

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
NORTHERN DIVISION

AMERICA'S COLLECTIBLES
NETWORK, INC., d/b/a
JEWELRY TELEVISION@,
Plaintiff, Civil Action No.
v. 3:09-cv-143
STERLING COMMERCE
(AMERICA), INC.,
Defendant.

Videotaped Statement Under Oath
ATLANTA, GEORGIA
NOVEMBER 10, 2015
3:01 p.m.

REPORTED BY:
TANYA L. VERHOVEN-PAGE, CCR-B-1790
JOB NO. 41703

APPEARANCES

FOR THE PLAINTIFF:
THE LAW OFFICE OF DAVID J. SHAPIRO, P.C.
43 West 43rd Street
Suite 45
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BY: David J. Shapiro, Esq.
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ALSO PRESENT: Leo Mileman, Videographer

November 10, 2015
3:01 p.m.

Videotaped Statement Under Oath
held at the Sheraton Atlanta, 165
Courtland Street, N.E., Atlanta, Georgia,
before Tanya Page, a Registered Professional
Reporter in the State of Georgia.

ATLANTA, GEORGIA; NOVEMBER 10, 2015
3:02 P.M.

PROCEEDINGS

THE VIDEOGRAPHER: Would counsel
please introduce themselves.

MR. SHAPIRO: David Shapiro from
the Law Offices of David J. Shapiro, P.C.
on behalf of the plaintiff Jewelry
Television.

THE VIDEOGRAPHER: Thank you. Will
the court reporter please swear in the
witness.

COURT REPORTER: I'm going to ask you to
raise your right hand. Do you solemnly swear the
testimony you are about to give will be the truth
the whole truth and nothing but the truth.

THE WITNESS: Yes, I do.

Thereupon --

EXAMINATION

BY MR. SHAPIRO:

Q Mr. Lewis, good afternoon.

A Hey.

Q Thank you very much for joining us.

Draft Copy

1 Before we start, I'd like to remind you
2 that we've asked you to come here today to tell the
3 truth and the whole truth and nothing but the truth.

4 Are you prepared to do that today for us,
5 sir?

6 A Absolutely.

7 Q Has anyone promised you anything in
8 exchange for today's testimony?

9 A No, sir.

10 Q Have you been -- are you being paid to be
11 here today?

12 A No, sir.

13 Q Has anyone made any promises to you of
14 any kind in connection with today's testimony?

15 A No, sir.

16 Q And will you do your best to tell the
17 full truth and the whole truth as you remember it
18 concerning the events surrounding the sale of
19 Sterling's product and services to JTV?

20 A Absolutely. Yes.

21 Q Sir, you recall you've given two
22 depositions in this case already.

23 Could you please tell us, in your own
24 words, why you're willing to come forward today and
25 give further testimony in this case?

1 A Yes. The first deposition back in
2 November I don't believe the question was answered
3 correctly as it relates to similar solutions the
4 client or our former client was looking for us to
5 confirm. Also, in the second deposition, I gave a
6 couple responses where I basically said I plead the
7 fifth because I wasn't comfortable with either the
8 arrangement, but this deposition is really just to
9 answer any questions and be a little bit more
10 succinct in the answers regarding what I believe the
11 client had asked us previously versus some answers
12 that we were positioned or coached on how to answer
13 in the past with the representation of Kilpatrick &
14 Townsend.

15 Q You say, sir, positions you were coached.
16 Is it fair to say that prior to today, to a certain
17 extent at least, you've always been telling the IBM
18 version of what happened at JTV?

19 A IBM as the employer. IBM as maybe a
20 business partner of one that had I relationship with.

21 So I would say not necessarily coaching
22 on how to respond, but when these types of questions
23 come up, this is how you can answer or this is how
24 other individuals have answered.

25 Q And is it fair to say that you're here

1 today because you want to tell the jury what happened
2 during the sales cycle and be totally unaided by IBM
3 on how they were encouraging you and positioning you
4 to give certain answers?

5 A That is correct.

6 Q And is it true that you're also here
7 because, at one point, you were a little worried
8 about certain answers you gave at the first
9 deposition on what your lawyers had said to you about
10 that; is that true, sir?

11 A That is true.

12 Q Would you explain what your lawyers had
13 said to you and why that encouraged you to come
14 forward today?

15 A Yes. The first deposition there was a
16 question at the very end regarding some
17 interrogatories and my response to those, my
18 certification of those answers being true, and I
19 don't think -- either we ran out of time or I wasn't
20 able to answer them completely or I was confused
21 about by whose responsibility it was to answer the
22 interrogatory.

23 Q And do you recall that your lawyers at
24 one time -- and we'll go over it later today -- used
25 the word perjury in connection with one of the

1 answers -- one of the answers you gave?

2 A Correct, and there was always
3 encouragement to not purger myself. So that, to me,
4 meant that I needed some more awareness.

5 Q So is it fair to say the one reason
6 you're here today is to correct any errors that may
7 have happened in the past with connection with your
8 testimony?

9 A Absolutely.

10 Q And is it fair to say that you're here
11 today to make sure that the record is as crystal
12 clear as you can make it as someone who was involved
13 in the sales cycle; is that right?

14 A Absolutely.

15 Q Okay. Let's start at the beginning.
16 Could you please tell the ladies and gentlemen of the
17 jury what was your role at Yantra prior to 2007?

18 A Yes. 1999 I hired in as a client
19 engagement manager. I was responsible for the
20 successful delivery of implementations. I managed
21 the project teams, which would be consisting of
22 project managers, senior consultants, and the goal
23 was to make sure the client was referenceable.

24 So prior to the role that I had years
25 down the road, it was really implementation, making

1 sure the customer went live and recognized value from
2 their investment in the software.

3 Q And prior to JTV in and around 2007, is
4 it true, sir, that you were on the -- therefore, the
5 implementation side of the Sterling and Yantra
6 organization as opposed to the sale side?

7 A Well, in 2005, when we were acquired by
8 Sterling Commerce, the roles changed. I moved out of
9 the implementation role into the sales team, and that
10 was just an organization change by Sterling Commerce.

11 Q But before 2007, you were involved in
12 implementation --

13 A All implementations.

14 Q Sorry. Implementing Sterling products;
15 is that right?

16 A Correct.

17 Q Okay. Now, drawing your attention to
18 December 2006, is that when JTV licensed a Sterling
19 product known as NWMS?

20 A I believe so.

21 Q And approximately when were you assigned
22 to the JTV product?

23 A It would have been after that sale. So,
24 if memory recall, February, thereabouts, 2007.

25 Q Okay. Now, based on your experience are

1 that I was still managing -- twelve to 15 months -- I
2 would say -- for that particular client, which was a
3 retailer. On average, I would say between nine and
4 12 months.

5 Q So OMS, in your experience, on average
6 was eight months and -- excuse me.

7 A Nine.

8 Q WMS, in your experience, was an average
9 of approximately eight months?

10 A Six to nine I would say.

11 Q Six to nine.

12 And based on your several years at the
13 company, the average implementation time for OMS, 12
14 to 15; is that right?

15 A Fair.

16 Q And before 2007, had Sterling ever
17 implemented the PO product?

18 A Not to my knowledge at all. I think
19 there was one other client, possibly Avery Dennison,
20 that had licensed the PO collab piece, but I don't
21 think they ever successfully went through an
22 implementation.

23 So there were no implementations prior to
24 JTV that were live.

25 Q So does it, therefore, follow, sir, that,

1 at Sterling, how long on average does it take to
2 implement the WMS product?

3 A My experience, which dates back, again,
4 to 1999, I would say, on average, it was about a six'
5 to nine-month implementation.

6 Q When you say 1999, are you referring to
7 the period from '99 up until 2007?

8 A Correct. Or my entire time in the
9 delivery organization, across all the projects and
10 clients that implemented WMS, I would say on average
11 six to nine months. Some were as long as 12 to 15
12 months.

