

National Commodities vs American Seafood Imports
AZARI, JEFF on 08/17/2012

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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 SOUTHERN DISTRICT OF FLORIDA

4 NATIONAL COMMODITIES COMPANY,
5 Plaintiff,

6 vs.

Civil Action H-11-1716

7 AMERICAN SEAFOOD (Southern District of Texas)
8 IMPORTS, INC.,
9 Defendant.

10 VIDEOTAPED

11 DEPOSITION OF: JEFF AZARI

12 DATE: AUGUST 17, 2012

13 TIME: 2:00 P.M. - 7:00 P.M

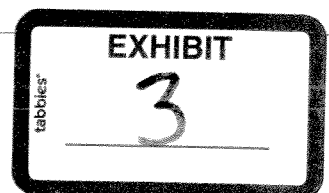
14 TAKEN BY: DEFENDANT

15 PLACE: BOYD & JENERETTE
16 801 BRICKELL AVENUE, SUITE 1440
17 MIAMI, FLORIDA 33131

18 REPORTED BY: CHELSEA HLAVACH, NOTARY PUBLIC, STATE
19 OF FLORIDA
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<p>1 THE VIDEOGRAPHER: We're now on the record in the 2 matter of National Commodities Company versus American 3 Seafood Imports Incorporated. Today's date is 4 August 17th, 2012. The time is 2:05 p.m. This is the 5 videotaped deposition of non-party Pacific Coral 6 Seafood Company, Inc.'s representative Jeff Azari. 7 Will Counsel please introduce themselves? 8 MR. CERSONSKY: M.H. Cersonsky for National 9 Commodities. 10 MR. WALKER: Earl Walker for American Seafood 11 Imports, Inc., and with me is my client's 12 representative, George Lemery. 13 MR. SLADE: Roger Slade, Boyd & Jenerette, for 14 non-party Pacific Coral Seafood Company and Jeff 15 Azari. 16 THE VIDEOGRAPHER: Will the court reporter please 17 swear in the witness? 18 THE COURT REPORTER: Do you swear or affirm that 19 the testimony you are about to give in this matter 20 will be the truth, the whole truth, and nothing but 21 the truth? 22 THE WITNESS: I do. 23 JEFF AZARI, 24 having been first duly sworn, was examined and 25 testified as follows:</p>	<p>1 Q. For -- before coming here today for your 2 deposition, did you do anything to prepare for the 3 deposition? 4 A. Yes. 5 Q. What did you do? 6 A. I got together the documents you requested -- 7 Q. I thank you -- 8 A. -- and that Earl requested. 9 Q. Thank you for that. Did you talk to anybody at 10 your company about this deposition? 11 A. My brother. 12 Q. Okay. And what is his name? 13 A. Dan Azari. 14 Q. And what did the two of you discuss? 15 A. We discussed the debit memo. I thought there was 16 an error and I asked him to look into it and I thought -- I 17 told him where I thought the errors were, which came out in 18 light when I was preparing for the deposition. 19 Q. How many employees does American Seafood have? 20 A. American Seafood? I'm not -- 21 Q. Pardon me. 22 A. I'm not sure. 23 Q. Pacific Coral. 24 A. We have 19 employees. 25 Q. And how long has the company been in business?</p>
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<p>1 DIRECT EXAMINATION 2 BY MR. CERSONSKY: 3 Q. Would you please state your name for the record? 4 A. Jeff Azari. 5 Q. Mr. Azari, have you ever had your deposition 6 taken before? 7 A. No. 8 Q. Have you had an opportunity to talk to your 9 lawyer about a deposition and what it is? 10 A. Yes. 11 Q. Okay. If I, in the course of this deposition, 12 ask a question that you don't understand, would you please 13 ask me to repeat it or rephrase it? 14 A. Sure. 15 Q. And you're doing a very good job of what I'm 16 going to let you know about; please answer all questions 17 out loud. 18 A. Okay. 19 Q. And also that means you can't say huh-uh and 20 uh-huh because the court reporter can't make that 21 distinction on the record. 22 A. Understood. 23 Q. If you need to take a break at any time let us 24 know. 25 A. Okay.</p>	<p>1 A. 1974. So quite a while. I'm not sure of the 2 number of years. The math is 30-something years. Close to 3 40 years. 4 Q. And when did you start working for the company? 5 A. 1989. 6 Q. Do you have an ownership interest in the company? 7 A. Yes. One-third. 8 Q. And did your family start the company? 9 A. My father started the company in 1974. 10 Q. And your brother works with the company? 11 A. I have two brothers. 12 Q. Okay. And Dan Azari works for the company? 13 A. Yes. 14 Q. And what is his position? 15 A. Secretary/treasurer. 16 Q. And what is your position? 17 A. President. 18 Q. As president of the company, do your duties 19 include ordering product for sale and resale? 20 A. Yes. 21 Q. Do you have any other people in the company that 22 do the same type of -- that particular type of work? 23 A. Sometimes when we do trades our sales people buy 24 small quantities that they need to fill an order or an 25 opportunity to buy something and resell it that I do not</p>

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<p style="text-align: right;">Page 10</p> <p>1 get involved in.</p> <p>2 Q. How long have you known George Lemery?</p> <p>3 A. Well, I've known of him for a long time, but I</p> <p>4 think I really got to know him around seven years ago. I'm</p> <p>5 not a hundred percent sure on that, but off the top of my</p> <p>6 head I would say seven years.</p> <p>7 Q. And could you tell me whether Pacific Coral had</p> <p>8 done business with American Seafood prior to that time?</p> <p>9 A. I would have to check. Doubtful, but there's</p> <p>10 possible a few sales here or there.</p> <p>11 Q. And tell me what exactly American Seafood --</p> <p>12 pardon me, Pacific Coral Seafood does. What -- how would</p> <p>13 you describe your business?</p> <p>14 A. We're importers, firsthand imports, and we market</p> <p>15 products. We have our own private labels, and we sell to</p> <p>16 restaurant chains, some supermarket chains, and</p> <p>17 distributors.</p> <p>18 Q. Do you have offices in places other than the</p> <p>19 South Florida area?</p> <p>20 A. We have an office in Tampa and an office in</p> <p>21 Boston.</p> <p>22 Q. Is there one particular person at Pacific Coral</p> <p>23 who works with American Seafood?</p> <p>24 A. That would be me.</p> <p>25 Q. And over the years -- the past seven years,</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. Let me ask you if you know of a company National</p> <p>2 Commodities.</p> <p>3 A. Well, I do now.</p> <p>4 Q. Okay. Do you know whether National Commodities</p> <p>5 sells two types of shrimp product at two different net</p> <p>6 weights?</p> <p>7 MR. WALKER: Objection: Vague.</p> <p>8 A. I am aware now. I wasn't before.</p> <p>9 MR. WALKER: And ambiguous.</p> <p>10 BY MR. CERSONSKY:</p> <p>11 Q. Okay. When did you become aware that they sold</p> <p>12 two products?</p> <p>13 A. I became aware that they sold two products when I</p> <p>14 read the depositions and got prepared for this.</p> <p>15 Q. Okay. Have you ever looked at the invoices sent</p> <p>16 to you by American Seafood to -- and looked at the type of</p> <p>17 product that was being sold when that product was coming</p> <p>18 from National Commodities?</p> <p>19 A. I looked at the price and the weight to make sure</p> <p>20 it's what we received. When I say the weight, I mean the</p> <p>21 weight on the invoice matching what I put into the computer</p> <p>22 system.</p> <p>23 Q. Okay. Are you aware in the industry that there's</p> <p>24 different types of net weight for shrimp product?</p> <p>25 MR. SLADE: Objection. It's vague.</p>
<p style="text-align: right;">Page 11</p> <p>1 you've worked with just George Lemery at American Seafood?</p> <p>2 A. No. I speak to Charlie, his partner, from time</p> <p>3 to time and I speak to Raul once in a while and Ernie from</p> <p>4 time to time as well.</p> <p>5 Q. Who's Raul?</p> <p>6 A. I'm not sure of his position and the title, but</p> <p>7 he works for George. I think he handles Latin American.</p> <p>8 Sometimes we kind of chat about what's going on down there.</p> <p>9 Q. And who's Ernie?</p> <p>10 A. I'm not quite sure. He answers the phone once in</p> <p>11 a while. He's a nice guy, so I talk to him. He's -- I'm</p> <p>12 not sure what he does there.</p> <p>13 Q. Would you describe George Lemery as a friend?</p> <p>14 A. I would consider him a -- someone that I trust in</p> <p>15 the business; that we, you know, we could talk about</p> <p>16 certain situations about what's going on with the market</p> <p>17 and that I can trust that he answers correctly. I like</p> <p>18 him. I enjoy doing business with him. I guess the answer</p> <p>19 would be, yes, I would consider him somewhat of a friend.</p> <p>20 Q. Have you ever had dinner with him?</p> <p>21 A. Yes.</p> <p>22 Q. Is that when you all get together at conferences</p> <p>23 or --</p> <p>24 A. Generally. At the Boston Seafood show is the</p> <p>25 only time I've had dinner with him, I believe.</p>	<p style="text-align: right;">Page 13</p> <p>1 A. Can you clarify that?</p> <p>2 BY MR. CERSONSKY:</p> <p>3 Q. Sure. Are you aware that -- that --</p> <p>4 MR. WALKER: Butch, can we agree that an</p> <p>5 objection by either one of us is good for both of us?</p> <p>6 MR. CERSONSKY: Yes.</p> <p>7 MR. WALKER: Okay.</p> <p>8 BY MR. CERSONSKY:</p> <p>9 Q. Excuse me. My question is: Have you seen</p> <p>10 different companies offer shrimp product with different net</p> <p>11 weights?</p> <p>12 A. You mean different packs? Like ten by two, five</p> <p>13 by two, four by five?</p> <p>14 Q. Yes.</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And when -- while they may have that much</p> <p>17 weight in them, there's also -- there's a designation of</p> <p>18 what the net weight is: 90 percent net weight or 100</p> <p>19 percent net weight?</p> <p>20 A. A product is offered as 100 percent net weight.</p> <p>21 Ninety percent net weight is not a recognized -- I mean,</p> <p>22 it's not legal. Most people don't dare put that on their</p> <p>23 price sheet because it's -- that's against federal law.</p> <p>24 Q. Okay. Now --</p> <p>25 A. But I have been offered e-mails of a product</p>

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1	that's 90 percent net weight. I've seen e-mails. We	1	MR. WALKER: Hold on one second.
2	don't -- we don't trade in that product. We don't buy that	2	THE VIDEOGRAPHER: Off the record.
3	product.	3	(Discussion off the record.)
4	Q. Okay.	4	THE VIDEOGRAPHER: Back on the record at
5	A. So to answer your question, I have seen offers at	5	3:01 p.m.
6	90 percent net weight.	6	BY MR. CERSONSKY:
7	Q. Okay. And I'll object to the prior answer as	7	Q. I'm going to hand you what's marked Exhibit 150
8	being nonresponsive when you were talking about what the	8	and it has the Bates stamp Number -- let me read it for the
9	law is.	9	record please -- 202.
10	Now, I would like to know: When your company	10	(Exhibit Number 150 was marked for identification.)
11	orders product, do they use a purchase order?	11	MR. SLADE: You don't have an extra copy for me,
12	A. Yes -- we use a purchase order, yes.	12	do you?
13	Q. When you use the purchase order, do you send it	13	MR. CERSONSKY: No. This is all I got from your
14	before or after you get the product?	14	staff. Let's go off the record.
15	MR. WALKER: Objection. Objection: Limits his	15	THE VIDEOGRAPHER: Off the record.
16	answer.	16	(Discussion off the record.)
17	A. Send it where?	17	THE VIDEOGRAPHER: On the record.
18	MR. WALKER: Limits the options of his answer.	18	BY MR. CERSONSKY:
19	BY MR. CERSONSKY:	19	Q. I hand you what's been marked Exhibit Number 150.
20	Q. The purchase order -- let me ask it in a	20	It was produced to me today. Can you tell me what the
21	different way.	21	document is that is Exhibit 150?
22	First you told me your company does use purchase	22	A. These are invoices for the product that we had on
23	orders in its business, correct?	23	our debit memo against American Seafood Imports. This is
24	A. Correct.	24	the product that we have noted on the debit memo as
25	Q. And the purchase orders would be sent to the	25	replacement costs.
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1	company that you are purchasing product from, correct?	1	Q. And would that have been -- okay. That's the
2	MR. SLADE: Objection: Form. Calls for -- it	2	replacement costs for product that was not delivered, or
3	calls for evidence not in the record.	3	was it for product from one of the containers that the net
4	BY MR. CERSONSKY:	4	weight was in dispute?
5	Q. I've got to get it in the record, so tell me how	5	A. This is for the container that was not delivered.
6	your company uses purchase orders.	6	Q. Okay. Let me ask you, did you consider the
7	A. They're internal documents. We send them if they	7	container that was not delivered to be the third container
8	request, but it's rare that they do.	8	as part of the three that had been ordered as part of one
9	Q. Okay. Are you aware if American Seafood Imports	9	contract with American Seafood?
10	has asked for --	10	A. Yes.
11	A. Documents or --	11	Q. Okay. So Exhibit 150 has to do with replacement
12	Q. -- purchase orders?	12	costs. Does that tell us the entire amount of the
13	A. Numbers or documents?	13	replacement cost, or do we need to look at other documents
14	MR. WALKER: Objection: Ambiguous.	14	to find out what the replacement cost was?
15	BY MR. CERSONSKY:	15	A. Well, you have to look at other documents. This
16	Q. Or asked for purchase orders?	16	is the FOB pricing.
17	A. Well, definition -- documents, no. Numbers, yes.	17	Q. All right. And --
18	Q. Okay. And a purchase order number would be --	18	A. And if you look at the bill of lading, there
19	A. Upper right-hand corner of the purchase order.	19	should be a value on it that can be added to one of the
20	MR. SLADE: Let him ask you a question, okay?	20	expenses. Yes. This one has the freight amount on it too.
21	THE WITNESS: Okay. I'm sorry.	21	Q. Okay. And Page 207 tells me the freight that's
22	MR. CERSONSKY: Off the record.	22	been added to the price of that product?
23	THE VIDEOGRAPHER: We're off the record.	23	A. Ocean freight.
24	(Discussion off the record.)	24	Q. Ocean freight.
25	THE VIDEOGRAPHER: On the record.	25	A. Correct. And there's other expenses that are not

