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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

NIKE USA, INC., an Oregon corporation,

Case No. 3:16-cv-00743-SB

Plaintiff,

v.

**DECLARATION OF
KENNON SCOTT**

BORIS BERIAN, an individual California
resident,

Defendant.

I, Kennon Scott, hereby declare as follows:

1. I am an attorney in the firm of Stoel Rives LLP, and am counsel for Plaintiff Nike USA, Inc. (“Nike”) in the above referenced manner. I submit this declaration in support of Nike’s Motion for Preliminary Injunction. The information herein is based on my personal knowledge unless otherwise noted.

2. Attached hereto as Exhibit 1 is a true and correct copy the excerpted transcript of the June 19, 2016 deposition of Defendant Boris Berian. The cited sections have been highlighted.

3. Attached hereto as Exhibit 2 is a true and correct copy of the excerpted transcript of the June 19, 2016 deposition of Merhawi Keflezighi, Defendant's agent. The cited sections have been highlighted.

4. Attached hereto as Exhibit 3 is a true and correct copy of Deposition Exhibit 3, a December 11, 2015 email chain between Defendant, Mr. Keflezighi, forwarded to me on June 16, 2016 in response to Nike's requests for production.

5. Attached hereto as Exhibit 4 is a true and correct copy of Deposition Exhibit 6, a January 12, 2016 email chain between Mr. Keflezighi and John Evans of New Balance Athletics, Inc. ("New Balance"), forwarded to me on June 16, 2016 in response to Nike's requests for production.

6. Attached hereto as Exhibit 5 is a true and correct copy of Deposition Exhibit 9, a January 20, 2016 email chain between Mr. Keflezighi and Mr. Evans, forwarded to me on June 16, 2016 in response to Nike's requests for production.

7. Attached hereto as Exhibit 6 is a true and correct copy of Deposition Exhibit 10, a January 19, 2016 email from Mr. Keflezighi to Ben Cesar and John Capriotti of Nike. This document was produced by Nike in this litigation and bears bates numbers NIKE0000075-78.

8. Attached hereto as Exhibit 7 is a true and correct copy of Deposition Exhibit 11, a January 20, 2016 email chain between Mr. Keflezighi, Mr. Cesar, Mr. Capriotti and others. This document was produced by Nike in this litigation and bears bates numbers NIKE0000066-70.

9. Attached hereto as Exhibit 8 is a true and correct copy of Deposition Exhibit 13, a January 22, 2016 email from Mr. Cesar to Mr. Keflezighi and others. This document was produced by Nike in this litigation and bears bates numbers NIKE0000058-65.

10. Attached hereto as Exhibit 9 is a true and correct copy of Deposition Exhibit 27, a compilation of text messages between Mr. Keflezighi and Mr. Evans. These text messages were exchanged between January 14, 2016 and March 22, 2016 and were produced by Defendant in this litigation.

11. Attached hereto as Exhibit 10 is a true and correct copy of Deposition Exhibit 4, a compilation of text messages between Defendant and Mr. Keflezighi. These text messages were exchanged between October 20, 2015 and March 20, 2016 and were produced by Defendant in this litigation.

12. Attached hereto as Exhibit 11 is a true and correct copy of Deposition Exhibit 20, a February 15, 2016 email chain between Mr. Keflezighi and Mr. Cesar. This document was produced by Nike in this litigation and bears bates number NIKE0000045.

13. To the best of my knowledge, Stoel Rives never received any written or oral communications from Defendant or Mr. Keflezighi suggesting that Nike had failed to match the offer New Balance made to Defendant. The first such communication came from Defendant's lawyer, Vincent C. Ewing on or around April 22, 2016.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 21, 2016.

s/ Kennon Scott
KENNON SCOTT, OSB No. 144280

Page 1

1 UNITED STATES DISTRICT COURT
 2 DISTRICT OF OREGON
 3 PORTLAND DIVISION
 4
 5 NIKE USA, INC., an Oregon)
 corporation,)
 6 Plaintiff,)
 7 v.) No. 3:16-cv-
) 00743-SB
 8 BORIS BERIAN, an individual)
 California resident,)
 9)
 Defendant.)
 10 _____)
 11
 12
 13 DEPOSITION OF BORIS BERIAN
 14 BIG BEAR LAKE, CALIFORNIA
 15 Sunday, June 19, 2016
 16
 17
 18
 19
 20
 21
 22
 23
 24 REPORTED BY:
 LINDA M. KLEA
 BSBA, CSR NO. 12468, RPR
 25 JOB NO. 81212

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1 UNITED STATES DISTRICT COURT
 2 DISTRICT OF OREGON
 3 PORTLAND DIVISION
 4
 5 NIKE USA, INC., an Oregon)
 corporation,)
 6 Plaintiff,)
 7 v.) No. 3:16-cv-
) 00743-SB
 8 BORIS BERIAN, an individual)
 California resident,)
 9)
 Defendant.)
 10 _____)
 11
 12
 13 Deposition of BORIS BERIAN,
 14 taken on behalf of Plaintiff at Best
 15 Western Big Bear Chateau, 42200 Moonridge
 16 Road, Big Bear Lake, California,
 17 commencing at 3:05 P.M. on Sunday,
 18 June 19, 2016, before Linda M. Klea, BSBA,
 19 CSR No. 12468, RPR, a Certified Shorthand
 20 Reporter in and for the County of
 21 Los Angeles, State of California.
 22
 23
 24
 25

Page 3

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 18
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 20
 21
 22
 23
 24
 25

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<p style="text-align: right;">Page 9</p> <p>1 Q Friday morning. Have you talked to your 2 agent about this deposition today? 3 A Yes. 4 Q And what did -- when did you do that? 5 A It was about 2:30. 6 Q And what did your agent tell you? What did 7 you learn on that call, or what did you talk about 8 on that call? 9 A He just let me know, again, what questions 10 would be asked. 11 Q And what did he say in terms of what 12 questions would be asked? 13 A Just -- just to be honest, we have nothing 14 to hide. 15 Q Did he tell you what type of questions 16 would be asked? 17 A Not specifically, no. 18 Q Did he tell you what subjects he thought 19 the questions would cover? 20 A Yes. 21 Q And what did he say about that? 22 A It was basically stuff about the Nike stuff 23 and the contracts, reductions, and stuff like that. 24 Q Have you talked to anyone else at Big Bear 25 Track Club about your deposition in the last few</p>	<p style="text-align: right;">Page 11</p> <p>1 Q Did you have an agent at the time? 2 A I did. 3 Q Who was your agent at the time? 4 A Kimberly Holland. 5 Q And did Nike approach Kimberly Holland or 6 did she approach Nike? 7 A Nike approached her. 8 Q Okay. Did you consider any other sponsors 9 at that time? 10 A Yes. 11 Q Who? 12 A New Balance, Under Armour, and ASICS. 13 Q Why did you choose Nike? 14 A They had the best offer. 15 Q Did you discuss the Nike contract with your 16 agent at the time you entered into it? 17 A No. 18 Q Did you read it yourself? 19 A Yes. 20 Q You understood that your sponsorship 21 agreement with Nike contained a right of first 22 refusal provision; correct? 23 A Yes. 24 Q Okay. How did you meet Mr. Keflezighi? 25 A When did we first meet, or --</p>
<p style="text-align: right;">Page 10</p> <p>1 days? 2 A No. 3 Q Have you talked to anyone else at Big Bear 4 Track Club about this litigation in the past few 5 days? 6 A Yes. 7 Q Who? 8 A My coach. 9 Q And what -- what did you discuss with your 10 coach? 11 A Just that I was going to have a -- have 12 this meeting today. 13 Q Did you discuss anything about the actual 14 case? 15 A No. 16 Q Like, whether or not Nike had matched the 17 New Balance offer, for example? 18 A No. 19 Q All right. Nike was your first sponsor; is 20 that right? 21 A Yes. 22 Q How did you come to be sponsored by Nike? 23 A They had the best deal. 24 Q They approached you? 25 A Yes. Or --</p>	<p style="text-align: right;">Page 12</p> <p>1 Q How did you come to meet him? Yeah. 2 A I'm not exactly sure. My coach knew who he 3 was. 4 Q Okay. Your coach introduced you to -- if 5 you don't mind, I'm going to call him by his first 6 name Merhawi because it's easier for me to say -- 7 correctly, that is. 8 Did your coach introduce you to Merhawi? 9 A Yes. 10 Q Did your coach recommend that you work with 11 Merhawi? 12 A Yes. 13 Q Did he suggest that you could get a better 14 sponsorship contract through Merhawi than you had 15 through your prior arrangement? 16 A No. 17 Q No? Is Mr. Merhawi -- is Merhawi still 18 your agent? 19 A Yes. 20 Q I want to talk a little bit about your 21 history wearing Nike footwear. I've seen some 22 Instagram pictures of you wearing Nike footwear in 23 the past. 24 Am I right that you wore Nike footwear when 25 you were racing in high school and college?</p>

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1 A Yes.
 2 Q And that was by choice; correct?
 3 A Yes.
 4 Q And during the time period in which you
 5 were sponsored by Nike after -- you know, in this
 6 most recent period, I understand you ran your
 7 personal best in the 800 meters at the Diamond Lake
 8 event in Monaco last July; is that correct?
 9 A Yes.
 10 Q That was the fifth fastest time run by an
 11 American ever; is that right?
 12 A Yes.
 13 Q Congratulations on that, by the way. You
 14 were wearing Nike that day, were you not?
 15 A I was.
 16 Q So you've run the fastest 800-meter race of
 17 your career in Nike shoes; correct?
 18 A Yes.
 19 Q Now, you're aware, I assume, that your
 20 coach Carlos Handler occasionally communicated with
 21 Nike about your training; is that right?
 22 A Yes.
 23 Q I'd like the court reporter to hand the
 24 witness what's been marked for identification as
 25 Exhibit 5.

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1 THE REPORTER: Okay. He has it.
 2 (Exhibit 5 was marked for identification by
 3 the Certified Shorthand Reporter.)
 4 BY MR. RAMFJORD:
 5 Q Mr. Berian, this is an e-mail dated
 6 December 8th, 2015, from Carlos Handler to
 7 Ben Cesar.
 8 Do you see that?
 9 A Yes.
 10 Q And you understood that Mr. Cesar is with
 11 Nike; correct?
 12 A Yes.
 13 Q And the e-mail states:
 14 "Hi Ben, thank you for checking in. I hope
 15 you and your family are doing well. Everyone is
 16 doing well over here. Boris is getting in a really
 17 good base phase and preparing for the indoor
 18 season."
 19 Do you see that?
 20 A Yes.
 21 Q Do you see that?
 22 A Yes.
 23 Q And was it true that everyone at Big Bear
 24 Track Club was doing well, to your knowledge, at
 25 that time?

Page 15

1 A Everyone was, yes.
 2 Q And it was true that you were getting in a
 3 good base for the indoor season?
 4 A Yes.
 5 Q Your training was going well at that point
 6 in time?
 7 A It was.
 8 Q I'd like you to turn to what's been
 9 marked -- or have the court reporter hand you what's
 10 been marked as Exhibit 28. And while she is pulling
 11 that together, I just want to ask one more question
 12 about why you chose Nike in terms of it being a
 13 better deal.
 14 Was it a better deal because of the money?
 15 A The situation I was in with my agent, it
 16 was.
 17 Q How so?
 18 A Nike offered to pay the 15 percent to Kim
 19 at the time.
 20 Q So Nike offered to pay your agent's
 21 commission in addition to paying you, and that made
 22 the Nike deal a better deal than, say, New Balance
 23 offered at that time?
 24 A Yes.
 25 Q And at that point in time you were

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1 satisfied with the idea of running in Nike shoes; is
 2 that right?
 3 A Yes.
 4 Q Now, turning back to Exhibit 28, which I
 5 believe you have in front of you now?
 6 A Not yet.
 7 Q Okay.
 8 THE REPORTER: I can't do it and write at
 9 the same time.
 10 MR. RAMFJORD: I'm sorry.
 11 THE REPORTER: That's okay. Okay.
 12 (Exhibit 28 was marked for identification
 13 by the Certified Shorthand Reporter.)
 14 BY MR. RAMFJORD:
 15 Q By the way, when you chose to go to Nike
 16 for this sponsorship arrangement, you had been
 17 wearing New Balance immediately prior to that; is
 18 that right?
 19 A Yes.
 20 Q But you switched from New Balance to Nike;
 21 is that right?
 22 A Yes.
 23 Q Okay. All right. But now I believe you
 24 have Exhibit 28 in front of you.
 25 A Yeah.

Page 17

1 Q This is another e-mail from Mr. Handler to
2 Ben Cesar dated January 14th, 2016.

3 Do you see that?

4 A Yes.

5 Q And it attaches some invoices. But at the
6 end of the e-mail on the first page it says:

7 "By the way, Boris is doing very well!

8 Training is going well and Boris is healthy! This
9 is going to be a big year for him. Thanks for your
10 time, Ben. Hope to hear from you soon."

11 Do you see that?

12 A Yes.

13 Q Was that true?

14 A Yes.

15 Q It was true that you were doing very well
16 and that your training was going well?

17 A Yes.

18 Q To your knowledge, before January 22nd,
19 2016, when Nike sent your agent a letter stating
20 that it matched the New Balance offer, did you or
21 your coach ever inform anyone at Nike that you had
22 any problems wearing Nike footwear?

23 A No.

24 Q Have you or your coach ever asked Nike if
25 it could make any modifications or adjustments to

Page 18

1 the Nike shoes you were wearing during the time you
2 were sponsored by Nike to make them more
3 comfortable?

4 A No.

5 Q You never asked for that?

6 A No. We didn't know we could.

7 Q And you didn't ask to see if you could
8 either?

9 A No.

10 Q Now, I want to talk a little bit about the
11 negotiations with New Balance. And I understand
12 that some point in time after Merhawi began
13 representing you, he began talking to New Balance
14 about a sponsorship agreement for you; is that
15 right?

16 A Yes.

17 Q Did he talk to any other companies?

18 A No.

19 Q So New Balance was the only company, to
20 your knowledge, that he spoke with after he started
21 representing you in the fall of 2015?

22 A Yes.

23 Q Did Merhawi talk to you about what you
24 wanted in terms of a new contract?

25 A Yes.

Page 19

1 Q What did -- what did he talk to you about
2 and what did you want?

3 A We talked about the starting base salary
4 and what shoes I felt most comfortable in.

5 Q A higher base salary and what shoes you
6 felt most comfortable in?

7 A Yes.

8 Q Anything else?

9 A That was it.

10 Q All right. I want to have the court
11 reporter pass you what's been marked for
12 identification as Exhibit 3.

13 THE REPORTER: Okay. He has it.

14 (Exhibit 3 was marked for identification by
15 the Certified Shorthand Reporter.)

16 BY MR. RAMFJORD:

17 Q Mr. Berian, Exhibit 3 is a chain of e-mails
18 between Mr. -- or Merhawi and John Evans of
19 New Balance and then it's forwarded to you on
20 December 11th, 2015.

21 Do you see that?

22 A Yes.

23 Q And I want to start by looking at the last
24 two pages of this e-mail. And at the bottom of
25 this -- actually, not the last two pages. Starting

Page 20

1 at the bottom of what's been marked as page 2, there
2 is an e-mail from Mr. -- or from Merhawi,
3 Mr. Keflezighi, to Mr. Evans dated November 25th.

4 Do you see that?

5 A Yes.

6 Q All right. And this e-mail includes some
7 proposed terms for a deal with New Balance, does it
8 not? If you look on the left of page 3?

9 A Yes.

10 Q Did you talk about Merhawi offering these
11 terms before this e-mail was sent?

12 A Yes.

13 Q So you approved his sending of this offer
14 before he sent it out?

15 A Yes.

16 Q Okay. I want to talk a little bit about
17 some of the terms here. I'd like to start with the
18 one -- it's the fourth dash point.

19 Says: "Allow third party logo on the race
20 uniform (Big Bear Track Club logo, or other
21 noncompetitive logo)."

22 Do you see that language?

23 A Yes.

24 Q What was the purpose of that term, as you
25 understood it?

<p style="text-align: right;">Page 21</p> <p>1 A Just to make the track club's own logo for 2 whatever company. 3 Q So was it to make sure that you could put a 4 third party logo on your race uniform like the 5 Big Bear Track Club logo? 6 A I don't understand "third party." Was 7 it -- 8 Q Well, was it -- I mean, it's not -- by 9 "third party," I mean not you and not New Balance. 10 In other words, you could put some other logo on 11 your race outfit like the logo at the time for 12 Big Bear Track Club? 13 A Yeah. 14 Q Okay. And the term -- this provision 15 refers to the Big Bear Track Club logo or other 16 noncompetitive logos. 17 Do you see that language? 18 A Yes. 19 Q Did you understand at the time that 20 whatever logo you put on your uniform could not be 21 the logo of a New Balance competitor? In other 22 words, couldn't put a Nike Swoosh on your uniform 23 but you could put the Big Bear Track Club logo on 24 your uniform -- 25 A Yes.</p>	<p style="text-align: right;">Page 23</p> <p>1 Do you see that? 2 A Yes. 3 Q Now, it also says at the end of the e-mail 4 here that: 5 "In addition to a sponsorship deal for 6 Boris, I have also been given authorization to 7 discuss a deal for the Big Bear Track Club." 8 Do you see that? 9 A Yes. 10 Q And was it your understanding that Merhawi 11 was attempting to negotiate an arrangement with 12 New Balance that would include both a sponsorship 13 agreement for you and a sponsorship agreement for 14 the Big Bear Track Club? 15 A Yes. 16 Q And you understood, I assume, that if there 17 was a sponsorship agreement for the Big Bear Track 18 Club, it would include a provision, like most club 19 sponsorship agreements, that says that club members 20 could not wear or use products manufactured by 21 competitors of New Balance? 22 A Yes. 23 Q Do you know whether Merhawi had an agency 24 agreement with Big Bear Track Club at this time? 25 A With the team?</p>
<p style="text-align: right;">Page 22</p> <p>1 Q -- if it didn't include a Nike Swoosh? 2 A Yes. 3 Q Do you understand or -- did you have any 4 discussions with Merhawi about why you were putting 5 this provision in? 6 A No. 7 Q Did you talk about whether or not it would 8 make it easier or harder for Nike to match any 9 New Balance offer? 10 A Yes. 11 Q What did you talk about with that? 12 A If New Balance agreed to that, it would 13 make it harder for them to just match that. 14 Q Make it harder for Nike to match the offer 15 if New Balance put it into their offer; is that 16 right? 17 A Yes. 18 Q And this was not a term that, you know, 19 gave you economic benefit; you didn't get more money 20 from putting this term in the contract, did you? 21 A No. 22 Q The fifth term right below that says: 23 "New Balance being a sponsor of the 24 Big Bear Track Club and sponsoring Boris as part of 25 that deal."</p>	<p style="text-align: right;">Page 24</p> <p>1 Q With the group, with the club. Does he 2 have an agency agreement with them? 3 A No. 4 Q He was just doing this informally, 5 negotiating on their behalf? 6 A Yes. 7 Q Was the idea of this that these two 8 agreements would start at the same time? In other 9 words, your agreement with New Balance and the 10 agreement with Big Bear Track Club would both start 11 on January 1, 2016, when your deal with Nike 12 expired? 13 A No. 14 Q What was your understanding about that? 15 How was that going to work? 16 A The team would be sponsored. 17 Q Okay. It says here, looking at that 18 language again: 19 "New Balance being a sponsor of the Big 20 Bear Track Club and sponsoring Boris as part of that 21 deal." 22 Do you see that language? 23 A Yes. 24 Q Wasn't it the case that New Balance would 25 be a sponsor of the team and you would be sponsored</p>

1 as part of the overall arrangement as well?
 2 A Not individually, but I'm a member of the
 3 Big Bear Track Club so I would be wearing
 4 New Balance.
 5 Q Yeah. You would be a member of the Big
 6 Bear Track Club, but you would also have your own
 7 separate agreement with New Balance that sponsored
 8 just you; is that right?
 9 A Not individually at the time, no.
 10 Q As of this time in November of 2015, wasn't
 11 Merhawi trying to negotiate an individual
 12 sponsorship agreement for you with an annual base
 13 compensation level of \$150,000 as he suggested in
 14 this e-mail?
 15 A Yes.
 16 Q Okay. So at this point in time, Merhawi
 17 was attempting to negotiate an individual
 18 sponsorship agreement for you, one; and a
 19 sponsorship agreement for the Big Bear Track Club,
 20 two; correct?
 21 A Yes.
 22 Q And both of those sponsorship agreements
 23 would start on January 1, 2016, when your contract
 24 with Nike expired; correct? Or as close thereto as
 25 possible?

1 A As close as possible. But with everything
 2 legally, the individual one wouldn't start on the
 3 1st.
 4 Q Yeah, is that -- that changed over time
 5 because of some of the legal issues that arose?
 6 A Yes.
 7 Q Correct?
 8 A Yes.
 9 Q Okay. All right.
 10 All right. I'd like to have the reporter
 11 give the witness what's been marked as Exhibit 4.
 12 THE REPORTER: Okay.
 13 (Exhibit 4 was marked for identification by
 14 the Certified Shorthand Reporter.)
 15 BY MR. RAMFJORD:
 16 Q All right. This, Mr. Berian, I believe, is
 17 screen shots of texts sent between you and Merhawi
 18 that were produced in this case.
 19 Do you recognize these as texts between you
 20 and Mr. Merhawi -- or I mean Merhawi?
 21 A Yes.
 22 Q Okay. All right. I'd like to have you
 23 start by looking at page 6 of this document. There
 24 are page numbers at the bottom there.
 25 A Page 6?

1 Q Yes.
 2 A Okay.
 3 Q And the top line of this text is cut off at
 4 the top of the page, but it appears to say:
 5 "John Evans. He has made an offer for 125K
 6 per year for three years. He will send me the offer
 7 in the next few days."
 8 Do you see that language?
 9 A Yes.
 10 Q And you respond that that's great news and
 11 you're pretty excited; correct?
 12 A Yes.
 13 Q And just by looking at the text below this,
 14 it appears that this exchange that you had with
 15 Merhawi was before December 19th, 2015; is that
 16 right?
 17 A Yes.
 18 Q Did you have any follow-up calls with
 19 Merhawi to talk about this offer?
 20 A I don't remember.
 21 Q Okay. Do you remember whether you
 22 discussed any other terms that might be part of this
 23 offer?
 24 A No.
 25 MR. RAMFJORD: Let's turn -- if the court

1 reporter would show the witness what's been marked
 2 as Exhibit 6.
 3 THE REPORTER: Okay.
 4 (Exhibit 6 was marked for identification by
 5 the Certified Shorthand Reporter.)
 6 BY MR. RAMFJORD:
 7 Q Mr. Berian, this is an e-mail exchange
 8 between Merhawi and John Evans relating to the offer
 9 made by New Balance.
 10 Do you see that?
 11 A Yes.
 12 Q If we start on the second page, Merhawi
 13 e-mails Mr. Evans stating:
 14 "I hope all is well with you. I just
 15 wanted to check in regarding Boris and Big Bear
 16 Track Club. I know I asked you to wait until the
 17 new year, so I am responsible for the delays.
 18 "When should I accept the offer for Boris
 19 and any documents to make the Big Bear Track Club
 20 deal official?"
 21 Do you see that?
 22 A Yes.
 23 Q And then on the e-mail that precedes that
 24 in the first page, there is a response. And that's
 25 dated January 12th, and from Mr. Evans to Merhawi

1 and he encloses the offer for Berian -- for Boris.
 2 And he says he's putting together the contract for
 3 Big Bear and should have that to him shortly as
 4 well; correct?
 5 A Yes.
 6 Q And attached to this is a copy of a
 7 document titled "Boris Berian Offer Compensation and
 8 Bonus Schedule."
 9 Do you see that?
 10 A Yes.
 11 Q And that was the initial offer that --
 12 written offer that you actually received from
 13 New Balance; is that correct?
 14 A Yes.
 15 Q Okay. Now, at this time you knew that you
 16 would have to present any New Balance offer that you
 17 wanted to accept to Nike under the right of first
 18 refusal provision in the Nike contract; right?
 19 A Yes.
 20 Q And you understood under that provision
 21 Nike might agree to match the New Balance offer;
 22 right?
 23 A Yes.
 24 Q Did you talk to Mr. Keflezighi about that
 25 possibility?

