

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA BARBARA
ANACAPA DIVISION

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

vs.

SUNSEEKER ENTERPRISES, INC., dba
SUN FIREDEFENSE; JAMES MOSELEY,
an individual; and DOES 1 through 10,
inclusive,

Defendants.

) Case No. 19CV04083

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) Volume III

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**CERTIFIED
ORIGINAL**

VIDEOTAPED DEPOSITION OF JAMES MOSELEY

Los Angeles, California

Friday, January 14, 2022

Reported by:

ED V. SERRANO,
CSR No. 7469

Job No.:
35251CAT (A) (V)



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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA BARBARA
ANACAPA DIVISION

6	THE PEOPLE OF THE STATE OF CALIFORNIA,)	Case No. 19CV04083
7)	
8	Plaintiff,)	Volume III
9	vs.)	
10	SUNSEEKER ENTERPRISES, INC., dba)	
11	SUN FIREDEFENSE; JAMES MOSELEY,)	
12	an individual; and DOES 1 through 10,)	
13	inclusive,)	
14)	
15	Defendants.)	

VIDEOTAPED DEPOSITION OF JAMES MOSELEY,
 taken remotely via Zoom videoconferencing on
 behalf of the Plaintiff, at 200 North Main Street,
 City Hall East, Fifth Floor, Los Angeles,
 California, commencing at 9:07 a.m. and
 concluding at 10:51 a.m. on Friday, January 14, 2022,
 reported by ED V. SERRANO, CSR No. 7469, a Certified
 Shorthand Reporter in and for the State of California,
 pursuant to Notice.

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15 The VIDEOGRAPHER: CHRISTOPHER CHAIN
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I N D E X

EXAMINATION BY:	PAGE
MR. RUIZ	251

E X H I B I T S

PLAINTIFF'S	PAGE
2 - E-mail String between DJ Wetmore and Fire Protection Consultant/Chemist Warren Harris 2-26-19 through 3-13-19 Re: SPF 3000 Clear Spray Purchase Inquiry	263
12 - E-mail from James Moseley to DJ Wetmore and Andrew Elkins Re: Sun FireDefense Website Content and Description 7-20-18	274
89 - E-mail from Annmarie Aronoff to Dave Timperley Re: Necessity of Steel Containers for Storage of SPF 3000 as opposed to Plastic Containers 8-15-18	260
92 - Letter from Ken Sissons to James Moseley Re: Testing Results and Longevity of SPF 3000 Clear Spray 12-28-21	293

1 Los Angeles, California, Friday, January 14, 2022

2 9:07 a.m.

3
4
5 THE VIDEOGRAPHER: Good morning. Here begins the
6 remote deposition of James Moseley in the matter of the
7 People of the State of California versus Sunseeker
8 Enterprises, Inc., et al. This case is in the Superior
9 Court of the State of California, County of Santa
10 Barbara. Case number is 19CV04083. Today's date is
11 January 14th, 2022 and the time on the recording is
12 9:08 a.m. This is a remote deposition through Zoom
13 videoconferencing. The videographer today is
14 Christopher Chain, appearing for Kennedy Court Reporters.

15 Will all counsel please identify yourselves and
16 state whom you represent?

17 MR. RUIZ: This is Miguel Ruiz with the Los Angeles
18 City Attorney's Office on behalf of Plaintiff the People
19 of the State of California.

20 MS. TUSAN: Christina Tusan on behalf of the People
21 of the State of California.

22 MS. LUCAS: Morgan Lucas on behalf of the People of
23 the State of California with the Santa Barbara District
24 Attorney's Office.

25 MR. CHAPMAN: This is Bill Chapman on behalf of

09:07:43

09:07:45

09:07:50

09:07:55

09:07:57

09:08:00

09:08:08

09:08:13

09:08:18

09:08:21

09:08:24

09:08:26

09:08:28

09:08:31

09:08:34

09:08:38

09:08:41

09:08:43

09:08:45

09:08:47

09:08:52

1 Defendant Jim Moseley. 09:08:53

2 THE VIDEOGRAPHER: Thank you. 09:08:57

3 Our reporter today is Ed Serrano. Will the 09:08:59

4 reporter please swear in our witness? 09:09:01

5 09:09:01

6 JAMES MOSELEY, 09:09:19

7 called as a Witness, and having been first duly sworn 09:09:19

8 by the Certified Shorthand Reporter, was examined and 09:09:19

9 testified as follows: 09:09:19

10 THE WITNESS: Yes. 09:09:22

11 09:09:23

12 EXAMINATION 09:09:23

13 BY MR. RUIZ: 09:09:23

14 Q Welcome back, Mr. Moseley, to the second part 09:09:23

15 of your deposition. I know we went over this the first 09:09:26

16 time, but I'm just gonna go over some -- some ground 09:09:30

17 rules briefly just so we're all on the same page again. 09:09:33

18 A Uh-huh. 09:09:36

19 Q Because this is a Zoom deposition and we're 09:09:36

20 doing this remotely, I just have to ask is there anyone 09:09:38

21 else in present in the room with you? 09:09:41

22 A No. 09:09:43

23 Q And can you see and hear me clearly? 09:09:43

24 A Yes, I can. 09:09:46

25 Q And will you let me know if, you know, the -- 09:09:47

1 you know, your internet is slow or something gets 09:09:49

2 garbled and -- and you didn't -- didn't hear me? 09:09:52

3 A Absolutely. 09:09:54

4 Q Okay. Now, as the court reporter just swore 09:09:54

5 you in, you recognize that you're under oath and it's 09:09:59

6 the same as if you were testifying in a court of law? 09:10:01

7 A Okay. 09:10:04

8 Q And we have this court reporter. So he's 09:10:06

9 taking down a written record, and so you have to give 09:10:09

10 verbal responses and it has to be a, you know, "yes" or 09:10:12

11 "no." A -- a nod or a head shrug is sort of 09:10:14

12 insufficient. Is that -- is that okay? 09:10:16

13 A Understood. 09:10:18

14 Q And we can't talk over each other. And we're 09:10:19

15 doing a good job so far of -- you know, I -- you let me 09:10:22

16 ask my questions and I'll do my best to let you finish 09:10:24

17 your question. Okay? 09:10:27

18 A I am, yes. 09:10:28

19 Q And also that pause might allow your counsel to 09:10:29

20 insert any objections, um, he's perfectly allowed -- 09:10:33

21 allowed to do; but, I also want you to understand that 09:10:36

22 if he does not instruct you to answer, you must answer 09:10:39

23 my question. Is that -- is that understood? 09:10:42

24 A Understood. 09:10:45

25 Q And because you're under oath, it's important 09:10:48

1 of course that you understand my question. So if I say 09:10:50
2 something that doesn't make any sense to you or I use a 09:10:52
3 word that's not how you would use it, will you -- will 09:10:55
4 you let me know and I'll try to ask a better question? 09:10:58

5 A Yes. 09:11:01

6 Q And if you don't let me know, then I'm going to 09:11:01
7 assume that you understood my question. Is that fair? 09:11:05

8 A That's fair. 09:11:07

9 Q And I mentioned this previously, but again, we 09:11:10
10 can take a break any time you like. I'll try and take a 09:11:12
11 break once an hour or so anyway; but, if you need one 09:11:16
12 sooner, that's fine. You should -- you can ask for it. 09:11:19
13 The only thing I ask is that if there's a question 09:11:22
14 pending, you answer the question before we go on break. 09:11:24
15 Is that okay? 09:11:26

16 A That's fine. 09:11:27

17 Q All right. Are you taking any medication or 09:11:29
18 drugs of any kind which might make it difficult for you 09:11:33
19 to -- to give true and complete testimony today? 09:11:36

20 A No. 09:11:40

21 Q Had a -- had any alcohol in the last eight 09:11:43
22 hours or so? 09:11:44

23 A No. 09:11:46

24 Q Now, since the last time this deposition 09:11:51
25 started in -- or in March of 2020, have you done 09:11:55

1 anything to prepare for the continuation of this dep -- 09:12:00
2 of this deposition today? 09:12:03
3 A Not -- 09:12:06
4 MR. CHAPMAN: I'm gonna -- I'm just gonna -- I know 09:12:06
5 you probably meant this. 09:12:08
6 But Mr. Moseley, do not reveal any 09:12:10
7 communications you've had with me, Mr. McEwen, or any 09:12:12
8 other of your lawyers. 09:12:17
9 THE WITNESS: Then it would be no. 09:12:20
10 BY MR. RUIZ: 09:12:22
11 Q Let me clar -- I don't want the contents of 09:12:22
12 anything that you spoke about with your attorneys; but, 09:12:26
13 did you speak with any attorneys in preparation for 09:12:30
14 today's deposition? 09:12:34
15 A Yes. 09:12:35
16 Q And which -- which attorneys were those? 09:12:36
17 A Bill Chapman. 09:12:40
18 Q And again, without talking about -- without 09:12:43
19 revealing any of the substance of that conversation, 09:12:46
20 when did you talk with Mr. Chapman about today's 09:12:50
21 deposition? 09:12:52
22 A Yesterday. 09:12:54
23 Q Um, for approximately how long did you speak 09:12:57
24 with Mr. Chapman? 09:12:59
25 A Five to 10 minutes. 09:13:02

1 Q Have you reviewed any documents in preparation 09:13:08
2 for today's deposition? 09:13:10

3 A Just the ones that we found that we gave to you 09:13:12
4 this morning. 09:13:18

5 Q So when you -- you reference "the ones that we 09:13:21
6 found this morning," would those be the 20 or so nasty 09:13:24
7 e-mails that Mr. Chapman provided this morning? 09:13:27

8 A Yes. 09:13:31

9 Q Other than those nasty e-mails, have you 09:13:34
10 reviewed any other documents in preparation for this 09:13:36
11 deposition? 09:13:39

12 A Today's deposition? Not that I recall. 09:13:41

13 Q Other than your attorneys, have you spoken with 09:13:46
14 anyone else about today's deposition? 09:13:51

15 A No. 09:13:54

16 Q All right. Now, again, I'm gonna go back and 09:14:15
17 talk about sort of SPF 3000. And -- and -- again, we 09:14:17
18 discussed it earlier, but where do you currently store 09:14:23
19 SPF 3000? 09:14:27

20 A We don't really store it. We have it made per 09:14:30
21 -- you know, per job if we're going to use it, but 09:14:34
22 that's it. There might be one can or two can that comes 09:14:40
23 directly to the job site or to our contractors. I might 09:14:44
24 have one 5-gallon here at any time, but it's not a 09:14:48
25 storage facility. 09:14:52

1 Q Did you ever store SPF 3000 in a storage 09:14:55
2 facility? 09:15:00

3 A Yes. 09:15:00

4 Q Where was that facility? 09:15:01

5 A It was the boatyard in the marina. 09:15:03

6 Q And when was the last time that you stored it 09:15:14
7 at -- at the boatyard? 09:15:19

8 A It's probably been a couple of years ago, year 09:15:23
9 and a half maybe. Maybe pre -- pre-pandemic I guess. 09:15:29
10 Time just really flew. But I think it's pre-pandemic, 09:15:33
11 yeah. 09:15:37

12 Q Is there a reason that you stopped storing SPF 09:15:39
13 3000 at the boatyard? 09:15:43

14 A Yes. 09:15:44

15 Q What was that reason? 09:15:45

16 A Couldn't make the rent on time and -- 09:15:47

17 Q Was there any ever -- was there ever any damage 09:16:03
18 caused at the boatyard as a result of storing SPF 09:16:06
19 3000? 09:16:14

20 A Yes, there was some spillage, a -- a minor 09:16:14
21 amount of spillage. 09:16:16

22 Q And what kind of damage did the spillage call 09:16:23
23 -- cause? 09:16:26

24 A Just staining. Because it was fairly new 09:16:29
25 concrete, it was a fairly new facility, so there was 09:16:32

1 some staining and we took care of it. And I believe 09:16:35
2 Dale went out and fixed it. 09:16:39

3 Q Was there any physical damage other than 09:16:49
4 staining, such as creating any holes or otherwise 09:16:53
5 damaging the -- the surface in the storage room? 09:16:57

6 A No. 09:17:00

7 Q Would you describe SPF 3000 as corrosive? 09:17:20

8 A If it was in -- 09:17:25

9 MR. CHAPMAN: Objection, vague. Do you mean in the 09:17:27
10 liquid state or after it's been sprayed and hardened? 09:17:30

11 MR. RUIZ: Mr. Moseley, did -- you can answer my 09:17:40
12 question. 09:17:41

13 THE WITNESS: What -- what? 09:17:43

14 MR. RUIZ: I said you can answer my question. But I 09:17:43
15 -- I'll -- I'll -- I'll repeat it. 09:17:45

16 THE WITNESS: Okay. 09:17:47

17 MR. RUIZ: Would you consider SPF 3000 corrosive? 09:17:47

18 MR. CHAPMAN: Objection, vague. 09:17:51

19 THE WITNESS: Not once it's dry. 09:17:56

20 BY MR. RUIZ: 09:18:00

21 Q But in it -- in its liquid state would you 09:18:00
22 consider it corrosive? 09:18:02

23 A If it was left to set long enough it could be; 09:18:04
24 but, we don't leave it sit around for long periods of 09:18:10
25 time. It would be like leaving, I don't know, some of 09:18:15

1 the types of fuels or something. It has -- has acetone 09:18:24
2 in it, so -- but we never left it laying around that 09:18:27
3 long. 09:18:31

4 Q What if you applied SPF 3000 to -- to certain 09:18:37
5 metals? Would it -- would it be corrosive on those 09:18:42
6 metals? 09:18:45

7 A I would have to see the type of metal. If it 09:18:46
8 was a thin aluminum can or something, possibly. The 09:18:49
9 manufacturer supplies, you know, specific cans that deal 09:19:00
10 with certain chemicals, so that doesn't occur in most -- 09:19:06
11 yeah, as far as I know. 09:19:11

12 Q So when you say "manufacturer," are you 09:19:16
13 referring to Engineered Coatings? 09:19:20

14 A Yes. 09:19:24

15 Q And is that only in reference then to the high 09:19:31
16 temperature base? 09:19:35

17 A Correct. 09:19:36

18 Q Engineered Coat -- is -- is -- and again, let 09:19:39
19 me just go -- I'll take a step back. My understanding 09:19:41
20 is that SPF 3000 is a combination of Master Flame, the 09:19:44
21 high temperature base, and some Inconel powder. Is that 09:19:51
22 fair? 09:19:54

23 A That's fair. 09:19:55

24 Q And Engineered Coatings does not produce the 09:20:00
25 combination, right? It only sends the high temperature 09:20:06

