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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

HONORABLE DAVID O. CARTER, JUDGE PRESIDING

- - - - -

UNITED STUDIOS OF SELF DEFENSE,)
INC.,)
)
Plaintiff,)
)
vs.)
)
KRISTOPHER RINEHART, ET AL.,)
)
Defendants.)
_____)

CERTIFIED

No. 8:18-CV-1048-DOC
Day 2, Volume I

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Bench Trial

Santa Ana, California

Wednesday, October 30, 2019

Debbie Gale, CSR 9472, RPR, CCRR
Federal Official Court Reporter
United States District Court
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**Certified for Kristopher Rinehart, MD
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ALSO PRESENT:

Charles Mattera, plaintiff representative
David Winblad, plaintiff's technician
Dr. Kristopher Rinehart, defendant
Dr. Katherine Au Hargraves
Brent Murakami
Hamid Baradaran, defense technician

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Court's timing calculations

5

MATTERA, Charles Anthony

7

Audio recording played, Exhibit Number 566

9

Audio recording played, Exhibit Number 561

76

WITNESSES**WITNESSES****DIRECT****CROSS****REDIRECT****RECROSS**MATTERA, Charles Anthony

By Mr. DeCarlo

7

EXHIBITS**EXHIBIT NO./DESCRIPTION****IDENTIFICATION****IN EVIDENCE**

530 Promissory note

80

552 Standardized USSD
Student Price Rates

46

552-12 Page 12 of Exhibit 552

48

52

552-10 Page 10 of Exhibit 552

53

552-15 Page 15 of Exhibit 552

53

553 Student manual

46

566 Audio recording

16

606 DBO filing

65

645 Franchise Offering
Circular

69

1 **SANTA ANA, CALIFORNIA, WEDNESDAY, OCTOBER 30, 2019**

2 **Day 2, Volume I**

3 (7:37 a.m.)

07:37 4 THE COURT: All right. Then we're on the record.

07:37 5 **COURT'S TIMING CALCULATIONS**

07:37 6 THE COURT: And the Court's carefully gone through
7 the transcript, and this is the time that will be charged
8 against the defendant on cross-examination. There was some
9 colloquy where the Court either asked questions or there
10 were objections by the defense, and a back-and-forth about
11 the one-party or two-party rule, that I'm charging from 3:27
12 to 3:58 --

07:38 13 Counsel, sit down --

07:38 14 MR. BERLINER: I'm sorry, Your Honor.

07:38 15 THE COURT: -- on cross-examination, charging
16 time. There was a break, a lot of conversation from 3:58 to
17 4:17, which should not be charged to the defense, against
18 your time. That was a legal discussion that went on
19 between -- that the plaintiff entered into just as much as
20 the defense. And I'm not going to charge either one of you
21 for that time.

07:38 22 We resume at 4:17. There's substantive
23 cross-examination until 4:24. There's then more discussion
24 for 2 minutes. Then there's cross-examination from 4:33 to
25 4:50. Then there's more legal discussion. And from 4:53 to

1 5:06, there's substantive cross-examination. So for your
2 records:

07:39 3 3:27 to 3:58, which is 31 minutes.
07:39 4 4:17 to 4:24, which should be 7 minutes.
07:39 5 4:33 to 4:50, which should be 17 minutes.
07:39 6 4:53 to 5:06, which should be 13 minutes.
07:39 7 And then from 6:02 to 7:47, an hour and 5 minutes.
07:39 8 So, Counsel, you've used approximately --
9 173 minutes approximately for the defendant.

07:40 10 MR. DeCARLO: Your Honor, my math is different.

07:40 11 THE COURT: All right. Let's add.

07:40 12 3:27 to 3:58, what would that be?

07:40 13 MR. DeCARLO: I had 31.

07:40 14 THE COURT: It's 31.

07:40 15 4:17 TO 4:24 what would that be? Another 7. Add
16 it up. That would be 38.

07:40 17 From 4:33 to 4:50, that's another 17 minutes.
18 That should be 55.

07:40 19 From 4:53 to 5:06, that should be 13 minutes. 68.

07:40 20 And then you went from 6:02 to 7:47, which was
21 substantive cross-examination. That should be an hour --
22 105.

07:41 23 MR. DeCARLO: Right. So that's 65 minutes, an
24 hour and 5 minutes, Your Honor.

07:41 25 THE COURT: Well, Counsel, 6:02 -- I said "an hour

1 and 5." I'm sorry.

07:41 2 6:02 to 7:47, how many minutes is that, Counsel?

07:41 3 MR. DeCARLO: Oh, something like --

07:41 4

07:41 5 THE COURT: 105.

07:41 6 MR. DeCARLO: Okay.

07:41 7 THE COURT: Should come to 173.

07:41 8 MR. DeCARLO: Thank you.

07:41 9 THE COURT: Okay. And for the defendant [sic],

10 you've used 163 minutes.

07:41 11 MR. BERLINER: The "plaintiff."

07:41 12 THE COURT: Thank you.

07:41 13 Sir, would you take the stand, please.

14 **CHARLES ANTHONY MATTERA, CALLED BY THE PLAINTIFF,**

15 **PREVIOUSLY SWORN, RESUMED THE STAND**

07:42 16 THE COURT: All right, Counsel.

07:42 17 Have a seat, sir.

07:42 18 Cross-examination's continuing, Counsel.

07:42 19 MR. DeCARLO: Thank you.

07:42 20 **CROSS-EXAMINATION (Resumed)**

07:42 21 BY MR. DeCARLO:

07:42 22 Q. Good morning, Mr. Mattera.

07:42 23 A. Good morning.

07:42 24 Q. You know who Tyler Martin is; correct?

07:42 25 A. Yes.

07:42 1 Q. And in the Summer of 2018, do you recall having a
2 conversation with Mr. Martin where you told Mr. Martin to
3 relay a message to Dr. Rinehart that, if Dr. Rinehart made a
4 payment to you, you could make the girl, referring to
5 Jessica Gruenberg, disappear?

07:42 6 A. That's not accurate.

07:42 7 Q. So when he comes in tomorrow and testifies that,
8 indeed, you said --

07:42 9 THE COURT: No. "If" he comes in tomorrow.

07:42 10 BY MR. DeCARLO:

07:42 11 Q. If he comes in tomorrow and testifies that you said to
12 him to deliver a message to Dr. Rinehart that, if
13 Dr. Rinehart --

07:42 14 *(Court reporter requests clarification for the*
15 *record.)*

07:42 16 BY MR. DeCARLO:

07:42 17 Q. So if Mr.-- so if Mr. Martin comes into this courtroom
18 and testifies that you asked him, Mr. Martin, to deliver a
19 message to Dr. Rinehart that if Dr. Rinehart would pay
20 you -- and this is in the Summer of 2018 -- that you could
21 make the girl disappear, Mr. Martin is lying?

07:43 22 A. If he said it that way, yes.

07:43 23 Q. Okay. And do you know who Mr. Bartlett *(phonetic)* is?
24 Glen Bartlett?

07:43 25 A. Yes, I do.

07:43 1 Q. If Mr. Bartlett told a similar story in a deposition,
2 he's also lying about that?

07:43 3 A. I would have to hear his testimony.

07:43 4 MR. DeCARLO: Okay. Your Honor, I'd like to play
5 audiotape -- it is KR011194. It's Exhibit 566. And it's a
6 minute and 40 seconds long.

07:43 7 THE COURT: And who's this allegedly between?

07:43 8 MR. DeCARLO: This is between Mr. Mattera and
9 Mr. Auza, part'a the same audiotapes that we've been
10 listening to.

07:43 11 THE COURT: You may.

07:43 12 *(Audio recording played, not reported.)*

07:45 13 BY MR. DeCARLO:

07:45 14 Q. Mr. Mattera, did you hear in -- is that your voice in
15 that audio recording?

07:45 16 A. Yes, it's my voice.

07:45 17 Q. Did you hear --

07:45 18 *(Court reporter requests clarification for the*
19 *record.)*

07:45 20 THE WITNESS: I heard what was on the tape.

07:45 21 BY MR. DeCARLO:

07:45 22 Q. Did you hear yourself say on the tape, "Jessica is a
23 half a million at least"?

07:45 24 A. I heard that.

07:45 25 Q. And this recording was in the Summer of 2018; correct?

07:45 1 A. I have no idea.

07:45 2 Q. Weren't you at the Peppino's restaurant in
3 Orange County?

07:45 4 A. We go to Peppino's maybe once every week or two.

07:46 5 Q. Who's "we"?

07:46 6 A. Well, my managers, people -- Mr. Auza was working for
7 meme at the time.

07:46 8 Q. But do you recall that particular meeting with Mr. Auza
9 at Peppino's?

07:46 10 A. No.

07:46 11 Q. Why did you say to Mr. Auza, "Jessica is a half a
12 million at least"?

07:46 13 A. He asked me.

07:46 14 Q. What did you mean when you said, "Jessica is a half a
15 million at least"?

07:46 16 A. I don't recall. But if you're asking me to try to
17 recollect, uh -- I don't recall. But it was -- certainly
18 wasn't any money for -- towards me.

07:46 19 Q. Who would the money go to?

07:46 20 A. Well, to the girl.

07:46 21 Q. Okay. And when you had this conversation with
22 Mr. Auza, you didn't know who this girl was; correct?

07:46 23 A. I had never met her.

07:46 24 Q. You'd never spoken with her?

07:46 25 A. Never spoken with her.

07:46 1 Q. Okay. So you were hoping this conversation with
2 Mr. Auza, the 500,000 -- you were advocating for this woman
3 who you never met to get a half a million dollars from
4 Dr. Rinehart; is that correct?

07:47 5 A. I'm not sure. Um, I was talking about Mike Kushner
6 (*phonetic*), I believe.

07:47 7 Q. When you said, "Jessica is a half a million at
8 least" --

07:47 9 A. Yes.

07:47 10 Q. -- what did you mean, sir?

07:47 11 A. I would have to hear the -- the tape.

07:47 12 THE COURT: Well, we can play that again.

07:47 13 THE WITNESS: No. "Before," I mean.

07:47 14 MR. DeCARLO: Why don't we play the tape again.

07:47 15 THE WITNESS: I'm asking to hear the tape before
16 this was said.

07:47 17 MR. DeCARLO: We're gonna play that clip again.

07:47 18 (*Audio recording replayed.*)

07:48 19 BY MR. DeCARLO:

07:48 20 Q. So there's another thing you said there, Mr. Mattera,
21 that I'd like you to comment on.

07:49 22 Why -- why did you feel the need to destroy
23 Dr. Rinehart?

07:49 24 A. I believe I was talking about Mike Kushner, but I
25 coulda been talking about Dr. Rinehart also. Because Luis

1 had poisoned me against Dr. Rinehart. He told me that
2 Dr. Rinehart was coming at me.

07:49 3 Q. I see. So that's why. So your testimony here today is
4 your animus towards Dr. Rinehart was actually improperly
5 fueled, in your view, by Luis Auza?

07:49 6 A. Yes.

07:49 7 Q. Okay. So it didn't have anything to do with, um --
8 thank you. Thank you, Mr. Mattera.

07:49 9 So why -- oh, I'm sorry. You have no recollection of
10 ever asking Dr. Martin to go to Dr. Rinehart and ask him for
11 money?

07:50 12 A. Never money, no.

07:50 13 Q. What did you ask Dr. Martin to ask Dr. Rinehart?

07:50 14 A. I don't recall, but I know I never asked for money.

07:50 15 Q. If you don't recall, how can you be sure you never
16 asked for money?

07:50 17 A. Because it wasn't about money.

07:50 18 Q. You --

07:50 19 A. If there was any comments, it woulda been, "We should
20 settle." That's it. And even Mr. -- if you look at the
21 deposition'a Mr. Tyler Martin, you'll see that.

07:50 22 Q. Did you ever suggest to anyone, including Mr. Martin,
23 that if the "Jessica" allegations got -- went public, it
24 could jeopardize Dr. Rinehart's medical license?