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1 included here in these documents.
2 Q. Let's go to the next exhibit, Number 151.
3 (Exhibit Number 151 was marked for identification.)
4 A. Same thing. This is another line item off
5 course --
6 MR. WALKER: He hasn't asked a question yet.
7 THE WITNESS: Oh, I'm sorry.
8 BY MR. CERSONSKY:
9 Q. Tell me what it is.
10 A. It is the same -- it's another shipment that has
11 product that was used towards the original debit memo as
12 replacement cost for the third container that was not
13 delivered.
14 Q. So Exhibit 151, the information contained there
15 would have been contained in your letter of August 2011 or
16 May of 2011?
17 A. I would have to see that letter to answer that
18 question. I believe it does.
19 MR. SLADE: Do you want to know, for the record,
20 what the witness is looking at?
21 MR. CERSONSKY: Yeah. Let's go ahead and mark
22 that.
23 (Exhibit Number 155 was marked for identification.)
24 BY MR. CERSONSKY:
25 Q. I'm going to hand you what's been marked Exhibit

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1 155, and I want to know if you can tell us what it is.
2 A. It's a letter notifying American Seafood Imports
3 that we're making a claim for the product that was short
4 weight and for the container that was not delivered, I
5 believe. Let me just read it carefully.
6 Q. Sure.
7 A. Yep. It's explaining the -- this is explaining
8 the deduction. I believe there's a debit memo that goes
9 with this.
10 Q. You are right. I hand you what's been marked as
11 Exhibit Number 156, but first I'll hand it to your
12 attorney.
13 (Exhibit Number 156 was marked for identification.)
14 A. Okay.
15 Q. Can you please tell us what is Exhibit Number
16 156?
17 A. It's a debit memo.
18 Q. And the debit memo, does it -- it concerns three
19 containers; is that correct?
20 A. Correct.
21 Q. Okay. And the first container on that memo was
22 delivered in -- to Vernon, California in November of 2010,
23 I believe; is that correct?
24 A. Correct.
25 Q. Okay. And then just so we have -- we'll call

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1 that Container Number 1 because that's what you've stated
2 it and you've described in your debit memo; is that okay?
3 A. Sure. Okay.
4 Q. And then Container Number 2 is the container that
5 was delivered into Medley, Florida in very early February
6 2011.
7 A. Correct.
8 Q. I'm going to call that Container Number 2 and
9 then -- that's the way you've labeled it, and last we have
10 Container Number 3 which was the container that was not
11 delivered.
12 A. Correct.
13 Q. Now, you made a partial payment on Container
14 Number 2, correct?
15 A. I believe we did, yes.
16 Q. All right. Are you aware if American Seafood
17 made a partial payment to National Commodities with regard
18 to Container Number 2?
19 A. No.
20 MR. SLADE: Objection: Calls for speculation.
21 A. I'm not aware of it.
22 BY MR. CERSONSKY:
23 Q. Now, you were helping me go through some of the
24 Exhibit 151, and does it have any relation to the
25 information that's contained on Exhibit 156? Does it

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1 relate to one of those --
2 A. My brother Dan Azari handled this portion, so I
3 would presume that he -- this was used in his deduction,
4 but I believe there's been -- there is a revised value
5 later given after some reconciliations.
6 (Exhibit Number 157 and 158 were marked for
7 identification.)
8 Q. I'm handing you what I have marked as Exhibit
9 Number 157 and I'm also going to hand you what's been --
10 I'm marking as 158. You have Exhibit 157 in front of you.
11 Would you please tell us what it is?
12 A. It's a follow-up to the debit memo made on
13 May 3rd.
14 Q. And does it also refer to the three containers
15 we've discussed a moment ago?
16 A. Yes, it does.
17 Q. I'm going to hand you what's been marked Exhibit
18 Number 158.
19 A. Okay.
20 Q. And can you please tell us what is Exhibit Number
21 158?
22 A. It's a debit memo.
23 Q. Does it have any connection to Exhibit Number
24 157?
25 A. It says revised debit memo. It's a revision to

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<p>1 the debit memo sent on May 3rd.</p> <p>2 Q. Oh, all right. And in that revised debit memo,</p> <p>3 Exhibit 158, there's an adjustment made of about \$11,000;</p> <p>4 is that correct?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. Now, going back to Exhibit 151/150, can</p> <p>7 you tell me what is the connection of those exhibits to</p> <p>8 Exhibit Number 158?</p> <p>9 A. There's an analysis of product on the second page</p> <p>10 where it has the replacing product, the FOB cost, the</p> <p>11 freight cost, the warehouse cost, the insurance cost, the</p> <p>12 drayage cost, the custom broker charge, the customs duty</p> <p>13 paid to come up with a total cost of product into the</p> <p>14 warehouse. Apples to apples compared to what we bought.</p> <p>15 Q. Now, after you bought the replacement shrimp,</p> <p>16 were you able to sell that replacement shrimp?</p> <p>17 A. We used the shrimp towards the contract. The</p> <p>18 shrimp was originally bought for other customers.</p> <p>19 Q. Okay. Let's break it down. I'm a little</p> <p>20 confused.</p> <p>21 A. Okay.</p> <p>22 Q. When you first -- let me ask first about</p> <p>23 Container Number 1. Let's talk about Container Number 1.</p> <p>24 A. Sure.</p> <p>25 Q. That was delivered to California, correct?</p>	<p>1 dollars would have been if that client or customer had</p> <p>2 agreed to pay for that product that was going to -- that</p> <p>3 was delivered as part of Container Number 1?</p> <p>4 A. I would have to look at the invoice.</p> <p>5 Q. And that would be the invoice to your customer?</p> <p>6 A. Correct.</p> <p>7 Q. Do you know whether that invoice was produced in</p> <p>8 the documentation that I was provided today?</p> <p>9 A. Yes. That's redacted, but it's there.</p> <p>10 Q. Okay.</p> <p>11 A. That would be it.</p> <p>12 Q. I don't know if -- there are many documents I</p> <p>13 have. It looks like they begin on Page 275 that have been</p> <p>14 Bates stamped to 321 of Pacific Coral. And if you could</p> <p>15 find it, sir, I'd appreciate it.</p> <p>16 A. Okay.</p> <p>17 Q. I'm sorry I'm not able to give you -- and we can</p> <p>18 go off the record for a moment, and in any way we can</p> <p>19 expedite things, I'm willing to try.</p> <p>20 A. Okay.</p> <p>21 THE VIDEOGRAPHER: We're off the record at 3:15.</p> <p>22 (Discussion off the record.)</p> <p>23 THE VIDEOGRAPHER: On the record at 3:18.</p> <p>24 BY MR. CERSONSKY:</p> <p>25 Q. I hand you what's been marked Exhibit 159.</p>
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<p>1 A. Correct.</p> <p>2 Q. And that product was subsequently sold to one of</p> <p>3 your customers, correct?</p> <p>4 A. It was brought in for a particular customer, yes.</p> <p>5 Q. Okay. And the customer accepted the product?</p> <p>6 A. No.</p> <p>7 Q. Okay.</p> <p>8 A. It was accepted after we relabeled it. It wasn't</p> <p>9 accepted as delivered.</p> <p>10 Q. Thank you for clarifying. After it was</p> <p>11 accepted --</p> <p>12 A. Uh-huh.</p> <p>13 Q. -- after being relabeled, was the product paid</p> <p>14 for?</p> <p>15 A. Yes.</p> <p>16 Q. Was the price paid for by the customer different</p> <p>17 from what the original price was going to be before the</p> <p>18 relabeling?</p> <p>19 A. Can you define price?</p> <p>20 Q. Sure. Well, I'll try. When the product came in</p> <p>21 to California for Container Number 1, was the product</p> <p>22 pre-sold? Did you have a customer already lined up who had</p> <p>23 agreed to buy it at a certain price per pound?</p> <p>24 A. Yes.</p> <p>25 Q. And can you recall approximately what the total</p>	<p>1 (Exhibit Number 159 was marked for identification.)</p> <p>2 And please tell me what Exhibit 159 is.</p> <p>3 A. It's an invoice to my customer for EZ Choice</p> <p>4 Shrimp, 51/60, P/D.</p> <p>5 Q. Where did you learn the term EZ Choice?</p> <p>6 A. I learned the term EZ Choice when -- pretty much</p> <p>7 when we discovered the problem.</p> <p>8 Q. And prior -- so that would have been in, what,</p> <p>9 March of 2011 or April 2011?</p> <p>10 A. March. March. When we buy product that's not</p> <p>11 our brand, we consider it packer label. So the brand's not</p> <p>12 important to us, so it doesn't resonate. It doesn't matter</p> <p>13 to me what the brand is.</p> <p>14 Q. When the product is delivered in -- to your</p> <p>15 company in California, what is your usual procedures with</p> <p>16 regard to testing the shrimp, if any?</p> <p>17 A. In California we only test shrimp that we feel</p> <p>18 may have a problem because we don't have a QC facility</p> <p>19 there.</p> <p>20 Q. And QC means quality control?</p> <p>21 A. Correct.</p> <p>22 Q. And so you have the opportunity after the shrimp</p> <p>23 has arrived to do a quality control check if you wish?</p> <p>24 A. Correct.</p> <p>25 Q. But your company's made the business decision,</p>

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<p>1 exact date. 2 (Exhibit Numbers 160, 161, 162, and 163A were marked for 3 identification.) 4 Q. All right. I'm going to hand you Exhibits 160, 5 161, 162, and 163 and ask you first if you could just 6 identify Exhibit 161 -- 7 MR. SLADE: Could I ask you to do me a favor? 8 MR. CERSONSKY: Sure. 9 MR. SLADE: Could you take back the exhibits 10 you're no longer using from in front so -- 11 THE WITNESS: I'm okay. 12 MR. SLADE: I mean, I know you're okay, but I'm 13 not so okay because I don't want to get confused about 14 what he's testifying to and there's no reason to have 15 a lot of paper around. 16 MR. WALKER: Right. And the court reporter's got 17 to figure out if all the exhibits are there. 18 MR. CERSONSKY: I'm sure we can do that for her, 19 Earl. 20 THE WITNESS: Let me just see which ones are from 21 where. Okay. I'm set. What would you like to know? 22 BY MR. CERSONSKY: 23 Q. Okay. Will you -- I guess first, just for the 24 record, let's go ahead and identify what is Exhibit Number 25 160?</p>	<p>1 So 163 and 162 -- 2 THE WITNESS: I thought there was -- I thought 3 there was three on this side before but maybe I'm 4 mistaken, but this is Medley on this side and this is 5 Vernon on that side. 6 MR. CERSONSKY: Go off the record for one second. 7 THE VIDEOGRAPHER: Off the record. 8 (Discussion off the record.) 9 THE VIDEOGRAPHER: Back on the record. 10 BY MR. CERSONSKY: 11 Q. Mr. Azari, I think we now have Exhibit Number 159 12 in front of you, and does it relate to Container Number 2 13 which was the product delivered to Florida? 14 A. Yes. 15 Q. Now, my -- now my question's going to go with 16 regard to Container Number 1, the product delivered in 17 California. 18 A. Okay. 19 Q. You had a customer who had already ordered and 20 agreed to a price for the product contained in Container 21 Number 1? 22 A. Correct. 23 Q. My question is: After the product was relabeled, 24 did you invoice them -- 25 A. Yes, I did --</p>
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<p>1 A. It's an invoice to my client that contains 2 product that we relabeled on it. 3 Q. And this relates only to the California-delivered 4 container? 5 A. This product is from U.S. Cold, Medley, Miami. 6 Q. Okay. So Exhibit 160 would be what we relate -- 7 we would call Container Number 2? 8 A. Correct. 9 Q. All right -- 10 A. In fact, these are all Container Number 2, the 11 ones I have on this side, and this is Container Number 1 on 12 this side. 13 Q. Just for the record, Exhibits 160 and 161 relate 14 to the Container Number 2 that was delivered to Medley, 15 Florida. 16 A. Correct. 17 Q. And, pardon my reach, Exhibit 163 and 162 relate 18 to the container delivered in Florida? 19 A. Correct. I believe you took another invoice that 20 belongs on this side when you removed your documents. 21 Q. Okay. 22 MR. WALKER: Objection. I think you, Butch, 23 misspoke. You said Florida and Florida. 24 MR. CERSONSKY: I did misspeak. Thank you, 25 Mr. Walker.</p>	<p>1 Q. -- again? 2 A. I never invoiced them until it was relabeled. 3 Q. Okay. And so why would the product have sat in 4 California when it was delivered in November of 2010 and 5 not be delivered until March, April, May of 2011? 6 A. It was actually delivered in July. July 14th. 7 Q. Okay. That -- now -- 8 A. July 13th and 20th to Vernon. 9 Q. Okay. So the Vernon product or the California 10 product was delivered in June or July of 2011? 11 A. To my customer, yes. 12 Q. When it was delivered you sent the invoice, 13 correct? 14 A. Correct. 15 Q. Did that invoice change the price per pound as to 16 what had been stated to the customer back in 2010? 17 A. No. Same price per pound. The weight on the 18 invoice changed. 19 Q. Therefore the total dollars that your company 20 received was less than it would have been if it had been a 21 hundred percent net weight product? 22 A. Correct. 23 Q. Okay. Now, with regard to the product delivered 24 in Florida, did the same scenario play out; that is to say 25 that the product was delivered to the customer that had</p>

