

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
2 IN THE UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF PENNSYLVANIA
4 Case No. 2-12-CV-05680-AB

5 -----x
6 DESTINATION MATERNITY CORPORATION,
7 Plaintiff,

8 v.

9 TARGET CORPORATION, CHEROKEE, INC.
10 and ELIZABETH LANGE, LLC,
11 Defendants.

12 -----x
13
14 VIDEOTAPED DEPOSITION OF REBECCA PICCONE
15 Philadelphia, Pennsylvania
16 Friday, October 18, 2013
17
18

19 Reported by:

Amy A. Rivera, CSR, RPR, CLR

20 JOB NO. 66675
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22
23
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1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 October 18, 2013
 3 9:09 a.m.
 4
 5 Videotaped deposition of REBECCA PICCONE
 6 held at the office of DLA PIPER, 1650 Market
 7 Street, Philadelphia, Pennsylvania, pursuant to
 8 Notice, before Amy A. Rivera, Certified
 9 Shorthand Reporter, Registered Professional
 10 Reporter, Certified LiveNote Reporter, and a
 11 Notary Public of the State of New York.
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 2 A P P E A R A N C E S:
 3 DLA PIPER
 4 Attorneys for Plaintiff
 5 1251 Avenue of the Americas
 6 New York, New York 10020
 7 BY: MELISSA REINCKENS, ESQ.
 8 -and-
 9 KRISTEN HAN, ESQ.
 10 In-House Counsel at Destination Maternity
 11 Corporation
 12
 13
 14 FAEGRE BAKER DANIELS
 15 Attorneys for Defendant Target Corporation
 16 300 North Meridian Street
 17 Indianapolis, Indiana 46204
 18 BY: MATTHEW ENNIS, ESQ.
 19 TREVOR CARTER, ESQ.
 20
 21
 22 ALSO PRESENT:
 23 Gerard Alfe, Legal Video Specialist
 24 TSG Reporting, Inc.
 25

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 VIDEOGRAPHER: This video deposition
 3 is now beginning. The date, October 18th,
 4 2013. The time is 9:09. This is the start
 5 of tape labeled number 1 in the deposition
 6 of Rebecca Piccone in the matter of
 7 Destination Maternity Corporation versus
 8 Target Corporation, Cherokee, Inc. and
 9 Elizabeth Lange, LLC being held in the
 10 United States District Court of Eastern
 11 Pennsylvania, No. 2-12-CV-05680-AB.
 12 Deposition is taking place at DLA
 13 Piper, LLC, 1 Liberty Place, Philadelphia,
 14 PA, 19103.
 15 Counsel will now introduce themselves.
 16 MS. REINCKENS: Melissa Reinckens on
 17 behalf of the plaintiff, Destination
 18 Maternity Corporation.
 19 Also with me is general counsel from
 20 Destination Maternity, Kristen Han.
 21 MR. ENNIS: Matthew Ennis with Faegre
 22 Baker Daniels on behalf of Target.
 23 And with me is my colleague, Trevor
 24 Carter, also of Faegre Baker Daniels on
 25 behalf of Target.

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 2 R E B E C C A P I C C O N E, having been duly
 3 sworn, testified as follows:
 4 EXAMINATION
 5 BY MR. ENNIS:
 6 Q. Good morning, Ms. Piccone.
 7 A. Good morning.
 8 Q. Have you ever been deposed before?
 9 A. Yes.
 10 Q. Okay. What was the subject matter
 11 of -- excuse me -- strike the question.
 12 When were you last deposed?
 13 A. 2004.
 14 Q. What was the subject matter of that
 15 deposition?
 16 A. The illegal collection of vendor
 17 allowances.
 18 Q. And were you working for Destination
 19 Maternity at that time?
 20 A. No.
 21 Q. Who were you working for?
 22 A. Saks Fifth Avenue.
 23 Q. Okay. Have you ever been deposed
 24 besides the time in 2004?
 25 A. Yes.

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 2 Q. Okay. When was the other time?
 3 A. 1993.
 4 Q. Okay. What was the subject matter of
 5 that deposition?
 6 A. Sexual misconduct at a swimming pool.
 7 Q. That's unfortunate.
 8 A. Yes, it was.
 9 Q. Any other times besides those two?
 10 A. No.
 11 Q. Okay. Great. So you're somewhat
 12 familiar with how a deposition works? I'll ask
 13 questions, you'll answer them?
 14 A. Yes.
 15 Q. Okay. And I'll just run through some
 16 of the other basics just so that way you
 17 understand and we can kind of have a relationship
 18 with how we work through things.
 19 You know, I'll ask the questions.
 20 You'll answer them. From time to time, your
 21 counsel may object. Unless your counsel instructs
 22 you not to answer, I'd ask that you answer the
 23 question to the best of your ability.
 24 Is that okay with you?
 25 A. Yes.

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 2 Q. Great. And then, is there anything
 3 that would prevent you from giving complete and
 4 accurate testimony today?
 5 A. No.
 6 Q. Okay. And if you ever need a break,
 7 just please let me know. We can take a brief
 8 break. The only caveat to that is I'd ask that
 9 please don't take a break while we are in the
 10 middle of a pending question.
 11 Is that okay?
 12 A. Yes.
 13 Q. Okay. And the same goes for lunch.
 14 If you need a lunch break at any time, definitely
 15 let us know, and we can work with that.
 16 Is that all right?
 17 A. Yes.
 18 Q. Okay. And then, if I ask you a
 19 question and you don't understand it, please let
 20 me know and I'll rephrase it so that way you can
 21 give an answer to that -- to a question that you
 22 would understand.
 23 Is that okay?
 24 A. Yes.
 25 Q. All right. And if you don't do that,

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 2 I'll presume that you understand the question.
 3 Is that okay?
 4 A. Yes.
 5 Q. Okay. You understand today that you
 6 are here to testify on behalf of Destination
 7 Maternity?
 8 A. Yes.
 9 Q. And also in your individual capacity,
 10 correct?
 11 A. Yes.
 12 (Exhibit 100, deposition notice, was
 13 marked for identification at this time.)
 14 Q. Okay. The court reporter has put in
 15 front of you Exhibits 100 and 41. If we could
 16 start with Exhibit 100.
 17 Just let me know you have that in
 18 front of you.
 19 A. Okay.
 20 Q. Have you seen Exhibit 100 before?
 21 A. Yes.
 22 Q. Okay. And you understand that Exhibit
 23 100 is the 30(b)(1) notice for you to testify in
 24 your personal capacity today?
 25 A. Yes.

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 2 Q. Great.
 3 Now, if you can take a look at
 4 Exhibit 41.
 5 And Exhibit 41 is Target's 30(b)(6)
 6 notice to Destination Maternity. Is that correct?
 7 A. Yes.
 8 Q. Thank you.
 9 MR. ENNIS: Counsel, perhaps we can
 10 short circuit this a little bit. We have an
 11 understanding of what topics Ms. Piccone
 12 will be testifying about today. I just
 13 wanted to go ahead and confirm that with
 14 you --
 15 MS. REINCKENS: Sure.
 16 MR. ENNIS: -- and we can move on.
 17 Let me know when you're ready.
 18 MS. REINCKENS: Yeah, I'm ready.
 19 MR. ENNIS: Okay. Topic 9 in whole;
 20 17 in part.
 21 MS. REINCKENS: Okay. I'm going to
 22 stop you right there.
 23 With respect to 17 --
 24 MR. ENNIS: Okay.
 25 MS. REINCKENS: -- Destination

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 2 Maternity has provided complete testimony on
 3 this, and in light of Target's contentions
 4 concerning the waiver of attorney-client
 5 privilege, Ms. Piccone is not going to be
 6 testifying today to this topic.
 7 MR. ENNIS: Okay. We -- we'll
 8 obviously reserve our rights with respect to
 9 that topic. We can take that up later.
 10 Twenty-nine in whole?
 11 MS. REINCKENS: Yes.
 12 MR. ENNIS: Thirty-two in part?
 13 MS. REINCKENS: Yes.
 14 MR. ENNIS: Thirty-three in part?
 15 MS. REINCKENS: Yes.
 16 MR. ENNIS: Thirty-six?
 17 MS. REINCKENS: Yes.
 18 MR. ENNIS: Forty-three?
 19 MS. REINCKENS: And all of these are,
 20 of course, subject to the objections we've
 21 already lodged and discussed with counsel,
 22 but --
 23 MR. ENNIS: Of course.
 24 MS. REINCKENS: -- you said 43?
 25 MR. ENNIS: Correct.

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 2 MS. REINCKENS: No, I don't have 43.
 3 MR. ENNIS: Okay.
 4 We confirmed these topics in the
 5 deposition of Ms. Hendrickson with Tamar, so
 6 our understanding is off the record. But,
 7 you know, we can circle back later in the
 8 day if you'd like, but --
 9 MS. REINCKENS: Yeah, I have 43 as
 10 dropped and --
 11 MR. ENNIS: Okay.
 12 MS. REINCKENS: -- not agreed. We do
 13 not agree that we'd provide a witness for
 14 that topic --
 15 MR. ENNIS: Okay.
 16 MS. REINCKENS: -- so we can revisit
 17 that, but --
 18 MR. ENNIS: Let's revisit that.
 19 MS. REINCKENS: -- as of now, she's
 20 not going to be testifying as to that topic.
 21 MR. ENNIS: All right. Yeah, I mean,
 22 we have a -- yeah, we have correspondence
 23 from Ms. Duvdevani on October 3rd that
 24 states that you'll be providing a witness
 25 and that witness would be Ms. Piccone. You

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 2 can confirm that with Tamar --
 3 MS. REINCKENS: Okay. Well, as of
 4 now, she's not going to be testifying as to
 5 that, but we can discuss that off the
 6 record.
 7 MR. ENNIS: Wonderful.
 8 MS. REINCKENS: I'll review the
 9 correspondence.
 10 MR. ENNIS: Great.
 11 Forty-four in part?
 12 MS. REINCKENS: Correct.
 13 MR. ENNIS: Forty-seven in whole?
 14 MS. REINCKENS: Correct.
 15 MR. ENNIS: Forty-eight in whole?
 16 MS. REINCKENS: Correct.
 17 MR. ENNIS: Forty-nine in part?
 18 MS. REINCKENS: Correct.
 19 MR. ENNIS: Fifty-eight in whole --
 20 50 -- sorry, and then 59 to 64 in whole?
 21 MS. REINCKENS: I have 58 and 59 for
 22 Ms. Piccone. And then 61 through 64, not
 23 inconclusive of topic 60.
 24 MR. ENNIS: We'll have to get back to
 25 you on that one.

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 2 Yeah, that's in the same e-mail, so I
 3 guess we will discuss that.
 4 MS. REINCKENS: Okay. Yeah, we'll --
 5 we'll take a look -- I mean, looking at that
 6 topic, it looks -- it's quite similar to the
 7 other topics, so it might have been an
 8 omission on my part --
 9 MR. ENNIS: Okay. We'll --
 10 MS. REINCKENS: -- but I just want to
 11 confirm.
 12 MR. ENNIS: We can confirm after the
 13 break. That's fine.
 14 Sixty-six in whole?
 15 MS. REINCKENS: Correct.
 16 MR. ENNIS: Sixty-nine in part?
 17 MS. REINCKENS: Correct.
 18 MR. ENNIS: Seventy-one in part?
 19 MS. REINCKENS: Correct.
 20 MR. ENNIS: Seventy-two -- excuse
 21 me -- in part?
 22 MS. REINCKENS: Correct.
 23 MR. ENNIS: Great. Okay.
 24 MS. REINCKENS: So the ones that we
 25 are revisiting are topic 60 and topic --

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 2 MR. ENNIS: Thirty -- no, forty-three.
 3 MS. REINCKENS: Okay. Thanks.
 4 MR. ENNIS: And then we obviously
 5 have -- we're reserving our rights with
 6 respect to 17.
 7 And, also, while we're here, on --
 8 during the earlier depositions on Tuesday
 9 and Wednesday, we learned that Destination
 10 Maternity has what's called a POM database
 11 that's not been -- excuse me, been made
 12 available for inspection by Target, and from
 13 testimony from Ms. Hendrickson, we
 14 understand that contains part life cycle,
 15 design documents. So we will obviously be
 16 keeping this deposition open subject to our
 17 review of that database.
 18 MS. REINCKENS: We, of course, object
 19 to your request to keep this deposition
 20 open, but we'll discuss it at a later point
 21 in time.
 22 MR. ENNIS: Understood.
 23 The court reporter could mark
 24 Exhibit 101.
 25 MS. REINCKENS: I'd also would just

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 2 like to note that we're marking this entire
 3 transcript attorneys' eyes only, highly
 4 confidential.
 5 And then also, looking at this
 6 document, I see that it should actually also
 7 be marked highly confidential, attorneys'
 8 eyes only, and we'll provide a corrected
 9 version of this document.
 10 MR. ENNIS: And then we also had an
 11 understanding during the first two days of
 12 the week that DMC documents produced by DMC
 13 would be stipulated as authentic. I wanted
 14 to see if that would continue through this
 15 deposition.
 16 MS. REINCKENS: I'll -- I'll consider
 17 it on a document-by-document basis.
 18 MR. ENNIS: Okay. So I guess during
 19 a -- during a break we can discuss whatever
 20 exhibits are done or clean it up at the end.
 21 MS. REINCKENS: Yeah, I mean, we have
 22 the -- an agreement to, I think, talk
 23 amongst ourselves about that --
 24 MR. ENNIS: Yep.
 25 MS. REINCKENS: -- so it -- I mean,

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 2 I'm not going to agree that every document
 3 that you show the witness is authentic, but
 4 if you want to ask me as you go through each
 5 document or we can consider it at a later
 6 time.
 7 MR. ENNIS: But it -- to be clear, it
 8 was for documents produced by DMC.
 9 MS. REINCKENS: That's fine.
 10 MR. ENNIS: So -- okay. I just wanted
 11 to make sure --
 12 MS. REINCKENS: My --
 13 MR. ENNIS: -- whether there's
 14 anything I should --
 15 MS. REINCKENS: Yeah, my statement
 16 still stands.
 17 MR. ENNIS: Okay. Wonderful.
 18 BY MR. ENNIS:
 19 Q. All right. So, Ms. Piccone, you have
 20 Exhibit 1 -- okay.
 21 (Exhibit 101, Mothers Work company
 22 profile, was marked for identification at
 23 this time.)
 24 BY MR. ENNIS:
 25 Q. Ms. Piccone, before we jump into

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 2 Exhibit 101, can you relate to me your education
 3 history starting with post high school?
 4 A. Yes.
 5 Q. I'd like you to please do so.
 6 A. I went to Mount Holyoke College.
 7 Graduated in 1996.
 8 Q. What was the degree that you got from
 9 Mount Holyoke College?
 10 A. A bachelor of arts in psychology and
 11 economics.
 12 Q. Was that a double major or just a
 13 psychology and economics together?
 14 A. It was -- psychology was the major.
 15 Economics was the minor.
 16 Q. Okay.
 17 Okay. And then what did you do after
 18 you graduated education wise from Mount Holyoke?
 19 A. I starred in the executive training
 20 program at Bloomingdale's.
 21 Q. Okay.
 22 Okay. Any certifications or
 23 certificates you have beyond your BA?
 24 A. No.
 25 Q. Okay. And when did you start at

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 2 Bloomingdale's?
 3 A. July of 1996.
 4 Q. And then you said it was in the
 5 executive training program?
 6 A. Yes.
 7 Q. Okay. And what were your
 8 responsibilities at that time at Bloomingdale's in
 9 the executive training program?
 10 A. Started off as an assistant buyer.
 11 Q. And then how long were you an
 12 assistant buyer?
 13 A. Let's see, one year.
 14 Q. What are the responsibilities of an
 15 assistant buyer at Bloomingdale's at that time?
 16 A. Spending at least three days a week in
 17 the 59th Street store, interacting with customers,
 18 tracking purchase orders, a lot of data entry, and
 19 shadowing the buyer who would be my boss to start
 20 to learn the tools of the trade.
 21 Q. And then you mentioned the 59th Street
 22 store.
 23 What city was that in?
 24 A. Manhattan, New York.
 25 Q. Okay. And then -- so I guess, what,

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 2 in 19 -- in July '97 you had a new position?
 3 A. Yes.
 4 Q. Okay. And what company was that
 5 position with?
 6 A. Bloomingdale's.
 7 Q. Okay. And then what was the new
 8 position?
 9 A. Associate buyer.
 10 Q. Okay. That would be a promotion,
 11 correct?
 12 A. Yes.
 13 Q. Okay. What additional
 14 responsibilities would an associate buyer have as
 15 compared to an assistant buyer?
 16 A. I was given my own area of
 17 responsibility, which was special size dresses,
 18 and I reported directly to the divisional
 19 merchandise manager.
 20 Q. What -- what type of dresses would
 21 be -- strike the question.
 22 Would special sizes -- strike that
 23 question, too.
 24 When you say, "special size," what do
 25 you mean by that?

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 2 A. Large sizes.
 3 Q. So an example of that would be 1X,
 4 2X --
 5 A. Correct.
 6 Q. -- type dresses?
 7 Would that include maternity?
 8 A. No.
 9 Q. Anything besides 1X, 2X, that type of
 10 dress?
 11 A. It was also Alpha sized.
 12 Q. Okay. So --
 13 A. I'm sorry, numeric sizes. Alpha is
 14 the 1X, 2X.
 15 Q. Right. Okay. Understood.
 16 And then, how long were you the
 17 associate buyer and responsible for the special
 18 size dresses?
 19 A. One year.
 20 Q. Okay. So around July '98?
 21 A. Yes.
 22 Q. Okay. And then, what was your new job
 23 in July of '98?
 24 A. Still at Bloomingdale's. I was
 25 promoted to the buyer of ladies' designer

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 2 outerwear.
 3 Q. All right. Just so I understand,
 4 outerwear would be jackets, coats, things like
 5 that?
 6 A. Just coats.
 7 Q. Just coats. Understood.
 8 Anything additional compared to the
 9 associate buyer?
 10 A. I get a direct report at that time
 11 and, you know, it was a larger area of
 12 responsibility in terms of the sales and margin
 13 dollars for the company.
 14 Q. You're also still at Bloomingdale's?
 15 A. Yes.
 16 Q. Okay. How long -- strike the
 17 question.
 18 What was the level of your direct
 19 report when you were the buyer?
 20 A. Assistant buyer.
 21 Q. Okay. So you were mentoring at that
 22 point --
 23 A. Yes.
 24 Q. -- as you mentioned?
 25 How long were you the buyer of ladies'

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 2 designer outerwear?
 3 A. Until July of 2002.
 4 Q. Okay. And then what was your new
 5 position in July '02?
 6 A. I moved to Columbus, Ohio and became a
 7 senior buyer for Express, which is a subsidiary of
 8 Limited Brands.
 9 Q. So that would have been also, so to
 10 spoke, a promotion?
 11 A. Yes.
 12 Q. What -- when you were a senior buyer
 13 at Express, what type of clothing were you
 14 responsible for?
 15 A. Outerwear, jackets and dresses.
 16 Q. Would this all have been women's or
 17 would that included men's?
 18 A. Women's.
 19 Q. Okay. And how long were you the
 20 senior buyer at Express?
 21 A. Two years.
 22 Q. Okay. So around July 2004 you would
 23 have left?
 24 A. Yes.
 25 Q. Okay.

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 2 A. It was actually a little less than two
 3 years. It was around April of 2004.
 4 Q. Okay. What was your new job in
 5 April 2004?
 6 A. I moved back to New York City, and I
 7 was a senior buyer at Saks Fifth Avenue.
 8 Q. And is Saks -- pardon my ignorance,
 9 but Saks is a higher-end store than Express,
 10 correct?
 11 A. Repeat the question?
 12 Q. Saks is a higher-end store than
 13 Express. Is that correct?
 14 MS. REINCKENS: Objection. Form.
 15 You may answer.
 16 Q. Can you answer question?
 17 A. Yes.
 18 Q. And what were your responsibilities as
 19 a senior buyer at Saks?
 20 A. I was responsible for the entire
 21 petite department.
 22 Q. So it would be all aspects of petite?
 23 A. Correct.
 24 Q. Would that include maternity petite?
 25 A. No. Saks did not carry maternity.

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 2 None of the companies I worked for
 3 carried maternity.
 4 Q. Thank you.
 5 And how long were you the senior buyer
 6 at Saks?
 7 A. A year.
 8 Q. Okay. So around April '05?
 9 A. It was until June of '05.
 10 Q. Okay. During that whole time, you
 11 were the senior buyer for petites?
 12 A. Yes.
 13 Q. Okay. Then where did you go in June
 14 of '05?
 15 A. In August of '05, I joined New York &
 16 Company.
 17 Q. New York & Company?
 18 A. Yes.
 19 Q. What was your position with that
 20 company?
 21 A. For the first year, I was a senior
 22 buyer.
 23 Q. Of what type of product?
 24 A. Woven collections.
 25 Q. Would that be for both genders?

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 2 A. No.
 3 Q. Okay. Which gender?
 4 A. Women.
 5 Q. All right. And then what about after
 6 your first year?
 7 A. I was then promoted to divisional
 8 merchandise manager.
 9 Q. Okay. Same company, obviously?
 10 A. Same company. Additional
 11 responsibility was added. It was dresses,
 12 intimate apparel, and outerwear.
 13 Q. Just so I understand, what's the
 14 difference between a woven collection and a dress,
 15 for example? Some dresses may be woven, I'm just
 16 trying to understand the distinction.
 17 A. Yes. Woven collections are wear to
 18 work. It is clothing you would wear to work, and
 19 it is strictly bottoms, suit jackets, and what is
 20 considered a woven wear to work shirt.
 21 Q. Okay. Is there an abbreviation for
 22 wear to work that is used in the fashion industry?
 23 A. I can't speak for the entire fashion
 24 industry. I can only speak for how I abbreviate
 25 it, and I do abbreviate it sometimes.

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 2 Q. Okay. What would that abbreviation be
 3 that you would use in your work?
 4 A. WTW.
 5 Q. Great. So moving on, you were the
 6 division manager at New York & Co. around
 7 August '06?
 8 A. Yes.
 9 Q. Okay. And how long did you have that
 10 position?
 11 A. Two years. And I was added --
 12 additional responsibility was added in that two
 13 years, knits, wear to work knit tops.
 14 Q. Anything else?
 15 A. No.
 16 Q. Okay. Great.
 17 Excuse me. So then, August '08 you
 18 were offered a position?
 19 A. In august '08, I was still there --
 20 Q. Okay.
 21 A. -- and I was promoted to vice
 22 president, general merchandise manager of the
 23 casual division.
 24 Q. Would that be for women's still?
 25 A. Yes.

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 2 Q. Okay. Would wear to work or woven
 3 collections fall within casual or not?
 4 A. No.
 5 Q. What type of clothing would be
 6 included in the casual division?
 7 A. Denim, knits that are casual, tee
 8 shirts, tank tops, I mean, casual tees. There's
 9 casual woven tops, so things that are washed and
 10 processed. Active. So yoga, work-out clothes
 11 with wicking on them, and then non-denim casual
 12 pants, chinos, twills, things that are washed and
 13 processed.
 14 Q. Understood. Any maternity at that
 15 point?
 16 A. No.
 17 Q. Okay. And then New York & Co. didn't
 18 do any maternity, correct?
 19 A. No.
 20 Q. And then how long were you VP of
 21 general merchandising at New York & Co.?
 22 A. Until September of 2011.
 23 Q. Okay. Any change in responsibility
 24 from August '08 to September 2011 as the VP of
 25 general merchandising?

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 2 A. No.
 3 Q. Okay. What was your new position on
 4 September 2011?
 5 A. I joined Destination Maternity --
 6 Q. Okay.
 7 A. -- as the vice president of
 8 Motherhood.
 9 Q. Is that the position you hold today?
 10 A. Yes.
 11 Q. What are your -- are your
 12 responsibilities as VP of Motherhood?
 13 A. I am responsible for the design team
 14 as well as the merchant team. Ultimately, I am in
 15 charge of driving a profit for the company.
 16 Q. So Motherhood is one of Destination
 17 Maternity's brands?
 18 A. Yes.
 19 Q. And then you would be, so to speak,
 20 responsible for that brand?
 21 A. Yes.
 22 Q. Okay.
 23 Okay. If you could look at
 24 Exhibit 101. Is this a type of document that
 25 you've seen before in your work at Mothers Work or

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 2 DMC?
 3 MS. REINCKENS: I'd just like to
 4 object and give the witness some time to
 5 take a look at the document.
 6 BY MR. ENNIS:
 7 Q. Take as much time as you need.
 8 MR. ENNIS: And, also, while we're
 9 waiting on the witness here, there may be
 10 some other documents of this nature, so I
 11 guess we will treat them as highly
 12 confidential, attorneys' eyes only if we see
 13 anything that is similar to this?
 14 MS. REINCKENS: Sure. You know, I'm
 15 not sure where this came from, so I just
 16 need to take a look at it. But I want to
 17 make sure that we reserve the right right
 18 now.
 19 MR. ENNIS: No, absolutely, I
 20 understand. I just want to let you know
 21 there are some others, so --
 22 MS. REINCKENS: Understood.
 23 MR. ENNIS: -- just when you get the
 24 time.
 25

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 2 BY MR. ENNIS:
 3 Q. All right. Ms. Piccone, have you had
 4 time to review the document?
 5 A. Yes.
 6 Q. Okay. Have you seen this document
 7 before?
 8 A. No.
 9 Q. Okay. Have you seen a document
 10 similar to this in any way?
 11 A. Yes.
 12 Q. All right. When was the last time you
 13 saw a document like that?
 14 A. I have seen -- I saw a similar
 15 document to this yesterday.
 16 Q. That was during preparation for your
 17 deposition today?
 18 A. Yes.
 19 MS. REINCKENS: Objection to form.
 20 Q. Did that document refresh your -- your
 21 recollection in any way?
 22 A. Yes.
 23 Q. How did it do that?
 24 A. I've seen iterations of company
 25 strategies at key points in the two years I've

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 2 been here.
 3 Q. And documents like this would be an
 4 example of that?
 5 A. Yes.
 6 Q. All right. If you could turn to
 7 page 22, and let me know when you're there.
 8 A. I'm there.
 9 Q. Thank you.
 10 What do the bubbles in the chart on
 11 the right-hand side of the page represent?
 12 MS. REINCKENS: Objection to form.
 13 A. I don't know. I didn't create this
 14 document.
 15 Q. Do you have an understanding as to
 16 what those bubbles represent?
 17 A. Are you asking me that in a personal
 18 capacity?
 19 Q. We can back up for a second.
 20 When I'm asking you questions and you
 21 provide answers, I'm assuming that your answer
 22 will be both in your capacity as DMC's corporate
 23 representative and under your personal
 24 understanding.
 25 If that ever differs, just please let

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 2 me know that you're either answering just for DMC
 3 or just for yourself.
 4 Can you do that?
 5 MS. REINCKENS: I'm going to object to
 6 that direction and ask that you provide
 7 guidance to the witness as to when you're
 8 asking in her corporate capacity or as a
 9 personal representative.
 10 MR. ENNIS: All of my questions are
 11 corporate questions. So she can tell me
 12 when, you know, she doesn't have corporate
 13 knowledge, might have personal knowledge.
 14 Is that fair?
 15 MS. REINCKENS: I'm just going to
 16 object on the record.
 17 MR. ENNIS: Fair enough.
 18 BY MR. ENNIS:
 19 Q. Looking at page 22 of Exhibit 101, you
 20 see the table on the right-hand side of the page,
 21 correct?
 22 A. Yes.
 23 Q. Okay. And you see that there are some
 24 circles, bubbles, and they will contain words,
 25 such as "Old Navy," "Mimi," and "Independen."