07:50 25 A. I don't remember that. I don't -- I don't believe so.

07:50 1 Q. Okay. I'd like to turn back to Exhibit 1, which is
2 the -- I'm sorry -- Exhibit 37, which is the license
3 agreement.

07:51 4 *(Exhibit displayed.)*

07:51 5 BY MR. DeCARLO:

07:51 6 Q. And we were talking specifically, when we stopped
7 yesterday, about the student manual that was Exhibit 533.
8 Do you remember talking about the student -- do you remember
9 the student manual?

07:51 10 A. Yes, I do.

07:51 11 Q. Okay. In that student manual, you'll recall, is
12 something that you indicated has to be provided by the
13 licensees to all of the students.

07:51 14 A. Yeah. Is that what it says?

07:51 15 Q. And -- and remember when we left off last night, um,
16 His Honor asked you to review that over the, uh -- in the
17 evening so when we came back we could ask you questions and
18 you would -- had your recollection refreshed over that
19 document?

07:51 20 A. Yes.

07:51 21 Q. And did you have an opportunity to review 533?

07:51 22 A. That's the manual?

07:51 23 Q. Yes.

07:51 24 A. Yes.

07:51 25 Q. All right. So does that manual, in fact, sir, have a

1 number of instructions about various methodologies and
2 techniques in Shaolin Kempo?

07:52 3 A. It's not an instruction manual. It's a reference
4 manual.

07:52 5 Q. I don't think that's responsive to my question, though,
6 sir.

07:52 7 A. I'm sorry.

07:52 8 Q. Does it have a lotta information about techniques and
9 methods for martial arts-type training?

07:52 10 A. Yes, it has information.

07:52 11 Q. Section 6 of Exhibit 37, Mr. Mattera, if you go to --
12 and this is the license agreement -- if you go to page, uh,
13 page 4 --

07:52 14 (To technician:) Mr. Barandon [sic], if you can go to
15 page 4, please.

07:52 16 (Exhibit displayed.)

07:52 17 BY MR. DeCARLO:

07:52 18 Q. And there's a Section 6 that says, Bushido Arts
19 martial, uh -- Martial Arts Supply and Logo.

07:52 20 So the licensee, Mr. Mattera, is required to use its
21 best efforts to obtain goods from Bushido; correct?

07:53 22 A. Yes. Best efforts.

07:53 23 Q. Right. And -- well, it says -- this agreement says
24 what it says. It -- it -- I'll read the last part of the
25 second paragraph:

07:53 1 "Licensee shall be relieved of this
2 obligation to exclusively purchase from
3 Bushido in hall [sic] -- in" --
07:53 4 MR. DeCARLO: *(Reading:)*
07:53 5 "Licensee shall be relieved of this
6 obligation to exclusively purchase from
7 Bushido, in whole or in part, if
8 Licensee can first reasonably show
9 licensor that it can consistently
10 acquire all of its marshal arts goods at
11 price [sic] and on terms better than
12 that being offered to it by Bushido and
13 that such martial arts goods are of
14 similar quality so as to not harm the
15 value and reputation of the trademarks."

07:54 16 BY MR. DeCARLO:

07:54 17 Q. So is that an accurate reflexion, Mr. Mattera, of how a
18 licensee can, under this agreement, avoid having to purchase
19 goods from Bushido?

07:54 20 A. Yes.

07:54 21 MR. DeCARLO: Your Honor, I'm sorry. I forgot to
22 ask that Exhibit 566 be admitted into evidence.

07:54 23 THE COURT: 556 [sic] is --

07:54 24 MR. HARDEMAN: Lacks foundation.

07:54 25 THE COURT: 556 [sic] is received.

07:54 1 Thank you, counsel. Overruled.
07:54 2 *(Exhibit Number 566 received in evidence.)*
07:54 3 BY MR. DeCARLO:
07:54 4 Q. Mr. Mattera, Bushido is an entity that is affiliated
5 with USSD; correct?
07:54 6 A. Affiliated, yes.
07:54 7 Q. Okay. USS- -- uh, Bushido, however, does not pay money
8 to USSD when Bushido makes sales; correct?
07:54 9 A. Correct.
07:54 10 Q. Okay. So there's no kind of commission that is paid by
11 Bushido to USSD; correct?
07:54 12 A. Correct.
07:54 13 Q. So if Bushido does not make a sale that maybe it
14 otherwise should have, either under this license agreement
15 or under one'a the franchise agreements, that does not in
16 any way financially harm USSD; correct?
07:55 17 A. I wouldn't say that.
07:55 18 THE COURT: Excuse me.
07:55 19 *(Court speaks with court technician.)*
07:55 20 THE COURT: All right. Counsel.
07:55 21 BY MR. DeCARLO:
07:55 22 Q. Mr. Mattera, when Bushido -- we just established that
23 Bushido doesn't --
07:55 24 *(Court reporter requests clarification for the*
25 *record.)*

07:55 1 BY MR. DeCARLO:

07:55 2 Q. We just established, Mr. Mattera, that when Bushido
3 makes a sale, it does not pay any kind of commission to
4 USSD; correct?

07:55 5 A. That's right.

07:55 6 Q. So if USSD does not make a sale that perhaps it should
7 have pursuant to either a license agreement or a franchise
8 agreement, that does not in any way harm financially USSD;
9 correct?

07:56 10 A. It would harm the brand because Bushido provides all of
11 our brand logo goods. And the quality of Bushido has to be
12 excellent. So if somebody was buying stuff from the
13 outside, it would hurt the brand.

07:56 14 Q. Okay. But in terms of financial losses, there would be
15 no financial losses because USSD doesn't have any financial
16 interest in Bushido; correct?

07:56 17 A. Well, I do.

07:56 18 Q. We haven't gotten to that yet. Can you answer my
19 previous question?

07:56 20 A. Yes. Bushido doesn't own -- um, United Studios doesn't
21 own Bushido.

07:56 22 Q. I'd like a clear record, though, to my previous
23 question, so I'll ask it again. Okay?

07:57 24 A. Okay.

07:57 25 Q. USSD does not suffer any financial harm if Bushido

1 doesn't make a sale that Bushido otherwise should be making
2 by virtue of Section 6 of the license agreement or the
3 equivalent section in a franchise agreement that requires
4 franchisees and/or licensees to purchase from Bushido;
5 correct?

07:57 6 A. United Studios would have a loss because the brand is
7 not being promoted if they buy outside of Bushido. Bushido
8 is the only authorized supplier of goods for United Studios.

07:57 9 THE COURT: Is there a provision in the agreement
10 that guides us as to who's to make the determination as to
11 whether these are comparable supplies or suppliers? In
12 other words, the provision seems to say that you can
13 purchase outside of Bushido, but it also seems to say if
14 they are basically of good quality. And I'm not certain who
15 makes that determination: The franchise or the franchisee?

07:58 16 BY MR. DeCARLO:

07:58 17 Q. Mr. Mattera, who makes the decision as to whether or
18 not the exception can be met to purchase goods outside of
19 Bushido?

07:58 20 A. The president of Bushido.

07:58 21 Q. The president of Bushido.

07:58 22 A. President of Bushido, and I usually get CC'd on any
23 issues.

07:58 24 The policy and procedures are that you're supposed'a
25 send in writing a request that you can get uniforms a lot

1 cheaper or yous (*verbatim*) can get something of better
2 quality, and ask for permission and then we respond.

07:59 3 Q. Who? Who responds?

07:59 4 A. The company Bushido responds, and I respond 'cause I'm
5 part'a both companies.

07:59 6 Q. You, Mr. Mattera, are a 100 percent owner of Bushido;
7 correct?

07:59 8 A. No.

07:59 9 Q. Oh. Who else owns it?

07:59 10 A. Mario Franqui.

07:59 11 Q. And how long --

07:59 12 A. CFO.

07:59 13 Q. And how long has Mario Franqui owned a portion of
14 Bushido?

07:59 15 A. Um, I believe -- I'm approximating -- two years.

07:59 16 THE COURT: So you own Bushido along with this
17 other partner?

07:59 18 THE WITNESS: Yes, Your Honor.

07:59 19 THE COURT: I see.

07:59 20 BY MR. DeCARLO:

07:59 21 Q. And Mr. -- and prior to Mr. Franqui obtaining some
22 portion of Bushido, you were a hundred-percent owner?

07:59 23 A. That's correct.

07:59 24 Q. So at the time that Exhibit 37 was entered into, at the
25 time Exhibit 1, which is the alleged Redondo Beach franchise

1 agreement, at the time the Beverly Hills 2015 franchise
2 agreement was entered into, you, Charles Mattera, were a
3 100 percent owner of Bushido; correct?

08:00 4 A. Yes, that's correct.

08:00 5 Q. So, in fact, the rationale for this provision is not a
6 quality issue. It's just another way for you personally to
7 make more money because you, at least when these agreements
8 were entered into, had a 100 percent financial interest in
9 Bushido; isn't that true?

08:00 10 A. No. That's --

08:00 11 Q. So --

08:00 12 *(Unreportable simultaneous speaking.)*

08:00 13 BY MR. DeCARLO:

08:00 14 Q. I cut you off.

08:00 15 A. That's not true.

08:00 16 Q. Why is that not true?

08:00 17 A. That's your opinion.

08:00 18 Q. Can you answer my question why it's not true?

08:00 19 A. *(No response.)*

08:00 20 Q. Let me ask the question again, Mr. Mattera.

08:00 21 A. Yes, please.

08:00 22 Q. Isn't it true that the reason that you require in the
23 license and franchise agreements for goods to be purchased
24 from Bushido is because it's another way for you,
25 personally, to profit?

08:01 1 A. Yes, that's true. But that's not the only reason.

08:01 2 Q. In order to be in good-standing, under this license
3 agreement, the licensee simply can't go out into the
4 marketplace and source martial arts goods in their
5 discretion as to those that they believe best fit their
6 dojo's particular needs; correct?

08:01 7 A. I don't...

08:01 8 Q. I'll ask it again.

08:01 9 A. Yes, please.

08:01 10 Q. In order to be in good-standing under Exhibit 37 and
11 other similar license agreements, the licensee cannot simply
12 go out into the marketplace and purchase those goods that
13 it, the Licensee, believes is the best fit for his or her
14 individual USSD dojo; correct?

08:02 15 A. I will say licensees have the ability'a buy outside'a
16 Bushido. It behooves 'em to buy from Bushido because we
17 have all the logo goods.

08:02 18 Q. Yeah, but, Mr. Mattera, we just read Section 6.

08:02 19 A. Yeah.

08:02 20 Q. And Section 6 says what it says: The Licensee has to
21 buy from Bushido unless the licensee can go through this
22 procedure that you just described to not have to purchase
23 from Bushido; correct?

08:02 24 A. I always -- my understanding was that licensees should
25 use their best effort to buy from Bushido.

08:02 1 Q. So the licensee simply cannot go out into the
2 marketplace; they can't just go to a trade show and say,
3 "Wow! That's a great headgear, and it's -- it's priced
4 reasonably. I'm gonna buy that headgear."

08:03 5 They can't do that because there's a restriction in the
6 license agreement that prohibits them; correct?

08:03 7 A. Okay. So licensees should do their best effort to buy
8 from Bushido. And the proof is we've never endorsed --
9 we've never gone after licensees for not buying --

08:04 10 Q. Well, except for today; right? Your position in this
11 case is --

08:04 12 A. We're talking about the franchises, Mr. DeCarlo. We're
13 talking about the franchises, not the licenses.

08:04 14 Q. I see. So you've gone after franchisees who've
15 purchased outsides of Bushido?

08:04 16 A. Not to my recollection, no.

08:04 17 Q. Except for today?

08:04 18 A. Except for today.

08:04 19 Q. That's a pretty significant restriction on the
20 licensee, wouldn't you agree?

08:04 21 A. No.

08:04 22 Q. Section 6 -- that they can't go out into the
23 marketplace and buy that which in their judgment for their
24 own dojo fits their needs.

08:04 25 A. I -- I don't understand.