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<p>1 ordered it before?</p> <p>2 A. Yes. We delivered the product in July.</p> <p>3 Q. And the price per pound remained the same?</p> <p>4 A. Correct.</p> <p>5 Q. But because there was less net weight, then the</p> <p>6 total dollars your company received was reduced?</p> <p>7 A. Correct. As were the pounds we delivered.</p> <p>8 Q. Understood. And the difference in those prices</p> <p>9 or the product -- I'm handing you Exhibit Number 158 --</p> <p>10 A. Okay.</p> <p>11 Q. Let me try to get these out of the way to</p> <p>12 avoid --</p> <p>13 A. There's a -- something on here -- well --</p> <p>14 Q. All right. There's something that --</p> <p>15 A. There's a -- I noticed a mistake on here.</p> <p>16 MR. WALKER: What are you referring to? What</p> <p>17 document?</p> <p>18 THE WITNESS: To an invoice to Vernon. I do see</p> <p>19 an error on the description because they used the</p> <p>20 original lot number, so they never changed the</p> <p>21 description to read four by four point one pounds.</p> <p>22 MR. WALKER: What exhibit are you referring to?</p> <p>23 THE WITNESS: I'm referring to Exhibit 163, and</p> <p>24 162 has one as well. Because we used the same lot</p> <p>25 number -- they didn't change the description -- there</p>	<p>1 Q. Thank you. That's what I wanted.</p> <p>2 A. I'm going to have to take a break in a few</p> <p>3 minutes for the restroom.</p> <p>4 MR. SLADE: Oh, right now.</p> <p>5 MR. CERSONSKY: We can do it now.</p> <p>6 THE VIDEOGRAPHER: Off the record at 3:33.</p> <p>7 (Break taken.)</p> <p>8 THE VIDEOGRAPHER: On the record at 3:41.</p> <p>9 BY MR. CERSONSKY:</p> <p>10 Q. I'm handing you what's been marked as Exhibit</p> <p>11 Number 163 -- or, I'm handing it to your attorney first.</p> <p>12 (Exhibit Number 163B was marked for identification.)</p> <p>13 A. Okay.</p> <p>14 Q. And can you tell us -- well, Page 1 of</p> <p>15 Exhibit 163 seems to be an e-mail?</p> <p>16 A. Uh-huh.</p> <p>17 Q. You have to speak out loud.</p> <p>18 A. Oh, I'm sorry. I'm sorry.</p> <p>19 Q. That's okay.</p> <p>20 A. Yes, it is an e-mail.</p> <p>21 Q. It can happen to anyone.</p> <p>22 A. Yep.</p> <p>23 Q. So you're doing very well.</p> <p>24 Let's turn to Page 2 of the -- well, first, on</p> <p>25 Page 1 of the e-mail, who is the e-mail from?</p>
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<p>1 was an error. But the pounds reflect the actual,</p> <p>2 correct weight. I just noticed that, so I thought I'd</p> <p>3 point it out.</p> <p>4 BY MR. CERSONSKY:</p> <p>5 Q. Thank you. Now, with regard to Exhibit 158, is</p> <p>6 the difference in the price for Container Number 1, would</p> <p>7 that be reflected by Exhibits 162 and 163?</p> <p>8 A. Are you referring to these -- this line right</p> <p>9 here?</p> <p>10 Q. Yes, sir.</p> <p>11 A. It refers to that, yes.</p> <p>12 Q. All right. And with regard to Container Number 2</p> <p>13 on Exhibit 158, the backup or the difference in price would</p> <p>14 be found in Exhibits 159, 160, and 161?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. Thank you, sir.</p> <p>17 A. Just a clarification. Are you asking if it's</p> <p>18 exactly related or does it refer to it?</p> <p>19 Q. I want to know if it -- I want to know if these</p> <p>20 are the only supporting documents for the difference in</p> <p>21 price for Containers 1 and 2.</p> <p>22 A. Oh, yes, they are.</p> <p>23 Q. Okay.</p> <p>24 A. One hundred percent of the product that is on</p> <p>25 Containers 1 and 2 is on these invoices.</p>	<p>1 A. George Lemery.</p> <p>2 Q. And it goes to whom?</p> <p>3 A. Myself.</p> <p>4 Q. Okay. Let's go to page -- and please tell us,</p> <p>5 what is Page 2 of Exhibit 163?</p> <p>6 A. I believe it's a sales confirmation/a sales</p> <p>7 memo --</p> <p>8 Q. And is --</p> <p>9 A. -- of some sort.</p> <p>10 Q. Okay. And that document is on whose letterhead?</p> <p>11 A. It's on American Seafood Imports' letterhead.</p> <p>12 Q. And it's being sent to your company; is that</p> <p>13 correct?</p> <p>14 A. Correct.</p> <p>15 Q. All right. There's some handwriting on that</p> <p>16 Page 2.</p> <p>17 A. Yes.</p> <p>18 Q. Would you please read the handwriting?</p> <p>19 A. "Jeff - please issue PO - Thank you."</p> <p>20 Q. All right. Do you recognize the handwriting?</p> <p>21 A. No, I do not.</p> <p>22 Q. Okay. Does Mr. Lemery ever communicate to you in</p> <p>23 handwriting by -- by the -- on a document that's scanned?</p> <p>24 A. I'm going to have to answer yes since -- well, I</p> <p>25 can't answer yes. I don't know the answer to that</p>

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1 way --
2 A. Yep.
3 Q. -- would be 381720. Would that be the one for
4 California?
5 A. Yes.
6 Q. And my fingers have found the second one first.
7 Here we go. So that we're running consecutively, I'm going
8 to number this Exhibit Number 165.
9 (Exhibit Number 165A was marked for identification.)
10 A. Okay.
11 Q. Can you please tell us what is Exhibit Number
12 165?
13 A. It's my purchase order made out to American
14 Seafood Imports for -- I think to what you referred to as
15 Container Number 1 in Vernon, California.
16 Q. Was this document prepared by your company?
17 A. I wrote this.
18 Q. Okay. And do you recall the date you wrote it or
19 the approximate date?
20 A. No. I put on there when it was supposed to come
21 in.
22 Q. If you look at Exhibit Number 164, does that
23 refresh your memory as to when you may have prepared
24 Exhibit Number 165?
25 A. No, it does not.

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1 Q. Mr. Azari --
2 A. 160 --
3 Q. Oh. I'm sorry --
4 A. Okay. No, it does not.
5 Q. Okay. When you prepared this document, did you
6 send it to American Seafood when it was prepared or soon
7 after it was prepared?
8 A. No, I did not.
9 Q. Is it your usual course of business not to send
10 the actual purchase order?
11 A. Correct. I think we covered that earlier today.
12 It's only upon request, and it rarely is requested.
13 Q. Okay. Now, I'm going to ask you, sir, in the
14 description part of Exhibit 165 there appears to be two
15 words that begin with the letter M and then they're
16 scratched out. Can you read those?
17 A. Melody, Melody.
18 Q. Okay. And prior to preparing this purchase
19 order, did you have any contact with anybody at National
20 Commodities about what products they sold/what the names of
21 their brands were?
22 A. Can you identify "we"?
23 Q. Yes. That would be you --
24 A. Uh-huh.
25 Q. -- and Pacific Coral or your brother.

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1 A. The answer would be no.
2 Q. Are there any other people at Pacific Coral
3 during this time period who would have had contact with
4 National Commodities?
5 A. What is the time period?
6 Q. Well, I -- when you wrote this purchase order.
7 A. But we haven't determined when I wrote it.
8 Q. I agree.
9 A. So I'll guess at this; yes.
10 Q. All right. And one of the people that -- whose
11 name -- who worked for your company for a while whose name
12 is Rockery -- is that --
13 A. No. Lipocky.
14 Q. Lipocky. And he worked for your company for a
15 short period of time?
16 A. Correct.
17 Q. Okay. And it's my understanding that he knew
18 this Jim Powell gentleman who works for National
19 Commodities.
20 A. Correct.
21 Q. And I don't know -- when did you learn that
22 Lipocky knew Powell from their prior --
23 A. I received an e-mail from Alan stating that he
24 knows Jim, went to him because he knows we're buying it,
25 the product, and he wanted to work directly with us.

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1 Q. Okay. Now, can you tell me if through those
2 communications you, Jeff Azari -- I hope I'm pronouncing
3 your name --
4 A. Azari.
5 Q. Azari --
6 A. Like Atari with a Z.
7 Q. I apologize. Azari. Was he the source, that's
8 Mr. Lipocky, was he the source of the name Melody when you
9 wrote that?
10 A. I don't believe so.
11 Q. Is there anybody -- would George Lemery have been
12 the person who would have provided you the name Melody
13 Brand so you knew what your company was buying?
14 MR. SLADE: Objection: Calls for speculation.
15 You can answer it.
16 A. I couldn't tell you where I've heard the name,
17 but somewhere along the line I heard the name.
18 BY MR. CERSONSKY:
19 Q. And so these -- this purchase order would have
20 been prepared before you learned of the problem in March
21 and April with regard to the net weight, correct?
22 A. Correct.
23 Q. Okay. So I'm just trying to -- I'm trying to --
24 let's see if we can get a time frame as to when that
25 document would have been prepared and when you would have

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<p>1 learned the name Melody because you wrote that document and 2 that's the name that appears there.</p> <p>3 A. The document would have had to have been prepared 4 sometime between the time that I negotiated it to the time 5 it was transferred to me. Then I gave them the PO number. 6 I can't tell you when. Sometimes I write them the day we 7 negotiate. Sometimes I write them at the last minute. I 8 refer to my notes as to the deal.</p> <p>9 MR. WALKER: I'd also like to point out that the 10 first word that's scratched out on that exhibit 11 appears to be Medley.</p> <p>12 THE WITNESS: I'm not a good speller.</p> <p>13 MR. WALKER: I just wanted to let Butch know 14 that.</p> <p>15 MR. CERSONSKY: Earl, all the help you give me, I 16 appreciate it.</p> <p>17 MR. WALKER: As in the city Medley, Florida.</p> <p>18 MR. SLADE: Have you been there?</p> <p>19 MR. WALKER: No.</p> <p>20 MR. SLADE: You don't want to go there.</p> <p>21 THE WITNESS: It's a good opportunity for 22 property.</p> <p>23 BY MR. CERSONSKY:</p> <p>24 Q. Okay. That was 381720.</p> <p>25 A. Uh-huh.</p>	<p>1 about the Melody Brand so that you could put it in the 2 purchase order?</p> <p>3 MR. WALKER: Objection: Calls for speculation.</p> <p>4 A. Actually, I can answer that. No one told me. I 5 just referred to what I remembered as the Malaysian trip to 6 be. This is ordered by Preference Brand, and it didn't 7 come in my label. So I crossed it out and just put Melody 8 on it.</p> <p>9 BY MR. CERSONSKY:</p> <p>10 Q. Yeah. But where would you have gotten the name 11 Melody as opposed to the name --</p> <p>12 A. EZ Choice? I don't know. It -- to me, it's not 13 important. It's a packer label. It could be Mickey Mouse 14 Brand. It's doesn't matter. Sometimes we don't put brands 15 because it's not my brand. We put our brand when it's our 16 brand, otherwise sometimes we don't put our brand and we 17 just put the brand that we -- that it is.</p> <p>18 Q. Right. And -- okay. Thank you.</p> <p>19 A. But this one was ordered as Preference.</p> <p>20 Q. Ordered as Preference means what, sir?</p> <p>21 A. When I ordered the shrimp, we ordered it to be 22 ordered in our label, Preference Brand. That's our 23 trademarked label. That's our private label. That's why 24 it says Preference right here.</p> <p>25 Q. Okay. And is there an e-mail that you recall</p>
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<p>1 MR. CERSONSKY: Let's go off the record one 2 moment.</p> <p>3 THE VIDEOGRAPHER: Off the record at 3:55. 4 (Off record discussion had.)</p> <p>5 THE VIDEOGRAPHER: Back on the record at 3:58. 6 (Exhibit Number 165B was marked for identification.)</p> <p>7 BY MR. CERSONSKY:</p> <p>8 Q. I'm handing you what's been marked as Exhibit 165 9 and ask you to identify it.</p> <p>10 A. It's a purchase order made out to American 11 Seafood Imports for container Number 2, I believe.</p> <p>12 Container Number 2.</p> <p>13 Q. I think you're correct on that, and if we're 14 wrong Mr. Walker will let us know.</p> <p>15 A. Okay.</p> <p>16 Q. But I'm going to ask you, this document, was it 17 prepared by you?</p> <p>18 A. Yes, it was.</p> <p>19 Q. Okay. And on the purchase order in the section 20 that's called description, I see the word Melody --</p> <p>21 A. Correct.</p> <p>22 Q. -- do you see the word Melody? Okay.</p> <p>23 A. I can't tell if it's spelled correctly, but yes.</p> <p>24 Q. Okay. Now, with regard to that word, "Melody," 25 again I'm going to ask you: Do you recall who told you</p>	<p>1 that was produced in the documents that said we want this 2 product to be Preference Brand?</p> <p>3 A. Yes, there's an e-mail. There's artwork sent to 4 Mr. Lemery. There's a whole string of e-mails sent in that 5 regard. When we have the opportunity, we like to bring in 6 our brand; that's market our -- market our label rather 7 than someone else's label.</p> <p>8 Q. Do you know whether that requirement that you 9 made that the product be labeled Preference Brand was 10 communicated to National Commodities?</p> <p>11 A. No.</p> <p>12 Q. You wouldn't have --</p> <p>13 A. No.</p> <p>14 Q. You were not part of that because you have no --</p> <p>15 A. No.</p> <p>16 Q. Go ahead. I'm sorry.</p> <p>17 A. I have no -- I'm not dealing with National 18 Commodities.</p> <p>19 Q. Now I'm going to hand you what's been marked as 20 Exhibit Number 40 -- pardon me -- 166.</p> <p>21 (Exhibit Number 166 was marked for identification.)</p> <p>22 A. By the way, I can tell you when this was written.</p> <p>23 Q. Okay.</p> <p>24 MR. SLADE: He hasn't asked you that yet.</p> <p>25 THE WITNESS: I know but -- it was written the</p>