13 Q And in February of 2007, JTV became
14 interested in possibly adding OMS and PO to its
15 project; is that right?

16 A Correct. Yes.

17 Q And you recall, sir, that, in June of
18 2007, JTV actually licensed the OMS and PO product?

19 A That is true.

20 Q Now, could you tell us, sir, based on
21 your experience on the implementation side at
22 Sterling, how long on average does it take to
23 implement OMS?

24 A Order management at Circuit City, the
25 prior project for me prior to JTV -- and it was one

1 by 2007, there was no history or track record upon
2 which Sterling could say here is the average amount
3 of time it takes to implement PO?

4 A Correct. No implementation patterns had
5 been established for a PO collab as a new product.

6 Q And do you recall, sir, that, in October
7 of 2007, the parties signed what's known as an
8 implementation statement of work?

9 A Yes.

10 Q And was JTV's -- are you familiar with
11 the phrase product mix as it's used in your -- in
12 your industry?

13 A Yes.

14 Q What is a product mix?

15 A I'll give you a quick use case with
16 warehouse management. The majority of the
17 implementation is -- the product mix would be
18 cartons, boxes, SKUs, pallets. JTV had a pretty
19 unique product mix in terms that they were selling
20 into eaches, small quantities, small units of
21 measures, rings, watches.

22 The packaging would have been different
23 than anything we would have faced before.

24 Q You say that would have been different
25 than anything we would have faced before.

1 Are you testifying today that JTV's
 2 product mix was the first time -- first of its kinds
 3 that Sterling had come across?
 4 A Yes, to my knowledge.
 5 Q And you referenced earlier, sir, the
 6 phrase implementation pattern.
 7 What is an implementation pattern?
 8 A In an implementation pattern, you
 9 typically look for things that are similar or things
 10 that are different, and those things that are
 11 different we would classify as gaps.
 12 So, with JTV, I think it was the first
 13 time that we, as an organization -- Yantra or
 14 Sterling -- had sold into an entity that mainly
 15 advertises through media.
 16 Q You anticipated my next question.
 17 Were there any clients before JTV that
 18 had the same implementation patterns that Sterling
 19 had dealt with?
 20 A I wouldn't say implementation patterns.
 21 I would say selling patterns. I believe we sold into
 22 one other retailer, QVC, and we sold the WMS product
 23 into QVC, and after the sale of that product, they
 24 abandoned their implementation and went with a
 25 competitor's product.

1 correct?
 2 A No. They abandoned their implementation.
 3 They abandoned after the sale, and they went with a
 4 competitor's product.
 5 Q And based on what you know, was the
 6 selling pattern at QVC, which is similar to the
 7 selling pattern at JTV, was that one of the reasons
 8 the QVC project failed?
 9 A I think once they got close enough to the
 10 implementation, there were too many challenges that
 11 they quickly identified, such as the ability to do
 12 half a million line item orders in a day.
 13 I think the scale, the volume was just
 14 different.
 15 Q And between February of 2007 and October
 16 of 2007, were there meetings between folks from
 17 Sterling and JTV to talk about adding OMS and PO to
 18 the project?
 19 A Yes.
 20 Q And you said earlier that, in your
 21 experience, WMS takes about eight months?
 22 A Six to nine.
 23 Q Six to nine months.
 24 OMS approximately 12 to 15 months?
 25 A Correct.

1 Q Do you know why QVC abandoned the product
 2 that they purchased from Sterling?
 3 A I wasn't on the implementation, but
 4 talking to some of the individuals that were
 5 responsible for the sale and the engineering
 6 organization, QVC felt we couldn't scale, and they
 7 felt like our WMS product wasn't the right fit for
 8 their industry.
 9 Q And the WMS product -- that's the same
 10 product that was licensed by both JTV and QVC,
 11 correct?
 12 A Correct. Network WMS.
 13 Q I'm sorry. Let me try that again.
 14 QVC licensed WMS, and that was the same
 15 WMS product licensed by JTV, correct?
 16 A Correct.
 17 Q And did QVC have a similar selling
 18 pattern to JTV?
 19 A I still would say that would have been
 20 our first time selling into that space where people
 21 are advertising products on-line through TV. Most of
 22 our implementations were just connected to an
 23 eCommerce application passing us an order or their
 24 order management system passing.
 25 Q And the QVC project was not successful,

1 Q And there had been no track record yet to
 2 know how long it would take on average to implement
 3 PO. Did I get that right?
 4 A Correct.
 5 Q But during this time period when you get
 6 up to October of 2007, did Sterling tell JTV that all
 7 three products, WMS, OMS and PO, could be implemented
 8 in just eight months?
 9 A I think that was the implementation
 10 estimate from the services team that all three could
 11 be implemented in eight months.
 12 Q Was it possible to implement all three
 13 products, NWMS, OMS and PO, in just eight months in
 14 2007?
 15 A From my point of view, not possible.
 16 Q Could you please explain why.
 17 A Because, with every additional product
 18 that was added, it required additional integration
 19 points to other systems at JTV.
 20 So in a traditional fashion, if it was
 21 just WMS and it took six to nine months on average to
 22 implement WMS, it's just hard for me to fathom how
 23 you can add two additional products to that mix, and
 24 all the integration work -- integration usually is
 25 40 percent of the overall budget of a project, and we

1 just added additional risk by adding more things to
2 integrate to. It's not just integration. It's
3 testing, as well, plus training.

4 Q And during this period, February of 2007
5 until October 2007, did the folks from JTV start
6 asking the folks from Sterling whether it had ever
7 done before what JTV was asking it to do now; that
8 is, implement all three together?

9 A I think that question came up multiple
10 times from Wayne, multiple times from Chris, and it
11 was all under the can you do all three, and I think
12 the client, speaking of JTV, all three meant all
13 three products. On our point of view, maybe we
14 thought three individual products.

15 Q Well, I want to go back to what you just
16 said about what the client was asking. Is it your
17 testimony today that your memory is that the JTV
18 folks wanted to know whether or not Sterling had
19 experience implementing all three at the same time?

20 A Correct. I think JTV definitely wanted
21 to know. Because they had licensed all three, and
22 their project was based around delivering all three.

23 So, from their point of view, the client
24 wanted to know had you successfully done all three
25 before.

1 Q And the folks from Sterling that were
2 involved in these meetings from February '07 and
3 October '07 -- one of the gentlemen -- did that
4 include a Mr. Gary Giannoni?

5 A Yes. He was the account executive for
6 JTV.

7 Q And were you present when Mr. Lambert
8 would ask Mr. Giannoni about Sterling's
9 implementation experience as it related to all three
10 products?

11 A Several meetings down at their
12 headquarters, yes.

13 Q And what did Mr. Lambert ask
14 Mr. Giannoni?

15 A Specifically, I can't say how he framed
16 the question, but I've often used this. That he was
17 curious had we done all three, could we do all three,
18 could we give some confidence and reaffirm that we
19 could do all three.

20 Specifically how the question was framed,
21 I don't remember.

22 Q But is it fair to say, sir, that
23 Mr. Lambert's question and the others from JTV was
24 very clear that they wanted to know whether Sterling
25 had implemented all three at a company before JTV?

1 Did I get that right?

2 A And that was a key consideration for them
3 purchasing the other two is that they wanted to know
4 had you had experience not only with WMS, which I
5 think everyone knew we had a track record with, but
6 the client wanted to know had we implemented all
7 three solutions in one project for one customer
8 before.

9 Q And were you ever present when
10 Mr. Giannoni answered these questions from either
11 Mr. Lambert or others?

12 A Yes, several meetings down at their
13 location, their headquarters.

14 Q What did you hear Mr. Giannoni say?

15 A Yes, and then reaffirming that we could
16 do it.

17 Q Okay. Yes what? What do you remember
18 Mr. Giannoni saying to Mr. Lambert about Sterling's
19 experience in implementing WMS, OMS and PO together?