1 base? 09:20:11

2 A I don't understand that question. 09:20:12

3 Q Sure, sure, sure, let me put -- so does 09:20:13

4 Engineered Coatings do any of the combination of 09:20:17

5 combining the high temperature base, the Inconel powder, 09:20:19

6 and the Master Flame to produce SPF 3000? 09:20:22

7 A No. 09:20:25

8 Q So -- so that was my understanding. So -- so 09:20:32

9 that -- that -- that -- my question's gonna be -- so 09:20:34

10 when you're talking about "storing" it, do you store SPF 09:20:36

11 3000 essentially in its -- separately, in its component 09:20:41

12 -- separate component parts? Or how does it get stored 09:20:45

13 when it's all sort of -- sort of combined together? 09:20:48

14 A I mean it just goes in its parts directly to 09:20:51

15 the job site normally, or one of our contractors, we get 09:20:54

16 it to him. 09:20:58

17 Q But do your contractors do the combination 09:21:02

18 themselves, or do you sort of -- sort of combine sort of 09:21:06

19 the -- the -- the components into SPF 3000 and then 09:21:11

20 deliver it to -- to the contractors? 09:21:13

21 A Mostly myself. But they could do it as well. 09:21:17

22 It's -- it's not a, you know, difficult thing. 09:21:21

23 Q And so when you do it yourself, uh, my question 09:21:28

24 is how do you store that SPF 3000? Do you keep it in 09:21:32

25 the high temperature base container, or is there a 09:21:38

1 separate container that you would use? 09:21:41

2 A It's whatever container Engineered Coatings 09:21:44

3 delivers it in. I think that we supply it with its 09:21:48

4 markings and things like that. You know, flammable 3 09:21:59

5 liquid sort of thing. 09:22:02

6 MR. RUIZ: Okay. I wanna -- yeah, can I pull up 09:22:09

7 Exhibit 89? 09:22:12

8 (Plaintiff's Exhibit 89 was referenced for 09:22:35

9 identification by Mr. Ruiz.) 09:22:35

10 MR. RUIZ: And this is an e-mail chain Bates-stamped 09:22:37

11 Sunfire Doc #400-392 to Sunfire Doc #400-393. Are you 09:22:42

12 familiar with this e-mail chain, Mr. Moseley? 09:22:53

13 THE WITNESS: Yeah. Let me read it for a sec. 09:23:00

14 (Short pause) 09:23:07

15 MR. CHAPMAN: Miguel, is there -- I can only see and 09:23:10

16 I assume Mr. Moseley can only see what's on the screen. 09:23:12

17 So if you're asking him about a document, I think he 09:23:15

18 should look at the whole thing. 09:23:17

19 MR. RUIZ: If he wants -- yeah, if he wants to -- to 09:23:20

20 -- to -- to read -- to read the whole thing he -- he -- 09:23:23

21 he can. I was just -- 09:23:24

22 MR. CHAPMAN: What -- yeah, what I mean is I don't 09:23:26

23 think he can scroll down. It's just -- 09:23:27

24 THE WITNESS: You know what? The one you're asking 09:23:31

25 about, Annmarie, the one "Hi, Dave," I'm not sure -- 09:23:31

1 would that be -- I don't -- oh, Dave Timperley, okay, 09:23:37
2 with Bonneville Power. Yes, I -- I mean I -- I haven't 09:23:40
3 seen this specifically before, but -- it's been a while, 09:23:46
4 but it looks like it could be a familiar type thing if 09:23:52
5 you want to ask me a question. 09:23:56
6 BY MR. RUIZ: 09:23:57
7 Q Yeah, I just want to make clear 09:23:57
8 "jim@sunfiredefense.com," is that an e-mail that goes to 09:24:00
9 you? 09:24:04
10 A Yes. Yeah. 09:24:04
11 Q Okay. So -- actually, I want to start at the 09:24:06
12 e-mail below. It appears from Dave -- to -- 09:24:09
13 MR. RUIZ: Right, stop there. 09:24:13
14 THE WITNESS: Uh-huh. 09:24:13
15 MR. RUIZ: Little bit. 09:24:14
16 THE WITNESS: Yeah, sounds like a tournament we were 09:24:16
17 doing for utility companies. 09:24:17
18 BY MR. RUIZ: 09:24:20
19 Q Right. And -- and this e-mail from 09:24:20
20 "timperley8," who I believe you said is Dave Timperley 09:24:22
21 -- 09:24:26
22 A Uh-huh. 09:24:26
23 Q -- says, "We are looking at changing our 09:24:26
24 5-gallon containers. The ones that we are currently 09:24:28
25 using are leaking and not holding up." 09:24:31

1 A Uh-huh. 09:24:33

2 Q So what -- if you recall, what containers were 09:24:35

3 they using at this -- at this tournament to store SPF 09:24:41

4 3000? 09:24:46

5 A I -- I mean it seems like they've always been 09:24:47

6 the same; but, they could have changed out containers, 09:24:49

7 you know, a long the way, you know? But I don't -- I 09:24:52

8 can't recall exactly which containers, but -- 09:24:59

9 Q But was sort of leakage a -- a -- a common 09:25:06

10 occurrence for SPF 3000 containers? 09:25:09

11 A No. It could have been damaged in -- you know, 09:25:12

12 in the transportation or something like that. That does 09:25:17

13 happen from time to time. There's also pressure issues, 09:25:19

14 you know, when you have acetone or something like that. 09:25:31

15 So if it was banged around or something like that, you 09:25:34

16 know. 09:25:41

17 Q Now, if you'll go up -- scroll up on 09:25:41

18 (indiscernible) -- uh, where AnnMarie says, "The formula 09:25:45

19 cannot be stored in plastic." 09:25:52

20 A Correct. 09:25:55

21 Q Why is that? 09:25:56

22 A Well, I mean we've stored it in plastic before, 09:25:58

23 but plastic tends -- we've get -- gotten shipments 09:26:01

24 before and they tend to break easily. They're not as 09:26:06

25 sturdy. 09:26:16

1 Q So in -- in the sentence before, where she says 09:26:18
2 that the -- it says, "Our supplier stated we must use 09:26:20
3 the steel containers" -- 09:26:23
4 A Uh-huh. 09:26:26
5 Q -- is that supplier in reference to Engineered 09:26:27
6 Coatings? 09:26:30
7 A I guess, yes. I mean by reading this, yes. 09:26:32
8 MR. RUIZ: All right. I want to go now to Exhibit 09:26:53
9 2. 09:26:56
10 (Plaintiff's Exhibit 2 was referenced for 09:27:00
11 identification by Mr. Ruiz.) 09:27:00
12 BY MR. RUIZ: 09:27:17
13 Q And this is an e-mail chain Bates-stamped 09:27:17
14 Sunseeker-PL_0154 (sic) to Sunseeker-PL_01458. 09:27:21
15 Mr. Moseley, are you familiar with DJ Wetmore? 09:27:32
16 A Yes. 09:27:35
17 Q Who is he? 09:27:36
18 A A former sales person. 09:27:38
19 Q Was he knowledgeable about SPF 3000? 09:27:42
20 A Yes. 09:27:46
21 MR. RUIZ: So if we go to the bottom of page 2 09:27:50
22 leading into page 3 -- if you scroll up just one more, 09:28:00
23 just a little piece. Sorry, up -- stop. Thank you. 09:28:06
24 Good. 09:28:11
25 This is the e-mail from DJ Wetmore to Warren 09:28:14

1 Harris March 1st. It doesn't look like you were on this 09:28:18
2 e-mail; but, if you could read it -- read it to 09:28:21
3 yourself, this -- this little piece and -- and let me 09:28:25
4 know when you're ready. 09:28:28

5 (Short pause) 09:28:50

6 THE WITNESS: Okay. I'm ready. 09:28:51

7 BY MR. RUIZ: 09:28:53

8 Q Okay. So the second sentence in that e-mail 09:28:53
9 says, "The -- the product does however, oxidize/corrode 09:28:56
10 metal surfaces if directly applied." Do you -- do you 09:28:59
11 agree with that? 09:29:04

12 A The oxidize part perhaps; but, no, not nec -- 09:29:05
13 not corrode. 09:29:12

14 Q And it says, "Typically, we sim" -- the next 09:29:16
15 sentence says, "Typically, we simply mask or otherwise 09:29:18
16 protect such areas during application." Is -- is that 09:29:21
17 an accurate statement? 09:29:24

18 A Yes. 09:29:27

19 Q So then is it fair to say that in a typical 09:29:30
20 application of SPF 3000, um, you would not apply it to 09:29:34
21 -- directly apply it to metal surfaces and you'd sort of 09:29:40
22 mask around those areas? 09:29:44

23 A It wouldn't hurt. The thing is like it never 09:29:46
24 (indiscernible) copper type of gutters and things like 09:29:52
25 that, and so you know, it could give it a -- oh, what's 09:29:55

1 that -- what's that term for greenish -- um, it could 09:29:59
2 oxidize it and turn it more of a greenish color. So 09:30:03
3 corroding isn't the word for it, but oxidizing could be 09:30:07
4 an issue so we always protect those areas. But we've 09:30:11
5 never had to replace anything that we've gotten it on. 09:30:18
6 Mainly just windows we'd want to mask off. 09:30:21
7 Q And -- and -- and -- and why would you mask 09:30:24
8 windows? 09:30:25
9 A Because you don't want to get it on the windows 09:30:27
10 and have to get it off with a rag and deal with it. 09:30:29
11 Q Why not? 09:30:33
12 A Because it just gets, you know, dry -- if -- if 09:30:35
13 it dries it gets -- oh, what's the word? Just doesn't 09:30:38
14 stain the windows, but it's just a pain in the butt to 09:30:44
15 get it off. You know, it's meant to adhere. 09:30:47
16 Q I see. So if you -- if you sprayed SPF 3000 on 09:30:51
17 a window, would it sort of -- would it impact the 09:30:53
18 ability to see out of the window? 09:30:58
19 A Yes. Just like a paint. You wouldn't want to 09:31:00
20 paint your windows, right? 09:31:07
21 Q If you were going to remove SPF 3000 off -- off 09:31:09
22 a window, how -- how would you do that? 09:31:13
23 A Well, it's a waterbase solution, so -- and Dale 09:31:17
24 has a particular, you know, thing he uses. But if you 09:31:21
25 catch it quickly it just -- you know, it's -- you can 09:31:26

1 pretty much take it off with a -- you know, soap and 09:31:29
2 water I believe, you know? But Dale's never -- never 09:31:33
3 mentioned it to me much, you know? Because it's usually 09:31:36
4 not an issue that stands out, you know? If he gets it 09:31:38
5 on there we gotta clean it. So -- like getting paint on 09:31:41
6 your windows. 09:31:46

7 Q Uh-huh. And if it was allowed to sort of cure 09:31:49
8 or -- or -- or -- or set for a little bit, would you be 09:31:52
9 able to get it off the window after that? 09:31:55

10 A Yes. 09:31:58

11 Q How -- how would you do that? 09:31:58

12 A Scrape it probably. 09:32:00

13 Q The next sentence says, "If a product that is 09:32:07
14 corrosive during application is a deal breaker for you, 09:32:10
15 we are likely not the right fit." Is -- is that an 09:32:13
16 accurate statement? 09:32:17

17 A Yes. Now, let me change that. It's not 09:32:19
18 corrosive. In DJ Wetmore's, you know, correspondence 09:32:27
19 here he really means oxidize and not corrode. Because I 09:32:34
20 can put this on a metal surface and it's not going to 09:32:38
21 corrode it. It just could oxidize it and change some 09:32:42
22 type of color. So I would say that's not a correct 09:32:45
23 statement for him. But he was very new. 09:32:49

24 Q Sorry, I -- and again, didn't mean to 09:32:57
25 interrupt. Uh, the first sentence says, "We have had 09:32:59

1 little issue with adhesion over other coatings or 09:33:05
2 discolored -- discoloration." Is that a fair 09:33:08
3 statement? 09:33:13

4 A I don't recall having an issue with 09:33:14
5 different -- with adhesion ever and discoloration. I 09:33:16
6 haven't had that that I can recall. Never had a 09:33:23
7 complaint from a customer saying that. Had a complaint 09:33:27
8 from one person. They said that I think the paint or 09:33:30
9 something like that was chipping or peeling and we 09:33:33
10 offered to fix it. But it was a real old paint job and 09:33:36
11 that's the extent of it. Never had a complaint 09:33:41
12 regarding that. 09:33:44

13 Q Did you say only -- only one consumer has 09:33:45
14 complained about paint peeling, or were -- have there 09:33:47
15 been multiple? 09:33:49

16 A Only one that I can recall. 09:33:51

17 Q Did you typically apply SPF 3000 to exterior 09:34:02
18 surfaces over -- over paint? 09:34:09

19 A Sometimes we do, sometimes we don't. 09:34:13

20 Q When you mean sometimes you don't, what do you 09:34:18
21 mean? What would you do? 09:34:21

22 A Well, sometimes it's just the eaves, you know, 09:34:22
23 or the fascia board or there's decking, you know, 09:34:25
24 2-by-6s, things like that, that -- or if it's in the 09:34:29
25 framing stages, you know, it's raw wood. Things like 09:34:33

1 that. 09:34:38

2 Q Can you -- we didn't talk about this earlier, 09:34:47
3 but can you give me a rough estimate of essentially what 09:34:50
4 percentage of jobs you've applied SPF 3000 to involve 09:34:57
5 painted exteriors as compared to sort of a -- a framing 09:35:03
6 job as -- as you -- as you called it? 09:35:07

7 A I -- I can't recall what -- what percentage 09:35:11
8 that would be. I -- I don't know. Less than 50 09:35:13
9 percent. 09:35:18

10 Q Okay. Less than 50 percent of the SPF 3000 09:35:22
11 jobs were applied to painted exteriors, or were applied 09:35:25
12 to frame issues? Or I'm sorry, framing jobs. 09:35:29

13 A I -- could you rephrase that? 09:35:35

14 Q Absolutely, yeah. Maybe I'll just ask it -- a 09:35:37
15 -- a more simpler question. What -- again, using your 09:35:40
16 best estimate -- 09:35:43

17 A Uh-huh. 09:35:44

18 Q -- what percentage of SPF 3000 jobs involve 09:35:45
19 applying SPF 3000 to painted exterior surfaces? 09:35:53

20 A I don't know what that percentage would be. 09:36:01
21 I'd have to do some calculating or some -- I can't think 09:36:05
22 on that. I don't know. Not -- not a big amount. Less 09:36:08
23 than 50 percent. Easily probably less than 30 09:36:12
24 percent. 09:36:15

25 Q How many -- what per -- let me -- I'll back up. 09:36:25

1 Again, using your best estimate, what percentage of jobs 09:36:31
2 in which you applied SPF 3000 were to what you called 09:36:35
3 "framing jobs?" 09:36:40
4 A More than 50 percent? Because typically Master 09:36:44
5 Flame doesn't really do a whole lot for -- I don't know, 09:36:49
6 longevity-wise I don't know how long it would last. And 09:36:54
7 as an additive, you know, it would make it last much 09:36:59
8 longer. 09:37:03
9 Q When you say that Master Flame doesn't last 09:37:07
10 that long, what -- what -- what do you -- what do you 09:37:09
11 mean by that? 09:37:11
12 A When you see it, it -- it -- it would -- it 09:37:12
13 just doesn't have the viscosity, the -- the -- you know, 09:37:15
14 the -- I don't know how to term it -- the grit, you 09:37:19
15 know, the sustainability as a -- as a -- you know, if 09:37:22
16 you were -- if you were gonna do a decking on a boat, 09:37:25
17 you know how you -- or stain a -- stain a deck, you 09:37:28
18 know, you would hardly know it's on there. I would 09:37:33
19 think after six months or a year it needs something 09:37:36
20 that's more of a -- you know, a sealant. And that's 09:37:40
21 what -- SPF 3000 gives it more of that sealant. That's 09:37:47
22 why -- longevity. 09:37:53
23 Q So if more than 50 percent of your jobs were 09:38:01
24 these -- these frame jobs, does this mean that you -- 09:38:06
25 SPF 3000 is mostly used sort of on -- on -- on new 09:38:08

1 construction? 09:38:11

2 A It can be used a variety of ways. I mean it's 09:38:12
3 approved to be able to use. It has the E84 rating on 09:38:16
4 the -- with the Cal Fire lab and the extended E84 rating 09:38:21
5 which is 30 minutes. And so yeah, that would be good 09:38:26
6 intended use. 09:38:33