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<p>1 correct?</p> <p>2 A. Correct.</p> <p>3 Q. And do you see what was being purchased in the</p> <p>4 description?</p> <p>5 A. I could see what I purchased, yes.</p> <p>6 Q. And what did you purchase?</p> <p>7 A. I purchased 379 cases of 51/60 Melody P&D tail</p> <p>8 off shrimp packed four by five.</p> <p>9 Q. Just so that I'm clear, and I don't mean to be</p> <p>10 argumentative, but it's unclear to me, as I look at the</p> <p>11 Line 2 under the description section there is the word</p> <p>12 Melody and there seems to be a line through it; is that --</p> <p>13 A. Correct.</p> <p>14 Q. And above it there are the words EZ Choice.</p> <p>15 A. Correct.</p> <p>16 Q. So on this purchase order do we -- were you</p> <p>17 writing an order for EZ Choice or for Melody?</p> <p>18 A. Well, there's a lot of mistakes on here. I wrote</p> <p>19 Melody, I put China, and I put the pack size as four by</p> <p>20 five.</p> <p>21 Q. Okay. But my question is not whether you had</p> <p>22 other mistakes on the document. My question is: Were you</p> <p>23 ordering EZ Choice or Melody product?</p> <p>24 A. Neither. I was ordering 51/60 P&Ds. I didn't</p> <p>25 care the brand. I didn't care the country.</p>	<p>1 MR. WALKER: What are you referring to?</p> <p>2 A. I provided the full set of documents that go with</p> <p>3 the purchase orders, so I believe that if I provided that</p> <p>4 to you, that you would have that.</p> <p>5 BY MR. CERSONSKY:</p> <p>6 Q. I understand.</p> <p>7 THE VIDEOGRAPHER: Can we break to change the</p> <p>8 tape?</p> <p>9 MR. CERSONSKY: Yes. Yes.</p> <p>10 THE VIDEOGRAPHER: Off the record at 4:23.</p> <p>11 (Break taken.)</p> <p>12 THE VIDEOGRAPHER: On the record at 4:38.</p> <p>13 BY MR. CERSONSKY:</p> <p>14 Q. Mr. Azari, with regard to Exhibit 171 and the</p> <p>15 document on Page 2 referring to 379 cases of product, your</p> <p>16 company received that product from American Seafood that's</p> <p>17 referred to in this exhibit?</p> <p>18 A. You don't have the bill of lading on here from</p> <p>19 the freezer, but I could answer I'm pretty sure it did.</p> <p>20 MR. WALKER: Did or did not?</p> <p>21 THE WITNESS: I'm pretty sure it did, but there's</p> <p>22 no bill of lading of transfer on there.</p> <p>23 BY MR. CERSONSKY:</p> <p>24 Q. Well, we may try to find that or we may not.</p> <p>25 A. But I could --</p>
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<p>1 Q. You said you didn't care, but you took the time</p> <p>2 to write down both brands?</p> <p>3 A. No. I didn't write down both brands. I wrote</p> <p>4 down one brand.</p> <p>5 Q. So on Line 1 we see the words EZ Choice, correct?</p> <p>6 A. Uh-huh. Correct.</p> <p>7 Q. On Line 2, with what looks like a line through</p> <p>8 it, it says Melody?</p> <p>9 A. That is correct.</p> <p>10 Q. And those words were written by you?</p> <p>11 A. No. That's not my handwriting on the top.</p> <p>12 Q. Okay. Thank you. Whose handwriting is it on the</p> <p>13 top?</p> <p>14 A. It's hard to say, but it is the person that</p> <p>15 entered it in the computer for us, and she obviously saw</p> <p>16 the receipt from the warehouse and corrected it.</p> <p>17 Q. So the product that was received was EZ Choice</p> <p>18 product?</p> <p>19 A. I can't tell you that. You'd have to present the</p> <p>20 rest of the documents that go with this purchase order the</p> <p>21 warehouse received and that may or may not have a brand on</p> <p>22 it.</p> <p>23 Q. Okay.</p> <p>24 A. I believe, if that's from me, I did provide that.</p> <p>25 Q. I'm sorry. You --</p>	<p>1 Q. Well, I want to ask you this: Could you tell me</p> <p>2 from that document what the number of pounds were that were</p> <p>3 delivered?</p> <p>4 A. For which document?</p> <p>5 Q. From exhibit --</p> <p>6 A. Number 2?</p> <p>7 Q. Yes.</p> <p>8 A. It says 15,160 pounds.</p> <p>9 Q. And that product would have been delivered</p> <p>10 between September 15th and September 20th, 2010?</p> <p>11 A. No.</p> <p>12 Q. Okay. When would that product have been</p> <p>13 delivered to Pacific Coral?</p> <p>14 A. September 21st.</p> <p>15 MR. WALKER: Of what year?</p> <p>16 THE WITNESS: 2010.</p> <p>17 BY MR. CERSONSKY:</p> <p>18 Q. I think the next exhibit will be 172.</p> <p>19 (Exhibit Number 172 was marked for identification.)</p> <p>20 Mr. Azari, can you tell me what is Exhibit Number</p> <p>21 172?</p> <p>22 A. It's an e-mail dated August 30th from myself to</p> <p>23 George Lemery.</p> <p>24 Q. And are there -- what year?</p> <p>25 A. 2011.</p>

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<p>1 Q. Would you please identify Exhibit 175?</p> <p>2 A. That's an e-mail from George Lemery to myself on</p> <p>3 February 2nd. Subject line is: Your PO 38171 is on FDA</p> <p>4 Sampling - PO 38127 passed FDA - ETA 2/04.</p> <p>5 Q. I'm obviously not in the seafood business. Could</p> <p>6 you please tell me what the last reference to the FDA</p> <p>7 sampling or review, what does that refer to?</p> <p>8 A. Considering that it's a -- it says that it passed</p> <p>9 FDA, but the ETA is on 2/04 and this e-mail's sent on</p> <p>10 February 2nd, it means that FDA was not examining it.</p> <p>11 THE WITNESS: Don't start yawning.</p> <p>12 MR. SLADE: I'm sorry?</p> <p>13 THE WITNESS: Don't start yawning.</p> <p>14 MR. SLADE: No, I know. I wish I'd slept more</p> <p>15 last night.</p> <p>16 (Exhibit Number 176 was marked for identification.)</p> <p>17 BY MR. CERSONSKY:</p> <p>18 Q. Please identify Exhibit 176.</p> <p>19 A. An e-mail from George Lemery to myself on</p> <p>20 February 10th, 2011.</p> <p>21 Q. And could you read the subject line?</p> <p>22 A. Please call USEless -- capital U, capital S,</p> <p>23 lower case the rest -- Cold Storage and accept the two lots</p> <p>24 from me of 51/60 P&D.</p> <p>25 Q. What is that referring to?</p>	<p>1 MR. CERSONSKY: Off the record.</p> <p>2 THE VIDEOGRAPHER: Off the record at 4:53.</p> <p>3 (Discussion off the record.)</p> <p>4 THE VIDEOGRAPHER: On the record at 4:56.</p> <p>5 BY MR. CERSONSKY:</p> <p>6 Q. Mr. Azari, I'm handing you, just for</p> <p>7 identification purposes, Bates stamp Number 043, a quality</p> <p>8 control report, and just tell us what that quality control</p> <p>9 report is -- concerns which of the three -- or two</p> <p>10 container -- pardon me. I'm getting tired.</p> <p>11 Can you tell me which container that document</p> <p>12 refers to that is Bates stamped Number 43?</p> <p>13 A. No -- Container Number 2, Medley. That was</p> <p>14 delivered in February.</p> <p>15 MR. CERSONSKY: Thank you, sir.</p> <p>16 MR. WALKER: Uh-huh.</p> <p>17 MR. CERSONSKY: I think you might want it.</p> <p>18 BY MR. CERSONSKY:</p> <p>19 Q. That quality control report, was that done by a</p> <p>20 gentleman who works for your company, an employee of your</p> <p>21 company?</p> <p>22 A. Correct.</p> <p>23 Q. Have you ever had a situation where you've sent</p> <p>24 out product to an independent laboratory for that kind of</p> <p>25 quality control work?</p>
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<p>1 A. That I will accept the transfer. The cold</p> <p>2 storage always calls before we accept product to make sure</p> <p>3 that we want it in our name.</p> <p>4 Q. And based upon the time that that e-mail was</p> <p>5 written, would that refer to Container Number 2?</p> <p>6 A. What was the date -- February -- Container</p> <p>7 Number 2 was received?</p> <p>8 Q. Yes.</p> <p>9 A. I don't know the date it was received, but it's</p> <p>10 on February 10th. So if it's around that time, it would</p> <p>11 be.</p> <p>12 Q. Okay. Thank you. I'm going to show this to you.</p> <p>13 I don't think it has anything to do with National</p> <p>14 Commodities, but I just wanted to be sure.</p> <p>15 A. Okay.</p> <p>16 Q. Could you tell me what -- do those e-mails refer</p> <p>17 to any of the three containers involving National</p> <p>18 Commodities?</p> <p>19 A. It does not.</p> <p>20 Q. Okay.</p> <p>21 A. This is product that my salesman, Albert</p> <p>22 Rodriguez, bought from George Lemery that he requested my</p> <p>23 brother to issue a PO number.</p> <p>24 MR. WALKER: Objection as nonresponsive to</p> <p>25 everything after not.</p>	<p>1 A. All the time.</p> <p>2 Q. Can you tell me whether the Container Number 2,</p> <p>3 as we've identified here, whether you sent any samples to</p> <p>4 an outside, independent laboratory for testing?</p> <p>5 A. Did I, personally, send them?</p> <p>6 Q. Or did Pacific Coral send them.</p> <p>7 A. From which shipment?</p> <p>8 Q. Shipment Number 2.</p> <p>9 A. No, they were not.</p> <p>10 Q. With regard to Shipment Number 1, the one that</p> <p>11 was delivered in California, were samples sent to an</p> <p>12 independent laboratory for testing on that container?</p> <p>13 A. Yes, they were.</p> <p>14 Q. And that report came back in -- what was it,</p> <p>15 April or May of 2011?</p> <p>16 MR. WALKER: Calls for speculation.</p> <p>17 A. I'm not sure.</p> <p>18 BY MR. CERSONSKY:</p> <p>19 Q. If you know.</p> <p>20 A. I don't know when it came back.</p> <p>21 Q. I want to ask you now about the relabeling and</p> <p>22 perhaps the repackaging of the containers.</p> <p>23 A. Sure.</p> <p>24 Q. Okay. With regard to Container Number 1, was</p> <p>25 that container -- were the contents merely relabeled, or</p>

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<p style="text-align: right;">Page 74</p> <p>1 did you have the contents repackaged?</p> <p>2 A. We had the master carton relabeled.</p> <p>3 Q. Now, the master carton -- I want to be sure I</p> <p>4 understand -- that's the carton that contains the packages</p> <p>5 of shrimp that are in plastic; is that --</p> <p>6 A. Correct. If the shrimp was in printed packages,</p> <p>7 we would have to relabel the packages too, but they were in</p> <p>8 plain packages so we were just, by law, required to change</p> <p>9 the master cartons to the correct net weight of the</p> <p>10 product.</p> <p>11 Q. And when -- and to -- was that a process you call</p> <p>12 relabeling or you would you call it repackaging? What's</p> <p>13 the right term to use?</p> <p>14 A. It's relabeling.</p> <p>15 Q. Now, once you relabeled you didn't have to -- let</p> <p>16 me just make sure I understand. You didn't have to get new</p> <p>17 cardboard boxes to put things in? You just got a -- you</p> <p>18 had somebody print out a new label to put that label on the</p> <p>19 cardboard box?</p> <p>20 A. Correct. We had to change it to be</p> <p>21 non-adulterated.</p> <p>22 Q. Well, I'll object: Nonresponsive.</p> <p>23 You just had somebody put on a label that you had</p> <p>24 set out what you wanted on the label?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 76</p> <p>1 A. The four by five kilos, that's incorrect. That's</p> <p>2 a mistype. It's -- they use the same lot number that was</p> <p>3 originally marked four by five. We relabeled it to four by</p> <p>4 four point one pounds, which is four by two kilos. So it</p> <p>5 says they had the same lot number. They forgot to put the</p> <p>6 word two in there if anyone's curious as to why it says</p> <p>7 four by five kilos.</p> <p>8 Q. Let me ask you: Did your company pay that</p> <p>9 invoice? Was there any --</p> <p>10 A. Of course.</p> <p>11 Q. All right.</p> <p>12 A. And the weight's reflective of the true net</p> <p>13 weight of the product.</p> <p>14 Q. At the present time does your company have</p> <p>15 possession of any master cartons of the original product?</p> <p>16 A. Yes. We have the master carton and the original</p> <p>17 product.</p> <p>18 Q. Okay. And the -- I'm talking about first</p> <p>19 Container Number 1.</p> <p>20 A. Yes.</p> <p>21 Q. And how many master cartons do you have of that</p> <p>22 product for Container Number 1?</p> <p>23 A. I believe there is -- there was ten -- ten cases</p> <p>24 that were left in each lot. Container Number 1 had ten</p> <p>25 cases, and I believe the actual master carton for one of</p>
<p style="text-align: right;">Page 75</p> <p>1 Q. Okay. That was Container Number 1. Now I want</p> <p>2 to move to Container Number 2. Was the same process</p> <p>3 followed for relabeling Container Number 2?</p> <p>4 A. Exactly.</p> <p>5 (Exhibit Number 177 Was marked for identification.)</p> <p>6 Q. Now, this came from a deposition, and it didn't</p> <p>7 come from your production. I wanted you to know that. I</p> <p>8 thought I saw it in your production, but I had my own copy.</p> <p>9 So Exhibit 177, can you tell us what it is, sir?</p> <p>10 A. In one moment I will be able to tell you.</p> <p>11 MR. CERSONSKY: I have a copy for you.</p> <p>12 MR. SLADE: Thanks.</p> <p>13 A. It is, I believe, the re-lotting in of the</p> <p>14 product after being relabeled to the correct weight.</p> <p>15 BY MR. CERSONSKY:</p> <p>16 Q. Okay. So this is the -- an invoice from the</p> <p>17 company that did the relabeling?</p> <p>18 A. No -- oh, yeah. It is an invoice?</p> <p>19 Q. I don't know. I'm asking you.</p> <p>20 A. It's an -- yeah. I didn't realize because I saw</p> <p>21 00. Yes. It's an invoice for the charge to relabel the</p> <p>22 product at Vernon. That would be Container Number 1.</p> <p>23 Q. Okay. Thank you, sir.</p> <p>24 A. And there is an error on it.</p> <p>25 Q. Oh, all right.</p>	<p style="text-align: right;">Page 77</p> <p>1 the cases was sent -- I believe my brother somewhere</p> <p>2 requested it, and it was sent sometime in June of this</p> <p>3 year.</p> <p>4 Q. Okay.</p> <p>5 A. So that would leave nine cartons in original</p> <p>6 packaging and one carton of the shrimp in a -- probably a</p> <p>7 brown box with a label on it because the master carton was</p> <p>8 taken off to send.</p> <p>9 Q. And those few remaining cartons are here in</p> <p>10 Florida?</p> <p>11 A. For Container Number 1, no. They're in Vernon.</p> <p>12 Q. And at the same warehouse facility that received</p> <p>13 the product to begin with, they've kept it for you all this</p> <p>14 time?</p> <p>15 A. Correct. Original condition. Original lot.</p> <p>16 Never touched. Well, never touched until we took a carton</p> <p>17 out to send.</p> <p>18 (Exhibit Number 178 was marked for identification.)</p> <p>19 Q. I'm handing you Exhibit 178 and ask you if you</p> <p>20 can identify it?</p> <p>21 A. It's an e-mail from George Lemery to myself</p> <p>22 confirming four by five from California mid November.</p> <p>23 MR. CERSONSKY: Okay. And for the record,</p> <p>24 Mr. Walker, I put two yellow dots -- highlighted on</p> <p>25 this from what I was going to ask my questions on, so</p>

