

Confidential Transcript of the Testimony of
Gregory Knighton

Date:

February 27, 2020

Case:

NEXT TECHNOLOGIES vs BEYOND OFFICE DOOR

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE WESTERN DISTRICT OF WISCONSIN

3 NEXT TECHNOLOGIES, INC.,

4 Plaintiff,

5 v.

 Case No. 3:19-CV-00217

6 BEYOND THE OFFICE DOOR, LLC,
 7 d/b/a BTOD.COM, and GREG
 8 KNIGHTON,

 Defendants.

10 VIDEO DEPOSITION OF GREGORY M. KNIGHTON,

11 witness in the above-entitled action, taken
 12 pursuant to Rule 30(b)(6) of the Federal Rules
 13 of Civil Procedure, before Mary P. Hader,
 14 Registered Professional Reporter and Notary
 15 Public in and for the State of Wisconsin, at the
 16 office of Bates Legal Group, 209 West Washington
 17 Street, Suite 102, Wausau, Wisconsin, on
 18 February 27, 2020, commencing at 11:24 a.m. and
 19 adjourning at 5:34 p.m.

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(Knighton Exhibit Nos. 1 through 10
marked for identification.)

THE VIDEOGRAPHER: We are on the
record. Today is February 27, 2020. The time
is 11:24. This is the videotape deposition of
Gregory Knighton, taken in Next Technologies,
Inc., versus Beyond The Office Door, LLC, d/b/a
BTOD.com, and Greg Knighton. If the attorneys
could state their appearances, the court
reporter will swear in the witness.

MR. KERLIN: Paul Kerlin on behalf of
the plaintiff, Next Technologies, Inc., with the
law firm Greenberg Traurig.

MS. TOY: April Toy on behalf of
Beyond The Office Door, BTOD, and Greg Knighton.

MR. BATES: Attorney Justin Bates
appearing in A personal -- for the personal
capacity for Greg Knighton, for Beyond The
Office Door, and BTOD.

THE REPORTER: Please raise your right
hand.

GREGORY MICHAEL KNIGHTON,
having been called as a witness herein,
being first duly sworn, was examined and
testified as follows:

Page 6

1 THE REPORTER: Thank you.
 2 EXAMINATION
 3 BY MR. KERLIN:
 4 Q Good morning, Mr. Knighton. Could you state
 5 your full name for the record.
 6 A It is Gregory Michael Knighton.
 7 Q Okay. Have you ever gone by any other names?
 8 A Greg.
 9 Q Any others?
 10 A Like, nicknames?
 11 Q Yes.
 12 A Gregggy. It's a horrible one.
 13 Q Okay. We just met earlier today --
 14 A Uh-huh.
 15 Q -- before the deposition started. Is that
 16 correct?
 17 A Yes.
 18 Q Okay. We haven't met before?
 19 A That's correct.
 20 Q Have you ever given a deposition or had your
 21 deposition taken before?
 22 A I have not.
 23 Q Have you ever testified in court?
 24 A I have not.
 25 Q Okay. I'm sure your counsel have been over the

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1 rules. Your testimony today is as if it is in
 2 front of the judge or the jury in court. And
 3 portions of it or all of it may be played in
 4 front of the jury. Do you understand that?
 5 A I do.
 6 Q Okay. If at any point you don't understand my
 7 question, please let me know. If you don't, I'm
 8 going to assume that you understood my question.
 9 All right?
 10 A Okay.
 11 Q And if at some point you need a break, just let
 12 me know. If we're in the middle of a line of
 13 questioning, I'd ask that maybe we finish the
 14 topic and then we can move on and you can take a
 15 break. All right?
 16 A (Nodding.)
 17 Q I'm going to hand you what's been previously
 18 marked as Exhibit 1. If you can take a look at
 19 it.
 20 It's just the notice. (Handing to
 21 Attorney Toy.)
 22 EXAMINATION
 23 BY MR. KERLIN:
 24 Q Mr. Knighton, do you recognize this document?
 25 A I do.

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1 Q Okay. Have you seen it before?
 2 A I have.
 3 Q Okay. When did you see it?
 4 A Oh, this one I believe I saw -- there's been a
 5 lot of these, so I believe I saw this one
 6 recently when -- when April came to visit, I
 7 believe.
 8 Q Okay. And I'm not asking about any discussions
 9 you've had with counsel, but just simply if
 10 you've seen the document before.
 11 A Yeah, I have.
 12 Q All right. Now, in this lawsuit, I represent
 13 Next Technologies, Inc. You understand that?
 14 A Yup.
 15 Q Okay. And you've been sued individually and
 16 also a company has been sued by the name of
 17 Beyond The Office Door, LLC. You understand
 18 that?
 19 A Yes.
 20 Q Okay. Today, for your deposition, you have been
 21 designated as what's -- what's called a 30(b)(6)
 22 under the Federal rules or a corporate
 23 representative. Do you understand that?
 24 A I do.
 25 Q Okay. Where you will be speaking in your

Page 9

1 representative capacity on behalf of Beyond The
 2 Office Door, LLC, on certain topics, correct?
 3 A Yes.
 4 Q Okay. And if we turn to page five, there's a
 5 number of topics, one to 18. Do you see those?
 6 A I do.
 7 Q Okay. With the exception of number 12, which we
 8 discussed with your counsel before this
 9 deposition, which we won't be asking you
 10 questions about, in your representative
 11 capacity, are you prepared to discuss and answer
 12 questions on the other topics?
 13 A I am.
 14 Q Okay. Okay. Now, in addition to your
 15 representative capacity -- I guess a better
 16 place to start is: Who are you employed by?
 17 A I -- I mean, technically I'm self-employed by
 18 Beyond The Office Door, LLC.
 19 Q Do you have any titles?
 20 A President.
 21 Q Okay. And as president, I -- I'm sure there are
 22 some areas that I might ask you questions about
 23 that aren't identified in this notice but that
 24 you have personal knowledge of. In other words,
 25 you were involved with the decision or you

Page 10

1 observed it. Okay?

2 A I should.

3 Q Okay. I -- I'm not going to ask you -- when I'm

4 going to ask you a question, that it's in a

5 representative capacity or that it's in an

6 individual capacity. Okay? In other words, I'm

7 not going to make a distinction between the two.

8 As the -- as the president, you speak for the

9 LLC. Is that correct?

10 A Yes.

11 Q And what you say binds the company, right?

12 A Correct.

13 Q Okay. And in addition, there are specific

14 topics that we've asked for you to be prepared

15 on for today, right?

16 A Correct.

17 Q And you'll bind the company on those as well

18 with your answers.

19 A Yes.

20 Q You understand that?

21 A Yup.

22 Q Okay. What did you do to prepare for your

23 deposition?

24 A What did I do to prepare for my deposition?

25 I -- I -- one, I met with April. We went over

Page 11

1 all of the interrogatories, the things here that

2 you're listing for Exhibit 1. We just -- we

3 basically covered those things and went back

4 through the two articles that are listed here.

5 Q Okay. With respect to documents, you've

6 mentioned the notice that we've marked as

7 Exhibit 1. You also mentioned the articles that

8 are at issue in this lawsuit with respect to --

9 and I take it that's the Terra article as well

10 as the Evodesk article?

11 A Correct.

12 Q Okay. Anything else that you re- -- anything

13 else that you've reviewed in preparation for

14 your deposition today as far as documents?

15 A Yeah. We reviewed -- we actually reviewed

16 the -- the products. I brought some of them

17 with me today. We reviewed the column, looked

18 at the column. And then just the gen- -- this

19 is my first time, so we just basically covered

20 kind of what to expect.

21 Q Okay. And, again, I'm not asking about any

22 discussions you had with counsel.

23 A Okay.

24 Q Those are what we call privileged.

25 A Okay.

Page 12

1 Q Okay? And so those get to remain between you

2 and your counsel. But with respect to

3 documents, I'm allowed to ask you about --

4 A Sure.

5 Q -- what you looked at --

6 A Yeah.

7 Q -- to get ready for your deposition.

8 A Yeah.

9 Q Did you talk to anyone other than your

10 attorneys?

11 A About -- about the --

12 Q In preparation for your deposition today.

13 A For the case?

14 Q Yes.

15 A Well, my business partner, we discussed the

16 case.

17 Q And -- and who is -- what's the name of your

18 business partner?

19 A Ryan Bald.

20 Q How long did you talk with Ryan?

21 A I mean, he just briefly kind of popped in with

22 us at the end.

23 Q Okay. Is that while you were discussing this

24 matter with your counsel?

25 A He's -- he's my business partner so, I mean, I

Page 13

1 felt it's fair that he be, sort of, involved

2 in --

3 Q Sure. And I'm asking outside of communications

4 with counsel.

5 A Oh, sure. Yeah. I mean, that would be the same

6 thing. I mean, he's seen all of these documents

7 as well.

8 Q Okay. But just so I'm clear, and so that we can

9 kind of delineate what your communications were

10 with your business partner were in the presence

11 of counsel versus just the two of you talking.

12 MS. TOY: Well, and also --

13 MR. KERLIN: Uh-huh.

14 MS. TOY: -- if the two of you are

15 talking about the lawsuit, that's going to be --

16 MR. KERLIN: Uh-huh.

17 MS. TOY: -- work product.

18 MR. KERLIN: Okay.

19 MS. TOY: So if the two of you are

20 talking about the lawsuit that's currently

21 pending, I'm going to instruct you not to --

22 THE WITNESS: Okay.

23 MS. TOY: -- not to talk about that.

24 THE WITNESS: Okay.

25 MR. KERLIN: Well, just so I'm clear,

Page 14

1 if they were asking each other something at the
 2 direction of counsel, together information, that
 3 would be one thing. But if they're just having
 4 a discussion about something that's related to
 5 the subject matter of the lawsuit, I don't think
 6 that's privileged. There's a -- there's a --
 7 there's a difference there, right?
 8 MS. TOY: If they're talking about the
 9 deposition and talking about prep for it, I
 10 think that is privileged.
 11 EXAMINATION
 12 BY MR. KERLIN:
 13 Q Okay. About how long did you meet with counsel
 14 to prepare for your deposition?
 15 A We met for approximately, I believe it was like,
 16 six hours.
 17 Q And when did you meet with counsel?
 18 A We met Wednesday last week, which I'm unsure of
 19 the date that actually is.
 20 Q Where did that take place?
 21 A At my office.
 22 Q And where is that located?
 23 A It is 5508, 5508 East Jelinek, J-e-l-i-n-e-k,
 24 Ave. And then we -- we had one more
 25 conversation, which was just on the phone on

Page 15

1 Friday.
 2 Q And how long did that last?
 3 A I believe it was about two hours.
 4 MS. TOY: Wait a second. Are you
 5 talking about conversations with me or
 6 conversations --
 7 THE WITNESS: You.
 8 MS. TOY: -- with Ryan?
 9 THE WITNESS: I'm talking about -- I
 10 guess I'm confused. Is that not what we're
 11 discussing? We're talking about conversations
 12 with April?
 13 MR. KERLIN: I'm not asking about --
 14 MS. TOY: Yeah.
 15 MR. KERLIN: -- what happened during
 16 them. But I am asking how long they lasted.
 17 MS. TOY: Okay.
 18 THE WITNESS: Sure. Yeah.
 19 MR. KERLIN: I think that's fair.
 20 THE WITNESS: Yup.
 21 MS. TOY: That's --
 22 MR. KERLIN: Okay.
 23 MS. TOY: I agree with that.
 24 EXAMINATION
 25 BY MR. KERLIN:

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1 Q And as the court reporter pointed out, sometimes
 2 you'll anticipate a question that I might ask,
 3 and you'll know where I'm going with it, and so
 4 you might -- sometimes we answer questions
 5 before the question's completely asked because
 6 we know -- kind of short circuit the question.
 7 A Yeah.
 8 Q If you'll wait until the question completely
 9 gets out, then that way it'll be a cleaner
 10 record for the court reporter. Okay?
 11 A Yup.
 12 Q And the other thing is, is, sometimes we shake
 13 our heads or nod our heads in response. If I --
 14 if I ask it for a verbal response, it's not to
 15 be difficult. It's just that for the record, I
 16 have to have a verbal response.
 17 A Okay.
 18 Q Got it?
 19 Okay. Where do you currently -- where
 20 do you currently live?
 21 A I live at 1409 Bent Stick Drive.
 22 Q And how long have you lived in Wisconsin?
 23 A I was actually born in Wausau.
 24 Q Have you always lived in Wausau?
 25 A I left for college; I went to Mankato. And then

Page 17

1 I moved to -- Mankato is Minnesota. And then I
 2 moved to Stevens Point. And then I moved to
 3 Plover. And that was approximately two years
 4 between those two. And then I moved back to
 5 Wausau when I bought my home.
 6 Q And just to have an idea of when you moved back
 7 to Wausau, when would that would have been --
 8 when would have that been?
 9 A I believe I moved back to Wausau when I was 24.
 10 Q And as far as what year that would have been?
 11 A Should be -- all right -- should that be two
 12 thousand and -- should have been 2008?
 13 Q Okay. Can you describe your educational
 14 background?
 15 A My education? Sure. I went to Mankato State at
 16 first to become an airline pilot. And that
 17 was -- the industry sort of changed, and it
 18 wasn't what I had hoped it would be, so I
 19 changed focus to business. And then I stayed
 20 there to appease my mother.
 21 Q Okay. And so did you graduate with a degree?
 22 A I did not.
 23 Q Did not. Okay. And how long did you attend
 24 college?
 25 A I attended college for six years.

Page 18

1 Q All right. And just so that I -- so you were --
 2 you -- you attended Mankato? Am I saying that
 3 properly?
 4 A That's correct, yeah.
 5 Q To study to be an airline pilot, initially. How
 6 long were your studies devoted to trying to
 7 become an airline pilot?
 8 A I believe it was about two years.
 9 Q Okay. And then the remaining four, you studied
 10 any spe- -- particular type of business or --
 11 A It was general business. And I retook a couple
 12 classes when -- that's when I went to -- to
 13 Stevens Point, UW-Stevens Point when I
 14 transferred.
 15 Q Okay. And so did you -- I take it from -- you
 16 transferred to another university or college?
 17 A (Nodding.)
 18 Q And what college did you --
 19 A From Mankato State to UWSP.
 20 Q And did you graduate from UWSP?
 21 A I did not.
 22 Q Okay. And how long did attend UWSP?
 23 A Approximately one year.
 24 Q Okay. During this time period, the -- the six
 25 years at Mankato and then the one year at UWSP,

Page 19

1 were you a full time student?
 2 A I was.
 3 Q Okay. Did you do any type of work during that
 4 time period?
 5 A I did, yeah. I was employed for my entire time
 6 at college. I worked first for Pizza Hut. I
 7 was a delivery person. I was a favorite in the
 8 dorm --
 9 Q Uh-huh.
 10 A -- because I always brought pizza home.
 11 Do you want to know my -- the rest of
 12 my jobs?
 13 Q I'd like to have an idea of it, yes.
 14 A Okay. Sure. So then I went from that position
 15 to -- to Best Buy.
 16 Q Let me stop you there. So at Best Buy, what
 17 type of -- of work were you doing at Best Buy?
 18 A I was in the media area, so it would have been,
 19 like, CDs, and CD holders, and DVDs.
 20 Q Was it kind of customer service?
 21 A I would say all of it's kind of customer
 22 service, yeah.
 23 Q Okay. Anything else?
 24 A And then I went and worked for MGM liquor store.
 25 Q Same type of capacity, like, in sales?

Page 20

1 A Yup. And then I started my business so then I
 2 stopped working for those companies in -- in
 3 college.
 4 Q Okay. Just so I'm clear, did you ever get any
 5 type of a Bachelor or Associate's degree from
 6 any type of university or college?
 7 A I did not.
 8 Q Okay. Did you ever study any type of
 9 engineering?
 10 A I did not.
 11 Q Do you hold any licenses or certifications?
 12 A I do not.
 13 For engineering? Or just in general?
 14 Q I'm just saying in any capacity.
 15 A I have a private pilot's license for single- and
 16 multi-engine rating.
 17 Q And how long have you had that license?
 18 A I got that when I was -- I believe I was a
 19 freshman in college.
 20 Q I don't think I asked when you started college.
 21 A Oh --
 22 Q So what year did you start college?
 23 A -- I graduated high school in 2002, so it would
 24 have been 2003.
 25 Q Okay. Do you still fly?

Page 21

1 A Unfortunately, I do not. I'm not a current
 2 pilot.
 3 Q Okay. Any other certifications or licensure?
 4 A No.
 5 Q Have you ever received any type of training
 6 regarding materials analysis?
 7 A I have not.
 8 Q Have you personally ever designed any form of
 9 furniture?
 10 A I was heavily involved in designing the
 11 VertDesk v3.
 12 Q Okay. I'm going to come back to that.
 13 A Okay.
 14 Q Have you -- well, actually, let's just explore
 15 that a little bit now.
 16 So you said you were heavily involved
 17 in designing the VertDesk v3. Can you tell me
 18 what type of a product that is?
 19 A It's a standing desk product, electric.
 20 Q Okay. When was that product first produced?
 21 A So the version three came out in two thousand --
 22 I believe it's 2017. I would have to -- I would
 23 have to -- I believe it was February of 2017. I
 24 would have to check.
 25 Q Okay. February of 2017 is what you think as you

Page 22

1 sit here today?
 2 A I believe so.
 3 Q Were you involved -- okay. It has v3. Does
 4 that mean a version three?
 5 A That's correct.
 6 Q Were you involved with the prior versions of it?
 7 A I was.
 8 Q Okay. Who sells the VertDesk v3?
 9 A The VertDesk is our private label product.
 10 Q And when you say our, are you referring to --
 11 A Beyond The Office Door, LLC.
 12 Q Okay. And, for the sake of clarity, I
 13 understand that you rebranded your company to
 14 BTOD.com. Is that --
 15 A That's correct.
 16 Q -- correct?
 17 So how would you like it to be
 18 referred to today? Is it more accurate to say
 19 that it's BTOD or Beyond The Office Door?
 20 A People still refer to us as both so it's okay --
 21 Q Okay.
 22 A -- either way.
 23 MR. BATES: Okay. Just as -- just as
 24 a point of clarity, when you're operating as
 25 BTOD.com, that is still under the company Beyond

Page 23

1 The Office Door, LLC.
 2 THE WITNESS: Correct.
 3 EXAMINATION
 4 BY MR. KERLIN:
 5 Q Okay. Is it okay for purposes of the -- of the
 6 deposition today if I refer to Beyond The Office
 7 Door, BTOD, I'm referring to the same thing?
 8 A Yes.
 9 Q Is that -- okay.
 10 Okay. You mentioned that you said you
 11 were heavily involved in the design of the
 12 VertDesk v3. Are there any other furniture
 13 products that you were involved in designing?
 14 A I -- we've been -- nothing that's come to the
 15 market.
 16 Q Okay. What about providing -- was there any
 17 engineering that was required to be done for the
 18 VertDesk v3?
 19 A I mean, there's quite a bit of engineering I
 20 believe that needs to be done for that product,
 21 yes.
 22 Q Okay. Is that something you did or did you hire
 23 someone else to do that?
 24 A That's something that was done at the OEM
 25 manufacturer, but I was involved in the process.

Page 24

1 Q Okay. Describe that for me how you were
 2 involved -- involved in the process.
 3 A Right. So we wanted to build a product that was
 4 able to bring high quality components,
 5 stability, and lasted a very long time. So I
 6 was involved because I know that, from the
 7 previous versions where we missed and what my
 8 customers were asking for, so when we were
 9 building that particular product, I knew what I
 10 wanted to see come from it to make it as close
 11 to perfect for what we were trying to accomplish
 12 as we could.
 13 Q So is it accurate to say that you provided
 14 feedback from customers to the OEM that the OEM
 15 incorporated into the desk?
 16 A I would say so.
 17 Q Okay. Did you do any type of, like, auto cad
 18 drawings or any type of design drawings that
 19 were provided to the OEM for production?
 20 A I did not.
 21 Q Okay. Is that something that they then had
 22 to -- that the OEM did internally as far as
 23 distances, and tolerances, and weight limits,
 24 and things of that nature?
 25 A Yes.

Page 25

1 Q Okay. Who was the OEM?
 2 A It's K & A Manufacturing.
 3 Q Could you spell that for the court reporter?
 4 A K & A Manufacturing, Inc.
 5 Q And where is that located?
 6 A It's Weston.
 7 Q All right. We've talked about the VertDesk v3.
 8 Any other products that you have been
 9 involved with as far as providing feedback or --
 10 or input about designs?
 11 A You know, actually, I was involved again in
 12 another product, which is -- we call it the
 13 Duke. It's a desktop converter. It's another
 14 standing desk product.
 15 Q Okay.
 16 A And that's from the same manufacturer.
 17 Q Is that a product that Beyond The Office Door
 18 sells?
 19 A Under the private label of Duke, D-u-k-e.
 20 Q What was your input in that product?
 21 A I was the reason -- I was the reason that it
 22 came to life. It was something that I really
 23 wanted to see. There was another product on the
 24 market, and I thought we could improve upon it,
 25 and so I asked them to create it for us.

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1 Q And what was the product that you were trying to
 2 improve upon?
 3 A It's called Ergo Desktop.
 4 Q Okay. We've talked about the VertDesk v3 and
 5 the Duke -- or, is it The Duke or is it Duke?
 6 A It's the duke.
 7 Q The Duke.
 8 A The Duke, yeah.
 9 Q Okay. We talked about those two.
 10 Any other items that you've provided
 11 input regarding any type of design?
 12 A Nothing that's come to market, no.
 13 Q Okay. Have you ever manufactured a standing
 14 desk product?
 15 A Have I -- like, out of my building?
 16 Q Yes. Do you, you or your company, developed or
 17 manufactured any type of -- of standing desk
 18 product?
 19 A I -- at my building, we do not manufacture
 20 standing desks.
 21 Q Okay.
 22 A And I -- I do want to interject just real quick
 23 so I don't miss this. But we were -- I -- we
 24 were involved, it's not related to Beyond The
 25 Office Door, another product. I don't know if

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1 that matters, but just for transparency.
 2 Q Okay. Why don't you go ahead and tell me
 3 what -- what product was that?
 4 A It's a gaming chair.
 5 Q A gaming chair. And for what company was that?
 6 A Levl. And it's -- it's not -- we really didn't
 7 reinvent the wheel with this one, but we made
 8 some improvements to it.
 9 Q Okay. Can you -- could you describe what the
 10 improvements would be?
 11 A Yeah. So we -- we added some padding to it so
 12 that it was more comfortable to sit on, for one;
 13 and then -- I think that's about it. We added
 14 the padding to the seat because it was lacking
 15 and offered -- it was more on the service side
 16 for the remaining parts.
 17 Q Okay. Anything else?
 18 A No.
 19 Q With respect to -- to standing desk products in
 20 general, are you familiar with the regulatory
 21 environment that has to be complied with for the
 22 manufacturers of those types of products?
 23 A How do you mean?
 24 Q Well, I guess what I'm saying is, like, the
 25 manufacturer, there are certain things they have

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1 to follow. For instance, if it's in California,
 2 there are certain requirements that have to be
 3 disclosed or included, depending upon the
 4 material that's used. California is kind of
 5 unique. They have a proposition that if there
 6 are certain compounds in a -- used in a product
 7 that are known to the State of California, for
 8 instance, to cause cancer, they have to be
 9 disclosed. Okay? Is that something that BTOD
 10 or you do for your products? Or do you rely on
 11 OEM manufacturers for that type of expertise?
 12 A That is something that the OEM manufacturer will
 13 generally take care of because there needs to be
 14 notice on the product for those things --
 15 Q Okay.
 16 A -- and so, because they're handling it, they
 17 would.
 18 Q Okay. In similar types of things for the
 19 electrical system, for instance --
 20 A Uh-huh.
 21 Q -- Underwriters UL is one that's a -- kind of an
 22 industry standard for testing those types --
 23 whether or not certain electrical components can
 24 handle certain things or whether they're safe.
 25 You don't do any of that type of testing. Is

Page 29

1 that correct?
 2 A Those -- I don't do any testing that's related
 3 to that, no.
 4 Q Okay. That's all done by the manufacturer, the
 5 OEM?
 6 A UL testing has to be done by someone certified
 7 for that.
 8 Q Okay. Would you agree that you're not an expert
 9 on the design or manufacture of an adjustable
 10 height desk?
 11 A I would disagree with that statement.
 12 Q Okay. Tell me why.
 13 A Because I've been heavily -- one, I've been
 14 heavily involved in the VertDesk, which we've
 15 discussed.
 16 I have been heavily involved in this
 17 process, which is to review. I've reviewed
 18 over 20 electric standing desks. I've torn them
 19 down to components.
 20 I work closely with our suppliers of
 21 different components for our product.
 22 I work with competing brands'
 23 suppliers of said components.
 24 I've traveled.
 25 I've been to Germany to Ketter. I've

Page 30

1 toured their plants.
 2 I've been to Taiwan where our
 3 manufacturing of our frames is done.
 4 And I've gone to China and been to
 5 numerous shows.
 6 I've seen many different standing
 7 desks, inside and out.
 8 Q Okay. But, just so I'm clear, as far as the
 9 designs that you have done, you have mentioned
 10 three. Is that correct?
 11 A That -- that I have been from the ground floor
 12 from all of the components? Yes --
 13 Q Okay.
 14 A -- to, technically, it would be the
 15 VertDesk v3 --
 16 Q Uh-huh.
 17 A -- and that is from scratch.
 18 And the Duke product.
 19 Q And then with respect to manufacturing, you said
 20 that you've never been involved -- your company
 21 is not involved in the manufacturing process for
 22 any standing desk products, correct?
 23 A My factory does -- my -- I don't have a factory.
 24 But I am in -- heavily involved in the factory
 25 that is manufacturing them because my input

Page 31

1 is -- is in -- in that desk; I mean, from the
 2 ground up.
 3 Q Okay. So I just -- I'm going to ask -- I asked
 4 it kind of on two bases last time. So I'm going
 5 to ask it with just respect to manufacturing.
 6 So would you agree that you're not an
 7 expert with respect to the manufacturing of an
 8 adjustable height desk?
 9 A I believe that I -- I believe that I am. If you
 10 asked me to recreate a standing desk, I could do
 11 it.
 12 Q Okay. That would comply with all State,
 13 Federal, and local requirements?
 14 A With the help of the same experts that
 15 manufacturers require the use of, because U- --
 16 like, UL, that requires you to work with a lab
 17 that's UL certified. These aren't being done at
 18 the factories making the product. These things
 19 have to leave those -- those --
 20 Q Uh-huh.
 21 A -- those manufacturers and get tested there --
 22 Q Yup.
 23 A -- so, yes, I do -- I do believe that.
 24 Q Okay. So just -- just so I'm clear, you're
 25 telling the jury that you're an expert on the

Page 32

1 manufacture of adjustable height desks, even
 2 though you've never manufactured an adjustable
 3 height desk, ever. Is that correct?
 4 A I believe I have been very much involved in the
 5 manufacturing of a desk. The VertDesk v3. That
 6 would be almost as if the manufacturer or the
 7 owner of the company that's manufacturing them,
 8 of them, is in the back actually manufacturing
 9 them, which he wouldn't be, either.
 10 Q Okay. Let's talk a little bit about some of
 11 the -- some of the manufacturers in this space.
 12 So you talked that you -- you've been to a
 13 number of different -- I guess do you want to
 14 call them suppliers or OEMs that oversees?
 15 A Uh-huh.
 16 Q Is that correct?
 17 A Uh-huh.
 18 Q Yes?
 19 A Yes. Sorry.
 20 Q Have you heard of -- is it called JieCang or
 21 JieCang? Is that --
 22 A Yes.
 23 Q Okay. Have you ever visited their
 24 manufacturing --
 25 A I have --

Page 33

1 Q -- facilities?
 2 A I have -- sorry. I have not.
 3 Q Do you know where they're located?
 4 A They're in China.
 5 Q Do you know what part of China?
 6 A I do not know the exact city that they are in.
 7 I could reference one of my reviews that we do
 8 list --
 9 Q Are they -- are they a pretty big player in this
 10 space?
 11 A Jie- -- JieCang --
 12 Q Uh-huh.
 13 A -- JieCang? Yes.
 14 Q Okay. What are some of the other ones as far as
 15 the components for adjustable height desks?
 16 A Some of the other manufacturers of these desks?
 17 Q Either of the desks or of the components that
 18 are used on the desks.
 19 A Okay. So you -- do you want domestic, or are
 20 you looking for European --
 21 Q Well --
 22 A -- or Asian?
 23 Q Let's go with -- let's go with domestic.
 24 A Okay.
 25 Q Okay. Now, are you going to -- why don't we

Page 34

1 start with a finished product. So something
 2 that would be sold. I'd call either the
 3 retailer or the kind of the end --
 4 A Uh-huh.
 5 Q -- seller of the product. All right? That it's
 6 probably branded by. Does that make sense?
 7 A Okay.
 8 MS. TOY: Wait a second. I just want
 9 to make sure that I follow you.
 10 Are you talking about manufacturing or
 11 selling?
 12 MR. KERLIN: Well, he's -- he's cut a
 13 little bit of a distinction here about
 14 manufacturing. I just want to know -- I mean,
 15 we can get into it now. I want to know the
 16 brand of every single desk he's ever reviewed.
 17 But I want to know what brands he's familiar
 18 with. And then from that, I want to know who --
 19 I'm going to ask him some followup questions.
 20 MS. TOY: Okay.
 21 MR. KERLIN: But to start with --
 22 MS. TOY: -- is your -- before you
 23 were talking about manufacturing. And then I
 24 think we switched to selling, so I just wanted
 25 to make sure that I was --

Page 35

1 MR. KERLIN: Right.
 2 MS. TOY: -- following you, and
 3 that --
 4 MR. KERLIN: Okay.
 5 MS. TOY: -- he followed you as well.
 6 MR. KERLIN: Sure. Appreciate the
 7 clarification.
 8 EXAMINATION
 9 BY MR. KERLIN:
 10 Q So why don't we start with -- with brands of --
 11 of adjustable height desks or standing desks.
 12 A So companies like me that have branded a
 13 product?
 14 Q Yes.
 15 A Some of the popular ones would be: Vivo,
 16 V-i-v-o. The UPLIFT Desk. Jarvis desk.
 17 Autonomous. VertDesk. NewHeights. It's a long
 18 list.
 19 Q Uh-huh.
 20 A Do you want me to keep going?
 21 Q Yes, please.
 22 A Xdesk. Evodesk. UpDesk. iMovR. I mean,
 23 there's -- the list is endless, but that's quite
 24 a few.
 25 Q Okay. Okay. And you've said that -- so -- so

Page 36

1 what is -- VertDesk is a product that you sell.
 2 Is that correct?
 3 A Correct.
 4 Q Okay. And so the -- I take it, is that
 5 trademarked by BTOD?
 6 A Yes.
 7 Q Okay. Are there any other standing desk
 8 products that are branded by BTOD that BTOD
 9 sells?
 10 A The -- that Duke product was.
 11 Q Okay. Do you no longer sell it?
 12 A We do.
 13 Q You do sell it?
 14 A Yeah.
 15 Q Okay.
 16 A Duke. And then we have the VertDesk converter,
 17 which is a desktop unit.
 18 Q Okay. So I got the VertDesk and the Duke. And
 19 the converter for the VertDesk.
 20 A It's called VertDesk converter.
 21 Q How does the VertDesk converter differ from the
 22 VertDesk?
 23 A It is a -- it's a unit that just goes on the
 24 desk. It -- it functions with gas cylinders.
 25 There's nothing electrical about it.