1 A Yes.
 2 Q What did you talk about?
 3 A If Nike would have matched the offer, then
 4 I'd have no choice and have to go with Nike.
 5 Q Did you talk about ways that you could get
 6 around that right of first refusal if you wanted to
 7 be sure that you could go with New Balance?
 8 A Um -- yes.
 9 Q What did you talk about in terms of ways to
 10 get around the Nike right of first refusal?
 11 A By just adding no reductions.
 12 Q Adding no reductions and adding that -- the
 13 affiliation clause? Do you recall that?
 14 A What is that?
 15 Q Well, let's actually look at the --
 16 A Oh, okay.
 17 Q -- last page of this document of the
 18 exhibit in front of you. It has a clause that's
 19 Roman numeral five, "Affiliation."
 20 Do you see that?
 21 A Yes.
 22 Q And that provision says:
 23 "New Balance shall permit ATHLETE to
 24 compete under the Big Bear Track Club affiliation,
 25 and ATHLETE may wear the official uniform and

1 footwear of Big Bear Track Club in all domestic
 2 competitions, including the US Indoor Championships
 3 and the US Olympic trials, in 2016. ATHLETE shall
 4 compete for Team New Balance and wear the Team New
 5 Balance official uniform at all international
 6 events."
 7 Do you see that language?
 8 A Yes.
 9 Q Did you talk to Mr. Keflezighi about this
 10 provision?
 11 A Briefly, yes.
 12 Q And did you understand that one of the
 13 goals of this provision was to make it difficult for
 14 Nike to match the New Balance offer?
 15 A Yes.
 16 Q And this is not a provision that gave you
 17 any economic benefit? Again, this is just to make
 18 it hard for Nike to match the offer; right?
 19 A Yes.
 20 Q And did you understand that another goal of
 21 this provision was to try to ensure that even if
 22 Nike matched the New Balance offer, you would still
 23 be able to run in New Balance apparel and footwear
 24 because it would be the official apparel and
 25 footwear of the Big Bear Track Club?

1 A Yes.
 2 Q Did you ever discuss this provision with
 3 anyone else at Big Bear Track Club such as your
 4 coach Carlos Handler?
 5 A Carlos, yes.
 6 Q Did you explain how this provision would
 7 work?
 8 A Briefly, yes.
 9 Q And you explained to him that it was
 10 designed to help -- designed to make it difficult
 11 for Nike to match the New Balance offer?
 12 A I didn't do, like, all that. I just let
 13 him know. But Merhawi, he explained most of this
 14 stuff to Carlos.
 15 Q Okay. All right. Now, this attachment to
 16 the e-mail, which is titled "Boris Berian Offer
 17 Compensation and Bonus Schedule," this is not an
 18 actual sponsorship contract, is it?
 19 A What do you mean?
 20 Q Well, it does not include some of the terms
 21 that you would expect in a normal sponsorship
 22 agreement, like provisions allowing the sponsor to
 23 use your name or image, or provisions saying that
 24 you would make appearances on behalf of the sponsor,
 25 those kinds of provisions?

<p style="text-align: right;">Page 37</p> <p>1 recent version of the offer that you had received 2 from New Balance; correct? 3 A Yes. 4 Q And this included a few little sweeteners 5 from the original written offer that you received in 6 terms of track time, bonuses, and rollovers; is that 7 right? 8 A Yes. 9 Q But it still included the affiliation 10 clause we mentioned earlier, which is now clause 11 Roman numeral seven; correct? 12 A Yes. 13 Q Did you discuss with Merhawi the language 14 in his cover e-mail, how he was going to present the 15 New Balance offer before he sent it? 16 A What do you mean? 17 Q Well, did you -- did Merhawi call you up 18 and say here's -- or write to you and say, "Here's 19 what I'm going to say to Nike. I'm going to tell 20 them that in addition to the financial terms and 21 lack of reductions, we consider the affiliations 22 clause in the contract to be a material element of 23 the offer." 24 Did you discuss that with him? 25 A No. He just told me he was going to send</p>	<p style="text-align: right;">Page 39</p> <p>1 matches the New Balance offer as set forth in 2 Attachment 2 and will enter into a new contract with 3 Boris for the exclusive right and license for his 4 'Athlete Endorsement' in connection with the 5 'products' and/or NIKE brands (as each is defined in 6 the Contract) and otherwise in accordance with the 7 matched terms set forth in Attachment 2." 8 Do you see that language? 9 A Yes. 10 Q And that language says that Nike matches 11 the New Balance offer; correct? 12 A Yes. 13 Q And Attachment 2, which is included with 14 this letter, is a version of the Boris Berian Offer 15 Compensation and Bonus Schedule that Mr. Keflezighi 16 had sent to Nike substituting Nike for New Balance? 17 Do you see that? 18 A No. Everything New Balance is substituted? 19 Q Yeah. Nike is substituted for New Balance. 20 Do you see that? 21 A No. 22 Q Okay. Let's start a little bit more 23 simply. If you look at -- there's some numbers in 24 the lower right-hand corner of the pages of these 25 documents.</p>
<p style="text-align: right;">Page 38</p> <p>1 off the contract. 2 Q Okay. Did you know that he was going to 3 draw attention to the affiliation clause in the hope 4 that Nike would not agree to match it? 5 A No. 6 Q All right. I'd like -- if the court 7 reporter could show the witness what's been marked 8 as Exhibit 13. 9 THE REPORTER: 13? 10 MR. RAMFJORD: Yeah, please. 11 THE REPORTER: Okay. 12 (Exhibit 13 was marked for identification 13 by the Certified Shorthand Reporter.) 14 BY MR. RAMFJORD: 15 Q Mr. Berian, you have in front of you what's 16 been marked as Exhibit 13, which is an e-mail from 17 Ben Cesar to Mr. Keflezighi dated January 22nd, 18 2016. And it attaches a letter from John Capriotti. 19 Do you see that? 20 A Yes. 21 Q Did Mr. Keflezighi show you this document? 22 A Yes. 23 Q Okay. If you look at the attached letter, 24 the second sentence states: 25 "This letter is to notify you that NIKE</p>	<p style="text-align: right;">Page 40</p> <p>1 A Yes. 2 Q Do you see those numbers? 3 A Yes. 4 Q And if you look at the page ending in 60. 5 A Yes. 6 Q That's the New Balance Boris Berian Offer 7 Compensation and Bonus Schedule; correct? 8 A Yes. 9 Q That's the offer you had received from 10 New Balance; correct? 11 A Yes. 12 Q And then if you look at the document with 13 the number at the bottom of the page ending 63. 14 A 63. Okay. 15 Q That says Boris Berian Offer Compensation 16 and Bonus Schedule; correct? 17 A Yes. 18 Q And if you look at each section, for 19 example, under Section Roman Numeral, "IV.A. 20 Performance Bonus," says: 21 "To attain a performance bonus set forth 22 below ATHLETE must (1) have competed exclusively in 23 NIKE products," et cetera. 24 A Yes, I see that. 25 Q Do you see that?</p>

<p style="text-align: right;">Page 41</p> <p>1 A I do now, yes.</p> <p>2 Q So this provision or this document takes</p> <p>3 the New Balance offer and substitutes NIKE for</p> <p>4 New Balance in each and every term; correct?</p> <p>5 A Yes.</p> <p>6 Q So Nike was agreeing to match each and</p> <p>7 every term set forth in the attachment from</p> <p>8 New Balance, the New Balance Boris Berian</p> <p>9 Compensation and Bonus Schedule; correct?</p> <p>10 A Yes.</p> <p>11 Q Now, turning back to the first, the letter</p> <p>12 which accompanies this, in the second full paragraph</p> <p>13 of that letter, Mr. Capriotti comments that the</p> <p>14 New Balance offer is silent on reductions and Nike</p> <p>15 is only obligated to match the terms stated in the</p> <p>16 New Balance offer.</p> <p>17 Do you see that?</p> <p>18 A Yes.</p> <p>19 Q Now, there's nothing in this letter that</p> <p>20 says that Nike will not agree to the New Balance</p> <p>21 offer because it contains reductions, is there?</p> <p>22 A No.</p> <p>23 Q In fact, the first paragraph says that Nike</p> <p>24 matches the New Balance offer, and this paragraph</p> <p>25 also says that Nike is obligated to match the terms</p>	<p style="text-align: right;">Page 43</p> <p>1 responds:</p> <p>2 "Got it."</p> <p>3 And he goes on to say:</p> <p>4 "There's a few ways to get the desired</p> <p>5 results. Let me analyze them and get back to you</p> <p>6 with a good game plan and options."</p> <p>7 Do you see that?</p> <p>8 A Yes.</p> <p>9 Q And am I correct that what Carlos had told</p> <p>10 you, that you're referring to in that first text, is</p> <p>11 that Nike had matched the terms of the New Balance</p> <p>12 offer; is that right?</p> <p>13 A I don't remember.</p> <p>14 Q Do you remember what Carlos told you you</p> <p>15 had to do with the New Balance offer?</p> <p>16 A Yes.</p> <p>17 Q Nike's match of the New Balance offer?</p> <p>18 A Yes.</p> <p>19 Q Did you talk to Carlos about what you</p> <p>20 should do in response to Nike's letter?</p> <p>21 A I don't remember.</p> <p>22 Q Did you talk to Carlos or anyone else about</p> <p>23 the potential impact of Nike's letter on the ability</p> <p>24 of Big Bear Track Club to get a New Balance</p> <p>25 sponsorship agreement?</p>
<p style="text-align: right;">Page 42</p> <p>1 stated in the New Balance offer; correct?</p> <p>2 A Yes.</p> <p>3 Q Now, I'd like to go back to the chain of</p> <p>4 e-mails or texts between you and Mr. Keflezighi,</p> <p>5 which is Exhibit 4.</p> <p>6 A Okay.</p> <p>7 Q And I'd like you to turn to what's been</p> <p>8 marked as page 12 at the bottom.</p> <p>9 A Okay.</p> <p>10 Q And there's a text there dated Friday,</p> <p>11 January 22nd, 2016.</p> <p>12 Do you see that?</p> <p>13 A Yes.</p> <p>14 Q And that's the same day, same date as the</p> <p>15 letter that we just looked at from Nike, which is</p> <p>16 Exhibit 13; correct? January 22nd, 2016.</p> <p>17 A Yes.</p> <p>18 Q And the text says:</p> <p>19 "Hey Hawi. Just got done with my run.</p> <p>20 Carlos came over and told me what's going on. You</p> <p>21 can call back anytime right now."</p> <p>22 You go on to say:</p> <p>23 "I'd basically go anybody but Nike ... or</p> <p>24 hoka, haha. But yea NB as main."</p> <p>25 And then on the next page, Mr. Keflezighi</p>	<p style="text-align: right;">Page 44</p> <p>1 A What do you mean?</p> <p>2 Q Well, I mean, that if Nike had matched the</p> <p>3 New Balance offer and you were obliged to go with</p> <p>4 Nike, then wouldn't that make it difficult for</p> <p>5 New Balance to get a sponsorship agreement with</p> <p>6 Nike -- with -- wouldn't that make it difficult for</p> <p>7 Big Bear Track Club to get a sponsorship agreement</p> <p>8 with New Balance that required club members to wear</p> <p>9 New Balance footwear and apparel?</p> <p>10 A Yes.</p> <p>11 Q Did you talk about that with Carlos --</p> <p>12 A Um --</p> <p>13 Q -- your coach?</p> <p>14 A I believe so. Yes.</p> <p>15 Q What do you remember talking about in</p> <p>16 regard to that?</p> <p>17 A He briefly let me know that Nike sent over</p> <p>18 the contract. And I was going to go over it more</p> <p>19 with Hawi in that phone call.</p> <p>20 Q And he briefly let you know that it appears</p> <p>21 that Nike had matched the New Balance offer?</p> <p>22 A I think it was something like that, yeah.</p> <p>23 Q Okay. All right. Now, turning back to the</p> <p>24 exhibit that the -- your -- or you respond to</p> <p>25 Mr. Keflezighi. And then he comes back and says</p>

<p style="text-align: right;">Page 45</p> <p>1 "There's a few ways to get the desired results. Let 2 me analyze them and get back to you with a good game 3 plan and option." 4 Do you see that language again? 5 A Yes. 6 Q And I take it that the desired result at 7 this point in time was avoiding an agreement with 8 Nike since you wanted to go to New Balance; correct? 9 A No. 10 Q What was the desired result? 11 A I don't remember. But it was basically to 12 go to New Balance. 13 Q The desired result was to go to 14 New Balance; right? 15 A Yes. 16 Q And to go to New Balance, you couldn't 17 have -- you couldn't go to New Balance if you had an 18 agreement with Nike, could you? 19 A No. 20 Q And so the desired result was avoiding an 21 agreement with Nike so you could go to New Balance; 22 correct? 23 A At the time I wasn't aware that there was a 24 complete agreement, but yeah. 25 Q Well, but you did -- you wanted to make</p>	<p style="text-align: right;">Page 47</p> <p>1 with John Evans today and he is discussing their 2 options with the NB -- New Balance; that is -- 3 lawyer. I will have our options and strategy --" 4 And you have to turn to the next page to 5 finish. 6 "-- to discuss with you." 7 Do you see that? 8 A Yes. 9 Q And, again, did you understand that the 10 options and strategies were to allow you to go 11 forward with the New Balance agreement and avoid any 12 agreement with Nike? 13 A Yes. 14 Q Did you have a follow-up conversation with 15 Mr. Keflezighi regarding what he learned from the 16 New Balance lawyer? 17 A I don't remember. 18 Q Do you remember Mr. Keflezighi telling you 19 that New Balance could not enter an agreement with 20 you because of the language of Mr. Capriotti's 21 letter stating that Nike matches the New Balance 22 offer? 23 A I believe so, yes. 24 Q Yes, he told you that? 25 A Yeah.</p>
<p style="text-align: right;">Page 46</p> <p>1 sure it was not a complete agreement with Nike so 2 you could go to New Balance; correct? 3 A I thought there wasn't at the time. 4 Q What? 5 A During all this Hawi told me that Nike 6 couldn't match, so that's what I was thinking the 7 whole time. 8 Q Couldn't match you say? 9 A Yes. 10 Q So Hawi was telling you that Nike could not 11 match the New Balance offer; is that correct? 12 A Yes. 13 Q Okay. Did he say why? 14 A With mainly the affiliation. 15 Q Okay. So putting that affiliation clause 16 in the New Balance offer would make it impossible 17 for Nike to match the New Balance offer? 18 A Yes. 19 Q All right. Looking, again, at the bottom 20 of page 13 of this same exhibit. On January 25th, 21 it appears that you e-mail Mr. Keflezighi saying: 22 "Hey Hawi. Just wondering if anything new 23 has happened." 24 And Mr. Keflezighi responds saying: 25 "Thanks for checking in, Boris. I spoke</p>	<p style="text-align: right;">Page 48</p> <p>1 Q Okay. And did he tell you that New Balance 2 would have to wait, at a minimum, until the 180-day 3 matching period in your contract with Nike expired 4 before New Balance could enter into a contract with 5 you? 6 A Yes. 7 Q And, in fact, New Balance refused to enter 8 into an agreement with you in January of 2016 9 because Nike had sent this letter saying that it 10 matched the New Balance offer; correct? 11 A Yes. 12 Q Okay. All right. I'd like to have you 13 turn to what's been marked for identification as 14 Exhibit 15, or have the court reporter hand you 15 that. 16 THE REPORTER: Okay. He has it. 17 (Exhibit 15 was marked for identification 18 by the Certified Shorthand Reporter.) 19 BY MR. RAMFJORD: 20 Q This is an e-mail from Mr. Keflezighi to 21 Mr. Cesar and Mr. Capriotti dated January 27th, 22 2016. And it says, in part: 23 "After chatting with Boris, I think it's a 24 good idea for all of us to chat by phone. Is there 25 a good day and time that works for you?"</p>

<p style="text-align: right;">Page 49</p> <p>1 Do you see that?</p> <p>2 A Yes.</p> <p>3 Q And do you recall having a conversation</p> <p>4 with Mr. Keflezighi after receiving the January 22nd</p> <p>5 letter from Nike in which Mr. Keflezighi said, you</p> <p>6 know, "Let me call up Nike and see if I can persuade</p> <p>7 them that you don't want to be with them, you want</p> <p>8 to be with New Balance, and see if we can get out of</p> <p>9 this"? Or something along those lines?</p> <p>10 A I think so, yeah. He sent an e-mail,</p> <p>11 maybe.</p> <p>12 Q What do you recall Mr. Keflezighi telling</p> <p>13 you that he was going to say to Mr. Cesar and</p> <p>14 Mr. Capriotti?</p> <p>15 A I remember that he asked me if I just</p> <p>16 wanted to chat with Ben and John, just to see if</p> <p>17 they would just release me.</p> <p>18 Q Okay. And, actually, let's turn</p> <p>19 to -- let's have the court reporter hand you what's</p> <p>20 been marked as Exhibit 17.</p> <p>21 THE REPORTER: Okay.</p> <p>22 (Exhibit 17 was marked for identification</p> <p>23 by the Certified Shorthand Reporter.)</p> <p>24 BY MR. RAMFJORD:</p> <p>25 Q All right. And, Mr. Berian, this is a</p>	<p style="text-align: right;">Page 51</p> <p>1 it, you told Nike that you would prefer to be with</p> <p>2 New Balance; correct?</p> <p>3 A Yes.</p> <p>4 Q And Nike told you that it wanted to</p> <p>5 continue working with you, having you as its</p> <p>6 sponsored athlete; correct?</p> <p>7 A Yes.</p> <p>8 Q And during that call there was no legal</p> <p>9 discussion about whether or not Nike had or had not</p> <p>10 matched the New Balance offer, it was really about</p> <p>11 your preference; correct?</p> <p>12 A Yes.</p> <p>13 Q Did you do anything to prepare for that</p> <p>14 phone call?</p> <p>15 A No, not really.</p> <p>16 Q What did you tell Nike in terms of your</p> <p>17 preference why you wanted to go with New Balance?</p> <p>18 A Footwear was bothering me. And two, as,</p> <p>19 like, Ben Cesar wasn't really communicating too much</p> <p>20 with us.</p> <p>21 Q Okay. Had you complained before about the</p> <p>22 footwear bothering you in any way?</p> <p>23 A No.</p> <p>24 Q Did Mr. Cesar or Mr. Capriotti say, "Well,</p> <p>25 we're happy to work with you on that and try to</p>
<p style="text-align: right;">Page 50</p> <p>1 series of e-mails. I'm going to focus on the one at</p> <p>2 the bottom of the first page, which is dated</p> <p>3 February 1st, 2016, from Mr. Keflezighi to Mr. Cesar</p> <p>4 and Mr. Capriotti. And it talks about:</p> <p>5 "Is there a good time to chat today or</p> <p>6 tomorrow?"</p> <p>7 And right below that there's actually an</p> <p>8 e-mail dated January 28, 2016, in which</p> <p>9 Mr. Keflezighi writes Mr. Cesar and says:</p> <p>10 "As discussed yesterday, let's set up a</p> <p>11 time for you, me -- or for me, you, Boris and Cap to</p> <p>12 get on the phone together. Boris and I are</p> <p>13 available and flexible on Monday and Tuesday of next</p> <p>14 week for this call. We hope to be -- we are able to</p> <p>15 resolve any issues and clarify the process during</p> <p>16 the phone call."</p> <p>17 Do you see that?</p> <p>18 A Yes.</p> <p>19 Q And this is the phone call you're talking</p> <p>20 about where -- this phone call actually took place</p> <p>21 after this e-mail was sent and you, Mr. Keflezighi,</p> <p>22 and Mr. Cesar, and Mr. Capriotti were all on the</p> <p>23 phone; correct?</p> <p>24 A Yes.</p> <p>25 Q And during that phone call, as I understand</p>	<p style="text-align: right;">Page 52</p> <p>1 figure out a way to make the footwear more</p> <p>2 comfortable for you"?</p> <p>3 A In the phone call, yes.</p> <p>4 Q Yeah. And did they also indicate that, you</p> <p>5 know, they'd be happy to try to communicate more</p> <p>6 with you if that was an issue?</p> <p>7 A I believe so, yes, in the call.</p> <p>8 Q It was clear to you that they wanted to go</p> <p>9 forward and work with you in the future; correct?</p> <p>10 A Yes.</p> <p>11 Q All right. I'd like to have the court</p> <p>12 reporter show you what's been marked as Exhibit 20.</p> <p>13 And while we're getting that, I just need one</p> <p>14 second.</p> <p>15 (Brief pause in proceedings.)</p> <p>16 (Exhibit 20 was marked for identification</p> <p>17 by the Certified Shorthand Reporter.)</p> <p>18 BY MR. RAMFJORD:</p> <p>19 Q Do you have in front of you what's been</p> <p>20 marked as Exhibit 20?</p> <p>21 A Yes.</p> <p>22 Q Yes?</p> <p>23 A Yes.</p> <p>24 Q Okay. In the bottom e-mail here, that's</p> <p>25 dated February 15th, 2016. And it's from Mr. Cesar</p>

<p style="text-align: right;">Page 53</p> <p>1 and it says:</p> <p>2 "Hello Merhawi. Attached is a long form</p> <p>3 contract for Boris for your review. As we discussed</p> <p>4 on our last call, we're looking forward to</p> <p>5 continuing our relationship with Boris."</p> <p>6 Do you see that?</p> <p>7 A Yes.</p> <p>8 Q And in response, right above that, there is</p> <p>9 an e-mail from Mr. Keflezighi to Mr. Cesar on the</p> <p>10 same day saying:</p> <p>11 "Hello Ben, as discussed, Boris has</p> <p>12 expressed an interest not to resume a relationship</p> <p>13 with Nike. You asked us to discuss internally and</p> <p>14 notify you. Boris' position has not changed since</p> <p>15 our conference call.</p> <p>16 "Additionally, your original letter asked</p> <p>17 for a revised proposal/offer. We reserved the right</p> <p>18 to submit the requested information if you decide</p> <p>19 not to honor Boris' personal preference.</p> <p>20 "If you decide not to honor Boris' personal</p> <p>21 preference, I can have a revised offer to you in the</p> <p>22 next week."</p> <p>23 Do you see that?</p> <p>24 A Yes.</p> <p>25 Q And this -- nowhere in this e-mail does</p>	<p style="text-align: right;">Page 55</p> <p>1 preliminary injunction hearing so we're just on the</p> <p>2 tightest possible schedule.</p> <p>3 THE REPORTER: Okay. And when is your</p> <p>4 hearing?</p> <p>5 MR. RAMFJORD: Hearing right now is set for</p> <p>6 Tuesday morning. We're trying to move that. But,</p> <p>7 you know, if we're not able to, we'd like to be able</p> <p>8 to have something sometime tomorrow morning if we</p> <p>9 could.</p> <p>10 THE REPORTER: Yeah, I can turn it in</p> <p>11 tomorrow morning, and they can probably e-mail it to</p> <p>12 you.</p> <p>13 MR. RAMFJORD: Okay.</p> <p>14 THE REPORTER: Okay.</p> <p>15 MR. RAMFJORD: Thank you.</p> <p>16 THE REPORTER: You're welcome.</p> <p>17 And, Mr. Ewing, do you need a copy?</p> <p>18 MR. EWING: Yes. A copy synched with the</p> <p>19 video, please, if possible.</p> <p>20 THE REPORTER: Okay.</p> <p>21 MR. EWING: But the expedited one, as soon</p> <p>22 as you can get that to us, that'd be great.</p> <p>23 THE REPORTER: Okay. Thank you.</p> <p>24 MR. EWING: Boris, you're done.</p> <p>25 MR. RAMFJORD: Thank you, Boris.</p>
<p style="text-align: right;">Page 54</p> <p>1 Mr. Keflezighi indicate that Nike did not match the</p> <p>2 New Balance offer, does he?</p> <p>3 A No.</p> <p>4 Q Did Mr. Keflezighi show you the long form</p> <p>5 agreement that was proposed by -- as a starting</p> <p>6 point by Nike?</p> <p>7 A No.</p> <p>8 Q Give me one second, if you would.</p> <p>9 (Brief pause in proceedings.)</p> <p>10 MR. RAMFJORD: We have no further</p> <p>11 questions.</p> <p>12 Are you there?</p> <p>13 THE WITNESS: Yeah.</p> <p>14 THE REPORTER: Yeah. So --</p> <p>15 MR. RAMFJORD: We have no further -- you're</p> <p>16 done.</p> <p>17 THE REPORTER: Okay. Thank you.</p> <p>18 MR. EWING: Excuse me. Ms. Reporter, can</p> <p>19 we get an expedited transcript and video?</p> <p>20 THE REPORTER: Yes. When do you need it</p> <p>21 by?</p> <p>22 MR. EWING: As soon as possible.</p> <p>23 THE REPORTER: Okay. Well, I can turn it</p> <p>24 in on Monday.</p> <p>25 MR. RAMFJORD: We have an upcoming</p>	<p style="text-align: right;">Page 56</p> <p>1 THE WITNESS: Thank you.</p> <p>2 THE VIDEOGRAPHER: This concludes this</p> <p>3 deposition of Boris Berian. Going off the record,</p> <p>4 4:07 P.M.</p> <p>5 (End time: 4:07 P.M.)</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

1 UNITED STATES DISTRICT COURT
 2 DISTRICT OF OREGON
 3 PORTLAND DIVISION
 4 Civil Action No. 3:16-cv-00743-SB
 5 NIKE USA, INC., an Oregon)
 6 corporation,)
 7 Plaintiff,)
 8 -vs-)
 9 BORIS BERIAN, an individual)
 10 California resident,)
 11 Defendant.)
 12 VIDEO DEPOSITION OF MERHAWI KEFLEZIGHI
 13 MERHAWI KEFLEZIGHI
 14
 15 The video deposition upon oral examination
 16 of MERHAWI KEFLEZIGHI, a witness produced and sworn
 17 before me, Judith E. Bellinger, RPR, CRR, CSR No.
 18 94-R-1044, a Notary Public in and for the County of
 19 Marion, State of Indiana, taken on behalf of the
 20 Plaintiff at the MARRIOTT EAST, 7202 East 21st
 21 Street, Indianapolis, Marion County, Indiana, on
 22 the 19th day of June, 2016, commencing at the hour
 23 of 3:05 p.m., pursuant to the Federal Rules of
 24 Civil Procedure with written notice as to the time
 25 and place thereof having been given.