7 Q Yeah, I -- yeah, no, I'm just asking like what 09:38:35
8 -- what you would consider a typical SPF 3000 job is, 09:38:37
9 since you said sort of less than 30 percent was sort of, 09:38:41
10 you know, applying it to, you know, an already painted 09:38:46
11 exterior. 09:38:50

12 A Uh-huh. You can do that, you can apply it to a 09:38:51
13 painting exterior; but, you gotta make sure the paint's 09:38:57
14 in good shape and -- you know, you power wash it to make 09:39:01
15 sure there's no particles or anything on it, you know? 09:39:04
16 It's only as good as the surface you apply it to. You 09:39:08
17 know, if it had an issue where the surface was gonna 09:39:10
18 peel off or something like that, then obviously, you 09:39:14
19 know, it's what you'd have to contend with. 09:39:17

20 Q So for -- so if you were applying SPF 3000 to a 09:39:23
21 painted exterior, would you always power wash the 09:39:30
22 exterior surface prior to application? 09:39:33

23 A Yes. 09:39:36

24 Q And all of your contractors knew to do this? 09:39:44

25 A Yes. 09:39:47

1 Q How -- how did they know that? 09:39:49

2 A A, they were told to; B, it's common sense. 09:39:53

3 You know, like if you were painting a house you wouldn't 09:39:55

4 apply -- you know, no -- no contractor would just throw 09:39:59

5 it over or spray it over loose -- I mean if there was 09:40:02

6 dirt on it or something it wouldn't make sense. 09:40:05

7 Q Was that a -- a -- a -- a separate charge to -- 09:40:10

8 to sort of -- the power wash? Is that part of the sort 09:40:13

9 of -- 09:40:16

10 A That's part of it. That, mask off the windows. 09:40:17

11 Q Now, you said that SPF 3000 could be used in 09:40:36

12 sort of a new construction, that it was, as you said, 09:40:40

13 approved to do so. But do you recall actually having 09:40:44

14 applied SPF 3000 to a new construction? 09:40:49

15 A Yes. 09:40:53

16 Q Approximately how many times? 09:40:54

17 A I don't remember. 09:40:57

18 Q Was it more than 10 times? 09:40:59

19 A Yes. 09:41:02

20 Q More than a hundred? 09:41:04

21 A No. 09:41:05

22 Q More than 20 times? 09:41:25

23 A Yeah, I'd say you're closing in on it. 09:41:28

24 Q How about -- how about less than 50? 09:41:33

25 A How about more than 30? 09:41:36

1 Q So more than 30 but -- so how -- can -- can -- 09:41:46
2 can I say more than 30 but less than 50? Would that be 09:41:48
3 fair? 09:41:51
4 A Okay, Miguel, you can say that. 09:41:52
5 Q Again, I -- I -- I -- I don't need you to 09:41:54
6 guess, but -- but just your -- your -- your -- your best 09:41:56
7 estimate. I -- 09:41:59
8 A Yeah, best estimate around 30 probably. 09:42:00
9 Q I'm gonna ask you a similar question, um, about 09:42:12
10 applying SPF 3000 to homes that already sort of had a 09:42:15
11 painted exterior. Can you give me a best of how many -- 09:42:21
12 how many times you've done that? 09:42:24
13 A Probably around that same number. 09:42:26
14 Q So around -- around 30 then? Is that fair? 09:42:30
15 A I mean as -- yeah, sorry, I have to guess. I 09:42:34
16 just don't recall. But that sounds like a fair 09:42:37
17 number. 09:42:40
18 Q Do you remember who complained about paint 09:42:57
19 peeling? 09:43:00
20 A Yes. It was the only one. It was -- oh, God, 09:43:03
21 what's her name? Marylou Hamill, Mark Hamill's wife. 09:43:10
22 But she was -- she was antagonized by this guy Bobby 09:43:15
23 Milstein at a -- at an event. So, you know, it's a real 09:43:20
24 simple thing. It's -- it's probably around some old, 09:43:25
25 old windows that she had that weren't opening and 09:43:28

1 closing well anyway. And then he started in on her, you 09:43:31
2 know, creating seeds of doubt on my product. And then 09:43:33
3 at that point I asked, "Hey, we'll -- we'll fix it." 09:43:38
4 Because that's a simple -- simple -- 09:43:42
5 MR. CHAPMAN: I'm -- I'm -- I'm gonna -- I'm gonna 09:43:44
6 object to the answer and move to strike everything after 09:43:45
7 "Mark Hamill's wife." 09:43:48
8 THE WITNESS: Okay. 09:43:53
9 BY MR. RUIZ: 09:43:58
10 Q So other -- other than Ms. Hamill, you don't 09:43:58
11 recall anybody -- any other consumer complaining about 09:44:03
12 paint peeling. Is that right? 09:44:08
13 A No. 09:44:09
14 Q Are you familiar with the -- the website for 09:44:36
15 Sun FireDefense? 09:44:39
16 A Yes. 09:44:41
17 Q Who -- who controlled the -- the -- the content 09:44:46
18 on -- on Sun FireDefense.com? 09:44:47
19 A It moved around a lot. I would offer up 09:44:51
20 content, you know, other people would offer up content 09:44:55
21 that worked for me. Yeah. 09:44:59
22 Q All right. Uh, but did -- did you have final 09:45:06
23 say on -- on the content that appeared on the website? 09:45:08
24 A Yes. 09:45:11
25 MR. RUIZ: So if we could pull up Exhibit 12. 09:45:15

1 (Plaintiff's Exhibit 12 was referenced for 09:45:17
2 identification by Mr. Ruiz.) 09:45:17

3 THE WITNESS: I'm just gonna turn off the air. 09:45:26

4 (Short pause) 09:45:45

5 BY MR. RUIZ: 09:45:45

6 Q This is a -- an e-mail that had been previously 09:45:45
7 produced at -- Bates-stamped Sunseeker-PL_00127. Are 09:45:49
8 you familiar with this e-mail, Mr. Moseley? 09:45:57

9 A Yes. 09:46:01

10 Q And we -- we talked about DJ Wetmore 09:46:04
11 previously. Do you know who Andrew Elkins is? 09:46:06

12 A I don't remember who Andrew Elkins is. I don't 09:46:11
13 remember who Andrew Elkins is. Maybe somebody that 09:46:18
14 worked on the website. 09:46:22

15 MR. CHAPMAN: Mr. Moseley, be sure not to guess. 09:46:29

16 THE WITNESS: I don't remember Andrew Elkins. 09:46:33

17 BY MR. RUIZ: 09:46:37

18 Q So the first sentence in the e-mail is: "Could 09:46:37
19 you guys do me a favor and pull a couple of things off 09:46:39
20 of the -- the website?" 09:46:43

21 A Yes. 09:46:44

22 Q Is that something you would typically do? 09:46:46
23 Instruct DJ Wetmore or -- or -- or whoever to modify the 09:46:49
24 website? 09:46:52

25 A Yes. 09:46:53

1 Q And there it says -- the next sentence says, 09:47:10

2 "Anywhere it might be BEST RATED or TOP RATED." 09:47:13

3 A Yes. 09:47:17

4 Q (Extraneous noise/inaudible) -- have them take 09:47:20

5 that off the -- the website. 09:47:23

6 A Yes. 09:47:25

7 Q Yeah -- no, I'm -- I'm sorry -- sorry. Why did 09:47:26

8 you instruct them to -- to take that off the website? 09:47:27

9 A It was -- I think it was you guys. It was 09:47:35

10 saying, 'Well, there's not really a best rated or a top 09:47:38

11 rated.' And then when I looked at it, I agreed, and so 09:47:41

12 I told him to pull it off. You know, I -- to me it 09:47:45

13 seemed unreal. It seemed, you know -- it's -- you know, 09:47:49

14 it wasn't a correct statement. 09:47:53

15 On the other hand, a best rated product, the -- 09:48:00

16 it would be synonymous with a class A rating though. If 09:48:05

17 you said it was -- "Hey, does your product have a class 09:48:10

18 A rating?" you know, that could be determined that, but 09:48:12

19 it sounded kind of corny anyway, you know? 09:48:18

20 Q Are you familiar with the website 09:48:32

21 sunfiredefenseNW.com? 09:48:35

22 A I'm familiar with it; but, I don't have 09:48:41

23 anything to do with that one except, you know, my cousin 09:48:43

24 is up in Oregon. 09:48:47

25 Q Okay. And so is that website not run by you or 09:48:50

1 Sunseeker Enterprises? 09:48:55

2 A Correct. 09:48:57

3 Q And when you say "cousin" are you referring to 09:49:03

4 Andy Su? 09:49:08

5 A Uh, yes. There's a lot of fires up in that 09:49:09

6 area and he wanted to help me. 09:49:23

7 Q Does -- is there a corporate entity associated 09:49:28

8 with the website sunfiredefenseNW.com? 09:49:36

9 A I don't know. 09:49:40

10 Q Are you -- do you have involvement with any 09:49:54

11 other corporate entities other than Sunseeker 09:50:01

12 Enterprises the Defendant in this case that sell SPF 09:50:04

13 3000? 09:50:12

14 A Do I have any other entities that sell it? No. 09:50:12

15 Q Are you involved with any other corporate 09:50:25

16 entities other than Sunseeker Enterprises the Defendant 09:50:27

17 in this case that either offer a service or products 09:50:30

18 that includes SPF 3000? 09:50:37

19 A No. Your -- your -- basically your question 09:50:41

20 was nobody else is. We -- we don't have anybody else 09:50:54

21 selling it. Isn't that your question? 09:50:57

22 Q Well, yes, I -- I -- I -- I'm just making -- 09:51:00

23 yeah, that -- that is -- that is a question, is -- is -- 09:51:01

24 is -- is -- is coming up -- was -- was a little more 09:51:03

25 broad -- that's a broader question than I intended. I 09:51:05

1 just meant that if you use any other corporate entity 09:51:08
2 other than yourself or Sunseeker Enterprises the 09:51:11
3 Defendant in this case to market or sell a product or 09:51:13
4 service involving SPF 3000. 09:51:20

5 A No. Got it. 09:51:22

6 Q The -- the broader question is yes, have you 09:51:24
7 authorized any individual or other corporate entity to 09:51:27
8 sell SPF 3000? 09:51:33

9 A No. 09:51:37

10 Q So does -- is Andy Su, for example, authorized 09:51:42
11 to sell SPF 3000? 09:51:48

12 A If he ever he sold something, I guess we would 09:51:49
13 be the ones selling it. It wouldn't be him. You know, 09:51:53
14 essentially we would be -- if he made a sale up there, 09:51:55
15 then we would ship it up there. He just wanted his own 09:52:01
16 separate thing like this, you know, acknowledging his 09:52:04
17 area. 09:52:07

18 Q So would it be fair to refer to Mr. Su then as 09:52:25
19 more of like an independent like sales associate? 09:52:28

20 MR. CHAPMAN: Objection, calls for a legal 09:52:35
21 conclusion, vague and ambiguous. 09:52:36

22 THE WITNESS: Do I still answer that? What do I do? 09:52:43

23 MR. CHAPMAN: If you can without guessing. I don't 09:52:47
24 want you to guess or speculate. But if -- if you 09:52:49
25 understand the question and then you can answer it. 09:52:52

1 THE WITNESS: Could -- could you repeat it then? 09:52:56

2 BY MR. RUIZ: 09:52:59

3 Q Yeah, I -- yes, I -- I -- I'm just trying to 09:52:59

4 understand Mr. Su's involvement with SPF 3000 in the 09:53:02

5 sense of your earlier testimony was that you said that, 09:53:10

6 you know, if were to find a sort of person to sell SPF 09:53:14

7 3000 to, you would be the per -- you -- you know, you 09:53:18

8 would be the one to make the sale. So I'm just trying 09:53:19

9 to sort of categorize his relationship with -- with you 09:53:24

10 and -- and -- and -- and Sunseeker. So I suggested an 09:53:27

11 independent sales associate in this case; but, if you 09:53:32

12 have a better definition or -- 09:53:33

13 A You know, I don't think so because he's a 09:53:36

14 full-time doctor, you know? He's a -- he's a 09:53:38

15 podiatrist, so he just has a -- so I don't see him ever 09:53:42

16 being a full-time sales person or anything like that. 09:53:48

17 He just knew people up there and -- you know, that were 09:53:52

18 interested in protecting their homes. 09:53:55

19 Q So have you ever made any sales through 09:54:00

20 Mr. Su? 09:54:04

21 A No. 09:54:05

22 Q Have you discussed compensation for Mr. Su if 09:54:11

23 he did sort of generate a sale for -- for SPF 3000? 09:54:15

24 A If he did a sale? 09:54:22

25 Q Yeah, did he get a commission? Or would he get 09:54:24

1 a commission? 09:54:26

2 A Yes, I'd give him a commission. He wasn't 09:54:28

3 asking for it, but I'd probably give him a commission. 09:54:30

4 Q So there's no -- the -- is there a written 09:54:33

5 agreement between you and Mr. Su regarding like the 09:54:37

6 amount of commission for example? 09:54:40

7 A No. 09:54:42

8 Q Does Mr. Su have any SPF 3000? 09:54:47

9 A No. 09:54:51

10 (Unidentified extraneous voices) 09:55:01

11 THE WITNESS: That wasn't me. 09:55:02

12 MR. CHAPMAN: I'm hearing some background -- 09:55:02

13 THE WITNESS: That wasn't me, okay? All my cute 09:55:04

14 kids are grown. 09:55:08

15 MR. RUIZ: Amazingly enough, I don't think it was me 09:55:11

16 either. But -- 09:55:13

17 MR. CHAPMAN: I'm in my office, so it -- it's not 09:55:16

18 me. 09:55:18

19 MS. TUSAN: Also not me. 09:55:23

20 MS. LUCAS: Or me. 09:55:25

21 MR. CHAPMAN: It's a mystery voice. 09:55:28

22 THE WITNESS: Uh-huh. 09:55:35

23 BY MR. RUIZ: 09:55:48

24 Q So other than Mr. Su, uh, are there any other 09:55:48

25 individuals or corporate entities that you have 09:55:54

1 authorized to market SPF 3000 on your behalf? 09:55:58

2 A Yes. 09:56:04

3 Q Who? 09:56:05

4 A Well, it would be -- we have Mike Yakovich has 09:56:06

5 just joined our team recently. 09:56:11

6 Q Other than Mike Yakovich, are there any other 09:56:21

7 individuals or corporate entities that are authorized to 09:56:24

8 sell SPF 3000? 09:56:28

9 A Any other entities? No other entities that I 09:56:31

10 can recall. No, pretty much everybody quit after, you 09:56:35

11 know, your investigation. You know, everyone jumped 09:56:43

12 ship, you know? 09:56:47

13 Q What is Mr. Yakovich's role with the company? 09:56:51

14 A He's our general contractor. 09:56:56

15 Q Is he an employee of Sunseeker? 09:57:06

16 A No. 09:57:08

17 Q Does he have a written agreement to provide 09:57:18

18 services for Sunseeker? 09:57:20

19 A Maybe a -- a -- you know, a commission to him. 09:57:28

20 But yeah. If he sold something. I'm just saying he 09:57:38

21 applies -- he's our general contractor that applies and 09:57:44

22 has his own insurance and everything else. 09:57:48

23 Q Yeah, un -- un -- un -- understood. And -- and 09:57:50

24 yeah, I -- and -- and -- and not in terms of -- I wasn't 09:57:51

25 necessarily referencing sales. Although -- I just meant 09:57:54

1 in general does he have a written agreement that 09:57:58
2 describes sort of the scope of services, you know, he 09:58:02
3 offers Sunseeker? 09:58:06