Page 37

1 Q Is it an accessory to the VertDesk or is it --
 2 A It is not.
 3 Q -- a completely different type of product?
 4 A It is not.
 5 Q Okay. Okay. Well, we had talked about JieCang
 6 with respect to components that are used in
 7 these, such as -- are you familiar with the legs
 8 or also called columns?
 9 A Uh-huh, yes.
 10 Q Okay. And that's -- is that what they're
 11 referred to in the industry?
 12 A A column?
 13 Q Yeah.
 14 A Yes.
 15 Q Okay. Are you familiar with some of the
 16 manufacturers of the columns?
 17 A The company that would be producing the column
 18 for a company like JieCang?
 19 Q Yes; or a company like Xdesk, or iMovR, or BTOD?
 20 A Well, a company like iMovR or Xdesk, they don't
 21 actually produce the columns, so --
 22 Q Right. No, I understand --
 23 A They don't produce any of that portion of the --
 24 Q Right. So that's what I'm asking. Do you know
 25 who produces those?

Page 38

1 A Yes.

2 Q And what are some of the manufacturers of those

3 types of products, the columns?

4 A So -- the column portion for those two brands

5 that you mentioned would be a Linak product.

6 Q Are you familiar with any other manufacturers of

7 columns other than Linak and JieCang?

8 A Well, our desk is one. VertDesk v3 is -- is our

9 column design.

10 Q Okay. You just saw on page -- so it's -- who

11 manufactured the actual column?

12 A Are you just referring to only the metal

13 component?

14 Q Yes.

15 A So if we were to say the -- just the metal

16 component, I cannot be certain who manufactures

17 the metal component; the actual tube supplier --

18 Q Uh-huh.

19 A -- of a company like JieCang, JieCang, or Linak.

20 Q I wasn't talking about that. I'm sorry. I was

21 talking about your product, the VertDesk.

22 A Yes.

23 Q Where does your column come from?

24 A That comes from our partner in Taiwan.

25 Q And what's the name of that partner?

Page 39

1 A Sunburst.

2 Q Okay. Are you familiar with these types of

3 columns?

4 A Very much so.

5 Q The JieCang, Linak, Sunburst?

6 A Yes.

7 Q Okay. Okay. And -- and you're telling the jury

8 here that you're an expert in these types of

9 products, right?

10 A Correct.

11 Q The manufacture and design of them,

12 specifically, correct?

13 A Not all of those, but I -- I would say that I

14 would qualify, yes.

15 Q As an expert in -- in adjustable height desks,

16 the manufacture and design, specifically, right?

17 A Yes.

18 Q Okay. So you understand the difference between

19 a frame and -- and the column, correct?

20 A Correct.

21 Q Okay. And then there's a big difference between

22 them, right?

23 A No.

24 Q Okay. And is there -- or, tell me what would be

25 the industry standard for differentiation

Page 40

1 between the frame and the legs or the column?

2 A For -- for every -- I would say for almost --

3 let's say 99 percent of the population, when

4 assuming a frame, they would assume that the

5 feet, the column, the upper support, if there's

6 a cross support, those would all be included in

7 a frame.

8 Q Okay.

9 A There are many sites online that sell frame only

10 and those are all encompassing as a frame.

11 Q Okay. Would you agree with me that if JieCang

12 said something different, that they're an expert

13 in the field as well?

14 A If Jie- -- if JieCang said that the column

15 wasn't part of their frame?

16 Q Yeah.

17 A I can't speak on what JieCang says.

18 Q I'm just asking -- would you agree with them?

19 A If JieCang said that the column wasn't part of

20 the frame, I would disagree.

21 Q Okay. What about with Linak? If Linak said,

22 no, that the -- the columns or the legs are

23 different than the frame. We sell the legs, but

24 the frame is different. Would you -- would you

25 disagree with them and say that the legs were

Page 41

1 part of the frame?

2 A I would -- I would disagree to the point -- I

3 would expect that, in order to have a frame, it

4 would incorporate a column, because it is tying

5 everything together. Without that portion of

6 the frame, you don't have a frame. You have

7 feet and upper supports.

8 Q I understand your explanation, but we refer

9 to -- and this isn't to be talking down at all

10 or use lawyer speak -- we call it a term of art.

11 Okay? So there -- there's sometimes a term

12 that's used in industry that has a unique

13 meaning.

14 A Uh-huh.

15 Q And, in the standing desk or adjustable height

16 desk, space or industry, do you know if there's

17 a specific meaning for a frame versus a leg or a

18 column?

19 A So --

20 Q Or are you just using it in kind of the ordinary

21 way that you'd think you'd use it?

22 A So when advertising to the general consumer, I

23 would advertise it in a way that they would

24 expect it to be. So if someone bought a frame

25 from me, I would expect that we would ship them

Page 42

1 the entire frame.

2 Q Okay. And I understand that. That's not my

3 question.

4 A Okay.

5 Q My question is to you: Do you know if there's a

6 term of art or if there's a specific

7 particularized meaning to the term frame and to

8 legs or columns in the adjustable height desk

9 industry?

10 A I don't believe -- I believe that a column has a

11 name, just as a foot has a name and an upper

12 support has a name --

13 Q Okay.

14 A -- but they all are incorporated in a frame.

15 Q Okay. And the companies like Linak, for

16 instance, if they cut a distinction and say, no,

17 there's a frame, and then separate and apart

18 from that, there's a column or there's a leg,

19 and they're two different things, you wouldn't

20 agree with that?

21 A Could you repeat that because I think --

22 Q Sure.

23 A -- I'm a bit confused.

24 Q Yeah. With respect, for instance, Linak, all

25 right? If they -- if they use the term frame in

Page 43

1 their industry, a particular meaning for it,

2 separate and apart from a column or a leg, you

3 wouldn't agree with that; you'd say it's all

4 part of the frame?

5 A I think if -- if Linak said that they were

6 selling you -- because Linak specializes in

7 columns. They do not specialize in

8 manufacturing feet or upper supports. So what

9 they're going to label their product that

10 they're selling to you as an OEM is likely to be

11 a column because they don't -- just recently

12 within the last couple years, they started to

13 offer feet because customers weren't able to

14 access feet. So, yes, I can see them saying

15 this is, in fact, a column, because it is a

16 column. But, in order to be a frame, it needs

17 to incorporate all of the components.

18 Q And that's your opinion, right? That's what you

19 think?

20 A I would say that the majority of people would

21 agree with that opinion.

22 Q The majority of who? When you say the majority

23 of people, are you talking about people in the

24 standing desk adjustable height desk space?

25 A I would say the -- I would -- the majority of

Page 44

1 the population. I -- if we referred to a

2 definition of what it is, I think that would be

3 a good example of what we could use.

4 Q Okay. But, again, going back specifically to

5 the adjustable height industry, is it fair to

6 say that you don't know if frame has a

7 particularized or unique meaning separate and

8 apart from a column?

9 MR. BATES: I'll just object to the

10 extent that that mischaracterizes his former

11 testimony.

12 But answer, if you can.

13 MS. TOY: And asked and answered

14 already, I believe.

15 THE WITNESS: And I do believe we are

16 going in circles right now.

17 But I -- I believe that, with regard

18 to what I say is a frame is what the general

19 public who we speak to would refer to -- refer

20 to a frame. I mean, I -- that's what I believe.

21 EXAMINATION

22 BY MR. KERLIN:

23 Q Okay. And, again -- and I'm not asking about

24 the general public. And that's the reason why I

25 asked the question again because I'm really

Page 45

1 trying to ask a really specific question and

2 you're kind of answering a little differently

3 than the way I'm asking it. So if it seems like

4 I'm asking it again, it's really because -- and

5 if it's something you can't answer, that's fine,

6 too; I mean, that's a fine answer. Or you don't

7 know; that's a fine answer as well. And I'm not

8 trying to put words in your mouth at all. So

9 please don't take it that way. I just want to

10 make sure that, with respect to my question, if

11 you feel like you've answered it, that's fine.

12 But you've said that you're an expert

13 in the manufacture and design of standing desks.

14 Certain industries, standing desk being one of

15 them, probably have unique terms that are used

16 in the industry to refer to different parts of

17 their products. Would you agree with me?

18 A For --

19 MS. TOY: I'm going to object. It's

20 an incomplete hypothetical.

21 But answer, if you can.

22 THE WITNESS: I -- I think with

23 anything, there's different parts that make up

24 something greater. And I believe that a column

25 is a component or part of a frame. I don't know

Page 46

1 how else to explain it other than that.
 2 EXAMINATION
 3 BY MR. KERLIN:
 4 Q Okay. I'll come back to this a little later.
 5 A Okay.
 6 Q Just because it's getting my exhibits out of
 7 order. But I think I understand your answer.
 8 Okay. Let's talk a little bit about
 9 Beyond The Office Door. What is Beyond The
 10 Office Door?
 11 A Beyond The Office Door is -- is my business.
 12 It's Ecommerce company. We sell office
 13 furniture. And we -- I mean, we're an Ecommerce
 14 company, I guess, with an educational component
 15 to it.
 16 Q Okay. When was it founded?
 17 A It was -- I started it in 2005 while in school.
 18 Q Why?
 19 A Because I hated punching parts in my dad's
 20 factory.
 21 Q Okay. And who's your dad?
 22 A Bill Knighton.
 23 Q And what's his company?
 24 A K & A Manufacturing.
 25 Q The same one that we were talking about earlier

Page 47

1 that --
 2 A That's correct.
 3 Q -- is the OEM for your VertDesk product?
 4 A Yes.
 5 Q Okay. When it was founded, who were the -- was
 6 it founded as a limited liability company?
 7 A Yes.
 8 Q Okay. Who were the members?
 9 A On the initial founding of the business, it was
 10 just myself.
 11 Q Okay. Did that change?
 12 A It did.
 13 Q It did?
 14 A (Nodding.)
 15 Q When did it change?
 16 A I would have to look -- I would have to look at
 17 the actual records, but it includes Ryan Bald
 18 now.
 19 Q Okay. And you -- you referred to him earlier as
 20 a partner as well. Is that kind of what you
 21 meant; y'all are both in the same LLC together?
 22 A Yes.
 23 Q Okay. And what are the respective percentages
 24 of ownership?
 25 A I'm 60 percent and he has 40.

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1 Q And just to have an idea, I know you said you
 2 don't know exactly when he joined -- he started
 3 being your partner. As, you know, like, month
 4 and day, but can you give me a year, or has it
 5 been more than ten years? General -- can you
 6 give us a general idea of how long he's been
 7 your partner?
 8 A He -- he became a partner in the second --
 9 the -- so Beyond The Office Door, he became a
 10 partner in later. We -- when I first founded
 11 the business, it was myself. And when he became
 12 a partner, it was in a company called Beyond
 13 Auctions. And it was a company that was really
 14 just designed to sell furniture through eBay.
 15 Q And was that a company that was owned by Beyond
 16 The Office Door?
 17 A No. It was a company that we owned
 18 together 50-50, and I owned 100 percent
 19 of Beyond The Office Door.
 20 Q Okay. Does Beyond Auctions continue to exist?
 21 A It does not.
 22 Q When did it cease to exist?
 23 A It -- it would have been, I believe, in the time
 24 frame of around two thousand and -- I believe it
 25 was around 2007 time frame, maybe 2008.

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1 Q Okay. And is that about the time when he joined
 2 BTOD as a member?
 3 A He had graduated school, and we've -- we just
 4 thought it would be easier to form one business,
 5 so we -- we -- we did it that way.
 6 Q And y'all have been partners and worked together
 7 since?
 8 A Yes.
 9 Q What -- what's his educational background? You
 10 mentioned he'd graduated from college?
 11 A Accounting.
 12 Q Does he have any engineering expertise?
 13 A He does not.
 14 Q Did he get a Bachelor of Arts in accounting or
 15 Bachelor of Science?
 16 A I think it was actually in finance.
 17 Q Okay. Okay. How many current employees are
 18 there at BTOD?
 19 A We have eight full time employees.
 20 Q How long have -- let me take that back.
 21 Okay. So we have -- we have you.
 22 You're the president, right?
 23 A Correct.
 24 Q And how long have you been the president?
 25 A Since the -- the start --

Page 50

1 Q Okay.

2 A -- since the beginning.

3 Q And then Ryan, what is his title?

4 A He's vice-president.

5 Q Okay. Are there any other management titles,

6 anybody else who holds a management title at

7 BTOD?

8 A We had management. We had a manager for

9 marketing. And we had a manager for sales, but

10 we've actually transitioned to a lead setup, so

11 there's now team leads for each department. And

12 that happened within the last -- within the last

13 year.

14 Q Okay. Going back to 2017, can you tell me who

15 would have been -- what the management positions

16 would have been in 2017?

17 A 2017, I would have had -- Ryan would have still

18 been vice-president, of course. I would be

19 president. Kent Cloutier would be our sales

20 manager at that point. And that would be it as

21 far as management.

22 Q Okay. With respect to reviews of products, when

23 did -- when did you first start doing reviews of

24 products?

25 A 2017; in the beginning of 2017.

Page 51

1 Q Why did you start reviewing products in 2017?

2 A So we actually -- I think the story is well

3 documented on the web site. There's a video

4 that actually explains the whole thing, so -- we

5 had gone through that rebranding from Beyond The

6 Office Door.com to BTOD.com. And any time you

7 change a domain like that in Google, it can

8 really cause chaos. You're likely to lose a

9 significant portion of your traffic for more the

10 organic side. Your paid advertising will reset

11 itself, and you'll basically be starting in the

12 basement there. And so, you know, we -- we

13 basically kind of had to -- kind of had to start

14 over, in a sense, with some things, and kind of

15 build ourselves back up, I guess you could say.

16 Having been in the business for a long

17 time, I'd say we had good standing in the

18 business. But we realized we kind of needed

19 to -- kind of needed to change our approach.

20 And I think I documented this in the video that

21 I did. But basically I said that when people

22 called us, one of the things that made us

23 different is that the people that answer the

24 phone are consistent and they always know what

25 they're talking about. They know the products

Page 52

1 that they're talking about. But that required

2 people to pick up the phone. And most people

3 don't pick up the phone. So we wanted to find a

4 way that we could kind of change the complexion

5 of our business so that people would see that

6 we're experts without having to call.

7 And, by chance, I actually read a book

8 by a gentleman called Marcus Sh- -- named Marcus

9 Sheridan. It's called They Ask You Answer. And

10 it really transformed my way of thinking of how

11 we could approach our industry in a way that I

12 thought -- that I thought was really needed. It

13 was a foundation of basically they ask the

14 questions, they being the customer, and you

15 answer them honestly and transparently,

16 consistently.

17 And it focuses on five major pillars.

18 And it's -- it's -- it's the foundation of what

19 we do. And that's why we started doing it.

20 Because the things that he said to do, the five

21 major pillars incorporate reviews, things like

22 costs, comparisons, problems with products, best

23 of lists. Those are the things that consumers

24 have the most questions on and so that's why we

25 decided to make that change.

Page 53

1 Q Okay. Did you see an uptick in your sales after

2 you started reviewing products?

3 A It definitely wasn't immediate. I mean, you --

4 we -- we had to -- we had to do -- we had to

5 write a lot of content to, you know, build a

6 good resource that people were able to get the

7 answers to their questions. So it definitely

8 took a long time to kind of get going.

9 Q But, ultimately, did it improve your sales?

10 A Yeah.

11 Q Okay. I'm going to hand you what's been marked

12 as Exhibit 2. Do you recognize that document?

13 A Yeah.

14 Q Okay. And if we look at the first page, it says

15 about us. Well, I guess it's -- it could be at

16 the second page. The web sites don't always

17 print real neatly like they display on a

18 computer.

19 A Uh-huh.

20 Q What is this document -- or, what is this a

21 printout of?

22 A This looks like our about us page.

23 Q Okay. And if we go to -- it's going to be the

24 third page from the front.

25 MS. TOY: Yeah.

Page 54

1 MR. BATES: I'm sorry. Could we just
2 pause for one second?
3 MR. KERLIN: Yeah.
4 MR. BATES: I'm going to turn the heat
5 up a little.
6 MR. KERLIN: Oh, sure.
7 THE VIDEOGRAPHER: We're off the
8 record.
9 (Recess from 12:16 through 12:19 p.m.)
10 THE VIDEOGRAPHER: We are back on the
11 record at 12:19.
12 EXAMINATION
13 BY MR. KERLIN:
14 Q Okay. Mr. Knighton, we're back from a short
15 break. Are you able to continue?
16 A Yes.
17 Q Okay. If we go to Exhibit 2, I think I had
18 directed you to page three. You see at the
19 bottom, there's a paragraph and it says -- it
20 starts, Beyond The Office Door, LLC. Do you see
21 that?
22 A Yes, yup.
23 Q Okay. I'll start at the beginning. The second
24 sentence says, the company ships directly from
25 more than 30 manufacturers, including top names

Page 55

1 like Lesro, RightAngle, and OFM, Inc.
2 Did I read that correctly?
3 A Yes.
4 Q Okay. Now, we talked about three desks -- I'm
5 sorry, three products that you've been involved
6 with the design of. You told us about three
7 that have been branded products by BTOD,
8 correct?
9 A I -- I told you two that I was directly involved
10 with designing that are standing desk related.
11 And the VertDesk converter I did not have any
12 input on.
13 Q Right. So we have the VertDesk, the VertDesk
14 converter, and the Duke, which are branded
15 products. Branded means they're BTOD's products
16 that you sell, right?
17 A Yes.
18 Q Okay. What else does BTOD sell besides their
19 own branded products?
20 A I mean, we sell -- we sell a lot of products.
21 We sell -- we sell -- do you want to know all of
22 the manufacturers?
23 Q I just want to have an idea of kind of the
24 number of products that you also sell, make
25 available.

Page 56

1 A Okay. So I believe we have, at any given time,
2 approximately 2,000 products on our web site.
3 Q Okay. Are there specific categories for
4 products? In other words, we've talked a lot
5 about standing desks or adjustable height desks.
6 So I would -- I would refer to that as one
7 category. Are there other categories or
8 products that you sell that you could tell me?
9 A Yes. We sell -- I would say we sell most office
10 furniture. Most office furniture types, so
11 office desks. We sell reception furniture,
12 office chairs, ergonomic accessories, things you
13 pair with your -- your desk.
14 Q Okay. Does BTOD have a physical location?
15 A We do.
16 Q And where is that?
17 A 5508 East Jelinek.
18 Q And -- and what is the size of the physical
19 location?
20 A Our building is 8,400 square feet.
21 Q Okay. Now, you mentioned that you sell 2,000
22 products. I'm guessing that 2,000 products
23 wouldn't fit in 8,400 square feet?
24 A That's correct.
25 Q Are -- do you have a showroom? Or is it all

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1 E-retail or online?
2 A We have a showroom that's by appointment only.
3 It doesn't mean people don't stop in, but it's
4 really meant to be appointment only.
5 Q Okay. About how many products do you have on
6 display in your showroom?
7 A We have a lot of products in there. We probably
8 have -- we have access to all of the products in
9 the building, but I would say, at any given
10 point, we probably have 50 plus office chairs in
11 the main area, which would be considered the
12 showroom.
13 Q Okay. What are the other parts of your physical
14 location besides the showroom?
15 A What are the other -- what do you mean?
16 Q So, it sounds -- so, you have a showroom. I
17 mean, do you do any type of --
18 A It's a working showroom, just so that we're on
19 the --
20 Q Sure. Do you do any type of packaging or
21 shipping from your physical location?
22 A If we have open box items, so, things that come
23 back from a customer, we take a lot of our items
24 back to our location.
25 Q Okay.

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1 A And we would ship those out, but we are not
 2 actively shipping out products from our
 3 location.
 4 Q So is it -- is it -- do I understand it
 5 correctly if an order comes in, then that order
 6 that comes in is going to be shipped from some
 7 other location directly to the consumer?
 8 A Yes.
 9 Q Okay. So, for instance, if they decide to buy
 10 your VertDesk v3, that product, when a customer
 11 buys it, is going to be shipped from K & M?
 12 A K & A.
 13 Q K & A. I'm sorry. K & A to the customer. Is
 14 that right?
 15 A Yes.
 16 Q Okay. So --
 17 A Am I still in the -- okay. Sorry.
 18 Q So BTOD never takes any type of physical custody
 19 of it or doesn't have any physical interaction
 20 with an individual order. Is that correct?
 21 A Not unless we need to. I mean, if -- if there's
 22 a large order that -- because we work with K & A
 23 Manufacturing fairly close, that would be one
 24 where I may go and oversee something before it
 25 goes out.

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1 Q Okay. How often would that -- does that occur?
 2 A It's fairly infrequently. They've got a good
 3 handle on what they do.
 4 Q Once a year?
 5 A Probably more.
 6 Q Once a quarter?
 7 A Probably somewhere in that neighborhood.
 8 Q Okay. Other than those approximately four
 9 instances a year, all the rest of the orders,
 10 they come in, just ship directly from the
 11 manufacturers, right?
 12 A They ship from the manufacturers, yes.
 13 Q Okay. So what are the people at the -- you
 14 know, your employees, what are they doing at
 15 your physical location?
 16 A We have customer service people who are actively
 17 helping customers, so anything post sales. We
 18 have salespeople who are assisting customers
 19 with questions related to products that we sell
 20 or don't sell. I have a full marketing team
 21 with two full time videographers who are editing
 22 video and shooting video. And I have a graphic
 23 designer who does a lot of graphic stuff.
 24 Q Okay. If we go down to the last sentence in
 25 that same paragraph on Exhibit 2, it says,

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1 concentrating on products and categories that
 2 are underserved (sic) allows Beyond The Office
 3 Door to become experts on every product sold;
 4 setting them apart from their competition.
 5 Did I read that correctly?
 6 A Yes.
 7 Q Okay. Is BTOD an expert on every product that
 8 they sell?
 9 A I would say that we are very well-versed in
 10 every product that we sell, yes.
 11 Q Okay. So you stand behind your statement you're
 12 an expert on every product sold?
 13 A When it comes to the things that we sell, yes.
 14 We don't bring on items that we're unfamiliar
 15 with.
 16 Q Okay. So for all the 2,000 items -- the 2,000
 17 products that you sell, y'all are an expert on
 18 every single one of those items?
 19 A There's a lot of -- there's a lot of products,
 20 like Lesro, for instance, which is listed here,
 21 which is a brand of reception chairs. And they
 22 have close to 500 skews. And it's -- you know,
 23 it's wooden guest chairs, metal guest chairs. I
 24 mean, that accounts -- we have brands that --
 25 like that --

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1 Q Uh-huh.
 2 A -- that account for big chunks. So, yeah, we're
 3 familiar with, very familiar. And I would say
 4 that with ten people in the office, that someone
 5 is an expert on everything that we sell.
 6 Q Okay. And so stand behind the statement
 7 that you're making to the public that you're an
 8 expert on all the products you sell, right?
 9 A Yes.
 10 Q Okay. I'm going to hand you what's been marked
 11 as Exhibit 3. Do you recognize this document?
 12 A I do.
 13 Q Okay. What is it?
 14 A This is who -- this is our about BTOD.com and
 15 why you can trust us.
 16 Q Okay. When did you first put this out?
 17 A I don't know the exact date. I would have to
 18 look at the web site to see the -- the post date
 19 on it.
 20 Q With respect to the part at the top, so it says
 21 BTOD.com, and then underneath it, it says, The
 22 Breakroom Blog. Do you see that part?
 23 A I don't -- what are you -- which part?
 24 Q Yeah, it's in blue on that, so it's --
 25 A This?

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1 Q -- almost like a ribbon at the top.
 2 A Yes. This? Yup.
 3 Q Okay. What is The Breakroom Blog?
 4 A The Breakroom Blog is the educational component
 5 to our web site.
 6 Q And when did that start?
 7 A That started in 2017.
 8 Q And was that created so it would be an area
 9 where you could put reviews of the products that
 10 you were reviewing?
 11 A It's designed to put all of the content that we
 12 have created there, yes.
 13 Q Okay. Can you give the jury an idea of how much
 14 content you currently have on The Breakroom
 15 Blog?
 16 A I believe we have approximately, live on the
 17 blog currently, about 370; about 370 live posts.
 18 Q Okay. Is the primary purpose of BTOD to sell
 19 office furniture?
 20 A The primary purpose of BTOD.com, the Ecommerce
 21 site, is to sell office furniture. The
 22 Ecommerce site. But the blog is not solely
 23 designed to buy office furniture.
 24 Q Right. But specific to BTOD.com, I mean, you
 25 created the business to sell office furniture,

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1 right?
 2 A The Ecommerce side is, yes, designed to sell
 3 office furniture.
 4 Q Okay. Okay. Does -- does The Breakroom Blog
 5 pay any type of -- or, strike that.
 6 Does BTOD pay The Breakroom Blog any
 7 type of -- of money for its reviews?
 8 A No.
 9 Q Okay. Is it -- say -- is it accurate to say
 10 that it's a -- it's a -- it all falls inside of
 11 BTOD.com? In other words, it's not, like, a
 12 separate company?
 13 A It is not a separate company.
 14 Q Okay. Are there any other companies that
 15 BTOD -- well, strike that.
 16 Are there any other business ventures
 17 that BTOD has? You've mentioned this kind of --
 18 The Breakroom Blog is one of them we've talked
 19 about. Is there anything similar to that
 20 that -- that BTOD operates?
 21 A Is there another place where we host content?
 22 Q Yes.
 23 A So we make videos that are on YouTube.
 24 Q Okay. Anything other than the YouTube videos
 25 and The Breakroom Blog?

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1 A Could -- I'm -- could you expl- -- I don't
 2 und- -- I don't think I quite understand
 3 what he's asking.
 4 Q So you're doing The Breakroom Blog to review
 5 products, right?
 6 A Right.
 7 Q Part of doing the reviews is that it increases
 8 your visibility on the Internet, right?
 9 A Right.
 10 Q Helps drives sales, right?
 11 A It helps dr- -- it brings awareness for our
 12 brand, correct.
 13 Q And, as a result, you mentioned organic
 14 searches. And so the jury's aware, can you tell
 15 us what organic searches mean?
 16 A It's traffic coming to your web site.
 17 Q Okay. So the more content you have, the more --
 18 the higher results you're going to -- you're
 19 going to come back on in Google searches
 20 organically, right?
 21 A That's correct.
 22 Q Okay. So there's a benefit to reviewing more
 23 products. They increase the visibility of BTOD,
 24 right?
 25 A I would say that's fair, yes.

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1 Q Okay. And the more visibility it has, the more
 2 it drives product sales, right?
 3 A Yes.
 4 Q Okay. Okay. With respect to the YouTube, you
 5 mentioned YouTube videos. Okay? So those are
 6 two aspects. We've got The Breakroom Blog and
 7 we have YouTube. Are there any type of other --
 8 you can call it marketing, you can call it
 9 reviews, public comment, whatever -- however you
 10 want to describe it, because there's a number of
 11 different ways to do it. Is there anything else
 12 like that that you operate?
 13 A I mean, just normal social channels, but we're
 14 mostly focused here on the blog and on YouTube.
 15 But we -- you know, we have commented on other
 16 social channels.
 17 Q Okay. But -- and I guess on the social
 18 channels, they're -- they're -- it's not like --
 19 is it fair to say that it's not like The
 20 Breakroom Blog where it's -- it's, like,
 21 something you host?
 22 A Yeah. We're not -- I think I know what
 23 you're -- we're not -- there's not another
 24 site like The Breakroom Blog, you're saying?
 25 Q Correct. It's, like, wholly independent of

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1 BTOD.com?
 2 A No, no.
 3 Q Because, I mean, it's pretty clear from this;
 4 it's like The Breakroom Blog falls underneath
 5 BTOD?
 6 A We want to keep it all connected to make sure
 7 that everybody knows who we are. We're not
 8 trying to hide that there's an educational
 9 component to push people to our Ecommerce site.
 10 We're -- we're very clear that we're the same
 11 brand.
 12 Q Okay. I'm going to hand you what's marked as
 13 Exhibit 4. I think it's all one. And it's
 14 actually double sided.
 15 I'll give you that; there you go.
 16 THE WITNESS: There's so much content
 17 here.
 18 MR. KERLIN: That's all right. I only
 19 have one extra copy.
 20 MR. BATES: That's fine.
 21 THE WITNESS: It really doesn't print
 22 very well.
 23 MR. KERLIN: No. It's a real
 24 challenge to -- to print web sites.
 25 MS. TOY: Paul, you've given me one

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1 with writing on it. Did you --
 2 MR. KERLIN: Okay.
 3 MS. TOY: Is this your -- is this the
 4 one that you want?
 5 MR. BATES: Probably.
 6 MR. KERLIN: Oh, yeah, it is.
 7 MR. BATES: It says PBK copy.
 8 MR. KERLIN: Thank you.
 9 MS. TOY: Uh-huh.
 10 EXAMINATION
 11 BY MR. KERLIN:
 12 Q Exhibit 4, it's a document I've handed to you.
 13 Do you recognize this document?
 14 A I do.
 15 Q Okay. And it's a printout of a web site that
 16 I've done. Do you recognize what web site that
 17 I tried to print out?
 18 A It's our web site --
 19 Q Okay.
 20 A -- BTOD.com.
 21 Q All right. And is this the type of content
 22 that -- that -- that BTOD puts out?
 23 A Yes. We put out best of lists.
 24 Q Okay. And this one specifically, it says the
 25 nine best adjustable standing desks for 2020.

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1 Do you see that?
 2 A Yes.
 3 Q Okay. And it looks like, it says, Greg
 4 Knighton; that's you as the author?
 5 A That's correct, yes.
 6 Q Anybody else have any input in this?
 7 A No one else has input in this list, no.
 8 Q Okay. And like I -- like I mentioned, it's
 9 double sided, so if we go to the -- it's the
 10 bottom of the second page, which is going to be
 11 the back of the first page. It says, best
 12 standing desk for 2020. Do you see that?
 13 A Yes.
 14 Q Okay. And then it's got a list of 13 -- well, I
 15 guess it -- I guess there's nine that are in the
 16 list. Is that right?
 17 A That's correct.
 18 Q Okay. So the first one is NewHeights XT. Who
 19 sells NewHeights XT?
 20 A We sell NewHeights XT, as well as a long list of
 21 dealerships, Amazon. I think Wayfair has it.
 22 Quite a few -- quite a few web sites.
 23 Q Okay. But, specifically, that's one product
 24 that your company sells. Is that correct?
 25 A We do sell that product, yes.