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 21 BRAD DALTON
 22
 23 ALSO PRESENT:
 24 Rob Leinwand, Nike
 25

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 26 Merhawi Keflezighi dated
 27 2/2/2016 7:34:49 AM to Ben
 28 Cesar, Subject: Re: Boris
 29 Berian, Bates Nos. NIKE0000046
 30 through 0000047
 31 Exhibit 20 - E-mail chain, top email from93
 32 hawisports@gmail.com dated
 33 2/15/2016 3:36:50 PM to Ben
 34 Cesar, Subject: Re: Contract -
 35 B. Berian, Bates No. NIKE0000045
 36 Exhibit 25 - Email chain, top email from95
 37 Ben Cesar dated 3/15/2016
 38 4:50:39 PM to John Capriotti,
 39 Subject: Fwd: Track and Field
 40 Contract between Nike and Boris
 41 Berian, with attachments, Bates
 42 Nos. NIKE0000018 through 0000021
 43 Exhibit 27 - Text messages between Mr.60
 44 Keflezighi and Mr. Evans, in 11
 45 parts

<p style="text-align: right;">Page 5</p> <p>1 INDEX OF EXHIBITS (CONTINUED) 2 Exhibit 28 - Email from Carlos Handler15 dated 1/14/2016 6:09:48 PM to 3 Ben Cesar and Boris Berian, Subject: Boris Berian Invoice, 4 with attachments, Bates Nos. NIKE0000079 through 0000100 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 7</p> <p>1 MERHAWI KEFLEZIGHI, 2 having been duly sworn to tell the truth, the whole 3 truth, and nothing but the truth relating to said 4 matter was examined and testified as follows: 5 6 DIRECT EXAMINATION, 7 QUESTIONS BY MR. PER A. RAMFJORD: 8 Q Mr. Keflezighi, could you please state your name 9 and address for the record. 10 A Merhawi Keflezighi, 10436 Perry Fox Drive, 11 Fishers, Indiana, 46037. 12 Q Have you ever had your deposition taken before? 13 A No, I have not. 14 Q Let me just explain briefly a few ground rules. 15 First of all, you're under oath, as you 16 just heard. 17 A Uh-huh. 18 Q Do you understand that? 19 A Yes, I do. 20 Q And it is important that you understand the 21 questions that I'm asking you. So if I ask you 22 something and you don't understand it, please, 23 let me know. 24 Will you do that? 25 A Yes.</p>
<p style="text-align: right;">Page 6</p> <p>1 THE VIDEOGRAPHER: This begins the video 2 deposition of Merhawi Keflezighi taken in the 3 matter of Nike USA, Inc. versus Boris Berian, 4 pending in the United States District Court, 5 District of Oregon, Portland Division, Cause No. 6 3:16-cv-00743-SB. 7 This deposition is being held in 8 Indianapolis Marriott East, 7202 East 21st 9 Street, in Indianapolis, Indiana. 10 My name is Brad Dalton, I am the legal 11 video specialist, and the court reporter is Judy 12 Bellinger, both representing Beovich Walter & 13 Friend, Inc. 14 Today's date is Sunday, June 19th, 2016, 15 and the current local time is 3:05 p.m. 16 As we are now on the record, will counsel, 17 please, introduce themselves and state their 18 representation. 19 MR. RAMFJORD: This is Per Ramfjord on 20 behalf of Nike, along with Kennon Scott. 21 MR. EWING: Vince Ewing for the defendant, 22 Boris Berian. 23 THE VIDEOGRAPHER: Will the court reporter 24 now swear in the witness and then we may 25 proceed.</p>	<p style="text-align: right;">Page 8</p> <p>1 Q All right. And it is also important that you 2 answer questions orally as opposed to nodding 3 your head, since I can't see that, and the court 4 reporter can't record that. 5 Do you understand that? 6 A Yes, I do understand. But I do have a tendency 7 to nod my head so I'll try to make sure 8 everything's verbal. 9 Q All right. And, finally, it's just important 10 that we not talk over each other so that after I 11 ask you a question, let there be a little space 12 before you start to answer, okay? 13 A Okay. 14 Q How did you meet Mr. Berian? 15 A I met Mr. Berian through his coach, Carlos 16 Handler. 17 Q When was that? 18 A Via email or text, I would say, September of 19 2015. 20 Q How did you come to represent Mr. Berian as an 21 agent? 22 A His coach asked me to represent both him and one 23 of his other clients -- I mean, other athletes. 24 Q Who was the other client? 25 A Brenda Martinez.</p>

<p style="text-align: right;">Page 21</p> <p>1 Q You didn't propose any specific terms at that 2 point in time? 3 A Let me see. I don't think I -- I think he asked 4 me to put together a proposal. So I don't think 5 we discussed anything specific at that time. 6 Q So this was the proposal that you put together, 7 this email? 8 A Let's see. I believe so. 9 Q Okay. And it does include proposed terms for a 10 sponsorship arrangement with New Balance; 11 correct? 12 A Yes. 13 Q And if we look at the page marked number 3 at 14 the bottom. That's where those terms begin. 15 And I would like to start with the fourth term, 16 which states, "Allow third party logo on the 17 race uniform (Big Bear Track Club logo, or other 18 non-competitive logo)." 19 Do you see that language? 20 A Yes. 21 Q And I assume your intent in presenting this term 22 was to allow Mr. Berian to place a third-party 23 logo on his uniform like that of the Big Bear 24 Track Club; correct? 25 A Yes. But not only Big Bear Track Club, but,</p>	<p style="text-align: right;">Page 23</p> <p>1 Q Okay. You used the phrase "New Balance being a 2 sponsor of the Big Bear Track Club and 3 sponsoring Boris as part of that deal." 4 So were you proposing that these two 5 agreements would go together, be part of the 6 same package? 7 A Not necessarily. I just -- it's a possibility 8 that I presented for New Balance to also sponsor 9 the Big Bear Track Club and Boris. 10 Q Okay. And the idea would be that those 11 agreements would both go into effect at the same 12 time after Nike's contract with Mr. Berian 13 expired? 14 A Yes. I mean, it was something I proposed not 15 knowing how the timing would work out. But it 16 was to give the Big Bear Track Club a sponsor 17 because Boris was available. 18 So it just opens up the opportunity. 19 That's when the Big Bear Track Club had the most 20 leverage. 21 Q In other words, the Big Bear Track Club would 22 have the most leverage to get a sponsorship 23 arrangement if they could bring Boris along with 24 the deal? 25 A Or vice-versa.</p>
<p style="text-align: right;">Page 22</p> <p>1 also, possibly, other corporate -- corporations 2 and potential sponsors. 3 Q Well, the language here states, "Big Bear Track 4 Club, or other non-competitive logo"; correct? 5 A Yes. Non-competitive to New Balance. 6 Q Non-competitive to New Balance. That's what I 7 would understand. 8 So this was not intended to allow 9 Mr. Berian to place a logo on his jersey if it 10 incorporated the logo of a New Balance 11 competitor such as the Nike swoosh; is that 12 right? 13 A Yes, that's right. 14 Q Okay. The fifth terms states, "New Balance 15 being a sponsor of the Big Bear Track Club and 16 sponsoring Boris as part of that deal." 17 Do you see that language? 18 A Yes, I do. 19 Q And you go on to note at the end of the email 20 that you've been given authorization to discuss 21 a deal for the Big Bear Track Club; right? 22 A Yes. 23 Q Had you entered an agency agreement with them at 24 this time, that is the Big Bear Track Club? 25 A Yes, verbally.</p>	<p style="text-align: right;">Page 24</p> <p>1 Q All right. 2 A Or vice-versa. Boris can bring the Big Bear 3 Track Club into the deal. 4 Q Okay. If you turn to what's been -- or if the 5 court reporter could hand you what's been marked 6 as Exhibit 4, please. 7 (Exhibit 4 was marked for identification.) 8 Q Mr. Keflezighi, the court reporter has put in 9 front of you what's been marked as Exhibit 4, 10 which is a printout of a series of texts between 11 you and Mr. Berian that were produced to us. 12 Do you see those? 13 A Yes, I do. 14 Q And is that, in fact, what these are, texts 15 between you and Mr. Berian? 16 A Yes. 17 Q All right. I want you to turn to what's been 18 marked at the bottom of the page as page 6. 19 A (The witness complies.) Uh-huh. 20 Q Do you have that in front of you? 21 A Yes, I do. 22 Q Okay. At the top of the page the text is cut 23 off but it appears to say, "John Evans. He has 24 made an offer of" -- "for \$125K per year for 25 three years. He will send me the offer in the</p>

1 A Yep.
 2 Q And just so we get the context here, if you turn
 3 to the second page, it starts, actually, with an
 4 email from you dated the day before, in which
 5 you indicate you want to check in. You say, "I
 6 just wanted to check-in regarding Boris and the
 7 Big Bear Track Club. I know I asked for you to
 8 wait until the new year, so I am responsible for
 9 the delays.

10 "When should I accept the offer for Boris
 11 and any documents to make the Big Bear Track
 12 Club deal official?"

13 Is that right?

14 A Yep. And then I think it's instead of "accept"
 15 it should be "expect."

16 Q Oh, expect the offer, okay.

17 A It was a typo.

18 Q And then on the first page Mr. Evans forwards
 19 you a copy of an offer; is that right, page 1?

20 A "Please find the offer for Boris." Yes.

21 Q And, in fact, a copy of that offer is attached
 22 to this exhibit; correct?

23 A Okay. Yes, it is. I believe it is.

24 Q And in that first page Mr. Evans also says he's
 25 putting together the contract for Big Bear and

1 should have that to you shortly; correct?

2 A Yes.

3 Q But by this time is it fair to say that you were
 4 working towards agreements with both Mr. Berian
 5 and Big Bear Track Club and New Balance; is that
 6 right?

7 A Yes.

8 Q And the agreements would both go into effect
 9 when Mr. Berian's agreement with Nike expires;
 10 is that right?

11 A It would be in 2016 after his -- yeah.

12 So it wouldn't actually come to -- it
 13 wouldn't actually be at the same time. As you
 14 can see, it happened at different times.

15 The agreement for Boris goes through Boris.
 16 And the Big Bear Track Club deal goes through
 17 Carlos Handler.

18 Q Now, this agreement with Big Bear Track Club --
 19 I just received a copy of it.

20 Do you have a copy of it with you there?

21 A I don't have a copy of it. It was a standard
 22 agreement that they use for other clubs with no
 23 base -- no compensation.

24 Q The document states that should go into effect
 25 as of January 1, 2016.

1 Is that consistent with your recollection?

2 A Yes, I believe so.

3 Q And that would have been the day after

4 Mr. Berian's agreement with Nike would have
 5 ended on December 31st, 2015; correct?

6 A It was just starting in the new calendar year.

7 Q And this agreement provided that all members of
 8 the Big Bear Track Club would give New Balance
 9 permission to use any of their photographs,
 10 names, and/or video as part of its promotional
 11 efforts, didn't it?

12 A I believe so.

13 Q And it also provided that Big Bear Track Club
 14 would not be allowed to enter into any
 15 agreements that would cause any club members not
 16 to wear and/or use products manufactured by any
 17 competitor of New Balance.

18 Do you recall that?

19 A If it's in the agreement, then, it must be
 20 there.

21 Q And, so, for this arrangement to work out to
 22 have agreements with both New Balance and Big
 23 Bear Track Club, Mr. Berian had to have a
 24 sponsorship agreement with New Balance. He
 25 couldn't be running for Nike, because if he were

1 running for Nike with Nike shoes, he would be
 2 violating the provisions of this Big Bear Track
 3 Club agreement; right?

4 A Do you have the date of that, when that
 5 agreement was sent to me?

6 Q Well, I have -- well, we'll go through some
 7 emails on that. But the agreement was being --
 8 was forwarded to you before January 22nd, the
 9 date of the Nike email regarding a match?

10 A I think it was around January 22nd or -- if you
 11 can give me the date. So what I want to
 12 establish is that the Boris -- I hadn't seen the
 13 New Balance proposal or contract for the Big
 14 Bear Track Club before we had an offer for Boris
 15 Berian from New Balance.

16 So I had no -- even though we wanted the
 17 Big Bear Track Club to be sponsored by New
 18 Balance, or New Balance wanted to sponsor the
 19 Big Bear Track Club, it was -- we didn't see
 20 the -- I didn't think it was an extensive
 21 contract the way it was, and, so --

22 Q Well, but under this language of the agreement
 23 you produced, if Nike matched New Balance's
 24 offer to Mr. Berian, Mr. Berian would then be
 25 obliged to run in Nike footwear and apparel,

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1 Adidas athlete and a Nike athlete joined the Big
2 Bear Track Club, yet, they were not required to
3 wear any of the Big Bear Track Club uniform, or
4 shoes, or anything like that because they were
5 under contract with a different footwear
6 company.
7 New Balance was very understanding of that.
8 Q When was that?
9 A I would say, maybe, March or so.
10 Q Of this year, 2016?
11 A Of this year. But I'm not sure exactly of the
12 date, but we can check when those athletes
13 joined.
14 Q So they negotiated an exemption from the
15 obligations of this contract?
16 A No, they just -- they were part of the Big Bear
17 Track Club, but they weren't subject to the Big
18 Bear Track Club New Balance contract.
19 Q That's what I'm saying. They weren't -- they
20 negotiated an arrangement whereby they were not
21 subject to this Big Bear Track Club/New Balance
22 agreement; correct?
23 A Yeah, yeah. But it's not that formal. I think
24 the coach accepted their situation and their
25 circumstances. So I don't think it was a big

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1 negotiation at all.
2 Q Okay. But at the time you were dealing with
3 Mr. Berian and the Big Bear Track Club with
4 Mr. Evans, the idea was that Mr. Berian was
5 going to both have his own individual contract
6 and that he would be subject to the Big Bear
7 Track Club contract; correct?
8 A If we were able to get the -- both contracts
9 done, he would be subject to both contracts.
10 Q All right. Now, going back to the email,
11 Exhibit 6 that we were looking at just a minute
12 ago.
13 As I said earlier, this has a document
14 attached to it titled "Boris Berian Offer
15 Compensation and Bonus Schedule."
16 Do you see that?
17 A Yes.
18 Q And that's the offer from New Balance at the
19 time?
20 A Yeah. I think this was, maybe, the first offer.
21 Q That's my understanding as well.
22 But I want to start by looking at the
23 second page of this there's an Article V
24 Affiliation.
25 Do you see that?

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1 A Yes.
2 Q And that states that, "New Balance shall permit
3 athlete to compete under the Big Bear Track Club
4 affiliation, and athlete may wear the official
5 uniform of Big Bear Track Club in all domestic
6 competitions, including the US Indoor
7 Championships and US Olympic Trials, in 2016.
8 Athlete shall compete for Team New Balance and
9 wear the Team New Balance official uniform in
10 all international events."
11 Do you see that language?
12 A Yes, I do.
13 Q Who drafted that language?
14 A New Balance did.
15 Q Did you talk to Mr. Evans about that provision?
16 A Not really. I accepted that provision.
17 Q Did he explain the purpose of that provision to
18 you?
19 A Not really.
20 Q Did you understand that one of the purposes of
21 this provision was to make it hard for Nike to
22 match any New Balance offer?
23 A Yes, I do understand it was to make it difficult
24 for Nike to match.
25 Q And did you understand that another goal was to

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1 try to ensure that even if Nike matched the New
2 Balance offer, Mr. Berian could be able to run
3 in New Balance footwear and apparel in any
4 event?
5 A Under the affiliation clause, it would be
6 limited to those events in the affiliation
7 clause.
8 Q So other than the -- in 2016 it says, "Athlete
9 shall compete for Team New Balance and wear the
10 Team New Balance" -- well, actually, let me just
11 have you explain that.
12 Can you explain what you just meant?
13 A About? So, I mean, I think the affiliation
14 clause says that the athlete, Boris Berian,
15 could wear New Balance -- the -- let's see, "The
16 official uniform and footwear of the Big Bear
17 Track Club in all domestic competitions."
18 Q Okay.
19 A "Including the US Indoor Championships and US
20 Olympic Trials."
21 Q And at this time, you understood -- I mean the
22 idea here was that New Balance would be agreeing
23 to support -- or sponsor the Big Bear Track
24 Club; right?
25 A At that time, when I first received this, there

<p style="text-align: right;">Page 41</p> <p>1 was an intent or a goal to get New Balance to 2 sponsor the Big Bear Track Club. But I hadn't 3 seen the official agreement for that club's 4 sponsorship agreement. 5 Q But you knew that the goal here was that the 6 official uniform and footwear of the Big Bear 7 Track Club would be New Balance; right? 8 A Yes, we were working on that. 9 Q And, so, the idea here was that even if Nike 10 matched the New Balance offer, it would have to 11 allow Mr. Berian to wear the official uniform 12 and footwear of the Big Bear Track Club in all 13 domestic competitions, as stated here; is that 14 right? 15 A Yes, for those specific events. Yep. 16 Q Did you talk to Mr. Berian about this provision? 17 A I believe I did. I went through every clause in 18 the contract with him. 19 Q When did you do that? 20 A I'm sure sometime after I received it. 21 Q What did you say about this provision? How did 22 you explain it to him? 23 A Just that this would make it difficult for Nike 24 to match. 25 Q Okay. Did you discuss this provision with</p>	<p style="text-align: right;">Page 43</p> <p>1 logo, or other non-competitive logo)"; correct? 2 A Yes. 3 Q And, so, if Nike had matched New Balance's offer 4 containing this provision -- 5 A Which provision are you talking about? 6 Q -- it might have been allowed to compete in New 7 Balance apparel or footwear even if it were the 8 official footwear or apparel of Big Bear Track 9 Club, correct, because that would be a 10 competitive logo? 11 A Can you ask the -- 12 Q That's a bad question. 13 A Yeah. 14 Q Let me rephrase that. 15 Assuming that Nike had matched the New 16 Balance offer containing this provision -- 17 A The affiliation clause? 18 Q Okay. Yes, this affiliation clause that you're 19 proposing here in Exhibit 3. 20 A Okay. So that's not the affiliation clause. 21 That's just a brainstorming session I had about 22 different ways that we can make it difficult for 23 Nike to match. 24 Q Well, and one of the things I want to ask about 25 here is this particular provision would not have</p>
<p style="text-align: right;">Page 42</p> <p>1 anyone else at Big Bear Track Club, like Carlos 2 Handler? 3 A I'm not sure if I spoke about this specifically 4 with Carlos Handler. It's -- I think maybe 5 Boris might have spoken to him about this 6 affiliation clause, but I don't recall if I 7 spoke to Carlos specifically about this clause. 8 Q Did you talk to anyone else at Big Bear Track 9 Club about it? 10 A No. If I did speak to anybody, it was, like, 11 Boris, and maybe Carlos. 12 Q Okay. Do you have any idea what Boris told 13 Mr. Handler about this provision? 14 A No, I mean, you know, Carlos is an advisor to 15 Boris so he could have seen this affiliation 16 clause himself. 17 Q Now, this affiliation clause is different from 18 what you originally proposed in your 19 November 25th, 2015 email? And let's look back 20 at that. That's Exhibit 3, if you'd look back 21 at that. 22 A Uh-huh. (The witness complies.) Okay. 23 Q If you look at the page marked 3 at the bottom 24 again. That clause stated, "Allow third party 25 logo on the race uniform (Big Bear Track Club</p>	<p style="text-align: right;">Page 44</p> <p>1 allowed Mr. Berian to run in apparel containing 2 the Big Bear Track Club logo incorporating the 3 New Balance logo, would it, because it doesn't 4 allow any competitive logos to be used; correct? 5 A So one thing is this provision that you speak 6 about on page 3, that is not a provision on any 7 contract. It was just a brainstorming session, 8 you know, that was -- it has no substance, in my 9 opinion, on the affiliation clause. 10 The affiliation clause is what it is and we 11 can look at that. 12 Q I understand that. I'm just trying to 13 understand the difference between what you 14 proposed and what actually ended up getting into 15 the offer that Mr. Berian received, okay? 16 A Okay. 17 Q And what I understand here is that the provision 18 you proposed would not have allowed Mr. Berian 19 to put any logo on his apparel that incorporated 20 some competitor's logo; is that right? 21 A Yes. 22 Q I think we already talked about that. 23 A Yes. And if I can just explain the objective of 24 that element where it says, "Allow third party 25 logo on race uniform," is I know that Nike has</p>

