

FEDERAL TRADE COMMISSION

I N D E X

IN RE POM WONDERFUL, ET AL.

TRIAL VOLUME 3

PUBLIC RECORD

MAY 26, 2011

WITNESS:	DIRECT	CROSS	REDIRECT	RE CROSS	VOIR
Posell	297	405			

EXHIBITS	FOR ID	IN EVID	IN CAMERA	STRICKEN/REJECTED
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CX

None

RX

None

JX

None

DX

None

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)
)
POM WONDERFUL LLC and)
ROLL GLOBAL LLC,)
as successor in interest to)
Roll International Corporation,)
companies, and) Docket No. 9344
STEWART A. RESNICK,)
LYNDA RAE RESNICK, and)
MATTHEW TUPPER, individually)
and as officers of the)
companies.)
)
-----)

THURSDAY, MAY 26, 2011

12:21 p.m.

TRIAL VOLUME 3

PUBLIC RECORD

BEFORE THE HONORABLE D. MICHAEL CHAPPELL
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C.

Reported by: Susanne Bergling, RMR-CRR-CLR

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P R O C E E D I N G S

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JUDGE CHAPPELL: Okay. Let's go back on the record in Docket 9344.

Is the Government ready to call its next witness?

MS. DOMOND: Yes, Your Honor.

JUDGE CHAPPELL: Go ahead.

MS. DOMOND: Your Honor, Complaint Counsel would like to call Ms. Fiona Posell.

Whereupon--

FIONA POSELL

a witness, called for examination, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. Good morning, Mrs. Posell.

A. Good morning.

Q. Could you please state your first and last name for the record and please spell it?

A. Fiona, F-I-O-N-A, Posell, P-O-S-E-L-L.

Q. Thank you.

Mrs. Posell, are you here to testify today in response to a subpoena that was served upon you on behalf of the Federal Trade Commission?

A. Yes.

Q. And were you formerly employed by Roll Global LLC, which was formerly Roll International Corporation, which today I will just refer to as Roll, for simplicity?

A. Yes.

Q. Can you please give me your dates of employment with Roll?

A. October 2002 through February 2008.

Q. Okay. And, Mrs. Posell, were you also formerly employed by POM Wonderful, LLC, which today I will just refer to as POM, for simplicity?

A. I worked for POM for two years, yes.

Q. Okay. And can you just give me the dates of those two years?

A. It was the first two years of my employment.

Q. Okay. So, just to clarify, would that be October 2002 to approximately sometime in 2004 or 2005?

A. Yeah. POM is a subsidiary of Roll, so it was -- I don't know the exact dates.

JUDGE CHAPPELL: Hold on a second. You need to speak up or move the mic a little closer.

And, ma'am, you can pull that mic over so you don't have to lean over.

THE WITNESS: Oh, thank you.

JUDGE CHAPPELL: Chris, can you adjust that for

her?

MS. DOMOND: I'm sorry, Your Honor?

JUDGE CHAPPELL: I have got the bailiff adjusting the mic for the witness, so hold on.

MS. DOMOND: Okay.

JUDGE CHAPPELL: All right, thanks.

Go ahead.

BY MS. DOMOND:

Q. Mrs. Posell, starting with your employment at Roll, can you just give me the titles that you held while you were employed by Roll?

A. Director -- by Roll?

Q. Your title, your job title.

A. Vice president, corporate communications, for Roll International.

Q. Okay. And for what time period did you hold the position as vice president of corporate communications at Roll?

A. From the period that I stopped being vice president of corporate communications for POM, through to the end of my employment.

Q. Okay. And what was the beginning date of that, when you stopped being vice president of corporate communications at POM?

A. I don't recall. That's the date we were trying

to figure out.

Q. Okay.

A. It was a two-year period. I don't recall the end date.

JUDGE CHAPPELL: You actually don't need to lean towards the mic. It picks you up. Thank you.

BY MS. DOMOND:

Q. And moving on to your employment with POM, can you just give me the titles or title that you held while you were employed by POM?

A. Director of corporate communications; vice president, corporate communications.

Q. Okay. And do you know for what time period you held the position as vice president of corporate communications at POM?

A. I don't.

Q. And do you know -- go ahead. I'm sorry.

A. I don't recall.

Q. Okay. And do you know, by chance, the time period that you held the position as director of corporate communications at POM?

A. I don't recall.

Q. Okay. And I take it you were -- you held the position of director before you became vice president at POM. Is that correct?

A. Yes.

Q. Okay. And, Ms. Posell, can you -- Mrs. Posell, can you please just explain what corporate communications means?

A. Corporate communications is the function within businesses that protects, enhances, and preserves a reputation for a business or a brand. It typically does not involve any advertising activities. Advertising is typically classified under marketing, and typically, corporate communications has very -- involves very low output in terms of dollars.

You are essentially not buying media, which is the big difference between advertising and corporate communications. And under corporate communications, PR is a subfunction of corporate communications.

Q. And when you say "PR," does that mean you are referring to public relations? Is that correct?

A. Public relations. And typically, for most people, that includes media relations, which is outreach to the media, who are publications and print media, broadcast media.

Q. And -- I'm sorry?

A. Radio, TV.

Q. And you were saying that public relations is a component of corporate communications. Is that correct?

A. Correct.

Q. Okay. And talking specifically about the position that you held at Roll as vice president of corporate communications, was that considered a senior management position?

A. Yes, I suppose so, but I -- the company functions are quite fluid -- were quite fluid, so I don't -- my interpretation of that may be different than yours. It was a senior position. A vice president position is a senior position, yes.

Q. Okay. And what was your interpretation? You said mine might be different than yours. Can you just explain what your interpretation of your role as a senior manager in that position was?

A. Can you clarify your question?

Q. You said that my interpretation of a senior management position might be different than yours, but you did consider yourself in a senior position. Can you just explain what your definition of a senior management position is, then?

A. It's the -- it's the lead in a group.

Q. And the positions that you held at POM, were they also considered senior management positions, in your definition of such?

A. Yes, I suppose so.

Q. And, Mrs. Posell, have you produced documents that were in your possession to the Federal Trade Commission in response to a subpoena that was served upon you?

A. Yes.

Q. And is it your understanding that before these documents were produced to the Federal Trade Commission, they were all provided to Roll for review?

A. I believe so. I'm just trying to recall the process. I --

Q. Okay.

A. -- I don't really remember the exact process of how you received the documents, but that could be correct.

Q. Do you have any reason to believe that it's not correct?

A. I don't recall the process that the legal team used to give you the documents.

Q. Mrs. Posell, do you remember, in January -- on January 19th, 2011, me taking your deposition in this matter?

A. Yes.

Q. Okay. And actually, in your deposition, at page 18, lines 10 through 23, when I asked you if you had produced everything in your possession that had been

marked -- that was responsive to the FTC's subpoena that had been marked as Number 2 in that deposition, you said that everything was provided to Roll. Do you remember saying that?

A. No, but if you have it there, I'm sure I said it.

Q. Okay. Mrs. Posell, is it your understanding that Roll considered some of the documents that you had provided to them as privileged?

A. Yes.

Q. And, Mrs. Posell, starting with your employment at Roll, can you please describe some of your responsibilities as vice president of corporate communications?

A. To enhance, preserve, and protect the brand and the brands within the business.

Q. Can you describe what that would entail?

A. We did ensure that facts were presented accurately.

Q. And can we just pull -- pull for me, please, CX 1436.

JUDGE CHAPPELL: What's that exhibit?

MS. DOMOND: CX 1436.

JUDGE CHAPPELL: What's the purpose for displaying it?

MS. DOMOND: This is just to go over her responsibilities as a -- as corporate communications vice president at Roll.

JUDGE CHAPPELL: You need to lay a foundation first.

MS. DOMOND: Okay.

BY MS. DOMOND:

Q. Mrs. Posell, can you elaborate on some of your responsibilities as the vice president of corporate communications at Roll?

A. Sure. I worked across all of the businesses, of which there are many under the Roll umbrella, and I had a team. And I would supervise and help the team to conduct their work, which involved, as I said, making sure that we were doing the right things by the brands and the companies. And by the right things, I mean, again, enhancing, preserving, protecting the brands --

Q. Okay.

A. -- and the companies.

Q. And then you said that you -- you managed several or you were responsible for working with several Roll companies. Can you just give the names of those companies, please?

A. I'll try and recall the names of the companies. It's been a while since I worked there. POM Wonderful,

Fiji Water, Paramount Farms, Paramount Farming, Paramount Citrus. I'm sorry, are you asking me for the brands or the companies?

Q. The companies, that's fine. The companies or the brands.

A. Roll International. That's all I can recall.

Q. Okay. And that work also included work for POM. Is that correct?

A. Correct, until -- I had two children, one in 2005 and one in 2007, so I was on maternity leave during that time. And then also, in 2006, POM was attacked by animal rights activists, PETA, an organization. And during that time, I was personally attacked.

And so we moved out of the house for a while. I didn't go to work for a couple of weeks, and then basically removed myself from the POM business from pretty much around the middle of 2006, removing myself in any outbound capacity from 2006 through the end of my employment. I went on maternity leave in 2007, and -- approximately the end of October 2007. I did not return to the business until after my maternity leave, which ended the end of February.

Q. Okay. And when you said that you removed yourself from POM, can you explain what that means?

A. So, in order to ensure that the activists did

not associate me with POM anymore, I had resigned from the business in December of 2006, approximately 2006, and that meant that my family no longer enjoyed protests from them on a weekly basis. And prior to that, I didn't actively participate as a public face after they had started their attacks.

Q. But did you still perhaps do projects and work for POM while you -- while you were no longer the public figure for POM?

A. I was still the head of the group, but as I mentioned, there were six -- five, six other companies. So, most of my focus was on that work, and I backed away from the business after the middle of 2006.

Q. All right. And, Mrs. Posell, you said that you managed other Roll employees as vice president of corporate communications. Is that correct?

A. Yes.

Q. Do you remember any of their names?

A. I do. Would you like me to give you them?

Q. Sure. If you could, please.

A. Okay. Rob Six, Marlyn Denter, Daniel Portolan, Pam Holmgren, Sonia Grigourek. Now, I'm starting -- I can't remember anymore.

Q. All right. Well, that was a good number.

And, Mrs. Posell, did your responsibilities as

vice president of corporate communications at Roll include designing or preparing press releases?

A. Press releases are not designed. That's a -- that would be an art function. Press releases are written and then distributed. So, on that point, they weren't designed; they were written.

And, I'm sorry, what was the other word you used, designed and --

Q. I guess prepared -- I'm sorry. I meant to say prepared and issued. So, would that be a better description of what is done with press releases?

A. Just written and issued.

Q. Written and issued.

And did your responsibilities include writing and issuing press releases as the vice president of corporate communications at Roll?

A. They typically involved some involvement on a collaboration basis in the writing and the drafting of the documents, and then issuing some oversight there perhaps in terms of timing.

Q. And as the vice president of corporate communications for Roll, would it also include reviewing other press releases that may have been written by some of the other employees that were in that division?

A. Sometimes. Not necessarily.

Q. So, you didn't always have to review press releases before they were issued for POM?

A. Well, as I mentioned, I was absent for quite a lot of the last two years that I worked there. So, during those periods, I may or may not have reviewed documents in the same way that perhaps I did in the first two years of my employment.

So, it's quite possible that I did look at some; it's quite possible that I didn't. And when I was on maternity leave, I probably wasn't looking at them, so...

Q. Okay. How about when you were there and you weren't on maternity leave and before you left, would you typically review the press releases before they were issued?

A. So, as I mentioned, from 2006, in relation to POM, I -- I mean, I would think so, but I couldn't tell you with certainty because of the circumstances, what was happening at that time in relation to the animal activists.

Q. Mrs. Posell, did your responsibilities as vice president of corporate communications at Roll include designing or preparing press campaigns?

A. Again, just a point of clarification. It's not designed.

Q. Okay.

A. And press campaigns, I'm not sure what you -- can you clarify what you mean?

Q. Is that a term of art that's sometimes used by people in public relations, press campaigns, or it's not something you've heard?

A. It's not something I'd say typically.

Q. Okay. And did your responsibilities as vice president of corporate communications at Roll include designing or writing and issuing press kits?

A. Yes. My work involved the writing of the content that would go into the press kits to ensure that it was accurate and -- factually accurate, yeah.

Q. Okay. And could you please describe what a press kit is?

A. A press kit could take many forms. Nowadays, they're often electronic. But the idea of a press kit is you present factual information to a journalist, typically, and they use that factual information in their own background or as a way to develop stories. So, it's an information kit, typically called a press kit because the information is generally given to a member of the media, also called press.