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1 Q All right. And then if we go to the next page
 2 and look at the second on the list, it's got
 3 VertDesk v3. Do you see that?
 4 A Yes.
 5 Q Okay. And that's your branded product, right?
 6 A That is our private label product.
 7 Q So you definitely sell that one --
 8 A Yup.
 9 Q -- correct?
 10 A Yes.
 11 Q Okay. And if we look at those top two, those
 12 are the only two that got rankings in the 80s.
 13 Is that correct?
 14 A Yes, that's correct.
 15 Q Okay. Next one we have, the Xdesk Terra 1.
 16 That's my client's product?
 17 A That's correct.
 18 Q And we'll be talking about that some today. And
 19 then it continues on down. 6 is the EvoDesk,
 20 which is also my client's product, which
 21 we'll -- we'll have some discussions about as
 22 well. But the top two are the ones that you
 23 sell, right?
 24 A Yes.
 25 Q Okay. And then if we go to page four, you'll

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1 note that the videos don't print out at all, so
 2 there's kind of a blank there. And it says,
 3 compare the nine best standing desks for 2020.
 4 And it has NewHeights, followed by VertDesk are
 5 the top two. And it has a numerical ranking
 6 system. Do you see that?
 7 A Yes.
 8 Q Okay. How did you come up with the numerical
 9 ranking system?
 10 A Are we referring to the actual rank of the
 11 products?
 12 Q So what I'm referring to -- just so that we're
 13 clear -- is on page four of Exhibit 4,
 14 underneath compare the nine best standing desks
 15 for 2020; if we, for instance, go to rank number
 16 one, NewHeights XT for assembly, NewHeights gets
 17 an 8.2. How did you arrive at the 8.2?
 18 A I arrived at the 8.2 through my process of
 19 assembling the table.
 20 Q Okay. And I'm guessing, since you have metrics
 21 for all these different -- the different desks
 22 underneath it, that there's some type of policy
 23 or written procedure that you have as far as how
 24 you come up with a particular ranking. In other
 25 words, a one might have a certain criteria and

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1 a -- I'm guessing, is it on a scale from one to
 2 ten?
 3 A Correct.
 4 Q Ten being the highest?
 5 A Yes.
 6 Q Okay. Some type of written criteria about how
 7 you arrive at that number? Is there any type
 8 of -- of written policy or process that you have
 9 for how you come up with, under assembly, a
 10 numerical ranking?
 11 A We -- I don't -- I'm the only one doing this, so
 12 there isn't a written formal policy that's on
 13 record for creating these.
 14 Q For any of them. So that -- is that true for
 15 assembly, stability, electronics, and capacity?
 16 A Right.
 17 Q Okay. And when you said you're the only one who
 18 does these, I just want to make sure we're
 19 clear. With respect to reviewing standing desk
 20 products for your company, are you the only one
 21 that does the reviews?
 22 A I am the only one.
 23 Q No one else has input on those?
 24 A No one has input on these -- on electric
 25 standing desks. I am the only person who

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1 reviews them.
 2 Q Okay. So we don't have a written policy. Why
 3 don't you have a -- why don't you write down
 4 your process? I mean, it seems like it's
 5 important that you'd -- would you agree with me
 6 it's important to compare the products on a
 7 similar basis?
 8 A I mean, I have -- I have systems that I know
 9 that I follow for certain things. I mean, if
 10 you wanted to talk about something specific,
 11 it's only me doing it, so I'm not delegating the
 12 task.
 13 Q Okay. Do you have, like, a rubric or any type
 14 of a -- well, I guess we'll just -- we'll start
 15 with what your system is. So when you decide
 16 you're going to review the NewHeights XT, how do
 17 you arrive at an assembly score of 8.2?
 18 A I mean, I go -- basically, these numbers are --
 19 it's a top ten -- top down mentality when we
 20 look at this stuff. So I look at what is
 21 considered to be the easiest. And you'll notice
 22 that my list doesn't include any tens because I
 23 don't believe anything is perfect. But it's top
 24 down. So whatever is the easiest that I've
 25 reviewed holds the top score, which is a

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1 ProDesk 60. And it's well-documented in that
 2 review why that's the easiest.
 3 Q So between the ProDesk with the 9.3 and the
 4 NewHeights XT with an 8.2, how is there a
 5 difference of -- of one between those two?
 6 A So I would base that off of my experience. It
 7 is certainly my opinion with this. I'm -- I'm
 8 basing that off of things that I would feel
 9 would be considered pain points after -- you
 10 know, as you review a lot of these desks and
 11 assemble a lot of desks, you have a good
 12 familiarity of how things go together and how
 13 easily they go together.
 14 Q Okay. With respect to -- I'll jump to the last
 15 column, capacity. How do you arrive at the
 16 capacity?
 17 A So the capacity is something that's based on a
 18 manufacturer's specification. So if a
 19 manufacturer states a number, that is their
 20 number that they have for their capacity.
 21 Q So you don't individually test the capacity. Is
 22 that correct?
 23 A I do individually test capacities.
 24 Q Okay. But the score here doesn't reflect your
 25 testing?

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1 A It does not.
 2 Q Where does that get incorporated? Is that in
 3 the individual review --
 4 A Individual --
 5 Q -- of the products?
 6 A -- reviews.
 7 Q Just so we don't talk over each other.
 8 A All right.
 9 Q Okay. So the score as it's here is simply based
 10 upon what -- what -- what the manufacturer of
 11 these desks holds it out as far as the capacity.
 12 Is that --
 13 A So these scores are pulled from each individual
 14 review. So if you wanted to see where these
 15 scores are coming, they're coming from the
 16 individual reviews. They're brought and -- onto
 17 the big list and then ranked accordingly off of
 18 the average of all of the scores that I've
 19 provided.
 20 Q Okay. But I just want to make sure I
 21 understand, like, where you have a nine here, so
 22 let's say I'm a customer and I'm coming here and
 23 I'm looking to buy a product. And I'm going to
 24 buy a product that can lift the most.
 25 A Uh-huh.

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1 Q I've got, I don't know, four or five monitors.
 2 I'm a stock trader or something. I need -- it's
 3 going to have to lift the most. If I look at
 4 your capacity, it would seem like EvoDesk or
 5 UPLIFT are the -- or, I should get one of those
 6 two. Is that right?
 7 A If you want to get something that lifts the most
 8 and it's guaranteed by the product manufacturer
 9 brand selling --
 10 Q Uh-huh.
 11 A -- yes.
 12 Q Okay. And when you test it for capacity, you --
 13 did you test to make sure that the capacity that
 14 was listed by the manufacturer could be met by
 15 the product?
 16 A Yes.
 17 Q And what if it didn't? How is that reflected in
 18 here?
 19 A Then -- then it -- if it doesn't meet the
 20 capacity by the manufacturer, then the score
 21 would be adjusted accordingly based on how all
 22 the other scores are ranked.
 23 Q Okay. Let's talk about electronics. What goes
 24 into electronics?
 25 A Again, it's the same -- that is the same

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1 concept, so it's a top down mentality. I look
 2 at, basically, what is the best. And you can
 3 see that the Xdesk Terra scored the best here.
 4 They use Linak. I feel that's the best. And
 5 that's without question.
 6 Q And then if we're getting back to your list of
 7 the top nine as far as the numbers, so I see
 8 kind of down here where you have compare them,
 9 and it's got the four columns, assembly,
 10 stability, electronics, capacity. And you have
 11 a score for each, right?
 12 A There should be more. It looks like it cut off
 13 the rest of the --
 14 Q Oh, I see. And so is it an aggregate of all
 15 those --
 16 A It's an average, yes.
 17 Q It's an average of them?
 18 A It's an average of them.
 19 Q And then -- I mean, I guess you multiply by 10
 20 to get to 85 out of 100 for the NewHeights XT.
 21 Is that how --
 22 A That -- right, that would be -- right, exactly.
 23 I mean, that's a --
 24 Q 8.5 --
 25 A Yeah, if you --

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1 Q -- out of ten?
 2 A Right.
 3 Q Got it. Okay.
 4 And it looks like with respect to the
 5 Terra -- and we'll talk about this more in
 6 detail when we get to the specific posts -- but
 7 your primary -- where they scored -- where that
 8 product scored the lowest was stability,
 9 correct?
 10 A That's correct.
 11 Q Okay. In fact, it's the second to lowest out of
 12 all the desks you reviewed of these nine?
 13 A Yes.
 14 Q Okay. I want to talk a little about K & A. How
 15 big is their manufacturing facility?
 16 I can help you out. I can be a little
 17 more specific. But do you have an idea about
 18 how many square feet their -- their facility is?
 19 A I -- I do not know for sure what the exact
 20 square footage is.
 21 Q And, again, I'm not asking exact. Can you give
 22 an idea -- how many employees work there, if you
 23 know?
 24 A To -- I -- I don't know. I don't know what
 25 his -- what my father's number of employees

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1 currently is.

2 Q Okay. And I'm not asking currently. Let's say

3 when you worked there, about how many employees

4 did he have?

5 A Oh, God, I don't know.

6 Q Did he have more than 100?

7 A No.

8 Q Okay. More than 50?

9 A He could.

10 Q Okay. Does he make products other than the

11 VertDesk v3 that you brand and sell?

12 A So the Duke would be one.

13 Q Got that. Okay. That's one that --

14 A Technically --

15 Q Okay.

16 A -- the VertDesk converter would be another one.

17 Q Okay. So they make all three of -- they being

18 K & A -- make all three of the products that

19 are branded by -- by BTOD?

20 A I -- I wouldn't -- see, I think the thing that's

21 confusing is -- is, could you clarify what --

22 what constitutes a manufacturer? What

23 constitutes making something, so I can know for

24 sure that I'm on the right page.

25 Q Well, I mean, I'll just -- and I'm not trying to

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1 be a smart about it, but, I mean, you're --

2 you've told me you're the expert on it. So I'm

3 kind of deferring to you a little bit on this.

4 And you've referred to them as the OEM, which I

5 understand it to mean, at least in the normal

6 manufacturing industry, to be original equipment

7 manufacturer.

8 A Okay, right.

9 Q Okay. And so you had said that K & A

10 Manufacturing, Inc., was the OEM for

11 VertDesk v3, right?

12 A Right.

13 Q Okay. So I'm assuming they manufacture your

14 desk. I mean, is that accurate?

15 A For the desk, correct; yes.

16 The reason I ask is because the

17 converter. So the converter is something that

18 comes from another manufacturer, Knape & Vogt,

19 but, in the world of what we're deeming to be

20 manufacturers, it becomes kind of cloudy. So,

21 you know, what your -- I don't know what your

22 interpretation of it is. Do we consider Xdesk

23 to be a manufacturer or Evodesk? So I can

24 understand.

25 Q Sure. So you're familiar with my client, right?

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1 I mean, you're familiar with -- with Xdesk?

2 A Yeah.

3 Q Okay. Do you understand that they make, like,

4 the desktop for their products; like, the actual

5 surface?

6 A Which one do they make?

7 Q We'll start with the Terra. Do you know that

8 they manufacture part of the aluminum frame on

9 the Terra?

10 A Are they -- by -- could you -- I just need to

11 know what that actually means. Are they

12 actually producing the aluminum or cutting

13 material?

14 Q See, I really want to know what you know, and

15 not kind of tell you what I know. So I'm just

16 wondering what you know about my client and --

17 and -- and what they make or don't make.

18 A I just think it's very confusing in our industry

19 what people consider to be manufacturers and

20 what an actual manufacturer is. And so that's

21 why I want to make sure when I answer today that

22 I'm being honest and straightforward and not

23 giving you --

24 Q Sure.

25 A -- what -- what could be -- it's -- again, it's

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1 very -- there's blurred lines here on what we

2 could technically be considered the manufacturer

3 of the VertDesk; however, I don't believe that

4 we are.

5 Q Okay. I understand and appreciate that. Yeah.

6 No, I understand that there can be -- some

7 people can think different things about what it

8 means to be a manufacturer, just like they're,

9 you know -- some people in the industry will

10 refer to the frame and some will refer to the

11 legs as two separate things. And I understand

12 what your belief is.

13 A Okay. On which part?

14 Q With respect to the legs and the frame.

15 A Okay.

16 Q Okay. But -- and with respect to: Your company

17 doesn't manufacture any adjustable height desks?

18 A We -- correct.

19 Q Okay. Roughly, how many adjustable height desks

20 do you sell for K & A?

21 THE WITNESS: Is that something that I

22 have to answer?

23 MR. KERLIN: If you know. I mean --

24 THE WITNESS: Does this not go to the

25 financial side of what we're --

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1 MS. TOY: Well, I think he's --
 2 MR. KERLIN: I'm not asking how much.
 3 I'm not asking what you make. I haven't asked
 4 what you're --
 5 MS. TOY: He's asking quantity; how
 6 many --
 7 THE WITNESS: Okay. I just want to
 8 make sure because when I was -- when we talked,
 9 we weren't talking about financial stuff, so I
 10 just want to make sure we're on the same page.
 11 EXAMINATION
 12 BY MR. KERLIN:
 13 Q I'm not asking about -- I mean, while we're
 14 still on it. So my first question would be:
 15 How much of their product do you sell? Just
 16 numbers.
 17 A How much --
 18 Q Like, desks. Like, how many of -- how many of
 19 the VertDesk v3s that they manufacture and you
 20 sell.
 21 A From day one? Or are we talking, like, last
 22 year?
 23 Q Last year.
 24 A So for -- for their product, for the VertDesk,
 25 it would be probably in the neighborhood of

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1 about 3,000, give or take.
 2 Q Okay. Just to finish up, before we move on to
 3 some of the specific reviews, but with respect
 4 to your company, BTOD, you earn revenue through
 5 sales, right? You sell office products. Are
 6 there any other source of revenue that --
 7 that -- that -- that BTOD has?
 8 A I think that there's -- there is a few videos
 9 that may be monetized on YouTube that just
 10 weren't caught as monetizing because we were
 11 accepted into their program. And it just
 12 autotags all of the videos. And so I'm sure
 13 they're some that are there. It's very small.
 14 And I think that we still have some affiliate
 15 things on the blog that are potentially still
 16 there.
 17 Q Affiliate -- I'm sorry. I didn't get that.
 18 A So, like, if you were to come to a page, and it
 19 was a product, and you clicked a link, and went
 20 to Amazon and bought something, we would receive
 21 money for that purchase. But that's not our
 22 business model.
 23 Q Okay.
 24 A It's something we tried and it could very well
 25 still be on there for some potential products.

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1 Q So just so I'm -- so that would kind of be,
 2 like, almost like a referral? I mean, they're
 3 reviewing -- it's from your product linked -- I
 4 mean, it's from your review linked to someone
 5 else's product. And then Amazon pays you or the
 6 company --
 7 A Amazon would pay.
 8 Q Have you ever received any type of payment for
 9 any of your reviews?
 10 A No.
 11 Q Have you ever solicited any type of payment for
 12 review?
 13 A For someone to review my stuff?
 14 Q Yes.
 15 A No.
 16 Q Okay. And I understand you have a showroom, but
 17 is it accurate to say that all your sales are
 18 online?
 19 A Actually, we do sell some things locally, but
 20 it's a very small percentage.
 21 Q Okay. Less than five percent?
 22 A Yes.
 23 Q Okay. Is it fair to say that you only do
 24 reviews of categories of products that you sell?
 25 A Could you rephrase that? Just so I understand

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1 for sure that I know what you mean.
 2 Q Sure. So one of the categories is adjustable
 3 desks, standing desks, right? So that's one.
 4 Office chairs might be another category. So I
 5 don't know all the categories you sell. But is
 6 it accurate to say that BTOD only reviews
 7 categories of products that they sell?
 8 A Yeah, I think that's fair.
 9 Q Okay. In other words, there aren't any
 10 categories or products that you don't sell that
 11 you're reviewing products for that would be
 12 unrelated to what you sell?
 13 A Right. Because I believe it's important that
 14 we're involved in what we're talking about.
 15 Q You said that you do all the reviews for
 16 standing desks. Has it always been that way?
 17 A For the standing desks, yes.
 18 Q Okay. All right. With respect to the standing
 19 desk, how many have you reviewed?
 20 A I would have to refer to the web site to see the
 21 actual number to be exact.
 22 Q So the jury has an idea of at least the
 23 magnitude, is it more than 10?
 24 A Yes.
 25 Q More than 20?

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1 A Yes.
 2 Q More than 25?
 3 A Yes.
 4 Q More than 50?
 5 A No.
 6 Q So somewhere between 25 and 50?
 7 A Yes.
 8 Q And those have all been done in the last --
 9 well, you said you started in February, so two
 10 years?
 11 A We -- we started in --
 12 Q Three years?
 13 A -- in January 2017. My first standing desk
 14 review was in February of 2017.
 15 Q So, three years; I'm sorry. So in three years
 16 you reviewed somewhere in the neighborhood of 25
 17 to 50 standing desks?
 18 A Correct.
 19 Q Is it possible for you to tell me all the brands
 20 of adjustable height desks that you've reviewed?
 21 A Like, the retailer selling? The -- like, for
 22 instance, VertDesk?
 23 Q Right.
 24 A I would have to, again, fall back on the blog
 25 to -- to verify that I got all of them. I

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1 wouldn't want to say this is, in fact, the
 2 number and then missed one, but --
 3 Q Okay. Describe for us the process or protocol
 4 for your approach to reviewing an adjustable
 5 height desk.
 6 A That's pretty broad.
 7 Q I want to know it all. I mean, you don't have a
 8 written one. So tell me what your process is.
 9 If it's not written down, I assume it's all up
 10 here, right?
 11 A So we want to -- you want to cover, from start
 12 to finish, of a complete --
 13 Q Review.
 14 A Okay. Do we have -- again, I would like to see,
 15 just again, so I don't miss anything, I would
 16 like to see a review, if you even had an Xdesk
 17 review, I'd look at that --
 18 MS. TOY: We can --
 19 THE WITNESS: -- as an example.
 20 MS. TOY: -- hook up the computer --
 21 THE WITNESS: Okay.
 22 MS. TOY: -- as you mentioned --
 23 THE WITNESS: Yeah.
 24 MS. TOY: -- in the hall.
 25 THE WITNESS: I mean, I can --

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1 MR. KERLIN: Well, for now, I just
 2 want to know -- I mean, he said he doesn't have
 3 a written --
 4 MS. TOY: Yeah.
 5 MR. KERLIN: He doesn't have a prep.
 6 He doesn't have a written protocol. He doesn't
 7 have a written process. I want to know when he
 8 walks in and starts reviewing a desk, I mean,
 9 it's something he's done 25 to 50 times.
 10 EXAMINATION
 11 BY MR. KERLIN:
 12 Q I assume you know it, right?
 13 A Yeah.
 14 Q I'm not trying to be coy. We're going to go
 15 over specific reviews.
 16 A Okay.
 17 Q Right now I just want to know, here's my
 18 process. Because I don't have, like, a -- a
 19 policy or process that I can show the jury and
 20 say --
 21 A Sure.
 22 Q -- okay, here's his -- here's his uniform
 23 approach. It's just kind of what you say. So I
 24 just want to hear what -- how you describe it.
 25 A So bas- -- so it starts with a product. So you

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1 bring a product in. You -- you get it in, and
 2 it arrives via the carrier that it comes in.
 3 And the first thing that we do -- or, I should
 4 say me. The first thing I do is I look at the
 5 packaging.
 6 Q Okay. And I'll also -- I mean, I guess we can
 7 go ahead and we'll just jump to it and I'll mark
 8 it. Exhibit 5.
 9 Have you seen that document before?
 10 A Yes.
 11 Q Okay.
 12 A Are we going to be able to take a break for
 13 lunch?
 14 MR. KERLIN: Sure. Yeah. I want to
 15 hit this real quick and then we'll come back to
 16 it. Okay? This isn't going to take real long,
 17 unless you really need a -- I mean, do you need
 18 a break right now?
 19 THE WITNESS: I mean, we had talked
 20 about -- wasn't the food coming at 12:30?
 21 MR. KERLIN: I think 1:00 or so.
 22 MS. TOY: 1:00.
 23 THE WITNESS: 1:00? Okay. Perfect.
 24 Yeah. Let's go.
 25 EXAMINATION

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1 BY MR. KERLIN:
 2 Q Okay. All right. So you've seen this document
 3 before. Flip to the last page --
 4 A Okay.
 5 Q -- if you will. It's got something called a
 6 verification. Did you ever sign one of these
 7 documents? Did you sign a verification?
 8 A Yes.
 9 Q Okay. I'd make a request that --
 10 MS. TOY: We sent that to you. And
 11 it's -- I sent that to Mark. I'm assuming he's
 12 forwarded it on to you? So I can pull it up and
 13 get it to.
 14 MR. KERLIN: I haven't gotten one. I
 15 would like to have one so I can, at least, have
 16 him confirm it's his signature today, if
 17 possible. If you send it to me, I can ask if
 18 they can print it here; do it over lunch.
 19 MS. TOY: I can send it to Justin.
 20 MR. KERLIN: Okay.
 21 MS. TOY: Do you want to just do it
 22 over lunch?
 23 MR. KERLIN: Yeah, that's fine.
 24 MS. TOY: Okay.
 25 MR. KERLIN: That's fine. Tell you

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1 what. Let's see if lunch is here. This wasn't
 2 going to be real long. We can wait.
 3 THE WITNESS: Okay.
 4 THE VIDEOGRAPHER: We're off the
 5 record.
 6 (Luncheon recess from 12:59 through 1:36 p.m.)
 7 THE VIDEOGRAPHER: We are back on the
 8 record at 1:36.
 9 EXAMINATION
 10 BY MR. KERLIN:
 11 Q Mr. Knighton, we're back after the break for
 12 lunch. Are you ready to continue?
 13 A I am.
 14 Q Okay. Well, when we left off, we were talking
 15 about Exhibit No. 5, which I think you might
 16 still have over there. It's the answers to --
 17 responses and answers to request for production
 18 and interrogatories. Do you see that document?
 19 A I do.
 20 MR. KERLIN: Okay. Well, and I'll
 21 ask -- I'm fine with just appending this to the
 22 back? Or we can do it as a separate exhibit?
 23 Whatever you want to do.
 24 MS. TOY: It's your call.
 25 MR. BATES: I think you can make a

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1 record that you appended it to the back. That
 2 would be fine.
 3 MS. TOY: Yeah.
 4 MR. BATES: I'm fine with that.
 5 EXAMINATION
 6 BY MR. KERLIN:
 7 Q Okay. We're going to add -- it's verification
 8 that has been signed. And it's identified as
 9 page 13 to the defendants Beyond The Office Door
 10 and Greg Knighton's responses to plaintiff's
 11 first set of interrogatories.
 12 Could you add that -- put that at the
 13 back of the page. Before we get there, I do
 14 want to ask you: Is that your signature?
 15 A It is.
 16 Q Okay. And you understand that by signing that,
 17 you're representing that -- or, you're verifying
 18 that the information contained in the
 19 interrogatories are true and correct. Is that
 20 accurate?
 21 A Yes.
 22 Q Okay. Let's go through these real quick. So if
 23 we get to page four, there's some ob- -- there's
 24 some objections beforehand, but, on page four,
 25 it starts, document requests. Okay. And the

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1 first one asks for documents of communications
 2 reflecting the testing, inspection, or analysis
 3 you performed on the Evodesk or NextDesk Terra.
 4 Do you see that?
 5 A Yes.
 6 Q Okay. There's some objections. And then
 7 it says, subject to the objections, it
 8 has -- number one is BTOD 000010 to BT --
 9 BTOD 12, 000012. See that?
 10 A Yes.
 11 Q Okay. Two is -- it looks like a link to a web
 12 site. Is that a link to the review for the
 13 Terra desk?
 14 A That is the problems post.
 15 Q That's the what?
 16 A Problems post.
 17 Q Correct. Okay. And it looks like it
 18 has 2017/11/01.
 19 Is that the date it would have been
 20 posted?
 21 A Yes.
 22 Q And then three is -- it looks like it's the top
 23 six problems with Evodesk. And it looks like it
 24 was published on January 16, 2018. Is that
 25 accurate?

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1 A Yes.

2 Q Okay. Anything else you have with respect to

3 testing analysis or investigation of those two

4 products, the Evodesk or NextDesk Terra?

5 A It should probably state the review, shouldn't

6 it, for testing?

7 Q Well, you identified a link to the web site.

8 A Okay.

9 Q Is that what you're referring to?

10 A Yeah.

11 Q So it's got those two. Each -- so it has the

12 review for the eight problems with the NextDesk

13 and the review for the six problems?

14 A Then those are the problems. There are full --

15 full reviews for each product.

16 Q Okay. With respect to any document for testing,

17 inspection, or analysis, I've got three pages of

18 documents in the two links. Is that it?

19 A And those -- I would say the two additional

20 review links for those products on the blog,

21 that's on the web -- on the web site.

22 Q So it's more than what's here. Is that what

23 you're telling me?

24 A Yes.

25 Q Okay. Are there only two additional posts

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1 regarding the Terra and Evodesk?

2 A With regards to testing or analysis of

3 the inspe- -- like, inspection testing.

4 Q Yes.

5 A That would be all on the review page.

6 Q Okay. And I know I have the one for the Terra.

7 And so I'll -- I'll show that to you. I think I

8 have the Evo as well. So I think it -- let me

9 know when we get those if those are the ones

10 you're referring to --

11 A Okay.

12 Q -- okay?

13 I'm going to mark what's -- I'm going

14 to hand you what's been marked as Exhibit 6.

15 Do you recognize Exhibit 6?

16 A I do.

17 Q Okay. There's red letters and numbering on the

18 bottom right. Do you see that? It says BTOD

19 and it starts at 000001?

20 A Yes.

21 Q Okay. These are documents. They were produced

22 by your counsel. The numbering scheme coincides

23 with the response for number one, the response

24 to the request for production. Okay? If we

25 turn to page 10.

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1 A Okay.

2 Q All right. So if we got -- and I'm going to

3 leave off the leading zeros. We got 10, 11, 12.

4 We got three pages.

5 A Okay.

6 Q What are these?

7 A These would be -- these would be the tests that

8 are performed for the reviews.

9 Q Okay. Okay. Who wrote this?

10 A I wrote this.

11 Q Okay. Anywhere on these two pages does it show

12 the date that these notes were made?

13 A It does not.

14 Q Do you know who took the pictures. I mean, this

15 is a picture. It's not a copy, right?

16 A I believe --

17 Did I take the picture and send it to

18 you? Or did we take it when we were together.

19 MS. TOY: I did not take that.

20 THE WITNESS: Okay. Then I took it.

21 EXAMINATION

22 BY MR. KERLIN:

23 Q Okay. When was that picture taken?

24 A Last week.

25 Q Okay. Other than these three pages that we're

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1 looking at, anywhere else do you have

2 documented -- you know, let me start over.

3 In addition to these three pages and

4 what's posted on your web site, are there any

5 other documents, notes, records, e-mails that

6 would include any of your testing, inspection,

7 or analysis of the Evodesk or the Terra desk?

8 A There -- there shouldn't be any more with

9 regards to that exhibit -- to the testing,

10 inspection, or analysis. I mean, we're -- I'm

11 still going through my e-mails. And I know that

12 the discovery request was fairly recent, so

13 I'm -- I'm trying to get as much stuff as I can

14 for you guys just in case there's anything

15 that's been missed, but I refer -- this, this

16 is, to my knowledge, what I currently have, yes.

17 Q Okay. When -- when you got done with your --

18 your testing or analysis, would you type up

19 your -- the handwritten notes that we're looking

20 at?

21 A I type up the full review. And this one is --

22 is big. This one's 4,000 words. It's a big

23 post.

24 Q Okay. Before it's posted, do you take this and

25 keep it anywhere other than in just a -- it

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1 looks like a steno pad?
 2 A No.
 3 Q Okay. Is that true for all of the standing
 4 desks that you've reviewed?
 5 A Yes.
 6 Q Okay. Did you e-mail Ryan any results or
 7 information that you gleaned from your analysis
 8 or testing of the Evodesk or Terra?
 9 A I don't believe so.
 10 Q Have you checked?
 11 A I -- I mean, I'm still going through my e-mails,
 12 so could I have potentially said, for instance,
 13 on here, the switch is encased in aluminum and
 14 looks nice? I could have. I'm not sure. To my
 15 knowledge, I don't believe I have. But I -- I
 16 should be able to find out literally everything
 17 I have from e-mail after my IT department gets
 18 involved and looks through everything in case
 19 something was missed.
 20 Q When do you -- when do you expect that's going
 21 to be completed?
 22 A I don't have an exact date; as soon as possible.
 23 MR. KERLIN: Okay. To the extent any
 24 additional documents are produced that are
 25 responsive to the requests, we'd reserve the

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1 right to question the witness about them.
 2 EXAMINATION
 3 BY MR. KERLIN:
 4 Q Okay. If we look at request for production
 5 number two, the response includes pages one
 6 to 12, so all of Exhibit 6 that I've handed you.
 7 And then it has BTOD.com. And then it has
 8 NextDesk's www.NextDesk.com. And then it has
 9 the Linak web site. Okay? What is on the --
 10 or, what from the Linak web site is relevant to
 11 this response? Why was it included here?
 12 A Let me just read it real quick.
 13 It was relevant due to one of the --
 14 give me just one -- the collision avoidance
 15 section of the problems posted referenced here.
 16 Q Okay. Is that the only part of the review or
 17 analysis and testing that it's relevant to?
 18 A It should be that whole section where it refers
 19 to collision avoidance. And I believe it also
 20 refers to the overload protection.
 21 Q Okay. So overload and anti-collision. Anything
 22 else?
 23 A I'd have to see the document just to verify it.
 24 Is that in this list? Is that in here?
 25 Q No. I mean, what -- what this asks for is, I

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1 want to know all the information that you relied
 2 upon in drafting the eight problems with the
 3 Terra desk.
 4 A Okay.
 5 Q All right?
 6 A Yeah. Sure.
 7 Q I mean, that's what it's seeking.
 8 A Okay.
 9 Q And what you've -- what -- what -- what you
 10 through your counsel has identified are the 12
 11 pages of documents that we marked as Exhibit 6?
 12 A Yes.
 13 Q Your web site, my client's web site, and the
 14 Linak web site. Anything else out there that
 15 you relied upon in producing that article?
 16 A Not to produce the article, no.
 17 Q Okay. I just want to make sure I know the
 18 universal documents we're talking about --
 19 A Sure.
 20 Q -- okay?
 21 And if we go back to Exhibit 6 and we
 22 look at them, tell me what the first page is.
 23 A Exhibit 6?
 24 Q Exhibit 6.
 25 A Oh, sorry, the both sides. I'm not very good

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1 with the legal term stuff here.
 2 Q Oh, no; no problem.
 3 A Okay. This exhibit here would be pertaining to
 4 the Evodesk and ensuring that they're not
 5 confusing their Evodesk with a NextDesk. And
 6 it's referring to how the frame functions, how
 7 the desk -- how the actual columns lift.
 8 Q Okay. And what's the date of this?
 9 A I'm not 100 percent sure if -- I mean, I'm
 10 not 100 percent sure based on what's here.
 11 Q Okay. Yeah. I mean, so how is this maintained?
 12 Like, where did this -- do you have this saved
 13 somewhere?
 14 A Yes.
 15 Q Okay. And on what type of system is it saved?
 16 A This one is saved -- it's saved on my computer.
 17 Q Any particular type? Did you save it as a PDF?
 18 Or is it saved in the native format?
 19 A I'm pretty sure it's saved as a .jpeg.
 20 Q Okay. When was that .jpeg created?
 21 A I would have to look. I don't know offhand.
 22 Q Okay. Did you create it the same day that you
 23 had the conversation?
 24 A Yes, this -- this was -- this is like a
 25 screenshot saved as a .jpeg off of a chat with

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1 the representative from Evodesk.
 2 Q Okay.
 3 A Like, I would assume they probably have records
 4 of this exact conversation as well.
 5 Q Okay. If we go to the next page. It looks to
 6 be similar. If we wanted to know the date that
 7 this -- this chat occurred, would we need to
 8 look at when the .jpeg was created?
 9 A I think this one is exactly the same. It looks
 10 like it's a duplicate.
 11 Q Okay. So one -- one and two are the same. Is
 12 that correct?
 13 A It appears so, yes.
 14 Q Okay. So there's one -- okay. That's -- takes
 15 care of that.
 16 We get to three. And it looks like
 17 you're chatting with Grover now. Same question.
 18 If we want to know when this was done, we'd have
 19 to look at the time the .jpeg was created?
 20 A Or you should be able to look at Evodesk, their
 21 chat log.
 22 Q When was the -- okay. What computer
 23 specifically did you save these .jpegs onto?
 24 Like, your personal computer? Or your office
 25 computer?