<p style="text-align: right;">Page 45</p> <p>1 a -- they're very strict when it comes to their 2 contract and what other logos you can have on 3 the uniform. And I knew that if you could 4 create that exception where you can have a team 5 mobile logo, or any other corporate logo, or a 6 club that's not a Nike-sponsored club, right, 7 because they are Nike-sponsored clubs that allow 8 their club name and logo to be on the uniform. 9 But in -- so this was just an opportunity 10 to provide one other logo on the uniform which 11 is wear in track and field. 12 Q And if that was, as you say, another way that 13 you were brainstorming about as a means to make 14 it hard for Nike to match any offer from New 15 Balance; right? 16 A Yes. Make it challenging and difficult, yep. 17 Q Okay. All right. 18 A And just to clarify on that, I don't see 19 anything wrong with that. It's just like asking 20 New Balance for \$500,000. That just makes it 21 difficult for Nike to match, and I think 22 anything I proposed was just a different term, a 23 different material term to make it difficult for 24 Nike to match. 25 So I don't see anything bad with that.</p>	<p style="text-align: right;">Page 47</p> <p>1 about the details of the contract. 2 Q Right. 3 A But none of these terms would change. 4 Q Okay. I understood that. 5 Moving on to another exhibit. 6 MR. RAMFJORD: If the court reporter could 7 pass the witness what's been marked as Exhibit 8 9. 9 (Exhibit 9 was marked for identification.) 10 Q Mr. Keflezighi, you have in front of you what's 11 been marked as Exhibit 9. 12 A Yes. 13 Q Okay. And if you look at this, this is a series 14 of emails between -- largely between you and 15 Mr. Evans relating to the offer to Mr. Berian; 16 is that generally correct? 17 A Yes. 18 Q I just want to clarify one thing. If we go to 19 what's been marked as page 6 at the bottom of 20 the page. 21 Do you see that? 22 A Yes. 23 Q On January 12th, you thanked Mr. Evans for the 24 proposed offer, which we just have been looking 25 at the first offer, but asked him whether he</p>
<p style="text-align: right;">Page 46</p> <p>1 Q Okay. I want to turn back to Exhibit 6, which 2 has the compensation and bonus schedule attached 3 to it. 4 A Uh-huh. 5 Q If you look at that document, that Boris Berian 6 offer compensation and bonus schedule is not an 7 actual sponsorship agreement is it? 8 A It's just an offer. 9 Q It doesn't contain all of the terms that are 10 typically included in a sponsorship agreement, 11 like provisions allowing the sponsor to use the 12 name or image of the athlete; correct? 13 A Correct. 14 Q Or a provision that required the athlete to make 15 any appearances on behalf of the sponsor; 16 correct? 17 A Correct. Those are all things that I planned on 18 discussing and working out, negotiating, later. 19 Q And you understood that if -- even if Mr. Berian 20 agreed to this New Balance offer, the terms of 21 this offer would be put into a sponsorship 22 agreement that filled in those additional gap 23 terms that I just described, and others; 24 correct. 25 A There would definitely be more communication</p>	<p style="text-align: right;">Page 48</p> <p>1 could -- might be willing to negotiate some 2 additional terms, like bonuses, time bonuses, 3 rollovers, and other bonuses. 4 A Yeah. 5 Q Is that right? 6 A Yep. 7 Q And Mr. Evans agreed to do that; is that 8 correct? 9 A Yes. 10 Q And as a result, if you look at page 3, on 11 January 14th, he sent you an updated offer with 12 some of those revisions; is that right? 13 A Yes. 14 Q And then if we turn to the email after that, 15 which starts at the bottom of page 2, on 16 January 19th, 2016, you wrote Mr. Evans, "Since 17 Nike has 10 days to match, I think it is best 18 for me to share this offer with Nike today. At 19 this point, I think we have determined this is 20 an offer from New Balance that Boris would sign 21 if he could. 22 "Is it okay for me to proceed with sharing 23 the offer with Nike?" 24 Do you see that language? 25 A Yes, I do.</p>

<p style="text-align: right;">Page 49</p> <p>1 Q Okay. Is it fair to say that you wanted to get 2 this process moving because you wanted to get 3 the sponsorship agreements with both Mr. Berian 4 and Big Bear Track Club done as quickly as you 5 could? 6 A At this point, it was just all about Boris. I 7 don't think there was anything about Big Bear 8 Track Club. It was just trying to get this done 9 for Boris ASAP. Get the ball moving. 10 Q Is the caption of these emails "Boris & Big Bear 11 Track Club Follow-up"? 12 A Let's see. Yes. But I think that's because the 13 email chain goes to much earlier than -- when I 14 refer to that 10-day right to match by Nike, I 15 was referring just to Boris's contract. 16 Q Why did you say, "Since Nike has 10 days to 17 match, I think it's best for me to share this 18 offer with Nike today"? 19 What was the reason for a hurry? 20 A I just think -- first, I just felt it was -- 21 once you have a final offer that you accept and 22 the client accepts, I'm required to share it 23 with Nike as soon as possible. That was my 24 understanding. 25 So if we're done negotiating and I've</p>	<p style="text-align: right;">Page 51</p> <p>1 (Exhibit 10 was marked for identification.) 2 Q Mr. Keflezighi, this is an email from you to Ben 3 Cesar dated January 19th, 2016, and it forwards 4 a copy of the New Balance offer to Nike; is that 5 right? 6 A Yes. 7 Q It's to Mr. Capriotti, too, is that right? 8 A Yes. 9 Q And you state, "I am now representing Boris 10 Berian. New Balance has submitted an offer for 11 Boris, which Boris finds agreeable. Pursuant to 12 Section 5 of Boris' Nike agreement, I am 13 submitting the New Balance offer to you. In 14 addition to the financial terms and lack of 15 reductions, we do consider the affiliation 16 clause in the contract a material element of the 17 offer." 18 Do you see that language? 19 A Yes, I do. 20 Q All right. And drawing attention to the 21 affiliation clause, were you doing that, in 22 part, because you thought Nike might not be 23 willing to match it, or would not be willing to 24 match it? 25 A It would be make it -- it would be -- I mean,</p>
<p style="text-align: right;">Page 50</p> <p>1 reviewed the terms, then there's no point in 2 holding. 3 Q Okay. And right above the email we were just 4 looking at on page 2, there's one from Mr. Evans 5 and he says, "Yes. Please proceed. Still 6 waiting for legal to get me the Big Bear Track 7 Club contract but that is a formality. Please 8 keep me updated." 9 Do you see that language? 10 A Yes, I do. 11 Q So at this time you were, in fact, talking with 12 Mr. Evans about both Mr. Berian's contract and 13 the Big Bear Track Club contract; correct? 14 A Yes. And if I can clarify, the conversations 15 about Boris were extensive, as you can see the 16 back-and-forth in the emails and the details. 17 With the Big Bear Track Club, the only things 18 that we had discussed was that it was just going 19 to be a club deal like other deals, and it was 20 going to be product and -- yeah, product for the 21 team. 22 Q Okay. I'd like to have the court reporter pass 23 you what's been marked as Exhibit 10. 24 25</p>	<p style="text-align: right;">Page 52</p> <p>1 it's up to them. They can match whatever they 2 want. But it would be difficult. 3 I didn't anticipate them matching that 4 portion of the contract -- or the offer. 5 Q In fact -- in fact, I mean, your goal here was 6 to avoid Nike matching the contract; correct? 7 A It would be just as if I had an offer for Boris 8 for \$500,000. If that was something that Nike's 9 not able to match, this is just another term. 10 Q But this is a term that you put in to make it 11 hard for Nike to match, as you stated earlier; 12 correct? 13 A Yes. 14 Q And you didn't want Nike to match. You wanted 15 to go forward with New Balance; correct? 16 A That is what the -- my client wanted, yes, and 17 that's what his preference was. 18 Q Did you talk to Mr. Evans of New Balance about 19 this -- the language that you were putting into 20 this cover email to Mr. Cesar -- 21 A I did not. 22 Q -- and Mr. Capriotti? 23 A I did not. 24 Q By the way, this affiliation clause, which is 25 Section 7 in this version that you're now</p>

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1 sending on the 19th, does that have any economic
 2 value to Mr. Berian, like the \$500,000 would?
 3 A No. I think more the value that it has for him
 4 is this is the club that helped him get to where
 5 he is today.
 6 Q So the value would be that having this kind of
 7 affiliation clause would help him get -- help
 8 the track club get a sponsorship agreement for
 9 the whole track club, which would benefit the
 10 club that had helped him.
 11 Is that fair to say?
 12 A I think it helps the club. And anything that
 13 helps the club, Boris is happy to do.
 14 Q Okay. All right. If you look -- if the court
 15 reporter would hand you what's been marked as
 16 Exhibit 11.
 17 (Exhibit 11 was marked for identification.)
 18 Q Do you have that Exhibit 11 in front of you,
 19 Mr. Keflezighi?
 20 A Yes.
 21 Q Okay. This is an email exchange between you and
 22 Ben Cesar of Nike regarding the offer that we
 23 just discussed.
 24 And as I understand it, after you initially
 25 provided the offer that we just looked at in

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1 Exhibit 10, Mr. Cesar asked to have it on New
 2 Balance letterhead; is that right?
 3 A Yes.
 4 Q And that's because the clause in the Nike
 5 contract required that any offer be on the
 6 letterhead of the company providing it; correct?
 7 A Yes, I believe so.
 8 Q And, so, what you were doing here is complying
 9 with that and giving the offer back to Mr. Cesar
 10 on New Balance letterhead; is that right?
 11 A Yes, just the way he requested.
 12 Q And the terms don't change -- didn't change at
 13 all; correct?
 14 A I didn't change any terms.
 15 Q Okay. All right, now, I would like you to -- I
 16 would like the court reporter to hand you what's
 17 been mark as Exhibit 13.
 18 (Exhibit 13 was marked for identification.)
 19 Q Do you have that?
 20 A Yes, I do.
 21 Q Mr. Keflezighi, this is an email from Mr. Cesar
 22 to you enclosing a letter from Mr. Capriotti
 23 regarding the offer that you sent in Exhibit 11;
 24 correct?
 25 A Yep.

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1 Q And if you look at the letter itself, the second
 2 sentence states, "This letter is to notify you
 3 that Nike matches the New Balance Offer as set
 4 forth in Attachment 2 and will enter into a new
 5 contract with Boris for the exclusive right and
 6 license for his 'Athlete Endorsement' in
 7 connection with the 'Products' and/or Nike brand
 8 (as each is defined in the Contract) and
 9 otherwise in accordance with the matched terms
 10 set forth in Attachment 2."
 11 Do you see that?
 12 A Yes.
 13 Q This sentence clearly states that Nike matches
 14 the New Balance offer, doesn't it?
 15 A I think what it says subsequently impacts -- you
 16 know, it was a very uncertain letter to me.
 17 Q Well, we'll get to that. But let's start with
 18 this sentence.
 19 This sentence says that Nike matches the
 20 New Balance offer; correct?
 21 A Yes. And it also refers to "as each is defined
 22 in the Contract." And I'm not sure which
 23 contract it's referring to.
 24 Q And you didn't ask Mr. Capriotti that or
 25 Mr. Cesar that, did you?

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1 A I did not.
 2 Q Okay. This letter also includes an Attachment
 3 2, which is essentially a version of the New
 4 Balance offer with Nike substituted for the term
 5 New Balance throughout; correct?
 6 A Yes.
 7 Q So it is a word-for-word match of the terms that
 8 New Balance had offered; correct?
 9 A Right.
 10 Q In the second full paragraph of Mr. Capriotti's
 11 letter, he comments that "the New Balance Offer
 12 is silent on reductions and Nike is only
 13 obligated to match the terms stated in the New
 14 Balance Offer"; correct?
 15 A That's what it says.
 16 Q He does not say that Nike will refuse to match
 17 any offer that does not include reductions, does
 18 he?
 19 A Say that again.
 20 Q I stated this letter does not say that Nike is
 21 refusing to match the New Balance offer because
 22 it does not include reductions?
 23 A It does not say that.
 24 Q Okay. In fact, the first paragraph, as we
 25 already noted, says that Nike matches the New

<p style="text-align: right;">Page 57</p> <p>1 Balance offer. And this paragraph says that 2 Nike's obligated to match the terms stated in 3 the New Balance offer; correct? 4 A So that is correct. And the part that's 5 uncertain is I was very clear that the New 6 Balance offer did not include reductions. And 7 in here it seems like Capriotti and Ben did not 8 understand whether the New Balance offer was -- 9 had reductions or not. So there was -- it 10 seemed like we were not on the same page in 11 terms of whether the offer I sent had reductions 12 or not. 13 And I am firm that the offer I sent did not 14 have reductions and could not -- did not say 15 anything about reductions because they didn't 16 exist. 17 Q But you just admitted, though, this letter does 18 not say that Nike will refuse to match the New 19 Balance offer simply because the New Balance 20 offer doesn't include reductions, does it? 21 A This letter does not say that. 22 Q And you said that you thought they might be 23 confused about whether or not the New Balance 24 offer, in fact, included reductions. 25 But you never called them or wrote back to</p>	<p style="text-align: right;">Page 59</p> <p>1 would refuse to match the offer if it didn't 2 include reductions, did he? 3 MR. EWING: Objection. Asked and answered 4 at least three times. 5 Q You can go ahead and answer, Mr. Keflezighi. 6 A So it seemed to me that they wanted a 7 clarification, further clarification, if the 8 offer I sent to them had reductions or not. 9 That was the impression I was -- 10 Q You never provided any written clarification of 11 that, or anything from New Balance at that point 12 in time, to give them assurances one way or the 13 other? 14 A I set up a phone call to discuss this matter 15 with Ben and with John Capriotti. And, also, in 16 addition to discussing this language about 17 reductions, to also tell them specifically what 18 Boris's preference was so that we don't waste 19 anybody else's time any longer. 20 And when I told them that I would get a 21 revised offer from New Balance that would 22 indicate there were no reductions, I was sent 23 another letter, I think from your office from 24 the legal department, saying I was not -- that's 25 not what John Capriotti was asking for in the</p>
<p style="text-align: right;">Page 58</p> <p>1 them to ask about that, did you? 2 A I did have -- immediately after getting this, I 3 did say that -- I did set up a call. I wanted 4 to set up a call to discuss between Boris, 5 myself, Ben, and John Capriotti. 6 Q And Mr. Cesar and Mr. Capriotti never told you, 7 during that call, that they would refuse to 8 match the New Balance offer if it didn't include 9 reductions, did they? 10 A On January 27th, I did have a call with Ben 11 Cesar and he couldn't tell me whether the offer 12 that they matched had -- or the matching offer 13 that they sent was going to include reductions 14 or not. 15 So he couldn't provide any clarification to 16 me. 17 Q But he didn't tell you that Nike wouldn't match, 18 did he? 19 A Well, for me, if I present an offer that doesn't 20 have any reductions, and he tells me they're 21 matching, but he's not sure if it includes 22 reductions or not, then I don't know what to 23 think. I'm thinking they're not matching -- 24 he's not matching. 25 Q But as I said earlier, he never said that Nike</p>	<p style="text-align: right;">Page 60</p> <p>1 letter. 2 So I attempted to do what it says in 3 paragraph 2 of this letter, but I was 4 subsequently told that I cannot do that and 5 shall not do that. 6 Q Okay. Well, let me go at it this way: At no 7 point in time during your discussions then, or 8 since then, has Nike ever indicated anything 9 other than a desire to go forward with the 10 matched arrangement with Mr. Berian, has it? 11 A Yes, it did. When it sent me the long form 12 contract with reductions, which was different 13 from the offer I presented to them, that's -- 14 those terms are not matching, and, therefore, it 15 was very different. 16 Q Let's start back with the conversations you had 17 with -- oh, we'll get to that. Let's just go in 18 order here to try and be a little bit more 19 focused. 20 I would like to have you look at what's 21 been marked as Exhibit 27. If the court 22 reporter can hand that to you. 23 (Exhibit 27 was marked for identification.) 24 Q Do you have that in front of you? 25 A Yes, I do.</p>

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1 Q And this exhibit is a series of text messages
 2 between you and John Evans at New Balance; is
 3 that right?
 4 A Yes, it is.
 5 Q If you turn to page 2 of this exhibit there's a
 6 text from Mr. Evans dated -- or text from you to
 7 Mr. Evans dated January 22nd at 7:14 p.m.
 8 Do you see that?
 9 A Yes.
 10 Q January 22nd is this same day that you received
 11 the letter from Nike, from Mr. Capriotti, in
 12 which he stated, "Nike matches the New Balance
 13 offer"; correct?
 14 A Yes, it's the same day as when I received the
 15 letter.
 16 Q And you say, "Hello John - I hope all is well
 17 with you. I just got an email from Nike. It
 18 looks like they want to match the offer. I'll
 19 forward you the email. Let me know when you
 20 have a chance to chat"; correct?
 21 A Yes, that's what the text says.
 22 Q You don't mention anywhere in this text that
 23 Nike failed to match the lack of reductions in
 24 the New Balance offer, do you?
 25 A I indicated it looks like they want to match the

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1 offer. I didn't say they matched the offer. So
 2 looking at that language --
 3 Q It didn't say -- you did not say that they
 4 failed to match it by failing to match the lack
 5 of reductions, did you?
 6 A I did not say that in this text.
 7 Q And you did not say anything about their failing
 8 to match the affiliation clause, did you?
 9 A I did not.
 10 Q In fact, what you said is that they wanted to
 11 match the offer; correct?
 12 A That's what I said.
 13 Q Did you talk to Mr. Evans after you sent this
 14 text?
 15 A I don't think I spoke to him then.
 16 Q Okay. The next text down is dated January 23rd,
 17 2016, and it says -- this is from you to
 18 Mr. Evans -- "Spoke with my lawyer. Got some
 19 good advice regarding rights & strategy. Just
 20 FYI."
 21 A Uh-huh.
 22 Q Do you see that?
 23 A Yes.
 24 Q And the advice regarding rights and strategy
 25 that you were seeking from your lawyer was about

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1 how to avoid an agreement with Nike given the
 2 letter from Mr. Capriotti; correct?
 3 A No. It was not.
 4 MR. EWING: Privileged the witness --
 5 objection, privileged the witness is not him.
 6 Q Did you seek advice from your lawyer on how to
 7 get out of an agreement with Nike?
 8 A No, I did not.
 9 Q Isn't it true that you really had no intention
 10 of entering any agreement with Nike on
 11 Mr. Boris Berian's behalf if you could avoid
 12 it?
 13 A If they had matched completely, and that's what
 14 Boris wanted, I would have no problem with it.
 15 And I made that clear to both John Capriotti and
 16 to Ben Cesar. First time was on January 27th.
 17 Second time was, I think, February 2nd.
 18 Q The next -- well, did you -- the next text down
 19 says, "Thanks Hawi. Interested to hear what he
 20 said."
 21 Do you see that?
 22 A Yes.
 23 Q Did you ever talk to Mr. Evans about the advice
 24 you got from your lawyer?
 25 A I think I might have spoken to him.

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1 Q Okay. What did you tell him?
 2 A So the thing is at that point, Boris let me know
 3 that he didn't want to be with Nike. And the
 4 advice that I got from, you know, the advisors
 5 that I have is, hey, just let the
 6 representatives of Nike know exactly what the
 7 situation is.
 8 So, at this point, it wasn't even about
 9 reductions or anything else, it was if Boris is
 10 not happy, or excited to be with Nike,
 11 communicate that with Nike so that everybody's
 12 on the same page.
 13 And I did that.
 14 Q Okay. Let's go back to the text chain with
 15 Mr. Berian, which is Exhibit 4, if we could do
 16 that.
 17 A Yes.
 18 Q If you turn to page 12.
 19 A Page 12?
 20 Q Yes.
 21 A I think there's only 11 pages on this. Is it
 22 Exhibit --
 23 Q Exhibit 4?
 24 A Exhibit 27? 4, okay.
 25 Q No, Exhibit 4.