08:04 1 Q. Okay. We'll move on, then.

08:04 2 Mr. Mattera, when Bushido sells things like --

08:04 3 *(Court reporter requests clarification for the*
4 *record.)*

08:04 5 MR. DeCARLO: Sorry.

08:04 6 BY MR. DeCARLO:

08:04 7 Q. When Bushido, Mr. Mattera, sells things like uniforms,
8 which are also known as ghis, and belts, those are branded
9 with the United Studios logo; correct?

08:05 10 A. Yes.

08:05 11 Q. But there's other martial arts items that Bushido sells
12 to licensees and franchisees which do not have the USSD
13 trademark; correct?

08:05 14 A. We have unbranded items because we sell to outside
15 schools.

08:05 16 Q. Mr. Mattera, isn't it true that licensees and
17 franchisees, when they purchase certain items from Bushido,
18 which they are required to do, some of those items are not
19 branded with USSD trademarks; correct?

08:05 20 A. All of the items are not branded.

08:05 21 Q. I'm sorry, sir?

08:05 22 A. All of the items are not branded, to my knowledge.

08:05 23 Q. I thought you just said that uniforms and belts are
24 branded with USSD.

08:05 25 A. I believe so.

08:05 1 Q. Then why did you just say none are branded?

08:06 2 A. I didn't say none. I said "not all."

08:06 3 Q. Let's start again.

08:06 4 A. Not all items are branded.

08:06 5 Q. Mr. Mattera, all I wanna establish is that Bushido
6 sells some items that are branded and some that are not.
7 Can we agree on that?

08:06 8 A. Yes, we can agree on that.

08:06 9 Q. And can we agree that the franchisees and licensees are
10 required to purchase from Bushido product, whether it is
11 branded USSD or not branded USSD. Can we agree on that?

08:06 12 A. I don't know that. That would be a Bushido question.

08:06 13 Q. Well --

08:06 14 THE COURT: Who owns Bushido?

08:06 15 THE WITNESS: Mr. Franqui owns a majority of
16 Bushido, Your Honor.

08:06 17 THE COURT: Okay.

08:06 18 BY MR. DeCARLO:

08:06 19 Q. Mr. Franqui owns the majority?

08:06 20 A. Yes.

08:06 21 Q. How much does he own now?

08:06 22 A. I believe, um, 74 percent. 70, 74 percent.

08:06 23 Q. Why would we ask Bushido, who's not the franchisor or
24 who's not the licensor, that question?

08:07 25 A. Well, because he's in charge. He knows the day-to-day

1 operations.

08:07 2 Q. When a franchisee and/or licensee purchases a non-USSD
3 branded item -- so let's say -- there's headgear; correct?
4 That's part a martial arts?

08:07 5 A. Yes.

08:07 6 Q. And there's things like, um, weapons like, uh -- I'm
7 not a "martial arts" person -- but like nunchakus, those
8 might not be branded with USSD; correct?

08:07 9 A. I'm not sure. I don't think the nunchakus are. But I
10 believe that the helmets are, but I'm not sure.

08:07 11 Q. Let's stick with the nunchakus.

08:08 12 A. Okay.

08:08 13 Q. Okay. 'cause they're not a branded USSD; correct?

08:08 14 A. No. But they're not a staple item.

08:08 15 Q. So when a licensee and/or franchisee purchases
16 nunchakus from Bushido that does not have the USSD brand,
17 those items are not promoting in any way the USSD brand;
18 correct?

08:08 19 A. Yes, that's correct.

08:08 20 Q. Isn't it true, Mr. Mattera, that Mr. Murakami and
21 Dr. Rinehart, as part of their duties in operating the dojos
22 that we have up on my board (*indicating*), over the last five
23 years have sought to source product from Bushido for the
24 Redondo Beach location and the Beverly Hills location, but
25 that there were instances in which Bushido simply did not

1 have product in stock?

08:09 2 A. I don't know.

08:09 3 Q. Who would know that, sir?

08:09 4 A. Josh Larson or, uh -- who's the manager -- or Mario
5 Franqui.

08:09 6 MR. DeCARLO: I'd like to read from the witness's
7 deposition July 19, 2019, page 58, line 14 through 21.

08:09 8 THE COURT: You may read that.

08:09 9 MR. DeCARLO: Page 58, line 14.

08:09 10 "QUESTION: Well, no, you didn't
11 answer it.

08:10 12 "Didn't -- hasn't Mr. Murakami and
13 Mr. Rinehart, for example, come to you
14 within the last five years and said
15 words to the effect, *There's product*
16 *that we wanna buy that Bushido doesn't*
17 *have available*"?

08:10 18 "ANSWER: It's possible. I don't
19 recall.

08:10 20 "QUESTION: Okay.

08:10 21 "ANSWER: It's possible."

08:10 22 BY MR. DeCARLO:

08:10 23 Q. Why did you say in your deposition, Mr. Mattera, that
24 it's possible that Mr. Murakami and Dr. Rinehart came to you
25 and told you that there was product that they wanted to

1 purchase from Bushido that simply wasn't available?

08:10 2 A. Well, I don't wanna make a mistake. I don't recall
3 everything that everyone talks to me -- I don't really zero
4 in on the supply company. I've only been there maybe three
5 times in the last two years, so I don't know really what's
6 going on in the day-to-day operations. But is it possible
7 that they mentioned that the supply company ran out of a
8 specific size? Yes, it's possible.

08:11 9 Q. Isn't it true, Mr. Mattera, that, in fact, you had
10 provided permission to Dr. Rinehart and Mr. Murakami to
11 purchase goods outside of Bushido from time to time?

08:11 12 A. I don't believe that's true.

08:11 13 Q. So it's your testimony under oath today --

08:11 14 A. Yes.

08:11 15 Q. -- that you can recall no instance in which you said
16 words to the effect, "Doc, Brent, yeah, sure. If it's not
17 available at Bushido, you know, sure, go buy what you need
18 from somewhere else"?

08:11 19 A. No, that's not my testimony.

08:11 20 Q. How about other franchisees?

08:11 21 A. Well, from time to time if somebody -- if Bushido --
22 every supply company occasionally runs out of an item. I
23 mean, our stuff comes from overseas, and sometimes ships get
24 delayed in customs, so we run out of certain items
25 occasionally. Occasionally, we do. Has people asked me?

1 Probably, but it's not common. It's not frequent.

08:12 2 Q. Well, hold on, sir. You said "probably."

08:12 3 A. It's probable that, over the last 52 years, people have
4 come to me and said, "Hey, we're outta size 3 belt in
5 Bushido." The first -- what I would normally do, our
6 customs and procedures is to say, "Call up the supply
7 company right now and see if they can order -- get a special
8 order in." And many times we will get a special order in
9 and ship it out at our cost to the -- Bushido is a service
10 to the schools. It's not a high profitable, um, company
11 because, uh, you know, we -- we buy a uniform and maybe make
12 \$3 on it, and the studio makes \$40 on it, what -- \$35,
13 whatever the spread is. The retail's where the profits are
14 made.

08:13 15 Q. Mr. Mattera, I just want a clear record. Do you have a
16 recollection of providing permission to other franchisees or
17 licensees in the last five years to purchase goods outside
18 of Bushido?

08:13 19 A. I don't recall specifics, but it's possible.

08:13 20 Q. I think it's probable; right?

08:13 21 MR. HARDEMAN: Argumentative.

08:13 22 THE COURT: Sustained.

08:13 23 He said "possible."

08:13 24 MR. DeCARLO: Okay.

08:13 25 THE WITNESS: Not frequent.

08:13 1 BY MR. DeCARLO:

08:13 2 Q. Now, you're not aware of any situation in the last five
3 years, Mr. Mattera, are you, where a USSD trademark has been
4 placed on a good where USSD didn't grant permission for the
5 mark to be placed on the good; correct?

08:14 6 A. Well, it'd be a counterfeit item.

08:14 7 Q. Correct. You're not aware of any counterfeits in the
8 last five years; correct?

08:14 9 A. I don't -- I don't believe so.

08:14 10 Q. Okay.

08:14 11 A. I don't recall.

08:14 12 Q. You -- okay. Thank you, sir.

08:14 13 A. Yeah.

08:14 14 Q. Do you have more to say?

08:14 15 A. No, no.

08:14 16 Q. Sir, you learned about the alleged violation of my
17 clients' purchasing from outside Bushido when?

08:14 18 A. I would say sometimes in around late '17, 2018, in that
19 time period.

08:14 20 Q. And did you ever send any kind of notice to them
21 alerting them to their violation?

08:15 22 A. Written? No.

08:15 23 Q. Did -- why not?

08:15 24 A. I'm sorry?

08:15 25 Q. Why not?

08:15 1 A. Well, because we're friends, and I would see them and
2 it would be a verbal request.

08:15 3 Q. Okay. Let's take a look at Exhibit 1 and Section 5 --
4 15.2 of that agreement, which is page -- page 27 of
5 Exhibit 1.

08:15 6 *(To technician:)* If you could put that on the screen,
7 Mr. Baran -- Barandon [sic].

08:15 8 *(Exhibit displayed.)*

08:15 9 BY MR. DeCARLO:

08:15 10 Q. So it's --

08:15 11 *(To technician:)* If you could blow up 15.2 for us.

08:15 12 *(Technician complies.)*

08:16 13 BY MR. DeCARLO:

08:16 14 Q. Mr. Mattera, it's your view of the sale -- I'm sorry --
15 the purchase by my clients of goods outside of Bushido is a
16 breach of the agreement; correct?

08:16 17 A. Yes.

08:16 18 Q. But you never provided any kind of 15.2 notice to my
19 client; correct? -- or, my clients.

08:16 20 A. I believe that my attorneys did.

08:16 21 Q. And that was in, uh -- when?

08:16 22 A. 'fore the lawsuit, I believe.

08:16 23 Q. Right before this lawsuit was filed in --

08:16 24 A. I think so.

08:16 25 Q. -- in the Summer of 2018?

08:16 1 A. I believe that was accurate.

08:16 2 Q. Isn't the reason that nobody ever sent a written notice
3 of breach, prior to your lawyers' breach in, uh -- whenever
4 you said it was, in 2018, is because you knew that their
5 purchases as -- as rare as they were, outside of Bushido
6 were permitted by you; isn't that true?

08:17 7 A. No.

08:17 8 Q. You never even verbally told them, my clients, that
9 purchasing outside -- the way they had purchased outside of
10 Bushido was a breach of the agreement and that you objected;
11 correct?

08:17 12 A. That wasn't my testimony.

08:17 13 Q. I'm asking you today, sir?

08:17 14 A. Yes.

08:17 15 Q. Let me ask the question again.

08:17 16 A. You're asking me if I ever verbally told 'em.

08:17 17 Q. My question, sir, is, isn't it true that you never told
18 Dr. Rinehart or Mr. Murakami that you had an objection to
19 the way in which they purchased goods outside of Bushido?

08:17 20 A. No.

08:17 21 Q. There are many other -- in the last five years, there
22 have been many other franchisees and licensees that've come
23 to your attention, who have purchased goods outside of
24 Bushido, when, for example, Bushido doesn't have goods that
25 are available; correct?

08:18 1 A. I -- once again, I don't run Bushido. I don't see -- I
2 can't remember any written complaints to me, um, outside of
3 a handful maybe. I get them from Utah, from Tyler Martin's,
4 uh, little group; but other than that, uh -- other than
5 Tyler Martin, I don't have any -- I don't recall any written
6 complaints.

08:18 7 Q. Over -- over the last five years, you're aware that
8 there has been some fairly substantial quality issues with
9 Bushido; correct?

08:18 10 A. Not recently.

08:18 11 Q. I said within the last five years.

08:18 12 A. Right up until Mr. Matt Mattera quit, there was
13 questions of quality. After he quit, Mr. Franqui corrected
14 those. Mr. Larson corrected those.

08:19 15 Q. So the -- there were some -- some substantial quality
16 issues within the last five years, but then they were
17 remedied when your son quit; is that your testimony?