Q. And, Mrs. Posell, did your responsibilities as vice president of corporate communications at Roll

include any celebrity outreach?

A. We would -- celebrity outreach for us is -- just to clarify, what I understand, is that would be anything that we might do that might be directed towards getting product in the hand of a celebrity. So, yes, it did.

For example, we gave product to Eva Longoria, the star of Desperate Housewives, for her birthday party. That was an example of celebrity outreach, at least my definition of celebrity outreach.

Q. Okay. And, Mrs. Posell, did your responsibilities as vice president of corporate communications at Roll include outreach to any medical professionals?

A. Can you clarify "medical professionals"?

Q. Doctors or nurses or nurse practitioners.

A. I believe there was -- there was a program -- there may have been some trade shows that we went to that were trade shows targeted towards that audience, but I don't recall any outreach that we did from my team, in particular, towards those -- those groups.

Q. Okay. And, Mrs. Posell, did your responsibilities as vice president of corporate communications at Roll include any outreach to scientific researchers?

A. Not much in a public relations capacity, no.

Q. In any other type of capacity?

A. Sure. I mean, we would talk to the science community that was involved in research through our science -- you know, our head of science -- I forget the names of the people, but within the company, who were involved in managing the relationship with the institutions, the prominent -- prominent institutions throughout the country that were conducting research on behalf of -- of POM Wonderful and Roll International.

And so their responsibility was to manage those relationships, and from time to time, depending on what the need was or what the communication -- what communication was necessary, we would sometimes speak to individual researchers that were involved in projects in order to obtain facts around those -- what they were doing and how we might be able to leverage some of that information in order to communicate accurately, in a more public way, when the timing was appropriate.

Q. Okay, thank you.

And, Mrs. Posell, did your responsibilities as vice president of corporate communications at Roll include managing press and public affairs for Mr. and Mrs. Resnick?

A. When I was at Roll, the Resnicks had a very low public profile. So, there was one opportunity towards

the end of my tenure at Roll, when there was a major fundraiser in LA, which the Resnicks were supporting. And so I worked on that in order to support their efforts in that regard. It was a charitable endeavor. But during most of the time that I was there, the Resnicks had a very low public profile, and they wished to keep it that way.

Q. Did you advise them on any public affairs, Mrs. Resnick or -- and Mr. Resnick, at that time?

A. I notice you're using "public affairs." Can you distinguish between that -- what you mean by that term, rather than public relations?

Q. Actually, could we please go to CX 1346, which is your LinkedIn profile where you talk about managing press and public affairs? And this is for Mr. Resnick.

JUDGE CHAPPELL: Excuse me. You need to take that exhibit down.

MS. DOMOND: I'm sorry?

JUDGE CHAPPELL: You need to remove that exhibit from the screen. We are going to have a little chat.

MS. DOMOND: Okay.

JUDGE CHAPPELL: It is common procedure in trial or hearing to lay a foundation before you flash an exhibit up in front of a witness, common courtesy and a procedure. So, before you flash an exhibit up to the

witness, you need to connect it to the witness.

For example, is there something that would refresh your memory or do you recall this, that, or the other? There needs to be a foundation laid in this courtroom before exhibits are flashed in front of a witness.

MS. DOMOND: Yes, Your Honor.

JUDGE CHAPPELL: Proceed or move on.

MS. DOMOND: Okay.

BY MS. DOMOND:

Q. Mrs. Posell, if I -- I have your -- a copy of your LinkedIn profile, if it might refresh your recollection about managing and advising Mr. and Mrs. Resnick on your -- on press and public affairs.

A. Sure, if it's something that I wrote. I was responding to your -- you started to use a different term, "public affairs." So, that's why I asked you what you meant by that.

Q. Yes, and that was in some of what you wrote, so...

I'm sorry, Your Honor, is that --

JUDGE CHAPPELL: Yes. Go ahead.

BY MS. DOMOND:

Q. And, Ms. Resnick [sic], if you can see it on the screen, when you were at Roll International, as vice

president of corporate communications, you wrote that you advised and managed press and public affairs that pertained to Stewart and Lynda Resnick, 100 percent owners of Roll International.

Can you explain what you mean by that?

A. There was this charitable event that the Resnicks were involved in. So, that was not a press event, it was a public event, so that's public affairs, as opposed to the press being the -- well, in this case, it was raising money to benefit this charity. So, yeah, that would be --

Q. Okay. Was that the only advising or managing that you did of press or public affairs for the Resnicks? Is that correct?

A. Of press and public affairs?

Q. Yeah. I am just reading what you --

A. No. I -- the -- the work I did around the charity was nonpress-related. It was public affairs-related. I advised the Resnicks on press around the businesses during the time that I was there.

Q. Okay. And could you just explain what that entailed?

A. Sure. So, for example, if -- if there was a journalist who wanted to do an article that involved an interview with Lynda Resnick, I would tell her, explain

to her the circumstances of the interview. I would help her prepare by giving her the background information about the publication or the journalist. And then I would sit with her during the interview and make sure that to the best of our knowledge -- because you can't control the media -- what she said is accurately reflected. But there is no -- so, that was the role.

And sometimes, if a member of the media has somebody within the company other than just the person being interviewed, it helps ensure that they are a little bit more careful in their correct writing of the media. So, that's a typical role that somebody would play in that capacity.

Q. Okay, thank you.

A. Sure.

Q. And, Mrs. Posell, did your responsibilities as vice president of corporate communications at Roll include arranging press interviews for the Resnicks?

A. No. We never arranged press interviews for the Resnicks. We would speak to the media, and sometimes the media would ask to speak to any number of different people in order to inform their stories. So, at that point, if it was appropriate for the Resnicks to be interviewed, we would discuss it with the Resnicks and we would collaborate as to whether or not it was

appropriate, good use of their time, necessary use of their time, and then we would organize it in the fashion that I just described.

Q. Okay.

A. But it wasn't a -- the way you said it, it sounds like it's a proactive, you know, organization to try and get the Resnicks in the media, and they were not interested in that. They maintained and wanted to maintain a low profile.

Q. And, Mrs. Posell, similarly to how -- and -- how you arranged press interviews and not --

JUDGE CHAPPELL: Excuse me. Are you finished with this exhibit?

MS. DOMOND: Oh, I'm sorry.

JUDGE CHAPPELL: You need to pull them down when you're done. It's distracting to the witness. It's blaring right in her face as it's sitting there.

MS. DOMOND: I'm sorry, Your Honor.

BY MS. DOMOND:

Q. And, Mrs. Posell, similar to the press interviews that you assisted the Resnicks with, did you do any press interviews yourself while you were vice president of corporate communications at Roll?

A. I did.

Q. And, Mrs. Posell, did your responsibilities as

vice president of corporate communications at Roll include -- not soliciting, but the arranging, as you described, any talk show appearances for any POM employees?

A. Absolutely not.

Q. Did your responsibilities as vice president of corporate communications at Roll include arranging any production shoots for any -- anybody at POM Wonderful or scientists or researchers that did work on POM Wonderful-related products?

A. Can you -- can you tell me what you mean by "production shoots"?

Q. I guess videos for -- if -- something that would be sent to the media or anything of that sort, just like a filming. Did you help arrange anything like that?

A. That we would proactively put out?

Q. Or not proactively, just if you -- if you helped -- if somebody requested that you put together a production shoot or a film, would you assist in that? Was that one of your responsibilities as vice president?

A. If I'm understanding you correctly, I think your question is around production of, but the press release is the ability to provide background footage to the media, the broadcast media, can have images that they can use in connection with a story.

So, in that regard, yes, we would do B-roll, for example, of the farming. We would do B-roll of the orchards when they were fully in bloom and looking beautiful; do B-roll when the fruit was getting on the trees, pistachios or the pomegranates. And we would offer that to the media as background, if they were doing broadcast stories about California fruit growing or something like that. We would work on that, sure.

Q. And can you think of any other public relations-related responsibilities that your work may have included while you were vice president of corporate communications at Roll?

A. Can you be a little bit more specific?

Q. Other than responsibilities that we've just walked through, such as issuing press releases and press kits, anything that we haven't already talked about. Are there any other responsibilities that you may have had while you were vice president at -- of corporate communications at Roll that you can think of?

A. I'm not really sure how to -- how to answer that. It's -- I don't recall specifically something I can tell you that I did, but --

Q. Okay, that's fine.

A. All right.

Q. Thank you.

JUDGE CHAPPELL: When you were talking about the video, I want to make sure the record is clear.

THE WITNESS: Yeah.

JUDGE CHAPPELL: Were you talking about what would be called file footage? A reporter called your office, you would send file footage?

THE WITNESS: We called it B-roll footage.

JUDGE CHAPPELL: B, as in boy?

THE WITNESS: B, as in boy, yes.

JUDGE CHAPPELL: Did that have anything to do with marketing or advertisements?

THE WITNESS: No.

JUDGE CHAPPELL: Thank you.

BY MS. DOMOND:

Q. And, Mrs. Posell, throughout your time as vice president of corporate communications with Roll, you mentioned that you did some work or POM -- you worked on some POM projects. Is that correct?

A. I'm sorry. I was distracted. Can you repeat the question?

Q. During your time as vice president of corporate communications of Roll, you mentioned that you had worked on some POM products -- POM projects. Is that correct?

A. Yes.

Q. Okay. And just to be clear, for today's purposes, when I ask you questions about your work for Roll, I am talking specifically about the work that you did on projects for POM, and so not for any of the other companies that you mentioned earlier.

A. Okay.

Q. Okay. And, Mrs. Posell, during your employment at Roll, did you have a supervisor or who was your supervisor?

A. So, I think you asked me this in my earlier depositions. I -- you know, it was a -- the way all the businesses work is it's a -- you know, you have teams and you have collaboration, and a supervisor, I'm not really sure what -- I don't know how to answer this question, because it's not really a business -- the way a lot of businesses work. I -- so, if you could ask -- maybe ask me what somebody did or if I could --

Q. Okay.

A. -- help you, I mean...

Q. I'm sorry.

When you were vice president of corporate communications at Roll, who did you report to?

A. So, I reported to Matthew Tupper and to Lynda Resnick.

Q. And can you just explain what you mean by you

"reported" to them or in what capacity?

A. Sure. So, I would keep them, you know, informed about things that they needed to know about. I would talk to them about staffing and about, you know, the best way to develop a team. I would talk to them about reviews. I would talk to them about ideas. We would collaborate on different -- different things around POM. We would talk about POM, yeah.

Q. And, Mrs. Posell, moving on to your employment at POM, can you please describe some of your responsibilities as vice president of corporate communications of POM?

A. So, are you going back to POM? I thought you were talking about Roll.

Q. Right. Earlier we were talking about some of your responsibilities as vice president of corporate communications at Roll. So, now, I'm asking about -- if you can describe some of your responsibilities as vice president of corporate communications at POM.

A. They were the same.

Q. Okay. And by the same, meaning -- by saying the same, as we talked about with -- as to releases or B-roll, celebrity outreach, and the list I went through, you did the same things while you were director of corporate communications at POM?

A. I did. The other thing to realize is that POM has a very large fresh pomegranate business. So, a lot of activities were around the fresh pomegranate season and the fresh fruit. Activities were not only around the pomegranate juice. So, there was, you know, different -- different work streams that we were -- we were involved in around different -- different products.

Q. And how did you go from being vice president of corporate communications at POM to vice president of corporate communications at Roll?

A. Can you -- can you tell me what you mean by "how"? How did I?

Q. You -- before -- when you were vice president of corporate communications at POM, did -- were you promoted to vice president of corporate communications at Roll or how did you move into the next position at Roll from POM?

A. I was asked to do an expanded job that covered all the companies that we're not talking about today, so...

Q. And who asked you to take that role?

A. I don't recall.

Q. And just to be clear, for today's purposes, if I'm asking you any questions about your work for POM, I'm talking about work that you did on projects for POM.

So, if you worked for any other Roll entities at the time or did projects for them, I'm only specifically talking about your work as it concerns POM. Does that make sense?

A. It does, but I get confused, because you talk about POM when I was vice president of Roll, and then you ask me about POM when I was vice president of POM. So, I just want to make sure I'm clear when you're asking me so I can answer the questions properly.

Q. So, for either, when you were vice president of corporate communications at either POM or Roll, and I'm specifically talking about the work you did for POM, so not for any other Roll entities.