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1 A Yeah, so an office computer. So we have -- we
 2 have a -- we went from a server, moved to a
 3 cloud environment. The IT company moved a lot
 4 of those files. They moved these files with.
 5 Q Okay. Do you know when that occurred?
 6 A The transition to a cloud?
 7 Q Yup.
 8 A Transition to a cloud, when we moved in to our
 9 new building was the first week of January last
 10 year. And that's when we were fully up and
 11 running on the cloud.
 12 Q Okay. Did you -- do you know if when it was
 13 migrated from one location to another, if it
 14 altered any of the metadata?
 15 A I would rely on them to be the experts on the IT
 16 stuff, so I don't know. I would assume not,
 17 but, again, they're the experts.
 18 Q So is it -- is it true to say that it -- it no
 19 longer exists outside of the cloud?
 20 A Out --
 21 Q Is it -- let me ask it like this. Is it saved
 22 to your desktop somewhere? Or to a local
 23 directly on your computer?
 24 A It could -- it could very well be.
 25 Q Okay. And then, in addition to that location,

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1 you also think that it's been uploaded to the
 2 cloud somewhere?
 3 A Yes.
 4 Q Okay. When you went and found where it's
 5 located, these -- these documents that have been
 6 produced to us, or a printout of them, where did
 7 you find them?
 8 A Under the hierarchy of the files that was -- I
 9 believe it was under, like, blog, NextDesk, and
 10 they were -- they were saved in there.
 11 Q And that's on the cloud?
 12 A That's on the cloud.
 13 Q All right. So we get to page four, same
 14 question. Same -- is it fair to say for four
 15 and five that it's saved the same way. Is that
 16 accurate?
 17 A Absolutely.
 18 Q So it's going to be the same -- if we're trying
 19 to figure out when it was created, that's where
 20 we need to go and look?
 21 A Absolutely. But, like I mentioned, they should
 22 have access to these things. We have access to
 23 chats that we do, so they should have access to
 24 all this stuff as well. That company -- the
 25 Pure Chat company should save it.

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1 Q And so then we go to the -- to page six. Now,
 2 it's a little bit different. It's a little
 3 different layout. Do you know why it's a
 4 different layout than the others? I mean, it's
 5 a -- I call it a landscape?
 6 A I -- honestly, I can't tell you. I just -- I
 7 just print them as I can -- it's kind of like,
 8 you know, when we open this stuff up, and we
 9 look at your stuff you printed, it's the same
 10 concept. It's hard to print web site stuff on
 11 the pages, so --
 12 Q With respect to the name, this is the only one
 13 that I believe has a last name?
 14 A Okay.
 15 Q Is that just the way it was when you were doing
 16 the chat?
 17 A I haven't altered any of these things, if that's
 18 what you're asking.
 19 Q I'm just -- I'm just wondering because some of
 20 them don't have a last name. Actually, none of
 21 them do except for this one, and this one does.
 22 So it was --
 23 A I would go -- I would refer to -- to next for
 24 that information. I have no idea why they sign
 25 them that way. That would be -- that would be

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1 my assumption, though, is it's how those people
 2 are logged in is likely how they show their
 3 name, just based on how our stuff works.
 4 MS. TOY: And I think this -- sorry.
 5 MR. KERLIN: Sure.
 6 MS. TOY: This one's NextDesk versus
 7 Evodesk.
 8 THE WITNESS: That could be very well.
 9 MR. KERLIN: That's what I was -- I
 10 was going to ask him that next. Appreciate it.
 11 EXAMINATION
 12 BY MR. KERLIN:
 13 Q So pages one to five; did all of those
 14 communications pertain to your, I'll call it,
 15 investigation; your investigation of the
 16 Evodesk?
 17 A One through five?
 18 Q Yes.
 19 A These would be -- yeah, I mean, I would say so,
 20 with the exception of the overlap where we
 21 mention the Xdesk or the NextDesk.
 22 Q Is that -- can you refer me to -- or, refer me
 23 to the page you're referring to?
 24 A That was the first page where it's mentioned,
 25 I'm thinking you're confused with your more

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1 expensive NextDesk --
 2 Q Okay.
 3 A -- because that was the desk that was being
 4 advertised as chain driven. And so I was hoping
 5 that he was going to provide me with the
 6 accurate information.
 7 Q Okay. So going back to the first page, we have,
 8 chatting with Hayden. It says, visitor. You're
 9 the visitor. Is that right?
 10 A Yes.
 11 Q Okay. And your referring to, at the bottom,
 12 when it says, I'd hate to get it and have it be
 13 linear actuated versus chain drive. I'm
 14 thinking you're confused with your more
 15 expensive desk, NextDesk. Is that correct?
 16 A Yes, that's what you're referring to, yeah.
 17 Q But the information that you were -- you were
 18 eliciting or trying to elicit from Xdesk was
 19 information about the Evodesk. Is that correct?
 20 A That's correct.
 21 Q Okay. So then if we go to page six -- and this
 22 is, again, it's a chat between you, not just
 23 somebody commenting, but you specifically and
 24 Robert Potts, or at least that's what
 25 identified -- that's what's identified on the

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1 chat.
 2 A Okay. On page six you said?
 3 Q Yeah.
 4 A Okay.
 5 Q And this one is, you're asking about the Terra
 6 desk. Is that what you're asking about?
 7 A Yes.
 8 Q Okay. Okay. On this, it says, hi, Robert. I
 9 was just chatting with Christopher.
 10 Who's Christopher?
 11 A Christopher, I believe, is a man- -- was in
 12 management, is in management at Next.
 13 Q Why do you believe he's in management at Next?
 14 A I believe he's in management at Next because
 15 when I received my desk, he -- when I received
 16 my desk, I received it, a foot was bent, and I
 17 reached out trying to get a foot that wasn't
 18 bent for the review. I wasn't really getting
 19 anywhere. And so I called again and asked for
 20 management to get one. And he was the person
 21 who called me back.
 22 Q Okay. Did -- did he -- did Christopher himself
 23 identify himself as I'm -- I'm with management?
 24 A He -- I -- to my recollection, I cannot remember
 25 that specifically that he said I'm with

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1 management, but that is, you know, a phone call
 2 that took place almost three years ago, so --
 3 Q Okay. Is the reason why you think he is with
 4 management is that when you previously called,
 5 you said you wanted someone in management to
 6 call you back? So you made the assumption if
 7 Christopher called, then Christopher must be
 8 with management?
 9 A That could -- I guess that could be potentially.
 10 I --
 11 Q Okay. But is it accurate -- so you don't have a
 12 recollection one way or another? I just want to
 13 make sure we're clear. I mean, if you don't
 14 remember it, that's fine.
 15 A Yes.
 16 Q But do you recall Christopher -- the person who
 17 identified himself as Christopher saying, I'm
 18 with management?
 19 A I do not remember that he said I was with -- I
 20 am with management, but he -- I don't -- I know
 21 that he had the ability to expedite my
 22 replacement foot and threw in the glides at no
 23 charge and was more than willing to facilitate
 24 and help.
 25 Q Did he -- do you recall if he said -- if he

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1 provided any other information that would
 2 indicate he had a high level of responsibility
 3 within the company?
 4 A I mean, I asked them to send -- to have someone
 5 from management call. I believed that he was
 6 with management, but I cannot for 100 percent
 7 sure know that --
 8 Q Again, I'm just saying, I want to know what he
 9 told you, to the best of your ability to
 10 remember it. Did he ever say, I -- you know,
 11 I'm in charge of X or I have --
 12 A It's -- it's been almost three years. I -- it's
 13 a call that happened --
 14 Q Okay.
 15 A -- almost three years ago, so --
 16 Q Did you make any type of contemporaneous
 17 errec- -- or, contemporaneous record around the
 18 time you had the call, at or around the time you
 19 had the call with Christopher about the call you
 20 had with Christopher?
 21 A What?
 22 Q A record. Did you write it down? Or make a
 23 note? Or send an e-mail?
 24 A I don't have a note today that I've held through
 25 that time. I -- I can't tell you for certain

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1 that I ever made a note on it; I don't remember.
 2 Q From what phone did you call when you called
 3 Christopher?
 4 A I called from our office phone.
 5 Q And what number is that?
 6 A It should be a local -- it should be our local
 7 number. It should be a (715) 803-4041.
 8 Q Okay. So Christopher calls you back, makes the
 9 arrangement for you to get the foot that was
 10 bent so we get you a new foot. Any other
 11 conversation or discussion with Christopher?
 12 A It's -- it's referenced in the post that we
 13 discussed what's now being referenced in this
 14 again. And that's what I -- that's my -- I go
 15 back to that for my source.
 16 Q Okay.
 17 A I mean, I --
 18 Q Other than -- let me just ask the question.
 19 A Okay.
 20 Q Other than what's written on your post --
 21 A Yup.
 22 Q -- is there anywhere else that you would have
 23 any type of documentation of your conversation
 24 with Christopher?
 25 A No. But I -- I just want to make it clear that

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1 what we're discussing here being that they're --
 2 they're misadvertising the desk. And I think --
 3 I think that's a bigger issue here, if we're
 4 considering what we're -- the bigger picture
 5 what we're talking about, isn't it?
 6 I'm being told -- I'm being verified
 7 from a director in this chat that even after
 8 I've received the components, that the uprights
 9 of the NextDesk Terra are steel or aluminum.
 10 And they say, they are aluminum with some steel
 11 parts inside. That's significant to me.
 12 MR. KERLIN: I'm going to object to
 13 all that, and ask it be stricken from the record
 14 as -- as being nonresponsive. I asked you a
 15 specific question. And I'm not trying to be
 16 difficult. But the way it works is that I ask a
 17 question, and your counsel can object or
 18 instruct you not to answer. But I wasn't asking
 19 for a narrative there.
 20 EXAMINATION
 21 BY MR. KERLIN:
 22 Q So you mentioned in your answer, though, that
 23 Christopher was a director. What made you think
 24 he was a director?
 25 A I didn't -- I didn't say that specifically.

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1 This Robert Potts confirmed, I just verified
 2 that with my director after I'd asked if the
 3 uprights of the NextDesk Terra are steel or
 4 aluminum. He said, they are aluminum with some
 5 steel parts inside.
 6 Q Okay. Let's finish with the document requests.
 7 If we get to request for production number six,
 8 just to close this out, which is on page number
 9 five, it asks for all documents or
 10 communications that support your contention that
 11 you left a message for management, that someone
 12 at NextDesk acknowledged the information on
 13 their web site was incorrect, and y'all
 14 referenced that page we were just talking about.
 15 Okay? So that's it, right? There's nothing
 16 else out there? No phone records, no anything
 17 else?
 18 A I do not have phone records, no.
 19 Q Okay. Okay. Okay. Okay. Are you familiar
 20 with what's called search engine optimization?
 21 A Yes.
 22 Q What is it?
 23 MS. TOY: Wait a second. I'm going to
 24 object. I believe this was something that's
 25 outside the scope of this present lawsuit.

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1 MR. KERLIN: Yeah. I'm --
 2 MS. TOY: It's defamation of lawsuit.
 3 MR. KERLIN: Yeah, I'm not asking
 4 about the negative SEO right now. I'm just
 5 asking in general search engine optimization.
 6 MS. TOY: Okay.
 7 MR. KERLIN: So -- and I'll be more
 8 specific.
 9 EXAMINATION
 10 BY MR. KERLIN:
 11 Q You mentioned earlier -- you mentioned something
 12 called organic search results and that your
 13 organic search results had improved since you
 14 started posting content in 2017.
 15 Is that correct?
 16 A That's correct.
 17 Q Okay. So there's a couple different types of
 18 search results, right? I mean, there's one that
 19 we've referred to as organic. And my
 20 understanding is that organic -- an organic
 21 search result, you just type in, for instance,
 22 VertDesk v3, and it will link -- it'll show the
 23 results for web sites that Google thinks is most
 24 responsive to your request.
 25 Is that generally accurate?

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1 A Are you talking -- rephrase that one more time.
 2 Was it pretty --
 3 Q Let's say -- let's say I wanted to go find
 4 your -- your -- your product.
 5 MS. TOY: Can we go off the record for
 6 a second?
 7 MR. KERLIN: Yeah.
 8 MS. TOY: I just want to figure out
 9 where this line of questioning is going.
 10 THE VIDEOGRAPHER: We are off the
 11 record.
 12 (Recess from 2:05 through 2:08 p.m.)
 13 THE VIDEOGRAPHER: We're back on the
 14 record at 2:08.
 15 EXAMINATION
 16 BY MR. KERLIN:
 17 Q Rather than me say it, because I probably, you
 18 know, I'm not involved in -- in -- in
 19 E-retailing or Ecommerce, other than when I
 20 purchase something from Amazon. But are you
 21 familiar with search engine optimization?
 22 A I am.
 23 Q Okay. And can you -- can you explain it just
 24 kind of on a general basis to the jury?
 25 A Search engine optimization is a, I guess, a way

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1 to optimize your web site's pages to show highly
 2 in search. It's a lot deeper than that,
 3 especially --
 4 Q Yeah.
 5 A -- in the way Google operates now. They're very
 6 sophisticated.
 7 Q Okay. Do you have a general understanding of
 8 how Google search results or search rankings
 9 work?
 10 A I mean, there's -- there's a whole host of
 11 things that go into it. They have -- I don't
 12 even know what the ranking signals are at now.
 13 It's hundreds of them.
 14 Q Okay. Was it your observation when you -- as
 15 you -- BTOD's Breakroom Blog posted more
 16 content, and that content was linked to by
 17 other -- other content providers, that BTOD's
 18 content moved up the Google rankings?
 19 A I think it has a lot more than -- there's a lot
 20 more involved than that. As far as -- are you
 21 asking if other third party sites linked to our
 22 content, if it helps us?
 23 Q Well, not even so much like that. I'm just
 24 saying, as a business owner who's an Ecommerce
 25 retailer, is it good to have your products

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1 ranked highly on Google organic searches?
 2 A Absolutely.
 3 Q Is that something you strive for your products?
 4 A For our products?
 5 Q To have those high search rankings?
 6 A I think that anything that we put on the site,
 7 we would hope that it would rank. I mean, the
 8 goal is to be found.
 9 Q If your products fell in rankings, let's say to
 10 the second or third page of organic searches,
 11 would that have an impact on your business?
 12 A I think so.
 13 Q Since you started doing reviews, and it's
 14 documented on your -- your web site that you
 15 transitioned, and rebranded, and that -- and you
 16 lost some of the, I'll call it, good will that
 17 had built up with Google as far as search
 18 results, without going into the minutia, okay?
 19 Is that generally accurate? I mean, you
 20 probably had rankings and then you probably fell
 21 in the rankings when you rebranded.
 22 A That's correct.
 23 Q Okay. And then have you been able to build that
 24 back up over time?
 25 A Yes.

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1 Q Okay. As you built it back over time -- as you
 2 built it back over time, was that beneficial for
 3 your business from a profitability standpoint?
 4 A Yes. And what we do now is much more important
 5 than what we did before. Before we were just a
 6 general Ecom reseller. We didn't provide a ton
 7 of value. I believe we bring a ton of value to
 8 our industry now. And we're being rewarded for
 9 it.
 10 Q Okay. And so you obviously want favorable
 11 articles, or reviews, or links to your products
 12 to be ranked high, right? I mean, that's how --
 13 that's how a consumer could find your product,
 14 right?
 15 A I -- what do you --
 16 Q So if I go try and search for, let's say, a
 17 standing desk. So I put in standing desk or
 18 adjustable height desk. I mean, Google's going
 19 to provide search results. And then if your
 20 products are on the top searches, then I'm
 21 probably more likely to click on those. Would
 22 you agree with me on that?
 23 A Are you referring to my products? Or, like,
 24 blog posts? Or just -- just pages in general?
 25 Just so I know.

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1 Q Pages. You know, I mean, we were talking
 2 earlier. So the higher -- the higher rankings
 3 that your web site has, I think we had an
 4 agreement, is that that helped drive traffic to
 5 your web site, and ultimately products that were
 6 sold, which is good for your business, right?
 7 A I would say, yes.
 8 Q Okay. Well, let's talk about it a little
 9 differently. What if there was an article that
 10 was negative about your company or your products
 11 and it ended up being one of the top organic
 12 searches for your products? Would that hurt
 13 your business?
 14 A It depends.
 15 MS. TOY: Objection, speculation.
 16 EXAMINATION
 17 BY MR. KERLIN:
 18 Q Okay. Have you ever had a negative article like
 19 that?
 20 A I have.
 21 Q Has it impacted your business?
 22 A It did.
 23 Q Is it still out there on the Internet?
 24 A We've had -- well, we had the Wirecutter post,
 25 and it was -- it destroyed my VertDesk v1. And

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1 I've got a well-documented post why we changed
 2 to v2, then v3.
 3 Q Okay. But --
 4 A So we made improvements.
 5 Q Okay. Understand. But it had an impact on your
 6 business, right?
 7 A It was factually accurate, though.
 8 Q That wasn't my question.
 9 A But that -- it's --
 10 Q Did it have an impact on your business?
 11 A When it should, it should.
 12 Q Okay. So high ranking positive reviews are good
 13 for business. High ranking negative reviews
 14 equally are damaging for business, right?
 15 MR. BATES: I'll object to incomplete
 16 hypothetical and speculation. There's a lot
 17 that goes into that.
 18 MS. TOY: I join.
 19 MR. KERLIN: I think generally we have
 20 agreement. So I'll ask it a little bit
 21 differently.
 22 EXAMINATION
 23 BY MR. KERLIN:
 24 Q I think -- I think we agreed that if -- if your
 25 web site is ranked highly, and the articles are

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1 favorable, well, I think I pretty much got it,
 2 but, the Wirecutter article, would you describe
 3 that as a negative or positive article about
 4 your -- it sounds like it was the version one --
 5 version one of the VertDesk?
 6 A Yeah.
 7 Q Okay. All right. And it -- and it hurt -- it
 8 hurt your sales of that product.
 9 A Absolutely.
 10 Q Is that right?
 11 A Absolutely, but it was accurate.
 12 Q Okay. Was it -- was it in the top ten of search
 13 results for your -- if somebody searched for
 14 your product, would that Wirecutter article show
 15 up in the top ten --
 16 A When that post --
 17 Q -- at the time?
 18 A When that post was live for that particular
 19 brand? I believe it did. And it also was the
 20 top funnel for a lot of things that people were
 21 looking for. I mean, that's the most cited
 22 source on the web when it comes to standing
 23 desks. So I would say that Wirecutter's the
 24 most influential when it comes to impacting your
 25 business.

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1 Q Okay. Would you consider Wirecutter an
2 authoritative source on standing desks in the
3 industry?
4 A I would say that the author, Kevin Purdy who
5 wrote that post, became much more in tune than
6 he was when he initially started. Same thing
7 with Brian Lucash. They -- after spending more
8 and more time with the desks, they did get
9 better with the desks for sure.
10 Q Would you -- are they -- do you know -- I mean,
11 well, let me ask it like this.
12 Do you know one way or another whether
13 they're knowledgeable about adjustable height
14 desks?
15 A I don't know them -- I don't know them
16 personally and spend a ton of time talking with
17 them, so I can't vouch for their expertise. But
18 they are the most cited source for standing
19 desks, so they have the most impact on the web.
20 I mean, it's owned by the New York Times now,
21 too. It's a significant source of information
22 for sure.
23 Q Okay. And you said it was -- what was posted
24 about your version one VertDesk, I'm sorry, but
25 it was factually accurate. Is that true?

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1 A Absolutely.
2 Q Okay. With respect to standing desks, do they
3 know the different parts of the desk? I mean,
4 the way they describe them in the article, do
5 they know what they're talking about?
6 A You know, I don't think that they go as
7 technical as we do. That's our -- we're more
8 nuts and bolts, and they're not. And that's
9 their -- that -- I don't know why they're not.
10 Maybe it's because they don't get into that.
11 Maybe that we get into that because that's my
12 thing. We're more of nuts and bolts and how
13 things are made.
14 Q Okay. But just to tie this together before we
15 move on, the Wirecutter article was negative.
16 It impacted your business, right? And it was
17 relatively high in search results. Is that
18 correct?
19 A It was negative and it impacted our business,
20 but rightfully so.
21 Q Okay. When you've had articles that are
22 positive about products you sold, it's improved
23 your business. Is that correct?
24 A Yeah.
25 Q Okay. Have you ever spoken with Google about

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1 their search rankings?
2 A What?
3 Q Have you ever spoken with Google about their
4 spoke -- their search rankings?
5 A Spoken to someone directly at Google?
6 Q Yeah. I mean, yeah, ever called, e-mailed,
7 communicated with them about search rankings?
8 A They're -- they're pretty outward with their
9 content on things that happen with regards to
10 algorithms, and, you know, best search --
11 Q Uh-huh.
12 A -- practices, so I don't have -- I don't
13 personally -- I don't think there is even
14 someone that exists that is someone for a
15 business to contact for search, other than some
16 of, like, the ambassadors of search, like John
17 Mueller, and people like that; Gary Illyes,
18 those types of people. You can Tweet them, if
19 you want.
20 Q Okay. But you haven't spoken with anyone at
21 Google?
22 A No, I have not.
23 Q With respect to the articles that you published
24 for BTOD, have you worked with any consultants?
25 A With regards to the articles, have I spoke with

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1 any consultants; in what regard?
2 Q In any -- I mean, have you ever used a
3 consultant in any way, shape, or form for
4 developing your content that you posted?
5 A For SEO purposes?
6 Q I'm just asking in general; not specific to SEO.
7 A Have I ever spoke with someone who would help me
8 write the post?
9 Q Write, edit, comment on it, give you feedback?
10 A Okay. I have -- I have -- that's a -- that's a
11 tough question to answer. So you're -- like,
12 for instance, my wife, she edit my -- she has
13 edited my content.
14 Q Okay. Outside -- and I'm really -- I mean,
15 just -- just so we're clear, and I'm not
16 trying -- that's probably not exactly -- unless
17 she's a -- is she like a consultant?
18 A No.
19 Q Okay.
20 A She doesn't even get paid.
21 Q And I'm talking more about someone that you'd --
22 you'd pay for services that would come in and,
23 you know, maybe they think you ought to organize
24 an article a particular way; maybe they're an
25 editor, something like that that would have

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1 provided input, guidance, or advice about
 2 your -- your posts.
 3 A No.
 4 Q Okay. With respect to search optimization, have
 5 you -- I think you posted on your web site that
 6 you worked with a consultant at one point?
 7 A Correct.
 8 Q And can you give me the name?
 9 A Glenn Gabe.
 10 Q When was the last time you worked with him?
 11 A Oh, Glenn would have been probably -- I know for
 12 sure I worked with him on -- in 2013.
 13 Q Okay. Let me just ask it this way. For
 14 purposes of the claims that we're here today to
 15 discuss, was it before the purchase of my
 16 client's products, or the review, or posts that
 17 were related to my client's products that your
 18 company did?
 19 A It had nothing to do with your client's
 20 products.
 21 Q It pre-existed?
 22 A Correct.
 23 Q Okay. Okay. I want to circle back to something
 24 we kind of started earlier, and then we kind of
 25 started talking about some other stuff, and I

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1 got a little off topic. But, in a number of the
 2 answer to interrogatories, which we can look at,
 3 when we ask about what you did as far as testing
 4 or that sort of thing, the response that was
 5 often given was calls for a detailed narrative
 6 response. So I'm going to give you an
 7 opportunity right now to give me a detailed
 8 narrative response. I want to know the entire
 9 process or protocol that you use from start, you
 10 purchase the desk, all the way through, hit
 11 publish, you know, click to publish it on the
 12 Internet.
 13 A Okay. So we, again, order it, receive it. And
 14 we then as- -- or, I then assemble it.
 15 Q Okay. And I'm kind of looking for the entire
 16 big picture first. Like we talked about
 17 earlier, there isn't a written protocol, or
 18 procedure, or process. So it's all kind of
 19 something you keep internal. So I just want to
 20 learn what that is.
 21 A You want to go over each individual part --
 22 Q Yeah, I mean, I want -- what I was thinking is,
 23 if you can give me an overview, here's my
 24 process, this is what I do, I've done it 25 plus
 25 times, and so I kind of have my process down,

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1 and then I'll ask you -- we can go through it
 2 step by step.
 3 A Okay. So keep doing what we're doing?
 4 MR. BATES: Well, and just to be fair,
 5 because you had started this before --
 6 THE WITNESS: Right.
 7 MR. BATES: -- and you had started
 8 with saying the package arrives and review
 9 packaging --
 10 THE WITNESS: Right.
 11 MR. BATES: -- so, I mean, truly every
 12 single step --
 13 THE WITNESS: Right.
 14 MR. BATES: -- is what he's looking
 15 for.
 16 THE WITNESS: Right. Okay.
 17 EXAMINATION
 18 BY MR. KERLIN:
 19 Q Because there isn't -- it's not written
 20 anywhere. I mean, it's in your reviews, but
 21 there not, like, a uniform, this is my approach.
 22 A The entire thing is in my reviews, so you can
 23 see the flow off the -- you know, you can see
 24 the flow off of -- off of it in my reviews. You
 25 can see how it flows.

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1 Q Okay. Let's do this then. Let me see what I
 2 have marked next. Okay. We'll go with -- I'll
 3 hand you what's been marked as Exhibit 7. We'll
 4 get into the details later, but right now, you
 5 know, if it's helpful for you to be able to
 6 describe your process, I'm happy for you to have
 7 it.
 8 A This is the problems post. This wouldn't be a
 9 review. So everything starts off the review and
 10 then kind of flows out from there.
 11 Q Okay. So before that, did you do a product
 12 review for the Terra?
 13 A Yes. So, like, this would have been reviewed
 14 in, I believe -- I want to say that it was
 15 reviewed in, like, October. This product was
 16 reviewed in October. And everything from that
 17 point forward, it wouldn't be put in a best of
 18 list. It wouldn't be put in a comparison. It
 19 wouldn't be -- there would be no problems post
 20 generated until I've had my time with the
 21 product going through the entire process.
 22 Q Okay. So you do a -- you did a review of the
 23 Terra, and then subsequent to that -- okay, I
 24 guess a couple weeks later, you posted top eight
 25 problems with the Terra. Is that right?

<p style="text-align: right;">Page 130</p> <p>1 A That's correct.</p> <p>2 Q Okay. Is that typical of what you do, is that</p> <p>3 you review a product and then you'll identify</p> <p>4 problems with it afterwards?</p> <p>5 A So I follow that Marcus Sheridan model. It's</p> <p>6 the five big pillars basically. It's the things</p> <p>7 that customers care most about. So we follow</p> <p>8 what -- the five majors that he recommends,</p> <p>9 which, again, we look at product reviews; we</p> <p>10 compare things; we've got best of lists; costs,</p> <p>11 and problems. That is what -- if you look at</p> <p>12 consumers as a whole they care most about</p> <p>13 Q Okay. Well, I might have it somewhere here. I</p> <p>14 don't have it right in front of me. But let's</p> <p>15 just go through the process because, I mean,</p> <p>16 this is something you do. It's not the post</p> <p>17 that we're going to talk about that's the action</p> <p>18 of this lawsuit. But I want to understand what</p> <p>19 your review process is because it sounds like</p> <p>20 the information from your review, at least part</p> <p>21 of it, ended up in the post. Is that fair?</p> <p>22 A Yeah. I mean, anything that is ending up in</p> <p>23 that post is from my experience with the product</p> <p>24 through the review.</p> <p>25 Q Okay. So packaging had been mentioned by</p>	<p style="text-align: right;">Page 132</p> <p>1 certain types of brands, some bolts may be more</p> <p>2 difficult to access, and so we discuss that.</p> <p>3 With our product, we have a hex rod.</p> <p>4 We know that that's a pain point -- pain point</p> <p>5 for people as they try to assemble the table.</p> <p>6 And as you -- you know, as you assemble all</p> <p>7 these tables, it becomes clearer what are, you</p> <p>8 know, pain points for most people, but doesn't</p> <p>9 necessarily cover everybody. I do my best to</p> <p>10 give my opinion with regards to how the assembly</p> <p>11 process works.</p> <p>12 Q Okay. What's next?</p> <p>13 A Once the desk is assembled, we go through -- I</p> <p>14 go through my -- my process of testing the specs</p> <p>15 of the table.</p> <p>16 Q With respect to the specs of the table -- for</p> <p>17 the table, where do those come from? Is that</p> <p>18 from the manufacturer?</p> <p>19 A Manufacturers will list specifications for their</p> <p>20 tables, yes.</p> <p>21 Q Okay. What are you looking for there?</p> <p>22 A Looking at, really, the basics. We're looking</p> <p>23 at -- that it has a height adjustment range</p> <p>24 that's advertised or can be achieved. We're</p> <p>25 looking at the adjustment speed of the desk.</p>
<p style="text-align: right;">Page 131</p> <p>1 counsel, so we got -- where I've gotten to is:</p> <p>2 You order it, you receive it, you know --</p> <p>3 A We show the picture. You've got a picture</p> <p>4 there. We take pictures of the packaging. We</p> <p>5 look at how it's packaged.</p> <p>6 Q Okay. All right. Then you assemble it?</p> <p>7 A I assemble it.</p> <p>8 Q Okay. Is there any type of approach that you</p> <p>9 take to assembly that you use?</p> <p>10 A I just follow -- I follow their instructions.</p> <p>11 Q Okay. For your review, is it -- is it based</p> <p>12 simply on time? Is it based on -- I guess what</p> <p>13 I'm trying to say is, under that kind of</p> <p>14 subcategory, are there -- are there additional</p> <p>15 categories that you consider? Like, can you</p> <p>16 tell us more about your process? I mean, I get</p> <p>17 you put the thing together. But just putting it</p> <p>18 together, how does that end up in your review?</p> <p>19 A We just talk about what -- I mean, I -- I</p> <p>20 basically say how the experience went. So when</p> <p>21 I'm putting the products together, do they go</p> <p>22 together easily? Does everything line up</p> <p>23 properly? You know, are there -- if there's</p> <p>24 misaligned components, what are they? If</p> <p>25 there's any particular pain points. So with</p>	<p style="text-align: right;">Page 133</p> <p>1 We're looking at the weight capacity of the</p> <p>2 desk. We look at the sound of the desk.</p> <p>3 Q Anything else?</p> <p>4 A We look at stability of a desk. And that's in,</p> <p>5 like, the -- the major -- I'd have to look at</p> <p>6 the -- just to make sure. It's a lot of stuff</p> <p>7 off the --</p> <p>8 Q Sure. So I got height, adjustment speed, weight</p> <p>9 capacity, sound, and stability. Anything else</p> <p>10 that you can think of?</p> <p>11 A With regards to those tests? I mean --</p> <p>12 Q Specifically -- and I don't mean to talk over.</p> <p>13 She told me at lunch we were talking over each</p> <p>14 other. But I had this category, kind of</p> <p>15 generally described it as the -- you're looking</p> <p>16 at the specs of the table, right?</p> <p>17 A Uh-huh.</p> <p>18 Q So with respect to the specs of the table, I've</p> <p>19 got height, adjustment speed, weight capacity,</p> <p>20 sound, and stability. Anything else that you</p> <p>21 can think of?</p> <p>22 A Did I put adjustment speed in there did you say?</p> <p>23 Q I did have adjustment speed, yeah.</p> <p>24 A Okay. And the adjustment range?</p> <p>25 Q I had height. But I can -- would that be the</p>

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1 same or is that --
 2 A That's the same thing, yeah.
 3 And then we also address that it has
 4 overload protection.
 5 And then it has collision avoidance.
 6 Q Okay. What else?
 7 A I mean, from a -- from a testing standpoint, I
 8 mean, the review is deeper than that. We go
 9 through, you know, deeper into other sections as
 10 well, but -- so we look at things like the -- I
 11 mean, there's -- I would have -- we could -- am
 12 I able to pull up a review so we can just look
 13 at it on the computer?
 14 Q Well, the topic specifically asks for you to be
 15 prepared on this, so I really just want from --
 16 A I just want to make sure nothing is missed, just
 17 in case. I mean, this is my first time in a
 18 situation like this, so it's --
 19 Q Okay. So once you get done with the specs, I
 20 mean, if you can think of something else, just
 21 let me know.
 22 A Okay.
 23 Q We can talk -- we're going to talk about all
 24 these in detail --
 25 A Okay.