08:19 18 A. You're saying substantial qualities [sic]. I don't
19 know if that would be appropriate. There was some quality
20 issues with some of the uniforms that my son had purchased.

08:19 21 Q. Okay. Let me direct your attention now back to
22 Exhibit 37, Mr. Mattera. And if we could go to page 8 of
23 Exhibit 37.

08:19 24 MR. DeCARLO: And I'd like, Mr. Barandon [sic], if
25 you could blow up, please, 19 first.

08:19 1 *(Exhibit displayed.)*

08:19 2 BY MR. DeCARLO:

08:19 3 Q. All right. Mr. Mattera, can you read this to yourself,
4 so we don't burden the court reporter. Let me know when
5 you're done reading it, sir.

08:20 6 A. Okay.

08:20 7 Q. You understand that this means that this agreement is
8 supposed to be the full embodiment of the agreement and
9 nothing outside'a the agreement needs'a be considered; is
10 that your understanding?

08:20 11 A. Yes.

08:20 12 Q. Okay. Let's go to Paragraph 20 of Exhibit 37.

08:20 13 *(Exhibit displayed.)*

08:20 14 BY MR. DeCARLO:

08:20 15 Q. I, unfortunately, will burden the court reporter and
16 read this. Section 20 of Exhibit 37, found on page 8:
17 "Any modification of this agreement or
18 additional obligation assumed by either
19 party in connection with this agreement
20 shall be binding only if placed in
21 writing and signed by each party or an
22 authorized representative of each
23 party."

08:21 24 Do you understand what that means, sir?

08:21 25 A. Yes.

08:21 1 Q. Who is the party to this agreement? Who are the
2 parties to this agreement, Exhibit 37?

08:21 3 A. The parties would be SB Ninja and United Studios.

08:21 4 Q. And if you could refer to my chart up there, if you can
5 see the tree of ownership, do you see who the owner of
6 SB Ninja is?

08:21 7 A. I can't see that.

08:21 8 Q. Okay. I'll represent to you that it's -- the chart
9 says -- and Mr. Murakami will testify to this -- that Brent
10 Murakami is a hundred percent owner of SB Ninja.

08:21 11 Did you know that before I just told you that now?

08:21 12 A. I think it was discussed in the last -- yesterday or --

08:21 13 Q. So --

08:21 14 A. -- recently.

08:22 15 Q. So do you understand, Mr. Mattera, that in order to
16 alter Exhibit 1, you would need to get both parties to agree
17 in writing -- I'm sorry. Exhibit 37. This is the license
18 agreement.

08:22 19 Do you agree, Mr. Mattera, that Section 20 means that
20 in order to modify or alter Exhibit 37, both parties,
21 SB Ninja and USSD, would need to agree such -- agree to such
22 in writing?

08:22 23 A. I think the -- that's a legal question. I'm not sure
24 of the -- I'm not sure of the legality.

08:22 25 Q. Well, Mr. Mattera, do you not understand Section 20?

08:23 1 MR. HARDEMAN: Argumentative.

08:23 2 THE COURT: Overruled.

08:23 3 THE WITNESS: I believe that -- it says what it
4 says. Yeah, has to be in writing.

08:23 5 BY MR. DeCARLO:

08:23 6 Q. And it's gotta be signed by both parties; correct?

08:23 7 A. That's what it says, yes.

08:23 8 Q. And the parties are USSD on the one hand; correct?

08:23 9 A. Yes.

08:23 10 Q. And SB Ninja on the other hand; correct?

08:23 11 A. Yes, that's right.

08:23 12 Q. And it is your testimony here today that Exhibit 1, the
13 so-called Redondo Beach franchise agreement, served to
14 modify -- more than modify -- erase the rights that were
15 granted to SB Ninja in Exhibit 37; correct?

08:23 16 A. Once again, that's -- that's a legal question I can't
17 answer. I don't understand. If you're asking me should
18 Brent and I've signed an agreement where he was transferring
19 'em to the franchise.

08:24 20 Q. Well, let's go to Exhibit 1.

08:24 21 A. Okay.

08:24 22 Q. And let's look at page 7 of Exhibit 1. And let's look
23 at the first paragraph.

08:24 24 (To technician:) Mr. Bradon [sic], can you blow that up
25 for Mr. Mattera.

08:24 1 (*Display adjusted.*)

08:24 2 BY MR. DeCARLO:

08:24 3 Q. We'll put it on the screen, Mr. Mattera, if that makes
08:24 4 that easier for you.

08:24 5 MR. DeCARLO: (*To technician:*) Can you highlight
08:24 6 that, Mr. Barandon [sic].

08:24 7 A. I can see it.

08:24 8 Q. So the Exhibit 1 franchise agreement that is the
08:24 9 position of USSD today, that serves as a replacement and
08:24 10 superseded Exhibit 37? (*Verbatim.*)

08:24 11 A. Yes.

08:24 12 Q. Okay. It indicates that it's between United Studios of
08:24 13 Self Defense and South Bay Self Defense Studios; do you see
08:24 14 that?

08:25 15 A. Yes.

08:25 16 Q. South Bay Self Defense Studios is not a party to the
08:25 17 2011 Redondo Beach license agreement, Exhibit 37, is it?

08:25 18 A. South Bay is not part'a the license?

08:25 19 Q. Mr. Mattera, South Bay Self Defense Studios --

08:25 20 A. Yes.

08:25 21 Q. -- SBSSD is the acronym we've given it. That entity is
08:25 22 not a party to the 2011 Redondo Beach license agreement,
08:25 23 Exhibit 37, is it?

08:25 24 A. Oh, I see what you're saying. SB Ninja is; right?
08:25 25 That's what you're saying'a me. So South Bay is not,

1 SB Ninja is; is that right? That's what you're asking me?

08:25 2 Q. Mr. Mattera, I'm asking you what I'm asking you.

08:25 3 South Bay Studios of Self Defense, the alleged
4 franchisee in Exhibit 1 --

08:26 5 A. Yes.

08:26 6 Q. -- is not a party to the Redondo Beach license
7 agreement, Exhibit 37, is it?

08:26 8 A. I don't believe -- I don't know. It's on the contract.
9 And Mr. Rinehart signed it, and they're partners. That's
10 all I know.

08:26 11 Q. Okay.

08:26 12 A. We established that yesterday.

08:26 13 Q. There is nothing -- I'm not -- it's a long document,
14 but there is nothing in Exhibit 1, is there, that says words
15 to the effect, This document is intended to be a replacement
16 and is intended to supercede that license agreement entered
17 into between USSD and SB Ninja in 2011? There's no language
18 in Exhibit 1 that sends -- that says anything even remotely
19 like that; correct?

08:27 20 A. I -- I don't know. I don't believe so. I don't think
21 there is.

08:27 22 Q. So, Mr. Mattera, it's your view that Exhibit 1, the
23 Redondo Beaching franchise agreement, replaced/superseded
24 Exhibit 37, so that's -- Exhibit 37, the Redondo Beach
25 license agreement, no longer has any effect. That's your

1 view today; right?

08:27 2 A. I believe that the franchise -- yes. I testified
3 yesterday the franchise agreement superseded the licensing
4 agreement.

08:27 5 Q. And prior to trying to get Dr. Rinehart to sign
6 Exhibit 1, you had asked Mr. Murakami repeatedly to convert
7 the Redondo Beach location to a franchise; correct?

08:28 8 A. No. I've only asked Mr. Murakami to con -- consider
9 the licensing agreements, not the franchise agreement.

08:28 10 Q. Okay.

08:28 11 A. It was represented that Mr. Rinehart was representing
12 South Bay.

08:28 13 Q. Mr. Mattera, the -- we went over yesterday -- and I
14 think you agreed with me -- that that protected territory,
15 that exclusive territory that had been granted by SB --
16 granted to SB Ninja by USSD by virtue of Exhibit 37, that
17 was a valuable right that was granted to SB Ninja; correct?

08:28 18 A. Yes.

08:28 19 Q. Didn't it occur to you that if you were going to take
20 that right away from SB Ninja and replace that right with a
21 franchise agreement with a different entity, SBSSD -- didn't
22 it occur to you that, *Boy, I better get the permission of*
23 *SB Ninja before I do that?*

08:29 24 A. No.

08:29 25 Q. Never occurred to you?

08:29 1 A. No.

08:29 2 Q. Okay.

08:29 3 A. Mr. Murakami was SB Ninja, and Mr. Murakami was South
4 Bay Studios and partners with Mr. Rinehart. That's how it'd
5 been established.

08:29 6 Q. So you just kinda thought, in your own way: *Those guys*
7 *are partners. I got Doc signing it. That's all I need.*

08:29 8 That was your thought process?

08:29 9 A. Yes.

08:29 10 Q. Did you ever consult with a lawyer around that time to
11 say, Can I do this? Is this gonna pass muster? Is this
12 legal? Did you ever consult with a lawyer to see if what
13 you were tryin'a do made any sense?

08:30 14 A. No, I didn't.

08:30 15 Q. Do you wish you had?

08:30 16 MR. HARDEMAN: Argumentative.

08:30 17 THE COURT: Sustained.

08:30 18 BY MR. DeCARLO:

08:30 19 Q. At the time that you entered into exhibit -- uh, you
20 alleged to've claim -- claimed -- strike that.

08:30 21 At the time, September of 2014, that you believe
22 Exhibit 1, the so-called Redondo Beach franchise agreement
23 was executed, did you have any documentation at all to
24 suggest that Dr. Rinehart had the authority to sign away
25 SB Ninja's license rights?

08:30 1 A. Written? No.

08:30 2 Q. And, in fact, Mr. Murakami never represented to you
3 that Dr. Rinehart had the ability to sign away SB Ninja's
4 right; correct?

08:31 5 A. In writing, no.

08:31 6 Q. I'm sorry?

08:31 7 A. Not in writing, no.

08:31 8 Q. He never even said that to you orally?

08:31 9 A. I don't recall. I don't believe so.

08:31 10 Q. I'd like to direct your attention to Section 21, page 8
11 of Exhibit 37, and specifically the Section 21.

08:31 12 *(Exhibit displayed.)*

08:31 13 BY MR. DeCARLO:

08:31 14 Q. That says, License and Services Agreement, Not a
15 Franchise."

08:31 16 So you're specifically in -- specifically, in this
17 agreement, there's a provision that alerts the licensee to
18 the fact or the alleged fact that the agreement is not a
19 franchise; right?

08:32 20 A. Yes.

08:32 21 Q. And the purpose of that is, at least as it relates to
22 the 2011 agreement that SB Ninja executed, is because USSD
23 did not have the ability or legal right in 2011 to issue
24 franchises; correct?

08:32 25 A. What was the time frame again that you --

08:32 1 Q. The -- the Redondo Beach license agreement,
2 Exhibit 37 --

08:32 3 A. Yes.

08:32 4 Q. -- was executed in March of 2011.

08:32 5 A. Yes.

08:32 6 Q. Remember?

08:32 7 A. Yes, that's correct.

08:32 8 Q. In March of 2011 USSD did not have the, uh, legal right
9 to issue or sell franchises in California; correct?

08:32 10 A. Yes, that's correct.

08:32 11 Q. So part of one of the reasons to have this language,
12 Section 21 of Exhibit 37, is to alert the licensee to the
13 fact that the licensee is not a franchise; correct?

08:33 14 A. That's what it says, I believe.

08:33 15 Q. Even though it says this, Mr. Mattera, there are
16 restrictions in this agreement at -- this agreement,
17 Exhibit 37 -- as to how the licensee could run its business;
18 for example, it has to purchase from Bushido; correct?

08:33 19 A. We asked to do best -- best efforts to buy from
20 Bushido.

08:33 21 Q. You could read the second -- I'munna read you the
22 second section under -- under -- I'm sorry -- the second
23 sentence under Section 21:

08:33 24 "Licensor is not imposing methods or
25 procedures upon licensees other than set

1 forth in this agreement in connection
2 with licensee's deployment of the
3 trademarks." *(As read.)*

08:34 4 So the purchase -- the requirement of purchasing
5 from Bushido is not completely related to the trademarks
6 because Bushido sells goods that are not branded by USSD;
7 correct?