20 A Yes, that we had done all three before.

21 Q Was that true?

22 A Not all three as one application bundle,
23 no.

24 Q And how did you know that that wasn't
25 true?

1 A Again, it's from my implementation
2 experience and the fact that the PO product was new.
3 The PO product did not exist like when I first hired
4 in in 1999. So there were no customers of record
5 that had implemented all three solutions back in
6 2007.

7 Q Had you ever -- did you ever hear
8 Mr. Lambert or others from JTV ask the question this
9 way: Sterling, have you ever done this before?

10 A This referring to what we were pitching
11 or what we were positioning and what we were looking
12 to sell. This being PO collab, order management,
13 WMS, this before.

14 Q Is there any doubt in your mind that
15 between February of '07 and October of '07
16 Mr. Lambert and the other representatives of JTV
17 wanted to know whether Sterling had experience in
18 implementing what JTV was asking it to do; that is,
19 implementing WMS, OMS and PO together?

20 A No. No doubt in my mind, and
21 successfully implementing all three.

22 Q And why is there no doubt in your mind
23 that JTV wanted to know if Sterling had implemented
24 all three products together?

25 A Their buying decision depended upon that.

1 Q Now, when you heard Mr. Giannoni tell
2 Mr. Lambert that Sterling had previously done what
3 JTV was asking it to do, implement all three at the
4 same time, Mr. Lewis, can you tell us why didn't you
5 correct him?

6 A Two, maybe three possible reasons.
7 Number one, we're in a sales cycle, and that would be
8 taboo in a sales organization to put up a challenge
9 that prevented the sale from progressing, and that
10 could be the end of your career, and maybe
11 individuals wouldn't want to work with you again if
12 you called out all the challenges in a sales cycle.

13 Number two, from my implementation point
14 of view, I've been in similar scenarios where sales
15 sold A, B and C, and I had to deliver A, B and C. So
16 I still felt like our delivery team could meet the
17 requirements and actually deliver the solution.

18 Q But irrespective of what you thought the
19 solution implementation team might do, is it your
20 testimony today that Mr. Giannoni misrepresented a
21 fact, that he misrepresented Sterling's
22 implementation experience?

23 A Yes.

24 Q And is there any doubt in your mind that
25 Mr. Giannoni said to Mr. Lambert and others, yes, we

1 the JTV product?

2 A Another account would have been Circuit
3 City. They were licensing order management, looking
4 to implement order management and also a new
5 capability.

6 Q And based on your observation of
7 Mr. Giannoni and based on the time you spent working
8 with him, why do you believe that Mr. Giannoni lied
9 to Mr. Lambert and others and misrepresented
10 Sterlings's implementation experience?

11 A I think the nature of sales, especially
12 sales reps, is that you have a limited amount of time
13 to show success before your career with that company
14 could be ended, and what I mean by that is the
15 average amount of time that they give people to
16 train, come into an organization, learn the products
17 is in between six to 12 months.

18 If you haven't sold any product within
19 six to 12 months, there's a lot more pressure as to
20 whether or not that was a bad hire. Was that a bad
21 candidate. Maybe we should have never hired him, and
22 my sense is Gary was in his second year of not having
23 any sales at Yantra or Sterling.

24 Q Have you ever heard the phrase a warm
25 blanket of assurance as it's used in the sales

1 have implemented all three of these products together
2 at a company before you?

3 A No doubt in my mind that that was said.

4 Q And is it your testimony today, sir, that
5 that was a lie?

6 A That is incorrect. We had never done it
7 before.

8 Q Well, just so the record is clear, when
9 you say that is incorrect, my question wasn't
10 incorrect, but let's -- let me do it again.

11 Is there any doubt in your mind, as you
12 sit here today testifying under oath, that
13 Mr. Giannoni misrepresented Sterling's implementation
14 experience when he said to Mr. Lambert and others,
15 yes, we, at Sterling, have implemented all three
16 before together?

17 A No doubt in my mind that that is a
18 misrepresentation.

19 Q Had you known Mr. Giannoni before this
20 February to October time period when you were on the
21 JTV project?

22 A Yes. I supported him on another
23 opportunity.

24 Q Okay. And can you please describe for us
25 briefly your interactions with Mr. Giannoni before

1 context in your industry?

2 A Yes, and --

3 Q What does that phrase mean?

4 A You're offering assurances that you can
5 meet the customer's requirements, that you can
6 implement those capabilities, and the entire team,
7 sales, services and marketing, are all throwing
8 across a warm blanket that we have done this before.
9 We can do this for you. We will be successful if you
10 go with us.

11 Q And is that what you heard Mr. Giannoni
12 say time and time again during the sales cycle from
13 February '07 to October '07?

14 A I wouldn't use those words in quotations
15 that he used a warm blanket, but he conveyed a warm
16 blanket that we could implement these capabilities
17 throughout every interaction.

18 Q Did I understand your answer correctly,
19 sir, that the reason you believe Mr. Giannoni
20 misrepresented Sterling's implementation experience
21 is because he wanted to close the deal?

22 A Or there were incentives that -- that
23 there were negative things that can happen if he did
24 not get on the books and get a sale done, and I
25 believe JTV was his first sale in the two years that

1 he was with that organization.

2 Q Did Mr. Giannoni misrepresent Sterling's
3 implementation experiences and capabilities in an
4 effort to get this sale from JTV?

5 A Yes.

6 Q Now, after JTV sued Sterling for fraud,
7 do you recall that JTV issued something called an
8 interrogatory, which I think is a fancy word for a
9 question?

10 A I remember, I believe, the firm of
11 Kilpatrick & Townsend suggesting that there were an
12 interrogatory response that was due, and that our
13 whole team would have to fill out certain parts of
14 it.
15 (Previously marked Madhavan Exhibit 25 was identified
16 for the record.)

17 BY MR. SHAPIRO:

18 Q I'm going to hand you, sir, a document
19 that was previously marked as Madhavan Exhibit No.
20 25?

21 A And it's marked as Madhavan?

22 Q Yes. Do you see in the bottom right-hand
23 corner?

24 A Yes.

25 Q Okay. And do you recognize this? I'll

1 draw your attention to the title, Defendant's
2 supplemental objections and responses to Plaintiff's
3 first set of interrogatories?

4 A Yes.

5 Q And, if you could, turn with me to page
6 seven.

7 A Confidential - subject to protective
8 order.

9 Q Yes. That's on the top, and you see
10 Interrogatory Number 7. Do you see there in the
11 middle of the page, sir?

12 A Yes, I do.

13 Q And it reads: Section H of the
14 Implementation Phase SOW states, among other things,
15 that, JTV has relied upon the expertise of Sterling
16 Commerce in its software, its experience in
17 implementing similar solutions in other companies and
18 its ability to customize the Sterling Commerce
19 software to meet the requirements as defined in the
20 Solution Definition documents, end quote.

21 Do you see that, sir?

22 A Yes.

23 Q And then there's subparts A, B, C and D.
24 Do you see that?

25 A What were the other companies? What were

1 the similar solutions?

2 Q Right, and do you see C: Did any of the
3 "other companies" or "similar solutions" involve the
4 simultaneous or sequential implementation of WMS, OMS
5 and PO wherein Sterling was hired to perform the
6 implementation.

7 Do you see that?

8 A Yes.

9 Q The first question I have for you, sir --
10 this is called supplemental objections.

11 Do you recall receiving from your lawyers
12 at IBM Interrogatory Number 7, including subparts A,
13 B, C and D?

14 A I don't remember the questions A, B, C
15 and D. I do remember the preamble section.

16 Q And do you have any memory of your
17 lawyers from IBM asking you to answer Number 7,
18 including subparts A, B, C and D?