A. I see. Okay.

JUDGE CHAPPELL: When you went from POM to Roll or vice versa, was your paycheck signed by the same person?

THE WITNESS: I don't remember.

JUDGE CHAPPELL: Probably had direct deposit?

THE WITNESS: I think you're right.

JUDGE CHAPPELL: Did you have the same boss?

THE WITNESS: I did.

JUDGE CHAPPELL: Did you have the same office?

THE WITNESS: Physical office was constantly relocating within the building.

JUDGE CHAPPELL: Okay. But was it because you went from one entity to the other or for other reasons?

THE WITNESS: Other reasons. Space mainly.

JUDGE CHAPPELL: Thank you.

Okay, go ahead.

BY MS. DOMOND:

Q. And when you were vice president of corporate communications at POM, did you also report to Mrs. Resnick and Mr. Tupper then?

A. I did.

Q. And did you report to anybody else?

A. For POM? No.

Q. When you were -- okay.

And, Mrs. Posell, when you were employed as vice president of corporate communications at Roll, did you have to keep track of your time based on whether you were working on a project for POM versus another company of Roll?

A. No.

Q. And when you were employed as vice president of corporate communications at Roll, do you know whether POM had to reimburse Roll for your services?

A. There was discussion around that, but I don't recall how it was resolved. Did you ask for my services?

Q. I'm sorry? For any services that you did relating to POM.

A. So, when the discussion -- we were having discussions around that, I was not -- my team was part of that, but I don't believe that I was included in that, because I was the manager of the team.

Q. Okay. Now, Mrs. Posell, when you were an employee of POM Wonderful, did you have an email address?

A. Yes.

Q. Yes?

A. Unfortunately.

Q. Unfortunately.

And would you receive or send emails to that email address?

A. Yes.

Q. And was that fposell@pomwonderful.com? Would that be correct?

A. I don't recall.

MS. DOMOND: And just to make sure I'm doing this appropriately, Your Honor, I wanted to show Mrs. Posell an email that was sent to her -- but I want to make sure that I lay the proper foundation for it -- relating to her public -- public relations work.

JUDGE CHAPPELL: Well, I haven't heard a

foundational question yet.

MS. DOMOND: Okay.

BY MS. DOMOND:

Q. Mrs. Posell, was a purpose of public relations by POM to market POM products to consumers?

A. No. It was to preserve, protect, and enhance the -- in the case of POM, you know, the -- both the company and the products.

Q. And, Mrs. Posell, I'd like to show you an email that might help refresh your recollection about -- it was a PR plan that you drafted discussing the purpose of public relations by POM, regarding marketing.

So, if we --

A. Regarding marketing?

Q. Or public relations at -- at POM.

A. You are going to show me a PR plan?

Q. Yes, a PR plan that you drafted.

A. Okay.

Q. If we could please show Exhibit CX 11, page 1.

Mrs. Posell, the document there is an email from and to yourself on January 1st, 2003. Is that -- is that correct?

A. Yeah. It looks like it's from my home address to my office email.

Q. Okay. And the subject and the attachment refer

to a PR plan. Is that correct?

A. Yes.

Q. And if we could -- and -- just move to the page 4 of the attachment, please. It's CX 0011-0004. If we could blow up the middle there.

A. So, this -- this was sent from my home, where I had a business, Posell Communications prior to joining POM. It's a PR plan that was sent to POM. It was probably -- I mean, I'm speculating, but it was probably sent so that I could refresh my memory as to what things were considered in a PR plan. I don't -- this is related to POM? This is a POM PR plan?

Q. Well, that's what I was going to ask you.

A. Okay.

Q. But where it says, "Marketing-Driven Public Relations: Advertising. Elements: Coordinate press activities to coincide with advertising campaigns," was that relating to your work at POM?

A. I have no idea. This is a very standard way -- approach to think through public relations. There is no reason for me to know if this is linked to a POM PR plan or -- but given that I sent it, it looks like it was an existing document that I had on my computer from my office that I sent to myself in January, two months or three months after I joined POM. So --

Q. Do you recall why --

JUDGE CHAPPELL: Excuse me. What I'm hearing is a lot of speculation on what it might be. Do you want to take a moment to look at the full exhibit --

THE WITNESS: Sure.

JUDGE CHAPPELL: -- look it over and see if you can identify it for us?

THE WITNESS: That would be great.

JUDGE CHAPPELL: Thank you.

THE WITNESS: How do I do that? Do I touch something?

MS. DOMOND: We will hand it to you.

Your Honor, if we could approach the witness and hand her a copy of CX 11?

JUDGE CHAPPELL: Go ahead.

MS. DOMOND: Okay.

THE WITNESS: (Document review.)

JUDGE CHAPPELL: Go ahead.

BY MS. DOMOND:

Q. Mrs. Posell, have you had a chance to look over the document?

A. I have. Thank you.

Q. Do you know, just by looking at it now, whether you are -- why you sent it to yourself at -- while you were at POM Wonderful?

A. So, in looking at it now, I can see that it was -- it's ideas around -- that relate to POM Wonderful, not to previous clients or other business. So, having seen that, I can now confirm that, yes.

Q. And, Mrs. Posell, was marketing-driven public relations -- was marketing-driven public relations a component of POM Wonderful's public relations?

A. Yes. This document clearly states that these are some of the ideas around marketing-driven public relations, yes.

Q. And looking at the document, under "Marketing-Driven Public Relations," it says, "Advertising: Elements: Coordinate press activities to coincide with advertising campaigns."

Can you explain what coordinating press activities to coincide with advertising campaigns means?

A. I can if I can use a non-POM example.

Q. Okay. Do you recall any POM examples or --

A. No.

Q. Okay. You can use -- go ahead. Just however you can explain it.

A. So, when we launched the pistachio brand Everybody's Nuts in D.C., the advertising was very fun and engaging and entertaining, and it was around the time of the elections. And it -- and we were able to

garner some interest in some of the Washington print media around the ads that were appearing in D.C., and it was kind of engaged in the conversation around the elections.

So, that's an example of how ads provoked media interest in a brand, and we were able to talk about that and -- so, but with respect to POM, I can't think of any examples of where we did that. And this was written in 2003, before we had started any advertising campaigns, as I recall. So, this was with regard to future -- future plans.

Q. Future ideas for the POM business?

A. Future ideas, yeah.

Q. And, Mrs. Posell, were resources that were spent on public relations included -- were resources that were spent on public relations included as part of POM's marketing spend?

A. I don't recall where they sat in the budget.

Q. And if we could refresh your recollection, I'd like to show you --

JUDGE CHAPPELL: You might want to ask the witness first if there's anything that would refresh her recollection.

MS. DOMOND: Oh. I'm sorry, Your Honor.

BY MS. DOMOND:

Q. Is there anything, Mrs. Posell, that might refresh your recollection on whether public relations was part of POM's marketing spend?

A. Sure. If you showed me a budget and it was a line item in the marketing budget, that would confirm it, yeah.

Q. Okay. I'd like to show you CX 105, and I think we talked about this at your deposition. The second attachment, which is -- starts at page 36.

It was a summary page, and I think you had explained it as a summary page for POM Juice spend. Is that correct?

A. I'm sorry. I had explained it as a summary page for POM Juice --

Q. I'm sorry. Could we show the whole page?

A. I'm confused.

Q. Actually, can we --

If we can approach the witness, Your Honor?

JUDGE CHAPPELL: Yes, that's a good idea.

MS. DOMOND: Thank you.

BY MS. DOMOND:

Q. And just to help you out, Mrs. Posell, we're looking at page 0036. It would be where the CX numbers are.

A. So, can I just read -- do you want me to read it

or --

Q. Sure. I mean, you can -- you can look at it as long as you like, but just the page that I was referring to is CX 0105-0036.

A. Okay.

JUDGE CHAPPELL: Regarding your request to read it, not without a pending question. I don't think there's a question pending, so don't read it.

THE WITNESS: Don't read it?

JUDGE CHAPPELL: Right, unless you are asked a question.

THE WITNESS: Okay.

MS. DOMOND: Okay. Can she turn to the page, Your Honor, or --

JUDGE CHAPPELL: Would you like to direct the witness to a particular page? Then do so.

MS. DOMOND: I thought I had. I apologize if I hadn't.

JUDGE CHAPPELL: Well, I'm not sure she understood you.

BY MS. DOMOND:

Q. Okay. Mrs. Posell, can you please turn to page CXB 0105-36?

A. Yes.

JUDGE CHAPPELL: You have two things going on

here. You have got something on the screen and she has got something in her hand. So, let's just be clear for her.

BY MS. DOMOND:

Q. You can tell me once you get to that page.

A. So, this is the -- this is the second document from this that you have given me. So, the first one is a spreadsheet. The second one is a -- okay, the second one is -- just give me a second.

Q. If you look at the bottom, there should be numbers, where it says CX --

A. Okay.

Q. -- so if you could go to 36.

A. Yep.

Q. Okay.

JUDGE CHAPPELL: You said earlier that something would refresh your recollection. Does that do so?

THE WITNESS: Of whether or not the PR is part of the marketing budget? No.

BY MS. DOMOND:

Q. If you look to the -- where it says "Total Marketing Spend for POM Juice," the very first line, might that refresh your recollection of whether PR is part of the total marketing spend?

A. Absolutely not. That has nothing to do with

budgets. Absolutely nothing to do --

Q. Does the PR have anything to do with total marketing spend?

A. If -- if you spend money on producing something in PR, yes, but you're referring here to -- to advertising equivalency or media hits, which has nothing to do with outbound spend. This is -- it has nothing to do with marketing budgets at all, what you have -- what I can see in front of me.

Q. Okay. Mrs. Posell, do you recognize this document?

A. I do.

Q. Can you just explain what it is?

A. So, what I have are two documents. I have a spreadsheet, truncated, and then I have a -- a second document that you're asking me to look at. I think it's the first page of that, it's a summary page, and it says, "Summary of Marketing Activities from 2002 to 2006," including references to PR activities within there.

Q. Okay. And do you know why it would say "PR" within that first sentence, where it's describing total marketing spend for POM Juice?

A. Sure. So, it says, "Cost of purchasing equivalent advertising with 3000 PR mentions (print and

broadcast) would have been \$184 million."

Q. You are looking at the second paragraph? I'm talking -- I'm sorry.

A. I'm looking at what's blown up in front of me.

Q. If you look at the very first paragraph, where it says "Total Marketing Spend."

A. Yeah.

Q. And within the parenthetical, the second to last, it says "PR."

A. Um-hum.

Q. So, I was just asking if you know why PR would be included in that parenthetical describing total marketing spend.

A. Because that -- that was what was -- how it was portrayed in this document. It also includes overhead, but overhead isn't necessarily in the marketing budget. You had asked me whether PR falls into the marketing budget. I can't answer whether it does or not.

I'm just talking -- this document is around a complete marketing, is supposed to be a summary of marketing, and in this document, for some reason, it's calling out media, production, hand tags, ice barrels, overhead, PR, and web. It doesn't mean that the PR falls under marketing. So, I still -- in terms of budget. So, I still can't confirm that for you, if

that's what you're looking for.

Q. No. I wasn't asking about budget. I was actually just asking about what it means, under "Marketing Spend," why would PR be classified here under the total marketing spend for POM? It's not budget, but --

A. Because the goal of this document was to clearly come up with a number that involved -- included PR and ice barrels and web.

Q. Okay. And do you know why PR would have been mentioned in this marketing document?

A. Because it was -- it's an important element of what we were doing. I considered my job was important, so --

Q. Important to marketing?

A. Important in the way in which we wanted to communicate factually about the brands and the company, yeah.

Q. And, Mrs. Posell --

A. You can see from the second line that it's considered important in terms of -- you can see why it could be considered important from the second line and the third line.

Q. Mrs. Posell, did you keep track of the value of POM's public relations in comparison to -- I'm sorry,

can you take the exhibit down? -- in comparison to advertising dollars?

A. So, one standard industry way of showing worth for PR activities is to take an equivalent -- what's called an advertising equivalency, and so we would do that. When it came to -- it's very hard to do in broadcast media, radio, and TV, because buying a spot in broadcast media is very -- it's very hard to quantify that.

But in an attempt to quantify and internally show value for a PR program, you would often look at media as it related to print, sometimes many print -- online is really hard to do as well -- and you would come up with some advertising equivalency. And advertising equivalency usually means what was the rack rate of buying an ad in that publication and equivilizing the amount of space we had; what it cost to purchase the ad; and this is the amount of editorial coverage that you get.