<p style="text-align: right;">Page 65</p> <p>1 A Sorry. Page 4 of Exhibit 27?</p> <p>2 Q No, page 12 of Exhibit 4, Mr. Keflezighi.</p> <p>3 A Do I have that here? Okay. Page 4, yep.</p> <p>4 Q Page 12 of Exhibit 4.</p> <p>5 A Okay.</p> <p>6 Q Are you there?</p> <p>7 A Yep.</p> <p>8 Q This is a text from Mr. Berian to you dated</p> <p>9 January 22nd, 2016.</p> <p>10 Do you see that text there?</p> <p>11 A Yes.</p> <p>12 Q And, again, this is the day that Nike had sent</p> <p>13 the letter saying that it matched the New</p> <p>14 Balance offer; correct?</p> <p>15 A Yes.</p> <p>16 Q And Mr. Berian says, "Hi" -- "Hey Hawi. Just</p> <p>17 got done with my run. Carlos came over told me</p> <p>18 what's going on. You can call back anytime</p> <p>19 right now."</p> <p>20 Do you see that language?</p> <p>21 A Yes.</p> <p>22 Q And then if you turn to the next page -- well,</p> <p>23 actually, below that, Mr. Berian expresses his</p> <p>24 preference to go with anybody but Nike. And on</p> <p>25 the next page you respond, "There's a few ways</p>	<p style="text-align: right;">Page 67</p> <p>1 perspective directly to Nike, which I did as</p> <p>2 soon as I can, after this conversation.</p> <p>3 Q And the goal was to avoid the agreement with</p> <p>4 Nike; correct?</p> <p>5 A I don't think there was any agreement with Nike</p> <p>6 at that time.</p> <p>7 Q Well, to avoid an agreement with Nike, put it</p> <p>8 that way.</p> <p>9 A Yes.</p> <p>10 Q Now, if you look down at the bottom of page</p> <p>11 13 --</p> <p>12 A Uh-huh.</p> <p>13 Q -- there's an email from you saying, "Thanks for</p> <p>14 checking in Boris. I spoke with John Evans</p> <p>15 today & he is discussing their options with the</p> <p>16 New Balance lawyer. I will have our options &</p> <p>17 strategy to discuss with you." If you go on to</p> <p>18 the next page.</p> <p>19 A Uh-huh.</p> <p>20 Q Correct?</p> <p>21 A Yes.</p> <p>22 Q What were the options that Mr. Evans was</p> <p>23 discussing with the New Balance lawyers?</p> <p>24 A I think it was whether they can provide a --</p> <p>25 what is it called? Revised offer.</p>
<p style="text-align: right;">Page 66</p> <p>1 to get the desired result. Let me analyze them</p> <p>2 and get back to you with a good game plan &</p> <p>3 options."</p> <p>4 Do you see that language?</p> <p>5 A Yes.</p> <p>6 Q All right. The desired result that you were</p> <p>7 referring to at this point was avoiding an</p> <p>8 agreement with Nike; correct?</p> <p>9 A I was referring to what my client's preference</p> <p>10 was.</p> <p>11 Q And you understood that his preference at that</p> <p>12 time was to avoid an agreement with Nike;</p> <p>13 correct?</p> <p>14 A To avoid endorsing Nike.</p> <p>15 Q And that would mean avoiding entering a</p> <p>16 sponsorship -- having a sponsorship agreement</p> <p>17 with Nike; correct?</p> <p>18 A I think it was a preference. But I don't think</p> <p>19 he would avoid it if he had to, legally.</p> <p>20 Q But the "game plan & options" that you were</p> <p>21 trying to come up with were ways to effectuate</p> <p>22 his desire to avoid a relationship with Nike;</p> <p>23 correct?</p> <p>24 A It was -- you know, that game plan was</p> <p>25 communicating with Nike and sharing his</p>	<p style="text-align: right;">Page 68</p> <p>1 That was what he was discussing with the</p> <p>2 New Balance lawyer, because that is what the</p> <p>3 letter from Capriotti asked for.</p> <p>4 Q Isn't it true that they were focused on whether</p> <p>5 they could even go forward with an agreement</p> <p>6 with Mr. Berian, given the fact that Nike had</p> <p>7 sent a letter saying that Nike matches the New</p> <p>8 Balance offer?</p> <p>9 A I think that was subsequently after the</p> <p>10 reductions, they did consider signing a contract</p> <p>11 with Boris, but not at this time.</p> <p>12 Q But at this time they weren't willing to do that</p> <p>13 because they were concerned that Nike had</p> <p>14 matched the New Balance offer; correct?</p> <p>15 A I think it was --</p> <p>16 MR. EWING: Objection. Calls for --</p> <p>17 objection. Calls for speculation.</p> <p>18 Q Well, let me rephrase the question.</p> <p>19 Didn't Mr. Evans tell you, at some point in</p> <p>20 time shortly after January 22nd, that New</p> <p>21 Balance could not enter into an agreement with</p> <p>22 Mr. Berian at that time because of the letter</p> <p>23 from Mr. Capriotti stating that Nike matches the</p> <p>24 New Balance offer?</p> <p>25 A That was something that they were concerned</p>

1 about doing and didn't -- at a precaution,
 2 didn't take that step. Which I don't blame them
 3 for taking that -- making that decision.
 4 They were concerned. I think there were
 5 internal conversations, but they wanted to be
 6 safe and couldn't come to agreement.
 7 Q And, in fact, they did not enter into a
 8 sponsorship agreement with Mr. Berian. They
 9 have not, as of yet, entered into a sponsorship
 10 agreement with Mr. Berian; correct?
 11 A That is true.
 12 Q Did Mr. Evans tell you that New Balance would
 13 have to wait until the 180-day matching period
 14 in Mr. Con- -- in Mr. Berian's contract expired
 15 before it would enter into an agreement with
 16 Mr. Berian?
 17 A What John Evans said is, you know, once this is
 18 resolved, then we can talk about signing an
 19 agreement with Boris.
 20 Q And did -- was one of the ways that it could be
 21 resolved simply waiting for the 180-day period
 22 to expire?
 23 Did he talk about that with you?
 24 A No. But under my understanding, after the 180
 25 days, Boris would be open to signing with any

1 other shoe company. He would be free to do
 2 that.
 3 And some lawyers that advised me also said
 4 that he may be able to do that as soon as we
 5 prove that Nike didn't officially match the
 6 offer that was sent to them.
 7 Q By the way, just, you know, in this text here
 8 dated January 25th to Mr. Berian, you don't say
 9 anything about whether Nike matched the lack of
 10 reductions in the New Balance offer, do you?
 11 A I think it was very clear in the letter on
 12 January 22nd --
 13 Q Mr. Keflezighi, I'm just asking you what you
 14 said in this text.
 15 Do you say anything about it in this text,
 16 that Nike purportedly failed to match this lack
 17 of reductions?
 18 A In this particular text --
 19 MR. EWING: I would object. I would
 20 object, Mr. Ramfjord, based on your ground
 21 rules, if you could let Mr. Keflezighi answer
 22 your question. And then if you don't get what
 23 you want, just ask him again, rather than
 24 talking over him, per your ground rules.
 25 MR. RAMFJORD: I'm just trying to get

1 through this given the limited time period we
 2 have, that's all.
 3 Q It's a relatively simple straightforward
 4 question.
 5 A Okay. I just want to be careful. But in this
 6 particular text on January 25th, around
 7 6:55 p.m., I did not talk about failure of Nike
 8 about reductions. I didn't mention that at all
 9 in that particular text.
 10 Q In fact -- you can look through the rest of the
 11 texts. But did you ever text Mr. Berian about
 12 Nike's purported failure to match the lack of
 13 reductions in the New Balance offer?
 14 A To me, I think that was very obvious. I'm sure
 15 I had that conversation with Boris over the
 16 phone. It was very obvious that if they're
 17 saying -- if the letter says that we cannot
 18 match an offer -- a term that's not in the
 19 letter, or on the letterhead, that's telling me
 20 the element about reductions that I brought up
 21 is not being matched.
 22 So for me, I understood that to be Nike not
 23 matching on the element of no reductions. And
 24 I'm sure I communicated that with Boris, even
 25 if, you know, by phone if not by text.

1 Q I'll represent to you there's no text here that
 2 mentions that. You're welcome to look through
 3 it.
 4 But you also don't say anything in your
 5 texts about whether Nike matched the affiliation
 6 clause, do you?
 7 A The affiliation clause was clear to me. It
 8 seemed like they matched it without a problem,
 9 from what I see in the -- in that January 22nd
 10 letter.
 11 Q I understand what you say is clear to you. I'm
 12 trying to say what you put in writing to
 13 Mr. Berian. And I've been unable to find
 14 anything in writing to Mr. Berian in which you
 15 state that Nike failed to match the reductions
 16 clause or failed to match the affiliation
 17 clause.
 18 Is that fair?
 19 A I think that's fair.
 20 Q Okay. All right. I would like you to turn to
 21 what's been marked as Exhibit 14, or have the
 22 court reporter pass that to you.
 23 I think we may have already given it to you
 24 once.
 25 A 14?

<p style="text-align: right;">Page 81</p> <p>1 this relationship; is that right?</p> <p>2 A Yes, I did. And during the call with John</p> <p>3 Capriotti and Ben Cesar, Boris was actually on</p> <p>4 the phone and expressed that himself.</p> <p>5 Q There were actually two calls, I believe, and</p> <p>6 I'm trying to figure out -- one, I believe,</p> <p>7 Mr. Berian was on the phone, and one it was just</p> <p>8 you and Mr. Cesar and Mr. Capriotti.</p> <p>9 Is that consistent with your recollection?</p> <p>10 A Just to clarify. So I think it was January 27th</p> <p>11 was just myself and Ben Cesar.</p> <p>12 Q Yes, okay.</p> <p>13 A And then, I think on February 2nd or so, it was</p> <p>14 a conference call with Ben Cesar, John</p> <p>15 Capriotti, myself, and Boris. But after Boris</p> <p>16 hung up, I did have a subsequent conversation</p> <p>17 with both Ben Cesar and John Capriotti, the same</p> <p>18 day.</p> <p>19 Q Let's start with the first call, okay?</p> <p>20 A Uh-huh.</p> <p>21 Q Just you and Mr. Cesar, okay?</p> <p>22 A Yes, yes.</p> <p>23 Q And that's the call referred to in this email,</p> <p>24 Exhibit 15; correct?</p> <p>25 A Hold on. Yes, I believe -- let's see. Yep.</p>	<p style="text-align: right;">Page 83</p> <p>1 But what wasn't clear was whether they were</p> <p>2 matching without reductions or not. It seemed</p> <p>3 like to me that they didn't believe the</p> <p>4 information I provided about the New Balance</p> <p>5 deal not having -- the New Balance offer not</p> <p>6 having reductions. And, so, it seemed like we</p> <p>7 were on two different pages on --</p> <p>8 Q And just to be clear. You know, the contract</p> <p>9 with Mr. Berian, as we pointed out earlier,</p> <p>10 required that any offers from a third-party</p> <p>11 competitor be on the letterhead of that</p> <p>12 competitor; correct?</p> <p>13 A Yes, it did.</p> <p>14 Q And the New Balance bonus and compensation</p> <p>15 schedule didn't say anything one way or the</p> <p>16 other about reductions. It didn't mention them</p> <p>17 at all; correct?</p> <p>18 A It didn't mention them at all, but it did</p> <p>19 mention other elements of the contract, such as</p> <p>20 rollovers.</p> <p>21 So rollovers is specifically referred to</p> <p>22 there, whereas, reductions are not.</p> <p>23 Q And I understand that. All I'm saying is that</p> <p>24 your communication in an email was not a</p> <p>25 statement by New Balance on New Balance</p>
<p style="text-align: right;">Page 82</p> <p>1 Q Okay. And in that call Mr. Cesar continued to</p> <p>2 say that Nike wanted to move forward with</p> <p>3 Mr. Berian; correct?</p> <p>4 A Yes, he did.</p> <p>5 Q And he did not acknowledge not having matched</p> <p>6 the offer or not having -- or refusing to comply</p> <p>7 with the lack of reductions, or anything like</p> <p>8 that; correct?</p> <p>9 A I did bring that up. I asked Ben, what is -- I</p> <p>10 said -- because he said, "We have a deal." I</p> <p>11 said, "We don't have a deal because what's the</p> <p>12 resolution on reductions?"</p> <p>13 And he didn't provide an answer. It seemed</p> <p>14 like he didn't know either.</p> <p>15 So I said, "How can we have a deal if we</p> <p>16 don't know where we land on this very material</p> <p>17 term?"</p> <p>18 Q We talked about this already. He also didn't</p> <p>19 refuse to agree to an offer without reductions,</p> <p>20 did he?</p> <p>21 A They were going to send another -- a contract</p> <p>22 that was going to lay out the terms that they</p> <p>23 are agreeable to, I guess, so --</p> <p>24 Q And, in fact -- well, go ahead.</p> <p>25 A So he made their interest in Boris very clear.</p>	<p style="text-align: right;">Page 84</p> <p>1 letterhead, was it?</p> <p>2 A It -- well, it's hard to indicate in the offer.</p> <p>3 For example, there was no signing bonus in this</p> <p>4 situation with the offer from New Balance, but</p> <p>5 they didn't write no signing bonus on the</p> <p>6 contract -- or on the offer.</p> <p>7 Q But reductions -- it would have been easy to put</p> <p>8 in a term saying there are no reductions under</p> <p>9 this contract -- or under this offer, wouldn't</p> <p>10 it?</p> <p>11 A But we didn't see the need to do so.</p> <p>12 Q Okay. And you didn't ever provide anything to</p> <p>13 Mr. Capriotti or Mr. Cesar that said that?</p> <p>14 A I was told -- when I attempted to go ahead and</p> <p>15 get that revised offer, I was told, I think, by</p> <p>16 your office, or maybe the legal department at</p> <p>17 Nike, that I should not do that at all.</p> <p>18 It would have been very easy for me to do</p> <p>19 that, but I was threatening -- I was threatened</p> <p>20 with action, legal action, if I, you know, tried</p> <p>21 to get -- I think it was a revised offer from</p> <p>22 New Balance.</p> <p>23 That's exactly what I told John -- that's</p> <p>24 exactly what I told Ben Cesar on January 27th.</p> <p>25 I said, "Hey, your own letter says I can go</p>

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1 ahead and get you a revised offer." And at that
 2 time, my goal was to get something very
 3 specific, lay out all the terms so that there
 4 would be no question.
 5 But as soon as I --
 6 Q So you're saying -- you're saying that if
 7 Mr. Cesar had just said, "We'll agree to an
 8 offer with no reductions," that would have put
 9 the matter to rest and Mr. Berian would have
 10 gone forward with Nike?
 11 A I do think if there was -- if it was very clear
 12 that there were no reductions, we have no choice
 13 except to express -- you know, we can still --
 14 we still have the right to express to Nike
 15 Boris's preference.
 16 But in terms of from a legal perspective,
 17 if they matched that, you know, it would be a
 18 complete match and then we would discuss the
 19 other terms of the contract.
 20 Q Okay. Turn to what's been marked as Exhibit 17.
 21 If the court reporter could hand that to you.
 22 (Exhibit 17 was marked for identification.)
 23 Q Mr. Keflezighi, you have in front of you what's
 24 been marked as Exhibit 17. And this includes at
 25 the bottom of the page an email exchange between

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1 you and Mr. Cesar, first, on January 28th, and
 2 then on February 2nd.
 3 Do you see that?
 4 A Yes.
 5 Q And the bottom email is from you to Mr. Cesar on
 6 January 28th, and you say, "As discussed
 7 yesterday, let's set up a time for you" -- "for
 8 me, you, Boris and Cap to get on the phone
 9 together. Boris and I are available and
 10 flexible on Monday and Tuesday next week for the
 11 call. We hope to be able to resolve any issues
 12 and clarify the process during the phone call."
 13 Do you see that?
 14 A Yes, I do.
 15 Q In this email you don't specifically say that
 16 Nike failed to match the offer, do you?
 17 A So if you look at the second sentence, or the
 18 second paragraph in that email, it's I was
 19 following exact instructions in the letter from
 20 John Capriotti. And, so, it says provide to us
 21 a revised offer from New Balance that reflects
 22 that and all material terms.
 23 So I indicated that if we cannot come to
 24 terms in terms of resolving this issue of
 25 Boris's preference, then I would go ahead and

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1 provide a revised offer from New Balance.
 2 So if there was any uncertainty, I was
 3 going to provide documentations to make it
 4 certain, and then Nike could take the action
 5 that it wanted.
 6 Q But right now, in this email, you're not saying
 7 that Nike had failed to match, are you?
 8 A I was referring to the uncertainty. They wanted
 9 more clarification because there was some
 10 uncertainty. I was going to provide that
 11 clarification. I reserved the right to do that
 12 according to this email.
 13 Q And what had stopped you from providing that
 14 clarification earlier?
 15 A Because I wanted to just go directly and
 16 communicate to Nike exactly what Boris's
 17 preference was.
 18 Q Okay. And the reason that you didn't provide
 19 the clarification earlier was because Mr. Berian
 20 had said he didn't want to have a contract with
 21 Nike and you didn't want to give Nike the
 22 information that would erase this?
 23 A That's not the case at all. I was very open in
 24 terms of exactly what I was doing. And I
 25 didn't -- there's no reason for me not to get

Page 88

1 the offer from New Balance, except that I wanted
 2 to resolve the issue and see if there was a way
 3 for Nike to understand exactly what Boris's
 4 preference was before, you know, getting into a
 5 legal situation and making this more
 6 complicated.
 7 Q Okay. Let's continue with this line of inquiry.
 8 I want to go back to Exhibit 27 which are your
 9 texts with Mr. Evans.
 10 A (The witness complies.) Okay.
 11 Q Okay. At the top of this page there's a text
 12 from you to Mr. Evans dated February 2nd,
 13 saying, "Boris & I have a call with Ben & Cap at
 14 5 pm Eastern Standard Time. Will keep you
 15 posted on how it goes."
 16 A Yep.
 17 Q Do you see that?
 18 A Yes.
 19 Q And then, Mr. Evans responds, "Thanks for the
 20 update. Should be 'interesting'. Please keep
 21 me posted."
 22 Do you see that?
 23 A Yes, I do.
 24 Q And then Mr. -- you respond in the last text on
 25 this page, "Boris requested that we try to

McKenzie, Kevin

From: Vincent Ewing <vcewing@me.com>
Sent: Wednesday, June 15, 2016 8:20 PM
To: Scott, Kennon; Ramfjord, Per; William Ferranti
Subject: Fwd: Hawi Email

DEFENDANT BORIS BERIAN'S

RESPONSE TO PLAINTIFF NIKE USA, INC.'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Begin forwarded message:

From: Boris Berian <berian800@yahoo.com>
Date: June 15, 2016 5:04:40 PM
To: "vcewing@me.com" <vcewing@me.com>
Cc: "wpf@ferrantiappeals.com" <wpf@ferrantiappeals.com>
Subject: Hawi Email

On Friday, December 11, 2015 3:58 PM, Merhawi Keflezighi <hawisports@gmail.com> wrote:

Hello Boris,

I just wanted to share my correspondence with New Balance with you.

John Evans and I were supposed to connect this week, but it did not happen. I am hoping to chat with him this weekend or early next week.

At the very bottom of this e-mail is the proposal I sent to him and that he is considering.

I look forward to hanging out with you in Dallas this weekend.

Thanks,
Hawi

----- Forwarded message -----

From: Merhawi Keflezighi <hawisports@gmail.com>
Date: Fri, Dec 11, 2015 at 6:55 PM
Subject: Re: Boris Berian
To: John Evans <John.Evans@newbalance.com>



Hello John,

I hope all is well with you. Sorry I wasn't more available on Wednesday.

I will be meeting with Boris in Dallas this weekend. I'd love to share some of your feedback on the proposal with him. I know its already Friday evening, so we can also connect early next week if this weekend is not convenient for you.

Thanks,

Hawi

On Tue, Dec 8, 2015 at 3:57 PM, Merhawi Keflezighi <hawisports@gmail.com> wrote:

Hello John,

Great to hear from you. All is well. Congrats on the NYC Marathon deal!

Yes, tomorrow would be great. If possible, before 12pm would be a good time. I am also available between 3-4pm EST.

Alternatively, If you give me a specific time outside of these times, I can reschedule my other calls.

Thanks,

Hawi

(310) 895-6438

On Tue, Dec 8, 2015 at 3:51 PM, John Evans <John.Evans@newbalance.com> wrote:

Hi Hawi:

Hope you are well. Can I give you a call tomorrow on this?

Thanks,

John

Sent from my iPhone

On Dec 2, 2015, at 11:59 PM, Merhawi Keflezighi <hawisports@gmail.com> wrote:

Hello John,

I hope all is well with you. Just wanted to check-in with you regarding the general proposal below for Boris Berian.

Please let me know if you'd like to discuss this further by phone this week or next week.

Thanks for your consideration.

Hawi

On Wed, Nov 25, 2015 at 12:43 PM, Merhawi Keflezighi <hawisports@gmail.com> wrote:

Hello John,

It was great chatting with you yesterday. Congrats on all of the great things that are developing at New Balance.

Thanks for your interest in working with Boris Berian.

Here are some thoughts I had based on our conversation yesterday:

Annual Base Compensation: \$150k

Term of Contract: 2016-2020

Unique terms to consider to increase the chance of securing a deal:

- No reductions
- Guaranteed to be one of the top 10 T&F sponsored athletes under the brand
- Allow non-exclusivity in the following categories: Watches/ wearables, Sunglasses, compression socks
- Allow third party logo on the race uniform (Big Bear Track Club logo, or other non-competitive logo)
- New Balance being a sponsor of the Big Bear Track Club and sponsoring Boris as part of that deal.

Again the items above are just creative thoughts to spark conversation and help us achieve our goal. I completely understand if you are opposed to any of them.

In addition to a sponsorship deal for Boris, I have also been given authorization to discuss a deal for the Big Bear Track Club. Please do let me know if this is something that you are interested in discussing and exploring.

Thank you,

--

Hawi Keflezighi
(310) 895-6438
www.HAWImanagement.com

--

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McKenzie, Kevin

From: Vincent Ewing <vcewing@me.com>
Sent: Thursday, June 16, 2016 11:01 AM
To: Scott, Kennon; Ramfjord, Per; William Ferranti
Subject: Fwd: Boris & Big Bear TC Follow-up
Attachments: Boris Berian Offer.pdf

DEFENDANT'S RESPONSE TO PLAINTIFF'S FURTHER REQUEST FOR PRODUCTION OF DOCUMENTS

Begin forwarded message:

From: Merhawi Keflezighi <hawisports@gmail.com>
Date: June 16, 2016 10:53:28 AM
To: Vincent Ewing <vcewing@me.com>, William Ferranti <wpf@ferrantiappeals.com>
Subject: Fwd: Boris & Big Bear TC Follow-up

I believe this is the original offer from NB that Per requested from a reference in the e-mail chain.

Thanks,
Hawi

----- Forwarded message -----
From: John Evans <John.Evans@newbalance.com>
Date: Tue, Jan 12, 2016 at 4:44 PM
Subject: RE: Boris & Big Bear TC Follow-up
To: Merhawi Keflezighi <hawisports@gmail.com>

Hi Hawi:

Sorry for the delay in getting back to you. Please find the offer for Boris.

I am also putting together the contract for Big Bear and should have that to you shortly.

Please let me know if you have any questions.

Talk soon,

John



From: Merhawi Keflezighi [mailto:hawisports@gmail.com]
Sent: Monday, January 11, 2016 11:34 AM
To: John Evans
Subject: Boris & Big Bear TC Follow-up

Hello John,

I hope all is well with you.

I just wanted to check-in regarding Boris and the Big Bear TC. I know I asked for you to wait until the new year, so I am responsible for the delays :)

When should I accept the offer for Boris and any documents to make the Big Bear TC deal official?

Thanks,

--

Hawi Keflezighi

(310) 895-6438

www.HAWImanagement.com

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--

Hawi Keflezighi

(310) 895-6438

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**BORIS BERIAN OFFER
COMPENSATION AND BONUS SCHEDULE**

I. BASE FEE (SUBJECT TO ADJUSTMENT BASED ON ROLLOVER):

2016	\$125,000
2017	\$125,000
2018	\$125,000

II. TRAVEL:

2016	\$5,000
2017	\$5,000
2018	\$5,000

III. PERFORMANCE BONUS:

- A. To attain a performance bonus set forth below ATHLETE must (i) have competed exclusively in NB Products (including Footwear) during the entire Contract Year in which the performance bonus was earned; (ii) competed in NB Footwear and NB Product during the competition in which the performance bonus is earned; and (iii) the NB logo on ATHLETE's Footwear and uniform must be entirely visible (i.e. not covered in any manner by numbered bib) during the competition in which the bonus is earned.
- B. If ATHLETE attains any of the performance achievements listed below and complies with the requirements set forth in this Agreement, NB shall pay ATHLETE a performance bonus as set opposite such achievement set forth below.

With respect to all world and United States (American) records achieved, the following criteria shall apply to earn such bonuses: (i) all records/performances must be officially recognized by the USATF and/or IAAF, whichever is applicable; (ii) records must be broken; performances that equal a current record will not qualify for a bonus; and (iii) record bonuses are not cumulative and ATHLETE shall receive the single highest bonus achieved one time per Contract Year per distance.

With respect to ranking bonuses, the following criteria shall apply to earn such bonuses: (1) all rankings are determined by Track and Field News; (2) rankings are only applicable for Olympic events; and (3) ranking bonuses are not cumulative and ATHLETE shall receive the single highest ranking bonus achieved one time per Contract Year.

(i) WORLD RECORDS:

- Individual World Outdoor Record (Olympic events only): \$100,000
- Individual World Indoor Record (Olympic events only): \$25,000

(ii) U.S. (AMERICAN) RECORDS:

- Individual U.S. (American) Outdoor Record (Olympic events only): \$50,000
- Individual U.S. (American) Indoor Record (Olympic events only): \$10,000

(iii) COMPETITIONS (INDIVIDUAL EVENTS ONLY):

Event	First Place / Gold Medal	Second Place / Silver Medal	Third Place/ Bronze Medal
Olympic Games	\$150,000	\$100,000	\$50,000
World Outdoor Championships	\$100,000	\$60,000	\$40,000
World Indoor Championships	\$10,000	\$7,500	\$5,000
U.S. Olympic Trials (Track)	\$7,500	\$5,000	\$3,000
U.S. Outdoor Championships	\$5,000	\$3,000	\$1,000
IAAF Diamond League (A races only)	\$5,000	\$3,000	\$1,000
U.S. Indoor Championships	\$2,000	\$1,000	\$500

(iv) OUTDOOR RANKINGS:

- World Rankings (as determined by Track and Field News, Olympic Events Only)

Rank	Amount
1	\$25,000
2	\$15,000
3	\$10,000
4	\$5,000
5	\$4,000
6 through 10	\$2,500

- United States Rankings (as determined by Track and Field News, Olympic Events Only)

Rank	Amount
1	\$10,000
2	\$5,000
3	\$2,500

IV. ROLLOVER (Individual Events Only):

If ATHLETE attains any of the performance achievements listed below and complies with the requirements set forth in this Agreement, NB shall increase ATHLETE's Base Fee by such amount listed opposite such competition or achievement, as applicable, for each subsequent Contract Year through the expiration of the Agreement Period. Rollover increases to the Base Fee are not cumulative, and ATHLETE shall receive only the single highest Rollover increase to Base Fee achieved one time per Contract Year.