19 A No, I don't.

20 Q And if you could, turn with me to the
21 next page. Actually, let's stay on page seven.

22 Do you see there is something called a
23 supplemental response?

24 A At the bottom, yes.

25 Q Yes, and if you flip over to the next

1 page, there's a couple of paragraphs.

2 A Yes.

3 Q And then if you flip over to the next
4 page, there's still more paragraphs?

5 A Yes.

6 Q Okay. But there are no companies listed
7 in response to Number 7, correct, especially in
8 response to 7(c)?

9 A I don't see any of our client's names in
10 this section.

11 Q So here is my question, sir: If your
12 lawyers from IBM had asked you to answer Number 7,
13 and specifically 7(c), what would the true and full
14 answer be to 7(c)?

15 A What were the other companies? None.

16 Q And why would the answer have been none?

17 A Because there were no other companies
18 that implemented that bundle of PO, WMS and/or
19 management.

20 Q And if you would turn with me now, sir, a
21 couple of pages in. It's a few pages to the back.

22 It's the second to last page. It's called a

23 verification.

24 A Yes.

25 Q And that's your signature, right,

1 Mr. Lewis?

2 A There's three or four. So we're looking
3 at my verification?

4 Q Yes. Okay. Are you with me? I
5 appreciate it, and if you see in the top right-hand
6 corner, it says April 18th, '12, and then it says
7 2:40 p.m., Felton E. Lewis?

8 A Correct.

9 Q Was this FAXed to your home FAX machine?

10 A I believe so.

11 Q And you see --

12 A That's my home phone number,
13 (770)214-9194.

14 Q Okay. And the verification says that you
15 have read Sterling's supplemental responses to Number
16 7, and that Sterling's supplemental responses is
17 true -- are true and correct.

18 Do you see that?

19 A Yes, and I signed it.

20 Q And you signed it.

21 Who asked you to sign this verification?

22 A Joel Bush, or someone on his team.

23 Q And before he asked you to sign it, did
24 Joel Bush or anybody on his team walk you through and
25 show you the answer that we just looked at a few

1 seconds ago in this paragraph.

2 A No. It was separate. It was signed and
3 returned as -- and I believe it was signed and
4 returned, the other document, but there was no walk
5 through.

6 Q And, again, if you had been told that the
7 answer to Number 7 would not include a clear and
8 crisp and direct statement that there were no prior
9 customers of Sterling that had implemented WMS, OMS
10 and PO, would you still have signed the verification?

11 A I would not have signed the verification.

12 Q Why not?

13 A Because it would not have been true.

14 Q Now, do you recall we had -- you were
15 asked some questions about your verification and
16 about the answer Number 7 at your first deposition?

17 A Yes.

18 Q Okay. And when I showed you the answers
19 to Number 7 and your verification, did those
20 questions concern you at the time?

21 A It concerned me, and it was troubling
22 because I didn't know what my responsibility was
23 during the deposition or prior to the deposition.

24 Q And we'll come back to it in a minute,
25 but what did you do after that first deposition, and

1 you noticed, as I understand your testimony, the
2 first time you realized you had verified something
3 that was not -- that in your words was not true?

4 A During the deposition I turned to Susan,
5 I believe, who was with Kilpatrick & Townsend, and I
6 asked did I make a mistake? Was I supposed to fill
7 out this document? Was I supposed to answer these
8 questions? Because the way it was presented to me is
9 we're sending you a document. Review, sign, FAX and
10 send it back, and during the deposition, I just
11 turned -- because I didn't know if it was my
12 responsibility to go through this entire document and
13 then call out things that were true or not true. I
14 thought my role was just to sign and return a
15 document.

16 After the deposition, we had a caucus,
17 after I was off camera, and I went back at Susan and
18 Joel Bush in this caucus, and I said I don't think I
19 did a good job answering the last question that you
20 had asked, and the question was really regarding
21 where have you done similar solutions, and I didn't
22 know we were supposed to put names of customers in
23 there when I was on camera, and I just wanted to go
24 back to them and help them understand did I make a
25 mistake? Did we make a mistake? Did someone just

1 forget to fill out a document, and what I heard from
2 Joel Bush is that we intentionally left it blank.

3 Q And did it concern you to hear from
4 Mr. Bush that you had verified an answer as true,
5 which had been, as you put it, intentionally left
6 blank?

7 A Or misleading, yes, it did.

8 Q Why was that, sir?

9 A Because I had just been on camera, and I
10 had just signed the document, and maybe I didn't know
11 what I was actually signing.

12 Q And is it fair to say, as we talked about
13 earlier today, that one reason you're here today is
14 to tell under oath the truth of what had been told to
15 JTV about Sterling's implementation experience?

16 A Absolutely.

17 Q Now I'd like to show you our next
18 document, which was previously marked at your
19 deposition as Lewis Exhibit 31.
20 (Previously marked Lewis Exhibit 31 was identified
21 for the record.)

22 BY MR. SHAPIRO:

23 Q And, sir, you'll see that this is called
24 Defendant's original responses to Plaintiff's first
25 set of interrogatories.

1 Do you see that?
 2 A It looks very same similar to this one.
 3 Q Exactly. You can put them side by side.
 4 A Okay.
 5 Q So we just took a few minutes looking at
 6 the supplemental objections, Exhibit 25, that you
 7 verified?
 8 A Correct.
 9 Q Drawing your attention now to Lewis
 10 Exhibit 31, do you recognize this as the original
 11 objections and responses to Plaintiff's first set of
 12 interrogatories?
 13 A During the first deposition, correct.
 14 Q Well, here is my question. Taking a
 15 look -- flipping through Exhibit 31, the original
 16 objections, did anyone from IBM or Sterling show you
 17 these questions and answers before they were sent to
 18 JTV in January of 2012?
 19 A Not to my knowledge, and if it was, it
 20 was a document, but I wasn't told to look at the
 21 entire document.
 22 So I may have had a copy of it. I just
 23 didn't read it.
 24 Q And let's just take a second. If you
 25 flip ahead to Page 12, you'll see -- we see Interrog

1 tory Number 7.
 2 A Okay.
 3 Q The same question we looked at earlier,
 4 right, and that is it sets out Section H, and then
 5 asks under subpart C whether any of the "other
 6 companies" or "similar solutions" involved a
 7 simultaneous or sequential implementation of the
 8 three products.
 9 Do you see that, sir?
 10 A Yes.
 11 Q Here is my question, Mr. Lewis: If the
 12 IBM lawyers had shown you the original
 13 interrogatories and asked you to answer Number 7,
 14 what would you have given the answer? What answer
 15 would you have given?
 16 A For question (a), what were the other
 17 companies? None. What were the similar solutions?
 18 None. (c), did any of the other companies involve a
 19 simultaneously? That would have been none, and
 20 question (d) is a question yes question, but the
 21 other three were no.
 22 Q And let's flip back now to Exhibit 25
 23 just for a second -- I'm sorry. Before we do that,
 24 let's stay on Exhibit 31, and let's look at the
 25 answer to Number 7.

1 Do you see on page 13 --
 2 A Okay.
 3 Q -- under that second full paragraph, it
 4 says: Subject to and without waiving the foregoing
 5 objections and general objections above, Sterling
 6 incorporates by reference its response to
 7 Interrogatory No. 1.
 8 A Yes.
 9 Q And if you flip back with me, you see in
 10 response to Interrogatory Number 1, which starts on
 11 page three, there's a list of companies, and on page
 12 four, you'll see, for example, DHL, 1-800-Flowers,
 13 the Gap, Best Buy and a bunch of others on page four?
 14 A Correct.
 15 Q So can you tell us: Were you ever
 16 asked -- in responding to the supplemental
 17 objections, were you ever explained why Sterling did
 18 not incorporate Number 1 by reference as it had done
 19 in the original interrogatories?
 20 A I just never asked that.
 21 Q And do you know why -- in connection with
 22 the supplemental answer to Number 7, do you know why
 23 no companies for Number 1 are listed?
 24 A No. Other than the comment that it was
 25 intentionally left blank.