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 2 Do you see that?
 3 A. Yes.
 4 Q. Does DMC have any understanding of
 5 what those bubbles and names in those bubbles
 6 mean?
 7 A. Yes.
 8 Q. What is that understanding?
 9 A. These are people who are in our market
 10 space.
 11 Q. And what market space is that?
 12 A. Maternity.
 13 Q. Maternity market as a whole?
 14 A. Yes.
 15 Q. What meaning, if any, is there to the
 16 size of the bubbles on page 22 of Exhibit 101?
 17 MS. REINCKENS: Objection to form.
 18 Q. You can answer the question.
 19 A. I don't know. I didn't create this
 20 document.
 21 Q. Does DMC have any understanding
 22 regarding the size of the bubbles on page 22 of
 23 Exhibit 101?
 24 A. I don't know.
 25 Q. So DMC has no testimony regarding the

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 2 size of the bubbles on page 22 of Exhibit 101. Is
 3 that correct?
 4 MS. REINCKENS: Objection to form.
 5 Q. You can answer the question.
 6 A. What is in front of me is a document
 7 from 2007. I was not an employee until 2011. I
 8 am not comfortable speaking to what bubble sizes
 9 mean prior to my start date.
 10 Q. Then who is the person best able to
 11 answer questions about bubble sizes in documents,
 12 such as Exhibit 101, prior to your start date in
 13 2011 at DMC?
 14 A. Possibly Lisa Hendrickson.
 15 Q. Anyone else?
 16 A. Not that I can recall.
 17 Q. All right. Does DMC -- excuse me.
 18 Strike the question.
 19 Does DMC have any understanding of the
 20 location of the bubbles on page 22 -- strike the
 21 question again.
 22 Do you see a price up arrow in the
 23 table on page 22 of Exhibit 101?
 24 A. A price up -- yes.
 25 Q. And then you see a fashion arrow

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 2 pointing to the right on that same chart?
 3 A. Yes.
 4 Q. What is DMC's understanding of --
 5 well, strike the question.
 6 So if I understand this document
 7 correctly, price increases as you go vertical, is
 8 that correct, on the table?
 9 A. Yes.
 10 Q. And then fashion would increase as you
 11 go right on the table. Is that correct?
 12 A. Yes.
 13 MS. REINCKENS: Objection to form.
 14 Q. So do you see the Pea in the Pod in
 15 the upper right-hand corner?
 16 A. Yes.
 17 Q. So looking at that table, Pea in the
 18 Pod is high on the price and high on the fashion.
 19 Is that correct?
 20 A. Yes.
 21 Q. And it is higher on price and higher
 22 on fashion than Mimi Maternity, for example, which
 23 is the Mimi bubble, right?
 24 A. Yes.
 25 Q. Okay. So if you look at the Pea in

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 2 the Pod bubble, would all Pea in the Pod products
 3 be covered inside that bubble on this table for
 4 price and fashion?
 5 A. Restate the question?
 6 Q. Okay. So you see the -- the various
 7 bubbles on the table on page 22, correct?
 8 A. Yes.
 9 Q. They're on different locations on a
 10 price-by-fashion table.
 11 Is that your understanding as well?
 12 A. I understand that.
 13 Q. Okay. Is that DMC's understanding?
 14 A. Yes.
 15 Q. Okay. And you understand that Pea in
 16 the Pod is higher on price and higher on fashion
 17 than, for example, Mimi Maternity on this table.
 18 Is that correct?
 19 A. Yes.
 20 Q. And looking at the Pea in the Pod area
 21 on that chart, all Pea in the Pod products covered
 22 within that area of price by fashion?
 23 MS. REINCKENS: Objection to form.
 24 Q. You can answer.
 25 A. You know, again, I was not here at the

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 2 time this document was published. I do not know
 3 what Mimi Maternity had and if Mimi Maternity
 4 carried some products that may have been Pea in
 5 the Pod. So I'm not comfortable answering that
 6 question.
 7 Q. Okay. If you could look at Exhibit 41
 8 again?
 9 A. Yes.
 10 Q. So if you look at topics 58 through 64
 11 on page 17?
 12 A. Topic --
 13 Q. Topics 58 through 64.
 14 Do you see those?
 15 A. Yes.
 16 Q. What did you do to prepare to give
 17 testimony on behalf of DMC regarding those topics
 18 from 2007 to 2011?
 19 MS. REINCKENS: Yeah, I'm going to
 20 object here and -- and caution the witness
 21 not to answer to the extent it would
 22 result -- you know, to the extent it would
 23 be a disclosure of attorney-client
 24 privileged information.
 25 Counsel, if you're asking about this

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 2 document, the document speaks for itself.
 3 You've asked about bubble size and location
 4 of bubbles.
 5 If you're trying to get at what the
 6 document actually talks about, why don't you
 7 ask questions about what the document talks
 8 about.
 9 BY MR. ENNIS:
 10 Q. Can you answer the question?
 11 A. Repeat the question.
 12 Q. What did you do to prepare to give
 13 testimony on behalf of DMC regarding topics 58
 14 through 64 from 2007 to 2011?
 15 A. I was instructed not to answer that.
 16 Q. So that you're unable to provide any
 17 answer that is not subject to attorney-client
 18 privilege. Is that correct?
 19 You can answer the question.
 20 A. Repeat the question.
 21 Q. So you're unable to provide any
 22 testimony in response to that question that is not
 23 subject to attorney-client privilege. Is that
 24 correct?
 25 A. Correct.

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 2 Q. And did you speak with anyone at DMC
 3 in preparation for your deposition today?
 4 A. Yes.
 5 Q. Who did you speak with?
 6 A. My attorney.
 7 Q. Any employee of DNC -- DMC?
 8 A. No.
 9 Q. And did you speak with anybody that
 10 was at DMC from 2007 to 2011?
 11 A. Yes.
 12 Q. Who was that -- well, strike the
 13 question.
 14 In preparation for your deposition,
 15 did you speak with anybody who was at DMC from
 16 2007 to 2011?
 17 A. Yes.
 18 Q. Who was that person?
 19 A. I met with Steve Kahn.
 20 Q. Anyone else?
 21 A. No.
 22 Q. Who is Steve Kahn?
 23 A. The head of e-commerce.
 24 Q. And how long has he been at
 25 Destination Maternity based on DMC's

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 2 understanding?
 3 A. I do not know.
 4 Q. But he was there before you were?
 5 A. Yes.
 6 Q. Okay. Do you know when he started?
 7 A. No.
 8 MS. REINCKENS: You know, Counsel, if
 9 we could actually just take a break here for
 10 a moment?
 11 I think I have some -- you know,
 12 confusion about kind of the scope and my
 13 objection on attorney-client privilege. I
 14 just want to take a break for a moment.
 15 MR. CARTER: Yeah, I'll just note for
 16 the record -- I'm not taking the deposition.
 17 I'll just note for the record this witness
 18 does not seem to be adequately prepared.
 19 She is the only designee for -- for --
 20 MS. REINCKENS: As -- as I said,
 21 you're not taking the deposition, so you're
 22 actually not supposed to be speaking on the
 23 record right now, so --
 24 MR. ENNIS: He's talking right now,
 25 so --

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 2 MS. REINCKENS: -- but -- I do realize
 3 that there are two counsel -- counsel, you
 4 know, here taking deposition. So, I mean,
 5 you know, the rules here, Trevor. If Matt
 6 has an objection and wants to state
 7 something on the record, he's welcome to do
 8 so.
 9 But I would just like to take a break
 10 for a moment. I think the witness is
 11 confused and I would just like to have a
 12 conversation.
 13 MR. ENNIS: Sure. Let's go off the
 14 record.
 15 MS. REINCKENS: Okay.
 16 VIDEOGRAPHER: We are now going off
 17 the record. The time is 9:51.
 18 (Recess.)
 19 VIDEOGRAPHER: Back on, 10:06.
 20 MS. REINCKENS: Okay. I just wanted
 21 to start by saying that I confirmed with my
 22 cocounsel that Ms. Piccone is going to be
 23 speaking to topics 43 and 60 subject to the
 24 objection and overbreadth of -- the
 25 overbreadth objections we've already

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 2 asserted.
 3 MR. ENNIS: Understood.
 4 Anything further, Counsel?
 5 MS. REINCKENS: No, that's it.
 6 MR. ENNIS: Wonderful.
 7 BY MR. ENNIS:
 8 Q. Okay. Ms. Piccone, are you filled in?
 9 A. Yes.
 10 Q. Okay. Great.
 11 If you could take a look at
 12 Exhibit 101 again.
 13 And you've not seen this document
 14 before today. Is that correct?
 15 A. Correct.
 16 Q. Have you spoken with anybody at DMC to
 17 understand this document before today?
 18 A. Have I spoken?
 19 I have seen this type of document in
 20 my years in the industry, and since being at DMC,
 21 I have not seen this specific document.
 22 Q. Is DMC able to provide any testimony
 23 about Exhibit 101 -- strike the question.
 24 Are you able to provide testimony on
 25 behalf of DMC regarding Exhibit 101?

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 2 A. Yes.
 3 Q. If you turn to page 22, Exhibit 101?
 4 A. Yes.
 5 Q. Beyond the words of the plain text of
 6 the page are you able -- is DMC able -- strike the
 7 question.
 8 Beyond what is displayed on the page
 9 in the text shown on the page, page being 22,
 10 Exhibit 101, are you able to provide any
 11 additional testimony about that page?
 12 MS. REINCKENS: Objection to form.
 13 And to the extent you have a question,
 14 I'd urge you to ask the witness a
 15 question --
 16 MR. ENNIS: Strike the question.
 17 MS. REINCKENS: -- to see if she can
 18 answer.
 19 Q. All right. Can you now answer any
 20 question that I previously asked in this
 21 deposition regarding page 22 of Exhibit 101?
 22 MS. REINCKENS: Objection to form.
 23 I just -- I would ask that if you have
 24 any questions that you want to restate, that
 25 you restate them. It's hard for the witness

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 2 to recall all of the questions that have
 3 been asked.
 4 Q. You can answer the question.
 5 You can answer it.
 6 A. I don't know what the question is.
 7 Q. Okay. For any question that I asked
 8 you where you said you did not have knowledge
 9 because you were not with DMC until 2011, are you
 10 now able to answer questions previous to 2011
 11 about DMC and specifically this document?
 12 MS. REINCKENS: Again, same objection.
 13 If you have a question that you've
 14 asked previously that you want to reask,
 15 please ask it of the witness.
 16 Q. You can answer it.
 17 A. I'm still unclear what the question
 18 is. It's -- you're asking a very broad question.
 19 Q. Sure. Let's look at page 22. You see
 20 the table that has "price by fashion," correct?
 21 A. Correct.
 22 Q. And page 22 states, "Impact of the
 23 2005 competitive strategy," correct?
 24 A. Correct.
 25 Q. And we were talking about the bubbles

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 2 with various names in them.
 3 Do you recall that?
 4 A. Yes.
 5 Q. Okay. And we talked about how on the
 6 price-by-fashion table a Pea in the Pod is a blue
 7 bubble in the upper right-hand corner on the
 8 price-by-fashion table, correct?
 9 A. Yes.
 10 Q. Are all Pea in the Pod products
 11 contained within that bubble on the
 12 price-by-fashion table?
 13 A. To the best of my knowledge, yes.
 14 Q. And then speaking to the table again,
 15 is there any meaning to the different colors of
 16 the bubbles on that table?
 17 A. Again, I have absolutely no idea why
 18 things are colored the way they are on this. I am
 19 familiar with the competitive landscape. I do
 20 know not why things are color coded on this
 21 specific document.
 22 Q. Understood.
 23 Destination Maternity brands are a
 24 navy blue. Is that correct?
 25 That would --

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 2 A. Correct.
 3 Q. That would include a Pea in the Pod,
 4 Mimi, correct?
 5 A. Correct.
 6 Q. Motherhood?
 7 A. Correct.
 8 Q. Oh Baby by Motherhood?
 9 A. Correct.
 10 Q. And Two Hearts at Sears. Is that
 11 correct?
 12 A. Correct.
 13 Q. As a follow on, as VP of Motherhood
 14 are you responsible in any way for Oh Baby by
 15 Motherhood?
 16 A. No. I am an officer of the company,
 17 so I'm responsible for the total bottom line
 18 profit of all of us doing well. So in that form,
 19 you know, the brand heads of Pea in the Pod, of
 20 Motherhood, which is me, and of Oh Baby and the
 21 lease businesses, we interact often, but I am not
 22 directly responsible.
 23 Q. Understood.
 24 So your responsibilities would be
 25 confined to Motherhood, for example, rather than

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 2 Two Hearts at Sears or Oh Baby on the other hand,
 3 correct?
 4 A. Correct.
 5 Q. In a general sense.
 6 And then you also see bubbles on
 7 page 22 of Exhibit 101 for Gap and Old Navy. Is
 8 that correct?
 9 A. Correct.
 10 Q. There are three additional bubbles for
 11 JCPenney, Target and then Walmart and Kmart. Is
 12 that correct?
 13 A. Correct.
 14 Q. Are Walmart and Kmart the same
 15 company?
 16 A. Yes.
 17 Q. All right. Do you see the Mimi
 18 Maternity bubble on the price-by-fashion table?
 19 A. Yes.
 20 Q. Are all Mimi Maternity products
 21 included within that range of fashion by price --
 22 MS. REINCKENS: Objection to form.
 23 Q. -- as shown?
 24 A. Again, to -- to the best of my
 25 knowledge, yes.

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 2 Q. Okay. And the same would go for the
 3 Motherhood bubble. Is that correct?
 4 A. Correct.
 5 Q. And Oh Baby by Motherhood. Is that
 6 correct?
 7 A. Correct.
 8 Q. Two Hearts at Sears, is that also
 9 correct?
 10 A. Correct.
 11 Q. Is that also correct for Gap on store
 12 and in line, based on DMC's understanding of Gap?
 13 A. Restate the question.
 14 Q. Do you see the Gap online and in store
 15 bubble?
 16 A. Yes.
 17 Q. To the best of DMC's understanding,
 18 are all Gap maternity products included in that
 19 bubble on the price-by-fashion table?
 20 A. Yes.
 21 Q. The same would go for Old Navy. Is
 22 that correct?
 23 A. Yes.
 24 Q. The same would go for JCPenney. Is
 25 that also correct?

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 2 A. Yes.
 3 Q. Target as well?
 4 A. Yes.
 5 Q. Then Walmart and Kmart as well,
 6 correct?
 7 A. Yes.
 8 Q. Okay. And, again, this table would
 9 show the overall maternity market?
 10 A. Yes.
 11 Q. And then is this DMC's understanding
 12 of the overall maternity market in May of 2007?
 13 A. Yes.
 14 Q. Okay. On the -- I'm sorry.
 15 On page 22 of Exhibit 101, what is
 16 DMC's understanding of fashion as shown on the X
 17 axis of this table?
 18 MS. REINCKENS: Objection to form.
 19 A. Pea in the Pod, Mimi, and Gap are
 20 considered high fashion and high price.
 21 Q. Versus Walmart and Kmart, which would
 22 be low price and low fashion?
 23 A. Yes.
 24 Q. Okay. And then your understanding of
 25 fashion, could you explain that to me -- strike

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 2 the question.
 3 What is DMC's understanding of
 4 "fashion," the term, as shown on this table?
 5 A. It is the difference between something
 6 that's fast fashion versus a key item basic.
 7 Q. And a -- a key item basic is -- is
 8 something -- what does that mean -- strike the
 9 question.
 10 What is a key item basic?
 11 A. A key item basic is something that
 12 isn't considered high end, isn't considered, you
 13 know, a designer -- you know, the designer market.
 14 Q. So then the designer market would be
 15 contained within your expression "fast fashion."
 16 Is that correct?
 17 A. Yes.
 18 MS. REINCKENS: Objection to form.
 19 Q. So then what else might be included
 20 within fast fashion based on DMC's understanding
 21 of that term?
 22 A. Things you don't necessarily wear
 23 multiple times in a week. Something that is maybe
 24 a little more memorable. Something that's closer
 25 to what you see on a runway, you know, if it -- if

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 2 it's -- you know, goes down the runway, you see
 3 it, it gets to stores in a -- in a quicker time
 4 period.
 5 Q. So, for example, fast fashion might be
 6 trendier than the key item basics?
 7 MS. REINCKENS: Objection to form.
 8 A. It could be. Sometimes, though,
 9 something that's considered -- I mean, it's all
 10 subjective. It's fashion. But sometimes, you
 11 know, a tee shirt could come down the runway and
 12 that could be considered fast fashion.
 13 Q. Understood.
 14 You can put Exhibit 101 aside for now.
 15 MR. ENNIS: I'll have the court
 16 reporter mark Exhibit 102.
 17 (Exhibit 102, Mothers Work company
 18 profile, 12/2007, was marked for
 19 identification at this time.)
 20 BY MR. ENNIS:
 21 Q. Ms. Piccone, have you seen Exhibit 102
 22 before today?
 23 A. No.
 24 Q. Again, you've seen documents similar
 25 to 102 before today, correct?

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 2 A. Yes.
 3 Q. Do you need a moment to review the
 4 document?
 5 A. Yes.
 6 Q. Please do. And if you could just let
 7 me know when you're done, I'd appreciate it.
 8 A. Okay.
 9 Am I allowed to compare this to
 10 Exhibit 101?
 11 Q. I'll -- I can ask questions about that
 12 later, but you can -- you can do that now, if
 13 you'd like.
 14 A. Okay.
 15 Q. So you've had time to review the
 16 document?
 17 A. Yes.
 18 Q. If you could turn to page 23, and let
 19 me know when you're there.
 20 A. I'm there.
 21 Q. Okay. This appears similar to page 22
 22 of Exhibit 101, correct?
 23 A. Yes.
 24 Q. Does the table on page 23 of
 25 Exhibit 102 represent DMC's understanding of the

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 2 maternity market as of December 2007?
 3 A. Yes.
 4 Q. And the same testimony that you gave
 5 earlier regarding -- strike the question.
 6 And for each of the bubbles shown on
 7 page 23 it remains your testimony that all
 8 products -- maternity products sold by those
 9 brands are contained within the bubbles on that
 10 table?
 11 A. To the best of my knowledge, yes.
 12 Q. And that also is the best of DMC's
 13 knowledge, correct?
 14 A. Yes.
 15 (Exhibit 103, DMC company profile,
 16 1/2009, was marked for identification at
 17 this time.)
 18 BY MR. ENNIS:
 19 Q. Ms. Piccone, the court reporter has
 20 handed you Exhibit 103?
 21 A. Okay.
 22 Q. Given that this is before your time at
 23 DMC, I presume that you have not seen this
 24 document before today. Is that correct?
 25 A. Correct.

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 2 Q. If you could please take a moment and
 3 take a look at Exhibit 103, and let me know when
 4 you're done?
 5 A. Okay.
 6 Okay.
 7 Q. Okay. And then, you have not seen
 8 Exhibit 103 before today, correct?
 9 A. Correct.
 10 Q. All right. If you can turn to page 24
 11 of Exhibit 103. Let me know when you're there.
 12 A. I'm there.
 13 Q. Okay. Do you see the price-by-fashion
 14 table that is on page 24?
 15 A. Yes.
 16 Q. Okay. And you'll notice that it's
 17 slightly different than the tables that are shown
 18 on Exhibits 102 and 101. Is that correct?
 19 A. I need to turn to those.
 20 Okay.
 21 Q. Okay. Brands of Destination Maternity
 22 are still in Navy. Is that correct?
 23 A. Yes.
 24 Q. Okay.
 25 A. Except for Sears.

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 2 Q. Right. Is that because of Sears
 3 relationship ended in June 2008, as shown on page
 4 24 of Exhibit 103?
 5 MS. REINCKENS: Objection to form.
 6 A. My understanding -- we are still in
 7 business with Sears since I have started. If
 8 there was ever a time when we weren't prior to
 9 that, I have no knowledge of that.
 10 Q. Okay. And who would have knowledge of
 11 that at DMC?
 12 A. The CEO of our company, Ed Krell.
 13 Q. Anyone else?
 14 A. And Lisa Hendrickson would.
 15 Q. All right. Okay.
 16 But then you -- you still see the fact
 17 that we have bubbles on this page in various
 18 locations on the price-by-fashion table, and all
 19 maternity items sold by each of the brands shown
 20 are included within that -- the bubbles on the
 21 price-by-fashion table, correct?
 22 A. Yes.
 23 Q. You'll notice there's a change where
 24 Mimi Maternity is no longer present?
 25 A. Correct.

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 2 Q. Why is Mimi Maternity no longer
 3 present?
 4 A. It was a company initiative to
 5 streamline our brands and eliminate Mimi
 6 Maternity, convert those into Pea in the Pod, so
 7 that we stand for Pea in the Pod in a bigger way.
 8 We maintain Motherhood Maternity, and then we
 9 opened nameplates called "Destination Maternity"
 10 that housed both Motherhood and Pea in the Pod.
 11 Q. By "nameplates," do you mean stores?
 12 A. Restate the question.
 13 Q. What do you mean by "nameplates"?
 14 A. Brick-and-mortar channels of
 15 distribution.
 16 Q. What is the Pea Collection as shown on
 17 page 24 of Exhibit 103?
 18 MS. REINCKENS: Objection to form.
 19 A. Pea Collection would be product that
 20 is generated from designers that you would see in
 21 designer apparel spaces that has the designer's
 22 label as well as Pea in the Pod Collection in it.
 23 Q. Understood. So an example might be if
 24 DMC sold 7 Jeans, those might fall in the Pea
 25 Collection. Is that correct?

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 2 A. Yes.
 3 Q. And then the table shown on exhibit --
 4 strike the question.
 5 The table shown on page 24 of
 6 Exhibit 103 reflects DMC's understanding of the
 7 overall maternity market as of January 2009. Is
 8 that correct?
 9 A. Yes.
 10 (Exhibit 104, DMC company profile,
 11 2/25/10, was marked for identification at
 12 this time.)
 13 BY MR. ENNIS:
 14 Q. Have you seen Exhibit 104 before
 15 today, Ms. Piccone?
 16 A. No.
 17 Q. Are you able to provide testimony on
 18 behalf of DMC regarding Exhibit 104?
 19 A. Yes.
 20 MS. REINCKENS: Objection to form.
 21 A. Yes.
 22 Q. If you could turn to page 14 of
 23 Exhibit 104, and let me know when you're there.
 24 A. I'd like to look at the document
 25 first.

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 2 Q. Please do. Let me know when you're
 3 done.
 4 A. Okay.
 5 Q. Ms. Piccone, do you see on page 14
 6 there is a bullet point for "significant DEST
 7 competitive advantages."
 8 Do you see that?
 9 A. Yes.
 10 Q. You see that there's unparalleled
 11 assortment and superior service level. Is that
 12 correct?
 13 A. Yes.
 14 Q. Are there any other significant DEST
 15 advantages in February 25th of 2010 that aren't
 16 provided on the table?
 17 MS. REINCKENS: Objection to form.
 18 Q. You can answer.
 19 A. Repeat the question.
 20 Q. Sure. Are there any other key DEST
 21 competitive advantages as of February 25th, 2010
 22 that aren't provided on the table on page 14 of
 23 Exhibit 104?
 24 A. There's a number. They're just -- we
 25 have many competitive advantages.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 Q. What are the key competitive
 3 advantages?
 4 MS. REINCKENS: Objection to form.
 5 A. Well, I mean, I guess, if --
 6 unparalleled assortment gives a global umbrella to
 7 the fact that we have -- we have an unparalleled
 8 assortment, and there's many style and feature
 9 attributes within that assortment that separates
 10 us from competition.
 11 Q. And in Destination Maternity's belief,
 12 what are the most important style and feature
 13 differentiators that you just referred to?
 14 A. We invented the Secret Fit Belly.
 15 Q. Any others?
 16 A. There's many, but I -- you know, I
 17 can't recall them at this time.
 18 Q. Can you give me the top three?
 19 A. We offer a variety of price points to
 20 our customer in specific channels of distribution.
 21 And I think that's all I remember at
 22 this time.
 23 Q. Okay. So just to be clear, the -- the
 24 two significant DEST competitive advantages --
 25 strike the question.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 So regarding the unparalleled
 3 assortment significant DEST competitive advantage,
 4 the top two sub reasons under that category are
 5 the Secret Fit Belly and the range of price
 6 points, correct?
 7 MS. REINCKENS: Objection to form.
 8 A. Correct.
 9 Q. All right. And if you look at this
 10 table on page 14 of Exhibit 104, do you see it's
 11 also price by fashion?
 12 A. Yes.
 13 Q. Okay. And we again have Motherhood --
 14 strike the question.
 15 And again we have Destination
 16 Maternity brands are shown in navy?
 17 A. Yes.
 18 Q. Other brands are included on the table
 19 in other bubbles. Is that correct?
 20 A. Yes.
 21 Q. And within each bubble is contained
 22 all maternity products sold by that brand based on
 23 DMC's understanding as of February 25th, 2010?
 24 A. Yes.
 25 MR. ENNIS: All right. Let's take a

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 break. Change the tape.
 3 VIDEOGRAPHER: We are now going off
 4 the video record. That concludes Tape
 5 No. 1. The time is 10:41.
 6 (Recess.)
 7 VIDEOGRAPHER: We are now back on the
 8 video record. This commences Tape No. 2.
 9 October 18th, 2013. The time, 11:04.
 10 Please continue.
 11 BY MR. ENNIS:
 12 Q. And welcome back, Ms. Piccone.
 13 A. Thank you.
 14 Q. Before we broke, we talked about
 15 significant DEST competitive advantages and some
 16 items below unparalleled assortment.
 17 Am I reading correctly?
 18 A. Yes.
 19 Q. And within that unparalleled
 20 assortment category, the two items that you
 21 recalled were that DMC invented the Secret Fit
 22 Belly and that you have offerings at a wide
 23 variety of price points.
 24 Am I recalling that correctly?
 25 A. Yes.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 Q. When you say, "invented the Secret Fit
 3 Belly," what do you mean by "invented"?
 4 MS. REINCKENS: Yeah, I'm going to
 5 object to the extent it calls for any
 6 attorney-client privileged information.
 7 Q. You can answer it.
 8 A. My company came up with a new way of
 9 wearing pants with a belly panel that redefined
 10 and changed the trajectory of our company.
 11 Q. When you say that your "company came
 12 up with a new way of wearing pants with a belly
 13 panel," what's your basis for that understanding?
 14 MS. REINCKENS: Objection to form.
 15 A. My company invented the Secret Fit
 16 Belly.
 17 Q. What is the basis for your
 18 understanding that DMC invented the Secret Fit
 19 Belly?
 20 MS. REINCKENS: Again, I'm going to
 21 object to the extent it calls for any
 22 attorney-client privileged information.
 23 A. Prior to Destination Maternity
 24 bringing the Secret Fit Belly to retail, women did
 25 not have that as an option when they were buying

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 bottoms.
 3 Q. Are you a patent lawyer?
 4 MS. REINCKENS: Objection.
 5 Okay. I'm going to stop this line of
 6 questioning if we're going down the path
 7 where you're going to try to ask questions
 8 that are privileged.
 9 Obviously, you know the witness is not
 10 a patent lawyer, so I'm just going to object
 11 now and I'm going to put an end to this line
 12 of questioning.
 13 You know the witness isn't a patent
 14 lawyer. She has not been designated to
 15 speak on any topic that relate to patent
 16 law. She's answering the questions as a lay
 17 witness.
 18 MR. ENNIS: Okay. So just to confirm,
 19 will you stipulate that Ms. Piccone has no
 20 knowledge of patent law?
 21 MS. REINCKENS: Yes, I'll stipulate
 22 that she has no knowledge of patent law.
 23 MR. ENNIS: Okay. Thank you.
 24 MS. REINCKENS: And just to be clear,
 25 the witness wasn't speaking as a patent

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 lawyer when she talked about an invention.
 3 Just because she used the word "invention"
 4 does not mean that she's speaking in -- and
 5 as -- as a -- a patent lawyer.
 6 BY MR. ENNIS:
 7 Q. Ms. Piccone, prior to your joining
 8 Destination Maternity in -- strike the question.
 9 Have you personally seen any prior
 10 products before DMC invented, according to your
 11 understanding, the Secret Fit Belly?
 12 MS. REINCKENS: Objection to form.
 13 A. What question is this in regards to?
 14 Q. You mentioned that DMC invented the
 15 Secret Fit Belly, correct?
 16 A. Correct.
 17 Q. Have you personally seen products
 18 that -- created by DMC or others that are
 19 maternity bottoms with a stretchy band prior to
 20 DMC's invention, according to your understanding,
 21 of the Secret Fit Belly?
 22 MS. REINCKENS: Okay. And I just want
 23 to clarify on the record that the witness
 24 has not been designated to talk about
 25 anything related to where I think you're

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 going here, so you're going to be asking her
 3 right now in her personal capacity.
 4 Q. You can answer.
 5 A. So to be clear, you're asking me in my
 6 personal capacity, prior to my start date of 2011,
 7 did I see items in the maternity sector that
 8 had -- that looked like a Secret Fit Belly? Is
 9 that what you're asking me?
 10 Q. You can answer that question.
 11 A. So can you restate it?
 12 Q. Sure. So in your personal capacity,
 13 in -- before 2008, did you see any items in the
 14 maternity sector that had a bottom with a stretchy
 15 band attached to that bottom?
 16 A. There is no reason I would have even
 17 been looking for that. I was not employed, nor
 18 was I pregnant.
 19 Q. Of course.
 20 MR. ENNIS: I just want to make sure
 21 that was "invent" used in Ms. Piccone's
 22 corporate capacity or her personal capacity,
 23 just to make the record clear?
 24 MS. REINCKENS: We can go back and
 25 revisit that -- that specific line of

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 questioning, because I don't -- I mean, I
 3 can look right now, but I don't want to
 4 necessarily answer.
 5 If you're trying to go down some line
 6 with this ridiculous privilege waiver
 7 argument, I'm not going to entertain it.
 8 So --
 9 MR. ENNIS: Let's go off the record.
 10 VIDEOGRAPHER: One moment. We are now
 11 going off video. The time is 11:10.
 12 (Recess.)
 13 VIDEOGRAPHER: Back on, 11:12.
 14 MS. REINCKENS: I will stipulate on
 15 the record that Ms. Piccone will not appear
 16 at trial as a witness speaking to patent law
 17 or invention in a patent law sense.
 18 MR. ENNIS: Or in a lay opinion sense,
 19 is that -- is that also acceptable?
 20 MS. REINCKENS: Ms. -- Ms. Piccone is
 21 allowed to talk about invention in the
 22 context as she understands it as a lay
 23 person.
 24 She's not here to testify, and will
 25 not be testifying at trial, about invention

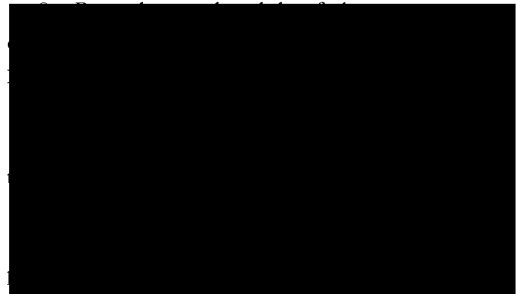
1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 in a patent law sense. It's part of -- I
 3 cannot control the dictionary or the phrases
 4 that she uses to describe when a company
 5 comes up with something in -- as -- in a
 6 business sense.
 7 So, I mean, we can have this -- this
 8 dialogue off the record and can clarify
 9 later on, but I'm willing to stipulate that
 10 she's not going to show up at trial and talk
 11 about invention in a patent law sense.
 12 MR. ENNIS: All right. Let's go off
 13 the record.
 14 VIDEOGRAPHER: Off video, 11:13.
 15 (Recess.)
 16 VIDEOGRAPHER: Back on, 11:18.
 17 BY MR. ENNIS:
 18 Q. Welcome back, Ms. Piccone.
 19 A. Thank you.
 20 Q. When we were talking about significant
 21 DEST competitive advantages on page 14 of
 22 Exhibit 104, we discussed the unparalleled
 23 assortment bullet beneath that larger category,
 24 correct?
 25 A. Correct.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 Q. All right. And then the two
 3 reasons -- strike the question.
 4 And then the two sub items below
 5 unparalleled assortment that you could recall
 6 were, one, that DMC invented the Secret Fit Belly,
 7 and two, DMC offers a -- a product at a wide
 8 variety of price points.
 9 Am I recalling your testimony
 10 correctly?
 11 A. Yes.
 12 Q. Okay. And then I asked you for your
 13 understanding of DMC's invention of the Secret Fit
 14 Belly, correct?
 15 A. Correct.
 16 Q. Okay. And then what is your
 17 understanding as a lay fact witness -- strike the
 18 question.
 19 And then what is the basis as a
 20 lay fact witness for your statement that DMC
 21 invented the Secret Fit Belly?
 22 A. They have a patented trademarked item
 23 that was put into existence prior to my starting
 24 that we have built an entire strategy, an entire
 25 assortment. We've redefined our selling space.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 It has redefined our assortment, our apparel.
 3 It's changed a woman's options. Prior
 4 to getting the Secret Fit to market, women were
 5 not able to wear the same types of bottoms that
 6 they wore pre-pregnancy, and now women can wear
 7 the same types of bottoms that they wore before
 8 they got pregnant: Skinny jeans, flare leg, wear
 9 to work bottoms, shorts, skirts, and we make sure
 10 we celebrate that in our store. It's our number
 11 one key initiative.
 12 MS. REINCKENS: And I just want to
 13 restate the objection that I have already
 14 stated prior to the break for the same line
 15 of questioning and caution the witness that
 16 she can answer to the extent it doesn't
 17 disclose any attorney -- attorney-client
 18 privileged information.
 19 Q. Ms. Piccone, you've mentioned that you
 20 did not work in the maternity space or have
 21 knowledge of the maternity space before you joined
 22 Destination Maternity in 2011.
 23 Am I remembering your testimony
 24 correctly?
 25 A. Yes.