You cannot buy editorial coverage. It's completely up to the media what they write about. Again, our role is to provide them with the facts. How they interpret the facts, even if they get it correct or wrong, is very arbitrary. But you hope, in presenting the factual information and speaking accurately, that

they convey the information correctly.

Q. And just to clarify, you were saying that you would look at the -- to figure out what the ad equivalency of a PR piece would be -- would be to compare it to if you bought an ad in that publication or -- you mean in the publication where the PR piece ran?

A. So, it's -- if the PR piece is -- just to clarify, it's editorial. So, it's up to a journalist if they cover a story, and if they cover the story and then write a page on it, then you can -- for internal purposes -- and it's meaningless in terms of value, because you're not spending the money.

But you could say, okay, a one-page ad in this publication costs X; therefore, a one-page editorial equals X, because we didn't spend money to purchase that. And that's a way that people in my profession try to convey value, because marketing is a art, not a science, and it's hard sometimes to convey any degree of value. So, that's one way in which we would -- we would try and quantify the value.

But, again, that is very arbitrary. It's not the same thing. Editorial and advertising is completely different.

Q. And, Mrs. Posell, would this advertising

equivalency be something that POM would keep track of, perhaps on a yearly basis?

A. Well, as you know from the -- from the press clippings information that I gave as part of my subpoena, we did attempt to keep track of -- in relation to POM, fresh -- hits around the fresh pomegranates, hits around juice, and, yes, we would do this on a regular basis. But not only focusing on ad equivalency, but also focusing on whether or not, you know, the media was interested in the products.

Q. And, Mrs. Posell, you were mentioning press books where --

A. Press clippings.

Q. -- press clippings with advertising --

A. No, not advertising.

Q. I'm sorry, with -- I'm sorry.

You were talking about press coverage books. Do you have -- where there were press editorials that were related to POM, correct? And when you were talking about the press coverage books, 43 -- this is CX 430, which is the 2003 press coverage book. Is this what you were referring to?

A. Yeah. That's an example of the press clipping book, yes.

Q. Okay. And so, then, within it would be what you

were explaining as press clippings? Okay.

And then the same, if you took a press coverage book from 2006, the -- this would be press clippings that involved pomegranates or POM-related products. Is that correct?

A. So, just to clarify, they would be press clippings that usually would -- sometimes they were branded, sometimes they were unbranded coverage. So, sometimes it didn't mention POM Wonderful. As pomegranate juice became more and more popular and pomegranates became more and more popular, oftentimes the coverage would not brand -- be brand-specific.

But they would -- the press clippings books would be covering anything related to pomegranates, could be Pomtinis, could be anything. And it was -- again, sometimes we would talk to the media, sometimes we wouldn't; sometimes other people would talk to the media.

Q. Okay. And, Mrs. Posell, do you know who created these books, the press coverage books?

A. They were created externally, put together by -- you know, compiled by somebody on my team.

Q. And how often were they created?

A. I don't recall.

Q. Could you tell me what POM's purpose was in

having these types of books created?

A. The purpose was to show value from the team's work. It was an internal tool.

Q. And when you say "the team," you're referring to the corporate communications team. Is that correct?

A. Yes.

Q. Did POM distribute copies of these press coverage books to anybody outside of POM?

A. Not to my knowledge, and it's possible, but not to my knowledge. That wasn't the intent of the books, but they're pretty interesting, so maybe. I don't know.

Q. And within Roll and -- did Roll get copies of these press coverage books?

A. I -- can you be more specific? Roll? Who at Roll?

Q. I guess, who would get copies of the press coverage books?

A. We would just have them in the office, and if somebody was interested, they would look at them.

Q. Okay. And when you say "in the office," this was when you were both at Roll or at POM, you would have these types of press coverage books in the general office you were in? Is that correct?

A. Yeah. It may be in my office or our team area or -- there were bookshelves, and we would keep them

there.

Q. Mrs. Posell, do you know if Mr. Tupper would get a copy of these press coverage books?

A. I don't recall. I don't know. I don't know if he was given a copy or he ever read them. I don't recall.

Q. Do you know whether Mrs. Resnick got a copy of these press coverage books?

A. I don't recall.

JUDGE CHAPPELL: It's about 1:30. Let's talk about scheduling for today and tomorrow.

I think I was told that this is the only witness Complaint Counsel has scheduled for today. Is that correct?

MS. DOMOND: Yes, Your Honor.

JUDGE CHAPPELL: And is it correct that this witness is only available today?

MS. DOMOND: Yes, Your Honor.

JUDGE CHAPPELL: And we're at 1:30 now. When do you anticipate completing your direct?

MS. DOMOND: Well, I guess if -- how many hours, Your Honor, is the question?

JUDGE CHAPPELL: Yes.

MS. DOMOND: Maybe another 2, 2 1/2 hours.

JUDGE CHAPPELL: Okay. And we have agreed to

stay late today?

MR. GRAUBERT: It's fine with us, Your Honor.

JUDGE CHAPPELL: Okay.

MR. GRAUBERT: How late can the witness stay?

MS. DOMOND: I think Mrs. Posell, Your Honor, said she has to leave by 5:00.

JUDGE CHAPPELL: Then we won't go late. We are going to take a break, and you can confirm that. What I was trying to figure out is how to schedule our breaks this afternoon so we can get this done. And you need to think about the time limitation when we take the break and look over your notes --

MS. DOMOND: Yes, Your Honor.

JUDGE CHAPPELL: -- because this is not my doing. If the witness has to be gone by 5:00, you have to leave time for cross examination.

MS. DOMOND: Yes, Your Honor.

JUDGE CHAPPELL: How much time do you expect to need?

MR. GRAUBERT: Well, we will work that out, Your Honor, with counsel, to be done by 5:00.

JUDGE CHAPPELL: I would like everybody to come to some agreement so whatever time the witness needs to walk out, we could be done.

Now, let's talk about tomorrow. I understand

there's one witness available tomorrow?

MS. DOMOND: Yes, Your Honor.

JUDGE CHAPPELL: And how much time do you need for that witness?

MS. JOHNSON: This is an estimate, Your Honor, but I would think three hours, three or four hours.

JUDGE CHAPPELL: Who's the witness tomorrow?

MS. JOHNSON: Elizabeth Leow.

JUDGE CHAPPELL: What's the last name?

MS. JOHNSON: L-E-O-W. Probably a half day.

JUDGE CHAPPELL: And what's the anticipated cross?

MS. DIAZ: We assume minimal, Your Honor.

JUDGE CHAPPELL: Minimal? Minimal is good, okay.

I'm thinking about, with other issues pressing, that we might start a little late tomorrow, but I want to make real sure we finish tomorrow. So, we are going to take a short break, and I want everybody to think about what you want to do tomorrow, and you can give me a suggestion when we come back.

I think what we will do now is take about a 15 or 16-minute break. When we return, we can discuss these issues. So, we will reconvene at 1:50, 1-5-0. We're in recess.

(A brief recess was taken.)

JUDGE CHAPPELL: Okay. Back on the record in Docket 9344.

Yes?

MS. JOHNSON: I believe you wanted to get an update about scheduling tomorrow, Your Honor?

JUDGE CHAPPELL: Yes.

MS. JOHNSON: It is fine with the Government if you wanted to start late. We believe, again, we only need about half a day with Ms. Leow.

MS. DIAZ: And, Your Honor, we assume at this juncture that we would not be any more than an hour.

JUDGE CHAPPELL: Okay. What about a noon start tomorrow, same as today? A noon start tomorrow?

MS. JOHNSON: A noon start? That is fine with us.

MS. DIAZ: It's fine with us as well.

JUDGE CHAPPELL: And we are going to be able to accommodate this witness, Mrs. Posell, for today?

MS. JOHNSON: Yes, Your Honor.

JUDGE CHAPPELL: Okay, thank you.

Go ahead.

BY MS. DOMOND:

Q. Mrs. Posell, before the break, we were discussing a little bit the press coverage books. I

just wanted to hand you an excerpt of the 2006 press coverage book, if we can -- this is CX 0433-0001?

JUDGE CHAPPELL: It's a good idea in the future to have your exhibits in a witness binder at their seat to save time. Go ahead.

BY MS. DOMOND:

Q. Okay. And, Mrs. Posell, this is the 2006 press -- excerpt from the press coverage book we were talking about earlier?

A. Yes.

Q. Can you please go to CX 043-0002 [sic] for me?

A. I'm sorry. It's --

Q. And looking at the right-hand column, if we could blow that up for everyone, the chart.

A. I'm sorry. Can you tell me the page number?

Q. It's the second page.

A. Okay.

Q. The second page. The second page, if you include the cover of the press coverage book as the first page.

A. Okay, thank you.

Q. And then looking at the chart, where it says "2006" on the right side, which is also in front of you on the screen.

Mrs. Posell, can you explain this chart for me?

And you can look at the -- you don't have to look at the screen. You can look at the one we handed you if the screen's not clear enough.

A. So, this is a summary of press coverage, print press coverage, for the year 2006. This is press coverage, it appears to be around fresh pomegranates; pomegranate juice; coverage that included a mention of fresh pomegranates and juice; other; POM Tea, juice, fresh tea; juice and tea; fresh and tea; and then each.

Under each category, it's divided into branded coverage, which is when the brand name POM Wonderful would be mentioned, and nonbranded coverage. And then there are totals at the bottom of the columns. It's also split by national coverage, local coverage, and international coverage.

Q. And which -- okay, thank you.

And when you were talking about the total at the bottom, were you talking about the total advertising equivalency number there at the bottom of the chart?

A. I just said it was totaled. So, there's different totals.

Q. Okay.

A. There's the total number of articles. So, you can see that in 2006, there were over a thousand articles, 1074 articles, and the net result, the total

of all those aforementioned categories that I just went through.

Q. And going to the bottom of the chart, where it says "Total Advertising Equivalency," is that referring to the type of advertising equivalency you were speaking about earlier, before the break?

A. Yes.

Q. And you said that the chart was broken up into basically categories, and if you look under the first one, where it says "Fresh," where -- in the very top, it says, "Total Fresh Ad Equivalency," could you just explain what that would refer to?

A. Okay. Sure, if it's not too repetitive, I'm happy to explain it.

So, what that refers to is that under -- it mentions that it appeared in press clippings that mention fresh pomegranates, the fruit; of those, the amount of pages -- if you had purchased the amount of pages as an advertisement, it would have cost you that number there.

Q. And when you say "that number there," you're looking where it says the 167 total fresh --

A. Right.

Q. -- here?

All right. And going under where it says

"Juice: Total Juice Ad Equivalency," would that be referring to a similar thing, but articles that involved juice?

A. Sure. Now, you can see that of those articles, of those 550 articles, 360 were nonbranded, non-POM branded, and 190 were branded. So, you can see how, by 2006, there was a lot being written around non-POM related products, as you see, in fact, with fresh as well.

And then you've got circulation, so some magazines are widely circulated; some are not; some of them have a very small viewership or readership in this case. And so that's the number of -- it's supposed to be some measure of how extensive the reach is.

Q. Okay, thank you.

And then where it says "Total Juice/Fresh Ad Equivalency," would that then be talking about articles that were dealing with the top two combined, or is it referring to articles where they mention juice and fresh pomegranates?

A. The latter.

Q. The latter? Okay.

All right, we are done with that document,
Mrs. Posell.

And I'd like to show you one of the articles

from the 2003 press coverage book that we also mentioned. If we could show CX 0430, page 1. And this is the 2003 --

JUDGE CHAPPELL: Go ahead.

BY MS. DOMOND:

Q. -- press coverage. I'm sorry.

And, Mrs. Posell, does that look like an excerpt from the 2003 press coverage book that we were talking about earlier?

A. No, it -- I mean, it's the cover page of that book, just like the cover page of the 2006 book. Go ahead.

Q. Right. Is that -- so that the cover page is similar to the 2003 book that I showed you earlier when we were talking about the press coverage books? Is that correct?

A. It appears to be the cover of the one in your hand, yes.

Q. All right. And if you could turn to page -- it would be the 0003 after the CX number, there's an article in the press coverage book. The article -- if you could look at the second to last paragraph, if you look where -- at the very bottom of the last sentence, and it quotes you as saying, "POM Wonderful is a product that carries a very strong health and medical message."

Did you make this statement to any reporter for The Business Journal?

A. So, this was 2003. I don't recall making that statement. It's in quotes, as a quote from me. As I mentioned earlier, quotes are sometimes accurate, sometimes misrepresented. I don't recall a conversation in 2003, but it appears to be a quote from me.