1 Q Now, you talked a little bit -- and we'll
 2 come back to it in a minute -- conversations you had
 3 with your lawyers after your first deposition, but
 4 let's talk about before your deposition.
 5 Did you have a meeting with your lawyers
 6 before that first deposition?
 7 A On November 19th, there was an all-day
 8 meeting at Kilpatrick & Townsend's facilities here in
 9 Atlanta.
 10 Q Did they talk to you about the questions
 11 that might be asked at your deposition?
 12 A Yes. It was intended to be a day of
 13 preparation and to get ahead of questions, how to
 14 respond to questions.
 15 Q Did they talk to you about the
 16 October 5th, 2007 implementation contract?
 17 A I would imagine, yes. Seven, eight years
 18 ago definitely.
 19 Q Let's just take a quick look at them, and
 20 I'll ask you some questions about that.
 21 (Lewis Examination Exhibit 1 was marked for the
 22 record.)
 23 BY MR. SHAPIRO:
 24 Q Now, drawing your attention, sir -- we've
 25 handed you Lewis Examination Exhibit 1, which is the

1 October 5th, 2007 implementation statement of work.
2 You've seen -- do you remember getting
3 asked questions about this document at your earlier
4 depositions?

5 A Yes. Except this agreement is not
6 signed. This document I have, if you look at the
7 last page, it's not executed.

8 Q Right. If you look at page seven of ten.

9 A Okay.

10 Q So do you see a gentleman, Steven Gatoff,
11 signed it on behalf Sterling and Wayne Lambert?

12 A Yes. I was looking at this page.

13 Q Sure, and special terms we find on this
14 page seven of ten, right?

15 A Yes.

16 Q Okay. And do you recall you were asked
17 questions at your earlier deposition about
18 negotiations you had with Mr. Matthews about this?

19 A Tim Matthews, yes.

20 Q Here is my question: I want to focus now
21 on this meeting you had with your lawyers before the
22 first deposition.

23 Did they show you Section H, the special
24 terms? Did they focus your attention on the phrase
25 "similar solutions" and "other companies", and did

1 they -- did they tell you what other witnesses had
2 said and how they had interpreted that phrase?

3 A Right. So it wasn't -- my recollection
4 it wasn't a review of Section H and language. It was
5 an easel board over to the left that had key things
6 that are likely to come up based on people that had
7 been deposed ahead of me, and there were just certain
8 bullet points that they highlighted, and similar
9 solutions, if I recall right, was maybe at the top of
10 the list regarding this issue has come up over and
11 over. This is how others have answered the question.
12 Similar solutions does not mean all three. I do
13 remember hearing that. Similar solutions is just
14 have we done WMS, PO and order manage, but it was an
15 easel board that these points were introduced. Not
16 through a document.

17 Q Okay. Fair enough, but so I've got it
18 right. There's an easel board up in that -- in a
19 conference room when you meet with your lawyers; is
20 that right?

21 A Correct.

22 Q And on the easel, they have phrases or
23 words that have come up in previous depositions; is
24 that right?

25 A More points.

1 Q Points?

2 A It was more points. Like this term may
3 come up, "similar solutions", and this is how others
4 have responded to that.

5 Q Okay. And did you get the sense from
6 meeting with your lawyers that when they were telling
7 you what others had said about the phrase "similar
8 solutions" that they were sending you a message this
9 is how we'd like you to answer the question if you
10 get it?

11 A And they would always, you know --

12 Q Is that a yes? I'm sorry. Is that a
13 yes?

14 A -- briefly said, but you have to tell the
15 truth, but I think it was put out there so that you
16 have some consistency on how these issues came up.
17 This is likely how that issue is going to be
18 presented to you, and this is how we interpret your
19 response.

20 Q And did you get the sense that they
21 wanted you to have that same interpretation and give
22 a similar response that the other witnesses had
23 given?

24 A Correct.

25 Q Did you get the sense from these lawyers

1 that they were very much focused on the fact that, if
2 you get a question about Sterling's implementation
3 experience, you should say we've done all three
4 because we did one in one year and one another year
5 as opposed to doing it all together?

6 A Right.

7 Q Did you get the sense from these lawyers
8 that they wanted you to tell the IBM story, and the
9 story being, yes, of course, we have similar -- of
10 course, we have experience in similar solutions
11 because we have done each at different times?

12 A Or at least our interpretation of similar
13 solutions, they wanted that to be consistent.

14 Q So is it fair to say that you got the
15 sense from the lawyers for IBM that they were giving
16 you the company line on whether or not Sterling had
17 the experience of implementing all three and they
18 wanted you to stick to it?

19 A I don't know if I would use the word
20 company line because it's a legal issue at that
21 point, but I think the legal position was to be
22 crisp, sharp, brief, yes, no, and when this issue
23 comes up regarding similar solutions, you can feel
24 confident that we've implemented similar solutions
25 because we did them in one off places.

1 Q So during this pre-deposition meeting,
2 did the lawyers from IBM make a distinction to you
3 between, on the one hand, implementation experience
4 and similar solutions means we've done all three at
5 the same time just like we promised JTV we would
6 versus, on the other hand, whether or not we had
7 experience in individual modules?

8 Did they make that distinction?

9 A I can't recall the distinction. I just
10 remember it was a point that's likely to come up, and
11 when it does come up, you can feel confident that our
12 interpretation, our being IBM, is similar solutions
13 does not imply all three as one application bundle.

14 Q Okay. But during the sales cycle, is
15 there any doubt in your mind that Mr. Matthews and
16 Mr. Lambert wanted a representation from Sterling
17 that they had, in fact, implemented all three at the
18 same time and that they did have the experience in
19 doing exactly what JTV was asking them to do on the
20 JTV project?

21 A No doubt. The client wanted to know all
22 three not only had been licensed and purchased before
23 and had been implemented but all three had been
24 implemented together.

25 Q And we briefly talked about this, but

1 after the first deposition, you had a meeting with
2 your lawyers; is that right?

3 A Right after.

4 Q And did you talk about the questions that
5 you received about Number 7 that we spent some time
6 looking at today?

7 A Correct.

8 Q And what did they tell you about the
9 answer to Number 7?

10 A Well, I was more worried that I had made
11 a mistake, and I had failed to answer a question
12 truthfully, and I think what I heard at the end of it
13 when we were off camera was that, you know, Felton,
14 you did good today. We intentionally left that
15 blank. We didn't put the names of customers in
16 there.

17 Q Did it concern you that they had
18 intentionally left the answer blank?

19 A Yes, because I had just been on camera,
20 and I didn't know it was my responsibility to answer
21 A, B, C and D as it relates to that section.

22 Q And is it also fair to say, sir, based on
23 what you've testified today that the answer -- that
24 you were concerned because the answer should have
25 been none, as you told us earlier?

1 A We should have revealed either one,
2 customers that had implemented similar solutions, or,
3 B, we should have answered it as none. We have not
4 implemented any.

5 Q This will be Lewis Examination Exhibit 2.
6 (Lewis Examination Exhibit 2 was marked for the
7 record.)

8 BY MR. SHAPIRO:

9 Q Sir, I've handed you a document we've
10 called Lewis Examination Exhibit 2, which was
11 previously produced by the Kilpatrick firm at
12 KTS00002139.

13 Do you recognize this as a text message
14 from you and your phone?

15 A I don't know to whom. But I do recognize
16 it's a text message with Felton Lewis's name, and
17 it's November 19th, which is the day I had a
18 deposition.