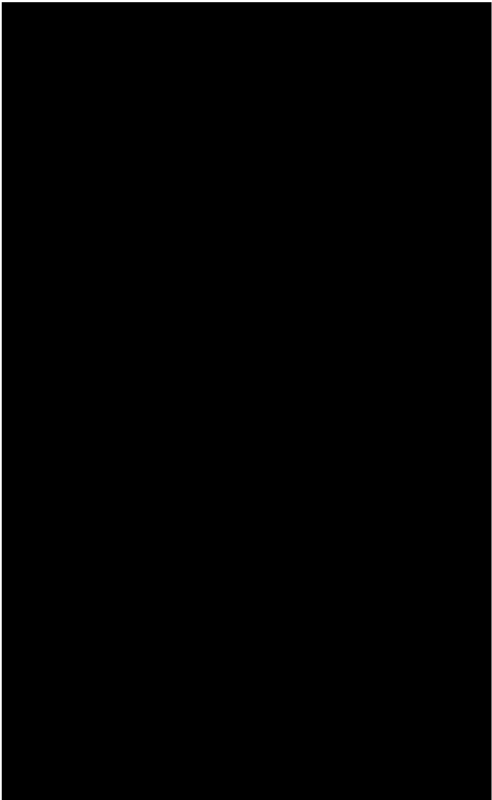
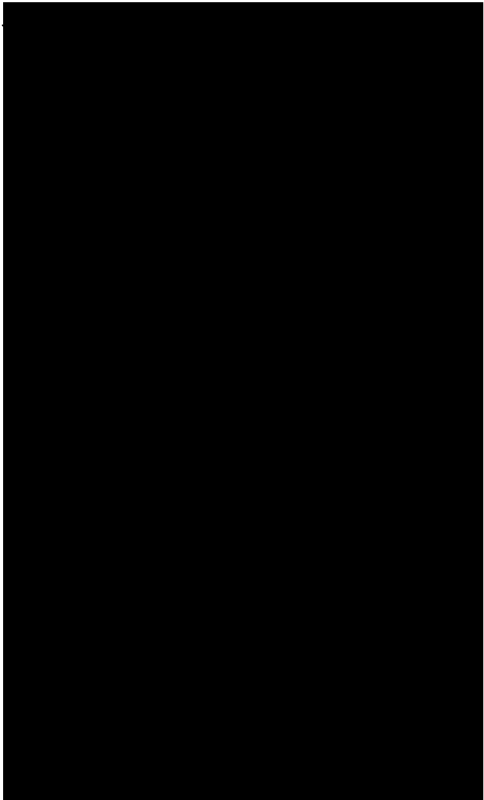
1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 Q. Okay. Have you ever seen DMC patents?
 3 MS. REINCKENS: I'm going to object to
 4 the extent this calls for attorney-client
 5 privileged information.
 6 A. Again, what question is this referring
 7 to?
 8 Q. You mentioned that the Secret Fit
 9 Belly is patented and trademarked, correct?
 10 A. Correct.
 11 Q. And I'm asking if you have ever seen
 12 the patents that relate to the Secret Fit Belly.
 13 A. The ones issued from the Patent
 14 Office?
 15 Q. Correct.
 16 A. No, I have not.
 17 Q. Okay.
 18 And then, do you have any knowledge of
 19 DMC products prior to 2011?
 20 A. You're asking me do I --
 21 Q. Personally.
 22 A. Yes.
 23 Q. When did you first become aware of DMC
 24 products?
 25 A. When I was pregnant with my first

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 child.
 3 Q. When was that?
 4 A. 2008.
 5 Q. Was the Secret Fit Belly available in
 6 2008 according to your understanding?
 7 A. Yes.
 8 Q. Do you have any knowledge of DMC
 9 products prior to 2008?
 10 A. No.
 11 Q. And then you -- you had mentioned your
 12 understanding of how DMC invented the Secret Fit
 13 Belly, and you -- you gave your answer.
 14 Do you have anything to add to your
 15 answer?
 16 A. Not at this time, no.

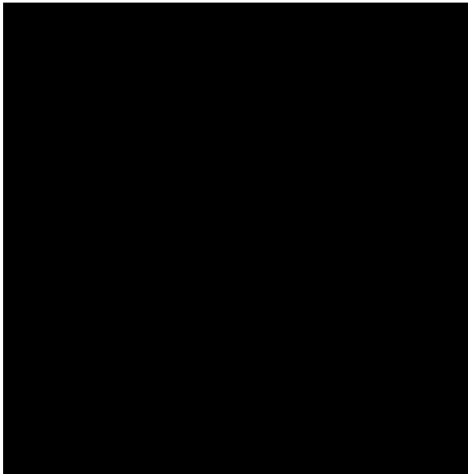


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16 A. I don't recall.
17 (Exhibit 105, DMC company profile,
18 2/25/11, was marked for identification at
19 this time.)

20 THE WITNESS: Okay. I need to go
21 through this, obviously.

22 BY MR. ENNIS:

23 Q. Let me know when you're done. Thank
24 you.

25 A. Yep.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE

2 I'd like to go back and add something
3 to a statement I made.

4 Q. What statement's that?

5 A. When you asked me about additional
6 attributes to the company -- I don't remember the
7 exact question, but it was additional competitive
8 advantages?

9 Q. Correct.

10 And I guess you have additional
11 competitive advantages that you've now recalled?

12 A. Yes. I recall one additional one.

13 Q. And what is that advantage?

14 A. Much like Target, we offer an entire
15 lifestyle of maternity clothes, meaning wear to
16 work, casual and active.

17 Q. So that it would be proper to
18 characterize that as a third sub point to the
19 unparalleled assortment that we discussed on
20 page 14 of Exhibit 104?

21 A. Yes.

22 Q. Is that also -- you just mentioned
23 that there's a full lifestyle and a full range of
24 maternity products at DMC and Target, correct?

25 A. Yes.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE

2 Q. Is that also true for Gap?

3 A. No.

4 Q. Okay. What is different about Gap?

5 A. Gap does not offer wear to work
6 clothes.

7 Q. Okay. Is that -- does Walmart offer a
8 full range?

9 A. I am not familiar with Walmart. I
10 cannot speak to Walmart.

11 Q. Okay. Does DMC have any knowledge
12 regarding the range of Walmart's assortment?

13 A. I don't know. I don't give them much
14 thought, quite frankly.

15 Q. Okay. Who's the best person that
16 would know the answer to the range of Walmart's
17 assortment at DMC?

18 A. Are you asking me back in -- are you
19 asking me as of, you know, 2011 to the present
20 time or are you asking me in the past?

21 Q. We were talking about the
22 February 25th, 2010 time frame. So we can do
23 that --

24 A. Yeah.

25 Q. -- or if you have an understanding

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2 that is, you know, later to that, just let me know
3 the time frame and we can work with that.

4 A. You know, I'm not even comfortable
5 giving a name about -- I have no idea who was in
6 charge of, you know, representing whatever Walmart
7 carried.

8 Q. Okay. Does JCPenney have a full range
9 of maternity products?

10 A. JCPenney is no longer in the maternity
11 business.

12 Q. Okay. Where did you -- how did you
13 arrive at that understanding?

14 A. I went to their store recently.

15 Q. Okay. Have you looked at their
16 website?

17 A. Not recently.

18 Q. Okay. So you're not aware of
19 JCPenney's website for maternity personally?

20 A. No.


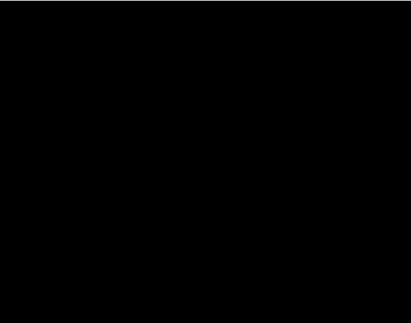
21 Q. Okay. Does Old Navy have a full range
22 of maternity products?

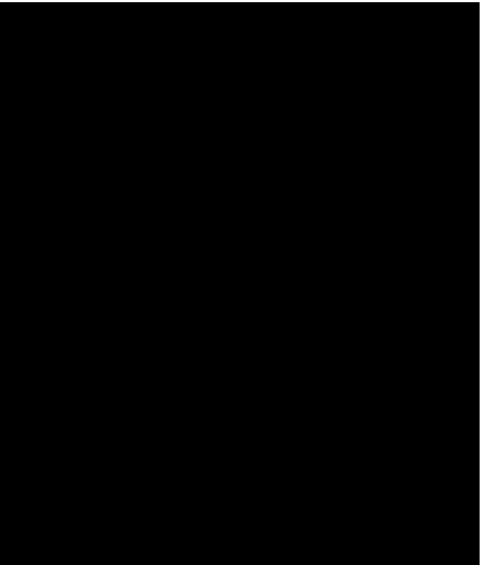
23 A. No.

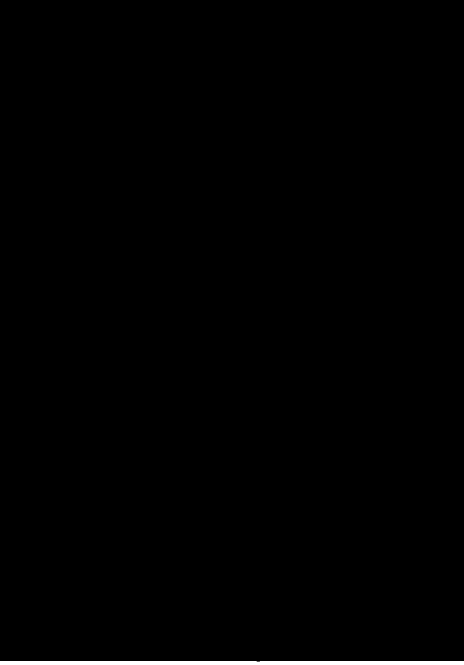
24 Q. Okay. What does Old Navy not have?

25 A. Wear to work clothing.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 Q. Okay. Does Motherhood have a full
 3 range of maternity product?
 4 A. Yes.
 5 Q. Okay. Two Hearts?
 6 A. Yes.
 7 Q. Kohls Oh Baby?
 8 A. Yes.
 9 Q. Okay. independents?
 10 A. I don't know. I'd need more
 11 specifics. I'd need the actual independent person
 12 listed.
 13 Q. Okay. A Pea in the Pod Collection?
 14 A. Yes.
 15 Q. A Pea in the Pod?
 16 A. Yes.
 17 Q. Okay. What independents, sitting here
 18 today, do you -- are you aware of -- strike the
 19 question.
 20 What independent maternity retailers
 21 are you aware of sitting here today?
 22 MS. REINCKENS: Objection. Form.
 23 A. There's someone called Pickles & Ice
 24 Cream, but I spend basically no time worrying
 25 about independents because they do not compete

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 with Motherhood.
 3 Q. How do you know that they don't
 4 compete with Motherhood?
 5 A. Independents are typically at a higher
 6 price point.
 7 Q. Okay. And then Gap would also be at a
 8 higher price point than Motherhood?
 9 A. For the majority of their products,
 10 yes.
 11 Q. Okay.
 12 A. And -- and they don't offer wear to
 13 work. They offer a very small and specific casual
 14 assortment.
 15 Q. Understood. 
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 19 A. Although I'm not sure our customer
 20 walks into a Gap, because it typically -- you
 21 know, walking in, she's going to notice a higher
 22 price than she's used to wearing, or she walks
 23 into Target often, because it accompanies other
 24 things that she buys.
 25 Q. Right. So, for example, you know,

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 Walmart would have food and other types of
 3 non-maternity clothing that would not be at a
 4 Motherhood store, for example?
 5 A. Correct.
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2 [REDACTED]
3 [REDACTED]
4 Q. So then you had mentioned that you --
5 strike the question.

2 document. So you're asking the witness
3 at -- at the time that this document was
4 created where H&M --

5 BY MR. ENNIS:

6 Q. Look at the --

7 MS. REINCKENS: Strike --

8 Q. -- strike the question.

9 Let's -- all right.

10 So we're on page 14 of Exhibit 105,
11 correct?

12 A. Yes.

13 Q. Okay. Wonderful.

14 And when did you start at Destination

15 Maternity?

16 A. October of 2011.

17 Q. Okay. Do you have awareness of where
18 H&M would have been in the overall maternity
19 market as of the creation of Exhibit 105,
20 approximately February 25th, 2011?

21 A. I'm sorry, repeat the question.

22 Q. [REDACTED]

20 Q. Okay. I'm handing you a pen.
21 To the best of your understanding,
22 could you draw where a bubble for H&M would appear
23 on the chart on page 14 of Exhibit 104.

24 MS. REINCKENS: I just want to object
25 here and -- and state that this is a 2011

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1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE

2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 Q. Does H&M carry a full line of
9 maternity?

10 A. No.

11 Q. What does H&M not carry?

12 A. They also don't carry wear to work
13 clothing. They also don't carry the Secret Fit
14 Belly in any capacity. But it is, essentially, a
15 legging and knit top business.

16 Q. Okay.

17 Okay. Does Gap carry the Secret Fit
18 Belly in any capacity?

19 A. Not that I've seen.

20 Q. Not since 2011?

21 A. Not since -- correct.

22 Q. Strike the question.

23 Not since you joined Destination
24 Maternity in 2011, to be clear.

25 So that was correct?

2 A. Yes.

3 Q. Great.

4 Does Old Navy carry the Secret Fit
5 Belly in any capacity since you joined Destination
6 Maternity in November 2011?

7 A. When I walk into Old Navy, what I see
8 first and foremost is half bellies in a very
9 dominant way. If something that looked similar to
10 a Secret Fit Belly, you know, entered their
11 assortment here or there, it -- it did not catch
12 my radar, because, you know, unlike Target, where
13 when I walk into a Target, I am immediately, you
14 know, confronted with pants that look very
15 similar, you know, to what we have, I do not feel
16 that way when I walk into -- into Old Navy. I see
17 predominantly half bellies.

18 Q. So then, it's your testimony that
19 Target has carried the Secret Fit Belly in some
20 capacity sometime between November 2011 and
21 present day?

22 A. It's my testimony that when I walk
23 into Target since 2011, I see in a very dominant
24 way bottoms that have panels that look very
25 similar -- look like they were copied from the

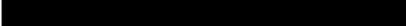
1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 Secret Fit Belly that is Destination Maternity's.
 3 Q. What is the basis for your
 4 understanding that Target pants with bellies would
 5 have been copied for Destination Maternity?
 6 MS. REINCKENS: Objection.
 7 She just answered that question.
 8 A. Again, can we go back to what question
 9 this is in relation to?
 10 Q. Sure. You had mentioned that you see
 11 panels that look very similar, look like, that is
 12 destination Maternity's -- strike the question.
 13 You see bottoms -- when you walk into
 14 Target, you saw bottoms that have panels that look
 15 very similar, look like they were copied from the
 16 Secret Fit Belly that is Destination Maternity's.
 17 Is that correct?
 18 A. Yes.
 19 Q. Okay. What is your -- the basis for
 20 your understanding that those panels look like
 21 they were copied?
 22 A. My eyes.
 23 Q. Do you know one way or the other
 24 whether Target actually copied Destination
 25 Maternity?

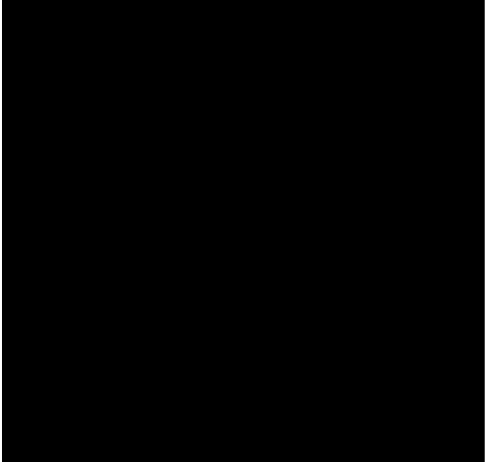
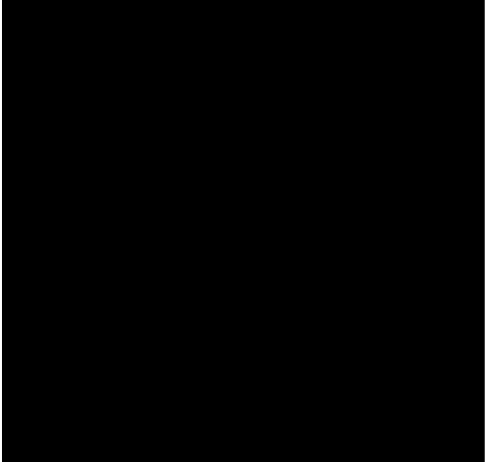
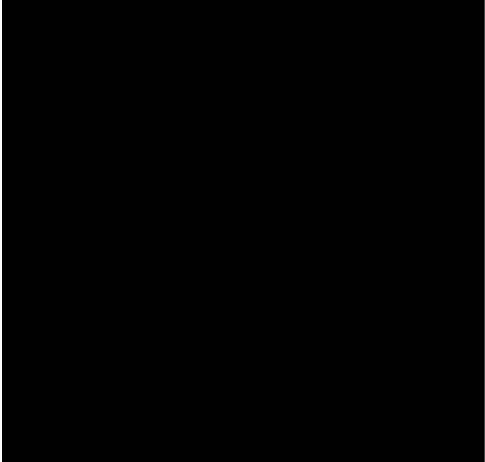
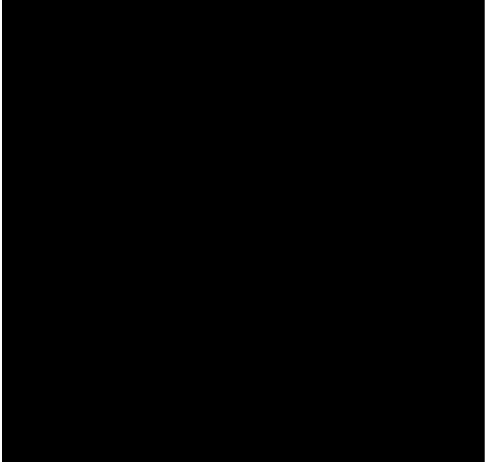
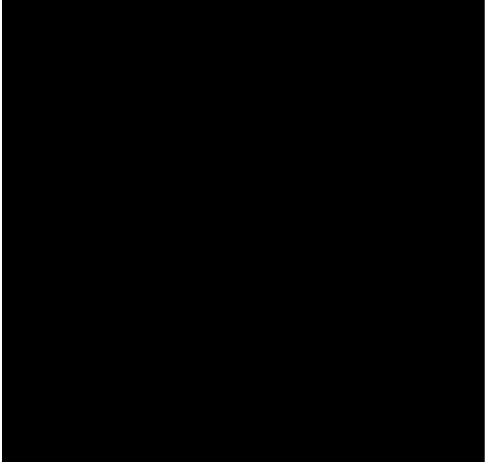
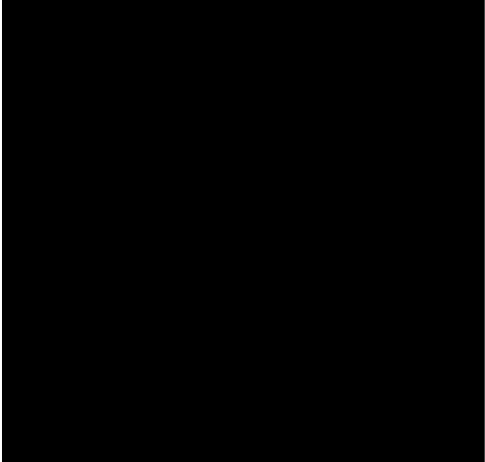
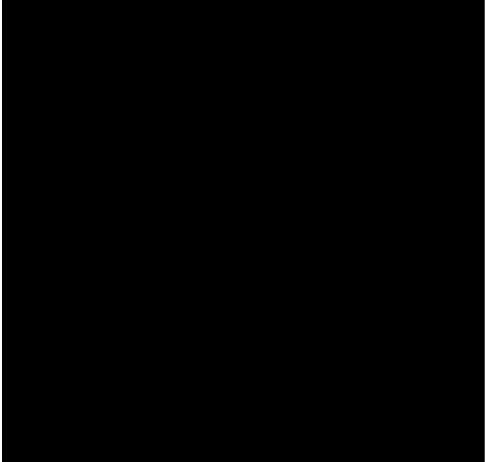
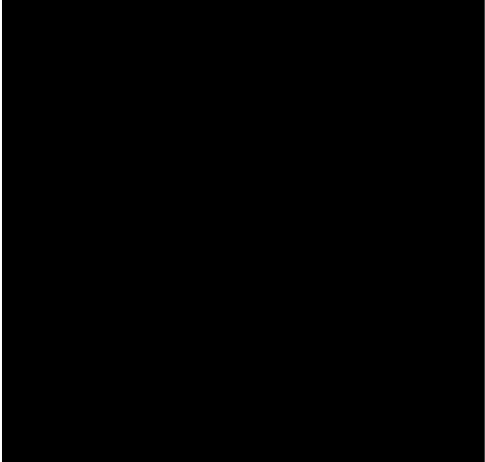
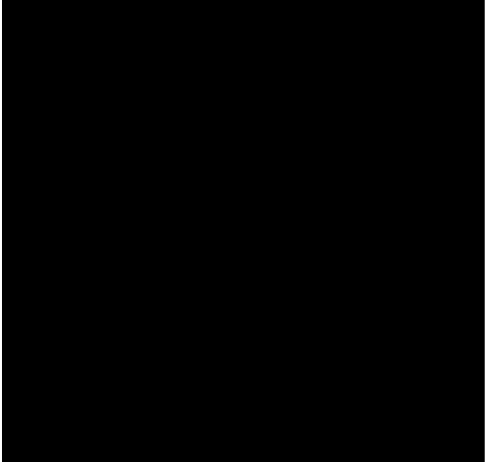
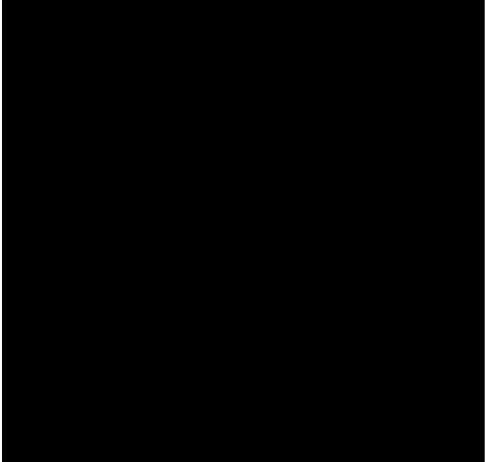
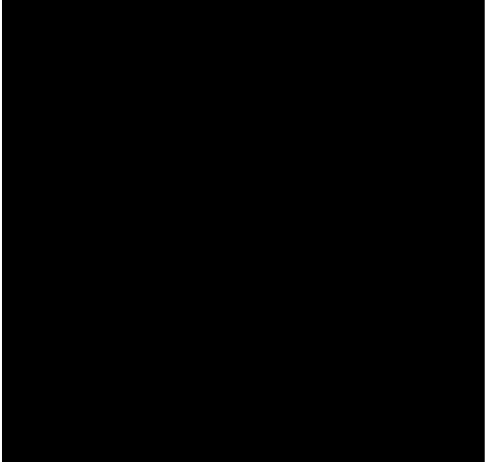
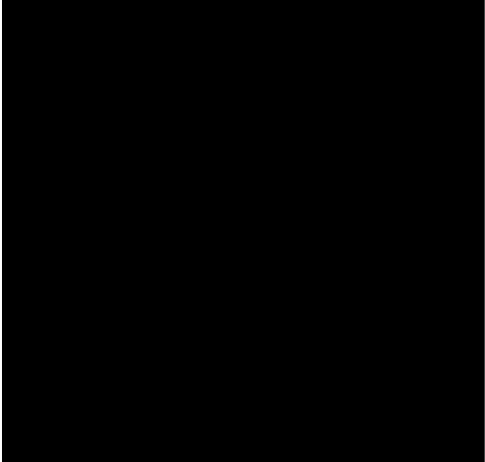
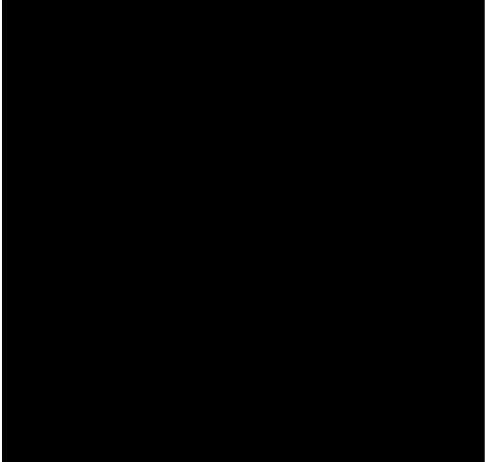
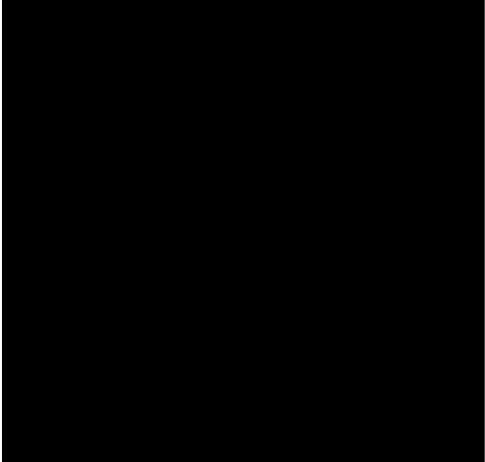
1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 A. Again, what my eyes saw was very
 3 similar to the patented pants that are Destination
 4 Maternity's.
 5 Q. But you have no basis to show that
 6 Target actually did, in fact, copy, correct?
 7 MS. REINCKENS: Objection to form.
 8 She's asked -- she's answered this
 9 question.
 10 Q. You can answer.
 11 A. Repeat the question?
 12 Q. But you have no factual basis to show
 13 that Target actually did, in fact, copy
 14 Destination Maternity's Secret Fit Belly, correct?
 15 A. I have no factual basis?
 16 Q. Correct.
 17 A. My eyes showed me that it looked
 18 similar.
 19 Q. Apart from your eyes, do you have any
 20 reason to believe that Target copied Destination
 21 Maternity's Secret Fit Belly?
 22 A. Yes.
 23 Q. Okay. What is that reason?
 24 [REDACTED]
 25 [REDACTED]

























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 2 [REDACTED]
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 11 [REDACTED]
 12 Q. Does Target sell a product that is
 13 branded Secret Fit Belly?
 14 A. No.
 15 Q. Does Destination Maternity own the
 16 intellectual property rights in Secret Fit Belly?
 17 MS. REINCKENS: Objection to the --
 18 A. I'm not a patent lawyer.
 19 MS. REINCKENS: Objection to the
 20 extent this is calling for a legal
 21 conclusion.
 22 MR. ENNIS: Strike the question.
 23 Q. I'm -- I'm referring to, does
 24 Destination Maternity own a trademark in Secret
 25 Fit Belly?