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<p>1 I apologize. I didn't have a -- didn't use a copy 2 machine. 3 BY MR. CERSONSKY: 4 Q. Okay. In the middle it says: E-mail me a 5 summary. I will e-mail you the PO numbers. 6 A. Uh-huh. 7 Q. Did I read that correctly? 8 A. E-mail me a summary. I will e-mail you the PO 9 numbers. Yes. Smiley face you left off. 10 Q. And that was your e-mail to George -- 11 A. Yes. 12 Q. -- Lemery, correct? 13 A. Uh-huh. 14 Q. Now, how often do you send him e-mails with 15 smiley faces? 16 A. I don't know. Once in a while. This was a 17 little banter going back and forth, I believe. 18 Q. And as friends you sometimes have that banter 19 with Mr. Lemery, correct? 20 A. I try to do it with everybody. It's part of 21 doing business. 22 Q. Now, Mr. Lemery on Tuesday, September 21st, 2010 23 e-mails you that -- the following words: I'm not, then 24 colon, I know you like good paper trails. 25 A. Uh-huh.</p>	<p>1 Q. Okay. And it means thank you? 2 A. I presume. 3 Q. Who is Albert Rodriguez? 4 A. He's one of my sales people. 5 Q. Was Mr. Rodriguez in charge of the relabeling 6 project? 7 A. It was his account that was sold. That -- the 8 account that we sold regarded -- it was his account that 9 this product was sold to, so we made him in charge of the 10 relabeling. 11 Q. Why did Pacific Coral not ask American Seafood to 12 relabel the product? 13 A. It was in -- I had title to it. I would have to 14 transfer it to them, they would have to request it done, 15 and there'd be an expense involved in that. 16 Q. So once title's transferred to you or Pacific 17 Coral, Pacific Coral then has always taken the position 18 that if anything has to be relabeled, it would do it on its 19 own because it's more cost effective? 20 MR. SLADE: Objection. 21 A. Can you repeat that, please? 22 BY MR. CERSONSKY: 23 Q. Sure. Have there been other -- maybe I'll ask it 24 differently. Are there -- have there been other times that 25 Pacific Coral has had to relabel product that it received?</p>
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<p>1 Q. Is that -- did I read that correctly? 2 A. Yes. And it's true. 3 Q. And you expect there to be good paper trails 4 between your company and the people you do business with? 5 A. Yes. 6 Q. And similarly you would expect there to be good 7 paper trails between companies like American Seafood and 8 the companies they do business with? 9 A. Well, it's my business practice. I don't know 10 what theirs is. It just makes it easier for me to 11 reference things. 12 Q. On Page 2 of Exhibit Number 178 which is -- and 13 Page 2 is Bates stamped Page 10, Page 1 is Bates stamped 14 Page 9 -- there's an e-mail from George Lemery to Jeff 15 Azari and it says confirming four by five for California 16 mid November. Did I read that part right? 17 A. Yes. It's the same title as the rest of the 18 e-mail. 19 Q. And you -- there's a section. Would you please 20 read that? 21 A. Will you send me POs please on Monday. TY. 22 Q. Okay. Who -- what does TY stand for? 23 A. Thank you maybe. 24 Q. Okay. You've never seen that? 25 A. I've seen TY before.</p>	<p>1 MR. SLADE: Objection. 2 A. Sure. 3 BY MR. CERSONSKY: 4 Q. Okay. And can you tell us in those situations 5 did Pacific Coral always choose to do the relabeling itself 6 as opposed to asking the seller to relabel or cure it? 7 A. If it's in my possession the only one -- only 8 person that Cold -- that Cold Storage would take 9 instruction from is the title holder. They're not allowed 10 to take instructions from anybody else if other persons do 11 not have title to the product. 12 Q. And I'm just -- just asking this: In that 13 situation, if you gave your -- if Pacific Coral gave 14 permission to Cold Storage to allow someone else to access 15 the product and relabel it, could that have been done? 16 A. Informally, yes. But more formally I would have 17 to transfer it to the person and they would assume title of 18 it at which point they could ask the freezer to do whatever 19 they liked and then I would receive it back upon transfer. 20 Q. Now, I want to ask you about photos, so hopefully 21 this will go -- 22 A. Sure. 23 Q. -- a little faster. But first, I have to ask 24 about one e-mail you wrote. 25 A. This is Page 2 of an e-mail.</p>

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<p>1 Q. Am I -- well, I appreciate that, and I'll -- but</p> <p>2 what I'm going to -- there is an e-mail on Page 52, and</p> <p>3 it's from or to V Perez.</p> <p>4 A. Uh-huh.</p> <p>5 Q. And it's from Jeff Azari and it's called revised</p> <p>6 and there's some information below that I wanted to ask you</p> <p>7 about.</p> <p>8 A. Yes.</p> <p>9 Q. Okay. There's a paragraph that seems to be</p> <p>10 highlighted.</p> <p>11 A. Uh-huh.</p> <p>12 Q. And have you read that?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And there's a reference in there -- well,</p> <p>15 I'll read it, then I'll ask a question. The last two</p> <p>16 sentences: It is imperative that you take photos showing</p> <p>17 the relabel as I will need for evidence. Also, once</p> <p>18 completed, call -- please e-mail me the invoice for the</p> <p>19 work performed.</p> <p>20 A. Correct.</p> <p>21 Q. All right. What evidence are you referring to?</p> <p>22 A. Well, we knew we had a problem with the product,</p> <p>23 and we have to just make sure that we have, in case needed,</p> <p>24 everything that has to do with it. So we requested ten</p> <p>25 cases not be touched, and the rest I needed to take care of</p>	<p>1 labels and apply them to each case -- actually, no. It was</p> <p>2 copied -- okay. It was sent to Vernon. This is the</p> <p>3 instructions from Albert to Vernon to relabel the product.</p> <p>4 So he's asking them to print the label and to put</p> <p>5 them on: More than one label probably needed for each</p> <p>6 case. "Make sure these labels cover the old gross and net</p> <p>7 weight labels. More than one label will probably be needed</p> <p>8 for the case." So he's asking them to relabel everything</p> <p>9 and to make sure that the old weights are covered. That's</p> <p>10 the first e-mail there.</p> <p>11 Q. Okay. And at Bates stamp Number 55 -- or 85, I</p> <p>12 apologize. Can you help me with that? Is that 85 I think?</p> <p>13 A. That's 85.</p> <p>14 Q. 85 Bates stamp Number 86, 87. The last three</p> <p>15 pages of Exhibit 180. Can you identify these photographs?</p> <p>16 A. They're what appears to be the relabeled cartons</p> <p>17 that were from Vernon. There's a production date, quality</p> <p>18 period stamp --</p> <p>19 Q. First let me just -- first we'll look at the</p> <p>20 photograph on Page 185. Now go ahead and tell us what --</p> <p>21 what you see.</p> <p>22 A. Page 185? Bates stamp --</p> <p>23 MR. SLADE: It's a Bates stamp.</p> <p>24 A. Okay. Okay. Bates stamped 185. What is your</p> <p>25 question?</p>
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<p>1 my business. So I had them remark it, relabel it as need,</p> <p>2 and I told them to please take lots of photographs of the</p> <p>3 work performed and to keep any record of the relabeling.</p> <p>4 And I believe there's a lot of photographs.</p> <p>5 (Exhibit Number 180 was marked for identification.)</p> <p>6 Q. I'm handing you Exhibit Number 180 -- first to</p> <p>7 your Counsel.</p> <p>8 MR. SLADE: Go ahead. Take that one back.</p> <p>9 MR. CERSONSKY: Yes, thank you.</p> <p>10 THE WITNESS: Okay.</p> <p>11 BY MR. CERSONSKY:</p> <p>12 Q. Please tell me what Exhibit Number 180 concerns</p> <p>13 because you're one of the people involved in the string of</p> <p>14 e-mails there.</p> <p>15 A. It's an e-mail from my salesman, Albert</p> <p>16 Rodriguez, to myself, and its subject: Label for the four,</p> <p>17 two kilos. And let's see where those went to. To Vernon.</p> <p>18 Q. Okay. And are you asking for photos in the</p> <p>19 e-mails?</p> <p>20 A. Well, let me see.</p> <p>21 Q. Sure. Take your time.</p> <p>22 A. Well, I have to read it from the back forwards.</p> <p>23 This is -- I don't know -- a lot of pages. Okay. So it's</p> <p>24 an e-mail string, and the first one's from Albert to Dan</p> <p>25 and Guy telling them to have the warehouse print some</p>	<p>1 BY MR. CERSONSKY:</p> <p>2 Q. My question is -- I'm asking you to answer a</p> <p>3 couple of questions now that we've identified the page</p> <p>4 we're looking at.</p> <p>5 A. Okay.</p> <p>6 Q. Because I think the record wasn't as clear as</p> <p>7 we'd like it to be. That's not your fault. My fault. I</p> <p>8 should have identified the page. We're looking at this</p> <p>9 Page 185 --</p> <p>10 MR. WALKER: No. It's not 185. It's 85.</p> <p>11 MR. SLADE: Eighty-five.</p> <p>12 BY MR. CERSONSKY:</p> <p>13 Q. Eight-five. Thank you. It's a little hard to</p> <p>14 read, but on Bates stamp Number Page 85, what do we see?</p> <p>15 A. A panel of one -- of a master carton with</p> <p>16 stickers applied to it that describe the country of origin,</p> <p>17 the type of shrimp, and the correct net weight of what -- I</p> <p>18 can't read it, but it has it in pounds and kilograms as</p> <p>19 prescribed by some statute I think.</p> <p>20 Q. All right.</p> <p>21 A. Food Safety Act of something or another.</p> <p>22 Q. All right. We move to Page 86.</p> <p>23 A. It's a different carton. Same -- same thing.</p> <p>24 Q. Okay. And page --</p> <p>25 A. I've got much better photographs than this.</p>

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<p>1 Q. I understand.</p> <p>2 A. It's a whole pallet showing the labels placed on</p> <p>3 the pallets -- on each -- each carton in the pallet.</p> <p>4 Q. Let me see if I can find better pictures.</p> <p>5 MR. SLADE: Some are a bit better.</p> <p>6 THE WITNESS: Okay.</p> <p>7 (Exhibit Number 181 was marked for identification.)</p> <p>8 BY MR. CERSONSKY:</p> <p>9 Q. I hand you what's been marked as Exhibit 181.</p> <p>10 Please identify it.</p> <p>11 A. It's an e-mail from myself on June 19th, 2012 to</p> <p>12 George Lemery. Subject line is Lot Number 46648a and</p> <p>13 attachments.</p> <p>14 Q. And can you describe or identify the attachments?</p> <p>15 A. They're poor photographs of master cartons.</p> <p>16 Q. Okay. Let's go to -- we're in Exhibit 181.</p> <p>17 We're going to Bates stamp Page 153.</p> <p>18 A. Correct.</p> <p>19 Q. And please tell us what is on Page 153.</p> <p>20 A. That appears -- it is a panel of the case of Easy</p> <p>21 Choice farm raised white shrimp, 51/60.</p> <p>22 Q. Can you tell us whether this label that we see</p> <p>23 here was repaired by your company --</p> <p>24 A. No.</p> <p>25 Q. -- or is this the original label?</p>	<p>1 A. But it's -- I can maybe answer that by looking at</p> <p>2 this.</p> <p>3 Q. Let's see if this group helps.</p> <p>4 A. No.</p> <p>5 (Exhibit Number 182 was marked for identification.)</p> <p>6 Q. I hand you what's been marked Exhibit 182, or</p> <p>7 your Counsel did, and I ask you if you can identify it.</p> <p>8 A. It's an e-mail sent on June 19th at 6:23 p.m. to</p> <p>9 George Lemery. Forward: Lot number 46648a.</p> <p>10 Q. And can you tell us whether there were photos</p> <p>11 attached to those e-mails?</p> <p>12 A. Yes. And now I know what these are.</p> <p>13 Q. All right. Why don't you --</p> <p>14 A. It's a --</p> <p>15 Q. -- tell us what is by --</p> <p>16 A. This is one of the cartons of the ten cartons</p> <p>17 that were the original lot number. I know this by the date</p> <p>18 that it was sent to me from the Cold Storage, and I</p> <p>19 requested this. I requested they take all four panels of</p> <p>20 every carton of the ten cartons left in inventory.</p> <p>21 Q. So the pictures on Exhibit 182 --</p> <p>22 A. Actually six panels because there's a top and a</p> <p>23 bottom, so there would be six photographs for each of these</p> <p>24 e-mails that you have here.</p> <p>25 Q. So but I'm asking is are we looking at the</p>
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<p>1 A. That's the original master carton.</p> <p>2 Q. Okay. We go to Bates stamp Number 154 from</p> <p>3 Pacific Coral.</p> <p>4 A. Uh-huh.</p> <p>5 Q. And what do we see on this page?</p> <p>6 A. It's the same photograph. Well, it's another</p> <p>7 photograph of a panel. It's either the same photograph or</p> <p>8 the other side of the carton, which normally has the same</p> <p>9 panel on both sides.</p> <p>10 Q. And that --</p> <p>11 A. And that would be an end panel.</p> <p>12 Q. Okay. Just --</p> <p>13 A. Oh.</p> <p>14 Q. Okay. Let me first identify the page we're</p> <p>15 looking at. Bates stamp Number 155.</p> <p>16 A. It'd be an end panel. There's two side panels,</p> <p>17 and there's two end panels. That's an end panel.</p> <p>18 Q. Okay. The end panel that we're looking at, is</p> <p>19 this the original end panel or is this the panel that's</p> <p>20 been relabeled pursuant to Pacific Coral's instructions?</p> <p>21 A. It is such a poor photograph that I can't answer</p> <p>22 that. I'd be happy to if you can get me a good photograph.</p> <p>23 I think it's the original, but the photograph is really --</p> <p>24 there's some really good photographs that I turned in.</p> <p>25 Q. All right. I'll try to find it.</p>	<p>1 packages in their original form with their original</p> <p>2 labels --</p> <p>3 A. Yes.</p> <p>4 Q. -- from these photos in Exhibit 182?</p> <p>5 A. Yes. And the very last photo, that's part of the</p> <p>6 ten cases left over.</p> <p>7 If it helps, there should be ten of those.</p> <p>8 Q. Ten photos?</p> <p>9 A. No. Ten sets. I took one for every carton left</p> <p>10 in inventory, so if that helps speed things along.</p> <p>11 Q. So --</p> <p>12 A. These were all taken by the Cold Storage on the</p> <p>13 same date too.</p> <p>14 (Exhibit Number 183 was marked for identification.)</p> <p>15 Q. All right. So I'm just -- so the pictures --</p> <p>16 well, here. Let me first show them to your lawyer, and</p> <p>17 then I'll ask you the next question.</p> <p>18 With regard to Exhibit 183, those are</p> <p>19 photographs, correct?</p> <p>20 A. Correct.</p> <p>21 Q. And they are photographs of the original items?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. Do you recall if you produced any of the</p> <p>24 new labels?</p> <p>25 A. Oh, yeah.</p>

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1 Q. Where would those be?