19 Q And you said, quote, I learned afterward
20 that a few questions were left intentionally blank by
21 KT.

22 Do you see that?

23 A Yes.

24 Q What were you referring to in that text?

25 A Well, after the deposition, I asked the

1 question on Interrogatory Response Number 7, and we
2 didn't fill in the name of clients who had
3 implemented similar solutions, and the few questions
4 left blank were the interrogatory response.

5 Q And, again, it concerned you that they
6 left it blank; is that right?

7 A Correct.

8 Q And it concerned you that they left it
9 blank because you had verified the answer as true,
10 even though the answer should have included the word
11 not.

12 Did I get that right?

13 A Right.

14 Q Did you meet with Wayne Lambert for
15 coffee in Knoxville, Tennessee on or about
16 January 14th, 2014?

17 A Yes. I don't remember the exact date,
18 but definitely.

19 Q And do you recall having a conversation
20 with him about what he and others at JTV had been
21 told by Sterling about Sterling's implementation
22 experience during the sales cycle of February '07 to
23 October '07?

24 A Right.

25 MR. SHAPIRO: This will be our next

1 document.
2 (Lewis Examination Exhibit 3 was marked for the
3 record.)

4 BY MR. SHAPIRO:

5 Q Sir, I've handed you a document we've
6 marked Lewis Examination No. 3, and you'll see it's
7 an affidavit of Howard Wayne Lambert.

8 Do you see that at the top, the title?

9 A Yes.

10 Q Now, I want to draw your attention to
11 paragraph nine. In paragraph nine, Mr. Lambert
12 testifies as follows: Mr. Lewis told me further that
13 during the deposition preparation with Kilpatrick,
14 Townsend & Stockton he reviewed sales documents that
15 had been presented to JTV during the sales cycle and
16 realized, quote, how false the statements in the
17 documents were, end quote.

18 Mr. Lambert goes on to testify as
19 follows: He, Mr. Lewis, told me that Mr. Giannoni
20 had, quote, made false statements, end quote, to JTV
21 during the sales cycle. He suggested that, during
22 the sales cycle, Sterling falsely represented to JTV
23 that Sterling had implemented at other customers the
24 three software products JTV had licensed from
25 Sterling.

1 January of 2014 that Mr. Giannoni had misrepresented
2 Sterling's implementation experience during the sales
3 cycle?

4 A Again, the context of that meeting was
5 just to see how Wayne was doing. So initially, when
6 I reached out to him, it was, hey, I'll be in your
7 area. Can we meet for coffee, and the first set of
8 questions I had for him was how are you? How are you
9 doing? What happened after JTV? And I really wanted
10 to have that meeting to kind of see had I made any
11 false statements that he relied upon to move forward,
12 and it was really and clearly a conscious type of
13 event, if you will, and then, through that process, I
14 mentioned to him that there were several questions
15 that if they would have come up during my
16 deposition -- but I'm not a lawyer. I can't say what
17 questions to ask on me. Answer the questions in
18 front of me, and I said that there were several
19 things that I thought that came up -- or several
20 things that did not come up that should have been
21 addressed if you're going to tell the whole story.

22 Q And what were some of the things that you
23 thought should have been addressed at your deposition
24 that were not addressed in order to, as you say, tell
25 the whole story?

1 Do you see that language, sir?

2 A Yes.

3 Q Did you, in fact -- is that true? Did
4 you tell Mr. Lambert that Mr. Giannoni had made false
5 statements to JTV during the sales cycle?

6 A I don't remember -- I'm suggesting
7 Giannoni made false statements. I don't remember how
8 this was introduced, but I do remember sitting down
9 with Wayne, and initially it was just regarding him,
10 how did he come out, and as we talked about the
11 depositions and the case and the preparation for it,
12 I said there was evidence all the way throughout that
13 that there were some things that were said that were
14 false. For example, intimation regarding RFID and
15 resources down in Bentonville, Arkansas if you don't
16 hurry up and sign with us, and I definitely said
17 there were false statements that were made by Gary.
18 I just don't remember in what context.

19 Q Sure, but do you remember saying to
20 Mr. Lambert, in words similar to what you've said
21 today under oath, that, yes, it's true. Mr. Giannoni
22 falsely represented that Sterling had implemented all
23 three products at one company before?

24 A Absolutely.

25 Q And why did you tell Mr. Lambert in

1 A The history, the experience selling, the
2 pressure on individuals to sell, the reason why
3 somebody may be motivated not only for a commission
4 but for livelihood. You'll lose your job if you
5 don't hurry up and get up on the books.

6 Q So unpack that for me a little. If you
7 had been asked at your previous depositions about the
8 pressures that the salesmen had at Sterling to close
9 the deal at JTV, if I've got that right, what would
10 you have said, and what do you want to say now under
11 oath about those pressures and the connection it had
12 to what happened during the sales cycle?

13 A I think, in general, sales is a tough
14 field to be in. I think there's pressures put on
15 sales reps that are unique and different than any
16 other part of the software organization, and I think,
17 just my experience being in this industry, is it
18 lends itself to making statements that maybe are not
19 totally true to progress the opportunity to close
20 your, high level.

21 Q And just to close the loop, one of the
22 statements made during the sales cycle by
23 Mr. Giannoni that was not true was this
24 representation that Sterling had previously
25 implemented NWMS, OMS and PO before at a single

1 companies; is that right?

2 A There was several things. That was one.
3 One of -- one of the things was similar solutions.
4 The implication of, if you don't sign, there's a
5 client that is somewhere in Bentonville, Arkansas
6 that's going to consume all the resources. Because I
7 asked these questions directly to Wayne. Wayne, did
8 you make a decision based on losing resources to a
9 project? Yes. Right?

10 So I wanted to make sure that I was
11 really listening in on what happened to Wayne. His
12 decisions that he made, what were they based on, and
13 a lot of it was based on the assurances that we
14 gave -- we as an organization, we as an entity --
15 that we had done all three. Not just a sales rep,
16 but we, the organization. The sales rep may be there
17 next year. May not be there, but when the sales rep
18 makes a commitment on behalf of that organization,
19 the entity owns that commitment.

20 Q So just to close the loop to make sure I
21 have it right, your testimony today under oath is
22 that Mr. Giannoni misrepresented Sterling's
23 implementation experience because of, from what you
24 could observe, the pressures on the sales team at
25 Sterling, which you say are unique, to close the deal

1 with JTV?

2 Did I get that right?

3 A I can't say that he misrepresented it
4 based on that, but I can say that's what I've seen as
5 trends. I've seen -- Gary is not the first sales rep
6 that felt he had pull-a-gun-to-my-head pressure to
7 get a deal done or he would no longer be with that
8 firm. It's happened in many different software
9 companies that I've joined. I think Gary
10 misrepresented our capability to implement it within
11 a certain timeline, and we never called that out
12 to -- me, even myself -- we never called it out to
13 the customer that, regardless of what a sales rep has
14 said, we don't feel comfortable that we can do this
15 in eight months.

16 Q But is it true, sir, that the
17 misrepresentation by Mr. Giannoni was twofold:
18 Number one, misrepresentation that it could -- all
19 three could be implemented within a certain
20 timetable, number one?

21 A Yes.

22 Q And, number two, misrepresenting the
23 alleged fact that prior to '07 Sterling had, in fact,
24 implemented all three when they hadn't?

25 Did I get that right?

1 A That would be correct. There would be
2 two sides of that.

3 Q Did there come a point in time, sir,
4 where you fired your lawyers from Kilpatrick?

5 A Shortly after my first deposition.

6 Q Can you tell us why you fired them.

7 A Number one, I didn't feel comfortable
8 with the answers and the response even after being
9 off camera that we intentionally left things blank.