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 MS. REINCKENS: Again, same objection.
 3 Q. You can answer.
 4 A. My understanding is the Secret Fit
 5 Belly is trademarked by Destination Maternity.
 6 Q. Are you aware of Target ever using --
 7 strike the question.
 8 Are you aware of Target ever using
 9 Secret Fit Belly in any way, shape, or form in its
 10 advertising or promotional materials?
 11 MS. REINCKENS: Objection to form.
 12 A. Repeat the question?
 13 Q. Are you aware of Target ever using the
 14 phrase "Secret Fit Belly" in any way, shape, or
 15 form in its advertising or promotional materials
 16 whether in stores, online, or in printed media?
 17 MS. REINCKENS: Objection to form.
 18 A. No, I'm not aware.
 19 Q. Do you recall the names of the store
 20 managers that you just relayed -- strike the
 21 question.
 22 You mention that store managers told
 23 you that individuals would come into Destination
 24 Maternity, and if DMC was out of a particular size
 25 of a Secret Fit Belly garment, that customers

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 would tell the store manager that they would go to
 3 Target and buy a Secret Fit Belly --
 4 A. Yes.
 5 Q. -- is that correct?
 6 Do you recall the names of the store
 7 managers that told you that?
 8 A. No.
 9 Q. Okay. Where were the stores
 10 managers -- strike the question.
 11 Do you recall in what state the stores
 12 that those store managers managed were located?
 13 A. We have 3,000 distribution points, and
 14 I make it a point to visit hundreds of stores in a
 15 six month time period.
 16 Had I known I'd be deposed, I
 17 certainly would have taken the store name. I
 18 would have taken the customer's name and her phone
 19 number. But I did not know I was going to be
 20 deposed, so no, I did not keep track of any of
 21 that information.
 22 Q. That's understandable. I don't think
 23 anyone would expect to be deposed and -- and I
 24 don't blame you for taking that tact.
 25 But sitting here today, you're not

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 able to specifically recall where or who
 3 those statements about buying a Secret Fit Belly
 4 at Target were said or were said to?
 5 A. No.
 6 MS. REINCKENS: Objection.
 7 She's answered the question.
 8 Q. Have you documented in any way that
 9 customers in DMC stated that they would buy a
 10 Secret Fit Belly at Target?
 11 A. We have certainly verbally documented
 12 it. You know, it's something that we discuss, you
 13 know, as a merchant team. In terms of written
 14 documentation, I am not sure.
 15 Q. Turning back to page 14 of
 16 Exhibit 105, I don't believe we've discussed
 17 JCPenney.
 18 Am I remembering that correctly?
 19 MS. REINCKENS: Objection.
 20 A. You had asked me about their online
 21 business and in store.
 22 Q. Right. And when JCPenney had in store
 23 maternity, do you recall them providing a Secret
 24 Fit Belly in any capacity?
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 16 Q. Has H&M ever offered, to your
 17 knowledge, a Secret Fit Belly in any capacity?
 18 A. Not that I've seen.
 19 Q. Okay. Has anyone at DMC seen an H&M
 20 Secret Fit Belly according to DMC's understanding
 21 of Secret Fit Belly?
 22 MS. REINCKENS: Objection to form.
 23 A. Specific to Motherhood, which is my
 24 area, no one on my team has seen a Secret Fit
 25 Belly at H&M.

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 9 Q. To the best of your knowledge --
 10 A. To the best of my knowledge, yeah.
 11 Q. To the best of your knowledge, what
 12 are those stores?
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 13 Q. How many -- strike the question.
 14 You are the vice president in charge
 15 of the Motherhood brand, correct?
 16 A. Yes.
 17 Q. Beneath you, what is the next highest
 18 level of responsibility within the Motherhood
 19 brand?
 20 A. There are two. There's the director
 21 of design.
 22 Q. Okay.
 23 A. And then he has a whole design team
 24 that reports to him. And then it's divisional
 25 merchandise manager.

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 23 MR. ENNIS: Could we take a quick five
 24 minute break?
 25 THE WITNESS: Sure.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 VIDEOGRAPHER: Off video. The time is
 3 11:52.
 4 (Recess.)
 5 VIDEOGRAPHER: Back on, 12 o'clock.
 6 BY MR. ENNIS:
 7 Q. All right. So, Ms. Piccone, you had
 8 mentioned right before the break that -- well, not
 9 right before the break. Strike the question.
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 13 Q. Okay. Have you walked into the Gap --
 14 strike the question.
 15 What other bellies are offered by Old
 16 Navy, in your recollection?
 17 MS. REINCKENS: Objection to form.
 18 A. They have under bellies. They have
 19 mid bellies, half panels.
 20 Q. Anything else?
 21 A. Not that I recall at the time, no.
 22 Q. Okay. What is the difference between
 23 an under-belly panel and a mid-belly panel?
 24 A. An under-belly panel does not have a
 25 panel at all.

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 2 Q. Would the -- might those be referred
 3 to by others as "no panel"?
 4 A. Yes.
 5 Q. What is the difference between a mid
 6 belly and a half panel?
 7 A. It just has to do -- you know, and
 8 again, I -- I don't -- I'm not the expert in this.
 9 This has got a whole technical aspect to this with
 10 regards to the construction of a competitor's
 11 pants, but it's just different lengths of the
 12 panel.
 13 Q. So what is DMC's understanding as you
 14 use the term "mid panel" versus "half panel" --
 15 strike the question.
 16 What is DMC's understanding of the
 17 difference between a mid-belly panel and a half
 18 panel?
 19 MS. REINCKENS: I am going to object
 20 and ask you to -- to point me to where --
 21 which topic this relates to?
 22 MR. ENNIS: We're talking about the
 23 maternity market and I'm talking about
 24 competing products that, you know, may be
 25 related to the product at issue in this case

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 by both Destination Maternity and Target.
 3 I'm trying to understand the various
 4 different maternity bottoms that are
 5 available.
 6 MS. REINCKENS: Okay. I'm just asking
 7 you to -- to point me to the topic, because,
 8 you know, we -- I understand that another
 9 witness has already been designated.
 10 MR. ENNIS: Well, 58, for example.
 11 MS. REINCKENS: But we're not
 12 discussing the commercial market. You're
 13 specifically asking for the difference
 14 between the term "mid panel" and "half
 15 panel" as used by competitors.
 16 And the witness has, I believe,
 17 answered that she's not a technical expert
 18 and can't speak to that. So if you're
 19 asking in a commercial market sense, she can
 20 answer it.
 21 MR. ENNIS: That's exactly the sense
 22 I'm asking it.
 23 BY MR. ENNIS:
 24 Q. In a commercial market sense, what is
 25 Destination Maternity's understanding of the

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 difference between a mid panel and a half panel?
 3 A. I'm not comfortable answering on
 4 behalf of Destination Maternity, so I will answer
 5 on -- from a personal standpoint.
 6 A mid panel -- they're just -- it's a
 7 difference in terms of rise.
 8 Q. Rise of the panel?
 9 A. Correct. Height of the panel, length,
 10 whatever, yeah.
 11 Q. Which is taller, a mid panel or a half
 12 panel?
 13 A. A mid panel.
 14 Q. Do you recall any approximation of how
 15 much taller?
 16 A. No.
 17 Q. Are those all the panels types --
 18 strike the question.
 19 By Old Navy, you are aware of an under
 20 belly, a mid panel and a half panel.
 21 Are there any other panel types at Old
 22 Navy that you're aware of today?
 23 A. Not that I recall.
 24 Q. Okay. How about the Gap, what types
 25 of panels are offered by Gap, to the best of your

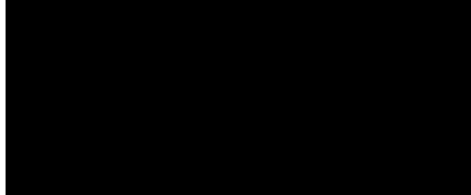
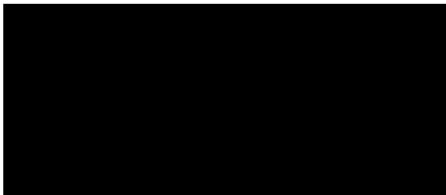
1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 knowledge?
 3 A. I don't recall.
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 20 For Target, what types of panels are
 21 you aware of?
 22 A. They have one that, as I stated
 23 earlier, looks from my eyes and what the customers
 24 have told me, very much like a Secret Fit. And I
 25 have seen some half bellies.

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 2 Q. Any others?
 3 A. Not that I recall.
 4 And, again, you know, it's -- there
 5 may be, depending on the season, you know, summer,
 6 there -- you know, in high summer, you have the
 7 shorts, and in the wintertime you'll have, you
 8 know, some specifically winter items that may or
 9 may not have a -- an iteration of a belly.
 10 So, again, I'm not comfortable saying
 11 I'm representing all of your bellies, but, again,
 12 for the most part, I see a -- a very large percent
 13 that look a lot like the Secret Fit, and then I
 14 see some that are half bellies.
 15 Q. Yeah, I'm -- I'm not expecting you --
 16 A. Yeah.
 17 Q. -- to have personal --
 18 A. Yeah.
 19 Q. -- perfect knowledge of the universe.
 20 I just --
 21 A. Yeah.
 22 Q. -- I'm trying to figure out your
 23 understanding. I appreciate it.
 24 And then, we -- and then -- let's see.
 25 H&M, what type of bellies are offered

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 by H&M, to the best of your knowledge, today?
 3 A. To the best of my knowledge, they --
 4 Q. Actually, strike the question. I'm
 5 sorry.
 6 To the best of your understanding
 7 today, what bellies have been offered by H&M?
 8 A. To the best of my knowledge today, it
 9 has been half bellies and under bellies.
 10 Q. Would you be surprised if H&M had a
 11 product that a Destination Maternity employee
 12 thought was a SFB, or Secret Fit Belly?
 13 MS. REINCKENS: Objection. Form.
 14 A. Yes.
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8 Q. Who would have the most knowledge at
9 DMC of the -- strike the question.

10 Who at DMC would have the best
11 knowledge of a Pea in the Pod's competitive
12 shopping?

13 A. The vice president of that brand.

14 Q. And who is that?

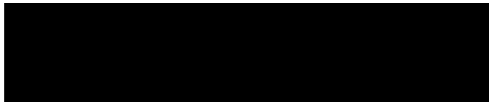
15 A. Jill Doster.

16 Q. And for Two Hearts Maternity at Sears
17 and Oh Baby Maternity at Kohls, who at DMC would
18 have the best knowledge of competitive shopping
19 done on behalf of those brands?

20 A. The vice president of that brand.

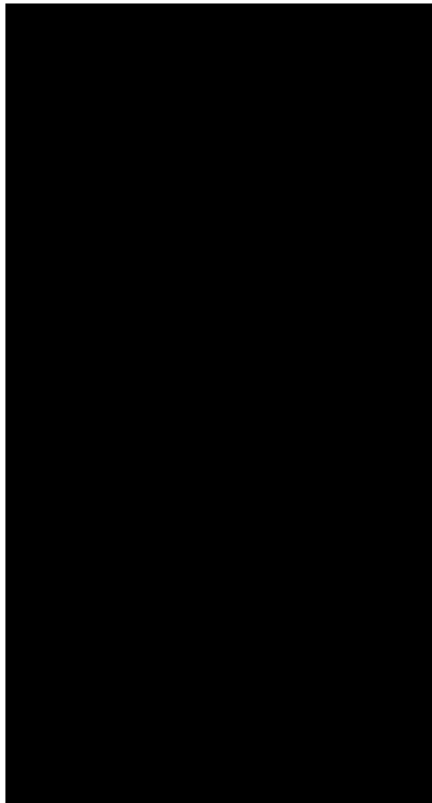
21 Q. And that person is?

22 A. Lisa Hendrickson.



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4 Q. Excellent. Thank you.

5 And you've mentioned those numbers
6 apply to fiscal 2013?

7 A. Yes.

8 Q. What is your understanding of the time
9 frame for fiscal 2013?

10 A. October of last year through end of
11 September this year.

12 Q. Okay. So fiscal '13 is over and we
13 are now in fiscal '14, correct?

14 A. Correct.

15 Q. All right. Do you have any
16 recollection regarding fiscal 2012 for these same
17 figures that we just discussed?

18 A. I -- yes.

19 Q. Okay. What extent --

20 A. To some extent.

21 Q. To the best of your knowledge, how --
22 strike the question.



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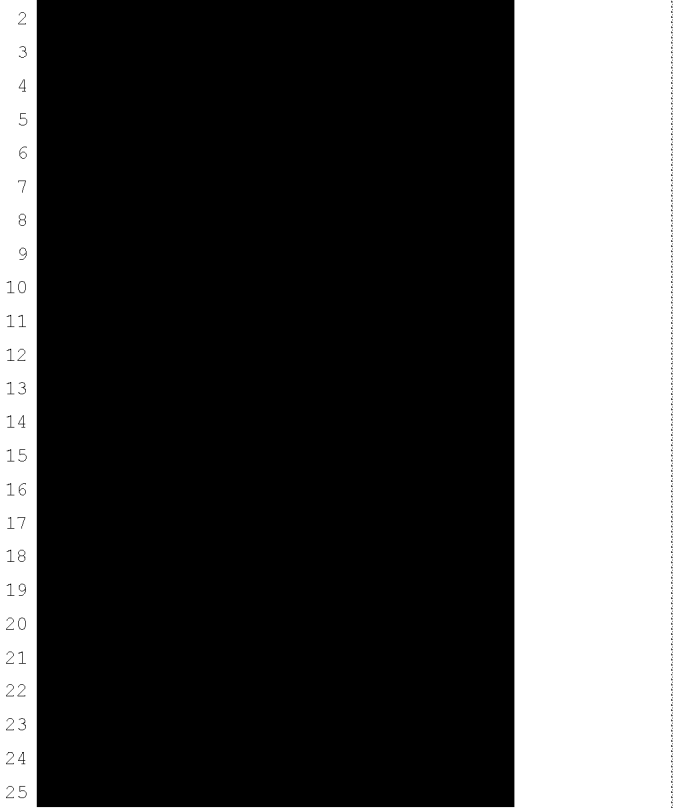
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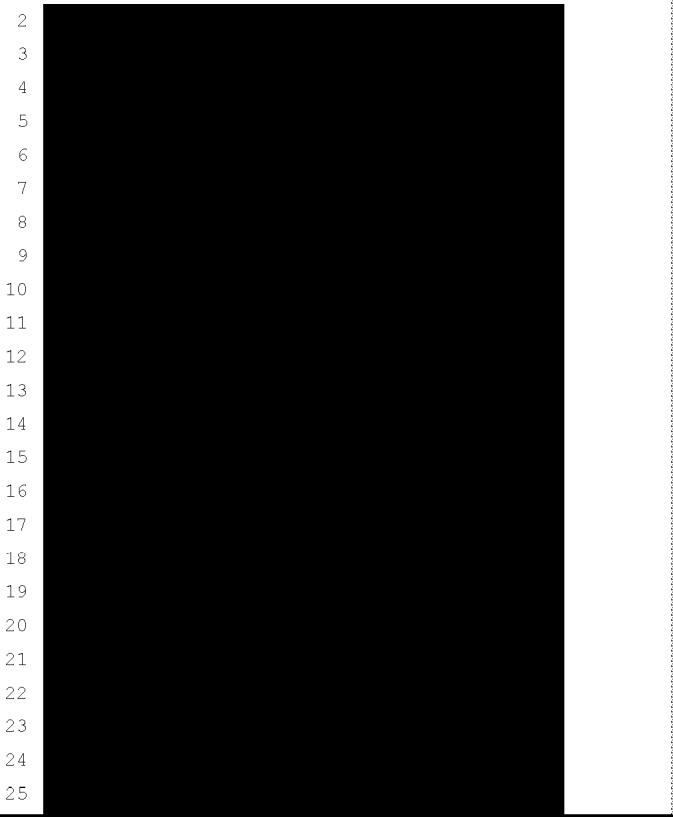
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21 (Exhibit 106, DMC company profile,

22 1/20/12, was marked for identification at

23 this time.)

24 BY MR. ENNIS:

25 Q. Ms. Piccone, have you seen Exhibit 106

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 before today?
 3 A. Yes.
 4 Q. Okay. When did you last see
 5 Exhibit 106?
 6 A. When I was at the company, you know,
 7 when this was published and I believe I was at the
 8 board of directors meeting that this was handed
 9 out in. If not, I certainly was at that
 10 pre-meeting where I saw this.
 11 Q. Okay. So you're somewhat familiar
 12 with this document compared to the -- the ones we
 13 looked at before that were pre --
 14 A. Yes. No, I haven't seen this in -- in
 15 quite some time, but yes, I -- I have seen this.
 16 Q. Okay. If we could turn to page 14?
 17 A. Yeah, I still just want to look at it
 18 very quickly.
 19 Q. Please do. Let me know when you're
 20 done.
 21 A. Okay.
 22 Q. All right. Ms. Piccone, if you could
 23 turn to page 7 of Exhibit 106, and let me know
 24 when you're there?
 25 A. I'm there.

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 2 Q. Okay. You mentioned before that
 3 Destination Maternity has a Beyond the Motherhood
 4 brand, Pea in the Pod brand, and just Destination
 5 Maternity stores as a whole. You mentioned
 6 licensed relationships and leased departments.
 7 Am I remembering that correctly?
 8 A. I don't recall that I did, but I --
 9 can you -- do you want to --
 10 Q. Okay. You'll see that on this page
 11 there are total stores and leased departments.
 12 A. Yep.
 13 Q. Do you see that?
 14 A. Yes.
 15 Q. When it says, "leased department,"
 16 what does that mean?
 17 A. A leased department is where we are in
 18 someone else's brick-and-mortar selling space, so
 19 we are not paying rent for that space, and what we
 20 do is is that particular store that we're in -- or
 21 the company that we're in gets a percentage of the
 22 sales profit.
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

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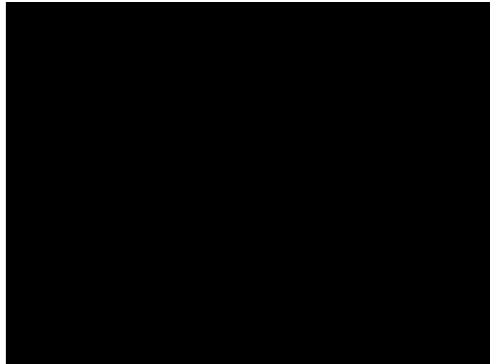
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13 Q. Oh, it's fine. You know, I'm just
14 looking for the best of your knowledge. I'm not
15 expecting you --

16 A. Yeah.

17 Q. -- to be perfect or -- or anything
18 like that. I appreciate it.

19 All right. And then does -- I notice
20 there's another section here called,
21 "International Franchise Locations."

22 Do you see that?

23 A. Yes.

24 Q. Does Destination Maternity run stores
25 outside of the United States?

2 A. Yes.

3 Q. Would those be through franchises or
4 run by Motherhood -- strike the question.

5 Are all of the foreign Destination
6 Maternity stores franchised?

7 A. No.

8 Q. In what companies does Destination
9 Maternity -- strike the question.

10 In what countries does Destination
11 Maternity directly oversee stores in addition to
12 the United States?

13 A. Canada.

14 MS. REINCKENS: Objection to form.

15 Q. Any countries beyond Canada?

16 A. Not to my knowledge, no.

17 Q. If we could turn to page 14 of
18 Exhibit -- I think it's -- yes, 106 -- oh,
19 actually, let's turn to page 13.

20 Are you there?

21 A. Yes.

22 Q. Okay. And you'll see that there's a
23 page here that's entitled "Exclusive leased and
24 licensed relationships."

25 Do you see that?

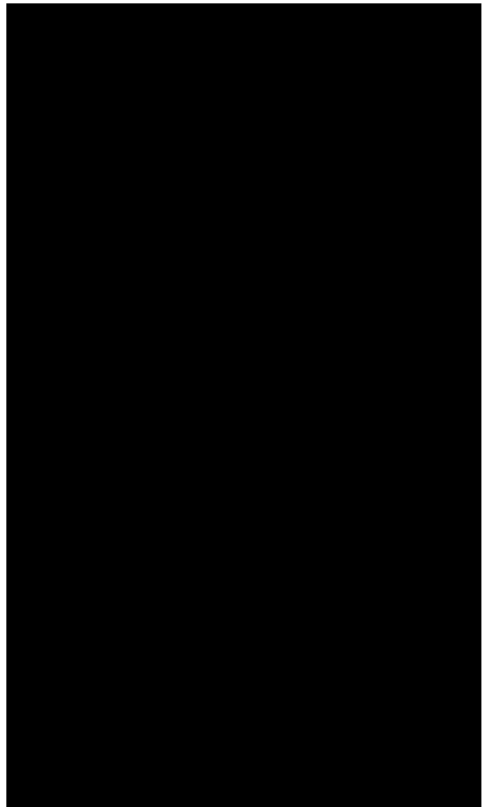
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 2 A. Yes.
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1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 the video record. That concludes Tape
 3 No. 2. The time is 12:40.
 4 (Luncheon recess.)
 5 AFTERNOON SESSION
 6 (Exhibit 107, DMC company profile,
 7 1/25/13, was marked for identification at
 8 this time.)
 9 VIDEOGRAPHER: We are now back on the
 10 video record. This commences Tape No. 3,
 11 October 18th, 2013. The time is 1330.
 12 Please continue.
 13 BY MR. ENNIS:
 14 Q. Welcome back, Ms. Piccone.
 15 A. Thank you.
 16 Q. Do you still have Exhibit 106 in front
 17 of you?
 18 A. Yes.
 19 Q. If you could get that for me and turn
 20 to page 14?
 21 A. Yes.
 22 Q. Are you there?
 23 A. Yes.
 24 Q. Great. You mentioned earlier that you
 25 started monitoring H&M sometime in 2012.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 Am I remembering that correctly?
 3 A. Yes.
 4 Q. Okay. When in 2012 did you start,
 5 approximately?
 6 A. I couldn't say. I don't remember.
 7 Q. Okay. You have a pen with you up
 8 there I see. To the best of your knowledge, can
 9 you draw where H&M would appear on this chart
 10 based on your understanding and the work you've
 11 done monitoring H&M as of when you started
 12 monitoring them?
 13 A. Sure.
 14 They'd be in this -- you mean, you
 15 literally want me to draw it?
 16 Q. Please.
 17 Then, if you could, put your name --
 18 sorry, date it and then sign it for me, please.
 19 A. What's the date today?
 20 Q. The 18th. I didn't fix my watch.
 21 Okay. So I see that you've put H&M
 22 below Walmart in the bottom left corner of the
 23 chart on page 14 of Exhibit 106. Is that correct?
 24 A. Yes.
 25 Q. Okay. And then all H&M products from

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 the time you started monitoring in -- strike the
 3 question.
 4 At the time you started monitoring H&M
 5 products, all H&M maternity products would be
 6 encompassed in that bubble that you drew on
 7 page 14 of Exhibit 106, correct?
 8 A. Yes.
 9 Q. Okay. The court reporter has marked
 10 Exhibit 107.
 11 Do you see that?
 12 A. Yes.
 13 Q. Have you seen Exhibit 107 before?
 14 A. Yes.
 15 Q. Okay. When was the last time that you
 16 saw Exhibit 107?
 17 A. At the annual stockholder's meeting on
 18 January 25th, 2013.
 19 Q. So you attended the meeting?
 20 A. Yes.
 21 Q. Okay. If you could take a moment and
 22 review the document, and please let me know when
 23 you've finished.
 24 Is that okay?
 25 A. Yes.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 Q. Thank you.
 3 A. Okay.
 4 Q. All right.
 5 Okay. If you could turn to page 13 of
 6 Exhibit 107?
 7 Let me know when you're there?
 8 A. I'm there.
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 A. Correct.
 14 Q. And it looks like we have 12 stores,
 15 Buy Buy Baby, correct?
 16 A. Correct.
 17 Q. And I guess your recollection was
 18 correct.
 19 Do you see the asterisk on the bottom
 20 left corner?
 21 MS. REINCKENS: Objection to form.
 22 Q. Strike the question.
 23 Do you see the asterisk on the bottom
 24 left corner of page 13 of Exhibit 107?
 25 A. Yes.

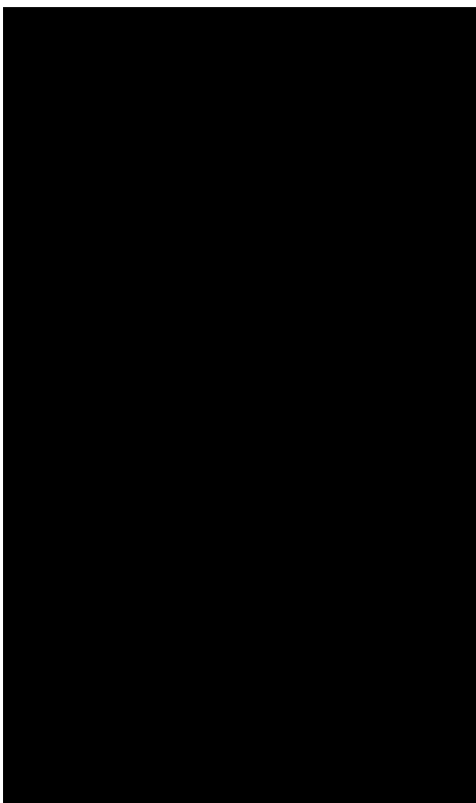
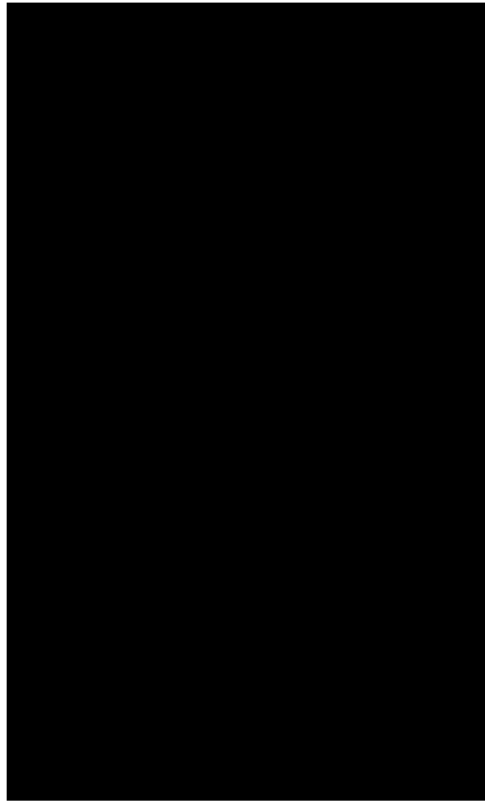
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 2 Q. Okay. Do you see the -- the end of
 3 that text following the asterisk is "Exited Babies
 4 'R Us in October 2012."
 5 Do you see that?
 6 A. Yes.
 7 Q. Do you have any reason to believe
 8 that's incorrect?
 9 A. No.
 10 Q. Okay. And you also see that before
 11 that, there's the text:
 12 "Began a broader relationship with Buy
 13 Buy Baby, including leased departments, in
 14 October, November 2012."
 15 Do you see that?
 16 A. Yes.
 17 Q. Do you have any reason to believe
 18 that's incorrect?
 19 A. No.
 20 [REDACTED]
 21 [REDACTED]
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16 Q. Okay. So when you say, "very beginning of her trimester," you're -- you're referring to the first trimester?

19 A. Correct.

20 Q. Okay.

21 All right. If we could turn to page 14?

23 I -- you will see the price fashion chart that we've been discussing at length today.

25 A. Yes.

2 Q. You'll notice that we now do not have JCPenney and Walmart appearing on the chart --

4 A. Correct.

5 Q. -- is that correct?

6 If you don't mind, if you could draw your understanding of where H&M is on this chart as of -- would be on this chart as of January 2013 --

10 A. It would be the same.

11 Q. -- Appreciate it.

12 And then sign and date?

13 A. Sure.

14 Q. Thank you.

15 A. What date did we say it was?

16 Q. The 18th?

17 A. Eighteenth. Okay.

18 Q. And I see that you've put it in roughly the same place, on the bottom of the, I guess, column headed by Sears and Kohls?

21 A. Yes.

22 Q. Okay. And then again as -- as previously, Destination Maternity brands are in blue on page 14 of Exhibit 107 in the chart?