08:34 8 A. Yes.

08:34 9 Q. But the licensee is still required to utilize its best
10 efforts and to go through a protocol if they want to buy
11 others, other than Bushido; correct?

08:34 12 A. Best efforts, yes.

08:34 13 Q. And, in addition, the license agreement requires the
14 licensee to provide all of its students with that really
15 thick manual, Exhibit 533 -- I'm sorry -- 553; correct?

08:34 16 A. If they want.

08:34 17 Q. Well, if they want? Well...?

08:34 18 A. Some schools don't take advantage of the manual.
19 They're free.

08:35 20 Q. But it's required by the licensee to provide to the
21 students; isn't that correct?

08:35 22 A. Required?

08:35 23 Q. Yes.

08:35 24 A. I'm not sure.

08:35 25 Q. I'll -- I'll find it later.

08:35 1 Oh, I'm sorry. I found it.

08:35 2 MR. DeCARLO: Can we go to page 4 of, uh,
3 Section 5 of page -- uh, page 4 of Exhibit 37, Section 5.
4 Can you put that up on the screen, Mr. Barandon [sic].

08:36 5 *(Exhibit displayed.)*

08:36 6 MR. DeCARLO: And can you blow up --
7 *(Display adjusted.)*

08:36 8 MR. DeCARLO: There you go. Thank you.

08:36 9 BY MR. DeCARLO:

08:36 10 Q. First paragraph:

08:36 11 "Licensee shall provide each person",
12 paren, "student," closed parens
13 "enrolling or participating at the
14 licensed school a new copy of the United
15 Studios of Self Defense manual." (As
16 read.)

08:36 17 A. Yes.

08:36 18 Q. *(Reading:)*

08:36 19 "Licensee understands and agrees that
20 the student manual contains and promotes
21 the trademarks, has intrinsic value, and
22 is useful in promoting martial arts
23 schools in association with the
24 trademarks."

08:36 25 So it's required. The word is "shall"; correct?

08:36 1 A. That's what it says.

08:36 2 Q. It's not optional.

08:36 3 A. Yeah.

08:36 4 Q. And that is a mandate that is placed by the licensor on
5 the licensee as to how the licensee shall run its operation.

08:37 6 A. Yeah, maybe.

08:37 7 Q. Thank you.

08:37 8 A. Maybe that word "shall" shouldn't be in there.

08:37 9 Q. I'm sorry, sir?

08:37 10 A. It says "shall." Maybe it should say, "should."

08:37 11 Q. What's the difference?

08:37 12 A. Well, licenses should provide the students with a
13 manual. They're free. It's a benefit. I don't understand
14 why the -- they wouldn't want the manual.

08:37 15 Q. Okay. But to be clear, sir, that is a mandate that is
16 placed on the licensee by the agreement?

08:37 17 A. We've never enforced that.

08:37 18 Q. That's not my question. It is, in fact, a mandate by
19 the agreement that restricts how the licensee can choose to
20 run its own business.

08:38 21 A. I don't know.

08:38 22 Q. You don't know. Okay.

08:38 23 Don't you charge -- doesn't USSD charge for the
24 manuals? Isn't that part of the \$750 fee that is paid by
25 the licensee?

08:38 1 A. Absolutely not. Manuals are free.

08:38 2 Q. Let's go to 552. I'd like you to take a look at
3 page -- oh.

08:38 4 MR. DeCARLO: Uh, I can't remember. Did we move
5 553 into evidence?

08:38 6 If not, Your Honor, I'd ask that 553, the student
7 manual, be moved into evidence.

08:38 8 THE COURT: I think it already was, Counsel.

08:38 9 MR. DeCARLO: Thank you.

08:38 10 MR. HARDEMAN: It was received into evidence.

08:38 11 THE COURT: Let me double check my evidence.

08:38 12 MR. BERLINER: 552?

08:38 13 MR. DeCARLO: 553.

08:38 14 *(Simultaneous speaking.)*

08:38 15 MS. SHIN: 553.

08:38 16 MR. BERLINER: I'm sorry.

08:39 17 Yes, Your Honor. I have it.

08:39 18 THE COURT: It was previously received, Counsel,
19 wasn't it?

08:39 20 MR. BERLINER: I have it, Your Honor.

08:39 21 THE COURT: Well, do you have your notes
22 reflecting it was previously received?

08:39 23 MR. BERLINER: Yes.

08:39 24 MS. SHIN: Yes.

08:39 25 THE COURT: You also, Counsel?

08:39 1 MS. SHIN: Yes.

08:39 2 THE COURT: All right.

08:39 3 And I do, as well.

08:39 4 And that was last evening, wasn't it, Counsel?

08:39 5 MR. HARDEMAN: I believe so, Your Honor.

08:39 6 THE COURT: If not, Counsel, it's re-received.

7 That'll make it simple.

08:39 8 *(Exhibit Number 553 received in evidence.)*

08:39 9 THE COURT: Please proceed.

08:39 10 I have 551, last night. I'm not sure. So let's
11 just receive 552.

08:39 12 *(Exhibit Number 552 received in evidence.)*

08:39 13 BY MR. DeCARLO:

08:39 14 Q. Mr. Mattera, I've put up on the screen Exhibit 552, and
15 page 12 of 552.

08:39 16 THE COURT: And, once again, what is 552?

08:40 17 MR. DeCARLO: It is a document entitled
18 Standardized USSD Student Price Rates. And the bottom of it
19 says, "Professor Charles Mattera."

08:40 20 BY MR. DeCARLO:

08:40 21 Q. Sir, have you seen this document before?

08:40 22 MR. HARDEMAN: Is this Exhibit 552 or 551,
23 Counsel?

08:40 24 MR. DeCARLO: 552, and I'm directing --

08:40 25 MR. HARDEMAN: This is not our exhibit 552?

08:40 1 MS. SHIN: It's page --

08:40 2 THE COURT: And I'm now not certain that 552 is
3 received. So I'm going to receive it just out of caution
4 because it is relevant.

08:40 5 I have 551 being received last night. So let's
6 just make certain our record's clear.

08:40 7 MR. BERLINER: If I may, Your Honor?

08:40 8 I don't have 551, which on my list is an email
9 between Josh George and United Studios billing, dated
10 January 6th.

08:40 11 THE COURT: All right. We'll clean that up at the
12 recess --

08:40 13 MR. BERLINER: Okay.

08:40 14 THE COURT: -- 'cause I don't wanna use valuable
15 time.

08:40 16 MR. BERLINER: Okay. Your Honor.

08:40 17 THE COURT: And I think you may be right, Counsel.
18 So we can do that at the recess and over the lunch hour.

08:41 19 And I think you're correct, Counsel. I don't
20 think I have 551 either.

08:41 21 I have 521.

08:41 22 MR. BERLINER: Just tryin'a be helpful.

08:41 23 THE COURT: I know.

08:41 24 MR. BERLINER: Move things along.

25

08:41 1 BY MR. DeCARLO:

08:41 2 Q. So, Mr. Mattera, I've placed in front of you page 12 of
3 Exhibit 552.

08:41 4 Mr. Mattera, we're gonna show you the entire
5 Exhibit 552, and then I'll direct your attention to a couple
6 of specific pages.

08:41 7 MR. HARDEMAN: Your Honor, I believe these are all
8 separate documents, bundled up into one exhibit. So I would
9 ask that each of these be --

08:42 10 THE COURT: Be separated out?

08:42 11 MR. HARDEMAN: -- separated -- separately
12 authenticated.

08:42 13 THE COURT: Counsel?

08:42 14 MR. DeCARLO: I'll do that by page number.

08:42 15 Why don't we call -- well, we'll call 552 --
16 Exhibit 5 -- the document on the screen, 552, page 12, we
17 will call 552-12.

08:42 18 Is that okay?

08:42 19 *(Exhibit Number 552-12 marked for identification.)*

08:42 20 BY MR. DeCARLO:

08:42 21 Q. So, Mr. Mattera, Exhibit 552-12, which is up on your
22 screen right now --

08:42 23 A. Yes.

08:42 24 Q. -- do you recognize that document?

08:42 25 A. Well, yes.

08:42 1 Q. Is -- did you write it?

08:42 2 A. I believe I did.

08:42 3 Q. All right. And does -- is this something that you
4 provided to members of the system at a first Friday meeting?

08:43 5 A. Yes.

08:43 6 Q. Do you remember when you did it?

08:43 7 A. No.

08:43 8 Q. Do you know if it was within the past year?

08:43 9 A. I -- honestly, I don't know.

08:43 10 Q. So this is, uh -- do you know if this is a longstanding
11 policy of USSD?

08:43 12 A. Well, it's a policy of -- yes, it's a longstanding
13 policy.

08:43 14 Q. Right. And if we can go to the paragraph that says,
15 um -- the first paragraph:

08:43 16 "The purpose and intent of USSD is to
17 ensure your success. An important
18 element in any organization is for each
19 and every studio to abide by and charge
20 every student the same USSD standard
21 tuition."

08:43 22 And then, if we look above it, there's a tuition
23 schedule. Do you see that?

08:43 24 A. Yes.

08:43 25 Q. So it is USSD's policy to require its franchisees and

1 licensees to charge these amounts of money identified on the
2 schedule to its students?

08:44 3 A. It's a -- its standard student price rate for
4 franchisees.

08:44 5 Q. So this is not applicable to licensees?

08:44 6 A. No. But we would encourage them to kinda follow along
7 with it. But it's not mandatory.

08:44 8 Q. Don't licensees appear at the first Friday meetings on
9 a regular basis?

08:44 10 A. Um, we don't take attendance so -- but I believe that
11 occasionally a license- -- there is -- first of all, there
12 isn't that many licensees in the company. But if they did
13 come in, uh, we don't take attendance.

08:44 14 Q. So when you handed Exhibit 552-12 out at a first Friday
15 meeting, you didn't say, *Hey, this only applies to*
16 *franchisees, not licensees*. You never made any kinda
17 pronouncement like that; right?

08:45 18 A. Probably not.

08:45 19 Q. And the reason for why USSD -- strike that.

08:45 20 You understand, even though franchise agreements are
21 complicated and have a lot of requirements and
22 restrictions -- franchises are still independent businesses.
23 You understand that; right?

08:45 24 A. Yes.

08:45 25 Q. Okay. And why are you dictating to an independent

1 business how much they can charge? Why is USSD dictating to
2 an independently owned business, like a franchise, how much
3 that independent business can charge for the services that
4 it offers its students?

08:45 5 A. We're not dictating. These are suggested prices.
6 Every franchise does this. Every franchise has -- has their
7 rates. You can't go to McDonald's here and go across the
8 street there and get a Big Mac for a different price.

08:46 9 Q. Mr. Mattera, the last paragraph of this document
10 says -- this is Exhibit 552-12:

08:46 11 "We encourage entrepreneurship and do
12 not have thousands of rules and
13 regulations; however, a standard rate is
14 an extremely important requirement for
15 the benefit and protection of everyone."

08:46 16 Mr. Mattera, it's not -- the pricing schedule is not a
17 suggestion. It's a requirement; correct?

08:46 18 A. Incorrect. You're reading it wrong. It says,

08:46 19 "A standard rate is extremely
20 important requirement for the benefit
21 and protection of everybody."

08:46 22 It doesn't say we are requiring it. We're saying it's
23 important for your benefit and protection. That's what it
24 says.

08:47 25 Q. Well, it says what it says, sir.

08:47 1 A. Yes, it does.

08:47 2 Q. Okay. Let's go -- I'd ask that Exhibit 552-12 be
3 admitted.

08:47 4 THE COURT: I thought it was 552?

08:47 5 MR. DeCARLO: 552-12. Exhibit 552-12, I would ask
6 it be admitted.

08:47 7 MR. HARDEMAN: It would be page 12 of 552. And
8 there's no objection.

08:47 9 THE COURT: Thank you. Received.