4 A Um, were there sp -- go ahead -- could you 09:58:11
5 repeat that? I'm sorry, I turned off my ringer. It was 09:58:14
6 ringing and -- 09:58:17

7 Q You -- you say -- you said that Mr. Yakovich is 09:58:20
8 not an employee of -- of Sunseeker. 09:58:22

9 A Yes. 09:58:25

10 Q But is there a written agreement between 09:58:26
11 Sunseeker and Mr. Yakovich that describes the scope and 09:58:29
12 compensation for the services he provides Sunseeker? 09:58:34

13 A No, there's not a -- an agreement or a 09:58:39
14 contract. Just he has daily rates, you know. 09:58:42

15 Q I see. So is he then paid his -- his daily 09:58:51
16 rates for -- for every job he performs for Sunseeker. 09:58:57
17 Is that fair? 09:59:00

18 A Yeah. Yeah, he gets a daily rate. It's not 09:59:01
19 just about Sunfire prod -- I mean it's not just about 09:59:03
20 the coating. We do sprinklers, window laminates and 09:59:07
21 everything. 09:59:11

22 Q What is that daily rate? 09:59:19

23 A I don't recall. I believe it's probably around 09:59:23
24 \$350 per person, \$375 per person per day? 09:59:28

25 Q And do you know how many contractors 09:59:40

1 Mr. Yakovich uses for a job for Sunseeker? 09:59:45

2 A It varies. 09:59:50

3 Q Is it more than 10? 09:59:54

4 A Less than 10. 09:59:57

5 Q Less than five? 10:00:08

6 A Typically. 10:00:12

7 Q And is Mr. Yakovich a licensed contractor? 10:00:16

8 A Yes. 10:00:20

9 Q When did he join Sunseeker? 10:00:28

10 A I don't know. "Join" is kind of -- he has his 10:00:32

11 own company. I mean he works with us -- he's been 10:00:35

12 working with us for about a year. 10:00:38

13 Q What's his company's name? 10:00:46

14 A I believe -- it's just MYGC, which is Mike 10:00:51

15 Yakovich General Contracting. 10:00:55

16 Q What's your best estimate of how many projects 10:01:12

17 he's worked on for Sunseeker? 10:01:17

18 A Probably 10? I mean in that range, 10 to 15? 10:01:24

19 Q And of those 10 to 15 projects, how many of 10:01:31

20 them has he applied SPF 3000? 10:01:35

21 A Probably two or three. 10:01:44

22 Q And so projects in which he has not used SPF 10:01:57

23 3000, those would use -- those would be the -- the 10:02:01

24 sprinkler system and the laminates and the other -- the 10:02:03

25 other services? 10:02:07

1 A Yes. 10:02:10

2 Q For the two to three houses that were -- or two 10:02:14

3 to three projects in which SPF 3000 was used, where are 10:02:17

4 those projects located? 10:02:21

5 A Around L.A. 10:02:23

6 Q Can you be more specific? 10:02:32

7 A Uh, let's see. Hidden Hills. Malibu. There's 10:02:39

8 one out in -- no, that -- that -- I can't remember -- 10:02:48

9 yeah, maybe one up in Laurel Canyon? 10:02:51

10 Q And I'm sorry, I missed your first answer. 10:02:57

11 That ended in Hills? Is that -- 10:03:00

12 A Hidden Hills. 10:03:01

13 Q Hidden Hills. Other than Mike Yakovich do you 10:03:04

14 use any other contractors, um, for Sunseeker projects 10:03:11

15 currently? 10:03:15

16 A No. Dale Walsh, he's dis -- he's out on 10:03:19

17 disability leave because of his knee and -- so we just 10:03:25

18 stream -- streamline everything through Mike. 10:03:32

19 Q Are you familiar with Ken Sissons? 10:03:57

20 A Yes. 10:04:00

21 Q What's your relationship to him? 10:04:04

22 A Consultant, you know? He works with us in -- 10:04:08

23 in that capacity. 10:04:14

24 Q When did you first meet him? 10:04:15

25 A Probably like -- I don't know, six years ago? 10:04:20

1 When he was at Bonneville Power. 10:04:24

2 Q So you're saying January 2016 approximately? 10:04:36

3 A I don't remember. It's kind of a blur when I 10:04:40
4 actually met him. So I can't -- I couldn't -- I 10:04:42
5 couldn't tell. '15? '16? Maybe even before that. I 10:04:46
6 don't know. It's been a while. 10:04:52

7 Q How -- how did you meet him? 10:04:56

8 A Uh, good question. I -- I don't recall how I 10:05:00
9 met him. I -- I think it was just Bonneville Power, um, 10:05:10
10 referred me to him I think. It's -- it's been a long 10:05:18
11 time ago. I don't know. I'm try -- let me -- I don't 10:05:20
12 know. I don't remember. Somebody introduced me to him 10:05:23
13 or inquired. It -- if somebody introduced me to him or 10:05:29
14 he in -- he inquired through Bonneville or Dave 10:05:34
15 Timperley did. Something like that. 10:05:37

16 Q Now, you -- you -- you said he's the -- a 10:05:43
17 consultant for Sunseeker. What -- does he have a set 10:05:45
18 consulting rate? 10:05:54

19 A No. And it has nothing to do with consumer. 10:05:56
20 It's -- it's utility markets. That's where his 10:05:58
21 expertise is. 10:06:01

22 Q But -- but you have paid him for his consulting 10:06:15
23 work. Is that -- is that fair? 10:06:17

24 A From time to time, yes. 10:06:19

25 Q Do you know -- do you know how much you paid 10:06:22

1 him over -- over the years? 10:06:24

2 A No. I mean I'll give him a few hundred here, 10:06:28
3 five hundred here. You know, just -- I don't -- I don't 10:06:32
4 know how much that would add up to. 10:06:34

5 Q So you're saying -- you know, so you're 10:06:44
6 ballparking this in the -- 10:06:47

7 A Not a lot. You know, he doesn't -- doesn't 10:06:49
8 demand a lot in his retirement, thank God. He's just a 10:06:51
9 -- just a good, honest guy, you know, that really knows 10:06:56
10 his stuff, you know? 10:07:00

11 Q So you'd say maybe total compensation has been 10:07:04
12 under a hundred-thousand dollars? Is that -- is that 10:07:08
13 fair? 10:07:10

14 A Oh, we're gonna do this again, huh? Yeah, it's 10:07:10
15 under -- it's -- it's under 10. How's that? I would 10:07:14
16 guess -- I would guess it's around the 10 mark, 10 -- 10:07:16
17 10K. 10:07:20

18 Q Okay. Okay. Is he a shareholder in 10:07:21
19 Sunseeker? 10:07:30

20 A No. 10:07:31

21 Q Has he ever been? 10:07:33

22 A No. 10:07:35

23 Q You mentioned he's worked with -- the -- in the 10:07:39
24 utility market. Did -- would he get a -- a commission 10:07:43
25 from any sales within the utility industry? 10:07:49

1 A Yes, that would be my intention. I would 10:07:54
2 give -- if it's something that, you know, he got, then I 10:07:58
3 would -- I would work out a commission with him. 10:08:01

4 Q Did you have a set percentage? 10:08:06

5 A Yes. 10:08:09

6 Q What was that percentage? 10:08:11

7 A I believe it was 5 percent. 10:08:15

8 Q Did Mr. Sissons receive any commission for any 10:08:23
9 sales to Bonneville Power? 10:08:28

10 A No. 10:08:30

11 Q Why not? 10:08:35

12 A Yeah, it just seemed like I paid him for 10:08:37
13 consulting or something and it wasn't that big of an 10:08:40
14 order. I don't remember paying him an actual 10:08:43
15 commission. I don't know, maybe he thought there was a 10:08:46
16 conflict of interest. I don't know. I don't remember. 10:08:51
17 It's been a while back. 10:08:56

18 Q Other than sort of paying him for his 10:09:01
19 consulting work and potential commissions for sales in 10:09:04
20 the utility market, is there any other compensation that 10:09:07
21 you or Sunseeker provided to -- to Mr. Sissons? 10:09:10

22 A No. 10:09:15

23 Q You know, we -- we took a deposition of 10:09:23
24 Mr. Sissons last year and I -- my understanding is that 10:09:24
25 one of the companies that he ran worked on selling Tiny 10:09:30

1 Homes? Do -- do you have any familiarity with that? 10:09:35

2 A Yes. 10:09:39

3 Q And I believe he testified that he would market 10:09:41

4 SPF 3000 for application on these -- on these Tiny 10:09:46

5 Homes. Is -- is that your recollection as well? 10:09:52

6 A That was the intention. 10:09:54

7 Q So did Mr. Sissons receive any commission for 10:10:00

8 those kinds of sales? 10:10:06

9 A No. 10:10:10

10 Q Would Mr. Sissons -- if Mr. Sissons were to 10:10:19

11 sell SPF 3000 on a Tiny Home to a consumer, would you -- 10:10:23

12 would you contract with the consumer directly or would 10:10:30

13 you sell it to Mr. Sisson's company? 10:10:34

14 A I don't know what we'd end up doing. It just 10:10:39

15 never quite got there. I don't know how we would do it. 10:10:42

16 The easiest way would be to do it -- you know, rather 10:10:50

17 than going consumer to consumer on a Tiny Home, you 10:10:55

18 know, just have it somehow done, you know, at -- at the 10:10:58

19 milling aspect of it, or you know, when they're just 10:11:06

20 cutting the lumber or something, have it pre-treated. 10:11:09

21 That would be the -- that would -- that would most 10:11:11

22 likely be a -- the easiest way to do it, you know? 10:11:14

23 Q Right, I understand. And if you were to -- and 10:11:20

24 if you were to sell SPF 3000 to, you know, one of 10:11:22

25 Mr. Sisson's companies, you wouldn't have any control 10:11:27

1 over how much he charged the consumer for that 10:11:31
2 application. Is that -- is that fair? 10:11:36

3 A Well, we would set something in -- you know, we 10:11:37
4 would set a price. You know, I wouldn't want him to go 10:11:40
5 crazy on it, you know. I mean I -- I would probably 10:11:43
6 want to do that, you know, in fairness to anybody in a 10:11:46
7 market. I wouldn't want him charging 20 bucks this -- 10:11:50
8 for this when it could be charged five; or, you know, 10:11:54
9 vice versa, I wouldn't want him undercutting it five 10:11:56
10 when we're charging 20. So -- 10:11:58

11 Q So, you know, you described Ken Sissons as a 10:12:08
12 consultant for Sunseeker. What sort of activities did 10:12:13
13 Mr. Sissons do as -- as a consultant? 10:12:17

14 A You know, it had to do more with gaining 10:12:22
15 knowledge in those particular areas. Um, for instance, 10:12:24
16 it's one thing to just treat a piece of wood. It's 10:12:34
17 another thing to know everything about a utility pole 10:12:38
18 and gain knowledge about a utility pole and how it 10:12:40
19 reacts and -- there's a lot of technical aspects to a 10:12:43
20 utility pole and how it's preserved and treated and so 10:12:47
21 forth. 10:12:53

22 Q Did -- did Mr. Sissons ever review any 10:12:57
23 advertising for you? 10:13:01

24 A I don't believe so. 10:13:04

25 MR. CHAPMAN: Miguel, are we getting near a break 10:13:08

1 point? You said every hour you're gonna take a break. 10:13:10

2 MR. RUIZ: Yeah, sorry. I -- yeah, I was just 10:13:13

3 going. Why don't we take a -- why don't we take a short 10:13:13

4 break and then we'll -- we can finish up obviously 10:13:16

5 Mr. Moseley's part of the deposition. It won't be that 10:13:20

6 much longer. And then we can, you know, move on to the 10:13:22

7 Sunseeker depo. So yeah, why don't we take -- uh, is -- 10:13:25

8 10 minutes? Is that okay, Mr. Moseley? 10:13:29

9 THE WITNESS: Okay. 10:13:31

10 MR. CHAPMAN: That's fine to me. 10:13:32

11 THE WITNESS: That's fine with me. 10:13:34

12 MR. RUIZ: Okay. All right. We'll -- 10:13:35

13 THE VIDEOGRAPHER: We are going -- 10:13:35

14 MR. RUIZ: We'll come back in 10 minutes. 10:13:35

15 THE VIDEOGRAPHER: We are going off the recorded at 10:13:38

16 10:13 a.m. 10:13:40

17 (Short break) 10:28:24

18 THE VIDEOGRAPHER: We are back on the record at 10:28:24

19 10:28 a.m. 10:28:26

20 MR. RUIZ: I just wanted to follow up on -- on some 10:28:29

21 -- some points that we had - we talked about here today. 10:28:30

22 You mentioned Mike Yakovich doing contracting now and 10:28:35

23 Dale Walsh doing contracting in the past. 10:28:39

24 Sorry, I hear an echo of somebody. 10:28:45

25 // 10:28:45

1 BY MR. RUIZ: 10:28:49

2 Q Let me back up. So other than Mike Yakovich 10:28:49
3 and Dale Walsh, have you used other contractors to apply 10:28:52
4 SPF 3000? 10:28:57

5 A Uh, that's been our -- I don't remember. I 10:29:01
6 mean Dale brings a couple of guys with him, but 10:29:15
7 generally that's it. You know, we've had -- yeah, we've 10:29:19
8 had a couple painting contractors along the way. 10:29:21

9 Q Do you recall who those -- those people were? 10:29:28
10 These painting contractors? 10:29:29

11 A No, I -- I don't remember. Sometimes it's -- 10:29:33
12 yeah, that's it. Sometimes it's the own customers, you 10:29:44
13 know, people that they introduce me to a contractor. 10:29:48

14 Q So -- so you're saying a circumstance where a 10:29:56
15 -- a customer would have you use their contractor to 10:30:00
16 apply SPF 3000 to -- to their home? 10:30:03

17 A Yes. 10:30:09

18 Q And approximately how many times did that 10:30:11
19 happen? 10:30:13

20 A Approximately three or four times. 10:30:17

21 Q And how did you -- how did you find Dale 10:30:31
22 Walsh? 10:30:33

23 A Gosh, that's been a long time ago, too. I 10:30:38
24 believe it was Will Spyrison, a fire chief, retired fire 10:30:45
25 chief. 10:30:55

1 Q And what about Mr. Yakovich? 10:30:57

2 A How did I meet him? 10:31:04

3 Q Yes. 10:31:06

4 A Through a referral. 10:31:06

5 Q Who -- who referred you? 10:31:09

6 A Someone named Pat. 10:31:12

7 Q Do you know Pat's last name? 10:31:16

8 A I don't remember. 10:31:19

9 Q Was Pat a consumer? Or how -- how -- how did 10:31:25

10 you meet Pat? 10:31:29

11 A He was a friend of my sons. 10:31:32

12 Q All right. Going back to the -- to the storage 10:31:46

13 facility, um -- and -- and -- and you mentioned that, 10:31:51

14 you know, you stopped using it pre pandemic -- 10:31:54

15 approximately how long did you use the storage 10:31:57

16 facility? 10:32:00

17 A It seems for about year? I don't recall the 10:32:01

18 exact amount of time, but within a year, probably less 10:32:10

19 than a year. Something like that. 10:32:15

20 Q And other than SPF 3000, did you store anything 10:32:20

21 else in there? 10:32:22

22 A Yes. 10:32:26

23 Q What else was stored there? 10:32:29

24 A A workbench and pieces of material that I might 10:32:35

25 be testing for myself, you know, internal testing. 10:32:47

1 dripped down the side of the can and then got onto the 10:34:23
2 concrete or something like that. 10:34:26