25 A. Yes.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 MS. REINCKENS: Objection to form.
 3 Q. When we look at the Pea in the Pod
 4 bubble as shown on page 14 of Exhibit 107, all Pea
 5 in the Pod products would be included within that
 6 bubble, correct?
 7 A. Yes.
 8 Q. The same is true for the independents'
 9 bubble on page 14 of Exhibit 107?
 10 A. Yes.
 11 Q. The same is true for the Gap bubble?
 12 A. Yes.
 13 Q. The Motherhood Maternity bubble?
 14 A. Yes.
 15 Q. Sears and the Kohls bubble?
 16 A. Yes.
 17 Q. The Target bubble?
 18 A. Yes.
 19 Q. The Old Navy bubble?
 20 A. Yes.
 21 Q. And the H&M bubble that you drew?
 22 A. Yes.
 23 Q. Okay. We had talked a little bit
 24 earlier about independents, and I believe that
 25 independent that you had mentioned was Pickles.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 Are you aware of any other
 3 independents as of the time this chart was
 4 created, January 2013?
 5 A. I don't recall at this time, no.
 6 Q. If you had to put Time Maternity as
 7 sold by Babies 'R Us in that chart, could you
 8 please do that, if you're able?
 9 A. I'm drawing a blank at what their
 10 prices are.
 11 I don't -- I don't feel comfortable
 12 doing that. I'd like to go back to -- to Time. I
 13 have not been in one in a year, and I can't
 14 accurately speak to what their prices are, the
 15 delta and price, between their tickets and mine.
 16 Q. That's understandable.
 17 If you don't mind, could you write
 18 "unable to place Time Maternity as of -- on this
 19 chart as of October 18th, 2013," and then sign it?
 20 MS. REINCKENS: I'm going to object.
 21 I mean, what's the point of -- she
 22 just mentioned that -- that on -- on the
 23 record. Why do you need it written on a
 24 document?
 25 Q. Would you mind doing that, please.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 A. Well, please restate that.
 3 Q. Okay.
 4 A. What would you like me to do?
 5 Q. Could you write, "I do not have
 6 sufficient information to place Time Maternity on
 7 this chart as of October 18th, 2013," and then
 8 sign it?
 9 MS. REINCKENS: I'm going to object.
 10 That's not what the witness said. So,
 11 I mean, if you're asking the witness to type
 12 her -- or, I'm sorry, to write what she
 13 stated, she doesn't have the record in front
 14 of her, so -- so what's -- what's the
 15 purpose of this exercise?
 16 MR. ENNIS: I don't have to answer it.
 17 Q. You can write it --
 18 A. I'm not comfortable doing that.
 19 Q. Okay.
 20 Okay. Who's the most knowledgeable
 21 person about where Time Maternity would appear on
 22 this chart as of January 2013?
 23 A. I'm not sure.
 24 Q. Okay.
 25 Who's the most knowledgeable person at

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 DMC about where Time Maternity would appear on the
 3 chart on page 14 of Exhibit 107?
 4 MS. REINCKENS: I'm going to object.
 5 Time Maternity is not under the
 6 purview of Destination Maternity, so how can
 7 someone at Destination Maternity be able to
 8 speak about products that are sold at Time
 9 other than in the general sense at Macy's.
 10 BY MR. ENNIS:
 11 Q. Who is the most knowledgeable person
 12 at DMC about where Time Maternity would appear on
 13 the chart on page 14 of Exhibit 107?
 14 I understand that you do not have
 15 perfect knowledge of Time Maternity because they
 16 are not Destination Maternity, but I am asking who
 17 at Destination Maternity will be most
 18 knowledgeable about where Time might appear on
 19 this chart?
 20 A. I have no knowledge of knowing who in
 21 my company has ever set foot in Time Maternity or
 22 if they've looked at their tickets.
 23 MR. ENNIS: The court reporter could
 24 mark Exhibit 108.
 25 (Exhibit 108, denim dictionary, was

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 marked for identification at this time.)
 3 BY MR. ENNIS:
 4 Q. Ms. Piccone, if you could take a
 5 moment and review Exhibit 108, and let me know
 6 when you're ready.
 7 A. Okay.
 8 Q. Okay. Ms. Piccone, have you ever seen
 9 Exhibit 108 before today?
 10 A. No.
 11 Q. Okay. And then I note it was before
 12 your time at Motherhood Maternity as it's dated
 13 8/27/08.
 14 Do you see that?
 15 A. Correct.
 16 Q. Do you have any reason to doubt the
 17 accuracy of that date?
 18 A. No.
 19 Q. All right. If you could turn to
 20 page -- the paper ending in -- or strike the
 21 question.
 22 Are you familiar with what's called a
 23 "Bates number"?
 24 A. A Bates number?
 25 Q. Correct.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 A. No.
 3 Q. Okay. Do you see them -- if you look
 4 in the bottom right-hand corner of the first page
 5 of Exhibit 108, you'll see a number that begins
 6 with DMC?
 7 Okay. I'll --
 8 A. Yes.
 9 Q. -- I'll represent to you or just for
 10 our discussions today, we'll -- I'll refer to that
 11 as a Bates number, and sometimes I'll -- that will
 12 help us figure out what page we're on in a
 13 document.
 14 A. Okay.
 15 Q. So if you could turn to the number
 16 ending in 494?
 17 A. Okay.
 18 Q. Okay. And you'll see that there are
 19 five shapes on the left-hand side of the page,
 20 pink being the top and a blue being the bottom.
 21 Do you see those?
 22 A. Yes.
 23 Q. And it says at the top of the page,
 24 "Find your perfect leg shape."
 25 Do you see that?

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 A. Yes.
 3 Q. So is it fair to say that, based on
 4 this page, women have many different body types,
 5 leg shapes, that may cause them to buy different
 6 jeans than other women with different body types
 7 or different leg shapes?
 8 MS. REINCKENS: Objection to form.
 9 A. Yes.
 10 Q. If you could turn to the page ending
 11 in 495?
 12 A. Okay.
 13 Q. Okay. Do you see there are four
 14 different bellies styles shown on the page ending
 15 in 495?
 16 A. Yes.
 17 Q. Okay. We've already discussed the
 18 Secret Fit Belly.
 19 Do you see that?
 20 A. Yep.
 21 Q. Okay. And then do you see to the
 22 right of the Secret Fit Belly the No Belly?
 23 A. Yes.
 24 [REDACTED]
 25 [REDACTED]

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 2 [REDACTED]
 3 Who at Destination Maternity would
 4 best be able to discuss what Destination Maternity
 5 products had an under belly prior to your time at
 6 Destination Maternity?
 7 A. Restate the question.
 8 Q. You mentioned that when you came to
 9 Destination Maternity, the under-belly style was
 10 remnants from years prior.
 11 Am I remembering that correctly?
 12 A. Yes.
 13 Q. Do you recall when those styles were
 14 sold before they were being clearance store
 15 remnants?
 16 MS. REINCKENS: Objection to form.
 17 A. Are you asking me what styles and SKUs
 18 were offered in the under belly?
 19 Q. Strike the question. I'm sorry.
 20 You see there's an under-belly style
 21 of jean. Is that an accurate way to describe the
 22 figure in the lower left-hand corner of page
 23 ending in 495?
 24 A. Yes.
 25 [REDACTED]


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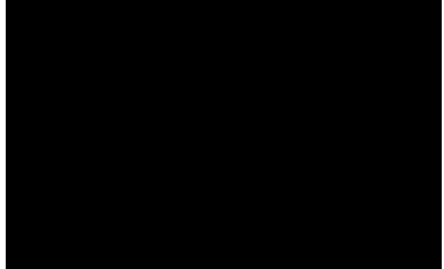

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 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 Q. All right. And then we see to the
 18 bottom right there is a mid-belly style of pant.
 19 Do you see that?
 20 A. Yes.
 21 Q. We had mentioned earlier that Old Navy
 22 carries a mid-belly style of pant.
 23 Am I remembering that correctly?
 24 A. Yes.
 25 Q. Is the mid-belly style shown on 495

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 consistent with your understanding of Old Navy's
 3 mid-belly style?
 4 A. Again, I'm -- I'm speaking from what
 5 my eyes see. So what eyes are seeing here and
 6 what my eyes see when I walk into Old Navy, I see
 7 both. And what -- what I see from -- what looks
 8 like this under belly and a mid belly.
 9 Q. So --
 10 A. But I just don't see a Secret Fit
 11 Belly when I walk in there.
 12 Q. Right. So the mid-belly image shown
 13 on 495 is consistent with your understanding as a
 14 marketing person and being the VP of Motherhood as
 15 what a mid belly is?
 16 MS. REINCKENS: Objection to form.
 17 A. Yes.
 18 Q. The same would go for an under belly?
 19 A. Yes.
 20 Q. Okay. And the Secret Fit Belly,
 21 obviously?
 22 A. Yes.
 23 Q. Okay. If you could turn to the page
 24 ending in 496?
 25 You see there are two different style

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 of pants shown on the page ending in 496, half
 3 belly and self belly? Is that --
 4 A. Yes.
 5 Q. -- is that correct?
 6 We had mentioned earlier that Old Navy
 7 has a half-belly style pant.
 8 Am I remembering that correctly?
 9 A. What I said was in the two years that
 10 I've shopped them and been in there, I have seen
 11 half-belly pants, yes.
 12 Q. And this image is consistent with the
 13 half-belly pants that you saw in your time when
 14 you shopped at Old Navy?
 15 MS. REINCKENS: Objection to form.
 16 A. I can't say for sure this picture --
 17 you know, in this picture, the back side of the
 18 pant looks like it's a real jean. It doesn't look
 19 like it has a -- a panel.
 20 And at Old Navy, I only saw it from
 21 the front, so I can't -- you know, if you were
 22 just showing me the front panel, I would say yes.
 23 But with this back panel, I'd have to say I'm not
 24 sure.
 25 Q. Okay. Does a half belly go just

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 around the front of the wearer or all the way
 3 around the wearer?
 4 MS. REINCKENS: Objection to form.
 5 
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 9
 10 So I -- I don't know the nuances of
 11 what a half belly is. I -- I just wouldn't waste
 12 my time getting up to speed on the 'cause it
 13 doesn't affect my business at this current time.
 14 Q. I'm just trying to understand your
 15 view of Old Navy's offerings, and I was just
 16 asking if this half-belly style pictured on 496
 17 is, you know, the same as Old Navy's, different,
 18 or you -- you can't tell me for sure?
 19 MS. REINCKENS: Objection.
 20 The witness has answered the question.
 21 A. What I'm saying is when I go to Old
 22 Navy, I don't see a Secret Fit Belly. So I really
 23 don't care if it's a half belly, a mid belly. I
 24 
 25

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
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1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 MS. REINCKENS: Objection to form.
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 11 A. Can you give me an actual number, like
 12 which of the questions is this in regards to?
 13 Q. If -- if -- if you don't think it's a
 14 30(b)(6) topic, then you -- I'd be asking for your
 15 personal knowledge.
 16 A. So are you asking for my personal
 17 knowledge?
 18 Q. Sure.
 19 A. Okay. Restate the question?
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 25 MS. REINCKENS: Objection.

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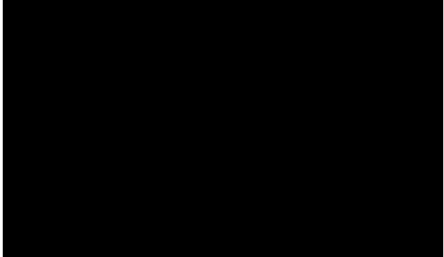
1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 MS. REINCKENS: Objection to form.
 3
 4 Q. So, for example, if -- strike the
 5 question.
 6 So moving on to page 498, let me know
 7 when you're there.
 8 All right. You see that --
 9 A. I'm there.
 10 Q. -- of the top three styles on this
 11 page, Secret Fit Bellies -- actually, strike the
 12 question.
 13 You'll see there are three style boxes
 14 in -- on the right-hand side of the page. Is that
 15 accurate?
 16 A. Yes.
 17 Q. Okay. The top two, are those the
 18 Secret Fit Belly styles?
 19 A. That's what they say in there, yes.
 20 Q. And then the lower style is a navy mid
 21 belly, correct?
 22 A. That's what it says, yes.
 23 Q. Okay. And despite the fact that the
 24 upper two styles -- strike the question.
 25 The two Secret Fit Belly styles are

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 not the same denim fabric or jean. Is that
 3 accurate?
 4 MS. REINCKENS: Objection to form.
 5 A. I don't know that. Actually, they
 6 could very well be the same denim fabric, but I
 7 don't know.
 8 Q. But they are cut differently. Is that
 9 correct -- strike the question.
 10 They are fitted differently. Is that
 11 correct?
 12 MS. REINCKENS: Objection to form.
 13 A. Hold on, let me look at this.
 14 Not having these in front of me, the
 15 only thing I could tell you that's different is
 16 the belly choices. I don't know about the fabric.
 17 It could be the same fabric. It says it's the
 18 same leg shape.
 19 Q. So if you look, one is a medium wash
 20 and one is a dark wash?
 21 A. It's still the same fabric, you just
 22 have a different wash technique.
 23 Q. Another one has boot cut and boot leg
 24 shape, correct?
 25 A. Yes.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 Q. One is fitted for petite and one is
 3 not.
 4 A. Correct.
 5 Q. Is that accurate?
 6 A. So that would be a different fit, yep.
 7 Q. And the inseam is 3 inches shorter on
 8 the petite fit?
 9 A. Yes.
 10 Q. Okay. So a woman may buy style
 11 95521-40 over style 95520-42 if she, for example,
 12 has shorter legs?
 13 A. Yes.
 14 Q. If we could move on to the page ending
 15 in 499.
 16 Are you there?
 17 A. Yes.
 18 Q. And we will see to these are called
 19 "Mid-stretch styles."
 20 Do you see that?
 21 A. Yes.
 22 Q. To clarify, the lower three styles
 23 shown on the page are mid-stretch styles. Is that
 24 accurate?
 25 A. Yes.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 Q. And --
 3 A. And I am not sure what "mid-stretch
 4 styles" means.
 5 Again, you know, this is a document
 6 that, since I've joined the company, we have
 7 new -- we look at things a little bit differently.
 8 So I -- I'm unclear what mid-stretch styles --
 9 that doesn't tell me anything.
 10 Q. Thank you.
 11 Yep. And then each one of these has a
 12 fit and flair leg shape.
 13 Do you see that?
 14 A. Yes.
 15 Q. Versus the boot cut leg shape of the
 16 previous three styles that we looked at before?
 17 A. Yep.
 18 Q. So if a woman prefers the fit and
 19 flair leg shape either for the fit or the look of
 20 the garment, she would buy, for example, these
 21 three mid-stretch styles over the previous three
 22 styles that we looked at?
 23 MS. REINCKENS: Objection to form.
 24 A. Okay.
 25 Q. Do you agree or disagree that a woman

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 that has a fit and flare leg shape or likes the
 3 fit and flare style may buy it over the boot cut
 4 leg shape style?
 5 A. Yes.
 6 Q. And you'll see that the top two of the
 7 mid-stretch styles on page 4998 -- sorry, strike
 8 the question.
 9 You'll see the top two styles on the
 10 page with the number ending in 499 are Secret
 11 Bellies.
 12 Do you see that?
 13 A. The two in the middle.
 14 Q. Yes.
 15 A. Yes.
 16 Q. Does Secret Belly refer to Secret Fit
 17 Belly?
 18 A. I didn't create this document, so I
 19 don't know. I -- I would assume so, but I don't
 20 know.
 21 Q. Then we could go to...
 22 MR. ENNIS: Exhibit 109.
 23 (Exhibit 109, Motherhood Maternity
 24 weekly ABT form, was marked for
 25 identification at this time.)

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 BY MR. ENNIS:
 3 Q. Ms. Piccone, if you could take a
 4 moment and review Exhibit 109.
 5 A. Okay.
 6 There's no date on this. Can you tell
 7 me the date?
 8 Q. I actually don't know. So I guess we
 9 will have to proceed as if we do not know the date
 10 of that -- of this document.
 11 Is that fair to say?
 12 A. Okay. That's going to make it
 13 complicated to answer questions.
 14 Q. I -- I understand. I understand.
 15 I'm only going to ask some very
 16 high-level questions about this document.
 17 A. Okay.
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1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 Q. Okay. And, obviously, we don't know
 7 the specific time when this document was created,
 8 correct?
 9 A. Yes.
 10 Q. Okay. But you have no reason to doubt
 11 the accuracy of any of the feedback, fit concerns,
 12 visual feedback, topic feedback, etc., that are
 13 contained in the document, correct?
 14 MS. REINCKENS: Objection to form.
 15 A. I have no reason to doubt that whoever
 16 was typing down the comments typed it accurately,
 17 but without knowing the date, I can't speak to the
 18 context of this.
 19 Q. Correct. I was just asking --
 20 A. Yeah.
 21 Q. -- if you had any reason to doubt
 22 whether the comments included were accurately
 23 recorded. Is that correct?
 24 A. I would --
 25 Q. Okay.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 A. -- yeah, I would assume so.
 3 Q. Okay.
 4 (Exhibit 110, comments, produced in
 5 native format, was marked for identification
 6 at this time.)
 7 BY MR. ENNIS:
 8 Q. Ms. Piccone, I can represent to you
 9 that DMC produced Exhibit 110 in native form,
 10 which is an Excel spreadsheet --
 11 A. Okay.
 12 Q. -- which is why you'll see the
 13 produced in native form cover. The remainder of
 14 the document is the tabs of that spreadsheet tab
 15 by tab.
 16 Please take a moment to review, and
 17 let me know when you're ready to discuss.
 18 A. Okay.
 19 MR. ENNIS: Excuse me.
 20 Q. Ms. Piccone, have you ever been seen
 21 this document before?
 22 A. I have not seen -- I've seen
 23 iterations of this. [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 Q. Correct. Based on the dates on the
 3 sheets, if we look all the way to the end of the
 4 document, September 2nd, 2008. Is that correct?
 5 A. September 2nd, 2008?
 6 Which page is that?
 7 Q. The fourth-to-last page.
 8 A. My fourth-to-last page does not say
 9 that.
 10 Q. Okay. Well, does your --
 11 A. Okay. My fifth to last does.
 12 Q. Okay. I apologize.
 13 A. The one that says "August" at the top?
 14 Q. Yes.
 15 A. Okay.
 16 Q. Okay. So you also see, it says,
 17 9/2/2008 --
 18 A. Yes.
 19 Q. -- in the top right-hand corner?
 20 And then it continues chronologically
 21 becoming more recent until we get to the second
 22 page of the document, which has the June
 23 competitive recap, and it has 7/6/2010 in the top
 24 right. Is that true?
 25 A. 7/6/2010?

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 Yes.
 3 This is not in chronological order
 4 though because your last two pages are -- say 2013
 5 on them. 10/10/2013.
 6 Q. Correct. However, you'll note the
 7 month is for July?
 8 A. Okay.
 9 Q. And based on the -- that page location
 10 in the document, do you have any reason to believe
 11 that 10/10/2013 is correct or incorrect?
 12 MS. REINCKENS: Objection to form.
 13 A. I have not seen this document before,
 14 so this particular one, I -- I -- I don't know.
 15 Q. All right. And then as DMC's
 16 corporate representative, are you able to speak to
 17 this document that was created prior to your
 18 joining Destination Maternity in November 2011?
 19 MS. REINCKENS: Objection to form.
 20 A. Can you restate what you're asking me?
 21 Q. Do you feel comfortable testifying to
 22 what's -- what's set forth in this document as
 23 DMC's corporate representative even though it was
 24 created prior to your joining the company in 2011?
 25 A. Yes.

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45 (Pages 174 to 177)

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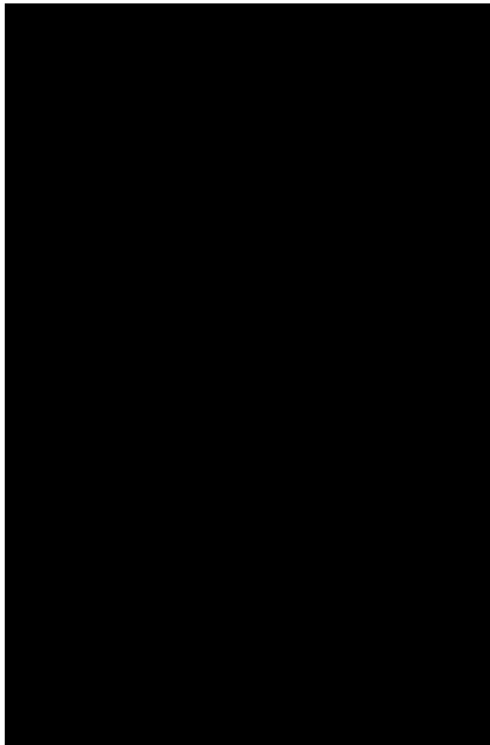
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46 (Pages 178 to 181)

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24 MS. REINCKENS: Is this a good time to
25 take a break?

2 MR. ENNIS: Sure.

3 VIDEOGRAPHER: One moment.

4 We are now going off the video record.

5 That concludes Tape No. 3. The time is
6 1435.

7 (Recess.)

8 (Exhibit 111, comments, produced in
9 native format, was marked for identification
10 at this time.)

11 VIDEOGRAPHER: We are now back on the
12 video record. This commences Tape No. 4,
13 October 18th, 2013. The time, 1449.

14 Please continue.

15 BY MR. ENNIS:

16 Q. All right, Ms. Piccone, welcome back.

17 You have Exhibit 111 in front of you,
18 right?

19 A. Yes.

20 Q. Okay. If you can take a moment to
21 review it.

22 Again, this is produced to Target
23 natively as an Excel, and we have printed out each
24 spreadsheet in that Excel file as a separate page
25 following the produced-in-native-format page.

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1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE

2 A. Okay.

3 There's no date on these either.

4 Q. Correct.

5 A. Do you know what date these were?

6 Q. I don't. And I presume you don't
7 either. Is that correct?

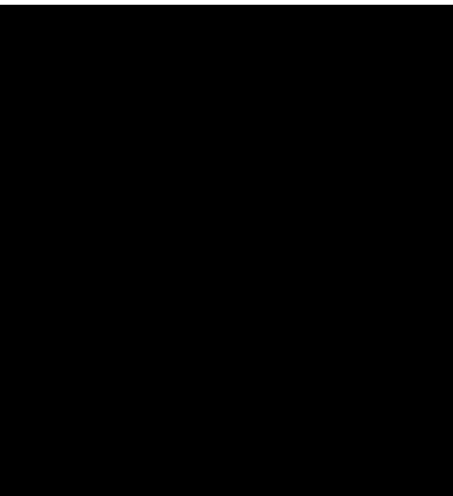
8 A. No.

9 Q. Okay.

10 A. I'm ready.

11 Q. Okay. So, Ms. Piccone, have you ever
12 seen Exhibit 111 before today?

13 A. I -- I've seen iterations of this type
14 of -- of this, you know, sort of thing, but I
15 can't say that this is the actual thing I've seen.



17 Q. Okay. All right. But, again, you are
18 familiar with this type of document, and you can
19 provide some testimony about its contents. Is
20 that fair?

21 A. Yes.

22 Q. Okay.



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 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

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 2 [REDACTED]
 3 [REDACTED]
 4 Q. And the reason for that compared to
 5 Old Navy and Target?
 6 A. As I had mentioned before, they don't
 7 offer an entire lifestyle the way Target does, so
 8 I don't consider them as much of a competition.
 9 And going back to this whole competitors, your
 10 whole price fashion analysis, they're not in my
 11 quadrant in any way, shape, or form.
 12 Q. Understood.
 13 Okay. If we can turn to the
 14 second-to-last page of Exhibit 111, which is Gap.
 15 Are you there?
 16 A. Yep.
 17 Q. Do you see there is a -- there is a
 18 WTW pant and WTW skirt in the category field?
 19 A. Yes.
 20 Q. Does that change your testimony
 21 earlier about Gap not having wear to work
 22 offerings?
 23 A. No.
 24 Q. Turn to the H&M tab -- strike the
 25 question.

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 2 Go to the Old Navy page, which I
 3 believe is the third page of the document.
 4 Are you there?
 5 A. Yep.
 6 Q. And you see in the category field
 7 there are wear to work pants and wear to work
 8 skirts?
 9 A. Yes.
 10 Q. Does that change your testimony --
 11 A. No.
 12 Q. -- about whether Old Navy has or
 13 doesn't have wear to work offerings in its
 14 maternity section?
 15 A. Absolutely not.
 16 Q. All right. If we could look at
 17 Target, which is the second page.
 18 A. Okay.
 19 Q. Okay. If you look at the WTW pant for
 20 Target, do you see that general category area?
 21 A. Yes.
 22 Q. Do you see the term "full panel"?
 23 A. Yes.
 24 Q. Do you, as Destination Maternity's
 25 corporate witness on marketing topics, have any

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 2 understanding of what "full panel" means?
 3 A. You know, again, this was done by
 4 someone for a meeting, so it's really what they
 5 think -- you know, what they thought it meant at
 6 the time for them to have a conversation of what
 7 they saw and, you know, what their recommendations
 8 were.
 9 We -- we don't have a formalized, you
 10 know, in -- from -- in -- in terms of the verbiage
 11 or nomenclature. We don't -- you know, we don't
 12 tell our merchants, use this word to mean this,
 13 use this word to mean this. Each of them use as
 14 that they see fit in order to have the proper
 15 tools to have the discussion.
 16 Q. But you'll notice, if you look at the
 17 Target page, do you see anywhere on this
 18 particular Target page the term "SFB," as in
 19 Secret Fit Belly?
 20 Let me know if you do.
 21 A. No, I don't.
 22 Q. But that term --
 23 A. Well, actually, I do.
 24 Q. Okay. Where is that term?
 25 A. I see it on the very last line --

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 2 Q. Yep.
 3 A. -- "SFB/FL, French terry pant."
 4 Q. Yep.
 5 Outside of that, are there any
 6 instances on the Target sheets of Exhibit 111 that
 7 have the term "SFB"?
 8 A. That doesn't -- no, but that doesn't
 9 mean anything. Again, this is all information
 10 that someone entered to have a verbal
 11 conversation. So I don't know, you know, what
 12 they used to -- you know, it -- it's keys to have
 13 that discussion.
 14 Q. But at the same point you acknowledge
 15 that the Secret Fit Belly term was used for other
 16 stores in the wear to work field, and for Target,
 17 it was not in this particular person's analysis as
 18 shown in Exhibit 111?
 19 A. I acknowledge that each store is done
 20 by a different merchant and no two merchants use
 21 the same terminology when describing a store.
 22 Q. And that is true within the Motherhood
 23 Maternity division at Motherhood?
 24 A. Correct.
 25 Q. Do you know if that's true within the

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 2 Pea in the Pod division?
 3 A. No, I don't know.
 4 Q. Do you know if that's true within the
 5 Two Heart Maternity division and the Oh Baby
 6 division?
 7 A. I don't know.
 8 Q. Do you have any explanation for the
 9 difference between -- strike the question.
 10 Do you have any understanding as you
 11 sit here today of the difference between a full
 12 panel and a Secret Fit Belly panel in your
 13 capacity as VP of Motherhood?
 14 A. If you're asking me specific to this
 15 Target page, I -- I don't know. I don't know --
 16 know if the merchant just used two different words
 17 to describe the same thing. Again, it was a
 18 verbal conversation. This is -- you know.
 19 For me, if I said, "full panel," it
 20 would mean the same. It'd be interchangeable with
 21 Secret Fit Belly.
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

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2 [REDACTED]
3 [REDACTED]
4 (Exhibit 112, comments, produced in
5 native format, was marked for identification
6 at this time.)

2 that this document was created on or around
3 October 10th, 2013 or -- or not?

4 A. I don't know.

7 BY MR. ENNIS:

5 Q. Okay. Well, let's stay on the page
6 that is dated 10/10/2013.

8 Q. Ms. Piccone, Exhibit 112 is a -- was
9 produced to Target in native format, as you can
10 see from the first page. Again, each sheet within
11 this entire Excel file is its own page.

7 Are we -- are you still there?

8 A. Yes.

12 If you can take a moment to review it,
13 and then let me know when you are ready.

14 A. I'm ready.

15 Q. Okay. This document does not appear
16 to have a date either, does it?

17 A. Actually, it does.

18 Q. Oh, where is it?

19 A. 10/10/2013.

20 Q. Do you believe that date to be
21 accurate even though the competitive monthly recap
22 gap is February?

23 A. I'm not sure. I was trying to figure
24 that out. I don't know.

25 Q. Okay. So your best presumption is

24 Q. If you could turn to the next page.
25 Let me know when you're there.

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2 A. Yep.