08:47 10 *(Exhibit Number 552-12 received in evidence.)*

08:47 11 BY MR. DeCARLO:

08:47 12 Q. Let's go back to -- let's go to Exhibit 552-10.

08:47 13 *(Exhibit displayed.)*

08:47 14 BY MR. DeCARLO:

08:47 15 Q. This is the agenda for a meeting in October, on
16 October 5th, 2018; correct, Mr. Mattera?

08:47 17 A. I believe so, yes.

08:48 18 Q. And one'a the line items is Standardized Testing Fees.
19 You see that?

08:48 20 A. Yes.

08:48 21 Q. So does that refresh your recollection that
22 Exhibit 552-12 was provided to those attending the first
23 Friday on October 5th, 2018?

08:48 24 A. I believe so, yes.

08:48 25 Q. Okay. The agendas, like we see --

08:48 1 MR. DeCARLO: I'd like to admit Exhibit 552-10,
2 Your Honor.

08:48 3 THE COURT: Received.

08:48 4 *(Exhibit Number 552-10 received in evidence.)*

08:48 5 BY MR. DeCARLO:

08:48 6 Q. Mr. Mattera, the agendas, like the kind we see on
7 552-10, these are routinely given out to the members of --
8 who attend the first Friday meetings; correct?

08:49 9 A. Yes.

08:49 10 Q. Okay. Now, I'd like you to take a look at 552-15.
11 There's a line item -- and this is in March of 2019. And
12 this is a line item -- that second bullet point up from the
13 top says, "Ongoing litigation." You see that?

08:49 14 A. Yes.

08:49 15 Q. Okay. Now, you're referring to this litigation; right?

08:49 16 A. It would make sense.

08:49 17 Q. Okay. So you briefed the members of the first Friday
18 about this litigation?

08:49 19 A. Several of the members had asked me -- uh, because
20 Mr. Rinehart had been advertising about this -- What's going
21 on? There's a lawsuit. And I put it down there just as a
22 brief -- uh, they wanted'a know. So I figured it'd be best
23 to mention it to the group.

08:50 24 MR. DeCARLO: All right. I'd ask that 552-15 --
25 Exhibit 552-15 be admitted into evidence.

08:50 1 THE COURT: Received.

08:50 2 (*Exhibit No. 552-15 received in evidence.*)

08:50 3 BY MR. DeCARLO:

08:50 4 Q. Let's talk about the Torrance studio, Mr. Mattera.

08:50 5 Let's -- I think you testified on your direct about Max-J,

08:50 6 Inc. (*Phonetic.*)

08:50 7 Max-J, Inc. is a -- to your understanding, is an LLC

08:50 8 that was owned by a gentleman by the name of, um, who?

08:50 9 A. Dave Johnson.

08:50 10 Q. And you've -- Dave Johnson -- if we can go to

08:50 11 Exhibit 633, please.

08:50 12 A. 633.

08:50 13 MR. DeCARLO: I believe this was already admitted

08:50 14 into evidence.

08:51 15 BY MR. DeCARLO:

08:51 16 Q. This is the original license agreement for a facility

08:51 17 in Torrance; correct? -- if we go to page 3 of Exhibit 633?

08:51 18 A. I think this says "Rolling Hills."

08:51 19 Q. Well, let me -- let's walk through that.

08:51 20 Page 3 of 633 references the territory as Torrance. Do

08:51 21 you see that?

08:51 22 A. Yes, yes.

08:51 23 Q. Okay. So you were, I think, confused because on page 1

08:51 24 the address --

08:51 25 A. Oh, I see.

08:51 1 Q. -- for the licensee is Rolling Hills.

08:51 2 A. Thank you.

08:51 3 Q. But, in fact, you would agree that this license
4 agreement, Exhibit 633, is for the location of Torrance;
5 correct?

08:51 6 A. Yes.

08:51 7 Q. And then 634, which you also went over yesterday,
8 that's the assignment noting that that license, the Torrance
9 license, was assigned to SB Ninja, and USSD gave permission
10 for it; correct?

08:52 11 A. I believe so, yes.

08:52 12 Q. All right.

08:52 13 THE COURT: And both were previously received.

08:52 14 BY MR. DeCARLO:

08:52 15 Q. Now, let's talk about Rolling Hills. Let's talk --
16 let's go to Exhibit 38, sir.

08:52 17 *(Exhibit displayed.)*

08:52 18 BY MR. DeCARLO:

08:52 19 Q. We talked about this yesterday. Exhibit 38 is an
20 agreement that you both typed out and wrote in, in pen;
21 correct?

08:52 22 A. Yes.

08:52 23 Q. All right. And its referencing two locations: One in
24 Rolling Hills and one in Torrance; correct?

08:52 25 A. Yes.

08:52 1 Q. So when it's relate -- when it's -- when it, this
2 agreement, is referring to Torrance, it's referring to
3 Exhibit 634 and Exhibit 635, the documents we just went
4 over; correct?

08:53 5 A. Um, I don't know. The original intent of this
6 agreement was exclusively for Rolling Hills.

08:53 7 When Mr. Murakami came in, he asked to be excluded from
8 paying the back payments for Torrance. That's why it was
9 written in.

08:53 10 Q. Wasn't Dr. Rinehart also in that meeting?

08:53 11 A. I don't believe so, no.

08:53 12 Q. Okay. Can I get a -- Mr. Mattera, do you remember if
13 Dr. Rinehart was in that meeting?

08:53 14 A. I don't remember him being there.

08:53 15 Q. You don't remember him being there?

08:53 16 A. No. Nope. I believe Brent was alone.

08:53 17 Q. Okay. The Torrance -- I'm sorry. The Rolling Hills
18 facility, at that point, was the -- was a location that was
19 being operated by Mr. Murakami after a previous franchise
20 agreement had expired; right?

08:54 21 A. Yes.

08:54 22 Q. Okay. In a way, you and Mr. -- strike that.

08:54 23 You and Mr. Murakami had had discussions prior to March
24 of 2018 about the ongoing operations of that Rolling Hills
25 facility; correct?

08:54 1 A. Yes.

08:54 2 Q. And Mr. -- and you did not want that facility to close;
3 you wanted it to stay open under the USSD brand; correct?

08:54 4 A. Of course.

08:54 5 Q. And Mr. Murakami at that point was doing you a bit of a
6 favor by operating it, keeping it open, even though, you
7 know, it wasn't a particularly profitable studio; correct?

08:54 8 A. Doing me a favor?

08:54 9 Q. Right. He stepped in and operated a studio that had
10 been aban -- or in which the prior franchise agreement had
11 expired.

08:54 12 A. Yes.

08:54 13 Q. Okay. And he wasn't paying any fees during that time
14 'cause there was no agree -- the time that -- the time
15 leading up to March of 2018 and prior to the previous or
16 expiration of the previous franchise, there was no op --
17 there was no operative agreement for that Rolling Hills
18 studio; correct?

08:55 19 A. Well, he was using United Studios trademark and logo.

08:55 20 Q. Right. With your permission.

08:55 21 A. *(No response.)*

08:55 22 Q. Right? He's operating the facility?

08:55 23 A. Yes.

08:55 24 Q. Without any written agreement -- he, Mr. Murakami --

08:55 25 A. Yes.

08:55 1 Q. -- is operating the facility without any operating --
2 without any --

08:55 3 *(Court reporter requests clarification for the*
4 *record.)*

08:55 5 BY MR. DeCARLO:

08:55 6 Q. Mr. Murakami is operating the Rolling Hills facility --

08:55 7 A. Yes.

08:55 8 Q. -- without any written agreement at all. Yes?

08:55 9 A. I -- I believe that's accurate, yes.

08:55 10 Q. Flying the USSD flag?

08:55 11 A. Without having permission -- without any written
12 permission for the trademark or logo.

08:56 13 Q. But, of course, you had approved Mr. Murakami operating
14 the studio during that period; correct?

08:56 15 A. Yes. We already established that we wanted'a keep 'em
16 in the system.

08:56 17 Q. So now the purpose of March of 2018 is you and
18 Mr. Murakami need'a get something in writing that relates to
19 Rolling Hills; correct?

08:56 20 A. Yes.

08:56 21 Q. And that is the genesis of Exhibit 38?

08:56 22 A. Yes.

08:56 23 Q. Okay. You testified in your direct that it is -- was
24 not your intention for the language "includes Torrance" to
25 mean that everything on this document was intended to

1 include Torrance? Is that -- was that your testimony on
2 direct?

08:56 3 A. Yes.

08:56 4 Q. Okay.

08:56 5 A. That's why there's lines. Different subjects.

08:56 6 Q. So the way that a -- the way you interpret the
7 agreement is, those lines that you wrote in on the document
8 means that the language of this doc- -- of this agreement
9 does not relate to Torrance?

08:57 10 A. It relates to Torrance where it says it relates to
11 Torrance, specifically.

08:57 12 Q. So above that line, Mr. Mattera, it specifically says
13 "for the next three years." You see that?

08:57 14 A. Yes.

08:57 15 Q. So that was an intention by the parties who entered
16 into this that it was to be a three-year agreement; correct?

08:57 17 A. Yes.

08:57 18 Q. And the word includes -- "Torrance" is above your
19 squiggly line; right?

08:57 20 A. It's below -- oh, it's above the first squiggly line,
21 yes.

08:57 22 Q. So doesn't this mean that the intention of you and
23 Mr. Murakami was that both Torrance and Rolling Hills would
24 now be governed by an agreement that is to last for three
25 years?

08:58 1 A. Why would I do that, when I had a 20-year -- I already
2 had an agreement with Torrance. I already had a licensing
3 agreement with Mr. Murakami for Torrance. Why would I give
4 up 20 years for no reason? This was a favor to
5 Mr. Murakami, to keep 'em in the system for three years.
6 Yes, it was good for United Studios; yes, it was good for
7 him.

08:58 8 Q. Okay. Okay. If you look at the second part of --
9 underneath the first squiggly line -- oh, I'm sorry. Let's
10 go with the second squiggly -- the second section under the
11 second squiggly line.

08:59 12 *(Exhibit displayed.)*

08:59 13 BY MR. DeCARLO:

08:59 14 Q. You wanted Mr. Murakami to test for black belts;
15 correct?

08:59 16 A. He, um -- yes, we -- we always wanted'a test the black
17 belts.

08:59 18 Q. You wanted Mr. Murakami to do it?

08:59 19 A. Well, if he was gonna get paid, then he should do some
20 work.

08:59 21 Q. Can you just answer my question, Mr. Mattera. You
22 wanted Mr. Murakami to test for black belts under the USSD
23 brand; correct?

08:59 24 A. I think that was more of his request.

08:59 25 Q. So you did not want him to test for black belts?

08:59 1 A. No. I think it was a mutual, beneficial thing --

09:00 2 Q. Okay.

09:00 3 A. -- from my recollection.

09:00 4 Q. Mr. Murakami is a master fifth degree black belt;
5 correct?

09:00 6 A. He's fifth degree black belt, yes.

09:00 7 Q. He is not a master?

09:00 8 A. Yes, he is a master.

09:00 9 Q. In Shaolin Kempo?

09:00 10 A. Yes.

09:00 11 Q. So you -- as the owner and founder of USSD, you're
12 proud to have someone like Mr. Murakami underneath a sign
13 that says "USSD" with the bonazi tree representing your
14 brand; correct?

09:00 15 A. Yes, that's correct.

09:00 16 Q. So the notion that Mr. Murakami -- now, let's talk
17 about Mr. Murakami's black belt testing that occurred in
18 Redondo Beach.

09:00 19 You're aware that he, although limited, did some black
20 belt tests in the Redondo Beach location; correct?

09:00 21 A. Yes.

09:00 22 Q. Okay. And that was in a location that had a "USSD"
23 sign on it; right?

09:01 24 A. Yes.

09:01 25 Q. The bonazi tree --

09:01 1 A. Yes.

09:01 2 Q. -- right?

09:01 3 A. Yeah.

09:01 4 Q. The student is a USSD student; right?