3 Q And then earlier you had mentioned that sort of 10:34:31
4 the -- the liquid, because of -- you know, has acetone 10:34:34
5 and -- and -- and other solvents in there, if it sort of 10:34:41
6 sits for a while it will, you know, cor -- potentially 10:34:44
7 corrode the container it's in. Do you know how long 10:34:48
8 that would take. 10:34:51

9 A Over a year probably. I mean -- yeah, that's 10:34:54
10 probably a fair statement, over a year. 10:35:06

11 Q Going back to -- to -- to Mr. Sissons, are -- 10:35:21
12 are -- are writing letters part of his sort of 10:35:30
13 consulting relationship? 10:35:35

14 A Not necessarily; but, he's done it from time to 10:35:39
15 time. 10:35:46

16 Q Do you know -- do you pay him for those 10:35:46
17 letters? 10:35:48

18 A No. 10:35:49

19 Q Do you ask him to write these letters? 10:35:53

20 A Just on his findings from time to time. I 10:35:57
21 don't say, "Hey, write me a letter." Updates. 10:36:00

22 MR. RUIZ: So if we talk about -- 10:36:16

23 Could we pull up Exhibit 92? 10:36:18

24 (Plaintiff's Exhibit 92 was referenced for 10:36:20
25 identification by Mr. Ruiz.) 10:36:20

1 BY MR. RUIZ: 10:36:34

2 Q And this is a letter Bates-stamped Sunfire Doc 10:36:34

3 #400-616 to Sunfire Doc #400-617. Have you seen this 10:36:39

4 letter before? 10:36:47

5 A Yes. 10:36:48

6 Q Did you ask Mr. Sissons to write this letter? 10:36:52

7 A It was already written. I just asked for 10:36:56

8 updates just to see how the product (audio glitch). 10:36:59

9 Q So what was the update in this letter? 10:37:09

10 A Well, it had just been a while. You know, he 10:37:13

11 tested it from time to time. 10:37:16

12 Q I -- I understand that. But -- you -- you can 10:37:29

13 read the letter, um, as much as you want. I just -- I'm 10:37:30

14 looking for sort of the new information December of 2021 10:37:34

15 that -- that necessitated an update?. 10:37:38

16 A You want me to read this whole -- 10:37:43

17 MR. CHAPMAN: Objection -- 10:37:44

18 THE WITNESS: -- so you want me to read the whole 10:37:44

19 thing? 10:37:46

20 MR. CHAPMAN: Yes. 10:37:46

21 MR. RUIZ: You can read it. 10:37:47

22 MS. CHAPMAN: Yeah. And I'm just gonna object. You 10:37:47

23 can answer the question, but my objection is 10:37:50

24 speculation, foundation, vague and ambiguous. 10:37:52

25 THE WITNESS: Yes. Okay. I -- I'm -- I'm reading 10:38:03

1 it. 10:38:07

2 MR. RUIZ: And I would just like to -- to say what 10:38:07

3 -- what was updated in -- in this letter as -- as of 10:38:09

4 December 28th, 2021 which it was dated that -- that 10:38:14

5 necessitated the update? 10:38:18

6 MR. CHAPMAN: Same objections. 10:38:20

7 THE WITNESS: Just -- (indiscernible). 10:38:23

8 MR. RUIZ: I'm sorry, Mr. Moseley. Can you repeat 10:38:23

9 your -- your answer? 10:38:25

10 THE WITNESS: Longevity. 10:38:27

11 BY MR. RUIZ: 10:38:30

12 Q What -- what do you mean by "longevity?" 10:38:30

13 A How long it lasts. Is it still lasting? Is it 10:38:35

14 still working? 10:38:38

15 Q And -- and I will give you -- you -- you can -- 10:38:46

16 you can take your time to read it. I just want to know 10:38:50

17 what in here tells you that it's long-lasting? 10:38:53

18 A I don't know. I didn't -- I don't think I've 10:39:05

19 read it in its entirety since he sent it. I just asked 10:39:07

20 him if it's working. That's it. Maybe if you scroll 10:39:11

21 down, there's something else I'm not seeing. But -- 10:39:18

22 (Short pause) 10:39:34

23 THE WITNESS: Yeah, okay. Well, I guess it would 10:39:36

24 say -- over the last six years would be the answer. 10:39:37

25 // 10:39:37

1 BY MR. RUIZ: 10:39:50

2 Q Do you know the last time, um, Mr. Sissons 10:39:50
3 tested, um, a pole treated with SPF 3000? 10:39:57

4 A No. It's ongoing. 10:40:04

5 Q Do you know what kind of test Mr. Sissons 10:40:08
6 performs? 10:40:10

7 A Uh, presume it -- you know, putting weed 10:40:14
8 burners, which are, you know, really intense heat on it 10:40:19
9 to make sure -- to see if it's -- you know, if it's 10:40:22
10 self-extinguishing still. That's really the key, is how 10:40:27
11 it's self-extinguishing over time. 10:40:31

12 Q But do you know -- my -- my -- when Mr. Sissons 10:40:41
13 performs one of these tests, um, how does he let you 10:40:45
14 know that he's performed it? 10:40:50

15 A He doesn't necessarily announce it: "Oh, I 10:40:52
16 checked it out again" or this or that and -- you know, 10:40:55
17 because he's doing a -- he does other types of tests for 10:40:58
18 us as well. It's not all about SPF 3000. And so -- not 10:41:00
19 all about fire actually. 10:41:04

20 Q Right, but there's no -- I -- I -- what I mean, 10:41:08
21 are there any videos or photographs when he conducts 10:41:12
22 these tests? 10:41:15

23 A I don't have any, no. 10:41:16

24 Q And -- and you're not with him when he conducts 10:41:18
25 these tests. 10:41:20

1 A No, he conducts 'em up -- up north. 10:41:21

2 Q Right, but he doesn't take you with -- with -- 10:41:25
3 with him when he conducts these tests. 10:41:27

4 A No. 10:41:30

5 Q So the only -- only evidence you have that he's 10:41:31
6 performed this test is Mr. Sissons saying, "Hey, I did 10:41:37
7 this test." Is that fair? 10:41:40

8 A That's fair. 10:41:43

9 Q Have you ever witnessed Mr. Sissons perform an 10:41:53
10 SPF -- uh, a test of SPF 3000? 10:41:56

11 A Yes. 10:41:59

12 Q When -- when was that? 10:42:00

13 A Last one was probably, I don't know, three or 10:42:07
14 four years ago. I -- I witnessed one up at Bonneville. 10:42:15
15 Then before that, there was a couple of other tests they 10:42:22
16 did up there. 10:42:25

17 Q So when you say "three to four years ago at 10:42:30
18 Bonneville," um, that would be 2017, 2018? Is that -- 10:42:34
19 or -- or 2018, 2019? 10:42:40

20 A Let's see. I don't recall the -- the exact 10:42:46
21 year; but, I think the last time was when we were 10:42:52
22 co-sponsoring a golf tournament with utility companies, 10:42:58
23 probably 2018-19 before Covid. 10:43:03

24 Q So -- so the golf tournament was the last time 10:43:10
25 you witnessed Mr. Sissons test SPF 3000 in person. 10:43:13

1 A Yes. 10:43:17

2 Q And -- and what did that testing consist of? 10:43:24

3 A Uh, it's same old thing: putting a weed burner 10:43:29

4 or a torch on a particular piece and -- of wood. 10:43:33

5 Q And so can -- can -- can you give me a little 10:43:46

6 more detail about that? I mean is he -- is he holding 10:43:50

7 the piece of wood in his hand? How -- how -- how big a 10:43:52

8 piece of wood are we -- are we talking about? 10:43:55

9 A Yeah, holding it in his hand. It could have 10:43:57

10 been a vice. I'm trying to remember. I believe it was 10:44:01

11 in a vice. 10:44:05

12 Q Do you recall what type of wood? 10:44:09

13 A No. Probably Douglas fir, something like that 10:44:12

14 that they make utility poles out of. 10:44:17

15 Q Do you recall the dimensions of the wood? 10:44:21

16 A Um, I don't know, couple of feet long or 10:44:28

17 something? 10:44:31

18 Q And would he test only a piece of wood treated 10:44:37

19 with SPF 3000, or would he also sort of demonstrate, you 10:44:42

20 know, a piece of -- at -- at -- at this (indiscernible) 10:44:46

21 would he demonstrate how fire would react with a -- 10:44:49

22 (audio glitch)? 10:44:52

23 A Right, you kind of broke up there, Miguel. 10:44:53

24 Q I'll -- I'll -- I'll repeat. For this testing 10:44:55

25 was he only testing wood treated with SPF 3000? 10:44:57

1 A I believe it was with and without. I don't 10:45:05
2 believe it was testing a competitor or anything like 10:45:09
3 that next to it. 10:45:12

4 Q I mean not -- that's what I was asking. Like 10:45:18
5 was there a controlled testing as well during this 10:45:20
6 demonstration at the golf tournament? 10:45:23

7 A Well, not necessarily controlled. It -- you 10:45:26
8 know, these were just guys that do this kind of thing a 10:45:31
9 lot, you know, when they're testing poles every day and 10:45:35
10 -- and put a torch on it and it still did well. 10:45:39

11 Q Now, you mentioned Douglas fir. Was it as 10:45:45
12 thick as a normal power pole, or -- 10:45:49

13 A No. 10:45:51

14 Q Do you recall how thick it was? 10:45:53

15 A Probably a couple inches. 10:45:55

16 Q Did the wood -- uh, back up. Do you recall if 10:46:06
17 the wood was cured prior to testing it? 10:46:09

18 A No, I -- I didn't ask him; but, if he was 10:46:15
19 testing it, I'm sure it had -- you know, it was dry for 10:46:18
20 sure, you know? The only time it ever burns is if it's 10:46:21
21 wet, you know? It's never burned, period, when it's 10:46:26
22 dry. 10:46:32

23 Q Did you provide him the treated wood, or did 10:46:33
24 Mr. Sissons do it himself? 10:46:36

25 A No. No. 10:46:38

1 Q So I was -- then -- then who actually applied 10:46:43

2 SPF 3000 to the -- to the wood that was used in this -- 10:46:46

3 A I don't know. I didn't see it. I didn't see 10:46:48

4 him treat it. 10:46:50

5 (Short pause) 10:47:03

6 MR. RUIZ: I think I've just about used my time for 10:47:10

7 your personal deposition. So I will, um, cede my time 10:47:14

8 to -- to Mr. Chapman before we -- we move on to the -- 10:47:19

9 to the -- to the next -- 10:47:23

10 MR. CHAPMAN: Yeah, I don't have any questions. 10:47:24

11 MR. RUIZ: Okay. Okay. Then I'm happy to just, you 10:47:26

12 know, handle the deposition per -- per code. 10:47:32

13 But if you have a stipulation, Mr. Chapman, I 10:47:34

14 would also entertain that; but, otherwise I'm happy to 10:47:36

15 go forward with -- with per code. 10:47:40

16 THE WITNESS: Can I ask a question? 10:47:41

17 MR. RUIZ: Yes. 10:47:42

18 THE WITNESS: What's the difference between me 10:47:43

19 personally and me the corporation? I mean I'm kind of 10:47:45

20 like the only guy around here. I'm just curious why -- 10:47:48

21 why it's -- why you're doing it twice. I mean whatever. 10:47:51

22 I'm just -- yeah. 10:47:55

23 MR. RUIZ: So, yes. I mean you're -- you're -- 10:47:58

24 you're -- you're -- you're both named Defendants, and so 10:48:02

25 both have the opportunity to sort of -- you know, to 10:48:03

1 take -- take -- take -- take information about -- about 10:48:05
2 -- about your testimony. We'll get into this -- the 10:48:07
3 start of your deposition of course. But, um, believe -- 10:48:09
4 as you -- as you -- as you said, since you're the -- 10:48:14
5 you're the person there, that the answers you gave here 10:48:14
6 would be the same as the -- as if you were speaking on 10:48:16
7 behalf of the company, so I don't have to ask those 10:48:18
8 questions again. Is that -- 10:48:20
9 THE WITNESS: Okay. 10:48:22
10 MR. RUIZ: -- is that -- is that understood? Is 10:48:23
11 that okay with you? 10:48:23
12 THE WITNESS: Yeah, I just didn't know. 10:48:25
13 MR. RUIZ: Okay. You know, especially, you know, 10:48:26
14 with a company, right? You can designate multiple 10:48:28
15 people, right? You know, if it's a bigger company, as 10:48:30
16 you might imagine, there might be, you know, people with 10:48:33
17 different sets of knowledge, right? One person -- 10:48:35
18 THE WITNESS: Sure. 10:48:38
19 MR. RUIZ: -- might be an accountant and one person 10:48:38
20 might be, you know, sales, right? And so -- 10:48:39
21 THE WITNESS: Correct. 10:48:41
22 MR. RUIZ: -- this type of deposition would allow 10:48:41
23 different people to -- to speak about different 10:48:43
24 topics. 10:48:44
25 THE WITNESS: Uh-huh. 10:48:45

1 MR. RUIZ: So -- so that's why you do these things 10:48:46
2 separately. But as you said, since you are the person, 10:48:48
3 um, I think -- you know, and -- and we'll get into it on 10:48:51
4 that question, too; but, we assume that when you testify 10:48:54
5 for yourself, you would -- you -- your answers wouldn't 10:48:56
6 change if you were testifying about Sunseeker. And vice 10:48:59
7 versa, if you were testifying for Sunseeker, um, we -- 10:49:02
8 we'd presume you -- you -- you're testifying the same 10:49:06
9 for -- as if you were testifying in your personal 10:49:08
10 capacity. Is -- is -- is that fair? Is that -- 10:49:10
11 THE WITNESS: Yeah, okay. I -- I -- 10:49:12
12 MR. CHAPMAN: Well -- well, uh -- well, Miguel, 10:49:13
13 we'll stipulate he only has one brain. 10:49:14
14 MR. RUIZ: Yeah. 10:49:18
15 THE WITNESS: Yeah, exactly. 10:49:19
16 MR. RUIZ: Uh, good. Like I say, yeah 10:49:22
17 (indiscernible) -- but yeah, just -- just -- just to 10:49:23
18 clear up -- and again, hopefully that will make the, uh 10:49:23
19 -- the second part of this go -- go -- go faster 10:49:25
20 obviously, since we don't have to repeat the same, uh -- 10:49:27
21 THE WITNESS: Awesome. 10:49:30
22 MR. RUIZ: -- the same questions. 10:49:30
23 THE WITNESS: Okay. 10:49:31
24 MR. RUIZ: But yes, Mr. Chapman, as -- as I said, 10:49:31
25 I'm -- I'm happy to stipu -- to go per code with the 10:49:33

1 handling of the deposition. 10:49:35

2 MR. CHAPMAN: Oh -- 10:49:37

3 MR. RUIZ: You know, unless you want to alternate a 10:49:37

4 -- offer a -- a different stipulation. 10:49:39

5 MR. CHAPMAN: Yeah, I -- um, you know, I -- I don't 10:49:41

6 -- I know it's changed in -- um, whatever's -- I -- I'd 10:49:42

7 like to make it convenient. I don't know if the code -- 10:49:46

8 some states require the witness to go down to the court 10:49:49

9 reporter's office and sign -- read in their lobby and 10:49:53

10 sign and all that. I -- I'd like to avoid that. So, um 10:49:56

11 -- oh, the old way we used to do it was that the 10:50:02

12 original transcript be provided to the witness and they 10:50:05

13 have a couple weeks or a month, depending on trial date, 10:50:09

14 to review and make changes under penalty of perjury, and 10:50:12

15 that I would notify everybody of any changes. That 10:50:15

16 would be my preference if you're willing to do that. 10:50:19

17 MR. RUIZ: Um, that's fine. So will you be in 10:50:22

18 charge of -- if we get delivered the original, do you 10:50:26

19 want to handle the original then? Or would you have the 10:50:30

20 court reporter -- 10:50:32

21 MR. CHAPMAN: Yeah -- yeah, I'll -- I'll be happy to 10:50:32

22 handle it and me take custody and produce it at any 10:50:33

23 hearing or trial on notice. 10:50:35

24 MR. RUIZ: Okay. Then I'll just -- I'll just state 10:50:36

25 that all for the record so we're clear, that the way 10:50:39

1 we'll handle it is that the court reporter will be 10:50:42
2 relieved of his duties to handle the original transcript 10:50:44
3 and say -- will deliver it to -- to Mr. Chapman who will 10:50:48
4 deliver it to the witness. The witness will have 30 10:50:51
5 days from Mr. Chapman's receipt of the document to make 10:50:53
6 any changes and Mr. Chapman will be obligated to -- to 10:50:57
7 notify all parties if there are any changes to the 10:51:02
8 deposition transcript after his -- after Mr. Moseley's 10:51:05
9 review. 10:51:08

10 So -- so -- 10:51:10

11 MR. CHAPMAN: Yeah, I agree. So stipulated. 10:51:10

12 THE VIDEOGRAPHER: Thank you, everyone. This is 10:51:14

13 going to end the videotaped deposition of James Moseley. 10:51:15

14 We are going off the record at 10:51 a.m. 10:51:20

15 10:51:23

16 (Whereupon it was stipulated by and between 10:51:23

17 Counsel that the provisions of 2025.520 may be waived.) 10:51:23

18

19 (Deposition concluded at 10:51 a.m.)