10 Number two, I didn't feel like I needed
11 to sign the errata sheet because there were too many
12 things we would have to do over, and what I mean by
13 do over is we would have to have the deposition all
14 over again. I was told that, if you fill out the
15 errata sheet, it can only be small grammatical things
16 you can change, and I thought the last question that
17 was asked at the deposition needed a lot more color
18 than just a grammatical error or mispronunciation. It
19 was the basis of the client's claim.

20 Q What did you want to write in your errata
21 sheet that the lawyers from Kilpatrick said you
22 couldn't do?

23 A Well, after reading my testimony, looking
24 at trying to answer all the follow ups that came out
25 of the deposition, I just felt like I didn't answer

1 that question correctly, and I still didn't know if
2 it was my responsibility. So I said if I disengage
3 with them, maybe it will come out later.

4 Q Okay. And just to make sure I got this
5 right. If you had been given permission by your
6 lawyers to fill out the errata sheet, what would you
7 have said in response to the questions I asked you at
8 that first deposition about whether or not Sterling
9 had experience implementing NWMS, OMS and PO at a
10 company before JTV?

11 A The reason why I didn't complete it is
12 that I thought -- the reason why I -- excuse me.

13 The reason why I did not complete the
14 errata sheet is I thought the last question had too
15 much significance to it to be a grammatical error.

16 So what I was told from John Moye, if I
17 believe -- who was the one that sent it to me -- was
18 that these errata sheets are intended for small
19 grammatical, maybe someone misunderstood something.
20 I thought this was too major of an issue to just let
21 an errata sheet be the way to address it.

22 Q But I take it you wanted to correct the
23 record? You wanted to make it clear that Sterling
24 didn't have the experience of implementing all three
25 at the same time, and is it fair to say one reason

1 you're here today is to make that record clear,
2 correct?

3 A And we've made that record clear.

4 Q Now, I want to -- now, do you remember
5 your -- you had a lawyer named Greg Fidlon who
6 represented you in a matter against IBM?

7 Do you recall that?

8 A Yes, sir.

9 Q And do you recall getting a copy of an
10 e-mail that Mr. Bush said to Mr. -- sent to
11 Mr. Fidlon in or around April of '14?

12 A I'm not sure of the context back then,
13 but I remember Fidlon and Bush talking, e-mails,
14 conversations. I just don't know context on what
15 happened back then.

16 Q Sure. Do you remember -- and I'll show
17 it to you in a minute, but I just want to see if I
18 can get your recollection of the document.

19 Do you remember the word -- there was a
20 word perjury in an e-mail that Mr. Bush had sent to
21 your lawyer?

22 A I think it was in regards to if I
23 accepted an opportunity -- well, if I was no longer
24 represented by Kilpatrick & Townsend and I met with
25 you or your firm that be careful to not commit

1 perjury, and the reason for that is I had sent a
2 request through -- to Fidlon and asked him to send it
3 through to IBM to make sure if I did meet that it
4 would be okay and that I wasn't violating some
5 attorney legal language that I wasn't aware of.

6 Q Let me show you that e-mail. I'm going
7 to ask you one question about it. It will be the
8 next document.

9 (Lewis Examination Exhibit 4 was marked for the
10 record.)

11 BY MR. SHAPIRO:

12 Q Sir, this is a document that was produced
13 by your former lawyers, Kilpatrick, and it was Bates
14 stamped KTS00002119, and you'll see it's an e-mail
15 from Joel Bush to Greg Fidlon, dated April 11th,
16 2014, and I want to know -- if you would, please turn
17 with me to the second page of this document.

18 Do you see in the first full paragraph
19 Mr. Bush writes: Quote, we believed at the time of
20 Mr. Lewis's prior deposition -- and we continue to
21 believe -- that Mr. Lewis testified truthfully in
22 response to the question he was asked at his
23 November 19th, 2013 deposition, and that Mr. Lewis
24 did not commit perjury at that time.

25 Do you see that language, sir?

1 A Yes, I do.

2 Q Now did that word -- seeing that word
3 "perjury" concern you?

4 A Well, it concerned me because it's coming
5 from legal folks, and I don't really know the
6 implementations of anything legally. I know layman.

7 Q Were you at all concerned when you saw
8 that word that it was important for you to come
9 forward and make sure anything you had said in your
10 first deposition was -- if it needed to be corrected,
11 that it got corrected?

12 A Yes, and I didn't think there was any
13 issues with perjury in my first deposition, other
14 than the last question which was not answered.

15 Q Were you concerned -- when you saw the
16 word perjury in that e-mail, were you concerned that
17 your former lawyers might come after you because you
18 had verified Number 7?

19 A It sounded threatening, at least the
20 language or my interpretation of they were trying to
21 threaten me that if you go ahead and meet with the
22 other side be careful because there could be legal
23 implications down the road. There could be a lot of
24 issues down the road for you. So you're on warning
25 is how I interpreted it.

1 Q And is it fair to say, summarizing what
2 you testified earlier under oath, that one reason
3 we're here today is to make sure that the record is
4 as crystal clear as possible of what you remember
5 about the sales cycle and Sterling's implementation
6 experience as of '07?

7 A Absolutely.

8 Q Mr. Lewis, would you please describe for
9 us briefly your professional relationship with
10 Yantra, Sterling and IBM from '99 to 2013?

11 A So I hired in in 1999 -- November of 1999
12 as a client engagement manager. Several promotions
13 later, acquisitions later, I moved into a selling
14 professional services role primarily with IBM. Moved
15 from selling professional services into selling
16 software and just had a lot of clients that basically
17 would reaffirm that, you know, you're ethical, and
18 they say those things about you if you looked at
19 LinkedIn. All of my endorsements are on LinkedIn.

20 Q And after you left IBM, did you continue
21 to do work for them under a consulting contract?

22 A No. Not underneath a consulting
23 contract. I left -- I left IBM and joined an IBM
24 business partner in April of 2013. So I was
25 responsible for re-selling IBM software.

1 Q Did you do any work, though, for the
2 Kilpatrick firm and IBM under a consulting firm --
3 under a consulting agreement after you were no longer
4 an employee?

5 A Yes.

6 Q Okay. That's what I wanted to know
7 about. Just tell me briefly. What did you do for
8 IBM and its attorneys in connection with this
9 consulting arrangement you had?

10 A So after termination 3/13/2013, I had got
11 a couple of calls from Joel Bush about signing the
12 representation agreement and the value of the
13 representation agreement being a protection; because
14 if I didn't sign the representation agreement, the
15 opposing side could come at me with questions.

16 So it was -- the month of April was spent
17 recruiting me over to sign the representation
18 agreement with Kilpatrick & Townsend.

19 Q And did there come a point in time, sir,
20 where your contractual relationship with IBM ended?

21 A Yes. After the first deposition in
22 December.

23 Q Okay. And tell us why did you end your
24 contractual relationship with IBM after that first
25 deposition?

1 A Well, all along there was, in my opinion,
2 a conflict of interest because I had an employment
3 matter with IBM and then I was representing IBM. So
4 to wake up and you have two sides of one position
5 inside you was difficult.

6 Q And I understand, sir, that you had a
7 mediation at one point with IBM concerning certain
8 employment related allegations you had against that
9 company?

10 Did I get that right?

11 A Yes. So the employment issue with IBM
12 was discrimination, and it was racial discrimination,
13 but it was really based on the fact that the manager
14 took commissions away, and the mediation opportunity
15 that IBM introduced was that, if I agreed to be
16 deposed, they would agree to mediation, and up until
17 that time, we hadn't gotten anywhere with our demand
18 letters on the employment matter.

19 Q Did you have -- did a mediation with IBM
20 take place in July of 2015 before Mr. Parks?

21 A There were two that took place. So there
22 was one back in December of 2013, and the second one
23 would have been in July of 2015, this year.