Q. Do you have any reason to believe that the quote in the article is an inaccurate depiction of what you said?

A. I have no reason to believe that, but it -- you know, experience tells me that you can't always see a quote and be sure that it's exactly written as you said it.

Q. Okay. But POM included this article in the 2003 press coverage book. Is that correct?

A. Yes, for all the reasons that we talked about, because it's coverage on the products and it's -- it was for internal use, and obviously, this was an article written by a journalist based on conversations, it appears, and information he would have received from us.

Q. Do you perhaps recall anyone at POM telling you that they had a problem with this quote?

A. A problem with the quote? I don't remember. This is over -- over I don't know how many articles. I

don't recall any conversations about this particular article.

Q. And if you would kindly turn to the next page of CX 430, it's an article in The Produce News, December 8th, 2003. And if you would turn to what's actually marked as page 5, 0005.

A. It's not in this handout that you've given me.

Q. Are you looking at the CX --

A. This goes to 0004.

Q. Are you looking at the CX 430 number, where it says CX 0430?

A. I am.

Q. And it says 0004, but it jumps from 4 to -- it doesn't have the number 5?

A. Correct.

MS. JOHNSON: May I approach?

MS. DOMOND: May we approach and give her a different copy, Your Honor?

JUDGE CHAPPELL: Do you want to ask her about the one on the screen?

MS. DOMOND: If she can read it. Yeah, I'm sorry. Thank you.

BY MS. DOMOND:

Q. If we could zoom in on the third full paragraph in the bottom left.

The article states, "Mrs. Posell also sends out press releases touting various positive aspects of pomegranates, from their uniqueness to their health benefits."

And also, the -- if we look at the last full paragraph of that same part, it says, "Mrs. Posell uses similar language in discussing her strategy. 'You have to have a focused and dedicated public-relations effort. You need a strong and credible story, and you have to be prepared to tell that story very quickly. Public relations is a very powerful vehicle that you can use to get your message across.'"

Do you remember making any statements like this, Mrs. Posell, to any reporter from The Produce News?

A. No.

Q. Do you have any reason to believe that a quote in this article is an inaccurate depiction of what you said?

A. No. I have no reason to believe that other than what I've stated earlier.

Q. And POM included this article in the 2003 press book. Is that correct?

A. I -- I can't recall, but if it came out of the book, yes, which we endeavor to include all articles that related to POM -- fresh pomegranates and

pomegranate juice and any other products in the press clippings book.

I can't tell you if it was in that book or -- and there's no -- what was in the book wasn't more important than anything that was not in the book. It was all just in the book. Everything that we could get our hands on was in the book.

Q. So, I don't understand. You said that things in the book might not be more important than things that weren't in the book, but then everything would be in the book?

A. No. I said -- so, you said was it in the book, as though there were some significance to it being in the book. There is no -- I'm just saying, if it was press clippings and we knew of its appearance, it would be in the book.

Q. Okay. Do you recall whether anyone expressed any problems or -- with your interview or the -- the depiction of your statement?

A. About public relations?

Q. What you said in the article, you know, if anybody at POM said that it was beyond the line or anything of that sort.

A. About what? What part of what I said?

Q. About any of it, I guess. Did anyone have any

concerns with what you said or express any concerns?

A. I -- I don't recall anybody expressing any concerns about this, but I don't recall this article and I don't recall this quote that I'm looking at, which is about public relations and not particularly about POM.

Q. Okay. Do you -- and I understand you don't recall being interviewed, but do you, by chance, know what "a strong and credible story" is or what that refers to?

A. As I mentioned earlier, public relations is about conveyance of the facts.

JUDGE CHAPPELL: I have a question, a relevance question. Is it the Government's contention that statements such as these we're going over are within the scope of the violations claimed in the complaint?

MS. DOMOND: Well, it's the Government's position, Your Honor, that market -- that POM used PR as marketing the POM products, and so it is relevant.

JUDGE CHAPPELL: So, you are claiming these are advertisements?

MS. DOMOND: No, I'm not claiming that the quotes are advertisements. I'm just asking about her strategy. It talks about the PR strategy. So, Your Honor, I was just asking about the POM PR strategy and how the company used PR.

JUDGE CHAPPELL: All right.

MS. DOMOND: Thank you, Your Honor.

BY MS. DOMOND:

Q. And going back to where it says "Public relations is a very powerful vehicle that you can use to get your message across," what was the message that was trying to be -- to get across?

A. So, here I'm clearly talking about public relations, the profession. So, when you -- with good public relations, you can get your message across. That's what that statement -- it doesn't refer to any particular message, and I don't -- from what I can read, it's not referring to any particular company or brand. He's asking me about public relations, "he" being the journalist.

Q. And, Mrs. Posell, you had mentioned earlier that you were involved in issuing press releases by POM. Is that correct?

A. Yes.

Q. Were you responsible for preparing or issuing any press releases that cited to scientific research on pomegranates or POM products?

A. Can you repeat the last part of your question, please?

Q. Were you responsible for preparing -- were you

responsible for issuing any press releases that cited to scientific research on pomegranates or POM products?

A. There were press releases issued that cited research, yes.

Q. And what was the purpose in citing to scientific research in press releases?

A. You'd have to show me a specific example for me to answer that accurately.

Q. I guess -- okay. We can do that.

If -- Your Honor, can we -- well, we can see if -- if you can't see it on the screen, we will get it.

If you could show, please, CX 0013-0001.

A. I'm not sure I can see that, actually. It's slightly blurry.

Q. Well, we will blow it up, if we could just blow up the heading of the email.

Mrs. Posell, this is an email chain between you and Risa Schulman at POM Wonderful. Is that correct? And it's also to --

A. What you have blown up is an email from me to All POM Wonderful, Roll Consulting, and Risa Schulman. Okay, now I can see the top, yeah.

Q. Can you just tell me who Risa Schulman is?

A. Risa Schulman was an employee of POM Wonderful.

Q. Okay. And do you know what the subject of this

email is referring to?

A. No.

Q. And if we could just go to the first quote in the bottom email --

JUDGE CHAPPELL: That email is dated 2003. You might want to let her review it before you ask if she is familiar with it.

MS. DOMOND: Okay, Your Honor. May we approach to give her a copy of the --

JUDGE CHAPPELL: Go ahead. I suggest you have copies of your exhibits handy to hand the witness.

MS. DOMOND: I'm sorry?

JUDGE CHAPPELL: Make sure you have copies of exhibits ready to hand the witness; that way you don't have the snafu about a page number or something that was going on there.

THE WITNESS: (Document review.)

(Discussion off the record.)

BY MS. DOMOND:

Q. Okay. Mrs. Posell, again, have you had a chance to review the email?

A. I have. Thank you.

Q. Okay. And if you could please look at the first email in the chain. It's at the bottom. That's an email from you, as you were saying, to all of POM

Wonderful, Roll Consulting, Risa Schulman, and there's a few other CCs, and the email is sent on January 8th, 2003. Is that correct?

A. Yes.

Q. And the article says, "POM Wonderful Announcement" -- I'm sorry. The subject of the email is "POM Wonderful Announcement - January 9, 2003."

Do you know what that subject is regarding?

A. Yes. When I read this document that you have given me, I can see that that's regarding a press release that's attached to the back of this.

Q. And when you're saying to the back, you're talking about the remainder of Exhibit CX 13. Is that correct?

A. I'm afraid I don't know what this exhibit's called, but it's what you handed me.

Q. Okay.

A. It's the second through fourth page of -- fifth page.

Q. And can you please, Mrs. Posell, look at the first paragraph of that email that we were talking about, the first email, and where it says, "Below and attached is a press release that is being distributed to journalists and speaks to the health benefits of pomegranate juice and to the medical research that has

been conducted. The research will also be distributed over a Business Wire on January 9 at 8:15 a.m."

Can you please just let me know what Business Wire is?

A. Business Wire is a service that is used to distribute news.

Q. And the paragraph continues that, "This means that it will probably be seen by a wide audience, although it is targeted at the Southern California media. It will also appear on Yahoo!"

Why would it be seen by a wide audience?

A. Because the way you distribute, you distribute by sections, and so what happens is you -- this is a -- it's kind of a technical point on distribution. So, you distribute for the least amount of money to the widest audience. You do what's called a corridor.

So, a corridor is Southern California media, but in actual fact, it gets picked up more broadly by some of the national news wires, such as Yahoo!, for example. So, it's a news feed, but from a cost perspective, you don't pay for national distribution.

But you do have the opportunity to -- for some pickup from other national feeds, and as you can see, it's targeted to food editors, as well as health and medical editors, too.

Q. Okay. And can you please look at the second paragraph of that same email for me? And it says, "This release is timed to coincide and support our marketing efforts in Southern California. It communicates two critical messages -- that pomegranate juice contains more antioxidants than other beverages that are typically considered to be high in antioxidants and -- that drinking pomegranate juice daily confers heart health benefits by lessening factors that contribute to atherosclerosis (plaque in the arteries)."

What was the purpose of having release timed to coincide with marketing efforts?

A. Because you release it -- like the example I gave about Everybody's Nuts. If you have a cohesive program, you are likely to get, generally, more awareness.

Q. Was part of the purpose to give credibility to advertisements?

A. No.

Q. Was part of --

A. At that time, 2003, you -- I mean, I don't believe there was even an ad campaign going on at that time. So, this is talking about -- we were barely getting going. This is the really early days of POM. It wasn't even -- January 2003, the product wasn't even

available nationally. It was very, very early in the -- in the business cycle.

Q. Was a purpose to promote the product to consumers?

A. No. The purpose was to -- was to -- was to provide facts around -- that pomegranate -- these two facts that we've talked about to the journalists who would be interested in knowing what pomegranate juice was all about and why, from a factual perspective, as conveyed by the citations in the press release, there was evidence to suggest that it was good for the health -- good for your health.

So, that was the purpose of the release, to convey those facts in a structured, organized fashion, which was the intent of the press release.

Q. Okay. And, Mrs. Posell, can you please turn to what is page 2 of that exhibit?

A. Yes.

Q. If you need to take a moment to look at that.

A. (Document review.)

Q. Do you need more time?

A. That's fine. Thank you.

Q. The press release attached to this email, does it appear to be the final release that was distributed to Business Wire and Yahoo!?

A. I can't answer that unless you showed me the -- what was on the news wire. You'd have to show me that. This is -- this is an internal copy that was probably in a press kit. So, I -- I don't know the answer to that, frankly.

JUDGE CHAPPELL: I think she has referred to that attachment twice. Do you have the attachment? If not, then you need to move on.

MS. DOMOND: I'm sorry? The attachment?

JUDGE CHAPPELL: She says something is missing she needs to see. This is the second time I've heard her say it's referring to a document she doesn't have in front of her. Am I correct?

THE WITNESS: So, in this case, what's -- to answer that question, I would have to see the printout of the Business Wire press release.

JUDGE CHAPPELL: And do you have that?

MS. DOMOND: Right. This was the attachment to the email. It --

THE WITNESS: You asked me if this was what went over the Business Wire. I can't answer that, because I don't have what went over the Business Wire in my hands. I don't see that here.

BY MS. DOMOND:

Q. All right. And, Mrs. Posell, do you recall me

asking about this document at your deposition?

A. Not -- I -- yes, I believe so. Yes, I do.

Q. And at your deposition -- for reference, it was starting at page 102, on line 23. I asked you if this was a final copy of the press release that had gone to the public, and your answer was, "It looks like it is, yes."

A. Correct.

Q. Do you still believe that it is?

A. That's not the same question as you just asked me, if this was what went out over Business Wire. What I'm telling you is, is this a copy of what went out over the Business Wire? This is not it.

Q. But this is a copy that went out to the public?

A. No. This went out to the people on the email, POM Wonderful, Roll Consulting, Risa Schulman.

Q. Okay. So, in your deposition, can you explain what you meant by "the public," then?

A. So, repeat the -- repeat what I said in my deposition.

Q. I asked you:

"QUESTION: Do you know if this is a final -- a copy of the final release that would have gone out to the public?"

"ANSWER: It looks like it is, yes."

A. So, this would have been -- this looks like it was in the press kit. So, the public, meaning the media, would have gotten it from the press kit. This is internally formatted. It is formatted -- it's not a copy of what went out to Business Wire. So, I can't answer if it's the final copy that went out over the wire to the broader audience that was picked up by the media, because I can't see that copy.

This is what -- there was a copy that was contained in our press kits, but this isn't in a press kit. It's attached to an email. So, I can't answer your question with certainty, because I'm seeing an email with a document attached.