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1 Q -- and I'm sure you might think of something
 2 else --
 3 A Yeah, yeah.
 4 Q -- when we go through the eight solutions --
 5 A Okay.
 6 Q -- you might say, oh, that's something else.
 7 A Sure.
 8 Q I'm not trying to trick you there at all. I'm
 9 just trying --
 10 A Okay.
 11 Q -- to get an understanding of what we can then
 12 ask additional questions about.
 13 A Sure. So from the testing, from the testing
 14 standpoint, that's what we're -- we're looking
 15 at. We're also looking at, as my -- as my -- as
 16 my process has evolved to what it is today, and
 17 what it evolved into, probably I would say, by
 18 the time I reviewed the Xdesk, we went deeper
 19 diving into the desks. And we were looking
 20 at -- we look at additional things now as well.
 21 But I wouldn't say it's pers- -- it's tests.
 22 We're not testing them. So the flow of the
 23 review, it would continue on with these
 24 additional items.
 25 Q Okay. So these would be, like, nontest items.

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1 Is that --
 2 A Right. This would be more inspection based.
 3 Q Inspection based. Okay.
 4 Okay. Then what?
 5 A So, in the inspection, we look at -- we would
 6 look at the motors, the gears, the glides, the
 7 electronics, the columns, the feet. And we also
 8 address things like the -- I guess, the
 9 functionality of a switch, so, you know, if it
 10 has one touch functionality, or if it's press
 11 and hold. It has programmable options that you
 12 can program. If it has any other type of
 13 technology. In that collision avoidance, some
 14 of them have, like, GyroSense and collision
 15 avoidance. That's like six way accelerometers.
 16 Q Okay. Anything else?
 17 A We also cover the brand, it's OEM, as is earlier
 18 on in the post, but we cover the brand's OEM. I
 19 think it's important that people know where
 20 things are coming from.
 21 Q You cover the brand's OEM? Is that -- make sure
 22 I understood it right. Okay?
 23 And what are you putting into -- so
 24 when you say OEM, because we talked about this
 25 earlier, when you say OEM, what do you mean?

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1 A I'm referring to the -- the company that's --
 2 when I really look at it, I'm looking at the --
 3 it kind of varies because brands will -- you
 4 know, if a brand is making a certain component
 5 or accessing it from a different point, then we
 6 try to address those things. But a lot of
 7 times, we're getting things that are like a --
 8 for instance, like a -- a Jie- -- JieCang,
 9 JieCang product is coming in a box with, like, a
 10 feet upper supports, the columns; it has the
 11 control box, the switch. You know, like, we
 12 would consider that to be the OEM. If they're
 13 making additional parts, then we would address
 14 that as well.
 15 Q Okay. So we've done all this. Is there
 16 anything else?
 17 A Yeah. We have a section that's called the
 18 things -- basically, it's, like, bullet points
 19 on the -- it's, like, the cliff notes,
 20 essentially, of a review. It's the things that
 21 I like and the things that I don't like. And
 22 those are generally listed as, like, pros and
 23 cons at the top. And then they're also just a
 24 little bit further detail at the bottom because
 25 some people like to, you know, not go read

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1 a 4,000 word post. They like to kind of skim
 2 through it to see if it's interesting to them,
 3 and then they go deeper diving.
 4 Q Okay.
 5 A And then just the bottom line.
 6 Q Okay. And I think you said --
 7 A I think I have the brand history. Sorry.
 8 Q Yup. Okay. But is it after you get done with
 9 your -- your -- I mean, you've -- you've --
 10 you've ordered it, you've received it, you've
 11 assembled it. You've done your, I'm going to
 12 call it testing. But you had said you check the
 13 specs of the table. Then you do your inspection
 14 based evaluation. And then is it after you get
 15 down with that part of it, you then start typing
 16 it up or writing it up with respect to the
 17 review?
 18 A Yeah, after everything's -- after everything has
 19 been completed, all of the tests have been
 20 completed, and just so that we're on the same
 21 page, it was July 2017 that we started -- or, I
 22 started to take these desks down to core
 23 components. And that's when you'll see those
 24 sections are added. So, earlier on, those desks
 25 that were reviewed, unless they've been updated,

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1 they wouldn't include those sections. After
 2 that point, they do include all of those things.
 3 So as my -- as I --
 4 Q Uh-huh.
 5 A -- my process sort of evolved, so did the
 6 review.
 7 Q Okay. Do you have -- when you're -- when you're
 8 drafting the review, is there -- is there, like,
 9 a review of the review, so to speak? In other
 10 words, do you put together a draft, and then
 11 Ryan has input on it, or editing, or anything
 12 like that?
 13 A No.
 14 Q So it's just you?
 15 A My wife. My wife was the editor for most of
 16 these posts.
 17 MR. BATES: When you say editor,
 18 editor? Or proofreader?
 19 THE WITNESS: Sorry. Proofreader.
 20 Yeah, she has no -- she wouldn't change
 21 anything, no; though she's probably an expert
 22 now.
 23 EXAMINATION
 24 BY MR. KERLIN:
 25 Q Approximately -- and I want to talk kind of

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1 early on, because I think when you were
 2 reviewing my client's products, it was
 3 relatively early on in your process of reviewing
 4 standing desks. Is that --
 5 A Just one. Evodesk was in May.
 6 Q Was in May. Okay.
 7 A When I reviewed NextDesk, it was in October, and
 8 the process was fully developed at that point.
 9 Q How long with respect to the testing does
 10 that -- well, tell you what. Let's do it this
 11 way.
 12 We've given you what's -- I think you
 13 have the Exhibit --
 14 MS. TOY: Six.
 15 MR. KERLIN: -- 6 in front of you that
 16 has some photos and whatnot. Defendants'
 17 production.
 18 MS. TOY: It's this one here.
 19 THE WITNESS: Okay. At least you know
 20 where it is.
 21 Okay. Did you say which page?
 22 EXAMINATION
 23 BY MR. KERLIN:
 24 Q So if we -- if we look at page six?
 25 A Okay. I have a different page six.

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1 Q I'm sorry. Page seven.
 2 What are we looking at?
 3 A We are looking at the NextDesk Terra.
 4 Q Okay. Do you know when this was taken?
 5 A I believe this was taken -- it was -- it was
 6 early October, so it is either October 1st
 7 through the 3rd. I have to verify.
 8 Q Okay. What type of device was this taken on?
 9 Was it taken with a camera?
 10 A This was taken on a camera.
 11 Q What type of camera?
 12 A I believe it was a phone.
 13 Q What type of phone?
 14 A Oh, geez. Probably a Gal- -- when this would
 15 have been, it would have been -- it would have
 16 been a Galaxy, maybe, S7.
 17 Q Okay. Do you still have that phone?
 18 A I do.
 19 Q Does it still have the picture on it?
 20 A I went through it and I looked because we were
 21 asked for discovery. And the phone -- the phone
 22 was wiped because it was supposed to go back to
 23 AT&T.
 24 Q Okay. How did you get the -- how did the -- how
 25 did the picture get from the phone to -- to your

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1 computer for the post?
 2 A I'm pretty sure this one is -- I'm pretty sure
 3 this is e-mailed.
 4 Q Okay. So you sent it from your phone to -- I
 5 mean, you sent it to your work e-mail address?
 6 A I actually provided this this morning. I found
 7 this this morning. The raw photo.
 8 You saw that come through, right?
 9 Q Well, I don't want to talk about communication
 10 between you and your counsel so e-mail's --
 11 A Okay.
 12 Q -- that's privileged. And so --
 13 A But this is available in its raw format.
 14 Q Okay. Is that true for all the photos that you
 15 have of the NextDesk or the NextDesk components?
 16 A So the two that I have that I found in my e-mail
 17 are this one, the seven, and then the eight.
 18 Q Seven and eight. Okay. So we got those two.
 19 And they still exist.
 20 What about nine?
 21 A Nine is a photo from the blog, so that's
 22 basically taken from, likely, a camera, and
 23 then -- and then edited, and then pushed live to
 24 the blog.
 25 Q Okay. Same types of questions. Like, what

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1 camera would it have been taken with? The same
 2 device? Or something different?
 3 A You know, I may -- I may have used the Canon for
 4 this one. I'm not 100 percent sure.
 5 Q Okay. If you take it on the Canon, does it save
 6 it to some form of a flash drive or memory chip?
 7 A Yeah. So I used three memory chips when I did
 8 all of these projects.
 9 Q How would you get them from the memory chip to
 10 your computer?
 11 A Plug them in.
 12 Q Okay. Would you have to save those to your
 13 computer? I mean, you've got to save them from
 14 the -- you've got to move them over, right --
 15 A You can --
 16 Q -- from the --
 17 A You can --
 18 Q -- camera?
 19 A You can pull them --
 20 Q Pull them.
 21 A -- into the editing program from the card.
 22 Q You would -- so is it accurate to say you would
 23 not save them to your computer?
 24 A I -- I may have saved some of them to my
 25 computer. This is something going back to the

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1 IT department. I can see if, you know, if I had
 2 no real use to keep them. So I don't -- I may
 3 still have them, but I would have to have them
 4 do a deeper dive.
 5 Q Okay. The other photos we have -- we talked
 6 about the photos of the three pages steno pad
 7 that -- those are ones you took recently. Last
 8 week, I guess?
 9 A Yes.
 10 Q And then we get to -- it looks like a screen- --
 11 a screenshot of a web site is 13. Is that --
 12 A Yes.
 13 Q All right. Okay. Where did -- like, where did
 14 this come from?
 15 A It's from -- it says in the -- up on top of it,
 16 it should say Xdesk Terra.
 17 Q Right. No. I mean, did you just print out a
 18 copy of it or did you have this saved somewhere?
 19 A This is a screenshot.
 20 Q Okay. And what was the purpose of, like -- I'm
 21 trying to understand why you produced it.
 22 A I produced it because this was -- this was
 23 screenshot last week. And in here it
 24 advertises, it's highlighted robust intern dual
 25 chain drives for increased reliability and low

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1 noise. And this is on a Terra product. This is
 2 their current way they're advertising the
 3 product and I've had one since 2017 October
 4 that's not this way.
 5 Q Okay. And then if we go to 14? What are we
 6 looking at on 14?
 7 A 14 -- it's all right. I'm getting there. Okay.
 8 So 14 is -- this is how it should look. This is
 9 a Steelcase series seven. So this is -- this is
 10 a chain driven Linak column. This is the column
 11 that they're advertising.
 12 Q Okay. When was this picture taken?
 13 A This was taken last week.
 14 Q Okay. What was the -- can you -- can you tell
 15 me what the name of the product was again?
 16 A Steelcase series seven.
 17 Q Okay. And then what is 15?
 18 A 15 is a picture inside the column of the Xdesk,
 19 and it's showing the spindle.
 20 Q This is the -- this is -- when was this taken?
 21 A Last week, same time.
 22 Q And is that -- when you say Xdesk, that's the
 23 Xdesk Terra?
 24 A Yes.
 25 Q And you still have that product currently?

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1 A I do.

2 Q Okay. All right. So, other than the photos
3 that we have here, do you have any other
4 photos -- let me ask you this.
5 Going back to seven, so we have a
6 picture of the packaging, do you recall an
7 assembly manual -- whether an assembly manual
8 came with it?
9 A You can -- yeah, it's the picture. It's right
10 here.
11 Q Okay. It has the American flag?
12 A Uh-huh, yes.
13 Q All right. Okay. Do you tell companies that
14 you are planning on reviewing their products?
15 A No.
16 Q Why not?
17 A I wouldn't want them to change the product that
18 I receive.
19 Q Okay. You said that in two thousand and -- make
20 sure I have this right -- July of 2017 you
21 started taking apart components and so your
22 process changed, right?
23 A It -- it just -- it got -- yeah, it got a little
24 bit more in depth, I guess.
25 Q Other than that change, has there been any other

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1 changes to the process you described earlier?
2 A The last -- the final change, really, to the
3 process is the wobble meter that was developed.
4 Q Okay. When was that developed?
5 A The wobble meter was developed in -- I'd have to
6 go back to see the exact date. But it was in
7 two thousand and -- 2018 is when I first started
8 using it.
9 Q Okay. Did you use the wobble meter on reviewing
10 either the Terra or the Evodesk?
11 A I did not.
12 Q Okay. All right. Let's go to -- we marked
13 Exhibit 7. And I think we've already talked
14 about it once. Do you recognize Exhibit 7?
15 A I don't know if I have it.
16 Q Oh, I'm sorry. I have it. I picked it up. I
17 don't know how it ended up over here. Okay. I
18 gave you -- this should be 7. All right. Okay?
19 A Sure.
20 Q Okay. Do you recognize Exhibit 7?
21 A Yes, I do.
22 Q Okay. All right. And what's the date of this?
23 When was this published?
24 A November 1, 2017.
25 Q And, again, you're the one who authored this and

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1 posted it, correct?
2 A Yes.
3 Q In the first paragraph, second sentence starts,
4 unfortunately, like many of the desks I have
5 tested.
6 How many -- at that point in time, how
7 many desks had you tested?
8 A I can't give you an exact number at this point,
9 but I would -- I would just be speculating on a
10 number at this point.
11 Q Okay. Is there a way that we could determine it
12 from looking at your web site?
13 A Yeah. We could go back and definitely look and
14 to see when that -- how many there were.
15 Q Okay. So if I archived the reviews that you
16 have and put them in order, I could look and see
17 what the ones were that preexisted the Terra,
18 and that'd give me an idea of how many desks you
19 had tested?
20 A I could -- I could personally find out exactly
21 when the post date -- the original post dates on
22 each one of them is so that you have an exact
23 number.
24 Q Okay. You don't have to do that right now. I'm
25 just trying to get an idea of how many -- you

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1 say you've tested many of them, so --
2 A This is --
3 Q -- I just wanted to --
4 A This is still true today.
5 Q Okay. Okay. So if you look at -- on the second
6 page, at the top, there's a -- underneath, so
7 there's -- first, you have a disclaimer. And so
8 you say, we are an office furniture dealer and
9 sell some of the products we review.
10 Is that right?
11 A Yes.
12 Q Okay. Then underneath that is a box. And in
13 the box, it says, after 12 months of testing 20
14 plus electric standing desks, the results are
15 in.
16 Is that something that is akin to,
17 like, an advertisement or something? I mean,
18 would that have been in the original post in
19 November of 2017?
20 A No. That would have been -- well, we can tell
21 because it says 2018 in there, so that's
22 something that was pushed on to all pages that
23 were relevant later on.
24 Q Okay. So the first topic on here is stability
25 issues at all heights. Is that correct?

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1 A Correct.

2 Q Okay. Before we get into this -- and I want to

3 go back to pages -- am I in the way -- 10, 11,

4 and 12 on Exhibit -- I believe it's Exhibit 6,

5 the production.

6 Page 10, if I could direct you there.

7 All right. Between page 10 and 11,

8 can you tell me what parts of these notes apply

9 to the Terra desk, and the Evodesk, or both?

10 A These are all related to the -- these are all

11 related to it.

12 Q To the Terra, or to the Evo, or to both?

13 A To the Terra.

14 Q Just to the Terra. Do you have any notes

15 similar to these for the Evo?

16 A I do not.

17 Q Okay. Have you looked for those?

18 A I have.

19 Q Is that something that you would have written

20 down at the time you conducted your process?

21 A When -- when I write all of my reviews, I am

22 documenting all the things that we discussed in

23 the testing. And it -- you know, it's on paper

24 that I'm using at the time. So, yeah, I mean, I

25 definitely take notes when I'm doing it. I

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1 don't necessarily keep all of my notes for

2 future reference. I use my reviews for that.

3 Q So we don't have any type of notes -- I guess

4 basically all we have is the review that's

5 posted and the eight problems, is that accurate,

6 for the Evodesk?

7 A Yes.

8 MS. TOY: It's six problems?

9 MR. KERLIN: I'm sorry. Six problems.

10 EXAMINATION

11 BY MR. KERLIN:

12 Q Okay. All right. So let's talk about the

13 stability. Last sentence: Unfortunately, the

14 front to back rocking motion was the worst I

15 have tested.

16 Do you see that?

17 A Yes.

18 Q Okay. And at this time, you're not sure exactly

19 how many desks you've tested but that's

20 something that we can independently verify,

21 right, by looking at your web site?

22 A Correct.

23 Q Okay. What type of metrics did you use so you

24 could determine that the rocking motion front to

25 back was the worst for the Terra desk versus all

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1 the other desks?

2 A Well, I mean, I -- I benchmark off of, like,

3 literally no movement at all. So that is a

4 sitting position for almost all standing desks,

5 so any -- anything that the majority of people

6 would be using, a sitting height, that's where

7 it starts, essentially. And if -- I would say

8 that 90 -- probably if you'd look at the list,

9 you could see it's, like, 95 percent of standing

10 desks at sitting height exhibit almost no

11 motion. They're, like, rock solid. That's

12 subjective, of course; but, I mean, I would say,

13 you know, you -- they don't move.

14 Q But if we look back at your review regarding

15 stability, want me to -- how many did you

16 say? 90 plus percent, there's no rocking

17 whatsoever?

18 A At sitting height.

19 Q Okay.

20 A That's what I base it off of.

21 Q You don't -- I mean, your statement here, front

22 to back rocking motion was the worst I've

23 tested. I mean, that's not specific to any

24 height. It's at all heights? Is that correct?

25 A Overall, yeah. I mean, overall, that is -- this

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1 desk exhibited movement very, very low because

2 of the foot bended -- or, bent. I say bended.

3 But it -- the foot was -- was literally flexing

4 on it. And so it exhibited stability issues

5 through all usable heights. I mean, it's --

6 Q So I want to know, like, did you measure it?

7 That's it. Did you -- did you take any

8 measurement of the rocking motion?

9 A I based it off of my opinion of the desk that I

10 had tested up to that point and these -- and it

11 is a benchmark of what is at sitting height

12 where most standing desks will be solid and it

13 moves up from there. This is -- this is

14 opinion. And stability is subjective. However,

15 I had a lot of experience at that point

16 reviewing desks and understanding what should be

17 expected and what shouldn't be expected for

18 stability, essentially.

19 MR. KERLIN: Object to the

20 nonresponsive portion.

21 EXAMINATION

22 BY MR. KERLIN:

23 Q I'm just asking a real simple question. Did you

24 take any measurements when you were assessing

25 the stability of the Terra?

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1 A I did not.
 2 Q Okay. With respect to the desks that you had
 3 tested prior to the Terra, did you take any
 4 measurements?
 5 A It wasn't until the wobble meter was developed
 6 that we could quantify the movement.
 7 Q So the answer to my question is, no, you didn't
 8 take any measurements, correct?
 9 A Correct.
 10 Q Until -- would you say it was 2018 or 2019 when
 11 the wobble meter came out?
 12 A Right. And that -- there was no such thing to
 13 measure such things. It was based on feel,
 14 which is based on my experience.
 15 Q Okay. Can you show me where in your notes it
 16 references wobble or stability issues?
 17 A The first thing, it says, aluminum foot provides
 18 little support on the first -- on page 10.
 19 Q That's the second line from the bottom?
 20 A Yes.
 21 Q Okay. Can you tell me what testing surface it
 22 was on? In other words, when you were
 23 conducting this search -- this test about
 24 stability, what type of surface was it on?
 25 A I -- I do the tests on -- it would be on the

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1 same surface for all of these desks, which was,
 2 like, a hardwood floor laminate surface that
 3 was -- then I use a rug, the same rug. It's
 4 documented in our review. It's the same cintas
 5 rug. We use a cintas rug that's a low pile
 6 carpet that is -- I believe it mimics most
 7 commercial carpets.
 8 Q Approximately how thick is it?
 9 A I would have to look back at my notes. I
 10 believe we have that.
 11 But it's consistent throughout all of
 12 them.
 13 Q Okay. Did you level the desk beforehand? In
 14 other words, did you put a level on it to make
 15 sure it was level before you started your
 16 stability test?
 17 A I do not level the standing desks, no.
 18 Q I think if we go to -- it's Exhibit 6, but if we
 19 go to the Bates ranges, the numbers ends in 11.
 20 It says, on the left, halfway down, does it say
 21 wobble and rocking. Is that your writing? Is
 22 that what it says?
 23 A Yes, yup.
 24 Q Okay. It just says left to right. Solid up
 25 to 48 inches. 49 inches, small amounts of sway.

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1 So, left to right, it didn't have any issues up
 2 to 48 inches. Is that correct?
 3 A Yes, based on the notes.
 4 Q Okay. Do you know what the resting height of
 5 the desk is? In other words, the desk when it's
 6 lowered all the way down.
 7 A I would have to verify again. I would have to
 8 look at -- I would have to look at -- is it on
 9 the notes on the web site?
 10 Q Then at the -- then at the bottom, it says,
 11 front to back. Is that correct? I'm
 12 interpreting your handwriting --
 13 A Yup.
 14 Q -- so correct me if I'm wrong.
 15 A Yeah. It says 28 starts to rock.
 16 Q Is that 28? Okay. Starts to rock.
 17 And then to the right, it's -- it's
 18 got a line. And it also has 28 inches to the
 19 right of that line. And there's no indication
 20 there.
 21 A Yeah. That was with -- that was with no glides.
 22 And the desk was just not very good with no
 23 glides. It was pretty much bad all the time. I
 24 think I have that in my review. It was --
 25 without glides, that desk is not stable. And

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1 that's why I reference, you need to get glides
 2 with your stand. You -- they charge for them;
 3 you have to buy them.
 4 Q Okay. But with respect to your column where it
 5 says no glides for 28 inches, you have nothing
 6 written there. Is that correct?
 7 A I have nothing written there. I can't --
 8 Q Underneath for 35 inches. Is that a 33, a 35?
 9 Do you know?
 10 A Yeah. 35. And then it looks like -- or, it's
 11 a 33. I can't tell. It looks like a 33,
 12 actually.
 13 Q You have nothing written there as well. Is that
 14 correct?
 15 A Correct.
 16 Q Then on 38 -- is that a 38?
 17 A That's correct.
 18 Q Okay. 38 inches, it says really bad.
 19 A Correct.
 20 Q Okay. If we go back to the left hand column,
 21 there isn't any for 33 inches.
 22 Did you test it at 33 inches?
 23 A We -- we -- I test for -- we, actually, if you
 24 watch the video, you can see what we focus on,
 25 which is a sitting height, an intermediate

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1 height, and then a tall height. That's what we
 2 really genuinely focus on. That's what we're
 3 most concerned with, which is the average
 4 sitting height, the mid height for someone who's
 5 five-six; and then we look at 46, which is good
 6 for someone that's, like, six-five. Those
 7 are -- those are the -- those are the heights
 8 that basically most people are using; that's why
 9 we kind of key in on those and we show it in the
 10 video.
 11 Q Okay. So there isn't any notation for 33
 12 inches, right?
 13 A There is not.
 14 Q Okay. How do you know that you tested 33
 15 inches?
 16 A I -- I don't know if I tested it for 33 inches.
 17 Q Okay. So it doesn't look like for -- at least
 18 the left hand column here, there's anything
 19 intermediate.
 20 A Because it's just bad.
 21 Q Okay. Well, you don't note that here because
 22 you don't have anything reflecting 33 inches on
 23 the left hand side.
 24 A And I can't read my handwriting there, but it
 25 just says bad. I don't know what the number is

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1 on it.
 2 Q Okay. But you'll agree with me there's only two
 3 and typically you -- you said you tested three,
 4 right?
 5 A If the -- what we would go off of would be the
 6 wobble video where I go through the different
 7 heights. I would reference that.
 8 Q Okay. And then at the top when it has left to
 9 right, you're testing it all the way up to 48
 10 inches. Is that right?
 11 A I said that it was -- I said that it was solid
 12 up to 48, correct.
 13 Q Okay. Outside of what we've talked about just
 14 now, are there any other references in your
 15 notes as far as your testing or evaluation
 16 regarding stability issues of the Terra desk?
 17 A In these notes, no.
 18 Q And just so we're clear, I don't want to leave a
 19 false impression, I mean, these are the notes
 20 that you would have made contemporaneously,
 21 isn't that correct, at the time you were doing
 22 your evaluation and testing?
 23 A Correct.
 24 Q Okay. So this would be the best source of
 25 material as far as what you wrote down about

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1 what happened, right?
 2 A In addition to the video that's recorded.
 3 Q Okay.
 4 A And these notes -- I mean, I think it's
 5 important that, you know, we look at -- I --
 6 could there be notes for other things? There
 7 could be additional notes. I don't know if
 8 there is for this. But there certainly could be
 9 more notes. I mean, my goal wasn't to keep the
 10 notes for any future purposes.
 11 Q Well, I asked for all the notes you have.
 12 A Right.
 13 Q And this is my one opportunity to ask you
 14 questions about it.
 15 A Yup, yup.
 16 Q So, if somehow you locate some additional notes
 17 or information later, you know, I'm going to get
 18 an opportunity to ask you about them again.
 19 A Absolutely.
 20 Q Okay? But this is what I have to go off of.
 21 A Yeah.
 22 Q All right? So -- okay. So if we go down to the
 23 solution --
 24 MS. TOY: Are you on two of ten? It's
 25 at the top.

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1 MR. KERLIN: Yes, it is. Yup.
 2 EXAMINATION
 3 BY MR. KERLIN:
 4 Q Second paragraph starts, two product
 5 alternatives that we have tested with similar
 6 adjustment ranges are the GeekDesk v3 and the
 7 NewHeights XT.
 8 Who sells the GeekDesk v3?
 9 A GeekDesk.
 10 Q Okay. And who sells the NewHeight XT?
 11 A We sell it as well as other people sell that
 12 one. That one's an open line for people.
 13 Q Okay. Have you ever used the wobble meter on
 14 the Terra desk?
 15 A We have not.
 16 Q Before I get too much further, there was one
 17 other. I'll give you a couple exhibits here.
 18 Probably makes sense. I'm going to hand you
 19 what's been marked as 8, 9, and 10 that are
 20 going to go with the next line of questioning.
 21 This would be 8. (Handed to Ms. Toy.)
 22 I only have 1 to 9. I'm not sure how
 23 that happened, but --
 24 MS. TOY: That's okay.
 25 MR. KERLIN: I can give it to you.

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1 It's not --
 2 MS. TOY: I'll just take a look at --
 3 I think this is part of the complaint, right?
 4 MR. KERLIN: That's actually -- I
 5 tried to print out a better copy because the
 6 complaint was a little bit difficult to read, so
 7 yesterday I printed out a copy of what's
 8 supposed to be the same thing. Okay?
 9 And then Exhibit -- here's Exhibit 10.
 10 MS. TOY: Thank you.
 11 MR. KERLIN: Okay. I wanted to start
 12 with Exhibit 10.
 13 MS. TOY: Is this to Greg or to you?
 14 MR. KERLIN: Oh, I gave him one. But
 15 I'll -- if you don't mind, I'll use it here in a
 16 second.
 17 EXAMINATION
 18 BY MR. KERLIN:
 19 Q So 10, it's a receipt that we were able to track
 20 down from my client --
 21 A Yup.
 22 Q -- for the Next Terra desk, and it appears that
 23 it's for the purchase that you made. My
 24 question is, is, do you recall purchasing the
 25 Terra desk around September 7, 2017?

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1 A This is definitely me, yes.
 2 Q Okay. And it says for e-mail, greg@, l-e-v-l,
 3 gaming.com, right?
 4 A Correct.
 5 Q Okay. So this is your purchase?
 6 A Yes.
 7 Q Got it. Okay. Why didn't you purchase it in
 8 the name of Beyond -- BTOD or Beyond The Office
 9 Door?
 10 A I purchased it in the name of greg@levl gaming so
 11 that I could definitely get the desk.
 12 Q Okay. All right. And if we turn to the
 13 second -- oh, I'm sorry. It's on the first
 14 page. So it's -- you ordered the light bamboo
 15 finish, silver gloss frame, and then it has
 16 standard bar, standard 63 inch width depth, two
 17 grommets, 120 volts - US, correct?
 18 A Correct.
 19 Q Okay. With respect to the Terra desk, have you
 20 ordered anything else such as any accessories,
 21 components, replacement parts, from Xdesk?
 22 A I have not.
 23 Q Okay. All right. And if we go to Exhibit 8,
 24 and frankly 9, they kind of go together. As
 25 counsel mentioned, this was attached to the

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1 complaint. It's a little bit harder to read
 2 than the copy that I printed yesterday. I think
 3 if you look at 9, it's going to be a little
 4 easier to read. But, on either one, you can
 5 see, for the aluminum frame finish, there's five
 6 different options, right? You can do jet black
 7 gloss, alpine white, silver gloss, silver matte,
 8 black matte, right?
 9 A Yup.
 10 Q Okay. And you had selected silver gloss when
 11 you purchased it?
 12 A Correct.
 13 Q Okay. So the color you got was silver. Is that
 14 correct?
 15 A I got the silver gloss, yes.
 16 Q But specific to the color, because there's two
 17 different types of -- there's -- there's silver
 18 gloss and there's silver matte. So you have
 19 silver, and then you have two different
 20 finishes. Which one did you order?
 21 A I have the -- I have the silver gloss. It's a
 22 high gloss finish on the frame that I have.
 23 Q Yeah, right. And that's my point. Isn't it?
 24 The gloss has a finish, like the matte has a
 25 finish, but the color is silver, correct?