22 Q. If you could turn to page 2, which is
23 Target.

24 A. Okay.

25 Q. And you'll see there is -- there are

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 2 three shaded areas again.
 3 Do you see those three -- one --
 4 strike the question.
 5 Do you see the three shaded areas?
 6 A. Yes.
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
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 19 [REDACTED]
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 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 What was that word you used? I'm
 19 going to learn -- learn a new word today. It
 20 started with a "D."
 21 Q. I can't tell you.
 22 A. I don't know.
 23 Q. I'll have to -- we'll have to talk
 24 about it during a break.
 25 A. If it comes up again, I'll have to ask

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 the definition.
 3 Q. All right. We'll figure it out.
 4 You see the page after Target is plus?
 5 A. Yes.
 6 Q. Do you know why plus would be
 7 monitored by Destination Maternity?
 8 A. We have a plus-size business.
 9 Q. In addition to a maternity business?
 10 A. Well, it is a maternity business. It
 11 is for a large-sized woman who is also pregnant.
 12 Q. So does that mean that plus-size
 13 garments may compete in the maternity business?
 14 A. Are you asking me -- please restate
 15 your question.
 16 Q. Is it DMC's understanding that women
 17 may buy plus-size garments instead of
 18 maternity-style garments when they are pregnant?
 19 A. No.
 20 Q. Does DMC believe that its products for
 21 maternity may be worn by plus-size women?
 22 A. DMC recognizes that a large percent of
 23 our population in the United States is plus size
 24 and they have children, so we have a separate
 25 assortment of plus-size clothes for pregnant

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 2 plus-sized women.
 3 Q. So to be clear, when this page says,
 4 "plus," it's referring to plus maternity versus
 5 plus generally?
 6 A. Yes.
 7 Q. And you'll see there is a --
 8 A. Actually, no. It's -- sorry, it's
 9 referring to plus maternity versus competitors
 10 that sell plus-size clothes and maternity.
 11 Q. Does Lane Bryant -- do you see that?
 12 A. Yeah.
 13 Q. Do they sell maternity clothes?
 14 A. They may not.
 15 Now, with plus, the -- the first one,
 16 Avenue Maternity, they sell maternity. Old Navy
 17 does do plus size on line only, which is what this
 18 says.
 19 And then specific to plus, and it is
 20 only done apparel-wise in plus, they list Lane
 21 Bryant simply because from a pricing standpoint,
 22 you know, Lane Bryant is the -- the expert in the
 23 nonpregnant plus-size apparel. So they look at
 24 the prices as a -- as a comparison just to make
 25 sure that our plus-size customer, when she comes

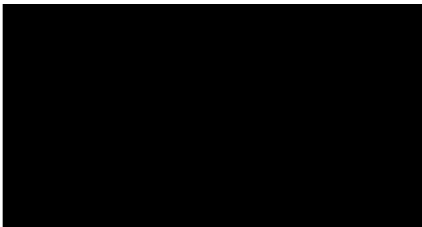
1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 to Destination Maternity, doesn't feel that we are
 3 taking advantage of her. We want to make sure
 4 that we're offering her that same cost value
 5 equation that -- that she sees at stores she shops
 6 pre-pregnancy.
 7 Just like our Macy customer.
 8 Q. Are you aware of Target offering
 9 plus-size maternity garments?
 10 Are you aware of Target offering any
 11 plus-size maternity garments from November 2011 to
 12 the present?
 13 A. I am not aware.
 14 Q. Are you aware of Target offering any
 15 plus-size maternity garments prior to your final
 16 at DMC, which began November 2011?
 17 A. I was absolutely not paying attention
 18 to the maternity space until I started working
 19 here.
 20 Q. So the answer to your question is no?
 21 A. No.
 22 MR. ENNIS: What exhibit are we on?
 23 COURT REPORTER: 113.
 24 MR. ENNIS: Mark that as Exhibit 113.
 25 MS. REINCKENS: Do you have a copy for

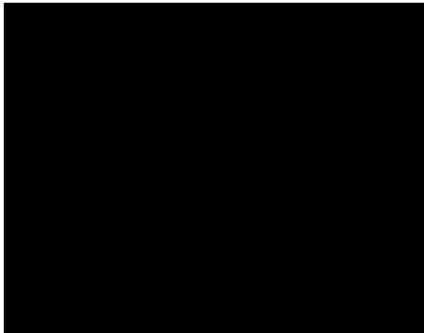
1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 me?
 3 MR. ENNIS: It's a physical item.
 4 MS. REINCKENS: I'd like to take a
 5 look at it first, please.
 6 MR. ENNIS: Absolutely.
 7 (Exhibit 113, pair of Maternity jeans,
 8 was marked for identification at this time.)
 9 MS. REINCKENS: Is there a reason why
 10 this is covering the label?
 11 MR. ENNIS: That's just our internal
 12 tracking, but if you need to remove it to
 13 view the document -- you know, the garment,
 14 then I guess that's what you have to do.
 15 BY MS. REINCKENS:
 16 Q. Ms. Piccone, you can take a moment and
 17 review the garment that has been labeled
 18 Exhibit 113. Let me know when you're ready to
 19 discuss.
 20 A. Okay.
 21 Q. Are you familiar with the brand Tala
 22 Maternity?
 23 A. No.
 24 Q. Okay. Do you know who carries Tala
 25 Maternity?

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 2 A. No.
 3 Q. Have you ever seen a garment -- strike
 4 the question.
 5 So you have never before today seen
 6 the Exhibit 113?
 7 A. No.
 8 Q. As VP of Motherhood and not as any
 9 legal expert, does Exhibit 113 have what you would
 10 consider a Secret Fit Belly?
 11 MS. REINCKENS: I'm going to have to
 12 object here and ask you to direct me to the
 13 topic that this relates to.
 14 MR. ENNIS: I mean, yeah, we -- she's
 15 been providing testimony about what is or is
 16 not a Secret Fit Belly all day. I don't get
 17 why this example would be any different.
 18 MS. REINCKENS: Okay. No, I'm asking
 19 you to direct me to the topic that this
 20 relates to.
 21 MR. ENNIS: At the very least, 58 --
 22 MS. REINCKENS: Again, is that the
 23 commercial marketing?
 24 MR. ENNIS: -- fifty-nine, 60.
 25 MS. REINCKENS: The commercial market,

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 2 it relates to what the -- what the
 3 commercial looks like. She's -- the
 4 commercial market looks like, she's
 5 testified about that.
 6 I -- I'm not sure what her testimony
 7 about what some random product she's never
 8 seen before has anything to do with the
 9 commercial market.
 10 MR. ENNIS: Sixty-two.
 11 Well, if she -- she doesn't know, she
 12 doesn't know, and that's fine, and she can
 13 testify that she doesn't know and -- and we
 14 can move on.
 15 MS. REINCKENS: Okay.
 16 MR. ENNIS: Okay.
 17 MS. REINCKENS: You can continue.
 18 BY MR. ENNIS:
 19 Q. In your capacity today as DMC's
 20 corporate representative for the topics for which
 21 you've been designated, are you able to tell me
 22 whether or not the Exhibit 113 has a Secret Fit
 23 Belly as you understand that term?
 24 A. I can't answer that.
 25 Q. Why not?

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 2 A. I'm not comfortable answering it.
 3 Q. Is there a reason that you're not
 4 comfortable answering?
 5 A. I am not comfortable answering that.
 6 Q. If you saw that product in Old Navy,
 7 for example, what would you think?
 8 A. I don't know.
 9 Q. Can you provide any testimony
 10 regarding Exhibit 113 that you've not already
 11 provided to me?
 12 A. No.
 13 Q. I can take 113 back. Thank you.
 14 MR. ENNIS: Can you mark 114?
 15 (Exhibit 114, Tala Maternity jeans,
 16 was marked for identification at this time.)
 17 MR. ENNIS: And, Melissa, I presume
 18 you want to inspect this one as well?
 19 MS. REINCKENS: Yes, please. Thank
 20 you.
 21 MR. ENNIS: Absolutely.
 22 MS. REINCKENS: Again, I'm going to
 23 remove this tag, if that's okay?
 24 MR. ENNIS: I just ask that after the
 25 deposition we put them back on, because you

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 2 will have to inspect them, and that's our
 3 only way to track what is what, so --
 4 MS. REINCKENS: You're welcome to put
 5 them back on as opposed to -- you can staple
 6 it back on.
 7 MR. ENNIS: That is an exhibit number,
 8 too, now, so that should suffice.
 9 MS. REINCKENS: Thanks.
 10 BY MR. ENNIS:
 11 Q. Ms. Piccone, if you could take a
 12 moment and take a look at Exhibit 114, and once
 13 you're done, let me know?
 14 A. I'm done.
 15 Q. Have you seen Exhibit 114 before
 16 today?
 17 A. No.
 18 Q. Exhibit 119 -- strike the question.
 19 
 20
 21
 22
 23
 24
 25

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 10
 11
 12 Q. As DMC's corporate representative on
 13 the topics for which you've been designated, can
 14 you tell me one way or the other whether this
 15 exhibit has a Secret Fit Belly as you understand
 16 the term as a nonlawyer?
 17 MS. REINCKENS: Yeah, I'm just going
 18 to assert the same objections as before.
 19 A. I'm not comfortable answering that.
 20 Q. Why is that?
 21 A. Unlike Target, I have not tried this
 22 on myself while I was pregnant. I have not seen
 23 this on a mannequin -- on a pregnant mannequin.
 24 I'm -- I'm just simply seeing this on a table, so
 25 I -- I don't know.

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 2 Q. When you are looking at products from,
 3 for example, Old Navy to determine whether or not
 4 they have a Secret Fit Belly as you understand the
 5 term as a lay witness, do you need to see them on
 6 a person or on a mannequin to determine whether or
 7 not they have a Secret Fit Belly as you understand
 8 the term?
 9 MS. REINCKENS: I'm going to object to
 10 that question.
 11 A. In the two years that I've been here,
 12 throughout the scope of -- of that time, I have
 13 seen almost every single competitor's pants on my
 14 own body because I was pregnant, and I made it a
 15 point to go to every single store that I felt was
 16 our competition. I have tried on every single
 17 jean.
 18 I did not see ever this, nor did I see
 19 the one you showed me before, so I -- I am not
 20 comfortable answering that.
 21 Q. So then you have no further testimony
 22 as DMC's corporate witness on the topics for which
 23 you've been designated or as a -- or in your
 24 personal capacity regarding Exhibit 114. Is that
 25 correct?

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 2 A. Correct.
 3 MR. ENNIS: Mark 115.
 4 (Exhibit 115, Baccini jeans, was
 5 marked for identification at this time.)
 6 MR. ENNIS: Counsel?
 7 MS. REINCKENS: Thank you.
 8 MR. ENNIS: If you feel you need to
 9 remove the tag, go ahead.
 10 MS. REINCKENS: I will.
 11 MR. ENNIS: If I could see that one
 12 before the witness --
 13 MS. REINCKENS: Yeah.
 14 MR. ENNIS: -- I apologize.
 15 MS. REINCKENS: No worries.
 16 BY MR. ENNIS:
 17 Q. Take a moment to inspect, and once
 18 you're ready to discuss, please let me know.
 19 A. I'm ready.
 20 Q. Okay. Have you ever seen Exhibit 115
 21 before today?
 22 A. No.
 23 Q. Have you ever seen the brand
 24 B-O-C-C-I-N-I for a maternity garment before
 25 today?

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 2 A. No.
 3 Q. What is the price on the tag of -- of
 4 Exhibit 115?
 5 A. There is not one.
 6 Q. Okay. As DMC's corporate
 7 representative on the topics for which you've been
 8 designated and in -- in your individual capacity
 9 as VP of the Motherhood brand, can you tell me one
 10 way or the other whether Exhibit 115 has a Secret
 11 Fit Belly as you understand Secret Fit Belly?
 12 MS. REINCKENS: I'm going to assert
 13 the same objections.
 14 A. Yet, again, I -- I can't answer them
 15 for the same -- many of the same reasons. I would
 16 not have been able to try on plus-size maternity
 17 when I was pregnant, but, you know, without seeing
 18 it on -- on our fit model -- on our plus-size fit
 19 model, or on a -- it's hard for me to make that
 20 statement.
 21 Q. Do you have any other testimony to
 22 provide regarding Exhibit 115 in your personal
 23 capacity or as DMC's corporate witness on the
 24 topics for which you've been designated today?
 25 A. No.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 Q. Okay. I'm handing your counsel what
 3 has been previously marked Exhibit 47.
 4 A. Okay.
 5 Okay.
 6 Q. Ms. Piccone, have you ever seen
 7 Exhibit 47 before today?
 8 A. I have seen this name, Sutra Belly. I
 9 have not seen this particular pant, and I am not
 10 remembering in what context I have seen Sutra
 11 Belly, but I have definitely heard of Sutra Belly.
 12 Q. Have you seen this particular style of
 13 pant in front of you today?
 14 A. Not that I recall.
 15 Q. Same question: As DMC's corporate
 16 representative on the -- on the topics for which
 17 you've been designated and in your personal
 18 capacity, can you tell me one way or the other
 19 whether Exhibit 47 has a Secret Fit Belly?
 20 A. It does not have a Secret Fit Belly.
 21 Q. And how do you know that?
 22 A. Because it doesn't have the panel.
 23 Q. Could I have Exhibit 47 one moment?
 24 I just want to make sure that you're
 25 not saying there's -- and if -- if you --

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 2 inside --
 3 A. Oh, I'm sorry, I was -- you gave it to
 4 me like this.
 5 Q. I -- your counsel gave it to you like
 6 that. I apologize.
 7 A. Well, that's how you gave it to my
 8 counsel.
 9 Q. Okay. I apologize for any confusion,
 10 but just -- there we go. And I'll give you a
 11 chance to look at it again, and we can go through
 12 this again. I just want to make sure the record's
 13 clear and accurate.
 14 MS. REINCKENS: And, again, I'm going
 15 to assert the same set of objections.
 16 Q. Okay. As DMC's corporate
 17 representative on the topics for which you've been
 18 designated and in your personal capacity as VP of
 19 the Motherhood brand, can you tell me one way or
 20 the other whether Exhibit 47 has a Secret Fit
 21 Belly as you understand Secret Fit Belly?
 22 MS. REINCKENS: Objection.
 23 A. Again, anything that has a panel,
 24 before I make that call, I'd want to see it on --
 25 on a model.

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 2 Q. And then the Target products that you
 3 were referring to as having a Secret Fit Belly,
 4 you've seen each one of them on a model or a
 5 mannequin. Is that correct?
 6 A. I'm not claiming that I've seen every
 7 single SKU, but I have seen a number of styles
 8 and, as I mentioned, I was recently pregnant and I
 9 made it a point to try on every single pair of
 10 pants that all of my competitors carry.
 11 MR. ENNIS: If we could mark
 12 Exhibit -- are we on 116?
 13 Okay. Let's mark 116.
 14 (Exhibit 116, Gap jeans, was marked
 15 for identification at this time.)
 16 MR. ENNIS: Counsel?
 17 BY MR. ENNIS:
 18 Q. Ms. Piccone, have you seen Exhibit 116
 19 before today?
 20 A. No.
 21 Q. What brand is Exhibit 116?
 22 A. Gap.
 23 Q. How much is the price of Exhibit 116
 24 on the tag, if there is a price?
 25 A. It is not -- there is not a price

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 listed on the tag.
 3 Q. Have you seen a garment that is of the
 4 same style as Exhibit 116 on a mannequin or on a
 5 person?
 6 MS. REINCKENS: Objection to form.
 7 A. No.
 8 Q. As DMC's corporate representative on
 9 the topics for which you've been designated and in
 10 your personal capacity as VP of Motherhood
 11 Maternity, can you tell me one way or the other
 12 whether Exhibit 116 has a Secret Fit Belly?
 13 MS. REINCKENS: Again, assert the same
 14 objections.
 15 A. I have the same comment.
 16 Q. So you cannot provide any additional
 17 testimony regarding Exhibit 116 as you sit here
 18 today as DMC's corporate representative on the
 19 topics for which you've been designated or in your
 20 personal capacity as VP of Motherhood Maternity.
 21 Is that correct?
 22 A. Correct.
 23 Q. Then regarding the exhibits that we've
 24 discussed, if I hand you a pant today that you
 25 have not seen before as DMC's -- strike the

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 question.
 3 If I handed you, as DMC's corporate
 4 representative on the topics for which you've been
 5 designated, and in your personal capacity as VP of
 6 Motherhood Maternity, a product that you had not
 7 seen before today, would you be able to tell me
 8 one way or the other whether that product had a
 9 Secret Fit Belly?
 10 MS. REINCKENS: Objection.
 11 I think she's already asked and
 12 answered that question numerous times.
 13 A. What question does that relate to?
 14 Q. You could answer the question.
 15 A. Restate the question?
 16 Q. So if I handed you a maternity pant
 17 today that had a panel that you had not seen
 18 before today, in your capacity as DMC's corporate
 19 witness on the topics for which you've been
 20 designated and as in your personal capacity as VP
 21 of Motherhood Maternity, would you be able to tell
 22 me if that pant had a Secret Fit Belly or not, one
 23 way or the other?
 24 MS. REINCKENS: I'm going to object.
 25 The witness has been shown a number

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 2 of -- a number of pants many of which she
 3 has not seen before and has stated that
 4 she's not able to testify. So that -- I
 5 mean, you keep asking the same question.
 6 MR. ENNIS: I'm trying to, you know,
 7 show that that's going to be consistent. If
 8 I were to pull out 20 more pants, she's
 9 going to say the same thing.
 10 And if that is the case, she can say
 11 so and -- and we can move on.
 12 MS. REINCKENS: Okay.
 13 A. Again, my patterning, or my shopping
 14 of Secret Fit Belly copying is me walking into a
 15 store and seeing it in the context of the store.
 16 Part of what I'm seeing is the -- the penetration
 17 of Secret Fit Belly.
 18 When you show me one garment out of
 19 context, it's -- it's very hard to say. I do not
 20 have the technical or functional expertise to tell
 21 you if it is technically or functionally the same
 22 as -- as our pant.
 23 Q. What context would you need in order
 24 to be able to make that -- strike the question.
 25 You mentioned that you are seeing

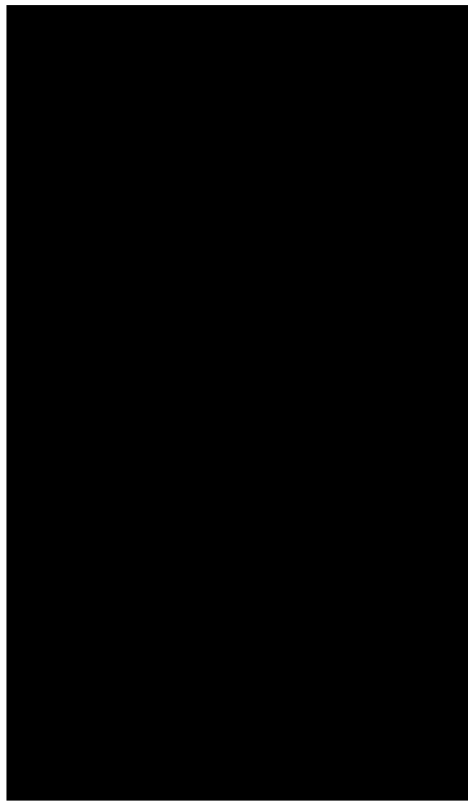
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 2 these pants out of context --
 3 A. Yes.
 4 Q. -- is that correct?
 5 A. Yes.
 6 Q. So if these pants were in a store,
 7 would that give you sufficient context?
 8 A. Yes.
 9 Q. If these pants were shown on a store
 10 online, would that give you sufficient context?
 11 A. Not necessarily. I'd prefer to -- to
 12 see it myself in a store.
 13 Q. So you prefer to see the -- strike the
 14 question.
 15 So to be clear, you would need to see
 16 the physical item in a physical store to be able
 17 to have sufficient context to make the
 18 determination about whether a pant you've not seen
 19 before today has a Secret Fit Belly?
 20 MS. REINCKENS: I'm going to object.
 21 A. If I'm going to sit here and make the
 22 claim, which is a pretty serious claim, that a
 23 company is copying something that my company has,
 24 I would want to first make sure that I spent at
 25 least two years in that company's store monitoring

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 2 the percent of whatever the designated item is
 3 that we think they're copying. I'd want to have
 4 the tools from stores. I'd want to have customer
 5 feedback. And I'd want to have, you know, all
 6 that data to make sure it was an accurate
 7 statement versus being shown something out of
 8 context that's one item, you know, here out of
 9 context.
 10 Q. Understood.
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
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 17 [REDACTED]
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6 MR. ENNIS: All right. We can take a
7 break.

8 MS. REINCKENS: Okay.

9 VIDEOGRAPHER: We are now going off
10 the video record. That concludes Tape
11 No. 4. The time is 1548.

12 (Recess.)

13 VIDEOGRAPHER: We are you back on the
14 video record. This commences Tape No. 5,
15 October 18th, 2013. The time, 1609.

16 Please continue.

17 MS. REINCKENS: And I just would like
18 to note on the record that we are willing to
19 agree that the documents reviewed so far
20 today are -- are business records.

21 MR. CARTER: We'll stipulate to the
22 authenticity.

23 MS. REINCKENS: Yes.

24 MR. CARTER: And I can state on the
25 record that the -- so my understanding

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2 between the agreement -- the agreement
3 between the parties is all of the documents
4 with Target Bates numbers used by DMC at the
5 Target depositions last week, Target
6 stipulates to their authenticity.

7 And the DMC Bates-numbered documents
8 used in the Hendrickson, Masciantonio dep
9 and the dep today, DMC stipulates to their
10 authenticity.

11 And the parties have a general
12 agreement going forward that documents that
13 are produced with their own Bates number,
14 that they will be authenticate unless it is
15 an unusual circumstance that we can discuss
16 on a document-by-document basis.

17 MS. REINCKENS: Sure. Agreed.

18 BY MR. ENNIS:

19 Q. Ms. Piccone, the court reporter will
20 be handing you what has been previously marked as
21 Exhibit 51.

22 If you could take a moment to look it
23 over and let me know when you are done.

24 A. Okay.

25 Q. Ms. Piccone, have you seen Exhibit 51

2 before today?

3 A. No.

4 Q. Are you -- strike the question.

5 Are you aware of any Gap all around
6 belly product in the 2006 time frame?

7 A. No.

8 Q. Can you provide any testimony
9 whatsoever regarding Exhibit 51?

10 A. No.

11 Q. Or can you provide any testimony
12 regarding the Gap product referenced in item 2 in
13 Exhibit 51?

14 A. No.

15 MR. ENNIS: The court reporter will
16 hand you a document that's been previously
17 marked Exhibit 60 -- actually, I will hand
18 it to you.

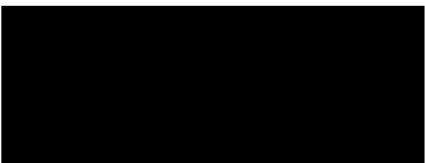
19 Q. Take a moment to review it. Let me
20 know when you are ready.


21 A. Okay.

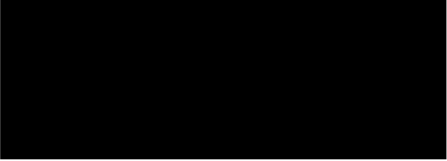
22 Q. Ms. Piccone, have you seen Exhibit 60
23 before today?

24 A. No.

25 Q. Have you seen the drawings on pages 2

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 and 3 of Exhibit -- of Exhibit 60 before today?
 3 A. No.
 4 Q. Are you able to provide any testimony
 5 regarding the content of Exhibit 60?
 6 A. No.
 7 Q. What are the advantages of a Secret
 8 Fit Belly?
 9 A. The advantages of the Secret Fit Belly
 10 are that it's comfortable. It's a pant -- it's a
 11 bottom. You know, when it's applied to a bottom,
 12 it allows a woman to wear it for all of her
 13 pregnancy because it expands with her belly, and
 14 then she's also able to wear it after she gives
 15 birth and is in post-partum form, and it allows
 16 your pants -- or your bottoms, I should say, to --
 17 to stay up and grow with you.
 18 Q. You're familiar with the Gap product
 19 that has a mid belly, correct?
 20 A. Yes.
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 10 Q. So how would a mid-belly product
 11 cause -- strike the question.
 12 What specific feature in the Secret
 13 Fit Belly allows it to stay up on a woman's belly
 14 better than a mid-belly product?
 15 MS. REINCKENS: Objection to form.
 16 A. So I'm a merchant. I'm not the
 17 inventor. So as a merchant, that's not my
 18 responsibility to know that.
 19 When I see a product that's been
 20 invented that is going to be a game changer for
 21 the industry, my job is to take that product and
 22 make as much money as possible with it and make
 23 sure I protect it at all costs, and that I put --
 24 I'm making sure that other people in our -- our
 25 landscape are not doing things that -- that are

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 2 copying us. I am not in charge of inventing.
 3 Q. What's your basis for saying that the
 4 Secret Fit Belly is a game changer in the
 5 industry?
 6 A. You can look and see what it has done
 7 to the total bottoms business, and then,
 8 ultimately, not just the total bottoms business,
 9 the total apparel business when it was introduced
 10 to Destination Maternity.
 11 Q. When was the Secret Fit Belly
 12 introduced to Destination Maternity?
 13 
 14
 15
 16
 17
 18 Q. What happened in the global economy in
 19 2008?
 20 A. There was a recession.
 21 Q. Since 2008 -- strike the question.
 22 In your opinion, as DMC's corporate
 23 witness on the topics for which you've been
 24 designated, has the economy improved since 2008 to
 25 present?

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 2 A. Yes.
 3 Q. And then again, referring to
 4 Exhibit 60, you have no testimony to provide
 5 regarding Exhibit 60 in your personal capacity or
 6 in your capacity as DMC's corporate
 7 representative --
 8 A. Correct.
 9 Q. -- is that correct?
 10 Do you know -- turning back to
 11 Exhibit 51.
 12 A. Yes.
 13 Q. Do you know of any other document at
 14 Destination Maternity that relates or regards to
 15 the Gap product referenced under number 2 in that
 16 exhibit?
 17 A. I do not.
 18 Q. All right.
 19 MR. ENNIS: What exhibit are we on?
 20 COURT REPORTER: 117.
 21 MR. ENNIS: Okay. Let's mark 117.
 22 (Exhibit 117, Excel spreadsheet, was
 23 marked for identification at this time.)
 24 THE WITNESS: And to just elaborate on
 25 the question you asked about why it was a

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 2 game changer?
 3 The introduction of the Secret Fit
 4 Belly for the first time ever allowed a
 5 woman to feel like she was still the woman
 6 she was prior to getting pregnant. It
 7 allowed her to wear bottoms that were
 8 familiar to her before she became pregnant.
 9 You know, various leg shapes of -- of
 10 bottoms, skinny bottoms, straight bottoms,
 11 boot cut, and then it allowed her to have
 12 the luxury of worrying about the top and
 13 actually looking and feeling like the woman
 14 she was before she got pregnant.
 15 And prior to Secret Fit Belly, we
 16 don't believe that any retailer that sold
 17 maternity clothes conveyed that message, and
 18 that in and of itself was the game changer.
 19 It made her want to buy maternity clothes.
 20 And I actually have that in testimony.
 21 We have e-mails. One was from
 22 Customerville, which I get on a daily basis.
 23 One in particular where a customer said, "I
 24 want to thank you, Destination Maternity. I
 25 just bought a pair of your Secret Fit Belly

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 2 skinny denim jeans. They are my most
 3 favorite jeans that I have ever bought
 4 ever." And I believe there were three
 5 exclamation points after it.
 6 BY MR. ENNIS:
 7 Q. Okay. Again, do I recall your
 8 testimony earlier today that you were not aware of
 9 the maternity market before you joined Destination
 10 Maternity -- sorry, strike the question.
 11 You became aware of the maternity
 12 market in 2008 when you yourself became pregnant
 13 and started shopping for maternity clothes. Is
 14 that correct?
 15 A. Not really.
 16 Q. Okay. When did you first become aware
 17 of the maternity market?
 18 A. When it became my livelihood in 2011.
 19 Q. Okay. And before that time, do you
 20 have any basis to speak to what was on the market
 21 in 2007, for example?
 22 A. No.
 23 Q. Do you have 117 in front of you?
 24 A. I do.
 25 Q. Okay. Great.

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 2 MR. ENNIS: I'm also marking 118.
 3 Q. If you can take a moment to look at
 4 117, when you get a chance, and let me know when
 5 you're ready to talk about it.
 6 (Exhibit 118, Excel spreadsheet, was
 7 marked for identification at this time.)
 8 THE WITNESS: Okay.
 9 BY MR. ENNIS:
 10 Q. Okay. Have you seen documents like
 11 Exhibit 117 before today?
 12 A. No.
 13 Q. Okay. Have you seen any type of style
 14 pricing breakdown document before today at
 15 Destination Maternity?
 16 A. Are you -- I'm -- you have to restate
 17 that question --
 18 Q. Sure.
 19 A. -- it's very broad.
 20 Q. You see that this particular document
 21 has a concept number starting with "PE"?
 22 A. Hold on.
 23 Q. It's in the top part of the page
 24 under --
 25 A. Yes.

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 2 Q. -- item 1?
 3 A. Okay. Yes.
 4 Q. And right below item 1, before item 2,
 5 is original style pricing breakdown?
 6 A. Okay.
 7 Q. Do you work with these type of
 8 documents in your job as vice president of
 9 Motherhood at Destination Maternity?
 10 A. I do not.
 11 Q. Would Mr. McCracken be more suited to
 12 provide testimony on this type of document for
 13 Destination Maternity?
 14 A. You'd have to ask him.
 15 Q. All right. Is there anybody besides
 16 you who would be -- strike the question.
 17 Is there someone else at Destination
 18 Maternity who would be better able to testify
 19 about Exhibit 117 than you?
 20 MS. REINCKENS: Objection to form.
 21 A. I -- I don't know. I don't know who
 22 owns this.
 23 This is -- you know, this is a
 24 granular, I think, data entry. I -- I don't know.
 25 At a VP level, I have never seen nor have I input

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 2 any of this data.
 3 Q. Does PE in the concept number make
 4 it -- tell you anything -- strike the question.
 5 A. No.
 6 Q. Do you see "Brand Pea"?
 7 A. Where -- yes.
 8 Q. Okay. So this would be a style
 9 pricing breakdown for a Pea in the Pod garment?
 10 A. Yes.
 11 Q. Okay. And then, obviously, you don't
 12 work with Pea in the Pod, so I can -- we can move
 13 on to Exhibit 118 -- strike the question.
 14 Beyond what we've discussed, you have
 15 no further testimony regarding document 117?
 16 A. No.
 17 Q. If we could move on to document 118.
 18 Just let me know when you get a chance to look at
 19 it.
 20 A. Okay.
 21 Q. Okay. Have you seen a document like
 22 Exhibit 118 before today?
 23 A. No.
 24 [REDACTED]
 25 [REDACTED]

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 3 [REDACTED]
 4 [REDACTED]
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 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 MS. REINCKENS: Again, I'm just going
 6 to object.
 7 I think this is kind of outside the
 8 scope of the 30(b)(6) topics, and I do think
 9 that if we're getting into specific prices
 10 and costs, that Mr. McCracken is probably
 11 the person that's going to be -- I mean, I
 12 know he's going to be testifying as to
 13 finance topics. So --
 14 MR. ENNIS: I would --
 15 MS. REINCKENS: The only thing is I --
 16 I'm just -- I'm going through the 30(b)(6)
 17 notice and I -- I haven't seen any topics
 18 that relate to pricing at all. So that
 19 doesn't appear to be a topic.
 20 MR. ENNIS: For example, it could be
 21 69, but they're both designated.
 22 But, in any event, if you feel that
 23 Mr. McCracken would be the appropriate
 24 witness for this document, then I can --
 25 Ms. Piccone can tell me she can't provide

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 2 any testimony --
 3 MS. REINCKENS: I mean, you can
 4 continue asking, I mean -- and then we can
 5 see what happens, but I -- I just, you know,
 6 if we're getting into specific cost
 7 breakdowns -- yeah, you can take over.
 8 MR. CARTER: Thank you. I feel like
 9 I'm at home, permission to talk?
 10 So if -- if you can represent
 11 Mr. McCracken, which it would not surprise
 12 me that he is going to be the best person to
 13 deal with topic 69 and address issues such
 14 as costs, then that's fine. We'll move on.
 15 But because you co-designated them, we
 16 don't want to be in a situation where you
 17 co-designated and Mr. McCracken says, you
 18 should have asked that question to
 19 Ms. Piccone.
 20 MS. REINCKENS: Yeah, I mean, but 69
 21 is really the portion of the profit, if any,
 22 that we contend should be credited to the
 23 claimed subject matter of the patents in
 24 suit.
 25 MR. ENNIS: Right.