09:01 5 A. *(No response.)*

09:01 6 Q. The student being tested is a USSD student?

09:01 7 A. I believe so.

09:01 8 Q. Okay. And Mr. Murakami is a highly qualified,
9 fifth degree master in Shaolin Kempo, providing this black
10 belt test in a location with all of the USSD branding;
11 correct?

09:01 12 A. Yes.

09:01 13 Q. That cannot in any way, Mr. Mattera, can it, harm the
14 USSD brand?

09:01 15 MR. HARDEMAN: Argumentative --

09:01 16 THE COURT: Overruled.

09:01 17 *(To the witness:)* you can answer that question.

09:01 18 THE WITNESS: Of course, it can. It's against the
19 agreements. It's against the franchise. It's against --
20 nobody is allowed to give black belt test in United Studios
21 for -- concern, uh -- the franchise locations. It's in the
22 franchise. It's crystal clear.

09:02 23 BY MR. DeCARLO:

09:02 24 Q. Mr. Mattera, have you ever heard any complaints from
25 any consumers -- consumers are like the students. Have you

1 heard any complaints from any students or any consumers --
2 let's start broad -- about my clients and their operation of
3 their studios, period?

09:02 4 A. I don't think so.

09:02 5 Q. Okay. So you certainly, then, never heard a consumer
6 say words to the effect, *Boy, I's [sic] confused. I thought*
7 *I was getting USSD training when really I was getting*
8 *training from a guy who was not authorized by his franchise*
9 *agreement to give me that training.*

09:03 10 You've never heard a consumer say anything like that?

09:03 11 A. No.

09:03 12 Q. Okay. Mr. Mattera, United Studios has 67, um,
13 locations right now?

09:03 14 A. Approximately.

09:03 15 Q. Okay. Martial arts is a -- is a niche; correct?

09:03 16 A. Yes.

09:03 17 Q. Appeals to a very, very small segment of the overall
18 population; correct?

09:03 19 A. About 3 percent.

09:03 20 Q. Do you have any information or reason to believe that
21 United Studios is a famous household name to the general
22 consuming public?

09:03 23 A. I think so.

09:03 24 Q. What is that information, sir?

09:03 25 A. 52 years, 20 states, over 500 locations, and 2 million

1 students.

09:03 2 Q. In your view makes it a household name to the overall
3 general public in the United States?

09:04 4 A. Well, maybe not every household.

09:04 5 Q. Okay. Let's go back to Exhibit 38.

09:04 6 *(Exhibit displayed.)*

09:04 7 MR. DeCARLO: Actually, I'd like to go to
8 Exhibit 606. This is one of the DBO filings.

09:04 9 *(Exhibit displayed.)*

09:04 10 MR. DeCARLO: And can I -- Mr. Barandon [sic], can
11 you pull up page 14 for Mr. Mattera, 606 and page 14.

09:05 12 BY MR. DeCARLO:

09:05 13 Q. Well, why don't we start with the first page. Oh.

09:05 14 *(Counsel and technician confer.)*

09:05 15 MR. DeCARLO: Okay. 606 is one page.

09:05 16 BY MR. DeCARLO:

09:05 17 Q. 606, Mr. Murakami [sic], that is your signature;
18 correct?

09:05 19 A. *(No response.)*

09:05 20 Q. Can you -- can you read this document to yourself.
21 Don't read it out loud. And then when you're done, lemme
22 know and I have a question for ya.

09:05 23 This document means that you were certifying to the
24 State'a California that since April 21, 2017, through the
25 present, no USSD franchises have been sold or offered for

1 sale within the State'a California; is that correct?

09:06 2 A. Yes.

09:06 3 Q. Now, I'd like to go to Exhibit 6 --

09:06 4 MR. DeCARLO: I'd like to ask that 606 be
5 admitted.

09:06 6 THE COURT: Received.

09:06 7 *(Exhibit Number 606 received in evidence.)*

09:06 8 MR. DeCARLO: Now I'd like to go to 647, and
9 specifically page 14.

09:06 10 MR. HARDEMAN: We'd renew our objection that this
11 was provided for the first time after the final pretrial
12 conference order.

09:06 13 MR. DeCARLO: Never mind. I don't need to go to
14 647.

09:06 15 Okay. Let's go to the Beverly Hills agreement
16 now, Exhibit 639, Mr. Mattera, and I'll ask you a series of
17 questions about Beverly Hills.

09:07 18 *(Exhibit displayed.)*

09:07 19 BY MR. DeCARLO:

09:07 20 Q. Let's go to page 29 of this exhibit.

09:07 21 *(Exhibit displayed.)*

09:07 22 BY MR. DeCARLO:

09:07 23 Q. You recognize your signature and Dr. Rinehart's
24 signature on this document?

09:07 25 A. Yes.

09:07 1 Q. And then you'll note that Dr. Rinehart initialed every
2 page of this agreement.

09:07 3 A. Yes.

09:07 4 Q. All right. Let's go to exhibit -- I'm sorry -- um,
5 yeah. Let's go to Exhibit 645, which is one of the DBO
6 filings.

09:08 7 MR. HARDEMAN: And, again, we'd renew the same
8 objection that these were provided for the first time after
9 the final pretrial conference order.

09:08 10 THE COURT: What is 645?

09:08 11 MR. DeCARLO: It is a certified copy of a filing
12 of USSD with the DBO.

09:08 13 THE COURT: So this is actually from the
14 defense -- strike that -- from the plaintiff's files? In
15 other words, it was discoverable from the plaintiff?

09:08 16 MR. DeCARLO: This is what the plaintiff's filed
17 with the State'a California, and then we got certified
18 copies from the State'a California.

09:08 19 All right. So I'd like to direct your attention
20 to Exhibit 645. And let's go to the -- let's go to
21 page 312.

09:08 22 *(Exhibit displayed.)*

09:08 23 MR. DeCARLO: All right.

09:08 24 BY MR. DeCARLO:

09:08 25 Q. And do you know what an FDD is, Mr. Mattera?

09:08 1 A. Used to be called FOC, Franchises Offering Circular.
2 But it's the same -- I think it's the same terminology for
3 the same document.

09:09 4 Q. Franchise Disclosure Document; correct?

09:09 5 A. Yes.

09:09 6 Q. You know, and then it's dated --

09:09 7 MR. DeCARLO: Mr. Barandon [sic], can you show the
8 date.

09:09 9 *(Display adjusted.)*

09:09 10 MR. DeCARLO: Says it was received on June 1,
11 2015, Department of Business Oversight.

09:09 12 Can you go back to the main document, first
13 paragraph, I'munna read that to you:

09:09 14 "You will operate a United Studios of
15 Self Defense martial arts studio. The
16 total investment necessary to begin
17 operation of a single United Studios of
18 Self Defense franchise is 173,400 to
19 189,000. This includes 75,000 that must
20 be paid directly to the franchisor or
21 affiliate."

09:09 22 BY MR. DeCARLO:

09:09 23 Q. So, Mr. Mattera, would you agree that this is a FDD
24 that is intended to be provided to prospective franchisees
25 so that they understand what is going to be required of

1 them, including the payment of fees?

09:10 2 A. Yes.

09:10 3 Q. After the -- at no time, either before or after
4 Exhibit 639, the Beverly Hills franchise agreement was
5 executed, did USSD notify or seek -- strike that.

09:10 6 At no time did USSD ever notify the State of
7 California, the DBO, that it, USSD, offered a franchise,
8 specifically the Beverly Hills agreement, that had terms
9 different than what's in the FDD, including the 75,000 that
10 must be paid; true?

09:11 11 A. This was a transfer. It wasn't necessary.

09:11 12 Q. So the answer, then, is no such -- no such change was
13 ever brought to the attention of the DBO; correct?

09:11 14 A. No such change was brought to the DBO.

09:11 15 Q. And that's because, in your view, it wasn't required
16 because Beverly Hills was just a transfer; correct?

09:11 17 A. Yes.

09:11 18 Q. Okay. I'd like to direct your attention to page 329 of
19 this Exhibit 645.

09:11 20 *(Exhibit displayed.)*

09:11 21 BY MR. DeCARLO:

09:11 22 Q. And under "notes," it says,

09:11 23 "If you are an entity, all of your
24 owners must jointly and severally
25 guarantee your performance under the

1 franchise agreement and must sign the
2 franchise agreement."

09:11 3 This stands for the proposition, Mr. Mattera, that
4 it puts franchisees on notice that individual owners of an
5 entity that becomes a franchise -- they have to know that
6 they're going to be required under the franchise agreement
7 to personally guarantee the obligations; correct?

09:12 8 A. I don't believe what you just said is accurate. I -- I
9 believe that that section says, uh, that, uh, the person
10 personally is guaranteeing the performance no matter what
11 entity you signed under.

09:12 12 Q. Well, it says what it says, sir.

09:12 13 MR. DeCARLO: And, Your Honor, I'd ask that
14 Exhibit 645 be admitted into evidence.

09:12 15 MR. HARDEMAN: Objection, Your Honor. There was
16 only a portion of 645 that the witness was referring to.
17 It's late-produced, um, also potentially hearsay. Um, if,
18 um, Counsel, wants to walk through the rest of the 300 pages
19 that are within 645 -- actually, 364 --

09:13 20 THE COURT: I'll receive 645 in total, all 300
21 pages. That way you can argue from it, Counsel, for both
22 sides.

09:13 23 MR. DeCARLO: Thank you, Your Honor.

09:13 24 MR. HARDEMAN: Very good, Your Honor.

09:13 25 *(Exhibit Number 645 received in evidence.)*

09:13 1 MR. DeCARLO: Let's go to page 355 of Exhibit 645.

2 355 of Exhibit 645. 355. Thank you.

09:13 3 *(Exhibit displayed.)*

09:13 4 BY MR. DeCARLO:

09:13 5 Q. Mr. Mattera, this is your signature on 355?

09:13 6 A. Yes.

09:13 7 Q. And you were certifying on April 15, 2015, that "all
8 Notices of Negotiated Sale of Franchise have been filed with
9 the commissioner as required"; correct?

09:14 10 A. That's what it says, yes.

09:14 11 Q. And you certified this under penalty of perjury;
12 correct?

09:14 13 A. Yes.

09:14 14 Q. And, in fact, you never did -- or USSD never did file
15 any Notices of Negotiated Sale of Franchises; correct?

09:14 16 A. I don't recall. I don't recall doing it.

09:14 17 Q. All right. Let's go now to the signature page on
18 Exhibit 639, which is page 29.

09:14 19 *(Exhibit displayed.)*

09:14 20 BY MR. DeCARLO:

09:14 21 Q. So it's Exhibit 639, page 29. And you see the
22 franchisee is Los Angeles Studios of Self Defense?

09:15 23 A. Yes.

09:15 24 Q. All right. So you understand the franchisee is LASSD;
25 correct?

09:15 1 A. And Kris Rinehart.

09:15 2 Q. Dr. Rinehart's the franchisee?

09:15 3 A. Well, you just read the section before that says that
4 all franchise -- all franchisees, all personnel, uh, they're
5 personally responsible for their entity.

09:15 6 Q. Well, that's not what the section said. But my
7 question to you, sir, is, is Dr. Rinehart a franchisee under
8 Exhibit 639?

09:15 9 A. I've always viewed him as a franchisee, yes, but --

09:15 10 Q. Well --

09:15 11 A. -- the entity is Los Angeles Studios of Self Defense.

09:15 12 Q. Okay. Well, you, of course, understand the difference
13 between an entity and a person who owns an entity; right?

09:15 14 A. Yes.

09:15 15 Q. Because you are the owner of Bushido; right?

09:15 16 A. (No response.)

09:15 17 Q. You're the owner; right?

09:15 18 A. Yes.

09:15 19 Q. You're the owner of USSD; right?

09:16 20 A. Yes, I am.

09:16 21 Q. So you're not suggesting that when USSD enters into a
22 contract, that Charles Mattera is also a contracting party,
23 are you?

09:16 24 A. No.