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1 A Correct.
 2 Q Okay. And the one you got was silver, correct?
 3 A I do have silver, yes.
 4 Q Okay.
 5 A I think there's quite a few different colors of
 6 silver, though, right; shades?
 7 Q All right. And let's move on to -- it's going
 8 to be page three of ten on Exhibit -- I didn't
 9 mark it. I think we're on Exhibit 7? Or is
 10 that 8? Might be 8. No, I'm sorry; it's 7.
 11 The Terra review. Okay?
 12 A I don't think I have a Terra review. I have a
 13 problems.
 14 Q Problems --
 15 A Okay.
 16 Q -- correct.
 17 Okay. So on page three, top of it,
 18 title is mismatched color frame and feet.
 19 Do you see that?
 20 A Yes.
 21 Q Okay. Would you agree with me that there's a
 22 difference between a color and a finish?
 23 MS. TOY: I'm going to object to the
 24 form.
 25 EXAMINATION

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1 BY MR. KERLIN:
 2 Q Do you understand that there's a difference
 3 between a color and a finish?
 4 A I mean, I think that all -- we can't just say
 5 silver is one color, either.
 6 Q Okay.
 7 A I mean, it's clearly different on that desk.
 8 And I have it to show you, if you'd like.
 9 MR. KERLIN: Object to the
 10 nonresponsive portion.
 11 EXAMINATION
 12 BY MR. KERLIN:
 13 Q Specific. Okay. Okay. Is silver and silver
 14 the same color?
 15 A There are different shades of silver.
 16 I think that's incorrect.
 17 Q Okay. Would you agree with me that matte and
 18 glossy are finishes?
 19 A What -- one more time.
 20 Q Sure. Would you agree with me that matte and
 21 finish -- excuse me, matte and gloss are
 22 finishes?
 23 MS. TOY: I'm going to object to the
 24 form.
 25 Go ahead and answer.

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1 THE WITNESS: Matte and gloss are
 2 finishes. I would say that -- I mean, I would
 3 say regardless, the color is different whether
 4 or not it's matte or gloss. The color itself is
 5 different on the desk.
 6 EXAMINATION
 7 BY MR. KERLIN:
 8 Q That's not my question. I'm just asking, in
 9 general, I think there's a variety of different
 10 colors. And then there's different types of
 11 finishes. I mean, if you paint a house, have
 12 you ever -- have you ever had your house
 13 painted?
 14 A I have not had my house painted.
 15 Q Okay. Have you ever painted a house?
 16 A Unfortunately, I have painted, yes.
 17 Q Have you ever gone to, like, a Sherwin Williams
 18 or an Ace Hardware and had to order paint?
 19 A Yeah.
 20 Q Okay. So they want to know the color you're
 21 going to use. Then they want to know the
 22 finish, right? Because there's different types
 23 of finishes for each color.
 24 A So all of the grays then that they're selling
 25 would be considered the same, though? Or the

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1 silvers? I mean, that doesn't make sense to me.
 2 Because the color at the core is different.
 3 Q My question's real easy. I'm just saying, when
 4 you've gone and you've bought paint before and
 5 you go to the store, because I want the jury to
 6 be able to understand this, okay? And it's fine
 7 if you want to say -- if you want to make some
 8 other type of different distinction, that's
 9 something you can do, and they can evaluate
 10 that. Okay? And for whether or not when you
 11 said mismatched color frame and feet, if that's
 12 really a mismatch of finish or a mismatch of the
 13 color. Okay? But I'm just asking whenever you
 14 bought paint, have you ever -- I mean, there's,
 15 like, satin; there's eggshell; there's flat;
 16 there's gloss; there's all sorts of different
 17 types of finishes. Would you agree with me?
 18 A I would agree, but I would say that I wouldn't
 19 mix them on the same wall, if that makes sense.
 20 Q I do. I understand that.
 21 Okay. Did you evaluate the other
 22 finish options? Specifically, if we look back
 23 at Exhibit No. 8 and 9, okay, in this one,
 24 it's -- in fairness, it's not a review. It's --
 25 it's -- you're identifying problems, right? I

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1 mean, that's what you -- that's the purpose of
 2 the article?
 3 A Yes, yup.
 4 Q Okay. And you're saying that with respect to
 5 the Terra, the colors are mismatched between the
 6 frame and the feet, right? That's what you're
 7 saying?
 8 A Because of the -- because of the feet, the cross
 9 support, the upper supports, yes.
 10 Q Yup.
 11 A Yup.
 12 Q And you stand behind that statement?
 13 A Because of those components, I would say they
 14 look very different, yes.
 15 Q Okay. So going back to Exhibit 8 and 9, either
 16 one of them, it's easier to see on 9, but there
 17 are -- they're different -- they're different --
 18 they're different color options, different frame
 19 finishes is actually what they're called. Okay?
 20 A Okay.
 21 Q Did you evaluate the silver matte finish for the
 22 Terra?
 23 A I did not.
 24 Q Okay.
 25 A They look very similar, though.

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1 Q What about the jet black gloss? Did you
2 evaluate that one?
3 A I did not.
4 Q Okay. Alpine white? Same answer?
5 A Correct.
6 Q And black matte?
7 A Correct.
8 Q Okay. How do you know that the colors are
9 mismatched for the frame and feet for the other
10 finish options besides silver gloss?
11 A I actually said that I would recommend
12 requesting finished samples so you can see for
13 yourself. And that's what we do with our
14 business, too, is, if you want to see that
15 stuff, you should get a free swatch.
16 Q Okay. But is it accurate to say that you don't
17 know if the other colors would be -- it would
18 be -- you didn't evaluate them, right?
19 A I did not evaluate them, no.
20 Q So you can't say whether they are mismatched.
21 Is that correct?
22 A Correct.
23 Q Okay. All right. Okay. And you don't say that
24 when you're -- in your discussion here that, you
25 know, by the way, I haven't evaluated their

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1 other finishes or their other colors, right?
2 A No. I said to avoid paying the extra color for
3 the -- or, the extra money for it, and since
4 they don't match, my biggest issue is with
5 anything that's high gloss because all Linak
6 columns come with that matte finish -- with a
7 matte finish.
8 Q And did you know that going on?
9 A Did I know what?
10 Q You knew that the Linak columns have a matte
11 finish.
12 A I -- so the truth is, is that I didn't know what
13 they were doing with it. They -- they made it
14 appear that it looks like it matches the rest of
15 the frame. That all of the frame should look
16 the same. And so I was under the impression
17 that if it's true, then they're doing something
18 to the columns, I'd like to see it.
19 Q When did you learn that the Linak columns --
20 when did you first learn the Linak columns were
21 matte finish?
22 A To be honest, I don't know what all finishes are
23 for Linak. So could you maybe get a high gloss
24 finish on there? You potentially could and
25 that's why I ordered it, to see if it was that

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1 way.
2 Q Okay. But that's not what you just said a
3 minute ago. You said you knew that all Linak
4 columns have a matte finish --
5 A I --
6 Q -- right?
7 A I guess that's an assumption. That's my
8 opinion. Based on seeing them, it shows.
9 Q But based upon that assumption, if you would
10 have ordered the silver matte finish, it would
11 have matched, right?
12 A It could have.
13 Q But you chose to get the silver gloss
14 specifically so you could try and identify this
15 issue, right?
16 A I wanted to see if it -- because it appeared
17 that way in the picture.
18 Q Because it works in your favor to identify
19 another problem, right?
20 MR. BATES: Objection, argumentative.
21 MS. TOY: I'll join.
22 You can answer.
23 THE WITNESS: I believe when
24 advertising the way that they are and having the
25 pictures appear that they -- the way that they

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1 are and advertising it being a frame, I wanted
2 to know.
3 MR. KERLIN: Object to the nonresponse
4 portion.
5 EXAMINATION
6 BY MR. KERLIN:
7 Q All right. Let's talk about the next item.
8 We've been going for a while, if you
9 want to take a break. I'm fine to keep -- keep
10 going. Whatever y'all want to do.
11 THE WITNESS: What do you guys want to
12 do?
13 MS. TOY: It's up to you, Greg.
14 MR. BATES: How much longer do you
15 think you have?
16 MR. KERLIN: Two, two and a half.
17 MR. BATES: Let's take a quick five.
18 THE VIDEOGRAPHER: We're off the
19 record.
20 (Recess from 3:14 through 3:23 p.m.)
21 THE VIDEOGRAPHER: We are back on the
22 record at 3:23.
23 EXAMINATION
24 BY MR. KERLIN:
25 Q Okay. Mr. Knighton, we're back after a brief

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1 break. Are you ready to continue?
 2 A Yes.
 3 Q Okay. So the next section in the review and --
 4 and I'm looking at -- it's Exhibit 7, page
 5 three, inaccurate information throughout the
 6 NextDesks.com web site. Is that correct?
 7 A Yes.
 8 Q That's what it says. Okay.
 9 Okay. It says, during -- the second
 10 paragraph starts, during the research portion of
 11 the buying process with NextDesk, I ran into
 12 multiple red flags. The first was in regard to
 13 the type of material used for the frame.
 14 I'm just going to go back to -- I know
 15 I've had a lot of questions today about frames
 16 and legs or columns is what we've also called
 17 it. Do you think that the frame is the entire
 18 metal structure of the desk? Is that accurate?
 19 A That's accurate.
 20 Q Okay. You then reference Linak. You referenced
 21 the Linak column, right, in I guess it's the
 22 next sentence. The odd thing was that NextDesk
 23 has always used a Linak column for their Terra
 24 products. Do you see that?
 25 A Okay, yes.

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1 Q Okay. To be more specific, this is the next
 2 sentence, it has always been the DL4 series
 3 column for Linak. This series from Linak has
 4 only been constructed from steel. Okay. So how
 5 could there be any confusion?
 6 Your position, if I understand it
 7 correctly, is that the column is part of the
 8 frame. Is that correct?
 9 A That's correct.
 10 Q Okay. Do you know how Linak -- am I saying it
 11 properly? Linak? Linak?
 12 A Linak.
 13 Q Linak. Do you know how Linak, since you're
 14 referring to their column, how they refer to it?
 15 A I would imagine they would refer to, again,
 16 different components of the column and frame,
 17 depending on what's all there, differently.
 18 It's -- if we're referring to specifically the
 19 column, the upright portion, they're probably
 20 going to call it a column.
 21 Q Okay. You've -- you've -- you've gone to
 22 Linak's web site, right --
 23 A Yes.
 24 Q -- at one point in time?
 25 A Yes.

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1 Q Okay. Have you done any research or conducted
 2 any evaluation about how they refer to frames,
 3 legs or columns, or anything like that?
 4 A No.
 5 Q Okay. Would it surprise you to learn that they
 6 refer to the support underneath the desktop
 7 surface, and only that part, as the frame?
 8 MR. BATES: Before you answer that, if
 9 you're referring to something from their web
 10 site, I think he should have a chance to have
 11 that in front of him if you're going to ask him
 12 about it.
 13 MR. KERLIN: I'll show it to him as
 14 well.
 15 MS. TOY: I'm going to object to the
 16 extent that it assumes facts not in evidence --
 17 evidence.
 18 EXAMINATION
 19 BY MR. KERLIN:
 20 Q Okay. But you haven't conducted any evaluation;
 21 you didn't go to their web site and look and
 22 say -- you're referencing the Linak column, but
 23 you didn't go out there and look and say, well,
 24 is the column part of the frame? You just made
 25 an assumption that it's all part of the frame,

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1 right?
 2 A I -- it -- in my opinion, the frame constitutes
 3 all of the components we discussed.
 4 Q Okay. And even though you're an expert, and
 5 you've said you're an expert in the design and
 6 manufacture of standing desks, you again don't
 7 make a differentiation between legs, feet, and
 8 frame, right?
 9 MR. BATES: Objection. That
 10 mischaracterizes his testimony. He said that
 11 the legs and the feet and the columns comprise
 12 the frame.
 13 THE WITNESS: I mean, that's where --
 14 all of those components make up a frame. There
 15 are going to be different parts within a frame
 16 that may have different names, but you need all
 17 those components to make a standing desk frame.
 18 EXAMINATION
 19 BY MR. KERLIN:
 20 Q Okay. Would you agree that Linak or Linak, that
 21 they're considered an authoritative source for
 22 standing desks?
 23 MS. TOY: Objection, speculation.
 24 Go ahead and answer.
 25 THE WITNESS: I think that Linak makes

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1 a very nice standing desk column, for sure.
 2 EXAMINATION
 3 BY MR. KERLIN:
 4 Q Do you think they know their products?
 5 A I think that they make a good product.
 6 Q You've already said Wirecutter's an
 7 authoritative source on standing desks, right?
 8 A Correct.
 9 Q Okay. Okay. I'll show you what's been
 10 marked --
 11 I think I need another exhibit tag.
 12 Thank you.
 13 (Knighton Exhibit No. 11
 14 marked for identification.)
 15 EXAMINATION
 16 BY MR. KERLIN:
 17 Q And just so that it's clear to the jury, the
 18 columns that you reference in the report -- or,
 19 in the eight problems article, with respect to
 20 my client's product, the columns are provided by
 21 Linak, right?
 22 A Correct.
 23 Q Okay. Let me show you what's been marked as
 24 Exhibit 11.
 25 MS. TOY: Do we know what date this is

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1 from?
 2 MR. KERLIN: It was pulled from their
 3 web site yesterday. We will supplement our
 4 production with it, although I don't think it's
 5 been requested.
 6 EXAMINATION
 7 BY MR. KERLIN:
 8 Q Okay. On page one, see the front here? It
 9 says, ready, set, done. And underneath it, it
 10 says, desk frame one includes frame, legs, and
 11 feet.
 12 Do you see that?
 13 A I see it says, desk frame one is one complete
 14 full frame lifting column solution where they're
 15 including all of these components to make a
 16 frame.
 17 Q Desk frame one is the name of their product
 18 they're selling, right?
 19 A Is one complete full frame lifting column
 20 solution.
 21 Q So if we go to -- go to page four. Now, this is
 22 the company that makes the columns, right, for
 23 the Terra product, correct?
 24 MS. TOY: And you can feel free to
 25 read the whole thing before you start --

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1 THE WITNESS: Okay.
 2 MS. TOY: -- answering questions.
 3 THE WITNESS: Okay.
 4 Yeah.
 5 EXAMINATION
 6 BY MR. KERLIN:
 7 Q Okay. So on page five, Linak's talking about,
 8 there's a column that says frame, and there's
 9 another one that says legs, and there's another
 10 one that says feet, correct?
 11 A Correct.
 12 Q So Linak is breaking it down to three different
 13 parts. Is that correct?
 14 A Yeah, they're saying top frame.
 15 Q In fairness, above that, it just says frame. It
 16 doesn't say top frame.
 17 A Okay.
 18 Q Frame, legs, feet. All right?
 19 Let's go to the next page. Do you see
 20 that at the top where it says frame, legs, feet?
 21 A Okay.
 22 Q Okay. So at least Linak is making a distinction
 23 in breaking it down from the frame to the legs
 24 to the feet, correct?
 25 MS. TOY: I'm going to object to the

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1 extent that this mischaracterizes the document.
 2 As Greg had pointed out, there's a
 3 bunch of text underneath that gives context.
 4 MR. KERLIN: I object to the speaking
 5 objection.
 6 MR. BATES: I'm going to join to the
 7 objection. And I'm going to move to strike this
 8 exhibit as not only do I don't think there's a
 9 foundation label for it, but also it's obviously
 10 a marketing piece that's trying to explain this
 11 in such a manner that I don't know that is
 12 complete without --
 13 MR. KERLIN: Objection noted.
 14 MR. BATES: All right. Thank you.
 15 EXAMINATION
 16 BY MR. KERLIN:
 17 Q Yeah. So just to get back to page five.
 18 Well, before we get there, you've
 19 provided an affidavit in this case, right?
 20 And in that affidavit -- is that -- is
 21 that a yes for the --
 22 A Yes.
 23 Q -- record?
 24 And in that affidavit you've said, I
 25 went out to Linak's web site and I pulled some

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1 materials, right?

2 A Yes.

3 Q You did have access to their web site, right?

4 A Yes.

5 Q You're familiar with their web site; you've been

6 there before, prior to this case. Is that --

7 A They're very large --

8 Q -- true?

9 A -- companies, though. I don't have all of

10 the -- I don't -- it's not my web site, so I

11 don't have all of it. That's for sure.

12 Q Yeah. Not my question, though. In fairness,

13 I'm just asking, you've had access to their web

14 site?

15 A I've been on it, yes, absolutely; yeah.

16 Q Okay. Did you ask them for a document like this

17 about my client's product before you reviewed

18 it?

19 A I don't -- I don't think I needed to for this.

20 Q So you didn't, right?

21 A No.

22 Q Okay.

23 A I mean, they refer to this as a desk frame one,

24 the whole package, which kind of goes to my

25 point.

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1 MR. KERLIN: Move to strike. There's

2 no question pending.

3 EXAMINATION

4 BY MR. KERLIN:

5 Q Okay. So it's fair to say you weren't -- you

6 didn't have any knowledge about what we're

7 talking about right here?

8 A I've never seen this.

9 Q Okay.

10 MR. BATES: Can we go off the record.

11 As long as you've moved on from there, can we go

12 off the record for just one brief second?

13 MR. KERLIN: Sure.

14 MR. BATES: Okay.

15 THE VIDEOGRAPHER: Okay. We're off

16 the record.

17 (Recess from 3:34 through 3:36 p.m.)

18 THE VIDEOGRAPHER: We're back on the

19 record at 3:36.

20 EXAMINATION

21 BY MR. KERLIN:

22 Q Mr. Knighton, with respect to Exhibit 11, we've

23 talked about some parts of it. I'd like for you

24 to have an opportunity, since you've looked it

25 over, to read the first page.

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1 A Okay. It says ready, set, done. Desk frame one

2 is one complete full frame lifting column

3 solution for electric office desks, including

4 frame, legs, and feet, from a global supplier

5 close to you.

6 Q Okay. You can set that aside I think. We'll

7 move on to the next part of this section. Okay.

8 Okay. The next paragraph is where you discuss

9 your discussions or communications with NextDesk

10 or Xdesk. Is that right?

11 A Correct.

12 Q Okay. Is the entirety of your communication --

13 and I think it's clear on this, but I just want

14 to make sure -- this is what we talked about

15 earlier, the online chats, and then the

16 telephone call with Christopher?

17 A That's correct.

18 Q Okay. Okay. That last sentence of the

19 paragraph, it says, it has been two months since

20 I received an apology from management at

21 NextDesk; however, they continue to provide bad

22 information to new customers.

23 With respect to the first part of the

24 sentence before the semicolon, who apologized

25 from management at NextDesk to you?

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1 A Christopher.

2 Q What did he say?

3 A I cannot remember the exact content of the

4 conversation since it was quite a long time ago

5 now.

6 Q Okay. Didn't make any note of it anywhere that

7 we can see. Is that right?

8 A That's correct.

9 Q The only -- the only reference that we have to

10 it is going to be in your report -- is in your

11 eight problems. Is it also in the review?

12 A This section I discussed in the review getting

13 the -- I have to -- I would have to pull it back

14 up if we wanted to look at it for sure, but I

15 know I referenced the portion of receiving the

16 bent foot. I do believe I reference that as

17 well.

18 Q Okay. Was the bent foot replaced before you did

19 any of your testing?

20 A Yes, yes.

21 Q Okay. And I think we've talked ad nauseam, and

22 it's not my intention to ask the same questions

23 again today. You -- is it accurate to say that

24 your belief that Christopher was in management

25 is because he called you back --

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1 MS. TOY: Object.
 2 MR. KERLIN: -- and you did ask --
 3 MS. TOY: Sorry.
 4 MR. KERLIN: -- that someone from
 5 management call you?
 6 MS. TOY: I'm going to object to the
 7 point -- to the extent that it misstates his
 8 prior testimony.
 9 Subject to the objection, you can
 10 answer.
 11 MR. BATES: I'll -- I'll join. And
 12 asked and answered here.
 13 But go ahead, if you can.
 14 THE WITNESS: It was my belief that he
 15 was in management. And I can't recollect the
 16 phone call. I left a voice mail for management
 17 to call. Christopher is the one who called me
 18 back.
 19 EXAMINATION
 20 BY MR. KERLIN:
 21 Q Why is that an important fact to put into your
 22 review for your eight issues article?
 23 A I think it's -- this part and the portion where
 24 we refer to the chain drive verse the spindle
 25 drive, the materials, it's a top down issue at

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1 NextDesk.
 2 Q So, by putting in that it was from management,
 3 that adds -- that adds to the problems in that
 4 it's stating that NextDesk has high level
 5 problems. Is that correct? High level in
 6 management?
 7 A I think it goes to the fact that they're
 8 providing misinformation that starts at the top.
 9 And so, unfortunately, for these other people
 10 that are -- that I'm talking to in chat, they
 11 wouldn't know any different.
 12 Q Did you do anything outside of what we've
 13 discussed to independently verified that the
 14 apology that you think you got from Christopher,
 15 although you can't remember the specifics right
 16 now, was, in fact, from management?
 17 A No.
 18 Q When you say that they continue to provide bad
 19 information to new customers, are you referring
 20 to the columns being made of steel and not
 21 aluminum?
 22 A I'm referring to -- there's a -- yes, there's
 23 that. There's the chain drive part.
 24 Q Okay. Anything else besides those two?
 25 A I'd have to go back through the review.

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1 I don't think they advertised any
 2 collision avoidance on their web site or
 3 overload protection. So I don't think that that
 4 would be inaccurate. I know that their speed
 5 testing was different than what I received --
 6 or, what I had. But those would be the two -- I
 7 mean, those are two major ones.
 8 Q Okay. Do you agree that, other than the
 9 columns, the Terra desk is made from aluminum?
 10 I mean, other than the desktop surface and the
 11 electronic components, but the other metal
 12 pieces that are part of it?
 13 A Those are made from aluminum, yes.
 14 Q Okay. When we get down to -- oh, I'm sorry,
 15 before we get there, next paragraph says, the
 16 second problem with misinformation is the
 17 internal components of the columns. That's when
 18 you mentioned the chain drive. Is that -- your
 19 issue with that is that they say it's a chain
 20 drive and you don't think it's a chain drive?
 21 A Right.
 22 Q Okay. It says, Linak has phased out the
 23 original D4 column and replaced it with the
 24 DL4S. Do you know when Linak phased out the D4
 25 column?

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1 A I believe it was in October of -- I know in -- I
 2 actually spoke with someone recently on this.
 3 And they said that it was in October of 2017.
 4 But that was someone that was actually over in
 5 Denmark.
 6 Q At Linak?
 7 A At Linak, yeah. Someone who subscribed to our
 8 content; a couple of them are subscribed. I had
 9 spoken with them.
 10 Q Did you reach out to them because of this
 11 lawsuit?
 12 A I wanted to find out to know for sure, yeah.
 13 I'd like to find out in the States here because
 14 I'm sure it's a little bit different.
 15 I believe I did when I was doing this,
 16 and I don't -- I don't remember what it was. I
 17 never put it in there.
 18 Q Okay. So with respect to the chain drive, if we
 19 go to the five photos we have, I think it's
 20 going to be 10? Nope. 14. On Exhibit 6, I
 21 believe it is.
 22 Okay. So that is not of the drive
 23 system that's on the Terra that you reviewed.
 24 Is that correct?
 25 A On which page?

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1 Q Page 14.
 2 A 14 is the Steelcase series seven desk.
 3 Q And 15 is the desk that is the Terra desk?
 4 A That's correct.
 5 Q Okay. Under solution, your first sentence
 6 states, while there were a handful of additional
 7 items mentioned on NextDesk that were -- that
 8 are simply not true, these are the two that I
 9 found to be most -- to be the most important.
 10 Sorry. We talked about the two just recently.
 11 Can you tell me what other items you found on
 12 NextDesk that are simply not true?
 13 A One is the best in class speed that they
 14 advertise, which was 1.7 inches per second,
 15 which is not true. If I can look at the -- if
 16 we can pull up the review, I can see I'm pretty
 17 sure I'm at the bottom of the review. Or if I
 18 can just look on my phone.
 19 Q I have a copy of -- did you recently repost the
 20 review?
 21 A I updated the date.
 22 Q Okay. Did you change anything else on it?
 23 A It shouldn't be, but I have -- everything that
 24 happens with the web site gets saved in Word for
 25 us, so --

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1 (Knighton Exhibit No. 12
 2 marked for identification.)
 3 EXAMINATION
 4 BY MR. KERLIN:
 5 Q Handing you what's been marked as Exhibit 12,
 6 Mr. Knighton, do you recognize this document?
 7 A I do.
 8 Q Okay. It's a double sided printout that I made
 9 from your web site actually yesterday. Can you
 10 tell the jury what it is?
 11 A This is the -- yeah, this is the full review for
 12 the Xdesk Terra.
 13 Q Okay. And so you republished this, it says,
 14 October 18, 2019. Is that accurate?
 15 A That's correct.
 16 Q Okay. And, again, if we go -- well, not again.
 17 But if we go to page three, we talked about this
 18 when you were describing your overall process.
 19 You got the pros and cons. And under cons, you
 20 got stability issue at all heights. We've
 21 talked about that. Mismatched color -- colors
 22 for frame. We've talked about that. No
 23 overload protection. No anti-collision system.
 24 We haven't got an opportunity to talk about that
 25 yet, but I'm certain we will. And you have

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1 adjustable foot glides at \$100.00. Why is the
 2 adjustment foot glides at \$100.00 a con?
 3 A Because they're included with every other
 4 standing desk that I've reviewed for free.
 5 Q All right. So let's get to the other -- what
 6 we're on. The reason why I had given it to you
 7 is you said that there were a handful of
 8 additional items that are simply not true on the
 9 NextDesk. And I just wanted to know what those
 10 are.
 11 A It was -- it was -- it was definitely linked to
 12 the speed of the desk. And I cannot remember if
 13 they have on their site that they included the
 14 collision avoidance. But it was best in class.
 15 They make a bunch of best in class claims. And
 16 I don't believe that all of them are accurate.
 17 I'd have to go back. I know that they don't --
 18 they don't have best in class all the things
 19 they list.
 20 Q With respect to the time -- so you've talked
 21 about speed. Going back to your notes, is that
 22 indicated on your notes where you took
 23 measurements regarding that?
 24 A Yes.
 25 Q Okay. Let's talk about that. How did you --

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1 how did you run those tests? What was your
 2 protocol?
 3 A So when I run the test, I run the test with no
 4 weight on the desk, just the surface. And we
 5 will run it -- initially, when I earl- -- when I
 6 was early with this first starting, I was
 7 obsessive over doing a lot of cycles, over ten,
 8 and taking the average of that to get my number.
 9 And I realized that it didn't require that much
 10 to get an accurate depiction of how the desk
 11 functioned, speed-wise. And so I'd take three
 12 and take the average of it. And so you'll see
 13 on the notes, there might not be a third one
 14 listed, but it's usually the -- it would be the
 15 last. It would be the last one taken. And I'm
 16 most focused on that. The -- and then, from
 17 that, it's how does the desk stay
 18 consistency-wise as weight's added.
 19 Q Looking at Exhibit 6, and it's -- it's -- last
 20 two digits are 11, I think is where it has your
 21 indication of -- or, where you made notes about
 22 the results.
 23 Are those your measurements?
 24 A Yes.
 25 Q Okay. All right. So, just so that I can

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1 understand your document here, so it says
 2 NextDesk at the top, and then it has DB equals.
 3 Would that be for decibels?
 4 A Yes.
 5 Q And so that ranged from 58 to 61. Is that
 6 right?
 7 A Yes.
 8 Q What's the significance of the 30 minutes next
 9 to it?
 10 A That was -- that was the time required for
 11 putting it together.
 12 Q All right. And then it has 50 pounds equals and
 13 some -- it's difficult to read.
 14 A I have no idea.
 15 Q Then on the left hand column, it says weight?
 16 A Yes.
 17 Q And we have just top?
 18 A Yes.
 19 Q Okay. What would that be?
 20 A That would be just the top.
 21 Q So nothing on top of putting it up on top of
 22 desk?
 23 A Right.
 24 Q No additional weight?
 25 A Correct.

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1 Q We have 100 pounds, and then what's the one
 2 underneath 100 pounds?
 3 A I have to kind of decipher my writing, but
 4 it's 210.
 5 Q And then next to that, it's got stars around
 6 something?
 7 A Yeah, it says loud.
 8 Q Okay. Continuing down in the left hand column,
 9 there's two more weights. What are those two
 10 weights?
 11 A Those are additional weight tests that I
 12 performed on it.
 13 Q And the numbers are? I just can't read them.
 14 A Oh, sorry. 285 and 360.
 15 Q Okay. Why did you stop at 360?
 16 A I stopped -- it's excessive. It would be well
 17 beyond the listed weight capacity that they
 18 advertise on their web site and what Linak
 19 shows.
 20 Q Do you know what is the -- like, what is the
 21 actual -- so, is it ac- -- let me start that
 22 over.
 23 Is it accurate to say that you don't
 24 continue to add weight until a point which the
 25 desk won't lift any more?

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1 A Correct.
 2 Q Why is that?
 3 A It's not necessary.
 4 Q Okay. Well, how do you know? I mean, one of
 5 the things you said you tested for was overload
 6 protection, right?
 7 A Right.
 8 Q Okay. Well, what's your overload protection
 9 test process?
 10 A The overload protection for standing desk would
 11 kick in at the rated weight that's advertised by
 12 an OEM, or a manufacturer, or a brand.
 13 Q Do you know whether the Terra would result in
 14 having an error if an excessive weight load was
 15 on top of it, such that it wouldn't harm the
 16 gears in the internal mechanisms?
 17 A Beyond the weight that's -- beyond the weight
 18 that is warranted? Because I believe if you go
 19 over 315 pounds, and if you use the context of
 20 it is if you go over 315 pounds, excessively,
 21 and you break your desk, you'll be outside of
 22 warranted weight, which is important.
 23 Q My question is, is, how do you know the desk
 24 would break if you didn't take it to the point
 25 it does break?

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1 A I didn't want to break it.
 2 Q But -- so you don't know that it was overloaded
 3 then. Is that correct?
 4 A I do because it's the weight capacity that's
 5 listed by the OEM.
 6 Q Okay.
 7 A It's not meant to operate beyond that point.
 8 Q That's your interpretation of the OEM --
 9 A I mean, when they --
 10 Q -- maximum weight?
 11 A When they advertise a weight capacity, I guess
 12 it's an assumption, but I would assume that
 13 that's pretty fair.
 14 Q Do you know if -- and this is just a question.
 15 Do you know if the Terra has a function that if
 16 the weight is too heavy, either up or down, that
 17 the motor disengages?
 18 A In 2017, I do not know. I don't believe it did,
 19 but I could now.
 20 Q And what you said in your article is that it
 21 doesn't. Is that right?
 22 A I don't believe that it has overload protection
 23 because I took it beyond -- well beyond the
 24 stated limit from both their brand and from the
 25 OEM, and it still lifted.

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1 Q But you didn't test it past 360 pounds, correct?

2 A That's 360 plus the weight of the top, so that

3 would be over 400 pounds.

4 Q You didn't take it past 400 pounds?

5 A I did not.

6 Q Okay. Did you test it when it was coming down

7 as to what the downward load would be before it

8 would disengage, if at all?

9 A I had -- I had the same amount of weight on it

10 when it would go down.

11 Q Well, no, I'm talking if it, like, impacted

12 something. Let's say something got underneath

13 the glide and was causing it a problem, or if

14 the desk is going down and there's something

15 underneath it that would stop it. Did you --

16 did you check for that?

17 A I did.

18 Q Okay. And what did -- what were your results

19 with respect to the load?

20 A To the load?

21 Q With respect to what we're talking about right

22 now, the overload protection.

23 A I mean, I don't know -- I don't -- if it hit

24 something hard, it doesn't have collision

25 avoidance, so it would just lift the leg.

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1 Q Did you test that?

2 A I didn't need to.

3 Q But you didn't test it, right?

4 A I tested the collision avoidance, which it

5 doesn't have which we've shown documentation on.