Criteria	First Place / Gold Medal	Second Place / Silver Medal	Third Place/ Bronze Medal
Olympic Games	\$150,000	\$100,000	\$50,000
World Outdoor Championships	\$100,000	\$60,000	\$40,000

- World Outdoor Records (Individual Olympic Events Only): \$100,000
- U.S. (American) Outdoor Records (Individual Olympic Events Only): \$50,000

V. AFFILIATION:

New Balance shall permit ATHLETE to compete under the Big Bear Track Club affiliation, and ATHLETE may wear the official uniform and footwear of Big Bear Track Club in all domestic competitions, including the US Indoor Championships and US Olympic Trials, in 2016. ATHLETE shall compete for Team New Balance and wear the Team New Balance official uniform in all international events.

McKenzie, Kevin

From: Vincent Ewing <vcewing@me.com>
Sent: Wednesday, June 15, 2016 8:09 PM
To: Scott, Kennon; Ramfjord, Per; William Ferranti
Subject: Fwd: Boris & Big Bear TC Follow-up
Attachments: BBERian Offer.pdf

DEFENDANT BORIS BERIAN'S

RESPONSE TO PLAINTIFF NIKE USA, INC.'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Begin forwarded message:

From: Merhawi Keflezighi <hawisports@gmail.com>
Date: June 15, 2016 6:39:26 PM
To: Vincent Ewing <vcewing@me.com>, William Ferranti <wfp@ferrantiappeals.com>
Subject: Fwd: Boris & Big Bear TC Follow-up

----- Forwarded message -----

From: John Evans <John.Evans@newbalance.com>
Date: Wed, Jan 20, 2016 at 11:56 AM
Subject: RE: Boris & Big Bear TC Follow-up
To: Merhawi Keflezighi <hawisports@gmail.com>

Hi Hawi:

Please see attached.

Regards,

John

From: Merhawi Keflezighi [mailto:hawisports@gmail.com]
Sent: Tuesday, January 19, 2016 8:10 PM
To: John Evans
Subject: Re: Boris & Big Bear TC Follow-up

Thanks!



On Tue, Jan 19, 2016 at 8:06 PM, John Evans <John.Evans@newbalance.com> wrote:

Hi Hawi:

Will send it over tomorrow.

John

Sent from my iPhone

On Jan 19, 2016, at 6:56 PM, Merhawi Keflezighi <hawisports@gmail.com> wrote:

Hello John,

I sent the offer to Ben & Cap at Nike this afternoon. I just got a note asking for the offer to be on official company letterhead.

Can you please send the offer to me in this format asap?

Thanks,

Hawi

On Tue, Jan 19, 2016 at 12:27 PM, John Evans <John.Evans@newbalance.com> wrote:

Yes. Please proceed. Still waiting for legal to get me the BBTC contract but that is a formality. Please keep me updated.

Thanks,

John

Sent from my iPhone

On Jan 19, 2016, at 10:03 AM, Merhawi Keflezighi <hawisports@gmail.com> wrote:

Hello John,

Since Nike has 10 days to match, I think it is best for me to share this offer with Nike today. At this point, I think we have determined this is an offer from New Balance that Boris would sign if he could.

Is it okay for me to proceed with sharing this offer with Nike?

Thanks,

Hawi

On Thu, Jan 14, 2016 at 10:54 AM, John Evans
<John.Evans@newbalance.com> wrote:

Hi Hawi:

Please find an updated offer based on your note and what I think makes sense for NB. Running to a meeting now but I will call you later to discuss.

Thanks,

John

From: Merhawi Keflezighi [mailto:hawisports@gmail.com]
Sent: Thursday, January 14, 2016 6:58 AM
To: John Evans
Subject: Re: Boris & Big Bear TC Follow-up

Thank you, John. That is very helpful.

Here are three areas that I would like you to consider revising/adding:

1. Roll-over criteria:

The additions you made are great. Would you also consider the following:

- American Indoor Record
- Top Time Bonus
- \$10,000 or even \$25,000 for making the final in the 2016 Olympic Games or 2017 World Championships

(Knowing Boris story, we know that he would be featured and highlighted during the introductions and race)

2. Time Bonuses:

800m

- Sub 1:44.00 \$5,000
- Sub 1:43.50 \$10,000
- Sub 1:43.34 \$20,000
- Sub 1:43.00 \$25,000

1500m

- Sub 3:36.50 \$5,000
- Sub 3:36.00 \$10,000
- Sub 3:35.00 \$20,000
- Sub 3:34.00 \$25,000

3. Travel/ Physio

- Can we increase this to \$8,000 per year?

I assume we can get Boris a merchandise credit in the \$5,000 range.

Finally, it would be great if we can include a bonus structure for the IAAF Continental Cup.

Thanks for your consideration.

Hawi

On Wed, Jan 13, 2016 at 10:57 AM, John Evans
<John.Evans@newbalance.com> wrote:

Hi Hawi:

Will give you a call, but here's Brenda's rollover opportunities. I can certainly add these for Boris.

Regards,

John

- (i) Value of Individual Olympic Games Medal Bonus
- (ii) Value of Individual IAAF World Outdoor Championship Medal Bonus
- (iii) Value of Individual Outdoor World Record
- (iv) Value of Individual Indoor World Record
- (v) Value of Individual American Outdoor Record
- (vi) Value of T&F News World Ranking – Top 5 ONLY

From: hawisports@gmail.com [mailto:hawisports@gmail.com]

Sent: Tuesday, January 12, 2016 9:10 PM

To: John Evans

Subject: Re: Boris & Big Bear TC Follow-up

Sounds good, John.

I volunteer at an elementary school on Wednesdays from 12-4pm EST, so I am available before 12pm or after 6:30pm tomorrow.

Thanks,

Hawi

Sent from my iPhone

On Jan 12, 2016, at 9:01 PM, John Evans
<John.Evans@newbalance.com> wrote:

Hi Hawi:

Will give you a shout tomorrow on this.

Talk soon,

John

Sent from my iPhone

On Jan 12, 2016, at 6:14 PM, Merhawi Keflezighi
<hawisports@gmail.com> wrote:

Thank you so much, John. I will review the contract and discuss it with Boris.

I know the base compensation is firm and agreed upon. But are you open to some suggestions for time bonuses, roll-overs, and other bonuses? As discussed, we'd love for Boris contract upside to be similar to Brenda's.

Thanks also for the update on the Big Bear TC contract.

Thanks,

Hawi

On Tue, Jan 12, 2016 at 4:44 PM,
John Evans
<John.Evans@newbalance.com>
wrote:

Hi Hawi:

Sorry for the delay in getting back to
you. Please find the offer for Boris.

I am also putting together the contract
for Big Bear and should have that to you
shortly.

Please let me know if you have any
questions.

Talk soon,

John

From: Merhawi Keflezighi
[mailto:hawisports@gmail.com]
Sent: Monday, January 11, 2016 11:34
AM
To: John Evans
Subject: Boris & Big Bear TC Follow-up

Hello John,

I hope all is well with you.

I just wanted to check-in regarding
Boris and the Big Bear TC. I know I
asked for you to wait until the new

year, so I am responsible for the
delays :)

When should I accept the offer for
Boris and any documents to make
the Big Bear TC deal official?

Thanks,

--

Hawi Keflezighi

(310) 895-6438

www.HAWImanagement.com

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Hawi Keflezighi

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NEW BALANCE ATHLETICS, INC.
100 GUEST STREET
BOSTON, MA 02135-2088

T 617 783 4000
newbalance.com

**BORIS BERIAN OFFER
COMPENSATION AND BONUS SCHEDULE**

I. BASE FEE (SUBJECT TO ADJUSTMENT BASED ON ROLLOVER):

2016	\$125,000
2017	\$125,000
2018	\$125,000

II. TRAVEL:

2016	\$5,000
2017	\$5,000
2018	\$5,000

III. MERCHANDISE ALLOTMENT

Yearly \$5,000

IV. PERFORMANCE BONUS:

- A. To attain a performance bonus set forth below ATHLETE must (i) have competed exclusively in NB Products (including Footwear) during the entire Contract Year in which the performance bonus was earned; (ii) competed in NB Footwear and NB Product during the competition in which the performance bonus is earned; and (iii) the NB logo on ATHLETE's Footwear and uniform must be entirely visible (i.e. not covered in any manner by numbered bib) during the competition in which the bonus is earned.
- B. If ATHLETE attains any of the performance achievements listed below and complies with the requirements set forth in this Agreement, NB shall pay ATHLETE a performance bonus as set opposite such achievement set forth below.

With respect to all world and United States (American) records achieved, the following criteria shall apply to earn such bonuses: (i) all records/performances must be officially recognized by the USATF and/or IAAF, whichever is applicable; (ii) records must be broken; performances that equal a current record will not qualify for a bonus; and (iii) record bonuses are not cumulative and ATHLETE shall receive the single highest bonus achieved one time per Contract Year per distance.

With respect to ranking bonuses, the following criteria shall apply to earn such bonuses: (1) all rankings are determined by Track and Field News; (2) rankings are only applicable for Olympic events; and (3) ranking bonuses are not cumulative and ATHLETE shall receive the single highest ranking bonus achieved one time per Contract Year.

(i) WORLD RECORDS:

- Individual World Outdoor Record (Olympic events only): \$100,000
- Individual World Indoor Record (Olympic events only): \$25,000

(ii) U.S. (AMERICAN) RECORDS:

- Individual U.S. (American) Outdoor Record (Olympic events only): \$50,000
- Individual U.S. (American) Indoor Record (Olympic events only): \$10,000



NEW BALANCE ATHLETICS, INC.
100 GUEST STREET
BOSTON, MA 02135-2088

T 617 783 4000
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(iii) COMPETITIONS (INDIVIDUAL EVENTS ONLY):

Event	First Place / Gold Medal	Second Place / Silver Medal	Third Place / Bronze Medal
Olympic Games	\$150,000	\$100,000	\$50,000
World Outdoor Championships	\$100,000	\$60,000	\$40,000
World Indoor Championships	\$10,000	\$7,500	\$5,000
U.S. Olympic Trials (Track)	\$7,500	\$5,000	\$3,000
U.S. Outdoor Championships	\$5,000	\$3,000	\$1,000
IAAF Diamond League (A races only)	\$5,000	\$3,000	\$1,000
U.S. Indoor Championships	\$2,000	\$1,000	\$500
IAAF Continental Cup	\$5,000	\$3,000	\$1,000
NB Grand Prix	\$3,000		

(iv) OUTDOOR RANKINGS:

- World Rankings (as determined by Track and Field News, Olympic Events Only)

Rank	Amount
1	\$25,000
2	\$15,000
3	\$10,000
4	\$5,000
5	\$4,000
6 through 10	\$2,500

- United States Rankings (as determined by Track and Field News, Olympic Events Only)

Rank	Amount
1	\$10,000
2	\$5,000
3	\$2,500

V. TRACK TIME BONUSES (must be electronically timed and non-wind aided)

Bonus	800m
\$15,000	Sub 1:43.34
\$20,000	Sub 1:43.00

Time bonuses are non-cumulative and paid only one time per year per event to the highest bonus level achieved



NEW BALANCE ATHLETICS, INC.
100 GUEST STREET
BOSTON, MA 02135-2088

T 617 783 4000
newbalance.com

VI. ROLLOVER (Individual Events Only):

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Criteria	First Place / Gold Medal	Second Place / Silver Medal	Third Place/ Bronze Medal
Olympic Games	\$150,000	\$100,000	\$50,000
World Outdoor Championships	\$100,000	\$60,000	\$40,000

- World Outdoor Records (Individual Olympic Events Only): \$100,000
- U.S. (American) Outdoor Records (Individual Olympic Events Only): \$50,000
- World Indoor Record (Individual Olympic events only): \$25,000
- (vii) If ATHLETE Qualifies for the final at the 2016 Olympics or 2017 World Championships, base Compensation will increase by \$10,000 (One time per Contract Term)
- Value of Top 5 world ranking

VII. AFFILIATION:

New Balance shall permit ATHLETE to compete under the Big Bear Track Club affiliation, and ATHLETE may wear the official uniform and footwear of Big Bear Track Club in all domestic competitions, including the US Indoor Championships and US Olympic Trials, in 2016. ATHLETE shall compete for Team New Balance and wear the Team New Balance official uniform in all international events.

Message

From: Merhawi Keflezighi [hawisports@gmail.com]
Sent: 1/19/2016 10:24:37 AM
To: Cesar, Ben [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=01b83fd5baf441a8881171cb4d3ace42-Cesar, Ben]; Capriotti, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e3ce346d2295451c9a3fd87ae435f781-Capriotti,]
Subject: Boris Berian
Attachments: Boris Berian Offer-3.pdf

Hello Ben & Cap,
I hope all is well with you.

I am now representing Boris Berian. New Balance has submitted an offer for Boris, which Boris finds agreeable. Pursuant to Section 5 of Boris' Nike agreement, I am submitting the New Balance offer to you. In addition to the financial terms and the lack of reductions, we do consider the affiliation clause in the contract a material element of the offer.

Please let me know if you have any questions or want to discuss over the phone.

Thanks,

--

Hawi Keflezighi
(310) 895-6438
www.HAWImanagement.com



**BORIS BERIAN OFFER
COMPENSATION AND BONUS SCHEDULE**

I. BASE FEE (SUBJECT TO ADJUSTMENT BASED ON ROLLOVER):

2016	\$125,000
2017	\$125,000
2018	\$125,000

II. TRAVEL:

2016	\$5,000
2017	\$5,000
2018	\$5,000

III. MERCHANDISE ALLOTMENT

Yearly	\$5,000
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IV. PERFORMANCE BONUS:

- A. To attain a performance bonus set forth below ATHLETE must (i) have competed exclusively in NB Products (including Footwear) during the entire Contract Year in which the performance bonus was earned; (ii) competed in NB Footwear and NB Product during the competition in which the performance bonus is earned; and (iii) the NB logo on ATHLETE's Footwear and uniform must be entirely visible (i.e. not covered in any manner by numbered bib) during the competition in which the bonus is earned.
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- Individual World Indoor Record (Olympic events only): \$25,000

(ii) U.S. (AMERICAN) RECORDS:

- Individual U.S. (American) Outdoor Record (Olympic events only): \$50,000
- Individual U.S. (American) Indoor Record (Olympic events only): \$10,000

(iii) COMPETITIONS (INDIVIDUAL EVENTS ONLY):

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U.S. Outdoor Championships	\$5,000	\$3,000	\$1,000
IAAF Diamond League (A races only)	\$5,000	\$3,000	\$1,000
U.S. Indoor Championships	\$2,000	\$1,000	\$500
IAAF Continental Cup	\$5,000	\$3,000	\$1,000
NB Grand Prix	\$3,000		

(iv) OUTDOOR RANKINGS:

- World Rankings (as determined by Track and Field News, Olympic Events Only)

Rank	Amount
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Message

From: Cesar, Ben [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=01B83FD5BAF441A8881171CB4D3ACE42-CESAR, BEN]
Sent: 1/20/2016 1:36:50 PM
To: Rinfret, Leah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9dd74c8c66e04385877f4282fc726192-Rinfret, Le]
Subject: Fwd: Boris Berian
Attachments: BBerian Offer.pdf



Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: Merhawi Keflezighi <hawisports@gmail.com>
Date: 1/20/2016 1:28 PM (GMT-08:00)
To: "Cesar, Ben" <Ben.Cesar@nike.com>
Subject: Re: Boris Berian

Hello Ben,
I have attached the offer in the requested format.

Thanks,
Hawi

On Tue, Jan 19, 2016 at 6:53 PM, Cesar, Ben <Ben.Cesar@nike.com> wrote:
Hello Merhawi.

Please resend the offer on official company letterhead.
Thank you.

From: Merhawi Keflezighi <hawisports@gmail.com>
Date: Tuesday, January 19, 2016 10:24 AM
To: Ben Cesar <Ben.Cesar@nike.com>, John Capriotti <john.capriotti@nike.com>
Subject: Boris Berian

Hello Ben & Cap,
I hope all is well with you.



I am now representing Boris Berian. New Balance has submitted an offer for Boris, which Boris finds agreeable. Pursuant to Section 5 of Boris' Nike agreement, I am submitting the New Balance offer to you. In addition to the financial terms and the lack of reductions, we do consider the affiliation clause in the contract a material element of the offer.

Please let me know if you have any questions or want to discuss over the phone.

Thanks,

Hawi Keflezighi

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newbalance.com

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COMPENSATION AND BONUS SCHEDULE**

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2016	\$125,000
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2018	\$125,000

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2018	\$5,000

III. MERCHANDISE ALLOTMENT

Yearly	\$5,000
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IV. PERFORMANCE BONUS:

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(III) COMPETITIONS (INDIVIDUAL EVENTS ONLY):

Event	First Place / Gold Medal	Second Place / Silver Medal	Third Place/ Bronze Medal
Olympic Games	\$150,000	\$100,000	\$50,000
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IAAF Continental Cup	\$5,000	\$3,000	\$1,000
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(iv) OUTDOOR RANKINGS:

- World Rankings (as determined by Track and Field News, Olympic Events Only)

Rank	Amount
1	\$25,000
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3	\$10,000
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6 through 10	\$2,500

- United States Rankings (as determined by Track and Field News, Olympic Events Only)

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Message

From: Cesar, Ben [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=01B83FD5BAF441A8881171CB4D3ACE42-CESAR, BEN]
Sent: 1/22/2016 3:55:32 PM
To: Merhawi Keflezighi [hawisports@gmail.com]
CC: Capriotti, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e3ce346d2295451c9a3fd87ae435f781-Capriotti,]; Rinfret, Leah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9dd74c8c66e04385877f4282fc726192-Rinfret, Le]; berian800@yahoo.com
Subject: Boris Berian
Attachments: boris berian right to match.pdf

Hello Merhawi.

See attached letter from John Capriotti.





January 22, 2016

Via Email

Mr. Merhawi Keflezighi (hawisports@gmail.com)
Director
HAWI Management

RE: Track & Field Contract effective July 1, 2015 between NIKE USA, Inc. ("NIKE") and Boris Berian (the "Contract")

Dear Merhawi,

On January 20, 2016, in accordance with Paragraph 5 of the Contract, you provided NIKE with the attached offer from New Balance for Boris Berian (the "New Balance Offer"). This letter is to notify you that NIKE matches the New Balance Offer as set forth in Attachment 2 and will enter into a new contract with Boris for the exclusive right and license for his "Athlete Endorsement" in connection with the "Products" and/or NIKE brands (as each is defined in the Contract) and otherwise in accordance with the matched terms set forth in Attachment 2.

Notwithstanding your email, because the New Balance Offer is silent on reductions and NIKE is only obligated to match the terms stated in the New Balance Offer, we will send to you a new contract which will include the stated terms of the New Balance Offer as received. However, if material terms were omitted from the New Balance Offer, such as the purposeful exclusion of reductions, please provide to us for review a revised offer from New Balance that reflects that and all other material terms.

Additionally, as NIKE has informed you of its match of the New Balance Offer, you should notify New Balance that Boris is no longer free to negotiate or enter into a contract with them.

NIKE is delighted that Boris will remain part of the NIKE family.

Yours sincerely,

A handwritten signature in black ink, appearing to read "John Capriotti", is written over the typed name.

John Capriotti

cc: Boris Berian
Ben Cesar, NIKE
Leah Rinfret, NIKE



NEW BALANCE ATHLETICS, INC.
100 GUEST STREET
BOSTON, MA 02135-2088

T 617 783 4000
newbalance.com

**BORIS BERIAN OFFER
COMPENSATION AND BONUS SCHEDULE**

I. BASE FEE (SUBJECT TO ADJUSTMENT BASED ON ROLLOVER):

2016	\$125,000
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2018	\$125,000

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III. MERCHANDISE ALLOTMENT

Yearly \$5,000

IV. PERFORMANCE BONUS:

- A. To attain a performance bonus set forth below ATHLETE must (i) have competed exclusively in NB Products (including Footwear) during the entire Contract Year in which the performance bonus was earned; (ii) competed in NB Footwear and NB Product during the competition in which the performance bonus is earned; and (iii) the NB logo on ATHLETE's Footwear and uniform must be entirely visible (i.e. not covered in any manner by numbered bib) during the competition in which the bonus is earned.
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< Messages (50) **John**

Details

iMessage

Thu, Jan 14, 1:20 PM

Yes, Big Bear Track Club
Inc. (In the process of
becoming a non-profit)



◀ Messages (50) **John**

Details

Fri, Jan 22, 7:14 PM

Hello John- I hope all is well with you. I just got an email from Nike. It looks like they want to match the offer. I'll forward you the email. Let me know when you have a chance to chat.

Sat, Jan 23, 7:47 PM

Spoke with my lawyer. Got some good advice regarding rights & strategy. Just FYI.

Thanks Hawi. Interested to hear what he said. Will give you a shout tomorrow.



iMessage



< Messages (50) John

Details

Mon, Jan 25, 11:04 AM

Morning Hawi. Please let me know when you are available to talk. I will give you a shoot. Thanks

Good morning John. I'm open between now & 1pm. Also available after 2pm.

Tue, Jan 26, 11:22 AM

Shooting you over Big Bear contract. Please review and let me know if you have any questions. As mentioned, we will grow with club. And I know we didn't agree to it, but we will work together to cover some



iMessage



Messages (50) John

Details

Tue, Jan 26, 11:22 AM

Shooting you over Big Bear contract. Please review and let me know if you have any questions. As mentioned, we will grow with club. And I know we didn't agree to it, but we will work together to cover some travel for trials etc.

Thank you, John.

Tue, Jan 26, 6:39 PM

I will be reviewing the BB TC contract & discussing it with Carlos.

I am also ready to execute a strategy on



iMessage



← Messages (50) **John**

Details

grow with club. And I know we didn't agree to it, but we will work together to cover some travel for trials etc.

Thank you, John.

Tue, Jan 26, 6:39 PM

I will be reviewing the BB TC contract & discussing it with Carlos.

I am also ready to execute a strategy on Boris' situation. I will be discussing this with Boris tonight. Let me know if you prefer to chat tonight or tomorrow morning.



iMessage



← Messages (50) **John**

Details

Tue, Feb 2, 10:48 AM

Boris & I have a call with Ben & Cap at 5pm EST. Will keep you posted on how it goes.

Tue, Feb 2, 1:34 PM

Thanks for the update. Should be "interesting". Please keep me posted

It will be. Hopefully no curve balls. Boris & I are prepared for anything.

Boris requested we try to resolve this ASAP, so he can move forward with NB.

Tue, Feb 2, 6:31 PM



iMessage



← Messages (50) **John** Details

It will be. Hopefully no curve balls. Boris & I are prepared for anything.

Boris requested we try to resolve this ASAP, so he can move forward with NB.

Tue, Feb 2, 6:31 PM

Spoke with Cap & Ben. Nothing too interesting. They were being very nice to Boris. They want us to discuss internally & get back to them. Boris' perspective hasn't changed. They also said they believe in Boris & will fight to keep him.



iMessage



< Messages (50) John

Details

Fri, Feb 5, 10:13 PM

Hi Hawi, how are things?
You able to talk with
boris? Is he having
second thoughts after
talking with Nike? Talk
soon, John

Hey John. I spoke to
Boris yesterday. No
second thoughts. He
wants me to proceed to
get him on Team NB.
very direct & honest
feedback.