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 2 MR. CARTER: Or what comments relate
 3 to --
 4 MS. REINCKENS: Costs.
 5 MR. CARTER: -- costs.
 6 MR. ENNIS: And markups from costs.
 7 MS. REINCKENS: Okay.
 8 Well, I mean, I think you can continue
 9 to ask some questions about this, because we
 10 did prepare her generally for this topic,
 11 but -- and I do think that McCracken is
 12 going to speak about the specific costs and
 13 things like that, but --
 14 MR. ENNIS: To be honest, I'm -- I'm
 15 not going to be ask about specific, specific
 16 costs. I'm not actually asking for specific
 17 percentiles. I'm trying to -- I'll be
 18 getting at Ms. Piccone's understanding here.
 19 MS. REINCKENS: Okay. So let's
 20 continue with this line of questioning and
 21 see where we get.
 22 BY MR. ENNIS:
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

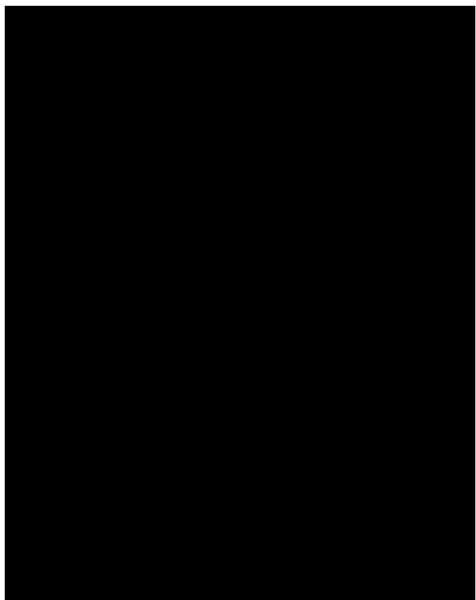
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20 Q. When you're referring to Jessica
21 picking up items that may or may not be a Jessica,
22 does that mean that -- I'm trying to understand
23 what you mean by that.

24 So some items are branded Jessica
25 Simpson?

2 A. Correct.
3 Q. Some items that are, you know, in the
4 Jessica line are branded Motherhood?

5 A. No.
6 Q. Okay. So what do you mean by she'll
7 pick up three of her items? Is that to Jessica
8 Simpson or is that to your customer?

9 A. So when I run -- or when we run a -- a
10 promotion that is buy three, get one free, all
11 bottoms in Motherhood, because Jessica Simpson is
12 in some Motherhood stores and is included in the
13 promotion, she may pick up, or sometimes I -- I
14 can -- she does pick up, you know -- when she --
15 when she leaves the store with those four bottoms
16 that are part of the promotion, one may be a
17 Jessica bottom.

18 Q. Okay. When you're referring to "she,"
19 that would be a customer --

20 A. A pregnant customer, yes.

21 Q. Wonderful. Thank you. I was -- I was
22 not sure if it was from Jessica Simpson or -- or a
23 customer. So thank you.

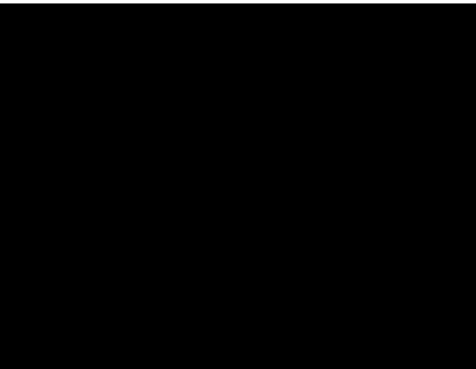
24 But -- so that would be promotions
25 will have an impact on what people may buy because

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2 it changes the price of goods?

3 A. Correct.

4 Q. So in the example that you gave, the
5 buy three, get one or buy four, get one promotion
6 may cause someone to buy a product that is
7 ordinarily more expensive because the promotion
8 makes it cheaper?

9 A. Yes.



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21 Q. Understand. Okay.

22 So tops and bottoms works --

23 A. Yeah --

24 Q. -- to distinguish the two?

25 A. -- yes, yes.

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2 Q. Okay. All right.

3 In order for the Secret Fit Belly
4 pants to work, a woman does not need to wear a
5 top, correct?

6 MS. REINCKENS: Objection.

7 A. Well --

8 Q. Strike the question.

9 A. -- you'd be showing your --

10 Q. Strike the question.

11 A. I would suggest wearing a top if you
12 walk outside.

13 Q. Okay. In order for Secret Fit Belly
14 product to stay on the body and perform its
15 desired function that makes women want to buy it,
16 they do not need to necessarily buy two tops from
17 Destination Maternity, correct?

18 MS. REINCKENS: Objection to form.

19 A. Correct.

20 Q. For example -- or, you know, they
21 could buy them at Gap. They could buy them at
22 Target. They could buy them at Old Navy, or even
23 H&M, correct?

24 A. Correct.
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7 Q. And that often happens in any retail
8 establishment. If I walk into Old Navy and I buy
9 a product, I'm more likely to buy another product
10 from Old Navy than I am to leave, drive across
11 town, and go to Motherhood Maternity and buy
12 across there. Is that fair?

2 item of clothing that a woman needs when she
3 becomes pregnant, we are -- bottoms are our -- the
4 backbone to our business.

5 Q. But in order for the Secret Fit Belly
6 products to work and function, there's no other
7 maternity or non-maternity product necessary for
8 them to stay up on a woman's belly and function
9 the way that they were intended to, correct?

13 A. Yes. There are certain brands -- I
14 cannot speak for men's, but in the retail
15 industry -- and I'm talking non-maternity -- where
16 certain brands specifically -- Theory is one,
17 where Theory has the same business model, because
18 they've made a name for themselves selling pants,
19 you know, just like we have, when a woman puts a
20 Theory bottom on, it is a known fact she will then
21 walk out with, you know, two to three Theory tops
22 and -- and when Theory is out of a size or Theory
23 does not have the pants, the entire sale is lost.

10 MS. REINCKENS: Objection. Form.

11 A. Correct.

12 Q. Looking back at Exhibit 118.

13 A. Hold on, which one is 118 -- yes,
14 okay.

15 Q. It's the --

16 A. Yes.

17 Q. -- Motherhood woven pant?

18 A. Yes.

19 Q. Okay.

24 Not all companies are as dependent on
25 bottoms. Obviously, because a bottom is the first

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24 Q. Is the fabric of the Secret Fit Belly
25 consistent across Motherhood including Jessica

2 Simpson?

3 A. The -- specific to the Jessica Simpson
4 Secret Fit Belly, it has her insignia on it. It
5 has her -- it's like a jacquarded Secret Fit
6 Belly, but it is the -- my understanding is it is
7 the same fabric in the Secret Fit Belly both in
8 Motherhood and in Jessica.

9 Q. So -- but it's branded with Jessica
10 Simpson's brand, but aside from that --

11 A. It's -- it's the belly itself,
12 actually, is physically -- physically it looks the
13 same and it does the same thing, but it -- it has
14 a jacquarded effect to it that says Jessica
15 Simpson on the Secret Fit Belly --

16 Q. Okay.

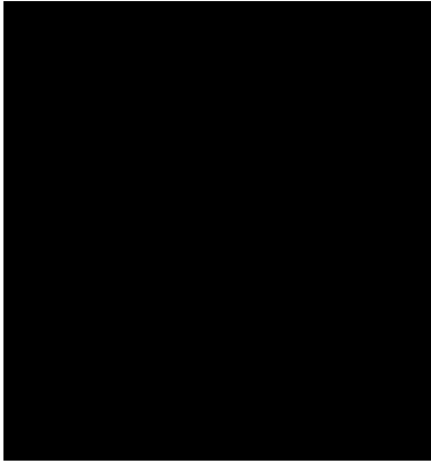
17 A. And other than the belly, it's just --
18 it's just the -- the fabric.

19 Q. And aside from that jacquarded look of
20 the Jessica Simpson logo, there's no difference in
21 fabric quality between a Motherhood Maternity
22 Secret Fit Belly and a Jessica Simpson Secret Fit
23 Belly?

24 MS. REINCKENS: Objection to form.

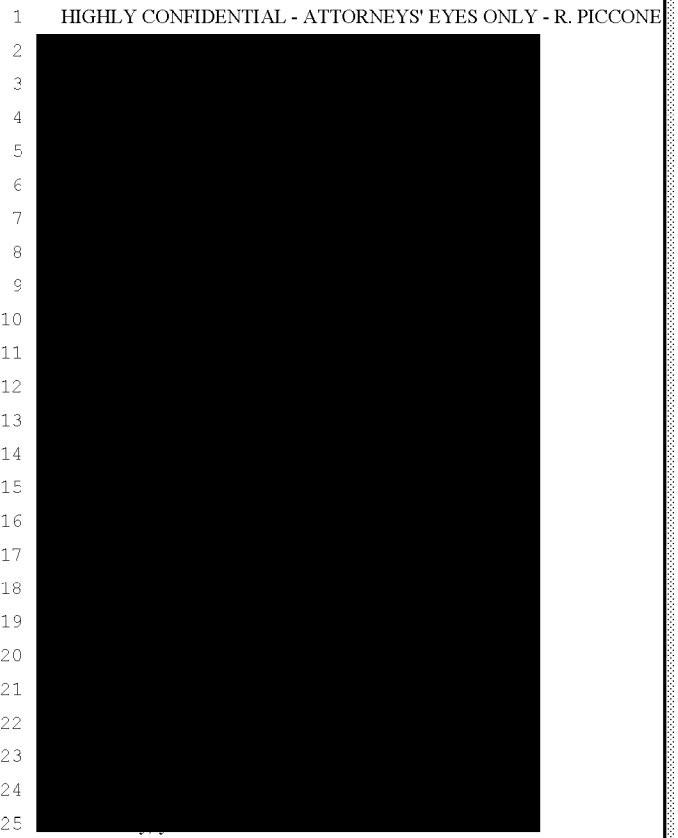
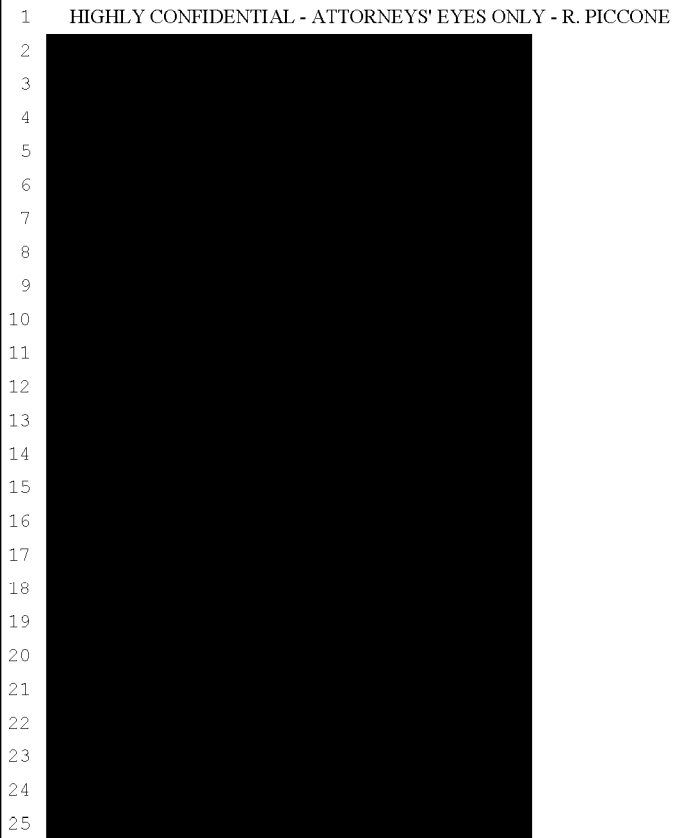
25 A. To the best of my knowledge, no.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 Q. Okay. Are you aware of customers that
 3 purchase Jessica Simpson branded bottoms because
 4 of Jessica Simpson's endorsement?
 5 A. Yes.



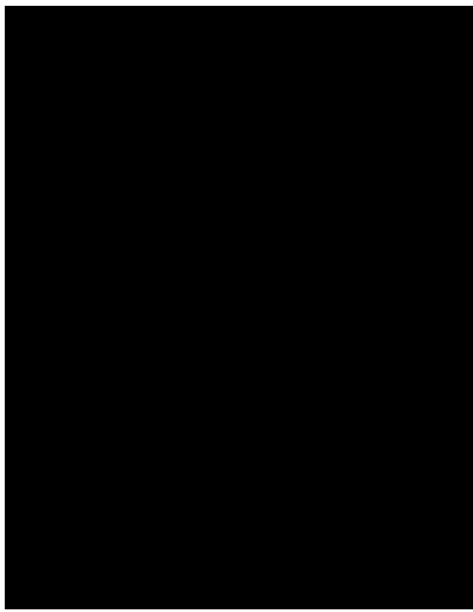
20 Q. Right. I'm just trying to distinguish
 21 just Motherhood solely and then there's -- and was
 22 it Jessica Simpson for Motherhood, or is it
 23 something like that?
 24 A. Yeah. I have to go back and see the
 25 exact, but Jessica Simpson is the -- the -- the

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 2 name --
 3 Q. Right --
 4 A. -- yeah.
 5 Q. -- it has their name on -- on the
 6 product versus something that just has Motherhood?
 7 A. Correct.



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20 MR. ENNIS: What exhibit are we on?

21 COURT REPORTER: 119.

22 MR. ENNIS: Okay. Let's roll out 119.

23 (Exhibit 119, e-mail dated March 18,
24 2008, was marked for identification at this
25 time.)

2 MR. ENNIS: And I will also give the
3 court reporter 120.

4 (Exhibit 120, e-mail dated March 18,
5 2008, was marked for identification at this
6 time.)

7 BY MR. ENNIS:

8 Q. Ms. Piccone, have you seen Exhibit 119
9 before today?

10 A. No.

11 Q. You see Exhibit 119 was sent from Rick
12 Adelman to Don Matthias in March 18th, 2008. Is
13 that accurate?

14 A. That's what this says.

15 Q. Okay. Do you have any reason to doubt
16 that that's the case?

17 A. No.

18 Q. Okay. Who is Don Matthias -- Dan
19 Matthias? I apologize.

20 A. He was the previous owner -- or the
21 previous CEO of Destination Maternity.

22 Q. Do you know when he stopped being the
23 previous owner or CEO of Destination Maternity?

24 A. I can't tell you the exact date.

25 Q. Okay. Can you give me a year maybe?

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2 A. Actually, no. I -- I mean, I know,
3 obviously, it was prior to my start date --

4 Q. Okay.

5 A. -- but it -- no, I don't know.

6 Q. Have you ever heard of Mr. Adelman
7 before today?

8 A. Yes.

9 Q. Okay. Who is Mr. Adelman?

10 A. He had been the head of sourcing.

11 Q. Okay. When did he stop being the head
12 of sourcing?

13 A. I don't remember the exact date. But
14 he -- we -- our cross -- our paths crossed for I'd
15 say -- it was probably a month.

16 Q. Do you know what -- is Mr. Adelman
17 still an employee of Destination Maternity?

18 A. No.

19 Q. Do you know what Mr. Adelman does
20 today?

21 A. No.

22 Q. Can you provide any testimony on
23 behalf of DMC regarding Exhibit 119?

24 A. No.

25 Q. Can you provide any testimony on

2 behalf of Destination Maternity regarding any
3 interest or licensing of the Secret Fit Belly
4 trademark, patent, or just product generally?

5 A. No.

6 Q. Take a look at Exhibit 120.

7 A. Okay.

8 Q. Have you seen Exhibit 120 before
9 today?

10 A. No.

11 Q. Again, this is an e-mail from Don
12 Matthias back to Mr. Adelman in March of 2008. Is
13 that correct?

14 A. That's what it says, yes.

15 Q. Now, you have no reason to doubt that?

16 A. No.

17 Q. Okay. Are you able to provide any
18 testimony today regarding Exhibit 120 as DMC's
19 corporate representative?

20 A. No.

21 Q. In your job as vice president of
22 Motherhood, do you have any responsibility for
23 communications with Motherhood's vendors?

24 A. Yes.



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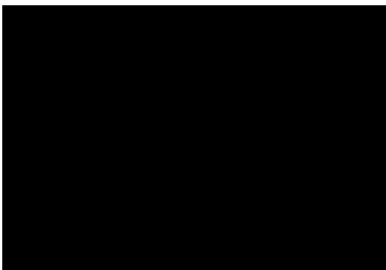
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 2 at Destination Maternity?
 3 A. I would say our general counsel.
 4 Q. Okay. So that would be Ms. Han and
 5 Mr. Masciantonio?
 6 A. Yes.
 7 Q. Do you have any more testimony for --
 8 to provide on behalf of DMC regarding topic 29?
 9 Topic 29 is communications between you
 10 and any manufacturer of pertinent maternity
 11 products?
 12 A. I do not.
 13 Q. Okay. Regarding topic 29, is there
 14 anyone at DMC that is better able than you to
 15 testify regarding communications between you, DMC,
 16 and any manufacturer of maternity products?
 17 MS. REINCKENS: I mean, you guys have
 18 asked -- you've asked -- that's a very broad
 19 topic, so -- and we've objected to that.
 20 If you have a specific document or a
 21 specific communications that you'd like to
 22 reference, I mean, that could be --
 23 potentially be half the company at
 24 Destination Maternity.
 25 So, I mean, if you have something

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 2 specific you'd like to ask the -- the
 3 witness while she's here --
 4 Q. You can answer the question.
 5 A. As I mentioned before, I'd start with
 6 the general counsel and -- and I'm sure they could
 7 adequately answer all your questions, and if they
 8 can't, they could then recommend, you know, if
 9 there's anyone else.
 10 MR. ENNIS: Are we on Exhibit 121?
 11 COURT REPORTER: That's next.
 12 MR. ENNIS: Okay. Exhibit 121.
 13 (Exhibit 121, e-mail dated May 8,
 14 2008, was marked for identification at this
 15 time.)
 16 THE WITNESS: Okay.
 17 BY MR. ENNIS:
 18 Q. Ms. Piccone, have you seen Exhibit 121
 19 before today?
 20 A. No.
 21 Q. Can you provide any testimony on
 22 behalf of DMC regarding Exhibit 121?
 23 A. No.
 24 Q. Again, the -- the person at DMC most
 25 able to provide testimony on this document would

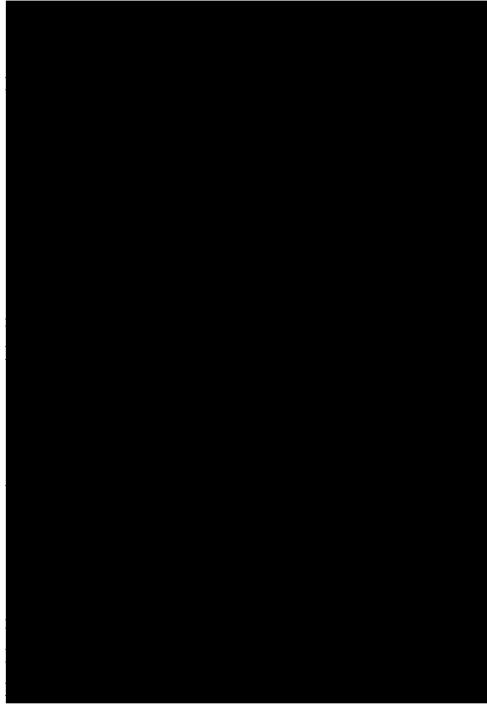
1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 be general counsel, that is, Kristen Han and John
 3 Masciantonio. Is that correct?
 4 MS. REINCKENS: Objection to form.
 5 That's not what the witness has
 6 testified to at all.
 7 Q. You can answer the question.
 8 A. Repeat the question?
 9 Q. Sure. Who other than -- strike the
 10 question.
 11 Who at DMC would be most able to
 12 provide testimony regarding the subject matter in
 13 the document that is Exhibit 121?
 14 A. I don't know.
 15 Q. If you had to look for -- for some --
 16 strike the question.
 17 If you had Exhibit 121 and wanted
 18 additional information, who at DMC would you seek
 19 out to figure out what the subject of 121 was?
 20 MS. REINCKENS: Objection to form.
 21 A. Again, I -- I -- something like this,
 22 I would go to my general counsel.
 23 MR. ENNIS: 122.
 24 (Exhibit 122, e-mail dated May 8,
 25 2008, was marked for identification at this

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 time.)
 3 THE WITNESS: Okay.
 4 BY MR. ENNIS:
 5 Q. Ms. Piccone, have you seen Exhibit 122
 6 before today?
 7 A. No.
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 16 Q. Who at DMC would be able -- strike the
 17 question.
 18 Is there anyone other than you at
 19 DMC -- strike the question.
 20 MR. ENNIS: Counsel, I'll just note
 21 that the attachments to Exhibit 122 haven't
 22 been produced. We ask that they be
 23 produced.
 24 MS. REINCKENS: Yeah.
 25 And this -- this I know specifically

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 2 is one of the archived e-mails that there is
 3 an issue with. So you -- you can see our
 4 previous correspondence on that.
 5 MR. ENNIS: And I'll -- I'll just
 6 state for the record that this is cited in
 7 your interrogatory responses and under
 8 Rule 33(d).
 9 Q. Ms. Piccone, if you were to look for
 10 someone to -- in DMC to explain the content of
 11 Exhibit 122, who would you look to?
 12 A. I don't know. I don't even know what
 13 this means.
 14 Q. So you have no idea?
 15 A. No.



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 23 MS. REINCKENS: Objection.
 24 A. It's their general counsel.
 25 Q. Would anybody in finance have that

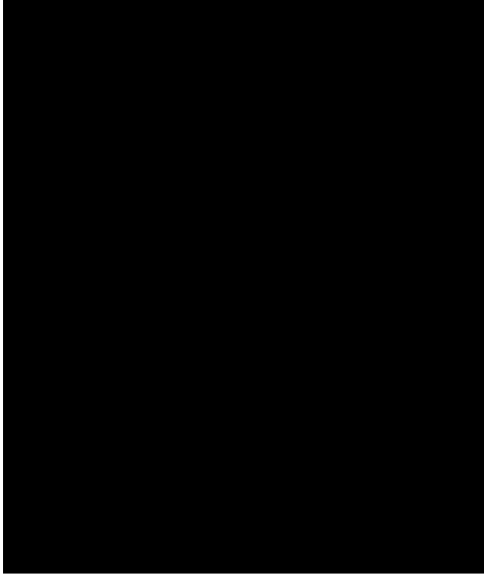


1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 knowledge?
 3 A. Yes.
 4 Q. Who would an individual in -- strike
 5 the question.
 6 Who in finance might have that
 7 knowledge?
 8 A. I -- I couldn't say. I -- I -- I
 9 don't know. That's why I would start with the
 10 general counsel since all legal contracts, you
 11 know, obviously start there.
 12 MR. ENNIS: What exhibit are we on?
 13 COURT REPORTER: 123.
 14 MR. ENNIS: 123.
 15 (Exhibit 123, DMC strategic plan
 16 session, was marked for identification at
 17 this time.)
 18 BY MR. ENNIS:
 19 Q. Take a moment to review Exhibit --
 20 A. Sure.
 21 Q. -- 123, and -- and let me know when
 22 you're ready.
 23 MS. REINCKENS: Are you planning on
 24 finishing up in the next five minutes?
 25 MR. ENNIS: No. I -- I don't know if

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 we'll be to the point where we can ask
 3 questions about the document in the next
 4 five minutes, so -- I'm not trying to rush
 5 anybody, but I'm being honest.
 6 MS. REINCKENS: This is the last
 7 document you're asking questions about?
 8 MR. ENNIS: Maybe. It's not like I
 9 have 20 documents stacked up. I -- I don't
 10 expect --
 11 MS. REINCKENS: Yeah, I'm just
 12 wondering --
 13 MR. ENNIS: -- many more.
 14 MS. REINCKENS: -- if I should cancel
 15 the train for 5:55?
 16 MR. ENNIS: I think that's a good
 17 idea.
 18 THE WITNESS: Okay.
 19 BY MR. ENNIS:
 20 Q. All right. Before today, have you
 21 ever seen Exhibit 123, Ms. Piccone?
 22 A. No.
 23 Q. Okay. Are you able to provide
 24 testimony regarding Exhibit 123 today?
 25 A. It depends on what the question is.

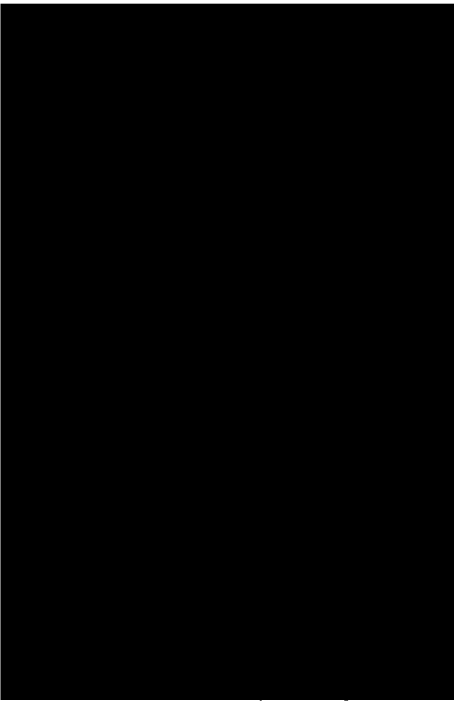
1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 Q. If you turn to the third page of
 3 Exhibit 123 ending in 267?
 4 A. Okay.
 5 Q. Just let me know when you're there.
 6 A. Yeah.
 7 Q. And you'll see a section about Old
 8 Navy?
 9 A. Yes.
 10 Q. And a section about Gap and Baby Gap?
 11 A. Yes.
 12 Q. Okay. And, again -- strike the
 13 question.
 14 Then on the next page, ending in 268,
 15 you see Sears?
 16 A. Yes.
 17 Q. Okay. And then other competitors,
 18 right?
 19 A. Yes.
 20 Q. And then in the other competitors
 21 section there's Target?
 22 A. Yes.
 23 Q. There's JCPenney?
 24 A. Yes.
 25 Q. Walmart?

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 2 A. Yes.
 3 Q. Baby Style, but Baby Style would be
 4 closed at the end of 2009. Is that correct?
 5 A. Yes.
 6 Q. And then retail associates is by
 7 department stores?
 8 A. Yes.



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 2 Q. -- that you can't be super banker
 3 precise.
 4 A. Yeah.



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 6 That e-mail did not refresh my memory
 7 on that. It -- I -- that e-mail was the first
 8 time I had ever seen any -- or even focused my
 9 attention on anything prior to my start date.
 10 We're, you know, responsible for the
 11 Secret Fit Belly 'cause, you know, my job, like I
 12 said, is to drive sales, and I'm -- I don't have
 13 the -- I'm not really interested in how it started
 14 before, prior to this case.
 15 Q. In that document was there any
 16 comparison between the Secret Fit Belly products
 17 and the products that came before that were sold
 18 by Destination Maternity?
 19 A. I'd like to see the -- the e-mail
 20 again, 'cause I -- I -- I believe so, but I -- I
 21 don't recall.
 22 Q. Okay.
 23 A. I can't say for sure.
 24 Q. As far as the e-mail, do you recall
 25 who sent the e-mail?