6 Q Okay. And we'll talk about collision avoidance,

7 anti-collision avoidance -- or anti-collision

8 here in a minute.

9 Is there -- I mean, do you think that

10 there is a problem with a desk if it's able to

11 lift more than what its maximum rating is?

12 A I don't know if it's -- I would say for

13 warranty, which is very important with these

14 desks --

15 Q All right.

16 A -- people need to be considerate of what that is

17 when lifting things on their desk. And that

18 saves you from misuse and abuse, which is in

19 almost every warranty for furniture.

20 Q All right. With respect to -- talk a little bit

21 about the anti-collision. Let me make sure that

22 we're done with this section.

23 Okay. All right. So turn -- going

24 back to Exhibit 7, which is the eight problems

25 document for Terra. On page five -- well,

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1 before we get there.

2 Anything else besides best -- you said

3 statements regarding best in class speed and

4 then you had the testing -- your testing.

5 Anything else? I just want to make sure I

6 covered everything on the last topic before

7 we --

8 A I don't believe so.

9 MS. TOY: I think he also said the --

10 the -- the speed.

11 MR. KERLIN: The speed. That's just

12 what I was mentioning, yeah, the 1.7 seconds.

13 MS. TOY: Yeah.

14 EXAMINATION

15 BY MR. KERLIN:

16 Q Yeah. At 1.7 inches per second is what Terra

17 says. You said that's inaccurate?

18 A Correct.

19 Q Okay. And your evidence that you think it's

20 inaccurate are the numbers that you have on this

21 page which you put in your report?

22 A And what's -- and what's shown on Linak's web

23 site.

24 Q Okay. All right. With that, let's go to page

25 five of Exhibit 7. It is --

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1 A Right there. Okay. Sorry.

2 Q Yeah. So the next topic was -- that I wanted to

3 discuss with you is no overload protection or

4 anti-collision. We just talked about the

5 overload protection. Let's talk a little bit

6 about anti-collision. What is anti-collision?

7 A Anti-collision is developed for -- to, I guess,

8 stop desks from colliding with things in your

9 office.

10 Q Okay. And if we go back -- and I'm not trying

11 to flip around a bunch of documents, but in your

12 answer to interrogatory number two, it says, in

13 addition, Gregory Knighton performed a manual

14 anti-collision test, right? Okay.

15 MS. TOY: Is that a yes?

16 THE WITNESS: Yes. Sorry.

17 EXAMINATION

18 BY MR. KERLIN:

19 Q Tell me what your anti-collision test is.

20 A Push down on the desk as absolutely hard as you

21 can, if need be. You just keep pushing down as

22 it's moving up trying to get it to stop because

23 if it has collision avoidance, that is a lot of

24 force, and it will stop the desk.

25 Q Okay. Okay. So that I understand, you put

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1 downward pressure on the top of the desk and
 2 then you engage the desk?
 3 A You -- you -- right. You -- no, you're running
 4 the desk. You're moving the desk up or down.
 5 And then you push down. Like, on a corner of a
 6 desk, you push down on the desk as hard as you
 7 can. If you -- you know, you put your weight
 8 into it. And if a collision avoidance triggers,
 9 the desk will reverse its course to stop it from
 10 crushing whatever it's hitting.
 11 Q Okay. Going back to your notes -- because this
 12 is what I have about what you documented about
 13 your test result, and I don't have anything
 14 else --
 15 A Okay.
 16 Q -- all it says on it -- and it's on page 10,
 17 last two digits 10, no anti-collision.
 18 A Correct.
 19 Q Okay. And then underneath it says, no overload
 20 protection.
 21 A Correct.
 22 Q Okay. Going back to the overload protection
 23 real quick, any notes or references or anything
 24 next to it other than what we discussed about
 25 the weight --

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1 A No.
 2 Q -- test that you did?
 3 A No.
 4 Q Okay. So now it says no anti-collision.
 5 There's no reference on here about what you did
 6 as far as your anti-collision test, right?
 7 A In my notes?
 8 Q In your notes.
 9 A There's no need.
 10 Q Okay. Why isn't there a need?
 11 A Because it's the same test over and over. It's
 12 one of the -- probably the most simple ones that
 13 we do. I mean, it's like real, real simple.
 14 Q Okay. What part of the desk did you put weight
 15 on?
 16 A The -- the corners of the desks are most likely
 17 to trigger it. That's what many things are
 18 hitting. So we always -- you can -- you push
 19 down on the side; you can push down on the
 20 corner. It doesn't matter if it has collision
 21 avoidance and you put enough force on it, which
 22 I'm capable of doing for all the desks that I've
 23 tested that have it, it will trigger it. It
 24 will reverse course because if you can't get it
 25 to trigger with the amount of force I put into

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1 it, there's no real point in having it. It will
 2 break things.
 3 Q Okay. But there's no indication on your notes
 4 as to what part of the desk that you pushed on,
 5 right?
 6 A I always push down on the corners.
 7 Q Do you know which corner?
 8 A I -- no.
 9 Q Okay. Do you know whether or not -- well,
 10 strike that.
 11 Do you know who manufactures the
 12 control unit for the Terra?
 13 A Who manufactures it?
 14 Q Uh-huh. You got a picture of it, right?
 15 A Yeah.
 16 Q I mean, there's a picture of it. We've got two
 17 different pictures. We've got one here on --
 18 it -- it's in in an A so we can see it here,
 19 right? And then we have another one I think
 20 closer up right here.
 21 A Yes.
 22 Q Okay. And it says NextDesk. Do you know who
 23 actually makes those?
 24 A Linak.
 25 Q Okay. Did you talk to Linak and see whether or

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1 not this particular one has anti-collision or
 2 not?
 3 A That -- that control box cannot have -- that
 4 C- -- the CBDS6S control box cannot have
 5 collision avoidance on it unless it has the
 6 dongle in place. It's documented on their web
 7 site.
 8 Q Do you have a picture anywhere of the different
 9 parts of the desk that were shipped? We have
 10 the one here. And I'm showing you the one that
 11 just has the box looking -- you know, you have
 12 the top of the box off it. Do you have any --
 13 any pictures of the internal components inside
 14 of here where we can see whether or not a dongle
 15 was delivered or not?
 16 A So when they ship that, it comes preassembled.
 17 If you look at the other -- if you look at
 18 No. 8, you see the packaging just pulled off
 19 of it --
 20 Q Uh-huh.
 21 A -- that's exactly as it was received. That's
 22 what we pulled out of the box.
 23 Q Okay. Do you know whether or not a dongle is
 24 always required for anti-collision?
 25 A For this particular control box, yes.

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1 Q And, again, I just want to make sure this is
2 clear. You verified that with Linak?
3 A Yes.
4 Q Okay. And how did you verify that with Linak?
5 THE WITNESS: Didn't we send the
6 documentation over?
7 MS. TOY: It's part of our summary
8 judgment motion.
9 EXAMINATION
10 BY MR. KERLIN:
11 Q Okay. Is the document that you provided as an
12 exhibit to your affidavit, which I'll mark here
13 in a minute, I'm getting it out, is that the
14 only source for your position or statement that
15 this control box requires a dongle in order to
16 have anti-collision capabilities?
17 A And the fact that I tested this desk as this
18 control box stands and it didn't have collision
19 avoidance, so besides physically testing it and
20 what's provided on the Linak web site, yes.
21 Q Okay. But nowhere do you say in your review or
22 in your eight problems with the Terra that you
23 actually tested the anti-collision. Is that
24 correct?
25 A I said that it doesn't have anti-collision. I

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1 mean, it's a 4,000 word post so I have to cut
2 out somewhere; otherwise, people will stop
3 reading it.
4 Q I know. I just want to make sure it's clear.
5 You don't actually say you tested it in there.
6 You said you tested some of these other parts.
7 You didn't actually test -- you didn't say in
8 there that you tested. You just make a
9 statement, right?
10 A We could reread through it. I'm not exactly
11 sure. But I tested it. That's how I know. And
12 it's in there stating that it doesn't have it.
13 I'm not sure adding words such as testing will
14 impact that, but --
15 (Knighton Exhibit No. 13
16 marked for identification.)
17 EXAMINATION
18 BY MR. KERLIN:
19 Q Okay. I'm handing you what's been marked as
20 Exhibit 13.
21 I should have another copy of this.
22 Okay. I'll stay on the topic of the
23 anti-collision. If you look at paragraph -- I
24 believe it's 11 -- and just real quick,
25 Exhibit 13, you recognize this as your

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1 affidavit. Is that correct?
2 A Yes.
3 Q Okay. It says, when drafting paragraph 13, when
4 drafting the November 1, 2017 article titled top
5 eight problems and solutions with NextDesk Terra
6 standing desk, I, as an officer of BTOD,
7 analyzed whether an anti-collision was present
8 on a Terra desk obtained from NextDesk, which
9 has since been rebranded to Xdesk.
10 Did I read that correctly?
11 A Yes, I believe so.
12 Q Okay. I'm going to refer you to paragraph six
13 at the top. Okay? It's a very similar
14 paragraph, but there's a key difference to it.
15 So when you get to it, it says, when drafting
16 the November 1, 2017 article titled top eight
17 problems and solutions with NextDesk Terra
18 standing desk, I, as an officer of BTOD,
19 conducted an overload protection test on a Terra
20 obtained from NextDesk, which has since been
21 rebranded to Xdesk.
22 Did I read that right?
23 A Correct.
24 Q Okay. Why did you say in paragraph six that you
25 tested the overload protection and you said

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1 analyzed in paragraph 11?
2 A I'm not really sure, but I tested both of them.
3 Q Okay. So is it your sworn testimony today that
4 when you said analyzed in paragraph 11, you
5 actually tested it?
6 A Correct.
7 Q And the way you tested it is what you described
8 earlier?
9 A Correct.
10 MS. TOY: And I'm going to object to
11 the extent in -- in response to the written
12 discovery, we were asked for all information.
13 This document, the affidavit, was prepared for
14 the purposes of this motion for summary
15 judgment.
16 EXAMINATION
17 BY MR. KERLIN:
18 Q Okay. Yeah, I'm not complaining about getting
19 it now. I mean, it is what it is. I'm just
20 saying it's just curious that up here you used
21 test and down here you put analyzed. Why didn't
22 you just say test? Was it just a different
23 usage of word?
24 A I -- I mean, I didn't physically write this,
25 so --

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1 Q Okay. Well, I just haven't seen it anywhere
 2 else where -- I haven't seen anywhere ever, any
 3 document in this case where it says that you
 4 tested it. Okay? You use analyze here. You
 5 just say no anti-collision; just a statement in
 6 your notes. In your reviews, in your eight
 7 problems that you've identified, you just say
 8 there's no anti-collision. Never did you say
 9 you tested it. So I just want to make sure that
 10 it's abundantly clear that you actually tested
 11 this thing.
 12 A I 100 percent tested it.
 13 Q Did anyone witness you?
 14 A Testing it?
 15 Q Yes.
 16 A Yeah. I think actually -- well, I don't -- it's
 17 been -- it's two and a half years ago, so, I
 18 mean, for me to -- for me to remember the exact
 19 situation when who was in the room during the
 20 many times that I did it, I -- I can't tell you
 21 that. I mean, I've reviewed too many desks.
 22 But, of course, there's people coming in and out
 23 of the room when I'm testing stuff.
 24 Q Okay. With respect to paragraph 12 and 13, when
 25 it references an attachment as Exhibit 13 to

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1 your affidavit, it talks -- it talks about the
 2 user manual from Linak. When did you first
 3 access that document, the one that's attached as
 4 Exhibit 13, the Linak document?
 5 A When is the first time I looked at this
 6 particular document?
 7 Q Yeah.
 8 A It's likely -- it's likely around the time of
 9 the review, but, I mean, I go through their
 10 entire web site using it as a reference. And
 11 when we did -- when this was pulled with us, it
 12 was just because we had just -- and this is the
 13 stuff we talk about, well, which we don't talk
 14 about, but --
 15 Q So -- so I just -- I mean, I just want -- I want
 16 to make sure it's clear here. Did you review
 17 this document, the Linak document, at some point
 18 in time before you wrote the review for the
 19 Terra?
 20 A That I can't be -- I can't be certain of.
 21 Q Okay. Did you pull it specifically for using it
 22 as part of your affidavit, an exhibit in this
 23 case?
 24 A I know that it was pulled for that.
 25 Q And if we go to --

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1 A It was pulled before that as well.
 2 Q -- 14. It's Exhibit 13. But if we go to
 3 the 14th -- well, actually, it's just a cover
 4 page of Exhibit 13. It's got a section -- I'm
 5 sorry. I'll wait until you get there.
 6 A What page was it?
 7 Q It's Exhibit 13. Yeah, it's the sixth page from
 8 the front.
 9 A Okay.
 10 Q Okay. So one of its subsections says
 11 anti-collision. Do you see that?
 12 A Page six, right?
 13 MS. TOY: What page are you on, Paul?
 14 MR. KERLIN: It's the -- it's the
 15 affidavit.
 16 MS. TOY: Up here, the -- so that
 17 we -- because I don't think we're finding where
 18 you are.
 19 MR. KERLIN: Oh, okay. You know, it
 20 could be -- what is on some of these. I think
 21 y'all have the full set. I pulled out some of
 22 the ones --
 23 MS. TOY: Okay. Does it say, like,
 24 page one of 24? You can just tell us which one
 25 it is so we can find it.

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1 MR. KERLIN: It's two of 24. It says
 2 document 26-2.
 3 MS. TOY: Okay.
 4 MR. KERLIN: Okay. I don't think I
 5 have the page in front of it, if there is one.
 6 I guess you all have a page in front of it.
 7 That must be the difference, so it's -- I don't
 8 have a page one.
 9 EXAMINATION
 10 BY MR. KERLIN:
 11 Q With respect to this control box, there is a
 12 feature for anti-collision, correct?
 13 A Correct.
 14 Q Okay. And so that control box was the one used
 15 on the Terra desk, correct?
 16 A Correct.
 17 Q Okay. So the anti-collision feature was
 18 available. But if I understand you correctly,
 19 you don't think it was activated on that -- on
 20 the desk that you received?
 21 A It requires a dongle.
 22 Q Okay. But there's anti-collision in it --
 23 A No.
 24 Q -- if the dongle's included.
 25 A That runs off of -- so the dongle is software

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1 that gets plugged into the control box that
 2 works off amperage loads. So it understands how
 3 much amperage is moving through the desk. But
 4 in order for that software to run properly, it
 5 needs to have the dongle to plug into it to make
 6 it work.
 7 Q Do you know if at some point Linak changed their
 8 approach and no longer required a dongle for
 9 anti-collision?
 10 A This documentation is still relevant on their
 11 web site. I know they have PEZO, which is
 12 another inline system that they use for
 13 collision avoidance.
 14 Q Okay. But do you know one way or another
 15 whether -- I mean, so it sounds like you know
 16 what this one document says because you've
 17 accessed that particular document, right?
 18 A Correct.
 19 Q But have you ever spoken with Linak or had
 20 interactions with them and they've said, well,
 21 the dongle isn't always required for
 22 anti-collision?
 23 A No.
 24 Q Have they ever said that they can program the
 25 control box specifically for a customer so that

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1 it doesn't require a dongle?
 2 A I mean, it says required for use in their
 3 material.
 4 Q That's generally available on their web site --
 5 A Correct.
 6 Q -- right?
 7 But if we look at -- going back to,
 8 like, this one. And I'll just show you my copy
 9 as part of Exhibit 6, page nine, this is
 10 specifically branded for NextDesk, right? I
 11 mean, it's a -- it's a product that Linak makes,
 12 but it's for NextDesk. So it has the NextDesk
 13 brand on it.
 14 A Yeah, and that's not very unusual for OEMs to
 15 put other brand stickers on their control boxes.
 16 Q So with respect to what Linak does for
 17 particular end users of their components, do you
 18 know whether they can program their control unit
 19 so that it doesn't require a dongle for
 20 anti-collision?
 21 A I do not know that, but I know the desk that I
 22 tested did not have it.
 23 Q If it did, if it had been programmed, would you
 24 agree with me that it had anti-collision?
 25 MR. BATES: I'll object to --

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1 THE WITNESS: What?
 2 MR. BATES: -- hypothetical, and
 3 speculation, and assuming facts not in evidence.
 4 Answer, if you can.
 5 MS. TOY: And I believe he's already
 6 provided testimony on this subject. But I'll
 7 join.
 8 THE WITNESS: I can't speak on what
 9 they do and what they're not doing with regards
 10 to that, but I know the desk that I tested did
 11 not have collision avoidance.
 12 EXAMINATION
 13 BY MR. KERLIN:
 14 Q Okay. But there's a difference between having
 15 something and having something that works,
 16 right? So --
 17 A It doesn't have it if it does not have the
 18 software. It does not have collision avoidance.
 19 Q Okay.
 20 A That's just -- it is a fact.
 21 MR. KERLIN: I want to take a quick
 22 break, real quick.
 23 THE VIDEOGRAPHER: We're off the
 24 record.
 25 (Recess from 4:15 through 4:22 p.m.)

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1 THE VIDEOGRAPHER: We are back on the
 2 record at 4:22.
 3 EXAMINATION
 4 BY MR. KERLIN:
 5 Q Are there any Linak components on any of your
 6 branded products for BTOD?
 7 A There are none.
 8 Q Are there any Linak components on other
 9 companies' products that you sell through your
 10 web site?
 11 A There are not.
 12 (Knighton Exhibit No. 14
 13 marked for identification.)
 14 EXAMINATION
 15 BY MR. KERLIN:
 16 Q Mr. Knighton, I hand you what's been marked as
 17 Exhibit 14. It's a document that we
 18 supplemented our production with actually last
 19 night. Takes a little while to track down the
 20 receipt. So we believe this is your payment
 21 that was made for purchasing the Evodesk from
 22 Xdesk or NextDesk at the time?
 23 A That's correct.
 24 Q Okay. Have you purchased any other accessories
 25 or anything of that nature from Xdesk or

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1 NextDesk regarding the Evodesk as reflected on
 2 this invoice?
 3 A I have not.
 4 Q Okay. And you ordered it the same way under the
 5 company Levl Gaming, right?
 6 A Correct.
 7 Q Okay. Let me grab the next exhibit. Oops.
 8 You -- is it accurate that you purchased the
 9 Evodesk before you purchased the Next- -- I
 10 mean, the Terra.
 11 A Yes.
 12 Q Is that right? Okay.
 13 (Knighton Exhibit No. 15
 14 marked for identification.)
 15 EXAMINATION
 16 BY MR. KERLIN:
 17 Q Mr. Knighton, do you recognize the document that
 18 I've handed you as Exhibit 15?
 19 A I do.
 20 Q And what is it?
 21 A It is the top six problems and solutions for the
 22 Evodesk standing desk.
 23 Q Okay. And it looks like the date it was
 24 published was January 16 of 2018; is that right?
 25 A That's correct.

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1 Q Okay. Did you publish anything earlier about
 2 the Evodesk on your web site?
 3 A I did.
 4 Q You published a review?
 5 A I did.
 6 Q Did you -- was there anything else?
 7 A Yes.
 8 Q Okay. What else?
 9 A I published a comparison to the UPLIFT desk, and
 10 I published a comparison to the VertDesk.
 11 Q Okay. Why did you publish the problems for the
 12 Terra desk before you published the problems for
 13 the Evodesk?
 14 A I guess I just got lost in my own documents here
 15 because --
 16 Q Exhibit 7 was the review for --
 17 A Getting there.
 18 Q Okay. Sure.
 19 A Okay. So you --
 20 Q All right. So you bought the Evodesk first?
 21 A Yup.
 22 Q Did you do the review before you did the review
 23 of the -- post the review of the Evo before you
 24 posted the review of the Terra?
 25 A Correct.

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1 Q Okay. And then it seems like pretty shortly
 2 after the Terra review, you then, a couple weeks
 3 later, posted the eight problems?
 4 A That's right.
 5 Q Why did you wait so long to post the top six
 6 problems with the Evodesk after the review you
 7 had done of the Evodesk?
 8 A So that is just how the flow of my content ended
 9 up working. When we -- when I first wrote the
 10 reviews, I mentioned in February I wrote my
 11 first two, was UPLIFT and Jarvis. I then wrote
 12 my own products review, followed up by some
 13 other reviews as well. And going through the
 14 process, we had reviewed the -- I say we, I mean
 15 BTOD, but it's again me. We had reviewed the
 16 IKEA BIKANT, which is a well known product in
 17 the industry. And we had -- we had distinct
 18 problems that were noticed from our time with
 19 it, and then that were just everywhere online.
 20 I mean, they were posted everywhere.
 21 And following what I had learned from
 22 Marcus Sheridan was that, again, people really
 23 care about problems to find good fits for the
 24 products that they're searching for. They care
 25 more about the problems than they do the good

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1 stuff. They want to make sure that they're the
 2 right fit. And so what ended up happening is
 3 the process -- it -- I don't know the exact date
 4 on the -- I believe it may have been August when
 5 I did the IKEA, the first problems post on a
 6 standing desk was done for the IKEA, followed by
 7 my product, and then I kind of just went through
 8 the list of desks that I had reviewed. So there
 9 was really no rhyme or reason to why those
 10 problems posts were written when they were. It
 11 was just as they kind of came up.
 12 Q It just kind of worked out that way?
 13 A Right.
 14 Q Okay. If we go to page two -- I'm sorry, I --
 15 I -- I meant to start on page one.
 16 Okay. Yeah. I'm sorry but we're
 17 starting on page two. Your first topic that you
 18 have is over- -- overlubrication, correct?
 19 A Correct.
 20 Q Okay. Let's talk about a little bit about
 21 overlubrication. Okay. The first one, it says,
 22 over- -- excuse me, one of the most common
 23 issues with the JieCang frame in Chinese
 24 standing desk in general is overlubrication.
 25 Did you have an understanding when --

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1 when you posted this article that the Evodesk
 2 wasn't entirely manufactured in China?
 3 A I mean, I'm referring to the frame. So I'm
 4 referring to the frame, JieCang or JieCang frame
 5 and other Chinese standing desks that I've
 6 reviewed. That's a common problem across the
 7 board with them.
 8 Q Okay. But it appears -- okay. And you wrote
 9 it, so we can figure it out here. But the
 10 Chinese standing desk, when you reference
 11 Chinese standing desk, you're not referring to
 12 the Evodesk with that statement?
 13 A I'm generalizing all standing desks that are
 14 made in China had exhibited the same issues.
 15 Q Okay. But do you have an understanding of
 16 whether or not the Evodesk is entirely
 17 manufactured in China?
 18 A I know that their top is manufactured I believe
 19 in Minnesota.
 20 Q Okay. The picture in this printout did not come
 21 out. And so what I think I'm going to do is
 22 mark your motion for summary judgment. Well,
 23 let me ask -- ask you this. So let's go back to
 24 the photos just for a minute.
 25 So I've got a handful of photos, some

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1 of which were taken recently, some of which were
 2 taken earlier. Okay? You have photos that are
 3 on your reviews, correct?
 4 A Correct.
 5 Q Okay. I asked for all the photos that you have,
 6 and y'all referred me to your web site. I get
 7 that. But do the photos that are on, for
 8 instance, like the one -- you can't see it in
 9 this one because they don't print out properly.
 10 MS. TOY: It's part of the affidavit
 11 if you want it. Is that what you were looking
 12 for?
 13 MR. KERLIN: Okay. Yeah. No, and I
 14 appreciate that.
 15 EXAMINATION
 16 BY MR. KERLIN:
 17 Q Does that exist in it's -- I mean, like, what
 18 was that taken with as far as a camera?
 19 A It could have been the -- I mean, it would have
 20 been either the Canon or my cell phone. So, I
 21 mean, we're going to go through and find
 22 whatever we have.
 23 Q Okay. Let me go back to the affidavit. Is that
 24 the only photograph of it that you have? One
 25 photograph that's part of your affidavit?

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1 A Yes, correct.
 2 Q Okay. Here it is. Okay. So it's the last page
 3 of Exhibit 13. Okay.
 4 A I don't know if I'm looking at the right stuff,
 5 but I know what picture it is, so --
 6 Q It's --
 7 A Which exhibit is it?
 8 Q I just want to make sure that we're both --
 9 MS. TOY: Exhibit 13.
 10 EXAMINATION
 11 BY MR. KERLIN:
 12 Q As long as we're both referring to the same
 13 thing. It should be the last page, I think.
 14 Okay. When did you take this photo?
 15 A This photo was taken -- I believe it was taken
 16 sometime probably around the review, but I don't
 17 know for sure. It was either -- it would have
 18 been -- had to have been around the review.
 19 Q Okay. So sometime in 2017 --
 20 A Correct.
 21 Q -- probably?
 22 Okay. On this picture, can you -- can
 23 you describe for me what is the overlubrication
 24 or evidence of overlubrication that you have
 25 referenced in your eight problems -- in your six

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1 problems article?
 2 A So, in the picture is just a picture depicting
 3 what you can see on the outside. So if you were
 4 to pull back from this picture, you would see
 5 the white lubrication goes up and down the
 6 columns. And that's -- that's something that
 7 happens as the desk retracts and expands. And
 8 then what else I'm referring to is inside the
 9 columns.
 10 And so when you open the column,
 11 you'll see that they -- they have a lot of
 12 lubrication, especially when we compare this now
 13 to, like, a Linak product, which, again, is
 14 our -- what we've kind of focused on as being
 15 the best of the best, and Ketter. These are two
 16 of the leading producers of gears. The gears
 17 are -- they're pretty messy. There's a lot of
 18 lubrication there. There's a lot of lubrication
 19 throughout the actual glides themselves when you
 20 open them up as well, especially when comp- --
 21 when compared to what we consider to be premium
 22 columns.
 23 Q Does -- what you characterize as
 24 overlubrication, does that cause any problem in
 25 the operation of the desk?

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1 A Well, I know that when you have lubrication
 2 that's this excessive, that things from outside,
 3 contaminants, such as, like, dirt, dust, hair,
 4 will stick to it. It pulls in. It will wear on
 5 those glides sooner than if it were clean. If
 6 there's nothing for -- if nothing can stick to
 7 this column and it's moving in and out, it's
 8 going to remain a lot cleaner. It's going to
 9 work a lot more efficiently over time.

10 Q Have you done any long term study to evaluate
 11 whether overlubrication shortens the life span
 12 of the internal parts that you've mentioned?

13 A I actually -- we cycle tested a Jarvis desk.
 14 And it's the JieCang. And our OEM has done the
 15 same thing. He actually just finished cycling
 16 those. And the -- the glides definitely play a
 17 pivotal role in what's happening with the desk
 18 and not functioning properly, specifically when
 19 we look at collision avoidance, false positives,
 20 stability issues, things of that nature.

21 Q Did -- that's not something that your answer
 22 specifically on the Evodesk?
 23 That's not something that you did
 24 specifically on the Evodesk?

25 A I did not.

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1 Q Okay. And then you state in the article, after
 2 cycling the Evodesk only a handful of times.
 3 Can you tell me, like, how many cycles
 4 that would have been?

5 A Yeah. You could run this desk up and down
 6 three, four, five times and it would start to
 7 show that lubrication up and down the columns.

8 Q Okay. If you ran it for a longer period of
 9 time, in other words, if you cycled it for a few
 10 hundred times, would that lubrication then go
 11 away?

12 A No, it just becomes -- it becomes more white.

13 Q If we get to the paragraph under the picture on
 14 the same exhibit, it's Exhibit -- I think it's
 15 fif- -- 14, excuse me. 14 or 15? 15. Sorry.
 16 On page two, okay, the last paragraph, it says,
 17 the overlubrication problem didn't just exist in
 18 the glides.
 19 What specifically are the glides?

20 A The glides are the plastic components that marry
 21 the two columns together.

22 Q Okay. It says, this was a problem throughout
 23 the entire frame.
 24 So tell me the -- tell me the other
 25 parts of the frame. I mean, you mentioned

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1 around the motor, right? Was that an area where
 2 there was -- like, where else was this excessive
 3 lubrication in addition to this part that we see
 4 on the photograph?

5 A Well, this would be -- this -- I mean, this
 6 technically would be throughout the frame right
 7 up and down the column portion of the frame.
 8 You would have it going from this -- the only
 9 one that wouldn't exhibit it on the outside
 10 would be the outer column at the bottom. But
 11 the other two that expand, it streaks up and
 12 down the columns. Now, when you open it up, the
 13 gears inside, that's the same thing. And the
 14 additional glides inside because you're going to
 15 have an upper and a lower glide system. And
 16 they're lubricating -- they're really
 17 lubricating the bottom ones. And they are
 18 lubricating the top ones. It's kind of getting
 19 intermixed here. And that's why it's pushing
 20 out.

21 Q Okay. With respect to the feet, was there a
 22 lubrication problem with respect to the feet?

23 A No.

24 Q Okay. And you've described that earlier in your
 25 deposition today as part of the frame, right?

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1 A Correct.

2 Q Okay. So when you say this is a problem
 3 throughout the entire frame, that statement's
 4 not accurate, correct?

5 A It isn't through the feet.

6 Q Okay. Are there any other parts of what you
 7 consider the frame, whether it wasn't a problem
 8 with lubrication on the Evodesk that we haven't
 9 already discussed?

10 A No.

11 Q I'm going to turn you to page four of that same
 12 document. There should be a section, section
 13 four, low quality electronics.
 14 Do you see that?

15 A Yes.

16 Q Okay. Okay. First, it says a common problem we
 17 have found among all Chinese desks tested has
 18 been their low quality electronics.
 19 Did I read that correctly?