Q. Okay. Mrs. Posell, if you could look to the second paragraph there on the same page, starting with, "The research shows that antioxidants found in pomegranate juice may also be more important than previously thought in promoting optimum cardiovascular health." And then it goes on to say that, "Medical research shows that daily consumption of the equivalent of 8 fluid ounces of POM Wonderful pomegranate juice confers heart health benefits by lessening factors that contribute to atherosclerosis," and it goes on to talk about the American Heart Association, cardiovascular disease being the number one killer in America.

Is this what you meant earlier about conveying a message about pomegranate juice, that -- would this be conveying a message about pomegranate juice?

A. So, these are -- this is citations. You see the citations, 1 and 2, taken from the -- the -- there's a quote of the citations in the back. So, these would have been lifted from those reports. One's a -- it looks like it's a paper, and the other one is a CDC/NCHS, and the American Heart Association report.

So, yes, this would -- this would have been conveyance of facts that were contained in those reports. That's why they're cited. So, yes, that would have been.

Q. Did anyone approve this language?

A. I don't remember.

Q. Okay. Would it be typical at this time, in 2003, that you would show a press release to anyone for review or approval?

A. Yes.

Q. And typically, who would you show it to for review?

A. So, it would be a collaboration, and typically during drafting, it would be seen by people that were involved in the business to ensure its accuracy. And then this obviously would -- as the email indicates

before, it looks like Risa helped with it, and then it would be seen by, you know, others on the team before it was issued, so everybody knew what was in it and could confirm if there were any issues with it not being factually accurate.

Q. And would it be typical to have press releases reviewed by anybody you reported to, such as Mrs. Resnick?

A. I mean, typically, I think, you know, Matt Tupper would look at something like this, make sure it was accurate. I can't recall if he looked at this one. I don't even recall if he was actually involved in the business at this point. It was the very early days, and I don't recall if Lynda Resnick would have looked at this particularly either. 2003 was a long time ago.

Q. I understand.

Did anyone have to approve press release language before it was released to the public or sent over the Business Wire or included in press kits?

A. Well, it's incumbent on the company to make sure that the -- that the information is -- is, you know -- is as accurate and as fact-based as it can be. That's the purpose of a press release. So, you know, we all had a collaborative responsibility to make sure that it was -- that it was accurate.

Q. We are done with that document.

A. Thank you.

Q. And returning to the 2006 press coverage book, if we could show CX 433, page 1. And if we could go to the second page of CX 433.

A. Do I -- is this one I have? Should I look at my copy?

Q. I think you have 2003. If you need another copy, we can give you one, if it's not clear on the screen.

I'm sorry, actually, if you can -- if you can blow up -- I am actually going to 433-4. This was an article that was included in the 2006 press coverage book, The Produce News, September 4, 2006. Do you see that?

A. Yes.

Q. If you could look at the very last column of that page of the article, it's the -- starting on the second paragraph -- the second paragraph from the bottom, and it says, "Mrs. Posell agreed that the pomegranate is increasing in popularity each year. She said that every time new research is released touting one health benefit or another, there is a spike in sales. The study at the beginning of the summer linking the consumption of pomegranate juice to a reduction in

prostate cancer was especially helpful, she said."

And then, if you look at the very last paragraph in that same column, it says, "Mrs. Posell said that POM Wonderful can see the results in increased sales every time a new study surfaces."

Mrs. Posell, do you recall making any statements to a reporter for The Produce News in approximately 2004?

A. I don't.

Q. Do you have any reason to believe that the quote in this article isn't an accurate depiction of what you said?

A. You know, it's interesting, because it's always very hard. As we've seen in the press clippings books, one of the things that PR professionals wrestle with is how to show value. It would be great if you could show an immediate link between press coverage and sales. You typically can't.

It surprises me that this is in here, because it's very hard to measure. It's very hard to show that as fact. It's in here, and I don't recall saying it, but -- it almost surprises myself that I would have said that.

Q. Do you have any reason to believe that it's inaccurate?

JUDGE CHAPPELL: I think she just stated a reason to believe.

MS. DOMOND: No, that --

JUDGE CHAPPELL: Next question.

MS. DOMOND: Your -- yes, Your Honor.

BY MS. DOMOND:

Q. And POM included this article in the press book, correct, in the 2006 press coverage book we were talking about?

A. Yes. According to what you have given me, it was in there, yes.

Q. Do you recall whether anyone at Roll or POM gave you any feedback about this article?

A. No.

Q. Was increased sales a motivator in issuing press releases, citing research on POM juice and POMx?

A. No. As I say, press releases typically don't generate sales, so no, that wasn't a motivator. The motivator was to convey facts.

Q. Okay. We're done with this exhibit.

And, Mrs. Posell, earlier we were talking about sometimes there would be press releases that cited to -- to scientific research.

A. Would you like me to still look at the screen?

Q. Oh, yeah. Thank you.

Is that correct?

A. Yeah. Thank you.

Q. Earlier, we were -- you mentioned that sometimes press releases cited to scientific research. Is that correct?

A. Yes.

Q. If we could show you an email about a proposed press release, CX 62.

If we could approach the witness, Your Honor?

If you could just let me know once you've had a chance to look at that document.

A. (Document review.)

Q. Do you need more time?

A. No, thank you.

Q. If you could look at the first email in the chain, it's the email --

A. There's only one email in this chain.

Q. On CX 62, there's a top and a bottom email. The top email is the one that's from you to L. Resnick.

A. Okay, yeah.

Q. So, the first email in the chain.

And does L. Resnick refer to Mrs. Resnick?

A. Yes.

Q. And you also sent this email to Matt Tupper. Is that correct?

A. It looks like it was CC'd to Matt Tupper and John Regal.

Q. And the subject of it was, "Press release announcing the health benefits of POMx." Is that correct?

A. Yes.

Q. Okay. And if you could read the -- look at the first sentence of the first paragraph of that email, where it says, "Please find attached a draft of the proposed press release about POMx. This press release supports our overall strategy to explain the power of the Wonderful variety of pomegranate," and it also goes on at the end to say -- I'm sorry.

Is the power referring to the health benefits of POM Wonderful pomegranates?

A. No. It's referring to just the -- I mean, it was a -- it's a great fruit. It's a great product made from a great fruit. It's just -- this is an internal email talking about the power of this -- we talked a lot about the power of this fruit.

Q. So --

A. It says "the power of the Wonderful variety of pomegranate."

Q. And what was that power that you were referring to?

A. Just -- it's just really a good fruit. I mean, it's a great fruit. It's -- you know, the terminology is -- is language that we'd use in -- you know, it's a powerful -- powerful fruit.

Q. And still in that first paragraph, the next sentence, it says, "We need news, and this press release has it!!"

A. Um-hum.

Q. What did you mean by that?

A. So, press releases can only -- you know, should only be issued when there's great facts and it's potentially a news hook. So, here, it looks like we are about to develop products that use POMx.

POMx is a very different and kind of somewhat hard to describe thing. It's not like POM juice, insofar as it's made differently, and it's not like pomegranates, which are a fresh fruit.

And it looks as though we are talking about some of the research that's been done on POMx and looking to release an announcement about that, which is not attached to this, so I'm not sure what -- what the press release actually is, but I can make that assumption.

Q. Well, we're not asking about the press release, per se.

Going back to the subject of the email, where it

says, "Press release announcing the health benefits of POMx," you are saying the power wasn't referring to the health benefits or wasn't talking about health benefits. Can you just explain the nature of the subject of your email?

A. I would assume that the subject of the email is consistent with the subject of the press release.

Q. So, the press release would be announcing the health benefits of POMx?

A. I mean, it would be speculation on my part, because I can't see it. But yes, I would assume so.

Q. And if you could go to the next -- after what we just read, the "We need news," if you go to the next sentence, it says, "I used the prostate cancer study to substantiate our statements about POMx. Look at how far we have come with pomegranate juice, watch this space when it comes to seeing what POMx can do for the body."

So, can you just explain how you used the prostate study to substantiate the statements about POMx that were referred to in the press release?

A. I don't recall exactly how we came to include that in the press release, but what I can tell you about, you know, how -- again, when you're looking for facts, you're looking for things that support. So, if the prostate cancer study supported POMx, then that

would have been a good citation to have used in the press release.

JUDGE CHAPPELL: What did you mean when you said "to substantiate" the statements?

THE WITNESS: So, to substantiate, to show it was fact-based, the statements were fact-biased. So, if we were making statements about POMx, we had to give facts -- we had to support those statements in a press release. Ideally, you need to support your statements. So, you support it using citations from -- from scientific research.

JUDGE CHAPPELL: Okay. Thank you.

BY MS. DOMOND:

Q. Would it be used to substantiate prostate cancer claims?

A. No. The -- I don't -- I don't understand your question. I'm sorry.

Q. I guess I just -- you said you would substantiate the facts. So, the study you mentioned was about prostate cancer. So, I -- I guess I just don't understand what you mean by "substantiate."

A. So, I -- again, I -- I don't have the press release. I have the statement. So, I assume that the prostate cancer study spoke to POMx, and there was a link between the two, and that's why -- that's why it

was -- it was used, or it referred to something that was consistent between POMx and POM juice, and, therefore, it was a viable source to substantiate whatever it is that the press release that we're talking about was referring to.

But, again, it's hard for me to -- I don't recall this email, and I don't recall the press release, and I don't have the release in front of me. So, it's a little hard for me to answer your question.

Q. If you could just go to the second to the last paragraph of your July 3rd, 2006, email, where it says, "Regarding timing: We can put this out whenever you like. It might be wise to start to soft pitch it this week but to release it officially next Monday."

I guess next Monday from July 3rd date would be July 10, 2006. Is that correct?

A. I don't know. If you say so.

Q. A week from July 3rd would be July 10th?

A. Yes.

Q. If we could actually go to CX 0065, where you were asking to see a copy of the press release.

If we could just approach the witness, Your Honor, and give her a copy?

JUDGE CHAPPELL: Go ahead.

BY MS. DOMOND:

Q. And this is a press release titled "POMx, a Highly Concentrated Form of Healthy Pomegranate Antioxidants, Becomes Available to Consumers for the First Time." And that was released on July 10th, 2006.

And you are the contact on this release, correct?

A. Again, my name is at the top of this release.

Q. Does this July 10th, 2006, press release look like a copy of the final press release for the POMx release that was mentioned in your July 3rd email?

A. I can't answer that with certainty. It looks like it -- it is, yes.

Q. Does the format of the release look like the format of the final press release?

A. It does, yes.

Q. Okay. If we could just go back to CX 62, the email that we were talking about that's discussing the press release announcing the health benefits of POMx.

A. Yes.

Q. And if you could please look at the second paragraph of that same email, where it says, "We support this statement by citing two researchers and quoting them. The quotes still have to be verified but they are adaptations of verbiage that they supplied to us so I don't believe that the changes I made will be viewed as

problematic. Feel free to edit these quotes if you think they need to be changed. Overall, it lends credibility to this release to have both researchers quoted."

Do you recall for what reason you made changes to those researchers' quotes?

A. To -- for what reason I made changes?

Q. Right. In your email, you said that you made changes to the quotes.

A. Well, I said they are adaptations of the verbiage -- verbiage that they supplied to us, so I -- so, they obviously gave us statements or we had statements that we could use, and maybe we had used them in prior -- I don't know, but -- so, in order to make them fit in the press release, they need to be in a certain format. So, I'm sure I edited them to make sure that they were in the format required.

Q. And when you say "it lends credibility to this release to have both researchers quoted," do you mean citing the two researchers made the statements about the health benefits of POMx appear more credible to consumers?

A. No. It's -- no, that's not what I mean by that.

Q. Can you explain what you meant by that?

A. Yes. It -- in a press release, you usually have

quotes from people, and a press release usually will quote a person who is a subject matter expert. And so in this release, given that we're talking about POMx and it's citing -- let's see, actually, it's not -- we're talking about POMx. This is obviously -- we are citing one study, which in this case Dr. Aviram did. It makes sense to have him quoted in here, because he's -- he would be an expert.

Q. Okay. And if you could please turn back to the press release on CX -- Exhibit CX 65, and if you could look to the second paragraph, where it has Dr. Aviram's quote, and it says, "According to Michael Aviram, who was at the forefront of initial research on pomegranates, the research on POMx looks very promising."

And it goes on, "Commenting on this research, Professor Aviram remarks, 'The results showed that POMx is as potent an antioxidant as pomegranate juice and just like pomegranate juice may protect against cardiovascular as well as other diseases.'"

Was this the adapt -- adapt -- adapted language that Dr. Aviram quoted?