09:16 25 Q. I mean, you're a sophisticated businessman. You

1 understand the difference between entering into a contract
2 as an individual versus entering into a contract on behalf
3 of your company; correct?

09:16 4 A. That's correct.

09:16 5 Q. Okay. So, in fact, Dr. Rinehart is not a franchisee
6 under Exhibit 639; correct?

09:16 7 A. Uh, that's a legal question.

09:16 8 Q. Well, respectfully, sir, I don't -- I don't think it
9 is.

09:16 10 A. Okay.

09:16 11 Q. Do you know if Dr. Rinehart is a franchisee under 639,
12 the Beverly Hills franchise agreement?

09:16 13 A. My understanding is he is, but I don't wanna be
14 argumentative. I understand the difference between a entity
15 and a person.

09:16 16 Q. Okay. So go to page --

09:17 17 *(To technician:)* Mr. Barandon [sic], can you go to page
18 7 of Exhibit 639.

09:17 19 *(Exhibit displayed.)*

09:17 20 BY MR. DeCARLO:

09:17 21 Q. I'm not gonna read it, but can you look in the first
22 block.

09:17 23 Is there something in there that suggests to you that
24 Kristopher Rinehart -- Dr. Kristopher Rinehart is a
25 franchisee?

09:17 1 A. His name doesn't appear.

09:17 2 Q. And, in fact, nowhere on this agreement does it say
3 that Kristopher Rinehart or anybody else is going to
4 personally guarantee the obligations under this agreement;
5 correct?

09:17 6 A. No.

09:17 7 Q. Okay. If the FDD, and, in fact, your franchise
8 agreement, warns franchisees or notifies potential
9 franchisees that they're going to be personally liable and
10 required to sign the agreement, why don't you have a section
11 that says, doctor -- "Dr. Kristopher Rinehart hereby
12 personally guarantees the obligations under this agreement"?

09:18 13 A. We did do that. He initialed that page.

09:18 14 Q. Okay. I don't have time to read it, but the document
15 speaks for itself.

09:18 16 Let's go to page 630. I'm sorry. Exhibit 639,
17 page 30.

09:18 18 *(Exhibit displayed.)*

09:18 19 BY MR. DeCARLO:

09:18 20 Q. There was a change made to the Beverly Hills agreement
21 where the franchisee fee was erased; correct?

09:18 22 A. Correct.

09:18 23 Q. Then there's nothing -- there's no documentation
24 anywhere to suggest that the Beverly Hills franchise issued
25 to LASSD is a transfer from another franchisee; correct?

09:18 1 A. That's incorrect.

09:18 2 Q. Where's that documentation?

09:18 3 A. Says it right there: "Transfer."

09:19 4 Q. Where are you looking, sir? Are you looking on
5 page 30?

09:19 6 A. Uh, yes, I'm looking at page 30, off to the left.

09:19 7 Q. Oh.

09:19 8 A. It's a transfer'a \$1.

09:19 9 Q. Okay. I see. So that is the evidence that you would
10 rely upon to suggest that Beverly Hills is a -- is a
11 franchise that was transferred from another entity?

09:19 12 A. That's one piece of evidence, yes.

09:19 13 Q. I believe you testified yesterday that the prior
14 trans -- uh, the prior franchisees were guys -- who [sic]
15 were the guy's names?

09:19 16 A. Um, you talking about first base? Second base? Third
17 base?

09:19 18 Q. Who was the prior franchisee in Beverly Hills, the
19 immediate prior franchisee?

09:19 20 A. I believe it was Jason Assayag (*phonetic*) and Jody Neal
21 (*phonetic*).

09:19 22 Q. Okay. And they abandoned their location before the
23 franchise agreement was even up; correct?

09:19 24 A. I'm not sure about the paperwork, but I know that they
25 were -- they were running the school and they abandoned it.

09:20 1 Q. And there's no document anywhere from Mr. ASSAYAG
2 indicating that they -- Mr. Assayag -- are transferring the
3 franchise to LASSD; correct?

09:20 4 A. I don't believe so.

09:20 5 *(Court reporter requests clarification for the*
6 *record.)*

09:20 7 THE COURT: We can do that during the recess.

09:20 8 We'll take a recess right now, then, Counsel, and
9 we can get to those names.

09:20 10 All right. You're admonished not to discuss this
11 matter amongst yourselves nor to form or express any opinion
12 concerning this case.

09:20 13 And we'll resume, let's say in 15 minutes. Okay?
14 Thank you very much, Counsel.

09:20 15 Sir, you may step down.

09:20 16 THE WITNESS: Thank you.

09:20 17 *(Recess held at 9:20 a.m.)*

09:53 18 *(Proceedings resumed at 9:53 a.m.)*

09:53 19 THE COURT: Thank you for your patience, Counsel,
20 I got tied up in some phone calls.

09:53 21 We're back in session. All counsel are present
22 and the parties are present.

09:54 23 And, Counsel, if you'd like to continue your
24 examination, please.

09:54 25 MR. DeCARLO: Thank you, Your Honor.

09:54 1 THE COURT: This is still cross.

09:54 2 BY MR. DeCARLO:

09:54 3 Q. Mr. Mattera, earlier in your testimony I asked you a
4 question about a conversation that you had with Mr. Auza.
5 And I didn't have the tape ready to go but I do now.

09:54 6 *(Court reporter requests clarification for the*
7 *record.)*

09:55 8 BY MR. DeCARLO:

09:55 9 Q. So I'm -- like to play Exhibit 561, which was "Bate"
10 marked as KR011188. It's a minute, 55 total.

09:55 11 MR. HARDEMAN: Objection. Foundation. Best
12 evidence.

09:55 13 THE COURT: Overruled.

09:55 14 And, once again, is this between Mattera and
15 Mr. --

09:55 16 *(Audio recording played, not reported.)*

09:55 17 MR. DeCARLO: Can we start that over, Your Honor.
18 I'm sorry. The Court -- Your Honor was saying something and
19 it started --

09:55 20 THE COURT: I want you to identify, once again for
21 my record -- I know who they are -- but for the record, if
22 there's an appeal from either one of you, who these parties
23 are.

09:56 24 MR. DeCARLO: The recording captures Mr. Mattera
25 speaking with Mr. Luis Auza.

09:56 1 THE COURT: All right.

09:56 2 Now, you may play that over objection of counsel.

09:56 3 *(Audio recording replayed)*

09:58 4 BY MR. DeCARLO:

09:58 5 Q. Is that your voice on the tape, Mr. Mattera?

09:58 6 A. Yes, I believe so.

09:58 7 Q. And you're having a conversation with Mr. Auza?

09:58 8 A. Yes.

09:58 9 Q. And this is prior Mr. Auza's February 6, 2019,

10 deposition; correct?

09:58 11 A. I don't know.

09:58 12 Q. Well, you didn't talk to him after the deposition, did

13 you?

09:58 14 A. I'm not sure.

09:58 15 Q. Didn't you cut off your contact with him after the

16 deposition on February 6, 2019?

09:58 17 A. I believe I did.

09:58 18 Q. Okay. So this information that you were having was

19 necessarily, then, before February 6, 2019; correct?

09:58 20 A. Yes.

09:58 21 Q. There's a reference in the audio recording where you

22 say, "If we go to the police department, we played our trump

23 card."

09:58 24 Did you hear -- did you hear -- saying that?

09:58 25 A. No.

09:59 1 Q. You don't -- you don't --

09:59 2 A. Well, I didn't say that. What I said was the lawyer
3 said that.

09:59 4 Q. Who's the lawyer, by the way?

09:59 5 A. I forget his -- his name.

09:59 6 Q. Meaning that once you go to the police, and then once
7 it becomes public, you lose some leverage with Dr. Rinehart;
8 right?

09:59 9 A. I don't lose leverages. The girl would lose leverage,
10 I mean.

09:59 11 Q. 'cause part'a your leverage at that point in time is
12 *Doc, if this gets public and your medical license is at*
13 *issue, you better play ball with me.*

09:59 14 That's part'a your reference at that point in time;
15 right?

09:59 16 A. My leverage?

09:59 17 Q. Yes.

09:59 18 A. No. There's -- there was no money in this as far as --
19 the money was gonna go to the girl, if she was -- if she was
20 a victim.

09:59 21 Q. In -- at this point in time, Mr. Mattera, when you're
22 having this conversation with Mr. Auza, there's a reference
23 to "I'm glad Luis screwed this up."

10:00 24 You recall listening to that?

10:00 25 A. That's my voice.

10:00 1 Q. Yeah, meaning, *Hey, Luis, I know you lied to me about*
2 *that police report, but it's actually ending up being a*
3 *pretty good thing that you screwed up that whole police*
4 *thing.*

10:00 5 That's what you were saying; right?

10:00 6 A. I don't know if that was before or after the police --
7 what is the date on this audio? How do we know?

10:00 8 Q. I --

10:00 9 A. We don't know where it was taped. We don't know what
10 time it was taped. And we don't know if it was altered.
11 I'm sorry.

10:00 12 It is my voice.

10:00 13 Q. And, in fact, you were communicating to Mr. Mattera --
14 I'm sorry.

10:00 15 Mr. Mattera, you were communicating with Mr. Auza that
16 you were actually pleased that, in fact, Mr. Auza didn't
17 take Jessica to the police; right?

10:01 18 A. I never said that.

10:01 19 Q. Okay. Well, the tape says what it says.

10:01 20 All right. Let's go back and talk about the
21 Beverly Hills agreement. And I'd like to put in front of
22 you Exhibit 530, and ask you if you recognize Exhibit 530.
23 We'll put it up on the screen, sir.

10:01 24 A. I have it.

10:01 25 Q. Okay. You can look on the screen, Mr. Mattera.

10:01 1 (Exhibit displayed.)

10:01 2 THE WITNESS: Actually, it's more legible here.

10:01 3 BY MR. DeCARLO:

10:01 4 Q. It's up to you, sir.

10:01 5 MR. HARDEMAN: Your Honor, can the witness have
6 time to read the whole document --

10:01 7 THE COURT: Certainly.

10:01 8 MR. HARDEMAN: -- in the binder.

10:01 9 THE COURT: Well, how long? How big is that
10 document, Counsel?

10:01 11 MR. DeCARLO: It's on the screen, Your Honor.

10:01 12 MR. HARDEMAN: Seems to be one page.

10:01 13 THE COURT: One page?

10:02 14 THE WITNESS: Okay.

10:02 15 BY MR. DeCARLO:

10:02 16 Q. And you recognize that document?

10:02 17 A. Vaguely, yes.

10:02 18 Q. All right. That's the promissory note that was
19 executed on the same day as the Beverly Hills franchise
20 agreement; correct?

10:02 21 A. I believe so.

10:02 22 Q. Right.

10:02 23 MR. DeCARLO: I'd ask that 530 be admitted into
24 evidence.

10:02 25 THE COURT: Received.

10:02 1 (Exhibit Number 530 received in evidence.)

10:02 2 BY MR. DeCARLO:

10:02 3 Q. And I wanna skip through this quickly, Mr. Mattera,

4 'cause we're short on time. But the promissory note says

5 what it says. And the purpose of it was to put together a

6 transaction so that some money that -- that you believed

7 USSD owed Pirooz Nourizad was paid via this promissory note

8 from LASSD; correct?

10:03 9 A. Yes, I -- I believe so.

10:03 10 Q. So this would necessarily -- and this was executed as

11 part of that Beverly Hills franchise agreement; correct?

10:03 12 A. This was between, um, Mr. Reinhart and Peter.

10:03 13 (Live reporter switch at 10:03 a.m.)

10:04 14 (Further proceedings reported by Deborah Parker in

15 Volume II.)

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CERTIFICATE

I hereby certify that pursuant to Section 753,
Title 28, United States Code, the foregoing is a true and
correct transcript of the stenographically reported
proceedings held in the above-entitled matter and that the
transcript page format is in conformance with the
regulations of the Judicial Conference of the United States.

Date: November 7, 2019

/s/ Debbie Gale

DEBBIE GALE, U.S. COURT REPORTER
CSR NO. 9472, RPR, CCRR