20 A That's correct.

21 Q Okay. With that statement, are you categorizing
 22 the Evodesk as a Chinese desk?

23 A The portion of it that we're discussing here,
 24 the electronics, yes.

25 Q You can't see the photo, but underneath the

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1 photo, it talks about operate the -- excuse me,
 2 opening the control box. Is that something that
 3 you did?
 4 A Yes.
 5 Q Okay. And you mention there's a two board
 6 design. Why does it matter whether it's a two
 7 board design or a one board design?
 8 A So I brought those.
 9 We should -- do we want to show them?
 10 MS. TOY: If it helps you explain what
 11 you're getting at?
 12 THE WITNESS: Yeah, I think so. I
 13 mean, I -- we -- I have the one for -- we have a
 14 picture of the one from the Evodesk; otherwise,
 15 I have it here. We can take it out of the box
 16 if we want. Again, it's just six screws.
 17 EXAMINATION
 18 BY MR. KERLIN:
 19 Q Yeah, if you can just tell me generally. I
 20 don't necessarily need to get into it, but you
 21 make the statement that the main reason they use
 22 the two board system is cost savings. So I just
 23 want to know what would be the cost savings
 24 associated with --
 25 A So if you take --

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1 Q -- two boards rather than one?
 2 A Yeah. So if you take a look at what is -- so
 3 this is Linak. This is the same control box
 4 that's being used in the Terra --
 5 Q Uh-huh.
 6 A -- right? This -- this is the pinnacle of --
 7 this is the pinnacle of just perfection as far
 8 as this control box is concerned, right?
 9 Q Uh-huh.
 10 A Okay. You can see it's -- this is engineered
 11 specifically for use in what they're doing with
 12 it. When we look at the Chinese ones that we
 13 brought in, this is common across every single
 14 one that I've reviewed, with one exception. And
 15 that came later after this. It was a VariDesk
 16 product from Kaidi. But they all are using --
 17 this is the portion for their desk. This is a
 18 mass produced power supply. And they're linking
 19 these two components together with these
 20 connections.
 21 Now, desks move up and down; they
 22 vibrate, right? Any weak point you have in this
 23 particular setup is going to be a potential
 24 problem. Getting these power supplies at scale
 25 is much less expensive than producing something

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1 like this. So if you just take a quick glance
 2 at it, you can see there is no -- there's no
 3 silicone holding components down. These things
 4 are all held together properly with proper
 5 stands soldered correctly. You know, you can
 6 see corners are being cut here with these
 7 connections. And there's no consistency here
 8 with any of this epoxy that they put throughout
 9 here. Same thing with the toroid cores. I can
 10 bring out another one. You can see this should
 11 be perfection across here. It's not.
 12 Q With respect to the cost savings that you
 13 believe they had, did you do anything to
 14 independently verify whether JieCang does, in
 15 fact, use a two board system specifically
 16 because of cost savings as opposed to any other
 17 reason?
 18 A Like the rest of the desks -- I mean, the Xdesk
 19 is twice the price of this desk, of an Evodesk.
 20 All of those things matter. In order to bring
 21 the cost down of the desk, they have to go with
 22 cheaper components. And that's throughout the
 23 entire desk. How much is being saved? I'm not
 24 sure. But money is being saved there.
 25 Q Okay. I understand that. And I appreciate your

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1 answer. But specifically your statement is the
 2 main reason they use the two board system is
 3 cost savings. Did you do anything to verify
 4 that that is, in fact, the case with JieCang?
 5 A I believe that's the main reason that all of the
 6 Chinese desks that I've reviewed are using the
 7 two board system versus the more expensive
 8 Linak. I have a law dictated one. You can see
 9 they're consistent with each other.
 10 Q And I guess I'm just trying to understand your
 11 basis for that. And is that just your
 12 observation from opening these control units as
 13 well? Or is it from some other source?
 14 A What are we referring to? What's the question?
 15 Q With respect to the main reason for using the
 16 two board system as cost savings.
 17 A So I have a producer of -- he has probably now I
 18 bet he's up to 40 years experience producing
 19 electronics. He's worked extensively with
 20 people in China, Europe. And when prompted with
 21 the question, he has explained to me in great
 22 detail why this is the way that it is.
 23 Q Can you tell me who that person is?
 24 A It's Karsten Llaing. And he's our supplier of
 25 our control boxes.

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1 Q What company is he with?
 2 A Laing Innotech.
 3 Q How do you spell the second part of that?
 4 Innotech?
 5 A Yeah. I-n-n-o-t-e-c-h. I believe that's it. I
 6 can double check that. L-l-a-i-n-g.
 7 Q Okay. And where is Mr. Llaing located?
 8 A So he resides in Germany. His manufacturing is
 9 done in Hungary. And I've been to his facility.
 10 We've met extensively. We've met in the United
 11 States as well.
 12 Q And then going to the last two sentences of that
 13 paragraph, it says, another concern with the two
 14 board system is the poor connections between
 15 each linked with cheap connectors. Is that what
 16 you described a minute ago?
 17 A Yeah, absolutely. That's a concern of mine
 18 because these desks move up and down and vibrate
 19 as they move.
 20 Q Okay. These -- your next sentence is, these
 21 tend to be loose, and they're likely to be the
 22 first portion of the control box to fail.
 23 Have you ever had the control box fail
 24 on one of these desks while you were testing
 25 them?

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1 A We have had control boxes fail on standing
 2 desks, yes.
 3 Q Okay. Which --
 4 A Not the Evodesk, though.
 5 Q Not the Evodesk. Okay. Which -- can you tell
 6 me which desks that you've had the control box
 7 fail?
 8 A We had a Jarvis desk fail. We haven't -- we are
 9 about to start doing this. We are about to
 10 extensively test these desks and put them to
 11 full cycle tests because you need to see how
 12 this desk functions, one, two, three, four,
 13 five, 10,000 cycles to get a better idea on how
 14 the life cycle will work. If you're just using
 15 it in your office for 500 cycles, 1,000 cycles,
 16 we don't know how that desk will function in
 17 three, four, or five years, and I think that's
 18 really important.
 19 Q With respect to the Jarvis desk that you said
 20 failed, under what circumstances or parameters
 21 did it fail? Were you --
 22 A It was -- it was -- well, 4,000 cycles. I
 23 believe it started to have issues at 400 cycles.
 24 The collision avoidance started to act up and
 25 the leg disconnected. It wasn't -- it wasn't

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1 very good. And they sent a new control box
 2 before the leg disconnected. They replaced my
 3 control box, and then the leg disconnected later
 4 on. Sorry.
 5 Q Did that resolve the problem when the control
 6 box was replaced?
 7 A It did, yeah.
 8 Q Okay. I think if we go to the last -- well,
 9 I've got my pages out of order. All right.
 10 THE WITNESS: You really cranked up
 11 the heat in here. It's really hot now.
 12 MR. KERLIN: Yeah, it has been a
 13 little warm.
 14 MS. TOY: I know. You can turn it
 15 down. I think our court reporter's getting
 16 pretty hot, too.
 17 MR. KERLIN: Yeah, we can go off.
 18 THE VIDEOGRAPHER: Off the record.
 19 (Recess from 4:48 through 4:51 p.m.)
 20 THE VIDEOGRAPHER: We're back on the
 21 record at 4:51.
 22 EXAMINATION
 23 BY MR. KERLIN:
 24 Q Okay. Turning to page -- we're still on the
 25 same exhibit. Exhibit 15, if we turn to page

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1 five, you have a section called T base mounting
 2 clearance problems?
 3 A Yes.
 4 Q Okay. All right. One second. Okay. If we go
 5 to the second sentence, it starts, looking at
 6 the T base design of the Evodesk.
 7 Do you see that sentence?
 8 A I do.
 9 Q Okay. Continues, where this frame is placed a
 10 problem -- is placed a problem for users who
 11 plan to mount accessories.
 12 Okay. Now, we looked at your order.
 13 It didn't appear that you -- you -- you ordered
 14 any accessories from NextDesk or Xdesk. Is that
 15 correct?
 16 A That's correct.
 17 Q Okay. So, with regard to that -- okay. Did
 18 you -- did you -- did you test with -- with the
 19 Evodesk regarding accessibility for mounting
 20 accessories -- ability to mount accessories --
 21 let me ask it like that -- the ErgoEdge.
 22 A Did I -- did I test mounting accessories to the
 23 ErgoEdge?
 24 Q No, no. Did you -- did you -- did you purchase
 25 the ErgoEdge, which is an accessory Xdesk sells

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1 for the Evodesk, with the Evodesk?
 2 A Isn't the ErgoEdge just the shape of the top?
 3 Q I don't think so, but let's -- it might be.
 4 A The ErgoEdge is the curved radius.
 5 Q Did you purchase the power management system for
 6 the Evodesk from Xdesk and test it with the
 7 Evodesk?
 8 A I didn't purchase any of their accessories.
 9 This is generalized at scale just with
 10 accessories. A lot of customers like to buy
 11 stuff on the Amazon to save money. They do with
 12 it with our products as well. It's -- a T base
 13 will have a mounting clearance problem because
 14 of the limited amount of depth required to mount
 15 many of the accessories. It -- I clarified this
 16 when something was sent over because I want to
 17 make sure that we know that it's not specific to
 18 Evodesk's accessories. This is as a whole in
 19 the industry ergonomic products.
 20 Q Okay. So just let me go through these really
 21 quickly. These are accessories that Xdesk
 22 sells, and I just want it to be clear whether or
 23 not you attempted to use any of them when --
 24 before you did your review on the Evodesk.
 25 MS. TOY: Are you saying Evodesk or

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1 Xdesk sells?
 2 EXAMINATION
 3 BY MR. KERLIN:
 4 Q Well, Evodesk is the product; Xdesk sells them.
 5 A I didn't use any, though. None. I didn't buy
 6 any.
 7 Q Right. So let me just run through them real
 8 quick just to confirm. All right?
 9 The Harman Kardon sound system; that's
 10 not something you tested?
 11 A No.
 12 Q The POD storage. Is that correct?
 13 A Correct.
 14 Q POD Storage Plus?
 15 A Correct.
 16 Q Hi-rise storage?
 17 A Correct. That would go on the top of the desk.
 18 Q Not something you tested?
 19 A Correct.
 20 Q Treadmills?
 21 A No.
 22 Q DeskShield?
 23 A That's another top of the desk item.
 24 Q Evoflex cable management?
 25 A No.

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1 Q And then casters, which would be at the bottom,
 2 though?
 3 A What's --
 4 Q They also sell casters as an accessory, but
 5 that's not something that --
 6 A Right. I specifically said whether things would
 7 be big issues. And it's generalized again.
 8 Keyboard trays. CD holders. Pencil drawers.
 9 Those are some of the most popular items that
 10 get attached to standing desks.
 11 Q But you didn't test any accessories sold by
 12 Xdesk for the Evodesk --
 13 A I did not.
 14 Q -- before you did your --
 15 A Correct.
 16 Q I think you said you're currently -- well, one
 17 of the products that you sell is the -- I might
 18 mispronounce it, but the iMovR or iMovR. You
 19 don't sell that product?
 20 A I do not sell that product, no.
 21 Q Have you ever sold that product?
 22 A I have not.
 23 Q Did you ever write any reviews about it?
 24 A About the iMovR?
 25 Q Uh-huh. Yes.

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1 A I did.
 2 Q Okay. And on your web site, at least at one
 3 point in time, you posted --
 4 A This is going to where you're -- I know where
 5 this is going, so --
 6 Q Okay. And let me -- it's fine for an objection.
 7 I just -- I'm going to ask it. And then we can
 8 go from there.
 9 Did you reach some type of resolution
 10 or settlement with Ron Wiener of Work While
 11 Walking?
 12 MR. BATES: Object.
 13 Go ahead.
 14 MS. TOY: I'm going to object to the
 15 extent that that's protected settlement
 16 information.
 17 MR. KERLIN: Okay. I'm not asking
 18 with respect to any of the terms. I'm only
 19 asking if there was some type of settlement
 20 attained.
 21 MS. TOY: And on the basis of
 22 relevance?
 23 MR. KERLIN: All right. So you're
 24 instructing the witness not to answer?
 25 MS. TOY: No.

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1 Go ahead.
 2 THE WITNESS: Do I have to answer?
 3 MR. BATES: You mean --
 4 MR. KERLIN: If we can reach an
 5 agreement on the record that I can -- that I'll
 6 have an opportunity in the event the court --
 7 MS. TOY: Amends the complaint, then
 8 yes.
 9 MR. KERLIN: Okay. Or in the --
 10 MS. TOY: But --
 11 MR. KERLIN: -- event we're forced to
 12 file a second lawsuit. I mean --
 13 MS. TOY: Yeah.
 14 MR. KERLIN: -- then we'll have an
 15 opportunity in that case.
 16 MS. TOY: But that's something to
 17 discuss later. This has nothing to do with this
 18 case.
 19 MR. KERLIN: I understand that. I
 20 just want to make sure that it's on the record.
 21 I mean, it's -- we filed a motion for leave, so
 22 it's on file in this case.
 23 MS. TOY: Well, if --
 24 MR. KERLIN: It's not the live
 25 pleading.

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1 And so I just want to make it clear
 2 for the record, not that I'm necessarily going
 3 to try and ask the question today. But I just
 4 want to make sure that I'll have an opportunity,
 5 because I think they're going to be relevant to
 6 those claims, to come back and ask the witness
 7 about search engines -- in more detail about
 8 search engine optimization and consultants,
 9 specifically with regard to what's known as
 10 negative search engine optimization or black hat
 11 discussions, interactions, communications,
 12 e-mails, articles that might discuss Ron Wiener,
 13 his company, his products, as well as
 14 interactions between them; and also about
 15 whether there is any settlement reached with
 16 respect to that dispute.
 17 MS. TOY: And I'm not going to
 18 necessarily say that that's fine down the road.
 19 I think that's something we'll address down the
 20 road. I may not even be counsel in a second
 21 lawsuit, so -- but for the purposes of here, you
 22 know, you can certainly --
 23 MR. KERLIN: Uh-huh.
 24 MS. TOY: -- reserve your right and we
 25 can -- we can fight that out later. But, for

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1 the purposes of here, that has no bearing on
 2 this lawsuit, and we had already come to an
 3 agreement, off the record, that this line of
 4 questioning isn't appropriate.
 5 MR. KERLIN: Okay.
 6 MR. BATES: And I would ask that this
 7 entire digression be struck in the event that
 8 any of this is played in front of the jury in
 9 connection with the live pleading in the event
 10 that there are no additional pleadings allowed.
 11 MS. TOY: And I'll join.
 12 MR. KERLIN: Yeah. Y'all don't need
 13 to object. I agree. The court's never going to
 14 let the jury hear about our discussions. I just
 15 want to make sure that's not a situation because
 16 I've encountered it in the past where I've had a
 17 motion for leave on file to assert additional
 18 claims that the court hasn't ruled on, taken a
 19 deposition, and then had counsel on the other
 20 side require me to file a motion for leave for a
 21 second deposition regarding the additional
 22 claims that I'm asserting because I had
 23 previously filed the motion for leave, even
 24 though they opposed my ability to ask questions
 25 at that time. So I just want to make sure --

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1 MS. TOY: Yeah.
 2 MR. KERLIN: -- that you can object,
 3 and we can -- we can have the discussion about
 4 whether or not the topics I'm going to ask for
 5 at a second deposition are overly broad or not
 6 relevant. I'm fine with all that.
 7 MS. TOY: Yeah, we'd have to --
 8 MR. KERLIN: But --
 9 MS. TOY: -- we'd have to look at it
 10 and, like, I mean, go through the same process
 11 that we just went through.
 12 MR. KERLIN: I just don't want to
 13 encounter the argument that you had an
 14 opportunity with the witness and we could have
 15 handled this all at once, but instead,
 16 Mr. Kerlin, you chose to wait so you could try
 17 and get a second deposition because I'd rather
 18 knock it all out at once. But I understand
 19 y'all's position and --
 20 MS. TOY: Yeah. And I mean I think
 21 that would be --
 22 MR. KERLIN: -- I'm fine.
 23 MS. TOY: -- very disingenuous. I
 24 hope that --
 25 MR. KERLIN: I'm not -- yeah, I'm not

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1 trying --

2 MS. TOY: Yeah.

3 MR. KERLIN: You know, the whole point

4 of this is just to get it on the record so it's

5 clear.

6 MS. TOY: Sure.

7 MR. KERLIN: I'm not trying to do

8 something --

9 MS. TOY: Yeah.

10 MR. KERLIN: -- you know, different or

11 untoward, which is why I gave you a heads up

12 before we were heading there.

13 Okay. Why don't we take a five minute

14 break. I probably got about 15 minutes of

15 cleanup questions.

16 MS. TOY: Okay.

17 MR. KERLIN: But I'm at least getting

18 close to being finished.

19 THE VIDEOGRAPHER: We are off the

20 record.

21 (Recess from 5:00 o'clock through 5:09 p.m.)

22 (Knighton Exhibit No. 16

23 marked for identification.)

24 THE VIDEOGRAPHER: We are back on the

25 record at 5:09.

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1 EXAMINATION

2 BY MR. KERLIN:

3 Q Mr. Knighton, I'm going to hand you what's been

4 marked as Exhibit 16. We talked about the

5 Evodesk review that your company had done. Is

6 that -- is this a printout of what that review

7 is? Say that more awkwardly.

8 Can you tell me what exhibit -- what

9 that exhibit is?

10 A This is the review of -- of the Evodesk.

11 Q Okay. And the date of that review was May 2

12 of 2017, right?

13 A That's correct.

14 Q Okay. Okay. With respect to -- and I can

15 identify it by exhibits, but the eight problems

16 with the Terra, the six problems with the Evo,

17 and then the Terra review, and the Evo review

18 that we've looked at today, and also with the

19 other documents that are printouts from your web

20 site, are those maintained in the ordinary

21 course of your business? In other words, are

22 those files maintained in the ordinary course of

23 your business and posted on the web site?

24 A Yes.

25 Q Okay. And we've had a chance to look at them,

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1 but -- but, I mean, are they true and correct,

2 as far as you know?

3 A Are they written by me?

4 Q Well, the ones that are written. In order --

5 just so you'll understand. In order for them to

6 constitute business records, I just need to know

7 if they're kept in the ordinary course of your

8 business. The -- I'll refer to them as

9 documents, but they're reviews and posts on your

10 web site.

11 In the ordinary course of your

12 business, for what's published on the Internet

13 by BTOD.com, is that done in the ordinary course

14 of BTOD.com's business?

15 MS. TOY: I'm going to object just to

16 the extent that it's calling for whether it

17 falls with a legal conclusion, whether it falls

18 into --

19 MR. KERLIN: Okay. I'm not asking for

20 a legal conclusion. Okay.

21 MS. TOY: Go ahead.

22 EXAMINATION

23 BY MR. KERLIN:

24 Q In your business, BTOD.com is the web site you

25 maintain. Is that correct?

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1 A Correct.

2 Q As part of that web site, do you maintain

3 different types of content related to The

4 Breakroom Blog?

5 A We maintain all of the content with Breakroom

6 Blog on the blog in the WordPress platform

7 that's kind of interconnected, let's say.

8 Q And so the reviews that we've looked at today in

9 the eight desks -- in the eight problems and the

10 six problems articles, those are maintained as

11 part of your web site and published, correct?

12 A Correct.

13 Q Okay. And then that's what you do, providing

14 that content is part of what you do in the

15 ordinary course of your business?

16 A Correct.

17 Q Okay. As well as, and some of them we haven't

18 looked at today, but I know we had the

19 discussion that if we wanted -- if we wanted to

20 understand what you have with respect to content

21 for reviews prior to the Terra desk. In other

22 words, if we wanted to have an idea how many you

23 had tested before then, you said that we could

24 just look at the web site and figure out which

25 ones you had -- reviews you had published before

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1 then. Is that -- am I saying that correctly or
 2 is that accurate?
 3 A So when you go into WordPress, you can see
 4 revisions made on posts. So you can see every
 5 single revision that's been made on a post as
 6 it's going through the process. So I can go in
 7 and I can see when the first revision was done
 8 on the post. So I can see the order of first
 9 revision for all postings that relate to
 10 reviews --
 11 Q Okay.
 12 A -- to get the dates completely accurate on that.
 13 Q Okay. With respect to revisions for reviews or
 14 for other articles, are they maintained for a
 15 particular amount of time by WordPress?
 16 A I think it's forever.
 17 As long as we pay for the hosting.
 18 Q When you're drafting an article or other content
 19 that you're going to put on your web site,
 20 specific to reviewing products or identifying
 21 problems with products, like what we've talked
 22 about today, do you draft that in WordPress or
 23 do you draft it, like, in a Word document and
 24 then add it to WordPress?
 25 A I draft it in Google Docs. And that makes it

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1 easy for it to be proofread by my wife.
 2 Q Do you keep versions or drafts of reviews?
 3 A Yes.
 4 Q Are those -- do you still maintain those today
 5 for the products that you reviewed?
 6 A Yes.
 7 Q Okay. Do you know if you had earlier drafts of,
 8 for instance, the eight problems document?
 9 A The earliest draft would be in the Google Docs.
 10 Q Okay. And that's something you still have
 11 today; maintain?
 12 A Yes.
 13 MR. KERLIN: Okay. I'll make a
 14 request for that on the record right now. But I
 15 think that's something we've asked for is prior
 16 documents. I can identified the RFP, but we'd
 17 ask that document production be supplemented
 18 with prior drafts of the eight problems article
 19 as well as the six problems article.
 20 EXAMINATION
 21 BY MR. KERLIN:
 22 Q Last document I'm going to -- I'm going to ask
 23 you about it. I don't know that I'm going to
 24 mark it. Are you aware that Xdesk published a
 25 response to -- well, strike that.

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1 Are you aware that Xdesk performed a
 2 review of the VertDesk v3 standing desk?
 3 A I am.
 4 Q Okay. And was that published after the posts
 5 you had made about the eight problems and six
 6 problems?
 7 A Yes.
 8 Q Have you had a chance to review it?
 9 A I have.
 10 Q Do you have any thoughts on it?
 11 A I would say it's not nearly in the same process
 12 that we go through our reviews.
 13 Q Okay. What's the relationship between BTOD and
 14 RightAngle Products?
 15 A RightAngle Products is one of our manufacturers
 16 or brands that we resell.
 17 So we work with, like, 40 different
 18 manufacturers or brands. RightAngle Products is
 19 one of them.
 20 Q Is RightAngle Products a company that's owned by
 21 your father as well?
 22 A That's correct.
 23 Q Okay. So what's the -- if you could explain the
 24 interaction between K & A Manufacturing and
 25 RightAngle Products? Is one of them, like, a

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1 parent and a subsidiary, or are they separate
 2 businesses?
 3 A I mean, he would have to speak on the specifics
 4 of his organization. That's not for me to
 5 discuss.
 6 Q To your knowledge -- and, again, this is just
 7 to your knowledge -- does K & A Manufacturing
 8 manufacture RightAngle Products?
 9 A Yes.
 10 Q With respect to Mr. Bald, where does he live?
 11 A I don't know his address.
 12 Q Is it -- is it here locally?
 13 A Yeah.
 14 Q And the employees that you mentioned, I think
 15 you said you currently have eight employees?
 16 A Correct.
 17 Q Does that include you?
 18 A No.
 19 Q Okay. Do they all reside here in the area?
 20 A They do.
 21 Q Mr. Knighton, have I been courteous to you today
 22 when I've been asking you questions?
 23 A Yeah, I think so.
 24 MR. KERLIN: I appreciate your time.
 25 At this time, I don't have any further

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1 questions, subject to the reservation of rights
 2 that we had on the record with respect to any
 3 other additional claims that may be asserted.
 4 EXAMINATION
 5 BY MS. TOY:
 6 Q I might just have a couple of things I want to
 7 clarify. Mr. Knighton, would you please refer
 8 to Exhibit 11. I know we spoke extensively
 9 about it. On page five of Exhibit 11, I'm going
 10 to read to you what falls under the heading,
 11 frame. Kick & Click is the innovative top frame
 12 for office desks. It is an easy and intuitive
 13 way to mount columns to the table top. Simply
 14 mount the different parts, kick them together,
 15 and it says click. That means no screws and no
 16 tools for mounting.
 17 Did I read the heading, frame, and the
 18 paragraph underneath of it?
 19 A Yes.
 20 Q Does the heading, frame, in your opinion,
 21 indicate that it refers only to the columns?
 22 MR. KERLIN: Objection, calls for
 23 speculation.
 24 MS. TOY: I'm asking him about the
 25 paragraph -- the heading, frame, and then the

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1 paragraph that falls underneath.
 2 EXAMINATION
 3 BY MS. TOY:
 4 Q Does that --
 5 MR. KERLIN: Yeah, I --
 6 EXAMINATION
 7 BY MS. TOY:
 8 Q -- paragraph, to you, in your opinion, as you
 9 read it, as you interpret it, refer to -- state
 10 that -- or, does it imply that it is referring
 11 only to the column?
 12 MR. KERLIN: Hold on. I object
 13 that -- I object that it calls for speculation.
 14 Second of all, it asks for an opinion.
 15 Mr. Knighton has not -- he hasn't been
 16 identified as an expert in interpreting
 17 documents, to my knowledge. And, therefore, his
 18 knowledge is limited to personal knowledge.
 19 EXAMINATION
 20 BY MS. TOY:
 21 Q You can go ahead and answer.
 22 A So what was your question again?
 23 Q Sure. And I read on page five --
 24 A Okay.
 25 Q -- there's a heading, frame.

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1 A Correct.
 2 Q And I read the entire frame -- or, the entire
 3 paragraph that falls under it. Does the heading
 4 and the paragraph that falls under it, as you
 5 read that paragraph, does that refer to simply
 6 the column or does that refer to different parts
 7 being fitted together as a frame?
 8 MR. KERLIN: Same objection. Calls
 9 for speculation. Asks for an opinion.
 10 EXAMINATION
 11 BY MS. TOY:
 12 Q You can go ahead.
 13 A I believe it mount -- brings the -- ties
 14 everything together.
 15 Q And can you describe the picture in the
 16 background for me.
 17 A It's the feet, the column, and the cross
 18 support; the upper cross support making a frame.
 19 The desk -- I think they call it the desk frame
 20 one.
 21 Q You were asked about -- a couple of questions
 22 about the documents that have been marked as
 23 Exhibit 6; specifically, BTOD 00014 and 00015,
 24 correct?
 25 A Correct.

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1 Q If you look at 00015, inside of the gray col- --
 2 strike that.
 3 00015 depicts a gray column, correct?
 4 A Correct.
 5 Q Inside of the gray column, there is a shiny
 6 silver object, correct?
 7 A Correct.
 8 Q Describe for me what that object is.
 9 A It's a spindle gear.
 10 Q And you'd been asked extensively about the notes
 11 that you had kept, which have been marked as
 12 Exhibit 6; and, specifically, BTOD 000010
 13 through 00012, correct?
 14 A Are we on the same thing here? Okay. Yeah.
 15 Q What is the purpose of these notes?
 16 A I use -- I use these notes as well as other
 17 notes as I'm working on a project to complete a
 18 review. These are my thoughts as I'm going
 19 through the process as well as testing that's
 20 performed on the desk.
 21 Q And it -- does -- do these -- is the purpose of
 22 these notes to write down all the information
 23 verbatim regarding testing?
 24 MR. KERLIN: Objection, form.
 25 THE WITNESS: Yeah. I mean, this

1 is -- I use this as well as other notes. And I
2 have -- you know, I have multiple pages of notes
3 when doing reviews, so they can be across many
4 pages. They could be across loose pages as
5 well.

6 MS. TOY: That's all I have.

7 MR. KERLIN: Okay. I've got a couple
8 of followups. Since counsel brought up notes.
9 How do you want to deal with this? I'll mark
10 it, but I can not mark it. It's not really
11 identified any other way other than to say that
12 it has highly confidential attorney's eyes only.

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

that

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1 THE WITNESS: Okay.
 2 MR. KERLIN: -- for the record.
 3 EXAMINATION
 4 BY MR. KERLIN:
 5 Q Okay. Going back to questions by counsel that
 6 you had a minute ago, just a couple of followups
 7 on that, and I think we'll be done.
 8 A Did you want this back?
 9 Q I -- I do. Yes. Thank you.
 10 The Exhibit 11 that we talked about,
 11 it's the Linak document?
 12 A Yes.
 13 Q We talked about it a lot today. And we've got
 14 some more questions on it. Never seen that
 15 document before today. Is that correct?
 16 A Correct.
 17 Q Have no personal knowledge about what Linak
 18 meant by what they said in it. Is that correct?
 19 A I've never seen this before.
 20 Q Okay. With respect to your notes, now counsel
 21 asked you about the three pages of notes, is it
 22 your testimony that, at the time you evaluated
 23 the Terra desk, that you had more than three
 24 pages of notes about it?
 25 A We could have more notes on it, correct.

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1 Q How would we know whether you did or you didn't?
 2 A So I refer to that -- the 4,000 word review.
 3 That's the -- that is where everything --
 4 everything comes together. That is where all my
 5 final product exists.
 6 Q But as far as where you would write down --
 7 okay. Well, for instance, in your review, what
 8 you don't have is you don't have the actual
 9 metrics for some of these, right? Like, you
 10 don't have four point -- or, excuse me, 1.48
 11 inches, 1.46 that corresponds with different
 12 weights, things like that, correct?
 13 A I don't believe I have it for the NextDesk, no.
 14 Q Okay. So when he says it encompasses
 15 everything, I mean, there's information in your
 16 notes. You might take --
 17 A From my process.
 18 Q -- the bigger picture of it.
 19 A From my review process, still. Right. So
 20 when we go down the different bulleted stuff,
 21 that's -- that's what it is.
 22 Q I understand. I'm just trying to understand is,
 23 if you're now saying, which it sounds like it
 24 isn't, so it might just be my misunderstanding
 25 is that, do you think that you had more than

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1 three pages of notes when you were doing the
 2 testing, inspection, and the rest of it with
 3 respect to the Terra desk?
 4 A I don't know. But I do know that that specific
 5 thing that you just asked me previous about the
 6 different weights and how the desk performs is
 7 something that I do believe I referenced in the
 8 testing inspec section, and that goes back to
 9 where I mention if a desk is consistent as we
 10 add weight to it, because I think that's
 11 important to certain consumers who want to buy
 12 a desk and add a lot of weight to it. So that's
 13 why I do that. I mean, do I need to add all
 14 of those individual line items into the review?
 15 No. Again, it gets too long; it's already 4,000
 16 words.
 17 Q I get that. And that makes sense. I'm just
 18 trying to understand if there would be more than
 19 this, at the time you would have inspected,
 20 reviewed, tested?
 21 A Could there have been? Sure.
 22 Q Where else would it have been kept?
 23 A On -- on more papers.
 24 Q But it would have -- I mean, do you have a
 25 particular, like, steno pad that you use,

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1 because it looks like it's a steno pad, that you
 2 would make notes on when you're doing
 3 inspections for reviews or testing?
 4 A It could be on -- it could be on multiple sheets
 5 of paper. These are -- these are my thoughts as
 6 I'm going through the process. There isn't one
 7 single place where I'm keeping file of all of my
 8 notes from all of the desks that I've reviewed.
 9 My resource that I create is the 4,000
 10 word post.
 11 Q Okay. In fairness, I mean, you haven't had
 12 scientific training, right, about testing and
 13 testing protocols. Is that fair to say?
 14 A I have not.
 15 Q Okay. Because one of the -- the main tenets in
 16 any type of scientific test is reproducibility.
 17 In order to have reproducibility, you have to
 18 keep the results of the prior tests. All right?
 19 A Okay.
 20 Q Okay. And we already talked about the Evodesk.
 21 You don't have any notes with respect to the
 22 Evodesk?
 23 A Correct.
 24 MR. KERLIN: Those are all the -- all
 25 the questions I have. Appreciate your time.


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1 THE WITNESS: Okay.
 2 THE VIDEOGRAPHER: This concludes the
 3 deposition for today. The time is 5:33. We're
 4 off the record.
 5 (Discussion off the record.)
 6 THE VIDEOGRAPHER: We're back on the
 7 record.
 8 MS. TOY: Just pursuant to Rule 30,
 9 we're going to read and sign.
 10 THE WITNESS: Do I need to --
 11 MS. TOY: No, that's it.
 12 THE WITNESS: Okay.
 13 THE VIDEOGRAPHER: Off the record.
 14 (Whereupon, the video deposition of
 15 Gregory M. Knighton adjourned.)
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 7 DEPONENT'S READING AND SIGNING SHEET
 8
 9 I have read the foregoing deposition and
 10 have noted any exceptions or corrections on
 11 Page ____ of this transcript.
 12
 13
 14
 15 _____
 16 Gregory M. Knighton
 17
 18 Subscribed and sworn to before me this
 19 ____ day of _____, 2020.
 20
 21 State of _____
 22 My commission expires: _____.
 23
 24 _____
 25 Notary Public

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 6 REPORTER'S CERTIFICATE
 7
 8
 9 STATE OF WISCONSIN)
 10) SS:
 11 COUNTY OF MARATHON)
 12
 13
 14
 15
 16 I, Mary P. Hader, do hereby certify
 17 the foregoing to be a true and correct
 18 transcription of my stenographic notes taken in
 19 this action.
 20
 21
 22 
 23 _____
 24 MARY P. HADER
 25

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