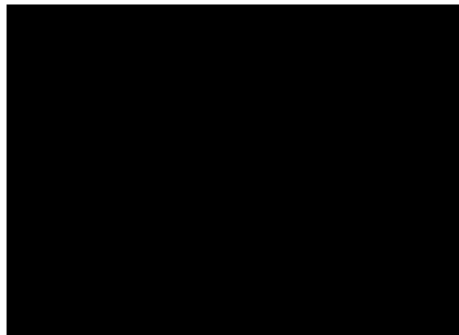
1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 A. To the best of my knowledge, I believe
 3 it was from Lisa Hendrickson.
 4 Q. Okay. Do you know who the e-mail was
 5 sent to?
 6 A. That, I don't recall.
 7 Q. Okay. Anyone that was copied on it?
 8 A. I don't recall.
 9 Q. Okay. Subject line?
 10 A. I don't recall.
 11 Q. Okay. Any idea of the date?
 12 A. No.
 13 Q. Okay. 2010?
 14 A. It certainly wasn't 2010. It -- it
 15 was a -- it was prior to '10. I couldn't tell you
 16 if it was '08 or '09 or even before that. I -- I
 17 don't know.
 18 Q. Okay.
 19 A. But I know it wasn't 2010.
 20 Q. Okay.
 21 MR. ENNIS: All right. If we could
 22 take a quick five-minute break?
 23 MS. REINCKENS: Sure.
 24 VIDEOGRAPHER: One moment. We are now
 25 going off the video record. That concludes

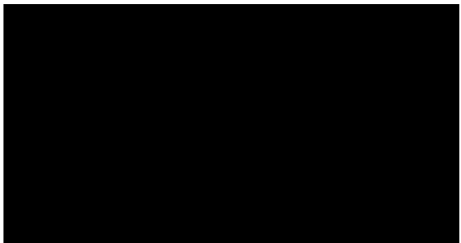
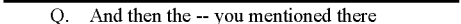
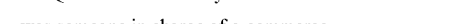
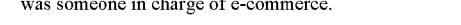
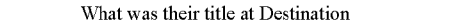


1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 Tape No. 5. The time is 1719.
 3 (Recess.)
 4 (Exhibit 124, DMAT parallel path, was
 5 marked for identification at this time.)
 6 VIDEOGRAPHER: We are now back on the
 7 video record, and this commences Tape No. 6,
 8 October 18th, 2013. The time, 1734.
 9 Please continue.
 10 BY MR. ENNIS:
 11 Q. Ms. Piccone, the court reporter has
 12 marked Exhibit 124 and it is in front of you right
 13 now. I believe your counsel has a copy.
 14 If you could please take a look at
 15 this document, and after you are ready to talk
 16 about it, please let me know?
 17 A. Okay.
 18 Okay.
 19 Q. All right?
 20 Have you seen -- strike the question.
 21 Ms. Piccone, have you seen the
 22 document that is marked as Exhibit 124 before
 23 today?
 24 A. No.
 25 Q. Okay. Are you able to provide

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 testimony on behalf of Destination Maternity
 3 regarding Exhibit 124?
 4 A. It would depend what the question is.
 5 Q. Okay. If you could turn to the page
 6 ending in 411?
 7 A. Okay.
 8 Q. Do you see the "Who is ranked higher"
 9 on the left-hand side of the page of Exhibit 124
 10 that is ending in Bates range 411?
 11 A. Yes.
 12 MS. REINCKENS: Objection to form.
 13 Q. What is zulily.com?
 14 A. It is a liquidator of merchandise.
 15 Q. Are you aware of what brands are
 16 available at zulily.com?
 17 A. It's different every day.
 18 Q. Okay. So Zulily would be akin to a
 19 Marshall's or a TJ Maxx, for example?
 20 A. No, I -- because of Zulily is what
 21 this -- my understanding -- again, I -- this is
 22 the first time I've seen this -- this is specific
 23 to e-commerce.
 24 Q. Okay.
 25 A. So Zulily is an e-commerce-only

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 channel of distribution, so I would not equate it
 3 to any retailers that have brick-and-mortar
 4 stores.
 5 Q. Okay. What is A-S-O-S.com?
 6 A. Asos.
 7 Q. Asos?
 8 A. They are also an online-only channel
 9 of distribution. They do not have
 10 brick-and-mortar stores.
 11 Q. Okay. What goods are sold by Asos?
 12 A. Asos sells a variety of goods in -- in
 13 women's apparel.
 14 Q. Just in women's apparel?
 15 A. I don't know, actually. I -- I've
 16 only looked at their women's.
 17 Q. So they sell maternity and
 18 non-maternity, for example?
 19 A. Yes.
 20 Q. Okay. Would that also be true for
 21 Zulily, they sell maternity and non-maternity?
 22 A. Again, they don't really sell
 23 anything, because they don't -- my understanding
 24 is they don't ever physically own their inventory.
 25 So, you know, they're like a -- I would equate

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 2 them to like a RueLaLa or a Gilt.
 3 Q. Right. So they would take excess
 4 inventory from a store that, for example, might
 5 not be able to sell it and then liquidate it
 6 online?
 7 A. Correct.
 8 Q. Amazon, obviously, is an
 9 online-only --
 10 A. Same --
 11 Q. -- channel of distribution?
 12 A. -- yes.
 13 Q. Does Destination Maternity sell
 14 product through Amazon?
 15 A. I believe they do.



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 9 Q. And then the -- you mentioned there
 10 was someone in charge of e-commerce.
 11 What was their title at Destination
 12 Maternity?
 13 I apologize.
 14 A. He's the vice president of e-commerce.
 15 Q. Okay. Who was that?
 16 A. The person I mentioned prior, Steve
 17 Kahn.
 18 Q. Okay. How long has Mr. Kahn held that
 19 role at -- at DMC?
 20 A. I don't know.
 21 Q. Okay. Has he held it since before
 22 your time at DMC?
 23 A. Yes.
 24 Q. What is Seraphine Maternity?
 25 A. Where is that?

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 2 Q. At the bottom --
 3 A. I don't know. I've never heard of
 4 them.
 5 Q. Okay.
 6 You've never come across them?
 7 A. No.
 8 Q. If we can turn to the page ending in
 9 413?
 10 A. Okay.
 11 Q. Does page -- the page ending in 413
 12 tell you anything about when Exhibit 124 may have
 13 been created?
 14 A. Well, there's -- there's another page
 15 I saw that tells it better.
 16 Q. Okay. What page was that?
 17 A. There was a page that referenced that
 18 had enough information that led me to believe that
 19 this happened at the end of the first quarter of
 20 2013.
 21 Where it says Q-1 summary, all brands.
 22 Q. Okay.
 23 MS. REINCKENS: What page was that?
 24 Q. Yeah, what page --
 25 THE WITNESS: 427.

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 2 Q. Thank you.
 3 Turning back to page 413, I just want
 4 to run through the companies that are listed here.
 5 Motherhood.com, that is -- is that the
 6 Motherhood Maternity website?
 7 A. Yes.
 8 Q. Okay.
 9 A. To be clear though, you can also
 10 access Motherhood product if you go on the
 11 destinationmaternity.com website.
 12 Q. Correct --
 13 A. Yeah.
 14 Q. -- but I'm just trying to --
 15 A. Yep.
 16 Q. -- understand the web addresses.
 17 A. Yes.
 18 Q. For example, Motherhood Maternity, you
 19 would be able to access Motherhood Maternity
 20 product --
 21 A. Yes --
 22 Q. -- through there as well --
 23 A. -- yes.
 24 Q. -- and as through Destination
 25 Maternity?

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 2 A. Yes.
 3 Q. Are there any other Destination
 4 Maternity-owned web addresses listed on page 413
 5 beyond what we've already discussed?
 6 A. Pea in the Pod.
 7 Q. Yep. Anything else?
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 Q. Would you think that Motherhood
 15 Maternity is -- is a DMC website?
 16 A. I would assume so.
 17 Q. Okay. Looking at the other remaining
 18 companies here -- sorry, web addresses, what is
 19 Loft?
 20 A. Ann Taylor Loft.
 21 Q. Okay. And that would be the Ann
 22 Taylor Loft website, for example?
 23 A. Correct.
 24 Q. Isabella Oliver, what is that?
 25 A. That is very high-end maternity.

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 2 Q. Okay. So that would be akin to Pea in
 3 the Pod or even more expensive, for example?
 4 A. Yes.
 5 Q. Okay. Target and Zulily we've already
 6 discussed.
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 Gap, Babies 'R Us.
 11 That one, what is diapers.com? Are
 12 you familiar with that?
 13 A. Vaguely familiar. It's -- yeah, I'm
 14 vaguely familiar with that website.
 15 Q. Okay. What is that website about?
 16 A. It's a website that will deliver
 17 diapers to your home.
 18 Q. Okay. Is that somewhat analogous to
 19 contacts with 1-800 Contacts, for example?
 20 A. I don't wear contacts.
 21 Q. Okay. Understood.
 22 All right. If you could turn to the
 23 next page, which is ending in Bates 414?
 24 A. Okay.
 25 [REDACTED]

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 Q. Okay. And then -- if I wanted to ask
 9 detailed questions about this document, I would
 10 need to talk with Mr. Kahn?
 11 A. Yes.
 12 MS. REINCKENS: Objection to form.
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
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 10 [REDACTED]
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1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
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 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 [REDACTED]
 3 [REDACTED]
 4 Okay. If you could turn to the page
 5 ending in 456?
 6 A. 456?
 7 Q. Correct. I think it's --
 8 A. I found it, yes.
 9 Q. -- maybe four from the back?
 10 A. Yes.
 11 Okay.
 12 Q. Are you aware of any meaning to the
 13 acronym SCO?
 14 A. I don't. I don't know what that
 15 means. I noticed it --
 16 Q. Okay.
 17 A. -- when I was going through this. No.
 18 Q. So if I were to want questions
 19 answered regarding the data and results displayed
 20 on this page, who at Destination Maternity would I
 21 have to ask?
 22 A. You know, I would say Steve Kahn, the
 23 head of e-commerce.
 24 Q. Understood. Okay.
 25 If you could put aside exhibit --

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 2 strike the question.
 3 You could put aside Exhibit 124.
 4 Other than the testimony that you've
 5 provided today, do you have any other testimony to
 6 provide regarding the topics for deposition of DMC
 7 that you have not yet provided -- strike the
 8 question.
 9 Other than the testimony you
 10 provided -- let's start over.
 11 You know -- you know the topics that
 12 you've been designated for deposition today on
 13 behalf of DMC?
 14 A. Yes.
 15 Q. Okay. Do you have any additional
 16 testimony on those topics to provide today?
 17 A. It depends if you have any more
 18 questions for me.
 19 Q. Okay. Can you look at Exhibit 41?
 20 A. This was the document you showed me
 21 earlier, correct?
 22 Q. Correct, it is.
 23 A. Okay.
 24 Q. Okay. If you could turn to page 14 of
 25 that document, Exhibit 41.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 Are you there?
 3 A. Yes.
 4 Q. Do you have any more testimony to
 5 offer as DMC's corporate witness on topic 9 as set
 6 forth in Exhibit 41, page 14, subject to DMC's
 7 objections?
 8 MS. REINCKENS: I'm going to object.
 9 Do you have any more questions?
 10 Q. You can answer the question?
 11 A. Please repeat the question.
 12 Q. Do you have any more testimony to
 13 offer as DMC's corporate representative on topic 9
 14 as set forth in Exhibit 41, page 14, subject to
 15 DMC's objections? Yes or no.
 16 A. If you don't have any more questions,
 17 at this current time, no.
 18 Q. And is that true for the remainder of
 19 the topics of deposition for which you've been
 20 designated by DMC?
 21 A. Again, I'd -- I'd need specific
 22 questions. If you don't have any more questions,
 23 then...
 24 Q. All right. So turning to topic 17?
 25 A. Okay.

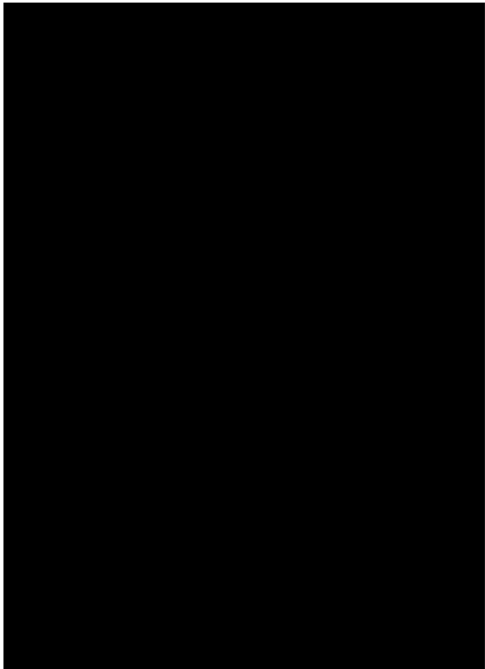
1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 Q. Do you have any more testimony to
 3 offer as DMC's corporate representative on
 4 topic 17 as set forth in Exhibit 41, page 14,
 5 subject to DMC's objections? Yes or no.
 6 A. At this time, I'd say no.
 7 Q. Turn to page 15 of Exhibit 141 for me?
 8 A. Okay.
 9 Q. Do you have any more testimony to
 10 offer as DMC's corporate representative regarding
 11 topic 29? Yes or no.
 12 A. At this time, no.
 13 Q. You could look at topic 32.
 14 Do you have any more testimony to
 15 offer as DMC's corporate representative regarding
 16 topic 32? Yes or no.
 17 A. At this time, no.
 18 Q. Do you, as DMC's corporate
 19 representative, have any more testimony to offer
 20 regarding topic 33, subject to DMC's objections?
 21 Yes or no.
 22 A. At this time, no.
 23 Q. Do you, as DMC's corporate
 24 representative, have any more testimony to offer
 25 regarding topic 36, subject to DMC's objections?

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 Yes or no.
 3 A. At this time, no.
 4 Q. If you can turn to page 16 of
 5 Exhibit 41.
 6 Do you have any more testimony to
 7 offer as DMC's corporate witness for topic 43,
 8 subject to DMC's objections? Yes or no?
 9 A. At this time, no.
 10 Q. Do you have any more testimony to
 11 offer as DMC's corporate witness for topic 44,
 12 subject to DMC's objections? Yes or no.
 13 A. At this time, no.
 14 Q. Do you have any more testimony to
 15 offer as DMC's corporate representative for
 16 topics 47, 48, 49, subject to DMC's objections?
 17 Yes or no?
 18 A. Give me a minute while I reread them.
 19 You said 47, 48, and 49?
 20 Q. Correct.
 21 A. Okay.
 22 Well, specific to 47 and 48, I would
 23 say, not at this time, no.
 24 Q. Okay.
 25 A. For 49, I -- I have a lot -- I -- I --

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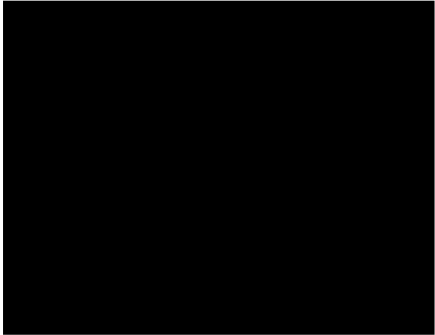
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2 A. It is --
3 MS. REINCKENS: Again, I'm just going
4 to caution the witness to respond to the
5 extent she can answer without disclosing any
6 attorney-client privileged information.

7 Q. You can answer the question.



18 Q. Do you have any further testimony
19 regarding the Fit Smart product --

20 A. No.

21 Q. -- sold by --

22 A. Not at this time, no.

23 Q. All right. Beyond what you just
24 stated concerning topic 49, do you have any
25 further testimony?

22 Q. Okay. Are you aware of a product that
23 might be referred to as Fit Smart?

24 A. Yes.

25 Q. What is that product?

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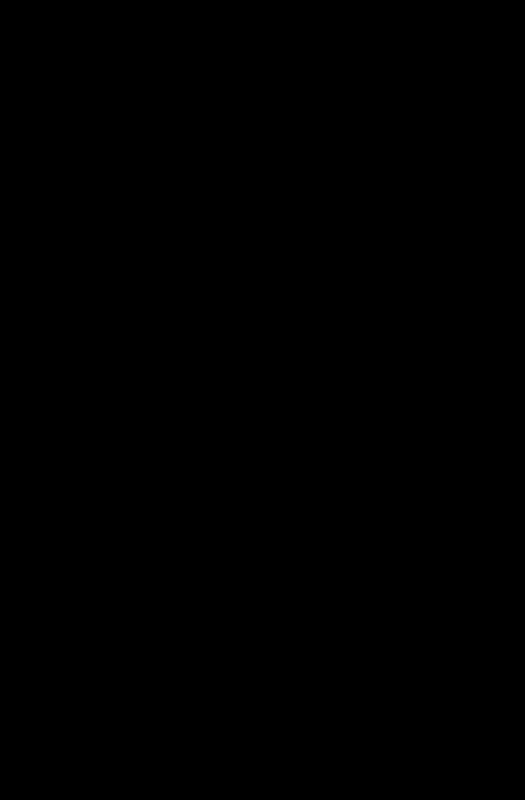
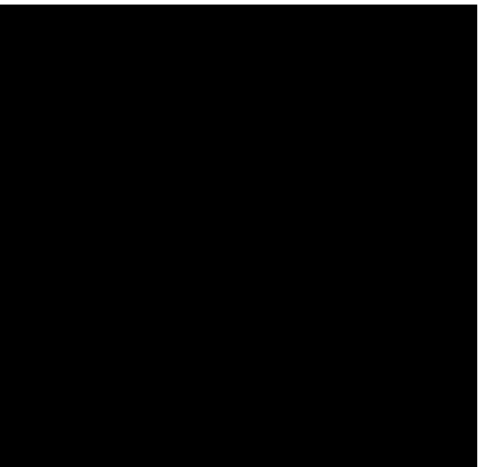
2 A. Not at this time, no.

3 Q. Okay. If we could turn to page 17 of
4 Exhibit 41.

5 Do you have any further testimony to
6 offer regarding topic 58, subject to DMC's
7 objections? Yes or no.

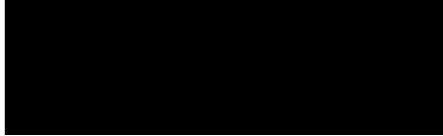
8 A. Not at this time, no.

9 Q. Do you have any further testimony to
10 offer as DMC's corporate representative regarding
11 topic 59, subject to DMC's objections?



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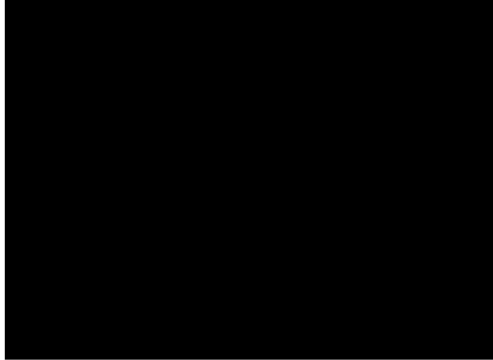
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6 Regarding the profitability of goods
7 sold by Destination Maternity, who would be the
8 better witness to ask, you or Tom McCracken or
9 someone else at Destination Maternity?

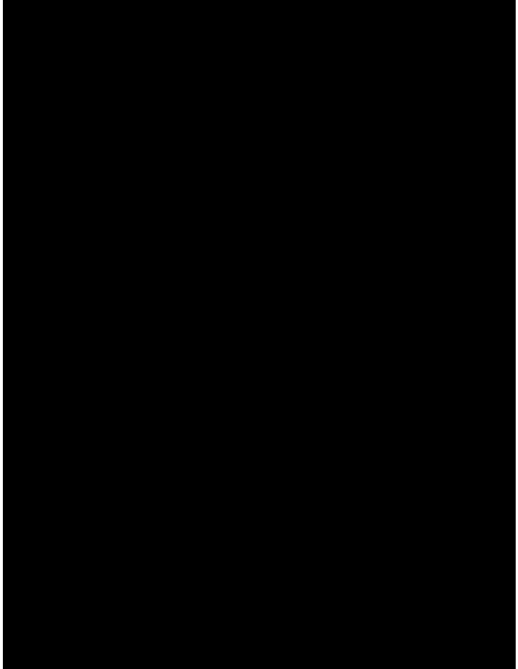
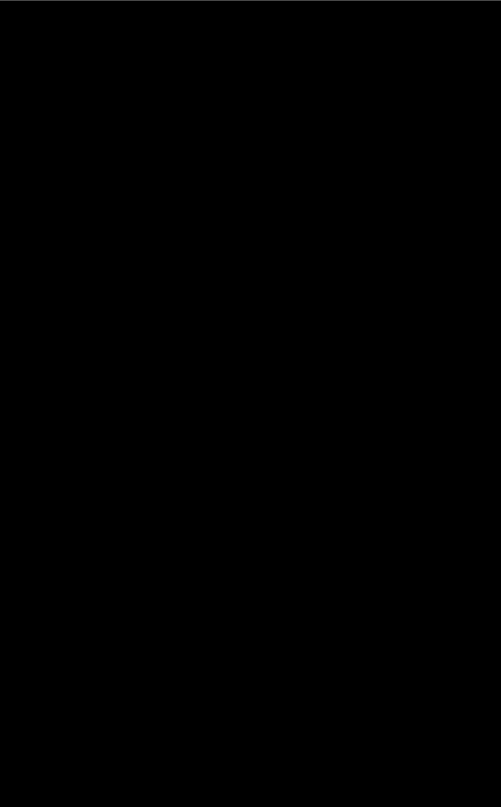
10 A. I'm still unclear what you're asking
11 me, so it's hard for me to -- to say that.

12 What -- what are you asking -- when
13 you say, "profitability," what are you -- what do
14 you mean?



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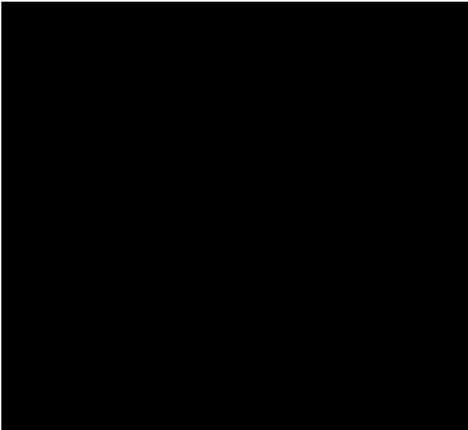
22 Q. Who would you go back to to get an
23 accurate number?

24 A. My computer.

25 Q. So sitting here today, without a

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 2 calculator or your computer, you're -- you're
 3 unable to give me that specific number, but if you
 4 were provided a computer and some time, then you
 5 might be able to?
 6 A. Yes.
 7 Q. Okay. Understood.
 8 Do you know if the computer that you
 9 would access -- strike the question.
 10 Do you know if the information that
 11 you would access in your computer to provide me
 12 the total gross profit for Secret Fit Belly sold
 13 by Motherhood has been produced to Target in this
 14 case?
 15 A. I don't know.
 16 MR. ENNIS: Counsel, if it has not
 17 done so, we ask that it be produced.
 18 MR. CARTER: Is that produced?
 19 MS. REINCKENS: Yes.
 20 MR. CARTER: Yesterday?
 21 MS. REINCKENS: Yes.
 22 MR. CARTER: And is Mr. McCracken the
 23 witness --
 24 MS. REINCKENS: Yes.
 25 MR. CARTER: -- for that information?

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 2 MS. REINCKENS: Yes.
 3 MR. CARTER: Thank you.
 4 BY MR. ENNIS:
 5 Q. All right. If you could turn to
 6 page 17 of Exhibit 41?
 7 A. Yes.
 8 Q. Do you have any further testimony
 9 regarding topic 60 as DMC's corporate
 10 representative, subject to DMC's objections? Yes
 11 or no.
 12 A. At this time, no.
 13 Q. Do you have any further testimony
 14 regarding topic 61 as DMC's corporate
 15 representative, subject to DMC's objections? Yes
 16 or no.
 17 A. At this time, no.
 18 Q. Do you have any further testimony
 19 regarding topic 62 as DMC's corporate
 20 representative, subject to DMC's objections? Yes
 21 or no.
 22 A. At this time, no.
 23 Q. Do you have any further testimony
 24 regarding topic 63 as DMC's corporate
 25 representative, subject to DMC's objections? Yes

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 or no.
 3 A. At this time, no.
 4 Q. Do you have any further testimony
 5 regarding topic 64 as DMC's corporate
 6 representative, subject to DMC's objections? Yes
 7 or no.
 8 A. Again, I -- I have stuff that shows
 9 future marketing and our intention of, you know,
 10 continuing to maximize the success of the Secret
 11 Fit Belly in a pants, but based on your questions,
 12 at this time, no.
 13 
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 2 But, again, if you're done with your
 3 questioning, at this time, I don't have any
 4 more -- I don't have -- I'm done.
 5 Q. Regarding topic 66, do you have any
 6 further testimony to provide today as DMC's
 7 corporate representative on that topic, subject to
 8 DMC's objections?
 9 A. Not at this time, no.
 10 Q. Okay. Regarding topic 69, do you have
 11 any further testimony to provide today as DMC's
 12 corporate representative, subject to DMC's
 13 objections to that topic?
 14 A. At this time, no.
 15 Q. Regarding topic 71, do you have any
 16 further testimony to provide as DMC's corporate
 17 representative subject to DMC's objections
 18 regarding that topic?
 19 A. At this time, no.
 20 Q. With regard to topic 72, do you have
 21 any further testimony to provide as DMC's
 22 corporate representative on that topic, subject to
 23 DMC's objections?
 24 A. At this time, no.
 25 Q. Do you have any further testimony to

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 provide regarding topic 9 subject to DMC's
 3 objections as DMC's corporate representative? Yes
 4 or no.
 5 MS. REINCKENS: Wasn't that already
 6 covered?
 7 You're going through it again?
 8 A. At this time, no.
 9 Q. Thank you.
 10 MR. ENNIS: Today, we have no further
 11 questions for the witness. However, we are
 12 going to reserve our right to hold the
 13 deposition open.
 14 I'm sure that the parties will be
 15 exchanging correspondence regarding Target's
 16 corporate depositions and DMC's corporate
 17 depositions, and I think we can handle it in
 18 that manner.
 19 If you have anything to say, feel
 20 free?
 21 MS. REINCKENS: Sounds good.
 22 MR. ENNIS: All right. Then I think
 23 we're done for today.
 24 VIDEOGRAPHER: That now concludes this
 25 video deposition and Tape No. 6. The time

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 2 is 1810.
 3 (Whereupon the proceedings were
 4 concluded at 6:10 p.m.)
 5 oOo
 6 I, REBECCA PICCONE, the witness herein,
 7 do hereby certify that the foregoing testimony of
 8 the pages of this deposition to be a true and
 9 correct transcript, subject to the corrections, if
 10 any, shown on the attached page.
 11 _____
 12 REBECCA PICCONE
 13 Subscribed and sworn to before me this
 14 _____ day of _____, _____.
 15 _____
 16 _____
 17 _____
 18 _____
 19 _____
 20 _____
 21 _____
 22 _____
 23 _____
 24 _____
 25 _____

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 CERTIFICATE
 3 I, AMY A. RIVERA, a Certified Shorthand
 4 Reporter, Registered Professional Reporter,
 5 Certified LiveNote Reporter, and Notary Public of
 6 the State of New York, do hereby certify that
 7 prior to the commencement of the examination
 8 REBECCA PICCONE, was duly sworn by me to testify
 9 the truth, the whole truth and nothing but the
 10 truth.
 11 I DO FURTHER CERTIFY that the foregoing
 12 is a true and accurate transcript of the testimony
 13 as taken stenographically by and before me at the
 14 time, place and on the date hereinbefore set
 15 forth.
 16 I DO FURTHER CERTIFY that I am neither a
 17 relative nor employee nor attorney nor counsel of
 18 any of the parties to this action, and that I am
 19 neither a relative nor employee of such attorney
 20 or counsel, and that I am not financially
 21 interested in the action.
 22 _____
 23 Notary Public of the State of New York
 24 My commission expires August 28, 2014
 25 License No. XI00939
 Dated: October 22, 2013

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - R. PICCONE
 2 INDEX
 3 WITNESS PAGE
 4 REBECCA PICCONE
 5 By Mr. Ennis 6
 6
 7 EXHIBITS
 8 NUMBER DESCRIPTION PAGE
 9 Exhibit 100 Deposition notice 9
 10 Exhibit 101 Mothers Work company 17
 11 profile
 12 Exhibit 102 Mothers Work company 52
 13 profile, 12/2007
 14 Exhibit 103 DMC company profile, 54
 15 1/2009
 16 Exhibit 104 DMC company profile, 58
 17 2/25/10
 18 Exhibit 105 DMC company profile, 75
 19 2/25/11
 20 Exhibit 106 DMC company profile, 118
 21 1/20/12
 22 Exhibit 107 DMC company profile, 136
 23 1/25/13
 24 Exhibit 108 Denim dictionary 150
 25

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2 EXHIBITS (Continued)

3 NUMBER	DESCRIPTION	PAGE
4 Exhibit 109	Motherhood Maternity weekly ABT form	169
6 Exhibit 110	Comments, produced in native format	172
8 Exhibit 111	Comments, produced in native format	184
10 Exhibit 112	Comments, produced in native format	207
12 Exhibit 113	Pair of maternity jeans	217
13 Exhibit 114	Tala Maternity jeans	220
14 Exhibit 115	Baccini jeans	224
15 Exhibit 116	Gap jeans	228
16 Exhibit 117	Excel spreadsheet	242
17 Exhibit 118	Excel spreadsheet	245
18 Exhibit 119	E-mail dated March 18, 2008	267
20 Exhibit 120	E-mail dated March 18, 2008	268
22 Exhibit 121	E-mail dated May 8, 2008	276
24 Exhibit 122	E-mail dated May 8, 2008	278

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2 EXHIBITS (Continued)

3 NUMBER	DESCRIPTION	PAGE
4 Exhibit 123	DMC strategic plan session	281
6 Exhibit 124	DMAT parallel path	293

8 REQUEST FOR PRODUCTION

9 PAGE/LINE	DESCRIPTION
10 128 19	Any contracts or agreements relating to DMC's licensed business with Kohls and with Sears
14 133 3	Agreements with Macy's, Babies 'R Us, Buy Buy Baby, Bloomingdale's, Gordmans, or Boscov's regarding the leased departments
19 278 22	Attachments to Exhibit 122
20 284 22	Appendix 3 to Exhibit 123

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2 UNITED STATES DISTRICT COURT) Pg. Of Pgs.

3 EASTERN DISTRICT OF PENNSYLVANIA)

4 I wish to make the following changes for

5 the following reasons:

6 PAGE LINE

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