2 A. Yeah. Those -- at your request, I believe, so

3 there's a lot of photographs --

4 Q. Yeah.

5 A. -- of relabeling. In fact, the entire process

6 was documented via photograph.

7 Q. I am almost -- let's go off the record for a

8 minute.

9 THE VIDEOGRAPHER: Off the record 5:25.

10 (Break taken.)

11 THE VIDEOGRAPHER: Back on the record at 5:35.

12 (Exhibit Number 184 was marked for identification.)

13 BY MR. CERSONSKY:

14 Q. I'll hand you what's marked as Exhibit Number

15 184. Would you please tell me what is Exhibit Number 184?

16 Take your time.

17 A. No. It's an e-mail from myself to George Lemery

18 on June 16th, 2011 title: Label for 4X2 kilos. Here are

19 the photos from U.S. Cold Medley.

20 Q. All right. So we've got some photos attached to

21 Exhibit 184.

22 A. Uh-huh.

23 Q. And that's a -- that would be a yes?

24 A. I'm sorry. That's an affirmative.

25 Q. All right. Thank you, sir. All right. Can you

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1 please look at the first photo that we have attached to

2 Exhibit Number 184?

3 A. Yes.

4 Q. Can you read the Bates stamp number on that page?

5 A. Gosh, 667? I -- don't know. Can you read --

6 anyone read that? Well --

7 MR. SLADE: Where is it --

8 A. Well, the one before. Yeah. Hey, 57. How's

9 that? It says -- the word prior it says 56, so I'm going

10 to presume it says 57. It ends with a 7.

11 BY MR. CERSONSKY:

12 Q. I think that's a good -- good presumption.

13 Can you tell me: The photograph, does it depict

14 a relabeled box or original?

15 A. It depicts an illegally marked original box.

16 Q. All right. And that's because the net

17 weight's --

18 A. Not in the correct format.

19 Q. All right.

20 A. It doesn't even declare the net weight of the

21 carton. It says the pack of the carton. A correctly

22 labeled one would say packed four by five pounds -- or, in

23 this case, five pound -- five pound bags times four -- with

24 the words net weight, twenty pounds, and then the correct

25 weight in kilos.

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1 Q. We now go to Exhibit 184 Page 58.

2 A. Uh-huh.

3 Q. And tell me, is that an original master carton.

4 A. Yes, it is.

5 Q. All right.

6 A. This is the side panel; this is the front panel.

7 Q. The front panel is on page --

8 A. The front panel's on Page 58.

9 Q. On Bates stamp Number 59, this exhibit --

10 A. Right. It shows the Cold Storage adding --

11 applying labels to the end panel of a carton.

12 Q. And --

13 A. Sixty.

14 Q. Okay. I'm sorry. You're talking -- thank you --

15 Bates stamp Page 60?

16 A. It's a close-up of the label placed on the

17 carton, and there are plenty more photographs other than

18 these.

19 (Exhibit Number 185 was marked for identification.)

20 Q. I will continue to look for it. Here. I hand

21 you what's been marked as Exhibit Number 185.

22 A. Okay.

23 Q. And can you identify Exhibit 185?

24 A. That's an e-mail from myself to George Lemery and

25 it has one, two, three, four, five, six, seven -- fourteen

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1 attachments on it, original e-mails from Ricky Monta --

2 Mata from U.S. Cold Storage to myself that says: Here are

3 the pictures you requested for invoice number -- oh, we

4 requested photographs and invoice -- number 1013: We have

5 2,553 cases and two each. Upon completion the new lot

6 number will be 57756 leaving a remainder of ten cases with

7 the lot number 5 -- excuse me, 46648a. Regards, Ricky.

8 Q. There are some photographs attached to Exhibit

9 185.

10 A. Uh-huh.

11 Q. The first one is on Bates stamped Page 62.

12 A. Correct.

13 Q. And can you tell me what we see on Page 62? Is

14 that a master carton labeled front side or is --

15 A. It's an end panel with original packaging

16 incorrectly marked, and then it's the same paneling, I

17 believe, with the label on it. Yes. Before and after.

18 Q. Okay. So Bates stamp Page 63, which is actually

19 Page 3 of Exhibit 185, is the way the box looked after you

20 had it relabeled?

21 A. That would be correct.

22 MR. WALKER: Hold on one second. What -- what

23 number is -- what Bates stamp is that right there?

24 You said 63. It's not 63.

25 MR. CERSONSKY: Okay. It's my -- what -- so it's

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1 68 or 69?
2 THE WITNESS: Yeah. You're missing a bunch of --
3 that has fourteen attachments. You only have two of
4 them here.
5 MR. WALKER: Jeff, could you tell us is that --
6 isn't it Bates stamped 69?
7 THE WITNESS: It is Bates stamped 69.
8 MR. CERSONSKY: Can I get copies of those? Can
9 you get someone to make a -- or I'll run to a copy
10 machine.
11 MR. SLADE: No, I can do it. I'll get somebody
12 to make copies.
13 MR. CERSONSKY: Yeah. Because apparently in --
14 MR. SLADE: Do you want me to do it now?
15 THE WITNESS: You don't need to make copies.
16 MR. SLADE: I can get copies and there'll
17 probably be extra copies in my office. If you give me
18 the Bates numbers, I can just pull them out.
19 THE WITNESS: Are we off the record?
20 MR. CERSONSKY: Yeah. Off the record.
21 THE VIDEOGRAPHER: Off the record at 5:41.
22 (Break taken.)
23 THE VIDEOGRAPHER: Back on the record at 5:53.
24 BY MR. CERSONSKY:
25 Q. We've had a break and we've identified some other

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1 pictures that may be similar or next to the Bates numbers
2 for Exhibit Number 185 that we were discussing before the
3 break.
4 A. Uh-huh.
5 Q. So I would like for you to look at Exhibits
6 180 -- I've numbered them 185.1 through 185.8.
7 A. Correct.
8 Q. As to each of those documents I want to know if
9 it's the original label we're looking at or the new label.
10 A. Okay. Fair enough. 81 is the original.
11 MR. WALKER: Say the whole number.
12 THE WITNESS: Got you. 185.1: Original. No
13 stamp on here, so I can't identify --
14 MR. WALKER: Name the label --
15 THE WITNESS: -- the picture.
16 MR. CERSONSKY: Actually, we didn't --
17 THE WITNESS: You didn't put number two on it,
18 185.2's missing. Oh, you know what? You have some of
19 these upside down. May I?
20 BY MR. CERSONSKY:
21 Q. Yes. Please put them in order.
22 A. Okay. You're missing -- that should be two,
23 185.2. Okay. So 185.1 is an original. 185.2 is a poor
24 reproduction, but I believe it's original. I don't see any
25 labels on it. 185.3 is another poor reproduction, but it

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1 has a label. I can't see what the label says.
2 Q. So as to 185.3, you cannot tell if that was an
3 original label and packaging or --
4 A. No. It's relabeled, but I'm just saying that
5 it's such a poor picture that you can't read the label.
6 But it's a -- it is the relabeled. 185.4 shows someone
7 smiling putting a label on it; another guy smiling looking
8 at the camera. 185.5 is an action shot of a label being
9 put on. 185.6 there're cases being moved off a pallet of
10 original product, presumably -- probably being brought to
11 the table to be labeled. And 185.7, that's another poor
12 photograph. I think it's original. There are better
13 photographs available. And 185.8 is a photograph of a
14 relabeled master.
15 So they're all before and after pictures, but
16 they're all taken during the repacking; some showing
17 before, some showing after, some showing during.
18 MR. WALKER: You said repacking.
19 THE WITNESS: Relabeling. Excuse me.
20 These don't have any numbers on it. I'm not sure
21 where they came from.
22 BY MR. CERSONSKY:
23 Q. I -- we didn't identify them. Okay. They don't
24 have a number? I don't --
25 A. They're from your -- oh, you know what? We went

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1 through these. They're your original --
2 Q. One is a 69 --
3 A. Yeah.
4 Q. -- and one is a 62. They went with 185.
5 A. They went with this. These are separate.
6 (Exhibit Number 187 was marked for identification.)
7 Q. Mr. Azari, we found some -- or I found some
8 additional pictures that were produced to American Seafood
9 in response to their request to production for documents,
10 and so I'm going to ask you to walk through them with me.
11 Let me ask you -- after you've reviewed them, I'll ask you
12 some questions.
13 A. Okay.
14 Q. Exhibit Number 187.1.
15 A. Original master carton end panel.
16 Q. What is Exhibit Number 187.2?
17 A. Original master carton -- sorry, 187.2 is the
18 original master carton front panel.
19 Q. What is Exhibit Number 187.3?
20 A. End panel original carton.
21 Q. What is 187.4?
22 A. I think it's the same photograph as point three,
23 black and white. No. It's a different code number. It's
24 an original end panel.
25 Q. What does Exhibit Number 187.5 show?

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<p>1 A. Original end panel.</p> <p>2 Q. What does Exhibit Number 187.6 show?</p> <p>3 A. Original end panel.</p> <p>4 Q. What does Exhibit Number 187.7 show?</p> <p>5 A. A relabeled end panel.</p> <p>6 Q. What does Exhibit number 187.8 show?</p> <p>7 A. Original end panel --</p> <p>8 MR. WALKER: No. I mean -- I'm sorry --</p> <p>9 objection.</p> <p>10 THE WITNESS: I'm sorry. I got distracted. My</p> <p>11 phone. It's a relabeled end panel. I'm going to put</p> <p>12 this away because it's --</p> <p>13 MR. SLADE: Yeah. Careful with the mic.</p> <p>14 THE WITNESS: Okay. I apologize.</p> <p>15 BY MR. CERSONSKY:</p> <p>16 Q. Okay. What does Exhibit 187.9 show?</p> <p>17 A. It is -- well, on the bottom they're relabeled.</p> <p>18 It has two pallets of product and the bottom pallet's been</p> <p>19 relabeled and the top pallet has not been relabeled.</p> <p>20 Q. What do we see on 187.10?</p> <p>21 A. The same thing: Two pallets of product --</p> <p>22 partial pallets of product, the bottom half of which is</p> <p>23 relabeled, the top half of which is not labeled. This is</p> <p>24 all done -- these are all photographs taken during the</p> <p>25 process of relabeling, so it's work in progress.</p>	<p>1 shrink wrapped, so getting ready to but put back in the</p> <p>2 freezer.</p> <p>3 Q. What do we see on 187.19?</p> <p>4 A. You see a relabeled end panel.</p> <p>5 Q. 187.20?</p> <p>6 A. You're -- let see. Relabeled final pallet after</p> <p>7 shrink wrapping work completed with a lot number</p> <p>8 identification license plate on it.</p> <p>9 Q. And does that tell us, this license plate --</p> <p>10 A. Well, this tells me the lot number, and I -- I</p> <p>11 don't know their system, but that's the lot number and this</p> <p>12 is some sort of identification they use and I don't know</p> <p>13 what -- these are internal things they need. I presume</p> <p>14 that's a description in there. I don't know.</p> <p>15 Q. Okay. The -- on Exhibit 187.20 -- I want to show</p> <p>16 the camera -- what we've been talking about has the Number</p> <p>17 57756, correct?</p> <p>18 A. Correct. I'm presuming that's a lot number.</p> <p>19 It's easy to reference to the invoice.</p> <p>20 Q. Okay.</p> <p>21 MR. CERSONSKY: Can you get that, sir?</p> <p>22 THE VIDEOGRAPHER: (Indicating.)</p> <p>23 MR. CERSONSKY: Thank you.</p> <p>24 THE WITNESS: That's called a license plate.</p> <p>25 That's what they call it.</p>
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<p>1 Q. All right. What is Exhibit 187.11?</p> <p>2 A. That's an action shot of a label being put on.</p> <p>3 Q. What does 187.12 show?</p> <p>4 A. These are the same ones we just went through in</p> <p>5 color. It's action shots of smiley faces/guys putting on</p> <p>6 labels.</p> <p>7 Q. What do we see as 187.13?</p> <p>8 A. It's a relabeled carton on the top, and on the</p> <p>9 bottom -- on -- I can't tell from the bottom.</p> <p>10 Q. Okay. But the top one is a relabeled one?</p> <p>11 A. Correct.</p> <p>12 Q. And is that how they would have been shipped to</p> <p>13 your client?</p> <p>14 A. Exactly the way they were shipped to my client.</p> <p>15 Q. 187.14 is the -- a relabel?</p> <p>16 A. Correct.</p> <p>17 Q. 187.15 showing them being --</p> <p>18 A. The bottom pallet's relabeled. The top pallet,</p> <p>19 they're working on relabeling it.</p> <p>20 Q. Okay. Don't worry about 187.16. What is 187.17?</p> <p>21 A. It's a relabeled product, end panels that are</p> <p>22 relabeled.</p> <p>23 Q. Okay. What is shown on Exhibit 187.18?</p> <p>24 A. Relabeled cartons on pallets at least on the</p> <p>25 top -- I can't tell. The bottoms are also relabeled and</p>	<p>1 MR. WALKER: They being the storage facility?</p> <p>2 THE WITNESS: Correct. The U.S. Cold Storage</p> <p>3 refers to it as a license plate I believe.</p> <p>4 MR. CERSONSKY: Go off the record.</p> <p>5 THE VIDEOGRAPHER: Off the record.</p> <p>6 (Discussion off the record.)</p> <p>7 THE VIDEOGRAPHER: Back on the record.</p> <p>8 A. 187.21: Two pallets of shrimp, the bottom half</p> <p>9 of which has been relabeled, the top half which is not</p> <p>10 relabeled.</p> <p>11 MR. CERSONSKY: I need one more -- oh, I found</p> <p>12 it. My bad. My bad.</p> <p>13 BY MR. CERSONSKY:</p> <p>14 Q. Please tell us what's -- I'm sorry -- what's on</p> <p>15 187.22?</p> <p>16 A. Yes. Point twenty-two it's, once again, two</p> <p>17 pallets. The one on the bottom is relabeled. The one on</p> <p>18 the top is not. This is done during the relabeling</p> <p>19 process, and they haven't got to the top pallet yet.</p> <p>20 MR. CERSONSKY: Go off the record for a minute.</p> <p>21 THE VIDEOGRAPHER: Off the record.</p> <p>22 (Discussion off the record.)</p> <p>23 THE VIDEOGRAPHER: On the record.</p> <p>24 (Exhibit Number 188 was marked for identification.)</p> <p>25 BY MR. CERSONSKY:</p>