A. Yes. And then also, as you would expect, every press release like this quotes -- the person who's quoted proves it. You never want to misquote somebody.

Q. And did Dr. Aviram provide the quote to be used in the press release?

A. Well, it looks as though he didn't provide this exact quote, because of what we've just talked about, but I am -- whatever was -- ended up in the press release would have been -- you know, he would have approved.

Q. And if we could just show -- pass to the witness CX 813. It's an email chain.

If we could approach the witness, Your Honor?

Once you have had a chance to look at it, let me know.

A. (Document review.)

Q. Are you ready, Mrs. Posell?

A. Yes.

Q. Okay. And looking at the first email in that chain from Michael Aviram to Mark Dreher, yourself, Harley Liker, and Matt Tupper, CC'ing, I guess, himself, is this the quote that Dr. Aviram provided in the email quote?

A. I don't know.

Q. Going back to the press release, Mrs. Posell, CX 65, and if you could look at the first paragraph, it says, "POMx research comes at the benefits derived from the Wonderful variety of pomegranates that are used to

make POM Wonderful's healthy pomegranate juices. It also has a similar biochemical profile to pomegranate juice since both contain a diverse range of phytochemicals, of which polyphenols make up a large proportion."

Actually, I am going to strike that. If we -- sorry.

If we could just turn to page 2 of CX 65, where it says -- in that very first paragraph, it's talking about the POMx research, "derived from the Wonderful variety of pomegranate are, once again, being noted by the worldwide medical community. Recently, the American Association for Cancer Research published research that indicates that a daily pomegranate regimen has a positive effect for men with prostate cancer. Specifically, drinking 8 ounces of POM Wonderful pomegranate juice daily prolonged post-prostate surgery PSA doubling time from 15 to 54 months." And then it talks about PSA being a protein marker for prostate cancer.

Is this what you meant by using the prostate cancer to substantiate statements about POMx?

A. We didn't use prostate cancer to substantiate statements. I didn't say that.

Q. I'm sorry. You said you used the prostate

cancer study to substantiate statements about POMx.

A. Yes.

Q. Would this be an example of that?

A. It would, yes.

Q. And looking at the second paragraph on the same page, it's a quote -- there's a quote from Dr. Heber, which says: "Basic studies indicate that the effects of POMx and POM Wonderful pomegranate juice on prostate cancer are the same. The most abundant and most active ingredients in pomegranate juice are also found in POMx."

Mrs. Posell, did you get permission from Dr. Heber to quote him in this press release?

A. Yes.

Q. Did Dr. Heber review this quote?

A. Yes.

Q. And did you solicit or did POM solicit the quote from Dr. Heber?

A. Yes.

Q. And if you could go back to CX 433, page 4, that's the 2006 press coverage book that we were looking at. Going back to that same section we were talking about, at the end of the second to the last paragraph in the last column, and let me know once you've had a chance to get there.

A. Yes.

Q. At the end of that second to last paragraph, you said, "The study at the beginning of the summer linking the consumption of pomegranate juice to a reduction in prostate cancer was especially helpful."

Is the press release we were just discussing the press release you were mentioning in this article as promoting the sales of pomegranate juice?

A. I assume so, given the timing, that that would -- and actually, I have the wrong thing pulled up on the screen. Can you just show me the --

Q. I think you have the right thing in your hand, though. It's the -- if you look at the bottom.

A. Yes. I just don't remember seeing something like this, but -- again, I don't recall. It was a long time ago.

Q. And if we could please show Mrs. Posell CX 43.

If we could approach the witness, Your Honor?

If you can take a moment and just look at that, Mrs. Posell.

A. (Document review.)

Q. And if we could blow up the heading of the email, please.

Mrs. Posell, this is an August 8th, 2005, email from you to Mrs. Resnick and Mr. Tupper. Is that

correct?

A. Yes.

Q. And if we focus on the first paragraph of that email, and looking at the first paragraph, Mrs. Posell, this email refers to a press release for a medical paper by Dr. Dean Ornish to be published in the American Journal of Cardiology in September of 2005. Is that correct?

A. Yes.

Q. And in the -- in the last sentence of that first paragraph, it says, "In the past" -- from the first paragraph to the second, it says, "In the past, it has best served POM to credit The Resnick Foundation rather than the company name or individuals who can be tracked to POM.

"I think we should change everything in bold to...and The Resnick Foundation."

How would it best serve POM to credit The Resnick Foundation, rather than the company name or individuals who could be tracked to POM?

A. Well, so, the research I had seen was on the POM Wonderful pomegranate juice, and that would have been made evident in the research. As far as the Resnicks are concerned and the individuals, the Resnicks at this time had a low profile, and The Resnick Foundation was

pretty much unknown.

So, linking -- linking research to a company name is sometimes problematic, because people assume that somehow the results are biased in the company's favor, and in this case, we wanted to maintain the credibility of the research as it was conducted at a very credible institution. So, that was the thinking here.

It seems that from the email, although I -- I mean, I really can't recall, but in the past, The Resnick Foundation had been used in research and cited rather than individuals' names or POM Wonderful. So, I assume that that was probably the rationale.

Q. And you sent this email to Mrs. Resnick. Did she agree that it was not in the best interests to mention POM and individuals in the --

A. I'm sorry. I candidly don't recall what her comment was.

Q. Do you recall if Mr. Tupper agreed? You also sent the email to him.

A. I don't know. I guess the best thing to do would be to look at the research paper and see how it ended up.

Q. Okay. So, if it's in the research paper, what does that -- you would assume that Mr. Tupper and/or

Mrs. Resnick --

A. I won't assume anything. However it is in the research paper is how it ended up, but there could have been any number of influences on what made that happen, because, you know, disclosure is key in research. So, there may have been things that I was unaware of in August 2005 when I wrote this.

Q. Do you recall if Mrs. Resnick or Mr. Tupper followed up with you on this -- on this email?

A. I don't recall. I'm sorry.

Q. If we can go to the third paragraph of that same email, where you wrote, "The less obvious we make the link between any funding that POM provides and the research, the more beneficial the research is perceived to be by the uninformed public that we are seeking to influence!"

Can you explain what you meant by that?

A. So, it's the same -- my response is -- is similar to what I stated earlier insofar as if the public thinks that an industry player, a company, is behind research, they view it less credibly, whereas the truth of the matter is that industry has to fund research in order for it to happen. The public doesn't necessarily understand that as the practicality of the world. So, that's what I mean by that.

Q. And would the uninformed public refer to the public in general?

A. That would refer to people who don't understand what I just said.

Q. And you said that you're seeking to influence the uninformed public. What were you trying to influence them to do?

A. To understand that the research that POM had undertaken was credible, because it was funded by POM, not -- you know, not influenced by POM. It was independent.

Q. All right.

And if we could please -- Your Honor, if we could approach the witness and hand her CX44?

JUDGE CHAPPELL: And what's that exhibit?

MS. DOMOND: These are emails between Mrs. Posell, Mrs. Resnick, and Tupper regarding this -- the language in the -- in the same press release relating to this email we were just discussing.

JUDGE CHAPPELL: Okay. How are we doing on timing?

MS. DOMOND: We -- yes.

JUDGE CHAPPELL: Did you verify what time this witness needs to vacate the building?

MS. DOMOND: At 5:00.

JUDGE CHAPPELL: All right. Go ahead.

BY MS. DOMOND:

Q. Okay. And, Mrs. Posell, would you take a moment to just look that over for me and let me know?

A. Would you like me to read the document?

Q. No. I just wanted to make sure you had a chance to look at the document, and then I'll ask you questions about it.

A. Yes. I can see it.

Q. Okay. If we can just blow up the heading of the document.

Mrs. Posell, these are emails between yourself and Mrs. Resnick, Mr. Tupper -- and Mr. Tupper. Is that correct?

A. Yes.

Q. And the subject of the matter -- the subject of the email is "Dean Ornish." Is that correct?

A. Yes.

Q. And this was a September 16th, 2005, email from you. Is that accurate?

A. That -- it appears to be an email from me sent on September 16th, yes.

Q. Okay. And at the bottom of the email is a copy of what appears to be a press release. Is that correct?

A. Yes. At the bottom is actually a copy of the

Business Wire release. So, this is the release that went out over Business Wire.

Q. Okay. So, this would be a final copy of the release that went out across Business Wire?

A. This is the one, yes.

Q. Okay. And do you know whether this is the press release we were just discussing in that earlier August 8th, 2005 email, that was CX 43?

A. I have no idea.

Q. And looking at the first paragraph of that email, your -- you mention that Dean Ornish is upset about something to do with the press release. Is that correct?

A. Would you like me to read it? Hold on a minute, let me read this.

Q. Um-hum.

A. (Document review.) Yes, it appears he was upset by something.

Q. Do you recall what he was upset about?

A. No.

Q. And going back to the press release, Mrs. Posell, the title of the press release is "Pomegranate Juice May Affect the Progression of Coronary Heart Disease." And then if we could blow up -- you have already -- thank you.

According to the first paragraph, the study discussed shows that pomegranate juice has an effect on coronary heart disease. Is that correct? I can read it for you, if you want.

A. It says it may. It may affect the progression of coronary heart disease, as published in the American Journal of Cardiology, yes.

Q. And it says that coronary heart disease is the number one cause of death in the U.S. and in most of the world, correct?

A. It states that, yes.

Q. Was it -- I'm sorry.

Was it POM's belief that pomegranate juice may affect the progression of coronary heart disease?

A. Well, it wasn't POM's belief. It was -- I mean, I -- you know, again, I haven't read this in its entirety, but what is stated in scientific research is what's stated. It's not the company's belief.

JUDGE CHAPPELL: She's making a good point. Are you asking this witness was it POM's belief or are you asking her is that the intent of this document she's looking at?

MS. DOMOND: I'm asking her if that was POM's belief.

JUDGE CHAPPELL: Same answer?

THE WITNESS: Same answer.

BY MS. DOMOND:

Q. All right. And if you could please go to the second paragraph of that same email, and you wrote, "Per Dean's detailed instructions, we issued the release that he ended up sending to me, at the time that he wanted it sent out. Since it is our release, we added the POM Wonderful boilerplate and I deleted his paragraph about it being funded by the Resnicks since we never cite the source of funding nor do we link the Resnicks to POM in press releases."

If you could please turn to page 2 of that email, at the end of the release, where it starts, "About POM Wonderful," and there's several paragraphs after that.

Is that the boilerplate language you were referring to that you added?

A. Yes.

Q. And what was the purpose of adding that language?

A. So, much as in the same way as you include quotes in press releases, the issuing party always includes a boilerplate. This is a boilerplate, a standard press protocol.

Q. Mrs. Posell, did POM use a PR program in which

individuals told their own health benefit stories alongside third-party credible parties, such as physicians and scientists?

A. I don't recall.

Q. If I showed you an email that perhaps mentions that, could we maybe see if it might help your recollection?

A. Sure. Sure.

Q. If we could show CX 54, please.

If you don't mind, if we could approach the witness, Your Honor?

And, Mrs. Posell, this is an email chain between yourself and Staci Glovsky. Is that correct?

A. Yes.

Q. And the subject of the email was "Discussion with Lynda." Is that correct?

A. Yes.

Q. Do you know what that refers to?

A. If you give me a minute, I'll read the email, and then I can maybe answer your question. (Document review.) Okay, thank you.

Q. Do you recall what this subject was referring to?

A. It sounds like Staci -- I mean, I -- again, I'm speculating that -- I mean, it looks like Staci had a

conversation with Lynda, and that's why it says "Discussion with Lynda," but I'm deducing that from reading this, just like you can. So, I don't know if I'm accurate, and I shouldn't speculate. So, I -- I --

Q. When Ms. Glovsky sent this email to you entitled "Discussion with Lynda," did you ask her if she had a discussion with Lynda?

A. I don't recall this email. I'm sorry.

Q. All right. In the email, Ms. Glovsky writes, "Lynda" -- if you could focus on it -- "Lynda was highlighting today the main problem that supplements face -- they bring a multitude of benefits but DSHEA (Dietary Supplement Health & Education Act) won't allow disease claims. I think this is where PR comes in and can help communicate a story."

And it continues, "While POM cannot tell these stories via advertising, the Web site, or product label, POM can run PR programs in which these individuals can tell their own stories (alongside 3rd party credible folks such as physicians and scientists)."

So, going back to my question, did POM use PR programs in which individuals told their own health benefit stories alongside third-party, credible folks, such as physicians and scientists?