20

21

22

23

24

25

1 STATE OF CALIFORNIA

2

3 COUNTY OF SANTA BARBARA

4

5 I am the witness in the foregoing deposition.

6 I have read the deposition. Having made changes and
7 corrections as I desire, I certify that the same is true
8 of my own knowledge, except as to those matters which are
9 therein stated upon my information or belief, and as to
10 those matters, I believe it to be true.

11 I declare under penalty of perjury under the laws of
12 the State of California that the foregoing is true and
13 correct.

14

15

16 Executed on _____

17 at _____, (Address)

18

19

20

21

22

23

JAMES MOSELEY

24

25

1 REPORTER'S CERTIFICATION

2
3 I, the undersigned, a Certified Shorthand
4 Reporter of the State of California, do hereby certify:

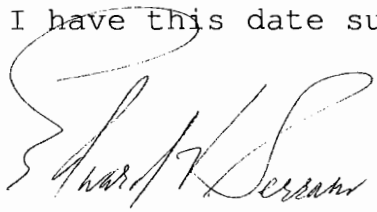
5 That the foregoing proceedings were taken before
6 me at the time and place herein set forth; that any
7 witnesses in the foregoing proceedings, prior to
8 testifying, were duly sworn; that a record of the
9 proceedings was made by me using machine shorthand, which
10 was thereafter transcribed under my direction; that the
11 foregoing transcript is a true record of the testimony
12 given.

13 Further, that if the foregoing pertains to the
14 original transcript of a deposition in a federal case,
15 before completion of the proceedings, review of the
16 transcript [] was [] was not requested.

17 I further certify I am neither financially
18 interested in the action nor a relative or employee of any
19 attorney or party to this action.

20 IN WITNESS WHEREOF, I have this date subscribed
21 my name.

22 Dated: JANUARY 24, 2022

23
24 
25 Edward V. Serrano, CSR No. 1469
Certified Shorthand Reporter
For The State Of California

1 Errata Sheet

2

3 NAME OF CASE: PEOPLE OF THE STATE OF CA vs SUNSEEKER ENTERPRISES INC

4 DATE OF DEPOSITION: 01/14/2022

5 NAME OF WITNESS: JAMES MOSELEY

6 Reason Codes:

7 1. To clarify the record.

8 2. To conform to the facts.

9 3. To correct transcription errors.

10 Page _____ Line _____ Reason _____

11 From _____ to _____

12 Page _____ Line _____ Reason _____

13 From _____ to _____

14 Page _____ Line _____ Reason _____

15 From _____ to _____

16 Page _____ Line _____ Reason _____

17 From _____ to _____

18 Page _____ Line _____ Reason _____

19 From _____ to _____

20 Page _____ Line _____ Reason _____

21 From _____ to _____

22 Page _____ Line _____ Reason _____

23 From _____ to _____

24

25 _____

Exhibits	284:5	290:4,16 291:20	additive 269:7
35251CAT(A)	16 284:5	292:1,7 296:3,18	adhere 265:15
EXH 2 249:12	19CV04083	297:10,25 298:19,	adhesion 267:1,5
263:8,9,10	250:10	25 300:2	advertising
35251CAT(A)	1st 264:1	5	288:23
EXH 12 249:14	2	5 286:7	agree 264:11
273:25 274:1	2 263:9,10,21	5-gallon 255:24	304:11
35251CAT(A)	2-by-6s 267:24	261:24 292:11	agreed 275:11
EXH 89 249:16	20 255:6 271:22	50 268:8,10,23	agreement 279:5
260:7,8	288:7,10	269:4,23 271:24	280:17 281:1,10,
35251CAT(A)	2016 284:2	272:2	13
EXH 92 249:19	2017 297:18	8	ahead 281:4
293:23,24	2018 297:18,19	89 260:7,8	air 274:3
#	2018-19 297:23	9	alcohol 253:21
#400-392 260:11	2019 297:19	92 293:23,24	allowed 252:20,
#400-393 260:11	2020 253:25	9:07 250:2	21 266:7
#400-616 294:3	2021 294:14 295:4	9:08 250:12	alternate 303:3
#400-617 294:3	2022 250:1,11	A	aluminum 258:8
\$	2025.520 304:17	a.m. 250:2,12	Amazingly
\$350 281:24	28th 295:4	289:16,19 304:14,	279:15
\$375 281:24	3	19	ambiguous
1	3 260:4 263:22	ability 265:18	277:21 294:24
10 254:25 271:18	30 268:23 270:5,9	Absolutely 252:3	amount 256:21
282:3,4,18,19	271:25 272:1,2,8,	268:14	268:22 279:6
285:15,16 289:8,	14 304:4	accountant	291:18
14	3000 255:17,19	301:19	Andrew 274:11,
10:13 289:16	256:1,13,19	accurate 264:17	12,13,16
10:28 289:19	257:7,17 258:4,20	266:16	Andy 276:4
10:51 304:14,19	259:6,11,19,24	acetone 258:1	277:10
10K 285:17	262:4,10 263:19	262:14 293:4	Angeles 250:1,17
12 273:25 274:1	264:20 265:16,21	acknowledging	Annmarie 260:25
14 250:1	267:17 268:4,10,	277:16	262:18
14th 250:11	18,19 269:2,21,25	activities 288:12	announce 296:15
15 282:18,19	270:8,20 271:11,	actual 286:14	answers 301:5
	14 272:10 276:13,	add 285:4	302:5
	18 277:4,8,11		antagonized
	278:4,7,23 279:8		272:22
	280:1,8 282:20,23		appeared 273:23
	283:3 287:4,11,24		appearing 250:14
			appears 261:12

application 255:16 258:19
264:16,20 266:14
270:22 287:4
288:2

applied 258:4
264:10 268:4,11
269:2 271:14
282:20 300:1

applies 280:21

apply 264:20,21
267:17 270:12,16
271:4 290:3,16

applying 268:19
270:10,20 272:10

approved 270:3
271:13

approximately
254:23 271:16
284:2 290:18,20
291:15

area 276:6 277:17

areas 264:16,22
265:4 288:15

aspect 287:19

aspects 288:19

associate 277:19
278:11

assume 253:7
260:16 302:4

Attorney's
250:18,24

attorneys 254:12,
13,16 255:13

audio 294:8
298:22

authorized 277:7,
10 280:1,7

avoid 303:10

Awesome 302:21

B

back 251:14

breaker 266:14

briefly 251:17

brings 290:6

broad 276:25

broader 276:25
277:6

broke 298:23

bucks 288:7

burned 299:21

burner 298:3

burners 296:8

burns 299:20

butt 265:14

C

Cal 270:4

calculating
268:21

California 250:1,
7,9,19,21,23

call 256:22

called 251:7
268:6 269:2

calls 277:20

cans 258:9

Canyon 283:9

capacity 283:23
302:10

care 257:1

case 250:8,10
276:12,17 277:3
278:11

catch 265:25

categorize 278:9

caused 256:18

cede 300:7

Certified 251:8

chain 250:14
260:10,12 263:13

change 266:17,21
302:6

changed 262:6
303:6

changing 261:23

Chapman 250:25
254:4,17,20,24
255:7 257:9,18
260:15,22 273:5
274:15 277:20,23
279:12,17,21
288:25 289:10
294:17,20,22
295:6 300:8,10,13
302:12,24 303:2,
5,21 304:3,6,11

Chapman's
304:5

charge 271:7
303:18

charged 288:1,8

charging 288:7,
10

checked 296:16

chemicals
258:10

chief 290:24,25

chipping 267:9

Christina 250:20

Christopher
250:14

circumstance
290:14

City 250:18

clar 254:11

class 275:16,17

clean 266:5

clear 261:7
302:18 303:25

cleared 292:18

closing 271:23
273:1

co-sponsoring
297:22

Coat 258:18

coating 281:20

coatings 258:13,
24 259:4 260:2
263:6 267:1

code 300:12,15
302:25 303:7

color 265:2
266:22

combination
258:20,25 259:4,
17

combine 259:18

combined 259:13

combining 259:5

commission
278:25 279:1,2,3,
6 280:19 285:24
286:3,8,15 287:7

commissions
286:19

common 262:9
271:2

communications
254:7

companies
261:17 286:25
287:25 297:22

company 280:13
282:11 287:13
301:7,14,15

company's
282:13

compared 268:5

compensation
278:22 281:12
285:11 286:20

competitor 299:2

complained
267:14 272:18

complaining
273:11

complaint 267:7,
11

complete 253:19

component
259:11,12

components
259:19

concluded
304:19

conclusion
277:21

concrete 256:25
293:2

conducts 296:21,
24 297:1,3

conflict 286:16

consist 298:2

construction
270:1 271:12,14

consultant
283:22 284:17
288:12,13

consulting
284:18,22 286:13,
19 293:13

consumer 267:13
273:11 284:19
287:11,12,17
288:1 291:9

container 259:25
260:1,2 292:9
293:7

containers
261:24 262:2,6,8,
10 263:3 292:1

contend 270:19

content 273:17,
20,23

contents 254:11

continuation
254:1

contract 281:14
287:12

contracting
282:15 289:22,23

contractor 271:4
280:14,21 282:7
290:13,15

contractors
255:23 259:15,17,
20 270:24 281:25
283:14 290:3,8,10

control 287:25

controlled
273:17 299:5,7

convenient 303:7

conversation
254:19

copper 264:24

cor 293:6

corny 275:19

corporate 276:7,
11,15 277:1,7
279:25 280:7

corporation
300:19

correct 258:17
262:20 266:22
275:14 276:2
301:21

correspondence
266:18

corrode 264:13
266:19,21 293:7

corroding 265:3

corrosive 257:7,
17,22 258:5
266:14,18

counsel 250:15
252:19 304:17

County 250:9

couple 256:8
274:19 290:6,8
297:15 298:16
299:15 303:13

court 250:9,14
252:4,6,8 303:8,
20 304:1

cousin 275:23
276:3

Covid 297:23

crazy 288:5

creating 257:4
273:2

cure 266:7

cured 299:17

curious 300:20

custody 303:22

customer 267:7
290:15

customers
290:12

cute 279:13

cutting 287:20

D

daily 281:14,15,
18,22

Dale 257:2 265:23
283:16 289:23
290:3,6,21

Dale's 266:2

damage 256:17,
22 257:3

damaged 262:11

damaging 257:5

date 250:10
303:13

dated 295:4

Dave 260:25 261:1,12,20 284:14	detail 298:6	duties 304:2	estimate 268:3,16 269:1 272:7,8 282:16
day 281:24 299:9	determined 275:18	E	et al 250:8
days 304:5	difference 300:18	e-mail 260:10,12 261:8,12,19 263:13,25 264:2,8 274:6,8,18	event 272:23
deal 258:9 265:10 266:14	difficult 253:18 259:22	e-mails 255:7,9	evidence 297:5
December 294:14 295:4	dimensions 298:15	E84 270:3,4	exact 291:18 297:20
deck 269:17	directly 255:23 259:14 264:10,21 287:12	earlier 255:18 268:2 278:5 293:3	EXAMINATION 251:12
decking 267:23 269:16	dirt 271:6	easiest 287:16,22	examined 251:8
Defendant 251:1 276:12,16 277:3	dis 283:16	easily 262:24 268:23	Exhibit 260:7,8 263:8,10 273:25 274:1 293:23,24
Defendants 300:24	disability 283:17	eaves 267:22	expertise 284:21
definition 278:12	discolora 267:2	echo 289:24 292:15	extended 270:4
deliver 259:20 304:3,4	discoloration 267:2,5	Ed 251:3	extent 267:11
delivered 303:18	discussed 255:18 278:22	Elkins 274:11,12, 13,16	exterior 267:17 268:19 270:11,13, 21,22 272:11
delivers 260:3	District 250:23	em 297:1	exteriors 268:5, 11
demand 285:8	DJ 263:15,25 266:18 274:10,23	employee 280:15 281:8	extraneous 275:4 279:10
demonstrate 298:19,21	Doc 260:11 294:2, 3	end 287:14 304:13	F
demonstration 299:6	doctor 278:14	ended 283:11	facility 255:25 256:2,4,25 291:13,16 292:7
dep 254:1	document 260:17 304:5	Engineered 258:13,18,24 259:4 260:2 263:5	fair 253:7,8 258:22,23 264:19 267:2 272:3,14,16 277:18 281:17 284:23 285:13 288:2 292:3,5 293:10 297:7,8 302:10
depending 303:13	documents 255:1,10	Enterprises 250:8 276:1,12,16 277:2	fairly 256:24,25
depo 289:7	dollars 285:12	entertain 300:14	fairness 288:6
deposition 250:6, 12 251:15,19 253:24 254:2,14, 21 255:2,11,12,14 286:23 289:5 300:7,12 301:3,22 303:1 304:8,13,19	doubt 273:2	entirety 295:19	familiar 260:12 261:4 263:15 273:14 274:8 275:20,22 283:19
describe 257:7	Douglas 298:13 299:11	entities 276:11, 14,16 279:25 280:7,9	
describes 281:2, 11	dries 265:13	entity 276:7 277:1,7	
designate 301:14	dripped 293:1	essentially 259:11 268:3 277:14	
	drugs 253:18		
	dry 257:19 265:12 299:19,22		
	duly 251:7		