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1	Q. What is Exhibit Number 188, sir?	1	that we submitted today.
2	A. 188 is my original request to have the container	2	Q. Okay.
3	QC checked.	3	MR. SLADE: I have a copy of it if you want.
4	Q. And to whom was that request made?	4	MR. CERSONSKY: I've got it.
5	A. To Thomas McGuire, my QC tech.	5	MR. SLADE: You got it. Okay.
6	Q. And is he a college graduate?	6	THE WITNESS: If you'd like, I can look at that
7	A. I don't know.	7	while you look at that, if it helps.
8	Q. How long has he worked with you?	8	MR. SLADE: You can mark it too.
9	A. Two/three years.	9	MR. CERSONSKY: Yes. Yes.
10	Q. Do you know what his background was before coming	10	BY MR. CERSONSKY:
11	to your company?	11	(Exhibit Number 189 was marked for identification.)
12	A. Sure. He was the buyer at Sysco in Miami.	12	Q. I hand you what's been marked Exhibit 189. Tell
13	Q. And that's Sysco, S-Y-S-C-O?	13	me what it is, please?
14	A. The one from Houston.	14	A. This is a supplemental claim to the original
15	I've known Thomas for a long time.	15	debit memo Number DB-1-11 that we submitted on
16	Q. Okay. Let me ask you if American Seafood owes	16	May 3rd, 2011, with further revisions that were made to
17	your company any money at this time?	17	that same debit memo on August 30th, 2011.
18	A. Yes, he does.	18	Q. Okay. There are some additional charges here
19	Q. Okay. And how much?	19	that concern Container Number 1, correct?
20	A. I have no idea.	20	A. This is correct.
21	Q. Let me ask this: Does American Seafood owe your	21	Q. Could you please identify for me and the judge
22	company any money with regard to Container Number 1 that	22	the additional charges that refer to or relate to Container
23	was delivered to California?	23	Number 1?
24	A. No, they do not.	24	A. Sure. Thinking about it, we realized that we
25	Q. With regard to Container Number 2, the product	25	paid storage for seven months on 50,000 pounds of product

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1	that was delivered to Medley, Florida in February of 2011,	1	when indeed there was not 50,000 pounds of product there
2	does Pacific Coral contend or maintain that American	2	because it wasn't packed to be 100 percent net weight, and
3	Seafood owes money on that container --	3	that is the difference. That is the additional monies that
4	A. No, they do not.	4	we had paid.
5	Q. -- to Pacific Coral? Okay.	5	Q. Okay. Which paragraph or section of Page 1,
6	With regard to the container that was not	6	Bates stamped Number 86, are you referring to?
7	delivered, the third container --	7	A. Well, if you look at it, it's broken up in three
8	A. Uh-huh.	8	sections. The first section is for the container that was
9	Q. Are you with me?	9	not delivered and the second section is for over-storage
10	A. I'm with you.	10	that was paid because of the weight received and the third
11	Q. Okay. Does Pacific Coral contend or believe that	11	section is recurring storage charges that we paid while the
12	American Seafood owes money to Pacific Coral for that	12	product was in -- being held for deposition --
13	container?	13	MR. SLADE: Disposition.
14	A. Yes. As of yesterday they do.	14	THE WITNESS: Disposition. Thank you.
15	Q. Okay. And --	15	BY MR. CERSONSKY:
16	A. But they're not -- I'm not sure if they were	16	Q. Okay. But in the time period, with regard to
17	aware of it yet, but that's one of the additional claims	17	Container Number 1, there was no problem that you were
18	that we just put in. Actually, could I --	18	aware of -- Pacific Coral was aware of from the time it was
19	Q. Sure.	19	delivered in November till sometime in March or April,
20	A. I just realized. The answer to your first two	20	correct?
21	questions, Container Number 1 and Container Number 2, yes,	21	A. That would be March.
22	there is monies owed.	22	Q. March. Correct. Okay. So why wasn't the
23	Q. Okay. With regard to Container Number 1, how	23	product sold or delivered to the customer in December,
24	much money is owed?	24	January, or February?
25	A. I would have to refer to the additional claim	25	A. Because it -- it was -- wasn't due yet, and

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<p style="text-align: right;">Page 106</p> <p>1 actually, I just realized another charge that I forgot to 2 put on here. There's some extra freight we had to pay 3 because we didn't have the product available in Los Angeles 4 and we delivered from the east coast, which has a much 5 higher freight rate, so I need to get with my brother on 6 that one.</p> <p>7 Q. Okay. Now, are you -- you're saying that you 8 were paying storage on higher charges. Can you give me a 9 line example of that? Would it be in section three or four 10 that begins with the word additionally?</p> <p>11 A. Uh-huh. That is correct.</p> <p>12 Q. Okay. "Additionally, we are claiming for the 13 cost of storage for the 12 percent of the product that was 14 short weight." Did I read that correctly?</p> <p>15 A. You did.</p> <p>16 Q. All right. Now, have you gone back to your own 17 storage company and advised them that the weight was not 18 100 percent net weight but was 88 to 90 percent net weight?</p> <p>19 A. No, we did not do that. It is doubtful they 20 would change their billing.</p> <p>21 Q. With regard to the last section of the letter, 22 large section, begins with the word additionally, it 23 says -- the first line: "Additionally, we are claiming the 24 added holding cost due to delay in sales of the two 25 received shipments due to short weight." Did I read that</p>	<p style="text-align: right;">Page 108</p> <p>1 It's just an industry standard. So if something weighs 2 20 pounds it's an industry standard to add 20 percent for 3 the gross weight. It's just the way the freezers charge. 4 At U.S. Cold Storage we only pay on net weights, 5 and you will see that the charges are much less because we 6 have a much more favorable rate as well.</p> <p>7 Q. And going up from the bottom, the very single 8 line that begins with the word revised.</p> <p>9 A. From the bottom?</p> <p>10 Q. It's in the middle. They have the word revised 11 claim.</p> <p>12 A. Oh, yes.</p> <p>13 Q. Now, the reason for that revised claim is what?</p> <p>14 A. You'd have to refer to Page 2. We re-thought the 15 whole process of the expenses and we negotiated this in 16 September of 2010. We weren't told officially that we're 17 not going to receive a Container Number 3 until July 2011, 18 and you can see from the graph what the market did between 19 those two dates. That is the true extent of our loss. 20 It's explained below. The graph, you can read something on 21 there as well.</p> <p>22 Q. But didn't you buy product or replace that 23 Container Number 3 from another source?</p> <p>24 A. That product, the product that we used -- I still 25 needed product. It never ended. The sale I had was a very</p>
<p style="text-align: right;">Page 107</p> <p>1 correctly?</p> <p>2 A. Yes, you did.</p> <p>3 Q. All right. It says on the next line, "Freezer 4 charges for Preferred Vernon load, 3 months X .018 pounds 5 per month times 50 pounds --</p> <p>6 A. 50,000 pounds.</p> <p>7 Q. "50,000 pounds" -- thank you -- "\$2,700."</p> <p>8 A. This is correct.</p> <p>9 Q. Who is the company making that charge to you?</p> <p>10 A. This is what we paid. This is Preferred Vernon's 11 charge for this, and I wonder why he put three months? I 12 suppose he's taking it from the date that we knew about the 13 problem because we were holding it anyway to that point, so 14 that's the additional storage that we paid due to the -- 15 due to the issue.</p> <p>16 Q. All right. Do you have a document that you can 17 show me that says they charge you by net weight and not 18 gross weight?</p> <p>19 A. I believe Preferred charges by gross weight, but 20 that's a function of net weight. It's a calculation they 21 put. It's called a tare weight. They don't weigh each 22 case, but if you say it weighs 20 pounds, they charge you 23 an assessed tare weight of 20 percent of which is the 24 normal difference between net and gross weight, and you 25 take into account the package and weight and the glaze.</p>	<p style="text-align: right;">Page 109</p> <p>1 large sale that went over a year's time period. Eventually 2 that product that wasn't delivered had to be made up, and 3 it was made up. On this date I had to buy more product to 4 make up for the loss, the missing product I had. The 5 previous debit memo was incorrectly thought out.</p> <p>6 Q. Well, wouldn't there be an invoice showing what 7 you paid for the replacement product that you say you had 8 to buy?</p> <p>9 A. It's a few ways to look at it. I had products 10 that I bought overseas in September that I paid \$3.10 for 11 as an importer. The market went up -- the relative market 12 is all you need to look at. The difference between the 13 two -- your buying prices go up that amount too, I mean 14 otherwise -- when markets go up here, buying prices go up 15 down -- overseas. It's that difference that's the true 16 loss.</p> <p>17 Q. But isn't there an invoice that shows what you 18 paid for the replacement product?</p> <p>19 A. It's ambiguous. I can pull invoices up. There's 20 product that, from this point forward, I guarantee you that 21 as a company we paid that spread higher on product. 22 Whatever I paid back here, what I negotiated at this point, 23 when I negotiate here, I'll be paying this much more for 24 the product. And you can see what the market did. It was 25 very active in that period. The market went up and that</p>

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1 was because the product was short. It was harder to get.
2 That generally causes the market to spike. But, you know,
3 I sold product to this customer for over a year time's
4 period. You can't put it towards anyone's delivery point.
5 There's parts of my product where I lost huge amounts of
6 money because the market went up and I had to supply the
7 customer. I had a guaranteed price to him. I had no
8 guarantee to what I was buying it at.

9 Q. So what you've done, if I understand it, you've
10 kind of averaged in the cost at that time. It's not based
11 on any particular invoices that you received for product
12 that was bought during that time period?

13 A. This is correct. If I was to have negotiated the
14 product on my own and brought it in with no issues, I would
15 have paid the difference that's shown between these two
16 points less per pound.

17 At the point where we knew we weren't getting
18 that container, I had to go buy more shrimp. It might have
19 been delivered to a customer somewhere down the stream, but
20 that was the date where we definitively knew we were not
21 going to get this product, and that's the date that we had
22 to -- okay, now we have to buy product. It's --

23 Q. Okay. Have you been in situations in the past
24 where a company failed to deliver the product that you
25 wanted and you had a second container on order from them,

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1 did you withhold all payment on that first container or
2 would you pay what you thought was -- was owed?

3 A. Generally, that's -- we're an importer primarily,
4 so when they do that to us, there's a dispute, and we
5 normally stop doing business with people like that because
6 we can't run a company based on they choose when they're
7 going to deliver orders.

8 Q. But my question was: If the first order came in
9 and it wasn't -- there was some labeling dispute/net weight
10 dispute, would your company do like it did here for
11 American Seafood on Container Number 2 and make a partial
12 payment, reducing the offsets that your company had? Is
13 that the way you operate --

14 MR. WALKER: Objection: Calls for speculation.

15 MR. SLADE: Objection: Hypothetical.

16 THE WITNESS: Okay.

17 MR. CERSONSKY: It is.

18 MR. SLADE: He's not an expert in this case.

19 MR. CERSONSKY: Yeah. Well, I was trying to ask
20 just to what their business experience was, not the
21 industry standard.

22 MR. WALKER: Objection: Calls for speculation
23 but --

24 MR. SLADE: I already made my objection.

25 THE WITNESS: What would you like me to do?

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1 MR. SLADE: You can answer it.

2 A. Oh. We usually are on the short end of the
3 stick. When you import containers payments are made based
4 on documents, letters of credit, or payments before the
5 product arrives. So, once again, if we have a problem and
6 they can't make it up to us, bye-bye. They're gone.
7 Generally we work it out.

8 BY MR. CERSONSKY:

9 Q. Now I want to ask you: Is your company expecting
10 to get any money from the proceeds of this lawsuit --

11 A. No.

12 Q. -- on the -- no. Have you agreed to help out
13 your friend George Lemery and his company, American
14 Seafood, with regard to this case?

15 A. No. I've --

16 MR. WALKER: Objection: Vague.

17 A. I've agreed to provide documents upon his
18 request.

19 BY MR. CERSONSKY:

20 Q. Didn't you suggest the name -- a name to him of
21 an attorney who practices in this area?

22 A. My brother did.

23 Q. Oh, okay. How many times have you had an
24 opportunity to visit with -- with Earl Walker about this
25 case?

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1 A. Visit? Like --

2 Q. Well, telephone conversation.

3 A. I've talked to Earl twice.

4 Q. When was the first time you talked to him?

5 A. First time I talked to him was June or -- I
6 believe June.

7 Q. Of what year?

8 A. 2012.

9 Q. Tell me about that first conversation.

10 A. Well, I'm not quite sure. I think he requested
11 master cartons. I believe. I'm not a hundred percent
12 certain. He wanted to know if I could FedEx overnight some
13 master cartons from the original lots.

14 Q. What else did the two of you discuss about this
15 case?

16 A. Well, I talked to George about some business. He
17 called me looking for some product, and with Earl I only
18 recall that master carton. I'm not sure of any other
19 questions that he asked, but there again, I'm not even
20 certain about that a hundred percent.