A. Not -- so, I don't recall if that was the

outcome, but looking at this now, as I would have done in 2006, the most important thing is to establish what the subject is and what we're talking about, and I don't know -- and I don't know if -- I don't remember what happened.

This is an idea somebody had and not necessarily anything that happened or didn't happen. I can't -- I don't recall what the outcome of this email was, I'm afraid.

Q. Okay. And can you -- who is Staci Glovsky, if you could?

A. She was a POM employee.

Q. Do you know what her title was?

A. I don't.

Q. Do you know what division she worked in?

A. I think she was in the marketing division.

Q. You think, but you are not sure?

A. I'm not sure.

Q. Why do you think she was in marketing?

A. Because she's talking about marketing in her email.

Q. And if we could go to the second email in the chain --

JUDGE CHAPPELL: Okay, let's -- since you are finished with that last page --

MS. DOMOND: Oh, I am still on the same --

JUDGE CHAPPELL: -- we will take a break.

MS. DOMOND: Okay.

JUDGE CHAPPELL: We will reconvene at 3:35.

(A brief recess was taken.)

JUDGE CHAPPELL: Okay. We're back on the record, Docket 9344.

Next question.

BY MS. DOMOND:

Q. Mrs. Posell, if we could go back to the document we were talking about before the break, the CX 54 email, and we are looking at the second email. The first email in the chain, which is the second email on the page.

Would you look for me at the second email in the chain? That was your response to Mrs. Glovsky. Is that correct?

A. Yes.

Q. And you say in the response, "The vehicles are less problematic than the key messages. This should be our first step and will establish the 'risk' threshold."

Can you explain what you meant by that?

A. So, again, you need to think about facts in any communication, and at the bottom of this email, Staci talks about a lot depends on the level of risk that POM is willing to take. So, that's the reference there.

So, first you establish what you want to say, and then you try and assess whether or not you can say it or not. And that involves whether or not you can say it from -- is it science-supported? Do you want to say it? Is it helpful? Is it interesting to the audience? Any number of different factors contribute to that process of thinking.

Q. And so what is the risk referring to, risk of --

A. The level of risk that POM is willing to take. That's what Staci talks about.

Q. The risk in what?

A. So, it depends -- she's talking about supplements. She's -- as she mentions, has a -- are regulated differently. This is a new area for POM. She talks about the level of risk. So, I'm echoing that in my message back to her. For any level of risk, we need to understand what that is and understand it.

Q. So, the level of risk of getting into the supplement market or -- I'm -- I'm not --

A. What was your question?

Q. What is the -- you say "establish the 'risk' threshold," and what's the actual risk that you -- that -- that you were referring to that Ms. Glovsky was --

A. I was echoing her -- her statement. I don't

know what the level of risk is or was, because I don't know the supplement business.

Q. Okay. So, the level of risk would be in the supplement business?

A. I would assume so, but, again, I'm -- I don't remember, and I'm echoing her -- her words in my email. So, I don't know what she meant.

I'm acknowledging to her that if she thinks there's a level of risk, we obviously need to take that into account, understand what that is, understand what she means. And, frankly, I don't know any more.

Q. Was it -- I'm sorry.

A. I said, I don't know any more than that.

Q. Was there a risk that the company would get into trouble with health or advertising regulators?

A. I don't know.

Q. Mrs. Posell, would you consider press releases about POM-sponsored studies as communicating disease claims?

A. What's a disease claim?

Q. A claim that mentions disease. A statement about diseases and the benefits of pomegranate juice or a POM product.

A. I'm sorry. The first part of your -- would I consider -- would you repeat that?

Q. If there was a press release talking about a POM-sponsored study on pomegranate juice, would you consider that as communicating a disease claim?

MS. DIAZ: Objection, Your Honor. It calls for a legal conclusion.

JUDGE CHAPPELL: Sustained. You are free to rephrase.

MS. DOMOND: Okay.

BY MS. DOMOND:

Q. Mrs. Posell, if -- we've been talking a little bit about some press releases that reference POM-sponsored studies. If the study -- for example, we were talking about a prostate cancer press release. Would you consider that that press release was communicating any benefits that POM juice has on prostate cancer?

A. I -- if I'm following you, the -- so, the press release would reflect the scientific paper that was being published.

Q. Yes.

A. Yeah. So, it would reflect the scientific paper.

Q. Okay. Mrs. Posell, did you ever give feedback or suggestions regarding language on the POM Wonderful Web site?

A. Did I give feedback? Yeah, I'm sure I did.

Q. And if we could give Mrs. Posell CX 49-001.

If we may approach the witness, Your Honor?

If you could just take a moment to look at that, Mrs. Posell, and let me know once you have had a chance.

A. (Document review.)

Q. Have you had a moment to look at it?

A. Just give me a second. I would just like to read this.

Q. No problem.

A. (Further document review.) Okay, thank you.

Q. Okay. Mrs. Posell, in looking at the last email in the chain, which is the top of page 1 of the exhibit you have just been handed, this is an email from Matt Tupper to you, and it CCs a couple of other folks. Is that correct?

A. Yes. It CCs the people -- the person who sent it to Matt.

Q. And the subject is "Cancer page options." Is this subject referring to the POM Wonderful Web site cancer page?

A. To be honest, if you hadn't mentioned the site and asked me the first question, I wouldn't know. So, I don't know for sure, is the answer. I assume so, given your prior question, but I don't know.

Q. In looking at Mr. Tupper's email to you, which is Monday, February 6th, 2006, he says, "I think Option 2 is OK, but I would switch the order of the 2 sentences and add 'According to XXXXX...

"Fiona, what do you think?"

If you turn to the second page of Exhibit 49, does this look like the attachment to the email on the options that Mr. Tupper wanted you to consider?

A. It appears to be consistent with that, yeah.

Q. Okay. And looking at the two options -- it's a lot better blown up there on your screen -- does the only difference between the two options appear to be that first sentence, where it says, in Option 2, "Nearly half of all men and a little over one third of all women in the United States will develop cancer during their lifetimes"?

A. Are you asking me to confirm if that's the only difference between the two, Option 1 and --

Q. Yes.

A. (Document review.) I would agree with you, yes.

Q. Okay. Mrs. Posell, was the intent of this cancer page that Mr. Tupper referred to to explain POM's benefits regarding cancer?

A. I don't know.

Q. Okay. And if we could go to CX 50.

If we can approach the witness, Your Honor?

JUDGE CHAPPELL: Go ahead.

BY MS. DOMOND:

Q. And, again, take a moment to look at that document, and let me know once you have had a chance.

A. (Document review.)

Q. And looking at CX 50, do the first two emails in that chain on CX 50, which are the bottom of the page, appear to be the same as those two emails we were just looking at on CX 49?

A. Do you want me to read them to clarify it?

Q. Yes. You can just look at them, just see if CX 50 looks like a continuation of that chain.

A. (Document review.) It does. It looks like I was on maternity leave at the time, because it came to my house. Yeah.

Q. And if we could look at the third email on CX -- the third email in the chain, which is the second email down on CX 50. The third email is your response to Mr. Tupper. Is that correct?

A. Yes. That's what it says here.

Q. Okay. And you wrote in your response, "Unlike heart disease, we know that cancer is the most feared disease and so I don't think that adding this sentence is necessary. I therefore prefer that we simply delete

the first sentence as agreed with LRR and I like the additional deletion of the last sentence in that paragraph. So, I would like us to go with option 1."

For what purpose did you distinguish cancer and heart disease here in your email?

A. So, from what I know, cancer is much more feared than heart disease, and yet heart disease is one of the main causes of death in the United States.

Q. Was it the intent of part of POM's Web site to explain POM's benefits regarding heart disease?

JUDGE CHAPPELL: Hold on a second. You haven't established this witness as qualified to tell you the intent of POM's Web site. You need a foundation for that question.

BY MS. DOMOND:

Q. Mrs. Posell, you had -- when I asked you earlier if you had reviewed parts of POM's Web site, you had told me that you had. Is that correct?

A. I believe you asked me if I ever gave input.

Q. On parts of POM's Web site.

A. Yes.

Q. And you said that --

A. You asked me that, and I said yes.

Q. Did you, by chance, ever look at any parts of Web sites -- of POM's Web site dealing with heart

disease and the benefits of POM on heart disease?

A. Not that I recall.

Q. Okay. And going to your third email -- the third email in the chain, looking at your email again, you state "as agreed with LRR." Does LRR refer to Mrs. Resnick?

A. It does, yes.

Q. Had Mrs. Resnick also agreed to this language for the cancer page that we were discussing?

A. I don't recall.

Q. Do you recall whether she agreed that the first sentence wasn't necessary?

A. I'm sorry. I don't recall this conversation by email back in 2006. So, I'm looking at these documents with a fresh pair of eyes. I don't really remember any background or any details about any conversations regarding this.

And like I said, I didn't -- you know, I -- I assume, because it says "page," that we're talking about the Web site, but I don't even know that for a fact.

Q. Do you --

A. But I don't see -- these are not -- this doesn't look like a Web page, and I can't see the citations. So, I can't tell you that it's a Web page. It could have been for another purpose. I have no idea what it

was used for, the intent.

Q. Do you have any thought, other than a Web site, that it could be possibly referring to?

A. That would be speculating. Un-huh.

Q. Mrs. Posell, do you know if Mrs. Resnick reviewed any other language of the POM Web site?

A. I don't know.

MS. DOMOND: Okay, Your Honor, I have no further questions.

JUDGE CHAPPELL: Okay.

Cross?

CROSS-EXAMINATION

BY MS. DIAZ:

Q. Hello, Mrs. Posell. This is going to be very brief, I think.

I refer you to your earlier testimony today regarding Exhibit 44.

Can we put that up? Thank you.

This was the press release regarding the coronary heart disease study by Dr. Ornish. Do you remember that?

A. Yes.

Q. And you were asked by counsel for the FTC if it was possible that pomegranate juice may affect the progression of heart disease, and you responded it

wasn't a question of belief; it was what was stated in the scientific research. Do you remember that?

A. Yes.

Q. And then both counsel and the Judge asked you if it was POM's belief, and you said, "Same answer." Do you remember that?

A. Yes.

Q. Did you mean to in any way, shape, or form imply that POM does not believe that pomegranate juice may affect the progression of heart disease?

A. No.

Q. And could you explain your -- your previous answer, please?

A. So, the press release was a reflection of fact. POM's belief in product was very much an everyday point of fact, too. The two are distinct.

Q. Okay. And is it, in fact, your understanding that POM does, in fact, believe that the consumption of pomegranate juice may affect the progression of heart disease?

A. Yes. That is my understanding.

Q. Okay. Thank you.

No further questions for her.

JUDGE CHAPPELL: Is there any redirect based on the cross?

MS. DOMOND: No, Your Honor.

JUDGE CHAPPELL: Thank you, ma'am. You are excused.

This witness is under subpoena. Does anyone reserve the right to recall?

MR. GRAUBERT: No, Your Honor.

JUDGE CHAPPELL: You are free to go.

THE WITNESS: Thank you.

JUDGE CHAPPELL: Thank you.

Anything further today?

MR. GRAUBERT: Not from Respondents.

MS. JOHNSON: No, Your Honor.

JUDGE CHAPPELL: There doesn't appear to be a strong conviction on this side.

MS. JOHNSON: I'm sorry.

JUDGE CHAPPELL: Take a moment if you need to.

MS. JOHNSON: I was concerned about the chair falling over. No, Your Honor.

JUDGE CHAPPELL: Okay.

All right. So, we will resume at noon tomorrow?

MR. GRAUBERT: Yes, sir.

JUDGE CHAPPELL: And there is no doubt the witness will be finished tomorrow afternoon?

MS. JOHNSON: That's correct, Your Honor.

JUDGE CHAPPELL: Until tomorrow at noon, we are

in recess.

(Whereupon, at 4:00 p.m., trial was adjourned.)

C E R T I F I C A T I O N O F R E P O R T E R

DOCKET/FILE NUMBER: 9344

CASE NAME: In Re POM WONDERFUL LLC, et al.

DATE: MAY 26, 2011

I HEREBY CERTIFY that the transcript contained herein is a full and accurate transcript of the notes taken by me at the hearing on the above cause before the FEDERAL TRADE COMMISSION to the best of my knowledge and belief.

DATED: 6/2/2011

SUSANNE BERGLING, RMR-CRR-CLR

C E R T I F I C A T I O N O F P R O O F R E A D E R

I HEREBY CERTIFY that I proofread the transcript for accuracy in spelling, hyphenation, punctuation and format.

SARA J. VANCE, CMRS