24 Q And in connection with the July 2015
25 mediation with Mr. Parks, did you prepare an

1 affidavit?

2 A Correct.

3 Q And I'm going to now mark as an exhibit
4 the affidavit you wrote in connection with that
5 mediation and ask you a few questions about it, if
6 that's okay.

7 A Sure.

8 (Lewis Examination Exhibit 5 was marked for the
9 record.)

10 BY MR. SHAPIRO:

11 Q Sir, we've handed you a document which
12 we've marked as Lewis Examination No. 5.

13 Do you recognize this as an affidavit
14 that you prepared and signed on March 15th --
15 March 16th, 2015?

16 A Yes, sir.

17 Q My first question, sir: Did you write
18 every single word of this affidavit by yourself?

19 A Absolutely.

20 Q Did you have any help whatsoever from any
21 lawyer?

22 A No.

23 Q Could you please -- is everything in this
24 affidavit true to the best of your belief?

25 A Absolutely.

1 Q Could you please read into the record the
2 words you wrote under paragraph seven of your
3 March 16th, 2015 affidavit.

4 A Yes. To the best of my knowledge, during
5 my ten years of employment working as an employee of
6 the Yantra and Sterling Commerce organizations,
7 America's Collectibles Network, Incorporated doing
8 business as Jewelry Television JTV, was the first
9 client that ever had licensed or intended to deploy
10 this specific configuration or "application bundle",
11 quote, unquote, of Sterling WMS, Sterling DOM and
12 Sterling PO collaboration. JTV was also my first
13 client that desired to deploy this "application
14 bundle", quote, unquote, as one integrated solution
15 delivery. Finally, the first time our implementation
16 team at Yantra or Sterling Commerce was tasked to
17 deliver all three applications as part of one
18 Delivery Program or Business Release. During my
19 tenure at Yantra between January '99 and 2005, we had
20 never deployed this specific "application bundle".

21 Q And, Mr. Lewis, could you tell us. Why
22 did you write paragraph seven?

23 A Because that was the first time I could
24 respond to an interrogatory in my own words.

25 Q And, in your own words, tell us why did

1 you write the sentence, quote, this was the first
2 time our implementation team at Yantra or Sterling
3 Commerce was tasked to deliver all three applications
4 as part of one delivery program or business release?

5 A Because that the first time, to my
6 knowledge, that it had ever been attempted or done.

7 Q And going back to your earlier testimony,
8 you're very clear in your mind today under oath that
9 what JTV wanted to know from Sterling prior to
10 October '07 was, in fact, whether or not Yantra or
11 Sterling had ever delivered all three applications as
12 part of one delivery program or business release,
13 correct?

14 A Yes.

15 Q And you write: During my tenure at
16 Yantra between '99 and '05, we had never deployed
17 this specific "application bundle". Is that true?

18 A Absolutely.

19 Q And is it true, sir, that up until
20 October of 2007 what JTV wanted to know specifically
21 from Sterling was whether or not you had deployed the
22 specific "application bundle" of all three, correct?

23 A Yes.

24 Q And you heard Mr. Giannoni say, yes, we
25 have delivered all three as one "application bundle",

1 A Wayne Lambert, the CIO of JTV, was our
2 executive sponsor and my primary point of contact at
3 JTV during and after the sale of the Sterling
4 Commerce WMS, DOM, D-O-M, and PO Collaboration
5 Software and the associated Professional Services.

6 Wayne reached out to me on several occasions prior to
7 and after the SOW was executed to express frustration
8 with the challenges he had observed with the Sterling
9 Commerce Delivery team. I represented his concerns,
10 alerted various departments and executives and
11 relayed Wayne's comments and his observations to
12 Sterling Commerce executive management as well as the
13 delivery team.

14 Q Thank you.

15 Why did you include paragraph eight in
16 your affidavit?

17 A Initially I thought I had to have
18 statements of facts if it was an affidavit, and that
19 was a fact that Wayne had raised several escalations
20 prior to and after, right, concerned with resource,
21 concerned with capabilities, concerned with resources
22 that were on the ground, concerned with how fast
23 things were moving, concerns that they may run out of
24 money before they actually get to the end of a
25 project, and if he shared those responsibilities --

1 correct?

2 A "Application bundle" was my term because
3 I was trying to unclear or unpack the similar
4 situations. So I just wanted to be specific that JTV
5 licensed three products. They wanted to implement
6 three products, and all three were not implemented.

7 So I used the word "application bundle"
8 just to make sure everyone was clear that everyone
9 was looking to implement these three. I don't think
10 that was Gary's term, "application bundle".

11 Q Fair point. Let me ask it a different
12 way. You write: During my tenure at Yantra between
13 '99 and '05, we had never deployed this specific
14 "application bundle", but is it true that you heard
15 Mr. Giannoni on several occasions --

16 A Represent we could.

17 Q Thank you -- represent that Sterling
18 could, in fact, implement all three of these products
19 at JTV?

20 A Yes.

21 Q And that he represented Sterling had in
22 the past implemented all three products at JTV?

23 A Yes.

24 Q Could you please read into the record
25 paragraph eight.

1 or if he shared those concerns with me, even if I was
2 no longer part of the delivery team, I thought it was
3 my responsibility to share his concerns with the rest
4 of the organization.

5 Q Is it fair to say that one reason you
6 wrote this paragraph is because you, too, shared his
7 frustration and disappointment in the talent of the
8 services team?

9 A Yes. Not the talent of the services
10 team, but how could we get so far behind. How could
11 we get so far misaligned right after a sale. Because
12 I understand what 2 million -- \$2 million meant to a
13 client that's the best thing to us and then shortly
14 after we signed a \$2 million contract all I'm hearing
15 is there's escalations, there's fires, there's
16 challenges, there's problems, there's resource
17 turnover, and I felt like that would give a buyer
18 remorse that quickly after signing off on a
19 \$2 million agreement.

20 Q Mr. Lewis, I want to thank you for
21 voluntarily coming forward today and giving testimony
22 about the sales cycle. I want to thank you for
23 coming forward and correcting any errors that may
24 have happened in your previous testimony, and my last
25 question for you today sir, is this: If you -- would

1 you accept voluntarily a subpoena to appear at this
 2 trial and give testimony before a jury?
 3 A Absolutely.
 4 Q Why are you willing to do that?
 5 A The truth still has to be told whether
 6 it's in this setting, an exam, a deposition, but in
 7 front of the jury. I think the jury ultimately has
 8 to make the decision.
 9 Q And what is the truth about whether or
 10 not Sterling misrepresented its implementation
 11 experiences to JTV during the sales cycle?
 12 A It had never been done before. So we
 13 misrepresented our ability to do all three in eight
 14 months or any amount of timeline. We had never done
 15 it before.
 16 MR. SHAPIRO: Thank you very much,
 17 sir. I appreciate your time.
 18 THE VIDEOGRAPHER: Off the video
 19 record at 4:10 p.m.
 20
 21 (Thereupon, the Statement Under Oath
 22 was concluded at approximately 4:10
 23 p.m.)
 24
 25

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1
 2 STATE OF _____)
 3) :ss
 4 COUNTY OF _____)
 5
 6
 7 I, LEWIS E. FELTON, the witness
 8 herein, having read the foregoing
 9 testimony of the pages of this statement under
 10 oath, do hereby certify it to be a true and
 11 correct transcript, subject to the
 12 corrections, if any, shown on the attached
 13 page.
 14
 15 _____
 16 LEWIS E. FELTON
 17
 18
 19
 20 Sworn and subscribed to before me,
 21 this _____ day of _____, 2015.
 22
 23 _____
 24 Notary Public
 25

1
 2 E R R A T A
 3
 4
 5
 6 I wish to make the following changes,
 7 for the following reasons:
 8
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 24 WITNESS' SIGNATURE DATE
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