familiarity 287:1	friend 291:11	guessing 277:23	holes 257:4
fascia 267:23	fuels 258:1	gutters 264:24	home 287:11,17 290:16
faster 302:19	full-time 278:14, 16	guy 272:22 285:9 300:20	homes 272:10 278:18 287:1,5
favor 274:19	G	guys 274:19 275:9 290:6 299:8	honest 285:9
feet 298:16	gain 288:18	H	hour 253:11 289:1
final 273:22	gaining 288:14	half 256:9	hours 253:22
find 278:6 290:21	gallon 292:12	Hamill 272:21 273:10	house 271:3
findings 293:20	garbled 252:2	Hamill's 272:21 273:7	houses 283:2
fine 253:12,16 289:10,11 303:17	gave 255:3 301:5	hand 275:15 298:7,9	How's 285:15
finish 252:16 289:4	general 280:14,21 281:1 282:15	handle 300:12 303:19,22 304:1,2	hundred 271:20 285:2,3
fir 298:13 299:11	generally 290:7	handful 275:15 298:7,9	hundred- thousand 285:12
fire 270:4 290:24 296:19 298:21	generate 278:23	handling 303:1	hurt 264:23
Firedefense 273:15	give 252:9 253:19 264:25 268:3 272:11 279:2,3 285:2 286:2 295:15 298:5	happen 262:13 290:19	I
Firedefense.com 273:18	glitch 294:8 298:22	happy 300:11,14 302:25 303:21	identification 260:9 263:11 274:2 293:25
fires 276:5	God 272:20 285:8	hardened 257:10	identify 250:15
fit 266:15	golf 297:22,24 299:6	Harris 264:1	imagine 301:16
fix 267:10 273:3	good 250:5 252:15 263:24 270:5,14,16 284:8 285:9 302:16	head 252:11	impact 265:17
fixed 257:2	Gosh 290:23	hear 251:23 252:2 289:24 292:14	important 252:25
Flame 258:20 259:6 269:5,9	gotta 266:5 270:13	hearing 279:12 292:15 303:23	inches 299:15
flammable 260:4	greenish 265:1,2	heat 296:8	includes 276:18
flew 256:10	grit 269:14	Hey 273:3 275:17 293:21 297:6	Inconel 258:21 259:5
follow 289:20	ground 251:16	Hidden 283:7,12, 13	independent 277:19 278:11
formula 262:18	grown 279:14	high 258:15,21,25 259:5,25	indiscernible 262:18 264:24 295:7 298:20 302:17
forward 300:15	guess 256:9 263:7 272:6,15 274:15 277:12,24 285:16 295:23	Hills 283:7,11,12, 13	individual 277:7
found 255:3,6	Friday 250:1	holding 261:25 298:6,9	individuals 279:25 280:7
foundation 294:24			industry 285:25
frame 268:12 269:24			
framing 267:25 268:5,12 269:3			

information 294:14 301:1	January 250:1,11 284:2	282:24	looked 275:11
inquired 284:13, 14	Jim 251:1	lasting 295:13	loose 271:5
insert 252:20	jim@ sunfiredefense. com 261:8	lasts 295:13	Los 250:1,17
instance 288:15	job 252:15 255:21, 23 259:15 267:10, 268:6 270:8 281:16 282:1	Laurel 283:9	lot 269:5 273:19 276:5 285:7,8 288:19 299:9
instruct 252:22 274:23 275:8	jobs 268:4,11,12, 18 269:1,3,23,24	law 252:6	Lucas 250:22 279:20
insufficient 252:12	join 282:9,10	lawyers 254:8	lumber 287:20
insurance 280:22	joined 280:5	laying 258:2	M
intended 270:6 276:25	jumped 280:11	leading 263:22	made 255:20 277:14 278:19
intense 296:8	K	leakage 262:9	make 253:2,18 256:16 261:7 269:7 270:13,14 271:6 278:8 296:9 298:14 302:18 303:7,14 304:5
intention 286:1 287:6	Ken 283:19 288:11	leaking 261:25 292:9	making 276:22
interest 286:16	Kennedy 250:14	leave 257:24 283:17	Malibu 283:7
interested 278:18	key 296:10	leaving 257:25	manufacturer 258:9,12
internal 291:25	kids 279:14	left 257:23 258:2	March 253:25 264:1
internet 252:1	kind 253:18 256:22 275:19 282:10 284:3 296:5 298:23 299:8 300:19	legal 277:20	marina 256:5
interrupt 266:25	kinds 287:8	letter 293:21 294:2,4,6,9,13 295:3	mark 272:21 273:7 285:16
introduce 290:13	knee 283:17	letters 293:12,17, 19	market 277:3 280:1 285:24 286:20 287:3 288:7
introduced 284:12,13	knew 270:24 278:17	licensed 282:7	markets 284:20
investigation 280:11	knowledge 288:15,18 301:17	liquid 257:10,21 260:5 293:4	markings 260:4
involve 268:4,18	knowledgeable 263:19	lobby 303:9	Marylou 272:21
involved 276:15	L	located 283:4	mask 264:15,22 265:6,7 271:10
involvement 276:10 278:4	L.A. 283:5	long 254:23 257:23,24 258:3 262:7 269:6,10 284:10 290:23 291:15 293:7 295:13 298:16	master 258:20 259:6 269:4,9
involving 277:4	lab 270:4	long-lasting 295:17	material 291:24
issue 265:4 266:4 267:1,4 270:17	laminates 281:20	longer 269:8 289:6	
issues 262:13 268:12		longevity 269:22 295:10,12	
J		longevity-wise 269:6	
James 250:6 251:6 304:13			

matter 250:6 289:8 295:8 304:13	Moseley's 289:5 304:8	objections 252:20 295:6	19 270:10,21 272:11
Mcewen 254:7	move 273:6 289:6 300:8	obligated 304:6	painting 270:13 271:3 290:8,10
means 266:19	moved 273:19	occur 258:10	pandemic 291:14
meant 254:5 265:15 277:1 280:25	multiple 267:15 301:14	occurred 292:21	part 251:14 264:12 271:8,10 289:5 293:12 302:19
medication 253:17	MYGC 282:14	occurrence 262:10	part 251:14 264:12 271:8,10 289:5 293:12 302:19
meet 283:24 284:7 291:2,10	mystery 279:21	odd 292:15	particles 270:15
mentioned 253:9 266:3 285:23 289:22 291:13 292:6 293:3 299:11	N	offer 273:19,20 276:17 303:4	parties 304:7
met 284:4,9	named 291:6 300:24	offered 267:10	parts 259:12,14
metal 258:7 264:10,21 266:20	nasty 255:6,9	offers 281:3	past 289:23
metals 258:5,6	nec 264:12	office 250:18,24 279:17 303:9	Pat 291:6,9,10
Miguel 250:17 260:15 272:4 288:25 298:23 302:12	necessarily 280:25 293:14 296:15 299:7	ongoing 296:4	Pat's 291:7
Mike 280:4,6 282:14 283:13,18 289:22 290:2	necessitated 294:15 295:5	opening 272:25	pause 252:19 260:14 264:5 274:4 292:13 295:22 300:5
milling 287:19	nod 252:11	opportunity 300:25	pay 293:16
Milstein 272:23	noise/inaudible 275:4	order 286:14	paying 286:14,18
minor 256:20	normal 299:12	Oregon 275:24	peel 270:18
minutes 254:25 270:5 289:8,14	north 297:1	original 303:12, 18,19 304:2	peeling 267:9,14 272:19 273:12
missed 283:10	notice 303:23	overspill 292:23	penalty 303:14
modify 274:23	notify 303:15 304:7	oxidize 264:12 265:2 266:19,21	pending 253:14
month 303:13	number 250:10 272:13,17	oxidize/corrode 264:9	people 250:7,18, 20,22 273:20 278:17 290:9,13 301:15,16,23
months 269:19	O	oxidizing 265:3	percent 268:9,10, 23,24 269:4,23 270:9 286:7
Morgan 250:22	oath 252:5,25	P	percentage 268:4,7,18,20 269:1 286:4,6
morning 250:5 255:4,6,7	object 273:6 294:22	paid 281:15 284:22,25 286:12	pain 265:14
Moseley 250:6 251:1,6,14 254:6 257:11 260:12,16 263:15 274:8,15	objection 257:9, 18 277:20 294:17, 23	paint 265:19,20 266:5 267:8,10, 14,18 272:18 273:12 292:24	paint 265:19,20 266:5 267:8,10, 14,18 272:18 273:12 292:24
		paint's 270:13	perfectly 252:20
		painted 268:5,11,	perform 297:9
			performed 296:14 297:6
			performs 281:16

296:6,13	299:12	provided 255:7 286:21 303:12	react 298:21
period 299:21	pre 256:9 291:14	provisions 304:17	reacts 288:19
periods 257:24	pre-pandemic 256:9,10	pull 260:6 273:25 274:19 275:12 293:23	read 260:13,20 264:2 294:13,16, 18,21 295:16,19 303:9
perjury 303:14	pre-treated 287:20	put 259:3 266:20 299:10	reading 263:7 294:25
person 263:18 267:8 278:6,16 281:24 297:25 301:5,17,19 302:2	preference 303:16	putting 296:7 298:3	ready 264:4,6
personal 300:7 302:9	preparation 254:13 255:1,10		real 267:10 272:23
personally 300:19	prepare 254:1	Q	reason 256:12,15
photographs 296:21	present 251:21		recall 255:12 262:2,8 267:4,6, 16 268:7 271:13 272:16 273:11 280:10 281:23 284:8 290:9 291:17 297:20 298:12,15 299:14, 16
physical 257:3	preserved 288:20	question 252:17, 23 253:1,4,7,13, 14 257:12,14 259:2,23 261:5 268:15 272:9 276:19,21,23,25 277:6,25 284:8 294:23 300:16 302:4	receipt 304:5
piece 263:23 264:3 288:16 298:4,7,8,18,20	pressure 262:13	question's 259:9	receive 286:8 287:7
pieces 291:24	presume 296:7 302:8	questions 252:16 300:10 301:8 302:22	recently 280:5
Plaintiff 250:18	pretty 266:1 280:10	quickly 265:25	recognize 252:5
plaintiff's 260:8 263:10 274:1 293:24	previously 253:9 274:6,11	quit 280:10	recollection 287:5
plastic 262:19,22, 23	price 288:4	R	record 252:9 289:18 303:25 304:14
podiatrist 278:15	prior 270:22 299:17	rag 265:10	recorded 289:15
point 273:3 289:1	prod 281:19	ran 286:25	recording 250:11
points 289:21	produce 258:24 259:6 303:22	range 282:18	refer 277:18
pole 288:17,18,20 296:3 299:12	produced 274:7	rate 281:18,22 284:18	reference 255:5 258:15 263:5
poles 298:14 299:9	product 264:9 266:13 273:2 275:15,17 277:3 294:8	rated 275:2,10,15	referenced 260:8 263:10 274:1 293:24
possibly 258:8	products 276:17	rated.' 275:11	referencing 280:25
potential 286:19	project 282:16, 19,22 283:3,4,14	rates 281:14,16	referral 291:4
potentially 293:6	protect 264:16 265:4	rating 270:3,4 275:16,18	referred 284:10
pouring 292:10	protecting 278:18	raw 267:25	
powder 258:21 259:5	provide 280:17 299:23		
power 261:2 270:14,21 271:8 284:1,9 286:9			

291:5	ringer 281:5	sealed 292:3,4	Shorthand 251:8
referring 258:13 276:3	ringing 281:6	sec 260:13	shrug 252:11
relationship 278:9 283:21 293:13	role 280:13	seeds 273:2	sic 263:14
relieved 304:2	room 251:21 257:5	self-extinguishing 296:10,11	side 293:1
remember 271:17 272:18 274:12,13,16 283:8 284:3,12 286:14,16 290:5, 11 291:8 298:10	rough 268:3	sell 276:12,14 277:3,8,11 278:6 280:8 287:11,13, 24	sign 303:9,10
remote 250:6,12	Ruiz 250:17 251:13 254:10 257:11,14,17,20 260:6,9,10,19 261:6,13,15,18 263:8,11,12,21 264:7 273:9,25 274:2,5,17 278:2 279:15,23 289:2, 12,14,20 290:1 292:15,17,19 293:22,25 294:1, 21 295:2,8,11 296:1 300:6,11, 17,23 301:10,13, 19,22 302:1,14, 16,22,24 303:3, 17,24	selling 276:21 277:13 286:25	sim 264:14
remotely 251:20	rules 251:17	sends 258:25	similar 272:9
remove 265:21	run 275:25	sense 253:2 271:2,6 278:5	simple 272:24 273:4
rent 256:16	S	sentence 263:1 264:8,15 266:13, 25 274:18 275:1	simpler 268:15
repeat 257:15 278:1 281:5 295:8 298:24 302:20	sale 277:14 278:8, 23,24	separate 259:12 260:1 271:7 277:16	simply 264:15
rephrase 268:13	sales 263:18 277:19 278:11,16, 19 280:25 285:25 286:9,19 287:8 301:20	separately 259:11 302:2	Sisson's 287:13, 25
replace 265:5	Santa 250:9,23	Serrano 251:3	Sissons 283:19 286:8,21,24 287:7,10 288:11, 13,22 293:11 294:6 296:2,5,12 297:6,9,25 299:24
reporter 251:3,4, 8 252:4,8 303:20 304:1	scope 281:2,11	service 276:17 277:4	sit 257:24
reporter's 303:9	Scrape 266:12	services 280:18 281:2,12 282:25	site 255:23 259:15
Reporters 250:14	screen 260:16	set 257:23 266:8 284:17 286:4 288:3,4	sits 293:6
represent 250:16	scroll 260:23 262:17 263:22 295:20	sets 301:17	slow 252:1
require 303:8	sealant 269:20,21 10	shape 270:14	soap 266:1
responses 252:10		shareholder 285:18	sold 277:12 280:20
result 256:18		ship 277:15 280:12	solution 265:23
retired 290:24		shipments 262:23	solvents 293:5
retirement 285:8		short 260:14 264:5 274:4 289:3,17 292:13 295:22 300:5	sons 291:11
reveal 254:6			sooner 253:12
revealing 254:19			sort 252:11 255:17 259:13,18 260:5 262:9 264:21 265:17 266:7 268:5 269:25 270:9 271:8,12 272:10 278:6,9,23 281:2 286:18 288:12 292:8,17 293:3,5, 12 294:14 298:19 300:25
review 288:22 303:14 304:9			
reviewed 255:1, 10			

sounded 275:19
sounds 261:16
272:16
sp 281:4
speak 254:13,23
301:23
speaking 301:6
specific 258:9
283:6
specifically
261:3
speculate 277:24
speculation
294:24
SPF 255:17,19
256:1,12,18
257:7,17 258:4,20
259:6,10,19,24
262:3,10 263:19
264:20 265:16,21
267:17 268:4,10,
18,19 269:2,21,25
270:8,20 271:11,
14 272:10 276:12,
18 277:4,8,11
278:4,6,23 279:8
280:1,8 282:20,22
283:3 287:4,11,24
290:4,16 291:20
292:1,7 296:3,18
297:10,25 298:19,
25 300:2
spill 292:24
spillage 256:20,
21,22 292:7,21,25
spilled 292:22
spoke 254:12
spoken 255:13
spray 271:5
sprayed 257:10
265:16
sprinkler 282:24
sprinklers 281:20
Spyrison 290:24
stages 267:25
stain 265:14
269:17
staining 256:24
257:1,4
stands 266:4
start 261:11 301:3
started 253:25
273:1
state 250:7,9,16,
19,21,23 257:10,
21 303:24
stated 263:2
statement 264:17
266:16,23 267:3
275:14 293:10
states 303:8
steel 263:3
step 258:19
stipu 302:25
stipulate 302:13
stipulated
304:11,16
stipulation
300:13 303:4
stop 261:13
263:23
stopped 256:12
291:14
storage 255:25
256:1 257:5
291:12,15
store 255:18,20
256:1 259:10,24
262:3 291:20
stored 256:6
259:12 262:19,22
291:23 292:2,4
storing 256:12,18
259:10
stream 283:18
streamline
283:18
strike 273:6
stuff 285:10
sturdy 262:25
Su 276:4 277:10,
18 278:20,22
279:5,8,24
Su's 278:4
substance
254:19
suggested
278:10
Sun 273:15,18
Sunfire 260:11
281:19 294:2,3
sunfiredefensen
w.com 275:21
276:8
Sunseeker 250:7
276:1,11,16 277:2
278:10 280:15,18
281:3,8,11,12,16
282:1,9,17 283:14
284:17 285:19
286:21 288:12
289:7 302:6,7
Sunseeker-pl_
00127 274:7
Sunseeker-pl_
01458 263:14
Sunseeker-pl_
0154 263:14
Superior 250:8
supplier 263:2,5
supplies 258:9
supply 260:3
surface 257:5
266:20 270:16,17,
22
surfaces 264:10,
21 267:18 268:19
sustainability
269:15
swear 251:4
swore 252:4
sworn 251:7
synonymous
275:16
system 282:24