Sounds good. I will follow
your lead on next steps. I
know next week is going
to be really busy for you
so will wait until you are
ready and decide how to



iMessage



◀ Messages (50) **John**

Details

second thoughts after talking with Nike? Talk soon, John

Hey John. I spoke to Boris yesterday. No second thoughts. He wants me to proceed to get him on Team NB. very direct & honest feedback.

Sounds good. I will follow your lead on next steps. I know next week is going to be really busy for you so will wait until you are ready and decide how to proceed. Have a great weekend. John ps hope Meb is feeling good and ready to go



iMessage



← Messages (50) John

Details

Sun, Feb 14, 8:28 PM

Fyi...got the following text from Cap...."Let the Games begin". I am not responding

Thanks for the info. I saw Ben Cesar many times this weekend & he didn't say anything. Shook my hands after the race. I don't think Cap was in town. I wanted to sit & chat with both but I had too much going on with Meb.

Thu, Feb 18, 11:45 AM

Hi Hawi: thanks for call and sorry I missed you. I am actually out on



iMessage



Messages (50) John

Details

World champion!!!!
Congrats to you and
Boris. Amazing

Thank you John!!!

Tue, Mar 22, 8:25 AM

Hey John- I hope all is well with you. Hope you're feeling better. I'm surprised I haven't received a call or letter from Nike yet. I will be chatting with our lawyer this week to discuss next steps. Just wanted to keep you posted.

Thanks mate. In sports marketing meetings today but will call you



iMessage



RAWI

3108956438



Cool, look forward to it!

2:27 PM



Great

3:04 PM



Tue, 10/20/2015

How's your schedule tomorrow or Thursday?

5:18 PM



Just a recovery day tomorrow. Should run around 3 or 4. Other than that I've got nothing going on.

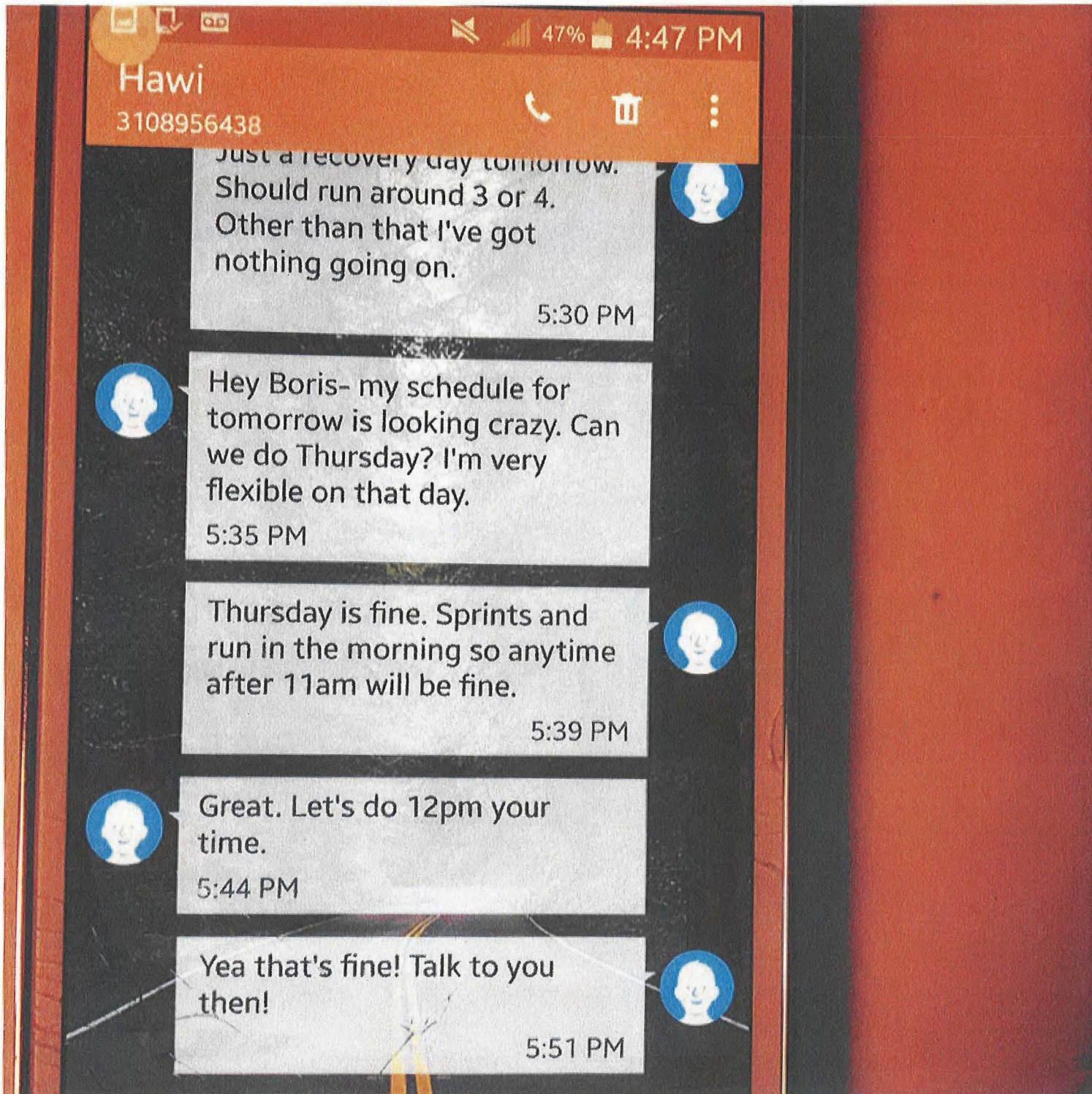
5:30 PM

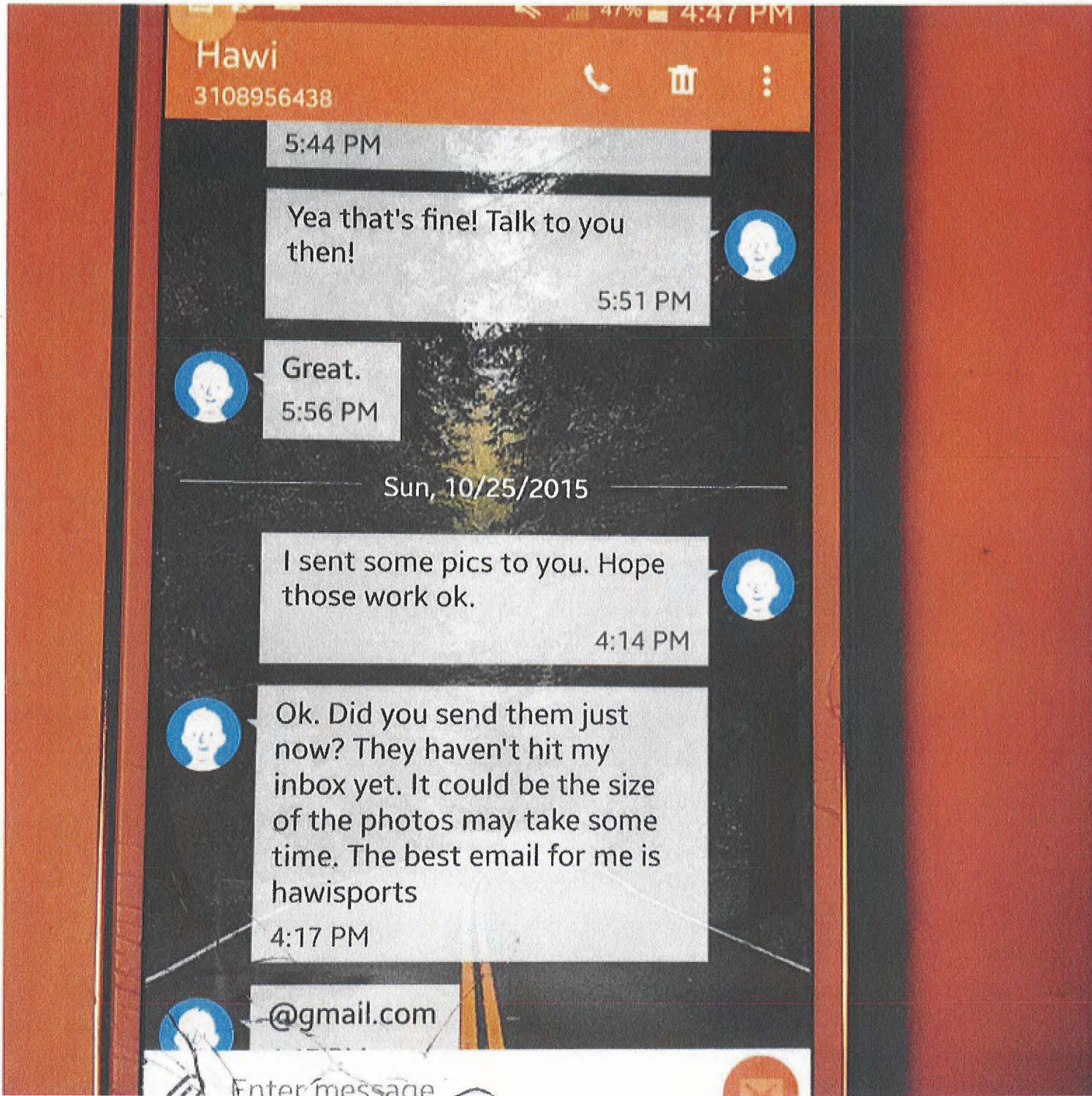


Hey Boris- my schedule for tomorrow is looking crazy. Can we do Thursday? I'm very flexible on that day.

5:35 PM







Hawi

3108956438



of the photos may take some time. The best email for me is hawisports

4:17 PM



@gmail.com

4:17 PM



Just got them. Thanks.

4:18 PM

Wed, 11/25/2015



I had a good chat with John Evans yesterday. He is interested. I have sent him a proposal to review.

10:46 AM

That's awesome news! Good to hear!



interested. I have sent him a proposal to review.

10:46 AM

That's awesome news! Good to hear!

11:37 AM

I'll keep you posted on his response to the proposal. Nike still has a right to match.

12:25 PM

Thu, 11/26/2015

Happy Thanksgiving, Boris!

10:32 AM

Thanks Hawill! Happy thanksgiving to you too!

11:04 AM

Thanks Boris!

11:24 AM

Hawi

3108956438



JOHN EVANS. HE HAS MADE AN offer for \$125k per year for 3 years. He will send me the offer in the next few days.

12:45 PM

That's great news! I'm pretty excited.

4:22 PM



Me too!

4:23 PM

Sat, 12/19/2015





5:13 PM NMS



Happy Birthday Boris! Nice birthday love from from Flotrack.

4:00 PM

Haha thank you Havi!

4:01 PM



Tue, 12/22/2015



Congrats on your #1 ranking in the USA!

5:40 PM

That's awesome! Thank you. That's from USATF?

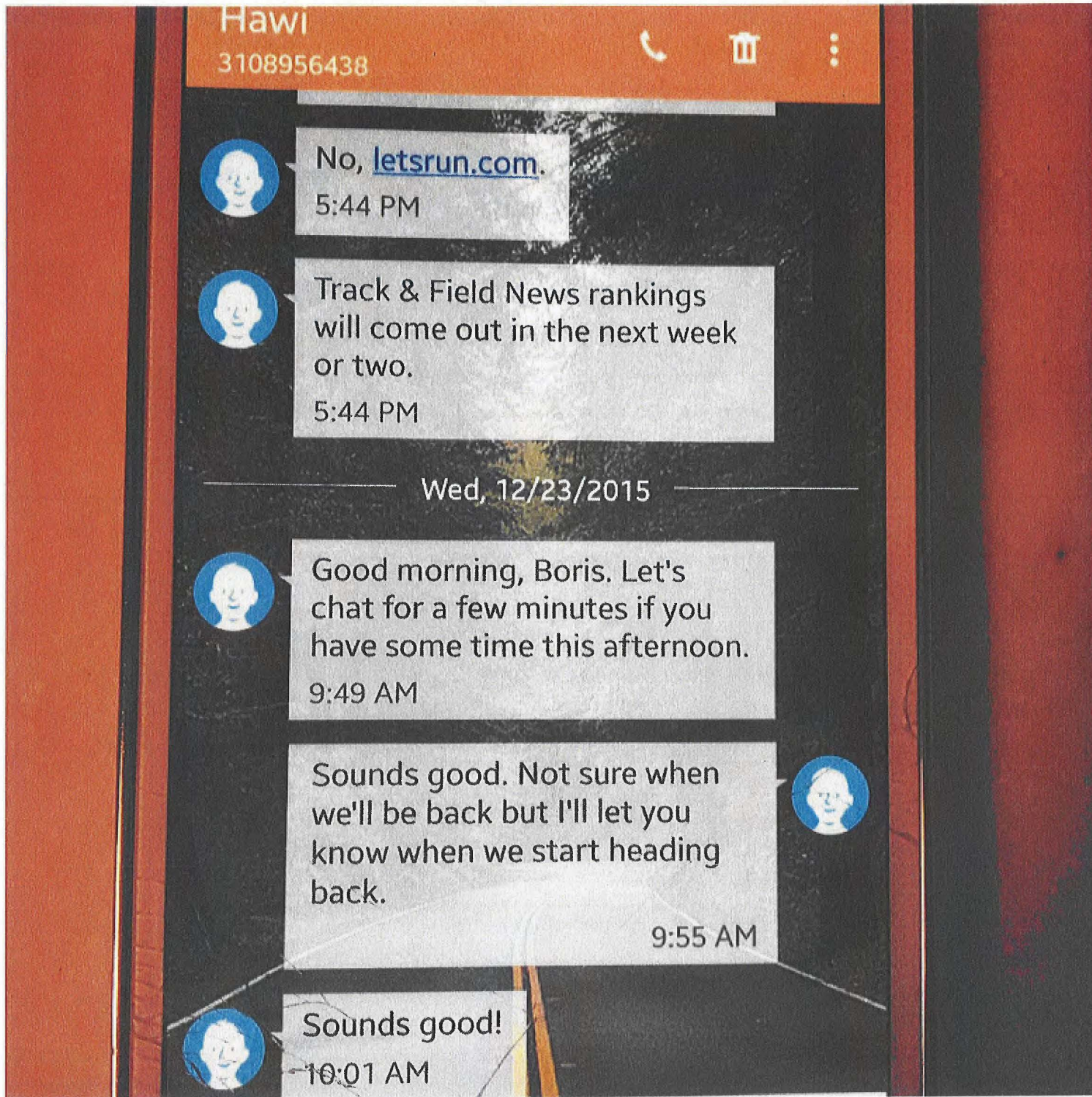
5:43 PM



NO. letsrun.com

5:44 PM





3108956438



Sounds good!
10:01 AM

I can talk real quick now if that's good for you. Carlos is getting an oil change



2:43 PM



Now is Perfect.
2:43 PM

Tue, 12/29/2015



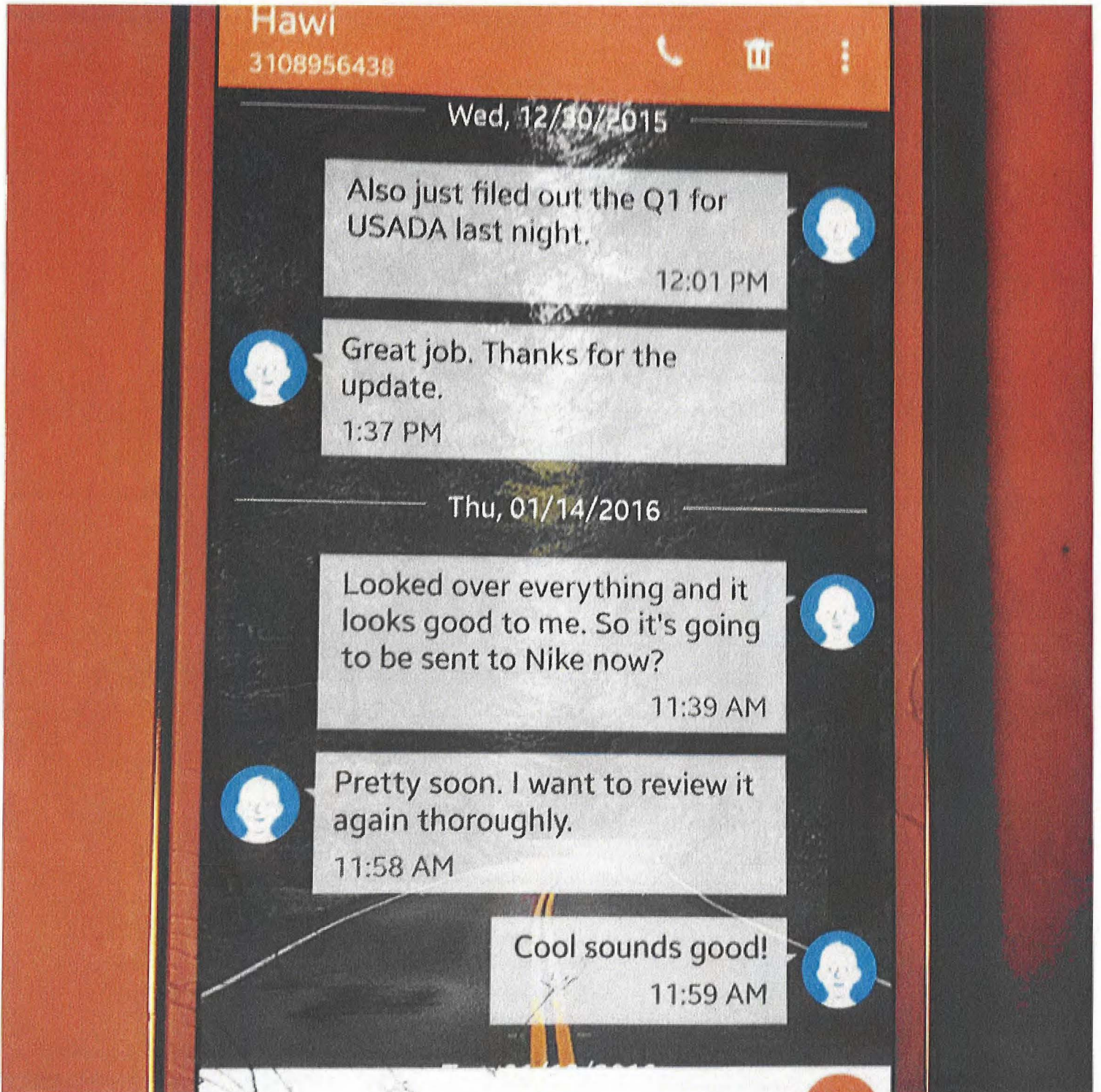
Hello Boris- your payment of \$2k from Dallas arrived today. I will take my 15% commission of \$300 out & send you \$1700. I can send it via Chase QuickPay