21 Q. Let me ask you about the second time you had a
22 conversation with Mr. Walker.

23 A. I believe I called him because I received notice
24 that there was going to be a deposition.

25 Q. And that was a deposition of Pacific Coral?

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1	A. The deposition that we're currently in.	1	Q. And did you make any suggestions?
2	THE VIDEOGRAPHER: I'm sorry to interrupt. Can I	2	A. I said to Mr. Lemery that I needed the product,
3	change the tape?	3	giving it back was not an option because I had a huge
4	MR. CERSONSKY: Yes.	4	order, and that I'm not going to sell adulterated product
5	THE VIDEOGRAPHER: We're off the record at 6:25.	5	to my customer. I'm not going to put myself in that
6	(Discussion off the record.)	6	position; that you need to work it out with whoever you
7	THE VIDEOGRAPHER: Back on the record. It's	7	bought it from because, you know, I can't give back the
8	6:27.	8	product because I -- it was due relatively soon after we
9	BY MR. CERSONSKY:	9	discovered the short weight and I was not about to short
10	Q. With regard to your second conversation with	10	one of my most important customers with non-delivery.
11	Mr. Walker, tell me what you discussed.	11	Plus, that is a big restaurant chain that had a commercial
12	A. I asked him -- I'd never been depoed before. I	12	that was currently running on TV, and, you know, this was
13	didn't even know I had an attorney until, I don't know,	13	all purchased for that ad that was coming out. It was zero
14	maybe a couple weeks ago. He was in my office and I asked	14	hour and I was -- I had a situation. I had a customer, and
15	who he was and he said he was my attorney.	15	I had to try to work it out.
16	MR. SLADE: I do represent the company, but he's	16	Q. Now, you had this important customer, and you had
17	not involved in that part of the business apparently.	17	promised them product at 100 percent net weight, correct?
18	A. Apparently we've had one for years but we never	18	A. Well -- I mean, did I -- no. I didn't tell them
19	have been in need for one so -- but prior to that I didn't	19	it was 100 percent net weight. It's a given. I'm not
20	know I had one so I called Mr. Walker to say, hey, I've	20	going to tell my customer I'm going to sell you short
21	never been in this. What do I do. I had no one else to	21	weight.
22	talk to, so I called him because he sent me an e-mail I	22	Q. Okay. Well, I understand. You're selling 100
23	believe.	23	percent net weight product, correct?
24	BY MR. CERSONSKY:	24	A. Correct.
25	Q. And how long did you and he talk?	25	Q. Now, when you found out the product was 90
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1	A. Minutes. Just a couple of minutes. I asked him	1	percent net weight or thereabouts --
2	if I needed an attorney because I'd never been here and if	2	A. Uh-huh.
3	I did would he be my attorney or would that be -- do I have	3	Q. -- you kept the product and did not return it?
4	to get somebody else, and he said no. It's best that you	4	A. This is correct.
5	get somebody else, and that was the extent of the	5	Q. Now, did you send that product to your customer
6	conversation.	6	even though it was --
7	Q. Do you know if your brother has had any	7	A. I called my customer.
8	conversations with Mr. Walker?	8	Q. Okay.
9	A. I do know that.	9	A. I explained that we have an issue; that the
10	Q. And the answer is?	10	product, when we checked it, was not full weight; and that
11	A. The answer is no.	11	I need his assistance in setting up a new product code
12	Q. Has anybody else with Pacific Coral spoken with	12	because the product codes we had for the customer were
13	Mr. Walker?	13	eight by five and four by five pounds. We had to create a
14	A. No.	14	new code for a four by four point one pounds, or four point
15	Q. Have you had any discussions with Mr. Lemery	15	four pounds in this case -- whatever the remarked/relabelled
16	about this lawsuit?	16	product was.
17	A. Yes, I have.	17	Q. So the customer agreed to adjust the
18	Q. About how many times have you and he talked about	18	specifications to allow you to deliver the 90 percent net
19	the case?	19	weight product after it was relabeled?
20	A. Well, any time he requested a document he would	20	A. I don't like the way you phrased it. He paid --
21	call me or e-mail me and I would send it to him.	21	he -- he put me to the correct people to get a new item
22	Q. So tell me, before the lawsuit was filed, were	22	code set up in their system to be able to accept four by
23	you involved in any discussions in trying to resolve the	23	four pounds or four by four point one pounds product.
24	case?	24	There was a new item code that had to be set up to accept
25	A. I certainly was.	25	that.

UNRECORDED

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<p>1 Q. So this customer that was originally was being 2 sold 100 percent net weight made an adjustment and allowed 3 product to be delivered to it that was 90 percent net 4 weight -- 5 A. No. No. 6 MR. WALKER: Objection: Misstates testimony. 7 A. No. He never accepted 90 percent net weight. 8 After we relabeled it, it was 100 percent net weight. We 9 delivered to him product and billed him for product that 10 weighed -- does anybody have a calculator? What's four 11 times four point one or four times four? Sixteen -- 12 whatever the corrected net weight is, he only got 100 13 percent net weight. He would have gotten 90 percent net 14 weight if I shipped him the original cartons which I 15 refused to do. 16 BY MR. CERSONSKY: 17 Q. So you relabeled the cartons so that the net 18 weight that was in the -- of the shrimp inside the box was 19 on the label? If that were 16 pounds or 18 pounds, that 20 was what was going to be on the label? 21 A. Right. That's what was on the label, that was 22 what the PO came in for, and that's what was delivered, and 23 that's what was billed for. It's all on the invoices in 24 all the supporting paperwork. The purchase order is on 25 there; it notes the pack. The invoice is on there; it</p>	<p>1 aware of that? 2 A. No. But nor would I allow that. 3 Q. Because the product had been delivered to you and 4 you were upset about what had happened? 5 A. No. Because I'm not going to relinquish title to 6 something that I needed. And after reading, I think they 7 just offered to put a sticker that said 90 percent on it. 8 They weren't even offering to label it properly. 9 Q. But that's a discussion that you did not have 10 with them at that time? 11 A. No. This is something that -- after reading that 12 I see. It's the way I understand what I read on the depo 13 pages. 14 Q. Okay. So for preparing for this deposition you 15 actually read some depositions that had been taken in this 16 case? 17 A. Yes. I was interested because I was a party and 18 I wanted to know what the heck happened -- 19 Q. So which -- 20 A. -- as part of my curiosity. 21 Q. Okay. Which depositions did you read? 22 A. I read depositions from Jim, Yang, Lynn, and 23 George. 24 Q. And when did you read all these depositions? 25 A. After work just sitting on the couch.</p>
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<p>1 notes the pack or the weight. Everything matches to 2 exactly to match what was delivered. 3 Q. Did the client want four by five pound packages 4 originally? 5 A. Yes. 6 Q. And so what was changed was making four by four 7 point one -- 8 A. Well -- 9 Q. Whatever the number is that -- 10 A. Yes. 11 Q. That was the -- 12 A. That was a code that they didn't have in their 13 system. It's not a usual code. It's an unusual pack size, 14 and we were both in the same position. He was nervous 15 because this is -- this is a very large order and a very 16 important promotion, and he was nervous that I would have 17 enough product to sell him because it was a lot of one 18 item, one size. It was a lot of product. So when I told 19 him about the problem, he was more than happy to help 20 accommodate and he was very thankful that we didn't try to 21 fraud -- create fraud in delivering the wrong packages. 22 Q. Are you aware that National Commodities offered 23 to relabel the product? 24 A. I was now. When I read through the depositions, yes. 25 Q. But at the time this was going on you were not</p>	<p>1 Q. There're better things to do in life; I assure 2 you. 3 A. I find interest in things. I was interested to 4 see what really happened because this was a huge stress 5 factor. It affected not only this sale, it affected my -- 6 rest of my business during that time period because it was 7 a lot of stress I had. 8 I mean, you've got to remember, this was one of 9 my most important customers. If I fail I'm history, and 10 there was a huge amount of stress put on me. I tried 11 everything I could. I negotiated with Cold Storage on 12 relabeling costs. I was looking out -- I just wanted to 13 make -- I was just wanting to get an agreement to make this 14 thing disappear. I certainly don't want it to become a 15 federal case so -- 16 Q. Which it has become. 17 A. Apparently it has. 18 Q. And you didn't pick up the phone and say, George, 19 let's get those people over here and let's have a 20 face-to-face meeting and work it out? 21 A. Did I pick up the phone and say that? No. 22 Q. Did you write an e-mail and say, George, can 23 those people come here and meet with me face-to-face and 24 try to work this out? 25 A. No. Because it's not my --</p>

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<p>1 Q. Just --</p> <p>2 A. No, I did not because I didn't deal with the</p> <p>3 company. In fact, I didn't know who it was at that point,</p> <p>4 when it first happened. I still didn't know who it was</p> <p>5 until later on.</p> <p>6 MR. CERSONSKY: Believe it or not, I'll pass the</p> <p>7 witness.</p> <p>8 MR. SLADE: Wow.</p> <p>9 CROSS-EXAMINATION</p> <p>10 BY MR. WALKER:</p> <p>11 Q. Mr. Azari, my name is Earl Walker. I represent</p> <p>12 American Seafood in this case. Have we ever met before</p> <p>13 today?</p> <p>14 A. No, we have not.</p> <p>15 Q. If this case goes to trial in Houston, Texas</p> <p>16 would you be willing to come to Houston, Texas and testify</p> <p>17 live at the trial?</p> <p>18 A. I would be, yes. I would not like to go, but I</p> <p>19 would.</p> <p>20 Q. All right. Now, I'm going to ask you some</p> <p>21 questions about the documents that P -- that Pacific Coral</p> <p>22 Seafood produced in this case in response to a subpoena for</p> <p>23 documents from my client, American Seafood, and a subpoena</p> <p>24 for documents from National Commodities Company. Do you</p> <p>25 understand that?</p>	<p>1 MR. CERSONSKY: I have one request.</p> <p>2 THE VIDEOGRAPHER: We're off the record?</p> <p>3 MR. WALKER: Are we off the record?</p> <p>4 MR. CERSONSKY: Oh, yes.</p> <p>5 THE VIDEOGRAPHER: We're off the record at 6:39.</p> <p>6 This ends the deposition.</p> <p>7 THE COURT REPORTER: Would you like to read?</p> <p>8 MR. SLADE: Read deposition.</p> <p>9 THE COURT REPORTER: Order?</p> <p>10 MR. CERSONSKY: Order.</p> <p>11 MR. WALKER: Copy.</p> <p>12 MR. SLADE: I don't want to pay for a transcript</p> <p>13 for you.</p> <p>14 (The deposition concluded at 6:40 p.m.)</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 A. Okay. Sure.</p> <p>2 Q. Were the documents produced by Pacific Coral</p> <p>3 Seafood in response to American Seafood's subpoena for</p> <p>4 documents and National Commodities' subpoena for documents</p> <p>5 made at or near the time of the occurrence of the matter</p> <p>6 set forth by or from information transmitted by a person</p> <p>7 with knowledge of those matters?</p> <p>8 MR. CERSONSKY: Earl, I'll stipulate that these</p> <p>9 are their business records.</p> <p>10 MR. SLADE: That sounds good to me.</p> <p>11 MR. WALKER: That sounds good to me too.</p> <p>12 MR. SLADE: I would have done the same thing if I</p> <p>13 were you.</p> <p>14 MR. WALKER: All right. Well, let me just make</p> <p>15 sure it's clear for the record. So, Butch, do you</p> <p>16 agree that the documents produced by Pacific Coral in</p> <p>17 response to National Commodities' subpoena for records</p> <p>18 and American Seafood's subpoena for records are the</p> <p>19 business records of Pacific Coral?</p> <p>20 MR. CERSONSKY: Provided you take me to dinner at</p> <p>21 Truluck's tonight, yes. And even if you don't take me</p> <p>22 to dinner at Truluck's tonight, yes.</p> <p>23 MR. WALKER: All right. Pass the witness.</p> <p>24 THE WITNESS: That's it?</p> <p>25 MR. SLADE: Nothing from me.</p>	<p>1 CERTIFICATE OF OATH</p> <p>2 STATE OF FLORIDA</p> <p>3 COUNTY OF MIAMI-DADE</p> <p>4 I, CHELSEA HLAVACH, shorthand reporter and Notary</p> <p>5 Public, State of Florida, certify that JEFF AZARI</p> <p>6 personally appeared before me and was duly sworn/affirmed.</p> <p>7 Witness my hand and official seal this 17th day</p> <p>8 of August, 2012.</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15 Chelsea Hlavach, Notary Public</p> <p>16 State of Florida, My Commission:</p> <p>17 1317860, Expires: August 11, 2015</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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1	CERTIFICATE OF REPORTER	AUGUST 27th, 2012	
2	STATE OF FLORIDA	JEFF AZARI	
3	COUNTY OF MIAMI-DADE	C/O ROGER SLADE, ESQUIRE	
4	I, CHELSEA HLAVACH, Shorthand Reporter and Notary	Boyd & Jenerette	
5	Public, State of Florida, HEREBY CERTIFY that I was	801 Brickell Avenue, Suite 1440	
6	authorized to and did stenographically report the	Miami, Florida 33131	
7	deposition of JEFF AZARI; that a review of the transcript	In Re: AUGUST 17, 2012 deposition of JEFF AZARI	
8	was not requested; and the foregoing transcript, pages 1	NATIONAL COMMODITIES COMPANY VS. AMERICAN	
9	through 124, inclusive, is a true and accurate record of my	SEAFOOD IMPORTS, INC.	
10	stenographic notes.	Dear Sir/Madam:	
11	I FURTHER CERTIFY that I am not a relative,	This letter is to advise that the transcript for the	
12	employee, attorney, or counsel to any of the parties, nor	above-referenced deposition has been completed and is	
13	am I a relative or employee of any of the parties' attorney	available for review. Please contact our office at	
14	or counsel connected with the action, nor am I financially	(800)275-7991 to make arrangements for read and sign or	
15	interested in the action.	sign below to waive review of this transcript.	
16	Dated this 17th day of August, 2012.	It is suggested that the review of this transcript be	
17		completed within 30 days of your receipt of this letter,	
18		as considered reasonable under Federal Rules*; however,	
19		there is not Florida Statute to this regard.	
20		The original of this transcript had been forwarded to	
21		the ordering party and your errata, once received, will be	
22		forwarded to all ordering parties for inclusion in the	
23		transcript.	
24		Sincerely,	
25		Chelsea Hlavach	
		Orange Legal	
		CC: M.H. CERSONSKY, ESQUIRE	
		EARL WALKER, ESQUIRE	
		Waiver:	
		I, _____, hereby waive the reading & signing	
		of my deposition transcript.	
		Deponent Signature _____ Date _____	
		*Federal Civil Procedure Rule 30(e)/Florida Civil Procedure	
		Rule 1.310(e)	

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1	ERRATA SHEET
2	DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES HERE
3	RE: NATIONAL COMMODITIES COMPANY VS. AMERICAN
4	SEAFOOD IMPORTS, INC.
5	CASE NO: CIVIL ACTION H-11-1716
6	DATE TAKEN: AUGUST 17, 2012
7	PAGE LINE CHANGE REASON
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21	Under penalties of perjury, I declare that I have read my
22	deposition and that it is true and correct subject to any
23	changes in form or substance entered here.
24	DATE _____ JEFF AZARI _____
25	

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