just got off the phone with Brian, is what

19 the document says. So Brian Murray.

11:28:06 20 **Q. Brian being Brian Murray?**

21 A. Brian Murray, yes.

22 **Q. All right. Okay.**

23 **And please describe your conversation with**

24 **Brian.**

11:28:14 25 A. Aided by the email, because I don't

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2 remember the specific conversation.

3 **Q. Right.**

4 A. He was still unsure of whether they were

11:28:23 5 going to be part the Apple announcement. Didn't seem

6 to be wedded to specific agency models. He was

7 willing to look at various options or at least he led

8 me to believe he had the ability to mix and match his

9 model.

11:28:40 10 **Q. And what did you communicate to him about**

11 **your position?**

12 A. That we were still very strongly objecting

13 to an agency model.

14 **Q. Did you --**

11:28:49 15 A. And we didn't want to go there.

16 **Q. Did you give him any hope there might be**

17 **some compromise here that you might be able to work**

18 **out?**

19 A. No.

11:28:57 20 **Q. You did not. All right.**

21 **And it's on the 25th of January you got to work.**

22 **Did Mr. Grandinetti advise you that the day before he**

23 **attended a meeting with Mr. Bezos in his boathouse?**

24 A. I have no knowledge of such a meeting.

11:29:16 25 **Q. Did he simply tell you that he had met with**

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2 **Mr. Bezos and others over that weekend?**

3 A. He did not.

4 **Q. He never mentioned it to you at all?**

11:29:25 5 A. He did not.

6 **Q. And so how did you know -- he came in and**

7 **said, "Look, what we've got to do is call these**

8 **publishers and continue discussions"?**

9 A. Well, there was no difference in our

11:29:36 10 stance from the week before, which was we were very

11 much against agency and we were looking to find out

12 what the publishers were going to do and how far they

13 were going to push it.

14 **Q. Okay.**

11:29:47 15 **Isn't it a fact that you told Mr. Murray that**

16 **people at Amazon were preparing a document setting**

17 **forth pros and cons of the agency model for Mr. Bezos?**

18 MR. SUTTON: Objection.

19 A. Not to my knowledge.

11:30:15 20 **Q. Were you the only one that had a**

21 **conversation that day with Mr. Murray?**

22 A. I don't know.

23 **Q. Do you know if Mr. Grandinetti did?**

24 A. I do not.

11:30:26 25 **Q. Was it the truth that internally at Amazon**

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2 **there was a document being prepared for Mr. Bezos**

3 **setting forth the pros and cons of Amazon moving to the**

4 **agency model?**

11:30:42 5 MR. SUTTON: Objection, form.

6 A. I have no recollection of such a document.

7 **Q. You've never heard of it?**

8 A. I have no recollection of such a document.

9 **Q. Okay.**

11:30:51 10 **Was there -- setting aside a document. Were you**

11 **assigned to come up with a presentation, whether orally**

12 **or written, about the pros and cons of the agency**

13 **model?**

14 A. No, I was not.

11:31:11 15 **Q. Do you know whether anybody was?**

16 A. No, I don't.

17 **Q. Could you see personally any benefit to**

18 **Amazon going to the agency model as of the 25th of**

19 **January?**

20 A. No.

21 **Q. Okay.**

22 **So on the 28th you had a meeting with the people**

23 **we described, and shortly thereafter you, Amazon,**

24 **pulled the buy buttons on Macmillan; correct?**

11:31:52 25 MR. SUTTON: Objection, form.

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2 A. The next day.

3 **Q. And you were personally involved in**

4 **executing that strategy?**

5 A. Yes.

6 **Q. What did Mr. Grandinetti tell you about why**

7 **you were doing that?**

8 MR. SUTTON: Objection, form.

9 A. We were taking them down because they had

11:32:10 10 presented us with an ultimatum and terms we couldn't

11 live with and told us we had no option but to go with

12 those terms.

13 **Q. And if you didn't go with those terms, what**

14 **did Mr. Sargent say would be the consequences?**

11:32:31 15 A. Well, he said, "You have a choice. You

16 can either go to the agency model or you cannot see

17 new releases for seven months."

18 **Q. It was, I'm sorry, seven months?**

19 A. I believe it was seven months, yes.

11:32:43 20 **Q. So it was sign up with the agency model or**

21 **windowing; am I right?**

22 A. Yes.

23 **Q. All right.**

24 **How long were the buy buttons pulled on**

11:32:54 25 **Macmillan titles?**