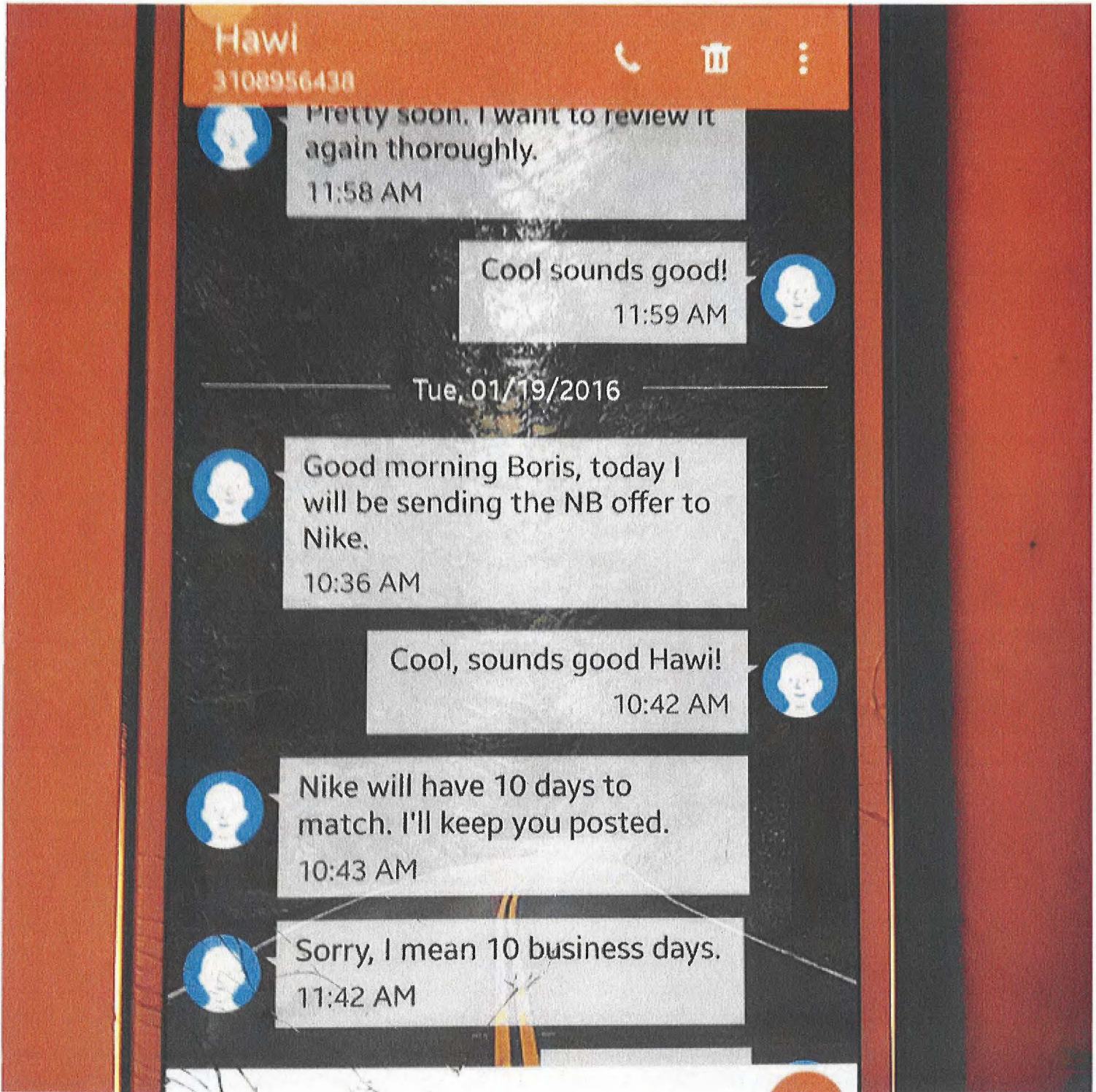
1:40 PM

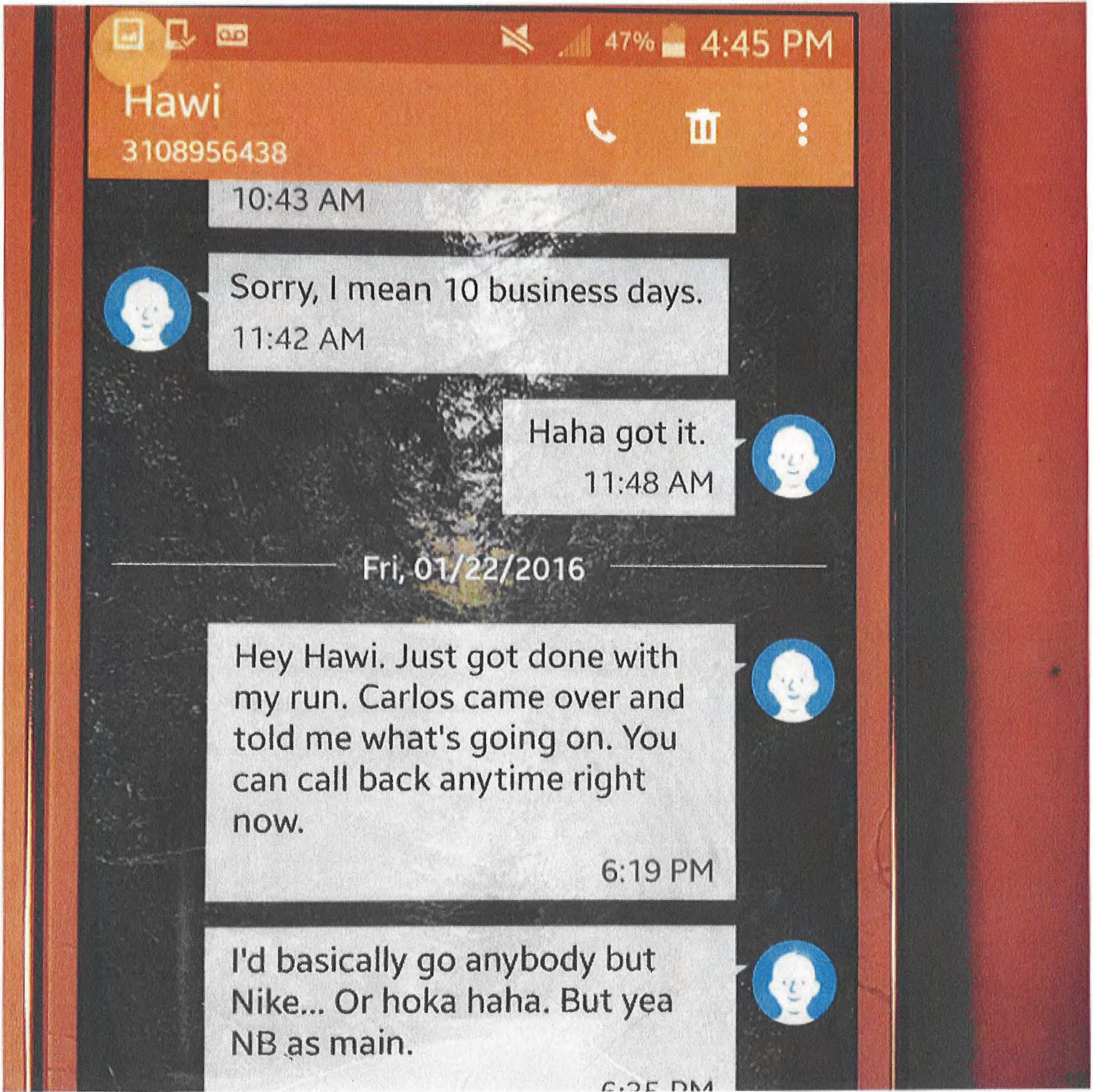


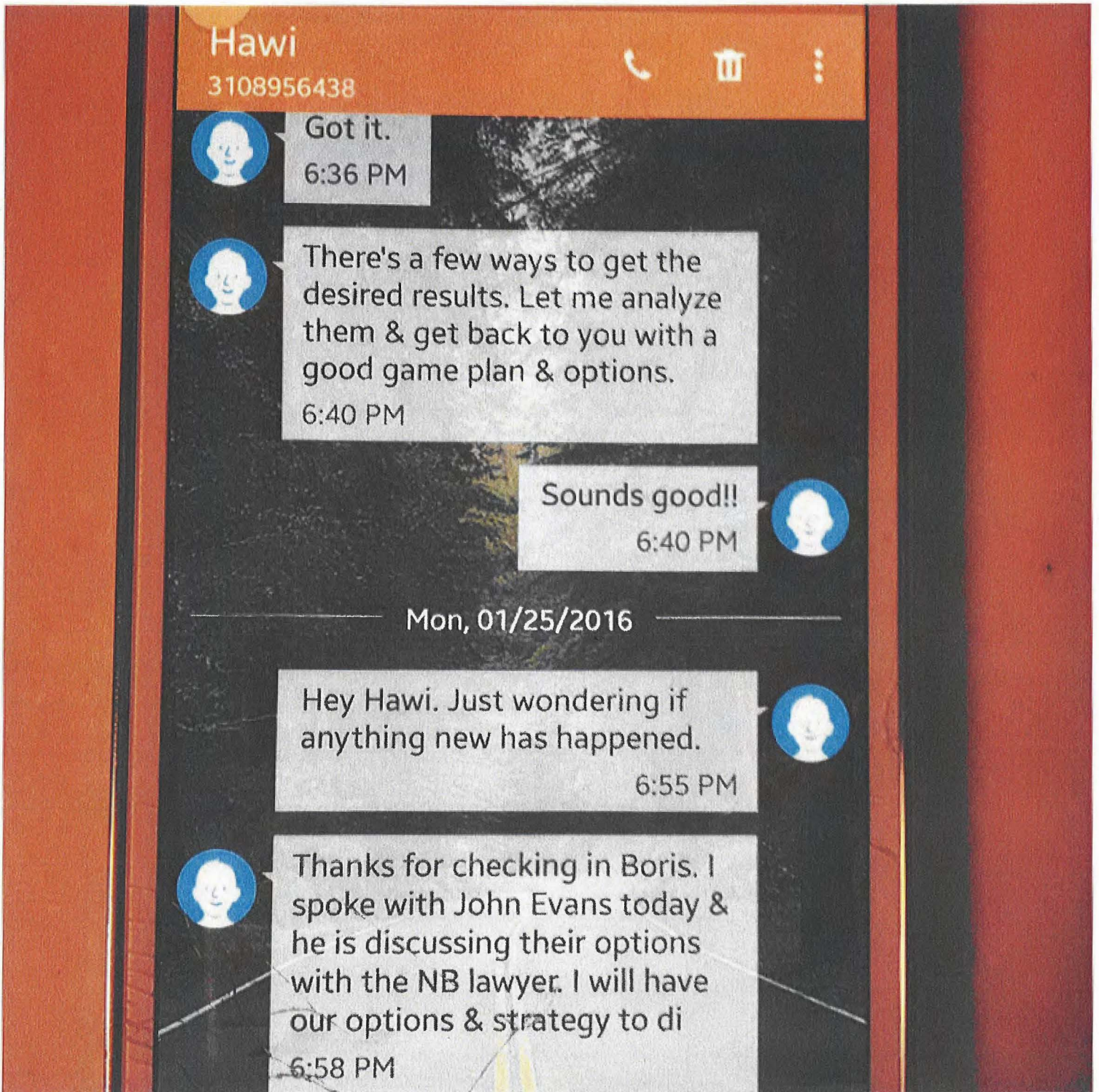
or mail you a check. Let me know what you prefer.

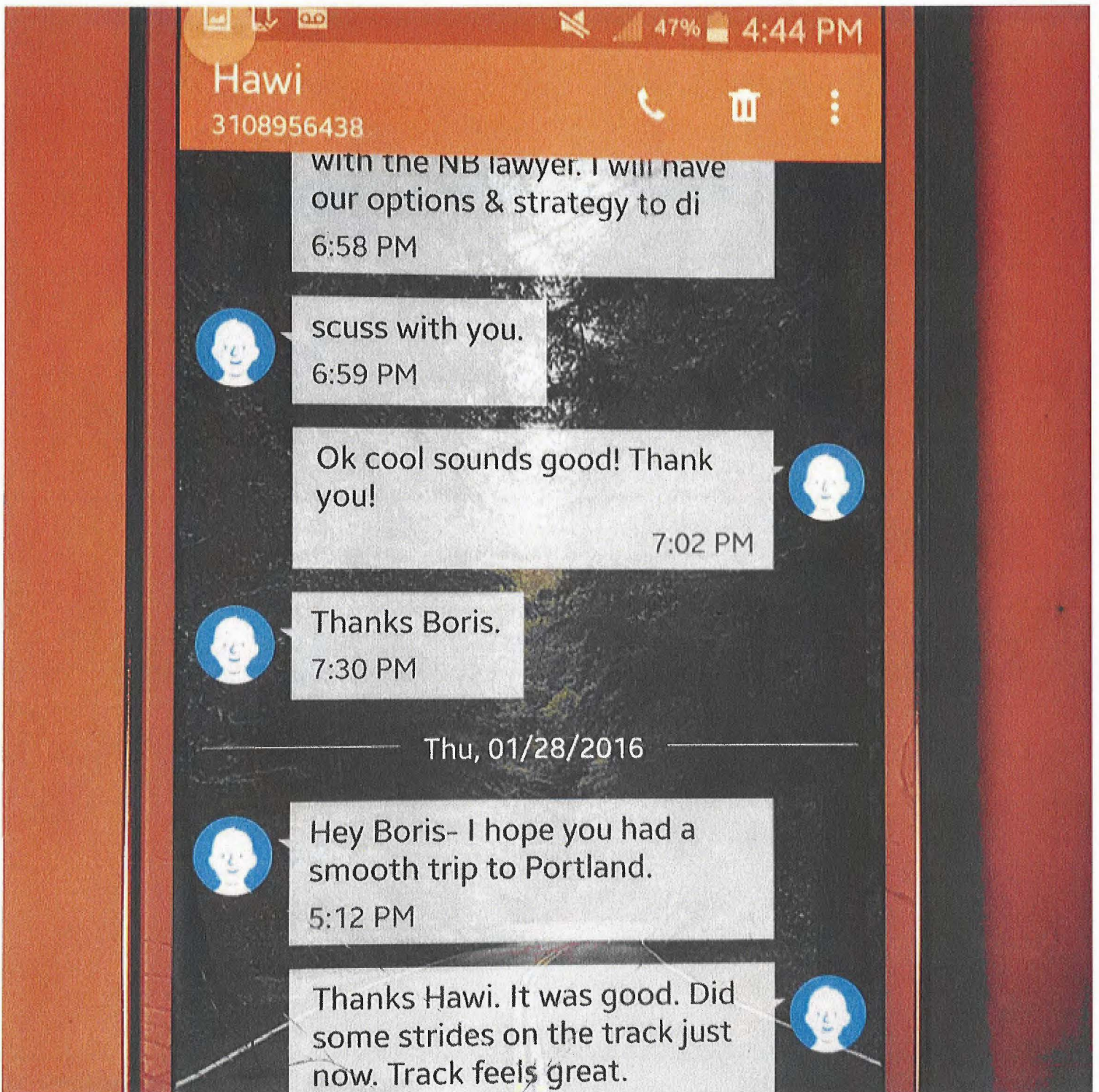
1:41 PM











Hawi

3108956438



...ably are not you can
wear the Big Bear TC footwear
& apparel this weekend & at
the tr

10:26 AM



ials & everything in between.

10:26 AM



So they are contradicting
themselves in every letter they
write. This shows desperation.

10:26 AM



Do you have time to chat
briefly today?

12:20 PM

Yea I can real quick

12:30 PM



...t have time

Hawi

3108956438



Cool. Let me know a good time to chat.

12:35 PM

Fri, 03/11/2016



Congrats on a smooth run!

6:04 PM

Thanks Hawi! Felt pretty good.

6:35 PM



Wishing you the very best tomorrow!

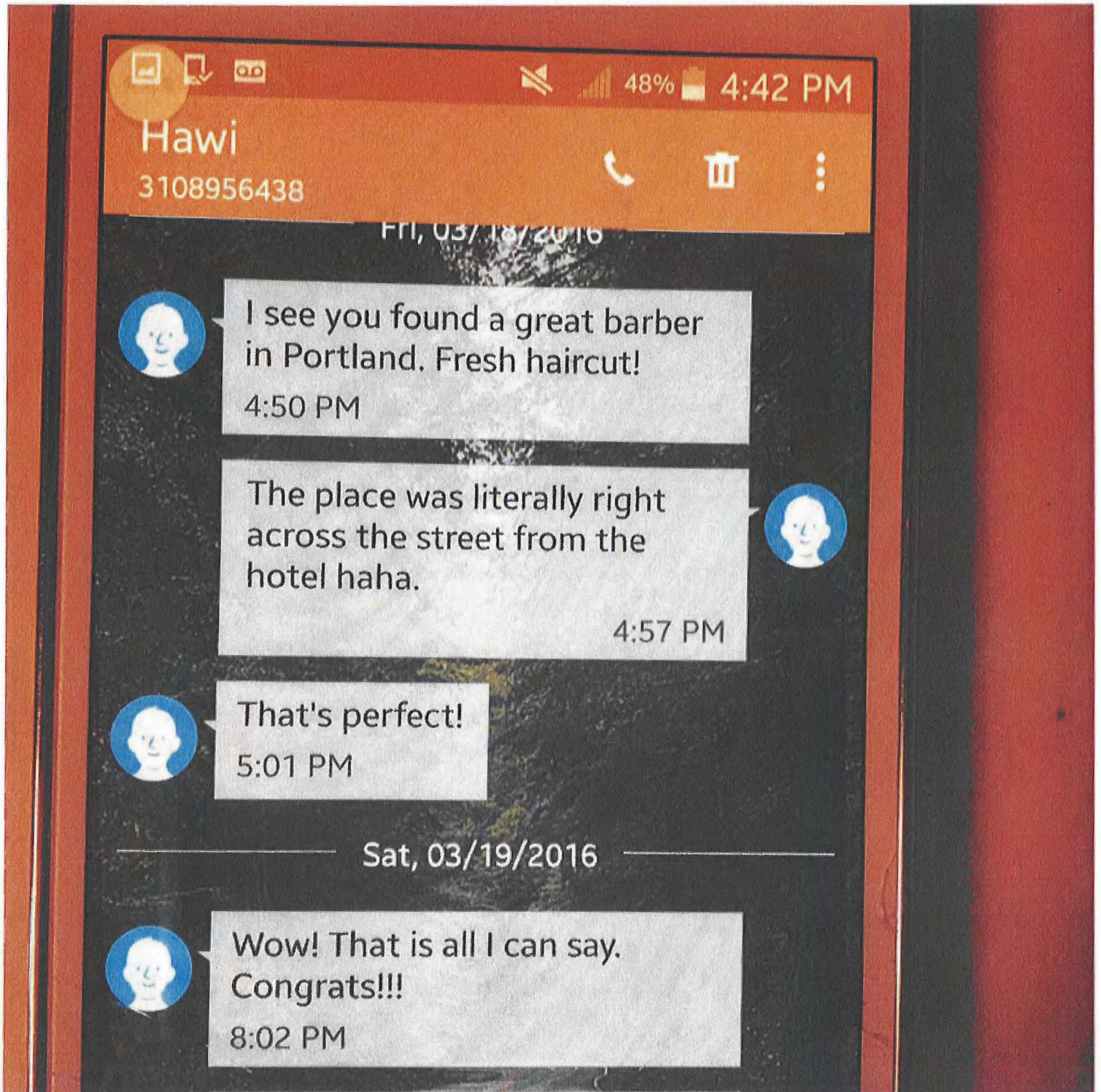
6:56 PM

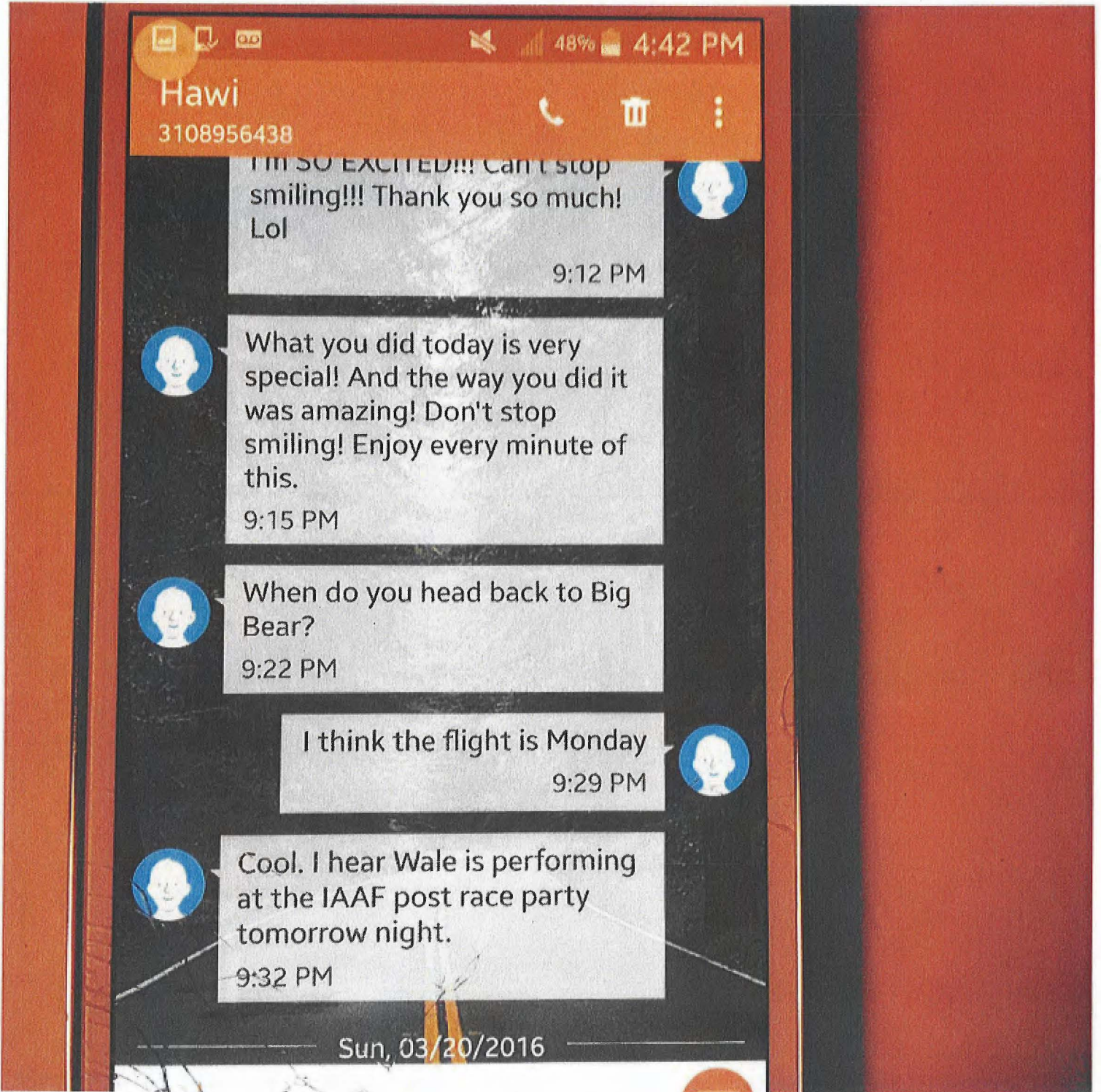
Thank you. Appreciate it!!!!

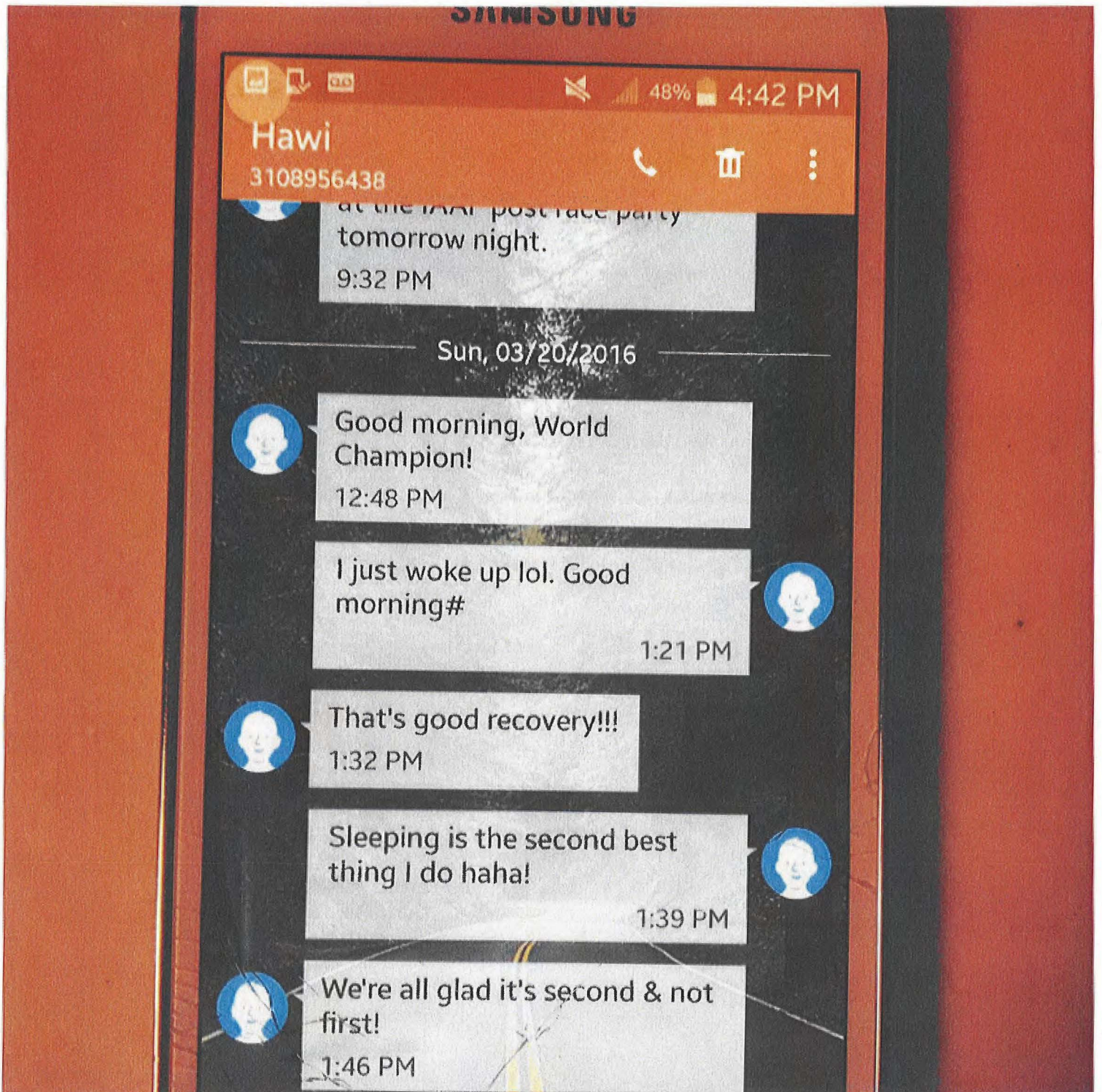
7:04 PM



Fri, 03/18/2016







Message

From: hawisports@gmail.com [hawisports@gmail.com]
Sent: 2/15/2016 3:36:50 PM
To: Cesar, Ben [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=01b83fd5baf441a8881171cb4d3ace42-Cesar, Ben]
Subject: Re: Contract - B. Berian

Hello Ben,
As discussed, Boris has expressed an interest not to resume a relationship with Nike. You asked us to discuss internally and notify you. Boris' position has not changed since our conference call.

Additionally, your original letter asked for a revised proposal/ offer. We reserved the right to submit the requested information if you decide not to honor Boris' personal preference.

If you decide not to honor Boris' personal preference, I can have a revised offer to you in the next week.

Thanks,
Hawi

Sent from my iPhone

> On Feb 15, 2016, at 3:23 PM, Cesar, Ben <Ben.Cesar@nike.com> wrote:
>
> Hello Merhawi.
>
> Attached is the long form contract for Boris for your review.
> As we discussed on our last call, we're looking forward to continuing our relationship with Boris.
> <Berian, Boris, Agmt, 2016-18 (v 2.15)[6].pdf>