T

taking 252:9
253:17
talk 252:14 254:20
255:17 268:2
293:22
talked 274:10
289:21
talking 254:18
259:10 298:8
team 280:5
technical 288:19
tells 295:17
temperature
258:16,21,25
259:5,25
tend 262:24
term 265:1 269:14
terms 280:24
test 296:5 297:6,7,
10,25 298:18
tested 294:11
296:3
testified 251:9
287:3
testify 302:4
testifying 252:6
302:6,7,8,9

testimony 253:19
278:5 301:2
testing 291:25
298:2,24,25
299:2,5,9,17,19
tests 296:13,17,
22,25 297:3,15
thick 299:12,14
thin 258:8
thing 253:13
259:22 260:5,18,
20 261:4 264:23
265:24 272:24
277:16 288:16,17
292:11 294:19
298:3 299:8
things 260:4
264:24 267:24,25
274:19 302:1
thought 286:15
throw 271:4
time 250:11
251:16 253:10,24
255:24 256:6,10,
16 257:25 262:13
284:11,24 290:23
291:18 293:14,15,
20 294:11 295:16
296:2,11 297:21,
24 299:20 300:6,7
times 271:16,18,
22 272:12 290:18,
20
Timperley 261:1,
20 284:15
timperley8
261:20
Tiny 286:25 287:4,
11,17
today 250:13
251:3 253:19
254:2 289:21
today's 250:10
254:14,20 255:2,
12,14
told 271:2 275:12
top 275:2,10
topics 301:24
torch 298:4
299:10
total 285:11
tournament
261:16 262:3
297:22,24 299:6
transcript 303:12
304:2,8
transportation
262:12
treat 288:16 300:4
treated 288:20
296:3 298:18,25
299:23
trial 303:13,23
true 253:19
turn 265:2 274:3
turned 281:5
Tusan 250:20
279:19
type 258:7 261:4
264:24 266:22
298:12 301:22
types 258:1
296:17
typical 264:19
270:8
typically 264:14,
15 267:17 269:4
274:22 282:6

U

Uh-huh 251:18
261:14,22 262:1
263:4 266:7
268:17 270:12
279:22 301:25
un 280:23
undercutting
288:9
understand
252:21 253:1
259:2 277:25
278:4 287:23
294:12
understanding
258:19 259:8
286:24
understood
252:13,23,24
253:7 280:23
301:10
unidentified
279:10
unreal 275:13
update 294:9,15
295:5
updated 295:3
updates 293:21
294:8
utility 261:17
284:20 285:24,25
286:20 288:17,18,
20 297:22 298:14

V

vague 257:9,18
277:21 294:24
varies 282:2
variety 270:2
verbal 252:10
versa 288:9 302:7
versus 250:7
vice 288:9 298:10,
11 302:6
videoconferenci
ng 250:13
videos 296:21
viscosity 269:13
voice 279:21
voices 279:10

W

waiting 292:17
waived 304:17
Walsh 283:16
289:23 290:3,22
wanna 260:6
wanted 276:6
277:15 289:20
Warren 263:25
wash 270:14,21
271:8
water 266:2
waterbase
265:23
ways 270:2
website 273:14,
23 274:14,20,24
275:5,8,20,25
276:8
weed 296:7 298:3
weeks 303:13
wet 299:21
Wetmore 263:15,
25 274:10,23
Wetmore's
266:18
whatever's 303:6
wife 272:21 273:7
window 265:17,
18,22 266:9
281:20
windows 265:6,8,
9,14,20 266:6
271:10 272:25
witnessed 297:9,
14,25

wood 267:25 251:19
288:16 298:4,7,8,
12,15,18,25
299:16,17,23
300:2

word 253:3 265:3,
13

work 284:23
286:3,19

workbench
291:24

worked 273:21
274:14 282:17
285:23 286:25

working 282:12
295:14,20

works 282:11
283:22

write 293:19,21
294:6

writing 293:12

written 252:9
279:4 280:17
281:1,10 294:7

Y

Yakovich 280:4,6
281:7,11 282:1,7,
15 283:13 289:22
290:2 291:1

Yakovich's
280:13

year 256:8 269:19
282:12 286:24
291:17,18,19
293:9,10 297:21

years 256:8
283:25 285:1
295:24 297:14,17

Yesterday 254:22

Z

Zoom 250:12



From: DJ Wetmore <dj@sunfiredefense.com>
Sent: Wednesday, March 13, 2019 3:27 PM
To: Harris, Warren <WHarris@jensenhughes.com>
Subject: Re: SPF-3000 Clear Spray Purchase Inquiry

Hello Warren,

I've gotten approval and am sending you both a small liquid sample and a couple of cedar shingles, one treated and one untreated for demonstration purposes. I am using the address listed in your email footer and directing the package to your attention.

Thank you for your patience on this. Please let me know when you have received them.

Regards,

SUNSEEKER-PL_01454

DJ Wetmore
Office: (833) 466-2876 x.102
Cell: (805) 316-4344
sunfiredefense.com
4300 Promenade Way
Marina Del Rey, CA 90292



From: Harris, Warren <WHarris@jensenhughes.com>
Sent: Monday, March 11, 2019 8:14:39 AM
To: DJ Wetmore
Subject: RE: SPF-3000 Clear Spray Purchase Inquiry

Dear DJ:

Just a quick note to inquire about the possibility of receiving a board and a liquid sample of the SPF 3000.

Warren

WARREN F. HARRIS, BS, PI
Fire Protection Consultant/Chemist

23109 55th Avenue W., Mountlake Terrace, WA 98043
O: +1 425-775-5550 | C: +1 206-618-2746
wharris@jensenhughes.com

jensenhughes.com

From: DJ Wetmore <dj@sunfiredefense.com>
Sent: Friday, March 01, 2019 8:57 AM
To: Harris, Warren <WHarris@jensenhughes.com>
Subject: Re: SPF-3000 Clear Spray Purchase Inquiry

Hello Warren,

We have had little issue with adhesion over other coatings or discoloration. The product does however, oxidize/corrode metal surfaces if directly applied. Typically we simply mask or

SUNSEEKER-PL_01455

otherwise protect such areas during application. If a product that is corrosive during application is a deal breaker for you, we are likely not the right fit. If it's something you can work around, please let me know and I will see about sending a sample.

Regards,

DJ Wetmore
Office: (833) 466-2876 x.102
Cell: (805) 316-4344
sunfiredefense.com
4300 Promenade Way
Marina Del Rey, CA 90292



From: Harris, Warren <WHarris@jensenhughes.com>

Sent: Tuesday, February 26, 2019 4:22:10 PM

To: DJ Wetmore

Subject: RE: SPF-3000 Clear Spray Purchase Inquiry

Dear DJ:

Thank you for the prompt reply. Our primary concern is three fold. Firstly the performance of paint adhesion following some duration post treatment, and the potential discoloration of stucco or cementitious systems that may be subject to overspray. In addition we may need to satisfy the FAA's concerns regarding the corrosion of metallic substrates as it associated with aircraft that may be subject to overspray in windy areas. It is primarily this reason that we need liquid sample for corrosivity testing.

In any case, if you are able to provide a coated piece of wood that would be a nice start, but a quart-sized liquid sample was our main wish. Please mail any samples to the address listed below. If there is a fee associated with this service, I will be glad to provide prompt payment.

Sincerely, Warren Harris

WARREN F. HARRIS, BS, PI
Fire Protection Consultant/Chemist

23109 55th Avenue W., Mountlake Terrace, WA 98043
O: +1 425-775-5550 | C: +1 206-618-2746
wharris@jensenhughes.com

jensenhughes.com

SUNSEEKER-PL_01456

From: DJ Wetmore <dj@sunfiredefense.com>
Sent: Tuesday, February 26, 2019 3:04 PM
To: Harris, Warren <WHarris@jensenhughes.com>
Subject: Re: SPF-3000 Clear Spray Purchase Inquiry

Hi Warren,

Thank you for reaching out.

We are not in the habit of sending out product samples in liquid form, although we are glad to send you a piece of your desired substrate treated with our product.

We typically oversee our projects from start to finish working directly with the contractor to provide our product applications as a service, rather than a distributed or shelved product. There are some exceptions to this, generally with commercial/industrial clients.

If you are able to provide with me some details on the project, including what materials are being used, and what standards they must meet, I may be able to shed some light on whether or now what we offer might be a good fit.

Regards,

DJ Wetmore
(805) 316-4344

Defending Life & Property From Fire

Sent from my iPhone - Small buttons; big thumbs. Please forgive brevity and typos.

On Feb 26, 2019, at 12:22 PM, Harris, Warren <WHarris@jensenhughes.com> wrote:

Dear Mr. Wetmore:

Hope all is well. I'm a consultant working with worldwide fire protection company in the Seattle area. Some recent projects have provoked us to search for an exterior grade, spray-applied fire-retardant for consideration in preparing architectural specifications. Pursuant to this request, I am inquiring about possibly purchasing a quart or gallon mock-up sample of your SPF-3000 Clear Spray. We look forward to hearing from you.

Sincerely, Warren Harris

WARREN F. HARRIS, BS

SUNSEEKER-PL_01457

Fire Protection Consultant/Chemist

23109 55th Avenue W., Mountlake Terrace, WA 98043
O: +1 425-775-5550 | C: +1 206-618-2746

wharris@jensenhughes.com

jensenhughes.com

SUNSEEKER-PL_01458

dausersb

From: James Moseley <jim@sunfiredefense.com>
Sent: Friday, July 20, 2018 10:13 AM
To: Andrew Elkins; DJ Wetmore
Cc: Dalbey, Christopher
Subject: website

Hi Andrew & DJ,

Could you guys do me a favor and pull a couple of things off of the website. Anywhere it might say BEST RATED OR TOP RATED. There's not a specific rating system like that so you can put our specific approvals in it's place. The ASTM 30 minute burn pass as well as the lightning strike simulation test with BPA / Dept. Of Energy.

Thanks so much,

James E. Moseley, Founder & CEO
Sun Fire Defense/ Sunseeker Enterprises, Inc.
4300 Promenade Way, #116
Marina Del Rey, Ca. 90292
818-486-4662



From: Annmarie Aronoff monkeydoctortv@gmail.com
Subject: Re: Registration
Date: August 15, 2018 at 10:41 AM
To: timperley8 timperley8@aol.com
Cc: jim@sunfiredefense.com, ken.sissons@sebiteam.com



Hi Dave,

Thanks for the note. I let Ken know that our supplier has stated we must use the steel containers. The formula cannot be stored in plastic. Our supplier gave me the name of the company they use for unlined UN 1263 steel containers. This is what must be used for SPF3000 formula. Therefore I will order these going forward.

Thanks,
Annmarie

Annmarie Aronoff
+1.213.284.0181

On Aug 15, 2018, at 10:37 AM, timperley8 <timperley8@aol.com> wrote:

Hi Annmarie,
We are assigned Hole 4, it's a nice little par 3.
Our team will be teeing off of Hole 15.
We are looking at changing our 5gal. containers.
The ones that we are currently using are leaking and not holding up.
If you have any ideas let us know, other wise we will look for better quality cans.
Thanks
dat

Sent from [Mail](#) for Windows 10

From: [Annmarie Aronoff](#)
Sent: Wednesday, August 15, 2018 9:13 AM
To: timperley8; jim@sunfiredefense.com
Cc: ken.sissons@sebiteam.com
Subject: Registration

Hi Dave,
If you and Ken plan to play in the tournament, you need to register your names with Andrea.
Please call her today to do so. I just spoke to Jake Carter and he said that they don't have you registered to play yet.
Thanks,
Annmarie

Annmarie Aronoff
+1.213.284.0181

On Aug 13, 2018, at 5:35 PM, timperley8 <timperley8@aol.com> wrote:

The person to call is Andrea her number is 503-262-9125
She works for the 125 IBEW
DAT



Sent from [Mail](#) for Windows 10

From: [Annmarie Aronoff](#)
Sent: Monday, August 13, 2018 2:16 PM
To: ken.sissons@sebiteam.com; [Dave Timperley](#)
Subject: Website

Hi Ken,
Do you have a website address for the tournament? Or is it just what's on the
Local union website?

Annmarie Aronoff
+1.213.284.0181



Sustainable Engineered Buildings Inc.

December 28, 2021

Jim Moseley
Sun FireDefense
4300 Promenade Way #116
Marina Del Rey, CA

Dear Jim,

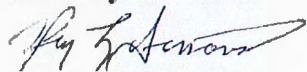
I am writing to inform you of the first-hand experience we have had with testing the Sun Fire Defense SPF3000 clear fire retardant clear spray at BPA. We began testing the Sun FireDefense product nearly Six years ago on untreated cedar poles at Bonneville Power Administration (BPA). BPA gave us two cedar poles for a side by side comparison testing. We treated one pole and did not treat the other. The treated pole was allowed to dry, and then we subjected it to two large weed burner propane torches. After 45 minutes of continuous heating the pole would not sustain a flame. The other pole exactly the opposite results it would sustain a flame. This was the result that we were expecting. The importance of this is in the application of wildfires. Wildfires have a fairly quick burn over rate at a lower sustainable temperature than a propane torch. The fire burned completely around the pole. The pole incurred light surface charring, however no structural damage.

We then treated a 10' x 10" structure, one was treated with the SPF3000 product and the other half not. The same results as the poles. This supports the claims made by Sun FireDefense that this product would protect the entire building, but if just egress ports were treated it would allow inhabitants to have a save path to escape. The next most astonishing item was six months later. The poles used in the test were left in the ground over the winter, a winter where we had over 50 inches of rain and snow. In the spring we did a high voltage test to simulate a lightning strike or a grounding event. We dug up the same poles and used them for the test. The same results the pole treated 6 moths earlier and subjected to 50 inches of rain would not sustain a flame. Where as the other pole during the same test caught fire and continued to burn.

The results of these tests are the reason that BPA purchased the material and is using it in the field. They need one hour to treat a pole ahead of a fire and that pole would be fire resistant. Protecting the line from wildfire damage. The result of these tests was superior fire protection to that of other

competitor products that normally last a matter of hours or until the next rain. The Sun Fire Defense SPF3000 product has lasted for three years during and during this time we have been testing for longevity. Over the last Six years, we have periodically applied the same process used previously, and every time the poles would not sustain a flame. As an engineer in the power industry I am very impressed with these results and longevity of the product and our testing lead to sales of SPF 3000 to BPA and poles are currently being treated with the product.

Sincerely



Ken L. Sissons